

**Mayor:** Cr K Milne

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

# Agenda

## **Ordinary Council Meeting Thursday 24 October 2019**

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

# Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

## Guiding Principles for Tweed Shire Council

### (1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

### (2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

### (3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

## Items for Consideration of Council:

ITEM	PRECIS	PAGE
	<b>CONFIRMATION OF MINUTES</b>	<b>7</b>
1	[CONMIN-EXT] Confirmation of Minutes of Extraordinary Council Meeting held Thursday 19 September 2019	7
2	[CONMIN-CM] Confirmation of Minutes of the Ordinary and Confidential Council Meeting held Thursday 19 September 2019	9
3	[CONMIN-CM] Confirmation of Minutes of the Ordinary Council Meeting held Thursday 3 October 2019	11
	<b>SCHEDULE OF OUTSTANDING RESOLUTIONS</b>	<b>13</b>
4	[SOR-CM] Schedule of Outstanding Resolutions at 24 October 2019	13
	<b>MAYORAL MINUTE</b>	<b>27</b>
5	[MM-CM] Mayoral Minute for September 2019	27
	<b>RECEIPT OF PETITIONS</b>	<b>31</b>
6	[ROP-CM] Receipt of Petitions at 24 October 2019	31
	<b>ORDERS OF THE DAY</b>	<b>33</b>
7	[NOM-Cr K Milne] Reference Group - Zero Waste Strategy	33
8	[NOM-Cr C Cherry] 5G Network Infrastructure	35
9	[NOM-Cr J Owen] 2019 New Year's Eve fireworks - Salt Central Park	38
	<b>REPORTS THROUGH THE GENERAL MANAGER</b>	<b>40</b>
	<b>REPORTS FROM THE GENERAL MANAGER</b>	<b>40</b>
10	[GM-CM] Gallery DownTown	40
11	[GM-CM] Councillor Professional Development July 2018 - June 2019	56
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>60</b>
12	[PR-CM] Development Application DA13/0712.01 for an Amendment to Development Consent DA13/0712 for a Micro Herb Production Facility including Two Greenhouses, Two Pump Sheds, Potting Shed/Office, Water Tank, Driveway Access and Associated Earthworks at Lot 3 DP 1191598 No. 67 Howards Road, Burringbar	62
13	[PR-CM] Development Application DA19/0242 for the Erection of Dwelling to Create Detached Dual Occupancy and a Detached Garage and Carport at Lot 38 DP 263730 No. 52 Royal Drive, Pottsville	100

14	[PR-CM] Development Application DA19/0371 for a Two Lot Boundary Adjustment at Lot 2 DP 850714 No. 1289 Kyogle Road, Uki; Lot 92 DP 807666 No. 1317 Kyogle Road, Uki	157
15	[PR-CM] Proposal to Establish Alcohol-Free Zone	187
	<b>REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT</b>	<b>192</b>
16	[SCE-CM] Recycled Plastic Seating	192
17	[SCE-CM] Tweed Regional Accessible Park and Playground Seed Funding	199
18	[SCE-CM] Cool Towns - Greening the Shire Program	205
19	[SCE-CM] Fee for Service - Servicing of a 19 Metre Refrigerated Waste Compactor Bin	210
20	[SCE-CM] Response from Tomra Cleanaway regarding the Container Deposit Scheme	214
21	[SCE-CM] Application Under the Developer Contributions and Developer Charges for Community Organisations Policy	217
22	[SCE-CM] Nomination for Joint Hosting of NSW Coastal Conference 2020 with Byron Shire Council	221
	<b>REPORTS FROM THE DIRECTOR ENGINEERING</b>	<b>224</b>
23	[E-CM] Acceptance of Grant - Active Transport	224
24	[E-CM] B-Double Applications - Meeting held 26 September 2019	227
25	[E-CM] Procurement Policy - Review of Procurement Thresholds	231
26	[E-CM] RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains	234
	<b>REPORTS FROM THE EXECUTIVE MANAGER FINANCE, REVENUE AND INFORMATION TECHNOLOGY</b>	<b>239</b>
27	[FRIT-CM] Monthly Investment Report for Period Ending 30 September 2019	239
	<b>REPORTS FROM THE EXECUTIVE MANAGER PEOPLE, COMMUNICATION AND GOVERNANCE</b>	<b>245</b>
28	[PCG-CM] Disclosure of Interest Returns - 2018/2019	245
	<b>REPORTS FROM SUB-COMMITTEES/WORKING GROUPS</b>	<b>248</b>
29	[SUB-EAC] Minutes of the Equal Access Advisory Committee Meeting held Wednesday 11 September 2019	248
30	[SUB-LTC] Minutes of the Local Traffic Committee Meeting held 26 September 2019	253
	<b>CONFIDENTIAL ITEMS FOR CONSIDERATION</b>	<b>268</b>



<b>REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE</b>	<b>268</b>
<b>REPORTS FROM THE GENERAL MANAGER IN COMMITTEE</b>	<b>268</b>
<b>C1 [GM-CM] Murwillumbah Visitor Information Centre Lease</b>	<b>268</b>
<b>REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT IN COMMITTEE</b>	<b>269</b>
<b>C2 [SCE-CM] Unauthorised Vegetation Clearing at Lot 1 DP 418150 No. 1 Pacific Drive Banora Point</b>	<b>269</b>
<b>C3 [SCE-CM] Commonwealth Home Support Program (CHSP) Innovation Grant - Thrive, Belong, Connect</b>	<b>270</b>
<b>REPORTS FROM THE DIRECTOR ENGINEERING IN COMMITTEE</b>	<b>271</b>
<b>C4 [E-CM] McAllisters Road Upgrade</b>	<b>271</b>

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## CONFIRMATION OF MINUTES

### 1 [CONMIN-EXT] Confirmation of Minutes of Extraordinary Council Meeting held Thursday 19 September 2019

**SUBMITTED BY:** Corporate Governance

nhm

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Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

**ROLE:** **Leader**

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The Minutes of the Extraordinary Council Meeting held Thursday 19 September 2019 are attached for information and adoption by Council.

#### RECOMMENDATION:

**That the Minutes of the Extraordinary Council Meetings held Thursday 19 September 2019 be adopted as a true and accurate record of proceedings of that meeting.**

**REPORT:**

As per Summary.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

**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:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Attachment 1

Minutes of the Extraordinary Council Meeting held Thursday  
19 September 2019 (ECM6068331).

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**2 [CONMIN-CM] Confirmation of Minutes of the Ordinary and Confidential Council Meeting held Thursday 19 September 2019**

**SUBMITTED BY: Corporate Governance**

mhm



Making decisions with you  
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**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

**ROLE:** **Leader**

---

The Minutes of the Ordinary and Confidential Council Meeting held Thursday 19 September 2019 are attached for information and adoption by Council.

**RECOMMENDATION:**

**That:**

- 1. The Minutes of the Ordinary and Confidential Council Meetings held Thursday 19 September be adopted as a true and accurate record of proceedings of that meeting.**
- 2. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (f) matters affecting the security of the council, councillors, council staff or council property.**



**3 [CONMIN-CM] Confirmation of Minutes of the Ordinary Council Meeting held Thursday 3 October 2019**

**SUBMITTED BY: Corporate Governance**

mhm



Making decisions with you  
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**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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

**ROLE: Leader**

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The Minutes of the Ordinary and Confidential Council Meeting held Thursday 3 October 2019 are attached for information and adoption by Council.

**RECOMMENDATION:**

**That:**

- 1. The Minutes of the Ordinary and Confidential Council Meetings held Thursday 3 October 2019 be adopted as a true and accurate record of proceedings of that meeting.**
- 2. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (f) matters affecting the security of the council, councillors, council staff or council property.**

**REPORT:**

As per Summary.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

**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:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Attachment 1

Minutes of the Ordinary Council Meeting held Thursday  
3 October 2019 (ECM 6088490).

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## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 4 [SOR-CM] Schedule of Outstanding Resolutions at 24 October 2019

SUBMITTED BY: Corporate Governance

nhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader**

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#### SUMMARY OF REPORT:

This report details the outstanding resolutions from both Council and Planning Committee meetings for the information of Councillors.

#### CODE OF MEETING PRACTICE:

- 10.11 No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.

(Adopted by Council 4 August 2004)

#### RECOMMENDATION:

That the Schedule of Outstanding Resolutions are received and noted.

**REPORT:**

**CODE OF MEETING PRACTICE:**

10.11 No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.

(Adopted by Council 4 August 2004)

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**15 SEPTEMBER 2016**

**REPORTS FROM THE GENERAL MANAGER IN COMMITTEE**

**C1 [GM-CM] Murwillumbah Railway Station**

**REASON FOR CONFIDENTIALITY:**

This report relates to possible commercial dealings that should not be disclosed.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

(c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

**C 29**

That Council:

1. Authorises the General Manager to enter into lease negotiations for the Murwillumbah Railway Station.
2. A report be brought back to a future Council meeting which includes the terms and conditions of the future potential lease.

**Current Status:** A report on future lease options will be considered more broadly as part of the Rail Trail project in accordance with the business case presented to the State and Commonwealth Governments which identified the need for complimentary tenancy of the Rail Trail to contribute to the ongoing maintenance of the infrastructure.

Council was unsuccessful in obtaining an Heritage Grant to undertake works on the Murwillumbah Railway Station site.

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1 MARCH 2018

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C2 [PR-CM] Unauthorised Works within Crown Road Reserve, Zara Road, Limpinwood

REASON FOR CONFIDENTIALITY:

This is subject to current legal investigations.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

**C 9**

That Council, in respect of the current legal investigations relating to the unauthorised works within the Crown Road at Zara Road Limpinwood:

1. ....
4. Council seeks further advice in regard to whether it is appropriate to issue a Notice of Intention to cease using the Crown Road Reserve.

**Current Status:** A report was submitted to the 1 August 2019 Council Meeting and resolved that:

*".. Council, in respect of the current compliance matter with Mr John Fish resolves it wishes to continue with the terms of an agreement with Mr Fish relating to rectifying unauthorised works on Crown Road, off Zara Road Limpinwood:*

1. *Endorses and grants delegation to The Mayor, Councillor Katie Milne, Councillor Polglase and the General Manager to seek a meeting with Mr Fish and his representatives to negotiate a revised agreement on the next steps of this process, and related prosecution action in the Land and Environment Court."*

A meeting was subsequently held at Council on 20 August 2019, and following a request made by Council's solicitors, the Land and Environment Court approved a further 6 month deferral of the current prosecution action, and the terms of a corresponding revised agreement between Council and Mr Fish have been agreed to. Council is currently awaiting the lodgement of a development application by the owner in order to advance Council's resolved position.

**22 MARCH 2018**

**ORDERS OF THE DAY**

**12 [NOM] Policy for Variations to Council's Planning Controls**

**99**

**Cr K Milne  
Cr R Byrnes**

**RESOLVED** that Council brings forward a report on amending the Tweed and Tweed City Local Environmental Plan and Development Control Plan, with a view to enhancing sustainability outcomes such as living walls, green roofs, blue green infrastructure, greenhouse gas emissions, waste, composting, community gardens, etc., in accordance with the Paris Agreement targets.

**Current Status:** At its meeting of 5 September 2019 Council resolved to endorse the priorities for the 2019/20 Strategic Planning and Urban Design Work Program. This project was not a priority, and any future advancement of this project will be dependent on the availability of Council resources.

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**17 MAY 2018**

**ORDERS OF THE DAY**

**12 [NOM] Landscaping - South Tweed**

**235**

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that Council undertakes low key landscaping improvements to Minjungbal Drive and brings forward a report on enhanced landscaping planning controls in the South Tweed locality.

**Current Status:** At its meeting of 5 September 2019 Council resolved to endorse the priorities for the 2019/20 Strategic Planning and Urban Design Work Program. This project was not a priority, and any future advancement of this project will be dependent on the availability of Council resources.

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## 15 [NOM] Options for Improved Land Management

238

Cr K Milne  
Cr C Cherry

**RESOLVED** that:

1. Council officers bring back a report on options for securing land that would be suitable as offset stewardship sites under the Biodiversity Offset Scheme and how this could be funded and managed.
2. In the interim, the Mayor writes to the Local State Members for Lismore and Tweed Heads seeking State consideration for the acquisition of sites that have high biodiversity values for the addition to the National Park Estate and provide examples of such to the State Member.

**Current Status:** The project has been on hold since April 2019 with the endorsement of council to address a significant family health matter faced by the consultant working on the project that has unfortunately resulted in the consultant having to withdraw from the contract. The company that was placed second in the procurement process has been approached and negotiations commenced regarding completion of the project.

The new consultant has commenced to complete the report on a regional approach to biodiversity offsetting. Presentation of the draft report is expected at the September Northern Rivers Joint Organisation Natural Resource Managers Group meeting.

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21 JUNE 2018

## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### 11 [PR-CM] Preparing a Scenic Landscape Strategy with Community and Stakeholders, Related Draft Council Policy and DCP Amendment

295

Cr J Owen  
Cr P Allsop

**RESOLVED** that Council endorse:

1. The Draft Scenic Landscape Strategy be publicly exhibited for a period not less than 60 days during which community and stakeholder engagement is to be conducted to assist staff with the trial and testing of the Strategy;
2. The Scenic Landscape Policy is to be concurrently exhibited with the Strategy for a period not less than 60 days; and,

3. The proposed amendment of *Tweed Development Control Plan 2008* shall be publicly exhibited so as to comply with Clause 18 of the *Environmental Planning and Assessment Regulation 2000* but for a period not less than 60 days.
4. A further report be submitted to Council detailing the findings of the public exhibition and engagement for these three policies and any amendments considered appropriate.

**Current Status:** Public exhibition of the SLS Policy Statement, Strategy and draft DCP concluded in June 2019. Council determined in its endorsement of the Strategic Planning and Urban Development Work Program 2019/20 that the Fingal and Chinderah Locality Plan processes should take more immediate priority in the second half of 2019. A report on the SLS consultation and submissions will follow in early 2020.

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**16 AUGUST 2018**

## **ORDERS OF THE DAY**

### **6 [NOM] Environmental Land Purchases**

**422**

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that a report be brought forward on the potential for Council to purchase significant environmental areas for the purposes of appropriate rezoning and resale.

**Current Status:** Bond University Research Services Branch are being engaged to complete a briefing paper investigating and detailing the function and operation of land trusts, to include recommendations regarding council's potential involvement in securing the outcomes associated with this mechanism.

A viability analysis via a student capstone project using a local case study for a high level consideration and recommendations regarding council's potential involvement in facilitating a sustainable planning and development outcome has been commenced via an inception meeting on 4 September 2019.

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## **REPORTS FROM DIRECTOR PLANNING AND REGULATION**

### **15 [PR-CM] Affordable Housing Context and Options Paper**

**419**

**Cr K Milne  
Cr R Cooper**

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**RESOLVED** that Council:

.....

6. A further report be brought back to Council following the exhibition of the draft policy statement.

**Current Status:** At its meeting of 5 September 2019 Council resolved to endorse the priorities for the 2019/20 Strategic Planning and Urban Design Work Program. This project was not a priority, and any future advancement of this project will be dependent on the availability of Council resources.

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## **REPORTS FROM DIRECTOR COMMUNITY AND NATURAL RESOURCES**

### **20 [CNR-CM] Review of Dog Areas in Public Open Space - Updated Report**

**409**

**Cr K Milne**  
**Cr C Cherry**

**RESOLVED** that this item be deferred for a workshop with staff to provide further information on:

1. Records of people impacted by dog attacks;
2. Records of wildlife impacted;
3. Areas where threatened species occur; and
4. Options for alternative management strategies.

**Current Status:** Prohibited Dog Area signage has been updated at Hastings Point and Pottsville. Additional and consistent signage for dog zones on beaches is in progress. Significant community engagement on regulations for dog access in public areas was undertaken in the first half of this year. A grant application has been lodged to pursue a more detailed dog-owner behaviour change program throughout 2020-2022.

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15 NOVEMBER 2018

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-CM-CON] Works at Lot 136 DP 755724 Boormans Road, Limpinwood

REASON FOR CONFIDENTIALITY:

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

(g) *advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

**C 87**

That:

1. Council defers this item to seek the following further investigations and provide updated advice including on:
  - a) the North East Forest Alliance Audit report,
  - b) previous complaints to Council from the neighbours in the immediate vicinity,
  - c) further investigation of the recent activities in question and the history of logging on the property including:
    - i) interviews with the neighbouring complainants,
    - ii) more detailed historical aerial imagery if available,
    - iii) other relevant documents that may practically assist in establishing the extent of historical logging on the property, such as tax and transaction records of the parties involved including the transport and receiving parties.
    - iv) other relevant documents that may practically assist in establishing the extent of the recent level of logging activity in question on the property, such as tax and transaction records of the parties involved including the transport and receiving parties.
2. A further report be brought back to Council once these additional investigations and advice have been completed.

**Current Status:** At its meeting of 1 August 2009, Council resolved the following:

*"... that Council, in respect of the current compliance matter with Mr John Fish resolves it wishes to continue with the terms of an agreement with Mr Fish relating to rectifying unauthorised works on Crown Road, off Zara Road Limpinwood:*

1. *Endorses and grants delegation to The Mayor, Councillor Katie Milne, Councillor Polglase and the General Manager to seek a meeting with Mr Fish and his representatives to negotiate a revised agreement on the next steps of this process, and related prosecution action in the Land and Environment Court."*



A meeting was subsequently held at Council on 20 August 2019, and Council's solicitors have successfully applied to the Land and Environment Court to seek a further 6 month deferral of the current prosecution action, and have pursued a corresponding revised agreement between Council and Mr Fish to continue with relevant approval processes in order to resolve this matter.

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## REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE

### C2 [CNR-CM] Management of Chronic Acid Sulfate Soil Pollution, Christies Creek REASON FOR CONFIDENTIALITY:

#### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

(a) *personnel matters concerning particular individuals (other than councillors).*

### C 88

That Council:

1. Supports the General Manager writing to Sunshine Sugar to express Council's concerns about the impact the current drain water quality is having on the environment of Christies and Cudgera Creeks and the amenity of Hastings Point, and request that Sunshine Sugar work cooperatively with Council and other stakeholders to resolve the Acid Sulfate Soil and water quality problem.
2. Supports the General Manager writing to the Minister for Environment and Minister for Primary Industries to seek NSW Government advice and assistance to resolve the Acid Sulfate Soil and water quality problem.
3. Seeks legal advice regarding Council's and NSW Government options to take action under the Protection of the Environment Operations Act and other relevant legislation, in relation to the pumping and discharge of contaminated water into Christies Creek.
4. Engages specialist expertise to report on the consequences of all available remediation options for the subject site including the effects of implementing an alternative land management/use approach.
5. Engages specialist expertise to report on the ecological health of Christies Creek, focusing on investigations that will determine if the creek's biota has been affected by water quality problems in the catchment.

**Current Status:** Points 1 and 2 complete. It should be noted that whilst a letter was sent to Sunshine Sugar it was not received and has subsequently provided via email. Sunshine Sugar prior to receipt of the letter had proactively contacted Council to express its commitment to work with Council and the industry to find a suitable resolution. As such, Sunshine Sugar will be actively involved with points 4 and 5 below.

Point 3 - Legal advice has been received and Council has written to the landowner to request a meeting to resolve the issue. Meeting was held on 20 May 2019 and there have been other subsequent meetings with the land owner and Sunshine Sugar representatives to progress a plan to address water quality in Christies Creek.

Points 4 and 5 – Have sought quotes from consultants to undertake an ecological assessment of Christies Creek. This will require sampling in Spring and Summer with a report expected in the first half of next year. Point 5 will be progressed if necessary following assessment of the results of actions undertaken in point 3 above.

A letter from the General Manager has was sent 11 June 2019 to Hardy's, copied to Sunshine Sugar, attention Malcolm Warren, outlining aspects of the letter we concur with and those that we do not. Letter also reiterated that works as per original; agreement need to be completed and council invoiced and that until resolution to problem, pumping to the creek should not occur.

Staff have been working closely with landowner and Sunshine Sugar on a plan to address water quality in Christies Creek.

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**21 MARCH 2019**

**REPORTS FROM THE GENERAL MANAGER**

**12 [GM-CM] Destination Management Plan**

**89**

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that Council refers the proposed amendments to the Destination Management Plan to Destination Tweed and Tweed Experiences Network for feedback and brings back a report to Council for further consideration.

**Current Status:** The Destination Management Plan was adopted with a number of amendments by Council at its meeting on 3 October 2019.

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**17 APRIL 2019**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

**11 [PR-CM] Helipads and Heliports - Management of Noise**

**146**

**Cr C Cherry**  
**Cr R Cooper**

**RESOLVED** that Council defers this item for a Councillor Workshop to discuss key issues surrounding the assessment and regulation of noise associated with helipads and heliports;

**Current Status:** Support to complete an assessment guide for applicants and staff. A draft guide will be completed during 2019 with input from interested Councillors as requested at the workshop held 13 June 2019.

Report being prepared for consideration of Council at an end of year meeting.

---

**2 MAY 2019**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE**

**C1 [PR-CM] Unauthorised Forestry and Road Works at Lot 136 DP 755724 Boormans Road, Limpinwood**

**REASON FOR CONFIDENTIALITY:**

This report is the subject of current legal action.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**ALTERNATE MOTION**

**C 44**

That in respect of alleged unauthorised works on the premises Lot 136 DP 755724, Boormans Road, Limpinwood, Council defers this item pending the outcomes of further negotiation in regard to Items C1 and C2 of this Council agenda.

---

**Current Status:** A meeting was subsequently held at Council on 20 August 2019, and Council's solicitors have successfully applied to the Land and Environment Court to seek a further 6 month deferral of the current prosecution action, and have pursued a corresponding revised agreement between Council and Mr Fish to continue with relevant approval processes in order to resolve this matter.

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**20 JUNE 2019**

**REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES**

**19 [CNR-CM] Wyuna Road Community Land Foreshore Management**

**227**

**Cr C Cherry  
Cr K Milne**

**RESOLVED** that this item be deferred for a further Workshop between Councillors, staff and the residents of Wyuna Road.

**Current Status:** The Council workshop with residents was held on 12 September 2019 with a Council report to be forwarded to the December meeting following staff consideration of funding options for ongoing maintenance of any works.

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**15 AUGUST 2019**

**REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT**

**29 [SCE-CM] Koala Beach Wildlife and Habitat Management Committee**

**320**

**Cr C Cherry  
Cr K Milne**

**RESOLVED** that:

1. This report be deferred until a further in depth engagement with the community is undertaken;
  2. A community engagement officer is allocated the role of managing the process.
-

**Current Status:** A community engagement plan is in development with a Koala Beach resident information event to be held before the end of the year.

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**5 SEPTEMBER 2019**

**PLANNING COMMITTEE**

**REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

**5 [PR-PC] Rural Land Strategy - Response to Public Exhibition and Final Draft for Adoption**

**P 60**

**Cr C Cherry  
Cr R Byrnes**

**RECOMMENDED** that this item be deferred for a facilitated Workshop to discuss the draft Rural Land Strategy as attached to this report as previously resolved at the Council meeting of 15 August 2019 (i.e., comprising a maximum of three representatives from each of the Combined Tweed Rural Industries Association, Tweed Rural Sustainable Alliance and Tweed Canegrowers Association to discuss the way forward with the Rural Land Strategy) and that in addition Council also invites the Department of Planning, Industry and Environment, the Department of Primary Industries and 3 representatives from the Tweed Fruit and Vegetable Growers Association.

**Current Status:** The General Manager has since written to the NSW Department of Planning, Industry and Environment seeking available dates for their staff to attend a facilitated Workshop. The Department is still considering available dates.

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**COUNCIL MEETING**

**REPORTS FROM DIRECTOR PLANNING AND REGULATION IN COMMITTEE**

**C4 [PR-CM] Report from Prevention Partners NSW in Response to a Complaint from the Tweed Water Alliance in Respect of Council Compliance Actions relating to Water Extraction Uses**

**REASON FOR CONFIDENTIALITY:**

This report is confidential as it contains reference to confidential matters affecting Council staff and members of the public.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -  
(e) information that would, if disclosed, prejudice the maintenance of law.

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**C 97**

That Council, in respect of the report titled "Tweed Shire Council – Water Extraction Compliance" July 2019 prepared by the independent external firm Prevention Partners NSW as a response to a complaint from Tweed Water Alliance in respect to Council compliance actions relating to water extraction uses in the Tweed Shire:

1. Receives and notes this report; and
2. A Councillors Workshop be held to seek direction from Tweed Councillors on how best they wish to respond and implement the recommendations of the Prevention Partners NSW report.

**Current Status:** Workshop was held on 10 October 2019.

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**19 SEPTEMBER 2019**

**ORDERS OF THE DAY**

**7 [NOM-Cr K Milne] Climate Emergency Declaration**

**394**

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that Council:

.....

14. Brings back a report on actions Council is currently undertaking to address climate change and further steps that can be taken to reduce emissions to levels at least consistent with IPCC targets, and provides this report to the Youth Council for their input.

....

**Current Status:** Report to be prepared.

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**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## MAYORAL MINUTE

### 5 [MM-CM] Mayoral Minute for September 2019

**SUBMITTED BY:** Cr K Milne, Mayor

mhm

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Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

**ROLE:** **Leader**

---

#### SUMMARY OF REPORT:

The Mayoral Minute report provides information on activities undertaken by the Mayor and Councillors during the month of September 2019.

#### RECOMMENDATION:

**That:**

1. The Mayoral Minute for the month of September 2019 be received and noted.
2. The attendance of Councillors at nominated Conferences be authorised.

## **REPORT:**

### **Councillors**

### **COMMITTEE MEETINGS**

#### **Attended by the Mayor**

- 6 September Aboriginal Advisory Committee – Minjungbal Museum and Cultural Centre, Corner Kirkwood Road and Duffy Street, Tweed Heads.
- 

### **INVITATIONS / MAYORAL REPRESENTATION:**

#### **Attended by the Mayor**

- 10 September Bray Park Weir Project Reference Group Meeting – Murwillumbah Civic Centre, 10 Tumbulgum Road, Murwillumbah.
- 20 September Global Climate Strike Rally – Ambrose Brown Park, Tweed Coast Road, Pottsville.
- 20 September Presentation Multi-Use Rail Corridor (Rail Trail) with Byron Shire Council, Richmond Valley Council and Arcadis – Byron Shire Council, 70-90 Station Street, Mullumbimby.
- 23 September Water Strategies Review Project Reference Group – Murwillumbah Civic Centre, 10 Tumbulgum Road, Murwillumbah.
- 24 September Murwillumbah High School Year 12 Graduation Ceremony – Murwillumbah High School, 86 Riverview Street, Murwillumbah.
- 27 September Caldera Environment Centre 30<sup>th</sup> Birthday Event – New Leaf Café, 47 Murwillumbah Street, Murwillumbah.

#### **Attended by other Councillor(s) on behalf of the Mayor**

- 2 September Legacy Memorial Service and Launch of Legacy Week – Murwillumbah Services Club Memorial, 10 Wollumbin Street, Murwillumbah. Crs Cherry and Byrnes attended.
- 17 September Local Consultants Breakfast – Ivory Tavern, 156 Wharf Street, Tweed Heads. Crs Allsop, Cooper, Owen and Polglase attended.

#### **Inability to Attend by or on behalf of the Mayor**

- 10 September Palm Beach Currumbin Lionesses Volunteers Event – Tweed Heads Library, Wharf Street, Tweed Heads. Crs Milne, Cherry and Byrnes invited as Richmond Tweed Regional Library Committee Members, none available to attend.
  - 19 September YWCA Youth Frontiers Showcase 2019 – Kingscliff Community Hall, 81 Marine Parade, Kingscliff. Mayor invited only, clash with Council Meeting.
-



- 20 September Housing Industry Australia Gold Coast and Northern Rivers Housing Awards – Intercontinental Sanctuary Cove Resort, Manor Circle, Sanctuary Cove QLD. All Crs invited, none available.
- 

## **REQUESTS FOR WORKSHOPS:**

Councillors did not request any additional workshops during September 2019.

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## **CONFERENCES:**

### **Conferences attended by the Mayor and/or Councillors**

Councillors did not attend any conferences during September.

### **Information on Conferences to be held**

- 31 October Tomorrowland 2019 I, Human Symposium – Sydney  

We need to collaborate in extraordinary ways to find the solutions we need for people and planet. The challenges specific to the built environment are complex and interwoven. We need complex systems thinking and the evolving power of technology to help. In environmental management, in building technology, in shaping communities for economic capital and social capital, in finance that can deliver \$100 million for the like of the amazing Nightingale Village; in how we manage the onslaught of technology coming at us in all directions. Above all how we meet these unprecedented challenges and retain the best of our humanity with all its hopes and dreams for our people and our planet? Each of us will need to make a personal commitment. This is not an event for committees. It's an event for I, human.

Registration \$ 341.81, two flights, one night's accommodation.  
<https://www.thefifthestate.com.au/events-tfeevents/tomorrowland2019/>
- 24-26 Nov Australia New Zealand Society for Ecological Economics (ANZSEE) Conference – Melbourne VIC  

Escalating impacts of climate change and ecological crises create urgency to address significant local to global environmental and social problems – degrading forests and agricultural land, polluted inland waterways and oceans, and dislocated social and cultural systems. This conference explores appropriate approaches and techniques for re-balancing the human-nature interactions that are central to the study and practice of ecological economics – solutions now and in the future.

Registration \$245, two flights, three night's accommodation, transfers.  
<https://anzsee.org.au/2019-anzee-conference/>

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**SIGNING OF DOCUMENTS BY THE MAYOR:**

- 5 September Plan of Subdivision – 571 Doon Doon Road, Doon Doon.
- 

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

**b. Budget/Long Term Financial Plan:**

Appropriate expenditure is allowed for attendance by Councillors at nominated conferences, training sessions and workshops.

**c. Legal:**

Not applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## RECEIPT OF PETITIONS

### 6 [ROP-CM] Receipt of Petitions at 24 October 2019

**SUBMITTED BY:** Corporate Governance

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Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.4 Councillors and Civic Business - To make informed decisions in the best interest of the community.

**ROLE:** Collaborator

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#### SUMMARY OF REPORT:

Under Section 1.5.4 Receipt of Petitions in the Code of Meeting Practice:

*Petitions received by Councillors or forwarded to the (Acting) General Manager will be tabled as per the Order of Business, Item 11, Receipt of Petitions.*

*Unless Council determines to consider it in conjunction with a report already listed on the agenda, no motion (other than a motion to receive the same) may be made on any petition until the next Ordinary Meeting after that at which it has been presented.*

#### RECOMMENDATION:

**That the following tabled Petition(s) be received and noted:**

**REPORT:**

As per Summary

**OPTIONS:**

That in accordance with Section 1.5.4 of the Code of Meeting Practice:

1. The tabled Petition(s) be considered in conjunction with an Item on the Agenda.
2. The tabled Petition(s) be received and noted.

**CONCLUSION:**

Any Petition tabled should be considered under Section 1.5.4 of the Code of Meeting Practice.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## ORDERS OF THE DAY

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Making decisions with you  
*We're in this together*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Leader**

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## 7 [NOM-Cr K Milne] Reference Group - Zero Waste Strategy

### NOTICE OF MOTION:

Councillor K Milne moves that Council invites expressions of interest from members of the Tweed community to participate in a reference group which will be used to inform the development of programs under the Zero Waste Strategy.

### Councillor's Background Notes

Recommended Priority:

Nil.

Description of Project:

Nil.

### Management Comments:

Delivery Program:

mhm

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Leaving a Legacy  
*Looking out for future generations*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.1 Natural Resource Management
- 1.1.4 Environmental Sustainability - To support Council, businesses and the community to achieve the best possible combination of environmental, social and economic outcomes.

ROLE: **Leader**

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Council is in the process of developing a Zero Waste Strategy which will involve various consultation activities. The establishment of a reference group could assist in the testing and delivery of programs under the strategy.

A Council workshop is scheduled for 31 October 2019 to discuss the delivery program and process for the development of the Zero Waste Strategy including proposed consultation processes.

The reference panel could be established to advise Council on the direction and priorities of a program to achieve a zero waste target for the Shire, subject to the endorsement of the proposed staged program, including other stakeholder engagement. The reference panel would focus on the first stage of the program as a priority, which is to develop a zero waste policy and 12 month action plan, before a longer term zero waste strategy is developed.

It is recommended that the reference panel have a membership of no more than ten people. Local and regional representatives of industry/chambers of commerce, other levels of government, academia, and the community could be invited to nominate to sit on the reference panel.

The duration of the reference panel would be expected to be no more than 12 months in accordance the proposed Stage 1 delivery program for zero waste. Council would need to consider any recommendations from the reference panel in accordance with the practicality of implementation, including budget and operational constraints of various units of Council.

Secretariat support would need to be provided by Council Resource Recovery Unit staff with either the Unit Coordinator/Director could chair this proposed panel.

**Budget/Long Term Financial Plan:**

Assuming the reference panel would be voluntary, costs are not expected to be substantial and could be covered by the Resource Recovery Unit budget.

**Legal Implications:**

The Terms of Reference would establish the parameters of the proposed reference panel and it would be intended to act in an advisory capacity to Council.

**Policy Implications:**

Development of the policy will require a multi-pronged approach to engagement of which the reference panel could be an integral part.

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## 8 [NOM-Cr C Cherry] 5G Network Infrastructure

### NOTICE OF MOTION:

Councillor C Cherry moves that Council invites representatives from the community group concerned about the 5G network and Australian Radiation Protection and Nuclear Safety Agency (ARPANSAS) representatives to a workshop on the implications of the roll-out of 5G networks across the Tweed Shire.

### Councillor's Background Notes

#### Recommended Priority:

Many members of the community have approached Councillors with their concerns regarding the potential implications of the 5G network. The roll-out of 5G involves small cell infrastructure at a much higher density than other telecommunications and the community concerns raised with this needs to be addressed. A workshop would allow the highlighting of any issues that may arise with this network.

#### Description of Project:

Nil.

### Management Comments:

#### Delivery Program:



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.5 Economic Development - To support the local economy and attract new business and employment to the Tweed.

**ROLE:** Collaborator

---

Council officers have previously contacted the Mobile Carriers Forum (MCF) on Council's behalf, and asked for them to provide an update of the rollout of 5G technology in the Tweed. The MCF are a peak industry body representing all mobile carriers in Australia. Council has followed up for their response on several occasions.

Council does not have any input into the policy decisions made in respect to the licencing and deployment of mobile telecommunications in Australia. These matters are dealt with primarily by the Federal Government and as such Council does not have any policies specific to the installation of infrastructure for 5G telecommunications. Council may wish to consider requesting the local Federal Member, the Hon. Justine Elliott, to make representations on Council's and the concerned community members' behalf.

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The Australian Communications and Media Authority (the ACMA) is a federal statutory authority responsible for broadcasting, the internet, radio communications and telecommunications. Part of their responsibility is managing and licencing the radio frequency spectrum as well as licencing and monitoring the licenced telecommunications carriers (the carriers).

In December 2018 ACMA finalised the auction of 5G spectrum to the carriers. Details can be view in the links below.

- <https://www.acma.gov.au/theACMA/australias-5g-auction-concludes>
- <https://www.computerworld.com.au/article/650613/australia-telcos-prepare-5g-era-spending-834-million-key-spectrum/>

ACMA are also responsible for the administration of the Federal Telecommunications Act which regulates the installation of telecommunications infrastructure, including mobile phone infrastructure. In some instances this infrastructure is deemed as a low-impact facility under the Telecommunications (Low-impact Facilities) Determination guidelines because of its size and location. These facilities include:

- small radio communications dishes and antennae;
- underground cabling and cable pits; and
- public payphones.

It is assumed that the installation of some of the 5G infrastructure will fall within the classification of a Low-impact Facility. To review the Federal Government policies in more detail visit ACMA's web page:

<https://www.acma.gov.au/Industry/Telco/Infrastructure/Network-facilities/acma-installation-of-telecommunications-facilities-a-guide-for-consumers-fact-----sheet>

Given that the 5G spectrum auction has concluded, we understand the adoption and roll out of 5G infrastructure will be the responsibility of the carriers. Further on 9 October Telstra has announced that it will close its 3G services in 2024.

Between the telecommunications policy of the Federal Government and the land use planning policies of the NSW Government there is very little impact Council's policies can have over the installation of 5G infrastructure. Council therefore facilitating such a meeting can ultimately frustrate community members as false expectations can arise that Council has power it does not have. It is therefore best where appropriate to make representations on behalf of the community through the local Federal Member. The local Federal Member in this instance may have greater sway in garnishing a response from the Federal bodies responsible.

Council has previously adopted the Telecommunications Facilities on Council Owned Land Policy. This Policy outlines what is required before owners consent is issued for a development application for telecommunications infrastructure on Council land.

Budget/Long Term Financial Plan:

Not Applicable.



Legal Implications:

Legal responsibility for 5G sits with the Commonwealth.

Policy Implications:

Council has previously adopted the Telecommunications Facilities on Council Owned Land Policy. This Policy outlines what is required before owners consent is issued for a development application for telecommunications infrastructure on Council land.

**UNDER SEPARATE COVER:**

- |               |  |
|---------------|--|
| Attachment 1. | Letter to Councils regarding 4G and 5G (ECM6099357).   |
| Attachment 2. | Australian Mobile Telecommunications Association - 5G and Electromagnetic Fields Explained (ECM6099358). |
| Attachment 3. | Australian Mobile Telecommunications Association - Fact Sheet - 5G (ECM6099360).                         |
| Attachment 4  | Australian Mobile Telecommunications Association - Fact Sheet - Small Cells (ECM6099361).                |
| Attachment 5. | Email advice from Telstra - Telstra 3G Service Closure Announcement (ECM6099359).                        |
-

9 [NOM-Cr J Owen] 2019 New Year's Eve fireworks - Salt Central Park

**NOTICE OF MOTION:**

Councillor J Owen moves that Council contributes \$2000 to Peppers Resorts to go towards the New Year's Eve fireworks in Salt Central Park.

**Councillor's Background Notes**

Recommended Priority:

Recommended priority relative to other Delivery Program Strategies of Projects.

Description of Project:

Salt Central Park is a gathering place for the community on New Year's Eve. Peppers Resorts are proposing to have a fireworks event on this evening. In support of this community event it is recommended that Council contribute financially towards these fireworks.

**Management Comments:**

Delivery Program:

nhm

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

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 3 People, places and moving around
- 3.1 People
- 3.1.2 Community and Cultural Development - To provide community and cultural development services to foster and improve social and cultural well-being.

**ROLE:** **Leader**

---

Currently Council contributes to fireworks at Jack Evans Boat Harbour at Tweed Heads. These fireworks were held in conjunction with the fireworks funded by Twin Towns Services Club. Council's fireworks display is traditionally held at 9pm (ADST) and the Twin Towns display is held at 12am (ADST).

Budget/Long Term Financial Plan:

The 2018 fireworks cost Council \$8,000. The 2019/20 Festivals and Events budget has an allocation of \$8,300 for the 2019 New Year's Eve fireworks. If an additional amount were to be allocated towards fireworks at Salt Central Park then this would increase the proposed amount for fireworks for this year from an estimated \$8,300 for Tweed Heads and \$2,000 for Salt Central Park to a total of \$10,300, leaving a shortfall of \$2,000.

It is suggested that these funds would need to be sourced from the Festivals and Events 2019/20 budget and that a provision be made in future years.

Legal Implications:

Not Applicable.

Policy Implications:

Similar to previous years, the organisers of this event have lodged an application to Council for a licence to conduct this year's event. This licence assesses and applies appropriate conditions for the management of Work Health and Safety, the ecological impacts on local threatened species (including potential additional costs for spotting and traffic management to protect nesting birds such as the Bush-stone curlew), insurances, food hygiene and waste collection.

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE GENERAL MANAGER

#### 10 [GM-CM] Gallery DownTown

**SUBMITTED BY:** General Manager

mhm



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

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.2 Places
- 3.2.2 Art Gallery - To promote awareness, enjoyment and understanding of the visual arts through collections, exhibitions, education and community programs.

**ROLE:** Collaborator

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#### SUMMARY OF REPORT:

In March 2018, Council resolved to establish the 'Gallery DownTown', for an initial trial of 12 months.

Gallery DownTown is the annex of one of the State's most recognised regional galleries, the Tweed Regional Gallery and Margaret Olley Arts Centre (TRGMOAC). An innovative and forward-thinking initiative of Tweed Shire Council. As per the report tabled at Council at its meeting 22 March 2018 the purpose of the Gallery DownTown trial was to act as an incubator for the establishment of an Arts Precinct (M|Arts Precinct) within the former Sunrise Motors and Escape Gallery's building in Murwillumbah CBD.

This report provides information from the TRGMOAC, visitor and business surveys, operational data and an update of discussions with the proprietor for Council consideration. The current date in the Licence and Memorandum of Understanding (MOU) for the completion of the trial is 14 December 2019, and a Council decision is required to guide the delegated authority of the General Manager with regard to the exit strategy for the trial.

#### RECOMMENDATION:

**That Council delegate the General Manager to negotiate an exit transition plan for an additional 12 months that includes:**

1. A joint marketing plan for the M|Arts precinct with established milestones, deliverables and financial contributions from Tweed Shire Council, ZASK Pty Ltd and Tweed Tourism Company.

2. **A Council led program of public events within the M|Arts precinct that is facilitated by the Economic Development unit, Community Development team and Communications unit.**
3. **A renegotiated license agreement for the Gallery DownTown that presents the Community Access Exhibition Program (CAEP) at the current service level of 23 hours per week.**
4. **Voting a budget of \$100,000 operational and \$20,000 for events and programs.**
5. **ATTACHMENTS 3 and 4 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (c) **information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

## REPORT:

In March 2018, Council resolved to establish the 'Gallery DownTown', for an initial trial of 12 months.

Gallery DownTown is the annex of one of the State's most recognised regional galleries, the Tweed Regional Gallery. An innovative and forward-thinking initiative of Tweed Shire Council. As per the report tabled at Council at its meeting 22 March 2018 the purpose of the Gallery DownTown trial was to act as an incubator for the establishment of an Arts Precinct (M|Arts Precinct) within the former Sunrise Motors and Escape Gallery's building in Murwillumbah CBD.

The venture was not only to act as a direct economic injection stimulus, but to further add to the work undertaken by the Tweed Regional Gallery Foundation Ltd and Council by increasing the connection between the CBD and Tweed Regional Gallery.

A copy of the Council resolution of 22 March 2018 is reproduced below.

- "1. Council notes the attached Detailed Business Case and agrees to the implementation of a 12-month trial of the Gallery DownTown concept in the M-Arts Precinct as outlined, in the upstairs gallery space on a five-day per week trading basis to act as direct economic stimulus for the town post flood and as an incubator for the activation of the M-Arts precinct.*
- 2. Council allocates \$100,000 from the Economic Development budget to the project.*
- 3. Council seeks State Government support for both promotion and funding through the Local State Member and relevant Minister."*

Working in collaboration with the Tweed Shire Council and M|Arts Precinct, this project is a venture to establish a link from the TRGMOAC, attracting visitors and spending into the town of Murwillumbah. This trial project was to act as a catalyst to build capacity and underpin confidence in the renaissance of Murwillumbah as a vibrant and versatile creative hub.

The collaboration is aspirational and highlights the catalytic role that the arts hold in both entrepreneurial and creative strategies – cultural activities are a significant draw card for businesses to attract and retain customers. Improving access to the arts contributes to quality of life and enhances the image of Murwillumbah. The collaboration has yielded mutual benefits for local businesses and the community, in particular local artists.

Following the March Council resolution the General Manager entered into a license agreement with ZASK Pty Ltd to occupy the upper floor of the M|Arts Precinct building for a 12-month trial period. The agreement was executed on 14 December 2018. The terms of the license includes the licensee paying \$250 inclusive of GST, cleaning costs and electricity allowance per week to be paid in monthly installments. Council wrote to the Tweed Regional Gallery Foundation Ltd with a request for a financial contribution of \$30,000 towards the budget for the Gallery DownTown. The Tweed Regional Gallery Foundation Ltd advised it was not supportive of providing finance for the trial and the budget allocation for the Gallery DownTown (refer Attachment 1). Therefore the budget of \$100,000 was fully met by the Economic Development budget.

The Gallery DownTown opened on 15 December 2018.

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In the report presented to Council at the March 2018 meeting, a business case was included which detailed several progress *milestones* agreed to by the proprietor. A specific aim identified within the business case was:

*"The project aims to transform a set of vacant industrial buildings into a vibrant new arts precinct where artists will create, collaborate, interact with and sell to the public. The precinct will also include a new café, wine bar and restaurant."*

The following table shows the precinct's progress to date against those milestones.

Progress milestone	Progress achieved
20-25 art studios, workshop spaces	Only 15 art studios, workshop, retail spaces
Coffee shop	Bacaro is trading on the corner of Brisbane St & Proudfoots Lane
Bar	Not yet achieved
Restaurant	Not yet achieved
Galleries	Not yet achieved
Space for live music performances	Not yet achieved

There are occasions when the precinct is vibrant, as a result of organized events such as the monthly Makers Finders Market and the recent BEATS event, however on other occasions the precinct lacks vibrancy resulting in some studios opening for limited and irregular hours. There are three retail spaces; an art supply shop, a florist and a picture framer which open 9am-5pm week days.

A report commissioned by the TRGMOAC and undertaken by Destination Research identified the following key results:

- A successful mix of cultural and artistic programs to draw visitors into Murwillumbah.
- Gallery DownTown welcomed 12,534 visitors.
- Contributed \$650,000 to the local economy.
- 52% of visitors are from the local Tweed Shire 20% neighbouring Local Government Areas and 32% from interstate.
- Visitors both local and from nearby LGAs see Gallery DownTown as an opportunity to showcase their region to visiting family and friends.
- Evidence of a positive link between TRGMOAC and Gallery DownTown with 73% visiting both Galleries.
- 15% of visitors hearing about Gallery DownTown through TRGMOAC.
- High levels of visitor satisfaction with a 99% rate of very good or excellent.
- Gallery DownTown and M|Arts are open seven days a week.\*

\*Note that the seven day a week operation commenced August 2019.

The report notes that the above findings are based on previous data from the Tweed Regional Gallery Foundation Ltd report. Further, a number assumptions are based on Museum and Galleries NSW data and extrapolated on a shire wide basis rather than being specific to the objectives of the trial in Murwillumbah.

Given the reliance on the 12,534 visitors as the basis for this analysis, it would be advisable to undertake a more detailed analysis of the data to identify the peak visitor trends and the impact of programmed events.

The objectives outlined in the Business Plan dated May 2018 for Gallery DownTown are:

- Assist with the invigoration of Murwillumbah CBD.
- Make art more accessible to both residents and the youth audience.
- Support pillar 2 and direction number 10 of Council's Economic Development Strategy – identify opportunities to establish subsidised creative spaces in Murwillumbah using the 'Creative Spaces' model.

Gallery DownTown situated in the heart of Murwillumbah and located within the M|Arts Precinct is appreciated by many as taking the lead to encourage new visitation, a sense of community and participation in the arts and is a linkage between the TRGMOAC and the CBD.

There is a high frequency of “word of mouth” and positive recommendations, and the Gallery DownTown is raising Murwillumbah's profile.

The M|Arts precinct underpins new confidence in Murwillumbah with the investment and gentrification of the industrial precinct reinforcing the notion of positive change and a resurgence in the town. The trial project has provided a significant contribution as a “start up” to build and promote creative and economic capacity in the town.

The M|Arts Precinct vision is to serve as a meeting place, a connection point and a space designed to accommodate community interactions and events at varying scales making art and creative endeavours available for all ages and abilities. Examples range from the Murwillumbah Chamber of Commerce breakfasts to the BEATS Awards to community events RUOK Day to micro-events of regular knitting, crocheting and painting classes.

The exceptional reputation of TRGMOAC is leveraged to provide a high-quality product and experience at Gallery DownTown, an anchor tenant in the vibrant M|Arts Precinct. This approach creates a positive image of the local government supporting two projects that encourage social, cultural and economic advancement within the region.

## **OVERVIEW OF INITIATIVES DURING THE TRIAL**

Developed as a strategic draw card to capture the tourist dollar, Gallery DownTown also enhances the local quality of life. It has positively contributed to local pride and the image of Murwillumbah and emphasises the distinctness of the Tweed area with artists drawing on their personal experiences of identity and place. Council has initiated and hosted a range of activities during the trial to ensure the investment in the Gallery DownTown.

### Community Access Exhibition Program (CAEP)

Gallery DownTown extends the CAEP across two venues (TRGMOAC and M|Arts), doubling the capacity to show the work of regional artists and provide them with professional exhibition experience and mentorship. There are tangible benefits for artists exhibiting new works that include an artist fee and art sales with a low commission basis.

Within the 12 month pilot, the project will have profiled 46 artists of the region in solo and group exhibitions with an additional 45 renowned Australian artists showcased in two exhibitions featuring artworks from the TRGMOAC Collection.



Notably, Gallery DownTown is a sophisticated space to showcase works of regional and national significance from the TRGMOAC Collection with a focus on the four collection areas. It provides an opportunity for those in the community to see 'their' collection and also it's accessible to locals and visitors who might not ordinarily take interest.

Exhibitions from the collection:

*Tetralogy*: 15 December 2018 – 17 July 2019

*Interplay*: 20 July – 28 December 2019

CAEP exhibitions:

*Ensemble*: 15 December 2018 - 23 March 2019

*Kath Egan*: 29 March – 12 May

*Dave Sparkes*: 29 March – 12 May

*Façade: Art Deco of Murwillumbah*: 17 May - 27 July 2019

*Konstantina*: 2 August – 12 October 2019

*Rosi Griffin*: 2 August – 12 October 2019

*Greg Mulheran*: 18 October – 28 December

*Karyn Fendley*: 18 October – 28 December

## **ARTIST COMMENTS:**

The Gallery DownTown Report September 2019 (Attachment 2) details specific comments by Artists who have exhibited at the DownTown Gallery over the last 12 months. These have been very positive and highlighted the professional development opportunity that the DownTown Gallery has afforded them.

### Art Sales

The TRGMOAC objective is to support artists of the region in the presentation of their work. A tangible benefit of the CAEP program is the ability for the artist to sell their artworks. Since December 2018, Gallery DownTown has managed artwork sales totaling \$21,972\* as at 30 September 2019.

\* Note the MOU advises under the financial arrangements that M|Arts will receive the commission made from any sales of art in the CAEP hung in the licensed area. The commission on arts sales is 33% payable to the licensor, the artist receives the wholesale amount for their work.

### Public Programs

Gallery DownTown annex of the TRGMOAC cultivates opportunities for artists and the community and makes art accessible. It provides for paid artist engagement and educational opportunities for a range of ages through public programs.

- Gallery DownTown has hosted public programs during the trial which were planned to build audiences, connection with art and artists and encourage repeat visitation. Public Programs – Blue Jeans Sisters, Kid's Workshop Explore Found Object.
- Artist Talks – Heather Matthew (M|Arts), Rosi Griffin (CAEP).
- Exhibition Openings - Gallery DownTown x 4, M|Arts x 4.
- Facade Publication with TRM along with Façade - Walking Tours with Tweed Regional Gallery.
- Liaising with regional artists.
- Attendance at Gold Coast Indigenous Art Camp Industry Day.

Additional programs and activities that were particularly successful include a professional development workshop and a self-guided walk publication produced for *Façade: Art Deco of Murwillumbah*. This exhibition was curated with 30 regional artists responding to the Art Deco in Murwillumbah and complemented the National Gallery of Australia touring Art Deco exhibition at the TRGMOAC. Working with the well-respected National Gallery of Australia Education team, 17 regional artists undertook a professional development workshop.

- "One of the best PDs ever!" Trish Callaghan.
- "Such a useful and really interesting workshop. Thank you." Judy Oakenfull.
- "An inspirational, educational, playful day." Alison Rooney.

In partnership with Tweed Regional Museum, a self-guided walk booklet was developed highlighting the Art Deco architecture in Murwillumbah. The booklet is designed to endure, and with a second reprint of 2,000 books, it continues to inspire a sense of pride and discovery through the CBD. The booklet is distributed through local businesses, The Tweed Regional Museum, TRGMOAC and Visitor Information Centres.

#### Business Community Engagement

Gallery DownTown and Tweed Shire Council Economic Development unit have hosted or been involved in activities to build relationships with community and local business during the trial period:

- Volunteer Morning Tea including Tweed Shire Councillors and Economic Development
- Chamber of Commerce breakfast includes Gallery DownTown Tour.
- Personal delivery of Façade books to local businesses to develop relationships.
- Collaborating with Tweed Tourism Co on regional promotion
- M|Arts - co-working, marketing, advertising and publicity campaigns inclusion in M|Arts monthly newsletter.
- MAT19 meetings, Programming Façade exhibition opening to coincide with MAT19.
- Visual Merchandising Workshop.

A business meeting organised on 17 July 2019 by Economic Development with input from Gallery DownTown created a forum for local retail and food and beverage businesses to discuss the development of the town in terms of its renewal and reinvigoration. The event was titled '*Murwillumbah, are we on the cusp of something great?*'

The purpose of the meeting was to discuss the renewed vibrancy in Murwillumbah and how 'we' can work together, as a collective, to influence the progress of the renewal to benefit local business and create a thriving town? Almost 50 people came together to share their ideas about Murwillumbah's bright future and how to work together to ensure it remains bright!

As outlined in the Research Report, a survey of local business owners found Gallery DownTown was proving to generate economic activity and 89% felt that Gallery DownTown was achieving its objectives to assist with the invigoration of the Murwillumbah CBD. 94% of businesses surveyed supported the continuation of the Gallery DownTown.

Following the meeting on 17 July 2019 with local Murwillumbah businesses a survey was circulated to gain written feedback and ideas to assist in the formulation of strategies to harness this renewed vibrancy.

Two questions were posed in the survey about the Gallery DownTown:

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1. Gallery DownTown, an annex of the TRGMOAC, was opened in the M|Arts Precinct in December 2018 for a 12 month trial period.

The Gallery DownTown objectives are:

- To assist with the invigoration of the Murwillumbah CBD,
- To make art more accessible to both local residents and the youth audience.

Do you think the Gallery DownTown is achieving the above objectives?

2. Would you like the Gallery DownTown to continue operating beyond December 2019?

Of the 36 businesses that responded to survey question 1, 89% believed that the Gallery DownTown was achieving the objectives of:

- Assisting with the invigoration of the Murwillumbah CBD
- Making art more accessible to residents and the youth audience.

Of the 35 business that responded to survey question 2, 57.1% respondents indicated that they wished the Gallery DownTown to remain beyond December 2019, with only one respondent indicating they wished for it not to do so and a further 14 opted to provide a comment which are reproduced below:

*'A lot of Murwillumbah residents "assume this is part of MArts as TSC look like they "favour" this business"*

*'It is a fabulous initiative and should definitely have a permanent home there.'*

*'The M-arts and Gallery downtown have lifted the profile of the CBD with the likes of Keith and Johnny Franco, Murwillumbah is morphing into a destination for lunch and social catchups'*

*'Yes I do, think it's a great initiative. Would encourage gallery openings and some tours/commentary on what is on display on the Saturday mornings to align with the Finders & Makers Market at Marts to encourage more people to see it. Or alternatively maybe a monthly or every two months Friday night'*

*'The gallery is so great and brings people into town.'*

*'Definitely keep it going. It's great to bring people into town.'*

*'It has been amazing for the town'*

*'I believe that opening on a Sunday is a very positive move for the gallery, though if they wish to attract more visitors a higher standard of art (not just local amateur artists) and exhibitions will be required as well as an increase in advertising in arts journals and periodicals, rather than solely in tourism pamphlets.'*

*'Thank god they agreed to open on Sundays. We had lots of feedback from people who had driven down from Brisbane or Gold Coast on a weekend to visit the new gallery'*

*downtown and found it shut. They were angry and vowed never to come back to Murwillumbah. What's wrong with this place, they would say. Why is everything so shut!'*

*'At the meeting held on Wednesday 17/7/19, the statistics supported the continuation of the Gallery Downtown. The Tweed Regional Gallery and Gallery Downtown are both huge draw cards for many tourists and art lovers'*

*'It would be to showcase more local artists. It would also be good to see an annex in another area of the Tweed, possibly along the coast.'*

*'I think there needs to be more accessible art in the shop at the back of the gallery so visitors can buy local artworks as a souvenir or gift without spending a lot of money. Something like Chelle Wallace's framed photos of the town as an example. Maybe some colourful things from Each to Own. And the shop should be at the front rather than at the back where many people don't know it's even there. It could be more like the setup at the main gallery bringing people in as much for the shop as the artworks.'*

*'its vital that this continues in our town and that the council comes on board to show they are supporting the Arts of downtown Murwillumbah and not just directing people past our town and only to the Tweed Regional Gallery. The smaller Gallery in town represents a more local approach and also show the council supports the M-Arts Precinct, which is the best thing that has happened to this town in a very long time.'*

*'The Gallery DownTown attracts visitors into the CBD, particularly from outside the region. It is great that it is open when the main gallery is closed on Mondays and Tuesdays. People, including locals, who don't usually engage in the arts, can now be attracted to the cafe and arts precinct and score the bonus of a place where the artwork of local artists is on display. There are also paintings from the gallery collection that aren't normally on display. The markets and artist studio spaces are attracting new people to the area. It is wonderful that the owner has been willing to invest money into an unused space and activate it.'*

#### Awards and Case Study

Gallery DownTown was a finalist for the Local Government Professionals Australia NSW - NSW Local Government Excellence Awards – Creative Communities in April.

The Gallery has nominated for the Museum and Galleries NSW – IMAGinE Awards / Capacity Building, Capital Sustainability Programs Award for a project over \$100,000. The award is announced on 29 November 2019 in Sydney.

Gallery DownTown and the Tweed Regional Museum were identified for inclusion in the Making Space for Culture Masterclass as part of World Cities Culture Forum held in Sydney in June 2019.

#### Marketing

Tweed Shire Council has contributed in kind and financially to a range of marketing activities through the TRGMOAC and Tweed Shire Council Communications team and in collaboration with the M|Arts Precinct.

Key activities include:

- Hot Tomato radio campaign – Gallery DownTown, Tweed Regional Museum, Tweed Aquatic Centre.
- 10,000 postcard to promote Gallery DownTown and M|Arts Precinct.
- Advertising in Tweed Weekly – Façade: Art Deco of Murwillumbah exhibition.
- Advertising in Blank GC monthly publication – April and May.
- Exhibition Media Releases.
- Radio interview with ABC North Coast – Façade: Art Deco of Murwillumbah
- M|Arts publicity including Gallery DownTown – Jetstar.
- Tweed Tourism Co publicity – Guardian – 11 things to do the Tweed.
- Social Media via Tweed Regional Gallery facebook, Instagram.
- Dedicated registration of Gallery DownTown Tripadvisor and Google Business.
- Marketed at every monthly business chamber breakfast by Council's Senior Economic Development Officer.
- ABC Gold Coast Radio interview and promotion by Council's Senior Economic Development Officer.
- Various Council promotions via Facebook, The Tweed Link and E Newsletters.

### Sunday Trading

In June 2019, the M|Arts Precinct began a trial to open Sunday between 10.00am – 2.00pm thus opening seven days a week. While the new hours were seen as progressive and were received well by visitors and local businesses in the town, especially those opening on a Sunday, there was a drawback as the Gallery DownTown Collection Room remained locked.

The decision by M|Arts to trade Sunday is viewed positively as being supportive of businesses who undertake weekend trade.

It should be noted that the Sunday trading sits in addition to Council's resolution of March 2018, but has not been funded directly by Council, therefore, compliance with the resolution of Council has been maintained as staffing of the facility is undertaken by volunteers and M|Arts staff members.

## **TRANSITION PLAN**

### M|Arts and Gallery DownTown Review meeting with Proprietor

The General Manager, DSC Environment, Acting Manager Land and Economic Development met with the registered proprietor of the M|Arts precinct on 4 October 2019 to review the outcomes of the Gallery DownTown trial against the original business plan objectives and milestones. The meeting also sought to understand the proprietor's expectation for the Gallery DownTown Project and the License Agreement made between ZASK Pty Ltd as the Licensor and Tweed Shire Council as the Licensee.

The License Agreement allowed for the occupation of the upper level of the M|Arts precinct by the Gallery DownTown. This agreement expires on the 14 December 2019.

At the commencement of the meeting it was reiterated that the aim of the Gallery DownTown project was as a catalyst to assist with the transformation of a vacant industrial building into a vibrant new arts precinct by providing seed funding to establish an annexure of the TRGMOAC known as the Gallery DownTown. It was explained that the injection of public resources and funds was designed to assist with the activation of the precinct and help drive economic activity. The expenditure of public money on this project was confined to a limited

period. The proprietor expressed his desire that it would be a three year arrangement and acknowledged that it was never intended to be a permanent arrangement.

Mindful that the expiry date for the License Agreement was rapidly approaching, Council was seeking to work with proprietor to agree on a mutually beneficial transition and exit plan for the publicly funded Gallery DownTown. As a part of this negotiation it was explained that it may be possible to extend the arrangement for a further 12 months subject to council approval and funding. In considering an extension to the current agreement it was acknowledged that some key milestones that it was expected would have been achieved within the initial 12 month period were unable to be met due to planning consent matters. It was expressed to the proprietor that a smooth transition and planned exit strategy would be essential in ensuring the long term viability of the M|Arts Precinct

The proprietor made it clear that an arrangement of a further 12 months at the existing service level of 23 hours per week would be unacceptable. The proprietor advised that the minimum time frame for the transition should be at least 2 years. Furthermore, the proprietor explained that Council had not fully committed to the project as it did not adequately resource the Gallery DownTown by providing sufficient staff resources, a comprehensive marketing program and that the development approval process for the Precinct was taking longer than he anticipated. In addition, the proprietor inferred that he was subsidising a public funded gallery and that this was no longer an acceptable solution. It was expressed at the meeting that it was never Council's intention nor aim to have a situation where the proprietor felt that he was disadvantaged by Council's presence and therefore if it were not working as hoped by the proprietor the license and the project should be concluded.

The proprietor was requested to draft a letter to Council outlining his concerns and also outline his desire for Council to continue to fund the Gallery DownTown for a further 2 year period and to include the terms of any such license extension. The proprietor initially agreed to submit the letter by 9 October 2019 but has since advised by text that due to work commitments that he will not be doing so. (Refer to Confidential Attachment 3).

Council in considering this report and determining its preferred option going forward should therefore be mindful of the proprietor's concerns balanced with Council's obligations as a public authority.

#### Transition proposals

If Council were to resolve to extend for a further 12 or 24 months the following suggestions could be included in a transition plan to support an effective and sustainable exit from the M|Arts precinct:

#### Marketing

- Develop a joint marketing plan with M|Arts and allocate a budget to leverage both in-kind, publicity and advertising spend. Create a twelve month marketing plan to build new audiences and attract visitation.
- Continue to work with Tweed Tourism Co and M|Arts with monthly meetings to discuss topics and trends in the region to inform marketing and initiatives.
- Develop a fold-out pamphlet/booklet to map out the M|Arts Precinct and include Gallery DownTown, M|Arts artists and retailer list for distribution.
- Target bus and touring companies to visit Gallery DownTown, M|Arts Precinct and Tweed Regional Museum and include the Façade Walk to encourage more visitation into town.

- Gallery DownTown net promoter score is high – compile a strategy to target specific markets to attract people from Brisbane, Sunshine Coast, Sydney, Central Coast and Gold Coast.

### Public Programs

- Co-ordinated public program with M|Arts, TRGMOAC, Tweed Regional Museum, to engage the community such as schools, universities, young families, all ages, professional development for artists, disability.
- Develop opportunities for members of the community, i.e. regular art groups, parent groups, special needs groups, slow art, music etc.
- Develop collaborations with the Museum similar to the Façade booklet.
- Create Public Programs with draw card events such as 'in conversation' with renowned artists such as Visited by James Guppy, Dale Rhodes, Robyn Sweaney.
- Opportunities for council staff to be involved – free tickets to workshops, work a day in my shoes, artist's talks, openings.

### Operational

- Consider the Council funded position (currently 23 hours a week) and the level of service to enable exit transition planning and operational delivery.
- Consider the operational hours, floor space for tenancy, and options for an exit and transition plan within the period approved by Council and negotiated with the proprietor.
- Undertake another Volunteer drive to welcome visitors in front-facing role to Gallery DownTown.
- Work with Gallery Director to extend Gallery DownTown curatorial focus on forward thinking CAEP artists, expand into new installations, materiality and the use of space.

### **OPTIONS:**

#### Option 1

That Council delegate the General Manager to negotiate a transition plan for an additional 12 months that includes:

1. A joint marketing plan for the M|Arts precinct with established milestones, deliverables and financial contributions from Tweed Shire Council, ZASK Pty Ltd and Tweed Tourism Company.
2. A Council led program of public events within the M|Arts precinct that is facilitated by the Economic Development unit, Community Development team and Communications unit.
3. A renegotiated license agreement for the Gallery DownTown that presents the CAEP at the current service level of 23 hours per week.
4. Voting a budget of \$100,000 operational and \$20,000 events and programs.

#### Option 2

That Council delegate the General Manager to negotiate a transition plan for an additional 12 months that includes:

1. A joint marketing plan for the M|Arts precinct with established milestones, deliverables and financial contributions from Tweed Shire Council, ZASK Pty Ltd and Tweed Tourism Company.

2. A Council led program of public events within the M|Arts precinct that is facilitated by the Economic Development unit, Community Development team and Communications unit.
3. A renegotiated license agreement for the Gallery DownTown that presents the CAEP at an increased service level of 35 hours per week.
4. Voting a budget of \$130,500 operational and \$20,000 events and programs.

### Option 3

That Council delegate the General Manager to negotiate a transition plan for an additional 24 months that includes:

1. A joint marketing plan for the M|Arts precinct with established milestones, deliverables and financial contributions from Tweed Shire Council, ZASK Pty Ltd and Tweed Tourism Company.
2. A Council led program of public events within the M|Arts precinct that is facilitated by the Economic Development unit, Community Development team and Communications unit.
3. A renegotiated license agreement for the Gallery DownTown that presents the CAEP at the current service level of 23 hours per week.
4. Voting a budget of \$200,000 operational and \$40,000 events and programs

### Option 4

That Council delegate the General Manager to negotiate a transition plan for an additional 24 months that includes:

1. A joint marketing plan for the M|Arts precinct with established milestones, deliverables and financial contributions from Tweed Shire Council, ZASK Pty Ltd and Tweed Tourism Company.
2. A Council led program of public events within the M|Arts precinct that is facilitated by the Economic Development unit, Community Development team and Communications unit.
3. A renegotiated license agreement for the Gallery DownTown that presents the CAEP at an increased service level of 35 hours per week.
4. Voting a budget of \$261,000 operational and \$40,000 events and programs

### Option 5

That Council determines that its objectives of the Gallery DownTown project have been met and concludes its license agreement and MOU on 14 December 2019 and continues to support the M|Arts project through assistance with the building and development process, in marketing through the Tweed Tourism Company and discussions with proprietor concerning special events and exhibitions hosted and funded by Council.

### Option 6

That Council resolves an alternative position in regards to its tenure for the Gallery DownTown.



## **CONCLUSION:**

Situated in the hip M|Arts Precinct, Gallery DownTown is professionally curated, efficiently operated and enriching the lives of both locals and visitors. Easily accessible in the heart of Murwillumbah, the Gallery is located within a community of practicing artists and creative endeavours where visitors feel comfortable to explore.

Visitors to Gallery DownTown appreciate the quality of the Gallery experience. The Gallery is contributing to the liveliness and resurgence of the area.

The investment of the Tweed Shire Council, M|Arts Precinct and TRGMOAC in delivering Gallery DownTown has provided a significant flow on for the town of Murwillumbah and ultimately the Tweed region.

Gallery DownTown forms part of an essential professional pipeline for artists as an extension of the CAEP. It creates a sense of place as a physical locale and is an outstanding sensory experience through the perspective of artists responding to the landscape, architecture and stories. It's a guiding light for businesses to see the potential to invest in the town and places faith in the future of Murwillumbah as dynamic and uplifting cultural destination for locals and visitors.

The information provided in this report presents the data available at this time and the perspectives of a range of stakeholders including local artists, TRGMOAC staff, local businesses, visitors to Gallery DownTown, and the M|Arts proprietor. The date of completion for the current trial is 14 December 2019 and Council's directive to the General Manager is required to provide sufficient lead time in the negotiations for Council's future commitments.

Council in considering this report and determining its preferred option going forward should be mindful of the proprietor's concerns balanced with Council's obligations as a public authority.

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable

### **b. Budget/Long Term Financial Plan:**

An extract from Council's financials is outlined below, which indicate the budget with respect to income and expenditure for the period September 2018 to September 2019 with an extrapolated 12 month forecast. The financials show income of \$50,219 received under the Stronger Country Communities Grant Funding which provided for a motorized stairway lift, air-conditioning unit, signage and branding, lighting and information technology most of which will remain as an asset of the property once Council deems the trial period has met its objectives.

In addition, in-kind support has not been included, which includes several of the marketing initiatives listed in the body of the report, as well as assistance provided by Council's Building and Environmental Health and Economic Development Units, in assisting with the building and development approval process and Council's Information Technology Unit in provision of technology at the site.

Council needs to be mindful that once it has determined the objectives of the catalyst project have been met there will be costs associated with exiting the precinct. An indication of costs are: freight, insurance and staff resources to physically remove and transport the collection back to TRGMOAC, and also demount the CAEP exhibitions, as well as costs for IT staff to remove the hardware from the premises, a budget of \$6,500 is estimated.

If Council was of the mind to extend its presence at M|Arts for a further period of 12 months before exiting, based on the current service level and license agreement, being 23 hours per week of paid staff time and a weekly license of \$250 per week indexed at 2.5%, with a similar program schedule a budget of \$100,000 would be required. If this was increased to a 35 hour per week paid staff time service a budget of \$130,500 would be required. If Council were of the mind to resolve to extend and cease operations after 24 months as requested by the proprietor this would require a budget of \$200,000 at the current service level or \$261,000 if the service level was increased to 35 hours per week. It should be noted that none of the above figures include the in-kind contribution Council would need to make to market and support the initiative.

**DownTown Gallery (Dec 18 to Sep 19 - 10 Months)**

<b>Job/Project No</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>	<b>12 Month Extrapolated</b>
<b>GRANT INCOME/EXPENDITURE</b>				
A4017.3464 Stronger Country Communities Funding	(16,572)	(33,647)	(50,219)	
A4071.0048 - Lighting	8,727	0	8,727	
A4071.0012 - Security	3,050	201	3,251	
A4071.0072/1858 - Communications/IT	9,913	1,315	11,227	
A4071.5544 - Signage & Branding	5,424	163	5,587	
A4071.0256 - Motorized Stairway Lift	7,426	0	7,426	
A4071.0012/17 - Air Conditioner	14,658	3,939	18,598	
	<b>32,626</b>	<b>(28,028)</b>	<b>4,598</b>	

**OPERATING INCOME/EXPENDITURE**

1857 - Artworks sales	(16,668)	(5,304)	(21,972)	
1855 - Artwork sales exp	11,788	8,392	20,179	
Net artwork commission	(4,880)	3,087	(1,793)	(2,151)
A4071.0002 - Employee Costs	33,371	23,514	56,885	68,262
A4071.0012 - Security	530	201	731	877
A4071.0013 - Cleaning	0	44	44	53
A4071.0017 - Lease expenses	7,464	3,939	11,403	13,683
A4071.0030 - Maintenance	175	0	175	210
A4071.0085 - Working Expenses	1,603	234	1,836	2,204
A4071.0257 - Program Costs	588	106	694	833
A4071.1858 - Marketing	0	600	600	720
A4092 - Gallery DownTown Exhibition - Kath Egan	984	120	1,104	1,325
A4093 - Gallery DownTown Exhibition - Dave Sparkes	643	0	643	772

A4094 - Gallery DownTown Exhibition - Tetralogy	0	702	702	843
A4097 - Gallery DownTown Exhibition – Ensemble	1,000	0	1,000	1,200
A4100 - Gallery DownTown Exhibition – Facade	3,533	291	3,823	4,588
A4111 - Gallery DownTown Exhibition – Best before	0	915	915	1,098
A4112 - Gallery DownTown Exhibition – Colour Correction	0	991	991	1,189
	<b>38,850</b>	<b>31,126</b>	<b>69,976</b>	<b>83,971</b>
<b>TOTAL INCOME/EXPENDITURE</b>	<b>71,476</b>	<b>3,097</b>	<b>74,574</b>	

**c. Legal:**

A copy of the Business Case, Licence Agreement and MOU are included as Confidential Attachment 4.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

There have been a number of community engagement activities undertaken throughout the 12 month period as outlined in the report above.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	Letters to and from Tweed Regional Gallery Foundation Ltd (ECM 6098878)
Attachment 2.	Gallery DownTown Report September 2019 (ECM 6098903)
<i>Confidential</i> Attachment 3.	Text from proprietor. (ECM 6098802)
<i>Confidential</i> Attachment 4.	Business Case, licence agreement and MOU (ECM 6098902)

11 [GM-CM] Councillor Professional Development July 2018 - June 2019

SUBMITTED BY: General Manager

mhm



Leaving a Legacy  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.2 Asset Protection
- 1.2.1 Floodplain Management - To manage the risk of flooding and its impacts for property owners and the community.

ROLE: **Leader**

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**SUMMARY OF REPORT:**

The Councillor Professional Development report provides information on professional development and training activities offered to the mayor and each councillor in the year 1 July 2018 to 30 June 2019 and whether or not they participated.

**RECOMMENDATION:**

**That the Councillor Professional Development July 2018 – June 2019 report be adopted as a true and accurate record.**

**REPORT:**

The Councillor Induction and Professional Development Policy adopted by Council on 19 July 2018 requires the General Manager to report to the first Council meeting held after 30 June each year identifying professional development activities offered to the mayor and each councillor in the year to 30 June, and whether they participated in them or not. The Policy requires the General Manager to publish this report on Council's website.

Due to oversight, the report is being provided to Council and actions have been taken to note this reporting requirement for the meeting held after 30 June 2020.

The Policy also requires the General Manager to report to the first Council meeting held after the councillor induction program is delivered the activities offered to the mayor and each councillor as part of the induction program, and whether or not they participated in them. This report will be presented following the 2020 Local Government election and implementation of the induction program.

The below table sets out the professional development opportunities offered to the mayor and each councillor for the period June 2018 to July 2019. The grey shading indicates completion or attendance at the relevant opportunity by the mayor or respective councillor.

Professional Development	Dates	Councillors						
		Allsop	Byrnes	Cherry	Cooper	Milne	Owen	Polglase
Liveable Cities Conference	16-17 Jul 18							
LGNSW Regional North Coast Summit	12-Jul-18							
13th Mosquito Control Association Conference	03-Sep-18							
Australian Regional Development Conference	17-18 Sep 18							
Community and Stakeholder Engagement	21-Sep-18							
Northern Rivers Housing Forum	11-Oct-18							
Local Government NSW Annual Conference	21-23 Oct 18							
IAP2 Shake It Up Conference	23-25 Oct 18							
World Business Council for Sustainable Development	26-Oct-18							
Local Government Forum	01-Nov-18							
27th Annual NSW Coastal Conference	6-9 Nov 18							
AICD Company Directors Course	12-16 Nov 18							
18th International Cities, Town Centres and Communities	14-16 Nov 18							
Mayors Weekend Seminar	24-25 Nov 18							
Social Media For Councils	26-Nov-18							
IT2018 LG Info. Technology Conference	24-25 Nov 18							
LG NSW Media Skills Training (in-house)	15-Feb-19							
Financial Issues in Local Government (in-house)	22-Feb-19							
Australian Governance Summit	4-5 Mar 19							
Australian Coastal Councils Conference	6-8 Mar 19							
Cities and Regions 4.0 Summit	12-14 Mar 19							
National Sustainability Conference	1-2 Apr 19							
ALGWA NSW Annual Conference	4-6 Apr 19							

Professional Development	Dates	Councillors						
		Allsop	Byrnes	Cherry	Cooper	Milne	Owen	Polglase
Local Government Summit 2019	11-12 Apr 19							
Good Growth Housing Conference	15-Apr-19							
Regionality Farm2Plate Exchange	13-15 May 19							
Floodplain Management Conference	14-17 May 19							
Planning Institute of Aust. Congress	15-17 May 19							
MAV Future of LG National Summit	23-24 May 19							
World Business Forum	28-29 May 19							
National General Assembly	16-19 Jun 19							
3rd Australasian Indigenous Family Violence Policing Conf.	19-21 Jun 19							
Dealing with the challenges of being an elected Councillor								
Code of Conduct	6-Jun-19							
eLearning Code of Conduct								
Pecuniary Interest Returns Workshop	7-Aug-19							

Attended/ Completed	
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**OPTIONS:**

1. Council adopts the Councillor Professional Development report for July 2018 to June 2019 as a true and accurate record and notes that the report will be published on Council’s website; or
2. Council adopts the Councillor Professional Development report for July 2018 to July 2019 with amendments (and evidence to be provided of attendance at training activities reflected in the amendments) and notes that the report will be published on Council’s website.

**CONCLUSION:**

This reporting requirement is set out in the Councillor Induction and Professional Development Policy. The General Manager is required by the Policy to publish this report on Council’s website.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Councillor Induction and Professional Development Policy V1.0

**b. Budget/Long Term Financial Plan:**

This report has no implications on the existing professional development budget allocation for the mayor and each councillor.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### 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.

12 [PR-CM] Development Application DA13/0712.01 for an Amendment to Development Consent DA13/0712 for a Micro Herb Production Facility including Two Greenhouses, Two Pump Sheds, Potting Shed/Office, Water Tank, Driveway Access and Associated Earthworks at Lot 3 DP 1191598 No. 67 Howards Road, Burringbar

**SUBMITTED BY:** Development Assessment and Compliance

mhm

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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**

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**SUMMARY OF REPORT:**

Council is in receipt of a Section 4.55 Application to amend the development consent for a micro herb production facility operated by Pocket Herbs and Produce at 67 Howard Road Burringbar.

Development Consent DA13/0712 was approved by Council under delegated authority on 1 April 2014 and the facility began operation in 2016. This application was initially lodged to seek approval for the use of two soil bays, staff canteen and two storage containers constructed without development consent. The application was modified 25 February 2019 to seek approval for additional garden beds and plant pods as well as the use of an existing bore for irrigation purposes.

The existing structures constructed without prior development approval are ancillary to existing site operations and are to be the subject of a Building Information Certificate.

This application also seeks to amend the site plan to reflect actual site layout and to include water tanks and a composting toilet that was the subject of the original application but not included on the approved site plan. As the current layout does not comply with previous stormwater approvals, the amended consent will require a new S68 stormwater approval.

The application was referred to Essential Energy with regard to the proximity of existing structures to an electricity easement. Rectification works and certification required to be undertaken by the applicant at the request of Essential Energy resulted in delays in the assessment of this application. Essential Energy are now satisfied with the location of all structures on site.

The additional growing area being the new proposed garden beds (19m<sup>2</sup>) and plant pods (approximately 55m<sup>2</sup>) represent a relatively minor increase (1.77%) to the existing approved greenhouses totalling 4,187m<sup>2</sup>. The use of these areas is consistent with the current approval for a rural industry (micro-herb production). The use of these areas is not considered to generate additional unacceptable environmental impacts and therefore are considered worthy of approval.

The application was referred to the Natural Resource Access Regulator (NRAR) with regard to the new additional garden beds and grow pods in proximity to a water way. Extensive delays in NRAR providing a response to the application have further extended the assessment timeframe for this application. NRAR have provided comments stating that they have no objections to the location of the garden beds or growing pods.

The conversion of an existing bore for irrigation purposes is the subject of separate water licence application with Water NSW and is currently being assessed by Department of Planning, Industry and Environment. In accordance with previous water extraction development approvals, it is considered that the use of the existing bore for irrigation purposes requires development approval as it is associated with a use that required development consent being the existing approval rural industry DA13/0712. Additional conditions of consent are recommended that require compliance with any water licence issued and monitoring of water extraction volumes.

The operations at the site have been the subject of several Council reports addressing noise impacts from current site operations. The most recent of these reports was considered by Council on 7 February 2019 in which it was resolved to undertake noise logging and assessment to determine compliance with current consent conditions. Noise monitoring is ongoing in accordance with this resolution and is being addressed separately to this application.

It is considered that the matters relating to this modification application do not result in significant additional noise impacts noting that many of the structures are existing and subject to current noise monitoring and assessment activities.

The applicant has shown a willingness to work with Council to negotiate achievable outcomes in relation to operational issues associated with the site.

**RECOMMENDATION:**

**That Development Application DA13/0712.01 for an amendment to Development Consent DA13/0712 for a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks at Lot 3 DP 1191598 No. 67 Howards Road, Burringbar be approved subject to the following amended conditions and new additional conditions.**

**1. The following new conditions are to be added:**

**1.1 The development shall be completed in accordance with the following additional plans and Modification Report dated March 2018 (as amended in red):**

- Amended site plan submitted 7 March 2019 (Page 1);
- Plan of additional structures dated 14 March 2018;
- Photographs dated 14 March 2018;
- Staff canteen building - Floor plan dated 14 March 2018;
- Staff canteen Section 1-1 dated 14 March 2018;
- Staff canteen Elevations A & 1 dated 14 March 2018;
- Staff canteen Elevations B & 2 dated 14 March 2018.

**3.1. A Building Information Certificate is to be obtained for the following structures as indicated on Plan of additional structures dated 14 March 2018:**

- Block work soil bays (item 1);
- Pump houses (item 2);
- 6 x 22,000 litre water tanks (item 3);
- Staff canteen (item 4);
- Generator shed (item 5);
- Shipping container (item 6);
- Insulated container (item 7);
- Hardstand area and soil bay (item 8) ;
- Composting toilet (item 9).

**The Building Information Certificate application is to include:**

- i) structural engineers certification in respect of the structures, and
- ii) demonstrate and/or provide certification the structures satisfy the requirements of the BCA - 2016.

**9.1. Prior to the issue of a Building Information Certificate, permanent stormwater quality treatment shall be provided in accordance with the following:**

- (a) Details of stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils Development Design Specification D7 - Stormwater Quality.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) Specific Requirements to be detailed include:
  - (i) Runoff from all hardstand areas, (including driveway and hardstand parking areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices

must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Building Certificate.

**9.2. Within 90 days of the issue of this amended development consent, a detailed Surface Water Management Plan developed by a suitably qualified person shall be submitted for consideration and approval by Council's General Manager or delegate. The Surface Water Management Plan should include, but not be limited to:**

- Detailed baseline data on water quality of the 3<sup>rd</sup> order stream intersecting the property (sampling points within the 3<sup>rd</sup> order stream should include, but not be limited to, the upstream boundary of the property, within the property, and downstream of the property);
- A detailed description of the water management system on site (including surface water, storm water, waste water);
- Detailed plans, including design objectives and performance criteria for the:
  - Permanent sediment and erosion control measures for all existing anthropogenic structures and disturbance/activities within the riparian zone;
- Detailed performance criteria for the following, including trigger levels\* for investigating any potentially adverse impacts associated with the operation:
  - The water management system;
  - Downstream surface water quality;
- A program to monitor and report on:
  - The effectiveness of the water management system;
- Reporting procedures for the results of the monitoring program;
- A plan to respond to any exceedances of the performance criteria, and mitigate any adverse surface water impacts of the operation.

**\*Note: Trigger levels for investigation should additionally include post rain events.**

**9.3. Within 30 days of the date of issue of this amended development consent, a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.**

**12.1 This consent approves the use of an existing bore for irrigation purposes in association with the approved Rural Industry. The Applicant is to maintain all relevant licences and permits from State Agencies (e.g. Water NSW) as statutorily required while ever acting on this consent. The State licences are to cover the extraction amount authorised by this consent being up to a maximum of 20ML strictly for onsite irrigation purposes only.**

**The use of the bore for irrigation purposes shall not commence until all relevant State licenses are issued. A copy of any State licences shall be provided to Council once issued.**

**12.2 Groundwater volumes extracted from the site are to be continuously recorded in perpetuity whilst extraction operations for irrigation purposes are on-going. The following is required at a minimum:**

- (a) A digital flow meter is to be installed and maintained at each extraction bore used for irrigation extraction so that pumping times and pumping volumes can be recorded. Data from the bores are to be downloaded at routine time intervals and kept for future reference.**
- (b) A digital flow meter is to be installed and maintained within the pump line at the point where water is pumped to the tanks. Data from the pumped line meter is to be downloaded at routine intervals and kept for future reference.**
- (c) Access to the bores and monitoring equipment by Council or its representatives shall be available upon request at any time.**

## REPORT:

**Applicant:** Pocket Herbs & Produce Pty Ltd  
**Owner:** Hydrogarden Australia Pty Ltd  
**Location:** Lot 3 DP 1191598 No. 67 Howards Road, Burringbar  
**Zoning:** RU2 Rural Landscape  
**Cost:** \$18,000.00

## Background:

Council is in receipt of a Section 4.55(2) application to amend the development consent for a micro herbs production facility at the subject site. Development Consent DA13/0712 was granted by Council under delegated authority on 1 April 2014 and approved a rural industry comprising of the following key elements as included in the Statement of Environmental Effects lodged with the original application:

- *Greenhouse 1 = 1 x 72m x 32m x 5.2m high;*
- *Greenhouse 2 = 1 x 56m x 25.6m x 5.2m high;*
- *Pump Sheds (x2) to contain tanks and control equipment and for storage. Tanks will need to be located in suitable pit(s) to enable recirculation.*
  - *Sizes 1 x 10m x 6m and 1 x 11m x 10m (inc. storage);*
- *Potting shed / Office = 1 x 30m x 15m;*
- *Water Tank = Size 8.63m diameter (135,000L), to hold treated water from dam for use in the hydroponic systems. A few other various size tanks will be used to collect roof run off from other sheds;*
- *Toilet facility – 1 x Clivus Multrum Waterless Composting toilet;*
- *Access driveway approximately 120m in length and of bitumen and gravel finished surface, suitable for small rigid vehicle turn-a-round;*
- *Car parking = 16 car parks accessed from the proposed driveway;*
- *Operate seven (7) days a week and MUST pack on Sundays.*

Greenhouse 1 was completed in 2016 and construction of Greenhouse 2 has been completed but is yet to become operational. The facility has been operating since 2016 and noise concerns have been raised with Council by adjacent residences.

In response to the community concerns the operator was required by Council to commission a Noise Impact Study (NIS). The NIS indicated that the operation needed to implement a number of measures to minimise noise impacts and protect the amenity of adjacent residences.

Since preparation of the NIS, Council has been working with the operator and adjacent residents to manage noise and protect amenity. A number of reports have been prepared for the elected Council regarding noise from on-site operations. The most recent report was considered by Council on 7 February 2019. Part of the resolution that followed was:

*"Council officers to undertake noise logging at the two nearest impacted residences to Pocket Herbs for a period of 6 months and noise logging is to include one 2 week monitoring assessment by an independent consultant. The assessment is to use logging equipment, with audio recording capability and data analysis methodology that will determine compliance with the current consent conditions."*

Council subsequently installed the equipment at the residences and noise logging commenced in early April 2019.

Site visits, maintenance, calibration checks, data collection and remote monitoring have occurred regularly since logging commenced. Noise logging is expected to continue to November 2019. An acoustic consultant will carry out a detailed analysis of data and provide advice to Council regarding compliance with the *Protection of the Environment Operations Act* and the development consent.

Operations at the site were expanded to include the production of edible flowers subject to DA17/0347 approved 22 February 2018. Construction of the plant shelter approved by DA17/0347 is complete and the production of the edible flowers has commenced.

During the assessment of DA17/0347 it was noted that there were inconsistencies between the approved site plan for DA13/0712 and actual physical layout of the site. Additionally it was noted that the site contained additional ancillary structures, notably concrete stock piling bays located adjacent a waterway. As a means of rectifying these inconsistencies the consent for DA17/0347 was imposed with the following condition:

*"9. Prior to the issue of a construction certificate for the plant shelter, an application is required to be submitted to Council to seek approval for the stockpiling bays and any other unapproved structures that are not exempt development and are not shown on the plans for DA13/0712."*

This application is lodged to comply with the above condition of consent and seeks to obtain approval for the use of the stockpiling bays and other ancillary unapproved structures associated with current operations of the micro herb facility.

### **History of this application**

This application was initially submitted to Council on 3 April 2018. The application was referred to Essential Energy with regard to the electricity easement located on site. Essential Energy identified encroachments into an existing electricity easement and requested additional information and compliance reports regarding existing encroachments into the electricity easement. Essential Energy advised that the proposal was acceptable on 4 July 2019 subject to relocation of the existing composting toilet and works in relation to an existing power pole.

The applicant advised Council on 26 February 2019 that they wish to amend the modification application to seek approval for additional raised garden beds and plant pods. Water NSW informed Council on the 5 March 2019 that an application was received by Water NSW to convert an existing stock and domestic bore to irrigation purposes and to install a pump on the stream for irrigation purposes. As the use of the water bore is for irrigation purposes in association with an activity that needs development approval (rural industry) it was considered that the use of the water bore also requires development approval.

As such the application was amended as follows:

- Four fixed raised garden beds;
- Additional relocatable growing pods;



- Relocation of the composting toilet (to comply with Essential Energy requirements); and
- Use of an existing licensed bore for irrigation purposes.

The amended application was re-notified on 9 April 2019 and referred to the Natural Resource Access Regulator (NRAR) with regard to additional structures (fixed raised garden beds) in proximity to a waterway. Comments from NRAR were received by Council on 18 August 2019.

The assessment of this application has been protracted primarily due delays in the submission of information and certification to satisfy Essential Energy requirements and the delayed response from NRAR.

**Site details:**

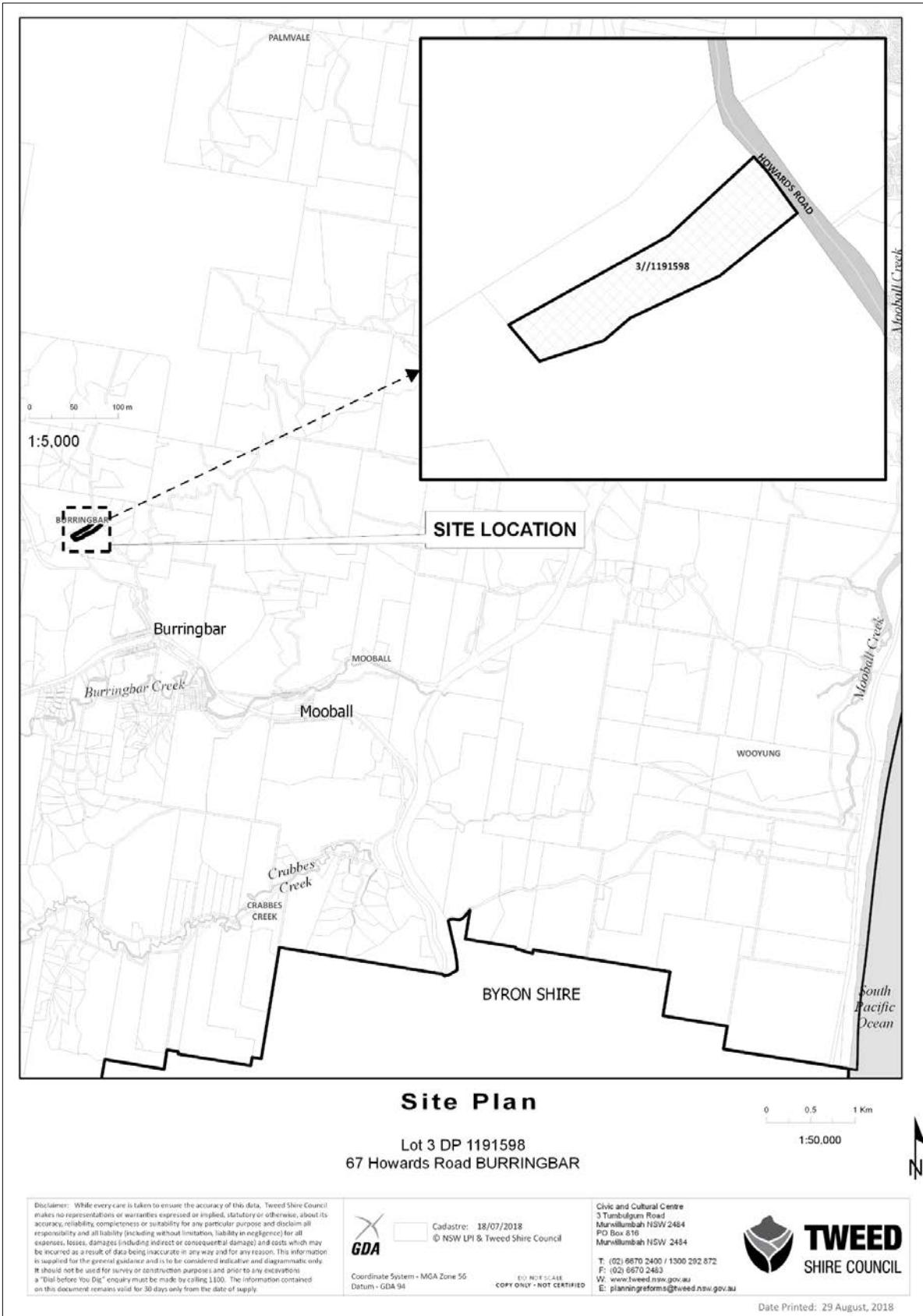
The subject site is 2.27ha (22,700m<sup>2</sup>) and is roughly rectangular in shape with an 80m frontage to Howards Road. The site is bisected by a perennial stream (Third Order stream) that meanders through the rear portion of the lot. The micro herb production facility is contained on the front portion of the lot which is relatively flat. The land at the rear of the lot beyond the perennial stream is elevated approximately 25m above the stream and contains stands of mature trees.

A two storey dwelling is approved for the rear of the site subject to DA16/0097 granted by Council on 4 February 2016. A construction certificate is yet to be issued for the dwelling which is proposed to be located at the rear of the site which is separated from the existing micro herb production facility by the third order stream.

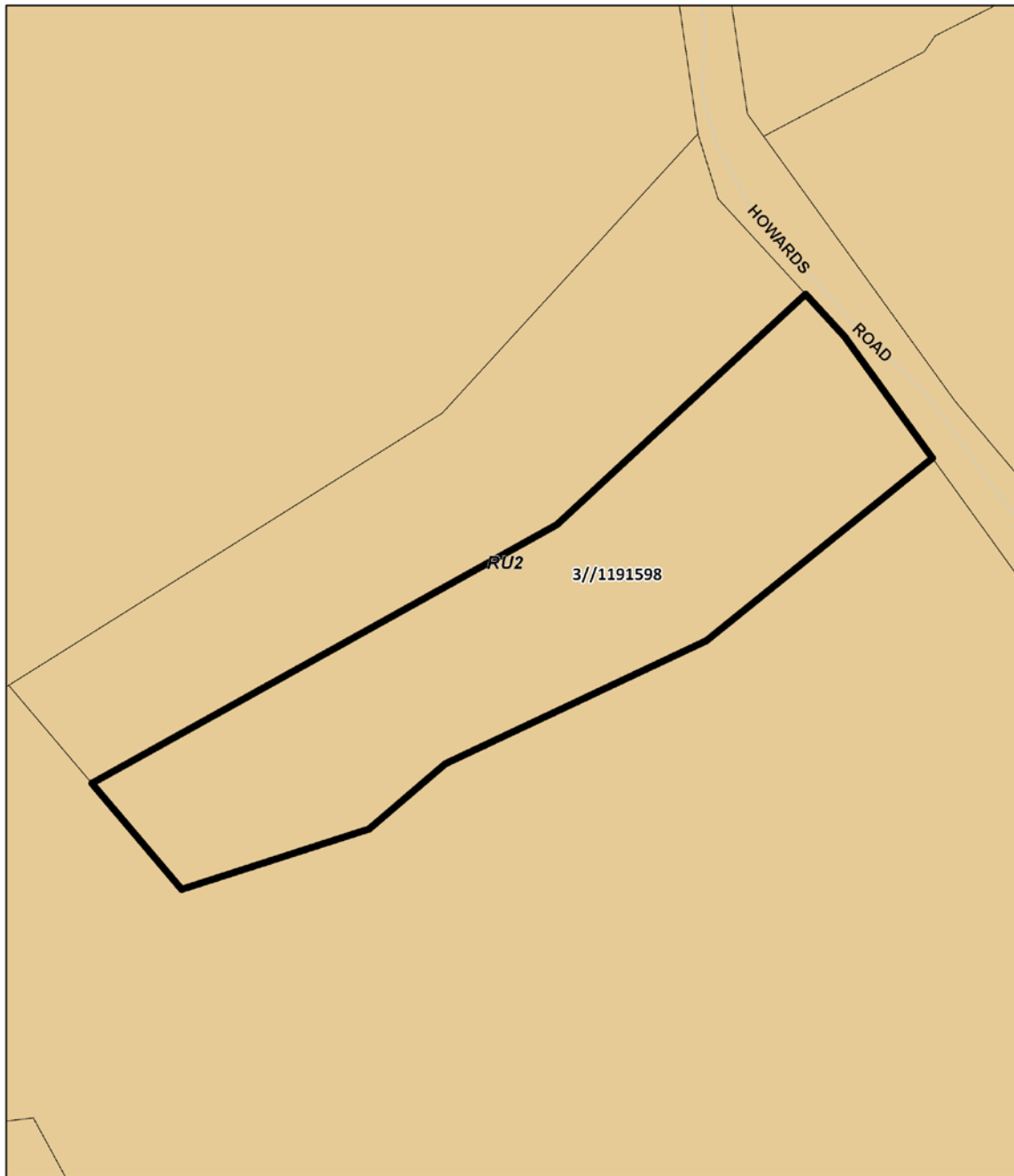
Development Approval DA18/0386 granted by Council under delegated authority on 16 January 2019 approved a private bridge required to access the approved dwelling. The bridge replaces a previous bridge in the same location that was washed away in the April 2017 flood event.

The structures that are the subject of this modification application are located within the development footprint of the existing approved micro herb production facility.

**SITE DIAGRAM:**

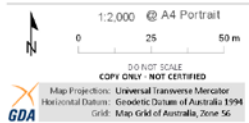


**ZONING MAP:**



Subject Land  
 Subject Land

Tweed Local Environmental Plan 2014  
 RU2 Rural Landscape



**Site Plan - Local Environmental Plan**

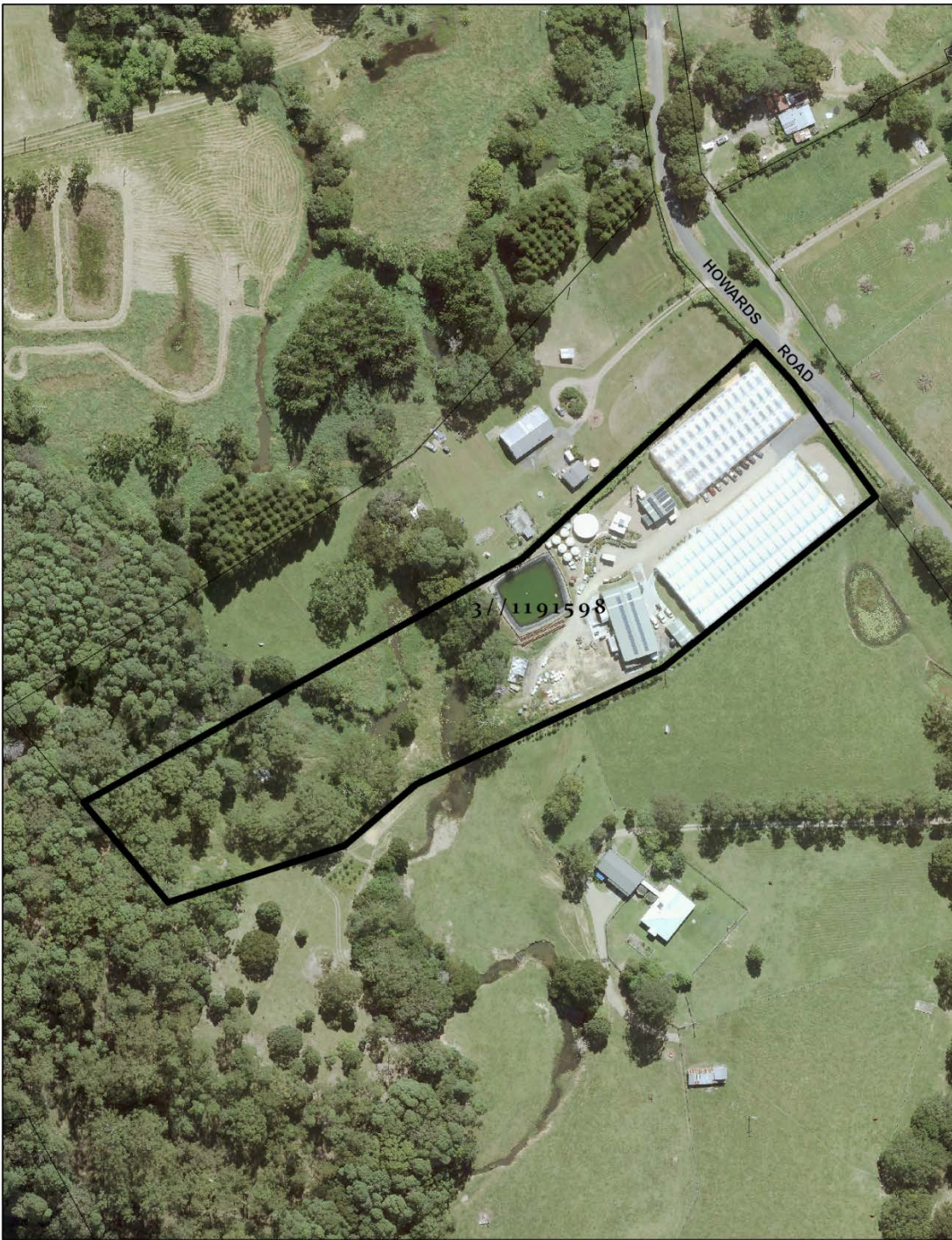
Lot 3 DP 1191598  
 67 Howards Road BURRENBAR

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**AERIAL:**



3/1191598

HOWARDS ROAD

1:2,000 @ A4 Portrait  
0 25 50 m  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED  
GDA  
Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

**TWEED** SHIRE COUNCIL  
Civic and Cultural Centre  
3 Tunbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T: (02) 6671 2450 | 1300 262 872  
F: (02) 6670 2428  
W: www.tweedshire.nsw.gov.au  
E: [enquiries@tweedshire.nsw.gov.au](mailto:enquiries@tweedshire.nsw.gov.au)

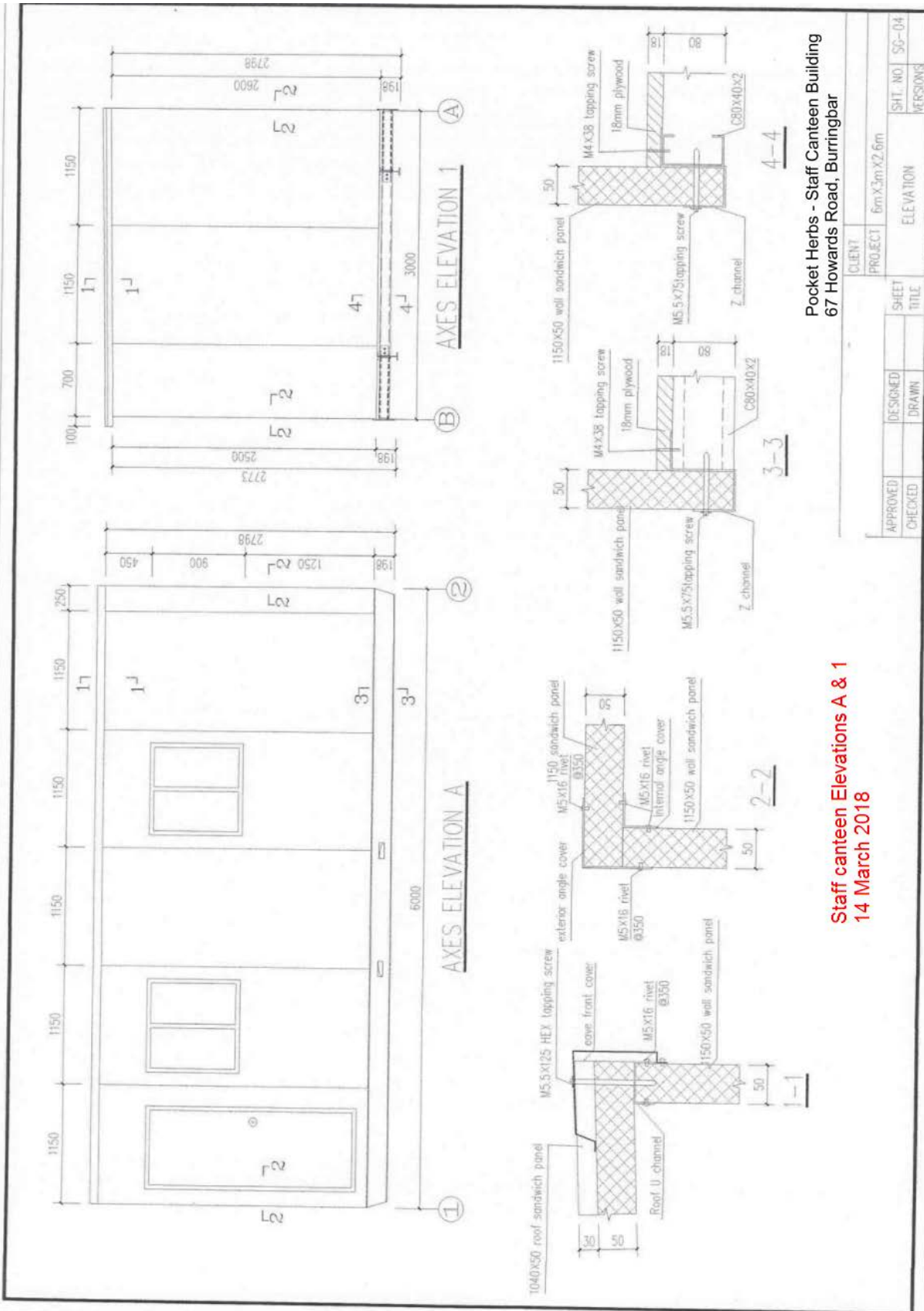
**Aerial Photography April 2018**  
Lot 3 DP 1191598  
67 Howards Road BIRRINGBAR

© 2018 Imagery - Tweed Shire Council  
© Cadastre - Tweed Shire Council  
*Boundaries shown should be considered approximate only.*

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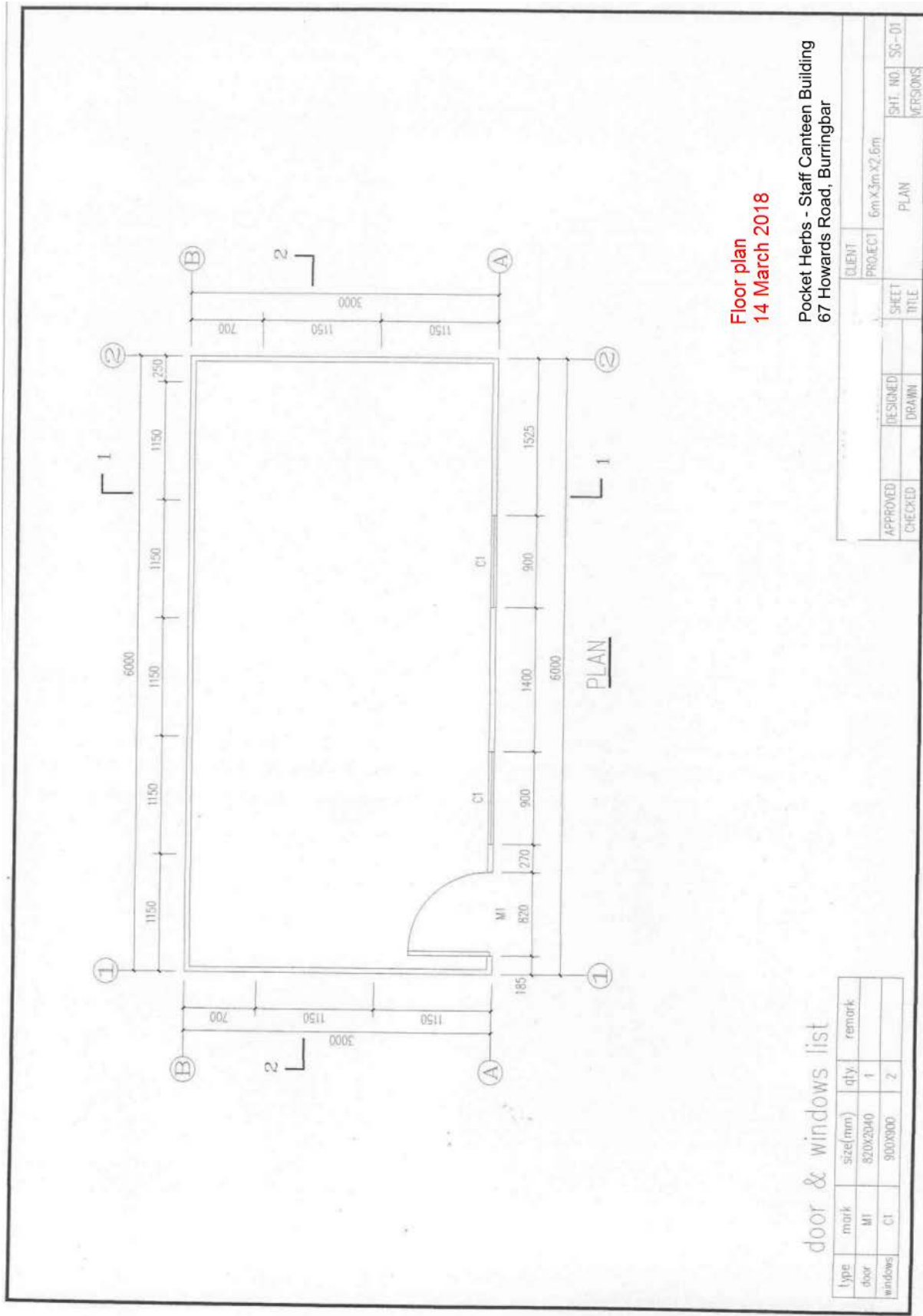




Pocket Herbs - Staff Canteen Building  
67 Howards Road, Burringbar

Staff canteen Elevations A & 1  
14 March 2018

APPROVED	DESIGNED	CHECKED	DRAWN	SHEET TITLE	ELEVATION	SHT. NO.	SC-04
				CLIENT	PROJECT	6m x 3m x 2.6m	
				REVISIONS			



Floor plan  
14 March 2018

Pocket Herbs - Staff Canteen Building  
67 Howards Road, Burringbar

door & windows list

Type	mark	size(mm)	qty	remark
door	M1	820x2040	1	
windows	C1	900x900	2	

CLIENT	PROJECT	6m x 3m x 2.6m	SHT. NO.	SC-01
APPROVED	DESIGNED	PLAN	DRAWN	MFRS/DONS
CHECKED	DRAWN			

## Current site operations

The site is approved for the production of micro herbs and edible flowers. Adjoining residents have voiced their concerns to Council regarding impacts from the development (noise, traffic and environmental). To provide some clarity regarding site operations, the applicant has provided the following summary:

- Herb seed is purchased via on line companies and collected from the post office or on occasion a TOLL van will deliver from one supplier;
- Hydroponic soil is delivered once per fortnight in an 8 metre truck;
- Hydroponic soil is stored in the covered soil bay behind the seedling shed and a mini excavator is used to push the soil into the nominated bay areas;
- Nutrients delivered (once per fortnight);
- Other infrequent deliveries of materials may occur (pots and sleeves – approx. once per year; cartons – approx. once every 6 weeks);
- Seeds are potted in the seedling shed;
- Herbs mature in the greenhouse;
- Herbs packed for transport via small pantech truck to transport company twice a day for three days a week plus one extra trip on Fridays which equates to 7 loads per week;
- Usually 9 staff on site at a time but up to 14 at any one time at busy periods;
- Hours of staff generally 7.30am – 4pm (majority 8am – 3pm);
- Greenhouse fans on during above work hours and are at reduced levels overnight as per operational plan;
- Construction of Greenhouse 2 has been completed;
- Excess herbs (beyond sales) are placed (via forklift) in the free standing soil bay at the rear of the site and the material is then re-used as hydroponic soil; and
- Rain water is captured from the roofs of the greenhouses and other structures and stored in the dam. Water is pumped into holding tanks and treated prior to irrigation of crops.

The above activities are consistent with a horticultural activity and visits to the site have confirmed that this is a generally accurate representation of activities at the site.

## Proposed modifications

This modification application seeks approval for the following:

- The use of a number of ancillary structures constructed without development consent being soil bays, staff canteen, insulated container and shipping container;
- Four new fixed raised garden beds (two 9m x 1m and two 10m x 1m);
- Additional relocatable growing pods;
- Relocation of the composting toilet (to comply with Essential Energy requirements);
- Use of an existing licensed bore for irrigation purposes; and
- An amended site plan which shows the location of the additional items and the location of composting toilet and water tanks approved by DA13/0712 that were not shown on the original approved plans.



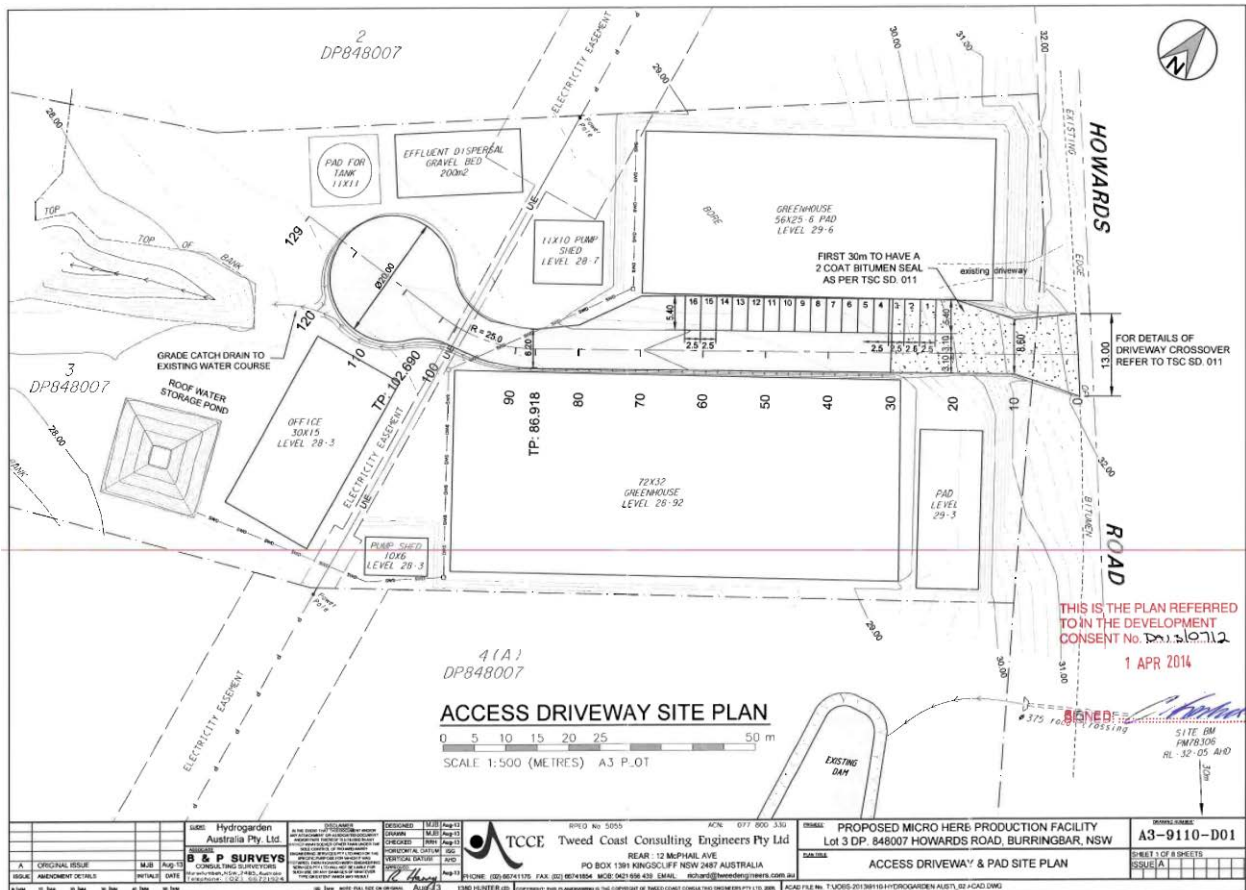


Figure 1 Approved site plan DA13/0712

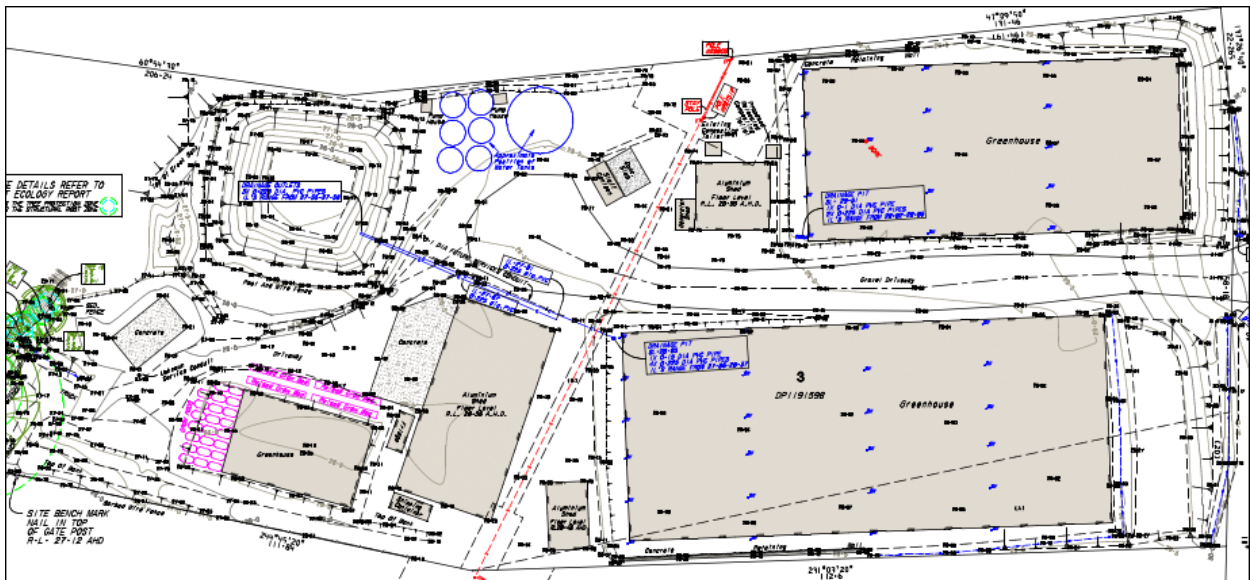


Figure 2 Existing site layout for approval including new garden beds (shown in pink)

Notable differences from the approved site plan and the amended site plan relate to the location of the dam and the location of the main potting shed/office. The dam was relocated at the time of construction to avoid telecommunications infrastructure. A notice informing Council of the telecommunications infrastructure works was provided by Telstra in September 2015 (ECM 3813230). The alternate location of the storage pond has been reviewed by the Natural Resource Access Regulator (NRAR) with regard to proximity to the waterway and no additional works or action is required by (NRAR) in relation to the location of the water storage pond.

The existing items that are the subject of this application are shown on the plan below and are identified as follows:

1. Soil bay;
2. Pump houses x 2;
3. Water tanks x 7;
4. Staff canteen;
5. Generator shed;
6. Shipping container;
7. Insulated container;
8. Concrete hardstand and soil bay; and
9. Composting toilet.

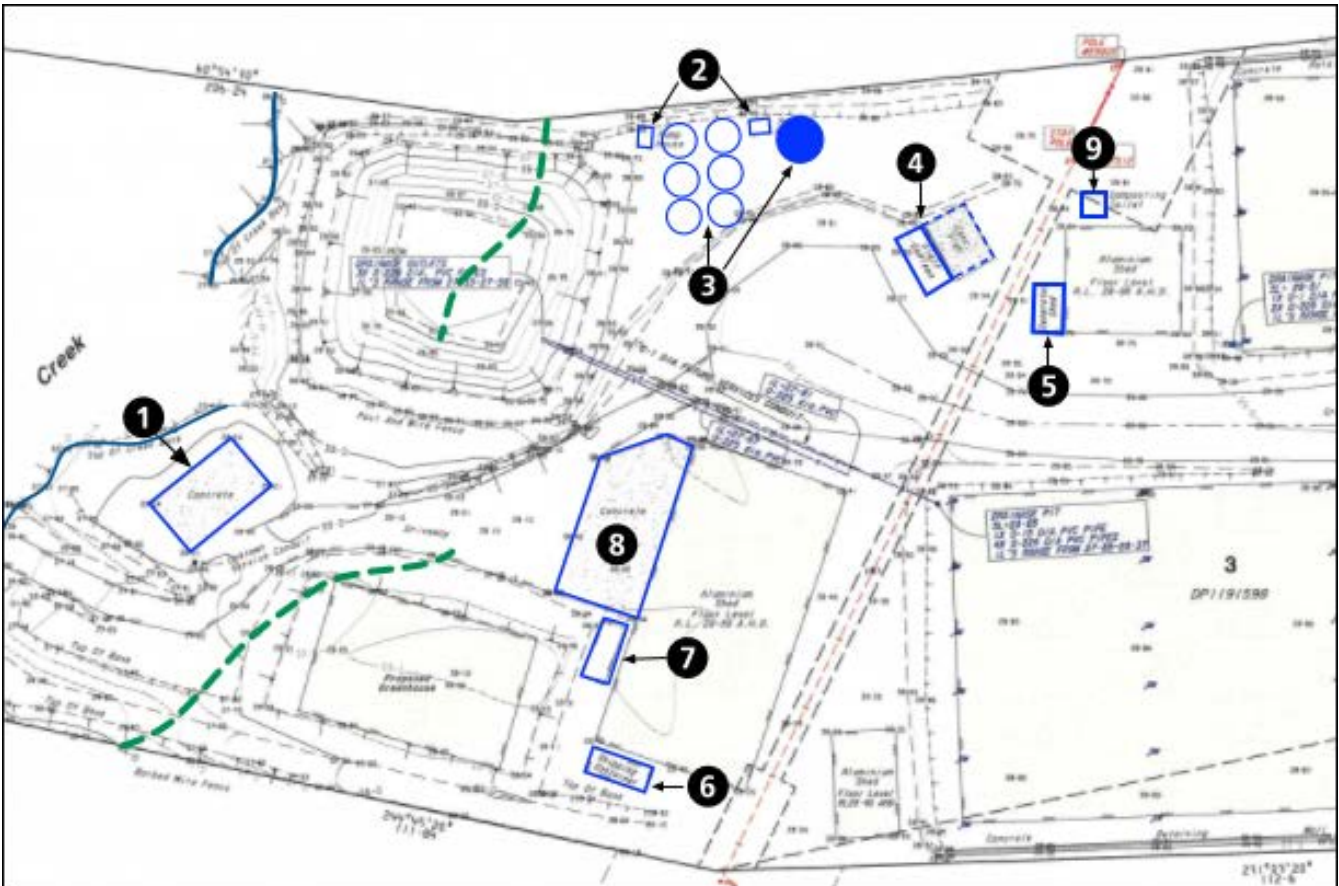


Figure 3 Location of existing structures that are the subject of this application

 <p><b>1</b> Soil Bay 10 m x 6 m</p>	 <p><b>3</b> Water Tanks 6 x 22,700 litre</p>	 <p><b>6</b> Shipping Container 6m x 2.44m x 2.59m (high)</p>
 <p><b>2</b> Pump Sheds x 2 2.1m long x 1.5m wide 1.6m high (both)</p>  <p><b>2</b></p>	 <p><b>3</b> Water Tank 1 x 212,000 litre</p>	 <p><b>7</b> Insulated Container 6m x 2.55m x 2.66 (high)</p>
<p><b>PHOTOGRAPHS</b> 14 March 2018</p> <p>DA 13/0712 - Modification Application March 2018</p> <p>Pocket Herbs and Produce Lot 3 DP 1191598 67 Howards Road, Burringbar</p>	 <p><b>4</b> Staff Canteen 8m x 3m Prefabricated building Hardstand area 8m x 4.2m Hardstand shelter 8m x 4.2m x 2.65m (approx and variable)</p>	 <p><b>8</b> Handstand Area 18m x 8 m (variable) Soil Bay 6.6m x 4.8m</p>
 <p><b>5</b> Generator Shed 2.95m x 4.67m x 2.5m (high)</p>	 <p><b>9</b> Composting Toilet 2.1m x 2.25m Overall Height = 4.1m</p>	

The application includes the following statement with regard to some of the above structures:

*"It should be noted that some of the items described as being part of the development in the Statement of Environmental Effects for DA 13/0712, were not shown on the approved plans. Notably, the composting toilet and all of the water tanks, although a tank pad was shown, and various size water tanks are included in the development description in the original Statement of Environmental Effects.*

*Some of the structures on the site would not normally require approval as they are clearly incidental to the approved development, however, they are included to ensure that there is no question in the future concerning their legality."*

The water tanks and the composting toilet were included in the Statement of Environmental Effects and On-site sewage management report for the original application but were not shown on the plans. These items represent structures and so should have been the subject of a Construction Certificate. This application seeks to rectify this by inclusion on an amended site plan. A Building Information Certificate application will be required for these structures.

The pump houses and generator shed were completed as a condition of consent which required the acoustic treatment or shielding of mechanical plant and equipment to minimise potential noise impacts. Ideally these items should have been included in a construction certificate application for the site. As such these items are to be included in the Building Information Certificate application.

The soil bays, staff canteen, insulated container and shipping container were not included in the original application. These items do not meet the exempt provisions for development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) and so require development approval. This application seeks to rectify



this by seeking approval for the use of these structures and a Building Information Certificate will be required for these structures to ensure structural adequacy.

### ***Existing structures***

A detailed assessment of each of the existing items identified on the amended plan is provided below.

#### ***1. Soil bays***

The soil bays are located adjacent to the creek and are constructed from concrete block work measuring 10m x 6m. They are used to store used growing material from the micro herb production process which is then used for the cultivation of the edible flowers.



Any application that involves work within 40m of a water way requires referral to Department of Primary Industries - Water in accordance with *Water Management Act 2000*. DPI Water (currently known as Natural Resources Access Regulator) were notified (ECM 161208401) of the location of the soil bays during the assessment of DA17/0347 for the plant shelter. It was queried if a Controlled Activity Approval (CAA) would be required for the soil bays (noting that the soil bays were not included in the application for DA17/0347 which was referred to DPI Water). Natural Resources Access Regulator (NRAR) advised that a CAA can only be issued for *proposed* works and a CAA does not cover the use of a previously constructed structure.

NRAR advised that they do not require removal of the structures and compliance action in relation to works on waterfront land without a controlled activity approval has been undertaken.

Soil material from the soil bays has the potential to be mobilised during rain and wind events. It is considered that potential adverse impacts resulting from the use of the soil bays could be managed by the imposition of appropriate mitigation and management measures. The amended consent will be conditioned requiring a Surface Water Management Plan that includes a monitoring program for the adjacent stream and mitigation strategies to address any adverse surface water impacts from the operation of the site.

#### ***2. Water pump houses***

Two pump houses are included on the site plan adjacent to the existing water tanks located at a minimum distance of approx. 1.5m from the northern side boundary. The pumps draw water from the roof water storage pond to the water tanks for treatment and storage prior to

being used for irrigation purposes. The pump houses were constructed to protect the pumps (which are incidental to the water tanks) and comply with condition 45 of DA13/0712 which states:

45. *All externally 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 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 mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.*



The operation of the pumps is subject to the provisions of an approved Operational Noise Management Plan for the site to ensure unacceptable noise impacts are not generated by the pumps for adjoining residents. Subject to existing conditions of consent the pump houses are not considered to have any adverse impacts on the site or adjoining properties.

### 3. *Water tanks*

The plans for DA13/0712 show a water tank on an 11m x 11m pad adjacent to the northern side boundary of the site. The Statement of Environmental Effects noted that “A few other various size tanks will be used to collect roof run off from other sheds” however these were not specifically identified on the approved site plan.

The amended plans indicate that 6 x 22,700 litre tanks have been installed adjacent to the large 212,000 litre water tank indicated on the original plans by the 11m x 11m pad. The tanks do not meet the provisions for exempt development under the Codes SEPP due to the capacity of the tanks being greater than 10,000 litres permitted as exempt development.



Vegetation screening is provided along the boundary of the adjacent property to ameliorate visual amenity impacts. The pumps associated with the water tanks are enclosed as an acoustic attenuation measure as discussed above. It is considered that water tanks are unlikely to have any adverse impacts on the site or adjoining properties.

#### 4. *Staff canteen*

A prefabricated staff canteen measuring 3m x 8m with an approximate height of 2.8m and an associated covered external amenity area (approx. 25m<sup>2</sup>) has been constructed adjacent to the internal driveway turn around area. The canteen is located a minimum of 14m from the northern side boundary and approximately 44m from a dwelling on the adjoining property. Vegetation screening is provided along the boundary of the adjacent property to ameliorate visual amenity impacts. Landscaping has been provided around the canteen to soften the visual impact of the structure.

The area is used for staff breaks and water is provided by the main clean stock rain water tank which is separate from the irrigation water tanks. Premises that serve the public or employees and use rainwater for drinking and/or cooking must comply with the NSW *Public Health Act 2010* and have a quality assurance program following the NSW Private Water Supply Guidelines. The amended consent will imposed with a condition to ensure compliance with this requirement.



## 5. Generator shed

A 2.95m x 4.67m shed has been constructed adjacent to the approved 11m x 10m shed to house the generator. The shed is located approx. 20m from the nearest boundary and is located at least 50m from the dwelling on an adjoining property. The shed was constructed to ameliorate noise impacts from the generator to satisfy condition 45 of DA13/0712 as reference previously in this report. The generator shed is not considered to have any adverse impacts on the site or adjoining property.



The generator shed is consistent with the definition of a farm building (machinery shed) and is compliant with the provisions for exempt development pertaining to farm buildings as contained in clauses 2.31 and 2.32 of the Codes SEPP.

**farm building** means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling [from Tweed Local Environment Plan 2014].

**Subdivision 16 Farm buildings** from State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

### 2.31 Specified development

The construction or installation of a farm building used for the purpose of an agricultural activity and not used for habitable purposes is development specified for this code if it is:

- (a) constructed or installed on land in Zone RU1, RU2, RU3, RU4 or RU6, and
- (b) not constructed or installed on or in a heritage item or a draft heritage item or in an environmentally sensitive area.

### 2.32 Development standards

(1) The standards specified for that development are that the development must:

- (a) be not higher than 7m above ground level (existing), and
- (b) not have an area of more than:
  - (i) if it is a stockyard—0.5ha, or
  - (ii) if it is any other building—200m<sup>2</sup> (if situated on a lot of 2ha or more) or 50m<sup>2</sup> (if situated on a lot of less than 2ha), and
- (c) be located at least 20m from the primary road frontage of the lot and at least 10m from the other lot boundaries, and
- (d) not be constructed or installed within 50m of a dwelling on an adjoining property, and
- (e) be located at least 50m from a waterbody (natural), and
- (f) to the extent it is comprised of metal components—be designed by, and constructed in accordance with the specifications of, a professional engineer, and



- (g) to the extent it is a silo—not be fitted with a motorised fan for aeration or drying purposes.
- (2) If the development is a shipping container, there must not be more than 1 shipping container per lot.

To ensure compliance with item (f) above, the generator shed is to be included in the application for a Building Information Certificate as required by any amended consent issued.

#### 6. & 7. *Insulated container and shipping container*

An insulated container and shipping container are located adjacent to the approved 30m x 15m shed labelled as office in the approved plans. The containers provide storage for various materials, equipment and consumables required for the operation of the site. The storage containers do not meet the provisions for Farm Buildings under the Codes SEPP and as such consent is required for the containers.



The containers are located approx. 15m and 6m from the southern site boundary and 75m from and adjoining dwelling. The containers are used for storage purposes only and are not a source of any noise generation activity. Vegetation screening has been planted along the southern site boundary in accordance with DA17/0347 for the plant shelter and as such visual impacts are minimised. The containers are considered unlikely to have any adverse impacts on the site or surrounding locality.

#### 8. *Hardstand area and additional soil bay*

A hardstand area with an approx. area of 140m<sup>2</sup> is located adjacent to the 30m x 15m shed labelled as 'office' on the stamped plans for DA13/0712. A soil bay measuring approx. 6.6m x 4.8m constructed from timber and corrugated steel and partly covered with a shade cloth awning is located on the hardstand area. The soil bay may be considered as a farm building however does not meet the provisions for exempt development and as such requires approval.





The soil bay is required for the day to day operations of the facility and is used to store growing medium (soil) delivered to the site approximately once every two weeks and a mini-excavator is used to push the soil into the bays. The soil is then transferred by hand as needed to the main potting shed for use in the potting process for the growing of the micro-herbs.

The soil bay is located approx. 27m from the nearest boundary and approx. 70m from the nearest dwelling in on an adjoining property. Noise generated from the use of soil bay is limited to use of the mini-excavator one per fortnight following delivery of the soil and is consistent with the approved operations of the site as an agricultural activity.

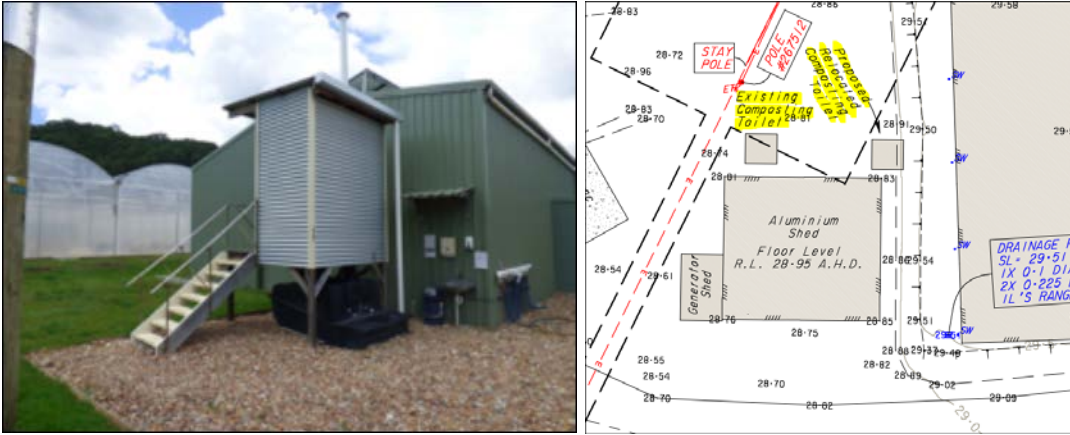
With regard to the hardstand area it is noted that condition 9 of the current consent DA13/0712 states relates to stormwater quality treatment and states:

*9(c)(i) Runoff from all hardstand areas, (including driveway and hardstand parking areas and excluding roof areas) must be treated to remove oils, sediments and gross pollutants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 - Stormwater Quality, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.*

Stormwater Drainage Works approval SWD14/0418 ancillary to DA13/0712 was issued by Council on 1 October 2014. During the assessment of DA17/0347 for the plant shelter it was revealed that the stormwater management of the site was not in accordance with the approved stormwater management plan. As this modification application the seeks approval for a modified site plan and the use of additional hardstand areas it is considered appropriate that the amended consent is conditioned to require a new stormwater management plan that is consistent with the current site layout.

## 9. Composting toilet

A composting toilet was originally constructed in the vicinity of the staff canteen and located approx. 12m from the northern side boundary. References to the a toilet facility were made in the Statement of Environmental Effects and the On-site Sewerage Management Report submitted with the original application for DA13/0712 however the location of the toilet was not shown on the plans.



The composting toilet was originally constructed within an electricity easement on site and has since been relocated (approx. 7m to the northeast) external to the electricity easement to comply with a request from Essential Energy.

The application was referred to Essential Energy in accordance with Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007. With regard to the location of the composting toilet Essential Energy have advised that they are satisfied with the new location.

The current composting toilet and management of the on-site sewage system is consistent with the OSSM report and On-site Sewage Management System (SEP140078) and is unlikely to have any adverse impacts on the site or surrounds.

***New items***

The application was amended on 26 February 2019 to seek approval for the following items as part of the modification application:

- Four fixed raised garden beds;
- Additional relocatable growing pods; and
- Use of an existing licensed bore for irrigation purposes.

All of the above items are considered to be ancillary to the existing rural industry approved by DA13/0712 and as such were considered to be able to be included in the modification application.

***Fixed raised garden beds and plant pods***

Four fixed raised garden beds are proposed adjacent to the existing plant shelter approved under DA17/0347. The garden bed are located within the development foot print of the existing rural industry and no earthworks are require to facilitate the construction of the garden beds. The dimension of the garden beds are as follows:

- Two garden beds 9m long x 1m wide x 0.6m high.
- Two garden beds 10m long x 1m wide x 0.6m high.

The proposed additional plant pods are similar to those already used for the growing of edible flowers in the approved plant shelter (DA17/0347). The pods are relocatable and the installation does not require any additional earthworks.



Figure 4 Plant pods

The applicant has provided the following statement in relation to the use of the garden beds/plant pods:

*"The pods/beds are needed to grow more longer term plants already produced onsite. The plants will be harvested for flowers and/or fresh cut using the same manual methods currently employed such as scissors and snippers.*

*Irrigation will be via an extension of the current system in the next door plant structure or hand watered when necessary. These items are maintenance free and no additional deliveries are needed as the media and plants have long life spans. We will be propagating from cuttings and seed so again, no additional deliveries required. Current staff members will look after the pods/grow beds. Some foliar feeding will be required as per the existing farm activities as and when required for pest control etc. using organically registered products."*

The garden beds/plant pods are located approximately 90m from the adjoining dwelling to the north and approximately 70m from the adjoining dwelling to the south. The use of the existing garden beds/plant pods are not considered to contribute significantly to existing noise generating activities on site. Any potential noise generated from use of the garden beds/plant pods will be subject to the provisions of existing Operational Noise Management Plans for the site.

#### *Use of an existing licensed bore for irrigation purposes*

Council was informed by Water NSW that the site operator has made an application to Water NSW to convert a bore for stock and domestic to irrigation purposes. Approval of the existing bore was issued by NSW Water on 23 July 2012.

As the use of the bore is proposed to be changed to irrigation purposes in association with an activity that requires approval (existing rural industry) it was considered that the use of the bore also requires development consent. As the use of the bore is for irrigation purposes is ancillary to the rural industry approval DA13/0712, it was considered that this use of the bore could be considered under this modification application.

The existing bore is located within Greenhouse 2 approximately 14.5m from the northern side boundary and 55m from the front boundary. The applicant has provided the following information in relation to the use of the bore:

- The depth of the existing bore is 42m;

- Application has been made to Water NSW for extraction of 20 mega litres per year;
- The existing pump is a spear pump located at 42m depth and is not audible;
- The pump will be activated manually;
- The water is for onsite irrigation purposes only and will not be removed from site; and
- The bore is to be used as a supplementary water source required in case rainfall events are not sufficient to restock existing onsite water storage.

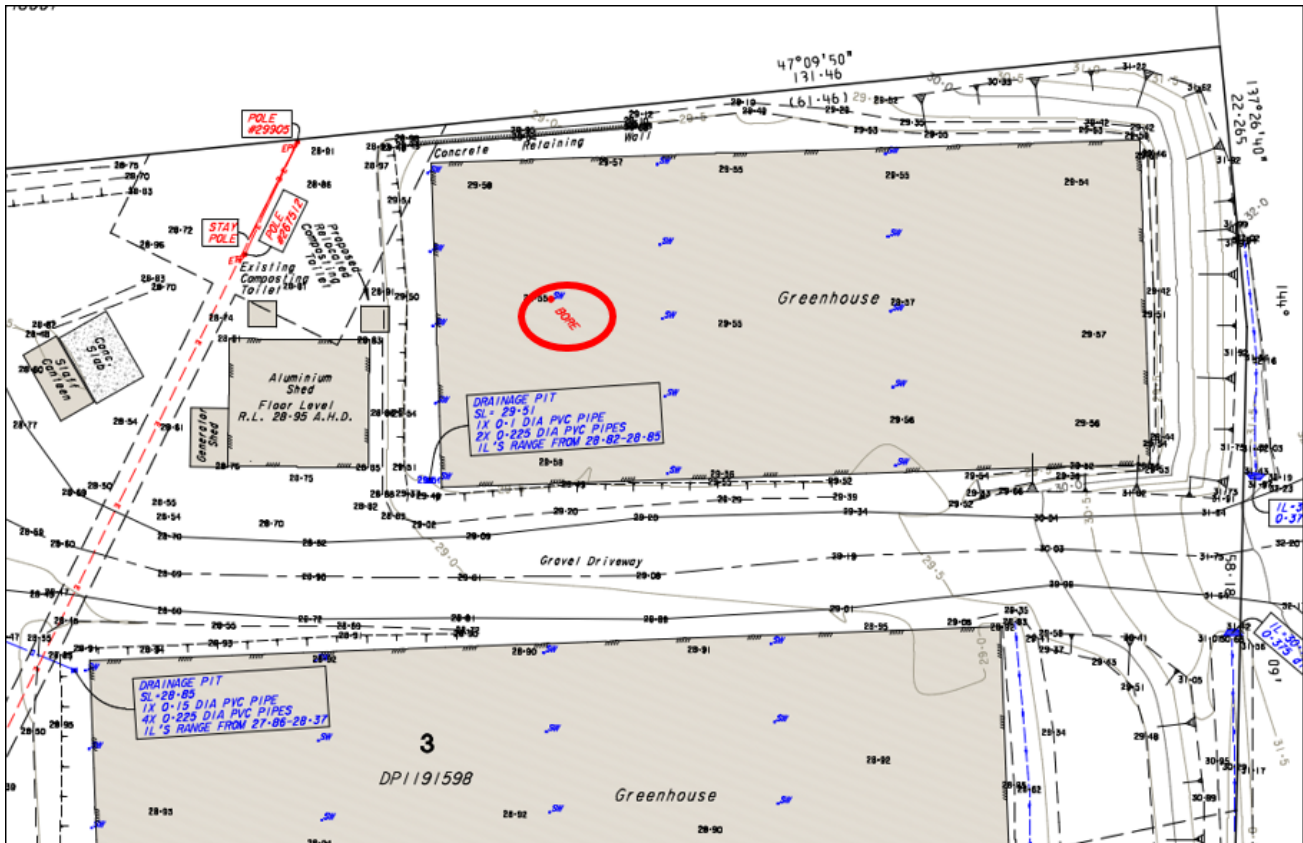


Figure 5 Location of existing bore indicated by red circle

The use of the bore for irrigation purposes is to supplement existing onsite storage capacity in times of low rain fall. Existing onsite storage capacity is approximately 1.4ML provided by 6 x 22,700 litre tanks and one 212,000 litre tanks as well as the existing storage pond. The water extracted from the bore will be diverted to the water tanks prior to treatment and distribution as per current methods.

The application to convert the existing bore for irrigation purposes is being reviewed by Department of Planning, Industry and Environment (DPIE) separate to this application. The applicant has been requested by DPIE to provide additional technical information regarding water quality and pump testing before further consideration of the application can be undertaken. Following submission of the requested information, DPIE will undertake assessment of the application with regard to groundwater level drawdown and quality impacts on neighbouring bores and the environment (surface water, the alluvial aquifer and the basalt aquifer) to determine if the application can be granted.

Development approval of the use of the bore in association the approved rural industry is subject to approval by Water NSW of the application for the conversion of the bore to irrigation use by Water NSW. The amended consent will include new conditions to prevent use of the bore for irrigation purposed without the required Water NSW approvals. Additional conditions are recommended that require continual monitoring and record keeping of water volumes extracted.

**Considerations under Section 4.55 and 4.15 of the Environmental Planning and Assessment Act 1979 (previously Sections 96 and 79C respectively):**

This application was lodged as a Section 4.55(2) modification. Section 4.55(2) of the Act states that in order to grant consent, the consent authority must consider the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (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*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Furthermore, S4.55(3) states:

- (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.*

**Item (a) - substantially the same development**

The site is approved for the purposes of a rural industry. The items that are the subject of this application are incidental or ancillary to the operations at the site as summarised below.

<b>Item</b>	<b>Use</b>
Soil bays	Used for storage of growing material for the horticultural activity.
Pump houses	Incidental to the water tanks required for irrigation of the crops. Housing of the pumps was completed as a condition of the original consent.
Water tanks	Envisaged in the original approval however not included on the plans.



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<b>Item</b>	<b>Use</b>
Staff canteen	Amenity area for staff noting that the original application stated up to 18 staff would be at the site at any one time.
Generator shed	Completed as a condition of consent.
Storage containers	Storage for equipment related to site operations.
Composting toilet	Envisaged in original approval however not shown on plans.
Raised gardens beds	Relatively minor extension of plant growing area in addition to existing operations.
Plant pods	Relatively minor extension of plant growing area in addition to existing operations.
Use of existing bore for irrigation purposes	Irrigation of crops is ancillary to existing rural industry.

The use of the structures are consistent with the approved activities at the site and do not represent an intensification of the current approved use.

The addition of the new garden beds and plant pods is a relative minor extension of existing approved activities and the proposal remains substantially the same as approved being a rural industry relating to the growing of micro-herbs.

The use of the existing bore for irrigation purposes is to provide a supplementary water supply to existing onsite water storage. The use is consistent with the approved use of the site as a rural industry growing crops (micro-herbs) requiring irrigation.

As such it is considered that the development as modified is substantially the same development to that originally approved.

### **Item (b) – consultation with external authorities**

#### **Essential Energy**

The application was referred to Essential Energy in accordance with clause 45 of State Environmental Planning Policy (Infrastructure) 2007 regarding the proximity of structures to an existing electricity easement on site.

Essential Energy noted that shed and the composting toilet have been constructed with the electricity easement and required the relocation of the toilet which has been completed.

Essential Energy also required a report prepared by an appropriately qualified electrical contractor that clearance requirements were met and evidence that electrical protection is sufficient. This required some rectification works including relocating stays to existing electrical poles. The subsequently applicant submitted an Electrical Reticulation - Stay Removal Plan which also showed existing encroachment into the electricity easement (ECM 5960171). Essential Energy advised on 4 July 2019 that the plan was satisfactory noting that one encroachment will remain however this was deemed to be acceptable (ECM 5960171).

It is noted that further works are being undertaken on site with regard to electrical infrastructure however these works are being undertaken on behalf of Essential Energy and relate to the supply of electricity to the broader locality and not specifically to Pocket Herbs.

**Natural Resource Access Regulator (NRAR)**

The soil bays are located within 40m of a waterway and the location of these were discussed with DPI Water during the assessment of DA17/0347 for the plant shelter (noting that the soil bays were existing at this time and not the subject of DA17/0347). Controlled Activity Approvals are required for works within 40m of a waterway however DPI Water advised that in this instance a Controlled Activity Approval (CAA) cannot be obtained for the structures as the works have already been completed. It is noted that a CAA relates to development works only and not the ongoing activities from development.

DPI Water did not require removal of the soil bays and advised that the structures do not raise any ongoing concerns (ECM 161208401).

The application was amended 26 February 2019 to include the raised garden beds and plant pods adjacent to the existing approved plant shelter. As these items related to work within 40m of a waterway, the application was referred to the Natural Resource Access Regulator for review (23 March 2019). NRAR provided comments 18 September 2019 stating that NRAR has no objections to the proposal and noting that no additional earthworks were required for the garden beds and plant pods. Furthermore, no additional approval were required from NRAR and further consideration from NRAR is required.

**Item (c)(i) & (ii) – notification**

The application was notified to adjoining residents with a submission period of 14 days from Wednesday 2 May 2018 to Wednesday 16 May 2018. During this time six submissions were received in relation to the proposal.

The application was re-notified with regard to the amendments to the application with an additional 14 day submission period from Tuesday 16 April 2019 to Tuesday 30 April 2019. During this time three submissions were received.

**Item (d) - consideration of submissions**

The current development and site operations have caused some community concerns and this is reflected in the submissions received for this modification application. Some of the items raised in the submissions relate to the appropriateness of the current approval and not expressly to the items that are the subject of this modification application which are considered to be ancillary structures to the existing approved operations.

Nevertheless all items raised in the submissions are summarised below.

Initial submission received May 2018	
Issue	Council Response
Existing greenhouse fans not included in the modification Noise from fans	The existing approved greenhouse and fans are not the subject of this modification application.  The operation of the fans is subject to an approved Operational Noise Management Plan (ONMP) which was implemented following noise complaints and in accordance with conditions of consent. The ONMP regulates the use of the fans to comply with the requirements the Noise Policy for Industry produced by the NSW Environmental Protection Authority.  Noise monitoring for compliance with the ONMP is ongoing.

<b>Initial submission received May 2018</b>	
<b>Issue</b>	<b>Council Response</b>
<p>Substantially the same development</p>	<p>The water tanks, pump house, composting toilet, generator shed were envisaged in the original development application and approval however were not included on the approved plans. This application seeks to rectify this by including these items on the approved plans. These items are considered to be consistent with the original approval.</p> <p>This application also seeks approval for the use of the additional structures being staff canteen, soil bays and associated hardstand areas and storage containers. These items are considered to be ancillary to the original approved operations for a micro-herbs facility and are directly related to site operations. As such it is considered that the modification of the existing approval to include these additional structures does not substantially alter the consent as originally approved being a micro-herbs production facility.</p>
<p>Over development of site and associated amenity impacts</p>	<p>As mentioned above, the water tanks, pump house, composting toilet, generator shed were envisaged in the original development application and approval and the additional structures that this application seeks approval for the use of is limited to the staff canteen, soil bays and associated hardstand areas and storage containers.</p> <p><i>Amenity</i></p> <p>Screening vegetation has been planted along the boundaries of the site adjacent to land containing dwellings and as such the additional structures are unlikely to result in an unacceptable visual impact.</p> <p>Use of the soil bays may result in some noise generation activities associated with the delivery of soil and moving of soil for operational activities by a mini-excavator. The application has stated that the use of the mini-excavator associated with the soil bays occurs approx. once every two weeks. This use is not considered to result in an unacceptable noise impact and is consistent with the approved agricultural activity.</p> <p>The staff canteen is located approx. 44m from the nearest dwelling and its use is not considered to result in unacceptable noise impacts on adjoining dwellings. Existing conditions of consent relating to amenity are sufficient to manage potential impacts from the use of the staff canteen.</p> <p><i>Overdevelopment</i></p> <p>The additional structures are not associated with an intensification of use of the site but rather are required to support existing operations.</p> <p>The additional structures are located within the existing developed portion of the site and did not require any vegetation clearing or additional earthworks. The total area of additional structures is approximately 288m<sup>2</sup> which represents approximately 1.25% of the total site area or approximately a 7% increase in the total floor area</p>



<b>Initial submission received May 2018</b>	
<b>Issue</b>	<b>Council Response</b>
	of development on the site. The additional structures are unlikely to result in any additional environmental impacts subject to conditions of consent
SEE submitted with original application not accurate representation of the site.	The assessment of modification applications is limited to the specific items that are the subject of the proposed modification (in this instance an approved site plan and ancillary structures). A modification application cannot be used to review an existing approval.
Noise impacts of existing operations	Cumulative noise impacts have been considered as part of this assessment and it is considered that use of the additional structures will not result in unacceptable additional noise impacts. Existing conditions of consent and the Operational Noise Management Plan are sufficient to manage any potential noise impacts from the site.  Noise associated with operation of the approved greenhouses (and associated fans) are not the subject of this modification application.
Existing approval not consistent with the objectives of the RU2 zone	As mentioned previously the site has an approval for the existing rural industry and this application relates to the use of some ancillary structures that are consistent with the approved use of the site.
Site not operating in accordance with original consent	Council is satisfied that operations at the site are consistent with the current conditions of consent and the Operational Noise Management Plan.
Proximity of water tank pump houses to the boundary.	The water pumps are incidental to the water tanks the plans indicate that a water tank was approved adjacent to the northern side boundary. The water pump houses were constructed to comply with Condition 45 of the consent which required mechanical plant to be acoustically treated or shielded prevent the emission of offensive or intrusive noise. The pump houses are located a minimum of approx. 1.5m from the boundary and 31.5m from the adjoining dwelling. Operation of the water pumps is subject to the provisions of the approved Operational Noise Management Plan.
Potential run off from soil bays to the adjacent creek and other site runoff	The potential for runoff from the soil bay creating an adverse impact on the adjacent creek has been considered. Any amended consent will be imposed with a condition requiring a Surface Water Management Plan be prepared for the site which includes a monitoring program and mitigation strategies. The consent will also require a new stormwater management plan to be submitted which reflects the current site layout.

<b>Additional submission period April 2019</b>	
<b>Issue</b>	<b>Council Response</b>
An unregulated commercial bore will impact adjoining properties by way of noise and traffic	<p>The conversion of the existing bore for irrigation purposes is being assessed by the Department of Planning Industry &amp; Environment (DPIE) and if the proposal is found to be acceptable will be subject to a water licence from Water NSW.</p> <p>The use of the bore is to supplement current onsite water storage capacity in times of low rainfall. The water is to be used for on-site irrigation only and is not for transporting off site.</p> <p>The use of the bore will be subject to conditions of development consent to allow monitoring of the water extraction.</p>
Impact of water extraction on water ways and water resources	The application for the conversion of the existing bore to irrigation purposes is being assessed by the DPIE and will have regard to the groundwater level drawdown and quality impacts on neighbouring bores and the environment (surface water, the alluvial aquifer and the basalt aquifer) to determine if the application can be granted. The development consent will require monitoring equipment to be installed to ensure any water extraction complies with all water licences and approvals.
Addition of four garden beds and relocatable pods contributes to over development of site and associated impacts	<p>The addition of the four garden beds (19m<sup>2</sup>) and additional relocatable pods represent (approximately 55m<sup>2</sup>) a minor increase (1.77%) to the existing approved greenhouses totalling 4,187m<sup>2</sup>.</p> <p>The garden beds and grow pods will be located within the existing development footprint and no additional earthworks are required for the items. The use of these items is consistent with current operations is not expected to result in any significant additional noise impacts. Any potential noise generation associated with the use of the pods will be subject to existing noise mitigation measures.</p>

### **Item 3 - Reasons for granting the original consent**

The original consent was issued on the 1 April 2014 before Council had to nominate reasons for approving applications. However the assessment report included the following statements regarding the proposals consistency with the applicable environmental planning instruments and development control plans and having regard to the public interest of the proposal.

#### **Reason 1**

*A rural industry development is permitted with consent in the RU2 Zone. The proposed development is considered to be consistent with the objectives of the zone through providing for a range of compatible uses, being in this instance a micro-herb production development.*

The consent as modified remains consistent with the above statement being permissible within the zone and compatible with the zone objectives. The development remains a compatible land use for the zone being a sustainable primary industry.

#### **Reason 2**

*The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be generally in the public interest, being a rural industry development located on an appropriately zoned site.*

The development as modified remains consistent with the above statement being considered to be in the public interest subject to the conditions of consent. This report includes an assessment of the modified proposal against the applicable planning instruments and development controls plans and it has been determined that the proposal as modified conforms to the relevant controls subject to the modified the conditions at the end of this report.

**Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (previously s79C)**

**(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 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, 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.*

**Item (a)(i) – Any environmental planning instrument**

**TLEP 2014 Clause 1.2 – Aims of the Plan**

The original application was assessed under the provisions of the Tweed Local Environment Plan 2000 and the Draft TLEP 2014.

- (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 development, as amended, remains consistent with the aims of the TLEP 2014 in that it represents sustainable economic development that is permissible within the zone.

#### Exempt and Complying Codes SEPP

The Codes SEPP includes exempt provisions applicable to farms buildings, water tanks and hardstand areas. In this instance the water tanks do not meet the development standards for exempt development and the hardstand area is not associated with a driveway and as such the exempt provisions do not apply.

It appears that the generator shed meets the exempt provisions for a farm shed as indicated in an earlier section of this report and as such development approval is not required. However as the generator shed was completed as a condition of consent, a Building Information Certificate will be required for the structure to ensure it is structurally adequate.

#### Rural Lands SEPP 2008 (Repealed)

This application was lodged 3 April 2018 prior to the repeal of this SEPP. An assessment of application against the provisions of Rural Lands SEPP was undertaken for the original application. The proposed modification to amend the site layout and seek approval for the use of the additional ancillary structures does not substantially alter the development as originally approved. Accordingly the proposal is consistent with the original assessment of the provisions of the Rural Land SEPP.

#### State Environmental Planning Policy (Primary Production and Rural Development) 2019

Since the lodgement of this application, the SEPP Primary Production and Rural Development SEPP came into force and repealed the Rural Lands SEPP 2008. The provisions of the SEPP relate to development on State Significant Agricultural Land, aquaculture, livestock industries and farm dams.

The site is not identified as State Significant Agricultural Land under this Policy. The site contains a water storage pond/farm dam however the water storage pond is existing and this modification application does not relate to the water storage pond. As such the provisions of this SEPP are not applicable to this modification application.

Since the approval of the original consent on 1 April 2014, the North Coast Regional Environmental Plan 2036 has been adopted. The proposed amendment is relatively minor in nature and the proposal as modified remains substantially the same as that originally approved and is considered to be generally compliant with the provisions of NCREP 2036.

### **Item (a)(iii) - Tweed Development Control Plan**

#### **A11-Public Notification of Development Proposals**

The modification application was advertised in accordance with this section of the Development Control Plan. Submissions have been received and considered in relation to the proposed amendment. These submissions are addressed in an earlier section of this report.

### **Item (b) – Likely impacts of the development**

The likely impacts associated with the proposed amendments relate principally to noise, visual amenity and environmental impacts. The water tanks and composting toilets formed part of the assessment of the original application whilst the housing for the pumps and generator shed were completed to satisfy a condition of consent and are not like to generate any additional impacts.

#### *Noise*

The use of the soil bays, storage containers and staff canteen as well as the new garden beds and growpods are unlikely to generate an unacceptable additional noise impacts other than what may reasonably be expected from a rural industry. The use of these areas will be subject to current and ongoing noise monitoring and mitigation measures that apply to the entire site.

#### *Visual amenity*

Visual amenity of the existing approved development was a matter of concern raised in the submissions for this application (although not directly related to this modification application). Where structures are located adjacent to property boundaries (storage containers) suitable screening vegetation has been planted to mitigate visual impacts from neighbouring dwellings.

#### *Environmental impacts*

The storage containers and staff canteen are unlikely to generate addition unacceptable impact on the environment or surrounding locality. Water quality of the adjacent creek has been considered with respect to the use of the soil bays and their proximity to the creek. To ensure that the water quality of the creek is not impacted by the operations of the micro-herb facility a condition is to be imposed which requires a Surface Water Management Plan to be developed for the site to safe guard the water quality of the stream. The production facility will also be required to submit a new stormwater management plan which reflects the current layout of the site and accounts for additional hardstand areas.

There is no change proposed to an existing condition of consent which prohibits the discharge of waste water from the facility to the surrounding environment.

As mentioned previously, the use of the existing water bore for irrigation purposes is subject to the provisions of any water licence (if issued). Potential environmental impacts associated with the use of the bore for irrigation purposes is being assessed by DPIE prior to any water licence approval being issued (if issued). Monitoring equipment will be required to be installed on the bore to ensure its use is compliant with approvals or licences.

The proposed new conditions and existing conditions of consent are considered to be sufficient to safeguard the environment and surrounding locality.

**Item (d) - Any submissions**

Submissions have been considered in an earlier section of this report. Some of the matters raised in the submissions do not form part of the statutory assessment requirements for this modification application. Where appropriate, the matters raised in the submissions are able to be managed by existing conditions of consent and the imposition of additional conditions as included within this report.

**Item (e) - Public interest**

The impact of the proposed modification has been considered during the assessment of this application and it is considered that subject to conditions of consent the proposed modifications are unlikely to generate unacceptable impacts.

Whilst it is acknowledged that the existing approved development has been the subject of noise complaints by adjoining residents, the applicant is working with Council's Environmental Health Unit to reduce noise impacts from the site. Current operations at the site are subject to ongoing monitoring and assessment.

The proposed modification to DA13/0712 relates primarily to ancillary structures associated with the current operations of the micro herb production facility. The additional garden beds and grow pods represent a relatively minor increase in growing area of approximately 1.77%. This is contained within the existing development footprint and so is considered to be acceptable.

The use of the existing water bore for irrigation purposes is subject to the issue of a water licence and is being assessed by DPIE separate to this application.

Subject to conditions of consent the proposed modification of the site is not considered to be in conflict with the public interest in that the proposal rectifies inconsistencies between the current development and approved development.

**OPTIONS:**

1. Approve the 4.55 Application in accordance with the recommendation.
2. Refuse the 4.55 Application for reasons specified.

Council officers recommend Option 1.

**CONCLUSION:**

The proposed modifications do not represent any substantial change to existing site operations. All existing structures and new structures (19m<sup>2</sup> garden beds) are ancillary to the existing approved use of the site for a rural industry – micro herb production.

Primary community concerns regarding noise from existing operations are being addressed separately to this application. This matters that are the subject of this modification application are unlikely to create further unacceptable noise impacts.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

The applicant may appeal any Council determination of this application under Class 1 of the NSW Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**13 [PR-CM] Development Application DA19/0242 for the Erection of Dwelling to Create Detached Dual Occupancy and a Detached Garage and Carport at Lot 38 DP 263730 No. 52 Royal Drive, Pottsville**

**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**

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**SUMMARY OF REPORT:**

**Updated Summary of Report since 19 September 2019 Council Meeting**

This proposal has been reported to Council on two separate occasions with respect to matters relating to the burdening of Council land for the purposes of meeting asset protection zone provisions for the proposed additional dwelling. At the Council Meeting of 19 September 2019 it was resolved that:

*"Council grants owner's consent for an Asset Protection Zone over Council land and grant in-principle support to report this matter to the next Planning Committee meeting with draft Conditions of Consent to enable consideration for the application as proposed. Council includes in the report options to minimise any risks to Council and maintenance burdens over and above current service levels."*

This summary to the previous two reports (included below) discusses options to minimise any risk to Council including any maintenance burdens of the proposed Asset Protection Zone.

The land that is subject to the off-site Asset Protection Zone (APZ) associated with the proposed new dwelling partially encompasses two lots being:

- Lot 65 DP866656 and
- Lot 39 DP263730



Management responsibilities of the land is split between Council's Parks & Active Communities Unit and the Sustainability & Environment Unit. The land is currently actively maintained for the purposes of hazard reduction approximately 22 times per year which is currently being undertaken by the Parks & Active Communities Unit.

Should there be any reduction of the current maintenance regime by Parks & Active Communities Unit (i.e. due to any future budgetary or resourcing constraints) the Sustainability & Environment Unit may be required to maintain the portion of the APZ over Lot 65. The maintenance of the land would be in accordance with the requirements of *Rural Fires Act 1997* (Part 4 Division 1 Clause 63 *Duties of public authorities and owners and occupiers of land to prevent bush fires*) however it may not at the same intensity currently being undertaken (22 times per year) and may not be to APZ standards required by the proposal.

Any future changes to current maintenance regimes will have to have regard to the APZ area and future budgetary implications.

Options are provided at the end of this report which reflect the matters discussed below. Option 1 recommends refusal consistent with the previous Council reports and is the preferred Option.

### **Vegetation removal**

An Asset Protection Zone (APZ) requires maintenance in perpetuity to reduce a bush fire hazard to a particular asset (in this instance the proposed new dwelling). To remove this burden of maintenance in perpetuity from Council, one option is to permanently remove all vegetation from the nominated APZ thereby removing the need for ongoing maintenance.

This would require the permanent removal of grassed areas and replacement with approximately 350m<sup>2</sup> concrete or other such treatment to permanently prevent regrowth. As Council does not fund private development this would have to be undertaken at the applicant's expense.

Option 2 at the end of this report includes conditions of consent that include conditions relating to the provision of concrete or other treatment to permanently prevent regrowth and future vegetation maintenance.

### **Creation of Easement**

In accordance with the current Planning for Bushfire 2006 any development that proposes an APZ over adjoining land requires an easement to be created to guarantee the ongoing management of the APZ in perpetuity.

Accordingly the conditions at the end of this report include a requirement that an easement be created under Section 88B of the *Conveyancing Act 1919* that:

- Benefits the subject property (Lot 38 DP 263730 No. 52 Royal Drive Pottsville);
- Burdens Lot 39 DP263730 and Lot 65 DP866656 (Council community land);
- Sets out the management regime of the APZ in accordance with an approved Plan of Management.

Management of any APZ within the easement would be the responsibility of Council as the land is within the Pottsville Wetland Bushland Reserve which is mapped as being Coastal Wetlands under the Coastal Management SEPP 2018. The management of the APZ would be set out in a Plan of Management as detailed below.

### **Plan of Management**

In accordance with the current Planning for Bushfire 2006 a Plan of Management (PoM) is required where an APZ is proposed on off-site upon land owned or managed by council or government.

An approved (PoM) provides assurances that the land will be managed as an APZ in perpetuity and should include:

- The prescribed APZ requirements and its treatment details (Inner Protection Area and Outer Protection Area widths and fuel loads);
- The range of specific management activities, including scope and location;
- Timing intervals of management activities;
- Demonstration that of resourcing and funding to undertake management activities;
- Notification of any transition arrangements for management or alterations which occur as a result of land dedication or acquisition.

Construction of the new dwelling would not be able to commence until the plan of management is approved. As such a Plan of Management would need to be submitted and approved by Council prior to the issue of Construction Certificate.

Option 3 at the end of this report includes conditions that require a Plan of Management of the nominated APZ area to be prepared and approved prior the issue of a Construction Certificate.

### **IPART Special Variation**

Councils are able to apply to IPART (Independent Pricing and Regulatory Tribunal NSW) for a Special Variation to rates charges to develop or maintain essential community services or regional projects.

It is therefore possible to apply to IPART for a Special Variation to rates charges to fund maintenance regimes of the community land over which the APZ is to be imposed for the proposed new dwelling. In this instance the Special Variation would apply to a single property having benefit of the APZ.

IPART assesses applications for Special Variations against set criteria and it is considered unlikely that IPART would approve a Special Variation to be applied to a single property.

### **Status quo**

An alternate option to all of the above matters is to continue with the status quo. The land would be continued to be managed as per the current management regime however no provisions would be made to ensure that the land would be managed as an APZ to benefit the development in perpetuity.

Any future changes to the current management regime (i.e. in response to future budgetary or resourcing constraints) may not have regard to any commitments to maintain the land as an APZ benefiting development.

This alternative could result in the land not meeting the required APZ standards as prescribed by Planning for Bush Fire Protection. It is advisable that Council legal seek advice and insurance advice regarding possible consequences from any bush fire event.

This alternative is not recommended as an appropriate option due to possible increased liability risk to Council.

### **Previous Summary of Report Presented to the Council Meeting of 19 September 2019**

This matter was originally reported to Council at the meeting of 15 August 2019 with respect to matters relating to the burdening of Council land for the purposes of meeting asset protection zone provisions as prescribed by Planning for Bush Fire 2006. At the meeting, Council resolved that:

*“...this item be deferred for further information in relation to changes in legislation affecting Lot 38 DP 263730 No. 52 Royal Drive, Pottsville and a further report be prepared for the 19 September 2019 meeting.”*

The Rural Fire Service (RFS) have advised that legislative adoption of the new PBP 2018 is anticipated to occur in September 2019. The RFS have also confirmed that until PBP 2018 is published and legislated, the current 2006 edition of PBP continues to remain in force.

With respect to the subject application for an additional dwelling, the current PBP 2006 is the relevant document against which the application is to be considered. The proposed changes to Planning for Bushfire Protection between the current 2006 version and the pre-release 2018 version are not significant in relation to this development proposal.

As detailed in the original Council report presented to the 15 August 2019 Council meeting, it is considered that the subject application does not comply the provisions of the current PBP 2006.

The APZ requirements for PBP (2006 & 2018) state that an APZ is to be contained wholly within the property. An area outside the boundaries of a property may be considered as equivalent to an APZ as per the definition below from PBP 2006:

*Equivalent to an APZ*

*Is where the building will be separated from the bushfire hazard by other development (including roads, other buildings and managed properties) with a setback distance which would have been occupied by an APZ, if the development has been established having regard to the provisions of Appendix 3 of this document.*

Whilst there are examples of development in which Council land is taken as being equivalent to an APZ in lieu of an on-site APZ (refer to examples below), these areas are managed lands being passive recreational parklands or cycle ways. The land to the rear of the subject lot is natural bushland and is not managed to the same standard as passive recreational parklands or cycle ways. Examples where Council has not considered it appropriate to impose APZ

requirements over public land for the benefit of residential development are also provided below.

It is noted that the Bushfire Report for the subject proposal does not rely on the Pottsville Wetland Bushland Reserve as being equivalent to an APZ (i.e. managed land), but rather relies on the bushland reserve to the rear to be managed to the standard of an APZ applicable to residential development in perpetuity.

The specific current provisions of PBP 2006 require consent from the adjoining landowner for any APZ to be imposed over adjoining land. Council as the adjoining land owner and manager of the Pottsville Wetland Bushland Reserve does support the imposition of an APZ over the bushland reserve which would require maintenance obligations for the private benefit of the proposed development in perpetuity.

The applicant has the option of resubmitting the application with an amended proposal (i.e. two storey design or granny flat with greater setbacks) and a Bush Fire Assessment Report that demonstrates that the proposal can meet the provisions of PBP without the reliance on Council land for any APZ.

It is considered that Council should not support providing owner's consent being provided for an APZ over public land to benefit the proposed additional dwelling. As such this application is being recommended for refusal.

### **Changes to Planning for Bush Fire Protection from 2006 to 2018**

Planning for Bush Fire Protection (PBP) provides development standards for designing and building on bush fire prone land in NSW. PBP is given effect in the *Environmental Planning and Assessment Regulation 2000*, the *Rural Fires Regulation 2013* and applies to all development on bush fire prone land.

Whilst there are no altered or additional provisions in PBP 2018 with regard to APZs which would alter Council's consideration of subject application, PBP 2018 does provide greater detail with regard to the management standards for APZs. In relation to maintaining APZs, Appendix 4 Asset Protection Zone Standards of PBP 2018, states:

**Grass:**

- *should be kept mown (as a guide grass should be kept to no more than 100mm in height)*
- *leaf and other debris should be mown, slashed or mulched.*

*An APZ should be maintained in perpetuity to ensure ongoing protection from the impact of bush fires. Maintenance of the IPA [Inner Protection Area] and OPA [Outer Protection Area] to the standards given above should be undertaken on an annual basis in advance of the fire season, as a minimum.*

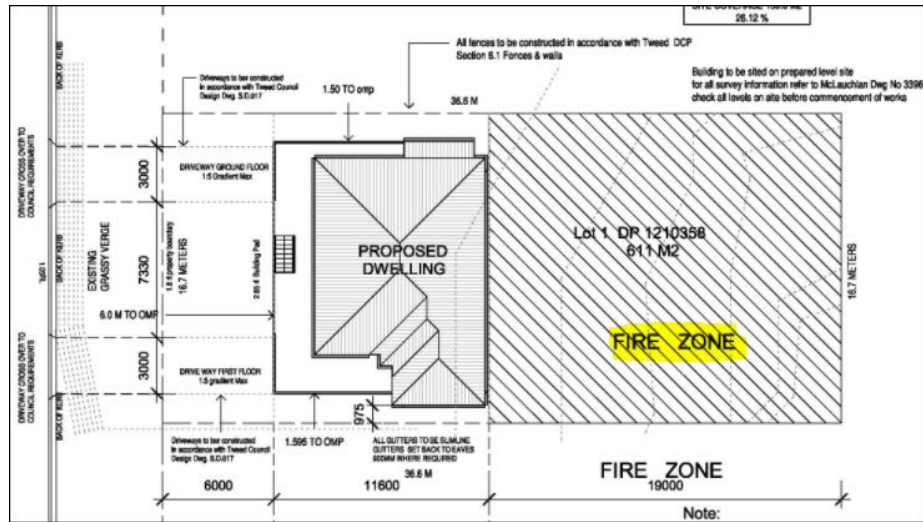
Whilst the proposed development is subject to the provisions of the current PBP 2006, Council should be mindful of the new requirements and question whether it is in the public interest to burden the land and ratepayer for the benefit of a single proponent when other solutions (two storey house design or a granny flat) may be available to meet asset protection requirements within the private allotment.

**Examples of requests for APZ over Council land not granted**

The following applications relate to land where Council considered that the imposition of the requirements of an APZ over Council land was **not** considered to be appropriate. The developments were approved providing the required APZ wholly within the lot.

<p>DA07/0247                  Four lot subdivision, 21 James Road Tweed Heads                  Deferred Commencement                  17/12/2007</p>	<p>Application initially refused due to non-compliance with APZ provisions.                  Resubmitted application approved subject to a restriction over the lots for a 19m rear setback to comply with APZ requirements.</p>	<p>6(a) Open space TLEP2000</p>

<p>DA18/00866                  Dwelling &amp; secondary dwelling, 21 James Road Tweed Heads South                  Approved 17/01/2019</p>	<p>Application relates to lot create by DA07/0247 (above).                  Application initially proposed APZ over Council land. This was not supported and amended plans were approved which provides APZ wholly within the lot.</p>	<p>6(a) Open space TLEP2000</p>
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**Examples where Council owned managed land is considered to meet the requirements for asset protection**


PBP 2006 states “existing roads, other building or managed properties can be considered as part of the APZ.” Accordingly historically Council has approved the following applications where adjacent public land was considered to be managed land and therefore equivalent to an APZ.

Application	APZ details	Zone / Management
<p>DA18/0550                  Dual occupancy                  33 Overall Drive Pottsville                  Approved 27/11/2018</p>	<p>Requires 5m of Council owned land along Mooball Creek for the managed land (like an APZ).                  Identified as managed land for the purposes of an APZ based on confirmation from Recreation Services that the land will be maintained into perpetuity.</p>	<p>6(a) Open Space LEP 2000                  Recreation Services</p>





Application	APZ details	Zone / Management
<p>DA17/0043 Secondary dwelling 5 Warne Place, Pottsville Approved 31/05/2017</p>	<p>Parkland at rear of site considered to be Managed Land (like an APZ) and as such was considered to be a low threat noting that the bush fire threat was from the south. Confirmation of maintenance regime provided by Recreation Services.</p>	<p>RE1 Public Recreation TLEP2014 Recreation Services</p>
<p>DA08/1141 thirty seven (37) lot subdivision - Salt Stage 6 Approved 07/11/2008</p>	<p>Managed park, cycle way and stormwater detention area at the rear of the site considered to be managed land like an APZ. Plan of Management approved by Natural Resources Management Unit. Restrictions placed on lots regarding bushfire management zone.</p>	<p>RE1 Public Recreation TLEP2014 Recreation Services</p>
		

Application	APZ details	Zone / Management
DA18/1017 Dwelling 23 Sea Eagle Court, Casuarina Approved 06/12/2018	Sealed cycleway and beach vehicle access to the south considered to be a non-hazard and a defendable space thereby providing a performance solution as per PBP 2006.	RE1 Public Recreation TLEP2014
		

**Additional information provided by applicant**

The applicant has provided the following additional information to justify why land to the rear of the subject site is acceptable for the use as an ongoing APZ for application to which exceptional circumstances apply:

- *The easement is documented to be managed by Council twice a year, a supporting email is presented in App. 3;*
- *Council are to manage the APZ as mapped and listed in the Far North Coast Bushfire Risk Management Plan which is legislated under the Rural Fires Act 1997:*
- *The Rural Fires Act 1997; 4, Div.1, s.63 (1) states, duties of public authorities, owners and occupiers of land are required prevent bushfires as per the following:*

**63 Duties of public authorities and owners and occupiers of land to prevent bush fires**

- (1) *It is the duty of a public authority to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of a bush fire on or from:*
  - (a) *any land vested in or under its control or management, or*
  - (b) *any highway, road, street, land or thoroughfare, the maintenance of which is charged on the authority.*
- (2) *It is the duty of the owner or occupier of land to take the notified steps (if any) and any other practicable steps to prevent the occurrence of bush fires on, and to minimise the danger of the spread of bush fires on or from, that land.*
- (3) *A public authority or owner or occupier is liable for the costs incurred by it in performing the duty imposed by this section.*



- (4) *The Bush Fire Co-ordinating Committee may advise a person on whom a duty is imposed by this section of any steps (whether or not included in a bush fire risk management plan) that are necessary for the proper performance of the duty.*
- (5) *In this section:*

**notified steps** means:

- (a) *any steps that the Bush Fire Co-ordinating Committee advises a person to take under subsection (4), or*
- (b) *any steps that are included in a bush fire risk management plan applying to the land.*
- *The Pottsville Waters Estate APZ is listed as high risk, in the Far North Coast BFRMP 2017; failure to maintain the APZ may result in negative effects of bushfire to structures along Royal Drive, being exposed to a greater level bushfire risk than currently exists.*
  - *The existing application provides an application using current legislated documentation.*
  - *The pre-release version of PBP 2018, is not legislated as yet.*
  - *Recent applications have been approved based on similar, exceptional circumstances for off-site APZs in the Pottsville locality / Tweed coastal fringe e.g. Elanora Ave, Elizabeth St, Coronation Ave, Tamarind Ave and many existing and recently approved estates.*

As stated in the original Council Report of 15 August 2019 (included below) it is considered that this application does not comply with the provisions for 'exceptional circumstances' under PBP 2006.

Council's obligations under Section 63 of the Rural Fires Act 1997 are to prevent the occurrence of bush fires on and minimise the danger of the spread of a bush fire on or from Council land. Council operates in accordance with Rural Fires Act 1997 and the Far North Coast Bush Fire Risk Management Plan. The Bush Fire Risk Management activities implemented to meet these obligations are done to prevent fire occurring and spreading from the publically owned and managed land.

These management activities are not developed or maintained with the intent of meeting the APZ requirements of adjacent assets or residential development.

With regard to other applications as indicated by the applicant (Elanora Ave, Elizabeth St, Coronation Ave, Tamarind Ave) it is noted that these sites do not adjoin Council owned and managed land as such a comparison for the purposes of this application is not appropriate.

### **Previous Summary of Report Presented to the Council Meeting of 15 August 2019**

Council is in receipt of a development application seeking approval for the erection of a single storey dwelling to create a detached dual occupancy. The subject site is within an established residential area and is adjacent to community land being the Pottsville Wetland Bushland Reserve.

The site is mapped as being bush fire prone and the proposed additional dwelling relies on Council owned land at the rear of the site to provide the required asset protection zones (APZ) to comply with the provisions of Planning for Bush fire Protection 2006 (PBP). The Bush fire Risk Assessment Report submitted with the application relies on advice provided by Council

that the community land to the rear of the site is managed as an APZ. As such the Bush fire Risk Assessment Report concludes that the proposal complies with the provisions of PBP noting that the proposal relies on the community land to the rear of the site to provide the required APZs.

Council is the asset manager for the Pottsville Wetland Bushland Reserve and do not support the application on the basis that owner's consent was not requested or provided for the specific purpose of an APZ to benefit the proposal. Furthermore Council would not support granting owner's consent for the purposes of an APZ that benefits private development as this would burden Council with the liability and risk associated with ensuring maintenance standards are maintained for the life of the development.

Council considers the subject application as a case in point in a review of the issues associated with the current approach to assessing applications in which there is a reliance on public land for the provisions of APZs, and it is noted that the current approach is not in accordance with the provisions of PBP in which owner's consent of any land to be burdened with an APZ is to be submitted with a development application.

On the basis of the facts, it is considered that Council should not support providing owner's consent being provided for an APZ over public land to benefit the proposed additional dwelling.

As such this application is being recommended for refusal. The applicant has the option of resubmitting the application with an amended Bush Fire Assessment Report that demonstrates that the proposal can meet the provisions of PBP without the reliance on Council land for any APZ.

#### **RECOMMENDATION:**

**That Development Application DA19/0242 for the erection of dwelling to create a detached dual occupancy and a detached garage and carport at Lot 38 DP 263730 No. 52 Royal Drive, Pottsville be refused for the following reasons:**

- 1. The proposal does not meet the provisions of Section 3 of Planning for Bush Fire Protection 2006 in relation to the requisite asset protection zones.**
- 2. The proposal is not in the public interest in that the proposal burdens public land for the benefit of private development.**

**REPORT:**

**Applicant:** Mrs DS Gordon  
**Owner:** Mrs Deborah S Gordon  
**Location:** Lot 38 DP 263730 No. 52 Royal Drive, Pottsville  
**Zoning:** R2 - Low Density Residential  
**Cost:** \$112,832.10

**Background**

Council is in receipt of a development application seeking approval for the erection of a single storey dwelling to create a detached dual occupancy, and includes the demolition of an existing two car carport to enable development of a new detached garage and carport in its place. The proposed single storey dwelling comprises a kitchen/dining and living area, along with a study, two bedrooms, two bathrooms, internal laundry and covered rear verandah.

The proposed additional dwelling is to be constructed toward the rear of the site and no modifications to the existing single storey dwelling are proposed as part of the application.

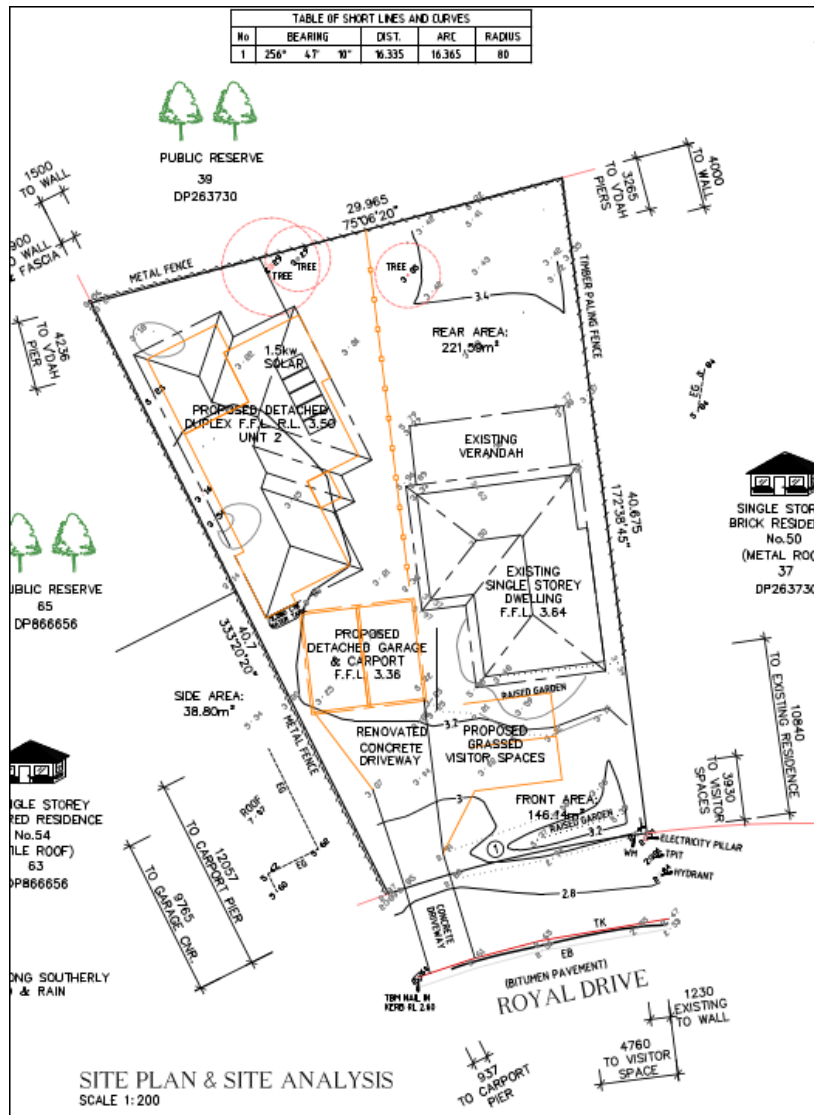


Figure 1 - Site plan

Of particular importance to the assessment of this application is the consideration of Asset Protection Zones (APZs) located on public land that are required for the proposal to comply with Planning for Bush Fire Protection 2006 (PBP). A detailed assessment of this matter is provided below whilst the balance of the report addresses the remaining matters for consideration under the EP&A Act.

### Bush Fire Risk Assessment

The site is located within an established residential area of Pottsville and at the rear of the site is natural open space, known as Johansen Park. This land is part of the Pottsville Wetland Bushland Reserve which is community land categorised as natural area and managed by Council's Sustainability and Environment Unit.

The area is mapped as being Bush Fire prone and the residential lot that is the subject of this application is within the buffer area and located approximately 13m from the bush fire hazard being Vegetation Category 1.

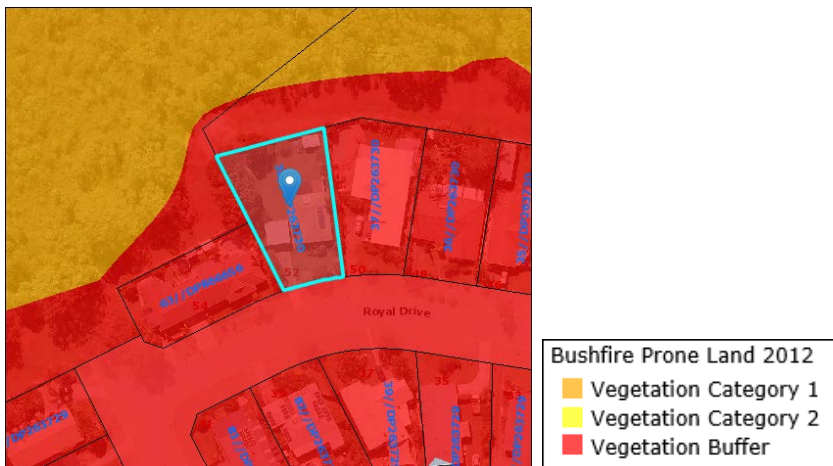


Figure 2 Bush fire mapping

The application is accompanied by a Bush Fire Risk Assessment which concluded that the proposal complies with the requirements of Planning for Bush Fire Protection (2006) for integrated development. The Bush Fire Report noted that prior to compilation of the report the bush fire consultant wrote to Council on 7 August 2018 requesting confirmation that Johansen Park is maintained as an asset protection zone, as indicated in the Far North Coast Bush Fire Risk Management Plan. Council confirmed in writing on 7 August, that:

*"The area behind and to the north of this property is maintained as an APZ through a regular program of works and with a dedicated budget."*



Figure 3 Existing APZ and Park Management Asset area from Council's GIS mapping

Based on this correspondence, the Bush Fire Report concluded that the proposal is able to meet the required constructions standard stating:

*"The dwelling and associated buildings can be positioned to meet BAL-29 or lower which is able to meet the deemed-to-satisfy provisions of the National Construction Code (ASCB 2016) including the NSW variations or construction, pursuant to AS3959 and Planning for Bush Fire Protection 2006."*

To achieve this the following Asset Protection Zones are observed to be existing on or adjacent to the site noting Council's correspondence that the area to the north and west of the subject site are confirmed to be managed as an APZ.

Hazard Direction	North	East	South	West	North-west Corner
Existing APZ	15m (3.1m on-site & 12m off-site)	To boundary	To boundary	>13m (on-site & managed APZ off-site)	14m (4m on-site & 10m off-site)
Min. Distance for BAL-29 (AS3959)	12m (3.1m on-site & >9m off-site)	To boundary	To boundary	To boundary	12m (4m on-site & >8m off-site)

Figure 4 Table 1 from submitted Bush Fire Risk Assessment report dated 3 December 2018

Note that to achieve compliance with the NCC and Planning for Bush Fire Protection (PBP) the proposal relies upon a 12m APZ to the north and north-west of the proposal with up to 9m of this APZ is on Council owned land as illustrated below:





- The proposal is no closer to the Bush Fire hazard than neighbouring properties;
- The existing dwelling is recommended to be upgraded for ember protection;
- The proposal is infill development and complies with the objectives for infill development (above).

The specific objectives for infill development in the PBP are as noted above are:

- *ensure that the bush fire risk to adjoining lands is not increased;*
- *provide a minimum defensible space;*
- *provide better bush fire protection, on a re-development site, than the existing situation. This should not result in new works being exposed to greater risk than an existing building;*
- *ensure that the footprint of the proposed building does not extend towards the hazard beyond existing building lines on neighbouring land;*
- *not result in an increased bush fire management and maintenance responsibility on adjoining land owners unless they have agreed to the development; and*
- *ensure building design and construction enhance the chances of occupant and building survival.*

In summary the Bush Fire Risk Assessment concludes that the above objectives for infill development are met as follows:

- The proposal is unlikely to have any negative effects on adjoining land;
- The entire site is to be maintained as an Inner Protection Zone (IPZ) and defensible spaces are provided on site and off site on the managed land (confirmed by Council) to the rear;
- The preparation of a bush fire survival plan as advised will provide a better bush fire outcome than the current situation;
- The new proposal will be constructed to current bush fire standards which is a greater level of protection to the current situation;
- The setbacks of the proposal are consistent with the existing setbacks for other residential development along Royal Drive
- There will be no increase in management responsibility on adjoining land; and
- The building design provides a greater chance of occupant survival and appropriate evacuation routes area available.

One of the justifications cited above is the fact that the proposal will not be closer to the hazard than existing development. The minimum distance from the bush fire hazard to existing residential development is approximately 8m as shown below.



Figure 6 Existing residential development in the vicinity of Royal Drive with respect to the bush fire hazard (orange line)

The application was referred to the Rural Fire Service who reviewed the application plans and the Bush Fire Risk Assessment Report and raised no objection to the proposal subject to recommended conditions consent including the following in relation to APZs.

*At the commencement of building works and in perpetuity the entire property shall be managed as an 'Inner Protection Area' as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.*

The application was also assessed internally by Council's Sustainability and Environment Unit who are the managers of the Pottsville Wetland Bushland Reserve to the rear of the site. The Sustainability and Environment Unit undertook an assessment of the proposal with respect to the principles for "Exceptional circumstances" for which APZ over adjoining land is considered to be an acceptable alternative solution. Following a discussion with other Units and Council Management considerable was agreed that the proposal does not comply with the principles of for *exceptional circumstances* for the following primary reasons:

- Council is responsible for the management of the adjacent Pottsville Wetland and do not accept maintenance of the nominated area to the standard prescribed in the Bush Fire Risk Assessment for the benefit of the proposed development noting:
  - A Bush Fire Management Plan prepared in accordance with PBP has not been prepared by the applicant and endorsed by Council;
  - The Far North Coast Bush Fire Risk Management Plan 2017 is not a Bush Fire Management Plan as referenced within the PBP specifically addressing the management of the proposed APZ to benefit the subject development.
- Council do not accept responsibility for the management of the proposed APZ across Council land in perpetuity and Council consent has not been issued for establishment of an APZ or easement;



- Whilst the development may be considered infill or other development under PBP, the site currently supports an existing dwelling. The proposal seeks to increase the density of development onsite. As noted under s3.3 '*An increase in residential densities is not, by itself, considered an exceptional circumstance*'.

The broader issue of burdening public land for the purposes of APZs for the benefit of private development has been considered as part of this DA, more specifically, the requirements of PBP, current practices in relation to the assessment of applications which rely on APZ over Council land and appropriate delegated authority in this regard, and the liability and risk burden to Council associated with ensuring that standards are met for the life of any development.

Council's current approach to this issue is consideration on merit and that previous decisions are made on confirmation of current maintenance only and do not specifically include owner (asset manager) consent, nor Council's capacity to ensure this management regime is maintained for the life of the development. Furthermore this approach does not address the other requirements of Section 3.3 of PBP with regard to legal arrangements, including maintenance agreements, nor the specified requirement that the benefiting property owner of the easement is responsible for maintaining the APZ. This approach currently places liability and risk associated with maintenance of the APZ upon Council.

In terms of the issue of APZ over public land with respect to the subject proposal, Section 3.3 of PBP (*Exceptional circumstances for APZs*) allows for merit based consideration of the use of adjoining lands to meet APZ requirements and the following provisions apply:

- *It is the developer's responsibility to negotiate with an adjoining landowner as part of the Development Application (DA) process to secure consent for the location of the APZ on adjoining lands and evidence of the consent is to be submitted with the DA;*
- *The DA must demonstrate that 'exceptional circumstances' apply to the land to be developed and if this is demonstrated, the requirement for an easement will be included to the consent conditions;*
- *The owner/occupier of the land who has benefited from the easement is responsible for maintaining the APZ;*
- *Easements should not be considered where the adjoining land is used for a public purpose, where vegetation management is not likely or cannot be legally granted (e.g. National Park, council bushland reserve, SEPP 14 or SEPP 26, critical habitat).*

With consideration to the above, the subject application is not consistent with the requirements of PBP in that Council consent has not been provided for an APZ benefitting the proposal, the proposal has not satisfactorily demonstrated that 'exceptional circumstances' apply to the land, and no easement for the purposes of an APZ have been created or will be considered over the Pottsville Wetland Bushland Reserve.

In review, it is considered that Council should not provide land owner's consent with respect to the nominated APZ over Council land.

On this basis, the application is being recommended for refusal.

### **Other Matters for Assessment**

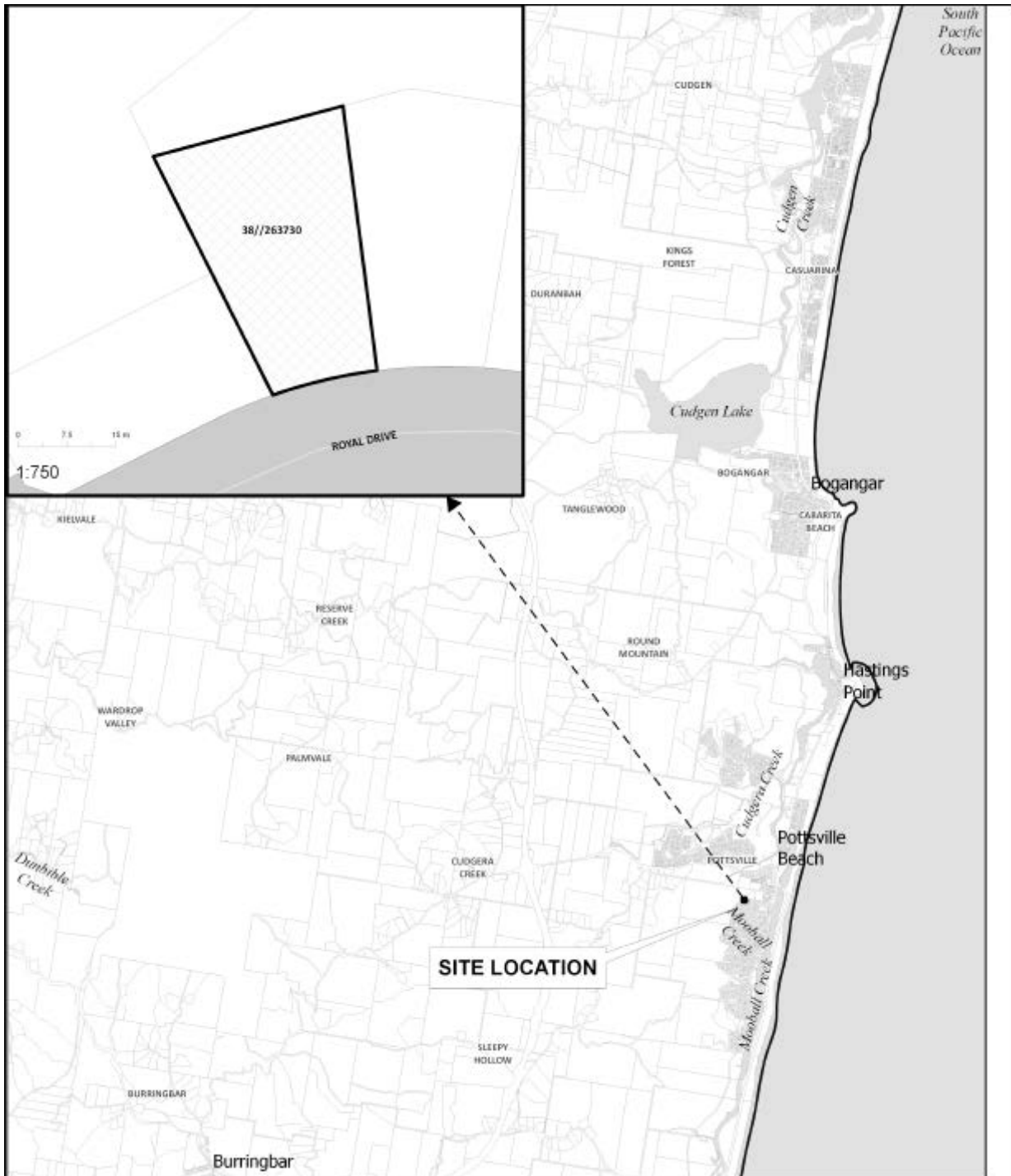
The proposal was assessed against all relevant planning instruments and found to be worthy of approval.

The proposed development meets the provisions of Section A1, Part A of the Tweed Development Control Plan 2008, with the exception of rear setback distances and ceiling heights. The variation to the rear setback will not impact the amenity of adjoining residential development and the proposal complies with the objectives of the rear setback controls. The proposed ceiling heights comply with Building Code of Australia Standards and as such each of the variations is supported. Further detailed assessment of the proposed variations are included in a later section of this report.

The proposal was notified to seven surrounding properties for a period of 14 days from Wednesday 17 April to Wednesday 1 May 2019. No submissions were received during this period.

The development application was referred internally to Council's Building Unit, the Waste and Wastewater unit and the Natural Resource Management unit. No issues have been identified by the specialist units, subject to the imposition of conditions of consent.

**SITE DIAGRAM:**



**Site Plan**

Lot 38 DP 263730  
52 Royal Drive, POTTSVILLE



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Coordinate System - ANZS Zone 56  
Datum - GDA 94

Cadastre: 23/07/2019  
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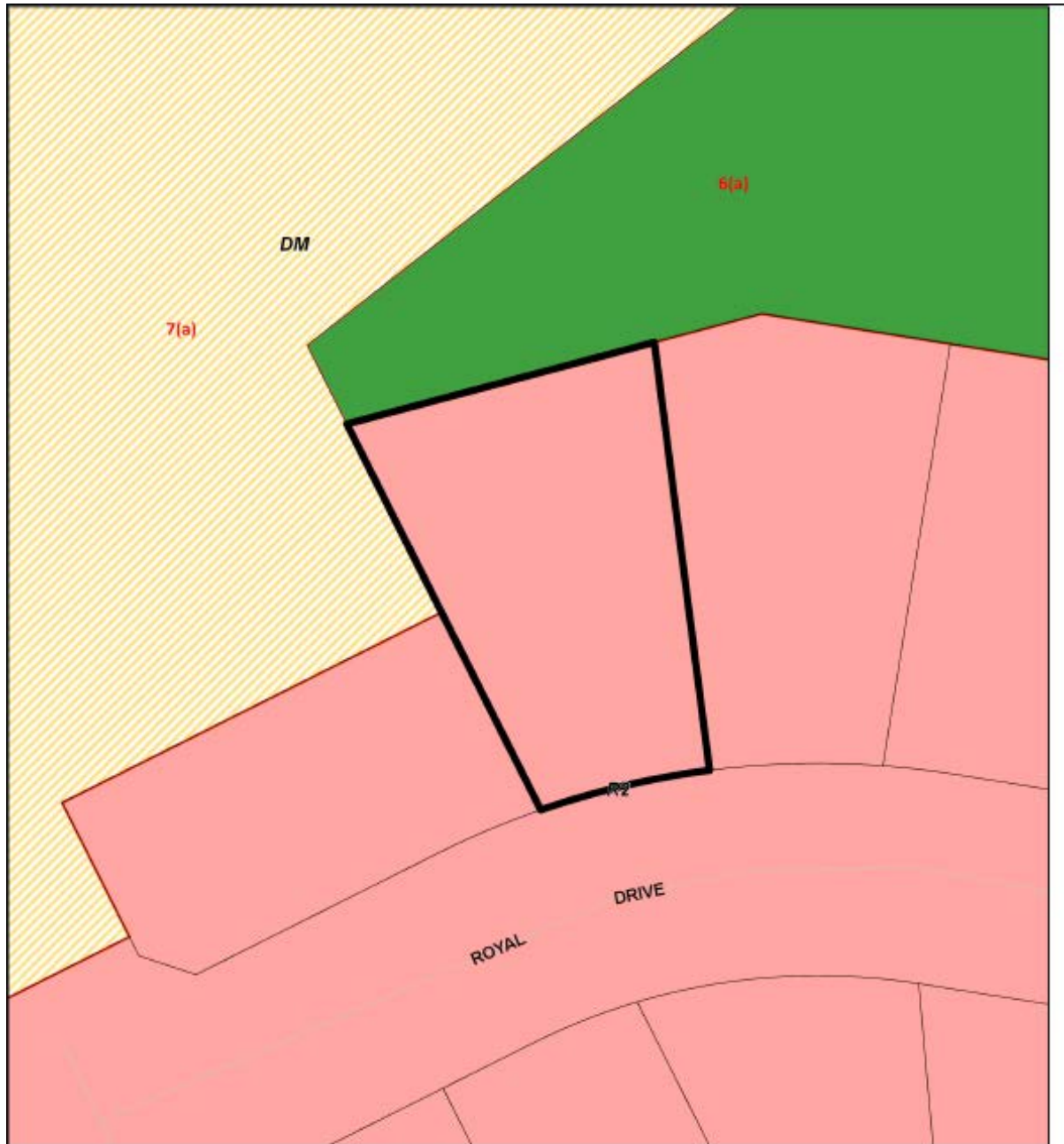
Civic and Cultural Centre  
3 Tankajuan Road  
Maree North NSW 2484  
PO Box 614  
Maree North NSW 2484

T: (02) 9070 2400 | 1300 280 872  
F: (02) 9070 2463  
W: www.tweed.nsw.gov.au  
E: plan@tweed.nsw.gov.au



**TWEED**  
SHIRE COUNCIL

**ZONING PLAN:**



Subject Land	Tweed Local Environmental Plan 2014	LEP 2000 (as at 2014)
Subject Land	R2 Low Density Residential	6(a) Open Space
DM, Deferred Matter	7(a) Environmental Protection (Wetlands and Littoral Rainforest)	

1:500 A4 Portrait  
 0 4.5 9 m  
 GDA  
 COPIES - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Authority: Geoscience Australia, 2004  
 Contour: Map Grid of Australia, Zone 58

**Site Plan - Local Environmental Plan**

Lot 38 DP 263730  
 52 Royal Drive, POTTSVILLE

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 Date Printed: 23 July 2019



**AERIAL IMAGERY:**



<p>1:500 A4 Portrait          0 5 10m          80 NEW SCALE          COPY ONLY - NOT CERTIFIED          Map Projection: Universal Transverse Mercator          National Datum: Geoidetic Datum of Australia 2004          Cont.: Map Grid of Australia, Zone 58</p>	<p>Civic and Cultural Centre          3 Tamburlage Road          Marvillambah NSW 2434          PO Box 818          Marvillambah NSW 2434</p> <p><b>TWEED</b>          SHIRE COUNCIL</p> <p>T (02) 8678 2400   F (02) 8678 2402          E (02) 8678 2423   W www.tweedshire.gov.au          C planning@tweedshire.gov.au</p>	<p><b>Aerial Photography April 2018</b></p>	<p>© 2018 Imagery - Tweed Shire Council          © Cadastre - Tweed Shire Council          Boundaries shown should be considered approximate only</p>
<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties, expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general public and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation or "dig before you dig" enquiry must be made to calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>		<p><b>Lot 38 DP 263730</b>  <b>52 Royal Drive, POTTSVILLE</b></p>	
<p><small>Author: © South - 02</small></p>		<p><small>Data Period: 25 July, 2019</small></p>	

**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 the Tweed Local Environment Plan 2014 are to:

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

The proposed development is generally consistent with the aims of the Plan in that it provides housing for the community.

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.*
- *enable other land uses that provide facilities or services to meet the day to day needs of residents.*

In this zone, the proposed dual occupancy development is permissible with development consent and is considered to be generally in accordance with the objectives of the zone by way of providing for the housing needs of the community.

The proposed development does not compromise the existing or desired future character of the local area and is consistent in nature to the surrounding development.

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

Not applicable. No subdivision is proposed as part of this development application.

Clause 4.3 - Height of Buildings

The site is subject to a maximum building height of 9m as identified on the building height map.

The proposed dwelling has a maximum height of approximately 4.7m, thus complying with the maximum height limit permitted under this clause.

Clause 4.4 – Floor Space Ratio

The site is subject to a floor space ratio of 0.8:1 site.

The site has a total lot size of 922.9m<sup>2</sup>. The proposed residential dwelling has a stated floor area of 132.6m<sup>2</sup> and the garage/carport has a stated floor area of 41.2m<sup>2</sup> based on the submitted plans. The existing dwelling has a stated floor area of approximately 102.1m<sup>2</sup>. Therefore the proposal would result in a total floor area of 275.9m<sup>2</sup>, which equates to a FSR of 0.33:1.

Accordingly, the proposal complies with the maximum floor space ration permitted under this clause.

Clause 4.6 - Exception to development standards

Not applicable as there are no variations to development standards proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable. The proposed development does not seek approval for any miscellaneous permissible uses.

Clause 5.5 – Development within the Coastal Zone

Not applicable as the site is not within the coastal zone.

Clause 5.10 - Heritage Conservation

The site is not mapped as a Heritage Conservation Area under this plan nor is it identified on mapping for the Aboriginal Cultural Heritage Management Plan. It is

noted that an Aboriginal Place of Heritage Significance is mapped under the Aboriginal Heritage Management Plan is known to occur about 75 metres to the north-east of the site. An AHIMS Basic search did not identify any known Aboriginal sites or place in or near the subject site.

Standards conditions of consent relating to the disturbance of Aboriginal objects or relics would be appropriate for any consent.

#### Clause 5.11 - Bush fire hazard reduction

The application is mapped as being bush fire prone however the proposal does not affect the application of this clause in relation to hazard reduction.

A full assessment of the bush fire risk of this proposal is included in a later section of this report.

#### Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as containing Acid Sulfate Soils Class 3. The submitted plans indicate that minor disturbance to the soil only would be required at the subject site for the preparation of footings, slab, and connection of services.

As such, acid sulfate soil is not considered to be a key constraint for the proposed development and an acid sulfate soil management plan is not required in this instance.

#### Clause 7.2 - Earthworks

The submitted plans indicate that excavation works are limited to facilitate the support posts associated with the concrete slab. This is consistent with the cut and fill allowance for a flat site as outlined in Table 1 – Cut and Fill Requirements in DCP A1 – Part A.

Based on the extent of earthworks proposed, 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 (PMF) level. Given the extent of flooding exhibited to this site (PMF only) the proposal is considered to be generally acceptable having regard to the flood risk on the site.

Notwithstanding, a condition is recommended to ensure that the floor level is above the minimum design height.

#### Clause 7.4 - Floodplain risk management

Not applicable. The subject site is situated above the design flood level.



Clause 7.5 - Coastal risk planning

The subject site is not located on land identified as 'coastal risk' on the Coastal Risk Planning Map.

Clause 7.6 - Stormwater Management

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

The site contains sufficient permeable area to cater for stormwater runoff. Standard conditions of consent would be provided in this regard. The proposal is considered to be acceptable with respect to the requirements of this clause.

Clause 7.7 - Drinking Water Catchments

Not applicable. The subject site is not situated within a drinking water catchment.

Clause 7.8 – Airspace operations

No applicable. The subject site is not located within an area exposed to airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable. The subject site is not located within an area affected by aircraft noise.

Clause 7.10 - Essential Services

The subject site is located within an existing established residential area with all requisite essential services available.

Other Specific Clauses

There are no other specific clauses applicable to the application.

**North Coast Regional Plan 2036 (NCRP)**

The proposal relates to the construction of an additional dwelling to create a dual occupancy an established residential area and as such full consideration under this Plan is not warranted. Regardless, the proposal is not inconsistent with the aims and objective of the NCRP 2036.

**State Environmental Planning Policies**

SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area and the Coastal Wetlands Proximity Area.

The objectives of the relevant 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.

**11 Development on land in proximity to coastal wetlands or littoral rainforest**

**Note.** *The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.*

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless*

*the consent authority is satisfied that the proposed development will not significantly impact on:*

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

*(2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

The proposal relates to residential development within an established residential area and in regard the proposal is not considered to result in significant impacts on the environmental values or water quality.

#### 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**

There are no draft planning instruments applicable to the proposal.

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

##### Tweed Development Control Plan

##### A1-Residential and Tourist Development Code

A complete A1 assessment has been undertaken and is available on the electronic development application file.

The proposal seeks two minor variations to the provisions of Section A1, Part A of the Tweed Development Control Plan 2008. The variations to Part A relate to the following items:

1. Rear setback distances
  - The proposed dwelling does not comply with the rear setback requirement of 12 metres (for lots greater than 900m<sup>2</sup> and building height over 4.5 metres)
  - The application seeks approval for a minimum rear setback of 4 metres
2. Minimum recommended ceiling heights
  - The proposed dwelling does not comply with the recommended minimum ceiling height of 2.7 metres
  - The application seeks approval for a minimum ceiling height of 2.55 metres

### Rear Setback Distances – Assessment

Setbacks allow space for landscaping, retention of views, access to breezes, solar access and facilitate privacy and adequate separation between dwellings in residential areas. The objective of rear setbacks is to achieve open space to allow for landscaping and deep soil areas, water infiltration as well as providing private areas for external living, recreation and relaxation.

In accordance with Table 3 – Front and Rear Setbacks in Section A1, Part A of the Tweed Development Control Plan 2008, on lots greater than 900m<sup>2</sup> where the building is 4.5 metres in height or greater the minimum rear setback is 12 metres.



*Aerial View and Site Layout*

The proposal, as lodged, has demonstrated compliance with the objectives of the rear setback controls. While the proposed dwelling is shown on the submitted plans to have a minimum rear setback of 4 metres, the configuration of the site allows adequate space for landscaping, including deep soil zones, does not impact upon views from any neighbouring dwellings and is offset from neighbouring dwellings allowing access to breezes, good solar access and privacy. The rear setback is adjacent to a vegetated Council reserve and will not impact the generally amenity of existing residential dwellings, local views or the streetscape of Royal Drive.

Furthermore, the application was notified development and no objections were received regarding this application.

The variation is supported given the objectives of the rear setback are achieved and no objections were received regarding this application.

### Minimum Ceiling Height - Assessment

In accordance with Section 4.6, Part A of the Tweed Development Control Plan 2008, a minimum ceiling height of 2.7 metres is encouraged for habitable rooms. The objectives associated with this control include contributing to a consistent and attractive streetscape compatible with the surrounding residential context.

The submitted plans indicate ceiling heights of 2.55 metres. As such, a minor variation of 0.15 metres is being sought. It is important to note the proposed ceiling height of 2.55 metres is compliant with the National Construction Code of Australia, 2016. The proposed ceiling height is also 0.15 metres higher than the 2.4 metre ceiling height of the existing dwelling.

The variation is supported given the objectives of the minimum ceiling height are achieved, are consistent with existing development, will not impact on the streetscape and no objections were received regarding this application.

### A2-Site Access and Parking Code

For dual occupancies, DCP A2 requires 1 space per dwelling plus provision for driveway parking of another vehicle (2 spaces per dwelling).

The proposal includes the construction of a detached garage and carport structure, providing covered parking for 2 vehicles. The submitted plans also indicate the provision of 2 additional grassed vehicle spaces at the front of the property. As such, each dwelling includes parking for two cars in accordance with the DCP A2 requirements.

In order to ensure that the two proposed grassed visitor spaces are retained for parking, for the life of the development, it is recommended that any approval include a condition requiring the footprint to be formalised through treatment with a grasscrete paver (or similar). This will ensure the permeability of the area is maintained while also ensuring the parking area is designated and cannot be landscaped in a manner preventing parking in the future.

### A3-Development of Flood Liable Land

Residential development as Section A3 stipulates *“habitable areas of all residential buildings are to be at a level not less than Council’s adopted minimum floor level for development.”*

The subject site is PMF affected. The subject site ground levels range from RL 3.63m AHD to 2.91m AHD. The floor level for the proposed new dwelling is RL 3.5m AHD. As the Design Flood Level for this site is 3.1m AHD, flooding is not a concern for the proposed dwelling.

### A11-Public Notification of Development Proposals

The proposal was notified to seven surrounding properties for a period of 14 days from Wednesday 17 April to Wednesday 1 May 2019. No public submissions were received during this period.

### B21-Pottsville Locality Based Development Code

The subject site is located within the Pottsville Waters area specific strategy of the DCP. As such the specific objectives and controls of this area apply to the proposed development.

The Pottsville Waters area is indicated as being an established residential area with predominately single detached dwellings, with some multi-dwelling development to the north. The stated desired future character of the area is stated as being 'to maintain the existing residential character of the precinct providing a range of accommodation types' and 'where suitable, encourage an increase in density within walking distance of the commercial node'

There are four listed Built Form Controls in this precinct. The proposed development is assessed against these below:

1. *Buildings are to incorporate the use of screening, sun shading devices and deep recesses to create deep shadows and shading on building facades.*

Adequate shading in the form of deep eaves and passive design is considered to be provided to the dwelling proposed under this application.

2. *Buildings, wherever possible, achieve a high degree of integration between indoor and outdoor spaces.*

The proposal includes the provision of a covered verandah area which is accessed from the living and dining room of this dwelling. This is considered to be in accordance with the above control.

3. *Landscape is integrated with built form and should be of a subtropical character with strong textures and colours & robust species.*

The landscaping proposed is considered to be in accordance with the above requirement.

4. *Buildings incorporate composite construction, combining lightweight and masonry elements, and avoid a predominance of brick and tile or tile and rendered masonry.*

The proposed development combines masonry brick materials and colour bond roof sheeting as opposed to tile.

In conclusion, the proposed development is considered to be generally in accordance with the provisions of this DCP and in particular the site specific controls and objectives for the Pottsville Waters area.

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

There are no planning agreements over the site.

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

Clause 92(1)(b) Applications for demolition

Minor demolition works are proposed as part of this application. Appropriate conditions of approval have been provided in this regard.

Clause 93 Fire Safety Considerations

Not applicable as the proposal relates to the construction of a new dwelling.

Clause 94 Buildings to be upgraded

Not applicable as the proposal relates to the construction of a new dwelling.

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

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The 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.

**Coastal Zone Management Plan for the Tweed Coast Estuaries 2013**

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.

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater**

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**

Context and Setting

The site is relatively flat and is presently developed with a single storey three bedroom dwelling and detached double car carport, as well as an ancillary outbuilding. The vegetation on site is limited to landscaped trees, shrubs and lawn areas.

The site is bordered by a Council reserve (Johansen Park) to the north, north-west and low density single storey residential development to the south, east and south-west. The surrounding development is considered consistent with the existing and proposed development on the subject site.

The proposed dwelling is well situated to avoid any shading or amenity impacts on neighbouring dwellings, while allowing good solar access and natural ventilation. The existing streetscape will not be impacted by the proposed development.

#### Access, Transport and Traffic

No changes to the existing access is required to facilitate the proposal noting that a formal driveway crossover is provide from Royal Drive. The local traffic network has the capacity to accommodate the additional dwelling and the proposal is considered to be acceptable in this regard.

#### Flora and Fauna

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.

### **(c) Suitability of the site for the development**

#### Surrounding Landuses/Development

Having regard to the existing surrounding dwellings, it is considered that the proposed development, subject to the recommended conditions will not negatively impact the surrounding neighbours and general amenity of the neighbourhood.

As indicated in the report the proposed dwelling is setback from the road towards the rear of the lot and will not alter the existing streetscape of the site.

#### Natural Hazards – Bush Fire

Matters relating the bush fire hazard of the land is address in detail at the beginning if this report. In summary, regardless of assessment of the proposal provided by submitted bush fire Risk Assessment Report and support of the application by the RFS the application was determined not to fully comply with the provisions of PBP in that the proposal relies on APZ over public land for which Council owners consent was not provided.

Furthermore, Council do not support the owner's consent being provide for the application as the proposal would result in a burden on Council for the liability and the risk associated with ensuring maintenance standards are maintained for the life of the development.

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

No public submissions were received in relation to the proposal. The application was reviewed by the Rural Fire Service who raised no objection to the proposal



and recommended conditions of consent relating to asset protection zones, water and utilities, and design and construction. These recommended conditions would be applied to any consent.

**(e) Public interest**

The proposal contributes to the provisions of housing of with Tweed Shire via infill development in an established residential area. The proposal is unlikely to result in a significant detrimental impact on the physical landscape or the environmental or cultural values of the land.

The proposal relies on Council land for asset protection zones to ensure the proposal complies fully with the provisions of Planning for Bush Fire Provisions 2006 however Council consent was not sought, nor is it to be provided, for this burden over Council land.

In this regard the proposal is not considered to be in the public interest as it burdens public land for the benefit of private development.

**OPTIONS:**

Option 1 is recommended.

**Option 1.** Refuse the application in accordance with the recommendation.

**Option 2.** Approve the development in accordance with the Conditions for Option 2 below which includes approval for the works required to permanently remove all vegetation from the nominated APZ area and replace with concrete or other such treatment to permanently prevent regrowth.

**Option 3.** Approve the development in accordance with the Conditions for Option 3 below which make provision for the future management of the APZ by Council according to Plan of Management to be approved prior to the issue of a Construction Certificate.

**Conditions as per Option 2**

**GENERAL**

1. The development shall be completed in accordance with the amended Statement of Environmental Effects received by Council on 6 May 2019 and
  - Site Plan and Site Analysis - Plan Nos Sheet 1 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
  - Proposed Dual Occupancy Floor Plan - Plan Nos Sheet 3 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
  - Proposed Detached Garage and Carport Floor Plans, Elevations and Section - Plan Nos Sheet 4 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
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- Proposed Setout Plan for Detached Garage and Carport - Plan Nos Sheet 6 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Stormwater, Sedimentation and Landscape - Plan Nos Sheet 9 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- BASIX certificate number 980345S prepared by Sonia Macourt and dated 23 January 2019,

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0015]

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

[GEN0115]

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

5. Sewer manholes are 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]

6. 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]

7. Bushfire Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

- (a) At the commencement of building works and in perpetuity the entire property shall be managed as an 'Inner Protection Area' as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

[GEN0320]

8. Bushfire Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- (a) Water, electricity and gas are to comply with the provisions of Section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

[GEN0325]

9. 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) New construction shall comply with Sections 3 and 7 (BAL29) Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

- (b) Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build-up of flammable material. Any materials used shall be non-combustible.

[GEN0335]

10. Bushfire Landscaping

- (a) Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

[GEN0340]

11. All existing trees within the road reserve are to be retained and protected during construction. Where existing trees within the road reserve cannot be adequately retained and protected, approval from Council's General Manager or their delegate is required to remove street trees and they are to be replaced with a similar species in a 45L pot in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location (for distances away from infrastructure such as light poles and driveways) and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701 (including the installation of root barrier) to the satisfaction of Council's General Manager or their delegate.

[GEN0355]

12. Sewerage reticulation for the secondary dwelling shall be connected to the existing internal sewerage of the lot, ensuring the lot only has one connection to Council's public sewerage infrastructure.

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

13. Prior to the issue of a Construction Certificate, plans shall be submitted to Council nominating the required Asset Protection Zone area over Lot 39 DP263730 and Lot 65 DP866656 in accordance with the submitted Bushfire Risk Assessment report prepared by Melanie Jackson and dated 3 December 2018.

The plans should detail works to permanently remove vegetation within the nominated Asset Protection Zone area. The works are to install concrete or other such treatment to permanently prevent regrowth and future vegetation maintenance at the applicant's expense with no cost to Council.

The plans are to be approved by the General Manager or delegate prior to the issue of a Construction Certificate.

[GENNS02]

14. Prior to the issue of a Construction Certificate an easement and restrictions as to user is to be created over Lot 39 DP263730 and Lot 65 DP866656 under Section 88B of the Conveyancing Act 1919 for the following:

- Positive covenant over the land for the nominated Asset Protection Zone area in accordance with the Bushfire Risk Assessment report prepared by Melanie Jackson and dated 3 December 2019.

Burdens: Lot 39 PD263730 and Lot 65 DP866656

Benefits: Lot 38 DP 263730

[GENNS03]

15. Section 7.11 Contributions

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

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

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

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

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

- (a) Tweed Road Contribution Plan:
- |  |         |
|--|---------|
| 1.3 Trips @ \$1450 per Trips           | \$1,885 |
| (\$1,284 base rate + \$166 indexation) |         |
| CP Plan No. 4                          |         |
| Sector8_4                              |         |

(b)	Open Space (Casual): 0.5833 ET @ \$624 per ET (\$502 base rate + \$122 indexation) CP Plan No. 5	\$364
(c)	Open Space (Structured): 0.5833 ET @ \$714 per ET (\$575 base rate + \$139 indexation) CP Plan No. 5	\$416
(d)	Shirewide Library Facilities: 0.5833 ET @ \$933 per ET (\$792 base rate + \$141 indexation) CP Plan No. 11	\$544
(e)	Bus Shelters: 0.5833 ET @ \$71 per ET (\$60 base rate + \$11 indexation) CP Plan No. 12	\$41
(f)	Eviron Cemetery: 0.5833 ET @ \$135 per ET (\$101 base rate + \$34 indexation) CP Plan No. 13	\$79
(g)	Community Facilities (Tweed Coast - North) 0.5833 ET @ \$1539 per ET (\$1,305.60 base rate + \$233.40 indexation) CP Plan No. 15	\$898
(h)	Extensions to Council Administration Offices & Technical Support Facilities 0.5833 ET @ \$2187.14 per ET (\$1,759.90 base rate + \$427.24 indexation) CP Plan No. 18	\$1,275.76
(i)	Cycleways: 0.5833 ET @ \$526 per ET (\$447 base rate + \$79 indexation) CP Plan No. 22	\$307
(j)	Regional Open Space (Casual) 0.5833 ET @ \$1215 per ET (\$1,031 base rate + \$184 indexation) CP Plan No. 26	\$709
(k)	Regional Open Space (Structured): 0.5833 ET @ \$4264 per ET (\$3,619 base rate + \$645 indexation) CP Plan No. 26	\$2,487

[PCC0215/POC0395/PSC0175]

16. 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 @ \$13,926= \$8,355.60

Sewer = 1.0 ET @ \$6,690 = \$6,690.00

[PCC0265]

17. In accordance with Section 4.68 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

18. Prior to Construction Certificate the plans shall be updated to show the location of the existing sewerage infrastructure and manhole located on the lot.

**PRIOR TO COMMENCEMENT OF WORK**

19. 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]

20. 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]

21. 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]

22. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 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]

23. 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]

24. **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]

25. 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]

## **DURING CONSTRUCTION**

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

[DUR0025]

27. 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]

28. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

29. 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]

30. 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]

31. 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]

32. 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 2017.

[DUR0415]

33. Any cut or fill on the property is to be battered at a ratio not greater than 1:2 (v:h) within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

34. 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]

35. 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]

36. Landscaping of the site shall be carried out in accordance with the submitted/approved Landscaping Plans. [DUR1045]
37. 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]
38. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
39. 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]
40. 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]
41. 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]
42. 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]
43. 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]

44. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

45. Works in the vicinity of public infrastructure must comply with the following requirements;

- a) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, concrete slab with construction joints offset one metre from the sewer pipeline (for any new driveways) 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.
- b) Trees and other landscaping that will grow to over one metre in height at maturity are not permitted to be planted 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.
- c) Deep soil planting zones are not permitted within the sewer easement or within one metre of the sewer if no easement exists, to ensure adequate protection of council's public sewer infrastructure.

[DURNS01]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

46. 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]

47. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

48. 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]

49. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

50. 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.

51. Prior to the issue of an Occupation Certificate all works in relation to the Asset Protection Zone on Lot 39 DP263730 and Lot 65 DP866656 are to be completed.

[POC0475]

## **USE**

52. 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]

53. The building is to be used for single dwelling purposes only.

[USE0505]

54. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

## **Conditions as per Option 3**

### **GENERAL**

1. The development shall be completed in accordance with the amended Statement of Environmental Effects received by Council on 6 May 2019 and

- Site Plan and Site Analysis - Plan Nos Sheet 1 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Proposed Dual Occupancy Floor Plan - Plan Nos Sheet 3 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Proposed Detached Garage and Carport Floor Plans, Elevations and Section - Plan Nos Sheet 4 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Proposed Dual Occupancy Elevations and Section - Plan Nos Sheet 5 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Proposed Setout Plan for Detached Garage and Carport - Plan Nos Sheet 6 of 9

- (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- Stormwater, Sedimentation and Landscape - Plan Nos Sheet 9 of 9 (Plan No 2130E) prepared by Parameter Designs dated 28 November 2018
- BASIX certificate number 980345S prepared by Sonia Macourt and dated 23 January 2019,

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0015]

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

[GEN0115]

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

5. Sewer manholes are 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]

6. 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]

7. Bushfire Asset Protection Zones

The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities.

- (a) At the commencement of building works and in perpetuity the entire property shall be managed as an 'Inner Protection Area' as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

[GEN0320]

8. Bushfire Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- (a) Water, electricity and gas are to comply with the provisions of Section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

[GEN0325]

9. 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) New construction shall comply with Sections 3 and 7 (BAL29) Australian Standard AS3959-2009 'Construction of buildings in Bush Fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

- (b) Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build-up of flammable material. Any materials used shall be non-combustible.

[GEN0335]

10. Bushfire Landscaping

- (a) Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

[GEN0340]

11. All existing trees within the road reserve are to be retained and protected during construction. Where existing trees within the road reserve cannot be adequately retained and protected, approval from Council's General Manager or their delegate is required to remove street trees and they are to be replaced with a similar species in a 45L pot in accordance with Council's Development Design Specification D14.08.03C Tree Planting and Location (for distances away from infrastructure such as light poles and driveways) and Standard Drawing 'Tree and Shrub Planting Details' Dwg. No. SD701 (including the installation of root barrier) to the satisfaction of Council's General Manager or their delegate.

[GEN0355]

12. Sewerage reticulation for the secondary dwelling shall be connected to the existing internal sewerage of the lot, ensuring the lot only has one connection to Council's public sewerage infrastructure.

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

13. Prior to the issue of a Construction Certificate a Plan of Management for maintenance of the Asset Protection Zone over Lot 39 DP263730 and Lot 65 DP866656 as indicated by the Bushfire Risk Assessment report prepared by Melanie Jackson and dated 3 December 2019, shall be prepared by the applicant and submitted to Council for approval. The Plan of Management is to be approved by the General Manager or his delegate prior to issue of the Construction Certificate.

[GENNS02]

14. Prior to the issue of a Construction Certificate an easement and restrictions as to user is to be created over Lot 39 DP263730 and Lot 65 DP866656 under Section 88B of the Conveyancing Act 1919 for the following:

- Positive covenant over the land for the nominated the Asset Protection Zone area in accordance with the Bushfire Risk Assessment report prepared by Melanie Jackson and dated 3 December 2019;
- Management of the Asset Protection Zone in accordance with the approved Plan of Management.

Burdens: Lot 39 PD263730 and Lot 65 DP866656

Benefits: Lot 38 DP 263730

[GENNS03]

15. Section 7.11 Contributions

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

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

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

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

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

- |   |         |
|---|---------|
| (a) Tweed Road Contribution Plan:<br>1.3 Trips @ \$1450 per Trips<br>(\$1,284 base rate + \$166 indexation)<br>CP Plan No. 4<br>Sector8_4 | \$1,885 |
| (b) Open Space (Casual):<br>0.5833 ET @ \$624 per ET<br>(\$502 base rate + \$122 indexation)<br>CP Plan No. 5                             | \$364   |
| (c) Open Space (Structured):<br>0.5833 ET @ \$714 per ET<br>(\$575 base rate + \$139 indexation)<br>CP Plan No. 5                         | \$416   |

(d) Shirewide Library Facilities: 0.5833 ET @ \$933 per ET (\$792 base rate + \$141 indexation) CP Plan No. 11	\$544
(e) Bus Shelters: 0.5833 ET @ \$71 per ET (\$60 base rate + \$11 indexation) CP Plan No. 12	\$41
(f) Eviron Cemetery: 0.5833 ET @ \$135 per ET (\$101 base rate + \$34 indexation) CP Plan No. 13	\$79
(g) Community Facilities (Tweed Coast - North) 0.5833 ET @ \$1539 per ET (\$1,305.60 base rate + \$233.40 indexation) CP Plan No. 15	\$898
(h) Extensions to Council Administration Offices & Technical Support Facilities 0.5833 ET @ \$2187.14 per ET (\$1,759.90 base rate + \$427.24 indexation) CP Plan No. 18	\$1,275.76
(i) Cycleways: 0.5833 ET @ \$526 per ET (\$447 base rate + \$79 indexation) CP Plan No. 22	\$307
(j) Regional Open Space (Casual) 0.5833 ET @ \$1215 per ET (\$1,031 base rate + \$184 indexation) CP Plan No. 26	\$709
(k) Regional Open Space (Structured): 0.5833 ET @ \$4264 per ET (\$3,619 base rate + \$645 indexation) CP Plan No. 26	\$2,487

[PCC0215/POC0395/PSC0175]

16. 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 @ \$13,926= \$8,355.60

Sewer = 1.0 ET @ \$6,690 = \$6,690.00

[PCC0265]

17. In accordance with Section 4.68 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

18. Prior to Construction Certificate the plans shall be updated to show the location of the existing sewerage infrastructure and manhole located on the lot.

**PRIOR TO COMMENCEMENT OF WORK**

19. 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]

20. 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]

21. 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]

22. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 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]

23. 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]

24. **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]

25. 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]

## **DURING CONSTRUCTION**

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

[DUR0025]

27. 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]

28. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

29. 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]
30. 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]
31. 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]
32. 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 2017.  
[DUR0415]
33. Any cut or fill on the property is to be battered at a ratio not greater than 1:2 (v:h) within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.
- Please note timber retaining walls are not permitted.  
[DUR0835]
34. 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]
35. 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]
36. Landscaping of the site shall be carried out in accordance with the submitted/approved Landscaping Plans.
37. 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]

38. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]
39. 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]
40. 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]
41. 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]
42. 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]
43. 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]
44. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main. [DUR2705]

45. Works in the vicinity of public infrastructure must comply with the following requirements;
- a) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, concrete slab with construction joints offset one metre from the sewer pipeline (for any new driveways) 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.
  - b) Trees and other landscaping that will grow to over one metre in height at maturity are not permitted to be planted 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.
  - c) Deep soil planting zones are not permitted within the sewer easement or within one metre of the sewer if no easement exists, to ensure adequate protection of council's public sewer infrastructure.

[DURNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

46. 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]
47. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

48. 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]

49. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

50. 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]

## USE

51. 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]

52. The building is to be used for single dwelling purposes only.

[USE0505]

53. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

## CONCLUSION:

Further investigations are required in respect of a corporate approach to development applications and requests from development proponents for reliance on public land to meet asset protection zone (APZ) requirements for bush fire management.

Any decisions with regard to development which proposes to burden Council owned land with an APZ should have regard to ongoing cost and liability burdens to Council.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

### b. Budget/Long Term Financial Plan:

- APZ area behind 52 Royal Drive, Pottsville - Approximate measurement 28m x 12m = 336m<sup>2</sup>.
- Unit rate for mowing 7 cents - Mowing height is under prescribed 100mm.
- The subject area is currently on a regular maintenance schedule and is serviced approximately 22 times a year.
- The current estimated cost to maintain the APZ behind this address on a yearly basis is \$517.44 (336 x .07 x 22).

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.

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14 [PR-CM] Development Application DA19/0371 for a Two Lot Boundary Adjustment at Lot 2 DP 850714 No. 1289 Kyogle Road, Uki; Lot 92 DP 807666 No. 1317 Kyogle Road, Uki

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**

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**SUMMARY OF REPORT:**

**Updated Summary since 3 October 2019 Planning Committee meeting**

At the Council meeting of 3 October 2019 Council resolved that:

*"Council, in accordance with its' resolved position of 1 August 2019, provide in principle approval of this application and that a report be brought back to the next Council meeting including recommended conditions of consent."*

This report provides conditions in accordance with this recommendation which are presented as Option 2 below.

The remainder of the report is unchanged from the previous report of 3 October 2019 which outlines the reasons for a recommendation of refusal of the proposal in accordance with legal advice.

**Summary of report from 3 October 2019 Planning Committee meeting**

Consent is sought for a two lot boundary adjustment between two rural zones lots. The purpose of the boundary adjustment is to facilitate the acquisition of land to enable the continuation of current grazing activities.

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

Subject lots	Current size	Proposed	% change
Lot 2 DP 850714	14.38ha	Lot 20 - 2.072ha	85.6% decrease
Lot 92 DP 807666	2.072ha	Lot 21 - 14.38ha	694% increase

The application is being made with respect to Clause 4.1C of the Tweed Local Environmental Plan 2014 which permits boundary adjustments between 2 or more lots where one or more of the resulting lots would be less than the prescribed 40ha minimum lot size.

Subsequent to accepting the application for lodgement, Council received legal advice pertaining to the interpretation of the term 'boundary adjustment' under Clause 4.1C in relation to another application. The legal advice indicated that any application for a boundary adjustment should relate to a minor alteration to boundaries and lot configuration.

Having regard to the legal advice received in relation to the meaning of a 'boundary adjustment' and the interpretation of Clause 4.1C of the Tweed Local Environment Plan 2014 (TLEP2014), it is considered that the proposal cannot be considered a boundary adjustment due to the significant variation in lot size and configuration from the original lots.

At the Council Meeting of 1 August 2019, Council considered a separate development application seeking approval pursuant to Clause 4.1C and the following Decision was made in relation to other applications seeking approval under Clause 4.1C:

- 3. Assess any DA's for Boundary adjustments that have already been accepted by Council before 01/08/19 on the interpretation of Clause 4.1(C)3 on their merits and using the interpretation publicly known at the time of their submission*

This development application DA19/0371 was lodged prior to 01/08/19 and as such this application is being referred to Council for determination.

This report has regard for the previous legal advice received in relation to Clause 4.1C and therefore recommends refusal of the application as it is considered that the proposal does not comply with Clause 4.1C.

Regardless of the application's non-permissibility under Clause 4.1C of the TLEP2014, the proposal is not considered to result in any unacceptable environmental impacts on the natural or built environment. The proposal is considered to be generally acceptable with regard to relevant State Environmental Planning Policies and the Tweed Development Control Plan 2008.

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 DA19/0371 for a two lot boundary adjustment at Lot 2 DP 850714 No. 1289 Kyogle Road, Uki; Lot 92 DP 807666 No. 1317 Kyogle Road, Uki be refused for the following reason:**

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. ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**REPORT:**

**Applicant:** Mr IR Arnold and Mrs JL Arnold  
**Owner:** Mr Ivan R Arnold & Mrs Judith L Arnold  
**Location:** Lot 2 DP 850714 No. 1289 Kyogle Road and Lot 92 DP 807666 No. 1317 Kyogle Road, Uki  
**Zoning:** RU2 Rural Landscape  
**Cost:** Nil

**Background**

Consent is sought for a two lot boundary adjustment between two rural zones lots. The applicant has stated that the purpose of the boundary adjustment is to transfer 12.3ha of grazing land between family members. The owners of Lot 2 are unable to appropriately manage the land due to ill health and wish to transfer a portion of their land to their son on the neighbouring lot. The subject land will continue to be used for grazing purposes and no vegetation removal is proposed to facilitate the proposal.

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

Subject lots	Current size	Proposed	% change
Lot 2 DP 850714	14.38ha	Lot 20 - 2.072ha	85.6% decrease
Lot 92 DP 807666	2.072ha	Lot 21 - 14.38ha	694% increase

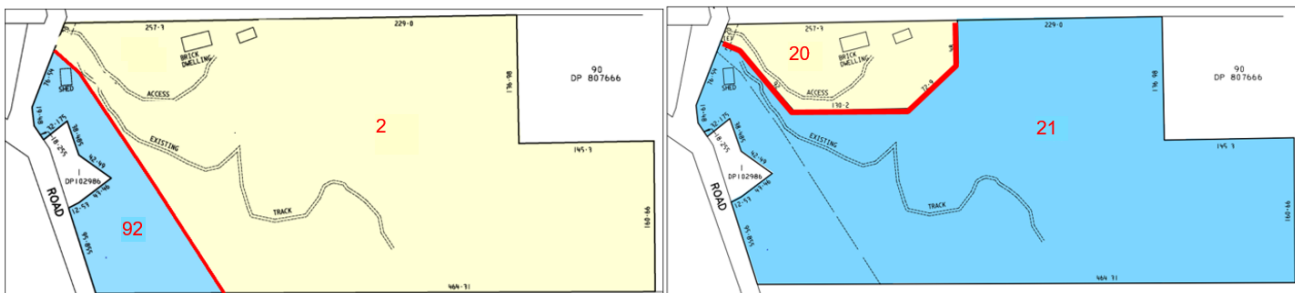


Figure 1 Current and proposed lot boundary (in red) and lot layout

This application is seeking approval under the provisions of Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments 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 each of the subject lots is currently less than the minimum lot size at 14.38ha and 2.072 ha. The proposal will result in each of the subject lots remaining less than the minimum lot size.

Council recently sought legal advice with regard to the meaning of the term *boundary adjustment* with respect to the application of Clause 4.6 in relation to another boundary adjustment application submitted to Council (DA19/0265). It is noted that 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 context of the site as a whole, the land affected by the proposal represents 74.8% (12.3ha) of the total site area of both lots (16.45ha). This cannot be considered a minor adjustment and each of the lots is substantially altered in size.

The resultant configuration of the proposed new lot layout is substantially different to the original lot layout and cannot be considered to be a *minor* adjustment as indicated by the legal interpretation of the clause.

Accordingly, with consideration for recent legal advice received regarding the interpretation of Clause 4.1C, and the meaning 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.

Council considered the legal advice received in regard to Clause 4.1C with respect to DA19/0265 at the Council Meeting of 1 August 2019. The Decision of Council included the following item:

3. *Assess any DA's for Boundary adjustments that have already been accepted by Council before 01/08/19 on the interpretation of Clause 4.1(C)3 on their merits and using the interpretation publicly known at the time of their submission*

This development application DA19/0371 was lodged 31 May 2019 prior to receipt of the legal advice received 2 July 2019 and prior to the above Decision of Council.

As such this application is being referred to Council for determination.

This report has regard to the legal advice received in relation to Clause 4.1C and therefore recommends refusal of the application as it is considered that the proposal does not comply with Clause 4.1C.



The remainder of 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.

### Site Description

The subject lots comprise of cleared grazing land with stands of mature vegetation adjacent to Kyogle Road and along the southern boundary of current Lot 2 (14.38ha). Aerial imagery suggests the land has been used for grazing for approximately 50yrs.

The land is undulating varying in height from RL 15m AHD to RL 85m AHD on the south eastern portion of current Lot 2. The land contains some ephemeral low order streams and farm tracks.

Lot 2 is 14.38 ha and has a dwelling entitlement. The site contains an approved house and telecommunications pole. A farm shed is also located on the property adjacent to the dwelling house. The site is used for cattle grazing.

Lot 92 is 2.072ha and has a dwelling entitlement. The site contains an approved dwelling, ancillary studio and a farm shed. The site is used primarily for rural residential purposes.



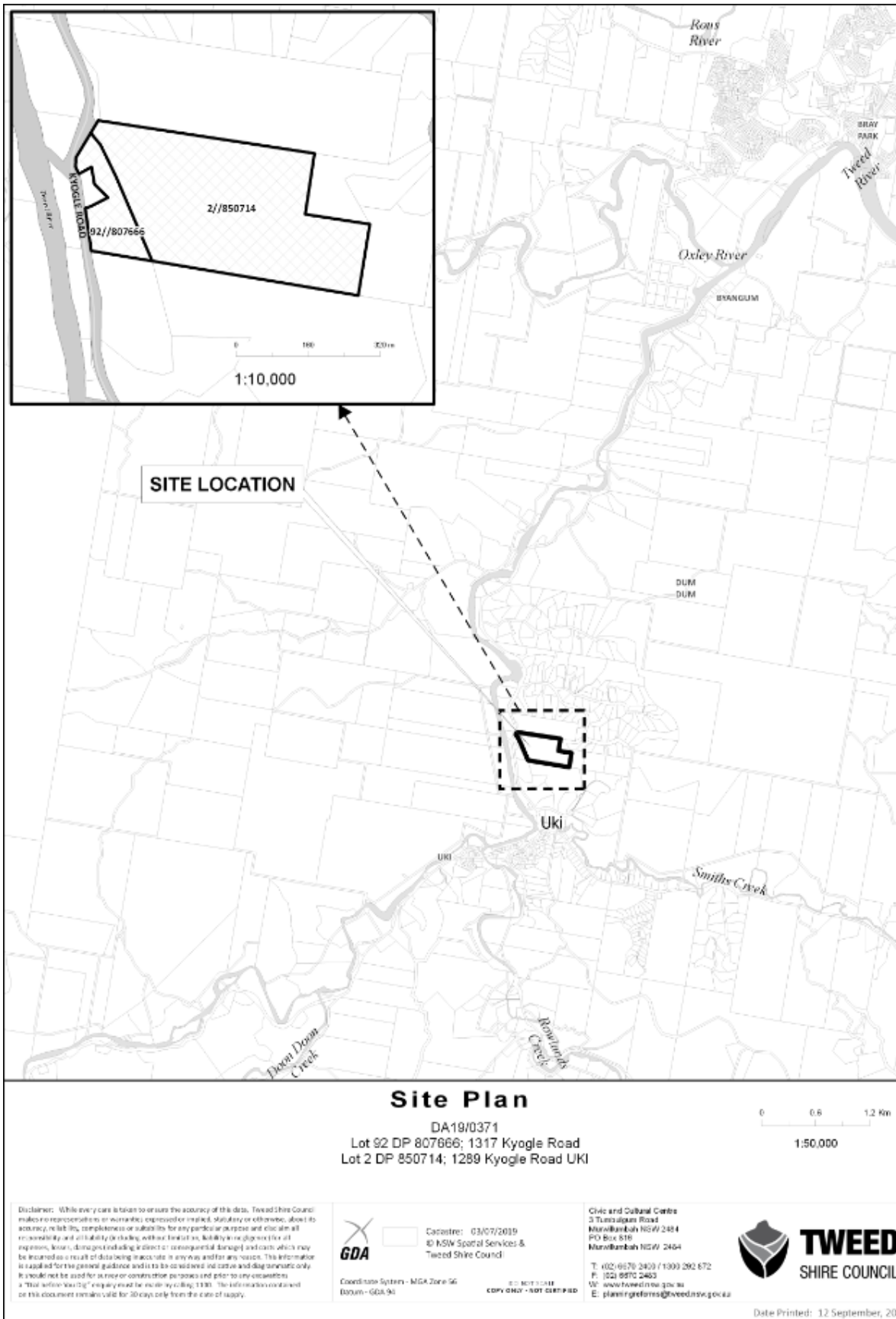
Figure 2 Subject lots with the proposed boundary shown in red.

The subject lots are mapped as bushfire prone and are within the Drinking Water Catchment Area. Lot 92 (2.072ha) is partially mapped as being potentially flood affected from the Clarrie Hall Dam and a small portion of the lot (11%) is identified as being Regionally Significant Non-Contiguous Farmland under the Farmland Protection Project. Each of the lots have frontage to Kyogle Road which is a Classified Main Road.

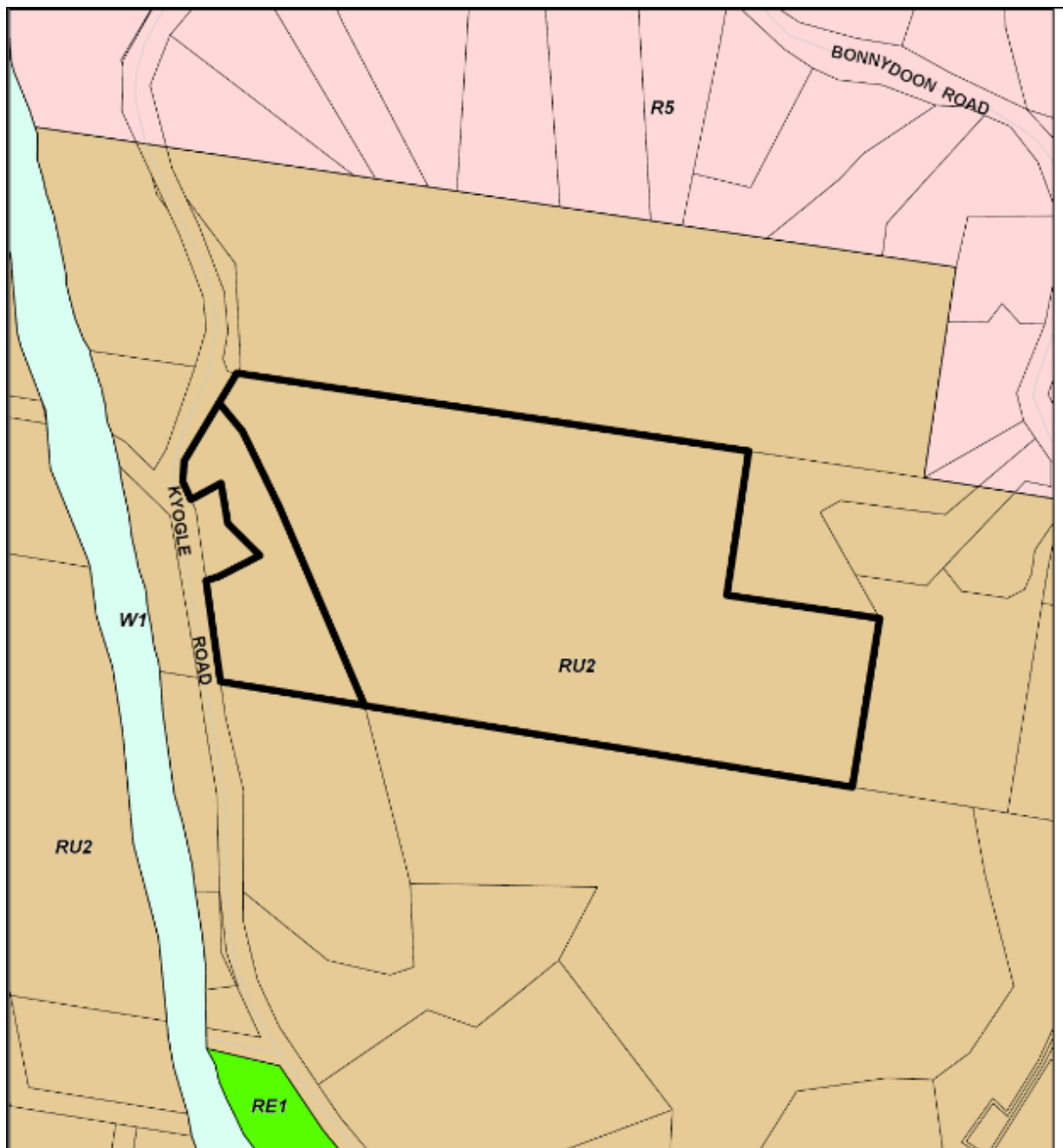
The application has been reviewed by Council's Environmental Health and Development Engineering Units who raised no objections to the proposal.



**SITE DIAGRAM**



**ZONE MAP**



- |              |                                     |                       |                   |
|--------------|-------------------------------------|-----------------------|-------------------|
| Subject Land | Tweed Local Environmental Plan 2014 | RU2                   | Rural Landscape   |
| Subject Land | R5                                  | Large Lot Residential | W1                |
|              | RE1                                 | Public Recreation     | Natural Waterways |

1:5,000 @ A4 Portrait  
 0 40 80 m  
 DRAFT ZONE  
 GDA  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geocentric Datum of Australia 2004  
 Grid: Map Grid of Australia Zone 56

**Site Plan - Local Environmental Plan**  
 DA19/0371  
 Lot 92 DP 807666; 1317 Kyogle Road  
 Lot 2 DP 850714; 1289 Kyogle Road UKI

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 Information (LPI)  
 and Tweed Shire Council



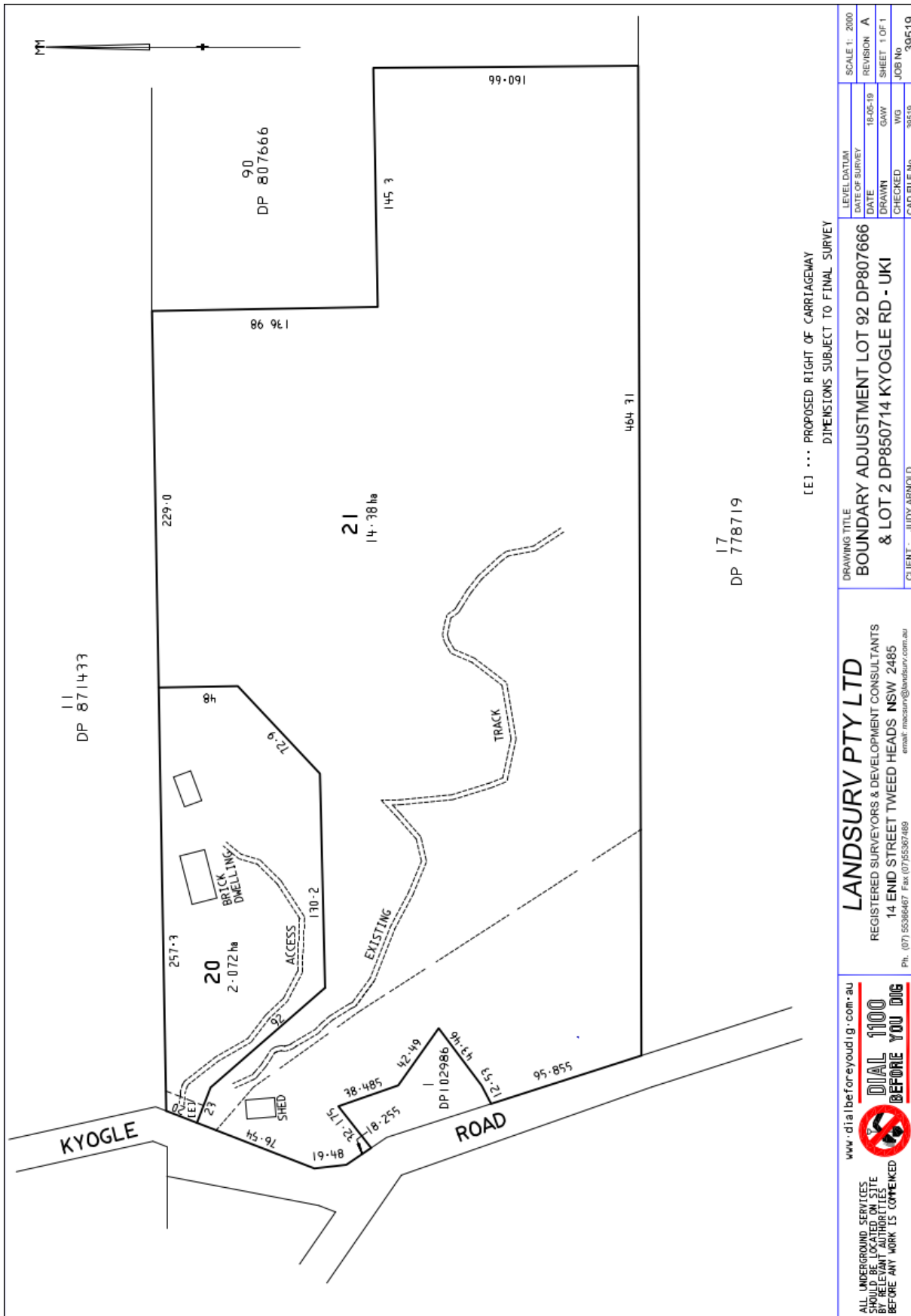
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Date Revised: 27 September 2019





DEVELOPMENT PLAN



LEVEL DATA		SCALE 1: 2000
DATE OF SURVEY	16-05-19	REVISION A
DATE	GAW	SHEET 1 OF 1
DRAWN	WVG	JOB NO
CHECKED	39519	39519
CAD FILE No.		

DRAWING TITLE  
**BOUNDARY ADJUSTMENT LOT 92 DP807666  
 & LOT 2 DP850714 KYOGLE RD - UKI**

CLIENT : JUDY ARNOLD

**LANDSURV PTY LTD**  
 REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS  
 14 ENID STREET TWEED HEADS NSW 2485  
 email: msurvey@landsurv.com.au  
 Ph. (07) 55366467 Fax (07) 55367489

www.dialbeforeyoudig.com.au  


ALL UNDERGROUND SERVICES SHOULD BE LOCATED ON SITE BEFORE ANY WORK IS COMMENCED

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

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

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

The particular aims of this Plan are as follows:

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

The proposed boundary adjustment relates to rural land used for agricultural purposes. The plan aims to, among other things, encourage a sustainable local economy and agriculture. In this respect, the proposal is consistent with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The subject lots are zoned RU2 Rural Landscape and the objectives the zone are as follows:

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

The purpose of the proposal is to enable the subject land to be used for grazing purposes. No works are proposed and as such the proposal will not impact on the existing rural landscape character of the land. The proposal is therefore considered to be consistent with the objectives of the zone.

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

The application is seeking a boundary adjustment under Clause 4.1C Exceptions to minimum subdivision lot size for boundary adjustments. Consideration of the application of Clause 4.1C to the proposed alteration of the boundary is provided in an earlier section of this report with respect to recent legal advice received regarding the interpretation of the term '*boundary adjustment*'.

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 substantially in size and configuration from the original lots. Current Lot 92 will increase by 694% and current Lot 21 will decrease by 85.6%.

Irrespective of the recent legal interpretation of the term 'boundary adjustment', the proposal is considered to be compliant with the provisions of Clause 4.1C as detailed 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*

No new lots will be created and no opportunities for additional dwelling is created by the proposal. Each of the current lots has a dwelling entitlement and each of the lots resulting from the proposal will be below the minimum lot size of 40ha which prevents further subdivision to create additional lots with a dwelling entitlement.



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

No changes to current land uses are proposed. Current Lot 92 (2.072ha) contains a dwelling, studio and farm shed and is currently used primarily for rural living purposes. Current Lot 2 contains a dwelling and farm shed and is used for rural living purposes and cattle grazing. The purpose of the proposal is to transfer 12.308ha from Lot 2 to Lot 92 so that the land is able to be appropriately managed by the property owners.

Proposed new Lot 20 (2.072ha<sup>2</sup>) will contain a single dwelling and is of sufficient size and dimensions to provide appropriate buffers to agricultural activities (grazing) on the adjacent lot. The existing dwelling is located approximately 63m from the proposed new lot boundary. 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 unlikely to result in adverse impacts the environmental values of the land and no changes to the current uses are proposed. The portion of land to be essentially transferred from existing Lot 2 to new Lot 21 will continued to be used for cattle grazing.

- (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 rural living and grazing purposes. Land in the vicinity of the subject site is utilized primarily for agricultural and rural residential purposes. Rural lots in the locality range in size from 57ha to 2798m<sup>2</sup>.

- (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 proposal is unlikely to have a significant impact on adjacent agricultural and rural residential uses in the locality as is it noted that not changes to land uses are proposed.

- (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 existing or future 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,*

The subject lots are zoned RU2 Rural Landscape and do not adjoin any other zone. The proposal will not impact land zoned R5 Large Lot Residential 200m north of the site.

- (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 current boundary traverses land ranging in elevation from approximately RL 25m AHD to RL 15m AHD. The proposed new boundary alignment generally follows the contour of the land with new Lot 20 generally contained to land above the RL 30m AHD contour line. The proposed re-aligned boundary is unlikely to result in any detrimental impact to the natural or physical environment.

As such it is considered that the proposal is appropriate with regard to the physical constraints of the land.

#### Clause 4.3 - Height of Buildings

Not applicable as no buildings/dwellings are proposed.

#### Clause 4.4 – Floor Space Ratio

Not applicable as no buildings/dwellings 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.

#### Clause 5.5 – Development within the Coastal Zone

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 not identified on mapping under the Aboriginal Cultural Heritage Management Plan (ACHMP).

No works are proposed and as such it is considered unlikely the proposal will impact European or Aboriginal Cultural Heritage items.



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 not mapped as being affected by Acid Sulfate Soils.

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

A portion of current Lot 92 is mapped as being affected by possible flooding from the Clarrie Hall Dam. The proposed altered lot boundary is not on land that is mapped as being flood affected. The proposal will not adversely flood behaviour or result in an increase of any adverse effects of flooding. The proposal is considered compliant with the provisions of this clause.



Clause 7.4 - Floodplain risk management

Not applicable and the subject site is not on land to which this clause is applicable.

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 subject land is located within the Drinking Water Catchment Area. No change in land use is proposed by this application and the development is unlikely to have any adverse impact on the quality and quantity of water entering the drinking water storage. The proposal is compliant with the provisions of this clause.

Clause 7.8 – Airspace operations

The site is not mapped as being affected by airspace operations.

Clause 7.9 - Development in areas subject to aircraft noise

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

Clause 7.10 - Essential Services

The site is not connected to Council's water or sewerage infrastructure.

The applicant has not provided an on-site sewage management land capability assessment report or any supporting information discussing the suitability of the proposed Lots for on-site sewage management. However it is considered that each of the proposed lots are of a size that is capable of accommodating appropriate onsite sewerage management systems.

No changes to existing telecommunications and electricity services are required.

Existing access to each of the dwellings is to remain unchanged and is considered to be suitable.

**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 NCRP 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 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 aerial imagery suggests that the land has been used for grazing for at least 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.*

No change to the current cattle grazing and rural residential activities are proposed. 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 continued agricultural and rural residential purposes with regard to potential contamination of the site and the provisions of this SEPP have been satisfied.

#### SEPP (Infrastructure) 2007

The current and proposed lots each have frontage to Kyogle Road which is a classified main road. As such Clause 101 of the Infrastructure SEPP is applicable to the proposal which states:

#### **101 Development with frontage to classified road**

- (1) *The objectives of this clause are:*
  - (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
  - (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*
- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
  - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) *the design of the vehicular access to the land, or*
    - (ii) *the emission of smoke or dust from the development, or*
    - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The proposal relates to a subdivision of land with no change in land use and as such the proposal does not relate to a noise sensitive development. No changes to existing access is proposed which is considered to be acceptable. The development will not compromise the ongoing operation of the classified road. The proposal is considered to be compliant with the provisions of this SEPP.

#### 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

A3-Development of Flood Liable Land

A portion of current Lot 92 is mapped as being affected by possible flooding from the Clarrie Hall Dam. No additional dwellings are proposed that would be affected by flooding and the proposal is considered to be compliant with the provisions of this Section of the DCP.

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*

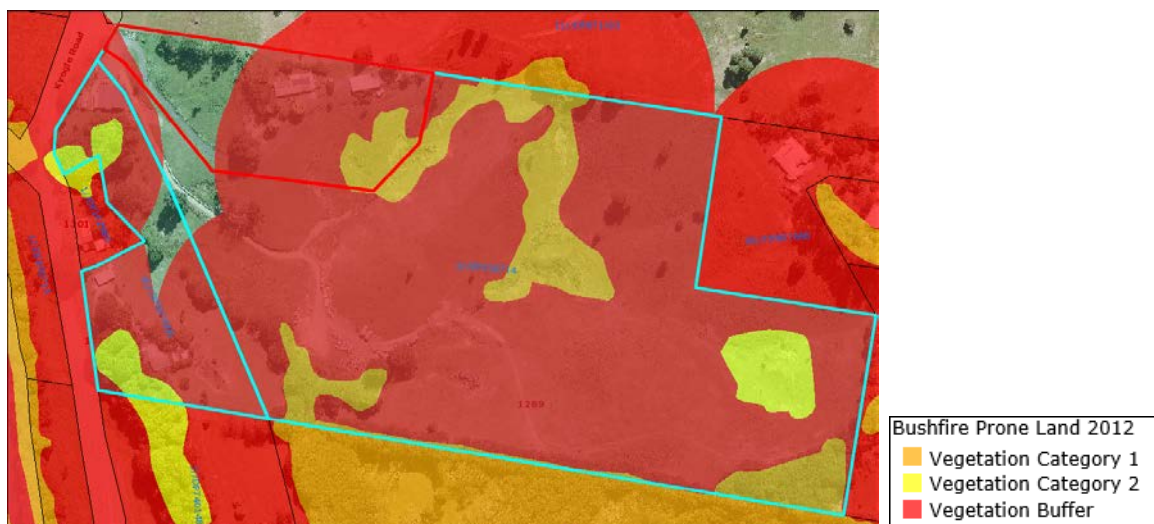
No fill is proposed to facilitate the boundary alteration the proposal does not increase the flood risk to any dwellings. The existing dwellings remain above the estimated flood level.

- *Bushfire Risk*

The subject site is mapped as bushfire prone. The existing dwellings on each of the subject lots are 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 asset protection zones.

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



- *Native Vegetation and Significant Vegetation*

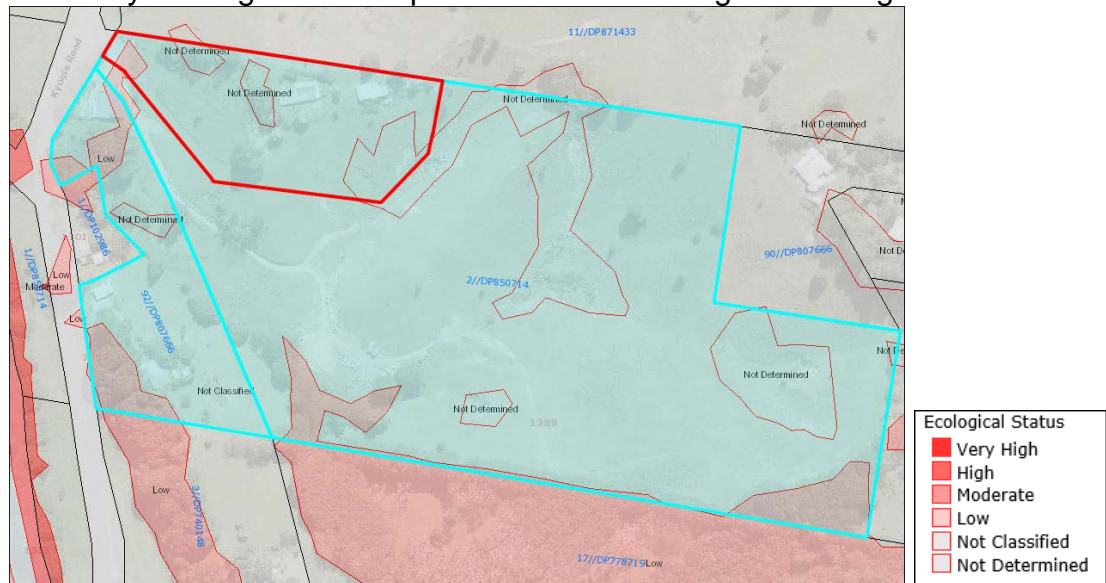


The subject lots are currently used as grazing land and for rural residential purposes. Each of the lots contain managed gardens in association with the respective dwellings.

The site is not identified on the Biodiversity Values Map.

Proposed Lot 20 (2.072ha) is substantially cleared of native vegetation. Proposed Lot 21 (14.38ha) is also substantially cleared however does include stands of mature trees near the southern boundary and adjacent to Kyogle Road. These areas are mapped as Low Ecological Status on Councils Vegetation Mapping and are not on land affected by the altered boundary alignment.

No vegetation is proposed to be removed to facilitate the proposal and any new boundary fencing will not require the removal of significant vegetation.



- *Landscape visual character*

No subdivision works or vegetation removal is required to facilitate the proposal. The future land uses will be consistent with the current rural residential and grazing activities. As such it is considered that the proposal will not alter the landscape visual character of the locality and the proposal is considered to be acceptable in this regard.

- *On-site effluent disposal*

The applicant has not provided an on-site sewage management land capability assessment report or any supporting information discussing the suitability of the proposed lots for on-site sewage management. However it is considered that each of the proposed is of a size that is capable of accommodating appropriate onsite sewerage management systems.

- *Rural Watercourses and drainage*

Low order streams traverse the site and drain to the Tweed River located approximately 60m to the west of the site on the other side of Kyogle Road. The proposal will not impact these ephemeral streams.

As mentioned previously, no works are proposed to facilitate the boundary adjustment and no change to existing farming activities and rural living are proposed. The subdivision will not alter the drainage layout and the proposal is considered acceptable in this regard.

- *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;
- Is able to comply with Planning for Bushfire Protection 2006;
- Is capable of accommodating appropriate on-site sewerage management systems; and
- Is of an appropriate size to allow for adequate separation of dwellings to rural activities.

The proposal will result in a reduction of road frontage for new Lot 20 from 32.5m (existing Lot 2) to 20m however this is considered to be acceptable. No changes to the existing access to the dwellings is proposed.

An easement for access, being a proposed Right of Carriageway is indicated on the plans to facilitate ongoing access for the farm shed located on proposed Lot 21.

- *Rural Movement Network*

No new roads are proposed and no changes to existing access is proposed. The proposal is acceptable in this regard.

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

There are no planning agreements applicable to the proposal.

**(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 Coastal Protection Act 1979),**

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The 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.

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

**Context and Setting**

The proposed boundary realignment does not result in any change of use of the land. 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 57ha to 2798m<sup>2</sup>. The proposal is therefore considered to be consistent with the context and setting of the rural location.

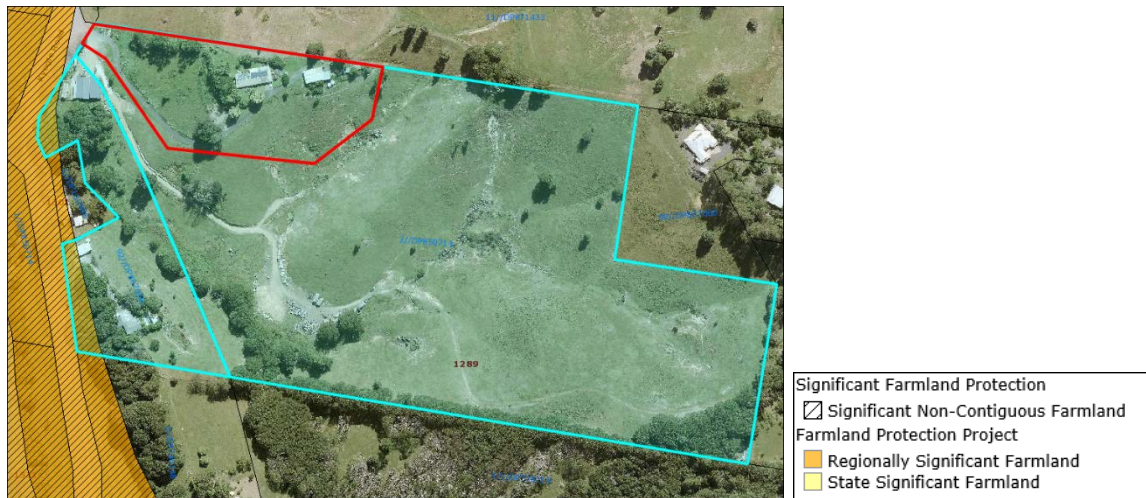
**Flora and Fauna**

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 proposed development satisfies 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.

Farmland of State or Regional significance

The subject site is partially mapped as Regionally Significant Non-Contiguous 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 any 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*.



**(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.

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 asset protection zones for each of the existing dwellings. The General Terms of Approval are considered to be reasonable and appropriate.

**(e) Public interest**

The proposal relates to the reorganisation of lot boundaries to facilitate on ongoing agricultural activity 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. Approve the application accordance with the Recommendation of Council at the Meeting of 3 October 2019 and the below conditions.

Option 1 is recommended.

**Conditions as per Option 2**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Boundary Adjustment Plan No. 39519 prepared by Landsurv Pty Ltd and dated 18 May 2019, except where varied by the conditions of this consent. [GEN0005]
2. The subdivision is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications. [GEN0125]

**PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

3. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans. [PSC0005]
4. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with. [PSC0825]
5. Prior to the issue of the Subdivision Certificate, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent. [PSC0830]
6. The creation of Easements for services, Rights Of Carriageway and Restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:
  - (a) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 "Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway or Easement shall make provision for maintenance of the Right Of Carriageway or Easement by the owners from time to time of the land

benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

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

[PSC0835]

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

Furthermore, prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.

[PSC0845]

8. Prior to registration of the Plan of Subdivision, a **Subdivision Certificate** shall be obtained.

The following information must accompany an application:

- (a) Submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and original Admin Sheets) prepared by a registered surveyor together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) All detail as tabled within Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

9. Prior to the issue of a Subdivision Certificate, an on-site sewage management land capability assessment for proposed Lots 20 & 21 prepared by a suitably qualified on-site sewage management consultant shall be submitted to Council. The information should be provided in accordance with AS1547/2012.

Any such recommendations as provided within the on-site sewage management land capability assessment shall be carried out to the satisfaction of the General Manager or his delegate prior to the issue of the Subdivision Certificate.

[PSCNS01]

## **GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame

contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of Subdivision Certificate and in perpetuity, the land surrounding the existing dwelling on proposed Lot 20, to the property boundary to the north and to a distance of 20 metres in other directions, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones.'
2. At the issue of Subdivision Certificate and in perpetuity, the land surrounding the existing dwelling on proposed Lot 21, to a distance of 5 metres to the west and 20 metres in other directions, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

### **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. Furthermore, the proposal is considered to be generally acceptable with regard to relevant State Environmental Planning Policies and the Tweed Development Control Plan 2008.

The interpretation of the provisions of Clause 4.1C of the TLEP has been considered with respect to legal advice received 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 boundary is considered to result in lots that are altered beyond a minor extent with regard to lot size and shape.

### **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 6067097)

*(Confidential)* Attachment 2. Lindsay Taylor Lawyers Legal Advice (TWD19007)  
(ECM 6067098)

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## 15 [PR-CM] Proposal to Establish Alcohol-Free Zone

**SUBMITTED BY:** Building and Environmental Health

mhm



Making decisions with you  
*We're in this together*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.4 Councillor and Civic Business - To make informed decisions in the best interest of the community.

**ROLE:** Advocate

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### SUMMARY OF REPORT:

An alcohol-free zone is a means by which Council may limit locations where the consumption of alcohol is permitted.

The principal objective of an alcohol-free zone is to prevent disorderly behaviour caused by the consumption of alcohol in public areas in order to improve public safety. Alcohol-free zones are an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

Drinking of alcohol is prohibited in a zone that has been established by Council which can include public places such as public roads, footpaths, or public car parks.

Within Tweed Shire, the enforcement of these zones is the responsibility of NSW Police.

Council at its meeting of 7 December 2017 resolved to approve the re-establishment of alcohol-free zones in accordance with the Local Government Act 1993 within areas of Tweed Heads, Tweed Heads South, Kingscliff, Salt, Cabarita Beach and Murwillumbah for the maximum period of four years.

NSW Police, Tweed Byron Police District have requested the establishment of an additional alcohol-free zone in Wharf Street between Bay Street and Kennedy Drive; River Terrace; and Terranora Terrace, Tweed Heads. This zone is proposed until 1 December 2021, at which time all alcohol-free zones within the Tweed Shire will be re-established for a further four years.

This report seeks to establish an additional alcohol-free zone following appropriate public consultation in accordance with the provisions of Section 644, 644A and 646 of the Local Government Act 1993 and Ministerial Guidelines on Alcohol-Free Zones (Guidelines), 2009.

**RECOMMENDATION:**

**That Council:**

- 1. Endorses the *Proposal to Establish an Alcohol-Free Zone 2019 within Tweed Shire* (as identified in Attachment 1 to this report) be placed on public exhibition for a period of 30 days to establish an alcohol-free zone within Wharf Street between Bay Street and Kennedy Drive; River Terrace; and Terranora Terrace, Tweed Heads until 1 December 2021;**
- 2. Notifies the prescribed interested parties, including NSW Police Force Local Area Commander and officers in charge of Tweed Heads, Kingscliff and Murwillumbah Police Stations, any liquor licensees and secretaries of registered clubs whose premises border on, or adjoin, or are adjacent to the zones, and the Tweed Byron Aboriginal Land Council of the proposal to establish the alcohol-free zone; and**
- 3. Following the public exhibition, a report be brought back to Council seeking final endorsement of this proposal.**



## REPORT:

An alcohol-free zone is a means by which Council may limit the locations where the consumption of alcohol is permitted.

The principal objective of an alcohol-free zone is to prevent disorderly behaviour caused by the consumption of alcohol in public areas in order to improve public safety. Alcohol-free zones are an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

Drinking of alcohol is prohibited in a zone that has been established by Council which can include public places such as public roads, footpaths, or public car parks.

Council approved footpath alfresco dining areas are not included within the alcohol-free zones. These areas are clearly delineated by Council placed footpath markers. Businesses operating outside of these markers may expose their patrons to the regulatory provisions.

Alcohol-free zones can also be varied or suspended for special circumstances with the approval of Council's General Manager, and are separate from alcohol prohibited area signage within recreational areas such as sports grounds, parks, and reserves.

To validly establish an alcohol-free zone Council must comply with the procedures in sections 644 to 644C of the Local Government Act 1993 (the Act) and the Ministerial Guidelines on Alcohol-Free Zones (Guidelines), 2009.

Council at its meeting of 7 December 2017 resolved to approve the re-establishment of alcohol-free zones within areas of Tweed Heads, Tweed Heads South, Kingscliff, Salt, Cabarita Beach and Murwillumbah for the maximum period of four years, which are due to expire on 1 December 2021.

NSW Police, Tweed Byron Police District have requested the establishment of an additional alcohol-free zone in Wharf Street between Bay Street and Kennedy Drive; River Terrace; and Terranora Terrace, Tweed Heads. This zone is proposed until 1 December 2021, at which time all alcohol-free zones will be re-established for a further four years within The Tweed.

Alcohol-free zones provide NSW Police with options beyond existing 'move on' powers including the power to seize and tip out or otherwise dispose of alcohol without the need to issue a warning.

An alcohol-free zone can be established after a phase of public consultation and advertising. The establishment of an alcohol-free zone within the identified trouble spot provides officers of NSW Police with regulatory options to control irresponsible street drinking and the related issues of crime, public nuisance, and litter.

In accordance with the Guidelines, a *Proposal to Establish an Alcohol-Free Zone 2019 within Tweed Shire* document has been prepared for public consultation and advertising (see attachment for public exhibition material) for a period of 30 days to satisfy the requirements of Sections 644 and 644A of the Act. A person who is a representative of a community group active in the area, a police officer, or a person who lives or works in the area may also make an application to Council to establish an alcohol-free zone.

The nominated areas are as follows:

- Wharf Street between Bay Street and Kennedy Drive;
- River Terrace; and
- Terranora Terrace.

24 hours per day, all days.

The Proposal document is contained within Attachment 1 to this report.

**OPTIONS:**

That Council:

1. Approves the proposal to establish an alcohol-free zone following appropriate public consultation; or
2. Refuses the proposal.

Option 1 is recommended.

**CONCLUSION:**

The NSW Police, Tweed Byron Police District requested the establishment of an additional alcohol-free zone within Tweed Heads. This zone is proposed until 1 December 2021, at which time all alcohol-free zones will be re-established.

This alcohol-free zone will assist NSW Police in preventing disorderly behaviour caused by the consumption of alcohol in public areas and prevent the escalation of irresponsible street drinking to incidents involving serious crime.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Stage 1 – approximately \$67.60 (advertising); Stage 2 approximately \$3400 (advertising and sign installation), to be funded from a current operational budget.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

*Proposal to Establish an Alcohol-Free Zone 2019 within  
Tweed Shire – Public Exhibition Material (ECM 6088896)*

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## REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT

### 16 [SCE-CM] Recycled Plastic Seating

**SUBMITTED BY:** Parks and Active Communities

mhm



People, places and moving around

*Who we are and how we live*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.2 Places
- 3.2.7 Parks and Gardens - To provide and manage quality and accessible public parks and gardens for the enjoyment and wellbeing of the community and visitors to the Tweed.

**ROLE:** **Provider**

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#### SUMMARY OF REPORT:

At its meeting held 15 August 2019, it was resolved that Council:

- "1 *Notes the recycling crisis that is affecting Australia due to the China Sword policy.*
2. *Investigate and bring back a report on whether we can increase the purchase of recycled plastic products to assist in increasing the market demand for this material, for instance park / street furniture and particularly seating that may also assist our elderly population and provide enhanced opportunities for social interaction.*

This report responds to item two of the resolution."

#### RECOMMENDATION:

**That Council receives and notes the report on Recycled Plastic Seating and continues to trial recycled park furniture products as they become available with the intent of increasing their use within the shire parks.**

## REPORT:

At its meeting held 15 August 2019, it was resolved that Council:

- "1 Notes the recycling crisis that is affecting Australia due to the China Sword policy.
2. Investigate and bring back a report on whether we can increase the purchase of recycled plastic products to assist in increasing the market demand for this material, for instance park / street furniture and particularly seating that may also assist our elderly population and provide enhanced opportunities for social interaction."

### Current use of recycled products in parks

Council currently uses a variety of recycled plastic products within public areas. Over the years Chromated Copper Arsenate (CCA) treated timber bollards have been replaced with recycled plastic bollards, timber posts supporting public taps and drinking fountains have also been replaced with recycled plastic bollards. These products use 100% recycled plastic. Use of recycled plastic for this type of fixture is feasible as they are bulky products that are not structural or affected by hot weather.

Council also uses a number of composite materials throughout its public parks and within managed streetscapes. These include decking material in place of timber decking in parks such as the new Rowan Robinson Park in Kingscliff and Ambrose Brown Park in Pottsville. A large tiered viewing platform seat has also been created overlooking the beach at Kingscliff using this composite material.



Figure 1: Viewing platform in Rowan Robinson Park made from composite materials

A composite material uses recycled plastic along with other additives such as wood flour to give the product strength.

An example of composite products is 'Futurewood', a recycled composite timber that requires no oiling and does not rot but is made from recycled polyolefin (plastic from post industrial waste), rice husks and recycled hardwood timber.

### **Current limitations on recycled plastic furniture**

#### Strength

Generally recycled plastics on their own do not have the internal strength, like timber or aluminium, to span any meaningful distance before warping or sagging without being manufactured thick or bulky. This largely contributes to their limited use in outdoor furniture beyond bollards and wheel stops. For this reason composite material products have a wider application within our parks.

#### Aesthetics

Due to the lack of internal strength, the use of recycled plastic for park benches requires additional supports and legs. Replac use this method and whilst it addresses the issues of strength and sagging, it severely compromises its aesthetics and limits its use in high profile urban projects or district parks. The community generally value not only function, but form and aesthetics play a major role in a projects success and acceptance within the community.

#### Quality

Council's experience with recycled plastic quality products has been mixed. Some products fade quickly, after only a few months in many cases, and without additional support or additional construction materials recycled plastics alone tend to sag as it gets hot and also retain their heat for longer.

Recycled plastics can also be prone to structural failings and become brittle under extreme and constant UV exposure. Finally vandalism can be difficult to remove as the plastic can be easily carved into and felt pens tend to leave a permanent mark behind even after cleaning.

### **Materials currently used for park benches and tables**

Due to the limitations described above, Council currently installs aluminium furniture types including seats with backs and arms and whole picnic settings. These are low maintenance with only an annual wash down required. This furniture is considered a sustainable option as it is cost effective to purchase, has a comparatively long life and requires little ongoing maintenance simply requiring an annual wash.

As an alternative but to retain the 'timber look and feel' council has trialled a shrink wrapped timber look over an aluminium batten down at Rowan Robinson Park. An all-purpose vinyl is treated with heat to shrink the vinyl around the aluminium batten. In the twelve months since their installation there has been no maintenance required beyond a wash down.

Where practical, a mixture of composite plastic decking and battens has been used over in situ concrete that is functional and also robust in flood prone areas such as Budd Park.





*Figure 2: Solid recycled plastic battens showing sagging between frame connections*



*Figure 3: A Replas seat illustrating limited colour choice and bulky design required to prevent sagging.*





*Figure 4: Aluminium shrink wrapped bench in Rowan Robinson Park*



*Figure 5: A mixture of composite plastic decking over in-situ concrete in Budd Park designed to be functional and flood proof.*



## Cost Comparison

Below are costs comparisons from three options discussed in this report:

1. Company: Street Furniture Australia  
Seat Type: Park Furniture Range 1800mm long, shrink wrapped wood grain aluminium battens with back and arms, surface mounted (figure 4). Manufactured within Australia.  
  
Cost: \$1100 per seat
2. Company: Strabe  
Seat Type: Evo Seat with arms 1800mm long. Composite plastic battens (enviroslat) Enviroslat is developed in Australia and the United States but is largely made in China.  
  
Cost: \$1580 per seat
3. Company: Replas  
Seat Type: Daintree plastic seat with back and metal arms, surface mounted. Replas manufacture all the recycled plastics within their 3 factories in Victoria. This is the 3 legged seat (figure 3).  
  
Cost: \$1100.

## Summary

Council uses a range of recycled products and sustainable materials within its wide furniture range and decking material from plastic bollards and plastic wheel stops to composite plastic decking over a composite fibre glass structure and aluminium battened picnic settings.

The move away from timber has helped reduce ongoing maintenance costs and Council is always searching for new and innovative products that increase sustainability on all levels. There are a number of plastic and composite plastic materials on the market that Council regularly trials and as the market further develops and broadens the range of products Council will continue to monitor, trial and utilise where feasible.

The limited range, style and functionality of fully recycled plastic products may not serve to increase demand for these products at this point in time.

Finally, the companies that council engage with to provide park furniture adhere to best practise principles for environmental sustainability within their industry. The factories follow Toyota lean principles to minimise waste, timbers are Programme for the Endorsement of Forest Certification (PEFC) certified and locally sourced and most goods are Australian made and owned.

## OPTIONS:

- 1 That Council receives and notes this report and continues to trial recycled park furniture products and they become available.
2. That Council receives and notes this report.
3. That Council considers another option.

**CONCLUSION:**

Council currently utilises a range of products with varying degrees of recycled content. Currently, fully recycled plastic products have limitations in their application but Council will continue to identify and trial recycled content products as they are developed with the intent of increasing their use within the shire parks.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

The cost of park furniture is included in annual budget allocations and grant funded projects. The life cycle costs of various construction materials is considered when selecting park furniture.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## 17 [SCE-CM] Tweed Regional Accessible Park and Playground Seed Funding

**SUBMITTED BY: Community and Cultural Services  
Parks and Active Communities**

mhm



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.2 Community and Cultural Development - To provide community and cultural development services to foster and improve social and cultural well-being.

**ROLE:** **Provider**

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### SUMMARY OF REPORT:

The construction of a regional accessible playground was identified as a project in the Tweed Shire 2007 Social Plan. Seed funding of \$350,000 was allocated in the 2007 budget for this project. Concept planning was undertaken through Council's Access Committee to progress this project however the philosophy on how to best provide accessible play spaces has shifted since the project was first identified. Instead of a single site regional accessible playground this report proposes improving accessibility in numerous play spaces across the Tweed Shire.

This report summarises the background and history of the accessible playground project and the recent change in focus of the NSW Government towards inclusion in all play spaces for children. The report proposes the alternate use of the seed funding to support the implementation of the Everyone Can Play Guidelines developed by the NSW Government and to ensure that people with disabilities are actively and meaningfully involved in the planning and design process. This change aligns with the principles of the Access and Inclusion Plan 2018-2021 for a universal design approach and the Open Space Strategy 2019-2029.

One of the play spaces identified for the re-allocation of funding is an inclusive play space in Goorimahbah - Place of Stories. Council has been invited by Variety Livvi's Place to enter into a partnership to develop a concept plan for the inclusive play space. The proposal was considered and endorsed by the Aboriginal Advisory Committee (AAC) at its meeting of 24 September 2019 and consultation for the development of the Draft Jack Evans Boat Harbour Plan of Management also supported the addition of a more inclusive play space.

**RECOMMENDATION:**

**That Council:**

- 1. Endorses the use of the seed funding for the implementation of the Everyone Can Play Guidelines for inclusive children's play spaces in Tweed Shire and to ensure the active participation of people with disabilities in the process.**
- 2. Accepts the grant from Variety Livvi's Place of \$30,000 to develop a concept plan for the upgrade of the existing playground located in Goorimahbah - Place of Stories to be an inclusive play space.**
- 3. Votes both the income and expenditure.**

## REPORT:

### Background

The construction of a regional accessible playground was identified as a project in the Tweed Shire 2007 Social Plan. Seed funding of \$350,000 was allocated for this project. At this time, construction of regional accessible playgrounds was accepted practice by local governments across Australia to support the inclusion of children with disabilities and their families.

In Tweed Shire a site was identified in Ebenezer Park adjacent to Jack Evans Boat Harbour. Community consultation was undertaken through a working group to inform the design of the site. In 2016 a consultant was engaged to develop a concept design which was endorsed by Council. No further progress has occurred because applications for grant funding to complete the project were unsuccessful. In 2018 concerns were raised during a Council workshop about the appropriateness of the site.

In 2014 the NSW Disability Inclusion Act was adopted in order to support transition to the National Disability Insurance Scheme. The legislation mandated NSW Councils develop and implement Disability Inclusion Action Plans. This legislation has changed thinking about how to improve inclusion of people with disabilities across the whole community. The changed approach looks for strategies to incorporate accessibility into every area of community life. This has meant a move away from specifically designed and marketed accessible regional playgrounds because they maintain the idea of segregated or “special” places for people with disability. It is now accepted practice to make all places and spaces accessible to promote inclusion for everyone in the community.

### Everyone Can Play

In 2018 the NSW Government issued a media release on the commitment for all children’s playgrounds to be inclusive by 2020. The key role of local government in the implementation of this commitment was recognised. The NSW Government then developed guidelines to making play spaces in NSW more inclusive. Tweed Shire Council’s Landscape Architect was on the working group that developed the *Everyone Can Play Guidelines*.

*“Everyone Can Play is not a new standard for playgrounds in NSW. By complementing existing standards and applying universal design theory, Everyone Can Play provides design principles and sets best practice recommendations for play spaces of all sizes, types and budgets.”* (Guidelines)

To assist NSW Councils to progress the commitment to inclusive play spaces as standard practice, an annual grant round was offered commencing in 2018. Tweed Council were successful in securing \$107,000 for the upgrade of the playground at Fingal Head Foreshore. Council will continue to apply for the Everyone Can Play Funding to provide new inclusive play spaces or to upgrade existing play spaces in accordance with the priorities identified in the Open Space Strategy 2019/2029.

### Re allocation of Seed Funding

From the original \$350,000 seed funding allocated in the Social Plan 2007, \$20,000 was spent on the consultant’s fee for the adopted concept design and site investigations at Ebenezer Park. This concept design was for the whole hectare site including a themed accessible children’s playground.

It is proposed the remaining \$330,000 of the seed funding be used to develop new inclusive play spaces and to upgrade existing play spaces across the Shire. This funding will enable the application of the Everyone Can Play Guidelines in four locations. The locations were identified by the community during the development of the Open Space Strategy 2019/2029 as key priority projects and will ensure a more equitable supply of high quality and inclusive play spaces. The below table includes the proposed locations, the seed funding allocation and other grant or management information.

Location	Seed funding allocation	Other grants obtained	Management
Goorimahbah - Place of Stories, Jack Evans Boat Harbour Parklands	\$100,000	\$30,000 grant obtained from Variety Livvi's Place to develop a concept plan for an inclusive play space.	Council will consult with the AAC and the Equal Access Committee on the project. Council will apply for NSW Government Everyone Can Play Program - Round 2 and Infrastructure Grants - Clubs Grants Category 3 to fund this project.
Fingal Foreshore Park, Fingal Head	\$20,000	\$107,000 grant received from NSW Government Everyone Can Play Program - Round 1	\$20,000 seed funding will contribute to the requirement for match funding \$107,000.
Amaroo Park, Banora Point	\$80,000	To action 2020-2023	An action in the Open Space Strategy 2019-2029.
Pioneer Park, Tweed Heads West	\$80,000	To action 2020-2023	An action in the Open Space Strategy 2019-2029
<b>Total</b>	<b>\$280,000</b>		

Council has been invited by Variety Livvi's Place to enter into a funding agreement to develop a concept plan for the inclusive play space in Goorimahbah - Place of Stories. The grant amount of \$30,000 will fund a Landscape Architect, mutually agreed on by both Council and Variety and in consultation with the AAC, to deliver an initial concept design. Where practical the elements of the concept design developed for Ebenezer Park will be applied to Goorimahbah site. The proposal to develop a concept for the upgrade of the play space in Goorimahbah using the Variety Livvi's Place Grant was considered and endorsed by the AAC at its meeting of 24 September 2019 and the AAC will continue to be involved and consulted as this concept is developed.

It is also proposed the remaining \$50,000 of the seed funding be allocated to ensure the active participation of people with disabilities, family members and people who support them in all community engagement for the projects. In a dedicated effort we will ensure effective and appropriate supports are in place to enable the participation of people with disabilities to ensure their needs are met and to add value to play space and open space development.

The seed funding will also extend to the information disseminated about Council's parks and open spaces (including our website) to ensure it is accessible to the widest number of people in the community. Engagement and information sharing will be guided by the principles and objectives of the Disability Services Act and will promote access for inclusion.

Council's Parks and Active Communities and Community and Cultural Services Units will work together to establish clear parameters around the use of the seed funding to enhance accessibility in prioritised locations and to actively engage people with disabilities in the process. This aligns with and will be guided by the principles in the Access and Inclusion Plan 2018-2021 and the Open Space Strategy 2019/2029.

### **OPTIONS:**

Option 1.

That Council:

1. Endorses the use of the \$330,000 seed funding to assist with the implementation of Everyone Can Play Guidelines as outlined, including the active participation of people with disabilities in the process.
2. Accepts the grant from Variety Livvi's Place of \$30,000 to develop a concept plan for the upgrade of the existing playground located in Goorimahbah - Place of Stories to be an inclusive play space.

Option 2

That Council:

1. Does not endorse the use of the \$330,000 seed funding to assist with the implementation of Everyone Can Play Guidelines and seeks further information.
2. Does not accept the grant from Variety Livvi's Place of \$30,000 to undertake design and engagement for the upgrade of the Goorimahbah play space.

### **CONCLUSION:**

The re-allocation of these funds to improve access in a number of playground locations in Tweed Shire means that more people will be able to play and socialise in their own neighbourhoods. This is a key component of inclusion where children and their families can meet and form friendships and feel part of their local community. Playgrounds and parks are free, healthy and natural places where people from all walks of life and backgrounds can gather. The additional funds will enable Parks and Active Communities to include playground features that improve access and meet universal design principles in a number of playgrounds. The additional benefits include less crowding, parking issues and maintenance due to popularity that is a common experience in designated regional accessible playgrounds.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Grant of \$30,000 from Variety Livvi's Place to undertake design for accessible playground in Jack Evans Boat Harbour.

The recommendation is a redistribution of an existing budget allocation.

**c. Legal:**

Not applicable.

**d. Communication/Engagement:**

As a component of the Variety Livvi's Place, the funding body undertakes communication with the community on the requirement and benefits of accessible play spaces. This will include engagement through local schools.

Engagement with the community was undertaken for the Goorimahbah site through the development of the Jack Evans Boat Harbour Plan of management and the Open Space Strategy. Design for the area will reference this engagement feedback and also include additional communication of the design and construction as the project progresses.

The Aboriginal Advisory Committee and the Access Committee will be included in the design process.

Community engagement for various other projects will be undertaken as the projects progress

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## 18 [SCE-CM] Cool Towns - Greening the Shire Program

**SUBMITTED BY:** Parks and Active Communities

mhm



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

3	People, places and moving around
3.2	Places
3.2.7	Parks and Gardens - To provide and manage quality and accessible public parks and gardens for the enjoyment and wellbeing of the community and visitors to the Tweed.

**ROLE:** **Provider**

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### SUMMARY OF REPORT:

At its meeting held 12 December 2018, it was resolved that Council:

1. *Schedules a Workshop on a program to green our public places and streets with trees that will provide shade and full canopy cover wherever possible.*
2. *Further investigates amending Development Code A5 to ensure sufficient space is provided for road and street verges to provide for large and significant trees to provide for shade and full canopy cover wherever possible and schedules a Council Workshop.*

A workshop was conducted in March 2019 where the results of internal stakeholder workshops conducted with an external consultant were presented for consideration and feedback.

This report outlines options to progress a program with both 'quick wins' and the development of a considered program or 'plan of action'.

### RECOMMENDATION:

**That:**

1. **Council develops a program titled 'Cool Towns' with the objective of increasing canopy cover within the Shire, targeting hot spots.**

2. **The initial phase of the program utilises existing resources to build on existing tree planting programs to target hot spots and brand these programs under the 'Cool Towns' program.**
3. **Council develops a longer term program including community education and engagement programs, review of the assessment and approval process for new developments with reference to optimising tree canopy coverage.**

## REPORT:

At its meeting held 12 December 2018, it was resolved that Council:

1. *Schedules a Workshop on a program to green our public places and streets with trees that will provide shade and full canopy cover wherever possible.*
2. *Further investigates amending Development Code A5 to ensure sufficient space is provided for road and street verges to provide for large and significant trees to provide for shade and full canopy cover wherever possible and schedules a Council Workshop.*

A workshop was conducted in March 2019 where the results of internal stakeholder workshops conducted with an external consultant were presented for consideration and feedback.

The recommended approach is to build on what Council already does in terms of tree planting in existing streets and parks, prioritising existing tree planting at shade-hungry hot spots for walking, cycling, rest and play, and consider improved designs in new developments, the 'quick wins'. This may include urban heat island mapping to assist in identifying target areas and providing a basis for measuring improvement over time.

Additionally Council can develop a program or 'plan of action' which can consider how to best develop and implement a coordinated approach across the organisation. This plan would recognise that a greening program is not just about planting more trees, the ingredients of success include:

- shared Council and community vision of what a Greener Tweed is, how it fits into our Community Strategic Plan and good engagement that leads to the following;
- shared Council and community support for Greener Tweed
- strategic approach, based on good evidence and baselines, that identifies priority areas - "shade-hungry hot spots"
- delivering better trees within existing verge allocation as well as exploring some innovative options, (without losing development yield)
- Cost-effective additional investment, up from 'business as usual' and recognises life-cycle costs
- Working with State Government allies

This would also establish baselines and build evidence of the impacts and also define the required resources.

The program would include consideration of options to improve canopy cover in new developments within existing verge widths such as encouraging landscaping/shade tree planting that is better integrated with movement corridors, optimising tree canopy outcomes through smart design, better species choices at the pre development application stage, and considering canopy shade targets.

## Recommendation

In summary, it is recommended that Council undertake a shire wide shading program aimed at increasing canopy cover. To increase effectiveness and commence awareness within the community it is recommended that the program be branded with a name such as "Cool Towns".

The initial stage of the program can be undertaken within existing resources and include:

- Target existing tree planting programs to 'hotspots' and to brand these plantings under the 'cool towns' program including urban heat island mapping to assist in identifying target areas and providing a basis for measuring improvement over time
- Launch the 'Cool Towns' message with a tree planting along Minjungbal Drive between Dry Dock Road and Heffron Street. Note that this is best undertaken in autumn to increase survival rates of the trees by allowing for establishment prior to the heat of the summer period.
- Launch draft policy position on verge planting

The development of a considered program or 'action plan' will require the dedication of additional resources. This program may include:

- Developing and promoting a shared Council and community vision of what a Greener Tweed is, how it fits into our Community Strategic Plan and good engagement that leads to the following;
- Promoting and encouraging shared Council and community support and ownership for Greener Tweed
- Developing a strategic approach, based on good evidence and baselines, that identifies priority areas - "shade-hungry hot spots"
- Delivering better trees within existing verge allocation as well as exploring some innovative options, (without losing development yield)
- Cost-effective additional investment, up from 'business as usual' and recognises life-cycle costs
- Working with State Government allies - eg. NSW Climate Change Fund, Stronger Country Communities Fund
- Community shade tree planting events or similar

The subsequent implementation of the program will also require on-going resources. The development of a program will identify cost estimates for the implementation for Council's consideration and potential funding grants.

## OPTIONS:

1. Council develops a program titled 'Cool Towns' with the objective of increasing canopy cover within the Shire, targeting hot spots.
2. The initial phase of the program will utilise existing resources to build on existing tree planting programs to target hot spots and brand these programs under the 'Cool Towns' program.
3. Council develops a longer term program including community education and engagement programs, review of the assessment and approval process for new developments with reference to optimising tree canopy coverage.

**CONCLUSION:**

Council currently includes a significant amount of tree planting within its current programs. There is an opportunity to target planting to hot spots within the Shire to maximise the shade benefits from increased canopy cover.

The development of a considered program to consider other coordinated initiatives to further improve on outcomes for shade in new developments and also where targeted retrofitting in existing hot spots would be the next phase of this concept. This would require dedicated additional resources to develop the program.

Subsequent to developing a program, Council can then consider on-going funding to implement the program and/or use the program as a basis for attracting funding.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Initial elements of a program can be progressed within existing Sustainable Communities and Environment budgets.

The development of a program will require dedicated resources at an estimated costs of \$30,000. This may be initially sourced from funds remaining in a closed contribution plan 6 - Street Trees.

The costs of implementation of the initiatives identified in the program and for ongoing costs would be identified in the development of a program and would be considered by Council at a future date.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Involve/Collaborate** - We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

Community engagement would be a key component of the proposed program with various initiatives including bespoke engagement processes.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**19 [SCE-CM] Fee for Service - Servicing of a 19 Metre Refrigerated Waste Compactor Bin**

**SUBMITTED BY: Resource Recovery**

mhm



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.1 Rubbish and Recycling Services - To collect, recycle and dispose of residential and commercial waste, manage landfill sites and deliver community education so as to divert rubbish from landfill.

**ROLE: Provider**

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**SUMMARY OF REPORT:**

This report outlines proposed amendments to the 2019/2020 Waste and Recycling Service Charges to incorporate a new fee for the servicing of a 19 cubic metre refrigerated waste compactor bin. This proposed fee was not included in the 2019/2020 advertised fees and charges but needs to be included to allow Council to charge for this service currently being provided to the Peppers Resort Group.

It is proposed to place the fee on public exhibition before being considered by Council for adoption in the 2019/2020 fees and charges.

**RECOMMENDATION:**

**That:**

- 1. Council endorses the public exhibition of proposed amendments to Council's 2019/2020 Fees and Charges for those items below for a period of 28 days inviting submissions, in accordance with Section 610F of the *Local Government Act 1993*.**
- 2. A report be brought back to Council following the 28 day exhibition period summarising any submissions and making recommendation for Council to consider.**

## REPORT:

Council has been in negotiation with the Peppers Resort Group (The Group) made up of the Peppers residential lots (Strata Plan 76024), Bale residential lots (Strata Plan 76023), Lot 166 of Strata Plan 76024 (the Conference Centre), and the Four Seasons Restaurant and Spa (Strata Plan 77925) for the provision of waste services. The current waste collection service is provided for a 19 cubic metre refrigerated compactor bin which is owned by the Peppers Resort Group. The bin is stored in the underground car park at the site.

During discussions with The Group, Council was advised that all parties at the site use the compactor bin. The bin is located in the Peppers Residential basement car park and is attached to fixed infrastructure for the loading and compaction of the bin. To service the compactor, the bin needs to be disconnected from the compaction unit and loaded onto a truck before being taken to a waste disposal facility where the waste is ejected as a large refrigerated load of mixed waste.

The Group is made up of a mix of business and residential rated properties with the residential property at the Peppers and Bale sites being short term holiday style letting. The site arrangements are organised by way of an internal agreement between The Group made up of representatives of the three Strata's.

The Peppers development was serviced by a private contractor prior to Council's involvement and the 19 cubic metre refrigerated compactor bin was purchased by The Group under this prior arrangement. Council neither own nor provide any other similar service and this compactor bin remains the property of The Group. The 104,262 mobile garbage bins that Council provides are owned and maintained by Council with the bins being much simpler, smaller and mobile.

Waste services for residential property are provided under section 496 of the *Local Government Act 1993* (The Act) which say that:

- (1) *A council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available.*

This service is not one of Council's typical waste services as it is being provided in a 'one off' large compactor bin owned by The Group. The Group is made up of both residential and business rated properties, and the service is provided on a variable frequency based on demand, with the weight of waste in the bin varying considerably between two and five tonne. The bin arrangements and service have been tailored under a private contractor arrangement to fit the development and are unique to this mixed development. Accordingly the service provided would not be viewed strictly as a residential waste service provided under section 496 of The Act.

The Group is therefore not compelled to participate in the Council provided waste service and has the ability to seek to have its waste services provided by any commercial provider able to meet their needs.

Council is however seeking to provide a service option as we have been working with mixed developments such as this seeking to reduce the amount of waste being generated by providing alternative diversion arrangement such as the sorting for recycling and organics waste collection services. The site currently diverts only a minimal amount of waste from landfill.

For Council to offer this waste service, there needs to be an adopted charge in the 2019/2020 Fees and Charges for the service. The charge proposed is based around a methodology which recovers the cost of providing the service. It is proposed that the charge for providing this service could be raised under Section 608 of The Act (Council fees for service) which says:

- (1) *A council may charge and recover an approved fee for any service it provides, other than a service provided, or proposed to be provided, on an annual basis for which it is authorised or required to make an annual charge under section 496 or 501.*

The proposed fee for service allows councils to recover costs for providing the service. The Service includes the collection and transport of the bin to the Stotts Creek Waste Disposal Facility, and the return and reattachment of the bin to the compactor and the associated administration.

It is not proposed that Council include any cost in its service charge for the maintenance and replacement of this bin or the site infrastructure required to support the service on site, as these are owned by The Group and not Council. All responsibility for maintenance and replacement cost would remain with the owner of the bin and infrastructure (The Group) and this message would be clearly conveyed to the Site Manager to ensure they are aware of the need to make provision for the potential replacement and maintenance of the refrigerated compactor bin and the on-site infrastructure.

The service fee to be included in the fees and charges will be for the servicing of the 19 cubic metre refrigerated compactor bin by transporting the bin to the Stotts Creek Resource Recovery Centre for disposal of the waste in the bin. On top of this service fee Council will apply the 2019/2020 adopted waste disposal charge for the waste being dropped off.

The monthly invoicing would therefore include:

- Council's adopted disposal charge for putrescible waste 2019/2020      \$200 per tonne
- Proposed collection charge including administration                      \$385 per service

The proposed service fee to be included in the 2019/2020 fees and charges would therefore be \$385 per service. The disposal charge of \$200 per tonne for the waste disposed of at the Stotts Creek Resource Recovery Centre has already been adopted and is included in the Waste and Recycling Service Charges 2019/2020.

All charges would be invoiced on a monthly basis through the Sundry Debtor system with the billing distributed to the Strata Manager - Strata Plan 76024, as the site owner and manager where the bin is collected from. Council will have no involvement in the internal disbursement of charging amongst The Group.



**OPTIONS:**

Not applicable.

**CONCLUSION:**

Council will need to place the proposed fee on public exhibition for 28 days inviting submissions, in accordance with Section 610F of the Local Government Act 1993.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Council will need to place the proposed fees on public exhibition for 28 days inviting submissions, in accordance with Section 610F of the Local Government Act 1993.

**b. Budget/Long Term Financial Plan:**

The proposed fees and charges cannot be adopted and raised by Council until the conclusion of the exhibition period.

On adoption by Council the proposed fees will be required to be included within the 2019/2020 Fees and Charges.

The budget will be adjusted to recognise the cost and income of providing this service once the fees have been adopted.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**20 [SCE-CM] Response from Tomra Cleanaway regarding the Container Deposit Scheme**

**SUBMITTED BY: Resource Recovery**

mhm



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.1 Rubbish and Recycling Services - To collect, recycle and dispose of residential and commercial waste, manage landfill sites and deliver community education so as to divert rubbish from landfill.

**ROLE: Provider**

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**SUMMARY OF REPORT:**

At the March 2019 meeting, Council resolved to request a brief report on the "return and earn" deposit stations and operations in the Tweed Shire from the Tomra Cleanaway Company and from the Environmental Protection Authority with regard to any issues/solutions for the current locations, to include noise impacts/complaints from residents, rubbish left on site, hygiene (regarding the need for hand washing facilities), lack of shade, queuing problems, etc. and discussion on the need for increased locations.

Council contacted Tomra and the Environmental Protection Authority to request the information and this report provides their response.

**RECOMMENDATION:**

**That Council notes this report on the response from Tomra Cleanaway regarding the Container Deposit Scheme.**

**REPORT:****Background**

At the Council meeting of 21 March 2019 it was resolved that:

*“Council requests a brief report on the "return and earn" deposit stations and operations in the Tweed Shire from the Tomra Cleanaway Company and from the Environmental Protection Authority with regard to any issues / solutions for the current locations, to include noise impacts/ complaints from residents, rubbish left on site, hygiene (regarding the need for hand washing facilities), lack of shade, queuing problems, etc. and discussion on the need for increased locations.”*

Tomra Cleanaway has provided the following information in regard to the number of containers deposited in the reverse vending machines within Tweed Shire under the Container Deposit Scheme between 1 December 2017 and 30 June 2019.

Period	Aluminium	Glass	PET	HDPE	Liquid Paper Board	Steel	Other	Total
Dec 2017 – June 2018	3,147,427	3,201,343	1,439,262	102,306	68,039	3,064	291	7,961,732
Jul 2018 – Dec 2018	5,908,199	5,816,062	2,602,254	257,074	137,600	5,682	656	14,727,527
Jan 19 – June 19	6,054,741	6,094,342	2,749,735	163,279	148,145	7,148	684	15,218,074
<b>Total</b>	<b>15,110,367</b>	<b>15,120,747</b>	<b>6,791,251</b>	<b>522,659</b>	<b>353,784</b>	<b>15,894</b>	<b>1,631</b>	<b>37,916,333</b>

No weights were provided or available for the containers deposited at the reverse vending machines, however It is safe to assume that most of the containers processed that were received from within Tweed Shire would have ended up in the yellow lidded recycling bin had they not been processed through the container drop off facilities. Tweed tonnages in the recycling bins have fallen by approximately 15% or 1,500 tonnes per annum.

It is likely that these container numbers in the above table are higher than what would be expected for the Tweed Shire for the period 1 December 2017 to 31 December 2018 as no container deposit scheme was available in Queensland prior to January 2019 and a number of people were known to be bringing containers across the border to recover the container deposit at facilities within the Tweed.

The figures for the calendar year 2019 will provide a better indication of the amount of containers generated from Tweed residents that may have ended up in the recycling bins as Queensland has now introduced their own container drop-off scheme which commenced in January 2019.

**Request for Information**

In response to the request for the other information the following detail was provided by Tomra Cleanaway on the introduction and operation of the Container Deposit Scheme:

*“Complaints generally make up <5% of community enquiries about the scheme. We have taken over 200,000 calls since the scheme commenced in 2017 (to March 2019) to provide a guide regarding the volume of contact that TOMRA Cleanaway receives from the people of NSW.*

*All the Reverse Vending Machines have been developed with a protective canopy and surround to keep customers at the sites under cover whilst conducting their returns.*

*EPA has directed you to your LGA data on the Exchange for Change website – this information will be updated quarterly (as opposed to every 6 months) from the next quarter.”*

Tomra’s response also directed Council through a number of links to online presentations from various officers from within the EPA and Tomra Cleanaway discussing the success of the scheme, however they did not directly respond to the questions posed relating to increased locations, hygiene and rubbish left at the site.

Tomra have installed and decommissioned sites since the service commenced and have recently contacted Council with a view to establishing a new additional drop off location in Tweed Heads. It is also noted that the sites are serviced and cleaned daily, and provided with either bulk bins or waste bins for the residual waste.

Council is not privy to the on-site arrangements on private sites however provisions are included in the lease with Council at the Murwillumbah drop off location which requires the contractor to clean the site daily and to keep the equipment in good repair.

**OPTIONS:**

Council has the option to note the information provided in this report.

**CONCLUSION:**

A Notice of Motion was adopted by Council in March 2019 seeking information from Tomra Cleanaway on the ‘return and earn’ drop off stations in the Tweed. The information included in this report was provided as a response to that inquiry.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**21 [SCE-CM] Application Under the Developer Contributions and Developer Charges for Community Organisations Policy**

**SUBMITTED BY: Community and Cultural Services**

mhm



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

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 3 People, places and moving around
- 3.1 People
- 3.1.2 Community and Cultural Development - To provide community and cultural development services to foster and improve social and cultural well-being.

**ROLE:** **Leader**

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**SUMMARY OF REPORT:**

A request has been lodged with Council for deferment of developer contribution charges under the Developer Contributions and Developer Charges for Community Organisations Policy for the recently approved expansion of the Pottsville Community Preschool.

This report reviews the eligibility of the approved development in light of the policy and recommends that Council endorse the deferment of the relevant contributions accordingly.

**RECOMMENDATION:**

**That Council:**

- 1. Agrees to enter into an agreement to defer the developer contribution charges of \$81,976.72 for the approved expansion (DA16/0550.01) of Pottsville Community Preschool Inc. (ABN: 42 645 460 513) for a period of ten years under the Development Contributions and Developer Charges for Community Organisations Policy.**
- 2. Authorises the Mayor and the General Manager to have the Council seal affixed to the agreement with Pottsville Community Preschool located at 2-4 Centennial Drive, Pottsville.**
- 3. Makes this offer of deferral available to the Pottsville Community Preschool for a period of 12 months from the date of this resolution.**
- 4. Authorises under the agreement that payments will be required to be made in ten equal instalments due annually within 12 months from the date of the agreement.**

5. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (c) **information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

**REPORT:****Background**

On 20 March 2017 Council approved a development application (DA16/0550.01) for the extension of the Pottsville Community Preschool. As part of this approval the development attracted developer contributions under s.7.11 of the Environmental Planning and Assessment Act. The current developer contributions for this approval are as follows:

<b>Contribution Payable</b>	<b>S7.1 Contribution Plan Number/ Sector</b>	<b>Amount</b>
TRCP - POTTSVILLE	04-Aug	\$81,571.80
COUNCIL ADMIN - TECH SUPPORT	18	\$404.92
<b>TOTAL AMOUNT DUE</b>		<b>\$81,976.72</b>

On 9 September 2019 Council received a letter from Pottsville Community Preschool requesting payment of these developer charges be deferred. A deferral in this instance would fall under the Developer Contributions and Developer Charges for Community Organisations Policy (the Policy).

**Eligibility**

To be eligible under the Policy an application must be a 'Community Organisation' which is defined as:

*'An eligible Community Organisation is a registered not-for-profit organisation with an annual turnover of less than \$500,000. The organisation must be registered for GST and have an active ABN.'*

A further definition identifies a 'Not-for-Profit' as:

*'A non-government group or organisation that is not operating for the profit or gain of its individual members, where these gains would be direct or indirect.'*

Below is an assessment of Pottsville Community Preschool's ability to meet the following criteria:

<b>Policy Criteria</b>	<b>Applicant Status</b>
Have an ABN	ABN: 42 645 460 513
GST Status	Active
Not for Profit	Yes
Turnover <\$500,000	Yes
Non-Government Community Organisation	Incorporated association registered with Fair Trading NSW (Incorporation No Y0271104)

In accordance with the Policy, to be eligible, the community organisation needs to be located on 'Council Controlled Land' which is defined as:

*'Land owned by Council classified as either community land or operational land under the Local Government Act 1993; Council Public Roads defined under the Roads Act 1993; and Crown Land where Council is appointed trustee under the Crown Lands Act 1989.'*

The preschool is located at 2-4 Centennial Drive, Pottsville (Lot 1, DP1240808). This land is currently Council administered Crown Land and is therefore eligible.

**OPTIONS:**

That Council:

1. Agrees to enter into an agreement with Pottsville Community Preschool to allow them to defer their developer contributions charges (s.7.11) for DA16/0550.01.
2. Decline to enter into an agreement with Pottsville Community Preschool for the deferral of their developer contribution charges (s.7.11) for DA16/0550.01.

**CONCLUSION:**

This report recommends that council enter into an agreement to defer the Tweed Roads Developer contribution Plan developer charges for the approved expansion of the Pottsville Community Preschool Inc. for a period of ten years under the Developer Contributions and Developer Charges for Community Organisations Policy.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Developer Contribution and Developer Charges for Community Organisations v2.0

**b. Budget/Long Term Financial Plan:**

This report recommends the deferral of a developer contribution charge for up to ten years. There is an opportunity cost to Council by not receiving this money at the time the occupancy certificate is issued.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

(Confidential) Attachment 1. Draft Agreement with Pottsville Community Preschool Inc. for deferral of developer contribution charges (ECM 6082536)

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**22 [SCE-CM] Nomination for Joint Hosting of NSW Coastal Conference 2020 with Byron Shire Council**

**SUBMITTED BY: Sustainability and Environment**

mhm



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.1 Natural Resource Management
- 1.1.3 Coastal Management - To protect and manage the use and quality of the Tweed's beaches and foreshores.

**ROLE: Collaborator**

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**SUMMARY OF REPORT:**

The NSW Coastal Conference has been run as an annual event since 1990 with Tweed Shire hosting in 1995, 2002 (co-host) and 2011. The conference is one of the most successful coastal industry events and attracts 250-300 delegates from around Australia. The event in 2011 returned a profit of \$11,000 to Council.

A proposal has been put that Byron and Tweed Shire Councils co-host the event in early November 2020. The major sponsor of the conference is the Department of Planning, Industry and Environment. A professional conference organising company (East Coast Conferences) has been appointed to ensure continuity from one year's conference to the next.

There are significant benefits for Council in co-hosting the conference including tourism and economic benefits and professional development opportunities for staff and Councillors.

The registration costs for the 2019 conference are:

- Early Bird registration - \$785
- Full registration - \$895

**RECOMMENDATION:**

**That Council:**

- 1. Co-hosts the 29<sup>th</sup> NSW Coastal Conference with Byron Shire Council.**
- 2. Commits to underwriting the event up to \$5,000 from the Coastal Management budget.**

## REPORT:

The NSW Coastal Conference has been run as an annual event since 1990. The conference has grown to become one of the most successful coastal industry events held in Australia. It attracts between 250 - 300 participants from throughout NSW and Australia. The 29th Annual NSW Coastal Conference is to be held in the first half of November 2020.

Byron Shire has previously been unable to host this conference due to a lack of suitable venues. Byron Shire Council staff approached Tweed Shire Council to co-host the 2020 conference. This would enable Byron Shire to be involved in the program planning committee, highlight regional coastal management issues and undertake a number of field trips within its coastal zone.

It is also noted that under Schedule 1 of the *Coastal Management Act 2016*, Byron and Tweed Shires have shared responsibility for the Point Danger - Cape Byron coastal sediment compartment. This requires the two Councils to consult when developing their respective Coastal Management Programs.

By co-hosting the NSW Coastal Conference, Tweed Shire Council is required to underwrite (up to 50%) the conference. The conference does not require any upfront funding and is managed as a separate entity. Council does not need to be involved with any financial transactions related to the conference organisation or GST reporting.

Any profit generated from the conference will be forwarded to the host councils upon completion of the final budget wrap up, with the exception of a marketing contribution (15% of total profit) which is to be carried-over for the ongoing development of the next conference.

The program is comprised of all the traditional aspects of the Conference including plenary sessions, concurrent sessions or workshops, poster displays and half-day field trips addressing some of the local coastal zone management issues. Daily lunches and morning/afternoon teas, the welcome reception, a casual dinner and the conference dinner are included in the registration.

### Entitlements for Host Councils

Included entitlements/benefits for the Host Councils include the following:

- Two (2) full conference registrations for each Council, including social functions
- Total of three (3) one-day only conference registrations (excludes social functions) for each Council
- Both Council logos and website link on conference website
- Opportunity to contribute the "Message from Host Council" and "About the Host Council" for inclusion on website and in program/registration material from both Councils
- Opportunity to review and approve all prepared marketing materials which include Host Council logos
- Opportunity to have a trade display area for the duration of the conference to promote local initiatives
- Opportunity to have a nominated local brochure (usually tourism-related) included with all delegate satchels

The conference website is [www.coastalconference.com](http://www.coastalconference.com).

**OPTIONS:**

1. That Council resolves to co-host the 29<sup>th</sup> NSW Coastal Conference 2020 with Byron Shire Council.
2. That Council does not co-host the 29<sup>th</sup> NSW Coastal Conference 2020 with Byron Shire Council.

**CONCLUSION:**

There are numerous positive benefits and little risk to Council co-hosting this conference with Byron Shire Council.

Benefits include an economic benefit to Tweed Shire as the location for the conference venue and associated accommodation. Reputational and social benefits come from working with Byron Shire Council as a fellow member of the Northern Rivers Joint Organisation. Hosting the conference also provides significant professional development opportunities for staff and Councillors.

Risks include financial risk should the conference make a loss (unlikely). Reputational risk should the conference be unsuccessful or be reported negatively (unlikely).

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Events Strategy v1.0.

**b. Budget/Long Term Financial Plan:**

By hosting the NSW Coastal Conference, Tweed Shire Council is required to underwrite the conference. The conference does not require any upfront funding and is managed as a separate entity. Council does not need to be involved with any financial transactions related to the conference organisation or GST reporting.

The last time Tweed Shire Council hosted the NSW Coastal Conference in 2011 there was an \$11,000 profit returned to Council.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## REPORTS FROM THE DIRECTOR ENGINEERING

### 23 [E-CM] Acceptance of Grant - Active Transport

**SUBMITTED BY:** Roads and Stormwater

mhm

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

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.3 Moving around
- 3.3.4 Roads, Traffic, Footpaths and Cycleways - To provide and maintain a network of roads and bridges, footpaths and cycleways that is safe, efficient and accessible.

**ROLE:** **Provider**

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#### SUMMARY OF REPORT:

Council applied for and has received a grant offer of \$83,500 from the Roads and Maritime Services to construct a shared user path on two sections of Piggabeen Road, Tweed Heads West. The shared user path will cater for both bicycle riders and pedestrians (including mobility scooters) and provides a connection to the Cobaki Broadwater Village.

#### RECOMMENDATION:

**That Council:**

- 1. Endorses the acceptance of the grant by the General Manager, for \$83,500 from Roads and Maritime Services to construct a shared user path along two sections of Piggabeen Road, Tweed Heads West and votes into the budget as part of the September 2019 Quarterly Budget Review.**
- 2. Commits the required matching funding of \$83,500 from the Cycleways Program.**

**REPORT:**

The New South Wales (NSW) Government has developed the Active Transport Grant Program to make walking and cycling a more convenient, safe and enjoyable transport option. Council applied for and has received a grant offer of \$83,500 under the Cycling Communities Council Partnership Program to construct a new shared user path, estimated to cost \$167,000. The grant is administered by Roads and Maritime Services and requires matching funding from Council.

The project that has gained funding is the construction of a shared user path on two sections of Piggabeen Road, Tweed Heads West. The shared path will fill a missing link in our pathway network between Cobaki Broadwater Village and Tulgi Way and between Tulgi Way and Kennedy Drive (Figure 1).

Shared paths are generally a minimum width of 2.5 m and provide for the use of both bicycle riders and pedestrians (including mobility scooters). The shared user path will provide a safer option for cyclists and pedestrians in this area.

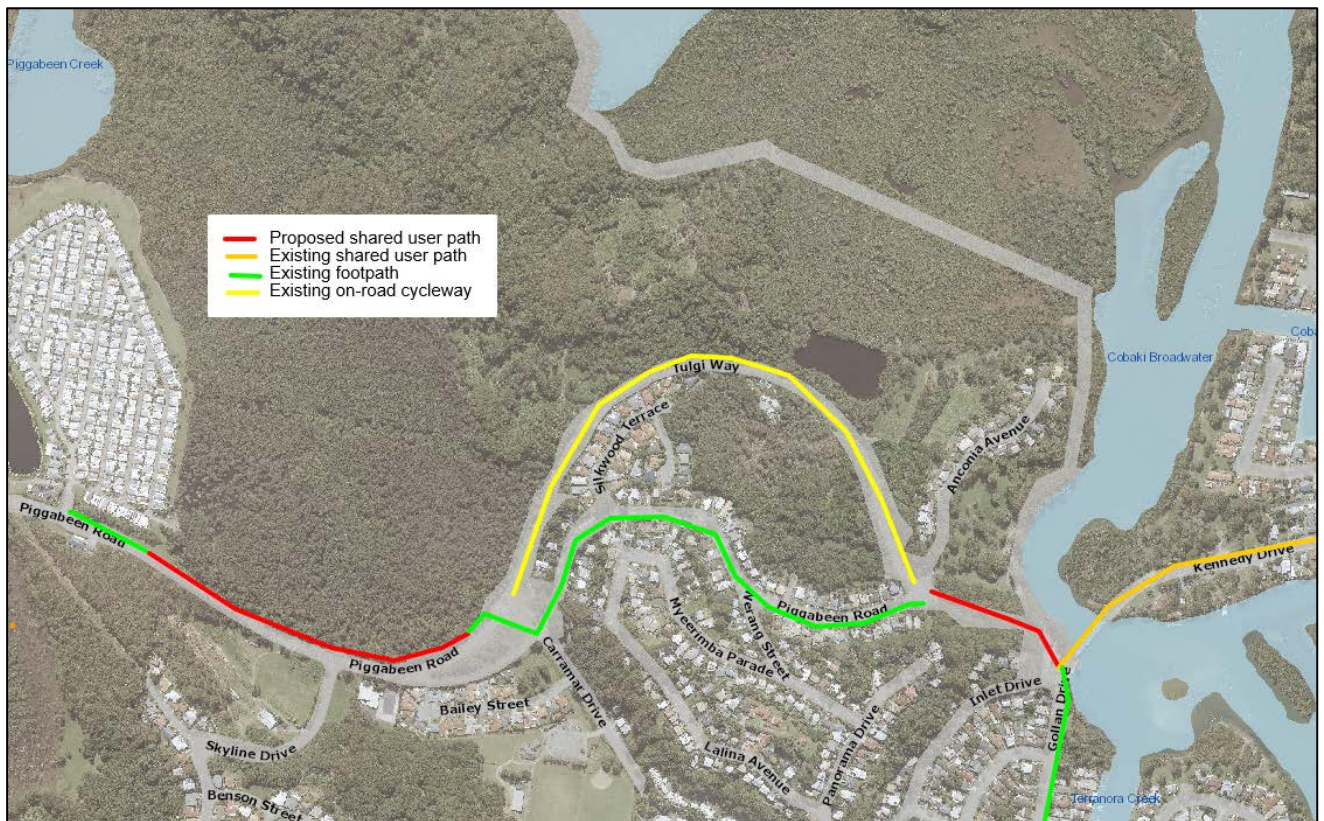


Figure 1. Proposed new shared user path on two sections of Piggabeen Road.

The grant was accepted by the General Manager to meet the funding acceptance deadline.

It is proposed to use the Cycleways Program budget for the required matching funding of \$83,500. Under the funding agreement all physical works must be completed by 30 April 2020.

**OPTIONS:**

1. Endorses the acceptance of the grant by the General Manager, for \$83,500 from Roads and Maritime Services to construct a shared user path along two sections of Piggabeen Road, Tweed Heads West and votes these funds into the budget.
2. Council does not accept the grant from Roads and Maritime Services.

**CONCLUSION:**

Accepting the grant offer and matching the funding will maximise the value of our cycleways budget and provide a missing link in our off road pathways for pedestrians and cyclists. It is recommended that Council accepts the offer and commits the matching funding.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

If accepted, the funds should be voted into the budget as part of the September Quarterly Budget Review. Council's matching 50 percent funding to be allocated from the Cycleways Program.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

Council has received several requests for improved pathways along Piggabeen Road. A lack of footpaths / cycleways in Tweed Heads West was identified in the Open Space Strategy which involved extensive community consultation.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## 24 [E-CM] B-Double Applications - Meeting held 26 September 2019

**SUBMITTED BY:** Director

mhm



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.3 Moving around
- 3.3.4 Roads, Traffic, Footpaths and Cycleways - To provide and maintain a network of roads and bridges, footpaths and cycleways that is safe, efficient and accessible.

**ROLE:** Advocate

---

### SUMMARY OF REPORT:

The Minutes of the B-Double Routes Agency Advisory Group meeting held 26 September 2019 are reproduced in the body of this report for the information of Council.

Nineteen metre B-Double truck combinations do not require specific route approval from the road authority unless a request is received to exceed the general Gross Combination Mass (GCM) of 50t.

Approval with or without conditions can be given for the GCM to be increased to 55t and that approval can be granted for the road generally or apply specifically to an operator.

Nineteen metre B-Double truck combinations can travel on roads that have approval for 26m B-Doubles.

### RECOMMENDATION:

**That:**

1. The Minutes of the B-Double Routes Agency Advisory Group meeting held 26 September 2019 be received and noted.
2. Item 1. Minjungbal Drive, Tweed Heads South and Kennedy Drive, Tweed Heads Consent Request No 244001r17v1 (ECM 6047749; 6063425)

***That the application (NHVR Consent Request Number 244001r17v1) for the use of a 19m B-Double truck up to 55t to access 6 - 8 Minjungbal Drive via Kennedy Drive and Wharf Street be approved subject to a satisfactory structural bridge report. The applicant will need to provide an engineering report confirming that the bridge***

***on Kennedy Drive, between Norman Street and Crystal Waters Drive is capable of carrying the extra 5 tonne load.***



**REPORT:**

Following are the Minutes of the B-Double Routes Agency Advisory Group meeting held 26 September 2019 which are reproduced for the information of Council.

**Venue:**

Mt Warning Meeting Room

**Time:**

9:40am

**Present:**

Cr James Owen (via conference call), Detective Chief Inspector Matt Kehoe, NSW Police, Jennifer Brinsmead on behalf of Mr Geoff Provest MP, (Member for Tweed), Mr Col Brooks on behalf of Ms Janelle Saffin MP, (Member for Lismore).

**Informal:**

Mr Ray Clark (Chairperson), Alana Brooks, Ms Judith Finch (Minutes).

**Apologies:**

Ms Katherine Boulton, (Roads and Maritime Services of NSW Representative), Cr Reece Byrnes, Cr Chris Cherry, Cr Ron Cooper, Cr Katie Milne, Cr Warren Polglase, Snr Constable Chris Davis, NSW Police, Ms Janelle Saffin MP, (Member for Lismore), Mr Geoff Provest MP, (Member for Tweed), Mr Rod Bates on behalf of Mr Geoff Provest MP, (Member for Tweed), Mr Nic Harrigan.

**Minutes of Previous Meeting:**

For the information of the group, the Minutes of the B-Double Routes Agency Advisory Group meeting held 2 May 2019 were received by Council at its meeting held 20 June 2019.

**Business Arising:**

Nil.

**Agenda Items:**

**1. Minjungbal Drive, Tweed Heads South and Kennedy Drive, Tweed Heads Consent Request No 244001r17v1 (ECM 6047749; 6063425)**

An application has been received to use a 19m /B-Double semi-trailer carrying greater than 50t up to 55t from the M1 east along Kennedy Drive and Minjungbal Drive to the United Fuel Station 6-8 Minjungbal Drive Tweed Heads South for the delivery of fuel.

**RECOMMENDATION FROM ADVISORY GROUP:**

**That the application (NHVR Consent Request Number 244001r17v1) for the use of a 19m B-Double truck up to 55t to access 6 - 8 Minjungbal Drive via Kennedy Drive and Wharf Street be approved subject to a satisfactory structural bridge report. The applicant will need to provide an engineering report confirming that the bridge on Kennedy Drive, between Norman Street and Crystal Waters Drive is capable of carrying the extra 5 tonne load.**

**Next Meeting:**

The next meeting of the B-Double Routes Agency Advisory Group will be called as and when required.

The meeting closed at 09:45am.

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**EXECUTIVE LEADERSHIP TEAM COMMENTS:**

1. **Minjungbal Drive, Tweed Heads South and Kennedy Drive, Tweed Heads Consent Request No 244001r17v1 (ECM 6047749; 6063425)**

Nil.

**EXECUTIVE LEADERSHIP TEAM RECOMMENDATIONS:**

1. **Minjungbal Drive, Tweed Heads South and Kennedy Drive, Tweed Heads Consent Request No 244001r17v1 (ECM 6047749; 6063425)**

That the application (NHVR Consent Request Number 244001r17v1) for the use of a 19m B-Double truck up to 55t to access 6 - 8 Minjungbal Drive via Kennedy Drive and Wharf Street be approved subject to a satisfactory structural bridge report. The applicant will need to provide an engineering report confirming that the bridge on Kennedy Drive, between Norman Street and Crystal Waters Drive is capable of carrying the extra 5 tonne load.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice v3.0.

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

Not applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## 25 [E-CM] Procurement Policy - Review of Procurement Thresholds

**SUBMITTED BY:** Infrastructure Delivery

mhm



Behind the scenes  
*Providing support to make it happen*

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Behind the scenes
4.2	Support Services
4.2.4	Procurement Services - To support Council to purchase goods, services and assets that are fit for purpose, sustainable and provide best value.

**ROLE:** **Provider**

---

### SUMMARY OF REPORT:

At its meeting of 17 April 2019, Council resolved to endorse the revised Procurement Policy v1.8 and place the document on public exhibition. Exhibition of the revised Policy document came to an end on 20 June 2019, and no submissions were made.

On the 25 June 2019, changes to the *Local Government Act 1993* (NSW) relating to the threshold for tendering came into effect through the *Local Government Amendment Act 2019* (NSW). The changes increase the threshold requirement for Council to carry out a public tender.

In addition, on 15 August 2019, Council resolved to remove the requirement for bidders to complete a Business Associations Disclosure when tendering for Council work.

These two changes require the Procurement Policy to be revised and placed on public exhibition for a period of 28 days for the receipt of written submissions.

### RECOMMENDATION:

1. **Endorses the revised Procurement Policy v 1.9 (incorporating changes regarding the tender threshold and the Business Associations Disclosure).**
2. **Approves the revised Procurement Policy v 1.9 to be placed on public exhibition for a period of 28 days for the receipt of written submissions.**

## REPORT:

### Background

Council's Procurement Policy v1.8 was endorsed by Council on 17 April 2019 and placed on public exhibition. On the close of exhibition, no submissions were received. Version 1.8 was, at that time, ready to be adopted by the Executive Leadership Team. Since this time, a number of events have occurred which require the Policy to be revised. These are outlined below.

### Tender Threshold

The *Local Government Amendment Act 2019* (NSW) made the following change to section 55 of the *Local Government Act 1993* (NSW) which relates to tendering:

*Omit paragraph (3) (n):*

*A contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations,*

*Instead insert:*

*a contract involving an estimated expenditure or receipt of an amount of:*

- (i) less than \$250,000 or another amount as may be prescribed by the regulations, or*
- (ii) less than \$150,000 or another amount as may be prescribed by the regulations for a contract involving the provision of services where those services are, at the time of entering the contract, being provided by employees of the council*

In terms of the Procurement Policy, the main effect of this legislative change is to increase the monetary threshold for Council to undertake a public tender process to \$250,000.

The revised Procurement Policy v1.9 references the updated legislation. Reference to the legislation in lieu of replicating the threshold will ensure any further legislative changes will not require a revision of the Procurement Policy.

### Business Associations Disclosure

On 15 August 2019, following a successful rescission motion, Council resolved to remove the requirement for all tenderers to disclose any direct contractual agreement to construct or operate the Adani Carmichael mine in the Galilee basin.

Council resolved that:

1. The Procurement Policy be amended by removing the requirement for all tenderers to disclose any direct contractual agreement to construct or operate the Adani Carmichael mine in the Galilee basin, specifically the following wording to be removed from the Procurement Policy:

#### *"3.8 Business Associations Disclosures*

*Council does not support the development of the Carmichael Mine in the Galilee basin. All tenderers are required to answer a compulsory question stating whether they have entered into any direct contractual agreement for the construction or operation of the Carmichael Mine. A yes response will result in the tenderer being*



**26 [E-CM] RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains**

**SUBMITTED BY: Water and Wastewater**

Valid



**Leaving a Legacy**  
*Looking out for future generations*

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.3 Tweed Laboratory - To provide a cost effective, reliable, responsive and high quality water and soil testing facility.

**ROLE:** **Leader**

---

**SUMMARY OF REPORT:**

Council operates a network of underground gravity sewer lines, some of which are nearing the end of their usable life. Council regularly inspects the network to ensure adequate performance and to plan maintenance works to prolong the life of the assets.

Pipe relining technology can rehabilitate pipes without any excavation and can provide an additional 50 years of use without removing the original pipe. The process minimises waste, disruptions and damage to nearby structures.

Council does not have the in-house capacity to reline sewer pipes and so a suitably qualified and experienced organisation(s) will be required to undertake the work involving supply of materials, line cleaning, installation and provision of video evidence of finished works.

Request for Offer RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains was called to obtain competitive offers from suitably qualified and experienced organisation(s). At the time of closing, four (4) Offers were received.

The evaluation of the offers against the Selection Criteria is contained in the Offer Evaluation Report included in **CONFIDENTIAL ATTACHMENTS 1 and 2**. The recommendations are based on the evaluation.

**RECOMMENDATION:**

**That in respect to Contract RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains:**

- 1. Council awards a Contract to Aaro Group ABN 37 064 603 096 for the amount of \$1,408,726.12 (exclusive of GST).**

2. **The General Manager be granted delegated authority to approve appropriately deemed variations to the contract and those variations be reported to Council six monthly and at finalisation of the contract.**
  
3. **ATTACHMENTS 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (d) **commercial information of a confidential nature that would, if disclosed:**
    - (i) **prejudice the commercial position of the person who supplied it, or**
    - (ii) **confer a commercial advantage on a competitor of the council, or**
    - (iii) **reveal a trade secret.**

## REPORT:

### Offer Background

Council operates a network of underground gravity sewer lines, some of which are nearing the end of their usable life. Council regularly inspects the network to ensure adequate performance and to plan maintenance works to prolong the life of the assets.

Pipe relining technology can rehabilitate pipes without any excavation and can provide an additional 50 years of use without removing the original pipe. The process minimises waste, disruptions and damage to nearby structures.

Council does not have the in-house capacity to reline sewer pipes and so a suitably qualified and experienced organisation(s) will be required to undertake the work involving supply of materials, line cleaning, installation and provision of video evidence of finished works.

Request for Offer RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains was called to obtain competitive offers from suitably qualified and experienced organisation(s).

### Request for Offer Advertising

The Offer was invited in accordance with the provisions of the Local Government Act 1993, the NSW Local Government (General) Regulation 2005 and Councils Procurement Protocol.

The Offer was officially advertised on Tuesday 30 July 2019 in The Sydney Morning Herald and made available on Council's website on the same date. The Offer was also advertised in the Brisbane Courier Mail and Gold Coast Bulletin on 27 July 2019.

### Offer Submissions

Offer submissions closed at 4:00pm (local time) on 21 August 2019 in the Tender Box located in the foyer at the Tweed Shire Council Civic and Cultural Centre, Murwillumbah NSW 2484. The Tender Box was opened by Councils delegated Officers after 4:00pm (local time) and the following Offers were recorded:

Bidder	ABN	Offered Amount (incl GST)
Aaro Group	37 064 603 096	Confidential Information
Abergeldie Watertech Pty Ltd	90 601 658 066	
Insituform Pacific	43 123 427 305	
Interflow Pty Ltd	34 000 563 208	

### Offer Evaluation

Council's Offer Evaluation Panel was made up as follows:

Position
Project Manager Contracts
Senior Technical Officer - Trade Waste & Connections, Water and Wastewater
Senior Engineer - Operations & Maintenance, Water and Wastewater

Offers were evaluated as per the Offer Evaluation Plan dated 23 July 2019. Offers were evaluated against the criteria below, these were listed in the Conditions of Offer:



Criterion	Document Reference	Weighting (%)
Value for Money (Normalised Offer Price) (Mandatory but Chairperson sets weighting)	Schedule 2 & 3	40
Price Compared with TSC Estimate	Schedule 2 & 3	Yes/No Item
Financial Details and Capacity	Schedule 4	Yes/No Item
Previous and Current Works (Experience & Key Personnel)	Schedule 4&5	10
Methodology and Work Program (Time)	Schedule 6	10
WHS and Risk Management	Schedule 7	5
Environmental Management	Schedule 7	5
Product Quality	Schedule 7	20
Proposed Subcontractors (Experience)	Schedule 8	Yes/No Item
Sustainable Procurement	Schedule 10	Yes/No Item
Local Content (Development of Local Business/Industry) (Mandatory 10% assessment as per Policy)	Schedule 11	10
Maintenance and Running costs	All Schedules	Yes/No Item
Life of Proposed materials and equipment	All Schedules	Yes/No Item
Warranty Periods Offered	All Schedules	Yes/No Item
Council's Contract Administration Costs	Schedule 6	Yes/No Item
	Total	100

The details of the price and non-price evaluation are shown on the Offer Evaluation Report and Offer Evaluation Scoring Sheet. A copy of the Offer Evaluation Report and Offer Evaluation Scoring Sheet are included as ATTACHMENTS 1 and 2 which are CONFIDENTIAL in accordance with Section 10A(2):

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

The information identifies the Bidder in relation to the Offer price and the evaluation of the products offered by the Bidder. If disclosed, the information would be likely to prejudice the commercial position of the Bidder in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Offer.

### Evaluation Summary

Aaro Group achieved the highest overall assessment score and is therefore deemed as the most advantageous option for Council. Aaro Group are based in Currumbin QLD.

### OPTIONS:

That Council, in respect to Contract RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains:

1. Awards a Contract to Aaro Group ABN 37 064 603 096 for the amount of \$1,408,726.12 (exclusive of GST).

2. Declines to accept any of the Offers, including reasons for this course of action in accordance with Regulation 178 of the Local government (General) Regulation 2005).

**CONCLUSION:**

Council operates a network of underground sewer lines that function under gravity mechanics. Some of the lines in the network are in excess of 50 years old or have degraded to a point that they are nearing their usable life. Council performs a regular inspection regime to determine the performance of the pipe system and plan maintenance to prolong life.

Council does not have the in-house capacity to reline sewer pipes and so a suitably qualified and experienced organisation(s) will be required to undertake the work involving supply of materials, line cleaning, installation and provision of video evidence of finished works.

Request for Offer RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains was called to obtain competitive offers from suitably qualified and experienced organisation(s).

Aaro Group achieved the highest overall assessment score and is therefore deemed as the most advantageous option for Council. Aaro Group are based in Currumbin QLD.

It is recommended that Council awards a Contract to Aaro Group ABN 37 064 603 096 for the amount of \$1,408,726.12 (exclusive of GST).

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Procurement Policy v1.7.

In accordance with Local Government (General) Regulations 2005.

**b. Budget/Long Term Financial Plan:**

Provision for RFO2019103 Rehabilitation of Gravity Sewerage Reticulation Mains is included in the Water and Wastewater Maintenance Budget.

**c. Legal:**

Not applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. RFO2019103 - Offer Evaluation Report (ECM 6073190).

*(Confidential)* Attachment 2. RFO2019103 - Offer Evaluation Scoring Sheet (ECM 6073226).

*(Confidential)* Attachment 3. RFO2019103 - Technical Evaluation (ECM 6091125).

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## REPORTS FROM THE EXECUTIVE MANAGER FINANCE, REVENUE AND INFORMATION TECHNOLOGY

### 27 [FRIT-CM] Monthly Investment Report for Period Ending 30 September 2019

SUBMITTED BY: Financial Services

mhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.5 Financial Services - To collect and manage Council funds and provide information and advice to support sound financial decision-making.

ROLE: **Leader**

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#### SUMMARY OF REPORT:

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested. The Executive Manager Finance, Revenue and Information Technology, being the Responsible Accounting Officer, certifies that investments have been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies. Council had **\$369,710,017.31** invested as at **30 September 2019** and the net return on these funds was **\$1,109,943.87** or **3.60%** annualised for the month. (Note: this is actual income received during the month, not accrued interest)

#### RECOMMENDATION:

**That, in accordance with Section 625 of the Local Government Act 1993, the monthly investment report as at period ending 31 August 2019 totalling \$369,710,017.31 be received and noted.**

## REPORT:

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested. The Executive Manager Finance, Revenue and Information Technology, being the Responsible Accounting Officer, certifies that investments have been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies. Council had **\$369,710,017.31** invested as at **30 September 2019** and the net return on these funds was **\$1,109,943.87** or **3.60%** annualised for the month. (Note: this is actual income received during the month, not accrued interest)

### 1. Ethical Investments

<b>Australian Ethical Classification</b> <b>\$201,100,000</b> which represents <b>54.5%</b> of the total portfolio <i>Source: Australian Ethical</i>
<b>Market Forces Classification</b> <b>\$168,350,000</b> which represents <b>45.5%</b> of the total portfolio <i>Source: Market Forces</i>
Major Differences: <ul style="list-style-type: none"><li>• Australian Ethical classify NAB and Westpac as non-fossil fuel lending institutions but not ANZ or CBA</li><li>• Market Forces classify ANZ as non-fossil fuel lending institution but not CBA NAB or Westpac</li></ul>

### 2. Economic Commentary

#### Australian and World Economy and Cash Rate

At its 1 October 2019 meeting, the Reserve Bank of Australia (RBA) decided to lower the cash rate to 0.75 percent.

While the outlook for the global economy remains reasonable, the risks are tilted to the downside. The US–China trade and technology disputes are affecting international trade flows and investment as businesses scale back spending plans because of the increased uncertainty. At the same time, in most advanced economies, unemployment rates are low and wages growth has picked up, although inflation remains low. In China, the authorities have taken further steps to support the economy, while continuing to address risks in the financial system.

Interest rates are very low around the world and further monetary easing is widely expected, as central banks respond to the persistent downside risks to the global economy and subdued inflation. Long-term government bond yields are around record lows in many countries, including Australia. Borrowing rates for both businesses and households are also at historically low levels. The Australian dollar is at its lowest level of recent times.

The Australian economy expanded by 1.4 per cent over the year to the June quarter, which was a weaker-than-expected outcome. A gentle turning point, however, appears to have been reached with economic growth a little higher over the first half of this year than over the second half of 2018. The low level of interest rates, recent tax cuts, ongoing spending on infrastructure, signs of stabilisation in some established housing markets and a brighter outlook for the resources sector should all support growth. The main domestic uncertainty continues to be the outlook for consumption, with the sustained period of only modest increases in household disposable income continuing to weigh on consumer spending.

Employment has continued to grow strongly and labour force participation is at a record high. The unemployment rate has, however, remained steady at around 5¼ per cent over recent months. Forward-looking indicators of labour demand indicate that employment growth is likely to slow from its recent fast rate. Wages growth remains subdued and there is little upward pressure at present, with increased labour demand being met by more supply. Caps on wages growth are also affecting public-sector pay outcomes across the country. A further gradual lift in wages growth would be a welcome development. Taken together, recent outcomes suggest that the Australian economy can sustain lower rates of unemployment and underemployment.

Inflation pressures remain subdued and this is likely to be the case for some time yet. In both headline and underlying terms, inflation is expected to be a little under 2 per cent over 2020 and a little above 2 per cent over 2021.

There are further signs of a turnaround in established housing markets, especially in Sydney and Melbourne. In contrast, new dwelling activity has weakened and growth in housing credit remains low. Demand for credit by investors is subdued and credit conditions, especially for small and medium-sized businesses, remain tight. Mortgage rates are at record lows and there is strong competition for borrowers of high credit quality.

The Board took the decision to lower interest rates further today to support employment and income growth and to provide greater confidence that inflation will be consistent with the medium-term target. The economy still has spare capacity and lower interest rates will help make inroads into that. The Board also took account of the forces leading to the trend to lower interest rates globally and the effects this trend is having on the Australian economy and inflation outcomes.

It is reasonable to expect that an extended period of low interest rates will be required in Australia to reach full employment and achieve the inflation target. The Board will continue to monitor developments, including in the labour market, and is prepared to ease monetary policy further if needed to support sustainable growth in the economy, full employment and the achievement of the inflation target over time.

*(Source: RBA Monetary Policy Decision)*

### **Council's Investment Portfolio**

Council's investment portfolio is conservatively structured in accordance with NSW Office of Local Government guidelines with approximately 78% of the portfolio held in cash and term deposits. Term deposits and bonds are paying average margins over the 90 day bank bill rate. The benchmark 90 day bank bill rate hit a new low of 0.96% pa during the month.

Bank demand for term deposit funds has waned as overseas wholesale funding alternatives become less expensive in conjunction with a global falling interest rate outlook. At the same time Australian Prudential Regulation Authority (APRA) imposed mortgage lending restrictions have loosened meaning some increased demand for depositor's funds. Banks are also using debt issuance (bonds) as a less expensive source of funds than term deposits.

Many "cash at call" rates are at levels below the RBA cash rate. The historic low cash rate and long-term bond rates are translating to lower total investment yields. This continues to present difficulties obtaining reasonable investment income without risking capital.

All investment categories out-performed the UBS 90 day bank bill benchmark this month. The investment portfolio again benefited this month from some longer-dated, higher yielding bonds and recently purchased short-term term deposits. Longer-dated bonds and term deposits are being replaced with short-dated term deposits. Overall, the investment portfolio has returned a weighted average 1.08% pa above the 90 day UBS bank bill index for the last month.

### 3. Term to Maturity

Maturity Profile	Actual % Portfolio	Policy Limits
Less than 365 days	47.16%*	Minimum 40%
More than 365 days and less than 3 years	36.63%	Maximum 60%
3 years and less than 5 years	16.21%	Maximum 35%
Portfolio Total	100.00%	

*\*Note: Some of Council's Bond Portfolio is included with longer dated maturities i.e. >1 year <5 years however this type of investment can generally be liquidated within two (2) business days*

### 4. Diversification and Credit Risk

Total Portfolio Credit Limits Compared to Policy Limits					
Long-Term Credit Ratings			Short-Term Credit Ratings		
Credit Ratings	Investment Policy Limit	Portfolio	Credit Ratings	Investment Policy Limit	Portfolio
AAA Category	100%	1.25%	A-1+	100%	14.71%
AA Category	100%	25.90%	A-1	100%	8.66%
A Category	60%	17.02%	A-2	60%	14.34%
BBB Category	20%	13.52%	A-3	20%	0.27%
Unrated	10%	0.81%	Unrated	10%	3.52%

### 5. Investment Summary

#### General Fund

Corporate Fixed Rate Bonds	4,706,625.31	
Floating Rate Notes	75,603,393.00	
Asset Backed Securities	0.00	
Fund Managers	0.00	
Term Deposits	103,999,999.00	
Call Account	17,400,000.00	<b>201,710,017.31</b>

#### Water Fund

Term Deposits	68,000,000.00	
Fund Managers	0.00	<b>68,000,000.00</b>

#### Sewerage Fund

Term Deposits	100,000,000.00	
Fund Managers	0.00	<b>100,000,000.00</b>

<b>Total Investments</b>	<b>369,710,017.31</b>
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It should be noted that the General Fund investments of **\$201 million** are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and Council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

All Water and Sewerage Fund investments can only be expended in accordance with Government regulation and Council resolution.

**Statutory Statement - Local Government (General) Regulation 2005 Clause 212**

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulations and Council's investment policies.



**Responsible Accounting Officer**

Executive Manager  
Finance, Revenue & Information Technology  
Tweed Shire Council

**OPTIONS:**

Not Applicable.

**CONCLUSION:**

Not Applicable.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Local Government (General) Regulations 2005 - Section 212 - Reports on council investments

*"(1) The responsible accounting officer of a council:*

- (a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:*
  - (i) if only one ordinary meeting of the council is held in a month, at that meeting, or*
  - (ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and*

- (b) *must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.*
- (2) *The report must be made up to the last day of the month immediately preceding the meeting."*

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Tweed Shire Council Investment Report Pack – 1 to 30  
September 2019 (ECM6091023).

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## REPORTS FROM THE EXECUTIVE MANAGER PEOPLE, COMMUNICATION AND GOVERNANCE

### 28 [PCG-CM] Disclosure of Interest Returns - 2018/2019

SUBMITTED BY: Corporate Governance

mhm



Behind the scenes  
*Providing support to make it happen*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Behind the scenes
- 4.1 Assurance
- 4.1.1 Governance - To provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

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#### SUMMARY OF REPORT:

The Disclosure of Interest Returns for the period 1 July 2018 to 30 June 2019 for Councillors and Designated Persons (Council Officers) are tabled in accordance with Sections 449 and 450A of the *Local Government Act 1993* (NSW).

#### RECOMMENDATION:

**That the Disclosure of Interest Returns for the period 1 July 2018 to 30 June 2019 for Councillors and Designated Persons (Council Officers) as tabled, be received and noted.**

**REPORT:**

Section 449 of the *Local Government Act 1993* (NSW) (LG Act) requires Councillors and Designated Persons to lodge with the General Manager, returns disclosing their interests.

Section 450A(2) of the LG Act requires the General Manager to table such returns at the first meeting of Council held after the last day for lodgement of the returns, that date being 30 September 2019.

Following recent consultation, the Information Privacy Commissioner released an updated Information Access Guideline 1 - For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons), which relates to the treatment of Interest Returns of designated persons and councillors. A full copy of the updated Guideline 1 is provided as an attachment. Relevant extracts are provided as follows:

“ ...

*The mandatory proactive release provisions of the GIPA Act and the GIPA Regulation apply to the disclosure of information contained in returns disclosing the interests of councillors and designated persons. The combined effect of the GIPA Act and the GIPA Regulation is that the information in the returns needs to be disclosed on the website of each local council, unless to do so would impose unreasonable costs on the council, or if the council determined there was an overriding public interest against disclosing the information.*

*In order to decide whether there is an overriding public interest against disclosure, councils need to apply the public interest test, and weigh the public interest considerations in favour of and public interest considerations against disclosure.*

...

*However, the returns may contain personal information about the person concerned, and, potentially, about third parties such as family members. This is information which individuals may have concerns about disclosing publicly on a website and may object to publication following consultation under the GIPA Act...*”

The overall effect of the updated Guideline is that Council must make returns available on its website.

The returns for Councillors and Designated Persons (Council Officers) have traditionally been made available for inspection by members of the public. With the release 26 September 2019 of the Information and Privacy Commission (IPC) Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons, this practice will need to change.

Under IPC Guideline 1 councils are now required to make returns of interests publicly available free of charge on councils' website, unless there is an overriding public interest against disclosure of the information contained in them or to do so would impose unreasonable additional costs on the council. Where a council decides that there is an overriding public interest against the disclosure of some of the information contained in a return, consideration should be given to releasing an edited copy of the return (for example redacting the individual's signature and residential address). Where information is deleted

from a return, councils should keep a record indicating, in general terms, the nature of the information redacted from the return in accordance with Section 6(5) of the Government Information (Public Access) Act 2009 (GIPA Act).

Full compliance with this directive will take a short period of time to achieve given the requirement to communicate these changes to councils' designated persons, to review resulting submissions for redaction and to allow for determination of whether or not an overriding public interest exists. Minor adjustments will also need to be made to council's website to accommodate this disclosure requirement.

The Corporate Governance Unit will apply the Guideline and the public interest test to the returns tabled with this report. Consultation will occur where the returns contain personal information.

**OPTIONS:**

Not Applicable.

**CONCLUSION:**

That the Disclosure of Interest Returns for the period 1 July 2018 to 30 June 2019 for Councillors and Designated Persons (Council Officers) as tabled, be received and noted.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Conduct for Council Staff.

Code of Conduct for Councillors.

Information Access Guideline 1 - For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons).

**b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Once the public interest test has been applied, returns will be made available on Council's website.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Information Access Guideline 1 - For Local Councils on the disclosure of information (returns disclosing the interest of councillors and designated persons). (ECM6091594)

Attachment 2. Disclosure of Interest Returns tabled at the meeting.

## REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

### 29 [SUB-EAC] Minutes of the Equal Access Advisory Committee Meeting held Wednesday 11 September 2019

**SUBMITTED BY:** Community and Cultural Services

mhm

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People, places and moving around

*Who we are and how we live*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.2 Community and Cultural Development - To provide community and cultural development services to foster and improve social and cultural well-being.

**ROLE:** Advocate

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#### SUMMARY OF REPORT:

The minutes of the Equal Access Advisory Committee Meeting held Wednesday 11 September 2019 are reproduced in the body of this report for the information of Councillors.

#### RECOMMENDATION:

**That the minutes of the Equal Access Advisory Committee Meeting held Wednesday 11 September 2019 be received and noted.**

## REPORT:

The minutes of the Equal Access Advisory Committee meeting held Wednesday 11 September 2019 are reproduced as follows for the information of Councillors.

### Venue:

Banora Point Community Centre

### Time:

10:00am

### Present:

Prospero Aplet (Chair), Una Cowdroy, Wendy Gilbert, Suzanne Hudson (Community Representatives), Cr Warren Polglase, Robert Noakes, Chantelle Howse, Jennifer Grainger (Tweed Shire Council)

### Apologies:

Milena Morrow, Alana Brooks, Shannon Rees, Joanne Watters

### Guests:

Vicky Harrison, Acting Senior Practitioner, Community Services and Averre Mackay, Family Services Australia

### Guest Presentations

Vicky Harrison, Acting Senior Practitioner, Community Services presented on NDIS roll out and Averre Mackay, Family Services Australia presented on disability services / barriers to employment.

Following the presentation, the committee discussed the need for greater understanding by Doctors of the NDIS process.

**Action:** *Pass feedback from presentation and discussion regarding training for medical professionals, to Linda Hope, Social Futures. Responsible Officers: Chantelle Howse, Jennifer Grainger*

### Minutes of Previous Meeting:

**Moved:** Una Cowdroy

**Seconded:** Suzanne Hudson

**RESOLVED** that the Minutes of the Equal Access Advisory Committee meeting held Wednesday 19 June 2019 be accepted as a true and accurate record of the proceedings of that meeting.

### Business Arising:

#### Outstanding Matters:

#### OM1. Kerb ramps on Florence Place and Winders Place

Una advised that she and Alana have not yet revisited the area to identify priority kerb ramps in order that they can be addressed in the Pedestrian Access and Mobility Plan.

**Action:** *Revisit the area and identify priority kerb ramps for upgrade. Responsible Officers: Alana Brookes with Una Cowdroy.*

**OM2. NDS report titled 'How is the disability sector faring?'**

Equal Access Advisory Committee members indicated they have not yet received the report.

**Action:** *Email the NDS report: 'How is the disability sector faring' to the EAAC. Responsible Officer: Jennifer Grainger.*

**OM3. Requests for Accessible Parking Spaces**

Previously Alana reported that while no protocol exists Roads and Storm Water Unit respond where they can dependent on funding. There are issues with installing on road Accessible Parking Bays due to space constraints especially allowing for rear exiting wheelchairs from vans. Prospero asked whether there were regulations concerning where Wheelchair Accessible Vehicles can park considering the amount of space required for the person using a wheelchair to exit the vehicle and the likelihood of blocking traffic. As Alana is an apology, no update is available at this time. These matters will continue to be raised at EAAC meetings.

**Action:** *Respond to questions and issues as they arise. Responsible Officer: Alana Brookes.*

**OM4. Footpath Parking**

Council Rangers will continue to monitor footpath parking along Coral Street and throughout Tweed Shire. Chantelle advised that the new Team Leader – Rangers, Nic Harrigan, has been employed. Warren advised that a new program to photograph and issue on the spot tickets will commence after Christmas. Footpath parking will continue to be raised at EAAC meetings.

**Action:** *Liaise with Council Rangers regarding vehicles being parked on footpaths blocking the thoroughfare for pedestrians using the footpath. Responsible Officers: Alana Brookes, Chantelle Howse.*

**OM5: 21st Birthday celebration**

Chantelle proposed that an EAAC 21st Birthday celebration be held to coincide with International Day of People with Disability 2019 on or near Tuesday 3 December 2019. Chantelle proposed a 'promotional day' to inform Council staff and the wider community about the activities and achievements of the EAAC ie. the Access and Inclusion Plan. Prospero noted the importance of creating ongoing change not just highlighting things that have already been achieved. She proposed an event / activity that informs the community and is more interactive or engaging. The committee felt that hosting an event on a weekday will not attract the public. Rob suggested that we might link the EAAC 21<sup>st</sup> activities to an existing / high profile event which already attracts the wider community. Prospero suggested that flags and accompanying information boards could be located throughout an event site highlighting factors affecting access and inclusion.

The committee also suggested the community needs to know that the EAAC exists as a point of contact for the public to forward any access and inclusion concerns or suggestions to Council.

**Action:** *Talk to Kerry McConnell, Council Events Officer regarding possible dates and suggestions for linking to upcoming event / activity. Responsible Officers: Chantelle Howse, Jennifer Grainger.*

**Action:** *Bring any ideas / suggestions for an event to the October EAAC meeting. Responsible Officers: EAAC members.*

## **Agenda Items:**

### **A1. Tweed Link – Access All Areas**

Articles regarding access and inclusion have regularly featured in the 'Access All Areas' section of the Tweed Link. The group believes these to be useful, but ongoing feedback regarding their effectiveness and reach is necessary. Access All Areas will continue to be raised at EAAC meetings, pending evaluation.

**Action:** *Promote the EAAC 21<sup>st</sup> activities in the 'Access All Areas' section of the Tweed Link. Responsible Officer: Chantelle Howse, Jennifer Grainger.*

### **A2. Access and Inclusion Planning (Disability Inclusive Action Plan)**

Area updates provided from the following Council units:

- Community and Cultural Services
- Recreation Services
- Tweed Regional Gallery
- Economic Development
- Sustainability and Natural Resources

**Action:** *Send update information to EAAC. Responsible Officer: Jennifer Grainger.*

## **General Business:**

### **GB1. Resignations – Beverly Kelso and Nathan Quinell**

With the recent resignations of Beverly Kelso, Nathan Quinell and Chris Vannucci, there are now three community representative vacancies. The term of the EAAC coincides with each Council which is still a year away. The committee agreed that three vacancies is too great for the group to function effectively over the course of the year. Therefore, the Committee will recommend replacement members to be approved by Council. Prospective members will be invited to submit an EOI.

**Action:** *Send EOI form to EAAC. Responsible Officer: Jennifer Grainger.*

**Action:** *Send names and contact details of potential community EAAC representatives to Jennifer. Responsible Officers: EAAC members.*

### **GB2. Maintaining and upgrading traffic signals and intersections for Roads and Maritime Services**

Una and Suzanne advised that some of the discussed pedestrian crossings are lasting longer, a good outcome following the June 2019 meeting in which EAAC members shared detailed information with Raed Dabit of DM Roads about intersections that need addressing.

### **GB3. Community Building Partnership Grants**

Wendy advised that these grants are available to make community premises more accessible. The grants close on the 27<sup>th</sup> September. Rob requested to know how much money is available and which buildings are a priority (ie. clubs).

**Action:** *Contact Linda Hope for further information re: grants. Responsible Officers: Robert Noakes and Chantelle Howse.*

**Action:** *Provide link to Community Building Partnership Grants to EAAC. Responsible Officer: Jennifer Grainger.*

**Next Meeting:**

The next meeting of the Equal Access Advisory Committee will be held Wednesday 16 October 2019.

The meeting closed at 11:45am.

**EXECUTIVE LEADERSHIP TEAM'S COMMENTS:**

Nil.

**EXECUTIVE LEADERSHIP TEAM'S RECOMMENDATIONS:**

Nil.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

Terms of Reference - Equal Access Advisory Committee adopted 12 December 2013 (ECM 2847116)

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**30 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held 26 September 2019**

**SUBMITTED BY: Roads and Stormwater**

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

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

**ROLE: Advocate**

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**SUMMARY OF REPORT:**

The Minutes of the Local Traffic Committee Meeting held 26 September 2019 are reproduced in the body of this report for the information of Councillors.

These minutes have been circulated to members and support of Regulatory items from Roads and Maritime Services and NSW Police has been obtained.

**RECOMMENDATION:**

**That:**

- 1. The Minutes of the Local Traffic Committee Meeting held 26 September 2019 be received and noted; and**
- 2. The Executive Leadership Team's recommendations be adopted as follows:**

**A1 [LTC] UniSport National 2019 Cycling Time Trial Events - 1 and 2 October 2019**

**That the proposed UniSport National 2019 Cycling Time Trial Events on 1 and 2 October 2019 be supported, subject to:**

- 1. NSW Police approval being obtained.**
- 2. Endorsement of the event by Bicycle NSW or Cycling Qld.**
- 3. Conformance with a Traffic Management Plan and associated Traffic Control Plans (submitted to Council at least 2 weeks prior to the event) implemented and controlled by Roads and Maritime Services accredited persons.**
- 4. Community and affected business consultation addressing raised concerns including a letterbox drop to directly affected residents.**
- 5. The event organiser notifies Tweed residents of the impact of their event by advertising in the Tweed Link at their expense a minimum of one week prior to the operational impacts taking effect. The advertising must include the**

- event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints.
6. Adequate public liability insurance being held by the event organiser.
  7. All signage erected for the event to not cause a hazard for motorists or pedestrians and be removed immediately following the completion of the event.
  8. Consultation with emergency services and any identified issues addressed.
  9. Arrangements made for private property access and egress affected by the event.
  10. That the applicant organise for the event to be listed on Council's Calendar of Events web page. Go to [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) and select Our Community/Festivals Events and Filming/Calendar of Events and access the Calendar of Events site to upload the event details.
  11. The submission and approval of a Community Event application/Major Event application and compliance with any conditions imposed therein.
  12. The event be conducted and signposted (where applicable this supersedes signposting in accordance with RMS Guide to Traffic Control at Worksites) in accordance with the current RMS Guidelines for Bicycle Road Races to ensure consistency across the network.
  13. A report be provided to Council, by the event organiser, within 2 weeks of conduct of the event, showing compliance with the above conditions.
  14. The event organiser is to ensure that any proposed roads or pathways used for the event have been assessed and are fit for purpose.
  15. Consultation with the Hy-Tec quarry operator and any concerns addressed.

**A2 [LTC] Nautilus Way, Kingscliff**

That:

1. A double centre line be installed on Nautilus Way extending into the curve at Oasis Way commencing at the driveway at no. 2 for 32m to the north.
2. Council rangers be requested to monitor the situation and provide appropriate advice to contractors and enforce any relevant regulatory obligations and report back to the Committee.

**A3 [LTC] Pottsville Beach Public School - Tweed Coast Road**

That approval be given for the installation of a Children's Crossing on Tweed Coast Road for Pottsville Primary School, north of Elfran Street and it be installed subject to available funding.

**REPORT:**

The Minutes of the Local Traffic Committee Meeting held 26 September 2019 are reproduced as follows for the information of Councillors.

**VENUE:**

Mt Warning Meeting Room

**TIME:**

Commencing at 9.45am

**PRESENT:**

**Committee Members:** Cr James Owen (via conference call), Detective Chief Inspector Matt Kehoe, NSW Police, Mr Col Brooks on behalf of Janelle Saffin MP, Member for Lismore, Jennifer Brinsmead on behalf of Mr Geoff Provest MP, Member for Tweed.

**Informal:** Mr Ray Clark (Chairman), Miss Alana Brooks, Ms Judith Finch (Minutes Secretary).

**APOLOGIES:**

Katherine Boulton, Roads and Maritime Services of NSW (written comments received), Snr Constable Tony Davis, NSW Police, Mr Nic Harrigan, Janelle Saffin MP, Member for Lismore, Mr Geoff Provest MP, Member for Tweed, Mr Rod Bates on behalf of Mr Geoff Provest MP, Member for Tweed.

**CONFIRMATION OF MINUTES OF PREVIOUS MEETING**

**MIN1 [LTC-MIN] Confirmation of Previous Minutes Meeting held 22 August 2019**

**RESOLVED** that the Minutes of the Local Traffic Committee Meeting held 22 August 2019 be adopted as a true and accurate record of proceedings of that meeting.

**SCHEDULE OF OUTSTANDING RESOLUTIONS**

**SCH1 [LTC-SOR] Schedule of Outstanding Resolutions - 26 September 2019**

**From Meeting held 22 August 2019**

**B1 [LTC] Bakers Road, Byangum**

**ORIGIN:**

**Roads & Stormwater**

FILE NO: ECM5687631: Traffic - Committee: Weight of Vehicles: Bakers Road, Byangum.

**SUMMARY OF REPORT:**

**Applicant's Information:**

The applicant would appreciate if the 'Traffic and Road Safety Committee' consider requesting a vehicle weight limit of 14.5 tonnes on Bakers Road in Byangum.

The road has many blind corners, trees near the edge of the road and steep drop offs. Recently there has been an increase in very large water tankers using this road and making it extremely dangerous.

There has been some feedback on social media about how this road has become more dangerous.

Attached is a heavy vehicle trip planner showing the recommended route through Murwillumbah. It also shows some of the tight blind corners on Bakers Road.

**Officer's Comment:**

There is no evidence of the increase in heavy vehicle movements on Bakers Road and it is recommended that traffic volumes surveys be carried out to determine the actual number of heavy vehicles. However, it would be unlikely that heavy vehicles would use this road to bypass Murwillumbah town centre. Google Maps indicates that it would take longer and increased distance using Bakers Road to get to the roundabout at Alma Street at Tweed Valley Way.

**COMMITTEE ADVICE:**

**That:**

- 1. Traffic surveys be carried out on Bakers Road, Byangum to determine the extent of heavy vehicle use and these surveys be brought back to the Committee upon completion.**
- 2. Bakers Road, Byangum be added to the Schedule of Outstanding Resolutions.**

***Current Status: That Bakers Road Byangum (B1) from Local Traffic Committee meeting held 25 July 2019 remain on the list of Outstanding Resolutions.***

***(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 28 February 2019 (Item B1).***

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**B2 [LTC] Fraser Drive, Banora Point**

**ORIGIN:**  
**Roads & Stormwater**

**FILE NO:** ECM5785148; Traffic - Committee; Fraser Drive – Banora Point; Harrier Street; Speed Zones

**SUMMARY OF REPORT:**

Request received for a reduction of the 80km/h speed limit on Fraser Drive.

**Applicant's Information:**

The applicant is concerned that the speed limit is inconsistent and inappropriate given the adjacent developments.

**Officer's Comment:**

The 80km/h section on Fraser Drive is approximately 1km in length from Harrier Street to just north of Vintage Lakes Drive. There is 60km/h sections north and south of this speed zone.

A review of the five year crash history found one non-injury and one injury crash, both single vehicle run off road.

The new developments accessing Fraser Drive have 2 intersections which have been designed for an 80km/h speed zone.

The Chairman requested that this item be added to the Schedule of Outstanding Resolutions.

**COMMITTEE ADVICE:**

**That:**

1. The request for a reduction of the 80km/h speed limit on Fraser Drive, Banora Point be referred to the Roads and Maritime Services, who are the authority on speed limits in NSW.
2. This item be placed on the Schedule of Outstanding Resolutions.

*Current Status: That Fraser Drive, Banora Point (B4) from Local Traffic Committee meeting held 25 July 2019 remain on the list of Outstanding Resolutions.*

*(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 2 May 2019 (Item B4).*

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**B3 [LTC] Dulguigan Road, North Tumbulgum**

**ORIGIN:**

**Roads & Stormwater**

FILE NO: ECM 6013170; ECM5960501; Traffic - Committee; Safety; Speed Zones; Heavy Vehicles; Dulguigan Road, North Tumbulgum, Kynumboon, Dulguigan, Urliup

**SUMMARY OF REPORT:**

**Applicant's Information:**

Following risks identified in a heavy vehicle route assessment the Tumbulgum Community Association has requested a reduction in speed limit from a default 100km/h to 80km/h.

**Officer's Comment:**

The road has a number of heavy vehicle movements to access Hy-tech quarry. The speed limit for trucks on Dulguigan Road is 60km/h. The 85<sup>th</sup> percentile for cars on the straight sections of Dulguigan Road is approximately 86km/h.

The Chairperson requested that this item be moved to Schedule of Outstanding Resolutions to allow for review by Roads and Maritime Services.

**COMMITTEE ADVICE:**

**That the request for speed limit reviews on Dulguigan Road be referred to the Roads and Maritime Services, who are the authority on speed limits in NSW, being:**

1. 100km/h speed limit for light vehicles be reduced to 80km/h
2. 60km/h speed limit for heavy vehicles be reduced to 50km/h

***Current Status: That Dulguigan Road North Tumbulgum (B5) from Local Traffic Committee meeting held 22 August 2019 remain on the list of Outstanding Resolutions.***

***(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 22 August 2019 (Item B5).***

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**BUSINESS ARISING**

Nil.

**A. FORMAL ITEMS SECTION**

**DELEGATIONS FOR REGULATORY DEVICES - MURWILLUMBAH**

**A1 [LTC] UniSport National 2019 Cycling Time Trial Events - 1 and 2 October 2019**

**ORIGIN:**

Roads & Stormwater

**FILE NO:** ECM 6065986; Traffic - Committee; Bicycle Matters - General; Festivals/Events; Dulguigan Road; Boyds Lane; Quarry Road; Hogans Road; Terranora Road; McAuleys Road

**SUMMARY OF REPORT:**

**Applicant's Information:**

UniSports National- Cycling Time Trials are proposed for Tuesday 1 October and Wednesday 2 October 2019. The events are expected to attract 80-100 participants. The course runs along Dulguigan Road and McAuleys Road, Tumbulgum. The events will be held between 9am and -11:15 am each day.

**Officer's Comment:**

Council Officers raised safety concerns with the applicant regarding heavy vehicle movements on the proposed route, following the identification of high risk curves in a recent safety audit. Unisports have provided the following response and updated their Event Management Plan.

*"We recognize that this section of road has been identified in a recent report as an area of risk due to the movement of trucks to and from the quarry. We have been aware of the truck movements for many years having conducted the UniSport Nationals (University Games) and National U19 Championships on this course mid-week over the last 7 years.*

*The nature of the time trial events will see individual riders or a maximum of two riders (Pairs Time Trial) travelling on the road separated by a gap of approximately 1 minute between riders. At no stage will there be a group of riders on the road. The expected duration of the event is from 9.00am till 11.15am.*

*To ensure the safety of riders on this section of road, our intended management is as follows:*

- Consultation with quarry management will be undertaken at least 3 weeks prior to the event*
- Event notification signage will be prominently displayed on this section of road at least 10 days before the event*
- Traffic controllers will be located at the entrance/exit to the quarry and on Dulguigan Road (just after turning from Terranora Rd). They will stop heavy vehicles to advise about the event.*
- Traffic controllers will be in radio communication with 2 x moto marshalls who will have the role of monitoring rider safety on this section of the course. The moto marshalls will ensure that riders keep to the left hand side of the road and will be available to escort trucks past riders as required.*
- Event marshalls will be located off Dulguigan Road at the intersection of Hogans Road and just prior to the corner before the Terranora Road bridge overpass to provide further guidance to riders*
- The speed limit for this section of road is proposed to be reduced to 60kph for the duration of the event.*

*The safety of participants is our highest priority. The course selected provides an ideal national time trial championship venue due to location, distance and terrain. We are aware of the need for additional safety measures for this section of the course and have addressed these in our planning for the event. The course has been used many times in the past for this mid-week event and no safety issues have been previously experienced (i.e. the measures have worked successfully in the past).*

*We hope this meets with our shared goal of delivering a safe event and we are able to progress the planning and approval process"*

Written advice has been received from RMS that if Committee Advice becomes the Recommendation to Council that RMS supports the event.

**RECOMMENDATION TO COUNCIL:**

That the proposed UniSport National 2019 Cycling Time Trial Events on 1 and 2 October 2019 be supported, subject to:

1. NSW Police approval being obtained.
2. Endorsement of the event by Bicycle NSW or Cycling Qld.
3. Conformance with a Traffic Management Plan and associated Traffic Control Plans (submitted to Council at least 2 weeks prior to the event) implemented and controlled by Roads and Maritime Services accredited persons.
4. Community and affected business consultation addressing raised concerns including a letterbox drop to directly affected residents.
5. The event organiser notifies Tweed residents of the impact of their event by advertising in the Tweed Link at their expense a minimum of one week prior to the operational impacts taking effect. The advertising must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints.
6. Adequate public liability insurance being held by the event organiser.
7. All signage erected for the event to not cause a hazard for motorists or pedestrians and be removed immediately following the completion of the event.
8. Consultation with emergency services and any identified issues addressed.
9. Arrangements made for private property access and egress affected by the event.
10. That the applicant organise for the event to be listed on Council's Calendar of Events web page. Go to [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) and select Our Community/Festivals Events and Filming/Calendar of Events and access the Calendar of Events site to upload the event details.
11. The submission and approval of a Community Event application/Major Event application and compliance with any conditions imposed therein.
12. The event be conducted and signposted (where applicable this supersedes signposting in accordance with RMS Guide to Traffic Control at Worksites) in accordance with the current RMS Guidelines for Bicycle Road Races to ensure consistency across the network.
13. A report be provided to Council, by the event organiser, within 2 weeks of conduct of the event, showing compliance with the above conditions.
14. The event organiser is to ensure that any proposed roads or pathways used for the event have been assessed and are fit for purpose.
15. Consultation with the Hy-Tec quarry operator and any concerns addressed.

***FOR VOTE - Cr James Owen (via conference call), Detective Chief Insp Matt Kehoe, NSW Police, Jennifer Brinsmead on behalf of Mr G Provest, Member for Tweed***



## DELEGATIONS FOR REGULATORY DEVICES - TWEED HEADS

### A2 [LTC] Nautilus Way, Kingscliff

#### ORIGIN:

Roads & Stormwater

FILE NO: ECM 6047902; ECM 6060774; Traffic - Committee; Traffic - Safety; Traffic - Parking Zones; Nautilus Way; Ocean Avenue; Edgewater Lane; Oasis Way; TRA19/0045

#### SUMMARY OF REPORT:

##### **Applicant 1 Information:**

Drivers have experienced very dangerous situations while trying to drive down our very narrow street. Cars parked on both sides then cars attempting to drive both directions. Nautilus Way is half the width of Seaside and Cylinders.

The corner bend of Nautilus Way and Oasis has near accidents weekly, it's a blind corner and people are pushed to go wide onto the other side of the street to get around parked cars. This also happens when cars try to drive out to Ocean Ave from Nautilus Ways as cars are parked on the side and you have to go on the other side of the road to get around them.

Suggestion is for parking on either side via making Nautilus Way and Edgewater Lane one way.

##### **Applicant 2 Information:**

The applicant states that when backing out of their driveway the applicant often has to ask for cars to be moved, or a four-point-turn is required. In addition, garbage bins are quite often not emptied as the trucks cannot get access. On the corner of Oasis Way and Nautilus Way there is a blind corner which has endangered lives in that residents have taken to writing signs in the interests of saving children's lives.

##### **Officer's Comment Applicant 1:**

To address the concerns on the curve at Ocean Avenue, Nautilus Way a section of double centre line should be installed as Council has previously done on Cylinders Drive. The designation of these streets as one-way should not be supported as this would result in non-compliance and inconvenience residents. Installation of prohibitive signage on one side of the road is not supported as this is a residential area and may set undesirable precedents for other roads.

##### **Officer's Comment Applicant 2:**

Currently there is significant building activity in this area and Council's rangers will be requested to monitor the situation and provide appropriate advice to contractors and enforce any relevant regulatory obligations.

Written advice has been received from RMS that the Committee Advice is supported.

**RECOMMENDATION TO COUNCIL:**

**That:**

1. **A double centre line be installed on Nautilus Way extending into the curve at Oasis Way commencing at the driveway at no. 2 for 32m to the north.**
2. **Council rangers be requested to monitor the situation and provide appropriate advice to contractors and enforce any relevant regulatory obligations and report back to the Committee.**

***FOR VOTE - Cr James Owen (via conference call), Detective Chief Insp Matt Kehoe, NSW Police, Jennifer Brinsmead on behalf of Mr G Provest, Member for Tweed***

**A3 [LTC] Pottsville Beach Public School - Tweed Coast Road**

**ORIGIN:**

Roads & Stormwater

FILE NO: ECM 5934811; Traffic - Committee; Traffic - School Zones; Pottsville Beach Public School; Tweed Coast Road, Pottsville

**SUMMARY OF REPORT:**

This item was reviewed by the Committee at its meeting held 27 June 2019, which is reproduced below:

**Applicant's Information:**

*"Request received regarding the school's advice that they are no longer able to put flags up and down for students to cross at each day and will ensure families are aware.*

*The roundabout has no other crossing features and families refuse to use the roundabout due to traffic safety. We do not have the consistency for a member of staff to place school zone flags at the roundabout near the school, which is what is currently happening."*

**Officer's Comment:**

*"While there are options for relocating the crossing away from the roundabout, this still needs to be supported by the school as installation of the crossing flags requires a signed commitment from the Principal.*

*The school principal has indicated that the school does not have the resources to manage the flags at this time."*

**Recommendation to Council:**

*"That the school crossing for Pottsville Beach Public School on Tweed Coast Road near Elrond Avenue be removed and that another school crossing location be considered in consultation with the school."*

Further to on site meetings between the school representatives, including the Principal and P & C President and Department of Education Health and Safety Officer, it was agreed that the best location for a children's crossing was north of the roundabout on Elfran Street, just south of the entrance to the bus zone. The Principal agreed on site to commit to placing flags on the crossing as per the RMS Guidelines. A concept design has been developed for the children's crossing and it is estimated to cost \$25,000. This submission to the Committee is to approve the installation of a children's crossing at this location including its associated signage and linemarking.

Written advice has been received by RMS that the Committee Advice is supported subject to the children's crossing being designed and installed to current Australian standards.

**RECOMMENDATION TO COUNCIL:**

**That approval be given for the installation of a Children's Crossing on Tweed Coast Road for Pottsville Primary School, north of Elfran Street and it be installed subject to available funding.**

***FOR VOTE - Cr James Owen (via conference call), Detective Chief Insp Matt Kehoe, NSW Police, Jennifer Brinsmead on behalf of Mr G Provest, Member for Tweed***

**B. INFORMAL ITEMS SECTION**

**GENERAL TRAFFIC ADVICE - MURWILLUMBAH**

Nil.

**GENERAL TRAFFIC ADVICE - TWEED HEADS**

**B1 [LTC] Pearl Street and Turnock Street, Kingscliff**

**ORIGIN:**

Roads & Stormwater

FILE NO: ECM 6046523; Traffic - Committee; Traffic - Safety; Traffic - Parking Zones; Pearl Street, Turnock Street, Kingscliff

**SUMMARY OF REPORT:**

**Applicant's Information:**

When leaving the underground driveway of the Kingscliff Zo Professional Centre, the driver's vision is severely obstructed in both directions when cars are parked very close to the driveway exit. There is no vision at all when vans or 4WDs are parked there.

It is suggested that people exiting this driveway need at least 10 metres either side of the driveway, with no cars parked, to have any vision at all whilst entering a 50km/h zone (outside ARC Radiology).

**Officer's Comment:**

This issue has been raised previously with Council officers who have advised the customers that adequate sight distance is available when appropriate care is taken when exiting the driveway. Generally, parking prohibitive signage should not be installed to address vehicles parked adjacent to a private access. It is noted that a convex safety mirror has been installed on the footpath without Council approval.

Written advice has been received from RMS in support of the Committee Advice.

**COMMITTEE ADVICE:**

**That the installation of prohibitive parking signage on Pearl Street adjacent to the driveway to the Zo building is not supported.**

**B2 [LTC] Yugari Drive, Hastings Point**

**ORIGIN:**

Roads & Stormwater

FILE NO: EC 6047508; Ratepayers/Progress Association; Traffic - Committee; Linemarking; Parking Zones; Yugari Drive

**SUMMARY OF REPORT:**

**Applicant's Information:**

The request is for a yellow line and No Parking signage on one side of the narrow section of Yugari Drive where it climbs to the headland. It is suggested that this would relieve a lot of the parking congestion on the headland itself because traffic is restricted to one way when visitors park on both sides of that section of road.

**Officer's Comment:**

Advice from the Manager Parks and Active Communities is that the installation of prohibitive parking, signage or linemarking is not supported as generally Yugari Drive is accessible and formalising parking in this area is not required.

Written advice has been received from RMS in support of the Committee Advice.

**COMMITTEE ADVICE:**

**That the installation of prohibitive parking, signage or linemarking is not supported on Yugari Drive, Hastings Point.**

**B3 [LTC] Meeting Schedule 2020**

**ORIGIN:**

Roads & Stormwater

FILE NO: Traffic - Committee

## **SUMMARY OF REPORT:**

The following meeting dates are proposed for Local Traffic Committee meetings in 2020 with each meeting scheduled generally for the 2<sup>nd</sup> Thursday of every month, with no meeting scheduled for January. If an urgent item is received in January a conference or video call can be established to discuss if such a need arises.

It should be noted that at this stage Council has confirmed Council meeting dates up until 20 August 2020. Based on this cycle the LTC meeting dates for 2020 are proposed as follows:

13 February  
12 March  
2 April (brought forward from 9 April due to public holiday on 10 April)  
14 May  
11 June  
9 July  
13 August  
10 September  
8 October  
12 November  
10 December (3<sup>rd</sup> Thursday due to Christmas)

Written advice has been received from RMS noting and supporting the Committee Advice.

Cr Owen suggested an earlier start to the meetings, advising that 8:30am would be preferred.

## **COMMITTEE ADVICE:**

**That the following meeting schedule be endorsed for Local Traffic Committee meetings in 2020:**

**13 February  
12 March  
2 April (brought forward from 9 April due to public holiday on 10 April)  
14 May  
11 June  
9 July  
13 August  
10 September  
8 October  
12 November  
10 December (3<sup>rd</sup> Thursday due to Christmas)**

## **NEXT MEETING:**

The next meeting of the Local Traffic Committee will be held 24 October 2019 in the Mt Warning Meeting Room commencing at 9.30am.

There being no further business the Meeting terminated at 10.28am.

**EXECUTIVE LEADERSHIP TEAM COMMENTS:**

**A1 [LTC] UniSport National 2019 Cycling Time Trial Events - 1 and 2 October 2019**

**Nil.**

**A2 [LTC] Nautilus Way, Kingscliff**

**Nil.**

**A3 [LTC] Pottsville Beach Public School - Tweed Coast Road**

**Nil.**

**EXECUTIVE LEADERSHIP TEAM RECOMMENDATIONS:**

**A1 [LTC] UniSport National 2019 Cycling Time Trial Events - 1 and 2 October 2019**

***That the proposed UniSport National 2019 Cycling Time Trial Events on 1 and 2 October 2019 be supported, subject to:***

- 1. NSW Police approval being obtained.***
- 2. Endorsement of the event by Bicycle NSW or Cycling Qld.***
- 3. Conformance with a Traffic Management Plan and associated Traffic Control Plans (submitted to Council at least 2 weeks prior to the event) implemented and controlled by Roads and Maritime Services accredited persons.***
- 4. Community and affected business consultation addressing raised concerns including a letterbox drop to directly affected residents.***
- 5. The event organiser notifies Tweed residents of the impact of their event by advertising in the Tweed Link at their expense a minimum of one week prior to the operational impacts taking effect. The advertising must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints.***
- 6. Adequate public liability insurance being held by the event organiser.***
- 7. All signage erected for the event to not cause a hazard for motorists or pedestrians and be removed immediately following the completion of the event.***
- 8. Consultation with emergency services and any identified issues addressed.***
- 9. Arrangements made for private property access and egress affected by the event.***
- 10. That the applicant organise for the event to be listed on Council's Calendar of Events web page. Go to [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) and select Our Community/Festivals Events and Filming/Calendar of Events and access the Calendar of Events site to upload the event details.***
- 11. The submission and approval of a Community Event application/Major Event application and compliance with any conditions imposed therein.***
- 12. The event be conducted and signposted (where applicable this supersedes signposting in accordance with RMS Guide to Traffic Control at Worksites) in accordance with the current RMS Guidelines for Bicycle Road Races to ensure consistency across the network.***
- 13. A report be provided to Council, by the event organiser, within 2 weeks of conduct of the event, showing compliance with the above conditions.***

14. *The event organiser is to ensure that any proposed roads or pathways used for the event have been assessed and are fit for purpose.*
15. *Consultation with the Hy-Tec quarry operator and any concerns addressed.*

**A2 [LTC] Nautilus Way, Kingscliff**

*That:*

1. *A double centre line be installed on Nautilus Way extending into the curve at Oasis Way commencing at the driveway at no. 2 for 32m to the north.*
2. *Council rangers be requested to monitor the situation and provide appropriate advice to contractors and enforce any relevant regulatory obligations and report back to the Committee.*

**A3 [LTC] Pottsville Beach Public School - Tweed Coast Road**

*That approval be given for the installation of a Children's Crossing on Tweed Coast Road for Pottsville Primary School, north of Elfran Street and it be installed subject to available funding.*

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice v3.0.

**b. Budget/Long Term Financial Plan:**

Not applicable.

**c. Legal:**

Not applicable.

**d. Communication/Engagement:**

**Inform** - We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

### REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

#### C1 [GM-CM] Murwillumbah Visitor Information Centre Lease

#### REASON FOR CONFIDENTIALITY:

##### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

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

mhm

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People, places and moving around

*Who we are and how we live*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.1 People
- 3.1.12 Tourism - to market the Tweed as a tourism destination.

ROLE: **Provider**

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## REPORTS FROM THE DIRECTOR SUSTAINABLE COMMUNITIES AND ENVIRONMENT IN COMMITTEE

### C2 [SCE-CM] Unauthorised Vegetation Clearing at Lot 1 DP 418150 No. 1 Pacific Drive Banora Point

#### REASON FOR CONFIDENTIALITY:

This report contains personal details of an individual following investigation of an offence under *Development Control Plan Section A16 - Preservation of Trees or Vegetation* and the *Environmental Planning and Assessment Act 1979*.

#### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following:

- (e) information that would, if disclosed, prejudice the maintenance of law.

nhm

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People, places and moving around

*Who we are and how we live*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

ROLE: **Provider**

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**C3 [SCE-CM] Commonwealth Home Support Program (CHSP) Innovation Grant  
- Thrive, Belong, Connect**

**REASON FOR CONFIDENTIALITY:**

Financial information provided could provide competitors commercial advantage.

**Local Government Act**

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

mhm

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

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

- 3 People, places and moving around
- 3.1 People
- 3.1.3 Community Services - To build stronger, more inclusive communities by assisting people to participate in social and economic life.

**ROLE:** **Provider**

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## REPORTS FROM THE DIRECTOR ENGINEERING IN COMMITTEE

### C4 [E-CM] McAllisters Road Upgrade

#### REASON FOR CONFIDENTIALITY:

This report relates to negotiations between Council and a property developer regarding the contribution of public funds towards the upgrading of essential public infrastructure. It contains commercial information supplied by the developer's contractor.

#### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

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

mhm

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

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.3 Moving around
- 3.3.4 Roads, Traffic, Footpaths and Cycleways - To provide and maintain a network of roads and bridges, footpaths and cycleways that is safe, efficient and accessible.

ROLE: **Provider**

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