



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

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

# Agenda

## **Planning Committee Meeting Thursday 7 February 2019**

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

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

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

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

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

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

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

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

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

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

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

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

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

(3A) **Development control plans**

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

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

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

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

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

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

(6) **Definitions**

In this section:

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

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## Items for Consideration of the Planning Committee:

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## REPORTS THROUGH THE GENERAL MANAGER

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA17/0836 for a Staged Development: Two Lot Subdivision (Stage 1) and 12 Lot Community Title Subdivision (Stage 2) and Associated Civil Works at Lot 12 DP 1208402 No. 79 Tamarind Avenue, Bogangar

**SUBMITTED BY:** Development Assessment and Compliance

mhm



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

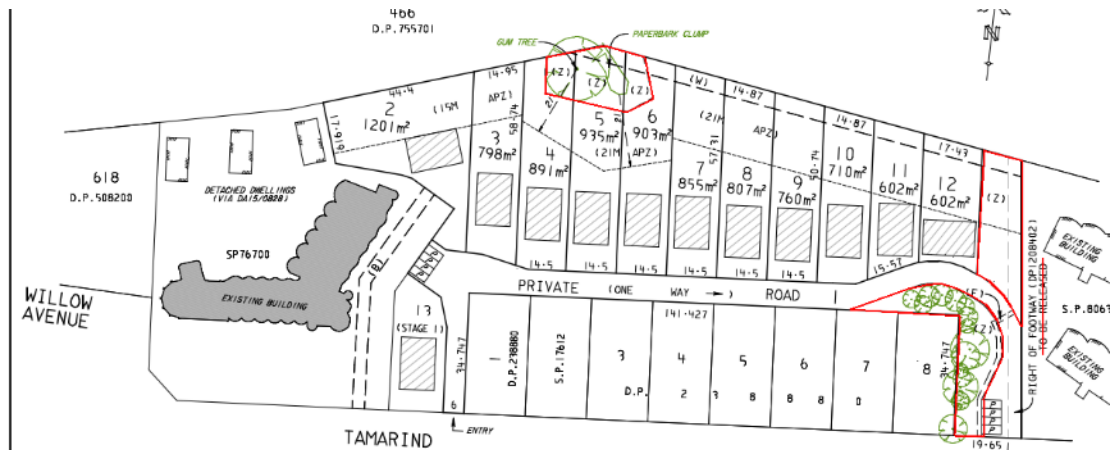
- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** Provider

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#### SUMMARY OF REPORT:

Council is in receipt of a Development Application for a staged residential subdivision. Stage 1 involves a two lot Torrens title subdivision to create a 551m<sup>2</sup> residential lot (Lot 13) and a development lot (Lot 14), 12,022m<sup>2</sup> in area. Stage 1 also includes filling of the proposed Lot 13 building envelope in addition to the filling in the locations of the building envelopes associated with Stage 2. A Conservation Area subject to a Habitat Management Plan is proposed for the area outlined in red below to be established at Stage 1. Stage 2 comprises a twelve lot Community Title subdivision of Lot 14, creating 11 residential lots and one common property lot. Stage 2 also includes the construction of a 6m wide access road and eight visitor car parking spaces.



**Lot configuration after Stage 2 – Red outline denotes Conservation Area**



**Civil Works Plan Stage 1 highlighting location of proposed fill**

This application was received in November 2017 and since this time, several complex issues were identified and the proposal was amended. The key issues involve flooding hazard impacts, stormwater infrastructure, earthworks, an existing Right of Footway easement benefiting Council, ecological impacts, pedestrian and traffic access issues, bushfire hazards, and compliance with Tweed Development Control Plan 2008.

As the subject site is mapped as flood prone, earthworks are proposed involving filling of the land only at the location of the building envelopes to 3.4m AHD to ensure the future homes occur above the Q100 Flood Level. Tweed Development Control Plan 2008 requires filling of the entire lot however this variation to the controls is considered acceptable keeping earthworks to a minimum and is designed to not adversely impact surrounding land, preserving the existing drainage conditions. Additionally, any future dwelling is to feature a second storey 'PMF Refuge' as recommended in the Flood Response Assessment Plan.

Through the negotiation process, the layout design was modified from the original proposal to address ecological impacts. Ecological reporting was submitted with the application and Council's Natural Resource Management Unit considered that any adverse cumulative impact on the site's ecological values as a result of the proposed development could be avoided or minimised and managed to an acceptable level through conditions of approval which include the nomination of key areas as a Conservation Area (outlined in red above); preparation and implementation of a Habitat Management Plan and a Section 88B Restrictive Covenant. The Habitat Management Plan involves the retention, enhancement and protection of a known Bush Stone-curlew nesting/roosting area and Endangered Ecological Community on site.

It is noted that during the assessment, a report was made regarding an alleged interference to the Bush Stone-curlew curlew nesting/roosting area at the subject site. This report was referred to NSW Office of Environment and Heritage who are the responsible agency for any harm to endangered species. Nonetheless, the subject Development Application was assessed having regard to the presence and suitability of the site being an ongoing home to the endangered species. This investigation is ongoing.

The application was placed on exhibition for a period of 14 days from Wednesday 17 January 2018 to Wednesday 31 January 2018 during which time nine submissions were received. Concerns raised within the submissions are considered to be adequately addressed subject to conditions of consent.

Given the submissions made objecting to the proposal, the application has been referred to Council for determination.

### **RECOMMENDATION:**

**That Development Application DA17/0836 for a staged development: two lot subdivision (stage 1) and 12 lot community title subdivision (stage 2) and associated civil works at Lot 12 DP 1208402 No. 79 Tamarind Avenue, Bogangar be approved subject to the following conditions:**

### **GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and additional information received by Council on 16 May 2018, 7 September 2018 and 16 November 2018 and Plan Nos:**

- **Proposed Subdivision Plan – Stage 1 Rev E Sheet 1 of 2 prepared by B & P Surveys and dated 23 August 2018;**
- **Proposed Subdivision Plan – Stage 1 Rev E Sheet 2 of 2 prepared by B & P Surveys and dated 23 August 2018 annotated in red;**
- **Concept Subdivision Plan - Revision P6 drawing number SK00 prepared by Cozens Regan Group and dated November 2018;**
- **Concept Civil Works Plan - Revision P7 drawing number SK03 prepared by Cozens Regan Group and dated November 2018;**
- **Proposed Subdivision Plan – Stage 1 Rev E prepared by B & P Surveys and dated 23 August 2018 annotated in red;**

**except where varied by the following staging:**

**The development shall be undertaken in the following stages.**

#### **Stage 1:**

**- Consists of:**

- **Subdivision of the subject site to create Lot 13 and residual Lot 14 as a conventional two lot Torrens title subdivision;**
- **Filling of the building pads for proposed Lot 13 and earthworks / filling works associated with the community title portion of the development and associated services for Lots 13 and 14;**
- **Establishment of a Conservation Area and landscaping.**



**Stage 2:**

**- Consists of:**

- **Subdivision of Lot 14 to create 11 residential lots and 1 Community Lot as a Community Title Scheme;**
- **Internal subdivision works which includes construction of private access road and provision of services to each Lot within the Community Title Scheme;**

except where varied by the conditions of this consent.

[GEN0005]

- 2. The subdivision is to be carried out in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design and Construction Specifications.**

[GEN0125]

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

[GEN0135]

- 4. Sewer manholes are adjacent to this site. Manholes are not to be covered with soil or other material.**

**Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application form accompanied by the required attachments and the prescribed fee. Works will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.**

[GEN0155]

- 5. Council advises that the site is flood liable with a Design Flood Level of 3.0m AHD. The minimum habitable floor level for the site is RL 3.5m AHD, unless notified otherwise by Council.**

[GEN0195]

- 6. Access**

**The intent of measures for property access for the Stage 2 Community Titled allotments is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation.**

- (a) The property access to the proposed Stage 2 - Community Titled allotments off Tamarind Avenue shall comply with the provisions of this consent, Section 4.1.3 of 'Planning for Bush Fire Protection 2006' and Council's Development Control Plan - Section A2 "*Site Access and Parking Code*" and Council's "*Driveway Access to Property - Design Specification*" (*current version*), whichever is the most stringent.**

- (b) Signage is required to be provided clearly nominating the access road as one way; stating no parking permitted along the access road and nominate parking spaces within Lot 1 Common Property to be made available to visitors at all times.

[GEN0330]

7. The areas identified as Proposed Easement (Z) Vegetation Protection Covenant (Restriction) on Proposed Subdivision Plan Dwg. No. 21588 D Rev. E Sheet 2 of 2 dated 23 August 2018 prepared by B&P Surveys including annotations in red are to be collectively described as the Conservation Area for the purposes of this consent.

[GENNS01]

8. The Conservation Area shall be managed for conservation purposes in perpetuity and subject to an approved Habitat Management Plan.

[GENNS01]

9. Maintenance, management and ongoing rehabilitation of the Conservation Area is to be undertaken by the Developer and successors in title in accordance with the conditions of this consent and the approved Habitat Management Plan. This responsibility including funding requirements and responsibilities for that land identified as common property managed by the Community Association must be reflected within the Community Management Statement.

[GENNS01]

10. The approved subdivision shall not result in any clearing of native vegetation without prior approval from the relevant authority.

[GENNS01]

11. Stormwater management shall be in general accordance with the Stormwater Management Plan prepared by Cozens Regan Group dated Revised May 2018, except where varied by the conditions of this consent.

[GENNS02]

12. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the Report On Preliminary Geotechnical Investigation for Proposed Residential Subdivision No. 77 Tamarind Avenue, Bogangar, prepared by Geotech Investigations Pty Ltd, dated May 2018, except where varied by the conditions of this consent.

The Report advises that significant settlements are likely to occur and ground improvements (possibly pre-loading) and settlement monitoring will be required.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS03]

13. Prior to the issue of the Construction Certificate for Stage 1, evidence shall be provided to Council that the existing stormwater infrastructure servicing neighbouring Strata Plan SP76700 (77 Tamarind Avenue) that burdens the area of proposed Lots 2 and 13 has been lawfully relocated and no longer burdens the site.

[GENNS04]

14. The existing Right of Footway 4 Wide (DP1208402) is to be retained, benefiting Tweed Shire Council.

[GENNS06]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

15. The developer shall provide a minimum of 8 Visitor car parking spaces (including parking for the disabled) in accordance with Tweed Shire Council's Development Control Plan Part A2 - *Site Access and Parking Code* for Stage 2 of the development.

Full design detail of the proposed parking and maneuvering areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a Construction Certificate for Subdivision Works for Stage 2.

[PCC0065]

16. The Construction Certificate Application for Subdivision Works for Stage 2 of the development shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's *Development Design Specification D7 - Stormwater Quality*. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Permanent stormwater quality treatment shall comply with the *Tweed Urban Stormwater Quality Management Plan* and Council's *Development Design Specification D7 - Stormwater Quality*. Variations to these standards shall only be accepted where they are supported by best practice water sensitive urban design principles entailed in the "Water By Design" guidelines (being a program of the South East Queensland Healthy Waterways Partnership).

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

Proposed treatment measures other than "deemed to comply" measures as specified in Council's *Development Design Specification D7*, must be supported by engineering calculations, including MUSIC modelling, to confirm that acceptable capacity and efficiency is achieved.

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

[PCC0165]

17. Prior to the issue of a Construction Certificate for Subdivision Works for both Stage 1 and Stage 2, an applicable Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the

works associated with that Construction Certificate, as set out in Council's fees and charges at the time of payment.

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

The bond will be refunded, if not expended, when the Subdivision Certificate for that stage of the development is issued.

[PCC0275]

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

[PCC0285]

19. Where earthworks result in the creation of batters greater than 1m high and/or slopes within allotments 17° (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application for Subdivision Works, as applicable to each stage of the development.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
- (e) Feature 80% local native species.

[PCC0455]

20. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material and documentary evidence that the fill material is free of any contaminants shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

21. All placed fill is to be graded at a minimum of 1% and must at no time result in additional runoff or ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject site. No retaining walls are approved as part of this consent.

[PCC0485]

22. Prior to the issue of a Construction Certificate for each stage of the development, a Detailed *Geotechnical Investigation* shall be undertaken by an appropriately qualified practising professional Geotechnical Engineer, unless considered unjustified by the Geotechnical Engineer and supported in writing and endorsed by Council.

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

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

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

[PCC0500]

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

[PCC0675]

24. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works, as applicable to each stage of the development. Safe public access shall be provided at all times.

[PCC0865]

25. Prior to the issue of a Construction Certificate for Subdivision Works, as applicable to each stage of the development, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) Detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by the PCA:

- **earthworks**
  - (a) **Stage 1**
    - **filling of the building pad for proposed Lot 13 and earthworks / filling works associated with the community title portion of the development (to RL 3.4m AHD with 1:4 batters).**
  - (b) **Stage 2**
    - **associated with the conversion of Stage 1 Lot 14 to 12 Community Title allotments, including the private access road.**
  
- **roadworks/furnishings/access**
  - (a) **Stage 1**
    - **provision of a standard vehicular access off Tamarind Avenue to service proposed Lot 13.**
    - **provision of a 1.5m wide concrete footpath along the eastern boundary of the subject site to Council standards from Tamarind Avenue to the Crown Reserve to the north;**
  - (b) **Stage 2**
    - **provision of a looped access road (presented as a driveway off Tamarind Avenue to identify that it is a private road and not a public road), of adequate width (minimum 6m wide) to comply with the provision of AS2890.1, the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 of this consent as well as safely accommodating standard 9.55m Garbage Truck and a 12.5m "Single Unit Truck/Bus". The access road (including any kerbing) is to offset a minimum 1.2m from the eastern property boundary, whilst maximising its clearance to the identified Bush Stone Curlew nesting area.**
    - **Provision of eight visitor car parking spaces.**
    - **Signage nominating the access road as one way; stating no parking permitted along the access road and nominate parking spaces within Lot 1 Common Property to be made available to visitors at all times.**
  
- **stormwater drainage**
  - (a) **Stage 1**
    - **provide applicable roofwater connection points into the kerb and gutter of Tamarind Avenue for proposed Lot 13;**
    - **provide a connection point to the existing drainage network in Tamarind Avenue for the Stage 2 development;**
    - **provide evidence that the site (including that areas of future Lots 2 and 13) is unburdened by pre-existing stormwater infrastructure benefiting SP76700 and that the stormwater infrastructure has been lawfully relocated.**
  - (b) **Stage 2**
    - **construction of the Stage 2 private stormwater system, including On Site Detention (OSD) under the driveway.**

- **landscaping works**
  - (a) **Stage 1**
    - works to be undertaken in accordance with the approved Habitat Management Plan which features a 1.5m wide concrete footpath along the eastern boundary of the subject site;
  - (b) **Stage 2**
    - any works to be undertaken in accordance with the approved Habitat Management Plan;
    - provision of a 1m wide landscaped strip along the southern side of the internal driveway within Lot 1 Community Lot featuring native shrubs.
  
- **sedimentation and erosion management plans**
- **location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure);**
  - (a) Including submission of electrical reticulation plans (on the opposite side to water mains), underground cables and all other electrical infrastructure including transformers and substations.

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

[PCC0985]

26. **Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of to the satisfaction of Council's General Manager or delegate.**

[PCC1065]

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

- (a) **The Construction Certificate Application for Subdivision Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.**
- (b) **Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.**
- (c) **The stormwater and site works shall incorporate Water Sensitive Urban Design principles and where practical, integrated water cycle management.**

[PCC1105]

28. **Disposal of stormwater by means of infiltration devices must be carried out in accordance with Section D7.09 of Tweed Shire Councils *Development Design and Construction Specification - Stormwater Quality*.**

**Surcharge overflow from the infiltration area to the street gutter must occur by visible surface flow, not piped.**

[PCC1125]

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

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

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

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee. The Section 68 Application must be approved by Council prior to the associated Construction Certificate being issued.
- b) Where Council is requested to issue a Construction Certificate for Subdivision Works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

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

A detailed Erosion and Sediment Control Plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality* shall be submitted with each Construction Certificate Application for Subdivision Works.

[PCC1155]

**31. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be no greater than pre-development rates. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.**

Details are to be submitted with the Construction Certificate and S68 stormwater application.

[PCC1165]

**32. Lot 13 of Stage 1 shall be provided with an individual Council water connection off the main in Tamarind Avenue to allow for individual metering. Lot 14 of Stage 1 shall be provided with an individual Council water connection off the main in Tamarind Avenue to service the future, Stage 2 Community Title development.**

Stage 2 of the development shall provide a private, internal water main within the private access road, sized to cater for the demands of the Community Title



development (including fire-fighting requirements), with a bulk water meter at the road frontage and individual house connections for each allotment.

[PCC1175]

33. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

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

[PCC1185]

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

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

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

[PCC1310]

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

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

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

[PCC1335]

36. The proposed water and sewer infrastructure on the Civil Works Plan submitted are considered to be preliminary and are subject to change to meet Council requirements.

[PCCNS01]

### 37. Stormwater

All stormwater outlets shall discharge to a lawful point of discharge, being a Council drainage system, existing watercourse or registered easement, compliant with Council's Design Specifications D5 - *Stormwater Drainage Design* and D7 - *Stormwater Quality*. The design and location of all stormwater outlets and related treatment and mitigation structures must consider and make provision for future access for maintenance, to the satisfaction of Council.

Allotments with adverse fall that cannot drain to a street shall provide a combination of infiltration and detention with level spreaders, to minimise adverse impacts on downstream property.

Where infiltration is adopted, the infiltration device must;

- (a) Comply with the provisions of Council's Design Specification D7 - Stormwater Quality, section D7.09.9.
- (b) Surcharge by visible surface flow, not piped.
- (c) Be sized to capture and infiltrate all storm events up to a Q20 ARI, unless agreed otherwise by Council.
- (d) Be designed to allow for cleaning and maintenance overhauls.
- (e) Be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (f) Be designed to withstand loading from vehicles during construction and operation of the development.
- (g) Be located clear of any sewer easements.

[PCCNS02]

38. Whilst a connection to the public stormwater system in Tamarind Avenue is generally supported connection at the location depicted in Cozens Regan Group drawing SK02 Rev P7 dated 11/18 is not approved. Council plans to upgrade this system and it is not clear if the proposed connection will be viable. The exact location of the sites stormwater connection to the public system shall be confirmed at detailed design stage (construction certificate or stormwater drainage works application).

[PCCNS03]

39. Prior to issue of the Construction Certificate for Subdivision Works for Stage 2, a draft Community Management Statement is to be submitted to Council. The statement is to include provisions for (but not be limited to) management of the Conservation Area, the use of the access road by emergency services, bona fide members of the public and public authorities. Additionally, the Community Management Statement must include the following:

- (a) Creation and incorporation of a Community Association to be responsible for the management and maintenance of common property;
- (b) Landscape guidelines specifying minimum landscape requirements for each dwelling to the satisfaction of Tweed Shire Council and including the requirement for a minimum of 90% of all landscaping to comprise local native species and prohibiting the planting of environmental weed species;

- (c) The approved Habitat Management Plan specifying methodology and funding source for the maintenance and monitoring of the Conservation Area on Common Property;
- (d) A Utility Services Plan, showing Works As Executed (WAE).
- (e) Minimum front setback provisions for future dwellings including 8m for Lots 3-7; 6m for Lots 8-10 and 4m for Lots 11 & 12.

[PCCNS03]

40. The applicant shall prepare a Habitat Management Plan (HMP) for the Conservation Area to include:

- (a) Construction phase and operational phase management measures to ensure protection of:
  - Vegetation classified as an Endangered Ecological Community;
  - Bush Stone-curlew individuals and habitat onsite.
- (b) Schedule and specifications of all habitat restoration/enhancement works to improve habitat conditions to be completed prior to issue of subdivision certificate for Stage 1 including:
  - (i) Suitable fencing or soft/hard landscape measures to clearly delineate the boundary of the Conservation Area. Such fencing and/or landscape measures shall be appropriately designed to ensure restriction of incompatible activities;
  - (ii) Assisted habitat restoration of the Conservation Area extending across Lot 4, Lot 5 and Lot 6;
  - (iii) Bush Stone-curlew habitat enhancement elements;
  - (iv) Construction of a 1.5m wide concrete footpath along the eastern boundary to Council standards.
- (c) Details of Conservation Area maintenance responsibilities and protocols for the developer and successors in title;
- (d) Details of a Bush Stone-curlew monitoring program;

The HMP shall be prepared by a suitably qualified ecologist with proven experience and knowledge of Bush Stone-curlew and Endangered Ecological Community management and be approved by Council's General Manager or delegate prior to issue of Construction Certificate for Stage 1 of the development.

[PCCNS04]

41. Prior to the issue of any Construction Certificate for the development, Development Consent D87/0874 as amended, shall be surrendered pursuant to Section 4.17(1)(b) and 5 of the Act and Clause 97 of the Regulations, that part of the Consent which is located within the subject site.

[PCCNS04]

#### **PRIOR TO COMMENCEMENT OF WORK**

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

[PCW0005]

**43. Prior to the commencement of works for Stage 2, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-**

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or**
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.**
- (c) WorkCover Regulations 2000**

[PCW0025]

**44. Any imported fill material must be from an approved source.**

**Prior to commencement of filling operations (as applicable to each stage of the development), details of the source of the imported fill, must be submitted to the satisfaction of the General Manager or his delegate.**

[PCW0375]

**45. Subdivision work (as applicable to each stage of the development) in accordance with the development consent must not commence until:**

- (a) a Construction Certificate for that subdivision work has been issued in accordance with Council's Development Construction Specification C101 by:**
  - (i) the Consent Authority, or**
  - (ii) an Accredited Certifier, and**
- (b) the person having the benefit of the development consent:**
  - (i) has appointed a Principal Certifying Authority,**
  - (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.**

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

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

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

[PCW0815]

**46. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the Defects Liability Period for the Stage 2 Subdivision works only.**

[PCW0835]

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

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

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

[PCW0985]

48. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new (or modification of the existing) driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCW1170]

#### **DURING CONSTRUCTION**

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

[DUR0005]

50. 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]

51. 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]

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

**A. Short Term Period - 4 weeks.**

**L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

**B. Long term period - the duration.**

**L<sub>Aeq, 15 min</sub> noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

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

[DUR0415]

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

**The earthworks and filling shall also be undertaken in accordance with the recommendations provided in the *Geotechnical Investigation* (as required by Consent Condition 22) and monitored by a Registered Geotechnical Testing Consultant.**

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

[DUR0795]

**55. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his delegate.**

[DUR0985]

**56. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the issue of each applicable Subdivision Certificate.**

[DUR0995]

**57. 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]

**58. All works below 1.0m natural ground surface or will lower the water table beyond 1.0m below natural ground surface shall be carried out in accordance with Council's Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.**

[DUR1075]

**59. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

**60. Before the commencement of the relevant stages of private road construction for Stage 2, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.**

- (a) **That the pavement has been designed in accordance with Tweed Shire Council's Development Design Specification, D2.**
- (b) **That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.**
- (c) **That site fill areas have been compacted to the specified standard.**
- (d) **That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing (including trenches for services) has been completed in accordance with Table 8.1 of AS 3798-2007.**

[DUR1805]

**61. During the relevant stages of the Stage 2 access road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:**

- (a) **That the pavement layers have been compacted in accordance with Council's Development Design and Construction Specifications.**
- (b) **That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.**

[DUR1825]

**62. 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]

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

**Roadworks (Stage 2)**

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

**Water Reticulation, Sewer Reticulation, Drainage (as applicable to each stage of the development)**

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

**Stormwater Quality Control Devices (other than proprietary devices) (Stage 2)**

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - On Maintenance
- (f) Off Maintenance

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

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

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

[DUR1895]



64. Where existing kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]
65. The developer/contractor is to maintain a copy of the development consent, approved Management Plans and Construction Certificate approval including plans and specifications on the site at all times. [DUR2015]
66. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site. [DUR2185]
67. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are maintained for each stage of the development until Council is satisfied that the site is fully rehabilitated. [DUR2375]
68. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate. [DUR2425]
69. During Stage 2 construction, a “Satisfactory Inspection Report” is required to be issued by Council for all s68h2 permanent Stormwater Quality Control Devices, prior to backfilling. The proponent shall liaise with Councils Engineering Division to arrange a suitable inspection. [DUR2445]
70. All works and measures shall be undertaken in accordance with the approved Habitat Management Plan [DURNS01]
71. Vegetation protection fencing around the perimeter of the Conservation Area shall be installed prior to commencement of any Stage 1 works onsite in accordance with Australian Standard AS4970:2009 Protection of trees on development sites. Vegetation protection fencing shall remain for the duration of the construction period unless otherwise approved by Council’s General Manager or delegate [DURNS01]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

72. Prior to issue of a Subdivision Certificate for each stage of the development, all applicable works/actions/inspections etc required by other conditions or approved Management Plans or the like for that stage of the development shall be completed in accordance with those conditions or plans. [PSC0005]
73. 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.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's Certificate of Compliance signed by an authorised officer of Council.

**BELOW IS ADVICE ONLY**

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

**Stage 1:**

Water: 1 ET @ \$13,632.00	= \$13,632.00
Sewer: 1 ET @ \$6,459.00	= \$6,549.00

**Stage 2:**

Water: 10 ET @ \$13,632.00	= \$136,320.00
Sewer: 10 ET @ \$6,459.00	= \$65,490.00

[PSC0165]

**74. Section 7.11 Contributions**

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

A Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 7.11 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

**Stage 1**

- |   |             |
|---|-------------|
| (a) Tweed Road Contribution Plan:<br>6.5 Trips @ \$1293 per Trips<br>(\$1,145 base rate + \$148 indexation)<br>CP Plan No. 4<br>Sector7_4 | \$8,152.85* |
| (b) Open Space (Casual):<br>1 ET @ \$624 per ET<br>(\$502 base rate + \$122 indexation)<br>CP Plan No. 5                                  | \$605.28*   |

<p><b>(c) Open Space (Structured):</b>  <b>1 ET @ \$714 per ET</b>  <b>(\$575 base rate + \$139 indexation)</b>  <b>CP Plan No. 5</b></p>	<p><b>\$692.58*</b></p>
<p><b>(d) Shirewide Library Facilities:</b>  <b>1 ET @ \$933 per ET</b>  <b>(\$792 base rate + \$141 indexation)</b>  <b>CP Plan No. 11</b></p>	<p><b>\$905.01*</b></p>
<p><b>(e) Bus Shelters:</b>  <b>1 ET @ \$71 per ET</b>  <b>(\$60 base rate + \$11 indexation)</b>  <b>CP Plan No. 12</b></p>	<p><b>\$68.87*</b></p>
<p><b>(f) Eviron Cemetery:</b>  <b>1 ET @ \$135 per ET</b>  <b>(\$101 base rate + \$34 indexation)</b>  <b>CP Plan No. 13</b></p>	<p><b>\$130.95*</b></p>
<p><b>(g) Community Facilities (Tweed Coast - North)</b>  <b>1 ET @ \$1539 per ET</b>  <b>(\$1,305.60 base rate + \$233.40 indexation)</b>  <b>CP Plan No. 15</b></p>	<p><b>\$1,492.83*</b></p>
<p><b>(h) Extensions to Council Administration Offices &amp; Technical Support Facilities</b>  <b>1 ET @ \$2187.14 per ET</b>  <b>(\$1,759.90 base rate + \$427.24 indexation)</b>  <b>CP Plan No. 18</b></p>	<p><b>\$2,121.53*</b></p>
<p><b>(i) Cycleways:</b>  <b>1 ET @ \$526 per ET</b>  <b>(\$447 base rate + \$79 indexation)</b>  <b>CP Plan No. 22</b></p>	<p><b>\$510.22*</b></p>
<p><b>(j) Regional Open Space (Casual)</b>  <b>1 ET @ \$1215 per ET</b>  <b>(\$1,031 base rate + \$184 indexation)</b>  <b>CP Plan No. 26</b></p>	<p><b>\$1,178.55*</b></p>
<p><b>(k) Regional Open Space (Structured):</b>  <b>1 ET @ \$4264 per ET</b>  <b>(\$3,619 base rate + \$645 indexation)</b>  <b>CP Plan No. 26</b></p>	<p><b>\$4,141.33*</b></p>

**Stage 2**

- (a) **Tweed Road Contribution Plan:**  
65 Trips @ \$1293 per Trips **\$81,523.65\***  
(\$1,145 base rate + \$148 indexation)  
CP Plan No. 4  
Sector7\_4
- (b) **Open Space (Casual):**  
10 ET @ \$624 per ET **\$6,052.80\***  
(\$502 base rate + \$122 indexation)  
CP Plan No. 5
- (c) **Open Space (Structured):**  
10 ET @ \$714 per ET **\$6,925.80\***  
(\$575 base rate + \$139 indexation)  
CP Plan No. 5
- (d) **Shirewide Library Facilities:**  
10 ET @ \$933 per ET **\$9,050.10\***  
(\$792 base rate + \$141 indexation)  
CP Plan No. 11
- (e) **Bus Shelters:**  
10 ET @ \$71 per ET **\$688.70\***  
(\$60 base rate + \$11 indexation)  
CP Plan No. 12
- (f) **Eviron Cemetery:**  
10 ET @ \$135 per ET **\$1,309.50\***  
(\$101 base rate + \$34 indexation)  
CP Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**  
10 ET @ \$1539 per ET **\$14,928.30\***  
(\$1,305.60 base rate + \$233.40 indexation)  
CP Plan No. 15
- (h) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
10 ET @ \$2187.14 per ET **\$21,215.26\***  
(\$1,759.90 base rate + \$427.24 indexation)  
CP Plan No. 18
- (i) **Cycleways:**  
10 ET @ \$526 per ET **\$5,102.20\***  
(\$447 base rate + \$79 indexation)  
CP Plan No. 22

(j) **Regional Open Space (Casual)**  
 10 ET @ \$1215 per ET \$11,785.50\*  
 (\$1,031 base rate + \$184 indexation)  
 CP Plan No. 26

(k) **Regional Open Space (Structured):**  
 10 ET @ \$4264 per ET \$41,418.19\*  
 (\$3,619 base rate + \$645 indexation)  
 CP Plan No. 26

\* Includes adjustments which effect compliance with the Directions from the Minister for Planning in relation to the maximum contribution payable per dwelling dated 13 January 2009 and 19 July 2009.

[PCC0215/POC0395/PSC0175]

75. **Prior to the issue of a Subdivision Certificate for each stage of the development, a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works associated with the Construction Certificate for that stage of Subdivision Works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

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

[PSC0215]

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

1. All earthworks and filling associated with that stage of the development have been supervised to a Level 1 standard in accordance with AS 3798 (current version) and in accordance with the recommendations of the detailed *Geotechnical Investigation* (as required by Consent Condition 22).
2. All allotments have achieved design bearing capacity strength in accordance with AS2870 (latest version) and are suitable for building purposes.
3. Trenches, including all trenches for services, have been compacted in accordance with Council's Construction Specifications.

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

[PSC0395]

77. **Prior to the issue of the Subdivision Certificate for each stage of the development, an appropriately qualified, practising professional Geotechnical Engineer shall provide site classifications based on site reactivity for each individual residential allotment in accordance with AS2870 (current version). If the site classification for any individual allotments is found to be poorer than 'M', then all such affected**

allotments shall be burdened by a Restriction on Use pursuant to Section 88B of the Conveyancing Act advising future owners of the site classification.

[PSC0400]

78. Any damage to property (including pavement damage) during each stage of the development is to be rectified to the satisfaction of the General Manager or his delegate prior to the issue of the associated Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of the associated Subdivision Certificate.

[PSC0725]

79. Prior to the issue of a Subdivision Certificate for each stage of the development, applicable Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

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

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

80. A Subdivision Certificate for each stage of the development will not be issued by the General Manager until such time as all conditions of this Development Consent applicable to that stage of the development have been complied with.

[PSC0825]

81. Prior to the issue of the Subdivision Certificate for each stage of the development, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent, as applicable to that stage of the development.

[PSC0830]

82. The creation of Easements for services, Rights Of Carriageway and Restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable to each stage of the development under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006

- “Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.**
- (c) A Restriction As To User advising that the roofwater from improvements on all allotments with adverse fall that cannot drain to a street, shall be connected to the approved infiltration pit (constructed as part of the subdivision) located on the subject property. All future owners are to maintain the infiltration systems in a satisfactory condition in perpetuity.**
- (d) Retention of the existing Right of Footway 4 Wide (DP1208402) linking Tamarind Avenue to neighbouring Lot 466 DP 755701, benefiting Tweed Shire Council.**
- (e) Restriction As To User regarding the formation and availability of 8 visitor car parking spaces on Common Property as per the approved Subdivision Plan.**
- (f) A Restriction As To User enforcing that no dwelling shall be constructed on an allotment that has been classified with a rating of M or less unless it is in accordance with AS2870 and any other Australian Building Standard that may subsequently be adopted as industry practice. The associated Geotech Report shall be registered as a Memorandum on title.**
- (g) In accordance with the development’s Flood Response Assessment Plan and as required by TDCP-A3 - Development on Flood Liable Land, all dwellings on the site must be equipped with a PMF Refuge (second storey) in accordance with section A3.2.6 note 4.**
- (h) Restriction As To User regarding the Conservation Area referred to in this consent Burdening Stage 1 Lot 14 and Stage 2 - Lots 4, 5, 6 and Lot 1 Common Property, benefitting Tweed Shire Council. The following activities are not permitted within this area unless otherwise authorised by the terms of any easement existing at the time of issue of this consent:**
- Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this approval unless otherwise required to establish and maintain asset protection zones to Lot 4, Lot 5 and Lot 6 as shown on the approved plan of subdivision;**
  - Erection of any fixtures or improvements, including buildings or structures;**
  - Construction or maintenance of access roads and any services**
  - Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the Conservation Area unless required in accordance with the approved Habitat Management Plan**
  - Keeping or permitting the entry of domestic animals or any other animals that are not indigenous into the Conservation Area; and**
  - Performance of any other acts which may have detrimental impact on the values of the Conservation Area.**
  - The area must be managed in accordance with the approved Habitat Management Plan.**
- (i) Positive Covenant over the area described as Conservation Area referred to in this consent burdening Stage 1 Lot 14 and Stage 2 - Lots 4, 5, 6 and Lot 1 Common Property, benefitting Tweed Shire Council. This area shall be managed in accordance with an approved Habitat Management Plan for conservation purposes in perpetuity.**
- (j) The car parking spaces within Lot 1 Common Property are to be made available to visitors at all times.**

- (k) Any future dwelling houses must be designed to comply with the following minimum front setbacks: 8m for Lots 3-7; 6m for Lots 8-10 and 4m for Lots 11 & 12.
- (l) Any future dwelling houses must be designed to provide a minimum of 2 car parking spaces within the private lots.

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

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

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

[PSC0835]

83. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) for each stage of the development shall show the approved street address for each lot in the new Deposited Plan.

[PSC0845]

84. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate for each stage of the development.

[PSC0855]

85. Prior to registration of the Plan of Subdivision for each stage of the development, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) submission of all documentation electronically (in pdf format), plus the original Plan of Subdivision (and Admin Sheets) prepared by a registered surveyor together with any applicable, original 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]



86. In conjunction with the application for a Subdivision Certificate for each stage of the development, the Applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works, as applicable to that stage of the development.

This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following (as applicable):

- (a) Roads / Private Access (Stage 2)
- (b) Water Reticulation
- (c) Sewerage Reticulation
- (d) Drainage
- (e) Bulk Earthworks / Site Regrading

**Note:**

1. All Compliance Certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Certifying Engineer, certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the Construction Certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Council's Development Design and Construction Specifications.
2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".

[PSC0915]

87. The six (6) months Defects Liability Period for the Subdivision Works commences upon the registration of the Plan of Subdivision, as applicable to each stage of the development.

[PSC0925]

88. Prior to issue of Subdivision Certificate for Stage 2, a final Community Management Statement is to be submitted to and approved by Council. The statement is to include provisions for (but not be limited to) management of the Conservation Area, the use of the access road by emergency services, bona fide members of the public and public authorities. Additionally, the Community Management Statement must include the following:

- (a) Creation and incorporation of a Community Association to be responsible for the management and maintenance of common property;
- (b) Landscape guidelines specifying minimum landscape requirements for each dwelling to the satisfaction of Tweed Shire Council and including the requirement for a minimum of 90% of all landscaping to comprise local native species and prohibiting the planting of environmental weed species;
- (c) The approved Habitat Management Plan specifying methodology and funding source for the maintenance and monitoring of the Conservation Area on Common Property;
- (d) A Utility Services Plan, showing Works As Executed (WAE).
- (e) Minimum front setback provisions for future dwellings including 8m for Lots 3-7; 6m for Lots 8-10 and 4m for Lots 11 & 12.

[PSC1005]

89. Prior to the issue of a Subdivision Certificate and also prior to the end of Defects Liability Period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed approved under the Construction Certificate for Subdivision Works for each stage of the development (including joints and junctions) will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Council's Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the Applicant.

[PSC1065]

90. Prior to issuing a Subdivision Certificate as applicable to each stage of the development, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

Fire Hydrants spacing, sizing and pressures for Stage 2 shall comply with Council's DCP - Section A5 - Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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

[PSC1115]

91. The production of written evidence from the local telecommunications supply authority certifying that the provision of underground telecommunications at the front boundary of all allotments intended for residential use, has been completed, as applicable to each stage of the development.

Unless agreed otherwise by Council, an acceptable form is Telstra's "*Telstra Network Infrastructure Letter*" or NBN's "*Provisioning of Telecommunication Services - Confirmation of final payment*" letter (for small subdivisions) / "*Certificate of Practical Completion of NBN network infrastructure*" letter (for large subdivisions) (as applicable to the development).

The NBN letter must reference:

- Over which Lot and Deposited Plan the agreement applies to,
- Identification of the number of lots to be serviced,

[PSC1165]

92. Electricity

The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been provided adjacent to the front boundary of each allotment intended for residential use, as applicable to each stage of the development.

**An acceptable form is Essential Energy’s “Notice of Arrangement”.**

**Unless agreed otherwise by Council, the form must reference:**

- **Over which lot and Deposited Plan did the arrangement for the provisioning of electricity (and street lighting, as applicable) apply to;**
- **Identification of the proposed lots to be created that have been serviced, or the development stage to which the arrangement applies.**

**Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.**

**Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.**

[PSC1185]

- 93. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer’s expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO’s Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services to each allotment intended for residential use, as applicable to each stage of the development.**

[PSC1205]

- 94. Prior to the issue of the Stage 2 Subdivision Certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all installed s68h2 permanent stormwater quality control devices (includes gross pollutant traps, infiltration systems and onsite detention systems).**

[PSCNS01]

- 95. Prior to the issue of a subdivision certificate the private stormwater issue between the subject lot and SP 76700 (77 Tamarind Avenue) relating to stormwater disposal infrastructure within proposed Lot 2 shall be resolved and all works required completed.**

**If the matter is not resolved, a positive covenant must be applied to the title of proposed lot 2 that prohibits further development on the lot that would interfere with the existing stormwater disposal infrastructure and point of discharge until such time as an alternative stormwater discharge solution is implemented for SP 76700 (77 Tamarind Avenue).**

[PSCNS01]

- 96. All works shall be completed in accordance with the approved Habitat Management Plan to the satisfaction of Council’s General Manager or delegate prior to issue of Stage 1 subdivision certificate**

[PSCNS01]

## **GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

- 1. The development proposal is to comply with the following, except where modified by this bush fire safety authority:**

- subdivision layout identified on the drawing prepared by B & P Surveys titled 'Stage 1, Proposed Subdivision Plan of Lot 12 in DP1208402, Tamarind Avenue, Bogangar', drawing number 21588 D, Revision E, sheet 1 of 2 and dated 23rd August, 2018; and
- subdivision layout identified on the drawing prepared by B & P Surveys titled 'Stage 2, Proposed Subdivision Plan of Lot 12 in DP1208402, Tamarind Avenue, Bogangar', drawing number 21588 D, Revision E, sheet 2 of 2 and dated 23rd August, 2018.

### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. At the issue of subdivision certificate and in perpetuity the entire property shall be managed as an inner protection area (IPA), except where indicated as a vegetation protection covenant on the plan titled 'Stage 2, Proposed Subdivision Plan of Lot 12 in DP1208402, Tamarind Avenue, Bogangar', drawing number 21588 D, Revision E, sheet 2 of 2 and dated 23rd August, 2018.

Asset protection zones shall be managed as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

3. A restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919', shall be placed upon proposed Lots 2 & 3 identifying a 15 metre asset protection zone on the northern boundary, as indicated on the plan titled 'Stage 2, Proposed Subdivision Plan of Lot 12 in DP1208402, Tamarind Avenue, Bogangar', drawing number 21588 D, Revision E, sheet 2 of 2 and dated 23rd August, 2018.

The terms of the restriction to land use shall require the asset protection zone to be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'. The asset protection zones shall be established prior to the issue of a subdivision certificate.

4. A restriction to the land use, pursuant to section 88B of the 'Conveyancing Act 1919', shall be placed upon proposed Lots 4 to 12 identifying a 21 metre asset protection zone on the northern boundary, as indicated on the plan titled 'Stage 2, Proposed Subdivision Plan of Lot 12 in DP1208402, Tamarind Avenue, Bogangar', drawing number 21588 D, Revision E, sheet 2 of 2 and dated 23rd August, 2018.

The terms of the restriction to land use shall require the asset protection zone to be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'. The asset

protection zones shall be established prior to the issue of a subdivision certificate.

#### **Water and Utilities**

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

- 5. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.**

#### **Access**

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

- 6. The internal road is to comply with section 4.2.7 and section 4.1.3(1) of 'Planning for Bush Fire Protection 2006', except no perimeter road is required and a 6 metre wide unobstructed width is acceptable.**

**REPORT:**

**Applicant:** Mrs N Trentelman  
**Owner:** Mrs Natalia Trentelman  
**Location:** Lot 12 DP 1208402 No. 79 Tamarind Avenue, Bogangar  
**Zoning:** R1 - General Residential  
**Cost:** \$785,000

**Background:**

**Subject Site**



***The subject site aerial photograph***

The subject site is 1.257ha and is currently vacant with minimal vegetation. The property is U shaped with two sections of road frontage to Tamarind Avenue to the south, 21.7m and 19.65m in length. Eight low density residential allotments lie between each of the subject site frontages. Low density residential development continues along the southern side of Tamarind Avenue.

To the north, the subject site adjoins Crown Land which surrounds Cudgen Lake and Cudgen Nature Reserve. To the east and west are mixed use residential and tourist developments.

***Site History***

The subject site was historically the Cabarita Gardens Lake Resort however since the closure of the caravan park, the site has an extensive approval history.

Permit Number 1615 approved a motel and residence granted 9 October 1969 and Development Consent D88/0057 approved the addition of 24 suites to an existing motel in 28 January 1988.

Development Consent D87/0874 approved the staged construction of 6 x 3 storey holiday resort buildings comprising 10 x 3 bedroom units and associated parking (stage 1); a sports complex (stage 2); 10 x 2 bedroom units and associated parking (stage 3); and 40 x 2 bedroom units and associated parking (stage 4) granted 14 December 1988. Stage 1 of this development was undertaken and involved additions to the existing motel building. This development is the existing building located on the allotment to the west. Strata Plan 76700 was created initially featuring eight (8) development Lots across the subject site with the existing building located within Lot 1.

SP 76700 was subsequently strata subdivided and modified many times and further consents have been issued in relation to the existing tourist building.

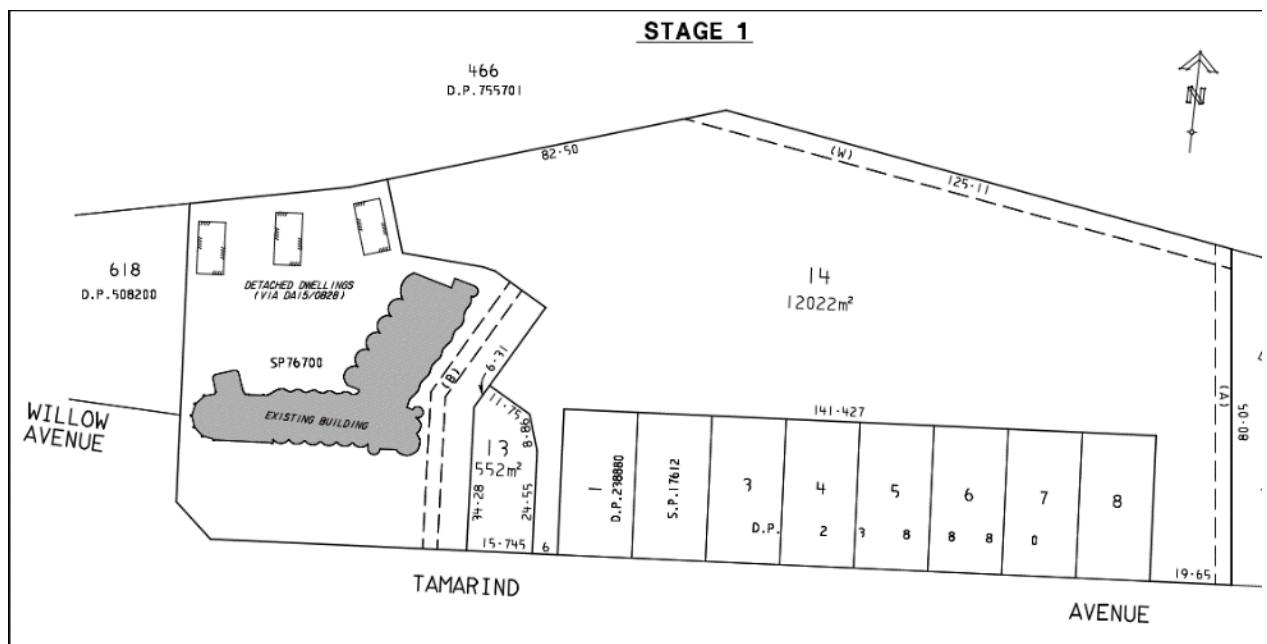
Development Consent DA15/0828 approved three townhouses 28 July 2016 constructed over Lot 53 SP 76700 located to the north-west.

The subject site was subdivided from the tourist building site (PN1615, D88/0057 & Stage 1 D87/0874) and townhouse site (DA15/0828) pursuant to Development Consent S96/0177 for a two lot Torrens title subdivision granted 4 February 1997 which was modified 29 May 2015. The current DP 1208402 was registered 11 February 2016 where Lot 11 includes the existing buildings of SP 76700 and Lot 12 is the site subject to this application.

## Proposal

Council is in receipt of a Development Application for a two lot Torrens title subdivision (stage 1) and a twelve lot Community Title subdivision (stage 2) and associated civil works at the subject site.

Stage 1 involves a two lot Torrens title subdivision to create a 551m<sup>2</sup> lot, Lot 13 and development lot, Lot 14, 12,022m<sup>2</sup> in area. Lot 13 has frontage to Tamarind Avenue. Stage 1 also includes filling of the proposed Lot 13 building envelope in addition to the filling in the locations of the building envelopes associated with Stage 2. Stage 1 also involves the creation of a Conservation area within the development Lot 14.



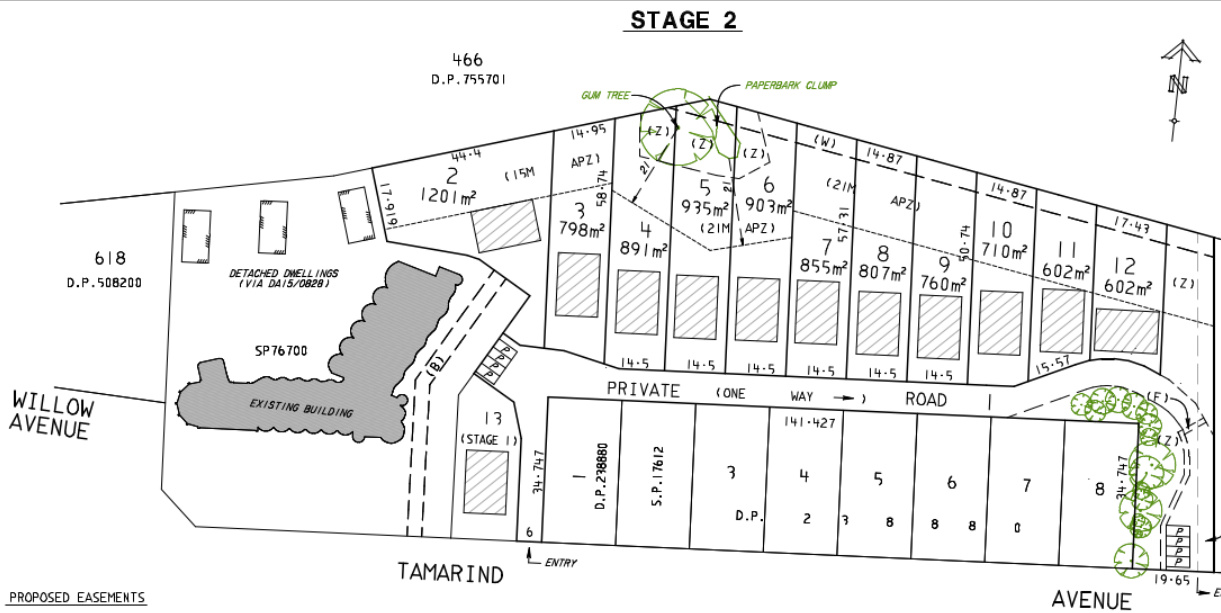
**Subdivision Plan Stage 1**



**Civil Works Plan Stage 1**

Stage 2 comprises a twelve lot Community Title subdivision of Lot 14, which includes:

- 11 Community Title residential lots and one common property allotment, Lot 1;
- the construction of a 6m wide access road and eight visitor car parking spaces;
- establishment of 15m to 21m asset protection zones;
- retention of a right of footway benefiting Council along the eastern boundary; and
- creation of a Conservation area within Lot 1 Common Property and proposed Lots 4-6;



**Site Plan Stage 2**

This application was received in November 2017 and since this time several complex issues were identified. The key issues involve flooding hazard impacts, earthworks, ecological impacts, pedestrian and traffic access issues, compliance with bushfire controls, and compliance with Tweed Development Control Plan 2008.



## **Subdivision Type and Characterisation**

Stage 1 of the proposal involves a Torrens Title subdivision while Stage 2 involves a Community Title subdivision.

It is noted that Section A5 outlines the nature of Community Title subdivisions and the standards required to be met when compared to conventional Torrens Title subdivisions. Community Title subdivisions generally *include communally owned property and infrastructure... Subdivision works will include internal community owned infrastructure and external works and/or connections*. A Community Title subdivision creates a Community scheme with a Community Management Statement under the Community Land Development Act 1989 and Community Land Management Act 1989.

Similarly, a strata subdivision creates a strata scheme subdividing the land into lots and common property, where the lots are allocated unit entitlements and the rights and obligations are conferred or imposed between owners of lots, other interested parties and an owners corporation. Strata subdivisions generally apply to multi-dwelling housing and are undertaken under the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015.

The differences between Community Title and Strata Title includes how boundaries are defined (land versus building walls), insurance arrangements and the legislation that applies.

However, Clause A5.6.1 of Section A5 states that the guidelines and development standards for Community Title subdivisions are generally the same as those for conventional Torrens Title subdivisions *except that Council will consider proposals that justify departure from standards for road and verge widths*.

Both Strata Title and Community Title subdivisions have been associated with multi-dwelling housing developments however given the construction of dwellings do not form part of this application, Stage 2 of the subject proposal has been assessed to reflect the character of a conventional subdivision except for the private access road and will involve common property.

## **Application History**

Discussions between the proponent and Council formally commenced with regard to the subject development at a pre-lodgement Development Assessment Panel meeting on 5 October 2016.

The current application was received in November 2017 and was considered to be notified development in accordance with the Environmental Planning and Assessment Act 1979 given the potential amenity impacts and development history of the area. The application was placed on exhibition for a period of 14 days from Wednesday 17 January 2018 to Wednesday 31 January 2018 during which time nine submissions were received.

The application was referred to the NSW Rural Fire Service (RFS) given the proposal is considered to be Integrated Development in accordance with Section 100B of the Rural Fires Act 1997. The NSW RFS requested further information and justification particularly with regard to the proposed access road provided not being of a perimeter design as outlined in *Planning for Bushfire Protection Guidelines 2006*. Further reports were provided by the

proponent and subsequently, the NSW RFS supported the amended proposal subject to conditions of consent.

The application required a Master Plan Waiver from the NSW Department of Planning and Environment in accordance with State Environmental Planning Policy No 71 – Coastal Protection. A waiver was received and the Department raised no objections to the proposal.

The NSW Department of Industry – Crown Lands was notified of the proposal given the ownership of adjoining land. No objections were raised from the Department.

The proposal was initially lodged as involving a three lot Torrens Title subdivision within Stage 1 and the construction of a dwelling house. Council raised concerns with the extent of non-compliance of this lot and development configuration and associated impacts which included unacceptable privacy concerns given the primary area for landscaping was Council's Right of Footway easement. This allotment and dwelling were subsequently removed from the application.

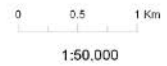
Negotiations were held during the second half of 2018 between Council and the proponent with regard to lot configuration, the Bush Stone Curlew conservation area and stormwater infrastructure design.

**SITE DIAGRAM:**



**Site Plan**

DA17/0836  
 Lot 12 DP 1208402  
 79 Tamarind Avenue BOGANGAR 2488



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 Datum - GDA 94

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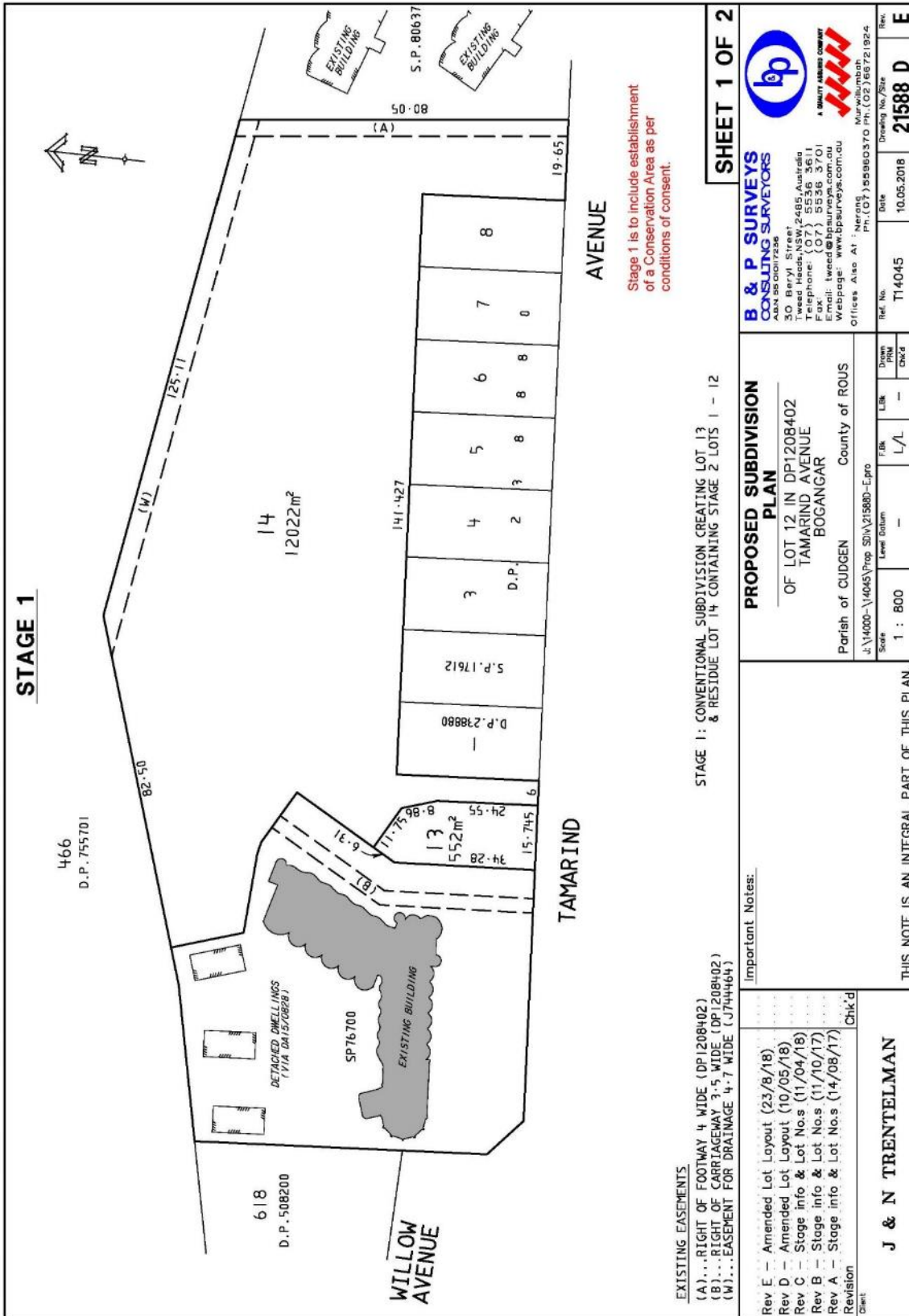
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 Murwillumbah NSW 2484  
 PO Box 816  
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Date Printed: 09 January, 2019

DEVELOPMENT/ELEVATION PLANS:



**EXISTING EASEMENTS**

(A)...RIGHT OF FOOTWAY 4 WIDE (DP1208402)

(B)...RIGHT OF CARRIAGEWAY 3.5 WIDE (DP1208402)

(W)...EASEMENT FOR DRAINAGE 4.7 WIDE (J744464)

Rev E - Amended Lot Layout (23/8/18)

Rev D - Amended Lot Layout (10/05/18)

Rev C - Stage Info & Lot Nos (11/04/18)

Rev B - Stage Info & Lot Nos (11/10/17)

Rev A - Stage Info & Lot Nos (14/08/17)

Revision Chk'd

Client: **J & N TRENTTELMAN**

**PROPOSED SUBDIVISION PLAN**

OF LOT 12 IN DP1208402

TAMARIND AVENUE

BOGANGAR

Parish of CUJUGEN County of ROUS

J:\14000-14045\Prop SDIV\215880-E.pro

Scale 1 : 800

Level Datum -

FBk L/L -

FBk L/Lk -

Drawn P/RII

CHK'd

Ref No. T14045

Date 10.05.2018

Drawing No./Size 21588 D

Rev. E

**B & P SURVEYS CONSULTING SURVEYORS**

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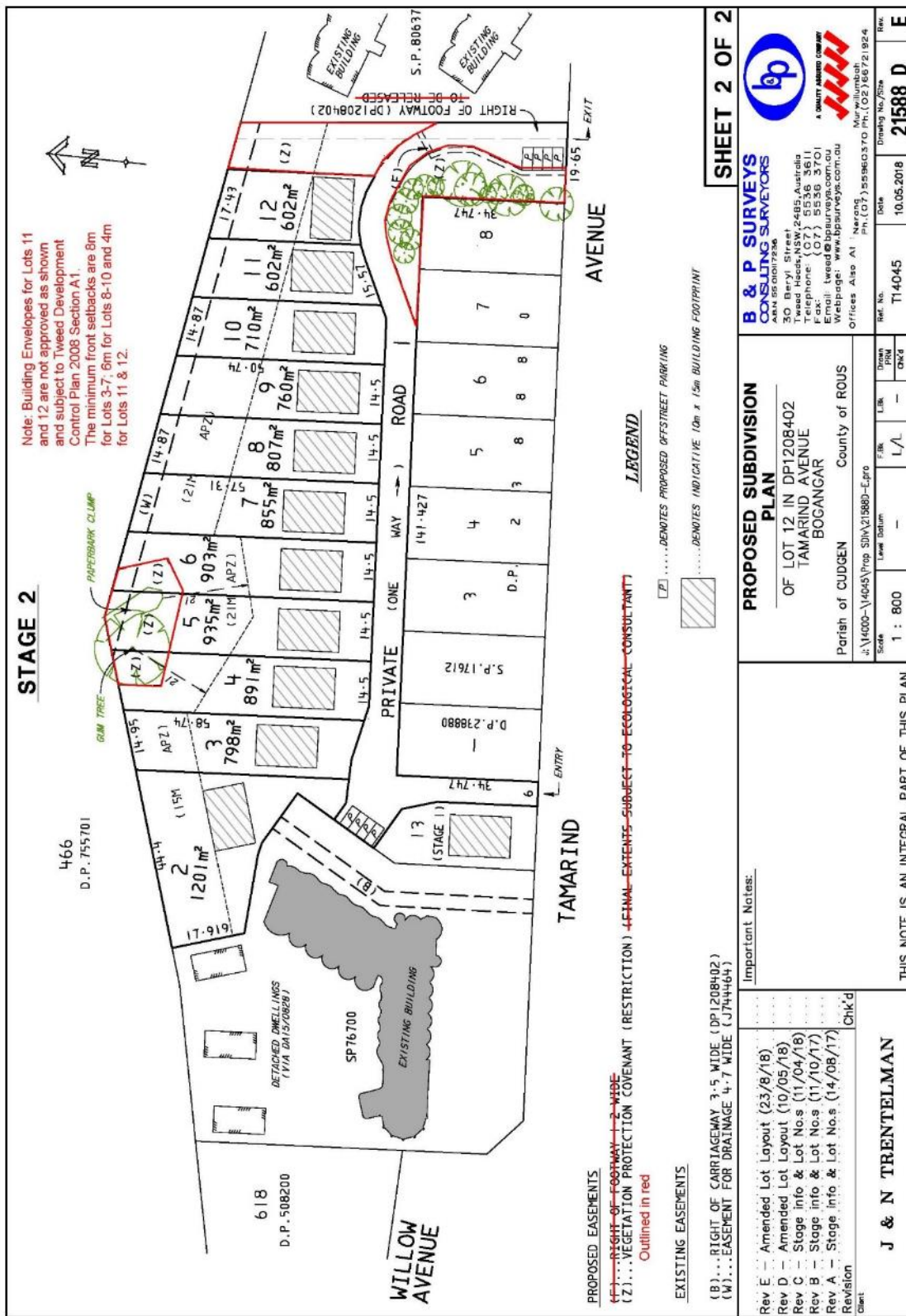
Email: tweed@bpsurveys.com.au

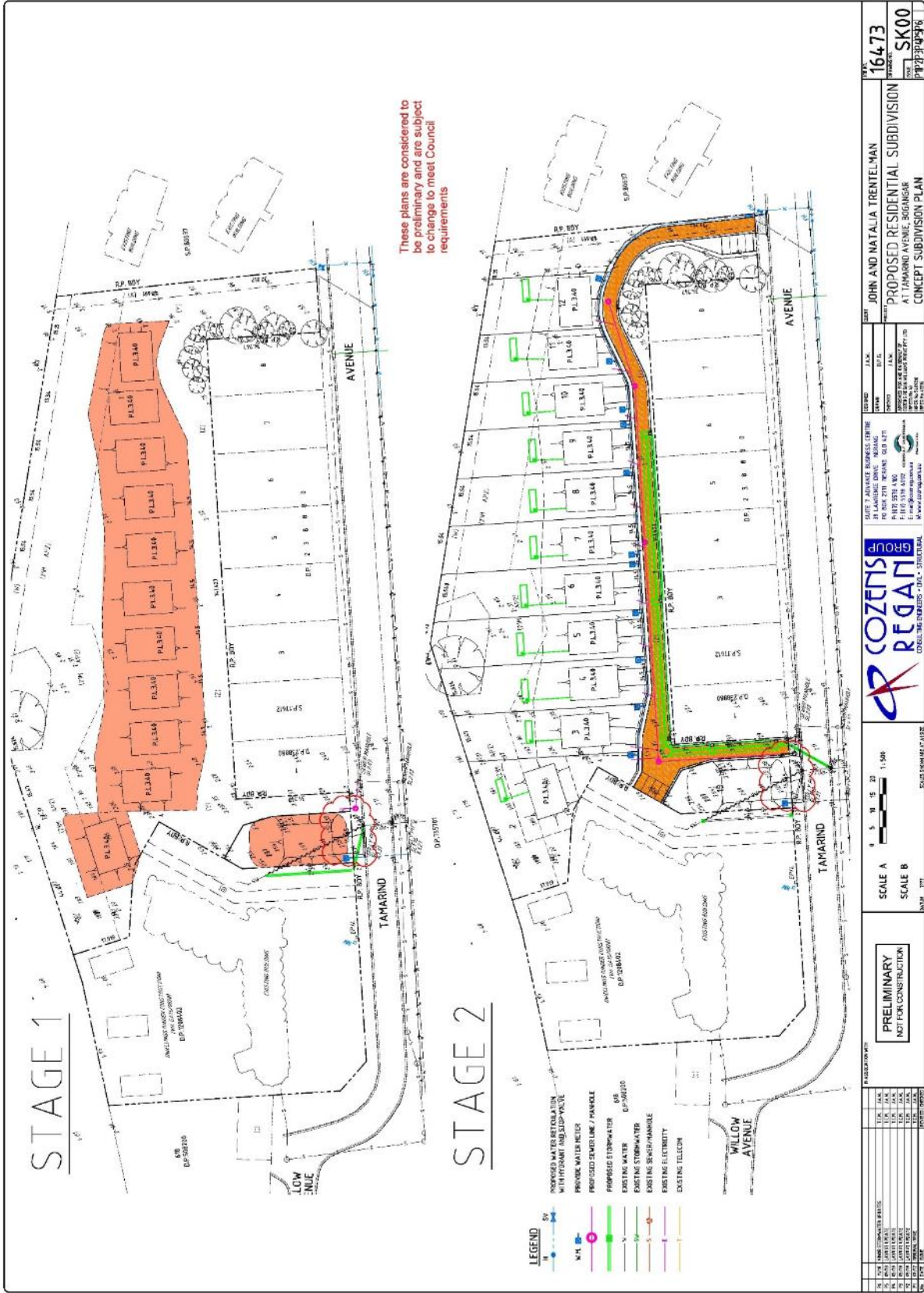
Webpage: www.bpsurveys.com.au

Offices Also At: Nerrang, Mackay, Athol

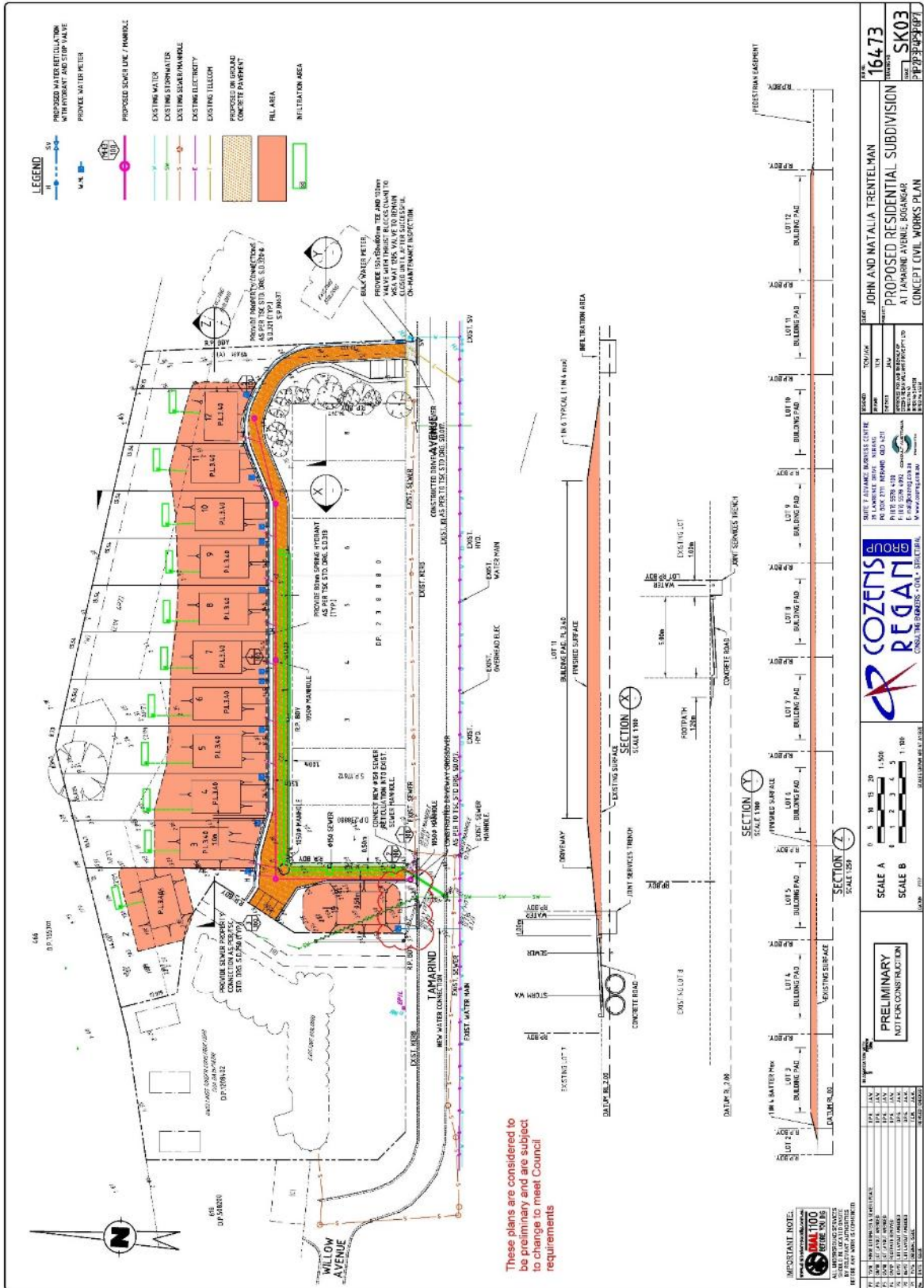
Ph: (07) 55960370 Ph: (02) 76721924

**SHEET 1 OF 2**





These plans are considered to be preliminary and are subject to change to meet Council requirements



These plans are considered to be preliminary and are subject to change to meet Council requirements

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

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

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

*The particular aims of this Plan are as follows:*

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

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

Clause 2.3 – Zone objectives and Land use table

The site is zoned R1 General Residential where the zone objectives are as follows:

- *To provide for the housing needs of the community.*



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

The proposal will result in residential development which is considered to contribute to providing for the housing needs of the community and is therefore consistent with the zone objectives and is acceptable in this regard.

Subdivision is permissible with consent pursuant to Clause 2.6 of this Plan.

#### Clause 2.6 – Subdivision

This clause states:

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

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

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

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

The subject site is mapped as having a minimum lot size of 450m<sup>2</sup>. Stage 1 proposes a two lot Torrens Title subdivision resulting in lot sizes of 552m<sup>2</sup> and 12,022m<sup>2</sup> therefore complying with this clause.

However, Clause 4.1 (4) states that Clause 4.1 does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme. As such, Clause 4.1 does not apply to lots created within the Community Title subdivision of Stage 2.

#### Clause 4.3 - Height of Buildings

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

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

Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

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

No variations to development standards are proposed.

Clause 5.5 – Development within the Coastal Zone

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

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

The subject application includes public access to or along the coastal foreshore. A condition has been applied to ensure Council retains the existing Right of Footway along the eastern boundary of the development and that improvements by way of a concrete footpath is proposed to allow future public access to the Cudgen Nature Reserve and Cudgen Lake from Tamarind Avenue. The proposal is considered acceptable in this regard subject to conditions of consent.

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

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

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

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

The proposed development is located approximately 800m from the coastal foreshore and over 40m from the Cudgen Lake foreshore. The building envelopes are proposed a minimum of 71m. Therefore given the setbacks proposed and that the subject application does not proposed building construction, the proposed subdivision is not considered to result in any overshadowing of the foreshore, nor loss of view from a public place. The subject application is considered to be acceptable having regard to the above considerations.

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

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land.

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

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

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

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

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

This clause goes on to further state:

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

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

Conditions of consent have been recommended to ensure the proposal will not impede or diminish the right of access of the public either to or along the Cudgen Lake foreshore.

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

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

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

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

- (d) *the proposed development will not:*

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

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

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

#### Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

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

The site is in proximity to a mapped Heritage Item listed within Schedule 5 being Cudgen Nature Reserve which includes High Conservation Value Old Growth Forest. Additionally, the site is mapped within 50m of a Known site of Aboriginal Cultural Significance located within Cudgen Nature Reserve.

The development proposes up to 1.5m of fill at the location of the proposed building envelopes (with dwelling construction not subject to this application). Given the sites with Heritage value are not located within the proposed development site the proposal is not considered to result in any detrimental impact with regard to heritage conservation and is considered acceptable with regard to provisions of this clause.

#### Clause 5.11 - Bush fire hazard reduction

The site is mapped as bushfire prone and is considered to be Integrated Development in accordance with Section 100B of the Rural Fires Act 1997. Accordingly the application was referred to the NSW Rural Fire Service (RFS) for comment and General Terms of Approval which were provided. The application was accompanied by bushfire hazard reporting and the NSW RFS considered that the proposal was acceptable with regard to the provisions of Planning for Bushfire Protection. The proposal is considered to be acceptable in this regard subject to conditions of consent.

#### Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage. The site is class 3 on the ASS Planning Maps which relates to any works below 1.0m natural ground surface or will lower the water table beyond 1.0m below natural ground surface. The application was referred to Council's Environmental Health Unit in this regard and no objections were raised to the proposal subject to conditions of consent. As such the proposal is considered acceptable in this regard.

#### Clause 7.2 - Earthworks

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

The proposal involves filling the site up to 1.5m above the existing ground level at the location of the future building envelopes in order for the development to comply with flood hazard related controls. No retaining walls are proposed

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

#### Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

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

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

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

The subject site is currently mapped as flood prone and subject to the Q100 flood at RL3.0 AHD. The current topography of the site varies from RL1.83 AHD to more than 3m AHD. The proposal include filling of the land at the location of the building envelopes to 3.4m AHD. The application was referred to Council's Flooding Engineer who reviewed the application.

Council's minimum fill level requirement for the site is 3m AHD. The proposal involves fill to 3.4m AHD and therefore the development complies in this regard. Although not required, the additional 0.4m of fill is to ensure the future homes, if constructed slab on ground, meet the minimum Design Floor level (3.5m AHD) as required by Council's Development Control Plan 2008 (TDCP). As detailed elsewhere in this report, the applicant proposes to only partially fill the site around the dwelling pad locations. This is not consistent with DCP-A3 section A3.6.3 which requires filling of the entire allotment to a minimum level of the design flood. Given the levels of adjoining properties and the hydraulic assessment of the area, the proposed extent of fill is considered appropriate for the site conditions and a concession to DCP-A3 section A3.6.3 is considered acceptable in this instance.

Further, the applicant has provided a Flood Response Assessment Plan (FRAP). The FRAP nominates evacuation as the preferred risk management approach, but acknowledges that Tamarind Avenue does not meet the requirement for a high level evacuation route. Therefore, the FRAP recommends each dwelling be equipped with a "PMF Refuge" which has been applied as a condition of consent. Council's Flooding Engineer has no objections to the proposal in this regard.

As such, the proposal is considered to satisfy Clause 7.3 subject to conditions of consent.

#### Clause 7.4 - Floodplain risk management

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

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

The applicant has provided a Flood Response Assessment Plan (FRAP) which nominates evacuation as the preferred risk management approach, but acknowledges that Tamarind Avenue does not meet the requirement for a high level evacuation route. As such, the FRAP recommends each dwelling be equipped with a "PMF Refuge". This has been recommended as a condition of consent where advice regarding this requirement will be stated on title to future landowners. The application was referred to Council's Flooding Engineer who reviewed the application and was satisfied with the proposal given the Plan provided and as such, is considered to satisfy Clause 7.4.

#### Clause 7.5 - Coastal risk planning

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

#### Clause 7.6 - Stormwater Management

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

Stormwater details have been provided as part of this application and reviewed by Council's Roads and Stormwater Unit who have advised that the applicant proposes that peak flow attenuation measures (onsite detention) be incorporated into the stormwater system that discharges to Tamarind Avenue. This is considered acceptable given the existing drainage arrangements. Connection to the public system although a design is not confirmed, this matter is considered to be capable of resolution at the Construction Certificate and Section 68 application stage.

Therefore the proposal is considered to comply with Clause 7.6.

#### Clause 7.8 – Airspace operations

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

The subject site is not mapped as subject to this clause and as such, the proposal is considered to comply with Clause 7.8.

#### Clause 7.9 - Development in areas subject to aircraft noise

The subject site is not mapped as being subject to aircraft noise and therefore this clause does not apply.

Clause 7.10 - Essential Services

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

(a) *the supply of water,*

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

(b) *the supply of electricity,*

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

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

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

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

Stormwater management has been reviewed by Council's Development Engineering and Stormwater Unit with the proposal being considered to be acceptable with respect to stormwater drainage subject to the application of appropriate conditions of consent.

It is noted that the applicant requested peak flow attenuation measures (onsite detention) to be incorporated into the stormwater system that discharges to Tamarind Avenue. This is supported by Council's Flooding Engineer given the existing drainage patterns of area. Also, further detail is required with regard to the connection to the public system however a condition of consent has been applied to ensure this is addressed at a later stage.

It is considered that adequate arrangements for stormwater infrastructure for the proposed subdivision are provided for the subject subdivision development. However during the assessment of the application, it was noted that stormwater infrastructure benefiting adjoining developments burdened the subject site in the locations of proposed Lot 2 and 13 in particular. Council was advised that these matters are being rectified separately however the applicant supported a condition being applied to any consent that would require resolution of the matter prior to the subdivision being undertaken. Council cannot require works to be undertaken on adjoining properties as part of this consent, however based upon the information provided by the applicant, Council will require evidence that these matters have been resolved prior to the subject development commencing.



(e) *suitable road access.*

Lot 13 created from Stage 1 obtains direct vehicular access from Tamarind Avenue while the proposed Community Title subdivision residential lots from Stage 2 are accessed via a 6m wide one way internal access road to be located on common property utilising the two existing frontages off Tamarind Avenue. As such, road access is considered acceptable.

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

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

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

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

### **State Environmental Planning Policies**

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

The Draft SEPP (Coastal Management) was exhibited in 2016 with the SEPP (Coastal Management) adopted 23 March 2018. The adoption of SEPP (Coastal Management) repealed SEPP No 14, SEPP No 26 and SEPP No 71. The application was lodged 28 November 2017 and therefore in accordance with Clause 21 of SEPP (Coastal Management), the subject application is to be assessed against of SEPP No 14, SEPP No 26, SEPP No 71 and Draft SEPP (Coastal Management).

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

#### **SEPP No 71 – Coastal Protection**

The application required a Master Plan Waiver from the NSW Department of Planning and Environment in accordance with State Environmental Planning Policy No 71 – Coastal Protection. A waiver was received and the Department raised no objections to the proposal.

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

*Clause 8 – Matters for consideration*

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

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

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

The public foreshore to Cudgen Lake is located to the north of the subject site. Although access to the foreshore is currently from 250m west of the subject site at the end of Willow Avenue, provision for future public pedestrian access is being retained by way of a 4m wide Right of Footway easement along the eastern boundary of the development. Improvements by way of forming a footpath from Tamarind Avenue to the Cudgen Lake foreshore within the Right of Footway is considered to address this clause.

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

The public foreshore to Cudgen Lake, a coastal lake, is located to the north of the subject site. Although access to the foreshore is currently from 250m west of the subject site at the end of Willow Avenue, provision for future public pedestrian access is being retained by way of a 4m wide Right of Footway easement along the eastern boundary of the development. This opportunity for public access for pedestrians or persons with a disability has been included with Council's Draft Open Space Strategy and as such, any consent will include a condition to construct a concrete footpath within the Right of Footway providing new public access to Cudgen Lake.

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

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

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

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

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

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

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

As detailed elsewhere in this report, the proposal would not impact negatively any animals or their habitats subject to conditions of consent.

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

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

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

As detailed elsewhere in this report, the proposed development is not considered to impact negatively on wildlife corridors subject to conditions of consent.

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

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

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

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

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

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

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

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

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

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

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

Not applicable to the subject application.

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

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

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

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

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

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

#### SEPP No. 55 - Remediation of Land

The application was referred to Council's Environmental Health Unit for assessment in this regard.

The subject site is not impacted by previous mineral sands mining activities according to Council's GIS. Council's GIS shows that there are no known dip sites in the immediate area or within 200 metres of the proposed site. An examination of the topographical map [ref: Cudgen 9641-3-N dated 1986] did not indicate any known contaminating activities. Additionally, an examination of the aerial photos dated 1940, 1962, 1970 and 1987 did not show any identifiable potentially contaminating activities on the site.

On the basis of the above, contamination is not considered to be a constraint for the proposed development and the provisions of SEPP No 55 are considered satisfied.

#### SEPP No 44 – Koala Habitat Protection

This Policy applies as the site is greater than 1 hectare in area. As 'Potential koala habitat' for the purposes of SEPP 44 does not occur onsite, the proposal is considered acceptable with regard to the provisions of this Policy.

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

#### **Draft State Environmental Planning Policy (Coastal Management)**

As addressed elsewhere in this report, although this document has been adopted, in accordance with savings provisions, consideration of the Draft document is

required. The subject site is within the Coastal Environment Area, the Coastal Use Area and the Coastal Wetlands Proximity Area.

With regard to Clause 11 and development on land in proximity to coastal wetlands or littoral rainforest. It is considered that that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the nearby coastal wetland nor the quantity and quality of surface and ground water flows to and from the nearby coastal wetland.

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

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

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

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The aim of this plan is to provide safe, convenient and equitable access to developed land for pedestrians, cyclists, motorists and public transport users.

The residential lot created from Stage 1 has frontage with and direct vehicular access from Tamarind Avenue by way of a standard residential crossover.

The proposed Community Title subdivision for Stage 2 includes a 6m wide one way internal access road to be located on common property utilising the 2 existing frontages off Tamarind Avenue

Sweep paths have been provided showing that a 9.55m Garbage Truck and a 12.5m "Single Unit Truck/Bus" can adequately circulate the proposed subdivision.

The submitted sweep paths is sufficient for general domestic usage, and compliance with the Rural Fire Services General Terms of Approval in ensuring that adequate access is provided for fire-fighting protection.

It is noted that the proposal design and subsequent Rural Fire Services General Terms of Approval does not allow for parking along the access road which removes visitor parking which is typically addressed by a minimum frontage control with Section A5 Clause A5.4.12. However the application proposes a separate eight visitor car parking spaces in common property. These spaces are within reasonable and convenient proximity to the dwellings and are considered sufficient to provide for the proposed 11 residential properties.

It is further noted that Lots 11 and 12 building envelopes do not provide a 6m setback from the front property boundaries with the access road. Therefore any future dwelling application is likely to require a variation to Section A2 given a dwelling house requires *one space per dwelling plus provision for driveway parking of another vehicle*. Conditions will be applied to ensure any future dwelling house design adequately caters for parking in this regard.

It is also noted that footpaths should be designed and located taking into account pedestrian amenity, and likely use patterns. Given the road is a one way private road that will not feature on-street parking, no footpath servicing pedestrians within the development is required. This is acceptable and consistent with Section A5 that allows for Community Title subdivisions to vary from standards of this nature. However, given the provisions of SEPP No. 71, a condition of consent is recommended requiring a footpath for within the Right of Footway along the eastern boundary providing pedestrian access from Tamarind Avenue to the Cudgen Lake foreshore. Council's Development Engineer has no objections to the proposal in this regard.

No traffic assessment was submitted with this application however Council's Development Engineer considers Tamarind Avenue adequate to cater for the additional traffic that will be generated by the proposed development.

Given the above assessment, the proposal is considered acceptable with regard to the provisions of Section A2.

### A3-Development of Flood Liable Land

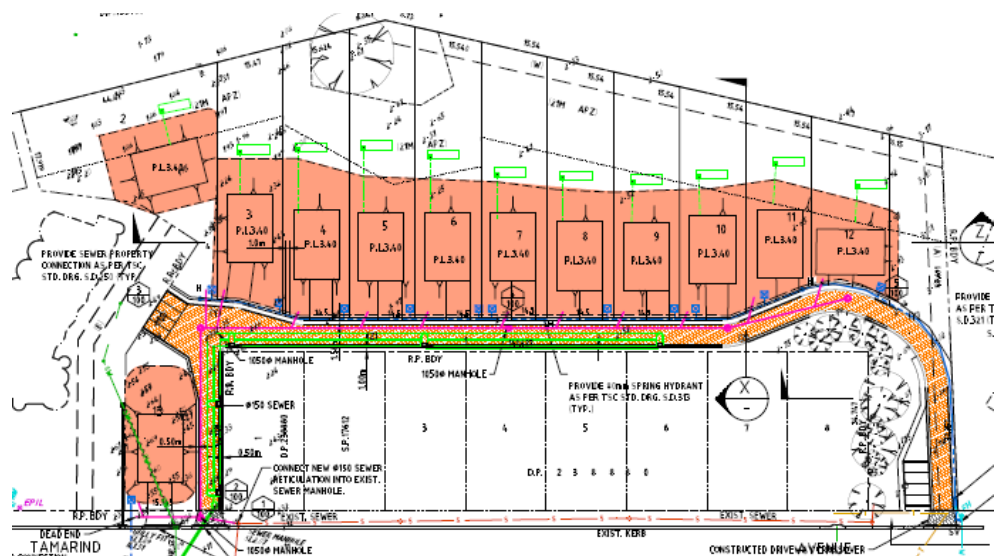
The subject site is currently mapped as flood prone and subject to the Q100 flood at RL3.0 AHD. As detailed elsewhere in this report, the current topography of the site varies from RL1.83 AHD to more than 3m AHD. The proposal include filling of the land at the location of the building envelopes to 3.4m AHD. The application was referred to Council's Flooding Engineer who reviewed the application and provided the following assessment.

The applicant has provided a Flood Response Assessment Plan (FRAP) as requested. The FRAP nominates evacuation as the preferred risk management approach, but acknowledges that Tamarind Ave does not meet the requirement for a high level evacuation route. Therefore, the FRAP recommends each dwelling be equipped with a "PMF Refuge".

This is consistent with Section A3 Clause A3.2.6 and Section A5 Clause A5.4.7. This will mean all future dwellings will need to be two storeys. Clear notification of this requirement should be made to any future potential owner/buyer of the lots. A condition of consent is recommended to ensure a covenant to this effect must be applied to the title of the parcels.

*Extent of fill*

The applicant has amended the proposed extent of fill to only partially fill the site around the dwelling pad locations as shown below. This requires a variation to Clause A3.6.3 which states that all land, other than public roads and reserves, is to be filled to a minimum level of the design flood where an additional allotment is created.



**Earthworks Plan showing extent of fill**

It is noted that, filling of the internal road on the subject site is not considered necessary as Tamarind Avenue is lower and this is not required for evacuation route purposes (see FRAP). Filling the road would also cause level difference issues with the neighbouring properties.

Further, filling to the boundary of the lots to the north (Crown Land boundary) is also considered unnecessary as this would interrupt the natural transition and drainage to the north. It should be noted that fill at the dwelling pads is up to 1.2m deep, which is relatively minor, and a gentle batter may be more appropriate for this magnitude of fill and distance to the northern boundary. Limiting fill to the proposed extent also minimises loss of flood storage in the area.

In a 1% AEP event, the proposed lots would generally have about 300-600mm deep of slow moving water in their northern areas of their backyards with an isolated area of about 1 metre deep in the vicinity of proposed Lot 2.

Therefore, the proposed extent of fill is considered appropriate for the site conditions and a variation to DCP-A3 section A3.6.3 is supported.

### *Hydraulic Assessment*

The applicant has provided a revised Civil Engineering Report that includes a qualitative hydraulic assessment.

The assessment correctly describes the nature of flooding in the area as low flow, storage type flooding and not a significant flow path. The assessment concludes that *the filling within the proposed lot is not likely to affect the hydraulic characteristics of the flood plain.*

The Coastal Creeks Floodplain Risk Management Study examined cumulative development scenarios that included filling of the subject lot. The study found that *if all of the sites are filled ... there is unlikely to be unacceptable cumulative impacts across the study area.*

Therefore, based on the applicant hydraulic assessment and the results of the Coastal Creeks FRMS cumulative development modelling, filling of the subject site is acceptable.

Given the above assessment, it is considered that the proposal is acceptable with regard to the provisions of Section A3.

### A5-Subdivision Manual

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

The application was referred to Council’s Development Engineering Unit in this regard who overall had no objections to the proposal subject to conditions of consent.

It is noted that Clause A5.6.1 outlines the nature of Community Title subdivisions and the standards required to be met. Community Title subdivisions generally *include communally owned property and infrastructure. Both development consent and issue of a subdivision certificate are required for community title subdivisions and a construction certificate is required for subdivision works. Subdivision works will include internal community owned infrastructure and external works and/or connections.*

Clause A5.6.1 also states that *the design guidelines and development standards for community title infrastructure are generally the same as those for conventional subdivisions except that Council will consider proposals that justify departure from standards for road and verge widths.*

Regarding Open Space networks related to Community Title subdivisions Clause A5.6.1 states that community subdivisions *must provide internal and perimeter public open space links that provide access to foreshores and special places and are consistent with and provide continuity for the outside urban and open space structure.* As discussed elsewhere in this report, a 4m wide Right of Footway



easement is to be retained for future public pedestrian access from Tamarind Avenue to the Cudgen Lake foreshore which is consistent with this provision.

Regarding Community Title Subdivision Works Clause A5.6.1 states:  
*A construction certificate is required for subdivision works which include internal community owned infrastructure as well as external works and/or connections. The requirements for compliance certification of these works is the same as for conventional subdivisions. Operation, maintenance, repair and replacement of internal infrastructure is the responsibility of the community body corporate and management plans will be required to direct and fund these activities.*

Conditions of consent have been applied accordingly.

#### A5.4.4 Physical Constraints

The subject site is generally flat and is mapped as flood prone. The proposal involves filling the building house pads and addressing stormwater management constraints. As detailed elsewhere in this report, Council's Flooding Engineer has reviewed the application and supports the proposal subject to conditions of consent.

#### A5.4.5 Environmental Constraints

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

Bushfire Risk: The application was supported by a Bushfire Assessment Report and was referred to NSW Rural Fire Service (RFS) in accordance with Section 100B of the Rural Fires Act. A variation was requested which included the development not requiring a perimeter road. Further information was requested, and the application was supported by the NSW RFS subject to conditions of consent which included a 6 metre wide one way access with unobstructed width.

Ecology: As detailed elsewhere in this report, the application was reviewed by Council's Natural Resource Management Unit and the application was supported subject to conditions of consent.

#### A5.4.6 Landforming

Fill is proposed within the areas of the building envelopes up to a maximum depth of 1.2m. This is considered to meet the relevant criteria keeping earthworks to a minimum and designed to not adversely impact other land or public infrastructure and preserve the existing drainage conditions and levels at site boundaries. No retaining walls are proposed.

#### A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding

The subject site is relatively flat ranging from 3.02m AHD to the east to 1.86m AHD to the over. Overland flow generally drains to the adjoining Crown Land via the north-western portion of the subject site.

The subject site is flood liable land and the application was referred to Council's Flooding Engineer who has no objections to the proposal subject to conditions of consent. As detailed elsewhere in this report, the applicant provided a Flood Response Assessment Plan (FRAP) and Civil Engineering Report that includes a qualitative hydraulic assessment and the proposal was considered acceptable when assessed against the provisions of Section A3 – Development of Flood Liable Land. As the subject site cannot achieve suitable high level road/pedestrian evacuation route(s) to land above PMF level, the proposal requires the provision of adequate refuges above PMF level in all future habitable development on that land. A condition has been applied to ensure this is noted on covenants over the future lots.

The application included an amended Stormwater Management Report (Attachment G) which proposes a detention system under the private, internal road, to address the increase in peak stormwater discharge generated by the development which is considered acceptable. Council officers did not support the entirety of the stormwater infrastructure design however it is considered to be capable of resolution with additional information provided at the Construction Certificate stage and this has been conditioned accordingly.

The subject site is located approximately 40m from Cudgen Lake and earthworks being undertaken a minimum of 70m from the Lake. Therefore approval from NSW Office of Water is not required. Appropriate sediment and erosion control conditions have been applied to mitigate impacts of the earthworks on nearby waterways.

It is noted that proposed Lot 2 and Lot 13 are currently burdened with stormwater infrastructure that benefits the neighbouring property, Strata Plan 76700. Council has been advised that a consulting engineer has been engaged regarding the relocation of the infrastructure and the issue is being rectified. Please note that Council believes this to be a civil matter between the properties, and is not considered to form part of the subject subdivision. Conditions have been recommended that require evidence be provided to Council to ensure the subject site is unburdened prior the commencement of work. This condition has been supported by the applicant.

#### A5.4.10 Movement Network

Proposed Torrens title Lot 13 has vehicular access from Tamarind Avenue to the south. Proposed Lots 2 – 12 created within the Community Title subdivision of Stage 2 do not have direct frontage to Tamarind Avenue and instead have vehicular access by way of an internal private road within Community Lot 1. The internal private road is one way, is to remain unobstructed (no on-street parking permitted) in accordance with NSW Rural Fire Service requirements and is to be 6m wide. The applicant has provided sweep paths to confirm that anticipated large vehicles such as garbage trucks and a 12.5m semi can be accommodated.

Tamarind Avenue is considered adequate to cater for the additional traffic that will be generated.

Given no on-street parking permitted, eight visitor car parking spaces have been provided within Community Lot 1. This is to service eleven residential lots (Lots 2-12) and is considered acceptable in this regard.

It is noted that footpaths should be designed and located taking into account pedestrian amenity, and likely use patterns. Given the road is a one way private road that will not feature on-street parking, no footpath is required. This is acceptable and consistent with Clause A5.6.1 that allows for Community Title subdivisions to vary from standards regarding the Clause 5.4.10. Council's Development Engineer has no objections to the proposal in this regard.

#### A5.4.12 Lot Layout

The proposed residential allotments are generally rectangular except for Lot 2 which is akin to a battleaxe lot. Proposed Torrens Lot 13 has 15.7m frontage onto Tamarind Avenue.

Each proposed allotment is demonstrates a building platform of the minimum dimension of 10m x 15m. Lots 11 & 12 are the most constrained sites in this regard given the 21m APZ to the north and then featuring a minimum 1.5m setback from the front boundary. Conditions of consent will be applied to ensure future dwelling design and onsite parking is sufficient and retention of the desired character of the development is maintained and consistent with Tweed Development Control Plan and provide a minimum 4m setback from the internal road.

Given no on-street parking permitted, eight visitor car parking spaces have been provided within Community Lot 1. This is to service eleven residential lots (Lots 2-12) which is considered acceptable in this regard.

It is noted that Lots 2, 5 and 6 are greater than 900m<sup>2</sup> and therefore theoretically meet the minimum lot size for dual occupancy developments under Tweed Development Control Plan 2008 Section A1. It is considered that these sites are not appropriate for dual occupancy development given the proportion of the sites available for development given the required asset protection zones and setbacks. However, a condition restricting this use is not able to be lawfully applied to a consent in this instance but should any future applications for dual occupancies be made, they will be assessed on merit in accordance with the Act.

#### A5.4.13 Infrastructure

The proposed services and utilities are acceptable subject to conditions of consent.

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

#### A11-Public Notification of Development Proposals

The subject application was considered to be notified development in accordance with the Environmental Planning and Assessment Act given the potential amenity impacts and development history of the area. The application was placed on exhibition for a period of 14 days from Wednesday 17 January 2018 to Wednesday

31 January 2018 during which time nine submissions were received. As such, Section A11 is considered satisfied.

#### A19 – Biodiversity and Habitat Management

At the time of lodgement of the application, Section A19 had not been adopted and therefore does not apply.

#### B19-Bogangar/Cabarita Beach Locality Plan

This section of TDCP 2008 aims to provide design guidelines to appropriately manage development within the subject Bogangar/Cabarita Beach, encourage high quality urban design.

The subject site is located within the Residential Tourist Precinct which comprises the north-western area of tourist development, adjacent to Cudgen Lake. This area has been substantially developed and it is not intended that this precinct be extended beyond its current bounds. The predominant land use in this area is to remain as an out-of-centre tourist precinct which predominately focuses on the recreation opportunities afforded by Cudgen Lake. Any future redevelopment of this precinct will demonstrate high quality environmental design and architectural merit.

Clause B19.8.1 states that *any future redevelopment of this Precinct should be retained for tourist accommodation.*

The subject development is for a staged development that will result in one additional Torrens title residential lot and a Community Title scheme comprising one community lot and 11 residential lots. Therefore a variation to Section B19 is required with regard to the residential rather than tourist use of the subject site.

When considering this variation, Clause B19.8.2 - Precinct Objectives require consideration. The Precinct Objectives are to:

- *Retain the level of amenity for adjacent residential areas and users of nearby recreation areas including Cudgen Lake.*
- *Ensure that an appropriate density of development is retained, which reflects the existing development in the precinct and surrounding residential areas.*
- *Contain any tourist development within the bounds of the precinct, ensuring the consolidation of tourist accommodation within this area of Bogangar.*

The proposed residential use of the site is considered to retain the level of amenity for adjacent residential and recreational areas. The proposed density reflects the low density residential development to the south rather than the tourist developments to the east and west. No tourist development is proposed outside the bounds of the precinct. Therefore it is considered that the Precinct Objectives are met.

Further, it is noted that the nomination of this site for Tourist development was consistent with the now repealed Tweed Local Environmental Plan (TLEP) 2000 where the site was zoned 2(e) Residential Tourist. This was reviewed under

Tweed Local Environmental Plan (TLEP) 2014 and the subject site is now zoned R1 General Residential.

Under TLEP 2000, the primary objective was *to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

As detailed elsewhere in this report, the proposed residential subdivision is consistent with the zone objectives of the current R1 General Residential zone under TLEP 2014.

Given the TLEP 2014 is the higher order document within the planning legislative hierarchy and that the relevant Precinct Objectives within Section B19 are met the variation to Section B19 with regard to the proposed residential use rather than the prescribed tourist use is considered acceptable.

The Structure Plan under Clause B19.2.4 identifies a number of opportunity sites within the village centre that could incorporate new development to achieve the broader outcomes established by this Locality Plan. The Structure Plan includes the subject site as follows:



**Excerpts from the Structure Plan (left) and Movement & Linkages Plan (right)**

*The blue X denotes the subject site. The red arrow denotes enhance views to inland water bodies whilst the purple denotes proposed pedestrian linkages.*

Further, Clause B19.8.3 states:

*Improved public access to these features should be considered a high priority in any redevelopment of the sites.*

Regarding public access, a Right of Footway 4m wide benefitting Tweed Shire Council exists along the eastern boundary of existing Lot 12 DP1208402. This easement was provided for future public access to the Cudgen Lake foreshore. As detailed elsewhere in this report, Council has not officially opened this easement for public use given the site was undeveloped. However the easement has been noted by Council's Recreation Services as part of Council's Draft Open Space Strategy as a future public pedestrian linkage and recommends that the proposal incorporate formation of a pedestrian corridor. This is consistent with the pedestrian linkages outlined in the Structure Plan and Movement and Linkages Plan above.

As detailed elsewhere in this report, it is noted the applicant proposes to replace the 4m wide corridor with a 1.2m wide footpath in the southern half of the site that is required to cross the driveway in order to access the Crown land to the north. This is not considered acceptable given the reduction of footway width from 4m to 1.2m unable to cater for a future shared user pathway and from a future public safety perspective. Any consent will require the retention of the existing 4m wide right of footway in its current location and provide a 1.5m wide concrete footpath within the easement from Tamarind Avenue to the Crown Reserve in order to comply with Section B19 and address concerns raised in this regard within public submissions.

Clause B19.8.4 Preferred Outcomes states that development in the Residential Tourist Precinct may be supported where the proposal does not detract from the amenity of the area and is consistent with:

- *The Vision for Bogangar/Cabarita Beach.*
- *This Precinct Objectives and Strategic Policies outlined above.*
- *The development design guidelines stipulated within Clauses B19.14, B19.15 and B19.16 of this Section.*

In addressing Clause B19.8.4, the proposed subdivision is not considered to detract from the amenity of the area. Further, Clause B19.2.3 states the vision for Bogangar/Cabarita Beach as:

*"To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar/Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business".*

Although no buildings are proposed, the proposed subdivision is not considered to be contrary to the vision for Bogangar/Cabarita beach.

Regarding Clause B19.8.3 Strategic Policies, the sites identified within the Tourist Residential Precinct are intended to be developed as predominantly accommodation units. The variation to this clause has been addressed above.

Clause B19.8.3 Strategic Policies also outlines that *the built form is to be low to medium rise, and is to respect the topographical features of individual sites. Where established native vegetation exists, development should be designed to integrate with the identified vegetation. The environmental performance of each site should*

*reflect its close proximity to significant environmental features such as Cudgen Lake and the adjoining National Park.*

No buildings are proposed as part of this application however, given the subdivision is for residential development, it is considered that any future development is capable of complying with this Clause. Further, much of the existing vegetation at the subject site is proposed for retention as part of Conservation Areas subject to conditions of consent compliant with this clause.

The development's compliance regarding public access to Cudgen Lake has been addressed above.

As no buildings are proposed as part of this application Clause B19.14 Commercial Façade Design Guidelines, Clause B19.15 Residential Design Guidelines and Clause B19.16 Building Height do not apply however it is noted that the proposed lots facilitate compliance with Clause 19.15 and any future residential development is capable of meeting this clause.

Given the above assessment, the proposed residential subdivision is considered to be consistent with Clause B19.8.4 Preferred Outcomes.

Overall, subject to conditions of consent, the proposal is considered to be acceptable with regard to the provisions of Section B19.

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

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

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

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

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

Clause 92(1)(b) Applications for demolition

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

Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

**Tweed Shire Coastline Management Plan 2005**

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

**Tweed Coast Estuaries Management Plan 2004**

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

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

The subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), with this Plan therefore not relevant to the proposed development.

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

**Context and Setting**

The subject site is located within an existing urban area with residential and tourist development to the east and west with low density residential development to the south. The proposed residential subdivision is considered to be an appropriate land use in this context.

**Access, Transport and Traffic**

Lot 13 created from Stage 1 obtains direct pedestrian and vehicular access from Tamarind Avenue while the proposed Community Title subdivision residential lots from Stage 2 are accessed via a 6m wide one way internal access road to be located on common property utilising the two existing frontages off Tamarind Avenue.

The application states that a garbage truck and a 12.5m truck/bus can adequately circulate the proposed development which is sufficient for general domestic usage, and compliance with the Rural Fire Services General Terms of Approval regarding access.

It is noted that the proposal design and Rural Fire Services General Terms of Approval does not allow for parking along the access road which removes visitor parking which is typically addressed by a minimum frontage control with Council's Subdivision Manual. To address this, the application proposes a separate eight visitor car parking spaces in common property. These spaces are considered sufficient to provide for the proposed 11 residential properties.



No traffic assessment was submitted with this application however it is considered that the road network is adequate to cater for the proposed low density development.

As such, the proposal is considered acceptable in this regard.

### Construction

There exists potential for noise and dust to be generated during earthworks and future construction activities. Standard conditions have been applied to mitigate any amenity and sediment and erosion impacts.

### Ecology

The application was referred to Council's Natural Resource Management Unit for assessment.

The existing site featured the following:

- A known Bush Stone-curlew (*Burhinus grallarius* listed as Endangered under the *Biodiversity Conservation Act 2016*) nesting and roosting site.
- A unit of vegetation representative of an Endangered Ecological *Swamp Sclerophyll forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions* listed under the *Biodiversity Conservation Act 2016* occurs onsite.
- The unit of Endangered Ecological Community (EEC) is regarded as Preferred Koala Habitat as defined in the Tweed Coast Comprehensive Koala Plan of Management 2015 (TCKPoM). Also Individual Preferred Koala Food Trees scheduled under the TCKPoM occur onsite.



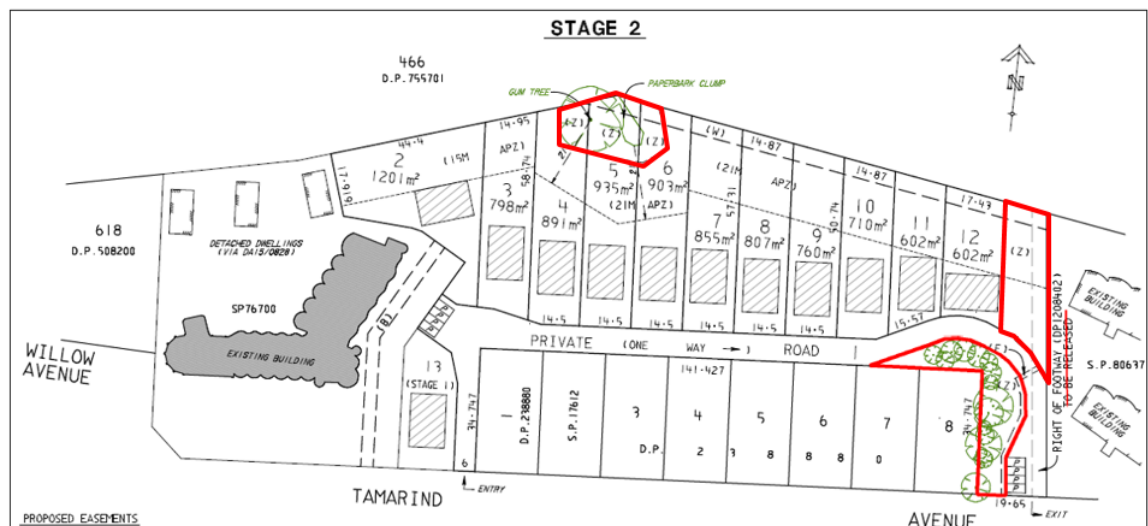
**Location of EEC, Preferred Koala Food Tree and Bush Stone-curlew record as taken from the Ecological Assessment 2018**

As shown below, the amended subdivision plan (annotated) overlaid onto the tree survey (in Vegetation Management Plan (VMP) dated 18 November 2017 prepared by Newground Environmental Consulting), shows that seven (7) trees classified as ‘prescribed vegetation’ under DCP Section A16 Preservation of Tree or Vegetation would require removal to facilitate the development. Those trees to be removed are identified by a red triangle symbol below. It is noted that the tree identified by the purple triangle has already been removed. All other trees in orange circles are to be retained.



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

- Retain, and protect in perpetuity a known Bush Stone-curlew nesting/roosting area and Endangered Ecological Community on site under an 88B Restrictive Covenant and within the Community Management Statement;
- Improve and enhance known Bush Stone-curlew nesting/roosting area and Endangered Ecological Community on site under an 88B Positive Covenant. These areas are to be subject to an approved Habitat Management Plan;
- Retain and protect Preferred Koala Food Trees and Preferred Koala Habitat occurring onsite;
- Ensure ecological values are afforded adequate protection and appropriately managed during the construction phase of the development through implementation of an approved Habitat Management Plan and installation of vegetation protection fencing in accordance with Australian Standard AS4970:2009 Protection of tree on development sites;
- Reference to an annotated plan to generally reflect the Conservation Area shown in red below.



**Proposed Site Plan highlighting the Conservation Area to be protected under an 88B Restrictive Covenant and Community Management Statement ('Z' or outlined red denotes area to be protected).**

The proposed staged development is supported subject to implementation and compliance with conditions of consent recommended to ensure long term protection and appropriate management of ecological values occurring onsite. Conditions involve the creation of a Conservation Area protected, rehabilitated and managed subject to an approved Habitat Management Plan stated on title from Stage 1 earthworks being undertaken and noted within the Community Management Statement.

#### Drainage and Flooding

The subject land is relatively flat with Cudgen Lake located to the north. The existing levels range from RL 1.8m to 3.1m AHD across the site. The proposal involves only filling areas of the building envelopes up to 3.4m AHD to achieve

minimum dwelling floor levels to comply with flooding requirements. The figure below shows the areas to be filled.



**Civil Works Plan Stage 1 (Orange denotes extent of fill)**

It is noted that the nature of flooding in the area is low flow, storage type flooding and is not a significant flow path. As detailed elsewhere in this report, a variation to the controls of Section A3 of TDCP is supported by Council's Flooding Engineer with regard to filling only the building envelopes rather than comply with the requirement to fill the entire site including the access road.

It is considered that the proposed fill is appropriate for the site flooding characteristics and site conditions minimising level difference issues and drainage impacts with the neighbouring properties.

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

Surrounding Landuses/Development

The subject site is located within an existing urban area with residential or tourist development to the east, west and south. To the north lies Cudgen Nature Reserve and Cudgen Lake.

The proposed residential subdivision is considered to be consistent with these adjoining land uses. The scale of the development the subdivision can facilitate is not considered to be dissimilar to the existing development in the area.

The proposal, subject to conditions of consent facilitates future public pedestrian access to the Crown land to the north from Tamarind Avenue whilst the proposed setbacks are sufficient to avoid any unreasonable overshadowing of existing adjacent developments with no unreasonable view loss anticipated. The proposed development is considered acceptable in this regard.

### Topography, Earthworks and Flooding Hazard

The subject site is generally flat and is mapped as flood prone, therefore requiring fill up to 1.2m in depth to comply with required flood hazard controls.

As detailed elsewhere in this report, the application was referred to Council's Flooding engineer for assessment. The applicant has provided a Civil Engineering Report that includes a qualitative hydraulic assessment.

The assessment describes the nature of flooding in the area as low flow, storage type flooding and not a significant flow path. The assessment concludes that the *filling within the proposed lot is not likely to affect the hydraulic characteristics of the flood plain.*

The Coastal Creeks Floodplain Risk Management Study examined cumulative development scenarios that included filling of the subject lot. The study found that *if all of the sites are filled there is unlikely to be unacceptable cumulative impacts across the study area.*

Therefore, based on the applicant hydraulic assessment and the results of the Coastal Creeks FRMS cumulative development modelling, filling of the subject site is considered acceptable.

Further, the applicant has provided a Flood Response Assessment Plan (FRAP) considering any future residential development. The FRAP which nominates evacuation as the preferred risk management approach, but acknowledges that Tamarind Avenue does not meet the requirement for a high level evacuation route. Therefore, the FRAP recommends each dwelling be equipped with a "Probable Maximum Flood (PMF) Refuge" requiring all future dwellings to be two storeys which is considered reasonable.

Therefore subject to conditions of consent, it is considered that the proposed earthworks and residential use is suitable at the subject site.

### Water and Sewer

Engineering Reports have been submitted addressing the provision of water and sewer to the subject development. Although further details are required prior to the issue of a Construction Certificate and Section 68 approval, Council's Water and Wastewater Unit and Development Engineers have no objection to the proposal subject to conditions of consent and is therefore acceptable in this regard.

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

The subject application was considered to be notified development in accordance with the Environmental Planning and Assessment Act given the potential amenity impacts and development history of the area. The application was placed on exhibition for a period of 14 days from Wednesday 17 January 2018 to Wednesday 31 January 2018 during which time eleven submissions were received from nine objectors to the proposal.

Most submissions raised similar concerns with regard to flooding, earthworks, ecology, amenity and the existing Right of Footway easement benefiting Council. The applicant did not address the concerns raised individually however provided the following response:

*The applicant recognises the importance of public participation in the decision-making process in regard to Development Applications of this nature in a location adjacent to a significant natural asset such as Cudgen Lake. As a result, the eleven (11) submissions have been carefully considered for the proposed amended design. It is apparent that the submissions objecting against the proposed development generally relate to the preservation of the local ecological values, flooding concerns and public access to Cudgen Lake. As a result, the applicant has amended the subdivision design in accordance with Council's requests above, as well as engaging an experienced Ecologist (i.e. New Ground Environmental) to ensure the identified flora and fauna species are retained in their natural state to be integrated within the development. It is recognised that flooding concerns are being addressed by the consulting Engineer (ie Cozens Regan) and relevant Council officer and as such, it is expected this issue will be closed in the short term.*

The concerns are summarised and considered below.

### Flooding

#### *Concerns raised:*

- New ground levels resulting from the proposed fill will result in drainage issues and flooding on adjoining properties. This will have a detrimental effect on existing houses in this area where which are at a lower ground level.
- The cumulative impact of raising land in a flood zone to benefit developers which would make “everyone else living in the Tweed more susceptible to flooding”. “Little faith” in the flood modelling was conveyed.
- The flooding concern should not be taken lightly given the climate science. “Is planning such that we pass buildings in the knowledge that there is a great chance of them becoming inundated with the social, insurance, economic problems that that brings.
- The current lot arrangement does not meet the road evacuation routes.
- It's inappropriate development in a flood prone area.
- The filling of the site is out of character with the surrounding development.

Below are submitted photographs taken during the March 2017 flood event.



***Photo from an adjacent property.***



***Photo from Tamarind Avenue.***

***Comments:***

As detailed elsewhere in this report, the application was referred to Council's Flooding engineer for assessment.

Tweed Development Control Plan 2008 Section A3 – Development of Flood Liable Land sets detailed standards for land development in order to minimise the adverse effect of flooding on the community and aims to implement the Tweed Valley Floodplain Risk Management Plan 2005.

Section A3 states that where an additional allotment is to be created land, the land is to be filled to a minimum level of the design flood is created. The extent of fill has been amended to propose only partially filling the site around the dwelling pad locations. On the subject site, filling of the internal road is not considered necessary as Tamarind Avenue is lower and this is not required for evacuation route purposes in accordance with the proposed Flood Response Assessment Plan (FRAP) which instead recommends each dwelling be equipped with a "Probable Maximum Flood (PMF) Refuge".

A variation to Section A3 in this regard is considered acceptable as the proposed extent of fill is considered appropriate for the site conditions minimising level difference issues with the neighbouring properties, minimising ecological impact

and interruption of drainage to the north and therefore the proposal is considered acceptable in this regard.

The Coastal Creeks Floodplain Risk Management Study examined and modelled cumulative development scenarios that included filling of the subject lot. The study found that *if all of the sites are filled there is unlikely to be unacceptable cumulative impacts across the study area.*

Whilst the Climate Change levels do not apply to this infill site, appropriate flood risk management measures have been incorporated into the design and conditions of consent for the subdivision.

In accordance with the NSW Floodplain Development Manual, the floodplain should not be sterilised from development simply because it is “flood prone”. The development is to be built to contemporary flood planning levels and is to be equipped with PMF refuges to mitigate risk to life from floods greater than the FPL. This is considered an acceptable level of risk for residential development under Council’s policies.

Therefore, given the above, the flooding hazard and proposed filling of the subject site is considered acceptable.

### Earthworks

#### *Concerns raised:*

- The submission vaguely proposes ‘about a metre’ of fill when actually up to 1.2m of fill is required.
- Dust from the earthworks causing lung issues or dirtying laundry associated with a home business.

#### *Comments:*

1.2m of fill proposed is noted. This is considered acceptable given the fill is located only associated with the dwelling pads and is located wholly within the development site. Standard conditions of consent will be applied to ensure the amenity impacts such as dust are minimised.

### Ecology

#### *Concerns raised:*

- Significant ecological and environmental concerns given proximity of the development to Cudgen Nature reserve.
- Wildlife in the area is under pressure already.
- The site contains koala habitat. The development proposal will impact on the habitat of Koalas that move through the site and the adjoining public land. The site adjoins public land that links two areas of Cudgen Nature Reserve that are very important for the Tweed Coast Koalas.
- Strongly disagrees that there will be no loss of biodiversity values. Our concern is that in fact these 60 trees proposed for removal are significant in our groups view. We ask that the design be modified so that these trees



can be kept as part of a Vegetation corridor between the two areas of the adjacent Cudgen Nature Reserve.

- Valuable habitat for endangered bush stone curlews. The development will limit the movement of the birds.
- Concerned that the Architectural Plans do not indicate clearly the 15 m APZ required per page 13 of the Bush Fire Assessment Report Appendix C. This concern is raised because the 15m Asset Protection Zone is not indicated on the detailed site plan provided. Please ensure the Council requires the 15 m setback to be adhered to in any final approval.

*Comments:*

Council's Natural Resource Management Unit assessed the application noting the existing ecological features at the site as summarised within the following plan submitted within the Ecological reporting.



**Location of EEC, Preferred Koala Food Tree and Bush Stone-curlew record as taken from the Ecological Assessment 2018**

Considering the concerns raised in the submissions and the ecological reporting provided as part of the application, it is considered that any adverse cumulative impact on the sites ecological values as a result of the proposed development could be avoided or minimised and managed to an acceptable level through conditions of approval. As such the following general conditions of consent are recommended:

- Retain, and protect in perpetuity a known Bush Stone-curlew nesting/roosting area and Endangered Ecological Community on site under an 88B Restrictive Covenant
- Improve and enhance known Bush Stone-curlew nesting/roosting area and Endangered Ecological Community on site under an 88B Positive Covenant. These areas are to be subject to an approved Habitat Management Plan
- Retain and protect Preferred Koala Food Trees and Preferred Koala Habitat occurring onsite.



**Proposed Site Plan highlighting areas to be protected under an 88B Restrictive Covenant ('Z' or red denotes area to be protected).**

As discussed elsewhere in this report, it is considered that seven (7) trees classified as 'prescribed vegetation' under DCP Section A16 Preservation of Trees or Vegetation are to be removed to facilitate the development considering the amended subdivision plan (annotated to include the Conservation Area) and the tree survey (in Vegetation Management Plan (VMP) dated 18 November 2017 prepared by Newground Environmental Consulting). As detailed above, this is considered acceptable subject to conditions of consent.

Amended site plans include the bushfire asset protection zones and show the majority of the existing vegetation is being retained.

Given the proposed conditions of consent, it is considered that the concerns raised have been sufficiently addressed.

### Easement and access to the foreshore

#### *Concerns raised:*

- Right of way being blocked by an existing fence or the future development.
- He's stopped people accessing the lake foreshore unless they're in his apartments.
- This linkage is highlighted in Section B19 and the development is considered to not enhance but rather reduce the linkage from Tamarind Avenue to the Cudgen Lake foreshore.

#### *Comments:*

As detailed elsewhere in this report, the easement as proposed is not considered acceptable and as such, any consent will require the retention of a 4m wide Right of Footway benefitting Council in addition to the formation of a 1.5m concrete footpath along the length of the easement. This is consistent with the existing easement which provided for a future public pedestrian linkage as outlined in Section B19 of Tweed Development Control Plan 2008 and consistent with SEPP No. 71 and Clause 5.5 of TLEP 2014.

Regarding the fencing along the front boundary, blocking the Right of Footway from public use, landowner was requested to remove the fencing to allow Council access whilst customers raising this matter have been advised that although the easement benefit's Council, Council has not yet authorised the public use of the easement.

### Amenity

#### *Concerns raised and comments:*

- Building heights in question and visual amenity impacts.

The building heights are regulated by the Tweed Local Environmental Plan 2014 where this site is mapped as having a maximum building height of 13.6m. Section A1 Part A of TDCP 2008 nominates a maximum building height of 9m for single dwellings or dual occupancies. No dwellings are proposed as part of the amended proposal and therefore building heights are not being assessed. However when considering potential future impacts, it is noted that each dwelling is to feature a PMF refuge making every dwelling 2 storeys in addition to the fill of a maximum of 1.2m. This can be easily achieved within the DCP control of 9m and therefore well under the TLEP control of 13.6m. However the building envelopes are located substantially setback from the site boundaries and the adjoining existing properties and as such, any future amenity impacts as a result of future compliant dwellings are not considered unreasonable in this regard.

- The area is zoned for tourist development.

The subject site is zoned R1 General Residential where dwelling houses are permissible with consent.

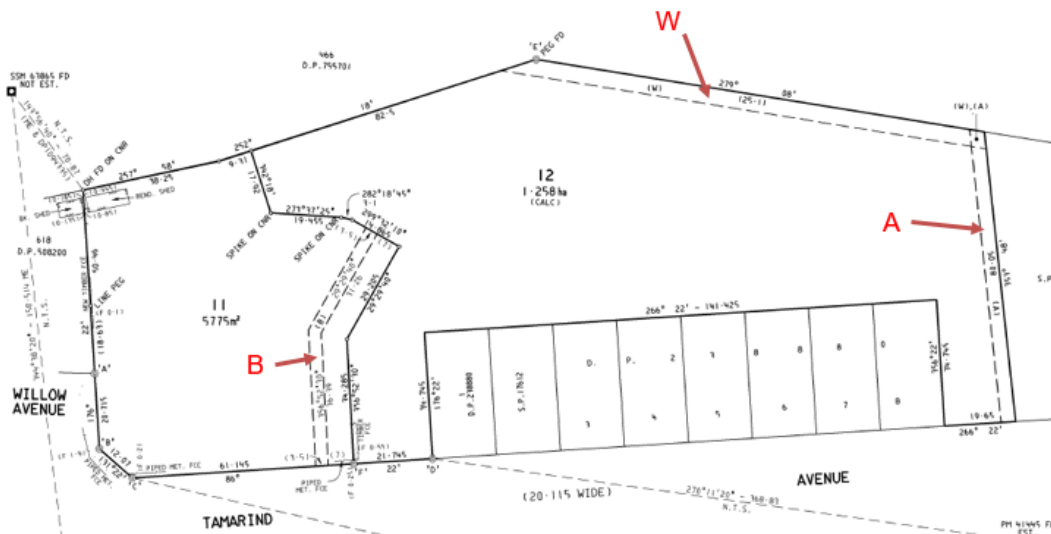
- No street tree planting is proposed

Conditions have been applied to require landscaping is provided along the internal access road to the south. It is also noted that the Conservation Area which include established vegetation subject to a Habitat Management Plan will also contribute to the amenity in this regard.

### **(e) Public interest**

As detailed in this report, a comprehensive analysis of proposal against legislation has been undertaken and it has been concluded that the proposed subdivision development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The proposal is consistent with plans to meet future housing stock demands. Robust conditions have been recommended to ensure impacts are adequately mitigated and the public interest maintained. The development is therefore considered to be in the public interest by providing residential development within an established urban area which through development design mitigates flooding hazards and minimises ecological impacts.

## Covenants and easements under Conveyancing Act 1919



**Plan of existing Lot 12 DP1208402**

As shown above, over the existing Lot 12 DP1208402:

- 'A' is a Right of Footway 4m wide benefitting Tweed Shire Council.
- 'B' is a right of carriage way 3.5m wide benefitting Lot 12.
- 'W' is a drainage easement 4.7m wide
- A positive covenant benefitting Tweed Shire Council states:  
*Lot 12 may not have been filled to Council's Adopted Design Flood Level of 3.4m AHD. Lot 12 will be required to be filled to Council's satisfaction in conjunction with any future development of the lot.*

The proposal involves easements 'B' and 'W' are to be retained and unchanged.

Regarding Council's Right of Footway, this easement was provided for future public access to the Cudgen Lake foreshore. As defined by Schedule 8 of the Conveyancing Act 1919 this Right of Footway allows people authorised by Council 'to pass... on foot at all times and for all purposes, without animals or vehicles'. Council has not officially authorised the public to utilise the footway as Council has not yet undertaken a risk assessment and management regime (e.g. signage, path construction) of the land for the purposes of public use given the site was undeveloped. However the easement has been noted by Council's Recreation Services as part of Council's Draft Open Space Strategy as a future public pedestrian linkage and recommends that the proposal incorporate formation of a 4m wide pedestrian corridor. This is consistent with the pedestrian linkages outlined in Section B19 of Tweed Development Control Plan 2008 and provisions within SEPP No 71 and Clause 5.5 of TLEP 2014.

The original application proposed the easement to be retained however be located through Lot 14 and make up most of the private open space of that Lot given the originally proposed dwelling design. This was not considered acceptable given the conflict of use and privacy impacts. The applicant amended the plan (see below) and proposes to replace the 4m wide corridor with a 1.2m wide footpath in the

southern half of the site that is required to cross the driveway in order to access the Crown land to the north.



**Revised Site Plan highlighting the proposed Council Right of Footway**  
 ('F' denotes the proposed however unsupported 1.2m wide Right of Footway.)

This is not considered acceptable given the reduction of footway width from 4m to 1.2m unable to cater for a future shared user pathway and from a future public safety perspective. Any consent will require the retention of the existing 4m wide right of footway in its current location. This is also considered to address concerns raised in this regard within public submissions. Additionally, in order to address SEPP No 71 provisions, any consent will be conditioned to require the construction of a 1.5m wide footpath along the eastern boundary within the Right of Footway.

It is noted that this existing footway easement is co-located within the proposed Conservation Area for the bush stone-curlew however Council's Natural Resource Management Unit have this considered acceptable given the preferred habitat and behaviour of the endangered species.

The positive covenant regarding filling to flood level is being addressed as part of this application.

Overall, subject to conditions of consent, the proposal is acceptable in this regard.

### **Tweed Coast Comprehensive Plan of Management (TCCKPoM)**

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

The applicant was requested to carry out a contemporary Koala Habitat Assessment (KHA) and Koala Activity Assessment (KAA) in accordance with 'Section 5.8 Assessment of Koala Habitat'. The applicant conducted a KHA and KAA in general accordance with the TCCKPoM (within the Ecological Assessment Report).

The KAA failed to return any evidence of Koala activity within the study area. Further the design of the development was modified to retain Preferred Koala Habitat and Preferred Koala Food Trees occurring onsite. It was noted that the 21m asset protection zones to Lots 4, 5 and 6 have been setback from the base of canopy trees forming part of the KHA. Minor understory modification and maintenance would be expected.

Given the absence of Koala activity, the position of the site outside a Koala Activity Precinct or Koala Linkage Precinct and that impact/removal of Preferred Koala Habitat and Preferred Koala Food Trees would be avoided

Therefore the proposal is considered acceptable with regard to the provisions of the Plan.

### **Developer Contribution Charges**

Section 64 and Section 7.11 Developer Contributions apply to the subject development.

The development proposes:

- Stage 1.  
Two lot Torrens Title residential subdivision.  
2 ET - 1 ET credit = 1ET/6.5 trips
- Stage 2  
12 lot Community Title subdivision comprising 11 residential lots and 1 community lot.  
11 ET - 1ET credit = 10 ET/65 trips.

As the development is characterised as a subdivision and construction of dwellings does not form part of the application, Community Title Lots are to be charged 'per Lot' as per the S9.11 Plans (1 ET/6.5 trips) rather than the 'per bedroom' rate.

Developer contributions have been conditioned accordingly.

### **OPTIONS:**

1. Approve the application in accordance with the recommended conditions of consent; or
2. Refuse the application with stated reasons for refusal.

OPTION 1 is recommended.

### **CONCLUSION:**

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

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

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

**c. Legal:**

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

**d. Communication/Engagement:**

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**2 [PR-PC] Development Application DA18/0665 for a Change of Use of Lot 18 (Unit 205) to Dual Use of Shop Top Housing and Serviced Apartments at Lot 18 SP 77096 No. 18/2-6 Pandanus Parade, Cabarita Beach**

**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:**

Consent is sought for a change of use of one tourist accommodation being Lot 18 (unit 205) to a dual use comprised of shop top housing and serviced apartments.

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

The unit is located on the second level of the existing "The Beach" complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach. The unit is comprised of three bedrooms (the main with ensuite), a bathroom, laundry and open plan living with an adjacent external private open space area, which overlooks the adjoining foreshore.

The fundamental issue with regards to the subject application is the precedent which *may* be set by endorsing a variation to the parking requirements under Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008.

In accordance with Section A2 the use of the existing unit for permanent occupation attracts the need for visitor parking. A2 prescribes 1 parking space per 4 residential units for visitor parking, in relation to the subject application this equates to 0.25 of a space rounded up to 1.

Based on a review of the available records the site is approved for 26 x 3 bedrooms, 1 x 4 bedroom and 30 x 2 bedrooms.



When considering the site holistically the development would be required to provide the following parking:

27 (3 bedroom units + 1x 4 bedroom) = 27 x 2 = 54 parking spaces

30 (2 bedrooms units) = 30 x 1.5 = 45 parking spaces

1 space/4 units = 0.25 x 57 units = 14.25 spaces

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

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

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

Council's Traffic Engineer has endorsed the variation for the subject application given the nature of the application (one unit), the subject unit complies with the required 2 parking spaces for permanent residents, and the availability of publically accessible parking in close proximity to the development. Site Access and Parking is discussed further within this report.

Notwithstanding the above it is noted that any *potential* future applications will need to be assessed on merit and may not be supported by Council for reasons other than parking.

The subject development has been assessed on its merits and is recommended for approval.

## **RECOMMENDATION:**

**That Development Application DA18/0665 for a change of use of Lot 18 (unit 205) to dual use of shop top housing and serviced apartments at Lot 18 SP 77096 No. 18/2-6 Pandanus Parade, Cabarita Beach be approved subject to the following conditions:**

### **GENERAL**

- 1. The development approves the change of use of one tourist accommodation unit into a dual use unit which can be used either as a residential unit (defined as shop top housing) or as a tourist accommodation unit (defined as a serviced apartment). The affected unit is Lot 18 in SP 77096 (level 2).**

**The development shall be completed in accordance with the Statement of Environmental Effects and associated plan titled Change of use of Lot 18 in SP 77096 (level 2) into a dual use unit which can be used either as a residential unit (defined as shop top housing) or as a tourist accommodation unit (defined as a serviced apartment). Received by Council 3/8/2018.**

[GEN0005]

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

[GEN0015]

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

[GEN0115]

#### PRIOR TO OCCUPATION

#### 4. Section 7.11 Contributions

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

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 7.11 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

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

- |  |                |
|--|----------------|
| (a) Shirewide Library Facilities:<br>0.875 ET @ \$933 per ET<br>(\$792 base rate + \$141 indexation)<br>CP Plan No. 11                       | <b>\$816</b>   |
| (b) Bus Shelters:<br>0.875 ET @ \$71 per ET<br>(\$60 base rate + \$11 indexation)<br>CP Plan No. 12  | <b>\$62</b>    |
| (c) Eviron Cemetery:<br>0.875 ET @ \$135 per ET<br>(\$101 base rate + \$34 indexation)<br>CP Plan No. 13                                     | <b>\$118</b>   |
| (d) Community Facilities (Tweed Coast - North)<br>0.875 ET @ \$1539 per ET<br>(\$1,305.60 base rate + \$233.40 indexation)<br>CP Plan No. 15 | <b>\$1,347</b> |

- (e) **Extensions to Council Administration Offices  
& Technical Support Facilities**  
0.1848 ET @ \$2187.14 per ET **\$404.18**  
(\$1,759.90 base rate + \$427.24 indexation)  
CP Plan No. 18
- (f) **Regional Open Space (Structured):**  
0.875 ET @ \$4264 per ET **\$3,731**  
(\$3,619 base rate + \$645 indexation)  
CP Plan No. 26

[POC0395]

5. **Prior to occupation of Lot 18 for permanent residential use (shop top housing) documentary evidence shall be submitted to Tweed Shire Council demonstrating that a PO Box has been obtained for the use of permanent residents.**

[POCNS01]

## **USE**

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

[USE0125]

**REPORT:**

**Applicant:** Mr PJ See  
**Owner:** Mr Patrick J See  
**Location:** Lot 18 SP 77096 No. 18/2-6 Pandanus Parade, Cabarita Beach  
**Zoning:** B2 - Local Centre  
**Cost:** Nil

**Background:**

Consent is sought for a change of use of one tourist accommodation being Lot 18 (unit 205) to a dual use, comprised of shop top housing and serviced apartments.

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

The unit is located on the second level of the existing “the Beach” complex located at Pandanus Parade and Tweed Coast Road, Cabarita Beach (see figure below). The unit is comprised of three bedrooms (the main with ensuite), a bathroom, laundry and open plan living with an adjacent external private open space area, which overlooks the adjacent foreshore.

“The Beach” is an established mixed use building within the main commercial centre of Cabarita, located on the eastern side of Tweed Coast Road at the southern edge of the Cabarita Village Centre.

The existing development is a mainly three storey building with a small four storey component. At present the complex has established short term residential uses located across the first, second and third floors. There is also basement level car parking and retail and commercial uses along the Pandanus Parade and Tweed Coast Road frontages of the site.

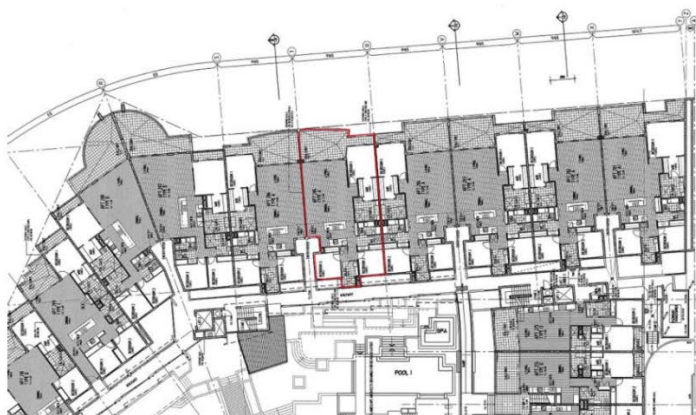


Figure 1: Unit 205 (lot 18) as extracted from approved plans for ‘the beach’ Major Project approval (DA03/1221)



Figure 2: Floor Plan of Unit 205 (lot 18), as extracted from the applicant's Statement of Environmental Effects

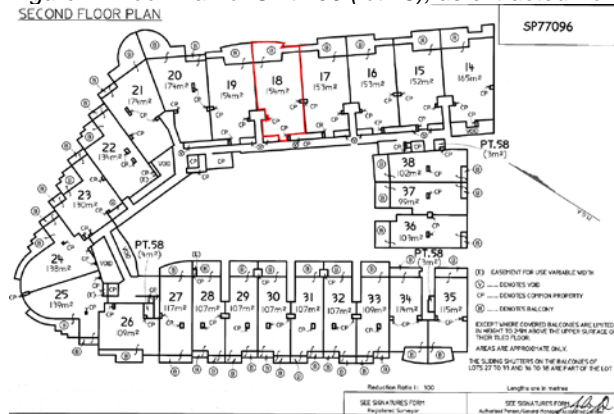


Figure 3: Lot 18, as extracted from SP 77096

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

The application was notified for a period of 14 days. During this period no submissions were received.

Notwithstanding this, an owner from a ground floor commercial business contacted Council and advised that they required an extension to the notification period. Upon consideration of workloads and timeframes an extension of some 9 days was granted. It appears that this verbal information was then passed on to other persons, as following the closure of the exhibition period a total of five late submissions were received (two of the submissions were on behalf of "the Beach Resort Management". These submissions were considered and are addressed further within this report.

As detailed previously, the fundamental issue with regards to the subject application is the precedent which *may* be set by endorsing a variation to the parking requirements under Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008.

In accordance with Section A2, the use of the existing unit for permanent occupation attracts the need for visitor parking. A2 prescribes 1 parking space per 4 residential units for visitor parking, in relation to the subject application this equates to 0.25 of a space rounded up to 1.

Based on a review of the available records the site is approved for 26 x 3 bedrooms, 1 x 4 bedroom and 30 x 2 bedrooms.

When considering the site holistically the development would be required to provide the following parking:

- 27 (3 bedroom units + 1x 4 bedroom) = 27 x 2 = 54 parking spaces
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1 space/4 units = 0.25 x 57 units = 14.25 spaces

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

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

Council's Traffic Engineer has endorsed the variation for the subject application given the nature of the application (one unit), that the subject unit complies with the required 2 parking spaces for permanent residents, and the availability of publically accessible parking in close proximity to the development. Site Access and Parking is discussed further within this report.

Again, notwithstanding the above it is noted that any future applications will need to be assessed on merit and may not be supported by Council for reasons other than parking.

### Consent History

The subject site has had the following approved:

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

Of particular relevance DA03/1221 "The Beach" development was approved by the Minister for Planning on 4 May 2004. The development consists of *57 tourist accommodation units, commercial floor area and basement car parking.*

Following the issue of DA03/1221, three subsequent modifications have been approved by the NSW DPE:

### DA03/1221.04:

Amended in relation to onsite car parking, condition 28 was amended to read as follows:

28. The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

<b>Car parking allocation</b>	<b>Number</b>
Tourist accommodation car parking spaces	85
Retail/commercial car parking spaces	71

DA03/1221.06:

Amendments were predominately in relation to payments of bond and BCA classifications, pool hours (amenity), payment of a road bond for works and stratum subdivision. No impacts on the subject application.

DA03/1221.07:

Amendment to condition 5 of Schedule 2, to read as follows:

**SCHEDULE 2**

**Condition No. 5 of Schedule 2 is amended to read as follows:**

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, Management Rights for the development are to be created in accordance with the document titled "*Management Rights Structures - The Beach, Cabarita*", prepared by Paul Brinsmead of Hickey Lawyers and dated 29 May 2003.

In order to ensure compliance with this condition, a subdivision certificate is not to be issued for the development until the consent authority is provided with copies of Apartment Management Agreements entered into by Purchasers who have entered into Contracts to acquire apartments in The Beach, for no less than 33 apartments in The Beach, whereby those Purchasers make their apartments available for short term tourist accommodation following the settlement of their purchase.

A review of the available file (DA03/1221) has revealed that condition 5 was complied with. Signed Management documents for 33 units to be used as Tourist only was submitted to Council. Lot 18 was not included.

The following units have been approved in accordance with condition 5 of DA03/1221 (as amended):

- 1, 2, 3, 4, 5, 6, 9, 12, 13, 15, 16, 17, 19, 20, 25, 26, 27, 28, 30, 31, 33, 34, 35, 38, 40, 41, 42, 43, 48, 49, 55, 56 and 57.

Whilst condition 5 of DA03/1221 (as amended) has been complied and the subject unit is not a Lot referred to, there was no condition on the amended consent requiring the units/lots be registered against the title as a restriction of use. Accordingly, it is open to all unit owners to lodge an application of a similar nature. Should this occur the site is not capable of complying with the required onsite parking prescribed under Section A2. Site access and parking is discussed further within this report.

Original consent:

**Surrender of Consent**

3. In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, the Applicant shall, prior to the issue of a construction certificate for this consent and in the manner prescribed by Clause 97 of the Regulation, surrender the development consents described below:

<b>Development Application No. 0323/2001DA (issued by Tweed Shire Council)</b>	
<b>Development Description</b>	Demolition of the existing building and structures and construction of a new 3 storey building comprising a hotel, restaurant, bottle shop, retail shops, conference/gym facility and 61 tourist accommodation units.
<b>Date</b>	21 June 2002

**Prescribed Conditions**

4. The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

**PART B - GENERAL**

5. The apartments are to be used only for the purpose of tourist accommodation, as specified on the development application form. In this regard, a covenant restricting use is to be placed on the title of each tourist accommodation lot restricting the stay of users within each unit to 40 continuous days.



**AERIAL PLAN:**



1:750 @ A4 Portrait  
 0 7.5 15 m  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoidetic Datum of Australia 1994  
 Grid: Map Grid of Australia, Zone 56

**TWEED**  
 SHIRE COUNCIL  
 Civic and Cultural Centre  
 3 Tumbulgum Road  
 Marvillumbah NSW 2484  
 PO Box 816  
 Marvillumbah NSW 2484  
 T | (02) 66773 2430 | 1300 262 872  
 F | (02) 6670 2429  
 W | www.tweedshire.nsw.gov.au  
 E | planning@tweedshire.nsw.gov.au

**Aerial Photography April 2018**

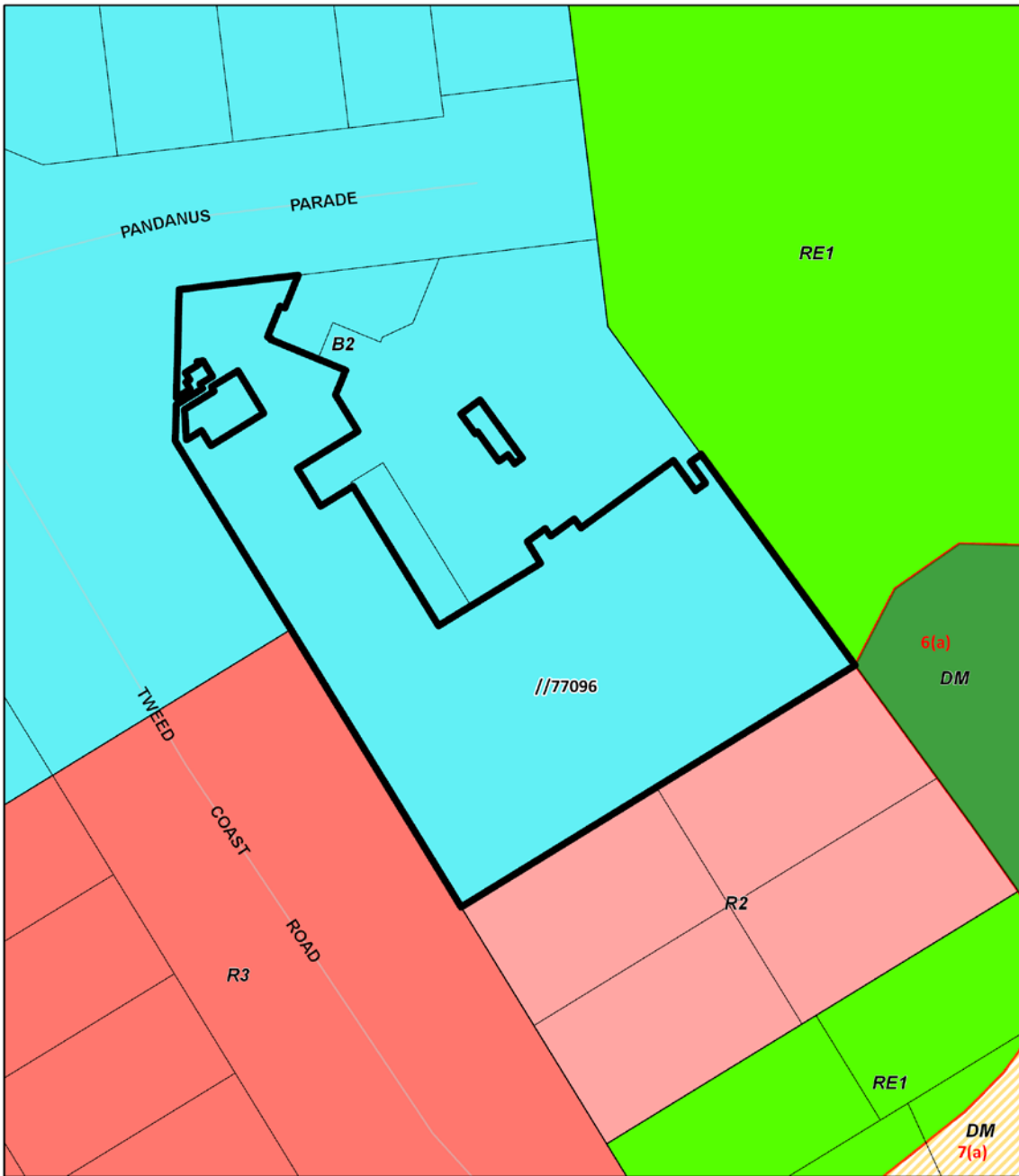
SP 77096  
 18/2-6 Pandanus Parade CABARITA BEACH

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 Boundaries shown should be considered approximate only.

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Author: C Less - 6/16 Date Printed: 22 January 2019

**ZONING PLAN:**



**Subject Land**  
 Subject Land

**LEP 2000 (as at 2014)**  
 6(a) Open Space  
 7(a) Environmental Protection (Wetlands and Littoral Rainforest)

**Tweed Local Environmental Plan 2014**  
 B2 Local Centre  
 R2 Low Density Residential  
 R3 Medium Density Residential  
 RE1 Public Recreation  
 DM, Deferred Matter

1:750 @ A4 Portrait  
 0 7.5 15 m  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projection: Universal Transverse Mercator  
 Horizontal Datum: Geoidetic Datum of Australia 1996  
 GDA  
 CRS: Map Grid of Australia, Zone 56

**Site Plan - Local Environmental Plan**

SP 77096  
 18/2-6 Pandanus Parade CABARITA BEACH

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 Information (LPI)  
 and Tweed Shire Council



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Date Printed: 22 January, 2019

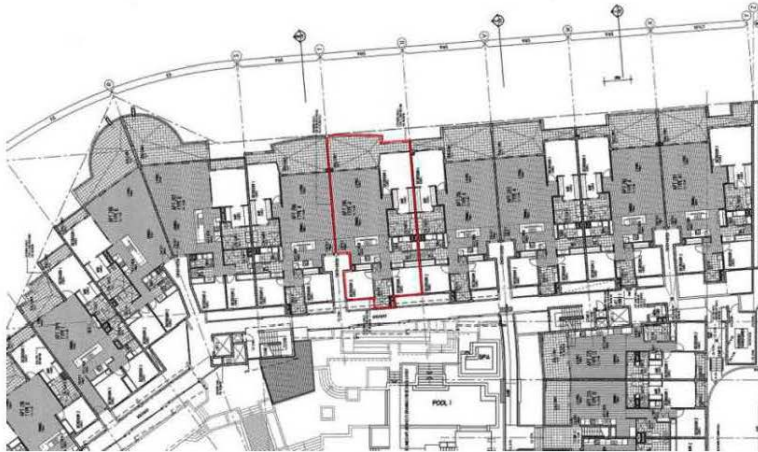
**DEVELOPMENT/ELEVATION PLANS:**

Change of use of Lot 18 in SP 77096 (level 2) into a dual use unit which can be used either as a residential unit (defined as shop top housing) or as a tourist accommodation unit (defined as a serviced apartment).

Received by Council 3 August 2018



Lot 18



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

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
  - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
  - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
  - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
  - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
  - (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
  - (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
  - (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
  - (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*

- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

It is considered that the proposal would be consistent with the aims of the plan; the proposed development is not considered to have any adverse impacts on environmentally sensitive areas and has the potential to provide either permanent housing or generate income consistent with the existing approval.

#### Clause 2.3 – Zone objectives and Land use table

The subject site is located within the B2 Local Centre Zone. The objectives of the zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre*

A serviced apartment and/or shop top housing is a form of development permitted within the B2 zone. It is considered that the proposed development is consistent with the objectives of the zone; by provide a range of occupancy options which allow for tourism and residential opportunities.

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

The subject application is to change the use of lot 18 from tourist accommodation units to dual use shop top housing and serviced apartments; as such clause 4.1 does not apply.

#### Clause 4.3 - Height of Buildings

The objectives of this clause, amongst other things, are to establish the maximum height for which a building can be designed and to limit the height of a building on the existing natural and built environment.

The proposed development does not involve any physical works and does not impact on the height of the building.

#### Clause 4.4 – Floor Space Ratio

The objectives of clause 4.4 are to define allowable development densities, enable the alignment of building scale, provide flexibility for high quality and innovation in building design, and limit the impact of new development and to encourage increased building height and site amalgamation.

The proposed development does not involve any physical works and does not impact on the floor space ratio.

Clause 4.6 - Exception to development standards

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying particular development standards and to achieve better outcomes for and from allowing flexibility.

The proposed development is not required to be considered against clause 4.6 as the proposed development is considered to be consistent with the required development standards of the TCCLEP.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Clause 5.4 is not applicable to the subject application.

Clause 5.10 - Heritage Conservation

Not applicable the subject site is not mapped within a Heritage Conservation Area, nor is the site mapped under the Aboriginal Cultural Heritage Management Plan.

Clause 5.11 - Bush fire hazard reduction

Not applicable – no bushfire hazard works are proposed.

Clause 7.1 – Acid Sulfate Soils

The subject site comprises Class 4 Acid Sulfate Soils. The objective of this clause is to ensure that development does not disturb, expose or drain ASS and cause environmental damage.

The subject development is for the change the use of lot 18 from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Clause 7.2 - Earthworks

Not applicable - the subject development is for the change the use of lot 18 from tourist accommodation units to dual use shop top housing and serviced apartments and does not involve any physical works.

Clause 7.3 – Flood Planning

Not applicable the subject site is not mapped as FPL.

Clause 7.4 - Floodplain risk management

Not applicable the subject site is not mapped as FPL.

Clause 7.5 - Coastal risk planning

Part of the subject site is mapped on Coastal Risk Planning Map. The objectives of Clause 7.5 are:

- a) *to avoid significant adverse impacts from coastal hazards,*
- b) *to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,*
- c) *to enable the evacuation of land identified as coastal risk in an emergency,*
- d) *to avoid development that increases the severity of coastal hazards*

The proposed development is for the use of an existing unit situated at level 2 of "The Beach" complex as a serviced apartment and shop top housing. The development is not considered likely to cause detrimental increases in coastal risks to other development or properties, is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment and given the nature of the proposed works is not considered to increase the severity of coastal hazards. Accordingly, the proposed development is consistent with the requirements of Clause 7.5.

#### Clause 7.6 - Stormwater Management

The proposed development does not increase the impermeable site area; as such it is considered that there will be minimal impacts as a result of the proposed development.

#### Clause 7.7 - Drinking Water Catchments

Not applicable – the subject site is not mapped under Clause 7.7.

#### Clause 7.8 – Airspace operations

Not applicable to the subject application.

#### Clause 7.9 - Development in areas subject to aircraft noise

Not applicable to the subject application.

#### Clause 7.10 - Essential Services

All essential services are made available to the subject site.

#### Other Specific Clauses

There are no other specific clauses applicable to the subject application.

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

In March 2017 the NCRP 2036 was introduced. The NCRP 2036 established the following vision for the area:

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

The NCRP 2036 includes 4 overarching goals to achieve the aforementioned vision:

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

The site is mapped as an Urban Growth area and within the coastal strip.

Consideration of the planning principles, which will guide growth on the North Coast, is required to be undertaken in determining an application.

Principle 1: Direct growth to identified Urban growth areas

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

Assessment:

Complies - The proposed change of use of the current tourist accommodation unit (lot 18) to a dual use shop top housing and serviced apartment. The development allows for flexibility in the use of the existing unit to encourage occupancy. The site is located within the Cabarita business area. Accordingly is within walking distance to a range of services and public transport. The area is located outside of sensitive coastal and farmland areas.

Principle 2: Manage the sensitive coastal strip

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

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

Assessment:

The development site is mapped under this plan as being within the sensitive coastal strip. The proposed development is considered of a low density and is not considered to impact on a natural hazards or farmlands.



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

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

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

Assessment:

As discussed above the site is located within the Cabarita Business core, associated services are also within five minutes' walk of public transport.

The proposed development is considered to comply with the planning principles of the NCRP 2036, goals and overarching vision of being *the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.*

### **State Environmental Planning Policies**

#### **SEPP No. 55 - Remediation of Land**

In summary, Clause 7 of this Policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with the Contaminated Land Planning Guidelines.

Council's Environmental Health Unit has advised the following:

*"The premises already consists of a residential holiday accommodation development. A search of Council records did not reveal or indicate any known or potentially contaminating activities."*

The proposal does not result in a change of land use and further consideration of this Policy is not required.

#### **SEPP No. 65 - Design Quality of Residential Flat Development**

The proposed development is for the change the use of lot 18 from tourist accommodation units to dual use shop top housing and serviced apartments. The change of use is to be conducted within the confines of the existing building and do not involve and physical building works. Additionally, the original DoP approval/assessment would have assessed the building against the SEPP. Notwithstanding this the following is noted.

Clause 1 of the SEPP advises the following:

This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
  - (i) the **erection of a new building**,
  - (ii) the **substantial redevelopment or the substantial refurbishment of an existing building**,
  - (iii) the **conversion of an existing building**, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at **least 4 or more dwellings**.
- (2) If particular development comprises development to which subclause (1) applies and other development, this Policy applies to the part of the development that is development to which subclause (1) applies and does not apply to the other part.
- (3) To remove doubt, this Policy does not apply to a building that is a class 1a or 1b building within the meaning of the Building Code of Australia.
- (4) Unless a local environmental plan states otherwise, this Policy does not apply to a boarding house or a serviced apartment to which that plan applies.

As advised above, the change of use is to be conducted within the confines of the existing building and do not involve and physical building works. Additionally, the original DoP approval/assessment would have assessed the building against the SEPP.

Also it is noted that previous interpretation of the SEPP in relation to applications is that the “building” itself not being converted and the development is not substantial being 1 unit out of 57.

#### SEPP (Building Sustainability Index: BASIX) 2004

The proposed development is for the change of use of a class 3 building to be used as Class 3 or Class 2. Advice from Councils Building Services Unit is that based on the nature of the application and the classes of the building a BASIX certificate is not required unless works are taking place (i.e. moving windows etc). As no physical works are proposed a BASIX certificate is not required for the proposed development.

#### SEPP (Coastal Management) 2018

The subject site is mapped as being within the Coastal Environment Area, Coastal Use Area and Coastal Wetlands and Littoral rainforest area.

The objectives of each clause are as follows:

**13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

**14 Development on land within the coastal use area**

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

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

The proposed development is for change of use of an existing tourist and visitor accommodation unit to allow either tourist accommodation (as a serviced apartment) or residential occupation as shop top housing. Accordingly, the development is considered to be consistent with the objectives of each clause.

### **Additional Clauses**

#### **10 Development on certain land within coastal wetlands and littoral rainforests area**

- (1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
  - (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) the carrying out of any of the following:*
    - (i) earthworks (including the depositing of material on land),*
    - (ii) constructing a levee,*
    - (iii) draining the land,*
    - (iv) environmental protection works,*
  - (d) any other development.*

#### **Note.**

Clause 17 provides that, for the avoidance of doubt, nothing in this Part:

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*

- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.
- (2) Development for which consent is required by subclause (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.
- (3) Despite subclause (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map may be carried out by or on behalf of a public authority without development consent if the development is identified in:
  - (a) the relevant certified coastal management program, or
  - (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the Local Government Act 1993, or
  - (c) a plan of management approved and in force under Division 6 of Part 5 of the Crown Lands Act 1989.
- (4) A consent authority must not grant consent for development referred to in subclause (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.
- (5) Nothing in this clause requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the Biosecurity Act 2015.
- (6) This clause does not apply to the carrying out of development on land reserved under the National Parks and Wildlife Act 1974 if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.

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

### **Note.**

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

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This clause does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

## **12 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

The above clauses are not considered applicable in this instance.

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

There are no draft LEPs or SEPPs applicable to the subject application.

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

#### Tweed Development Control Plan

#### A1-Residential and Tourist Development Code

The proposed development is to allow Lot 18 within SP 77096 to be used for either shop top housing (residential) or as a serviced apartment (tourist). No physical amendments are proposed. An A1 assessment was undertaken in relation to the subject application. A complete assessment is available on the electronic file. It is noted that some variations to Section A1 have been sought, however the variations are considered minor and do not result in refusal of the application. These variations are discussed below:

#### **Suitable Locations for Shop-top**

Shop-top is to be located in centres, generally along main streets.

Shop-top may not be appropriate for locations in proximity to civic, entertainment or community uses that generate noise, light spill or a high degree of activity during the day or the night.

Council's Environmental Health Unit reviewed the subject application and advised the following:

*"The master bedroom, main living areas and balcony of the subject apartment face the Cabarita Beach and Foreshore Reserve and do not face directly onto the common areas. As such, potential impacts upon amenity would be unlikely.*

*Bedrooms number 2 and 3 have windows facing the common area containing the pools and spa which could result in potential impacts to amenity of any permanent resident.*

*Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls).*

*The original approval also has a range of additional conditions included to manage potential impacts on amenity.*

*Further to the above, discussion with the building's management revealed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours.*

*Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated. Conditions under the original approval are considered to remain adequate for the current proposal".*

Based on this advice it is considered that the location is acceptable.

The following non-compliances with the document are of note:

- **Building Footprint And Attics, Orientation And Separation: Building footprint and attics**

The subject unit includes windows situated on the buildings eastern and western elevation. All bedroom rear walls are well within 10.0m from a window. The living area includes open plan living and the back wall being setback approximately 10.3m. Accordingly, seeks a minor variation to this

control. The variation of 300mm to the kitchen area is not considered to have any detrimental impacts with this regard. The objectives of the controls are to:

- To ensure that the bulk of the development is in scale with the existing or desired future context.
- To provide adequate amenity for building occupants in terms of sun access and natural ventilation.

The development does not include any physical works. Accordingly, is considered with the existing scale.

The development seeks a variation of 300mm, which is comprised of bench space/cook top. The area is considered to receive adequate amenity for any potential occupants.

- **Height/building Height**

In accordance with DCP the maximum height for shop top housing is 13.6m. The existing building has a maximum height of 15.0m. The area subject to this approval, based on the approved plans has a height of approximately 12.0m under the DoP approval.

Under the DCP the maximum permitted wall plate is 11.0m for shop top housing. The maximum wall plate for the original application is 11.7m. Accordingly, there is a slight variation with this regard.

As no physical works are proposed and the application is for the use of an existing tenancy the variation is supported.

- **Ceiling height**

In accordance with A1 a minimum ceiling height of 2.7m min. finished floor level to finished ceiling level for habitable rooms. The development is existing no physical works are proposed. The approved plans (DA03/1121) include an approximate ceiling height of 2.6m. A variation of 100mm is sought with this regard.

The objectives of this control are:

- To increase the sense of space in dwellings.
- To contribute to well proportioned rooms.
- To promote the penetration of daylight into dwellings.

The variation of 100mm is not considered to result in the development being contrary to the objectives of this control. The dwelling also has internal areas facing to the east with large windows and doors opening onto POS and facing the foreshore.

The bedrooms each have standard windows which open over a void and face towards to the internal common area of the site.



- **Floor Space Ratio**

The site is nominated under the DCP as having a FSR of 2:1 (based on shop top housing/Residential Flat building). The existing development is considered to exceed this required. The development does not propose any additional works the FSR would have been considered under the assessment of the DoP approval.

- **Building Types Control**

Front doors, windows and entry areas do not face the street. These features are oriented internally as the site is part of a wider tourist development. This is not dissimilar to RFB developments. The site still contains a main entrance foyer, which is clearly identifiable. The objectives of this control are:

- *To ensure the existing landform and topographic setting along the street is respected.*
- *To ensure new development is compatible with the positive characteristics of the existing streetscape.*
- *To ensure new development enhances the character of the existing streetscape.*
- *To encourage dwellings to be well designed.*
- *To ensure streets provide a high level of pedestrian amenity, access and safety.*
- *To ensure garages do not dominate the street.*

The subject application is not considered contrary to these controls.

- **Site Configuration Control (Impermeable Site Area)**

A review of the original DoP assessment there did not appear to have reference to the ISA controls. No assessment has been provided against the current controls as there is no increase in building works. The site in its entirety is developed. Accordingly, would exceed the current standards.

- **Landscaping**

The subject site is currently developed and no physical works are proposed. The DCP requires the retention of trees and the planting of trees with a minimum height of 10.0m and a large canopy (once mature). The subject application is for the change of use of a single unit. Accordingly, this cannot be complied with.

- **Minor elements**

BBQ areas:

This DCP advises that Barbeque areas are to be for domestic purposes only and located with consideration to the impact upon adjoining properties. The proposed development is for the change of use of a single unit and does not propose a BBQ area. Notwithstanding this, the site inspection revealed the

POS area is comprised of a standalone BBQ which would be used solely for Lot 18. Additionally the existing complex has facilities located on common property, which could be used by the residents and tourist guest for the unit.

Letterboxes:

This section of the DCP does not stipulate that a development *must* have a letter box but rather guides where the letter box(s) should be located. The subject application does not propose to construct a letter box onsite. To avoid any issues a condition has been applied that requires the applicant to obtain a PO Box for the unit and provide correspondence to Council with this regard Prior to the issue of an occupation certificate.

### A2-Site Access and Parking Code

'The Beach' development was approved by the Minister for Planning on 4 May 2004 on Lot 1 DP 247808. The development consisted of 57 tourist accommodation units, commercial floor area and basement car parking.

The following was extracted from the assessment report:

### **Development Control Plan No. 2 - Site Access and Parking Code**

The proposed development will comprise approximately 1560m<sup>2</sup> of retail/commercial space and 57 tourist accommodation units. Under DCP No. 2 the parking demand is as follows:

	<b>LANDUSE</b>		<b>REQUIREMENT</b>	
		<b>Customer parking</b>	<b>Staff parking</b>	<b>Bicycle parking</b>
<b>Retail/commercial</b>		3.5/100GFA <b>= 55 spaces</b>	0.5/100GFA <b>= 8 spaces</b>	2 + 1/200GFA <b>= 9 spaces</b>
<b>Tourist accommodation</b>		1/unit <b>= 57 spaces</b>	0.5/staff <b>(unknown staff at this stage)</b>	1/unit <b>= 57 spaces</b>

*Therefore the total number of car parking spaces required for the proposed development is 120 (plus additional spaces for staff of the proposed retail tenancies), with 66 bicycle spaces also required. The proposal provides for 190 on-site car parking spaces. This comprises 71 spaces for the proposed non-residential uses provided at.*

This was later amended under a modification and the following condition was applied:

Condition 28 of the "The Beach" (as amended) is as follows:

*The maximum number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a construction Certificate.*

***Car parking allocation Number***  
***Tourist accommodation 85***  
***Retail/commercial car parking spaces 71***

**Retail:**

A review of the most recent consents for the commercial component of the site has detailed that there is a surplus of parking on Lot 904 of 21 spaces. This is independent of the subject application and managed separately.

**Tourist/Visitor:**

In accordance with DA03/1221, SP 77096 was allocated 85 parking spaces.

A site inspection has revealed that Lot 18 (unit 205) has the exclusive use of 2 parking spaces (see images below). Though it is noted all parking is on common property (body corporate consent has been provided for the DA)



In accordance with Section A2 of the DCP the following rates are required for the subject application:

**Shop top housing:**

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (min class)	Delivery/Service Vehicle parking	Resident/ Visitor Parking	Staff parking	Customer car parking
A17	Shop top housing	in addition to commercial requirements		Residents: 1/unit (1). Visitors: 1/8units (3)		1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.		

For use as “shop top housing” the development is required to provide 2 spaces based on the unit comprising of 3 bedrooms. Plus 0.25 spaces towards visitor parking.

***The subject application is required to provide 2.25 (3 spaces).***

***As detailed above the unit is allocated 2 spaces.*** Accordingly, seeks a variation to the required parking.

Council’s Traffic Engineer has reviewed the subject application and advised (based on the subject application alone) the following:

*“there are no objections to the rounding down of the visitor parking requirements given the availability of publically accessible parking in close proximity to the development”*

Whilst the proposed variation is minor in the context of the subject application, Council's Development Assessment Unit consider that a precedent may be set for any *potential* future development applications should the variation to the parking requirements under Section A2 be endorsed.

Based on a review of the available records the site is approved for 26 x 3 bedrooms, 1 x 4 bedroom and 30 x 2 bedrooms.

When considering the site holistically the development would be required to provide the following parking:

27 (3 bedroom units + 1x 4 bedroom) = 27 x 2 = 54 parking spaces

30 (2 bedrooms units) = 30 x 1.5 = 45 parking spaces

1 space/4 units = 0.25 x 57 units = 14.25 spaces

*Assuming all units lodge an application for dual use the site would require a total of 113.25 (114). The site is allocated 85 spaces. Accordingly, there would be a shortfall of 29 spaces.*

Serviced apartment:

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (class)	Delivery/ Service Vehicle parking	Resident Parking	Staff parking	Customer car parking
B6	Serviced apartments			Employees: 1/4 staff (2). Visitors: 1/10 units (3)	1 HRV		1/staff	1/apt + 1 visitor space per 4 apt's

For use of Lot 18 as a serviced apartment the site is required to provide 1 space for the apartment and 1 space / 2 units for visitor parking. Accordingly, the development would be required to provide 1.25 spaces. The unit is allocated 2 spaces. The development complies with this regard.

The subject unit has 2 spaces allocated, which complies with the requirement for tourist and visitor parking.

Section A11 – Public Notification of Development Proposals

In accordance with Section A11, the application was notified for a period of 14 days from Wednesday 5 September 2018 to Wednesday 19 September 2018.

A13-Socio-Economic Impact Assessment

A Social Impact Assessment is required for residential development comprising 50 units or more. Accordingly, is not applicable to the subject application.

Section A15 – Waste Management

The Beach Cabarita currently has a waste management system in place which allows for the storage and separation of waste generated by the guests that stay at The Beach Cabarita which is easily and safely accessible. The apartment block currently has access to regular waste removal, and the proposed change of use to a dual use unit will not add an increased pressure on the current waste

management system in fact it is submitted that the generated waste would be less under the proposed dual use.

The application was referred to Council's Waste Management Unit who raised no objections with this regard and advised the following "Council's waste team has no issues with the Beach Hotel Waste management plan"

#### Section B19 - Bogangar / Cabarita Beach Locality Plan

The aims of Section B19 are to:

- *Implement development provisions and design guidelines that are specific to Bogangar/Cabarita Beach;*
- *Provide design guidelines to appropriately manage development within the subject Bogangar/Cabarita beach through a single document;*
- *Encourage high quality urban design;*
- *Inform applicants, developers, consultants, Council and the general public about Councils planning intentions for Bogangar/Cabarita Beach;*
- *Establish a Strategic Planning Framework for the future development of the study area.*

The proposed development does not negate the aims and objectives of the Plan.

#### Section B25 - Coastal Hazards

The development is located within the 2100 max line identified within Section B25 of the Tweed DCP. As the proposed tenancy currently exist and there is no building work proposed it is considered to have no impact upon the Coastal Hazards and therefore complies with this section of the DCP.

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

There are no draft planning agreements implicating the site.

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

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

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it does not propose any external modifications to the existing building; it will therefore not restrict access to any foreshore areas nor result in any overshadowing of beaches or foreshores.

##### Clause 92(1)(b) Applications for demolition

Not applicable – the subject application does not include any demolition.

##### Clause 93 Fire Safety Considerations

Yes, Councils Building Inspector reviewed the application and raised no concerns in relation to the building being approved for dual use as a class 3 and class 2 building.

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It is not considered that the subject change of use will impact upon the existing buildings compliance with Category 1 fire safety provisions. The following condition has been applied to the consent:

*The issue of this development consent does not certify compliance with the relevant provisions of the BCA. It is the applicant's responsibility to ensure the building complies with all relevant provisions of the BCA.*

Clause 94 Buildings to be upgraded

Not applicable.

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

**Tweed Shire Coastline Management Plan 2005**

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. Given the location of the development is not located within the Coastal Erosion Hazard zone it is considered that the proposal is consistent with the objectives of the Plan.

**Tweed Coast Estuaries Management Plan 2004**

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Amenity

The master bedroom, main living areas and balcony of the subject apartment face the Cabarita Beach and Foreshore Reserve and do not face directly onto the common areas. As such, potential impacts upon amenity would be unlikely.

Bedrooms number 2 and 3 have windows facing the common area containing the pools and spa which could result in potential impacts to amenity of any permanent resident.

Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist

apartment complex, the premises was constructed in accordance with *The Beach at Cabarita Noise Impact Assessment*, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls).

The original approval also has a range of additional conditions included to manage potential impacts on amenity.

Further to the above, discussion with the building's management revealed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours.

Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts on adjacent properties from the proposed change of use are not anticipated. Conditions under the original approval are considered to remain adequate for the current proposal.

#### Context and Setting

The proposed change of use will not have any adverse impact upon the natural environment as the site is currently developed. The proposed development will change the use of a previously approved tourist accommodation unit to allow for permanent residential occupation or short term accommodation on a site which is currently comprised by a mix of tourist and commercial uses.

#### Economic Impact

The proposed change of use application is considered to provide further options for ensuring that the building is occupied at all times in whatever manner best suits the current market conditions and the individual owner's circumstances and as such is considered to assist in promoting the economic revitalisation of the Tweed City Centre.

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

#### Availability of utilities and services

The existing public infrastructure is adequate to service the proposed additional resident/s.

#### Surrounding land uses

The subject site is within the commercial business district of Cabarita/Bogangar, which provides for a variety of shopping, dining, and recreational opportunities. The area is serviced by Woolworths (and ancillary smaller shops, chemist, butchers bakers etc.), medical facilities various professional/commercial uses within the immediate area.

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

In accordance with Section A11 – Notification of Development Proposals of the Tweed DCP 2008 the application was notified for a period of 14 days from Wednesday 5 September 2018 to Wednesday 19 September 2018. During this period NO submissions were received.

Notwithstanding this, an owner from a ground floor commercial lot contacted Council and advised that they required an extension to the notification period. Upon consideration of workloads and timeframes an extension of some 9 days was granted. It appears that this verbal information was then passed on to other persons notified as following the ceasing of the exhibition period a total of five late submissions were received (two submissions were on behalf of “The Beach Management Rights”).

**Applicant’s response to submissions:**

RESPONSE TO SUBMISSIONS - PROPOSED DUAL USE FOR TOURIST AND VISITOR ACCOMMODATION AND SHOP TOP HOUSING IN THE B2 LOCAL CENTRE ZONE SITUATED AT 205/2-6 PANDANUS PARADE, CABARITA BEACH, FORMALLY LOT 18 ON SP77096  
COUNCIL REF: DA18/0665

On behalf of the applicant, I hereby lodge a response to submissions made as a result of the public notification period carried out for 14 calendar days from 05 September 2018 to 19 September 2018.

	Total Submissions	Received within public notification period	Received outside of public notification period
Total	4	0	4

\*it is noted that the applicant was informed of the notification period being extended by an extra 9 calendar days to cater for one party’s letter of objection.

A breakdown of the submissions has been grouped and is provided below:


Issue	Response						
Insufficient Notice	<p>The Application was submitted by the applicant on 03 August 2018, with the application being accepted and relevant fees paid on 24 August 2018. Council’s DA tracking tool states that council notified adjoining owners and generated the associated advertisement on 27 August 2018.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><b>History</b></p> <table border="1"> <thead> <tr> <th>History</th> <th>Actioned</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>27/08/2018</td> <td>27/08/2018</td> <td>Notify adjoining owners Generate ad</td> </tr> </tbody> </table> <p><b>Related Applications</b></p> <p>Application(s): No applications recorded.</p> <p><b>Documents</b></p> <p><small>If the document doesn't open correctly, please Download the latest version of Adobe Acrobat Reader.</small></p> <ul style="list-style-type: none"> <li>DA18/0665 - DA Cover Letter - 18/2-6 Pandanus Parade Cabarita Beach</li> <li>DA18/0665 - DA Form Revised - 18/2-6 Pandanus Parade Cabarita Beach</li> <li>DA18/0665 - Statement of Environmental Effects - 18/2-6 Pandanus Parade Cabarita Beach</li> <li>DA18/0665 - Strata Committee Consent Letter - 18/2-6 Pandanus Parade Cabarita Beach</li> <li>DA18/0665 - AP/PC/NDIA A - Checklist - 18/2-6 Pandanus Parade Cabarita Beach</li> <li>DA18/0665 - Department Approval - DA 178-04-03 Assessment Report - 18/2-6 Pandanus Parade Cabarita Beach</li> </ul> </div> <p>It was stated in Section 7 of the Town Planning Report that there was no</p>	History	Actioned	Description	27/08/2018	27/08/2018	Notify adjoining owners Generate ad
History	Actioned	Description					
27/08/2018	27/08/2018	Notify adjoining owners Generate ad					



	<p>requirement under Section A11 of the Tweed Development Control Plan 2008 to publicly notify this development.</p> <p><b>A11.2 NOTIFICATION AND ADVERTISING OF APPLICATIONS</b>          Table 1 lists which developments will be notified/advertised and how they will be notified/advertised.</p> <p>Notification will not be made of an application for works involving:-</p> <p>(a) alteration to an existing building where the works will not result in any change to the height, external configuration or external facade of the existing building;</p> <p>(b) change of use (in a commercial or industrial zone); and</p> <p>(c) intensification of hours of operation (in a commercial or industrial zone).</p> <p>All applications to modify a development consent in accordance with Section 96(2) of the Act will be notified/advertised as set out in Table 1 except in the case of buildings where the modification or amendment does not change the height, external configuration, or facade of the proposal as shown on the original application.</p> <p>Despite the above, council publicly notified the application to their 'discretion'. Additionally, the applicant complied and the application was publicly notified within the required timeframe of 14 calendar days from 05 September 2018 to 19 September 2018. Despite this, not only were no submissions received during the public notification period, the applicant was advised that the notification period was to be extended a further nine calendar days till the close of business on 28 September 2018.</p>
<p>Intended Use          Inconsistent with          Zone Objectives</p>	<p>The subject property is located within the B2 Local Centre Zone of the Tweed LEP 2014. The proposed dual use is in fact consistent with the zone objectives as the fourth objective states "To provide for Tourism and Residential opportunities that contribute to the vitality of the local centre". The proposal will not detract from the unit's current lawful use and is applying for a use that as can be seen above, is supported under the objectives of the zoning. Enabling the unit to provide for Shop Top Housing in a commercial sense will not detract from the "Cabarita Economy" as long term occupants of the unit will be active community members engaged in activities, both social and commercial, and consequently contributing directly to the local economy. Additionally, the proposal will still accommodate for tourist and visitor accommodation</p> <p>The submission states that "A reduction in the amount of Tourist Accommodation available, and therefore the amount of Tourism possible, will: discourage employment opportunities as a reduction in tourism income will directly discourage employment growth within the local area". Significant businesses have begun trading in the local community in recent years requiring regular well trained staff to support their services. The proposed use will in fact support employment opportunities that directly attracts tourists to this local area.</p>
<p>Shop Top Housing</p>	<p>As per above, Shop Top Housing is a consistent use with the objectives of the B2 Local Centre zone. <i>The Beach Cabarita</i> currently, as stated both within the Town Planning Report and the letter of objection, is used a Tourist and Visitor Accommodation. There are several retail and commercial tenancies along the ground floor of <i>The Beach Cabarita</i>. Shop Top housing is defined as "one or more dwellings located above ground floor retail premises or business premises". The proposal as</p>


	<p>demonstrated above is aligned with this definition of the Tweed LEP 2014. Additionally, Section A1 – Part C Residential Flat Buildings and Shop Top Housing of the Tweed DCP 2008 determines that suitable locations for shop-top uses are “located in centres, generally on main streets”. The proposal is therefore compliant with this component of the DCP in the sense that the subject property is situated within a centre and along Tweed Coast Road.</p> <p>The submission also raised concerns about the proximity to The Beach Hotel and the Surf Life Saving Club. The use is currently well separated from the Surf Club due to its location within the complex and would not be exposed to unnecessary noise or light spill. Further, the opening hours of the surf club this will not have a direct impact on the amenity of the apartment if it were to be used as Shop Top Housing.</p> <p>Regarding the <i>Cabarita Beach Hotel</i> permanent residents would not experience anymore noise associated with this use as opposed to anyone using the apartment for Tourist reasons. It is also noted that the apartment is acoustically treated and noise can be mitigated. Light spill is not seen as an issue due to the separation between the unit and <i>The Beach Hotel</i> downstairs due to the aspect of the apartment facing toward the beach front with The Beach Hotel expanding no further toward the beachfront than the balcony to Unit 205.</p>
<p>Commercial Impact</p>	<p>The applicant currently has Lot 18 within the letting pool of ‘<i>The Beach</i>’ and does not intend to remove the lot from the short term letting pool. However, the applicant states that having purchased Lot 18 ‘<i>off the plan</i>’ in 2006, there has been at least 4 separate management groups involved within the management of the short term letting pool (one of which was insolvent). The applicant believes that the managers need to be mindful that the owners too have a significant investment in the resort and consequently are entitled to ensure that their investment is commercially well managed and of the benefit to the owners. Further, there is no direct reduction in the overall earning potential, as the managers are paid a fee by the Body Corporate to manage the resort. <b>All</b> owners contribute to that fee by the levies they pay.</p> <p>The approval to seek the change to Dual use – Tourist and Visitor Accommodation and residential occupancy (in this case Shop Top Housing) was approved by the Owner’s Corporation via a General Meeting on 05 October 2017 and further reaffirmed by General Meeting 06 June 2018. Additionally, the sale of the management rights allowed the intended purchaser to have ample time and resources to be made aware of this issue during their Due Diligence period. Further this matter was recorded in the minutes accordingly.</p> <p>These statements made about commercial impact and the purchase of Resort Management Rights is not administered under zoning considerations or planning provisions under the Tweed Shire LEP 2014. This therefore suggest that these comments hold no planning merit and should not be considered to do so.</p>

Unwelcome Precedent	Although it is acknowledged that the <i>'The Beach Cabarita'</i> was purpose built for Tourist and Visitor Accommodation, as stated above the proposed dual use is in fact anticipated and supported within the B2 Local Centre Zone. It is noted that a development application (DA18/0053) for a mixed use development, inclusive of Tourist and Visitor Accommodation is currently being assessed by council directly opposite <i>'The Beach'</i> at 53 Tweed Coast Road, Bogangar. If the application is to be successful, this alleged <i>"unwelcome precedent"</i> will exist regardless.
Consent of Affect Owners	Not only were the owners made aware of the decision to allow for any owner within the complex to allow for dual use as per the minutes of the General Meeting held on 05 October 2017 it was then later reaffirmed at a second and subsequent General Meeting of owners held on 06 June 2018. All owners within <i>'The Beach'</i> had the opportunity to voice their opinion. (See attached minutes)
Physical Characteristics of the Land and Resort Operations/Amenity	<p>As stated in the Town Planning Report submitted to council dated 14 August 2018, there are no changes proposed to the external built form, characteristics of the land or associated car parking. It is demonstrated through this same report that the unit is in compliance with car parking rates as the unit owner currently has access to two exclusive car parks associated with the 3 bedroom unit.</p> <p>The submitter is also under the impression that long term occupancy would <i>"necessitate a number of alterations to the common property"</i> this is in fact not the case. Unit 205 within the complex is currently a fully self-contained 3 Bedroom Unit, there are no need to change the current configuration of the common property within the complex as a result of the proposed change of use.</p> <p>The submitters have raised a number of concerns in relation to: Letter boxes, waste management and recycling, storage, car parking and the lifts in the complex being inadequate and not designed for transportation of permanent resident's furniture.</p> <p>The response to these issues are as follows:</p> <ul style="list-style-type: none"> <li>▪ Letters can be delivered to the resort or to the registered Post Office Boxes located immediately across the road;</li> <li>▪ Waste and recycling storage is adequately managed within <i>'The Beach'</i>. Arguably, Tourist usage produces a greater amount of waste with many short term residents being notorious for their lack of care and consideration of waste and recycling management;</li> <li>▪ The lot owner is of the opinion that the storage within the apartment exceeds most common permanent residential dwellings of similar size and location. Further each Lot has a designated area in the basement allocated to their individual use for Storage and noted in the Town Planning Report was a basement plan overlayed with the label E18.</li> <li>▪ The lifts in the complex allowed all of the furniture currently in use in all of the apartments to be transported and delivered accordingly, suggesting the same process can occur in the future.</li> </ul>
Rationale of Application	The submission states <i>"the application does not provide any meaningful rationale for the proposed development"</i> . Irrespective of the submitter's

	<p>'guess' as to what the rationale for the proposal by the owner of Lot 18 is, the intent of the application is quite clear, to change the current use from purely Tourist and Visitor Accommodation to a dual use that is inclusive of a residential nature (Shop Top Housing). Additionally, this statement does not hold any planning merit, as guessing the rationale of one's development application is not, and should not be a planning consideration.</p>																																																																	
<p>Resort Management Rights</p>	<p>The submitter states that <i>"commercial business decisions have been made in the knowledge that permanent residential occupation of the units is prohibited"</i>. This is in fact not correct, as again, the B2 Local Centre Zone does not prohibit the use of such areas as <i>'prohibited'</i>, and is in fact supported by the zoning objectives. Furthermore, and again, the approval to seek the change to Dual use – Tourist and Visitor Accommodation and residential occupancy (in this case Shop Top Housing) from council was approved by the Owner's Corporation via a General Meeting on 05 October 2017 and further reaffirmed by General Meeting 06 June 2018. Additionally, the purchase of Resort Management Rights is not administered under and zoning considerations or planning provisions under the Tweed Shire LEP 2014.</p>																																																																	
<p>Economic Considerations</p>	<p>As mentioned previously in this response the local economy of Cabarita Beach will not be adversely affected as a result of residential occupancy. It was noted that full time residents would in fact be active members within the local economy supporting the local business within Cabarita Beach.</p> <p>In regard to the loss of <i>"loss of visitor dollars"</i> recent trends in occupancy rates of <i>The Beach</i> suggest the total resort rates during the peak period (December – March) has not exceeded 78% in December through to 47% in March. Of particular note is the 3-bedroom Beach Front units fluctuating between 42% and 78% within these same four consecutive months (Refer to Image...source.... The Beach Cabarita Management Reports). The argument here is that if the dual use was to be approved and if the unit were to be occupied by permanent residents would theoretically be 100% for Unit 205. They would therefore be regular users of the local businesses and services, in turn stimulating the local economy of Cabarita Beach.</p>  <table border="1" data-bbox="523 1312 1283 1608"> <thead> <tr> <th>Month</th> <th>2 bdr Mountain View</th> <th>2 bdr Poolside</th> <th>2 bdr Park View</th> <th>3 bdr Surf Club View</th> <th>3 bdr Disabled Apt.</th> <th>3 bdr Ocean View</th> <th>3 bdr Sky Apartment</th> <th>3 bdr Beach Front</th> <th>3 bdr Sub-Perthouse</th> <th>3 bdr Perthouse</th> <th>4 bdr Perthouse</th> <th>TOTAL FOR RESORT</th> </tr> </thead> <tbody> <tr> <td>December</td> <td>67%</td> <td>81%</td> <td>67%</td> <td>66%</td> <td>62%</td> <td>71%</td> <td>79%</td> <td>73%</td> <td>60%</td> <td>71%</td> <td>91%</td> <td>78%</td> </tr> <tr> <td>January</td> <td>63%</td> <td>79%</td> <td>55%</td> <td>60%</td> <td>50%</td> <td>71%</td> <td>70%</td> <td>70%</td> <td>77%</td> <td>90%</td> <td>49%</td> <td>77%</td> </tr> <tr> <td>February</td> <td>51%</td> <td>57%</td> <td>35%</td> <td>52%</td> <td>42%</td> <td>72%</td> <td>40%</td> <td>42%</td> <td>46%</td> <td>39%</td> <td>18%</td> <td>62%</td> </tr> <tr> <td>March</td> <td>43%</td> <td>49%</td> <td>51%</td> <td>32%</td> <td>13%</td> <td>45%</td> <td>39%</td> <td>53%</td> <td>51%</td> <td>61%</td> <td>70%</td> <td>47%</td> </tr> </tbody> </table>	Month	2 bdr Mountain View	2 bdr Poolside	2 bdr Park View	3 bdr Surf Club View	3 bdr Disabled Apt.	3 bdr Ocean View	3 bdr Sky Apartment	3 bdr Beach Front	3 bdr Sub-Perthouse	3 bdr Perthouse	4 bdr Perthouse	TOTAL FOR RESORT	December	67%	81%	67%	66%	62%	71%	79%	73%	60%	71%	91%	78%	January	63%	79%	55%	60%	50%	71%	70%	70%	77%	90%	49%	77%	February	51%	57%	35%	52%	42%	72%	40%	42%	46%	39%	18%	62%	March	43%	49%	51%	32%	13%	45%	39%	53%	51%	61%	70%	47%
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<p>Tweed DCP Section A1 – Residential and Tourist Code</p>	<p>The relevant submission states that the application <i>"is dismissive of the Design Controls of Part C of the DCP"</i> in relation to the Town Planning Report suggesting no changes are proposed to the current built form, building envelope or car parking. It is further stated that design controls related to Amenity (D.C No.7), Internal Building Configuration (D.C. No.8)</p>																																																																	


	<p>and Building Performance (D.C. No.10) need to be addressed. Again, there are no changes proposed to the current built form inclusive of externally and internally, building configuration, common property, external building facades or the current car parking layout. Additionally, Unit 205 is currently a 3-Bedroom 2-Bathroom fully self-contained serviced apartment with no changes proposed to this aspect.</p> <p>As stated within the Physical Characteristics of the Land and Resort Operations/Amenity section of this response Waste and recycling storage is currently adequately managed within 'The Beach' and the change of use to unit 205 will not change this. Again, it is arguable that Tourist and Visitors to the resort generate more waste associated with their stay. Additionally, there is adequate storage spaces associated with the current 3-Bedroom Apartment.</p> <p>It is therefore determined that these controls are not applicable to this application.</p>
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**Submissions table and response:**


Summary of Submissions	Council's response
<p><b>Insufficient notice</b>  <i>Our client instructs that they have discussed the Development Application with a number of commercial owners and tenants in The Beach and adjoining properties and have found that a significant number of them did not receive notice of the Development Application in accordance with section A11 of the Tweed Development Control Plan 2008 (DCP). On this basis, assessment of the Development Application should not occur until sufficient notice has been issued and all affected owners have the opportunity to make submissions.</i></p>	<p>The subject application was notified for a period of 14 days in accordance with Council's DCP. Additionally, Council granted an extension to the notification period to enable submissions. No submissions were received during the period ALL submissions were late and considered as part of this assessment. A review of Council's records indicates the following lots were notified. A total of 86 properties were advised. Including all SP's</p> 
<p><b>Residential use is inconsistent with zone objectives</b></p>	<p>The proposed development is permissible with Council consent on the subject site and is considered to meet the zone objectives.</p> <ul style="list-style-type: none"> <li><i>To provide for tourism and residential opportunities that contribute to the vitality of the local centre</i></li> </ul> <p>A serviced apartment and/or shop top housing is a form of development permitted within the B2 zone. It is considered that the proposed development is consistent with the objectives of the zone; by provide a range of occupancy options which allow for tourism and residential opportunities.</p>

<p><b>Shop top housing near CBD</b></p>	<p>The proposed development is permissible with Council consent. The DCP advises that Shop-top is to be located in centres, generally along main streets.</p> <p>Shop-top <i>may not be appropriate</i> for locations in proximity to civic, entertainment or community uses that <i>generate noise, light spill or a high degree of activity during the day or the night.</i></p> <p>Council's Environmental Health Unit reviewed the subject application and advised the following:</p> <p><i>The master bedroom, main living areas and balcony of the subject apartment face the Cabarita Beach and Foreshore Reserve and do not face directly onto the common areas. As such, potential impacts upon amenity would be unlikely.</i></p> <p><i>Bedrooms number 2 and 3 have windows facing the common area containing the pools and spa which could result in potential impacts to amenity of any permanent resident.</i></p> <p><i>Pursuant to Condition 25 of the original approval granted by the Department of Planning (176-04-2003 (Council reference DA03/1221)) to construct the tourist apartment complex, the premises was constructed in accordance with The Beach at Cabarita Noise Impact Assessment, VIPAC, February 2003, which made recommendation for noise ameliorating measures for various building elements (windows, roof/ceiling/floors and walls).</i></p> <p><i>The original approval also has a range of additional conditions included to manage potential impacts on amenity.</i></p> <p><i>Further to the above, discussion with the building's management revealed that the use of the pool and spa is currently regulated to between the hours of 8am and 8pm, and that there are no barbeque facilities within the common area. The building complex currently has bylaws in place which mandate that no person shall make, continue, cause or permit to be made or continued, any unreasonably loud or excessive noise likely to disturb any reasonable person within the complex, and that no offensive noise should be heard within a habitable room after 10 pm. There is also a dedicated 24/7 phone number available in the event that assistance is required after hours.</i></p> <p><i>Considering the above information, potential impacts on the amenity of any full time resident are unlikely. Unreasonable impacts</i></p>
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Summary of Submissions	Council's response
	<p><i>on adjacent properties from the proposed change of use are not anticipated. Conditions under the original approval are considered to remain adequate for the current proposal.</i></p> <p>Further to the above conversations with the Health Unit advised that that treatment for acoustics was required under the original development consent and that no further concerns were raised in relation noise from the hotel. It is also noted that there are other permanent dwellings within close proximity to the hotel site.</p> <p>Based on this advice it is considered that the location is acceptable.</p>
<p><b>Impact on commercial development</b> The development would hurt the local businesses as there is no other tourist accommodation nearby</p>	<p>The application is for a single unit only. It cannot be assumed that further units will seek a similar COU approval. Accordingly, the application is to be assessed as proposed against merit.</p> <p>It is not considered that the COU of a single unit will have an impact on commercial uses within the area. Additionally, the applicant advised that the Lot will remain in the short term letting pool.</p> <p>Additionally Halcyon House (tourist accommodation) is within walking distance to the subject site.</p>
<p><b>Precedent</b></p>	<p>Council has acknowledged that the fundamental issue with regards to the subject application is the precedent which may be set by endorsing a variation to the parking requirements under Section A2 – Site Access and Parking Code of the Tweed Development Control Plan 2008.</p> <p>Notwithstanding the above it is noted that any future applications will need to be assessed on merit and may not be supported by Council for reasons other than parking.</p>
<p><b>No rationale or reason for proposed development</b></p>	<p>The applicant is not required to explain to Council their rationale for lodging an application which is permitted with Council consent. The application form and SEE advise the intended use as being to allow both tourist and permanent occupation of the unit.</p>
<p><b>Resort Management Rights</b> The owners of this business purchased it on the basis that the resort apartments were approved exclusively for tourist use only</p>	<p>This not a planning consideration. Council acknowledges this is a issue, however is not a planning consideration or reason for refusal under the EPAA.</p>
<p><b>DCP Section A1</b> The relevant submission states that the application “is dismissive of the Design Controls of Part C of the DCP”</p>	<p>A complete A1 assessment has been undertaken by the assessing officer. The development is for the change of use of a unit. Some variations are noted and detailed within this report. The variations are considered to still meet the objectives of the applicabl control under the DCP and are not considered to result in a cumulative impact worthy of refusal.</p>
<p><b>Rubbish Collection</b></p>	<p>The application was referred to Councils WMU who have reviewed the current waste management plan and advised the following:</p> <p><i>“Council’s waste team has no issues with the Beach Hotel Waste management plan”</i></p>

Summary of Submissions	Council's response
<p><b>Lack of storage</b></p>	<p>A RFI was sent to the applicant requesting further information in relation to the DCP control for Internal Building Configuration Control (Storage) – the unit is 3 bedroom accordingly, requires 5m<sup>3</sup>. The following information was submitted to Council with this regard. Additionally, this is discussed within the DCP assessment.</p>  <p>Highlighted in yellow and referred to as S18 in the above is the allocated storage space associated unit 205 (lot 18). The storage is 2.834m wide, 0.973m deep and 2.4m high totalling 6.62m<sup>3</sup>. It is noted that this area is not located on Lot 18, however the applicant has advised “<i>This allocation is included on the Community Management Scheme for 'The Beach Resort Cabarita'.</i>” This requirement plus the small areas within the unit are considered to meet the DCP requirements. Again it is noted that these are DCP controls and are not considered to warrant refusal of the subject application.</p>
<p><b>No mail box</b></p>	<p>At present mail is delivered to the reception. A Condition will be applied requiring a PO Box be acquired POC of the unit for permanent residential use.</p>
<p><b>Parking</b> There is insufficient parking onsite</p>	<p>This is discussed in detail under the Section A2 assessment of this report. Councils Traffic Engineer has endorsed a 0.25/1 space reduction for the visitor requirement advising the following:</p>



Summary of Submissions	Council's response
	<p><i>"There are no objections to the rounding down of the visitor parking requirements given the availability of publically accessible parking in close proximity to the development"</i></p> <p>The development complies with the required 2 parking spaces for the three bedroom unit. The application is being reported to Council as there may be a precedent set by supporting the parking variation.</p>
<p><b>Lifts are no large enough to transport furniture</b></p>	<p>Not a planning consideration. Notwithstanding this the unit is furnished and the applicant advised it would be leased this way.</p> <p>Additionally, the applicant advised the following with this regard:</p> <p>The lifts in the complex allowed all of the furniture currently in use in all of the apartments to be transported and delivered accordingly, suggesting the same process can occur in the future.</p>
<p><b>Economic considerations</b> A reduction in the number of tourist units will directly impact the input of visitor dollars into the economy</p>	<p>This is not a planning consideration, nor is this statement factual. A full time resident can also be a contributor to local businesses within the area.</p>
<p><b>Owners Consent</b> In this instance our client believes it would be appropriate that all owners in The Beach be deemed as land owners for the purposes of the Development Application and that the application not be accepted as properly made until each individual owner in The Beach has given their consent for the application to proceed. It would be unfair to the owners of lots within The Beach to allow such a significant change of use that hasn't been approved by all affected owners. It would be unreasonable in our client's view for Council to rely on a decision of the Owners Corporation which has not been made by a physical majority of owners in the scheme (but, rather, just a majority in attendance at a particular meeting), or to rely on a decision that has been made only by the Strata Committee for the Owners Corporation (who may not represent the majority interests of owners within The Beach on this particular issue).</p>	<p>Owners consent has been satisfied. The lot owner and body corporate has supplied owners consent for the lodgement of an application. Notification of the development was also undertaken to the subject Strata Plan and the surrounding properties.</p> 
<p><b>Changes/increase in value</b> There is what we believe an unrealistic expectation from various owners that changing the zoning will instantly result in significant value increase. This seems to be the reason for the application and for which more will follow. These parties are wanting to capitalise on the anticipated increase and sell immediately. This isn't about the long term interest of owners, it's about perceived short terms gain for those owners wanting to sell and move on.</p>	<p>The subject application does not seek consent to change the zone, but permit permanent residential occupation of a single unit. The changes to value of a unit and an owners expectation of this is not a planning consideration.</p>
<p><b>Use of facilities</b> The facilities are used by guests. In the event the residency position changes to permanent residence, friends and family could access facilities even though they may not be staying at the resort which would be impossible for management to police</p>	<p>This is a civil matter and is to be managed by the Body Corporate. Additionally, it is not expected that the change in use of a single unit 1 out of 57 will have a significant impact with this regard. The number of bedrooms or persons able to be accommodated will not increase under this application.</p>

In addition to the above submission the owners to the Management Rights submitted the following letter(s) to Council. Accordingly, these have been addressed as part of this report, responses are below (or within the submissions table):

**RE: DA 18/0665 – The Beach, Unit 205/2-6 Pandanus Parade, Cabarita Beach (Lot 18, SP 77096)**

We are writing to again seek clarification on the below issues. Could we please have your response to the following questions in relation to the above matter in writing or by email within 7 days?

*With particular reference to the parking situation, in the scenarios/analysis that was done was the number of required visitor bays based on 1 visitor bay per 10 apartments (as initially advised) or 1 per 4 apartments?*

*Is the applicant (via their town planning consultant) required to demonstrate compliance with the DCP Controls or justify any departures?*

*With particular reference to our email to your Lydia Charman dated 4<sup>th</sup> December 2018 and its attachment which listed fifteen DCP Controls that the building did not appear to meet, how exactly has compliance with the DCP Controls been assessed by Council in the case of this application?*

These controls go to our core argument that the subject building was designed as a resort for exclusive holiday use and is not suitable for permanent accommodation in its current form.

We kindly look forward to your prompt reply to these three questions.

#### Question 1 Response:

The application has been assessed by Council's Traffic Engineer who has supported/endorsed a variation to the requirement of a parking space (0.25, rounded up to 1) for visitor parking for the residential unit.

The issue of precedent was raised with the Traffic Engineer who advised that the application is for a single unit and it would be an assumption that all units may lodge a DA, whilst acknowledging that should all units lodge an application of a similar nature they may result in refusal.

#### Question 2 Response:

The Act and Regulations requires that an application be assessed against all applicable legislation and DCPs. It does not prescribe that the applicant of an application must undertake a complete assessment. An assessment was included within the submitted Statement of Environmental Effects which was suitable for lodgement. Following a complete A1 assessment by the Development Assessment Unit, further queries were made to the applicant regarding waste, parking, storage, amenity etc. The imperative concern is that the application was assessed **by the consent authority** against all relevant controls. This is considered satisfied. It is noted that some variations have been sought. The variations are considered to still meet the objectives of the applicable control under the DCP and are not considered to result in a cumulative impact worthy of refusal.

#### Question 3 Response:

A complete A1 assessment has been undertaken. A Development Control Plan is a guideline and any departure from a control is not a Clause 4.6 variation (under the

Tweed LEP 2014). The extent of a variation, which is contrary to the objectives of that control (not just numerical) and the number of variations sought together result in cumulative impacts and determines the suitability of a site for a development/use. The number of variations an application seeks does not strictly result in the refusal of an application, as a DCP variation to a control may still be able to achieve compliance with the objectives.

A response the aforementioned 15 variations are in the above submissions table and A1 assessment and below. Please note that a complete assessment of the application has been undertaken.

## Other Building Amenity (DCP Control) Concerns

*Key Concern: Should the applicant be required to demonstrate compliance or justify departures from the following DCP Controls for Shop-top Housing? How exactly has Council assessed compliance with these DCP Controls? We feel that when viewed as a whole these concerns go to our argument that the building was designed as an integrated resort for exclusive holiday use and is not suitable for permanent accommodation.*

### CHAPTER 1 – BUILDING TYPES

#### Shop-top Residential Buildings

##### Suitable Locations for Shop-top Housing

Shop-top may not be appropriate for locations in proximity to civic, entertainment or community uses that generate noise, light spill or a high degree of activity during the day or the night.

The internal space of the ground floor of the development is to be at the ground level of the street. Basement car parking is to be fully underground.

### CHAPTER 2 - SITE AND BUILDING DESIGN CONTROLS

#### DESIGN CONTROL 4 - Carparking and Access

##### Carparking Generally

Carparking is to be in accordance with Section A2 of the Tweed Shire Development Control Plan.

##### Basement Carparking

Basement carparking cannot extend more than 1m above ground where it faces a public street or public space, 1.5m above ground level can be achieved to the side and the rear of the lot where it does not face a public street or public space.

#### DESIGN CONTROL 7 – Building Amenity (sunlight access, visual privacy, acoustic privacy, view sharing, and natural ventilation).

##### Visual Privacy

Terraces and balconies off living areas are generally not to be located above ground floor if they overlook neighbours.

Living room and kitchen windows, terraces and balconies are to avoid a direct view into neighbouring dwellings or neighbouring private open space.

##### Acoustic Privacy

Dwellings located on designated or classified roads are to have double glazed windows where these windows face the road and provide light to living rooms or bedrooms.

Dwellings located on arterial roads are to have an acoustic seal on the front door to reduce noise transmission.

#### DESIGN CONTROL 8 – Internal Building Configuration

##### Storage

In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates: - studio 3m<sup>3</sup>

- one-bedroom 3m<sup>3</sup>

- two-bedroom 4m<sup>3</sup>

- three plus bedroom 5m<sup>3</sup>

Locate storage conveniently for dwellings.

##### Internal Circulation

Limit the number of units accessible from a single core/corridor to eight.

Providing generous corridor widths (preferred min. 2.5m) and ceiling heights (preferred min. 2.7m), particularly in lobbies, outside lifts and apartment entry doors,

#### DESIGN CONTROL 9 - External building elements

##### Roofs, Dormers and Skylights

The main roof is not to be a trafficable terrace.

##### Minor Elements

Barbeque areas are to be:

- used for domestic purposes only (this is not the case as the building was originally designed as a hotel and the barbecue area is still a commercial exclusive use area)

Letterboxes:

- are to be a maximum height of 1.2m above the ground,
- are to have street numbering corresponding with that allocated to the dwelling,
- are to be structurally sound,
- are to be designed as part of the building and its landscaping using similar materials and finishes,
- in multi-dwelling developments letterboxes must be located on common property; be contained in one structure, contain sufficient boxes, one for each dwelling, including one for the body corporate.

#### **DESIGN CONTROL 10 – Building Performance**

##### Energy Efficiency

Developments are to obtain BASIX certification where required.

##### Waste Management

Prepare a waste management plan for green and putrescent waste, garbage, glass, containers and paper.

##### Water Conservation

All developments are to obtain BASIX certification where required and comply with the relevant requirements of the Building Code of Australia.

### **Comments/response to above noted DCP comments by objector:**

#### Suitable locations:

The report, A1 assessment and submissions table addresses the location of the development. Council's Environmental Health Unit are satisfied in relation to amenity.

#### Ground level:

The unit is not located at the ground floor. The existing building is comprised of ground floor uses. Part of the existing building which faces Tweed Coast Road is elevated and the access to parking is within this area. However the building is in existence and no physical changes are sought.

#### Car parking:

Addressed within this report, a variation has been endorsed by the Traffic Engineer.

#### Basement parking:

No physical works are proposed with this regard.

#### Visual privacy:

The terrace looks to the foreshore.

#### Acoustic Privacy:

The unit is not located on the Road side (it is separated by some 80.0m from the road).

#### Storage:

Refer to the submissions section. Complies with the required 5m<sup>3</sup>

#### Internal circulation:

The entrance corridor is partially open and overlooks common areas.

The area from the lift is a partially open foyer, the unit with others is accessed via an open (roofed) access way, off the access way is an entrance shared directly with one other unit only.

Roofs:

The roof of the unit is not trafficable or used for the subject unit.

BBQ areas:

The unit has an existing BBQ on its own Private Open Space. The complex does have shared common areas which may be used by guests.

Letterboxes:

The DCP does not stipulate that a letter box is required, however discussed where proposed letter boxes shall be placed. Notwithstanding this, a condition has been applied with this regard, that the unit prior to occupation as a residence must provide evidence to Council that a PO Box has been secured.

BASIX:

As detailed within this report – BASIX is not required.

**(e) Public interest**

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

**OPTIONS:**

1. Approves the application.
2. Refuses the application for specified reasons.

Option 1 is recommended.

**CONCLUSION:**

The proposal is now considered acceptable, with appropriate conditions applied to ensure structural adequacy and fire separation is achieved prior to construction works. Accordingly, the revised plans are considered acceptable and consistent with Council's relevant planning provisions. The development will be inspected following completion to ensure compliance with the approved plans.

**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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**3 [PR-PC] Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar**

**SUBMITTED BY: Building and Environmental Health**

mhm



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

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

- 3 People, places and moving around
- 3.1 People
- 3.1.6 Environmental Health - To support public health and environmental safety through education, inspections and enforcement of government rules and regulations.

**ROLE:** Advocate

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**SUMMARY OF REPORT:**

**Background**

On 1 April 2014 consent was granted under delegated authority for DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks.

The facility has been operating since 2016 and noise concerns have been raised with Council by adjacent residences as a result of the operation of fans inside the greenhouse on a 24 hour a day and 7 days a week basis, as well as operation of plant and equipment.

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

The concerns raised by affected residences were validated by the NIS. The NIS also proposed mitigation and management measures to ensure noise emissions are reduced to compliant levels (however it is acknowledged that the noise may still be audible).

In response to Council's investigation and as recommended by the NIS, the operator of the micro herb production facility undertook proactive measures to ensure noise impacts are minimised including the installation of new and quieter fans on 22 June 2017, with capabilities to program speed and groupings so that noise emissions can be controlled out of the approved hours of operation.



On 3 August 2017 Council Report 'Pocket Herb Noise Assessment – Lot 3 DP 1191598 No. 67 Howards Road, Burringbar' was considered at Council's Planning Committee Meeting. Council resolved the following in respect of this item:

*"That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar, receives and notes this report on the alleged noise impacts from the operation and endorses the following:*

- 1. Operator to prepare and submit to Council an Operation Management Plan reflecting the mitigation measures for operation of Greenhouse 1, identified in the Noise Impact Assessment prior to 7 September 2017;*
- 2. Operator to provide a further Noise Impact Assessment including monitoring at each of the residences, identified in the Noise Impact Study Rev1 dated 180517, identifying all noise sources emanating from the use of the subject site, and including measured background levels, measured dBAL<sub>Aeq</sub> 15min levels and measured dBC levels for each day/evening/night period. NIA to include recommendations for further mitigation where identified and submit this to Council prior to 7 September 2017; the results of this verification shall be the subject of a further report to Council;*
- 3. Operator is required to submit to the satisfaction of Council a Noise Impact Assessment prior to the installation of any fans into Greenhouse 2 that demonstrates noise from the operation of Greenhouse 2 will not exceed the approved noise criteria. The assessment is to include the potential cumulative impacts (combined impacts) from the operation of both greenhouses and the mechanical plant equipment on site; the results of this assessment are to be reported back to Council for further review and determination of compliance actions;*
- 4. Operator is not permitted to operate greenhouse 2 until Council is satisfied that there will be no noise impacts above the approved noise criteria and written approval has been issued by Council;*
- 5. Subject to prior Council approval in points 3 and 4, Operator is required to notify Council of the intended date of operation of Greenhouse 2. Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required; and*
- 6. Operator to be advised that acoustic enclosure of the generator, water boiler and any mechanical plant equipment on site is considered necessary and is to be completed by 1 October, 2017."*

Council officers have been working closely with the site owner and surrounding residents to advance Council's resolution on the matter.

On 12 December 2018 another Council Report titled 'Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar' was considered at Council's Ordinary Council Meeting. Council resolved the following in respect of this item:

*"That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar:*

- 1. Receives and notes this report on the alleged noise impacts from the operation;*
- 2. Request further information from the proponent addressing; inconsistencies regarding noise data presented to date and the management of the operation of Greenhouse 2, and further information in accordance with point 3 of the Council resolution of 3 August 2017; and*
- 3. Council officers liaise with the site owners to ensure compliance with point 4 of the Council resolution of 3 August 2017 being:*
  - 4. Operator is not permitted to operate greenhouse 2 until Council is satisfied that there will be no noise impacts above the approved noise criteria and written approval has been issued by Council."*

The purpose of this report is to provide Council with an update on the progress on the 12 December 2018 resolution (which is linked to 3 August 2017 resolution above), and to seek Council endorsement of a preferred strategy to finalise assessment for Green House 2 (GH2).

**RECOMMENDATION:**

**That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598 No. 67 Howards Road, Burringbar, receives and notes this report on the alleged noise impacts from the operation and that:**

- a. Council provides written approval to use Greenhouse 2 in accordance with part '4' of the Council resolution of 3 August 2017;**
- b. Council officers liaise with the site owners to ensure that "Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required;" and**
- c. Council officers perform two random noise monitoring events over the next 6 months and respond to community noise complaints in the same period and undertake any compliance action under the POEO Act as required.**

## REPORT:

### Background

#### Description of Subject Site

The subject site is known as Lot 3 DP 1191598, Parish Murwillumbah. The site is accessed from Howards Road, via Cudgera Creek Road. Under Tweed Local Environmental Plan the land is zoned RU2 Rural Landscape.

The site is generally surrounded by rural holdings, rural residential and agricultural uses.

The location of the operation in the context of adjacent dwellings is provided in Photo Plate 1. The closest dwelling to greenhouse 2 is located at 75 Howards Rd and is located within 50m of the subject property.



#### Approvals and Compliance History

On 1 April 2014 consent was granted for DA13/0712 relating to land described as Lot 3 DP 1191598 for the purpose of a micro herb production facility including two greenhouses, two pump sheds, potting shed/office, water tank, driveway access and associated earthworks.

The original proposal did not include the operation of fans inside of the greenhouses on a 24hr and 7 day basis. However general conditions were applied to the consent to allow Council to respond to any noise concerns in a manner that is currently underway.

The operation of fans 24hrs a day does not breach the hours of operation which are currently 7am – 5pm (in the same way an ice machine remains on in a club). However it is still important that a noise nuisance cannot be created. Any required action would be taken under Protection

of the Environment Operations Act 1997 (POEO Act), by the Environmental Health section, rather than a planning compliance action by Compliance.

## **Noise Complaints**

The facility has been operating since 2016 and has been the subject of frequent noise complaints relating to the 24hr operation of fans inside of the greenhouses. It has been alleged that the fan noise is impacting on adjacent residences during night time hours outside of the approved operation hours. It has also been alleged that noise, generally associated with plant and equipment other than HAF fans, is impacting on adjacent residences during approved operation hours.

As a result of complaints a Noise Impact Study was requested in accordance with Condition 48 of Development Consent DA13/0712 which states that:

*“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.”*

A Noise Impact Study (NIS) was provided to Council on 18 May 2017. The NIS was considered to be deficient and further information was requested.

The operator was requested on Tuesday 23 May 2017 to submit an amended report. An amended NIS was submitted on 6 June 2017.

## **Council Resolution of 12 December 2018**

On 12 December 2018 another Council Report titled ‘Pocket Herb Noise Assessment - Lot 3 DP 1191598 No. 67 Howards Road, Burringbar’ was considered at Council’s Ordinary Council Meeting. Council resolved the following in respect of this item:

*“That Council, in respect of the compliance actions taken in respect of DA13/0712, relating to land described as Lot 3 DP 1191598, No. 67 Howards Road Burringbar:*

- 1. Receives and notes this report on the alleged noise impacts from the operation;*
- 2. Request further information from the proponent addressing; inconsistencies regarding noise data presented to date and the management of the operation of Greenhouse 2, and further information in accordance with point 3 of the Council resolution of 3 August 2017; and*
- 3. Council officers liaise with the site owners to ensure compliance with point 4 of the Council resolution of 3 August 2017 being:*
  - "4. Operator is not permitted to operate greenhouse 2 until Council is satisfied that there will be no noise impacts above the approved noise criteria and written approval has been issued by Council.""*

Council officers have been working closely with the site owner and surrounding residents to advance each of these resolved items.

**Table 1: The status of items in the Council resolution 12 December 2018**

Item No.	Item	Status and Comments
1	Receives and notes this report on the alleged noise impacts from the operation;	No further comments.
2	Request further information from the proponent addressing inconsistencies regarding noise data presented to date and the management of the operation of Greenhouse 2, and further information in accordance with point 3 of the Council resolution of 3 August 2017; and;	<p>The Council Report considered at Council's Ordinary Council Meeting on 12 December 2018 referred to an Environmental Noise Impact Report (ENIR) dated 30 November 2018. The ENIR dated 30 November 2018 was not included as an attachment, and this omission limited consideration of use of Greenhouse 2. ENIR dated 30 November 2018 is attached to this report.</p> <p>The Operational Noise Management Plan V2 dated 21 November 2018 identifies Greenhouse 1 as having 'fixed pedestal fans for disease susceptible varieties' and 'personal pedestal fans for staff safety/comfort'. It does not identify Greenhouse 2 as having fixed pedestal fans or personal pedestal fans.</p> <p>Likewise, the ENIR dated 30 November 2018 identifies Greenhouse 1 as having fixed pedestal fans and personal pedestal fans.</p> <p>It does not identify Greenhouse 2 as having fixed pedestal fans or personal pedestal fans.</p> <p>The operator, through their consultant, has advised of the following:</p> <p><i>The packing of the produce occurs in the rear of the Greenhouse 1 and this is a repetitive task requiring staff to be stationary for long periods and only occurs on Tuesday, Thursday, Friday and Sunday, whilst the general tending of the plants occurs every day and for this task the staff are not stationary in the greenhouses for long periods of time. No packing occurs in Greenhouse 2 and so the pedestal fans are not needed in that Greenhouse. The personal pedestal fans in Greenhouse 1 are only used in the dedicated packing area and only on pack days in the summer. This is the only Workplace Health &amp; Safety requirement as staff remain in the same area doing repetitive physical labour for long periods of time. The fans are not used in the 'body' of the greenhouse at all as they are not required. Many, non-pack, staff work every day in GH1 without personal pedestal fans. As we will be picking only in GH2 (not packing) there is no dedicated packing area where staff will be stood in the same location for extended time periods. Therefore, there is no need for pedestal fans or fixed pedestal fans in GH2.</i></p> <p>Council staff will monitor the ongoing use of Greenhouses 1 and 2.</p> <p>In the event that the operator requests use of additional fans or other consequential changes to fan arrangements, an updated ENIR and</p>

Item No.	Item	Status and Comments
		<p>Operational Noise Management Plan will be required. Should offensive noise be found to be generated in the future compliance action under the POEO Act can be taken.</p> <p>Enquiries have been made regarding the distance from Greenhouse 2 to the dwelling at 75 Howards Road, and potential implications for modelling of noise impacts. The operator, through one of their consultants, has advised of the following:</p> <p><i>There may be some confusion between the figure in the document titled "Report on Completion of Farm Development and Request to Council" prepared by Pocket Herbs and Produce dated 21 November 2018 which was attachment 2 to the Council report on 12 December 2018, and the CRG Acoustics Report dated 30 November 2018. In the Pocket Herbs and Produce report, there is a figure which shows the distance from the dwelling on 75 Howards Rd to the boundary which is approximately 30m. Jay Carter has provided the following explanation:</i></p> <p><i>The distance of 69m is referenced on Page 11 dot point 3 of the report, as follows:</i></p> <p><i>75 Howards Road, to the immediate west, approximately 69m from the existing greenhouse. This is the nearest receiver, on land at the same relative level as the subject site. The reference to the existing greenhouse relates to Greenhouse 1. We confirm that this greenhouse is 69m from the dwelling at 75 Howards Road. We also note the calculation sheet on Page 24, which shows the distance attenuation is 0 dB, as the assessment distance from Greenhouse 2 is 9m inside the property at 75 Howards Road, and the measurements of noise from Greenhouse 2 were undertaken at 9m from the greenhouse. This distance of 9m inside the boundary of 75 Howards Road represents a point 30m from the dwelling, which is the required assessment location as specified under the Noise Policy for Industry.</i></p> <p>The distance from Greenhouse 2 to the dwelling at 75 Howards Road is approximately 39 m. Another review of the ENIR (also referred to as 'CRG Acoustics Report') dated 30 November 2018 indicated that the distance used for modelling of noise impacts was appropriate.</p> <p>Enquiries have been made regarding fan speeds in Greenhouse 2. The operator, through one of their consultants, has advised of the following:</p> <p><i>Greenhouse 1 Horizontal Airflow Fans (HAF) fans use single phase electricity and are controlled with a digital controller of discrete increments of 1%. After trialling the fans, Mr Reynolds arrived at the 20% and 55% of full capacity speeds to obtain the correct airflow needed.</i></p> <p><i>Greenhouse 2 HAF fans use three phase electricity and are controlled by an analogue controller that has only 5 increments of 20%, 40%, 60%, 80% and 100% of full capacity. Through testing we found that 20% and 60% provide the airflow needed (there is no 55% option). These fans are quieter than Greenhouse 1 fans and meet the noise standards required.</i></p>

Item No.	Item	Status and Comments
3	<p>Council officers liaise with the site owners to ensure compliance with point 4 of the Council resolution of 3 August 2017 being:</p> <p>"4. Operator is not permitted to operate greenhouse 2 until Council is satisfied that there will be no noise impacts above the approved noise criteria and written approval has been issued by Council;"</p>	<p>The Industrial Noise Policy assists acoustic consultants and regulators regarding measured noise monitoring and assessments. The Industrial Noise Policy is not law, however compliance with it will generally ensure compliance with the POEO Act.</p> <p>The attached ENIR outlined that fans in Greenhouses 1 and 2, controlled in accordance with the report, will result in compliance with the Industrial Noise Policy. Therefore no concerns regarding the matter are raised by Council Officers at this point.</p> <p>Sporadic use of plant and equipment at the facility can be reasonably expected as part of rural operations.</p> <p>This does not immediately indicate this is 'offensive noise' and a non-compliance with the POEO Act.</p> <p>Tractors, harvesting machinery, mechanical pumps and other large equipment are often used as part of agricultural operations.</p> <p>In suburban area lawns mowers, brush cutters, leaf blowers and other equipment are used to maintain yards. Measured noise monitoring while such equipment is being used may identify noise that does not comply with the Industrial Noise Policy, for short periods. This does not immediately indicate 'offensive noise' and non-compliance with the POEO Act.</p> <p>Offensive noise is not simply confirmed by a measured noise level.</p> <p>When investigating whether offensive noise is being generated, Council or another regulatory authority considers a number of factors, specific to the situation. The offensive noise test is explained further in 'The Offensive Noise Test' below.</p> <p>Regarding use of plant and equipment at the facility, limits on start and finish times and duration, outlined in the Operational Noise Management Plan V2, are considered appropriate mechanisms to ensure that offensive noise isn't generated. Supporting information, including potential impacts at the nearest dwellings, may be found in the ENIR.</p> <p>The 'approved noise criteria' referred to in the Council resolution are considered to be prescriptive noise limits for HAF fans outlined in the ENIR, and limits on start and finish times and duration, outlined in the Operational Noise Management Plan V2.</p> <p>In conclusion, it is considered that approval may be granted for use of Greenhouse 2.</p>

**The development must not cause disruption to the amenity of the locality**

It is important to note that Condition 43 of Development Consent DA13/0712 states that:

*"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."*

To assess whether disruption is occurring, Council officers have referred to assessments carried out by a reputable acoustic consultant, undertaken noise monitoring, and have applied the offensive noise test outlined in the Noise Guide for Local Government.

If the above condition was contested in a court scenario, the offensive noise test would be applied. The following section of the report uses the offensive noise test to determine if disruption (or offensive noise) is being created and if compliance action is warranted.

**The offensive noise test:**

The POEO Act is the primary law in NSW to manage pollution, including noise pollution. A person may be required to do something, or not do something, where 'offensive noise' as defined in the POEO Act has been identified by a Local Council or other regulatory authority.

It is necessary to consider a range of factors to determine whether noise is offensive. The Noise Guide for Local Government refers to the process as the 'offensive noise test', and includes the following points:

- The loudness of the noise, especially compared with other noise in the area.

*Noise from fans:*

Previous operation of HAF fans in Greenhouse 1 at night was considered to generate noise that was loud compared with other noise in the area.

The operator responded to the matter by engaging a reputable acoustic consultant to carry out an assessment, and implementing the consultant's recommendations to install quieter fans and limit fan speed.

NB: measured noise monitoring by Council staff in late 2018 did not reveal concerns regarding HAF fans.

Current operation of HAF fans at the facility during the day, evening and night is not considered to generate noise that is loud compared with other noise in the area.

*Noise from general operations:*

Previous operation of plant and equipment during the day may have been considered to generate noise that was loud compared with other noise in the area.

The operator responded to the matter by engaging an acoustic consultant to carry out an assessment, and implementing the acoustic consultant's recommendations, including acoustic enclosures/shielding (boiler, emergency generator, compressor and pottling machine), quieter equipment (compressor) and limits on start and finish times and duration through the Operational Noise Management Plan V2 (various).

Current operation of plant and equipment at the facility during the day is not considered to generate noise that is loud compared with other noise in the area.

The noise is not currently considered to be loud in an absolute sense. The noise is not currently considered to be loud relative to other noise in the area.



- The character of the noise.

Previous operating arrangements associated with the potting machine during the day were considered to generate noise with an impulsive component. Impulsive noise is noise with a high peak of short duration or a sequence of such peaks. The operator responded to the matter by engaging an acoustic consultant to carry out an assessment, and implementing the acoustic consultant's recommendation regarding acoustic shielding. It is noted that sporadic use of reversing beepers may be audible.

Current activities at the facility during the day, evening and night are not considered to generate noise that is out of character with other noise in the area.

*The noise is not currently considered to include characteristics that make it particularly irritating.*

- The time and duration of the noise.

People usually expect their surroundings to be quieter on Sundays, during the evening (6-10pm) and at night (10pm – 7am) (10pm - 8am on Sundays and public holidays). Concerns regarding noise during these times have been adequately addressed by the operator.

Noise currently generated at the facility during the evening and night is not expected to regularly disturb sleep. This is supported by measured noise monitoring by Council staff in late 2018.

*The noise does not occur at times when most people would expect to enjoy peace and quiet. Sleep disturbance may occur when back-up power comes on in an emergency such as power failure. The generator has been insulated by the operator.*

- Whether the noise is typical for the area.

The property is zoned RU2 Rural Landscape. Operations at 67 Howards Road are consistent with the land use planning zone.

There are a number of agricultural activities in Howards Road and the surrounding area. Noise from equipment and agricultural activities on other properties near 67 Howards Road has been audible during investigations by Council staff.

*The noise is considered typical for the area (a rural activity in a rural area)*

- How often the noise occurs.

The facility operates seven days a week. Noise associated with operations may be audible every day of the week.

*The louder equipment that is used on site has been limited to agreed times only within the operational management plan. This is an acceptable noise management method.*

*The noise is considered to occur often.*

- The number of people affected by the noise.

Council has received formal complaints from the residents of two properties during the assessment period.

*A large number of people are not considered to be affected by the noise.*

### **Conclusion: is the noise from pocket herbs 'offensive noise'?**

There are statutory tools for the management of offensive noise that Council can apply, including a Noise Control Notice or Prevention Notice in accordance with the POEO Act.

It is acknowledged that the community have raised valid noise concerns and this has resulted in Council requiring the operator to undertake noise mitigation actions.

Due to the actions taken by the operator to mitigate noise and the use of the offensive noise test above, on balance, Council staff believe offensive noise is not being generated.

At this stage statutory options are not being pursued or recommended to be pursued.



Photo Plate 1. Location of the operation and closest adjacent dwellings.

### **Summary of Complaints Raised by Adjacent Residents**

A search of Council records demonstrates that the operations have been the subject of regular noise concerns since November 2016.

The concerns have largely related to operation of fans within greenhouses, however they have also related to operation of plant and equipment at the facility (eg pedestal fans, oil boiler, air compressor, potting machine). Sleep disturbance has previously been identified as a key concern.

It has also been alleged that noise, generally associated with plant and equipment other than HAF fans, is impacting on adjacent residences during approved operation hours. Council has taken the concerns of adjacent property owners very seriously.

### **Noise Monitoring**

Noise monitoring was carried out by CRG Acoustics on 7 November 2018.

Council officers were in attendance, and the owners of 75 Howards Road were in attendance for part of the monitoring. Results of greenhouse and equipment monitoring were included in the ENIR dated 30 November 2018.

Random monitoring was undertaken by Council on four occasions, and without notifying Pocket Herbs or affected residents. Sampling events during the evening and night found noise from Pocket Herbs was either not audible or barely audible in compliance with DA requirements.

### **Council Noise Compliance Monitoring Capability**

Council's Environmental Health Officers have the technical ability and equipment to undertake a proactive program to ensure compliance with the recommendation of this report. It is proposed that the Environmental Health Team will undertake further random monitoring of the facility to validate the outcome of the Noise Impact Assessment and will investigate future noise concerns raised by adjacent residences, within reason.

From the acoustic consultant's report and random noise monitoring undertaken by Council officers noise approval for the use of GH2 is recommended.

### **Independent action by residents**

Should Council approve the use of GH2 and the affected residents believe that the noise does impact them adversely they have the option of seeking a noise abatement order through the local court.

### **OPTIONS:**

#### **Option 1**

Council receives and notes this Pocket Herb Noise Assessment report and supports the recommendation that:

- a) Council provides written approval to use Greenhouse 2 in accordance with part '4.' of the Council resolution of 3 August 2017.
- b) Council officers liaise with the site owners to ensure that "*Within 30 days from the commencement of operation of greenhouse 2 the operator is required to provide verification testing against the approved noise criteria for the operation of both greenhouses and include recommendations for further mitigation where required;*"
- c) That Council officers perform two random noise monitoring events over the next 6 months and respond to community noise complaints in the same period and undertake any compliance action under the POEO Act as required.

## Option 2

Council refuses to grant approval for the use of GH2.

Option 1 is recommend as:

- The random monitoring by Council staff found no offensive noise was being created
- Pocket herbs have confirmed additional worker fans are not required in GH2
- Various positive and significant actions have been undertaken by the operator of Pocket Herbs to mitigate noise sources

Importantly should offensive noise be generated by Pocket Herbs in the future compliance action under the POEO Act can be taken.

## CONCLUSION:

Council received an Environmental Noise Impact Report (ENIR) dated 30 November 2018. The ENIR outlined that fans in Greenhouses 1 and 2, controlled in accordance with the report, will result in compliance with the Industrial Noise Policy.

The EINR also outlined that sporadic use of equipment can be reasonably expected as part of rural operations, and recommended control through a Noise Management Plan. An amended ONMP was submitted to Council on 21 November 2018.

It is considered that approval may be granted for use of Greenhouse 2.

The operator has been cooperative with regards to mitigating noise impacts. Fans in greenhouses have been replaced, other equipment has been replaced, acoustic enclosures have been constructed and changes have been made to work practices.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

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

Any decision by Council to take legal action will incur costs not currently accounted for in the Environmental Health Unit budget. It should also be noted that noise investigations and noise mitigation actions taken by Council officers has been extensive.

### c. Legal:

Protection of the Environment Operations Act 1997.

### d. Communication/Engagement:

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

Throughout the assessment process consultation with effected parties and the operator of the facility has been undertaken and this will continue with the aim to resolve matters to the satisfaction of all parties.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- |               |  |
|---------------|--|
| Attachment 1. | Operational Noise Management Plan V2 (ECM 5667504)   |
| Attachment 2. | Ventilation Fan Noise Assessment from CRG Acoustics Pty Ltd dated 30 November 2018 (ECM 5741170) |
-

**4 [PR-PC] Unauthorised Earthworks and Unauthorised Vegetation Clearing at Lot 2 DP 596914 No. 115 Murwillumbah Street, Murwillumbah**

**SUBMITTED BY: Development Assessment and Compliance**

mhm



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

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

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

**ROLE:** **Provider**

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**SUMMARY OF REPORT:**

On 26 December 2018, Council's Compliance Unit received a complaint from a member of the public alleging that extensive earth works were taking place at the rear of the Imperial Hotel, No. 115 Murwillumbah Street, Murwillumbah.

In response to this complaint Council officers have inspected the site on multiple occasions and have sought an explanation from the site owner. It was evident from these inspections that a significant amount of earthworks have been undertaken in the rear portion of the subject site and the works have extended into a section of the adjoining Bent Street Road Reserve. The rear embankment is approximately 20 metres in height from the base to the top of the site. Furthermore, it has been confirmed that native vegetation has been cut and removed on the site. It would appear that these works have been carried out without any prior approval.

It is noted that two recent approvals have been issued for this subject site (DA17/0128 & DA18/0518). Neither approvals issued consent for vegetation clearing and/or earthworks to be undertaken in the rear of the site.

It should further be noted that the property adjoining to the west (No.131 Murwillumbah Street) has been subject to embankment failure and is arranging rehabilitation works. Further information is provided in the **Confidential** Attachment 8 to this report.

On the basis of these initial investigations, it is considered to be an immediate imperative for Council to require the owner to undertake an urgent engineered stabilisation of the subject portion of the rear embankment.

Further investigation and legal advice will also be necessary to guide Council on the appropriate forms of fines to be issued for the unauthorised vegetation removal and earthworks.

**RECOMMENDATION:**

**That:**

- 1. ATTACHMENTS 7 & 8 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
  - (d) commercial information of a confidential nature that would, if disclosed:**
    - (i) prejudice the commercial position of the person who supplied it, or**
    - (ii) confer a commercial advantage on a competitor of the council, or**
    - (iii) reveal a trade secret.**
  
- 2. Council, in respect of the unauthorised earthworks and unauthorised vegetation clearing at the rear of the premises occupied by the Imperial Hotel, Lot 2 DP 596914, No. 115 Murwillumbah Street, Murwillumbah, endorse the following:**
  - 1. The property owner be requested in writing to submit an interim works plan to Council that includes stabilisation of the bank and the protection and stabilisation of Council's road asset being the Road Reserve. Upon approval from The General Manager and/or Delegate, the property owner be directed to carry out the works;**
  
  - 2. Council engages Solicitors to provide advice on the appropriate Penalty Infringement Notice/s that should be issued for the unauthorised works and tree vegetation removal;**

**In the event that the property owner does not comply with Council's directions to submit an interim works plan, Council engage Solicitors to commence appropriate action against the property owner of Lot 2 DP 596914 to require stabilisation of the bank and Road Reserve.**

## REPORT:

### Most Recent Approvals for the Subject Site

It is noted that the site has been the subject of two **recent** approvals being DA17/0128 and DA18/0518. Following a review of each of these applications it is advised that **no** consent has been issued for any earthworks or vegetation removal.

Notwithstanding the above, an application was **received** by Council's Technical Officers for lodgement in April 2018 which proposed the *construction of a retaining wall, vegetation clearing and alterations to existing building* at the subject site.

This application was not formerly lodged for assessment. Attachment 1 of this report provides a copy of Council's letter (dated 20 April 2018) to the applicant advising that the application could not be accepted without being accompanied by a range of supporting documents (including but not limited to a Slope Stability Assessment report) and Council owners consent.

Following this advice, DA18/0518 was lodged with Council and did not include any external works at the site.

### Recent Complaint and Response by Council's Compliance Unit

On 26 December 2018, Council's Compliance Unit received a complaint from a member of the public alleging that extensive earthworks were taking place at the rear of the Imperial Hotel, No. 115 Murwillumbah Street, Murwillumbah.

Upon an inspection from a Council officer on 26 December 2018 there was evidence of tree removal and earthworks. It was noted from the officer that there were no persons present at the time in this rear part of the site.

A second inspection was undertaken on 28 December 2018 in response to a second complaint alleging that work had re-commenced at the site. The inspecting Council officers instructed a person onsite to cease works immediately until Council provided further notice. It was noted by the officers that the person onsite was not the property owner.

The property owner was then directed to Stop Work by Council's Compliance Unit on 2 January 2019 and to provide advice as to why works were undertaken without appropriate approvals.

The property owner responded, advising that a Development Application was lodged in early 2018 to undertake earthworks and to retain the rear boundary (embankment) to prevent slippage (Please refer to Attachment 4 of this report).

A response was provided by Council to the applicant on 20 April 2018 that the application could not be accepted without being accompanied by a range of supporting documents (including but not limited to a Slope Stability Assessment report) and Council owners consent (Please refer to Attachment 1 of this report).

The property owner and Council Officers met onsite on 22 January 2019. The property owner advised that he undertook the works to stop the embankment from falling down. He advised that he was not expecting to do so much work but a tree stump was larger than expected and more earthworks were needed.



The property owner agreed onsite to seek advice from his Engineering Consultant to prepare an interim plan to stabilise the bank as soon as possible. The property owner further advised that he will agree to erecting safety fencing along the boundary line of Bent Street and his property.



The site area is zoned B3 Commercial Core



Photo taken on 21 January 2019



Photo taken on 03 January 2019



Photo taken on 26 December 2018



Photo taken on 29 December 2018

**OPTIONS:**

1. The property owner be requested in writing to submit an interim works plan to Council that includes stabilisation of the bank and the protection and stabilisation of Council's road asset being the Road Reserve. Upon approval from The General Manager and/or Delegate, the property owner be directed to carry out the works.
2. Council engage Solicitors to provide advice on the appropriate Penalty Infringement Notice/s that should be issued for the unauthorised works and tree vegetation removal.
3. In the event that the property owner does not comply with Council's directions to submit an interim works plan, Council engage Solicitors to commence appropriate action against the property owner of Lot 2 DP 596914 to require stabilisation of the bank and Road Reserve.
4. Take no action.
5. A combination of 1, 2, 3 or 4.

It is recommended that Council endorse Options 1, 2 and 3.

## CONCLUSION:

It is considered that the works need to be remedied and in this regard, should The General Manager and/or Delegate be satisfied with the prepared interim plan from the property owner, it is recommended that Council direct the property owner to engage qualified experts to stabilise the embankment and Road Reserve based on geotechnical and engineering standards and report.

It is considered appropriate in this instance that the owner should be issued with Penalty Infringements Notices as well as funding the remedy works given the background (advice on previous proposal) that the owner was aware that approval was required.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

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

Legal expenses may be incurred if any enforcement action is taken in respect to the unauthorised works and tree vegetation removal.

### c. Legal:

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

### d. Communication/Engagement:

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

## UNDER SEPARATE COVER/FURTHER INFORMATION:

- |                              |  |
|------------------------------|--|
| Attachment 1.                | Letter to applicant regarding construction of a retaining wall, vegetation clearing and alterations to existing building dated 20 April 2018 (ECM 5742878) |
| Attachment 2.                | Photos from Rangers dated 26 December 2018 (ECM 5742879)   |
| Attachment 3.                | Photos from Compliance Officer dated 03 January 2019 (ECM 5742881)   |
| Attachment 4.                | Photos from Compliance Officer dated 21 January 2019 (ECM 5742893)   |
| Attachment 5.                | Landscape Map Report from WEAVE (ECM 5742894)  |
| Attachment 6.                | Memo – Time line of events from 26 December 2018 to 21 January 2019 (ECM 5742905)  |
| (Confidential) Attachment 7. | Email response from property owner dated 8 January 2019 (ECM 5742882)  |

*(Confidential)* Attachment 8. Correspondence regarding ongoing rehabilitation works at 131 Murwillumbah Street (ECM 5742867)

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**5 [PR-PC] Draft Tweed Development Control Plan 2008 Amendment to Section A1 Residential and Tourist Code arising from the Fingal Head Building Heights Review**

**SUBMITTED BY:** Strategic Planning and Urban Design

**FILE REFERENCE:** GT1/DCP/A1

mhm



Leaving a Legacy  
*Looking out for future generations*

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

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

**ROLE:** Collaborator Leader

**SUMMARY OF REPORT:**

The purpose of this report is to report on the public exhibition and seek Council adoption of Tweed DCP 2008 Section A1 Residential and Tourist Development Code Parts A Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions and Part D Additional Site Specific Controls for Fingal Head (the plan) as amended and provided in Attachments 1 and 2 to this report respectively.

The review of Fingal Head building heights was initiated following a Councillor Notice of Motion in response to community based concerns principally in relation to building height and locality character. As part of that process a number of community conversations have been hosted by Council staff with Fingal Head residents in relation to the building heights and locality character in general. The outcomes of that community consultation process as reported in the Council endorsed '*Community Conversation 02 Feedback Fingal Head Building Height Review*' indicated a community consensus to retain the maximum 9 metre building height within the *Local Environmental Plan (LEP) 2014* and to provide a two storey character height limit within the *Tweed Development Control Plan (DCP) 2008*. In addition the community raised a number of concerns regarding roof top terraces and sought inclusion of development standards to manage and assess their impact on surrounding residents.

In accordance with the Council resolution on the building height review these amendments were incorporated into a draft DCP 2008 amendment which has been publicly exhibited in accordance with the Council resolution and the requirements of the *Environmental Planning and Assessment Regulation 2000*.

This report provides a review of submissions made during the public exhibition period and makes recommendations to the site specific controls for Fingal Head as noted within submission review section of this report. The plan is now recommended for adoption.

**RECOMMENDATION:**

**That Council:**

- 1. Adopts the Tweed DCP 2008 Section A1 Residential and Tourist Development Code Parts A Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions and Part D Additional Site Specific Controls for Fingal Head as amended and provided in Attachments 1 and 2 to this report respectively;**
- 2. Gives public notice of its decision and the date of commencement of the DCP amendment in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000; and**
- 3. Provides a copy of the DCP amendment to the Department of Planning and Environment within 28 days in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000.**



## REPORT:

### Background

Following a number of community conversations at Fingal Head in relation to the building heights review, Council resolved at their meeting of 5 October 2017:

- "1. The Council expresses its gratitude to those community attendees and contributors who participated and assisted staff with the Fingal Head Height of Building Review.*
- 2. The attached Community Conversation 02 Feedback Fingal Head Building Height Review is received and noted.*
- 3. The existing 9 metre building height limit under Tweed Local Environmental Plan 2014 for Fingal Head is to be retained.*
- 4. Tweed Development Control Plan 2008, Section A1 Residential and Tourist Development Code is to be amended to include a 2 storey 'character' design height limit to operate in concert with existing 9 metre height of building limit under the Tweed Local Environmental Plan 2014, for all residential or mixed-use development in Fingal Head; and*
- 5. The amendment described above is to include:*
  - a. character statements describing the existing and desired future character of Fingal Head, those elements that distinguish it as a unique place to live and are highly valued by the community that lives there; and*
  - b. planning principles to guide the design of new development, having specific regard to the varying contextual conditions and constraints; including, flood liable land, sloping sites and smaller (village) allotments; and*
- 6. The 2 storey 'character' design height limit described above is to be incorporated into the Tweed Local Environmental Plan 2014, at the earliest practicable time.*
- 7. Roof-deck design guidelines are to be prepared for incorporation into the Tweed Development Control Plan 2008, Section A1 Residential and Tourist Development Code, as a uniform code for any development in the Shire, at the earliest practicable time.*
- 8. A locality plan be prepared for the Fingal Head and Chinderah localities at the completion of the Kingscliff Locality Plan."*

### Consultation

A draft Development Control Plan (DCP) amendment to Section A1 Residential and Tourist Development Code (draft DCP Amendment) was prepared in accordance with the above resolution items 4, 5 and 7.

The draft DCP Amendment was publicly exhibited from Wednesday 31 October to Friday 30 November 2018, a period of 30 days.

The draft DCP Amendment was notified in the Tweed Link on 30 October 2018 and exhibition material was available on the Council website and in hard copy at the Murwillumbah and Tweed Heads Civic Centres.

Direct notification was sent to 65 Fingal Head property owners/residents who had previously requested to be kept informed of the process.

The draft DCP amendment was promoted on *Your Say Tweed* and social media.

### **Submissions**

Nine submissions were received in response to the public consultation. Submissions comprised two written submissions and seven comments on our *Your Say Tweed* page. Submissions and comments are summarised and considered as follows:

Sub No	Address 2	Comments	Planning Response	Recommendation
		Written Submissions		
1	Fingal Head NSW 2487	<p>Part D Site Specific Section 2.3 Built Form Character statement</p> <p><u>Suggested change</u> Add a fourth dot point to the list in paragraph 3. “Unfenced or low impact fenced front yards that encourage interaction with, and surveillance by, pedestrians.”</p> <p><u>Rationale</u> Whilst this relates to fencing rather than building heights, it is an important aspect of the streetscape character of Fingal Head that must be preserved. It is also integral to the community fabric that people talk to their friends and neighbours over the fence as they move around the village. Therefore, there is much benefit in including this in the Built Form Character statement. This aspect was investigated in the community consultation including pictures where the community could apply red/yellow/green stickers to pictures of different front fences. So the necessary consultation has been done and the community has spoken. The community strongly objects to high, opaque fencing such as is common on the Gold Coast, on arterial roads and in high crime areas. Hence, there is no harm in including this additional dot point even though it is not specifically addressed in the planning principles and controls.</p>	<p>This fencing character request is consistent with the character of Fingal Head and is to be incorporated as follows: <i>low, semi-transparent or absent front fencing which encourages interaction with pedestrians and passive surveillance.</i></p>	<p><i>Insert new dot point in Section 2.3 Built Form Character Statement as follow: “low, semi-transparent or absent front fencing which encourages interaction with pedestrians and passive surveillance.”</i></p>

Sub No	Address 2	Comments	Planning Response	Recommendation
		<p>Part D Site Specific Section 2.4 Building height – Control C3 <u>Suggested change</u> Change C3 iv. From “Ensure design features on any street elevation do not lead to a visual perception of a three storey building” to “Ensure design features on every street elevation do not lead to a visual perception of a three storey building”. Or in the alternate, change to “Ensure design features on each and every street elevation do not lead to a visual perception of a three storey building”.</p> <p><u>Rationale</u> The intention of this control is to implement the community desire to have a maximum two storey character on every house frontage in every street. Houses with multiple street frontages could argue that they have met the control entirely if they meet it on any one street frontage. The proposed change is intended to remove this ambiguity without materially complicating the wording.</p> <p>Building Envelope Section 3.2 Building Height - Control C2</p>	<p>This request is reasonable and is to be incorporated to ensure consistent interpretation of the intent.</p>	<p>Change C3 iv. to: <i>Ensure design features on every street elevation do not lead to a visual perception of a three storey building.</i></p>
		<p><u>(a) Suggested change</u> In the text/caption under the first diagram in control C2, change “existing ground level” to “natural ground level”.</p> <p><u>Rationale</u> Both diagrams in this section use the terminology “natural ground level”. This correctly represents the community view. The text/caption should use the same terminology as the diagram.</p>	<p>The reference to “existing “ ground level is required under the definition of <i>Building height</i> in the LEP 2014 and cannot be amended to “natural”. The diagrams are consistent with this using “existing ground level”. The existing text (in black not red) is not proposed or exhibited to be changed.</p>	<p>No amendment.</p>

Sub No	Address 2	Comments	Planning Response	Recommendation
		<p><u>(b) Suggested change</u>            In the last sentence of the paragraph under the second diagram in control C2, change “will generally not be supported” to “will not be supported”.            The outcome of the consultation was that building heights would be absolutely limited – always. That should be reflected in the control. In the context of a dispute over a design, there is no practical difference between the words “will generally not be supported” and “will always be supported”. On the other hand, “will not be supported” unambiguously represents the majority view obtained from community consultation. Using modern construction methods, it will always be practical to avoid adding a storey with minor incremental cost. Such incremental costs are expected when people buy difficult building sites.</p> <p>Building Design Section 4.7            Rooftop terraces (rooftop decks)            - control C7.</p>	<p>The existing text (in black not red) is not proposed or exhibited to be changed. It is noted that under the Environmental Planning and Assessment Act, 1979 a DCP is a <i>guideline</i> and does not provide an outright control, meaning that where suitably justified and alternative solution may be considered. Heights are specifically limited under the Local Environmental Plan as a development standard. The DCP sets up the height character to inform assessment as consistent with the local character.</p>	<p>No amendment.</p>

Sub No	Address 2	Comments	Planning Response	Recommendation
		<p><u>Suggested change</u> Change “Rooftop terrace shall be designed to limit overlooking into private open space and/or habitable rooms and windows of adjacent dwellings” to “Rooftop terrace shall be designed to limit overlooking into private open space and/or habitable rooms and windows of all nearby dwellings.” Or in the alternate, change to “Rooftop terrace shall be designed to limit overlooking into private open space and/or habitable rooms and windows of all dwellings within 30 metres.”</p> <p><u>Rationale</u> Rooftop terraces improve visibility of everything within visual distance. The nearer the person or object, the more detailed and intrusive the view and any photographs taken. The buildings in Fingal Head are largely on small lots of 400-500 square metres and streets and laneways are narrower than in most places. Hence, a house on the other side of the street may be only 10 metres away and a house on the other side of the next street may be only 25-30 metres away. Overlooking houses this close is no less intrusive than overlooking adjacent houses in places with larger lot sizes.</p>	<p>Whilst the rationale for the request is understood the suggested amendment leaves the assessment and interpretation of what is “nearby” too ambiguous. Similarly setting a 30 metre radius is fixed and may limit consideration of any impacts outside of this radius. It is considered that the greatest potential for amenity impacts is the adjoining properties (which includes side and rear boundaries and across the street). The requirements for “adjoining” is less ambiguous than nearby. It is recommended that the wording of this provision remains.</p>	<p>No amendment.</p>
2		<p>Query if this is a similarity with Kingscliff Chinderah and Fingal Head areas.</p>	<p>Called to discuss and no further comments or concerns.</p>	<p>Noted – no amendment</p>
		<p>Your Say Tweed Comments</p>		

Sub No	Address 2	Comments	Planning Response	Recommendation
3	Fingal Head	Don't want any changes to the existing height limits in Fingal Head. It will reduce the value of our existing lifestyle and amenity.	This comment is unclear whether the submitter is concerned with increasing or decreasing height limits. The approach of applying a two storey character limit and retaining the 9 m LEP height limit was a result of the previous Fingal Head community consultation.	Noted – no amendment
4	Fingal Head	Fingal head, a precious part of the Tweed coast and Council should fight to keep it in current condition, a fine salute to the days of yesteryear. Plenty of beautiful parts in Tweed for mega mansions, like Salt. Don't let Fingal lose its unique charm.	This comment is unclear regarding what character is sought to be retained. See submission 3.	Noted – no amendment

Sub No	Address 2	Comments	Planning Response	Recommendation
5	Banora Point	Agree with a housing high limit of 2 storeys on Fingal, however, oppose Council having any form of say in how I use or deck out my roof top terrace, it is personal taste.	Support for the two storey character limit is noted. The potential and emerging impacts of roof top decks on adjoining neighbours has been raised as a result of a number of development applications. Currently Council has no development standards to inform what is acceptable for roof top terrace development. These standards have been developed to balance acknowledging roof top terraces and to provide parameters to ensure, where provided, they are not impacting on adjoining neighbours.	Noted – no amendment
6	Bray Park	Limit heights to three stories. Protect the public open spaces. Look closely at the flood levels.	The flood levels and sloping topography have been fully considered in the retention of the 9 m height limit and the approach of applying a two storey character limit. This approach was a result of the previous Fingal Head community consultation.	Noted – no amendment
7	Murwillumbah	I think the proposed Draft Amendment is excellent! Thank you all.	Support noted.	Noted – no amendment



Sub No	Address 2	Comments	Planning Response	Recommendation
8	Fingal Head	I disagree to this.	Objection noted though no grounds for objection to address have been provided.	Noted – no amendment
9	Fingal Head	I am concerned the new dwelling proposed for 5 Bambery Street could have a lower sloped roof over carport so that everyone can continue to enjoy magnificent Tweed views. Traffic congestion at Nthn end of Bambery St is already an issue.	Concerns are noted. Individual DAs and traffic concerns are outside the scope of this DCP amendment. The building height character has been developed in response to community concerns with newer and larger developments. These broader issues are to be considered within the context of the Fingal Head locality plan to commence in early 2019.	Noted – no amendment

The recommended amendments have been inserted in to the *Tweed DCP 2008 Section A1 Residential and Tourist Development Code Parts A Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions and Part D Additional Site Specific Controls* for Fingal Head as provided in attachments 1 and 2 respectively. Text which is the subject of this amendment is in retained in red for ease of understanding.

### Next steps

Items 3, 6 and 8 of the above resolution are to be addressed as part of the Fingal Head and Chinderah Locality Plan process. These projects are priority 1 for 2019.

The project management plans and communications plans for each locality are currently being drafted and it is anticipated the Fingal Head and Chinderah Locality Plan projects will commence in the first quarter of 2019.

### OPTIONS:

1. Council adopt the *Tweed DCP 2008 Section A1 Residential and Tourist Development Code Parts A Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions and Part D Additional Site Specific Controls* for Fingal Head as provided in Attachments 1 and 2 to this report respectively; or

2. Council not adopt the recommended amendments and provide reasons for this Action;  
or
3. Council defer the matter for further consideration.

Option 1 is recommended.

### **CONCLUSION:**

The Fingal Head Building heights review has provided a community consultative process to embed guidance relating to locality character and controls relating to building height and roof terraces within the Tweed DCP as an outcome of that process. This review process is a prelude to the Fingal Head locality planning process, which will review locality land use issues, locality and built form character in a more holistic manner.

The amendments to the Tweed DCP 2018, as attached, have been exhibited in accordance with the requirements of the *Environmental Planning and Assessment Act, 1979 and Regulations* and are representative of the consultation and feedback with the Fingal Head community.

The resulting amendments to the final draft DCP amendment are minor and do not warrant re-exhibition of the DCP.

Accordingly, this report now seeks the adoption of the DCP amendment.

Items 3, 6 and 8 of the 5 October 2017 Council resolution are to be undertaken as part of the Fingal Head Locality Plan, anticipated to commence in early 2019.

### **COUNCIL IMPLICATIONS:**

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

Corporate Policy Not Applicable

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

The remaining steps to the adoption and commencement of the Tweed DCP Section A1 amendments require a minimal budget and are able to be completed within the current operating budget.

The Fingal Head and Chinderah Locality Plan projects are currently unfunded. It is proposed to divert funding from other strategic and locality planning project allocations, which are currently un-programmed. This budget allocation would then be reimbursed through the 2019-20 budget process.

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

Not Applicable.

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

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1. Tweed DCP 2008 Section A1 Residential and Tourist Development Code Part A Dwellings, Dual Occupancy, Secondary Dwellings and Alterations and Additions (ECM 5742052)

Attachment 2. Tweed DCP 2008 Section A1 Residential and Tourist Development Code Part D Additional Site Specific Controls (ECM 5742063)

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**6 [PR-PC] Planning Proposal PP16/0004 The Palms Village Caravan Park - Lot 1 DP 777875 Dry Dock Road, Tweed Heads South - Unauthorised Fill and Recommendation to Proceed to Gateway**

**SUBMITTED BY: Strategic Planning and Urban Design**

**FILE REFERENCE: PP16/0004**

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
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

**ROLE:** **Leader**

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**SUMMARY OF REPORT:**

This report is seeking Council's endorsement of the planning proposal to rezoning part of the Palm Village Caravan Park site known as Lot 1 DP 777875 (Nos.132-134 Dry Dock Road Tweed Heads South) from R2 Low Density Residential to RE2 Private Recreation. This planning proposal would facilitate development ancillary to the caravan park including a community hall, pool, bowling green and car park but prevent development of any type of residential accommodation that would otherwise be permissible with consent within the proposed RE2 Private Recreation zone on account of the prevailing Australian Noise Exposure Forecast (ANEF) zone restrictions.

This report also provides an update on Council's resolution of 11 May 2017 which required investigations and a further report on unauthorised fill on Nos.132-134 Dry Dock Road Tweed Heads South, prior to proceeding with rezoning of the site.

The site adjoins the western boundary and is part of a proposed upgrade and integration with the Palms Village Caravan Park.

A majority of the site has been filled without consent using material of unknown origin prior to the purchase of the property by the current landowner.

While contamination investigations have concluded the site is suitable for the purposes proposed in the planning proposal; geotechnically the fill is not suitable and will need to be removed.

Removal of the fill and rehabilitation of the site and safe disposal of the fill can be finalised at the Development Assessment stage; however, to ensure that rehabilitation occurs before any

development commences, the landowner has agreed to enter in to a voluntary planning agreement which will ensure this outcome.

The site's location within the 25-30 ANEF 2047 zones surrounding Gold Coast Airport makes the site undesirable for residential purposes. The proponent has agreed to enter into a Voluntary Planning Agreement (VPA) to prohibit any residential or accommodation type development across the subject site.

Once the planning agreement has been executed, the planning proposal and consequent amendment to the Tweed Local Environmental Plan 2014 can be finalised.

This report recommends that the planning proposal attached to this report be sent to the Department of Planning and Environment for a Gateway determination and that a planning agreement and the planning proposal be placed public exhibition simultaneously.

### **RECOMMENDATION:**

**That Council endorses:**

- 1. The attached planning proposal for Lot 1 DP 777875 (132-134 Dry Dock Road Tweed Heads South) be sent to the Department of Planning and Environment for a Gateway determination;**
- 2. A planning agreement which ensures that the site is rehabilitated and any waste/fill removed from the site is disposed of safely, and to restrict residential or tourism accommodation be finalised and placed on public exhibition simultaneously with the planning proposal, and**
- 3. The planning agreement be executed prior to finalisation of the planning proposal and making of the plan.**

## REPORT:

This report provides an update on investigations into the status of unauthorised fill on Lot 1 DP 777875, being Nos.132-134 Dry Dock Road Tweed Heads South (the site), and recommends that a planning proposal seeking a rezoning of the site from R2 Low Density Residential to RE2 Private Recreation be sent to the Department of Planning and Environment (DPE) for a Gateway determination.

The site adjoins the western boundary of the Palms Village Caravan Park. The owners have sought a rezoning of the site to facilitate development ancillary to the caravan park including a community hall, pool, bowling green and car park.

Initial investigations revealed that a majority of the site is covered by imported fill more than two metres in depth of an unknown origin which was deposited at some time prior to the purchase of the site by the current caravan park owners.

Due to the lack of any approval for the fill and uncertainty about the nature of the fill it was a requirement under State Environmental Planning Policy 55 – Remediation of Land, and draft guidelines in the Expression of Intended Effects for the proposed Remediation of Land SEPP publically exhibited in January 2018, that a detailed investigation be undertaken to determine whether the land is suitable for the uses proposed. If found to be suitable from a contamination perspective, the investigation is also required to determine whether it was geotechnically suitable for such purposes prior to proceeding with the planning proposal.

On 11 May 2017 Council endorsed a recommendation that:

*“in terms of Planning Proposal PP16/0004 Palms Shopping Village, the matter of alleged unlawful fill of land be referred to Council’s Compliance Unit for appropriate investigation and action. On completion of this investigation, a further report will be submitted to Council to further consider the referral of the Planning Proposal to the Department of Planning and Environment for a Gateway determination.”*

While remediation of the site will be a priority, due to the unknown history of the fill and inability of the new landowners to provide any background information, pursuit of action through the Compliance Unit has been deferred pending finalisation of investigations.

### **Findings of detailed site investigations and implications**

On 13 November 2018 Council received and reviewed the Final Detailed Site Investigation Report. The investigation concluded that the fill is considered suitable for the current and proposed use and no further investigation is required at this stage.

However, due to the fill having been placed without due controls to ensure adequate compaction (that is, in un-controlled circumstances), and due to the diverse nature of the fill, testing has concluded that it is geotechnically unsatisfactory for use as foundation material for development and will need to be removed.

Once all fill has been removed, the site will need to be rehabilitated as per the recommendations of the Geotechnical and Acid Sulfate Soils Investigation undertaken by Geotech Investigations in September 2017.

The proponent and landowner have acknowledged the need for the site to be rehabilitated prior to any development occurring, and that the fill when removed will be further tested, treated if necessary, and disposed of at a site suitable for this material.

## **Role of voluntary planning agreement**

### ***Site rehabilitation***

At this stage in the rezoning process, in accordance with legislative requirements under the *State Environmental Planning Policy 55 – Remediation of Land*, it is sufficient to know that the site can be rehabilitated, and consistent with the intention of the Gateway process, which seeks to reduce up-front costs and deal primarily with strategic level matters, it is appropriate to recommend proceeding with the planning proposal pending execution of a legally binding agreement which ensures that the site will be rehabilitated, and fill disposed of appropriately, prior to any development commencing.

The landowner has agreed that to ensure certainty in the remediation of the site and appropriate treatment of waste/fill when removed, that a voluntary planning agreement (VPA) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* will be entered in to with Council. The use of a Section 7.4 agreement which sets out the rehabilitation requirements will be incorporated into the VPA.

In effect the VPA will need to ensure that full consideration is given to both rehabilitation of the site, and potential for treatment of material when removed prior to any work commencing on development of the site; a range of options for removal of the waste/fill include:

- Disposal at an approved landfill facility (NSW or Queensland) as “solid waste”, and/or
- Potential reuse of the waste as Excavated Natural Material subject to future compliance with a NSW Environment Protection Authority (EPA) Resource Recovery Order or Resource Recovery Exemption; however, the presence of acid sulfate soil and recycled road base with asphalt or bitumen have been identified which may affect waste classification for reuse.

The future export or import of waste (including fill or soil) from or to the site will need to occur in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environment Protection Authority’s Waste Classification Guidelines (2014).

Any future development application (DA) would consider the removal of fill along with other key considerations including but not limited to potential noise impacts on amenity, dust, vibration, hours of operation, management of acid sulfate soil and dewatering.

### ***Restricting development types***

The intended outcome of this planning proposal is to facilitate the rezoning of Lot 1 DP 777875 (3876 square metres), for the purpose of development ancillary to the adjoining caravan park, specifically, a community hall, pool, bowling green and car park but prevent development of any type of residential accommodation that would otherwise be permissible with consent within the proposed RE2 Private Recreation zone.

The site’s location within the 25-30 ANEF 2047 zones surrounding Gold Coast Airport makes the site undesirable for residential purposes. The proponent has agreed to enter into a VPA

to prohibit any residential or accommodation type development across the subject site. It is a requirement that the VPA is executed (signed by all parties) prior to amendment of the Tweed Local Environmental Plan 2014 (the LEP) being finalised (that is prior to the making of the plan).

It is intended that both the Planning Agreement and Planning Proposal should be publicly exhibited simultaneously.

In consideration of the above, it is now proposed that a draft planning agreement be prepared, and that the planning proposal be forwarded to the DPE for a Gateway determination.

**OPTIONS:**

1. Proceed with preparation of a planning proposal for rezoning of the site from R2 Low Density Residential to RE2 Private Recreation to facilitate development ancillary to the caravan park, and prepare a voluntary planning agreement to ensure the rehabilitation of the site and safe disposal of fill and restrict residential land uses across the site; or
2. Defer proceeding with the planning proposal until the site is rehabilitated and waste/fill disposed of safely.

Option 1 is the officers' recommendation.

**CONCLUSION:**

Detailed site investigations to ascertain the nature of fill on the site have concluded that from a contamination perspective the fill is suitable for the uses proposed. However, geotechnical investigations have indicated that the fill is not suitable for the development proposed and will need to be removed.

While sampling confirms the waste/fill meets the criteria for solid waste, allowing for material to be transported to an approved landfill facility, areas of acid sulfate soil and gravel/road base have been identified across the site which may affect waste classification for reuse.

Investigations have now confirmed that the site can be used for the purposes proposed in the planning proposal; however, to ensure that the site is rehabilitated prior to any development occurring on the site, the landowner has agreed to enter in to a voluntary planning agreement to ensure that the site is rehabilitated and that any waste/fill removed is treated in accordance with relevant legislation and that any residential land uses would be prohibited on account of the prevailing ANEF zone restrictions.

It is intended that the VPA be exhibited concurrently with the planning proposal, and be executed by all parties prior to making the plan.

It is now recommended that the planning proposal be sent to the DPE for a Gateway determination, and that a planning agreement be prepared and executed.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable



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

All costs associated with preparation of the planning proposal and planning agreement will be at no cost to Council.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Planning Proposal The Palms Village Caravan Park - Lot 1  
DP 777875 Dry Dock Road, Tweed Heads South - Gateway  
Version 1 (ECM 5743406)

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**7 [PR-PC] Planning Proposal to Prohibit Water Extraction and Bottling**

**SUBMITTED BY: Strategic Planning and Urban Design**

mhm



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

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

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

**ROLE:** **Leader**

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**SUMMARY OF REPORT:**

On 15 November 2018 Council resolved to re-instigate a planning proposal to remove clause 7.15 of the Tweed Local Environmental Plan 2014 to prohibit water extraction for commercial water bottling in light of the precautionary principle. The resolution also requested the planning proposal application to be brought to Council for endorsement.

The purpose of this report is to present the draft planning proposal to Council for endorsement, prior to forwarding to the Department of Planning for Gateway Determination.

**RECOMMENDATION:**

**That Council provides endorsement to forward the attached planning proposal, to remove clause 7.15 of the Tweed Local Environmental Plan 2014 to prohibit water extraction for commercial water bottling, to the NSW Department of Planning and Environment's Local Environmental Plan Review Panel for Gateway determination.**

## REPORT:

On 15 November 2018 Council resolved that:

1. Council re-instigates a more comprehensive planning proposal to remove clause 7.15 of the Tweed Local Environment Plan to prohibit water extraction for commercial water bottling facilities in light of the precautionary principle in regard to the long term sustainability of this activity, safety and amenity concerns, wear and tear on unsuitable rural roads, and the high level of opposition in the community for this activity.
2. The Planning Proposal to be progressed as a matter of the highest priority and the Gateway application be brought to Council for endorsement.
3. Council requests support for urgent action on this planning proposal from the NSW Minister for Planning Anthony Roberts, the Minister for Regional Water Niall Blair, and our local State members.

The objective of the attached planning proposal is to give effect to the above resolution by way of amending the Tweed LEP to the effect that water bottling facility as a land use becomes prohibited in the rural zones of the Tweed Shire. This is sought to be achieved by way of removal of clause 7.15 'Water bottling facilities in Zone RU2 Rural Landscape' from the Tweed LEP 2014.

The NSW Department of Planning and Environment (DPE) has previously advised Council that a planning proposal seeking to prohibit water bottling facilities needs to include specific information, not limited to but including demonstrated evidence of the negative impacts caused by water extraction activities and evidence of how the activity is not sustainable, and addressing the previous justification for inclusion of the land use within the LEP.

The attached planning proposal outlines Council's strategic justification for the prohibition of water bottling facilities and is structured around addressing the themes raised by the DPE. The draft planning proposal is attached for Council's endorsement prior to forwarding to the Department of Planning for Gateway Determination.

## OPTIONS:

The following options are provided:

Option 1: That Council provide endorsement to forward the attached planning proposal to the NSW Department of Planning and Environment's Local Environmental Plan Review Panel for Gateway determination, or

Option 2: Defer forwarding the draft planning proposal for Gateway determination in favour of providing further amendment to the document.

Council staff recommend Option 1.

## COUNCIL IMPLICATIONS:

### a. Policy:

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

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

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.

Planning Proposal PP18/0004 To Remove Enabling Clause  
7.15 for Water Bottling Facilities Version 1 December 2018  
(ECM 5740734)

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**8 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**SUBMITTED BY: Director**

mhm



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

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

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

**ROLE: Provider**

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**SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

**RECOMMENDATION:**

**That Council notes there are no variations for the month of December 2018 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

**REPORT:**

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

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

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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