

Mayor: Cr K Milne

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



Planning Committee Meeting Thursday 1 August 2019

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

TWEED SHIRE COUNCIL | Living and Loving the Tweed

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 THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA19/0265 for a Two Lot Boundary Adjustment including Consolidation of 3 Closed Road Lots at Lot 1 DP 183130, Lots 1-3 DP 1243056 and Lot 1 DP 583624 No. 520-522 Bakers Road, Byangum

SUBMITTED BY: Development Assessment and Compliance

Making decisions with you We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: Provider

SUMMARY OF REPORT:

Consent is sought for a boundary adjustment between two rural zoned lots. The proposal includes the consolidation of three smaller lots (previous road reserves) into one of the lots.

The lots that are the subject of the boundary adjustment are as follows:

	Existing (ha)	Dwelling Entitlement	Proposed (ha)
Lot 1 DP583624	59.73	Yes	Lot 12 - 95.5
Lot 1 DP183130	38.64	Yes	Lot 13 - 3.62

The application is being made with respect to Clause 4.1C of the Tweed Local Environmental Plan which permits boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the prescribed minimum lot size.

The minimum lot size is 40ha and proposed Lot 13 would be less than the minimum lot size however will retain the existing dwelling entitlement. Proposed Lot 12 would be of a size that would permit future subdivision to create an additional compliant sized lot with a dwelling entitlement.

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Prior to submission of the application, Council advised the applicant that it appears that the proposal may not be compliant with Clause 4.1C(3)(b) which does not permit a boundary adjustment where there may be an increase in the opportunities for dwellings on each lot. The applicant was advised that one view was that the proposal may create *opportunities* for additional dwellings as the proposal would result in a 95.5ha lot with the potential for further subdivision to create an additional lot with a dwelling entitlement.

The application addresses Clause 4.1C (3)(b) by stating that each of the proposed Lots 12 and 13 will benefit from one existing dwelling entitlement and as such there will be no increase in the number of dwelling entitlements, or opportunities for dwellings on each lot, as a result of the proposal.

The precise meaning of phrase "opportunities for dwellings" within the clause is unclear and lends itself to alternative interpretations. As such it was considered warranted to seek legal advice regarding the interpretation of this clause as it applies to this proposal, once it was determined that there were no other planning matters that would prevent the proposal from proceeding.

The request for legal advice also had regard to the meaning of the term *boundary adjustment* as the proposal would result in a substantial change to the subject lot boundary and the term *boundary adjustment* is not defined in the Environmental Planning and Assessment Act 1979 or the Standard Instrument.

Having regard to the legal advice received in relation to this application and the interpretation of Clause 4.1C of the Tweed Local Environment Plan 2014, it is considered that the proposal cannot be considered a boundary *adjustment* due to the substantial variation in lot size and configuration from the original lots.

Notwithstanding the view that the proposal does not constitute a boundary adjustment and therefore cannot be considered with respect to the provisions of Clause 4.1C, it is also considered that the proposal <u>could</u> create the opportunities for additional dwellings and therefore does not satisfy sub-clause (3)(b) of Clause 4.1C. Further detailed consideration of sub-clause (3)(b) however is a moot point in that it is considered that the proposal cannot be considered to be a boundary *adjustment* pursuant to Clause 4.1C.

The report includes a full assessment of the proposal with regard to matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

RECOMMENDATION:

That:

- 1. Development Application DA19/0265 for a two lot boundary adjustment including consolidation of 3 closed road lots at Lot 1 DP 183130, Lots 1-3 DP 1243056 and Lot 1 DP 583624 No. 520-522 Bakers Road, Byangum be refused for the following reasons:
 - 1. The development does not constitute a boundary adjustment under the provisions of Clause 4.1C of the Tweed Local Environment Plan 2014 and is therefore not permissible.

- 2. The development is not considered to be consistent with Clause 4.1C(3)(b) in that the proposal will increase the opportunities for additional dwellings and is therefore not permissible.
- 2. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:

Applicant:	N Baker and M Baker
Owner:	Mr Neil G Baker & Mrs Michelle L Baker
Location:	Lot 1 DP 183130 No. 294 Bakers Road, Byangum; Lots 1-3 DP 1243056
	and Lot 1 DP 583624 No. 520-522 Bakers Road, Byangum
Zoning:	RU1 - Primary Production, RU2 - Rural Landscape
Cost:	Nil

Background

Consent is sought for a boundary adjustment between two rural zoned lots. The proposal includes the consolidation of three smaller lots (previous road reserves) into one of the lots.

The existing and proposed lots are detailed in below:

	Existing (ha)	Dwelling Entitlement	Proposed (ha)
Lot 1 DP583624	59.73	Y	Lot 12 - 95.5
Lot 1 DP183130	38.64	Y	Lot 13 – 3.62
Lot 1 DP 1243056	4356.0m ²	Ν	Amalgamated with Lot 12
Lot 2 DP 1243056	2749.0m ²	Ν	Amalgamated with Lot 12
Lot 3 DP 1243056	854.2m ²	Ν	Amalgamated with Lot 12

Existing Lot 1 DP583624 (59.73ha) has a Dwelling Entitlement as it meets the minimum lot size of 40ha prescribed by the Tweed Local Environment Plan 2014 (TLEP).

Existing Lot 1 DP183130 (38.64ha) does not currently contain a dwelling however benefits from a Dwelling Entitlement as confirmed by resolution of Council at the Planning Committee meeting of 6 September 2018.

Prior to submission of the application, the applicant met with Council Officers to discuss a preliminary design concept for the proposal and the applicant was advised that Council considers that the proposal may not be compliant with Clause 4.1C(3)(b) of the TLEP which states:

- (3) Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:
 - (a) an increase in the number of lots, or
 - (b) an increase in the number of dwellings or opportunities for dwellings on each lot, or
 - (c) an increase in the possibility of land use conflict, or
 - (d) an adverse impact on the environmental values or agricultural viability of the land.

The proposal would result in a 95.5ha lot capable of being further subdivided to create an additional lot with a dwelling entitlement. The applicant was advised that it is considered that the proposal may create *opportunities* for additional dwellings and that legal advice would be required with regard to the interpretation of Clause 4.1C prior to the determination of any such proposal.

Site Description

The subject lots comprise of cleared grazing land with scattered paddock trees. The land is undulating varying in height from RL 5m AHD along the boundary with the Tweed River to RL70m AHD and contains existing waterways, farms dams and gullies.

Existing Lot 1 DP583624 (59.73ha) contains a house and various farm buildings including a piggery. The lot has 1.4km frontage with the Tweed River and 822m frontage to Bakers Road and is used for agricultural activities including cattle grazing. The lot entirely encloses another parcel of land being Lot 1 DP392040 which does not form part of this application. A Right of Carriageway burdens Lot 1 DP583624 (59.73ha) to provide access to the enclosed lot (Lot 1 DP392040).



Figure 1 Detail of existing structures on Lot 1 DP583624 (59.73ha) and Lot 1 DP392040 (not part of this application)

Aerial imagery indicates that the piggery has been in existence since at least 1983 and that the dwellings (including the dwelling on Lot 1 392040) and some of the farm buildings have been in existence since at least 1962.

Existing Lot 1 DP183130 (38.64ha) is vacant and does not contain a dwelling or other structures. The lot has 1323m frontage to Bakers Road and unformed farm access on the eastern portion of the road frontage. The lot is used for grazing purposes and contains two farm dams.

The subject lots are mapped as bushfire prone and Lot 1 DP583624 (59.73ha) is partially mapped as being flood affected. The site is located in the Drinking Water Catchment area and the Bray Park Weir is located 360m from the northern portion of proposed Lot 12.

The subjects lots are identified as being predictive for Aboriginal Cultural Heritage under Council Aboriginal Cultural Heritage Management Plan (ACHMP) and a portion of proposed Lot 12 is mapped a being a Place of Heritage Significance under the ACHMP.

Proposal

The existing boundary between the subject lots is proposed to be altered to increase current Lot 1 DP583624 (59.73ha) by 35.77ha to create proposed Lot 12 being 95.5ha which includes the consolidation of the three smaller lots (previous closed road reserves) being:

- Lot 1 DP 1243056 4,356m²
- Lot 2 DP 1243056 2,749m²
- Lot 3 DP 1243056 854.2m²

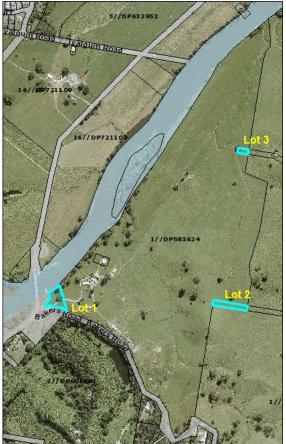
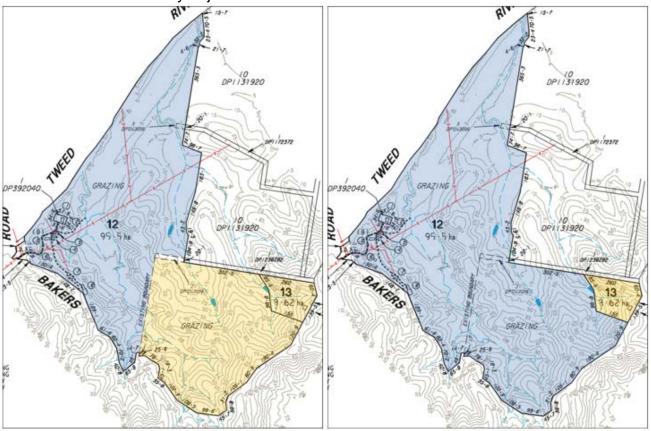


Figure 2 Lots in DP1243056 to be consolidated into proposed Lot 12.

Current Lot 1 DP183130 (38.64ha) is proposed to decrease in size by 35.02ha to create proposed Lot 13 being 3.62ha. No works are proposed to facilitate the proposal other than that required to establish formal access to proposed Lot 13. The relative change to the lot sizes is indicated below:

	Existing (ha)	% Change	Proposed (ha)
Lot 1 DP583624	59.73	59.8% increase	Lot 12 - 95.5 (includes 0.79 ha of consolidated lots)
Lot 1 DP183130	38.64	90.6% decrease	Lot 13 – 3.62



The effect of the boundary adjustment is shown below:

Figure 3 Existing and proposed lot configuration.

The applicant has stated that the objective of the proposal is to improve the financial viability of the land whilst maintaining a large farm holding. Proposed Lot 13 is to be used for rural living and minor agricultural purposes and a proposed dwelling site is shown on the plans with access from Bakers Road.

Proposed Lot 12 will contain the existing dwelling, farm buildings, piggery and farm dams. No works are proposed to the existing buildings and access for proposed Lot 12 and the proposed will not require the removal of any vegetation.

ASSESSMENT

The application is seeking approval under the provisions of Clause 4.1C <u>Exceptions to</u> <u>minimum subdivision lot size for boundary adjustments</u> of the Tweed Local Environment Plan 2014 (TLEP):

4.1C Exceptions to minimum subdivision lot size for boundary adjustments

- (1) The objective of this clause is to permit boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the minimum lot size shown on the Lot Size Map in relation to that land.
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,

- (c) Zone R5 Large Lot Residential.
- (3) Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:
 - (a) an increase in the number of lots, or
 - (b) an increase in the number of dwellings or opportunities for dwellings on each lot, or
 - (c) an increase in the possibility of land use conflict, or
 - (d) an adverse impact on the environmental values or agricultural viability of the land.
- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,
 - (b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,
 - (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
 - (f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.
- (5) This clause does not apply in relation to a subdivision under the Community Land Development Act 1989 or the Strata Schemes Development Act 2015.

With respect to the objectives of this Clause under item (1) above, it is noted that the minimum lot size applicable to the site is 40ha and existing Lot 1 DP183130 is currently less than the minimum lot size at 38.64ha. This lot is proposed to be reduced by the boundary adjustment create proposed Lot 13 with an area of 3.62ha.

The application has provided an assessment against the provisions of Clause 4.1C(3)(b) and includes the following statements:

"...it is clear that there are no additional lots created as the proposal is for a two (2) into (2) two lot boundary adjustment."

"Proposed lots 12 and 13 will benefit from (1) Dwelling Entitlement each... As such, no increase in the number of Dwelling Entitlements (or opportunities for dwellings on each lot) will occur as a result of this application."

Council Officers were unsure if the proposal may create the <u>opportunity</u> for additional dwellings via the potential or opportunity for further subdivision of Lot 12 being 95.5ha, to create an <u>additional</u> lot with a dwelling entitlement.

The precise meaning of phrase "opportunities for dwellings" within sub-clause (3)(b) is unclear and lends itself to alternative interpretations as indicated above. As such it was considered warranted to seek legal advice regarding the interpretation of this clause as it applies to this proposal, once it was determined that there were no other planning matters that would prevent the proposal from proceeding.

The request for legal advice also had regard to the meaning of the term *boundary adjustment* as the proposal would result in a substantial change to the subject lot boundary and the resultant lots vary significantly in size to the original lots. The term *boundary adjustment* is not defined in the Environmental Planning and Assessment Act 1979 or the Standard Instrument.

Legal advice was subsequently received that determined that any assessment of a boundary adjustment between lots under Clause 4.1C should consider the meaning of the term *adjustment*. The term *adjustment* implies that any alteration of boundaries should be minor in extent with regard to the repositioned boundary and the existing and resultant lot size and shape.

This reasoning is supported by NSW Land and Environment Court decisions which have determined that *boundary adjustments* are considered to be minor adjustments to boundaries and should not result in wholesale changes to the overall lot configuration. The case of Johnson v Coffs Harbour City Council [2018] NSWLEC 1094 relates to a proposed boundary adjustment in which the Commissioner considers the meaning of the terms "adjusting the boundary" and "boundary adjustment". The Commissioner reviewed previous cases in which the term boundary adjustment is considered and noted that:

- Adjusting means something that is slight or marginal;
- The meaning of "adjusting" depends on the degree of alteration that is sought in the context of the site as a whole; and
- "Boundary adjustment" does not encompass any and all alterations of a boundary and resulting parcels should bear some resemblance of the lots which existed prior to the boundary adjustment.

A copy of the Johnson v Coffs Harbour City Council [2018] NSWLEC 1094 is attached to this report as it includes a comprehensive review of previous cases in which the meaning of the phrase "boundary adjustment" is considered.

With regard to the subject proposal, the proposed boundary alteration is cannot be considered to represent a slight or marginal adjustment of boundaries. The proposal results in <u>substantial</u> changes to the existing lots noting that proposed Lot 12 results from a 59.8% increase in site area and proposed Lot 13 is created by decreasing the existing lot area by 90.6%.

With regard to the context of the site as a whole, as per the second item above, proposed Lot 12 increases from 60.7% of the total site area to 96.3% whilst proposed Lot 13 decreases from 39.3% to 3.7% of the total site area.

Accordingly, with consideration to the legal advice provided in respect to this application, and the meanining of the term boundary adjustment as considered by previous Land and

Environment Court cases, the proposal is not considered to meet the test of a *boundary adjustment* as per the provisions of Clause 4.1C.

Notwithstanding the view that the proposal <u>does not</u> constitute a boundary adjustment and therefore cannot be considered with respect to the provisions of Clause 4.1C, the question of whether the proposal creates *opportunities* for additional dwelling was also considered by the legal advice received in respect to the application.

The legal advice indicates that the proposal <u>could</u> create the opportunities for additional dwellings. The inclusion of the word *opportunities* in sub-clause (3)(b) implies that there should be consideration of future outcomes contingent on other things happening, such as a further permissible subdivision. In other words, consideration should be given to what may be possible following the outcome of any proposal.

In accordance with the Clause, Council must be satisfied that the proposal will not result in an increase in the *opportunities* for dwellings on each lot. With respect to the legal advice received, Council considers that the proposal creates the opportunity for additional dwellings via the further permissible subdivision potential of proposed Lot 12 and therefore <u>does not</u> <u>satisfy</u> Clause 4.1C(3)(b).

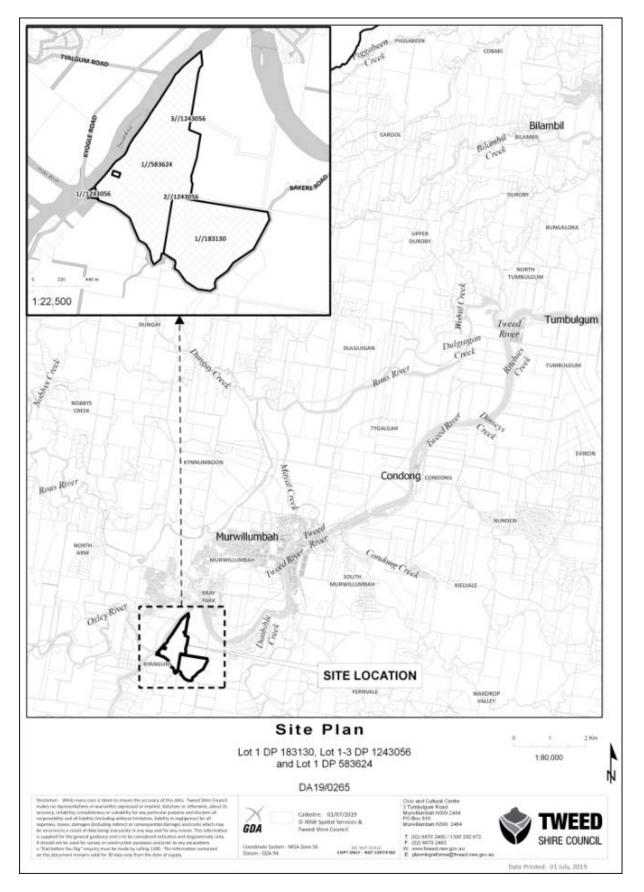
The applicant advised Council, subsequent to Council seeking legal advice, that they sought legal advice prior to the lodgement of the application however this legal advice was not submitted with the application nor has it been submitted at the time of compiling this Report. With reference to the legal advice received by the applicant, the application has stated the legal advice states, in part:

"As a result of the lawful subdivision, there would be one existing dwelling on one of the proposed lots and an entitlement for a dwelling on the other lot (subject to consent authority approval). In those circumstances there is no change to the present position and there is no increase in opportunities for dwellings on each lot."

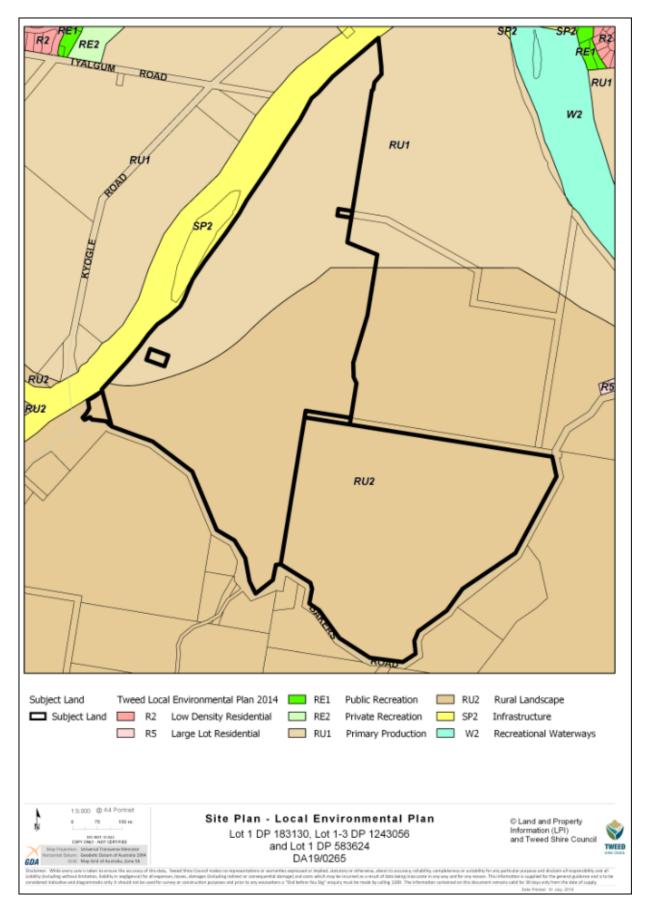
"There has been one further issue raised by a Council officer in relation to the application. In summary, it is suggested that the larger of the residue lots will be of a size that some future subdivision application may successfully result in its subdivision into two lots (both being larger than 40ha) and that thereby the current proposal has created an increased opportunity for dwellings on that lot. Whilst the argument has some superficial attraction it cannot be maintained."

Further detailed consideration of sub-clause (3)(b) however is a moot point in that it is considered that the proposal cannot be considered to be a boundary adjustment pursuant to Clause 4.1C.

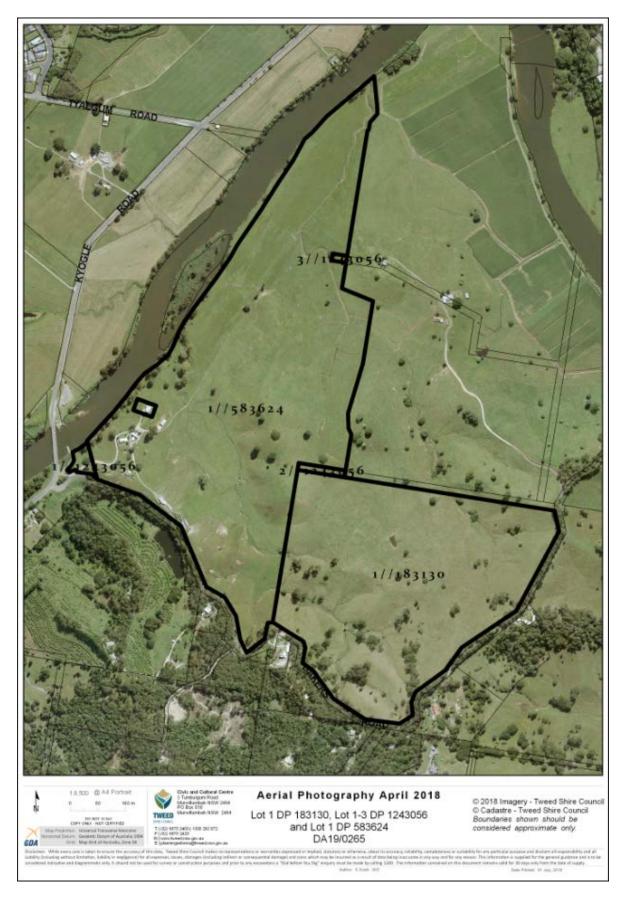
SITE DIAGRAM



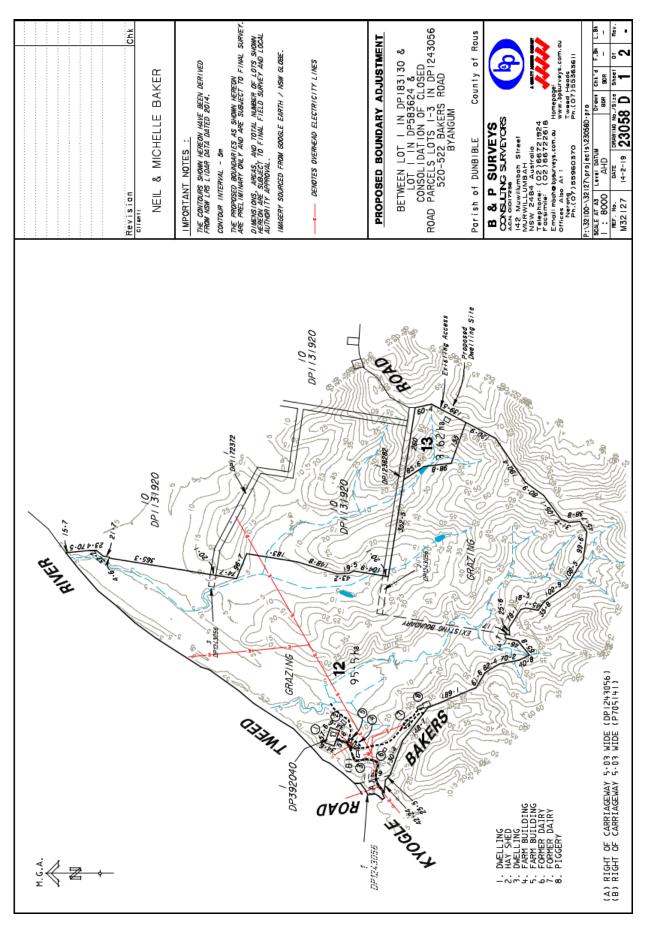
LEP ZONING

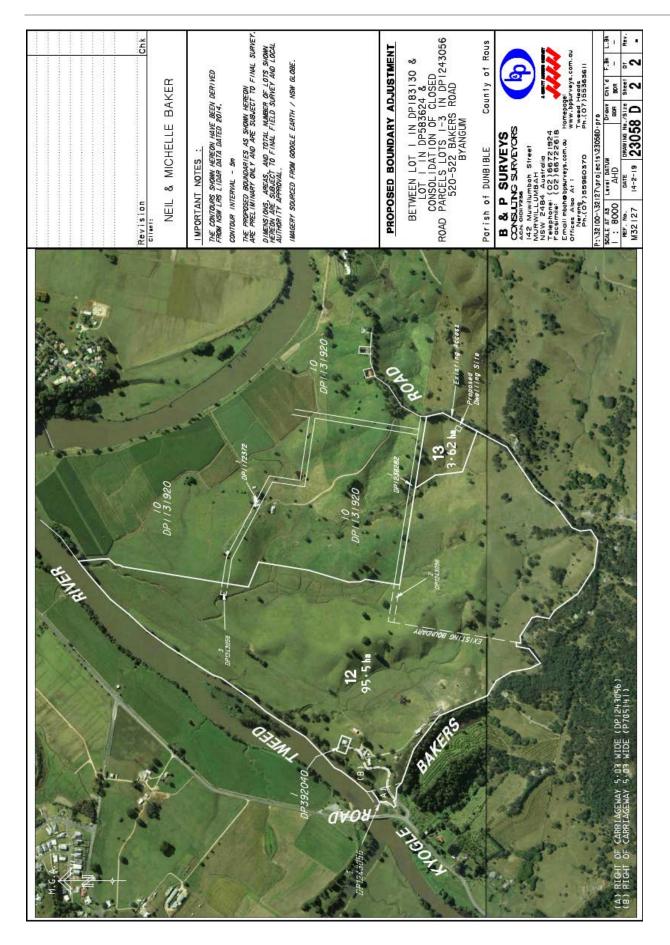


AERIAL IMAGERY



DEVELOPMENT PLANS





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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed boundary adjustment relates to rural land use for agricultural purposes. The plan aims to, among other things, encourage a sustainable local economy and agriculture. Fragmentation of available agricultural land could be viewed as being inconsistent with the aim of encouraging sustainable agriculture.

The proposal relates to the creation of a large lot that is capable of further permissible subdivision and the creation of a small lot with limited agricultural potential. It could be therefore argued that the proposal <u>could</u> lead to further fragmentation of

agricultural land, via the potential for further subdivision, which would be inconsistent with the aims of the plan.

However this application relates specifically to the alteration of lot boundaries to create a small lot for rural residential purposes and a large lot for the continuation of existing agricultural activities. The proposal is unlikely to result in detrimental impacts to the environment or the environmental and cultural values of the land.

Regardless of permissibility with specific clauses of the Plan, is it considered that the proposed alteration of lot boundaries is generally consistent with the Aims of the Plan.

Clause 2.3 - Zone objectives and Land use table

The proposal relates to land that is zoned RU1 Primary Production and RU2 Rural Landscape. The objectives of these zones are as follows:

RU1 Primary Production

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect prime agricultural land from the economic pressure of competing land uses.

Land zoned RU1 is not directly affected by this proposal in that this portion of land is not directly affected by proposal alteration of boundaries. No change of use of land zoned Primary Production is proposed and the land will be continued to be used for agricultural purposes consistent with the current situation. The proposal is considered to meet the objectives of the RU1 zone.

RU2 Rural Landscape

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.

The reduction of the 38.64ha lot to a 3.62ha lot would appear to be inconsistent with the zone objectives of encouraging sustainable primary industry as proposed Lot 13 would have limited agricultural potential. The reduction in the size of the lot would also limit further potential compatible land uses including agri-tourism.

The enlargement of the existing 59.73ha would appear to be consistent with the aims of the plan in that the stated intent of the proposal is to the continued agricultural uses of the land.

The proposal is consistent with the rural landscape character noting that the locality comprises of a range of lot sizes utilized for rural residential and agricultural purposes.

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

The application is seeking a boundary adjustment under Clause 4.1C <u>Exceptions</u> to minimum subdivision lot size for boundary adjustments. Consideration of Clause 4.1C(1) and 4.1C(3)(b) is provided in an earlier section of this report with respect to legal advice received regarding the interpretation of these clauses with respect to the subject application.

To reiterate, the proposal cannot be considered to be a boundary adjustment pursuant to Clause 4.1C as the term adjustment indicates something that is *minor* in its extent. The proposal is not considered to be a minor alteration of boundaries as resultant lots vary significantly from the original lots.

Irrespective of the inconsistency of the proposal with Clause 4.1C(1), the proposal was also determined not to comply with 4.1C(3)(b) as the creation proposed Lot 12 being 95.5ha, results in the opportunity for additional dwellings via the potential for the lot to be further subdivided to create an additional lot with a dwelling entitlement.

Regardless of the conclusion that the proposal cannot be considered a boundary a *boundary adjustment* pursuant to Clause 4.1C(1), consideration of the remaining provisions of Clause 4.1C is provided below.

- (3) Despite clause 4.1, development consent may be granted for the subdivision of land by way of an adjustment of boundaries between adjoining lots where the size of one or more of the lots resulting from the subdivision would be less than the minimum lot size shown on the Lot Size Map in relation to the land if the consent authority is satisfied that the subdivision will not result in:
 - (a) an increase in the number of lots, or

The proposal will not result in an increase in the number of lots. The proposal relates to a boundary adjustment between two adjoining lots and no new lots are created.

(b) an increase in the number of dwellings or opportunities for dwellings on each lot, or

This item is addressed in detail above in which it is considered that the proposal will result in the opportunities for additional dwellings.

(c) an increase in the possibility of land use conflict, or

The subject lots are currently used for cattle grazing with a rural dwelling located on Lot 1 DP283624. Proposed Lot 12 (95.5ha) will continued to be used for the current agricultural activities (grazing).

Proposed Lot 13 (3.62ha) is of sufficient size and dimensions to allow the development of a dwelling with appropriate buffers to agricultural activities (grazing) on adjacent lots. The plans show a proposed dwelling site on proposed Lot 13 with a minimum separation to boundaries of approximately 60m. As such it is considered that the proposal is unlikely to increase the possibility of land use conflict.

(d) an adverse impact on the environmental values or agricultural viability of the land.

The proposal is unlikely to adversely impact the agricultural viability of the land, however it is noted that the range of agricultural activities able to be conducted on proposed Lot 13 will be diminished due to its reduced size from 38.64ha to 3.62ha.

The proposal unlikely to result in adverse impacts the environmental values of the land, currently used for grazing purposes noting that the development of dwelling house is permissible on the current vacant lot (38.64ha) which will be reduced to create proposed Lot 13 at only 3.62ha.

Part of proposed Lot 12, along the boundary with the Tweed River, is identified on the NSW Office of Environment and Heritage Biodiversity Values Map however no vegetation removal is proposed and the altered lot boundaries are not on land identified on in the Biodiversity Values Map. As such the proposal is considered not to have an adverse impact of the land.

- (4) In determining whether to grant development consent for the subdivision of land under this clause, the consent authority must consider the following:
 - (a) the existing uses and approved uses of other land in the vicinity of the subdivision,

The site is currently utilised for grazing purposes. Land in the vicinity of the subject site is utilized primarily for agricultural and rural residential purposes. Smaller rural residential lots are located in the locality in size from 2000m² to 3.25ha.

(b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,

The predominant land use within the locality is agricultural and rural residential uses. The proposed subdivision (boundary adjustment) is unlikely to have a significant impact on adjacent agricultural and rural residential uses in the locality, however, proposed Lot 13 at 3.62ha will not be a viable agricultural lot.

(c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),

The proposal is not incompatible with the agricultural and rural residential uses of the locality.

(d) whether or not the subdivision is likely to be incompatible with a use of land in any adjoining zone,

Two land zonings being RU1 and RU2 apply to proposed Lot 12 (95.5ha) which is consistent with the current situation. No change of use is proposed for proposed Lot 12. Proposed Lot 13 will is zoned RU2 and is not adjacent to any zone boundaries. Residential lots (1000m²) zoned R5 Large Lot Residential are located approximately 240m from the subject site and are unlikely to be adversely impacted by the proposal.

(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),

No incompatibility is anticipated.

(f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

The subject site comprises of grazing land with scattered paddock trees. The land is undulating varying in height from RL 5m AHD along the boundary with the Tweed River to RL70m AHD and contains existing waterways, farms dams and gullies. The proposed realignment of boundaries does not intersect with the existing boundary to the Tweed River. The proposed boundary adjustment does not raise any concerns with regard to physical constraints of the land. A full assessment of natural and physical constraints of the land is provided in a later section of this report under Section 5 Subdivision Manual of the TDCP 2008.

Clause 4.3 - Height of Buildings

Not applicable as no buildings are proposed.

Clause 4.4 – Floor Space Ratio

Not applicable as no buildings are proposed.

Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

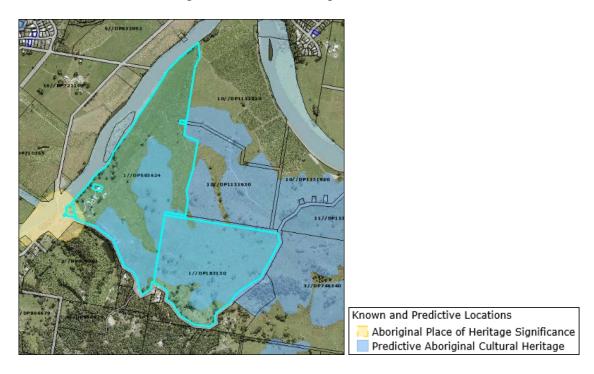
Not applicable as this application relates to a boundary adjustment only.

<u>Clause 5.5 – Development within the Coastal Zone</u>

Not applicable as the site is not located in the Coastal Zone.

Clause 5.10 - Heritage Conservation

The subject site is not within a Heritage Conservation Area nominated under this plan. The site is identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP) as being an Aboriginal Place of Heritage Significance and Predictive for Aboriginal Cultural Heritage.



The land is considered to be a significantly modified site due to past and current clearing and grazing activity. It is noted that the boundary proposed to be altered, is not on land which is mapped as being an Aboriginal Place of Heritage Significance.

The land mapped as being an Aboriginal Place of Heritage Significance is affected by the consolidation of Lot 1 DP 1243056 however no works are proposed to facilitate the consolidation and no change to the current situation is proposed in relation to land identified as an Aboriginal Place of Heritage Significance. It is further noted that development consent is not required for lot consolidation.

As no works are proposed to facilitate the proposal, it is unlikely that the proposal will result in the disturbance of items of heritage significance.

The application was reviewed by Councils Strategic Planning Unit with regard to Heritage conservation matters and it was considered that as no works are proposed on land mapped as either an Aboriginal Place of Heritage Significance or Predictive for Aboriginal Cultural Heritage, referral to the Tweed Byron Local Aboriginal Land Council was not warranted.

Any subsequent applications for a dwelling house will be required to consider the heritage conservation values of the land.

The proposal is considered to be compliant with the provisions of this clause. Detailed consideration of the proposal with respect to the Aboriginal Cultural Heritage Management Plan (ACHMP) is provided in a later section of this report.

Clause 5.11 - Bush fire hazard reduction

The site is mapped as bushfire prone. The proposal does not affect the provisions of this clause. A full assessment of suitability of the proposal with regard to the bushfire hazard of the land is provided in a later section of this report.

Clause 7.1 – Acid Sulfate Soils

The site mapped as possibly containing Class 1, 4 & 5 Acid Sulfate Soils. No works are proposed to facilitate this proposal and as such Acid Sulfate Soils are not considered to be a constraint for the application.

Clause 7.2 - Earthworks

The application relates to a subdivision in which no works are proposed. As such the proposal is considered to be compliant with the provisions of this clause.

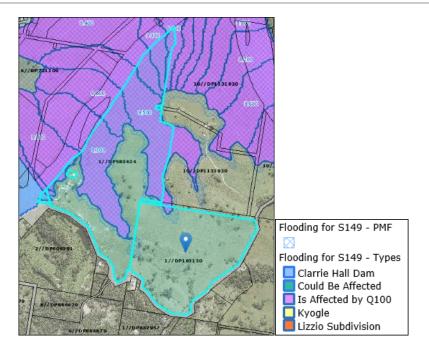
Clause 7.3 – Flood Planning

The objectives of this clause are:

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

The subject lots are mapped as being flood affected with a Design Flood Level of RL 9.9m AHD. The existing dwelling on Lot 1 DP583624 is on land that is not mapped as flood affected and the proposed dwelling site on proposed Lot 13 is not flood affected.

No works are proposed to facilitate the proposal and as such it is considered that the proposal is compatible with the flood hazard of the land and will not result in significant adverse impacts on flood behaviour or the environment.



Clause 7.4 - Floodplain risk management

Not applicable. The proposal does not relate to a risk adverse use listed under this clause.

Clause 7.5 - Coastal risk planning

Not applicable as the site is not identified on the Coastal Risk Planning map.

Clause 7.6 - Stormwater Management

Not applicable as this clause relates to stormwater management in urban zones.

Clause 7.7 - Drinking Water Catchments

The site is identified in the Drinking Water Catchment Map. The relevant provisions of this clause are as follows:

- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider the following:
 - (a) whether or not the development is likely to have any adverse impact on the quality and quantity of water entering the drinking water storage, having regard to the following:
 - (i) the distance between the development and any waterway that feeds into the drinking water storage,
 - (ii) the on-site use, storage and disposal of any chemicals on the land,
 - (iii) the treatment, storage and disposal of waste water and solid waste generated or used by the development,

- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) 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 any significant adverse impact on water quality and flows, 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.

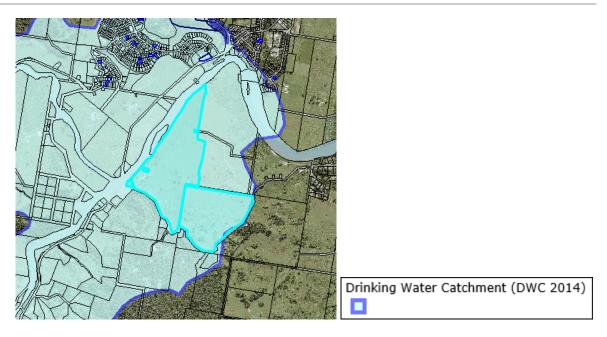
The site shares a boundary with the Tweed River and the Bray Park Weir is located 360m from the northern portion of proposed Lot 12. The application was supported by an On-site Sewage Management Assessment Report and it is considered that the proposed lots are able to satisfactorily manage the treatment and storage of wastewater generated by any existing or proposed residential development without impacting water quality.

The application was referred to the Water and Wastewater Unit for comment with respect to potential impacts on the drinking water quality and storage. The Water and Wastewater Unit noted that the past and current land use practices and farming operations, including the piggery, contribute to pollution of the water supply weir downstream of the site. No change of land use is proposed with respect to this boundary alteration and so this is considered to be a matter separate to this application.

With regard to the nearby weir the Water and Wastewater Unit also provided the following comments:

A study is currently in progress to determine a possible solution to the increased likelihood of salt water inundation of Bray Park Weir which is the main water supply for the Tweed District. The property in question abuts the weir pool and there is potential for solution to impact the adjoining properties in some way including minor inundation of low lying land.

It is noted that any changes to the Bray Park Weir may impact the subject site, however this proposal is unlikely to impact water quality and flows and therefore is compliant with the provisions of this clause.



Clause 7.8 – Airspace operations

The site is not mapped as being within an area subject to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable.

Clause 7.10 - Essential Services

The site is not connected to Council's water or sewerage infrastructure. The submitted On-site Sewage Management Assessment Report indicates that proposed Lot 13 is capable of accommodating an on-site sewage management system for any future dwelling. On-site sewage management for the existing dwellings on proposed Lot 12 are adequate and remain unchanged.

Telecommunications and electricity services are available to the area.

Existing access to propose Lot 12 is to remain unchanged and Council's Subdivision Engineers are satisfied that suitable access, in accordance with Council's controls, is able to be achieved for proposed Lot 13.

North Coast Regional Plan 2036 (NCRP)

The North Coast Regional Plan 2036 is the key strategic planning strategy that sets the intended direction for growth and development on the North Coast over the next 30 years. The NRCP sets out four primary Goals and associated Directions and Actions to achieve those goals.

Direction 11: *Protect and enhance productive agricultural lands* is applicable to the proposal as the site is partially identified as Regionally Significant Farmland through the Northern Rivers Farmland Protection Project 2005 as referenced with in this Direction. Action 11.2 of the NCRP proposes to update the Northern Rivers Farmland Protection Project 2005 and includes interim criteria for the assessment

of any non-agricultural uses of land identified as important farmland within Appendix B.

This application does not propose any change of use of land mapped as Regionally Significant Farmland and accordingly is considered to be not inconsistent with the strategic intent of the North Coast Regional Plan.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The site is partially mapped as being within the Coastal Environment Area identified in the Coastal Management SEPP and as such clause 13 is applicable to the proposal.

The objectives of Clause 13 are as follows:

13 Development on land within the coastal environment area

- (1) 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.
- (2) 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), 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.

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The proposed boundary realignment does not impact upon land mapped as being within the Coastal Environment Area. The proposal is not likely to cause an adverse impact on coastal environmental values or coastal processes and as such is considered to be compliant with the provision of the SEPP.

SEPP No. 44 - Koala Habitat Protection

This policy applies to land in relation to which a development application has been made that has an area of more than 1 hectare and as such is applicable to the proposal. The aims and objectives of SEPP 44 are set in clause 3 as follows:

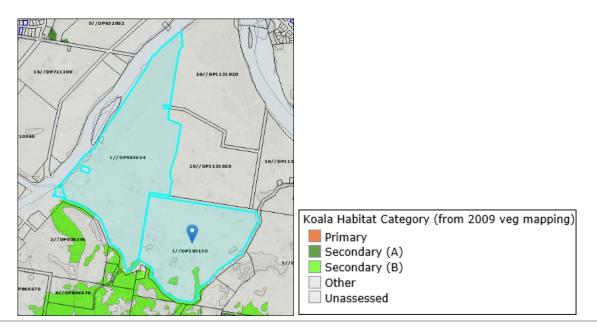
3 Aims, objectives etc

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

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

Prior to the issue of any consent for a development application, Council must consider if the land to which the application relates is potential or core koala habitat.

The land has been historically cleared and has been used as grazing land for more than 50 years. Council's vegetation mapping does not indicate that the site supports primary koala habitat. The land is not considered to be potential or core koala habitat and as such a plan of management is not required for the proposal.



SEPP No. 55 - Remediation of Land

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

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

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

Aerial imagery indicates that the site has been substantially cleared of vegetation from at least 1962 and there is no evidence of cropping.

The subject lots are currently use for cattle grazing. A piggery is located on current Lot 1 DP583624 (59.73ha) which is located approximately 260m from the existing dwelling on the lot and approximately 1000m from the proposed dwelling site on proposed Lot 13.

Council's Environmental Health Unit have reviewed that application and conducted a desk top analysis of potential contamination of the site. No evidence of potential contamination was uncovered and it is considered that no further investigation is warranted with regard to potential contamination of the site.

It is considered that the site is suitable for the proposed agricultural and rural residential purposes with regard to potential contamination of the site and the provisions of this SEPP have been satisfied.

SEPP (Primary Production and Rural Development) 2019

The aims of this policy are set out in Clause 3 and are as follows:

- (a) to facilitate the orderly economic use and development of lands for primary production,
- (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,
- (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,

- (d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,
- (e) to encourage sustainable agriculture, including sustainable aquaculture,
- (f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,
- (g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.

The SEPP sets out provisions relating to state significant agricultural land, farm dams, livestock industries (not grazing), aquaculture development and rural land sharing communities. The site is not identified as state significant agriculture land under this policy, nor is the development related to the above uses.

Schedule 4 of the SEPP includes standard provisions relating to primary production and rural development for non-standard local environment plans. The site is subject to the provisions of Tweed Local Environment Plan 2014 which is based on the Standard Instrument and therefore is not applicable to the proposal. Further consideration of this SEPP is not required.

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

There are no draft environmental planning instruments that apply to the proposed development.

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

Tweed Development Control Plan 2008

A2-Site Access and Parking Code

The application proposes to upgrade an existing farm access from Bakers Road for proposed Lot 13. An Intersection Sight Distance Plan was submitted for the existing access location which indicated that removal or trimming of some mature trees within the road reserve would be required to achieve acceptable sightlines.

The location of the driveway access was reviewed by Council's Development Engineering Unit and Council's Sustainability & Environment Unit. The Sustainability & Environment Unit expressed concern regarding the proposed vegetation removal however the Development Engineering Unit considers that an a repositioned access located 3-5m north of the existing access would be acceptable and reduce the need for vegetation removal.



Figure 4 Red line = existing access location for proposed Lot 13 Blue line = alternate location to avoid the need to remove the large existing gum tree.

The existing access for proposed Lot 12 currently traverses Lot 1 DP1243056 (First Title Creation of Road Closer). This lot is to be amalgamated with proposed Lot 12. No changes are proposed to the existing access driveway for proposed Lot 12 which is considered to be acceptable.

The proposal is considered to be acceptable with regard to access and the provisions of Section A2.

A3-Development of Flood Liable Land

The subject lots are mapped as being partially flood affected with a Design Flood Level of RL 9.9m AHD. Clause 3.10 Rural Areas of Section A3 apply to the site.

The controls with regard to subdivision state:

A flood free dwelling site must existing on each new allotment created. The construction of a flood free dwelling will be permitted only where it can be demonstrated that such work will not have any adverse effects on flood waters in the locality.

Where a flood free access exists to the land being subdivided the proposed subdivision, as far as practicable, be designed so that a flood free access is provided to the proposed lots.

The existing dwelling on Lot 1 DP583624 is on land that is not mapped as flood affected and no changes are proposed to the existing access. The proposed dwelling site on proposed Lot 13 is not mapped as being flood affected and flood free access is provided. The construction of any future dwelling is unlikely to result in any adverse effect on flood waters. The proposal is compliant with Section A3.

A5-Subdivision Manual

The aims of the Subdivision Manual are:

- Present Council's strategic plan objectives of the development of subdivisions;
- Achieve the highest quality and "best practice" of subdivision development on the Shire;
- Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development;
- Provide guidelines and development standards for the development of subdivisions.

Section A5.5 Rural Subdivision Guidelines and Development Standards as well as the provisions contained in Section 5.4 are applicable to the proposal.

Physical Constraints

• Flood liable land

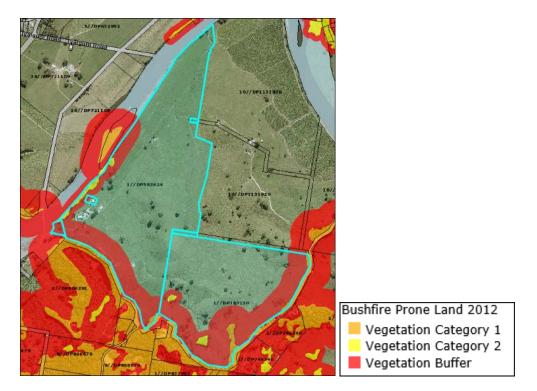
As discussed in an earlier section of this report, the proposed dwelling site for proposed Lot 13 not mapped as flood affected and flood free access is proposed. There is no fill or works proposed that will result in an adverse impact on flood waters.

Bushfire Risk

The subject site is mapped as bushfire prone and the application was accompanied by a bushfire threat assessment report. The existing dwelling on proposed Lot 12 is not on land mapped as bushfire prone and the proposed dwelling site on proposed Lot 13 is located on land mapped as being with the Vegetation Buffer.

The application was accompanied by a Bushfire Assessment Report and the application was referred to the Rural Fire Service in accordance with Section 100B of the Rural Fires Act 1997. The RFS have issued General Terms of Approval in relation to Water and Utilities. The General Terms of Approval relate to the proposed subdivision only and any further application for a dwelling will be required to address the requirements of 'Planning for Bushfire Protection 2006'.

The proposal is considered to be acceptable with regard to bushfire hazard of the land.



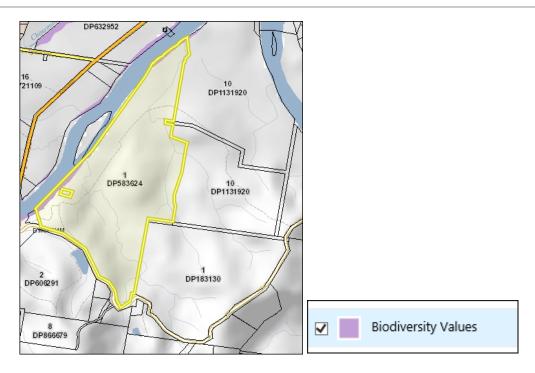
• Native Vegetation and Significant Vegetation

The subject lots are currently used as grazing land and are substantially cleared of vegetation with a few paddock trees scattered across the lots.

The proposed dwelling site on proposed Lot 13 does not require the removal of any significant vegetation. With regard to the upgrading the existing farm access to the dwelling site on proposed Lot 13, the application included plans which indicated that removal two mature trees, one of which is a Preferred Koala Food Tree (*Eucalyptus propinqua*), within the road reserve would be required to establish adequate site lines for the access. Council's Development Engineering Unit and Sustainability and Environment Unit have reviewed the application and are satisfied that adequate sightlines could be achieved without the need to remove the mature trees by repositioning the access 3-5 m north of the existing farm access. It is acknowledged that minor removal of understory vegetation within the road reserve may still be required.

Current Lot 1 DP583624 (59.73ha), is identified on the Biodiversity Values Map with respect to Protected Riparian Land along the boundary of the lot with the Tweed River. No works or vegetation removal is proposed on or adjacent to the Protected Riparian Land and the proposed altered boundary is to be located approximately 1100m from Protected Riparian Land.

The application was reviewed by Council's Sustainability and Environment Unit who noted that the proposed altered boundaries would not enable any additional clearing of vegetation as an 'allowable activity' under the *Local Land Services Act 2013* than is currently available to the registered landowners.



• Landscape visual character

No subdivision works are proposed other than that required to ensure adequate access is provided to proposed Lot 13.

Any future dwelling on proposed Lot 13 would be subject to a separate application for approval. The appropriate siting of dwelling with regard to visual character will be assessed at this time and will need to consider the provisions of Council's Draft Scenic Landscape Strategy as the land is identified on Scenic Landscape Strategy mapping.

It is considered that the proposed subdivision is compatible with the landscape visual character of the locality and the proposed dwelling site for proposed Lot 13 is acceptable subject to further development approvals.

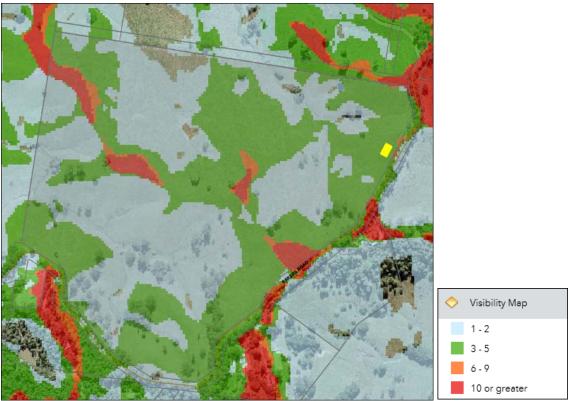


Figure 5 Extract from Draft Scenic Landscape Interactive Mapping tool indicating proposed dwelling site on proposed Lot 13

On-site effluent disposal

The applicant has provided an on-site sewage design / site and soil assessment HMC 2019.028 dated March 2019. The report findings demonstrate that suitable land will be available on proposed Lot 13 for on-site sewage management to service a future dwelling.

Council records indicate the effluent disposal bed attached to the septic tank at Lot 1 DP392040 (the existing lot enclosed by proposed Lot 12) is located outside the boundary. It appears the effluent disposal bed is located on proposed Lot 12. This situation is currently being rectified noting that an application for a replacement onsite sewage system for the dwelling on Lot 1 DP392040 has recently been approved by Council.

Rural Watercourses and drainage

Existing Lot 1 DP583624 (59.73ha) has a 1.4km boundary with the Tweed River and the subject site is traversed by a number of low order streams and contains several farm dams. The boundaries of proposed Lot 13 cross a lower a low order stream and will be adjacent to an existing farm dam which will be located on proposed Lot 12.

As mentioned previously, no works are proposed to facilitate the boundary adjustment and no change to existing farming activities are proposed. The subdivision will not alter the drainage layout and any future dwellings on proposed Lot 13 will be able to manage stormwater effectively and easements for drainage will not be required.

• Rural Subdivision Structure/ Lot Layout

Lot layout should consider environmental constraints and encourage and promote the continuation of agricultural uses of the land. In accordance with the requirements of this Section, each of the proposed lots:

- Have access to a road reserve;
- Have a flood free dwelling site noting there is no change to the existing dwelling located on proposed Lot 12;
- Is able to comply with Planning for Bushfire Protection 2006;
- Is capable of accommodating appropriate on-site sewerage management systems;
- Is of an appropriate size to allow for adequate separation of dwellings to rural activities.

The applicant has stated that the objective of the proposal is to increase the financial viability of the land and whilst maintaining a large land holding for farming operations and that proposed Lot 13 (3.62ha) is to be used for rural living and "*minor agricultural uses*". It is arguable that the creation of proposed Lot 13 is not consistent with the provisions of encouraging and promoting the continuation of agricultural uses of the land noting the limit potential for agricultural uses of this lot.

• Rural Movement Network

No new roads are proposed. An existing Right of Carriageway on Lot 1 DP583624 (59.73ha) benefiting Lot 1 DP392040 will remain unchanged by the proposal. No changes are proposed to the existing access for proposed Lot 12 and suitable 2 wheel drive standard access is achievable for the proposed dwelling site on proposed Lot 13. The proposal is acceptable in this regard.

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

There are no planning agreements or draft planning agreements that apply to the proposed development.

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

Clause 92(1)(b) Applications for demolition

Not applicable

Clause 93 Fire Safety Considerations

Not applicable. No changes to existing buildings is proposed.

Clause 94 Buildings to be upgraded

Not applicable. No changes to existing buildings is proposed.

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

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 primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

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.

<u>Coastal Zone Management Plan for Cobaki and Terranora Broadwater</u> (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 proposed boundary realignment and consolidation of lots, does not result in any change of use of the land noting that a dwelling is permissible on the current vacant Lot 1 DP183130 (38.64ha). The surrounding rural land uses are a mix of agricultural and rural residential uses. Current lot sizes in the surrounding rural zone varying in size from 59.7ha (subject lot) to 2000m². Two lots of approximately 3.5ha a located adjacent to current Lot 1 DP183130 (38.64ha) on Bakers Road. The proposal is therefore considered to be consistent with the context and setting of the rural location.

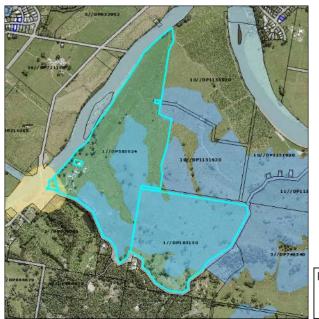
Heritage – Aboriginal Cultural Heritage

The site is identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP) as being an Aboriginal Place of Heritage Significance and Predictive for Aboriginal Cultural Heritage. Lot 1 DP 1243056 is mapped as being an Aboriginal Place of Heritage Significance under the ACHMP and is the current access for current Lot 1 DP583624 (59.73ha) to Bakers Road. This lot (closed road reserve) is to be amalgamated into proposed Lot 12 and no works are proposed to the existing access. An AHIMS Basic Search of the subject lots (including a 50m buffer) did not reveal any Aboriginal sites or places recorded or declared in or near the subject lots (recorded on file).

As this portion of land is to remain unchanged from the existing situation, the proposal is considered to be consistent with objectives of the ACHMP in this regard.

The boundary alteration and proposed Lot 13 relates to land mapped as Predictive for Aboriginal Cultural Heritage. Section C6.2 of the ACHMP applies to the assessment of development applications on land mapped as an area of Predictive Aboriginal Cultural Heritage and includes a Risk Matrix Table (table C3) to assist in the assessment of risk of harm to Aboriginal cultural heritage items or places.

The existing land use may be described as a significantly altered environment comprising of cleared grazing land. A lot boundary is proposed to pass through land mapped as Predictive Aboriginal Cultural Heritage however no physical works are associated with the creation of this boundary. As such the creation of proposed Lot 13 is considered to be Low Risk with regard to the potential disturbance of Aboriginal cultural heritage items or places. The recommendations for low risk proposals are to adopt a precautionary approach toward the preservation of Aboriginal Cultural Heritage values. There is no requirement for an Aboriginal cultural heritage assessment and referral to the Tweed Byron Local Aboriginal Land Council was not considered to be warranted.

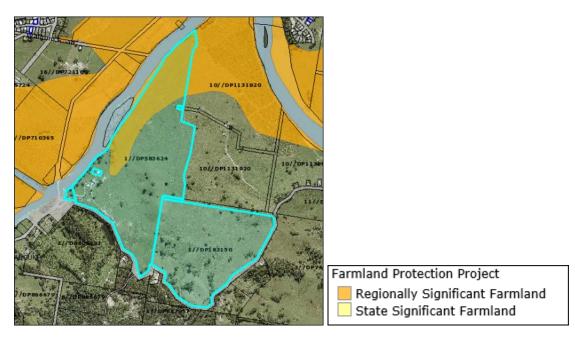


Known and Predictive Locations Aboriginal Place of Heritage Significance Predictive Aboriginal Cultural Heritage

Farmland of State or Regional significance

The subject site is partially mapped as Regionally Significant Farmland under the Northern Rivers Farmland Protection Project 2005. The aim of the Farmland Protection Project is to protect significant farmland from future rezoning for residential purposes. The proposal does not relate to dwellings on Regionally

Significant Farmland and does not restrict the continued use of the land Regionally Significant Farmland for agricultural purposes. The proposal is not inconsistent with the intent of the *Northern Rivers Farmland Protection Project*.



Flora and Fauna

As mentioned previously, no vegetation removal is required to facilitate the proposed boundary adjustment and the proposal will not enable any additional clearing of vegetation under the *Local Land Services Act 2013* noting that the land affected by the proposed altered boundary is cleared grazing land.

The proposal will have no effect on land identified on the Biodiversity Values Map.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The surrounding land uses comprise primarily of agricultural uses and rural residential uses. The application states that there is no change proposed to the existing land uses and the objective of the proposal is to facilitate the ongoing agricultural use of the land. Existing Lot 1 DP183130 (38.64ha) has a dwelling entitlement which will be retained for proposed Lot 13.

The proposal is considered to be consistent with surrounding land uses which are a mix of rural residential lots and agricultural land holdings.

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

The application was referred to the Rural Fire Service who issued General Terms of approval with regard to electricity supply which is to comply with 'Planning for Bushfire Protection 2006'. The RFS also noted as General Advice that any further applications for dwellings must address the requirements of 'Planning for Bushfire Protection 2006'.

(e) Public interest

The proposal relates to the reorganisation of lot boundaries and no physical or environmental impacts have been identified. The proposal therefore is considered to be in the public interest.

OPTIONS:

- 1. Refuse the application in accordance with the recommendation.
- 2. Grant in-principle support and report this matter to the next Planning Committee Meeting with draft conditions of consent to enable consideration for the application as proposed.

Option 1 is recommended.

CONCLUSION:

The proposed boundary alteration is unlikely to result in a significant impact on the physical landscape or the environmental or cultural values of the land. The proposal is considered to be generally consistent with the existing rural character of the land.

The interpretation of the provisions of Clause 4.1C of the TLEP has been considered with respect to legal advice provided in relation to this application and it is considered that the application cannot be considered to be a boundary adjustment pursuant to the provisions of Clause 4.1C. The proposed alteration to the lot boundaries is beyond what could reasonably be considered to be an *adjustment* to the boundary as the resultant lots vary significantly in size and shape to the original lot layout.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

Yes, legal advice has been received and is attached.

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Johnson	v	Coffs	Harbour	[2018]	NSWLEC	1094
	(ECM 597	7917	71)				

(Confidential) Attachment 2.	Lindsay	Taylor	Lawyers	Legal	Advice	(TWD19007)
	(ECM 597	79172)				

2 [PR-PC] Development Application DA19/0104 for an Attached Dual Occupancy and Two Swimming Pools at Lot 14 Section 6 DP 758571 No. 65 Kingscliff Street, Kingscliff

SUBMITTED BY: Development Assessment and Compliance



SUMMARY OF REPORT:

Consent is sought for the construction of an attached dual occupancy and two swimming pools within the front setback. The proposal comprises of a two storey mirror image dual occupancy with each unit comprising of 3 bedrooms and a floor area of approximately 220m².

The site contains an existing dwelling which is to be demolished to facilitate the proposal however this application does not seek consent for the demolition which is to be the subject of a separation application.

The proposal is to be completed in two stages with Stage 1 being the construction of the dual occupancy and attached garages and Stage 2 being the construction of the pools and front fencing. The staging of the development was proposed by the applicant to allow certification of the constructed development to be provided to Essential Energy prior to the construction of the pools and front fencing which are located within 30m of electricity infrastructure located within the road reserve.

The application was notified to adjoining property owners and one submission was received that raised matters relating to impacts on trees, overshadowing and privacy arising from the proposal.

A request for further information was issued in which the applicant was requested to address matters relating to overshadowing, rear fencing and sightlines, front fencing, and impacts on privacy and neighbouring trees.

The Statement of Environmental Effects for the application notes that that the proposal will result in overshadowing impacts to the adjacent residential property to the south however considered that the impacts were unavoidable and acceptable on merit. Overshadowing

diagrams were submitted for the proposal however more detailed diagrams depicting over shadowing impacts to the southern property were requested to enable a comprehensive assessment of the impacts. Following an assessment of the further information provided it was determined that the overshadowing impacts were generally acceptable with respect to permissible development in the medium density zone, noting the 13.6m height limit. Furthermore, it is considered that the proposal satisfies the aims and objectives of the solar access control.

The proposal will impact trees on adjoining properties that are located close to side boundaries and an arborists report was requested to ascertain the extent of the impact on the adjacent trees. The report recommended that one tree located on the fence line of the adjacent property to the north be removed due to its location and the affected property owners have provided owner's consent for the removal of the tree (recorded on file). Two frangipani trees located on the adjoining property to the south and adjacent to the fence line with the subject site, were determined to be able to be retained and recommendations were provided with regard to the management of works within the tree protection zone. Council's Sustainability and Environment Unit have reviewed the application and associated arborist report and have raised no objections to the proposal subject to conditions of consent.

The response to the further information request satisfactorily addressed matters relating to privacy, front and rear fencing and sight lines. The amended application is considered to be generally acceptable with regard to the objectives and controls of Section A1 of the DCP.

The application was referred to Essential Energy who had no comments with regard to safety risks from the proposal. Essential Energy noted no objection to the dual occupancy however requires that plans prepared by an Accredited Service Provider (Level 3 Designer) to be submitted to Essential Energy prior to construction of the fencing and pools (Stage 2).

The application has been reviewed by Council's Building, Environment Health and Water and Wastewater Units with no objection being noted for the proposal subject to the conditions at the end of this report.

Councillors Milne and Cherry requested that this application be called up for Council determination.

RECOMMENDATION:

That Development Application DA19/0104 for an attached dual occupancy and two swimming pools at Lot 14 Section 6 DP 758571 No. 65 Kingscliff Street, Kingscliff be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans prepared by Smek Design and dated December 2018, except where varied by the conditions of this consent:
 - Site analysis plan (amended in red) M273/DA1.01 Revision B;
 - Site development plan M273/DA1.02 Revision C;
 - Setback plan M273/DA1.03 Revision A;
 - Ground floor plan M273/DA2.01 Revision A;

- First floor plan M273/DA2.02 Revision A;
- Roof plan M273/DA2.03 Revision A;
- Elevations M273/DA3.01 Revision B;
- Elevations M273/DA3.02 Revision A;
- Section A M273/DA4.01 Revision A;
- Section B M273/DA4.02 Revision A;
- Laneway fence elevation (not dated).

The development is to be carried in the following stages:

- Stage 1 being the construction of the dual occupancy;
- Stage 2 being the construction of the pools and front fencing.

[GEN0005]

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

[GEN0115]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.

[GEN0135]

4. 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]

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

[GEN0305]

6. Vegetation removal shall be limited to that prescribed in the Arborists Report for 65 Kingscliff Street Kingscliff, prepared by TPZ Project Arborists and dated 12 June 2019, to facilitate the construction of the dwelling house. All other trees identified as "retain" shall retained and protected during construction in accordance with the recommendations of the Arborists Report prepared by TPZ Project Arborists for 65 Kingscliff Street dated 12 June 2019, unless otherwise approved by Council's General Manager or their delegate.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's receipt confirming payment.

A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT <u>MUST</u> BE PROVIDED AT THE TIME OF PAYMENT

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

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

(a)	Tweed Road Contribution Plan: 1.3 Trips @ \$1354 per Trips (\$1,137 base rate + \$217 indexation) CP Plan No. 4 Sector6_4	\$1,760
(b)	West Kingscliff - Drainage: 0.0096 HA @ \$81789 per HA (\$5,664.10 base rate + \$76,124.90 indexation) DCP Section B4 CP Plan No. 7	\$785.17
(c)	Shirewide Library Facilities: 0.75 ET @ \$985 per ET (\$792 base rate + \$193 indexation) CP Plan No. 11	\$739
(d)	Bus Shelters: 0.75 ET @ \$75 per ET (\$60 base rate + \$15 indexation) CP Plan No. 12	\$56
(e)	Eviron Cemetery: 0.75 ET @ \$140 per ET (\$101 base rate + \$39 indexation) CP Plan No. 13	\$105
(f)	Community Facilities (Tweed Coast - North) 0.75 ET @ \$1624 per ET (\$1,305.60 base rate + \$318.40 indexation) CP Plan No. 15	\$1,218
(g)	Extensions to Council Administration Offices & Technical Support Facilities 0.75 ET @ \$2195.88 per ET (\$1,759.90 base rate + \$435.98 indexation) CP Plan No. 18	\$1,646.91

(h)	Cycleways: 0.75 ET @ \$555 per ET (\$447 base rate + \$108 indexation) CP Plan No. 22	\$416	
(i)	Regional Open Space (Casual) 0.75 ET @ \$1282 per ET (\$1,031 base rate + \$251 indexation) CP Plan No. 26	\$962	
(j)	Regional Open Space (Structured): 0.75 ET @ \$4500 per ET (\$3,619 base rate + \$881 indexation) CP Plan No. 26	\$3,375	[PCC0215]

8. 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: 0.6 ET @ \$11,091 = \$6,654.60 Sewer: 1.0 ET @ \$7,173 = \$7,173.00

[PCC0265]

9. A detailed Plan of Landscaping containing no priority weed species and with a minimum 80% of total plant numbers comprised of local native species to the Tweed Shire is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. Local native species are to comprise appropriate species selected from the Tweed Shire Native Species Planting Guide available online at: http://www.tweed.nsw.gov.au/Controls/NativeSpeciesPlanting/Landing.aspx

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

[PCC0945]

11. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

12. 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]

13. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

14. Prior to the issue of a Construction Certificate, the existing sewer junction of Lot 14 Sec 6 DP 758571 shall be shown on the final design plans.

[PCCNS01]

15. Prior to issue of a Construction Certificate for Stage 2 of the works (construction of the 2 swimming pools, pool coping and front fencing), the Applicant must provide to Essential Energy, for its approval, plans prepared by an Accredited Service Provider (Level 3 Designer) to show the proposed underground powerline connections to each dual occupancy. These plans must comply with *ISSC 20*, any relevant Australian Standards and/or Essential Energy internal policies.

[PCCNS02]

16. Prior to the issue of a Construction Certificate for Stage 2 of the works (construction of the 2 swimming pools, pool coping and front fencing), evidence of all approvals required by Essential Energy must be provided to the Principal Certifying Authority.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

- 18. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

- 20. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 21. 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]

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

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

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

[PCW0985]

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

[PCW1005]

24. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new (or modification of the existing) driveway access (or modification of access).

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

[PCW1170]

25. To ensure the building and any associated structures are correctly positioned on the site in accordance with the Development Consent, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at footing stage and at the completion of the building.

[DURNS01]

DURING CONSTRUCTION

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

[DUR0005]

27. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

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

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

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

[DUR0205]

- 29. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
 - A. Short Term Period 4 weeks. L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period the duration. LAeq, 15 min noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]
- 30. 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]

31. 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]

32. 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]

33. 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]

- 34. If the work involved in the erection or demolition of a building:
 - (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - (b) building involves the enclosure of a public place,

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

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

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

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

[DUR0435]

35. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

36. 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 2017.

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]

37. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

[DUR0675]

38. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

[DUR0995]

- 40. 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]

- 41. 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.
- 42. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

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

[DUR1875]

- 44. Swimming Pools (Building)
 - (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2012 & AS 1926.3 -2010 & AS 1926.2-2007, the Swimming Pool Act 1992 and the Swimming Pool Regulation 2008.
 - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.

- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.
- (e) Once your pool or spa is complete please register it at www.swimmingpoolregister.nsw.gov.au.

[DUR2075]

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

[DUR2085]

46. 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]

- 47. 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]

- 48. 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]

49. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

50. 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]

- 51. 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]

52. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2017.

[DUR2835]

- 53. The occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:
 - (a) bears a notice containing the words "This swimming pool is not to be occupied or used", and
 - (b) is located in a prominent position in the immediate vicinity of that swimming pool, and
 - (c) continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

Maximum penalty: 5 penalty units.

Note. The signage requirements in subclause (3) are in addition to any signage that may be required under the *Environmental Planning and Assessment Act 1979* or any other Act.

[DUR2845]

54. All landscaping is to be undertaken in accordance with the approved detailed plan of landscaping.

[DURNS01]

- 55. A Project Arborist who holds an Australian Qualification Framework Level 5 Arboriculture certificate must be appointed prior to commencement of any works onsite to:
 - a. Oversee all arboricultural management works and measures in accordance with the Arborists Report for 65 Kingscliff Street prepared by TPZ Project Arborists and dated 12 June 2019, and Australian Standard AS4970 - 2009 Protection of trees on development sites.
 - b. Recommend and supervise any required remedial works; and
 - c. Certify works upon completion of the project.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

57. 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]

58. 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]

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

[POC0475]

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

[POC0905]

61. 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]

62. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

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

[POC1100]

- 64. Prior to the issue of an Occupation Certificate, the nominated Project Arborist shall provide to Council's General Manager or delegate a certification report that includes the following information:
 - a. Confirmation that all works have been undertaken in general accordance with Australian Standard AS4970 - 2009 Protection of trees on development sites, industry best standards, the approved Arborists Report for 65 Kingscliff Street prepared by TPZ Project Arborists and dated 12 June 2019, and details of any remedial actions recommended/undertaken by the Project Arborist to avoid/minimise disturbance of existing vegetation.
 - b. Brief assessment of the condition of the trees, details of any deviations from approved essential tree protection management actions/measures, any ongoing management measures for retained trees and if applicable, evaluation of any remedial actions undertaken to mitigate impact on existing vegetation as a result of project works.

[POCNS01]

USE

65. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like. [USE0125]

REPORT:

Applicant:	Mr T Lee and Mrs R Lee
Owner:	Mr Thomas Lee & Ms Roxanne Kinkade
Location:	Lot 14 Section 6 DP 758571 No. 65 Kingscliff Street, Kingscliff
Zoning:	R3 - Medium Density Residential
Cost:	\$1,000,000

Background

A Development Application for the construction of an attached dual occupancy and two swimming pools was lodged with Council on 13 February 2019.

The application was initially submitted for lodgement 11 December 2018 and a pre-lodgement review of the application noted that the two swimming pools were located in the front setback in proximity to electricity infrastructure located in the road reserve. Council queried if the applicant had sought any pre-lodgement advice from Essential Energy with regard to the proximity of the swimming pools to electricity infrastructure. The applicant subsequently referred the application to Essential Energy who raised some initial concerns with the proposal. Consequently, lodgement of the application was delayed until staging of the proposal was deemed to be a satisfactory solution to progress the application whilst matters relating the location of the pools and potential impacts to electrical infrastructure were addressed to the satisfaction of Essential Energy.

Site details

The subject site is 689.2m² and is a rectangular shaped lot with dual frontage to Kingscliff Street and Kingscliff Lane. The site is relatively level with a slight fall toward Kingscliff Street. The site currently contains a single storey dwelling house and some landscaping trees.

The site is within an established residential area of Kingscliff and is located approximately 65m from The Kingscliff Foreshore area and is separated from the foreshore area by existing residential development. The adjoining property to the south contains an older style two storey development containing three units. The property to the north contains a part two storey, part single storey single dwelling. Development within the broader locality comprises of a mix of one and two storey single dwellings, dual occupancies and small residential flat buildings.

The site is mapped as possibly containing acid sulfate soils class 5 and is mapped as being flood affected (PMF level).

Proposal

The proposal comprises of a two storey mirror image dual occupancy each with 3 bedrooms and a floor area of approximately 220m² and includes the following:

- Ground floor comprising of open plan kitchen/living/dining area, study, laundry, and verandah at the front of the dwelling (west);
- Attached double car garage for each unit with access from Kingscliff Lane to the rear;
- Upper level comprising of three bedrooms and bathroom;
- Swimming pools within the front setback to each unit;
- Front and rear fencing.

The proposal is to be completed in two stages as follows:

- Stage 1 being the construction of the dual occupancy and attached garage;
- Stage 2 is the construction of the pools and front fencing.

The staging of the development was proposed by the applicant to allow certification of the constructed development to be provided to Essential Energy prior to the construction of the pools and front fencing which are located within 30m of electricity infrastructure located within the road reserve.

The maximum height of the proposal is 8.62m and the proposal complies with minimum setback requirements. The Statement of Environmental Effects (SEE) for the application notes that the proposal does not comply with relevant Solar Access controls in the Tweed Development Control Plan 2008 (DCP). The SEE states that the proposal will result in overshadowing impacts to the adjacent residential property to the south however considered that the impacts were unavoidable and acceptable on merit.

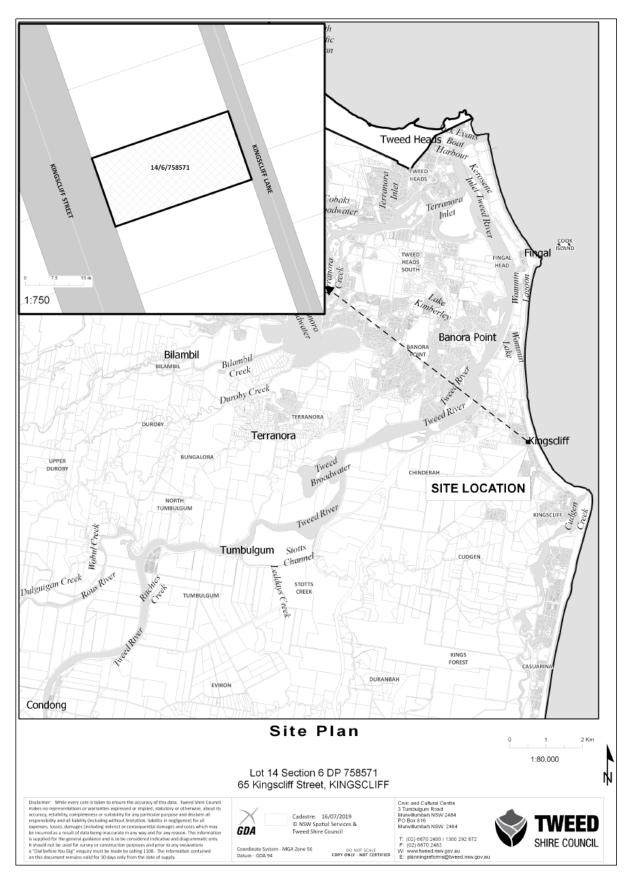
The SEE did not note any other variations to relevant development controls however the initial set of plans indicated that a 2m high solid front and rear fencing was proposed which is not in accordance with DCP controls. Amended compliant plans were submitted following requests to the applicant that this non-compliance be addressed.

The site currently contains a dwelling and the applicant has confirmed that this application does not seek approval for demolition. Approval for demolition will be sought via a separate Complying Development Application. The consent will be conditioned to require separate approval for demolition works.

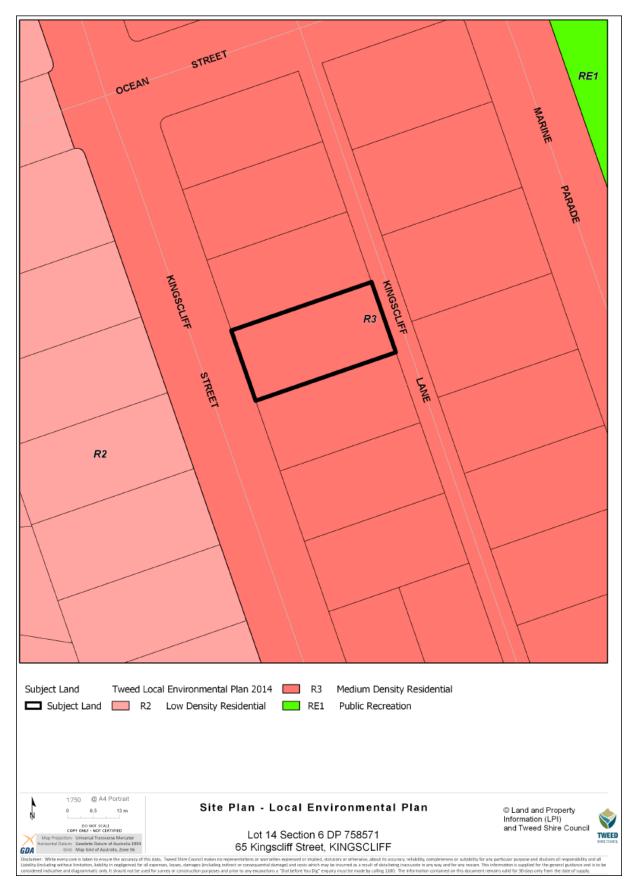
The application requires some minor earthworks and removal of existing landscaping trees from the site. Following a request for an arborists report to assess the impact of the proposal on trees adjoining located on adjacent properties, it was deemed appropriate to remove a tree on the adjacent site to the north which was located in close proximity to the boundary. Owner's consent from the effected property owner has been provided for the tree removal.

Two frangipani trees located on the southern adjoining property in close proximity to the boundary, are able to be retained and impacts to the trees are proposed to be managed in accordance with the recommendations of the arborists report.

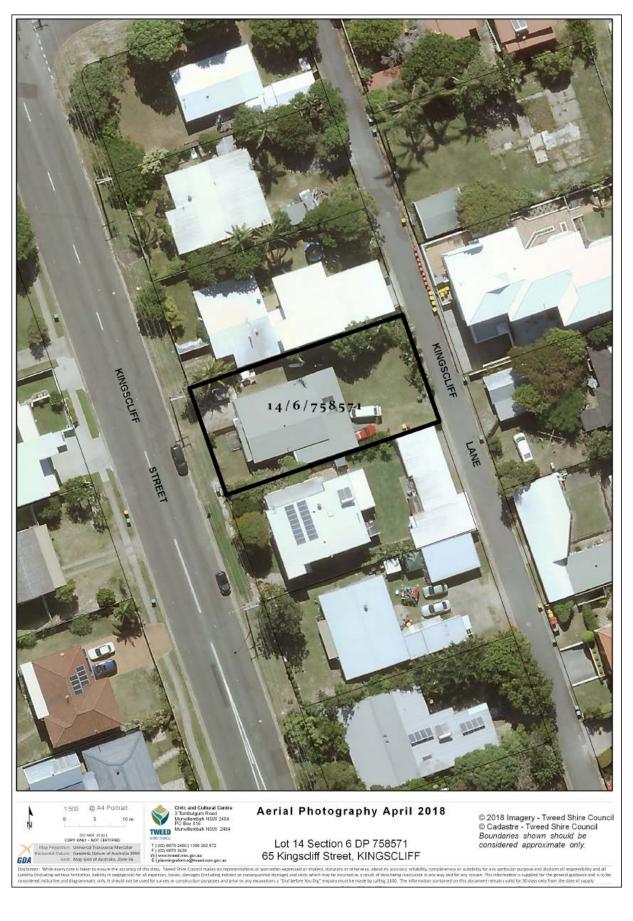
SITE DIAGRAM:



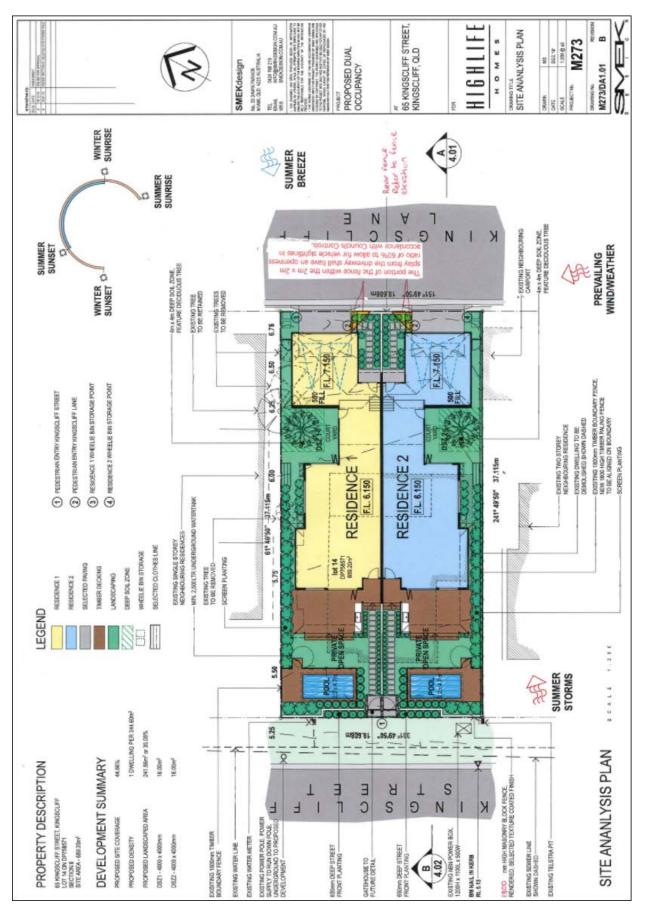
ZONE MAP

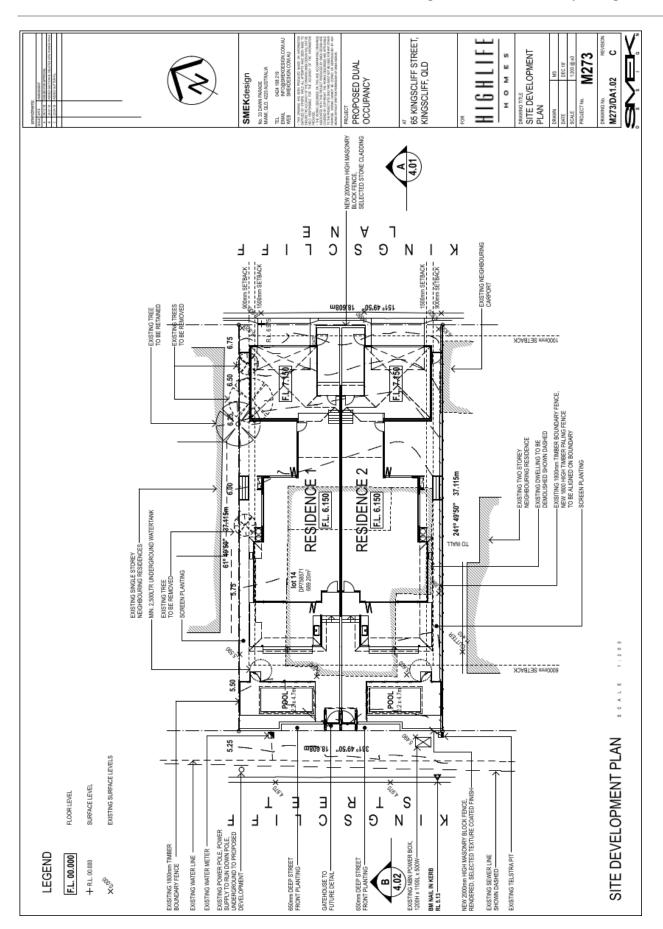


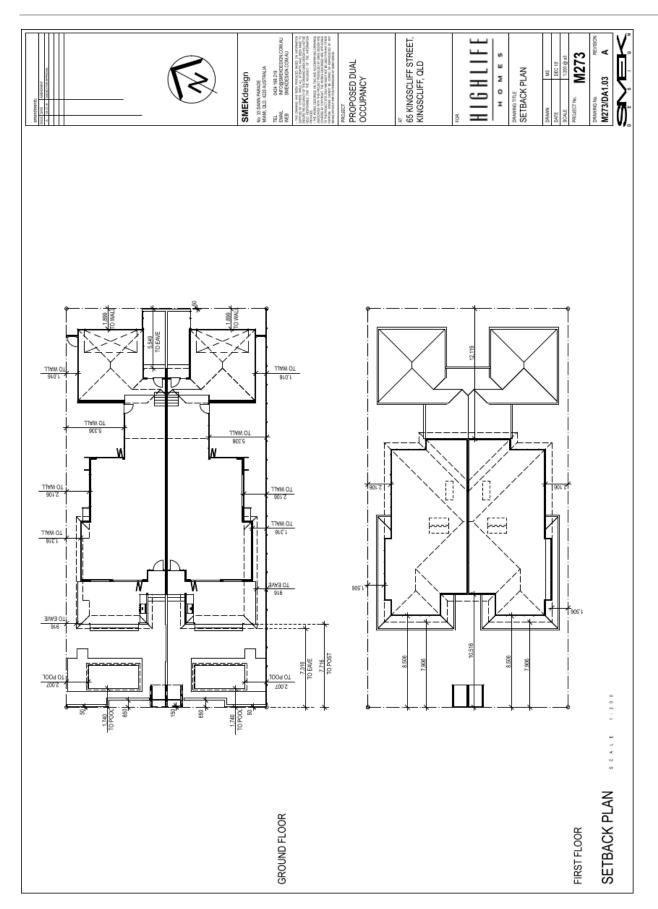
AERIAL IMAGERY

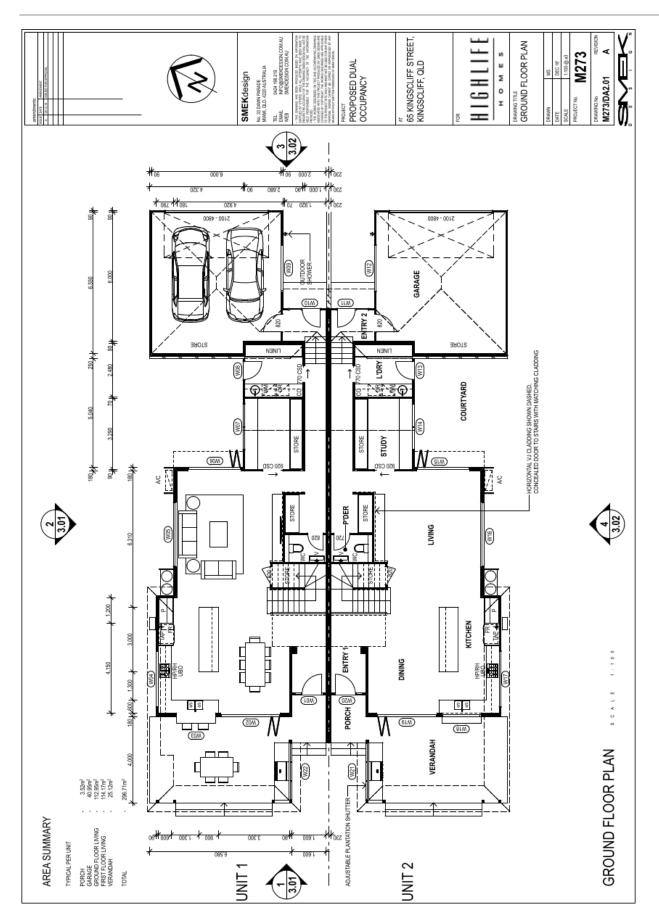


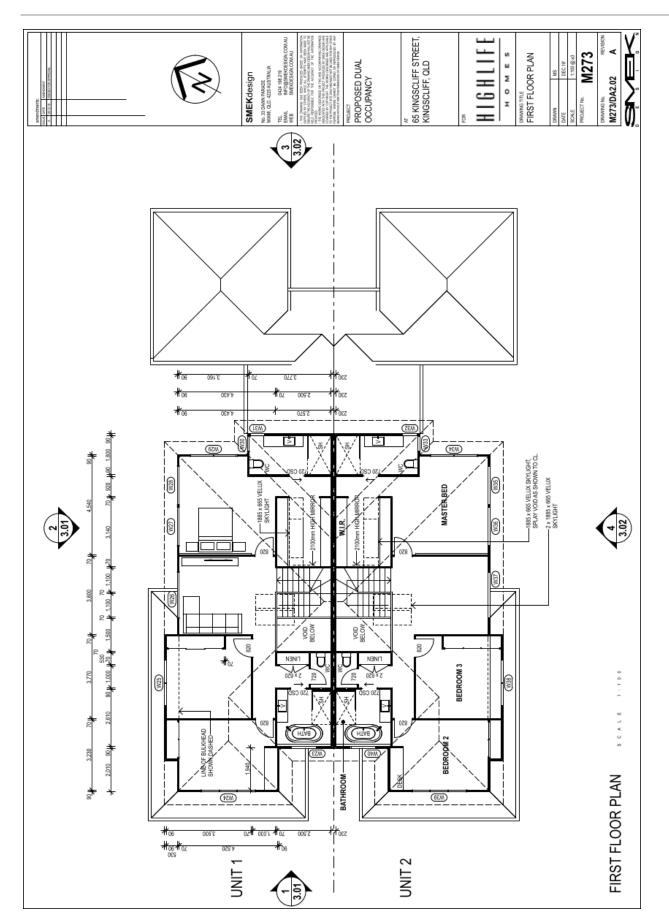
DEVELOPMENT/ELEVATION PLANS

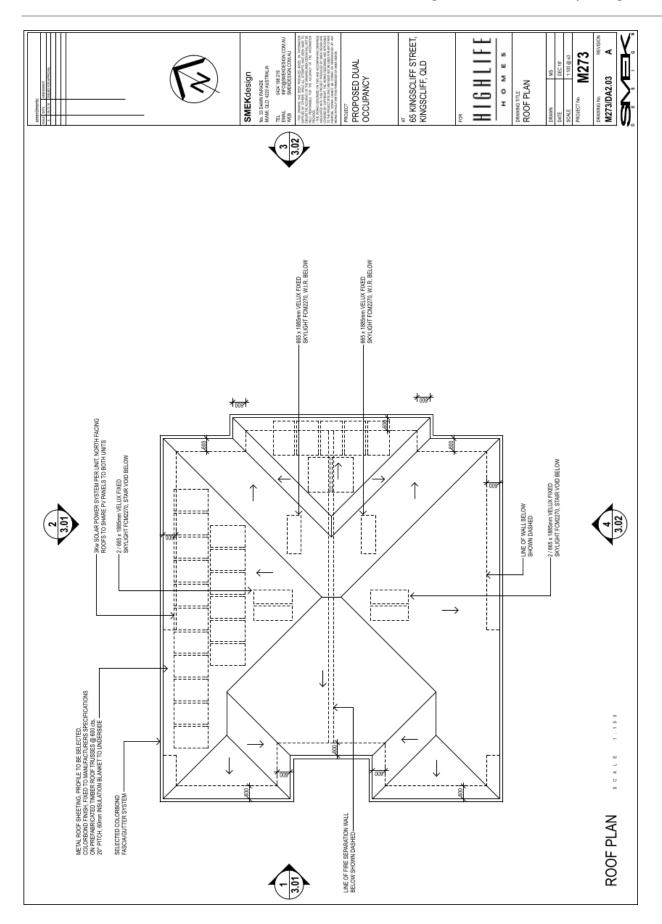


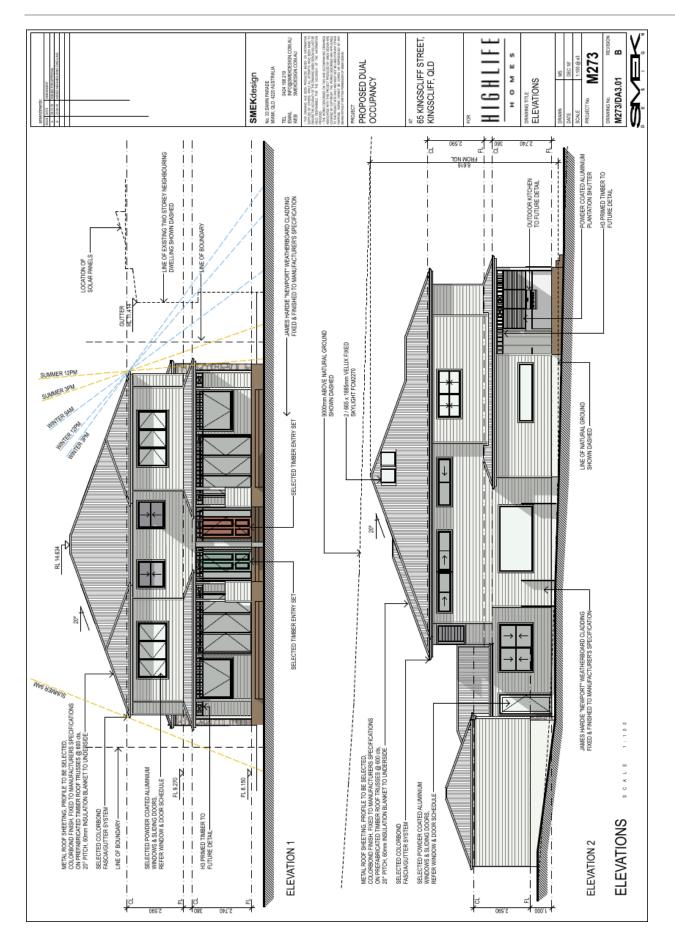




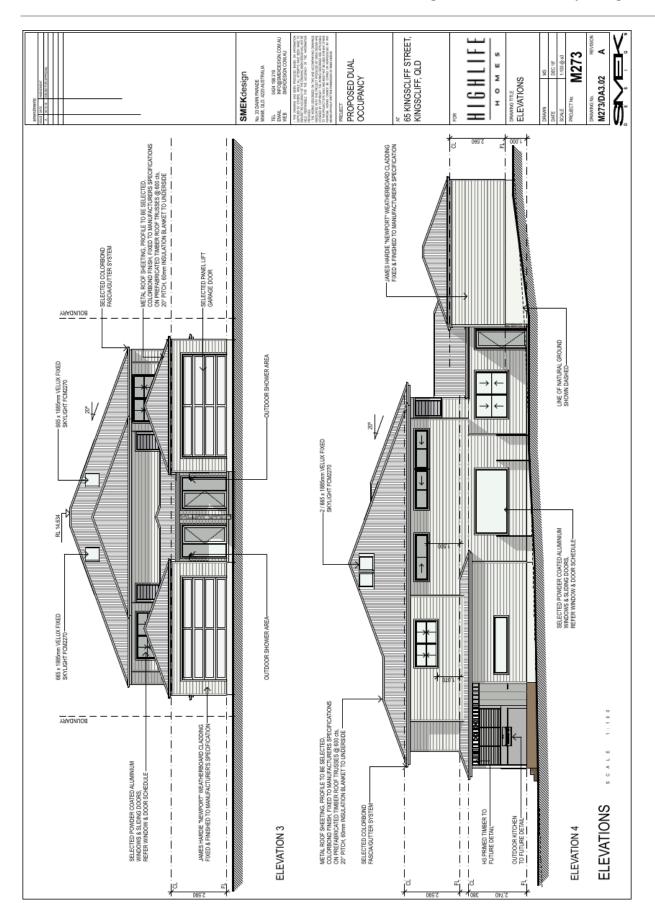




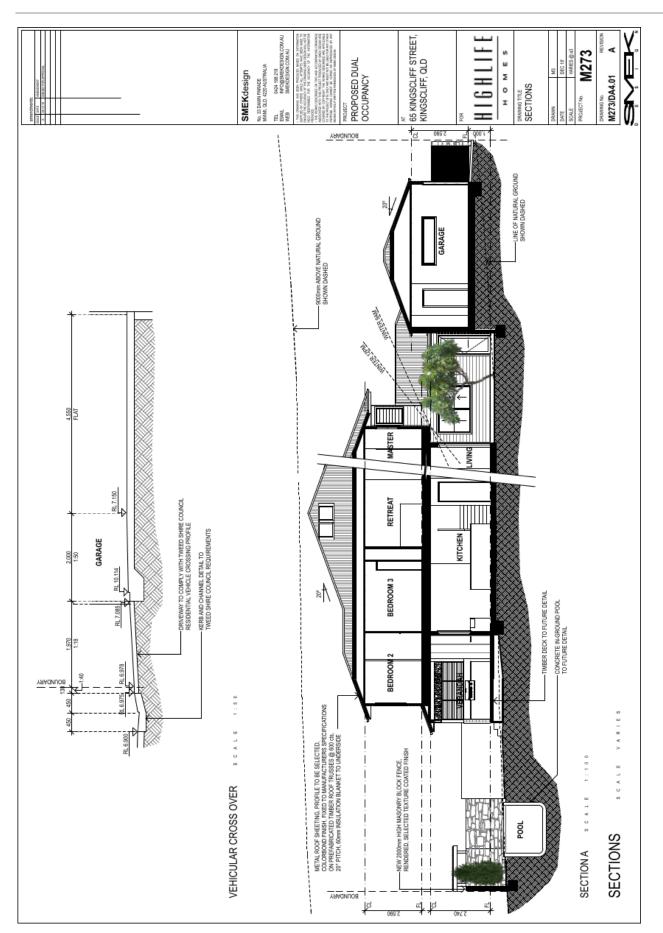




Planning Committee: Thursday 1 August 2019



Planning Committee: Thursday 1 August 2019





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 particular aims of this Plan are as follows:

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

The proposed dual occupancy is permitted with consent in the R3 Zone. The proposal is considered to be consistent with the aims of this clause as it relates to permissible residential accommodation that is considered to be generally satisfactory with regard to Council's development controls.

Clause 2.3 – Zone objectives and Land use table

The aims of the R3 Medium Density Residential zone are:

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

The proposed dual occupancy is permissible within the R3 zone. The proposal is therefore considered to be consistent with the zone objectives by providing for the housing needs of the community with a medium density environment.

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

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

The site is subject to a maximum height of building 13.6m. The proposed dual occupancy has a maximum height of 8.6m and so is compliant with the provisions of this clause.

Clause 4.4 – Floor Space Ratio

The site is mapped as being subject to a FSR of 2:1.

The site area is 689.2m² and each of the proposed units has a Gross Floor area of 217m² which equates to a total GFA of 434m².

As such the proposal has a FSR of 0.63:1 which complies with the control.

Clause 4.6 - Exceptions to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as the proposal does not relate to a use listed in this clause.

Clause 5.10 - Heritage Conservation

The site is not located in a heritage conservation area nor an area identified in Council's Aboriginal Cultural Heritage Management Plan.

The proposal is complaint with the provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

Not applicable as the site is not mapped as being bush fire prone.

Clause 7.1 – Acid Sulfate Soils

The site is mapped as possibly containing acid sulfate soils class 5. Minor site regrading is proposed which is unlikely to result in the water table being lowered.

The proposal is considered to be compliant with the provisions of this clause.

Clause 7.2 - Earthworks

The site is relatively level with minor earthworks proposed. Subject to appropriate stormwater management, the proposal is unlikely to result in a detrimental impact on adjoining properties. The site is not located within a heritage conservation area or Aboriginal Cultural area of significance and as such interception of cultural heritage items is considered to be unlikely.

The proposal is considered to be compliant with the provisions of this clause.

Clause 7.3 – Flood Planning

The site is mapped as being affected by the Probable Maximum Flood level (PMF). The application relates to residential development within an established residential zone. The habitable floor level of the proposal is above Council's minimum habitable floor level of RL 3.1m AHD and the proposal will not significantly affect flood behaviour. The proposal is considered to be compatible with the flood risk of the land and compliant with the provisions of this clause.

Clause 7.4 - Floodplain risk management

Not applicable as the proposal does not relate to a risk adverse use listed under this clause.

Clause 7.5 - Coastal risk planning

Not applicable as the site is not identified on the Coastal Risk Planning map.

Clause 7.6 - Stormwater Management

The proposal includes sufficient permeable area to cater for stormwater runoff. Standard conditions of consent will be imposed to ensure that appropriate stormwater management is addressed prior to the issue of any construction certificate. The proposal is compliant with the provisions of this clause.

Clause 7.7 - Drinking Water Catchments

Not applicable as the site is not located within the drinking water catchment area.

Clause 7.8 – Airspace operations

The site is located within the Obstacle Limitations Surface zone (Take off/Approach Surface). The proposal has a maximum height of 8.2m and will not breach the Obstacle Limitations Surface limit. The proposal is compliant with the provisions of this clause.

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

The site is within an established residential area with all the requisite essential services. Standard conditions of consent will be imposed to ensure that suitable stormwater management and vehicular access is provided. Council is satisfied that the following services can be provided to the proposal:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

North Coast Regional Plan 2036 (NCRP)

The NCRP 2036 established the following vision for the area:

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

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

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

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application. The site is mapped as an Urban Growth area and is located within the coastal strip.

Principle 1: Direct growth to identified urban growth areas

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

Complies - The proposed development is for the construction of a dual occupancy within the Urban Growth Area. The site is within an established residential area and is located within the Coastal strip and outside farmland areas.

Principle 2: Manage the sensitive coastal strip

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

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

Complies - The development site is mapped under this plan as being within the coastal strip and within an established residential subdivision. The proposed development does not represent an expansion of existing urban growth boundaries nor result in impacts on a natural hazards or farmlands.

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

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

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

Complies - The site is located within an established residential area and is within 2 minutes' walk of public transport.

The proposed development is considered to generally comply with the planning principles of the NCRP 2036, and its goals and overarching vision.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Use Area.

The objectives of the relevant clause is as follows:

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - *(ii)* overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and

- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is located approx. 70m from the coastal waters and is separated from the foreshore area by existing residential development. The proposal is located within an established residential area and is considered to be consistent with the objectives of this clause.

SEPP No. 55 - Remediation of Land

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

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

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

The subject application was referred to Councils Environmental Health Unit who raised no concerns with this regard. Accordingly, the subject application is considered to be acceptable with respect to contaminated land. The following comments were provided:

A search of Council records indicates:

- Council's mapping GIS Enlighten indicates that the site is located outside of the Heavy Mineral Sands Mining Paths and Plants and Tailings layers
- Council historical aerial photo 1962 (1962_run5_1159_5165-1.jpg) did not indicate any identifiable potentially contaminating activities or structures within the proposed site or immediate properties.

 Weave and SEE indicates there is an existing single storey fibro dwelling which will require demolition. Potential for underground slab contamination from the use of Organo Chlorine pesticides.

Given the above information it is considered that there is some potential for underground slab contamination, all other contamination of the land is unlikely. A separate approval would be required for demolition and possible contamination to be addressed. Condition GEN0305 is to be applied to ensure separate approval for demolition is completed. No further consideration of contaminated land required.

SEPP (Building Sustainability Index: BASIX) 2004

The proponent has provided an acceptable BASIX certificate 979164M (dated 6 December 2018) and any approval will be conditioned for compliance.

SEPP (Infrastructure) 2007

The application was referred to Essential Energy in accordance with Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007) as the application proposes swimming pools within the front setback in the vicinity of electricity infrastructure located in the road reserve of Kingscliff Street.

Essential Energy (EE) provided a statement that EE had no comments with regard to safety risks from the proposal however did provide general comments regarding the proposal which have been referred to the applicant. EE noted no objection to the construction of the dual occupancy however does require plans of the underground power connections to the development to be provided to EE prior to the construction of the pools and front fencing. The consent will be conditioned to ensure that all approvals required from EE are obtained prior to the issue of a Construction Certificate for Stage 2 being the construction of the pools and front fencing.

The proposal is considered to be compliant with the provisions of this SEPP.

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

No known Draft LEPs affect the subject proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The two storey dual occupancy is largely compliant with the controls within A1. Minor earthworks are required to achieve a level building pad (split level for the dwelling and garage) and the built form is appropriate for the coastal location.

The proposal is a mirror image design which is generally discouraged as such designs often do not have regard for the particular site conditions and can sometimes result in poor outcomes with regard to solar access, amenity and streetscape. The subject proposal includes living areas with windows in the

eastern and western elevations (front and rear facing) and two separate external living areas for each unit so that solar access is maximised to internal and external living areas. The street elevation is highly articulated and is appropriate to the coastal location. The proposal is compliant with the design principles and objectives in this regard and so the mirror image design is considered to be acceptable.

The initial set of plans proposed a variation to the fencing controls and the SEE identifies that the proposal will result in some overshadowing of the adjoining two storey unit development to the south. These matters, as well as potential privacy impacts, are discussed in more detail below. In summary however, the proposal is considered to be generally acceptable with regard to the objectives and controls of Section A1.

Solar access

The part two storey, part single storey proposal will result in overshadowing impacts for the 3 unit development to the south at No. 63 Kingscliff Street as demonstrated by the submitted shadow diagrams.

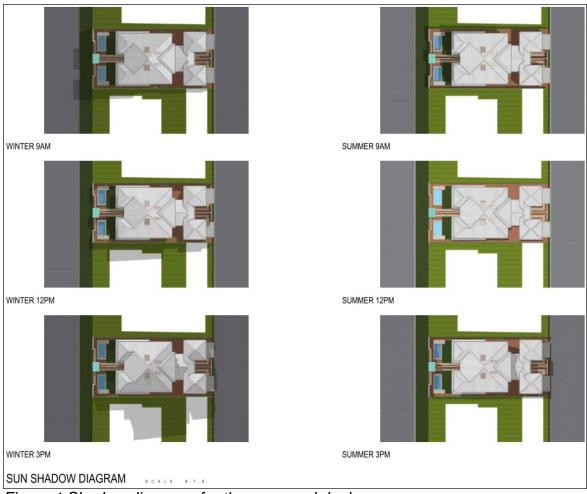


Figure 1 Shadow diagrams for the proposed dual occupancy

The above shadow diagrams were not of a sufficient detail to enable a proper assessment of the shadow impacts against the controls to the adjoining dwellings at No. 63, specifically against the following controls:

- C4. For neighbouring properties ensure:
 - *i.* Sunlight to at least 50% of the principle area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21, and
 - *ii.* Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.
 - *iii.* Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.
- C5. New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible.

The applicant was requested to submit further overshadowing detail to enable a proper assessment against the above controls. Subsequently amended plans were submitted which detailed the line of shadow to the northern elevation of the adjacent property to the south (below).

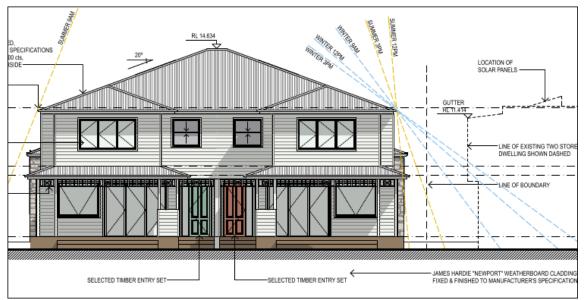


Figure 2 Details of shadow lines for the proposal on the adjacent southern residential units

The northern portion of the unit development at No. 63 comprises of a living room and bedroom to Unit 3 (front ground level unit) and a kitchen and bedroom to Unit 2 (rear ground level unit). A patio area is located in the northern side setback and is utilised as the primary access to Unit 2 and shared open space for the two ground floor units. Unit 3 utilises this area as the principle area of open space (approximately 5.7m x 4.8m) although it is noted that open space area is available in the front setback adjacent to the front entrance for Unit 3. Unit 2 has access to the shared northern patio area as well as private open space located in the southern side setback of approximately 5m x 9m.

Unit 1 is located on the upper level and an enclosed sunroom is located on the northern elevation. Unit 1 utilises the rear yard as (private) open space.

It is noted that the three unit development is not strata titled and use of external areas appears to have been established by the owner of the unit complex (resident of Unit 1).



Figure 3 No. 63 Kingscliff Street south of the subject site.

Each of the provisions of C4 Solar Access with regard overshadowing impacts to the adjacent property at No. 63 Kingscliff Street are addressed individually below noting that the proposal does not result in significant overshadowing impact to the property to the north of the site.

i. Sunlight to at least 50% of the principle area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21,

As can be seen from the aerial imagery of No. 63 (above), the majority area of private open space is located in the rear yard of the three unit development. This area is used exclusively by the resident of Unit 1. The submitted shadow diagrams indicate that this rear open space is not substantially impacted by overshadowing at 9am and 12pm during the winter months from the proposal. This area is impacted by overshadowing from development within the site (garages at rear) however it is considered that at least 50% of this area will receive at least 2 hours of sunlight between 9am and 3pm during the winter months.

The above shadow line diagram indicates that during the winter months the shared ground floor patio area of Units 2 & 3 of No. 63, will be impacted by overshadowing from the proposal. The below images show the current solar access to this patio area at 9am in winter.



Figure 4 Northern patio area at No.63 Kingscliff Street at 9am 18 July

It is likely that this patio area will be substantially overshadowed by the proposal during the winter months. Whilst it is noted that this area is utilised as the principle area of open space for the two ground floor units, these units have access to additional external areas at the front (west) and southern side of the unit development that will not be impacted by the proposal. It is noted however that private open space on the southern side will overshadowed from within the site.

With regard to the above control, whilst it is noted that the ground floor patio area is currently used as the *principle* area of (private) open space by the residents of Unit 2 & 3, and will be significantly impact by the proposal, there are other external areas available for use by the residents (front setback and southern side setback) that will not be impacted by the proposal and will receive the required 2 hours of sunlight during the winter months. The unit development is not strata titled and so it is considered to be reasonable that the residents of the units will have access to external areas that will not be impacted by overshadowing.

ii. Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

As described above, windows of a living area, kitchen and bedrooms are located on the northern ground floor elevation of No. 63. The living area of Unit 3 is has a window to the front of the site (west) and will not be impacted by overshadowing from the development. The living area for Unit 2 is located centrally located within the building and has a window on the southern elevation. Solar access to this southern facing window is limited by its position within the unit development and is not impacted by the subject proposal.

The shadow diagrams indicate that these windows will receive some sunlight at 9am however will be in shadow by noon and are unlikely to receive at least three hours of sunlight between 9am and 3pm during the winter months. The images



below indicate that these windows are currently in shadow by 9am during the winter as they are currently shaded by the 1.2m overhang of the upper level unit.

Figure 5 Shadow of patio area at No.63 Kingscliff Street at 9am 18 July.

It appears that these windows currently receive limited sunlight and during the winter months due to configuration of the unit development. As such it is considered that the subject proposal will not affect the current (limited) solar access to the windows of living areas of the ground floor units.

With regard to the upper level unit at No. 63, the above plans demonstrate that windows of the northern elevation will not be substantially impacted by overshadowing from the proposal and will receive the required amount of at least 3 hours of sunlight during the winter months. Minimal overshadowing impacts are predicted during the summer months.

iii. Where existing overshadowing by buildings is greater than this, sunlight is not to be further reduced by more than 20%.

The existing development at the subject site is a single storey dwelling. The full overshadowing impact of this existing development on No. 63 is not known, however it is not unreasonable to expect that permissible development in this medium density zone with a 13.6m height limit will result in an increase in overshadowing impacts on adjacent properties.

Whilst it is noted that the proposal will result in the reduction in solar access to the patio area of the ground floor at No. 63, this is considered to be reasonable noting that:

 The residents of the units have access to alternate external areas with solar access;

- The site is zoned for medium density residential development (R3);
- The proposal is 8.6m in height which is substantially less than the permissible 13.6m height limit;
- The side setbacks are compliant with the controls;
- The orientation of the lots and current configuration of existing development.
- C5. New dwelling design should minimise overshadowing on existing adjacent solar panels where other reasonable design alternatives are possible.

The plans demonstrate that the proposal will not result in overshadowing of solar panels at No. 63.

The planning and design principles and objectives for solar access are:

- P1. Maximises sunlight access and natural ventilation whilst minimising potential sunlight access and overshadowing issues for adjoining properties.
- P2. Small lot housing sites that are often constrained by narrow frontage, incorporate north facing courtyards, internal voids and double volume spaces combined with highlight windows to improve solar access and natural ventilation.
- O1. To ensure the dwelling is sited and designed to maximise sunlight and daylight access and natural ventilation to living spaces and external living areas.
- O2. To minimise the potential impacts on solar access and natural ventilation to adjoining properties.

The proposed development provides adequate solar access for future occupants via the inclusion of living areas with windows on the eastern and western elevations and two external living areas to maximise solar access on the eastern and western aspects of the site.

Whilst the proposal will result in overshadowing of the unit development to the south at No. 63, the proposal is considered to be acceptable with regard to the above principles and objectives. The single storey portion of the proposal at the rear of the site ensures overshadowing impacts to the rear private open space of No. 63 is minimised. Overshadowing of bedroom and kitchen windows is considered to be acceptable with respect to permissible development on the site, noting that existing solar access to windows of living rooms will not be impacted by the proposal.

Privacy and amenity

The plans include 2m x 1m windows to bedrooms of the upper level in the side elevation and the submission raised concerns regarding the potential privacy impacts from the windows in the side elevation. The applicant was requested to include provide an amended site analysis that includes the location of windows on adjoining properties to ensure that the placement of windows do not result in any privacy impacts.

The applicant subsequently provided a further detailed assessment of the impact of the proposed window placement and noted that the south facing window of bedroom 3 on the second level of Unit 2 will partially align with an upper level window of the unit development at No. 63. An enclosed sunroom is located on the northern elevation of the upper level unit at No.63 and it is these windows that may have visual connection with the proposed development. It is noted that the sunroom windows have fixed external privacy/shade screens which would mitigate any potential privacy impacts.



Figure 6 Existing privacy at No.63 Kingscliff Street (southern adjoining property)

The 2m x 1m window in the northern elevation of the proposed development overlooks a single storey portion of the adjoining residential development to the north of the subject site and does not raise any privacy concerns. Other windows to upper level bedrooms and secondary living areas of the proposal are high level windows which are considered appropriate to allow adequate natural light without raising any privacy or amenity concerns.

Front fencing

A pool is located in the front setback and the initial set of plans included a 2m solid front fence which is not in accordance with the controls. The applicant was requested to amend the plans to be compliant with Council's controls in relation to fencing to pools within the front setback.

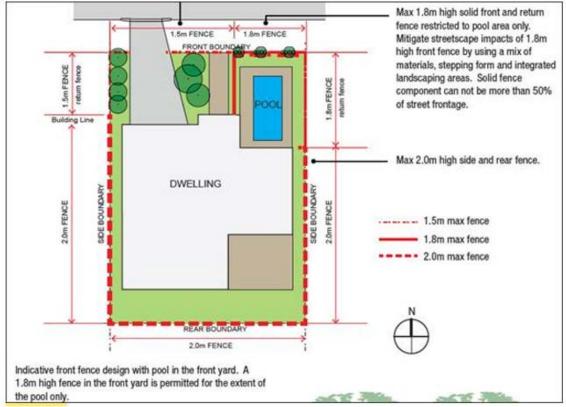


Figure 7 Fencing controls where a pool is located in the front setback

Amended plans indicating a 1.8m high fence were submitted following additional requests and discussions to amend the fencing design. The following comments were submitted by the applicant:

The front fence has been reduced in height to 1.8m as requested. The fence is highly articulated and presents well to the street. The fence has been divided into 5 distinct and separate bays to provide visual interest. The solid portion of the fence on the boundary comprises 40% of the overall elevation with the remainder of the fence being articulated by a recessed landscaped bay and a gatehouse structure. The fence is consistent with the prevailing pattern of fences on this side of the street which are primarily solid timber paling of masonry style fences.

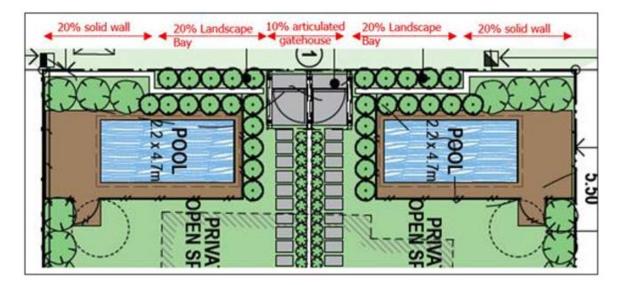


Figure 8 Front fencing detail

The controls allow for a solid fence for the width of the pools. The proposed 1.8m high solid fencing, articulated to allow for landscaping elements is considered to be generally consistent with the intent of the controls in that the two pools for the dual occupancy occupy the majority of the width of the lot. The proposal is considered to be acceptable in this regard.

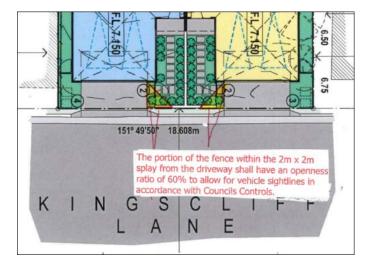
Landscaping

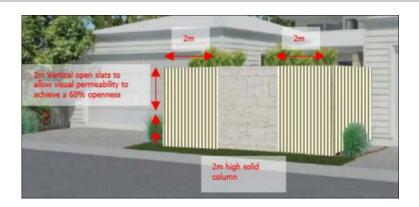
A landscape plan was submitted with the application which demonstrates that appropriate landscaping is proposed to enhance the site and includes tree plantings in the deep soil zone/central courtyard of each unit. The plan included some species listed however a detailed species list of all proposed plantings was not included and as such it was unable to be determined if the landscaping complies with the requirement of 80% local native species. Councils Sustainability and Environment Unit also queried the appropriateness of some of the larger species in within the side setbacks. The consent will therefore include a condition to require a detailed plan of landscaping be submitted prior to the issue of a construction certificate (PCC0585).

A2-Site Access and Parking Code

The controls state that two parking spaces is to be provided per dual occupancy unit. The proposal includes an attached double car garage for each unit with access from Kingscliff Lane to the rear and so complies with the control.

A solid 2m high fence was initially proposed to the rear lane boundary adjacent to the driveway access which failed to provide compliant sight lines for car exiting the garages. The application was requested to amend the fence design to provide appropriate sight lines for the rear driveways. The amended plans show a 2m solid fence with a 2m x 2m section constructed of vertical slats with a 60% openness ratio.





The proposal was referred to Council's Traffic Unit for review who considered the fencing to be acceptable with regard to the safety of users of the laneway.

A3-Development of Flood Liable Land

The site is mapped as being affected by the Probable Maximum Flood level (PMF). The plans indicate that the minimum habitable floor level of the proposal is to be at RL 6.15m AHD which is above the minimum habitable floor level of RL 3.1m AHD for the Shire. The proposal is considered to be compliant with the provisions of Section A3.

A11-Public Notification of Development Proposals

The proposal was notified in accordance with Section A11 to adjoining property owners with a submission period of fourteen days from Monday 4 March 2019 to Monday 18 March 2019. During this time one submission was received in relation to the proposal which is discussed in a later section of this report.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast. This proposal relates to infill residential development does not contravene the intended urban structure, centres hierarchy or design principles of this plan.

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

There are no known planning agreements in relation to the site.

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

Clause 92(1)(b) Applications for demolition

This application does not seek approval for demolition. The applicant has stated that approval for demolition of the existing dwelling will be sought separately to this application.

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 <u>Coastal</u> <u>Protection Act 1979</u>),

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 primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology; and, social and economic demand. It is considered that the proposal represents an appropriate development on land zoned for residential use and achieves an adequate spatial separation from the coastal foreshore. The proposal is generally consistent with the objectives of the Management Plan.

Tweed Coast Estuaries Management Plan 2004

The site is located approximately 2km from Cudgen Creek and is located within the Cudgen Creek Catchment area. The proposal is consistent with Strategy 9 relating to Urban Development and Stormwater in that the proposal relates to residential development within an established residential area and is not inconsistent with the principles of ecologically sustainable development.

The proposal is unlikely to create an unacceptable impact on Cudgen Creek and is not inconsistent with the provisions of the Plan.

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

The site is not located in an area to which this plan applies.

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

Flora and Fauna

The application will require the removal of some native vegetation planted as landscaping trees. The trees were not listed as prescribed vegetation under Section A16 of the DCP and their removal was considered to be acceptable.

The proposal will result in impacts to trees located on adjacent lots due to the trees location in proximity the boundary line. The trees are identified as being one Syzygium (10m high) and two frangipani trees (4m high) as shown below:



Figure 9 Location of affected trees. (1) Syzygium; (2) & (3) Frangipani

An arborists report was requested to provide an assessment of the impact of the proposal on the adjacent trees specifically with regard to the two frangipani trees located on the southern side boundary as the owner of these trees expressed concern with regard to the impact of the proposal on the frangipani trees. The arborists report concluded that the Syzygium (1) on the northern boundary should be removed due to its location and poor condition. Owner's consent has been provided for the removal this tree by the affected property owner's (recorded on file).

The frangipani trees were considered able to be retained and the report includes recommendations for management of works within the tree protection zone. The consent will be conditioned to comply with the recommendations of the arborists report and the proposal is considered to be acceptable in this regard. Council's Sustainability and Environment Unit have reviewed the application and associated arborists report and the following statement was included in comments:

The proposed development does not involve the removal of any prescribed vegetation which would typically require a permit under DCP A16 to remove. Arboricultural provisions have been made to avoid and minimise harm to non-prescribed vegetation requested to be retained from the neighbouring property to the south.

Providing conditions of consent are adhered to the proposed development is not anticipated to have a significant adverse impact on the environment.

The proposed development Does satisfy Section 1.7 of the EP&A Act 1979 - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994.

Context and Setting

The proposed dual occupancy is consistent in scale and built form of surrounding residential development which is a mix of one and two storey single dwelling houses, dual occupancies and multi-dwelling developments.

The proposal is permissible within the zone and complies with the statutory controls. It is appropriately sited and sensitively designed to enhance the existing street scape any potential impacts on the amenity of adjoining residences is minimised. Accordingly, the proposed dual occupancy is considered to be consistent with the surrounding medium density context and setting of the subject locality.

Utilities

The site has existing water and sewer connections. As no strata subdivision is proposed a second water connection is not required. The proposal will not impact on Council's Water and Wastewater infrastructure.

Access, Transport and Traffic

The proposal is not considered likely to generate significant volumes of traffic so as to be detrimental to the character of the area. The subject site is considered to be able to accommodate the additional traffic and parking requirements generated by this proposed development, given its location in a modern subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is located in an established residential area. The bulk and form of the proposal is considered acceptable and generally in keeping with the existing residential development. The development is consistent with other recent approvals in the locality in which older residential dwellings are being replaced to provide for a higher density development. The proposed infill development is considered appropriate with regard to its locality within the R3 medium density zone.

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

The application was notified to adjoining property owners with a submission period of 14 days from Monday 4 March 2019 to Monday 18 March 2019. During this time one submission was received from the adjoining property owner to the south of the subject site.

Summary of issues	Planning response
The matters raised in the submission are as follows:	The applicant was requested to provide a more detailed assessment/diagrams of the overshadowing impacts so a comprehensive assessment of the full overshadowing impacts could be undertaken.

Summary of issues	Planning response
Height of the proposal and resulting impacts on solar access to ground floor unit and upper level unit;	Additional shadow diagrams were submitted which illustrated the shadow impacts in relation to the northern elevation of the property to the south at No. 63 Kingscliff Street. The shadow diagrams showed patio areas will be substantially impacted by
Overshadowing of solar hot water panels;	
 Impacts on the submitters trees located close to the common property boundary with the subject site (2 x frangipani trees); 	overshadowing from the proposal. As discussed in an earlier section of this report, the proposal is considered to be acceptable as residents have access to alternate external spaces with solar access.
Privacy impacts from windows in southern elevation;	The proposal however will not impact living
Adequacy of shadow diagram.	room windows of the ground floor units and so the overshadowing impact was
Additional Matters	considered to be acceptable with respect to
The owner of the property at No. 63 Kingscliff Street contacted Council after the submission period and queried the surveyed lot boundaries. They	the objectives of the solar access controls in the DCP and permissible development for the medium density zone with a 13.6m maximum building height.
expressed concern that on site survey work has incorrectly located the property boundaries with an 18mm encroachment into his lot.	The windows of the upper level unit will receive adequate solar access and the proposal will only have a minor shadowing impact on these windows.
It is noted that the site plan for the proposal indicates that fence on the common boundary between the subject site and No. 63 is not located on the lot boundary but approximately 200mm north of the common boundary and wholly within the subject site.	The additional shadow diagrams indicated that the solar panels at No. 63 Kingscliff Street will not be impacted by the proposal.
	The shadow diagrams have been verified by online tools and have been found to be a fair representation of the shadow impacts.
	An arborists report was requested to provide an assessment to the frangipanis trees that are located adjacent to the property boundary as it was considered that the proposal may impact the structural root zone of these trees. As discussed previously, the arborists report considers that these trees are able to be retained and provides recommendations to manage construction activities in the tree protection zone for these trees. The consent will be conditioned to comply with the report.
	Existing shade screens and vegetation to be retained at No. 63 Kingscliff Street are sufficient to mitigate any privacy impacts from upper level bedroom windows of the proposal.
	With regard to lot boundaries, a standard condition of consent is imposed which requires that boundary setback measurements are taken from the real property boundary and not from fence lines. A further condition of consent has been

Summary of issues	Planning response
	imposed to ensure that certification is provided that the building is positioned correctly on the site. Boundary disputes are not a matter managed by Council.
	Subject to conditions of consent, it is considered that the matters raised in the submissions have been adequately addressed and the proposal does not warrant refusal in this regard.

The application was referred to Essential Energy (EE) who provided comments in relation to the proposal in accordance with Clause 45 of the SEPP Infrastructure 2007.

It is noted that EE has no objection to the dual occupancy. The consent will be conditioned to ensure that the requested Level 3 accredited service provided certified plans will be submitted to EE for approval prior to the issue of any Construction Certificate for State 2 of the proposal (pools and fencing) (PCCNS02 & PCCNS03).

A copy of the comments provided by EE has been provided to the applicant.

(e) Public interest

The proposed development has been assessed against all relevant legislation and policies, is permissible with Council consent and is not considered to be contrary to the public interest. Subject to conditions of consent, the application is considered reasonable and appropriate for the locality.

OPTIONS:

- 1. Approve the development application subject to recommended conditions of consent.
- 2. Refuse the application and provide reasons for refusal.

Option 1 is recommended.

CONCLUSION:

The proposed development has been considered in accordance with the relevant statutory obligations under Section 4.15 of the Environmental Planning and Assessment Act 1979, and on balance is considered to be suitable for determination by way of an approval.

The overshadowing impacts anticipated from the proposal are considered to be reasonable with respect to the objectives of the R3 zone to provide a variety of housing in a medium density residential environment. The development is not considered to result in an adverse impact to the built and environmental amenity of the area and to secure this outcome, appropriate conditions have been applied.

The proposal is considered to suitable and appropriate for the subject site, given its permissibility on the R3 Medium Density Residential zone. Matters raised in the submissions have been suitably considered and addressed and these matters do not warrant refusal in this regard. In addition, matters of public interest have been considered and addressed as part of this assessment.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

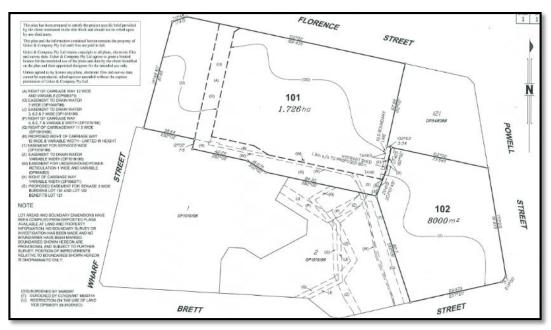
3 [PR-PC] Development Application DA17/0733 for a Two Lot Subdivision and Associated Civil Works at Lot 12 DP 803451 and Lot 121 DP 548088 No. 22-38 Florence Street, Tweed Heads

SUBMITTED BY: Development Assessment and Compliance

mhm	
	Making decisions with you We're in this together
LINKAGE	TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:
2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.
ROLE:	Provider

SUMMARY OF REPORT:

Council is in receipt of a Development Application for a two lot subdivision at Tweed Heads Bowls Club. The subdivision proposes Lot 101 with an area of 1.726 Ha to contain the club building, three bowling greens and car parking. Proposed Lot 102 will have an area of 8,000m² which is currently the site of bowling green, a toilet block and car parking.



Proposed two lot subdivision of the existing Tweed Heads Bowls Club site

The proponent has advised that the intent of the Club is to on sell proposed Lot 102 and by doing so relinquish control of the parking spaces located upon it (SEE Planit Consulting, Aug

2017). The proponent does not want future Lot 102 encumbered by a Section 88B car parking restriction which was proposed within the original submission. This Section 88B instrument restriction to user over future Lot 102, would have prevented the removal of the car parking spaces on Lot 102 until the Club provides additional car parking. No timeframe nor design of any replacement car parking was provided.

Therefore the proposed subdivision involves the removal of 188 car parking spaces from the area of future Lot 102 which are currently required by the Club as approved under previous development consents. The proposal results in a reduction in car parking being made available to Club patrons and staff from 415 to 227 car parking spaces. Tweed DCP 2008 Section B2 requires new developments of this nature to provide 1,963 car parking spaces while alternatively Section A2 requires 1,019 car parking spaces. Therefore the application seeks approval for a 78-88% variation to Tweed DCP 2008.

The proponent has submitted car parking assessments with the intent to convey that the proposal is acceptable given the surveyed car parking demand generated by the Club. A detailed assessment was undertaken and Council's Traffic Engineer cannot support the conclusions given the substantial inconsistencies with the submitted reports for the subject site pursuant to this application and Development Consent DA11/0582.02 for the staged redevelopment of the Club originally approved in 2012. Further, concerns were raised with some of the rationale applied in the reporting and the Club's desire to not implement the recommendations of their Traffic Consultant.

Also, Council's Traffic Engineer is not satisfied that the Aims and Objectives of the relevant sections of Tweed DCP 2008 are met and concludes the proposed removal of 188 car parking spaces without replacement is likely to have a detrimental impact on car parking and traffic in the local area which is already experiencing high demand. Further, it would be expected that the incidence of illegal and unsafe parking would result and an increased Council resource demand regarding regulation of on-street parking in the future. Council has evidence through complaints and Council staff observation that the surrounding area is the location of ongoing car parking and traffic concerns albeit not solely caused by the Club at present however the removal of car parking is likely to detrimentally impact the Club's operations.

It is noted that Section 7.11 Developer Contributions Plan 23 – Offsite Parking does not apply to this site and therefore the car parking deficit cannot be addressed by way of payment of developer contributions.

The applicant first enquired in relation to the proposed subdivision in 2014 with the subject application lodged in October 2017. Council staff discussed the application and met with the proponent and planning consultant on several occasions prior and throughout the assessment outlining Council's concerns which remained unchanged throughout the assessment with the proponent acknowledging by email after the meeting on 11 April 2018:

Our meeting was very positive and now allows everybody to see that THBC's intention is to subdivide the land, knowing that we may have to provide some additional car parking should the subdivided lot not be used for THBC car parking in the future.

Nonetheless, the application was not amended to provide replacement car parking. Council received four sets of information during the assessment.

Given the scale of the variation proposed, the application has been referred to Council for determination recommended for refusal.

RECOMMENDATION:

That Development Application DA17/0733 for a two lot subdivision and associated civil works at Lot 12 DP 803451 and Lot 121 DP 548088 No. 22-38 Florence Street, Tweed Heads be refused for the following reasons:

- 1. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section (1)(a)(iii). The proposed development is not considered to be in accordance with Tweed Development Control Plan 2008 Section A2 Site Access and Parking Code;
- 2. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section (1)(a)(iii). The proposed development is not considered to be in accordance with Tweed Development Control Plan 2008 Section B2 Tweed City Centre;
- 3. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section (1)(b) and the likely access, transport and traffic impacts of the development; and
- 4. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section (1)(e) the public interest. The development is not considered to be in the public interest given the scale of variations to the controls required.

REPORT:

Applicant:	Tweed Heads Bowls Club Limited
Owner:	Tweed Heads Bowls Club Pty Ltd
Location:	Lot 12 DP 803451 and Lot 121 DP 548088 No. 22-38 Florence Street, Tweed
	Heads
Zoning:	RE2 Private Recreation. Key Site
Cost:	\$40,000

Background:

Subject Site

The subject site is 2.526 Hectares and is currently developed as the Tweed Heads Bowls Club. The property has frontage into Wharf Street to the west, Florence Street to the north, Powell Street to the east and Brett Street to the south. The Club shares the block with St Cuthberts Anglican Church which is located on the north east section of the block and the Tweed Heads Civic Centre and Tweed Heads Library on the south west section of the block. Tweed Hospital is to the east of the development, medium density residential development is to the north and mixed use development to the west.



The subject site aerial photograph

As shown in the aerial photograph above, the main club building is located on the main north section of the site with three bowling greens located along the north boundary. An additional bowling green is located to the south east which is surrounded by car parking. Another car park is located along the western boundary and under the main building. It is noted that the other allotment to the north incorporates an existing detached car park which is utilised for parking related to the Club however is not subject to this application.

Site History

Land reclamation was undertaken west of the Tweed River in the period between 1962 and 1971 to create the land area the site currently occupies. Between 1972 and 1976 the club was constructed on the northern section of at the site and a retirement village was constructed in the southeast corner. The retirement village was later demolished in the 1980's and replaced with a bowling green and car park area.

Council records indicate a lengthy history in terms of various development applications and complying development certificates for the club. The following is a list of the more recent development approvals:

- DA18/1003 installation of solar panel system to roof of the Tweed Heads Bowls Club granted 21 January 2019;
- DA16/0661 enclosure of outdoor area and internal refurbishment (Tweed Heads Bowls Club) granted 24 October 2016;
- DA16/0112 installation of solar panel system to roof of the Tweed Heads Bowls Club granted 18 March 2016;
- DA14/0279 15m deep water bore granted 30 June 2014;
- DA14/0278 installation of lighting for existing bowls greens 1 & 2 granted 30 June 2014; and
- DA12/0033 refurbishment of the Sails Restaurant located within the Tweed Heads Bowls Club granted 27 June 2012.

On 28 August 2012, Development Consent DA11/0582 was granted for a staged redevelopment of Tweed Heads Bowling Club (4 stages) including formalising detached car park, construction of a new multi-level car park, alterations and additions to existing club and construction of a seniors living development comprising 91 self-contained units (JRPP). The redevelopment is proposed across the following stages:

<u>Stage 1</u>- Formalisation of the existing detached car park at 58-64 Wharf Street, to provide 56 spaces;

<u>Stage 2</u>- Construction of a new level basement car park on the Tweed Heads Bowls Club site, to replace the existing at grade parking area. The new parking will provide two basement levels, with a total of 179 car parking spaces;

<u>Stage 3</u>- The expansion of the existing Stage 2 basement car park, by providing a third car park at entry level, the expansion of the existing club foyer area, including new Porte Cochere, pedestrian entry from Florence Street and roof façade screen; and

<u>Stage 4</u>- Construction of a 91-unit serviced self-contained seniors living development adjacent to Powell Street and Brett Street. The units will be in two separate blocks, built around a central open space core. Car parking will be provided in the basement of each block.

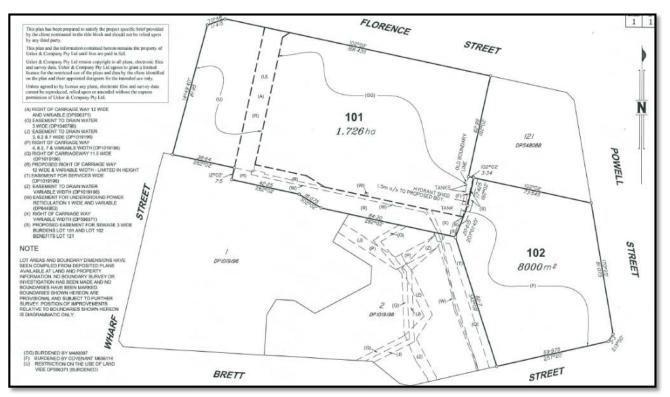
Access to the site will utilise the existing access points on Florence Street, Brett Street and McGregor Crescent. The existing driveway access on Powell Street will be relocated to provide vehicular access to the basement level of the seniors living component.

DA11/0582 application was subsequently amended twice. Development Consent DA11/0582.01 granted 1 September 2017 approved a reconfiguration and increase of car parking within Stage 1 to provide 70 spaces while DA11/0582.02 approved the inclusion of a boom gate to the Stage 1 car park entrance granted 13 July 2018.

Proposal

Council is in receipt of a Development Application for a two lot Torrens title subdivision of the Tweed Heads Bowls Club site as follows:

- Lot 101 with an area of 1.726 Ha. This allotment is proposed to contain the club building, three bowling greens and car parking; and
- Lot 102 with an area of 8000m² which is currently the site of bowling green, a toilet block and car parking.



Proposed Subdivision Plan

Civil works are proposed to facilitate the subdivision which include water and sewer infrastructure works which involves works within the neighbouring Lot 121. Landowner's consent from Lot 121 has been provided.

No further construction works are proposed as part of this application.

During the assessment, the proponent has also advised that the intent of the Club is to on sell proposed Lot 102 and by doing so relinquish control of the parking spaces located upon it (SEE Planit Consulting, Aug 2017).

The original submission involved the imposition of a Section 88B instrument restriction to user on future Lot 102, *preventing the removal of the car parking spaces on Lot 102 until such time as the Tweed Heads Bowls Club Ltd provides additional car parking spaces.* (SEE Planit Consulting, Aug 2017).

Later the proponent amended the application requesting that Lot 102 not be encumbered by a car parking Section 88B instrument and *As this development will be owned and operated independent of the Club and no additional Club parking is proposed, the remaining parking areas must provide sufficient parking to meet the parking demands of the Club and the proposed development* (Bitzios, 5 June 2019).

The subject application submission makes reference to the intent for the Club to on sell proposed Lot 102 which is the location of the 91-unit serviced self-contained seniors living development approved as Stage 4 of Development Consent DA11/0582.02. Stage 1 has been completed however it was also conveyed by the proponent during meetings that the Club has no intention of undertaking Stages 2 and 3 as the redevelopment is considered not feasible.

In this instance, if any future purchaser wishes to undertake Stage 4, a Section 4.55 amendment to DA11/0582.02 will be required to re-order the stages. However, given both stages 2 and 3 involve construction of additional car parking, any Section 4.55 modification would involve a reassessment of car parking provision to the club at each stage. As such, this application has been assessed so as to not limit proposed Lot 102 to development approved under Stage 4 of Development Consent DA11/0582.02 and so as not to assume approval of a future Section 4.55 modification to re-order the staging particularly given the car parking deficits that may occur at various stages of the redevelopment which is not the case with the current approval.

Further, it is noted that the proponent requested *Council to focus its assessment to the most recent parking analysis provided by Bitzios Consulting in June 2019* (Planit Consulting email dated 17 July 2019). The document dated June 2019 is a letter that attempts to address Council's concerns raised regarding the previous reports. The letter is not a stand-alone detailed car parking assessment and relies on the information from previous reporting. As such, Council was required to consider previous reporting.

Application History

The applicant first enquired in relation to the proposed subdivision in 2014. In 2016, the applicant's planning consultant followed up with email enquiries and meetings with Council officers on the matter of additional parking being required as part of the proposal and the *'timing of the delivery of the additional parking'*.

27 October 2017 - The subject application was lodged.

13 February 2018 - After a preliminary assessment of the original submission, concerns were raised with the proponent by email and Council officers requested a meeting to discuss the best way to progress the application. The consultant attempted to respond to the meeting agenda items by email.

28 February 2018 - Council sent a formal detailed request for further information requesting additional information in relation to the following and again requesting a meeting to discuss:

- Burdening the future Lot 102 by way of Section 88B Instrument related to car parking and the staging of future development by owners other than the club;
- Commencement of Development Consent DA11/0582.01;
- Water and sewer infrastructure details;

- Landowners consent request for Lot 121 DP 548088 given sewer works were proposed for within the church grounds. Also to consider review of the subject allotments and whether car parking allotments to the north that service the club development are to be included for consideration as part of the subject application; and
- Recommending a meeting to discuss the proposal as the best way to progress the application.

11 April 2018 - A meeting was held between the THBC General Manager and their planning consultant. The proponent acknowledged in following correspondence:

"We understand councils request/concern as to how THBC plans to satisfy car parking requirements should the intended new lot (8,000m2) not be used for car parking.

As agreed, Simon Halcrow will respond to the February dated letter outlining how the subdivision DA will be amended which will include a revised Bitzios Traffic Report that considers the 2011 DA (4 stage DA), intended courtesy bus offer, reduced or no reserved car parking, no intended GFA increases, no reliance on the expired Sails DA of 2011 etc.

Our meeting was very positive and now allows everybody to see that THBC's intention is to subdivide the land, knowing that we may have to provide some additional car parking should the subdivided lot not be used for THBC car parking in the future."

Council clarified to the proponent:

"The revised Bitzios Report needs to do a Gross Floor Area Analysis for the existing club and calculate the required parking under Tweed DCP A2 for the existing Gross Floor Area. The Bitzios report may want to analyse past development consents as those past consents may have applied concessions for individual DA's.

The revised Bitzios report can then apply for reduced parking based on demand generated analysis (less occupancy), charter bus etc. BUT we need the baseline GFA analysis to know how much of the standard is being proposed to be varied. And obviously such variation should aim to be minimised."

4 July 2018 - Council provided the applicant's traffic consultant a draft car parking assessment and confirmed applicable car parking rates to assist the process.

9 October 2018 - A response to Council's request for further information was received by Council which only discussed car parking at the site. The outstanding matters were raised with the applicant that day.

16 October 2018 - Further engineering information was received.

25 October 2018 - Another meeting was for held between Council officers, the proponent and planning consultant where the following was noted by Council via email:

- You wish for future Lot 102 to be unencumbered;
- At this stage there is no intention for the Club to undertake Stages 2 & 3 of DA11/0582;
- Ideally you don't want to have to construct a car park in place of one of the greens (as
 possibly proposed within the Bitzios Consulting Parking Assessments);

- You will lodge a response the Council's RFI dated 28 February 2018;
- You will be preparing an amended Bitzios report (not an options report) that will match your intentions for the current DA which will match your RFI response;
- You will amend the current DA to match the necessary works needed to accommodate the proposal;
- You will be advising us in writing within a week, a timeline for all of this as the DA has been in for some time and needs finalisation as a priority;
- Council expressed a preference for the DA to be withdrawn and re-lodged if the amendments were going to take more than four weeks.

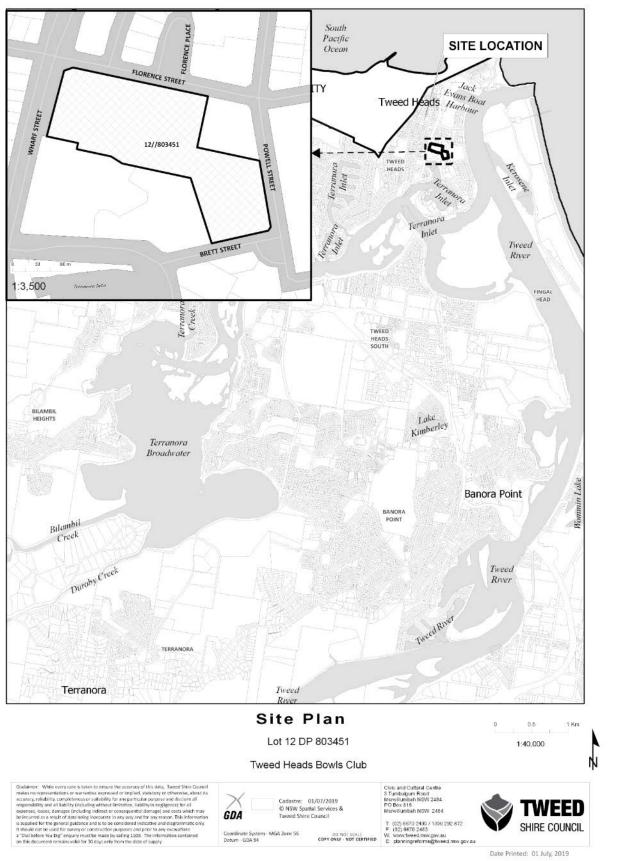
14 December 2018 - A response to Council's request for further information was received.

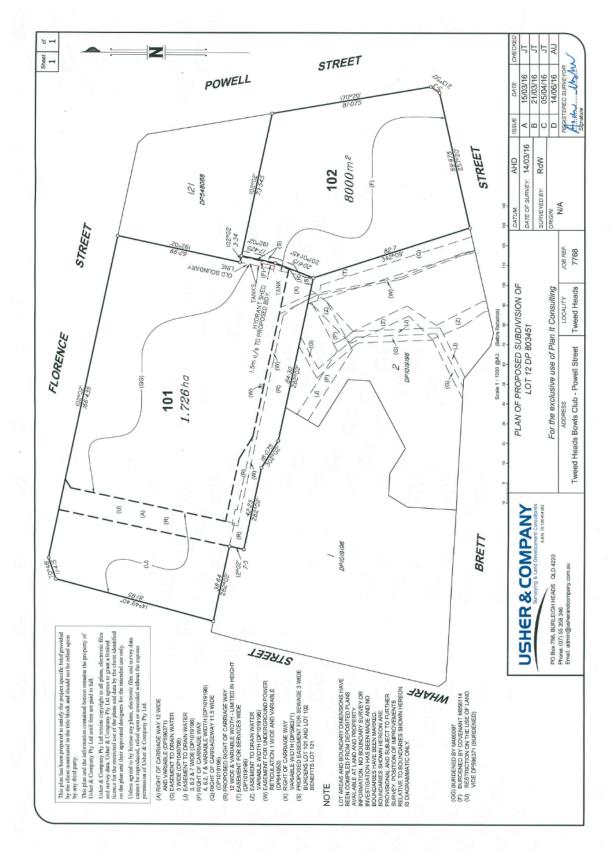
1 March 2019 - The proponent was formally advised that the information provided continued to not address the matters outstanding. Further phone discussions were had with the planning consultants in March 2019.

20 May 2019 – A meeting was held where the applicant requested another opportunity to submit updated documentation to address the issues which was accepted.

6 June 2019 – Final additional information was received by Council.

SITE DIAGRAM:





DEVELOPMENT/ELEVATION PLANS:

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

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

Tweed City Centre Local Environmental Plan 2012

Clause 1.2 – Aims of the Plan

This Plan aims to make local environmental planning provisions for land in Tweed City Centre in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.

The particular aims of this Plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,
- (d) to promote development that is consistent with the principles of ecologically sustainable development,
- (e) to promote the economic revitalisation of Tweed City Centre,
- (f) to strengthen Tweed City Centre as a multi functional and innovative regional centre that encourages employment and economic growth,
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.

The proposed development relates to a subdivision on appropriately zoned land and therefore the proposed development is considered to be generally consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

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

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

The proposal will result in development which is not inconsistent with the zone objectives however the proposed loss of car parking is considered to hinder the recreational use of the site.

Clause 2.6 – Subdivision

This clause states:

• Land to which this Plan applies may be subdivided, but only with development consent.

As such, the proposal complies with this clause given the subject development application.

Clause 4.1 – Minimum subdivision lot size

Clause 4.1 requires the size of any lot resulting from a subdivision of land to be not less than the minimum size shown on the Lot Size Map in relation to that land.

The subject site is not identified on the Lot Size Map and as such, this clause does not apply.

Clause 4.3 - Height of Buildings

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity. This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject development site is identified as having a maximum building height of 13.6m as identified on the building height map.

As building construction does not form part of this application, the proposal is considered acceptable in this regard.

Clause 4.6 - Exceptions to development standards

The objectives of this clause are as follows:

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

No variations to development standards under this Plan have been requested.

Clause 5.5 – Development within the Coastal Zone

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

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

The subject application does not impact existing or proposed access along the coastal foreshore.

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

The proposed subdivision is permissible on the subject site and as such is considered to be acceptable at this location.

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

The proposed development is located approximately 250m from the Tweed River and 1200m from the coastal foreshore. The subject application does not propose building construction and therefore the proposed subdivision is not considered to result in any overshadowing of the foreshore, nor loss of view from a public place. The subject application is considered to be acceptable having regard to the above considerations.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it does not propose any building construction.

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

The proposal is to be undertaken on a land which is already developed as the Tweed Heads Bowls Club. It is considered that the impact that the proposal will have with regard to local biodiversity or ecosystems is considered to be minimal.

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

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

This clause goes on to further state:

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

Given the subject site's proximity to the foreshore, it is considered that the proposal will not impede or diminish the right of access of the public either to or along the river or foreshore.

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

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

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

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

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

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

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

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

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

The subject site is not mapped as containing a Heritage Item nor is located within a mapped Heritage Conservation Area. Further the site is not mapped as a Known or Predictive site of Aboriginal Cultural Significance. Given sites with Heritage value are not located within the proposed development site, the proposal is not considered to result in any detrimental impact with regard to heritage conservation and is considered acceptable with regard to provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

The subject site is not mapped as bush fire prone and bush fire hazard reduction work is not proposed and as such this clause is considered satisfied.

Clause 6.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. The site is class 2 on the ASS Planning Maps and minor works to divert sewer services are required to facilitate the subdivision. The application was referred to Council's Environmental Health Unit who raised no objections to the proposal subject to conditions of consent. As such the proposal is considered acceptable in this regard.

Clause 6.2 – Flood Planning

The objectives of this clause are as follows:

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

Small areas of the subject site (less than 100m² of the 2.526 Hectare) site are mapped as flood prone and subject to the to the Q100 flood at RL 2.6 AHD.

The clause states that development consent must not be granted to development on land at or below the flood planning level unless the consent authority is satisfied that the development:

- (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 proposed subdivision is not considered to result in a greater impact from any flood event given the unchanged access and ongoing recreational use of the site. As such, the proposal is considered to satisfy Clause 7.3.

Clause 6.3 - Floodplain risk management

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

The subject site is subject to the Probable Maximum Flood level (PMF) however as the proposal does not involve any of the nominated land uses, this clause is considered satisfied.

Clause 6.6 – Minimum building street frontage

This clause states that development consent must not be granted to the erection of a building on land in nominated zones that does not have at least one street frontage of 20 metres or more. This clause does not apply to the subject RE2 Private Recreation zone and as such the proposal is acceptable in this regard.

Clause 6.9 - Airspace operations

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

Given the proposal is for a subdivision with no building construction works proposed, the development is acceptable in this regard.

<u>Clause 6.10 – Design excellence</u>

This clause applies to development involving the erection of a new building or external alterations to an existing building on land to which this Plan applies. Although the subject site is mapped on the relevant Key Sites Map, given the proposal does not involve any building construction works, the proposal is acceptable in this regard.

North Coast Regional Plan 2036 (NCRP)

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

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

The application was referred to Council's Environmental Health Unit for assessment in this regard. The Statement of Environmental Effects advises as follows with respect to the issue of contamination.

Development Consent DA11/0582 approved a staged redevelopment of Tweed Heads Bowling Club (4 stages) including formalising detached car park, construct new multi level car park, alterations and additions to existing club and construct seniors living development comprising 91 self-contained units in 2012.

A detailed site contamination investigation assessment report was prepared for Development Application DA11/0582 which identified the following potential areas of concern which will need to be investigated further:

- Underground diesel storage beneath the southern foyer of the bowls club building
- Potential migration of fuel from the decommissioned service station immediately North west of the site
- Potential migration of fuel from the underground diesel storage of the Tweed Hospital
- Long-term application of pesticides to the bowling green in the area to be redeveloped
- Potential asbestos contamination beneath the car park and Bowling Green areas".

Detailed soil testing was carried out which concluded that further investigation in relation to the area of proposed Stage 4 was required.

Subsequently Condition 132 of DA11/0582 required that "in the event that remediation of identified contaminated material is necessary as a consequence of Stage 4 development works than such contaminated material shall be managed in accordance with the Preliminary Remediation Action prepared by HMC."

Proposed Lot 102 is the site of Stage 4 development works under DA11/0582 and the Statement of Environmental Effects advises that "As the proposed relates to subdivision and minimal works are proposed the requirements of DA11/0582 are considered sufficient to address any materials with proposed Lot 102."

Should works associated with the relocation of services associated with the subject subdivision intercept any previously identified contaminated materials then such works shall be managed in accordance with the Preliminary Remediation Action Plan prepared by HMC Environmental Consulting. It is considered that the issue of contamination can be addressed by conditions of consent consistent with Development Consent DA11/0582.

On the basis of the above, contamination is not considered to be a constraint for the proposed development and the provisions of SEPP No 55 are considered satisfied and land contamination matters are adequately addressed subject to conditions of consent.

SEPP (Coastal Management)

The Draft SEPP (Coastal Management) was exhibited in 2016 with the SEPP (Coastal Management) adopted 23 March 2018. The adoption of SEPP (Coastal Management) repealed SEPP No 14, SEPP No 26 and SEPP No 71. The application was lodged 27 October 2017 and therefore in accordance with Clause 21 of SEPP (Coastal Management), the subject application is to be assessed against of SEPP No 14, SEPP No 26, SEPP No 71 and Draft SEPP (Coastal Management).

The subject site is not mapped as land affected by SEPP No 14 – Coastal Wetlands and SEPP No 26 – Littoral Rainforests. However, the subject site is mapped as within the Coastal Zone of SEPP No 71 and following is an assessment of the proposal accordingly.

SEPP No 71 – Coastal Protection

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

Clause 8 – Matters for consideration

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

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

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

The subject application does not impact existing or proposed access along the coastal foreshore. The subject site is 250m from the Tweed River and 1.2km from the coastal foreshore.

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

Given the subject site's proximity to the coastal foreshore the proposal cannot offer opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

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

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

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

The proposal will not result in any detrimental impact on the coastal foreshore, given its distance from the coastal foreshore.

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

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

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

The proposal is not anticipated to impact negatively any animals or their habitats.

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

The proposal is not considered to have an adverse impact upon marine environments or habitats.

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

The proposal is not anticipated to impact negatively any wildlife corridors.

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

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

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

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

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

The applicant has undertaken sufficient due diligence and the subject development is not considered to impact on any traditional Aboriginal cultural values.

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

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

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

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

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

Not applicable to the subject application.

- (p) only in cases in which a development application in relation to proposed development is determined:
 - *(i)* the cumulative impacts of the proposed development on the environment, and

This development is not considered to have a negative cumulative impact on the environment apart from issues detailed elsewhere in this report with regard to car parking impacts.

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

The proposal for subdivision does not necessitate the generation of Basix Certification.

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

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

Draft State Environmental Planning Policy (Coastal Management)

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

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

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

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

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

Tweed Development Control Plan 2008

Section B2-Tweed City Centre and Section A2-Site Access and Parking Code

Section B2 Tweed City Centre complements the provisions of the Tweed Local Environmental Plan for development in the Tweed City Centre that will contribute to the growth and character of Tweed City Centre, and protect and enhance the public domain.

Under Part 2.0 *City Centre Character Statements* within Section B2, the subject site is located within the *Civic/Campus Precinct* which primarily supports community related facilities such as Tweed Heads Hospital, Tweed Heads Bowling Club, Civic Centre Library, and St Cuthbert's Church. This precinct has a built form and architecture distinct from the rest of the Tweed City Centre which reflects it's predominantly civic and community role and function.

Regarding this precinct, the Plan states:

"The future development should positively address the surrounding streets and define the new public squares within the precinct. <u>Additional car parking</u> <u>opportunities should be sought within the precinct to reduce the on street car</u> <u>parking pressure on streets surrounding the precinct</u>.

Future multi deck car parking within the precinct should have active uses on ground level facing streets and internal squares and have attractive screening to the upper levels to conceal the parked cars.

The Tweeds Heads Bowls Club development is consistent with the plan regarding the community related services it offers within the precinct and subdividing the site as proposed to facilitate land uses consistent with the Plan would generally be supported. However, the proposal involves a substantial reduction in car parking with no additional car parking opportunities which therefore does not comply with this Section of Tweed DCP 2008.

Regarding Section B2 Part 5.0 *Access, parking and servicing*, Table 5.1 nominates a rate of onsite car parking to be provided and as detailed below the application seeks a variation to Tweed DCP 2008 in this regard. It is noted that Section A2 Site Access and Parking Code also nominates a rate of onsite car parking which in this case is lesser. Strictly applying the relevant controls, it is considered that the site specific Section B2 of Tweed DCP 2008 applies in this regard however as outlined below, even if the lower rate from Section A2 applied, the scale of the variation is still substantial and nonetheless has been considered.

Regarding Section B2 Part 5.0 *Access, parking and servicing*, the Objectives of Clause 5.3 *On-site Parking* are as follows:

- 1) <u>To facilitate an appropriate level of on-site parking provision in the city</u> <u>centre to cater for a mix of development types.</u>
- 2) To minimise the visual impact of on-site parking.
- 3) To provide adequate space for parking and manoeuvring of vehicles (including service vehicles and bicycles).
- 4) To encourage economic growth in the city centre.
- 5) To enable the conversion of above ground parking to other future uses.
- 6) To recognise the complementary use and benefit of public transport and non-motorised modes of transport such as bicycles and walking.

As outlined in the following detailed assessment, the proposal is not considered to facilitate an appropriate level of on-site parking provision in the city centre nor does the proposal provide adequate space for parking of vehicles therefore not complying with the Plan in this regard.

The proposal involves the subdivision of the Tweed Heads Bowls club site. A subdivision alone generally would not involve consideration of car parking however proposed Lot 102 is the location of 188 car parking spaces for the Club and it is noted that the submission states with regard to Lot 102:

As this development will be owned and operated independent of the Club and no additional Club parking is proposed, the remaining parking areas must provide sufficient parking to meet the parking demands of the Club and the proposed development. (Bitzios, 5 June 2019)

In assessing the car parking requirements for the Club, it is noted that the Club has an extensive approval history since the 1980s, which includes the proposed staged redevelopment pursuant to DA11/0582.02 which was approved on the basis that the Club is serviced by car parking which included the 188 car parking spaces located within future Lot 102. Stage 4 of DA11/0582.02 involves the removal of the 188 car parks to make way for a seniors living development however this consent required a number of additional car parks to be constructed prior to Stage 4 to replace the 188 spaces being removed.

The application states that the existing gross floor area of the Club is 9,814m² with 200 total staff (Bitzios, *Staged car parking requirements*, 9 October 2018). Council has considered later correspondence (Planit Consulting email dated 17 July 2019) which advises the total staff numbers as 125. The following car parking rates from Tweed DCP 2008 apply:

Parking Generation clause	Customer parking rate	Staff parking rate	Motorbikes or comments	Requirement
Section B2 – Table 5.1 - Clubs, lounges and bars	1 space per 5m ² of floor area.	Inclusive in customer rate	1 motorbike space per 25 car spaces	1,963 spaces plus 78 motorbike spaces.
Section A2 – Table 2 – Commercial Premises Group - C25 Registered Clubs	1 space per 10m ² of floor area.	0.3 per staff	Where spaces are to be reserved for specific members they must be additional and be nominated at DA stage.	981 customer spaces + 38 staff spaces = 1019 spaces excluding reserved spaces.

In this instance, the site specific Section B2 of Tweed DCP 2008 applies however even if Council applied the lower rates, the scale of the variation remains substantial.

Therefore as the proposal involves the provision of less than the required **1,963 car parking** spaces, a variation is required to Tweed DCP 2008 where the proposal is required to meet the relevant Aims and Objectives. The nature of this assessment is against the Aims and Objectives of Tweed DCP 2008, Section A2 and Section B2 and whether the parking provision on site is capable of catering for the development's needs.

It is also noted that the RTA Traffic Generating Guidelines state:

Parking must be provided to satisfy the peak cumulative parking requirements of the development as a whole, by superimposing the parking demand for each activity. The submission has provided an analysis of car parking surveys in an attempt to provide peak parking demand. These are assessed in detail later in the report.

However it is acknowledged that 415 car parking spaces have been assessed and approved to adequately service the current Club arrangements pursuant to Development Consent DA11/0528.02.

The current provision of onsite car parking

In assessing the substantial variation to the Tweed DCP 2008, the proponent submitted three sets of car parking assessments which were noted to be inconsistent with the current provision of onsite car parking. This created variability in car parking survey results. Council officers undertook a site inspection to confirm the existing car park provision.

It is noted that the existing Club operation is subject to Development Consent DA11/0582.02 and is required to provide the car parking nominated under Stage 1. Site inspection of the club revealed the provision as outlined in the table below which also highlights the inconsistency of the stated existing car parking in the reports.

Reported Existing Car Parking Provision					
Location	Spaces approved under DA11/0582.0 2 after Stage 1. (Required to be onsite)	Bitzios Report dated 12 Oct 2017		Bitzios Report dated 10 Dec 2018	Site Inspec tion
Western Carpark (I)	91	88	91	93	91
Undercover Carpark (F)	56	61	40 unresrved; 16 resrved/ excluded	60	56
Powell Street Carpark (E) & Eastern (D)	188 + 10	172	188	188	188 + 10
McGregor Cres Carpark (A)	70	54 (assumed pre Stage 1)	70	70	70
Total car parking spaces	415	375	389 unreserved (405)	411	415

Following site inspection, Powell Street Carpark (E) was noted to feature 188 car parking spaces where it was observed that 18 spaces were unavailable for parking within Powell Street Carpark (E) due to storage of mobile grandstand seating while 16 spaces within undercover car park (F) were reserved by signage for club directors. Both observations are not permitted in accordance with Development Consent DA11/0582.02. Also, during the site inspection, it was observed that the Club's onsite parking was in high demand with very few spaces available and users appearing to be visiting the Club.

Therefore the development has been assessed that the proposal involves the removal of 188 car parking spaces leaving 227 spaces to provide for the parking demands of the club. Therefore the variation to Tweed DCP 2008 is from 1,963 car parking spaces from Section B2 or 1,019 car parking spaces from Section A2 to 227 spaces. This is a 78-88% variation to Tweed DCP 2008 and a 45% reduction in the current car parking required under existing consents.

Car parking assessments and inconsistent recommendations

As detailed later, the subject application submission has included four sets of car parking assessments or information. Council requested that the car parking assessments should address the staged redevelopment approved under Development Consent DA11/0582.02 where Stage 1 has been completed. To summarise:

- Three of the four submissions involved the consideration of two sets of parking surveys data (April/ May 2016 and November 2018) with the intent of determining peak demand whilst discounting non-bona fide usage of the car parks i.e. Non club patrons utilising club car parking.
- Generally, the first two reports concluded that the removal of 188 car parking spaces would result in a car parking deficit (76-79 spaces) after excluding reported non-bona fide user demand and if no replacement car parking was provided. The recommendations generally included replacement car parking option either by way of undertaking Stages 2 & 3 of DA11/0582.02 or by the constructing new car parking facilities onsite.
- The third report concludes that the removal of 188 car parking spaces would result in a car parking deficit of 2 spaces.
- The fourth report is a letter that attempts to address Council's concerns raised regarding the previous reports and concludes that the proposal *will not introduce any adverse traffic, parking or transport impacts.*

As discussed in the following detailed assessment of each report, Council's Traffic Engineer cannot support the conclusions given the substantial inconsistencies with the submitted reports for the subject application and the approved reports pursuant to Development Consent DA11/0582.02. Further, concerns were raised with some of the rationale applied in the reporting and the Club's desire to not implement the recommendations of their Traffic Consultant. Also, Council's Traffic Engineer is not satisfied that the Aims and Objectives of the relevant Sections of Tweed DCP 2008 are met and concludes the proposed removal of 188 car parking spaces without replacement is likely to have a detrimental impact on car parking and traffic in the local area.

Approved Assessment of DA11/0582.01

This original application was approved by the Joint Regional Planning Panel. As part of the original development application (DA11/0582), the applicant provided a detailed assessment of the existing and proposed car parking provisions for the Club for each stage of the proposed redevelopment.

The applicant's assessment process detailed car parking provision at each stage of the redevelopment which was observed to not result in a car parking deficit at any stage. The DA11/0582.01 proposed an additional 14 spaces increasing the car parking spaces available in the McGregor Crescent car park (Stage 1) from 56 to 70. DA11/0582.01 was also required to consider more recent approvals since the date of the original DA11/0582 consent. DA11/0582.01 was approved with the requirement of providing **415 spaces after Stage 1**. Stage 1 of this development was completed 1 August 2018 and **the Club's current car parking arrangements should reflect this approval**.

The following car parking discussions described the car parking in the Precinct in accordance with the following map. The car parking in Area E is proposed for removal as part of the subject subdivision.



It is noted that only Areas A, E, F and I are located on the subject site and therefore contribute to the onsite car parking calculations.

Original submission - 12 October 2017 - Parking Assessment

The Bitzios Report dated 12 October 2017 identifies 375 existing spaces, and reviews parking demand based on observations in April and May 2016.

The report estimates that peak parking demand (Friday 20 May 2016 survey) under the current configuration is 328 spaces based upon parking survey results excluding non-bona fide visitors which equates to a shortfall of 76 spaces after the removal of the 188 spaces on future Lot 102.

The report discusses bona fide club patron usage and notes that some on-site parking is being utilised by hospital staff and visitors. The report does not discuss that club patrons are using on road parking particularly Florence Place which anecdotally is used heavily during bowling tournament days due to its proximity to the greens. It was noted that the parking surveys carried out did not include Florence Place which has been observed to be used by Club patrons.

In addressing the 76 space shortfall, the proponent's Traffic Consultant concluded that the existing bowling green adjacent to the car park in Area F should be converted into an at-grade car park to accommodate an additional 62 spaces, of which 24 would be tandem car spaces for use by staff only.

However, the replacement works although recommended by the proponent's Traffic Consultant, are not proposed as part of the subject development application and cannot be considered as addressing the shortfall.

<u>Response to request for further information - 9 October 2018 – Parking</u> <u>Assessment</u>

The report further discusses bona fide club patron usage and noting some on-site parking is being utilised by hospital staff and visitors whilst providing strategies to address this concern. Car parking surveys (Friday 20 May 2016) were referenced to determine peak demand and to ascertain levels of non-bona fide parking. The parking supply was provided as 391 spaces onsite with a peak 30 minute demand of 326 spaces with a peak bona fide parking demand of 305 spaces.

Therefore the survey concludes (Section 5.9 Table 5.9) that there is 86 spaces vacant during peak parking demand. As such, Council's Traffic Engineer could interpret that if 188 spaces were removed (from future Lot 102), it could be concluded from this survey that the Club would be 102 spaces in deficit.

However later in Section 5.10 *Future Parking Demand Table 5.10 Future On-Site Bona Fide parking Demand* the report provides development options. The option that the proponent wishes to undertake where stages 2 & 3 are not carried out while stage 4 is (i.e. the removal of car parking available within future Lot 102 which is what is proposed), the Club will be 79 spaces in deficit. The table is shown below:

Development Option	Pre Stage 4 Demand	Pre Stage 4 Provision	Pre Stage 4 Surplus / Shortfall	Ultimate Demand	Ultimate Provision	Ultimate Surplus / Shortfall
All Stages	335 spaces	598 spaces	263 spaces (+79%)	320 spaces	410 spaces	90 spaces (+28%)
1, 3 and 4	335 spaces	510 spaces	175 spaces (+52%)	320 spaces	322 spaces	+2 spaces (+1%)
1, 2 and 4	305 spaces	487 spaces	182 spaces (+60%)	290 spaces	299 spaces	9 spaces (+3%)
1 and 4	305 spaces	399 spaces	94 spaces (+31%)	290 spaces	211 spaces	-79 spaces (-27%)
1, 2 and 3				335 spaces	598 spaces	263 spaces (+79%)
1 and 3				335 spaces	510 spaces	175 spaces (+52%)
1 and 2				305 spaces	487 spaces	182 spaces (+60%)
1 (No Development)				305 spaces	399 spaces	94 spaces (+31%)

Table 5.10: Future On-Site Bona Fide Parking Demand

As such, the proponent's Traffic Consultant concluded that the parking supply and traffic impacts are acceptable subject to recommendations which included the Stages 2 and 3 of DA11/0582 (construction of an additional 88 and 111 car parking spaces respectively) were implemented prior to commencement of Stage 4 works and therefore prior the removal of the car parking on future Lot 102.

The proponent's Traffic Consultant also put forth an alternate solution for the parking shortfall which comprised of raising one or more bowling greens to provide parking underneath. This was proposed given there is no desire by the proponent to deliver the parking provision of either Stages 2 or 3. These construction works again although recommended by the proponent's Traffic Consultant, are not proposed part of the subject development application and cannot be considered to address the shortfall.

With regard to use of the Club's parking by non-bona fide users, the proponent's Traffic Consultant recommended a token operated boom gate system be installed across the site.

Council's Traffic Engineer has raised concerns over the timing of the surveys and the exclusion of Florence Place and adjacent Council owned car parking from the surveys in the determination of bona fide club patron parking usage.

14 December 2018 – Parking Assessment

This assessment calculated the onsite parking provision as 411 spaces. Parking surveys were undertaken on 14-15th November 2018. The report states the

highest parking demand was on a Wednesday (when only compared to Thursday, however previous reports stated Friday displayed peak usage) with 290 spaces used, leaving 121 spaces available. Observations were carried out which included parking capacity and demand as well as the proportion of visitors on-site but not visiting the Club, labelled as non-bona fide visitors. The surveys concluded that car park users were 55% bona-fide demand on average.

However, is was noted that undercover car park/ Area F may be misrepresented in the observations that concluded that this area had a maximum demand of 38 spaces out of the total 60 spaces available. In this area, a number of the spaces are reserved for Directors or Management and Council officer observations conclude that these spaces are underutilised. The underutilisation of this area is not accepted and should be excluded when determining any spare parking capacity on site. Also, reserving car parking in this manner is not permitted under Section A2 and is not in accordance with Development Consent DA11/0582.02.

Further the proponent's Traffic Consultant has calculated that parking required for the Club requires a reduction factor of 0.219 from the rates provided within Section A2 to reflect the observed parking demand. The above calculation is based on existing 30 minute demand with the survey conducted on a Wednesday when bowling events are underway. This is in conflict with their own 'Maximum Demand' (Table 4.4) and is also in conflict with previous reporting including a reduction factor of 0.29.

Further, the amount of staff car parking required was reduced from 60 car parking spaces required (200 staff, Bitzios 9 October 2018) to 45 spaces (150 staff) without any justification.

With the application of the reduction factor, removing demand from observed nonbona fide users and reduction in staff numbers, the report concluded that the development is two spaces in deficit when car parking located within future Lot 102 is removed if the abovementioned considerations and rationale are accepted.

Further a recommendation was provided regarding the expansion of the token operated boom gate system to remove any non-bona fide parking which was recently implemented in Area A.

6 June 2019 – Further Response to Council Concerns

The purpose of this letter is to provide further justification to respond to Council's concerns regarding the method and findings of the parking analysis.

The letter discussed undercover car park Area F and how many spaces within this area are reserved for directors or management which therefore impacts the parking demand results of the surveys. The proponent's Traffic Consultant has concluded that the club as *'effectively gained'* either 23 or 63 spaces (depending on the scenario) by the removal of parking restrictions in the future. Council staff highlight that the loss/ reservation of these car parking spaces was not approved in the first place. As described above, the Club is currently subject to Development Consent DA11/0582.02 which nominates 415 spaces are to be made available currently (Stage 1 is complete) which includes 56 unreserved spaces in this undercover car park/Area F.

The letter provides justification for the reduction in staff car parking. The letter states the applicant has since advised the maximum number of staff working at a single time is in the order of 50 staff and does not intend to reduce the number of staff in the future conceding the parking requirement was not calculated strictly in accordance with Council's DCP. The parking rates for staff under Section A2 are Council staff 0.3 spaces per staff member. The applicant in allocating one parking space per staff member working at any time. This does not address parking required during shift changeover times. Therefore when there are 200 staff in total Section A2 requires 60 spaces (200 staff x 0.3).

It is noted that in later correspondence from the proponent (Planit Consulting email dated 17 July 2019), it was advised that the total staff numbers is 125 which has been applied to the calculations. Therefore when there are 125 staff in total, Section A2 requires 38 spaces for staff (125 staff x 0.3). No justification was provided for the reduction from the 200 staff initially reported.

The June 2019 letter further discusses on-street and public parking highlighting it is lawful for Club patrons to utilise on-street parking and it is their choice. The proponent's Traffic Consultant then discussed the demand for on-street parking by other traffic generators, namely the hospital, and highlighted the use of on-street parking outside Club hours. It is generally accepted by Council staff that the Club is not the only development to utilise on-street car parking. However, the Club utilisation of on-street car parking cannot be excluded from any assessment of Club parking demand.

Council's Traffic Engineer's Assessment

The proposed subdivision involves the removal of 188 car parking spaces which are currently required by Tweed Heads Bowls Club as approved under previous development consents. The proposal does not involve any reduction in gross floor area nor proposed any replacement car parking. The proposal results in a reduction in car parking from 415 to 227 car parking spaces being made available to Club patrons and staff. Tweed DCP 2008 Section B2 requires new developments of this nature to provide 1,963 car parking spaces whilst Section A2 requires 1,019 car parking spaces. Therefore the application seeks approval for the development to require a 78-88% variation.

The proponent has submitted car parking assessments with the intent to convey that the proposal is acceptable given the surveyed car parking demand generated by the Club.

The proponent requested *Council to focus its assessment to the most recent parking analysis provided by Bitzios Consulting in June 2019* (Planit Consulting email dated 17 July 2019). This document is a letter that attempts to address Council's concerns raised regarding the previous reports. The letter is not a standalone detailed car parking assessment and relies on the information from previous reporting making no recommendations to address issues such as the use of the car park by non-bona fide users. As such, Council was required to consider previous reporting.

As discussed in the above detailed assessment of each report, Council's Traffic Engineer cannot support the conclusions given the substantial inconsistencies with the submitted reports for the subject application and the approved reports pursuant to Development Application DA11/0582.02. These inconsistencies include:

- total parking provision onsite;
- nominated peak demand periods for parking;
- the Club's current operational capacity generating the demand (current low membership numbers and their associated peak parking demand does not cater for future Club membership growth);
- percentages of non-bona fide usage; and
- recommendations and conclusions made by the consultants.

Additionally, Council has evidence through complaints and Council staff observation that the area around the Club is the location of ongoing car parking and traffic concerns. However, it is generally accepted that the Club is not the only development to contribute to these concerns.

Nonetheless, it has also been reported that Club patrons regularly utilise the Civic Centre parking area identified as Area H which was outside the scope of the Club parking demand surveys.

It is noted that 13 June 2018 a representative from the Club sent an email to Council seeking some assistance to obtain an Interim Occupation Certificate (IOC) for our recently completed car park on the corner of Florence and Wharf St, which is Area A within the car parking assessments. The email then states:

Currently our club is experiencing a significant negative impact on our trade due to reduced patronage and revenue with many potential patrons unable to get a car park. This is also creating much concern amongst our Management, Board of Directors and Members.

Area A comprises of 70 car parking spaces. Given the Club has reported an impact to its function from the lack of availability of 70 spaces, it cannot be concluded that the removal 188 car parking spaces as proposed will not result in any impact to the Club nor the surrounding area.

Council's Traffic Engineer has concluded that the application cannot be supported as there is reasonable risk that the proposed removal of 188 parking spaces provided for ongoing use of the Club will not satisfy the aims and objectives of Tweed DCP 2008. Further, the removal of 188 car parking spaces without replacement is likely result in further demand in the surrounding streets and public car parking areas, which are currently experiencing high demand. Customers would need to circulate around the area looking for parking spaces adding to congestion and it would be expected that the incidence of illegal and unsafe parking would result in increased future Council resource demand regarding regulation of on-street parking.

Section A5-Subdivision Manual

The aim of this section is to provide guidelines and development standards for the development of subdivisions, implement the policies and provisions of the NSW State Government and achieve the highest quality and "best practice" of subdivision development in the Shire.

The application was referred to Council's Development Engineering Unit in this regard.

A5.4.4 Physical Constraints

The subject site is generally flat and is mapped as flood prone. The recreational landuse of the site is considered appropriate given the physical constraints of the site.

A5.4.5 Environmental Constraints

Contaminated Land: As detailed elsewhere in this report, Council's Environmental Health Unit has reviewed the application and site history and have no objections subject to conditions of consent.

The subject site is not mapped as bushfire prone nor is there any significant vegetation at the site.

A5.4.6 Landforming

Earthworks or landforming does not form part of the application.

A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding

Stormwater discharges to the public infrastructure within the public road reserves. There will be no change to this arrangement which is considered acceptable. Regarding Stormwater Quality Management the only notable civil works is the relocation of a sewer line that services the adjacent church site. The length of line is approximately 30m and generally involves trenching and laying a new sewer line. Erosion from the trench spoil can be simply managed with typical erosion control measures, such as silt fence, sand bags, covering spoil which will be included as conditions of consent if the application is approved.

A5.4.10 Movement Network

No road works are proposed and the existing road network will continue to service the site which considered acceptable.

The existing accesses off the public road network are proposed to be retained and will continue to service both the proposed subdivision. Council's Development Engineer has advised that a Right of Carriageway that both burdens and benefits both Lots 101 and 102 is recommended to be imposed should the application be approved to facilitate the ongoing vehicle circulation within and between both the Lots for legal continuance of the Club's operations.

A5.4.12 Lot Layout

The proposed allotments are generally rectangular. Each lot benefits from ample road frontage to both streets and arterial roads.

Table A5-9.10 states regarding lot layout for the subject site that the size, shape, dimensions and orientation to be commensurate with proposed uses and zone objectives, taking into account; access, setback, landscaping, car parking and water sensitive design.

It is considered that the size, shape, dimensions and orientation of the proposed allotments are compatible and acceptable when considering the private recreation use and the zone objectives of the site. However car parking arrangements are considered an issue when assessing car parking provision of the existing development and the proponent's desire to substantially reduce the car parking being made available to the Club. A detailed assessment of the car parking provision is outlined elsewhere in this report.

A5.4.13 Infrastructure

The proposed services and utilities are acceptable subject to conditions of consent if the application is approved.

Given the above assessment, it is considered that the proposed residential subdivision is generally acceptable with regard to the provisions of Section A5.

Section A11-Public Notification of Development Proposals

The application not was required to be notified or advertised in accordance with Section A11-Public Notification of Development Proposals.

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

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

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

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

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

Clause 92(1)(b) Applications for demolition

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

Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

It is noted that this section of the Environmental Planning and Assessment Act 1979 and Coastal Protection Act 1979 has been repealed since the lodgement of the subject application. Nonetheless, the consideration is given to the following Plans.

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.

<u>Coastal Zone Management Plan for Cobaki and Terranora Broadwater</u> (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 subject site is located within an existing urban area featuring medium density residential, commercial and mixed use. The proposed subdivision of the recreational land use could be considered appropriate in this context and setting. However, as detailed elsewhere in this report, car parking impacts have not been adequately addressed and as such, the proposal and the associated reduction on car parking being made available to the Tweed Heads Bowls Club is considered to result in an unacceptable car parking impact particularly in this setting.

Access, Transport and Traffic

As outlined under the assessment of the proposal against Tweed DCP 2008, the access, transport and traffic impacts have been considered in detail. The subject development involves a two lot subdivision that results in the reduction in 188 car parking spaces being made available to Tweed Heads Bowls club patrons and staff. The application submission has included four sets of car parking assessments or information. Council requested that the car parking assessments

should address the staged redevelopment approved under Development Consent DA11/0582.02 where Stage 1 has been completed. To summarise:

- Three of the four submissions involved the consideration of two sets of parking surveys data (April/ May 2016 and November 2018) with the intent of determining peak demand whilst discounting non-bona fide usage of the car parks i.e. Non club patrons utilising club car parking;
- Generally, the first two reports concluded that the removal of 188 car parking spaces would result in a car parking deficit (76-79 spaces) after excluding reported non-bona fide user demand and if no replacement car parking was provided. The recommendations generally included replacement car parking option either by way of undertaking Stages 2 & 3 of DA11/0582.02 or by the constructing new car parking facilities onsite;
- The third report concludes that the removal of 188 car parking spaces would result in a car parking deficit of 2 spaces; and
- The fourth report is a letter that attempts to address Council's concerns raised regarding the previous reports and concludes that the proposal *will not introduce any adverse traffic, parking or transport impacts.*

As detailed under the Tweed DCP 2008 assessment, Council's Traffic Engineer has concluded that the application cannot be supported as there is reasonable risk that the proposed removal of 188 parking spaces provided for ongoing use of the Club will not satisfy the aims and objectives of Tweed DCP 2008 and result in unacceptable car parking and traffic impacts. The removal of 188 car parking spaces without replacement is likely result in further demand in the surrounding streets and public car parking areas, which are currently experiencing high demand. Club patrons would need to circulate around the area looking for parking spaces adding to congestion and it would be expected that the incidence of illegal and unsafe parking would result in increased future Council resource demand regarding regulation of on-street parking.

The proposal is not considered acceptable in this regard.

Construction

There exists potential for noise and dust to be generated during minor civil works associated with the subdivision. Any amenity and sediment and erosion impacts are considered to be appropriately mitigated by way of standard conditions of consent.

Flora and Fauna

The site is developed with no formal construction works being proposed as part of this Development Application. Minor civil works are proposed as part of the subdivision and they are not considered to have an unacceptable impact on flora and fauna in the area.

(c) Suitability of the site for the development

Surrounding land uses/Development

The subject site is located within an existing urban area including the zonings of private recreation, medium density residential, commercial and mixed use featuring Tweed Hospital, Tweed Heads Civic Centre, residential development and commercial development.

The scale and associated recreational land use of the subdivision is consistent with these adjoining land uses. However, the proposal is considered to create an unacceptable impact with regard to car parking that is particularly unsuitable given the adjoining developments.

Water and Sewer

Engineering Reports have been submitted addressing the provision and water and sewer to the subject development. Council's Water and Wastewater Unit and Development Engineers have no objection to the proposal subject to conditions of consent and is therefore acceptable in this regard.

The existing building on proposed Lot 101 is currently serviced and the existing building shall continue to be serviced by these existing water service connections.

Therefore proposed Lot 102 does not have any water service connections. It is noted that the applicant did not want to provide a water service connection until future development of the land is confirmed. However, Council requires each lot to have an individual water service connection to Council's public water infrastructure which was later addressed.

The developer is proposing to relocate the existing sewer junction connection for the neighbouring church site at Lot 121 DP548088 and therefore works with their lot involving alterations of the private sewer drainage is required. The applicant was required to obtain owners consent to perform sewerage works on the neighbouring property Lot 121 DP 54808.

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

No submissions were received as the development was required to be notified or advertised development in accordance with Section A11 of Tweed Development Control Plan 2008.

(e) Public interest

As detailed in this report, a comprehensive analysis of proposal against legislation has been undertaken and it has been concluded that the proposed subdivision development is not consistent with the applicable environmental planning instruments and the Tweed Development Control Plan 2008 with regard to car parking. The development is not considered to be in the public interest given the scale of variations to the controls required and the anticipated detrimental traffic impacts.

Covenants and easements under Conveyancing Act 1919

As detailed elsewhere in this report, the applicant has requested that the proposed Lot 102 remain unencumbered with regard to car parking.

Further, a number of existing easements are identified over the subject land. Council's Development Engineers have reviewed the proposed easements and have stated that if a consent was to be issued, in addition to the easements proposed, a Right of Carriageway that both burdens and benefits both Lots 101 and 102 is recommended to be imposed to facilitate the ongoing vehicle circulation within and between both the Lots for legal continuance of the Club's operations.

Developer Contribution Charges

Section 64 and Section 7.11 Developer Contributions would apply to the subject development if approved given the creation of another lot. It is noted that Plan 23 – Offsite Parking does not apply to this site and therefore the car parking deficit cannot be addressed by way of payment of developer contributions.

OPTIONS:

- 1. Refuse the application with the recommended reasons for refusal; or
- 2. Approve the application in principle and request the application be reported to Council with conditions of consent.

Option 1 is recommended.

CONCLUSION:

Although the proposed subdivision could be considered suitable for the site as it is a permissible form of development, the proposal is not recommended to be supported given the proposal requires the removal of 188 car parking spaces from being available to Club staff and patrons. The application included several reports and addendums from traffic consultants which are not considered to address the unacceptable variation to Tweed Development Control Plan 2008 and the substantial detrimental traffic impact the subdivision would create. Therefore in the assessment of the application, once taking into account the relevant planning considerations, the proposed development presents issues that are considered to be contrary to the public interest as outlined in this assessment report.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

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

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

4 [PR-PC] Development Application DA19/0099 for a Change of Use to Dual Use (Tourist and Permanent Residential) for 27 Units Creating Shop Top Housing at Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 in SP 77096 No. 2-6 Pandanus Parade, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance



SUMMARY OF REPORT:

Consent is sought for a change of use of 27 tourist accommodation units being Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 in SP 77096 to a dual use comprised of shop top housing and serviced apartments.

The subject application essentially seeks consent to enable the abovementioned existing tourist units to be used for either permanent residential occupation or for short term tourist accommodation. The subject units are completely self-contained and no physical works are proposed as part of the subject application. The applicant has advised that the units will remain the in the tourist management pool, however they also wish to have the option to lease the units for longer/permanent periods if the option/need arises.

The subject application proposes the change of 18×2 bedroom units and 9×3 bedroom units (the main with ensuite), a bathroom, laundry and open plan living with an adjacent external private open space areas.

The units are located throughout the existing "The Beach" complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach:

Lot No.	Unit No.	Level	Building location	Bedrooms
1	101	First Floor	Eastern/foreshore elevation	3
2	102	First Floor	Eastern/foreshore elevation	3
3	103	First Floor	Eastern/foreshore elevation	3
7	107	First Floor	North-Eastern/foreshore elevation	3

Lot	Unit	Level	Building location	Bedrooms
No.	No.			
8	108	First Floor	North-Eastern/foreshore elevation	3
11	111	First Floor	North-West/Pandanus Parade Elevation	2
19	206	Second Floor	North-Eastern/foreshore elevation	3
22	209	Second Floor	North- Eastern/foreshore elevation	3
24	211	Second Floor	North-West/Pandanus Parade Elevation	2
25	212	Second Floor	North-West/Pandanus Parade Elevation	2
26	213	Second Floor	West Elevation/Tweed Coast Road Elevation	2
27	214	Second Floor	West Elevation/Tweed Coast Road Elevation	2
28	215	Second Floor	West Elevation/Tweed Coast Road Elevation	2
29	216	Second Floor	West Elevation/Tweed Coast Road Elevation	2
32	219	Second Floor	West Elevation/Tweed Coast Road Elevation	2
33	220	Second Floor	West Elevation/Tweed Coast Road Elevation	2
34	221	Second Floor	West Elevation/Tweed Coast Road Elevation	2
36	223	Second Floor	West Elevation/Tweed Coast Road Elevation	2
40	302	Third Floor	Eastern/foreshore elevation	3
42	304	Third Floor	West Elevation/Tweed Coast Road Elevation	2
44	306	Third Floor	West Elevation/Tweed Coast Road Elevation	2
45	307	Third Floor	West Elevation/Tweed Coast Road Elevation	2
46	308	Third Floor	West Elevation/Tweed Coast Road Elevation	2
47	309	Third Floor	West Elevation/Tweed Coast Road Elevation	2
50	312	Third Floor	West Elevation/Tweed Coast Road Elevation	2
51	313	Third Floor	Southern Elevation	2
54	401	Fourth floor	South-West/Tweed Coast Road Elevation	3

The fundamental issues with regards to the subject application are:

- The significant parking shortfall for residential land uses; and
- The cumulative impact of endorsing such a significant variation to the parking requirements under Section A2 Site Access and Parking Code of the Tweed Development Control Plan 2008.

The subject development application will require a total of 52 spaces (rounded up from 51.75 spaces).

The area nominated under exclusive use to the accommodation units subject to this application is 36 parking spaces (two parking spaces for each three (3) bedroom unit and 1 parking space for each two (2) bedroom unit), thus **this DA alone falls short 16 spaces** (rounded up from 15.75 spaces).

It is also noted that development consent DA18/0665 was approved by Council at the 7 February 2019 Planning Committee Meeting. This application was reported to Council for determination as it approved a shortfall in parking of 0.25 of a space (being the required visitor parking space).

Additionally, development application DA19/0232 is currently before Council and is for the change of use of one (1) x three (3) bedroom unit to Dual Use of Shop Top Housing and Serviced Apartments on the same site. Should this application be supported it will require 2.25 parking spaces. As advised under DA19/0232 the tenancy has been allocated exclusive use of 2 spaces. Accordingly, falling short by 0.25 spaces.

Including DA18/0665 (approved), the subject application and current development application DA19/0232 the uses require 57 spaces (rounded up from 56.25). The site has 40 spaces allocated to the Lots subject to the above referenced applications.

Accordingly, would fall short by 17 spaces (rounded up from 16.25 spaces).

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces.

Accordingly, there would be a **shortfall of some 29 spaces**.

It should also be noted that parking is located on common property (body corporate consent has been provided), with each unit being allocated exclusive use for parking. Whilst this is not relevant to the subject application (for one unit) future applications for change of uses (with varying numbers of bedrooms) on the subject site may need to be conditioned to ensure parking is clearly identified as residential use allocated to a unit and visitor use.

Council's Traffic Engineer has not supported the development given the significant parking shortfall, the type of parking demand associated with the proposed Development Application being residential and its potential adverse impacts on adjacent public and commercial parking demand. Site Access and Parking is discussed further within this report.

The officer's recommendation is for refusal.

RECOMMENDATION:

That Development Application DA19/0099 for a change of use to dual use (tourist and permanent residential) for 27 units creating shop top housing at Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 in SP 77096 No. 2-6 Pandanus Parade, Cabarita Beach be refused for the following reasons:

 The development does not satisfy Section 4.15(1) of the Environmental Planning and Assessment Act 1979, particularly Section (a)(iii) – the provisions of any Development Control Plan in that the development is inconsistent with the Development Control Plan Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008 as:

- a) The site has a shortfall in the required onsite parking;
- b) The area is currently subject to high demand for recreational use experienced with the beach foreshore;
- c) The subject site is within a tourist dominated precinct and has a high increase in visitors in summer (beach goers, markets, hotel patronage, nippers carnivals etc.) a shortfall in parking would be problematic;
- d) The onsite parking is within an existing basement and is not highly visual/known; and
- e) The commercial precinct itself is small in scale and is comprised of a Woolworth's shopping centre, a number of small retail premises, cafes, restaurants and a hotel, beyond the commercial area are residential land uses, overflow of parking for tourists accessing the foreshore/commercial precinct would create conflict of uses.
- 2. The development does not satisfy Section 4.15(1) of the Environmental Planning and Assessment Act 1979, particularly Section (a)(i) – the provisions of any Environmental Planning Instruments in that the application has not considered SEPP 65 – The Design Quality of Residential Flat Development.
- 3. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section 1(e) *the public interest* in that the development is not considered to be in the public interest.

REPORT:

Applicant: Planit Consulting Pty Ltd
Owner: Mr Brenden E Capper & Mrs Judith M Capper
Location: Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 in SP 77096 No. 2-6 Pandanus Parade, Cabarita Beach
Zoning: B2 - Local Centre
Cost: Nil

Background:

Consent is sought for a change of use of 27 tourist accommodation units being Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 in SP 77096 to a dual use comprised of shop top housing and serviced apartments.

The subject application essentially seeks consent to enable the abovementioned existing tourist units to be used for either permanent residential occupation or for short term tourist accommodation. The subject units are completely self-contained and no physical works are proposed as part of the subject application. The applicant has advised that the units will remain the in the tourist management pool, however they also wish to have the option to lease the units for longer/permanent periods if the option/need arises.

The subject application proposes the change of 18 x 2 bedroom units and 9 x 3 bedroom units (the main with ensuite), a bathroom, laundry and open plan living with an adjacent external private open space areas.

The units are located throughout the existing "The Beach" complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach.

Lot	Unit	Level	Building location	Bedrooms
No.	No.		_	
1	101	First Floor	Eastern/foreshore elevation	3
2	102	First Floor	Eastern/foreshore elevation	3
3	103	First Floor	Eastern/foreshore elevation	3
7	107	First Floor	North-Eastern/foreshore elevation	3
8	108	First Floor	North-Eastern/foreshore elevation	3
11	111	First Floor	North-West/Pandanus Parade Elevation	2
19	206	Second Floor	North-Eastern/foreshore elevation	3
22	209	Second Floor	North- Eastern/foreshore elevation	3
24	211	Second Floor	North-West/Pandanus Parade Elevation	2
25	212	Second Floor	North-West/Pandanus Parade Elevation	2
26	213	Second Floor	West Elevation/Tweed Coast Road Elevation	2
27	214	Second Floor	West Elevation/Tweed Coast Road Elevation	2
28	215	Second Floor	West Elevation/Tweed Coast Road Elevation	2
29	216	Second Floor	West Elevation/Tweed Coast Road Elevation	2
32	219	Second Floor	West Elevation/Tweed Coast Road Elevation	2

Lot No.	Unit No.	Level	Building location	Bedrooms
33	220	Second Floor	West Elevation/Tweed Coast Road Elevation	2
34	221	Second Floor	West Elevation/Tweed Coast Road Elevation	2
36	223	Second Floor	West Elevation/Tweed Coast Road Elevation	2
40	302	Third Floor	Eastern/foreshore elevation	3
42	304	Third Floor	West Elevation/Tweed Coast Road Elevation	2
44	306	Third Floor	West Elevation/Tweed Coast Road Elevation	2
45	307	Third Floor	West Elevation/Tweed Coast Road Elevation	2
46	308	Third Floor	West Elevation/Tweed Coast Road Elevation	2
47	309	Third Floor	West Elevation/Tweed Coast Road Elevation	2
50	312	Third Floor	West Elevation/Tweed Coast Road Elevation	2
51	313	Third Floor	Southern Elevation	2
54	401	Fourth floor	South-West/Tweed Coast Road Elevation 3	

Owners consent from all applicable lot owners and the Body Corporate for Strata Plan 77096, (including minutes of a meetings with the endorsement of the body corporate seal, dated 1 August 2018) were submitted with the subject application.

The application was notified for a period of 14 days from Monday 4 March 2019 to Monday 18 March 2019. During this period two submissions were received.

Following this, the application was re-notified due to an administrative error. The re-notification was for a period of 14 days from Monday 1 April 2019 to Monday 15 April 2019. During this period four submissions were received.

As detailed previously, the fundamental issues with regards to the subject application are:

- the significant parking shortfall for residential associated land uses; and
- the precedent which would be set by endorsing such a significant variation to the parking requirements under Section A2 Site Access and Parking Code of the Tweed Development Control Plan 2008.

In accordance with Section A2 each three bedroom unit is required to provide 2.25 spaces (including visitor parking) and each two bedroom unit is required to provide 1.75 spaces (including visitor parking).

The conversion of 9×3 bedroom units requires = 20.25 spaces.

The conversion of 18×2 bedroom units requires = 31.5 spaces.

The proposed development will require a total of 52 spaces (rounded up from 51.75 spaces).

The area nominated under exclusive use to the accommodation units subject to this application is 36 parking spaces (two parking spaces for each three bedroom unit and 1 parking space for each two bedroom unit), thus **this DA alone falls short 16 spaces** (rounded up from 15.75 spaces).

It is also noted that development consent DA18/0665 was approved by Council at the 7 February 2019 Planning Committee Meeting. This application approved a shortfall in parking spaces of 0.25 of a space (the required visitor parking space).

Additionally, development application DA19/0232 is currently before Council and is for the change of use of 1 x 3 bedroom unit to Dual Use of Shop Top Housing and Serviced Apartments on the same site. Should this application be supported it will require 2.25 parking spaces. As discussed under the assessment of DA19/0232 the tenancy has been allocated exclusive use of 2 spaces. Accordingly, falling short by 0.25 spaces.

Including DA18/0665 (approved), the subject application and current development application DA19/0232 the uses require 57 spaces (rounded up from 56.25). The site has 40 spaces allocated to the Lots subject to the above referenced applications.

Accordingly, would fall short by 17 spaces (rounded up from 16.25 spaces).

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces.

Accordingly, there would be a **shortfall of some 29 spaces.**

It should also be noted that parking is located on common property (body corporate consent has been provided), with each unit being allocated exclusive use for parking. Whilst this is not relevant to the subject application (for one unit) future applications for change of uses (with varying numbers of bedrooms) on the subject site may need to be conditioned to ensure parking is clearly identified as residential use allocated to a unit and visitor use.

Council's Traffic Engineer has not supported the development given the significant parking shortfall, the type of parking demand associated with the proposed Development Application being residential and its potential adverse impacts on adjacent public and commercial parking demand.

Further to the above a SEPP 65 assessment was not provided with the application. Historically, there has been some inconsistencies relating to the interpretation of SEPP 65 and whether it applies to developments of this nature. However during the assessment of this application is was determined that a SEPP assessment is 65 is required. Given the application is recommended for refusal, the assessing officer resolved not to formally request this information.

Consent History

The subject site has had the following approved:

Application	Description	Date approved
DA18/0665	Change of Use of Lot 18 (Unit 205) to Dual Use of Shop Top Housing and Serviced Apartment	13/02/2019
DA14/0824	partial change of use to allow a cafe, ancillary to existing gallery	17/12/2014
DA14/0632	homewares and decor shop fitout (first use - shop 8)	16/10/2014
DA14/0457	medical centre and associated fit out and signage	30/09/2014
DA13/0566	first use and fitout of psychiatrist clinic	6/12/2013
DA13/0375	internal alterations and fitout of clothing shop (shops 6 & 7)	24/09/2013
DA12/0369	first use - surf print shop/gallery and takeaway food shop (shop 2)	24/10/2012
DA10/0535	shop fitout hairdressers and beauty salon (shop 4 & 5)	7/10/2010

Of particular relevance:

DA18/0665 for Change of Use of Lot 18 (Unit 205) to Dual Use of Shop Top Housing and Serviced Apartment was approved with a shortfall in parking of 0.25 (rounded up to 1) space.

DA03/1221 "The Beach" development was approved by the Minister for Planning on 4 May 2004. The development consists of *57 tourist accommodation units, commercial floor area and basement car parking.*

Following the issue of DA03/1221, three subsequent modifications have been approved by the NSW DPE:

DA03/1221.04:

Amended in relation to onsite car parking, Condition 28 was amended to read as follows:

28. The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Car parking allocation	Number
Tourist accommodation car parking spaces	85
Retail/commercial car parking spaces	71

DA03/1221.06:

Amendments were predominately in relation to payments of bond and BCA classifications, pool hours (amenity), payment of a road bond for works and stratum subdivision. No impacts on the subject application.

DA03/1221.07:

Amendment to Condition 5 of Schedule 2, to read as follows:

SCHEDULE 2

Condition No. 5 of Schedule 2 is amended to read as follows:

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, Management Rights for the development are to be created in accordance with the document titled *"Management Rights Structures - The Beach, Cabarita"*, prepared by Paul Brinsmead of Hickey Lawyers and dated 29 May 2003.

In order to ensure compliance with this condition, a subdivision certificate is not to be issued for the development until the consent authority is provided with copies of Apartment Management Agreements entered into by Purchasers who have entered into Contracts to acquire apartments in The Beach, for no less than 33 apartments in The Beach, whereby those Purchasers make their apartments available for short term tourist accommodation following the settlement of their purchase.

A review of the available file (DA03/1221) has revealed that condition 5 was complied with. Signed Management documents for 33 units to be used as Tourist only was submitted to Council. The lots bolded below were included.

The following units have been approved in accordance with condition 5 of DA03/1221 (as amended):

1, 2, 3, 4, 5, 6, 9, 12, 13, 15, 16, 17, **19**, 20, **25, 26, 27, 28**, 30, 31, **33**, **34**, 35, 38, **40**, 41, **42**, 43, 48, 49, 55, 56 and 57.

Whilst Condition 5 of DA03/1221 (as amended) has been complied with and the above bolded units are referred to, there was no condition on the <u>amended</u> consent requiring the units/lots be registered against the title as a restriction of use. Accordingly, it is open to all unit owners to lodge an application of a similar nature.

Original consent:

Surrender of Consent

3. In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, the Applicant shall, prior to the issue of a construction certificate for this consent and in the manner prescribed by Clause 97 of the Regulation, surrender the development consents described below:

Development Application No. 0323/2001DA (issued by Tweed Shire Council)		
Development Description	Demolition of the existing building and	
	structures and construction of a new 3	
	storey building comprising a hotel,	
	restaurant, bottle shop, retail shops,	
	conference/gym facility and 61 tourist	
	accommodation units.	
Date	21 June 2002	

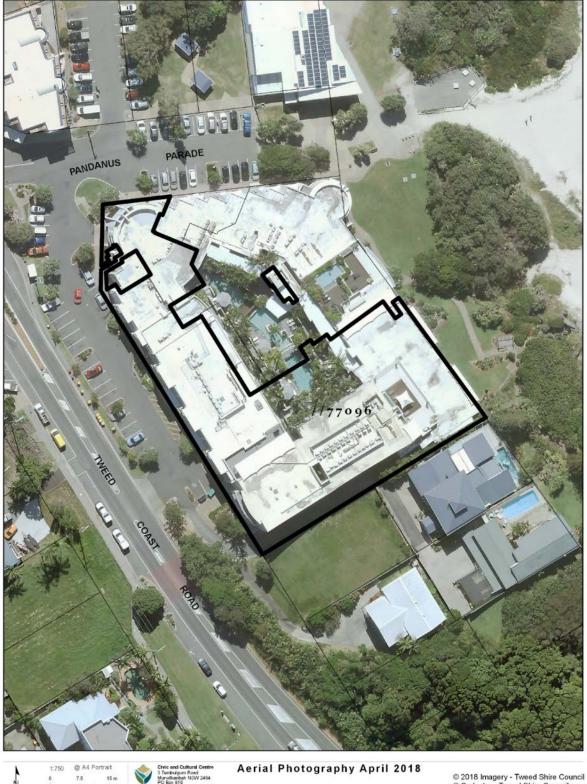
Prescribed Conditions

4. The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

PART B - GENERAL

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, a covenant restricting use is to be placed on the title of each tourist accommodation lot restricting the stay of users within each unit to 40 continuous days.

AERIAL PLAN:



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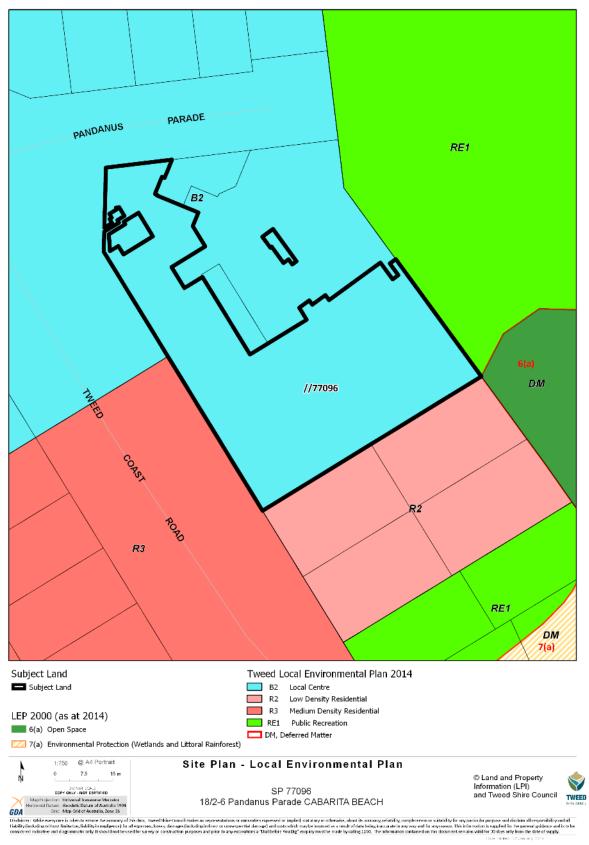
SP 77096 18/2-6 Pandanus Parade CABARITA BEACH © 2018 Imagery - Tweed Shire Council © Cadastre - Tweed Shire Council Boundaries shown should be considered approximate only.

ile every use is taken to encoure the accuracy of this data. Tweed State Counter the representations or mannelines prevand or implied, statement in social scattering, reliability in any symbol and a program and disclam all responsibility and is to initiation, lability in any symbol. This information is supplied for the prevand patience and is supplied to supplice and patience and is supplied to the prevand patience and patience and is supplied to the prevand patience and is supplied to preveand patience and is supplied to prevand patience and the pre

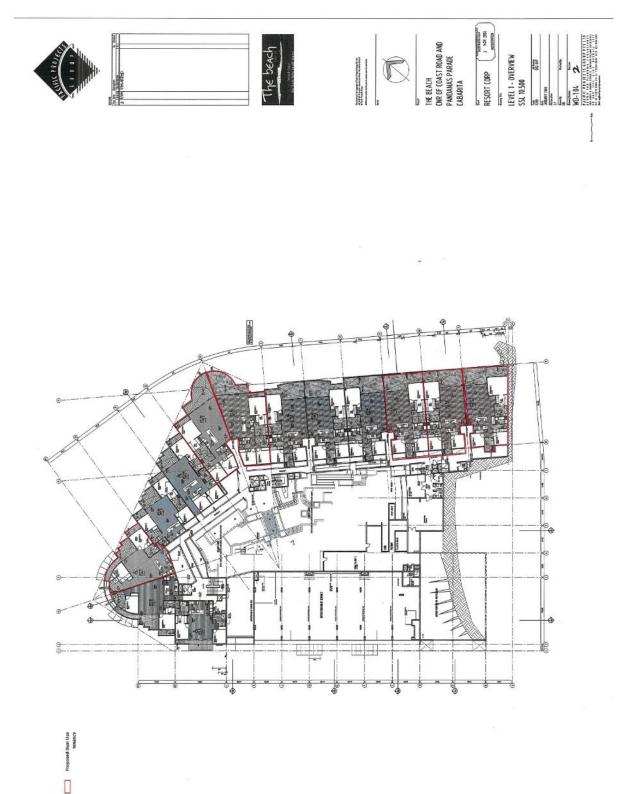
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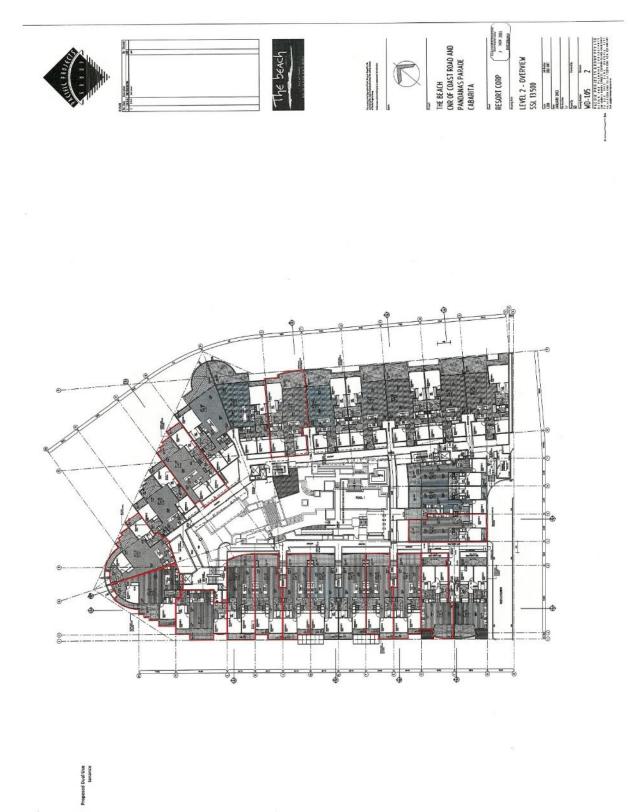
GDA

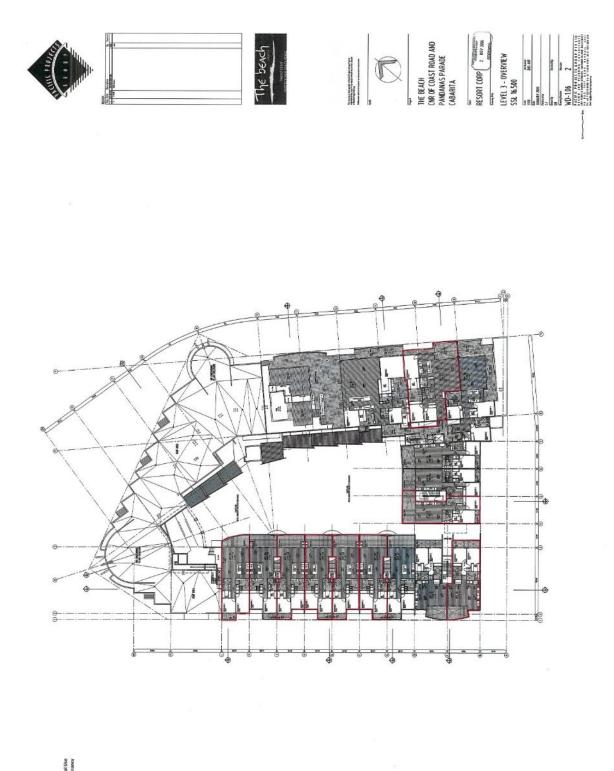


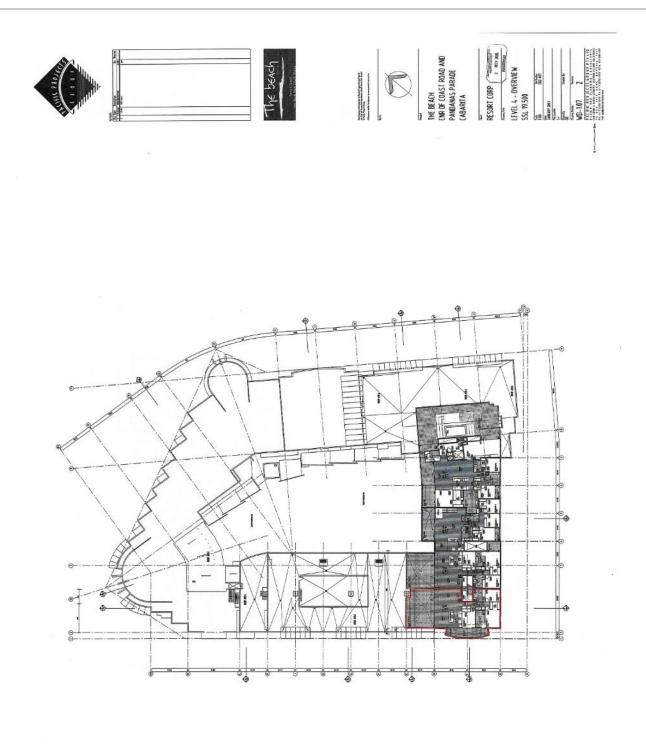


DEVELOPMENT PLANS:









Proposed Dual Use tenancy

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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:

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

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

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

Clause 2.3 – Zone objectives and Land use table

The subject site is located within the B2 Local Centre Zone. The objectives of the zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for tourism and residential opportunities that contribute to the vitality of the local centre

A serviced apartment and/or shop top housing is a form of development permitted within the B2 zone. It is considered that the proposed development is consistent with the objectives of the zone; by providing a range of occupancy options which allow for tourism and residential opportunities.

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

The subject application is to change the use of 27 units/lots from tourist accommodation units to dual use shop top housing and serviced apartments; as such clause 4.1 does not apply.

Clause 4.3 - Height of Buildings

The objectives of this clause, amongst other things, are to establish the maximum height for which a building can be designed and to limit the height of a building on the existing natural and built environment.

The proposed development does not involve any physical works and does not impact on the height of the building.

Clause 4.4 – Floor Space Ratio

The objectives of clause 4.4 are to define allowable development densities, enable the alignment of building scale, provide flexibility for high quality and innovation in building design, and limit the impact of new development and to encourage increased building height and site amalgamation.

The proposed development does not involve any physical works and does not impact on the floor space ratio.

Clause 4.6 - Exception to development standards

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying particular development standards and to achieve better outcomes for and from allowing flexibility.

The proposed development is not required to be considered against clause 4.6 as the proposed development is considered to be consistent with the required development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Clause 5.4 is not applicable to the subject application.

Clause 5.10 - Heritage Conservation

Not applicable the subject site is not mapped within a Heritage Conservation Area, nor is the site mapped under the Aboriginal Cultural Heritage Management Plan.

Clause 5.11 - Bush fire hazard reduction

No bushfire hazard reduction work is proposed. The proposal remains compliant with the bushfire requirements applied to the site.

Clause 7.1 – Acid Sulfate Soils

The subject site comprises Class 4 Acid Sulfate Soils. The objective of this clause is to ensure that development does not disturb, expose or drain ASS and cause environmental damage.

The subject development is for the change the use of 27 units/lots from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Clause 7.2 - Earthworks

Not applicable - the subject development is for the change the use of 27 units/lots from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Clause 7.3 – Flood Planning

Not applicable the subject site is not mapped as FPL.

Clause 7.4 - Floodplain risk management

Not applicable the subject site is not mapped as FPL.

Clause 7.5 - Coastal risk planning

Part of the subject site is mapped on Coastal Risk Planning Map. The objectives of Clause 7.5 are:

- a) to avoid significant adverse impacts from coastal hazards,
- b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,
- c) to enable the evacuation of land identified as coastal risk in an emergency,
- d) to avoid development that increases the severity of coastal hazards

The proposed development is for the use of existing units situated at levels 1, 2 and 3 of "The Beach" complex as a serviced apartment and shop top housing. The development is not considered likely to cause detrimental increases in coastal risks to other development or properties, is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment and given the nature of the proposed works is not considered to increase the severity of coastal hazards. Accordingly, the proposed development is consistent with the requirements of Clause 7.5.

Clause 7.6 - Stormwater Management

The proposed development does not increase the impermeable site area; as such it is considered that there will be minimal impacts as a result of the proposed development.

Clause 7.7 - Drinking Water Catchments

Not applicable – the subject site is not mapped under Clause 7.7.

Clause 7.8 – Airspace operations

Not applicable to the subject application.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable to the subject application.

Clause 7.10 - Essential Services

All essential services are made available to the subject site.

Other Specific Clauses

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

North Coast Regional Plan 2036 (NCRP)

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

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

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

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

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

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

Principle 1: Direct growth to identified Urban growth areas

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

Assessment:

Complies - The proposed development is for the change of use of the current tourist accommodation units to a dual use shop top housing and serviced apartments. The development allows for flexibility in the use of the existing units to encourage occupancy. The site is located within the Cabarita business area. Accordingly is within walking distance to a range of services and public transport. The area is located outside of sensitive coastal and farmland areas.

Principle 2: Manage the sensitive coastal strip

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

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

Assessment:

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

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

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

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

Assessment:

As discussed above the site is located within the Cabarita Business core, associated services are also within five minutes' walk of public transport.

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

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

In summary, Clause 7 of this Policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council's Environmental Health Unit has advised the following:

"The premises already consists of a residential holiday accommodation development. A search of Council records did not reveal or indicate any known or potentially contaminating activities."

The proposal does not result in a change of land use and further consideration of this Policy is not required.

SEPP No. 65 - Design Quality of Residential Flat Development

The proposed development is for the change the use 27 units from tourist accommodation units to dual use shop top housing and serviced apartments. The change of use is to be conducted within the confines of the existing building and does not involve and physical building works.

Clause 1 of the SEPP advises the following:

This Policy applies to development for the purpose of a residential flat building, shop top housing or *mixed use development with a residential accommodation component* if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at *least 4 or more dwellings*.
- (2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.
- (3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.
- (4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.

As advised above, the change of use to the 27 units is to be conducted within the confines of the existing building and does not involve and physical building works.

Previous interpretation of SEPP 65 in relation to a similar application was that the *building* was not being converted and the development was not *substantial redevelopment* (in the case of DA18/0665 being 1 unit out of 57). Accordingly, SEPP 65 did not apply.

However upon further review during the assessment of the subject application to determine if the change of 27 units was *substantial redevelopment* it was resolved that SEPP 65 does indeed apply. The SEPP applies not as the development is *substantial redevelopment* but as the application includes the *conversion of an existing building.*

Under clause 1.4 Definitions of the *Environmental Planning and Assessment Act 1979* a building is defined as:

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.

The building as per the definition under the EPA Act 1979 contains four or more dwellings and is 3 or more stories. Accordingly, SEPP 65 applies.

A SEPP 65 assessment was not provided with the application. Given the application is recommended for refusal, this was not requested of the applicant.

Should Council resolve to provide in principle support for the application the applicant would be required to provide Council with a SEPP 65 assessment.

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development is for the change of use of a class 3 building to be used as Class 3 or Class 2. Advice from Councils Building Services Unit is that based on the nature of the application and the classes of the building a BASIX certificate is not required unless works are taking place (i.e. moving windows etc.). As no physical works are proposed a BASIX certificate is not required for the proposed development.

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area, Coastal Use Area and Coastal Wetlands and Littoral rainforest area.

The objectives of each clause are as follows:

13 Development on land within the coastal environment area

- (1) 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.
- (2) 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), 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.

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development is for change of use of 27 existing tourist and visitor accommodation units to allow either tourist accommodation (as a serviced apartment) or residential occupation as shop top housing. Accordingly, the development is considered to be consistent with the objectives of each clause.

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

There are no draft LEPs or SEPPs applicable to the subject application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development is to allow Lots 1, 2, 3, 7, 8, 11, 19, 22, 24, 25, 26, 27, 28, 29, 33, 34, 36, 40, 42, 44, 45, 46, 47, 50, 51 and 54 within SP 77096 to be used for either shop top housing (residential) or as a serviced apartment (tourist). No physical amendments are proposed. An A1 assessment was undertaken in relation to the subject application. A complete assessment is available on the electronic file. It is noted that some variations to Section A1 have been sought. These variations are discussed below.

Suitable Locations for Shop-top

Shop-top is to be located in centres, generally along main streets.

Shop-top may not be appropriate for locations in proximity to civic, entertainment or community uses that generate noise, light spill or a high degree of activity during the day or the night.

Council's Environmental Health Unit reviewed the subject application and advised the following:

"Several of the apartments face Tweed Coast Road which is mapped as a classified road. Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 mandates that the consent authority consider any potential impacts from proposed development with frontage to a classified road.

Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls). Potential impacts from the Tweed Coast Road were considered in the noise assessment.

In prior discussion with the building's management for a previous change of use application at the site (DA18/0665), it was confirmed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours. The original approval also has a range of conditions included to manage potential impacts on amenity.

Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated.

Conditions under the original approval are considered to remain adequate for the current proposal".

Based on this advice it is considered that the location is acceptable.

The following non-compliances with the document are of note and relate to the physical building:

• Site Configuration

Location of external living areas.

The DCP advises that where possible external living areas should be oriented to the North. The development is existing and does not proposed any physical building works. It is noted that only Lots 7, 8, 11, 22, 23 24, 36, 51 and 54 have their existing balconies oriented to North. Most remaining sites have their external living areas oriented to the east and north-east which is considered acceptable. Lots 25 (unit 212) and 26 (unit 213) and Lot 50 (Unit312) are not acceptable with this regard. It is also noted that the site has ample recreation areas and directly adjoins the foreshore area.

Above ground Private Open Space areas.

The DCP advises that above ground external living areas are to have a minimum depth of 2.5m and a minimum area of 10sq.m. The development is generally compliant with this regard, with the exception of Lot 26 (depth of 2.3m, complies with the 10sqm requirement), Lot 27 (depth ranges from 1.4m – 2.8m, area compliant with 2.5m depth is only 5.6sqm, however has overall 14sqm), Lot 42 (depth ranges from 1.4m – 2.8m, area compliant with 2.5m depth is only 5.6sqm, however overall is 14sqm).

Building Footprint And Attics, Orientation And Separation: Building footprint and attics

Room depth - windows

The subject application includes windows situated on the buildings northern, eastern and western elevations. All bedroom rear walls are well within 10.0m from a window. The living areas include open plan living and for Lots 1, 2, 3, 7, 8 and 19 the back wall being setback approximately 10.3m/10.4m. Accordingly, seeks a minor variation to this control (the DCP requires minimum 10.0m to the rear wall). The variation of 300mm – 400mm to the kitchen area is not considered to have any detrimental impacts with this regard. The objectives of the controls are to:

• To ensure that the bulk of the development is in scale with the existing or desired future context.

• To provide adequate amenity for building occupants in terms of sun access and natural ventilation.

The development does not include any physical works. Accordingly, is considered with the existing scale.

Orientation of primary windows/doors

The DCP advises where possible orient the primary windows of living rooms to the front or the rear of lots.

Again, it is noted that the building is existing and no physical works are proposed. However Lots 27, 28, 29, 32, 33, 36, 42, 44, 45, 46, 47 and 51 orient their primary areas to the east/north which overlook the existing pools and recreation area. It is noted that there is screening and access ways etc between the windows/doors and recreation area. It is not anticipated that there would be any negative impacts with this regard.

Passive solar design

The DCP advises that developments should orient living areas to employ passive solar design principles.

Again, it is noted that the building is existing and no physical works are proposed. The development is generally acceptable with this regard. However it is noted that Lots 25, 26 and 50 are generally oriented to the west.

Height/building Height

In accordance with DCP the maximum height for shop top housing is 13.6m. The existing building has a maximum height of 15.0m. The area subject to this approval, based on the approved plans has a height of approximately 12.0m under the DoP approval.

Under the DCP the maximum permitted wall plate is 11.0m for shop top housing. The maximum wall plate for the original application is 11.7m. Accordingly, there is a slight variation with this regard.

As no physical works are proposed and the application is for the use of an existing tenancy the variation is supported.

• Ceiling height

In accordance with A1 a minimum ceiling height of 2.7m min. finished floor level to finished ceiling level for habitable rooms. The development is existing no physical works are proposed. The approved plans (DA03/1121) include an approximate ceiling height of 2.6m. A variation of 100mm is sought with this regard.

The objectives of this control are:

- To increase the sense of space in dwellings.
- To contribute to well proportioned rooms.

• To promote the penetration of daylight into dwellings.

The variation of 100mm is not considered to result in the development being contrary to the objectives of this control. The dwelling also has internal areas facing to the east with large windows and doors opening onto POS and facing the foreshore.

The bedrooms each have standard windows which open over a void and face towards to the internal common area of the site.

• Floor Space Ratio

The site is nominated under the DCP as having a FSR of 2:1 (based on shop top housing/Residential Flat building). The existing development is considered to exceed this required. The development does not propose any additional works the FSR would have been considered under the assessment of the DoP approval.

• Building Types Control

Front doors, windows and entry areas do not face the street. These features are oriented internally as the site is part of a wider tourist development. This is not dissimilar to RFB developments. The site still contains a main entrance foyer, which is clearly identifiable. The objectives of this control are:

- To ensure the existing landform and topographic setting along the street is respected.
- To ensure new development is compatible with the positive characteristics of the existing streetscape.
- To ensure new development enhances the character of the existing streetscape.
- To encourage dwellings to be well designed.
- To ensure streets provide a high level of pedestrian amenity, access and safety.
- To ensure garages do not dominate the street.

The subject application is not considered contrary to these controls.

• Site Configuration Control (Impermeable Site Area)

A review of the original DoP assessment there did not appear to have reference to the ISA controls. No assessment has been provided against the current controls as there is no increase in building works. The site in its entirety is developed. Accordingly, would exceed the current standards.

• Landscaping

The subject site is currently developed and no physical works are proposed. The DCP requires the retention of trees and the planting of trees win a minimum height of 10.0m and a large canopy (once mature). The subject application is for the change of use of a single unit. Accordingly, this cannot be complied with.

• Minor elements

BBQ areas:

This DCP advises that Barbeque areas are to be for domestic purposes only and located with consideration to the impact upon adjoining properties. The proposed development is for the change of use of a single unit and does not propose a BBQ area. Additionally the existing complex has facilities located on common property, which could be used by the residents and tourist guest for the unit.

Letterboxes:

This section of the DCP does not stipulate that a development *must* have a letter box but rather guides where the letter box(s) should be located. The subject application does not propose to construct a letter box onsite.

A request for further information in relation to Section A1 of the Tweed DCP 2008 was not sought from the applicant as the recommendation for the application is for refusal. Should any further consideration of the application be required, the applicant should be afforded the opportunity to respond to A1

A2-Site Access and Parking Code

'The Beach' development was approved by the Minister for Planning on 4 May 2004 on Lot 1 DP 247808. The development consisted of 57 tourist accommodation units, commercial floor area and basement car parking.

The following was extracted from the assessment report:

Development Control Plan No. 2 - Site Access and Parking Code

The proposed development will comprise approximately 1560m² of retail/commercial space and 57 tourist accommodation units. Under DCP No. 2 the parking demand is as follows:

LANDUSE		REQUIREMENT		
	Customer parking	Staff parking	Bicycle parking	
Retail/commercial	3.5/100GFA	0.5/100GFA	2 + 1/200GFA	
	= 55 spaces	= 8 spaces	= 9 spaces	
Tourist	1/unit	0.5/staff	1/unit	
accommodation	= 57 spaces	(unknown staff at this stage)	= 57 spaces	

Therefore the total number of car parking spaces required for the proposed development is 120 (plus additional spaces for staff of the proposed retail tenancies), with 66 bicycle spaces also required. The proposal provides for 190 on-site car parking spaces. This comprises 71 spaces for the proposed non-residential uses provided at.

This was later amended under a modification and the following condition was applied:

Condition 28 of the "The Beach" (as amended) is as follows:

The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a construction Certificate.

Car parking allocation Number Tourist accommodation 85 Retail/commercial car parking spaces 71

Retail:

A review of the most recent consents for the commercial component of the site has detailed that there is a surplus of parking on Lot 904 of 21 spaces. This is independent of the subject application and managed separately.

Tourist/Visitor:

In accordance with DA03/1221, SP 77096 was allocated 85 parking spaces.

In accordance with the current onsite operations all three (3) bedrooms units have the exclusive use of 2 parking spaces and all two (2) bedroom units have the exclusive use of a single parking space. Though it is noted all parking is on common property (body corporate consent has been provided for the DA).

In accordance with Section A2 of the DCP the following rates are required for the subject application:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (min class)	Delivery / Service Vehicle parking	Resident / Visitor Parking	Staff parking	Customer car parking
A17	Shop top housing	In addition to commercial requirements		Residents: 1/unit (1). Visitors: 1/8 units (3)		1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking		

Shop top housing:

For use as "shop top housing" the development is required to provide 1.5 spaces based on a two bedroom unit, 2 spaces based on a three bedroom unit plus 0.25 spaces towards visitor parking (1 space per 4 units).

Accordingly:

Each three bedroom unit is required to provide 2.25 spaces (including visitor parking)

Each two bedroom unit is required to provide 1.75 spaces (including visitor parking)

The application seeks consent for the dual use of 9 x 3 bedroom units.

9 units x 2.25 spaces required = **20.25 spaces**

The application seeks consent for the dual use of 18 x 2 bedroom units.

18 units x 1.75 spaces required = **31.5 spaces**

TOTAL = 51.75 (rounded to 52 spaces) car parking spaces required

The area nominated under exclusive use to the accommodation units subject to this application is 36 parking spaces, thus the DA falls short 16 spaces.

Other approvals:

DA18/0665 for the change of use of one unit to Dual Use of Shop Top Housing and Serviced Apartments was approved by Council at the 7 February 2019 Planning Committee Meeting. This application approved a shortfall in parking spaces of 0.25 of a space (rounded up to 1).

DA19/0232 is currently before Council and is for the change of use of one three bedroom unit to Dual Use of Shop Top Housing and Serviced Apartments on the same site. Should this application be supported it will require 2.25. The tenancy has been allocated exclusive use of 2 spaces. Accordingly, falling short by 0.25 spaces.

Considering development consent DA18/0665 and the two current applications for the site being DA19/0099 (subject application for 27 units) and DA19/0232 (1 unit), the site would be short 17 spaces (rounded up from 16.5 parking spaces).

Council's Traffic Engineer has reviewed the subject application and advised the following:

"Recommendation

The proposal is not supported given the significant parking shortfall, the type of parking demand associated with the DA being residential and its potential adverse impacts on adjacent public and commercial parking demand.

Comments

The applicant acknowledges that the proposal will result in a shortfall (DCP A2) of 16 parking spaces and that additional parking cannot be provided for onsite.

To address the deficiency the applicant in the SEE advises that given the proximity to commercial, recreational, public transport, employment and social opportunities there is decreased demand for a private vehicle and resident parking.

Whilst this argument may result is less trips per household (theoretically) there is no evidence to support that private car ownership per household (parking demand) would be achieved.

While there is public parking provision in close proximity to the development that during business hours may be subject to less than high demand, residential development parking is out of business peak demand and coincides with times of high demand for recreational use experienced with the beach foreshore.

The applicant has questioned whether parking demand surveys may be of assistance in determining the DA. While there is no objection to these being submitted their relevance and findings would be heavily scrutinised as to their validity. This is not being requested by Council.

The proposal shortfall is not considered a minor shortfall, but a significant shortfall.

The response put forward that the Aims and Objectives of DCP A2, "Provide off street parking facilities that satisfy the demand of resident, visitors, staff, customers, servicing, loading and unloading", is not accepted and the proposal is not supported due to insufficient parking provision.

The Section 7.11 Plan. 23 does not apply in this instance as that Plan only allows for contributions from non-residential and mixed use developments.

Approval of this DA with its significant parking shortfall would set a precedent for residential developments that could have cumulative adverse connotations."

When considering the site holistically the development would be required to provide the following parking:

27 (3 bedroom units + 1x4 bedroom) = 27 x 2 = 54 parking spaces 30 (2 bedrooms units) = $30 \times 1.5 = 45$ parking spaces 1 space/4 units = 0.25×57 units = 14.25 spaces

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces. Accordingly, there would be a shortfall of 29 spaces.

A11-Public Notification of Development Proposals

In accordance with Section A11, the application was notified for a period of 14 days from Monday 4 March 2019 to Monday 18 March 2019. During this period two submissions were received.

Following this, the application was re-notified due to an administrative error. The re-notification was for a period of 14 days from Monday 1 April 2019 to Monday 15 April 2019. During this period four submissions were received.

The submissions are discussed further within this report.

A13-Socio-Economic Impact Assessment

A Social Impact Assessment is required for residential development comprising 50 units or more. Accordingly, is not applicable to the subject application.

A15-Waste Minimisation and Management

The Beach Cabarita currently has a waste management system in place which allows for the storage and separation of waste generated by the guests that stay at The Beach Cabarita which is easily and safely accessible. The apartment block currently has access to regular waste removal, and the proposed change of use to a dual use unit will not add an increased pressure on the current waste management system in fact it is submitted that the generated waste would be less under the proposed dual use.

The application was referred to Council's Waste Management Unit who raised no objections with this regard and advised the following "Council's waste team has no issues with the Beach Hotel Waste management plan".

B19-Bogangar/Cabarita Beach Locality Plan

The aims of Section B19 are to:

- Implement development provisions and design guidelines that are specific to Bogangar/Cabarita Beach;
- Provide design guidelines to appropriately manage development within the subject Bogangar/Cabarita beach through a single document;
- Encourage high quality urban design;
- Inform applicants, developers, consultants, Council and the general public about Councils planning intentions for Bogangar/Cabarita Beach;
- Establish a Strategic Planning Framework for the future development of the study area.

The proposed development does not negate the aims and objectives of the Plan.

Section B25 - Coastal Hazards

The development is located within the 2100 max line identified within Section B25 of the Tweed DCP. As the proposed tenancy currently exist and there is no building work proposed it is considered to have no impact upon the Coastal Hazards and therefore complies with this section of the DCP.

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

There are no draft planning agreements implicating the site.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it does not propose any external modifications to the existing building; it will therefore not restrict access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

Clause 92(1)(b) Applications for demolition

Not applicable - the subject application does not include any demolition.

Clause 93 Fire Safety Considerations

Yes, Councils Building Inspector reviewed the application and raised no concerns in relation to the building being approved for dual use as a class 3 and class 2 building.

It is not considered that the subject change of use will impact upon the existing buildings compliance with Category 1 fire safety provisions. The following condition was recommended by Council's Building Inspector. However the application is recommend for refusal.

The issue of this development consent does not certify compliance with the relevant provisions of the BCA. It is the applicant's responsibility to ensure the building complies with all relevant provisions of the BCA.

Clause 94 Buildings to be upgraded

Not applicable.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Plan.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Amenity

Several of the apartments face Tweed Coast Road which is mapped as a classified road. Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 mandates that the consent authority consider any potential impacts from proposed development with frontage to a classified road.

Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls). Potential impacts from the Tweed Coast Road were considered in the noise assessment.

In prior discussion with the building's management for a previous change of use application at the site (DA18/0665), it was confirmed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours. The original approval also has a range of conditions included to manage potential impacts on amenity.

Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated.

Conditions under the original approval are considered to remain adequate for the current proposal.

Context and Setting

The proposed change of use will not have any adverse impact upon the natural environment as the site is currently developed. The proposed development will change the use of previously approved tourist accommodation units to allow for permanent residential occupation or short term accommodation on a site which is currently comprised by a mix of tourist and commercial uses.

(c) Suitability of the site for the development

Availability of utilities and services

The existing public infrastructure is adequate to service the proposed additional resident/s. However, the site itself is not capable of accommodated the required onsite parking.

Surrounding land uses

The subject site is within the commercial business district of Cabarita/Bogangar, which provides for a variety of shopping, dining, and recreational opportunities. The area is serviced by Woolworths (and ancillary smaller shops, chemist, butchers bakers etc.), medical facilities various professional/commercial uses within the immediate area.

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

As advised above the application was notified for a period of 14 days from Monday 4 March 2019 to Monday 18 March 2019. During this period two submissions were received.

Following this, the application was re-notified due to an administrative error. The re-notification was for a period of 14 days from Monday 1 April 2019 to Monday 15 April 2019. During this period four submissions were received.

The submissions are discussed in the below table with the applicant's response following.

Summary of Submissions	Council's response
Residential use is inconsistent with zone objectives	The objectives under the zone table are listed previously within this report. The proposed development is permissible with Council consent on the subject site and is considered to meet the following zone objective:
	 To provide for tourism and residential opportunities that contribute to the vitality of the local centre
	A serviced apartment and/or shop top housing is a form of development permitted within the B2 zone.
	It is considered that the proposed development is consistent with the objectives of the zone; by providing a range of occupancy options which allow for tourism and residential opportunities.
Shop top housing near CBD	The proposed development is permissible with Council consent.
	The DCP advises that Shop-top housing is to be located in centres, generally along main streets.
	Shop-top <i>may not be appropriate</i> for locations in proximity to civic, entertainment or community

Summary of Submissions	Council's response
	uses that generate noise, light spill or a high degree of activity during the day or the night.
	Council's Environmental Health Unit reviewed the subject application and advised the following:
	Several of the apartments face Tweed Coast Road which is mapped as a classified road. Clause 101 of State Environmental Planning Policy (Infrastructure) 2007 mandates that the consent authority consider any potential impacts from proposed development with frontage to a classified road.
	Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls). Potential impacts from the Tweed Coast Road were considered in the noise assessment.
	In prior discussion with the building's management for a previous change of use application at the site (DA18/0665), it was confirmed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours. The original approval also has a range of conditions included to manage potential impacts on amenity.
	Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated.
	Conditions under the original approval are considered to remain adequate for the current proposal.
	Based on this advice it is considered that the location is acceptable.

Summary of Submissions	Council's response	
Impact on commercial development The development would hurt the local	It is an assumption that the occupants of units will result in a reduced retail income in the area.	
businesses as there is no other tourist accommodation nearby	Additionally, the applicant advised that the Lots would remain in the short term letting pool.	
	Further to the above, Halcyon House (tourist accommodation) is within walking distance to the subject site.	
Precedent Parking	Council has acknowledged that the fundamental issue with regards to the subject application is the cumulative impact which would be experienced by endorsing a variation to the parking requirements under Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008.	
	Accordingly, is recommending refusal of the application.	
No rationale or reason for proposed development	The applicant is not required to explain to Council their rationale for lodging an application which is permitted with Council consent. The application form and SEE advise the intended use as being to allow both tourist and permanent occupation of the unit.	
Resort Management Rights The owners of this business purchased it on the basis that the resort apartments were approved exclusively for tourist use only	This not a planning consideration. Council acknowledges this is a issue, however is not a planning consideration or reason for refusal under the EPAA.	
Residential accommodation is prohibited The <i>express purpose</i> of the subject Development Application is to enable the subject lots to be used for permanent residential occupation (in addition to their current use for serviced apartments). It needs to be appreciated that ' <i>residential</i>	The Tweed LEP 2014 is the governing legislation. The LEP defines permitted and prohibited uses. Under the TLEP 2014 shop top housing is permissible with consent, whilst the parent definition of residential accommodation is prohibited. In accordance with Clause 2.3(3)(a) and(b). Clause (b) essentially advises that reference to a	
<i>accommodation</i> ' is a prohibited form of development in the B2 zone under the LEP 2014.	building or other thing does not include reference to a building or other thing does not include reference to another type of building or thing referred to separately in the Land Use Table. This sub clause can be applied to parent and child definitions listed under the same zone.	
DCP Section A1	A complete A1 assessment has been undertaken by the assessing officer. Some variations are noted and detailed within this report.	
The relevant submission states that the application nominally addresses this DCP.		
Parking	This is discussed in detail under the Section A2	
There is insufficient parking onsite. The Development Application self-admittedly does not comply with the applicable parking requirements of the DCP and notes a significant shortfall of 16 car spaces if the change in use is	assessment of this report. Council's Traffic Engineer has not supported the development given the significant parking shortfall (16 spaces), the type of parking demand associated with the proposed Development Application being residential and its potential adverse impacts on adjacent public and commercial parking demand.	

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Summary of Submissions	Council's response
approved (36 available car spaces and 52 required by the DCP).	Site Access and Parking is discussed further within this report.
SEPP 65 No SEPP 65 assessment has been provided and should be.	SEPP 65 assessment was not provided with the application. Historically, there has been some inconsistencies relating to the interpretation of SEPP 65 and whether it applies to developments of this nature. However during the assessment of this application is was determined that a SEPP assessment is 65 is required. Given the application is recommended for refusal, the assessing officer resolved not to formally request this information.
Economic considerations A reduction in the number of tourist units will directly impact the input of visitor dollars into the economy	This is not a planning consideration, nor is this statement factual. A full time resident can also be a contributor to local businesses within the area.
Owners Consent In this instance our client believes it would be appropriate that all owners in The Beach be deemed as land owners for the purposes of the Development Application and that the application not be accepted as properly made until each individual owner in The Beach has given their consent for the application to proceed. It would be unfair to the owners of lots within The Beach to allow such a significant change of use that hasn't been approved by all affected owners. It would be unreasonable in our client's view for Council to rely on a decision of the Owners Corporation which has not been made by a physical majority of owners in the scheme (but, rather, just a majority in attendance at a particular meeting), or to rely on a decision that has been made only by the Strata Committee for the Owners Corporation (who may not represent the majority interests of owners within The Beach on this particular issue).	Owners consent has been satisfied. The lot owners and body corporate have supplied owners consent for the lodgement of an application. Notification of the development was also undertaken to the subject Strata Plan and the surrounding properties.

Applicant's response to submissions:

Issue 1. Land Use Permissibility

One (1) submission expressed concern regarding the permissibility of the proposed uses on the site considerate of the area and land zoning. The site is zoned B2-Local Centre pursuant to TLEP2014 in which "Shop Top Housing" and "Tourist and Visitor Accommodation" are permissible uses with consent.

In response to the question of permissibility, the Applicant notes the following:

• Shop top housing is listed as permitted with consent within the B2 Local Centre zone;

- Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises;
- The proposal seeks to facilitate dual use of 27 tenancies as tourist accommodation (approved and existing) and shop top housing (proposed). These tenancies are located above ground floor retail and business premises therefore meeting the above definition and permitted with consent.

Shop top housing being a permissible use within the zone is evidenced by the approval of this shop top housing use on the site and within B2 zoned areas throughout the city. No further response in relation to land use permissibility is therefore required.

Issue 2. Traffic implications

The three (3) submissions identified parking as a concern. This has been discussed within the SEE sections 3.3 and 4.6. The Applicant maintains the position that the shortfall in parking is 'minor' with a shortfall of 16 spaces (9 residents, 7 visitors) easily assimilated by the 198 publicly accessible spaces available within The Beach and on-street immediately surrounding the site. The Applicant maintains that parking generation rates consider a 'worst case demand' scenario and are not reflective of the realised demand of the proposal (which maintains tourist accommodation use and compliant parking).

The Applicant has also noted through discussion that within the 13 years since the beach was developed, their experience is that the only noticeable lack of parking has been in relation to major events (such as surfing carnivals) and coinciding with peak holiday periods.

The proposal results in allocated on title use of 36 parking spaces for the 27 tenancies. This parking provision meets the parking demand which is submitted to be reduced and considerate of multi-purpose trips. The reduced parking demand is reflective of the site's location in relation to services, public transport, recreational and active transport opportunities.

A complete assessment of the proposal against the aims and objectives of the TDCP is also provided in section 4.6 of the SEE. With justification provided therein in light of the parking shortfall.

Issue 3: Economic Considerations

Two (2) of the submissions raised concern with the economic implication of reduced tourism numbers and economic considerations. In response, the proposal seeks dual use provision for a select number of tenancies (totalling less than 50%). This facilitates 100% of the existing tenancies to operate for tourist and visitor accommodation and less than 50% of these tenancies allowed the flexibility of longer term accommodation (shop top housing). The Applicant maintains that this proposal does not significantly deplete the short term accommodation pool for the area. It has not been indicated or intended that tenancies will be solely used for permanent accommodation, rather the proposal allows flexibility at the owners discretion.

The proposal does provide the option of tenancies being more permanently let. The Applicant submits that this will result in more permanent and consistent occupancy and customer base for businesses(in particular through less busy periods of the year). Tourism typically goes through waves of peak/trough periods. The Applicant notes that within the 13 years of The Beach establishing, there have been a large number of shops which have attempted unsuccessfully to establish in this economic environment. These have been approved for services and operations such as a medical centre and retail/commercial businesses. However, due to the transient nature of the tourism industry and lack of consistent demand, these have remained unoccupied. The proposal in allowing more permanent occupancy options, could ideally operate for tourism during peak periods and longer term in less busy times of the year (off season). This would provide owners with a suitable on and off season return on their investment, while ensuring a more consistent customer base for businesses year round.

One (1) submission references 'economic amenity' as a consideration, however does not make clear definition of any concern to this effect. Regardless, the proposal does not seek to change any of the commercial operations and does not alter the site layout, exterior appearance or nature of uses within the site (i.e. accommodation maintained for accommodation). As such, it is highly unlikely that any 'economic amenity' impacts would arise from flexibly allowing long term and short term residency of existing short term residences.

Issue 4: Tweed Development Control Plan Compliance

One (1) submission raises concern with the applications compliance with the TDCP. The SEE provided detailed assessment against the relevant considerations of the TDCP (please refer to section 4.5 of the SEE). The submission specifically raises concern that the application does not adequately address the considerations of A1 Part C, in relation to Shop top housing (as proposed). The Applicant has taken this into consideration and provides further correspondence to this effect in the table below.

Suitable locations for Shop top	Response
Shop-top is to be located in centres, generally along main streets.	The subject site is located within a centre and fronts both Tweed Coast Road and Pandanus Parade which form the main junction of Cabarita Beach.
Shop-top may not be appropriate for locations in proximity to civic, entertainment or community uses that generate noise, light spill or a high degree of activity during the day or the night.	The site is in proximity to the main thoroughfare of the beachfront, Cabarita SLSC and The Beach Hotel which provide public and recreational entertainment (such as music events, surfclub carnivals, etc). Noise and light spil are not deemed to impact the flexible use of the site for shop top housing and tourist accommodation, with sensitive receptors (i.e. tourist accommodation) already approved and operating. Safeguard parameters (i.e. acoustics/lighting) have formed conditions of consent in approving these business and community operations, and these remain unchanged. The like for like nature of the proposal (accommodation for accommodation) provides exceptional amenity for occupants and residents. The site is deemed a suitable location for shop top housing.

Control	Response
a. Shop-top development is to have a street elevation consistent with other buildings in the street in terms of height and vertical and horizontal proportions. The buildings street elevation is to be designed to give emphasis to enclosing the street space along the street boundary.	The proposal utilises an existing built form which encloses the street space along the northern boundary.
b. Colonnades are generally not acceptable along main streets unless there is a historic precedent of colonnades along the street.	No columnades are proposed.
c. Uses on ground level are to be commercial (generally retail). Circulation spaces used to access upper level dwellings may occupy up to 15% of the lot frontage.	The majority of the lower level street frontage is commercial with a small pedestrian entryway and basement entry representing considerably less than 15% of the frontage.
d. Uses on the first floor can be either residential or commercial.	The first floor is a combination of tourist accommodation and proposed shop top housing (residential).
e. The internal space of the ground floor of the development is to be at the ground level of the street.	Internal areas are located at the ground level which meets the street. The split level nature of the building was designed to utilise the natural slope of the land, with commercial/retail areas provided on the ground level.
f. Basement car parking is to be fully underground.	The split level nature of the building was designed to utilise the natural slope of the land, with basement parking considered underground.
g. Footpath trading must comply with the procedures and guidelines contained in the Tweed Footpath Trading Policy.	The proposal provides footpath and pedestrian areas as existing and constructed under the previous approval. No change is proposed
 h. The design and layout of commercial spaces is to demonstrate: the intended type of commercial uses proposed and the suitability of the building design to accommodate these uses, the immediate and long term economic feasibility of proposed commercial space, the way in which the proposed commercial space complements and extends the quality and attractiveness of the existing centre 	The proposal does not seek to alter the existing and commercial spaces.

With the existing nature of the site for tourist accommodation it is submitted that other relevant (design) considerations have been adequately considered and addressed through design and construction of the site historically. Item 5: SEPP 65 compliance

One (1) submission raises discussion on the requirements of a SEPP 65 assessment. To this effect the proposal does not seek approval for a residential flat building as was established within section 4.3.2 of the SEE. To reiterate the proposal seeks dual use of less than 50% of the accommodation tenancies, while 100% of tenancies retain the ability to provide tourist and visitor accommodation. The Applicant maintains that the site continues to operate as 'a building principally used for the accommodation of tourists' and is consistent with the intent of the original approval and defined use at the time of approval. The proposal therefore does not require complete assessment against SEPP 65. Having regard to the Applicant and submitters different positions, the SEE addresses the considerations of SEPP 65 anyway. The overarching aim of this policy is to improve residential flat development design. The proposal utilises existing tenancies which provide exceptional residential amenity. The building is the benchmark of mixed use building design for the Cabarita Beach area with articulation, placemaking and visual amenity forming keystones of its original design. The Beach also offers views to the hinterland, ocean, headlands and Tweed coastline; within an iconic location proximate to the beach and business area.

The Applicant reiterates in terms of the SEPP 65 requirements that The Beach in its current form demonstrates best practice design elements such as:

- Built form and character complementary to the site location and responsive to the topography of the land;
- Shifts in built form alignment to reduce building bulk and scale;
- Differentiation between levels;
- Balcony protrusions, awnings, feature finishes and screening to add articulation;
- Crime Prevention Through Environmental Design (CPTED) principles such as: o Surveillance – balcony, windows, walkways overlooking communal areas and public realm;
 - Legibility intercom communication, swipe access lifts, secured parking/storage
 - Territoriality separate accommodation access, internally located open space;
 - Ownership improved by opportunity for owner/occupiers to be dispersed throughout the existing units to encourage shared vested interest and responsibility of security;
 - Management Body Corporate and onsite management and maintenance to discourage unlawful behaviour (removal of vandalism, repair damage, maintain vegetation to allow clear sight lines, etc.)
 - Vulnerability security cameras, lighting, secure parking, swipe/code access reducing opportunities for unlawful behaviour.
- Landscaped garden beds and maintained potted plants;
- Housing diversity including differences in sizes, configurations and orientation;
- High quality communal open space and opportunities for social interaction; and
- Proportionate and balanced aesthetic appearance with a variety of colours, materials, window sizes and location, screening, etc.

(e) Public interest

The proposed development is not considered to be an appropriate outcome for the site, nor is it considered to be in the public interest.

OPTIONS:

That Council:

- 1. Refuses the application for reasons specified, or
- 2. Formally requests a SEPP 65 assessment and reports the application back to Council for determination.

Option 1 is recommended.

CONCLUSION:

The proposed development is not considered suitable for the site and is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

5 [PR-PC] Development Application DA19/0232 for a Change of Use of Lot 55 (Unit 402) to Dual Use of Shop Top Housing and Serviced Apartments at Lot 55 SP 77096 No. 55/2-6 Pandanus Parade, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

mhm	
9	Making decisions with you We're in this together
LINKAGE	TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:
2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.
ROLE:	Provider

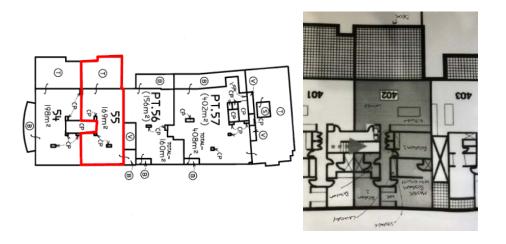
SUMMARY OF REPORT:

Consent is sought for a change of use of Lot 55 (Unit 402) in SP 77096 to a dual use comprised of shop top housing and serviced apartments.

The subject application essentially seeks consent to enable the existing tourist unit to be used for either permanent residential occupation or for short term tourist accommodation. The subject unit is completely self-contained and no physical works are proposed as part of the subject application.

Lot 55 is comprised of a three bedroom unit (the main with ensuite), a bathroom, laundry and open plan living with an adjacent external private open space areas.

The unit is located on level 4 of the southern building within the existing "The Beach" complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach.



The fundamental issues with regards to the subject application are:

- the shortfall in the required onsite parking for residential land uses; and
- the cumulative impact of endorsing variations to the parking requirements under Section A2 Site Access and Parking Code of the Tweed Development Control Plan 2008.

The subject application will require a total of 3 spaces (rounded up from 2.25 spaces).

The area nominated to Lot 55 under exclusive use is comprised of two parking spaces.

Accordingly, the development falls short 1 parking space.

It is also noted that Development Consent DA18/0665 was approved by Council at the 7 February 2019 Planning Committee Meeting. DA18/0665 was also for the change in use of a single unit comprised of 3 bedrooms (similar to the subject application). This application was reported to Council for determination as it proposed a shortfall in parking of 0.25 of a space (rounded up to 1 space), being the required visitor parking space.

Additionally, development application DA19/0099 is currently before Council and is for the change of use of 27 units (3 and 2 bedrooms) to Dual Use of Shop Top Housing and Serviced Apartments on the same site. DA19/0099 require 52 parking spaces. As advised under DA19/0099 the units have been allocated exclusive use of 36 spaces. Accordingly, falling short by 16 spaces (rounded up from 15.75).

Including, DA18/0665 (approved), the subject application and current development application DA19/0099 the uses require 57 spaces (rounded up from 56.25). The site has 40 spaces allocated to the Lots subject to the above referenced applications.

Accordingly, would fall short by 17 spaces (rounded up from 16.25 spaces).

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces.

Accordingly, there would be a **shortfall of some 29 spaces.**

It should also be noted that parking is located on common property (body corporate consent has been provided), with each unit being allocated exclusive use for parking. Whilst this is not relevant to the subject application (for one unit) future applications for change of uses (with varying numbers of bedrooms) on the subject site may need to be conditioned to ensure parking is clearly identified as residential use allocated to a unit and visitor use.

Council's Traffic Engineer has reviewed the proposed development application and noted that whilst the parking variance is minor in this instance, the cumulative effect of similar applications should be taken into account (such as DA19/0099 and DA18/0665).

When considering the site holistically the parking shortfall is significant. Site Access and Parking is discussed further within this report.

The officer's recommendation is for refusal.

RECOMMENDATION:

That Development Application DA19/0232 for a change of use of Lot 55 (unit 402) to dual use of shop top housing and serviced apartments at Lot 55 SP 77096 No. 55/2-6 Pandanus Parade, Cabarita Beach be refused for the following reasons:

- The development does not satisfy Section 4.15(1) of the Environmental Planning and Assessment Act 1979, particularly Section (a)(iii) – the provisions of any Development Control Plan in that the development is inconsistent with the Development Control Plan Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008 as:
 - (a) The site has a shortfall in the required onsite parking;
 - (b) The area is currently subject to high demand for recreational use experienced with the beach foreshore;
 - (c) The subject site is within a tourist dominated precinct and has a high increase in visitors in summer (beach goers, markets, hotel patronage, nippers carnivals etc.) a shortfall in parking would be problematic;
 - (d) The onsite parking is within an existing basement and is not highly visual/known; and
 - (e) The commercial precinct itself is small in scale and is comprised of a Woolworth's shopping centre, a number of small retail premises, cafes, restaurants and a hotel, beyond the commercial area are residential land uses, overflow of parking for tourists accessing the foreshore/commercial precinct would create conflict of uses.
- The development does not satisfy Section 4.15(1) of the Environmental Planning and Assessment Act 1979, particularly Section (a)(i) – the provisions of any Environmental Planning Instruments in that the application has not considered SEPP 65 – The Design Quality of Residential Flat Development.
- 3. The development does not satisfy Section 4.15 of the Environmental Planning and Assessment Act, particularly Section 1(e) *the public interest* in that the development is not considered to be in the public interest.

REPORT:

Applicant:Ms ST Stafford and I StaffordOwner:Ms Siobhan T StaffordLocation:Lot 55 SP 77096 No. 55/2-6 Pandanus Parade, Cabarita BeachZoning:B2 - Local CentreCost:Nil

Background:

Consent is sought for a change of use of Lot 55 (Unit 402) in SP 77096 to a dual use comprised of shop top housing and serviced apartments.

The subject application essentially seeks consent to enable the existing tourist unit to be used for either permanent residential occupation or for short term tourist accommodation. The subject unit is completely self-contained and no physical works are proposed as part of the subject application.

Lot 55 is comprised of a three bedroom unit (the main with ensuite), bathroom, laundry and open plan living with an adjacent external private open space areas.

The unit is located on level 4 of southern building within the existing "The Beach" complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach.

Owners consent from owner of Lot 55 and the Body Corporate for Strata Plan 77096, (including minutes of a meetings with the endorsement of the body corporate seal, dated 1 August 2018) were submitted with the subject application.

The application was advertised and notified for a period of 14 days from Wednesday 17 April 2019 to Wednesday 1 May 2019. During this period a single submission was received.

A detailed previously, the fundamental issues with regards to the subject application are:

- the shortfall in the required onsite parking for residential land uses; and
- the cumulative impact of endorsing variations to the parking requirements under Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008.

In accordance with Section A2 each three bedroom unit is required to provide 2.25 spaces (rounded up to 3 spaces), including visitor parking.

The area nominated to Lot 55 under exclusive use is comprised of two parking spaces. Accordingly, falls short 1 space (rounded up from 0.25 spaces).

It is also noted that development consent DA18/0665 was approved by Council at the 7 February 2019 Planning Committee Meeting. DA18/0665 was also for the change in use of a single unit comprised of 3 bedrooms.

This application was reported to Council for determination as it approved a shortfall in parking of 0.25 of a space (being the required visitor parking space) and concerns were raised in relation to the perceived precedent of approving such an application.

It should be noted that whilst the subject application is similar in nature to DA18/0665 being the change in use of a single 3 bedroom unit, the recommendation of the subject application is different to that under DA18/0665.

DA18/0665 was supported by Council's Traffic Engineer, who advised the following:

"there are no objections to the rounding down of the visitor parking requirements given the availability of publically accessible parking in close proximity to the development."

With the Council report for DA18/00665 advising:

"Whilst the proposed variation is minor in the context of the subject application, Council's Development Assessment Unit consider that a precedent may be set for any potential future development applications should the variation to the parking requirements under Section A2 be endorsed".

The current scenario is that there are now 28 (in addition to the single unit approved under DA18/0665) units seeking consent (under DA19/0099 and the subject application, DA19/0232) to vary the onsite parking requirements of Section A2, the previous comments provided under DA18/0665 by the Traffic Engineer as noted above, no longer apply as the variation (cumulative) is no longer minor.

Additionally, development application DA19/0099 is currently before Council and is for the change of use of 27 units (3 and 2 bedrooms) to Dual Use of Shop Top Housing and Serviced Apartments on the same site. DA19/0099 requires 52 parking spaces. As advised under DA19/0099 the units have been allocated exclusive use of 36 spaces. Accordingly, falling short by 16 spaces (rounded up from 15.75).

Including, DA18/0665 (approved), the subject application and current development application DA19/0099 the uses require 57 spaces (rounded up from 56.25). The site has 40 spaces allocated to the Lots subject to the above referenced applications.

Accordingly, would fall short by 17 spaces (rounded up from 16.25 spaces).

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces.

Accordingly, there would be a **shortfall of some 29 spaces**.

It should also be noted that parking is located on common property (body corporate consent has been provided), with each unit being allocated exclusive use for parking. Whilst this is not relevant to the subject application (for one unit) future applications for change of uses (with varying numbers of bedrooms) on the subject site may need to be conditioned to ensure parking is clearly identified as residential use allocated to a unit and visitor use.

Council's Traffic Engineer has reviewed the proposed development application and noted that whilst the parking variance is minor in this instance, the cumulative effect of similar applications should be taken into account (such as DA19/0099 and development consent DA18/0665). When considering the site holistically the parking shortfall is significant. Site Access and Parking is discussed further within this report.

Further to the above a SEPP 65 assessment was not provided with the application. Historically, there has been some inconsistencies relating to the interpretation of SEPP 65 and whether it applies to developments of this nature. However during the assessment of this application is was determined that a SEPP assessment is 65 is required. Given the application is recommended for refusal, the assessing officer resolved not to formally request this information.

Consent History

The subject site has had the following approved:

Application	Description	Date approved
DA18/0665	Change of Use of Lot 18 (Unit 205) to Dual Use of Shop Top Housing and Serviced Apartment	13/02/2019
DA14/0824	Partial change of use to allow a cafe, ancillary to existing gallery	17/12/2014
DA14/0632	Homewares and decor shop fitout (first use - shop 8)	16/10/2014
DA14/0457	Medical centre and associated fit out and signage	30/09/2014
DA13/0566	First use and fitout of psychiatrist clinic	6/12/2013
DA13/0375	Internal alterations and fitout of clothing shop (shops 6 & 7)	24/09/2013
DA12/0369	First use - surf print shop/gallery and takeaway food shop (shop 2)	24/10/2012
DA10/0535	Shop fitout hairdressers and beauty salon (shop 4 &5)	7/10/2010

Of particular relevance:

DA18/0665 for Change of Use of Lot 18 (Unit 205) to Dual Use of Shop Top Housing and Serviced Apartment was approved with a shortfall in parking of 0.25 (rounded up to 1) space.

DA03/1221 "The Beach" development was approved by the Minister for Planning on 4 May 2004. The development consists of *57 tourist accommodation units, commercial floor area and basement car parking.*

Following the issue of DA03/1221, three subsequent modifications have been approved by the NSW DPE:

DA03/1221.04:

Amended in relation to onsite car parking, condition 28 was amended to read as follows:

28. The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Car parking allocation	Number
Tourist accommodation car parking spaces	85
Retail/commercial car parking spaces	71

DA03/1221.06:

Amendments were predominately in relation to payments of bond and BCA classifications, pool hours (amenity), payment of a road bond for works and stratum subdivision. No impacts on the subject application.

DA03/1221.07:

Amendment to condition 5 of Schedule 2, to read as follows:

SCHEDULE 2

Condition No. 5 of Schedule 2 is amended to read as follows:

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, Management Rights for the development are to be created in accordance with the document titled "Management Rights Structures - The Beach, Cabarita", prepared by Paul Brinsmead of Hickey Lawyers and dated 29 May 2003.

In order to ensure compliance with this condition, a subdivision certificate is not to be issued for the development until the consent authority is provided with copies of Apartment Management Agreements entered into by Purchasers who have entered into Contracts to acquire apartments in The Beach, for no less than 33 apartments in The Beach, whereby those Purchasers make their apartments available for short term tourist accommodation following the settlement of their purchase.

A review of the available file (DA03/1221) has revealed that condition 5 was complied with. Signed Management documents for 33 units to be used as Tourist only was submitted to Council. The lots bolded below were included.

The following units have been approved in accordance with condition 5 of DA03/1221 (as amended):

1, 2, 3, 4, 5, 6, 9, 12, 13, 15, 16, 17, **19**, 20, **25, 26, 27, 28**, 30, 31, **33**, **34**, 35, 38, **40**, 41, **42**, 43, 48, 49, 55, 56 and 57.

Whilst condition 5 of DA03/1221 (as amended) has been complied with and the above bolded units are referred to, there was no condition on the <u>amended</u> consent requiring the units/lots be registered against the title as a restriction of use. Accordingly, it is open to all unit owners to lodge an application of a similar nature.

Original consent:

Surrender of Consent

3. In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, the Applicant shall, prior to the issue of a

construction certificate for this consent and in the manner prescribed by Clause 97 of the Regulation, surrender the development consents described below:

Development Application No. 0323/2001DA (issued by Tweed Shire Council)				
Development Description	Demolition of the existing building and structures and construction of a new 3 storey building comprising a hotel, restaurant, bottle shop, retail shops, conference/gym facility and 61 tourist accommodation units.			
Date	21 June 2002			

Prescribed Conditions

4. The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

PART B - GENERAL

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, a covenant restricting use is to be placed on the title of each tourist accommodation lot restricting the stay of users within each unit to 40 continuous days.

The officer's recommendation is for refusal.

SITE DIAGRAM:



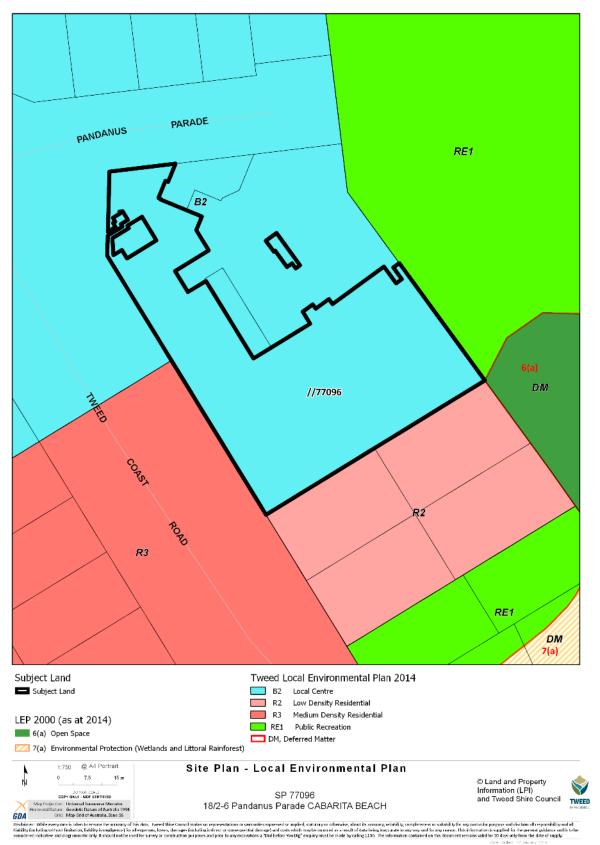
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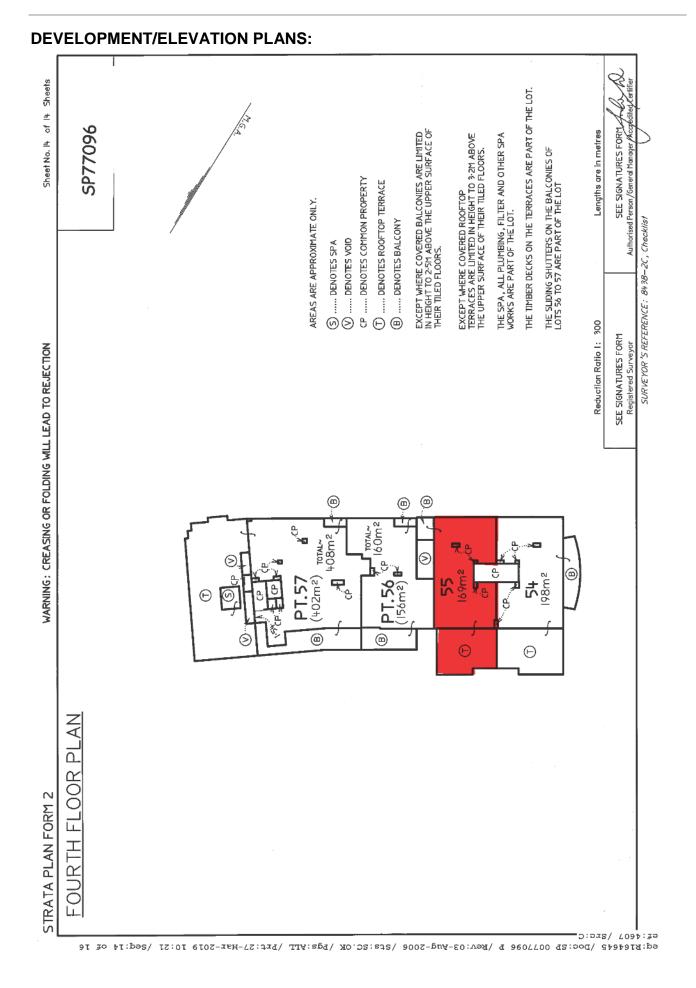
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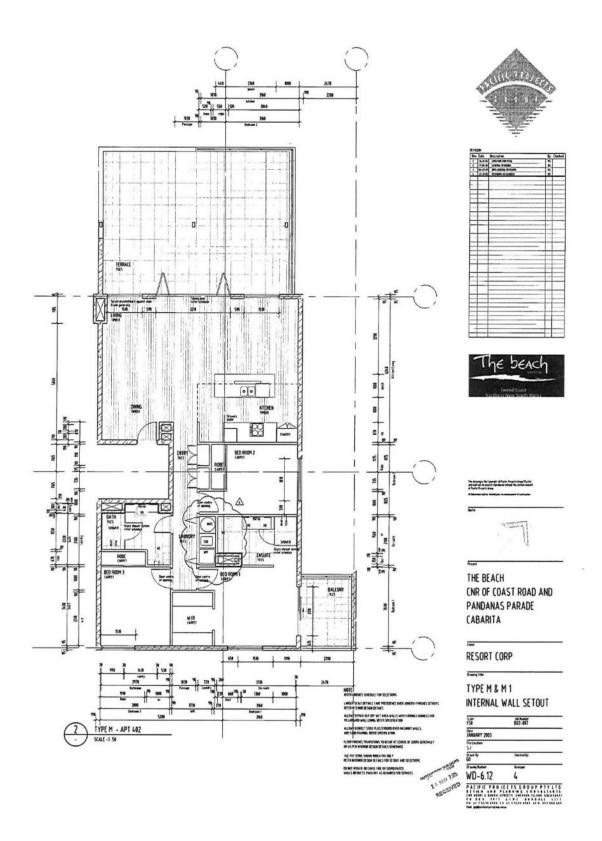
SP 77096 18/2-6 Pandanus Parade CABARITA BEACH © 2018 Imagery - Tweed Shire Council © Cadastre - Tweed Shire Council Boundaries shown should be considered approximate only.

of the data, Twend Blac Cound makes an representations or exeruption personnel in implicit strateway or otherwise, about its accuracy articitation complements or substituting to any particular purpose and detailent in representative and at for all expresses, thereas, human (indexingted) indexing and express and is how the presentation and a secretal of the human presentations and in the e used for survey or construction purposes and prior to any occasions as "Ball before You Dig" engainy must be made by calling 1300. The information constained on this document remains with the 30 days only from the date of supply.

ZONING PLAN:







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

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

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

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

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

It is considered that the proposal would be consistent with the aims of the plan; the proposed development is not considered to have any adverse impacts on environmentally sensitive areas and has the potential to provide either permanent housing or generate income consistent with the existing approval.

Clause 2.3 – Zone objectives and Land use table

The subject site is located within the B2 Local Centre Zone. The objectives of the zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To provide for tourism and residential opportunities that contribute to the vitality of the local centre

A serviced apartment and/or shop top housing is a form of development permitted within the B2 zone. It is considered that the proposed development is consistent with the objectives of the zone; by provide a range of occupancy options which allow for tourism and residential opportunities.

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

The subject application is to change the use of lot 55 from tourist accommodation units to dual use shop top housing and serviced apartments; as such clause 4.1 does not apply.

Clause 4.3 - Height of Buildings

The objectives of this clause, amongst other things, are to establish the maximum height for which a building can be designed and to limit the height of a building on the existing natural and built environment.

The proposed development does not involve any physical works and does not impact on the height of the building.

Clause 4.4 – Floor Space Ratio

The objectives of clause 4.4 are to define allowable development densities, enable the alignment of building scale, provide flexibility for high quality and innovation in building design, and limit the impact of new development and to encourage increased building height and site amalgamation.

The proposed development does not involve any physical works and does not impact on the floor space ratio.

Clause 4.6 - Exception to development standards

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying particular development standards and to achieve better outcomes for and from allowing flexibility.

The proposed development is not required to be considered against clause 4.6 as the proposed development is considered to be consistent with the required development standards of the TLEP 2014.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Clause 5.4 is not applicable to the subject application.

Clause 5.10 - Heritage Conservation

Not applicable the subject site is not mapped within a Heritage Conservation Area, nor is the site mapped under the Aboriginal Cultural Heritage Management Plan.

Clause 5.11 - Bush fire hazard reduction

No bushfire hazard reduction work is proposed. The proposal remains compliant with the bushfire requirements applied to the site.

Clause 7.1 – Acid Sulfate Soils

The subject site comprises Class 4 Acid Sulfate Soils. The objective of this clause is to ensure that development does not disturb, expose or drain ASS and cause environmental damage.

The subject development is for the change the use of lot 55 from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Not applicable - the subject development is for the change the use of lot 55 from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Clause 7.3 – Flood Planning

Not applicable the subject site is not mapped as FPL.

Clause 7.4 - Floodplain risk management

Not applicable the subject site is not mapped as FPL.

Clause 7.5 - Coastal risk planning

Part of the subject site is mapped on Coastal Risk Planning Map. The objectives of Clause 7.5 are:

a) to avoid significant adverse impacts from coastal hazards,

- b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,
- c) to enable the evacuation of land identified as coastal risk in an emergency,
- d) to avoid development that increases the severity of coastal hazards

The proposed development is for the use of an existing unit situated at level 4 of "The Beach" complex as a serviced apartment and shop top housing. The development is not considered likely to cause detrimental increases in coastal risks to other development or properties, is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment and given the nature of the proposed works is not considered to increase the severity of coastal hazards. Accordingly, the proposed development is consistent with the requirements of Clause 7.5.

Clause 7.6 - Stormwater Management

The proposed development does not increase the impermeable site area; as such it is considered that there will be minimal impacts as a result of the proposed development.

Clause 7.7 - Drinking Water Catchments

Not applicable – the subject site is not mapped under Clause 7.7.

Clause 7.8 – Airspace operations

Not applicable to the subject application.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable to the subject application.

Clause 7.10 - Essential Services

All essential services are made available to the subject site.

Other Specific Clauses

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

North Coast Regional Plan 2036 (NCRP)

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

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

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

- 1. The most stunning environment in NSW
- 2. A thriving interconnected economy

- 3. Vibrant and engaged communities
- 4. Great housing choices and lifestyle options

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

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

Principle 1: Direct growth to identified Urban growth areas

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

Assessment:

Complies - The proposed change of use of the current tourist accommodation unit (lot 55) to a dual use shop top housing and serviced apartment. The development allows for flexibility in the use of the existing unit to encourage occupancy. The site is located within the Cabarita business area. Accordingly is within walking distance to a range of services and public transport. The area is located outside of sensitive coastal and farmland areas.

Principle 2: Manage the sensitive coastal strip

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

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

Assessment:

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

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

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

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

Assessment:

As discussed above the site is located within the Cabarita Business core, associated services are also within five minutes' walk of public transport.

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

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

In summary, Clause 7 of this Policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council's Environmental Health Unit has advised the following:

"The premises already consists of a residential holiday accommodation development. A search of Council records did not reveal or indicate any known or potentially contaminating activities."

The proposal does not result in a change of land use and further consideration of this Policy is not required.

SEPP No. 65 - Design Quality of Residential Flat Development

The proposed development is for the change the use of 1 unit from tourist accommodation to dual use shop top housing and serviced apartments. The change of use is to be conducted within the confines of the existing building and does not involve and physical building works.

Clause 1 of the SEPP advises the following:

- (1) This Policy applies to development for the purpose of a residential flat building, shop top housing or *mixed use development with a residential accommodation component* if:
 - (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at *least 4 or more dwellings*.
- (2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.
- (3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.
- (4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.

As advised above, the change of use to Lot 55 is to be conducted within the confines of the existing building and does not involve and physical building works.

Previous interpretation of SEPP 65 in relation to a similar application was that the *building* was not being converted and the development was not *substantial redevelopment* (in the case of DA18/0665 being 1 unit out of 57). Accordingly, SEPP 65 did not apply.

However upon further review during the assessment of DA19/0099 (for 27 units) to determine if the development was *substantial redevelopment* it was resolved that SEPP 65 does indeed apply. The SEPP applies not as the development is *substantial redevelopment* but as the application includes the *conversion of an existing building.*

Under clause 1.4 Definitions of the *Environmental Planning and Assessment Act* 1979 a building is defined as:

building includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.

The building as per the definition under the EPA Act 1979 contains four or more dwellings and is 3 or more stories. Accordingly, SEPP 65 applies.

A SEPP 65 assessment was not provided with the application. Given the application is recommended for refusal, this was not requested of the applicant. Should Council resolve to provide in principle support for the application the applicant would be required to provide Council with a SEPP 65 assessment.

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development is for the change of use of a class 3 building to be used as Class 3 or Class 2. Advice from Councils Building Services Unit is that based on the nature of the application and the classes of the building a BASIX certificate is not required unless works are taking place (i.e. moving windows etc.). As no physical works are proposed a BASIX certificate is not required for the proposed development.

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area, Coastal Use Area and Coastal Wetlands and Littoral rainforest area.

The objectives of each clause are as follows:

13 Development on land within the coastal environment area

- (1) 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.
- (2) 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), 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.
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

14 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The proposed development is for change of use of an existing tourist and visitor accommodation unit to allow either tourist accommodation (as a serviced apartment) or residential occupation as shop top housing. Accordingly, the development is considered to be consistent with the objectives of each clause.

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

There are no draft LEPs or SEPPs applicable to the subject application.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed development is to allow Lot 55 within SP 77096 to be used for either shop top housing (residential) or as a serviced apartment (tourist). No physical amendments are proposed. An A1 assessment was undertaken in relation to the

subject application. A complete assessment is available on the electronic file. It is noted that some variations to Section A1 have been sought, however the variations are considered minor and do not result in refusal of the application. These variations are discussed below:

Suitable Locations for Shop-top

Shop-top is to be located in centres, generally along main streets.

Shop-top may not be appropriate for locations in proximity to civic, entertainment or community uses that generate noise, light spill or a high degree of activity during the day or the night.

Council's Environmental Health Unit reviewed the subject application and advised the following:

"Unit 402 is located along the southern side of the resort complex. Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls).

In prior discussion with the building's management for a previous change of use application at the site (DA18/0665), it was confirmed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours. The original approval also has a range of conditions included to manage potential impacts on amenity.

Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated".

Based on this advice it is considered that the location is acceptable.

The following non-compliances with the document are of note:

• Height/building Height

In accordance with DCP the maximum height for shop top housing is 13.6m. The existing building has a maximum height of 15.0m. The area subject to this approval, based on the approved plans has a height of approximately 12.0m under the DoP approval.

Under the DCP the maximum permitted wall plate is 11.0m for shop top housing. The maximum wall plate for the original application is 11.7m. Accordingly, there is a slight variation with this regard.

As no physical works are proposed and the application is for the use of an existing tenancy the variation is supported.

• Ceiling height

In accordance with A1 a minimum ceiling height of 2.7m min. finished floor level to finished ceiling level for habitable rooms. The development is existing no physical works are proposed. The approved plans (DA03/1121) include an approximate ceiling height of 2.6m. A variation of 100mm is sought with this regard.

The objectives of this control are:

- To increase the sense of space in dwellings.
- To contribute to well proportioned rooms.
- To promote the penetration of daylight into dwellings.

The variation of 100mm is not considered to result in the development being contrary to the objectives of this control. The dwelling also has internal areas facing to the east with large windows and doors opening onto POS and facing the foreshore.

The bedrooms each have standard windows which open over a void and face towards to the internal common area of the site.

• Floor Space Ratio

The site is nominated under the DCP as having a FSR of 2:1 (based on shop top housing/Residential Flat building). The existing development is considered to exceed this required. The development does not propose any additional works the FSR would have been considered under the assessment of the DoP approval.

• Building Types Control

Front doors, windows and entry areas do not face the street. These features are oriented internally as the site is part of a wider tourist development. This is not dissimilar to RFB developments. The site still contains a main entrance foyer, which is clearly identifiable. The objectives of this control are:

- To ensure the existing landform and topographic setting along the street is respected.
- To ensure new development is compatible with the positive characteristics of the existing streetscape.
- To ensure new development enhances the character of the existing streetscape.
- To encourage dwellings to be well designed.

- To ensure streets provide a high level of pedestrian amenity, access and safety.
- To ensure garages do not dominate the street.

The subject application is not considered contrary to these controls.

• Site Configuration Control (Impermeable Site Area)

A review of the original DoP assessment there did not appear to have reference to the ISA controls. No assessment has been provided against the current controls as there is no increase in building works. The site in its entirety is developed. Accordingly, would exceed the current standards.

• Landscaping

The subject site is currently developed and no physical works are proposed. The DCP requires the retention of trees and the planting of trees win a minimum height of 10.0m and a large canopy (once mature). The subject application is for the change of use of a single unit. Accordingly, this cannot be complied with.

• Minor elements

BBQ areas:

This DCP advises that Barbeque areas are to be for domestic purposes only and located with consideration to the impact upon adjoining properties. The proposed development is for the change of use of a single unit and does not propose a BBQ area. The POS area is approximately 53sqm and more than capable of accommodating a standalone BBQ which could be used solely for Lot 55. Additionally the existing complex has facilities located on common property, which could be used by the residents and tourist guest for the unit.

Letterboxes:

This section of the DCP does not stipulate that a development *must* have a letter box but rather guides where the letter box(s) should be located. The subject application does not propose to construct a letter box onsite. To avoid any issues a condition has been applied that requires the applicant to obtain a PO Box for the unit and provide correspondence to Council with this regard prior to the issue of an occupation certificate.

A2-Site Access and Parking Code

'The Beach' development was approved by the Minister for Planning on 4 May 2004 on Lot 1 DP 247808. The development consisted of 57 tourist accommodation units, commercial floor area and basement car parking.

The following was extracted from the assessment report:

Development Control Plan No. 2 - Site Access and Parking Code

The proposed development will comprise approximately 1560m² of retail/commercial space and 57 tourist accommodation units. Under DCP No. 2 the parking demand is as follows:

LANDUSE		REQUIREMENT		
	Customer parking	Staff parking	Bicycle parking	
Retail/commercial	3.5/100GFA	0.5/100GFA	2 + 1/200GFA	
	= 55 spaces	= 8 spaces	= 9 spaces	
Tourist	1/unit	0.5/staff	1/unit	
accommodation	= 57 spaces	(unknown staff at this stage)	= 57 spaces	

Therefore the total number of car parking spaces required for the proposed development is 120 (plus additional spaces for staff of the proposed retail tenancies), with 66 bicycle spaces also required. The proposal provides for 190 on-site car parking spaces. This comprises 71 spaces for the proposed non-residential uses provided at.

This was later amended under a modification and the following condition was applied:

Condition 28 of the "The Beach" (as amended) is as follows:

The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a construction Certificate.

Car parking allocation Number

<u>Tourist accommodation 85</u> Retail/commercial car parking spaces 71

Retail:

A review of the most recent consents for the commercial component of the site has detailed that there is a surplus of parking on Lot 904 of 21 spaces. This is independent of the subject application and managed separately.

Tourist/Visitor:

In accordance with DA03/1221, SP 77096 was allocated 85 parking spaces.

In accordance with the current onsite operations all three (3) bedrooms units have the exclusive use of 2 parking spaces and all two (2) bedroom units have the exclusive use of a single parking space. Though it is noted all parking is on common property (body corporate consent has been provided for the DA).

Subject application:

In accordance with Section A2 of the DCP the following rates are required:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (min class)	Deliver/ Service Vehicle parking	Resident/ Visitor Parking	Staff parking	Customer car parking
A17	Shop top housing	In addition to commercial requirements		Residents: 1/unit (1). Visitors: 1/8 units (3)		1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.		

Shop top housing:

For use as "shop top housing" the development is required to provide 2 spaces based on a three bedroom unit plus 0.25 spaces towards visitor parking (1 space per 4 units).

Accordingly, requires 3 spaces (rounded up from 2.25)

The area nominated under exclusive use to Lot 55 is 2 parking spaces, thus the DA falls short 1 (0.25) space.

Other approvals:

Of particular relevance to the subject application **DA18/0665** for the change of use of one unit to Dual Use of Shop Top Housing and Serviced Apartments was approved by Council at the 7 February 2019 Planning Committee Meeting. This application approved a shortfall in parking spaces of 0.25 of a space (rounded up to 1).

The application was recommended for approval as the variation sought at the time was minor as it was not evident any other applications would be received.

Notwithstanding this, the application was reported to Council for determination as there was concern regarding the precedent that would be set by approving the application.

DA19/0099 is currently before Council and is for the change of use of 27 units to Dual Use of Shop Top Housing and Serviced Apartments on the same site. This application is recommended for refusal. However, should this application be supported it will require 15.75 spaces.

Including DA18/0665 (approved), the subject application and current development application DA19/0099 the uses require 57 spaces (rounded up from 56.25). The site has 40 spaces allocated to the Lots subject to the above referenced applications.

Accordingly, would fall short by 17 spaces (rounded up from 16.25 spaces).

<u>Assuming</u> all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces.

Accordingly, there would be a **shortfall of some 29 spaces.**

3 bedroom units:

During the assessment of the subject application the applicant identified the minor variation sought under the current proposal (or any of the existing 3 bedroom unit's onsite) in comparison to the 2 bedroom units.

Accordingly, a calculation based on the 3 bedroom units alone was undertaken. As advised previously 3 bedroom units have the benefit of 2 parking spaces under exclusive use. This is compliant with the requirements for residents under Section A2. Accordingly, the existing 3 bedrooms units each fall short by 0.25 space (visitor parking).

Should all 3 bedroom units (27 existing) be approved for dual use (tourist and permanent residential) there would still be a shortfall in the required parking by 7 spaces (rounded up), being the required visitor parking.

Council's Traffic Engineer has reviewed the proposed development application and noted that whilst the parking variance is minor in the instance of DA19/0232, the cumulative effect of similar applications should be taken into account.

When considering the site holistically the parking shortfall is significant and the officer's recommendation is for refusal.

It should also be noted that parking is located on common property (body corporate consent has been provided), with each unit being allocated exclusive use for parking. Whilst this is not relevant to the subject application (for one unit) future applications for change of uses (with varying numbers of bedrooms) on the subject site may need to be conditioned to ensure parking is clearly identified as residential use allocated to a unit and visitor use.

Section A11 – Public Notification of Development Proposals

The application was advertised and notified for a period of 14 days from Wednesday 17 April 2019 to Wednesday 1 May 2019. During this period a single submission was received.

A13-Socio-Economic Impact Assessment

A Social Impact Assessment is required for residential development comprising 50 units or more. Accordingly, is not applicable to the subject application.

Section A15 - Waste Management

The Beach Cabarita currently has a waste management system in place which allows for the storage and separation of waste generated by the guests that stay at The Beach Cabarita which is easily and safely accessible. The apartment block currently has access to regular waste removal, and the proposed change of use to a dual use unit will not add an increased pressure on the current waste management system in fact it is submitted that the generated waste would be less under the proposed dual use.

The application was referred to Council's Waste Management Unit who raised no objections with this regard and advised the following "Council's waste team has no issues with the Beach Hotel Waste management plan"

Section B19 - Bogangar / Cabarita Beach Locality Plan

The aims of Section B19 are to:

- Implement development provisions and design guidelines that are specific to Bogangar/Cabarita Beach;
- Provide design guidelines to appropriately manage development within the subject Bogangar/Cabarita beach through a single document;
- Encourage high quality urban design;
- Inform applicants, developers, consultants, Council and the general public about Councils planning intentions for Bogangar/Cabarita Beach;
- Establish a Strategic Planning Framework for the future development of the study area.

The proposed development does not negate the aims and objectives of the Plan.

Section B25 - Coastal Hazards

The development is located within the 2100 max line identified within Section B25 of the Tweed DCP. As the proposed tenancy currently exist and there is no building work proposed it is considered to have no impact upon the Coastal Hazards and therefore complies with this section of the DCP.

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

There are no draft planning agreements implicating the site.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it does not propose any external modifications to the existing building; it will therefore not restrict access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

Clause 92(1)(b) Applications for demolition

Not applicable – the subject application does not include any demolition.

Clause 93 Fire Safety Considerations

Yes, Councils Building Inspector reviewed the application and raised no concerns in relation to the building being approved for dual use as a class 3 and class 2 building.

It is not considered that the subject change of use will impact upon the existing buildings compliance with Category 1 fire safety provisions. The following condition has been applied to the consent:

The issue of this development consent does not certify compliance with the relevant provisions of the BCA. It is the applicant's responsibility to ensure the building complies with all relevant provisions of the BCA.

Clause 94 Buildings to be upgraded

Not applicable.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Plan.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Amenity

Unit 402 is located along the southern side of the resort complex. Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-

04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls).

In prior discussion with the building's management for a previous change of use application at the site (DA18/0665), it was confirmed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours. The original approval also has a range of conditions included to manage potential impacts on amenity.

Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated.

Conditions under the original approval are considered to remain adequate for the current proposal.

Context and Setting

The proposed change of use will not have any adverse impact upon the natural environment as the site is currently developed. The proposed development will change the use of a previously approved tourist accommodation unit to allow for permanent residential occupation or short term accommodation on a site which is currently comprised by a mix of tourist and commercial uses.

Economic Impact

The proposed change of use application is considered to provide further options for ensuring that the building is occupied at all times in whatever manner best suits the current market conditions and the individual owner's circumstances and as such is considered to assist in promoting the economic revitalisation of the Tweed City Centre.

(c) Suitability of the site for the development

Availability of utilities and services

The existing public infrastructure is adequate to service the proposed additional resident/s.

Surrounding land uses

The subject site is within the commercial business district of Cabarita/Bogangar, which provides for a variety of shopping, dining, and recreational opportunities.

The area is serviced by Woolworths (and ancillary smaller shops, chemist, butchers bakers etc.), medical facilities various professional/commercial uses within the immediate area.

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

In accordance with Section A11 – Notification of Development Proposals of the Tweed DCP 2008 the application was advertised and notified for a period of 14 days from Wednesday 17 April 2019 to Wednesday 1 May 2019. During this period a single submission was received.

Summary of Submissions	Council's response		
Parking There is insufficient parking onsite	The application is being refused based on DCP A2.		
	Council's Traffic Engineer has reviewed the proposed development application and noted that whilst the parking variance is minor in this instance, the cumulative effect of similar applications should be taken into account (such as DA19/0099). When considering the site holistically the parking		
	shortfall is significant. Site Access and Parking is discussed further within this report.		
Economic considerations A reduction in the number of tourist units will directly impact the input of dollars	This is not a planning consideration, nor is this statement factual. A full time resident can also be a contributor to local businesses within the area.		
(visitors) into the economy			

The submissions are discussed in the below table:

(e) Public interest

The proposed development is not considered to be an appropriate outcome for the site, nor is it considered to be in the public interest.

OPTIONS:

That Council:

- 1. Refuses the application for reasons specified, or
- 2. Formally requests a SEPP 65 assessment and reports the application back to Council for determination.

Option 1 is recommended.

CONCLUSION:

The proposed development is not considered suitable for the site and is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

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

d. Communication/Engagement:

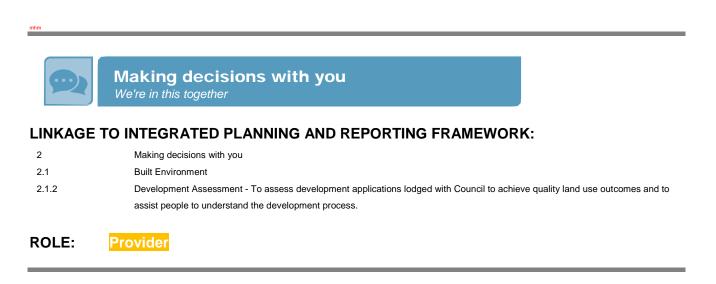
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

6 [PR-PC] Development Application DA18/0485 for Application for a Staged Development Consisting of Three Dwellings over Three Stages (One Dwelling Per Stage) at Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah

SUBMITTED BY: Development Assessment and Compliance



SUMMARY OF REPORT:

Updated Summary

Council at its meeting of 4 July 2019 resolved as follows:

"that this item be deferred for an on-site meeting with the proponent and the neighbouring residents to negotiate on an outcome that better addresses the concerns of the neighbours."

An on-site meeting with the owner, Councillors and adjoining residents has been arranged for Monday 29 July 2019.

Original Summary

The proposal is for three detached dwellings (over three stages - one dwelling per stage) development of stage 1 is the construction of dwelling 1, stage 2 is the construction of dwelling 2 and stage 3 is the construction of dwelling 3. Each dwellings are proposed to be two storeys in height with double garages. The proposal does not include Torrens subdivision or strata subdivision, although the potential lot sizes for each dwelling would be: Lot $1 - 744m^2$, Lot $2 - 673m^2$, Lot $3 - 806m^2$.

The application was referred internally to the following units: Building, Environment Health, Water, Development Engineers and Stormwater Engineers. No major concerns were raised, subject to recommended conditions.

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received 10 submissions (three from the same objector) in relation to the proposal which are addressed later within this report.

The main concerns raised by the objectors were: earthworks, bins and vegetation within the right of way, safety concerns of vehicles entering and exiting the site, two of the dwellings exceed the 9m building height, privacy impacts from the balconies of dwelling 1, geotechnical, stormwater and bushfire impacts.

Amended plans were provided which: removed the bins and landscaping from the right of way, provided improved detail of the proposed earth works within the right of way which also assisted in satisfying safety concerns, reduced building height of dwelling 1 and 2 so they are compliant with the 9m building height, privacy screens have been provided on the eastern elevation of dwelling 1 balconies. A geotechnical report, stormwater management plan and bushfire report prepared by suitably qualified persons were provided and assessed by Council staff and considered to be acceptable, these reports have been conditioned.

This development application has been called up for Council determination by Councillor Byrnes and Councillor Cooper.

RECOMMENDATION:

That Development Application DA18/0485 for application for a staged development consisting of three dwellings over three stages (one dwelling per stage) at Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah be approved subject to the following conditions:

GENERAL

 The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA2.0 issue E, DA2.3 issue E, DA2.4 issue E, DA(1)2.0 issue E, DA(1)2.1 issue E, DA(1)3.0 issue E, DA(1)3.1 issue E, DA(1)4.0 issue E, DA(2)2.0 issue C, DA(2)2.1 issue C, DA(2)3.0 issue C, DA(2)3.1 issue C, DA(2)4.0 issue C, DA(3)2.0 issue C, DA(3)2.1 issue C, DA(3)3.0 issue C, DA(3)4.1 issue C, DA(3)5.0 issue C, prepared by iphorm and dated September, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property. Any necessary adjustment or modification of existing services is to be undertaken in accordance with the requirements of the relevant authority, at the Developer's expense.

[GEN0135]

4. A sewer manhole is present on this site. Manholes are not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.

[GEN0155]

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

[GEN0300]

6. Bushfire Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- (a) Construction shall comply with Australian Standard AS3959-2009
 'Construction of buildings in Bush Fire-prone areas', Bushfire attack Level (BAL) 12.5 for each dwelling.
- (b) The development is to be completed in accordance with the Bushfire threat Assessment Report prepared by Bushfire Certifiers dated 10 January 2018 Ref:8/002.

[GEN0335]

- 7. A minimum 3.0 metre easement shall be created over ALL the existing public sewerage infrastructure on the lot.
- 8. Water and sewerage reticulation for all dwellings shall be connected so that there is only connection to Council's public water and sewer infrastructure.

[GENNS01]

9. The development is to be in accordance with the Stormwater Management Plan by Northern Rivers Structure consulting engineers dated 18 April 2019.

[GENNS01]

- 10. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotech Investigations Pty Ltd report, dated 11 December 2017, except where varied by the conditions of this consent.
- 11. All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS02]

12. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Geotech Investigations Pty Ltd report, dated 11 December 2017, except where varied by the conditions of this consent.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS02]

13. The landscaping is to be undertaken in general accordance with the approved landscaping plans. The landscaping must contain no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species.

[GENNS03]

14. This consent relates to a staged development as follows:

Stage 1 relates to the construction of dwelling number 1. Stage 2 consists of the construction of dwelling number 2. Stage 3 consists of the construction of dwelling number 3.

All conditions within this consent are to be applied to each relevant stage, where applicable.

[GENNS04]

15. No parking of vehicles is permitted within the Right Of Way.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Section 7.11 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions <u>for each stage</u> have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council (no contributions for stage 1 are required).

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

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

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

<u>Stage 2</u>

(a)	Tweed Road Contribution Plan: 2.6 Trips @ \$1570 per Trips (\$1,317 base rate + \$253 indexation) CP Plan No. 4 Sector9_4	\$4,082
(b)	Open Space (Casual): 1 ET @ \$659 per ET (\$502 base rate + \$157 indexation) CP Plan No. 5	\$659
(c)	Open Space (Structured): 1 ET @ \$754 per ET (\$575 base rate + \$179 indexation) CP Plan No. 5	\$754
(d)	Shirewide Library Facilities: 1 ET @ \$985 per ET (\$792 base rate + \$193 indexation) CP Plan No. 11	\$985
(e)	Bus Shelters: 1 ET @ \$75 per ET (\$60 base rate + \$15 indexation) CP Plan No. 12	\$75
(f)	Eviron Cemetery: 1 ET @ \$140 per ET (\$101 base rate + \$39 indexation) CP Plan No. 13	\$140
(g)	Community Facilities (Tweed Coast - North) 1 ET @ \$1624 per ET (\$1,305.60 base rate + \$318.40 indexation) CP Plan No. 15	\$1,624
(h)	Extensions to Council Administration Offices & Technical Support Facilities 1 ET @ \$2195.88 per ET (\$1,759.90 base rate + \$435.98 indexation) CP Plan No. 18	\$2,195.88
(i)	Cycleways: 1 ET @ \$555 per ET (\$447 base rate + \$108 indexation) CP Plan No. 22	\$555

(j)	Regional Open Space (Casual) 1 ET @ \$1282 per ET (\$1,031 base rate + \$251 indexation) CP Plan No. 26	\$1,282
(k)	Regional Open Space (Structured): 1 ET @ \$4500 per ET (\$3,619 base rate + \$881 indexation) CP Plan No. 26	\$4,500
<u>Stac</u>	<u>ge 3</u>	
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		[PCC0215/POC0395/PSC017	5]

17. 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:

<u>Stage 1</u> Water = Nil Sewer = Nil <u>Stage 2</u> Water = 0.4 ET @ \$13,926 = \$5,570.40 Sewer = 1.0 ET @ \$6,690 = \$6,690 <u>Stage 3</u> Water = 0.8 ET @ \$13,926 = \$11,140.80 Sewer = 1.0 ET @ \$6,690 = \$6,690

[PCC0265]

- 18. Prior to construction certificate of Stage One, details from a Structural Engineer are to be submitted to the Water Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.
- 19. Prior to construction certificate of Stages Two and Three, Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

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

[PCC0945]

21. For developments containing less than four attached or detached strata dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1175]

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

[PCC1195]

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

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

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

[PCC1310]

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

Note:

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

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

[PCC1335]

- 25. Prior to Construction Certificate of Stage One, the applicant is required to physically locate the actual location of the 150mm diameter sewer pipeline infrastructure on Lot 3 DP 371134. A Construction Certificate shall NOT be issued by a Certifying Authority unless the Certifying Authority is satisfied that plans show the actual location of the sewer pipelines, actual depth of the sewer dead end and actual depth of the sewer manholes.
- 26. Prior to Construction Certificate of Stage One, plans shall be provided to the Water Authority to demonstrate that the dwelling structures shall meet the Tweed Shire Council Development Design Specification D15 - Work in Proximity. Plans shall show that footings are located external to the sewer easement and also located below the sewer zone of influence.

[PCCNS01]

27. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.

[PCCNS02]

28. Safety rails, compliant with the Building Code of Australia are to be provided along the existing retaining wall (adjacent to the driveway) or any new constructed retaining walls where height exceeds 1.0m in height.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

29. 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]

- 30. 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]

31. 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]

- 32. Residential building work:
 - (a) Residential building work within the meaning of the <u>Home Building Act 1989</u> must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

- 33. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one closet for every 15 persons or part of 15 persons employed at the site. Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 34. 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]

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

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

[PCW0985]

36. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new (or modification of the existing) driveway access (or modification of access).

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

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

38. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

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

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

[DUR0205]

- 40. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
 - A. Short Term Period 4 weeks. L_{Aeq, 15 min} noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period the duration. LAeq, 15 min noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence. [DUR0215]

[DUR0215]

41. 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]

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

[DUR0395]

43. 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]

44. 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]

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

[DUR0425]

46. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

47. The development is to be carried out in accordance with the current BASIX certificate/s and schedule of commitments approved in relation to this development consent.

[DUR0905]

- 48. 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]

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

[DUR1875]

50. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

51. 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]

52. 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]

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

[DUR2195]

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

[DUR2425]

- 55. 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]

- 56. 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]

57. An isolation cock is to be provided to the water services for each dwelling in a readily accessible and identifiable position.

[DUR2505]

58. 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]

- 59. 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]

60. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

61. The Applicant shall submit the appropriate 'Application for Water Service Connection' form to Council's Water Unit to facilitate a property service water connection for proposed Lot 3 DP 371134, from the existing water main in Byangum Road. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

[DUR2800]

- 62. Works in the vicinity of public infrastructure must comply with the following requirements;
 - a) No portion of any structure may be erected within any easement or within one metre where no easement exists for public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.
 - b) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, asphalt or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.
 - c) Any fencing erected across the sewer main shall be designed and constructed with removable panels and footings located at least 1.0 metres horizontally clear of sewer main.

d) Trees and other landscaping that will grow to over one metre in height at maturity are not permitted within the sewer easement or within one metre of the sewer if no easement exists, to prevent the tree roots intruding into sewer mains and internal sewer pipes. Landscaping over the sewer shall be of a minor nature designed to ensure they do not damage or interfere with any part of the pipeline.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

64. 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]

- 65. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
 - (a) The use of any accommodation shall be limited to only the people permitted by the restrictions of occupation provisions under <u>State Environmental</u> <u>Planning Policy (Housing for Seniors or People with a Disability) 2004</u>.

[POC0860]

66. 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]

67. Prior to the issue of a final Occupation Certificate, all conditions of consent are to be met.

[POC1055]

- 68. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of Easements for services, Rights Of Carriageway and Restrictions As To User, as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
 - (a) A 3m wide easement is to be registered over the existing sewer in favour of Council.

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

[POCNS01]

USE

- 69. 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.
- 70. 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]

71. 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]

72. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0435]

73. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[USE0735]

74. All wastes shall be collected, stored and disposed of to the satisfaction of the General Manager or his delegate.

[USE0875]

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

[USE0875]

REPORT:

Applicant:	Mr D Crompton
Owner:	Mr Daniel J Crompton & Ms Justine C Shields
Location:	Lot 3 DP 371134 No. 141 Byangum Road, Murwillumbah
Zoning:	R2 - Low Density Residential
Cost:	\$660,000

Background:

The site is known as Lot 3 DP 371134; No. 141 Byangum Road Murwillumbah. The site is zoned R2 Low Density Residential with a land area of 3029m². The front boundary access is 6.096m wide at the road reserve which widens to 12.192m with an approximate length of 40m, the rear boundary is 67.056m wide, eastern boundary 54.667 long, and western boundary is 65.748m long. The site has a height of 38m AHD falling to the rear boundary at 22m AHD. The site is restricted by a right of way which benefits the neighbouring property No. 139 Byangum Road.

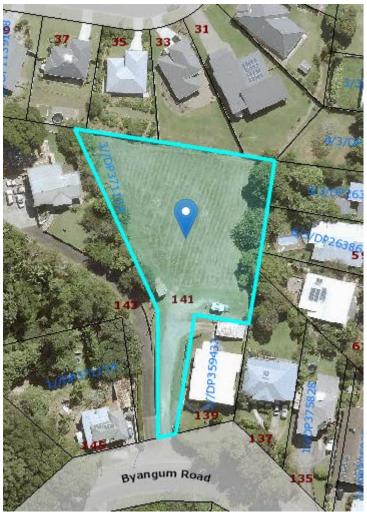
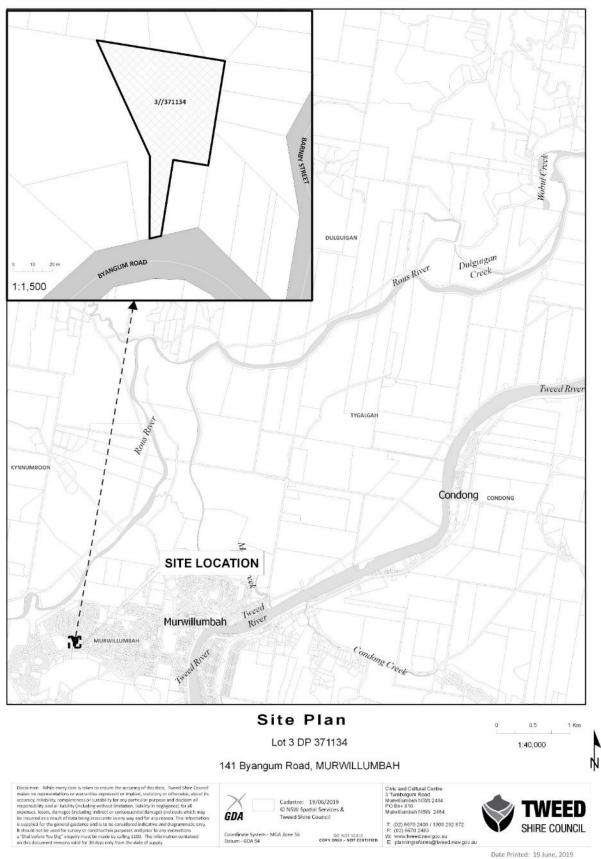
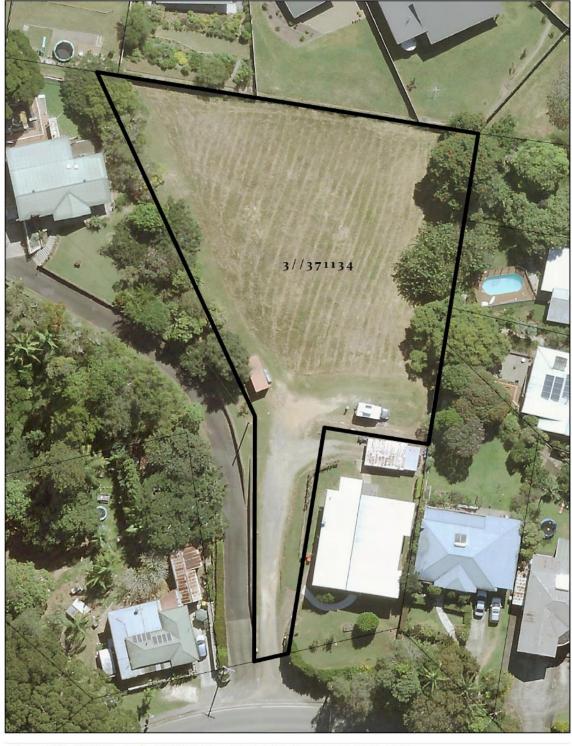


Figure: Aerial of the site and surrounds.

SITE DIAGRAM:



AERIAL PLAN:



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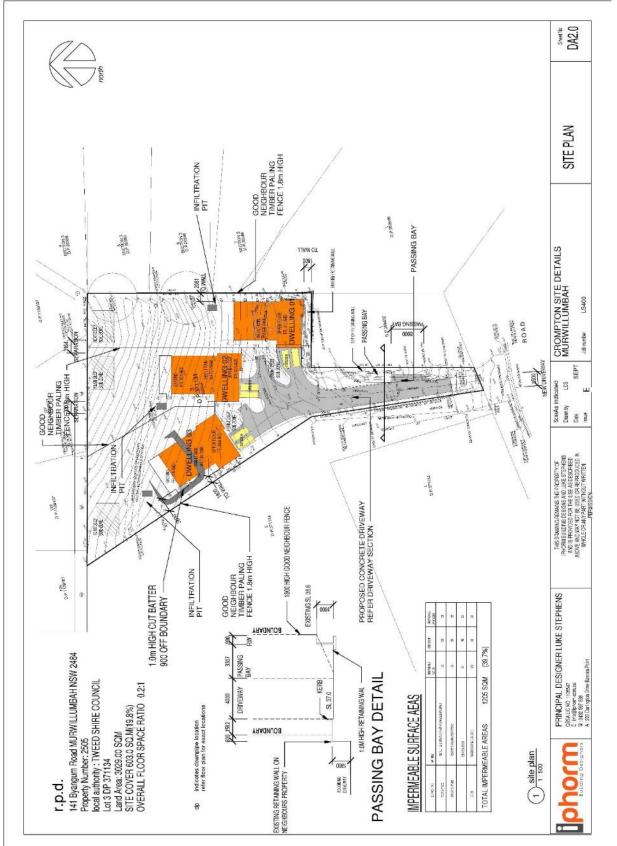
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Aerial Photography April 2018 Lot 3 DP 371134

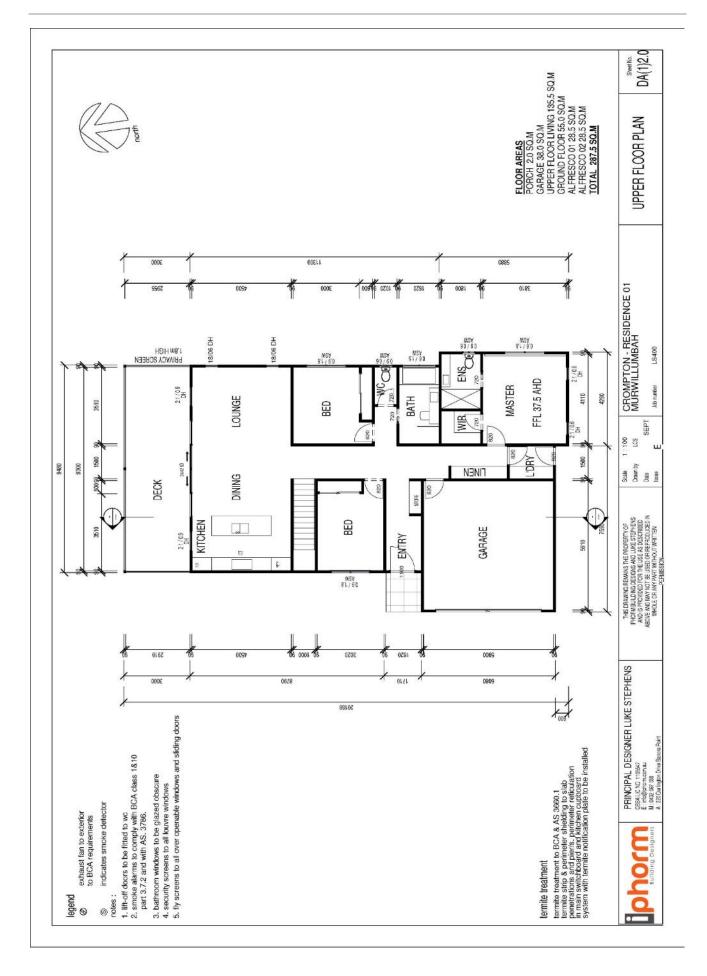
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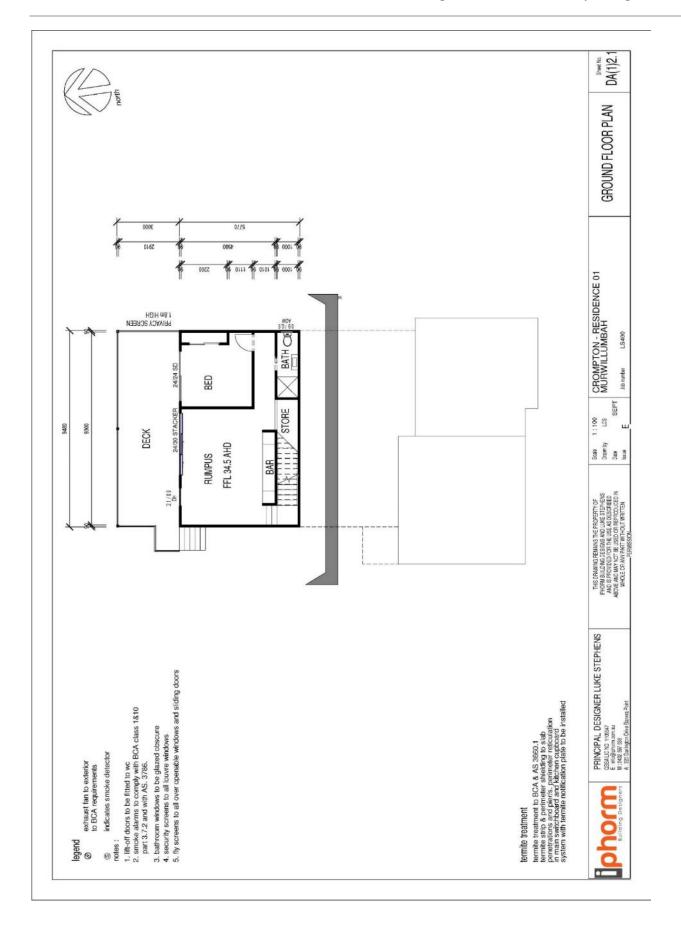
© 2018 Imagery - Tweed Shire Council © Cadastre - Tweed Shire Council Boundaries shown should be considered approximate only

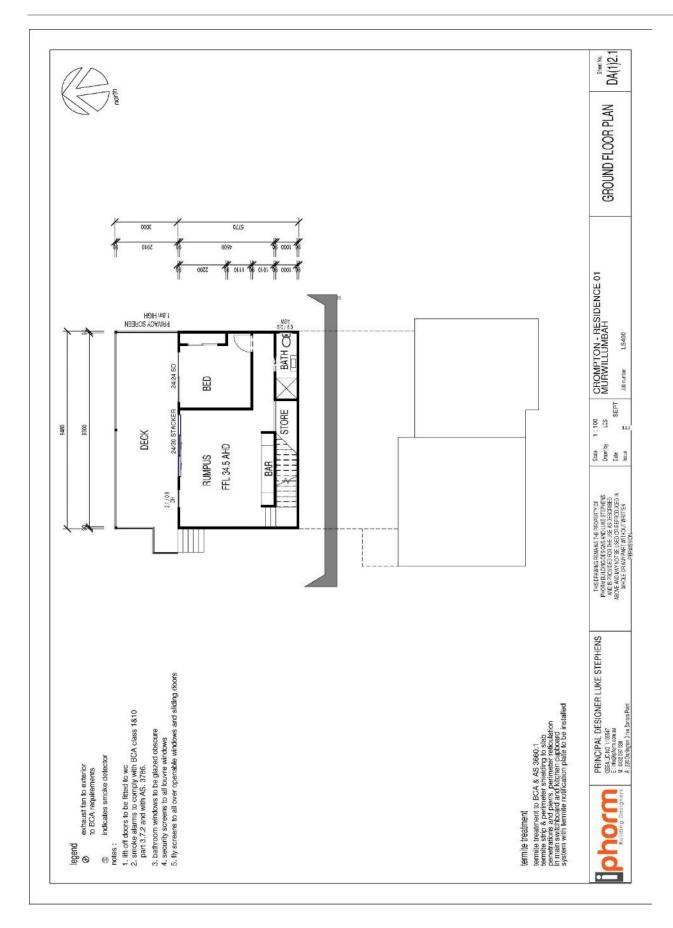
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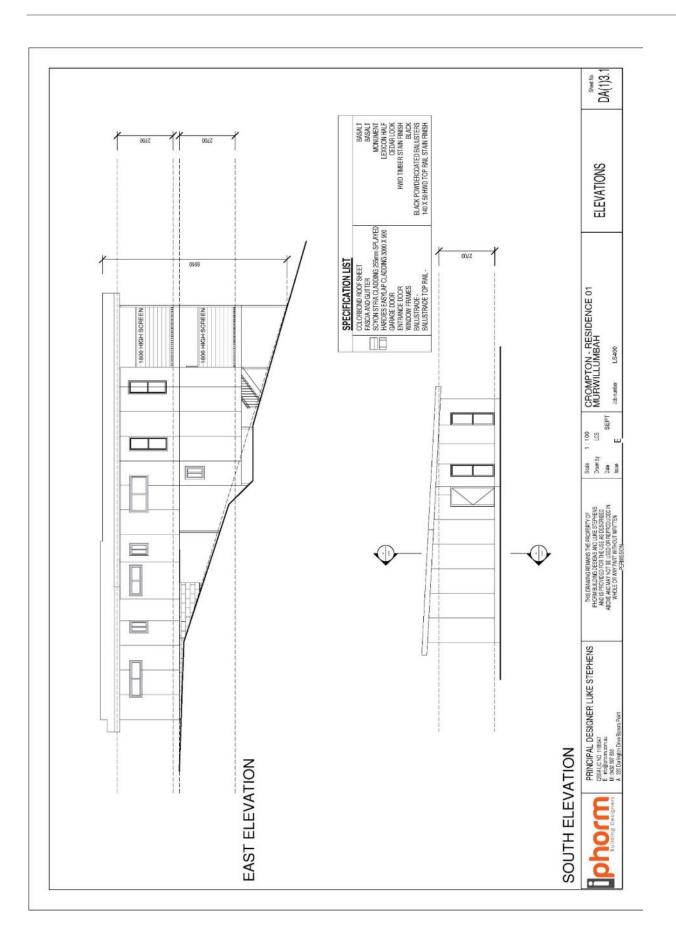




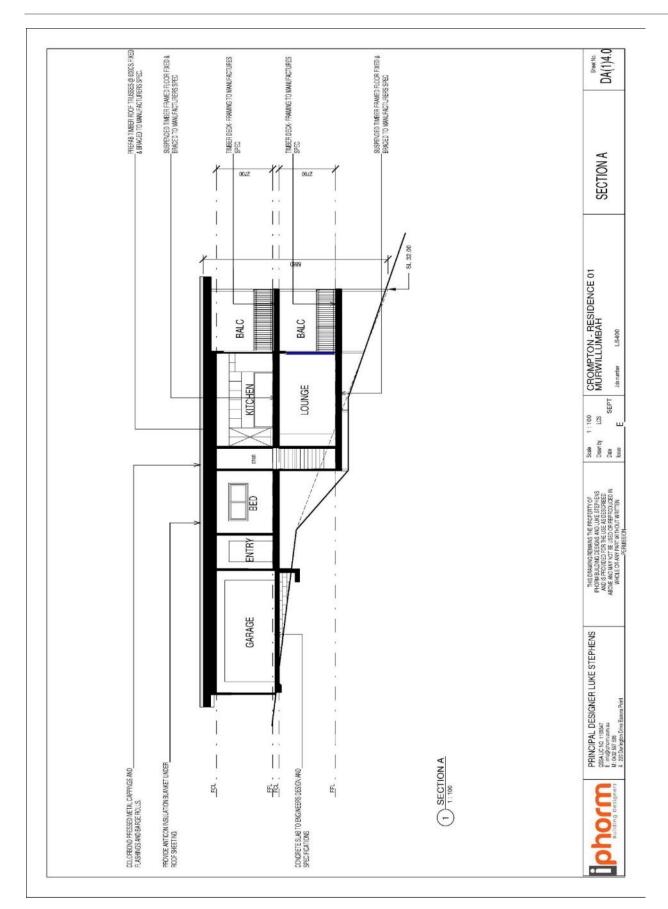


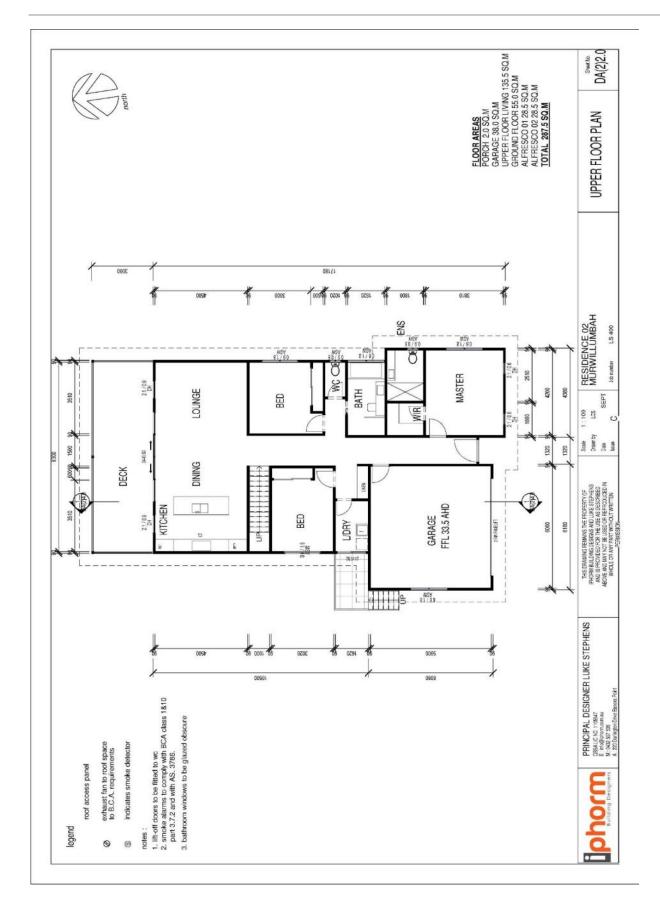


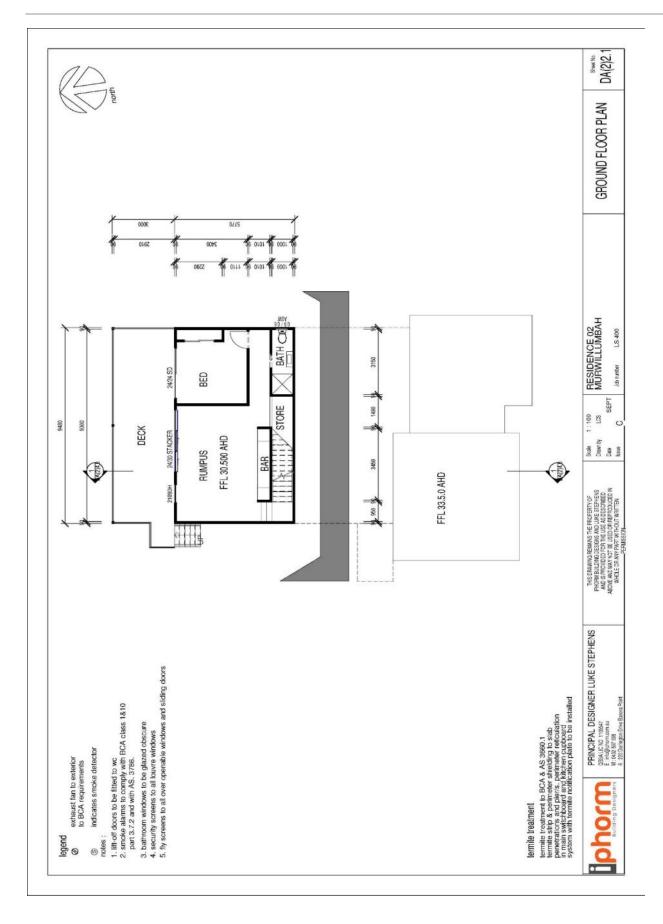


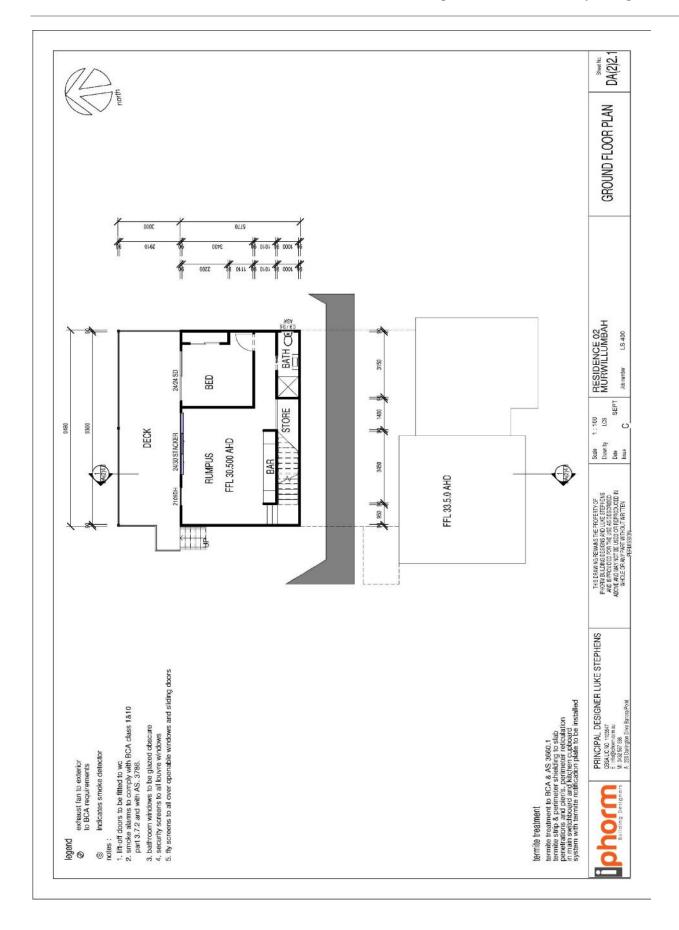


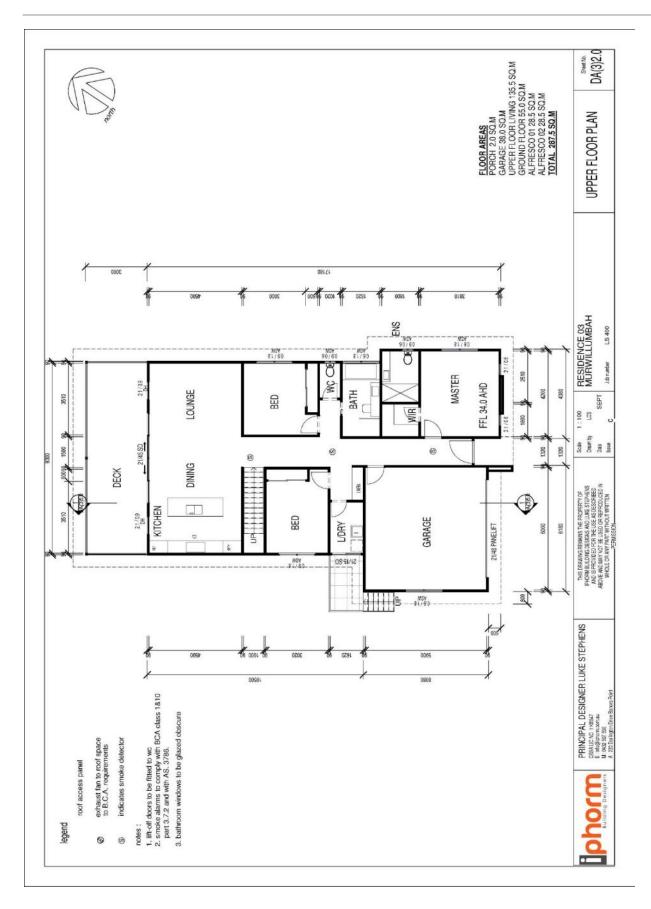


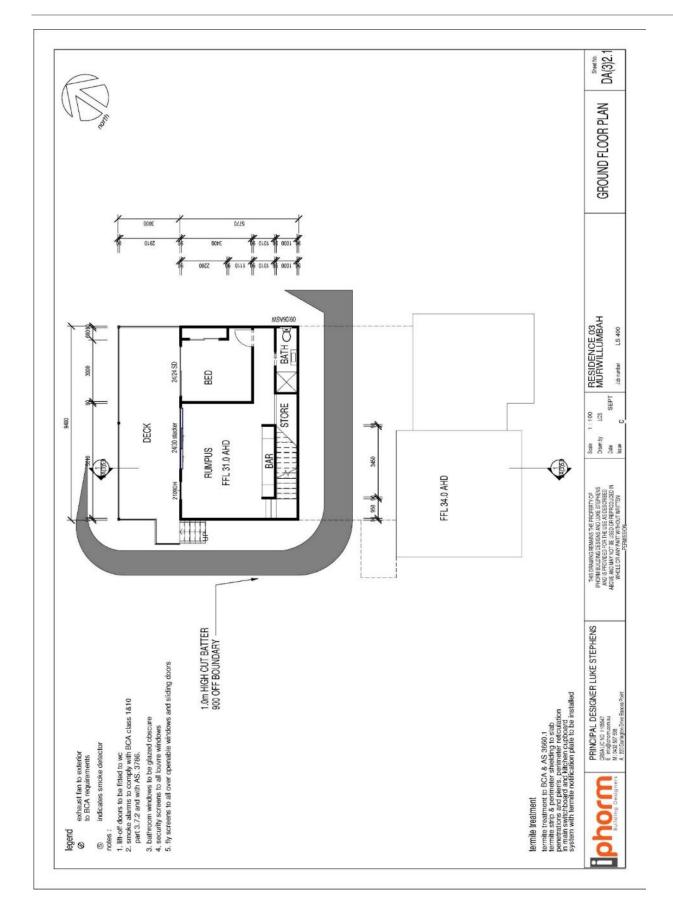


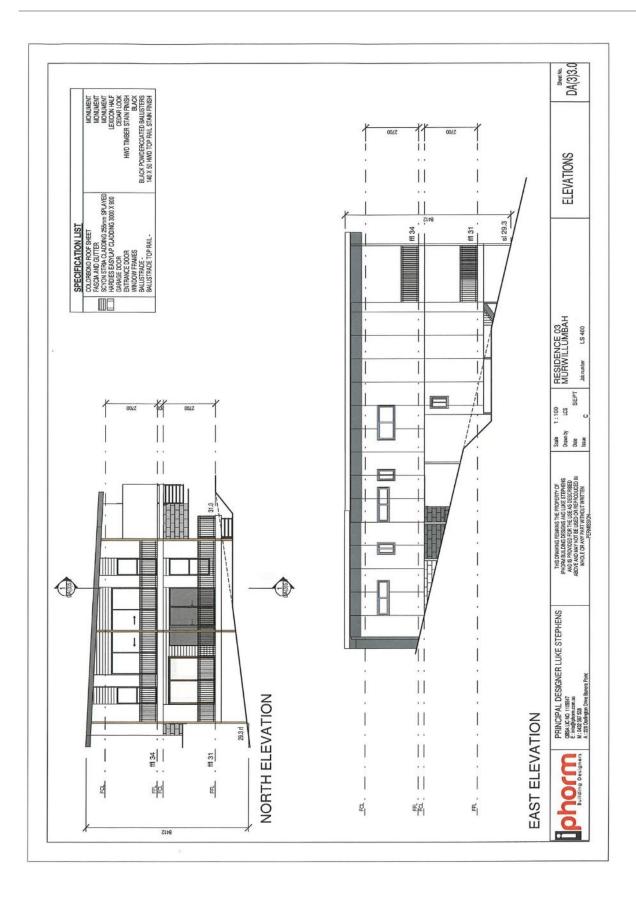


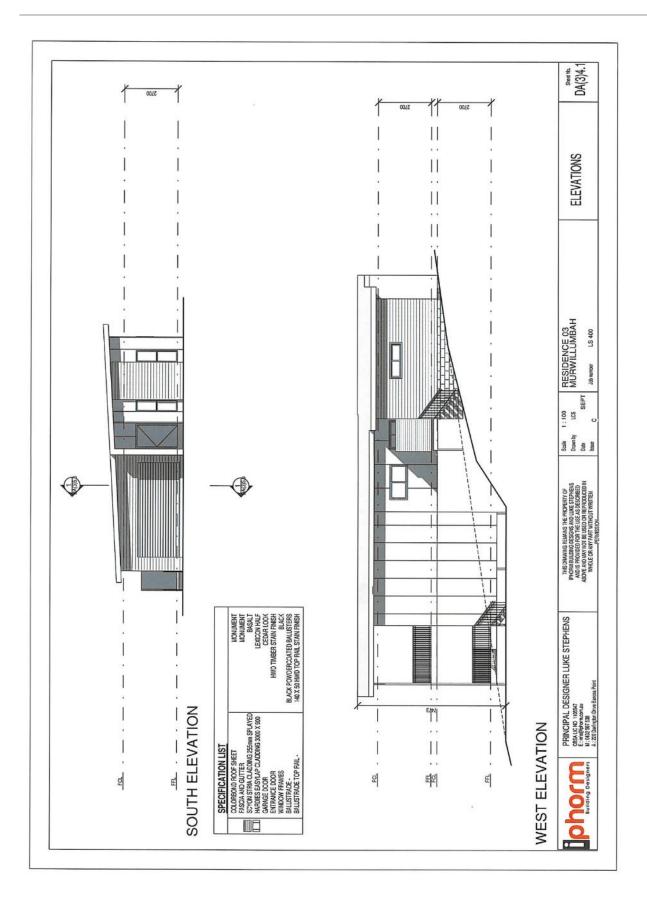












Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The proposed development is for three detached dwellings within the R2 Low Density Residential zoning. The proposed development is permissible and consistent with the objectives of the R2 zoning and the aims of the plan. Accordingly, the proposal is considered acceptable.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

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

The proposal for three dwellings on the site with a land area of 3029m² is permissible with consent and considered to be consistent with the zone objectives by providing housing within a low density residential environment (1 dwelling per 1009.66m²).

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

Subdivision is not proposed. The application states that subdivision will be subject to a future application.

Clause 4.3 - Height of Buildings

The site has a building height restriction of 9 metres. All three dwelling are less than 9m in height.

Clause 4.4 – Floor Space Ratio

The site has a floor space ratio of 0.8:1. The proposed FSR is approximately 0.2:1. Complies.

Clause 4.6 - Exception to development standards

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

Clause 5.4 - Controls relating to miscellaneous permissible uses

The development does not relates to a miscellaneous permissible use.

Clause 5.10 - Heritage Conservation

The site is not identified as being within a heritage conservation area, or a known or predicative Aboriginal Cultural Heritage site.

Clause 5.11 - Bush fire hazard reduction

Bushfire hazard reduction is not required. A small portion of the access to the site is within the bushfire buffer area. It is to be noted that the development does not propose either Torrens or strata subdivision and therefore is not integrated development.



Figure: The subject site and bushfire layer.

A bushfire report written by an accredited practitioner dated 10 January 2018 was submitted which demonstrates compliance with Planning for Bushfire. It is noted that the report recommends that the dwellings be constructed to Bal 12.5, each dwelling is to have a 5,000 litre water tank, the property is to be maintained as an Inner Protection Area and a reversing bay is acceptable in lieu of a turning circle. A condition is recommended requiring the BAL level. The report is to be conditioned.

Clause 7.1 – Acid Sulfate Soils

The site is class 5 on the ASS planning maps and elevated at 24 – 38m AHD. The Geotech Report and Statement of Environmental Effects (SEE) indicate relatively minor excavations to create a pad for upper slab on ground. Disturbance of ASS and groundwater are unlikely, no further consideration or conditions required.

Clause 7.2 - Earthworks

Minor earthworks are required for slab, piers and services. The proposed works are considered unlikely to create a detrimental impact on the environment and neighbouring properties.

Clause 7.3 – Flood Planning

The site is not prone to flooding.

Clause 7.5 - Coastal risk planning

The site is not within the coastal hazard.

Clause 7.6 - Stormwater Management

The applicant submitted a stormwater report which was reviewed by Council's Development Engineer and Stormwater Engineer and considered acceptable.

Clause 7.8 – Airspace operations

Not Applicable.

Clause 7.9 - Development in areas subject to aircraft noise

Not Applicable.

Clause 7.10 - Essential Services

The provision of essential services is considered to be available.

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, interconnected economy
- Vibrant and engaged communities
- Great housing choice and lifestyle options.

The site is identified as being within the Urban Growth Area the proposed three dwellings are considered to be consistent with the plan.

State Environmental Planning Policies

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area.

The objectives of each clause are as follows:

13 Development on land within the coastal environment area

- (1) 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.
- (2) 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), 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.

(3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The proposal is considered to be consistent with the objectives of each clause.

SEPP (Building Sustainability Index: BASIX) - 2004

The proponent has provided an acceptable BASIX certificate and any approval will be conditioned for compliance.

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

Not Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A full assessment of the development against the provisions of Section A1 of the DCP has been undertaken with the development considered to generally comply with the relevant development controls.

It is to be noted that privacy screens are provided to eastern elevation of both deck areas of dwelling 1 to improve privacy to the neighbouring properties to the east. Although it is noted that there is significant vegetation along the eastern property boundary separating the subject dwelling from the neighbouring properties providing screening and privacy.

A2-Site Access and Parking Code

The development is defined as multi dwelling housing with each dwelling consisting of four bedrooms, therefore requiring two spaces per dwelling. The proposal is considered to comply as the provision of a double garage is provided with all three dwellings. In addition to the double garages adequate area is available for two vehicles in front of each double garage, therefore a total of four spaces are provided to each dwelling.

Entry and exist to the site onto Byangum Road can be provided in a forward direction as vehicles can turn around on site.

Council's Traffic Engineer raised no objection to the proposal.

A5-Subdivision Manual

Although the development does not propose subdivision, the policy contains some relevant control to the proposal such as: right of way access and battle axed allotments.

Access to lots (including right of way access)

Every lot shall have feasible access from a street.

Where access is on a right of way over another property, the following minimum standards shall apply:

Benefited Properties	Standard of Access	Width of right of way
1	3m minimum pavement plus controlled drainage	Pavement width plus width required for earthworks, batters, retaining walls, longitudinal drainage and services. The minimum ROC shall not be less than 4.0m.
2 (or reciprocal)	As above plus provision for passing bays	As above
3 to 5	4.5m minimum pavement	As above

The development is considered to comply with four lots or properties to use the right of way with the access to be a minimum of 6m wide.

Battle-axe or Hatchet Shape Allotments

The policy states the following in relation to battle axed allotments.

Battle-axe lots must only be used where they can achieve adequate amenity for residents and neighbours, and enhance community safety, in situations including:

- outlook over parks;
- providing frontage to major streets;
- elevated views;
- providing vehicle access to sloping sites; and
- in very limited circumstances, larger lots adequate for selfcontainment of a dwelling and its outlook
- Battle-axe allotments must not be used for multi dwelling housing, dual occupancy,
- business, industrial, commerce and trade allotments.
- The area of battle-axe handles is not to be included in determining minimum lot sizes.

The proposal is considered to be acceptable in the circumstance as the total site area is $3029m^2$ with the site area minus the access handle being $2667m^2$ which equates to one dwelling per $889m^2$ of site area. This is generally consistent with and exceeds the lot sizes within the area and exceeds the minimum lot size of $450m^2$ set by the Tweed Local Environment Plan 2014.

The proposal complies with all relevant development controls set by Section A1 and A2 of Council's consolidated Development Control Plan and development standards within the Tweed Local Environment Plan 2014.

The proposal is considered to create acceptable and standard residential impacts on the natural and built environments.

A11-Public Notification of Development Proposals

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received multiple submissions objecting to the proposal, these submissions are addressed later within this report.

A15-Waste Minimisation and Management

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

As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP, subject to conditions.

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

There are no planning agreements or draft planning agreements that apply to this development.

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

Clause 92(1)(b) Applications for demolition

Demolition is not proposed.

Clause 93 Fire Safety Considerations

As the proposal does not involve the change of use of an existing building there are no fire safety considerations, this clause is not relevant.

Clause 94 Buildings to be upgraded

As the application does not cover rebuilding, alteration, enlargement or extension of an existing building, this clause is not relevant.

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

Tweed Shire Coastline Management Plan 2005

Not Applicable.

Tweed Coast Estuaries Management Plan 2004

Not Applicable.

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

Not Applicable.

(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

The proposal is considered to create acceptable impacts on the natural and built environment subject to conditions.

Context and Setting

The site is zoned R2 Low Density residential and is surrounded by R2 zoned land consisting of allotments of varying sizes and shapes containing dwellings.

(c) Suitability of the site for the development

The subject site is located within an existing residential area and is appropriately zoned R2 Low density with a site area of 3029m².

Surrounding Landuses/Development

The site is surrounded by residential land on varying sized and shaped sites.

Flora and Fauna

The site is vacant of vegetation, the removal of vegetation is not required.

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

The application was notified for a period of 14 days from Wednesday 18 July 2018 to Wednesday 1 August 2018. Council received nine submissions objecting to the proposal.

Summary of Submissions	Response
Any adjustment (levelling) as this will seriously impeded our access to our driveway;	Council's Traffic Engineer and Driveway Engineer have reviewed the proposal and advised that a 138 certificate is not required as the works are not within the road reserve.
	A site meeting was held between the applicant and the owner of No. 139 Byangum road to discuss earthworks within the right of way. The meeting concluded with the owners of No. 139 Byangum road being satisfied that access into their property from the right of way would be maintained at current standard or improved.
The placement of the bin bay (9 bins), impedes vision of our driveway as well as the hygiene issue as the bins will	The applicant has agreed to relocate the garbage bins relating to each residence, which are to be placed at

Summary of Submissions	Response
placed in a very close proximity (3-4 metres from our dining and kitchen) as well as visually displeasing (value) to our residence.	their respective residence. Therefore will not be stored adjacent to the driveway access and residence at No. 139 Byangum Road.
The planting of Franginpani trees (5-6 m tall/ and grow just as wide), Tuckeroo trees (8-15m tall/3-5 m wide) and Lilly Pillies(5m tall/2 m width) along the Right of Carriageway, as it will seriously impede vision and any traffic movement as the driveway is not wide enough to sustain traffic and significant Flora.	The applicant has agreed to remove the vegetation from the proposal. An amended landscape plan has been provided which identifies the removal of vegetation in the right of way.
Any Flora planted along the retaining wall between 141 Byangum Road and 143 Byangum Road as there is a water metre and a Telstra line running along that wall;	An amended landscape plan has been provided which identifies the removal of vegetation in the right of way and retaining wall.
Requesting a covenant (?) that there is no parking upon the Right of Way due to the safety issues with the movement of eight cars upon the driveway (2 per unit plus our two cars)- Can this be done in regards to building (i.e. no trade parking on Right of Way?);	A condition is recommended stating that no parking within the right of way.
Visitor car parking for us and the three units?	Section A2 of the DCP requires visitor parking for four units, with the development being for only three dwellings visitor parking is not applicable to the development. However, it is noted that each dwelling provides four vehicle spaces with only 2 spaces required, therefore effectively providing two visitor parking spaces per unit of six visitor parking spaces overall.
Who maintains the Right of Carriageway and because it is a development, does the developer shoulder the costs?	Maintenance of the right of carriageway is shared by all parties.
The safety concerns in regards to the steepness of our driveway upon turning into the driveway and the fact that your cannot see any car, bike, children etc until you have crested up on the driveway.	The development proposes to amend the current driveway within the site, by a slight reforming of the access removing the hump located approximately 11.7m in from the road.

Summary of Submissions	Response	
	The following points are made towards adequacy of the access.	
	• A passing bay (approximately 9 in length) is also proposed to assist in reduce safety or traffic impacts.	
	• The width of the driveway at the road reserve is 6m, with would enable two vehicles to be entering and exiting at the same time.	
	• The portion of the driveway within the road reserve has a length of 7m to the property boundary with an entrance width of 11m, which also enables the passing of two vehicles.	
	 Compliant pedestrian sight triangles are provide. 	
	• The ultimate peak traffic volumes accessing the site is considered to be low (3.12 trips per peak hour, compared to a domestic property of 2.4 trips in peak hour).	
	• Sight distance from the driveway to the east is approx. 125m and to the west >200m which is in excess of that desired under AS2890.1 and council's Driveway Policy. The access is not in a prohibited location as defined by AS2890.1 s3.2.3	
	Council's Traffic Engineer, Driveway Engineer and Development Engineer raised no objection to the driveway.	
The safety concerns in regards to the fact that there will be eight cars (plus visitors) utilising the Right of Way and the bottom of the driveway coming in and out of an already congested road and a dangerous corner.	As above.	
The fact that the residence of 143 Byangum Road and 145 Byangum Road will be using that same corner to turn into their residence and that the bottom of the driveway of 141, 143 and 139 Byangum Road all use the same	As above.	

Summary of Submissions	Response
driveway (at the initial entrance of the driveway) and the impact that has on an already dangerous corner (add bin collection of an additional six bins, plus postal delivery);	
The question of the distance from fire hydrant in road to furtherest unit (?);	A fire hydrant is not required as static water consisting of three 5,000 litre water tanks are required in accordance with the Bushfire Report.
Tweed LEP 2014 Permissibility. Council's Subdivision manual states that battle-axe blocks should not be used for multi dwelling housing.	Council's Subdivision manual is a development guide, which can be varied subject to a merit assessment. The proposal is considered to be acceptable on merit subject to the detailed assessment within this report.
A5 Subdivision manual states that battle axe blocks should not be used for multi dwelling housing and further states:	
May only be used where they can achieve adequate amenity for residents and neighbours and enhance community safety in situations that include - overlooking parks - this development does not provide frontage to major streets - this development does not.	
The lot has been identified as being bush fire prone on the Tweed Shire Council Map.	The site is partially affected by bushfire buffer and a bushfire report has been provided by a suitably qualified expert that recommends among other requirements the construction of the dwellings to be at BAL 12.5. The bushfire report is to be conditioned.
Slope gradient - steeply sloping (Geo Tech report) 18 degree gradient, Class P.	A Geotechnical report written by a qualified engineer was submitted and assessed by Council's Development Engineer and considered acceptable. The Geotechnical report is to be conditioned.
"Considering the severity of flood impact upon the region in recent years, the further development of such land to provide a higher density is in the greater interest of the community at	The site is not prone to flooding. The development complies with lot size, FRS etc. The density is greater than 1/450m ² being at around 1/1000m ² and is considered acceptable.

Summary of Submissions	Response
large" I would suggest the greater interest of the developer only.	
Meets the most basic of BASIX requirements only water 41 (target 40) energy 51 (target 50) thermal comfort pass - opportunity to be more environmentally and alternate energy conscious lost.	The development complies with the BASIX requirements, no further consideration is required.
The proposed multi housing development will not hinder any public views or vistas but will seriously impact on neighbouring allotments by increased overlooking. When buying our lot we considered that a dwelling would be built behind us but as the lot was a battle axe one as confirmed by Council and Tweed LEP 2014 this would be only one dwelling.	The development complies with all relevant controls such as: building heights, setback, FSR, deep soil zones. The proposal is considered to be acceptable development for the site.
We contest the assertion that a 15 metre set back allows ample deep soil zone at the rear of the property to absorb storm water and suggest that council be present when there such an event to see for themselves how inadequate this statement is.	A stormwater management plan was submitted and assessed by Council staff and considered acceptable.
This proposal is located on a site that is private and not visible form the street, it will not be private and will be very visible from the neighbouring allotments.	
Two external covered balconies for hinterland views and for overlooking of neighbour privacy particularly in relation to our backyard enjoyment.	Each dwellings rear setback exceeds the minimum requirement.
Traffic, Access & Safety.	Council's Traffic Engineer reviewed the proposal and did not raise an objection.
Maximum building height exceeded.	The three dwellings comply with the building height of 9m.



Figure: Site and properties that objected to the proposal

(e) Public interest

The proposed development does not present any issues that are considered to be contrary to the broader public interest as the development is in accordance with the planning regime which applies to the site.

OPTIONS:

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

Council officers recommend Option 1.

CONCLUSION:

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

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

d. Communication/Engagement:

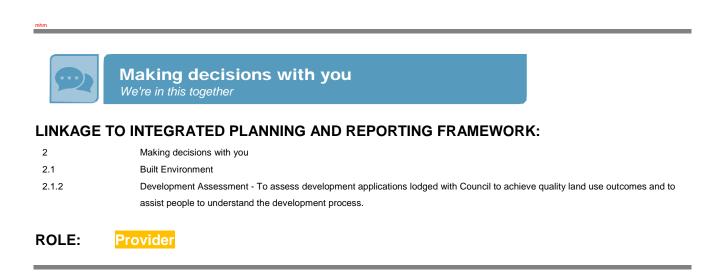
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

7 [PR-PC] Development Application DA17/0564.01 for an Amendment to Development Consent DA17/0564 for Dwelling Alterations and Additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah

SUBMITTED BY: Building and Environmental Health



SUMMARY OF REPORT:

Council has received a development application for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037, No. 125 River Street, South Murwillumbah.

The original approval (DA17/0564) was granted with a variation of 968mm to the 9m height limit prescribed by Clause 4.3 of the Tweed Local Environment Plan (TLEP) 2014.

The current proposed amendment to the consent seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure with a maximum height of 11.853m, 1.885m higher than the previously approved height variation and 2.853m higher than the maximum height limit prescribed by Clause 4.3 of the LEP. The increased building height consists wholly of the roof form, with the existing approved floor and ceiling heights being maintained.

In addition, the application seeks approval for other minor works, some of which are already constructed, however this report will focus primarily on the proposed height variation.

The height variation is considered to be a significant breach of the 9m height limit prescribed by Clause 4.3 of Council's Local Environment Plan (LEP) 2014. The as-constructed-building exceeds the LEP height limit by up to **32%** and is not considered to be consistent with the five part test for consent authorities to consider when assessing an application to vary a standard as set out by the Land and Environment Court.

From Council's review of the evidence available, the works are considered to be the result of unauthorised construction, which could have been rectified at an earlier stage had the conditions of consent been adhered to and a stop works notice issued at the framing stage.

The assessment of the proposal concludes that the variation provides no improved architectural value to the building and that compliance with the originally approved height variation is not unreasonable or unnecessary in this instance.

Further, had the current building height been applied for prior to being constructed, it would not have been supported by Council Officers. It is therefore considered that the application warrants a recommendation for refusal.

This development application is referred to Council for determination as requested by Councillors Allsop, Owen and Cherry.

RECOMMENDATION:

That:

- 1. Development Application DA17/0564.01 for an amendment to Development Consent DA17/0564 for dwelling alterations and additions at Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah be refused for the following reasons:
 - 1. Pursuant to the Environmental Planning and Assessment Act, Section 4.15 (1)(a)(i) The proposed development is contrary to the provisions of the Tweed Local Environment Plan 2014, in respect to the following:
 - (a) The proposal is not consistent with the objectives of Clause 4.3 (1);
 - (b) The proposal is not consistent with Clause 4.3 (2) which prescribes a 9m height limit for this locality; and
 - (c) The proposal is not consistent with Clause 4.6, in that compliance with an already varied development standard is not considered unreasonable or unnecessary in this instance.
 - 2. Pursuant to Section 4.15(1)(a)(iii) The proposal is not consistent with Section A1 of Council's Development Control Plan Clause 3.2, which prescribes a 9m height limit for residential dwellings.
 - 3. Pursuant to Section 4.15(1)(b) The proposal provides for an unwarranted departure from the building height development standard.
 - 4. Pursuant to Section 4.15(1)(e) The proposal is considered not to be in the public interest given the works have been constructed without consent, and were avoidable.
- 2. Council investigates options to commence appropriate compliance action for the unauthorised building works.
- 3. ATTACHMENTS 4, 5 and 6 are 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:

Applicant:Ms R TrickeyOwner:Ms Ruth E TrickeyLocation:Lot 1 DP 1241037 No. 125 River Street, South MurwillumbahZoning:R2 - Low Density ResidentialCost:\$320,000

Background:

APPLICATION DETAILS

The original development consent (DA17/0564) was granted for alterations and additions to an existing dwelling and included a variation to the Tweed Local Environment Plan (LEP) 2014 Building Height Standard.

The modification application that is the subject of this report, seeks retrospective approval for works constructed not in accordance with the Council approved plans for DA17/0564.

Works already constructed:

Roof

- The new roofing has been built at 40 degrees contrary to the approved plans, this has resulted in the apex of the roof now being 1.885m higher than approved. The new maximum roof height is 16.630m AHD, the previously approved maximum roof height was 14.75m AHD.

Ground floor

- Removal of some sub-floor posts to allow for more cost effective construction;
- Expansion of ground floor laundry toilet area to better carry load of building above;
- Expansion of internal stairwell to better carry load of building above; and
- Modification of breeze block wall to better allow for movement of flood waters.

First Floor

- Relocation of internal walls to bathroom and bed 3 to allow for relocated vanity; and
- Increased size of a window by 800mm in ensuite bed 1.

Works not yet constructed:

Roof

- It proposed to remove the existing 'Bullnose' verandah roof on the existing eastern verandah. This is to be replaced with an 'eye-lash' style curved roof in place of the old roof, which is to continue around the approved deck on the northern side of bed 1.

The modification application also seeks to alter conditions 1 and 6 of the original consent.

The proposed amendment to the consent seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure with a maximum height of

11.853m, **1.885m higher** than the approved height variation and **2.853m higher** than the maximum height limit prescribed by Clause 4.3 of the LEP. The increased building height consists wholly of the roof form, with the existing approved floor and ceiling heights being maintained (See Figure 1 below).

SITE DETAILS

The subject site is legally described as Lot 1 DP 1241037 No. 125 River Street, South Murwillumbah. The site has an area of 993.2m² and is a regularly shaped allotment with frontage to River Street.

The site is currently improved by an elevated single storey dwelling undergoing alterations and additions both approved under DA17/0564, and the owner is now seeking retrospective approval for unauthorised works under DA17/0564.01.

The site is flood affected with a Design Flood level of 7.3m AHD identified for the site. The minimum habitable floor level for the building is 7.8m AHD. The proposed modification maintains the previously approved habitable floor level.

The site adjoins the Tweed River to the rear or west, a three storey residential flat building to the south and a single residential dwelling to the north.

The predominant land use pattern within the area is low density residential living, with development in the area a mixture of single and two storey dwellings.

HISTORY OF THE APPLICATION

The original approval (DA17/0564) was granted with a variation of 968mm to the 9m height limit prescribed by Clause 4.3 of the Tweed Local Environment Plan (TLEP) 2014. The applicant addressed Clause 4.6 of the LEP, citing that compliance with the building height development standard was unreasonable or unnecessary.

Specifically, the applicant cited that the variation was warranted in order to achieve the minimum habitable floor levels prescribed by Section A3 of the Tweed Development Control Plan 2008 and also arguing that the 968mm variation was minor.

The proposed amendment to the consent now seeks to further vary the 9m height limit, by obtaining retrospective approval for the use of the structure. The structure now has a maximum height of 11.853m, **1.885m higher than the approved height** variation and **2.853m higher than the 9m building height limit** prescribed by Clause 4.3 of the TLEP 2014. The increased building height consists wholly of the roof form and maintains the existing floor levels (8.2m AHD) and the finished ceiling height (10.90m AHD).

Council officers do not support this variation, and are of the view that compliance with the existing approved height is not considered unreasonable or unnecessary given flooding considerations were already satisfied in the original variation, and the extent of the proposed variation should no longer be considered 'minor'.

As set out later in this report, the amended Clause 4.6 variation request is considered to be unreasonable having regard to the already approved height variation and it is recommended that Council refuse the request.

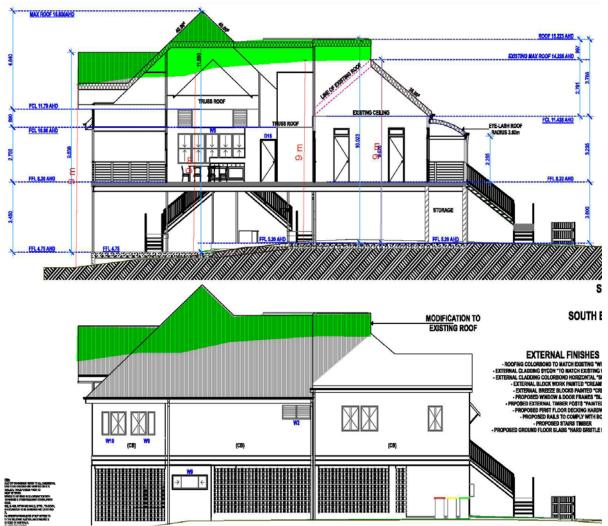


Figure 1 – Portion of the already constructed roof above the 9m height limit.

The original development consent had specific conditions imposed to ensure that the approved works were constructed with a maximum height of 14.745m AHD. These conditions include:

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

Date	Plan No.
03/08/17	DA P1 - DA P4
05/10/17	DA P5, DA P7 & DA P8
14/11/2017	DA P6, DA P9 - DA P11

- 4. 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.
- 6. The proposed alterations and additions shall not exceed a maximum height of RL 14.745m AHD, as indicated on the approved plans.

27. During construction the Principal Certifying Authority is to be provided with a Registered Surveyors floor level certificate at each floor platform stage (before any concrete pour) and when the roof framework is in place, to confirm the height of the building is proceeding in accordance with the approved plans/consent conditions.

It is the role of the Principal Certifying Authority to ensure that conditions of consent are adhered to, including the production of specific documents to Council as required (engineering, surveying etc.). The certifying authority is also responsible for ensuring works are constructed in accordance with the approved plans.

UNAUTHORISED WORKS INFORMATION

Council has undertaken various investigations in terms of the unauthorised works.

Whilst information provided by the owner states that the further building height encroachment is a result of errors made by the builder, the Private Certifier states:

"It was mentioned numerous times the overall height for the development due to the change in roof pitch to the owner who advised on a number of occasions that it was still under the maximum height limit for the subject site and this would be addressed within the section 96 application to Council."

The Principle Certifying Authority (private) conducted a framing inspection on 11 September 2018, in which the framing report states that the frame was satisfactory and that a 'Section 96 was requested for changes made from Development Approval Stamped Plans, including increased building height'. With the benefit of hindsight, a stop works notice may have been a more appropriate action to take.

The increased building height was directly non-compliant with condition No. 6, which specifies a maximum building height in Australian Height Datum (AHD). The Certifier provided the following response to Council with regard to the floor level certificates required by condition 27:

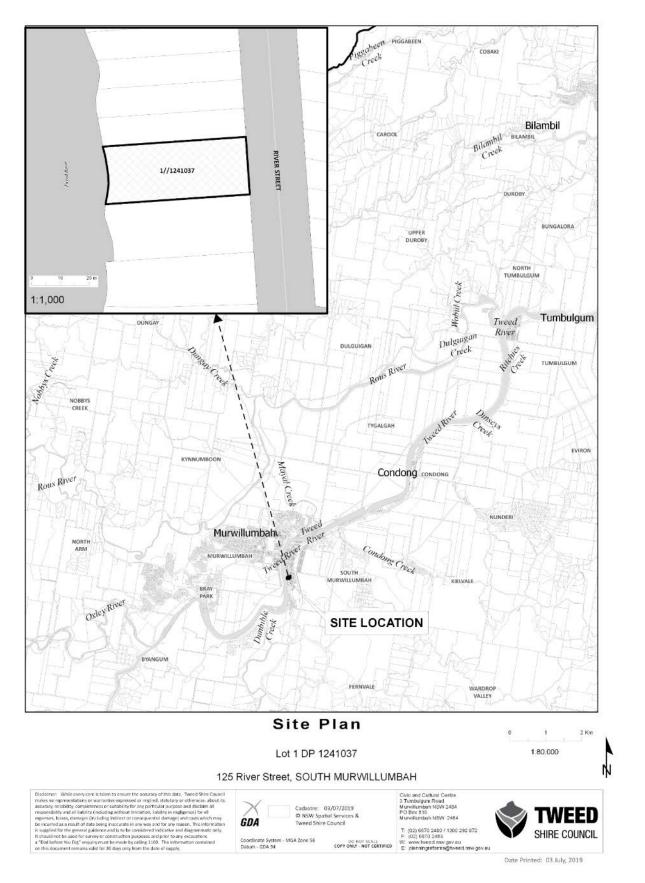
"I have contacted the previous builder regarding the surveyor certificates, he advised that the level for the slab and first floor were taken however he never received them from the surveyor as it was during the period that the dispute between himself and the owner took place and he was no longer the builder so he didn't finalise the surveyor certificates."

In the attached landowners' response to a Council issued Show Cause Notice, the owner cites that numerous non-compliances, including the building height, were first observed at the framing stage. This then led to numerous contractual issues and eventually legal disputes between the owner and the builder.

The owner states that, while they were aware the building was not being constructed at the correct height, they were not aware of the actual building heights until a survey was conducted after the builder had ended his contractual obligations.

The owner has also provided a petition from nearby residents in support of the structure.

SITE DIAGRAM:



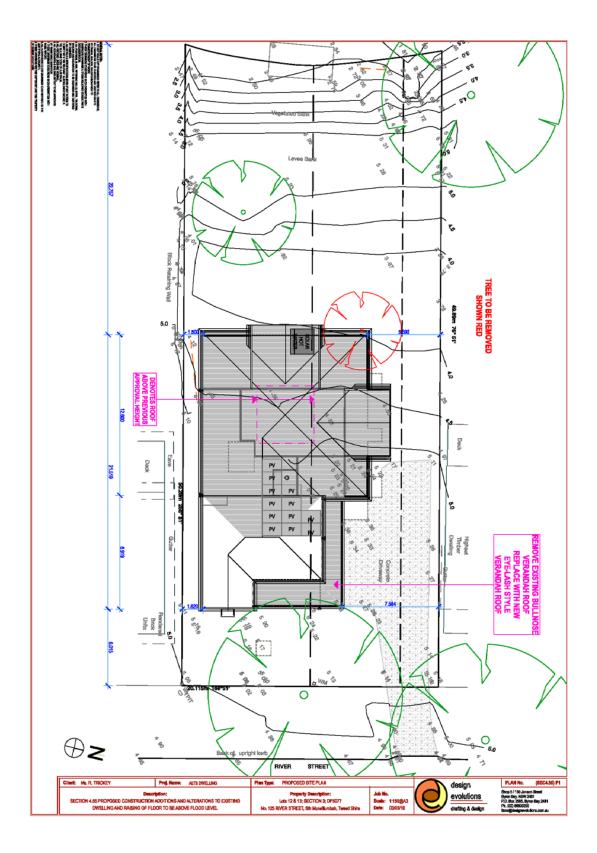
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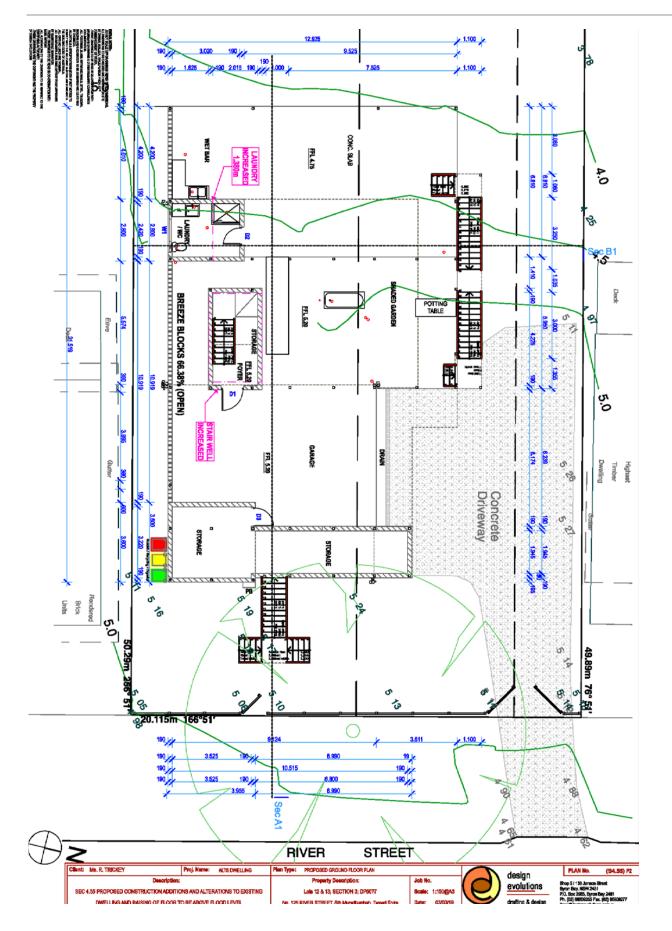


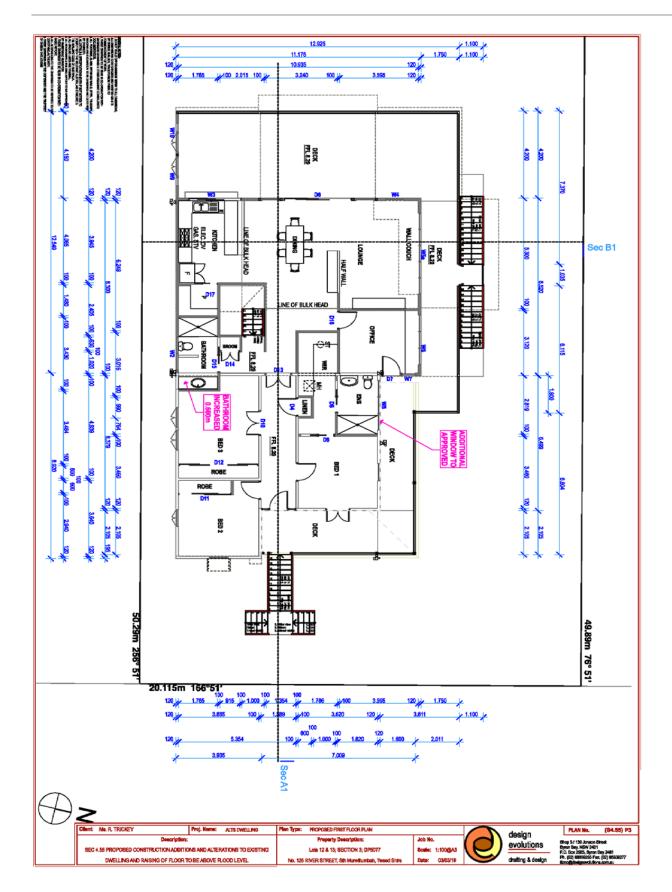
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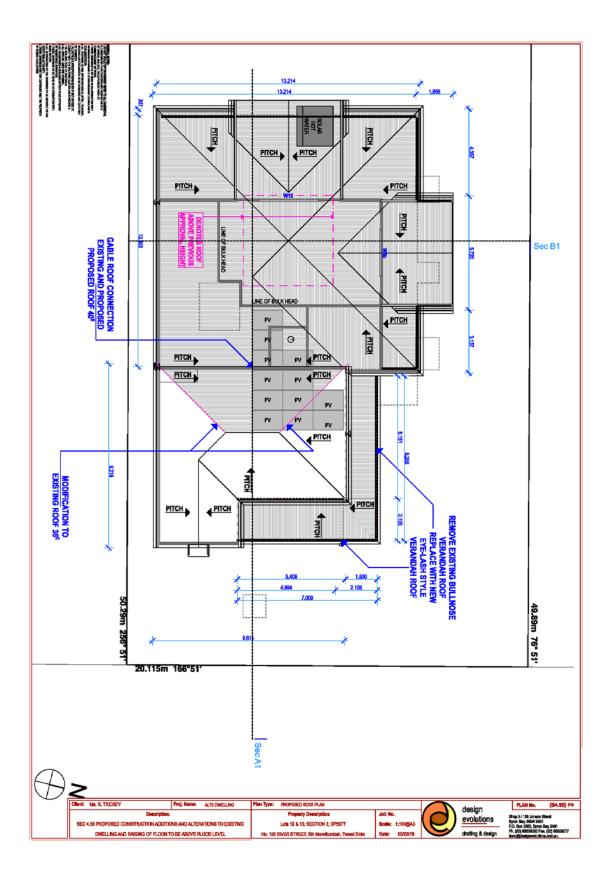
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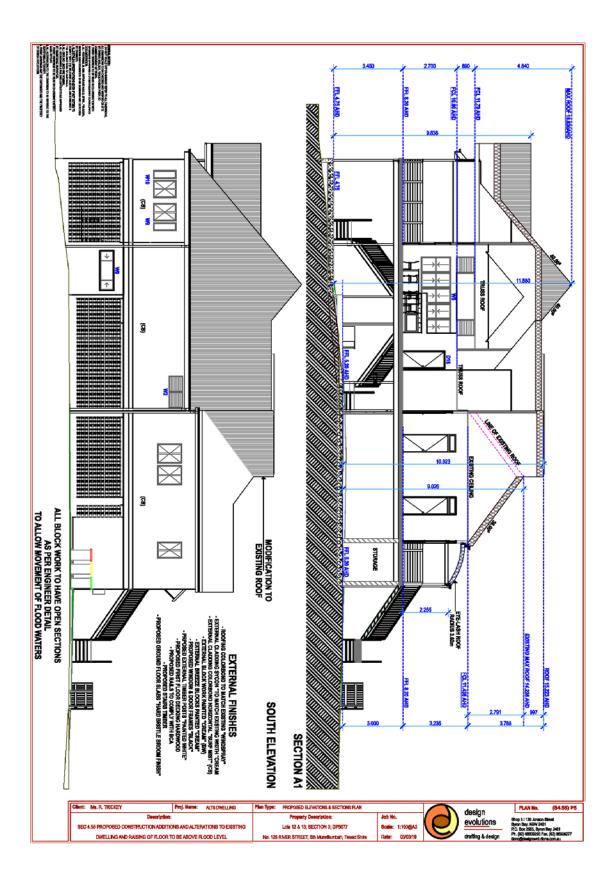
DEVELOPMENT/ELEVATION PLANS:

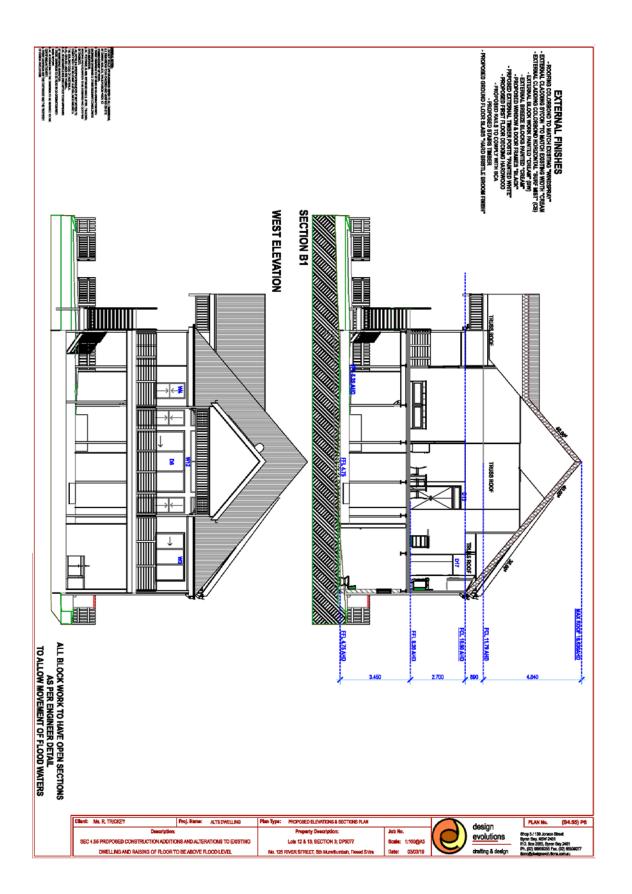


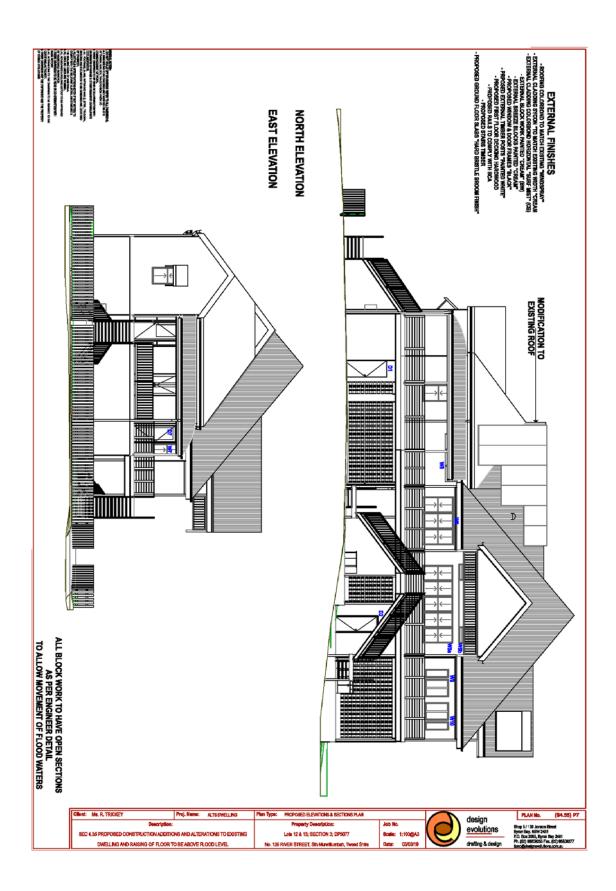












CONSIDERATIONS UNDER SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Council officers have made the following assessment in respect of Section 4.55 (1A) of the Act:

Section 4.55 modification of consents-generally:

(1A) Modifications involving minimal environmental impact

- (a) The proposed variations are considered not to create any major additional environmental impact beyond that which was originally assessed;
- (b) The proposed increase in roof height (up to 1.855 metres) is considered to be substantially the same development (alterations and additions to an existing dwelling) for which the consent was originally granted;
- (c) In accordance with Tweed Development Control Plan 2008 Section A11, the proposal has not been notified; and
- (d) One (1) submission in the form of a petition has been received in respect of this application. This submission has been considered in this assessment.

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

This section of the report will focus on the specific clauses for consideration relevant to this modification application. The clauses are 1.2, 2.3, 4.3, 4.6 and 7.3.

Clause 1.2 – Aims of the Plan

The aims of the plans 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 generally consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The site is zoned R2 Low Density Residential. A dwelling house is permitted with consent in this zone. The objectives of Zone R2 are as follows:

- To provide for the housing needs of the community within a low density residential environment; and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is consistent with these objectives.

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. The maximum building height specified for the site is 9m.

The plan defines **building height (or height of building)** as meaning:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed modification seeks to increase the already varied maximum building height of 9.968m to 11.880m. The maximum extent of the variation is 2.853m (approx. 32%). Please refer to Figure 1 of this report for further detail.

The non-compliant portion of the building consists solely of the roof.

Clause 4.6 - Exception to development standards

As set out below, the applicant seeks to vary this development standard in accordance with Clause 4.6. The applicant is seeking to rely on this clause to vary the height limit of 9m specified for the site, in accordance with Clause 4.3 – Height of Buildings. The applicant's Clause 4.6 request is attached in full in **Attachment 2**.

In accordance with subclause 3:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered <u>a written</u> request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written response to Clause 4.6 of the TLEP 2014 (see Attachment 2 of this report).

- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

The matters required by sub clause 3 are not considered to be satisfied. The original Clause 4.6 request approved under the original development application DA17/0564, cited that in accordance with sub clause 3, compliance with the building height standard was unnecessary due to the following:

- (a) The development is required to have a minimum habitable floor level of 7.8m AHD to comply with Development Control Plan Section A3 – Development of flood liable land. Compliance with this development code results in some of the dwelling exceeding 9m in height, to create suitably sized living space;
- (b) The variation was considered minor 968mm; and
- (c) The development height was consistent with surrounding development, mainly being a residential flat building over 10m in height.

The amended Clause 4.6 written statement submitted with the modification application DA17/0564.01 also cites the above points in response to sub clause 3.

In response to the main points justifying further contravention of the development standard, the following should be noted:

(a) The original variation to the height standard satisfied the design requirements of Section A3 with respect to flooding. It is therefore considered that noting flooding constraints is not sufficient environmental planning grounds to justify further contravention of the development standard;

- (b) The proposed variation is now 2.583m above the 9m height limit for this locality or 32%. A variation of this scale is not considered to be minor; and
- (c) The previous variation to clause 4.3 maintained a maximum height that was less than the adjoining residential flat building and thereby considered to remain consistent with the bulk and scale of surrounding development. The proposed variation now seeks to gain approval for a maximum building height greater than the adjoining residential flat building and significantly greater than surrounding single residential dwellings. The requested variation on this basis is not considered to be consistent with surrounding development given the scale of the variation.
 - (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out;

The proposed development is not considered to be in the public interest, being inconsistent with the objectives of Clause 4.3 – Height of Buildings.

The previous contravention of the development standards approved under the original development consent - DA19/0564, was considered to satisfy the objectives of the clause. Further contravention to rectify illegal works is not considered consistent with the objectives.

Specifically, the proposal is considered to be inconsistent with the following Objectives of Clause 4.3. The objective is in italics and is followed by the assessing officer's comments in relation to the objective.

(a) to establish the maximum height for which a building can be designed:

The proposal further increases an already approved variation to the 9m building height standard. The requested variation of 2.853m above 9m is considered a significant contravention of the maximum height limit. If supported the height contravention compounds the opportunity for the development standard to become abandoned or destroyed by the Council's own actions in granting consent, departing from the standard (NSW Land and Environment Court (LEC) 5 Point Test – Point 4).

(b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity:

The originally approved 9.968m high structure related to the land's capability to provide and maintain an appropriate urban character and level of amenity. The further contravention of the development standard is not considered to maintain an appropriate urban character. The alterations to the roof form are also not consistent with the architectural character of the locality.

(c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities:

The proposal does not allow for taller development in structured urbanised areas.

(d) to encourage greater population density in less car-dependant urban areas:

The proposed height variation does not encourage greater population density nor is the site in a less car dependant urban area.

(e) to enable a transition in building heights between urban areas comprised of different characteristics:

The site is zoned low density residential -R2, and is located within an established residential locality consisting of predominantly single residential dwellings. Where the previous application was of a height less than the adjoining residential flat building and provided a transition between the building and nearby single dwellings, the proposed amendment is now higher than the adjoining building and does not provide this same transition.

(f) to limit the impact of the height of a building on the existing natural and built environment:

The proposed amendment is considered to create an undesirable impact on the built environment of the locality.

(g) to prevent gross overshadowing impacts on the natural and built environment:

The further increase to the maximum building height will result in additional overshadowing impacts on the natural and built environment.

(b) the concurrence of the Secretary has been obtained.

As set out in Planning Circular PS18-003 whether the variation to a development standard is greater than 10%, the concurrence of the secretary may be assumed by the consent authority (being the elected members but not a delegate of Council).

- (5) In deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Land and Environment Court (LEC) 5 Point Test

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;

As discussed above, it is considered that the objectives of Clause 4.3 are not satisfied by the increased breach of the 9m building height standard. A concession of 968mm or 10.7% was already granted however the variation is now 2.853 m or 32% above current limits.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Not Applicable – The underlying objectives and purpose of the standard are largely relevant to the development.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The applicant claims in response to Clause 4.6 that flooding constraints, surrounding development and the minor nature of the variation warrants compliance with the development standard being unreasonable or unnecessary.

As discussed above, the previous development approval DA17/0564 allowed a breach of the 9m height limit based on the same reasoning. I t is considered that the proposed amendment fails this test as it does not:

- Improve flooding resilience as the floor levels remain the same;
- Relate to surrounding development as it is now significantly higher than all single dwellings in the locality; or
- The breach of up to 2.853m above the 9m height limit is not considered to be a minor variation, as opposed to the previous breach of 968mm which was.

The proposed variation is also a result of unauthorised works not constructed in accordance with the approved plans. In addition to the above it is considered the objectives of clause 4.3 would not be defeated if compliance was required.

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

Not Applicable – This standard has not been abandoned. It should be noted however that approval of this variation may contribute to a cumulative effect

and result in the development standard being abandoned or destroyed in the area.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Not Applicable – The site is zoned R2 and currently accommodates a single dwelling with 9m being the standard height limit applied in this zone.

Based on the above and the applicant's Clause 4.6 written request, it is considered that there are not sufficient environmental planning grounds to support the variation and that the objectives of Clause 4.3 are not satisfactorily met by further contravention of an already varied development standard. In this regard it is recommended that the Clause 4.6 request should not be supported.

Clause 7.3 - Flood Planning

The subject site is mapped as being within the 7.3m AHD design flood level. As addressed within the original development application, the dwelling is required to have a minimum habitable floor level of 7.8m AHD, which it achieves.

State Environmental Planning Policies

The proposed application raises no implications on any relevant SEPPS.

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

Not Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The previous heads of consideration remain unchanged other than the specific clauses addressed below.

Part A, Section 3.2 Building Height, Control C1

The overall building height is 9 metres, except on slopes of greater than 12 degrees (21.25%) where the building height may be a maximum of 10 metres.

The applicant is seeking to further vary a previously approved height variation under Clause 4.6 of the LEP. This is addressed earlier in this report.

With regards to Section A1, it is considered that such a variation (2.853m) cannot be supported. Specifically, the variation does not maintain Objective 1 of the Clause, which states:

O1. To ensure the height of buildings is appropriate to the residential scale and character of the street and the local area.

The requested modification results in the building now being higher than the adjoining residential flat building, as well as being considerably higher than nearby single residential dwellings. It is therefore considered that the illegal works seeking a retrospective use approval are not of an appropriate residential scale or consistent with the character of the local area (see Figures 2 & 3 below).





Figure 2 – The already constructed works at No.125 River Street





Figure 3 - Residential dwellings within the street.

Part A, Section 4.4 Building Form

O1. To minimise the visual impact and bulk of development when viewed from adjoining properties, the street, waterways and areas for public recreation purposes.

The increased building height results in a direct visual impact when viewed from the adjoining Residential flat building. The visual impact is a result of the structure being exaggerated by the roof which presents itself with considerable bulk and not in keeping with the context of roof form within the locality.

C1. Building siting, height, scale, and roof form must to relate to the surrounding development, topography and the existing site conditions.

The surrounding area consists of mainly elevated single storey dwellings which maintain the 9m height limit (See Figure 3), with the exception of the residential flat building adjoining the subject site. It is considered that the increased building height and resulting roof form are not in keeping with context and design character surrounding development.

The previously approved development application had a maximum height which was less than the adjoining residential flat building and was more in keeping with the height context of the area. The proposal is now positioned higher than the adjoining residential flat building and significantly higher than residential development within the locality. The proposal is therefore considered to not relate to the surrounding development.



Figure 4 - The subject site and adjoining residential flat building when viewed from the Commercial Road Boat Ramp

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

There is no planning agreement or draft planning agreement relating to the site or the proposal.

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

Not Applicable.

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

Tweed Coast Estuaries Management Plan 2004

The site is not located adjacent to any coastal estuaries covered by this plan.

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

The site is not located with the Cobaki or Terranora Broadwater areas to which this plan applies.

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

Context and Setting

The site is zoned R2 Low Density Residential with the proposed modification to the development consent seeking retrospective approval for the use of alterations and additions not carried out in accordance with the approved plans.

The proposal is seeking to further vary the height standard for the site to gain retrospective approval for illegal works which increase the approved maximum height. The variation consists purely of the roof form and does not contain any habitable space. The roof form is considered to not be in keeping with the architectural context of surrounding development.

The extent of the height variation is now 2.853m compared to the previously approved variation of 968mm. The building is now significantly higher than all single residential dwellings within the locality, and higher than the adjoining residential flat building.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is zoned R2 Low Density Residential. The unauthorised works maintains the low density character of the locality, however the roof form does not relate to surrounding development.

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

The original application was notified with no objection received. The S4.55 application (the subject application) was not notified but was accompanied by a petition of support.

Public interest

The works are considered contrary to the public interest given the works have been constructed without consent, were avoidable and if supported may contribute to future argument that the development standards have been virtually abandoned or destroyed by the council's own action in granting consents departing from the standard.

OPTIONS:

- 1. Refuse the application, subject to the reasons for refusal provided in this report and commence appropriate compliance action for the unauthorised building works.
- 2. Support the development application in principle and request a further report and conditions to be presented to Council for determination.

Council Officers recommend Option 1.

CONCLUSION:

In consideration of the planning issues raised, the proposal is considered to be a significant contravention of the LEP building height standard.

The written request from the applicant addressing Clause 4.6 of the LEP is not well founded and does not satisfy the Land and Environment Court's five part test for consent authorities to consider when assessing an application to vary a standard.

Furthermore, had the original development application sought approval for this variation, it would not have been supported. It is recommended that this request should be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

The applicant has a right of appeal in the NSW Land and Environment Court in respect of any Council determination of this application, such an appeal may have budget implications for Council.

c. Legal:

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

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Submitted Statement of Environmental Effects and written response to Clause 4.6 (ECM 5977383)	
Attachment 2.	Original Consolidated Development Consent DA17/0564 (ECM 5977384)	
(Confidential) Attachment 3.	Owners petition in support of the development (ECM 5977385)	
(Confidential) Attachment 4.	Land owners response to Council issued Show Cause letter (ECM 5977416)	
(Confidential) Attachment 5.	Private Certifiers explanation to unauthorised works (ECM 5977417)	
(Confidential) Attachment 6.	Certifiers inspection documentation (ECM 5977418)	

8 [PR-PC] Development Application DA12/0170.16 for an Amendment to Development Consent DA12/0170 for Alterations and Additions to Motel (Staged) at Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Sec 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach

SUBMITTED BY: Development Assessment and Compliance

mhm	
	Making decisions with you We're in this together
	TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:
2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.
ROLE:	Provider

SUMMARY OF REPORT:

Consent was issued for alterations and additions to a motel (staged) on 18 February 2013. Following on from the issue of Development Consent DA12/0170 numerous modifications have been granted consent. These are discussed within the background section of this report.

The amended application as lodged proposed the following:

- Convert the current multipurpose room on the north western side of the building at ground floor level to a dual use motel room and multipurpose room;
- Construction of a doorway in the western wall of the building and paved pedestrian pathway within the Cypress Crescent road reserve from the proposed doorway to the existing concrete driveway from Cypress Crescent;
- Construction of one additional car parking space on Lot 1 Section 4 DP 29748; and
- Enable the premises to be used until 2.00am on New Year's Day only.

The additions and alterations to the motel requiring the construction of an additional parking space on Lot 1 Section 4 DP 29748 were not supported as Lot 1 Section 4 DP 29748 is not benefitted by existing use rights for a motel. This is discussed further within this report.

The applicant recently advised Council that the application should be amended to seek consent for the following:

• Enable the premises to be used until 2.00am on New Year's Day only.

The application was circulated to Councillor's and concerns were raised by the Mayor in relation the proposed amendment to hours of operation not being subject to a trial period. Accordingly, the application is being reported to Council for determination.

The subject 4.55 Modification Application has been assessed on its merits and is recommended for approval, subject to the addition of a new condition for the hours of operation for New Year's (December 31).

RECOMMENDATION:

That Development Application DA12/0170.16 for an amendment to Development Consent DA12/0170 for alterations and additions to motel (staged) at Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Sec 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach be approved subject to the following condition being amended:

- 1. Insert new Condition 113D.1 which reads as follows:
 - 113D.1. Hours of operation of the business are restricted to the hours and days referred to in Condition 113D, except on New Year's Day, when the hours of operation can extend to 2am.

REPORT:

Applicant:	Western Partnership Pty Ltd
Owner:	Flaskas Bickle Pty Ltd & Wadley Bickle Pty Ltd
Location:	Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2
	Sec 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach
Zoning:	R2 - Low Density Residential
Cost:	Nil

Background:

Consent is sought to modify Development Consent DA12/0170. The amended application as lodged proposed the following:

- Convert the current multipurpose room on the north western side of the building at ground floor level to a dual use motel room and multipurpose room;
- Construction of a doorway in the western wall of the building and paved pedestrian pathway within the Cypress Crescent road reserve from the proposed doorway to the existing concrete driveway from Cypress Crescent;
- Construction of one additional car parking space on Lot 1 Section 4 DP 29748; and
- Enable the premises to be used until 2.00am on New Year's Day only.

Consent History

DA12/0170

On 1 May 2012, Tweed Shire Council received Development Application DA12/0170 seeking approval for a number of alterations and additions to the existing Hideaway Motel at 19-25 Cypress Crescent, Cabarita Beach. DA12/0170 originally proposed a number of ancillary facilities for guests of the motel such as new 'at grade' parking facilities, restaurant, lounge room, outdoor food and beverage service area and swimming pool to be constructed in three stages.

A number of submissions were received from neighbouring residents raising concerns in relation to overlooking, overshadowing of the foreshore and residential properties, noise and disturbance in relation to the proposed modifications to the existing land use.

Council at the meeting of 14 February 2013, resolved to approve DA12/0170 for 'Alterations and Additions to Motel'.

DA12/0170.01

Council on 11 July 2013 received a Section 96 (s96) application DA12/0170.01 seeking to modify the staging of contribution payments in line with the staging as approved within DA12/0170, and modifying the conditions to shift the payment of contributions from prior to issue of a construction certificate, to prior to the issue of the occupation certificate in line with Council's policy. The application was approved under delegated authority on 12 September 2013.

DA12/0170.04

Council on 12 September 2013 received an s96 application DA12/0170.04 seeking a number of internal and external modifications to the building which generated increased contribution charges on the basis of the intensification of use of the building.

It also proposed modification to the first dot-point of Condition 113 to extend approved hours of operation of the under roof dining areas to 7am - 12 midnight seven days a week and public holidays (from 7am to 10pm Sunday to Thursday and 7am to midnight Fridays, Saturdays and Public Holidays).

The Section 96 application was generally supported with the exception of the requested changes to the first dot-point of Condition 113. As such, Council Officers recommended no change to the hours of operation in the first dot-point.

The applicant did not propose any modification to the approved hours of operation for outdoor facilities in the second dot-point of Condition 113 (7am to 10pm seven days a week). As such, no changes to the approved hours of operation in the second dot-point were required to be considered or recommended by Council Officers.

Council approved DA12/0170.04 to this effect at the Planning Committee Meeting of 6 March 2014.

However, following a successful Notice of Rescission and an unsuccessful Notice of Motion at the Council Meeting of 20 March 2014 to extend operational hours in the first dot-point of Condition 113 in line with the applicant's proposal (7am - 12 midnight seven days a week), a Notice of Motion was carried to amend Condition 113 as follows:

113A Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 10pm Sunday to Wednesday and 7am to 12 midnight Thursday, Friday, Saturday, and gazetted NSW Public Holidays, and any Sunday immediately before gazetted NSW Public Holidays that occur on the Monday.
- Outdoor facilities, including pool and BBQ 7am to 10pm Monday to Sunday. This shall be for a trial basis for a period of twelve (12) months from the commencement of use and a report be brought back to Council at the conclusion of the trial period.

It was noted that the first dot-point of Condition 113A extended hours of operation on Thursdays, and Sundays that occur prior to a public holiday falling on a Monday, from 10pm to midnight.

The amended condition also imposed a twelve month 'trial period' from the commencement of use at the second dot-point, modification of which was not proposed by the applicant nor required to be considered by Council Officers in their assessment of the Section 96 application.

DA12/0170.07

Council on 15 May 2014 received a s96 application DA12/0170.07 seeking to amend an error in the wording of Condition No. 93A clarifying the requirement for payment of s94 contributions prior to the issue of an occupation certificate in line with Council's amended policy. The application was approved under delegated authority on 29 May 2014.

DA12/0170.10

Council on 3 November 2014 received an s96 application DA12/0170.10 seeking a number of internal and external design modifications and staging amendments which resulted in recalculation of contribution charges. The application was approved under delegated authority on 29/12/2014.

DA12/0170.11

Council, on 8 December 2014 received an s96 application DA12/0170.11 which sought the minor addition of an external terrace to an apartment unit and amendment of Condition 113A to remove a 12 month 'trial period' for the use of outdoor facilities. Legal advice accompanied the modification application to support removal of the trial period.

The s96 application was presented to Council for determination as the 'trial period' restriction in Condition 113A was imposed by way of a Notice of Motion in association with DA12/0170.04. The application for DA12/0170.11 was approved by Council on 3 February 2015.

DA12/0170.12

Council on 20 August 2015 received a s96 application DA12/0170.12 seeking to amend Condition 84A to include a reference to an additional Noise Management Plan review (dated 11 August 2015) which supports a concurrent proposed operational hour modification to Condition 113 which would result in trading of the enclosed dining/lounge and outdoor bar areas from 7am to midnight, 7 days per week (currently 7am to 10pm Sunday to Wednesday and 7am to midnight Thursday, Friday, Saturday and gazetted NSW Public Holidays and any Sunday immediately before a gazetted NSW Public Holiday that occurs on a Monday). Outdoor facilities, including the pool and BBQ would remain as is, being 7am to 10pm, 7 days per week.

The Noise Management Plan was produced after 2-3 months of operation and it was recommended that the proposed change in hours of operation only be supported on a trial basis for 6 months to gauge the developments impact over a busy summer period.

The application was reported to Council's meeting of 3 December 2015 as the application was called up by Councillors Bagnall and Milne.

The application was approved at this meeting.

DA12/0170.13

Council on 19 May 2016 received an s96 application DA12/0170.13 seeking to amend the internal and external design of the Stage 5 building and change the ancillary use of the building from caretakers dwelling, storeroom, common amenities and multipurpose space to day spa for motel guests, storeroom, manager's office and staff room.

The application was reported to Council's meeting of 4 August 2016 as the application was called up by Councillors Bagnall and Milne.

The application was approved at this meeting.

DA12/0170.14

Council on 30 May 2016 received an s96 application DA12/0170.14 seeking to remove the temporary provision of the hours of operation as conditioned under DA12/0170.12 through modification of Conditions 84 and 113.

The application was reported to Council's meeting of 4 August 2016 as the application was called up by Councillors Bagnall and Milne.

The application was approved at this meeting, subject to the following conditions.

Condition No. 84B is to be deleted and replaced with Condition No. 84C which reads as follows:

84C. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) and recommendations made in the Noise Management Plan Review prepared by MWA Environmental (ref: L37014/PAK/13-048 dated 1 December 2014) and MWA Environmental (ref: L26315/PAK/13-048 dated 11 August 2015) except where modified by this consent.

Condition No. 113C is to be deleted and replaced with Condition No. 113D which reads as follows:

- 113D. Hours of operation of the business are restricted to the following:
 - Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 12 midnight Monday to Sunday.
 - Outdoor facilities, including pool and BBQ 7am to 10pm Monday to Sunday.

DA12/0170.15

Council on 30 November 2017 received an s96 application DA12/0170.15 seeking to amend conditions 9, 11 and 12 which essentially related to the use of the site being for primarily for guests of the motel.

The application was withdrawn.

Proposed Modification

The application seeks consent to amend Development Consent DA12/0170 to:

• Enable the premises to be used until 2.00am on New Year's Day only.

The request to amend the proposed modification was at the request of Council who advised that "Until such time as the Planning Proposal has been gazetted Council cannot grant approval for the *car park* (which in accordance with Clause 2.3(3) is for the use of the motel) over Lot 1 Section 4 DP 29748, as the lot is not benefitted by existing use rights".

Existing Use Rights

As established under the assessment of DA12/0170, the existing motel has existing use rights.

Sufficient evidence was brought to Council's attention to demonstrate that Lots 9, 10, 11 and 12 in Section 4 DP 31209 benefit from existing use rights for the purpose of a motel.

However, Council officers were unable to find any evidence of existing use rights over Lots 1 and 2 in Section 4 DP 29748.

The subject application sought consent to:

- Convert the current multipurpose room on the north western side of the building at ground floor level to a dual use motel room and multipurpose room;
- Construction of a doorway in the western wall of the building and paved pedestrian pathway within the Cypress Crescent road reserve from the proposed doorway to the existing concrete driveway from Cypress Crescent;
- Construction of one additional car parking space on Lot 1 Section 4 DP 29748.

This component of the application was not supported as the development does not satisfy Clause 2.3(3) of Tweed Local Environmental Plan 2014.

Clause 2.3 - Zone objectives and Land Use Table, sub clause 3 of the *Tweed Local Environmental Plan 2014* (TLEP 2014) advises the following:

- (3) In the Land Use Table at the end of this Part:
 - (a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and
 - (b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.

Whilst a *car park* is permissible with consent on land zoned R2, the proposed *car park* is for the purpose of the motel (currently defined as Tourist and Visitor Accommodation). A motel is prohibited on land zoned R2 Low Density Residential under the Tweed Local Environmental Plan 2014 and Lot 1 Section 4 DP 29748 is not benefitted by existing use rights for a motel.

Until such time as the Planning Proposal has been gazetted Council cannot grant approval for the *car park* (which in accordance with Clause 2.3(3) is for the use of the motel) over Lot 1 Section 4 DP 29748.

Accordingly, this component of the Section 4.55 Modification was not supported.

Just prior to finalising this report the applicant following multiple instructions from Council advised:

"applicants have instructed DAC Planning Pty Ltd to amend the Modification Application to delete reference to converting the function room to a motel suite and the car parking on Lot 1 Section 4 DP 29748."

Hours of operation

The subject application seeks consent to trade up until 2.00 am on New Year's Day.

Environmental Health Unit

The Environmental Health Officer assessment report for this modification provided support for the requested change, advising that:

"The existing trading hours are limited by condition 113D of DA12/0170.14:

113D. Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ 7am to 10pm Monday to Sunday.

Several other 'standard' conditions protecting amenity also exist.

The applicant has submitted a liquor license from OLGA dated 3 February 2017. The trading hours under that document appear consistent with the above, except that outdoor facilities may be used on a Sunday til 12 midnight. Importantly, condition 101 permits trade til 2.00AM on New Year's Day:

Condition type:	Condition		Condition source:	Liquor Act 2007
Reference:	101			
Condition:	Consumption on pre Good Friday Christmas Day December 31st	12:00 noon 12:00 noon Normal open	to a me - 10:00 PM (liquor o to a me	can only be served with or ancillary eal in a dining area) can only be served with or ancillary eal in a dining area) closing time or <u>2:00 AM o</u> n later

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

The premise is regulated by OLGA. Despite the proximity of the two adjacent dwellings to the external area, trade til 2.00am on one occasion per year is not deemed likely to unreasonably impact amenity."

Registered complaints

Council's Compliance Unit

A single complaint was received by Council on 4 April 2019. A summary of the complaint is as follows:

Smoke:

- An outdoor fire pit was lit close to the fence line shared with an adjoining dwelling.
- Strong winds blew the smoke into the adjoining dwelling.
- Halcyon House was contacted by the complainant and asked to put the fire out.
- The submission notes that "eventually" the fire was put out, but the fire took time to burn out.
- The complainants dwelling smelt of smoke.

Noise:

- Patrons drinking outside (after 11.00pm) were around the fire and were being riotous and noisy.
- The complainant called Halcyon Management and asked for patrons to be taken inside.
- The complainant advised that this "eventually: happened.

Council response:

Council responded by advising the complainant the matter would be followed up with Halcyon House and noted that it was advisable to make a complaint to the Police and Department of Industry- Liquor and Gaming regarding licence conditions.

Tweed/Byron Police Local Area Command

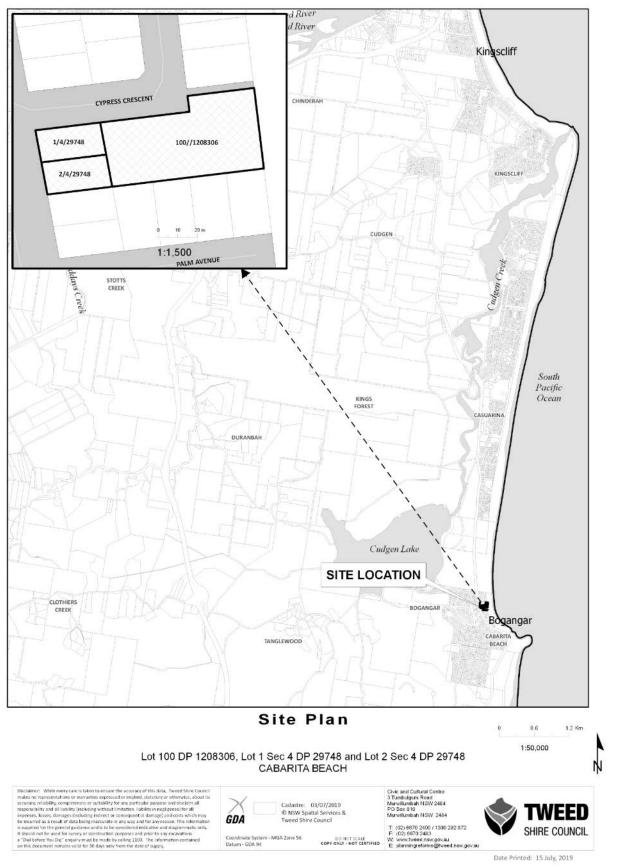
On 16 July 2019 the assessing officer contacted the Police in relation to any complaints received from the development site. The Senior Constable advised that there were no recorded incidents at the subject site on Police records.

Liquor Gaming and Racing

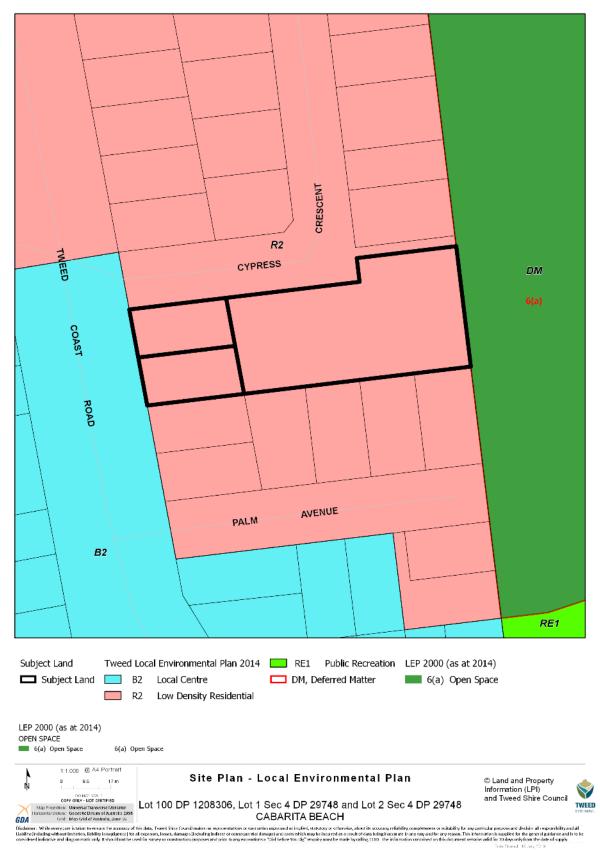
No complaints registered since 2016.

The current liquor licence permits under condition 101 trade until 2.00am on New Year's Day.

SITE DIAGRAM:



ZONING PLAN:



AERIAL IMAGERY:



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Lot 100 DP 1208306, Lot 1 Sec 4 DP 29748 and Lot 2 Sec 4 DP 29748 CABARITA BEACH © 2018 Imagery - Tweed Shire Council © Cadastre - Tweed Shire Council Boundaries shown should be considered approximate only.

dations: While every care is taken to encoure the accuracy of this data, Tennel thise Courcel makes no representations or warranties operand or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular pappose and its base in the provide and this the advertised of the partial advertised of the partial galaxies and its the advertised of the partial advertised of the partial galaxies and the the advertised of the partial advertised of the partial galaxies and the the advertised of the partial advertised of the partial galaxies and the pa

Considerations under Section 4.55 (1A) Minimal Environmental Impact:

1A Modifications involving minimal environmental impact

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

Comment:

An assessment has been undertaken with regard to the proposed modifications to the approved development, as noted in the 4.15(1) assessment elsewhere in this report. In conclusion, the proposed amendment is not considered to result in any significant environmental impact.

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

Comment:

The proposed modification results in essentially the same development as originally approved. Having regard to the proposed amendment, it is submitted that the threshold question is satisfied on the basis that:

- The development remains as previously proposed being a motel;
- No significant change will result to the scale or intensity of the use over and above that previously investigated and approved;
- The modification is for an amendment to the hours of operation for 1 day per year.

It follows from the above that the proposal comes within the scope of Section 4.55(1a) of the Act and is substantially the same development. It is submitted that Council may modify the consent as proposed.

- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment:

The subject application was notified period of fourteen (14) days from Wednesday 13 March 2019 to Wednesday 27 March 2019.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment:

During the notified period two submissions were received. These have been considered and are addressed below within this report.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified

Section 4.15(1) (Evaluation)

- (1) Matters for consideration-general in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
 - (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - *(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

Comment:

Tweed Local Environmental Plan 2014 (current standard instrument)

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development under the TLEP 2014 current zoning. However, continuing operation relies upon compliance with the definition of an *existing use* in accordance with Section 4.11 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the establishment of existing use rights. The Motel has been onsite for in excess of 50 years and predates any surrounding dwelling houses in the vicinity.

This modification is capable of determination and is assessed against s4.7 (2)(b) of the EP&A Act which states that the section "does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent..."

Clause 1.2 – Aims of the Plan

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

The proposed development is considered consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

R2 - Low Density Residential zone

The proposed development is defined as *hotel or motel accommodation* which is a type of *tourist and visitor accommodation*. The proposal is a prohibited form of development in the R2 zone. This is consistent with prohibition of a motel use in the former 2(a) Low Density Residential zone under the TLEP 2000.

However, operation of the motel has existing use rights (Clause 4.11 of the EP&A Act) and the motel has been onsite for in excess of 50 years. As such the proposed modification is capable of being considered within the R2 zone as it meets the provisions of s109B of the EP&A Act.

Clause 2.7 – Demolition requires development consent

Not applicable to the subject modification. The current proposal does not comprise physical works.

Any demolition associated with the proposal has been included in the original application.

Clause 4.3 - Height of Buildings

Not applicable to the subject modification. The current proposal does not comprise physical works.

The current proposal does not modify building height.

Clause 4.4 – Floor Space Ratio

Not applicable to the subject modification. The current proposal does not comprise physical works.

The subject site is affected by a maximum 0.8:1 FSR standard. The approved development achieved an FSR of 0.375:1 which does not exceed the standard and is not varied by way of this modification request.

Clause 5.11 - Bush fire hazard reduction

Not applicable to the subject modification. The current proposal does not comprise physical works.

The current modification application does not propose any bush fire hazard reduction.

Clause 7.1 – Acid Sulfate Soils

Not applicable to the subject modification. The current proposal does not comprise physical works.

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. Class 4 (ASS) is identified on the subject site.

Clause 7.2 - Earthworks

Not applicable to the subject modification. The current proposal does not comprise physical works.

The objective of this clause is to generally ensure that earthworks for which development consent is required will not have a detrimental impact on the locality.

Clause 7.5 - Coastal risk planning

Not applicable to the subject modification. The current proposal does not comprise physical works.

The current modification application does not propose any development that impacts upon current standards for Coastal Hazards.

Clause 7.6 - Stormwater Management

Not applicable to the subject modification. The current proposal does not comprise physical works.

Stormwater management was approved at the time of the original application and relevant conditions were imposed for further detail to be supplied at construction certificate stage.

Clause 7.10 - Essential Services

All essential services are available to the site.

State Environmental Planning Policies

SEPP No. 55 - Remediation of Land

Not applicable to the subject modification. The current proposal does not comprise physical works. The proposal remains consistent with the requirements of SEPP 55. Site contamination has previously been assessed by Council.

<u>SEPP No. 64 – Advertising and Signage</u>

The proposed amendments do not alter the signage previously proposed. This application does not seek to amend conditions of development consent relating to advertising signage.

Reasons for granting the original consent

Reason 1

The motel has established existing use rights.

How the proposed modification continues to satisfy Reason 1 above.

The subject application remains permissible in accordance with Section 4.11 of the EP&A Act.

Reason 2

The application achieved compliance all applicable SEPPs and DCPs.

How the proposed modification continues to satisfy Reason 2 above.

The modified development remains compliant with legislation.

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

Comment:

Hours of Operation/Noise

The application seeks to amend the development consent to operate until 2.00am on New Year's Eve. The application has been reviewed by Council's Environmental Heath Unit who have supported the application and advised the following:

"The existing trading hours are limited by condition 113D of DA12/0170.14:

113D. Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ 7am to 10pm Monday to Sunday.

Several other 'standard' conditions protecting amenity also exist".

The conditions referred to by the Environmental Health Unit have been noted by the assessing officer as 84C, 111A, 115 and 120.

"The applicant has submitted a liquor license from OLGA dated 3 February 2017. The trading hours under that document appear consistent with the above, except that outdoor facilities may be used on a Sunday til 12 midnight. Importantly, condition 101 permits trade til 2.00AM on New Year's Day:

Condition type: Reference:	Condition 101		Co	ndition source:	Liquor Act 2007
Reference.	101				
Condition:	Consumption on premises				
	Good Friday	12:00 noon	-		an only be served with or ancillary al in a dining area)
	Christmas Day	12:00 noon	-		an only be served with or ancillary al in a dining area)
	December 31st			time until normal	closing time or 2:00 AM on later
	Note: Trading is also	a te heuvelle c	dha	r limee on Good E	iday and Christmas Day if

Note: Trading is also allowed at other times on Good Friday and Christmas Day if authorised by an extended trading authorisation. Liquor can only be served with or ancillary to a meal in a dining area after 5:00 AM on Good Friday and Christmas Day.

The premise is regulated by OLGA. Despite the proximity of the two adjacent dwellings to the external area, trade til 2.00am on one occasion per year is not deemed likely to unreasonably impact amenity".

It was recommended to retain the existing condition 113D which advises:

113D. Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 12 midnight Monday to Sunday.
- Outdoor facilities, including pool and BBQ 7am to 10pm Monday to Sunday.

And add new condition:

113D.1.Hours of operation of the business are restricted to the hours and days referred to in Condition 113D, except on New Year's Day, when the hours of operation can extend to 2am.

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

Comment:

As outlined elsewhere in this report, the subject application relates to an amendment to an approved development. In this regard, the outlined modification is not considered to result in any detrimental impact relating to site suitability, subject to the applied conditions for hours of operation.

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

Comment:

During the notification period two submissions were received. It is noted that the submission mainly related to the proposed physical works, which no longer form part of the proposed modification. The submissions in relation to the amended hours of operation are below.

Noise/Hours of operation

Submission 1:

The hours of operation are currently detailed in a condition of the Consent as modified on 11 August 2016 (DA12/0170.14). This allows the major Dining, Lounge and Bar areas of the facility to operate 7 days a week from 7am to Midnight (0700hrs to2400hrs) being 17 hours per day. These existing hours have led to a number of noise complaints from surrounding residents. The manager of the facility (Mr De Riso) and local police will confirm this. Any extension of existing hours of operation has the potential to lead to further noise

disturbance of the surrounding amenity comprising single dwelling residential properties. To link an extension of hours of operation with the consumption of alcohol is obviously undesirable from a planning perspective when assessing a proposed development.

Submission 2:

Secondly, we object to the premises being permitted to be used until 2.00am on New Year's Day only. The New Year's event held each year at Halcyon House is advertised and open to the general public, again in contravention of their current approved operation which should be available to guests of the motel only. Whilst the proponent states that this is only one day per year and the impact would be minimial, it should be noted that the neighbourhood is already constantly impacted in the following ways as a result of their non-compliant operation:

- Average of 10-15 truck deliveries per day 7 days a week
- A 90 seat restaurant that operates 7 days a week for breakfast, lunch and dinner that is open to the general public with no on-site parking.
- 12-15 filthy, smelly rubbish bins and large industrial bins on the roadway of Cypress Crescent every Monday, Wednesday and Friday. These bins are often collected and emptied by large, noisy trucks well before 6am. The bins are then left the roadway for several hours (causing more traffic congestion) before they are washed out and brought back into the property. The bins are washed out on the roadway and then emptied into the stormwater drain which flows directly onto the beach - surely this can't be acceptable.
- Large tourist buses and car transporters trying to manoeuvre within the narrow Cypress Cres roadway to gain access to Halcyon House. In the last 18 months, Halcyon House has hosted 5-6 luxury car launches on the property. These events usually last approximately 1 week. During that time the launch/promotional cars are parked in the Halcyon House car park, resulting in most other cars being forced out of the car park and onto the surrounding streets.
- Noisy, often alcohol influenced patrons of Paper Daisy Restaurant or other function events and weddings spilling out of the Halcyon House property.
- Staff parking all day in surrounding streets, precluding local access to parking.
- A Day Spa that is open to the general public, that has 6 treatment rooms, open 7 days a week, that again has no on-site parking. This spa is operating in contravention to Condition No. 120.8 which states "The ancillary use of the Day Spa is exclusive for guests of the motel only and will not be open to the general public".

Photographic evidence can be provided to support the above. All of the above instances illustrate that Halcyon House do not consider the amenity of the local residential neighbourhood. To permit a further extension of their liquor licence is simply adding insult to injury to the long-suffering neighbourhood who are already adversely affected by their non-compliant operations.

Response:

The two submissions received both relate to acoustic amenity impacts experienced in respect of the motel business. The Motel has been onsite for in excess of 50 years and predates any surrounding dwelling houses in the vicinity. This is an important fact as it indicates all surrounding dwellings were constructed post the development and the business operates today due to existing use rights.

The application seeks consent to operate for an additional 2 hours, once a year on New Year's day (til 2.00am). Acoustic amenity has been considered by the assessing officer and Environmental Health Officer (EHO). The EHO in summary advised:

The current hours of operation are:

113D. Hours of operation of the business are restricted to the following:

- Enclosed Dining/Lounge/Bar areas and Outdoor Bar 7am to 12 midnight Monday to Sunday.
- Outdoor facilities including pool and BBQ 7am to 10pm Monday to Sunday.

Several other 'standard' conditions protecting amenity also exist.

The premise is regulated by OLGA, the current liquor licence under condition 101 permits trade til 2.00AM on New Year's Day.

Despite the proximity of the two adjacent dwellings to the external area, trade til 2.00am on one occasion per year is not deemed likely to unreasonably impact amenity.

The assessing officer has raised the matter of noise complaints which were stated in one submission to have been raised with Council, Police and the Office of Liquor, Gaming and Racing (OLGR) with the relevant section of Council and the other Authorities.

The outcome of this research was that there has been one complaint received recently by Council (the previous registered complaint for the site is dated 2017). No incidents have been registered with the Police or OLGR.

It is therefore considered that given the support of Council's Environmental Health Unit and lack of evidence ongoing complaints, that the application be supported.

Should a complaint ever be received by Council, existing conditions are in place to regulate noise impacts.

Ongoing Non-compliance

We believe that this Application should not be considered by Council until other outstanding matters relating to the non-compliant trading of Paper Daisy Restaurant are resolved. The issues of inadequate parking for this restaurant that were raised as a result of the proponent's previous S96 Application DA12/0170.15 remain outstanding.

Response:

The subject Section 4.55 Modification is to seek consent to operate an additional 2 hours one day a year. The application has been assessed on its merits and is recommended for approval. Any compliance matters in relation to the operation of the eixisting restaurant will be investigated separately to this application.

(e) The public interest.

Comment:

The proposed modification to Development Consent DA12/0170 is considered to be acceptable in terms of overall public interest. The modification is not considered to result in a significant negative impact upon the surrounding area, subject to conditions.

OPTIONS:

That Council:

- 1. Approves the application in accordance with the recommended conditions of consent.
- 2. Refuses the application for specified reasons.

Option 1 is recommended.

CONCLUSION:

The proposed section 4.55 modification has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

Subject to the recommended conditions the development is not considered to result in a significant impact to the amenity or uses of the surrounding sites, considering the existing approved use.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

9 [PR-PC] Exhibition of Draft Planning Proposal PP18/0004 Removal of Enabling Clause 7.15 for Water Bottling Facilities

SUBMITTED BY: Strategic Planning and Urban Design



SUMMARY OF REPORT:

The purpose of this report is to seek Council's endorsement to exhibit the draft planning proposal PP18/0004, which seeks to amend the Tweed Local Environmental Plan (LEP) 2014 by removing the enabling Clause 7.15 for water bottling facilities. Clause 7.15 currently enables water bottling facilities' to be permitted with consent in the RU Rural Landscape Zone. Removal of the clause would prohibit this land use across the rural zones of the Tweed.

A request to amend the Tweed LEP 2014 was submitted to the then NSW Department of Planning and Environment (DPE) for consideration on 19 February 2019. The original request was made in light of the precautionary principle in regard to the long term sustainability of the land use activity, stating the current lack of groundwater monitoring data on which to base decision making does not give credit to moving forward where uncertainty exists. It sought only to remove the clause from the Tweed LEP 2014 and did not introduce any alternative provisions for the land use.

A Gateway Determination and associated conditions were issued by the DPE on 13 May 2019 including, amongst others, a requirement to:

- 1) Include a savings provisions to allow development applications for water bottling facilities submitted prior to the amendment to the Tweed LEP 2014 to be determined on their merit;
- 2) To provide an updated Schedule 1 to Tweed LEP 2014 that includes existing approved water bottling facilities as additional permitted uses on the relevant land; and

3) Consider the findings by the Chief Scientist & Engineer from its review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW prior to plan finalisation.

The draft planning proposal now includes a list of those properties with known existing approved water bottling facilities, as well as properties where consent for the land use has been granted but the status of those consents is unknown. Affected landowners have been contacted and given the opportunity to provide evidence of lawful physical commencement.

Clause 7.15 currently enables water bottling facilities in the RU2 zone, however also contains a definition for the land use and a threshold test that must be met in order for consent to be granted. The complete removal of the clause as sought by the original planning proposal would remove the land use definition from the Tweed LEP 2014 and eliminate the threshold test for consent.

The introduction of 'water bottling facility' as a Schedule 1 additional permitted use on those properties with existing approved water bottling facilities, as required by the Gateway conditions, therefore needs to be addressed in terms of providing a definition for what would otherwise become an undefined land use, and to include measures by which the impact of any new proposals can be identified and assessed, on those sites.

The draft planning proposal as attached to this report seeks to remedy the above through the inclusion of a definition for 'water bottling facility' within the proposed Schedule 1 clause. The definition would be worded as it currently reads, with the exception of removing the reference to the RU2 Zone, so that those properties that have historical consents but are located outside the RU2 zone remain lawful under Schedule 1.

The draft planning proposal has also been modified to preserve the requirement that applicants for new, or expansion of existing, water bottling facilities on those lands where the proposed Schedule 1 would permit it, remain obliged to meet certain development criteria in order for consent to be granted.

It is recommended that the existing threshold test within clause 7.15 be modified into a 3-part test that provides clarity around what constitutes 'adverse impacts on natural water systems or the potential agricultural use of the land', thereby delivering greater certainty than the current wording allows to both applicants and Council when preparing, assessing and determining development applications.

Whilst the Gateway Conditions require Council to consider the findings of the Chief Scientists & Engineer from its review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW prior to finalisation of this planning proposal, nothing in that condition prevents the planning proposal being publically exhibited as it currently stands in order to gain an understanding of community sentiment for the proposed LEP amendment.

In light of the above this report now seeks Council's endorsement to place the draft planning proposal as attached to this report on public exhibition.

RECOMMENDATION:

That:

- 1. Planning Proposal PP18/0004, being amendment No. 28 to the Tweed Local Environmental Plan 2014, as updated and provided in Attachment 1, be publicly exhibited.
- 2. The updated Planning Proposal be exhibited in accordance with the Gateway Determination issued on 13 May 2019, for a period of 28 days and the requirements of the Environmental Planning and Assessment Act 1979 and Regulations 2000.

REPORT:

Background

The purpose of this report is to seek Council's endorsement to publicly exhibit the draft planning proposal PP18/0004 Remove Enabling Clause 7.15 for Water Bottling Facility, provided as Attachment 1 to this report.

At its meeting on Thursday 15 November 2018, Council resolved to:

"prepare a comprehensive planning proposal to remove clause 7.15 from the Tweed LEP 2014 in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity".

The draft planning proposal was prepared to that effect and submitted to the then NSW Department of Planning and Environment (DPE) for consideration on 19 February 2019. A Gateway Determination and associated conditions were issued on 13 May 2019 (provided in Attachment 2). Of note were the following non-standard conditions:

- Condition No. 1(d): Include savings provisions to allow that development applications for water bottling facilities submitted prior to the proposed amendment to the tweed LEP 2014 will be determined in their merit;
- Condition No. 1(e): Provide an updated Schedule 1 to Tweed LEP 2014 that includes existing approved water bottling facilities as additional permitted uses on the relevant land; and
- Condition No. 5: Findings by the Chief Scientist & Engineer from its review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW must be considered by Council prior to plan finalisation.

The strategic justification for the amendment to the LEP based on the precautionary principle and lack of data surrounding groundwater in the Tweed remains the same as was originally submitted to the DPE. Notwithstanding, in order to meet the Gateway conditions, and to address issues arising from meeting those conditions, the draft planning proposal has been modified as described in the following sections.

Amendment to Schedule 1 Additional Permitted Use

The draft planning proposal now includes an update to Schedule 1 to the Tweed LEP 2014 to include *water bottling facility* as an additional permitted use on those sites where lawful and operational development consents apply.

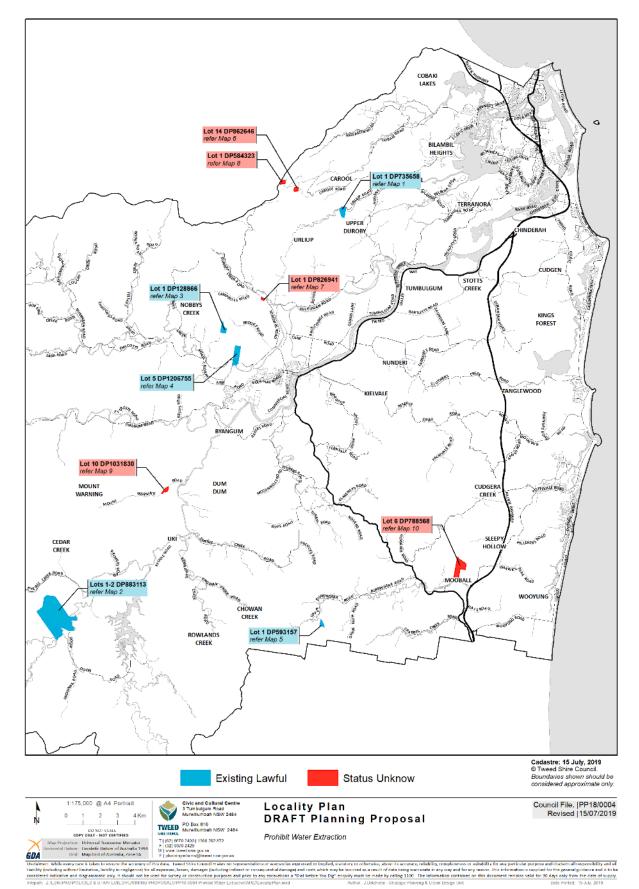
Table 1 below provides a list of development applications approved by Tweed Shire Council with respect of water extraction and/or bottling facilities. Figure 1 provides a shire-wide locality plan showing the locations of each of the properties. There are currently five properties in the Tweed Shire that have known lawful and operating consents (Items 1-5 in Table 1). These five properties are to be included in the Schedule 1 amendment.

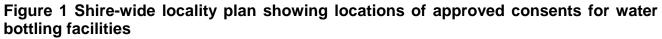
There are a further five properties that have had consents for water extraction and/or bottling granted in the past, but where the status of these consents is unknown in terms of whether

the use was lawfully and physically commenced prior to the lapsing date of the consent. The owners of these properties have been contacted and given the opportunity to make representation by way of provision of acceptable evidence of lawful physical commencement. If such evidence is provided to Council prior to the finalization of this planning proposal, these properties will also be included within the Schedule 1 amendment, as per the conditions of the Gateway Determination.

Table 1: Details of the properties that have been granted development consent for water extraction and/or bottling facilities in Tweed Shire. Note: Consents involving modifications to approved operations have been aggregated to show one entry per site.

	Property Details	Consent Details	Date Granted	Status
1	477 Urliup Rd, Urliup Lot 1 DP 735658	DA03/0445 Use of existing stock/domestic water bore for harvesting and bottling of water	14/8/2003	Lawful
2	2574 Kyogle Road, Kunghur Lots 1 & 2 DP 883113	DA05/0995 Rural industry for water bottling (plus amendments)	6/2/2006	Lawful
		DA16/0579 Alterations & Additions to water bottling facility in 2 stages (plus amendments)	18/11/2016	Lawful
3	101 Bryens Road, Nobbys Creek Lot 121 DP 1111869 (formerly Lot 1 DP 128866)	DA06/0603 Bottling of mineral water and bulk mineral water supplies	29/9/2006	Lawful
4	10-20 Edwards Lane, Kynnumboon Lot 5 DP 1206755 (formerly Lot B DP 953668)	DA06/1023 Transportation of water	25/1/2007	Lawful
5	64 Geles Road, Upper Burringbar Lot 1 DP593157	DA10/0161 Partial conversion of existing farm shed to allow for a spring water bottling plant	18/7/2011	Lawful
		DA13/0040 Fitout existing building for the purpose of a spring water bottling facility	31/1/2014	Lawful
6	376 Glengarrie Rd, Glengarrie Lot 14 DP 862646 (formerly Lot 10 DP 738259)	D91/0025 Establishment of a spring water bottling operation	14/3/1991	Unknown TBC
7	317 Tomewin Rd, Dungay Lot 1 DP 826941 (formerly Part Lot 5A Portion 5 DP755115, referred to in consent as Lot 1 DP 118628)	D92/0207 Establishment of a bottling and distribution plant for non- carbonated water	25/9/1992	Unknown TBC
8	65 Slash Pine Road, Glengarrie Lot 1 DP 584323	D96/0373 Use of existing shed as a spring water bottling plant	6/11/1996	Unknown TBC
9	153 Mount Warning Road, Mount Warning Lot 10 DP 1031830	DA03/1720 Wholesale supply of spring water	1/3/2004	Unknown TBC
10	109-127 Pottsville Road, Mooball Lot 6 DP 788568	DA03/1812 Water Bottling Plant	29/9/2004	Unknown TBC





Land Use Definition for Water Bottling Facilities

Tweed Local Environmental Plan (LEP) 2014 Clause 7.15 currently enables water bottling facilities in the RU2 zone and also contains a definition for the land use, as there is no other definition within the standard LEP dictionary by which this land use can lawfully be described.

Removal of Clause 7.15 in its entirety would remove the land use definition from the Tweed LEP 2014. However, the introduction of *water bottling facility* as a Schedule 1 additional permitted use on those properties with existing lawful consents, as required by the Gateway conditions, would result in the land use becoming permitted but otherwise undefined once Clause 7.15 is removed.

It is therefore proposed to include, within the amendment to Schedule 1, the definition for *water bottling facility* as it currently reads within Clause 7.15, with the exception of removing the reference to the RU2 Zone, as shown below:

"Water bottling facility means a building or place at which groundwater is extracted, handled, treated, processed, stored or packed for commercial purposes".

The Gateway Determination conditions specified all existing lawful operations to be included in Schedule 1. It did not specify that only land in RU2 zone shall be included in Schedule 1. It must therefore be assumed that any lawful and active consents shall be afforded the same land use protections regardless of the zone in which they occur.

The removal of the reference to the RU2 Zone is inconsequential in that it does not facilitate new operations on new land, given the definition will apply only to those properties that are to be identified with Schedule 1. It will, however, serve to protect any lawful operations on land that is currently not zoned RU2 or that may be subject to a change in zoning in the future.

This is particularly relevant to the property at Mount Warning Road, Mount Warning, should lawful physical commencement of development consent DA17/0320 be demonstrated, as the zoning of this property is a deferred matter under Tweed LEP 2014 and 7(I) Environmental Protection (Habitat) under Tweed LEP 2000.

Threshold Test Provisions

Clause 7.15 currently enables water extraction to be carried out on land within the RU2 zone subject to the following test that must be met before any consent can be granted:

"the consent authority is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land".

The complete removal of the clause as sought by the initial planning proposal would have the effect of eliminating any threshold test. This is applicable should there be any expansion to, or application for, new water bottling facilities on those sites where the use will remain permitted through the site's inclusion in to the amendment to Schedule 1.

It is therefore proposed to preserve a requirement for applicants for new or expansion of existing water bottling facilities, on those lands where the proposed Schedule 1 would permit it, to meet certain development criteria before consent may be granted.

The current threshold test within clause 7.15 is problematic in that the lack of data, understanding of and ability to identify or monitor the environmental impact of water bottling facilities means that Council, as a decision making authority, can never be fully satisfied that there will be no adverse impact.

An alternative is therefore proposed to provide clarity around what constitutes 'adverse impacts on natural water systems or the potential agricultural use of the land' in the form of clear, definable and assessable criteria that delivers greater certainty to both applicants and Council when preparing, assessing and determining development.

After discussion and advice from a hydrogeologist consultant representing Council on multiple recent NSW Land and Environment Court appeals relating to water extraction and bottling, the following three criteria are now suggested to form a 3-part threshold test for development consent:

The applicant is to:

- 1. Demonstrate that they are extracting water via approved infrastructure only from the source approved by their groundwater extraction license and no other water source such as a dam, wetland, river, watercourse or other surface water body.
- 2. Identify whether there are any Groundwater Dependent Ecosystems (GDEs) that could be affected and propose measures to mitigate these impacts.
- 3. Establish an ongoing rigorous groundwater monitoring program which will allow trends and patterns to be identified over time.

Assessment of the first two elements is dependent on whether there is real information available on which to make decisions. If there is no monitoring data or low levels of data it is extremely difficult to understand any impacts or effects. The third element should therefore be a requirement to establish an ongoing rigorous groundwater monitoring program which will allow trends and patterns to be identified over time.

It is proposed to include the above as threshold criteria within the Schedule 1 clause that permits water bottling facilities as additional permitted use on those lands where lawful operations exist.

The Gateway Conditions require Council to consider the findings of the Chief Scientist & Engineer when it delivers its final review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region. Whilst the final report is yet to be delivered, in regards to the above it is acknowledged that the wording around the three proposed threshold criteria may change should the Chief Scientist's final report provide further direction or advice around the assessment of risk to groundwater dependant ecosystems or the broader environment, and requirements for ongoing monitoring.

Savings Provisions

The Gateway Determination conditions require a means of ensuring that development applications for water bottling facilities, submitted prior to the proposed amendment to Tweed LEP 2014 being finalised, are able to be determined on their merit. To meet this requirement the planning proposal now proposes a savings provision to achieve this objective. The wording and placement of the saving provision within the Tweed LEP 2014 are a matter for Parliamentary Counsel to determine during drafting of the LEP amendment.

Savings provisions are a standard component of the planning process to manage the effects of changes in legislation.

Should the savings provision be utilised and any of those applications be approved after the LEP is amended, a further planning proposal would be required to amend Schedule 1 by addition of those properties.

It must be noted that there is a current NSW Land and Environment (L&E) Court appeal against the refusal of a new water bottling facility at Lot 3 DP 1125925 No. 302 Dungay Creek Road, Dungay. Should the L&E Court determine that the application shall be approved and this occurs prior to the final version of this planning proposal being sent to the Minister for making, this property would be included in Schedule 1 and have the benefit of the additional permitted use provision.

Should the court determine in favour of the applicant but the findings be handed down after the amendment has been made, it is assumed that this property would be saved in accordance with the savings provision directed by Condition 1(d) of the Gateway Determination (to be determined once savings provision has been drafted by Parliamentary Counsel). The site would therefore need to be added to Schedule 1 via an additional planning proposal.

Additionally, Council is currently in receipt of a development application over Lots 121 DP 1111869, Lot 66 DP 755715, Lot 1 DP 799355 & Lot 1 DP 1214753, Bryens Road road reserve and Crown road reserve, being No. 101 Bryens Road, Nobby's Creek. An existing approved water extraction and bottling facility is in operation on Lot 121 DP 1111869. The application currently under assessment seeks to increase the maximum annual groundwater extraction rate from 12ML to 38ML; continuation of 24 hour operation and transport of water at night; inclusion of a limit on truck movements; and use of a number of existing structures located on lots outside the originally approved allotment, which would extend the approval to 3 additional allotments. Should this application be determined by way of approval prior to finalisation of this planning proposal, the three additional lots would need to be included in the Schedule 1 amendment.

OPTIONS:

- 1. Endorse Planning Proposal PP18/0004 Remove Enabling Clause 7.15 for Water Bottling Facility, updated as outlined in this report, and provided in Attachment 1 to be publicly exhibited in accordance with the Gateway conditions.
- 2. Defer for Council workshop.

Option 1 is recommended.

CONCLUSION:

The draft planning proposal has been amended to satisfy the conditions of the Gateway Determination by way of inclusion of:

- a savings provision for development applications lodged but not yet determined; and
- inclusion of protection rights to existing lawful operators through additional permitted use provisions within Schedule 1 of the Tweed LEP 2014.

Arising from these updates is the recognition that the removal of Clause 7.15 would remove the land use definition, and would also remove the threshold test for development approvals contained within the current clause. In response, the planning proposal has been further amended to preserve of the definition for *water bottling facility*, and maintain assessment criteria in the form of a 3-part test which must be met in order for consent to be granted for any new or extension to water bottling facilities permitted under the amended Schedule 1.

The central premise driving this planning proposal is to prohibit any new water bottling facilities from being created across the rural area of the Tweed Shire, on the basis of the precautionary principle. The updates as described in this report do not change this fundamental objective or outcome. They do, however, provide a reasonable level of protection for existing operators to continue with their current lawful operations, and also refine the proposal so that clear and definable threshold criteria are contained within the Schedule 1 clause that permits water bottling facilities as additional permitted use on those lands where lawful operations exist.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

Planning Proposal to be placed on public exhibition as statutorily required by the Environmental Planning and Assessment Act 1979. The exhibition period will be for 28 days.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Planning Proposal PP18/0004 Version 2 for public exhibition (ECM 5976245)			
Attachment 2.	NSW Department of Planning Gateway Determination (ECM 5976246)			

10 [PR-PC] Request to Prepare a Planning Proposal - 225 Terranora Road, Banora Point

SUBMITTED BY: Strategic Planning and Urban Design



SUMMARY OF REPORT:

Council is in receipt of a request to prepare a planning proposal for Lot 16 DP 856265, No. 225 Terranora Road Banora Point.

Whilst the majority of the site lies within 7(d) Environmental Protection (Scenic/Escarpment) zoned land under Tweed LEP 2000 and Deferred Matter under Tweed LEP 2014, the request seeks to change the zoning to facilitate a large lot residential development.

On 17 November 2016, in relation to this site and a previous request from the proponent, Council resolved to reduce the area of land to be rezoned and limit the development potential to two allotments consistent with previous, but lapsed, development consent.

This request seeks to remove the requirement that the development potential be limited to two allotments.

Because this request is fundamentally a re-issue of the previous request of 2016, to minimise duplication, Council's resolution and report of that meeting is attached and should be referred to in conjunction with this report.

As addressed in detail in the report of 2016, while the site was previously a hard rock quarry, scenic protection, water supply, effluent disposal and geotechnical matters are of concern.

Council has a lengthy history of ensuring the protection of the escarpment both recently and historically, leading Council officers to recommend in this report that Council's resolution of 17 November 2016 remain in effect and the proponent be notified that Council does not support the request.

Where a council does not support a request to prepare a planning proposal, the proponent, if they choose, can seek a review of Council's decision through the Gateway process. This process is administered by the Department of Planning, Industry and Environment, and usually conducted by the local planning panel.

Whilst this request is considered to lack strategic merit and is not of regional significance, until such time as a Pre-Gateway review is sought by the proponent no indication of the Department's response is possible.

RECOMMENDATION:

That in respect of the request to prepare a Planning Proposal for Lot 16 DP 856265 at No. 225 Terranora Road, Banora Point, Council endorses that:

- 1. Council's resolution of 17 November 2016 stands;
- 2. The proponent be advised that their request is not supported; and
- 3. The Department of Planning, Industry and Environment be advised of Council's decision and provided with this report and the report of 17 November 2016.

REPORT:

Council is in receipt of a request from Planit Consulting (the proponent) for Council to prepare a planning proposal for Lot 16 DP 856265, No. 225 Terranora Road, Banora Point.

The request seeks a rezoning of part of the land from 7(d) Environmental Protection (Scenic/Escarpment) under *Tweed Local Environmental Plan 2000* to R5 Large Lot Residential under *Tweed Local Environmental Plan 2014*.

The request essentially seeks the same rezoning outcome, without the nomination of the number of lots, as was subject of an earlier planning proposal which Council resolved upon on 17 November 2016.

While Council resolved in 2016 to endorse a rezoning of part of the site, the resolution restricted the area and the development potential of the site to two allotments (not the 16 proposed in concept plans). Upon receipt of a Gateway Determination which supported Council's resolution, the proponent withdrew their request.

Two allotments were considered reasonable given the sensitivity of the site within the scenic escarpment, imposition of development restrictions on adjoining properties (on property titles) to prevent housing within the escarpment, and considerable constraints affecting a site which lies within what was previously a hard rock quarry.

Two lots are also consistent with a previous consent (K99/0355, 3 September 2002) for a two lot subdivision which was not acted upon and has lapsed.

Due to the proponent requesting the same planning outcome as previously reported to Council the resolution and detailed planning report to the 17 November 2016 Planning Committee Meeting is attached and should be read in conjunction with this report.

The proponent has provided copies of studies previously sent to Council for consideration and updated geotechnical and visual impact studies.

This report seeks Council's endorsement of a response to this request, and outlines the options to proceed with a rezoning of the site without any limitations on development capacity, or to maintain Council's existing position as resolved in 2016 and refuse the request.

The Site

The site is accessed off Terranora Road and adjoins large lot residential development in The Parapet. The part of the property subject of the rezoning request is identified in figures below.

The site is almost entirely located within the 7(d) Environmental Protection (Scenic/Escarpment) zone and contains a small section of RU5 at the entrance to the site and RU2 Rural Landscape to the lower access handle to the site.

Whilst the site was previously operated as a quarry and rehabilitation back to native vegetation occurred, the site has been kept in a grassed state, lack of trees should not be considered a primary factor in determining the suitability of a site for residential development, especially within the escarpment where environmental protection and scenic impact are highly significant.

A more detailed description of the site can be found in the attachment to this report.

This request

This current request is seeking a development outcome consistent with the request resolved upon by Council in 2016 but without a limitation on, or expressed number of lot yields.

Should Council resolved to rezone the site as requested without restricting the development capacity of the site, the landowner would be in a position to seek subdivision and obtain lot yields similar to those previously sought and refused by Council.



Figure 1: 2015 aerial image showing subject site, escarpment and locality



Figure 2: indicative area of rezoning as proposed by the proponent

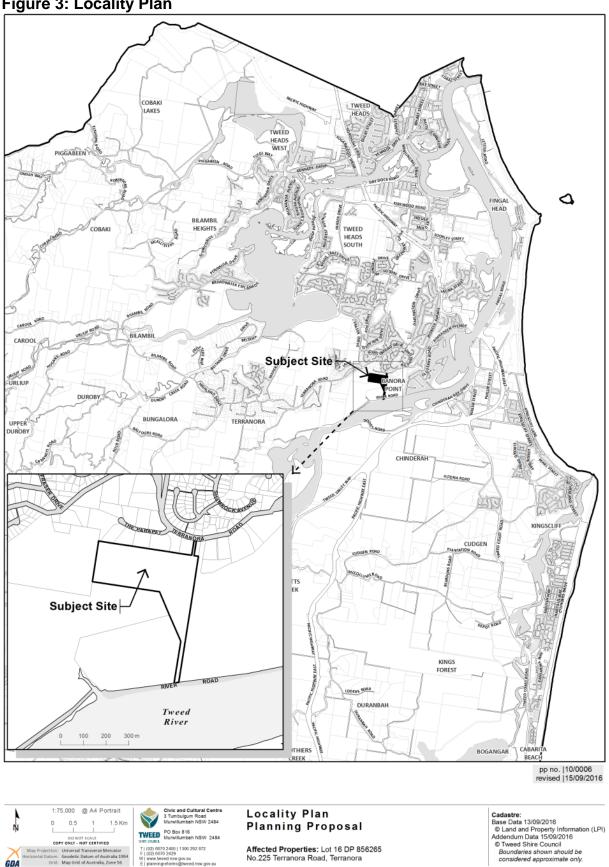


Figure 3: Locality Plan

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Figure 4: View of the site from the east showing adjoining properties on The Parapet and Terranora Road

Previous request to prepare a planning proposal

The property has previously been the subject of a number of requests; the most recent being reported to Council on 17 November 2016, requested by the same proponent.

As reported to Council in 2016, the proponent sought a rezoning of part of the land from 7(d) Environmental Protection (Scenic/Escarpment) under Tweed Local Environmental Plan 2000 to R5 Large Lot Residential under Tweed Local Environmental Plan 2014 to permit a 16 lot community title subdivision.

Whilst the site comprises an area of cleared land and it was previously operated as a hard rock quarry, the potential for significant scenic impact from its development within the escarpment is of major concern. In addition, there are other significant matters that Council must be satisfied can be adequately addressed, including:

- 1. Water supply;
- 2. Waste water disposal;
- 3. Potential for contamination from quarry operations and fill material, and
- 4. Geotechnical stability of the land.

Until Council has an endorsed Scenic Landscape Strategy, the impact of development on the scenic landscape and amenity of the locality remains as discussed in the attached report of 2016.

The 2016 report in part concludes that:

"While development consent for adjoining and nearby residential land has made specific reference to the need for protection of the escarpment and clear separation of housing development from the escarpment, to the point of having restrictions on use registered on title, Council has previously issued a development consent for a two lot subdivision of the site if the properties were connected to Council's reticulated water and sewer systems.

While the landowner has previously been advised that any level of development would have significant impacts on the scenic amenity, a two lot subdivision is considered an appropriate planning response providing that further investigations support this outcome, and the location, form and features of the house, including colour and visual impact are adequately addressed.

Council officers recommend that limiting the development of land to a two lot subdivision is an appropriate planning response because it reflects an actual constraint of the land when viewed against the visual landscape importance of the Terranora escarpment, which collectively with other unique landscape management units is the defining natural feature of the Tweed. The integrity of the Tweed's landscape is vital now and for the longer-term benefit it provides to the Tweed economy through tourism, and which has been cumulatively impacted over a long period through site by site development that individually have previously been perceived as imperceptible."

Previous resolution of Council

At its meeting of 17 November 2016 Council unanimously resolved, in part, to reduce the area of land to be rezoned, and to restrict subdivision potential to two lots only.

Potential implications of refusing the request

Should Council resolve to maintain its existing position regarding zoning and development of this site by restricting the area to be rezoned and limiting development capacity of the site to two allotments, this would lead to a refusal of the current request.

Refusal of the request would provide the opportunity through the Gateway process (for amendments to the LEP) for the proponent to seek a Pre-Gateway Review.

A Pre-Gateway Review is administered by the Department of Planning, Industry and Environment, and is carried out independently by the Regional Planning Panel.

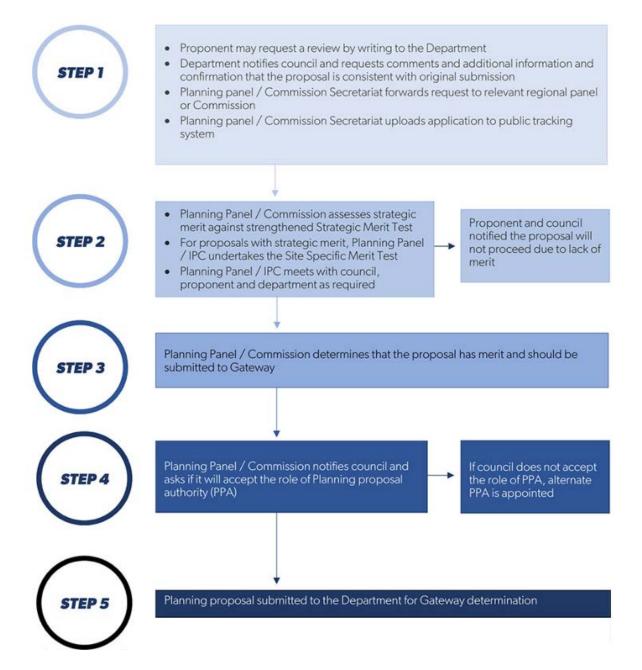
Whilst the Department has previously assumed the role of Relevant Planning Authority and rezoned land at 420-434 Terranora Road Terranora, a spot rezoning which is not considered to be of regional significance and lacks strategic merit would most likely be considered a matter outside the core roles of the Department.

Council has been clear, unanimous, and consistent, both recently and historically, with its determination to protect the escarpment from residential development not just on this site, but development along the top of the escarpment and Terranora Road. This position would be cited in any response to the Department should a Pre-Gateway review be sought by the proponent.

However, until such time as a Pre-Gateway Review Request is lodged with the Department, the nature of any response from the Department cannot be assumed.

Once finalised, it is envisaged that the implementation of the E Zone Review and Council's Scenic Landscape Strategy will provide further strategic guidance and support for protection of the escarpment in its entirety.

The process of having a Pre-Gateway review undertaken is summarised below.



OPTIONS:

1. Maintain Council's position of supporting a rezoning consistent with Council's resolution of 17 November 2016, being in part, a reduced area of land to be zoned R5 Large Lot Residential and not more than two lot subdivision; or

- 2. Prepare a planning proposal to be sent to the Gateway for a determination based on the request; or
- 3. Defer for a Councillor workshop.

Option 1 is recommended.

CONCLUSION:

The proponent has re-submitted a request for Council to rezone land within the scenic escarpment to RU5 Large Lot Residential and sought to vary Council's previous resolution by removing the requirement which restricted development capability to not more than two allotments.

Council has been successful over many years in establishing a clear position with respect to protection of the escarpment.

This report recommends that Council's resolution of 17 November 2016 remain as the position of Council for the development of this site and that the proponent and Department of Planning, Industry and Environment be notified accordingly.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Resolution and Report on 225 Terranora Road, Banora Point						
	Planning (ECM 59	Committee 75227)	Meeting	held	17	November	2016

11 [PR-PC] Response to Notice of Motion (NOM) on the Potential for the Planning Policy to require new Development Applications for Service Stations to include Fast Charging Stations

SUBMITTED BY: Strategic Planning and Urban Design



SUMMARY OF REPORT:

This report responds specifically to Item 3 of Council's resolved Notice of Motion (21 March 2019), as follows:

- "1. Council write to Tesla and to shopping centre management in the Shire to encourage the installation of electric charge stations for patrons;
- 2. Council to consider installing electric outlets for staff use;
- 3. A report be brought back on the potential for the planning policy to require new development applications for service stations to include fast charging stations."

In response to Item 1, Council wrote to Tesla and shopping centre management in early April 2019 outlining Tweed Shire Council's commitment to put solutions in place in response to climate change and welcoming the installation of electric charge stations within Tweed Shire. No response has been received to date. Item 2 is currently being considered by the Infrastructure Delivery team.

This report addresses Item 3.

Electric vehicles offer significant economic and environmental benefits as well as contributing to a modern and cleaner energy future.

Reasons cited for Australia's relatively slow uptake include particular pressure on range anxiety due to the distances between major urban areas and limited charging infrastructure. Although most electric vehicle drivers charge their cars at work or at home, access to fast chargers is essential to overcome 'range anxiety' or the perceived risk that a vehicle may run out of charge before a charging point can be reached.

Given the constraint of charging time, consideration must be given when siting public chargers to what drivers and their passengers might do while charging. Charging stations located in workplaces, shopping centres, public car parks and on roadsides, enable electric vehicle drivers to 'top up' their charge while travelling outside of their normal range, going about their daily activities, running errands, doing some shopping or sitting in a café.

Traditional service stations are typically not well placed to satisfy consumer behaviour or to turn the constraint of charging time into an opportunity for interaction with local businesses, cultural attractions, or public amenities. Nevertheless, the installation of electric vehicle chargers is permissible; as exempt development for all land owners or occupiers where used in a non-commercial basis, as well as in existing car-based developments, such as car parks, bus depots and service stations; and with development consent adjoining public roads.

Current trends globally and within Australia show consumer demand for charging stations located in workplaces, shopping centres, public car parks and on roadsides. Strategically located fast charging points enable users to 'top up' their electric vehicle charge while going about their daily activities.

Should Council wish to be proactive in encouraging electric vehicle charging stations, there is opportunity, subject to costs and work priorities, to identify service providers and investigate installation at/or near key strategic Council owned locations.

RECOMMENDATION:

That Council:

- 1. Receives and notes the information, recognising that the provision of electric charging stations is permissible under the existing planning framework and occurring in response to market demand in strategic longer stay public parking areas, away from traditional service stations, and
- 2. Investigates strategic public locations, costs and co-investment opportunities for installing fast charging stations at Tweed Heads, Murwillumbah and Tyalgum as envisaged by the *Power Up Northern Rivers Electric Vehicle Strategy* including assessment of the optimal ownership and or leasing arrangements for facilities on public land, cost implications and ongoing operational aspects.

REPORT:

Background

This report responds specifically to Item 3 of Council's Notice of Motion (21 March 2019), as follows:

- "1. Council write to Tesla and to shopping centre management in the Shire to encourage the installation of electric charge stations for patrons;
- 2. Council to consider installing electric outlets for staff use;
- 3. A report be brought back on the potential for the planning policy to require new development applications for service stations to include fast charging stations."

In response to Item 1, Council wrote to Tesla and shopping centre management in early April 2019 outlining Tweed Shire Council's commitment to put solutions in place in response to climate change and welcoming the installation of electric charge stations within Tweed Shire. Item 2 is currently being considered by the Infrastructure Delivery team.

This report addresses Item 3.

Electric vehicles offer significant economic and environmental benefits as well as contributing to a modern and cleaner energy future. They can reduce the cost of living and are cleaner and quieter – features which are essential in our growing and busy towns and cities.

The transition to electric vehicles brings many opportunities, including new industry development and employment growth in the transport, energy and technology sectors.

Globally, there was a 56 percent increase in electric vehicle sales volume from 2016 to 2017 and there are now more than 3 million electric vehicles on the road (ClimateWorks Australia, 2018). While Australia still trails behind global leaders in electric vehicle uptake, we have seen a notable growth in electric vehicle sales. There were 2,284 electric vehicles sold in Australia in 2017, representing a 67 percent increase from the previous year. The number of electric vehicle models available for sale in Australia has also increased by 44 percent, over the same period. The number of charging stations in Australia has also substantially increased, with 64 percent increase from 476 locations in 2017 to 783 locations in 2018.

Reasons cited for Australia's relatively slow uptake include: particular pressure on range anxiety due to the distances between major urban areas; absence of policies that actively promote uptake; limited model choice; high purchase costs; and limited charging infrastructure.

In NSW, there are currently about 390 public charging points, including 21 fast chargers (Transport for NSW, 2019). Numbers are growing steadily as commercial charging providers are starting to install charge points on major roads and highways.

Although most electric vehicle drivers charge their cars at work or at home, access to fast chargers is essential to overcome 'range anxiety' or the perceived risk that a vehicle may run out of charge before a charging point can be reached.

Need for public charging points

Whilst, the average Australian drives about 38 km per day, all electric vehicle owners will need access to fast charging when they travel long distances. The installation of appropriately sited and managed fast chargers in the Northern Rivers region is essential to attract tourist electric vehicle drivers, remove barriers to greater electric vehicle use by local residents and support the region's eco-tourism reputation.

The *Power Up Northern Rivers Electric Vehicle Strategy* identified the need for fast charger station installations at Tweed Heads, Nimbin, Lismore and Ballina to provide full accessibility throughout the region. It further recommended a network of secondary charger stations at other key commuter and tourism centres including Murwillumbah, Mullumbimby, Tyalgum, Uki, Casino, Bangalow and Lennox Head.

It is understood that a comprehensive network of charger stations in our region is required to ensure electric vehicle drivers are confident regarding charging opportunities when travelling within the region.

Addressing regional gaps in the availability of well-placed public charger stations throughout the Northern Rivers will support the region's community, economic and environmental ambitions for a zero emissions future.

Charging Technology

There are several types of chargers available, for a range of purposes, including slow overnight charging to rapid top-up charging.

Level	Power	Charge Time
Level 1 – Slow	Less than 7 kW	5 – 12 hours
Level 2 – Moderate	11 – 22 kW	2 – 4 hours
Level 3 – Fast	50 kW	30 minutes – 1 hour
Level 4 - Rapid	More than 120 kW	15 – 40 minutes

Charging infrastructure generally falls into four broad categories, being:

Slow chargers, often referred to as destination chargers, are best suited for home, work, shopping centre or commuter car park applications where vehicles will be parked overnight or for most of the day.

Moderate chargers are best suited for urban roadside charging points, tourist destinations (such as cinemas, libraries, beach parks, sports fields, galleries and museums) or shopping centres, where people will park and stay for a couple of hours.

Fast chargers are designed to keep drivers 'topped up' during a journey and are typically in the vicinity of highways and other key transport routes.

Fast electric vehicle chargers can draw power equal to the peak power usage of 80-200 homes, according to City of Sydney Council. To minimise stress on energy network infrastructure, large scale installation of electric vehicle chargers needs to be delivered with the adequate oversight and management and in consultation with the energy utilities.

Rapid chargers are currently being rolled out by the NRMA, along with other key government initiatives on priority motorways.

Siting Public Chargers

There is an opportunity for fast-charging stations to either be deliberately like traditional service stations, or deliberately different. Given the constraint of charging time, consideration must be given when siting public chargers to what drivers and their passengers might do while charging.

The current trend, globally and within Australia, is to locate public fast chargers away from traditional service stations, with the exception of motorway service centres, embedding them in towns and turning the constraint of charging time into an opportunity for interaction with local businesses, cultural attractions, or public amenities.

Charging stations located in workplaces, shopping centres, public car parks and on roadsides, enable electric vehicle drivers to 'top up' their charge while going about their daily activities, running errands, doing some shopping or sitting in a café. It is becoming increasingly common to see electric vehicle chargers in shopping centre car parks.

Traditional service stations are often located on the outskirts of towns and more than a reasonable walking distance (300 to 400 metres) from other services and destinations such as local businesses, cultural attractions, or public amenities. With the exception of motorway service centres, service stations traditionally have limited parking availability and customer seating providing limited convenience given the constraint of charging time associated with electric vehicles. Nevertheless, the installation of electric vehicle chargers is permissible; as exempt development for all land owners or occupiers where used in a non-commercial basis, as well as in existing car-based developments, such as car parks, bus depots and service stations; and with development consent adjoining public roads.

When siting public fast chargers it is also important to consider whether:

- The electricity supply infrastructure capacity of the existing electrical supply network is suitable;
- The site has a reasonable connection to the wider road network;
- The facility and its operation will not adversely impact upon the amenity of surrounding development or the public domain;
- The facility is safe with adequate lighting, and pedestrian and vehicular access available at all times of day and night; and
- The facility is compliant with relevant Australian Standards and Regulations for occupational health and safety. Charging station hardware must be located a safe distance away from hazards such as dangerous goods and fuels.

Furthermore, operational aspects need to be addressed including ongoing management, maintenance and customer assistance requirements.

Council is required to issue owners consent on a development application for an electric charging station to proceed on Council owned land. Any proposal for the installation and operation of an electric vehicle charging station on a road reserve would require additional approvals and permits, and need to demonstrate how the loss of parking space can be appropriately mitigated.

Local Government Fast Charger Initiatives

As outlined in the *Power Up Northern Rivers Electric Vehicle Strategy* owning or promoting public charging infrastructure in major villages, towns and at Council premises is an important role for local government.

Waverley, Woollahra and Randwick Councils in Sydney's eastern suburbs have installed public on-street electric vehicle charging stations in key destination hotspots including Bondi Beach, Coogee Oval and Double Bay shopping centre. Willoughby City Council has installed electric car chargers in the Council owned Westfield car park. In Queensland, Brisbane City Council has implemented an electric vehicle charging station pilot project in King George Square car park, while in South Australia City of Adelaide Council is constructing 20 electric vehicle charging points at UPark car parks across the city.

In the Northern Rivers existing and planned public fast charging options include:

- Byron Bay library;
- Macadamia Castle;
- Byron eco-park;
- Byron Bay Woolworths;
- Mullumbimby Council car park;
- Byron West shopping centre; and
- The Farm Ewingsdale.

An opportunity exists for Tweed Shire Council to identify service providers and explore strategic public locations and co-investment opportunities to install fast charging stations at Tweed Heads, Murwillumbah and Tyalgum as envisaged by the *Power Up Northern Rivers Electric Vehicle Strategy*.

Further investigation would be required to determine the optimal ownership and or leasing arrangements for facilities on public land, cost implications and ongoing operational aspects.

Planning Policy

It is essential that planning policy enable the orderly provision of electric vehicle charging infrastructure in both the public and private domain. Planning policy has the capacity to ensure that electric vehicle charging infrastructure is appropriately located and provide guidance on best practice to ensure consistency instead of an ad hoc approach.

Strategic Plans

Guided by Sections 3.3 and 3.4 of the *Environmental Planning and Assessment Act 1979* Strategic Plans must take into consideration Infrastructure Strategies, other relevant government policies and matters as directed by the Minister, which includes policies adopted by Infrastructure NSW.

The North Coast Regional Plan does not indicate any key objectives or strategies that focus on, or mention, charging infrastructure for electric vehicles. It does however, contain broader objectives to support the NSW Government's goal of a carbon neutral NSW by 2050.

Given the broad nature of Strategic Plans, they generally do not impact development on the ground level however they are required to be considered when preparing LEPs and Local Strategies.

Environmental Planning Instruments

In August 2018, NSW DPE outlined amendments and additions to SEPP (Infrastructure) 2007, including adding provisions for electric vehicle charging under Part 3, Division 17, Section 3. These provisions made the installation of electric vehicle charging stations exempt development for all land owners or occupiers where used in a non-commercial basis, as well as in existing car-based developments, such as car parks, bus depots and service stations.

Local Environmental Plans guide development at a local level, providing land use zones defining development that is exempt, permitted with consent and prohibited. Under the standard instrument there is currently no means for specifically defining electric vehicle charging infrastructure.

Development Control Plans

Development Control Plans give effect to the aims of the SEPPs and LEPs. The Tweed Development Control Plan 2008 provides parking standards and new development is generally required to show compliance with these standards. An opportunity exists to modify the Development Control Plan, through locality planning, to provide for specific standards on electric vehicle charging infrastructure within new developments.

Woollahra Municipal Council amended its development control plan (DCP) in December 2016, to reference Electric Vehicle Charging Points. The objective being to accommodate hybrid electric vehicles by encouraging adequate charging points for these vehicles are provided in off-street private car parking areas. The DCP includes the following controls:

- "1. The installation of a 15 Amp dedicated circuit for vehicle charging is encouraged in garages for a dwelling house, semi-detached dwelling or dual occupancies. If a 15 Amp circuit is not installed, the garage includes at least one standard 10 Amp charging point that is suitably located for charging electric vehicles, and can be dedicated for that purpose.
- 2. The installation of at least one 15 Amp dedicated circuit for vehicle charging is encouraged in the common parking areas of a residential flat building, multi-unit dwellings, and the residential component of a mixed use development. The circuit is to be suitably located to provide for convenient, shared access. Alternatively, or in addition, the development may include a user pays charging point with a dedicated space for electric vehicles.
- 3. For commercial development, the car parking area may include a user pays charging point with a dedicated space for electric vehicles.

Note – The charging points are to be shown on the DA plans."

Potential Council actions

An opportunity exists for Council to investigate within the next programmed review of the residential chapter of the Tweed DCP the inclusion of requirements for all new dwelling house,

semi-detached dwelling, dual occupancies, residential flat building, multi-unit dwellings and commercial developments to, where appropriate and possible, install electric vehicle charging infrastructure or the capacity for electric vehicle charging points to be installed at a later time.

Should Council wish to be proactive in encouraging electric vehicle charging stations, there is also an opportunity, subject to costs and work priorities, to investigate installation at/or near key strategic Council owned locations where vehicles would be parked for extended periods of time, for example at the Council depot sites, the libraries, civic centres, the multi deck parking station in Murwillumbah or other similar locations.

Undertaking such an approach would reinforce Council's commitment to sustainability through leading by example.

OPTIONS:

- 1. Receives and notes the information, noting that the provision of electric charging stations is permissible under the existing planning framework and occurring in response to market demand in strategic longer stay public parking areas away from traditional service stations; and/or
- 2. Investigates strategic public locations, costs and co-investment opportunities to install fast charging stations at Tweed Heads, Murwillumbah and Tyalgum as envisaged by the Power Up Northern Rivers Electric Vehicle Strategy including assessment of the optimal ownership and or leasing arrangements for facilities on public land, cost implications and ongoing operational aspects; and/or
- 3. Considers within the next programmed review of the residential chapter of the Tweed DCP the inclusion of requirements for all new dwelling house, semi-detached dwelling, dual occupancies, residential flat building, multi-unit dwellings and commercial developments to, where appropriate and possible, install electric vehicle charging infrastructure or the capacity for electric vehicle charging points to be installed at a later time; and/or
- 4. Defers the matter for further consideration.

Options 1 and 2 are recommended.

CONCLUSION:

Traditional service stations are typically not well placed to satisfy consumer behaviour or to turn the constraint of charging time into an opportunity for interaction with local businesses, cultural attractions, or public amenities. Nevertheless, the installation of electric vehicle chargers is permissible; as exempt development for all land owners or occupiers where used in a non-commercial basis, as well as in existing car-based developments, such as car parks, bus depots and service stations; and with development consent adjoining public roads.

Current trends globally and within Australia show consumer demand for charging stations located in workplaces, shopping centres, public car parks and on roadsides. Strategically located fast charging points enable users to 'top up' their electric vehicle charge while going about their daily activities.

Should Council wish to be proactive in encouraging electric vehicle charging stations, there is opportunity, subject to costs and work priorities, to identify service providers and investigate installation at/or near key strategic Council owned locations.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Budget implications of any actions arising would need to be considered as there is currently no budget provision for electric vehicle charging stations or any policy development associated with this. It is worth noting however, a related investigations regarding the feasibility of installing an electric charging point for staff use is currently being undertaken collaboratively by the Infrastructure Delivery and Sustainability and Environment Units in response to item 2 of Council's resolved Notice of Motion dated 21 March 2019.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

12 [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
	TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:
2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to
	assist people to understand the development process.
ROLE:	Provider

SUMMARY OF REPORT:

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

RECOMMENDATION:

That Council notes there are no variations for the month of July 2019 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal: Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.