



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 July 2018

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),
that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

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

(2) **Compliance with non-discretionary development standards—development other than complying development.**

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

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

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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Items for Consideration of the Planning Committee:

ITEM	PRECIS	PAGE
	REPORTS THROUGH THE GENERAL MANAGER	6
	REPORTS FROM THE DIRECTOR PLANNING AND REGULATION	6
1	[PR-PC] Development Application DA17/0358 for a Manufactured Home Estate at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South	6
2	[PR-PC] Development Application DA17/0805 for a Helipad at Lot 1 DP 735658 No. 477 Urliup Road, Urliup	109
3	[PR-PC] Development Application DA18/0001 For a Rural Land Sharing Community Comprised of 13 Dwelling Sites Over 5 Stages at Lot 1 DP 1054943 No. 54 Wallum Court, Clothiers Creek	144
4	[PR-PC] Update on Parking Contribution Waiver - Murwillumbah CBD/South Murwillumbah	236
5	[PR-PC] Rural Land Strategy	240
6	[PR-PC] Draft Aboriginal Cultural Heritage Management Plan 2017	247
7	[PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	263

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA17/0358 for a Manufactured Home Estate at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

Council is in receipt of a Development Application for a manufactured home estate. The development features 110 manufactured home sites developed across four stages. The development includes community facilities including an activity room, cinema, gym, amenities, pontoon and pool which overlook the waterway to the north east.



This application was received in June 2017 where the assessment noted several complex issues. The key issues involve amenity issues including flooding hazard, earthworks, aircraft noise, road noise and adjoining land uses, traffic impacts, ecological impacts, streetscape impact, landscaping and compliance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (Regulations).

Several meetings were held with relevant stakeholders prior to lodgement in 2016 and throughout the assessment process, with several requests for further information made and amendments to the proposal submitted. Following this negotiation process and giving consideration to legal advice received, it is considered that the subject development has adequately addressed the issues raised and can be approved subject to specific conditions of consent.

The application was advertised and placed on exhibition for a period of 30 days from 28 June 2017 to 28 July 2017 during which time one submission was received.

Due to the low lying nature of the existing ground level, earthworks are proposed comprising of fill up to 2m in depth with up to 1.5m high retaining walls parallel with the boundary to Fraser Drive, around drainage easements or vegetation to be retained. These earthworks result in the development complying with relevant flooding controls and are required to have no impact on vegetation to be retained and rehabilitated. A high level flood evacuation roadway to an area above the Probable Maximum Flood (PMF) level provided at each stage of the development has been incorporated into the proposal.

Concerns have also been raised with regard to the development being subject to aircraft noise as the site is mapped as within 25-30 contours of Aircraft Noise Emissions Forecast (ANEF) 2047. Manufactured home estates are not permissible under State Environmental Planning Policy No 36 (SEPP) in an *airport buffer area*. Also, Clause 7.9 of Tweed Local Environmental Plan outlines controls in this regard. Council sought legal advice regarding the interpretation of the SEPP and Clause 7.9 following a recent NSW Land and Environment Court decision on the matter. This legal advice is attached and confidential.

Reporting from an acoustic consultant accompanied the application addressing the concerns proposing acoustic attenuation measures to form part of the development which include 1.9m - 2.0m high noise barrier fencing parallel with the southern and western boundaries in addition to a high level of acoustical treatment to the future dwellings and community buildings to meet the indoor design sound levels in accordance with Australian Standard 2021:2015.

Given the Court's recent decision on an appeal at Tringa Street Tweed Heads, further legal advice received and consideration of the relevant provisions, it is concluded that the ANEF contours are not considered to be a 'buffer area' and as such, the development is permissible at the subject site. Further, it is considered Council can grant consent for the subject development in accordance with Clause 7.9 subject to conditions of consent which are also consistent with the advice and recommended conditions from Gold Coast City Airport.

Three Conservation Areas, 2,987m² in total area are proposed for retention and rehabilitation addressing the requirements of the Tweed Coast Comprehensive Koala Plan of Management and ecological biodiversity provisions.

Further, concerns were raised with regard to compliance with the Regulations regarding the proposed setbacks to the Fraser Drive and Kirkwood Road Road Reserves. Clause 18 requires a 10m setback between dwelling sites from road frontages unless *“the dwelling site has been or will be properly screened, fenced, enclosed or otherwise treated.”* As the control relates to dwelling site boundaries, the originally proposed 2m setback (80% variation) to the future house site boundary is not considered acceptable nor is having a landscaping buffer within a dwelling site.

However, it is considered that a 4m setback is acceptable given the sufficient capacity for landscape screening and the proposed acoustic fencing which together is considered to satisfy Clause 18 and any internal or streetscape impact concerns raised. As such, recommended plans for approval have been marked up and appropriate conditions included accordingly. The applicant reviewed the proposed marked up plan and draft conditions and submitted amended plans for approval that included the requested 4m setback one day before the Council Report deadline. However, as the latest plans include the roadway landscaping buffer for within the dwelling sites, the latest plans have not been supported and the marked up plans remain the recommended plans for approval.

Through the negotiation process, the layout design was modified from the original proposal to address ecological impacts. Ecological Reporting was submitted with the application and Council’s Natural Resource Management Unit considered that any adverse cumulative impact on the sites ecological values as a result of the proposed development could be avoided or minimised and managed to an acceptable level through conditions of approval which include the nomination of 2987m² as Conservation Areas and preparation and implementation of a Habitat Restoration Plan and a Vegetation and Fauna Management Plan.

Given the complexity of the issues raised as part of this application and scale of the development, the application has been referred to Council for determination.

RECOMMENDATION:

That:

- A. ATTACHMENTS 2 & 3 are 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.**
- B. Development Application DA17/0358 for a manufactured home estate at Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South 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 and documentation except where varied by the conditions of this consent.**

- No 0.3 Community Plan prepared by Prescott Architects and dated 11 May 2018 annotated in red and except where varied by the request amended Community Plan as detailed below;
- No 0.5 Staging Plan prepared by Prescott Architects and dated 11 May 2018 annotated in red;
- 2.0 Site Plan Landscaping prepared by RPS Group and dated 11 May 2018 annotated in red;
- No 1.1 Community Centre Plan Issue E prepared by Prescott Architects and dated 20 April 2017;
- No 1.2 Community Centre Elevations Issue F prepared by Prescott Architects and dated 27 April 2017;
- No 1.3 Community Centre Elevations Issue E prepared by Prescott Architects and dated 27 April 2017;
- No 1.4 Community Centre Sections Issue D prepared by Prescott Architects and dated 27 April 2017;
- No 5.1 Development Schedule prepared by Prescott Architects and dated 11 May 2018 annotated in red;
- Additional information received by Council 22 December 2017, 12 January 2018, 11 May 2018 and 14 May 2018;

This consent requires the lodgement of future plans as follows:

- Community Plan consistent with Condition 62(e) and accurate dimension and lot sites.
- Vegetation and Fauna Management Plan;
- Habitat Management Plan;
- Landscape Plan;
- Flood Response Assessment Plan;

These plans are to be lodged with Council for approval. The applicant is to comply with the approved plans.

[GEN0005]

2. This consent approves a manufactured home estate featuring 110 sites developed in the following stages:
 - Stage 1 - Roads, infrastructure and landscaping for 16 dwelling sites, interim flood evacuation road, northern community building, habitat management, vegetation and fauna management, all external works (Fraser Drive) and earthworks works to facilitate.
 - Stage 2 - Roads, infrastructure and landscaping for 29 dwelling sites, retention of interim flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.
 - Stage 3 - Roads, infrastructure and landscaping for 37 dwelling sites, southern community building, pool and pontoon, retention of interim flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.
 - Stage 4 - Roads, infrastructure and landscaping for 28 dwelling sites, completion of flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.

Installation or construction of the dwellings as submitted does not form part of this consent, however on the approved dwelling sites, the dwellings must comprise of the following:

- **103 of the dwellings to be 3 bedrooms or two bedrooms with a study;**
- **7 dwellings to be 2 bedrooms.**

[GEN0005]

3. The future dwellings are approved for residential use only and not tourist use.

[GEN0005]

4. All dwelling sites are to be located a minimum of 4m from the external property boundaries.

[GEN0005]

5. The development shall be completed in accordance with the plans approved by Council, except where varied by conditions of this consent.

[GEN0015]

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

[GEN0135]

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

[GEN0190]

8. Structures proposed/identified within/over the easements on the land are not approved and are to be located external to the easement.

[GEN0255]

9. The owner is to ensure that the proposed buildings are constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

10. The manufactured home estate shall be constructed and operated in accordance with the Local Government (Manufactured Home Estate, Caravan Park, Camping Ground and Moveable Dwelling) Regulation 2005.

[GENNS01]

11. Prior to the placement of the community building or any moveable dwellings the operator shall obtain a Local Government Act Section 68 approval to operate the home estate.

[GENNS01]

12. Prior to the placement of any moveable dwellings the operator shall obtain a Local Government Act Section 68 approval to install a manufactured home, moveable dwelling or associated structure on land.

[GENNS01]
13. Prior to commencement of construction or placement of the community building or any moveable dwelling, the applicant shall provide to the Principal Certifying Authority a report from a suitably qualified person which addresses the provisions of the maximum indoor sound levels as prescribed in Table 3.3 of AS2021-2000. The report shall include details on the building components and systems intended to be used in the construction of the buildings with the corresponding STC/RW ratings. Such details shall also reference the window and door systems to be installed with the corresponding STC/RW ratings.

[GENNS01]
14. Prior to the construction or placement of a private sewage ejection pump station, approval to install under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[GENNS01]
15. Prior to the commencement of operation of a private sewage ejection pump station, approval to operate under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[GENNS01]
16. Manufactured homes shall not be placed closer than 4 metres to the external boundaries of the manufactured home estate.

[GENNS01]
17. Signage does not form part of this approval and is subject to a separate development application where statutorily required.

[GENNS01]
18. The importation of waste (including fill or soil) to the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the Office of Environment and Heritage "*Waste Classification Guidelines*". The only fill material that may be received at the development is virgin excavated natural material or waste-derived fill material the subject of a resource recovery exemption. Any virgin excavated natural material or waste-derived fill material the subject of a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifying Authority or Council on request.

[GENNS02]
19. The applicant shall not remove, damage or disturb native vegetation unless such activity is carried out in accordance with the approved site based Vegetation and Fauna Management Plan for each stage of the development and where all necessary permits/approvals have been obtained from the relevant authority/s.

[GENNS02]
20. The following areas referenced in this consent are to be collectively described as the Conservation Area to be protected and managed for

conservation purposes in perpetuity comprising a total area of 2987 square metres identified as 'Offsetable Koala Habitat' shown on Dwg. No. 5.1 Development Schedule dated 11 May 2018 prepared by Prescott Architects:

- a. Area to the south-west of the site - 772m²
- b. Area positioned centrally along the southern boundary of the site - 903m²
- c. Area to the east of the site - 1312m²

[GENNS02]

21. The Conservation Area shall be subject to a habitat restoration program in accordance with the site based Habitat Management and Restoration Plan approved by Council

[GENNS02]

22. Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

Engineering drawings are to include the following additional measures as applicable:

- 1.8m high chain-wire security fence to be installed around the proposed property boundaries. Hessian or a similar product may be fixed to the chain-wire fence for additional screening.
- Sediment fences to be installed downstream of all works and exposed soils.
- In addition to the above silt fencing to be installed across site at minimum 30m spacing's where area has been exposed.
- Minimise the number of site access locations (preference for one only) and provide stabilised site access and shakedown to each access to minimise transport of sediment off site.
- Turf Strips (as required).
- Topsoil all stockpiles and all batters immediately after works have been completed.
- Hydro-mulch all exposed areas immediately after works have been completed.
- All dust generating activities to cease when wind speed reaches 35km/h and above. The contractor is responsible for providing a calibrated wind meter on site.
- Increased watering on site to prevent dust generation, including the temporary sprinklers (as required).
- All sediment and erosion control structures, trenchers etc shall be regularly maintained and inspected for effectiveness.
- Stockpile materials in protected locations away from any overland flow paths and protect with sediment fencing around stockpile. In the event of any rain or high winds, stockpiles are to be covered and secured.
- Reinstate and turf verge areas (as required) where construction activities have caused disturbance.

[GENNS03]

23. Internal sewer pump station/s shall be privately owned and operated. [GENNS05]
24. The design of sewer pressure systems shall comply with the appropriate Water Services Association (WSA) of Australia Code. [GENNS05]
25. The pump station/s should be designed to pump a minimum of less than every 8 hours to reduce septicity in the pump well and rising mains. [GENNS05]
26. The pump station/s should be sized for total development requirements. [GENNS05]
27. At least 24 hours emergency storage capacity shall be provided within the system, or hours of storage equivalent to the operating hours of the commercial property per day. [GENNS05]
28. The proposed water and sewer infrastructure on the Civil Works Plan submitted are considered to be preliminary and are subject to change to meet Council requirements. An application shall be lodged together with any prescribed fees under Section 68 of the Local Government Act for any water and sewerage works for each stage of the approval. The first stage is to include details of the Master Plan of the development. [GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

29. Any car parking floodlighting / internal driveway shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate. [PCC0055]
30. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved by the Principle Certifying Authority. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:
- a) Hours of work;
 - b) Contact details of site manager;
 - c) Traffic and pedestrian management;
 - d) Noise and vibration management;
 - e) Construction waste management;
 - f) Erosion and sediment control; and,
 - g) Flora and fauna management.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Principle Certifying Authority, stage the

submission of the Construction Environmental Management Plan (CEMP) consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

[PCC0125]

31. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges include indexation provided for in the S7.11 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 7.11 Plan current at the time of the payment.

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

Stage 1

(a) Shirewide Library Facilities: 12.8304 ET @ \$933 per ET (\$792 base rate + \$141 indexation) S7.11 Plan No. 11	\$11,971
(b) Bus Shelters: 12.8304 ET @ \$71 per ET (\$60 base rate + \$11 indexation) S7.11 Plan No. 12	\$911
(c) Eviron Cemetery: 12.8304 ET @ \$135 per ET (\$101 base rate + \$34 indexation) S7.11 Plan No. 13	\$1,732
(d) Community Facilities (Tweed Coast - North) 12.8304 ET @ \$1539 per ET (\$1,305.60 base rate + \$233.40 indexation) S7.11 Plan No. 15	\$19,746
(e) Regional Open Space (Casual) 12.8304 ET @ \$1215 per ET	\$15,589

(\$1,031 base rate + \$184 indexation)
S7.11 Plan No. 26

- (f) **Regional Open Space (Structured):**
12.8304 ET @ \$4264 per ET \$54,709
(\$3,619 base rate + \$645 indexation)
S7.11 Plan No. 26

Stage 2

- (a) **Banora Point West/Tweed Heads South (DCP Section B3)**
Open Space Passive (Casual):
14.4375 ET @ \$2633 per ET \$38,014
(\$2,184 base rate + \$449 indexation)
S7.11 Plan No. 1

- (b) **Banora Point West/Tweed Heads South (DCP Section B3)**
Open Space Active (Structured):
14.4375 ET @ \$3113 per ET \$44,944
(\$2,504 base rate + \$609 indexation)
S7.11 Plan No. 1

- (c) **Shirewide Library Facilities:**
25.0676 ET @ \$933 per ET \$23,388
(\$792 base rate + \$141 indexation)
S7.11 Plan No. 11

- (d) **Bus Shelters:**
25.0676 ET @ \$71 per ET \$1,780
(\$60 base rate + \$11 indexation)
S7.11 Plan No. 12

- (e) **Eviron Cemetery:**
25.0676 ET @ \$135 per ET \$3,384
(\$101 base rate + \$34 indexation)
S7.11 Plan No. 13

- (f) **Community Facilities (Tweed Coast - North)**
25.0676 ET @ \$1539 per ET \$38,579
(\$1,305.60 base rate + \$233.40 indexation)
S7.11 Plan No. 15

- (g) **Regional Open Space (Casual)**
25.0676 ET @ \$1215 per ET \$30,457
(\$1,031 base rate + \$184 indexation)
S7.11 Plan No. 26

- (h) **Regional Open Space (Structured):**
25.0676 ET @ \$4264 per ET \$106,888
(\$3,619 base rate + \$645 indexation)
S7.11 Plan No. 26

Stage 3

- (a) **Banora Point West/Tweed Heads South (DCP Section B3)
Open Space Passive (Casual):
21.125 ET @ \$2633 per ET \$55,622
(\$2,184 base rate + \$449 indexation)
S7.11 Plan No. 1**

- (b) **Banora Point West/Tweed Heads South (DCP Section B3)
Open Space Active (Structured):
21.125 ET @ \$3113 per ET \$65,762
(\$2,504 base rate + \$609 indexation)
S7.11 Plan No. 1**

- (c) **Shirewide Library Facilities:
31.9828 ET @ \$933 per ET \$29,840
(\$792 base rate + \$141 indexation)
S7.11 Plan No. 11**

- (d) **Bus Shelters:
31.9828 ET @ \$71 per ET \$2,271
(\$60 base rate + \$11 indexation)
S7.11 Plan No. 12**

- (e) **Eviron Cemetery:
31.9828 ET @ \$135 per ET \$4,318
(\$101 base rate + \$34 indexation)
S7.11 Plan No. 13**

- (f) **Community Facilities (Tweed Coast - North)
31.9828 ET @ \$1539 per ET \$49,222
(\$1,305.60 base rate + \$233.40 indexation)
S7.11 Plan No. 15**

- (g) **Regional Open Space (Casual)
31.9828 ET @ \$1215 per ET \$38,859
(\$1,031 base rate + \$184 indexation)
S7.11 Plan No. 26**

- (h) **Regional Open Space (Structured):
31.9828 ET @ \$4264 per ET \$136,375
(\$3,619 base rate + \$645 indexation)
S7.11 Plan No. 26**

Stage 4

- (a) **Banora Point West/Tweed Heads South (DCP Section B3)
Open Space Passive (Casual):
22.75 ET @ \$2633 per ET \$59,901
(\$2,184 base rate + \$449 indexation)
S7.11 Plan No. 1**

(b)	Banora Point West/Tweed Heads South (DCP Section B3) Open Space Active (Structured): 22.75 ET @ \$3113 per ET (\$2,504 base rate + \$609 indexation) S7.11 Plan No. 1	\$70,821
(c)	Tweed Road Contribution Plan: 5.7246 Trips @ \$1489 per Trips (\$1,318 base rate + \$171 indexation) S7.11 Plan No. 4 Sector2_4	\$8,524
(d)	Shirewide Library Facilities: 24.2032 ET @ \$933 per ET (\$792 base rate + \$141 indexation) S7.11 Plan No. 11	\$22,582
(e)	Bus Shelters: 24.2032 ET @ \$71 per ET (\$60 base rate + \$11 indexation) S7.11 Plan No. 12	\$1,718
(f)	Eviron Cemetery: 24.2032 ET @ \$135 per ET (\$101 base rate + \$34 indexation) S7.11 Plan No. 13	\$3,267
(g)	Community Facilities (Tweed Coast - North) 24.2032 ET @ \$1539 per ET (\$1,305.60 base rate + \$233.40 indexation) S7.11 Plan No. 15	\$37,249
(h)	Regional Open Space (Casual) 24.2032 ET @ \$1215 per ET (\$1,031 base rate + \$184 indexation) S7.11 Plan No. 26	\$29,407
(i)	Regional Open Space (Structured): 24.2032 ET @ \$4264 per ET (\$3,619 base rate + \$645 indexation) S7.11 Plan No. 26	\$103,202

[PCC0215]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and

the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

BELOW IS ADVICE ONLY

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

Stage 1

**Water: Nil
Sewer: Nil**

Stage 2

**Water: Nil
Sewer: Nil**

Stage 3

**Water: Nil
Sewer: Nil**

Stage 4

**Water: Nil
Sewer: Nil**

[PCC0265]

33. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the (public infrastructure - insert / delete as applicable) works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Occupation Certificate is issued.

[PCC0275]

34. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

35. All imported fill material shall be from an approved source.

Prior to the issue of a Construction Certificate, details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and proposed haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate (or the Principle Certifying Authority (PCA)) for approval, where the total volume of fill required is 500m³ or greater.

[PCC0465]

36. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A1 and Councils Development Design and Construction Specifications.

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

37. The site shall be filled such that it complies with the provisions of Council's Tweed DCP - Section A3 *Development of Flood Liable Land* and graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

Catch drains shall be provided on the top side of all retaining walls in accordance with Council's Development Design Specification D6 - Site Regrading.

All earthworks shall be contained wholly within the subject land unless approved by Tweed Shire Council. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

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

[PCC0585]

39. Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels and perimeter drainage shall be submitted for Council approval.

[PCC0675]

40. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works. Safe public access shall be provided at all times.

[PCC0865]

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

[PCC0945]

42. Prior to the issue of a Construction Certificate for any building works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) Detailed engineering plans and specifications, prepared in accordance with Development Design Specification D13 - particularly Section D13.09.

Application to be submitted to Tweed Shire Council shall include (but not limited to) engineering plans and specifications undertaken in accordance with Council's Development Design and Construction Specifications for the following external required works:

- (a) A new vehicular access and turning treatments (northern access and southern access) off Fraser Drive in general accordance with Drawing Name "2-Dimensional Concept Functional Layout", being Attachment 1 from the Bitzios' "136-150 Dry Dock Road - Section 96 Assessment - Response To Information Request" document, dated 27 November 2017, accept where varied by this consent or approved otherwise by Council.
- (b) Provision of a northbound indented bus bay on Fraser Drive.
- (c) Provision of pedestrian facilities including a pedestrian refuge across Fraser Drive, to Council's requirements.
- (d) Removal of any disused vehicular laybacks/driveways, with the area reinstated to match adjoining works, as applicable.
- (e) Pram ramps at new access crossings (as applicable).
- (f) A formal 1.2m wide concrete footpath shall be provided from the existing concrete footpath near Kirkwood Road / Fraser Drive intersection and connect with the existing footpath located on the unnamed road reserve south of Lot 1 DP1074784 near Acacia Street / Fraser Drive intersection.

- (g) Kerb and gutter shall be provided along the entire frontage of the site within Fraser Drive including applicable drainage provisions (stormwater pipes and gully pits etc.). Removal of any existing kerb and gutter is to be reinstated.

The above mentioned engineering plan submission must include copies of Compliance Certificates relied upon and details relevant to but not limited to the following:

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

And be complimented by a detailed Traffic Impact Assessment, supporting the proposed design.

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

[PCC0985]

43. Each Construction Certificate Application for Bulk Earthworks shall include a detailed Stormwater Management Plan (SWMP) complimentary to the SWMP endorsed under the Concept Plan for the construction and post construction phase of the Bulk Earthworks, prepared in accordance with Section D7.B2 of Council's Development Design Specification D7 - Stormwater Quality. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Permanent Stormwater quality treatment shall comply with the Tweed Urban Stormwater Quality Management Plan and Council's Development Design Specification D7 - Stormwater Quality and Code of Practice for Soil and Water Management on Construction Works.

Variations to these standards shall only be accepted where they are supported by best practice water sensitive urban design principles entailed in the "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership).

Treatment basins must be provided with a facility to bypass major stormwater flow events (greater than the Q3 month storm event), or otherwise cater for major storm flows without disturbing captured pollutants or damaging the structure.

Proposed treatment measures other than "deemed to comply" measures as specified in Council's Development Design Specification D7, must be supported by engineering calculations, including MUSIC modelling, to

confirm that acceptable capacity and efficiency is achieved, and water quality objectives are achieved.

An Operational Manual for all stormwater quality control devices must be provided as part of the SWMP. This manual must be updated as required during the Defects Liability ("On-Maintenance") Period for the device and the final version of the manual must be handed over to Council at the formal commissioning of the device, at the completion of the Defects Liability Period ("Off Maintenance").

Shake down area/s are to be installed within the property, immediately prior to any vehicle entering or exiting the site, prior to any earthworks being undertaken.

[PCC1105]

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

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

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

a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.

b) Where Council is requested to issue a Construction Certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

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

(a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

(b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

- (c) Any works undertaken within the waterbody are to be designed to minimise impacts to marine vegetation and the adjacent Terranora Inlet utilising erosion and sediment control best practice measures.

[PCC1155 MOD]

46. The Manufactured Home Estate is to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by the Manufactured Home Estate. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

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

[PCC1195]

48. In accordance with Section 68 of the Local Government Act, application shall be made to Council for any proposed sewerage drainage system. Detail shall include hydraulic drawings, pipe sizes, details of materials and discharge temperatures.

[PCC1225]

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

[PCC1255]

50. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system (private ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any application to install/operate an onsite sewerage management system (private ejection pump station) under Section 68 of the Local Government Act 1993 shall be accompanied by three copies of detailed hydraulic design report certified by a qualified hydraulic engineer and shall address the following criteria:

- * **System type and specifications including pump-well volume, pump specifications and rising main size, length and location.**
- * **Details of operation and maintenance**
- * **The sewer pump is to be constructed in a flood proof well with electrical equipment located above 1 in 100 ARI flood level.**

Any approval to install an on site sewerage treatment system (private ejection pump station) shall comply with the hydraulic design specifications as certified by a qualified Hydraulic Engineer including all recommendations of that report and any addendum to the report to the satisfaction of Councils General Manager or his delegate.

[PCC1295]

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

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

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

[PCC1310]

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

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

[PCC1325]

- 53. As the subject site is located within 40 metres of a watercourse, any required permits are to be obtained from the NSW Office of Water (Department of Primary Industries) pursuant to s.89, 90 and 91 of the Water Management Act 2000, prior to issue of a Construction Certificate.**

[PCC1330]

- 54. Prior to the issue of a Construction Certificate for Works, application shall be made to Council under Section 305 of the Water Management Act 2000 for a certificate of compliance for development to be carried out - i.e.: the provision of water and sewerage to the development.**

Note:

- (a) Following this, requirements shall be issued by Council under Section 306 of the Water Management Act 2000.**
- (b) Following this, any works needing to be undertaken will require a further application to be made to Council under Section 68 of the Local Government Act for the relevant water / sewer works. Approval of this application will be required prior to/in conjunction with issuing the Construction Certificate.**

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

[PCC1335]

- 55. Prior to the issue of any Construction Certificate for the development, Development Consents DA13/0669 and DA05/0696 shall be surrendered pursuant to Section 4.17(1)(b) and 5 of the Act and Clause 97 of the Regulations, that part of the Consent which is not relied upon for the purposes of the development authorised by Development Consent No. DA14/0171 and the general store use.**

[PCCNS01]

- 56. Prior to the issue of a Construction Certificate for the manufactured home estate, documentary evidence shall be provided to Council to confirm the registration of the subdivision under DA17/0270 - 2 lot subdivision with the Lands and Property Information (LPI) (formerly the Lands Titles Office).**

[PCCNS01]

- 57. Prior to issue of the construction certificate the applicant shall submit an acid sulfate soil management plan prepared by a suitably qualified person to the satisfaction of the General Manger or his delegate. All works shall comply with the approved management plan.**

[PCCNS01]

- 58. Prior to application for a Construction Certificate, owners consent shall be obtained from all existing property owners external of the subject allotments, where the development requires physically works to be undertaken within their property.**

Landowners consent from Council will be required for any works proposed in the Kirkwood Road reserve. The applicant shall submit final design details of the earthworks proposed in the Kirkwood Road reserve to Council for approval prior to issue of Construction Certificate for each stage. Note: Previous owners consent relates to the lodgement of development application only.

[PCCNS01]

- 59. Permanent stormwater quality treatment shall be provided in accordance with the following:**

- (a) The Construction Certificate Application for building works shall include a detailed detail Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils Development Design Specification D7 - Stormwater Quality.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) It is encouraged that Water Sensitive Urban Design principles such as bio-retention facilities in accordance with “Water By Design” guidelines (being a program of the South East Queensland Healthy Waterways Partnership) are utilised, instead of installing an “end of line” proprietary gross pollutant device.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
 - (i) Shake down area (if required) shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any works being undertaken.
 - (ii) Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm, with treatment provisions designed in accordance with Council’s Development Design Specification D7 - Stormwater Quality, Section D7.12.
 - (iii) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCCNS02]

60. Habitat Management

A Habitat Management and Restoration Plan ('HM&RP') shall be prepared by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities (e.g. wetlands, rainforest, riparian areas) to address the restoration of the entire collective Conservation Area. The HM&RP shall be prepared in accordance with:

- Tweed Shire Council’s Draft Habitat Restoration Plan Preparation Guideline - Site specific guidelines for the ecological restoration and ongoing management of habitat utilised by native flora and fauna dated February 2012; and
- Appendix C - Offset provisions in Tweed Coast Comprehensive Koala Plan of Management dated January 2015 prepared by Tweed Shire Council.

The HM&RP shall be submitted and approved by Council's General Manager or delegate prior to issue of Stage 1 construction certificate or prior to any works commencing onsite whichever occurs first, and shall include the following:

- a. An appraisal of the present condition of areas the subject of restoration activity;
- b. Reference to the following zones:
 - i. Assisted Rehabilitation - areas shown as 'Retained Koala Habitat' and 'Koala Habitat Retained' on Dwg. No. 0.3 Dry Dock Road Tweed Heads dated 11 May 2018 prepared by Prescott Architects;
 - ii. Revegetation - the balance of the Conservation Area.
- c. Plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting;
- d. Management strategy for each of the zones, including the approach, methods and techniques to be used for habitat restoration;
- e. A revegetation schedule of one (1) plant per square metre of local native plant species comprised of:
 - i. Species diagnostic of a Subtropical Coastal Floodplain Forest of the NSW North Coast bioregion - Endangered Ecological Community and/or Swamp Sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions; and
 - ii. Preferred Koala food trees - *Eucalyptus tereticornis* (Forest Red Gum) and *Eucalyptus robusta* (Swamp Mahogany)
- f. Measures to clearly delineate the Conservation Area (i.e. appropriate fencing, bollards) to restrict access and signage requirements to increase landholder awareness;
- g. Details of any necessary works/measures to enable the Conservation Areas to be free draining to ensure long term health and viability;
- h. Schedule of timing and program of works based on the following management phases:
 - i. Establishment Phase - Minimum of six (6) months
 - ii. Maintenance Phase - Minimum of five (5) years
- i. Details of primary establishment phase works and maintenance phase works as follows (yet may not be strictly limited to):

- i. **Primary Works - All planting, treatment of all environmental weeds (unless otherwise determined by Council), the installation of all fencing, baseline monitoring and reporting;**
- ii. **Maintenance works - Supplementary planting (where required), continued treatment and control of environmental weeds, maintenance of fencing, monitoring and reporting;**
- j. **Set of performance criteria for the establishment and maintenance phase with the objective of achieving site capture at the end of the 5 year maintenance period. The number of treatment rotations shall be adequate to successfully meet the objective;**
- k. **Maintenance, monitoring and reporting schedule with developer commitment for a period of not less than five (5) years; and**
- l. **An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes.**

[PCCNS03]

61. **A Vegetation and Fauna Management Plan (V&FMP) shall be prepared by a suitably qualified ecologist/environmental scientist in consultation with a qualified arborist (minimum AQF Level 5 arboricultural qualifications) to be implemented during the construction phase and operational phase for all stages of the development. The V&FMP shall be submitted and approved by Council's General Manager or delegate prior to the issue of Stage 1 construction certificate or prior to any works commencing onsite whichever occurs first. The V&FMP shall include (but not be limited to) the following:**

Vegetation Management

- a. **Particulars and locations of vegetation to be removed and vegetation to be retained in order to facilitate the development consistent with the Tree Survey Plan 136-150 Dry Dock Road Tweed Heads South Revision 2 (Dwg. No 1700-1_VMP_001 to Dwg. No. 1700-1_VMP_019) dated 10 May 2018 prepared by Element Ecology**
- b. **Details of all proposed earthworks, services, stormwater infrastructure, retaining walls, stockpile/set-down areas, equipment storage facilities etc.**
- c. **Details of strategies and methods to be implemented to protect vegetation to be retained during the construction phase in accordance with *Australian Standard AS 4970-2009 Protection of trees on development sites* and any recommendations made by the consulting arborist**
- d. **Direction of clearing**
- e. **Methods for the reuse of felled vegetation from the subject site**

- f. Location, alignment and specifications of vegetation protection fencing consistent with *AS4970:2009 Protection of trees on development sites*
- g. Details of protection fencing to be installed around the approved Conservation Areas
- h. Specify that all clearing operations and the installation and maintenance of vegetation protection measures are to be supervised by a Project Arborist (minimum AQF Level 5 arboricultural qualifications)
- i. Provide details of any post construction management measures to be implemented in order to improve and/or maintain the health, long term viability and safety of those trees identified to be retained

Fauna Management

- a. Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc.) and description of fauna species known/likely to utilise habitat features
- b. Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed)
- c. Considerations relating to time periods for when fauna is to be removed/flushed prior to clearing
- d. Details of special equipment required (such as cameras, elevated platforms etc.)
- e. Identification of general locations that wildlife will be relocated/translocated to if required based on habitat requirements and in accordance with licence/permit conditions
- f. Specify that a suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during any tree removal and/or disturbance to wildlife habitat. Fauna management methods employed should be generally consistent with the *Draft Queensland Code of Practice for the Welfare of Wild Animals Affected by Clearing and Other Habitat and Wildlife Spotter/Catchers* (Hangar & Nottidge 2009). Where translocation is required the proponent shall seek any relevant permits from the state regulating agency (Office of Environment & Heritage). It is the responsibility of the proponents to ensure all relevant licences have been obtained prior to any fauna interactions

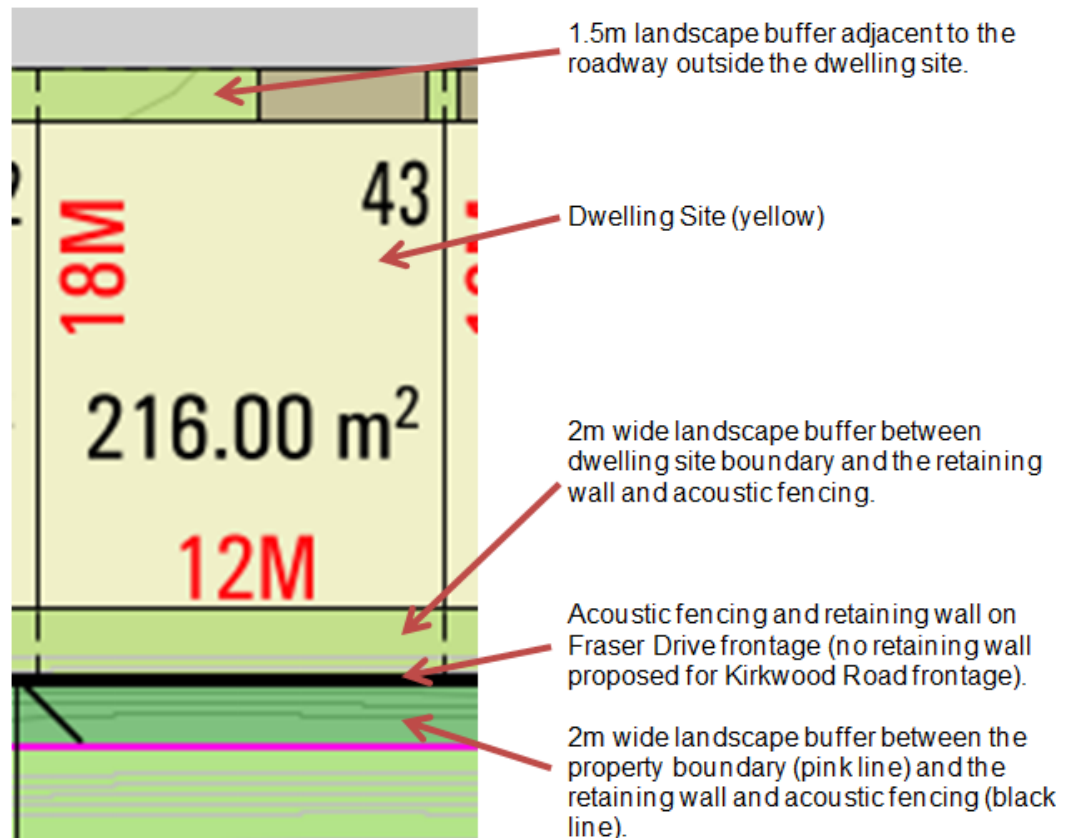
- g. Information on how water-bodies and/or inundation areas that may support aquatic species are to be dewatered and details of appropriate fauna management measures to be employed**
- h. Provide details of post clearing reporting by a suitably qualified ecologist engaged to oversee clearing works**

[PCCNS03]

62. A detailed landscape plan shall be submitted and approved by Council's General Manager or delegate prior to the issue of Stage 1 construction certificate or prior to any works commencing onsite whichever occurs first. The detailed landscape plan shall:

- a. Address each stage of the development.**
- b. Provide details of habitat restoration of the area identified as 'EEC Retained' on Dwg. No. 0.3 Dry Dock Road Tweed Heads dated 11 May 2018 prepared by Prescott Architects to include:**
 - i. Plant schedule to include scientific names, plant quantities and pot sizes comprising 100% local native species;**
 - ii. A minimum average of one (1) local native plant per square metre to apply across the 'EEC Retained' area;**
 - iii. A statement of commitment that all environmental weeds are to be treated and controlled prior to issue of occupation certificate;**
- c. Details of landscaping for all areas on-site beyond the 'EEC Retained' area mapped as 'Landscaping' on Dwg. No. 0.3 Dry Dock Road Tweed Heads dated 11 May 2018 to include:**
 - i. A plant schedule comprising a minimum of 80% local native species to the Tweed Shire and maximum of 20% Australian native or exotic species to apply to all other plants;**
 - ii. The plant schedule is to include plant numbers and stock sizes;**
 - iii. The landscaping features as shown in Dwg No. 2.0 Site Plan - landscape rfi response prepared by RPS group dated 11 May 2018;**
 - iv. The provision of landscape screening to minimise the visual impact of the retaining wall and fence on the Fraser Drive and Kirkwood Drive Road Reserves;**
- d. Include a statement indicating that all landscape areas the subject of the detailed landscape plan are to be afforded a minimum three (3) months establishment period and nine (9) months maintenance period.**
- e. Clearly show a 4m landscape buffer to the external property boundaries to Fraser Drive and Kirkwood Road (2m either side of the**

proposed acoustic fence and any retaining structures). This area is to be outside of the individual dwelling site boundaries. In addition, a 1.5m wide front roadway buffer is to be provided between any internal road and the front individual dwelling site boundaries generally in accordance with the following diagram.



[PCCNS03]

63. Prior to issue of any construction certificate, the Private Certifying Authority must be satisfied that the detailed civil engineering plans submitted demonstrate how the approved Conservation Areas will remain free draining in the long term post construction works. Any works and measures necessary to maintain free draining conditions shall not compromise the Conservation Area or any associated habitat restoration works

[PCCNS03]

64. The applicant must give security to Council in the form of a performance bond to the amount of \$10,000.00 to ensure vegetation identified to be retained in Tree Survey Plan 136-150 Dry Dock Road Tweed Heads South Revision 2 (Dwg. No 1700-1_VMP_001 to Dwg. No. 1700-1_VMP_019) dated 10 May 2018 prepared by Element Ecology occurring within the Kirkwood Road Reserve is retained, protected and not adversely affected by development works. The performance bond shall:

- a. Be lodged prior to issue of Stage 1 construction certificate
- b. Held by Council for a period of 12 months following issue of Stage 1 occupation certificate where it is demonstrated that tree protection

and management obligations have been met to the satisfaction of Council's General Manager or delegate.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

66. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

(a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or

(b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

(c) WorkCover Regulations 2000

[PCW0025]

67. The erection of a building or site works in accordance with a development consent must not be commenced until:

(a) a construction certificate for the work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

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

(i) appointed a principal certifying authority for the work, and

(ii) notified the principal certifying authority that the person will carry out the work as an owner-builder, if that is the case, and

(c) the principal certifying authority has, no later than 2 days before the work commences:

(i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

(ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the work, and

- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the work.
- [PCW0215]
68. Prior to work commencing, a "Notice of Commencement of Building or Civil Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
69. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council
- [PCW0245]
70. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- [PCW0255]
71. A flood evacuation plan shall be submitted to Council to the satisfaction of the General Manager or his delegate prior to the commencement of operations. The plan submitted shall have prior approval of the State Emergency Service.

[PCW0535]

72. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure.

[PCW0755]

73. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and driveway are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to the Principle Certifying Authority prior to commencement of ANY works on the site.

[PCW0775]

74. External works (Fraser Drive) in accordance with a development consent must not be commenced until:

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

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

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

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

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

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

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

[PCW0815]

75. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

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

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

[PCW0985]

77. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

78. Prior to the commencement of work an application under section 68 of the Local Government Act for the internal fire hydrant system to the Manufactured Home Estate is to be submitted to and approved by the Building Services Unit of Tweed Shire Council. The application is to be inclusive of the internal fire hydrant system which is to be designed by a suitably qualified hydraulic engineer in accordance with the Local Government (Manufactured Home estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and AS 2419.1.

[PCWNS01]

79. All pre-construction vegetation and fauna management measures for all stages of the development shall be satisfactorily completed in accordance with the approved Vegetation and Fauna Management Plan.

[PCWNS02]

80. A project arborist who holds an Australian Qualification Framework Level 5 Arboriculture certificate must be appointed prior to commencement of any works onsite for each stage of the development to:

- a. Ensure all approved vegetation management measures are satisfactorily implemented
- b. Supervise tree removal, limb/root pruning

- c. Recommend and supervise any required remedial works
- d. Certify works on completion of the project

[PCWNS02]

81. A suitably qualified ecologist who holds a fauna survey licence (NSW) must be appointed prior to commencement of any works onsite for each stage of the development. The appointed ecologist shall:

- a. Undertake a pre-works inspection immediately before any vegetation clearing or dewatering
- b. Supervise all approved vegetation and fauna management activities onsite for each stage of the development
- c. Immediately following completion of vegetation clearing and/or dewatering activity associated with each stage of the development, provide a final report to Council to include the following:
 - i. Brief summary of any fauna handling, mortality or other relevant fauna related incidents that may have occurred during tree removal
 - ii. Inventory of species encountered during tree removal
 - iii. If relocation was required, list of species and relocation location

[PCWNS02]

82. Prior to commencement of work the applicant must provide evidence of a contractual agreement made between the applicant and an ecological restoration contractor (Minimum Certificate IV in Conservation and Land Management) to implement and complete all establishment and maintenance phase works specified in the approved Habitat Management and Restoration Plan for the establishment period and minimum 5 year maintenance period.

[PCWNS02]

83. Prior to any filling works on site, a Detailed *Geotechnical Investigation* shall be undertaken by an appropriately qualified practising professional Geotechnical Engineer, unless considered unjustified by the Geotechnical Engineer and supported in writing and endorsed by the Principle Certifying Authority.

The investigation shall identify any areas of compressible clay materials, loose sands, landslip, instability, subsidence, uncontrolled fill or reactive soil profiles etc which may impact on construction or building activities, as well as providing site classification information.

If unsuitable materials are identified the investigation shall provide recommendations such as a preloading, remediation works or other forms of treatment necessary to achieve safe and stable building sites in accordance with AS 2870 (current version).

All consolidation resulting from preloading shall be monitored by settlement plates or detailed survey to determine consolidation/settlement characteristics.

[PCWNS02]

DURING CONSTRUCTION

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

[DUR0005]

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

[DUR0025]

86. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

88. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of AS2021-2015 for indoor noise

levels then a system of mechanical ventilation complying with the relevant provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwelling.

[DUR0295]

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

[DUR0375]

90. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 6.6 of the Environmental Planning and Assessment Act 1979.

[DUR0405]

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

[DUR0415]

92. Excavation

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

93. During filling operations,

- No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.
- All fill and cut batters shall be contained wholly within the subject land.
- No filling of any description is to be deposited, or remain deposited, within adjacent properties.
- All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications and to the satisfaction of the Principal Certifying Authority.

and upon completion,

- all topsoil to be respread and the site to be grassed and landscaped including battered areas.

[DUR0755]

94. All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing in accordance with Table 8.1.

The earthworks and filling shall also be undertaken in accordance with the recommendations provided in the *Geotechnical Investigation* (as required by Consent Condition 83) and monitored by a Registered Geotechnical Testing Consultant.

Notwithstanding earthworks and filling, the frequency of field density tests for trenches, including all trenches for services, shall be undertaken in accordance with Table 8.1 of AS 3798 (current version).

[DUR0795]

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

[DUR0815]

96. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Occupation Certificate.

[DUR0995]

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

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

[DUR1005]

98. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

24 hours notice is to be given to Council's Engineering Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

99. The existing concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR1745]

100. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be

adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

101. Before the commencement of any road construction widening or kerbing on Fraser Drive, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.

(a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.

(b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.

(c) That site fill areas have been compacted to the specified standard.

(d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing (including trenches for services) has been completed in accordance with Table 8.1 of AS 3798-1996 2007.

[DUR1805]

102. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:

(a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.

(b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

103. The proponent must not undertake any work within the public road reserve without giving Council's Engineering Division 48 hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

104. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.

[DUR1855]

105. The footpath area is to be graded to the kerb and turfed for the full frontage of the site.

[DUR1865]

106. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development

Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

- 107. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:**

Roadworks

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks / "boxing"
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, cycleways - formwork/reinforcement
- (h) Final Practical Inspection - on maintenance
- (i) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final Practical Inspection - on maintenance
- (i) Off maintenance

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

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

The fee for the abovementioned inspections shall be invoiced upon completion of all external works, and subject to the submission of an application for a 'Compliance Certificate'.

[DUR1895]

- 108. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.**

[DUR1905]

- 109. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.**

[DUR2015]

110. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

111. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 - 2010 & AS 1926.2-2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.**
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.**

[DUR2075]

112. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

113. The swimming pool is to be sited at least one metre horizontally clear of sewer main on site. Any part of the structure within the area of influence of the sewer main is to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design will ensure that all loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2095]

114. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

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

[DUR2425]

116. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control

devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection.

[DUR2445]

117. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

118. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

122 All water drawn from Councils reticulated system shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

[DUR2575]

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

- a) **No portion of any structure may be erected within any easement or within one meter where no easement exists for public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.**
- b) **Surface treatment over the sewer pipe shall be limited to soft landscaping, non-interlocking paving, concrete slab with construction joints along the alignment of the sewer easement (or one metre from the sewer if no easement exists) or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.**
- c) **Any fencing erected across the sewer main shall be designed and constructed with removable panels and footings located at least 1.0 metres horizontally clear of sewer main.**
- d) **Trees and other landscaping that will grow to over one metre in height at maturity are not permitted within the sewer easement or within one metre of the sewer if no easement exists, to prevent the tree roots intruding into sewer mains and internal sewer pipes. Landscaping over the sewer shall be of a minor nature designed to ensure they do not damage or interfere with any part of the pipeline.**

[DURNS01]

124. Any works undertaken within the waterbody are undertaken in a manner to minimise impacts to marine vegetation and the adjacent Terranora Inlet by limiting the footprint of works to necessary areas of disturbance and utilising best practice in relation to works within waters and erosion and sediment control.

[DURNS02]

125. All vegetation and fauna management measures detailed in the approved site based Vegetation and Fauna Management Plan shall be implemented to the satisfaction of Council's General Manager or delegate.

In the event that any threatened species, populations, ecological communities or their habitats not addressed as part of the development application are discovered/encountered during operations appropriate Plans of Management for those species must be prepared to the satisfaction of the General Manager or delegate and/or if required the NSW Department of Environment and Heritage. No further site clearing will take place until any respective Plan(s) of Management is/are approved.

[DURNS02]

126. Works shall be undertaken in accordance with the approved Habitat Management and Restoration Plan.

[DURNS02]

127. The applicant must comply with any directions given by the project arborist and/or appointed ecologist with respect to vegetation and fauna management measures employed onsite in order to minimise any adverse environmental impacts. Where directions are inconsistent with the approved Vegetation and Fauna Management Plan approval from Council's General Manager or delegate shall be sought before implementation.

128. All landscaping works shall be carried out in accordance with the approved detailed landscape plan for each respective stage of the development as required under Condition 62.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

129. Prior to issue of an Occupation Certificate for any stage of building works, all external works on Fraser Drive (inspections / actions / fees etc.) as required shall be completed.

[POC0005]

130. Prior to the issue of an Occupation Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council for all external works within the road reserve.

The bond shall be based on 5% of the value of the public infrastructure works (as set out in Councils Fees and Charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued.

It is the responsibility of the Proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

131. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

[POC0225]

133. 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]

- 134. Prior to the issue of an Occupation Certificate, the applicant shall produce a copy of the “final inspection - satisfactory inspection report” and “provide a receipt of payment for all inspections” issued by Council for all works required under the Construction Certificate external works within Fraser Drive road reserve.**

[POC0745]

- 135. Upon completion of all construction works (external works within Fraser Drive road reserve), Work as Executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 as well as a CCTV inspection of the stormwater pipes and sewerage system that are to be dedicated to Council as public infrastructure including joints and junctions to demonstrate that the standard of the system is acceptable to Council.**

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

- a) The plans accurately reflect the work as executed.**
- b) All stormwater lines, sewer lines, services and structures are wholly contained within the relevant easements or boundaries.**

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

[POC0765]

- 136. Submission to the Principal Certifying Authority, Certification for the structural integrity of any retaining structures in excess of 1.2m erected on the site by a suitably qualified structural engineer.**

[POC0815]

- 137. Upon completion of all internal works on the site and prior to the issue of any Occupation (including interim) Certificate, a further dilapidation report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the condition including the structural condition of the adjoining buildings/sites, infrastructure and roads. The dilapidation reports shall take into consideration the findings of the original reports and advise if any damages have occurred that could be attributed to the work the subject of this development consent. If damages have occurred the PCA is to be provided with evidence that the damages have been satisfactorily repaired prior to the issue of an Occupation Certificate (including interim).**

A copy of the dilapidation report is to be provided to the Principle Certifying Authority/Council.

[POC0825]

- 138. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:**

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.
- (c) Provide a 10m wide stormwater easement in favour of Tweed Shire Council (to discharge from the unformed Kirkwood Road reserve) and Lot 201 DP11011907 between Lots 70-75 and 88-90 and Lots 87 and 98. In addition provide an easement over the existing lake up to Terranora Creek in favour of Tweed Shire Council (to discharge unformed Kirkwood Road reserve) and Lot 201 DP11011907 Refer to plan "Stormwater Drainage Post Development Catchment Plan Sheet 2 of 2" dated 22/02/17 revision A by ADG Engineers and drawing number DWGE952P marked "B" by Stewart McIntyre & Associates dated 23/02/18.
- (d) Provide a 3m wide stormwater easement on the northern property boundary adjacent to Lot 201 DP1101907 to benefit the relevant surrounding properties. Refer to plan "Stormwater Drainage Post Development Catchment Plan Sheet 2 of 2" dated 22/02/17 revision A by ADG Engineers.
- (e) The dwellings within the manufactured home estate shall be used for residential use only.
- (f) All measures in the "Flood Response Assessment Plan" shall be enforced in perpetuity, to ensure compliance with flood emergency response provisions of Council's Development Control Plan Section A3 - Development of Flood Liable Land and Council's Flood Risk Management Policy.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

139. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Council's General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

140. Upon completion of the pool the builder is to submit to the Principal Certifying Authority a certificate stating that the "Water Recirculation System" has been installed in accordance with AS 1926.3-2010.

[POC0905]

141. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

142. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[POC1040]

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

[POC1045]

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

[POC1055]

145. The swimming pool or spa is required to be registered at www.swimmingpoolregister.nsw.gov.au prior to the issue of any occupation certificate for the swimming pool or spa.

[POC1100]

146. On completion of all external works, a certificate signed by a practicing National Engineering Register (NER) Civil Engineer is to be submitted to the Principal Certifying Authority to certify compliance with the applicable conditions of consent and good engineering practice.

In addition on completion of all external works, Council must undertake a Final Practical Inspection of the works and be satisfied that all conditions of consent have been complied with.

[POCNS01]

147. Prior to an Occupation Certificate being issued for the community building or occupation of any moveable dwelling, a Post Construction Noise Impact Compliance Assessment report prepared by a suitably qualified acoustic consultant shall be submitted for consideration and approval by Council's General Manager or delegate. The assessment report shall confirm that the development meets the maximum indoor sound levels as prescribed in Table 3.3 of AS2021-2000, and include any recommended noise amelioration measures to be carried out by the applicant. The applicant

shall carry out any such recommendations as provided within the Post Construction Impact Compliance Assessment report to the satisfaction of the General Manager or delegate within 30 days from the date of the acoustic assessment, provided that the General Manager or delegate may extend the time period for the carrying out of any recommended acoustic treatment to a date which may be determined by the General Manager or delegate.

[POCNS01]

148. Prior to the release of an occupation certificate for any stage, acoustic barriers as specified in Part 5 of the CRG Acoustics Report dated 22 December 2017 (CRGref: 16175 Letter 19.12.17) and CRG Acoustics addendum, 11 May 2018 (CRGref16175 Letter 11-5-18 rev 1) and shall be constructed and certified by an acoustic engineer to the satisfaction of the General Manager or his delegate.

[POCNS01]

149. Prior to issuing an Occupation Certificate, reticulated water supply and outfall sewerage reticulation shall be provided in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[POCNS02]

150. Prior to the issue of an Occupation Certificate, a Flood Response Assessment Plan shall be submitted to and approved by Council, demonstrating compliance with the Emergency Response Provisions of Council's DCP Section A3 *Development of Flood Liable Land*.

[POCNS02]

151. The development must at all times have a high level flood evacuation route to land above PMF as per Dwg No 0.5 Staging Plan prepared by Prescott Architects dated 11 May 2018. Should the early stages of the development be disconnected from this high land, as a minimum, a high level evacuation route must be provided at a rising grade above design flood level capable of passing vehicles. Any interim evacuation route must be a minimum of 3m wide with an all-weather pavement and turnaround facilities at each end.

[POCNS02]

152. At the completion of the earthworks/filling and prior to the issue of the Occupation Certificate for each stage, an appropriately qualified practising professional Geotechnical Engineer shall provide an Engineering Certification that clearly states the following:

1. All earthworks and filling have been supervised to a Level 1 standard in accordance with AS 3798 (current version) and in accordance with the recommendations of the detailed Geotechnical Investigation (as required by Consent Condition 83).

2. All allotments have achieved design bearing capacity strength in accordance with AS2870 (latest version) and are suitable for building purposes.
3. Trenches, including all trenches for services, have been compacted in accordance with Council's Construction Specifications.

The submission shall include copies of all undertaken test results, along with a site diagram identifying the location of each undertaken test.

[PSC0395/POCNS02]

153. All establishment phase habitat restoration works shall be completed to a level specified in the approved Habitat Management and Restoration Plan prior to the issue of the first occupation certificate issued for Stage 1 of the development. The habitat restoration works shall be maintained at all times to the satisfaction of the Council's General Manager or delegate.

[POCNS03]

154. Prior to the issue of the first occupation certificate for Stage 1, the Conservation Area pursuant to C shall be registered under a restrictive statutory covenant for conservation purposes. The covenant shall be made under Section 88B of the *Conveyancing Act 1919* burdening Future Lot 11 pursuant to DA17/0270, for the benefit of the Tweed Shire Council on the terms specified below:

- a. The area described as Conservation Area must be subject to a habitat restoration program undertaken in accordance with an approved Habitat Management and Restoration Plan and managed as a natural area for conservation purposes in perpetuity;
- b. The following activities are not permitted within the Conservation Area unless otherwise specified in (c) of this condition:
 - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent
 - ii. Erection of any fixtures or improvements, including buildings or structures
 - iii. Construction of any trails or paths;
 - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area
 - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the conservation area; and
 - vi. Performance of any other acts which may have detrimental impact on the values of the conservation area.
- c. Earthworks may be carried out in the Conservation Area only to the extent of that shown on Dwg. No. DA02 Preliminary Bulk Earthworks Layout Plan Sheet 2 of 2 Revision D dated 09 May 2018 prepared by ADG. Upon completion of earthworks any fill batters shall be revegetated in accordance with the approved Habitat Management and Restoration Plan.

[POCNS03]

155. Prior to the issue of an occupation certificate for each stage of the development, an arboricultural certification report prepared by the project arborist ((Minimum AQF Level 5 Arborist) shall be submitted to Council demonstrating compliance with:
- a. The approved Vegetation and Fauna Management Plan (tree protection requirements only)
 - b. *Australian Standard AS4970 - 2009 Protection of trees on development sites*; and
 - c. Any other tree management measure to protect retained vegetation as directed by Council's General Manager or delegate or Project Arborist during the construction period

[POCNS03]

156. The applicant must provide to Council immediately prior to the issue of occupation certificate for each stage of the development certification from a suitably qualified ecologist that all works/measures have been completed in accordance with the following approved plans:

- a. Vegetation and Fauna Management Plan;
- b. Habitat Management and Restoration Plan;

All landscaping shall be completed in accordance with the approved detailed landscape plan prior to the issue of occupation certificate. Landscaping must be maintained at all times to the satisfaction of Council's General Manager or delegate.

[POCNS03]

USE

157. 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]

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

[USE0175]

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

[USE0225]

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

[USE0245]

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

[USE1055]

162. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.

[USE1455]

163. The manufactured home estate is to be in accordance with Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

[USENS01]

164. Operating hours for activities in the community building shall be 7am to 10pm unless otherwise approved in writing by Council's General Manger or his delegate.

[USENS01]

165. The community facilities are to be used solely for the private use of residents and their guests in association with the accommodation on site. Any commercial ventures are required to seek separate development approval where statutorily required.

[USENS01]

166. The kitchen within the community facilities building is not to be used for the commercial preparation and sale of food. Any such activity is subject a separate Development Application.

[USENS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 89, 90 or 91 of the Water Management Act 2000 (Controlled Activity Approval)

The GTA issued by Department of Industry - Water (DoI Water) do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to DoI Water for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.

Condition Number	Details
GT0013-00001	<p>Design of works and structures</p> <p>A. Any proposed controlled activity carried out under a controlled activity approval must be directly supervised by a suitably qualified person.</p> <p>B. A copy of this approval must be:</p> <ul style="list-style-type: none"> i. kept at the site where the controlled activity is taking place, and ii. provided to all personnel working on the controlled activity.
GT0018-00003	<p>Before constructing or carrying out any proposed controlled activity, an application must be submitted to Crown Lands and Water Division, and obtained, for a controlled activity approval under the Water Management Act 2000.</p>
GT0019-00002	<p>Any proposed excavation on waterfront land must be undertaken in accordance with a plan submitted as part of a controlled activity approval, to be approved by Crown Lands and Water Division.</p>
GT0006-00001	<p>Erosion and sediment controls</p> <p>The following plan(s): - Erosion and Sediment Controls Plan must be:</p> <p>A prepared in accordance with Managing Urban Stormwater: Soils and Construction, Volume 1 (Landcom, 2004), as amended or replaced from time to time, and</p> <p>B. submitted with an application for a controlled activity approval.</p>
GT0014-00004	<p>A. The consent holder must ensure that any proposed materials or cleared vegetation, which may:</p> <ul style="list-style-type: none"> i. obstruct water flow, or ii. wash into the water body, or iii. cause damage to river banks, are not stored on waterfront land, unless in accordance with a plan held by Crown Lands and Water Division as part of a controlled activity approval. <p>B. When the constructing of the controlled activity has been completed, surplus materials must be removed from waterfront land.</p>
GT0021-00002	<p>The proposed erosion and sediment control works must be inspected and maintained throughout the construction</p>

period of the controlled activity and must not be removed until the site is fully stabilised.

Plans, standards and guidelines

GT0002-00202

A. This General Terms of Approval (GTA) only applies to the proposed controlled activity described in the plans and associated documents found in Schedule 1, relating to Development Application 2017.0358 provided by Council to Crown Lands and Water Division.

B. Any amendments or modifications to the proposed controlled activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Crown Lands and Water Division, Grafton Office, must be notified in writing to determine if any variations to the GTA will be required.

GT0003-00028

The application for a controlled activity approval must include the following document(s):

- outlet structures; Erosion and Sediment Control Plan.

Rehabilitation and maintenance

GT0007-00003

When the proposed controlled activity is completed, and the rehabilitation plan has been implemented, maintenance of the site must be carried out for a period of 2 years in accordance with that rehabilitation plan submitted as part of the controlled activity approval, and approved by Crown Lands and Water Division.

GT0011-00001

A rehabilitation plan for the waterfront land must be provided as part of a controlled activity approval application.

Reporting requirements

GT0020-00002

The consent holder must inform Crown Lands and Water Division in writing when the proposed construction of the controlled activity has been completed.

REPORT:

Applicant: Sheep Station Creek Pty Ltd AS Trustee For The Affinity Tweed Heads Lifestyle Community Trust
Owner: Mormatsal Investments Pty Ltd
Location: Lot 1 DP 1074784 No. 136-150 Dry Dock Road, Tweed Heads South
Zoning: RE2 - Private Recreation
Cost: \$6,500,000

BACKGROUND

Subject Site



The subject site aerial photograph

The subject site is 7.601Ha and currently features an abandoned aquatic club/tavern building, a hard stand area that was previously a car park, and a manmade waterbody for stormwater drainage purposes, that connects to Terranora Creek, under the Dry Dock Road bridge to the north. The proposed manufactured home estate is for within the southern 4.5Ha of the site following an approved subdivision.

To the south and south west features low to medium density residential development. To the east and west are existing caravan parks established more than 50 years ago. It is noted that the subject site is zoned RE2 Private Recreation under Tweed Local Environmental Plan 2014 which reflects the zoning of the adjoining caravan parks as shown below.



Zoning mapping under Tweed Local Environmental Plan 2014

Dry Dock Road exists along the northern boundary, Fraser Drive along the western boundary and the unformed Kirkwood Road Road Reserve along the southern. Plans have been compiled (and Part V assessment completed) for the construction of Kirkwood Road to provide connection with the Pacific Motorway at this location.

Other primary site constraints are that the site is considered to be flood prone subject to the Q100 flood event and is also mapped as subject to aircraft noise from Gold Coast City Airport.

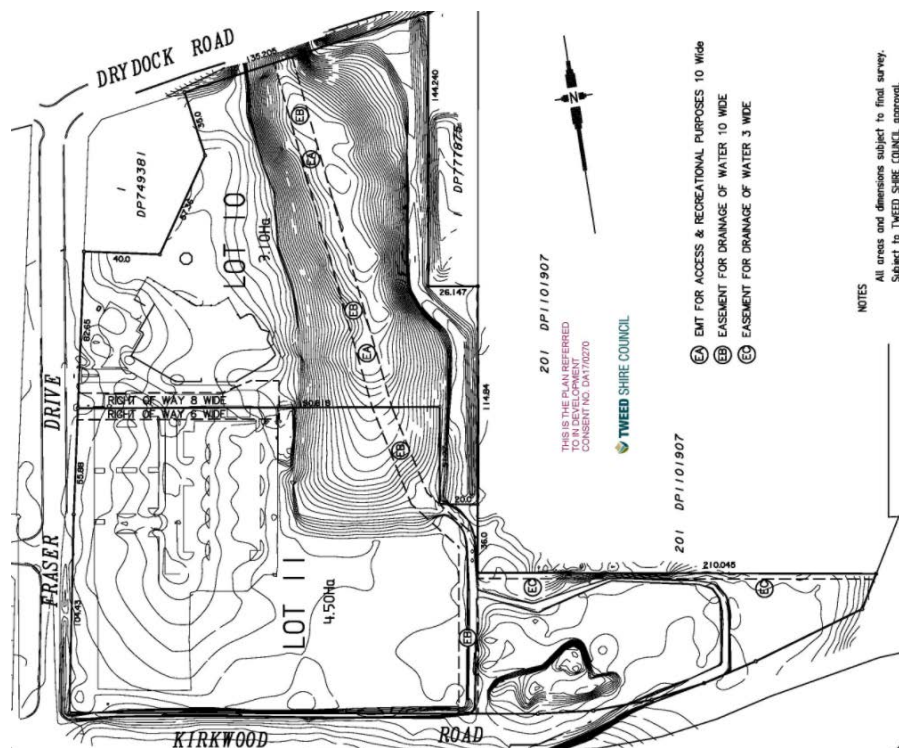
The subject site has an extensive approval history which mostly involves the primary building which can be seen in the aerial photograph above. Historic use approvals for the building include use as a hotel, club house, tourist facility, restaurant and general store. An application for demolition of the building was granted June 2017 (DA17/0239).

Recent Development Applications at the site include:

- D95/0309 for additions and alterations to existing club 26 September 1995;
- 0006/2001DA for the erection of a tourist resort including 271 accommodation units and the use of the existing premises for reception/recreation and restaurant was granted 7 August 2001 and subsequently amended once. Other proposed amendments were withdrawn or refused;
- DA04/1589 for a tourist resort multi-dwelling housing retail shops/commercial premises hotel/tavern & community title subdivision (DIPNR DA 287-11-2004) which was withdrawn 19 January 2008;
- DA05/0696 for the use of existing premises for purpose of a hotel 31 August 2005;
- DA13/0114 two lot subdivision, erection of a service station and associated road upgrade works was withdrawn 24 July 2013;
- DA13/0449 for a service station and two (2) lot subdivision was refused 5 May 2014;

- DA13/0669 for the change of use of an existing buildings for a proposed tourist facility comprising tavern, cafe, restaurant, function room, playground amphitheatre and pontoon granted 24 October 2014;
- DA14/0171 for the change of use of part of the existing building to a general store granted 11 February 2015;
- DA15/0212 for signage in association with existing tourist facility granted 16 June 2015;
- DA17/0239 for demolition of former Aquatic Club, gazebo, pathways, concrete surrounds, landscape beds and internal build outs granted 30 June 2017;
- DA17/0270 for a two lot subdivision granted 22 December 2017;

The subject manufactured home estate is proposed for the southern future Lot 11 pursuant to Development Consent DA17/0270 for a two lot subdivision which is shown below. Future Lot 11 will be 4.5 Ha in area. The existing building is to be located on future Lot 10 and therefore this subdivision is required to be completed prior to any works associated with the subject application.



Approved site plan Development Consent DA17/0270

Development Consent DA17/0270 included the requirement for rights of carriageway over both allotments as part of a shared vehicular access from Fraser Drive and drainage easements facilitating the existing drainage arrangements.

Development Consent 0006/2001DA for the erection of a tourist resort including 271 accommodation units and the use of the existing premises for reception/recreation and restaurant was granted 7 August 2001 which was later amended. Although the tourist units have not been constructed, the developer contributions for all stages of this development have been paid in full and it has been previously been determined that this approval has commenced. However, in order to utilise the developer contributions credit associated with the advanced payment, Condition 45 of Development Consent DA17/0270 requires the surrender of this approval.

Proposal

Council is in receipt of a Development Application that seeks approval for a manufactured home estate at the subject site.

The development features:

- 110 manufactured home sites each with between approximately 180m² and 290m²;
- Earthworks comprising primarily of fill up to 2m in depth with up to 1.5m high retaining walls parallel to the boundary or around drainage easements or vegetation to be retained;
- Community facilities comprising a hall, billiard room, cinema, activity room, library, office, kitchen, gym, amenities, pontoon and pool which overlook the waterway;
- Main vehicle entrance carriage way to be shared with the future allotment to the north; internal roads, 37 visitor car parking spaces including 3 with disability access;
- A high level flood evacuation roadway from the dwellings to the eastern end of the site available at each stage of the development;
- Acoustic fencing along southern and western boundaries;
- Three Conservation Areas 2987m² in total area for retention and rehabilitation.
- Landscaping around the perimeter and throughout the development.



Staging Plan

The development is proposed in the following stages as shown above:

- Stage 1 - 16 dwelling sites and associated roads, infrastructure and landscaping, interim flood evacuation road, northern community building, habitat management, vegetation and fauna management, all external works (Fraser Drive) and earthworks works to facilitate.
- Stage 2 - 29 dwelling sites and associated roads, infrastructure and landscaping, retention of interim flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.
- Stage 3 - 37 dwelling sites and associated roads, infrastructure and landscaping, southern community building, pool and pontoon, retention of interim flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.

- Stage 4 - 28 dwelling sites and associated roads, infrastructure and landscaping, completion of flood evacuation road, habitat management, vegetation and fauna management and earthworks to facilitate.

To address aircraft noise and road noise concerns, all buildings within the development are to feature sufficient acoustic attenuation measures by way of construction materials and design in addition to 1.9-2m high acoustic barrier fencing along the southern and western boundaries of the site.

External works within the Fraser Drive Road Reserve are to be undertaken by the developer to facilitate the development and include a new vehicular access and turning treatments, bus bay on Fraser Drive, provision of pedestrian facilities including a pedestrian refuge and pram ramps, formal 1.2m wide concrete footpath and kerb and gutter provision along the entire frontage of the site.

Through the negotiation process, the layout design was modified from the original proposal to address ecological impacts. The application was referred to Council's Natural Resource Management Unit who provided an assessment of the proposal with regard to ecological impacts.

An area of approximately 378m² of habitat representative of an Endangered Ecological Community (EEC) - Sub-tropical Coastal Floodplain Forest is to be retained and protected. The habitat area is to be afforded an approximate 5-7m revegetated buffer zone. The final development design complies with the Tweed Coast Comprehensive Koala Plan of Management (TCCKPoM) by retaining 810m² of Preferred Koala Habitat (PKH) on site; Providing an onsite compensation area 576m² for the loss of 48m² of PKH preferred koala habitat area of onsite and providing an area of 256m² to be revegetated to compensate for the loss of 4 Preferred Koala Food Trees. Also, an area of 573m² is made available on site for re-establishment of EEC Sub-tropical Coastal Floodplain Forest for the loss of 48m² of the community whilst adequate available area for habitat restoration additional to that required under the TCCKPoM has been provided to compensate for the loss of other habitat elements on the subject site (i.e. estuarine complexes and individual mature trees).

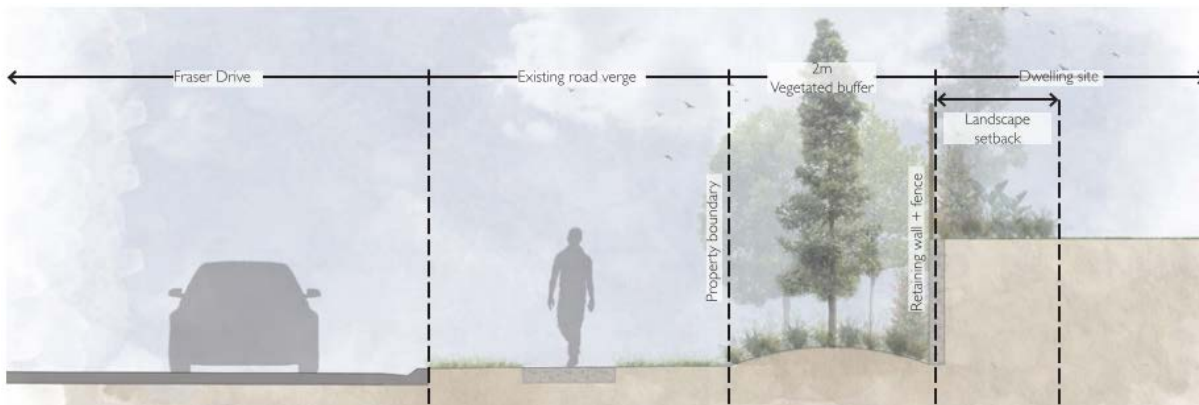
Council's Natural Resource Management Unit considered that any adverse cumulative impact on the sites ecological values as a result of the proposed development could be avoided or minimised and managed to an acceptable level through conditions of approval.

Concerns were raised with regard to the landscaping outcome at the site. The development is considered to provide an adequate amount of landscaping which mitigates streetscape impacts from the retaining walls and fencing and results in a desirable amenity outcome for future residents. However, the proponent sought for a substantial amount of the landscaping proposed to be located within the nominated dwelling sites. The following diagram shows the extent of the landscaping throughout the site that Council has been able to secure.



Landscaping Plan

The following Sections show the proposed landscaping buffers indicatively highlighting the streetscape buffer.



Section AA – Fraser Drive Interface - (not to scale)

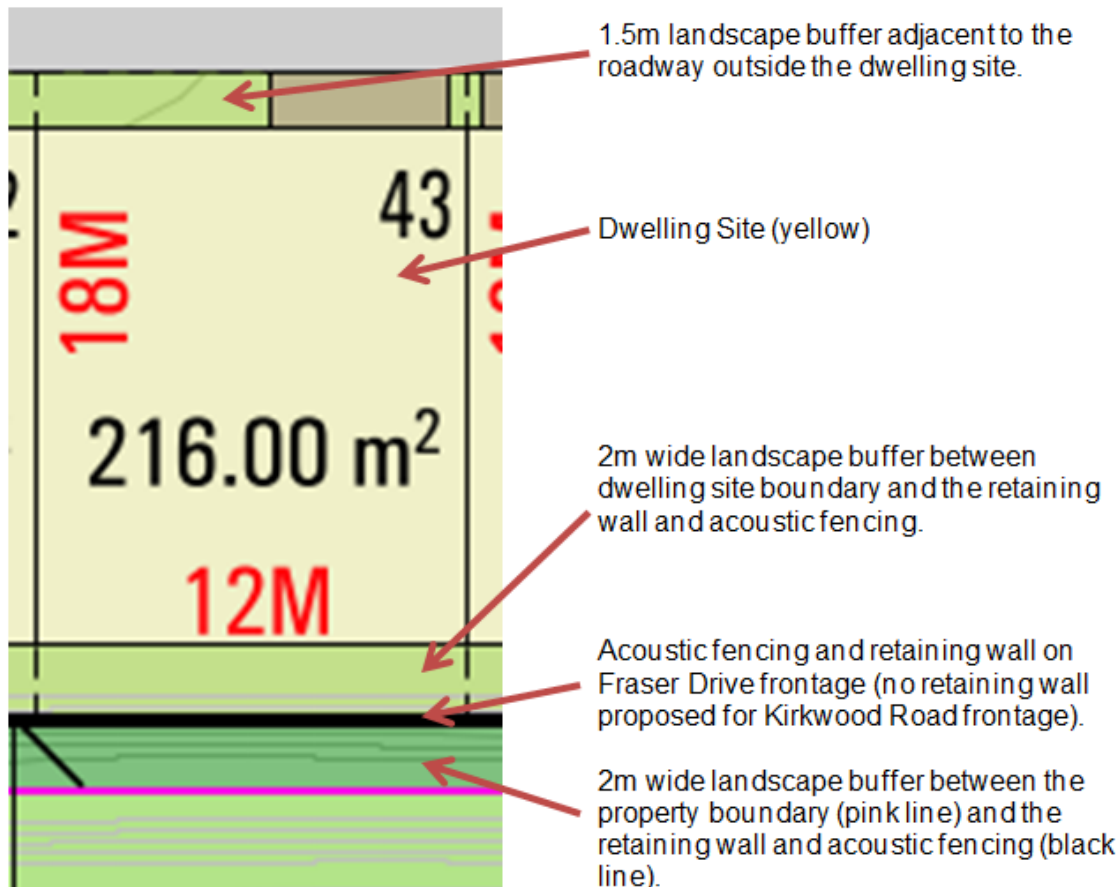


Section BB – Boulevard trees along roadways - (not to scale)

Locating the landscaping within dwelling sites impacts the proposal’s compliance with Clause 18 of the Local Government Regulations which is addressed in detail elsewhere in this report.

Council requested that the areas of landscaping proposed by the applicant is to be located outside the dwelling sites to ensure the landscaped areas nominated are retained into perpetuity (ideally maintained by management given the areas are outside individual sites) and contributes toward compliance with the Regulations.

Council requested and recommends the following landscaping arrangements:



The Plans submitted did not adequately reflect Council's request as the nominated dimensions and site areas included the external landscaping areas. However it is considered that the above can be achieved and therefore the recommended conditions of consent and marked up plans are considered to resolve this issue to ensure the desired outcome.

It is noted that further amended plans were received 18 June 2018, one day before the Council report deadline. These plans were not considered to address the entirety of the landscaping concerns with the road reserve landscaping buffer located within the dwelling sites. As the new set of plans required annotations similar to those within this report submitted in May 2018 and given the deadlines, the plans submitted in May 2018 continue to be recommended for approval.

A Section 82 Appeal has been concurrently lodged with the Development Application requesting construction of the dwellings on site. It is noted that this process is separate from the Development Application assessment, however Council requested preliminary documentation be submitted concurrently to ensure consistency throughout the assessment. The Section 82 Appeal has been justified on traffic safety grounds and has been supported

in principle by Council's Environmental Health Unit. This matter will be reported to Council separately if a consent is issued.

Signage does not form part of this proposal.

Application History

Discussions between the proponent and Council formally commenced with regard to the subject development at a pre-lodgement Development Assessment Panel meeting on 19 August 2016.

The application was received in June 2017 and was considered to be advertised development in accordance with the Environmental Planning and Assessment Act given the application was Integrated Development in accordance with the Water Management Act 2000. The application was placed on exhibition for a period of 30 days from Wednesday 28 June 2017 to Friday 28 July 2017 during which time one submission was received.

The application was referred to NSW Department of Primary Industries - Water in accordance with Section 89, 90 or 91 of the Water Management Act 2000 (Controlled Activity Approval). General Terms of Approval have been provided and applied.

Given proposed works included those under mean high water mark, the application was referred to NSW Department of Planning and Environment in accordance with State Environmental Planning Policy No 71 – Coastal Protection. The Department raised no objections to the proposal.

The proponent was requested to seek confirmation from NSW Department of Primary Industries – Fisheries that the site did not contain Key Fish Habitat which was received. Further, the Department confirmed that the work proposed does not trigger approval requirements under the Fisheries Management Act 1994.

Council's Traffic Engineer advised that given plans have been compiled (and Part V assessment completed) for the construction of Kirkwood Road to provide connection with the Pacific Motorway at this location, the assessment of the application must consider the ultimate intersection configuration and traffic volumes. The proposed development did not require referral to NSW Roads and Maritime in accordance with State Environmental Planning Policy (Infrastructure) 2007 however given the proposal has frontage to a future connection to the Pacific Motorway the application was referred as a courtesy. No objections were raised by the Department in this regard.

The application was referred to Gold Coast City Airport for comment with meetings held with GCCA staff to discuss the proposal. The following comments were provided from Gold Coast Airport consultants:

"Especially in view of the nature of previous proposals for the site, with which I am very familiar, and the predominant character and land use profile of the locality, GCAPL is in principle not opposed to the application on aircraft noise grounds. The facts that the applicant appears genuinely committed to fully complying with AS2021 attenuation standards, and will control the complete process of fabrication and construction of the dwellings, are regarded as positive features of the proposal. Obviously, appropriate

conditions will be needed to ensure compliance with applicable noise reduction standards for the entirety of the project.

We do not regard the ANEF as a "buffer" in the sense used in the SEPP, which if that were the case would cover very extensive parts of Tweed Heads West and Tweed Heads South. It is believed that adequate control can be exercised through Clause 7.9 of the LEP, compliance with which appears to be contemplated.

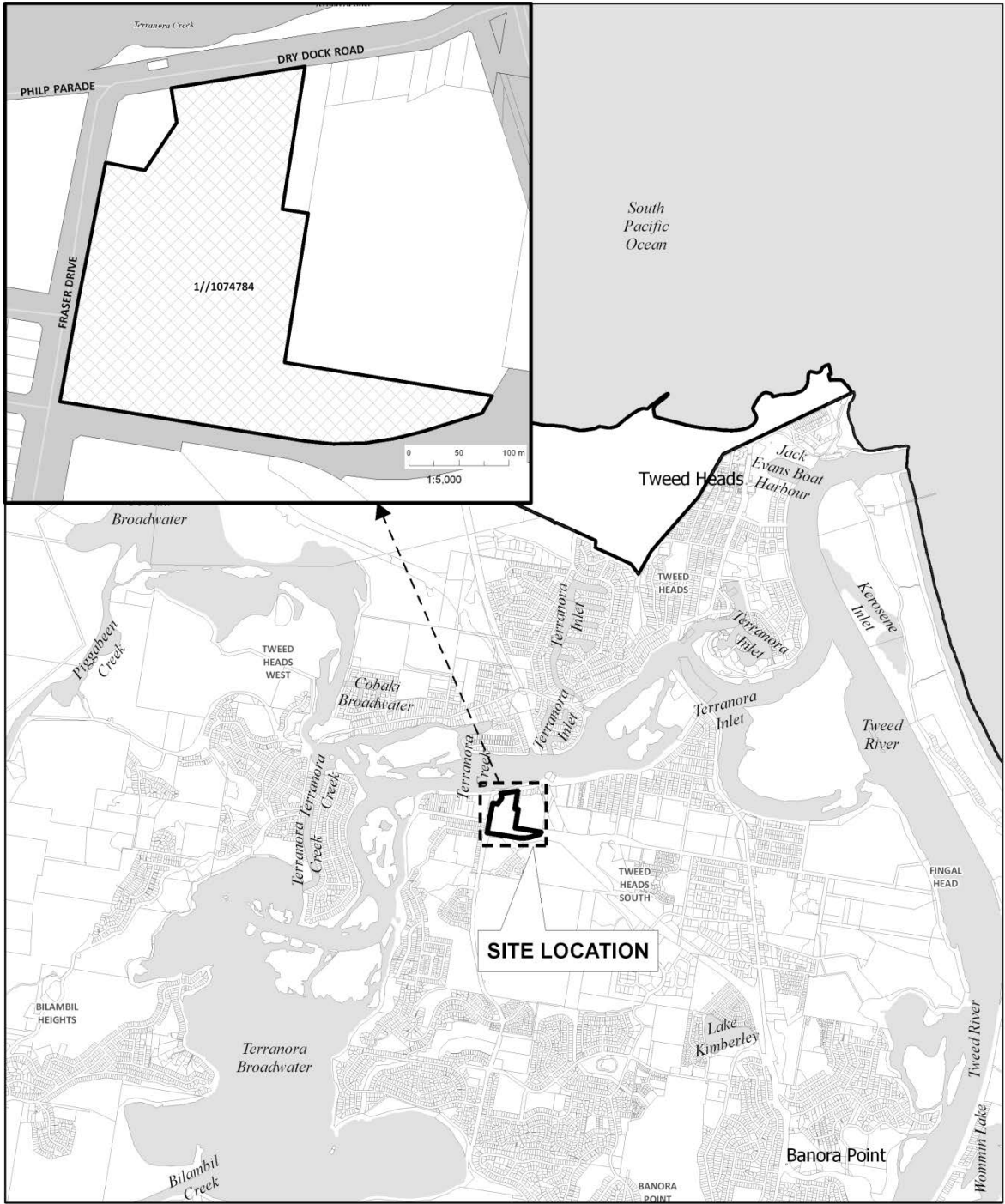
As far as the ANEF classification is concerned, in the new 2047 ANEF, which will come into effect upon final approval of the airport's 2017 Master Plan (expected later this year), and as noted by the applicants, the entire site will be between the 25 and 30 ANEF contours, and in our view it would be unreasonable to enforce a stricter standard in the meantime."

Given the above, and further correspondence, Gold Coast City Airport considers *the proposal is a suitable one for the site in terms of aircraft noise and does not object to the proposal subject to any consent being conditioned to enforce the commitments put forward by the applicant, including post-construction certification by an acoustic engineer.*

As a courtesy, the proponent was provided draft conditions of consent. In response, in addition to providing amended plans, the proponent sought changes or clarification to conditions regarding the extent of Fraser Drive works, the staging of the development and sewer system design. Some of the requested changes to conditions were made that clarified the requirement.

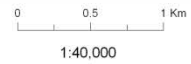
It was concluded that the extent of the Fraser Drive works reflects the submitted Traffic Report and is considered consistent with Council's standards in this regard. The staging of the development and the required works for the Conservation Areas is linked to the commencement of the removal of vegetation or due to the proximity of earthworks to the vegetation for retention. It is noted that the flood evacuation roadway requires filling of the site beyond the nominated staging areas which has been condition to ensure that impact to the Conservation Areas is mitigated at all times. Council's Water Unit reviewed the sewer system design and considered the condition proposed to be consistent with Council's standards.

SITE DIAGRAM:



Site Plan

Lot 1 DP 1074784
136-150 Dry Dock Road TWEED HEADS SOUTH



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Coordinate System - MGA Zone 56
Datum - GDA 94

Cadastre: 14/06/2018
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DO NOT SCALE
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TWEED
SHIRE COUNCIL

Date Printed: 14 June, 2018

DEVELOPMENT/ELEVATION PLANS:



Dimensions in red may not reflect dwelling site dimensions. The extent of dwelling sites are shown in yellow. Dwelling sites are to be a minimum of 4m from the property boundary.

2M MIN. LANDSCAPE SETBACK
2m landscape setback between property boundary and retaining walls/noise barrier

2m common property landscape setback retaining walls/noise barriers and dwelling sites.

2M COMMON PROPERTY LANDSCAPE SETBACK TO DWELLINGS
2m common property landscape setback between retaining walls/noise barriers and dwelling sites.

2M LANDSCAPE SETBACK
2m landscape setback between property boundary and retaining walls/noise barrier

2M COMMON PROPERTY LANDSCAPE SETBACK TO DWELLINGS
2m common property landscape setback between retaining walls/noise barriers and dwelling sites.

2M LANDSCAPE SETBACK
2m landscape setback between property boundary and retaining walls/noise barrier

Community Plan

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+ 612 9918 3022
rus@prescottarch.com.au

DRY DOCK ROAD
TWEED HEADS

SCALE 1:500 @ B1
JOB NO. 2_16_07
11/05/2018

SITE AREA - 4.5Ha

Yield
Manufactured Homes: 110 sites
Visitor Parking: 34
Disabled Parking: 3

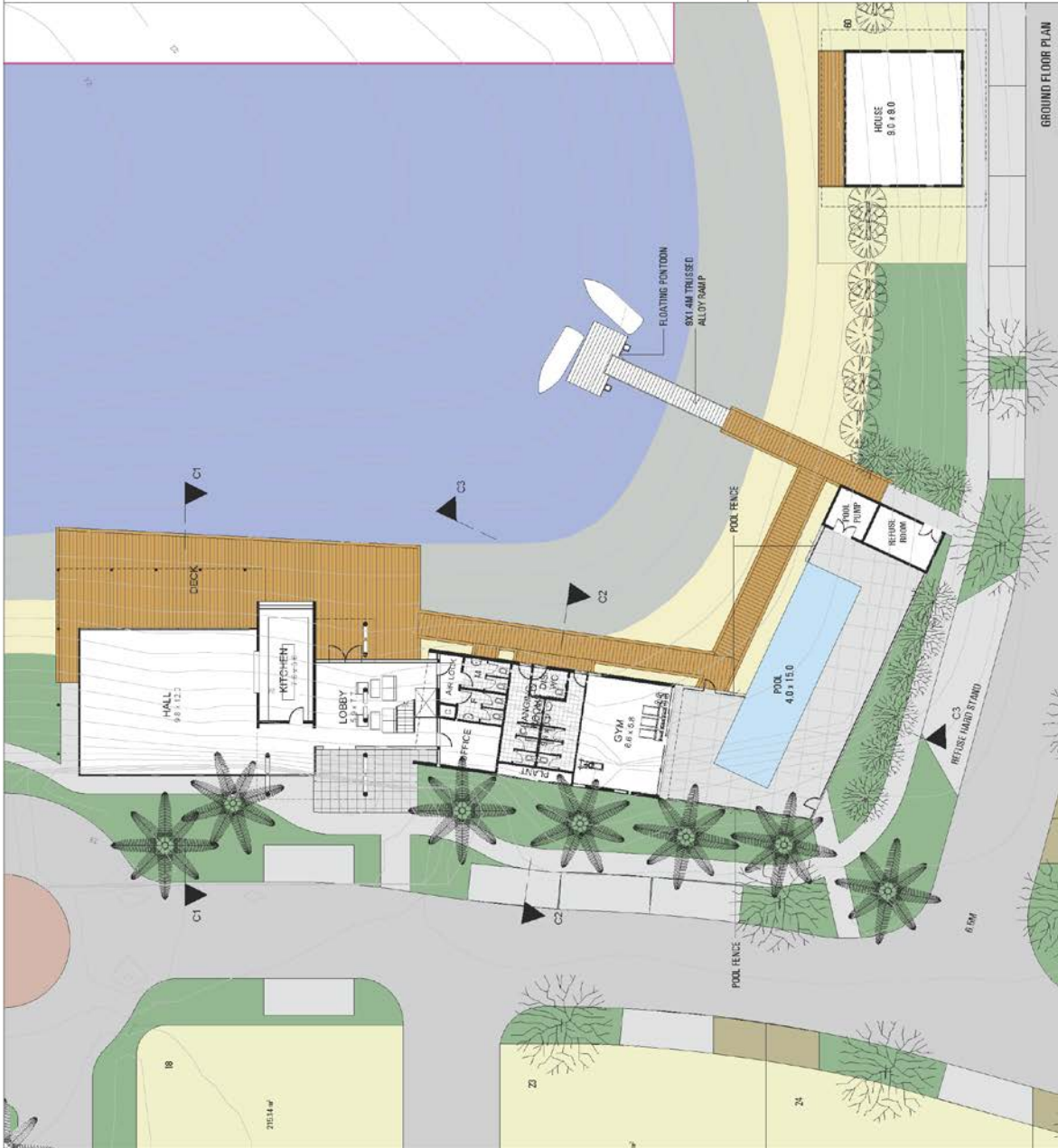
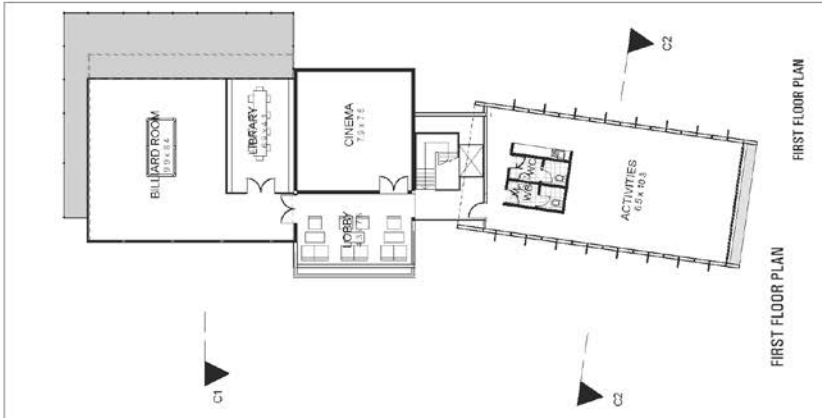
Legend

- Title Boundary
- Landscaping
- 0.2m Centres
- Extent of habitable area within dwelling site
- Nominated Driveway Location
- Visitor Parks
- Refuse Locations

2.0 Site Plan Landscaping



04.13.17/18 LANDSCAPING 1352 BY DOCK ROAD DUE DIRECTIONAL TECHNICAL INFORMATION DUE DOCK ROAD MD
 2018.07.11 10:11 | Landscape Impact | 1

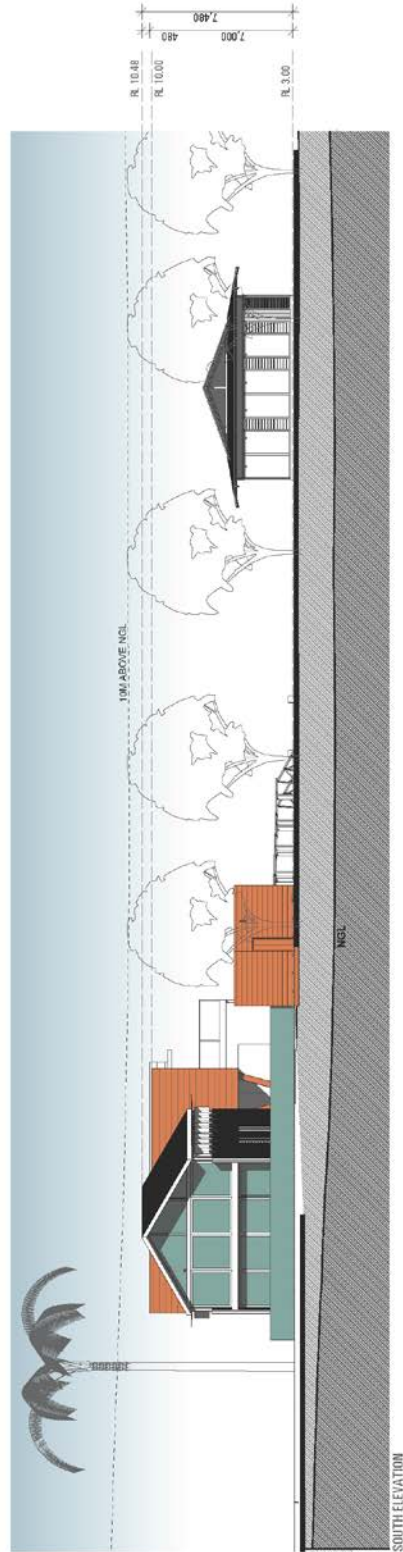
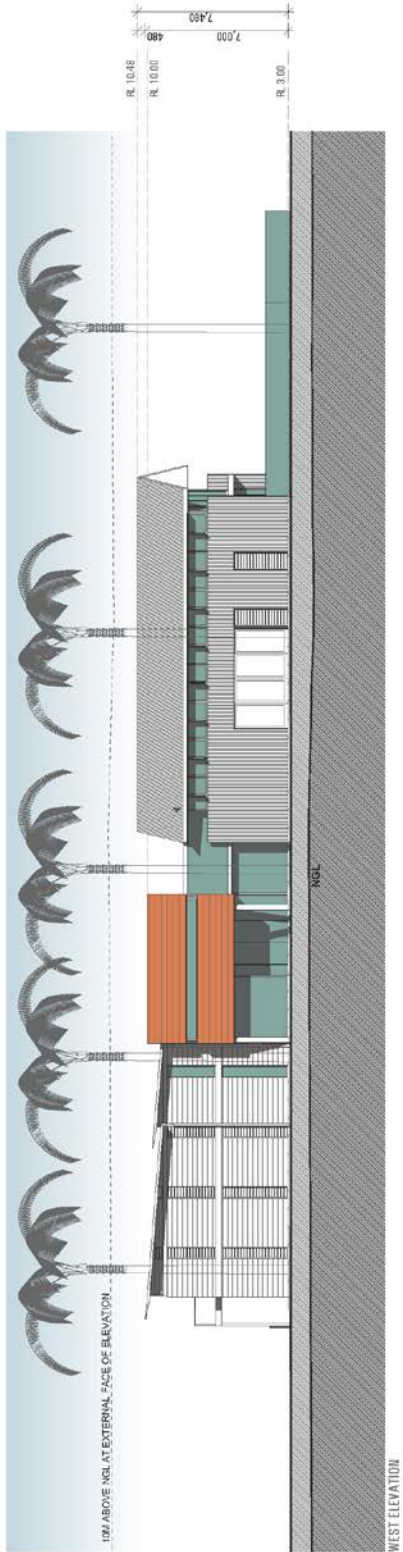


COMMUNITY CENTRE PLAN

prescottarchitects
 + 612 9819 3022 russell@prescottarch.com.au

1.1
 DRY DOCK ROAD
 TWEED HEADS

20/04/2017 JOB NO. 2_18_07 SCALE 1:20 @ A3
 1:15 @ A1



COMMUNITY CENTRE ELEVATIONS
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msell@prescottarch.com.au

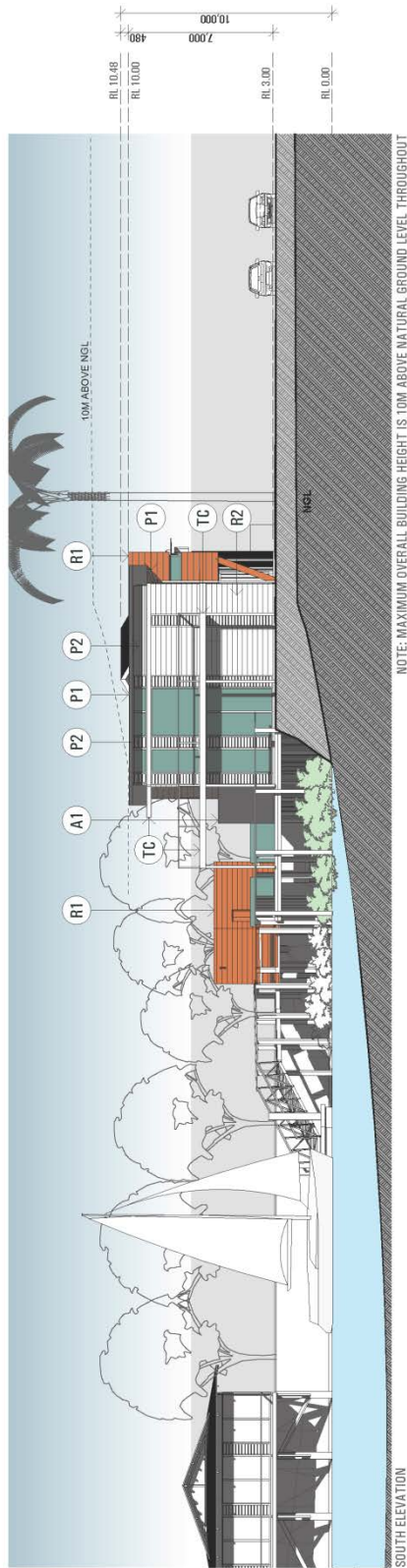
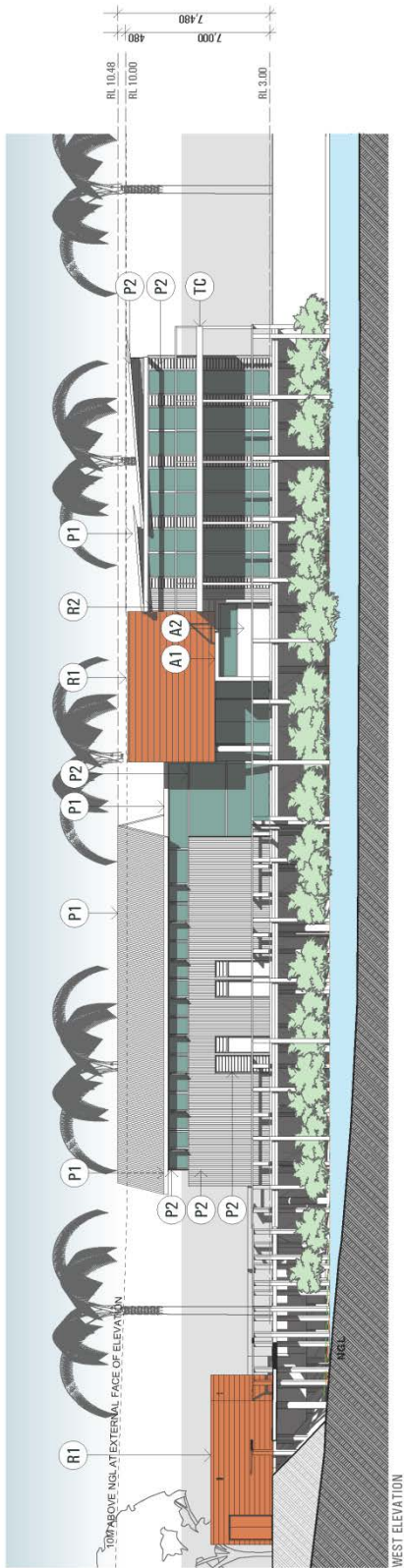
ISSUE F

DRY DOCK ROAD
TWEED HEADS

1.2

27/04/2017 JOB NO 2.14.07 SCALE 1:200 R.A3
1:100 @ A1

NOTE: MAXIMUM OVERALL BUILDING HEIGHT IS 10M ABOVE NATURAL GROUND LEVEL THROUGHOUT

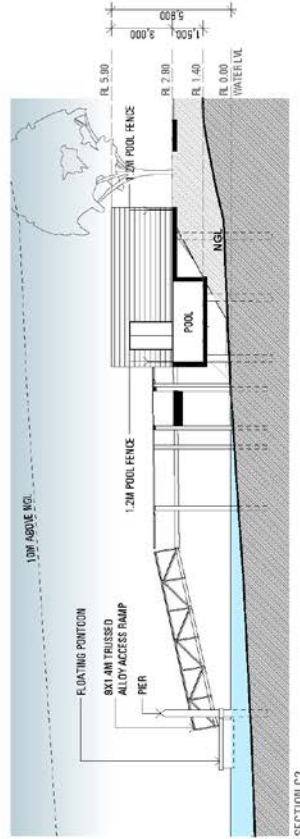
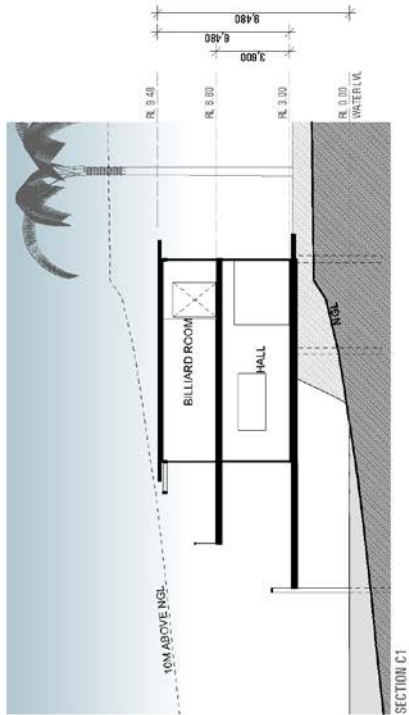
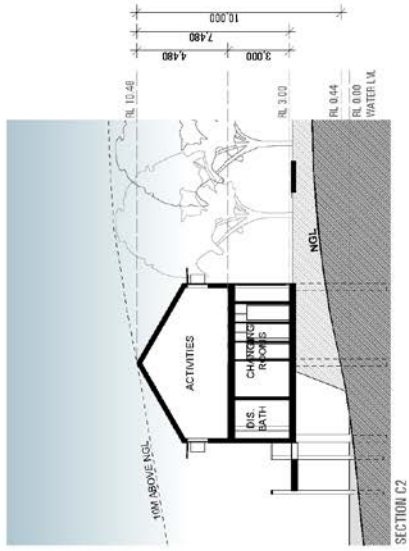


NOTE: MAXIMUM OVERALL BUILDING HEIGHT IS 10M ABOVE NATURAL GROUND LEVEL THROUGHOUT

- MATERIAL SCHEDULE**
- BALUSTRADES: TIMBER TOP RAIL & STAINLESS STEEL CABLES
 - POLES: NATURAL H6 TREATED PINE
 - ROOF: FASCIAS, GUTTERS & DOWN PIPES

COMMUNITY CENTRE ELEVATIONS
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1.3
 DRY DOCK ROAD
 TWEED HEADS
 27/04/2017 JOB NO. 2_18_07
 SCALE 1:200 @ A3
 1:100 @ A1
 ISSUE E

(P1) COLORBOND: WINDSPRAY	(R1) WINDOW TREATMENT & LOUVRES DURALDY: SILVER GREY	(R1) WALL CLADDING MINOVA NULINE WEATHERBOARD DILUX: CINNAMON SAND	(R1) WALL CLADDING MINOVA NULINE WEATHERBOARD DILUX: TERRACOTTA WHITE	(A1) WALL CLADDING ALUMINIUM COMPOSITE ALUCABOND: SMOKED SILVER	(A2) WALL CLADDING ALUMINIUM COMPOSITE ALUCABOND: METALLIC SILVER	(TC) AWNING & DECK TIMBER COMPOSITE IRONWOOD: IRON BARK
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COMMUNITY CENTRE SECTIONS
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ISSUE D

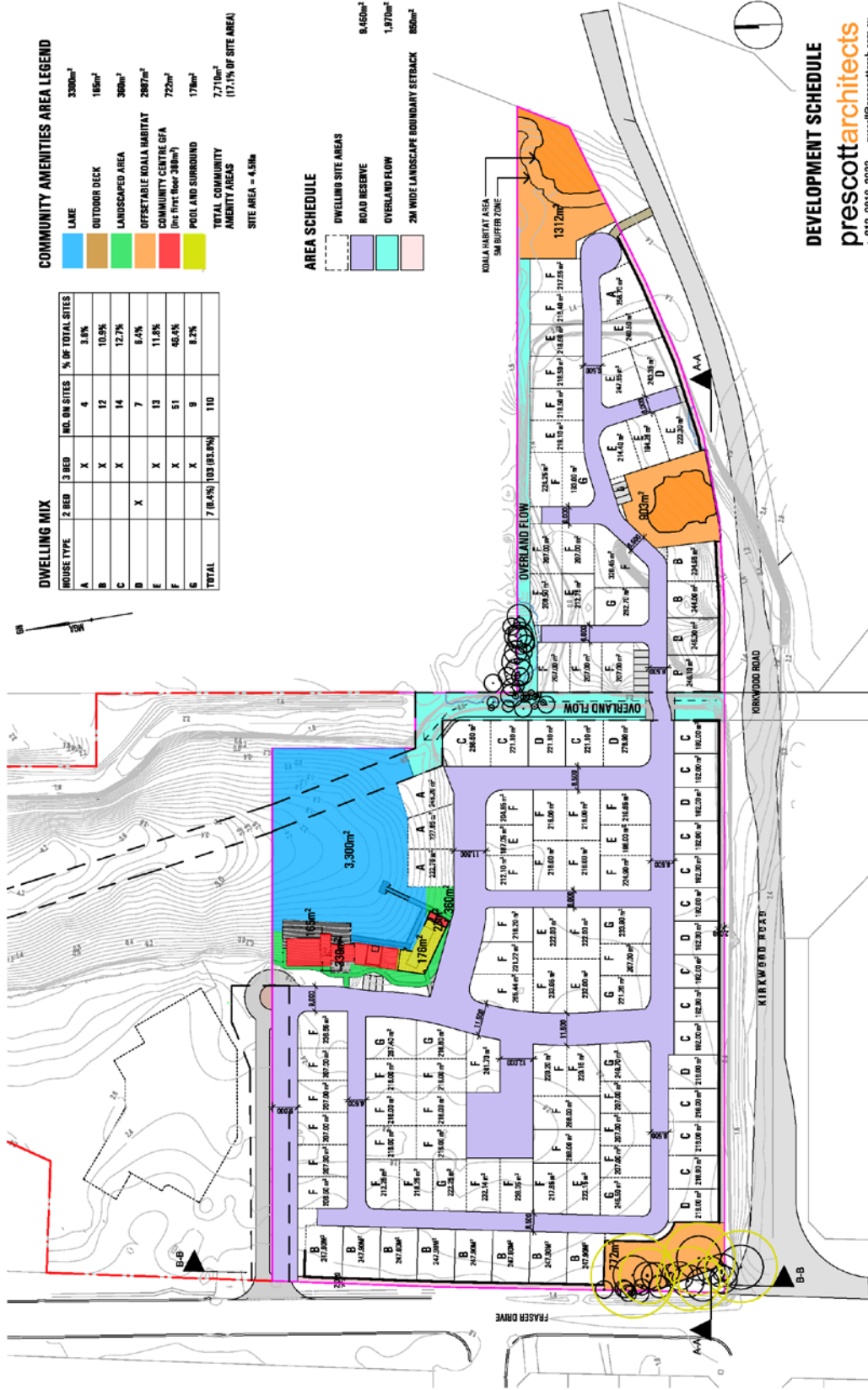
DRY DOCK ROAD
 TWEED HEADS

1.4

SCALE 1:200 @ A3
 1:100 @ A1

27/04/2017 JOB NO 2.18.07

NOTE: MAXIMUM OVERALL BUILDING HEIGHT IS 10M ABOVE NATURAL GROUND LEVEL THROUGHOUT



This plan is only approved for the purposes of nominating the Conservation Areas identified as 'Offsettable Koala Habitat'.
The dwelling sites (including areas and boundaries), vehicular access and parking as displayed on this plan are not approved.

Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed development relates to a manufactured home estate on appropriately zoned land. The proposed development is considered to be consistent with the aims of the plan.

Clause 1.4 – Definitions

The development is not defined under TLEP 2014, however, under the State Environmental Planning Policy No 36 – Manufactured Home Estates, (SEPP36) the development is defined as follows:

manufactured home estate which means *land on which manufactured homes are, or are to be, erected.*

The development is permissible within consent under SEPP36 as a caravan park is permissible with consent at the subject site.

A caravan park is defined as which means *land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.* It is noted however that the subject development is not considered to be characterised as this.

Clause 2.1 – Land use zones

The subject development site is zoned RE2 Private Recreation under the provisions of this clause.

Clause 2.3 – Zone objectives and Land use table

The site is zoned RE2 Private Recreation where the zone objectives are as follows:

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

It is noted that the development for a manufactured home estate is permissible on any land on which development for the purposes of a caravan park may be carried out in accordance with Clause 6 of SEPP 36 addressed in detail elsewhere in this report.

Caravan parks are permissible with consent within the RE2 zone and therefore the proposal is permitted with consent.

It is considered that as caravan parks are permitted with consent, the development is therefore a 'compatible land use' and is therefore consistent with the zone objectives and is acceptable in this regard.

Clause 2.6 – Subdivision

Subdivision does not form part of this application.

The application proposes a manufactured home estate on a future lot pursuant to Development Consent DA17/0270. The proposal has been assessed assuming the approved two lot subdivision has been completed.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity. This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject development site is identified as having a maximum building height of 10m as identified on the building height map.

The building heights of the community buildings measured from the proposed ground level are 7.4m and 6.4m. It is noted that the subject site is proposed for approximately 1-2m of fill in order to address flooding concerns. Building Heights measured from existing ground level in accordance with the definition are a maximum of 10m which complies with this control.

Clause 4.4 – Floor Space Ratio

The objectives of this clause are to define the allowable development density of a site and for particular classes of development and to enable an alignment of building scale with the size of a site. The subject site is not mapped on the Floor Space Ratio Map and therefore this clause does not apply.

Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

No variations to development standards are proposed.

Clause 5.5 – Development within the Coastal Zone

Although this clause has been repealed, it was in force at the time the application was lodged and therefore requires consideration. This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

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

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

The subject application does not propose any amendments to existing public access to or along the coastal foreshore.

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

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

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

(c) *the impact of the proposed development on the amenity of the coastal foreshore including:*

- (i) *any significant overshadowing of the coastal foreshore, and*
- (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is located approximately 3.5km from the coastal foreshore and over 200m from the Terranora Creek foreshore and it therefore not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views. The subject application is considered to be acceptable having regard to the above considerations.

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

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

(e) *how biodiversity and ecosystems, including:*

- (i) *native coastal vegetation and existing wildlife corridors, and*
- (ii) *rock platforms, and*
- (iii) *water quality of coastal waterbodies, and*

- (iv) native fauna and native flora, and their habitats, can be conserved, and*

The development's impact on biodiversity has been addressed in detail elsewhere in this report. The proposal is to be undertaken on a land which mostly has been previously cleared, in anticipation of the development of this land. It is considered that the impact that the proposal will have with regard to local biodiversity or ecosystems is considered to be satisfactorily mitigated and acceptable.

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

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

This clause goes on to further state:

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

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

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

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

The subject development does not propose to dispose effluent by non-reticulated system.

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

It is noted that the application has been reviewed by Council's Development Engineering Unit and Roads and Stormwater Unit with respect to stormwater, where no concerns were raised with respect to stormwater subject to the application of appropriate conditions of consent. It is considered that the subject application would be in accordance with the above controls, with no untreated stormwater being discharged to the sea, beach or the like.

(d) *the proposed development will not:*

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

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, permissibility and the spatial separation between the site and coastal hazards at this location.

Having regard to the above assessment, the proposal is considered to be acceptable with respect to the provisions of this clause.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

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

The site is approximately 200m from mapped Heritage Item archaeological site Taranora Park, site of Cedar Getters Camp however is not within a Heritage Conservation Area. Further the subject site is not mapped as a Known or Predictive site of Aboriginal Cultural Significance. The development proposes 1-2m of fill across the subject site. In this regard the proposal is not considered to result in any detrimental impact with regard to heritage conservation and is considered acceptable with regard to provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as bushfire prone and therefore this clause does not apply.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. The vast majority of the site is class 2 and a very small portion to the east is class 5 on the ASS Planning Maps. The application was referred to Council's Environmental Health Unit in this regard and have advised the following.

The application indicates that ASS investigation and management will be addressed in a 'Construction Environmental Management Plan' to be developed following Development Application approval. The Engineering Services report indicates:

The entirety of the developable area of the site is below 5m AHD and is encompassed by the TSC planning ASS planning maps. These planning maps identify the site as a Class 2 site with ASS identified as an issue for any works below the ground surface. As such, pending the results of an Acid Sulphate Soils (ASS) Investigation, it is likely that ASS will be encountered on site.

The waterbody on the site has likely been dredged/excavated. In addition to the Class 2 designation it maybe that actual ASS exist on site. The land will be filled for the development (minimum GL to be 2.6m AHD). The moveable dwellings are indicated as being placed on a slab on ground. Further, service connection, footings and the infrastructure around the water may disturb ASS.

The Environmental Health Unit raised no objections to the proposal in this regard subject to the application of conditions of consent be applied requiring the submission of an ASS Management Plan for approval to Council prior to the issue of a Construction Certificate.

Clause 7.2 - Earthworks

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

The proposal involves filling the site up to 2m above the existing ground level in order for the development to comply with flood hazard related controls. Retaining walls parallel with the Fraser Drive Road are proposed to ensure the works are wholly on the development site. However, Council has provided landowner's consent for the development to fill to the boundary and provide batter onto the unformed Kirkwood Road Road Reserve. This is considered to be consistent with the future road plans which provide connection from Fraser Drive to the Pacific Motorway. Other retaining walls across the development facilitate drainage easements and the retention of vegetation.

Visual impacts from retaining walls near the Fraser Drive boundary have been mitigated by proposed landscaping.

Council's Development Engineers and Roads and Stormwater Unit have no objections to the proposal subject to the conditions of consent giving consideration to the matters outlined within Clause 7.2. Therefore, the proposal is considered to be acceptable in this regard.

Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

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

(c) to avoid significant adverse impacts on flood behaviour and the environment.

The clause states that Development consent must not be granted to development on land at or below the flood planning level unless the consent authority is satisfied that the development. The subject site is currently mapped as flood prone and subject to the Q100 flood. The application was referred to Council's Flooding Engineer who reviewed the application.

As detailed elsewhere in this report, the current topography of the site varies from 0m AHD to more than 3m AHD. The proposal include filling of the land to about 3.1m AHD. Council's minimum fill level requirement for the site is 2.6m AHD. Presumably, the proposed additional fill to 3.1m AHD is to facilitate slab-on-ground- construction. A flood evacuation route is proposed in accordance with Council's Development Control Plan 2008, therefore no objections were raised with regard to the proposal subject to conditions of consent. As such, the proposal is considered to satisfy Clause 7.3.

Clause 7.4 - Floodplain risk management

The objectives of this clause are to ensure the evacuation of land subject to flooding in events exceeding the flood planning level and protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.

Development consent must not be granted to development for caravan parks on the subject site unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation from.

The application was referred to Council's Flooding Engineer who reviewed the application and was satisfied with the proposal given the design involves substantial filling above the Q100 Flood level and provides an evacuation route and as such, is considered to satisfy Clause 7.4.

Clause 7.5 - Coastal risk planning

The subject site is not identified as being within a coastal risk area on Council's Coastal Risk Planning Map on land to which this LEP relates.

Clause 7.6 - Stormwater Management

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

Stormwater details have been provided as part of this application and reviewed by Council's Roads and Stormwater Unit who have advised that the applicant proposes a number of end-of-pipe proprietary treatment devices to address stormwater quality where the lack of fall and proximity to saltwater preclude the

use of WSUD type devices such as bio-retention. The proposed solution is acceptable considering Council's specifications.

Further, no stormwater quantity mitigation is proposed as the site mostly discharges directly to the Terranora Broadwater via drainage easements through future Lot 10 to the north of the site. As there is no risk of flooding properties downstream, this is considered acceptable.

Therefore the proposal is considered to comply with Clause 7.6.

Clause 7.8 – Airspace operations

The objectives of this clause are to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport and to protect the community from undue risk from that operation.

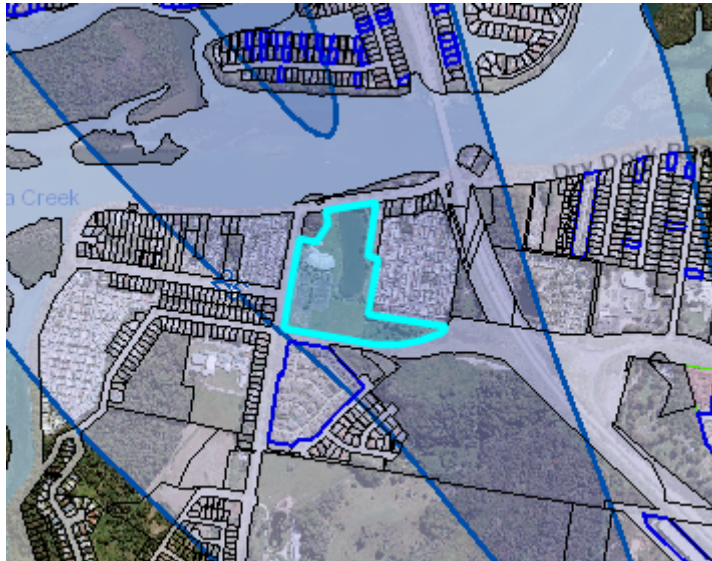
The subject site is mapped as subject to this clause however, the proposed development is not considered to penetrate the Limitation or Operations Surface. Nonetheless, the application was referred to Gold Coast Airport for comment who raised no objection to the proposal in this regard. As such, the proposal is considered to comply with Clause 7.8.

Clause 7.9 - Development in areas subject to aircraft noise

The objectives of this clause are as follows:

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

This clause applies as the site is mapped as within 25-30 contours of Aircraft Noise Emissions Forecast (ANEF) 2047. It is noted that the subject site was mapped as within 25-30 contours of ANEF 2031 with the northern end of the subject site mapped as within 30-35 contours of ANEF 2031 which is wholly within future Lot 10 and not the area of the manufactured home estate.



The subject site as mapped within Aircraft Noise Emissions Forecast (ANEF) 2047 contours 25-30.

Following is an assessment of this clause which states *before determining a development application for development to which this clause applies, the consent authority:*

- (a) **must consider** whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and

The area of the proposed manufactured home estate is vacant however approval has been granted (and deemed commenced) for tourist accommodation featuring 271 x 2 bedroom units for pursuant to Development Consent. 207 of the units were proposed within the subject development area, therefore regarding people affected by aircraft noise, 0006/2001DA approved:

207 units x 1.7 ppl x occupancy rate of 0.6 (tourist use) = 211.14 people

The subject development proposes (as per Development Schedule Dwg No 5.1 prepared by Prescott Architects dated 11 May 2018):

110 sites = (103 3 bedroom x 2.1ppl) + (7 2 bedroom x 1.7ppl) = 228.2 people

Therefore it is considered that the development results in an additional 17 people.

- (b) **must consider** the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021:2015, and

Table 2.1 indicates that a 'caravan park' and 'house' is 'unacceptable' development within a contour greater than 25. Note 4 to Table 2.1 states that if approval is given then the buildings should achieve the recommended aircraft noise reduction. Note 4 also states effects on outdoor areas should

be considered. The applicant states that the communal buildings will be attenuated and provide suitable recreational areas in lieu of suitable outdoor areas.

- (c) ***must be satisfied*** the development will meet the indoor design sound levels shown in Table 3.3 (*Indoor Design Sound Levels for Determination of Aircraft Noise Reduction*) in AS 2021:2015.

Acoustic Reporting accompanied the application and concluded that given the proposed noise attenuation measures proposed, the development is capable of meeting the indoor design sound levels in AS 2021:2015. The reporting was reviewed by Council's Environmental Health Unit and was considered acceptable in this regard.

Additionally, the proponent provided further planning justification addressing the objectives of the Clause mentioning the surrounding land uses that are similar in noise sensitivity and that the proposal will involve a greater level of noise attenuation than existing developments.

The provided Acoustic Reporting from CRG Acoustics dated 11 May 2018 concluded the following:

"A high level of acoustical treatment would be required to the external building envelopes of the future onsite dwellings and communal recreation buildings. Treatments to the building envelopes are predicted to include acoustically rated double glazed windows and sliding doors (with laminate glass and 100mm airgaps between glass panes), acoustic entry doors, external wall systems with multiple layers of plasterboard inside, multiple layers of sheeting on the external façade and high density insulation in the wall void. Rood/ceiling systems would require metal roof with Anticon insulation, multiple layers of plasterboard for the ceiling and high density insulation in the ceiling void." ...

"This assessment acknowledges that the site is within an area deemed unacceptable for residential development under the Australian Standard, but notes that a compromise may be met to facilitate development, given the following factors:

- *The dwellings will be prefabricated, therefore, the Developer has control over the design and construction of the dwellings. These dwellings can be treated to achieve the required indoor sound levels, but it is noted that building costs will be substantially higher than a standard building.*
- *The proposed communal recreation facilities propose a number of large and varied indoor recreation rooms. These indoor recreation rooms will be accessible to the residents should they wish a higher noise amenity when undertaking recreation activities. These buildings will be acoustically treated to achieve an acceptable indoor sound level.*

The Gold Coast Airport's year 2047 Australian Noise Exposure Forecast shows that the development site will fall entirely within the 25 - 30 contour (previously the ANEF 30 - 35 contour); hence, it can be inferred that aircraft noise impacts across the development site will likely lessen in the future.

There are a number of existing residential dwellings and caravan parks within the 25 - 30 and 30 - 35 ANEF contours; with the proposed Manufactured Home Park located directly adjacent to the "River Retreat Caravan Park" that currently includes manufactured homes."

Council received legal advice with regard to the interpretation of Clause 7.9 particularly following the NSW Land and Environment Court's recent decision to uphold an appeal to Council's refusal of Development Application DA16/0355 for a subdivision creating 54 residential lots, stormwater drainage reserve, public park and revegetation area at 26 Tringa Street, Tweed Heads West. This legal advice is attached and confidential. The site subject to DA16/0355 featured a similar aircraft noise exposure. Given the Court's recent decision; legal advice received specific to this development and consideration of the provisions as assessed above, it is considered that Council can grant consent for the subject development in accordance with Clause 7.9.

Clause 7.10 - Essential Services

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

(a) *the supply of water,*

The subject application has been reviewed by Council's Water Unit and Development Engineering Unit with respect to the above, with it being noted that adequate water supply could be provided to service proposal.

(b) *the supply of electricity,*

Electricity services are currently provided to the area. Appropriate Conditions of Consent shall be imposed to ensure that the applicant provides services in accordance with the standards of the supply authority.

(c) *the disposal and management of sewage,*

The disposal and management of sewage has also been reviewed by Council's Water and Development Engineering Units with it being determined that this can be adequately serviced through infrastructure available to the area. The proposal is acceptable in this regard.

(d) *stormwater drainage or on-site conservation,*

Stormwater management has been reviewed by Council's Development Engineering and Stormwater Unit with the proposal being considered to be

acceptable with respect to stormwater drainage subject to the application of appropriate conditions of consent.

(e) *suitable road access.*

Vehicular access to the development is to be provided via a crossover to the Fraser Drive frontage with appropriate 'turn treatments'. Council's Development Engineers and Traffic Engineer have reviewed the proposal in conjunction with the assessment of DA17/0270 for the two lot subdivision that established a right of carriageway across both Lot 10 and Lot 11 ensuring the access is adequate.

With respect to the above assessment against the provisions of this clause, it is considered that the proposed development would be acceptable from the perspective of essential services available to the site.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed Local Environmental Plan 2014.

North Coast Regional Plan 2036 (NCRP)

The NCRP 3036 provides a guide for the land use planning priorities and decisions to 2036 as an overarching framework to guide subsequent and more detailed land use plans. The goals for the Plan include a thriving, interconnected economy, vibrant and engaged communities, great housing choice and lifestyle options and the most stunning environment in NSW. The proposal is considered to be consistent with the Goals and Directions outlined in the Plan.

State Environmental Planning Policies (SEPP)

SEPP No. 36 - Manufactured Home Estates

The aims of this Policy are:

- (a) *to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements, and*
- (b) *to provide immediate development opportunities for manufactured home estates on the commencement of this Policy, and*
- (c) *to encourage the provision of affordable housing in well designed estates, and*
- (d) *to ensure that manufactured home estates are situated only in suitable locations and not on land having important resources or having landscape, scenic or ecological qualities that should be preserved, and*
- (e) *to ensure that manufactured home estates are adequately serviced and have access to essential community facilities and services, and*
- (f) *to protect the environment surrounding manufactured home estates, and*
- (g) *to provide measures which will facilitate security of tenure for residents of manufactured home estates.*

This Policy allows, with development consent, manufactured home estates on certain land on which caravan parks are permitted if the land meets the suitable locational criteria stipulated in this Policy (which it would not do if, for example, it contains important resources, is subject to natural or man-made risks or has sensitive environmental or ecological features).

Therefore as caravan parks are permitted with consent on land zoned RE2 Private Recreation under Local Environmental Plan 2014, manufactured home estates are permitted with consent under this Policy in accordance with Clause 6. It is noted that Clause 6 excludes land as described in Schedule 2. Schedule 2 (5) excludes

Land which is identified in an environmental planning instrument, or in any planning strategy of the Department or the council approved for the time being by the Director, by words which are cognate with or a description consistent with any one or more of the following:

- *airport/industry buffer area,*

The subject site is mapped as subject to Aircraft Noise Emissions Forecast (ANEF) contours which are relevant to Clause 7.9 of Tweed Local Environmental Plan 2014. Given the legal advice received on the matter, it is considered that the ANEF contours are not considered a 'buffer area' and as such, this Policy applies to the subject site.

Clause 9 outlines matters for consideration and states that Council may grant development consent only if it is satisfied:

- (a) *that each of the sites on which a manufactured home is or will be installed within the manufactured home estate is or will be adequately provided with reticulated water, a reticulated sewerage system, drainage and electricity, and*

The submitted engineering reports detail the provision of with reticulated water, a reticulated sewerage system, drainage and electricity.

- (b) *that the manufactured home estate is or will be provided with adequate transport services, and*

The subject site is serviced by buses along Fraser Drive and also involves sufficient vehicular access for private transport.

- (c) *that sufficient community facilities and services, whether situated within or outside the estate, are or will be available and reasonably accessible to the residents of the manufactured home estate, and*

The development includes a community hall, office, activities room, gym, cinema, library and pool at the site and is located 2.5km from Tweed City Shopping Centre.

(d) *that the development will not have an adverse effect on any:*

- *conservation area*
- *heritage item*
- *waterway or land having special landscape, scenic or ecological qualities,*

which is identified in an environmental planning instrument applicable to the land concerned.

The subject site is not mapped as within a Heritage Conservation Area nor containing a Heritage Item and is not mapped as a known or predictive site of Aboriginal Cultural Heritage significance. As detailed elsewhere in this report, the development is considered acceptable with regard to ecological impact and is not considered to have a detrimental impact to the landscape or waterway.

Given the above assessment and that the cumulative impact of the development is not considered to be detrimental to developments in the locality, the proposed manufactured home estate is considered to be in accordance with SEPP No 36.

SEPP No. 44 - Koala Habitat Protection

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

For the purposes of the SEPP 44, it was determined that Potential Koala Habitat was not present onsite within the areas of potential direct and indirect impact of the proposed development and therefore no further consideration is required in relation to the SEPP.

The Tweed Coast Comprehensive Koala Plan of Management has been addressed elsewhere in this report.

SEPP No. 55 - Remediation of Land

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

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

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

The subject application has been reviewed by Council's Environmental Health Unit who noted that a Development Application for a service station on the site was withdrawn.

Historical aerial photography does not indicate any potentially contaminating activities with the majority of the site appearing to have been vacant except the former aquatic centre.

The land was most recently used for a tavern / aquatic centre. The only issue of concern is potential sub slab treatments related to this building, however this building will be on the future Lot 10 to the north of the proposed development and therefore has been dealt with under addressed as part of other recent consents relevant to that building by way of suitable conditions for testing and validation.

As such, the land does not appear to be potentially contaminated satisfying the provisions of SEPP No 55.

SEPP (Coastal Management), SEPP No 71 – Coastal Protection, SEPP No 14 – Coastal Wetlands and SEPP No 26 – Littoral Rainforests

The Draft SEPP (Coastal Management) was exhibited in 2016 with the SEPP (Coastal Management) adopted 23 March 2018. SEPP (Coastal Management) repealed SEPP No 14, SEPP No 26 and SEPP No 71. The application was lodged 7 June 2017 and therefore in accordance with Clause 21 of SEPP (Coastal Management), the subject application is to be assessed against of SEPP No 14, SEPP No 26, SEPP No 71 and Draft SEPP (Coastal Management).

The subject site is not mapped as land affected by SEPP No 14 – Coastal Wetlands and SEPP No 26 – Littoral Rainforests with the only the SEPP No 14 buffer applying to the northern corner of the subject site which is not the location of the proposed manufactured home estate. However, the subject site is mapped as within the Coastal Zone of SEPP No 71 and following is an assessment of the proposal accordingly.

SEPP No 71 – Coastal Protection

The application was referred to NSW Department of Planning and Environmental in accordance with Clause 11(2) of the SEPP. The Department advised in their letter dated 17 January 2018 that they do not need to be involved in consideration of the matter and that the Department has no additional matters for consideration under clause 11(4).

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

Clause 8 – Matters for consideration

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

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

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

The subject site is not located in close proximity to any public access to or along the public foreshore.

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

It is not considered that this application offers any opportunities to provide new public access to the foreshore.

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

The proposal is considered suitable, having regard to its permissibility in this area.

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

The proposal will not result in any detrimental impact on the coastal foreshore, given its minor nature, separation and location on land zoned for private recreation purposes.

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

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

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

As detailed elsewhere in this report, the proposal would not impact negatively any animals or their habitats.

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

The proposal is not considered to have an adverse impact upon marine environments or habitats. This has been confirmed with correspondence from NSW Department of Primary Industries – Fisheries.

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

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

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

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

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

The proposal is not considered to cause any conflict between land-based and water-based activities.

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

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

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

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

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

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

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

Not applicable to the subject application.

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

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

This development is not considered to have a negative cumulative impact on the environment.

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

The proposal for manufactured home estate does not necessitate the generation of Basix Certification.

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

SEPP (Building Sustainability Index: BASIX) 2004

In accordance with the Environmental Planning and Assessment Regulation 2000, the development that forms part of this development application is not considered to be Basix affected development.

BASIX affected building means *any building that contains one or more dwellings, but does not include a hotel or motel.* However, future the dwellings/manufactured homes do not require development consent and are subject to Section 68 approval under the Local Government Act 1993.

The pool within the development services more than one dwelling and therefore is considered BASIX excluded development.

SEPP (Infrastructure) 2007

The aim of this Policy is to facilitate the effective delivery of infrastructure by improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services and providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

As the site is adjacent to the future connection from Fraser Drive to the Pacific Motorway, Clause 102 Impact of road noise or vibration on non-road development was given consideration. As addressed in detail elsewhere in this report, acoustic reporting was provided with respect to noise generated from the future road and Fraser Drive, in addition to the aircraft noise. The application was referred to Council's Environmental Health Unit in this regard and provided the recommendations of the reporting are implemented which includes acoustic fencing along the southern and western boundaries to Fraser Drive and Kirkwood Road, the development is considered acceptable.

Clause 104 regarding Traffic-generating development requires the referral of the application to NSW Roads and Maritime Services and applies to development specified in Column 1 of the Table to Schedule 3 that involves:

- (a) *new premises of the relevant size or capacity, or*
- (b) *an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

The development is not considered to be a subdivision of land and does not exceed 200 motor vehicles which is consistent with verbal advice from NSW Roads and Maritime Services. Nonetheless, as a courtesy, the application was referred to the Department who had no objection to the proposal and outlined matters for consideration which have been addressed elsewhere in this report.

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

Draft State Environmental Planning Policy (Coastal Management) 2016

As addressed elsewhere in this report, although this document has been adopted, in accordance with savings provisions, consideration of the Draft document is required. The subject site is within the Coastal Environment Area and the Coastal Use Area.

With regard to Clause 13 and development within the Coastal Environment Area, the proposed manufactured home estate is considered to be in accordance with Clause 13 given the proposal is not considered to impact the integrity of the biophysical, hydrological and ecological environment, coastal environmental values and natural coastal processes, marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The development is not considered to impact of existing public open space and safe access to and along the foreshore, beach, headland or rock platform and is not mapped as a known or predictive site of Aboriginal cultural heritage significance.

With regard to Clause 14 and development within the Coastal Use Area, the proposed manufactured home estate is considered to be in accordance with Clause 14 given the proposal is not considered to impact access, views and visual amenity along the foreshore, beach, headland or rock platform for the public; nor impacts areas of Aboriginal cultural heritage significance nor, cultural and built environment practices and places.

Given the proximity of the development to any foreshore, beach, headland or rock platform and the topography of the area, the development is considered consistent with the objectives and provisions of this draft SEPP.

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

Tweed Development Control Plan 2008

Section A1-Residential and Tourist Development Code

Section A1 does not apply to manufactured homes given this type of development is regulated by the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

Section A2-Site Access and Parking Code

With regard to the provision of car parking, Section A2 states that the proposal is required to meet the parking provisions within the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 which is addressed in detail elsewhere in this report.

The assessment and reporting with regard to access also gave consideration to the controls relevant to and demands generated by DA17/0270 for a 2 lot subdivision and DA14/0171.01 for a general store which were assessed concurrently and had implications with the same vehicular access point.

With regard to access, a site entry is proposed off Fraser Drive, south of the existing entrance. The entry road is proposed to go over the two lots to be created under DA17/0270. As part of DA17/0270 there is a condition to provide an easement (right of carriageway) over the two properties.

The subject application included advice from a Consultant Traffic Engineer and has been reviewed by Council's Development Engineering Unit and Council's Traffic Engineer with respect to the vehicular access proposed to service the proposed development, with no objections raised with respect to this subject to conditions of consent which includes submitting a supporting Traffic Assessment with the Construction Certificate; pedestrian upgrade works; a formal 1.2m wide concrete footpath; kerb to be constructed along full frontage of site to the intersection of Acacia Street and stormwater drainage upgrade.

Having regard to this and recommended conditions to be applied to any consent, the proposal is considered to be acceptable with respect to the proposed access provisions. The proposed development is considered to comply with the applicable provisions of DCP Section A2.

Section A3-Development of Flood Liable Land

The objective of this section of Tweed Development Control Plan 2008 is to set detailed standards for land development in order to minimise the adverse effect of flooding on the community.

The subject site is mapped as flood prone with the following levels applicable:

- Design Flood Level = 2.6m AHD
- Minimum Habitable Floor Level = 3.1m AHD

- Existing Ground Level Range = 0 to >3m AHD
- Probable Maximum Flood (PMF) Level = 5.8m AHD

The current topography of the site varies from 0m AHD to more than 3m AHD. Council's minimum fill level requirement for the site is 2.6m AHD. The proposal include filling of the land to about 3.1m AHD complying with this requirement. It is noted that the minimum finished floor level for the habitable areas of the proposed dwellings is 3.1m AHD. This provides 500mm freeboard to the design flood level in accordance with Section D5.12-3(c) of Council's Development Design Specification.

Clause A3.2.6 requires any new caravan park development, to have a permanent high level road evacuation route to land above PMF. The applicant proposes to establish a road link to the future Kirkwood Road West that provides access to land above PMF. There is precedent for this at Kirkwood Road East where the Billabong Caravan Park has an emergency access which is deemed a high level evacuation route. The land above PMF that the park will connect with is currently a high island with no facilities. However, Section A3 states only that the development shall have permanent high level access to land above PMF. It makes no explicit requirements for appropriate provisions or further connectivity past a high island. It is noted however that this evacuation route is to be provided to all stages of the development and as such, this will be conditioned accordingly. Therefore, the evacuation route is acceptable subject to conditions of consent.

The application was referred to Council's Flooding Engineer for review of the proposal who has no objections to the proposal and therefore, the development is considered acceptable with regard to Section A3 subject to conditions of consent.

Section A11-Public Notification of Development Proposals

The application was considered to be advertised development in accordance with the Act given the application was Integrated Development in accordance with the Water Management Act 2000. The application was placed on exhibition for a period of 30 days from Wednesday 28 June 2017 to Friday 28 July 2017 during which time one submission was received. As such, Section A11 is considered satisfied.

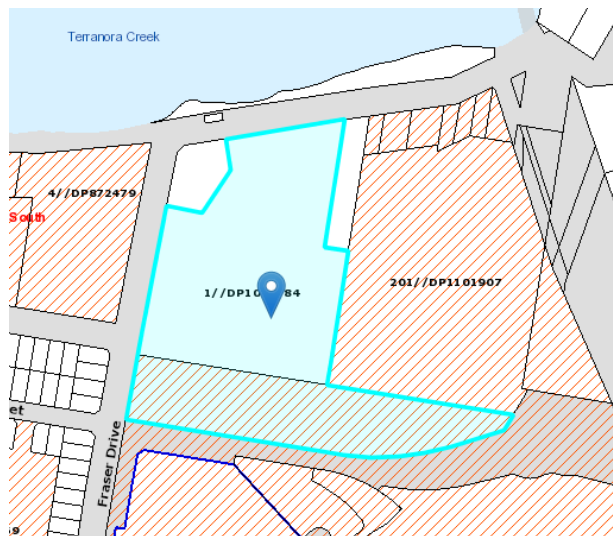
Section A15-Waste Minimisation and Management

The objective of this section is to minimise resource requirements and construction waste through reuse and recycling and the efficient selection and use of resources and to provide guidance in regards to space, storage, amenity and management of waste management facilities.

A Waste Management Plan forms part of the submission which was required under this section. The Plan addresses both construction and operational phases of the development. There is an identified refuse collection point and acceptable path of travel for moving bins. Given the arrangement is for a manufactured home estate the waste management will be centrally regulated. Council's Waste Unit has reviewed the application raising no objections to the proposal and as such, the proposal is considered to be in accordance with Section A15.

Section B3-Banora Point West- Tweed Heads South

The southern section of the subject site is mapped as where controls within Section B3 apply as mapped below.



Red hatch denotes the section of the subject site where Section B3 applies.

The aim of this section is to give detailed guidance to those wishing to develop within the Banora Point West - Tweed Heads South Area, to indicate Council's policies with respect to development in a more strategic approach.

The site is within Precinct 2 and mapped as 'Special Uses', nominated as the Aquatic Club site which is its historic use.

Clause B3.3.4 Tourist Development nominates the site as 'to provide an integrated tourist accommodation and retreat' with 'tourist Villas/Condominiums to be provided adjacent to the Hotel/Convention Centre and overlooking the Tweed Heads Rowing and Aquatic Club' which is consistent with Development Consent 0006/2001DA.

The objectives of Clause 3.7 Tourism include:

- *To encourage the establishment of a range of development forms offering different leisure and hospitality activities.*
- *To promote the complementary and simultaneous development of:*
 - i. resort hotels;*
 - ii. budget family style resorts; and*
 - iii. caravan parks, cabins etc.*

Although a manufactured home estate is considered to be a residential use as opposed to a tourist use and therefore inconsistent with this clause within the Development Control Plan, the proposed use is supported by a higher order instrument, State Environmental Planning Policy No 36 and as such, in the legislative hierarchy, this use is acceptable.

The Clause goes on to state that *whilst no specific guidelines or requirements are specified within this Section Council will, when dealing with any development application, consider the following matters:*

- i. The circulation system within the development provides for safe and convenient pedestrian and vehicle movements;*
- ii. Intersections with distributor and collector roads are safety designed and adequately spaced;*
- iii. The provision of adequate car parking;*
- iv. Noise abatement;*
- v. Privacy to adjacent or adjoining residential development;*
- vi. The provision of public access, pedestrian and open space linkages;*
- vii. The existing amenity of the neighbourhood;*
- viii. Visual amenity;*
- ix. The effects of lighting; and*
- x. The effects of the proposed hours of operation on the surrounding environment.*

It is considered that the proposal addresses all of the matters above, detailed throughout this report and as such, is acceptable within regard to Section B3.

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

No planning agreement or draft planning agreement is relevant to this application.

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

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

The subject site is nominated as within the Coastal Zone, and therefore this policy applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises of a manufactured home estate which is permissible under a State Policy. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

As the application does not involve the demolition, this Clause does not apply.

Clause 93 Fire Safety Considerations

As the application does not involve the change of use of an existing building, this Clause does not apply.

Clause 94 Buildings to be upgraded

As the application does not involve the upgrade or works to an existing building, this Clause does not apply.

Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

The object of this Regulation is to provide opportunities for affordable alternatives in short-term and long-term accommodation by applying standards for the design of manufactured home estates, standards for the design, construction and siting of manufactured homes and to apply standards to promote the health, safety and amenity of the occupiers of manufactured homes.

A detailed assessment of the proposal against the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 has been provided as an attachment to this report.

To summarise, in Part 2 of the Regulations, Division 3 provides controls with regard to the manufactured home estate whilst Division 4 provides controls for the manufactured homes.

The proposed manufactured home estate is considered to be generally in accordance with Division 3 with regard to community amenities, minimum lot size, onsite road and access provision, visitor parking and utilities except for the following Clause 18 which states:

18 Setbacks of dwelling sites from road frontages

- (1) A dwelling site must not be located closer than 10 metres to a public road or 3 metres to any other boundary of the manufactured home estate unless the approval for the manufactured home estate so allows.*
- (2) The approval for a manufactured home estate must not allow a lesser distance than 10 metres unless the council is satisfied that the dwelling site has been or will be properly screened, fenced, enclosed or otherwise treated.*

In response to Clause 18, the applicant submitted amended plans that provided a 2m landscaping setback from the boundary to the 1.5m retaining wall and 1.9-2.0m high noise barrier fencing. Although the proponent nominated an additional 2m landscaping buffer, this was proposed for inside the dwelling sites. The proponent's justification for this stated that the noise barriers (as recommended by Acoustic reporting) provided sufficient screening to allow the reduction from 10m setback to a 2m setback stating that the dwelling sites can include an additional 2m landscaping

As the control relates to dwelling site boundaries, the originally proposed 2m setback (80% variation) was not considered acceptable nor is having buffer landscaping within a dwelling site. However, the revised and conditioned 4m setback is considered acceptable given the sufficient capacity for landscape screening and the proposed acoustic fencing which together is considered to satisfy that the *dwelling site has been or will be properly screened, fenced, enclosed or otherwise treated.*

Further, the 4m setbacks reflect other existing development setbacks in the area. As such, it is recommended that any consent to be conditioned accordingly.

It is noted that, further amended plans were received from the proponent 18 June 2018, one day before the Council report deadline. These plans were not considered to address the entirety of the landscaping concerns with the road reserve landscaping buffer located within the dwelling sites. As the new set of plans required annotations similar to those within this report submitted in May 2018 and given the deadlines, the plans submitted in May 2018 continue to be recommended for approval.

Division 4 Clause 41 states:

41 Manufactured homes to be constructed and assembled off-site

- (1) A manufactured home must not be installed on a dwelling site unless each major section of the home has been constructed and assembled at, and transported to the manufactured home estate from, a place of manufacture outside the manufactured home estate.*
- (2) However, the fixing of cornices, the setting of wall lining joints, the fitting of skirting boards and architraves and the grouting of tiles may be done on the dwelling site.*

A Section 82 Appeal has been concurrently lodged with the Development Application requesting construction of the dwellings on site. It is noted that this process is separate from the Development Application assessment, however Council requested preliminary documentation be submitted concurrently to ensure consistency throughout the assessment. The Section 82 Appeal has been justified on traffic safety grounds and has been supported in principle by Council's Environmental Health Unit. This matter will be reported to Council separately if a consent is issued.

Given the above, the application is considered acceptable with regard to Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

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

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

The subject land is within the coastal policy area affected by the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*. The proposed development is consistent with the objectives, strategies and actions of the policy.

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards.

Coastal Zone Management Plan for the Tweed Coast Estuaries 2013

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

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development. It is noted that the water body within the subject site is man-made and not considered to be an estuary.

(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, Setting and Amenity

The subject site is located within an existing urban area with caravan parks to the north west and north east whilst low to medium density residential development is located to the south and south west. The proposed manufactured home estate is considered to be an appropriate land use in this context.

However, the main building on the subject site is proposed to be located on a separate allotment pursuant to Development Consent DA17/0270. Given the proximity of this building to proposed dwelling sites consideration of the use of that building requires consideration. As detailed elsewhere in this report, this building has an extensive approval history which includes use as a hotel, club house, tourist facility and restaurant. Given the bulk of the club building has been demolished pursuant to Development Consent DA17/0239 and following discussions with the landowners and applicants, it is understood the intent of the site to the north to be used as a general store and not uses and structures approved under DA13/0669.02 which was for a tourist facility comprising tavern, cafe, restaurant, function room, playground amphitheatre and pontoon. Therefore to ensure any future landuse conflict does not arise which may impact on the amenity for future residents, the requirement for the surrender of DA13/0669.02 will be conditioned accordingly. This results in the building relying on Development Consent DA14/0171.01 for construction and operation. An 'in principle' letter of support was received from the landowner in this regard.

Aircraft Noise and Road Noise – Amenity

As discussed elsewhere in this report, the subject site is mapped as within the Aircraft Noise Emissions Forecast contours 25-30. Additionally the subject site features frontage to Fraser Drive to the west and the Kirkwood Road Road Reserve to the south which is to provide future connection to the Pacific Motorway.

The Kirkwood Road formation has been identified in Council's Road Development Strategy and Tweed Road Contribution Plan. Whilst timing of its construction is

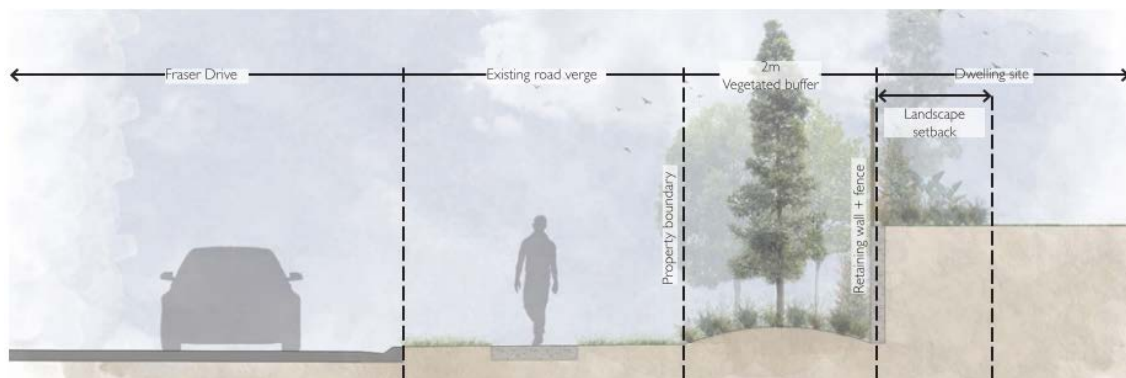
unknown Council's Traffic Engineer advised that any development that adversely impacts on the extension would not be supported and that the development must consider the ultimate intersection configuration and ultimate traffic volumes on that section of the road and associated noise generation.

Given the proximity of the dwelling sites to the road reserves, the applicant provided supporting documentation from an Acoustic Engineer (CRG Acoustics) recommending the provision of 1.9 – 2m noise barrier fencing between the dwelling sites and the abovementioned road reserves in addition to high level of acoustical treatment to the external building envelopes of the future dwellings and communal buildings which includes acoustically rated double glazed windows, external wall systems with multiple layers of plasterboard inside, multiple layers of sheeting on the external façade and high density insulation in the wall and ceiling voids. The treatments proposed would result in the development meeting the indoor design sound levels within Australian Standard 2021:2015.

Council's Environmental Health Unit reviewed the Acoustic Reporting where background noise was measured, suitable noise criteria identified and road noise modelled. It is considered that internal noise 'requirements for aircraft noise exceed the requirements for road traffic noise' and the report is considered to adequately address both aircraft noise and road traffic noise concern.

Streetscape and Landscaping

As detailed elsewhere in this report, the proposal involves perimeter landscaping that minimises the visual impact of the 1.5m high retaining wall and acoustic fencing parallel with the boundaries. Following negotiations with the proponent, conditions have been recommended to ensure the perimeter features a 2m vegetation buffer between the property boundary and the retaining wall and acoustic fence followed by a further 2m landscaped setback external to the dwelling sites as indicatively shown below.

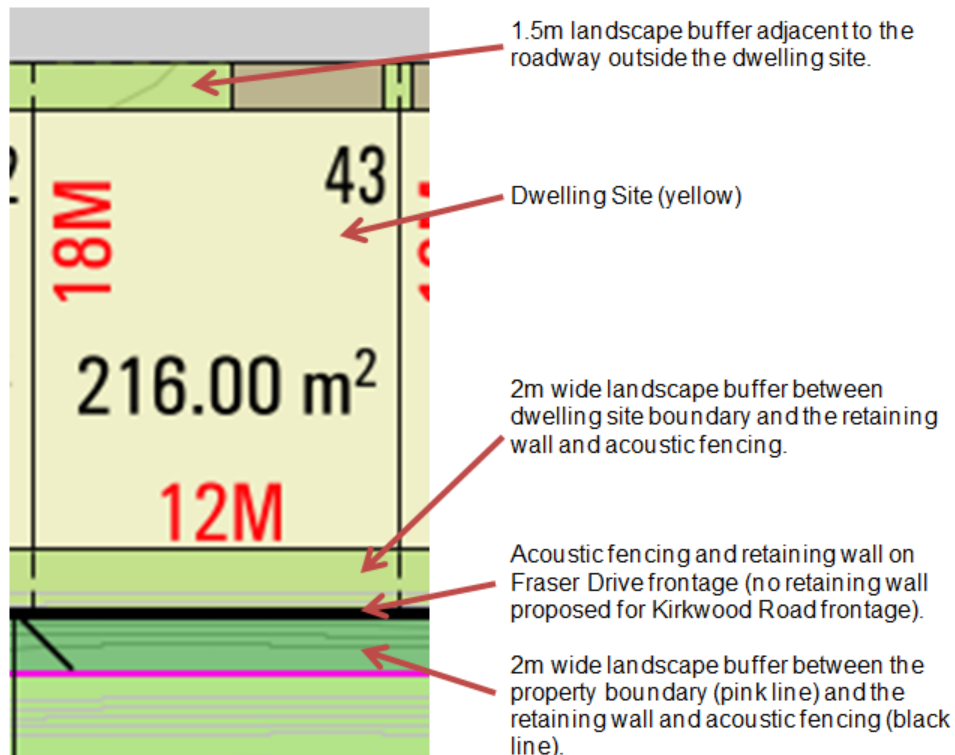


Setbacks and landscaping of Fraser Drive frontage.

It is noted that the Kirkwood Road frontage is recommended for a similar arrangement except the retaining walls are not required.

Also, the established vegetation at the southwest corner of the site is to be retained, in addition to the subject development featuring landscaping throughout the development along the road reserves within the manufactured home estate. As such, the proposal is considered to be acceptable in this regard subject to

conditions of consent which will require compliance with the following landscaping diagram.



Access, Transport and Traffic

As outlined elsewhere in this report, the application was referred to NSW Roads and Maritime Services who provided the following comments:

- *The proposed development will access the local road network.*
- *The proposal is not considered to impact significantly on any existing connections to the Pacific Motorway.*
- *Council should be satisfied that the proposed access arrangements can accommodate the peak hourly demand generated by the proposed development.*
- *Council should be satisfied that the proposed development provides appropriate connectivity for pedestrians, cyclists and public transport.*
- *Council may wish to consider the impact of the proposed development on any future road infrastructure improvements planned by Council in the subject area.*

The road extension of Kirkwood Road has been identified in Council's Road Development Strategy and Section 7.11 (previously Section 94) Plan. Whilst timing of its construction is unknown the proponent was advised that any development that adversely impacts on the extension would not be supported and that any development that abuts the proposed Kirkwood Road connection to Dry Dock Road must consider the ultimate intersection configuration and ultimate traffic volumes on that section of the road and this would include noise generation.

The applicant provided reporting from a Traffic Consultant which outlined the proposed vehicular access to the site as shown below.



Concept Layout extracted from the Bitzios document, dated 27 November 2017

Council's Development Engineer and Traffic Engineer have accepted the proposed access arrangements and upgrade to Fraser Drive to be generally in accordance with the plan above subject to conditions of consent which includes submitting a supporting Traffic Assessment with the Construction Certificate, in addition to the following upgrade works in Fraser Drive to cater for the proposed developments (the subject development, DA17/0270 – 2 lot subdivision and DA14/0171.01 – General Store assessed concurrently):

- Pedestrian upgrade works;
- Kerb to be constructed along full frontage of site to the intersection of Acacia Street;
- Stormwater drainage in the road reserve to be upgraded to reflect full length kerbing including gully pits;
- A formal 1.2m wide concrete footpath to be provided from the existing concrete footpath near Kirkwood Road / Fraser Drive intersection and connect with the existing footpath located on the unnamed road reserve south of Lot 1 DP1074784 near Acacia Street / Fraser Drive intersection.

Flora and Fauna

Through the negotiation process, the layout design was modified from the original proposal to address ecological and landscape amenity issues. The application was referred to Council's Natural Resource Management Unit who provided an assessment of the proposal with regard to ecological impacts.

The final development design complies with the Tweed Coast Comprehensive Koala Plan of Management (TCCKPoM) by retaining 810m² of Preferred Koala

Habitat (PKH) on site; Providing an onsite compensation area 576m² for the loss of 48m² of PKH preferred koala habitat area of onsite and providing an area of 256m² to be revegetated to compensate for the loss of 4 Preferred Koala Food Trees.

An area of approximately 378m² of habitat representative of an Endangered Ecological Community (EEC) - Sub-tropical Coastal Floodplain Forest is to be retained and protected. The habitat area is to be afforded an approximate 5-7m revegetated buffer zone.

An area of 573m² is made available on site for re-establishment of EEC Sub-tropical Coastal Floodplain Forest for the loss of 48m² of the community whilst adequate available area for habitat restoration additional to that required under the TCCKPoM has been provided to compensate for the loss of other habitat elements on the subject site (i.e. estuarine complexes and individual mature trees).

Vegetation associated with an EEC - Swamp Sclerophyll forest to the north of the site adjacent to the proposed drainage network is to be retained and afforded adequate protection.

Ecological impacts beyond the boundary of the subject site extending into the Kirkwood Road reserve were taken to have been satisfactorily addressed through compensatory measures associated with the Kirkwood Road upgrade project PTV10/0032.

Council's Natural Resource Management Unit are satisfied that the proposal will unlikely result in significant impact on threatened species, populations, ecological communities or their habitats subject to conditions of consent which include:

- A combined area of 2987m² to be described as a Conservation Area to be used for the conservation purposes;
- Preparation and implementation of a Habitat Restoration Plan over a minimum 5 year period across the Conservation Area;
- Preparation and implementation of a Vegetation and Fauna Management Plan;
- A security bond shall be held for works within the Kirkwood Road reserve associated with construction of an evacuation road to ensure protection of remnant vegetation;
- The area described as Conservation Area shall be secured under a section 88B positive covenant to be registered on title prior to issue occupation certificate for Stage 1 works;
- All works involving vegetation removal are to be supervised by a qualified arborist and ecologist.

The abovementioned conditions will be applied to any consent issued accordingly.

Earthworks, Drainage and Easements

The subject land is relatively flat with a canal located along part of the northern and eastern boundaries. The existing levels range from RL 1.4m to 2.4m across the site. The proposal involves filling the site to achieve minimum dwelling floor levels of 3.1m AHD to comply with flooding requirements.

Due to the low lying nature of the existing ground level, some lots at the boundary of the site or near drainage paths are proposed to have retaining structures to achieve the proposed minimum levels. The retaining structures have generally been proposed to a maximum height of 1.5m along the boundaries of the site.

Council's Development Engineer and Flooding Engineer have reviewed the application and have no objection to the proposal subject to conditions of consent which include the requirement for easements to ensure drainage is appropriately facilitated.

Further, earthworks are proposed for within the Kirkwood Road Road Reserve to the south of the subject allotment which Council has provided Landowners consent for with regard to the submission of the Development Application. A batter slope is proposed rather than retaining along the boundary. Council's Roads and Stormwater Unit had no objection to the works given the proposed levels are consistent with the proposed works for the future formation of this Road Reserve. Detailed plans of the earthworks are required to be submitted to Council as landowner for final approval of the works prior to the issue of a Construction Certificate.

Construction

The construction of the proposed development will be subject to standard amenity and hours of operation conditions being included on any consent issued. It is noted that Council's Building Unit and Environmental Health Unit have reviewed the application and recommended standard conditions of consent with respect to the construction phase of the proposed development.

This phase of the proposal will present some interruption to the ambience of the surrounding area, however this is temporary in nature and the amenity of the surrounding area can be adequately protected via appropriate conditions of consent.

Food Premises and Community Facilities

The community facilities building will contain a kitchen, however this is not proposed for the commercial preparation and sale of food. A condition of consent will be applied accordingly. Similarly with the community facilities, to ensure compliance with the Regulations, any consent will be conditioned to ensure that the facilities are for the use of residents and their guests and not for any other external commercial operation.

Public Health - Swimming Pools

A swimming pool is proposed. Consideration is given with regard to public health legislation that applies to public swimming pools. Council's Environmental Health Unit advises that the definition of public swimming pool is defined as follows:

public swimming pool or spa pool means a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or*
- (b) a pool provided at a workplace for the use of employees, or*
- (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or*
- (d) a pool provided at a school or hospital,*

but not including a pool situated at private residential premises.

It is considered that the pool would be used by residents rather than guests or holiday makers and as such it is considered that the pool is not considered 'public' by definition and related legislation does not apply.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located within an existing urban area with caravan parks to the north-west and north east whilst low to medium density residential development is located to the south and south-west. The proposed manufactured home estate is considered to be consistent with these adjoining land uses. The bulk and form of the development is not considered to be dissimilar to the existing development in the precinct.

The subject site is proposed for subdivision pursuant to Development Consent DA17/0270 which will result in the adjoining lot to the north similarly zoned as RE2 Private Recreation to feature a general store. Given the proximity of this building to proposed dwelling sites consideration of the use of that building requires consideration. As detailed elsewhere in this report, this building has an extensive approval history which includes use as a hotel, club house, tourist facility and restaurant.

Therefore to ensure that any future landuse conflict does not arise which may impact on the amenity for future residents, the requirement for the surrender of DA13/0669.02 will be conditioned accordingly.

Water and Sewer

Engineering Reports have been submitted addressing the provision of water and sewer to the subject development. Although further details are required prior to the issue of a Construction Certificate, Council's Water and Wastewater Unit

and Development Engineers have no objection to the proposal subject to conditions of consent and is therefore acceptable in this regard.

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

The subject application was advertised in the Tweed Link for a period of 30 days from Wednesday 28 June 2017 to Friday 28 July 2017. During this time one submission was received. The submission raised concerns with regard to exposing future residents to flood, climate change and the lack of infrastructure to cater for higher density living.

The proponent responded to these concerns with the following:

"The engineering matters raised in Council's information request have been addressed by providing further information, however there is no substantive change to the drainage strategy and design flood levels proposed. The increase in site runoff, as a result of the increase in impervious area, will be directed to the private canal, where the additional flows will not have an impact on the downstream catchment due to the proximity of Terranora Creek. The development will ensure no worsening of flows that are not directed to this private canal."

It is considered that the flooding and infrastructure concerns have been adequately addressed within engineering reports and by the design of the proposal which includes filling the land to above the Q100 Flood Level resulting in the development complying with Section A3 of Tweed Development Control Plan 2008 – 'Development of Flood Liable Land'. This Plan provides controls where necessary (greenfield sites) that consider climate change. The proposal has been supported by Council's Flooding Engineer with regard to mitigation flooding hazards for proposed and existing developments. Therefore the proposal is considered to be acceptable in regard to the concerns raised within the submissions subject to the recommended conditions of consent.

(e) Public interest

The proposed manufactured home estate development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is therefore considered to be in the public interest by providing residential development within an established urban area which through development design mitigates flooding hazards, acoustic issues and minimises ecological impacts.

Tweed Coast Comprehensive Plan of Management (TCCKPoM)

The subject application was reviewed by Council's Biodiversity Planner who assessed the proposal against the relevant provisions of the Plan and advised the following.

The modified layout plan satisfies onsite offset commitments for Preferred Koala Habitat under Table 2 – Appendix C of the TCCKPoM.

The modified layout plan generally satisfies offset commitments for Preferred Koala Food Trees under Table 2 – Appendix C. NRM consider that departure from the TCCKPoM to provide onsite offsets as opposed to offsite within the Southern Koala Management Area is appropriate given that PKH is to be retained and expanded

TCCKPoM Habitat Values	Retained	Removed	Offset Requirements under the TCCKPoM	Offset provided
Preferred Koala Habitat*	810 m ²	48 m ²	Ratio of 1:12 = 576 m ²	576 m ² – Complies
Preferred Koala Food Trees	Nil	4 trees	Ratio of 1:16 at 1 PKFT per 4 m ² = 256 m ²	256 m ² – Complies

* Does not include modified Coastal Blackbutt Open Forest to Woodland habitat to the south-west to be retained

It is considered that the impact on 48m² of EEC Sub-tropical Coastal Floodplain Forest is considered to have been adequately addressed. Impact has been avoided (378m²) and a compensation area additional to those offsetting requirements under the TCCKPoM of 573m² provided. The compensation ratio for EEC equates to 1:11.9.

Expansion of the south-western open space area provides for the long term retention and protection of all significant trees adjacent to Fraser Drive. A revised Tree Survey dated 10 May 2015 prepared by Element Ecology was provided identifying additional significant trees to be retained.

Given the above, the proposal is considered to satisfy the provisions of Part 5 of the TCCKPoM.

Developer Contribution Charges

Section 64 and Section 7.11 Developer Contributions apply to the subject development. When considering the applicable charges and credits that the site benefits from, the subject site has a complex approval history. The site (Lot 1 DP1074784) benefits from developer contribution credits following the advanced payment of charges applied to 0006/2001DA. This development for 171 tourist units although commenced was not constructed and therefore the credit can be applied to future development of the site provided the consent is surrendered. Development Consent DA17/0270 granted a two lot subdivision in December 2017 which requires the surrender of 0006/2001DA. Any consent for the subject development will require that DA17/0270 is completed.

A detailed analysis of the developer contribution history and charges applicable to the development at each stage is available on file.

OPTIONS:

1. Approve the application in accordance with the recommendation; or
2. Refuse the application with stated reasons for refusal.

CONCLUSION:

The proposed development is considered suitable for the site as it is a permissible form of development and the relevant planning considerations have been taken into account in the assessment of the application. The proposed development does not present any issues that are considered to be contrary to the public interest and generally aligns with the applicable development legislation, as outlined in this assessment report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Should the application be refused, the proponent may lodge an appeal with the NSW Land and Environment Court.

c. Legal:

Yes, legal advice has been attached.

Yes, legal advice has been received.

Should the application be refused, the proponent may lodge an appeal with the NSW Land and Environment Court.

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. Assessment of the proposal against Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 (ECM 5355285)

(*Confidential*) Attachment 2. Legal advice from Lindsay Taylor Lawyers dated 13 July 2017 (ECM 5355296)

(*Confidential*) Attachment 3. Legal advice from Maddocks Lawyers dated 5 April 2018 (ECM 5355307)

2 [PR-PC] Development Application DA17/0805 for a Helipad at Lot 1 DP 735658 No. 477 Urliup Road, Urliup

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

On 21 November 2017 Council received a Development Application for a Helipad at Lot 1 DP 735658 No 477 Urliup Road, Urliup (the subject site). The application states the helipad is for personal use with up to seven total flight movements per week.

The subject site is zoned RU2 - Rural Landscape and Helipads are a permissible development in the zone with consent from Council.

The submitted DA package was accompanied by a brief summary of the proposal, a Noise Impact Assessment Report and detail of the proposed flight path to and from the subject site.

The summary of the proposal states:

- The use of the helipad is for private purposes only, specifically it is to provide personal transport to and from work;
- The operator of the aircraft is a licensed pilot whom resides at the subject site;
- Up to seven trips per week (in and out cumulatively) is sought;
- Proposed hours of use are between 6.30am-6.30pm, 7 days a week;
- The approach and take off path has been designed to ensure the helicopter is above 500 feet when it travels beyond the boundary of the subject site and;
- The operation is in accordance with the Private Pilot License Helicopter (PPL(H)) granted by Civil Aviation Security Authority (CASA).

The application was advertised and neighbours were notified for a period of 14 days from Wednesday 6 December 2017 to Wednesday 20 December 2017. During the notification

period 10 submissions were received. The matters raised by the neighbours have formed part of the Section 4.15 Evaluation and are discussed later in this report.

In order for Council to consider the proposal as submitted, being "local development" DA (subject to a Section 4.15 Evaluation), a due diligence review of the regulatory framework for development of this nature has been undertaken and a summary of the review is contained later in this report (See **Table 1**). Based on the findings of the review, it is considered that the proposed development is a "local development" DA (Subject to Section 4.15 Evaluation) and does not require concurrence from an external authority and can be determined by the Council as the consent authority.

The application was referred to internal departments and external stakeholders for consideration and review, including the Gold Coast Airport and Australian Government Civil Aviation Safety Authority (CASA). No objections to the issuing of development consent from any of the internal departments or external authorities were raised, subject to the imposition of conditions of development consent.

During the assessment process, several complaints were made to Council (directly in writing and via Councillors) regarding the helipad activities already occurring from the site without development consent.

The nature of the use is such that the evidence needed to take action is both challenging to obtain and requires an extensive amount of Council resources (such evidence includes but is not limited to visual identification and recording of the operator of the helicopter, the time it was taking off and landing from the site and imagery of such occurring at the subject site) which would involve full time surveillance. Noting, once the helicopter is outside the bounds of the property and 500ft above natural ground level, the regulating authority is CASA and no longer under Councils jurisdiction of control.

The complaints received by Council were made both in writing and verbally over the phone however none of the accounts contained the evidence that would be required to issue an Order to cease the activity or Penalty Infringement Notices (PIN's) that would not be capable of challenge. Notwithstanding, Council officers made attempts to resolve the issues by way of gathering proper evidence of inbound and outbound flight logs based on the helicopter registration number however lengthy delays by the Gold Coast Airport and other authorities, has resulted in no such evidence becoming available to date.

Therefore, in order to determine the planning merit of the helipad at the subject site, the assessment of the development application has been progressed so to facilitate a means to establish a framework to which the complaints can be suitably managed by Council. In particular, the assessment of the application aims to determine:

- a) Whether the use is consistent with the regulatory framework and consent could be granted for the helipad;
- b) Whether on merit the application can be supported; and
- c) If consent could be granted; how the use can be appropriately regulated to mitigate the impacts to the neighbours and ensure it is consistent with the terms to which consent has been sought (as far as the times of operating, flight path

locations, and management of acoustic impacts and limiting the number of flights per week).

The assessment contained herein demonstrates that the proposed use is consistent with the applicable environmental planning instruments and based on planning merit; is worthy of support subject to the imposition of conditions of consent to limit the operations (and associated impacts arising from the operations).

Of particular relevance is Council officer's assessment of potential acoustic impacts arising from the proposed use of the helipad noting that the application is supported by a Noise Impact Assessment prepared by a suitably qualified Acoustic Consultant.

The report was prepared to determine the extent of noise impacts on neighbouring residents from the operation of the helicopter, and was prepared according to the NSW Environmental Protection Authority (EPA) Noise Control Guideline.

Council Environmental Health officers have reviewed the report and support the methodology and findings of the report (further discussion regard the particulars of the acoustic assessment can be found later in this report) with the exception of the proposed hours of operation. Having regard to the NSW EPA Noise Control Guideline and the location of the subject site, Council officers have made a recommendation that the operation times be limited to ensure that the development achieves full compliance with the EPA Noise Control Guide criteria and also provide some additional relief to surrounding sensitive receiver locations to protect the amenity of the rural area. The special condition of consent limits the helicopter movement to only be permitted within the hours from 7.00am to 6.30pm Mondays to Saturdays and 8.00am to 6.30pm Sundays. The applicant is opposing this condition, however it is still recommended that this condition remain to protect amenity in the area outside of those hours.

As such, the application is recommended for approval subject to conditions of development consent.

The matter is reported to Council given the number of objections, the compliance history of the helicopter use, and as a result of it being called up by Councillor Milne and Councillor Cherry.

RECOMMENDATION:

That Development Application DA17/0805 for a helipad at Lot 1 DP 735658 No. 477 Urliup Road, Urliup be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the flight path plan stamped and approved by Council, except where varied by the conditions of this consent.**

[GEN0005]

USE

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

[USE0125]

3. Hours of operation of the helipad/helicopter are restricted to the following hours:
- * 7.00am to 6.30pm - Mondays to Saturdays
 - * 8.00am to 6.30pm Sundays and Public Holidays

The above restrictions do not apply in the case of an emergency situation.

[USE0185]

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

[USE0225]

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

[USE0245]

6. The development shall be carried out in accordance with the provisions of the Noise Impact Assessment Report prepared by Craig Hill Acoustics Ref: 151117/1 and dated 15 November 2017.

[USE0305]

7. No intensification of use of the helipad/helicopter beyond a total of 7 helicopter flight movements per week (including taking off or landing) is permitted under this consent.

[USE0855]

8. The storage of fuel and refuelling of the helicopter is not permitted to occur on the subject site.

[USENS01]

9. The operation and use of the helipad in accordance with this development consent is to be maintained in a flight log which records the date and time of all inbound and outbound flights from the subject site.

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

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

[USENS02]

REPORT:

Applicant: Eniflat Pty Ltd
Owner: Eniflat Pty Ltd
Location: Lot 1 DP 735658 No. 477 Urliup Road, Urliup
Zoning: RU2 - Rural Landscape
Cost: Nil

Background:

The subject site is located within the rural setting of Urliup and comprises of a previously approved dual occupancy development as well as an approved rural industry comprising the harvesting and bottling of mineral water.

Whilst the water business has attracted significant public interest at the same site (with a NSW Land & Environment Court Appeal still pending) the subject application is separately and independent of these other applications and has been assessed on its merits in its own right.

On 21 November 2017 Council received a Development Application for a Helipad at Lot 1 DP 735658 No 477 Urliup Road, Urliup (the subject site).

In order for Council to consider the proposal as submitted; being a standard DA (subject to a Section 4.15 Evaluation), a due diligence review of the regulatory framework for development of this nature has been undertaken, and a summary of the review is provided in **Table 1**. Based on the findings of the review, it is considered that the proposed development is a "local development" DA (Subject to Section 4.15 Evaluation) and does not require concurrence from an external authority and can be determined by the Council as the consent authority.

As outlined in Table 1, the key considerations as to the 'triggers' for development application typologies (Local, Integrated Development and/or Designated Development) is the proposed number of helicopter flight movements per week.

Pursuant to Schedule 3 of the *Environmental Planning & Assessment Regulation 2000* 'Helicopter Activities' are considered to be Designated Development if the activity has an intended use of more than 7 helicopter flight movements per week (including taking-off or landing) and is located within 1 kilometre of a dwelling not associated with the facilities.

The information submitted in the DA included a summary of the proposed use of the helipad; which outlined up to seven flight movements per week. This scenario (in regard to the number of 'flight movements' including take-off or landing) was confirmed with the applicant and therefore Council can be satisfied that subject development is considered to be a local development application subject to a Section 4.15 Evaluation.

During the preparation of this report, the draft recommended conditions of development consent were referred to the applicant for their information and comment. Following this notification, the applicant responded to Council contesting draft recommended Condition No. 3 which relates to the hours of operation of the helicopter activity as follows:

3. Hours of operation of the helipad/helicopter are restricted to the following hours:

- * **7.00am to 6.30pm - Mondays to Saturdays**
- * **8.00am to 6.30pm Sundays and Public Holidays**

The above restrictions do not apply in the case of an emergency situation.

The applicant has stated that despite the original development application outlining hours of proposed movement from 6.30am that **any** restriction from Council on the hours of operation would be unreasonable as the applicant believes hours of operation should be unlimited and dictated by CASA and not Council.

To support this position the applicant supplied an additional/addendum Noise Report (see Attachment 3) and further specifies that the helicopter activity would not generate noise beyond 55dBA at nearby residences.

The applicant has stated that this is comparable to a normal vehicle moving to and from the site.

Table 2.1

Receiver	Distance from source			altitude of aircraft feet at max exposure
	Description	metres from pad	metres from flight path	
R1	Residential	477	477	>500
R2	Residential	280	280	0-100
R3	Residential	365	365	0-100
R4	Residential	221	221	0-100
R5	Residential Hogans road	504	504	elevated receiver above pad



Table 5.2

Location	Distance from flight path	L _{Amax}	>82 L _{Amax} criteria	Ambient L _{Aeq}	flight measurement duration	Ambient L _{Aeq} 15 min,	dB increase to ambient L _{Aeq} for up to 3 flights in 15 hours	>55L _{Aeq} criteria
R1	100m >500 feet above	76	-6	64.0	3.01	45	<1.0	0
		78	-4	68.0	2.40	45		
R2	280m	78	-4	62.2	2.36	45	<1.0	0
		70	-12	65.0	2.18	45		
R3	365m	71	-11	61.4	2.18	45	<1.0	0
		76	-6	64.7	2.06	45		
R4	221m	76	-6	65.0	2.00	45	<1.0	0
		77	-5	65.0	2.33	45		
R5	504 m	70	-12	64.0	2.30	45	<1.0	0
		70	-12	62.0	2.50	45		

Council officers have considered the applicants objection to Condition 3 together with the submissions received by adjoining property owners and having regard to matters of public interest and criteria under the NSW Noise Control Guideline referenced by the acoustic consultant, deem it appropriate that Condition No. 3 remains unchanged.

Condition 3 is considered to be a valid condition of consent that Council can impose as part of limiting the proposed intensity of the proposed operations. This is entirely consistent with Section 4.17 of the EP&A Act which gives Council as the consent authority the authorisation to impose conditions related to the merits of any application.

Table 1: Regulatory Assessment of proposal against Environmental Planning & Assessment Act 1979

Legislation	Development Type	Requirement and Consent Authority	Triggers	Comment	Applicable
Environmental Planning & Assessment (EP&A) Regulation 2000	Designated Development	Director General Requirements (DGR's) to be provided to the applicant by the Secretary of the NSW Department of Planning to facilitate the preparation of an Environmental Impact Statement (EIS) as per the DGR's. The EIS would be lodged to Council for consideration and assessment as formal DA Submission. The consent Authority would be the JRPP.	<ul style="list-style-type: none"> Has an intended use of more than 7 helicopter flight movements per week (including taking off or landing), and; Is located within 1 kilometre of a dwelling not associated with the facilities, or Is located: <ul style="list-style-type: none"> (i) so as to disturb more than 20 hectares of native vegetation by clearing, or (ii) within 40 metres of an environmentally sensitive area, or (iii) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities). 	<p>The proposed use of the helicopter is up to 7 flight movements per week (including taking off or landing) and therefore whilst it is located within 1km of a dwelling not associated with the land, the limitation of flights does not trigger Designated Development.</p> <p>Furthermore, a review of the proposal having regard to items (i) - (ii) (note: (iii) does not apply as the use is for a helicopter facility) indicates that the use of the site as a helipad will not disturb native vegetation by clearing, the site is not located within 40m of an environmentally sensitive area¹.</p>	No

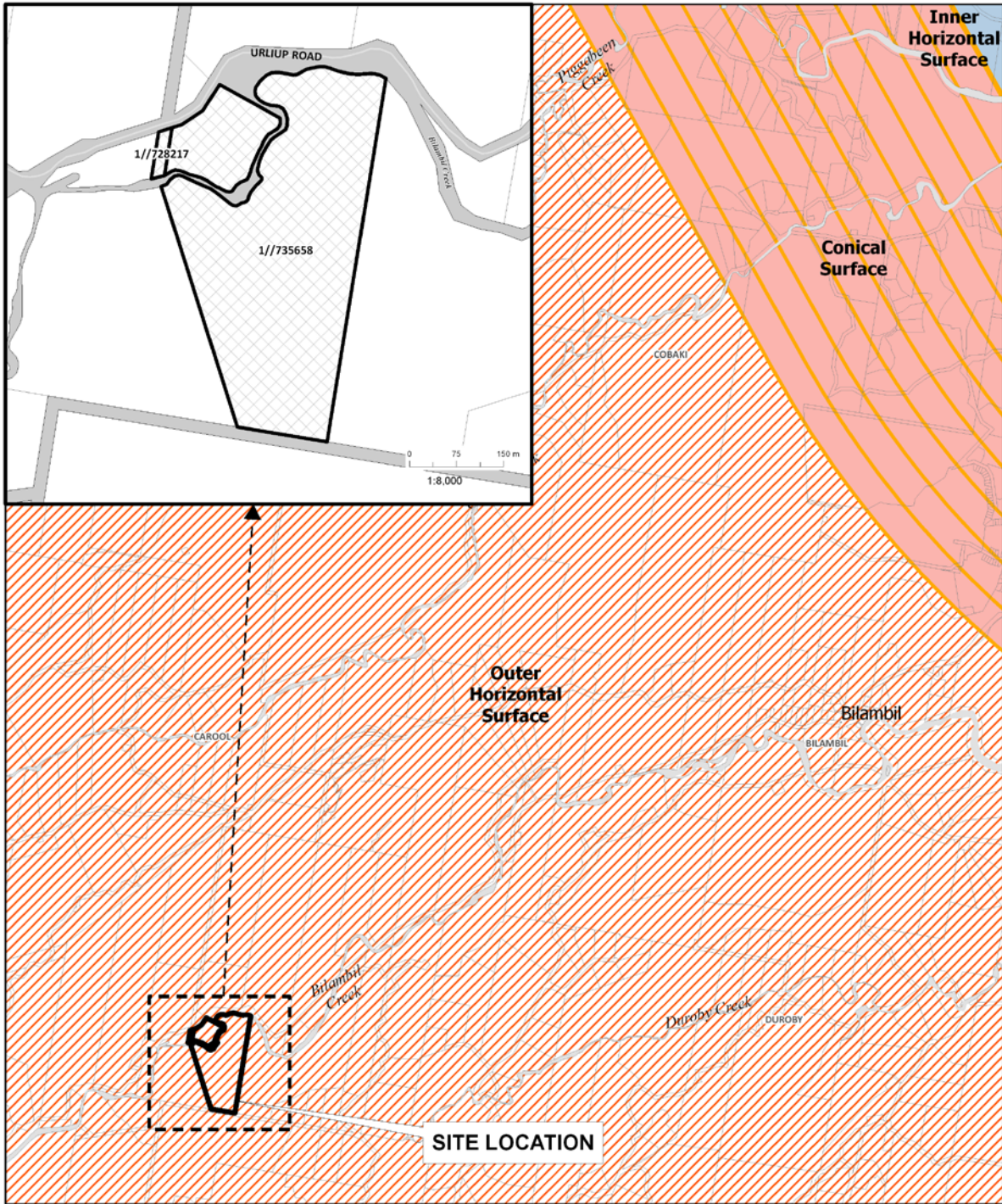
¹ For the purpose of defining this term, Council officers have adopted the definition from the Tweed LEP 2014, in the absence of a definition being provided in the Environmental Planning & Assessment Act 1979 or Regulation 2000. Under the LEP, Environmentally sensitive area means any of the following:

- (a) the coastal waters of the State,
- (b) a coastal lake,
- (c) land within the coastal wetlands and littoral rainforests area (within the meaning of the Coastal Management Act 2016),
- (d) land reserved as an aquatic reserve under the Fisheries Management Act 1994 or as a marine park under the Marine Parks Act 1997,
- (e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,
- (f) land within 100 metres of land to which paragraph (c), (d) or (e) applies,
- (g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,
- (h) land reserved under the National Parks and Wildlife Act 1974 or land acquired under Part 1.1 of that Act.
 - (i) land reserved or dedicated under the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes,
 - (j) land that is a declared area of outstanding biodiversity value under the Biodiversity Conservation Act 2016 or declared critical habitat under Part 7A of the Fisheries Management Act 1994.

Legislation	Development Type	Requirement and Consent Authority	Triggers	Comment	Applicable
Protection of Environmental Protection (POEO) Act 1997	Integrated Development pursuant to Clause 4.46 of the EP&A Act 1979.	Referral to the Environmental Protection Authority (EPA) to issue consent conditions. Given the threshold of flight movements under POEO Act 1997 is greater than Designated Development, an application that was triggered by this requirement would be Designated and Integrated therefore the JRPP would be the consent authority.	Helicopter related activities require a license if the activity has an intended use of more than 30 flight movements per week (where take-off and landing are separate flight movements).	The proposed use of the helicopter is up to 7 flight movements per week (including taking off or landing) and therefore the proposed development is not a Schedule Activity that requires a License by the Environmental Protection Authority (EPA).	No

Based on the findings in Table 1, Council officers have proceeded with the assessment of the proposed development pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979.

SITE DIAGRAM:



- GCA OLS Contours** **GCA OLS Zones**
- GCA OLS Contours
 - Inner Horizontal Surface
 - Outer Horizontal Surface
 - Take Off/Approach Surface

Site Plan

Lot 1 DP 728217 and Lot 1 DP 735658
477 Uriup Road, BILAMBIL

0 0.35 0.7 Km
1:30,000



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GDA Cadastre: 01/06/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Date Printed: 01 June, 2018

AERIAL PHOTOGRAPH:



13,000 @ A4 Portrait
 0 30 60 m
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geodetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 55
GDA

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Aerial Photography 2018

Lot 1 DP 728217 and Lot 1 DP 735658
 477 Uriilup Road, BILAMBIL

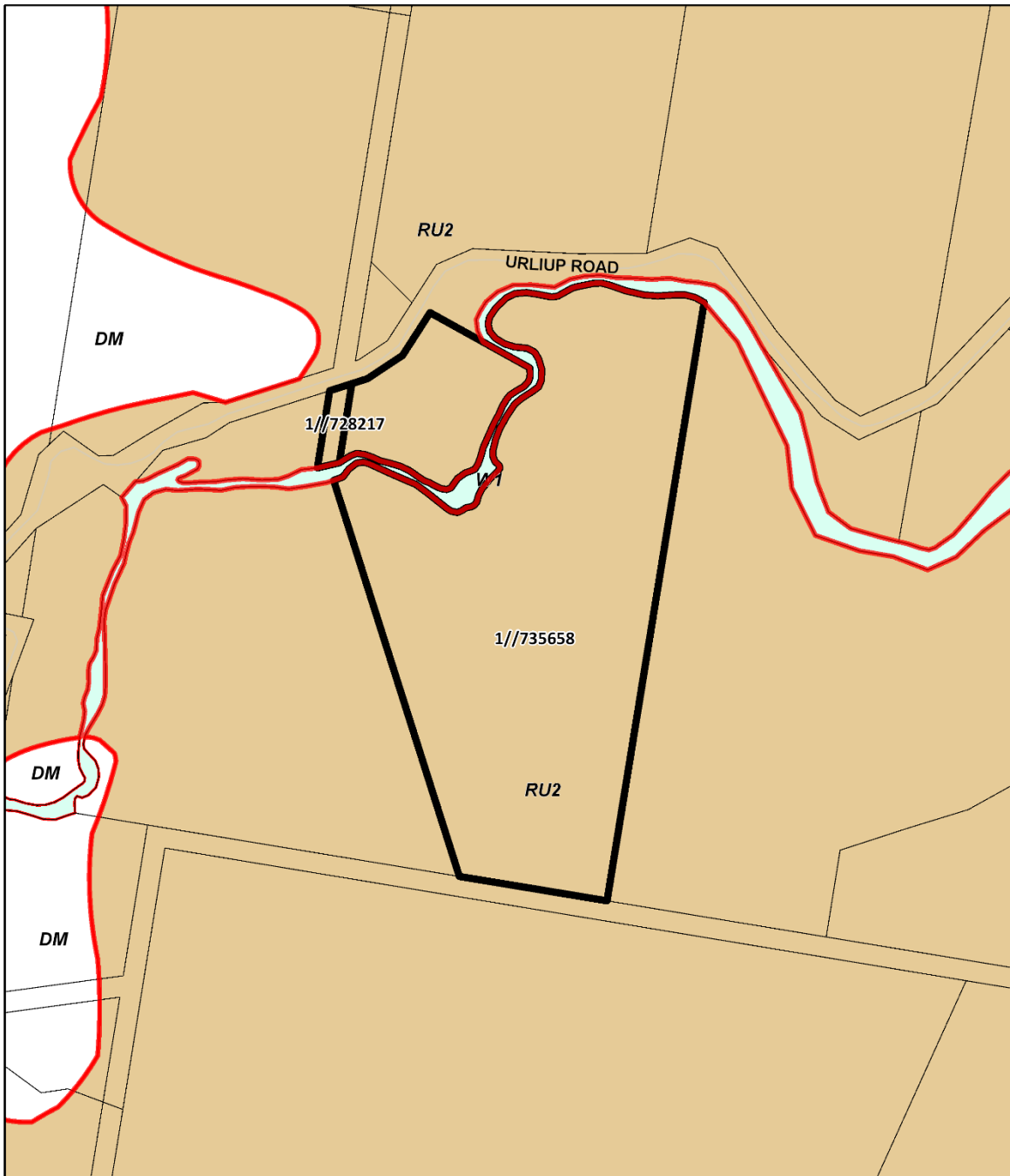
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Author: S.Scott - GIS

Date Printed: 01 June, 2018

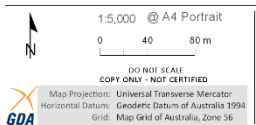
ZONING PLAN:



Subject Land Tweed Local Environmental Plan 2014

Zone

- RU2 Rural Landscape
- W1 Natural Waterways
- DM, Deferred Matter



Site Plan - Local Environmental Plan

Lot 1 DP 728217 and Lot 1 DP 735658
477 Uriup Road, BILAMBIL

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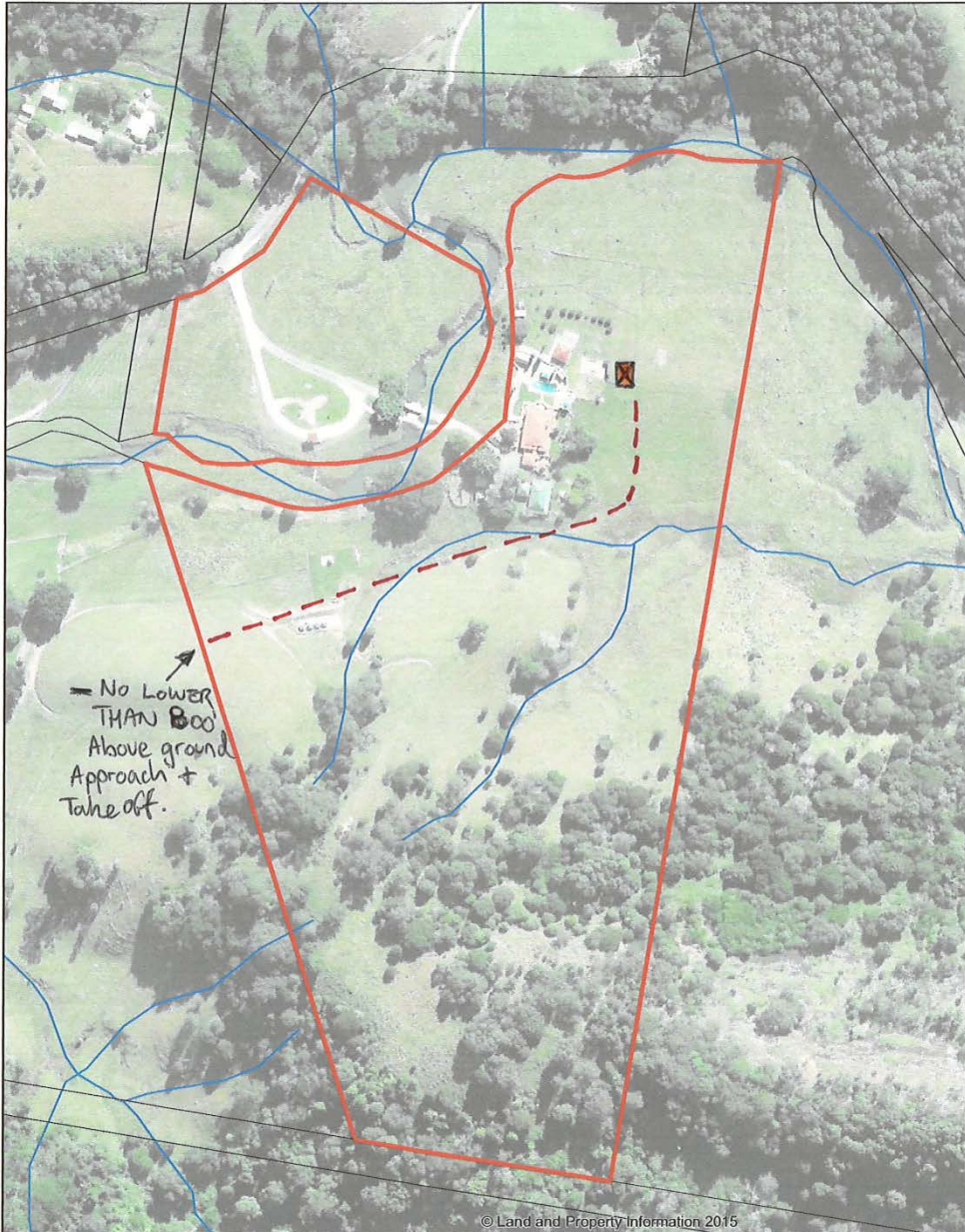


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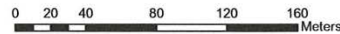
Date Printed: 01 June, 2018

DEVELOPMENT/ELEVATION PLANS:

Locality Map: Eniflat Pty Ltd - Larry Karlos



Legend



- Lot 1 DP 735658
- Watercourse
- Cadastre

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- CHOPPER PARKING
- Approach + T-off Path.

PHOTOGRAPH OF HELICOPTER:



Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

The proposal relates to a helipad (use of a part of the land, which is not open to the public, for take-off and landing of a helicopter) within the RU2 Rural Landscape Zone. As proposed, the helipad complies with the regulatory framework for such facilities including the relevant Environmental Planning Instruments which apply to the land (namely; Tweed LEP 2014) and therefore given its permissibility in the zone, is not contrary to the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned RU2 – Rural Landscape and the objectives of this zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The proposed development is defined as a **helipad** which means *a place not open to the public used for the taking off and landing of helicopters.*

According to the Land Use Table, helipads are a permitted development in the zone, with consent.

The proposed helipad is considered to be consistent with the objectives of the zone as far as delivery of a land use which is compatible to the Rural Landscape given it is for private use and does not comprise of any buildings or structures. The function and use of the site for the said purposes does not compromise agricultural land uses, the natural resource base or environmental qualities of the area and based on the information submitted and recommended conditions of consent, the use of a private helipad with a limited number of trips on a large rural land holding, is considered to maintain the rural landscape character of the land.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

Not applicable as no buildings works proposed.

Clause 4.4 – Floor Space Ratio

Not applicable as the proposed helipad does not seek any works and therefore does not contribute to the calculation of floor space ratio for the site.

Clause 4.6 - Exception to development standards

Not applicable as no exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the proposed use is not listed under this Clause.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the subject site is not located within the Coastal zoned being located approximately 13.8km westward of the coastal waters of the site.

Clause 5.10 - Heritage Conservation

The subject site is mapped as a predictive Aboriginal Place of Heritage Significance on Council's *Draft Aboriginal Cultural Heritage Management Plan* (ACHMP).

In order to determine whether the site is affected by this Clause (and also considered Environmentally Sensitive Land); Council officers have conducted a search via the Office of Environment & Heritage Aboriginal Heritage Information Management System (AHIMS) of known Aboriginal sites and places.

The search revealed that there are no known Aboriginal sites or Aboriginal places on or within 200 metres of the subject site.

As such, it is considered that the *Draft Aboriginal Cultural Heritage Management Plan* has been exhibited but not yet fully adopted and therefore the plan does not strictly apply.

Furthermore, having regard to the results of the AHIMS search, this Clause is not considered to strictly apply to the land.

Notwithstanding the above, consideration of the proposed development having regard to the ACHMP and the objectives of this Clause has been undertaken and the proposed land use does not seek consent for any building works and therefore there is no impact to the natural environs of the land or its surrounds as far as Aboriginal Objects or relics are concerned.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as being bushfire prone however this application does not have any implications regarding the application of this clause.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as contained Class 5 Acid Sulfate Soils. However, this clause is not applicable given that the proposal relates to the use of the site only and therefore no works (and associated soil disturbance) is a matter for consideration for this application.

Clause 7.2 - Earthworks

The proposed development does not include any building or earthworks and therefore Council can be satisfied that the matters for consideration under this Clause do not apply.

Clause 7.3 – Flood Planning

The subject site is not mapped to be flood prone or within an area subject to PMF.

Clause 7.4 - Floodplain risk management

Not applicable.

Clause 7.5 - Coastal risk planning

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

Clause 7.6 - Stormwater Management

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

The proposed use of the site as a helipad will have no impact on stormwater management.

Clause 7.8 – Airspace operations

The subject site is located within the Outer Horizontal Surface Limitation under the Gold Coast Airspace Operation map.

The objectives of this Clause are:

- (a) to provide for the effective and ongoing operation of the Gold Coast Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,
- (b) to protect the community from undue risk from that operation.

Pursuant to Clause 7.8(2), given the proposed use of the helipad at the subject site is likely to penetrate the limitation or operational surface layer, the proposed development was referred to the National Civil Aviation Safety Authority (CASA) and Gold Coast Airport for consideration and review.

CASA and Gold Coast Airport have reviewed the application and advised they raise no objection to the proposed use of the site as a helipad.

In particular, on 5 December 2017 formal advice was received from CASA stating that they do not regulate helipads, in particular private use helipads. It was further advised that the proposed flight paths in the development application and procedures outlined in the DA are within Regulation (i.e. Civil Aviation Act 1988).

A copy of the advice is contained in **Attachment 1** of this report.

In addition to CASA's advice, Gold Coast Airport provided an email on 18 December 2017 stating that Gold Coast Airport raise no objection to the proposed helipad at the subject site. It was further noted that operations are outside Gold Coast Airport and Air services' jurisdiction to manage.

Based on the correspondence from relevant external referral bodies; the development satisfies the matters for consideration under Clause 7.8(3) as well as the objectives of this Clause.

Clause 7.9 - Development in areas subject to aircraft noise

Clause 7.9(1) states the objectives of this clause are as follows:

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

Clause 7.9(2) states that this Clause applies to development that:

- (a) *is on land that:*
 - (i) *is near the Gold Coast Airport, and*
 - (ii) *is in an ANEF contour of 20 or greater, and*
- (b) *the consent authority considers is likely to be adversely affected by aircraft noise.*

Clause 7.9(3) states that before determining a development application for development to which this clause applies, the consent authority:

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

The subject site (land) is located within the Outer Airspace Operation Layer however the intent of this Clause is to ensure the consent authority considers and prevents noise impacts to the proposed development arising from airspace operations associated with aircraft moving to and from the Gold Coast Airport.

Therefore, having regard to the intent of the Clause and the circumstances to which this Clause applies (see *subclause 7.9(2)*); the proposed helipad is not

considered to be a sensitive development that requires protection from impact of aircraft noise.

In addition, having regard to the advice received by CASA and Gold Coast Airport (see previous discussion under Clause 7.8 and copy advice from CASA in **Attachment 1**), the development satisfies the objectives of this Clause.

Clause 7.10 - Essential Services

In considering the provision of Essential Services for the development pursuant to Clause 7.10, no services are required for the helipad and therefore Council can be satisfied the provisions of the Clause can be satisfied.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The subject site is not located within an area mapped under this policy and therefore SEPP (Coastal Management) 2018 does not apply.

SEPP No. 33 - Hazardous and Offensive Development

The aim of this policy is to:

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

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

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

The proposed development does not include any information in regard to uses which trigger a SEPP 33 assessment. However, this matter is raised to Council to advise that the storage of fuel for refuelling of a helicopter at the subject site; depending on the location and quantity, would require a SEPP 33 assessment in accordance with the *Hazardous and Offensive Development Application Guideline 'Applying SEPP 33'* (January 2011) Guideline by NSW Department of Planning. Therefore, for this reason, it is recommended that conditions of development consent be imposed to explicitly prohibit the storage of fuel on the subject site and, to prevent the refuelling of the helicopter from occurring at the site.

SEPP No. 55 - Remediation of Land

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

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

The subject site contains a dual occupancy and rural industry which has been approved by Council. In addition, consideration of Contamination information as contained on Council GIS indicates that no known contamination has been recorded for the subject site and that no cattle tick dip sites are indicated within metres of the subject site.

Based on the information provided; it is not expected that there will be any potential contamination on the subject site that would impact the proposed land use. To ensure the prevention of contamination on the site, conditions of consent are recommended to prevent contaminating activities (i.e. fuel storage and filling operations) occurring on the site. As such, the proposed land use is consistent the provisions of the SEPP, and appropriate measures have been taken to ensure the ongoing use of the helipad will not jeopardise more sensitive residential land uses which are occurring on the site, further securing appropriate outcomes having regard to the objectives of this policy.

SEPP (Rural Lands) 2008

The aims of this Policy are as follows:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) *to implement measures designed to reduce land use conflicts,*

- (d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The subject site is zoned for rural purposes (RU2 – Rural Landscape). The site contains residential dwellings and an existing extractive water industry. The application states that the proposed helipad is for private use only and will be operated by one of the site residents.

The site is not identified as being State Significant Agricultural land and having considered the existing rural industry operations of the site and surrounding rural residential land uses, the development is unlikely to compromise the ability for the subject site and surrounding rural lands to maintain land uses which are consistent with the aims of this policy.

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

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

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

Tweed Development Control Plan

There are no development controls which apply to the proposed use.

A11-Public Notification of Development Proposals

The application was notified to neighbouring properties with a period for submission of 14 days from Wednesday 6 December 2017 until Wednesday 20 December 2017.

During the notification period 10 submissions objecting the development application were received.

The details of the submissions are outlined in a later section of this report.

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

The development is not accompanied or affected by any planning agreement or any draft planning agreement under Section 7.4.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises of a land use which is permissible in the zone.

The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

Not applicable as the development does not propose any demolition.

Clause 93 Fire Safety Considerations

The proposed land use does not include any building works which would be subject to fire safety provisions under the BCA or Clause 93 of the Regulation.

However, a condition of development consent is recommended to forbid the storage of aviation fuel for the aircraft as a measure to secure appropriate fire safety outcomes.

Clause 94 Buildings to be upgraded

The proposed development does require the upgrade of buildings pursuant to Clause 94 of the Regulation as no works are proposed on the site.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site approx. 3.4km from the coastal foreshore and is not affected by coastal hazards. As such the proposed development does not contradict the objectives of the plan.

Tweed Coast Estuaries Management Plan 2004

The site is located approximately 13km from Cudgen Lake and as such the provisions of this Management Plan apply. The proposal relates to residential development on land previously approved for residential subdivision. The proposal is not inconsistent with the provisions of this management plan.

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

Not applicable as the site is not located within the area to which this plan applies.

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

Acoustic Impacts

The application is supported by a Noise Impact Assessment prepared by a suitably qualified Acoustic Consultant.

The report has been prepared to determine the extent of noise impacts on neighbouring residents from the operation of the helicopter.

The Report has been prepared according to the Environmental Protection Authority (EPA) Noise Control Guideline which contains the most relevant Noise Control Guideline available for Helicopter related noise impacts.

The Noise Impact Assessment has adopted the criteria for the assessment of helicopter noise as specified by the EPA Noise Control Guideline, measurements have been tested based on the specifications under *Australian Standard 2636* and the testing height was taken having regard to the *Civil Aviation Regulations 1988 – REG 157 (Low Flying)* which states that the pilot in command must not fly the aircraft over 500 feet.

So to ensure the content of the report is being accurately interpreted, a discussion between Councils Environmental Health Officer and the Acoustic Consultant occurred on 19 December 2017, and confirmed the applicants advice that only one flight path is to be used in and out of the helipad location. It was further advised, that at the nearest residential receiver the minimum height of the helicopter would be not less than 500 feet above ground in accordance with the *Civil Aviation Regulations 1988 – REG 157 (Low Flying)*. In addition the applicant has advised that the helicopter will only be below 500 feet when it is within their property boundary.

The submitted Noise Impact Assessment report has been prepared having regard to the noise impacts from the helicopter at 5 locations representing the nearest affected residences.

The closest affected residence based on the proposed flight path has been assigned the designation 'R1' (see Figure.1 below) and the measured noise level from the helicopter at this location is within the criteria as contained in the EPA Noise Control Guide.



Figure 1: Extract from submitted Noise Impact Assessment Report demonstrating the testing locations for affected residences

In addition, the report identifies that during the testing period (Sunday 28 October 2017) atmospheric conditions were within the guideline established under Australian Standard 2636 and the measured noise from the operation of the helicopter was within the criteria at all the other residential locations (as nominated on the map contained in Figure 1 above).

As such, the Noise Impact Assessment report has concluded that the noise from the operations of the helicopter is within the criteria as specified in the EPA Noise Control Guide in respect to both the LA_{max} and LA_{eq,T} (assessed over the entire daily operation time of the helipad).

Council Environmental Health officers have reviewed the report and support the methodology and findings of the report with the exception of the proposed hours of operation.

Councils Environmental Health officer has made a recommendation that the operation times be limited to ensure that the development achieves full compliance with the EPA Noise Control Guide criteria and also provide some additional relief to surrounding sensitive receiver locations given background noises are likely to be lower due to the rural nature of the area.

The special condition of consent limits the helicopter movement to only be permitted within the hours from 7.00am to 6.30pm Mondays to Saturdays and 8.00am to 6.30pm Sundays.

Subject to compliance with the Noise Impact Assessment Report and subsequent special condition of consent (in regard to permitted hours of operation) as well as compliance with limitations based on frequency of operations (up to 7 flights per week), the proposed helipad operations are considered to be consistent with the

established NSW EPA Guidelines and therefore unlikely to have unacceptable acoustic impacts.

It is noted that after the time the acoustic matters were considered and assessed, Council officers notified the applicant of draft conditions. Subsequently, the applicant submitted an additional/addendum Noise Report (see attachment 3) which sought to amend operating hours to allow flights to occur during daylight hours and thus challenge the recommended Condition 3:

3. *Hours of operation of the helipad/helicopter are restricted to the following hours:*

- * *7.00am to 6.30pm - Mondays to Saturdays*
- * *8.00am to 6.30pm Sundays and Public Holidays*

The above restrictions do not apply in the case of an emergency situation.

[USE0185]

The applicant has stated that despite the original development application outlining hours of proposed movement from 6.30am that **any** restriction from Council on the hours of operation would be unreasonable as the applicant believes hours of operation should be unlimited and dictated by CASA and not Council.

To support this position the applicant supplied an additional/addendum Noise Report (see Attachment 3) which specifies that the helicopter activity would not generate noise beyond 55dBA at nearby residences.

The applicant has stated that this is comparable to a normal vehicle moving to and from the site.

Table 2.1

Receiver	Distance from source			altitude of aircraft feet at max exposure
	Description	metres from pad	metres from flight path	
R1	Residential	477	477	>500
R2	Residential	280	280	0-100
R3	Residential	365	365	0-100
R4	Residential	221	221	0-100
R5	Residential Hogans road	504	504	elevated receiver above pad



Table 5.2

Location	Distance from flight path	L _{Amax}	>82 L _{Amax} criteria	Ambient L _{Aeq}	flight measurement duration	Ambient L _{Aeq} 15 min,	dB increase to ambient L _{Aeq} for up to 3 flights in 15 hours	>55L _{Aeq} criteria
R1	100m >500 feet above	76	-6	64.0	3.01	45	<1.0	0
		78	-4	68.0	2.40	45		
R2	280m	78	-4	62.2	2.36	45	<1.0	0
		70	-12	65.0	2.18	45		
R3	365m	71	-11	61.4	2.18	45	<1.0	0
		76	-6	64.7	2.06	45		
R4	221m	76	-6	65.0	2.00	45	<1.0	0
		77	-5	65.0	2.33	45		
R5	504 m	70	-12	64.0	2.30	45	<1.0	0
		70	-12	62.0	2.50	45		

Council's Environmental Health Officers have reviewed this report and it appears the content of the supplementary report is identical to the original Noise Impact Assessment Report submitted with the DA.

Notwithstanding, Councils Environmental Health officers further reviewed the Noise Impact Report and the relevant criteria for such activities and confirmed that operation outside the hours of 7am – 10pm should not be permitted except for emergency flights.

It is further considered that the adoption of a restriction such as permitting flights within 'daylight hours' as required by the applicant could result in flights at the very early morning hours (especially during daylight savings) and this is deemed to have an unreasonable impact on local amenity.

Therefore, Council officers have considered the applicants objection to Condition 3 together with the submissions received by adjoining property owners and consider that having regard to matters of merit and local public interest, and the relevant criteria under the NSW Noise Control Guideline, deem it appropriate that Condition No. 3 remains unchanged.

Condition 3 is considered to be a valid condition of consent that Council can impose as part of limiting the proposed intensity of the proposed operations. This is entirely consistent with Section 4.17 of the EP&A Act which gives Council as the consent authority the authorisation to impose conditions related to the merits of any application.

Ecological Impacts

Councils Natural Resource Management (NRM) Unit have reviewed the application and undertaken a comprehensive assessment of potential ecological impacts to flora and fauna (**see Attachment 2**). The assessment has resolved that the proposed development is unlikely to result in adverse impact to threatened species, waterways and ecological processes.

Appropriate conditions have been recommended to prevent hazardous material storage which further protects the environment from ecological impacts resulting from the development.

Context and Setting

The subject site is located within a rural landscape area and therefore benefits from large lot rural lands which contain a range of land uses that are conducive to the built and natural rural environment.

The location of the helipad is such that the helipad is capable of reaching a height of 500ft by the time the helipad reaches the boundary of the subject site and based on the Noise Impact Report, will have an acceptable impact on surrounding sensitive receiver locations (residential land uses).

However, having regard to the rural context and setting, it is considered that the times to which the helipad operations occur should be further regulated so to protect the amenity of surrounding residences. Therefore, a special condition of consent is recommended to restrict the helipad operations to be permitted within the hours from 7.00am to 6.30pm Mondays to Saturdays and 8.00am to 6.30pm Sundays. The restricted hours combined with the restricted number of flights

(maximum of 7 inbound and outbound cumulatively) appropriately mitigates impacts to the surrounding area.

Access, Transport and Traffic

The proposed helipad will have no impact on vehicle access, transport or traffic in the surrounding area.

(c) Suitability of the site for the development

Surrounding Land uses/Development

As mentioned previously in the report, the subject site is located within a desirable rural setting and the provision of a helipad at the subject site could create an undesirable impact to surrounding residences. However, it is worthy of noting that whilst not the subject of this assessment; the provision of such a land uses in a comparatively urban area is likely to be unsuitable due to the undesirable impacts having regard to the density of residential land uses and the closer proximity of dwellings to the site where the land use is occurring.

Therefore, having regard to the permissibility of the development in the zone combined with the limited frequency of use of the helipad and recommended conditions of consent to further regulate the manner in which the helipad is used, the assessment of the development has demonstrated that the site is suitable for the development.

Flora and Fauna

The subject site contains vegetation that is likely to form a habitat for native flora and fauna. However, the area of land which will accommodate the helipad is clear of vegetation and the activities (flying a helicopter) associated with the helipad would not encroach upon the vegetation as the aircraft would be airborne by the time it reached the vegetated area on the site (and surrounds). Furthermore, the frequency and nature of the use (during daylight hours) is likely to mitigate impacts associated with the safety of wildlife resulting from the helipad use.

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

The application was notified to neighbouring properties with a period for submission of 14 days from Wednesday 6 December 2017 until Wednesday 20 December 2017.

During the notification period 10 submissions objecting the development application were received.

Table 2: Summary of Objections

Summary of Objections	Planning Assessment response
<p>Noise Pollution resulting from the landing and taking off. Particularly those who live on the 'upper rim' of the valley as the noise travels up like an amphitheatre.</p> <p>The noise is impacting the serenity of the area.</p> <p>The Acoustic Report submitted is inaccurate as the helicopter was not at full rev's when the testing was carried out.</p>	<p>The application is supported by a Noise Impact Report prepared by a suitably qualified consultant. The Report has been prepared using the EPA Noise Control Guideline and a review of the NSW EPA website has not revealed any updated guideline to assess helicopter noise impacts other than this Guide.</p> <p>The Noise Impact Assessment has adopted the criteria for the assessment of helicopter noise as is specified in the guide with the exception of the proposed hours of operation.</p> <p>Discussions with the Acoustic Consultant on 19 December 2017 confirmed the applicants advice that only one flight path is to be used in and out of the helipad and that at the nearest residential receiver the minimum height of the helicopter would be not less than 500 feet above ground. In addition the applicant has advised that the helicopter will only be below 500 feet when it is within their property boundary.</p> <p>The Acoustic Consultant has assessed noise impacts from the helicopter at 5 locations representing the nearest affected residences.</p> <p>The Noise Impact Assessment has concluded that the noise from the operations of the helicopter is within the criteria as specified in the Noise Control Guide in respect to both the L_{Amax} and L_{Aeq,T} (assessed over the entire daily operation time of the helipad) which is considered to be reasonable.</p> <p>However, having regard to the submissions received by Council, the rural nature of the area, and the criteria in the Noise Control Guidelines it is recommended a special condition of consent be imposed to restrict the helicopter movements to be within 7.00am to 6.30pm Mondays to Saturdays and 8.00am to 6.30pm Sundays. When considering the maximum number of movements per week (total of 7 permitted) and the hours to which the helicopter is permitted to take-off and land at the site, the noise impacts can be suitably</p>

Summary of Objections	Planning Assessment response
	mitigated through conditions of consent.
<p>Air Pollution from the engine of the aircraft which contains carbon dioxide (CO's and greenhouse gases) that contributes to global warming.</p>	<p>The aircraft is sought for use a maximum of seven (7) times per week (flights in and out cumulatively) and therefore subject to compliance with the limitations sought under this DA, and imposed via conditions of consent, the cumulative impacts arising from use of the subject aircraft on limited occasions (7 flights per week) to overall air quality is considered to be negligible.</p>
<p>Fauna Impacts resulting from the vibration caused by aircraft on bird migratory patterns, breeding cycles and feeding patterns.</p> <p>The impact of noise on cattle, horses, pets and native wildlife.</p> <p>The potential for an animal to be injured as a result of the helipad operations.</p>	<p>The proposal has been referred to Councils Natural Resource Management Unit for consideration and comment having regard to the concerns raised over fauna impacts. It is considered that the proposed use of the site for take-off and landing of a helicopter during daylight hours is unlikely to endanger the life of animals (pets, agricultural or native wildlife) given the pilot would have relatively good visibility for take-off and landing during the regulated hours of operation.</p> <p>A full assessment of ecological values and potential impacts is provided in Attachment 2 of this report.</p>
<p>The need for a helipad given the Gold Coast Airport is so close by.</p>	<p>This matter is not the subject of a Section 4.15 Evaluation. The nexus of the need for a development or land use on a private lot of land is decided by the land owner. The regulation of that land use is based on the zoning of land, to which in this case, the zoning and the merits of the application permits a helipad.</p>
<p>Local compliance concerns as the helicopter is already operating without approval and is causing a noise disruption.</p> <p>-6.30am take off on a Sunday reported.</p> <p>-6.00am take off on a Sunday reported.</p> <p>-5.30am take off (no day mentioned) reported</p>	<p>Council is in receipt of several complaints and allegations that the helicopter is currently operating without development consent and at very early hours of the morning.</p> <p>Council officers have made attempts to gather evidence of such however due to the nature of the use (not being entirely land based), the gathering of such evidence has proven to be difficult.</p> <p>Furthermore, given that at the time the complaints were received, there was a DA being considered by Council, in line with usual protocol, compliance action was paused until such time that this application</p>

Summary of Objections	Planning Assessment response
	<p>had been fully considered by Council.</p> <p>An assessment of the application has been undertaken and demonstrated that subject to strict conditions of consent, is consistent with the relevant Environmental Planning Instruments which apply to the land.</p> <p>The conditions that have been recommended intend to safeguard the surrounding neighbours from adverse impacts in regard to noise and times of operation as well as establish and enforce a means to regulate the use of the helipad on the site.</p>
<p>Compliance with Civil Aviation Regulation as there have been reports that the aircraft was flying below the 500' limit specified by CASA.</p>	<p>The subject application relates to the proposed helipad (take-off and landing) and associated flight paths in and out of the subject site. Matters in relation to flights occurring outside of the Civil Aviation Safety Authority Regulation are a matter for CASA and do not form a land use or development within the Environmental Planning & Assessment Act 1979.</p> <p>Therefore, Council does not have the power or authority to address compliance matters outside of the proposed development or matters that are not prescribed under the Environmental Planning & Assessment Act 1979; Protection of Environmental Operations Act 1997; or Local Government Act 1993 to which unauthorised airway activity a described in this submission does not fall within.</p>
<p>Impact on safety given the site is a private residence and does not have the safety equipment required to deal with any accidents.</p>	<p>The safety operation of an aircraft is to comply with the Civil Aviation Regulation and Act as regulated through National Civil Aviation Safety Authority (CASA). Such Regulations include the provision of fire safety and fire safety equipment on board the aircraft.</p>
<p>Insurance Cover if there is an accident.</p>	<p>This is a civil matter is not regulated by Council.</p>
<p>Land Zoning and permitted uses Given there is more than one dwelling, livestock, water extraction business and is now seeking consent as a helipad (Aviation</p>	<p>The subject site is zoned RU2- Rural Landscapes and Council records indicate the existing and proposed land use (helipad) are permitted in the zone. The applicant has demonstrated that on</p>

Summary of Objections	Planning Assessment response
<p>Business), concerns were raised regarding the use of the site and whether its permitted in the zone.</p> <p>The proposed use is not complimentary to residential living.</p>	<p>planning merit and subject to conditions of consent, the use of the helipad for private purposes is permissible in the zone.</p> <p>Furthermore, Council records indicate that development consent has been issued for a dual occupancy and rural industry on the land. The issuing of development consent for other uses does not necessarily restrict the operator from seeking consent for a helipad if it is permissible in the zone.</p>
<p>Storage of fuel</p> <p>Storage of fuel for the aircraft and its impact on Bilambil Creek (water supply) if there is a spill.</p>	<p>The regulation for fuel storage areas would necessitate the construction of appropriate facilities to bund the fuel storage areas. This has not been sought as part of the DA and therefore is not a matter for consideration under Section 4.15 of the Act. Notwithstanding, a special condition of development consent is recommended to prohibit the storage of fuel.</p>
<p>Previous conduct and non-compliances</p> <p>Previous conduct and non-compliances on behalf of the land owner and other operations on the site sets a precedent as to how the operation of the helipad is likely to occur outside of compliance with conditions of consent.</p>	<p>The land owners history of conduct in relation to past regulatory and compliance matters in associated with other operations on the land is not a statutory consideration that would warrant refusal of the subject application. It is however noted that strict conditions of consent are recommended to ensure the operations are consistent with the regulatory framework that applies to the proposed use. i.e. hours of operations have been shortened to protect the amenity of neighbours, the number of flights is restricted to a total of 7 and the pilot is to maintain a log containing take off and land times and dates which may be requested for submission by Tweed Shire Council at any time upon receipt of complaints regarding non-compliance with recommended conditions of development consent.</p>

In addition, two complaints were received alleging that the helipad was already being used without development consent. These allegations were also mentioned in several of the objection letters received by Council.

(e) Public interest

The subject application has generated a substantial amount of interest from residences in the local area. The objections relate to fair and reasonable concerns surrounding amenity associated with residential/rural living.

Council's role in assessing these objections is to balance the land owners rights to develop their property in accordance with the applicable legislation having serious regard to the merits of the application and its potential impact on the neighbours amenity.

In this regard, the application seeks consent for a maximum of seven helicopter flight movements (in and out is two movements) per week during nominated hours of operation.

The proposal has been investigated and it is considered that whilst it is acknowledged that the helipad operations are clearly of great concern to surrounding residences, the environmental planning instruments that apply to the proposed development give weighing to support the development.

In addition, based on the information provided, the development is considered to have such an adverse impact to the surrounding built and natural environment, to warrant reasons for the refusal of the application.

The application has been considered by Councils Technical officers; with no objections being raised to the development subject to the imposition of conditions of consent as scheduled in this report. In addition, external regulatory authorities have been consulted with in regard to the proposed use of the site for the purposes of a helipad and no objection has been received.

During the assessment of this application, Council officers have received several complaints regarding flights occurring at various locations and in the early hours of the morning. However, these complaints in isolation do not provide sufficient weighing for refusal of the application. Furthermore, in the absence of a means to enforce compliance action, Council officers have found it very difficult to regulate the unauthorised development.

As such, it is considered that the proposed development, subject to conditions of development consent to restrict its operation and frequency, is in the public interest as it would facilitate an appropriate framework for Council to regulate the development by way of enforcement of compliance with conditions which are imposed to protect the amenity of surrounding residences and ensure the operations are within the means to which consent has been sought.

Furthermore, the conditions have been compiled with the aim to provide onus on the operator to self-regulate the helipad operations in accordance with the recommended conditions of consent. In this way, should non-compliances occur; appropriate audit of log books can be undertaken to enforce compliance with the framework to which the development is approved.

OPTIONS:

1. Approve the development application subject to recommended conditions of consent.
2. Approve the development application with amended conditions.

3. Refuse the development application with specified reasons and commence appropriate action to have the activity stop.

CONCLUSION:

The subject application has been subject to a vigorous assessment against the provision of the Environmental Planning & Assessment Act, Tweed Local Environmental Plan 2014 and relevant state and local provisions. Submitters concerns have been given due consideration and conditions of consent have been recommended to limit the operations and therefore mitigate potential impacts arising from the development. Based on the merits of the proposal, the application is considered worthy of support and recommended for 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 Council's determination in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- | | |
|---------------|---|
| Attachment 1. | Copy of advice from CASA (ECM 5337373) |
| Attachment 2. | Ecological Values and Impact Assessment Table (ECM 5337394) |
| Attachment 3. | Noise Impact Assessment - Helicopter Landing Pad - 477 Urliup Road, Urliup dated 14 June 2018 (ECM 5353815) |
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3 [PR-PC] Development Application DA18/0001 For a Rural Land Sharing Community Comprised of 13 Dwelling Sites Over 5 Stages at Lot 1 DP 1054943 No. 54 Wallum Court, Clothiers Creek

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

This report relates to a proposed rural landsharing community upon a 101.9ha parcel of rural land in Clothier's Creek. The initial application proposed the development of 27 dwelling sites over 8 stages with associated infrastructure. The application seeks development consent for the creation of dwelling sites and all associated infrastructure works and wildlife corridors. Dwellings upon approved sites will be the subject of a separate application to the specification of future shareholders.

As a result of significant concerns raised by Council in regards to vegetation loss, topography and earthworks, the development application has been amended to reduce the number of dwellings from 27 to 13 over 5 stages.

This significant reduction in the number of dwellings is considered to alleviate many of the concerns raised within the submissions received during the public advertising period. The development has also evolved since the initial lodgement, providing additional and more detailed information in regards to the quarry operation, earthworks for the internal road system and vegetation onsite.

The legislation that facilitates this form of rural landuse will be repealed on 6 August 2018. While the application was initially poor in the level of detail provided, the applicants have provided Council with most information requested since and have also removed any sites Council considered were not suitable or contentious. Unfortunately, all these amendments have been provided extremely late in the development process providing little time for further information or further amendments, if the report was to be presented to a Council meeting prior to 6 August 2018. If the legislation was not being repealed, the report would have been further delayed. However, with no savings provisions for applications lodged

prior to the repeal date and no opportunity to have any appeal dealt with, the applicants are reliant upon Council's determination.

Council have several options available in regards to this application. If the development is considered to have merit, conditional approval is considered appropriate in the knowledge that the list of conditions within this report are extensive and detailed due to the complexities of the application and the level of detail provided that normally would be required prior to determination. Conditional Consent will be in the form of deferred commencement if Council were to support the application, for added insurance that current concerns in regards to ecology will be satisfied.

Council has the option to refuse the application leaving the applicants with no appeal rights. Council could also defer the application, with the knowledge that any positive determination must be made prior to the 6th August and any non-determination after this date would be a pseudo refusal as the development would become prohibited with no avenue for permissibility. While the application does have issues that require further clarification, refusal is not necessarily the best outcome for the land, considering the current degraded state of the property and the commitment to rehabilitation of the operating quarry and augmentation and protection of native vegetation over the 101.9ha property.

The site is located at the end of Wallum Court, Clothiers Creek. Wallum Court is a rural street 550m in length, west of the Pacific Motorway, servicing 11 rural properties. The property is undulating containing grazing lands, an active quarry and sensitive vegetation. The property is surrounded by a mix of rural properties ranging in site area between 2ha and 100ha. The locality contains one rural industries of interest in regards to potential landuse conflict. The land is not state significant farmland however does contain a small area of land identified as suitable for grazing and pasture improvement. This area of land will be retained for these purposes and will not contain any dwellings, infrastructure or wildlife reserves.

The site is part zoned RU2 land and part zoned RU1 land pursuant to the Tweed Local Environmental Plan 2014.

The land is constrained by topography, sensitive vegetation and land required to be retained for agricultural purposes. These constraints have resulted in the number of sites be reduced from 27 to 13 sites with Lots numbered 4, 5, 8, 9, 10, 11, 12, 14, 15, 20, 22, 23, 24, 25 being deleted from the development. This reduction in sites has been accepted by the applicant. The development will now be constructed over 5 stages.

The 13 building envelopes proposed onsite each have an area of approximately 800m in a circular or rectangular shape include sufficient area for a dwelling and parking. Areas have also been identified for individual onsite sewerage management systems. The balance of the property will be designated for community use, wildlife corridors, road reserves, and agriculture. Each dwelling site has an Asset Protection Zone (APZ) provided. Dwellings will be the subject of future approvals as this application does not include specific dwelling designs. Dwelling site 17 will be an 'earthsheltered' style dwelling due to bushfire protection requirements

The site contains an extractive industry known as Bugler's Quarry. This quarry will cease operation, the consent surrendered and rehabilitated in conjunction with this approval. Stockpiled material from the operation will be used for the construction of the roads. The

quarry was in a poor state and during the preparation of this application the applicant has undertaken a significant clean-up of various old machinery and rubbish. The development consent for the quarry required an area of 1.5ha as compensatory habitat to be planted onsite. This compensatory habitat will be provided in the southwestern corner of the site within a proposed wildlife corridor.

Being a landshare community, a draft Community Management Statement has been provided. This CMS provides details in regards to the ongoing management of the community as all internal infrastructures will be the responsibility of the joint landowners. These landowners will also be responsible for all management matters relating to the wildlife corridors, agriculture and implementation of community bylaws. These bylaw restrictions include guidelines for dwellings including height limitations, floor area and materials.

The application has provided significant levels of information in regards to vegetation onsite. The development, as amended, reflects the constraints of the site such as topography, bushfire and significant vegetation. Wildlife corridors are proposed in conjunction with site planning and the provision of Asset Protection Zones (APZs) for respective dwelling sites. The development will incorporate a Vegetation Management Plan (VMP) and Habitat Restoration Plan (HRP) that will both be implemented as a condition of any consent granted. This VMP and HRP will also be linked into the CMS to ensure this aspect of the development is suitably managed and has the desired outcomes.

The development was assessed against the provisions of the SEPP (Integration and Repeals). It is noted in regards to this SEPP the development is consistent with the intent of the Policy for the following reasons;

- The development will enable persons to collectively own a single lot to erect multiple dwellings without dividing the lot
- The development will allow persons to share infrastructure, facilities and resources while residing upon a large rural parcel
- The development will not cause undue harm to the environment and will not create a demand for the unreasonable or uneconomic provision of public amenities and services

While not compulsory, the proposal is not considered consistent with the aims of the Policy as follows;

- Due to the significant reduction in dwelling sites, the development is not in a clustered style
- The area is not experiencing population loss
- The infrastructure costs relative to the number of dwelling sites being supported may not result in a more affordable option for persons seeking to purchase one of the dwelling sites

The application was notified for a 30 day period in January 2018. During this public notification period, 17 submissions were received, all objecting to the proposal on grounds relating to traffic, amenity, compliance issues relating to the quarry and engineering issues such as stormwater and erosion. While the development has changed from the original proposal, readvertising was not undertaken due to time constraints. The concerns of the submitters have been taken into due consideration and Council did share the views of adjoining owners in regards to amenity and vegetation impacts. Accordingly, while the

development was not readvertised, the development has responded to these issues with significant amendments including reducing the number of sites from 27 to 13, providing more details in regards to management of the land, vegetation management, rehabilitation of the quarry and ownership structure.

It is considered that the development with recommended changes, a reduced number of dwellings and further levels of detail required in conjunction with a heavily conditioned deferred consent will ensure the proposal is constructed and managed to the satisfaction of Council.

Deferred conditional approval is recommended.

RECOMMENDATION:

That Development Application DA18/0001 for a rural land sharing community comprised of 13 dwelling sites over 5 Stages at Lot 1 DP 1054943 No. 54 Wallum Court, Clothiers Creek, be approved subject to the following conditions

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.

- A. The Bushfire Risk Assessment (BRA) Incorporating Amendment 2: Proposed Development: 27 Lot Rural Landsharing Community Lot 1 DP 1054943 54 Wallum Court Reserve Creek NSW 2484 dated 23 May 2018 prepared by Bushfire Risk shall be amended by a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning and Design (BPAD) certified practitioner. The amended BRA must be approved by Council's General Manager or delegate. The amended BRA shall include the following:**
 - a. Calculate all asset protection zones for each site as shown on the site plan being Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter in accordance with Planning for Bushfire Protection (NSW RFS 2006) having regard to the following terms:**
 - i. The calculation of asset protection zones shall not be contingent on the modification of Vegetation Communities 5 and 8 (as identified on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd)**

to a rainforest vegetation community. Reference to such modification shall be removed.

- ii. No asset protection zone shall encroach within, or require modification of any Habitat Protection Area described in Condition 8 of the consent unless to the extent of encroachment identified as 'Partial Clearing APZ' as shown on Dwg. No 5.9 Site - Vegetation Management dated 17 June 2018 prepared by MilesWinter adjacent to Sites 1, Site 2 and Site 3 only.
- b. Demonstrate that the position of all development sites as shown on the site plan complies with:
- i. The terms listed above,
 - ii. Planning for Bushfire Protection (NSW RFS 2006)
 - iii. Relevant conditions of consent
- c. An appropriately scaled plan showing all sites as shown on the site plan and individual asset protection zones for each site as calculated above.

Advice Note: Reference to the Dwg. No 5.9 Site - Vegetation Management dated 17 June 2018 prepared by MilesWinter and Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd does not invoke approval or acceptance of such plans.

SCHEDULE B

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects, draft Community Management Statement dated May 2018 and Plan Nos;

Plan Number	Plan Title	Dated
5.6	Site Plan - Landuse	18 June 2018
5.7	Site Plan	18 June 2018
5.10	Site Sections - Bushfire	6 June 2018
5.15	Site Plan - Staging	June 2018
5.20	Site Plan - Wallum Entry	June 2018
5.21	Site Plan - Dwellings 1-3	18 June 2018
5.22	Site Plan - Dwellings 6-7	18 June 2018
5.24	Site Plan - Dwellings 13 & 16	18 June 2018
5.25	Site Plan - Dwellings 17 & 18	18 June 2018
5.26	Site Plan - Dwellings 19 & 21	18 June 2018
5.28	Site Plan - Dwellings 26 & 27	18 June 2018
5.30	Quarry Rehabilitation Plan	18 June 2018

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

2. This development consent is for a rural landsharing community of 13 sites. This development will be undertaken in 5 stages and includes the surrendering of development consents for Buglers Quarry upon the subject Lot.

The following works will be completed to the satisfaction of the General Manager or delegate for each stage, as amended by any conditions of this consent:

Stage	Dwelling Sites	Additional Works
1	6, 7, 13, 17, 18	New crossover Wallum Court Waste and recycle area. Gated entry 1150m bitumen seal on existing quarry road including turning area adjacent to dwelling 13 Upgrade the balance of the existing quarry road through to Woodfords Road as gravel suitable for bushfire vehicles for emergency exit only. Closure of commercial use quarry prior to commence of use of Stage 1. Wildlife corridor on north boundary and west boundary Water tank T1 and T4 Remediation of land and completion of monocell installation
2	1, 2, 3	Remediation of existing gravel road and bitumen seal. Wildlife corridor as per plan. Water tank T2
3	19, 21	Extend main quarry road bitumen approx. 300m Finalise rehabilitation of quarry Extend bitumen to site boundary Wildlife corridor to south and west boundary Access road Water tank T5
4	26, 27	Final areas of wildlife corridor.
5	16	Dwelling site and associated access road

3. All remediation works including the installation of the containment monocell shall be undertaken in conjunction with the first Stage of development. [GEN0005]
4. No approval for a dwelling on any site shall be issued until all works required to be undertaken associated with that Stage have been completed and all applicable conditions of this development consent have been duly satisfied.

5. Shares in the Home Unit Company cannot be sold until all works required to be undertaken with the relevant stage have been completed and all applicable conditions of development consent have been completed.
[GENNS01]
6. All works shall be in accordance with the amended Bushfire Risk Assessment as prepared by a Fire Protection Association Australia Accredited Bushfire Planning and Design certified practitioner, as approved by Council's General Manager or delegate.
7. Council advises that portions of the site are flood liable. The minimum habitable floor level for the site is 500mm above the nominated Design Flood Level as specified in Council's DCP Section A3 - *Development of Flood Liable Land*.
 - (a) All new building materials used below Council's Design Flood Level must not be susceptible to water damage.
 - (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. for any proposed building should, to the maximum extent possible, be located above the Design Flood Level. All new electrical wiring installed below the Design Flood Level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
 - (c) Provide adequate provision for the flood free storage for goods and equipment susceptible to water damage.
[GEN0195]
8. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.
[GEN0265]
9. The approved development shall not result in any clearing, damage or disturbance of native vegetation unless such activity is carried out in accordance with the following:
 - a. A site based Vegetation and Fauna Management Plan pursuant to **Condition 33** as approved by Council's General Manager or delegate; and/or
 - b. A Bushfire Risk Assessment pursuant to **Condition 6**, approved by Council's General Manager or delegate.
10. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire-fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided. This storage is independent to any required for fire-fighting purposes.
[GEN0310]

11. Bushfire Protection

Except where varied by the Rural Fire Service's conditions within this consent on the consent, the development shall comply with the following intent of measures to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire-fighting activities.

- (a) Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.
- (b) Water, electricity and gas are to comply with the following requirements, unless superseded by section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
- (c) A 20,000 litre water supply shall be provided for fire-fighting purposes per dwelling. A 65mm storz fitting and ball valve or gate valve shall be installed on the tank designated for fire-fighting purposes.
- (d) Polycarbonate/plastic tanks shall be shielded from the impact of radiant heat and direct flame contact.
- (e) A hardened ground surface for truck access is to be supplied up to and within 4 metres of this water source.
- (f) A minimum 5hp or 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- (g) Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal. Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.
- (h) The occupier of the property is to participate in the Static Water Supply Project initiative of NSW Fire Brigade and make available the water in a swimming pool (or dam on site) for use as a static water supply for fire-fighting purposes by NSW Fire Brigade or Rural Fire Service.

[GEN0325]

12. The following areas referenced in this consent are to be collectively described as Habitat Protection Areas to be protected and managed for conservation purposes in perpetuity unless otherwise specified in this consent:

- a. The following vegetation communities and areas as shown on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd:
 - i. Community 1 - Tall closed forest (*Cinnamomum camphora* +/- *Lophostemon confertus* and rainforest species) capturing an area of 1.97 hectares

- ii. Community 2 - Tall closed wet sclerophyll forest (*Eucalyptus pilularis*/*Lophostemon confertus*) capturing an area of 0.95 ha
 - iii. Community 3 - Tall closed wet sclerophyll forest (*Lophostemon confertus* +/- *Eucalyptus microcorys*, *Eucalyptus propinqua*, *Eucalyptus siderophloia*, *Eucalyptus pilularis*) capturing an area of 7.44 ha
 - iv. Community 4 - Tall closed wet sclerophyll forest (*Eucalyptus grandis*/*Lophostemon confertus*) capturing an area of 0.98 ha
 - v. Community 5 - Camphor laurel dominated mixed regrowth (*Cinnamomum camphora* +/- *Acacia melanoxylon*, *Corymbia intermedia*, *Eucalyptus microcorys*, *Lophostemon suaveolens*, *Araucaria cunninghamii*) capturing an area of 15.56 ha
 - vi. Community 6 - Swamp sclerophyll woodland (*Callistemon viminalis*) capturing an area of 0.22 ha
 - vii. Community 7 - Tall open dry sclerophyll forest/woodland capturing an area of 5.19 ha
- b. All other areas occurring within the 24.45 ha Wildlife Corridor Reserve as identified on Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter not identified as a Vegetation Community listed in **Condition 9**.
- c. A 20 metre radius buffer around the following threatened flora species as identified on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd:
- i. Marks Cassia (*Cassia marksiana*)
 - ii. White Lace Flower (*Archidendron hendersonii*)
13. The land within the 24.45 ha Wildlife Corridor Reserve as identified on Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter shall be subject to a habitat restoration program in accordance with a site based Habitat Management and Restoration Plan approved by Council.
14. Telecommunication/internet services via the mobile/broadband network will only be permitted for the subject site if services are considered satisfactory for reliable coverage. Alternatively, landline services shall be provided for each dwelling that does not have satisfactory coverage. Details to the satisfaction of the General Manager or delegate.
15. The Remediation Action Plan shall be approved in writing by a NSW EPA Accredited Site Auditor and a copy of the approval be supplied to Council prior to the commencement of remediation work.

16. The By-Laws of the final Community Management Statement shall include a section with words to the effect that the on-site sewage management system shall be operated and maintained in a sanitary condition, and in accordance with the relevant requirements of the Local Government (General) Regulation 2005, and other relevant operating specifications.
17. Separate approval is required for any future dwellings or associated structures. [GENNS02]
18. Proposed dwelling sites shall be located in accordance with the Preliminary Site Investigation prepared by HMC Environmental Consulting Pty Ltd dated November 2017 (HMC 2017.085.02) and the Remediation Action Plan approved by the NSW EPA Accredited Site Auditor. Proposed changes to the locations of proposed dwelling sites shall be communicated to Tweed Shire Council for consideration, and may require additional contaminated land investigation of the site(s) to the satisfaction of the General Manager or their delegate. [GENNS03]
19. Prior to the construction of any building requiring an on-site sewage management systems within the landsharing community, approval to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993 shall be obtained from Council. [GENNS04]

The development shall be compliant with the following conditions recommended by the NSW Rural Fire Service(NSW RFS), as amended by any conditions of this consent.

- i. The proposed 13 dwelling site - rural land sharing community shall comply with the following documents except where modified by the following conditions:
 - Coolamon Site Plan - Landuse dated 18 June 2018;
 - Coolamon Community Management Statement dated 18 June 2018.
- ii. Management of community roads, community asset protection zones and community fire fighting water supply(s) shall be undertaken in accordance with the Coolamon Community Management Statement.
- iii. A Bush Fire Management Plan for the Rural Landsharing Community is to be prepared that addresses the following requirements:
 - Contact person/department and details;
 - Schedule and description of works for the construction of the communal asset protection zones and their continued maintenance; and
 - location of firefighting water supplies and their on-going maintenance.

A copy of the Bush Fire Management Plan shall be attached to the Coolamon Management Statement.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits

and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

- iv. Asset Protection zones for future dwelling sites shall be in accordance with:
- Site Bushfire Management Plan dated 18 June 2018.

Access

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

- v. Internal vehicle roads shall be constructed before any dwelling application development approval. The internal vehicle roads shall comply with the following requirements:
- The primary access road (Quarry Road) shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006';
 - Secondary access roads to proposed dwelling sites 1, 2, 3 and 16 shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006' with the exception that no alternative access is required.
 - A turning head or loop road will be required for the secondary access road to dwelling site 16.

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- vi. An Emergency/Evacuation Plan is to be prepared, prior to any dwelling application development approval, consistent with the NSW Rural Fire Service document 'Guidelines for the Preparation of Emergency/Evacuation plans' and Australian Standard AS 3745 2010 'Planning for Emergencies in Facilities' including:
- trigger points for implementation of the emergency evacuation plan are to be developed and clearly stated.
 - a procedure to contact the NSW Rural Fire Service District Office / NSW Fire Brigade and inform them of the evacuation and the location they will be evacuated to.
- vii. A copy of the emergency evacuation plan shall be:
- attached to the Coolamon Management Statement;
 - provided to the consent authority; and
 - provided to the Local Emergency Management Committee.

[GENNS05]

20. The proposed house site 17 is required to be designed by a qualified structural or civil engineer with a geotechnical assessment of the foundation material.

PRIOR TO COMMENCEMENT OF WORK

21. All imported fill material shall be from an approved source. Prior to the commencement of filling operations, details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate. [PCW0375]
22. Prior to start of works for each stage of development (as applicable) the engaged supervising Civil Engineer is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls (with that stage of development) in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material. [PCW0745]
23. Prior to commencement of work on the site all erosion and sedimentation control measures (as applicable to that stage of development) are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with the erosion and sedimentation control plan endorsed by the engaged Civil Engineer and shall be adequately maintained throughout the duration of that stage of the development. [PCW0985]
24. Prior to commencement of works, the Applicant must engage a practicing Civil Engineer with National Engineering Registration (NER) to supervise the construction of the ALL civil works, including roadworks, earthworks, drainage, building pads, batter and retaining wall construction.

Geotechnical investigations shall be undertaken, as directed by the engaged Civil Engineer for each stage of the development. Geotechnical investigations shall identify any areas of compressible clay materials, loose sands, landslip, subsidence or reactive soil profiles which may impact on construction or building activities. If unsuitable materials are identified the investigation shall provide recommendations such as preloading, removal of uncontrolled fill material or other forms of treatment.

25. Prior to the commencement of the Stage 1 works, application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -
- (a) Bitumen or concrete sealing the new access from the existing road carriageway to the property boundary to accommodate a 6m wide road carriageway. This is to include repair work to the existing bitumen seal.
26. Prior to commencement of works for each stage of development, an applicable, detailed Stormwater Management Plan, compliant with the provisions of Council's Design Specification D7 - Stormwater Quality must be prepared and accepted by the engaged Civil Engineer.
27. Prior to commencement of works for each stage of development, an applicable detailed Erosion and Sediment Control Management Plan, compliant with the
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provisions of Council's Design Specification D7 - Stormwater Quality must be prepared and accepted by the engaged Civil Engineer.

All Erosion and Sediment Control shall be designed, installed and maintained in accordance with Tweed Shire Council's Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

28. Prior to the commencement of works as applicable to each stage of development, application shall be made to Tweed Shire Council under Section 68 of the Local Government Act for any drainage works (including connection of a private stormwater drain to a public stormwater drain or installation of erosion and sediment control works).
29. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council, prior to works commencing on the relative stage of development.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subject allotment.

[PCWNS01]

30. All uncontrolled fill identified as potential high risk landslip areas in the Geotechnical report prepared by Geotech Investigations dated 24 May 2018 is to be removed and replaced with controlled fill material or a structurally engineered suitable alternative, as applicable to each stage of the development. Any alternative solutions such as retaining walls are to be designed by a qualified structural engineer and supported by a geotechnical assessment of the foundation material.

[PCWNS02]

31. Engineering drawings addressing the required civil works for each stage of the development are to be prepared by a civil engineer with National Engineering Registration (NER).

These drawings are to be supported by a geotechnical report with any recommendations from the geotechnical report incorporated within the design. The geotechnical report is to clearly state that the future constructed works will

provide a 'low risk' in accordance with the AGS (Australian Geomechanics Guidelines).

[PCWNS03]

32. A Habitat Management and Restoration Plan ('HM&RP') shall be prepared for the following areas:

- a. Area described as the 24.45 ha Wildlife Corridor Reserve as identified on Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter**
- b. A 20 metre radius buffer around the following threatened flora species Marks Cassia (*Cassia marksiana*) and White Lace Flower (*Archidendron hendersonii*) as identified on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd.**

The HM&RP shall be prepared by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities in accordance with: A Habitat Management and Restoration Plan ('HM&RP') shall be prepared for the following areas:

- a. Area described as the 24.45 ha Wildlife Corridor Reserve as identified on Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter**
- b. A 20 metre radius buffer around the following threatened flora species Marks Cassia (*Cassia marksiana*) and White Lace Flower (*Archidendron hendersonii*) as identified on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd.**

The HM&RP shall be prepared by a person suitably qualified in Bushland Regeneration or Ecological Restoration and with knowledge and experience in local vegetation communities in accordance with:

- Tweed Shire Council's Draft Habitat Restoration Plan Preparation Guideline - Site specific guidelines for the ecological restoration and ongoing management of habitat utilised by native flora and fauna dated February 2012.**
- South East Queensland Ecological Restoration Framework: Code of Practice (Chenoweth EPLA and Bushland Restoration Services 2012)**

A separate HM&RP may be submitted and approved by Council's General Manager or delegate prior to commencement of works associated with each stage of the development as shown on Dwg. No. 5.15 Site Plan - Staging dated June 2018 prepared by MilesWinter. Where the staged submission of the HM&RP is not to be pursued a single HM&RP addressing habitat restoration matters for the nominated areas must be submitted and approved by Council's General

Manager or delegate prior to works commencing for Stage 1.

A HM&RP shall include the following components and associated detail:

Habitat Restoration Component

- a. A description of those areas the subject of the HM&RP including area estimates and an appraisal of the present condition of remnant vegetation.
- b. Plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate.
- c. The approach to restoration within the Wildlife Corridor Reserve as follows (with reference to vegetation communities identified in Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd):
 - i. Assisted habitat restoration areas identified as Vegetation Communities 1 to 5 and 7.
 - ii. Reconstruction areas identified as Vegetation Communities 9.
 - iii. Combined assisted habitat restoration and reconstruction being areas identified as Vegetation Community 8.
- d. Management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration.
- e. A revegetation schedule of (1) plant per two (2) square metre of local native plant species reflective of the pre-european clearing vegetation community.
- f. Fauna friendly live-stock proof fencing to be installed along the boundary of the Wildlife Corridor Reserve (where required). Suitable delineation markers where fencing is not required.
- g. Details of habitat restoration activities consistent with the approved Vegetation and Fauna Management Plan and pursuant to **Condition 33** and **Condition 34** for each Wildlife Corridor Reserve crossing point of any internal road.
- h. Schedule of timing and program of works based on the following management phases:
 - i. Establishment Phase - Minimum of one (1) year
 - ii. Maintenance Phase - Minimum of five (5) years
- i. Details of primary establishment phase works and maintenance phase works as follows (yet may not be strictly limited to):

- i. **Primary Works - All planting, treatment of all environmental weeds (unless otherwise determined by Council), the installation of all fencing/delineation boundary markers, baseline monitoring and reporting**
- ii. **Maintenance works - Supplementary planting (where required), continued treatment and control of environmental weeds, maintenance of fencing, monitoring and reporting.**
- j. **Set of performance criteria for the establishment and maintenance phase with the objective of achieving site capture at the end of the 5 year maintenance period. The number of treatment rotations shall be adequate to successfully meet the objective.**
- k. **Maintenance, monitoring and reporting schedule with developer commitment for a period of not less than five (5) years;**
- l. **An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes.**

Long-term Management Component:

- m. **A schedule of activities not permitted within the Wildlife Corridor Reserve registered on title under an 88B Restriction as to User referred to in this consent.**
 - n. **Set of performance criteria to be achieved annually post the 5 year maintenance period.**
 - o. **A schedule of annual works to achieve post 5 year maintenance period performance criteria.**
33. **A Vegetation and Fauna Management Plan (V&FMP) shall be prepared by a suitably qualified ecologist/environmental scientist in consultation with a qualified arborist (minimum AQF Level 5 arboricultural qualifications) to be implemented during the construction and operational phase of all stages of the development. A V&FMP shall be submitted and approved by Council's General Manager or delegate for each stage of the development prior to works commencing for Stage 1. The V&FMP shall include (but not be limited to) the following:**

Vegetation Management

- a. **Particulars and locations of vegetation to be removed and vegetation to be retained in order to facilitate the development having regard for **Condition 9.****
 - b. **Location of threatened flora species as listed under the Biodiversity Conservation Act 2016 and/or Environment Protection and Biodiversity Conservation Act 1999**
 - c. **Details of all proposed earthworks, services, stormwater infrastructure, retaining walls, stockpile/set-down areas, equipment storage facilities, land**
-

application areas etc.

- d. Reflect in the plan allowable asset protection zone clearing areas in accordance with **Condition 6**, and provide a tree survey of all trees greater than 200 mm girth (measured diameter at 1.4 m above natural ground) to be removed to comply with NSW RFS Standards for Asset Protection Zones . Environmental weed species shall be prioritised for vegetation removal to meet asset protection zone standards
- e. Details of strategies and methods to be implemented to protect vegetation to be retained during the construction phase in accordance with Australian Standard AS 4970-2009 Protection of trees on development sites and any recommendations made by the consulting arborist
- f. Direction of clearing
- g. Methods for the reuse of felled vegetation from the subject site
- h. Location, alignment and specifications of vegetation protection fencing consistent with AS4970:2009 Protection of trees on development sites
- i. Details of protection fencing to be installed around the approved Habitat Protection Areas
- j. Specify that all clearing operations and the installation and maintenance of vegetation protection measures are to be supervised by a Project Arborist (minimum AQF Level 5 arboricultural qualifications)
- k. Provide details of any post construction management measures to be implemented in order to improve and/or maintain the health, long term viability and safety of those trees identified to be retained.

Fauna Management

- l. Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc.) and description of fauna species known/likely to utilise habitat features
- m. Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed)
- n. Considerations relating to time periods for when fauna is to be removed/flushed prior to clearing
- o. Details of special equipment required (such as cameras, elevated platforms etc.)
- p. Identification of general locations that wildlife will be relocated/translocated to if required based on habitat requirements and in accordance with licence/permit conditions
- q. Specify that a suitably qualified ecologist who holds a fauna survey licence is required to manage wildlife onsite during any tree removal and/or disturbance to wildlife habitat. Fauna management methods employed should be generally consistent with the Draft Queensland Code of Practice for the Welfare of Wild Animals Affected by Clearing and Other Habitat and Wildlife Spotter/Catchers (Hangar & Nottidge 2009). Where translocation is required the proponent shall seek any relevant permits from the state regulating agency (Office of Environment & Heritage). It is the responsibility of the proponents to ensure all relevant licences have been obtained prior to any fauna interactions
- r. Information on how water-bodies and/or inundation areas that may support

- aquatic species are to be dewatered and details of appropriate fauna management measures to be employed
 - s. Provide details of post clearing reporting by a suitably qualified ecologist engaged to oversee clearing works
 - t. Provide fauna friendly crossing solution where roads and infrastructure intercept and fragment the dedicated Wildlife Corridor Reserve
 - u. Fauna signage at entry points prohibiting the entry of cats and dogs
 - v. Details of short to long term vertebrate pest management measures
34. Detailed engineering design plans for each stage of the development must include design elements to encourage and allow for safe passage of fauna at points where roads and infrastructure intercept and fragment the dedicated Wildlife Corridor Reserve. Crossing design solutions should be in general accordance with Fauna Sensitive Road Design Manual: Volume 1 dated 2000 and Volume 2 dated June 2010 prepared by Qld Department of Transport and Main Roads. Crossing design elements must be approved by Council's General Manager or delegate prior to works for any Stage commencing.
35. A detailed plan of landscaping for each stage is to be submitted and approved by Council's General Manager or delegate prior to the commencement of works. The detailed plan of landscaping shall address the following areas of the site and meet a plant selection criterion of 100% locally occurring Australian native species suited to the site and conditions:
- i. Areas disturbed during construction of roads and installation of services.
 - ii. The quarry remediation area as shown on Dwg. No. 5.30 Quarry Rehabilitation Plan dated 18 June 2018 prepared by MilesWinter.
 - iii. Land between dwelling sites numbered 7, 13, 18 and the nearest side boundary shall have additional landscaping to screen these dwellings from adjoining properties. Any landscaping shall not adversely impact any necessary Asset Protection zones.
36. All pre-construction vegetation and fauna management measures shall be satisfactorily completed in accordance with the approved Vegetation and Fauna Management Plan for each stage of the development.
37. Where works involve tree removal or disturbance of wildlife habitat a suitably qualified ecologist who holds a fauna survey licence shall inspect the site no more than two (2) weeks prior to clearing works commencing onsite and prepare a Pre-Clearing Wildlife Fauna Report for each stage of the development. The report shall include a full list of faunal species encountered during the inspection, as well as the marking and identification of significant habitat trees. The Pre-Clearing Wildlife Fauna Report shall be provided to Council prior to commencement of any works on-site.
38. Vegetation clearing at each stage of the development shall be carried out under the supervision of suitably qualified ecologist who holds a fauna survey licence. The qualified ecologist will be responsible for ensuring all construction phase management measures as prescribed in the approved Flora and Fauna Management Plan are successfully implemented and fauna is managed appropriately.

39. Prior to the commencement of works, the following amendments to the draft Community Management Statement shall be undertaken to the satisfaction of the General Manager or delegate;

- **By-law 1.1- Any approval for a dwelling shall not be granted until all conditions of development consent 18/0001 have been complied with for the relevant stage.**
- **By-law 1.2.6 - delete**
- **By-law Section 4.3-The keeping of cats or dogs on the site is prohibited.**
- **By-law Section 1.2 - No dwelling including the roof area shall exceed 8m in height**
- **By-Law Section 1.3 Each dwelling site shall provide carspaces for a minimum of two vehicles.**
- **By- Law Section 1.2 - Each dwelling shall not accommodate any more persons than the capacity of the respective onsite sewerage management system provided for the site.**
- **By-law Part 6 - The approved use is for residential accommodation. The development consent does not permit any form of short term or holiday accommodation onsite.**
- **By-law 4.4.2 - delete 14, 23, include 17**
- **By-law 2.3 - change to wildlife corridor**
- **By-Law 2.2 define reserve**
- **Delete any references to fire trails**
- **By-law 3.1.4- Amend speed limit to 40km per hour**
- **By-law 3.4 - Include statement that the collection of waste must be at intervals sufficient to prevent any adverse odour or vermin infestations.**
- **By- Law 3.5.3 - Add statement that generators must be suitably housed to prevent any noise impacts for residents upon the subject site or adjoining lands.**
- **The Community Management Statement shall reference this development consent and require compliance with all conditions.**

40. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, works must NOT commence unless all Section 7.11 Contributions have been paid for the respective stage and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges include indexation provided for in the S7.11 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 7.11 Plan current at the time of the payment.

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

Stage 1

<p>(a) Tweed Road Contribution Plan: 22 Trips @ \$1942 per Trips (\$1,807 base rate + \$135 indexation) S7.11 Plan No. 4 Sector10_4</p>	<p>\$42,724</p>
<p>(b) Open Space (Casual): 4 ET @ \$564 per ET (\$502 base rate + \$62 indexation) S7.11 Plan No. 5</p>	<p>\$2,256</p>
<p>(c) Open Space (Structured): 4 ET @ \$645 per ET (\$575 base rate + \$70 indexation) S7.11 Plan No. 5</p>	<p>\$2,580</p>
<p>(d) Shirewide Library Facilities: 4 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S7.11 Plan No. 11</p>	<p>\$3,476</p>
<p>(e) Eviron Cemetery: 4 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S7.11 Plan No. 13</p>	<p>\$508</p>
<p>(f) Community Facilities (Tweed Coast - North) 4 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S7.11 Plan No. 15</p>	<p>\$5,828</p>
<p>(g) Extensions to Council Administration Offices & Technical Support Facilities 4 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S7.11 Plan No. 18</p>	<p>\$7,742.48</p>
<p>(h) Regional Open Space (Casual) 4 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation) S7.11 Plan No. 26</p>	<p>\$4,528</p>
<p>(i) Regional Open Space (Structured):</p>	

4 ET @ \$3974 per ET \$15,896
 (\$3,619 base rate + \$355 indexation)
 S7.11 Plan No. 26

Stage 2

(a) Tweed Road Contribution Plan:
 19.5 Trips @ \$1942 per Trips \$37,869
 (\$1,807 base rate + \$135 indexation)
 S7.11 Plan No. 4
 Sector10_4

(b) Open Space (Casual):
 3 ET @ \$564 per ET \$1,692
 (\$502 base rate + \$62 indexation)
 S7.11 Plan No. 5

(c) Open Space (Structured):
 3 ET @ \$645 per ET \$1,935
 (\$575 base rate + \$70 indexation)
 S7.11 Plan No. 5

(d) Shirewide Library Facilities:
 3 ET @ \$869 per ET \$2,607
 (\$792 base rate + \$77 indexation)
 S7.11 Plan No. 11

(e) Eviron Cemetery:
 3 ET @ \$127 per ET \$381
 (\$101 base rate + \$26 indexation)
 S7.11 Plan No. 13

(f) Community Facilities (Tweed Coast - North)
 3 ET @ \$1457 per ET \$4,371
 (\$1,305.60 base rate + \$151.40 indexation)
 S7.11 Plan No. 15

(g) Extensions to Council Administration Offices
 & Technical Support Facilities \$5,806.86
 3 ET @ \$1935.62 per ET
 (\$1,759.90 base rate + \$175.72 indexation)
 S7.11 Plan No. 18

(h) Regional Open Space (Casual)
 3 ET @ \$1132 per ET \$3,396
 (\$1,031 base rate + \$101 indexation)
 S7.11 Plan No. 26

<p>(i) Regional Open Space (Structured): 3 ET @ \$3974 per ET (\$3,619 base rate + \$355 indexation) S7.11 Plan No. 26</p>	<p>\$11,922</p>
<p>Stage 3</p>	
<p>(a) Tweed Road Contribution Plan: 13 Trips @ \$1942 per Trips (\$1,807 base rate + \$135 indexation) S7.11 Plan No. 4 Sector10_4</p>	<p>\$25,246</p>
<p>(b) Open Space (Casual): 2 ET @ \$564 per ET (\$502 base rate + \$62 indexation) S7.11 Plan No. 5</p>	<p>\$1,128</p>
<p>(c) Open Space (Structured): 2 ET @ \$645 per ET (\$575 base rate + \$70 indexation) S7.11 Plan No. 5</p>	<p>\$1,290</p>
<p>(d) Shirewide Library Facilities: 2 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S7.11 Plan No. 11</p>	<p>\$1,738</p>
<p>(e) Eviron Cemetery: 2 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S7.11 Plan No. 13</p>	<p>\$254</p>
<p>(f) Community Facilities (Tweed Coast - North) 2 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S7.11 Plan No. 15</p>	<p>\$2,914</p>
<p>(g) Extensions to Council Administration Offices & Technical Support Facilities 2 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S7.11 Plan No. 18</p>	<p>\$3,871.24</p>
<p>(h) Regional Open Space (Casual) 2 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation) S7.11 Plan No. 26</p>	<p>\$2,264</p>

(i) Regional Open Space (Structured): 2 ET @ \$3974 per ET (\$3,619 base rate + \$355 indexation) S7.11 Plan No. 26	\$7,948
Stage 4	
(a) Tweed Road Contribution Plan: 13 Trips @ \$1942 per Trips (\$1,807 base rate + \$135 indexation) S7.11 Plan No. 4 Sector10_4	\$25,246
(b) Open Space (Casual): 2 ET @ \$564 per ET (\$502 base rate + \$62 indexation) S7.11 Plan No. 5	\$1,128
(c) Open Space (Structured): 2 ET @ \$645 per ET (\$575 base rate + \$70 indexation) S7.11 Plan No. 5	\$1,290
(d) Shirewide Library Facilities: 2 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S7.11 Plan No. 11	\$1,738
(e) Eviron Cemetery: 2 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S7.11 Plan No. 13	\$254
(f) Community Facilities (Tweed Coast - North) 2 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S7.11 Plan No. 15	\$2,914
(g) Extensions to Council Administration Offices & Technical Support Facilities 2 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S7.11 Plan No. 18	\$3,871.24
(h) Regional Open Space (Casual) 2 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation) S7.11 Plan No. 26	\$2,264

<p>(i) Regional Open Space (Structured): 2 ET @ \$3974 per ET (\$3,619 base rate + \$355 indexation) S7.11 Plan No. 26</p>	<p>\$7,948</p>
<p>Stage 5</p>	
<p>(a) Tweed Road Contribution Plan: 6.5 Trips @ \$1942 per Trips (\$1,807 base rate + \$135 indexation) S7.11 Plan No. 4 Sector10_4</p>	<p>\$12,623</p>
<p>(b) Open Space (Casual): 1 ET @ \$564 per ET (\$502 base rate + \$62 indexation) S7.11 Plan No. 5</p>	<p>\$564</p>
<p>(c) Open Space (Structured): 1 ET @ \$645 per ET (\$575 base rate + \$70 indexation) S7.11 Plan No. 5</p>	<p>\$645</p>
<p>(d) Shirewide Library Facilities: 1 ET @ \$869 per ET (\$792 base rate + \$77 indexation) S7.11 Plan No. 11</p>	<p>\$869</p>
<p>(e) Eviron Cemetery: 1 ET @ \$127 per ET (\$101 base rate + \$26 indexation) S7.11 Plan No. 13</p>	<p>\$127</p>
<p>(f) Community Facilities (Tweed Coast - North) 1 ET @ \$1457 per ET (\$1,305.60 base rate + \$151.40 indexation) S7.11 Plan No. 15</p>	<p>\$1,457</p>
<p>(g) Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$1935.62 per ET (\$1,759.90 base rate + \$175.72 indexation) S7.11 Plan No. 18</p>	<p>\$1,935.62</p>
<p>(h) Regional Open Space (Casual) 1 ET @ \$1132 per ET (\$1,031 base rate + \$101 indexation)</p>	<p>\$1,132</p>

S7.11 Plan No. 26

- (i) **Regional Open Space (Structured):**
1 ET @ \$3974 per ET **\$3,974**
(\$3,619 base rate + \$355 indexation)

S7.11 Plan No. 26

41. **Surrender of Consent:** Prior to commencement of works for Stage 1, Development Consents 98/212 and 91/141 relating to Buglers Quarry shall be surrendered in accordance with Clause 97(1) of the Environmental Planning and Assessment Act Regulation 2000.
42. Prior to the commencement of any works, details of any stockpiled material from the Quarry shall be provided including cubic volumes and proposed use of this stockpiled material. A Plan of Management must be prepared and approved by the General Manager or delegate to ensure this stockpiled material is suitably contained and not susceptible to erosion. No further extraction of material from the quarry onsite will be permitted following the commencement of works onsite for Stage 1.

[PCWNS04]

DURING CONSTRUCTION

43. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.
44. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

[DUR0005]

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0415]

47. All earthworks and filling shall be carried out in accordance with AS 3798 Guidelines on earthworks for commercial and residential developments (current version) to a geotechnical Level 1 inspection regime and testing in accordance with Table 8.1, unless advised otherwise by an engaged Civil Engineer.

[DUR0795]

48. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate.

[DUR0995]

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

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

[DUR1005]

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

[DUR2015]

51. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

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

[DUR2195]

53. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.

[DUR2205]

54. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are maintained until the PCA is satisfied that the site is fully rehabilitated.

[DUR2375]

55. All remediation works are to be carried out in accordance with the Remediation Action Plan approved by the NSW EPA Accredited Site Auditor.
56. All operations must comply with the approved Vegetation and Fauna Management Plan for each stage of the development. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate and/or if required the Department of Environment and Heritage. No further site clearing will take place until any respective Plan(s) of Management is/are approved.
57. Where works involve tree removal or disturbance of vegetation a supervising Project Arborist with a minimum Australian Qualification framework (AQF) level 5 in Arboriculture is required to oversee, and if necessary carry out mitigation/remediation works during the construction period for all stages of the development. The Project Arborist will be responsible for completing certification of tree protection through the various stages of development (where required).
58. During the construction period and with respect to vegetation and fauna management measures the applicant must comply with any directions given by:
 - a. Project Arborist
 - b. Qualified ecologist; and/or
 - c. Council's General Manager or delegate
59. All practical measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the quarry.
60. Landscaping of the site shall be carried out in accordance with the approved detailed plan of landscaping.
61. All flora and fauna management and habitat restoration works shall be carried out in accordance with:
 - a. The approved Vegetation and Fauna Management Plan; and
 - b. The approved Habitat Management and Restoration Plan
62. A Site Audit Statement (SAS) completed by a NSW EPA Accredited Site Auditor in accordance with the provisions of the Contaminated Land Management Act 1997 is to be submitted to Council within thirty (30) days of completion of the Remediation and Validation Report. The SAS is to certify that the land is suitable for the proposed land use. Conditions imposed on the SAS shall form part of this consent. Where the SAS conditions, if applicable, are not consistent with this consent, a Section 4.55 application pursuant to the provisions of the Environmental Planning and Assessment Act 1979 will be required to ensure the conditions of the SAS form part of the consent conditions.

[DURNS01]

[DURNS02]

63. The exportation or importation of waste (including VENM, ENM and General Solid Waste) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority “Waste Classification Guidelines”.

[DURNS03]

PRIOR TO COMMENCEMENT OF USE OF EACH STAGE

64. Prior to commencement of use for each stage of development, all works/actions/inspections etc required at that stage by other conditions or any approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

65. Prior to the issue of an occupation certificate for Stage 1 of the development, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all works required under Section 138 of the Roads Act 1993.

66. Prior to the commencement of use for each stage of the development, a certificate of practical completion shall be obtained from Council’s General Manager or his delegate for all works required under Section 68 of the Local Government Act, as applicable to that stage of development.

67. Any damage caused to public infrastructure (roads etc) during construction of the development as applicable to each stage of the development shall be repaired in accordance with Council’s Development Design and Construction Specifications, prior to the issue of any Occupation Certificate for that stage.

[POC0745]

68. Prior to the occupation of any building and prior to the issue of any occupation certificate requiring an on-site sewage management system within the landsharing community, approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[POC1040]

69. Prior to the commencement of use for each stage, all conditions of consent are to be met.

[POC1055]

70. Prior to the issue of an Occupation Certificate (including interim), certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service’s General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

[POCNS01]

71. All primary habitat restoration works pursuant to **Condition 32** for each stage of development must be completed in accordance with the approved Habitat Management and Restoration Plan (HM&RP) to the satisfaction of Council’s General Manager or delegate prior to issue of the first occupation certificate for each stage of the development.

The maintenance of the habitat restoration area/s thereafter shall be undertaken in accordance with approved HM&RP.

72. Prior to commencement of use for any stage of the development the subject of this approval the applicant shall provide to Council certification from a suitably qualified Bushland Regeneration or Ecological Restoration professional that the

necessary habitat restoration works have been successfully completed in accordance with the approved Habitat Management and Restoration Plan.

73. All landscaping shall be completed in accordance with the approved detailed plan of landscaping.
74. The following restrictions as to user under Section 88B of the Conveyancing Act 1919 are to be created to Council's satisfaction prior to the issue of the first occupation certificate:

Restriction as to user relating to all areas referred to in Condition 8 of this consent collectively described as Habitat Protection Areas. The following activities are not permitted within the Habitat Protection Area:

- a. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval unless otherwise approved by Council's General Manager or delegate;
- b. Erection of any fixtures or improvements, including buildings or structures;
- c. Construction of any trails or paths;
- d. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the Habitat Protection Area;
- e. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Habitat Protection Area; and
- f. Performance of any other acts which may have detrimental impact on the values of the nominated areas.

Burden: Part Lot 1. Benefit: Tweed Shire Council.

No cat or dog shall be kept either permanently or temporarily on the entire Lot burdened.

Burden: Lot 1. Benefit: Tweed Shire Council.

75. The following positive covenant under Section 88B of the Conveyancing Act 1919 is to be created to Council's satisfaction prior to the issue of the first occupation certificate:

A positive covenant shall be created over the areas referred to in **Condition 9** as 24.45 ha Wildlife Corridor Reserve (shown on Dwg. No. 5.6 Site Plan - Landuse dated the 18 June 2018 prepared by MilesWinter) and 20 metre radius buffer around the following threatened flora species Marks Cassia (*Cassia marksiana*) and White Lace Flower (*Archidendron hendersonii*) (as shown on Figure 7 Vegetation Communities & Threatened Species Records in Ecological Assessment Buglars Quarry Lot 1 DP 1054943 Version 4 dated 16 May 2018 prepared by JWA Ecological Consultants Pty Ltd).

The nominated area must be subject to an approved ecological restoration program to be undertaken in accordance with an approved habitat management and restoration plan and managed as a natural area for conservation purposes in perpetuity.

Burden: Part Lot 1. Benefit: Tweed Shire Council.

[POCNS02]

76. Prior to the commencement of the use of any stage and following completion of the internal road access and building pads for any stage of the development a certificate signed by the engaged Civil Engineer is to be submitted to the Principal Certifying Authority to certify compliance with the consent and good engineering practice.

[POCNS03]

77. Prior to the issue of an Occupation Certificate (including interim) for each stage of the development, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, is to be provided to the PCA for ALL internal roads servicing the proposed dwellings, as applicable to that stage of development.

The certification is to state that ALL internal access roads comply with the NSW Rural Fire Service document "Planning for Bushfire Protection 2006'. The certification is to include surveyed longitudinal road sections to demonstrate compliance for each stage of the development.

[POCNS04]

78. Prior to the issue of an Occupation Certificate (including interim) for each stage of the development a geotechnical engineer is to certify that all earthworks and filling (as applicable to that stage of the development) have been carried out in accordance with AS 3798 Guidelines on earthworks for commercial and residential developments (current version) to a Level 1 inspection regime with testing in accordance with Table 8.1, unless advised otherwise by an engaged Civil Engineer.

Each of the proposed building sites for each stage shall also be given a site classification as defined by AS 2870 (current version).

79. Prior to the issue of an Occupation Certificate (including interim) for each stage of the development, certification signed by a practising Structural Engineer is to be provided for all proposed retaining structures in excess of 1.2m in height, as applicable to that stage of development. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.
80. Prior to the issue of an Occupation Certificate for the development the road closure on the subject land is to be gazetted and the road closure parcels have been consolidated with adjoining lands.
81. The community management statement is to state that reticulated electricity and telecommunication/internet services have not been provided and individual dwellings are required to provide electricity and telecommunication/internet services at their own cost.
82. The Waste and Recycle Station shall be satisfactorily screened from adjoining properties. Acoustic screening will be required if the amenity of adjoining residents or residents on site are impacted by the location and operation of this Station. The Station should be provided with sufficient measures to prevent unauthorised disposal of waste.

83. The applicant must provide to Council at completion of habitat restoration works certification from a qualified habitat restoration professional that all works/measures have been completed in accordance with the approved Habitat Management and Restoration Plan.

[POCNS05]

USE

84. 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]

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

[USE0175]

86. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device. Minimum storage tank capacity shall be 20,000 litres for the first bedroom, then an additional 15,000 litres per bedroom thereafter and shall be in addition to any water volume requirements stipulated by the NSW Rural Fire Services. Installation, water collection, and maintenance of rainwater tanks used for drinking purposes must comply with NSW Health requirements.

[USE1470]

87. The Waste and Recycle Station should be provided with sufficient measures to prevent unauthorised disposal of waste. The Station shall be suitably managed by the community and waste must be collected at intervals that will prevent adverse odours or the attraction of vermin.

88. Woodfords Road shall be gated at the property entry to ensure this public road is used for emergency exit only.

89. No dogs or cats are permissible upon the subject site.

90. The Rural Landsharing Community shall be managed in accordance with the conditions of this consent, the Community Management Statement, the Habitat Management and Restoration Plan and the Vegetation and Fauna Management Plan for the life of the development.

[USENS01]

REPORT:

Applicant: MA Mitchell
Owner: Hircona Pty Ltd
Location: Lot 1 DP 1054943; No. 54 Wallum Court Clothiers Creek
Zoning: RU1 - Primary Production RU2 - Rural Landscape
Cost: \$1,100,000

Background:

On 5 August 2016 the NSW State government repealed State Environmental Planning Policy (SEPP) No 15 – Rural Landsharing Communities. NSW SEPP (Integration and Repeals) commenced on 6 August 2016. This SEPP will be repealed on 6 August 2018. This SEPP provided a legislative tool, for a predetermined period of time, for landsharing communities to have an approval path following the repeal of the previous SEPP.

The application cannot be determined after the repeal date of 6 August 2018 as rural landsharing communities currently rely on this SEPP for permissibility within the Tweed Shire Local Government area.

The application was lodged in January 2018 following a Development Assessment Panel (DAP) Meeting between the applicants and Council 5 May 2017. The original application was significantly deficient in detailed information, despite feedback from the DAP meeting.

Additional information has been received and assessed by various technical officers within Council. The application has been referred to the Rural Fire Service (RFS) and the Department of Primary Industries (DPI). However, the amendments to the development have negated integrated approval requirements for works within 40m of a river or estuary. While the RFS have assessed the development and provided advice, recommended conditions are pursuant to 4.14 of the Act, not 100B of the Rural Fires Act, as the development is not a 'special fire protection' use. The Tweed Byron Aboriginal Advisory Service has also provided comments on the application supporting the development subject to conditions.

Following the submission of additional information including more detailed ecology and engineering details, the application has been significantly reduced in dwelling site numbers. The development is now considered worthy of conditional support, subject to an extensive suite of conditions that will require additional information and amendments to the development prior to any commencement of stages

Proposal:

Council is in receipt of a proposed development application for a staged Rural Land Sharing Community (total 13 dwellings) comprising the following key elements:

- Preparation of the subject land for the future construction of 13 dwellings over 5 stages.
- Closure of the quarry onsite in conjunction with works for the proposed development other than the use of stockpiled material for onsite earthworks
- Provision of infrastructure for each stage including roads and associated infrastructure

- Removal of vegetation and implementation of vegetation management plan for the site including rehabilitation of the quarry site and compensatory habitat.

No approval will be issued for dwellings. Dwelling design and construction will be the subject of a separate approval process.

The total estimated cost of development was initially \$700 000. The applicant has reviewed this cost and provided a revised figure of 1.1million dollars. The application has been invoiced the additional development application fees.

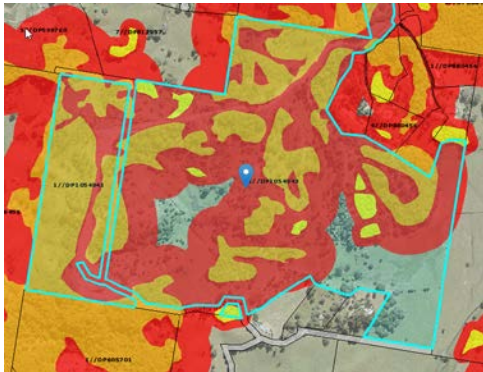
It is proposed to undertake the development in stages as follows:

Stage	Dwelling Sites	Additional Works
1	6, 7, 13, 17, 18	New crossover Wallum Court Waste and recycle area Gated entry 1150m bitumen seal on existing quarry road including turning area adjacent to dwelling 13 Upgrade the balance of the existing quarry road through to Woodfords Road as gravel suitable for bushfire vehicles for emergency exit only. Closure of commercial use quarry on first occupancy certificate of the Stage 1. Wildlife corridor on north boundary and west boundary Water tank T1 and T4 Remediation of land and completion of monocell installation
2	1, 2, 3	Remediation of existing gravel road and bitumen seal. Wildlife corridor as per plan. Water tank T2
3	19, 21	Extend main quarry road bitumen approx. 300m Finalise rehabilitation of quarry Extend bitumen to site boundary Wildlife corridor to south and west boundary Access road Water tank T5
4	26, 27	Final areas of wildlife corridor.
5	16	Dwelling site and associated access road

The subject application was lodged under State Environmental Planning Policy (Integration and Repeals) 2016. Schedule 1 of this Policy replaces State Environmental Planning Policy No.15 – Rural Land sharing Communities (SEPP 15). The policy took effect from 5 August 2016 and will be repealed on 6 August 2018. The policy applies to Tweed Shire and also applies to rural land.

The subject site is mapped under the following constraints. These are discussed further within this report.

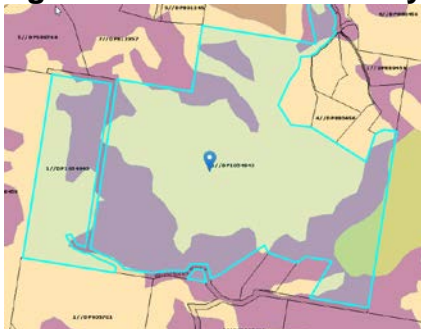
Bushfire Prone



Steep or Highly Erodible Land



Agricultural Land Suitability

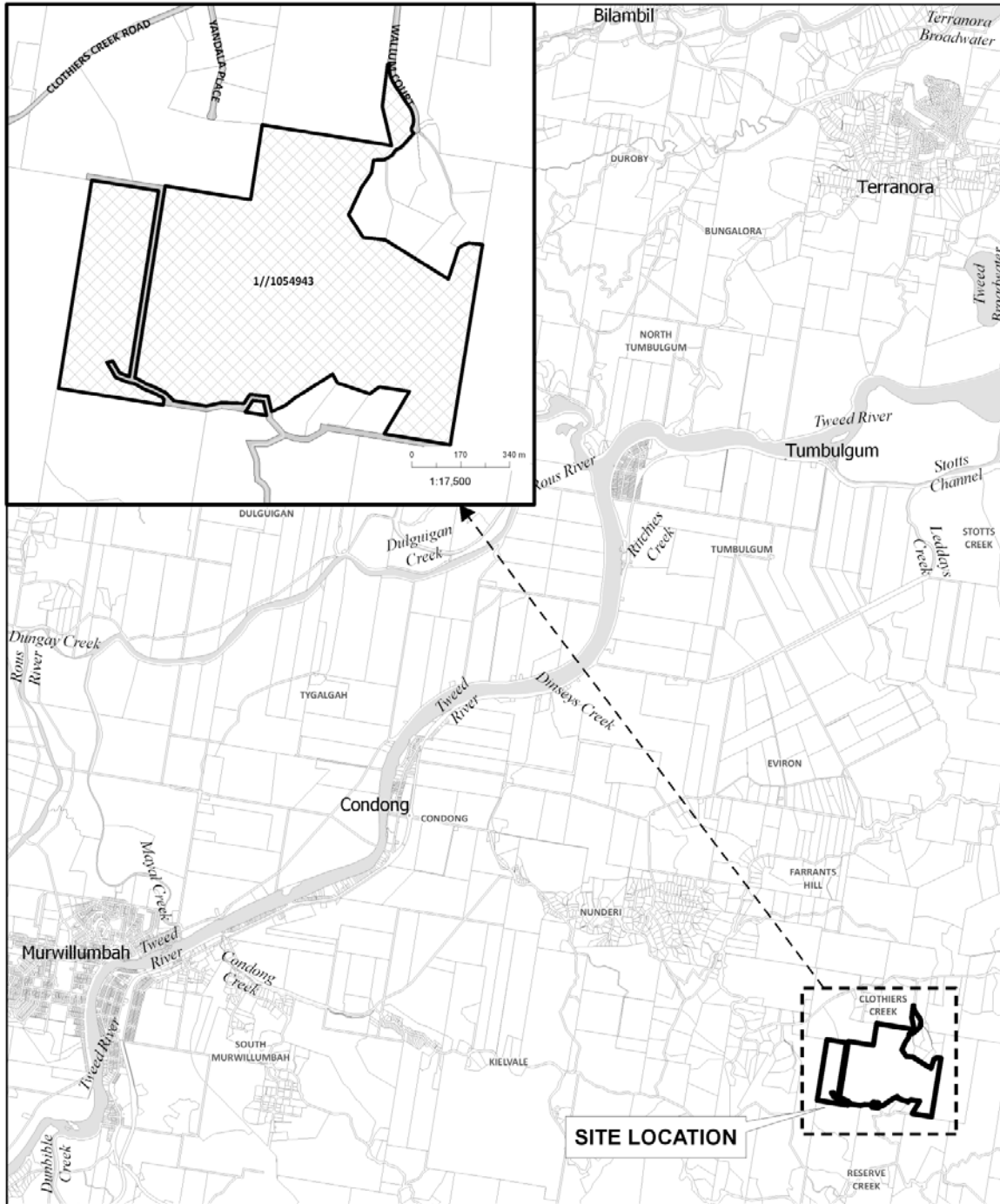


- Agricultural Land Suitability (1998)
- Arable land suitable for intensive cultivation
 - Arable land suitable for regular cultivation of crops
 - Bananas
 - Grazing land or land well suited to pasture improvement
 - Horticulture
 - Land suitable for grazing but not cultivation
 - Land unsuitable for agriculture
 - National Parks, Nature Reserve and Recreation Areas
 - State Forest
 - Urban
 - Water

Regionally Significant Farmland



SITE DIAGRAM:



Site Plan

Lot 1 DP 1054943
DA18/0001

0 0.75 1.5 Km
1:60,000



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: 18/06/2018
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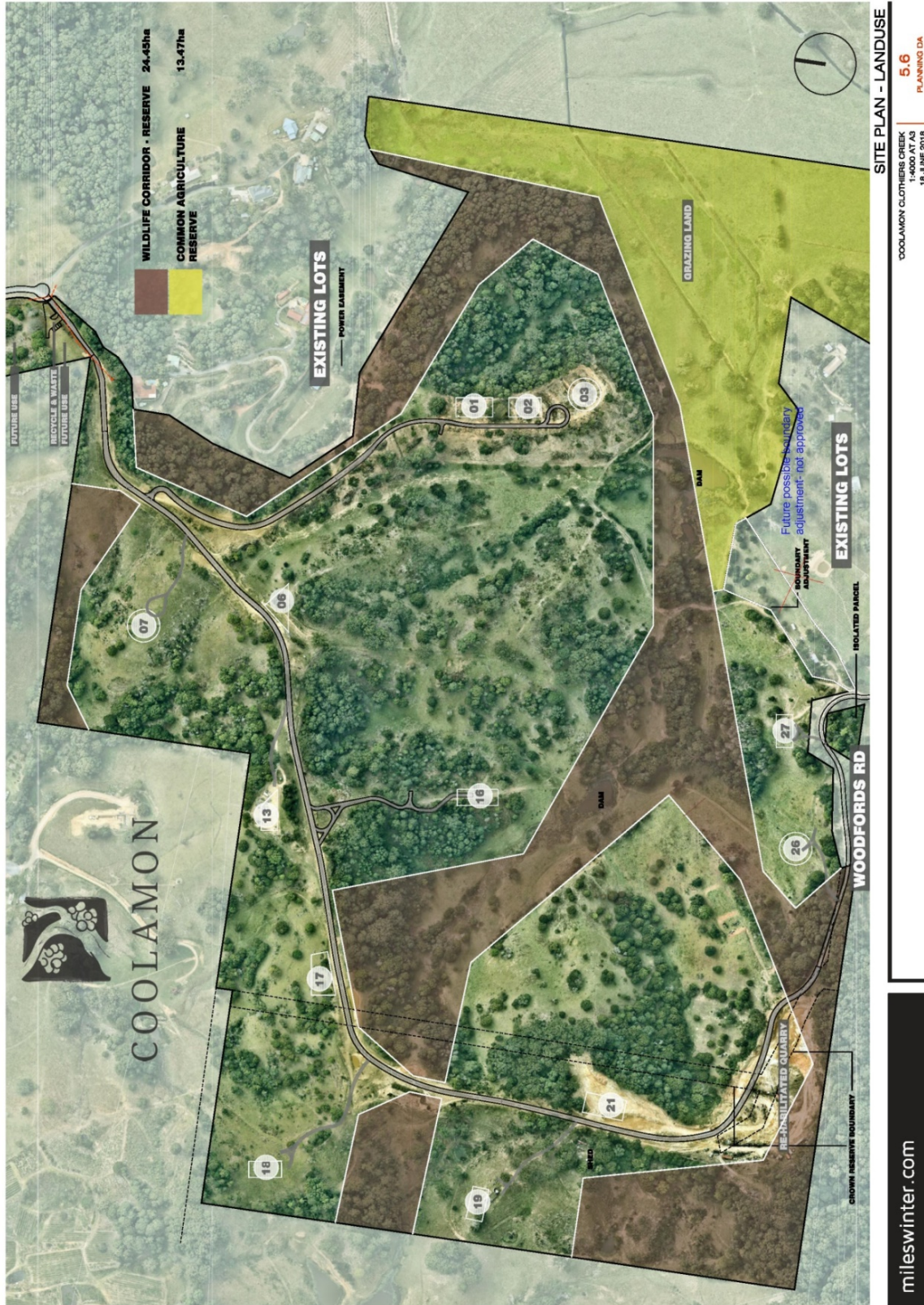
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Datum - GDA 94 DO NOT SCALE
COPY ONLY - NOT CERTIFIED

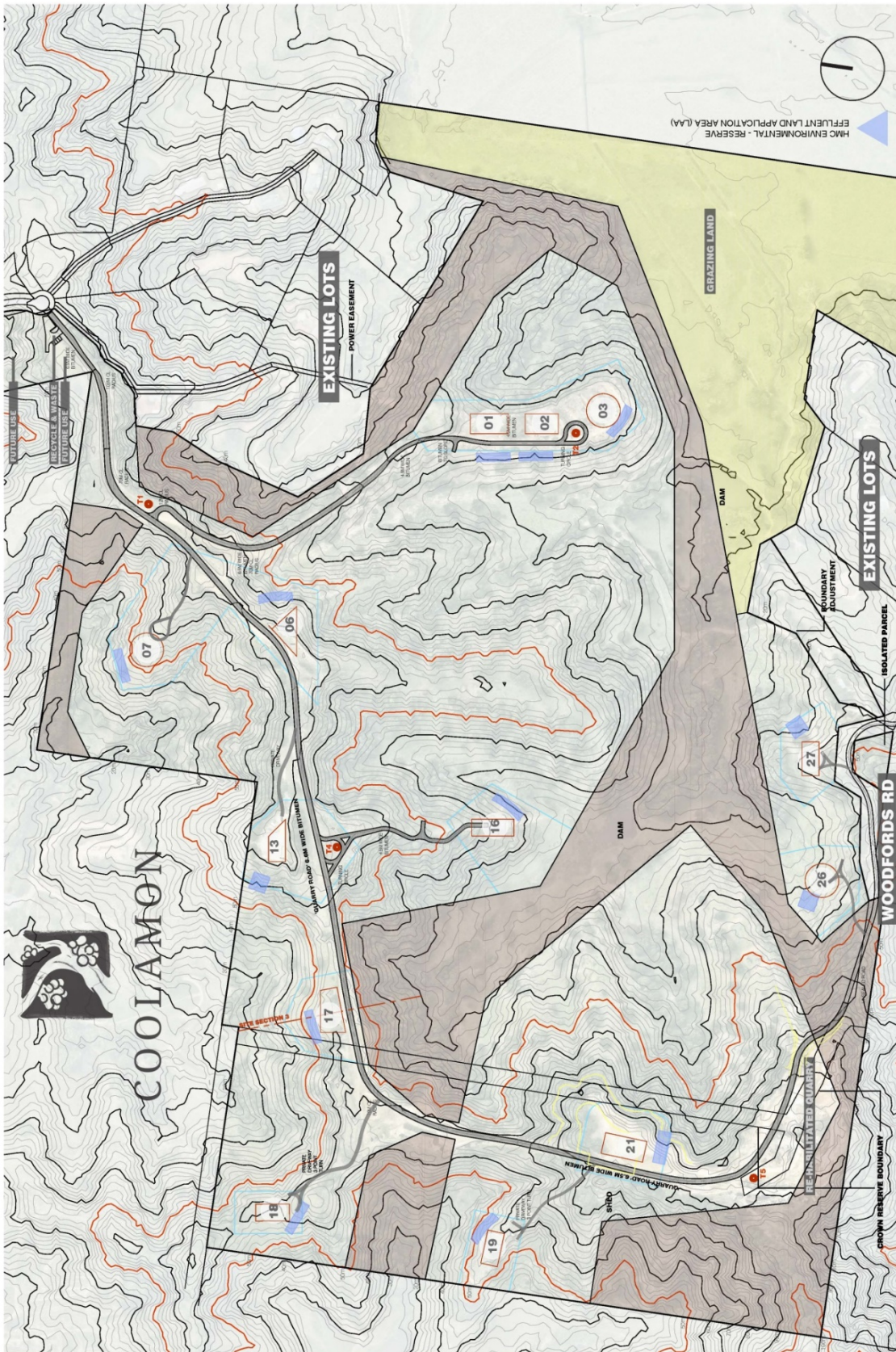
Civic and Cultural Centre
3 Tumbulgum Road
Murwillumbah NSW 2484
PO Box 816
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E: planning@tweed.nsw.gov.au



Date Printed: 18 June, 2018

DEVELOPMENT/ELEVATION PLANS:



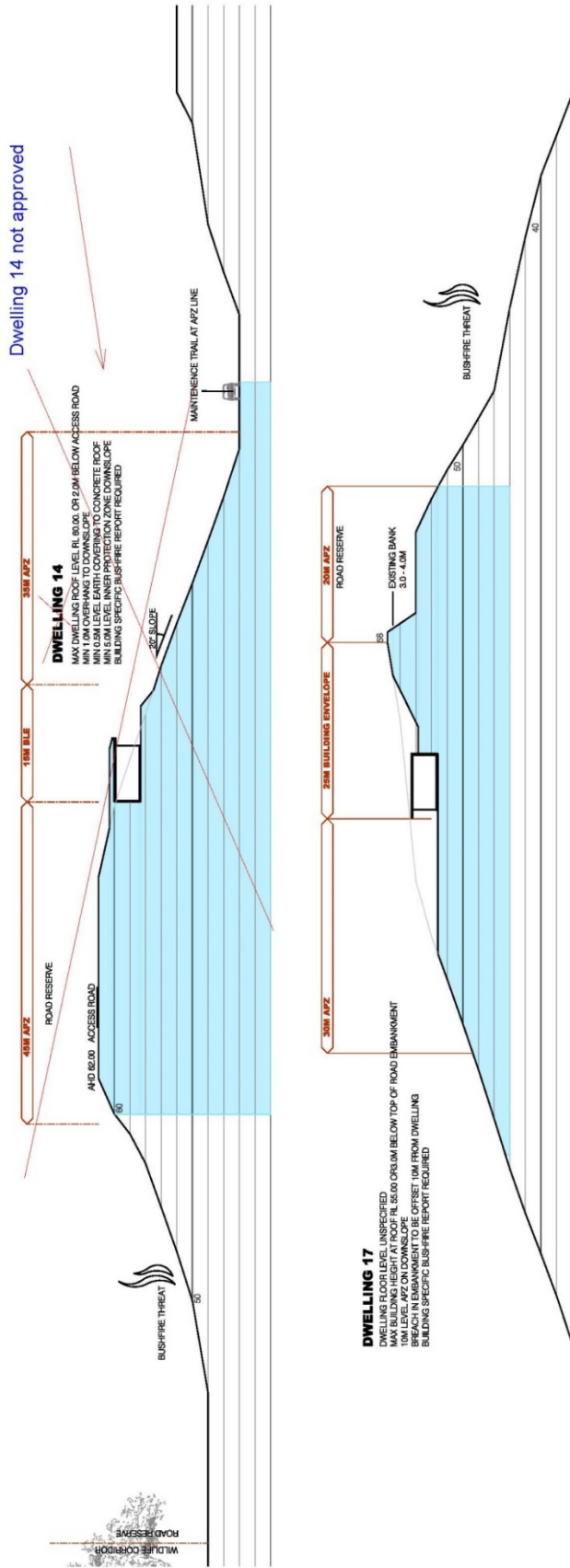


SITE PLAN

COOLAMON CLOTHIERS CREEK
1:1000 AT AS
18 JUNE 2018

5.7
PLANNING DA

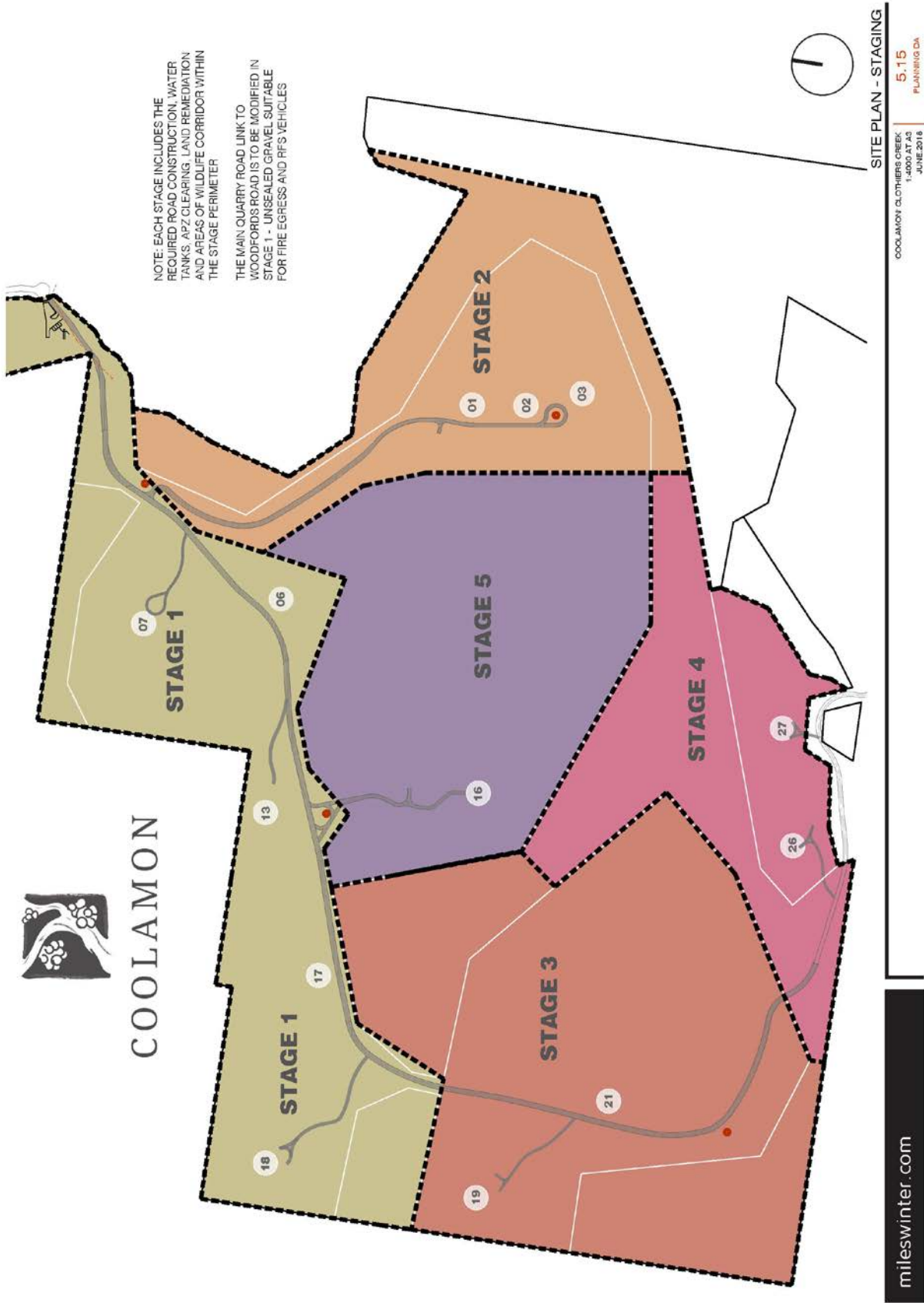
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SITE SECTIONS - BUSHFIRE

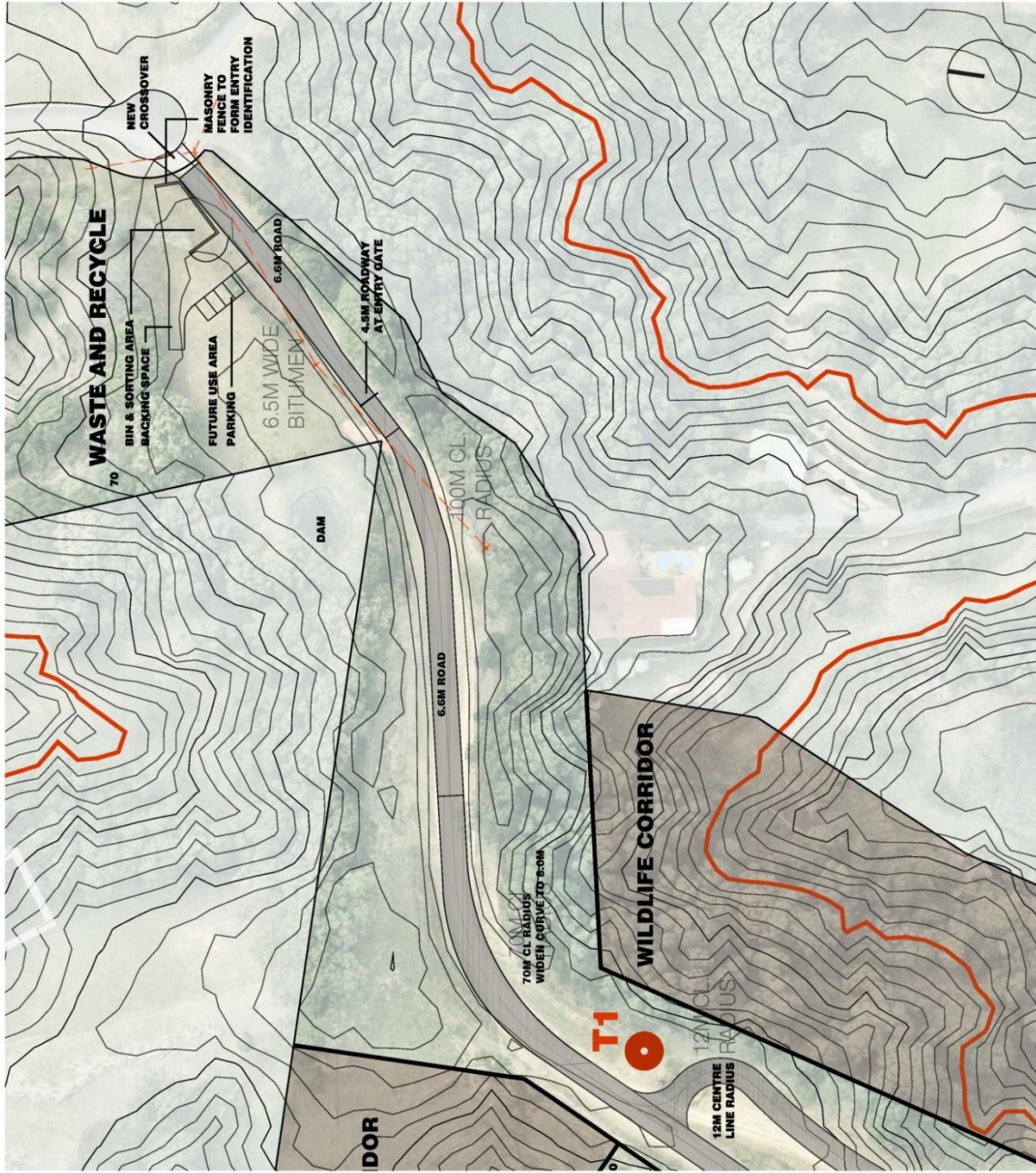
COOLAMON CLOTHIERS CREEK
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 06 JUNE 2018
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 PLANNING DA

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COOLAMON

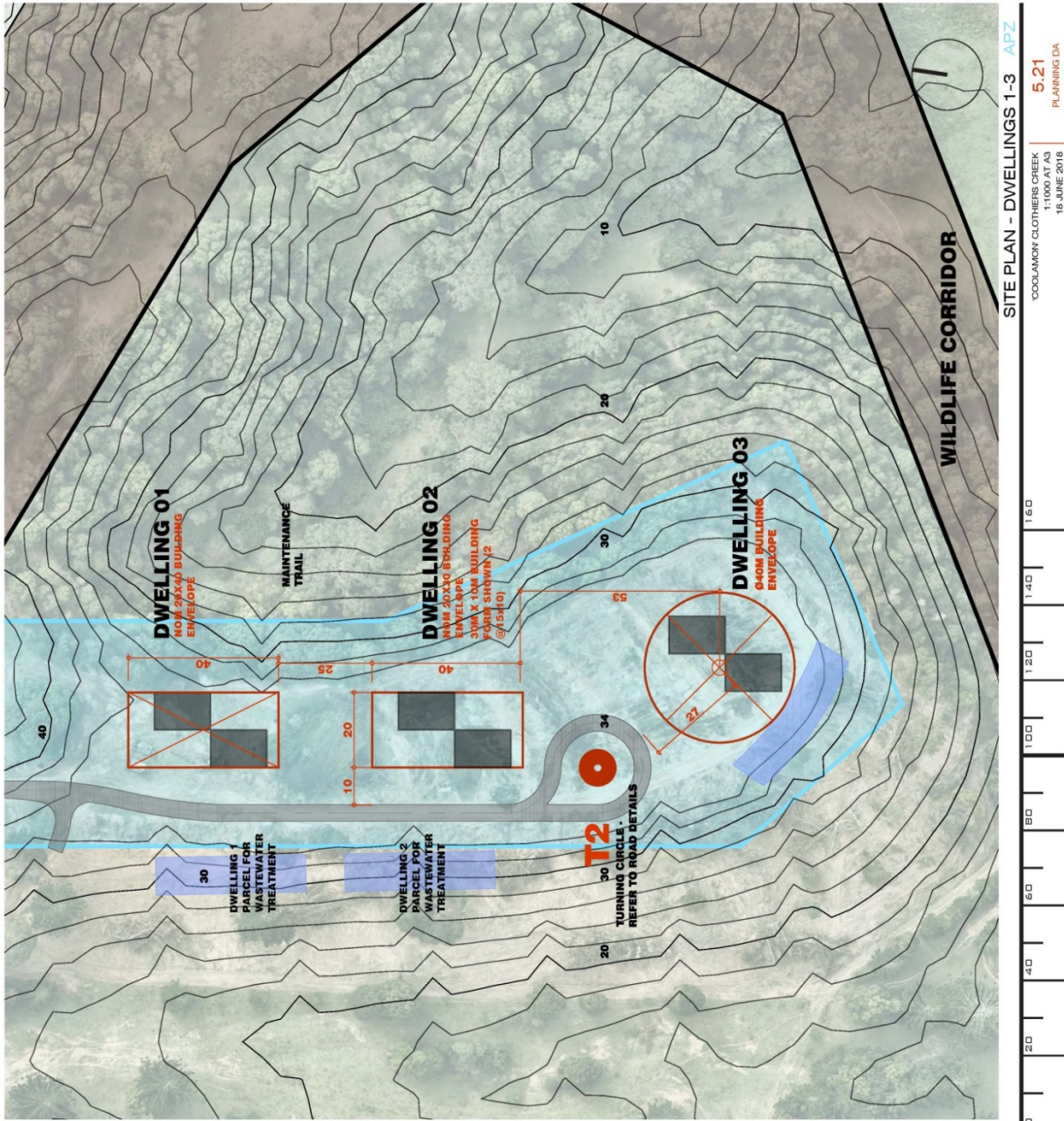


SITE PLAN - WALLUM ENTRY

COOLAMON CLOTHERS CREEK
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JUNE 2018
PLANNING DA
5.20



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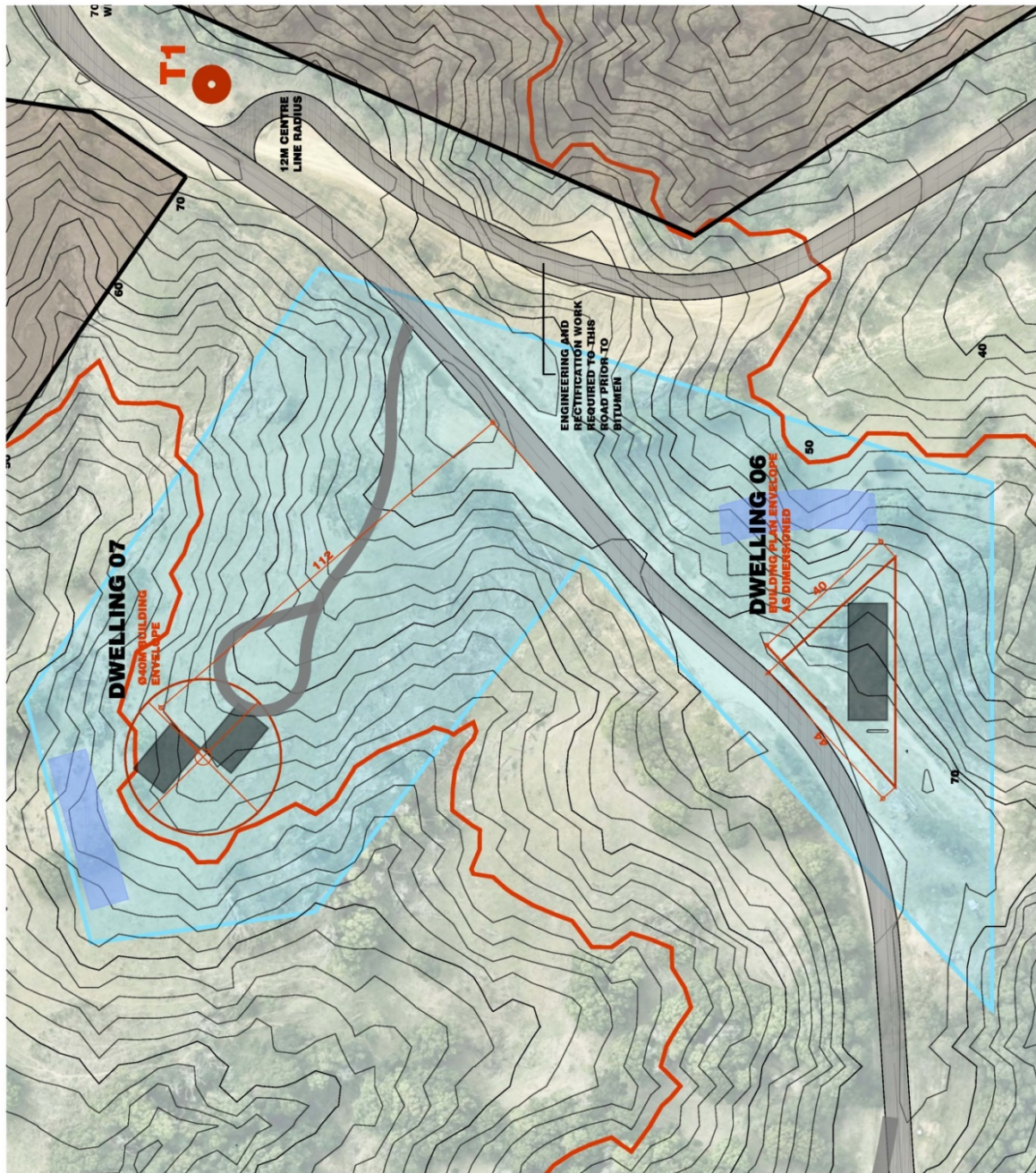


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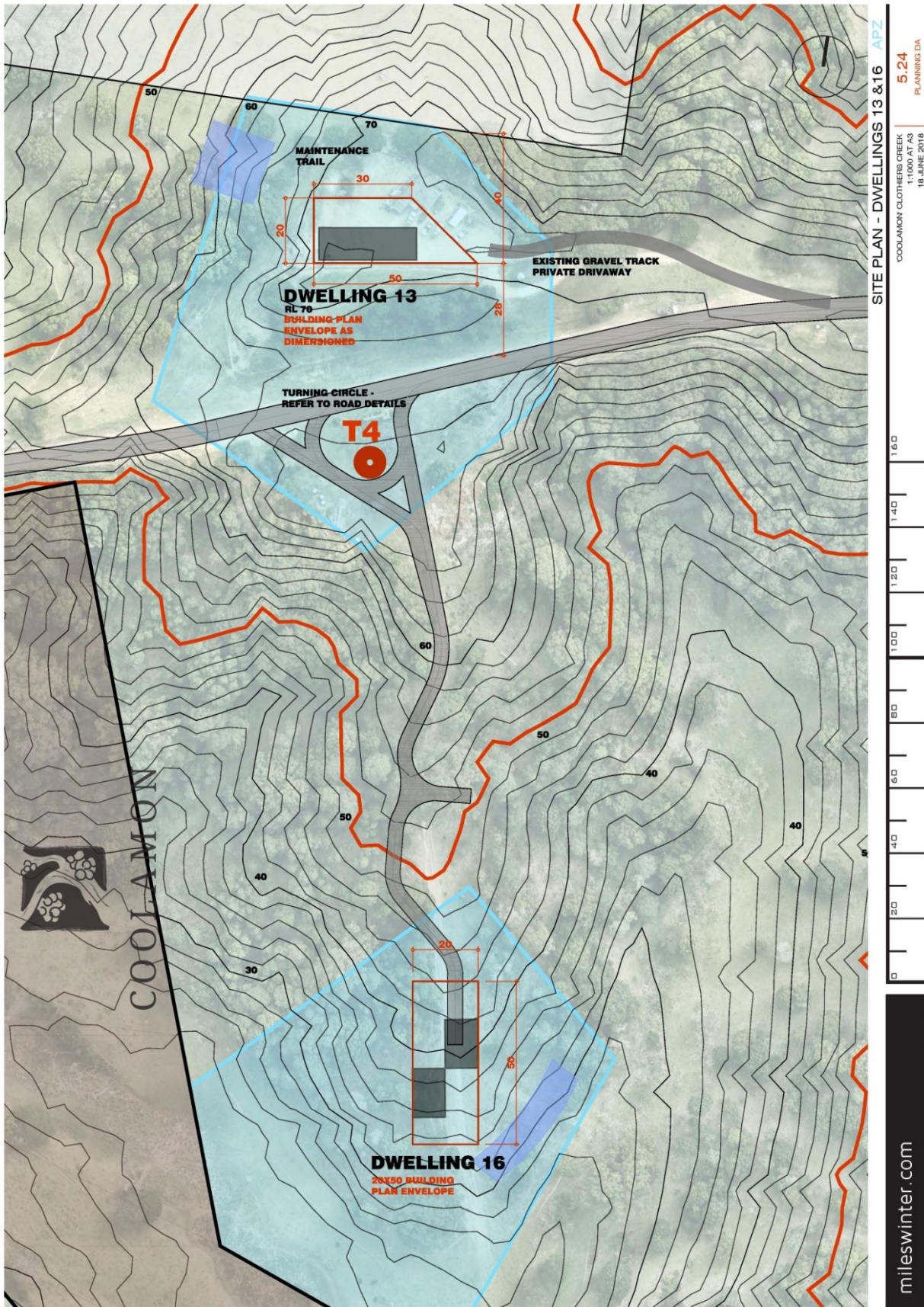
COOLAMON

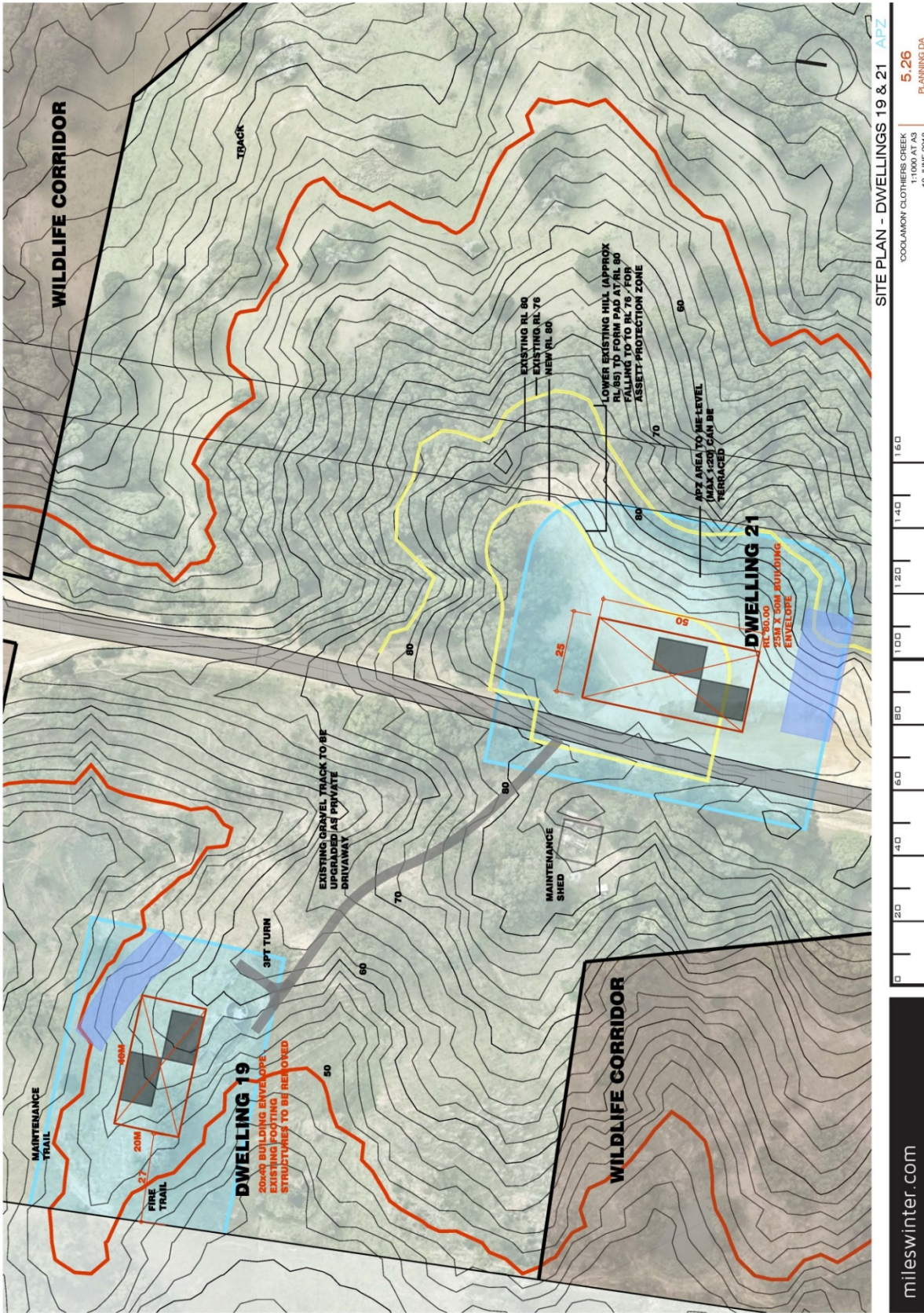


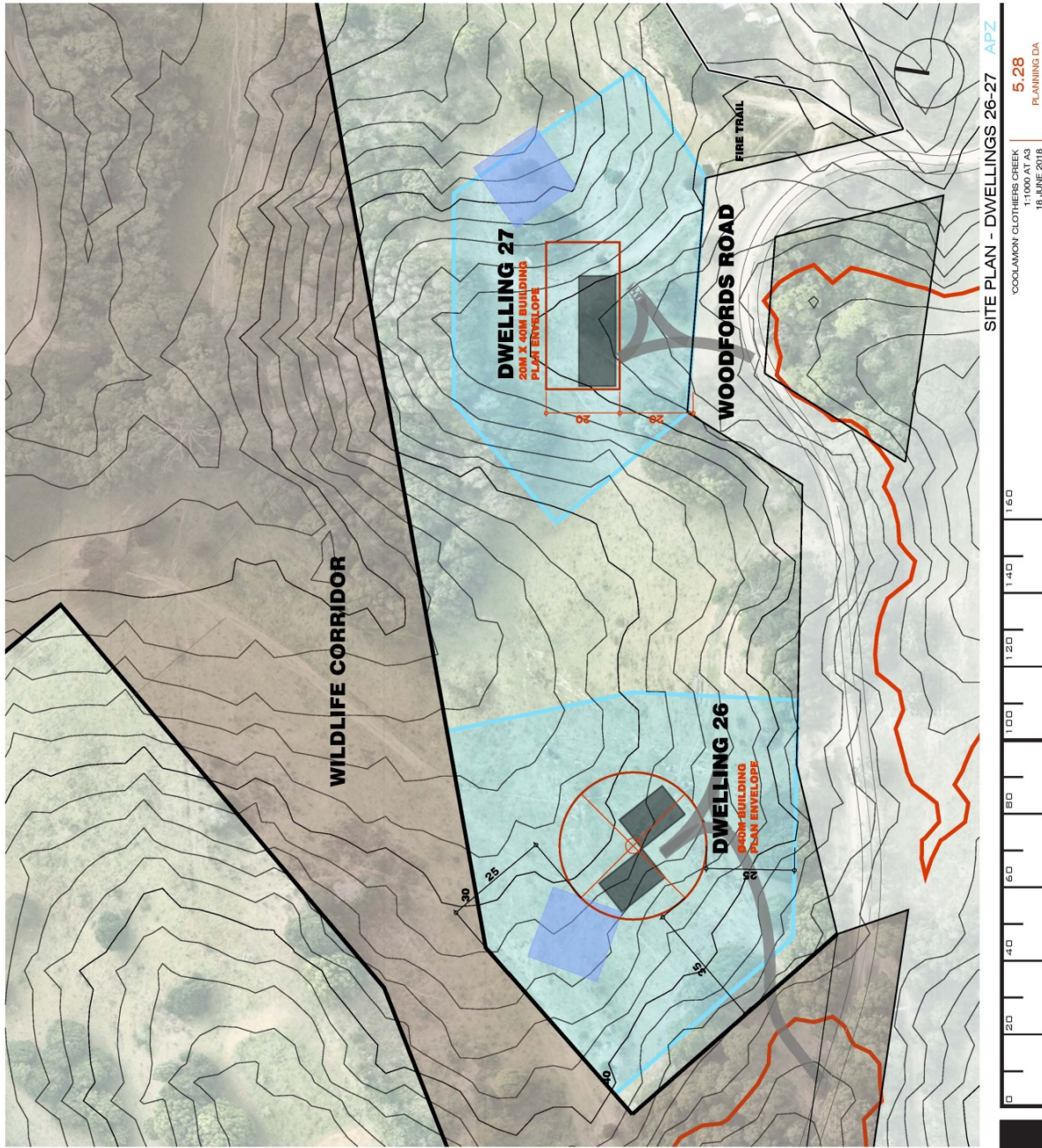
SITE PLAN - DWELLINGS 6-7 APZ

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18 JUNE 2018
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SITE PLAN - DWELLINGS 26-27 APZ
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18 JUNE 2018
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COOLAMON



- 00 MONOCELL**
NEW MONOCELL WITH 1.0M HIGH CONTAMINATED TERSOL AND BENSOL-AM DEEP 200MM PLASTIC CELL WITH DOUBLE TOP LAYER AND 0.6M CLAM FILL CLIPPING
- 01 MONOCELL BUFFER**
LAYERED PLANTING INCLUDING MEDIUM TO LARGE TREE SPECIES TO BOUND MONOCELL AREA
- 02 WILDLIFE CORRIDOR**
NEW TREE PLANTING WITHIN WILDLIFE CORRIDOR. PLANTING SCHEDULE TO INCLUDE ROMA FEED TREES
- 03 PLANTED RETAINING**
1.0M HIGH RETAINING WALL AND ASSOCIATED WATER TO REMEDY EXISTING RETAINING WALL. PLANTING TO INCLUDE FLOWERING PLANTS & SHRUBS
- 04 GRASSLAND**
LEVEL GRASS AREA FOR RECREATIONAL USE. PLANTING TO INCLUDE NATIVE GRASSES & FLOWERS
- 05 WATER TANK**
WATER TANK IN JUMPER 9 AND ASSOCIATED BRWEL TURNING AREA
- 06 UTILITY**
AREA FOR PARKING AND LANDSCAPING STOCKPILES / SUPPLIES
- 07 ROADSIDE PLANTING**
ROADSIDE LANDSCAPING AS PER VEGETATION MANAGEMENT PLAN



QUARRY REHABILITATION PLAN

COOLAMON CLOTHES CREEK
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18 JUNE 2018
5.30
PLANNING DA

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Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed development is for the establishment of a rural land sharing community, comprised of 13 dwellings. The proposed development is permissible upon the subject site. The development includes the retention of significant vegetation, the introduction of wildlife corridors and the management of the entire site with a Community Management Statement. The development is

considered sustainable development that has given due consideration to the protection of sensitive vegetation and other constraints of the land.

Clause 2.3 – Zone objectives and Land use table

The subject site is part zoned RU2 under the Tweed LEP 2014.

The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land*

The proposed development is for the establishment of a rural land sharing community, comprised of 13 dwellings. The use is permissible with consent and is considered to satisfy the objectives of the RU2 for the following reasons:

- The development will not compromise sustainable primary industry production as the dwellings will be located on lands not identified as being suitable for agriculture. The portion of the land suitable for agriculture will be retained
- The low density of the dwellings to be sited on the land will ensure the rural landscape of the locality is maintained, given the surrounding Lot patterns
- The development is considered compatible with any continuing agriculture upon the land and surrounding, given the lack of any approved agriculture development surrounding that would potentially conflict with additional dwellings upon the subject site. Sufficient protections have been afforded to agriculture adjoining.

The subject site is part zoned RU1 under the Tweed LEP 2014.

The objectives of the RU1 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To protect prime agricultural land from the economic pressure of competing land uses.*

The application proposes to preserve this area of land for ongoing agricultural purposes, consistent with the SEPP that does not permit RLS communities within primary agricultural land. This portion of the land will continue as grazing land.

The introduction of additional dwellings upon the site will not compromise the ability of the landshare to continue with this agriculture practice.

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

Not applicable. Clause 4.1 relates to the minimum subdivisions lot size. Under the provisions of the SEPP Rural Land sharing communities cannot be subdivided.

Clause 4.3 - Height of Buildings

The subject site is mapped as having a height limit of 10m. The proposed development includes three different schematic single storey home designs, with heights not specified. The Community Management Statement provides a maximum height for dwellings of 8m. The CMS also states that small areas of roof may be up to 10m in height. This is however contrary to the SEPP that limits buildings to 8m in height. A condition will be inserted requiring the CMS be amended to remove this Clause. The proposed development will be conditioned to comply with Clause 4.3 and the SEPP.

Clause 4.4 – Floor Space Ratio

Not applicable, the subject site is zoned RU2 and part RU1 and does not have a nominated FSR under Clause 4.4

Clause 4.6 - Exception to development standards

Not applicable to the subject application.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable to the subject application.

Clause 5.5 – Development within the Coastal Zone

Not applicable - the subject site is not located within the coastal zone.

Clause 5.10 - Heritage Conservation

Not applicable - the subject site is not a heritage item, nor is it mapped as being within a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as being affected by bushfire. The application was referred to the NSW Rural Fire Services and conditions have been applied. All landscaping and management arrangements were included in the approved plans by RFS and Council's NRM unit.

The respective dwelling sites have identified Asset Protection Zones. These areas for sites 1, 2, 3 and 21 have the potential to impact upon sensitive vegetation. The

consent will be conditioned requiring further fine tuning of these house sites to ensure vegetation worthy of retention is not at risk for the creation of these APZ's.

Clause 7.1 – Acid Sulfate Soils

A majority of the site is mapped as Class 5 Acid Sulphate soils. This area of land will not be at risk of exposing ASS given the level of works to be conducted and the depth where ASS are likely to be encountered.

The objectives of this clause are to ensure that development does not disturb, expose or drain ASS and cause environmental damage. Based on the Class of the land, risk of exposure is considered unlikely in this instance.

The area of RU1 land is Class 4 Acid Sulfate soils (ASS). Council has assessed the application and consider no further investigation in regard to ASS is necessary considering the location of infrastructure relative to the Class 4 lands.

Clause 7.2 – Earthworks

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

There are various levels of earthworks required over the site to facilitate the proposed development, namely infrastructure including internal roads and dwelling footprints. The proposed earthworks are permissible as it is ancillary to the proposed development.

Clause 7.2(3)(a)-(i) outlines matters which require consideration when assessing an application.

(3) *Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*

(a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

Comment: Council's subdivision engineer has undertaken a detailed review of the development in regard to the significant earthworks that will be required onsite for the internal spine road that provides access to combined driveways for clustered dwellings. These earthworks will be required to ensure driveways are constructed to Planning for Bushfire Protection standards.

The following comments were provided following this assessment;

The earthworks and road plans provided are basic and have been prepared from topographic maps. The roads and building pads could be constructed to the NSW Planning for Bushfire specifications although large scale earthworks are required to achieve compliance with some road gradients and accessible roads / building pads. Up to 4m high retaining walls or large batters are required to

achieve compliant roads and dwellings sites for the development as per the NSW Planning for bushfire protection requirements.

The earthworks have significant implications for the ability of the land to accommodate the proposed number of dwellings. Concerns with earthworks in certain locations will be discussed in a latter section of the report.

These concerns have directly resulted in 4 of the subject Lots being deleted from the project due to the level of earthworks required and subsequent implications in regards to loss of vegetation, alteration of natural topography and undesirable changes to natural watercourse flows.

(b) the effect of the development on the likely future use or redevelopment of the land,

Comment: Earthworks will allow the site to be developed while ensuring the buildings and infrastructure impact on the land is minimised by restricting development internally that will not require significant changes in the landscape through the construction of large retaining walls or batters. This method has resulted in a number of sites being deleted from the original plan to ensure acceptable levels of earthworks are approved in association with the development.

In particular sites 4 and 5 required the construction of a landbridge. This construction required significant levels of fill and impacts on the existing natural water course. These two sites have been removed from the development.

(c) the quality of the fill or the soil to be excavated, or both,

Comment: Any fill will be required to be suitable for the intended use and any consent conditioned accordingly.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

Comment: the earthworks will not impact upon adjoining properties in regard to drainage or stormwater patterns. A preliminary Stormwater Plan has been provided. Further details will be a condition of any consent granted

(e) the source of any fill material and the destination of any excavated material,

Comment: the destination of the fill for roads and dwelling envelopes will be detailed prior to commencement. Fill will either be obtained from the existing stockpiled quarry material or offsite.

(f) the likelihood of disturbing relics,

Comment: The development has been assessed appropriately with a cultural heritage assessment. This assessment has been reviewed by the Tweed Byron Local Aboriginal Land Council. No objection to the development is raised subject

to conditions of consent for the protection of any artefacts exposed during construction works

The site is not within a Heritage conservation area, nor does it contain any mapped items of Heritage significance.

- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*

Comment: The proposal is not within a water catchment area. Appropriate sediment control plans will be a condition of consent ensuring the excavations do not expose loose fill to erosion offsite to surrounding.

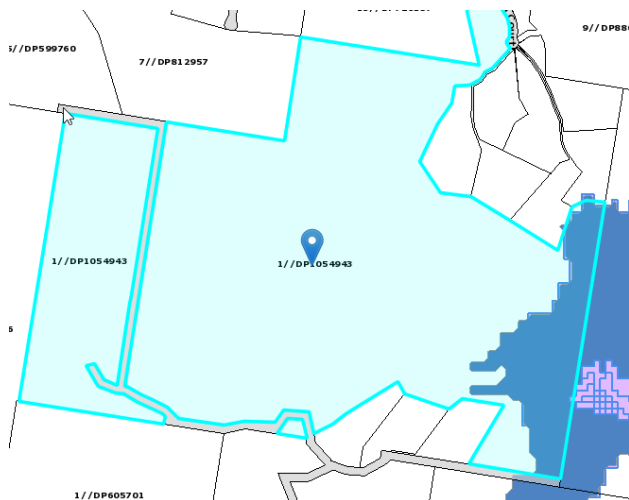
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

Comment: the impacts of the development will be minimised through appropriate soil and sediment controls, stormwater control and appropriate landscaping.

- (i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area*

Comment: See comment above.

Clause 7.3 – Flood Planning



The subject site is partially mapped as PMF flood prone land. The proposed works are located well clear of this area and well above the minimum floor level. The proposed development is not considered to be contrary with the provisions of Clause 7.3. Council's subdivision engineer raises no concerns in regards to flooding considering the area impacted is clear of all proposed dwelling sites and infrastructure.

Clause 7.4 - Floodplain risk management

The subject site and access is clear of the flood prone area.

Clause 7.5 - Coastal risk planning

Not applicable - the subject site is not mapped under Clause 7.5.

Clause 7.6 - Stormwater Management

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

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

The various components of the development have been assessed in regard to stormwater and the following comments are made.

Council's Infrastructure and Flooding engineer is satisfied with the level of information provided for the development. Further details will, however, be required as a condition of consent prior to the commencement of any stages to ensure the development is afforded with specific design details to reflect the amended design that is specific to the subject site.

Clause 7.8 – Airspace operations

Not applicable - the subject application is not located within proximity to the Gold Coast Airport and will not have any impact on the airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

The subject site is not connected to Council's reticulated water or sewer systems. The application includes onsite waste management and rainwater tanks.

Other Specific Clauses

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

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan (NCRP) is a strategic document adopted by the NSW Government that acknowledges the importance of the environment, the economy, communities and lifestyle choices.

The plan has four key goals. The support of these goals involves the management of specific directions identified by the plan.

The goals and specific directions identified within these goals discussed below;

Goal 1 – the most stunning environment in NSW –

Direction 1: Deliver environmentally sustainable growth

Direction 2: Enhance biodiversity, coastal and aquatic habitats, and water catchments

Direction 3: Manage natural hazards and climate change

Direction 4: Promote renewable energy opportunities

The concept of a traditional Rural Landsharing community lends itself to this goal through the adoption of an alternative style residential accommodation upon rural lands that shares the environmental upkeep of the land with multiple landowners. The rejection of traditional rural subdivision in favour of landsharing has the potential to provide share owners with the ability to engage renewable energy opportunities and rehabilitate degraded lands with native vegetation. The development is reflective of the constraints of the land and the portion of land capable of pasture improvement will be retained for this purpose.

Goal 2 – A thriving interconnected economy

Direction 11 of this goal is *the protection and enhancement of agricultural lands*. The retention of the RU1 lands for agricultural purposes will ensure the portion of the land suitable for grazing and pasture improvement will not be used for dwelling sites or vegetation rehabilitation. It is intended that the landshare community manage these lands as an entity for the purposes of some form of agriculture. This direction is therefore considered satisfied.

Direction 13 is *the sustainable management of natural resources*. The development includes the restoration and augmentation of sensitive vegetation onsite. The management of the site by the landshare community for the benefit of existing natural appears to be consistent with this goal.

Goal 3 – Vibrant and Engaged Community

Direction 14: Provide great places to live and work

Direction 15: Develop healthy, safe, socially engaged and well-connected communities

Direction 16: Collaborate and partner with Aboriginal communities

Direction 17: Increase the economic self-determination of Aboriginal communities

Direction 18: Respect and protect the North Coast's Aboriginal heritage

Direction 19: Protect historic heritage

Direction 20: Maintain the region's distinctive built character

Direction 21: Coordinate local infrastructure delivery

The development is considered to be consistent with the directions of this goal for the following reasons;

- It is intended that the rural landshare community is an alternative style of housing for those wishing to embrace this style of living with shared access to rural lands and the ability to rehabilitate parts of the land with a community shared arrangement rather than individually. This is more cost effective for many people unable to afford larger rural land parcels.
- The development has been assessed appropriately with a cultural heritage assessment. This assessment has been reviewed by the Tweed Byron Local Aboriginal Land Council. No objection to the development is raised subject to conditions of consent for the protection of any artefacts exposed during construction works.
- The site is not serviced by town water or sewer. The dwellings will be self-servicing as much as possible. Off grid electricity, onsite sewer and water tanks will be a component of the application ensuring the development does not place strain on infrastructure.

Goal 4 – Great housing choices and lifestyle options

Direction 22: Deliver greater housing supply

Direction 23: Increase housing diversity and choice

Direction 24: Deliver well-planned rural residential housing areas

Direction 25: Deliver more opportunities for affordable housing

The development is a rural landsharing community that will offer an alternative to the more traditional style of rural housing. This development through landsharing will provide a different option for future landowners that may not have the financial ability to purchase a large parcel of land individually. The development is subject to a community management statement to ensure the development is adequately planned and serviced.

State Environmental Planning Policies

SEPP No. 44 - Koala Habitat Protection

The applicant completed a Koala habitat activity assessment generally in accordance with Appendix E of the Tweed Coast Comprehensive Koala Plan of Management 2015 (TCKPoM). The assessment failed to return evidence of Koala activity on the subject site using the Spot Assessment Survey Technique based on faecal pellet trace.

Assessment of vegetation units considered to be representative of preferred Koala habitat (as classified under the TCKPoM) was undertaken. Based on the results of the assessment it was concluded that 'Potential Koala Habitat' as defined under the SEPP 44 was not present on site. That is, areas of native vegetation did not comprise at least 15% of tree types listed under Schedule 2 of the SEPP 44 within the upper and lower strata tree component.

As such, no further consideration of the SEPP 44 is required.

The creation of wildlife corridors will however afford some level of protection for fauna such as Koalas occupying the site. Similarly the prohibition of dogs and cats will protect fauna onsite for the life of the development

SEPP No. 55 - Remediation of Land

The object of this policy is to provide for a State wide planning approach to the remediation of contaminated land. Council's Environmental Health Unit has provided an assessment of a Remediation Action Plan (RAP) prepared for the subject site for contamination. Specifically, this RAP relates to the existing Quarry upon the subject site. The following comments have been made in response to the draft RAP.

A revised Remedial Action Plan prepared by HMC Environmental Consulting Pty Ltd dated 20 March 2018 (HMC 2017.085.03a) was submitted to Tweed Shire Council on 26/03/18. This Plan is considered satisfactory in addressing the above information request. However upon further consideration, it is considered that the RAP does not provide for the ongoing monitoring and management of the proposed containment cell. Considering the nature of the development being a rural land sharing community for residential purposes and the remediation proposed, it is considered appropriate that the remediation strategy described in the Revised Remedial Action Plan prepared by HMC Environmental Consulting Pty Ltd dated 20 March 2018 (HMC 2017.085.03a) is approved in writing by an Accredited Site Auditor (NSW).

The development will be conditioned appropriately. The remediation and completed installation of the monocell will be required in conjunction with Stage 1 of the RLS

SEPP (Rural Lands) 2008

The SEPP (Rural Lands) 2008 applies to the Tweed Shire Council LGA.

The aims of this Policy are as follows:

- (a) *to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*

Comment; the assessment of this application will ensure that any consent granted for a landsharing community upon the subject land has been the subject of an vigorous process to ensure the aims of this SEPP are achieved.

- (b) *to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*

Comment; the development has been assessed against the provision of the SEPP (Integration and Repeals) to ensure rural lands are not compromised by the proposed development.

(c) *to implement measures designed to reduce land use conflicts,*

Comment; the surrounding land parcels do not feature any rural uses that have the potential to have significant impacts on adjoining residential development. The strategic positioning of dwellings upon the subject land will afford protection to future residential while also ensuring adjoining lands are not sterilised by the rural landsharing development. Additional screening will also be proposed to minimise any potential landuse conflicts

(d) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*

Comment; the site does not contain state significant rural land.

(e) *to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

Comment; Not applicable

Clause 7 - Rural Planning Principles

The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

Comments:

The application has included the retention of the portion of the site zoned RU1 for agricultural purposes. This area of land is approximately 6.6ha in area and will be used for continued grazing by the collective that are owners of the rural landsharing community.

The aim of this development is the “*encouragement and facilitation of the development of the land for the purposes of rural land share that is committed to environmentally sensitive and sustainable land use practices*”. The RLS will provide a number of dwelling sites that reflect the constraints of the land such as steep topography while providing opportunities for providing wildlife corridors between individual land sites that are of an area that will allow residents to pursue agricultural activities at a domestic scale.

The development offers an alternative housing option, while the land remains consistent with the rural character of the area. Accordingly, is considered to acknowledge and respond to the changing nature of agricultural land uses.

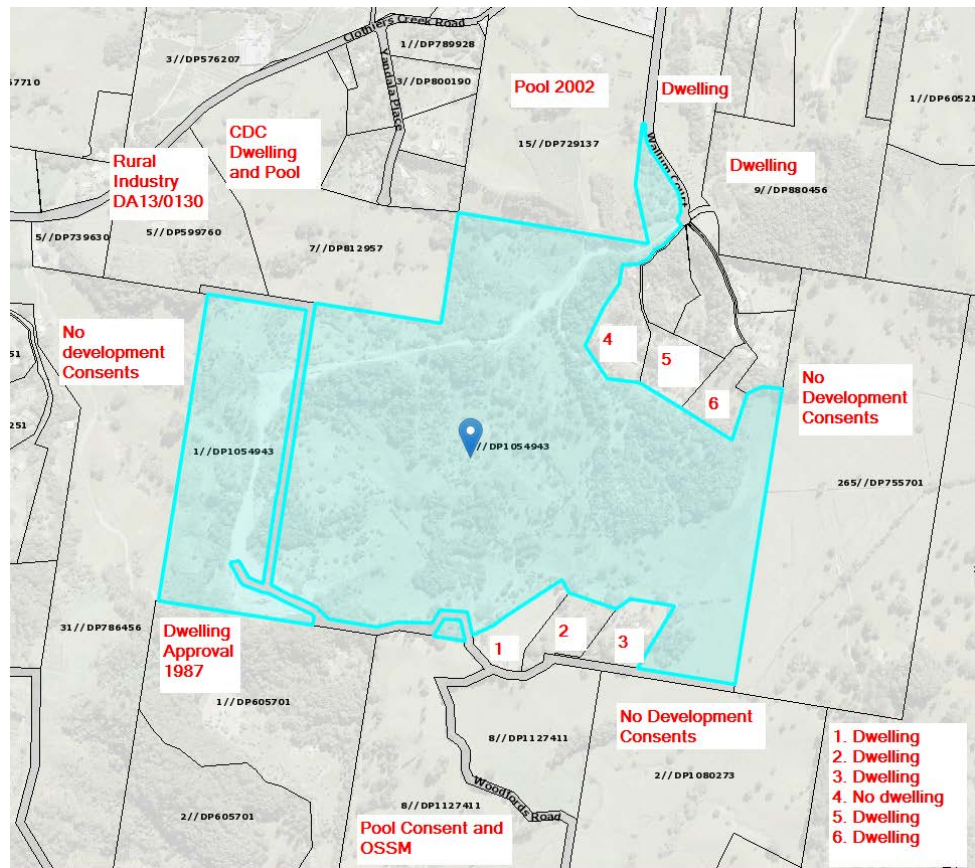
The site is currently serviced by a sealed road, no concerns with this regard were raised by Council’s Engineering unit.

Part 3 Rural subdivisions and dwellings

Clause 10 - Matters to be considered in determining development applications for rural subdivisions or rural dwellings;

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*
- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*
 - (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
 - (b) *erection of a dwelling.*
- (3) *The following matters are to be taken into account:*
 - (a) *the existing uses and approved uses of land in the vicinity of the development,*

Comments; the surrounding landuses, as demonstrated within the mapping below is primarily rural residential on the smaller lots while general agricultural activities that do not require development consent occur in the locality. One rural industry DA13/0130 was granted development consent for 720 Clothiers Creek road Clothiers Creek. The approved rural packing sheds and roadside stall are located over 300m from the common property boundary. The landowner of this property has lodged an objection to the proposal. This objection has been addressed within a later section of the report. Having regard to the spatial separation, topography and a condition of consent requiring additional landscaping to screen dwelling site 18 from this property it is considered that the increased risk of land use conflict has been minimised.



Surrounding Development Consents

(b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

Comments; the land will provide various dwelling sites for rural land sharing. Predominant landuses in the wider locality are currently low intensity rural and agricultural pursuits such as cattle grazing. Any conflict with the subject site would likely also impact the smaller allotments to the north and south of the subject site that contain existing single dwellings with limited potential for agricultural pursuits other than at a non-commercial scale. Accordingly, the proposed dwellings will not provide increased potential for land use conflict. In addition, the decommissioning of the quarry will improve the amenity of surrounding rural properties and decrease potential land use conflicts.

The following are additional points in support of the development in regard to land use conflicts;

- The subject site is located from 7.5km of the village area of Pottsville
- The subject site is not mapped as state significant farmland
- The locality has a mix of smaller (2ha) and larger properties (120ha) providing a reasonable conclusion the 13 dwellings upon a property greater than 100ha will not be inconsistent with the surrounding landscape and dwelling density
- Parts of the subject site are steep and not suitable for agricultural uses

Under the Tweed LEP 2014 the subject site is zoned RU2 Rural Landscape. The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land*

Comments; It is considered that the locality has no dominant land use, although smaller residential Lots i.e. Yandala Place and Wallum Court do dominate the immediate surrounds. It is reasonable to conclude that any preferred use is one which is permissible under the RU2 zone and consistent with the objectives of the zone.

The proposed rural land sharing community is permissible with consent and is considered to satisfy the objectives of the RU2 for the following reasons:

- The land is generally not suitable for agriculture however the RU1 land will maintain the resource base as it will be kept for agricultural purposes.
- The density of the dwellings and the single storey nature of the dwellings will ensure that the development maintains the low density rural character of the land. This character will be further maintained through the implementation of wildlife corridors.
- the sites grazing areas (RU1 zone) comprise approximately 6.6 hectares of the site with this area to be maintain for this purposes

In conclusion when viewing the site, intended use and location it is not considered that the proposed development is likely to have a significant impact on the surrounding land uses (predominant or preferred – as discussed above) in the vicinity of the development.

(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),

As discussed above the proposed development is considered in keeping and compatible with existing and approved uses in the vicinity. The development is within a rural zone that does have a mixture of rural lots sizes ranging from 120ha to 2ha.

The development is below the permitted number of dwellings permissible under the SEPP (Integration and Repeals) 2016 and the intended use proposes development which is sustainable, consistent with both the larger and smaller development pattern, and the objectives of the RU2 zone.

- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*

The subject site is zoned RU2 and it is assumed that a rural residential zone, is a R5 Large Lot Residential. Accordingly, the site does not adjoin any mapped rural residential zones. Notwithstanding, this the site is located adjoining smaller scale rural allotments. As discussed under sub-clauses a-c above, the proposed development is considered suitably in keeping with the surrounding developments.

- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

Not applicable – the proposed development is considered a compatible land use for the zoning and area, please refer to comments under sub clauses a-d, above.

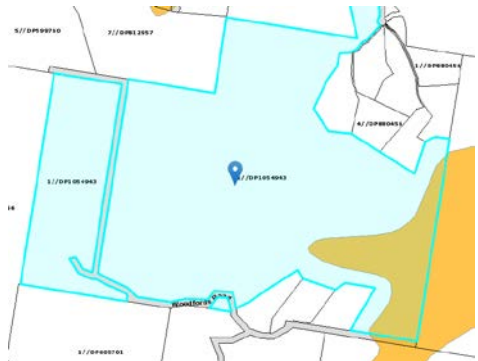
Based on the above, the proposed development is considered to comply with the applicable clauses of the SEPP (Rural Lands) 2008.


SEPP (Integration and Repeals) 2016

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>1 Application of Schedule</p> <p>This Schedule applies as if it formed part of each of the following local environmental plans and has effect despite any other provision of those plans:</p> <p>(a) <i>Bega Valley Local Environmental Plan 2002,</i> (b) <i>Bega Valley Local Environmental Plan 2013,</i> (c) <i>Bellingen Local Environmental Plan 2010,</i> (d) <i>Clarence Valley Local Environmental Plan 2011,</i> (e) <i>Coffs Harbour City Local Environmental Plan 2000,</i> (f) <i>Coffs Harbour Local Environmental Plan 2013,</i> (g) <i>Gloucester Local Environmental Plan 2010,</i> (h) <i>Great Lakes Local Environmental Plan 2014,</i> (i) <i>Guyra Local Environmental Plan 2012,</i> (j) <i>Inverell Local Environmental Plan 2012,</i> (k) <i>Kempsey Local Environmental Plan 2013,</i> (l) <i>Kyogle Local Environmental Plan 2012,</i> (m) <i>Port Stephens Local Environmental Plan 2013,</i> (n) <i>Richmond Valley Local Environmental Plan 2012,</i> (o) <i>Tenterfield Local Environmental Plan 2013,</i> (p) <i>Tweed Local Environmental Plan 2000,</i> (q) <i>Tweed Local Environmental Plan 2014.</i></p>	<p>The subject is site falls within the Tweed Local Environmental Plan 2014. Accordingly, the Integration and Repeals SEPP applies to the proposed development.</p>
<p>2 Aims of Schedule</p> <p>This Schedule aims to encourage and facilitate the development of rural land sharing communities committed to environmentally sensitive and sustainable land use practices by:</p>	

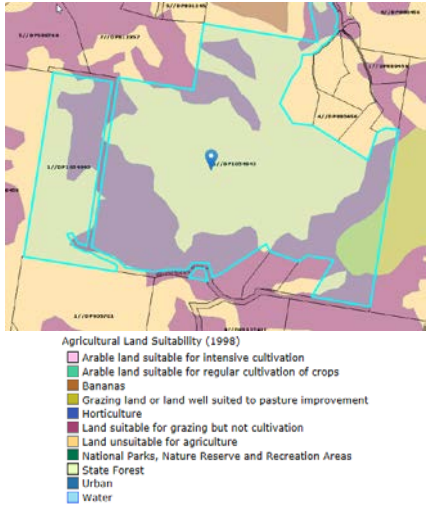
SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
(a) enabling people who collectively own a single lot to erect multiple dwellings on that lot without dividing the lot (such as by subdivision or by contractual arrangements), and	<p>The subject RLS will comprise of 13 dwellings on a single parcel of land. The development will be constructed over 5 stages. Each stage will trigger the construction of infrastructure and preparation of exclusive use areas APZs and wildlife corridors. Dwellings will be constructed by owners of the lots each having a share of the 'home unit company' by purchasing shares.</p> <p>13 Homes will be permitted with no subdivision of these dwellings permitted</p> <p>Ownership structure will be explained in a separate section however it is advised that dwellings will not be constructed by the company rather, the shareholders.</p> <p>The dwellings need to be consistent with the final Community Management Statement.</p>
(b) enabling the sharing of facilities and resources to allow a wide range of communal rural living opportunities at a lower cost, and	<p>Under the original proposal, the subject application did not include any detail on the proposed communal living opportunities. The application no longer includes any exclusive use areas. Shared facilities will include internal roads, recycling and waste site, grazing land, rehabilitated quarry site and wildlife corridors.</p> <p>Further information will be required as a condition of consent how the areas surrounding dwelling sites will be managed as these areas are no longer identified as being for exclusive use. It is considered reasonable that some areas of the land adjoining the dwelling envelope should be nominated for exclusive use purposes</p> <p>Council is not necessarily satisfied that the development is a more affordable option for purchasers given the reduced number of dwelling sites, relative to the works proposed and required to be undertaken. Each landowner will be protected by conditions of consent restricting the approval of any dwellings until all infrastructure and APZs is in place as required and any rehabilitation works have been completed to Council's satisfaction</p>

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>(c) facilitating development on rural land (preferably in a clustered style) without undue harm to the environment and without creating a demand for the unreasonable or uneconomic provision of public amenities or services, and</p>	<p>The proposed development is not clustered spreading the dwellings over the entire site. While the dwellings were originally clustered, the constraints of the site have resulted in a reduced number of dwellings upon selected sites only. The dwellings have been interspersed between the wildlife corridors and along spurs to facilitate minimal cut and fill, loss of vegetation and protection for bushfire.</p> <p>The proposal over 5 stages intends to cluster dwellings in each stage to some extent however a number of dwellings will also be isolated from other dwelling clusters. This mix of clustering and disbursement still enables the site to provide a shared road system for the primary access road and associated spur roads for small groups of dwellings. (See site plan).</p> <p>The SEE provides the following justification of the development In regards to the provision of public amenities and services</p> <p><i>a. Utilising the existing sealed bitumen road for site access. No additional public roads are required</i></p> <p><i>b. Managing all sorting of waste on-site and using private contract for waste removal and recycle.</i></p> <p><i>c. Creating usable onsite communal amenity with a vision to create spaces for the community to socially interact, be it in a communal tree house for children are communal building / café in the future use area (subject to council consent). This ultimately reduces the demand on public services ranging from parks to roads.</i></p> <p>It is noted that no approval will be provided for these uses listed above other the recycling station. A condition of consent will ensure future landowners are aware that such have not been approved.</p> <p>The reduced density and removal of exclusive areas facilities better communal use of the land</p>
<p>(d) creating opportunities for an increase in rural population in areas that are experiencing population loss.</p>	<p>The Clothier Creek locality and surrounding areas are predominately zoned RU2 Rural Landscape. Accordingly, attract a minimum lot size of 40 hectares. The proposed RLS is considered to present an opportunity for an increase in rural population.</p> <p>The community management statement has provided that dwellings have a maximum of 4 bedrooms however no maximum number of persons has been described within the MP. A requirement of any consent granted that the dwellings should be limited in number of persons by the Onsite Sewer Management system provided onsite.</p> <p>Accordingly, the proposed development offers an opportunity to increase the population in the area, which has the potential for positive benefits on the community.</p>
<p>3 Land to which Schedule applies This Schedule applies to land in any rural zone</p>	

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>but <u>not</u> to the following land:</p> <p>(a) land in an environmentally sensitive area for exempt or complying development within the meaning of clause 3.3 of the standard instrument prescribed by the <i>Standard Instrument (Local Environmental Plans) Order 2006</i>,</p> <p>(b) land to which a wilderness protection agreement under the <i>Wilderness Act 1987</i> relates,</p> <p>(c) land that is a forestry area within the meaning of the <i>Forestry Act 2012</i>,</p> <p>(d) land that is within a special area or a controlled area under the <i>Hunter Water Act 1991</i>, the <i>Sydney Water Act 1994</i> or the <i>Water NSW Act 2014</i>.</p>	<p>N/A – the subject site is not mapped as <i>environmentally sensitive land</i></p> <p>N/A – the subject site is not mapped under the <i>Wilderness Act 1987</i></p> <p>N/A – the subject site is not a forestry site under the <i>Forestry Act 2012</i></p> <p>N/A the subject site does not fall within this area.</p>
<p>4 Rural land sharing community permitted with consent</p> <p>(1) The consent authority may grant development consent to development on land to which this Schedule applies for the purposes of 3 or more dwellings if satisfied of the following:</p> <p>(a) the land is a single lot with an area of not less than 10 hectares,</p> <p>(b) the height of any building on the land will not be more than 8 metres,</p>	<p>The land has an area of 101.9 hectares.</p> <p>The design of the proposed dwellings does not exceed 8m in height. It is noted that Subclause 1.2.6 permits 'pop-tops' or small portions of 'clerestory' roof forms. These forms should be limited to 30m² in plan with a rise of an additional 2.0m</p> <p>This exemption is not consistent with the SEPP and shall be required to be removed from the Management plan prior to release of any CC for the first stage.</p>
<p>(c) no more than 25 per cent of the land is prime crop and pasture land and no building containing a dwelling will be on any such land,</p>	<p>As identified in the introduction section to this report part of the subject site is mapped as being regionally significant farmland (Farmland Protections Project). This area equates to approximately 6.4% of the subject site. (excluding the road reserve of approximately 1ha)</p> 

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
	<p>The eastern section of the subject site (in keeping with the farmland protection mapping) is nominated as Grazing land or land well suited to pasture improvement under the Agricultural Land Suitability mapping 1998. Accordingly, is defined as prime crop and pasture land*. This section of the site is comprised of an area of approximately 6.6ha and no buildings are proposed within this area.</p> <p>*The definition of prime crop and pasture land is defined under Clause 4(2) of this policy and refers back to the definitions under the SEPP 15 (Rural Land sharing community). Further explanation is provided below under subclause 2.</p>
(d) no building will be on land that is a wildlife refuge, wildlife corridor or wildlife management area and the development will not adversely affect any such land,	Council's mapping does not identify the subject site as being within a wildlife corridor. However, wildlife corridors will be created in conjunction with this rural land sharing community.
(e) the development will not include a camping ground, caravan park, eco-tourist facility or tourist and visitor accommodation, except where otherwise permissible on the land,	The proposed development does not include any camping grounds, caravan parks, eco-tourist facilities or tourist and visitor accommodation. It is noted that the original application did refer to eco-tourist accommodation. This reference has been removed from the proposal and a consent condition will state that no other uses are permissible upon the land without separate approval
(f) no building will be on land that has a slope in excess of 18 degrees or that is prone to mass movement,	<p>The subject site includes land nominated as steep or highly erodible. Dwelling sites and associated access roads or infrastructure will not be located on any lands in excess of 18 degrees in slope.</p> 
(g) the development is consistent with the aims of this Schedule.	The subject application generally complies with the aims of this plan – see assessment against clause 2, above.

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>(2) In this clause: prime crop and pasture land means:</p> <p>(a) land identified as prime crop and pasture land under <i>State Environmental Planning Policy No 15—Rural Landsharing Communities</i> as in force immediately before the repeal of that Policy, or</p>	<p>Under the <i>State Environmental Planning Policy No 15—Rural Landsharing Communities</i> Prime crop and pasture land means land within an area:</p> <p>(a) identified, on a map prepared before the commencement of this Policy by or on behalf of the Director-General of Agriculture and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses, or</p> <p>(b) identified, on a map prepared after the commencement of this Policy by or on behalf of the Director-General of Agriculture marked “Agricultural Land Classification Map” and deposited in an office of the Department of Agriculture, as Class 1, Class 2 or Class 3 or as land for special agricultural uses, or</p> <p>(c) certified by the Director-General of Agriculture, and notified in writing by or on behalf of the Director-General of Agriculture to the council, to be prime crop and pasture land for the purposes of this Policy.</p>

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
	<p>The NSW DPI document <i>NSW Agriculture Agricultural land classification</i> nominates the following classes:</p> <p>Class 1: Arable land suitable for intensive cultivation where constraints to sustained high levels of agricultural production are minor or absent.</p> <p>Class 2: Arable land suitable for regular cultivation for crops, but not suited to continuous cultivation. It has a moderate to high suitability for agriculture but edaphic (soil factors) or environmental constraints reduce the overall level of production and may limit the cropping phase to a rotation with sown pastures.</p> <p>Class 3: Grazing land or land well suited to pasture improvement. It may be cultivated or cropped in rotation with sown pasture. The overall production level is moderate because of edaphic or environmental constraints. Erosion hazard, soil structural breakdown or other factors, including climate, may limit the capacity for cultivation and soil conservation or drainage works may be required.</p> <p>Class 4: Land suitable for grazing but not for cultivation. Agriculture is based on native pastures or improved pastures established using minimum tillage techniques. Production may be seasonally high but the overall production level is low as a result of major environmental constraints.</p>  <p>Based on the definition under SEPP 15 (Rural Land sharing communities) prime crop is defined as Classes 1-3 or has land of merit; or certified by the Director General of Agriculture.</p>
(b) land identified by the Secretary of the Department of Industry, Skills and Regional Development that has been notified in writing to the Council as prime crop and pasture land for the purposes of this Schedule.	Tweed Shire Council has not been notified in writing that the site is a prime crop and pasture land. Considering the Farmland Protection Projects mapping and Agricultural classification of the land, it is considered unlikely that the Council would receive written notification of any more of land being nominated as prime crop.

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>5 Matter to be considered</p> <p>The consent authority must not grant development consent under this Schedule unless it has taken into account the following:</p> <p>(a) the arrangements for operating and managing the community,</p> <p>(b) the design of the proposed development,</p> <p>(c) the physical and heritage characteristics of the proposed site and surrounding land,</p> <p>(d) the availability of roads, utilities and other services,</p>	<p>The proposed development includes Community Management Statement (CMS). The CMS is considered to be acceptable however additional information is deemed necessary to be added to this statement prior to commencement of the first Stage. Please see additional comments within a latter section this report titled Staging and ownership structure.</p> <p>The design of the proposed development is now considered suitable to the location and consistent with the SEPP (Integration and Repeals) 2008. Each dwelling site is sympathetic to the constraints of the land in regards to vegetation topography and utilising existing infrastructure. The design is also reflective of existing areas of cleared vegetation, rehabilitation areas and the existing quarry.</p> <p>More detail regarding the location of each dwelling site is provided in a latter section of the report and how each stage will proceed</p> <p>A cultural heritage report was submitted with the application and referred to the Tweed Byron Local Aboriginal Land Council / Aboriginal Advisory Committee. The Council and committee supported the application, subject to conditions including conditions relating to further investigations prior to the approval of individual dwellings upon the respective sites</p> <p>Roads/Access: Wallum Court is deemed suitable to accommodate the traffic from the proposed 13 dwellings, given the existing usage potential from the quarry onsite. Council's Subdivision Engineer has undertaken an assessment of the internal road system. Following this assessment, particular sites have been removed to ensure large volumes of earthworks will not be generated to construct the access roads off the existing spine road</p> <p>Utilities: Reticulated Water and sewer infrastructure is not available to the site. Respective dwellings will provide private onsite sewer management systems and water tanks.</p> <p>Electricity; The SEE states the development is a planned 'off grid' community stating; <i>"To ensure its success, solar infrastructure is included in the sale of each share."</i></p> <p>This contradicts the updated bushfire report which states "the client has nominated electricity transmission lines to be placed underground."</p> <p>A condition of consent has been recommended to ensure the community management statement states that reticulated electricity/telecommunications/internet</p>

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
<p>(e) the impact of the development on the environment and any present or future use of the land,</p> <p>(f) any other matter that the consent authority considers to be relevant.</p>	<p>has not been provided and individual dwellings are required to provide these services at their own cost. Measures will also be required to ensure back-up generators do not cause any nuisance to residents onsite or adjoining</p> <p>Telecommunications No 'landline' telecommunication services are proposed. The application advises that mobile coverage will be the only telecommunication service. The consent will be conditioned to ensure that a satisfactory service level can be provided onsite by wither a mobile tower or landlines</p> <p>The impact of this development upon the environment and any present or future use of the land have been discussed in detail within other section of this report. The development will have a positive outcome for the environmental features of the land through the rehabilitation of the quarry and the augmentation of existing tracts of vegetation worthy of retention.</p> <p>All other matters considered relevant have been assessed within this report. These include the rehabilitation of the quarry onsite, the protection of vegetation despite the need for APZ's</p>
<p>6 Future management The consent authority must not grant consent to development under this Schedule unless it is satisfied that adequate provision will be made for the following:</p> <p>(a) water and waste management,</p> <p>(b) prevention, control and management of soil erosion,</p> <p>(c) bush fire management,</p> <p>(d) flora and fauna management, including the control of noxious weeds and noxious animals,</p> <p>(e) provision and maintenance of internal roads, boundary fences, water reticulation, service corridors for telephone and electricity cables and similar matters.</p>	<p>All of these matters will need to be addressed in detail for each proposed dwelling incorporated within the Rural Landsharing Community.</p> <p>Each dwelling will have a Onsite Sewage Management System and water tanks for domestic purposes</p> <p>Preliminary details of soil and sediment erosion control measures have been provided. Further details will be required as a condition of development consent.</p> <p>Preliminary details of stormwater management measures have been provided. Further details will be required as a condition of development consent.</p> <p>The site has been the subject of an extensive bushfire risk assessment. This risk assessment does require the creation of APZ at the expense of sensitive vegetation the consent will be the subject of a deferred commencement condition requiring some of the dwelling sites being shifted to protect trees considered worthy of retention.</p> <p>A habitat restoration plan and a vegetation management plan form part of the development proposal. Significant tracts of land will be provided to augment existing vegetation for the creation of wildlife corridors. Each stage of the development will be required to create these corridors that will eventually</p>

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
	<p>link over the site for the life of the development. The wildlife corridors and mapped vegetation will be protected on title to ensure future protection of this land</p> <p>The CMS will be a critical document for the ongoing management and maintenance of all community infrastructure. Further detail regarding the management of infrastructure will be required prior to works commencing and will need to be incorporated into the CMS. No dwellings will be approved until the infrastructure for each stage has been completed to the satisfaction of the certifier or General Manager or delegate.</p>
<p>7 Density of development</p> <p>(1) The consent authority must not grant consent to development under this Schedule if the development would result in more than the following number of dwellings on the land:</p> <p>(a) if the land has an area of 10 hectares or more but not more than 210 hectares—4 dwellings plus 1 additional dwelling for every 4 hectares of land greater than 10 hectares,</p> <p>(b) if the land has an area of 210 hectares or more—54 dwellings plus 1 additional dwelling for every 6 hectares of land greater than 210 hectares up to a maximum of 80 dwellings.</p> <p>(2) The consent authority must not grant consent to development under this Schedule if the development would result in the number of persons reasonably accommodated in all the dwellings on the land being greater than 4 times the maximum number of dwellings otherwise permitted by this clause.</p>	<p>Based on a land area of 101.9ha hectares, a maximum of 26 are permitted with an additional dwelling being permitted with the consolidation of an existing crown road currently being closed. However, the amended development only seeks consent for 13 dwellings. This is compliant with the density provisions</p> <p>Not applicable – the subject site is less than 210 hectares.</p> <p>The subject application will be conditions accordingly, to ensure that subdivision is prohibited.</p>
<p>8 Subdivision prohibited</p> <p>Subdivision (other than a subdivision permitted under clause 2.75 of <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>) of land is prohibited if development has been carried out on the land under this Schedule or under provisions similar to this Schedule.</p> <p>Note For example under the former <i>State Environmental Planning Policy No 15—Rural Landsharing Communities</i>.</p> <p>There should be no application for a strata certificate under this Schedule as subdivision is prohibited.</p>	<p>No subdivision will be permitted</p>
<p>9 More than 1 dwelling may be treated as a single dwelling</p> <p>The consent authority may, for the purposes of this Schedule, treat 2 or more dwellings as a single dwelling if it is satisfied that, having</p>	<p>Not applicable – the subject application proposed 13 dwellings. The application does mention that more than one dwelling could be considered as one if only 1</p>

SCHEDULE 1 – RURAL LANDSHARING COMMUNITIES	
REQUIREMENT	COMMENT
regard to the sharing of any cooking or other facilities and any other relevant matter, the dwellings comprise a single household.	<p>kitchen facility has been provided.</p> <p>This is consistent with the SEPP and will be assessed as part of the future approval for individual dwellings. This will also be a condition of consent, recognising that dwellings may be approved in an expanded form while only being approved as a single dwelling ie expanded dwellings</p>

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

Planning Proposal 18/001- Minor Zoning Amendments.

Not applicable to the subject site

SEPP (Coastal Management) 2018

The application was lodged prior to the commencement of this SEPP. The former planning provisions applicable to the site in accordance with Clause 21(1) of this SEPP are not applicable to the subject site. It is further noted that is noted however that the subject site is not subject to the provisions of this SEPP.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The development for rural land sharing does not include specific dwelling designs and has not approved any construction of dwellings upon the identified sites. Dwelling concepts will be reflected within the Community Management Statement in general terms. These building are considered suitable for the development and no objection is raised to the rural land sharing in this regard.

A2-Site Access and Parking Code

Parking:

In accordance with Section A2 the proposed development is required to provide 1 space per dwelling, plus provision for driveway parking of another vehicle. Dwelling sites rather than dwellings are proposed with future dwellings requiring separate approval. Each dwelling site will have approximately 800m² within a building envelope available for carparking in association with a future single storey dwelling. Such will be assessed during future assessments for these dwellings

It is considered that there is ample area at each dwelling to comply with the above.

Access:

Access is currently provided off Wallum Court being a public road, approximately 550m in length. Wallum Court is accessed via Clothiers Creek Road and services 11 other rural lots.

The property also has emergency access to Woodlands Road on the southern extremity of the property. This access will be gated and the CMS will state that this exit is not for general regular use.

Wallum Court is a 6m wide, Class B, Rural Road with a speed limit of 100km. This road is capable of accommodating the traffic from the 13 dwellings.

The proposed development will utilise an existing internal access road constructed for trucks associated with the quarry onsite. The road is sealed for a length 50m past the dwelling on the adjoining 56 Wallum Court, in accordance with the consent conditions of the Quarry.

The internal road system comprises a spine road, two access roads and driveways to serve the 13 dwellings. As mentioned the existing spine road is primarily constructed due to the presence of the quarry onsite in the south western corner. This road will require upgrading due to its degraded condition. This road is of a gravel construction with the exception of the first 150m. However the spine road as existing will be upgraded to bitumen in conjunction with this application. The spur road will have a number of tributaries roads constructed for access to individual home sites. These access roads will service up to 3 lots or may only service 1 dwelling.

The existing cross over is 6.7m wide including splays.



Council's Traffic Engineer has provided the following response to the Traffic Consultant report submitted in support of the application. It is noted that these comments were made prior to the development being amended to 13 sites and the comments are for the development of 27 sites.

The report incorrectly assesses the available sight distance at the intersection of Wallum Court and Clothiers Creek Road on the assumption that Clothiers Creek Road is speed limited to 100km/h. This road is signposted at 80km/h and as the

applicant advises that available sight distances are 230m to the west and 290m to the east, this complies with the Austroads Guidelines which requires 181m.

Whilst modelling has not been provided there are no concerns that the additional traffic associated with the development (27 residential premises) can be catered for on Wallum Court and be absorbed into the adjacent traffic network. There is no requirement to upgrade Wallum Court or its intersection with Clothiers Ck Rd as this has been constructed to cater for quarry trucks associated with the existing consent for the site. Whilst Clothiers Creek Road has a crash history, Council has proactively addressed these through grants under the Federal Black Spot programme. There is no crash (most recent 5 years) history on Clothiers Creek Rd at Wallum Court.

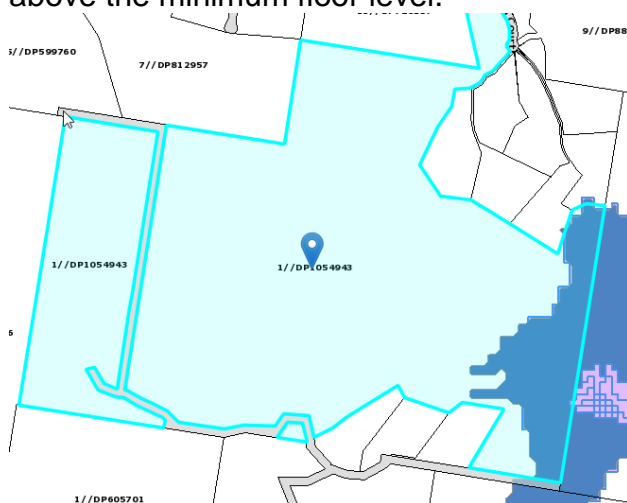
Given its rural location and low traffic volumes, pedestrian facilities or streetlighting is not considered to be warranted.

The development will utilise the existing driveway access off Wallum Ct used by the existing quarry operator which is adequate for the purpose. The report does not refer to an access to Woodfords road and a suitable condition limiting its use to emergency access only should be included in any approvals.

Whilst the report is poor in its response to the school bus issue, there are no concerns raised as the existing road shoulder could be utilised or the school bus operator could enter Wallum Ct and pick up students from the end of the cul-de-sac.

A3-Development of Flood Liable Land

The subject site is partially mapped as flood prone land. The site has a 1:100 year flood level of 6.70 AHD and an adopted minimum floor level of 7.2m AHD. The proposed works including access are located well clear of this area and well above the minimum floor level.



In accordance with Clause A3.10.3 Residential Development of Flood Liable Land (Rural Areas), Residential development the following is advised:

Subdivision

A flood free dwelling site must exist on each new allotment created. The construction of a flood free dwelling site will be permitted only where it can be

demonstrated that such work will not have any adverse effects on floodwaters in the locality.

Where a flood free access exists to the land being subdivided the proposed subdivision shall, as far as practicable, be designed so that a flood free access is provided to the proposed lot or lots.

Development

The habitable area of all residential buildings is to be at a level of not less than the level specified in any building approval having regard to the availability of flood information for the particular locality.

The proposed development (including access) is located well clear of the mapped flood area, with floor levels exceeding 7.2m AHD. The proposed development is compliant with the requirements of Section A3.

A15-Waste Minimisation and Management

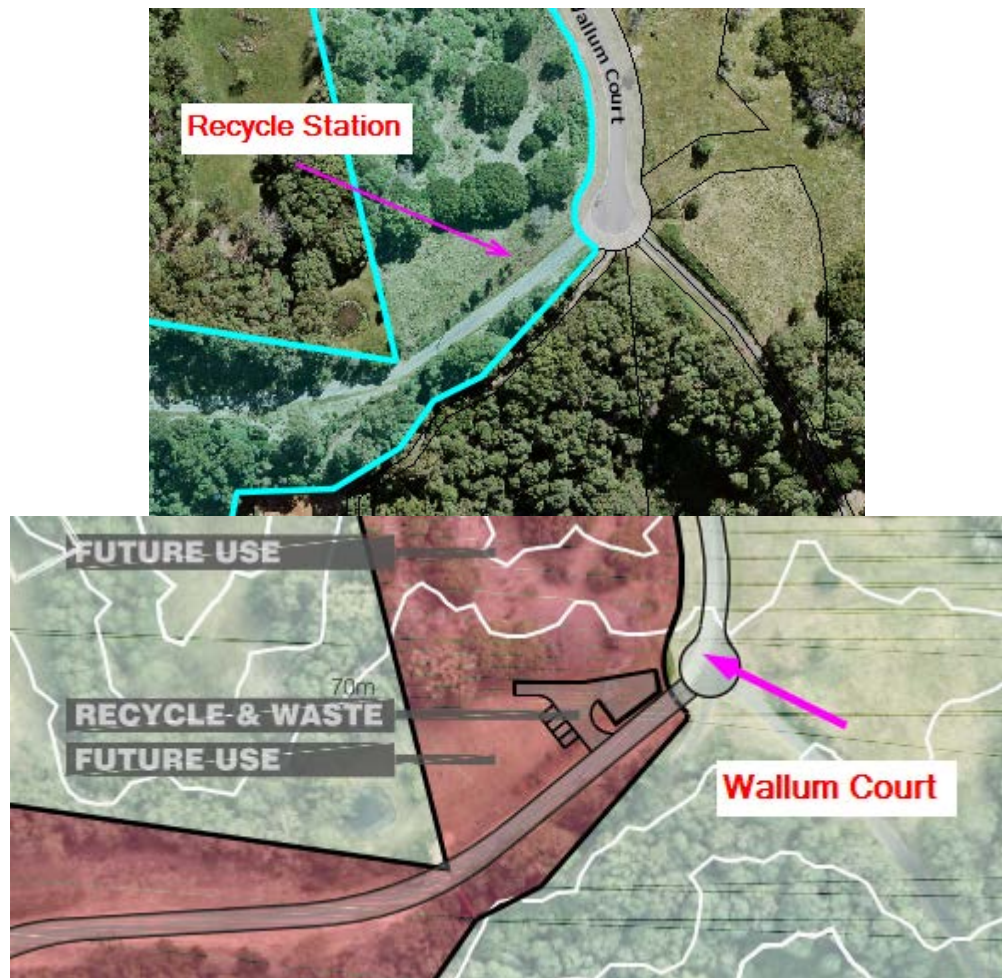
The application has included the location of an area of the land that will be a communal recycle waste station. The application has provided little detail in regards to the management of waste onsite. The draft Community Management Statement provides the following detail in regards to Waste Management;

- *Individual households will be responsible for recycling organic green waste at respective house sites*
- *The community waste and recycle station will accommodate recyclable and waste from individual house sites. Residents of the landshare will be required to take waste to the community station adjacent to Wallum Court and separate recyclable materials and general waste.*

No further detail has been provided. This type of development, being a landsharing community within a rural setting is not specifically addressed within this DCP. Rural dwellings are not required to utilise Council's waste collection services. The development will however be required to provide satisfactory waste management for the 13 dwellings upon the subject site.

The provision of a combined waste and recycling station close to the entrance of the site is considered appropriate to enable any waste collection vehicles a suitable area to collect this material turn by entering and leaving the site in a forward direction. The location of the site will also provide some protection in regards to amenity having regard to the separation distances from dwellings upon adjoining properties and within the rural landshare.

More information in regards to the management of the waste will be required as a condition of any consent granted. However the location of the water station and a commitment to recycling is considered sufficient at this stage. Detail will be required to ensure any general waste is collected within a satisfactory timeframe to prevent any adverse effects such as vermin, odour or insufficient storage areas. This collection may be undertaken by Council's services or a private contractor.



Draft Rural Lands Strategy

A key action of the draft Rural Lands Strategy recently exhibited by Tweed Shire Council is to initiate investigations into Rural Landsharing and Multiple Occupancy opportunities. These investigations are identified with Key Action – Greater Diversity of Rural Housing. These investigations would need to align with other Key Actions that include sustaining agricultural production, protecting agricultural land and support economic development. Another Key Action of the strategy is to protect and improve environmental values and respond to natural hazards. It is considered that the development has responded to the physical and environmental constraints of the land, as amended and is therefore consistent with this Key Action.

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

Not applicable

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

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

The site is not located within an area identified by the NSW Government Coastal Policy

Clause 92(1)(b) Applications for demolition

Not applicable – no demolition is proposed as part of the subject application

Clause 93 Fire Safety Considerations

No

Clause 94 Buildings to be upgraded

No

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

Not applicable to the subject site.

Tweed Shire Coastline Management Plan 2005

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

Tweed Coast Estuaries Management Plan 2004

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.

Coastal Zone Management Plan for Cobaki and Terranorra 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**

Staging

The staging of the site will result in a progressive development of the land commencing with lots along the northern edge for Stage 1 and then progressing from the northern extremity of the site to the south. The primary spur road is mostly constructed for access to the existing quarry, although not at the required standard. The road will be upgraded and sealed in accordance with the requirements of the RFS recommended conditions of consent and Council's subdivision engineer. Each stage requires the construction of minor shared roads and individual driveways to individual dwelling sites.

Council requested sufficient evidence that shareholders of dwelling sites within completed stages are not responsible for costs associated with future stages. The application has provided the following advice in regards to the ownership structure of the landshare, given the development will be undertaken in stages.

On approval, the land will be sold in entirety to a newly formed not for profit Home Unit Company. The sale is by way of an agreed purchase arrangement / contract with deferred settlement milestones tied to the staging plan (total 8).

The company is formed with a number of shares equivalent to the number of approved dwellings (25 shares -lot 5 ~ share 5). The shares are not tied to one and other by value; they represent the value of the share in the land as a whole including all infrastructure.

Sale of individual shares are treated as typical off-the plan contracts managed by appointed solicitors / conveyancers. Deposits are retained in solicitors trust accounts. Settlement completed on completion of the relevant stage.

'Improvements' (buildings and associated site works) on exclusive use areas no not alter the value of the share - they are therefore considered privately owned assets. They are required to be owned by the shareholder. As such, the future sale of a dwelling involves both the sale of the share, and the sale of the constructed asset.

The quarry (Hircona Ply Ltd) operates under the conditions of consent by way of a lease agreement with the Home Unit Company.

4.0 INFRASTRUCTURE FUNDING

The strategy is required to ensure that funding is available to complete all stages of work prior to the sale (or prior to the settlement) of relevant shares.

4.1 Funding for stage 1 infrastructure is borrowed by the home unit company against the value of the land in entirety. It is possible that the vendor (current owner) will offer finance for infrastructure as a supplement or in place of a secured bank loan.

4.2 An infrastructure funding account is setup to manage cash flow for all stages.

4.3 Sale of every individual share requires a set contribution to the infrastructure fund. The amount will be determined on development consent subject to conditions and final castings. The contribution amount will be set at 130% of the total anticipated cost to allow for contingency.

4.4 Shortfalls in infrastructure funding by way of contributions on the sale of early stages are drawn from the loan.

4.5 Should the contingency sum be in credit on completion of all work, the funds will be retained for management, sinking fund or additional infrastructure determined by the community association.

4.6 the settlement share cannot take place until such time as the road has been constructed to service the subject site. Private driveways will be constructed at the shareholders cost.

As such, each of the stage 1 shareholders (total 4) own 1/25~ of the property including infrastructure. The home unit company has paid 4/25 of the agreed purchase sum. 4 lots of infrastructure contribution have been paid to service the infrastructure loan, the infrastructure loan is drawn back down to fund stage 2 infrastructure. This is repeated for each stage.

The Quarry

The land contains an extractive industry known as Bugler's Quarry. The development was granted development consent in 1996. Council issued development consent that was challenged by the residents of Clothiers Creek. This appeal was dismissed. The consent was amended in 1998.

The Plan of Management (POM) was adopted for the operation of the quarry. This POM permitted a maximum annual extraction rate of 7 500 tonnes. Haulage from Clothiers Creek Road was to be limited to a maximum of 70 truck loads per day and a maximum average of 2 truckloads per day, per annum. Haulage from the Quarry via Woodfords road was permitted and limited to three truck loads a day with an average of 2 trips per day per annum.

Permission for blasting within the quarry was included within the consent conditions. The quarry's operating hours are 7am to 5pm Monday to Friday and 8am to 1pm Saturday. Special operational hours were also subject to permission from Council. Blasting hours were also restricted within the consent.

It is intended that material from the quarry is used to construct internal roads. This material will be stockpiled prior to any occupation of Stage 1 dwellings for the protection of residential amenity. Further detail in regards to this stockpiling will be required prior to the commencement of works. No further blasting will be required for this material. A management plan for the containment of this material will be required prior to commencement of the works for Stage 1.

The POM and consent provided for progressive rehabilitation of the quarry and compensatory habitat. Compliance with these requirements of the POM is poor. However, the quarry has had minimal operations recently. The quarry and immediate surrounds have undergone significant cleaning up of machinery and various materials such as dilapidated agricultural waste materials. No rehabilitation of the site has occurred to date and the compensatory habitat is not evident.

However, this application will require the matters relating to the POM to be incorporated into the conditions of consent to ensure rehabilitation and compensatory habitats are completed.

The compensatory habitat is located to the west of the subject site. No dwellings will be in this location and the area will be identified as wildlife corridor reserve. Any consent granted will also require the quarry consent to be surrendered.

The quarry pit will be used for the placement of a monocell containing contaminated material of approximately 910m³ of extracted from several locations across the site. This cell will be placed below the rehabilitated surface and will not be within proximity of any dwellings. The area above the cell will be covered with clean soil and revegetated.

The applicant has provided a preliminary plan to rehabilitate the quarry



As a preliminary plan, this level of detail is considered sufficient and the outcomes when combined with the compensatory habitat to the west will significantly improve this portion of the degraded land parcel. The grass area will also provide passive recreation opportunities for the community once completed for the benefit of all landshare owners.

Traffic, Access and Parking

The primary route for access to the development is via Wallum Court. Wallum Court is accessed via Clothiers Creek road. Clothiers Creek road is signposted at 80km/h and as the applicant advises that available sight distances are 230m to the west and 290m to the east, this complies with the Austroads Guidelines which requires 181m.

Wallum Court currently services 11 other rural properties. The development will result in an additional 84 trips per day. This increase in traffic has the potential to adversely impact residents along Wallum Court due to road capacities and amenity. However the existing consent for a quarry upon the subject site permits up to 70 truckloads per day or 140 trips a day along Wallum Court. Therefore the road has an existing high potential traffic volume and the surrendering of the quarry consent will result in a net decrease in trips movements along Wallum Court.

The use of the site for a rural landsharing community and the cessation of the quarry use onsite is considered to be a positive outcome for resident of Wallum

Court. The road will no longer be used by heavy vehicles for quarry operations and potential vehicle movements in Wallum Court will be lowered. Despite the quarry having minimal activity in recent years, the consent remains valid and the potential for heavy vehicle movements remains high while ever the quarry consent remains active. The rural landshare will initially generate traffic for construction works. However, as the consent for the quarry will be surrendered and no longer permitted to operate, prior to Stage 1 occupation, the cumulative impact on Wallum Court in regard to capacity and amenity traffic movements for residential purposes rather than extractive industry are considered a positive aspect of the development.

The Wallum Court cul-de-sac is capable of catering for the additional traffic associated with the additional dwellings, noting that Council's Traffic Engineer raised no objection to 27 additional dwellings despite only 13 sites being approved.

As the Wallum Court/Clothiers Creek intersection has been constructed to cater for quarry trucks, no upgrade of the intersection is considered necessary. The development will utilise the existing crossing at the end of Wallum Court this access is considered acceptable for the proposed development.

The access from Woodlands Road will be maintained as an emergency exit and informal access. Restrictions on the use of this alternative exit will be conditions of consent.

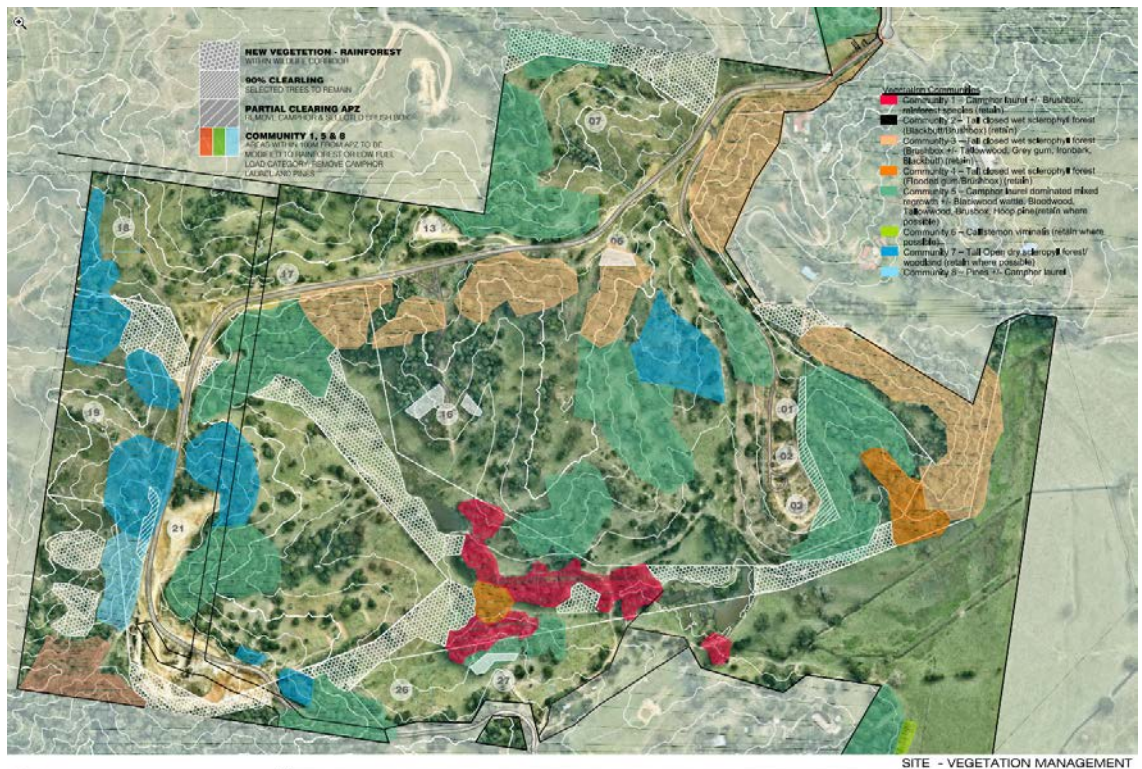
Context and Setting

The site can accommodate the proposed development as amended as the changes now reflect the site specific constraints such as topography, bushfire protection and sensitive vegetation. Dwelling sites located near common boundaries will be required to be landscaped to afford more protection to adjoining landuses and existing dwellings.

The development will improve the environmental value of the land through the augmentation of existing vegetation and the rehabilitation of the existing quarry. The density of the RLS is comparatively low having regard to the density provisions within the SEPP. This density of one dwelling for every 7.7ha is in fact lower than adjoining subdivision patterns in Yandala Place and Wallum Court.

Flora and Fauna

The augmentation and protection of existing sensitive vegetation onsite is a result of significant ecological surveys undertaken and reviewed by Council's NRM Unit. The areas mapped as containing vegetation worthy of retention will be secured by a title restriction as a condition of consent. Landscaping plans for area outside the wildlife corridors will be a condition of consent to afford greater amenity protection for adjoining landowners and future residents, particularly sites, 7, 13 and 18. Asset protection zones will not be permitted at the expense of significant vegetation. The positioning of dwelling envelopes has evolved to ensure vegetation is retained where necessary, based on the field surveys of the applicants consultants.



Council's NRM Unit have provided the following summary of the development;

- Nine (9) broad vegetation communities were identified on site. One community (Community 1) is representative of an Endangered Ecological Community – Lowland rainforest in NSW North Coast and Sydney Basin Bioregion (listed under the *Biodiversity Conservation Act 2016* (BC Act)) associated with a 3rd order watercourse (1:25 000 scale).
- Four (4) threatened flora species were identified onsite being *Archidendron hendersonii* (White Lace Flower - Vulnerable under the BC Act), *Drynaria rigidula* (Basket Fern - Endangered under the BC Act), *Syzygium moorei* (Coolamon – Vulnerable under the BC Act and *Environment Protection and Biodiversity Conservation Act 1999*) and *Cassia marksiana* (Marks Cassia – Endangered under the BC Act)
- Two (2) threatened fauna species were recorded onsite being Rose-crowned Fruit-dove (*Ptilinopus regina*) and Marbled Frogmouth (*Podargus ocellatus*) listed as Vulnerable under the BC Act
- An additional 11 threatened fauna species were considered in the Ecological Assessment to have a high likelihood of occurrence
- Koala records onsite were made in 1995 during survey conducted in association with the quarry application
- The site supports mapped Preferred Koala Habitat (Secondary B) (categorised under the *Tweed Coast Koala Habitat Study 2011*). Preferred Koala Food Trees – *Eucalyptus microcorys* and *E. propinqua* occur as canopy trees within areas of remnant vegetation and as isolated paddock trees. Scratch trace was evident on numerous *E. propinqua*.
- Numerous tributaries of Clothiers Creek traverse the site (1st to 3rd order at 1:25000 scale).
- The site features areas of 'Vulnerable' land being slopes in excess of 18°.

7-part test results

Council's NRM Unit consider that with the implementation of mitigation and management measures/arrangements specified in the recommended conditions of consent significant impact on threatened species, endangered ecological communities and their habitat would be avoided

(c) Suitability of the site for the development

Surrounding Landuses/Development

Surrounding landholders have objected to the proposal due to potential loss of amenity and land use conflicts. These concerns have been addressed within the submission summary below. It is considered that the augmentation of exiting landscaping, the spatial separation of dwellings from common boundaries and the overall reduction in dwelling sites will result in a development that is more acceptable to the surrounding community. Strict conditions of consent will also provide adjoining property owners and farmers with added confidence that the development can operate without detrimental impacts on surrounding landuses

Topography

The topography of the land has required the development to be amended from that originally proposed. Sites that required significant earthworks for access have been removed from the development namely sites 4, 5, 24 and 25.

Site Orientation

Large elevated dwelling sites will provide suitable opportunities for dwellings to have excellent access to natural light and ventilation. Each dwelling will require separate approval at which time site orientation can be further assessed.

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


Notification was undertaken for this development in accordance with DCP No. 11 provisions between the 17 January 2018 and 16 February 2018. During this period, 17 submissions were received.

It is noted that a late submission was received in early May supporting the application.


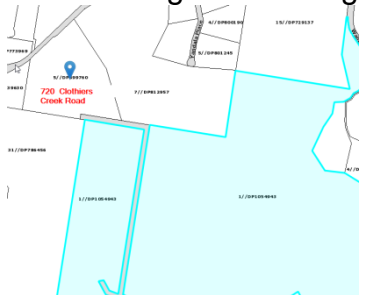
As summary of the issues are provided below with a response

Issue	Discussion
Woodfords Road should be sealed in conjunction with the application	Woodford road will only be an emergency access. Conditions of consent will provide that Woodfords Road shall be for emergency purposes only. The entrance will be gated for security purposes as a condition of consent
Wallum Court should not be utilised as an access due to road capacity	The quarry upon the subject site will no longer operate, with the consent being surrendered as a condition of any consent granted. Wallum Court will have a reduced traffic

<p>when combined with the Quarry. Street lighting and pedestrian access should be provided. There is a potential for a fatal accident along Wallum Court</p>	<p>flow as the quarry and RLS are not proposed to operate concurrently from the site.</p> <p>Councils Traffic Engineer has assessed this objection and considers that Wallum Court has the capacity to cater for the development for 13 additional dwellings upon the site.</p> <p>The intersection of Wallum Court and Clothiers Creek Road is of a higher specification as existing to cater for the existing quarry operations that will cease following any approval.</p>
<p>No subdivisions should be approved in the area</p>	<p>The development is a Rural Landsharing community, not a traditional Torrens title subdivision. The development is permissible subject to the provisions of SEPP (Integration and Repeals)</p>
<p>This large number of dwellings should not be approved without appropriate sewer services available</p>	<p>Each individual dwelling will have an onsite sewerage management system that will service this property. Councils OSSM officer has stated that the recommended wastewater treatment systems, effluent land application areas, size and locations are adequate for the proposed development when assessed in accordance with AS 1547/2012 and NSW Environment and Health Protection Guidelines "On-site Sewage Management for Single Households".</p> <p>It is noted that the number of dwellings on site have reduced from 27 to 13.</p>
<p>Land Management by the current owner has been poor with many weed species being introduced to the site and fence lines unmaintained</p>	<p>It is recognised that current land management practices upon the site have resulted in degraded land and the quarry has historically not being operated consistent with the Plan of Management and conditions of development consent.</p> <p>This development will have positive outcomes in regards to the cessation of the quarry operation, rehabilitation of the quarry site and the implementation of the Habitat Restoration Plan (HRP).</p> <p>The site will also contain significant wildlife corridors. The shared ownership of the land will also provide greater funding by the community association for other land management costs such as fencing, road maintenance and pasture improvement.</p>
<p>The development is contrary to the rural residential strategy</p>	<p>A key action of the draft Rural Lands Strategy recently exhibited by Tweed Shire Council is to initiate investigations into Rural Landsharing and Multiple Occupancy opportunities. These investigations are identified with Key Action – Greater Diversity of Rural Housing. These investigations would need to align with other Key Actions that include sustaining agricultural</p>

	<p>production, protecting agricultural land and support economic development. Another Key Action of the strategy is to protect and improve environmental values and respond to natural hazards. It is considered that the development has responded to the physical and environmental constraints of the land, as amended.</p> <p>The development is not considered contrary to the draft rural lands strategy.</p>
<p>The density of dwellings onsite is excessive</p>	<p>While the initial application proposed the maximum number of dwellings upon the subject site based on land area and the SEPP provisions, an amended application now proposes a reduction in dwelling sites to 13. This number of dwellings better reflects constraints identified by Councils technical officers, specifically topography, geotechnical advice, access roads and vegetation. Council is satisfied that the land can accommodate this number of dwellings and associated infrastructure.</p>
<p>Lack of privacy for residents of Yandala Place</p>	<p>Yandala Place is a rural residential style subdivision located to the north of the subject site. Lots within this cul-de-sac range in area between 2ha and 20ha. The nearest dwelling proposed upon the subject site (Site no 13) will be located 150m from a new dwelling at No 35 Yandala Place. The separation distance between No 35, dwelling 13 and dwelling site 7 provides ample opportunity for selective landscaping to increase privacy between dwellings.</p>  <p>Considering the size of these Lots and the proximity of dwellings and the applicants willingness to provide additional screening, this issue is considered capable of being overcome with suitable conditions of consent.</p>
<p>Lack of Environmental Impact Assessment and Koala Management Plan</p>	<p>Council requested and received significant levels of additional information from the initial lodgement as the level of information was not sufficient. The level of</p>

	<p>information now available to Council is now considered acceptable and a full assessment of the proposal having regard to flora and fauna, including Koalas has been undertaken. The reduced number of sites and amended plans are now deemed acceptable in regards to vegetation management and fauna protection.</p>
<p>The development should not be permitted on a Crown Reserve. This should be turned into an environmental reserve</p>	<p>The application for closing the crown road has been accepted by the Dept of Primary Industry. This area of land is not required to facilitate the approval of 13 dwellings.</p>
<p>The development is inconsistent with the provisions of the SEPP as the development will have a density not consistent with the surrounding land areas.</p>	<p>The development originally proposed 27 dwellings and would have resulted in a density of 1 dwelling for every 3.7ha. Yandala Place for example has an average Lot size of 2ha, with the exception of no 35 Yandala Place that is 20ha in area. The reduced number of dwellings will have a density of 1 dwelling per 7.7ha. This is a much lower density than the adjoining Yandala Place. This is also a much lower density than the 7 Lots located at the end of Wallum Court (No 55-60) that each have an approximate land area of 2- 2.5ha.</p> <p>This issue is discussed in more detail within this report (SEPP). The development is not considered be inconsistent with the range of rural lot sizes in the locality, given the Lot area will be retained and the density of dwellings is lower than surrounding rural residential style Lots mentioned above.</p>
<p>The community management statement allows the keeping of dogs</p>	<p>Dogs will not be permitted within the development and a consent condition will require this to be included within the community bylaws for the protection of fauna upon the site.</p>
<p>Water management is a concern from the site to other properties</p>	<p>An appropriate preliminary Stormwater Management Plan has been submitted and approved by Council. Further conditions will be applied for the implementation of this plan. A soil and erosion control plan will also be required prior the commencement of any works</p>
<p>Vegetation removal and revegetating on any boundary should be undertaken with consultation with adjoining landowners</p>	<p>It is unclear why an objection has stated this, considering the same objector was concerned with privacy impacts due to the lack of vegetation located between the proposed dwelling sites and dwellings upon adjoining properties. Notwithstanding, Councils NRM Unit have proved appropriate conditions following an assessment of the application to protect sensitive vegetation and support the appropriate introduction of wildlife corridors.</p>
<p>Any damage on common boundaries to existing infrastructure shall be repaired at the cost of the developer</p>	<p>This can be a condition of consent</p>

<p>The access road will adversely impact the amenity of the new dwelling at 35 Yandala Place. This road is 200m from the dwelling</p>	<p>The access road is existing and is the same road used for the approved quarry operations.</p> <p>The approval of this development will include the cessation of the quarry and any associated truck movements. The approved of 13 dwellings rather than 25/27 dwellings will significantly reduce the impact upon the amenity of vehicle movements along this road. The road will be sealed and vegetation is proposed along this common boundary. This development is considered satisfactory in this regard.</p> 
<p>Council should half the number of dwellings permitted upon the site</p>	<p>This has been done with amended plans</p>
<p>Lots 7, 13, 17 and 18 should be deleted from the development so there is no overlooking of dwellings in Yandala Place</p>	<p>The property at 35 Yandala Place is spatially separated from the subject site. This landowner has ample room to plant vegetation upon the subject site to provide visual screening between properties. The subject property has included vegetation planting to minimise the impacts of the reduced number of house sites along the northern boundary. The applicant in response to this objection has further stated that additional planting along the northern boundary line will assist with inter lot screening.</p>
<p>The development proposed will result in a step (steep sic?) change in the character of Clothiers Creek</p>	<p>The development as originally proposed had a dwelling density being comparative to two smaller subdivisions immediately adjacent to the subject site. Notwithstanding, the reduction in dwelling sites has significantly reduced the density of the development, being 1 site per 7.7ha.</p>
<p>The development will potentially cause landuse conflicts with traditional farming practices at 720 Clothier Creek Road as this development will focus on organic farming.</p> 	<p>The development application does not mention organic farming other than at a domestic scale with individual landowners. Site 18 has the potential to be the most impacted by adjoining landuses at 720 Clothiers Creek Road. The dwelling envelope is located 80m from the common boundary with 720 Clothiers Creek Road.</p> <p>All farming activities are required to comply with approved practices in regards to the management of any application of synthetic inputs (pesticides?).</p> <p>It is recognised that any additional residential dwellings upon rural land, either with this style of development or otherwise, has the potential to cause landuse conflicts. However, given the reduced density upon the site, land</p>

	<p>use conflict is considered a relatively low risk having regards to the land use existing upon No 720 Clothiers Creek Road and the uses proposed for the subject site.</p> <p>Further assurances can be made with the conditioning of the consent requiring further vegetation planting required along the north western boundary. This planting does not need to be a wildlife corridor, just appropriate for screening</p>
<p>The development will provide other land owners with an idea to do the same</p>	<p>Rural landsharing will not be permissible following 6 August SEPP being repealed. Any future avenues for this style of development would be required to be assessed against the relevant provisions, if there is any avenue for such development provided in the future</p>
<p>The estimated costs of works is not accurate</p>	<p>It is agreed that the estimated cost of works may be undervalued. The cost has been reviewed and the additional DA fees invoiced. The amended design will also result in substantially lower costs and as the primary road has been constructed and materials can be sourced onsite, this cost maybe more a realistic figure</p>
<p>The Waste and Recycle facility is too close to 56 Wallum Court.</p>	<p>The recycling and waste facility is 130m from No 56 Wallum Court. The prelodgement site plan proposed this facility further to the west towards No 56 Wallum Court. The location of the recycling centre is now considered acceptable. Screening of this area by vegetation or structures will also be a condition of consent.</p>
<p>Current stormwater practices on the site are not adequate</p>	<p>It is recognised that the current quarry and associated road network has not been managed to a suitable standard and stormwater issues may have occurred. The current proposal does include a stormwater plan following a request from Council for additional information. The level of detail now provided, combined with the reduced number of sites provides a suitable level of confidence that the development can adequately cater for stormwater management.</p>
<p>The site has been the subject of clearing in 2017 that are now the subject of proposed wildlife corridors. The applicant is not serious about environmental conservation. The application does not adequately address koala habitat onsite.</p>	<p>The site is degraded and it is likely that land clearing of vegetation may have occurred without the necessary approval in the past.</p> <p>The site was the subject of a Routine Agricultural Management Activities (RAMA) issued by the Environmental Protection Authority. The site was also inspected in 2009 for alleged unauthorised removal of vegetation and the matter investigated by Councils Compliance Unit.</p> <p>No compliance action was taken due to the vegetation type removed and the legislation applicable to the site at that time.</p>

	The ecological reporting by James Warren and Associates has been used by Council to ground truth current ecological conditions and condition the future of the development in regards to Habitat Restoration, the type of vegetation classes placed within the wildlife corridor and future protection of these areas.
The density of the dwellings proposed onsite will impact on the existing fauna onsite.	The significantly reduced scale of the development will reduce the impact of the rural landshare on existing flora and fauna while still providing adequate wildlife corridors be established
The development cannot re-establish the agricultural viability of the land when only a small area of the land will be allocated for such	The communal area zoned RU1 will be retained for agricultural purposes. Individual house sites will have the ability to undertake domestic scale agriculture given the site area available to communal use relative to the number of dwellings now proposed. Given the lack of agriculture currently undertaken on site and the concentration upon the quarry operation, the proposed development has a greater opportunity to encourage agriculture than the present land uses occurring.
Off grid power options such as generators have the potential to provide adverse noise impacts for adjoining residents.	13 sites rather than 25/27 sites can easily be conditioned to ensure any alternative power options are adequately housed to protect the amenity of not only residents on adjacent properties but also within the subject site.
Surrounding properties have poor mobile reception. Proposed development should not be allowed to rely on mobile telecommunications	Council will be required to be duly satisfied that dwellings can be serviced with either landlines or adequate mobile coverage
The community management statement provides insufficient detail on how the management strategies proposed will be enforced once the development commences.	Council acknowledges that the details provided by the application are not of a sufficient level of detail for commencement of the development. Council will require additional details prior to the release of any construction certificate to provide certainty to both adjoining and future residents that the intent of the SEPP can be met. Council will also need assurances that the development will proceed as intended with sufficient protection for the environment.
Concerns are raised regarding ecotourism mentioned in the SEE and the statement that more than one dwelling can be treated as a single dwelling	Eco tourism has been removed from the development proposal. A condition will also restrict the development from any form of tourist use. The statement regarding more than one dwelling can be treated as one dwelling is no inconsistent with various forms of dwelling homes that may include an 'expanded style dwelling that only contains one kitchen. Any design for dwellings will be the subject of a separate application. This application would ensure the dwelling is not capable of being separately occupied despite the potential for

	more than one structure
<p>Traffic during construction period will be unacceptable due to necessary infrastructure provision and will clash with Quarry operations.</p> <p>The stated 140 trips per day for the quarry do not occur.</p> <p>The quarry road has not been sealed</p>	<p>The reduced number of sites, combined with the staged development and cessation of Quarry operations prior to the occupation dwellings within the first stage (4 dwellings) will increase traffic movements within Wallum Court. Councils Traffic Engineer is satisfied that the road network can cater for this development and short term traffic increases are not unanticipated for any development process.</p> <p>While stockpiled material from the quarry will be used for the upgrading of internal roads, the quarry will not operate as a commercial business following any construction certificate to commence stage.</p> <p>It should be noted that the quarry does have an approval to undertake up to 140 truck trips per day.</p> <p>The internal roads will be sealed as a condition of this consent and no occupation of dwellings within each stage will be permitted until all necessary infrastructure is completed. It is recognised that the operation of the Quarry historical has been the subject of compliance issues. These issues will be resolved if this application is approved. The quarry road was however sealed in accordance with conditions of consent for a distance of 150m.</p> <p>The development consent for the quarry will remain active if this development does not proceed.</p>
<p>The development will result in reduced property values and be substandard low cost housing</p>	<p>This is not a consideration under the Environmental Planning and Assessment Act. No evidence has been provided that the development will be substandard housing. Any subsequent DA for dwellings will be assessed against the provisions of the EPA Act.</p>
<p>The development is contrary to the aims of the SEPP provisions as the area is not experiencing population loss and the development will create an unreasonable demand on public amenities and services</p>	<p>It is agreed that the locality is not experiencing population loss. However the proposal will provide opportunities for the land share community to share facilities in a rural setting, without harming the natural environment and will not create an unreasonable or uneconomic provision of public amenities or services.</p> <p>This conclusion has been made having regard to the number of dwellings that will be approved, the minimisation of infrastructure such as connection to grid electricity and self-reliance for water and disposal of waste.</p>
<p>The draft community management statement is not enforceable as the unit owners will be</p>	<p>Any consent granted will require the Community Management Plan to be finalised and approved prior to any construction certificate being issued for the first stage. The ongoing compliance with the community</p>

<p>responsible for such rather than an external compliance entity</p>	<p>management statement will be a condition of any consent granted. The operation of the RLS consistent with the CMP will be an ongoing compliance matter for the life of the development for Tweed Shire Council.</p> <p>The draft CMP is recognised as not being sufficient in detail. The provision of a document that contains far greater detail, timeframes and outcomes would be a condition of any consent granted</p>
<p>Roads will not be to a sufficient standard as they will be managed by the landowners.</p>	<p>The internal roadwork will require compliance with the provision Planning for Bushfire Protection to ensure fire trucks can access the property.</p>
<p>The management of the development will not be sustainable given the significant infrastructure</p>	<p>The feasibility of the development having regard to the number of sites that will be approved relative to the amount of infrastructure required is not clear. Sufficient protection measures for potential landowners can however be provided to ensure all necessary infrastructure and works for the relevant stage are completed prior to shares being sold for that stage and construction certificates issued for relevant dwellings</p>
<p>The enhancement of the natural resource base will rely upon future landowners capital investment and should be imposed into the CMP</p>	<p>The development, if approved will be required to enhance the natural resource base through the creation of wildlife corridors and retention of the RU1 land for agricultural purposes. This RLS community will be bound by conditions of consent and undertakings of the SEE in regards to the provision of infrastructure. Individual dwellings will not be required to farm as such. Further the community will not be required to undertake farming activities as pretence for development approval. This is similar to surrounding properties in that landowners are not obliged to utilise land for agricultural purposes. The SEPP also does not require the rural landsharing to undertake agricultural pursuits</p>
<p>The wildlife corridor is fragmented and crossed by roads</p>	<p>Councils NRM Unit is now satisfied that the wildlife corridors and crossings are satisfactory. AN updated wildlife corridor plan with reduced numbers of dwellings where the removal of vegetation was required to facilitate APZs will now ensure that the development is satisfactory in regards to the enhancement of existing vegetation onsite.</p>
<p>The development has not sufficiently addressed potential damage to waterways</p>	<p>The development application has now been accompanied by a stormwater management plan a preliminary erosion and sediment control plan. Further details will be required prior to the commencement of the use. Dwelling sites have also been removed where excessive cuts and fill were proposed to enable the construction of RFS complaint access roads.</p>
<p>Concerns regarding the future compliance with the CMP and conditions</p>	<p>Compliance issues are always an ongoing risk with development of this nature. Council can only ensure that satisfactory protections are imposed so that in the event</p>

of consent

of future issues arising, the consent can be relied upon to impose compliance.

(e) Public interest

The proposed development has been assessed against all relevant policies and legislation. The proposed development is permissible with consent and is considered not to create a significant impact on the natural or built environments subject to recommended conditions. The proposed development is considered not to negate public interest.

OPTIONS:

1. Approve the Development Application subject to deferred commencement conditions.
2. Refuse the application providing reasons.

Option 1 is recommended

CONCLUSION:

The subject application has been subject to a thorough assessment against the provisions of the Environmental Planning and Assessment Act, the Tweed Local Environmental Plan 2014 and the relevant State and local provisions. Submitters concerns have been given due consideration and the application has been assessed against the provisions of SEPP Integration and Repeals and received GTAs from the Department of Primary Industries Water.

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 to the Land and Environment in respect of any Council determination.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Update on Parking Contribution Waiver - Murwillumbah CBD/South Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you

We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

On 18 May 2017 Council resolved the following:

"that for a period of 12 months commencing 1 June 2017, a general amnesty/waiver on payment of upfront parking contribution fees or amnesty/waiver on provision of car parks under the car parking development code be provided and this amnesty/waiver be limited to a maximum of 3 (parking) spaces per new or expanding businesses in the Murwillumbah Central Business District and South Murwillumbah (specifically Prospero Street) region."

To date the following development applications have or are relying upon the waiver to meet carparking requirements:

- Two spaces waived for DA18/0064 - Nos. 22-26 Prospero Street, South Murwillumbah for a change of use to a hair salon.
- Proposal to waive three spaces for DA17/0573 - No. 1 Brisbane Street, Murwillumbah for a mixed use development (Arts Precinct).
- Proposal to waive three spaces for DA18/0231 - No. 32 Murwillumbah Street, Murwillumbah for a café expansion (Keith's cafe).

There has been eight enquires regarding the waiver.

RECOMMENDATION:

That Council notes this report and that the waiver applying to Council's carparking contribution plan for Murwillumbah CBD and Prospero Street concluded on 31 May 2018.

REPORT:

Following the resolution of Council, two rounds of promotion through the Tweed Link were undertaken to inform the community of the amnesty.

Three development applications have been submitted that rely on the carparking waiver with one determined by way of approval and the other two under assessment at the time of writing. Eight enquires regarding the waiver were made over the period for change of uses or minor expansions.

The waiver whilst serving a purpose for 12 months has the effect of long term shortfalls in onsite parking as the shortfall stays with the site forever in the form of a credit. The public domain is then imposed upon to cater for the shortfall of onsite carparking spaces which is contrary to Council's wider carparking strategies and policies.

OPTIONS:

1. Reinstate the waiver for another 12 months.
2. The waiver applying to Council's carparking contribution plan for Murwillumbah CBD and Prospero Street concluded on 31 May 2018.

Option 2 is recommended.

CONCLUSION:

It is considered that the waiver has served its purpose and a return to applying Council's standards is optimal.

COUNCIL IMPLICATIONS:

a. Policy:

This adopted position of Council lapsed on 31 May 2018.

b. Budget/Long Term Financial Plan:

Whilst there is no car parking contribution plan for South Murwillumbah the value of the 2 spaces provided under the amnesty based on the Murwillumbah CBD plan totals \$33,976. At some point in the future Council may be required to fund the additional parking demand generated by this business. Similarly the two applications yet to be determined may result in a future parking liability to Council of 6 spaces totalling \$101,928. The total cost of the amnesty is therefore estimated at \$135,904.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

Promotion of the amnesty was undertaken in the Tweed Link in November 2017 and February 2018.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Notice of Motion 18 May 2017 (ECM 5362108)

5 [PR-PC] Rural Land Strategy

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider** **Leader**

SUMMARY OF REPORT:

At its meeting of 5 May 2018 Council resolved to defer a determination of the draft Rural Land Strategy, and for a workshop to be held with the Combined Tweed Rural Industries Association (CTRIA). A workshop was subsequently held on Friday 15 June 2018.

This report presents a response to the feedback received by Councillors at the workshop and in particular the issues related to the existing long-standing minimum 40 hectare planning control.

A detailed response to all submissions received during the public exhibition and community engagement, which occurred between 7 November 2017 and 28 February 2018, was reported in the May 2018 Council Business Paper. Those attachments are reproduced as part of this report to ensure there is a comprehensive record and with no further amendment to those previously reported.

The report concludes that the draft Rural Land Strategy is consistent with the Policy Directions endorsed by the Council in 2016 and will provide the certainty needed to guide future land-use decisions concerning the Shire's rural lands; it is recommended for adoption.

RECOMMENDATION:

That:

- 1. The Draft Rural Land Strategy ("Tweed Rural Land Strategy 2036") as attached to this report be adopted;**
 - 2. An implementation plan ("Implementation Plan 2018/36") be prepared and reported on annually;**
-

3. **Public notice of the Council's decision to adopt the *Tweed Rural Land Strategy 2036* and preparation and annual reporting of the *Implementation Plan 2018/36* is published in the Tweed Link; and**
4. **A copy of *Tweed Rural Land Strategy 2036* is made available to the Director-General of the Department of Planning and Environment or their delegate for endorsement in accordance with Section 9.1 (Ministerial Direction 1.2) of the *Environmental Planning and Assessment Act 1979*.**

REPORT:

The draft Rural Land Strategy was presented to the Planning Committee meeting held 3 May 2018 for adoption. Council resolved to defer the report for a workshop with the Combined Tweed Rural Industries Association (CTRIA).

This report provides an update on discussion at the Council workshop of Friday 15 June 2018 and proposes that the attached draft Rural Land Strategy (RLS) be adopted.

As reported on 3 May 2018, the draft RLS was on public exhibition for a period of 17 weeks from 7 November 2017 to 28 February 2018. During this time 10 information sessions were convened at which nearly 100 people attended.

29 submissions were received; 24 from private parties, one each from the CTRIA, Crown Lands Department, The Office of Environment and Heritage (OEH), the Department of Primary Industries (DPI), and Scenic Rim Regional Council.

A detailed response to all submissions was prepared and reported to the 3 May 2018 Planning Committee meeting, and is attached to this report. The report also provided discussion under the following headings:

- Community engagement and public exhibition;
- Submissions;
- Minimum lot size, the 40 hectare rule and further subdivision;
- Increased flexibility in the RU1 and RU2 zones;
- Small lot clusters, R5 Large Lot Residential and subdivision;
- Subdivision for primary production purposes;
- Allotments split by infrastructure;
- Dwellings constructed without consent;
- Additional amendments, and
- Implementation.

Response to the CTRIA presentation

While the majority of matters raised by the CTRIA representative at the Council workshop held on 15 June 2018 have been previously addressed as part of the submissions review, there are two matters warranting a further reply and these are addressed below, as:

- 40 hectare minimum lot size (in RU2 zones); and
- Additional residential opportunities within rural areas.

40 hectare minimum lot size

During Stage 1 of the Rural Land Strategy project a *Resource Inventory and Land Capability Assessment* was prepared by Urban Enterprises the consultants who also prepared Council's Economic Development Strategy. The Assessment states that Tweed Shire remains a significant agricultural producer, particularly in horticulture and sugarcane industries.

Tweed Shire is recognised as a state-level significant agricultural producer; contributing approximately 30% of State product value of sugarcane and bananas, and 10% of the State’s tropical orchard fruit.

While comparatively the Tweed does not have the same quantity of larger broad acre farms typically found further west, Tweeds rural and agricultural industries are a significant economic driver with a total agricultural output of \$58m (id community 2011). In 2011, 10% of employment of rural residents were supported by primary industries (as compared to 21% for rural NSW), with data indicating that employment of rural Tweed residents is highly specialised in tertiary industries compared to rural NSW, and highly linked to urban centre nodes and services.

Based on location, scenic qualities, climate, and lifestyle opportunities Tweed is identified as being in the top 10 most diverse rural produce areas of NSW. However along with Tweed’s enviable climatic and amenity opportunities comes increased pressure on agricultural land from lifestyle purchase which has influenced not only the value of rural land but also rural land practices. This is further compounded as long-time residents approach retirement, and opportunities for more innovative and diverse farming practices are being pursued with new ‘green-change’ residents who have less connection to more traditional farming practices.

Representations to remove the 40 hectare minimum lot size development standard was the focus of the CTRIA presentation who sort to discount the relationship between productive farms and the minimum lot size. They further advocated for the flexibility of landowners to further subdivide in order to downsize or raise capital for re-investment. However, as illustrated within Figure 1, the majority of rural allotments across Tweeds rural landscape are already less than the Minimum Lot Size (MLS) with 50% of allotments in the RU2 Rural Landscape zone less than 3 hectares, and 60% less than 5 hectares. This smaller rural allotment pattern is further reflected in Figure 2 which indicates that the majority of land holdings consist of a single rather than multiple allotments.

In this regard, retention of the minimum lot size development standard serves to retain the remaining 10% of agriculture land holdings currently over 40 hectares. While further broad scale reduction in the minimum lot size is not proposed, the draft Strategy does provide opportunity for a greater diversity of housing, support for rural tourism, and ongoing protection of the natural environment, rural landscape and character presented across the nine policy directions previously endorsed by Council.

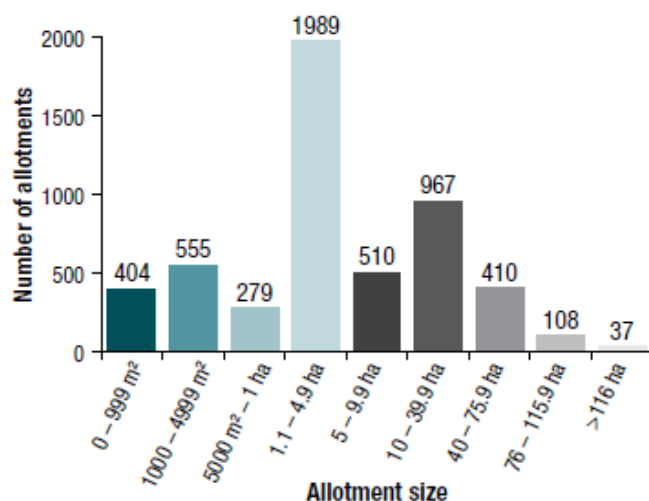


Figure 1: RU2 Rural Landscape – Lot Size Breakdown (Extract from draft Rural Land Strategy)

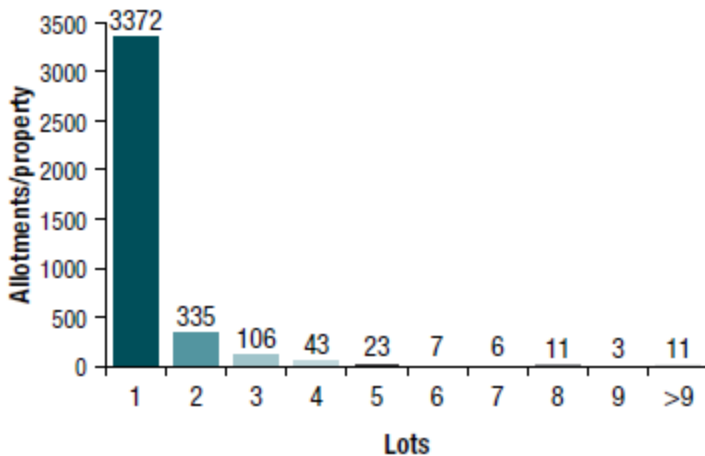


Figure 2: RU2 Rural Landscape – Number of lots per property (Extract from draft Rural Land Strategy)

Residential opportunities within rural areas

Part of the representations by the CTRIA to remove the 40ha minimum lot size development standard was to increase residential opportunities including subdivision within rural areas.

The draft RLS is proposing a number of actions to increase housing opportunities including enable detached dual occupancies as permissible with consent within the RU1 Primary Production and RU2 Rural Landscape zones on properties of at least 40 hectares, and secondary dwellings with consent in these zones on allotments of at least 10 hectares.

In addition Action 89 of the RLS is to: Undertake a supply and demand analysis as the first stage in assessing the need for further subdivision of rural land and a rural residential strategy. The intended purpose of which is to provide guidance on the need for further investigations into development of rural land for lifestyle purposes.

Whilst currently outside of the scope of the RLS and Strategic Planning and Urban Design Units' work program, the preparation of a Rural Residential Strategy would identify opportunities relating to new rural residential development based around locational, infrastructure and land capability criteria and provide a framework for which Council can assess the appropriateness of future rural residential planning proposals and development applications.

OPTIONS:

1. Adopt the recommendations of this report and in doing so adopt the draft Tweed Rural Land Strategy 2036, prepare and Implementation Plan 2018/36 and notify the public via the Tweed Link about the decision to do so, or
2. Defer consideration of the report and provide the reason for doing so.

Council officers recommend Option 1.

CONCLUSION:

The draft Rural Land Strategy has undergone one of the most exhaustive and diverse public engagement processes undertaken by Council.

Submissions received have reflected the diverse nature of rural landowners and landuses which typify the Tweed and distinguish it from other peri-urban and rural councils.

The draft Rural Land Strategy provides a blend of options which support the nine policy directions previously endorsed by Council and is presented for adoption.

While representations have been made to remove the 40 hectare minimum lot size to facilitate further subdivision, the majority of rural allotments already are substantially less than the MLS. Retention of the minimum lot size will ensure the retention of the existing 10% landholdings above 40 hectares.

Notwithstanding that the RLS was never intended to be a rural residential strategy, the draft RLS proposes completion of a supply and demand analysis as an initial stage in assessing the need for a comprehensive Rural Residential Strategy; however if Council should so resolve, the draft RLS could be amended to refer specifically to preparation of a rural residential strategy, which would need to be added to the SPUD Unit work programme.

Given that the majority of matters raised in the CTRIA presentation to Council were part of their submission to the public exhibition of the draft RLS, a detailed response to this and all submissions can be found in the attachments to this report.

No amendments have been made to the Draft Strategy as reported to Council's 5 May 2018 meeting; likewise, attachments to this report also remain unchanged.

The draft Tweed Rural Land Strategy is attached to this report and recommended for adoption by Council.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Implementation of the strategy will be both time consuming and may require additional resources and coordination between Council divisions and government agencies. An estimate of the budgetary implications and scheduling of each proposed action has been identified in the Implementation Plan to the Strategy.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Tweed Rural Land Strategy 2036 (ECM 5228599)
- Attachment 2. Draft Tweed Rural Land Strategy response to submissions received during public exhibition – 17 November 2017 – 28 February 2018 (ECM 5227704)
- Attachment 3. Rural Strategy – Additional amendments (ECM 5227706)
-

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

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: GT1/LEP2010/Heritage/ACH

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Collaborator Leader

SUMMARY OF REPORT:

The *Aboriginal Cultural Heritage Management Plan 2018* and mapping represents a significant body of work, in consultation with the Aboriginal community over a 4 year period.

The plan has been prepared on a shire-wide basis to assist property owners and developers understand the potential for Aboriginal Cultural Heritage (ACH) within the Tweed Shire and the appropriate steps required to avoid harm to ACH in accordance with current legislation.

The plan represents a best practice approach to the management of ACH and is broadly consistent with the recently exhibited Office of Environment and Heritage draft Bill and *Aboriginal Cultural Heritage Act 2018*, which will, as exhibited, require a landscape based mapping methodology, consultation with the Aboriginal community upfront in the planning process, introduces intangible cultural heritage and sets up a similar management and assessment process.

The draft ACHMP was publicly exhibited for an extended period of 145 days, during which 48 submission were received.

The draft ACHMP has been prepared consistent with the current legislation applying to Aboriginal cultural heritage and with the support of the OEH, DPE and the Aboriginal Land Council's at local, regional and state level.

Submissions received have been discussed within this report and a detailed review of the submissions is provided in Attachment 1 to this report.

Arising from the submissions minor amendments have been made to the Plan, Appendix 7, and a new section added to address the Aboriginal cultural heritage assessment requirements where assessment has been undertaken at the rezoning or subdivision stage.

This section is included to provide an acknowledgement of suitable ACH assessments (prepared at rezoning or subdivision stage) and a clearer path forward for the recognition of those assessments in the context of future development. This seeks to avoid duplication of the ACH requirements. For these reasons it is not considered necessary to re-exhibit the plan.

In addition, this report recommends the repeal of the *Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006* upon the adoption of the shire-wide ACHMP 2018.

As such the report seeks Council's endorsement to finalise the ACHMP and undertake the next steps of implementation.

RECOMMENDATION:

That Council:

- 1. Adopts the final Aboriginal Cultural Heritage Management Plan 2018, amended as discussed within this report and provided in Attachment 2, noting and including the recommended actions within Section B6 and the exhibited mapping;**
- 2. Commences a Planning Proposal to amend the Tweed City Centre Local Environment Plan 2012 and the Tweed Local Environmental Plan 2014 to incorporate the amendments as discussed in this report and within the Aboriginal Cultural Heritage Management Plan 2018;**
- 3. Investigates the potential to amend the Tweed Local Environmental Plan 2000 to incorporate the amendments as discussed in this report and within the Aboriginal Cultural Heritage Management Plan 2018;**
- 4. Repeals the Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006 upon adoption of the Aboriginal Cultural Heritage Management Plan (ACHMP) 2018; and**
- 5. Provides public notice of the adoption of the Aboriginal Cultural Heritage Management Plan 2018 and the repeal of the Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006.**

REPORT:

Background

Council commenced preparation of an Aboriginal cultural heritage management plan in 2012 arising from the adoption of the Community Based Heritage Study in 2012 and recognition of the need for a strategy to appropriately identify and protect Aboriginal cultural heritage.

Following many years of consultation, mapping review and development of the management plan by Council staff, Council resolved at the Planning Committee meeting of 5 October 2017 that:

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

This report provides a review of the submissions received during the public exhibition of the draft Aboriginal Cultural Heritage Management Plan (ACHMP) and seeks Council's adoption of the revised and attached Aboriginal Cultural Heritage Management Plan 2018.

Public exhibition and consultation

Council staff had previously presented the project to the Tweed Shire Council (TSC) Industry breakfast forum 26 September 2017 at Tweed Heads. The purpose of the presentation was to advise industry professionals of the forthcoming draft ACHMP and the intent of the plan in readiness for its exhibition.

In accordance with the Council resolution the draft ACHMP 2017 was originally publicly exhibited from 17 October to 20 December 2017.

In December Council received a number of representations from the community for an extension to the exhibition period.

As such the public exhibition was initially extended until 19 January 2018 and then further extended to Friday 16 February 2018 to allow for an additional community information session at Banora Point.

In total the draft ACHMP was publicly exhibited for a period of 145 days.

The public exhibition material included the draft ACHMP, a suite of fact sheets, the mapping in both PDF and interactive digital mapping overlaid on aerial photography, the Memorandum of Understanding and links to relevant legislation and guidelines.

The public exhibition material was made available on the Council's website and in hard copy at the Murwillumbah Civic and Cultural Centre and the Tweed Heads Civic Centre.

Notice of the public exhibition and follow up promotion was placed in the *Tweed Link* as follows:

- 17 October 2017 advising of the public exhibition and information session dates and times;
- 31 October 2017 promoting the relevance of the plan to all development;
- 7 November 2017 promoting the relevance of the plan to all development and information session dates and times;
- 5 December 2017 advising of rescheduled Minjungbal Museum Information Sessions;
- 20 December 2017 media release notifying of an extension to the exhibition and submission period until Friday 19 January 2018, arising from residents' concerns;
- 11 January 2018 media article advising and reminding of the extension of the exhibition period;
- 23 January 2018 promoting the additional information session at Banora Point and extending the submission period until 16 February, 2018; and
- 30 January 2018 promoting the additional information session at Banora Point and extending the submission period until 16 February, 2018.

A media release on the draft ACHMP 2017 was made on 28 November 2017 and followed up with an ABC North Coast radio interview.

This was reflected in a media article in the Tweed Valley Weekly on 30 November 2017.

Community information sessions

Twelve community Information sessions were held throughout the Shire, with a total of 83 attendees, as follows:

- **Fingal Heads:** 6 attendees Tuesday 24 October 2017
- **Tweed Heads:** 1 attendee Wednesday 25 October 2017
- **Uki:** 10 attendees Wednesday 8 November 2017
- **Burringbar:** 6 attendees Wednesday 15 November 2017
- **Murwillumbah:** 5 attendees Tuesday 21 November 2017
- **Tyalgum:** 2 attendees Wednesday 22 November 2017
- **Pottsville:** 0 attendees Monday 27 November 2017
- **Kingscliff:** 4 attendees Wednesday 29 November 2017
- **Piggabeen:** 2 attendees Tuesday 5 December 2017
- **Chillingham:** 3 attendees Wednesday 6 December 2017
- **Minjungbal Museum, Tweed Heads:** 2 attendees Wednesday 13 December 2017
- **Banora Point:** 42 attendees Wednesday 7 February 2018

Industry professional sessions

Direct emails were sent out to an industry professional database of 222 organisations, including private certifiers, planners, heritage consultants, surveyors, builders, architects, volume home builders, draftspersons and the like advising of two industry / professional sessions. A total of 16 industry professionals attended the information sessions as follows:

- **Murwillumbah:** 11 attendees Tuesday 7 November 7 2017
- **Tweed Heads:** 5 attendees Tuesday 14 November 2017

Staff information sessions

Six staff information sessions with a total of 151 staff attendees from across all areas of Council were held as follows:

- 9 November Council Chambers Murwillumbah: 25 attendees
- 14 November Council Chambers Murwillumbah: 15 attendees
- 16 November Council Chambers Murwillumbah: 15 attendees
- 23 November Harvard Room Tweed Heads: 44 attendees
- 28 November Council Chambers Murwillumbah: 22 attendees
- 30 November Buchanan Room Murwillumbah: 30 attendees

Aboriginal community consultation and support

Throughout the project Council has liaised frequently with the Aboriginal Advisory Committee (AAC) and the Tweed Byron Local Aboriginal Land Council (TBLALC) drawing on their knowledge through the mapping and ongoing feedback on the proposed processes and procedures.

Throughout the public exhibition period between 3 and 6 members of the TBLALC voluntarily attended all of the community information sessions, including Mr Des Williams (Chairperson), Ms Leweena Williams (CEO), Mr Ian Fox (then Cultural Heritage Officer), Mr Warren Phillips (Cultural Heritage Officer), Mr Maurice Gannon (Cultural Heritage Officer) and Ms Gina Combo (Cultural Heritage Officer).

The ability to freely discuss the plan with the Aboriginal community members in attendance was very well received by the wider community members who attended the information sessions.

In addition to the TBLALC attendees, Ms Tina Williams, the Northern Region Local Aboriginal Land Councillor for NSW Aboriginal Land Council, attended the Uki Information session.

Arising from the Uki information session Tweed Shire Council staff were invited to attend the Northern Region Local Aboriginal Land Council Forum on 30 November 2017 to present the Tweed draft ACHMP. This was very well received by the forum members.

A separate information session was to be held at Minjungbal Museum on Thursday 30 November 2017; however this was postponed to Wednesday 13 December 2017 due to

conflicts with the above forum. It is noted Councillor Cooper attended the November session.

The rescheduled session had 2 attendees.

Agency and Council consultation

Council staff liaised with the NSW Office of Environment and Heritage (OEH) throughout the process to ensure that the draft Plan is consistent with the current legislation and that it is easily transferable to the proposed legislation.

Council staff liaised with the NSW Department of Planning and Environment (DPE) at key stages to ensure the Plan would integrate into the planning framework, that there would be broad acceptance with the implications for exempt and complying development, and that the proposed amendments to the LEPs would be acceptable.

Direct referral was sent to the NSW Department of Planning and Environment (DPE) and the NSW Office of Environment and Heritage (OEH) as part of the public consultation.

Mr Dimitri Young, OEH Senior Team Leader Planning North East Branch, attended the Banora Point Information Session.

A presentation on the draft ACHMP was made to the NOROC Planners meeting in Murwillumbah on 5 December 2017.

Submissions

A total of 48 Submissions were received, comprising:

- 43 community submissions;
- 3 Land Council submissions, being: local regional and state;
- 2 agency submissions, being the Office of Environment and Heritage and the Department of Planning and Environment.

A detailed review of the submissions received is provided in Attachment 1 to this report.

Agency submissions

The OEH submission has raised no concerns with the Plan, considers the Plan well-structured and comprehensive containing all the relevant information necessary to consider ACH values. OEH have no further recommendations or amendments.

The DPE have committed to working with Council to ensure the protection of areas of high Aboriginal cultural significance is achieved consistently across the hierarchy of environmental planning instruments. The relationship of planning definitions is being investigated by the DPE. It is noted that if the definitions are amended the approach in the plan may be altered, however the intended outcomes will remain unchanged.

The DPE has expressed some concern with the mapping sitting outside of the LEP. However, they note this detail may be determined during the future planning proposal and will not impact on the intended outcomes of the Plan.

Submission themes

In summary seven submissions fully support the draft ACHMP and its management directions. A number provide qualified support in general for looking after Aboriginal cultural heritage, however, objected to the mapped areas applying to their land.

A significant number of the submissions were from the Terranora (23) and Fingal Head (3 objecting and 2 supporting) areas. The Terranora and Fingal submissions were in response to a letter box drop by a resident of each area, which included a mix of both information and personal opinion.

The Terranora submissions raised concern with the mapped predictive area applying to the Terranora ridge, included in the following discussion.

Fingal Head submissions raised concern as to why the Fingal Spit was not mapped. This is also addressed following. It is noted a submission of support was received from the Fingal Head Community Association.

The common themes of the submissions generally include:

Concerns with the consultation undertaken:

Many submissions raised concern there had been inadequate consultation.

Planning Comment

Extensive consultation beyond standard expectations and requirements, as detailed above has been undertaken.

Recommendation

No amendments regarding further consultation.

Concerns with perceived delays and costs to the development process:

Many of the submissions raised concern with perceived delays and costs to development, as well as possible devaluation of property. Some submissions also raised concern with the cost of undertaking an assessment or referral with the Aboriginal community.

Planning comment

It is noted that the requirements for assessment of ACH to avoid harm are currently in place under the *National Parks and Wildlife Act, 1974* (NPW Act). There have been instances where people unknowingly have disturbed ACH and at this point all development is put on hold while the appropriate investigations and permits are sought, potentially a minimum four - six months in the middle of a development. This Plan seeks to assist property owners understand these processes and the actions required where there may be harm to ACH.

Key to this process is consultation up front with the Aboriginal community for the landowner to understand any potential risk of harm to Aboriginal Cultural Heritage (ACH). This consultation and assessment prior to lodging a development application (DA) seeks to minimise any additional delays in the processing of applications as the considerations have been made prior to lodging the DA.

The representative Aboriginal Land Council is acknowledged under the *Land Rights Act 1983* as responsible for the promotion, awareness and management of Aboriginal Cultural Heritage (ACH). Aboriginal people are acknowledged as the appropriate custodians of their ACH under legislation and planning policy. As such they have the right to charge a suitable fee for their cultural knowledge. The cost of this service and/or assessment is applied similar to any other standard cost of assessing the suitability of development, such as undertaking a bushfire or flooding assessment.

Concerns regarding devaluation of property are common with all new planning procedures; however, the mapping is no different to mapping advising people of bushfire risk, acid sulphate soils or any other consideration requiring actions and assessment to determine the suitability of development.

It is noted that the management plan recommends notification of the mapped *Aboriginal Place of Heritage Significance* (Known areas) on S10.7 Planning Certificates (former s149 certificates) where the actions will be required under the Local Environmental Plan (LEP). However, land mapped as *Predictive* is not proposed to be included on planning certificates, as the actions are recommended rather than required.

Recommendation

No amendments arising from these concerns.

Objection to the predictive mapping layer:

Most objections related to the predictive mapping layer by submitters who contested the process of applying the mapping, the relevance of the criteria and therefore the potential for Aboriginal cultural heritage, many stating that they have farmed or owned the land for a long period and not ever seen cultural heritage. Many submissions requested the mapping layers be removed.

Planning comment

Aboriginal settlement of the Tweed extends up to 40,000 years and the mapping is informed in part by cultural knowledge of settlement, ceremony, stories and the like over that period of time. It is important to note that the Plan includes damaged, destroyed and contemporary sites as well as intangible cultural heritage.

The mapping is informed by ten criteria, as outlined in Part B of the Plan. The mapping is proving to be rigorous and accurate. Current assessments being undertaken within predictive areas have now confirmed Aboriginal cultural heritage finds.

It is noted that the interpretation and relevance of the mapping criteria is often different for Aboriginal people to those residents of today. By way of example, many people objected to the criteria of "point of observation". Some submitters perceived this as "views" which they considered were not available from their land or that the tree cover excluded these views.

However, for Aboriginal people elevated points of observation within the Tweed is not limited to "lookout" type viewpoints to lower areas, but also includes points of observation to significant cultural sites and even approaching weather. Aboriginal people actively monitored their country and maintained observation places over extensive periods of time and seasons. It should be understood that traditional Aboriginal people viewed and

managed the landscape in a different way and for a different purpose than non-Aboriginal residents and visitors today.

With regards land disturbance it is now becoming evident that land can be heavily disturbed over many decades and still be subject to finds of ACH. Recent assessments within the Tweed Shire are highlighting this.

Recommendation

Mapped areas are not proposed to be removed as they have been developed through a sound methodology and provide a “flag” to owners and developers to be aware of the possibility of ACH and the legislative requirements for management of ACH.

Concern regarding allowing Aboriginal people to provide their cultural advice with respect of private land:

A small number of submissions raised concern that allowing Aboriginal people the role of providing their cultural knowledge and input as part of the development process is unfair, biased, and provides no transparency as property owners cannot object. Submissions state the problem arises when only those with a vested interest (Aboriginals and archaeologists) are permitted to make a cultural assessment.

Planning comment

NSW legislation acknowledges and increasingly protects Aboriginal cultural and lore. NSW legislation acknowledges that Aboriginal people are the appropriate custodians of their cultural knowledge and information and should be consulted on the potential impacts to their ACH. The NPW Act and support information requires Aboriginal people be consulted on matters of cultural heritage. Only archaeologists (currently) are able to undertake cultural assessments under the legislation, however, this must be in consultation with Aboriginal people. The draft ACHMP reflects the current legislation whereby the Aboriginal community are consulted on cultural knowledge and cultural heritage assessments are undertaken by a qualified archaeologist.

Recommendation

No amendments arising from these concerns.

Mapping of Aboriginal land:

A number of submissions, essentially within the Fingal Head area, raised concern that areas identified as Aboriginal land (owned) are not mapped as having cultural heritage.

Planning comment

The mapping of all land was assessed using the same ten criteria. With respect of the Fingal Spit, this area was heavily sand mined and the risk of remaining ACH is low where sand mining occurred. Areas in and around the Village and along the dune system, however, were not subject to the same levels of disturbance.

The spit has been a constantly changing environment over thousands of years, whereas the headland area is of a different geological formation, subject to less change.

The same ACHMP requirements to avoid harm will also apply to the TBLALC as they do to any other land owner.

It is noted that the same requirements to avoid harm continue to apply to Aboriginal land owners.

Recommendation

No amendments arising from these concerns.

A couple of submissions raised valid concerns with process and procedures, as follows:

Green field development and subdivision:

A small number of submissions, predominantly by industry, raised concern that ACH assessment has been undertaken at the rezoning or subdivision stages, however the mapping remains and will therefore, impact future land owners. These submissions also ask for the mapping layers to be removed.

Planning comment

This is a valid concern, however, should not be addressed through removing the mapping layers. Undertaking an ACH assessment identifies the possibility of finding ACH. However, the assessment does not take away the significance. Significance for Aboriginal people remains. This is evidenced when a site is registered to the Aboriginal Heritage Information Management System (AHIMS), which may be destroyed, the AHIMS listing is not removed, as the significance of that find within that landscape remains.

Similarly, an ACH assessment is most frequently undertaken for a project area and for a specific scope of works. Subdivided land may be used for the assessed/envisaged purpose, but may also be used in the future for a purpose not envisaged or assessed. Therefore, undertaking an ACH assessment may not automatically translate that there is no risk of harm as part of future development. This is why the legislation relies on the principle of 'avoiding harm', rather than 'undertaking an assessment'.

A related matter is the relationship of the ACHMP with the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Code SEPP) exempt and complying development. The intent of the draft ACHMP is to 'turn off' exempt and/or complying development where mapped as *Aboriginal Place of Heritage Significance* due to these areas being of *high Aboriginal significance* as included in the definition of *Environmentally sensitive area* in the SEPPS.

This matter raises the question of turning complying development "back on" for future development where suitable assessment has been undertaken and suitable actions taken to avoid harm at the rezoning or subdivision stage.

At the request of these submitters to meet and discuss the matter, a meeting was held on 21 May 2018 to further understand the concerns.

This is a key issue which needed to be resolved in consultation with the Aboriginal community, the OEH and the DPE. As such this concern was reported to Council at their meeting of 7 June 2018 advising of the matter and delay to the final reporting of the ACHMP.

A meeting with Council staff, the Tweed Byron Local Aboriginal Land Council, OEH and DPE representatives was held on 4 June 2018

Generally agreement was reached with all parties that:

- The intent of the plan is not to duplicate the need for cultural heritage assessment at multiple stages of development.
- Simply removing the mapping is not appropriate as this is a “flag” to the potential for harm and that assessments may have been undertaken for a different purpose than the end development.
- Notwithstanding, there is scope to acknowledge previous Aboriginal cultural heritage assessments prepared at the rezoning or subdivision stage and make this information available to future land owners.
- The intent is to ‘turn off’ the Code SEPP (exempt and complying development) in areas of *Aboriginal Place of Heritage Significance*, however, provide a mechanism and flexibility to turn the Code SEPP ‘back on’ where assessment finds this is appropriate, in consultation with the Aboriginal community and/or registered parties.
- Support from all parties to amend the plan and seek amendment to the LEP to meet these objectives.

Key to assisting future owners of such land is to make as much information available to them as possible to inform their own assessments. As such this Plan has been amended to include a discussion specific to rezoning and subdivision which has undertaken an ACH assessment.

It was agreed there is no legislative reason why the land owner and/or the professional undertaking the assessment, as part of their ACH assessment and in consultation with the Aboriginal stakeholders or registered parties, should not be able to identify those areas where for a range of agreed reasons, such as the overlay of substantial fill, the risk of harm to ACH has been minimised and complying development may continue.

A new section C5.4 has been added to the ACHMP and references through the document to this Part addressing this matter. For ease of understanding these have been highlighted in red text within the ACHMP, provide in attachment 2.

Council staff will continue to work with the OEH and DPE to embed this approach into the legislative framework of the LEP

Recommendations

Whilst mapped areas are not proposed to be removed, an additional section is included within the ACHMP addressing rezoning and subdivision where ACH assessments have been prepared. This is to provide an acknowledgement and clearer path forward for the recognition of suitable ACH assessments (prepared at rezoning or subdivision stage) in the context of future development.

Mowing

A submission was made by a mowing contractor which raised concern with the approach of banning flail mowing where land is mapped as *Aboriginal place of heritage significance*. This

concern relates to the *Tweed Shire Council Standard Working Mitigation Procedure* (as in appendix 7).

Mowing is not 'development' covered by the legislation however, the intent of the Plan is to minimise the risk of harm through routine Council activities.

Planning comment

The concerns have been reviewed and discussed with staff who agree that in some situations a flail mower may cause less impact than a tow-behind tracker mower and the objective is to minimise the risk of harm through assessment and use of the most suitable means.

The document has included minor reviews to update the flow path and provide more examples to clarify the procedures.

Recommendation

The *Standard Working Mitigation Procedures – Internal* has been amended to instead state the objective to minimise the risk of potential harm through use of an appropriate mowing device which in the location and circumstance will cause the least disturbance to the ground surface.

Relationship to the *draft Aboriginal Cultural Heritage Bill 2018*

Almost simultaneously to the public exhibition of the draft ACHMP, the OEH released for public exhibition their planning reforms for Aboriginal cultural heritage. The reform process has been ongoing since 2011.

The draft Bill and *Aboriginal Cultural Heritage Act 2018* were exhibited through late 2017 and early 2018, with submissions closing 20 April 2018.

A report and submission on the proposed legislation was endorsed by Council at their meeting of 19 April 2018.

The proposed legislation correlates closely with the approach undertaken by Council. The proposed legislation introduces:

- New and amended definitions, including a definition for *intangible* Aboriginal cultural heritage;
- A landscape based mapping approach of known and predictive cultural heritage, largely to be developed by Aboriginal people;
- A similar management strategy of placing consultation with the Aboriginal community up front in the process. However, the proposed legislation intends to set up new authorities for the consultation, at a state and local level.

Significantly, the legislation is proposed to be introduced in 2018/19 with a transition period of 5-7 years.

The OEH have advised staff that there is no need to hold off on the introduction of the Tweed ACHMP and that Tweed Shire is well placed to transition to the new legislation once this becomes effective.

Relationship with the *Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006*

The *Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan (CTBACHMP) 2006* was prepared by Ian Fox for Tweed Shire Council arising from the catchment management policies. The CTBACHMP covers a water catchment area of the Tweed Shire largely from Duroby Creek north to the Border and west to Bilambil.

The mapping methodology used for the ACHMP is largely an updated version of that used for the CTBACHMP.

The mapping within the area of the CTBACHMP has been updated with more recent information and this area is now included the shire wide plan, as is the more recent management process.

Given the overlap of the two plans, repealing the CTBACHMP was discussed with the AAC at their meeting of 6 April 2018, at which time it was resolved:

"That subject to investigations to determine that there will be no direct impact on the Memorandum of Understanding - Cobaki Broadwater Attachment G to the Terranora Cobaki Broadwater Catchment Management Plan, the Aboriginal Advisory Committee supports the repealing of the Terranora Cobaki Broadwater Aboriginal Cultural Heritage Management Plan."

Further discussion regarding *Attachment G: Memorandum of Understanding (MOU)* occurred at the meeting when the Waterways Program Leader arrived, at which time it was confirmed that the MOU had expired and there will be no effect on the Terranora Cobaki Broadwater Catchment Management Plan by repealing the Terranora Cobaki Broadwater Aboriginal Cultural Heritage Management Plan.

As such the CTBACHMP is to be repealed upon the adoption of the ACHMP 2018.

Review and amendments to the ACHMP

Arising from the submissions and a general review the following updates have been undertaken to the ACHMP, as provided in Attachment 2:

- General language and spelling edit
- Updates of legislation references arising from the *Environmental Planning and Assessment Act* amendments which came into effect 1 March 2018.
- Updates to acknowledge the proposed stand-alone *Aboriginal Cultural Heritage Act and Bill 2018* (publicly exhibited late 2017 – early 2018)
- Updates to include the *Aboriginal Languages Act 2017*
- Updates to *Appendix 7 - TSC Standard Procedure for ACH Mitigation: Maintenance and Emergency Works* to reflect the lessons learnt during the public exhibition period and submissions.
- Update to include a new discussion about ACH assessment where this has been undertaken at a rezoning or subdivision stage.

Actions arising from the ACHMP

The full table of recommended actions is found within Section B6 of the ACHMP. The following is a summary of ongoing key actions.

The implementation of the ACHMP will require amendment to the applicable Local Environmental Plans, being Tweed City Centre LEP 2012, Tweed LEP 2014 and Tweed LEP 2000, which still applies to land deferred from the application of the Tweed LEP 2014, should this be possible.

Amendments to the Tweed LEP 2000, which is not based on the standard LEP template, are generally not supported by the DPE without resolution of the E zone matters; however, it is recommended Council investigate the possibility of amending the LEP 2000 should the DPE support this approach. Should the amendment to LEP 2000 not be possible, the line of sight between various legislation will not be as clear, however, the ACHMP and the mapping layers will continue to apply to the Shire, as will the NPW Act requirements to avoid harm.

Working with the OEH and the DPE, the LEP amendment will seek to clarify and make transparent the relationship of the mapped *Aboriginal Place of Heritage Significance* to the definition of *high Aboriginal significance* as included in the definition of *environmentally sensitive area* in the SEPPS. The amendment will also seek to make transparent the relationship with exempt and complying development where an Aboriginal cultural heritage assessment has been prepared as part of a rezoning or subdivision as discussed above.

LEP 2000 is not based on the standard instrument template, and thus this will be more complex as this LEP does not include the clauses for heritage (5.10 in the standard instrument) and exempt and complying (Part 3 in the standard instrument).

It is recommended that a Planning Proposal be prepared to amend the LEPs and to act on recommendations of the ACHMP.

It is noted the *TSC Standard Procedure for ACH Mitigation: Maintenance and Emergency Works* has been drafted to inform an appropriate Procedure, which will need to be formally prepared as a procedure and may need periodic updated to incorporate best practice and lessons learnt to ensure continued improvement in Council's management of Aboriginal cultural heritage.

Ongoing cultural awareness and cultural heritage training targeted at various levels of practical need will be required to be programmed into future training as will appropriate resourcing of staff towards the ongoing implementation.

OPTIONS:

1. Adopts the Aboriginal Cultural Heritage Management Plan (ACHMP), or
2. Defers for further consideration by Council.

Option 1 is the recommend option.

CONCLUSION:

The draft ACHMP was publicly exhibited for an extended period of 145 days, during which 48 submissions were received.

The draft ACHMP has been prepared consistent with the current legislation applying to Aboriginal cultural heritage and with the support of the OEH, DPE and the Aboriginal Land Council's at local, regional and state level.

As discussed above a number of submissions were focussed, for various reasons, on removing the ACH mapping layers from their land. The mapping has been based on a rigorous methodology, which reflects traditional knowledge integrated into a landscape based approach, supported by the OEH and the new legislation. Removing the mapping layers does not remove the significance or the potential for Aboriginal cultural heritage. The mapping is a flag to property owners and developers to the potential for harm and the legislative requirements to avoid harm. As such it is recommended that the mapping layers are not removed.

The draft ACHMP is broadly consistent with the intent and future directions of the, concurrently exhibited, OEH draft Bill and *Aboriginal Cultural Heritage Act 2018*.

A number of amendments to the draft ACHMP have been made as outlined within this report. It is considered the amendments are generally minor in nature. Amendments to include additional discussion about the process for land subject to ACH assessments at the rezoning or subdivision stage clarify the intent of the plan and seek to avoid duplication of the ACH requirements. For these reasons it is not considered necessary to re-exhibit the plan.

In addition, given the overlap of the two plans, the *Cobaki Terranora Broadwater Aboriginal Cultural Heritage Management Plan 2006* is to be repealed upon adoption of the ACHMP 2018.

As such the report seeks Council's endorsement to finalise the ACHMP and undertake the next steps of implementation.

COUNCIL IMPLICATIONS:

a. Policy:

Aboriginal Statement v1.3. It is noted that this Policy is currently under review, embracing a wider view of Aboriginal matters, including cultural heritage, and is to be reported to Council at their June Council meeting.

b. Budget/Long Term Financial Plan:

The current budget for the development and finalisation of the mapping and the management plan has now been expended.

Notwithstanding, many of the recommendations contained within the report, by their nature will require ongoing budget and resource commitment, including staff training and amendment to the LEP, which will need to be considered in future budgets.

In addition the draft ACHMP applies to the Tweed Shire generally and will be applicable to Council works and projects. The requirements of the plan are not new and are required under current legislation, however, wider appreciation and understanding of Aboriginal cultural heritage as well as the mapping developed as part of the Plan, will require more rigour in the assessment of potential impacts to Aboriginal cultural heritage as a key consideration of Council works and projects. This will need to be factored into future work programs.

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.	Detailed summary of submissions (ECM 5362634)
Attachment 2.	Aboriginal Cultural Heritage Management Plan 2018 (ECM 5362749)

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 the June 2018 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA18/0199
Description of Development:	3 lot strata subdivision and associated works
Property Address:	Lot 15 DP 1052244 No. 26 Lundberg Drive, South Murwillumbah
Date Granted:	30/05/2018
Development Standard to be Varied:	Clause 4.1 Minimum Subdivision Lot Size
Zoning:	IN1 General Industrial
Justification:	The site contains an existing approved light industrial development consisting of three units. Council has received a DA for a three lot strata subdivision of the existing units. The proposed strata sizes are: Unit 1 - 574m ² , Unit 2 - 219m ² , Unit 3 - 294m ² . The lots size development standard for the site is 2000m ² .
Extent:	The minimum lot size development standard applicable to the site is 2000m ² . The proposed strata sizes are: Unit 1 - 574m ² , Unit 2 - 219m ² , Unit 3 - 294m ² . The proposed variations are: The proposed strata sizes are: Unit 1 - 71%, Unit 2 - 89.05%, Unit 3 - 85.3%.
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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