

**Mayor:** Cr K Milne

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

# Agenda

## **Ordinary Council Meeting Thursday 16 May 2019**

held at  
**Council Chambers, Murwillumbah Civic & Cultural Centre,  
Tumbulgum Road, Murwillumbah**  
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.

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## CONFIRMATION OF MINUTES

- 1 [CONMIN-CM] Confirmation of Minutes of the Ordinary Meeting held 17 April 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 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 Council Meeting held Thursday 17 April 2019 are attached for information and adoption by Council.

### RECOMMENDATION:

**That the Minutes of the Ordinary Council Meetings held Thursday 17 April 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 Ordinary Council Meeting held Thursday 17 April 2019 (ECM 5855261).

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

**SUBMITTED BY: Corporate Governance**

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 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 2 May 2019 are attached for information and adoption by Council.

**RECOMMENDATION:**

**That:**

- 1. The Minutes of the Ordinary and Confidential Council Meetings held Thursday 2 May 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 2 May 2019 (ECM 5870509).

(Confidential) Attachment 2            Minutes of the Confidential Council Meeting held Thursday 2 May 2019 (ECM 5870511).

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## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 3 [SOR-CM] Schedule of Outstanding Resolutions at 16 May 2019

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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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#### CODE OF MEETING PRACTICE:

##### **Section 2.8 Outstanding Resolutions**

*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.*

**15 SEPTEMBER 2016**

#### REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

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

##### **C 29**

That Council:

1. Authorises the General Manager to enter into lease negotiations for the Murwillumbah Railway Station.
2. A report be bought 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.

A Heritage Application Grant has been submitted on 8 February 2019 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:** Following earlier directions hearings for criminal proceedings in the Land and Environment Court (LEC), and a Notice of Motion contending Council's authority to proceed with this action, further legal advice was sought, and a further report was submitted to Council's meeting on 7 February 2019 where it was resolved to reconfirm its decision to support the current prosecution action.

At an LEC hearing to determine the Notice of Motion held on 22 February 2019, the Court made an order pursuant to section 77 of the LEC Act granting leave to the prosecutor (Council) to withdraw the proceedings.

On 1 March 2019 a Justice of the Court granted an order to commence fresh Class 5 criminal proceedings. The first directions hearing is listed on 12 April 2019.

Council resolved at its meeting of 21 March 2019 that Council responds to Hickeys Lawyer's letter dated 20 March 2019 rejecting the proposed settlement offer contained therein, but stating that Council is prepared to negotiate with John Mervyn Fish in relations to items 3.2.3 and 3.2.4 of Council's letter dated 21 February 2019.

Council's solicitors have actioned the above resolution through forwarding correspondence to Mr Fish who provided a response which was reported to the Confidential Council meeting of 2 May 2019.

At its meeting of 2 May 2019 Council resolved that Council:

1. *Continues to negotiate with Hickey Lawyers in regard to Items C1 and C2 of this Council agenda for an agreed outcome within 21 days.*
  2. *Provides delegated authority to the General Manager, Mayor and Cr Polglase to negotiate and agree a satisfactory outcome with Hickey Lawyers on Council's behalf. Failing an agreed position between the delegates the matter be brought back to a Council meeting for decision.*
  3. *Failing an agreed outcome Council pursues legal action on Items C1 and C2.*
- 

**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:** These policy investigations will form part of the Tweed DCP housekeeping review. As per the adopted Strategic Planning and Urban Design Work Program this is scheduled to be undertaken after July 2019.

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**19 APRIL 2018**

**REPORTS FROM DIRECTOR ENGINEERING**

**23 [E-CM] Heavy Vehicle Approvals - B-Double Routes**

**173**

**Cr R Byrnes  
Cr K Milne**

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**RESOLVED** that this Item be deferred to schedule a Workshop with the Tweed Water Alliance and to seek advice from the applicants regarding their capability to carry 50t versus 55t on their B-double configurations.

**Current Status:** Workshop was held on 31 May 2018. Council is in the process of assessing legal advice in relation to the size of the trucks to service the water extraction under the terms of the consent.

Tweed Water Alliance has raised concerns that the Workshop of 31 May 2018 did not address this resolution and has requested another workshop be scheduled with Councillors.

A report to Council will be prepared for the June meeting.

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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:** An Inspection tour has been held on 3 July 2018 with agreement on landscaping works to be undertaken, primarily at the northern end of Minjungbal Drive which includes the removal of some of the Cocos Palms and the planting of various other trees to enhance the road amenity.

In terms of the Planning report, these policy investigations will form part of the Tweed DCP housekeeping review. As per the adopted Strategic Planning and Urban Design Work Program this is scheduled to be undertaken after July 2019.

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**15 [NOM] Options for Improved Land Management**

**238**

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that:

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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:** Discussions have occurred at a regional level at both the General Manager and Natural Resource Management Officer level to consider a regional approach to offsetting. Report was presented to the July Northern Rivers Joint Organisation (NRJO) General Managers' Group meeting where it was resolved that:

- NRJO identify a cost share arrangement for the estimated cost of \$41,500, to engage a fixed term staff person (or consultant) to be hosted at an NRJO council;
- This person completes a regional assessment of the needs of each council to adapt development assessment processes to meet the new legislation and report this assessment with recommendations for specific requirements.
- This person complete an assessment of the unavoidable biodiversity offset requirements likely to be generated from land already identified for development across the NRJO and report this assessment with recommendations for specific further requirements, including whether a second stage analysis of potentially available stewardship sites is required.

At the NRJO meeting of 2 November 2018 it was resolved that a cross-sharing arrangement for proposed work be funded through the JO and the request for quotation be issued accordingly. Copies of the business paper and minutes are available at the website of the Joint Organisation. This work is essential to being able to identify lands suitable as offset sites as any such land needs to provide the correct type of credits for which there is a demand through proposed or potential impacts.

Consultant was engaged in January 2019 through the NRJO to undertake the works. The consultant (Reconeco) has commenced the project, comprising interviews with relevant staff from all councils, collaboration with the regional biodiversity support officer and collation of all GIS data requirements for the biodiversity offset component of the project. The method for identifying the biodiversity credits potentially required across the region and analysis of the potential stewardship sites has also been refined to provide a standard approach for the region.

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## REPORTS FROM DIRECTOR ENGINEERING

### 24 [E-CM] B-Double Applications - Meeting held 19 April 2018

250

Cr C Cherry  
Cr K Milne

**RESOLVED** that:

1. The Minutes of the B-Double Routes Agency Advisory Group meeting held 19 April 2018 be received and noted.

...

3. 19m B-Double (50t-55t) to Dulguigan Quarry - NHVR Consent Request Number 143550r1v1

The application (NHVR Consent Request Number 143550r1v1) for the use of a 19m B-Double up to 55t on Riverside Drive, Tumbulgum, Terranora Road, Dulguigan Road, North Tumbulgum, Dulguigan be deferred for feedback from NSW Police representative on the B-Double Routes Agency Advisory Group.

**Current Status:** Briefings provided by National Heavy Vehicle Regulator at the B-Double Advisory Group Committee Meeting of 24 May 2018.

Engaged a consultant to provide an assessment of Dulguigan Road for suitability of B-Doubles and a report submitted to April 2019 Council Meeting detailing the assessment undertaken by the consultant.

A further report will be prepared for Council June meeting regarding the B Double application.

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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:** Following Council's resolution of the Strategic Planning and Urban Development Work Program this is now a priority 3 project and is currently on public exhibition.

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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:** Preliminary analysis and scope to provide meaningful brief to Council being undertaken. A list of suitable consultants to undertake brief being compiled to respond to Expressions of Interest.

At the General Managers' Group meeting of the Northern Rivers Joint Organisation in December 2018, this item was discussed to determine an appetite for other member councils to participate in the project. The consensus was that no other member councils wished to participate as there was a general belief that land zoned for development could not be back zoned for a profit. Therefore Council staff are revising the scope of works for a study of one particular site and are seeking revised quotations for the works noting the original quote was in excess of \$60,000 which is currently unfunded.

A revised scope of works, with the scope now limited to direct relevance to one specific site in Tweed Shire, has been requested from 3 consultants in March 2019. The brief requests a quotation to undertake the development of a business case and options paper to evaluate and report on the economic and environmental viability of council: purchasing land; using rezoning and/or covenants to protect

high conservation value areas; re-selling; and the administration and governance of such a program.

Council has only received 1 response from consultants which is currently being assessed for compliance with scope and providing value for money.

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## 8 [NOM] Proposed Workshop - Recycled Products and Council Business

424

Cr C Cherry

Cr K Milne

**RESOLVED** that staff hold a workshop with Councillors and bring forward a report on how more recycled products can be incorporated into Councils business potentially through:

1. Aligning processes with the ISO20400 Sustainable Procurement Standard 2017.
2. The incorporation of weighting criteria in the Procurement Policy and
3. Steps within the protocol to ensure that staff are making informed sustainable decisions
4. Training of staff to raise awareness of sustainable alternatives in alignment with the ISO standard.

**Current Status:** A workshop was held 11 October 2018 and a report being prepared for a future Council meeting.

A Sustainable Procurement Working Group has been formed comprising of key staff from across the organisation. This working group is working through the Notice of Motion and a report with proposed actions will be brought before Council in April 2019. To date the Working Group is seeing opportunities for: better reporting and promotion of existing Council initiatives; measuring Council's performance against ISO20400 (noting its broader Environmental, Social and Financial focus); educating key staff involved in Council's significant procurement actions; providing sustainable suppliers with opportunities to inform Council's key staff; and better utilisation of existing approaches to sustainability from key industry bodies (e.g. Good Environmental Choice, ECO Labels, Infrastructure Sustainability Council of Australia (ISCA) Framework, Sunshine Coast Council's sustainability benchmark data).

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## REPORTS FROM DIRECTOR PLANNING AND REGULATION

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

419

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**Cr K Milne**  
**Cr R Cooper**

**RESOLVED** that Council:

.....

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

**Current Status:** The Strategic Planning and Urban Design work program was determined at the October Planning Committee meeting. Exhibition likely to be undertaken in the third quarter of 2019.

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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:** A Workshop was held on 27 September 2018.

A report was prepared by Bird Life Australia to review draft off-leash dog policy which was presented at the workshop held on 22 November 2018.

Councillors requested that further information be provided on the details of a proposed community education program prior to the advancement of a draft policy for public exhibition.

There will be a public education campaign during January and February to raise awareness of the current rules about dogs on beaches.

Costings are being obtained to adequately sign all dog zones along the Tweed Coast. A memo was provided to Councillors to this effect.

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:** A Council workshop was held with relevant legal advisers on 13 February 2019. Currently compiling additional information and evidence and this matter will be reported to a future Council meeting.

At its meeting of 2 May 2019 Council resolved that Council:

1. *Continues to negotiate with Hickey Lawyers in regard to Items C1 and C2 of this Council agenda for an agreed outcome within 21 days.*
2. *Provides delegated authority to the General Manager, Mayor and Cr Polglase to negotiate and agree a satisfactory outcome*

*with Hickey Lawyers on Council's behalf. Failing an agreed position between the delegates the matter be brought back to a Council meeting for decision.*

3. *Failing an agreed outcome Council pursues legal action on Items C1 and C2.*
- 

## 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 has been scheduled for late May 2019.

Points 4 and 5 - will be progressed pending the outcome of the meeting with the landowner.

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## 21 FEBRUARY 2019

### REPORTS FROM THE GENERAL MANAGER

#### 10 [GM-CM] Commercial Use of Murwillumbah Airfield - Sky Diving Operations

23

Cr K Milne  
Cr C Cherry

#### RESOLVED that:

1. This item be deferred to obtain a clear written response from Learn to Skydive that addresses the concerns raised in the report submitted to the 21 February 2019 meeting.
2. Council forwards the response from Learn to Skydive and any submissions received in relation to the air safety of the parachute drop zone located at the Murwillumbah Racecourse to Air Services Australia for comment.
3. A further report be prepared for a future Council meeting.

**Current Status:** In accordance with the resolution of Council 21 February 2019 officers have forwarded the Council report and resolution to Learn to Skydive and requested them to respond to each of the concerns and submissions raised within the report. Once comments have been received the report and supporting and response from Skydiving Australia will be provided to Air Services Australia in accordance with the resolution. It should be noted that the aero club has since been in contact with officers to request a time slot at community access.

Several attempts have been made to seek a response from Learn to Skydive so this matter can be addressed. No responses have been received to date.

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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:** Council officers have met with the Tweed Tourism Company (TTC) and advised Council's position. The General Manager of the TTC has subsequently met with the Mayor and Deputy Mayor to request consideration for a broader review led by them including the above two parties.

A letter from Council has been forwarded to Destination North Coast, Destination NSW, Northern Rivers Food and National Parks and Wildlife Service notifying that Council and TTC are in the process of finalising the draft Destination Management Plan and seek their review and feedback of the Draft document tabled with Council. Council's Senior Economic Development Officer will bring a subsequent report forward when the feedback and consultation with each entity is complete.

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**REPORTS FROM DIRECTOR PLANNING AND REGULATION**

**a4 [MM-CM] Draft Rural Land Strategy Review**

**76**

**Cr K Milne**

**RESOLVED** that:

1. The development of the draft Strategy be suspended for a period to enable it to be reviewed and represented with plain English and after a more inclusive stakeholder engagement
2. Expressions of Interest are called for a project reference group from a broad section of community stakeholders to review the draft strategy and to also include the Department of Primary Industries, Councillors, and Council staff from relevant areas of planning, Sustainable Agriculture, natural resource management and the communications unit.

3. The process of review should be assisted by an independent facilitator to ensure that the information is presented clearly and concisely in plain English and feedback is captured.
4. The strategy should articulate opportunities for the current community of rural land holders as well as a vision for farming and rural land management into the future.
5. The Department of Primary Industries be requested to provide advice on the short, medium and long term (50+ years) challenges and opportunities for agriculture in the Tweed in regard to Climate Change.

**Current Status:** Council Officers are compiling additional information to assist the Councillors understanding of the impacts of the proposed amendments. This information will be provided prior to further actioning the above resolution in concurrence with the Councillors.

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## 8 [NOM-Cr K Milne] Electric Vehicles

80

Cr K Milne  
Cr C Cherry

**RESOLVED** that:

1. Council writes to Tesla and to shopping centre management in the Shire to encourage the installation of electric charge stations for patrons;
2. Council to consider installing electric outlets for staff use;
3. A report be brought back on the potential for the Planning Policy to require new Development Applications for service stations to include fast charging stations.

**Current Status:** Point 1 - Letters sent in accordance with the resolution.  
Point 2 - Feasibility assessment will commence in May.  
Point 3 - Report will be brought back to a future Council meeting.

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

### 9 [NOM-Cr K Milne] Return and Earn Scheme

81

Cr K Milne  
Cr R Byrnes

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**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.

**Current Status:** Letters have been forwarded to Tomra and Return and Earn. No responses have been received at the time of finalising this agenda.

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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:** A Workshop has been scheduled for 13 June 2019.

---

## MAYORAL MINUTE

### 4 [MM-CM] Mayoral Minute for April 2019

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

mhm



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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**

---

#### SUMMARY OF REPORT:

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

#### RECOMMENDATION:

**That the Mayoral Minute for the month of April 2019 be received and noted.**

## REPORT:

### Councillors

## COMMITTEE MEETINGS

### Attended by the Mayor

- 12 April Aboriginal Advisory Committee – Minjungbal Museum and Cultural Centre, Corner Kirkwood Road and Duffy Street, Tweed Heads South.
- 

## INVITATIONS / MAYORAL REPRESENTATION:

### Attended by the Mayor

- 9 April Gallery Down Town and M-Arts Event – Corner Brisbane Street and Proudfoots Lane, Murwillumbah. Crs Cherry and Cooper also attended.
- 10 April Water Strategies Review Project Reference Group – Murwillumbah Civic Centre, 10 Tumbulgum Road, Murwillumbah.
- 11 April Blessing Ceremony for Maori Artefacts – Tweed Heads Administration Office, Corner Wharf and Brett Streets, Tweed Heads.
- 16 April Court Hearing – Murwillumbah Courthouse, 61 Murwillumbah Street, Murwillumbah.
- 17-18 April Court Hearing – Land and Environment Court, 225 Macquarie Street, Sydney.
- 24 April Northern Rivers Food Harvest Festival Opening – Husk Farm Distillery, 1152 Dulguigan Road, North Tumbulgum. Cr Cherry also attended.
- 25 April ANZAC Day Dawn Service – Chris Cunningham Memorial, Wharf Street, Tweed Heads.
- 25 April ANZAC Day Main Service – Murwillumbah Cenotaph, Tumbulgum Road, Murwillumbah.
- 26 April Murwillumbah Chamber Rural Land Strategy Round Table – Burringbar School of Arts, 1 Old Pacific Highway, Burringbar

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

- 16 April Official Launch of Solar Installation - Tweed Regional Aquatic Centre, Tumbulgum Road, Murwillumbah. Cr Cherry attended.
  - 18 April Youth Music Forum – Regent Cinema, 5 Brisbane Street, Murwillumbah. Cr Allsop attended.
  - 20 April NSW Youth Week Showcase Saturday Sessions – Rowan Robinson Park, Marine Parade, Kingscliff. Cr Owen attended.
-

- 25 April ANZAC Day Dawn Service – Kingscliff War Memorial, Marine Parade, Kingscliff. Cr Owen attended.
- 25 April ANZAC Day Dawn Service – Murwillumbah War Memorial, Tumbulgum Road, Murwillumbah. Cr Allsop attended.
- 25 April ANZAC Day Main Service – Kingscliff War Memorial, Marine Parade, Kingscliff. Cr Polglase attended.
- 25 April ANZAC Day Service – Pottsville Cenotaph, ANZAC Park, Tweed Coast Road, Pottsville. Cr Cherry attended.
- 25 April ANZAC Day Main Service – Tweed Heads, Chris Cunningham Memorial Park, Wharf Street, Tweed Heads. Cr Byrnes attended.

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

- 6 April NSW Rural Fire Service Far North Coast Medal Presentations – Ocean Shores Golf Club, Orana Road, Ocean Shores. Mayor and Deputy unavailable and event out of the shire.
- 

**REQUESTS FOR WORKSHOPS:**

Councillors did not request any additional workshops during April 2019.

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**CONFERENCES:**

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

- 1-2 April National Sustainability Conference – Hotel Grand Chancellor, Brisbane QLD. Cr Milne attended.
- 15 April Good Growth Housing Conference – Rydges World Square, Sydney. Cr Cooper attended.

**Information on Conferences to be held**

There was no information received on pending conferences during April 2019.

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**SIGNING OF DOCUMENTS BY THE MAYOR:**

- 4 April Variation of Lease – Optus Mobile Pty Limited – Portion Lot 10 DP 1014470.
  - 10 April Sales Inspection Report and Exclusive Agency Agreement – 218 Kennedy Drive, Tweed Heads West.
-

**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

### 5 [ROP-CM] Receipt of Petitions at 16 May 2019

**SUBMITTED BY:** Corporate Governance

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#### 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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### 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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## 6 [NOM-Cr K Milne} Single Use Plastic

This matter was considered at the Council meeting held 21 March 2019 Council where it was resolved to defer this item for consideration at the meeting on 17 April 2019 where this item was further deferred for consideration at the meeting on 16 May 2019.

This Notice of Motion is again reproduced for the information of Councillors.

### NOTICE OF MOTION:

**Councillor K Milne moves that Council brings back a report on instigating a program along the lines of Byron Shire Council's "Making the Switch" program.**

### Councillor's Background Notes

#### Recommended Priority:

Nil.

#### Description of Project:

Excerpt from Byron Shire Council's Website:

*"What is Make the Switch?*

*'Make the Switch' is a community project to reduce Byron's plastic footprint through a source reduction approach. To achieve this, we engage directly with food outlets, events and markets to help them switch from single-use plastics to better alternatives. The project is run by Plastic Free Byron and The Boomerang Alliance in conjunction with Byron Shire Council.*

*How it Works*

*The program focusses on six key single-use plastic items which represent the most problematic and prolific sources of the litter stream. These items are; water bottles,*



foodware (cutlery, cups, plates etc.), straws, coffee cups/lids, takeaway containers and plastic bags.

Cafes, restaurants, events and markets join us as a member and we help them remove the six key single-use plastic items and replace them with reusable or 100% compostable alternatives. Our program is hands on and we work directly with every member. We recognise and promote members for their achievements. Those who complete all our identified actions become 'Plastic Free Champions' and receive additional benefits. Individuals can also sign up, support our business members and reduce their own plastic footprint."

## Management Comments:

### Delivery Program:



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## 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: **Advocate**

The main positive of the Byron program is the focus on cultural change and education, however the program also has a number of distinct weaknesses.

The program is only focused on plastics with many of the replacement products still look visually the same as plastics (PLA and Starch based plastics). It does not focus on other containers and only looks at avoidance and not recycling and processing. The plant based products will not be able to be identified and will be pulled out of organics collection services and are not suitable for placement in recyclables. They will need to go into a composting system but not a tunnel system as they are unlikely to break down within the time material is required to be processed in the tunnel.

It is considered relatively expensive at \$36,000 for a small number of commercial outlets where Council will not have the ability to control their activities.

The new program in Byron is very specific in that it focuses on businesses that supply food and drinks with plastic cups, bottles and food ware, as well as single use plastic bags. It is only focused on avoiding plastic and not on other recyclable or recoverable items including plastic.

Whilst avoidance should be a focus, there is also a need to pursue other options such as recovery and diversion. Recovery has a role and should be included in the program, as there are not always other options. There is a risk that we may alienate shops and restaurants that are actively recycling and recovering materials. The program is also focussed on plastics but

doesn't address glass or metal drink containers which are increasingly being preferred at nightclubs and venues.

The funding for the program was provided equally by Byron Shire and the Boomerang Alliance.

Typically Local government has focused on recovery, with the state and federal government driving programs for avoidance and Extended Producer Responsibility.

### **Additional information provided for 18 April Council Meeting**

Tweed Shire Council is currently working on a program of initiatives to reduce the use of single use plastics and to encourage waste diversion within the shire. These include the following programs and actions which should produce the desired results.

### **Avoiding single use plastics in events and local businesses**

1. Getting facilities in place to replace single use plastic items
2. Communicating Council's aspiration and providing information to involve and assist relevant stakeholders

#### **Actions to date – Council offices**

- Council civic centres' facilities, meetings and events
- Reception drinking fountains: single use plastic cups replaced with reusable cups, signage at all drinking water fountains within Civic Centres.
- Meeting rooms: 'Internal use' (not publicly bookable) meeting rooms at Civic Centres have reusable serving and glassware available in cabinets. Banora Point and Kingscliff Hall have reusable serving ware.
- Events kit: over 1,000 single use plastic packaging items avoided when the Waste Unit purchased 200 tumblers, 100 wine glasses, as well as 450 knives and forks for the 2018 staff Christmas party.
- Meeting catering: all individually wrapped tea, coffee and sugar have been replaced with items in reusable containers and food is in reusable trays with lids.
- Boomerang Mugs: Council promotes the Boomerang Mugs initiative to staff, and the return mug program to local café.
- Scrunchy plastics trial: NRM and Cleaning team members trialling a new scrunchy plastic waste collection bin

#### **Community Events & Business:**

- Draft Waste Management Guide for Businesses/Events/Markets: The Toolkit includes: Waste Information, Checklist for Events, Management Plan template for large events.
- Waste Workshops: Council's Waste Education Officer has delivered event workshops and has additional scheduled Waste Workshops for events, Administration, Cleaners, Communication Unit and Environmental Health Unit to assist with avoiding single use plastics, to reduce waste and contamination, and to highlight products marketed as 'eco/green' that can only go in red bin.
- The Waste Warriors Business Waste Reduction Project is a free service funded by Council which is delivered by North East Waste to support businesses to reduce their waste and use of single use products. This is supported by fact sheets,

website, Facebook branding and online support/promotion. There could be scope to include reduce single use certification to recognise achievement.

- Bin Trim Program is a free service funded by the EPA to deliver waste assessments. This program is similar to Waste Warriors, involving an assessment undertaken by waste experts. It may be possible for businesses to apply for a grant for small scale recycling equipment (\$1,000 - \$50,000 for up to 50% of purchase price)

#### Ongoing program development

#### Council Events & Meetings:

- Prepare and install signage to support the various programs
- Review and replenish reusable serving ware in remaining training rooms and Auditorium, Canvas/Kettle
- Final Design of Waste Information Sheets
- Communication to stakeholders
- Council meeting rooms and facilities available for public bookings:
- Review and purchase additional reusable serving ware stocks
- Include serving ware facilities in booking system
- Communicate to booking system users about how to host single use-free events and meetings
- Pilot a refillable water station for events at Knox Park Oct/Nov 2019

#### Community Events & Businesses:

- Prepare the Waste Toolkit for Businesses/Events/Markets: to be finalised and distributed.
- Reduce Single Use Series: Council and NE Waste are currently collaborating to produce 4 Social Media Clips to educate businesses and community members on reducing single use plastic and addressing packaging options. Draft of clips have been written, with end of May to have finished products ready to share for Plastic Free July.
- A to Z Guide – Website Resource and Mobile App: The initial extensive list of items is complete, further categorisation and special instructions are required as a part of the requirement for the design.
- Further promotion of existing programs: Terracycle, Responsible Cafes, Green Canteen (Reusable Cups), Trashless Take Away

#### Reduce Single Use - Program

North East Waste Warrior's Business Project Coordinator is at the development stage of creating a program called Reduce Single Use (<http://www.reduceingleuse.com.au/>) which will be trialled in May alongside 30 registered businesses in Ballina to avoid and reduce single use plastics in a fun and engaging way. Businesses choose one single-use plastic items to focus on to reduce at a time. Once this program has been trialled, the program may be replicated in Tweed however would need to be resourced.

#### Budget/Long Term Financial Plan:

Refer to Management Comments.

#### Legal Implications:

Nil.

Policy Implications:

Nil.

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7 [NOM-Cr K Milne] Dulguigan Road - Heavy Vehicle Route Assessment Report

**NOTICE OF MOTION:**

**Councillor K Milne moves that Council:**

1. Provides the 'Dulguigan Rd Heavy Vehicle Route Assessment Report' to the existing heavy vehicle permit holders using Dulguigan Road, and
2. Invites the existing permit holders to a meeting to discuss safety measures that could be implemented to enable permits to be reissued.
3. Requests the consultant review the Tumbulgum Community Association's response to the report and provide a response to the issues raised,
4. Seeks legal advice on Council's responsibilities and options in regard to the Dulguigan Road Heavy Vehicle Route Assessment Report.
5. Provides a report to Council on the estimated cost of the recommended measures and an estimated time frame for the works.

**Councillor's Background Notes**

Recommended Priority:

Nil.

Description of Project:

Nil.

**Management Comments:**

Delivery Program:

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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Management response to the 5 points in the Notice of Motion are as follows:

1. No issues or comments
2. Clarification of the intent of the meeting and under what circumstances permits may be reissued, is requested through the consideration of this Notice of Motion and the subsequent resolution. It is noted that the Route Assessment report was based on engineering design of the road only, and did not take into account additional factors such as driver behaviour.
3. Minor costs will be incurred for further advice from the consultant, expected to be less than \$5,000.
4. Clarification of the specifics and intent of the legal advice is requested through the consideration of this Notice of Motion and the subsequent resolution. The Route Assessment Report has been sent to Council's insurers StateWide for review and preliminary comment on points of law and potential liability. Legal advice will typically incur costs, with the amount yet to be determined.
5. This requires initial investigations by the Design and Roads and Stormwater Units, such as survey, concept design and estimation of quantities before meaningful cost and time information can be provided. A further report can be provided when this information is available.

Budget/Long Term Financial Plan:

Costs will be incurred for consultant review of the Route Assessment Report, legal advice on Council's responsibilities and options, and for the initial investigation of roadworks necessary to address all of the recommendations of the Route Assessment Report.

A request for a \$50,000 budget allocation for the above has been included in the March Quarterly Budget Review, with the funding sourced from the Infrastructure Reserve.

Legal Implications:

Point 4 relates to a request for legal services. Clarification on points of law and potential liability will be initially sought from Council's insurer.

Policy Implications:

Nil.

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## 8 [NOM-Cr C Cherry] Rural Land Strategy

### NOTICE OF MOTION:

**Councillor C Cherry moves that Council writes a letter to be included in the 2019 rates notice mail out for all rural rated landowners in the Shire, informing them about the proposed actions of the Rural Land Strategy and asks for their feedback and requests the best contact details for future consultation on rural issues.**

### Councillor's Background Notes

Council has had feedback from the rural community with many saying that they felt that they have not been widely consulted enough about the actions proposed in the Rural Land Strategy. Council is wishing to have real feedback from as many people as possible on the proposed actions so that we can get the best result we can and this is an attempt to try to achieve that cost effectively.

### Recommended Priority:

Nil.

### Description of Project:

Nil.

### Management Comments:

### Delivery Program:

mhm

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**Leaving a Legacy**  
*Looking out for future generations*



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

---

The draft Rural Land Strategy defines the meaning of “rural land” specifically for its own purposes, to mean:

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Under LEP 2014

- RU1 Primary Production
- RU2 Rural landscape
- R5 Large Lot Residential

Under LEP 2000

- 7(a) Environmental Protection (Wetlands and Littoral rainforest)
- 7(d) Environmental Protection (Scenic/escarpment), and
- 7(l) Environmental Protection (Habitat)

The estimated number of properties that would meet that rural description for the purposes of the draft RLS is 7,440.

As an alternative, some land (about 1,500 properties) is 'farmland' rated. Then there is land that has a rural RU1 or RU2 zone (about 4,960).

To be consistent with the draft RLS and to avoid any perception that some zoned land is more important than other land it would be prudent, as a minimum, to notify all rural land, as defined by the draft RLS. However, this may be perceived as alienating other Tweed landowners or residents from having the same privilege and may be construed as placing more weight on the rights of rural landowners to be informed about the draft RLS than someone who isn't a rural landowner.

The draft RLS is a Shire-wide plan of great significance. It is relevant to all Tweed landowners and residents and businesses regardless of whether they have an equitable or legal interest in rural property.

Further, to capture and extract rural zoned land for the mail out will require more detailed work, as no single database of owners exists. Therefore staff will need to overlay GIS layers with the property database to make best efforts to capture rural land as defined by the Rural Land Strategy. It is possible that some properties may not be captured, however best efforts would be made to capture as many properties as accurately as possible if this is council's preferred option.

An alternative option and easier to administer is to include a brief in all rate notices, as the rural character, amenity and future of rural lands may be argued to be of interest to all Tweed ratepayers and would cost an estimated additional \$3600 in printing but would save considerable administrative time and would ensure all affected ratepayers are captured.

Budget/Long Term Financial Plan:

Nominal impact.

Legal Implications:

The staff recommendation to notify all landowners avoids any possible claim of procedural fairness or bias.

Policy Implications:

This is an extraordinary measure that is not seeking to amend established practice.

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE GENERAL MANAGER

- 9 [GM-CM] Design Consultancy Services Request For Offer (RFO) For Concept Design Work: Tweed Council's Smart Sustainable Housing Concept Proposal.

SUBMITTED BY: General Manager

mhm

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Leaving a Legacy  
*Looking out for future generations*

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

- 1 Leaving a Legacy  
1.4 Managing Community Growth

ROLE: **Collaborator**

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#### SUMMARY OF REPORT:

The Request for Offer (RFO) RFO2019044 for the concept design of a Smart Sustainable Housing proposal on Lot 1 DP 1069561 Wardrop Valley Road, Wardrop Valley, has been called to select a list of suitably qualified and experienced companies from which a preferred bidder can be selected.

At the time of closing Four (4) conforming Offers were received and One (1) non-conforming Offer, which was excluded from further consideration.

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:

1. Council declines to accept the offers tendered by bidders because the offer price is substantially higher than had been expected and there is insufficient funding to cover the offer (contract) price and in doing so resolves to cancel the proposal for the contract.

2. **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.**
  - (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:

At its Ordinary Meeting of 7 February 2019 the Council resolved to proceed with the first stage of a wider assessment and design of an identified site for a housing project and with the purpose of garnering support from other tiers of government, as State and/or Commonwealth funding would be needed to progress and deliver the project.

Based on the specific input and guidance provided Councillor Cooper surrounding the overarching design brief for the project, the performance of the services would require the successful bidder to address the following established project design criteria:

- 100-200 dwellings;
- Off-grid sustainable design using green energy sources;
- Communal horticultural space;
- Community facilities (Hall and/or workshops) managed by residents;
- On-site wastewater management;
- Modular design with the capacity to modify and expand (prefabricated solutions will be considered); and
- Ability for modes of public transport to traverse the village.

To ensure the completed works would adequately meet the specific aims of the Council' resolution, the practical requirements on the bidder would, as a minimum, lead to the successful bidder preparing:

### Concept Design:

- Site Analysis. Taking into account topography, microclimate, natural features (including flora and fauna), services, access and egress and planning constraints.
- Examination of Case Studies of similar projects in Australia and overseas.
- Design of concept layout for the entire site presented at a suitable scale, indicating site circulation, location of services and utilities, landscaping, environmental factors, dwellings and community facilities.
- Design of a sample floorplan which demonstrates how the base model could be modified to suit different needs.
- Presentation materials suitable for use in promoting the scheme to potential funding organisations.

### Schematic Design:

- Development of a comprehensive site layout design. Including the articulation of material types, building methodologies and scale of work.
- Proof of Concept. Detailed examination of the feasibility of on-site waste water treatment, off-grid power solution and other proposed technical systems.
- Development of sample floor plans for Cost Estimate Preparation.
- Documentation suitable to enable an accurate cost estimate to be carried out.
- Presentation materials suitable for use in promoting the scheme to potential funding organisations or government.

The Council's resolution is in the following terms:

1. *Council supports a funding commitment of \$20,000 for the first stage of an investigation into the concept for a social and affordable housing Smart, Small, Sustainable (SSS) village development proposal at Lot 1 in DP1069561, Wardrop Valley Road, South Murwillumbah for consideration by political aspirants at the upcoming State and Federal elections.*
2. *Council will call for Expressions of Interest in being part of a Council community working group for advice on the project.*
3. *The architect/designer will be directed by Council staff and Council resolution and input from the community working group.*
4. *Council seeks a quote from an architect/designer for a preliminary concept of the SSS village up to the value of \$3,000.*

It is pertinent to note the two essential aspects of the resolution relating to the project funding, which are:

- A) The total amount of the funding commitment to the first stage of the investigation into the concept proposal is \$20,000; and
- B) The total amount of funding allocated for the development of a preliminary concept design by an external architect or designer is \$3,000.

As detailed in the RFO assessment the price of undertaking an industry standard concept design with sufficient certainty as to be reliable for funding purposes, but without the detailed investigation, is substantially higher than the total value allocated to the first stage of the investigation at \$20,000. Therefore to proceed with a market value concept design that is workable and capable of providing a relative degree of certainty about buildability (the degree to which the design facilitates the construction or utilisation) for the intended purpose of securing Federal or State funding the Council's budget would need to be increased commensurately with the market rate.

The market rate for the purposes of this Report is taken to be the bidder's price of the highest scoring bidder in the RFO evaluation. That price is \$80,476 (incl. GST). It is standard practice on projects of this kind to allow a contingency for unforeseen costs, such as overrun, scope creep, or unexpected expenses, in the amount of 10-20% of the contract value. In this instance, where there is a relatively low risk of cost escalation a 10% contingency would apply and would necessitate a budget of \$88,523.60.

In addition to those costs and based on advice provided to Council from the Office of Local Government surrounding the SSH project there is need to appoint an independent Probity Advisor. The cost of the appointment would be in addition to those detailed above for the project design consultancy and would reasonable be expected to range between \$7,000 to \$15,000 depending on the progress of the project.

### **Request for Offer Advertising**

Offers were officially invited in accordance with Council's Procurement Policy and Protocol. The Request for Offers was a direct request to the individual companies pre-evaluated for

their suitability to undertake a project of the kind described in the RFO brief and hence to make a conforming bid.

Offer submissions closed at 4.00pm (local time) on Wednesday 3 April 2019 with bidder submissions lodged in the Tender Box or uploaded to the Tender page on Council's website.

### Offer Addendums

There were two (2) Offer Addendums (Notice to Bidders) issued before close of Offer.

Notice to Bidders No. 01 was issued to advise Bidders that an extension of time for closing had been extended to 4.00pm Wednesday 3 April 2019.

Notice to Bidders No. 02 was issued to advise Bidders about several matters that, among other things, included further guidance and advice in relation to; sub-consultants, community consultation, access to certain staff, qualification about specific terms or phrases mentioned in the RFO document, and the availability of additional information to the successful bidder.

### Offer Submissions

At the closing time for Offer submissions, the Tender Box was opened and five (5) Offers were recorded as below:

<b>Bidder</b>	<b>ABN</b>
Breathe Architecture	80 126 047 443
Deicke Richards	79 050 405 135
John Sparks	No ABN
Six Degrees Architects	68 101 224 593
Roberts Day Group Pty Ltd AFT The RDD Trust	53 667 373 703

Of the five (5) bidders received, one (1) bidder; John Sparks, was found to be a non-conforming bid owing to it containing no ABN or ACN or price.

### Offer Evaluation

An Offer Evaluation Plan was developed based on the premise that competitive Offers were to be received and scored against specific evaluation criteria in order to select the best value Offer.

Council's Offer Evaluation Panel was made up as follows:

<b>Position</b>
Unit Coordinator – Strategic Planning and Urban Design
Coordinator - Contracts
Coordinator – Corporate Governance, Information Management and Compliance

The details of the 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):

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

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.

**OPTIONS:**

1. Decline to accept the offers because of insufficient budget allocation to cover the contract price and in doing so this will be a resolution to cancel the proposal for the contract.

(this may, but need not, resolve to also abandon the investigation into the concept for a social and affordable housing Smart, Small, Sustainable (SSS) village development proposal – if that was the desired effect it would need to be written into the recommendation provided).

**OR**

2. For the reasons stated in this report:
  - a) Increase the budget allocation to match the market value of the project consultancy plus a 10% contingency;
  - b) Award the Smart Sustainable Housing Concept Design contract to Deicke Richards (ABN 79 050 405 135) for an offered lump sum amount of \$80,476 (inclusive of GST); and
  - c) Having received solicited advice from the Office of Local Government through the Office of the General Manager, regarding the project generally and in particular the procurement process surrounding the RFO, it would be prudent for Council to appoint an independent probity advisor for the life of the project, as advised. The cost of the appointment would be in addition to the cost of the project design consultancy.
3. Decline to accept any of the offers and resolve to negotiate with Deicke Richards (ABN 79 050 405 135) to amend the scope of works to the preparation of an illustrative impression only and noting that the constructability, feasibility and buildability of the conceptual work would be subject to ordinary practices and scope of detailed evaluation. This would be to the maximum value of \$20,000 or other resolved amount.

Council staff recommend, for the reasons stated and in upholding the procurement practice and standards, that Option 1 be endorsed. However, should Council be inclined to increase the value of the project budget to the 'market value' discussed within this Report, then Option 2 would be appropriate and the following recommendations for resolution would apply:

1. The budget allocation for the Supply of Design Services for the Smart Sustainable Housing Concept Design be increased to the value of \$88,523.60.
2. In respect to contract RFO2019044 Supply of Design Services: SSSH Concept Design, Council awards the Smart Sustainable Housing Concept Design contract to Deicke

Richards (ABN 79 050 405 135) for an offered lump sum amount of \$80,476 (inclusive of GST).

3. The General Manager is to appoint an independent Probity Advisor for the life of the project.

### **CONCLUSION:**

Following this successful RFO process and the evaluation of bidders the preferred bidder based upon their skills and expertise and price is Deicke Richards (ABN 79 050 405 135).

While the process was successful in the identification of several highly experienced companies and for ascertaining the market value for an industry standard body of work it illuminated a significant budget shortfall for procuring a concept scheme that could be reasonably relied on as being capable of being delivered.

In summary, the cost of preparing a concept design that would serve the intended purpose of demonstrating project viability for Federal or State funding is seemingly much higher than the Council has allowed for and as such the Council must now consider what approach the circumstances best dictate; increase the budget to ensure greater confidence and certainty in the buildability of the project, alter the project brief (and outcome), or not proceed at this time.

In so far as this Report is concerned with the RFO process initiated by the Council resolution of 7 February 2019 it was successful however, staff must recommend that Council declines to accept the offers because they exceed the resolved budget allocation for the project.

Should however the Council resolve to increase the project budget, as Option 2 to this report eludes, it would also be appropriate to act on the advice of the Office of Local Government and appoint an independent Probity Advisor, as this is seen to be in the public interest having regard to Council's beneficial interests in the subject land.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

Procurement Policy v1.7

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

Within this report it was discussed that the bidder price for industry standard body of work is substantially higher than had been allocated to the project. Should Council wish to proceed with that level of work it would need to increase the budget allocation substantially and by upward of \$68,523.60. It would be open to Council that any increase in costing incurred by this Project should be factored into rent/return on investment so ultimately the monies are recovered in the long term.

#### **c. Legal:**

Not Applicable.

#### **d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. RFO2019044 Evaluation Report. (ECM5869811).

*(Confidential)* Attachment 2. RFO2019044 Evaluation Scoresheet (ECM5869824).

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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.

- 10 [PR-CM] Update on Water Extraction Matters relating to Eniflat Pty Ltd Water Extraction, 477 Urliup Road, Urliup, Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur, Rosehill Estate at No. 101 Bryens Road, Nobbys Creek, 10-20 Edwards Road, Kynnumboon and the Proposed Dawes Extraction at No. 298 Dungay Creek Road, Dungay

**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:**

The primary purpose of this report is to seek direction from Council in regard to the Mt Warning Spring Water applicants request for review (via Revenue NSW) of the penalty infringement notices which were issued to the two land owners in April 2019. Revenue NSW is seeking Council's advice on the review by 26 May 2019. This report also provides an opportunity to update Council and the community on the various compliance actions being undertaken in respect of existing commercial water extraction operators in the Tweed.

Water Extraction has become a highly contentious matter in the Tweed and broader area in recent years which has resulted in:

- a State Independent Review into Water Extraction (Part 1 released February 2019 and Part 2 pending);
- Council seeking an amendment to Tweed LEP 2014 to prohibit any future water extraction (with the NSW Department of Planning & Public Places);
- NSW Land & Environment Court Cases challenging Council's refusal of DA18/0910 and DA18/1044 (Eniflat Pty Ltd) and DA16/0660 (Robert Dawes, Dungay Creek Road); and
- Ongoing compliance matters associated with existing water extraction businesses.

A local community group Tweed Water Alliance provided Council with a report titled "Lawless – Tweed Water Mining Exposed" in March 2018 alleging breaches to development consents in regard to Water Extraction at four sites (1. Eniflat Pty Ltd, Urliup Road, 2. Mt Warning Spring Water, Kunghur, 3. Rosehill Estate, Nobby's Creek and 4. Edwards Lane, Kynnumboon). The report was accompanied with photographic and video evidence of each of the four sites.

Each of these four sites had some form of approval for water extraction however the consents are all approximately 13 - 16 years old (with multiple more recent variations) and are ambiguous in nature when being scrutinised by modern standards.

Since March 2018 Council has been reviewing the alleged breaches, seeking legal advice on the interpretation of some of the old consents and reporting the updates to Council in a confidential format given the nature of the confidential legal advice.

In confidential sessions of Council compliance matters in association with Water Extraction have been considered with certain actions resolved at various times. These resolutions have been enacted and this report is intended to provide a brief status of the matters and seek further direction from Council where required.

- **Eniflat Pty Ltd, 477 Urliup Road, Urliup**

In December 2018 Council issued a Development Control Order to the applicant requiring any illegal activity to cease and for any illegal structures to be demolished. In addition, Council resolved to refuse both DA18/0910 and DA18/1044. The applicant appealed the Order and Development Applications in the NSW Land & Environment Court. The Order is stayed until the Court considers DA18/0910 and DA18/1044 where the applicant sought consent for revised parameters to the existing water extraction business as approved by DA03/0445. These Court cases are ongoing with the matter being heard in Sydney again on Wednesday 3 July and Thursday 4 July 2019. No further resolutions are required of Council at this time for this ongoing matter.

- **Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur**

***4 April 2019 Resolution 1 - Writes a warning letter to the Owners of the site about their ongoing obligations under DA05/0995 & DA16/0579;***

A Warning letter was sent to the owners of the site on 5 April 2019.

***4 April 2019 Resolution 2 - Issues Penalty Infringement Notices to both owners for historically using large trucks when the consent bound them to small trucks and for exceeding the allocated trip numbers in November 2017 (4 x \$3,000 = \$12,000);***

Attached to the warning letter of 5 April 2019 were the 4 penalty infringement notices for a breach to the consent which specifies small trucks only and a breach to the number of truck movements in a given day exceeding 4 loads as permitted by DA05/0995 (as modified). However the owners of the site have now formally asked (via Revenue NSW) for these penalty infringement notices to be reviewed by Council.

This report details the content of the review requests and makes recommendations on whether the penalty infringement notices should stand, a caution be issued or take no action.

The four penalty infringement notices were issued to the two land owners for the two identified breaches. One of the land owners (I Martin) is the mother of the operator of Mount Warning Spring Water and Council needs to decide whether two of the four penalties are still to stand given her lack of apparent involvement in the business.

**4 April 2019 Resolution 3 - Concurrently pursue the Natural Resource Access Regulator (NRAR) for any and all water extraction volume figures from 2005 – 2019 and if breaches are identified then PINs be issued for each year that the volumes were exceeded.**

NRAR have provided the information they hold (which comprises the applicants self-reported data from Mt Warning Spring Water for 2017-2018 only) which shows that Mt Warning Spring Water Extracted 45.486 ML between July 2017 and June 2018 which demonstrates compliance with DA05/0995 (as modified) which authorises 50ML of extraction.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

- **Rosehill Estate at No. 101 Bryens Road, Nobbys Creek**

**Resolution 1 - Request the applicant to lodge a Development Application and Building Certificate within 90 days (given the Crown Land complications) from the date of notice for all unauthorised structures,**

The landowner has acknowledged this resolution and has been engaging planning, traffic, and hydrological experts to assist him prepare a DA.

**Resolution 2 - Concurrently pursue the Natural Resource Access Regulator (NRAR) for any and all water extraction volume figures from 2006 – 2019 and if breaches are identified then PINs be issued for each year that the volumes were exceeded.**

NRAR have provided the information they hold (which comprises the applicants self-reported data from 2006 - 2018) which shows that the 12ML limit as imposed on DA06/0603 has not been breached. The largest volume extracted in any year was 6.12ML in 2016.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

- **10 – 20 Edwards Lane, Kynnumboon**

At a confidential meeting on 2 August 2018 Council resolved as follows:

**Resolution A - Takes no action for historic breaches from 2006/2007 given the cooperative response Council has had to the alleged breaches; and**

**Resolution B - Writes to The Harris Group – Pristine Water Supplies reinforcing the need for compliance with all conditions of the consent and request reporting for the last 7 years as required by Condition 4.2 of DA06/1023.03 which could include log books of water extraction from the site, truck movements, including**

**dates and times to and from the site and water supply records from the water bottling company detailing total volume received**

This data was requested and provided to Council which did not show any breach to the 45ML extraction limit under the applicant's licence. No further action was considered necessary and no further resolutions are required of Council at this time.

- **298 Dungay Creek Road, Dungay (Robert Dawes)**

DA16/0660 sought approval for a new water extraction business at 298 Dungay Creek Road, Dungay. Council resolved to refuse the application in December 2018 and the applicant has since appealed that refusal in the NSW Land & Environment Court. Council is defending the appeal and court imposed conciliation conference has been scheduled for November 2019. No further resolutions are required of Council at this time

**Tweed Water Alliance – Second Report**

On 23 April 2019 Tweed Water Alliance provided Council with a second report titled "Still Lawless – Council Fails to Bring Lawless Industry under Control" again referring to the same four sites (1. Eniflat Pty Ltd, Uriup Road, 2. Mt Warning Spring Water, Kunghur, 3. Rosehill Estate, Nobby's Creek and 4. Edwards Lane, Kynnumboon). The second report does not contain the same level of detail as the first report and lacks the accompanying video and photographic evidence that would be required to prove breaches to the required standard for prosecution. However the covering letter to the report says that Tweed Water Alliance will provide whatever necessary evidence they have in their possession to assist Council with their investigations.

In regard to Mt Warning Spring Water the report stipulates that **if** the daily trips rates exceeded the 4 load allocation per day as evidenced in November 2017 (and for which penalty infringement notices have been issued) and **if** such non-compliance occurred every day then the applicant must be in breach of their yearly extraction allocation. However such presumptions are not sufficient evidence to issue a penalty infringement notice or commence civil or criminal proceedings.

As specified earlier NRAR have provided the information they hold (which comprises the applicants self-reported data from Mt Warning Spring Water for 2017-2018 only) which shows that Mt Warning Spring Water Extracted 45.486 ML between July 2017 and June 2018 which demonstrates compliance with DA05/0995 (as modified) which authorises 50ML of extraction. Therefore the alleged non-compliances in regard to Mt Warning Spring Water have not been proven with evidence to date.

The report also states for Mt Warning Spring Water that the applicant is in breach of their hours of operation. However the determination material (development consent, and statement of environmental effects as called up by Condition 2A) associated with DA05/0995 does not specify any hours of operation and therefore the consent is not limited by any hours of operation. This interpretation of the consent has not yet been communicated to the Tweed Water Alliance but may assist their understanding of what constitutes the determination material.

Council needs to consider whether the additional report provided by Tweed Water Alliance provides any additional admissible evidence that requires Council to take any

different action to that already being undertaken in regard to the existing water extraction sites.

It is recommended that staff request a meeting with the Tweed Water Alliance to review possible evidence that TWA hold to see whether any further breaches can be proved to the required standard.

**RECOMMENDATION:**

**That:**

**A. Council:**

1. In regard to the four penalty infringement notices issued to Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur on 5 April 2019 advise NSW Revenue that two of the four penalty infringement notices issued to Shaun Martin stand and the other two penalty infringement notices issued to Irene Martin are withdrawn given her lack of involvement in the water extraction business at the site as follows:
  - a. Penalty Infringement Notice 3120783683 – STANDS - Mr Shaun Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used;
  - b. Penalty Infringement Notice 3120783692 – BE WITHDRAWN and Council take no further action on this PIN - Mrs Irene Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used;
  - c. Penalty Infringement Notice 3120783701 – STAND - Mr Shaun Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017; and
  - d. Penalty Infringement Notice 3120783710 – BE WITHDRAWN and Council take no further action on this PIN - Mrs Irene Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017.
2. In regard to ongoing compliance monitoring at Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur pursue the NSW Office of Water and any sub branches of the state agency for any and all water extraction volume figures from 2005 – 2019 and issue penalty infringement notices (if statutorily valid) for any breaches to the permissible development consent extraction volume of 3ML till 2016 and 50ML between 2016 and 2019;
3. In regard to ongoing compliance monitoring at Rosehill Estate at No. 101 Bryen's Road, Nobby's Creek pursue the NSW Office of Water and any sub

branches of the state agency for any and all water extraction volume figures from 2006 – 2019 and issue penalty infringement notices (if statutorily valid) for any breaches to the permissible development consent extraction volume of 12ML;

4. **Receives and notes the Tweed Water Alliance Second Report titled “Still Lawless – Council Fails to Bring Lawless Industry under Control” received 23 April 2019 and invite Tweed Water Alliance to meet with Council staff so that staff can review any and all evidence that Tweed Water Alliance have to determine if any additional admissible evidence exists in regard to any breaches to existing water extraction development consents based on Council’s adopted interpretation of those consents to date; and**
  5. **Provides copies of the two Tweed Water Alliance Reports with all accompanying photographic evidence relevant to Mt Warning Spring Water to Shaun Martin as requested in the NSW Revenue review documentation.**
- B. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**



**REPORT:**

**Eniflat Pty Ltd, 477 Urliup Road, Urliup**

In December 2018 Council issued a Development Control Order to the applicant requiring any illegal activity to cease and for any illegal structures to be demolished. In addition, Council resolved to refuse both DA18/0910 and DA18/1044. The applicant appealed the Order and Development Applications in the NSW Land & Environment Court. The Order is stayed until the Court considers DA18/0910 and DA18/1044 where the applicant sought consent for revised parameters to the existing water extraction business as approved by DA03/0445. These Court cases are ongoing with the matter being heard in Sydney again on Wednesday 3 July and Thursday 4 July 2019. No further resolutions are required of Council at this time for this ongoing matter.

**Mount Warning Spring Water**

Mount Warning Spring Water Bottling is related to two land parcels:

- Lot 1 in DP 883113 (which had an original DA approved for Rural Industry for Water Bottling DA05/0995 as modified twice DA05/0995.01 and DA05/0995.02); and
- Lot 2 in DP 883113 (which sought approval DA16/0579 to re-locate the shed associated with the approved Rural Industry for Water Bottling from Lot 1 to proposed Lot 2).

Both of these properties are owned by Mr Shaun Martin and his mother Mrs Irene Martin and the sites are more commonly known as 2574 Kyogle Road, Kunghur.

Council has interpreted DA05/0995 (as amended) over Lot 1 in DP 883113 - Rural Industry for Water Bottling as follows (in summary only):

- The applicant must comply with the original Statement of Environmental Effects (SEE) as Condition 2A calls up compliance with the SEE. Condition 2E was never modified to reflect the modification reports/cover letters and therefore the original SEE prevails except where varied by another more specific condition. The SEE states:
  - Water Bottling
  - Fit out of existing machinery shed
  - Traffic will be reduced from dairy farmer use which was 1 semi-trailer every second day to 1 small truck per week
- The applicant must comply with the stamped plans as called up by Condition 2A;
- The applicant must comply with specific Condition 3A which allows 8 trips per day (4 full loads) for both bottled and bulk water. Condition 3A prevails over the SEE in regards to total trips and the specific inclusion of bulk water;
- The applicant must comply with the SEE in regard to truck size which states “small truck”. There is no condition limiting truck size so therefore the SEE prevails;
- The applicant has unlimited hours of operation as there is no condition limiting hours of operation. The original cover letter for the SEE said 9am – 3pm however this does not form part of the determination documentation and is not referenced in the consent; and

- The applicant must comply with the General Terms of Approval as contained in the modified consent which currently specifies **50ML** in any 12 month period commencing 1 July amongst many other GTA provisions.

Council has interpreted DA16/0579 over Lot 1 and Lot 2 in DP 883113 - Alterations & Additions to existing Rural Industry for Water Bottling & Bulk Water as follows (in summary only):

- The applicant must comply with the original Statement of Environmental Effects (SEE) as Condition 1 calls up compliance with the SEE. The SEE prevails except where varied by another more specific condition.
- The applicant must comply with the stamped plans as called up by Condition 1.
- The applicant must comply with specific Condition 83 which currently allows 12 trips per weekday (6 full loads) and 8 trips (4 full loads) on weekends.
- There is no condition limiting truck size so therefore truck size is unlimited.
- The applicant must comply with specific condition 73 for the hours of operation which are 7am – 7pm – 7 days a week.
- The total bore allocation rests with Lot 1 as detailed above in DA05/0995.

The applicant engaged DAC Planning who lodged the modification to DA16/0579 (.01) to stage the application as follows:

*Stage 1 - installation of the water delivery pipe, construction of the driveway and internal truck turnaround area, and the provision of bulk water supplies from Lot 2.*

*Stage 2 - construction of the shed and commencement of the water bottling Operation.*

This modification was approved on 6 December 2018 and allows the bulk water extraction to start operating under DA16/0579 within the parameters of the above conditions when the pipe connects the bore from Lot 1 to Lot 2 and when the driveway access for Lot 2 is upgraded to Council's satisfaction. **When** this occurs the applicant will be bound by the conditions in DA16/0579 in terms of truck numbers, hours of operation and an unlimited truck size. The 50ML extraction limit will remain as per DA05/0995 as the bore remains on Lot 1.

It is Council's understanding that the applicant is currently operating under DA05/0995 and that the applicant will notify Council when they switch to DA16/0579.

Tweed Water Alliance set up video surveillance at Mt Warning Spring Water between 17 November 2017 and 21 November 2017 which appears to show breaches to the small truck provision and to the number of trucks per day as follows.

- Friday 17 November 2017 - 10 possible large truckloads (20 trips)
- Saturday 18 November 2017 - 6 possible large truckloads (12 trips)
- Sunday 19 November 2017 – 6 possible large truckloads (12 trips)
- Monday 20 November 2017 – 9 possible large truckloads (18 trips)
- Tuesday 21 November 2017 – 9 possible large truck loads (18 trips)

The video and photos show large trucks coming in and leaving the property approximately 30-40 minutes later. The type of photos obtained are shown below:



Truck in 9.38am



Truck out 10.29am



TSC - 24 October 2018 - 11.36am - Typical truck servicing the site approximately 15m long (HRV)

Council considered all the available evidence and resolved on 5 April 2019 as follows:

- A. Writes a warning letter to the Owners of the site about their ongoing obligations under DA05/0995 & DA16/0579;
- B. Issues Penalty Infringement Notices to both owners for historically using large trucks when the consent bound them to small trucks and for exceeding the allocated trip numbers in November 2017 (4 x \$3,000 = \$12,000);
- C. Concurrently pursue the Natural Resource Access Regulator (NRAR) for any and all water extraction volume figures from 2005 - 2019 and if breaches are identified then PINs be issued for each year that the volumes were exceeded.

Council's understanding of the consent was explained to the applicant on 5 April 2019 when Council simultaneously issued the applicant with four penalty infringement notices to DA05/0995 as follows:

Penalty Infringement Notice (PINs) were accordingly issued to the applicant on 5 April 2019. On 29 April 2019 Council received notices from NSW Revenue that Mr Shaun Martin and Mrs Irene Martin had requested a review of the penalty infringement notices. The following information in italics supported the reviews:

- a. **Penalty Infringement Notice 3120783683 - Mr Shaun Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used.**

*Alleged offence is breach of condo 2A for DA05/0995 based on photographic evidence of 15-19m trucks & semi-trailer water tankers servicing the business?*

*No photographic evidence has been presented. I seek photographic date evidence.*

*The definition of small vs large truck is ambiguous. A common interpretation of large truck is any vehicle above 6 axles; e.g. 9 axle B- Doubles, 11 axle Dog Trailer, Road Train. These large trucks have not served the premises.*

*To put it into perspective, trucks that service the business have less axles than Quad Dogs operated by earth movers and transporters on all Shire Roads. So, in the large scheme of things, servicing trucks are small fry.*

- b. **Penalty Infringement Notice 3120783692 - Mrs Irene Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used.**

*Alleged offence is breach of condo 2A for DA05/0995 based on photographic evidence of 15-19m trucks & semi-trailer water tankers servicing the business?*

*No photographic evidence has been presented. I seek photographic date evidence.*

*The definition of small vs large truck is ambiguous. A common interpretation of large truck is any vehicle above 6 axles; e.g. 9 axle B- Doubles, 11 axle Dog Trailer, Road Train. These large trucks have not served the premises.*

*To put it into perspective, trucks that service the business have less axles than Quad Dogs operated by earth movers and transporters on all Shire Roads. So, in the large scheme of things, servicing trucks are small fry.*

- c. **Penalty Infringement Notice 3120783701 - Mr Shaun Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017.**

*Alleged offence is listed as breach of condition 3A for DA05/0995 based on Council receiving several submissions / complaints regarding sightings of truck movements exceeding the permitted number of trips per day.*

*No photographic evidence has been presented with the penalty notice of alleged vehicles entering or exiting the premises at 2574 Kyogle Road, Kunghur. I seek photographic date evidence of vehicles sighted at aforementioned address.*

- d. **Penalty Infringement Notice 3120783710 - Mrs Irene Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017.**

*Alleged offence is listed as breach of condition 3A for DA05/0995 based on Council receiving several submissions / complaints regarding sightings of truck movements exceeding the permitted number of trips per day.*

*No photographic evidence has been presented with the penalty notice of alleged vehicles entering or exiting the premises at 2574 Kyogle Road, Kunghur. I seek photographic date evidence of vehicles sighted at aforementioned address.*

Further to this material submitted to NSW Revenue Shaun Martin submitted the following letter to assist Council with the review of the PIN's:

*I am writing to you in relation to the abovementioned four (4) penalty infringement notices, issued by Tweed Shire Council on 5th of April 2019. I am writing on behalf of myself, Shaun Martin, landholder, and my mother, Irene Martin, additional joint landholder of 2574 Kyogle Road, KUNGHUR.*

*Following the issuing of these penalty infringement notices, we lodged review requests for all PINs via the Revenue NSW website in late April 2019. Further to these online requests, I hereby wish to submit the following additional information for your review and consideration.*

***PIN 3120783701 and 3120783710 – Breach of Condition 3A for DA05/0995***

*We would ask that the review of the penalty infringement notices in relation to increased truck movements during the relevant period takes into consideration the following extraordinary circumstances:*

*In 2016 Tweed Shire Council approved our DA to increase our production facilities and capacity as a family business. As I am sure you understand, there is a natural growth and transition phase that needs to occur in order that we are financially viable as the new facility is built. If we do not allow the business to grow during this transition phase, then it places us in an extremely risky position with both lenders and future customers. It is simply not possible to jump from one post to another without any gradual growth. This is an unusual and extraordinary period for us in light of this transition and growth phase. We would ask that some understanding be given to this – in light that the council approved our new and larger facility with knowledge that production and capacity would significantly increase.*

*To build a growing and sustainable business that further adds to the local economy and employment, we would hope that some understanding is given to this challenging transition phase.*

***PIN 3120783683 and 3120783692 – Breach of Condition 2A for DA05/0995***

*As previously mentioned in our online penalty review request, I wish to highlight that the definition of “small” vs “large” truck is ambiguous. A common interpretation of a “large truck” is any vehicle above 6 axles; e.g. 9 axle B-Doubles, 11 axle Dog Trailer, Road Train. These “large” trucks have not served the premises.*

*To put it into perspective, trucks that service the business have less axles than Quad Dogs operated by earthmovers and transporters on all Shire Roads. So, in the “large” scheme of things, trucks that service the business are “small” fry.*

*Please let us know where the definition of “large” trucks has come from as general industry standards indicate that the trucks that have serviced the business are not in the “large” category.*

***PIN 3120783692 and 3120783710 – PINs issued to Irene Martin***

*In relation to the fact that my elderly mother Irene was also issued with two fines, I would like to state that she is in no way involved with the running of the water bottling business and that these fines are not applicable to her person in any way. Whilst she lives on the land that she has occupied all her life, she is not responsible for the business operations or day to day activities.*

*We ask you to consider her predicament and hope you will find it a reasonable request to waive the fines that were issued in her name.*

*Thank you for your consideration of this additional material in relation to our request to review issued penalty infringement notices.*

It appears that Irene Martin as the mother of Shaun Martin has no involvement in the day to day running of the property or business and therefore penalty infringement notices 3120783692 - Mrs Irene Martin \$3000, **and** Penalty Infringement Notice 3120783710 - Mrs Irene Martin \$3000 are recommended to be **withdrawn** and no further action taken against these penalty infringement notices.

In regard to penalty infringement notice 3120783683 – for a breach of Condition 2A in terms of truck size the applicant appears to be referencing the AUSTROADS Vehicle Classification Systems which produces images with short, medium and long trucks as shown below:

AUSTROADS Vehicle Classification System

Level 1	Level 2		Level 3	AUSTROADS Classification		
Length (indicative)	Axles and Axle Groups		Vehicle Type	Class	Parameters	Typical Configuration
Type	Axles	Groups	Typical Description			
Short up to 5.5m	1 or 2	3, 4 or 5	Short Sedan, Wagon, 4WD, Utility, Light Van, Bicycle, Motorcycle, etc	1	$d(1) \leq 3.2m$ and axles = 2	
			Short - Towing Trailer, Caravan, Boat, etc	2	groups = 3 $d(1) \geq 2.1m$ , $d(1) \leq 3.2m$ , $d(2) \geq 2.1m$ and axles = 3, 4 or 5	
Medium 5.5m to 14.5m	2	2	Two Axle Truck or Bus	3	$d(1) > 3.2m$ and axles = 2	
			Three Axle Truck or Bus	4	axles = 3 and groups = 2	
			Four Axle Truck	5	axles > 3 and groups = 2	
			Three Axle Articulated Three axle articulated vehicle, or Rigid vehicle and trailer	6	$d(1) > 3.2m$ , axles = 3 and groups = 3	
Long 11.5m to 19.0m	> 2	> 2	Four Axle Articulated Four axle articulated vehicle, or Rigid vehicle and trailer	7	$d(2) < 2.1m$ or $d(1) < 2.1m$ or $d(1) > 3.2m$ axles = 4 and groups > 2	
			Five Axle Articulated Five axle articulated vehicle, or Rigid vehicle and trailer	8	$d(2) < 2.1m$ or $d(1) < 2.1m$ or $d(1) > 3.2m$ axles = 5 and groups > 2	
			Six Axle Articulated Six axle articulated vehicle, or Rigid vehicle and trailer	9	axles = 6 and groups > 2 or axles > 6 and groups = 3	
Medium Combination 17.5m to 36.5m	> 6	4	B Double B Double, or Heavy truck and trailer	10	groups = 4 and axles > 6	
			Double Road Train Double road train, or Medium articulated vehicle and one dog trailer (M.A.D.)	11	groups = 5 or 6 and axles > 6	
Large Combination Over 33.0m	> 6	> 6	Triple Road Train Triple road train, or Heavy truck and three trailers	12	groups > 6 and axles > 6	

Definitions: Group: Axle group, where adjacent axles are less than 2.1m apart  
 Groups: Number of axle groups  
 Axles: Number of axles (maximum axle spacing of 10.0m)

d(1): Distance between first and second axle  
 d(2): Distance between second and third axle

Council's interpretation of small versus large truck appears to be better answered in the Australian Standard AS2890 Table 2.1 which shows vehicle class as either:

- SRV - Small Rigid Vehicle length 6.4m, width 2.3m and wheel base 3.8m
- MRV - Medium Rigid Vehicle length 8.8m, width 2.5m and wheelbase 5m
- HRV – Heavy Rigid Vehicle length 12.5, width 2.5m and wheel base 6.60m
- AV – Articulated Vehicle length 19m, width 2.5m and wheel base 14.5m

Based on this national definition the trucks being used would appear to fall into the HRV (Heavy Rigid Vehicle category) and could not be considered a small truck.

Accordingly the penalty infringement notice served on Shaun Martin in regard to Condition 2A compliance with SEE which states small truck only is recommended to remain in place with no change.

In regard to penalty infringement notice 3120783701 – for a breach of Condition 3A in terms of excessive truck numbers in November 2017 it is recognised that small businesses do incrementally grow over time if successful. However the Environmental Planning & Assessment Act 1979 mandate that such growth is to occur under a valid development consent in accordance with conditions of that consent. Council has evidence that Condition 3A of DA05/0995 (as modified) was breached on at least 5 occasions in November 2017 and therefore this fine is recommended to remain in place with no change.

The applicant has been put on notice since 5 April 2019 of Council's interpretation of DA05/0995. Any further breaches to DA05/0995 may result in additional penalty infringement notices.



In regards to the Council resolution to pursue NRAR for the extraction data NRAR have provided the information they hold (which comprises the applicants self-reported data from Mt Warning Spring Water for 2017-2018 only) which shows that Mt Warning Spring Water Extracted 45.486 ML between July 2017 and June 2018 which demonstrates compliance with DA05/0995 (as modified) which authorises 50ML of extraction.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

The applicant has also been made aware that there are fees outstanding on DA05/0995 (as modified) for the Tweed Road Contribution Plan No. 4 at 5.5 trips totalling \$15,741 at today's rates. It is understood that the applicant will be requesting a payment plan to pay these outstanding fees over instalments.

### **Rosehill Estate at No. 101 Bryens Road, Nobbys Creek**

DA05/0995 was approved in January 2006, and authorised a rural industry for water bottling.

DA16/0579 was approved in November 2016, and authorised alterations and additions to water bottling facility (later modified to be in 2 stages in Dec 2018).

In March 2018 Tweed Water Alliance alleged that the applicant was breaching the consent by:

- Exceeding yearly extraction allocation 12ML
- Using unauthorised truck size
- Exceeding the allocated truck numbers
- Using additional infrastructure without approval (tanks etc.)

Council wrote to the applicant explaining these allegations and the applicant responded in May 2018 to these allegations with comments the effect that:

- *We are concerned with the allegations*
- *We thought we were operating as per the consent*
- *The SEE said water would be on demand, extraction would increase etc.*
- *Extraction Volumes were stated as being 6ML in 2016 from a permissible 12ML*
- *We thought late trips would be less intrusive when there is limited public on the roads*

The applicant has been regularly asking what is Council's interpretation of the consent and stated that they will do what they have to do to remedy any non-complying activities. They want to work with Council.

A site visit with the applicant's consultant planner (DAC Planning) was arranged for 13 February 2019 and it was determined that the following unauthorised structures exist in association with their bulk water extraction:

- 2 x 30,000L water tanks;
- 2 x 39,000L water tanks

- 78m deep test bore (no longer used as too much iron and flow too low)
- 65mm poly pipe that goes from the originally approved bore to the tanks at the front of the site
- Store shed where trucks connect hose at front of property
- Extended front fence in 2016

The applicant volunteered survey details to show the location of the unauthorised works.

Some of the unauthorised works occur in Crown Land so the applicant is in the process of applying for a land swap with the Crown so that they can lodge a future DA for the use of the unauthorised structures looking forward.

The results of this site visit were discussed with the Councillors on 13 February 2019 at a workshop.

Council now interprets the terms of the consent as follows:

- Consent is granted to undertake water extraction in the form of both bottling and bulk mineral water supplies in accordance with the approved plans.
- The water extraction operations must be conducted pursuant to a bore licence issued by the Department of Natural Resources (the Department) under s 116 of the *Water Act 1912*.
- Before operations commence under any licence - or variation of an existing licence - a copy of the licence and the conditions attached to it must be provided to Council as per Condition 18.
- Whilst the consent granted on 29 September 2006 specified that the volume of groundwater extracted must not exceed 12 megalitres, it also allowed for there to be variation of the allocation by the Department to prevent the overuse of an aquifer. Such variation occurred in 2008, and the bore licence was upgraded to allow 38 megalitres of water to be extracted per annum. However, whilst the bore licence allows for extraction in the amount of 38 megalitres per annum, development consent is required for extraction in an amount greater than 12 megalitres per annum, in accordance with the General Terms of Approval under the consent.
- It was estimated that the operation would involve one five tonne truck per week. However, that was specified to be an estimate and the wording of the consent allowed that the volume of production would increase.
- The consent provided that the quantity of mineral water supplied would depend on demand.
- The consent specified that the development is restricted to the number of trips set out in the Statement of Environmental Effects (**SEE**). The SEE anticipated that the number of trips on Bryens Road would increase by four (4) vehicle movements based on the two (2) proposed staff, and the addition of one (1) five tonne delivery truck per week. We note that the SEE did not specify a number of trips for the bulk water aspect of the business. The bulk water aspect of the business is therefore unlimited with respect to the number of trips and truck size.
- The consent and SEE do not specify the hours of operation. The DA form specified hours as 8am – 5pm seven days a week however this does not form part of the determination material. Any future DA should consider refining the hours of operation to ensure amenity concerns are adequately addressed.

On the 4 April 2019 Council resolved as follows:

**Resolution 1 - Request the applicant to lodge a Development Application and Building Certificate within 90 days (given the Crown Land complications) from the date of notice for all unauthorised structures,**

The landowner has acknowledged this resolution and has been engaging planning, traffic, and hydrological experts to assist him prepare a DA.

**Resolution 2 - Concurrently pursue the Natural Resource Access Regulator (NRAR) for any and all water extraction volume figures from 2006 – 2019 and if breaches are identified then PINs be issued for each year that the volumes were exceeded.**

NRAR have provided the information they hold (which comprises the applicants self-reported data from 2006 - 2018) which shows that the 12ML limit as imposed on DA06/0603 has not been breached. The largest volume extracted in any year was 6.12ML in 2016.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

It should be noted that the applicant has ceased water trucking operations while this matter is being resolved.

### **10 – 20 Edwards Lane, Kynnumboon**

The applicable consent for this site is DA06/1023 (as modified). The below table shows the relevant conditions of consent compared to the Tweed Water Alliance allegations and Council's interpretation of these issues:

<b>DA06/1023 CONDITIONS</b>	<b>ALLEGATION</b>	<b>APPLICANT RESPONSE</b>	<b>COUNCIL COMMENT</b>
1.1 The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1, 2 and 3 and dated <u>October 2015</u> , except where varied by conditions of this consent.	NIL	NIL	N/A
4A. Section 94 Contributions Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.  (a) Tweed Road Contribution Plan: 8 Trips @ \$2062 per trips <b>\$16,496</b> (\$1874 base rate + \$188 indexation) S94 Plan No. 4 Sector12_4	NIL	NIL	PAID

DA06/1023 CONDITIONS	ALLEGATION	APPLICANT RESPONSE	COUNCIL COMMENT
4.2 An annual statement of truck movements to and from the subject site is to be supplied to Council at the end of each financial year to the satisfaction of the General Manager or his delegate.	NIL	Applicant has now provided this.	No further action required.
7B. Trucks are only to enter and leave the site during the hours of:  - 7am to 7pm Mondays to Fridays (excluding public holidays) and are limited to ten (10) truck movements per day ie. five in and five out; and  - 8am – 12pm Saturday and Sunday and are limited to four (4) truck movements per day i.e. two in and two out.	Hours of Operation breached by 15 and 6 minutes on 30 October 2017	Minor breaches.  Action taken to comply in future.	No action was recommended in regards to these minor past breaches.

As DA05/1507 only authorised the tanks the current transportation operations are bound by DA06/1023 as per the above.

The licence for extraction is separate to any consent and specifies a 45ML limit.

In this instance there were three matters to consider:

- **2006/2007 Historic Breach** (looking back) – the breach of Condition 20 to DA05/1507 occurred over 10 years ago. The situation was remedied by lodgement and approval of DA16/1023. No action was recommended in regards to this historic breach as there is a 2 year limit on proceedings under section 9.57 (5) of the EP & A Act
- **2017 Alleged Breaches (looking back)** – the breach to Condition 7B Hours of operation by 15 and 7 mins on 30 October 2017 has been recognised by the Water Extraction Company and they have taken positive action to ensure such a breach will not occur again. No action was recommended in regards to these past minor breaches.
- **Compliance Reporting (looking forward)** – Pristine Water Supplies has considered the Tweed Water Alliance recommendations for log books of truck movements, including dates and times to and from the site and water supply records from the water bottling company and considers that the provision of this information to Council may better assist it to understand and monitor the prudent governance and supply steps used on site and to ensure that the terms of the development consents are being complied with and consistently monitored. It was recommended that Council writes to The Harris Group - Pristine Water Supplies and requests regular reporting log books in accordance with Condition 4.2 to ensure compliance monitoring into the future.

At a confidential meeting on 2 August 2018 Council resolved as follows:

***Resolution A - Takes no action for historic breaches from 2006/2007 given the cooperative response Council has had to the alleged breaches; and***

**Resolution B - Writes to The Harris Group – Pristine Water Supplies reinforcing the need for compliance with all conditions of the consent and request reporting for the last 7 years as required by Condition 4.2 of DA06/1023.03 which could include log books of water extraction from the site, truck movements, including dates and times to and from the site and water supply records from the water bottling company detailing total volume received**

This data was requested and provided to Council which did not show any breach to the 45ML extraction limit under the applicant's licence. No further action was considered necessary and no further resolutions are required of Council at this time.

- **298 Dungay Creek Road, Dungay (Robert Dawes)**

DA16/0660 sought approval for a new water extraction business at 298 Dungay Creek Road, Dungay. Council resolved to refuse the application in December 2018 and the applicant has since appealed that refusal in the NSW Land & Environment Court. Council is defending the appeal and court imposed conciliation conference has been scheduled for November 2019. No further resolutions are required of Council at this time

**Tweed Water Alliance – Second Report**

On 23 April 2019 Tweed Water Alliance provided Council with a second report titled “Still Lawless – Council Fails to Bring Lawless Industry under Control” again referring to the same four sites (1. Eniflat Pty Ltd, Urliup Road, 2. Mt Warning Spring Water, Kunghur, 3. Rosehill Estate, Nobby's Creek and 4. Edwards Lane, Kynnumboon). The second report does not contain the same level of detail as the first report and lacks the accompanying video and photographic evidence that would be required to prove breaches to the required standard for prosecution. However the covering letter to the report says that Tweed Water Alliance will provide whatever necessary evidence they have in their possession to assist Council with their investigations.

It is recommended that staff request a meeting with the Tweed Water Alliance to review possible evidence that TWA hold to see whether any further breaches can be proved to the required standard.

Provided below are the Tweed Water Alliance Recommendations as per their “Still Lawless” report with a brief response from Council where available:

### **Still Lawless - Investigation Site 1 – 477 Urliup Road, Urliup**

#### RECOMMENDATIONS

1. Fully investigate all breaches including historical ones that Councillors have previously refused to investigate (see note below)
2. Investigate with NSW Office of Water the extent of over extraction that has occurred.
3. Investigate whether the export of bulk water in any of these applications is in fact allowable, given there has never been a change to the original DA's approved use for on-site harvesting & bottling of water only.
4. Seek legal advice on whether the DA approval permits bulk transport of water. If not, cancel the DA.
5. If chronic breaching of conditions or over extraction is confirmed, cancel the DA and the commercial licence.

All compliance matters pertaining to this site are currently before the NSW Land & Environment Court as part of the Order that Council issued in December 2018. The Order has been stayed until such time as the Court determines DA18/0910 and DA18/1044. These Court cases are ongoing with the matter being heard in Sydney again on Wednesday 3 July and Thursday 4 July 2019.

No further resolutions are required of Council at this time for this ongoing matter.

It should be noted that development applications that have already been issued cannot be cancelled.

### **Still Lawless - Investigation Site 2 – Mt Warning Spring Water, 2574 Kyogle Road, Kunghur**

#### RECOMMENDATIONS

1. The NSW Office of Water & Tweed Shire Council investigate whether the property owner's 3 megalitre allocation was exceeded from October 2015 – June 2016.
2. The NSW Office of Water and Tweed Shire Council investigate whether the property owner's 50 megalitre allocation has been exceeded since June 2016.<sup>47</sup>
3. If over extraction has occurred, revoke the DA and/or licence.
4. Request financial and other records from transport company Black Mount Pty. Ltd., the landholders and the bottling company to determine the amount of water removed.
5. Seek compensation from property owners, Black Mount Pty. Ltd. and the bottling company for any water unlawfully removed.
6. Impose significant penalties and fines in order to ensure such unlawful conduct does not recur in the Shire.

In April 2018 Council reviewed all available data to date and decided not to pursue civil or criminal action in regards to DA05/0995.

Instead the 4 penalty infringement notices were issued which have now been challenged by way of a review. As discussed above 2 of the penalty infringement notices to Irene Martin are recommended to be withdrawn while the 2 penalty infringement notices to Shaun Martin are recommended to stand.

NRAR have provided the information they hold (which comprises the applicants self-reported data from Mt Warning Spring Water for 2017-2018 only) which shows that Mt Warning Spring Water Extracted 45.486 ML between July 2017 and June 2018 which demonstrates compliance with DA05/0995 (as modified) which authorises 50ML of extraction.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

It should be noted that development applications that have already been issued cannot be cancelled.

Compensation for breaches cannot be obtained without commencing civil or criminal proceeding which could result in fines. However the burden of proof for civil or criminal proceedings is very high and to date Council has not resolved to commence any civil or criminal prosecutions.

The penalty infringement notices are regulated and Council does not specify the amount of a fine.

### **Still Lawless - Investigation Site 3 – 101 Bryen's Road Nobby's Creek**

#### **RECOMMENDATIONS**

1. Investigate whether the property owner's authorised 12 megalitres allocation has been exceeded in conjunction with the NSW Office of Water.
2. Request financial records from property owner, bottling company & Black Mount Pty Ltd to determine the amount of water removed.
3. If over extraction has occurred, revoke the DA and/or licence.
4. Seek compensation from property owners, bottling company and water Transport Company for any water unlawfully removed.
5. Ensure that all DAs contain limitations on hours of operation.

In April 2018 Council reviewed all available data to date and decided not to pursue civil or criminal action in regards to DA06/0603. Instead Council resolved as follows:

***Resolution 1 - Request the applicant to lodge a Development Application and Building Certificate within 90 days (given the Crown Land complications) from the date of notice for all unauthorised structures,***

The landowner has acknowledged this resolution and has been engaging planning, traffic, and hydrological experts to assist him prepare a DA.

**Resolution 2 - Concurrently pursue the Natural Resource Access Regulator (NRAR) for any and all water extraction volume figures from 2006 – 2019 and if breaches are identified then PINs be issued for each year that the volumes were exceeded.**

NRAR have provided the information they hold (which comprises the applicants self-reported data from 2006 - 2018) which shows that the 12ML limit as imposed on DA06/0603 has not been breached. The largest volume extracted in any year was 6.12ML in 2016.

NRAR are a new organisation and it appears that Council may have to seek any additional extraction data for past years through NSW Office of Water. If Council wants to resolve to investigate past years this report provides that option within this report.

It should be noted that development applications that have already been issued cannot be cancelled.

Compensation for breaches cannot be obtained without commencing civil or criminal proceeding which could result in fines. However the burden of proof for civil or criminal proceedings is very high and to date Council has not resolved to commence any civil or criminal prosecutions.

Hours of operation will be contained on any future water extraction businesses.

#### **Still Lawless - Investigation Site 4 – 10 – 20 Edwards Lane, Kynnumboon**

##### **RECOMMENDATIONS**

6. Council inspect log books belonging to the property owner
7. Council request financial information from Black Mount Pty Ltd relating to this property in order to determine the amount of water removed;
8. Council request financial information from the bottling company relating to this property in order to determine the amount of water removed.
9. Should the property owner be in exceedance of its permitted allocation, the DA should be cancelled and the matter reported to NSW Water for enforcement action
10. A report on its investigations be publicly released

At a confidential meeting on 2 August 2018 Council resolved as follows:

***Resolution A - Takes no action for historic breaches from 2006/2007 given the cooperative response Council has had to the alleged breaches; and***

***Resolution B - Writes to The Harris Group – Pristine Water Supplies reinforcing the need for compliance with all conditions of the consent and request reporting for the last 7 years as required by Condition 4.2 of DA06/1023.03 which could include log books of water extraction from the site, truck movements, including dates and times to and from the site and water supply records from the water bottling company detailing total volume received***



This data was requested and provided to Council which did not show any breach to the 45ML extraction limit under the applicant's licence. No further action was considered necessary and no further resolutions are required of Council at this time.

**OPTIONS:**

The following is recommended:

That Council:

1. In regard to the four penalty infringement notices issued to Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur on 5 April 2019 advise NSW Revenue that two of the four penalty infringement notices issued to Shaun Martin stand and the other two penalty infringement notices issued to Irene Martin are withdrawn given her lack of involvement in the water extraction business at the site as follows:
  - a. Penalty Infringement Notice 3120783683 – **STANDS** - Mr Shaun Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used;
  - b. Penalty Infringement Notice 3120783692 – **BE WITHDRAWN** and Council take no further action on this PIN - Mrs Irene Martin \$3000 PIN – breach of condition 2A for DA05/0995 as large trucks have been accessing the site for water extraction where the Statement of Environmental Effects (SEE) specifies only a small truck is to be used;
  - c. Penalty Infringement Notice 3120783701 – **STAND** - Mr Shaun Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017; and
  - d. Penalty Infringement Notice 3120783710 – **BE WITHDRAWN** and Council take no further action on this PIN - Mrs Irene Martin \$3000 PIN – breach of condition 3A for DA05/0995 as daily truck movements have exceeded 8 trips per day (4 loads) on at least five occasions between 17 November 2017 and 21 November 2017.
2. In regard to ongoing compliance monitoring at Mt Warning Spring Water at Lot 1 DP 883113 No. 2574 Kyogle Road, Kunghur pursue the NSW Office of Water and any sub branches of the state agency for any and all water extraction volume figures from 2005 – 2019 and issue penalty infringement notices (if statutorily valid) for any breaches to the permissible development consent extraction volume of 3ML till 2016 and 50ML between 2016 and 2019;
3. In regard to ongoing compliance monitoring at Rosehill Estate at No. 101 Bryen's Road, Nobby's Creek pursue the NSW Office of Water and any sub branches of the state agency for any and all water extraction volume figures from 2006 – 2019 and issue penalty infringement notices (if statutorily valid) for any breaches to the permissible development consent extraction volume of 12ML;

4. Receives and notes the Tweed Water Alliance Second Report titled “Still Lawless – Council Fails to Bring Lawless Industry under Control” received 23 April 2019 and invite Tweed Water Alliance to meet with Council staff so that staff can review any and all evidence that Tweed Water Alliance have to determine if any additional admissible evidence exists in regard to any breaches to existing water extraction development consents based on Council’s adopted interpretation of those consents to date; and
5. Provide copies of the two Tweed Water Alliance Reports with all accompanying photographic evidence relevant to Mt Warning Spring Water to Shaun Martin as requested in the NSW Revenue review documentation.

Alternatively should Council want to expand the investigations beyond existing resource availabilities for both possible historical breaches and possible future breaches a private investigator and a financial budget needs to be provided for this investigation to gather the necessary evidence to support possible future legal action. However, to date Council has not resolved that sufficient evidence exists for such civil or criminal proceedings.

#### **CONCLUSION:**

Council has been reviewing all available data in an attempt to regularise the industry at specific sites. Historically these sites have self-reported to the licencing authority on extraction and questions are now being asked about whether such self reporting is adequate for this industry. Council has not had the resources to monitor every water extraction site twenty four seven. If Council wants to pursue additional resources beyond that currently available to continue looking at possible past breaches a private investigator and appropriate resources is required.

The recommendations in this report looks to continue compliance by working with the applicants in education and future application (assessed on their merits) where statutorily required while still pursuing the licencing authority for extraction data in past years.

All operators have maintained a dialog with Council and are seriously attempting to resolve any historical non compliances by way of future applications that must be assessed on their merits.

#### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Tweed Water Alliance Letter dated 23 April 2019 and attachments (ECM 5874193)

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**11 [PR-CM] Development Application DA13/0124.02 for an Amendment to Development Consent DA13/0124 Seven Townhouses at Lot 4 DP 801038 No. 18-20 Cupania Court, Tweed Heads West**

**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:**

Council is in receipt of an application to modify a consent for a seven townhouse development at the above address.

The subject application proposes to stage the development in two stages with Stage 1 consisting of the construction of a driveway crossover, partial construction of internal driveway (approximately 10m in length) and associated retaining walls. Stage 2 would then comprise of works associated with the remainder of the development approved under DA13/0124 (remaining driveway length and construction of seven townhouses and all associated works).

The submitted application has advised that *'the staging is necessary so that minor work can be commenced to preserve the development consent, which expires 4 July 2019.'*

The subject development has been notified for a period of 14 days, during which time one submission was received, which has been detailed elsewhere in this report.

The application has been referred to Council for determination based on previous Councillor enquiries relating to this development. It is noted that even in the event that this modification application not be supported by Council, the proponent would retain the ability to lawfully physically commence the development prior to the 4 July 2019.

The proposed modification is recommended for approval subject to the modification of relevant conditions to ensure that the relevant preparatory works (including but not limited to geotechnical and stormwater management investigations) as required on the existing consent are undertaken commensurate to each stage.

**RECOMMENDATION:**

**That Development Application DA13/0124.02 for an amendment to Development Consent DA13/0124 seven townhouses at Lot 4 DP 801038 No. 18-20 Cupania Court, Tweed Heads West be approved subject to the following modified conditions:**

**1. Delete Condition No. 1 and replace with Condition No. 1A which reads as follows:**

**1A. The development shall be carried out in two stages as follows:**

- **Stage 1**  
Driveway crossover, partial driveway and associated works as identified as Stage 1 on Staging Plan, and
- **Stage 2**  
Construction of seven townhouses and all remaining associated works as identified as Stage 2 on Staging Plan.

**The development shall be completed in accordance with the Statement of Environmental Effects and Approved Plans under Schedule A of this consent, and Staging Plan (No. 3 – dated 16 April 2014) prepared by Planit Consulting, except where varied by the conditions of this consent.**

[GEN0005]

**2. Delete Condition No. 22 and replace it with Condition No. 22A which reads as follows:**

**22A. Permanent stormwater quality treatment for Stage 1 and Stage 2 shall be provided in accordance with the following:**

- (a) **The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.**
- (b) **Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.**
- (c) **It is encouraged that the stormwater and site works incorporate Water Sensitive Design Principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership.**
- (d) **Specific Requirements to be detailed within the Construction Certificate application include:**
  - (i) **Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any site works being undertaken.**

- (ii) **Runoff from all hardstand areas, (including driveway and hardstand landscaping 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.**
- (iii) **Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.**

[PCC1105]

3. **Delete Condition No. 26 and replace it with Condition No. 26A which reads as follows:**

**26A. Prior to the issue of a Construction Certificate for Stage 1 and Stage 2, the Applicant must submit to (and receive approval from) the PCA, a detailed report from a suitably qualified Geotechnical/Structural Engineering confirming that the proposed development (including the protective wall along the northern property boundary):**

- (a) **will provide geotechnical stability to the proposed development,**
- (b) **will prevent any upslope advancement of any down-slope (off-site) slip failures and detail amelioration measure should a down-slope failure occur (including access requirements),**
- (c) **will not jeopardise the geotechnical stability or structural integrity of neighbouring property, including the existing Boulder Retaining Wall to the south,**
- (d) **complies with applicable Australian Standards (AS 4678-2002) and the provisions of Council's Design Specification D6 - *Site Regrading*.**

[PCCNS01]

4. **Delete Condition No. 31 and replace it with Condition No. 31A which reads as follows:**

**31A. The erection of a building in accordance with a development consent must not be commenced until:**

- (a) **a construction certificate for the building work for Stage 1 and Stage 2 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]
5. Delete Condition No. 80 and replace it with Condition No. 80A which reads as follows:
- 80A. On completion of work for Stage 1 and Stage 2 a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of all retaining structures.
- [POC0805]
6. Delete Condition No. 82 and replace it with Condition No. 82A which reads as follows:
- 82A. Prior to the issue of an occupation certificate for Stage 1 and Stage 2, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.
- [POC0985]
7. Delete Condition No. 86 and replace it with Condition No. 86A which reads as follows:
- 86A. Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 a certificate prepared by a qualified Geotechnical Engineer is to be provided to the PCA confirming that works have been undertaken in accordance with the recommendations of the endorsed Geotechnical Engineering’s report and that the development is geotechnically stable and does not jeopardise the geotechnical stability or structural integrity of any neighbouring property.
- [POCNS03]

**REPORT:**

**Applicant:** Leightons Investments (Cupania) Pty Ltd

**Owner:** Final Collection Services Pty Ltd

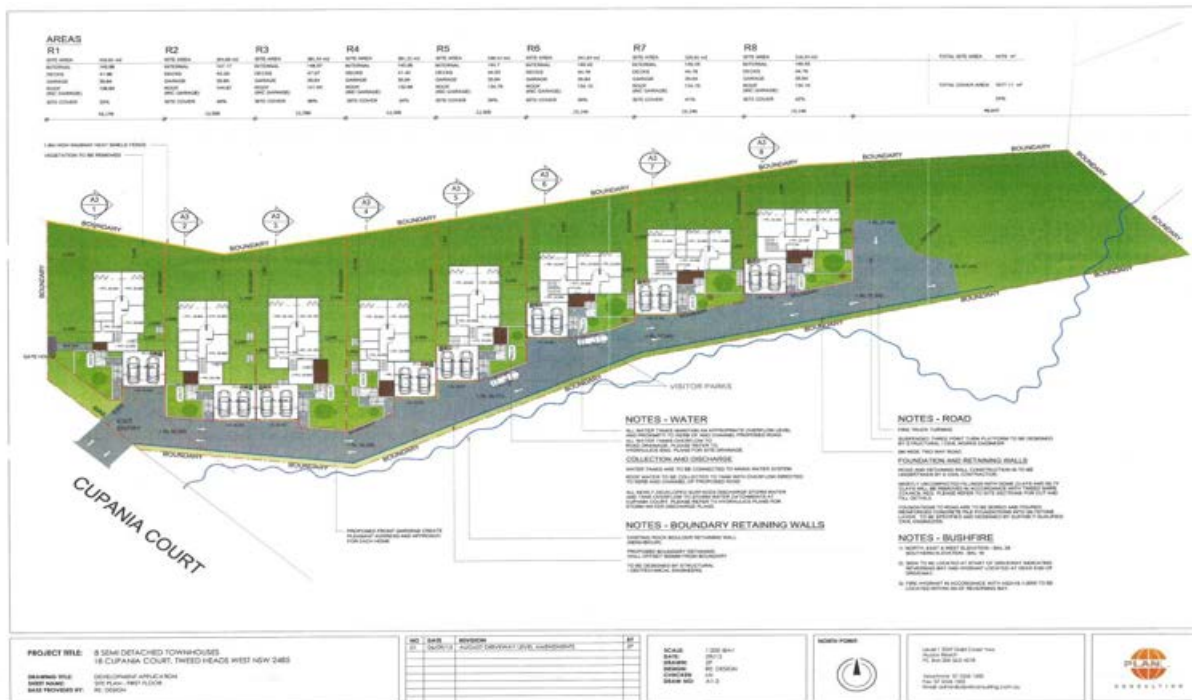
**Location:** Lot 4 DP 801038; No. 18-20 Cupania Court, Tweed Heads West

**Background:**

Approved development

On 23 January 2014 Council approved DA13/0124 for the development of seven townhouses at the above address.

The proposal was originally submitted as an eight townhouse development, however, following a meeting between the applicant and Council officers, it was agreed to remove one of these units in order to allow an adequately sized vegetation retention and rehabilitation area (identified as an Environmental Covenant Area) to the east of the site. The development layout is indicated on the below plan:



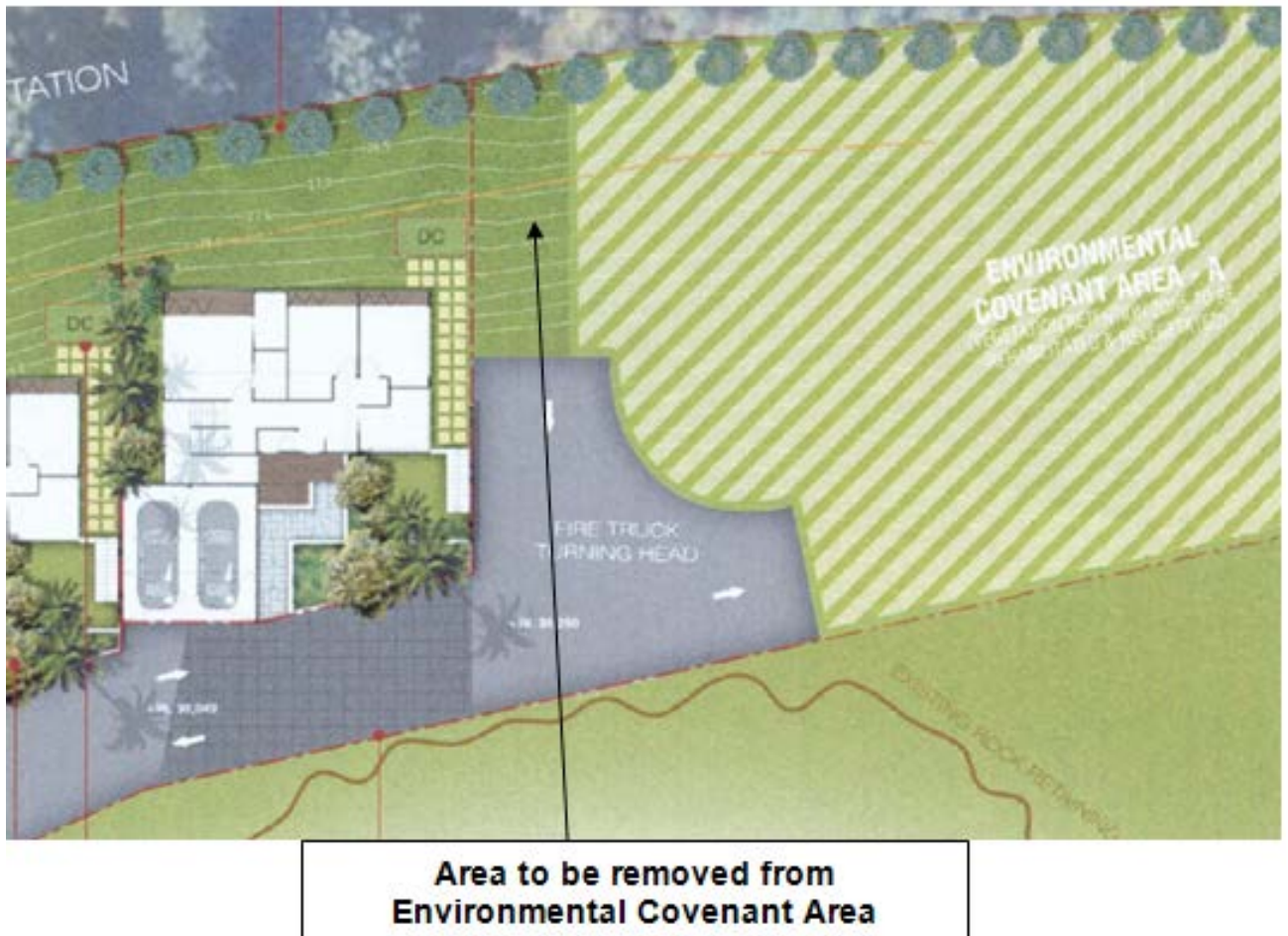
The proposed townhouses consist of four bedroom developments with floor areas ranging from 144m<sup>2</sup> to 148m<sup>2</sup>. These are accessed from an internal site roadway with garages orientated to the south. The primary living areas to each units are orientated to the north due to the shape and topography of the site.

The application was approved with deferred commencement conditions which required updated information to be submitted to Council including plans deleting references to residence 8, an identified Environmental Covenant Area, a Geotechnical report, a Bushfire Management Plan and a Statement of Landscape Intent.

Modified consent (DA13/0124.01)



Through the preparation of the information required to satisfy the deferred commencement conditions it was noted that the updated Bushfire Management Plan required a minimum separation distance of 6m between the Environmental Covenant Area and proposed Residence 7. This was not allowable under the terms of the deferred commencement conditions which stipulated that the area extending to the eastern boundary from the north-south aligned boundary of Residence 7 shall be described as 'Environmental Covenant Area - A' to be rehabilitated and managed as a natural area for conservation purposes in perpetuity.



As such, the applicant submitted a S96 modification application essentially to reduce the Environmental Covenant Area by 6m to enable proposed Residence 7 meet the required bushfire protection levels.

The S96 application was referred to Council's Natural Resource Management Unit (NRM) for comment with the proposed modifications being accepted in this instance.

A modified consent was issued in June 2014 which amended the requirements for the deferred commencement condition as outlined above.

On 4 July 2014 Council issued correspondence advising that the applicant had satisfied all conditions contained in Schedule A of this consent (deferred commencement) had been satisfied. Therefore the consent became operative from that date (4 July 2014).

The consent is to lapse 5 years from the date this consent becomes operative (4 July 2019) unless commenced prior to that date.

Proposed Modification

Council is now in receipt of an application to stage the proposed development. The applicant has provided the following supporting information for the subject application:

*'The staging is as follows:*

*Stage 1 - Driveway crossover, partial driveway and associated retaining.*

*Stage 2 - Works associated with the remaining driveway and seven (7) Townhouses.*

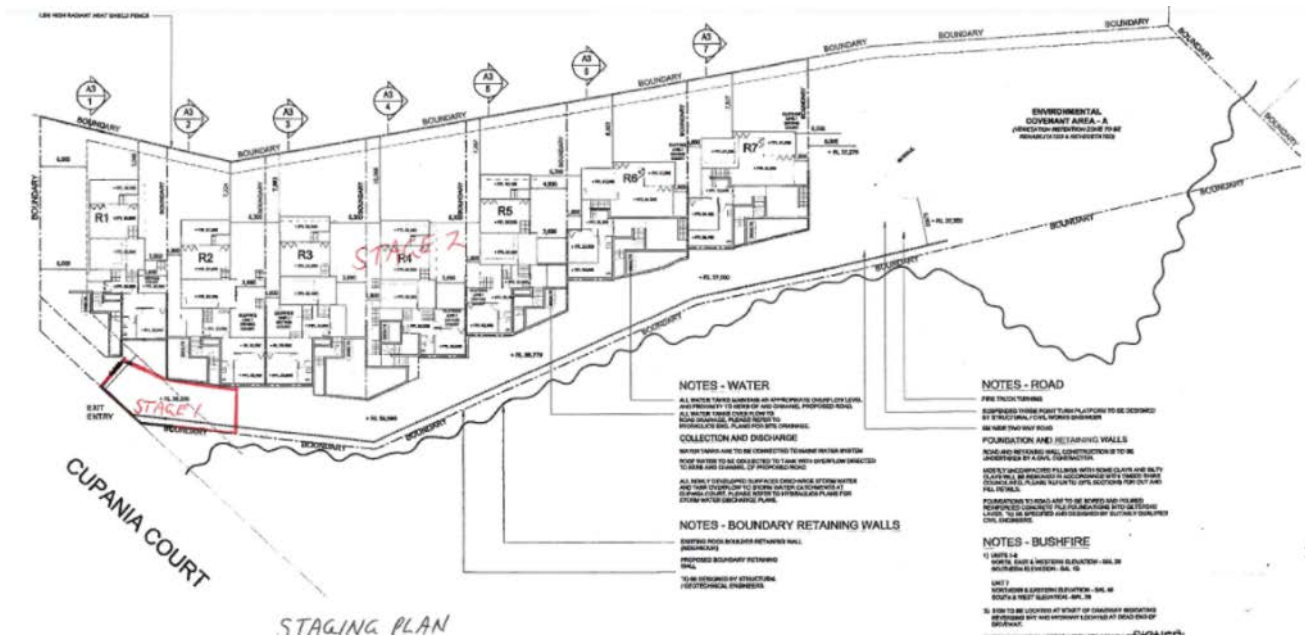
*The stage 1 works comprise the driveway crossover, construction of internal driveway and block retaining wall into the site for a distance of approximately 10m. The block retaining wall maintains the same setback distance of 900mm from the boundary and at similar height.*

*The staging is marked on the modified site plan.*

*The stage 1 works are minor so will not be subject to compliance with many of the conditions of the current consent. The applicable conditions for stage 1 would generally be limited to a S138 driveway application for the driveway crossover, S68 application for erosion and sediment control works and engineering detail for the block retaining wall.*

*The proposed modification is merely for staging purposes so is of minor environmental impact and maintains substantially the same development as originally approved by DA13/0124. The proposed modification can therefore be determined pursuant to Section 4.55 of the Environmental Planning and Assessment Act, 1979.'*

The below staging plan has also been submitted in support of this application:



While the submitted application advises that the proposal would be generally limited to 'S138 driveway application for the driveway crossover, S68 application for erosion and sediment control works and engineering detail for the block retaining wall' it is considered that a

Construction Certificate would also be required for the proposed works located on the subject site. Stormwater management and geotechnical assessment would also be required at and around the location of proposed Stage 1 works in order to ensure that there are no adverse impacts in this regard. These requirements would be addressed via updated conditions of consent (essentially referencing stages 1 & 2).

Council officers recommend that the following modifications be made to the existing Schedule B conditions of consent (changes identified in **bold & underline** or ~~strikethrough~~ where relevant):

**Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**

**1A. The development shall be carried out in two stages as follows:**

- **Stage 1**  
**Driveway crossover, partial driveway and associated works as identified as Stage 1 on Staging Plan, and**
- **Stage 2**  
**Construction of seven townhouses and all remaining associated works as identified as Stage 2 on Staging Plan.**

The development shall be completed in accordance with the Statement of Environmental Effects and Approved Plans under Schedule A of this consent, **and Staging Plan (No. 3 – dated 16 April 2014) prepared by Planit Consulting,** except where varied by the conditions of this consent.

[GEN0005]

**Delete Condition No. 22 and replace it with Condition 22A which reads as follows:**

**22A.** Permanent stormwater quality treatment **for Stage 1 and Stage 2** shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) It is encouraged that the stormwater and site works incorporate Water Sensitive Design Principles and where practical, integrated water cycle management, as proposed by "Water By Design", an initiative for best practice by the South East Queensland Healthy Waterways Partnership.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:

- (i) Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any site works being undertaken.
- (ii) Runoff from all hardstand areas, (including driveway and hardstand landscaping 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.
- (iii) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

**Delete Condition No. 26 and replace it with Condition No. 26A which reads as follows:**

**26A.** Prior to the issue of a Construction Certificate **for Stage 1 and Stage 2**, the Applicant must submit to (and receive approval from) the PCA, a detailed report from a suitably qualified Geotechnical/Structural Engineering confirming that the proposed development (including the protective wall along the northern property boundary):

- (a) will provide geotechnical stability to the proposed development,
- (b) will prevent any upslope advancement of any down-slope (off-site) slip failures and detail amelioration measure should a down-slope failure occur (including access requirements),
- (c) will not jeopardise the geotechnical stability or structural integrity of neighbouring property, including the existing Boulder Retaining Wall to the south,
- (d) complies with applicable Australian Standards (AS 4678-2002) and the provisions of Council's Design Specification D6 - *Site Regrading*.

[PCCNS01]

**Delete Condition No. 31 and replace it with Condition No. 31A which reads as follows:**

**31A.** The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work **for Stage 1 and Stage 2** 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]

**Delete Condition No. 80 and replace it with Condition No. 80A which reads as follows:**

**80A.** On completion of work **for Stage 1 and Stage 2** a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of all retaining structures.

[POC0805]

**Delete Condition No. 82 and replace it with Condition No. 82A which reads as follows:**

**82A.** Prior to the issue of an occupation certificate **for Stage 1 and Stage 2**, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

**Delete Condition No. 86 and replace it with Condition No. 86A which reads as follows:**

**86A.** Prior to the issue of an Occupation Certificate **for Stage 1 and Stage 2** a certificate prepared by a qualified Geotechnical Engineer is to be provided to the PCA confirming that works have been undertaken in accordance with the recommendations of the endorsed Geotechnical Engineering’s report and that the development is geotechnically stable and does not jeopardise the geotechnical stability or structural integrity of any neighbouring property.

[POCNS03]

These conditions are recommended to be specifically modified to ensure the consent clearly requires the proponent to obtain a Constriction Certificate and Occupation Certificate for Stage 1 and Stage 2 works as well as identifying that geotechnical and stormwater requirements are provided for Stage 1. Many other conditions on the consent have not been modified to specifically relate to Stage 1 and Stage 2 as they relate to both stages in their present form and thus are not considered to require modification.

## Site

The subject site covers a total area of 4479m<sup>2</sup> and is an irregularly shaped allotment. The site provides road frontage to Cupania Court, a cul-de-sac to the western boundary. To the south, the site is bordered by a three storey residential flat building, with low density residential development forming the eastern boundary. The land to the north of the subject site is at a substantially lower level, consisting of the Terranora Valley Retirement Village. These lower level properties provide vehicular access via Carramar Drive to the north.

The subject site is currently undeveloped, with mature vegetation evidenced in particular to the north and eastern boundary. The site slopes steeply down from south to north, with a fall of approximately 12m between the southern and northern boundary, over a distance of approximately 30m. The extent of this slope varies within the site.

The subject property is zoned R3 Medium Density Residential under the provisions of Tweed Local Environmental Plan 2014 (TLEP 2014). Surrounding zones are a combination of R3 Medium Density Residential to the south and west and R2 Low Density Residential to the north and east.

## History

Beyond the consent issued for the development of seven townhouses under DA13/0124 which is proposed to be modified as part of this application this site has also been the subject of the following development history:

D88/0094- Development Application - erection of 13 x 3 storey buildings and 6 x 2 storey buildings comprising a total of 116 residential units. Surrendered 25 September 1989.

DA05/1147- Development Application - construction of a three (3) storey terrace development comprising 21 units and car parking for 32 vehicles. Refused 4 June 2008.

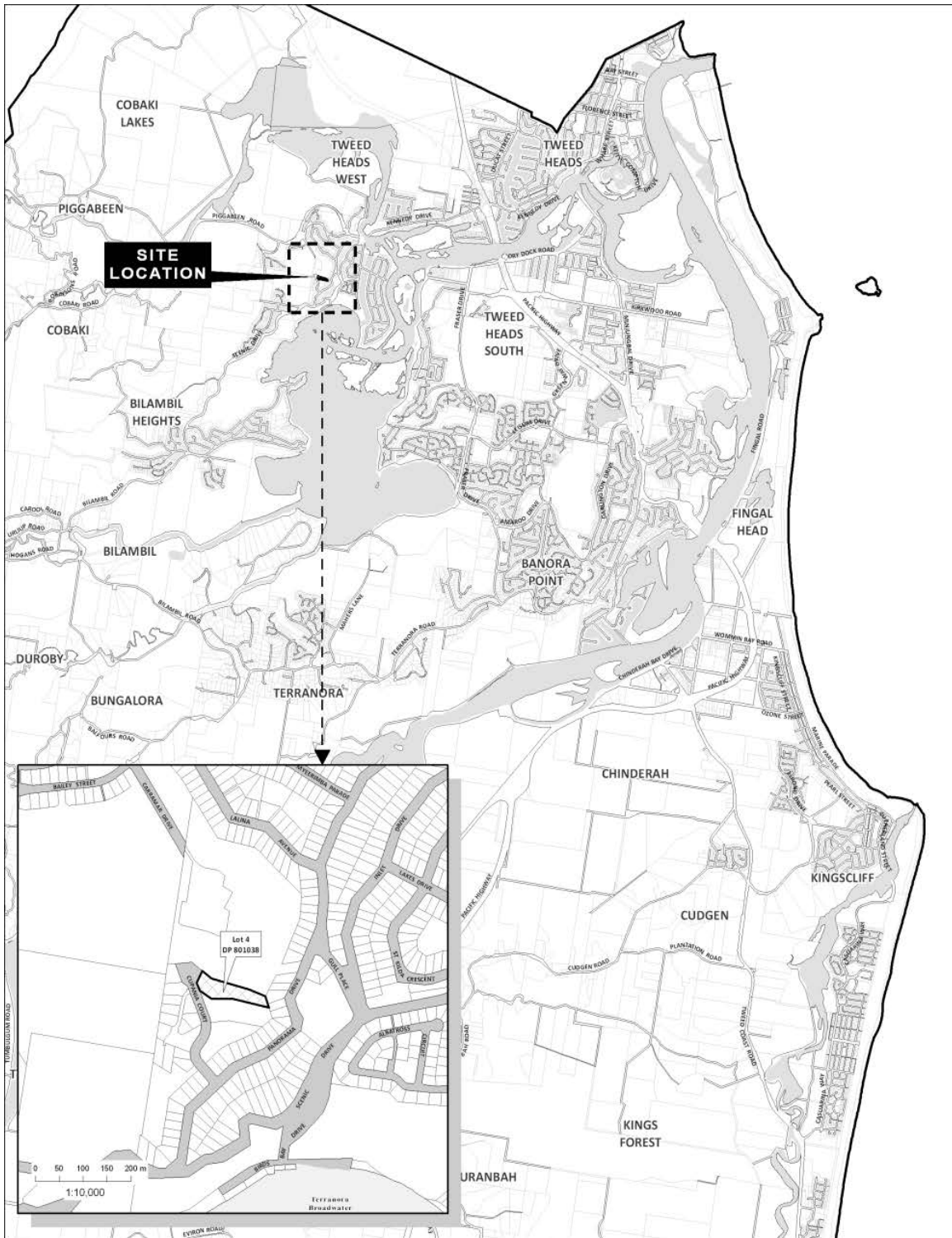
The reasons of refusal for this application included the following:

1. Geotechnical investigations submitted do not give Council the confidence that the proposed development will not adversely affect the existing landslip areas, surrounding land stability and the associated adjoining property located to the north and directly below the proposed development;
2. Stormwater is to be designed to a 1 in 500 year storm event, which is considered unachievable and would increase the likelihood of instability and landslip affecting down slope properties;
3. It is not considered that the circumstances of the proposed development warrant support of the State Environmental Planning Policy No. 1 objection to the three storey height limit;
4. Proposed development is considered to have an unacceptable cumulative impact upon adjoining property located to the north and directly below the proposed development;
5. The development application is contrary to the Development Control Plan Part A1 particularly relating to building envelope, private open space, waste and car wash bays.

6. The development application is contrary to the Development Control Plan Part A2 – Site Access and Parking Code, including the provision of car parking requirements generated by the proposal.
7. The development application is not considered to be in the public interest.

DA11/0172- Development Application - townhouse development - five detached and four attached. Withdrawn 5 March 2012.

**SITE DIAGRAM:**



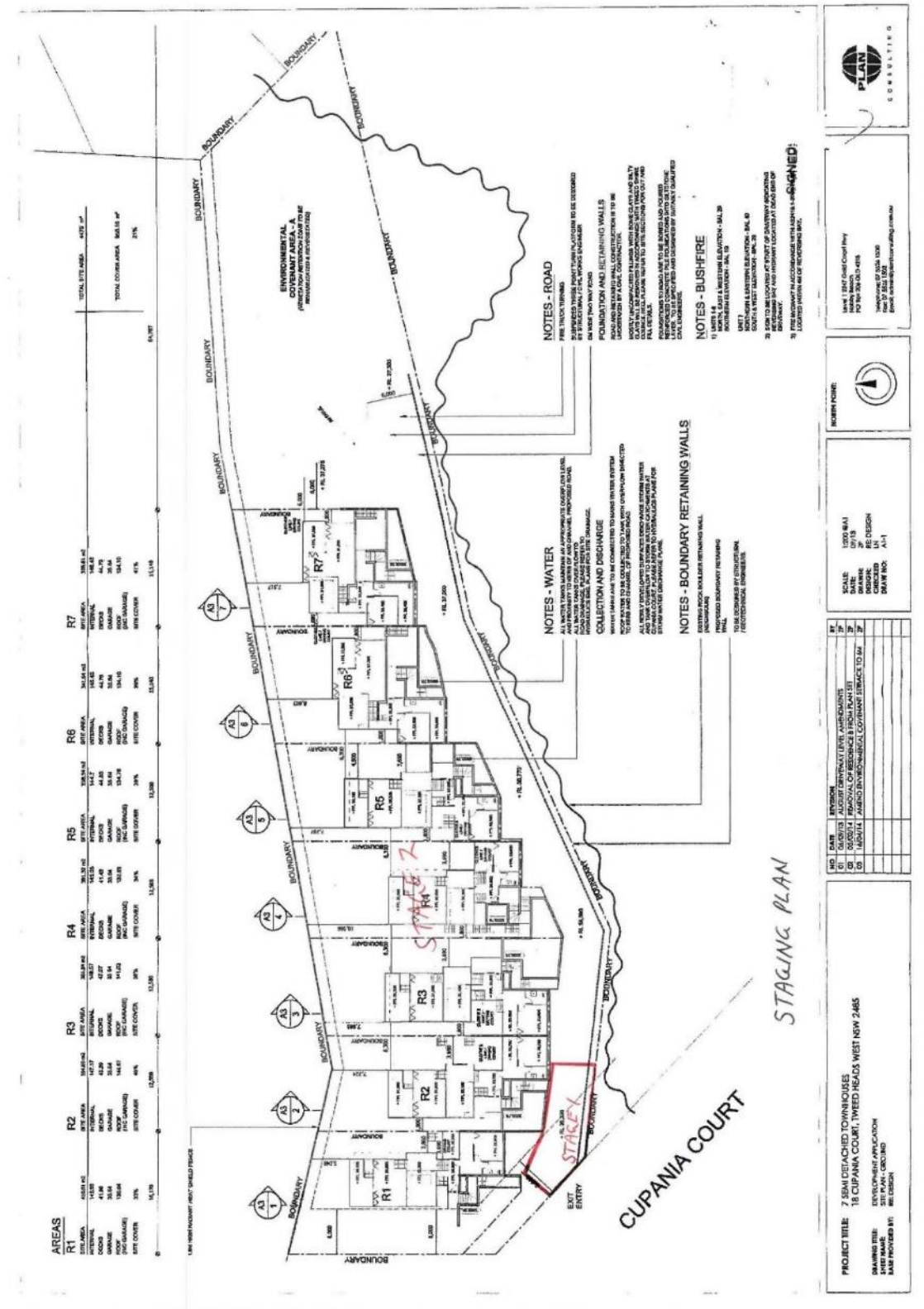
**Locality Plan**

Lot 4 DP 801038  
No. 18-20 Cupania Court, Tweed Heads West

<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 as negligent) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p>Cadastral 28/10/2013 © Land and Property Information (LPI) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 1.5 Km 1:65,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1994 GDA © 2018 Map Grid of Australia, Scale 50</p>	<p><b>Civic and Cultural Centre</b> 3 Tamburlong Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T   (02) 6670 2400   1300 292 872 F   (02) 6670 2429 W   www.tweed.nsw.gov.au E   planningreform@tweed.nsw.gov.au</p>  <p><b>TWEED</b> SHIRE COUNCIL</p>
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DEVELOPMENT PLANS:



**Considerations under Section 4.55 of the Environmental Planning and Assessment Act 1979:**

**Section 4.55 (Modification of consents-generally)**

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

**Comment:**

An assessment has been undertaken with regard to the proposed modification to the approved development, as noted in the 4.15 assessment elsewhere in this report. In conclusion, the proposed amendment is not considered to result in any significant environmental impact.

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

**Comment:**

The proposed modifications result in essentially the same development as originally approved, being for multi-dwelling housing consisting of 7 townhouse units. The proposal is considered to be substantially the same development as that originally approved.

(c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

**Comment:**

The subject application was notified for a period of 14 days from Wednesday 3 April 2019 to Wednesday 17 April 2019. During this time one submission was received. The details of this submission are outlined elsewhere in this report.

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

**Comment:**

The public submission has been considered elsewhere in this report. It is not considered that any substantive planning matters are raised which in this submission which would warrant refusal of this application.

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.

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

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible in the subject zone.

Clause 1.4 – Definitions

Under this Plan, the proposed development would be defined as ‘*multi dwelling housing*’ which means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Note. Multi dwelling housing is a type of *residential accommodation*.

This is permitted with consent in the R3 zone.

Clause 2.1- Land use zones

The proposed development area is zoned as R3 Medium Density Residential zone under the provisions of this plan.

Clause 2.3 – Zone objectives and Land use table

The LEP zones the development area as R3 – Medium Density Residential. The objectives of the R3 – Medium Density Residential zone are:

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

In this zone, the proposed development is permissible with consent. The proposed development is considered to be consistent with the objectives of the zone.

**State Environmental Planning Policies**

SEPP No. 55 - Remediation of Land

The original application as assessed against the provisions of SEPP 55 in relation to contaminated land. In this regard the application was reviewed by Council's Environmental Health Unit who raised no concerns in this regard.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The subject application does not propose any modification to the approved townhouse development layout or design. The original application was assessed as being compliant with the overall objectives of the DCP (although some variations proposed) and recommended for approval subject to the application of appropriate conditions of approval. The modification application is not considered to raise any further issues in this regard.

A2-Site Access and Parking Code

The subject application relates to the staging of access provisions on this development however does not amend the actual design layout for either parking or access provisions. In this regard the original application was assessed as being in accordance with the requirements of this DCP and this would remain the case, with only the timing of the access provision being amended.

A11-Public Notification of Development Proposals

The subject application was notified to surrounding properties for a period of 14 days from Wednesday 3 April 2019 to Wednesday 17 April 2019. During this time one submission was received and is detailed later in this report.

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

Not applicable to the subject application.

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

Clause 92(1)(b) Applications for demolition

The proposed development does not include any demolition.

- (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.

The subject site is located approximately 5.5km from the coastal foreshore and is not identified as having any key management actions under this plan. As such is considered that the proposal would not impact on the provisions of this plan.

**Tweed Coast Estuaries Management Plan 2004**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located within this area and as such the provisions of this plan are not considered to be impacted by the subject development.

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

The subject site is located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater catchments. The proposed development area is identified as an Urban Functional zone under the provisions of this plan. The proposed development is considered to be acceptable having regard to stormwater discharge from the site and does not contravene the principles of this plan.

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

The subject application was assessed originally as being acceptable with respect to the likely impacts of development subject to the imposition of appropriate conditions on any consent issued. Two of the main matters considered under the original application were geotechnical stability and stormwater drainage. These are addressed specifically below;

**Geotechnical Stability**

The original assessment report included the following in relation to geotechnical stability:

*'The proposed development site has a history of stability issues including uncontrolled filling, landslips on neighbouring properties and landslips throughout the subject site.*

*It is noted that there is an existing boulder retaining wall to the southern property boundary (uphill). On the southern property boundary is uncontrolled fill, which has potential to undermine the structural integrity of this existing boulder retaining wall.*

*Four previous geotechnical investigation and slope stability assessments have been submitted to Council, however these did not give Council the confidence that the proposed developments would not affect the existing landslip areas, surrounding land stability and adjoining property located to the south on the upslope and directly below the proposed development to the north (aged care units).*

*Information provided through this application has advised that the landslip areas are not located on the subject development site, but rather on the adjoining allotment to the north. In this regard, information has been provided outlining that attempts to gain landowners consent to undertake works with respect to landslip on the adjoining allotment have not been successful. As such it is proposed to install a protective wall along the northern property boundary to provide geotechnical stability to the proposed development and to prevent any upslope advancement of any down slope (off-site) slip failures. As such, the proposal does not rely upon the down slope property to maintain its stability.*

*A "Report on Slope Stability Analysis & Retention Wall Modelling" prepared by Douglas Partners (DP) dated September 2013 was submitted. This report presents the results of global slope stability analysis and soil-structure interaction analysis undertaken for a proposed soldier pile wall to be constructed near the northern property boundary to ensure stability of the subject site. The proposed soldier pile wall comprises of 0.45m diameter concrete piles at 1.2m horizontal centres, 6m long.*

*Council's Development Engineering Section have noted that the Report demonstrates that the site will remain stable in the long term and that stability is not contingent upon works carried out (or any future slope failures) on the neighbouring property to the north (i.e. down slope), which cannot be controlled by the applicant. The proposed development is considered to be acceptable in this regard as the applicant cannot prevent the land below the northern property boundary from potentially failing, but the submission received indicates that the proposed development will not contribute to a failure of the downstream property and it will prevent circumstantial failure of the development if such downslope failure were to occur.*

*Recommended conditions would be applied to any consent requiring that a detailed report from a suitably qualified Geotechnical/Structural Engineer be submitted confirming that the proposed development will provide adequate geotechnical stability to the proposed development. The proposal is*

*considered to be acceptable with respect to the geotechnical issues on the subject site.'*

The application now before council proposes to stage the development proposal. Recommended conditions would necessitate that geotechnical requirements be considered and implemented for each stage as relevant.

#### Stormwater Drainage

The original assessment report included the following in relation to geotechnical stability;

*'A Stormwater Management Plan (SWMP) has been submitted as part of this application. Councils Development Engineering Section has noted that it is proposed for stormwater runoff (including roof-water overflow from tanks associated with each residence) up to the Q100 storm event to be captured by the driveway and directed into a detention tank located underneath the driveway (with capacity of approx 225m<sup>3</sup>), before being discharged at a designated, controlled flow-rate into the pipe drainage network in Cupania Court. In the event the site is subjected to a much larger storm event such as the Probable Maximum Flood (PMF), the internal driveway has been designed to direct the PMF runoff to the Cupania Court carriageway.*

*Runoff generated from areas north and east of the proposed dwellings and access driveway, respectively, (as well as some elevated/retained areas between the proposed dwellings) shall be conveyed and discharged offsite as overland flow as per existing conditions.*

*It is noted that the SWMP is subject to further geotechnical investigation and design to confirm stability of the existing site, retaining and proposed works. As such, a detailed SWMP will be required to be submitted at Construction Certificate application stage by an appropriate condition of consent.*

*The subject development will result in a decrease in the stormwater currently sheeting across the site to the adjoining property to the north by virtue of the provision of a detention tank to divert stormwater from the majority of the hard surfaces on the site. In this regard, the proposal is considered to be acceptable.'*

The application now before Council proposes to stage the development proposal. Similar to the geotechnical considerations outlined above recommended modified conditions would require that adequate stormwater management be implemented for each stage as relevant.

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

Under the original application, the subject site was assessed as being suitable for development having regard to the zoning of the site and the conditions applied to ensure that the subject development would not have and unacceptable impacts on surrounding properties.

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

The subject application was notified for a period of 14 days from Wednesday 3 April 2019 to Wednesday 17 April 2019. During this time one submission was received, on behalf of the Body Corporate of the property to the north (Terranora Valley Village). The details of this submission is outlined below:

<b>Terranora Valley Village Body Corporate</b>	<b>Council Officer Assessment</b>
<p>Writing as Chairman of Body Corporate Committee, Terranora Valley Village, over 55's retirement home of 85 Villas and 110 residents. A large part of our complex lies directly below the proposed development at 18-20 Cupania Court - DA13/0124.02.</p> <p>This is at least the third attempt to develop the site in the last decade. It has reduced from 42 to eight and now seven townhouses. The fact of townhouses being constructed is not the problem, it is stormwater. from the site, causing slippage down a very steep slope onto a road and villas below. This has happened on at least two occasions in the past, causing considerable expense and labour to remove some tonnes of soil and to re-instate the retaining wall at the base of the slope.</p> <p>Council on several occasions were going to issue notices to the owners of 18-20 Cupania Court to install proper drainage from the site, but nothing has been done.</p> <p>At the last iteration of development a Council's "Engineering Assessment Report for the proposed development at 18-20 Cupania Court, Tweed Heads West dated 07/02/2012 - DA11/0172"</p> <p>The main issue in the document "Geo-technical instability and storm water issues"</p>	<p>The matters raised in this submission are addressed below by Council staff.</p> <p>The development history of this site is identified elsewhere in this report. In summary, while there are a number of historic applications for development on this site which were either refused or withdrawn by the applicant, under DA13/0124 consent was granted for seven townhouses.</p> <p>Stormwater and geotechnical considerations were also taken into account in the assessment of DA13/0124 with appropriate conditions being applied to the consent issued requiring a detailed report from a qualified Geotechnical/Structural Engineer be submitted confirming that the proposed development will provide adequate geotechnical stability to the proposed development. Furthermore, a detailed Stormwater Management Plan is required to be submitted.</p> <p>This is not a matter which was pursued through the Development Application process and therefore it is not possible to provide further advice on this.</p> <p>The reference to an engineering report associated with a previous Development Application (DA11/0172) is not considered to be a matter which can be used to refuse this modification application. Subsequent to the assessment of DA11/0172, a further development application was submitted which contained an updated engineering report (under DA13/0124) which was ultimately approved by Council. Each</p>



<b>Terranora Valley Village Body Corporate</b>	<b>Council Officer Assessment</b>
<p>The document quotes: Three Geotechnical Reports were carried out by two different companies on Lot DP 801038. The reports were completed by Soils Survey Geotechnical Assessment dated July 2005 and Douglas Partners Geotechnical Assessment dated September and October 2007.</p> <p>Council rejected the application as Council did not have confidence that the proposed development would not affect the existing landslip areas, surrounding land stability and associated adjoining properties located to the south on the up-slope and directly below the proposed development.</p> <p>This committee is in possession of several centimetres of soil survey and land stability reports on development at 18-20 Cupania Court over the years. None were able to persuade Council to permit the developments. All those reports, we are sure, are in your possession and will be considered regarding the application.</p> <p>This Committee objects to the development on the grounds that it is not satisfied that stormwater discharge and unstable soil slippage are sufficiently addressed.</p>	<p>individual application is required to be assessed on its merits.</p> <p>The application before Council now does not propose to modify any aspects of the approved development consent in relation to geotechnical stability or stormwater. Therefore it is not considered appropriate to refuse the application on this basis. It is noted that under the original development application these matters were considered in detail (as summarised elsewhere in this report) and are subject to conditions of consent which would still need to be adhered to.</p> <p>The issues raised under this submission are not considered to warrant the refusal of the application.</p>

**(e) Public interest**

The subject development is considered to remain in the public interest given its nature, being for a residential development on an appropriately zoned site which is permissible having regard to the applicable planning framework, it is considered that the proposal would be unlikely to impact on the wider public interest.

**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.**

*Reasons for granting the original consent*

*Note – the original consent was issued before Council had to nominate reasons for approving applications. However the assessment report had the following statements which read like reasons for approval and these have been re-assessed in determining the modification.*

Given the nature of the proposed development, being for a residential development on an appropriately zoned site which is permissible having regard to the applicable planning framework, it is considered that the proposal would be unlikely to impact on the wider public interest.

The development as modified remains consistent with the objectives of the medium density residential zone in that the development remains as a multi dwelling housing development to provide for the housing needs of the community.

**OPTIONS:**

That Council:

1. Approves the modification application subject to amended recommended conditions of consent; or
2. Refuses the modification application for specified reasons.

Council officers recommend Option 1.

**CONCLUSION:**

The proposed modification to DA13/0124 is considered to be in accordance with the relevant planning considerations as detailed elsewhere in this report, with the modification being to provide the development in two stages. Subject to the amendment of appropriate conditions of consent the development is considered to be appropriate.

The modification application has been assessed having regard to the matters for consideration under Section 4.15 and Section 4.55 (1a) of the Environmental Planning and Assessment Act, 1979. The proposed amendment is recommended for approval.

**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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**12 [PR-CM] Development Application DA15/0354.02 for an Amendment to Development Consent DA15/0354 for Change of Use to Recreation Facility (Indoor), Fitout and Associated Signage (5 Signs) at Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



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

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

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

**ROLE:** **Provider**

---

**SUMMARY OF REPORT:**

Consent was issued for the change of use of a vacant bulky goods retail tenancy to a recreation facility (indoor), fitout and associated signage (5 signs) on 26 August 2015.

The original tenants for the development were 'World's Gym' which are a large indoor recreation/gym franchise. The proposed tenant is now 'Hype Fitness'.

The amended application proposes the following:

- reduction in size of the tenancy by 276m<sup>2</sup> of Gross Floor Area (GFA), resulting in a total GFA for the tenancy of 1159m<sup>2</sup> (this area will be taken up by BCF which currently occupies tenancy 1, the use of this area does not form part of this Section 4.55 modification);
- deletion the of the bulky goods retail area;
- deletion of the fitness exhibit and massage room;
- deletion of the additional six (6) parking spaces conditioned under DA15/0354;
- retention of multiple training zones, cycle room, group fitness room and crèche;
- reconfiguration of the internal layout (see figures 1 and 2 below);
- relocation of the main entrance;
- amended Section 7.11 contributions in accordance with the new floor area and concessions under Council's Business Investment Policy;
- amended charges under the certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000, the site will have zero upfront cost (the site is listed for High Water Consumption); and

- the deletion of the conditioned 6 month trial period for 24 hour operation and for the facility to operate 24 hours / 7 days indefinitely.

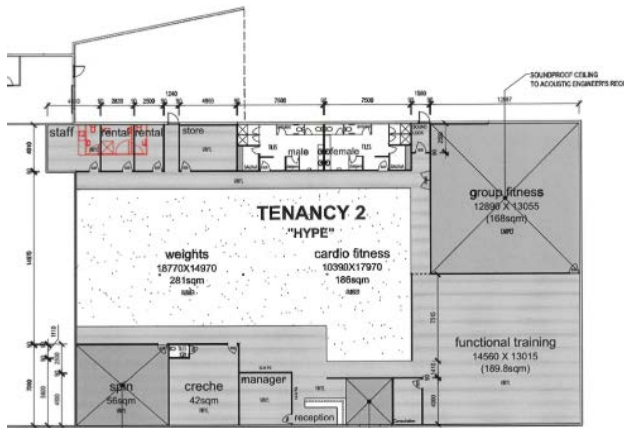


Figure 1: proposed floor plan (DA15/0354.02)

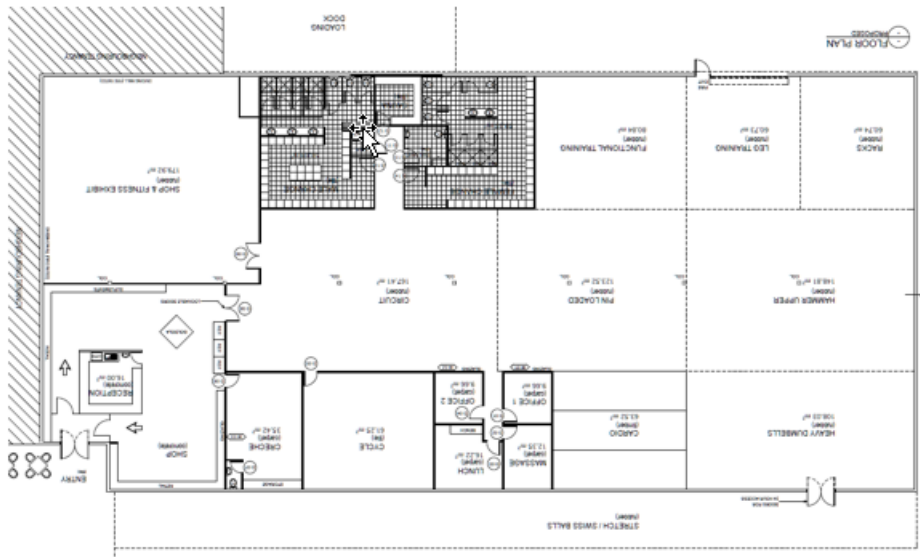


Figure 2: Approved under DA15/0354

In accordance with the Tweed Business Investment Policy (BIP), the applicant has advised that they seek approval to enter into a deferred payment arrangement for the TRCP charges. The BIP advises that approval for deferred payments must be by way of a Council resolution.

The application has been called up to Council for determination by Councillors Polglase and Allsop.

The subject 4.55 Modification Application has been assessed on its merits and is recommended for approval, with the retention of the 6 month trial period for 24 hour operation.

**RECOMMENDATION:**

**That Development Application DA15/0354.02 for an amendment to Development Consent DA15/0354 for change of use to recreation facility (indoor), fitout and associated signage (5 signs) at Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South be approved subject to the following conditions being amended:**

1. Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:

1A. The development shall be completed in accordance with the Statement of Environmental Effects and Plans as listed below, as amended in red, except where varied by the conditions of this consent:

- Proposed Site Plan, Project Number SD18-1124, Drawing Number A.01.1, Revision 01, dated 18/01/2019 and prepared by Superdraft;
- Proposed Ground Floor Plan, Project Number SD18-1124, Drawing Number A.02.1, Revision 01, received by Council 22/03/2019 and prepared by Superdraft; and
- Proposed Elevations, Project Number SD18-1124, Drawing Number A.03.1, Revision 01, dated 18/01/2019 and prepared by Superdraft.

2. Delete Condition No. 3.

3. Insert new Condition No. 5.1 which reads as follows:

5.1 The development shall be carried out in accordance with the provisions of the Environmental Noise Impact Report for Proposed Conversion of Bulky Goods Building to Gym (20 December 2018 crgref: 18174 report Rev 1), Alteration to Door Access Proposed Fitness Centre (22 March 2019 CRGref: 17140 Letter 22\_03\_19), and Alteration To Door Access Proposed Fitness Centre (30 April 2019 CRGref: 17140 Letter 30\_04\_19) for 20-26 Greenway Drive, Tweed Heads South prepared by CRG Acoustics Pty Ltd or to the satisfaction of Council's General Manager or delegate.

4. Delete Condition No. 6.

5. Delete Condition No. 7.

6. Delete Condition No. 33 and replace it with new Condition No. 8.1 which reads as follows:

8.1. 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, or Section 7.11 Contributions are in accordance with the provisions of a deferred payment arrangement between the applicant and 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:**
- |   |              |
|---|--------------|
| 259.27 Trips @ \$1489 per Trips   | \$173,723.85 |
| (\$1,318 base rate + \$171 indexation)  |              |
| (\$57,907.95 has been subtracted from this total as this development is deemed an 'Eligible Business Enterprise')       |              |
| (\$154,421.20 has been subtracted from this total as this development is deemed an 'Employment Generating Development') |              |
- CP Plan No. 4  
Sector2\_4

7. Delete Condition No. 34 and replace it with new Condition No. 34A which reads as follows:

34A. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

**BELOW IS ADVICE ONLY**

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

Water: NIL (to be confirmed on application)  
Sewer: NIL (to be confirmed on application)

8. Insert new Condition No. 35.1 which reads as follows:

35.1 A Building Information Certificate is to be obtained from Tweed Shire Council prior to the issue of an Occupation Certificate in respect of the recently erected inter-tenancy wall. The related application is to include certification from a suitably qualified building practitioner demonstrating the subject wall achieves a minimum fire resistance level of 90/90/90 as prescribed in Specification C1.1 of BCA - 2019 for a fire wall for Type C Construction.

9. **Delete Condition No. 38 and replace it with new Condition No. 38A which reads as follows:**

**38A. Hours of operation of the gym are restricted to the following hours for a trial period of six (6) months from the date of the Occupation Certificate being issued:**

- \* 24 hours - Monday to Sunday**

**Any requests to vary this condition (via a formal Section 4.55 application) must be lodged at least two (2) months prior to the expiry of the six (6) month period.**

**Following the trial period and where no Section 4.55 application has been granted, the hours of operation of the gym are restricted to the following hours:**

- \* 5.00am to 10.00pm - Monday to Sunday**

**or other hours as approved by Council's General Manager or delegate.**



## REPORT:

**Applicant:** Mr C Turner  
**Owner:** Bagcorp Pty Limited  
**Location:** Lot 7 DP 785566 No. 20-26 Greenway Drive, Tweed Heads South  
**Zoning:** B4 Mixed Use  
**Cost:** Not Applicable

## Background:

Consent is sought to modify development consent DA15/0354. The amended application proposes the following:

- reduction in size of the tenancy by 276m<sup>2</sup> of Gross Floor Area (GFA), resulting in a total GFA for the tenancy of 1159m<sup>2</sup> (this area will be taken up by BCF which currently occupies tenancy 1, the use of this area does not form part of this Section 4.55 modification);
- deletion of the bulky goods retail area;
- deletion of the fitness exhibit and massage room;
- deletion of the additional six (6) parking spaces conditioned under DA15/0354;
- retention of multiple training zones, cycle room, group fitness room and crèche;
- reconfiguration of the internal layout (see figures 1 and 2 below);
- relocation of the main entrance;
- amended Section 7.11 contributions in accordance with the new floor area and concessions under Council's Business Investment Policy;
- amended charges under the certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000, the site will have zero upfront cost and the site is listed for High Water Consumption; and
- the deletion of the conditioned 6 month trial period for 24 hour operation and for the facility to operate 24 hours / 7 days indefinitely.

## Consent History

**DA08/1242** approved the following development which created the premises subject to DA15/0354 (and this modification application):

- The erection of a new bulky goods retail building which is to be divided into two tenancies, with a gross floor area of 2705m<sup>2</sup>;
- Tenancy 1 was proposed to be occupied by BCF (Boating, Camping & Fishing outlet), while Tenancy 2 remained vacant;
- Vehicular access was approved via the existing cross over and driveway off Greenway Drive, which was constructed in accordance with DA04/1643 (demolition of existing dwelling, erection of a mixed use commercial and residential development and three (3) lot subdivision in three (3) stages);
- Carparking provisions (67 in total), loading bay, garbage bin storage and collection area;
- Signage in the form of a raised parapet at the corner of the building along the front elevation on translucent sheeting panels, as well as a 8m high x 3m wide pylon sign along the Greenway Drive frontage; and
- Trading hours in the form of:
  - Monday to Friday 7.00am to 7.00pm;
  - Late Night Shopping 7.00am to 9.00pm;

- Saturdays & Sundays 8.00am to 5.00pm; and
- Public Holidays 8.00am to 5.00pm.

**DA15/0354** (parent DA) approved an indoor recreation facility including multiple training zones, cycle/group fitness room, crèche, bulky goods retail area, fitness exhibit and massage room.

The proposal sought to operate the gym 24 hours per day, 7 days per week with noted peak hours between 4am to 8.30am to 5.30pm to 9pm. A 6 month trial period was approved with this regard, and is discussed below.

**DA15/0354.01** sought consent to vary the way in which the charge under the Tweed Road Contribution Plan was levied for DA15/0354 by applying the rate only to that part of the floor area that exceeded the 1000m<sup>2</sup> Eligible Business Criteria.

DA15/0354.01 also sought to enter into a deferred payment arrangement for the TRCP charge.

Prior to the original consent being issued, the applicant was informed that a reduction in the TRCP for this proposal was not supported.

The application did not meet the criteria to be considered an 'Eligible Business Enterprise' under the Plan and that there is insufficient justification to vary the criteria to only apply that part of the floor area that exceeds 1000m<sup>2</sup>.

Notwithstanding the above it is noted that Council did support the application entering a deferred payment agreement for TRCP.

The application was withdrawn prior to being determined as the applicant's found another site with an existing approval.

Of particular relevance to the subject Section 4.55 application the following is noted:

Hours of operation:

The application seeks consent to remove the six (6) month trial period for 24 hour operation of the facility as conditioned under DA15/0354.

It is noted that the approved gym has not commenced. Accordingly no trial period has been implemented.

The removal of the 6 month trial period for 24 hour operation is not supported at an officer level this is discussed further within this report.

Section 7.11 Contributions – Tweed Road Contribution Plan:

Following the issue of development consent for DA15/0354 Council's BIP was adopted. The policy allows the subject application to benefit from a discount as an *Eligible Business Enterprise – Small Business Incentives*. Based on the development's GFA being greater than 1,001m<sup>2</sup> and less than 1,500m<sup>2</sup> the application is eligible for a 25% discount to the levied Tweed Road Contribution Plan. This discount is in addition to the 40% discount applied under the *Employment Generating Incentive*, also within Council's BIP.

Condition 33 has been deleted and replaced with 33A which sees a decrease in charges of approximately \$20,000.00 for TRCP.

Further to the above, in accordance with the BIP, the applicant has advised that they seek approval to enter into a deferred payment arrangement for the TRCP charges. The BIP advises that approval for deferred payments must be by way of a Council resolution. The applicant may enter into an arrangement with Council to pay off the TRCP charges over a period of up to 6 years (over \$100,000).

Under the BIP the applicant will be required to enter into a written agreement with Council for deferred payments. This agreement will outline milestones, claims and deliverables that are in line with the business case originally provided as part of the application for assistance under the policy.

The BIP recognises and facilitates major investments that require a staged/incremental development process. The applicant must disclose all grant funds or investment incentives offered by other agencies for the same development.

Condition 33 (prior to occupation) has been deleted and new condition 8.1 (prior to CC) has been added to reference the deferred payment option.

Should the applicant take advantage of the deferred payment incentive a further report will be brought before Council from Council's Economic Development Unit.

Building Information Certificate:

Throughout the assessment process (and confirmed during conversations with the applicant's planning consultant) it has been identified that the original inter-tenancy wall has been removed and a new wall consistent with the subject application has been constructed. Accordingly, a Building Information Certificate will be required with this regard.

The Building Information Certificate will be required prior to the issue of an Occupation Certificate. The application will be required include certification from a suitably qualified building practitioner demonstrating the subject wall achieves a minimum fire resistance level of 90/90/90 as prescribed in Specification C1.1 of BCA – 2019 for a fire wall for Type C Construction. A new condition (35.1) has been added with this regard.

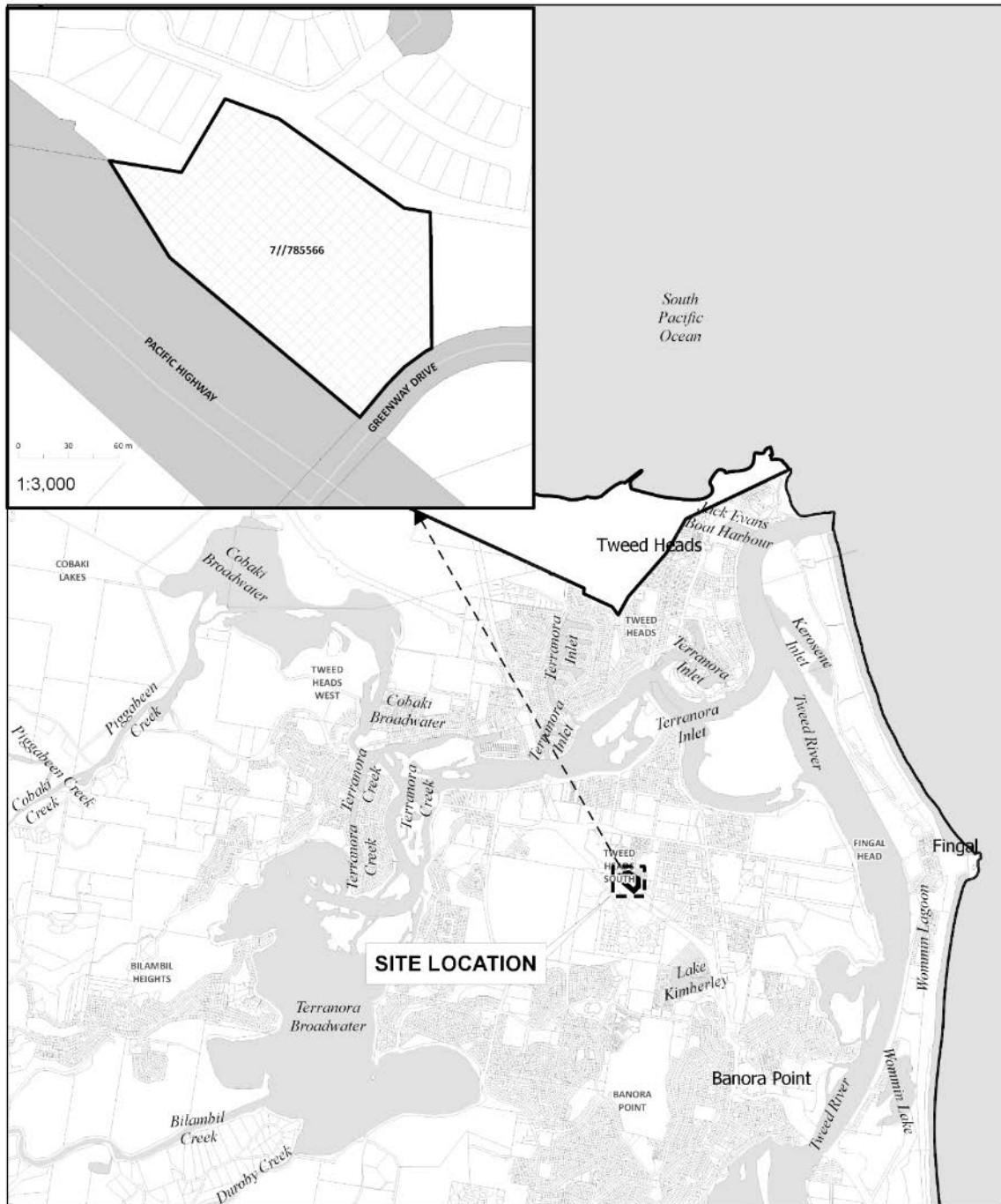
The fundamental issue with the subject application is the proposed removal of the 6 month trial period for 24 hour access, given the sites close proximity to neighbouring dwellings. Several gyms within the Tweed have resulted in amenity impacts to neighbouring residential premises prompting careful consideration of proposed hours of operation.

Proposed conditions to be amended:

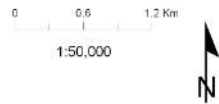
- Condition 1 to be deleted and replaced with new condition 1A.  
(Amended plans)
- Condition 3 to be deleted  
(Additional parking no longer required)
- Condition 6 to be deleted

- (Shop/fitness exhibit has been removed under the subject application)
- Condition 7 to be deleted  
(Additional parking no longer required)
- Condition 33 to be deleted and replaced with new condition 8.1A  
(Section 7.11 contributions and deferred payment option, these are being removed from prior to issue of occupation to prior to issue of CC, consistent with current practices)
- Condition 34 to be deleted and replaced with new condition 34A  
(Section 64 contributions)
- Condition 38 to be deleted and replaced with new condition 38A  
(Hours of operation)
- Condition 41 to be retained  
(Requires a Noise Impact Study upon receipt of a valid complaint)
- New condition 6.1 to be added:  
“The development shall be carried out in accordance with the provisions of the *Environmental Noise Impact Report for Proposed Conversion of Bulky Goods Building to Gym* (20 December 2018 crgref: 18174 report Rev 1), *Alteration to Door Access Proposed Fitness Centre* (22 March 2019 CRGref: 17140 Letter 22\_03\_19), and *Alteration To Door Access Proposed Fitness Centre* (30 April 2019 CRGref: 17140 Letter 30\_04\_19) for 20-26 Greenway Drive, Tweed Heads South prepared by CRG Acoustics Pty Ltd or to the satisfaction of Council’s General Manager or delegate”.

**SITE DIAGRAM:**



**Site Plan**  
 Lot 7 DP 785566  
 No. 20-26 Greenway Drive TWEED HEADS SOUTH



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 Datum - GDA 94

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**TWEED**  
 SHIRE COUNCIL

Date Printed: 29 April, 2019

**AERIAL:**



12,000 A4 Portrait  
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Horizontal Datum: Geocentric Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56  
GDA

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**Aerial Photography April 2018**

**Lot 7 DP 785566**  
**No. 20-26 Greenway Drive TWEED HEADS SOUTH**

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*Boundaries shown should be considered approximate only.*

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Author: S.Scott - GIS  
Date Printed: 29 April, 2019

DEVELOPMENT PLANS:



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PROPOSED DEVELOPMENT  
DRAWING NO. SD18-1124  
DATE: 17-01-2019  
SCALE: A3

**DRAWING SCHEDULE**  
A.00 ARCHITECTURAL SPECIFICATION  
A.01 PROPOSED SITE ANALYSIS PLAN  
A.02 PROPOSED SITE PLAN  
A.03 PROPOSED ELEVATIONS

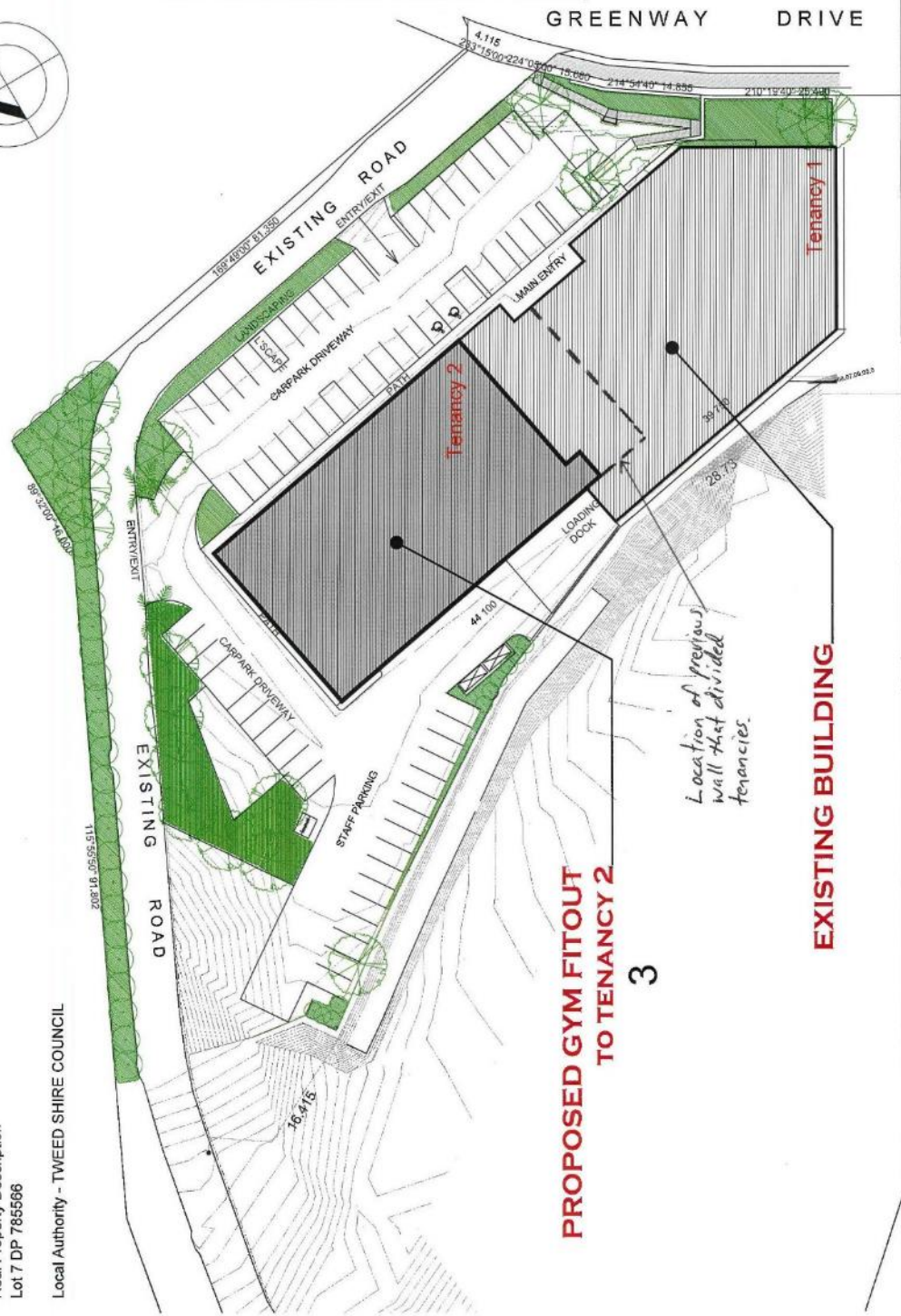
**SITE NOTES**  
• CONFIRM ALL DIMENSIONS ON SITE TO EXISTING REFERENCE POINTS TO BE MAINTAINED.  
• EXISTING PLUMBING AND ELECTRICAL SERVICES TO BE REMOVED AND MADE GOOD AS SHOWN.  
• THIS PLAN DOES NOT PROVIDE SPECIFIC LANDSCAPE DESIGN. THE LANDSCAPE DESIGN SHALL BE PROVIDED BY THE LANDSCAPE ARCHITECT AND APPROVED SERVICES SHALL BE PROVIDED IN ACCORDANCE WITH THE SPECIFICATION.  
• THE DRAWING SET TO BE READ IN CONJUNCTION WITH THE SPECIFICATION.  
• BEWARE OF EXISTING SERVICES. TAKE EXTREME CARE.  
• REFER ALL WORK TO DRAINAGE, PLUMBING, ELECTRICAL, AND MECHANICAL SERVICES TO CIVIL ENGINEER DOCUMENTATION.

**DEVELOPMENT APPROVAL**  
PROJECT NO. SD18-1124  
DATE: 17-01-2019  
SCALE: A3

**PROPOSED SITE PLAN**  
DRAWN BY: CASPER TURNER  
CHECKED BY: MJS  
DATE: 17-01-2019  
SCALE: 1:500  
PROJECT NO. SD18-1124

**PROPOSED SITE PLAN**  
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CHECKED BY: MJS  
DATE: 17-01-2019  
SCALE: 1:500  
PROJECT NO. SD18-1124



**Development Summary**  
Site Area - 1.93Ha  
Real Property Description  
Lot 7 DP 785566  
Local Authority - TWEED SHIRE COUNCIL



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**DRAWING SCHEDULE**

- A00 ARCHITECTURAL SPECIFICATION
- A01 PROPOSED SITE ANALYSIS PLAN
- A02 PROPOSED SITE WORK PLAN
- A03 PROPOSED ELEVATIONS
- A04 ELECTRICAL PLAN

**SITE NOTES**

CONFIRM ALL DIMENSIONS ON SITE TO EXISTING DIMENSIONS PRIOR TO EXISTING PLUMBING AND ELECTRICAL WORKS TO BE REMOVED AND MAKE GOOD AS THIS PLAN DOES NOT PROVIDE SPECIFIC LANDSCAPE PLANTING LOCATIONS AND SPECIFICATIONS. ALL PLANTING AND LANDSCAPE SERVICES SHALL BE THE RESPONSIBILITY OF THE CLIENT. THIS DRAWING SET TO BE READ IN CONJUNCTION WITH THE SPECIFICATION AND THE PROPOSED WORKS. THE CLIENT IS ADVISED THAT THE PROVISION OF EXISTING SERVICES, INCLUDING PLUMBING AND ELECTRICAL, IS THE RESPONSIBILITY OF THE CLIENT. THE CLIENT IS ADVISED THAT THE PROVISION OF EXISTING SERVICES, INCLUDING PLUMBING AND ELECTRICAL, IS THE RESPONSIBILITY OF THE CLIENT. THE CLIENT IS ADVISED THAT THE PROVISION OF EXISTING SERVICES, INCLUDING PLUMBING AND ELECTRICAL, IS THE RESPONSIBILITY OF THE CLIENT.

NO	REVISION	DATE	BY	CHKD
1	ISSUED FOR APPROVAL	17-01-2019	AS	AS
2	ISSUED FOR APPROVAL	17-01-2019	AS	AS
3	ISSUED FOR APPROVAL	17-01-2019	AS	AS
4	ISSUED FOR APPROVAL	17-01-2019	AS	AS
5	ISSUED FOR APPROVAL	17-01-2019	AS	AS

**DEVELOPMENT APPROVAL**

**GYM fitout**  
20-26 Greenway Drive  
TWEED HEADS SOUTH  
Casper Turner

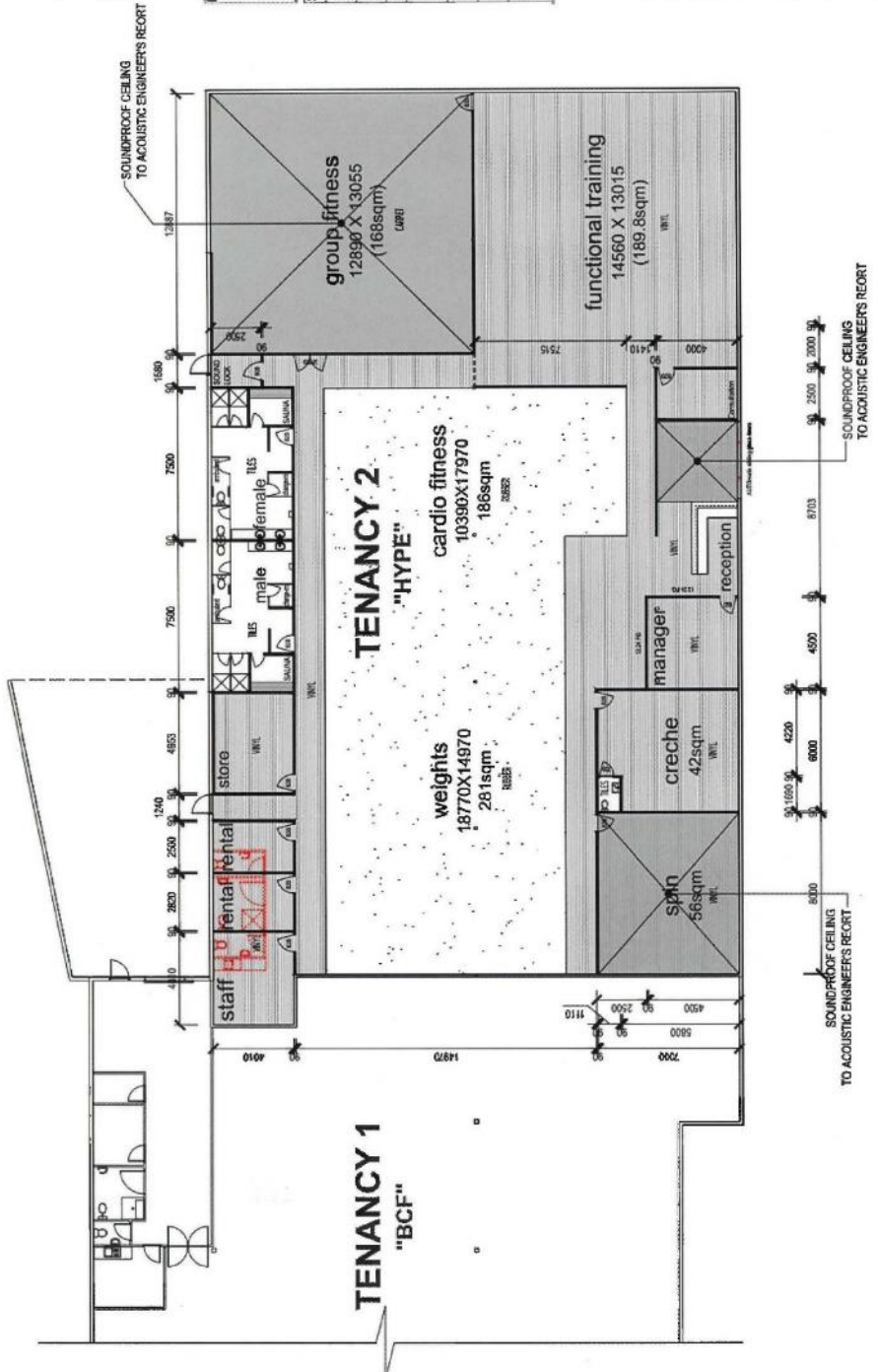
DATE: 17-01-2019  
SCALE: 1:200  
SHEET: A3

**PROPOSED GROUND FLOOR PLAN**

DESIGNED BY: MJS  
CHECKED BY: MJS  
DATE: 17-01-2019  
SCALE: 1:200  
SHEET: A3

PROJECT NO: SD18-1124  
DRAWING NO: A.02.1  
SHEET: 01

received by Council 22/03/2019







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DRAWING SCHEDULE

A00 ARCHITECTURAL SPECIFICATION  
A01 PROPOSED SITE AND LOOK PLAN  
A02 PROPOSED ELEVATIONS  
A03 PROPOSED ELEVATIONS

**SITE NOTES**  
• ALL DIMENSIONS ON SITE TO BE TAKEN FROM THE EXISTING RESERVE PRIOR TO COMMENCEMENT OF ANY WORK.  
• ALL DIMENSIONS TO BE TAKEN FROM THE EXISTING RESERVE PRIOR TO COMMENCEMENT OF ANY WORK.  
• ACCESS TO BE REMOVED AND MADE GOOD AS NECESSARY. ALL DOES NOT PROVIDE SPECIFIC LANDSCAPE PLANTING LOCATIONS.  
• ALL WORK TO BE COMPLETED WITHIN THE PROPOSED WORK AREA.  
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NO.	REVISIONS	DATE	BY	CHK.

DEVELOPMENT APPROVAL

PROJECT TITLE  
GYM fitout

20-26 Greenway Drive  
TWEED HEADS SOUTH

DATE ISSUED  
Casper TURNER

DESIGNED BY  
MJS

CHECKED BY  
MJS

DATE  
17-01-2019

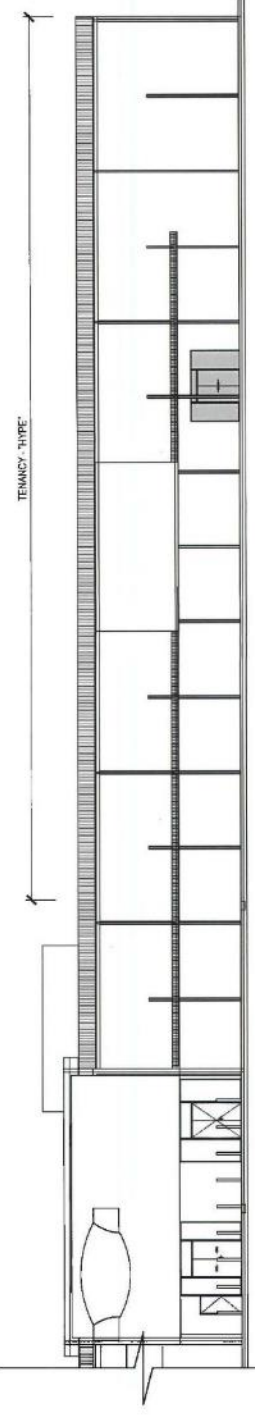
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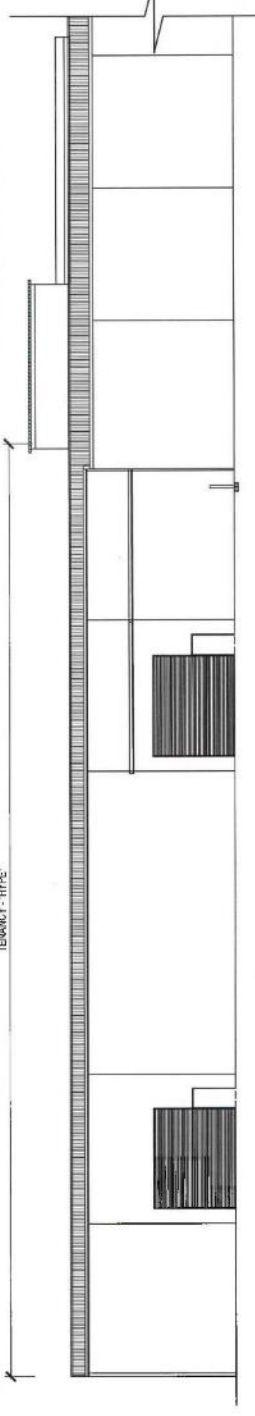
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DRAWING NO.  
SD18-1124

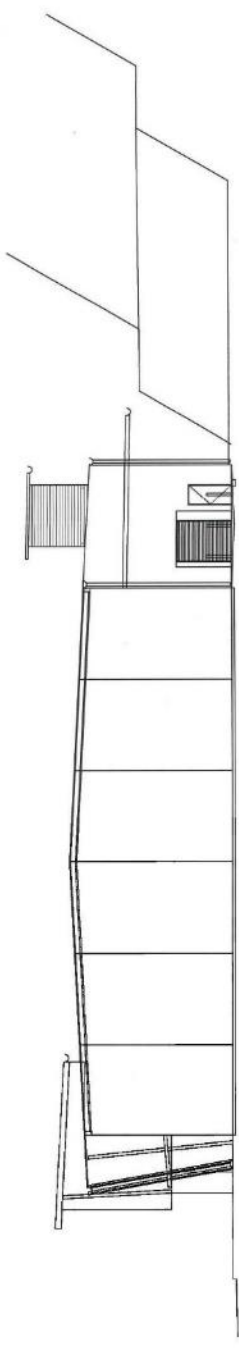
DATE  
A03.1



EAST elevation



WEST elevation



NORTH elevation

**Considerations under Section 4.55 (1A) Minimal Environmental Impact:**

**1A Modifications involving minimal environmental impact**

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

**Comment:**

An assessment has been undertaken with regard to the proposed modifications to the approved development, as noted in the 4.15(1) assessment elsewhere in this report. In conclusion, the proposed amendment is not considered to result in any significant environmental impact.

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

**Comment:**

The proposed modifications result in essentially the same development as originally approved. Having regard to the proposed amendments, it is submitted that the threshold question is satisfied on the basis that:

- The development remains as previously proposed being an indoor recreation facility;
- No significant change will result to the scale or intensity of the use over and above that previously investigated and approved;

It follows from the above that the proposal comes within the scope of Section 4.55(1a) of the Act and is substantially the same development. It is submitted that Council may modify the consent as proposed.

- (c) it has notified the application in accordance with:**

- (i) the regulations, if the regulations so require, or**  
**(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**

**Comment:**

The subject application was not notified, as during the assessment of DA15/0354 no submissions were received and a 6 month trial period of 24 hour operations had already been approved

- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

**Comment:**

Not applicable – no submissions were received.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified***

**Section 4.15(1) (Evaluation)**

- (1) *Matters for consideration-general in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

**(a) *the provisions of:***

- (i) *any environmental planning instrument, and***
- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and***
- (iii) *any development control plan, and***
- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and***
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,***

**Comment:**

The original application was assessed in accordance with the Tweed Local Environmental Plan 2014. The development was defined as a *Recreation Facility (indoor)*.

**Tweed Local Environmental Plan 2014 (TLEP 2014)**

**Part 1 Preliminary**

**1.2 Aims of Plan**

The proposed development relates to minor amendments to an approved recreation facility (indoor) on appropriately zoned land (B4 Mixed Use). The proposed development is considered to be consistent with the aims of the plan.

## Part 2 Permitted or prohibited development

### 2.1 Land use zones

The subject development site is zoned B4 Mixed Use under the provisions of this clause.

### 2.3 Zone objectives and Land Use Table

The objectives of the R3 zone are:

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

It is considered to provide for a development in accordance with the objectives of the relevant zones. The proposed modification application does not result to any changes with respect to the proposal being in accordance with these objectives.

### State Environmental Planning Policies

The subject application was initially assessed against the now repealed SEPP 71.

The site is not mapped under the SEPP (Costal Management) 2018.

### Tweed Shire Council Development Control Plan 2008

Applicable DCPs as considered under the assessment of DA15/0354 were:

#### Section A2 – Site Access and Parking Code

Under the assessment of DA15/0354 the applicant supplied a car parking assessment in lieu of a shortage of spaces as per the prescriptive standards of Section A2.

At the time of assessment of DA15/0354 the standards of Section A2 required the provision of 62 spaces for the proposed recreational facility based the gross floor area.

- 1100m<sup>2</sup> at (5/100m<sup>2</sup> GFA and 0.5/staff) = 56; and
- 335m<sup>2</sup> at bulky goods (1.4/100m<sup>2</sup> and 0.25/100m<sup>2</sup> staff) = 6

### **SUBJECT APPLICATION:**

Recreation Facility (indoor):

The prescriptive requirements of A2 remain the same as those under the assessment of DA15/0354, however the bulky goods component is no longer proposed and there has been a decrease in GFA of 276 for the tenancy 2:

H17	Recreation facilities (indoor)		1/5 car park	Employees: 1/4 staff (2). Visitors: 1/200m <sup>2</sup> GFA (3)			0.5/staff	5/100m <sup>2</sup> GFA
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- 1159 at (5/100m<sup>2</sup> GFA and 0.5/staff) = 57.95 (58 parking spaces) for customers and 1 space based on two staff = 59 spaces (reduction in 3 spaces compared to DA15/0354)

**BCF:**

As a result of the subject modification BCF will assume an additional 276sqm of GFA. Accordingly, will attract additional parking at the bulky goods rate. Under the original assessment BCF required 20 parking spaces. The additional floor area results the requirement of 5 spaces for BCF:

C4	Bulky goods premises			1/4 staff (3)	1/1500 GFA HRV		0.25/100 GFA	1.4/100m <sup>2</sup> GFA
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$0.25 + 1.4 = 1.65 / 100 = 0.0165 \times 276 = (4.554)$  5 spaces, resulting in a total requirement of 25 spaces.

**Site:**

The site requires 84 spaces (DA15/0354 required 82): 59 (recreation facility indoor) and 25 (BCF).

Accordingly, falls short an additional two (2) spaces in relation to that approved under DA15/0354 (this is due to an increase in the requirement for BCF).

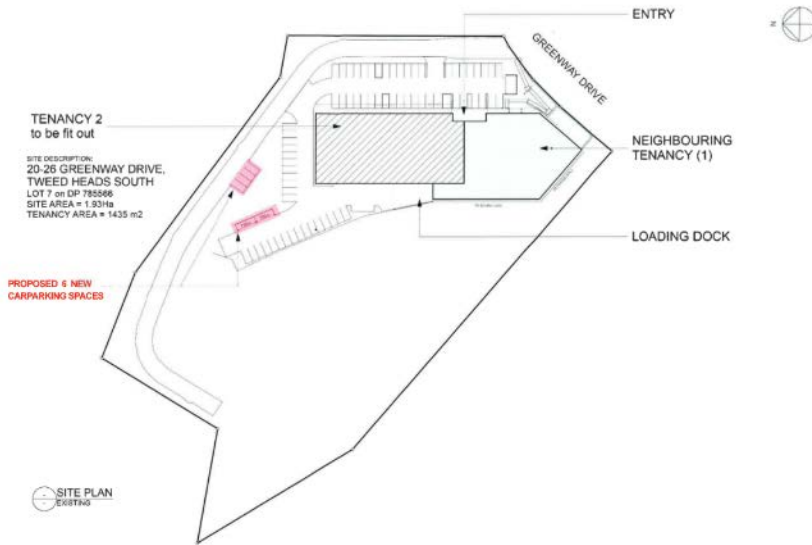
There are 67 spaces provided at the site.

The departure from the prescriptive requirements of Section A2 has been supported historically for the site. The original assessment of DA15/0354 advised the following:

*“The report detailed the results of a parking survey undertaken for an existing gym which also operates over 24 hours as well as a survey of the existing parking demand from the adjoining BCF development.*

*It was concluded that the existing 67 spaces at the site were capable of catering for the expected parking demand of the facility (in conjunction with operation of adjoining BCF) because during the busiest time, parking demand remains below 65% occupancy”.*

Notwithstanding the above, DA15/0354 proposed an additional 6 parking spaces as per below:



The subject application seeks consent to delete the requirement for these parking spaces. The site retains 67 onsite parking spaces and does not propose any additional spaces. This has been supported by Councils Traffic Engineering Unit who advised that the deletion of Condition 3 to remove the proposed additional six (6) parking spaces is accepted given the cross utilisation of the site and the varying peak hours for the adjacent businesses.

DCP Section A3- Development of Flood Liable Land

No modifications with this regard.

DCP Section A4 – Advertising and Signage Code

No modifications proposed with this regard.

DCP Section B2

No modifications with this regard.

Section 7.11 Contributions – Tweed Road Contribution Plan:

Following the issue of development consent for DA15/0354 Council's Business Investment Policy (BIP) was adopted. The policy allows the subject application to benefit from a discount as an *Eligible Business Enterprise – Small Business Incentives*. Based on the development's GFA being greater than 1,001m<sup>2</sup> and less than 1,500m<sup>2</sup> the application is eligible for a 25% discount to the levied Tweed Road Contribution Plan. This discount is in addition to the 40% discount applied under the *Employment Generating Incentive*, also within Council's BIP.

Condition 33 has been deleted and replaced with 33A which see a decrease in charges of approximately \$20,000.00 for TRCP.

Reasons for granting the original consent

Reason 1

The application was permissible with consent.

How the proposed modification continues to satisfy Reason 1 above.

The subject application remains permissible with the zones objectives.

### Reason 2

The application achieved compliance all applicable SEPPs and DCPs.

How the proposed modification continues to satisfy Reason 2 above.

The modified development remains compliant with legislation.

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

### Comment:

#### Hours of Operation/Noise

The application seeks to amend the development consent to operate 24 hours and remove the six (6) month trial period. *It is noted that the approved gym has not commenced. Accordingly no trial period has been implemented.*

Several gyms within the Tweed have resulted in amenity impacts to neighbouring residential premises prompting careful consideration of proposed hours of operation. Whilst it is noted that the gym has been designed to prevent amenity impact to these receivers, a trial period would enable operations to commence and confirm that amenity is adequately managed both internal and external to the building.

A Noise Impact Report (NIR) was prepared by CRG Acoustics Pty Ltd and dated 20 December 2018 (crgref: 18174 report Rev 1) was submitted with the application. The following is noted within this report:

- *Proposed 24 hour access;*
- *Onsite activity includes vehicle movements, amplified music, trainer voice, weights machines, and free-weight drop;*
- *Access will be via two sets of doors (with sound locks) on the eastern façade, one for normal operations and the other for access during hours that the gym is not attended by Management;*
- *Car parking located to the east of the building with extra parking to the northern side;*
- *Acoustic environment is dominated by road traffic on the M1 and Greenway Drive, and by aircraft overflight;*
- *Noise source levels have been collected from an assessment of Hype Health Club in Currumbin Waters which operates similarly to the subject site; and*
- *Hours of operation:*
  - *Fitness Group Classes – 5am to 9pm daily;*
  - *Cycle Classes – 5am to 9pm daily; and*
  - *General Gym – 24 hours.*

Within this report CRG Acoustics states that overall, the development will generally be within acceptable levels of the adopted criterion subject to the acoustic treatments recommended in Section 6 (of the NIR) being integrated into the operation of the development.

## **6.0 RECOMMENDED ACOUSTIC TREATMENTS**

We recommend the following acoustic treatments be incorporated into the development to mitigate onsite activity noise emissions:

- Hours of operation are to be as follows:
  - Fitness Group Classes: 5am to 9pm, seven days a week.
  - Cycle Classes 5am to 9pm, seven days a week.
  - General Gym: 24 hours, seven days a week.
- Music and voice amplification be limited to 88 dB(A) at 1m from speakers in Cycle Class room.
- Music and voice amplification be limited to 80 dB(A) at 1m from speakers in open Gym space between 5am and 9pm.
- Background music in the open Gym space be limited to 70 dB(A) at 1m from speakers in open Gym space between 9pm and 5am.
- A soundlock entry be constructed to the 24 hours access door. These doors be rated to a minimum Rw 30. Refer to Sketch No. 1 in Appendix "A" of this report.
- A sound control barrier be constructed inside the building to screen the main reception area. The main reception doors be rated to a minimum Rw 30. The internal northern wall of the entry area be lined with an acoustically absorptive lining min Noise Reduction Coefficient (NRC) 0.95, with a hard perforated sheet facing min 11 % open face area (e.g. custom mini-orb). Refer to Sketch No. 1 in Appendix "A" of this report.
- The floor on the free-weights area be covered with a minimum 15mm thick rubber mat.
- The Cycle Class room be constructed to meet an acoustical rating of Rw 50. Such a construction is 2 layers of 13mm plasterboard with 11kg/m<sup>3</sup> fibreglass batts in the wall void. The ceiling should be rated to a minimum Rw 45. Such a construction is 2 layers of 13mm plasterboard below a 19mm thick particleboard floor, with R2, 70mm thick fibreglass batts in the void. The door should be solid core 35mm thick timber with acoustic seals around door perimeter and a drop seal at the door base.
- Any new mechanical plant be designed and installed to comply with the noise criterion presented in Section 4.



Following review of the NIR, Council's Environmental Health Officer undertook discussions with the applicant's acoustic consultant (CRG Acoustics) on 9 April 2019. These discussions confirmed that whilst the NIR advises that the development would be generally within acceptable levels Council's approach (trial period) was appropriate for new operations and that the trial be implemented for this site.

Notwithstanding the above, the applicant amended plans (after the above report was completed) which included an additional door to the rear of the premises (closer to the adjacent residential zone). The following is noted:

- *A third door for 24 hour access is proposed to the south-western façade. The consultant advises that although this door is well screened to the residential area to the east and north, there are potential issues associated with reflections off the retaining wall to the west of the building. The sound lock will remove potential reflected sound and potential issues.*

Again, Council's Environmental Health Unit discussed the addendum letter with CRG Acoustics on 9 April 2019.

Council advised that parking and access to the rear of the site was initially limited to staff only (noted in the previous report dated 20 December 2018 (crgref: 18174 report Rev 1)). Accordingly, Council's Environmental Health Officer raised concerns that this amendment may impact residential receivers in terms of vehicle movements, door slams, and patron noise at the northern end of the site late at night and early morning, the possibility of restricting hours to this access point was considered.

Following on from this conversation an additional letter titled *Alteration To Door Access, Proposed Fitness Centre, 20-26 Greenway Drive, Tweed Heads South* prepared by CRG Acoustics dated 30 April 2019 (CRGref: 17140 Letter 30\_04\_19) has since been submitted.

This assessment assumes a worst case scenario external to the building with patrons parking as close to the dwellings as possible. The acoustic consultants confirm that subject to the soundlock being installed as per the CRG report dated 20/12/18, no extra noise impacts are noted.

The applicant raised concerns in relation to Council not supporting the removal of the 6 month trial period for 24 hour operation. The applicant advised that:

*"This development is a huge financial commitment for my client...the total outlay is about \$1.2 million.*

*It will be very hard to sell gym memberships without confidence in a 24 hour operation after the 6 month trial period and does not make this viable.*

*The acoustic report was prepared to support that modification and it ticks the boxes subject to some treatments which the owner is prepared to do. Hence it is hoping that Council give this careful consideration as it is very important to the viability of this business".*

Following on from this and final updated letter from the acoustic consultant, further discussions between Council's Environmental Health Unit and the acoustic consultant were undertaken on 30 April 2019.

During these conversations the acoustic consultant remained supportive of the 6 month trial period approach. The acoustic consultant also concurred that an ongoing start time of 5.00am would be suitable given the increased background noise level experienced in this location due to traffic noise from the Pacific Highway.

It is noted that no objections regarding noise have been received for the proposed development.

However, as the acoustic consultant has supported retaining the trial period and in consideration of higher background noise from 5am, it is recommended Condition 38 be deleted and replaced with new condition 38A as follows:

38A. Hours of operation of the gym are restricted to the following hours for a trial period of six (6) months from the date of the Occupation Certificate being issued:

- \* 24 hours - Monday to Sunday

Any requests to vary this condition (via a formal Section 4.55 application) must be lodged at least two (2) months prior to the expiry of the six (6) month period.

Following the trial period and where no Section 4.55 application has been granted, the hours of operation of the gym are restricted to the following hours:

- \* 5.00am to 10.00pm - Monday to Sunday

or other hours as approved by Council's General Manager or delegate.

The existing condition applies the following hours (upon completion of the 6 month trial period):

- \* 7.00am to 10.00pm - Monday to Saturday
- \* 8.00am to 10.00pm - Sunday and public holidays

Accordingly, the modification increases the approved hours by allowing the gym to open up to 3 hours earlier.

The applicant also seeks consent to remove condition 41 which reads as follows:

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

The removal of this condition is not supported by Council Officers as the condition allows Council to request an NIS in the event a valid noise complaint is received. *The retention of this condition is essential should condition 38 be amended to delete the 6 month trial period and approve 24 hour operation.*

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

**Comment:**

As outlined elsewhere in this report, the subject application relates to an amendment to an approved development. In this regard, the outlined modification is not considered to result in any detrimental impact relating to site suitability, subject to the applied conditions.

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

**Comment:**

Not applicable - no submissions were received.

**(e) *The public interest.***

**Comment:**

The proposed modification to Development Consent DA15/0534 is considered to be acceptable in terms of overall public interest. The modification is not considered to result in a significant negative impact upon the surrounding area.

**OPTIONS:**

That Council:

1. Approves the application in accordance with the recommended conditions of consent including the retention of the 6 month trial period for 24 hour operation; and supports the applicant entering into a deferred payment plan for Section 7.11 contributions.
2. Approves the application with the deletion of the 6 month trial period for the 24 hour operation (ensuring the retention of condition 41); and supports the applicant entering into a deferred payment plan for Section 7.11 contributions.
3. Refuses the application for specified reasons.

Option 1 is recommended.

**CONCLUSION:**

The proposed section 4.55 modification has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

The development is not considered to result in a significant impact to the amenity or uses of the surrounding sites, considering the existing approved use. Appropriate conditions have been applied, in particular the retention of the six (6) month trial period.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

The applicant may appeal Council's determination in the Land and Environment Court.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**13 [PR-CM] Development Application DA19/0033 for the Use of Existing Shipping Container as a Garden Shed at Lot 40 DP 792238 No. 4 Market Parade, Terranora**

**SUBMITTED BY: Building and Environmental Health**

mhm



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

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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 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:**

This report details the preliminary assessment of the use an existing shipping container as a garden shed. The report also provides recommendations in regards to this development application.

By way of background, the subject site (Lot 40) forms part of an established large lot residential (R5) area within Terranora. The site is currently improved by a single storey dwelling with attached garage, and a shipping container, which is the subject of this application. The site has an area of 2015m<sup>2</sup> and is bound by similar sized large lot residential allotments to the north, south and west, which contain single dwellings.

The shipping container was brought to the attention of Council via a Customer Service Request (ILL18/1926), which cited an unapproved shipping container located at the subject site.

State Environmental Planning Policy (Exempt and Complying Development) 2008, Part 2, Division 1, Subdivision 9 – Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses, advises that *The construction or installation of a cabana, cubby house, fernery, garden shed, gazebo or greenhouse is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item, on land in a foreshore area or in an environmentally sensitive area, where the following development standards are met:*

- (f) *not be a shipping container, and*

Given that the structure is a shipping container and does not qualify as exempt development, Council's Compliance Unit advised the following:

*"Following investigation by Council's Compliance Unit, it was requested that the owner:*

1. *Submit an application to Council's Building Unit to have the container approved as a shed; or*
2. *Remove the shipping container from the property."*

Subsequently, the owner/applicant has lodged a development application (DA19/0033) with Council for assessment.

Development Application DA19/0033 seeks to retrospectively approve the use of a shipping container as a garden shed which is located 15m from the front boundary, 3m from the northern side boundary and in excess of 20m from both the southern side and rear boundaries. The shipping container is also positioned behind the front building line and is considered to be consistent with the provisions of the Tweed Development Control Plan 2008 – Section A1 (DCP A1), in particular Part 6.2 – Ancillary Development (Outbuildings).



The application was notified for a period of 14 days during which Council received one submission objecting to:

- a) Misleading description of the proposal – 'Existing shipping container';
- b) Shipping containers are specifically excluded from the State Environmental Planning Policy (Exempt and Complying Development Code) 2008;
- c) The Tweed Development Control Plan 2008 – Section A1 Part 6.2 does not refer to shipping containers anywhere in the description;

- d) Non-compliance with specific objectives of Part 6.2 (DCP A1);
- e) The DCP A1 does not specifically address the potential impact of shipping containers on the streetscape of neighbourhoods; and
- f) The container is visible from the objector's property.

The applicant has amended parts of the development proposal to address the submissions where possible. The objections raised and responses are provided within this report.

Council had concerns with the original submission with regards to the impact that the shipping container may have on the streetscape, visual amenity and bulk, scale and mass of the structure. In response to a Council request for further information the applicant has amended the plans to include detailed landscaping along the front boundary and a 1.8m high screening fence, located forward of the shipping container and behind the front building line. As detailed further in this report and on the amended plans, the inclusion of the 1.8m high screening fence is considered to suitably screen the shipping container from the street and surrounding allotments. The applicant has also provided justification for the proposal to accompany the amendments (see attachment 1).

In terms of the assessment of this development application, the proposal is considered to be consistent with the relevant provisions of the Tweed Development Control Plan 2008 – Section A1. Concerns relating to streetscape, visual amenity and the bulk scale and mass are considered to be adequately mitigated through the inclusion of a 1.8m high screening fence and landscaping.

The proposed development is recommended for conditional approval, as the shipping container can be defined as an outbuilding for use as storage and is consistent with the relevant provisions of the DCP Section A1, therefore on merit the application warrants a recommendation for approval.

This development application is referred to full Council for determination as requested by Councillors Cooper and Byrnes.

#### **RECOMMENDATION:**

**That Development Application DA19/0033 for the use of existing shipping container as a garden shed at Lot 40 DP 792238 No. 4 Market Parade, Terranora be approved subject to the following conditions:**

#### **GENERAL**

1. **The development shall be completed in accordance with the plans approved by Council, except where varied by conditions of this consent.**  
[GEN0015]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**  
[GEN0115]

3. 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]

4. 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]

5. Within 30 days of the approval, the applicant is to submit the following to Council:

- An application for a Building Information Certificate.
- A certificate from a suitably qualified surveyor certifying that the shipping container is setback a minimum distance of 15m from the front boundary, as per the approved plan.
- An updated landscaping plan which demonstrates landscaped planting immediately forward of the proposed screening fence, in addition to the already proposed landscaping.

[GENNS01]

6. The shipping contained is to be painted to match the existing dwelling.

[GENNS02]

#### **DURING CONSTRUCTION**

7. 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]

8. 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]



9. 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]
10. 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]
11. 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]
12. 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]
13. All landscaping is to comply with the 88B Instrument pertaining to the site. [DUR1055]
14. 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]
15. 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]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

16. 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]

17. 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]

18. 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

19. The use of the shipping container is to be for storage purposes only.

[USENS01]

**REPORT:**

**Applicant:** Mr PJ Walle and Mr GC Botterill  
**Owner:** Mr Graham C Botterill & Mr Phillip J Walle  
**Location:** Lot 40 DP 792238 No. 4 Market Parade, Terranora  
**Zoning:** R5 - Large Lot Residential  
**Cost:** \$1,000

**Background:**

This report details the preliminary assessment of the use an existing shipping container as a garden shed. The report also provides recommendations in regards to this development application.

By way of background, the subject site (Lot 40) forms part of an established large lot residential (R5) area within Terranora. The site is currently improved by a single storey dwelling with attached garage, and a shipping container, which is the subject of this application. The site has an area of 2015m<sup>2</sup> and is bound by similar sized large lot residential allotments to the north, south and west, which contain single dwellings.

The shipping container was brought to the attention of Council via a Customer Service Request (ILL18/1926), which cited an unapproved shipping container located at the subject site.



*Figure 1 - The shipping container when viewed from the street.*

State Environmental Planning Policy (Exempt and Complying Development) 2008, Part 2, Division 1, Subdivision 9 – Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses, advises that *The construction or installation of a cabana, cubby house, fernery, garden shed, gazebo or greenhouse is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item, on land in a foreshore area or in an environmentally sensitive area, where the following development standards are met:*

- (f) *not be a shipping container, and*

Given that the structure is a shipping container and does not qualify as exempt development, Council's Compliance Unit advised the following:

*"Following investigation by Council's Compliance Unit, it was requested that the owner:*

- 1. Submit an application to Council's Building Unit to have the container approved as a shed; or*
- 2. Remove the shipping container from the property."*

Subsequently, the owner/applicant has lodged a development application (DA19/0033) with Council for assessment.

Development application DA19/0033 seeks to retrospectively approve the use of a shipping container as a garden shed. The shed measures 6m x 2.4m and 2.5m high and is located 15m from the front boundary, 3m from the northern side boundary and in excess of 20m from both the southern side and rear boundaries. The shipping container is also positioned behind the front building line and is considered to be consistent with the provisions of the Tweed Development Control Plan 2008 – Section A1 (DCP A1), in particular Part 6.2 – Ancillary Development (Outbuildings).

The application was notified for a period of 14 days during which Council received one submission objecting to:

- a) Misleading description of the proposal – 'Existing shipping container';
- b) Shipping containers are specifically excluded from the State Environmental Planning Policy (Exempt and Complying Development Code) 2008;
- c) The Tweed Development Control Plan 2008 – Section A1 Part 6.2 does not refer to shipping containers anywhere in the description;
- d) Non-compliance with specific objectives of Part 6.2 (DCP A1);
- e) The DCP A1 does not specifically address the potential impact of shipping containers on the streetscape of neighbourhoods; and
- f) The container is visible from the objector's property.

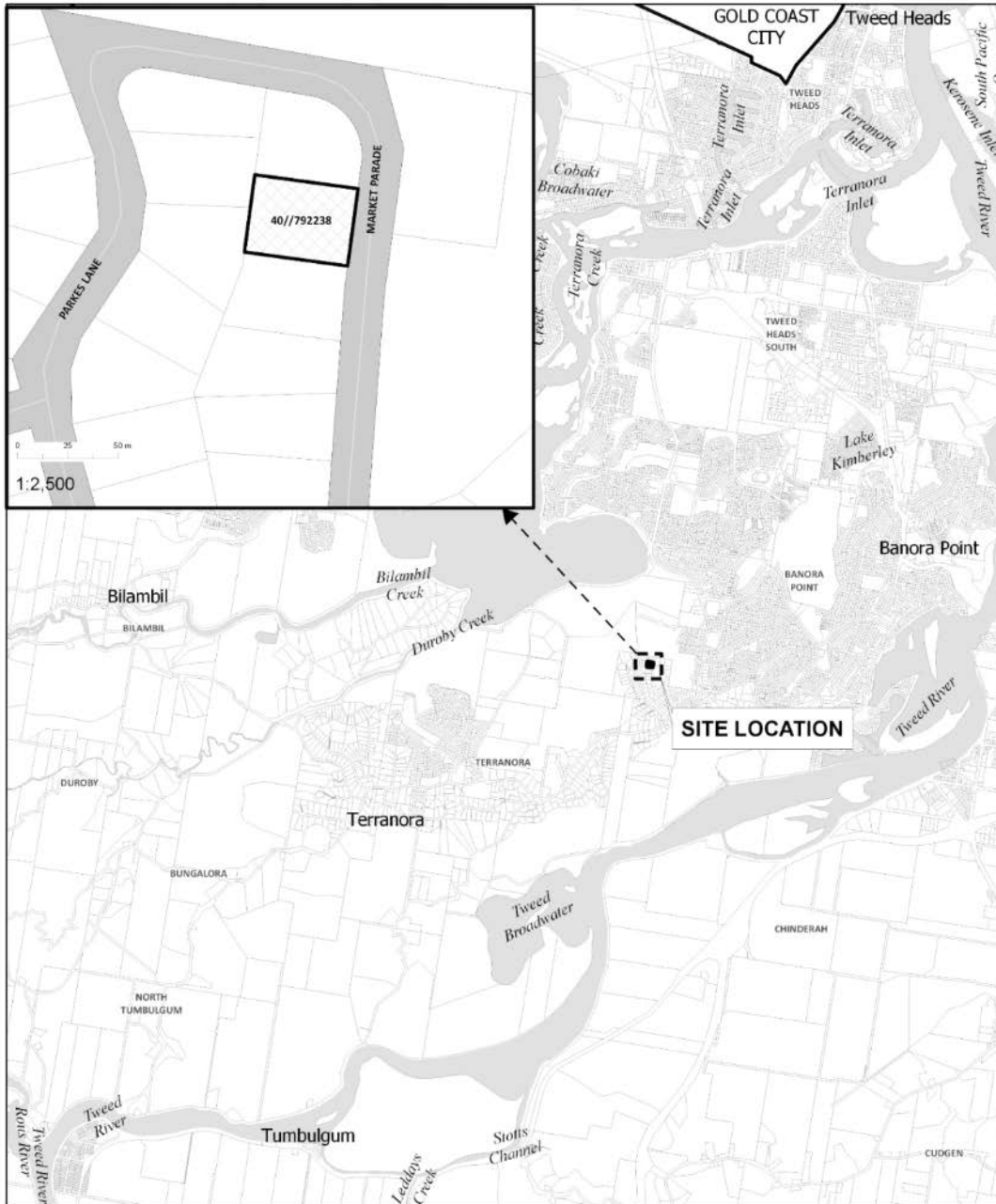
The applicant has amended parts of the development proposal to address the submissions where possible. The objections raised and responses are provided within this report.

Council had concerns with the original submission with regards to the impact that the shipping container may have on the streetscape, visual amenity and bulk, scale and mass of the structure. In response to a Council request for further information the applicant has amended the plans to include detailed landscaping along the front boundary and a 1.8m high screening fence, located forward of the shipping container and behind the front building line.

In terms of the assessment of this development application, the proposal is considered to be consistent with the relevant provisions of the Tweed Development Control Plan 2008 – Section A1. Concerns relating to streetscape, visual amenity and the bulk scale and mass are considered to be adequately mitigated through the inclusion of a 1.8m high screening fence and landscaping.

The proposed development is recommended for conditional approval, as the shipping container can be defined as an outbuilding for use as storage and is consistent with the relevant provisions of the DCP Section A1, therefore on merit the application warrants a recommendation for approval.

**SITE DIAGRAM:**



**Site Plan**  
 Lot 40 DP 792238  
 40 Market Parade TERRANORA

0 0.6 1.2 Km

1:50,000



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Coordinate System - MGA Zone 56  
 Datum - GDA 94

Cadastre - 29/04/2019  
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Date Printed: 29 April, 2019

**DEVELOPMENT/ELEVATION PLANS:**

<p><b>PROPOSED GARDEN SHED</b></p>	<p><b>Client</b> Graham Botterill &amp; Phil Waile</p> <p><b>Project</b> 4 Market Parade Terranora Described as Lot 40 on D.P. 792238</p>	<p>Job Number : MP/0002 Figure Number : 1 of 1 Date : 28-03-19</p>	<p>Scale : 1:200 at A3</p>	<p><b>SHEET 1 Site Plan</b></p>
<p>The site plan shows a rectangular plot with a boundary extending west. On the left side, there is an existing boulder wall. The plot contains an existing dwelling and a proposed garden shed. The shed is 6000 units wide and 2400 units deep. A 3000-unit wide area is reserved for the shed. A 4000-unit wide area is reserved for the dwelling. A 15000-unit wide area is reserved for the garden. The garden area includes existing and proposed planting. A kerb and Market Parade are located on the right side of the plot.</p>				

<p><b>PROPOSED GARDEN SHED</b></p>	<p><b>Client</b> Graham Botterill &amp; Phil Waite</p> <p><b>Project</b> 4 Market Parade Terranora Described as Lot 40 on D.P. 792238</p>	<p>Job Number: MP 0002 Figure Number: 2 of 2 Date: 28-03-19</p>	<p>Scale: 1:100 at A3</p>	<p><b>SHEET 2</b> <b>Elevations and Floor Plan</b></p>
<p>The drawings show the proposed garden shed from three perspectives:</p> <ul style="list-style-type: none"> <li><b>NORTHERN ELEVATION:</b> Shows the shed's profile with an existing dwelling to the left and a proposed container to the right. A dashed line indicates the boundary surface level.</li> <li><b>EASTERN ELEVATION:</b> Shows the side profile of the shed, including the existing dwelling and the proposed screening fence and container.</li> <li><b>FLOOR PLAN:</b> Shows the rectangular footprint of the proposed container with dimensions of 2400 units by 6000 units.</li> </ul>				



**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 proposal is considered to be in accordance with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The subject site is zoned R5 Large Lot Residential and the proposal meets the objectives of this zone. The structure is ancillary to the dwelling house and is permitted with consent.

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

The application does not involve subdivision.

Clause 4.3 - Height of Buildings

The proposed development has a maximum height of 2.5m which complies with the 9m height limit under this clause.

Clause 4.4 – Floor Space Ratio

The subject site has a maximum permissible floor space ratio of 0.55:1. With the inclusion of the storage container, the buildings on site will not exceed a floor space ratio of 0.55:1.

Clause 4.6 - Exception to development standards

There are no exceptions to the development standards.

Clause 5.4 - Controls relating to miscellaneous permissible uses

This application does not involve any miscellaneous permissible uses.

Clause 5.10 - Heritage Conservation

The site is not located within a heritage conservation area.

Clause 5.11 - Bush fire hazard reduction

The subject site is mapped as being bushfire affected. The consent shall be conditioned to ensure the class 10 structure as defined by the Building Code of Australia 2006 is to be non-combustible.

Clause 7.1 – Acid Sulfate Soils

The site has been identified as being affected by Class 5 sulfate soils, as the works are unlikely to lower the water table at adjoining classes, an acid sulfate soil management plan for minor works is not required with this application.

Clause 7.2 - Earthworks

It is considered that the minor nature of the proposed earthworks will not have a detrimental impact on the environmental functions and processes, neighbouring uses, cultural or heritage items of the subject site or surrounding lands.

Clause 7.3 – Flood Planning

The site is not mapped as being flood affected.

Clause 7.4 - Floodplain risk management

The site is not mapped as being flood affected.

Clause 7.5 - Coastal risk planning

The subject site is not within the coastal risk planning zone.

Clause 7.6 - Stormwater Management

It is considered that this proposal will minimise the impacts of urban stormwater on the subject site and adjoining properties, through appropriate conditions which will be imposed on the consent.

Clause 7.8 – Airspace operations

The proposed development is not considered to impact upon the operation of the Gold Coast Airport.

Clause 7.9 - Development in areas subject to aircraft noise

The proposal will not have any adverse impacts on the ongoing, safe and efficient operation of the airport, nor is it considered to require noise attenuation measures.

Clause 7.10 - Essential Services

All essential services are available and adequate.

Other Specific Clauses

No additional Clauses considered relevant to the proposal.

## **State Environmental Planning Policies**

### **SEPP (Coastal Management) 2018**

The subject site is mapped as being within the Coastal Environment.

The objectives of the clause is 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.

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

There are no draft Environmental Planning Instruments applicable to the site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

*The proposal is considered to be generally in accordance with Section A1 Part A. The key considerations of Section A1 Part A have been discussed in detail below and the proposal is considered to be acceptable on merit.*

**Preliminary**

**3. Context and Site analysis**

**3.1 Streetscape**

In its originally submitted form, although positioned behind the front façade of the existing dwelling, the shipping container raised some concern with regard to its potential impact on the streetscape. A request for further information was issued to the applicant requesting amendments to soften the appearance of the dwelling when viewed from the street. The applicant has since amended the plans to include a 1.8m high fence and landscaping forward of the shipping container to provide screening from the street. In addition, the applicant has provided the following justification in response to Council's concerns about the impact on the streetscape:

- *The street level is at least 1m below the existing ground level of the proposed screening fence and garden shed. The angled view from the street over the fence will in all likelihood block out, if not all, at least the vast majority of the shipping container;*
- *The shipping container is 15m from the front boundary, a fairly significant distance;*
- *The container can only be viewed from the street in a very small window of view if and only if you choose to look up at the property;*
- *It is permissible to build a considerably larger garden shed as exempt development in the same location.*

With consideration of the above points raised by the applicant, justification of the proposal with respect to the relevant Objectives and Controls of this clause is provided as follows:

**Objectives**

*O1. To ensure new development is compatible with, and complements the positive characteristics of the existing built, landscape and topographic elements of the streetscape.*

With the inclusion of a 1.8m high screening fence and proposed landscaping, the shipping container is considered to be suitably screened from the street and is unlikely to result in a structure which significantly detracts on the existing built, landscape and topographic elements of the streetscape. Additionally the, significant setback from the street (15m) further limits the potential impact of the structure on the streetscape.

It is recommended as a condition of consent, that an amended landscaping plan be provided which includes landscaping immediately forward of the proposed fence, running the entire length.

*O2. To ensure residential development encourages a high level of pedestrian amenity, access, safety and passive surveillance to and along the street*

The shipping container is unlikely to impact on pedestrian amenity, access, safety and passive surveillance to and along the street, given its location 15m from the front boundary.

### **Controls**

*C2. Site design, building setbacks and the location and height of level changes are to consider and be compatible with other buildings and sites along the street, particularly those that are older and more established*

The shipping container is setback a distance of 15m from the street, is 2.4m wide x 2.5m high, and is positioned behind the front façade of the dwelling. Along with the inclusion of landscaping and 1.8m high screened fencing forward of the container, only a minor portion of the container will be visible from the street.

It should be noted, with regards to the bulk of the structure and potential impact on the streetscape, that under the State Environmental Planning Policy (Exempt and Complying Development Code) 2008, a garden shed structure up to 50m<sup>2</sup> may be constructed without Council consent in the same location.

It is acknowledged that while the shipping container is not a typical garden shed structure in appearance, the intended use is to be the same as a garden shed. Additionally, both the SEPP (Exempt and Complying Development Code) 2008 and the DCP Section A1 do not provide a specific definition of a garden shed, thereby not limiting what a garden shed may be constructed of. With the appropriate implementation of design amendments to screen the structure, the impact of the structure on the streetscape and adjoining allotments can be significantly less than that of an exempt garden shed.

Given the design amendments to include landscaped screening and a 1.8m high screening fence, only a minimal portion of the container will be visible from the street which is unlikely to significantly detract on the streetscape and considered an acceptable outcome on merit.

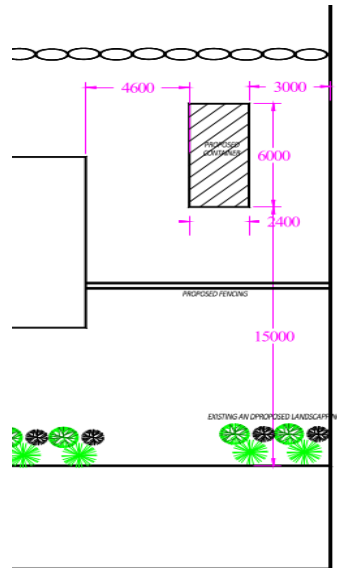


Figure 2 - The location of the proposed screening fence and landscaping

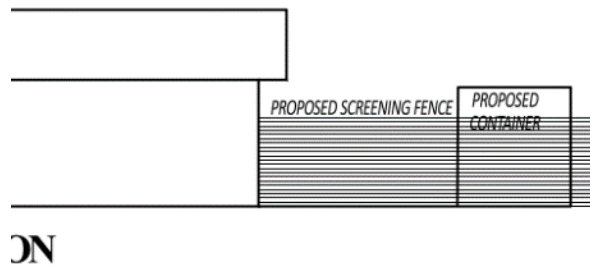


Figure 3 - The proposed screening fence to be positioned forward of the shipping container

### 3.2 Views and Vistas

#### Objectives

O2. To ensure public view corridors, particularly those down streets and between buildings, are not unnecessarily reduced or obliterated.

The shipping container is positioned behind the front façade, 15m from the front boundary. Although visible from the street in its current form, the inclusion of landscaped screening and a 1.8m high screening fence forward of the container, will effectively reduce the visibility of the container from public view corridors. Only a minor portion will remain visible which is considered acceptable on merit and will not unnecessarily reduce or obliterate public view corridors down the street.

#### Controls

C1. Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the planning principles of view sharing between properties.

The shipping container is positioned a significant distance from all surrounding development and is unlikely to impact on the views afforded to surrounding properties.

As noted above, the container shall be screened from the street by the proposed landscaping and 1.8m high screening fence, and will be screened from the northern adjoining dwelling by existing landscaping, an existing retaining wall and non-habitable structures on the adjoining property. The container is positioned below the natural ground level of the adjoining western allotment, and will be screened from the adjoining southern allotment by the existing dwelling on the subject site. It is therefore considered that the siting of the container is an acceptable outcome and will not impact on the views from surrounding properties.

## **Part A**

### **4. Building Design**

#### **4.4 Building form**

##### ***Objectives***

*O1. To minimise the visual impact and bulk of development when viewed from adjoining properties, the street, waterways, and areas for public recreation purposes.*

In its current form, the shipping container presents the potential for a detrimental impact visually when viewed from the street. This has also been highlighted in the objection received during the neighbour notification period.

At the request of Council, as detailed above, amendments have been made to the submitted plans to include significant landscaped screening and a 1.8m high screening fence, both forward of the shipping container. Along with being located 15m from the front boundary and behind the front façade of the existing dwelling, it is considered that once approved, only a maximum of approximately 600mm of the shipping container would be likely visible above the screening fence. Additionally, the natural slope of the land and view angle from the street will further limit the amount of the shipping container which is visible. Therefore, it is considered that the shipping container will have minimal visual impact and bulk when viewed from the street and is acceptable on merit.

##### ***Controls***

*C1. Building siting, height, scale, and roof form must relate to the surrounding development, topography and existing site conditions.*

The shipping container has been positioned 15m from the front boundary and behind the front façade of the existing dwelling. Along with landscaping and the proposed 1.8m high screening fence, the siting and scale of the proposal is considered to be acceptable. While not wholly relating to surrounding development, the measures proposed to screen the shipping container and mitigate the visual impact and bulk are considered acceptable outcomes on merit and should be supported in this instance.

As has been detailed above, the shipping container will be sufficiently screened from adjoining development. The minor portion visible from the street is considered to be acceptable and unlikely to result in significant detrimental impacts.

## **6. Ancillary Development**

### **6.2 Outbuildings**

#### **Objectives**

*O1. To provide for uses complementary to a dwelling house.*

The shipping container has been nominated for use as a garden shed, which is a use that is complementary to a dwelling house.

*O2. To ensure outbuildings are of an appropriate scale and compatible in design and materials with the existing dwelling house.*

The shipping container is of an appropriate scale for a large lot residentially zoned allotment. Ancillary structures of a typically larger nature and scale are permissible on this site without Council consent, therefore a structure of this scale should be considered an acceptable outcome.

With regards to being compatible in design and materials with the existing dwelling house, the existing dwelling house consists of face brick and the shipping container is solid steel. The shipping container is therefore not consistent with this objective, however, the intent of this objective would be to integrate ancillary structures with the main dwelling and reduce their visual impact when viewed from adjoining properties or the street. As has been discussed in detail above, while not consistent with the materials of the existing dwelling, the existing characteristics of the site and measures taken to screen the shipping container from the street will effectively result in a structure that is considered to not to be visually dominant.

The appearance of the structure should therefore be considered to be acceptable given it will only be visible, for the majority, from the existing dwelling on-site only.

On this merit, the proposal should be considered an acceptable outcome despite not being wholly consistent with the objective.

*O3. To maintain the existing or reinforce the desired future character and streetscape of the area and preserve the amenity of the existing dwelling house and any neighbouring properties.*

In its current form the shipping container does not satisfy this objective, however at the request of Council, design amendments have been made to the submitted plans to reduce the impact of the shipping container on the streetscape and adjoining allotments. These amendments include a 1.8m high screening fence and landscaping forward of the shipping container.

As has been discussed extensively above, the amendments will effectively screen the shipping container from the street and leave only a minor portion visible from the street. This will significantly limit the ability for the structure to detract on the streetscape or the visual amenity of the area. The shipping container sits below the natural ground level of both the adjoining northern and western allotments, and is therefore unlikely to be visually dominant when viewed from these dwellings. Additionally, the dwelling on the western allotment is in excess of 50m from the shipping container and separated by established vegetation. The dwelling on the



adjoining allotment to the south will be suitably screened from the shipping container by the existing dwelling.

With regard to the neighbouring property to the east (No.1-5 Market Parade), it is considered that the measures taken to screen the shipping container, distance from the neighbouring dwelling, existing landscaping (refer to figure 4) and the natural slope of the land, will suitably reduce the visual dominance of the shipping container and preserve the amenity of the existing dwelling house located on this allotment.

The intended use of the shipping container as an ancillary structure (garden shed) will preserve the amenity of the locality.

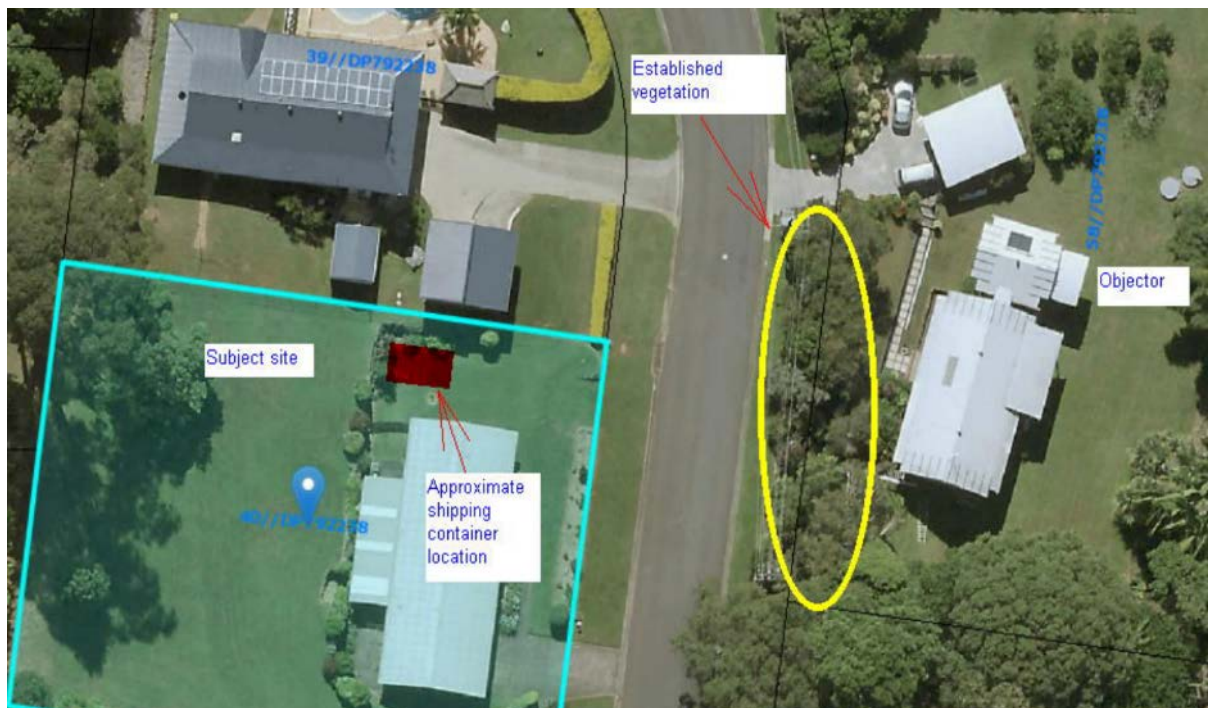


Figure 4 – Site diagram of the subject site and the neighbouring site across the road.

It is therefore considered, the positioning of the shipping container and the proposed amendments, that the proposal will maintain the existing streetscape and preserve the amenity of the existing dwelling house and any neighbouring properties.

The proposal complies with the remaining objectives and controls relating to outbuildings.

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

There are no planning agreements or draft planning agreements applicable to the proposal.

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

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

The proposal is not considered to be inconsistent with the Policy.

Clause 92(1)(b) Applications for demolition

The proposal does not include any demolition works.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not on the coastal foreshore and is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the clause.

**Tweed Shire Coastline Management Plan 2005**

Not applicable.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable.

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

Not applicable.

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

Context and Setting

The proposed development is not considered to have taken the necessary measure to ensure that it does not have any significant unreasonable impact upon the residential amenity of the occupants of adjoining properties. The proposal is considered reasonable and appropriate, given the site is located within an urban area zoned for residential use and the proposal is for a structure ancillary to a

residential dwelling. With the inclusion of the proposed screening measures, the proposal is not considered to negatively impact the established character of the area.

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

Surrounding Land uses/Development

The subject site is located within an existing large lot residential area, is regular in shape and rises gently from the street. The proposal maintains the large lot residential identity of the locality in that it is for a structure that is ancillary to a residential dwelling.

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

The application was neighbour notified for a period of 14 days from Friday 15 February 2019 to Friday 1 March 2019. Council received one submission which is detailed below.

Summary of Submissions	Response
<p>1. Misleading description of the proposal as 'existing shipping container' – implies some form of tenured existing use</p>	<p>The proposal has been described on council's systems as being an application for <i>'The use of an existing shipping container as a garden shed'</i>.</p> <p>The application has been lodged in order to gain retrospective approval for the use of a shipping container, which had not gained consent prior to being positioned on site. There is no existing use in place for the structure, hence the application being lodged. There is also nothing which prohibits an application for a shipping container structure to be lodged with Council and assessed on merit</p> <p>The intended use is for a garden shed, a permissible ancillary use under the Tweed Development Control Plan 2008 – Section A1, which shall also be enforced via conditions of consent.</p>
<p>2. Shipping containers are excluded from the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 as they have the potential to undermine the character of neighbourhoods and substantially diminish the amenity of streetscapes.</p>	<p>It is noted that Division 2, Subdivision 9 Clause 2.17(1)(f), of the State Environmental Planning Policy (Exempt and Complying Development Code) 2008 specifically prohibits shipping containers.</p> <p>The Tweed Local Environment Plan 2014 and the Tweed Development Control Plan 2008 – Section A1, do not</p>

Summary of Submissions	Response
	<p>specifically prohibit shipping containers as an ancillary structure (outbuilding).</p> <p>The application is therefore permissible subject to development consent.</p> <p>The Tweed Development Control Plan 2008 – Section A1 provides specific objectives and development controls to ensure development does not detrimentally impact on streetscape and amenity.</p> <p>The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act, 1979, and following amendments to the plans requested by Council, is considered an acceptable structure.</p>
<p>3. The Tweed Development Control Plan 2008 – Section A1 Clause 6.2, does not specifically refer to shipping containers anywhere in the description.</p>	<p>Although not specifically referred to in Clause 6.2 of the Tweed Development Control Plan 2008 – Section A1 – Outbuildings, the clause refers to outbuildings as – <i>‘Outbuildings are ancillary structures to the main dwelling. They are small scale detached buildings that are visually consistent with the design of the dwelling. Examples of outbuildings include boatsheds, workshops, storage sheds, garden sheds, green houses, cabanas and gazebos’.</i></p> <p>This description provides a broad definition of what an outbuilding is as per the DCP, and some examples, however it does not directly refer to a shipping container as prohibited. In this sense the shipping container can be assessed as an outbuilding as it is a <i>‘small scale detached building, ancillary to the main dwelling’.</i></p> <p>Although not considered consistent with the design of the existing dwelling, it can be argued that a colorbond garden shed constructed as exempt development, would not be visually consistent with a face brick dwelling, therefore assessment on merit is warranted.</p>

Summary of Submissions	Response
	As has been detailed in this report, it is considered that acceptable measures have been taken to significantly limit the visual impact of the shipping container.
4. A shipping container is a defined structure, it is not a garden shed and its usage as a garden shed does not transform its identity.	A shipping container is not a defined structure within the Tweed Local Environment Plan 2014, and is assessable as development that is ancillary to a dwelling house. The use as a garden shed is permissible and there is no definition as to what structurally constitutes a garden shed and what does not.
5. The shipping container comprising structural steel components is not consistent with Clause 6.2 Objective's O2 or O3	As detailed above, the shipping container is to be suitably screened from the street and painted a colour to match surrounding development. The container is as compatible as a colorbond garden shed would be, material wise, with the existing dwelling.
6. The Tweed Development Control Plan 2008 – Section A1, is a substandard planning document that does not protect residential amenity.	The Tweed Development Control Plan 2008 – Section A1 is the current legislative document for residential development.
7. The shipping container is visible from windows of the objectors dwelling. Namely the bathroom, 2 bedrooms, entry foyer and driveway.	<p>In its current form the shipping container is full visibly when viewed from the street directly in front of the container (see figure 1).</p> <p>With the inclusion of a 1.8m high screening fence and landscaping to be established, along with the significant established vegetation forward of No. 2 Market Parade (see figure 4), the shipping container is considered to be suitably screened from neighbouring dwellings and unlikely to result in a significant visual impact.</p>
8. Noting non-complying approvals i.e. Colorbond fence at number 58 Parkes Lane, Terranora	All non-complying approvals are assessed on merit and determined against the relevant legislation by the assessing officer. The fence in question was subject to a thorough assessment and was deemed acceptable on merit.

Summary of Submissions	Response
9. The zoning is for an open space character	The subject site is zoned large lot residential (R5), and a shipping container to be used as an ancillary structure to a residential dwelling, is not a prohibited use within this zone.  Both the screening fence and landscaped screening proposed will suitably reduce the visibility of the shipping container when viewed from the street.

**(e) Public interest**

The proposed development does not present any issues that are considered to be contrary to the broader public interest as the development is generally in accordance with the planning controls which apply to the site.

**OPTIONS:**

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

Option 1 is recommended.

**CONCLUSION:**

The proposed development is considered suitable for the site as it is a permissible form of development and the relevant planning considerations have been taken into account in the assessment of the application. Although already existing on the subject site, having been illegally constructed, the proposal for the retrospective use of the structure, provides sufficient amendments to reduce the potential impacts of the structure and does not present any issues that are considered to be contrary to the public interest. The proposal generally aligns with the applicable development legislation, as outlined in this assessment report.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.                      Applicants response to the original further information request (ECM 5867711)

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## 14 [PR-CM] Air Traffic Pollution

**SUBMITTED BY:** Building and Environmental Health

mhm



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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.1 Built Environment

**ROLE:** **Leader**

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### SUMMARY OF REPORT:

In response to a Notice of Motion submitted to Council's meeting 20 September 2018 in relation to Air Traffic Pollution, Council resolved the following:

1. *Notes monitoring devices will provide an essential baseline level to measure future expansion impacts of the airport, and assist the community and the cane industry better understand the impacts of cane burning and wood heaters.*
2. *Requests the Gold Coast Airport Corporation for the details on the scope of their program, methodology and timeline for implementation of Air Quality and Noise Monitoring plans.*
3. *Requests the Minister gives priority consideration for Tweed to be included for Air Quality Monitoring due to the large population affected by the 6th largest airport in the Country, and the unavoidable impacts from cane fires.*
4. *Provides a report on the cost of establishing monitoring if the above agencies advise they cannot provide monitoring in a timely or appropriate fashion.*

Council Officers have made contact with the NSW Environment Protection Authority (EPA) and Gold Coast Airport (GCA) and are attending air quality assessment sites with GCA and their consultants on 3 May, 2019.

The EPA are setting up a \$250,000 Air Quality Monitoring Network Site at Coffs Harbour and are open to a future site within the Tweed Shire, subject to normal budget processes.

The EPA are also considering providing Council with a new, but superseded \$80,000 Aeroqual 60 air quality monitoring station at no charge. Equipment suitability and set up and maintenance costs are being determined and will be reported to council when available.



Queensland's Department of Environment and Science (DES) have installed a new air monitoring station at Southport High School. The DES facility is located in close proximity to a major flight path at Gold Coast Airport (GCA) and will provide useful, representative, baseline data as well as show the impact on air quality pollution as the use of GCA increases.

This report also considers air quality monitoring options based on price and suitability:

*Low cost portable air quality monitoring options:*

The Aeroqual 500 is a portable air quality field kit that can measure the eight (8) primary air quality parameters. Staff are seeking clarification of the accuracy and suitability for general complaint investigations with the Air Quality Sensor Performance Evaluation Centre.

*Low cost fixed air quality monitoring options:*

There are a number of low cost air quality sensors available. The PurpleAir PA-II Dual Laser Air Quality Sensors is recommended by the EPA for monitoring of air borne particulates which is the primary measure of air quality. Ten (10) x PA-II sensors are recommended to be purchased for about \$300 each and funds are currently available (refer attachment 4).

A *Thermo Scientific ADR-1500* air quality dust monitor (refer attachment 5) provides non-reference baseline monitoring of particulates. A quotation from Lear Siegler with additional set up, maintenance and calibration costs is \$40,000. This monitor is set up in one location and does not offer the versatility of the PurpleAir PA-II and is not recommended at this time.

*High cost fixed NATA-certified air quality monitoring options:*

Quotes of \$50,000 - 80,000 have been received for high quality air quality samplers that test particulates only to reference quality. This equipment is highly specialised and requires maintenance contracts through the providers and is beyond Council's current budget.

**RECOMMENDATION:**

**That Council:**

- 1. Purchases 10 PurpleAir PA-II Dual Laser Air Quality Sensors for community air quality monitoring of particulates and set these up at homes, businesses and Council premises to gather indicative data and raise awareness of the air quality issues in the Tweed Shire;**
- 2. Participates in the air quality monitoring exercise being conducted by Gold Coast Airport and report results and recommendations back to Council when available;**
- 3. Regularly reviews the data from the Queensland Department of Environment and Science air monitoring station at Southport High School and obtain advice from the Queensland Department of Environment and Science should air quality standards not be complied with;**
- 4. Continues to seek the expansion of the NSW EPA Air Quality Network to include a site within the Tweed Shire;**

5. **Continues to research options for suitable low cost portable air quality monitoring equipment; and**
6. **Where the Aeroqual AQM 60 air monitoring station is offered to Council by NSW Environment Protection Authority at no cost, determines the set up and maintenance costs and staff expertise needed to operate the system within the Tweed Shire.**

## REPORT:

### Council Resolution

In response to a Notice of Motion submitted to Council's meeting 20 September 2018 in relation to Air Traffic Pollution, Council resolved the following:

1. *Notes monitoring devices will provide an essential baseline level to measure future expansion impacts of the airport, and assist the community and the cane industry better understand the impacts of cane burning and wood heaters.*
2. *Requests the Gold Coast Airport Corporation for the details on the scope of their program, methodology and timeline for implementation of Air Quality and Noise Monitoring plans.*
3. *Requests the Minister gives priority consideration for Tweed to be included for Air Quality Monitoring due to the large population affected by the 6th largest airport in the Country, and the unavoidable impacts from cane fires.*
4. *Provides a report on the cost of establishing monitoring if the above agencies advise they cannot provide monitoring in a timely or appropriate fashion.*

### Outcome of Officer Investigations

Council officers have investigated and progressed each of the above resolutions as follows:

#### Baseline air quality monitoring

***Resolution 1: Notes monitoring devices will provide an essential baseline level to measure future expansion impacts of the airport, and assist the community and the cane industry better understand the impacts of cane burning and wood heaters.***

The NSW EPA monitor baseline air quality in many city areas, rural towns and regional centres with a network of NATA accredited air quality monitoring stations. These stations continuously measure particulates (PM<sub>2.5</sub> and PM<sub>10</sub>, sulphur dioxide (SO<sub>2</sub>), ozone (O<sub>3</sub>), nitrogen dioxide (NO<sub>2</sub>), visibility, wind speed and direction, temperature and humidity.

Attachment 1 lists the current sites in the NSW air quality network.

While there is no NSW EPA air quality monitoring station in Tweed Shire, Queensland's Department of Environment and Science (DES) have installed a new air monitoring station at Southport High School. The DES facility is located in close proximity to a major flight path at Gold Coast Airport (GCA) and will provide useful, representative, baseline data for Council and will also indicate the impact on air quality as the use of GCA increases.

This Queensland DES data will be of great benefit to Council, at no cost.

The following link shows the live air quality data at the Queensland DES Southport facility:

<https://environment.des.qld.gov.au/air/data/search.php>

The NSW EPA have installed similar data communication technology in their air quality network stations and will have the ability to display live air quality data in the future.

### **Gold Coast Airport (GCA) preliminary air quality assessment**

***Resolution 2: Requests the Gold Coast Airport (GCA) Corporation for the details on the scope of their program, methodology and timeline for implementation of Air Quality and Noise Monitoring plans.***

Staff have been in discussions with the GCA who originally planned to conduct an air quality assessment of the airport in February - March 2019. After various delays this air quality assessment has commenced in late April 2019.

The GCA advise that the air quality assessment will occur over a two month period and that sample locations have been selected where the maximum pollution rates are experienced i.e. where aircraft are at full thrust. The general rationale for this approach is that if the selected sites are found to comply, residential areas that are further away will also comply. Conversely, if the results are concerning then broader assessment and modelling may be necessary.

*Council staff to participate in the GCA air monitoring assessment:*

GCA have agreed for Council staff to meet the air quality consultant undertaking the assessment, to attend the test sites and to be briefed on both the methodology utilised and the final results. Staff have been invited to attend the test sites on Friday 3 May 2019.

This will enable Council staff to gain additional capacity in air quality monitoring processes and will also allow a better understanding of the methodology being undertaken.

### ***Establishing a NSW Air Monitoring Network site in Tweed Shire***

***Resolution 3: Requests the Minister gives priority consideration for Tweed to be included for Air Quality Monitoring due to the large population affected by the 6th largest airport in the Country, and the unavoidable impacts from cane fires.***

A letter was sent to the then Minister for Environment and Local Government Hon Gabrielle Upton on 21 May 2018, raising various air pollution concerns (refer attachment 2).

A response was received from the Office of the Hon Gabrielle Upton and acknowledged the importance of our air quality issues, explained the current situation with green burning by the cane industry and stated that “*deployment of a rural network monitor in other regional centres remains a consideration.*” (Refer attachment 3).

In April 2019, Council staff contacted the NSW EPA about clarifying the process for the establishment of an air quality network station in the Tweed Shire. The EPA officer advised that a new air quality monitoring network station is being set up at Coffs Harbour and agreed that monitoring baseline air quality in a high growth region like the Tweed Shire had merit.

Council officers are in discussions with NSW EPA on the best way to progress Council's request for a future air quality network station in Tweed Shire.

The EPA have an **Aeroqual AQM 60** air monitoring station that may be able to be donated to Council for our baseline monitoring. NB: the AQM 60 has been superseded by the AQM 65.

Staff have a quotation for the current AQM 65 at a cost of \$82,428. It is possible to upgrade the AQM 60 (refer attachment 6); this would be a very high quality and affordable option.

### **Costs and suitability of monitoring equipment**

**Resolution 4: Provides a report on the cost of establishing monitoring if the above agencies advise they cannot provide monitoring in a timely or appropriate fashion.**

a. *Fixed baseline monitoring equipment for particulates only:*

**Thermo Scientific ADR-1500** air quality monitor provides non-reference baseline monitoring of particulates. A quotation Lear Siegler Australasia with additional set up, maintenance and calibration costs is \$20,000 for either a 2.5 microns or a 10 micron s, \$40,000 for both (Refer attachment 4).

b. *Fixed non-NATA accredited baseline monitoring equipment for 5 or 6 parameters:*

**Aeroqual AQM 65** is highly regarded air quality monitoring station that measures particulates, ozone, carbon dioxide, hydrogen sulphide; but costs \$82,420. The **Aeroqual AQM 60** if provided by the EPA, could be a much more viable option for Council (refer attachment 6).

c. *Fixed NATA accredited air quality monitoring station with live data capabilities:*

The NSW EPA advise the cost of a Network air quality monitoring station is \$250,000. There are also significant ongoing maintenance, calibration and upgrade costs. Council does not have the technical skills required to operate a NATA certified facility in isolation of the EPA network.

d. *Portable air quality equipment:*

Portable air quality monitoring equipment is generally more affordable, but less accurate, and will enable Council to take indicative air quality readings that may assist with community air quality complaints and raise awareness of the importance of good air quality.

#### *The Aeroqual 500 Air Quality Sensor*

The Aeroqual 500 has switchable monitoring heads that enables a much wider variety of parameters to be tested at a location. Cost per unit is \$8,000-10,000 (refer attachment 7).

The 8 parameters commonly used for air quality validation and community exposure are:

- Fine Particulates PM 2.5 (particles smaller than 2.5 microns)
- Particulates PM10 (particles smaller than 10 microns)
- Ozone (O<sub>3</sub>)
- Carbon monoxide (CO)
- Hydrogen sulphide (H<sub>2</sub>S)
- Nitrogen dioxide (NO<sub>2</sub>)
- Sulphur dioxide (SO<sub>2</sub>)

- Volatile organic compounds (VOC)

These additional sensor heads are available for the following gases if required in the future:

- Methane (CH<sub>4</sub>)
- Non methane hydrocarbon (NMHC)
- Chlorine (Cl)

The NSW EPA advise that while the Aeroqual 500 is versatile, it is predominantly designed for internal use and may not provide reliable results for external applications like cane fires.

Further research is being undertaken of the reliability and suitability of the Aeroqual 500 via the US Air Quality Sensor Performance Evaluation Centre prior to purchasing this equipment. *PurpleAir PA-II Dual Laser Air Quality Sensors.*

This simple wifi logger from Purple Air uses a fan to draw air past a laser, causing reflections from any particles in the air. These reflections are used to count particles in the air that are between 0.3microns and 10microns in diameter and then uploads this data to the cloud.

<https://www.purpleair.com/sensors>

The NSW EPA have suggested this innovative device provides accurate indicative air quality data that may lead to more detailed assessment if required. There is also a very positive educational element to being able to leave a logger at a premises for 1 - 12 months.

The PurpleAir PA-II Dual Laser Air Quality Sensor has been assessed by the US Air Quality Sensor Performance Evaluation Centre and performs very well (refer attachment 4).

The cost for 10 units with postage is US\$2,160 (approximately \$3,050).

These units may need additional plugs and transformers to suit our power supply and may be subject to import taxes. There is current funds in the 2018/19 budget to order this equipment.



*PurpleAir PA-II Dual Laser Air Quality Sensors*

- 1) PA-II Dual Laser Sensor.
- 2) Micro USB connector.
- 3) 5V 2A USB Outdoor Power Supply.
- 4) 17 foot power cable.
- 5) Zip Ties for mounting.

**OPTIONS:**

That Council:

1. Purchases 10 PurpleAir PA-II Dual Laser Air Quality Sensors for community air quality monitoring of particulates and set these up at homes, businesses and Council premises to gather indicative data and raise awareness of the air quality issues in the Tweed Shire;
2. Participates in the air quality monitoring exercise being conducted by Gold Coast Airport and report results and recommendations back to Council when available;
3. Regularly reviews the data from the Queensland Department of Environment and Science air monitoring station at Southport High School and obtain advice from DES should air quality standards not be complied with;
4. Continues to seek the expansion of the NSW EPA Air Quality Network to include a site within the Tweed Shire;
5. Continues to research options for suitable low cost portable air quality monitoring equipment; and
6. Where the Aeroqual AQM 60 air monitoring station is offered to Council by NSW EPA at no cost, determine the set up and maintenance costs and staff expertise needed to operate the system within the Tweed Shire.
7. Takes no further action.

Points 1 – 6 are recommended.

**CONCLUSION:**

While baseline air quality data is beneficial for a high growth area such as the Tweed Shire, the purchase of high cost, fixed, air monitoring equipment is not recommended in the next 12 to 18 months as a NSW EPA air quality monitoring network station is a far superior option.

In the interim the new DES air quality monitoring site at Southport will provide much of the air quality data needed by Council in relation to the airport operations, with very reliable equipment and at no cost to Council.

Should the NSW EPA be able to provide Council an Aeroqual AQM 60 fixed air quality station, this would provide high quality baseline data of about 5 key parameters, in one location.

There is merit in the purchase of a portable air monitoring field kit such as the Aeroqual S500, that can be used at any property where an air quality concern exists, there are concerns about the reliability of data and further research is being conducted into the suitability of this unit.

The NSW EPA suggest using the PurpleAir PA-II and this report recommends 10 units be purchased with 4 to be set up as permanent loggers on Council property and 6 to be used by the community for 1 – 12 month logging exercises to address specific air quality concerns.

Finally, staff will gain significant expertise through their involvement with the proposed air quality assessment of GCA, the trial of the PurpleAir PA-II and the operation of the AMQ 60.

### **COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Council does not have the expertise or budget to establish, maintain or upgrade a \$250,000 NATA Certified air quality station. The cost of a non-certified air quality station is prohibitive at \$40,000 - \$100,000. If there is substantial justification for a baseline monitoring site within the Tweed Shire the most suitable option is as part of the NSW EPA Air Quality Network.

The Aeroqual AQM 60 fixed air quality monitoring station even if provided at no charge to Council would incur maintenance and operational costs that will need to be determined.

**c. Legal:**

There is no legal requirement for Council to provide an air quality monitoring station.

**d. Communication/Engagement:**

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

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |  |
|---------------|--|
| Attachment 1. | Sites in the NSW Air Quality Network (ECM 5867145)   |
| Attachment 2. | Letter to Minister for Environment and Local Government dated 28 May 2018 (ECM 5867146)                                      |
| Attachment 3. | Reply by Hon Gabrielle Upton (ECM 5867147)   |
| Attachment 4. | PurpleAir PA-II Air Quality Sensor performance report from US Air Quality Sensor Performance Evaluation Centre (ECM 5867148) |
| Attachment 5. | Thermo Scientific ADR-1500 Specification (ECM 5867149)   |



Attachment 6. Aeroqual 60 and 65 multi parameter fixed air quality station (ECM 5867150)

Attachment 7. Aeroqual 500 portable air quality field kit (ECM 5867151)

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## REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

### 15 [CNR-CM] Pottsville and District Men's Shed

**SUBMITTED BY:** Recreation 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
3.2	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 17 April 2019, Council considered a request from the Pottsville and District Men's Shed Inc. ('Men's Shed') for Council to consider granting them a licence in perpetuity for their facility at the Black Rocks Sports Field or a modification of the licence to include an appropriate renewal clause. Council also considered a request from the Men's Shed for an extension to the licenced area.

At the 17 April 2019 meeting, Council passed a resolution in support of the proposal to grant a licence of an area at Black Rocks Sports Field, Pottsville to the Men's Shed for a period of five years with an option to renew for a further five years commencing upon the expiry of the existing licence agreement in 2022.

The resolution was as follows:

*That Council:*

- a. *Agrees to the extension of the licence for the Pottsville and District Men's Shed at the Black Rocks Sports Fields for an additional five year term with an option for a further five years.*
- b. *Includes the consideration of a request for an extension of the licence area in the development of a master plan for the Black Rocks Sports Field.*
- c. *Develops a master plan for the Black Rocks Sports Field.*

A review of the resolution has identified that, to comply fully with the intent of the resolution and for the process to be robust and in accordance with the *Local Government Act 1993 (NSW) (LG Act)*, the resolution should be altered to reflect the process required under the LG Act.

**RECOMMENDATION:**

That Council, pursuant to section 372 of the *Local Government Act 1993 ('Act')*, alter the resolution passed at its ordinary meeting held on 17 April 2017 in relation to item 14 titled '[CNR-CM] Pottsville and District Men's Shed - Licence Request' to read as follow:

*That Council,*

1. *In accordance with sections 46 and 47 of the Local Government Act 1993 and the Tweed Shire Council Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012 ('Plan of Management'):*
  - i) *Publicly notify and exhibit a proposal to grant to Pottsville and District Men's Shed Inc. ('Men's Shed') a licence of land, being the land to which the Licence Agreement between the Council and the Men's Shed dated 30 March 2017 applies, for a period of 5 years commencing on 30 March 2022 with an option to renew for a further period of 5 years exercisable by the licensee ('Licence').*
  - ii) *Before granting the Licence, consider a further report concerning public submissions received in relation to the public notification of the proposal and further consider whether the Minister's consent is required in order to grant the Licence.*
2. *Includes consideration of a request for an extension of the Licence area when developing a master plan for the Black Rocks Sports Field, which will be incorporated into the Plan of Management.*
3. *Develops the master plan prior to the conclusion of the 2019 calendar year.*

## REPORT:

### Council resolution

At its meeting held 17 April 2019, Council considered a request from the Pottsville and District Men's Shed Inc. ('Men's Shed') for Council to consider granting them a licence in perpetuity for their facility at the Black Rocks Sports Field or a modification of the licence to include an appropriate renewal clause. Council also considered a request from the Men's Shed for an extension to the licence area.

At the 17 April 2019, Council passed a resolution in support of the proposal to grant a licence of an area at Black Rocks Sports Field, Pottsville to the Men's Shed for a period of five years with an option to renew for a further five years commencing upon the expiry of the existing licence agreement in 2022.

The resolution was as follows:

*That Council:*

- a. *Agrees to the extension of the licence for the Pottsville and District Men's Shed at the Black Rocks Sports Fields for an additional five year term with an option for a further five years.*
- b. *Includes the consideration of a request for an extension of the licence area in the development of a master plan for the Black Rocks Sports Field.*
- c. *Develops a master plan for the Black Rocks Sports Field.*

A review of the resolution has identified that, to comply fully with the intent of the resolution and for the process to be robust and in accordance with the Local Government Act 1993 (NSW) (LG Act), the resolution should be altered to reflect the process required under the LG Act.

### Applicable legislation

In considering the grant of a licence, Council must be satisfied that the proposed licence to the Men's Shed is lawful pursuant to section 46 of the LG Act.

The granting of a licence in perpetuity is not an option that can be exercised by Council under section 46(3) of the Act which states that:

*A council must not grant a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option exceeding 30 years.*

Additionally Section 46(6) states that:

*if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise for an option exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years*

The proposed licence is lawful because it is authorised by clause 6.1 of the applicable plan of management, being the '*Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012*', read in conjunction with s46(1)(b)(i) and (4) of the LG Act.

Clause 6.1 of the plan of management relevantly provides:

*'This Plan of Management expressly authorises the lease, licence or grants of any other estate over all of the Sportsgrounds listed in this document. The latter includes the land and any buildings located on the land specified, for sporting and auxiliary purposes for a period not exceeding twenty-one (21) years. The purposes must be consistent with the core objectives of Sportsgrounds and other applicable legislative requirements under the Act.'*

Section 46(1)(b)(i) of the LG Act provides:

- '(1). A lease, licence or other estate in respect of community land:*
- (b) may be granted, in accordance with an express authorisation in the plan of management and such provisions of the plan of management as apply to the granting of the lease, licence or other estate.*
  - (i) for a purpose prescribed by subsection (4), or for a purpose prescribed by any of sections 36E to 36N as a core objective of the categorisation of the land concerned'*

Clause 6/1 of the plan of management also refers to the purposes being consistent with 'other applicable legislative requirements under the ACT'. In that regard, s46(1)(b)(i) of the LG Act provides that a licence may be granted in accordance with an express authorisation in the plan of management '*for a purpose prescribed by subsection (4)*'.

The purposes prescribed by section s46(4) include:

- '(a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following:*
- (ii) the physical, cultural, social and intellectual welfare or development of persons.'*

There can be no argument that the proposed licence for the Men's Shed involves a licence for the purpose of a service, facility or activity appropriate to the current needs of the local community (and perhaps the wider public) in relation to the cultural, social and intellectual welfare or development of the persons who will use the Men's Shed. It follows that the proposed licence is clearly for a purpose specified in s46(4) or the LG Act.

Section 47 of the LG Act states:

Under section 47 of the LG Act, Council's proposal to grant a licence must be publicly exhibited, with a final decision to grant the licence to be the subject of a further resolution after consideration of public submissions. If a submission is made objecting to the proposal, Council must also seek the Minister's consent to the granting of the licence and comply with any relevant requirements of the Minister in that regard.

- "(1) *If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must:*
- (a) give public notice of the proposal (including on the council's website), and*
  - (b) exhibit notice of the proposal on the land to which the proposal relates, and*
  - (c) give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*
  - (d) give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of community land.*
- (2) *A notice of the proposal must include:*
- information sufficient to identify the community land concerned*
  - the purpose for which the land will be used under the proposed lease, licence or other estate*
  - the term of the proposed lease, licence or other estate (including particulars of any options for renewal)*
  - the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)*
  - a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.*
- (3) *Any person may make a submission in writing to the council during the period specified for the purpose in the notice.*
- (4) *Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.*
- (5) *The council must not grant the lease, licence or other estate except with the Minister's consent, if:*
- (a) a person makes a submission by way of objection to the proposal, or*
  - (b) in the case of a lease or licence, the period (including any period for which the lease or licence could be renewed by the exercise of an option) of the lease or licence exceeds 21 years.*
- (6) *If the council applies for the Minister's consent, it must forward with its application:*
- a copy of the plan of management for the land*
  - details of all objections received and a statement setting out, for each objection, the council's decision and the reasons for its decision*
  - a statement setting out all the facts concerning the proposal to grant the lease, licence or other estate*
  - a copy of the public notice of the proposal*
  - a statement setting out the terms, conditions, restrictions and covenants proposed to be included in the lease, licence or other estate*

- *if the application relates to a lease or licence for a period (including any period for which the lease or licence could be renewed by the exercise of an option) exceeding 21 years, a statement outlining the special circumstances that justify the period of the lease or licence exceeding 21 years*
  - *a statement setting out the manner in which and the extent to which the public interest would, in the council's opinion, be affected by the granting of the proposed lease, licence or other estate, including the manner in which and the extent to which the needs of the area with respect to community land would, in the council's opinion, be adversely affected by the granting of the proposed lease, licence or other estate.*
- (7) *On receipt of the application, the Minister must request the Director of Planning to furnish a report concerning the application within such period as the Minister specifies.*
- (8) *After considering the application and any report of the Director of Planning, the Minister, if satisfied that:*
- (a) *subsections (1), (2) and (6) have been complied with, and*
  - (b) *such consent would not contravene section 46, and*
  - (c) *in all the circumstances, it is desirable to grant consent, may consent to the granting of a lease, licence or other estate in respect of the whole or part of the land to which the application relates, subject to such terms and conditions as the Minister specifies.*
- (8AA) *The Minister may consent to a lease or licence referred to in subsection (5) (b) only if the Minister is satisfied that there are special circumstances that justify the period of the lease or licence exceeding 21 years.*
- (8A) *On request by any person, the Minister must provide that person, within 14 days of that request, with a written statement of reasons for consenting to, or refusing to consent to, the granting of a lease, licence or other estate in accordance with subsection (8).*
- (9) *The Minister's consent is conclusive evidence that the council has complied with subsections (1), (2) and (6).*
- (10) *For the purposes of this section, any provision made by a lease or licence, or by an instrument granting any other estate, in respect of community land, according to which the council:*
- (a) *would suffer a disadvantage or penalty if the same or a similar lease, licence or estate were not to be granted, for a further term, after the expiry of the current lease, licence or other estate, or*
  - (b) *would enjoy an advantage or benefit if the same or a similar lease, licence or estate were to be so granted, is taken to confer an option for renewal for a term equal to the further term.*

Pursuant to section 372 of the LG Act, Council may alter its previous resolution. Section 372(1) of the Act states:

*'A resolution passed by Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the council's code of meeting practice.'*

Due notice of the proposed altered resolution for the purposes of section 372 is given if the relevant recommendation to alter the previous resolution, which may only be carried into effect if it is moved and seconded and resolved by the Council in accordance with its code of meeting practice, is contained in a staff report that is included in the agenda for the relevant Council meeting of which notice is given in accordance with the LG Act. The effect of inclusion of the recommendation in this report gives effect to section 372.

Any motion moved at the Council meeting in relation to the recommendation would relate to business of which due notice has been given under the LG Act.

### **Pottsville Fun Croquet Club Inc.**

Council s received correspondence dated 16 April 2019 from the Pottsville Fun Croquet Club Inc. ('Croquet Club') which is copied below:

*It's almost our 1st Birthday.*

*Pottsville "Fun Croquet" Club Inc. has been playing at Black Rocks Sports Ground since its inception May 2018 on Tuesday and Thursdays we currently have 38 member players.*

*Our club has had very successful social days with the local retirement village, been host to holiday makers, and interacted with youth in the school holidays.*

*Careful design in respect to layout of grounds new facilities will also create a multi and optimum use of the grounds. Consider the design of any structure to ensure it is users friendly*

*Capable of being used by other sporting organisations at an economical cost eg. Schools.*

*The following are own club ideas for the future of the sports ground:*

- *Some form of sun protection in form of shelter and landscaping/trees for cooler environment around the designated area of the croquet courts*
- *Top dressing and level our courts*
- *Permanent border around our courts, say 10cm wide strip of concrete edging - that mower can go over*
- *Be able to sit at various points around the area - Bench seating between the courts with minimum maintenance (on step of concrete base with Colour bond shading)*
- *Close access to a tap/water fountain*
- *Only 2 Toilets on the grounds are inadequate for the area*

*In future years maybe warrant our own facility.*

*Our club provide an affordable sporting opportunity for people Pottsville and its environs who aren't catered for in other local sports, where all members of the community can meet for a friendly chat and cuppa, whilst enjoying a social game of croquet.*



*It is hoped that as councillors and staff read this the need to take stock of what we need in our community so that a balanced view is obtained.*

*Our goal for our club for people to socialise, exercise and be part of a team. Croquet is a mentally and physically stimulating activity.*

*Need to promote existence of these grounds to the wider community to be used by future population of this area.*

Council staff and Councillors met with representatives of the Croquet Club on site to discuss their ambitions and requirements. While there are some short term improvements that will be undertaken to assist the Croquet Club, the other suggestions will be considered as part of the master plan process to be undertaken as resolved by Council.

### **Development Consent:**

The Development Consent for the construction and operation of the Men's Shed contains 104 conditions with 92 of the conditions pertaining to *general conditions, prior to the issue of construction certificate, prior to commencement of work, during construction and prior to issue of construction certificate*. A Final Occupation Certificate was issued in March 2018 indicating compliance with these conditions.

The remaining 12 conditions relate to use as listed below:

93. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.
94. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust on the premises.
95. The hours of operation of the facility are to be restricted to Monday to Sunday 07.30am to 5.30pm with meetings and social activities on Sunday only (no workshop activities). All deliveries and pickups relating to the facility are to occur within the approved hours.
96. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.
97. The use of power tools outside of the building are to be limited to within 5 metres of the building and restricted to operating hours.
98. All commercial/industrial/residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.
99. The kitchen facilities and the premises in general are not be used for the handling or preparation of food for sale as defined under the provisions of the NSW Food Act 2003.
100. Activities at the premise shall be supervised by suitably qualified staff at all times.

101. No residential accommodation shall be provided to clients at the premise.
102. Adequate provision for the flood free storage for goods and equipment susceptible to water damage should be provided.
103. The P&DMS must ensure that the operation of the Men's Shed does not disturb the Eastern Osprey nest during the active breeding season (July-September) by restricting access within 100m of the nest.
104. Ensure sufficient area is provided for access to the facility by emergency vehicles at all times.

Council has not received any communication or complaints to indicate that these conditions have not been complied with.

Complaints received regarding the use by the Men's Shed have been in relation to the flying of model planes or drones. It is noted that the fields are utilised by the Far North Coast Electric Fliers Inc. and that these complaints may have related to their use of that of other individuals.

Council officers have also received verbal comments raising concerns about activities of the Men's Shed taking place outside the licenced area. Council officers will meet with the Men's Shed Executive Committee to review and reinforce the current consent conditions related to use.

**Other considerations:**

Osprey:

The osprey nest located in bushland adjacent to the sports field has been monitored by the Tweed Osprey Group since 1996. During this period, there has been variable breeding success recorded. The nest is identified of significance as one of three osprey nests in Tweed Shire that are located in natural sites (trees). There are also approximately 30 osprey nests on artificial cradles in Tweed Shire that display variability from year to year in breeding success. Many of these nest locations are in sites that are subject to high levels of human activity, being located near roads, beaches and sports fields. The use of artificial cradles is acknowledged as a highly significant contributing factor to the recovery of osprey populations throughout northern NSW and south-eastern Queensland.

There are a range of variables that may impact the use and breeding success of the Black Rocks nest site. The current approach to minimising impact involves the application of a 100m exclusion zone to any permit or licence applications for activities involving flying model aeroplanes or similar. These activities are also not permitted during the osprey breeding season (approximately June to October in northern NSW). Informal or incidental use of flying vehicles are not currently restricted. Given the variability in breeding success over a relatively long monitoring period and the range of possible factors that may contribute to this, it is not possible to identify the presence of the Men's Shed as having any defining role in the breeding success of osprey at this site. It is recommended that a precautionary approach is continued and that the seasonal and spatial exclusion zone is applied to any ongoing use of the site. Council may also consider placing a blanket restriction on the informal use of the field for flying vehicles if there are available resources to educate, monitor and ensure compliance with any such restriction.

Koalas:

Council conducts monitoring of the Tweed Coast koala population activity through the implementation program of the Tweed Coast Comprehensive Koala Plan of Management. This activity survey is completed three yearly with the most recent monitoring event completed in 2018. There are approximately 12 survey locations in the Pottsville Wetland bushland reserve, including three in the vicinity of the Black Rocks sports field. This program applies a standardised method and is the most appropriate and useful approach to monitoring koala activity at this location. The 2018 survey identified ongoing consistent koala activity levels throughout Pottsville Wetland across the three survey events in 2010, 2015 and 2018. Incidental sightings records are also collected and published through the Tweed Shire Council online sightings database and Friends of the Koala hotline.

Black Rocks Sports Field Precinct Operational Plan:

The presence of the Men's Shed does not result in any implications for the Black Rocks Sports Field Precinct Operational plan or the functions of the precinct, including in relation to the provisions of relevant legislation including the LG Act. Any amendments to prohibited, permitted and licensed activities can be integrated to the plan when reviewed.

**OPTIONS:**

1. That Council, pursuant to s372 of the Local Government Act 1993 ('Act'), alter the resolution passed at its ordinary meeting held on 17 April 2019 in relation to Item 14 titled '[CNR-CM] Pottsville and District Men's Shed - Licence Request':

*"That Council,*

- a. *In accordance with sections 46 and 47 of the Local Government Act 1993 and the Tweed Shire Council Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012 ('Plan of Management'):*
  - i. *Publicly notify and exhibit a proposal to grant to Pottsville and District Men's Shed Inc. ('Men's Shed') a licence of land, being the land to which the Licence Agreement between the Council and the Men's Shed dated 30 March 2017 applies, for a period of 5 years commencing on 30 March 2022 with an option to renew for a further period of 5 years exercisable by the licensee ('Licence').*
  - ii. *Before granting the Licence, consider a further report concerning public submissions received in relation to the public notification of the proposal and further consider whether the Minister's consent is required in order to grant the Licence.*
- b. *Includes consideration of a request for an extension of the Licence area when developing a master plan for the Black Rocks Sports Field, which will be incorporated into the Plan of Management.*
- c. *Develops the master plan prior to the conclusion of the 2019 calendar year.*

2. That Council considers an alternative resolution.

**CONCLUSION:**

A review of the recommendations has identified that to comply fully with the intent of the resolution and for the process to be robust and in accordance with the required legislation the resolution should be amended to more appropriately reflect the process required under the *Local Government Act 1993*.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Generic Plan of Management for Community Land Categorised as a Sportsground, and Crown Land used as a Sportsground, May 2012 Black Rocks Sports Field Precinct Operation Plan

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

The development of a master plan will incur a costs or ranging from \$10,000 to \$20,000.

The current licence income is \$1/annum. The licence income for the proposed licence commencing 2022 will be determined through a Community Leases and Licences Policy currently being developed.

**c. Legal:**

Sections 46, 47 and 372 of the *Local Government Act 1993* (NSW):

**d. Communication/Engagement:**

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

Notice of the proposed licence will be provided in accordance with the requirements of section 47 of the *Local Government Act 1993*.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.                                      Licence agreement between Tweed Shire Council and Pottsville and District Men's Shed Incorporated (ECM 4517312)

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16 [CNR-CM] Draft Jack Evans Boat Harbour Plan of Management

SUBMITTED BY: Recreation 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
- 3.2 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:**

Council has resolved to prepare a Plan of Management for the Jack Evans Boat Harbour (JEBH) in consultation with the community. Community consultation regarding the proposed Jack Evans Boat Harbour Plan of Management was undertaken in late 2018 and a report summarising the results of this has been compiled. The feedback has informed the Draft Jack Evans Boat Harbour Plan of Management which is being presented to Council within the requested timeframe.

Given the majority of the Precinct is Crown land, the Plan addresses the *Crown Land Management Act 2016* (CLM Act). The CLM Act states that the framework of a Crown land Plan of Management is to reflect the framework outlined within the *Local Government Act 1993*.

However, it is noted that land tenure across the Precinct varies which results in a Plan that may not be able to be enacted in some areas of Crown land where Council has not been appointed Crown Land Manager. Rationalisation of the land tenure across the precinct has been reported to Council previously and a meeting between Councillors, Council staff and officers from the NSW Department of Industry – Crown Lands is scheduled for 23 May 2019 to discuss the matter.

Nonetheless the subject Draft Plan of Management is put forth within the requested timeframe and should Council wish to amend the land tenure, this Draft Plan of Management will be required to be amended to reflect the final tenure arrangements and reported to Council prior to being placed on exhibition or obtaining approval from relevant authorities.

**RECOMMENDATION:**

**That Council defers the Jack Evans Boat Harbour Plan of Management until after the scheduled meeting with NSW Department of Industry – Crown Lands regarding rationalising land tenure of the Precinct.**

## REPORT:

### Background:

Jack Evans Boat Harbour Reserve Trust resolved at its meeting Thursday 18 May 2017 that:

*Tweed Heads Jack Evans Boat Harbour Reserve Trust prepares a Plan of Management for the Jack Evans Boat Harbour in consultation with the community and with regard to the current event guidelines for the Jack Evans Boat Harbour.*

The main issues that were anticipated to influence the proposed timeline of the preparation of the plan of management were reported to the Jack Evans Boat Harbour Reserve Trust meeting Thursday 15 February 2018. The main issues included:

- Consultation with the Aboriginal Advisory Committee regarding “Goorimahbah – Place of Stories”;
- Land Tenure;
- Divergence of views between community stakeholders;
- Homeless use of the park;
- Cross border impacts with the Gold Coast City Council;
- State Government development plans for Crown Land surrounding JEBH;
- The proposed all access playground;
- The RSL cenotaph and the RSL's expectations;
- Twin Towns Services Club;
- The existing aquatic hire operation and conflicts with use of the area by cross border time share resorts.

Upon consideration of the above, the following was resolved by the Trust on Thursday 15 February 2018:

1. *Acknowledge the important cultural management considerations existing at Jack Evans Boat Harbour and prioritise actions relating to cultural heritage management in the JEBH Draft Plan of Management.*
2. *Acknowledge the existing Tweed Coast Single Coastal Reserve Plan of Management, the recently adopted Commercial Recreation Activities in Public Open Space Policy, The Draft Tweed River Estuary Coastal Management Program and the existing Jack Evans Boat Harbour Park Usage and Event Guidelines as forming primary considerations in the writing of the Draft Plan of Management for the Jack Evans Boat Harbour*
3. *Utilise the considerable information gained during the recent extensive community consultation for the Open Space Strategy to inform the writing of the Draft Plan of Management for the Jack Evans Boat Harbour*
4. *Requests clarity from the State Government on any plans it has for the development of Crown Land within and or surrounding JEBH so that this can be considered as part of the development of the Plan of Management.*

5. *Requests that Council allocates the required \$50,000 in order to prioritise the development of a draft Plan of Management for JEBH to be brought back for consideration by the Trust within 12 months.*
6. *Acknowledges that the 12 month time line for delivery of the draft plan of management will be contingent on agreement by the Aboriginal Advisory Committee to finalised plans for Goorimahbah.*

### Land Tenure

Jack Evans Boat Harbour (JEBH) comprises several separate Crown Reserves however Tweed Shire Council is not nominated Crown Land Manager for all of these reserves. Council has no power to authorise any third party use or occupation of the Crown Reserves for which it is not Crown Land Manager. Additionally, the 'Reserve Purpose' of these reserves varies which has implications for the potential use of the land as any proposed use needs to be consistent with the reserve purpose.

It is noted that the NSW Department of Industry – Crown Lands and Water advised Council on 24 May 2018:

*Council cannot compile a Local Government Act plan of management over land that Council is not currently the Trust manager of. Council can request to be appointed over the land. This will depend on current land negotiations with the LALC.*

It is noted that the new Crown Land Management Act 2016 came into force 1 July 2018 and as such, any land where Council was 'Reserve Trust Manager', Council will automatically become 'Crown Land Manager'.

This matter was reported to Council Thursday, 19 July 2018 seeking confirmation regarding the land that will be subject to the proposed Jack Evans Boat Harbour Plan of Management and sought to rectify any associated land tenure matters. Council resolved to defer this item in order to receive clarification from the NSW Department of Industry - Crown Lands and Water (Dol). Council sought written advice from Dol on 25 July 2018 as outlined in the Council resolution. A response was received 29 March 2019 addressing each of the points of the Council resolution on 19 July 2018 which are as follows:

1. *Whether it is possible for Council to create a Plan of Management for the Jack Evans Boat Harbour Precinct under the Crown Land Management Act given it is advised by staff it is not possible under the Local Government Act, due to Council not being the designated Crown Land Managers for all Reserves in this Precinct.*

Department response:

*Council is not able to prepare a POM under the provisions of the Crown Land Management Act 2016 (CLM Act) for reserves which are not under a Reserve Trust of which Council is appointed to manage.*

*Currently, under the provisions CLM Act, Tweed Heads Jack Evans Boatharbour Reserve Trust (Trust), remains in place as a transitional trust until 1 July 2019, when it will be abolished and Council will be directly appointed as Crown Land Manager of the current managed reserves.*



*Council must be the appointed Crown Land Manager of the identified Crown lands in the Precinct before it may consider the preparation of a POM under the provisions of the Local Government Act 1993.*

- 2. If it is possible for Council to initiate the Plan of Management under the Crown Land Management Act (CLMA), then Council writes immediately to the Department of Industry - Crown Lands and requests their support in preparing a plan for the Jack Evans Boat Harbour Precinct under the CLMA.*

Department response:

*Any proposed POM for Council managed reserves should be prepared under the provisions of the Local Government Act 1993.*

- 3. The current status of Aboriginal Land Claim 24855 lodged by New South Wales Aboriginal Land Council and provision of all the relevant information of the lands subject to the Land Claim.*

Department response:

*Aboriginal Land Claim 24855 was lodged by the New South Wales Aboriginal Land Council on 6 May 2010 over Lot 702 DP 720453 and Lot 703 DP 877250 and as at today's date has yet to be determined.*

#### Aboriginal Land Claim 24855

Given Aboriginal Land Claim 24855 is yet to be determined, consent is required from the New South Wales Aboriginal Land Council (NSWALC) for the appointment of Council as Crown Land Manager or for the adoption of a draft plan of management that is proposed for land subject to this claim.

A courtesy letter was sent to the NSWALC requesting any potential concerns for consideration prior to Council determining a direction in this matter and advised that any future Draft Plan of Management document will be referred to the NSWALC for approval as required.

NSWALC responded requesting further information and a copy of the Draft Plan of Management.

Council has subsequently advised NSWALC of the resolution to exclude the lots subject to a NSW Aboriginal Land claim from the Draft Plan.

#### Scope of the Draft Plan of Management

The Department's responses and the matters of land tenure and the scope of the proposed Plan of Management were reported to Council 17 April 2019 where it was resolved that Council:

- 1. Supports the scope of the proposed Draft Jack Evans Boat Harbour Plan of Management to include the JEBH Waterway, Chris Cunningham Park, Goorimahbah,*

*Ebenezer Park shown in Figure 1, excluding all lots subject to NSW Aboriginal Land Council land claim no: 24855.*

2. *Meets with Crown Lands as requested in letter dated 29 March 2019 to discuss available options regarding the Crown lands that are within the Precinct, but not under the care, control and management of the Trust. Discussion of these options will enable the progression of the rationalisation of the management of these Crown lands.*
3. *Continues to prepare the draft Plan of Management in parallel to the ongoing steps required to seek legal tenure for the Plan.*

## **Community Consultation**

Community consultation regarding the proposed Jack Evans Boat Harbour Plan of Management was undertaken from 8 October 2018 to 30 November 2018 where Council sought to provide an opportunity for the community to be involved and share what they believe is important about the area, the facilities, and how they would like to see the Precinct managed in the future.

Community feedback received comprised of:

- 1028 completed 'What's your Vision for Jack Evans Boat Harbour?' surveys:
  - 378 from a randomised postal survey;
  - 650 from a non-postal, self-selected online and hard copy survey;
- 37 written submissions (including 23 from [www.yoursaytweed.com.au/JEBH](http://www.yoursaytweed.com.au/JEBH));
- 16 Tourist/ Visitor Surveys; and
- 11 Postcard submissions.

Responses were captured and analysed in two ways comprising quantitative data (numerical data and statistics) and qualitative data (free form open ended comments and opinions). Council commissioned Jetty Research to analyse and report the quantitative findings from the 'What's your Vision for Jack Evans Boat Harbour?' surveys.

The key findings of the community consultation are reported within *Community Consultation Feedback for the proposed Draft Jack Evans Boat Harbour Plan of Management* which forms Appendix C to the Draft Plan of Management.

A Councillor workshop was conducted on 6 March 2019 which included a presentation by James Parker from Jetty Research. The content of the abovementioned report was discussed and direction of the Draft Plan of Management outlined.

Further community consultation is required prior to the adoption of the Plan of Management in accordance with the *Local Government Act 1993*.

## **Plan of Management considerations**

A Plan of Management is a legal document that provides guidelines as to how public land will be utilised and effectively managed. Content for a plan of management is set out under the relevant legislation. The Draft Plan of Management has been developed taking into consideration:

- legislation relevant to each parcel given the varied land tenure;
- the findings from the community consultation and Council's ongoing contact with the community with regard to land management issues in the area; and
- Planning and policy context.

## Land Tenure

The Jack Evans Boat Harbour (JEBH) precinct has a combination of land tenure including:

- State Managed Crown Land;
- Devolved State Crown Land;
- Council Managed Crown Land;
- Council owned Operational Land.

This results in a complicated and restricted Plan of Management that involves varying legislation depending on the parcel. Further, the Plan may not be able to be enacted in some circumstances as Council has no power to authorise any third party use or occupation of the Crown Reserves for which it is not Crown Land Manager.

The Draft Plan of Management for Jack Evans Boat Harbour has been compiled for the Precinct in accordance with Council resolutions and Council advice with the intent to meet the timeframes requested.

However it is noted that NSW Department of Industry – Crown Lands has advised that Council is not able to prepare a Plan of Management under the provisions of the Crown Land Management Act 2016 (CLM Act) for reserves where Council has not been appointed Crown Land Manager.

It is noted that a meeting is scheduled with officers from the NSW Department of Industry – Crown Lands for 23 May 2019 to discuss the land tenure for the Crown land within the Precinct and rationalisation of the management arrangements.

Nonetheless the subject Draft Plan of Management is put forth within the requested timeframe. **However should Council or Crown Lands wish to amend the land tenure, this Draft Plan of Management will need to be amended to reflect the final tenure arrangements and reported to Council prior to being placed on exhibition or obtaining approval from relevant authorities.**

As such, it is recommended Council defer the matter until after the scheduled meeting with NSW Department of Industry – Crown Lands regarding land tenure of the Precinct.

## Crown Land Management Act 2016 and Local Government Act 1993 requirements

Given the majority of the Precinct is Crown land, the Plan is written to address the requirements of the *Crown Land Management Act 2016* (CLM Act). The CLM Act states that the framework of a Crown land Plan of Management is to reflect the framework outlined within the *Local Government Act 1993* (s3.23(6) CLM Act).

In accordance with the *Crown Land Management Act 2016* and the *Local Government Act 1993* this Plan provides:

- An assessment of the condition of the land, buildings and other improvements and how the area is currently used;
- Categorisation of the land;
- Objectives for the management of the land in alignment with Council's Community Strategic Plan (CSP) and Delivery Program and Operational Plan (DPOP);
- Performance targets that define the way Council will achieve its objectives;
- Actions (means of achievement) for Council to achieve its targets; and
- Performance measures for assessment of each action; and
- Guidelines for permissible uses and works within the area;

The Draft Plan proposes that regarding the land that is not Council Managed Crown Land, although the Draft Plan is not required to address the above, the management of the land will be consistent where Council is lawfully empowered to do so which therefore may not be able to be enacted in some circumstances.

### **What the Draft Plan of Management proposes and how management issues raised are addressed**

Given the results from the community consultation, it is proposed that the Plan enables:

- Protection and management of environmental conservation and cultural heritage values.
- Infrastructure management:
  - ◆ Infrastructure maintenance or replacement including the existing level of service for maintenance, boardwalk replacement, revetment wall works and review of existing toilet, car parking and picnic facilities;
  - ◆ Infrastructure additions including a children's playground upgrade associated with Goorimahbah – Place of Stories, additional BBQs and picnic shelters with improved landscaping for shade provision;
- Land Use Regulation:
  - ◆ Regulation that supports healthy activation of the precinct and effectively manages amenity issues given the importance of the Precinct to the community. Activation is considered to assist in minimising anti-social behaviour.

Given the relatively recent redevelopment of JEBH and that the community feedback conveyed that the precinct generally should be left as is, not requiring any substantial redevelopment works, the Plan will propose only minor works or projects which include:

- Across the precinct:
  - ◆ Environmental management including addressing erosion problems by reconstruction of revetment walls and protection of vegetation north of Coral Street in accordance with *State Environmental Planning Policy (Coastal Management) 2018*;
  - ◆ Additional seating, lighting and picnic/BBQ facilities;
  - ◆ Additional natural shade (tree planting);
  - ◆ Infrastructure that facilitates temporary use of the park for markets and events such as power and temporary vehicular access;
  - ◆ A signage review addressing all abilities access, facility provision and land use regulation;
  - ◆ A car parking, pathway and cycleway review;
  - ◆ Ongoing maintenance for infrastructure and landscaping;
  - ◆ Replacement of the boardwalk.

- ◆ Improved water access for swimmers and non-motorised watersports and small scale facilities and water access that supports scuba diving and snorkelling;
- ◆ Encouraged as a mixed use area primarily for swimming and non-motorised watersports however boating is permitted in alignment with NSW Maritime guidelines;
- ◆ Develop a masterplan for 'Goorimahbah - Place of Stories' as an inclusive and accessible park that integrates Aboriginal elements and stories and incorporates an upgrade of the existing children's playground in accordance with the detailed brief supported by the Tweed Shire Council Aboriginal Advisory Committee. The following additional projects will be considered when developing the masterplan:
  - Exercise equipment;
  - Youth precinct featuring for example volleyball nets, table tennis or basketball half court;
  - Inclusion of small scale water play within the playground upgrade; and
  - Stage for live music (similar to Rowan Robinson Park);
- ◆ To investigate feasibility and opportunities for:
  - An artificial reef in conjunction with proposed facilities and water access that supports scuba diving and snorkelling;
  - Appropriately designed storage building for non-motorised watersports hire to operate from;
  - Construction of a kiosk/café which formed part of Stage 2 of the 2009 redevelopment or commercial kitchen building for hire or seasonal lease.
- Land north of Coral Street adjacent to Ebenezer Park;
  - ◆ This area features established vegetation mapped as Littoral Rainforest under *State Environmental Planning Policy (Coastal Management) 2018* (SEPP) and therefore, this area has been categorised as Natural Area. As such the management for these areas is to be in accordance with the SEPP.

### Permissible land uses and commercialisation

No large, permanent commercial, residential nor marina development is proposed.

Where Council is land manager, applications for permits, leases or licences will be assessed in accordance with principles and controls within Council's Policy on Commercial Recreation Activities on Public Open Space, the *Crown Land Management Act 2016* and Section 46 of the *Local Government Act 1993*.

### Social issues

Social issues within the Precinct were raised as a concern during community consultation. Addressing the social issues within the precinct is to be primarily undertaken in accordance with Council's recently adopted Homelessness Strategy rather than under the subject Plan of Management. This is due to the complex nature of the issue and the issue not being restricted to the confines of the nominated Precinct ensuring consistency in Council's approach.

As per Council's Policy, homeless people have the right to access and use Council spaces and facilities just like any member of the public. However illegal and anti-social behaviour will be reported to Police.

Following the adoption of Council's Homelessness Strategy, Council officers are currently compiling a Homeless Action Plan to ensure a consistent approach across Council including Council's Compliance Unit, Community Services Unit and Recreation Services Unit.

The Draft Plan of Management encourages activation of the park with the intent to minimise anti-social behaviour in alignment with the *Crime Prevention Through Environmental Design* (CPTED) principles. Increased passive surveillance which in addition to preventing crime, can contribute to creating a space which makes people feel safer.

### Dog Management

Consideration of the use of the space by dogs is proposed to be regulated by signage and not by controls within the Plan of Management. As the provision of dog friendly facilities requires a broader, strategic approach across the whole shire, this is considered the most appropriate method in addressing the matter rather than within the Plan of Management.

### Goorimahbah – Place of Stories

‘Goorimahbah - Place of Stories’ is an Aboriginal and Torres Strait Islander Botanic and Artwork Garden and contemporary meeting place planned for the northern section of the parklands. This project was initiated in 2002 as a The City of the Arts ‘Indigenous Public Place-making Project’ (IPPP) by the Tweed Shire Council Aboriginal Advisory Committee and was intended to create a high profile community cultural site which was integrated into Stage 2 of the 2009 Jack Evans Boat Harbour upgrade works masterplan.

Given the history and strong commitment by Council to respect the Aboriginal community, a workshop has been undertaken regarding a future redesign of the project which was supported by the Aboriginal Advisory Committee (AAC) in August 2018 and a design brief has been compiled.

This design brief for a future redesign supported by the AAC is included in the Plan of Management and includes (but is not limited to) an inclusive and accessible park that integrates Aboriginal elements and stories. The open space is retained and is embellished so to facilitate occasional larger scale uses and includes more shade, power and BBQ facilities. The children’s playground is extended and designed integrating Aboriginal storytelling utilising clever and subtle approaches rather than large art installations. The playground addition should feature interactive media, nature play, a sensory and edible garden and a mix of story boards and interactive pieces. An Aboriginal Diggers Memorial will also be included for consideration.

### Old Aquatic Club site and Aboriginal Land Claim 24855

Aboriginal Land Claim 24855 has been lodged over land north of Coral Street which includes what is known as the old Aquatic Club site. Given Aboriginal Land Claim 24855, is yet to be determined, consent is required from the New South Wales Aboriginal Land Council (NSWALC) for the adoption of a draft plan of management. The timeframe for this process is unknown.

Although Community Consultation undertaken included this area as potentially part of the Draft Plan of Management, this area has been excluded from being subject to the Draft Plan of Management as resolved by Council at its meeting on 17 April 2019.

## **Plan of Management Adoption Process**

In order for the subject plan to be a Plan of Management in accordance with the Crown Land Management Act 2016:

- Council must forward a copy of the draft plan to the owner, which in this case is NSW Department of Industry – Crown Lands before placing the Draft Plan of Management on exhibition;
- Council must include in any provisions required by NSW Department of Industry – Crown Lands;
- The approved Draft Plan of Management must be placed on exhibition for a minimum of 28 days where submissions can be made for a period no less than 42 days.

After considering all new submissions received concerning the draft plan of management, if Council decides to amend the draft plan substantially, the plan must be referred to NSW Department of Industry and placed on exhibition again.

### **OPTIONS:**

1. Council defer the Draft Jack Evans Boat Harbour Plan of Management until after the scheduled meeting with NSW Department of Industry – Crown Lands regarding rationalising land tenure of the Precinct.
2. Council seeks approval for the Draft Jack Evans Boat Harbour Plan of Management from NSW Department of Industry – Crown Lands and if approved, places the plan on exhibition for 42 days. A report be submitted to Council after the close of submissions.

### **CONCLUSION:**

A draft Plan of Management has been compiled for the Jack Evans Boat Harbour Precinct. Community consultation has informed the draft Plan. It is noted that land tenure across the Precinct varies which results in a Plan that may not be able to be enacted in some areas of Crown land where Council has not been appointed Crown Land Manager. Rationalisation of the land tenure across the precinct has been recommended to Council and a meeting is scheduled with officers from the NSW Department of Industry – Crown Lands for 23 May 2019 to discuss the matter.

Nonetheless the subject Draft Plan of Management is put forth within the requested timeframe, however should Council wish to amend the land tenure, this Draft Plan of Management will be required to be amended to reflect the final tenure arrangements and reported to Council again prior to being placed on exhibition or obtaining approval from relevant authorities.

As such, it is recommended Council defer the matter until after the scheduled meeting with NSW Department of Industry – Crown Lands regarding land tenure of the Precinct.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Community Engagement Strategy v2.0  
Crown Land Management Act 2016  
Local Government Act 1993

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

Works proposed within any adopted Plan of Management will have financial implications.

**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.

A comprehensive community engagement process is being undertaken in the development of the Draft Plan of Management.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	Draft Jack Evans Boat Harbour Plan of Management (ECM 5869645)
Attachment 2.	Commercial Recreation Activities on Public Open Space (ECM5869651)
Attachment 3.	Jack Evans Boat Harbour Parkland Use and Event Guidelines (ECM 5869664)
Attachment 4.	Community Consultation Results Report - Jack Evans Boat Harbour Plan of Management - March 2019 (ECM 5869672)
Attachment 5.	Tweed City Centre Local Environmental Plan 2012 Land Use Table (ECM 6869677)
Attachment 6.	Condition Assessment Guidelines (ECM 5869639)

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17 [CNR-CM] Ongoing Operations of the Salvage Centre (Tip Shop) at the Stotts Creek Resource Recovery Centre

**SUBMITTED BY:** Waste Management

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:**

In June 2018 Council took over responsibility for all operations at the Stotts Creek Resource Recovery Centre (SCRRC). On 6 June 2018 Council resolved to enter into an interim arrangement with St Vincent de Paul to continue operating the salvage centre (tip shop). It was also resolved that Council develop a specification for the operation of the tip shop focussing on waste diversion and social benefit. Staff were requested to use the period up to 31 March 2019 to evaluate the operations and bring back a further report on the options for salvage operations.

The assessment of the current operations considered what should be included in a better practice operation for landfill salvage and tip shop operations, based on the Better Practice Guidelines for Reuse Shops. Waste facilities within the region were consulted and inspected.

A business case has been put together to evaluate the management options. The options considered were for either Council, a Not for Profit (NFP) organisation or a commercial salvage operator to run the operation. The model using Council to operate the shop was prepared and the budget estimated with provisional income figures for sales from the reuse shop used to allow us to consider the alternatives. Council has also developed an understanding of the opportunities presented with the metal salvage at the site.

This report has been prepared on the basis of the better practice model and costing. Each option has benefits and drawbacks and Council needs to determine the overarching objectives of the tip shop in order to decide which option to pursue.

Council needs to consider the options and advise which they would like to pursue.

**RECOMMENDATION:**

**That Council determines its preferred option.**

## REPORT:

### Background

#### *Council resolutions and workshops*

At the Council meeting of 1 March 2018 Council resolved that:

- *Council takes over the management of the Stotts Creek Resource Recovery Centre site until the Masterplan and associated capital works program have been delivered.*
- *A further report be brought back to Council following delivery of the capital works program, on the best options for the long term management of the Stotts Creek Resource Recovery Centre site.*

A further report was put to Council at the meeting of 6 June 2018 where it was resolved that:

1. *Council enters into an interim arrangement for the operation of the tip shop and salvage operations at the Stotts Creek Resource Recovery Centre with St Vincent de Paul Society NSW to maintain their current level of service up to 30 June 2019.*
2. *A workshop with Councillors be scheduled to discuss the development of specifications for the provision of the service regarding social benefit and waste diversion options over the medium to longer term.*
3. *Council uses the period July 2018 to 31 March 2019 to investigate options, capture the necessary information and determine the most effective way to undertake salvage operations at the site including the management of a tip shop from 1 July 2019.*

In November 2018 a workshop was held with Council to consult on the options for management of the tip shop and salvage operations and in particular the 'not for profit' objectives applied when tendering this service previously.

### Options for salvage operation

Salvage operations are made up of two main components; light gauge ferrous and non-ferrous metals recovery and the recovery and sale of reusable and salvageable goods through a tip-shop arrangement. The following methodologies have been used successfully at other sites to undertake the recovery of reusable items and of ferrous and non-ferrous scrap metal:

1. Salvage of reusable items and scrap metals managed by Council;
2. Salvage of reusable items and scrap metals managed by either a NFP or commercial operator; and
3. Salvage of scrap metal managed by Council and reusable items and the tip shop managed by either a NFP or commercial operator.

In general the metals recovery is profitable when metal values are high and this financially supports the operation of the tip shop which can be difficult to generate a profit. Contractors generally pay for the salvage rights when the metals recovery is included by way of either a tonnage commission or an outright payment for rights, and alternatively pay very little for just the right to operate the tip shop.

When metal prices are low, metal salvage operations receive much less focus from contractors and they put more efforts into the recovery of reusable items. Council however has the advantage of avoiding the levy on recovered materials and in saving on landfill

airspace which provides an incentive to undertake these activities even when they are marginal in terms of revenue generation.

### **How do Council currently operate the site**

The site is managed by Council with the tip shop currently managed by a Not for Profit operator who has the rights to recover and resell reusable items except ferrous and non-ferrous scrap metal.

Council operates the recovery of ferrous and non-ferrous scrap metal from the landfill. This year 960 tonnes of metal has been recovered in 9 months which has shown a return to Council of approximately \$190,000.

There have however been times in the past when the resource values of metal was quite low and it was not financially viable for the contractors managing the site to salvage and recover scrap metal.

The current NFP salvage operator in the tip shop pays no royalties to Council for salvage rights and is provided with a facility from which to operate including free power and water.

### **Overarching objectives**

There are three different overarching objectives that can be applied to the operations. If the focus of the operation is primarily waste diversion, there needs to be sufficient focus on this aspect in the tender documents and an open tender or Council operating the site would likely achieve the best result. If however the overarching intent is to maintain the operations as a social enterprise providing employment for disadvantaged people from the community then the service should be let to a NFP as this would provide a steady stream of income with which to support their other activities.

If the objectives include both waste diversion and the provision of social enterprise benefit, the current model involving Council managing the metals recovery, and the NFP as tip shop operator provides the best option.

Having a NFP run the operation provides considerable social benefit, but is less likely to optimise recovery. The use of a NFP operator was previously included as a requirement of the site operations contract with the current NFP operator retained when the Council staff took over the management of the site.

The modelling undertaken indicates that the operation of the tip shop is marginal in terms of financial return. The previous NFP operator withdrew their services due to the lack of profitability supports this however the current NFP operator has been successfully running the tip shop for the last 2 ½ years, proving it can be managed sustainably. This operation diverts only a relatively small amount of waste (< 200 tonnes PA).

Council may wish to consider advertising on the open market for tenders with the engagement of a commercial operator as the focus. This tender could include all salvage operations or just the operations of the tip shop. Tendering the service does not limit the use of a NFP organisation, but would open up the tender to all parties, and require any NFP who may bid to run the operations to win the contract on merit.

In general commercial salvage operators tend to have a greater focus on the profitable recovery of materials which benefit them financially. They will not always pursue the recovery

of items with marginal or minimal returns, and they will adopt social contracts when required to or where the use of cheap labour provides them with a benefit. Their primary motivation is profit.

### **Risk and diversion**

The current modelling shows that the operation of the tip shop would be financially marginal without metals recovery. Therefore Council would not want to displace the NFP and take this on other than to increase the emphasis and effort going into diversion.

There is merit in Council maintaining control of the metals recovery from the landfill area as this will limit the exposure of contractors to our operations whilst supplementing operational income. The lowest risk option would be to leave the salvage operations for reusable items in the hands of the contractors whether they be a commercial operator or NFP organisation as they understand the business and can better manage the risks.

Council would need to be satisfied that this option without the rights to metals will attract a competitive field of bidders, and whether to require that the organisation be a NFP operator. The metals recovery is often used to subsidise salvage operations at other sites but can also lead to this becoming a singular focus when metal prices are high is more likely, or given less focus when they are low.

### **Merits and drawbacks of the various models**

#### 1. *Salvage of reusable items and scrap metals - managed by Council*

This methodology gives Council ultimate control of all aspects of the salvage operations at the site. Whilst there is considerable value in the recovery of scrap metal at present, the tip shop is unlikely to generate significant revenue and is more likely to be a cost to Council (staff, equipment and wages, etc.). The operation of the tip shop is a specialised activity that would require Council to employ staff and to train them to undertake this work. There would also be a degree of risk to Council in taking over the whole operation.

There is a reputational risk to Council in displacing a NFP operator without undertaking a tender process.

The annual cost to operate the tip shop has been estimated at \$209,331 for labour cost. The model includes a provisionally estimate for a one off cost for upgrades to the tip shop and a second hand small truck to transport the reusable items at \$56,450. There will be ongoing plant costs for the operation of the forklift and small truck provisionally estimated at \$50,000 per annum making the total recurring cost of operations for the tip shop at \$259,331.

The income for this option has been conservatively estimated at \$180,000 for tip shop operations and \$250,000 for metals salvage for this year. This would provide a return to Council of approximately \$171,000 this financial year based on this modelling.

The one off capital cost has not been included in this income projection.

Council also gets the saving on levy for the tonnes recovered which for the metal alone adds an additional \$94,400 per annum of avoided levy payments. This is applicable to all models where metal is recovered and is therefore not restated in the below comments.

2. Salvage of scrap metal managed by Council and reusable items and the tip shop managed by either a NFP or commercial operator.

With this methodology Council gets the benefit of the return on the scrap metal and can focus on saving air space and reducing levy payments. This also allows the metals recovery to continue even if prices for scrap metal falls.

This allows the contractors to manage the tip shop in the most economical way. The question will always be whether this activity can be profitably undertaken without the metals salvage, however the current operator has maintained their operations for the past 2 1/2 years.

Under this model Council incurs no cost to operate the tip shop, has no capital outlay for the new plant and equipment required for the tip shop, and still recovers the \$250,000 dollars from metal salvaged.

3. Salvage of reusable items and scrap metals managed by either a NFP or commercial operator.

This methodology allows a profitable operation to be established by the contractor. The drawback with this is a loss of income to Council for the metals when the price is high, and a loss of control over the operation. If the price of metals falls significantly, as it does from time to time, it is likely that the contractor will pull back on their efforts for metals recovery.

Council has the added benefit with metal salvage of saved air space and avoiding the landfill levy, so there would be an advantage in incentivising the contractor should the price for metal fall too low. This type of operation also allows the contractors to integrate their operations as much as possible and to achieve economies of scale by fully utilising staff and plant.

This option would likely show a return to Council depending what was submitted at contract for the royalties to operate the tip shop including metal salvage. It would however mean that the return would need to exceed \$250,000 per annum to outweigh the benefits of option two where Council is paid for salvaged metal. Council would also avoid the capital costs incurred in option one.

**OPTIONS:**

Council has the option to:

1. a) Take over all facets of operations for the salvage and recovery of reusable material and items; and
- b) Continues to utilise the services of St Vincent de Paul for the management of the tip shop in the interim period.

or

2. a) Retain control the metal salvage and tender out the management of the salvage operations for reusable items and the tip shop, as is the current model. This could be done through either open tender or by a tender specifying that the operator needs to be a NFP organisation; and

- b) Continues to utilise the services of St Vincent de Paul for the management of the tip shop in the interim period.

or

- 3. a) Tender out all aspects of salvage including metals and the operations of the tip shop to either a NFP or commercial salvage operator; and
- b) Continues to utilise the services of St Vincent de Paul for the management of the tip shop in the interim period.

**CONCLUSION:**

Council took over responsibility for all operations at the SCRRC on 1 June 2018. A resolution was passed by Council to retain the services of St Vincent de Paul to operate the second hand shop until 30 June 2019.

A model of operations was developed to assist in the evaluation of Council operating the site based on the better practices guideline for reuse shops, and Council used this to evaluate costs to set up and run the tip shop operations ourselves. A conservative estimate of the amount of money that could be raised from product sales was used as Council has no information on the current NFP's income or costs.

The model estimated our operating cost for wages at \$209,331 per annum with additional recurring costs for a number of items of plant, electricity and incidentals. Council would also need to purchase at least one small truck and to utilise the on-site forklift for the transfer of materials to the tip shop.

The income for the tip shop was conservatively estimated at \$180,000 per annum in the model as we did not have access to the current operator's books.

The modelling and cost evaluation showed that the shop is unlikely to be very profitable without the inclusion of metals salvage on the landfill. It is therefore not recommended that Council consider taking over this aspect of the operations.

In the nine months of operation this year Council have received 443 tonnes of self-hauled scrap metal and recovered an additional 517 tonnes from the incoming dry waste. This has been sold off as light gauge scrap for approximately \$190,000 which shows the benefit of this activity, on top of the space saved within the landfill and the waste levy avoided.

Council officers are seeking guidance from Council on this management going forward given there is no real reason to take this operations out of the hands of a NFP operator.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Procurement Policy v1.7.

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

All three options potentially have a positive impact on the budget. The option using Council to salvage metal and with the tip shop run under contract by either a NFP or commercial

salvage operator potentially provides the biggest return to Council. Awarding a contract which includes the management of the tip shop and the salvage right to recover scrap metal to the NFP or commercial operator would take away the income stream from Council for scrap metal, however this would likely be offset by a royalty or return to Council depending on the outcome of the tender process for the right to provide these services.

It is unlikely that any of the options presented would cost Council money and impact the budget. If we elected to go to tender for the management of the tip shop or both the management of the tip shop and the recovery of metal, the results of the Tender process would be presented for Council's considerations following the tender process. Council would therefore have an opportunity to consider any impact on the budget at that time.

**c. Legal:**

Legal advice will be obtained dependent upon the preferred option determined by Council.

**d. Communication/Engagement:**

Not Applicable.

Once Council determines its preferred option that a communication strategy will be developed for the ongoing operations of the Salvage Centre (Tip Shop) at the Stotts Creek Resource Recovery Centre.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Buy Back Centre Assessment (ECM 5858078)

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**18 [CNR-CM] RFO2018091 Design, Construction and Operation of the proposed Stotts Creek Organics Processing Facility**

**SUBMITTED BY: Waste Management Unit**

**FILE REFERENCE: RFO2018091**

Valid

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**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:**

Following an Expression of Interest (RFO2018119), offers were invited from four successful short listed organisations for the design, construction and operation of an organics processing facility, which will receive and treat household food organic waste and garden waste to produce a quality assured, value added product for beneficial reuse. The contract is for a 10 year term with the option for a single five year extension at Council's discretion.

At the time of closing four offers were received.

This report provides a recommendation for Council to appoint the successful bidder following the offer evaluation process.

The evaluation of the offers against the Selection Criteria is contained in the Offer Evaluation Report included in **CONFIDENTIAL ATTACHMENTS 1, 2 and 3**. The recommendations are based on the evaluation.

**RECOMMENDATION:**

**That, in respect to Contract RFO2018091 for the Design, Construction and Operation of the proposed Stotts Creek Organics Processing Facility:**

- 1. Council accepts the offer from Soilco Pty Ltd, ABN 85 055 303 243 for the amount of \$89.00 per tonne (exclusive of GST) resulting in an annual estimated cost of \$1,157,000 (exclusive of GST) for the period of the contract being 10 years with the option for one five year extension at Council's discretion.**

2. Council provides capital funding of \$7 million for the design and construction of the FOGO processing facility, funded from \$4.9 million of existing Waste Management Reserves and \$2.1 million of NSW Government Grant Funding.
3. 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.
4. ATTACHMENTS 1, 2 and 3 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:**

**Background**

Council at its meeting on 15 November 2018 resolved that in respect to Contract RFO2018119 Expression of Interest (EOI) Design, Construction and Operation of the proposed Stotts Creek Organics Processing Facility for the period of 10 years.

Council approved the following four companies to progress to the next round of the Offer process, where detailed Offers were invited, including a price submission. The companies were:

Company	ABN
REMONDIS Australia Pty Ltd	95 002 429 781
Solo Resource Recovery	62 398 515 816
Soilco Pty Ltd	85 055 303 243
Re.Group Pty Ltd	84 166 255 947

The above four shortlisted organisations were invited to submit offers for RFO2018091 Design Construct and Operate Organics Processing Facility, with a contract period of 10 years with one possible five year extension at Council’s discretion. The facility was to incorporate an enclosed technology based organic waste processing solution that will receive and treat household food organic waste and garden waste to produce a quality assured, value added product for beneficial reuse.

The successful organisation will be responsible for the detailed design, preparation of all planning studies and documents required, the submission of planning authority application to allow approvals for the development to occur, applying for and holding the Environmental Protection Licencing (EPL) approvals, construction and certification of the facility, commissioning, operation and maintenance of the proposed Organic Processing Facility The successful organisation will be responsible for all expenses at the site during operations.

The construction and operation of an organics processing facility at the Stotts Creek Resource Recovery Centre is the final element of Council's 2014 Integrated Waste Management Strategy that incorporated the introduction of a third green bin in 2017 for the collection and processing of Food and Garden organic waste.

**Offer Submissions**

Offer RFO2018091 was uploaded on 29 January 2019 and offer submissions closed at 4:00pm (local time) on Wednesday 20 March 2019 in the eTender Box via the Tweed Shire Council eTender portal.

The eTender Box was opened by Councils delegated Officers after 4:00pm (local time). The following offers (Schedule of rates) were recorded which are based on the annual offered amount of 13,000 tonnes of organics material being processed:

<b>Bidder</b>	<b>ABN</b>
Re.Group Pty Ltd	84 166 255 947
REMONDIS Australia Pty Ltd	95 002 429 781
Soilco Pty Ltd	85 055 303 243
Solo Resource Recovery	62 398 515 816

### Offer Evaluation Panel

Council's Offer Evaluation Panel was made up as follows:

Position
Waste Projects & Operations Officer
Project Manager - Waste Management Unit
Project Manager - Contracts, Infrastructure Delivery
3rd Party Independent Probity Officer - (Procure Group)

### Probity Officer - Procure Group

Procure Group has been engaged by Council to oversee the integrity of the request for offer process. Procure Group has advised that the evaluation process has been conducted with regard to probity. Procure Group's report is attached (see attachment 3).

### Evaluation Criteria

Offers were evaluated as per the Offer Evaluation Plan dated 15 March 2019.

Offers were evaluated based on the criteria noted in the table below which were also listed in the Conditions of Offering.

Criterion	Document Reference	Weighting (%)
Value for Money (Base Processing Fee) (Normalised Offer Price)	Schedule 2	50
Proposed Technology/Layout/Footprint/Understanding project requirements	Schedule 10	20
Proposed Personnel, Consultants, Experience & Capability (Design & Construction Phase)	Schedule 8, 15, 16	5
Proposed Personnel, Consultants, Experience & Capability (Operation Phase)	Schedule 8, 15, 16	10
Methodology and Work Program (Time)	Schedule 17, 19 & 21	5
Local Content (Development of Local Business/Industry) (Mandatory 10% assessment as per Policy)	Schedule 11	10
	<b>Total</b>	<b>100</b>

### Evaluation Summary

Each of the offers were assessed in accordance with the offer evaluation plan, dated 15 March 2019. The assessment panels agreed evaluation scores were:

Bidder	Evaluation Score
Re.Group Pty Ltd	93.61
REMONDIS Australia Pty Ltd	80
Soilco Pty Ltd	100
Solo Resource Recovery	86.49

Soilco achieved the highest assessment score representing the greatest value for money to Council for the design, construction and operation of an organics processing facility. The contract amount is estimated at \$1,157,000 (plus GST) per annum for the operation of the

facility, totalling \$11,570,000 (plus GST) for the 10 year contract (based on 13,000 tonnes annually). This is an expected estimated cost, however, actual costs will be based on the actual tonnages of greenwaste processed and may be higher or lower than this estimate.

This contract amount requires Council to contribute \$7 million of upfront capital funding. The assessment panel assessed each of the three options of capital offered by Council for the construction of the facility, being \$2.1 million, \$5 million and \$7 million and concluded that the best value to Council, based on the offer submissions was the option whereby Council provides \$7 million of capital, which includes \$2.1 million of grant funding from the NSW State Government and \$4.9 million from existing waste management reserves.

For the 10 year contract term, based on 13,000 tonnes annually, the estimated total expenditure will be \$18,570,000, which includes the \$7 million up front capital funding and \$11,570,000 in operational costs.

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):

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

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.

All four offer submissions were of a high quality with each company demonstrating suitable experience and capability in delivering projects of a similar size, value and complexity. Price was a significant determining factor in the assessment given the demonstrated ability for each of the bidders to design, construct and operate an organics processing facility.

Environmentally sustainable design elements including:

- 99kW solar power system which is expected to provide a 150,000KVa offset, representing an anticipated 22% of the facilities power consumption
- rainwater capture and reuse
- use of recycled building products in the construction phase

A financial assessment has been conducted by an independent third party and has advised Soilco's financial position is acceptable for this type and duration of contract.

Local content was assessed in accordance with Council's procurement policy. Given the difference in the offers, local content was not a deciding factor in the offer evaluation assessment (as per the procurement policy).

**OPTIONS:**

That Council:

1. Accepts the offer from Soilco Pty Ltd, ABN 85 055 303 243 for the amount of \$89.00 per tonne (exclusive of GST) resulting in an annual estimated cost of \$1,157,000 (exclusive of GST) for the period of the contract being 10 years with the option for one five year extension at Council's discretion. The contract requires Council provide Capital expenditure of \$7 million for the design and construction of the FOGO processing facility, funded from \$4.9 million of existing Waste Management Reserves and \$2.1 million of NSW Government Grant Funding.
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).

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Procurement Policy v1.7.

In accordance with Local Government (General) Regulations 2005.

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

Capital expenditure of \$7 million for the design and construction of the FOGO processing facility will be funded from \$4.9 million of existing Waste Management Reserves and \$2.1 million of NSW Government Grant Funding.

Contract payments of \$89 per tonne, estimated to be \$1,157,000 annually, for the processing of Organic Material will be funded by income from the receipt of organic material at the Stotts Creek Resource Recovery Centre as well as the Waste and Recycling Service Charges which are included in the 2019/20 revenue policy and future waste budget provisions.

**c. Legal:**

Legal advice has been provided by Council's internal legal services.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

(Confidential) Attachment 1. RFO2018091 - Offer Evaluation Report (ECM5865329).

(Confidential) Attachment 2. RFO2018091 - Offer Evaluation Scoring Sheet (ECM5865355).

(Confidential) Attachment 3. RFO2018091 - Probity Advisor's Report: Tweed Shire Council - Request for Offer for the Design and Construction of an Organics Processing Facility (ECM5865366).

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## REPORTS FROM THE DIRECTOR ENGINEERING

### 19 [E-CM] Water and Wastewater Renewable Energy

SUBMITTED BY: Water and Wastewater

nhm



Leaving a Legacy  
*Looking out for future generations*

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

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.2 Sewerage Services - To provide high quality and reliable sewage collection and treatment services that meet health and environmental requirements.

ROLE: **Provider**

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#### SUMMARY OF REPORT:

Council resolved to adopt a Renewable Energy Action Plan at meeting 2 November 2017 including setting renewable energy targets and commitments to financing Phase 1 works.

These Phase 1 projects, as they relate to Water and Wastewater, are now all either completed or on track to be delivered by mid-2019 and should generate approximately 520,000kWh annually which is equivalent to 3.5% reduction in Water and Wastewater (W&WW) grid power use.

As part of Phase 2 Renewable Energy Action Plan an options investigation including financial analysis for the proposed Banora Wastewater Treatment Plant (WWTP) 604kW Solar PV Project has now been prepared. It is recommended that further planning and investigation works continue and that a budget of \$880k be allocated for delivery of proposed Banora Point WWTP 604kW Solar PV system by mid-2020.

#### RECOMMENDATION:

That Council:

1. **Notes the status of Water and Wastewater Phase 1 Renewable Energy Action Plan works.**
2. **Allocates a budget of \$880,000 for delivery of proposed Banora Point WWTP 604kW Solar PV system for delivery in 2019/20.**

3. **Seeks energy procurement advice to investigate opportunities to reduce the carbon footprint of Council operations and increase renewable energy generation within the next round of electricity supply contracts.**
4. **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

Council resolved to adopt a Renewable Energy Action Plan at its meeting of 2 November 2017 including setting renewable energy targets and commitments to financing Phase 1 works.

Council has also set the following 2018/19 KPI:

Climate Change/Carbon offset for Water and Wastewater operations.

Investigate opportunity to reduce carbon footprint through either:

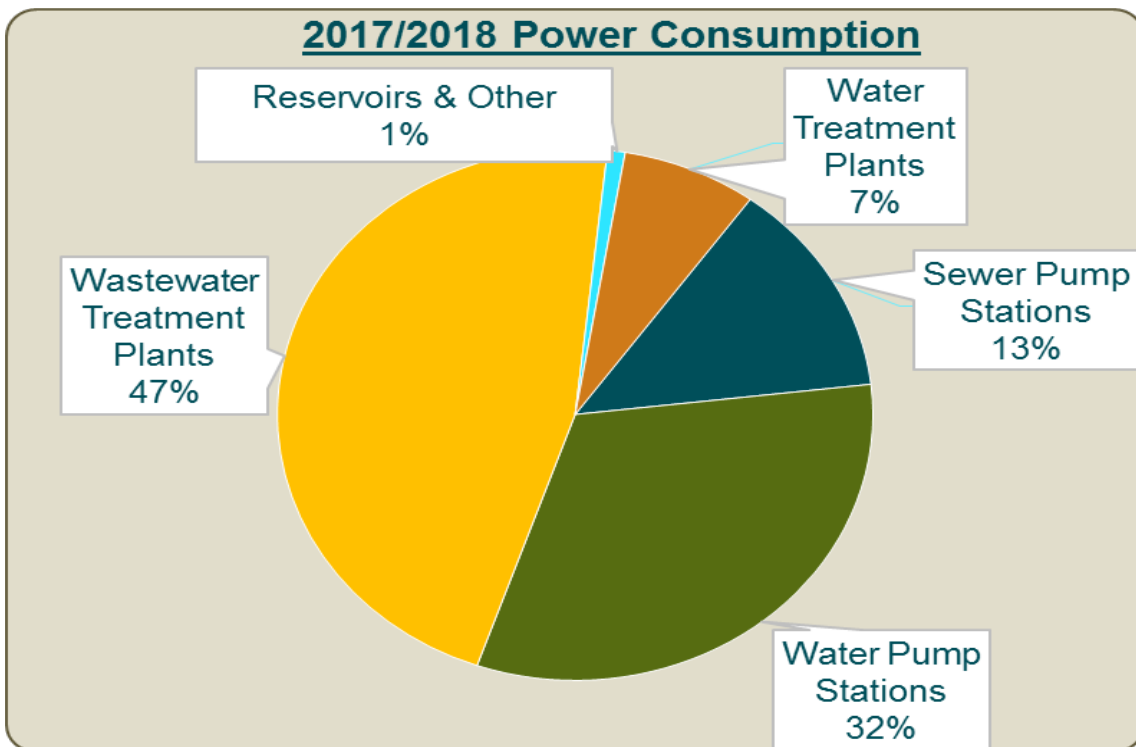
1. Reduction in energy consumption;
2. Purchasing of green power;
3. Buying carbon credits;
4. Increasing renewable energy projects at the water and wastewater plants; and
5. Combination of above.

This report now provides an update of the status of carbon footprint reduction works particularly relating to Water and Wastewater (W&WW) operations.

### Water and Wastewater Greenhouse Gas Emissions

Water and Wastewater (W&WW) Operations contribute a large component of Tweed Shire Council's overall Green-House Gas generation. CO<sub>2</sub>e, or carbon dioxide equivalent, is a standard unit for measuring carbon footprints. W&WW facilities and operations produce approximately 23kt CO<sub>2</sub>e/year which is approximately 70% of TSC's total output. W&WW Green-House Gas (GHG) contributions come from Electricity Use, Fuel Usage (vehicle fleet) and also fugitive gas generation of nitrous oxide (N<sub>2</sub>O) and methane (CH<sub>4</sub>) released as part of the wastewater treatment process.

2017/18 W&WW Electricity use was 14,200MWh and costs were \$3.42 million. The following chart shows the areas of W&WW operations where electricity is used.



Wastewater Treatment Plants and Water Pumps Stations are proportionately the largest consumers of electricity. Significant works have been completed over recent years to identify and deliver viable Energy Efficiency improvements across all W&WW assets. The following are some of the programs and works recently completed which are providing power and cost reduction savings:

- Efficient pumps – Standard procurement assessment includes Net Present Value cost analysis which ensures that the efficiency of new pumps and motor sets is weighted in the selection.
- Variable Speed Drives – A review was completed of all major Water Pumps Stations to consider power savings possible through the installation of variable speed drives. Installation of new motors and VSD at WPS10 is now providing 17% annual reduction in power use.
- Time of use limits on pump operation - in place and continually refined. Changes to WPS3 Operations have resulted in approximately 40% annual cost savings.
- Power factor correction – In place at Banora WWTP other facilities currently under review.
- Power Use Monitoring - A dedicated power monitoring software tool named Zeus has been developed in-house. This allows Facility Managers and Operators to be able to access power-use data and review impacts of system changes.
- Wastewater Treatment Plant (WWTP) Process Reviews – Detailed process reviews have now been completed for the largest WWTP sites. Operational changes implemented subsequent to the review at Banora WWTP have resulted in 12% reduction in annual power use at this site.

A technical paper detailing the successful Energy Efficiency works at Banora WWTP titled “Banora Point WWTP Energy Efficiency Review – Finding the Savings and Dispelling the Misconceptions” was presented to OzWater 2017 Conference in Sydney.

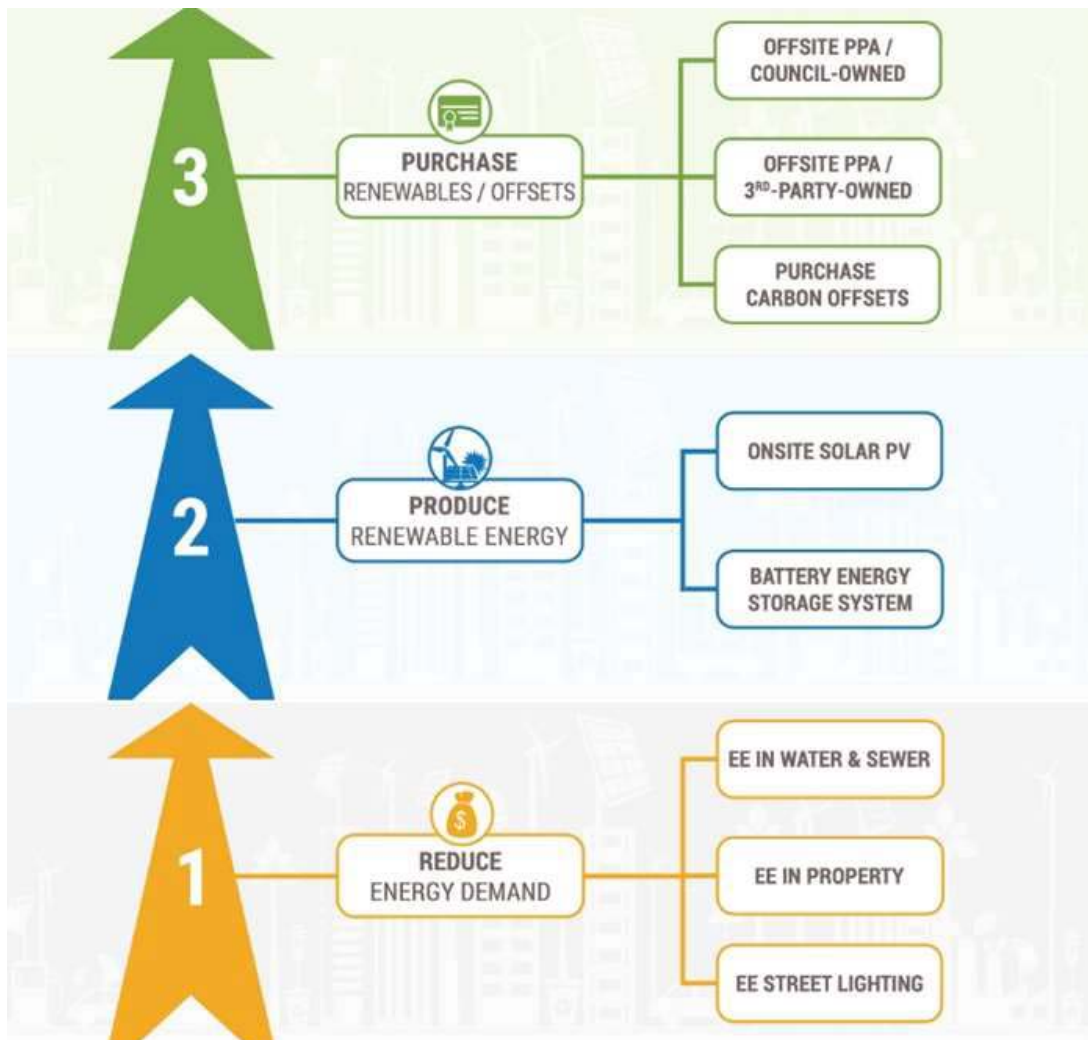
Comprehensive reviews are required to be completed for all proposed W&WW operational changes to ensure that levels of service and legislated obligations for water and wastewater services are continually met.

### Renewable Energy Action Plan

The Renewable Energy Action Plan (REAP) and the following staged renewable electricity targets were adopted by Council in November 2017.

- 25% of Council's electricity use self-generated from solar by 2022, compared to 2016/2017 use.
- 50% of Council's electricity use self-generated from solar, incorporating storage, by 2025, compared to 2016/2017 use.

The REAP detailed the following staged approach to meeting renewable energy targets:



### REAP Phase 1

The following table summarises the status of W&WW Phase 1 (2018-2020) REAP projects:

<b>Phase 1 Project</b>	<b>Status</b>
Bray Park Water Treatment Plant 99kW Solar PV	Complete
Water Pump Station WPS2 99kW Solar PV	Complete
Kingscliff Wastewater Treatment Plant 99kW Solar PV	Installed and awaiting commissioning
Mechanical and Electrical Depot 30kW Solar PV	Complete
Mooball WWTP 5kW Solar PV	Installed and awaiting commissioning
Wastewater Treatment Plant operating/process control improvements review	Complete

These projects are all either completed or on track to be delivered by mid-2019 and should generate approximately 520,000kWh annually which is equivalent to 3.5% reduction in W&WW grid power use.

### REAP Phase 2

As part of proposed Phase 2 works the REAP detailed a number of possible larger behind the meter and battery storage projects. These projects generally had longer pay-back periods and it was recommended that the business cases for these projects be reviewed for potential delivery in the period 2020-2025. The REAP anticipated significant reduction in Battery Energy and Storage (BESS) cost into the future.

Proposed W&WW Phase 2 Projects included:

- Banora WWTP 700kW Solar PV
- Kingscliff WWTP 500kW Solar PV + BESS
- Banora WWTP 700kW Solar PV + BESS
- Bray Park Solar 50kW + BESS
- Hastings Pt WWTP 60kW Floating Solar PV

An options investigation including financial analysis for the proposed Banora WWTP 604kW Solar PV Project has now been prepared. This report is included as Attachment A.

This report found that a 604kW ground mounted system located in the south-eastern corner of the site was preferred. The sizing of the system was determined based on most efficient behind the meter power use and the available land area on the site. A solar shading study has been completed and confirms the suitability of this location. A total project budget of \$880k has been estimated and financial analysis has identified that a simple payback of 5-6 years should be achieved. These proposed works are anticipated to reduce annual WWTP grid supplied electricity use by 20%.

It is recommended that further planning and investigation works continue and that a budget of \$880k be allocated for delivery of proposed Banora Point WWTP 604kW Solar PV system by mid-2020.

The other Phase 2 projects and some other potential "behind the meter" opportunities require detailed options investigation and financial analysis to determine their viability.

### REAP Phase 3

Phase 3 of the REAP identified that some form of renewable energy purchasing is likely to be required for Council to meet its future renewable energy targets. Contract options for purchasing renewable energy include the following:

- Owning a large-scale off-site power plant and contracting with a retailer to supply you with electricity through the distribution network to individual sites.
- Long-term agreement with an electricity retailer, with an underlying power purchase agreement with an identified off-set renewable energy project. This could be an existing power plant or a new power plant.
- Long-term agreement to buy renewable energy certificates from a renewable energy plant (which doesn't include retail electricity supply). These can come from an existing power plant or a new power plant.
- Purchasing renewable energy certificates from a broker (with no link to a particular renewable energy project).
- Purchasing GreenPower from a retailer. Can be purchased from any retailer with no long term commitments.

No explicit approach to renewable power purchase was recommended in the REAP Energy Study. It was recommended that Council engage with stakeholders to understand opportunities for future energy agreements. The suggested timing to begin purchasing renewable energy towards Council's target is 2023-24 (5,000 MWh pa), rising to say 15,000 MWh pa from 2026-27.

The REAP does not recommend GreenPower as it would likely impose a significant additional annual expense (\$0.7-1.1 million for W&WW operations).

Council has been exploring the options and mechanisms of Power Purchase Agreements (PPAs). Council is a foundation member of the Business Renewable Centre – Australia which is an initiative supporting the growth of corporate and government renewable energy power purchase agreements (RE PPAs). The aim of the organisation is to make it easier to enter the renewable energy market and facilitating 5GW of renewable energy PPAs by 2030, about 20 per cent of NSW's electricity load. Generally PPAs are complex contractual agreements with long term locked in prices i.e. 5 - 20 year agreements.

A carbon offset (or carbon credit) is generated from an activity that prevents, reduces or removes greenhouse gas emissions from being released into the atmosphere to compensate for emissions occurring elsewhere. Carbon offsets can be purchased for organisations to be carbon neutral.

Costs can range from \$40/tonne for Australian Greenpower, \$18/tonne for offset plantings (i.e. \$45k/ha rainforest planting, \$4k/ha eucalypts), \$14/tonne for Tasmanian forestry carbon credits, to \$1.40/tonne for Chinese windfarm credits. Organisations often purchase a range of offset products to spread the benefit of their investment across a range of markets.

Australian Securities and Investments Commission advice:

“Before you invest in carbon credits or carbon credit projects, make sure you understand the features, risks and benefits. If you are unsure, consider seeking professional financial advice to help you decide if carbon trading is right for you.”

For Council, purchasing offsets could result in an annual carbon offset cost from anywhere between \$35,000 to \$1,000,000, depending on the mix of offset products purchased.

In addition, audit and licence fees of approximately \$27,000 per year would bring Council in line with the Australian National Carbon Offset Standard (NCOS).

PPAs and other such arrangements are complex and the market for their agreement is constantly changing. Council has two main energy supply contracts, which expire at the end of 2019 and mid 2020.

It is recommended that Council seeks external professional advice on what steps Council should now be taking to reduce carbon emissions and increase reliance on renewable energy.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Budget recommendation of \$880,000 available under existing sewer funds.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Banora Point WWTP Options for PV Solar Installations (ECM5866033).

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**20 [E-CM] Approval for Public Gate on Council Road Reserve - Uki**

**SUBMITTED BY: Design**

mhm



**Behind the scenes**  
*Providing support to make it happen*

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

- 4 Behind the scenes
- 4.1 Assurance
- 4.1.3 Legal Services - To support and advise staff on organisational legal issues and property management of Council controlled assets

**ROLE: Leader**

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**SUMMARY OF REPORT:**

Council received an application for a public gate across a Council road reserve adjoining Lot 103 in DP1061154, Marshall Street, Uki.

A cattle grid, including fencing, has been in place at the site dating back to the 1930s and has remained so at Council's leisure.

At its meeting on Thursday, 21 February 2019, Council resolved to advertise the proposal for a public gate and invite written submissions.

Council advertised the proposal for a public gate in the Tweed Link, and invited written submissions for 28 days from 19 March 2019.

The 28 day public notice period has now elapsed, and no submissions (written or otherwise) have been received in response to the advertisement in the Tweed Link.

**RECOMMENDATION:**

**That:**

- 1. Council, in accordance with section 128 of the *Roads Act 1993 (NSW)*, approves the granting of a permit to the applicant for a public gate across the council road reserve adjoining Lot 103 in DP1061154, Marshall Street, Uki.**
- 2. Council writes to the applicant to inform them that the permit is granted to them on the condition that the structure has a notice attached to both sides bearing the words "PUBLIC GATE" in letters at least 75mm high, and ensures that all structures and the notice are maintained in good condition.**

- 3. All necessary documentation be signed by the General Manager in accordance with his delegations.**



**REPORT:**

Council received an application for a public gate across a Council road reserve adjoining Lot 103 in DP1061154, Marshall Street, Uki. A cattle grid, including fencing, has been in place at the site dating back to the 1930's and has remained so at Council's leisure. Refer to Diagram 1 and Diagram 2.

**Diagram 1** – Lot 103 in DP1061154, Marshall Street, Uki. Broken line indicates fence line within the road reserve.



**Diagram 2** – Street view of the cattlegrid and associated fencing located within the road reserve at Marshall Street Uki



The purpose of the structures across the road reserve is to ensure that the stock on Lot 103 remains within the property and does not enter the public road reserve or other adjoining parcels.

To allow the cattle grid and associated structures to remain within the road reserve it is prudent for the property owner to gain the approval of Council, as the roads authority, for a public gate across the road.

In accordance with section 128 of the *Roads Act 1993 (NSW)*, Council, as roads authority, may permit the occupier of any land through which an unfenced public road passes to erect a gate across the road at any place at which the road intersects a boundary fence.

Section 129 of the *Roads Act 1993 (NSW)*, requires the holder of a public gate permit, i.e. the landowner, to ensure that:

- (a) the structure has a notice attached to both sides of the gate bearing the words "PUBLIC GATE" in letters at least 75mm high; and
- (b) all structures and the notice are maintained in good condition.

At its meeting on Thursday, 21 February 2019, Council resolved to advertise the proposal for a public gate and invite written submissions for a period of 28 days from the date of the advertisement.

On 19 March 2019, Council advertised the proposal for a public gate in the Tweed Link, and invited written submissions for 28 days from 19 March 2019.

The 28 day public notice period elapsed on 16 April 2019.

No submissions (written or otherwise) have been received in response to the advertisement in the Tweed Link.

#### **OPTIONS:**

1. Approve the granting of a permit for the public gate on the Council road reserve; or
2. Refuse the granting of a permit for a public gate, and require the landowner to remove the cattle grid and associated structures from Council road reserve within 60 days of Council's resolution.

#### **CONCLUSION:**

It is recommended that Council approves the granting of a permit for the public gate in accordance with section 128 of the *Roads Act 1993 (NSW)*.

#### **COUNCIL IMPLICATIONS:**

##### **a. Policy:**

Unauthorised Private Encroachments on Public Roads v1.0  
Section 128 Roads Act 1993 (NSW).

##### **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.

Advertised for public comment/submissions in the Tweed Link on 19 March 2019.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**21 [E-CM] Classification of Land as Operational - Lot 1 on DP216360 Mahers Lane, Terranora**

**SUBMITTED BY: Design**

mhm



Leaving a Legacy  
*Looking out for future generations*

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

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.4 Water Supply -- To provide secure, high quality and reliable drinking water which meets health and environmental requirements.

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

Council at its meeting of 22 March 2018 resolved to purchase part of Lot 1 DP 216360, Mahers Lane, Terranora for the purposes of a reservoir site.

Subdivision of Lot 1 DP 216360 into Lot 1 DP 1250101 (22 Mahers Lane, Terranora) and Lot 2 DP 1250101 (86 Mahers Lane, Terranora) was carried out.

Settlement of the purchase of Lot 1 DP 1250101 (22 Mahers Lane, Terranora) occurred on 20 February 2019, the transfer of the land was also finalised on 20 February 2019. Pursuant to section 31 of the *Local Government Act 1993* (NSW), Council is required to classify all land held by it.

Prior to resolving to classify the land, it is necessary for a notice of its intention to classify the land be published in a locally circulated publication. Such notice was published in the Tweed Link on 26 March 2019, with no submissions received in response.

It is recommended that Council approve the classification of the subject land as Operational in pursuance of its obligations under the *Local Government Act 1993* (NSW).

**RECOMMENDATION:**

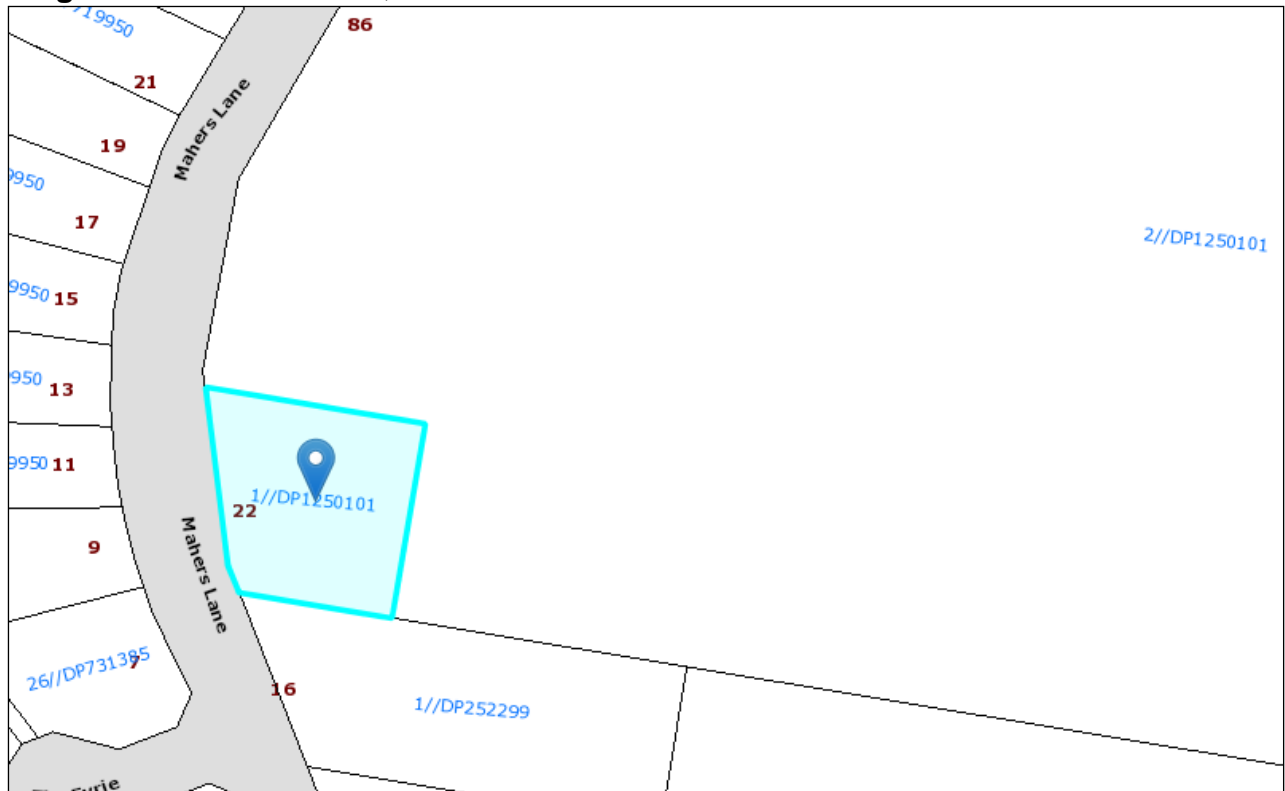
**That Council, in accordance with section 31 of the Local Government Act 1993 (NSW), classifies Lot 1 DP 1250101, 22 Mahers Lane, Terranora as "Operational Land".**

**REPORT:**

Council at its meeting of 22 March 2018 resolved to purchase part of Lot 1 DP 216360, Mahers Lane, Terranora, for the purposes of a reservoir site.

Diagram 1 below shows the location of the property.

**Diagram 1 – Mahers Lane, Terranora**



Subdivision of Lot 1 DP 216360 into Lot 1 DP 1250101 (22 Mahers Lane, Terranora) and Lot 2 DP 1250101 (86 Mahers Lane, Terranora) was carried out.

Settlement of the purchase of Lot 1 DP 1250101 (22 Mahers Lane, Terranora) occurred on 20 February 2019, and the registration of the transfer for the land was also finalised on 20 February 2019.

Pursuant to section 31 of the *Local Government Act 1993* (NSW), Council is required to classify all land held by it within three (3) months of the date of transfer to Council. Failure to classify land intended to be classified as Operational land will result in the land being automatically classified as Community Land, and will limit the use of the land pursuant to section 35 of the *Local Government Act 1993* (NSW).

It is intended to classify 22 Mahers Lane, Terranora as Operational Land to reflect the operational nature of the land to enable its use for operational purposes associated with a future reservoir.

Prior to resolving to classify the land, Council must publish a notice of its intention to classify the land in a locally circulated publication. Such notice was published in the Tweed Link on 26 March 2019, with a submission period of 28 days, this period expired on 23 April 2019. No submissions were received.

**OPTIONS:**

As the classification of land is a statutory obligation under section 31 of the *Local Government Act 1993* (NSW), there are no alternative options available regarding this matter. The property is to be utilised for operational purposes associated with a reservoir and, as such, is required to be classified as Operational Land.

**CONCLUSION:**

Council is required to classify all land held by it pursuant to section 31 of the *Local Government Act 1993* (NSW), the intention of this report is to satisfy that statutory obligation.

It is recommended that Council approves the classification of 22 Mahers Lane, Terranora as Operational land in pursuance of its obligations under the *Local Government Act 1993* (NSW).

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Classification of the Land pursuant to section 31 of the *Local Government Act 1993* (NSW).

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

No future budget implications arise from this report.

**c. Legal:**

Section 31 of the *Local Government Act 1993* (NSW) sets out the statutory requirement to classify land as Operational.

**d. Communication/Engagement:**

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

Advertised in the Tweed Link on 26 March 2019 seeking written submissions from the public.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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## REPORTS FROM THE EXECUTIVE MANAGER FINANCE, REVENUE AND INFORMATION TECHNOLOGY

### 22 [FRIT-CM] Corporate Quarterly Performance Report as at 31 March 2019

SUBMITTED BY: Financial Services

mhm

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



Behind the scenes  
*Providing support to make it happen*

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

2	Making decisions with you
2.2	Engagement
2.2.2	Communications - To inform, educate and engage the public about Council and community activities.
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: **Collaborator** **Provider** **Advocate** **Leader**

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#### SUMMARY OF REPORT:

The Corporate Quarterly Report as at 31 March 2019 is presented to Council for consideration.

This report and accompanying attachments detail the progress of the 2018/2019 Operational Plan activities up to 31 March 2019.

#### RECOMMENDATION:

**That Council receives and notes the Corporate Quarterly Performance Report as at 31 March 2019.**

## REPORT:

At the Council meeting held 6 April 2017, Council adopted the Community Strategic Plan 2017/2027 “Living and Loving the Tweed”. At the Council meeting held 21 June 2018, the Delivery Program 2017-2021/Operational Plan 2018-2019 was adopted by Council. Both of these documents contained a reporting structure which is based upon the following four principal streams:



### **Leaving a legacy: *Looking out for future generations***

The Tweed features an environment of world-significant biodiversity and natural beauty, and distinct cultural and built heritage – Council and the community values its protection.

The Tweed community respects and actively participates in the sustainable management of the natural and built environment so we can not only thrive and enjoy it today, but we look after this place we are proud to call home, so future generations can live and love it as well.

Council’s role is to work with the community and others to plan strategically for sustainable growth and change, and to support initiatives that help the Tweed retain and enhance its diverse natural and built environments, and to deliver sustainable essential services such as water, sewer and sanitation to meet community needs now and into the future.



### **Making decisions with you: *We’re in this together***

Council and the community working together will shape a better Tweed for the future.

The Tweed is a very proud and diverse community, and understands the importance of open information to enable community participation in steering the direction, decision-making and long-term goals of the Shire.

Council values these conversations that help to deliver sustainable development outcomes, balancing future population and economic growth with the protection and enhancement of natural, cultural and built environments.



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

Some residents were lucky to be born in the Tweed, others have made the fortunate choice to make this region their home – all of us have a role to play in shaping a safe, liveable community and to respect and value the unique characteristics that make the Tweed so special.

Together we can work to create a Tweed where people are welcomed, healthy and connected, with opportunities to prosper in their individual pursuits.

Council’s role is to work to meet the present and future infrastructure demands of the Tweed whilst providing community and cultural services and employment opportunities to retain and improve the quality of community life.





**Behind the scenes: *Providing support to make it happen***

To look after the Tweed, now and into the future, a great deal of work happens behind the scenes to ensure there are planned, resourced, efficient and transparent systems in place to enable our community to function and prosper.

The community expects responsible and transparent decision making with a focus on public conversations and ownership.

Council's role as visionary regional leader, service provider, partner and promoter draws together the skills and resources of other government agencies, businesses and community organisations to contribute to making the Tweed of tomorrow even better than it is today.

Section 404(5) of the Local Government Act 1993 provides that:

*“The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months.”*

Consistent with previous practice, the General Manager has elected to report more frequently (on a quarterly basis) to Council on its progress in meeting activities and targets of the Operational Plan.

This is the third quarterly report on the progress of the 2018/2019 plan and following adoption by Council will be made available via the Integrated Planning and Reporting Framework page on Council's website.

**OPTIONS:**

Not Applicable.

**CONCLUSION:**

That Council receives and notes the Corporate Quarterly Performance Report as at 31 March 2019.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Being reported in accordance with requirements associated with Integrated Planning and Reporting Framework.

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

Not Applicable.

**c. Legal:**

In line with the impacts of the adopted Operational Plan.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Corporate Quarterly Performance Report as at 31 March 2019. (ECM 5874261).

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23 [FRIT-CM] Quarterly Budget Review March 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**

**SUMMARY OF REPORT:**

This is the third quarter statutory budget review for this financial year and summarises the estimated expenditure and income changes to the 2018/2019 Budget.

This statutory report is prepared in accordance with the Local Government (General) Regulations 2005, sections 202 and 203. Council will have a balanced budget as at 30 June 2019 in all Funds.

**RECOMMENDATION:**

That the:

1. Quarterly Budget Review Statement as at 31 March 2019 be adopted.
2. Expenditure and income, as summarised below and detailed within the report, be voted and adjusted in accordance with the revised total expenditure and income for the year ending 30 June 2019.

Description	Change to Vote	
	Deficit	Surplus
<b>General Fund</b>		
<b><u>Expenses</u></b>		
Employee costs	0	130,186
Materials & Contracts	367,870	0
Interest	0	0
Other Operating costs	0	0
Capital	0	2,202,773

Description	Change to Vote	
	Deficit	Surplus
Loan Repayments	0	0
Transfers to Reserves	1,570,560	0
	<u>1,938,430</u>	<u>2,332,959</u>
<b>Income</b>		
Rates and Annual Charges	0	0
Interest revenue	0	0
Operating Grants & Conts	0	208,341
Capital Grants & Conts	0	27,708
User Charges & Fees	51,517	0
Other Operating Revenue	0	252,500
Loan Funds	0	0
Recoupments	0	0
Transfers from Reserves	41,800	0
Asset Sales	789,761	0
	<u>883,078</u>	<u>488,549</u>
Net Surplus/(Deficit)		<u>0</u>
	<b>Deficit</b>	<b>Surplus</b>
<b>Sewer Fund</b>		
<b>Expenses</b>		
Employee costs	0	0
Materials & Contracts	0	679,181
Interest	0	0
Other Operating costs	0	0
Capital	95,000	0
Loan Repayments	0	0
Transfers to Reserves	644,181	0
	<u>739,181</u>	<u>679,181</u>
<b>Income</b>		
Rates and Annual Charges	0	0
Interest revenue	0	0
Operating Grants & Conts	0	0
Capital Grants & Conts	0	0
User Charges & Fees	0	0
Other Operating Revenue	0	0
Loan Funds	0	0
Recoupments	0	37,800
Transfers from Reserves	0	22,200
Asset Sales	0	0
	<u>0</u>	<u>60,000</u>
Net Surplus/(Deficit)		<u>0</u>
<b>Water Fund</b>		
<b>Expenses</b>		
Employee costs	0	0
Materials & Contracts	0	228,206
Interest	0	0
Other Operating costs	0	0
Capital	0	488,254
Loan Repayments	0	0
Transfers to Reserves	803,954	0

Description	Change to Vote	
	Deficit	Surplus
	803,954	716,460
<b>Income</b>		
Rates and Annual Charges	0	0
Interest revenue	0	21,494
Operating Grants & Conts	0	0
Capital Grants & Conts	0	0
User Charges & Fees	0	0
Other Operating Revenue	0	0
Loan Funds	0	0
Recoupments	0	0
Transfers from Reserves	0	66,000
Asset Sales	0	0
	0	87,494
<b>Net Surplus/(Deficit)</b>		0

## **REPORT:**

### **Budget Review 31 March 2019 (Quarterly Budget Review)**

In accordance with section 203(1) of the Local Government (General) Regulation 2005, a Budget Review Statement and revision of the estimates of income and expenditure must be submitted to council within two months of the close of each quarter.

The Regulation requires that the quarterly financial review must include the following:

- A revised estimate for income and expenditure for the year.
- A report as to whether or not such statements indicate that the financial position of the Council is satisfactory and if the position is unsatisfactory, make recommendations for remedial action.

### **Report by Responsible Accounting Officer – Quarterly Budget Review Statements**

The Quarterly Budget Review Reports are prepared to provide Council and the community with information in relation to Council's financial performance and proposed amendments to its budget and forward estimates. The reports are prepared under accrual accounting principles in accordance with the requirements of the Local Government Act 1993.

New South Wales councils are required to prepare a Quarterly Budget Review Statement, which includes the following information:

- The original budget
- Approved changes to the original budget
- Recommendations by Council officers regarding changes to the revised budget
- A projected year end result
- Actual year to date figures
- Key Performance Indicators
- New contracts entered into during the quarter
- Consultancy and legal expenses

This information is presented in the following reports:

- List of changes which will impact on revenue, i.e. will affect the Operational Plan (budget) or Long Term Financial Plan
- Detailed list of recommended changes, including those recommended by officers and those adopted by Council
- Income and Expenses Statement, consolidated and by fund
- Funding Statement, consolidated and by fund, which gives the total budget result
- Capital Budget Review Statement
- Cash & Investments Budget Review Statement
- Budget Review Key Performance Indicators Statement
- Budget Review Contracts (part A) and Other Expenses (part B)

## Impacts on the Operational Plan and/or Long Term Financial Plan

Some recommended changes will have no net effect on the Operational Plan (1 year budget). Others will have long term effects and will need to be reflected in the next revision of the Long Term Financial Plan. The changes which will have such an effect are listed below:

Description	\$	\$
	<b>Net Effect</b>	
	<b>on</b>	
	<b>2018/2019</b>	<b>Net Effect</b>
<b>General Fund</b>	<b>Budget</b>	<b>on LTFP</b>
Murwillumbah museum	42,926	42,926
Art Gallery electricity	-42,926	-42,926
Community buildings	14,487	14,487
Compliance	28,463	32,150
Records storage facility	5,000	
Printing & stationery	-19,000	
Swimming Pool compliance	-28,950	
	<b>0</b>	<b>46,637</b>

### Detailed list of changes

In/Ex	Item	Category	Description	Current Vote	Change to Vote	Details / Comments
<b>1. Proposed Variations</b>						
<b>General Fund</b>						
Ex	1	Ex-OpOther	Murwillumbah Museum recurring costs	79,523	42,926	Revision of Community & Cultural budget
Ex	1	Ex-OpOther	Art Gallery electricity	186,758	-42,926	Revision of Community & Cultural budget
In	2	In-Fees	Rents & Sundry Income	-17,868	17,868	Revision of Community & Cultural budget
In	2	In-Fees	Rent - various facilities		-2,580	Revision of Community & Cultural budget
In	2	In-Fees	Rent - Northern Rivers Childrens Service	-21,800	-801	Revision of Community & Cultural budget
In	3	In-OpOther	Infringement Income & Fee - Animal	-102,047	37,747	Revision of Compliance budget
Ex	4	Ex-Op	Environmental Compliance (Building)	122,875	-14,000	Revision of Compliance budget
Ex	4	Ex-Op	Building Compliance Officer	103,804	14,000	Revision of Compliance budget
Ex	4	Ex-Op	Impounding Income & Expenses - Motor Vehicle	2,502	5,539	Revision of Compliance budget
Ex	4	Ex-Op	Stott's Island Impounding Facility Income	0	-4,534	Revision of Compliance budget
Ex	4	Ex-Op	Companion Animal Act Expenses	12,241	700	Revision of Compliance budget
Ex	4	Ex-Op	Animal Impounding Facility Expenses	71,346	-10,887	Revision of Compliance budget
Ex	4	Ex-Op	Straying Livestock Expense	1,154	1,046	Revision of Compliance budget
Ex	4	Ex-Op	Regulatory Legal Expenses	5,767	12,233	Revision of Compliance budget
In	4	In-Fees	Impounding Income	-75,280	11,280	Revision of Compliance budget
Ex	4	Ex-Op	Ranger Expenses	109,874	7,836	Revision of Compliance budget
In	4	In-OpOther	Infringement Income & Fee - Parking	-70,070	-48,247	Revision of Compliance budget
In	4	In-Fees	Environmental enforcement levy	-99,750	15,750	Revision of Compliance budget
Ex	5	Ex-Capital	Tweed Heads Cultural Plaza	196,933	15,000	Hearing loops
In	5	In-TFR	Access reserve		-15,000	Funding for above

In/Ex	Item	Category	Description	Current Vote	Change to Vote	Details / Comments
Ex	6	Ex-OpEmp	Infrastructure Delivery Salaries	857,917	-48,346	Revision of Infrastructure Delivery Budget
<b>Ex</b>	<b>6</b>	<b>Ex-OpEmp</b>	<b>Contracts Section</b>	<b>690,603</b>	<b>-33,435</b>	<b>Revision of Infrastructure Delivery Budget</b>
Ex	7	Ex-Capital	Capital plant purchases	7,169,957	-2,561,735	Revision of Fleet Budget
In	7	In-Sales	Capital plant sales	-2,210,437	789,761	Revision of Fleet Budget
Ex	7	Ex-Op	Fleet administration	382,303	-26,703	Revision of Fleet Budget
In	7	In-TFR	Fleet reserve	-288,052	288,052	Revision of Fleet Budget
Ex	7	Ex-TTR	Fleet reserve	0	1,570,560	Revision of Fleet Budget
Ex	7	Ex-Op	Workshop mechanics	419,354	-47,620	Revision of Fleet Budget
Ex	7	Ex-Op	Workshop metal fabrication	154,957	-12,315	Revision of Fleet Budget
Ex	7	Ex-Op	Workshop small plant	16,773	6,247	Revision of Fleet Budget
Ex	7	Ex-Op	Buchanan St residence	20,036	9,000	Revision of Procurement Budget
Ex	7	Ex-Capital	Depot improvements Tweed Heads	30,884	29,116	Revision of Procurement Budget
Ex	7	Ex-OpEmp	Storekeeping	390,484	-83,405	Revision of Procurement Budget
Ex	7	Ex-Op	Non-Inventory Store Issued Items	26,810	7,304	Revision of Procurement Budget
Ex	7	Ex-Op	Depot Murwillumbah	614,031	-106,554	Revision of Procurement Budget
Ex	7	Ex-Op	Depot Tweed Heads	271,519	4,935	Revision of Procurement Budget
Ex	7	Ex-Capital	Depot improvements Murwillumbah	167,670	207,138	Revision of Procurement Budget
In	7	In-OpOther	Gravel sales & royalties	-10,000	8,000	Revision of Procurement Budget
Ex	8	Ex-Op	Mooball Creek retaining wall		155,000	Single Coastal Reserve expenses
Ex	8	Ex-OpEmp	Coastal ranger		95,000	Single Coastal Reserve expenses
In	8	In-OpOther	Crown reserves transfer from TCHP		-250,000	Funding for above
Ex	9	Ex-Op	E Zone review		40,000	Consultancy
Ex	9	Ex-OpEmp	Strategic Planning	996,750	-40,000	Funding for above
Ex	10	Ex-Op	Youth Strategy	2,836	2,591	Youth Week activities
Ex	10	In-OG&C	Family and Community Services		-2,591	Funding for above
Ex	11	Ex-Op	Small Farms Big Changes		59,050	Environmental education project
In	11	In-OG&C	Environmental Trust		-59,050	Funding for above
Ex	12	Ex-Capital	Pools asset management	58,994	27,708	TRAC LED lights
In	12	In-CG&C	Australian Sports Commission		-27,708	Funding for above
Ex	13	Ex-Capital	Lundberg Drive stormwater		80,000	Remediate drainage issue Industry Central
Ex	13	Ex-Op	Stormwater drainage rehabilitation Murwillumbah Visitor Information Centre	633,205	-80,000	Funding for above
Ex	14	Ex-Op	Works Carried Forward reserve	408,748	91,252	Restoration works
In	14	In-TFR			-91,252	Funding for above
Ex	15	Ex-Op	Tweed Aboriginal Cultural Heritage Oral History Project		34,700	Community heritage project
In	15	In-OG&C	Office of Environment & Heritage		-34,700	Funding for above
Ex	16	Ex-Op	Road Safety Programs		5,000	Safety Around Schools
In	16	In-OG&C	Road Safety Grants		-5,000	Funding for above
Ex	16	Ex-Op	Road Safety Programs		5,000	Impaired Road Users
In	16	In-OG&C	Road Safety Grants		-5,000	Funding for above
Ex	16	Ex-Op	Road Safety Programs		2,000	Bike Week activities
In	16	In-OG&C	Road Safety Grants		-2,000	Funding for above
Ex	17	Ex-Op	Flood Mitigation lot consolidation	300,000	60,000	Flood mitigation
In	17	In-TFR	Infrastructure reserve		-60,000	Funding for above
Ex	18	Ex-Op	Condong Creek Stage 3		10,000	Stormwater drainage
In	18	In-TFR	Infrastructure reserve		-10,000	Funding for above
Ex	19	Ex-Op	Dulguigan Road Road Safety Design		50,000	Road safety



In/Ex	Item	Category	Description	Current Vote	Change to Vote	Details / Comments
In	19	In-TFR	Infrastructure reserve		-50,000	Funding for above
Ex	20	Ex-Op	Tiny homes		20,000	Tiny Home Village proposal
In	20	In-TFR	Land Development Reserve		-20,000	Funding for above
Ex	21	Ex-Op	Records storage facility	134,490	5,000	Security doors
Ex	22	Ex-Op	Printing & stationery	122,058	-19,000	Revision of budget
Ex	23	Ex-OpEmp	Swimming Pool compliance	141,859	-20,000	Revision of Building & Env. Health budget
In	23	In-Fees	Swimming Pool certificate fees	-76,727	10,000	Revision of Building & Env. Health budget
In	23	In-Fees	On-Site Sewage pre-purchase fees	-23,100	10,000	Revision of Building & Env. Health budget
In	23	In-Fees	On-Site Sewage new install inspections	-42,000	-10,000	Revision of Building & Env. Health budget
Ex	23	Ex-Op	Environmental Health	110,138	-18,950	Revision of Building & Env. Health budget
					0	
			<b>Sewer Fund</b>			
Ex	24	Ex-Op	Operations		-619,048	Various revisions
In	24	Ex-Op	Annual charges		-60,133	Various revisions
Ex	24	In-Interest	Interest received			No adjustments this quarter
In	24	In-Fees	Fees			No adjustments this quarter
In	24	In-CG&C	s64 income			No adjustments this quarter
Ex	24	In-CG&C	Capital grants			No adjustments this quarter
Ex	24	Ex-Capital	Capital works		95,000	New minor projects
In	24	In-TFR	Transfers from reserves		-22,200	Funding adjustments
In	24	In-Recoup	Recoupment from s64		-37,800	Funding adjustments
	24	Ex-TTR	s64 reversal			No adjustments this quarter
Ex	24	Ex-TTR	Transfers to reserves		644,181	Funding adjustments
					0	
			<b>Water Fund</b>			
Ex	25	Ex-Op	Operations		-216,447	Various revisions
In	25	Ex-Op	Annual charges		-11,759	Various revisions
Ex	25	In-Interest	Interest received		-21,494	Funding adjustments
In	25	In-Fees	Fees			No adjustments this quarter
In	25	In-CG&C	s64 income			No adjustments this quarter
Ex	25	In-CG&C	Capital grants			No adjustments this quarter
Ex	25	Ex-Capital	Capital works		-488,254	Deferrals and revisions
In	25	In-TFR	Transfers from reserves		-66,000	Funding adjustments
In	25	In-Recoup	Recoupment from s64			No adjustments this quarter
	25	Ex-TTR	s64 reversal			No adjustments this quarter
Ex	25	Ex-TTR	Transfers to reserves		803,954	Funding adjustments
					0	
			<b>2. Variations Arising from Council Resolutions</b>			
Ex	26	Ex-Op	Tweed Coastal Management Program		150,000	Resolution 25 October 2018 Item 25
In	26	In-OG&C	Office of Environment and Heritage		-100,000	Resolution 25 October 2018 Item 25
Ex	26	Ex-Op	Tweed Coastal Zone Management	96,390	-50,000	Resolution 25 October 2018 Item 25
					0	
			<b>Summary of Votes by Type</b>			
			2018/19 Variations		0	
			Council Resolutions		0	
					0	

In/Ex	Item	Category	Description	Current Vote	Change to Vote	Details / Comments	
		<b>Key to Category codes</b>					
		Ex-OpEmp	Employee costs				
		Ex-Op	Materials & contracts				
		Ex-Interest	Interest on loans				
		Ex-OpOther	Other operating expenses				
		Ex-Capital	Capital works				
		Ex-Loan Reps	Repayment on principal on loans				
		Ex-TTR	Transfers to reserves				
		Ex-Dep	Depreciation				
		Ex-Deprev	Depreciation reversal				
		In-Rates	Rates & annual charges				
		In-Interest	Interest income				
		In-OG&C	Operating grants & contributions				
		In-CG&C	Capital grants & contributions				
		In-Fees	User charges & fees				
		In-OpOther	Other operating income				
		In-Loan	Loan funds				
		In-Recoup	Recoupment from s64 & s94 funds				
		In-TFR	Transfers from reserves				
		In-Sales	Proceeds from sale of assets				
			<u>Expenses</u>				
			Employee costs		-130,186		
			Materials & Contracts		-539,517		
			Interest		0		
			Other Operating costs		0		
			Capital		-2,596,027		
			Loan Repayments		0		
			Transfers to Reserves		3,018,695		
					-247,035		
			<u>Income</u>				
			Rates and Annual Charges		0		
			Interest revenue		-21,494		
			Operating Grants & Conts		-208,341		
			Capital Grants & Conts		-27,708		
			User Charges & Fees		51,517		
			Other Operating Revenue		-252,500		
			Loan Funds		0		
			Recoupments		-37,800		
			Transfers from Reserves		-46,400		
			Asset Sales		789,761		
					247,035		
			Net		0		
			<b>Summary of Votes - by Division</b>				
			Corporate Services		-14,000		
			Planning & Regulation		-487		
			Community & Natural Resources		14,487		
			Engineering		0		
			General Manager		0		
					0		

**Results by fund:**

**General Fund**

The General Fund is expected to remain as a “balanced budget”.

**Water Fund**

The Water Fund is expected to remain as a “balanced budget”.

**Sewer Fund**

The Sewer Fund is expected to remain as a “balanced budget”.

**Quarterly Budget Review Statements**

**Income and Expense - Consolidated Budget Review Statement for the quarter ended 31 March 2019**

	Original Budget (000's)	Previously approved		Revised Budget (000's)	Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's) *	Dec Review (000's)				
<b>Income</b>							
Rates and Annual Charges	111,135	-	(72)	111,063	-	111,063	83,212
User Charges and Fees	46,920	73	(17)	46,976	(52)	46,924	37,209
Interest and Investment Revenue	9,821	31	(86)	9,766	21	9,787	7,715
Other Revenues	2,955	-	69	3,024	253	3,277	4,857
Grants & Contributions - Operating	17,123	(136)	5,133	22,120	208	22,328	22,660
Grants and Contributions - Capital	1,017	6,806	62	7,885	28	7,913	3,796
- Contributions (S94)	16,732	58	(11,959)	4,831	-	4,831	6,016
Net gain from the disposal of assets	-	-	-	-	-	-	-
<b>Total Income</b>	<b>205,703</b>	<b>6,832</b>	<b>(6,870)</b>	<b>205,665</b>	<b>458</b>	<b>206,123</b>	<b>165,465</b>
<b>Expense</b>							
Employee costs	57,916	393	30	58,339	(130)	58,209	42,167
Borrowing Costs	11,666	-	-	11,666	-	11,666	7,535
Materials & Contracts	46,739	15,488	4,736	66,963	(541)	66,422	34,682
Depreciation	42,623	-	-	42,623	-	42,623	31,968
Legal Costs	476	363	-	839	-	839	653
Consultants	492	-	-	492	-	492	133
Other Expenses	16,931	(150)	-	16,781	-	16,781	10,389
Net Loss from Disposal of Assets	-	-	-	-	-	-	183
<b>Total Expenses</b>	<b>176,843</b>	<b>16,094</b>	<b>4,766</b>	<b>197,703</b>	<b>(671)</b>	<b>197,032</b>	<b>127,710</b>

Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)	
	Sep Review (000's) *	Dec Review (000's)	Revised Budget (000's)				
<b>Net Operating Result</b>	28,860	(9,262)	(11,636)	7,962	1,129	9,091	37,755

**Net Operating Result before capital items**

11,111	(16,126)	261	(4,754)	1,101	(3,653)	27,943
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**Funding Statement - Consolidated - Source & Application of Funds**

Operating Result (Income Statement)

Operating Result (Income Statement)	28,860	(9,262)	(11,636)	7,962	1,129	9,091
<b>Add Back non-funded items:</b>						
Depreciation	42,623	-	-	42,623	-	42,623
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	25,659	3,961	1,237	30,857	38	30,895
Transfers from Internally Restricted Cash	3,499	53,996	(2,680)	54,815	46	54,861
Proceeds from sale of assets	2,210	-	-	2,210	(790)	1,420
Loan Funds Utilised	3,066	1,153	-	4,219	-	4,219
Repayments from Deferred Debtors	-	-	-	-	-	-
<b>Funds Available</b>	105,917	49,848	(13,079)	142,686	423	143,109
<b>Funds were applied to:</b>						
Purchase and construction of assets	45,771	50,076	(2,302)	93,545	(2,596)	90,949
Repayment of principal on loans	8,838	-	-	8,838	-	8,838
Transfers to Externally Restricted Cash	47,590	-	-	47,590	-	47,590
Transfers to Internally Restricted Cash	3,718	(228)	(10,777)	(7,287)	3,019	(4,268)
<b>Funds Used</b>	105,917	49,848	(13,079)	142,686	423	143,109
<b>Increase/(Decrease) in Available Working Capital</b>	-	-	-	-	-	-

\* Includes Carried Forward Works revotes

**Income & Expense- General Fund Budget Review Statement for the quarter ended 31 March 2019**

Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's) *	Dec Review (000's)	Revised Budget (000's)			

**Income**

Rates and Annual Charges	74,731	-		74,731	-	74,731	56,615
User Charges and Fees	19,177	73	(15)	19,235	(52)	19,183	15,862
Interest and Investment Revenue	5,243	-	-	5,243	-	5,243	4,461
Other Revenues	2,624	-	69	2,693	253	2,946	4,292
Grants & Contributions - Operating	16,209	(136)	5,133	21,206	208	21,414	21,781
Grants and Contributions - Capital	1,017	6,806	62	7,885	28	7,913	3,796
- Contributions (S64/S94)	1,856			1,856		1,856	3,508
Net gain from the disposal of assets				-		-	-
<b>Total Income</b>	<b>120,857</b>	<b>6,743</b>	<b>5,249</b>	<b>132,849</b>	<b>437</b>	<b>133,286</b>	<b>110,315</b>

**Expense**

Employee costs	45,838	393	30	46,261	(130)	46,131	33,050
Borrowing Costs	5,393	-	-	5,393	-	5,393	3,323
Materials & Contracts	25,620	14,706	4,669	44,995	367	45,362	27,717
Depreciation	24,978			24,978		24,978	18,734
Legal Costs	476	363		839		839	650
Consultants	94			94		94	116
Other Expenses	12,708	(150)		12,558	-	12,558	8,145
Net Loss from Disposal of Assets				-		-	170
<b>Total Expenses</b>	<b>115,107</b>	<b>15,312</b>	<b>4,699</b>	<b>135,118</b>	<b>237</b>	<b>135,355</b>	<b>91,905</b>

**Net Operating Result**

	5,750	(8,569)	550	(2,269)	200	(2,069)	18,410
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**Net Operating Result before capital items**

	2,877	(15,375)	488	(12,010)	172	(11,838)	11,106
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**Funding Statement - General Fund - Source & Application of Funds**

Operating Result (Income Statement)	5,750	(8,569)	550	(2,269)	200	(2,069)
<b>Add Back non-funded items:</b>						
Depreciation	24,978			24,978	-	24,978
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	1,554	1,553		3,107	-	3,107

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's) *	Dec Review (000's)	Revised Budget (000's)			
Transfers from Internally Restricted Cash	3,499	51,876	1,377	56,752	(42)	56,710	
Proceeds from sale of assets	2,210	-		2,210	(790)	1,420	
Loan Funds Utilised	3,066	1,153		4,219	-	4,219	
Internal charges				-		-	
Repayments from Deferred Debtors				-		-	
<b>Funds Available</b>	<b>41,057</b>	<b>46,013</b>	<b>1,927</b>	<b>88,997</b>	<b>(632)</b>	<b>88,365</b>	
<b>Funds were applied to:</b>							
Purchase and construction of assets	25,543	45,488	1,891	72,922	(2,203)	70,719	
Repayment of principal on loans	4,419	-	-	4,419	-	4,419	
Transfers to Externally Restricted Cash	7,377			7,377		7,377	
Transfers to Internally Restricted Cash	3,718	525	36	4,279	1,571	5,850	
<b>Funds Used</b>	<b>41,057</b>	<b>46,013</b>	<b>1,927</b>	<b>88,997</b>	<b>(632)</b>	<b>88,365</b>	
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	

\* Includes Carried Forward Works revotes

**Income & Expense- Sewer Fund Budget Review Statement for the quarter ended 31 March 2019**

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Income**

Rates and Annual Charges	30,680		(60)	30,620	-	30,620	22,159
User Charges and Fees	3,389		(14)	3,375	-	3,375	2,666
Interest and Investment Revenue	2,687	65	-	2,752	-	2,752	2,060
Other Revenues	17		-	17	-	17	2
Grants & Contributions - Operating	505		-	505	-	505	508
Grants and Contributions - Capital				-		-	
- Contributions (S64/S94)	4,877		(3,902)	975	-	975	929
Net gain from the disposal of assets				-		-	
<b>Total Income</b>	<b>42,155</b>	<b>65</b>	<b>(3,976)</b>	<b>38,244</b>	<b>-</b>	<b>38,244</b>	<b>28,324</b>

**Expense**

Employee costs	7,381			7,381	-	7,381	5,375
Borrowing Costs	2,030			2,030	-	2,030	1,028
Materials & Contracts	10,268	613	477	11,358	(679)	10,679	3,489

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			
Depreciation	10,196			10,196	-	10,196	7,647
Legal Costs				-	-	-	
Consultants	158			158	-	158	7
Other Expenses	2,761			2,761	-	2,761	1,274
Net Loss from Disposal of Assets				-		-	13
<b>Total Expenses</b>	<b>32,794</b>	<b>613</b>	<b>477</b>	<b>33,884</b>	<b>(679)</b>	<b>33,205</b>	<b>18,833</b>

<b>Net Operating Result</b>	9,361	(548)	(4,453)	4,360	679	5,039	9,491
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<b>Net Operating Result before capital items</b>	4,484	(548)	(551)	3,385	679	4,064	8,562
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**Funding Statement - Sewer Fund - Source & Application of Funds**

Operating Result (Income Statement)	9,361	(548)	(4,453)	4,360	679	5,039
<b>Add Back non-funded items:</b>						
Depreciation	10,196	-	-	10,196	-	10,196
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	8,631	216	(3)	8,844	38	8,882
Transfers from Internally Restricted Cash		1,485	162	1,647	22	1,669
Proceeds from sale of assets				-	-	-
Loan Funds Utilised				-	-	-
Repayments from Deferred Debtors				-		-
<b>Funds Available</b>	<b>28,188</b>	<b>1,153</b>	<b>(4,294)</b>	<b>25,047</b>	<b>739</b>	<b>25,786</b>
<b>Funds were applied to:</b>						
Purchase and construction of assets	5,933	1,566	191	7,690	95	7,785
Repayment of principal on loans	2,867	-	-	2,867	-	2,867
Transfers to Externally Restricted Cash	19,388	-	-	19,388	-	19,388
Transfers to Internally Restricted Cash		(413)	(4,485)	(4,898)	644	(4,254)
Internal charges				-		-
<b>Funds Used</b>	<b>28,188</b>	<b>1,153</b>	<b>(4,294)</b>	<b>25,047</b>	<b>739</b>	<b>25,786</b>
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Income & Expense- Water Fund Budget Review Statement for the quarter ended 31 March 2019**

Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Income**

Rates and Annual Charges	5,724		(12)	5,712	-	5,712	4,438
User Charges and Fees	24,354		12	24,366	-	24,366	18,681
Interest and Investment Revenue	1,891	(34)	(86)	1,771	21	1,792	1,194
Other Revenues	314	-	-	314	-	314	563
Grants & Contributions - Operating	409	-	-	409	-	409	371
Grants and Contributions - Capital				-		-	-
- Contributions (S64/S94)	9,999	58	(8,057)	2,000	-	2,000	1,579
Net gain from the disposal of assets				-		-	-
<b>Total Income</b>	<b>42,691</b>	<b>24</b>	<b>(8,143)</b>	<b>34,572</b>	<b>21</b>	<b>34,593</b>	<b>26,826</b>

**Expense**

Employee costs	4,697			4,697	-	4,697	3,742
Borrowing Costs	4,243			4,243	-	4,243	3,184
Materials & Contracts	10,851	169	(410)	10,610	(229)	10,381	3,476
Depreciation	7,449			7,449	-	7,449	5,587
Legal Costs				-	-	-	3
Consultants	240			240	-	240	10
Other Expenses	1,462			1,462	-	1,462	970
Net Loss from Disposal of Assets				-		-	-
<b>Total Expenses</b>	<b>28,942</b>	<b>169</b>	<b>(410)</b>	<b>28,701</b>	<b>(229)</b>	<b>28,472</b>	<b>16,972</b>

**Net Operating Result**

	13,749	(145)	(7,733)	5,871	250	6,121	9,854
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**Net Operating Result before capital items**

	3,750	(203)	324	3,871	250	4,121	8,275
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**Funding Statement - Water Fund - Source & Application of Funds**

Operating Result (Income Statement)	13,749	(145)	(7,733)	5,871	250	6,121
<b>Add Back non-funded items:</b>						
Depreciation	7,449	-	-	7,449	-	7,449
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	15,474	2,192	1,240	18,906	-	18,906
Transfers from Internally Restricted Cash		635	(4,219)	(3,584)	66	(3,518)



	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			
Proceeds from sale of assets				-		-	
Loan Funds Utilised				-	-	-	
Repayments from Deferred Debtors				-		-	
<b>Funds Available</b>	36,672	2,682	(10,712)	28,642	316	28,958	
<b>Funds were applied to:</b>							
Purchase and construction of assets	14,295	3,022	(4,384)	12,933	(488)	12,445	
Repayment of principal on loans	1,552	-	-	1,552	-	1,552	
Transfers to Externally Restricted Cash	20,825	-	-	20,825	-	20,825	
Transfers to Internally Restricted Cash		(340)	(6,328)	(6,668)	804	(5,864)	
Internal charges				-		-	
<b>Funds Used</b>	36,672	2,682	(10,712)	28,642	316	28,958	
<b>Increase/(Decrease) in Available Working Capital</b>	-	-	-	-	-	-	

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 March 2019 and should be read in conjunction with other documents in the QBRs.

**Capital Budget Review Statement - Consolidated - for the quarter ended 31 March 2019**

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's) *	Dec Review (000's)	Revised Budget (000's)			
<b>Capital Funding **</b>							
Rates and other untied funding	31,961	625	683	33,269	(1,456)	31,813	12,859
Capital Grants & Contributions	928	6,863		7,791	28	7,819	3,161
Internal Restrictions (Reserves)	1,987	25,769	1,209	28,965	15	28,980	11,715
External Restrictions	12,366	13,567	(4,192)	21,741	(393)	21,348	8,630
- s64 & s94 funds	2,205	2,600		4,805		4,805	1,942
Other Capital Funding Sources							
- loans	3,066	652		3,718		3,718	1,503
Income from sale of assets					(790)	(790)	
- plant and equipment	2,210			2,210		2,210	893
- Land, Buildings, Furniture, Fittings							
<b>Total Capital Funding</b>	54,723	50,076	(2,300)	102,499	(2,596)	99,903	40,703

**Capital Expenditure**

New Assets

- Plant and Equipment	230	106		336		336	308
- Land, Buildings, Furniture, Fittings	3,939	15,799	683	20,421	15	20,436	8,339
- Roads, Bridges, Footpaths	20	6,748	460	7,228		7,228	893

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
		Sep Review (000's) *	Dec Review (000's)	Revised Budget (000's)			
- Drainage							12
- Water & Sewer Infrastructure	7,016	2,504	(3,288)	6,232	(494)	5,738	2,485
- Other	3,200	9,836		13,036		13,036	300
<u>Renewals (Replacement)</u>							
- Plant and Equipment	7,170			7,170	(2,562)	4,608	1,489
- Land,Buildings,Furniture,Fittings	101	219		320		320	357
- Roads, Bridges, Footpaths	11,338	4,288	749	16,375		16,375	10,539
- Drainage	644	134		778	80	858	24
- Water & Sewer Infrastructure	6,845	1,673	52	8,570	166	8,736	3,161
- Other		2,544		2,544		2,544	1,544
<u>Upgrades</u>							
- Plant and Equipment							9
- Land,Buildings,Furniture,Fittings		2,227		2,227	264	2,491	1,130
- Roads, Bridges, Footpaths	630	2,761		3,391		3,391	2,140
- Drainage	800	772		1,572		1,572	892
- Water & Sewer Infrastructure	3,952	411	(956)	3,407	(65)	3,342	1,443
- Other		54		54		54	83
Loan Repayments (principal)	8,838			8,838		8,838	5,236
<b>Total Capital Expenditure</b>	<b>54,723</b>	<b>50,076</b>	<b>(2,300)</b>	<b>102,499</b>	<b>(2,596)</b>	<b>99,903</b>	<b>40,384</b>

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 March 2019 and should be read in conjunction with other documents in the QBRS.

\* Note: Includes Carry over works

\* \*Note: figures in the Actual YTD column of capital funding are estimates only. Detailed calculations of funding results are performed annually.

**Cash and Investments Budget Review Statement for the quarter ended 31 March 2019**

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual * YTD (000's)
		Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Unrestricted**

	7,814			7,814		7,814	12,661
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**Externally restricted**

Developer contributions	40,632	(3,961)		36,671	(38)	36,633	43,030
Domestic waste management	20,659	(11,387)		9,272		9,272	20,000
Special Rates	224			224		224	247
Unexpended grants & contributions	6,019	(6,019)		0		0	6,000
Water Supplies	75,087			75,087		75,087	61,172
Sewerage Services	100,861			100,861		100,861	100,605
Other	17,396			17,396		17,396	17,000

	Original Budget (000's)	Previously approved			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual * YTD (000's)
		Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			
<b>Total Externally restricted</b>	260,878	(21,367)	0	239,511	(38)	239,473	248,054
<b>Internally restricted</b>							
Employee Leave entitlements	13,554			13,554		13,554	13,554
Unexpended untied grants	1,501	(1,501)		0		0	1,500
Unexpended loans	3,091	(1,968)		1,123		1,123	3,000
7 Year Plan	2,445	(2,282)		163		163	2,400
Works Carried Forward	8,508	(7,070)		1,438	(91)	1,347	8,000
Replacement of Plant and Vehicles	5,456			5,456	1,858	7,314	5,000
Tip improvements	14,545	(7,625)		6,920		6,920	14,000
Asset renewals	28,534	(6,163)		22,371	(120)	22,251	28,000
Other	8,844			8,844	(20)	8,824	8,000
<b>Total Internally restricted</b>	86,478	(26,609)	0	59,869	1,627	61,496	83,454
<b>Total Restricted</b>	347,356	(47,976)	0	299,380	1,589	300,969	331,508
<b>Total cash and investments</b>	355,170	(47,976)	0	307,194	1,589	308,783	344,169
<b>Available cash</b>	7,814	0	0	7,814	0	7,814	12,661

\* Note: figures in the Actual YTD are estimates only. Detailed calculations of funding results and cash restrictions are performed annually.

The available cash position excludes restricted funds. External restrictions are funds that must be spent for a specific purpose and cannot be used by council for general operations. Internal restrictions are funds that council has determined will be used for a specific purpose.

### Statement of compliance with investment policy:

Council's investments have been made in accordance with Council's investment policies.

### Reconciliation of restricted funds with current investment report:

Total restricted funds	(000's)	331,508
Total invested funds as per March Investment Report		341,898
Note, some restricted funds are held as cash as they will be utilised in the current period.		

### Statement of bank reconciliation:

Cash has been reconciled with the bank statement. Bank reconciliations are up to date.

### Reconciliation of cash and investments:

(000's)

Cash and investments as per above	344,169
<b>Cash on hand and at bank</b>	2,271
<b>Investments</b>	<u>341,898</u>
	344,169

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 March 2019 and should be read in conjunction with other documents in the QBRs.

### Key Performance Indicators Budget Review Statement for the quarter ended 31 March 2019

Note that KPIs may be distorted by the fact that detailed calculations are only prepared on an annual basis.

These ratios should therefore be viewed with caution.

	Amounts	Indicator
<b>1. Unrestricted Current Ratio</b>		
	(000's)	
<u>Current assets less all external restrictions</u>	<u>74,058</u>	2.7:1
Current liabilities	27,754	
Target:		2:1

#### Purpose:

To assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

	Amounts	Indicator
<b>2. Debt Service Ratio</b>		
	(000's)	
<u>Debt Service Cost</u>	<u>12,771</u>	9.26%
Selected operating income	137,866	
Target:		15%

#### Purpose:

To assess the impact of loan principal and interest repayments on the discretionary revenue of Council.

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 March 2019 and should be read in conjunction with other documents in the QBRs.

### Budget Review Contracts and Other Expenses for the quarter ended 31 March 2019

**PART A-Contracts Listing**

<b>Contractor</b>	<b>Contract Title</b>	<b>Contract Value \$</b>	<b>Award Date</b>	<b>Duration of Contract</b>	<b>Budgeted (Y/N)</b>
Rod Smith Builder	Marine Parade Footpath Maintenance	\$86,700.00	22-Mar-19	8 Weeks	Y
PT Automation Solutions	Manufacture and Supply of Switchboard for SPS2033	\$87,760.00	25-Mar-19	12 Weeks	Y
Desire Contractors Pty Ltd	Landscape Works for Eunga Street Playground	\$67,075.00	07-Mar-19	12 Weeks	Y
Stabilised Pavements of Australia	Boyd St In situ Stabilisation Program	\$313,836.07	21-Mar-19	4 Weeks	Y
Arcadis (76 104 485 289)	Detailed Concept Design of Broadwater Parkway, Terranora	\$179,000.00	12-Mar-19	5 Months	Y
HME Services Pty Ltd	Tweed Heads Auditorium- Cabling and Lighting Upgrade	\$184,738.00	17-Jan-19	5 Weeks	Y
East Coast Asphalt and Concrete Edging Pty Lyt	Supply, Lay & Compact AC Terranora Rd, Terranora	\$205,293.00	11-Feb-19	8 Weeks	Y
Concept Engineering Services	Design and Construct Electrical Switchboard Uki Water Treatment Plant	\$169,128.02	08-Feb-19	12 Weeks	Y

**PART B - Consultancy and Legal expenses**

<b>Expense</b>	<b>Expenditure YTD \$</b>	<b>Budgeted (Y/N)</b>
Consultancies	212,842	Y
Legal expenses	647,687	Y

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 March 2019 and should be read in conjunction with other documents in the QBRS.

**Statutory Statement – Local Government (General) Regulations 2005 (Sections 202 & 203) by “Responsible Accounting Officer”**

**202 Responsible accounting officer to maintain system for budgetary control**

*The responsible accounting officer of a council must:*

- (a) *establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and*
- (b) *if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

**203 Budget review statements and revision of estimates**

- (1) *Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the Statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.*

- (2) A budget review statement must include or be accompanied by:
- (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and
  - (b) if that position is unsatisfactory, recommendations for remedial action.
- (3) A budget review statement must also include any information required by the Code to be included in such a statement.

**Statutory Statement**

It is my opinion that the Quarterly Budget Review Statement for Tweed Shire Council for the quarter ended 31 March 2019 indicates that Council's projected financial position at 30 June 2019 will be satisfactory at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.



M A Chorlton 3 May 2019

**"Responsible Accounting Officer"**

**Executive Manager Finance, Revenue and Information Technology  
Tweed Shire Council**

**OPTIONS:**

Not Applicable

**CONCLUSION:**

Refer to Statutory Statement above

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable

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

As detailed within the report.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

24 [FRIT-CM] Monthly Investment Report for period ending 30 April 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 **\$335,083,766** invested as at **30 April 2019** and the actual net return on these funds was **\$625,193** or **2.24%** annualised for the month. (Note: this is 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 30 April 2019 totalling \$335,083,766 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 **\$335,083,766** invested as at **30 April 2019** and the actual net return on these funds was **\$625,193** or **2.24%** annualised for the month. (Note: this is income received during the month not accrued interest)

### 1. Ethical Investments

#### Australian Ethical Classification

\$193,251,250 which represents 57.67% of the total portfolio

*Source: Australian Ethical*

#### Market Forces Classification

\$158,050,000 which represents 46.20% of the total portfolio

*Source: Market Forces*

Major Differences:

- Australian Ethical classify NAB and Westpac as non-fossil fuel lending institutions but not ANZ or CBA
- Market Forces classify ANZ as non-fossil fuel lending institutions but not CBA NAB or Westpac

### 2. Economic Commentary

#### Australian and World Economy and Cash Rate

At its 7 May 2019 meeting, the Reserve Bank of Australia Board decided to leave the cash rate unchanged at 1.50 per cent.

The outlook for the global economy remains reasonable, although the risks are tilted to the downside. Growth in international trade has declined and investment intentions have softened in a number of countries. In China, the authorities have taken steps to support the economy, while addressing risks in the financial system. In most advanced economies, inflation remains subdued, unemployment rates are low and wages growth has picked up.

Global financial conditions remain accommodative. Long-term bond yields are low, consistent with the subdued outlook for inflation, and equity markets have strengthened. Risk premiums also remain low. In Australia, long-term bond yields are at historically low levels and short-term bank funding costs have declined further. Some lending rates have declined recently, although the average mortgage rate paid is unchanged. The Australian dollar is at the low end of its narrow range of recent times.

The central scenario is for the Australian economy to grow by around 2¾ per cent in 2019 and 2020. This outlook is supported by increased investment in infrastructure and a pick-up in activity in the resources sector, partly in response to an increase in the prices of Australia's exports. The main domestic uncertainty continues to be the outlook for household consumption, which is being affected by a protracted period of low income growth and



declining housing prices. Some pick-up in growth in household disposable income is expected and this should support consumption.

The Australian labour market remains strong. There has been a significant increase in employment, the vacancy rate remains high and there are reports of skills shortages in some areas. Despite these positive developments, there has been little further progress in reducing unemployment over the past six months. The unemployment rate has been broadly steady at around 5 per cent over this time and is expected to remain around this level over the next year or so, before declining a little to 4¾ per cent in 2021. The strong employment growth over the past year or so has led to some pick-up in wages growth, which is a welcome development. Some further lift in wages growth is expected, although this is likely to be a gradual process.

The adjustment in established housing markets is continuing, after the earlier large run-up in prices in some cities. Conditions remain soft and rent inflation remains low. Credit conditions for some borrowers have tightened over the past year or so. At the same time, the demand for credit by investors in the housing market has slowed noticeably as the dynamics of the housing market have changed. Growth in credit extended to owner-occupiers has eased over the past year. Mortgage rates remain low and there is strong competition for borrowers of high credit quality.

The inflation data for the March quarter were noticeably lower than expected and suggest subdued inflationary pressures across much of the economy. Over the year, inflation was 1.3 per cent and, in underlying terms, was 1.6 per cent. Lower housing-related costs and a range of policy decisions affecting administered prices both contributed to this outcome. Looking forward, inflation is expected to pick up, but to do so only gradually. The central scenario is for underlying inflation to be 1¾ per cent this year, 2 per cent in 2020 and a little higher after that. In headline terms, inflation is expected to be around 2 per cent this year, boosted by the recent increase in petrol prices.

The Board judged that it was appropriate to hold the stance of policy unchanged at this meeting. In doing so, it recognised that there was still spare capacity in the economy and that a further improvement in the labour market was likely to be needed for inflation to be consistent with the target. Given this assessment, the Board will be paying close attention to developments in the labour market at its upcoming meetings.

*(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 80% of the portfolio held in cash and term deposits. Term deposits and bonds are paying average margins over the 90 day bank bill rate.

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 high yielding short-term deposits. Overall, the investment portfolio has returned a weighted average 1.05% pa above the 90 day UBS bank bill index for the last month.

### 3. Policy Term to Maturity Limits

Maturity Profile	Actual % Portfolio	Policy Limits
Less than 365 days	46.68%*	Minimum 40%
More than 365 days and less than 3 years	37.25%	Maximum 60%
3 years and less than 5 years	16.07%	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%	<b>1.37%</b>	A-1+	100%	<b>10.30%</b>
AA Category	100%	<b>27.08%</b>	A-1	100%	<b>11.64%</b>
A Category	60%	<b>18.79%</b>	A-2	60%	<b>17.61%</b>
BBB Category	20%	<b>9.33%</b>	A-3	20%	<b>0.60%</b>
Unrated	10%	<b>1.49%</b>	Unrated	10%	<b>1.79%</b>

### 5. Investment Summary

#### General Fund

Corporate Fixed Rate Bonds	4,669,386.31	
Floating Rate Notes	60,914,381.00	
Asset Backed Securities	0.00	
Fund Managers	0.00	
Term Deposits	93,999,999.00	
Call Account	7,500,000.00	<b>167,083,766.31</b>

#### Water Fund

Term Deposits	67,000,000.00	
Fund Managers	0.00	<b>67,000,000.00</b>

#### Sewerage Fund

Term Deposits	101,000,000.00	
Fund Managers	0.00	<b>101,000,000.00</b>

<b>Total Investments</b>	<b>335,083,766.31</b>
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It should be noted that the General Fund investments of **\$167 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 and 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. Investment Report Pack 1 April 2019 to 30 April 2019  
(ECM5876813)

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## REPORTS FROM THE EXECUTIVE MANAGER PEOPLE, COMMUNICATION AND GOVERNANCE

### 25 [PCG-CM] Mayor and Councillors Annual Fees 2019/2020

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 Local Government Remuneration Tribunal has made a determination under sections 239 and 241 of the *Local Government Act 1993* (NSW) in relation to fees payable to mayors and councillors for the 2019/2020 financial period.

The Tribunal has determined that an increase of 2.5 per cent in the minimum and maximum fee for the Mayor and Councillors is applicable for the 2019/2020 financial period.

Council needs to determine the fees payable for the 2019/2020 financial period, which are effective on and from 1 July 2019.

#### RECOMMENDATION:

**That the fees payable for the Mayor and Councillors for the 2019/2010 financial period be the maximum fees payable to members of the Regional Rural category council as determined by the Local Government Tribunal, being:**

Mayor	\$44,250
Councillor	\$20,280

It is noted that the Mayoral fee is payable in addition to the fee paid to the Mayor as a Councillor in accordance with section 249(2) of the *Local Government Act 1993* (NSW) which collectively equates to a maximum annual amount of \$64,530.

**REPORT:**

The Local Government Remuneration Tribunal has made a determination under sections 239 and 241 of the *Local Government Act 1993* (NSW) (Act) in relation to fees payable to mayors and councillors for the 2019/2020 financial period.

The Tribunal has determined that an increase of 2.5 per cent in the minimum and maximum fee for the mayoral office and councillors is applicable for the 2019/2020 financial period.

The proposed increase equate to an additional annual amount in the maximum fee payable to the Mayor of \$1080 and Councillor of \$490, over those fees pad in the 2018/2019 financial period.

For the purposes of the Tribunal's determination, Council is classified in the Regional Rural category which is defined as follows:

*“Councils categorised as Regional Rural will typically have a minimum population of 20,000.*

*Other features which distinguish them from other non-metropolitan councils include:*

- a major town or towns with the largest commercial component of any location in the surrounding area*
- a significant urban population existing alongside a traditional farming sector, and are surrounded by smaller towns and villages or may be located on or close to the coast with high levels of population and tourist facilities*
- provide a full range of higher-order services including business, office and retail uses with arts, culture, recreation and entertainment centres*
- regional services to the wider community through principal referral hospitals, tertiary education services and major regional airports*
- these councils may also attract large visitor numbers to established tourism ventures.”*

In accordance with section 241 of the Act, the Tribunal has determined the minimum and maximum fees for the Regional Rural category of councils as follows:

	2019/2020		2018/2019	
	Minimum	Maximum	Minimum	Maximum
<b>Councillor</b>	\$9190	\$20,280	\$8750	\$19,790
<b>Mayor*</b>	\$19,580	\$44,250	\$18,630	\$43,170

\* The Mayoral Fee is payable in addition to the fee paid to the Mayor as a Councillor in accordance with Section 249(2) of the Local Government Act 1993, which collectively equates to a maximum annual amount of \$64,530.

In determining the fees payable for the 2018/2019 financial period, it was resolved that the maximum fees of \$19,790 for Councillors and \$43,170 for the Mayor would be payable.

**OPTIONS:**

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Council can determine the fees applicable for the Mayor and Councillors across the range from the minimum to the maximum within the Regional Rural category.

**CONCLUSION:**

That Council determines the applicable fees payable to the Mayor and Councillors for the 2019/2020 period.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable  
Local Government Act 1993

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

Due allowance is provided within the appropriate budget for the payment of the annual fees to the Mayor and Councillors.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Inform – We will keep you informed

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Local Government Remuneration Tribunal Annual Report  
and Determination of Fees for 2019/2020 dated 15 April 2019  
(ECM5866289)

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## REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

26 [SUB-TCWC] Minutes of the Tweed Coast and Waterways Committee Meeting held Wednesday 13 February 2019

SUBMITTED BY: Natural Resource Management

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
- 1.1.3 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 Minutes of the Tweed Coast and Waterways Committee Meeting held Wednesday 13 February 2019 are reproduced in the body of this report for the information of Councillors.

### RECOMMENDATION:

That the Minutes of the Tweed Coast and Waterways Committee Meeting held Wednesday 13 February 2019 be received and noted.



## **REPORT:**

The Minutes of the Tweed Coast and Waterways Committee Meeting held Wednesday 13 February 2019 are reproduced as follows for the information of Councillors.

### **Venue:**

Canvas & Kettle Meeting Room

### **Time:**

9.00am

### **Present:**

Rhonda James (Chair); Cr Katie Milne; Carl Cormack; Bill Fenelon; Bill Hoskins; David Cranwell; Hamish Brace; John Harbison; Lindy Smith; Robert Quirk; Sam Dawson; Peter Comerford; Bruce Peate; Jane Lofthouse; Tom Alletson, Marama Hopkins.

### **Informal:**

Eddie White, Shane Davidson (11am).

### **Apologies:**

Jonathan Yantsch, Catherine Knight, Stewart Brawley.

### **Minutes of Previous Meeting:**

**Moved: Robert Quirk**

**Seconded: David Cranwell**

**RESOLVED** that the Minutes of the Tweed Coast & Waterways Committee meeting held Wednesday 12 December 2018 be accepted as a true and accurate record of the proceedings of that meeting.

### **Business Arising:**

#### **BA1. Proposed Dulguigan Algae Farm**

Tom briefed the committee on details of the proposal available from material submitted to Council prior to lodgement of an application. Should a DA be received Tom to review and provide update to committee.

#### **BA2. North Byron Parklands**

Tom provided a briefing on the sewage management system proposed for the facility. Tom confirmed that a water quality monitoring point had been established downstream of the festival site. Tom will look into the approval conditions of the facility and what water quality monitoring is to be undertaken by the operator.

### **Agenda Items:**

#### **A1. Tweed Estuary CMP Update**

Tom briefed the committee on progress with the CMP and the tidal inundation study. Cr Milne emphasised the importance of incorporating findings of the study into the planning framework for land release and development assessment.

#### **A2. Tweed Coastline Coastal Management Program**

Council is finalising a brief to be sent to Consultants to prepare a scoping study for the Tweed Coastline CMP. The initial list of issues to be considered in development of the CMP was discussed. Noted that the following interest groups to be included in list of stakeholders:

- Care groups

- Agriculture
- Tourism
- Tweed River Entrance Sand Bypass Project

An additional issue is the rationalisation of beach access tracks (private and public maintained).

### **A3. Koala Survey**

Marama provided an update on recent koala monitoring activity. There have been small increases in koala activity in some areas.

### **General Business:**

#### **GB1. Camping - Mooball to Wooyung**

Bill Hoskins raised a number of concerns regarding camping:

- Numerous records of campers in vehicles
- Multiple types of damage to environment/fencing
- Excrement, habitat destruction, litter, dogs, fires, tracks, abuse
- Cumulative damage and costs to Council
- Happening after hours and compliance action seems difficult
- Bill calls for coordinated and increased effort in compliance

Shane Davidson acting coordinator of Regulatory Services attended the meeting and advised:

- He is conducting a systematic review of regulatory services and this issue is being considered within that context
- Details of recent compliance efforts including after-hours inspections were provided
- Acknowledge mostly tourists rather than homeless
- Need to block secluded tracks that encourage sly camping
- "No Camping" signs
- Social media review of sites that may encourage free camping
- Acknowledge Bill's dedication and contribution

Noted that reporting issues, even if a Regulatory Services officer is not available, allows Council to determine hot spots and prioritise activities. Discussion on rationalising car parking areas and beach accesses and increased signage.

#### **GB2. Riparian Project Team (RPT)**

Tom provided an update and overview of the work undertaken by Council's Riparian Projects Team, which is part of the Waterways Program. The team is managing multiple sites on public land throughout the Shire, in particular providing support to Landcare, maintaining national tree day plantings and producing trees at the Uki Nursery.

The Chair requested that an acknowledgement of the team's hard work and dedication be recorded and the thanks of the committee noted in the minutes.

#### **GB3. Operation of Charter Vessels in Terranora Broadwater**

John Clarke, local fisherman and advocate of Terranora Broadwater recently submitted to Tom a statement regarding the activities of one of the Terranora Broadwater charter vessels alleging that the vessel had caused damage to the intertidal banks and seagrass beds. John had requested that the matter be tabled and recorded at the TCWC meeting.

Tom read John's statement to the committee.

The committee noted serious concern regarding the matter. Tom advised that he had spoken to Fisheries and they are investigating the incident. It was requested that Tom contact DPI Fisheries requesting that the outcome of the investigation of the matter be advised to Council.

Tom was asked to present some comparative aerial imagery of seagrass in the area of concern in Terranora Broadwater.

**GB4. Robert Quirk**

Robert updated the committee on a number of items including:

- Farmers for climate action - a recent meeting attended in Canberra to try and engage across party political lines to support action on climate change
- An update on the status of the Stotts Channel vegetation clearing permit

**GB5. Sam Dawson**

Sam updated the committee on the reformation of Community Working Group to inform a consultant's review of the Water Supply Demand Management Strategy.

**Next Meeting:**

The next meeting of the Tweed Coast & Waterways Committee will be held Wednesday 10 April 2019 (now deferred to Wednesday 12 June).

The meeting closed at 12.30 pm.

**EXECUTIVE LEADERSHIP TEAM'S COMMENTS:**

Nil.

**EXECUTIVE LEADERSHIP TEAM'S RECOMMENDATIONS:**

Nil.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

Terms of Reference - Adopted by Council at its meeting on 17 November 2016 Minute No: 517 (ECM4316118).

**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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**27 [SUB-TCKM] Minutes of the Tweed Coast Koala Management Committee Meeting held Tuesday 19 March 2019**

**SUBMITTED BY: Natural Resource Management**

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
- 1.1.1 Biodiversity Management - To protect and manage the environment and natural beauty of the Tweed for current and future generations.

**ROLE:** **Leader**

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**SUMMARY OF REPORT:**

The Minutes of the Tweed Coast Koala Management Committee Meeting held Tuesday 19 March 2019 are reproduced in the body of this report for the information of Councillors.

**RECOMMENDATION:**

**That the Minutes of the Tweed Coast Koala Management Committee Meeting held Tuesday 19 March 2019 be received and noted.**

**REPORT:**

The Minutes of the Tweed Coast Koala Management Committee Meeting held Tuesday 19 March 2019 are reproduced as follows for the information of Councillors.

**Venue:**

Mt Warning Room, Murwillumbah Civic Centre

**Time:**

2:00 pm

**Present:**

Jenny Hayes, Rhonda James, Marama Hopkins, Scott Hetherington, Cr Katie Milne, Bill Hoskins, Mark Kingston, Tracey Stinson.

**Apologies:**

Lorraine Vass, David Norris, Tanya Fountain.

**Minutes of Previous Meeting:**

**Moved:** Cr Katie Milne

**Seconded:** Jenny Hayes

**RESOLVED** that the Minutes of the Tweed Coast Koala Management Committee meeting held Tuesday 23 October be accepted as a true and accurate record of the proceedings of that meeting.

**Business Arising:**

Nil.

**Agenda Items:**

1. *Recognition of committee members' recent awards*

Mark Kingston noted that Lorraine Vass and Jenny Hayes have both recently been publicly recognised for their service to koala conservation. The committee offered congratulations to Lorraine on receiving the Australian Wildlife Society's 2018 Serventy Conservation Award and to Jenny for receiving an Australia Day Volunteer of the Year Award.

**Moved:** Cr Katie Milne

**Seconded:** Rhonda James

**RESOLVED** that Lorraine Vass and Jenny Hayes be acknowledged and congratulated for receiving the Australian Wildlife Society's 2018 Serventy Conservation Award and Australia Day Volunteer of the Year Award.

2. *OEH SOS funding and projects update*

Funding has been received from NSW OEH but still waiting on clearance regarding an official announcement. Council staff will meet with Biodiversity Conservation Trust in April to finalise training and arrangements and are currently finalising tender documents for appointment of a Project Officer. Start date is likely to be May 2019.

3. *Lot 919, Pottsville - land tenure and funding update*

Memorandum of Understanding signed by Minister in February 2019. This includes landholder consent to undertake detailed planning and commence construction. Surveying for subdivision, development application including flora and fauna assessments and utilities

planning are all underway. Tender preparation for detailed plans and construction is to be commenced shortly and the anticipated construction start date is October 2019.

4. *Kings Forest KPOM update*

Mark and Jenny attended the public meeting with the Independent Planning Commission on the modification application relating to the Kings Forest Koala Plan of Management. 26 public presentations were made. Mark congratulated members of the public on well-presented submissions. Jenny acknowledged Mark for assistance with interpreting documents and issues.

Main points of council submission - a number of issues require addressing, including: timing of securing offsets needs to occur prior to construction certificate, fencing issues in golf course area and consistency with SEPP Kings Forest, provision of off leash dog areas, fencing and underpasses through environmental areas, rehabilitation performance criteria. Further information provided to IPC, which will also be reported to Council.

5. *2018 Tweed Coast koala study update*

Marama gave an overview of the 2018 Tweed Coast koala study outcomes to support previous presentations to Councillor workshop and Tweed Coast and Waterways Committee.

**Action:** Marama to publish presentation as pdf slides on Council website and provide a copy of the presentation to the committee.

6. *Koala habitat restoration update*

Scott provided an update on key habitat restoration outcomes and status on behalf of Tanya. The key highlights and issues included nearly 10 hectares (10,750 trees) of new koala habitat planted in 2018; only 1,200 trees so far for 2019 due to hot and dry conditions; all plantings now mapped and publicly displayed via Council website; follow up inspections of planting sites have identified many plantings continuing to be used by koalas, community plantings undertaken or planned with Friends of Cudgen Nature Reserve and Team Koala; and a targeted campaign to secure additional private land for inclusion in the program is currently in development.

**Action:** Scott to prepare and distribute a media release sharing the successful KPOM outcomes (including the 2018 koala study and habitat restoration progress), together with acknowledgment of the awards received by committee members.

7. *ARC Linkage project update*

All field work complete and field data analysis is underway. Spatial prioritisation across the region being modelled and region-wide habitat map being prepared. 2<sup>nd</sup> paper in review (Biological Conservation); 3<sup>rd</sup> paper in review (Transactions in GIS); others in preparation. Expression of Interest in preparation for research project under NSW Koala Strategy.

**General business:**

1. *North-south linkage between Tweed and Byron shires*

Cr Milne raised the issue of planning and implementing north-south connectivity for koalas between Tweed and Byron Shires. Some of the relevant issues discussed in relation to this issue included: that koala habitat is being established in this area as a condition of the Dunloe Sands quarry development approval; that there has been an increase in koala activity reported for the North Byron Parklands; and that koala activity was recorded in Billinudgel Nature Reserve in 2018. Some of the constraints including land managed for sugar cane production

and the relative priority of this area against the remainder of the Tweed Coast were noted and discussed.

**Action:** Scott to request that Tanya undertake an analysis of opportunities and constraints for additional habitat restoration between Pottsville Wetland and Wooyung Nature Reserve, for discussion with committee at next meeting.

*2. Use of Black Rocks sports field*

The committee discussed a reported plan to increase the use of Black Rocks sports field. No certain information was available as to the nature, scope or timing of any proposed increase. It was noted that any additional organised events are required to be referred to the NRM Unit for assessment.

**Action:** Scott to discuss with Parks and Recreation Services and bring information to the next meeting.

**Next Meeting:**

Tuesday 4 June 2019 at 1.30pm (Mt Warning Room, Murwillumbah Civic Centre).

The meeting closed at 4.20pm

**EXECUTIVE MANAGEMENT TEAM'S COMMENTS:**

Nil.

**EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:**

Nil.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Code of Meeting Practice.

Terms of Reference – adopted 17 November 2017 (ECM4316512)

**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] DA12/0083 Husk Distillery - Business Investment Policy**

**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
- 3.1.5 Economic Development - To support the local economy and attract new business and employment to the Tweed.

**ROLE:** **Leader**

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

### C2 [CNR-CM] Extending the Waste Collections Contract (RFO2016040) with Solo Resource Recovery

#### REASON FOR CONFIDENTIALITY:

This report is confidential as it involves information relating to a current contract of Council, and includes legal opinions and financial information that are commercial in nature.

#### 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.
- (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.

mhun

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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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## REPORTS FROM THE DIRECTOR ENGINEERING IN COMMITTEE

### C3 [E-CM] Development Servicing Plans for Water Supply and Sewerage Services

#### REASON FOR CONFIDENTIALITY:

The matter deals with the setting of charges by Council. Legal advice has been sought to confirm a position recommended to Council. Access to the legal advice and the discussion within the report may provide an opportunity for large developers to challenge Council in the setting of developer charges.

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

mhm

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Leaving a Legacy  
*Looking out for future generations*

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

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.4 Water Supply -- To provide secure, high quality and reliable drinking water which meets health and environmental requirements.

ROLE: **Provider**

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## REPORTS FROM THE EXECUTIVE MANAGER FINANCE, REVENUE AND INFORMATION TECHNOLOGY IN COMMITTEE

### C4 [FRIT-CM] Transactional Banking Services Tender

#### 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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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: **Provider**

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