



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 7 June 2018

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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Items for Consideration of the Planning Committee:

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA17/0877 for a Change of Use From Dwelling to Serviced Apartment at Lot 54 DP 1198266 No. 12 Trestles Avenue, Casuarina

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:

The Development Application is seeking approval for a change in use of a dwelling to a serviced apartment for short term tourist accommodation, as a result of Council officers receiving complaints regarding the use of the subject dwelling as a serviced apartment for short term holiday letting. The complaints raise issues mainly in relation to noise late into the night, parking of vehicles impacting on the access of the shared laneway, the house being used as a party house, empty bottles of alcohol and general rubbish in the laneway and on neighbouring properties.

The site contains a four bedroom dwelling that is part single storey and part two storeys in height. Access to the site is via a shared laneway which provides vehicle and pedestrian access to a total of eight dwellings. The laneway can be accessed by either Casuarina Way to the west or Eclipse Lane to the east. The laneway is covered by an 88b restriction over the title of all eight residential lots and burdening and benefiting all eight lots.

The development application was notified for a period of 14 days, during this period Council received seven submissions all objecting to the proposal. The submissions raised concerns such as: safety within the lane way from speeding vehicles, rubbish overflowing from bins, use of neighbouring bins, parking within the laneway and on neighbouring vacant residential lot, poorly managed, excessive noise till 11pm, excessive number of people staying in the house, use as a party house, use of the lane way as a play area and concerns for the safety of neighbouring children.

The issues raised in the submissions are of concern and have implications on the amenity of the surrounding residents, particularly as the use is currently operating and Council has received complaints prior to the lodgement of the development application and also during the assessment of the development application. It is evident that the use of the site is not being managed appropriately and the occupants poorly chosen. The owner has provided a Site Management Plan which is considered to cover the issues raised in the submissions, the Site Management Plan has been referenced within a condition of consent. The Site Management Plan outlines matters such as: the name of the managing agent and their contact number, limits the number of occupants to eight, prohibits functions and 'Schoolies' for using the house, restrict the use of the pool and outdoor areas to 9pm Sunday to Thursday and 10pm Friday and Saturday, prohibiting the parking of vehicles toys and bikes from within the shared laneway and all waste is to be placed within the Council bins provided.

In addition to the Site Management Plan, further conditions have been recommended to address the issues raised in the submissions in order to maintain an acceptable level of amenity for the local residents. The recommended conditions relates to issues such as: all car parking to be located on the site and not impact on the shared lane, a register of occupancies, noise limits on use to prevent impact on neighbours, restriction on external lighting to prevent impact on neighbours and the requirement of a sign to be placed on the building which illustrate the management name and number for complaints and limit of occupants to eight. The consent is also recommended to be limited to a 12 month trial period enabling the owner to demonstrate to Council that the site can be appropriately managed with minimal impacts and also to provide a level of comfort to the local residents that if the use causes unacceptable impacts that the use is limited for only 12 months.

RECOMMENDATION:

That:

- A. Development Application DA17/0877 for a change of use from dwelling to serviced apartment at Lot 54 DP 1198266 No. 12 Trestles Avenue, Casuarina be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA-1, DA-2, DA-3, DA-4, DA-5, DA-6, prepared by Denise Fish Planning and dated 14/11/2017, except where varied by the conditions of this consent.**
- 2. The property being a serviced apartment is defined as tourist and visitor accommodation under the Swimming Pools Act 1992 No 49 which requires a valid occupation certificate (The Final Occupation Certificate was issued on 30 March 2016 and like a Compliance Certificate is valid for three years) or a current Certificate of Compliance in respect of a swimming pool thereafter. Accordingly you are to ensure there is a valid Certificate of Compliance in respect of the Swimming Pool after 30 March 2019.**

[GEN0005]

[GENNS01]

3. The Serviced Apartment use, subject to this consent is limited for a 12 month period commencing from the date the consent is granted. At the completion of the 12 month period, the Serviced Apartment use is to cease and revert to permanent residential use.

[GENNS02]
4. All carparking associated with the tourist accommodation use is to be located within the property boundary of the subject site and is not to impact on the use of the laneway or neighbouring properties.

[GENNS02]
5. A register is to be kept by the owner or proprietors to record the occupancies. The register shall be made available at any time for inspection by an authorised officer of Council.

[USE0025]
6. 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]
7. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{A90}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]
8. 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]
9. 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]
10. 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]

11. The premises shall be maintained in a clean and tidy manner. [USE0965]
 12. Occupancy and use of the premise shall comply with the 'Site Management Plan' dated 10 May 2018, to the satisfaction of the General Manager or his delegate.
 13. The maximum number of occupants of the property at any one time shall be 8. A sign shall be permanently displayed in the building stating the maximum number of occupants.
 14. Live music shall not be placed external to the building. Acoustic music shall not be played external to the building between 9pm and 8am Sunday to Thursday. Acoustic music shall not be played external to the building between 10pm and 7am Friday and Saturday. The premise shall not be utilised for festivals.
 15. Use of the outdoor entertaining areas and swimming pool are restricted to 7am to 9pm Sunday to Thursday and 7am to 10pm Friday and Saturday.
 16. Structures such as tents, campervans, vehicles or caravans shall not be used for occupancy external to the building. [USENS01]
 17. Open fires shall not be lit or permitted to burn at the premise.
 18. An A3 size sign shall be permanently placed at the front of the property to the satisfaction of the General Manager or his delegate so it can be clearly seen from the public domain advising the public of the land owner's or property manager's contact details including telephone number to enable complaints to be readily made at any time of the day. The land owner or property manager shall be contactable 24 hours 7 days a week to be able to respond to complaints from neighbours within 30 minutes to deal with issues such as parties, noise or anti-social behaviour which may affect residential amenity. [USENS02]
- B. A Penalty Infringement Notice be issued to the owner of Lot 54 DP 1198266 No. 12 Trestles Avenue, Casuarina for carrying out unauthorised development.

REPORT:

Applicant: J Francis
Owner: Mr James B Francis
Location: Lot 54 DP 1198266 No. 12 Trestles Avenue, Casuarina
Zoning: R1 - General Residential
Cost: Nil

Background:

The existing dwelling on the subject site was approved February 2015 with an occupation certificate issued in March 2016. The dwelling is part single storey and two storeys in height, consisting of four bedrooms, three car parking spaces and a swimming pool. Council's Compliance Unit received complaints regarding the use of the dwelling as a serviced apartment for short term accommodation. Following discussions between Council and the landowner, the landowner lodged the subject development application seeking approval for short term accommodation.

The development application was notified for a period of 14 days, during this period Council received seven submissions all objecting to the proposal. The submissions raised concerns such as: safety within the lane way from speeding vehicles, rubbish overflowing from bins, use of neighbouring bins, illegal parking within the laneway and on neighbouring vacant residential lot, poorly managed, excessive noise till 11pm, excessive number of people staying in the house, use as a party house, use of the lane way as a play area and concerns for the safety of neighbouring children.



Figure – Aerial image of the site, neighbouring properties and laneway.

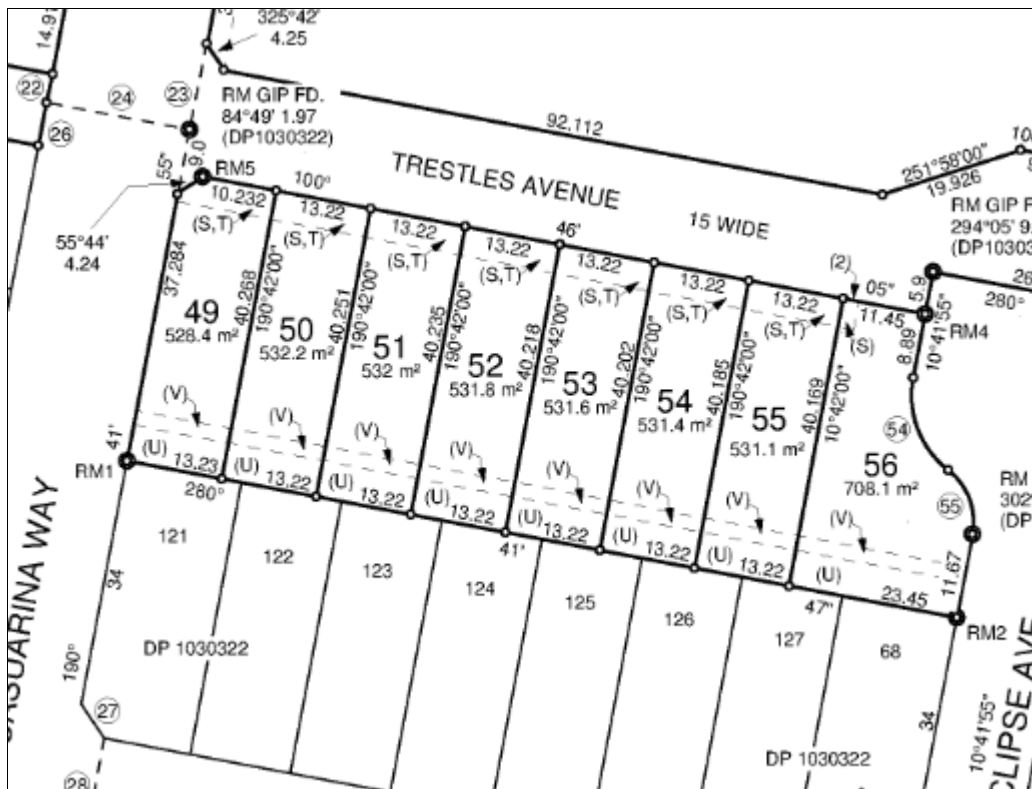


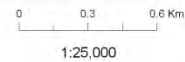
Figure – Registered plan illustrating the easement for access (U).

SITE DIAGRAM:



Site Plan

Lot 54 DP 1198266
No. 12 Trestles Avenue, Casuarina



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  Cadastre: 21/05/2018
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Datum - GDA 94

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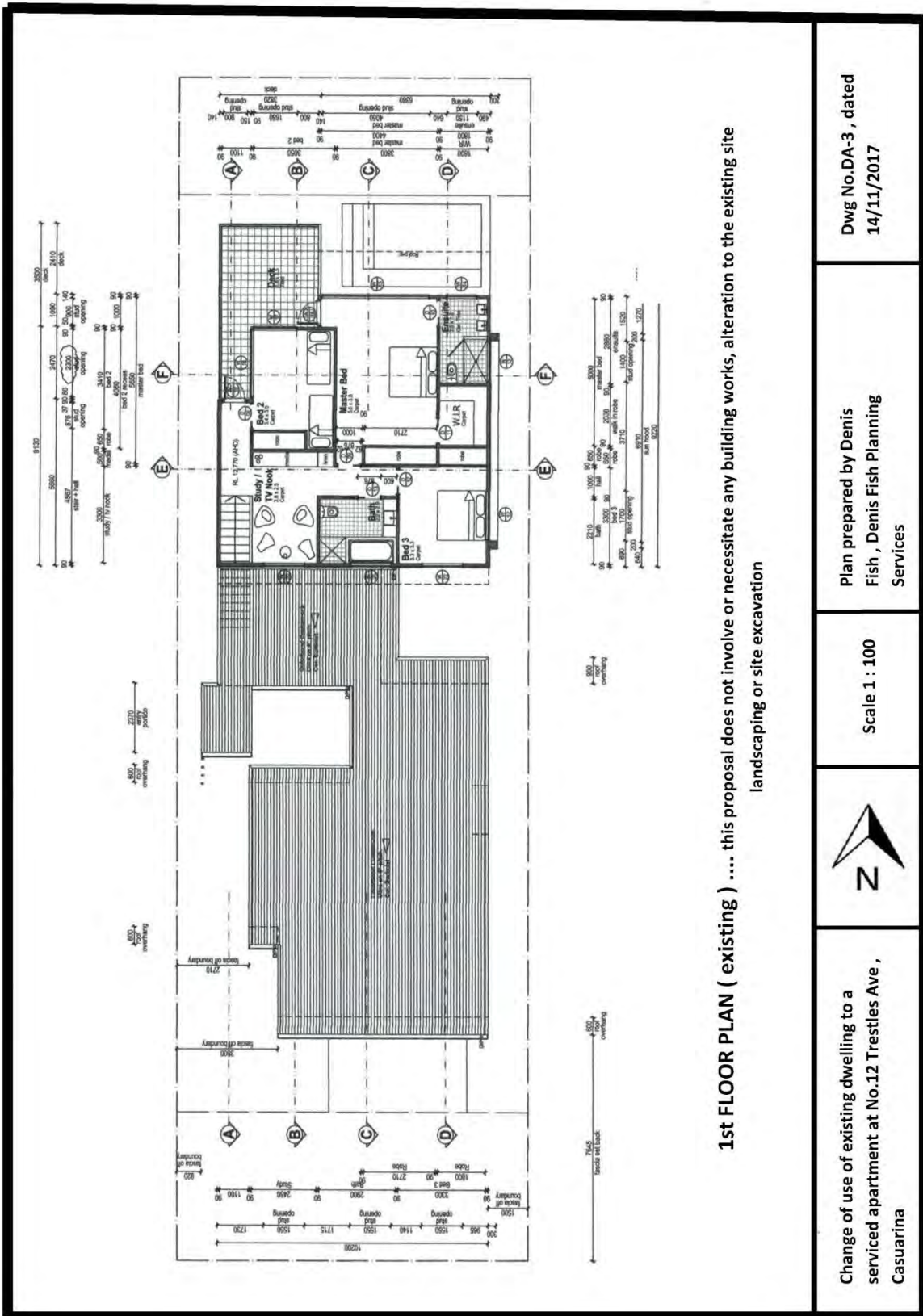
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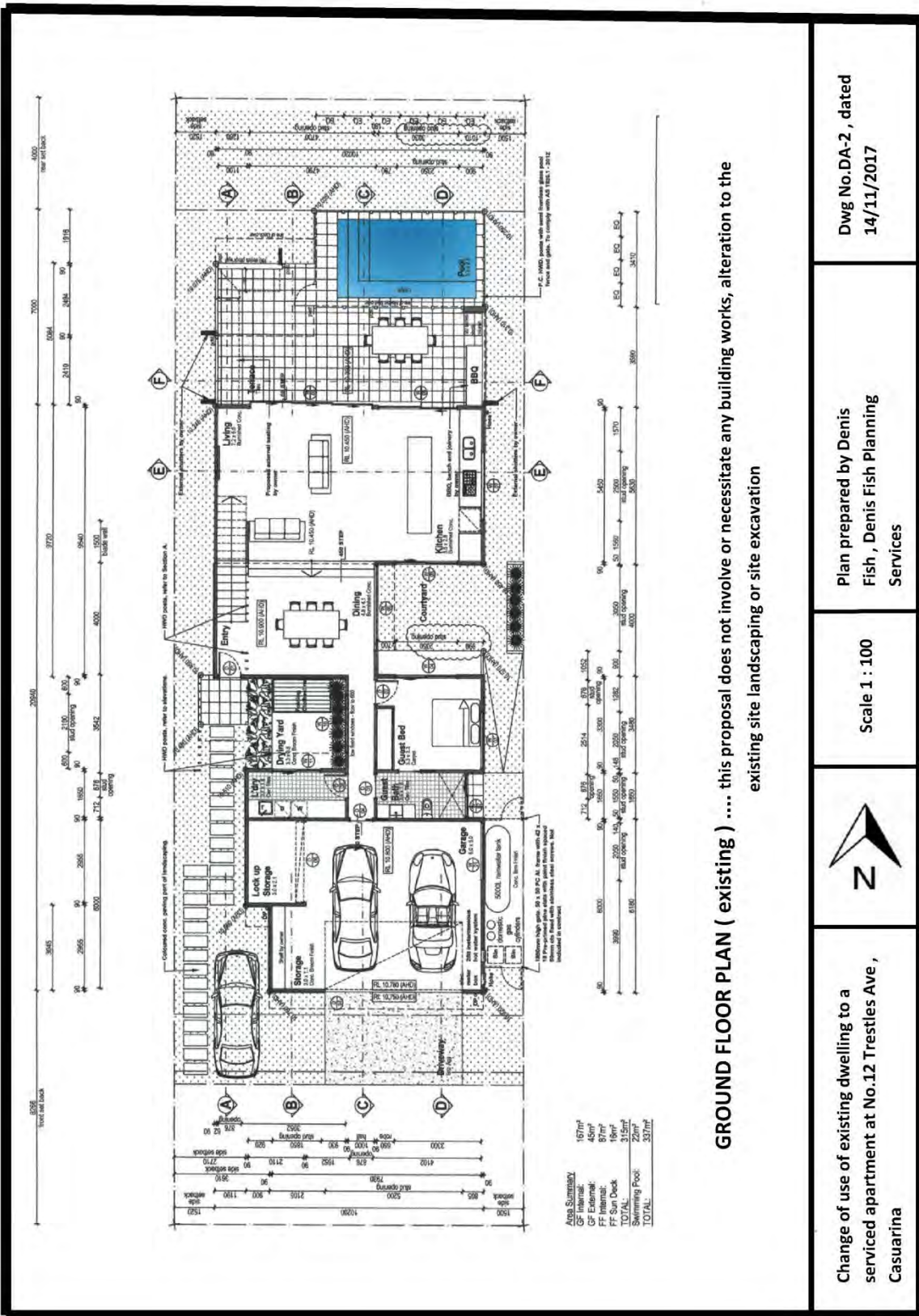
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Date Printed: 21 May, 2018

DEVELOPMENT/ELEVATION PLANS:





GROUND FLOOR PLAN (existing) this proposal does not involve or necessitate any building works, alteration to the existing site landscaping or site excavation

Change of use of existing dwelling to a serviced apartment at No.12 Trestles Ave, Casuarina



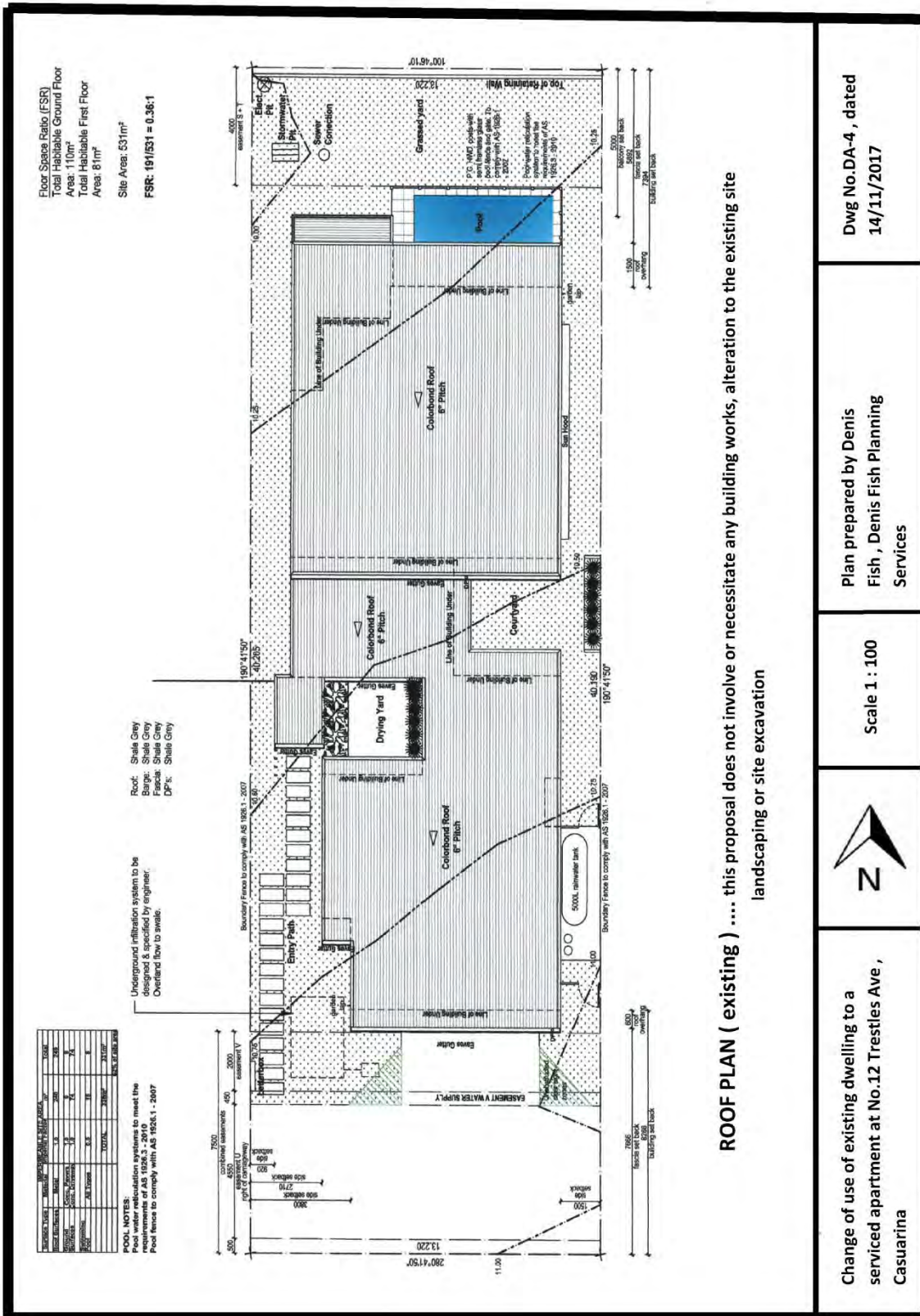
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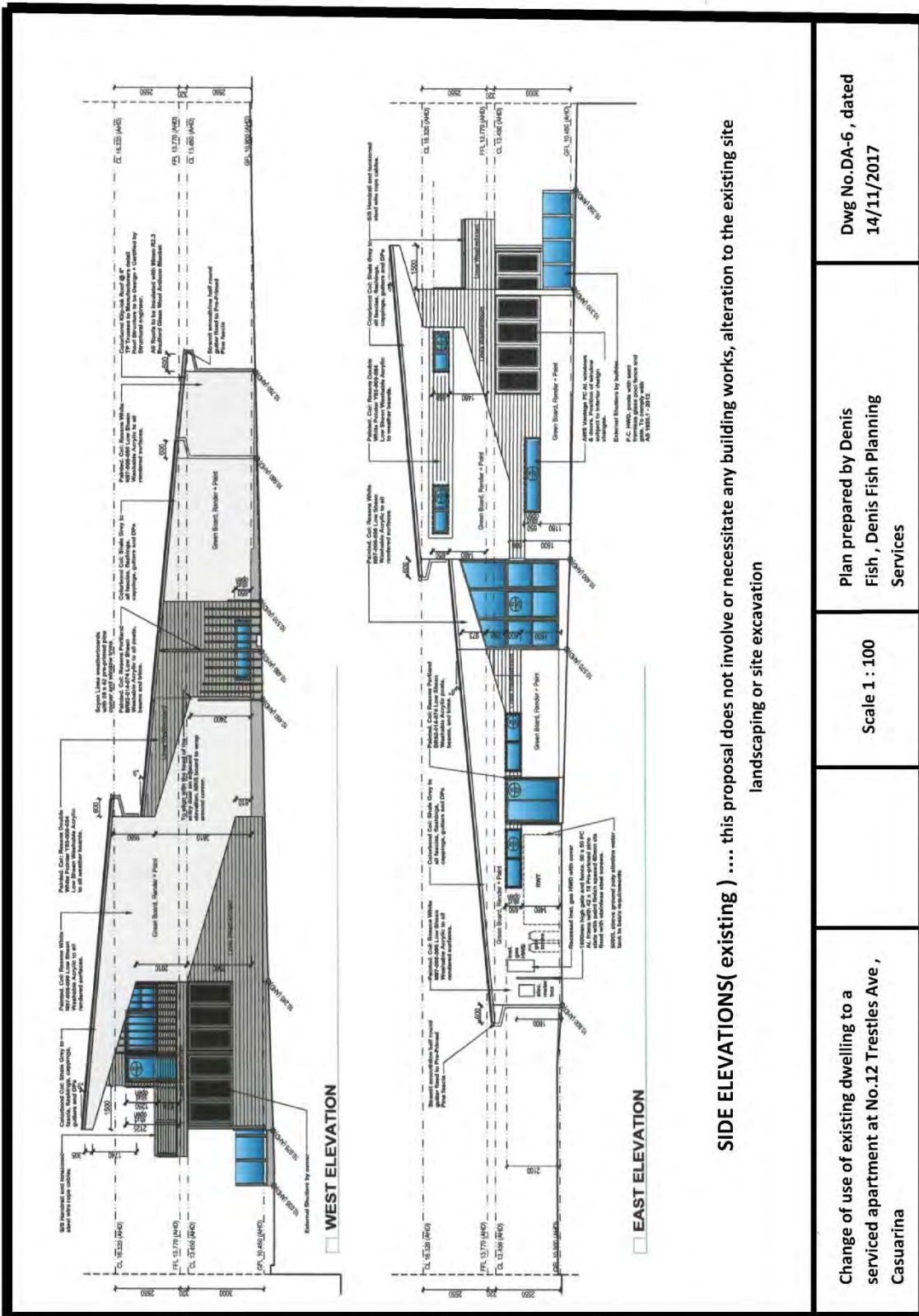
Plan prepared by Denis Fish, Denis Fish Planning Services

Dwg No.DA-2, dated 14/11/2017

	<p>Change of use of existing dwelling to a serviced apartment at No.12 Trestles Ave , Casuarina</p>	<p>Scale 1 : 100</p>	<p>Plan prepared by Denis Fish , Denis Fish Planning Services</p>	<p>Dwg No. DA-5 , dated 14/11/2017</p>
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FRONT & REAR ELEVATIONS(existing) this proposal does not involve or necessitate any building works, alteration to the existing site landscaping or site excavation





<p>Dwg No.DA-6 , dated 14/11/2017</p>	<p>Plan prepared by Denis Fish , Denis Fish Planning Services</p>	<p>Scale 1 : 100</p>	<p>Change of use of existing dwelling to a serviced apartment at No.12 Trestles Ave, Casuarina</p>
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SITE MANAGEMENT PLAN:

Site Management Plan	
Development type: Serviced Apartment (Holiday House)	
Address : No.12 Trestles Ave , Casuarina	
Date 10/05/2018. to be revised if and when required	
Dear guests these management arrangements have been put in place to ensure that you and the neighbours enjoy a high level of residential amenity and the property is maintained in a neat and tidy condition for in-coming guests.	
The managing agent : The managing agent for this property is Tweed Coast Holidays Pty Ltd , Phone : 02 6677 6006. Your contacts are Tammy Williams , Mob 0439 889-213 Email : tammy@tcholidays.com.au or Jason Walk Mob 0415 571-545 Email : managers@tcholidays.com.au	
Agent interaction	
Setting into your holiday home , upon arrival at the property the managing agent will meet you, hand over the keys to the property and briefly run through the operation of various systems and appliances at the property including the operation of the pool, waste disposal arrangements and the like. More detailed and day to day matters are outlined in this management plan.	
During your stay if there should be any failure or fault with the appliances or damage to the property you are requested to contact the managing agent as a matter of priority so this can be rectified at the earliest possible opportunity, including during your stay if possible	
Upon your departure you are required to remove all food from the fridges, all rubbish is to be put in the appropriate Council rubbish bins provided, and crockery and cutlery washed and is to be packed away. The managing agent will inspect the property after your departure	
Neighbour interaction	
It is of the utmost importance that your neighbours are not inconvenienced during your stay. Please enjoy yourself and all the beautiful Northern Rivers has on offer but please have regard for the neighbours.	
The following matters have been identified as having the potential for significant amenity impacts on surrounding property owners & occupiers:	
<ul style="list-style-type: none"> > The maximum number of occupants > Pool usage > Noise generation from voices, music & celebrations > Anti-social behaviour > Lighting > Vehicle movements and parking > Waste storage & disposal 	
The following house rules have therefore been devised to ensure that you have a pleasant, relaxing and stress free stay and that the potential to impact upon the neighbours is minimised and we ask for your co-operation in adhering to these rules.	

Management	Responsibility
The maximum number of occupants is 8 persons.	The managing agent and guests in the holiday house
Only the guests nominated and agreed in the booking may stay in the property overnight	
Functions and 'Schoolies' are strictly prohibited in this property	
Consequences of non-compliance	
If any other guests stay, extra charges will apply and/or the agreement may be terminated without refund. If it is established that a function took place or the property was let out for 'Schoolies', the rental arrangement will be terminated and guests will be evicted without refund and extra charges for security, cleaning, garbage removal, wear & tear, repairs etc will be imposed and the security bond will be forfeited.	

Pool usage	Responsibility
To maintain the integrity of the swimming pool safety fence, objects such as a barbeque, pot plants, toys, ladders and chairs must not be within the 900mm (90cm) of the safety fence	The managing agent and guests in the holiday house
The pool gate is not to be propped open and is always kept shut	In the event that the pool gate does not shut and lock automatically the guest is required to contact the managing agent

Pool usage cont'd	Responsibility
No glassware is permitted within the fenced pool area	The managing agent and guests in the holiday house In the event that the pool gate does not shut and lock automatically the guest is required to contact the managing agent
Children under the age of 12 must be accompanied by an adult	
The hours of use of the pool are restricted to 7.00 am to 9pm Sunday - Thursday & 7.00 am to 10pm on Friday - Saturday. Guests must then vacate the pool area & move inside the property	
Diving and running in the pool enclosure is not permitted and pool users are requested to maintain decorum at all times	
Persons under the influence of alcohol/drugs are not allowed to use the pool	
Consequences of non-compliance	
The rental agreement may be terminated without refund.	

Noise generation	Responsibility
Disturbance to your neighbours, including excessive noise, is unacceptable. Excessive noise generation threatens the on-going operation of this holiday house and could result in the termination of your rental agreement, so it is in your interest to have regard to the potential impact on neighbours	The managing agent and guests in the holiday house
Guests must vacate the outdoor entertaining areas & move inside the property by 9pm on Sunday - Thursday & 10pm on Friday - Saturday. A security camera has been set up in the terrace area and this covers the pool area as well. This camera is connected to the managing agents' phones by way of an app. It will alert the agent if there is movement in the outdoor entertaining areas outside after the above mentioned hours. If guests have not vacated the outdoor entertaining areas the managing agent will ring you to remind you of this requirement. If the camera is interfered with in any way or re-positioned you will be evicted and charged for any damage.	
Consequences of non-compliance	
If after a warning from the managing agent noise continues to affect the amenity of surrounding residents the rental agreement will be terminated and guests will be evicted without refund and extra charges may be imposed for security and any other related expenses.	

Lighting	Responsibility
Guests are not permitted to erect or otherwise provide additional outdoor lighting	The managing agent and guests in the holiday house
Guests are not permitted to change the angle of any of the existing outdoor lights	
All external lighting is to be turned off at 9pm on Sunday - Thursday & 10pm on Friday - Saturday, this includes the lighting serving the outdoor terrace & pool	
Consequences of non-compliance	
The rental agreement may be terminated without refund.	

Vehicle movement & parking	Responsibility
Guest's vehicles are to be parked in the double garage	Guests in the holiday house
No vehicles are to be parked in the shared driveway (laneway) at the rear of the property. Also please ensure that no toys, bikes etc are left in this area as this impedes access to other resident's properties.	Guests in the holiday house
Any excess guest vehicles are to be parked at kerbside in Trestles Ave or Eclipse Lane	
Consequences of non-compliance	
The rental agreement may be terminated without refund.	

Waste storage & disposal	Responsibility
All waste is to be placed in the garbage & recycling bins provided by Council	Guests in the holiday house and the managing agent
Council operates a 3 bin system	
- The red lid bin is for items that cannot be reused, recycled or composted. This includes nappies and pet waste, soft plastics and plastic bags	
- The yellow lid bin is for glass bottles/jars, rigid plastic bottles and containers, metal and aluminium cans, clean paper products, newspapers and long-life cartons	
- The green lid bin is for ALL food scraps (including meat and bones & garden waste). Also tissues, food-soiled paper products, newspaper, and compostable products (excluding nappies)	
Council collects the yellow & red lidded bins on an alternate fortnightly basis, the green lid bin is collected each week. Guests are required to contact the managing agent to ascertain which bins are to be put out for collection during their stay at the property	
The waste bins are to be placed at kerbside in Eclipse Lane on Thursday evening for collection on Friday morning	
After the Council pick up guests are required to collect the bins and place them in the garbage receptacle storage area which is located on the right hand side of the garage	
Before departure, all food must be removed from fridges, all rubbish put in the appropriate Council rubbish bins provided, and crockery and cutlery washed and is to be packed away. In the event that there is insufficient room in the Council rubbish bins contact the managing agent to arrange for the bins to be emptied or form additional rubbish to be removed from the site. A nominal additional fee will apply.	
Consequences of non-compliance	
Extra cleaning charges may be incurred for the cleaning of dirty dishes, emptying dishwasher, clearing the fridge, removal of rubbish, cleaning of BBQ's etc. Should the cleaning fee be more than the usual cost for cleaning the property, you will be charged the additional costs over and above the normal cleaning fee which will be deducted from the security bond or charged to your credit card.	

General house keeping	Responsibility
Smoking is not permitted in the house	Guests in the holiday house
You must comply with all of these house rules and all instructions from Tweed Coast Holidays and the caretakers of the property concerning occupancy, property, health, safety and quiet enjoyment of the property and that of your neighbours	
All furniture and furnishings must be left in the position they were in when you arrived	
You are responsible for damage, breakages, theft and loss of the property and any part of it during your stay. You must notify Tweed Coast Holidays of any equipment failure, damages, breakage and the like immediately so this can be rectified at the earliest possible opportunity, including during your stay if possible. Management may recover from you repair or replacement cost (this is at Management's discretion)	
The property should be vacated on time and secured. All windows and doors are to be locked. All keys must be returned to Tweed Coast Holidays or as otherwise directed	
You are responsible for the safekeeping and replacement of accommodation keys. If keys and/or remotes are lost the cost of rekeying the property will be charged to your security bond	
Consequences of non-compliance	
You will be charged additional costs which will be deducted from the security bond or charged to your credit card.	

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 proposed use as a serviced apartment is considered to be consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R1 General Residential, to which serviced apartments are permitted with development consent.

The objectives of the zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

The serviced apartment is consistent with the zone objectives by providing tourist accommodation. However, the development has the potential to impact on the amenity and services such as: noise, garbage and parking beyond a residential use. The applicant has provided a Site Management Plan which covers these issues in addition conditions have been recommend to protect the residential amenity.

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

Subdivision is not proposed.

Clause 4.3 - Height of Buildings (HOB)

The site has a HOB of 13.6 metres, the proposal is for use only no building works are proposed. The existing approved building height will remain unchanged, which is less than 13.6 metres.

Clause 4.4 – Floor Space Ratio

The site has a FSR of 2:1, the proposal is for use only no building works are proposed. The existing approved FSR will remain unchanged.

Clause 4.6 - Exception to development standards

The proposal does not require a variation to a development standard.

Clause 5.4 - Controls relating to miscellaneous permissible uses

The proposed land use being a serviced apartment is not listed within the clause.

Clause 5.5 – Development within the Coastal Zone

The site is within the coastal zone, however due to the proposal being for a change of use to an existing dwelling that does not require any building works. The proposal is considered to be consistent with the clause and unlikely to adversely impact on the coastal environment.

Clause 5.10 - Heritage Conservation

The site is not identified as having heritage conservation value.

Clause 5.11 - Bush fire hazard reduction

Bush fire hazard reduction works are not required.

Clause 7.1 – Acid Sulfate Soils

The site is identified as having Class 4 Acid Sulfate Soils. The proposed change of use does not require disturbance of the soil and therefore Acid Sulfate Soils will not be disturbed.

Clause 7.2 - Earthworks

The proposed change of use does not require earth works.

Clause 7.3 – Flood Planning

This site not prone to flooding.

Clause 7.5 - Coastal risk planning

The site is not within the coastal risk area.

Clause 7.6 - Stormwater Management

The proposed change of use is not required to alter the existing stormwater management.

Clause 7.8 – Airspace operations

The site is within the take-off approach surface which has an Obstacle Limitation Surface (OLS) of 149.5 metres. The proposed change of use of the existing two

storey dwelling (with a maximum RL height of 14 metres) is considered not to impact on airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

The site is not within the ANEF.

Clause 7.10 - Essential Services

The existing services provided to the dwelling are considered to be acceptable for the proposed change of use to a serviced apartment.

State Environmental Planning Policies

State Environmental Planning Policy (Coastal Management) 2018

The site is identified as being within the coastal environment area and the coastal use area. The proposed change of use to the existing dwelling to a serviced apartment is considered to be consistent with the provisions Division 3 Coastal environment area and Division 4 Coastal use area.

The proposed development is considered to address the public interest criteria by not impacting on public access to foreshore areas, does not create overshadowing, wind funnelling or impede views from public places, is not visible from the coast, will not impact on Aboriginal cultural heritage or the surf zone. The site is located approximately 210 metres from the nearest coastal water and therefore is considered not likely to conflict with the Coastal Management SEPP.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Advertising signage is not proposed by the applicant, however Council officers recommend that an A3 size sign be located on the front elevation of the house which is to contain contact details of the land owner or property manager to enable complaints to be managed immediately. Due to the type, size and nature of the sign, requested by Council, the sign is as defined as a wall sign under the State Environmental Planning Policy (Exempt and Complying Codes) 2008 and is exempt development.

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

There are no provisions of any draft Environmental Planning Policy applicable to the proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposal does not seek to alter the built form of the existing dwelling, rather seeks to change the use to a serviced apartment. The proposal does not require an assessment against A1.

A2-Site Access and Parking Code

The dwelling as approved has three on site car parking spaces in the form of a double car space garage and one uncovered car spaces located to the west of the double garage. Three on site car parking spaces is considered adequate to accommodate the proposal, subject to a recommended condition limiting the number of vehicles to three.

A11-Public Notification of Development Proposals

The DA was notified development for a period of 14 days from Wednesday 17 January 2018 to Wednesday 31 January 2018. Council received seven submissions all objecting to the proposal. The contents of the submissions have been addressed as detailed later within this report.

A15-Waste Minimisation and Management

A Waste Management Plan is not required for the proposed change in use, with the site using Council's three bin waste system (1 x 240L Yellow, 1 x 240L Red and 1 x 240L Green). If complaints are received in regards to waste, this will be discussed with the owner with a recommendation that the use of larger bins should be used or the use of a private waste contractor.

B5-Casuarina Beach

Section B5 relates to Urban Design, Management of Infrastructure and Management of Environmental Matters. Having regard to the proposed development, it is considered that the proposed change of use to a serviced apartment will not contribute negatively to the long term urban design or character of the area, and as such does not contravene the urban design principles outlined under section B5.2.2 of the DCP.

The proposal is not considered to contravene the management of any infrastructure or environmental matters in the area. Furthermore, the proposal is not considered to result in an environmental impact on the site, as the proposal does not require any vegetation clearing to be undertaken.

The proposal is considered not to contravene any of the objectives of the DCP.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. The Vision statement for this area identified at Clause B9.3.2 is:

To manage growth so that the unique natural and developed character of the Tweed Coast is retained, and its economic vitality, tourism potential, ecological integrity and cultural fabric are enhanced.

Policy Principles are identified at Clause B9.3.3, with characteristics to be considered including the following which are of particular relevance to this application.

The site is indicated as being an urban development area under the provisions of this DCP. The proposed development for change of use from a dwelling to a serviced apartment is considered to be consistent with the objectives of this DCP or the future development of the area. It is considered that the proposal is appropriate having regard to DCP Section B9.

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

The site is not affected by a planning agreement.

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

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

The site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The proposed change of use to a serviced apartment does not contradict the objectives of the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

Not applicable - no demolition is proposed.

Clause 93 Fire Safety Considerations

Not Applicable.

Clause 94 Buildings to be upgraded

Not Applicable.

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

Tweed Shire Coastline Management Plan 2005

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

Tweed Coast Estuaries Management Plan 2004

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.

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

Context and Setting

The site contains an existing part single storey and part two storey dwelling that was approved in 2015. Access to the site is via a right of way being a common lane way which provides access to a total of eight residential properties. The subject site being number 12 Trestles Avenue has two residential properties to the west of the site and five residential properties to the east of the site, all of which use the laneway for vehicle and pedestrian access. There are eight residential property located on the southern side of the laneway however, they do not use the laneway as access to these sites is from Steelwood Lane.



Figure – The subject site highlighted Laneway is highlighted in Red.

The proposed short term tourist use has the potential of create likely adverse impacts on the amenity of the surrounding neighbours which is evident from the multiple complaints Council has received before the application was lodged and during the assessment of the application and also the seven submissions received objecting to the proposal. The applicant has provided a Site Management Plan which has been assessed and considered acceptable however, additional conditions have been recommended with the intent of protecting the amenity of the surrounding residents. A condition is also recommended to limit the Serviced Apartment use for a 12 month period to enable the performance of the use to be monitored.

Access, Transport and Traffic

The proposed short term tourist use is considered to generate an acceptable and similar level of vehicles and traffic as a residential dwelling used for permanent occupation, therefore the existing onsite parking and road network is considered acceptable. A condition is recommended to enforce the requirement of vehicles to park within the subject site and not to park within the lane way or on neighbouring properties.

Flora and Fauna

The proposal is considered not to have an adverse impact on existing flora and fauna, as vegetation removal is not proposed or required.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is considered suitable for the proposed change of use of the existing dwelling to short term tourist accommodation. The proposal does not require any building works or vegetation removal.

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

The application was notified for a period of 14 days from Wednesday 17 January 2018 to Wednesday 31 January 2018. Council received seven submissions objecting to the proposal. The submissions raised concerns such as safety within the lane way from speeding vehicles, rubbish overflowing from bins, use of neighbouring bins, illegal parking within the laneway and on neighbouring vacant residential lot, poorly managed, excessive noise till 11pm, excessive number of people staying in the house, use as a party house, use of the lane way as a play area and concerns for the safety of children.

The issues raised in the submissions are of concern and can adversely impact on the amenity of the surrounding residents, particularly as the use is currently operating and Council has received complaints prior to the lodgement of the application and also during the assessment of the application. The use of the site is currently not being managed appropriately and the occupants poorly chosen. This is covered by the Site Management Plan and recommended conditions of consent.

The owner has been provided with a copy of the submissions and has provided a Site Management Plan which has been assessed and is considered to cover the issues raised. The Site Management Plan is to be conditioned to ensure that the site is appropriately managed and not used as a part house. Additional conditions are recommended to cover the issues raised in the submissions, in relation to: restrict parking and number of vehicles, set noise levels, restricting the hours of use of the outdoor living areas and pool area, restricting the number of occupants, maintain a register of occupants, require the premise to be maintained in a neat and tidy manner. A condition is also recommended to restrict the use for a trial period of 12 months.

(e) Public interest

As outlined within the report above, the proposed use of the dwelling for short term holiday letting is currently creating adverse impacts on the amenity of the local residents. However, subject to the applicants Site Management Plan, the recommended conditions and for the use to be limited for a 12 month trial period the proposal is considered to be within the public interest.

OPTIONS:

- 1A. Approve the application in accordance with the recommendation; and
- 1B. Issue a Penalty Infringement Notice for the unauthorised development; or

2. Refuse the application with reasons for refusal.
3. Approve the application with specified alternate conditions.

Option 1A & 1B is recommended.

CONCLUSION:

The proposed development is permitted with consent within the R1 General Residential zone. Although the use has been operating without approval and adversely impacting on the amenity of the neighbouring residents, the owner has provided a Site Management Plan which if complied with will mitigate the issue raised and maintain a reasonable level of amenity. A condition is recommended limiting the use for a 12 month trial period to enable to the owner to demonstrate to Council that the site and use can be appropriately managed and also if the site cannot be managed appropriately then the use will cease and any future request to amend the consent to extend the use is unlikely to be supported.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

2 [PR-PC] Development Application DA18/0048 for Alterations and Additions to an Educational Establishment at Lot 9 DP 7665 No. 8 King Street, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

This application has been reported to Council for their determination following a request from Councillors Allsop and Polglase.

The Proposal

Council is in receipt of a development application for alterations and additions to an existing educational establishment at 8 King Street, Murwillumbah.

The existing building has development approval (DA02/0357) for use as a Tutorial Centre operated by the NSW Department of Education in conjunction with Murwillumbah High School. The existing approval relates to a capacity of 12 students (aged 12 years +) and three teachers.

The current application seeks to operate the facility as a primary school (referred to by the applicant as *'The Small School'*) retaining the approved student and staff numbers. The proposed alterations and additions involve the following:

- Removing the existing vehicular access to King Street and replacing this with a pedestrian access;
- Internal alterations including upgrading the existing kitchenette to a commercial kitchen;
- Construction of an accessible toilet block (2 toilets) in the rear yard;
- Upgrading of outdoor play areas;
- Provision of acoustic barriers along a section of the western and eastern side boundaries to minimise noise impacts to neighbouring properties;

- Revisions to the onsite car parking to increase the number of spaces from three (3) to five (5) on-site manoeuvrability; and
- Provision of bicycle parking on site.

The proposal also includes the provision of a 19m long bus zone on King Street, which would operate at student drop-off and pick-up periods.

Modifications to application as originally submitted

The application as initially submitted sought to increase the number of students from 12 to 36 and to increase the number of staff from a maximum of three staff to three full time teaching/managerial positions, one part time teaching position with casual part-time staff and specialist educators and at least one parent onsite in the role of a helper.

With a proposal for an increase in student numbers to 36, the original traffic management measures included the provision of a drop-off/pick-up zone (accommodating 2 car parking spaces) and a new bus zone (19m long) on King Street.

However as a result of objectors' concerns with regard to the loss of on-street car parking resulting from the proposed traffic management measures to accommodate the increased student and staff numbers, the applicant has modified the application to retain the number of students at 12 and the number of staff at three as per the existing consent on the site. This negates the necessity for a drop-off/pick-up zone on King Street.

The location of the proposed bus zone has also been modified slightly to address traffic hazard concerns.

Traffic Management measures

Three of the five car parking spaces to be provided on-site will be available for student drop-off/pickup. The remaining two spaces are to be allocated to staff parking. (This can be managed by way of a condition on any consent issued).

Given the limited number of students (12), it is proposed by the applicant that the proposed bus zone on King Street will operate between 8.30am and 9.30am (1 hour for student drop-off) and between 2.45pm and 3.45pm (1 hour for student pickup) during school term. While car parking spaces on King Street are not marked, the provision of the bus zone will result in the loss of approximately three existing on-street car parking spaces for the drop-off and pick-up periods during the school term.

The amended Traffic Impact Assessment Report prepared by Bitzios Consulting (dated 3 May 2018) confirms that there is no requirement for a children's crossing or pedestrian crossing on King Street for the student numbers proposed.

Internal Referrals

The application was referred to Council's Environment & Health Unit, Building Unit, Water and Wastewater Unit, Traffic Engineering Unit and Development Engineering Unit for comment.

The Building Unit and Water and Wastewater Unit have raised no objection, subject to the imposition of appropriate conditions. Following the submission of plans with improved

legibility, Council's Environment & Health Unit raised no objection to the proposal and has approved the plans for the commercial kitchen.

Council's Traffic Engineering Unit and Development Engineering Unit initially had some concerns with the onsite car parking (which did not allow for vehicles to enter and exit the site from Prince Lane in a forward direction) and pedestrian safety. The amended plans reorganise the on-site car parking to allow for vehicles to manoeuvre on site. The amended Traffic Impact Assessment Report, which now relates to a student population of 12, indicates that a children's crossing on King Street is not required, nor is a dedicated drop-off/pick-up zone on King Street. Council's Traffic Engineering Unit supports the proposal, notwithstanding the loss of three on street car parking spaces during the drop-off/pick-up period.

External Referrals

There were no external referrals. As the number of students is less than 50, a referral to Road and Maritime Services (RMS) is not warranted for the application.

In the event that the application is approved, proposals for the installation of the required traffic management facilities and treatments including regulatory signage within the road reserve (bus zones and school speed zones) will be forwarded to the Tweed Local Traffic Committee (LTC) for assessment and subsequent recommendation(s) to Tweed Shire Council.

Objections

The application was advertised in the Tweed Link on 7 February 2018 with a submission period from 7 February 2018 to 21 February 2018. During this time five submissions were received. The main issues raised in the submissions related to traffic management and the loss of on-street car parking. Issues were also raised with regard to the appropriateness of a town centre site for a school, accessibility on site and traffic safety. These matters are addressed in more detail in the report.

It is considered that the modifications to the application address the main issues raised with regard to traffic, and with no increase in the number of students or staff, that the traffic impacts are considered reasonable. The applicant has also addressed the issues raised with regard to accessibility and the response is considered to address the issues raised in the objections.

Conclusion

The change of use of an approved educational facility from a tutorial centre for high school students to a primary school with the same number of approved students and staff is considered to be acceptable in terms of the additional impacts. While the applicant is proposing a new bus zone on King Street, the number of on-site car parking spaces is being increased with the provision of two surplus spaces. The existing vehicular access to the site from King Street is also being closed.

While the current application retains the student numbers at 12, it is understood that such small numbers may not be viable for the school in the long term and that it is possible that the applicant may make a future application (a new Development Application or a Section 4.55 (previously Section 96) application)) to increase the student numbers. It is recognised that any future increase in the student number may require additional traffic management

measures (such as additional car parking requirements, a designated drop-off/pick-up area, necessity for a children's crossing, etc). However Council can only assess the current application on its merits and in this case, the application is deemed to be acceptable.

RECOMMENDATION:

That:

- A. Development Application DA18/0048 for alterations and additions to an educational establishment at Lot 9 DP 7665 No. 8 King Street, Murwillumbah be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Kellie Shapland Town Planning (as amended by correspondence dated 4 May 2018) and the following plans, except where varied by the conditions of this consent.**

Document	Prepared by	Dated
Drawing A101 (Issue D) - Demolition Site Plan	Christian Zambelli	28 March 2018
Drawing A102 (Issue D) - Proposed Site Plan	Christian Zambelli	28 March 2018
Drawing A203 (Issue D) - Demolition Ground Floor Plan	Christian Zambelli	28 March 2018
Drawing A204 (Issue D) - Proposed Ground Floor Plan/Kitchen Floor Plan	Christian Zambelli	28 March 2018
Drawing A205 (Issue D) - Proposed First Floor Plan	Christian Zambelli	28 March 2018
Drawing A301 (Issue D) - Proposed East Elevation	Christian Zambelli	28 March 2018
Drawing A302 (Issue D) - Sections	Christian Zambelli	28 March 2018
Drawing A601 (Issue D) - Ground Level Internal Elevations	Christian Zambelli	28 March 2018
Drawing A602 (Issue D) - Disabled Toilet Block Plan	Christian Zambelli	28 March 2018
Drawing A603 (Issue D) - Proposed Ground Level Exit Plan	Christian Zambelli	28 March 2018
Drawing A604 (Issue D) - Proposed First Level Exit Plan	Christian Zambelli	28 March 2018

[GEN0005]

- 2. Advertising structures/signs to be the subject of a separate development application (where statutorily required).**

[GEN0065]

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

[GEN0115]

4. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
5. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.
[GEN0300]
6. The following works are to be undertaken to ensure that the building is provided with a satisfactory level of fire safety & NCC compliance:
 - (a) The existing Exit signs are to be certified to ensure compliance with Clause E4.6 of the Building Code of Australia.
 - (b) The existing smoke alarms are to be certified in accordance with AS 3786.
 - (c) The two external stairways are to be provided with a second handrail fixed at a height between 665mm and 750mm measured above the nosings of stair treads and the floor surface of ramps or the like as per NCC Clause D2.17.
 - (d) The rear external stair is to be modified to satisfy the requirements of Part D of the NCC and AS 1428.1 - 2009. In particular the open risers are to be filled and made opaque.
 - (e) The recommendations of *Access All ways Consultants Report* dated 16 December 2017 in respect of the subject building are to be carried out.
 - (f) A fire hose reel is to be installed within the existing FHR cabinet in accordance with AS 2441 as per NCC Clause E1.4, *Australian Standard 2441*.
 - (g) Portable fire extinguishers containing an extinguishing agent suitable for the risk shall be provided throughout the building to the requirements of AS 2444 - 2001.
[GENNS01]
7. Five on-site parking spaces are to be provided, generally in accordance with the Site plan A-102 dated 28 March 2018, with a minimum of three spaces signposted for parents/carers/visitors to the school.
[GENNS02]
8. All vegetation management works necessary to facilitate the development as specified in the Statement of Effects shall be undertaken by a suitably qualified Arborist (minimum AQF Level 3) in accordance with *Australian*

Standard 4373-2007 Pruning of amenity trees. Appropriate arboricultural management measures generally consistent with *Australian Standard AS4970-2009 Protection of trees on development sites* shall be installed and maintained during the construction phase of the development to protect all retained trees on site and those occurring on the adjacent land.

[GENNS04]

9. The educational establishment is limited to a total of 12 students and three staff.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

BELOW IS ADVICE ONLY

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

Water: Nil

Sewer: Nil

[PCC0265]

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

[PCC0585]

12. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

13. 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]

PRIOR TO COMMENCEMENT OF WORK

14. 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]

15. The erection of a building in accordance with a development consent must not be commenced until:

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

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

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

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

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

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

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

(d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:

(i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and

(ii) notified the principal certifying authority of any such appointment, and

(iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

16. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing. [PCW0225]
17. 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]

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

[PCW0665]

19. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the modification of access onto Prince Lane and the removal of the existing driveway crossover onto King Street and the reinstatement of the kerb.

Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

DURING CONSTRUCTION

20. 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]

21. 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:

- (a) Monday to Saturday from 7.00am to 6.00pm
- (b) No work to be carried out on Sundays or Public Holidays
- (c) The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

22. 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]

23. 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]

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

[DUR0395]

25. 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]

26. 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]

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

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

[DUR0645]

28. 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]

29. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

30. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

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

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

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

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

[DUR1495]

32. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
33. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3. [DUR1515]
34. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]
35. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned. [DUR1605]
36. The walls immediately behind any basin shall be provided with an impervious splashback to a height of 450mm and at least 150mm either side of the basin. [DUR1625]
37. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428. [DUR1685]
38. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428. [DUR1695]
39. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia. [DUR1705]
40. 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]

41. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

42. 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]

43. 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]

44. 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]

45. 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]

46. 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]

47. 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]

48. **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]

49. **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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

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

[POC0225]

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

[POC0355]

54. **The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.**

[POC0635]

55. **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]

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

[POC1055]

57. Prior to the issue of the occupation certificate, an updated Operational Plan of Management to be submitted to the General Manager or his delegate for approval. This plan shall reflect the approved student and staff numbers, operating times and traffic management measures. The plan shall address, but not be limited to, the following matters:

(a) Standard hours of operation and term times as per the NSW standard timetable

(b) Staffing and student supervision arrangements

(c) Traffic and pedestrian management measures including:

- Allocation of car parking spaces on site for staff parking and student drop-off/pick-up**
- Management/supervision of students accessing the bus zone**
- Management/supervision of students accessing the onsite carpark for drop-off/pick-up**
- Management/supervision of students accessing Knox Park within school operating hours**
- School transport policy**

(d) Noise management measures for the use of outdoor areas

(e) Establishment of a Complaint Management System for complaints in relation to the operation of the school.

[POCNS01]

USE

58. 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]

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

[USE0175]

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

- (a) 8.00am to 3.00pm - Mondays to Fridays for normal school operational hours in accordance with the NSW Standard School term.
- (b) 8.00am to 7.00pm - Mondays to Fridays for extracurricular operations (including but not limited to parent/teacher meetings, board meetings, special assemblies, student productions and the like).
- (c) No operations are to be carried out on Sundays or Public Holidays
- (d) All deliveries to the school are to occur from King Street between the hours of 9.30am to 2.45pm Monday to Friday.

Note: This condition does not preclude the use of existing facilities or buildings for the purposes of school-based child care, or for the physical, social, cultural or intellectual development or welfare of the community (whether or not it is a commercial use of the establishment) as exempt development outside of the hours specified above as authorized by Clause 38(1)(i) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

[USE0185]

- 61. 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]
- 62. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Assessment Report prepared by CRG Acoustics Ref: crgref: 17183 Report Rev 2 and dated 18 December 2017 except where amended by the conditions of this consent.

[USE0305]
- 63. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]
- 64. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]
- 65. Students are not to leave the grounds of the premises during school hours unless appropriate arrangements have been made for their supervision.

[USENS01]
- 66. All regulatory signage within the road reserve, including bus zones and school speed zones, as deemed satisfactory by the Tweed Local Traffic Committee and as approved by Council and/or Roads and Maritime Services shall be installed prior to the use of the site in accordance with this consent.

[USENS02]

67. The development shall operate in accordance with the Plan of Management approved under this consent.

[USENS03]

B. Council issue owner's consent for the development application proposal for the construction of a bus zone in the King Street road reserve.

REPORT:

Applicant: C Wilson and Mr BJ Esposito
Owner: Ms Carla R Wilson & Mr Brendan J Esposito
Location: Lot 9 DP 7665 No. 8 King Street, Murwillumbah
Zoning: B4 - Mixed Use
Cost: \$120,000

Background:

Introduction

On 19 January 2018, Council received a development application for alterations and additions to an educational establishment at 8 King Street, Murwillumbah. The application was advertised from 7 February 2018 to 21 February 2018, during which time five submissions were received.

On 7 March 2018, the applicant was requested to submit further information with regard to the following:

- Revised plans at appropriate scales and legibility;
- Evidence from the proposed school bus operators that they can service the proposed bus zone;
- Clarification as to how the proposed traffic management measures would work if the school were to operate at a different timetable to the standard NSW schedules (as proposed);
- Revised car parking proposals to allow for on-site manoeuvrability and addressing accessible car parking requirements;
- Provision of a speed platform on Prince Lane;
- Further information on how pedestrians would safely King Street to access the site; and
- A response to the issues raised by objectors in their submissions to the proposal.

On 9 March 2018, the applicant was advised that, following further consideration of the application, a speed platform on Prince Lane was unwarranted. Having regard to the low pedestrian volumes likely to be involved, it was considered that traffic speed could be addressed by signage alleviating the need for a safety platform on this lane.

Following a request from the applicant, the Assessing Planning Officer and Traffic Engineer met with the applicant and her representative on 17 April 2018 to discuss how the applicant proposed to response to the Request for Further Information. The applicant indicated her intention to modify the application to retain the student and staff numbers as approved and to request the Traffic Consultants engaged for the project (Bitzios Consulting) to update their report in light of such an amendment.

The applicant formally modified the application on 4 May 2018 with the submission of an updated Traffic Impact Assessment Report and additional advice from the Accessibility Consultant.

On 18 May 2018, the application was formally called up to a Council meeting for determination.

Site Details

The site is described as Lot 9 DP7665 and is commonly known as 8 King Street, Murwillumbah. It has an area of approximately 667.5sqm with 14.3m frontage to King Street and 11.4m rear boundary frontage to Prince Lane.

The site accommodates a two storey building which was originally constructed as a dwelling but has since been converted to use as a tutorial centre for Murwillumbah High School. The existing building consists of a technics room, kitchenette, bathroom and two multi-purpose rooms on the ground floor and on the first floor: two learning spaces, an office, interview room, kitchen, withdrawal space, two toilets and a verandah area.

The rear garden accommodates an outdoor covered learning area and small storage shed.

There is a vehicular access from both King Street and Prince Lane. Three off- street car parking spaces are provided at the rear of the site, accessed directly from Prince Lane.

The site is zoned B4 Mixed Use and is located within the Murwillumbah Central Business District, in the edge of the retail area.

The site is adjoined by 6 King Street to the east which accommodates a two storey building occupied by a chiropractor practice. To the east of this are dwellings (4 King Street and 2A King Street).

The site is adjoined to the west by 10 King Street which accommodates a two storey building which was in office use but is currently vacant. Further west are commercial uses including offices, medical practitioners, allied health professionals and other related therapy and health uses.

To the south of the site (Prince Lane), the land is zoned for mixed use, though the predominate use is residential. A portion of the lots directly opposite the site (5 Prince Street) is currently used for informal car parking (though there does not appear to be any consent on record for this use).

On the northern side of King Street is the Sunnyside Shopping Centre and associated ground level carpark. A veterinary hospital is located to the east of the shopping centre (3 King Street).

Site History

DA02/0357

Under DA02/0357, development consent was issued for the change of use of a dwelling to an educational establishment. The use related to a Tutorial Centre to be operated in conjunction with Murwillumbah High School with a capacity for 12 students (aged 12 years +) and 3 teachers.

The room now identified as a technics room was used as a double garage with access to both King Street and Prince Lane (rear lane).

The conditions of use imposed on the consent included the following:

9. *Students are not to leave the grounds of the premises during school hours unless appropriate arrangements have been made for their supervision.*
10. *Hours of operation of the Tutorial Centre are to be restricted to Monday to Friday 8.30am to 5.00pm during the normal school term.*
11. *A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units)*
12. *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, fumes or the like.*

As the Department of Education & Training was the applicant, Section 7.11 contributions did not apply.

DA02/0872

Under DA02/0872, development consent was issued for the erection of an educational facility. This application was for the construction of a carpark (3 spaces) and minor alterations to the building to facilitate the change of use from residential to an educational establishment approved under DA02/0357. The double garage was converted to educational use with the provision of 3 car parking spaces off Prince Lane.

Conditions of the consent included the following:

5. *The educational establishment shall be undertaken in accordance with the conditions of Development Consent No 02/0357.*
20. *The educational establishment is limited to a total of 12 students and three staff.*

Development Assessment Panel

The applicant attended a Development Assessment Panel (DAP) meeting with Council officers on 27 September 2017 with a proposal to increase the number of students in an approved educational facility from 12 to 36 students with use of land at 5 Prince Street for car parking.

The applicant was advised of the planning policies and controls which would apply to the development. While the applicant was given no indication as to whether the development would be supported, they were advised that initial proposals to provide parking on an adjoining site and to rely on the Knox Park bus stop was unacceptable.

They were also advised that the provision of school crossing facilities and speed zones would require the approval of RMS and the Local Traffic Committee.

Application Details

The current application seeks to operate the facility as a primary school (referred to by the applicant as 'The Small School') retaining the same number of students (12) and staff (3).

The applicant has submitted details of the 'school philosophy' with the application, which advises the following:

"We are a child-centred school strongly focused on the experience each child has with the world of learning and going to school. We believe children's innate desire to be curious and explore, to create and invent is at the heart of their learning success. Our goal is to foster the natural desire to create and intrinsic motivation to learn as children progress through formal education.

We use play-based and project-based learning and an emergent curriculum (child-led learning) as much as possible. We also use many age-old wisdoms in how children learn, namely through their love of a good teacher and adventurous, hands-on learning.

We love children to be involved in decision-making at our school, for them to feel respected and heard, and to have some say in what they learn. Decision-making, learning and the culture of our school are guided by relationships and connection, with ourselves, each other and our environment.

We truly value and welcome parents and community mentors to participate in our school. We want children to experience being at school and learning at school in connection with their families and wider community as much as possible."

The school will be registered with the NSW Education Standards Authority (NESA) and will need to meet the national standards contained in the Australian curriculum. The applicant is working to a deadline of obtaining an Occupation Certificate by 31 August 2018 to allow the school to open for the 2019 school year.

The proposed alterations and additions involve the following:

- Removing the existing vehicular access to King Street and replacing this with a pedestrian access;
- Internal alterations including demolition of internal partitions, changing the use of various rooms and upgrading the existing kitchenette to a commercial kitchen;
- Construction of a toilet block (2 toilets) in the rear yard with a covered walkway from the rear access to the building;
- Replacement of an outdoor games court with play equipment on grass;
- Replacement of an outdoor learning area with covered sand pit;
- Provision of acoustic barriers along part of the western and eastern side boundaries to minimise noise impacts to neighbouring properties;
- Demolition of garden shed to allow for extension of the parking area;
- Revisions to the existing on-site car parking to increase the number of spaces from three to five and to allow for on-site manoeuvrability;
- Construction of a path from the car parking to the rear access of the building;
- Provision of bicycle parking on site.

In addition, the applicant is proposing a bus zone on King Street and the introduction of school zone signage (40kph speed limit) on King Street, Prince Lane and Factory Lane.

Student and Staff numbers

The application initially sought to increase the number of students from 12 to 36 and to increase the number of staff from a maximum of three to three full time teaching/managerial positions and one part time teaching position. In addition, it was indicated that there would be casual part-time staff such as a gardener, kitchen hand/cook and specialist educators (woodwork, yoga, etc) with at least one parent onsite for a full or half day in the role of a helper (assisting staff, gardening, cooking or supervising drop-off/pick-up).

However as a result of objectors' concerns with regard to the loss of on-street car parking, the applicant has modified the application to retain the number of students at 12 (as per the existing consent on the site) and the number of staff at three. The applicant has indicated that with the reduced student numbers, the permanent staff will be reduced to two with a casual music teacher attending one hour a week.

Hours of Operation

The applicant initially nominated the preferred hours of operation as 9.00am to 3.00pm with a schedule of three terms (12-14 weeks) which would differ to the NSW standard school term schedule. However, acknowledging the likely difficulties with regard to accessing the public school bus service and the operation of the school zones outside of the standard NSW hours (8.30am to 2.30pm), the applicant amended the proposal to operate as per the standards NSW school terms and holidays.

Approval of the application can restrict the standard school operating (teaching) hours to between 8.00am and 3.00pm and to be in accordance with the standard NSW school terms and holidays. However, it is reasonable that an allowance would be made for extracurricular activities such as parent/teacher meetings, board meetings, special assemblies, student productions and the like to be accommodated outside of these hours (8.00am to 7.00pm Monday – Friday and 9.00am – 1.00pm Saturdays).

Traffic Management measures

The original traffic management measures included the provision of a drop-off/pick-up zone (12.4m long accommodating 2 car parking spaces) and a new bus zone (19m long) on King Street.

The modification of the application to retain the number of students and staff (as currently approved) has removed the necessity for a drop-off/pick-up zone on King Street, with three of the five car parking spaces to be provided at the rear of the site available for student drop-off/pick-up onsite. The remaining two spaces are to be allocated to staff parking. (This can be managed by way of a condition on any consent issued).

Given the limited number of students (12), it is proposed by the applicant that the bus zone will operate between 8.30am and 9.30am (1 hour for student drop-off) and between 2.45pm and 3.45pm (1 hour for student pickup) during school terms. It is noted that the acceptability of the specified bus zone times will be a matter for the Local Traffic Committee (LTC) to consider prior to making a recommendation on this matter to Council.

While car parking spaces on King Street are not marked, the provision of the bus zone will result in the loss of approximately three existing on-street car parking spaces for two hours (or as otherwise recommended by the LTC) on school days during the school term.

Internal Referrals

The application was referred to Council's Environment & Health Unit, Building Unit, Water and Wastewater Unit, Traffic Engineering Unit and Development Engineering Unit for comment.

The Building Unit and Water and Wastewater Unit raised no objection, subject to the imposition of appropriate conditions.

Following the submission of plans with improved legibility, Council's Environment & Health Unit raised no objection to the proposal and has approved the plans for the commercial kitchen.

Council's Traffic Engineering Unit and Development Engineering Unit initially had some concerns with the onsite car parking (which did not allow for vehicles to enter and exit the site from Prince Lane in a forward direction) and pedestrian safety. The amended plans reorganises the onsite car parking to allow for vehicles to manoeuvre on site. The amended Traffic Impact Assessment Report (prepared by Bitzios Consulting and dated 3 May 2018), indicates that a children's crossing on King Street is not required for 12 students, nor is a dedicated drop-off/pick-up zone on King Street.

Council's Traffic Engineering Unit supports the proposal, notwithstanding the loss of three on street car parking spaces during the drop-off/pick-up period.

External Referrals

There were no external referrals. As the number of students is less than 50, a referral to Road and Maritime Services (RMS) is not warranted for the application.

In the event that the application is approved, proposals for the installation of the required traffic management facilities and treatments including regulatory signage within the road reserve (bus zones and school speed zones) will be forwarded to the Tweed LTC for assessment and subsequent recommendation(s) to Tweed Shire Council.

Objections

The application was advertised in the Tweed Link on 7 February 2018 with a submission period from 7 February 2018 to 21 February 2018. During this time five submissions were received. The main issues raised in the submissions related to traffic management and the loss of on-street car parking. Issues were also raised with regard to the appropriateness of a town centre site for a school, accessibility on site and traffic safety. These matters are addressed in more detail in the report.

It is considered that the modifications to the application address the main issues raised with regard to traffic, and with no increase proposed in the number of students or staff, that the traffic impacts are considered reasonable. The applicant has also addressed the issues

raised with regard to accessibility and the response is considered to address the issues raised in the objections.

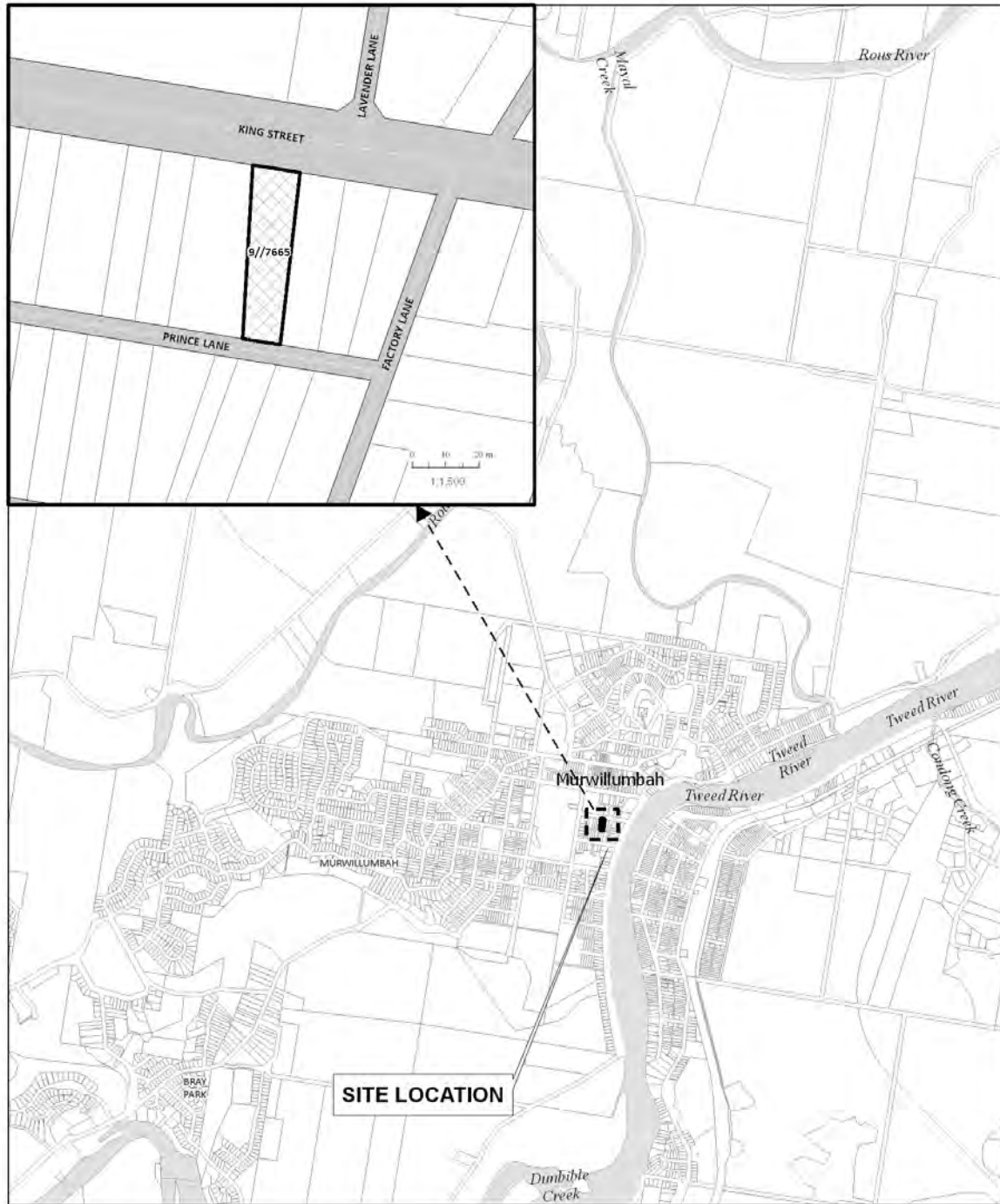
Conclusion

The change of use of an approved educational facility from a tutorial centre for high school students to a primary school with the same number of approved students and staff is considered to be acceptable in terms of the additional impacts.

While the applicant is proposing a new bus zone on King Street, the number of on-site car parking spaces is being increased with the provision of two surplus spaces. The existing vehicular access to the site from King Street is also being closed.

While the current application retains the student numbers at 12, it is understood that such small numbers may not be viable for the school in the long term and that it is possible that the applicant may make a future application (a new Development Application or a Section 4.55 (previously Section 96) application)) to increase the student numbers. It is recognised that any future increase in the student number may require additional traffic management measures (such as additional car parking requirements, a designated drop-off/pick-up area, necessity for a children's crossing, etc). However Council can only assess the current application on its merits and in this case, the application is deemed to be acceptable.

SITE DIAGRAM:



Site Plan

Lot 9 DP 7665
8 King Street, Murwillumbah

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Cadastral: 21/05/2018
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Coordinate System - MGA Zone 56
Datum - GDA 94

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Civic and Cultural Centre
3 Tumbalong Road
Murwillumbah NSW 2484
P.O. Box 616
Murwillumbah NSW 2484

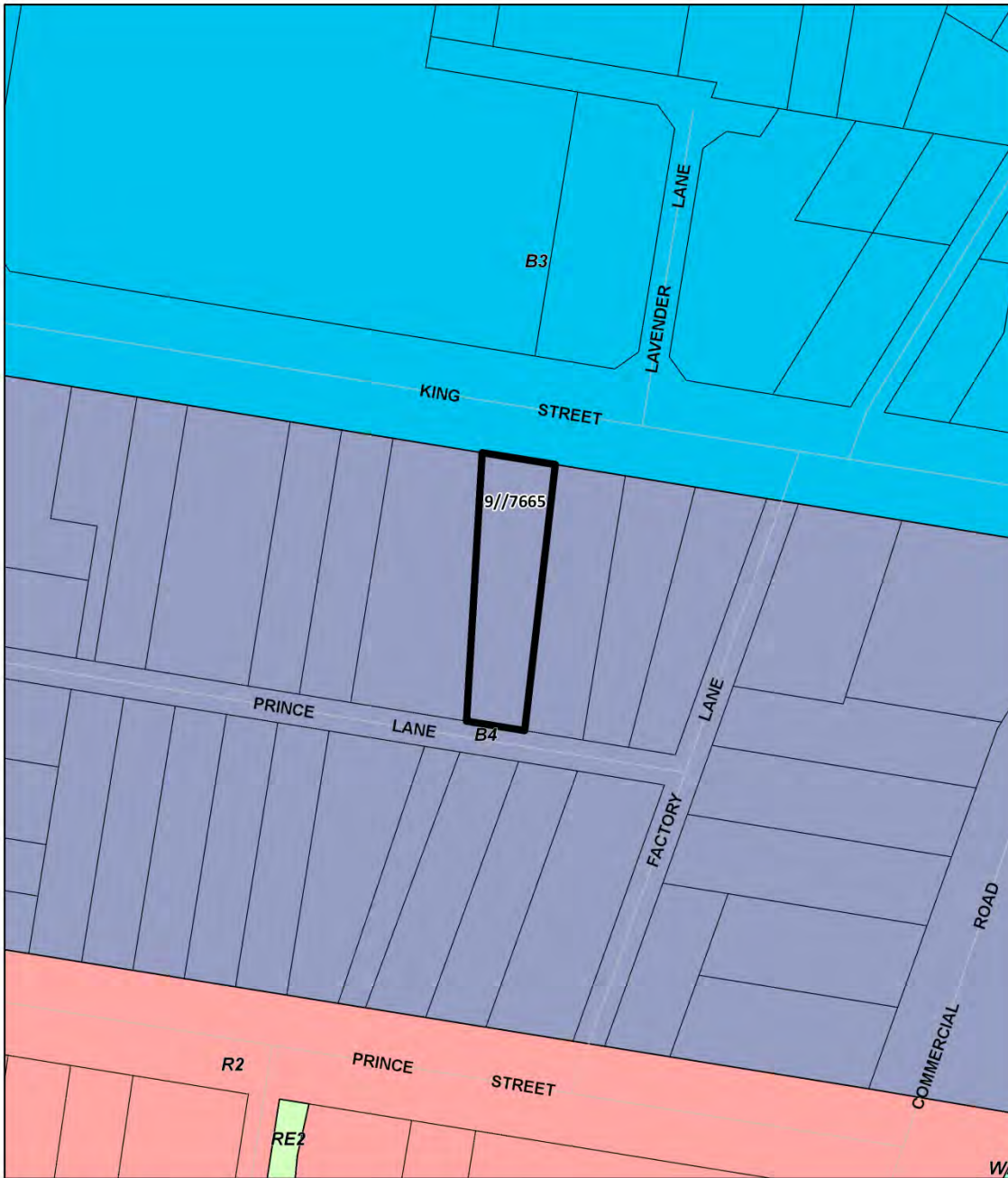
T: (02) 6670 2400 / 1300 632 872
F: (02) 6670 2483
W: www.tweed.nsw.gov.au
E: planning@forms.tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

Date Printed: 21 May, 2018

ZONING MAP:



Subject Land Tweed Local Environmental Plan 2014

- Zone
- B3 Commercial Core
 - B4 Mixed Use
 - R2 Low Density Residential
 - RE2 Private Recreation

1:1,000 @ A4 Portrait
 0 8.5 17 m

DO NOT SCALE
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GDA
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geosidetic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

Site Plan - Local Environmental Plan

Lot 9 DP 7665
 8 King Street, Murwillumbah

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Date Printed: 23 May 2018

DEVELOPMENT PLANS:

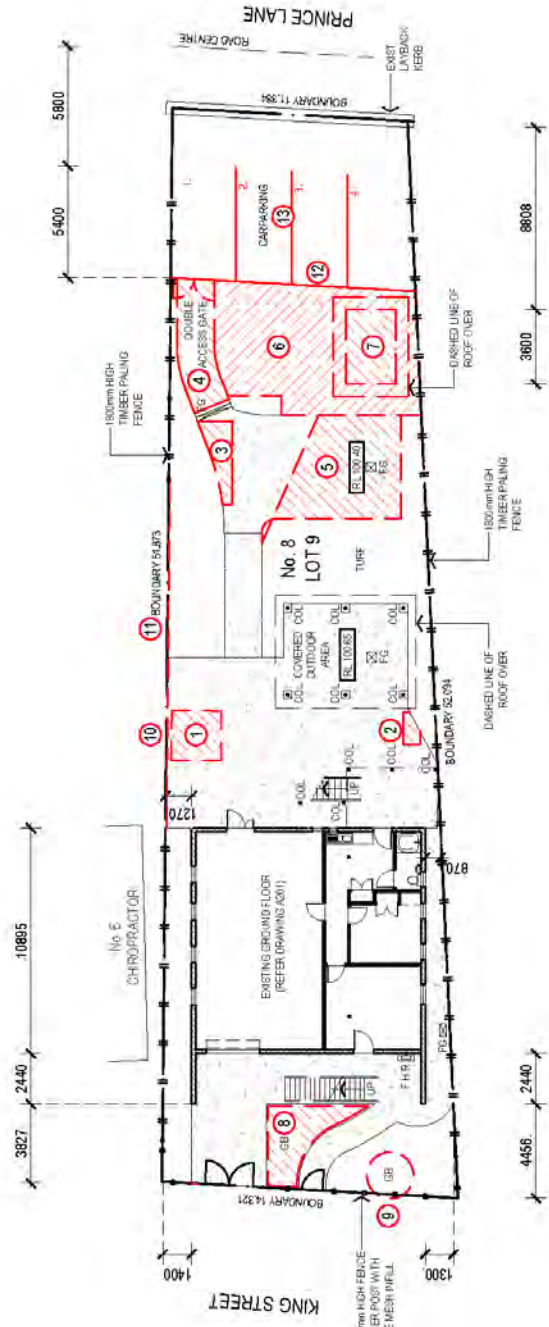
LEGEND

	CONC PATHWAY / SURFACE
	GARDEN BED
	COL
	FIELD GULLY / PIT
	FIRE HOSE REEL

NOTES

1 ALSO REFER ENVIRONMENTAL NOISE IMPACT REPORT FOR EXTENT OF ACOUSTIC TREATMENTS INCLUDING BUT NOT LIMITED TO FENCING REQUIREMENTS.

- DEMOLITION**
- 1 REMOVE CONC SECTION TO FACILITATE NEW 2.4m x 2.4m SANDPIT
 - 2 REMOVE PART CONC PATHWAY TO FACILITATE NEW VEGETABLE GARDEN BED
 - 3 REMOVE PART CONC PATHWAY IN PREPARATION FOR NEW TOILET BLOCK
 - 4 REMOVE PART PATHWAY TO FACILITATE NEW CAR PARKING LAYOUT
 - 5 REMOVE SECTION OF CONC SLAB TO GAMES COURT AREA IN PREPARATION FOR NEW TURF
 - 6 REMOVE TURF AREA IN PREPARATION FOR NEW CAR PARKING LAYOUT
 - 7 REMOVE GARDEN BED IN PREPARATION FOR NEW TURF WAITING AREA
 - 8 REMOVE EXISTING PALM TREE
 - 9 REMOVE EXIST FENCE AS REQUIRED TO FACILITATE NEW 2500mm HIGH ACOUSTIC BARRIER - ALSO REFER NOTE 1
 - 10 REMOVE EXIST FENCE AS REQUIRED TO FACILITATE NEW 2300mm HIGH ACOUSTIC FENCING - ALSO REFER NOTE 1
 - 11 REMOVE EXIST FENCE AS REQUIRED TO FACILITATE NEW 2300mm HIGH ACOUSTIC FENCING - ALSO REFER NOTE 1
 - 12 REMOVE FENCE AND GATES TO REAR OF EXISTING CARPARK
 - 13 PREPARE CARPARK FOR NEW LAYOUT - REFER DRAWINGS AND



DESIGN BY
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CLIENT
CARLA WILSON

PROJECT
PROPOSED 'THE SMALL SCHOOL' PROJECT

LOCATION
8 KING STREET, MURVILLUMBAH, NSW 2484

SCALE
1:200@A3

DATE
28th MARCH 18'

THIS DRAWING IS FOR
EXIST WITH DEMOLITION SITE PLAN

PURPOSE
APPROVAL
DRAWING NUMBER
P_059
DRAWING ISSUE
A-101 (D)

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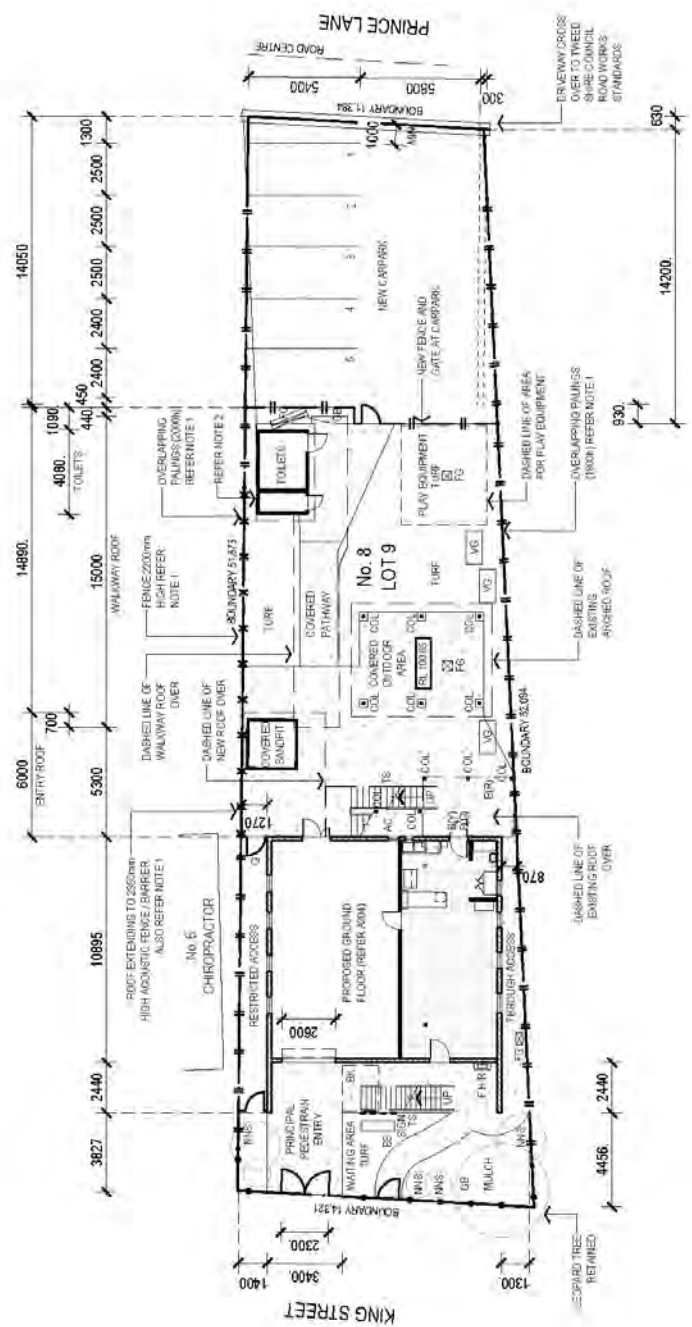
LEGEND

-  CONIC PATHWAY / SURFACE
-  NEW CARPARK LAYOUT CONTINUE
-  EXISTING ROADBASE (N/C)

- B(V) BIN, COLOUR AS NOTED
- B5 BENCH SEAT TO CLIENT SPECIFICATION
- BH BICYCLE PARKING
- G EXTERNAL SOLID DOOR / GATE CONNECTED TO ROOF STRUCTURE - ALSO REFER NOTE 1
- GB GARDEN BED
- COL COLUMN
- F.G. FIELD GAILY / RT
- F.H.F. FIRE HOSE REEL
- MMS NEW NATIVE SHRUB - LARGER SIZE TO 2m TALL
- SGN SIGN - NEW "THE SMALL SCHOOL" SIGN TO FRONT OF TIMBER SLAT SCREEN AT A SUITABLE VISUAL HEIGHT WHEN VIEWED FROM THE STREET - SIGN WITH 1700L x 700W x 100H
- T9 TIMBER SLAT SCREEN TO ENCLOSE UNDER STAIR TO RESAITE OVERHEAD - HCPHD
- VG VEGETABLE GARDENS

NOTES

1. ALSO REFER ENVIRONMENTAL NOISE IMPACT REPORT FOR ACOUSTIC TREATMENTS INCLUDING, BUT NOT LIMITED TO FENCING REQUIREMENTS
2. EXTERNAL DISABLED TOILET & WHEELIANT TOILET TO COMPLY WITH AS 4281:2000 EXCLUDING GUTTER, ENDSURE MIN 1500MM SETBACK FROM BOUNDARY - ALSO REFER DRAWING A02.
3. NEW COVERED SANDPIT TO NEARURE 2.4m x 2.4m SQUARE



PROPOSED SITE PLAN

THESE DRAWINGS
PROPOSED SITE PLAN
 SCALE: 1:200@A3
 DATE: 28th MARCH 18'

LOCATION: **PROPOSED 'THE SMALL SCHOOL' PROJECT**
 & KING STREET, MURWILLUMBAH, NSW 2484

CLIENT: **CARLA WILSON**

DESIGNER: **CHRISTIAN ZAMBELLI**
 Architect@christianzambelli.com
 P 0408 266 135 B.Arch BOAQ 4518

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DEMOLITION

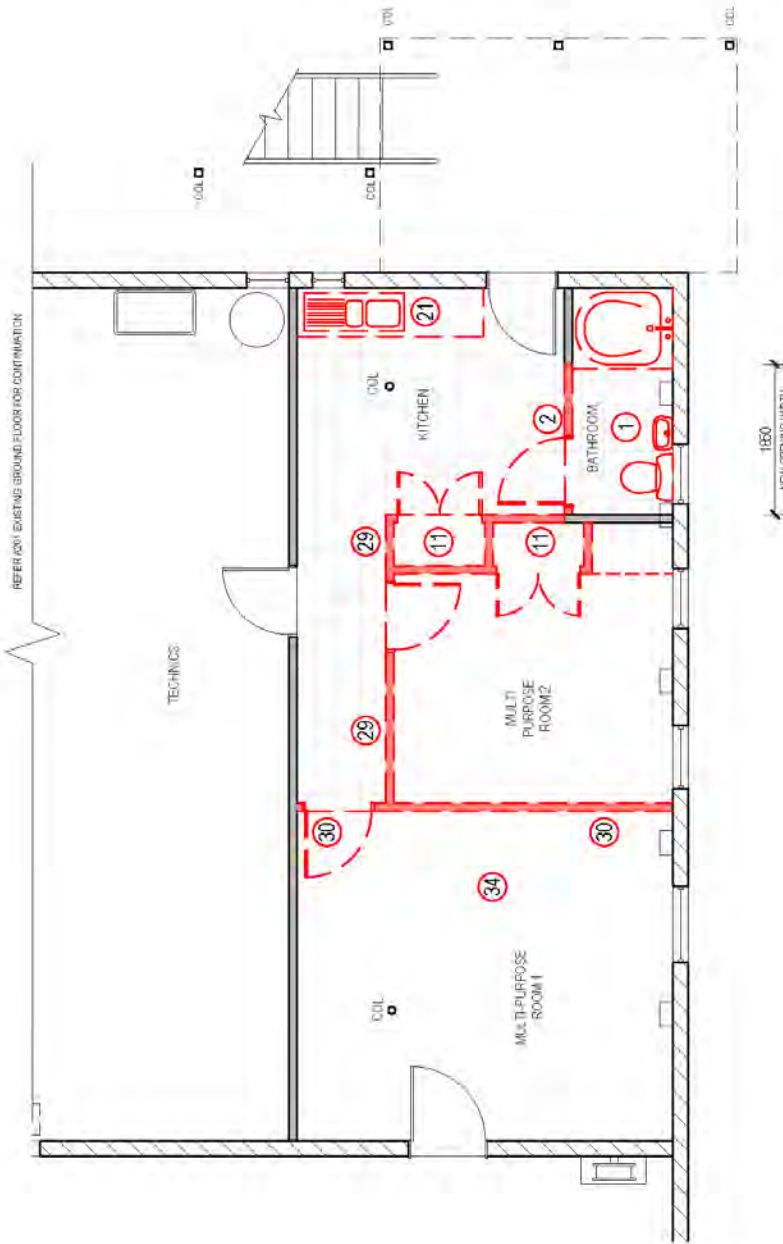


— LINE EXISTING BEAM

- ① REMOVE EXISTING BATHROOM
- ② PARTIALLY REMOVE WALL TO INCREASE OPENING WIDTH TO 1500MM
- ⑪ REMOVE INTERNAL WALL AND CUPBOARDS
- ⑰ REMOVE EXISTING BEICH AND BINK
- ⑲ REMOVE INTERNAL WALL
- ⑳ REMOVE INTERNAL WALL
- ⑳ PREPARE FLOOR FOR NEW TILE FINISH

NOTES

- 1 DEMOLITION PLANS PROPOSED PLANS AND CORRESPONDING ITEM NUMBERS TO BE READ IN CONJUNCTION WITH DOCUMENT TITLED KITCHEN NOTES FOR PLAN A204 - PROPOSED GROUND FLOOR (KITCHEN FLOOR PLAN)
- 2 REFER DRAWING A601 FOR INTERNAL ELEVATIONS OF PROPOSED NEW WORKS
- 3 REFER DRAWING A204 FOR NEW WORKS PLAN



PURPOSE: APPROVAL
PROJECT NUMBER: P-059
DRAWING TITLE: A-203 (D)

**DEMOLITION
GROUND LEVEL
PLAN**

SCALE: 1:50@A3

DATE: 28th MARCH 18'

SOUTH

LOCATION: 8 KING STREET, MURWILLUMBAH, NSW 2484

PROJECT: PROPOSED THE SMALL SCHOOL PROJECT

CLIENT: CARLA WILSON

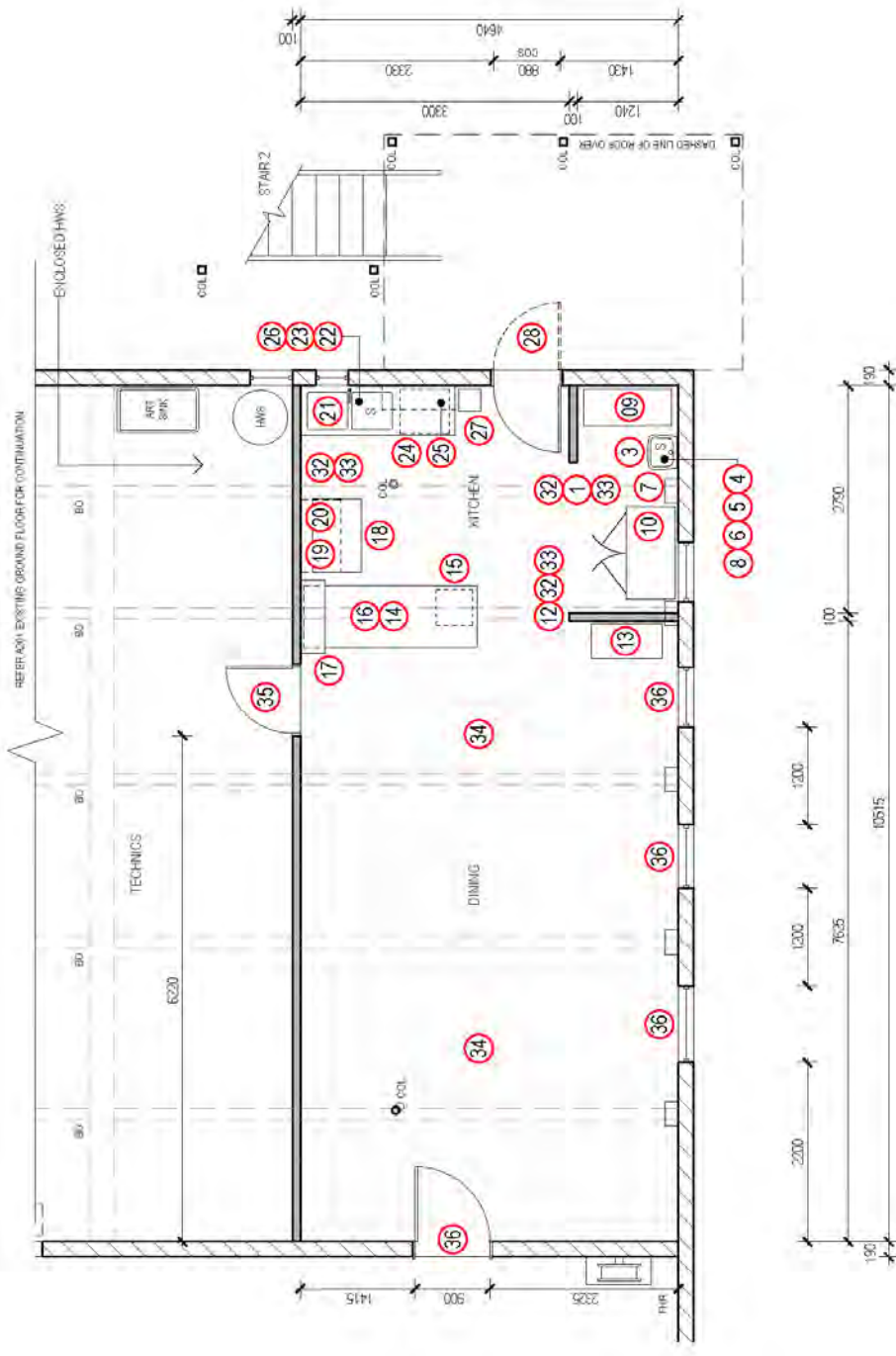
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LEGEND

	BLOCK WALL - PAINTED
	STUD WALL - REFER DIMENSIONS ON PLAN
	TILED WALL / FLOOR FINISH
	BEAM OVER
	COLUMN
	HWS - HOT WATER SYSTEM
	S - SINK - REFER NOTE 1
	WM - WASHING MACHINE
	(XX) - ITEM NUMBER - REFER NOTE 1

- NOTES**
- DEMOLITION PLANS/PROPOSED PLANS AND CORRESPONDING ITEM NUMBERS TO BE READ IN CONJUNCTION WITH DOCUMENT TITLED KITCHEN NOTES FOR PLAN A204 PROPOSED GROUND FLOOR (KITCHEN FLOOR PLAN) FOLLOWING ON FROM ABOVE. NOTE THAT ITEM 31 (LAUNDRY) IS NO LONGER APPLICABLE (NOT USED). REFER DRAWING A201 FOR INTERNAL ELEVATIONS OF PROPOSED NEW WORKS. REFER DRAWING A203 FOR DEMOLITION WORKS.
 -
 -
 -



MEMORANDUM	CLIENT	PROJECT	LOCATION	SCALE	DATE	PROJECT NUMBER	REVISION
CHRISTIAN ZAMBELLI architect@christianzambelli.com P 0408 266 135 B Arch. B04Q 4518	CARLA WILSON	PROPOSED THE SMALL SCHOOL PROJECT	8 KING STREET, MURWILLUMBAH, NSW 2484	1:50@A3	28th MARCH 18'	P_059	A-204 (D)
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LEGEND

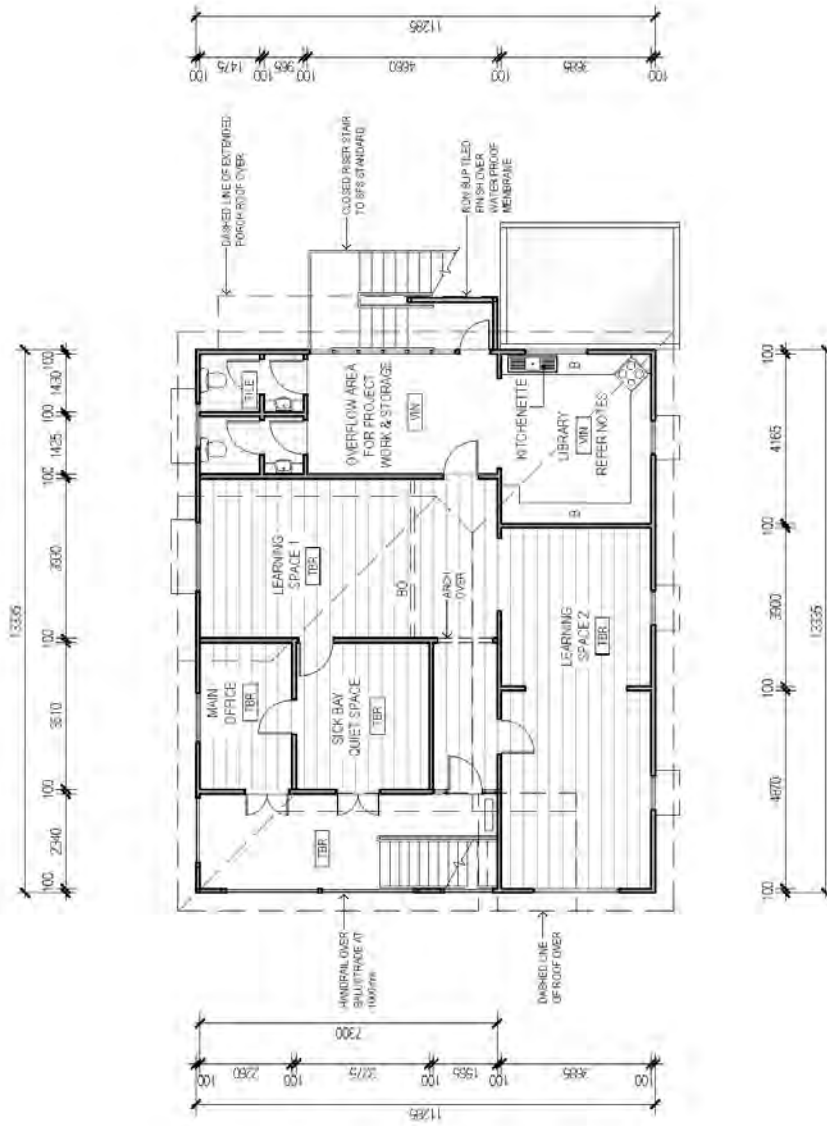
 BLOCK WALL - PAINTED
 STUD WALL - REFER DIMENSIONS ON PLAN
 TILED FLOOR FINISH
 POLISHED TIMBER FLOOR FINISH

 FLOOR FINISH AS NOTED
 GARDEN BED
 BENCH
 BALL STRADE
 BAL
 BEAM OVER
 BAO
 COLUMNS
 CPT
 GARRET
 HWS 270LT HOT WATER SYSTEM
 OV OVEN WITH RANGE HOOD OVER
 RS ROLLER SHUTTER
 S SHK
 SH SUN HOOD / CANOPY
 TBR TIMBER
 WC WATER CLOSET SET
 V VANITY / HAND WASHING BASIN
 VIN VINYL

NOTES

- KITCHEN AREA TO BE CONVERTED INTO THE NEW LIBRARY AREA WITH ACCOMPANYING NITCHENETTE WORKS TO INCLUDE
 - RE-USE OF EXIST CLIPBOARDS FOR BOOK STORAGE CLIPBOARD DOORS TO BE REMOVED
 - PAINT EXISTING SHELVES AND BENCH TOPS
 - RESTORE SURFACE AREA AROUND TAPS OVER EXIST SINK (CRACKED)
 - THIS AREA TO SERVE AS NITCHENETTE

PURPOSE:
APPROVAL
 PROJECT NUMBER:
P_059
 DRAWING CODE:
A-205 (D)



PROPOSED
**FIRST LEVEL
 PLAN**

SCALE:
1:100@A3
 DATE:
28th MARCH 18'

NORTH


LOCATION:
**8 KING STREET,
 MURWILLUMBAH,
 NSW 2484**

PROJECT:
**PROPOSED 'THE SMALL
 SCHOOL' PROJECT**

CLIENT:
CARLA WILSON

DESIGN BY:
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LEGEND

	BLOCK BLOCK WALL - PAINTED
	STUD WALL - REFER DIMENSIONS ON PLAN
	TILED WALL / FLOOR FINISH
	BEAM OVER
	COL COLUMN
	HWS 270LF HOT WATER SYSTEM
	S SINK - REFER NOTE 1
	WM WASHING MACHINE
	ITEM NUMBER - REFER NOTE 1

- NOTES**
- DEMOLITION PLANS/PROPOSED PLANS AND CORRESPONDING ITEM NUMBERS TO BE READ IN CONJUNCTION WITH DOCUMENT TITLED KITCHEN NOTES FOR PLAN AREA - PROPOSED GROUND FLOOR (KITCHEN FLOOR PLAN)
 - FOLLOWING ON FROM ABOVE, NOTE THAT ITEM 31 (LAUNDRY) IS NO LONGER APPLICABLE (NOT USED).
 - REFER DRAWING A20 FOR INTERNAL ELEVATIONS OF PROPOSED NEW WORKS
 - REFER DRAWING A20 FOR DEMOLITION WORKS



ELEVATION A
SCALE 1:50



ELEVATION B
SCALE 1:50



ELEVATION C
SCALE 1:50



ELEVATION D
SCALE 1:50

DATE: 28th MARCH 18'
 DRAWING NUMBER: P_059
 PROJECT NUMBER: A-601 (D)

PROPOSED
 GROUND LEVEL
 INTERNAL ELEVATIONS

SCALE: 1:50 @ A3
 DATE: 28th MARCH 18'

PROJECT: PROPOSED 'THE SMALL SCHOOL' PROJECT
 LOCATION: 8 KING STREET, MURWILLUMBAH, NSW 2484

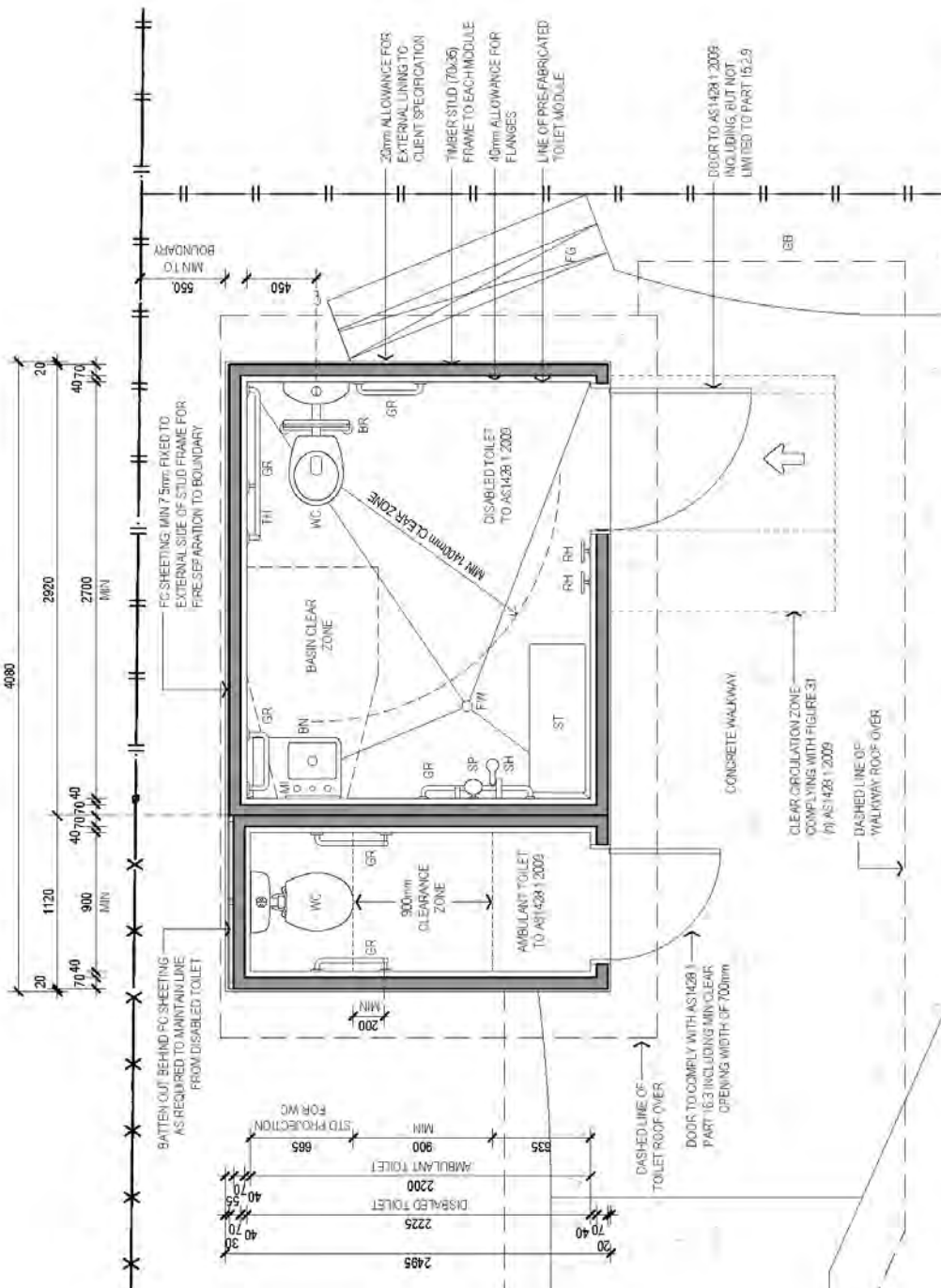
DESIGNED BY: CHRISTIAN ZAMBELLI
 ARCHITECT: christianzambelli.com
 P 0498 266 135 B.Arch. BOX 4518
 CLIENT: CARLA WILSON
 PROJECT: PROPOSED 'THE SMALL SCHOOL' PROJECT
 LOCATION: 8 KING STREET, MURWILLUMBAH, NSW 2484
 SCALE: 1:50 @ A3
 DATE: 28th MARCH 18'

NOTES

- BV BASIN
- BR BACK REST
- FK FLOOR/WHITE
- GR GRAB RAIL
- M MIRROR
- SH SHOWER HEAD ASSEMBLY WITH TAPS AND PORTABLE SHOWER HEAD ATTACHED TO COMPLIANT LENGTH HOSE
- SP SOAP HOLDER
- ST FOLDING SHOWER SEAT
- TH TOILET ROLL HOLDER
- WC TOILET SUITE

NOTES

1. EXTERNAL DISABLED TOILET AMBULANT TOILET TO COMPLY WITH AS1428.1:2009 EXCLUDING GUTTER, ENSURE MIN 300mm SETBACK FROM BOUNDARY
2. PROVIDE NEW CONCRETE SLAB FOR NEW TOILET BLOCK TO SOUTHWEST DIMENSIONS COMPROMISING WITH TOILET SUPPLIER PRODUCT DIMENSIONS
3. ALL TOILET SUITES TO BE SUITABLE TO PROVIDE SUPPLEMENTARY SYSTEMS TO DOORWAYS TO PREVENT WATER INGRESS



DESIGNER
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 P 0408 266 135 B. A-act 3042 4518

DATE
 CARLA WILSON

PROJECT
 PROPOSED THE SMALL SCHOOL PROJECT

LOCATION
 8 KING STREET, MURWILLUMBAH, NSW 2484

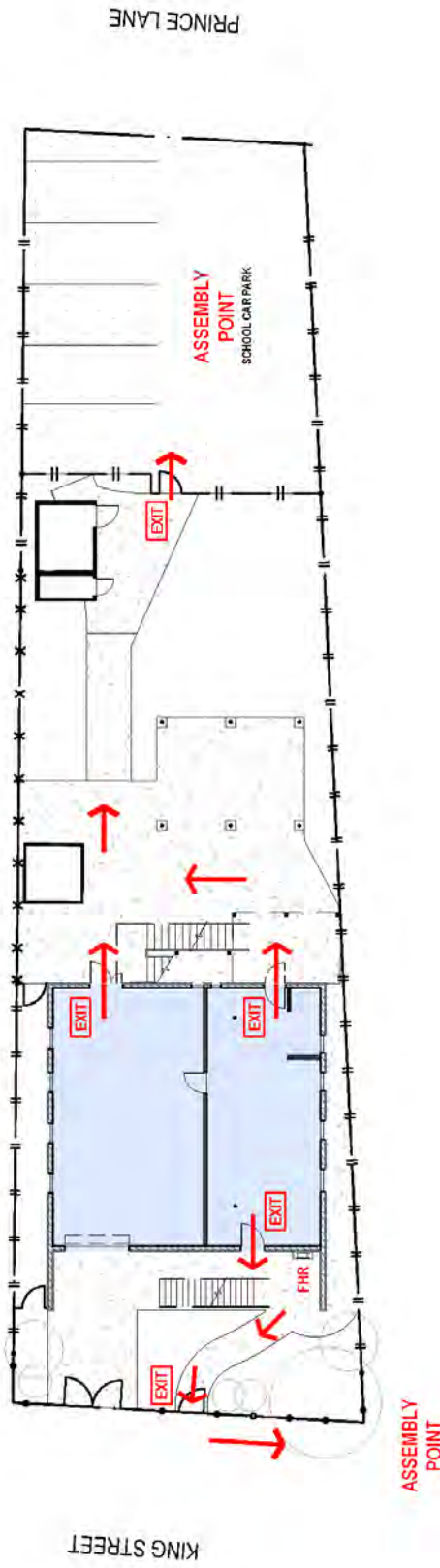
SCALE
 1:25@A3

DATE
 28th MARCH 18'

APPROVAL
 APPROVAL PROJECT NUMBER P_059 DRAWING ISSUE A-602 (D)

PROPOSED DISABLED TOILET BLOCK PLAN

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CLIENT: **CARLA WILSON**

PROJECT: **PROPOSED THE SMALL SCHOOL PROJECT**

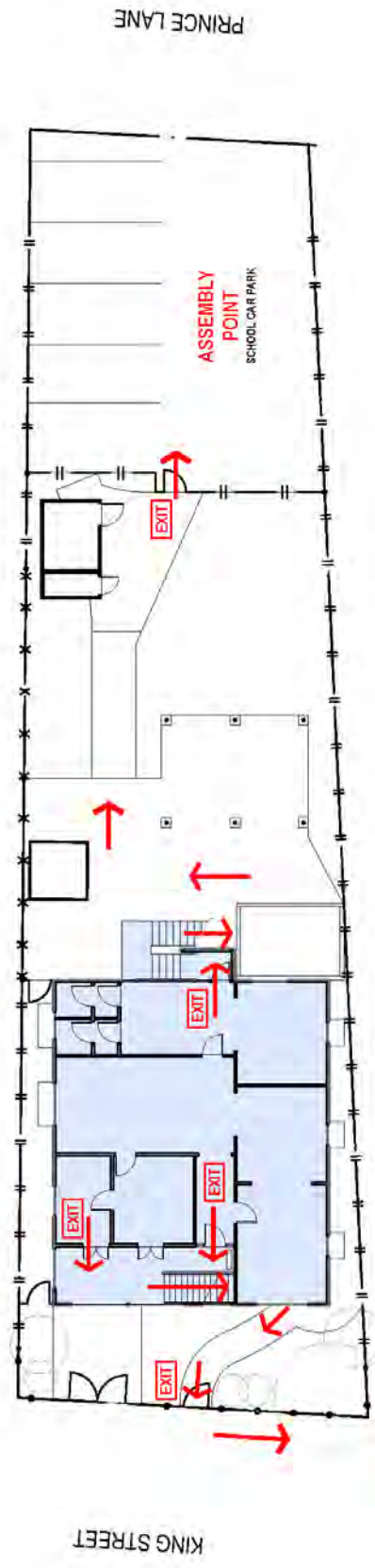
LOCATION: **8 KING STREET, MURWILLUMBAH, NSW 2484**

NORTH: 

SCALE: **1:180@A3**
 DATE: **28th MARCH 18'**

THIS DRAWING: **PROPOSED GROUND LEVEL EXIT PLAN**

PURPOSE: **APPROVAL**
 PROJECT NUMBER: **P_059**
 DRAWING (ISSUE): **A-603 (D)**



ASSEMBLY POINT

DATE: APPROVAL
 PROJECT NUMBER: P_059
 DRAWING (SCALE): A-604 (D)

PROPOSED
 FIRST LEVEL EXIT
 PLAN

SCALE: 1:160@A3
 DATE: 28th MARCH 18'



LOCATION: 8 KING STREET,
 MURWILLUMBAH,
 NSW 2484

PROJECT: PROPOSED 'THE SMALL
 SCHOOL' PROJECT

CLIENT: CARLA WILSON

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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

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 is considered to be generally in accordance with the aims of this plan in that it will provide an educational facility within an urban centre in close proximity to the potential student population and parents/carers' places of work.

While the proposal will result in the loss of approximately three on-street car parking on King Street during the drop-off and pick-up periods, it is consistent with the aims of the plan in that:

- The provision of a primary school enhances the range of educational facilities available to the local community in Murwillumbah and its hinterland;
- The continued use of a town centre site approved as an educational facility is a more desirable location for a school than a green field on the periphery or in a rural unserviced area;
- The provision of a bus zone will facilitate students accessing the site by school bus thereby encouraging the use of public transport and potentially reducing private vehicle trips and the associated demand for on-street car parking.

Clause 2.3 – Zone objectives and Land use table

The objectives of the B4 Mixed Use zoning are:

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

The proposal provides for a small scale private primary school at an edge of town centre location where there is a transition between retail, commercial and residential uses. The proposal seeks to rely on public transport (in addition to private vehicles), with the provision of a bus zone.

The plan defines an **educational establishment** as '*a building or place used for education (including teaching), being:*

- (a) *a school, or*
- (b) *a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.'*

An educational establishment is permitted with consent in Zone B4.

Clause 2.7 – Demolition requires development consent

The internal and external renovation works require minor demolition with the removal of some areas of concrete from the front and rear yard, the demolition of a garden shed and the demolition of some internal partitions. Appropriate conditions to address the demolition can be included on any consent issued.

Clause 4.3 - Height of Buildings

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 proposed development site is identified as having a maximum building height of 12.2m, as identified on the building height map.

There is no change to the maximum height of the existing building on the site (8m). The additions to the rear (cover structures to outdoor areas and accessible toilets) have a maximum height of 3.6m.

Clause 4.4 – Floor Space Ratio

The site has a maximum specified FSR of 1.2:1. With a site area of 667.5sqm, the existing FSR is 0.36:1 (based on a GFA of 115.2sqm on the ground floor + 128sqm on the first floor). The additional floor space proposed is 8.5sqm (accessible and ambulant toilet in rear year) resulting in a proposed FSR of 0.38:1.

Clause 4.6 - Exception to development standards

There is no variation sought to a development standard

Clause 5.10 - Heritage Conservation

The site does not contain a heritage item, is not located in a heritage conservation area or is it located in the vicinity of either. A review of Council's Aboriginal Cultural Heritage Mapping and Draft Aboriginal Cultural Heritage Management mapping (predictive and confirmed locations) does not identify any constraints on or adjacent to the site.

Clause 7.1 – Acid Sulfate Soils

The site is classified as Acid Sulfate Soils Class 3 where works more than 1 metre below the natural ground surface or works by which the water table is likely to be lowered more than 1 metre below the natural ground surface are to be assessed under this clause.

Engineering drawings prepared by GEO-AM Consulting and dated February 2018 indicate that footings may extend to a depth of 1.0m. A standard condition can be included in any consent issued requiring an Acid Sulfate Soils Plan for Minor Works.

Clause 7.2 - Earthworks

The earthworks associated with the proposal are minor in nature, restricted to the removal of concreted areas and the construction of the external toilet facilities.

Clause 7.3 – Flood Planning

The site is affected by flooding being located below the 1 in 100 year flood level (RL 7.0 AHD) and the Probable Maximum Flood (PMF) level. The site is also subject to low flow flooding (the product of flood velocity and depth at the peak of the ARI 100 year flood event being less than 0.3). The site is behind the Murwillumbah Levee.

This 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:

- (a) *is compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

The use of the building for an educational establishment has previously been approved under DA02/0357. The current applicant seeks to retain the number of students at 12. Though the age profile of the students will change from high school students (12-15 years) to primary school level, this will not impact on the risk to life as a result of flood hazard on the site with the site located behind the levee.

The extent of new development is limited to the external toilet, which is considered to have a negligible impact on potential flood behaviour.

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. As above, the extent of new development is limited to the external toilet with some alterations to the outdoor play areas and the onsite car parking area. Standard conditions of consent can be included in any consent issued to manage stormwater.

The proposal is considered to be acceptable with respect to the requirements of this clause.

Clause 7.10 - Essential Services

The site is serviced by Council's reticulated water and sewage network with a connection to the electricity supply. With no increase in student or staff numbers, there will be no increase in the demand for services. There is currently vehicular access to the site from both King Street and Prince Lane, though the applicant is proposing to restrict the King Street access to pedestrians only.

There will be no increase in demand for services as a result of the proposal.

Other Specific Clauses

There are no other clauses relevant to the proposal.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 is a 20 year blueprint for the future of the North Coast. The NSW Government's vision for the North Coast is to create the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities. To achieve this vision, the Government has set four goals for the region:

- The most stunning environment in NSW
- A thriving, interconnect economy
- Vibrant and engaged communities
- Great housing choices and lifestyle options.

The proposal is considered to be consistent with the following principles of the plan and the overarching aims of the plan to support local communities:

- *Direct growth to identified urban growth areas* - by reusing an existing educational establishment site, development is directed away from significant farmland and sensitive farmland and existing infrastructure can be used.
- *Provide great places to live and work in a unique environment* – making town centres the focus of jobs and activities makes communities more vibrant and active, reduces pressure on the environment and make it easier for residents to access services.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

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

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

The site is currently approved for use as an educational establishment and was in residential use prior to that.

The application was reviewed by Council's Environmental Health Officer (23 February 2018) who advised that previous Environmental Health Unit comments of 2 September 2002 on the previous applications advised that there was a low probability of any exposure to any health related risks. This previous assessment included a Contaminated Land Enquiry Checklist that revealed that:

- (a) Council held no information indicating any incidence of land contamination;
- (b) The subject site is situated in a central area of the Murwillumbah township and it is unlikely that any intensive agricultural activity was carried out on the site; and
- (c) A site inspection did not reveal any signs of actual or potential contamination.

In addition, in the assessment of the previous applications, a letter dated 29 July 2002 was received from Grahame Bar Architects regarding advice that the site was used for residential purposes for at least 45 years and that a previous use as a furniture business occurred on the site.

Additional checks of Council's current records revealed:

- No known cattle tick dip sites are located within 200m of the subject site;
- Topographical map ref: Murwillumbah 9541-11-N dated 1978 indicated site to be in a built-up area;
- Council's GIS did not reveal any recorded potential contaminating activity on the subject site.

On the basis of the above, contamination is not considered to be an issue.

SEPP (Exempt and Complying Development Codes) 2008

The Statement of Environmental Effects (SEE) submitted with the application advises that the applicant will be relying on this SEPP - *Division 2 (Advertising and Signage Exempt Development Code)* to erect an identification sign with an area of 1.12sqm (1.7m x 0.7m) to the front of the building.

SEPP (Vegetation in Non-Rural Areas) 2017

This SEPP is applicable to the site and requires Council to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposal includes the removal of a palm tree in the front setback to King Street and some small landscaping shrubs in this setback area, which are to be replaced with native landscaping. There is no objection to this proposal subject to the approval of a landscape plan identifying the number and species of new plants.

SEPP (Educational Establishments and Childcare Facilities) 2017

The aim of this Policy is to facilitate the effective delivery of educational establishments and early education and care facilities across the State by:

- (a) *improving regulatory certainty and efficiency through a consistent planning regime for educational establishments and early education and care facilities, and*
- (b) *simplifying and standardising planning approval pathways for educational establishments and early education and care facilities (including identifying certain development of minimal environmental impact as exempt development), and*
- (c) *establishing consistent State-wide assessment requirements and design considerations for educational establishments and early education and care facilities to improve the quality of infrastructure delivered and to minimise impacts on surrounding areas, and*
- (d) *allowing for the efficient development, redevelopment or use of surplus government-owned land (including providing for consultation with communities regarding educational establishments in their local area), and*
- (e) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- (f) *aligning the NSW planning framework with the National Quality Framework that regulates early education and care services, and*
- (g) *ensuring that proponents of new developments or modified premises meet the applicable requirements of the National Quality Framework for early education and care services, and of the corresponding regime for State regulated education and care services, as part of the planning approval and development process, and*
- (h) *encouraging proponents of new developments or modified premises and consent authorities to facilitate the joint and shared use of the facilities of educational establishments with the community through appropriate design.*

In Clause 8, the SEPP states that Clause 7.13 of Tweed Local Environmental Plan 2014 (Development requiring the carrying out of a development control plan) does not apply to development carried out under this Policy.

Part 4 of the Policy sets out specific development controls for schools and is applicable in Zone B4. In this Part, Clause 35 sets out the controls for schools permitted with consent. An assessment against this clause is set out over.

Table 1 - Clause 35 Schools — Development permitted with consent

Clause	Assessing Officer's comment
(1) <i>Development for the purpose of a school may be carried out by any person with development consent on land in a prescribed zone</i>	In accordance with Clause 33, Zone B4 is a prescribed zone.
(2) <i>Development for a purpose specified in clause 39 (1) or 40 (2) (e) may be carried out by any person with development consent on land within the boundaries of an existing school - See shaded text below.</i>	There is an approval for an educational establishment on the site and as such the site is considered to be an existing school.
39 Existing schools - Complying development	
<p>(1) <i>Development carried out by or on behalf of any person on land within the boundaries of an existing school is complying development if:</i></p> <p>(a) <i>it consists of the construction of, or alterations or additions to, any of the following:</i></p> <ul style="list-style-type: none"> (i) <i>a library, an administration building or office premises for the purposes of the school,</i> (ii) <i>a gym, indoor sporting facility or hall,</i> (iii) <i>a teaching facility (including lecture theatre), laboratory, trade facility or training facility,</i> (iv) <i>a cafeteria that is carried out in accordance with AS 4674—2004, Design, construction and fit-out of food premises, published by Standards Australia on 11 February 2004,</i> (v) <i>a kiosk or bookshop for students or staff (or both),</i> (vi) <i>a hall with associated covered outdoor learning area or kiosk,</i> (vii) <i><u>an outdoor learning or play area and associated awning or canopy.</u></i> (viii) <i>demolition of a building or structure (unless a State heritage item or local heritage item),</i> (ix) <i><u>minor alterations or additions (such as internal fitouts, structural upgrades, or alterations or additions to enable plant or equipment to be installed, to address work health and safety requirements or to provide access for people with a disability),</u></i> (x) <i>restoration, replacement or repair of a damaged building or structure, and</i> <p>(b) <i>it complies with this clause.</i></p>	<p>This clause applies with respect to the construction of an outdoor learning or play area and associated awning or canopy and minor alterations or additions (such as internal fitouts, structural upgrades, or alterations or additions to provide access for people with a disability).</p> <p>The applicant initially sought to increase the number of students and as such could not avail of Clause 39 to undertake the development as complying development. As the number of students in the now modified application will remain the same (12), the applicant could investigate the potential to modify the application and undertake these works as complying development subject to compliance with the provisions set out in Schedule 2.</p> <p>However the applicant is also seeking to modify the landscaping approved under DA02/0872 (which has not been undertaken in accordance with the approved plans), to amend the car parking layout on site and to provide a bus zone. The applicant cannot rely on the complying development process to undertake such works.</p>
<p><i>Note: Complying development must also comply with the general requirements in clause 19.</i></p>	
<p>(2) <i>Development carried out by or on behalf of any person on land within the boundaries of an existing school is complying development if:</i></p> <p>(a) <i>it is an alteration or addition referred to in subclause (1) or clause 40 (2) (e) that is</i></p>	

Clause	Assessing Officer's comment
<p>carried out for the purpose of a change of use to another use specified in subclause (1), and</p> <p>(b) it complies with this clause.</p> <p>Note 1. Complying development must also comply with the general requirements in clause 19.</p> <p>Note 2. Development to which section 100B (1) of the Rural Fires Act 1997 applies is not complying development under this Policy.</p> <p>(3) The development standards for complying development under this clause (other than for development referred to in subclause (1) (a) (viii), (ix) or (x)) are set out in Schedule 2.</p> <p>(4) Nothing in this clause authorises the carrying out of development in contravention of any existing condition of the most recent development consent (other than a complying development certificate) that applies to any part of the school, relating to hours of operation, noise, car parking, vehicular movement, traffic generation, loading, waste management, landscaping or student or staff numbers.</p>	
<p>(3) Development for the purpose of a school may be carried out by any person with development consent on land that is not in a prescribed zone if it is carried out on land within the boundaries of an existing school.</p>	<p>N/A - The applicant does not need to rely on this clause as Zone B4 is a prescribed zone.</p>
<p>(4) Subclause (3) does not require development consent to carry out development on land if that development could, but for this Policy, be carried out on that land without development consent</p>	<p>N/A</p>
<p>(5) A school (including any part of its site and any of its facilities) may be used, with development consent, for the physical, social, cultural or intellectual development or welfare of the community, whether or not it is a commercial use of the establishment.</p>	<p>It is proposed that the school would be accredited by the Department of Education and would operate as a commercial venture.</p>
<p>(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration:</p> <p>(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4, and</p>	<p>Refer to Table 2 below – The proposal generally complies with the requirements of Schedule 4.</p>
<p>(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.</p>	<p>The applicant states that given the size of the site, there would be little benefit for the community from the use of the school's facilities but that this would not be precluded in the future if there is a demand for this. This response is considered reasonable. The recreational facilities are limited and are unlikely to offer opportunities for the community to use the site.</p>

Clause	Assessing Officer's comment
(7) <i>Subject to subclause (8), the requirement in subclause (6) (a) applies to the exclusion of any provision in another environmental planning instrument that requires, or that relates to a requirement for, excellence (or like standard) in design as a prerequisite to the granting of development consent for development of that kind.</i>	Noted – There are no provisions in the TLEP 2014 which would require excellence in design for the proposal.
(8) <i>A provision in another environmental planning instrument that requires a competitive design process to be held as a prerequisite to the granting of development consent does not apply to development to which subclause (6) (a) applies that has a capital investment value of less than \$50 million.</i>	Not applicable - There are no provisions in the TLEP 2014 which would require a competitive design process for the proposal.
(9) A provision of a development control plan that specifies a requirement, standard or control in relation to development of a kind referred to in subclause (1), (2), (3) or (5) is of no effect, regardless of when the development control plan was made.	This clause voids any requirement, standard or control set out in the Tweed Development Control Plan 2008.
(10) <i>Development for the purpose of a centre-based child care facility may be carried out by any person with development consent on land within the boundaries of an existing school.</i>	Not applicable.
(11) <i>Development for the purpose of residential accommodation for students that is associated with a school may be carried out by any person with development consent on land within the boundaries of an existing school.</i>	Not applicable

Table 2: Schedule 4 Schools – Design Quality Principles

Principle	Applicant's response	Officer's response
Principle 1 — context, built form and landscape		
Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.	<i>The school utilises the existing building and general layout of the site/outdoor area. The scale of the education building would not alter as the increase in student numbers would be accommodated in the existing learning areas The only minor additions are the provision of additional toilet facilities to meet BCA requirements and the construction of a cover over the walkway and sand pit. These additions are visually compatible with the character of the area. The sandpit will have a cover constructed over it to provide shade and acoustic protection to the neighbour to the east. The site is not identified as having particular scenic value.</i>	There is limited opportunity to re-design the existing structure and site layout.
Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.		The applicant is proposing additional landscaping in the front yard to provide visual and acoustic privacy to neighbours, while maintaining surveillance of the street.
School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and		The site is not identified as having scenic value and the new additions are minor in nature.

Principle	Applicant's response	Officer's response
Principle 1 — context, built form and landscape		
located and designed to minimise the development's visual impact on those qualities and that natural environment.		
Principle 2 — sustainable, efficient and durable		
Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.	<i>The proposal utilises an existing building resulting in sustainability benefit over a new construction.</i>	The proposal will recycle a vacant educational facility minimising the uptake of a green field site and construction materials. The proposed modifications to the building will improve the useability of the internal and external spaces without restricting future use of the site.
Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements		
Principle 3 — accessible and inclusive		
School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities. Note. Wayfinding refers to information systems that guide people through a physical environment and enhance their understanding and experience of the space.	<i>The proposal provides safe and equal access (where practical given the existing building design) as outlined in the 'Access Advice' to the applicant from Access All Ways Consultants, dated 16 December 2017</i>	The removal of the driveway will improve pedestrian access from King Street with a new pedestrian access from the car parking on Prince Lane to the rear of the building. The school building and grounds are limited in size and as such a formal 'wayfinding' plan is not necessary. A condition will be included on any consent issued requiring compliance with the relevant requirements of the National Construction Code (NCC) and the Disability Discrimination Act (Clth) 1992.
Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.		
Principle 4 — health and safety		
Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.	<i>Health and safety would be promoted by the school staff. The school would utilise its backyard for informal play and gardening and Knox Park and other community facilities for other sporting and recreational activities. Given the size of the school, supervision within the site is relatively easy.</i>	Given that the site is developed, the potential to optimise health, safety security is limited by the existing layout. However, they there are opportunities for outdoor play onsite with access to nearby Knox Park. The operational plan (which is to be updated by way of a condition on any consent issued) makes provision for safe access for students to and from the Park.
Principle 5 — amenity		
Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal	<i>The school would provide a range of pleasant and engaging spaces that are available for informal and</i>	The layout is limited by the existing building and the size of the site. However within these constrains, a number of internal

Principle	Applicant's response	Officer's response
Principle 1 — context, built form and landscape		
and community activities, while also considering the amenity of adjacent development and the local neighbourhood.	<i>formal education. There are no external noise sources which require the implementation of noise mitigation measures to ensure a suitable learning environment for the students.</i>	spaces will be created with opportunities for outdoor play (sand pit and play equipment). An acoustic report has made recommendations to protect the amenity of adjoining properties.
Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.		The site is not on a busy road or near a rail corridor.
Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.		All internal rooms have access to natural sunlight and ventilation. There are no concerns raised with regard to visual or acoustic privacy for the students. There is limited storage space within the school building however the student numbers are limited.
Principle 6 — whole of life, flexible and adaptive		
School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.	<i>As discussed, the proposal utilises an existing building which is to be upgraded where appropriate for the size of the school. Indoor and outdoor learning areas are provided at a size and shape that can be adapted for various activities.</i>	The proposal involves the upgrading of an existing educational facility with minimal intervention which would enable multiple use of rooms.
Principle 7 — aesthetics		
School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.	The proposal utilises an existing building, which is compatible with other building design in the location ie dwellings converted for a range of uses.	The existing building has some architectural merit which is being respected. The front façade of the building will be retained, maintaining the 'residential' appearance of the building in an area where many of the structures are residences or former residences which have been converted to commercial use.
The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.		

Part 7 General development controls

Clause 57 relates to traffic generating development and requires that *development for the purpose of an educational establishment*:

- (a) *that will result in the educational establishment being able to accommodate 50 or more additional students, and*
- (b) *that involves:*
 - (i) *an enlargement or extension of existing premises, or*
 - (ii) *new premises,*

on a site that has direct vehicular or pedestrian access to any road

be referred to the RMS for comment. Subclause 57(3) further requires that the consent authority take into consideration the following matters:

- (a) any submission that RMS provides, and
- (b) the accessibility of the site concerned, including:
 - (i) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
 - (ii) the potential to minimise the need for travel by car, and
- (c) any potential traffic safety, road congestion or parking implications of the development.

As the number of students is limited to 12, this clause does not apply. Notwithstanding this, issues such as minimising the need for travel by car, potential traffic safety, road congestion and parking implications have been considered in the assessment of the application and are set out later in the report under Potential Impacts.

Coastal Management SEPP

The Coastal Management SEPP consolidates and improves earlier coastal-related SEPPs. It replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection) and ensures that future coastal development is appropriate and sensitive to the environment.

The site is mapped as being within the wider Coastal Environment Area and the more restrictive Coastal Use Area.

Under the SEPP, development consent must not be granted to development on land that is within the Coastal Environment Area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

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

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

- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1) above, or*
- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Development consent must not be granted to development on land that is wholly or partly within the Coastal Use area unless Council is satisfied that the proposed development:

- (i) *if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
- (ii) *minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
- (iii) *will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
- (iv) *will not adversely impact on Aboriginal cultural heritage and places, and*
- (v) *will not adversely impact on use of the surf zone, and*

Council is also required to take into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.

The proposal relates to works at an approved educational establishment with new development limited to the construction of external toilets and associated cover structures, the provision of additional on-site car parking and the provision of a school bus zone on King Street.

There will be no increase in the number of students or staff onsite.

The development of the site will not impact on access to a foreshore, the overshadowing of same or the visual amenity of any coastal areas. There is no evidence of the site having any Aboriginal cultural heritage significance.

The proposal is consistent with the requirements for both the broader Coastal Environment Area and the Coastal Use Area.

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

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

There is no draft SEPP or REP which affects the proposal.

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

While Clause 35(9) of SEPP (Educational Establishments and Child Care Facilities) 2017 states that the standards, requirements and controls in DCPs do not apply, the DCP parts below have been used as a guide to assessing the appropriateness of the development.

Tweed Development Control Plan

Part A2-Site Access and Parking Code

The aims of the *Site Access and Parking Code* are to:

- *Provide safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users.*
- *Provide facilities and infrastructure that encourage movement by means other than private vehicle.*
- *Encourage car park design and landscaping to enhance visual amenity, provide pedestrian comfort, legibility and minimise impacts from stormwater runoff and pollution.*
- *Provide off street parking facilities that satisfy the demand of residents, visitors, staff, customers, servicing, loading and unloading.*
- *Provide integrated transport opportunities within business centres to improve their amenity, accessibility and sustainability.*

Access

The applicant is proposing to close the vehicular access to King Street and to replace this with a pedestrian access. Access to the onsite car parking area is from Prince Lane, with an increase in the number of spaces from three (3) to five (5) and an amendment to the layout to allow for on-site manoeuvrability. Minor works will be required to upgrade the existing car park.

Car parking

As set out in Table 2F, the development requires three (3) car parking spaces:

- Student – 1 space per 14 children – 1 spaces required on basis of 12 students
- Staff – 0.5 spaces per staff member – 1.5 spaces based on three staff members.

The applicant is providing five onsite spaces.

The traffic report advises that while staffing of the site has been identified as three staff, it is understood from the applicant that based on the student numbers and operational requirements that the number of full-time staff on-site at any given time will be two. On this basis, it is recommended in the traffic report that the two (2) on-site parking spaces located closest to the building are signed as 'staff parking only'. The remaining three spaces will be provided for parent/visitor use.

Bicycle Parking

As set out in Table 2F, the development requires 3 bicycle parking spaces (1 per 5 students over year 4) being Class 2 spaces.

The proposal provides for three Security Class Level C bicycle parking spaces in the north-east corner of the site adjacent to the main pedestrian entrance off King Street.

Delivery/service Vehicle Parking

As set out in Table 2F, the development requires the provision of parking for a 12.5m Heavy Rigid Vehicle (HRV), the same requirement as currently applies to the site with its existing development consent for an educational establishment.

The traffic report advises that given the constrained nature of the site and the scale of the development (12 students and 3 staff), it is not practical nor an efficient use of space to cater for a HRV on-site for infrequent use. The traffic report recommends that servicing occur on-street (via King Street) outside school operating times to avoid conflict with the bus and vehicle movements surrounding the site.

The site has an approval to operate as an educational establishment and there is no increase in the student or staff numbers. It is therefore not anticipated that

there would be a significant increase in deliveries to the school. Further, as outlined above in Clause 35(9) of the Education SEPP Council is precluded from enforcing a Development Control Plan requirement.

Public Transport

As set out in Table 2F, the development of a primary school required 1 bus stop per 100 pupils with the bus stop to be located within an off street carriageway. Though there is no change in the student numbers, which is to be retained at 12 students, the applicant is proposing a bus zone on King Street within the road carriageway.

Given the limited site size, there is no potential to provide for an off-road bus stop. Having regard to a maximum number of 12 students in the school (all of whom are unlikely to travel by bus) and the limited number of bus services using the zone (three providers) and the limited availability of this zone (AM drop-off and PM pickup), a bus zone at this location is considered acceptable. Further assessment of the impact of the bus zone on on-street car parking is set out later in this report.

Part A3-Development of Flood Liable Land

The site is identified as being affected by the Q100 and is within the area protected by the Murwillumbah levee (which is estimated as a 1:80 year protection) with a 3 - 4 hour warning time. The site is identified as being in a Low Flow Area (ARI 100 year-flood flood velocity depth product is less than or equal to 0.3). An assessment against the relevant controls in this part is set out under.

Control	Assessing Officer's Response
Design Flood Levels	The Design Flood level for properties behind the levee is 7.0m AHD. The structure on the site is existing and there will be no change to the finished floor level.
High Flow Areas	The site is not identified as a high flow area.
Emergency Response Provisions	Not required as the development is not residential.
Filling	No filling proposed.
Structures	The DCP requires that where, on land within floodways or high hazard flood storage areas a proposed development could be damaged by flooding no work may be commenced until a certificate of structural adequacy with regard to stability as a result of flooding has been submitted to Council by a qualified structural/civil engineer. The building on the site is existing with new development limited to an external accessible and ambulant toilet in the rear yard.
Fencing	The DCP requires that fencing must be of a form that will either allow the free passage of flood water or of a light construction such as timber paling that will collapse as a result of any build-up of debris or flood water. The applicant is proposing noise attenuation fencing along part of the eastern and western boundaries which would not be considered to be flood fencing. However Council's Flooding Engineering has advised that the site's location behind the levee means that flood fencing is not warranted at this location and that there is no objection to the noise barrier fencing.
Building Materials	The DCP requires that all building materials used below Council's adopted design flood level must not be susceptible to water damage. However Clause 35(9) of the Educational Establishments SEPP, precludes Council from including any

Control	Assessing Officer's Response
Electrical Supply	condition to this effect. The DCP requires that (subject to the requirements of Northern Rivers Electricity), all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible, be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water. As above, Clause 35(9) of the Educational Establishments SEPP, precludes Council from including any condition to this effect.

A11-Public Notification of Development Proposals

The application was advertised in the Tweed Link on 7 February 2018 and notification letters were issued to adjoining property owners with a submission period from 7 February 2018 to 21 February 2018. In response five submissions were received. The matters raised are addressed later in this report.

A15-Waste Minimisation and Management

The applicant has not submitted a Waste Minimisation and Management Plan indicating that this was not required for an increase in student numbers (as initially proposed). It is indicated that the refuse and recycling bins would be stored at the rear of the building in a designated bin storage area before being to the road frontage for collection.

The revised traffic report advises that Council's 10.2m front loading refuse collection vehicle (RCV) will service the site as per existing on-street operations and that RCV servicing typically occurs outside school operating times and there will not conflict with the bus and vehicle movements surrounding the site.

The demolition and construction phases of the development will generate both waste and recycling. A condition can be included on any consent issued with regards to appropriate arrangements for the storage and removal of garbage and other waste materials from the site.

B22-Murwillumbah Town Centre

The site is located in the Murwillumbah Town Centre as defined in the Murwillumbah Town Centre DCP.

The use of the site for an educational centre is consistent with the vision for the Town Centre which is to:

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

Notwithstanding the loss of three on-street car parking for a limited period in the morning and afternoon during school term, it is considered that the site is an appropriate location for an educational establishment, with the low number of students reflecting the capacity of a site of this size and at this location. An assessment against the key strategies of this part of the DCP are set out below:

Strategy	Assessing Officer's comment
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Strategy	Assessing Officer's comment
1. Reinforce the character and vitality of the Murwillumbah Street precinct	As there is no change to the exterior of the building, there will be no change to the character of the street. However, the continued use of the site as an educational facility will contribute to the vitality of the precinct which contains a mix of commercial, retail and residential uses.
2. Create an active, liveable town centre, which provides for residential growth (that cannot be accommodated elsewhere) and which integrated Knox Park.	The site is zoned for mixed use and is in the transition area between the town centre core and medium density residential areas, with an educational establishment being a logical use at such a location. The applicant has indicated that Knox Park will be used for recreational purposes by the students who would be accompanied to the park by staff.
4. Create a walkable, connected centre that focuses on the river	N/A

Urban Structure

A structure plan has been prepared in order to guide and coordinate the location and form of future development within the Murwillumbah Town Centre. The Structure Plan provides an indication of the disposition of preferred activities, existing and proposed connections, an overlay of the proposed landscape system and the proposed strategies further developed within the DCP.

The proposal is consistent with the key components of the structure plan:

- Revitalisation of Knox Park;
- Increases in residential density on the periphery of Knox Park and the core retail and commercial area;
- Retail and commercial development focused between Murwillumbah Street and Prince Street, with mixed use areas at the edges of this precinct;
- Recognition of the need to maintain and enhance the existing character of Murwillumbah Street as the principal retail street of the Town Centre;
- Recognition of the principal pedestrian connections within the Town Centre.





Figure 5 - Extract from Murwillumbah Town Centre DCP

Precinct Character

The site is located within the Medium Density Housing Precinct.

‘These areas are currently predominantly residential in land use. Increased residential densities are proposed in order to provide a greater level of casual surveillance to Knox Park. In relation to Knox Park specifically, this DCP does not envisage typical styles of residential flat buildings. Rather, the specific conditions encountered in this area warrant forms that are more closely related to townhouses/rowhouses (see Section 5 for specific guidance).

Several non-residential activities are currently located within this precinct (eg Bowls Club). It is not the intention that these activities be replaced by residential development, rather, it is intended that over time, medium density residential development will become the predominant activity in the precinct, mixed with other activities and forms of residential.’

The continued use of the site as an educational establishment is consistent with the vision to increase residential density in the precinct, mixed with other appropriate landuses.

Floor Space Ratio

With a proposed FSR of 0.38:1, the development is significantly below the maximum of 1.2:1 specified in the DCP.

Site Coverage

A maximum site coverage of 70% is specified for the site. With the addition of the external toilets and covered walkways, the proposed site coverage is approximately 41%.

Building Height /Street Frontage Height / Building Alignment and Orientation / Street setback

There is no change to the height of the existing building, the floor to ceiling heights, the building alignment or street setback.

Rear Lanes

The development generally complies with the guidelines in the DCP for rear lanes (as set out over).

- The site continues to use the rear lane for access and parking as recommended in the DCP.
- The development will maintain a pedestrian entrance to the building from Prince Lane which will be used for drop-off and pick-up. Given the nature of the development and the need for child safety, the site is to be fenced off from the parking area.
- The active use of the rear of the site for car parking and student drop-off/pick-up will allow for suitable casual surveillance of the rear lane.
- The DCP recommends that service and access facilities (eg driveways) are to occupy no more than 50% of an individual properties frontage to a rear lane. A variation is sought in this regard to allow for the lane frontage to be occupied by the access driveway and car parking (which reflects the current arrangement). As above, Clause 35(9) of the Educational Establishments SEPP states that a provision of a development control plan that specifies a requirement, standard or control is of no effect for a development of this type.
- The DCP recommends that continuous and unencumbered pedestrian access is to be provided to rear lanes. There is currently no pedestrian access on either side of the lane and Clause 35(9) of the Educational Establishments SEPP prohibits the inclusion of any condition requiring the provision of same.
- The DCP recommends that wherever possible, landscape (particularly shade trees) is to be provided within the rear lane or immediately adjacent private property. With the increased car parking on the site, there is no opportunity for planting of shade trees, and Clause 35(9) of the Educational Establishments SEPP prohibits the inclusion of any condition requiring the provision of same.

Signage and advertising

The DCP sets out a number of controls for signage and advertising. As the applicant will be relying on SEPP (Exempt and Complying Development Codes) 2008, these controls are not applicable.

Mixed Use Development

The site is located in an area identified in the DCP for mixed use (defined as a vertical integration of 2 or more activities in the one building). The site currently has approved for use as an educational establishment and there is no change sought in this regard.

Conclusion

The proposal is generally consistent with the DCP for the Murwillumbah Town Centre, though as stated in SEPP (Educational Establishments and Childcare Facilities) 2018, the provisions of a development control plan that specifies a requirement, standard or control is of no effect in relation the proposed development.

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

There are no planning agreement or any draft planning agreement under section 7.4 relevant to the site.

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

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

The site is identified under the Government Coastal Policy. However the proposal is unlikely to be adversely affected by Coast Processes other than flooding, should a flood breach the Murwillumbah levee. The proposal will have no impact on coastal reserves or overshadow public open space.

Clause 92(1)(b) Applications for demolition

The proposal includes demolition works and it is recommended that appropriate conditions be included in any consent issued.

Clause 93 Fire Safety Considerations

Clause 93 of the Regulations does not apply as the proposal includes building works.

Clause 94 Buildings to be upgraded

The application related to the alteration of an existing building, and as such Clause 94 of the Regulations apply. The Building Unit officer has advised as follows:

'An inspection of the existing vacant building disclosed that it is deficient in a number of BCA-NCC requirements. It is to be noted the building was previously assessed under Clause 93 & 94 during assessment of DA02/0872 and the DA conditions required Exit Signs, portable fire extinguishers, smoke alarms and fire hose reels.

While there is an existing fire safety schedule relating to the property, certification will be required of these measures before occupation certificate. Accordingly NCC upgrading conditions will be included.'

The following upgrading works were identified by the Building unit:

- Existing exit signs and smoke alarms to be certified;
- Rear external stairs to be modified
- Recommendations of Access All ways Consultant report (16 December 2017) to be undertaken
- A fire hose reel to be installed
- Portable fire extinguishers to be provided.

The subject building is normally required to be of type B construction and any openings within 3m of a fire source feature required to be protected in accordance with Part C3 of the NCC. However due to the low population of students and the daytime use of the building together with the low fire load and uses of the neighbouring development, it was advised that a total upgrade cannot be justified.

- (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 is not impacted by this plan.

Tweed Coast Estuaries Management Plan 2004

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

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

As the subject site is not located within the Cobaki or Terranorra Broadwater to which this plan relates, this Plan is not considered relevant to the proposed development.

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

Access, Transport and Traffic

Trip generation

The amended Traffic Impact Assessment Report (3 May 2018) acknowledges that the traffic generation rates for the proposed development is not similar to the examples in the *RMS Guide to Traffic Generating Developments (2002)* and so a 'first principle' approach has been used to calculate expected trip generation.

Assuming that 33% of students would catch the bus and that there would be 1.5 students per vehicle (based on multiple sibling families and shared school runs), the revised traffic report submits that the number of trips resulting from the proposed development during peak hour is as follows:

- 2 bus trips (1 bus with 4 students),
- 10.67 car trips (5.33 cars with 1.5 students each) involved in dropping off/picking up students and
- 3 staff trips (3 cars with 1 staff member in each).

Given the limited student numbers, no measure of walk to school trips is included. This results in a maximum of 16 trips in the AM and PM peak hours.

The revised traffic report advises that typically school peak hour trips are concentrated in periods of 30 minutes for the AM peak and 15 minutes for the PM peak. The report advises that considering the decreasing traffic volumes on King Street (as per Council's Local and Regional Traffic Data between 2001 and 2011) and the low development traffic generation that the development is not expected to result in any adverse impacts to the surrounding road network.

Car parking

While Clause 35(9) of SEPP (Educational Establishments and Child Care Facilities) 2017 states that the standards, requirements and controls in DCPs do not apply, Section A2 Access and Parking Code can be used as a guide to source car parking rates for the proposed development. As set out earlier, the DCP sets out the following rates for a primary school:

- Students – 1 car parking space per 14 children – 1 space
- Staff – 0.5 car parking spaces per staff member (3 staff) – 1.5 spaces (2 spaces)

Applying the DCP rates, three spaces would be required. The applicant has made provision for five spaces on site.

In terms of accessible parking, the applicant has provided additional information from an accessibility consultant advising that the NCC Deemed to Satisfy provisions removes that need to designate the accessible car parking space where the total number of car parking spaces is not more than 5, which is the case with this proposal.

It is noted that Council previously resolved 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.

The Murwillumbah Central Business District, while not explicitly identified in terms of this resolution, can be taken to include the Business Zones including Zone B4 Mixed Use. On this basis, the site can be taken to be included in the area identified for a car parking amnesty/waiver.

While there is no expansion of the existing educational establishment in terms of staff numbers or enrolments, the operation of the 'Small School' can be considered to be a new business, occupying what is currently a vacant building. (It is noted that the resolution refers to a new 'business' as opposed to a new 'use').

Therefore, at the time of preparation of this Council report, the 12 month amnesty is still in place and the applicant is eligible for a waiver of up to three car parking spaces on site, in effect reducing the car parking requirements to zero. On this basis, the five on-site car parking spaces could all be considered surplus to Council's requirements.

School Zone Signage and Line Marking

As per the *Roads and Maritime NSW School Zone Technical Direction (2010)* and *Interim Guidelines for the Planning and Design of School Traffic and Pedestrian Facilities*, the school zone is appropriately 100m from the limits of the school boundary. The amended traffic report provides a concept school zone signage proposal (Refer to Figure 6 over).

The approval of a school zone is outside of the remit of this application. Subject to the approval of this application, the applicant will need to apply to Tweed LTC (which is comprised of representatives from Council's Traffic unit, RMS and local police) for the approval for the School zone. The Tweed LTC will make a recommendation on this matter to Council.

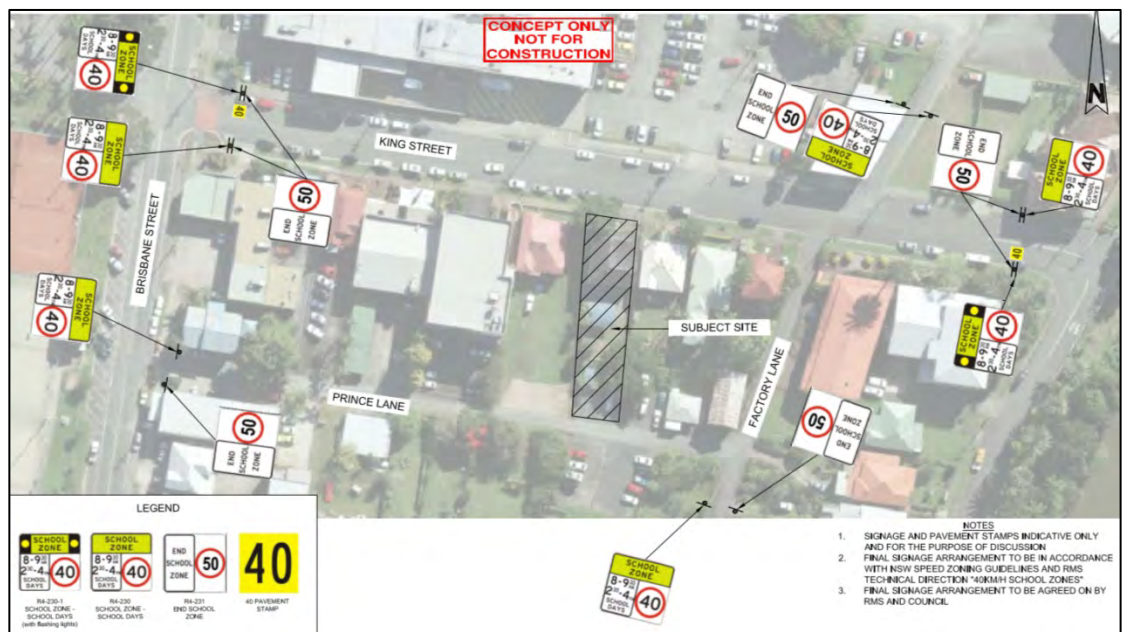


Figure 6: Proposed School Zone Signage (Source: Bitzios Consulting Traffic Impact Assessment Report dated 3 May 2018)

Bus zone

In the assessment of DA02/0357 (the original application for the change of use from residential to education), the proposal was considered acceptable in terms of land use in that the development needed to be centrally located in relation to schools in the area and close to transport links. In this regard, it was acknowledged that the site was close to the bus stop at Knox Park and that no further facilities were required.

While this was acceptable for a tutorial centre for students aged 12 years and over, the applicant was advised in the DAP meeting prior to lodgement of the application that a bus stop this distance from the site was not acceptable for a primary level school.

A new bus zone (19m long) is therefore proposed on King Street between the subject site and Factory Lane. The revised traffic report advised that there will be only one to two buses that service this school bus zone in both the morning and afternoon having regard to the existing school bus services in the area and the low number of students (12). A concept plan for the proposed bus zone is set out over in Figure 7.

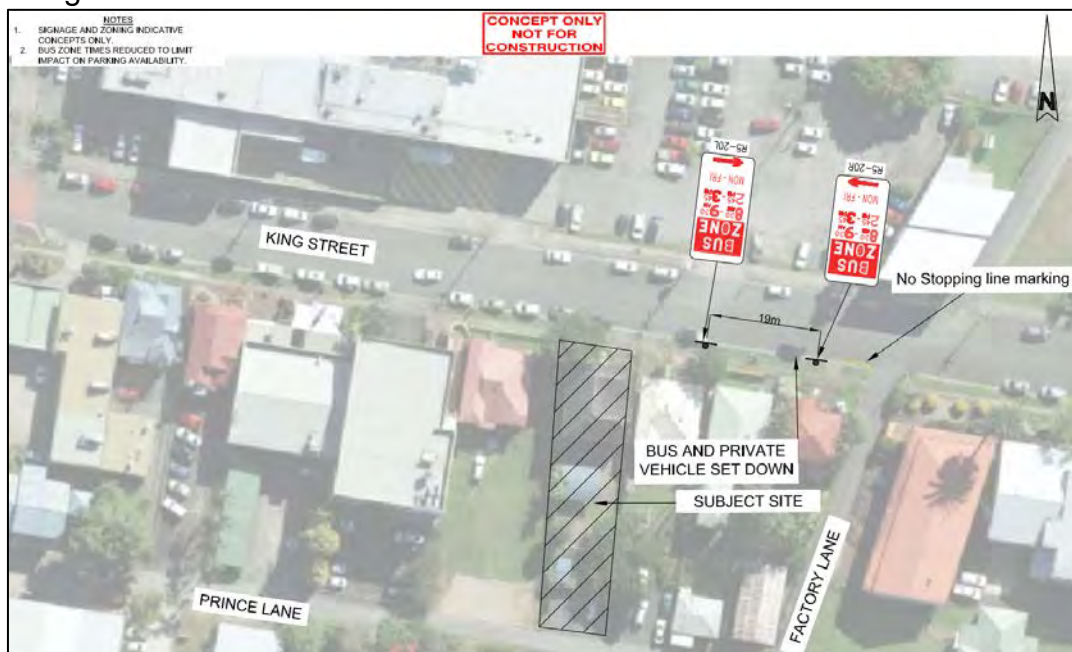


Figure 7: School Bus Zone Concept Layout (Source: Bitzios Consulting Traffic Impact Assessment Report dated 3 May 2018)

The provision of the bus zone will result in the loss of approximately three existing on-street car parking spaces for the drop-off and pick-up periods. The applicant has advised that this would be 8.30am - 9.30am and 2.45pm – 3.45pm, however these times would be subject to the approval of Tweed LTC and Council.

Student drop-off/pick up

The revised Bitzios Consulting traffic report notes that school would typically incorporate a dedicated drop-off / pick-up facility however given the current operations and the very small nature of the proposal, that a dedicated on-road facility is not required.

It is envisaged that three of the onsite car parking spaces are to be used for student drop-off/pick-up. Based on the trip generation in the revised traffic report, this would equate to 6 vehicles accessing these three spaces within a 30 minute period in the AM peak and for a 15 minute period in the AM peak.

The traffic report advises that no conflict is expected between staff vehicle movements and visitors as teachers will arrive and depart outside student/parent arrival times.

Pedestrian Access

The application does not propose to provide any new pedestrian or children's crossing on King Street. This is justified in the revised traffic report as follows:

'Australian Standards AS1742.10:2010 – Manual of Uniform Traffic Control Devices and Roads prescribes that a children's crossing or pedestrian crossing is normally required to:

"minimise conflict between pedestrians and vehicles by allotting short time periods for use of section of road by pedestrians, alternating with periods for use by vehicles."

A school crossing is not necessary for the proposed development as the school has a small number of students (12) which is not expected to heavily impact upon the existing pedestrian networks. The pedestrian trips generated from the school are likely to come from the north and west of the site via good quality pedestrian pathways and pedestrian crossings, as shown by Figure 6.3.'



The Traffic Report further advises that the school will provide information to students, parents and staff regarding the safest routes to the site, using the formalised crossings and existing pedestrian facilities to increase safe pedestrian behaviour and avoid conflicts with vehicles.

Servicing

The Access and Parking Code DCP requires the provision of a loading bay for a 12.5m Heavy Rigid Vehicle (HRV) to service the site. The revised Bitzios Consulting traffic report advised that it is neither practical or efficient to provide for this on-site given the infrequency of use and that servicing can occur on-street via King Street outside of school operating hours. As advised earlier, Council cannot apply the requirements of the DCP.

Impact on on-street car parking

The loss of on-street car parking resulting from the proposed development was raised as an issue in the majority of the five submissions received during the notification period. Having regard to the proposal as originally submitted with the provision for a bus zone and a drop-off/pick-up zone on King Street, in addition to the tripling of the student numbers, an increase in staff and visitor numbers and a lack of clarity on whether a pedestrian or children's crossing might be needed in the future to service a development of this scale, these concerns were not unreasonable.

However, the applicant has modified the proposal to substantially address these concerns. By retaining the student and staff numbers as currently approved, the car parking requirements can be met on site with provision for an additional two spaces which can function as a drop-off/pick-up zone, negating the need for an on-street drop-off/pick-up zone on King Street. The traffic report also confirms that a pedestrian or children's crossing is not warranted on King Street for 12 students.

The provision of a bus zone will result in a loss of approximately three on-street car parking spaces during the drop-off and pick-up periods. Though the applicant has nominated these times as 8.30am to 9.30 am and 2.45pm to 3.45pm on school days, the precise times would be subject to assessment by the Tweed LTC and approval by Council. However, notwithstanding the potential for these times to be amended slightly, the proposed loss in on-street car parking is considered acceptable having regard to the following:

- There is an existing approval on the site for an educational facility with three staff and 12 students with no increase in numbers proposed.
- The provision of a bus zone will enable students to travel directly to the site by public bus thereby potentially reducing the demand for on-street parking during the drop-off and pick-up periods.
- The applicant will increase the onsite parking provision despite no increase in student or staff numbers, thereby providing two additional spaces which are likely to reduce the current demand for on-street parking.
- As currently proposed, the loss of parking would be for a period of 1 hour in the morning and 1 hour in the afternoon on week days within the school term.

Traffic Engineering Unit referral

Council's Traffic Engineering Unit has advised as follows:

'Further information has been received from the applicant with an accompanying Traffic Impact Assessment report dated 3/5/2018 that amends the number of students to the site to 12 only.

The development proposes to:

- *maintain the existing approval for the educational establishment holding 12 students and three (3) staff members;*
- *remove the existing vehicular access from King Street and make pedestrian access only; and*
- *include two (2) additional car parking spaces (total of five), accessed via Prince Lane.*

The proposal recommends a bus zone be installed on King Street towards Factory Lane utilising the lead in afforded by the Lane. The bus zone would operate for one hour in the morning and one hour in the afternoon on school days. Whilst the bus zone would be located in front of number 4 Kings Street it is noted that this property does not have vehicular access to Kings Street.

Given the low student numbers there are no additional pedestrian facilities or on street parking proposed.

There are no further concerns raised with the proposed development and no further information is required.'

Advertising/signage

There is no advertising or signage proposed as part of the application. However the applicant has indicated that posts at the front gate and markings on the concrete and masonry surrounding the main pedestrian entrance will be painted in bright colours similar to the school logo (orange) and that with advice from the access consultant, they will use colours and signage that will assist people with sensory disabilities to locate the main entrance.

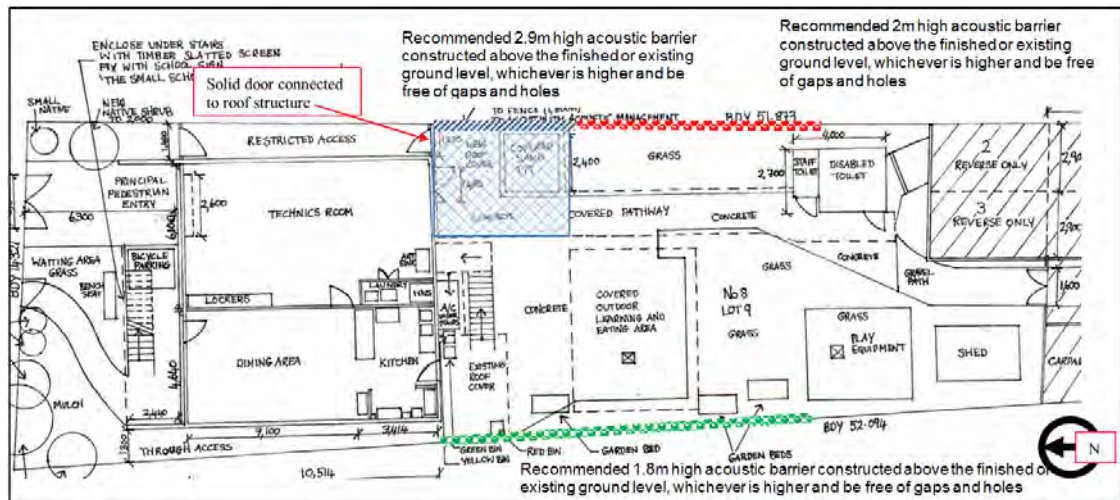
A condition can be included on any consent issued required that all advertising/signage be subject to a development application unless exempt or complying development.

Noise Management

The application has been accompanied by an Environmental Noise Impact Assessment Report prepared by CRG Acoustics (dated 18 December 2017) which concludes that the proposal (as original submitted with 36 students) is acceptable subject to condition. The application as modified (reduction in student numbers and relocation of the drop-of/pick-up zone to the rear of the site using onsite car parking) will further minimise any potential noise impacts.

Notwithstanding a reduction in the student numbers, the recommendations of the Noise Impact Assessment Report are still valid:

- Hours of operation to be limited to 7.00am to 6.00pm;
- Children activity prior to 7.00am to be restricted to inside the school;
- Eastern facing windows (ground and first floor) to be kept closed when indoor activities are being undertake;
- A maximum of 15 children (to be amended to 12) to use the outdoor play space at any one time for free play activity (structured learning sessions with a teacher is not covered by this restriction);
- Construction of acoustic barriers as detailed in Sketch 1 of Appendix A of the report. Barriers are to be constructed above the finished or existing ground level, whichever is higher and free of gaps and holes. Typical materials include earth berms, 19mm lapped timber fence (40% overlap), 9mm FC sheet, toughened glass, Perspex, masonry or a combination of the above (a minimum surface mass of 11kg/sqm is required).



- Mechanical plant to be designed and installed to comply with the noise criterion presented in the report. As final plant selection has not been completed, additional acoustic assessment(s) should be undertaken once the plant selections are finalised – to be conditioned to take place prior to the construction certificate.

A condition can be included in any consent issued requiring compliance with the recommendations of the acoustic report.

Landscaping

A portion of the landscaping approved under DA02/0872 has not been undertaken. The applicant seeks to modify the approved landscaping plan to delete a number of the trees/shrubs in the rear yard which have not been provided. It is proposed to undertake additional planting in the front yard on the side boundaries to screen the site from neighbouring properties (for privacy and acoustic management). This is considered acceptable. A condition can be included in any consent issued with regard to the submission of a detailed landscaping plan identifying the new plant

species and numbers and the undertaking of the planting prior to the use of the building.

Accessibility

The original application was accompanied by a letter of advice from an accessibility consultant (Access All Ways Consultants dated 6 April 2018) advising that compliance with the disability access provisions of the NCC are required.

It was advised that where the applicant complies with the NCC, for those matters covered, the applicant must also comply with the Disability Discrimination Act (CLTH) 1992. Compliance with the NCC must be demonstrated either by complying with the 'Deemed to Satisfy' Provisions, complying with the Performance Requirements through a Performance Solution or through a combination of both.

It is advised that compliance with the disability access provisions of the NCC for this project will in some part rely on Performance Solutions which demonstrate the relevant Performance Requirements DP1, DP2 and possibly FP2.1 are being met. These relate to access to the upper level, stair design, access to the Principle Pedestrian Entrance to the Building from the allotment boundary, the rear kitchen door, and possibly the provision of toilet facilities across the levels. The remainder of the development will meet 'Deemed to Satisfy' Provisions.

The Specialist Advice also provides that there is no requirement for a designed accessible car parking space, and as such no requirement for access from the parking spaces to the building entrance.

The issues raised by the objectors in relation to accessibility are addressed later in this report.

Food Safety

Discussion between Council's Environmental Health Officer and the applicant indicated that the ground floor kitchen will be utilised for the preparation of meals for children on approximately 3 days per week and that attendance fees are applicable. This would therefore constitute the handling of food for sale under the provisions of the NSW Food Act.

The first floor kitchen will continue to be used as staff facilities. This will not trigger the provisions of the NSW Food Act unless this use changes.

The applicant has provided food fitout plans with the application which have been approved by the Environmental Health Officer subject to appropriate conditions.

Lighting

It is not clear from the plan submitted if the proposal will involve external security lighting however most schools do incorporate some form of security lighting. In this regard a standard condition in relation to lighting can be included on any consent issued.

(c) Suitability of the site for the development

There is an existing approval on the site to operate as an educational establishment. There is no increase in the number of students or staff. With the exception of the bus zone, the proposal does not require any additional services.

As outlined earlier in the report, the re-use of an existing school site on the periphery of the town centre core is preferable in terms of use of limited resources such as land, facilitating shared journeys (the proximity of the site to employment and local services) and encouraging the use of public transport.

It is acknowledged that the site is limited in area and capacity, but this is reflected in the low student numbers and the child-focused ethos of the school's Management Principles.

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

Public Submissions

The application was advertised from 7 February to 21 February 2018. During this time, five submissions were received. The main issue related to traffic and car parking impacts:

- Impact of proposal on availability of on-street car parking
- The negative impacts in terms of parking and traffic on existing businesses on King Street is unreasonable
- Deficiencies in the Traffic Impact Assessment Report accompanying the application
- The establishment of a bus zone opposite Factory Lane would create a traffic hazard, particularly for students
- Increase in double parking, queuing and traffic in the area with parent/carer vehicles circling the block
- Suitability of a town centre site for a school over a green field site on the rural fringes
- Lack of accessibility to on-site car parking and first floor facilities

Summary of Submissions	Applicant's response	Assessing Officer comments
1. Impact of proposal on availability of on-street car parking		
<ul style="list-style-type: none"> • King Street has a number of health professionals who care for a large range of age-group patients, from young parents to their children to aged patients. Parking in close proximity to the health facilities is an important consideration for then when accessing health care and it is important that the proposed bus zone and extra demands for parking from the proposal throughout the day does not restrict this availability. • Peak period for appointments for 	<p>The reduction of student numbers from 36 to 12 and the removal of the drop-off zone addresses most of the issues raised in the submissions. Most importantly, the proposed parking on site exceeds Council's requirements. For 12 students, the applicant has advised that there will be a maximum of two (2) staff on-site at any one time, most of the time. It's unlikely there will be much crossover</p>	<p>The applicant has modified the proposal to retain the number of student and staff as currently approved on the site. With no increase in staff or student numbers there will be no increase on parking demand as a result of this proposal, though the applicant is providing two (2) additional spaces on site.</p>

Summary of Submissions	Applicant's response	Assessing Officer comments
<p>medical/health related facilities are often early morning (aged patients) and pre/ post school – coinciding with peak traffic periods for the proposed development.</p> <ul style="list-style-type: none"> • Car parking availability in the area is already limited with the lack of carparks in the town centre meaning that King Street and other side streets act as overflow areas for parking from other area particularly at school drop-off/pick-up times, holiday periods, etc • The impact on parking will not just be limited to school drop-off and pick-up times but throughout the day with parents attending the school. • It is likely that the 5 on-site spaces will be taken by the four staff and visiting specialist teacher(s) 	<p>between the part-time staff as this will impact on the school's budget. The only time that there will be more than two (2) staff is for one hour per week when a music teacher will visit the site. Staff and board meetings will be outside school hours. Therefore, the concern raised by an objector that the staff will be utilising all of the car parking spaces is not valid.</p>	<p>While the bus zone will result in the loss of approximately 3 on-street spaces during the drop-off and pick-up periods on school days, this is offset by the additional two car parking spaces being provided on the site which will ease any existing pressure on on-street parking on King Street.</p> <p>It is further noted that existing commercial development in the area would have been required under the DCP to meet their car parking requirements on-site.</p>
<p>2. Deficiencies in the Traffic Impact Assessment Report accompanying the application</p>		
<ul style="list-style-type: none"> • Questions raised in relation to figures in the Traffic report indicating a decline in traffic flow on King Street - The data is dated (2011) and contrary to anecdotal evidence that would suggest an increase in traffic • Questions assumption that 42% of students will use public transport which is believed to be an overestimation: <ul style="list-style-type: none"> ○ Proximity to bus transport nodes is not a reliable indication that students will use public transport ○ The school's philosophy of encouraging parent participation in the school day will increase the number of students being driven to school and the number of parents seeking to park and take their children into school rather than use the drop-off facilities. ○ Further it is evident at existing schools in town that events, special assemblies/ productions, parents days, etc. create a demand for additional parking. • The traffic forecasts do not factor 	<p>A revised Traffic Impact Assessment has been prepared addressing the proposal for a school with 12 students.</p> <p>With respect to the issue raised in the objection summary concerning events, special assemblies, productions, parents' days, etc. impacting on parking, the applicant advises that student presentations will be outside of school times so that working parents can attend. These will be on early in the evenings or on Saturday. Having these outside of school times will meet the needs of working parents and be better for surrounding business, particularly if it's on a Saturday, Therefore, there will be limited impact on parking in these circumstances.</p> <p>It is noted that it is important that the development consent does not limit the hours of operation to school hours only. With any school, there are limited events and meeting that occur outside of normal school hours. This is</p>	<p>The Traffic report has been amended in response to the objections and the changes to the proposal. The assumptions in relation to transport mode breakdown (33% bus user & 66% private car) is not considered unreasonable and may be conservative given that no allowance has been made for walking or cycling.</p> <p>It would be unreasonable to expect the traffic forecasts to factor in a change in transport mode from year to year given the small sample size.</p> <p>In terms of the data used in the report for traffic counts on King Street, the most recent data available has been used.</p>

Summary of Submissions	Applicant's response	Assessing Officer comments
<p>in any change in transport mode from year to year and is therefore not a reliable measure of the traffic effects</p>	<p>essential for the operation of the school.</p>	
<p>3. The establishment of a bus zone opposite Factory Lane would create a traffic hazard</p>		
<ul style="list-style-type: none"> • Current driver behaviour entering and exiting Factory Lane raises concerns in relation to traffic safety and this would be further exacerbated by the introduction of a bus zone at this location – with a hazard for student safety. 	<p>This matter is addressed in the revised Bitzios Consulting Traffic Impact Assessment: The introduction of a bus zone at the proposed location is not expected to exacerbate traffic hazards considering:</p> <ul style="list-style-type: none"> ○ Beyond existing conditions, given the existing utilisation of on-street parking (ie the proposed school bus zone is located where there is existing on-street parking); ○ The road is low speed (50km/h) meaning that vehicles have substantial time to see a vehicle approaching the Kings Street/Factory Lane intersection; ○ The school bus zone fronting the development is limited to 8;30am – 9:30am and 2.45pm-3.45pm, compared to normal school bus zones of 7am-9am and 2pm - 4pm; and ○ It is anticipated that there will only be 2-3 buses that service this school bus zone in both the morning and afternoon. The existing utilisation of Factory Lane is low, and the likelihood of a bus being parked in the school bus zone when a car is using the King Street/Factory Lane intersection is unlikely. <p>In addition, the proposed bus stop location has been shifted to the west and a 'No Stopping zone', marked with yellow line marking around the west corner of the Factory Lane intersection recommended, as to improve sight distances in accordance with Australian Standards for safety at intersections. This</p>	<p>The bus zone has been relocated away from the Factory Lane intersection and the applicant has submitted that a 'no stopping zone' can be formally identified at this junction. The comments provided by Bitzios Consulting in the amended Traffic Impact Assessment report are noted and it is considered that a bus zone can be provided at this location without prejudicing student safety or creating a traffic hazard.</p>

Summary of Submissions	Applicant's response	Assessing Officer comments
	allows for adequate sight distance when existing Factory Lane on to King Street and sufficient entry space to the bus bay during bus arrival periods.	
4. Increase in double parking, queuing and traffic in the area with parent/carer vehicles circling the block		
<ul style="list-style-type: none"> As there will be a large number of students being dropped off/picked up at the same time, there will be an increase in double parking, queuing and parent/carer vehicles circling the block waiting to access the drop-off / pick-up zone 	The amount of on-site car parking exceeds the requirements of Tweed DCP Section A2 – Site Access and Parking. Therefore, the potential for double parking is minimised.	Given the reduction in student numbers and the surplus of car parking on site, this issue is considered to be resolved.
5. Suitability of a town centre site for a school over a green field site on the rural fringes		
<ul style="list-style-type: none"> King Street is zoned for business with long established businesses who have had to develop strategies to compensate for not being on the 'main' street – one of the main advantages being the ease of parking New schools would be better established on the rural fringes of the town with access to green playing fields and easier access for parents and staff 	<p>Schools in town centres are common and have many advantages over a greenfield or rural site as suggested by the objector. By providing a school in the town centre students have easier access to community services and facilities and students can utilise existing bus services, without an extra dedicated 'out of town' service being provided. A town centre site is more convenient for parents to drop children off, often as part of their journey to work. Stabling a school in a rural area can place extra demand on rural road as, and requires all water and sewer services to be provided on-site. A town centre school generally make use of existing urban standard infrastructure, which is more desirable than creating new infrastructure services.</p> <p>In relation to the subject site, it is commented that:</p> <ul style="list-style-type: none"> The proposal is permissible with development consent in the B4 Mixed Use Zone under Tweed LEP 2014 The proposal is consistent with the relevant zone objectives The site has an existing consent over it for an educational establishment The school will be regularly providing students with access to 	The zoning of the site allows for the development of an educational establishment on the site and there is an existing approval on the site.

Summary of Submissions	Applicant's response	Assessing Officer comments
	<p>larger open space and community sportsfields as part of their regular exercise program.</p> <ul style="list-style-type: none"> The application has demonstrated that potential impacts on the locality can be appropriately managed to ensure that the school does not adversely affect neighbours in this mixed-use development area. 	
6. Lack of Accessibility		
<ul style="list-style-type: none"> Lack of accessible car parking on the site which should be a priority for a development of this nature No disabled access to the school No disabled access to first floor teaching facilities – ramp, lift, similar The first level toilets are not accessibility compliant 	<p>In response to the issues raised in the submissions, the applicant has provided the following access advice from Access All Ways Consultants:</p> <ul style="list-style-type: none"> There is no requirement within the NCC to designate accessible car parking spaces for this development as the required number of car parking spaces does not exceed 5. The development will comply with the requirements for accessible car parking contained within the Deemed to Satisfy provisions of the NCC. Access for people with disabilities will be provided and will comply with the Performance Requirements of the NCC. The solution will be part Deemed to Satisfy and part Performance solution. Disabled access is being provided for most types of disabilities to the first floor teaching facilities and where a person with a specific disability may identify issues with access provided, this will be managed by the school through its formal Management Policies to ensure disadvantage does not occur. Access to first floor teaching facilities will comply with the Performance 	<p>The applicant's response is considered reasonable. As access for people with disabilities will be provided and will comply with the Performance Requirements of the NCC (the solution being part Deemed to Satisfy and part Performance solution), these matters are considered to be resolved.</p>

Summary of Submissions	Applicant's response	Assessing Officer comments
	<p>Requirements of the NCC. The proposed solution will be part Deemed to Satisfy and part Performance Solution (a management in use plan will be provided which shows that equivalent facilities will be used on the ground floor where access for some people with disabilities' proves challenging – eg people who use wheelchairs will not be able to use facilities on Level 1 and in this event equivalent facilities will be provided on the ground floor.</p> <ul style="list-style-type: none"> • The Performance Solution will clearly demonstrate that disadvantage will not occur and that any response to issues as they arise will be reasonable. Matters to be considered will include the public nature of the building, the number of people and types of disabilities which might be adversely affected by the proposed design (less than 0.5% of the total population) and the proposed method of managing access for this group of people. • The first level toilets are not accessibility compliant. The provision of toilets will comply with the Performance Requirement of the NCC. An AS1428/1:2009 compliant accessible toilet is being provided on the Ground level. This type of toilet, a public access toilet is specifically designed for use by wheelchair users and in the context of the use of this building provides the required access to sanitary facilities to the degree necessary. Overall sufficient 	

Summary of Submissions	Applicant's response	Assessing Officer comments
	'accessibility complaint' toilets are being provided and all new toilets meet the requirements of AS1428.1:2009.	

Public Authorities Submissions

There were no referrals on this application. In the event that the application is approved, proposals for the installation of the required traffic management facilities and treatments including regulatory signage within the road reserve (bus zones and school speed zones) will be forwarded to the Tweed Local Traffic Committee (LTC) for assessment and subsequent recommendation(s) to Tweed Shire Council.

(e) Public interest

The proposal is considered to be in the public interest:

- There is an existing approval for the use of the site as an educational establishment;
- There will be no increase in the approved number of students or staff on the site;
- The upgrades to the building will improve access to the building and facilities;
- The implementation of the recommendations in the Noise Impact Assessment Report will put in place measures to manage noise, including the construction of noise barrier fences;
- The alterations to the car parking layout will increase the on-site car parking provision and enable on-site manoeuvrability (thereby minimising any traffic hazard associated with the current layout which prohibits vehicles entering and existing the site in a forward direction);
- The provision of a bus zone adjacent to the school will encourage the use of bus transport as opposed to private vehicles reducing traffic volumes;
- The re-use of an existing school site on the periphery of the town centre core is preferable to a green field site in terms of use of limited resources such as land, facilitating shared journeys (the proximity of the site to employment and local services) and encouraging the use of public transport.
- It is acknowledged that the site is limited in area and capacity, but this is reflected in the low student numbers and the child-focused ethos of the school's Management Principles.

Further, the proposal is consistent with the provisions of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* which seeks to facilitate the effective delivery of educational establishments and early education and care facilities across the State.

Section 7.11 and 64 Contributions Plan

Section 64 Contributions

Given that there is no increase in the student numbers, the Water and Wastewater unit have advised that nil contributions are required under Section 64.

Section 7.11 Contributions

Section 94 Plan No 4 (TRCP) – Sector 9 (Murwillumbah) and Section 94 Plan No 18 (Council Administration Offices and Technical Support Facilities) apply to the site.

No Section 7.11 contributions were levied on the previous development approvals on the site (DA02/0357 and DA02/0872) given that the applicant was the Crown (Department of Education & Training) and not a developer.

Initial Section 7.11 contribution calculation on file for DA02/0357 indicate than in other circumstances a Section 94 Plan No 4 (TRCP) contribution of \$466 would have been liable. This was based on 1.564 trips at a rate of \$297.85 per trip (where there was 12 enrolments generating 1.4 trips per enrolment subject to a high school modification factor of 0.8 for shared journeys and a further Council Concession of 40% and there was an existing credit on the site for a dwelling).

While the extant consent for the use of the site as an educational establishment (DA02/0357) did not levy for any Section 94 contributions on the basis that the applicant was the Crown, the consent related to the site and not to the applicant (being the Department of Education & Training). As such the current applicant can rely on the credit created by the existing approval on the site which allowed for the use of the site as an educational establishment with up to 12 enrolments.

The applicant was advised in the DAP meeting prior to lodgement of this application that Section 94 Plan No 4 (TRCP) contributions would be applicable, however this was based on a proposal to increase the student numbers from 12 to 36.

Given that there is no increase in the student or staff numbers and the additional Gross Floor Area is limited to the provision of an ambulant and accessible toilet, no contributions be required under Section 7.11 on the basis of the existing credit on the site created with the approval of DA02/0357 (use of the site as an educational establishment).

Section 94 Plan No 4 (TRCP) - Sector 9 (Murwillumbah)

Proposed Trip generation

Trip generation rate for an educational establish (Primary School) – 1.4 trips per enrolment

Basic trip generation for 12 students = 16.8 trips

Applying a Modification Factor for Diverted trip making for Primary Schools as per Table 3.6.1B (0.75), reduced trip generation = 12.6 trips

Existing Credit

Applying existing credit on the site based on the approved use* of the site:

Trip generation rate for an educational establish (High School) – 1.4 trips per enrolment

Basic trip generation for 12 students = 16.8 trips

Applying a Modification Factor for Diverted trip making for High Schools as per Table 3.6.1B (0.80), reduced trip generation = 13.44 trips

Total trips

Proposed trips (12.6 trips) – credit (13.44 trips) = 0

**Note: Credit has been applied based on the approved use of the site and not the trip generation previously calculated (but not levied) under DA02/0357 which applied a further 40% 'Council concession' to the trip generation.*

Section 94 Plan No 18 (Council Administration Offices and Technical Support Facilities)

The purpose of Section 94 Plan 18 is to 'enable the levying of development contributions for the provision and upgrading of Council's administration office and technical support facilities, which Council considers are necessary to adequately cope in the future with increased demands generated by new development within its area.'

Further in Section 2.16, the plan states that 'contribution will be levied according to the estimated increase in demand. An amount equivalent to the contribution attributable to any approved development on the site of a proposed new development will be allowed for in the calculation of contributions. Council will determine the credit on the basis of the likely demand that the existing development would create.'

As above, existing credit is on the basis of the development and not any contributions previously paid (which in this case was nil). The increase in GFA as a result of the approval of this application would be 8.5sqm (accessible and ambulant toilet). It is not considered that this floor area will increase the demand for Council's administration office and technical support facilities. Rather this portion of the development is necessary to bring the existing development up to required standards in terms of accessibility.

As such it is not recommended that the 8.5sqm of new GFA be levied under Section 94 Plan No 18.

OPTIONS:

- 1A. That Development Application DA18/0048 for alterations and additions to an established educational establishment be APPROVED subject to the recommended conditions included in this report; and
- 1B. That Council issue owner's consent for the development application proposal for the construction of a bus zone in the King Street road reserve.
2. That Development Application DA18/0048 for alterations and additions to an established educational establishment be REFUSED subject to the drafting of reasons for refusal by Council.
3. Should Council have concerns in relation to any of the information submitted, the option to seek further information is possible.

Option 1A & B is recommended.

CONCLUSION:

The change of use of an approved educational facility from a tutorial centre for high school students to a primary school with the same number of approved students and staff is considered to be acceptable in terms of the additional impacts. Any proposal to increase the student or staff numbers will require a future application (a new Development Application or a Section 4.55 (previously Section 96) application)).

The re-use of an existing school site on the periphery of the town centre core is considered appropriate in terms of use of limited resources such as land, facilitating shared journeys (the proximity of the site to employment and local services) and encouraging the use of public transport. While the applicant is proposing a new bus zone on King Street, the number of on-site car parking spaces is being increased with the provision of two surplus spaces with flow-on impacts in terms of a reduction in the uptake of on-street car parking spaces.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No legal costs will be incurred for any of the above options.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

3 [PR-PC] Assessment of Acoustic Barrier Design to Satisfy Condition No. 5 of Court Approved Development Application DA15/1064 for a Redevelopment of Waterslide Playground at Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point

SUBMITTED BY: Development Assessment and Compliance

mhm



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

The NSW Land and Environment Court issued conditional approval for the redevelopment of waterslide playground at Lot 1 DP 1014298, No. 1-3 Tweed Coast Road, Hastings Point.

Condition No. 5 of this approval requires further notification to be undertaken with local residents with respect to the design of an acoustic barrier approved under this consent. Specifically, Condition No. 5 states the following:

5. *The design of the external presentation of the:*

- 5.1 *2.8m high barrier fronting Tweed Coast Road and adjacent to the existing and proposed water park areas; and*
- 5.2 *the platform level acoustic barrier;*

is to be finalised by the Applicant to the satisfaction of the Council, or, if the Council is not satisfied, to the satisfaction of the Court. This must occur prior to the issue of a Construction Certificate. Council must provide notice to local residents of the proposed external presentation of the barriers and allow a period of 14 days for local residents to express their views in relation to such proposed external presentation. The external presentation of the barriers must be implemented, as finalised under this condition, in the course of carrying out work under this consent.

The applicant has now submitted information to satisfy the requirements of this condition and this was notified to local residents in accordance with the provisions of this condition for

a period of 14 days from Monday 7 May 2018 to Monday 21 May 2018. During this time four submissions were received which are detailed elsewhere in this report.

The submitted information is considered by Council officers to adequately address the requirements of this condition, however this has been referred to elected Council for determination given Council's previous determination of the Development Application and subsequent Section 82A Review of Determination.

It is noted that the condition provides that if Council is not satisfied with the submitted design, the matter will return to the Land and Environment Court for consideration.

RECOMMENDATION:

That Council, in respect of the Court approved redevelopment of a waterslide playground at Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point, issues correspondence to the applicant advising that the submitted information satisfies the relevant provisions of Condition No. 5 of the consent

REPORT:

Applicant: Ladehai Pty Ltd
Owner: Ladehai Pty Ltd
Location: Lot 1 DP 1014298 No. 1-3 Tweed Coast Road, Hastings Point
Zoning: RE2 - Private Recreation

Background:

History

Original Development Application

Council received DA15/1064 for the redevelopment of a waterslide playground in December 2015. This was refused at the Planning Committee meeting on 7 July 2016. The reasons of refusal stated the following:

1. *The proposed facility is considered an overdevelopment of the site and not in keeping with the low key village scale character.*
2. *Unacceptable noise impacts to surrounding residents and environment.*
3. *Unacceptable visual impacts along Tweed Coast Road and to the neighbours.*
4. *This larger proposal would necessitate the provision of the 30m Tweed Coast Road setback to be provided.*
5. *The lack of capacity to provide adequate vegetation screening.*
6. *The potential for the development to attract public use not strictly associated with the caravan park is not considered to be orderly and economic use of the land or supporting the welfare of the community.*
7. *Taking into account the large number of objections, the proposal is not considered to be in the public interest.*

Section 82A Review of Determination

Subsequently, the application lodged a request for the Review of Determination under S82A of the Environmental Planning and Assessment Act on 16 September 2016.

Through this, the plans for the development were amended. The height of the platform was reduced from 8.5m to 8.2m and the plans included a 1.8m high noise barrier at the eastern side of the waterslide platform and to the access stairs. Furthermore, the colour of the slides were altered to exclude bright colours. Otherwise the development was the same as that previously assessed/determined by Council.

At the Council meeting of 15 December 2016, Council resolved to refuse the Review of determination and to defend any appeal lodged by the applicant in the Land and Environment Court as it was considered that:

- a. *The proposed facility is not considered suitable for the site due to overdevelopment and over intensity of activity for the site.*
- b. *The development is not in keeping with the existing low key hamlet/village scale character or the identified future desired character of the locality.*
- c. *Unacceptable noise impacts to the surrounding areas.*
- d. *Unacceptable visual impacts along Tweed Coast Road and to the neighbours.*

- e. *This lack of provision of the 10m Tweed Coast Road setback to mitigate adverse impacts.*
- f. *The lack of capacity to provide adequate vegetation and screening.*
- g. *The potential for the development to attract general non park public use not strictly associated with the caravan park is not considered to be an orderly and economic use of the land or supporting the overall welfare of the community.*
- h. *The social and economic benefits of the proposal are not considered to outweigh the social impacts.*
- i. *The proposal is not considered to be in the public interest taking into account the large number of objections from far and wide within the community highlighting the above concerns.*

Land and Environment Court Proceedings

The applicant appealed the matter to the Land and Environment Court, with hearing dates held on 10/11 May and 8 June 2017. The judgement was received in January 2018, upholding the applicants appeal and directing that consent conditions be prepared.

The finding of the Judgement (at 152) included the following:

'Consequently, I propose that the Parties provide submissions to the Court on a condition of consent to require that the finalisation of the design of both acoustic barriers, including their external presentation to Tweed Coast Road, be subject to consultation with local residents, including those who made submissions to this appeal.'

Subsequently, Notice of Orders Made were issued in March 2018 which contained conditions of consent at Annexure "A". Condition No. 5 stated the following:

5. *The design of the external presentation of the:*

- 5.1 *2.8m high barrier fronting Tweed Coast Road and adjacent to the existing and proposed water park areas; and*
- 5.2 *the platform level acoustic barrier;*

is to be finalised by the Applicant to the satisfaction of the Council, or, if the Council is not satisfied, to the satisfaction of the Court. This must occur prior to the issue of a Construction Certificate. Council must provide notice to local residents of the proposed external presentation of the barriers and allow a period of 14 days for local residents to express their views in relation to such proposed external presentation. The external presentation of the barriers must be implemented, as finalised under this condition, in the course of carrying out work under this consent.

The applicant has now submitted information to Council to satisfy the provisions of condition No. 5 which is detailed further under 'Matters for Consideration' heading below.

Site

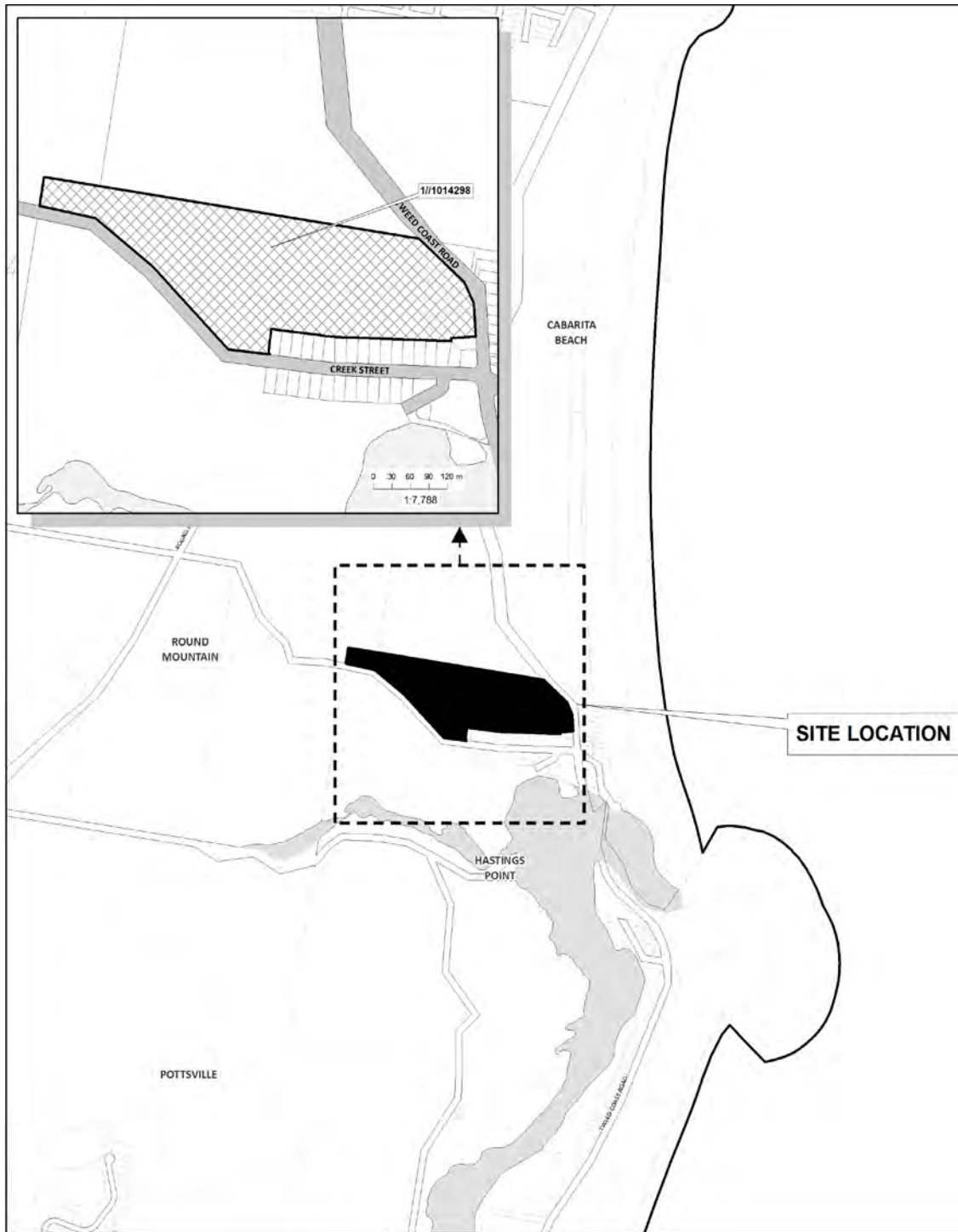
The subject site is legally described as Lot 1 DP 1014298, known as No. 1-3 Tweed Coast Road, Hastings Point. The site mainly contains the North Star Holiday Resort and Caravan Park, although it is noted that there is also a service station to the east site boundary.

The site is bordered by road reserve to the east (Tweed Coast Road) and south/south west (Creek Street). To the north and north-west the property borders Crown Land (Cudgen Nature Reserve).

The site is irregular in shape, with an area of 9.962 hectares and is relatively level.

The acoustic barrier, to which this matter relates, is to be located to the north-east of the site, adjacent to Tweed Coast Road which borders the site at this point and the existing service station on site. The waterslide development is to be located adjacent to existing water play equipment on site.

SITE DIAGRAM:



Locality Plan
 Lot 1 DP 1014298
 No. 1-3 Tweed Coast Road, Hastings Point

<p>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 disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) 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 "trial before you dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 90 days only from the date of supply.</p>	<p>Cadastral: 20 June, 2016 (B) Land and Property Information (LPI) © Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.15 0.3 Km 1:15,000 @ A4 Portrait GDA 1100 COPY ONLY - NOT CERTIFIED</p>	<p>Civic and Cultural Centre 3 Tunbulgun Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@toms@tweed.nsw.gov.au</p>
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Matters for Consideration:

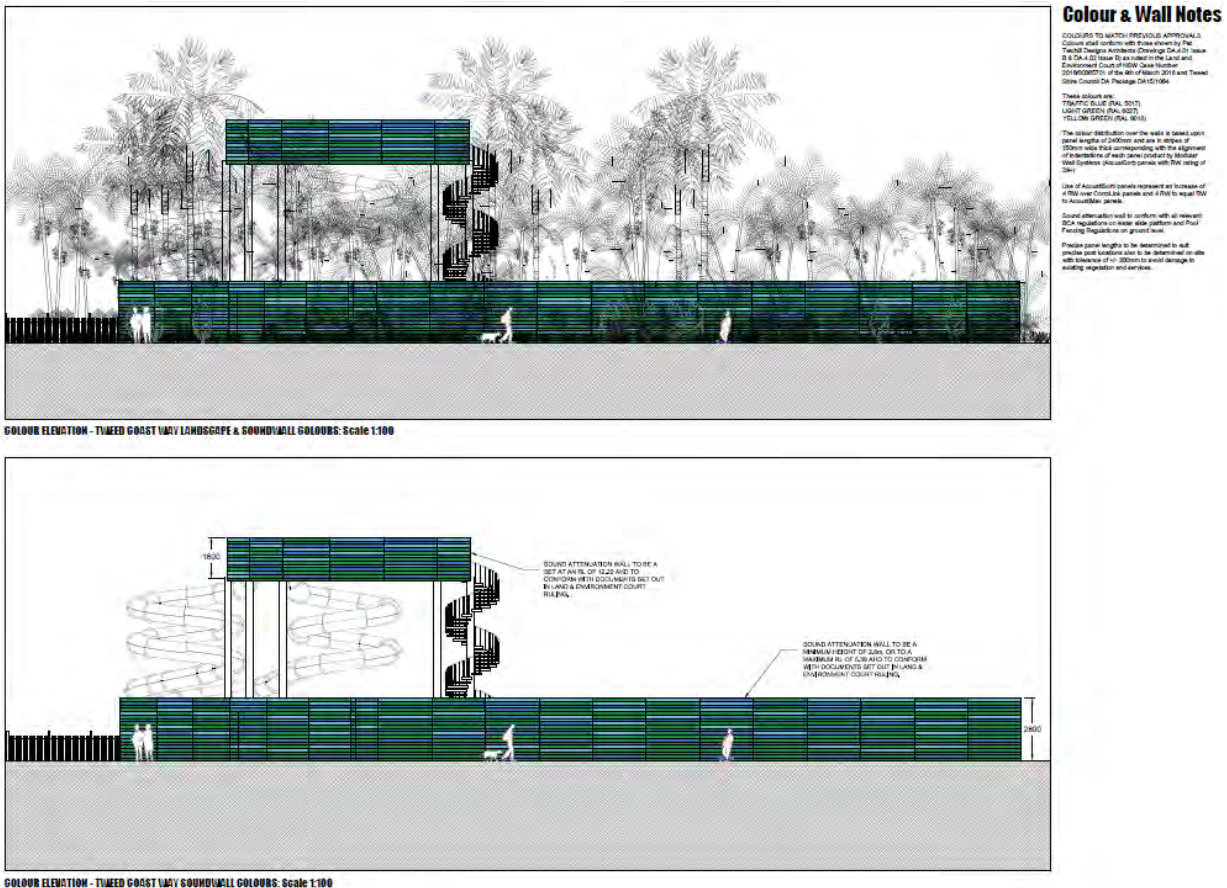
In April 2018, the applicant submitted information to Council in order to satisfy the provisions of Condition No. 5.

5. The design of the external presentation of the:

- 5.1 2.8m high barrier fronting Tweed Coast Road and adjacent to the existing and proposed water park areas; and
- 5.2 the platform level acoustic barrier;

is to be finalised by the Applicant to the satisfaction of the Council, or, if the Council is not satisfied, to the satisfaction of the Court. This must occur prior to the issue of a Construction Certificate. Council must provide notice to local residents of the proposed external presentation of the barriers and allow a period of 14 days for local residents to express their views in relation to such proposed external presentation. The external presentation of the barriers must be implemented, as finalised under this condition, in the course of carrying out work under this consent.

The submitted elevation and plans drawings are re-produced below:



Submitted Elevation Drawing



Submitted Plan Drawing

Council Officer Assessment of submitted Plans

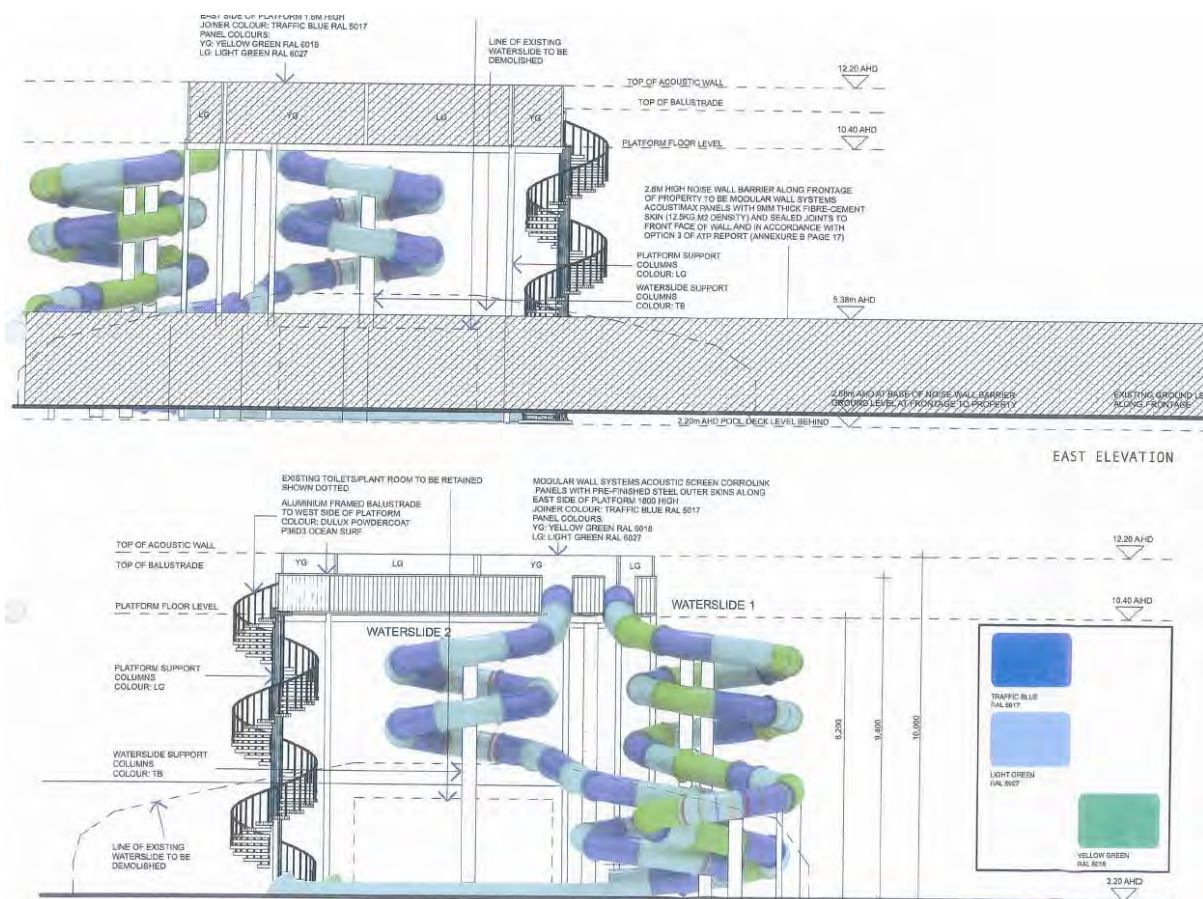
As outlined elsewhere in this report, Condition No. 5 requires the following:

5. *The design of the external presentation of the:*
 - 5.1 *2.8m high barrier fronting Tweed Coast Road and adjacent to the existing and proposed water park areas; and*
 - 5.2 *the platform level acoustic barrier;*

is to be finalised by the Applicant to the satisfaction of the Council, or, if the Council is not satisfied, to the satisfaction of the Court. This must occur prior to the issue of a Construction Certificate. Council must provide notice to local residents of the proposed external presentation of the barriers and allow a period of 14 days for local residents to express their views in relation to such proposed external presentation. The external presentation of the barriers must be implemented, as finalised under this condition, in the course of carrying out work under this consent.

It is noted, that the provision of a 2.8m high barrier fronting Tweed Coast Road and the platform level acoustic barrier themselves are not under consideration at this time, as they were approved through the court proceedings, but instead the condition calls that the 'design of the external presentation' of these elements to be to the satisfaction of Council.

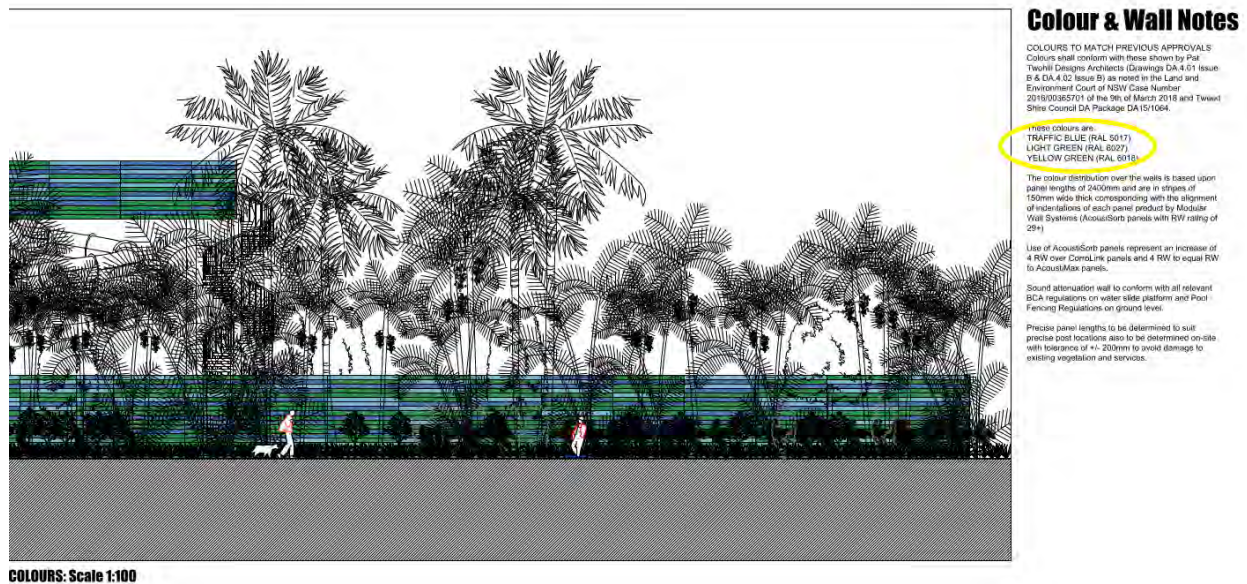
In this regard, it is considered relevant to refer to the approved DA plans (reproduced below) which demonstrate the provision of acoustic barriers to this location and at the specified dimensions.



Furthermore, it is noted that the colours approved for the waterslide itself and the platform level acoustic barrier under the DA are as follows:

- Traffic Blue (RAL5017)
- Light Green (RAL 6027)
- Yellow Green (RAL 6018)

The proponent has now also proposed these colours to the 2.8m high acoustic barrier to the roadside elevation as identified below:



Furthermore, the notes to this plan advises that *'the colour distribution over the walls is based upon panel lengths of 2400mm and are in stripes of 150mm wide thick corresponding with the alignment of indentations of each panel product by Modular Wall Systems (AcousiSorb panels with a RW rating of 29+).'*

No objection is raised to the use of these colours by Council officers, given their consistency with the Court approval which provided for their use to the waterslide itself and the platform level barrier.

It is noted that Council can only assess the proposal received and whether or not it meets the provisions of Condition No. 5. It is not the place of Council officers to request modifications to the submitted design unless it is deemed to not meet the requirements of the condition. As outlined above, the submitted information is considered to be in accordance with the requirements of Condition No. 5.

Condition No. 5 also requires public notification of this external design. This has been undertaken and is reviewed below:

Public Notification

These documents, in addition to accompanying Development Application documents, were notified to local residents for a period of 14 days from Monday 7 May 2018 to Monday 21 May 2018. During the above period, Council received four formal submissions. These are detailed below. It is also noted that the content of the submissions were forwarded to the applicant for comment and where provided, these are also included below:

Submission No 1: *Co-owner of 3/2 Tweed Coast Road, Hastings Point

'I strongly support the use of the barriers as proposed however the first consideration when making comment on their appearance is to know what the wall structure is made of and unfortunately this is not clear from the information provided;

The plans approved in the Conditions of Consent by Commissioner Chilcott include Rev. B drawings DA.2.01, DA.4.01 and DA.4.02 from Pat Twohill Designs which specify the 2.8m high barrier along the site frontage to be: modular wall systems AcoustiMax panels with 9mm thick fibre-cement (12.5kg/sq.m density) and sealed joints to the front face of wall and in accordance with Option 3 of ATP report (Annexure B Page 17).

An ATP report dated March '15 was part of the original DA and that report, amended August '16 was reissued in the S82A Application recommending a 1.8m high barrier on the platform so as to not increase existing noise levels. Neither report has an Annexure B or any wall options on page 17. However following consultation with the TSC Town Planner it was identified that the acoustic consultant for the Applicant had filed an expert report in April '17 to the court which included the ATP report as Annexure B and accordingly on page 17 it provides three options for the wall on the slide platform, the third option being FC sheeting minimum 9mm thickness (12.5kg/sq.m).

The Pat Twohill Designs drawings show the platform wall as: modular wall systems acoustic screen Corrolink panels with pre-finished steel outer skins.

Subsequently Duncan Gibbs Landscape Architect has issued drawings J0417-CD01 Rev.A for a Construction Certificate and J0417-04 showing the coloured wall elevations. These plans don't nominate the barrier wall system but base the colour scheme on AcoustiSorb panels which have a fairly unique skin profile being perforated aluminium with 150mm height ridges and indentations between each ridge.

In summary we have:

- The ATP report recommending a barrier using FC panels 9mm thick (12.5kg/sq.m) for the 1.8m (min.) height platform barrier and presumably the same product when they recommended inclusion of the 2.8m high road frontage barrier.*
- Pat Twohill Designs followed the ATP recommendation for the road frontage barrier but showed Corrolink 1.8m high on the platform.*
- Duncan Gibbs Landscape Architects made reference that the wall should confirm with documents set out in Land & Environment Court ruling, but then based the colour scheme on the specific profile of AcoustiSorb wall panels.*

The primary purpose of these barriers is to reduce noise emissions from the site and as a consequence traffic noise within the water park will also be reduced. Privacy is an added benefit for nearby residents, passing traffic and water park patrons especially given that the ever increasing gaps in the trees presently opens vision into the area which is virtually impossible to avoid. Therefore I believe the barrier function should be to cover those gaps and be as inconspicuous as possible.

From my perspective a consistent aesthetic is most important, meaning the same barrier system should be used for both walls and given that the condition is a Court ruling I would expect that Option 3 in the ATP report is best satisfied by the AcoustiMax panel with a 9mm FC skin on the road side face. I understand the use of the 9mm FC panel means this is not an off the shelf product but a special order.

It does come in 300, 600 and 1200mm heights and up to 4.2m long and different height panels could each be pre-painted in one of the three chosen colours and placed randomly to

create a similar chequered colour scheme to that proposed, only in a larger pattern which would seem to suit a wall of this height.

I suggest the painting and installation time would be reduced significantly as a result of using the larger panels and a further great outcome would be to extend the barrier to cover the eastern side of the stairs below the platform.

That area being left exposed, I believe, lets down the very good work carried out by the Commissioner and can only diminish the ultimate aim of the condition that has been enforced. Noise reduction, patron privacy and motorist concentration will all diminish as a result of this omission.

In closing I recognise that I have been self indulgent in my response and wouldn't have delved as deeply into the products mentioned had the barrier specifics been made abundantly clear. At the same time I also acknowledge that definitive specification can be difficult prior to a coordinated application for a Construction Certificate."

**Council Officers Note: Submissions No. 1 & 3 have been received by separate owners/residents in the same unit.*

Applicant Response

- *"The sound attenuation wall panels are specified on Duncan Gibbs drawings (refer to Colour & Wall Notes on drawing No. J0417-CD04) as Acousti-sorb panels, as per discussions with Modular Walls. It was determined that these panels have a higher noise attenuation rating and, importantly to this point, absorb the sound rather than reflect the sound back out into the adjoining areas, (both roadway and waterpark).
 - *- Acoustic Max Panels have an Rw rating of 25 - 28 (depending on mass/thickness).*
 - *- Acousti Sorb Panels have an Rw rating of 29 -34 or 34 -45 (depending on mass/thickness).**
- *Gaps between trees/planting will be reduced under this scheme, as supplementary plantings have been specified.*
- *A larger colour pattern would not suit the wall, since the purpose of the pattern is to break up the mass of the wall and camouflage it behind the existing and new supplementary plantings.*
- *No evidence has been presented that the use of the spiral staircase will create significant noise requiring attenuation, nor been determined by the acoustic consultant.*
- *While the slides are in operation there is a requirement to have an attendant on duty to limit the number of persons accessing the facility, as such there would only be at the most 2 persons on the stairs at any one time.*
- *No evidence has been presented that motorist concentration is impaired any more by the waterpark structures than by any other roadside structures, such as service station signage, notices for garage sales, or unusual architecture and the like, or anything else."*

Council Officer Assessment

This submission makes reference to the difference in materials specified in the DA approval and those now proposed. While an objection is not specifically raised on this point it is advised that *'first consideration when making comment on their appearance is to know what the wall structure is made of and unfortunately this is not clear from the information provided.'*

In reviewing this, it is considered that the information submitted to Council does identify the colours and the material (including the specific company product) now proposed.

Whether or not a change to these materials to those previously identified requires that the Court Development Approval be modified would be a matter for the Private Certifier, who is charged with issuing a Construction Certificate, to consider. It is however noted that there can be minor deviations between plans approved through the Development Application and subsequent Construction Certificate without the need for a modification to the consent.

It is noted that all materials proposed constitute acoustic barrier and in this way there would be a consistency to the material typology used, irrespective of the specific company used. This would be in much the same way as a timber fence would differ slightly in appearance depending on the timber used, but would still fulfil the purpose of being a timber fence.

Whether or not the acoustic panelling used is a custom order or an 'off the shelf' product is not considered to be in and of itself relevant to the appropriateness of the external presentation of the barrier, as presented in Condition No. 5.

The provisions of either the judgement or of Condition No. 5 of the Court issued approval does not mandate that acoustic screening be applied to the eastern side of the stairs below the platform. Therefore this is not a reasonable requirement to impose upon the development as there is no provision for same in the Court issued approval.

Submission No. 2: Hastings Point Progress Association

"The Association supports the instalment of the noise barriers as proposed however we are concerned that they are not covering the east side of the spiral staircase in the 5.4m high gap between the barrier on the platform and the one at ground level. This obviously reduces the effectiveness of the noise reduction and as raised previously, our concerns about this DA included the potential for it to distract motorists. This open space where people climbing the stairs will be clearly visible has the potential to do that. Those residents living opposite the proposed slides will face an even greater risk of being rear ended when turning into their driveways than they do now, given the speed (80+ kph) at which traffic now enters the village due to inappropriate speed sign location, and the distraction this will provide to motorists.

We note that the approved drawings include plans by Pat Twohill Designs that clearly specify the 2.8m high wall type as AcoustiMax and comply with the Acoustic Consultants report, they also show colour samples for the wall. The subsequent plans for a Construction Certificate from Duncan Gibbs Landscape Architects shows a colour scheme to suit AcoustiSorb panels and the colours appear to be more vivid than those shown on the Twohill plans.

Whilst acknowledging that colour samples, especially once copied or transferred to another medium can be unreliable, our members generally agree that more subdued or pastel colours will have a better chance of losing the wall amongst with the vegetation that remains in front of it. Additionally the consensus is that 150mm thick coloured stripes are probably too thin for a 2.8m high wall.

We concur that ideally both the platform and frontage barriers should be of the same construction material and appearance. Therefore we trust that Council or the Court can resolve any anomaly in the barrier type used and ensure the equivalent noise reduction as recommended by the Acoustic Consultants is achieved.”

Applicant Response

- *"No evidence has been presented that the use of the spiral staircase will create significant noise requiring attenuation, nor been determined by the acoustic consultant.*
- *Speed limit signage is not part of the DA or CC conditions, and is set by Council Independently of North Star Holiday Park.*
- *For decades the speed limit through Hastings Point has signage very clearly indicating 50km and not 80km as suggested – see image.*
- *No evidence has been presented that motorist concentration is impaired any more by the waterpark structures than by any other roadside structures, such as service station signage, notices for garage sales, or unusual architecture and the like, or anything else.*
- *The colour scheme is consistent between Pat Twohill's drawings and Duncan Gibbs drawings and is based upon the Pantone Colours set by Pat Twohill in his drawings and to be accorded with as ruled by the court: (Traffic Blue RAL5017, Light Green RAL6027, and Yellow Green RAL6018).*
- *A larger colour pattern would not suit the wall, since the purpose of the pattern is to break up the mass of the wall and camouflage it behind the existing and new supplementary plantings.*
- *Thinner strips of colour will be more effective in breaking up the visual mass of the wall and assist in blending its mass into the existing plantings and proposed supplementary planting. This could also be argued, using logic, to further assist making the structures less obvious from the roadside, further reducing any "distraction" that the structures may cause any motorist, since the structures are further camouflaged."*

Council Officer Assessment

The provisions of either the judgement or of Condition No. 5 of the Court issued approval does not mandate that acoustic screening be applied to the spiral staircase. Therefore this is not a reasonable requirement to impose upon the development as there is no provision for same in the Court issued approval.

The colours identified are identical to those already approved through the Court.

The element of the submission which states that '*150mm thick coloured stripes are probably too thin for a 2.8m high wall*' is noted by the assessing officer. As outlined above, the external presentation is considered to be acceptable by the assessing officer of Council, however it is ultimately the role of elected Council (or possibly the Court) to determine whether this is the case.

Submission No 3: *Co-owner of 3/2 Tweed Coast Road, Hastings Point

*"Thank you for the opportunity to comment on the proposed acoustic wall at 1-3 Tweed Coast Road Hastings Point. The outcomes from court proceedings were fair to both parties. The judgement by Commissioner Michael Chilcott in 152 states **Consequently, I propose that the Parties provide submissions to the court on a condition of consent to require that the finalisation of the design of both acoustic barriers, including their external presentation to Tweed Coast Road, be subject to consultation with local residents, including those who made submissions to this appeal.** It is very surprising then that Mrs Eloise McGilligan from [REDACTED] and who made a submission to the court and many of the nearby residents and local owners who wrote individual letters objecting to the waterslides have not received Council's letter regarding the acoustic barrier.*

My comments are as follows:

Apart from the drawings being confusing and hard to decipher (for example: landscape plan legend existing and proposed trees are not visibly different) my main disappointment is that although the attached drawing was used in the application to reconsider the water slides and showed an acoustic wall covering the stairs the current plans do not. I believe by not having an acoustic barrier behind the stairs is a missed opportunity.

*The developer states on page 4 of the S82A Application: **'A 1.8m high barrier is considered suitable as the main patrons using the slides will be children. Audible noise is not likely from children or adults on the climb up the stairs, as physical exertion of climbing the stairs naturally limits chatter and excessive speech. However, the applicant is also willing to construct the noise barrier on the eastern side of the stairwell, to ensure that there is no basis for residents to object to the development on the basis of the creation of unacceptable noise.'***

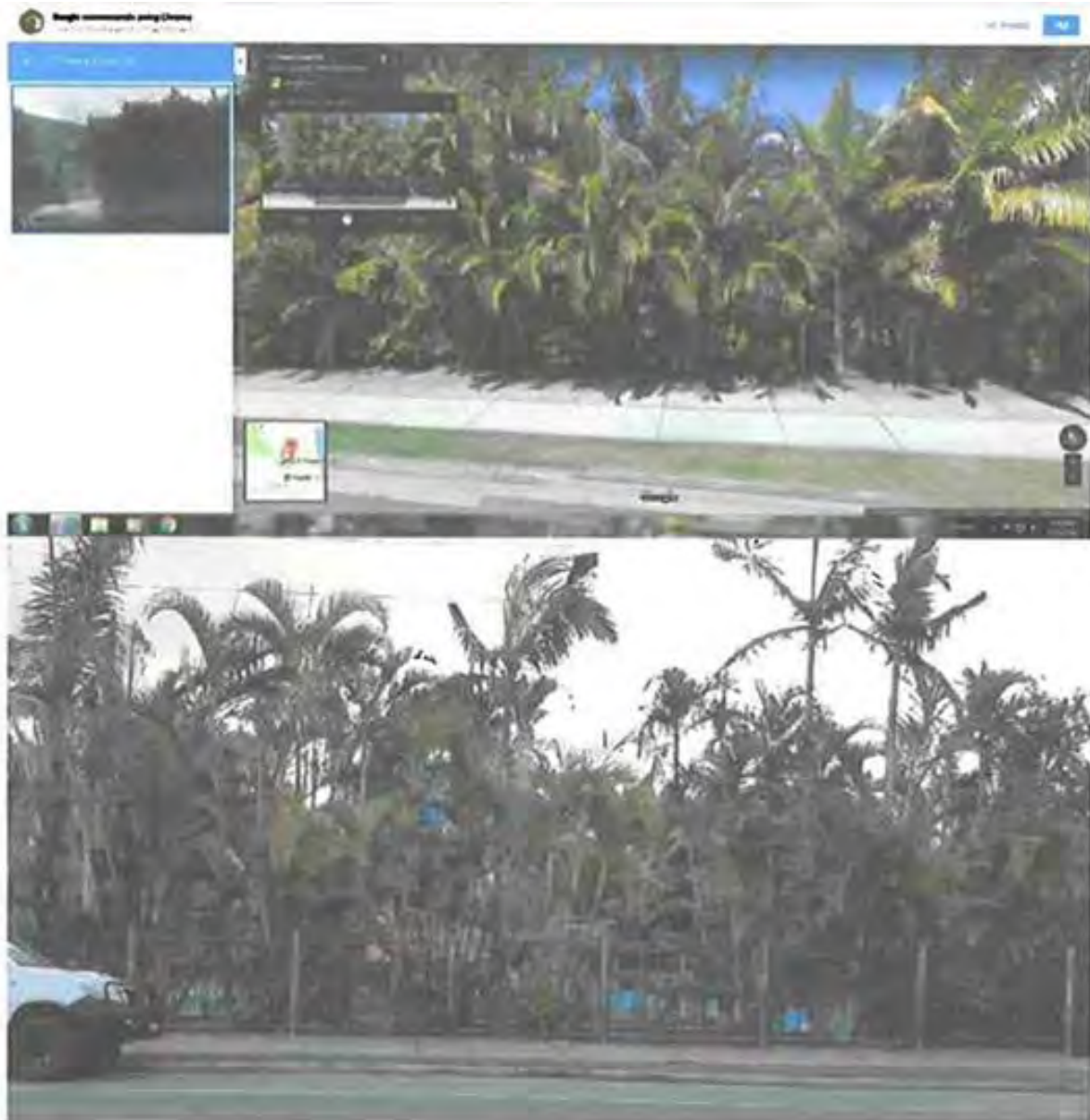
I believe quite a lot of noise can be generated on the stairs with children screaming from excitement. We live 30 meters from the water play area and apart from young patrons running non-stop and screaming over long periods we also get the tramping noise as they run on the rubber surface of the water park and the stairs and platform under the tipping bucket. The new 3 story staircase has many more stairs and a barrier would reduce any additional thumping noises. It makes sense to partition that area as well for safety for the users and less distraction for passing vehicles should also be considered.

I was very surprised to see the colouring of the wall and would like to know the true colours. Drawing Samples show 'Yellow Green' as a fairly vivid green. The light Green sample is blue. I think an inconspicuous wall would be more fitting and don't wish for it to stand out like an advertisement for the water park.

The images below demonstrate the thinning over time of the existing palms on the roadside. This has continued since the court findings. To camouflage the wall should be a main priority and the proposed landscaping and existing trees should help but systems should be put in place to stop the applicant from continuing to thin the foliage especial as the majority of it is on Council land and is the entry welcome to Hastings Point.

It has been 7 years since the construction of Sammy's Waterpark. This is when we first woke to bells and parlour music and the serenity of Hastings Point changed for us. I wish to thank the Tweed Shire Councillors who listened to our concerns and although I regret the

expense to rate payers for the court proceedings, common sense and respect for the local residents prevailed. As a result all who live at Hastings Point will benefit and the park users will have their privacy."



**North Star Water Park - Tree cover 2009 (top) compared to 2018 (above)
(Attachment : S82A Application Plan)**

SEIA APPLICATION FOR RECONSIDERATION OF DEVELOPMENT APPLICATION DA 15/1064
Redevelopment of Waterslide Playground
At Lot 1 DP 1014298, No. 1 - 3 Tweed Coast Road, Hastings Point



*Council Officers Note: Submissions No. 1 & 3 have been received by separate owners/residents in the same unit.

Applicant Response

"Without repeating the answers again they would be the same as in submissions 1 and 2."

Council Officer Assessment

The person specifically referred to in the submission is identified as being a resident at [REDACTED]. Council have issued a notification letter to this property through the postal details available, being to the Strata. A copy of this is provided below. Therefore it is considered that this person has been notified of the submitted information.

Council Reference: DA15/1064 LN43366
Your Reference:



24 April 2018

Customer Service | 1300 292 872 | (02) 6670 2400

tsc@tweed.nsw.gov.au
www.tweed.nsw.gov.au

Fax (02) 6670 2429
PO Box 816
Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN 90 178 732 496

Dear Sir/Madam

Development Application DA15/1064 - redevelopment of waterslide playground at Lot 1 DP 1014298, No. 1-3 Tweed Coast Road Hastings Point

Land and Environment Court of New South Wales issued conditional approval for the redevelopment of waterslide playground at Lot 1 DP 1014298, No. 1-3 Tweed Coast Road Hastings Point. Condition no. 5 requires further consultation to be undertaken with local residents with respect to the design of an acoustic barrier approved under this consent. Specifically, condition no. 5 states the following;

It is further noted that the judgement referenced was subsequently incorporated into a condition of consent, to the satisfaction of the Commissioner, being that:

Council must provide notice to local residents of the proposed external presentation of the barriers and allow a period of 14 days for local residents to express their views in relation to such proposed external presentation.

It is considered that the submitted information has been notified in accordance with the provisions of the condition and the judgement, with the local residents association also advised of receipt of the information.

As advised elsewhere in the assessment of these submissions, Council cannot require that an acoustic barrier be provided to an area (specifically the submission references a stairwell) that the Court judgement has not required.

The colours identified to satisfy Condition No. 5 are the same as those identified in the approved DA plans, being as follows:

- Traffic Blue (RAL5017)
- Light Green (RAL 6027)
- Yellow Green (RAL 6018)

A landscaping plan has been submitted to Council for consideration, as required by Condition No. 4 of the consent. This is separate to the external presentation of the acoustic barrier which was specifically required to be notified as per the condition. The consent does not rely on any landscaping in Council's road reserve for camouflage.

Submission No. 4: Owner of 4 Tweed Coast Road, Hastings Point

"Thank you for your letter of 24th April 2018 re the above. We approve of the noise barrier which has been submitted but it would preferable if the barrier could also block out the noise which will be coming from the stair case. We note that we will be advised when commencement of the works will be due to start."

Applicant Response

"Without repeating the answers again they would be the same as in submissions 1 and 2."

Council Officer Assessment

The provisions of either the judgement or of Condition No. 5 of the Court issued approval does not mandate that acoustic screening be applied to the waterslide staircase. Therefore this is not a reasonable requirement to impose upon the development as there is no provision for same in the Court issued approval.

Conclusion

As outlined in the Council officer comments above, the matters raised in the above submissions are not considered to be an impediment to the submitted information being satisfactory when assessed against the requirements of Condition No. 5.

OPTIONS:

1. Issues correspondence to the applicant advising that the submitted information satisfies the provisions of Condition No. 5 of the consent; or
2. Issues correspondence to the applicant advising that the submitted information does not satisfy the provisions of Condition No. 5 of the consent for stated reasons.

Council officers recommend Option 1

CONCLUSION:

The above assessment is considered to demonstrate that the proposed design of the acoustic barrier is acceptable with respect to the requirements of Condition No. 5 of the approval and the plans approved for the development through the Land and Environment Court proceedings.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal costs as at 31 March 2018 were \$160,558.00 and should this matter return to Court, further legal costs will be incurred.

c. Legal:

If the applicant is dissatisfied with the determination, they may have the matter determined by the Land and Environment Court.

d. Communication/Engagement:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Collaborator Leader

SUMMARY OF REPORT:

In the interim to a report seeking Council's endorsement of the draft Aboriginal Cultural Heritage Management Plan (draft ACHMP) this report provides an update on the drafting at review following its public exhibition between 17 October to 20 December 2017.

The foundation of this report is the crux of a specific issue raised within the 48 submissions received and which questions the appropriateness of applying the proposed mapping to Greenfield and other approved development sites where Aboriginal cultural heritage management plans have already been approved. The contention being that it would lead to duplication of the need to prepare and submit separate cultural assessments at different stages of the development chain, for example; each at the rezoning, subdivision and dwelling stage.

This is a real issue and may have unintended and unnecessary implications if left unchecked. Council staff have therefore undertaken to further consider this issue in consultation with the Aboriginal community representatives, the NSW Office of Environment and Heritage, and the Department of Planning and Environment with a view to resolving the duplicative processes without diminishing the cultural significance of the previously assessed site, area or locality. Once the issue is adequately resolved a further report for Council's consideration for the adoption of the draft ACHMP will be submitted, this is expected to occur no earlier than August 2018.

RECOMMENDATION:

That Council receives and notes the update on the draft Aboriginal Cultural Heritage Management Plan 2017, which outlines matters related to rezoning, greenfield and subdivision raised during the extended community consultation with a further review to be undertaken and reported to Council.

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."*

A detailed report on the public exhibition and submissions was to be made to Council at the June meeting, however, an issue raised through the submissions has required further consultation and liaison with the Aboriginal community, Office of Environment and Heritage and Department of Planning and Environment. As such this report provides an interim update on the draft Aboriginal Cultural Heritage Management Plan (draft ACHMP) and outlines the next steps which will be pursued.

Public exhibition and consultation summary

In accordance with the Council resolution the Draft ACHMP 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.

In total the draft ACHMP was publicly exhibited for a period of 145 days.

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.

Issue to be clarified

Four submissions to the draft ACHMP raised concerns regarding the mapping of areas, which are current greenfield areas, and which have previously been subject to an Aboriginal Cultural Heritage Assessment(s) either for rezoning, project sites, and/or subdivision.

These submission raise concerns based on:

1. Cultural assessment has already been undertaken and addressed;
2. Consider the mapping to be inaccurate and they should not be mapped; and
3. The plan will encumber future owners with requirements for Aboriginal cultural heritage (ACH).

In addressing points 1 and 2, it is noted that many large land release areas have completed or are currently undertaking Aboriginal cultural heritage assessments. Notwithstanding their assessments and recommendations, the significance of the mapped *Aboriginal Place of Heritage Significance* (known areas) remains, and as such it is not proposed to remove these areas from the mapping.

However, the implications of the ACHMP potentially requiring duplication of assessment by the land developer and then again on a site by site basis by the future land owner is acknowledged and requires further clarification for consistency with State legislation and resolution in terms of defining an appropriate course of assessment across a range of development scales.

It is the intent of the draft ACHMP to find a balanced approach to the consideration of ACH which is undertaken early in the development process, suited to the scale and nature of the works, consistent with the legislative requirements, considers and manages to the potential for harm of ACH, and is efficient and effective for land owners.

With respect to point 3, the plan as drafted reads that the developer of land is required to undertake ACH assessment and then the future owner of land when building, for example a house, would also be required to undertake an ACH assessment. Whilst this may be appropriate in some locations and for some forms of development especially where significant excavation is proposed a blanket approach which could potentially lead to assessment duplication was not the intended outcome.

In addition, it is the intent of the draft ACHMP that the mapped *Aboriginal Place of Heritage Significance* will, due to the need to consider any impacts on the known ACH, 'turn off the option to undertake exempt or complying development' through the definition of *environmentally sensitive area*. Whilst generally this is the preferred approach, it is also acknowledged that where an ACH assessment has been completed and detailed recommendations followed, there may be some areas where exempt and complying development may be able to be undertaken without undue risk to ACH.

The challenge for the draft ACHMP arising from these submissions is to embed flexibility in the planning and assessment processes whereby if there a risk of harm identified, and if that risk of harm has been removed, addressed or minimised in consultation with the aboriginal community, that there is an ability to 'turn back on' exempt and complying development back where appropriate.

In consideration of the above, there is opportunity for the draft ACHMP be amended to include a discussion related to greenfield development and subdivision and to provide additional process pathways for future development within these areas.

To facilitate and expedite this outcome Council officers are undertaking further consultation with the Aboriginal community (through the Tweed Byron Local Aboriginal Land Council), OEH and DPE to resolve the potential duplication and develop an appropriate pathway/process.

A full and detailed report on the public exhibition and submissions along with proposed changes to the draft ACHMP will follow resolution of that consultative process.

OPTIONS:

1. Council receives and notes the update on the draft Aboriginal Cultural Heritage Management Plan 2017.

CONCLUSION:

The development of the draft ACHMP is a culmination of 4-5 years of work and it is important that the plan provides an efficient, effective and workable approach to the assessment and management of ACH, consistent with legislative requirements.

Following community consultation and consideration of submissions relating to rezoning, Greenfield development and subdivision it is considered important to consult further with the relevant stakeholders to develop an appropriate ACHMP development assessment processes which will ensure a greater degree of clarity between the differing scales and stages of development.

A full and detailed report on the public exhibition and submissions will follow resolution of an appropriate process.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No additional budget implications.

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:

Nil.

5 [PR-PC] Protecting Tweed's Native Forests

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
- 1.1 Natural Resource Management
- 1.1.2 Bushland Management - To manage bushland on land owned and under the care and control of Council.

ROLE: **Advocate** **Leader**

SUMMARY OF REPORT:

This report is in response to the Notice of Motion (NOM) of 22 March 2018 on protecting Tweed's Native Forests, and the subsequent Councillor workshop held on 10 May 2018.

Given the range of agencies and interests involved in this matter, it is proposed as a first step, that Council facilitate a meeting with the relevant government agencies to discuss options for improving the protection of Tweed's native forests.

RECOMMENDATION:

That a meeting is convened for Councillors, government agencies and relevant Council officers to discuss options for improving the protection of Tweed's native forests.

REPORT:

This report is in response to the Notice of Motion (NOM) proposed at the Council meeting of Thursday 22 March 2018 and subsequent workshop of 10 May 2018.

Notice of Motion

On Thursday 22 March 2018 a NOM proposed that Council:

“1. Notes:

- a) *Tweed Shire has the most diverse range of ancient Gondwana Rainforest remnants in Australia, and significant Aboriginal cultural heritage much of which is still not mapped and vulnerable to Private Native Forestry operations,*
 - b) *Climate Change poses a serious threat to the Tweed community, economy and environment,*
 - c) *Maintaining forests and reforestation is an important mechanism to address climate change by reducing carbon emissions, reducing the impact of flooding and potential for landslides, assist in reducing the number of threatened species and improving waterway quality,*
2. *Brings forward a report on supporting and encouraging landholders to reforest the landscape on a major scale and include considerations and incentives to achieve this through various strategies such as the Rural Land Use Strategy, including but not limited to consideration of an increased dwelling entitlement in exchange for a legally binding commitment e.g. for 95% native vegetation cover, or potentially for plantations of diverse native forests where this does not involve clearing existing vegetation.*
 3. *Brings forward a report on whether the further clearing of Tweed's native forests for Private Native Forestry is appropriate for the Shire, including but not limited to consideration of the recent report from the State Government that identified that North Coast Forests as in poor condition due to high grading, the significance of the Shire's forests particularly in regard to the ancient Gondwana Rainforests and the very high numbers of threatened species and value of these forests.*

The motion was amended and Council resolved that this item be deferred for a future workshop.”

A Councillor workshop was held on Thursday 10 May 2018 at which it was proposed that a report be presented to Council addressing the intent of the original NOM.

Significance of the Tweed's native vegetation

Council adopted the Tweed Vegetation Management Strategy (TVMS) in 2004. An objective assessment of the ecological status of vegetation throughout the shire was completed to inform the TVMS. Approximately 75% of the remaining vegetation was classified as of *High* or *Very High* ecological status through assessment of key attributes

such as remnant size, the regional status of specific vegetation communities, connectivity and areas of key fauna habitat.

The Tweed region also supports one of the highest concentrations of threatened species in Australia with more than 200 significant plant species and over 100 threatened fauna. A number of key threats associated with the use and management of native forests are recognised as key threatening processes under the *Biodiversity Conservation Act 2016* including clearing of native vegetation, loss of hollow bearing trees and the invasion, establishment and spread of Lantana.

National Parks in the caldera region of the Tweed are part of the *Gondwana Rainforests of Australia* World Heritage Area. Much of the native vegetation that occurs on private land has values of equal or similar conservation significance and provides a critical role in buffering and connecting these internationally significant forests.

Current relevant programs

Council currently delivers a range of programs that assist landholders and community groups to protect and improve vegetation. More than 300 landholders participate in these programs which represents 7% of properties in the shire that are greater than 2 hectares and have existing bushland.

Council is also currently in the process of implementing the outcomes of the NSW Department of Planning Northern Councils E Zone Review. All vegetation will be assessed according to the criteria identified by the review and proposed zones identified accordingly.

Under Tweed LEP 2014, forestry requires consent from Council in addition to any approval provided by a state agency, including private native forestry (PNF).

The draft Tweed Rural Land Strategy also proposes a range of initiatives which will support revegetation of rural land. Nine policy directions have been endorsed by Council representing a balanced approach to the future use and management of rural land, including Policy Direction 2 *Protect and improve environmental values and respond to natural hazards*.

The intent of Policy Direction 2 is to ensure that rural development and land use does not adversely impact on scenic, environmental or cultural values, and that environmental hazards are avoided, and climate change is responded to. Under this policy direction, 21 actions are proposed supporting the intent of the policy direction.

In 2006, Tourism Australia and Parks Australia formed a partnership based on tourism and conservation, to identify Australian iconic landscapes which capture and promote areas of outstanding natural beauty and cultural significance. This partnership saw the creation of Australia's National Landscapes Program, an initiative that aims to achieve conservation, social and economic outcomes for Australia and its regions via the promotion of outstanding nature-based tourism experiences.

The Mount Warning *Wollumbin* Caldera Region was accepted into the Australia's National Landscapes Program in November 2007.

Proposed meeting

Given the range of agencies and interests involved in the protection and management of native vegetation, it is proposed as a first step, that council facilitate a meeting with the relevant government agencies to discuss options for improving the protection of Tweed's native forests.

It is proposed that the meeting establish a clear understanding of the legislative and operational processes that government agencies operate under and ensure that all parties involved in the protection and management of native vegetation have a 'common foundation' upon which further steps can be developed.

Contact has been made with Local Land Services (LLS), who now have responsibility for regulation of PNFs, who advised that while they were not able to respond to an earlier request from the Mayor to brief Councillors due to the recent transfer of PNFs to LLS (30 April 2018), they have expressed support for a multi-agency meeting.

The Department of Primary Industries (Plantation Forest Unit), and the Environmental Protection Authority (responsible for PNF enforcement) are also supportive of the proposed meeting.

It is proposed to invite representatives from:

- Department of Planning and Environment;
- Local Land Services;
- Environment Protection Authority;
- Department of Primary Industries, and
- Biodiversity Conservation Trust.

The meeting would allow the key agencies to provide a succinct explanation of their roles and responsibilities, clarify the current status of native vegetation and plantation and private native forestry, and allow open discussion about options and possibilities for the protection and improvement of native vegetation in the Tweed.

Subsequent to the initial meeting and mutual clarification of the current situation, additional engagement could be undertaken to include a broader representation of the community and relevant industries.

OPTIONS:

1. Proceed with convening a multi-agency meeting, or
2. Establish an alternative approach to understanding opportunities to facilitate protection of native vegetation.

Option 1 is the recommended option.

CONCLUSION:

The diversity and quality of native vegetation in the Tweed is recognised for its local, regional and international significance.

The ability of this vegetation to support viable communities of threatened or endangered species is highly significant and is dependent on the protection and expansion where possible of these vegetation communities.

This report proposes a first step in developing understand of the most appropriate and effective way to bring about long-term change in approaches to protection of native vegetation in the Tweed.

A multi-agency, Councillor and Council officer meeting is recommended as a means of ensuring a common understanding of the legislative framework under which native vegetation is protected, and identify opportunities for further action.

A number of key government agencies have already expressed an interest in being part of a meeting and are keen to support such an initiative.

The proposed meeting would allow consideration of the matters raised in the Notice of Motion previously presented to Council and provide Councillors and officers with sufficient information to allow further consideration of options.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

6 [PR-PC] Tiny Homes Audit Council Land

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader and Collaborator**

SUMMARY OF REPORT:

Arising from a Notice of Motion, Council resolved the following at its meeting of 15 February 2018:

"RESOLVED that a report be generated by Council listing available and appropriate Council land for the purpose and utilisation of a 'Tiny Homes' project of a small scale that can be managed by a not for profit organisation or Housing NSW. Further, that Council writes to the NSW State Government requesting a list of available and appropriate State owned/Crown Land for the purpose of a 'Tiny Homes' project."

Prior to undertaking the audit of Council land, it was clarified with the Councillors that they were interested in sites that had the suitable capacity for a particular built form of multiple, individual tiny homes on one lot, similar to example of development approved at Gosford, the details of which are provided as an attachment to this report.

In terms of undertaking the audit, it was recognised that Council currently owns several hundred individual land parcels, of varying sizes and use, and in order to present a more manageable audit for the Tiny Homes task, the officers have only drawn from a limited list of properties that have been presented to Council in the past, as having some form of redevelopment and sale potential.

The initial results of this audit was presented to a Councillors Workshop on 10 May 2018, and the details have been updated and presented within this report following feedback received from the Councillors. Further to discussion at the Workshop, it was also identified that Council's Recreation Services Unit are also preparing to report back to Council on the Draft Open Space Strategy, which will include an analysis of the suitability of retaining the full range of Council owned open space parcels, in the context of the previous community consultation and study of open space needs.

In accordance with the resolution, Council has also written to the State Local Member Geoff Provest seeking his assistance in providing similar information on State owned/Crown Land in the Tweed Shire. Council is still awaiting a response.

RECOMMENDATION:

That Council:

- 1. Receives and notes this report; and**
- 2. Determines whether to proceed with the further investigation of redevelopment opportunities for Tiny Homes on any of the Council sites identified in this report.**

REPORT:

Background

Arising from a Notice of Motion, Council resolved the following at its meeting of 15 February 2018:

"RESOLVED that a report be generated by Council listing available and appropriate Council land for the purpose and utilisation of a 'Tiny Homes' project of a small scale that can be managed by a not for profit organisation or Housing NSW. Further, that Council writes to the NSW State Government requesting a list of available and appropriate State owned/Crown Land for the purpose of a 'Tiny Homes' project."

Prior to undertaking the audit of Council land, it was clarified with the Councillors that they were interested in sites that had the suitable capacity for a particular built form of multiple, individual tiny homes on one lot, similar to example of development approved at Gosford, the details of which are provided as an attachment to this report.

In terms of undertaking the audit, it was recognised that Council currently owns several hundred individual land parcels, of varying sizes and use, and in order to present a more manageable audit for the Tiny Homes task, the officers have only drawn from a limited list of properties that have been presented to Council in the past, as having some form of redevelopment and sale potential.

Council staff have since conducted an audit of Council land for "Tiny Homes" opportunities. The initial results of this audit was presented to a Councillors Workshop on 10 May 2018, and the details have been updated and presented within this report following feedback received from the Councillors. Further to discussion at the Workshop, it was also identified that Council's Recreation Services Unit are also preparing to report back to Council on the Draft Open Space Strategy, which will include an analysis of the suitability of retaining the full range of Council owned open space parcels, in the context of the previous community consultation and study of open space needs. This report seeks Council's direction on whether to proceed with the further investigation of redevelopment opportunities for Tiny Homes on any of the identified sites.

In accordance with the resolution, Council has also written to the State Local Member Geoff Provest seeking his assistance in providing similar information on State owned/Crown Land in the Tweed Shire. Council is still awaiting a response.

This report seeks Council's direction on whether to proceed with the further investigation of redevelopment opportunities for Tiny Homes on any of the identified sites.

RESULTS OF AUDIT OF COUNCIL OWNED SITES FOR A TINY HOMES DEVELOPMENT

Lot 33 DP 218264 No. 50 Pioneer Parade, BANORA POINT (613m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 602	This parcel is located above flood level and currently has a pathway to the overpass of the motorway. Essential Energy will relocate line to northern boundary and easement will be created, pathway to be relocated over the easement corridor. A water pipe line is currently under construction on the southern boundary of this lot. Not affected by current Aboriginal Cultural Heritage mapping. No flooding constraints. Recommendation: Not for Tiny Homes, Sale and Possible Attached Dual Occupancy.



Tweed Local Environmental Plan 2014
 Zone
 R2 Low Density Residential
 RE1 Public Recreation

Site Plan - Local Environmental Plan
 Lot 33 DP 218264
 50 Pioneer Parade, Banora Point

© Land and Property Information (LPI) and Tweed Shire Council



Aerial Photography 2015
 Lot 33 DP 218264
 50 Pioneer Parade, Banora Point

© Land and Property Information (LPI) and Tweed Shire Council
 Boundaries shown should be considered approximate only.

Lot 19 Section 16 DP 758571 No. 5 Yao Street, KINGSCLIFF (493m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 601	Council has already resolved to rezone and sell this land. Not affected by current Aboriginal Cultural Heritage mapping. In terms of flooding, the site is above Q100, but needs to take account of Probable Maximum Flood level. Recommendation: Not for Tiny Homes, Sale and Possible Attached Dual Occupancy.



Tweed Local Environmental Plan 2014

Zone

- R3 Medium Density Residential
- RE1 Public Recreation
- R2 Low Density Residential

Subject Land

Site Plan - Local Environmental Plan

19 Section 16 DP 758571
5 Yao Street, Kingscliff

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GDA Geospatial Information Systems

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Aerial Photography 2015

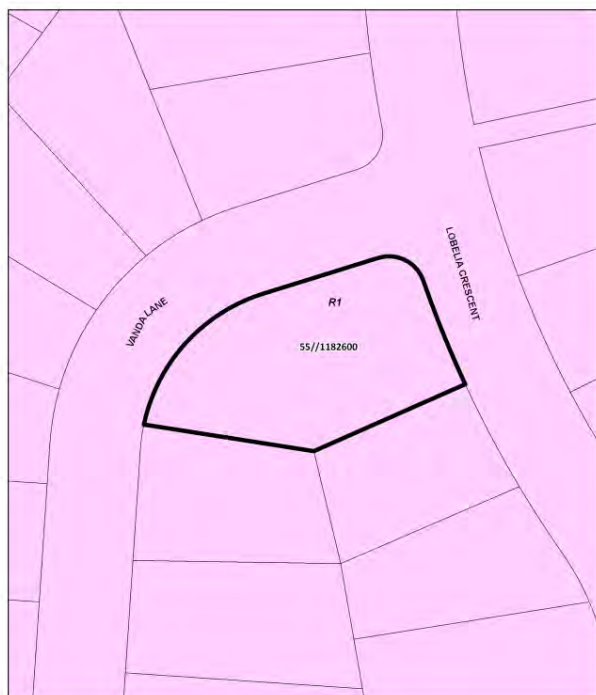
19 Section 16 DP 758571
5 Yao Street, Kingscliff

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Lot 55 DP 1182600 No. 22 Lobelia Crescent, CASUARINA (1,098m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
R1 General Residential	Operational land	Bus service 603	This parcel was dedicated to Council from a subdivision, but not developed as open space. Has potential development for housing, flood free and close to services. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is above Q100, but needs to take account of Probable Maximum Flood level. Recommendation: Potential for sale to Housing Provider for townhouse development.



Tweed Local Environmental Plan 2014
 Zone
 R1 General Residential
 Subject Land
 Site Plan - Local Environmental Plan
 Lot 55 DP 1182600
 22 Lobelia Crescent, Casuarina (Cnr Vanda Lane)
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Aerial Photography 2015
 Lot 55 DP 1182600
 22 Lobelia Crescent, Casuarina (Cnr Vanda Lane)
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 Boundaries shown should be considered approximate only

Lot 20 DP 30842 No. 24 Cooloon Crescent, TWEED HEADS SOUTH (1,200m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 602	Cooloon Crescent and Megan Street parcels are neighbouring parcels, currently parks, but contain sewer infrastructure including a sewer pump station which could constrain the development of the site. Close to services. Requires rezoning. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is impacted by Q100, involving evacuation issues, making the site not suitable for Tiny Homes. Recommendation: Not suitable for Tiny Homes, but may have potential for other forms of residential development.



Tweed Local Environmental Plan 2014

Subject Land

Zone

- R2 Low Density Residential
- RE1 Public Recreation

Site Plan - Local Environmental Plan

Lot 20 DP30842
24 Cooloon Crescent, Tweed Heads South

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TWEED

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Aerial Photography 2015

Lot 20 DP30842
24 Cooloon Crescent, Tweed Heads South

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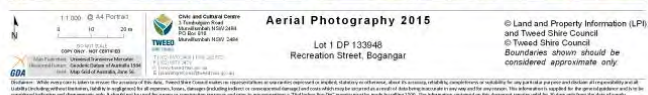
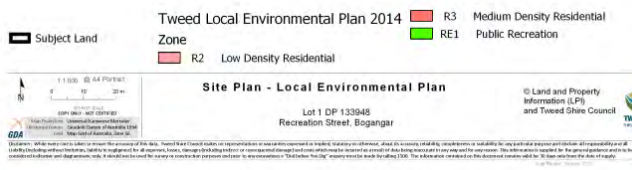
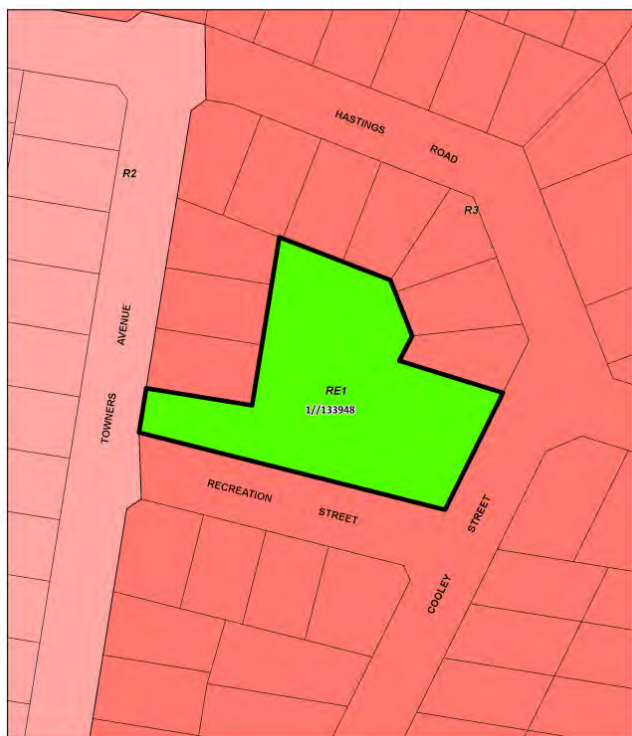
Lot 66 DP 205850 Megan Street, TWEED HEADS SOUTH (1,745m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 602	Megan Street and Cooloon Crescent parcels are neighbouring parcels, currently parks, but contain sewer infrastructure including a sewer pump station which could constrain the development of the site. Close to services. Requires rezoning. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is impacted by Q100, involving evacuation issues, making the site not suitable for Tiny Homes. Recommendation: Not suitable for Tiny Homes, but may have potential for other forms of residential development.



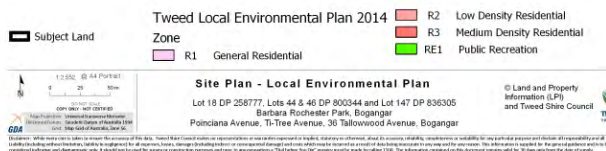
Lot 1 DP 133948 Recreation Street, BOGANGAR (4,550m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 603	This parcel was previously Crown land vested in Council, and classified as operational land. Needs rezoning. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is above Q100, but needs to take account of Probable Maximum Flood level. Recommendation: Potential for sale to Housing Provider for medium density development.



Lot 18 DP 258777, Lots 44 & 46 DP 800344 and Lot 147 DP 836305 Barbara Rochester Park, BOGANGAR (10,717m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	- Community land	Bus service 603	<p>Previous complaints from neighbours regarding anti-social behaviour. Contains a number of trees. Requires rezoning and reclassification. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is above Q100, but needs to take account of Probable Maximum Flood level. A trunk sewer rising main traverses Lots 18 and 46 and also there is no sewer readily available to these lots and therefore a sewer extension will be required.</p> <p>Recommendation: Potential for sale to Housing Provider for townhouse development following reclassification to Operational land.</p>



Twweed Local Environmental Plan 2014

Zone	R2 Low Density Residential
R3 Medium Density Residential	
R1 General Residential	RE1 Public Recreation

Subject Land

Site Plan - Local Environmental Plan
 Lot 18 DP 258777, Lots 44 & 46 DP 800344 and Lot 147 DP 836305
 Barbara Rochester Park, Bogangar
 Poinciana Avenue, T-Tree Avenue, 36 Tallowood Avenue, Bogangar

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Lot 1 DP 327457 35 Queen Street, MURWILLUMBAH (758m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
RE1 Public Recreation	Operational land	Bus service 622	This parcel is a heavily vegetated parcel on Queen Street, which is primarily a gully and appears to contain stormwater infrastructure. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is above Q100, but needs to take account of Probable Maximum Flood level. Recommendation: Not suited for redevelopment.

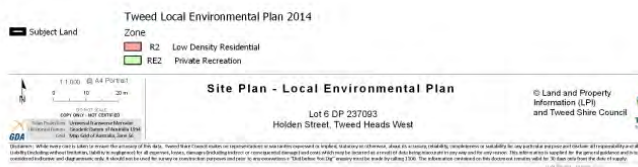


Aerial Photography 2015
 Lot 1 DP 327457
 35 Queen Street, Murwillumbah

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 © Tweed Shire Council
 Boundaries shown should be considered approximate only

Lot 6 DP 237093 Holden Street, TWEED HEADS WEST (1,695m²)

Current Zoning	Land Classification	Public Transport	Site issues and redevelopment recommendation
R2 – Low Density Residential	Operational land	Bus service 604	This is a parcel that contains a formed access to the private caravan park, and is sometimes used by Essential Energy as a rear access to avoid using Sullivan Street in the afternoons. Will need to be subdivided to create road for formalised access, which has been in place for a long period. Not affected by current Aboriginal Cultural Heritage Mapping. In terms of flooding, the site is impacted by Q100, involving evacuation issues, making the site not suitable for residential development. Recommendation: Not suited for redevelopment.



OPTIONS:

Option 1

That Council:

1. Receives and notes this report; and
2. Determines whether to proceed with the further investigation of redevelopment opportunities for Tiny Homes on any of the Council sites identified in this report.

Option 2

That Council defers this matter for another workshop.

Option 1 is recommended.

CONCLUSION:

Council staff have conducted an audit of Council land for “Tiny Homes” opportunities. The initial results of this audit was presented to a Councillors Workshop on 10 May 2018, and the details have been updated and presented within this report. This report seeks Council’s direction on whether to proceed with the further investigation of redevelopment opportunities for Tiny Homes on any of the identified sites.

COUNCIL IMPLICATIONS:

a. Policy:

Not applicable

b. Budget/Long Term Financial Plan:

Any decision to advance the sale and/or redevelopment of these sites will require a more detailed appraisal of the financial feasibility.

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.

Example of development approved at Gosford City Council (ECM 5298873)

7 [PR-PC] Short Term Rental Accommodation - Update on Compliance Actions for Alleged Unauthorised Short Term Rental Accommodation

SUBMITTED BY: Development Assessment and Compliance

mhm



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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

SUMMARY OF REPORT:

At its meeting of 3 May 2018, Council resolved the following:

- “1. Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let (STHL) uses;
2. Council’s solicitors be engaged to instruct Council officers on the appropriate enforcement actions to cease the current unauthorised STHL uses in respect of the complaint items listed in this report, ILL18/0142 and ILL18/0365, due to proven operation of STHL use and substantiated ongoing residential amenity issues; and
3. A further report be submitted to Council as to whether a STHL use is confirmed for complaint item ILL18/0385, and whether any further complaints have been received in respect of complaint item ILL18/0346.”

This report has been prepared in response to Point 3 of the resolution, and concludes that:

ILL18/0385 (17 Point Break Circuit, Kingscliff) – Compliance has been satisfied and no further action is required.

ILL18/0346 (1 Tamarind Avenue, Bogangar) – A further complaint has been received in respect of the unauthorised STHL use on this site. An exchange of correspondence has since occurred between Council officers, and the owner has committed to ceasing the use, but has requested Council to consider further matters raised in correspondence attached to this report. Council officers propose the ongoing monitoring of this site.

RECOMMENDATION:

That Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let uses, and determines whether any further detailed reports be prepared on individual complaint items.

REPORT:

At its meeting of 3 May 2018, Council resolved the following:

- “1. Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let (STHL) uses;*
- 2. Council’s solicitors be engaged to instruct Council officers on the appropriate enforcement actions to cease the current unauthorised STHL uses in respect of the complaint items listed in this report, ILL18/0142 and ILL18/0365, due to proven operation of STHL use and substantiated ongoing residential amenity issues; and*
- 3. A further report be submitted to Council as to whether a STHL use is confirmed for complaint item ILL18/0385, and whether any further complaints have been received in respect of complaint item ILL18/0346.”*

This report has been prepared in response to Point 3 of the resolution.

The following update is provided:-

ILL18/0385 – 17 Point Break Circuit, Kingscliff

After receiving an anonymous complaint regarding a STHL on this property, a letter was sent to the property owners via post and email on 2 March 2018 advising them that the site is zoned R2 Low Density Residential area and a STHL is prohibited in that zoning area. They were advised that any unauthorised STHL use should cease immediately.

The Compliance Unit did not receive any correspondence from the property owners nor were any further complaints received regarding 17 Point Break Circuit, Kingscliff.

The Compliance Officer that was handling this matter monitored the property for compliance and there has been confirmation that the property is on the market for sale. The Compliance Officer contacted the Real Estate Agent and the Agent did confirm that the property is on the market and it is not being utilised for STHL. The Agent also confirmed that she is advising perspective buyers that STHL is prohibited in Zone R2 and they should contact Council regarding any Applications or approvals.

No further action is required on this matter at this point in time.

ILL18/0346 – 1 Tamarind Avenue, Bogangar

After receiving a complaint from a neighbouring property a letter was sent to the property owner of 1 Tamarind Avenue, Bogangar advising her that the STHL is to cease immediately. The property owner was provided with all the appropriate information explaining what Zoning Area the property is on and why STHL is prohibited in that area.

The property owner responded and requested further information. The Council Officer handling the matter advised the property owner that she is more than welcome to attend and speak on this matter at Council’s Community Access Meeting, which she did.

A further complaint was received by Council on 3 April 2018 claiming that the property is still operating as a STHL and the holiday makers hit a boat which belonged to nearby neighbours.

The Council Officer advised the complainant to report the accident to the Police.

The property owner was then sent further correspondence advising that the STHL is to cease immediately and that this is her final warning.

The property owner responded. She was under the impression from the Planning Committee meeting held on 5 April that no widespread action will be taken.

The Council Officer responded advising that due to Council receiving complaints regarding her property, Council have a duty of care to take reasonable action. The property owner was advised that the STHL is impacting on the neighbouring properties. Main impacts are noise (Police were called and attended the property) and traffic.

The property owner responded and confirmed that the STHL will cease and she will engage the services of a private planning consultant to obtain further information.

No further complaints have been received on this matter. However the complainant did call the Compliance Officer to advise her that the property owner of 1 Tamarind Avenue, Bogangar approached her.

A further submission has been received from the property owner on 25 May 2018. The submission is attached.

The property is currently being monitored for compliance. No short term holiday letting has been seen to be taking place at this current time.

OPTIONS:

Option 1

That Council receives and notes this report on current complaints received in respect of alleged unauthorised Short Term Holiday Let uses, and determines whether any further detailed reports be prepared on individual complaint items.

Option 2

That Council receives and notes this report, and no further action be taken at this point of time.

Option 1 is recommended.

CONCLUSION:

This report has been prepared in response to Point 3 of the resolution of the Planning Committee Meeting held on 3 May 2018, and concludes that:

ILL18/0385 (17 Point Break Circuit, Kingscliff) – Compliance has been satisfied and no further action is required.

ILL18/0346 (1 Tamarind Avenue, Bogangar) – A further complaint has been received in respect of the unauthorised STHL use on this site. An exchange of correspondence has since occurred between Council officers, and the owner has committed to ceasing the use, but has requested Council to consider further matters raised in correspondence attached to this report. Council officers propose the ongoing monitoring of this site.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Legal expenses may be incurred if any enforcement action is taken in respect to alleged unauthorised STHL use.

c. Legal:

Council has a duty of care as a regulator to ensure that compliance complaints are appropriately dealt with.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Correspondence from the owner of No. 1 Tamarind Avenue, Bogangar, dated 25 May 2018 (ECM 5310511)

8 [PR-PC] Low Rise Medium Density Housing Code - Request for Deferral of Commencement Within Tweed Shire Council LGA

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader**

SUMMARY OF REPORT:

At the Planning Committee Meeting of 7 December 2017 Council resolved to amend the Tweed Local Environmental Plan 2014 to address concerns arising with the NSW Government's proposal to introduce new legislative changes to enable medium-density housing to be assessed as complying development.

The new 'Low Rise Medium Density Housing Code', seeks to increase the supply of medium density housing; commonly referred to as the 'missing middle', as complying development in a range of zones and where 'multi dwelling housing' is permitted.

To-date, Ryde, Canterbury Bankstown, Land Cove and Northern Beaches councils have been granted a deferral of the code's commencement until a later time and in response to their concerns surrounding implications for local character, resident communities and infrastructure; the main concerns being with its application in the R2 Low Density Residential Zone.

Tweed's Planning Proposal relates specifically to the R2 Zone and seeks to ensure that the current density of 1 dwelling per 450m² is maintained however, Council have received informal advice from the Department that the Council's current Planning Proposal (PP17/0001) is in the process of being rejected and as such this report recommends writing to the Secretary of Department of Planning and Environment, in a similar vein to those other councils, seeking a deferral from its application until the planning proposal matter is properly resolved and dealt with.

A confidential draft letter is attached to this report.

RECOMMENDATION:

That:

- 1. The attached letter (Attachment 1), which requests a deferral of the commencement of the NSW Department of Planning's 'Low Rise Medium Density Housing Code' be forwarded to the Secretary of Department of Planning and Environment; and**
- 2. The General Manager write to the Secretary under separate cover requesting an urgent update on Planning Proposal PP17/0001 'Housekeeping Review of Development Standards'.**
- 3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (e) information that would, if disclosed, prejudice the maintenance of law.**

REPORT:

At the Planning Committee Meeting of 7 December 2017 Council resolved to amend the Tweed Local Environmental Plan 2014. This relates specifically to the R2 Low Density Residential Zone and is in response to the NSW Government's proposal to introduce new legislative changes to enable medium-density housing to be assessed as complying development.

The new complying development provisions could allow a dwelling rate up to 1 dwelling per 200m² of site area, representing a density uplift of over 100% in the R2 Low Density Residential Zone. While this level of uplift might be seen as appropriate in medium density designated areas it conflicts with the notion of 'low-density' and is foreseeably at odds with Tweed's mainstream community expectation, as it would be founded on the relatively low-density character of the Shire's housing estates; these are typically in the range of 12-18 dwelling/ha as compared to a medium density rate at 25-35 dwelling/ha.

The proposed LEP amendment therefore sought to respond with a provision that any future complying medium density development (multi-dwelling housing and being three or more dwellings) would not exceed the current low density residential density ratio of 1 per 450m² site area.

Council's resolution and the referral of a planning proposal was made with sufficient time for the matter to be progressed and made by the Minister. However, informal advice from the Minister's Department of Planning and Environment is that the planning proposal will not be allowed to proceed.

In so far as the staff understand, not having the benefit of a formal advice or Gateway refusal, the planning proposal, which also includes the Council's resolved building height amendments, is being rejected because the building height amendments proposed and resolved for Kingscliff, according to the informal advice received – lacks the necessary strategic justification as ordinarily provided in a well-considered strategy that is informed by an open public engagement process.

Staff have requested that the medium-density aspect of the planning proposal be excised off from the other aspects / amendments and proceeded with however, have been advised that a fresh planning proposal will be required.

The consequence of the Department's apparent decision/actions is that Tweed will be exposed to the application of the new more generous provisions in the Medium Density Housing Code, which will commence on 6 July 2018. Additionally, the Code will not require consideration of infrastructure availability, such as sewer capacity. This has the potential to be an issue on the Tweed's southern coast.

OPTIONS:

1. As recommended request the Secretary of the Department of Planning and Environment to grant Tweed a deferral from the commencement of the new complying provisions, or
2. Accept that the new complying development provisions are commencing on 6 July and that no further action is required

Staff recommend Option 1.

CONCLUSION:

In light of the matters raised in this report and the attached draft Letter to the Secretary the staff are of the opinion that it would be in the public interest to proceed with implementing the amendment to the Tweed Local Environmental Plan 2014 prior to the new low rise medium density complying development provisions taking affect in the Tweed. This is largely because of the potential impact on local character and resident amenity but is also needed because some of the residential housing estates on the Tweed's southern coast do not have the necessary sewer infrastructure to accommodate greater density.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Overall financial and infrastructure implications are difficult to predict at this point of time.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment Draft letter to Secretary of Department of Planning and Environment (ECM 5312181)

9 [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 May 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.	DA17/0854
Description of Development:	Change of use from dwelling and secondary dwelling to detached dual occupancy and two lot strata subdivision
Property Address:	Lot 57 DP 263729 No. 23 Royal Drive, Pottsville
Date Granted:	07/05/2018
Development Standard to be Varied:	Clause 4.1 Minimum Subdivision Lot Size
Zoning:	R2 Low Density Residential
Justification:	Variation to minimum lot size for strata subdivision to facilitate the proposed strata boundary around existing dwellings. TLEP2014 min. Lot size: 450sqm. Total land area: 1000sqm. Proposed Lot Size: 539sqm and 324sqm (147sqm CP)
Extent:	28% variation to minimum lot size for strata subdivision for proposed Lot 2
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.