



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr B Longland (Mayor)

**Councillors:** P Youngblutt (Deputy Mayor)  
D Holdom  
K Milne  
W Polglase  
K Skinner  
J van Lieshout

# Agenda

## **Ordinary Council Meeting Tuesday 21 February 2012**

held at Murwillumbah Cultural and Civic Centre  
commencing at 10.30am

### **COUNCIL'S CHARTER**

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

## Items for Consideration of Council:

ITEM	PRECIS	PAGE
	<b>CONFIRMATION OF MINUTES</b>	<b>7</b>
1	[CONMIN] Confirmation of the Minutes of the Ordinary and Confidential Council Meetings held Tuesday January 24 January 2012	7
	<b>SCHEDULE OF OUTSTANDING RESOLUTIONS</b>	<b>9</b>
2	[SOR] Schedule of Outstanding Resolutions	9
	<b>MAYORAL MINUTE</b>	<b>15</b>
3	[MM] Mayoral Minute for the Period 6 January to 5 February 2012	15
4	[MM] Mayoral Minute - 2012 National General Assembly of Local Government - Call for Motions	19
5	[MM] Mayoral Minute - Southern Cross University (SCU) - Engineering, Science and Planning Programs	21
	<b>ORDINARY ITEMS FOR CONSIDERATION</b>	<b>23</b>
	<b>REPORTS THROUGH THE GENERAL MANAGER</b>	<b>23</b>
	<b>REPORTS FROM THE GENERAL MANAGER</b>	<b>23</b>
6	[GM-CM] Destination Tweed Quarterly Performance Report - October to December 2011	23
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>37</b>
7	[PR-CM] Rural Fire Service - 2012/2013 Estimates	39
8	[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	43
9	[PR-CM] Development Application DA11/0526 for Extensions to Existing Storage Facility and Reconfiguration of Existing Depot for Truck Storage and Landscaping Supplies at Lot 2 DP 863736; No. 942 Cudgera Creek Road, Cudgera Creek	47
10	[PR-CM] Development Application DA11/0356 for a Wakeboarding Coaching Clinic between Fingal and Chinderah along the Tweed River (Operating from Fingal Boat Ramp) at Lot 403 DP 755740 Main Road, Fingal Head	85
11	[PR-CM] Development Application DA11/0487 for a Two Storey Dwelling with Basement Garage, Gatehouse and Inground Concrete Swimming Pool at Lot 51 DP 1031933 No. 51 She-Oak Lane, Casuarina	133

12	[PR-CM] Development Application DA11/0520 for Alterations and Additions to Existing Dwelling, Including House-Raising, Rooftop Viewing Area, Retaining Walls on Western and Southern Boundaries, Front Fence and Water Feature at Lot 16 DP 18026; No. 2 Prince Street, Fingal Head	163
13	[PR-CM] Development Application DA11/0476 for the Demolition of Existing Structures, Construction of a McDonalds Restaurant and Drive-Thru, IGA Supermarket, 2 x Speciality Stores, Carparking and Associated Signage at Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah	207
<b>REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES</b>		<b>295</b>
14	[CNR-CM] Kingscliff Coastal Zone Management Update	295
15	[CNR-CM] Review of Tweed Urban Stormwater Quality Management Plan - Public Exhibition	303
16	[CNR-CM] Impact of Wake on Tweed River Bank Erosion - Study Exhibition	307
17	[CNR-CM] Budd Park River Bank Stabilisation and Park Reconfiguration	311
18	[CNR-CM] Interpretation of State Environmental Planning Policy 26 Littoral Rainforest	315
19	[CNR-CM] Progress Update Eviron Road Quarry and Landfill Proposal	321
20	[CNR-CM] NSW Environmental Trust Grant - Raising Illegal Dumping Awareness in the Northern Rivers	323
21	[CNR-CM] Draft Waste Minimisation and Management - Tweed Development Control Plan	327
22	[CNR-CM] Tweed River Art Gallery - Memorandum of Understanding - Tweed Shire Council and Margaret Olley Art Trust	331
23	[CNR-CM] Pottsville Beach Neighbourhood Centre	333
24	[CNR-CM] Water Demand Management Key Performance Indicators and Progress Report	341
25	[CNR-CM] Ageing Disability and Home Care 2009/2012 Funding Variation	351
<b>REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS</b>		<b>353</b>
26	[EO-CM] Acquisition of Proposed Easement for Underground Powerlines and Multi-Purpose Installation within Lots 63 and 64 DP 855462 and Lot 2 DP 1040120 - Overall Drive, Pottsville	353



27	[EO-CM] Acquisition of Proposed Easement for Underground Powerlines Variable Width within Lot 1 DP 780163 - Arkinstall Park, Sullivan Street, Tweed Heads South and Lot 34 DP 258723 - Blundell Estate Park, Amber Road, Tweed Heads South	357
28	[EO-CM] EC2012-003 Supply and Laying of Asphaltic Concrete Overlays	363
<b>REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES</b>		<b>367</b>
29	[TCS-CM] Local Government Elections September 2012	367
30	[TCS-CM] Constitutional Recognition of Local Government	377
31	[TCS-CM] Legal Services Register as at 31 December 2011	381
32	[TCS-CM] Complaint Analysis Report - 1 October to 31 December 2011	387
33	[TCS-CM] In Kind and Real Donations - October to December 2011	391
34	[TCS-CM] Monthly Investment and Section 94 Developer Contributions Report for the Period Ending 31 January 2012	397
35	[TCS-CM] Quarterly Budget Review December 2011	409
36	[TCS-CM] Corporate Quarterly Report - 1 October to 31 December 2011	435
37	[TCS-CM] Delivery Program Six Monthly Progress Report - 1 July to 31 December 2011	439
<b>REPORTS FROM SUB-COMMITTEES/WORKING GROUPS</b>		<b>443</b>
38	[SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 14 December 2011	443
39	[SUBCOM] Reports from Subcommittees and/or Working Groups	449
<b>ORDERS OF THE DAY</b>		<b>451</b>
40	[NOM-Cr B Longland] Small Business Assistance Package	451
41	[NOM-Cr K Milne] Small Business Incubator Hubs	451
42	[NOM-Cr K Milne] Seniors' Age Specific Exercise Facilities	451
43	[NOM-Cr K Milne] Budget Allocation Open Space	452
44	[NOM-Cr K Milne] Legal Advice Tweed Richmond Regional Library	452
<b>QUESTIONS ON NOTICE</b>		<b>453</b>
45	[QoN-Cr K Milne] Equal Employment Opportunity for the General Manager	453
46	[QoN-Cr K Milne] Quarry Activities	453
47	[QoN-Cr K Milne] Legal Provider	453

48	[QoN-Cr K Milne] Fluoride	453
49	[QoN-Cr K Milne] Richmond Tweed Regional Library	454
	<b>CONFIDENTIAL ITEMS FOR CONSIDERATION</b>	<b>455</b>
	<b>REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE</b>	<b>455</b>
	<b>REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES IN COMMITTEE</b>	<b>455</b>
1	[CNR-CM] Contract for the Provision of Greenwaste Processing and Marketing Services - EC2008-151	455
	<b>REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES IN COMMITTEE</b>	<b>455</b>
2	[TCS-CM] Options for Sale of Land for Unpaid Rates	455

## CONFIRMATION OF MINUTES

- 1 [CONMIN] Confirmation of the Minutes of the Ordinary and Confidential Council Meetings held Tuesday January 24 January 2012

### UNDER SEPARATE COVER/FURTHER INFORMATION:

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

1. Minutes of the Ordinary Council Meeting held Tuesday 24 January 2012 (ECM 45304088).
  2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 24 January 2012 (ECM 45304098).
-

**THIS PAGE IS BLANK**

## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 2 [SOR] Schedule of Outstanding Resolutions

---



## Civic Leadership

---

### CODE OF MEETING PRACTICE:

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

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

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 *Civic Leadership*
- 1.2.1 *Council will be underpinned by good governance and transparency in its decision making processes*
- 1.2.2.1 *Priority decision making*
- 1.2.2.1.1 *Council decisions will be in accordance with the Community Strategic Plan*

### FOR COUNCILLOR'S INFORMATION:

16 February 2010

### ORDERS OF THE DAY

#### 57 [NOM-Cr K Milne] Tree Removal Approval

### NOTICE OF MOTION:

114

Cr K Milne

Cr K Skinner

**RESOLVED** that a report be brought forward on an appropriate system that requires authorisation for tree removal on private lands such as implemented in other councils.

**Current Status:** A report will be submitted to a future Council meeting dependent on outcomes of discussions with the Department of Planning on draft LEP 2010. This item has been initially addressed through the officer's report and Council resolution at 15 February 2011 Council meeting for a new Tweed Tree Preservation Order 2011, and interim protection measure for koala habitat.

---

19 October 2010

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

**23 [CNR-CM] Tweed District Water Supply - Demand Management Strategy**

686

Cr K Milne

Cr B Longland

**RESOLVED** that Council:

....

6. Develops a water friendly garden Policy.

**Current Status:** Policy development currently programmed for first half of 2012.

---

19 April 2011

**ORDERS OF THE DAY**

**56 [NOM-Cr K Milne] National Iconic Landscape Meeting Request with Federal Member**

225

Cr K Milne

Cr B Longland

**RESOLVED** that Council provides a report on recommendations that could be included in the Council's Subdivision Manual to provide for planning provisions appropriate to further protection of the values of the National Iconic Landscape.

**Current Status:** A letter, signed by the General Manager, was forwarded to Ms Justine Elliot MP on 27 April 2011 advising of the resolution to the Motion and requesting Ms Elliot to make time available to meeting with Council to progress the potential role of government in protecting the values of the National Iconic Landscape. To date there has been no response from the office of Ms Elliot.

---

16 August 2011

**ORDERS OF THE DAY**

**56 [NOM-Cr D Holdom] Non Potable Water Harvesting in Commercial and Industrial Precincts**

504

Cr D Holdom

Cr W Polglase

**RESOLVED** that the:

1. General Manager investigates and reports back to Council on a new Policy for Tanks (non potable water harvesting) in Commercial and Industrial Precincts within the Tweed Shire Local Government area.
2. Investigation to also consider retrofitting possibilities in existing Commercial and Industrial Precincts.
3. Possibility of any rebate schemes being implemented.

**Current Status:** Awaiting outcome following the implementation of the top 20 non-residential program. Anticipate that policy would follow in mid 2012.

---

**57 [NOM-Cr D Holdom] Invitation to the Office of Liquor, Gaming and Racing**

505

Cr D Holdom

Cr B Longland

**RESOLVED** that the General Manager officially writes to the Office of Liquor, Gaming and Racing (OLGR) inviting the Executive to attend a workshop with Councillors with the aim of providing Councillors with a full understanding of the role of the OLGR.

**Current Status:** Contact has been made with Office of Liquor, Gaming and Racing (OLGR) representatives and a Workshop is still to be scheduled.

---

18 October 2011

**ORDERS OF THE DAY**

**55 [NOM-Cr K Milne] Sustainability Development Control Plan**

643

Cr K Milne

Cr B Longland

---

**RESOLVED** that Council brings forward a report on developing a Sustainability Development Control Plan for medium to large subdivisions utilising a sustainability assessment tool for subdivisions.

**Note:** such as the Landcom Precinct X Sustainability Tool

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

---

24 January 2012

## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### 9 [PR-CM] Unauthorised Activity - Poultry Farm at Lot 1 DP 881996 No. 576 Cudgen Road, Cudgen

23

Cr K Skinner

Cr K Milne

**RESOLVED** that Council, in respect of the unauthorised poultry farm and associated sheds on premises known as No. 576 Cudgen Road, Cudgen (Lot 1 DP 881996):

1. Defers contempt of Court proceedings from the recent orders issued in respect of the judgement made by Justice Sheahan in the NSW Land and Environment Court, to provide the owner of the site the opportunity to remove all existing chickens on the site to another suitable location by 5.00pm on 15 February, 2012; and
2. Council officers provide a further report to Council's Meeting of 21 February 2012, informing Council of the progress of the owner's proposed actions, and any subsequent actions required to satisfy the Order referred to in Point 1.

**Current Status:** The applicant has been given until 5.00pm on Wednesday 15 February 2012 and an update will be provided to the meeting.

---

### 21 [EO-CM] Chinderah Bay Drive Foreshore Masterplan

35

Cr W Polglase

Cr P Youngblutt

**RESOLVED** that Council:

1. Endorses the Landscape Concept Plans for the Chinderah Foreshore Upgrade, as exhibited.
-



2. Reallocates a total of \$225,000 in the adopted Infrastructure Program 2011/2012 from the Chinderah Bay Drive foreshore upgrade (Wommin Bay Road to Chinderah Road) to fund additional cost of the roundabout and associated realignment works at the intersection of Chinderah Bay Drive and Wommin Bay Road.
3. Brings forward a report identifying where \$225,000 can be sourced for the completion of the Chinderah Foreshore Upgrade.

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

---

## ORDERS OF THE DAY

### 40 [NOM-Cr K Milne] Roadside Fruit and Vegetables Stalls

#### NOTICE OF MOTION:

53

Cr K Milne

Cr P Youngblutt

**RESOLVED** that a report be brought forward on:

1. Potential obstacles in the current policies applying to road side fruit and vegetables stalls, and
2. Appropriate recommendations to improve these policies with the aim of encouraging such activities.

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

---

### 42 [NOM-Cr K Milne] Composting Toilets

#### NOTICE OF MOTION:

54

Cr K Milne

Cr D Holdom

**RESOLVED** that Council brings forward a report on whether encouraging composting toilets would be appropriate for this Shire in the rural or urban environment, and if so, ways to encourage this and include in Council's policies.

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

---

**43 [NOM-Cr K Milne] Albert's Lyrebird**

**NOTICE OF MOTION:**

**55**

**Cr K Milne  
Cr D Holdom**

**RESOLVED** that Council brings forward a report on the current situation for the Albert's Lyrebird and the merits of applying for this species to be listed as Endangered on the State and National Threatened species list.

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

---

**44 [NOM-Cr K Milne] Bikeway to Tweed**

**NOTICE OF MOTION:**

**56**

**Cr K Milne  
Cr D Holdom**

**RESOLVED** that Council holds a Workshop on cycleways plans for the Shire.

**Current Status:** Workshop to be scheduled.

---

**46 [NOM-Cr K Milne] Light Rail Extension to Tweed Heads**

**NOTICE OF MOTION:**

**57**

**Cr K Milne  
Cr K Skinner**

**RESOLVED** that Council seeks urgent representations with the Cross Border Commissioner once appointed to discuss a range of issues relating to maximising benefits to the Tweed and NSW resulting from the Commonwealth Games being held in 2018, particularly around public transport issues.

**Current Status:** Cross Border Commissioner not yet appointed.

---

## MAYORAL MINUTE

### 3 [MM] Mayoral Minute for the Period 6 January to 5 February 2012

Councillors,

## COMMITTEE MEETINGS

### Attended by the Mayor

- 16 Jan 2012 - Australia Day Committee Meeting - Canvas & Kettle, Murwillumbah Civic Centre
  - 16 Jan 2012 - Destination Tweed Board Meeting - Mantra at Salt Village, Kingscliff
  - 20 Jan 2012 - Margaret Olley Art Centre Steering Committee - Marks Family Library, Tweed River Art Gallery
  - 03 Feb 2012 - NOROC - Ballina Shire Council Chambers
- 

## INVITATIONS:

### Attended by the Mayor

- 16 Jan 2012 - Presentation of Civilian Commendations by Fire and Rescue NSW (FRNSW) Assistant Commissioner Jim Smith - Tweed Heads Fire Station, 1 Dry Dock Rd Tweed Heads (cnr Mingungbal Rd)
  - 16 Jan 2012 - Murwillumbah Ratepayers Association Meeting - Autumn Club, Tumbulgum Rd, Murwillumbah
  - 19 Jan 2012 - Tweed Valley Respite Service Inc. Site Visit and Morning Tea - Jack Williams Place, Dungay
  - 24 Jan 2012 - Public Forum, Special Olympics Tweed Shire Branch - Banora Point Community Centre, Banora Point
  - 25 Jan 2012 - 4CRB Radio Talkback - 4CRB, 8 Stevenson Court, Burleigh Heads, QLD
  - 26 Jan 2012 - Private Citizenship Ceremony for Tarana Meethara - Mayor's Office, Murwillumbah Civic Centre, 3 Tumbulgum Rd
  - 30 Jan 2012 - Northern Rivers Food Links, final handover event - Nightcap Restaurant, Wollongbar TAFE, Sneaths Road, Wollongbar
-

- 01 Feb 2012 - Murwillumbah Community Centre Management Committee - Murwillumbah Community Centre (also attended by Cr Polglase)
- 02 Feb 2012 - Launch of the 'Tweed Environmental Restoration' National Green Jobs Corps Project - Masterton Park, Burringbar
- 03 Feb 2012 - Murwillumbah Chamber Breakfast - Regent Cinema, Murwillumbah
- 04 Feb 2012 - Australia Day Awards & Citizenship Ceremony - Murwillumbah Civic Centre Auditorium, 3 Tumbulgum Rd, Murwillumbah

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

Not applicable.

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

- 04 Feb 2012 - Pottsville Wetland Walk - Black Rocks Sportsground at the southern end of Overall Drive
- 

**REQUESTS FOR WORKSHOPS:**

Date of Request	Requested by Councillor	Topic	Councillors For	Councillors Against	Proposed Workshop Date
20 Jan	Cr Holdom	Asbestos - public awareness, education, health matters	Cr Holdom Cr Longland Cr Milne	4 Remaining	-

---

**CONFERENCES:**

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

Councillors did not attend any conferences during the period 6 January - 5 February 2012.

**.Information on Conferences to be held**

- 22-24 Mar 2012 2012 Australian Local Government Women's Association (NSW) Conference - Dubbo Regional Theatre & Convention Centre, Dubbo - *The annual ALGWA conference provides a platform for councillors and staff to gather to discuss current and emerging issues facing women in Local Government. An impressive line-up of speakers has been arranged for 2012. Each presenter will discuss stories of how they have created change in their work place or in the community they live.* - Early Bird Registration \$580 incl main social events, by 23 February
-

2012 - Refer

[http://www.lgsa.org.au/resources/documents/ALWGA\\_brochure\\_LR.pdf](http://www.lgsa.org.au/resources/documents/ALWGA_brochure_LR.pdf)

- 5-6 May 2012 LGSA Councillor Weekend - Novotel Pacific Bay Resort, Coffs Harbour - *The Councillor Weekend will explore the Councillor's role in the Integrated Planning System, the principles of managing time and stress, community leadership and how to engage your community in the lead up to the elections. Designed to cater for both new and experienced councillors over the Friday/Saturday period* - Registration \$990 inc. Friday dinner - Refer <http://www.lgsa.org.au/www/html/151-courses-for-councillors.asp>
- 

#### **SIGNING OF DOCUMENTS BY THE MAYOR:**

There was no documentation requiring the signature of the Mayor during the period 6 January - 5 February 2012.

---

#### **RECOMMENDATION:**

**That:-**

- 1. The Mayoral Minute for the period 6 January to 5 February 2012 be received and noted.**
  - 2. The attendance of Councillors at nominated Conferences be authorised.**
-

**THIS PAGE IS BLANK**

**4 [MM] Mayoral Minute - 2012 National General Assembly of Local Government - Call for Motions**

**Councillors,**

As advised by email to Councillors on 2 February 2012, a letter was received from the Australian Local Government Association (ALGA) calling for motions for the 2012 National General Assembly (NGA) to be held in Canberra 17 – 20 June 2012.

This year's theme is 'National Voice, Local Choice – Infrastructure, Planning Services'.

The letter previously provided to Councillors details eligibility guidelines for motions with a Discussion Paper to assist councils in preparing motions. The NGA have requested that motions are submitted no later than 27 April 2012. Councillors are requested to provide any Notices of Motion for consideration for submission to the National General Assembly.

**RECOMMENDATION:**

**That Council determines the following Motions for submission for consideration at the National General Assembly of Local Government:-**

---

**THIS PAGE IS BLANK**



**5 [MM] Mayoral Minute - Southern Cross University (SCU) - Engineering, Science and Planning Programs**

**Councillors,**

Southern Cross University is seeking Council's support for their funding bid for the redevelopment of the Lismore campus to include an Engineering and Science facility.

They aim to introduce a Civil Engineering Professional (4 year) Degree from the start of 2013. SCU has submitted an Expression of Interest under the Australian Government's Education Investment Fund Regional Priorities (Regional EIF) funding round to develop new regionally focused Engineering, Science and Planning programs, and are waiting to hear whether they can proceed with a full application.

**RECOMMENDATION:**

**That Council provides a letter of support for Southern Cross University's bid to re-develop an Engineering and Science facility at the Lismore Campus.**

---

**THIS PAGE IS BLANK**

**ORDINARY ITEMS FOR CONSIDERATION**

**REPORTS THROUGH THE GENERAL MANAGER**

**REPORTS FROM THE GENERAL MANAGER**

**6 [GM-CM] Destination Tweed Quarterly Performance Report - October to December 2011**

**ORIGIN:**

**Business and Economic Development**

**SUMMARY OF REPORT:**

As required by the current funding and performance agreement with Destination Tweed a quarterly performance report and summary financial statement are to be provided for Council's review. This report provides the Destination Tweed's Quarterly Reports for the quarter 1 October to 31 December 2011. All financial information that is of a 'commercial in confidence' nature in this report has been provided in a confidential attachment.

This report recommends that Council endorses the quarterly report from Destination Tweed to December 2011.

**RECOMMENDATION:**

**That:**

- 1. Council endorses Destination Tweed's Quarterly Report for the quarter October to December 2011.**
- 2. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
  - (d) commercial information of a confidential nature that would, if disclosed:**
    - (i) prejudice the commercial position of the person who supplied it, or**
    - (ii) confer a commercial advantage on a competitor of the council, or**
    - (iii) reveal a trade secret**

**REPORT:**



## **Quarterly Report to Council October to December 2011**

### **1. A1 – INVESTIGATION, DEVELOPMENT & DELIVERY OF TOURISM PRODUCT**

#### **ENVIRONMENT**

##### ***National Landscapes – Australia’s Green Cauldron (AGC)***

TRC Tourism, the consultants engaged to produce the Experiences Development Strategy (EDS), continued to conduct famils of the region throughout October and November in order to gain an understanding of the range of experiences and the diversity of the destination. Destination Tweed staff coordinated the famils and escorted the consultants throughout the Tweed.

Destination Tweed (DT) facilitated the stakeholder workshops which were held in Boonah, Tamborine, Kyogle, Byron Bay, Currumbin, Murwillumbah and Beaudesert to engage broader stakeholder engagement and ensure understanding of the National Landscapes program, positioning of the region and the EDS. The consultants took feedback and input was taken in relation to the range of experiences on offer and discussion around new and improved opportunities.

DT continues its position as the main point of contact for TRC and DT continued to manage the overall project on behalf of the project management group - in conjunction with funding partner NSW Trade and Investment.

TRC Tourism released the Draft Experience Development Strategy to the AGC Steering committee for comment on 19 December. Initial response was that lengthy discussion would need to be had before the draft could be released for public comment. The committee then agreed that due to many members being on leave, they would filter comment through to the Chair, Jonathan Fisher, by 20 January and a steering committee meeting will be held on February 2 to discuss. Feedback will then be provided to TRC for expected release mid February.

#### **FOOD**

##### ***Caldera Farmers’ Markets***

DT continues to support the development and promotion of the markets. DT sits on the markets committee to assist with its forward planning and marketing.

The markets popularity continues to grow with the local community drawing in customers from out of town. Local restaurants are purchasing products and attending the markets to give cooking demonstrations which both showcase the produce as well as the culinary skills of their chefs in the Tweed region.

DT has establishing a Facebook business page for the market organisers. The page is hosted from the DT profile page and has given administrator access to the organiser to now manage the page.

## **ART & CULTURE**

### ***Caldera Art***

With the addition of the Caldera Art Gallery to the WHRC, there has been increased interest in the project with visitors coming to the centre to learn more about the project. The increased interests has resulted in more sales from the WHRC.

As previously reported DT has worked to promote the Caldera Art road show which has now is now finished for 2011. This activity has proved successful in highlighting the region as well as the Caldera Art Awards event.

### ***WHRC Theatre – Green Cauldron Panorama Project***

At its meeting on 20 September, Tweed Shire Council resolved to allocate \$35,000 from the WHRC redevelopment budget to fund this project. Work has commenced and will be completed within 12 months.

The allocation of funds is to modify the internal suspended floor, walkways and walls in the WHRC theatre to maximise the current unused space. The intention is to optimise the space to provide a tangible, marketable Australia's Green Cauldron experience.

The project will include world heritage and national landscapes interpretive and educational material, a 360 degree artwork on removable wall panels depicting the view from the summit of Mt Warning, additional display areas for local produce and gifts, large format plasma screen with latest audio-visual image streaming technology.

## **SPORT AND RECREATION**

### ***Historical Walks***

In conjunction with North Coast Area Health Service (NCAHS) and the Kingscliff Institute of TAFE, DT continues on the development of the Historical content and production (design, layout, cartography) of brochures and a book which will retail in the VIC's. To provide real life experiences DT has asked TAFE students to work on the development and design of the collateral, DT continue to provide feedback on content and layout.

### ***QSM Sports***

QSM Sports, who organise the Kingscliff Triathlon each year, have identified the Jack Evans Boat Harbour as a great venue for a new event based on a swim and run to be held in 2012. Destination Tweed (DT) will be assisting them in any way to help get the event going.

### ***4ASD Kids Event***

Destination Tweed worked closely with Livewire Events to help bring this event to Salt Central Park in December. The event had previously been held in Sanctuary Cove for the past 3 years. The charity is fronted by celebrity couple Matt Rogers and Chloe Maxwell.

This event raised \$200 000 and was huge success for its first year at Salt Village, Kingscliff. It helped to raise the profile of the Tweed with the extensive publicity and saw both Mantra and Peppers fully booked for the entire weekend with a wide range of fundraising events stretched over the 2 days which ended with carols and fireworks in Salt Central Park.



**NSW Surf Lifesaving Titles**

Destination Tweed have been involved in meetings with the management of NSW Surf Life Saving and representatives from Tweed Shire council regarding the 2012 titles scheduled to be held at Kingscliff Beach. It was advised that contingency plans are in place regarding the erosion to ensure this does not affect the event going ahead.

We will continue to assist the event organisers going forward as the event has a substantial economic impact on Kingscliff and helps to highlight the whole region as a tourist destination.

**REGIONAL PRODUCT DEVELOPMENT FUNDING**

As a result of lobbying by FORTO (Forum of Regional Tourism Organisations), the State Government has made available \$5 million in funding, which is called the Regional Tourism Product Development Funding Program.

Destination Tweed assisted the Caldera Institute and Caldera Art with applications and also applied for funding to operate a mobile VIC. Other applications from the Tweed region were made from the Caldera Festival Season Sub-committee, QSM Sports for the Kingscliff Triathlon and the Battle of the Border Cycling Event.

There was a deadline for announcements of the end of November however this was not met. It is now expect to be announced in mid December. Northern Rivers Tourism will have the final sign off on the selected projects from FORTO.

**2. A2 – OPERATION OF TWEED HEADS & MURWILLUMBAH VISITOR INFORMATION CENTRES**

**MOVEMENT IN VISITOR NUMBERS**

2011-2012						
	2011/12	2010/11	Variance	2011/12	2010/11	Variance
	WHRC			Tweed Heads		
Sept Qtr	7238	7680	-5.76%	8721	9792	-10.94%
Dec Qtr	5442	5748	-5.32%	7507	7362	1.97%

- Murwillumbah had a decrease in visitor numbers this quarter in comparison to same quarter last year by 5.32% and a decrease of 24.81% compared to last quarter.
- Tweed Heads had a slight increase in visitor numbers of 1.97% in comparison to the same quarter last year however had a decrease of 13.92% compared to last quarter.

Visitor Number Comparisons for December Quarter 2011

	Total Numbers	% difference to Sept Quarter 2011	% difference to Dec. Quarter 2010
<b>MURWILLUMBAH</b>			
<b>TOTALS</b>	5442	-24.81%	-5.32%
Local	828	-24.73%	-6.55%
<b>INTERSTATE</b>			
NSW	1423	-19.74%	-0.07%
QLD	1623	-23.91%	0.81%

	Total Numbers	% difference to Sept. Quarter 2011	% difference to Dec. Quarter 2010
<b>TWEED</b>			
<b>TOTALS</b>	7507	-13.92%	1.97%
Local	852	-9.65%	9.23%
<b>INTERSTATE</b>			
NSW	1571	-11.34%	-3.44%
QLD	1277	12.51%	3.40%

VIC	379	-55.67%	-5.96%	VIC	1067	-45.97%	11.84%
ACT	48	-34.25%	-52.00%	ACT	52	-37.10%	-16.13%
WA	91	-27.78%	-24.79%	WA	214	-11.20%	59.70%
TAS	29	-70.71%	16.00%	TAS	94	-60.67%	40.30%
SA	97	-34.01%	3.19%	SA	216	-59.40%	-8.47%
NT	17	70.00%	0.63%	NT	23	0.45%	64.29%
<b>INTERNATIONAL</b>				<b>INTERNATIONAL</b>			
US/Canada	118	53.25%	5.36%	US/Canada	177	30.15%	-18.43%
NZ	77	-53.05%	-12.50%	NZ	359	-40.56%	18.87%
UK	161	64.29%	-30.60%	UK	310	31.91%	-34.32%
Europe	439	29.88%	-19.45%	Europe	900	89.87%	4.17%
Africa	6	50.00%	-33.34%	Africa	16	50.00%	-11.12%
Japan/Asia	87	-38.73%	8.75%	Japan/Asia	307	17.62%	-8.90%
Other	19	-57.78%	-0.05%	Other	49	-24.62%	63.33%

### COMMISSIONS EARNED

- Commission revenue for the 2nd quarter of the 2011/2012 financial year totalled \$12,044 exceeding the budgeted figure of \$10,000. In comparison to the same period last year there is an increase in commissions of \$2,783.
  - The higher results can be attributed to a number of factors such as increased visibility with new signage, upgraded shop fronts, new inventory, staff training and increased member product awareness.
- Commission revenue represents 10% of total booking value made.
- 9.06% of bookings through the website were made online, a decrease of 10.45% in comparison to the previous quarter.

### RETAIL REVENUE

Oct-Dec 2011				6 Months YTD			
2nd Quarter	Last Year	Budget	Variance	YTD	Last Year	Budget	Variance
17,302	16,215	15,550	1,802	34,267	34,468	31,400	2,867

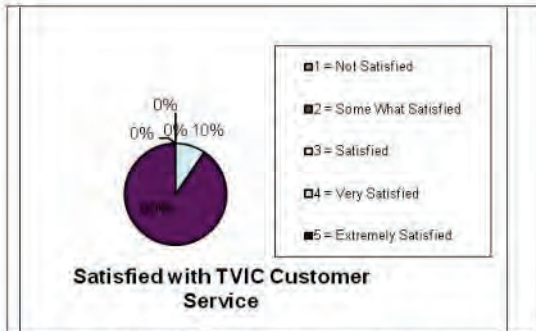
- Retail was up by 21.50% in Tweed Heads VIC compared to last year – but had a decrease of 3.29% compared to previous quarter.
- Murwillumbah retail was up by 10.21% on last year's figures – and had an increase of 2.70% on previous quarter.
  - As with commissions, higher results can be attributed to a number of factors such as increased visibility with new signage, upgraded shop fronts, new inventory, staff training and increased member product awareness.

### QUALITY OF SERVICE AT VISITOR INFORMATION CENTRES

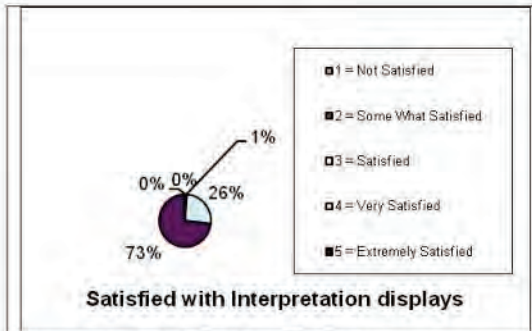
Surveys for the last quarter, results show that 90% of visitors to the VIC's were extremely satisfied and 10% very satisfied with the quality of customer service received. Majority of visitors surveyed were happy with the range of brochures and information provided as well as the interpretative displays.

Most of the feedback was very positive this month with comments such as friendly, relaxed, scenic, very helpful staff, info centres are great, we'll keep coming back. The only negatives were that need more street name signs and roads very potholed.

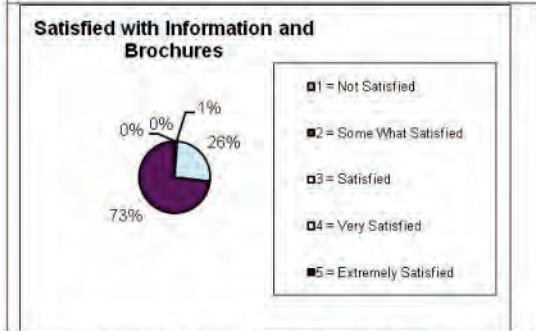




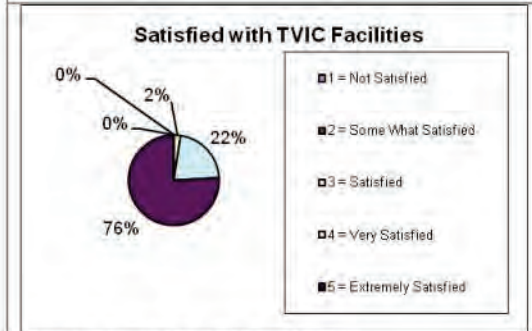
Were visitors satisfied with our customer service



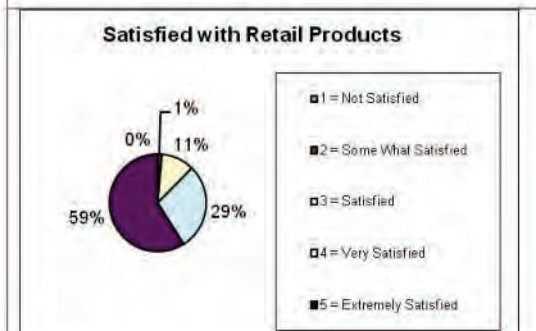
Were visitors satisfied with our displays



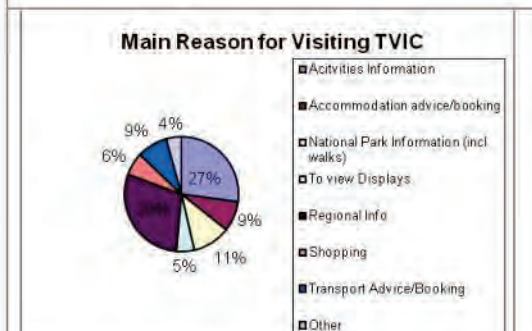
Were visitors satisfied with our range of information



Were visitors satisfied with our facilities



Were visitors satisfied with the quality of retail products



Main reason for visiting TVIC



### 3. A3 – PREPARATION AND DELIVERY OF TOURISM MARKETING AND PROMOTION STRATEGIES AND PLANS AND RELATED PUBLIC RELATIONS ACTIVITIES

#### MEMBERSHIP

As at 31 December the membership is as follows:

MEMBERSHIP	AS AT 31/12/11
Essential Members	75
Tourism Business Members	80
Corporate Members	5
Corporate Affiliate Members	17
Reciprocal Members	7
<b>Total</b>	<b>182</b>

#### MARKETING

During the October/November/December quarter Destination Tweed engaged in the following marketing, promotional and advertising activities:

- The Australian Fishing Championships - filmed four episodes which aired on the Channel 9 Network in November through to January, these episodes were also in conjunction with associated magazine stories. The production crew used several parts of Tweed River and Jack Evans Boat Harbour for the Backdrops for the episodes and promotional visuals providing the regions with national airtime and exposure.
- The Tweed was featured on Channel 7 Brisbane and surrounds as part of a Great South East advertising campaign. The campaign also included radio advertisements with Brisbane based station 4KQ. It was expected that this exposure, during the key summer holiday planning period would encouraged one our largest target markets (South East Queensland) to discover The Tweed and increase length of stay.
- The Destination Tweed team attended the Max Potential Community Coaching Program Showcase at Seagulls Club. The event was attended by Mayor Barry Longland, Seagulls Group CEO Luke Simmons and a number of other local dignitaries. The Max Potential program draws on leaders and professionals in the community to volunteer for training as leadership coaches, which is then used to provide mentoring and coaching to youths. Destination Tweed was acknowledged and well represented at the event.
- Destination Tweed have been in contact with the publisher of Northern Exposure Magazine. Contact details were supplied for Destination Tweed members under the artisan and foodie banner, for their up and coming coffee table book. The book is and arts and lifestyle coffee table book for the Northern Rivers. Northern Exposure are launching the hard copy and online version in December for 2012 and will be doing a specific feature on the Caldera region.
- Advertisements and editorial have been arranged to run in the following publications: Byron & Beyond accommodation guide inclusive of editorial, Telstra Sensis listings for Destination Tweed (admin), Tweed Heads (VIC) and Murwillumbah (VIC). East Coast Fishing Guide, Gold Coast Info Maps, Tweed Valley Weekly inclusive of a produce feature and the Tweed Link over the Christmas holiday period.

#### *E-marketing*

Members and stakeholders continue to receive industry news and event updates via the monthly email newsletter the *Destination Tweed Network News*. This email publication provides information about upcoming events, news, information, marketing opportunities, public relations reports and a variety of useful industry information. The monthly event calendar is also produced in conjunction with the Network



News and is distributed to stakeholders via email each month as a printable PDF document. The calendar is also available for download on the Destination Tweed website home page, promoted via our Facebook page and distributed to local media via public relations channels.

#### **Social Networking**

Destination Tweed is continuing its engagement in various social media platforms and achieving excellent progress with Facebook. At the time of writing the Destination Tweed Facebook profile has 3343 Friends. Facebook is being utilised as tool to promote workshops, business/tourism events and seminars in the Tweed region, as well as promotion of our Destination Tweed members and their upcoming events. It is also being utilised as a platform for sharing photos and images of our region

#### **Image Library**

The Destination Tweed photography project is 60% complete, however, delays have been experienced delays due to unfavourable weather conditions. The photographer continued to steadily capture scenery and landscape shots throughout December when the opportunities arose however given consistent poor weather and some delays with talent, there have been a few false starts to the scheduled shoots. It has been decided that the full two day shoot will be broken in to more manageable components i.e. four half day shoots.

#### **Website**

Development of the new websites has reached *Stage Four – Website Build*, of the planning approach timeline. The website developer is loading copy and migrating content from the Bookeasy site while the design layouts have being adjusted to accommodate variations in the content provided by Destination Tweed. A launch date pre-Easter has been discussed to leverage the most optimum audience reach, market exposure and media coverage.

#### **Tweed Tourism/Destination Tweed Website Analytics**

Site Usage	October	November	December	Total/Average
Number of visits	6036	5547	6465	<b>18 048 (ttl)</b>
Absolute Unique Visits	4915	4486	5310	<b>14 711 (ttl)</b>
Time spent per visit	3.01	2.52	2.26	<b>2.59 (av)</b>
Page views per visit	3.53	3.57	3.12	<b>3.40 (av)</b>
Bounce rate	50.25%	50.39%	56.66%	<b>52.43% (av)</b>
New visits	76.56%	74.74%	76.63%	<b>75.97% (av)</b>

#### **EVENTS**

During the last quarter, Destination Tweed assisted with the promotion of various events, workshops and seminars throughout the Tweed region including, but not limited to, the following:

- **Northern Rivers Tourism Symposium** - Destination Tweed worked closely with organisers of the 2011 Symposium which was held on October 17-18 at Southern Cross University in Lismore. Staff and members attended the Symposium, which had a particular emphasis on events and festivals, sports tourism, creative industries and practical business workshops.
- **Caldera Artfest Opening** - Destination Tweed staff attended the gala opening of the 2011 Caldera Artfest at the Murwillumbah Civic Centre. The event was well attended by locals and dignitaries including the new Mayor. The event was a record-breaker with more than 180 entries submitted for the four-day exhibition and touring events.



- **Great Moscow Circus** – staff and volunteers attended the Mayor’s Charity Night. Destination Tweed facilitate the selling of tickets, in total we sold 624 out of the 1000 tickets. A total of \$18,178 was raised, with half begin donated to the Murwillumbah Hospital Auxiliary and the other half to the Tweed Heads Hospital Auxiliary to purchase must needed equipment like special wheelchairs.
- **Tweed River Festival** - running from Monday 7 – Sunday 13 November the Tweed River Festival was a celebration of environment and community. Destination Tweed liaised with Tweed Shire Council and assisted with promoting the event.
- **Christmas Lights** - In conjunction with the Murwillumbah District Business Chamber (MDBC), DT have installed Christmas lights within the World Heritage Rainforest Centre (WHRC) as part of the Murwillumbah Festival and Community Christmas Carnival. Also, with the assistance of TSC, lights have been placed in the trees outside the centre. Destination Tweed also assisted the Tweed Chamber with their Christmas banners, now featured on the light poles stretching from Jack Evans Boat Harbour all the way to Homemart in South Tweed.
- **Destination Tweed Christmas Event** - was held at Mavis’s Kitchens and Cabins on 14 December with almost 100 people attending the event. Certificates were given to volunteers and special badges presented to those who were acknowledged with long service to the organisation. A presentation was also made to departing CEO, Phil Villiers.

#### **FAMILIS**

In order to keep on top of the market and experience the products and services we are promoting through the VIC’s the following famils were been arranged and attend by Destination Tweed staff and volunteers:

- **October Destination Tweed Famil** – On Wednesday 12 and Wednesday 26 October staff and volunteers attended a familiarisation with Samba Blistas Carnival Drumming at Kingscliff Bowls Club. Staff and volunteers enjoyed a creative evening and had the opportunity to experience the rhythm, beat and drumming.
- **November Destination Tweed Famil** – On Tuesday 22 November Destination Tweed visited Tweed Central Motel, Grand Mercure Blue C Apartments and Nirvana by the Sea at Kirra. These types of familiarisation tours are organised to help our volunteers and staff experience tourism product first hand and allow them to accurately promote our members to visitors by seeing first-hand what they have to offer.
- **December Destination Tweed Famil** – On Saturday 3 December staff and volunteers attended a familiarisation tour on a Bombora coach and visited the beautiful Cedar Creek Winery for morning tea. The group then travelled to Mount Tambourine to experience the newly constructed Tamborine Rainforest Skywalk. The team also experienced a tour of the surrounding area, galleries, retailers and operators.

#### **4. B1 - MARKETING & PROMOTION OF THE TWEED FOR BUSINESS INVESTMENT**

##### ***Tweed Business Collateral***

Content for location profiles and industry profiles is being prepared and TSC have advised that DT can now use the images from the old TEDC library.

##### ***2011 Community Economic Development***

The CEO was invited as a guest to this forum held at Lennox Heads. The purpose of the event, presented by NSW Trade & Investment, was to bring together Economic and Tourism Managers from the Northern Rivers coastal and inland regions and provide an update of the changes happening to this department and discuss their future plans.

Group seminars were held and provided an opportunity to learn about other regions and their successes as well as provide some information on the evolution of DT.

Anne Duke from the Caldera Institute won an award for her work and the great progress that has come from her organisation.

#### **5. 4 YEAR STRATEGIC MARKETING AND PROMOTIONAL PLAN**

Approved by Council on 17 August 2011.

APPENDIX 1

VERVE CONSULTING

Destination Tweed Quarterly Report to Council – December 2011

10

DESTINATION TWEED Inc  
 QUARTERLY PUBLIC RELATIONS & MARKETING REPORT  
 VERVE CONSULTING  
 OCTOBER - DECEMBER 2011  
 A1 – TOURISM PRODUCT DEVELOPMENT

INITIATIVE	ACTION
<b>Festivals Sub-Committee</b>	No additional progress on the establishment of the Festivals Season during this quarter due to the fact that the Festival Organisers were all busy organising and running their respective events. A meeting is being scheduled for early February to reactivate the process.
<b>Australia's Green Cauldron</b>	<ul style="list-style-type: none"> <li>• October 12 - Attended AGC meeting in Lismore with Northern Rivers tourism managers</li> <li>• Compilation and submission of AGC-specific flora and fauna information for National Landscapes Wildlife Calendar</li> </ul>
<b>Australia's Green Cauldron – Experience Development Strategy</b>	<ul style="list-style-type: none"> <li>• Liaised with TRC consultants, Ross Corbett and Janet Mackay re stakeholder workshops, invitations and distribution thereof;</li> <li>• Attendance at stakeholder workshops at Currumbin Wildlife Sanctuary on October 21 and November 21</li> <li>• November 4 – Met with Cathie Johnson from Scenic Rim Council</li> </ul>
<b>Walking Trails Book</b>	<ul style="list-style-type: none"> <li>• October 28 – Met with Kingscliff TAFE graphic design teacher Harry Williamson and Julia Gill from the Department of Health to review student designs for walking book being produced under MOU with Kingscliff TAFE</li> <li>• Reviewed and re-jigged publication layout/pagination</li> <li>• November 2 – Met with Julia Gill to review proposed changes and pagination</li> <li>• November 4 – Met with Harry from Kingscliff TAFE to pass on feedback</li> <li>• November 23 – Met with Julia and Harry to review students' changes</li> </ul>
<b>Destination NSW Visitor Economy Taskforce</b>	<ul style="list-style-type: none"> <li>• November 24 – Attended Destination NSW Visitor Economy Taskforce workshop in Ballina, providing input relevant to the Tweed region and our operators</li> </ul>
<b>Diana Lambert – potential new operator</b>	Met with Diana Lambert to provide advice on the potential establishment of her new business which involves offering guided environmental and historical walks/bike rides in the Kingscliff area.

A3 – TOURISM MARKETING

Destination Tweed Quarterly Report to Council – December 2011

11



INITIATIVE	ACTION
Destination Tweed Website	<ul style="list-style-type: none"> <li>Review of web page template designs</li> <li>Writing of copy for Destination Tweed (landing) section of the website</li> <li>Writing of copy for Tourism section of the website</li> </ul>
Branding Workshop	<ul style="list-style-type: none"> <li>October 10 – Attended meeting with Bond University branding expert, Dr Caitlyn Byrne to ascertain parameters of branding project recommended in Strategy</li> </ul>
Collateral Review	Review and rewrite of various collateral, including: <ul style="list-style-type: none"> <li>CEO Position Vacant</li> <li>Board Vacancies</li> <li>Board Information Pack</li> <li>Chairman's AGM Report</li> <li>2012 Holiday &amp; Touring Guide</li> </ul>
Member Communications	<ul style="list-style-type: none"> <li>Supplied copy for Destination Tweed members' newsletter – October, November/December</li> <li>Prepared letter for all staff, volunteers and members advising of appointment of Bill Tatchell as new CEO of DT</li> </ul>
Tweed Visitor Guide	<ul style="list-style-type: none"> <li>Development of Project Overview outlining potential items for costing</li> </ul>
Australia Day Awards Nominations	<ul style="list-style-type: none"> <li>Prepared and submitted nomination for Alexandra Wilkinson, Tyalgum Festival organiser</li> <li>Prepared and submitted nomination for Tyalgum Festival of Classical Music</li> </ul>
Drive Brochures	<ul style="list-style-type: none"> <li>Writing of copy and graphic design of drive brochures for Tweed Coast Art &amp; History Trail and Tweed Valley Art &amp; History Trail</li> </ul>

### A3 – TOURISM PUBLIC RELATIONS

#### Regional & National Media:

INITIATIVE	ACTION	OUTCOME
FROM PREVIOUS FAMILS	<ul style="list-style-type: none"> <li>Stories published as a result of previous famils</li> </ul>	<b>Go Camping – October 2011</b> <i>Diving into the Green Cauldron</i> 4-page feature  <b>Holidays with Kids – October 2011</b> <i>Time to Chill</i> 3-page feature  <b>Country Style Magazine – October 2011</b> <i>Tweed feature article</i>
International Publication	Forwarded media kits to German travel writer working on a book about Australia	
National Publication	Forwarded relevant information to travel writer working on a book about 4WD trails in southeast Queensland and northern NSW	
National Publication	October 13 – Met with local travel writer working on souvenir book about the Tweed	
Sample NNSW Magazine	Resubmitted stories and images to Sample NNSW Magazine on: <ul style="list-style-type: none"> <li>Chillingham Bush Tucker</li> <li>Flutterbuck's Coffee Cupping, Tyalgum</li> <li>House of Canelli, Tyalgum</li> </ul>	
Outtrigger Twin Towns Resort group media famil	<ul style="list-style-type: none"> <li>Further stories published as a result of joint group media famil with Outtrigger Twin Towns Resort in August</li> </ul>	<b>Queensland Country Life – October 2</b> <i>Tweed's Tourism Tradition Unstoppable</i> Full-page feature
Calendar of Events	<ul style="list-style-type: none"> <li>Distributed monthly Calendar of Events to all regional and national media in October, November &amp; December</li> </ul>	

<b>100 Best Bushwalks in NSW</b>	<ul style="list-style-type: none"> <li>Forwarded detailed information on local Tweed bushwalks to Destination NSW for possible inclusion in new book currently being written: 100 Best Bushwalks in NSW</li> </ul>	
<b>New Destination Tweed CEO</b>	<ul style="list-style-type: none"> <li>Forwarded Appointment Notice re Bill Tatchell's appointment as the new CEO of Destination Tweed to relevant trade media</li> </ul>	
<b>Calendar of Events 2012</b>	<ul style="list-style-type: none"> <li>Compiled Calendar of Events for 2012 and distributed to all media</li> </ul>	

**Local Media:**

INITIATIVE	ACTION	OUTCOME
<b>4ASD Kids Weekend</b>	<ul style="list-style-type: none"> <li>Writing of press release and photo opp to publicise media announcement by Mat Rogers and Chloe Maxwell</li> <li>Distributed to all media</li> </ul>	<b>Extensive media generated for the region as a result of the launch and 4ASD Kids Fundraising Weekend – no clippings available</b>
<b>Calendar of Events</b>	<ul style="list-style-type: none"> <li>Tweed Calendar of Events distributed to all local media for October, November &amp; December</li> </ul>	
<b>New CEO Appointment</b>	<ul style="list-style-type: none"> <li>Prepared and distributed press release on appointment of Bill Tatchell as new Destination Tweed CEO</li> </ul>	<b>Daily News – 23 November</b> <i>Destination Tweed has new CEO</i> <b>Tweed Coast Weekly – 9 December</b> <i>New Boss for Tweed Tourism Group</i> <b>Tweed Sun – 24 November: Front page</b> <i>Tatchell to lead Destination Tweed</i>
<b>Destination Tweed Christmas Party</b>	<ul style="list-style-type: none"> <li>Invitations distributed to all media</li> </ul>	<b>No media available to attend</b>
<b>Certificate of Thanks</b>	<ul style="list-style-type: none"> <li>Certificate of thanks and Christmas present from Destination Tweed delivered to Daily News and Tweed Sun/Gold Coast Bulletin in appreciation of their support throughout 2011</li> </ul>	
<b>Zeta's Coffee awards</b>	<ul style="list-style-type: none"> <li>Prepared media release re Zeta's Coffee winning three awards at the</li> </ul>	<b>Northern Star – 8 December</b>

Destination Tweed Quarterly Report to Council – December 2011

14

	<p>Golden Bean Awards</p> <ul style="list-style-type: none"> <li>Distributed to all local print and TV media</li> </ul>	<p><i>Coffee Grower Brews up Success</i>  <a href="http://www.northernstar.com.au/story/2011/12/08/coffee-grower-brews-up-awards-success/">http://www.northernstar.com.au/story/2011/12/08/coffee-grower-brews-up-awards-success/</a>  <b>Daily News – 8 December</b>  <i>Coffee Grower Wins Golden Bean</i>  <a href="http://www.mydailynews.com.au/story/2011/12/08/coffee-grower-wins-golden-bean/">http://www.mydailynews.com.au/story/2011/12/08/coffee-grower-wins-golden-bean/</a></p>
<b>FROM PREVIOUS INITIATIVES</b>		<p><b>Tweed Coast Weekly – 7 October</b>  <i>The Art of the Green Cauldron</i>  <b>Tweed Sun – 6 October</b>  <i>Tyalgum to Become New Rio for a Night</i></p>

Destination Tweed Quarterly Report to Council – December 2011

15

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

This report fulfils Destination Tweed's reporting requirement under its current funding agreement.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. **Confidential Attachment** – Destination Tweed Quarterly Financial Report – October to December 2011 (ECM45553747)
-



## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

#### MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
  - (a) the provisions of
    - (i) any environmental planning instrument; and
    - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
    - (iii) any development control plan, and
    - (iv) any matters prescribed by the regulations,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 of 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.

**THIS PAGE IS BLANK**

**7 [PR-CM] Rural Fire Service - 2012/2013 Estimates**

**ORIGIN:**

**Building and Environmental Health**

**SUMMARY OF REPORT:**

Councils have a number of roles and responsibilities under the Rural Fires Act 1997 (NSW).

Previously Council, with subsidy from State Government, directly employed staff to carry out these responsibilities.

Of more recent times, the majority of these roles and responsibilities are performed on behalf of Councils by the Rural Fire Services (RFS) under a Service Level Agreement and each year each District RFS Manager prepares an estimate on the probable expenditure within each of those districts for consideration by Councils.

The proposed total Tweed district estimates for 2012/2013 (\$840,024) is significantly greater than the 2011/2012 total of \$725,742, which equates to an increase of \$114,282 or 15.74%.

**RECOMMENDATION:**

**That Council accepts and approves the 2012/2013 estimates from the District New South Wales Rural Fire Services as submitted.**

## REPORT:

Councils have a number of roles and responsibilities under the Rural Fires Act 1997 (NSW)

Previously Council, with subsidy from State Government, directly employed staff to carry out these responsibilities.

Of more recent times, the majority of these roles and responsibilities are performed on behalf of Councils by the Rural Fire Services under a Service Level Agreement. Each year and in accordance with the Rural Fires Act the Minister is required to prepare an estimate of probable expenditure from the New South Wales Fire Fighting Fund (RFFF) for the ensuing year and an estimate of expenditure applicable to each Rural Fire District. These estimates of expenditure are prepared by the District Manager and submitted to Council for consideration.

Clause 107 of the Rural Fires Act 1997 provides that the total amount of rural fire service contributions to be paid for a financial year by councils is currently 11.7%. It is important to note that the 11.7% contributions include both the district costs AND the state costs. This report only deals with the district costs.

This financial year the total Tweed district estimates for the Rural Fire Fighting Fund were \$725,742.00. For next financial year the total Tweed district estimates are \$840,024.00 and a summary of these estimates is provided below:

Annual maintenance and repairs	\$155,905.00
Appliances	\$0.00
Second hand appliances	\$0.00
Other vehicles	\$0.00
Equipment	\$79,500.00
Brigade stations	\$0.00
Reimbursable items	\$96,503.00
Hazard reduction	\$69,000.00
District staff estimate	\$439,116.00
<b>Total</b>	<b>\$840,024.00</b>

This represents an increase of \$114,282 or 15.74% from the 2011/2012 total Tweed district estimates.

On 17 January 2012 the service level agreement liaison committee had a meeting to discuss the current service level agreement and the 2012/2013 rural fire fighting estimates and at the conclusion of the meeting it was considered that the estimates provided are a fair and true estimate of the anticipated expenditure.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As itemised in the December Quarterly Budget Review, the total Rural Fire Service *quarterly* contributions have increased for the third and fourth quarter from \$34,980 to \$65,451. Over a full year this will increase contributions in the Long Term Financial Plan by \$121,884 per annum, bringing Council's total contribution to \$261,804.00, however with the increase in the Tweed district estimates for 2012/13 this contribution could be expected to increase further again.

In addition, the State Government is currently conducting surveys in relation to the Rural Fire Service arrangements. The outcome of this survey is not likely to favour Councils.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. A copy of the breakdown of estimates for 2012/2013 (ECM 46076843)
-

**THIS PAGE IS BLANK**

**8 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

In accordance with the Department of Planning's Planning Circular PS 08-014 issued on 14 November 2008, the following information is provided with regards to development applications where a variation in standards under SEPP1 has been supported/refused.

**RECOMMENDATION:**

**That Council notes the December 2011 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.**

## REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

<b>DA No.</b>	DA10/0666
<b>Description of Development:</b>	Two (2) lot subdivision and dwelling construction
<b>Property Address:</b>	Lot 22 DP 1080322 No. 28 Joshua Street, Murwillumbah
<b>Date Granted:</b>	14/12/2011
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	1(b2) Agricultural Protection, 2(c) Urban Expansion
<b>Justification:</b>	Seeks to create a lot of 6.463ha in the 40ha zone for 1(b)2 land, a variation of 83.85%.
<b>Extent:</b>	84% variation from prescribed minimum lot size (lot is 6.418ha in 1(b) (2) zone which requires 40ha)
<b>Authority:</b>	Director-General of the Department of Planning

<b>DA No.</b>	DA11/0471
<b>Description of Development:</b>	Boundary adjustment
<b>Property Address:</b>	Lot 2 DP 702661 No. 473 Hopkins Creek Road, Hopkins Creek
<b>Date Granted:</b>	14/12/2011
<b>Development Standard to be Varied:</b>	Clause 20(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	1(a) Rural, 7(d) Environmental Protection (Scenic/Escarpment)
<b>Justification:</b>	The DA proposes the variation of a boundary between two lots with no creation of additional lots in the 1(a) Rural zone. The existing lots are below the relevant development standard of 40 hectares. The development proposes to adjust the boundary to produce two lots with areas: Lot 5 (8.66 ha) will expand to proposed Lot 21 measuring 17.54 ha and Lot 2 (15.33 ha) will be reduced to proposed Lot 20 measuring 6.44 ha. On this basis the SEPP 1 variation is considered to be justified.
<b>Extent:</b>	Proposed Lot 21 - 56.15% and Proposed Lot 20 - 83.9%
<b>Authority:</b>	Tweed Shire Council



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**THIS PAGE IS BLANK**

**9 [PR-CM] Development Application DA11/0526 for Extensions to Existing Storage Facility and Reconfiguration of Existing Depot for Truck Storage and Landscaping Supplies at Lot 2 DP 863736; No. 942 Cudgera Creek Road, Cudgera Creek**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0526 Pt1**

**SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council. The standard is varied up to 25.33%.

The applicant seeks consent for an extension to an existing storage facility located adjacent to an existing landscape supply business on the subject land by way of construction of an additional four (4) single storey self storage buildings with a total Gross Floor Area (GFA) of 1656m<sup>2</sup>. Extension of the storage facility relies on reconfiguration of, and a reduction in land area associated with the landscape supply business which is also included in the proposal.

The SEPP No. 1 variation relates to Clause 24 of the Tweed Local Environmental Plan 2000 (LEP 2000). Clause 24(2) clarifies that the development standard applies to land within Zone 1(a). Clause 24(3) states that a building as prescribed must not be erected on land zoned 1(a) if the distance between the proposed building and any designated road would be less than 30m. The northern elevation of proposed Building E is setback a minimum of 22.4m from the northern boundary which results in a variation of 25.33% to the development standard. Cudgera Creek Road is a designated road.

DA06/1035 was granted approval for the existing self storage facility (GFA of 1768.8m<sup>2</sup>) at Council's meeting of 2 October 2007. Approved plans indicate the northern elevation of existing Building A with a minimum setback of 22.4m to the northern boundary which resulted in the same degree of variation to Clause 24 of the LEP. The current proposal almost doubles the GFA of the existing facility and locates the proposed buildings at setbacks consistent to the original proposal.

The objective of the proposal is to increase the availability of self storage facilities within the locality due to increasing demand for such services. Council is not clear at this stage as to whether land currently designated for industrial use in the Pottsville area will be made available to the public for that purpose in the future. Accordingly, whilst acknowledging that the 1(a) rural zoning of the subject site is not ideal for the location and intensification of a light industrial activity, there are few amenity issues and no other suitably zoned locations for such use within vicinity of the Shire's southern townships.

The application requires concurrence pursuant to SEPP 1. However, Council has an instrument of assumed concurrence for this purpose and it was therefore not necessary to refer the application to the Department of Planning for concurrence purposes.

The proposal was required to be placed on public exhibition. Eight (8) letters of support were received during the exhibition period.

It is considered that the application is suitable for approval, subject to conditions.

**RECOMMENDATION:**

**That Development Application DA11/0526 for extensions to existing storage facility and reconfiguration of existing depot for truck storage and landscaping supplies at Lot 2 DP 863736; No. 942 Cudgera Creek Road, Cudgera Creek be approved subject to the following conditions:**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and:**

- **Plan No. 1364C Amendment 2 Sheet 1 of 5 (Site Plan / Sign Elevation), prepared by Parameter Designs and dated 6 February 2012**
- **Plan No. 1364C Amendment 2 Sheet 2 of 5 (Site, Erosion and Stormwater Plan), prepared by Parameter Designs and dated 6 February 2012**
- **Plan No. 1364C Amendment 2 Sheet 3 of 5 (Floor Plans - Buildings E, F, G and H), prepared by Parameter Designs and dated 6 February 2012**
- **Plan No. 1364C Amendment 2 Sheet 4 of 5 (Elevations - Buildings E, F, G and H), prepared by Parameter Designs and dated 6 February 2012**
- **Plan No. 1364C Amendment 2 Sheet 5 of 5 (Cross Sections - Buildings E, F, G and H), prepared by Parameter Designs and dated 6 February 2012**

**except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0065]

**3. The storage sheds are to stand a minimum of 22.4 metres from the northern boundary of the property.**

[GEN0095]

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

[GEN0115]

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

[GEN0135]

**6. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.**

[GEN0265]

7. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]
8. Site and soil disturbances or commercial activities shall not be located closer than 100m to the former cattle dip site.

[GENNS01]
9. Any associated signage displayed on the subject site is to be directed towards Cudgera Creek Road and not the Pacific Highway.

[GENNS02]
10. The storage shed area and the landscaping yard area shall not be used for residential purposes.

[GENNS03]
11. With regard to the operation of the landscaping supplies component, no direct sales are to be made to the public. Sales are to be made by phone order or the like and all material leaving the site is to be transported by the operator's truck/s only. Associated advertising signage is to include wording that reflects and reinforces this arrangement.

[GENNS04]
12. The truck storage depot is only to be used for trucks associated with the landscaping supply business.

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

13. Pursuant to Section 80A(1)(B) of the Environmental Planning and Assessment Act, 1979 (as amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 amended development consent No. DA02/0594.04 dated 7 July 2003 shall be surrendered by lodgement of the prescribed information suitably executed, PRIOR to the issue of a Construction Certificate.

[PCC0005]
14. The developer shall provide two(2) parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The car parking spaces and hardstand area's shall be sealed with a minimum two coat bitumen seal.

Full design detail of the proposed parking and manoeuvring 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.

[PCC0065]
15. **Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 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 S94 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 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

**(a) Tweed Road Contribution Plan:**

11.11 Trips @ \$1252 per Trips **\$13910**

(\$1252 base rate + \$0 indexation)

S94 Plan No. 4

Sector11\_4

**(b) Extensions to Council Administration Offices  
& Technical Support Facilities**

0.8295 ET @ \$1772.82 per ET **\$1470.55**

(\$1759.9 base rate + \$12.9199999999998 indexation)

S94 Plan No. 18

[PCC0215]

16. 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. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

17. All imported fill material shall be from an approved source and free of any contaminants.

[PCC0465]

18. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

19. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) Design flood level of RL 13.2m AHD.
  - (b) The minimum habitable floor level for the building is RL 13.5m AHD.
  - (c) All building materials used below Council's design flood level must not be susceptible to water damage.

[PCC0705]

20. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works:

- (a) The existing access to the landscaping yard shall be formalised and sealed with a two coat bitumen seal from the edge of Cudgera Creek Road to the property boundary in accordance with Tweed Shire Council -Driveway Access to Property.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
- Traffic control plan

[PCC0895]

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

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

[PCC1105]

22. 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 S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

23. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase 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".

[PCC1155]

24. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

Any approval to install an on site sewage treatment and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-Site Sewage Management Design Report, HMC Environmental, November 2006 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCC1285]

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

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
- (i) appointed a principal certifying authority for the building work, and
- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and



- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

27. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

28. 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 to the satisfaction of the Principal Certifying Authority.

[PCW0985]

#### **DURING CONSTRUCTION**

29. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

30. Construction and/or demolition site work including the entering and leaving of 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]

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

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

32. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

33. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

34. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

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

[DUR0985]

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

[DUR0995]

37. 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]

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

[DUR1025]

39. Landscaping of the site shall be carried out in accordance with the approved landscaping plans and species selection.

[DUR1045]

40. All hazardous and/or dangerous goods shall be handled and stored in a designated area away from stormwater drains. The designated area is to be:

- (a) Roofed;
- (b) Provided with a sealed floor; and

Bunded so as to hold 110% of the total quantity of goods stored. Bunded area(s) shall not be flood-labile and shall be provided with pump out facilities.

[DUR1635]

41. 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]

42. 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]

43. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

44. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

45. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l.

[DUR2435]

46. During 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 and Operations Division to arrange a suitable inspection.

[DUR2445]

47. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.

[DUR2485]

48. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

49. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

50. Any on-site sewage management systems are to be removed in accordance with NSW Health Advisory Note 3 - May 2006 “Destruction, Removal or Reuse of Septic Tanks, Collection Wells and Aerated Wastewater Treatment Systems (AWTS)”.

[DUR2785]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

51. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

52. All landscaping work is to be completed in accordance with the approved plans prior to issue of an occupation certificate.

[POC0475]

53. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

54. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

A certificate certifying compliance with the above is to be submitted to Council by the licensed plumber on completion of works.

**Reason: Mandatory condition, clause 34 of the Local Government (General) Regulation 2005.**

[POC1025]

55. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

56. Prior to the occupation of any building and prior to the issue of any occupation certificate approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.

[POC1040]

57. A separate water closet shall be provided on site for use in association with commercial activities prior to the issue of an occupation certificate or commencement of use of the proposed storage facility extension.

[POCNS01]

58. The storage shed compound shall be provided with perimeter security fencing to the satisfaction of the General Manager or his delegate , and which is effective in preventing any person from accessing the previous cattle dip site from the storage compound.

[POCNS02]

## USE

59. 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]

60. Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

[USE0145]

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

[USE0165]

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

\* Storage facility:

8.00am to 5.00pm - 7 days per week

All deliveries and pickups relating to the business are to occur within the approved hours

\* Landscape yard

8.00am to 5.00pm - Mondays to Fridays

8.00am to 12 noon - Saturdays

No operations are to be carried out on Sundays or Public Holidays

All deliveries and pickups relating to the business are to occur within the approved hours

[USE0185]

63. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0245]

65. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

66. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0445]

67. All loading/unloading to take place within the boundary of the subject property.

[USE0525]

68. The premises shall be maintained in a clean and tidy manner.

[USE0965]

**69. All wastes in association with the storage sheds shall be stored and disposed to the satisfaction of the General Manager or his delegate. All waste materials in association with the landscaping supply operations shall be collected and disposed off-site to the satisfaction of the General Manager or his delegate. Waste materials shall not be permitted to accumulate at the subject property.**

[USENS01]

**70. Acid sulfate soils shall not be excavated or disturbed.**

[USENS02]

**71. Erosion and sedimentation fencing shall be erected and maintained at all times around the perimeter of all stockpiled materials to the satisfaction of the General Manager or delegate. Fencing shall also be effective in preventing wind blown material impacting adjacent residential premises.**

[USENS03]

**72. Soils, sand or other materials from the property shall not be excavated or removed from the property as part of the proposed landscape supply business.**

[USENS04]

## REPORT:

**Applicant:** Mr M Sauer and Ms K Sauer  
**Owner:** Mr Neil J Everingham & Mrs Meryl C Everingham  
**Location:** Lot 2 DP 863736; No. 942 Cudgera Creek Road, Cudgera Creek  
**Zoning:** 1(a) Rural  
**Cost:** \$400,000

## BACKGROUND:

Council is in receipt of a development application for extensions to an existing storage facility and reconfiguration of an existing depot for truck storage and landscaping supplies on a parcel of land zoned 1(a) Rural. The proposed extension to the storage facility reduces the size and alters the configuration of the landscaping supplies business.

### History

Lot 2 DP 863736 was created as the smallest lot in 1996 as part of a 6-lot subdivision of Lot 1 DP 180070 which had a total land area of 63.6 hectares.

The dwelling located on the site appears to be a historic homestead, originally associated with Lot 1, which was created in 1921. Lot 2 is not burdened by any restrictions on title.

Development consent DA02/0594 for a depot for truck storage and landscaping supplies was issued 22 January 2003. Minor amendments to the proposal were approved by way of DA02/0594.04 on 7 July 2003.

Development consent DA03/0619 for an advertising sign for the landscaping supplies business was issued on 7 July 2003. The applicant installed the sign to face east towards the Pacific Highway and not north as per Condition 4 to face Cudgera Creek Road. The sign is to be removed as part of the current proposal and a small sign located on the fence adjacent to the entrance of the landscaping supplies business with operational details in accordance with Condition 3 of the original signage consent.

Development Consent DA06/1035 for the existing self storage facility was approved by Council in 2007 inclusive of Condition 8 which required the storage sheds to be dismantled and removed and consent surrendered within two years of gazettal of any industrial zoned land within a five (5) kilometre radius of the subject site.

An application to modify DA06/1035 in order to delete Condition 8 was approved by Council at its meeting on 16<sup>th</sup> February 2010.

One of the main considerations during the assessment of DA06/1035 was the flood liability of the property, the appropriate design flood level and potential impacts on local flooding as a result of filling the site for the storage sheds to be above the design flood level. At that time the assessment was based on anecdotal observations of the June 2005 flood event (including statutory declarations from landholders in the area) and modelling information relating to the adjacent Pacific Motorway (which contradicted the landholder evidence).

In the years since, Council has completed the Coastal Creeks Flood Study (March 2010) and adopted design flood levels and high flow maps from the flood study into DCP A3 – Development of Flood Liable Land. This has enabled subsequent assessment of the current application for extensions to this development more straight forward.

### Compliance Issues



Inspection of the subject site in November 2011 highlighted the position of unauthorised advertising signage and incomplete landscaping in accordance with approved plans relating to DA06/1035 and associated construction certificate, CC08/0015. The aforementioned signs have been removed and additional landscaping has been included in the current application in order to assist with the retention of stormwater run-off and to visually screen the development from the boundaries.

A site inspection by the Environmental Health Unit revealed that on site sewage management facilities had not been upgraded in line with previous consent conditions and that the provision of a separate WC facility on site had not taken place. Staff have been utilising the WC in the dwelling for such purposes which is contrary to requirements of previous consents and the Building Code of Australia. The current proposal addresses these matters.

Council has no record of complaints regarding noise from the existing activities.

### The Subject Site

The subject site is located on the southern side of Cudgera Creek Road, opposite the Reserve Creek Road intersection, approximately 330m to the west of the Pacific Highway. It has a total site area of 2.057 hectares and a 264.84m frontage to Cudgera Creek Road. The western boundary of the site is aligned to a short section of Cudgera Creek.

The eastern portion of the site contains an existing residence and landscape supply business / truck depot. The remainder of the site contains the existing self storage premises erected upon filled land and consisting of four (4) single storey buildings with a total of 101 units: 11 outdoor areas for the storage of caravans, boats, large vehicles etc. and 90 undercover units within the four buildings. Scattered grassland extends to the western boundary.

The site is within a rural location characterised by rural living on various sized allotments and agricultural pursuits (primarily grazing). The land is generally flat and does not contain any significant vegetation. It is not considered to be bushfire prone.

The land is mapped as being non-contiguous regionally significant farmland as part of a narrow belt west of the Pacific Highway that follows each side of Cudgera Creek Road to Tuckeroo Road. Historic aerial photography suggests that the land may have been used for grazing and for cropping in the mid-80's prior to fragmentation but was then converted for use as a horse exercising track from at least 1995.

Existing access from Cudgera Creek Road includes a small informal driveway to the dwelling, gravel access to the landscape supplies business and concrete / gravel access to the storage shed facility. The former Cudgera cattle dip site is located on the north-western boundary.

### The Proposed Development

The application was lodged originally for an extension to the existing storage facility. However, the plans indicated minor changes to the depot for truck storage and landscaping supplies. The existing depot is an Item 2 permissible use within the 1(a) Rural zone. The business conducts wholesale operations only and materials are delivered by the applicant to clients off site. Associated business signage reflects the non-retail nature of operations and has been conditioned to this effect.

As such, the proposed extension to the existing storage facility and reconfiguration of the existing depot for truck storage and landscaping supplies involves the following works:-

- Filling and regrading of the site area for the building pads to conform to flooding requirements and facilitate stormwater drainage
- The construction of four (4) single storey self storage buildings with a total GFA of 1656m<sup>2</sup> and 101 units
- Associated landscaping
- Replacement signage
- Upgrading of the on site sewage management facility
- Provision of a unisex WC facility
- Upgrading of the driveway access from Cudgera Creek Road to the landscaping yard.

Buildings E, F and G will each enclose an area of 450m<sup>2</sup> and contain 28 units of varying sizes. Building H contains an area of 306m<sup>2</sup> and remains open on the northern side, with a total of 17 storage bays (6m x 3m) for caravans, cars and boats.

The proposed buildings are to be constructed using colourbond external walls, roofing and roller doors (no doors on Building H). The maximum roof height of Buildings E, F and G are proposed to be 3.415m at the ridge down to 2.75m at the eaves using a pitched gable end roof design. Finished floor level is RL 13.9m with finished ground level at RL 13.8m. Building H is proposed to be of skillion roof design with a maximum ridge height of 3.85m sloping to a lower eaves height of 3.185m.

The applicant intends to fill the site from RL12.6m AHD to RL13.8m AHD. After completion the pads will be above the 1:100 Design Flood Level of RL13.3m AHD and equal to the PMF level of RL13.8m. Fill will be graded to the street. Compaction of the fill to AS 3798 will be required.

The proposed facility is to continue to be managed by the operators of the existing landscape supply business from the existing office facility located on the subject site. There will be no increase in the number of employees and the proposal does not generate demand for additional water or sewage services.

The frontage of the site to Cudgera Creek Road is to be extensively landscaped with local native species.

### Summary

The proposal represents an increase in intensity of an existing storage unit operation, and a reconfiguration of an existing wholesale depot operation on rural zoned land within proximity to the Pottsville area and surrounds. Amenity impact of the current operation is low and there appears to be little conflict with adjoining land uses. Although not an ideal location for storage units, Council is currently unable to offer suitably zoned land to cater for an increasing demand by the community for the storage facility. As such, the proposal is recommended for approval, subject to conditions.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 DP 863736  
No. 942 Cudgera Creek Road, Cudgera Creek

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council make no representation or warranty expressed or implied, statutory or otherwise, as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including in those instances liability or responsibility for all expenses, losses, damages including interests, consequential damages and costs) which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for construction purposes and prior to the construction a 'load before use' type' enquiry must be made for ruling 21.11. The information contained in this document remains valid for 30 days only from the date of issue.</p>	<p>Cadastral: 30 January 2011 © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>Scale: 1:10,000 @ 44 Postcode ONLY DATE - NOT DISTANCE</p>	<p>Civic and Cultural Centre 3 Tankersley Road Murrumbidgee NSW 2484 PO Box 614 Murrumbidgee NSW 2484 T   602 6670 2480   1300 290 812 F   602 6570 2423 W   www.tweed-shire.nsw.gov.au E   planning@tweed-shire.nsw.gov.au</p>	<p><b>TWEED</b> SHIRE COUNCIL</p>
--	--	---	---	---------------------------------------

















---

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and rural residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 – Consent Considerations

The subject land is zoned 1(a) Rural under the provisions of the Tweed LEP 2000.

The proposal is defined as:

- a “depot” which is permissible with Council’s consent (Item 2) subject to satisfying the provisions of Clause 8(1) of the Tweed LEP 2000, and
- a “storage unit” which is permissible with Council’s consent (Item 3) subject to satisfying the provisions of Clause 8(2) of the Tweed LEP 2000.

Clause 8(1) – “depot”:

- (a) the reconfiguration and ongoing land use as “depot” has been considered in regards to the primary objective of the zone and this is discussed under Clause 11 below.
- (b) the reconfiguration and ongoing land use as “depot” has been considered in accordance with the aims and objectives of the plan above under Clause 4.
- (c) the reconfiguration and ongoing land use as “depot” is not considered to create a detrimental cumulative impact in the locality. Current operations are lawful. Continuing operations on site do not result in any detrimental cumulative impact on the surrounding locality given the existing operations of the “depot” for almost a decade.

Clause 8(2) - “storage unit” - provides as follows:

- (2) The consent authority may grant consent to development specified in Item 3 of the Table to Clause 11 only if the applicant demonstrates to the satisfaction of the consent authority that:
  - (a) the development is necessary for any one of the following reasons:
    - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
    - (ii) it meets an identified urgent community need,
    - (iii) it comprises a major employment generator, and

- (b) there is no appropriate site on which the development is permitted with development consent (other than as advertised development) in reasonable proximity, and
- (c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and
- (d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

A summary of the points made by the applicant addressing Clause 8(2) matters is provided below:

- the application to expand the existing 'at capacity' facility arises directly from demand for its services and an identified urgent community need
- the Pottsville area is continuing to expand within the residential estates of Koala Beach, Seabreeze and Black Rocks and through redevelopment of older housing stock
- the most appropriate zones for self storage facilities are within the 4(a) Industrial or 3(c) Commerce and Trade zones. However, there are still no such zones within Pottsville or surrounding areas. The subject site is within reasonable proximity to the township, has good access and minimal conflict with surrounding land uses
- addition to the existing storage facility would pose less change to the character of the area than if a new Greenfield site for such a facility was sought
- there is unlikely to be another appropriate site, within reasonable proximity, on which storage units are permitted with consent short of development of a Greenfield site
- the proposal is generally consistent with the scale and character of existing and future lawful development in the immediate area.

The applicant contends that the points above demonstrate that the proposal is satisfactory with respect to Clause 8(2)(a)(i) and (ii), and 8(2)(b) and 8(2)(c).

- The proposal is not inconsistent with the aims of the plan. It is consistent with a number of objectives of the 1(a) Rural zone and consistent with the relevant principles of ecologically sustainable development insofar as:
  - the proposal does not give rise to any threats of serious or irreversible environmental damage
  - inter-generational equity is maintained because the health, diversity and productivity of the environment are maintained for the benefit of future generations
  - the development does not give rise to issues relating to the need for conservation of biological diversity and ecological integrity, and
  - the impacts of the development relative to pollution are internalised in the facility such that environmental factors have been included in the valuation of assets and services provided as the users of the facility

will bear the cost of containment and storage of their goods and their goods are not directly the source of any pollution.

The applicant contends that the points above demonstrate that the proposal is satisfactory with respect to Clause 8(2)(d).

An assessment of the proposal concludes that given the continuing absence of any suitably zoned land in the area and in light of the points raised by the applicant above, it is considered that the proposal is satisfactory in meeting the provisions of Clause 8(2).

The existing storage shed facility and landscape supply business on the subject site reduce the impact that the proposed additional storage units may have otherwise had on the amenity of the area. The location, current land use and overall characteristics of the site are considered to support the applicant's claim that the land is suitable in accommodating the proposal – despite the zoning of the land and the requirements of Clause 8(2).

Also relevant to Clause 8(2) matters are strategic considerations such as the likely timing for the provision of any proposed industrial land in the vicinity. In this respect, the following summary of comments from Council's Planning Reform Unit is provided below:

*"While further expansion of storage facilities at 942 Cudgera Creek Road is not our preferred option for expansion or establishment of industrial development in the general locality, Council is not able to provide certainty about the time frame for development of alternative suitable industrial land in the locality."*

Detailed comments from Council's Planning Reform Unit regarding current options for the creation of industrial land within the vicinity are provided further into this report.

#### Clause 11 - Zone objectives

The site is zoned 1(a) Rural as per the Tweed LEP 2000.

#### **1(a) Rural Zone**

*Primary objectives for the 1(a) Rural zone include:*

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, and*
- *to protect rural character and amenity.*

*Secondary objectives for the 1(a) Rural zone include:*

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism*
- *to provide for development that is not suitable in or near urban areas*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

On balance, the proposal satisfies the abovementioned objectives for the 1(a) zone in that:

- the proposal does not detract from the rural character or amenity of the locality
- the proposal does not impact upon adjoining land that may be utilised primarily for agricultural or natural resource utilisation purposes
- the development proposed is not suitable in or near the urban / village area of Pottsville, and
- the development utilises the same site upon which there is already similar development, thus preventing unnecessary development of a new site.

#### Clause 15 - Essential Services

Council's reticulated water supply and piped effluent disposal infrastructure are not available within the area.

Electricity services are currently provided to the area via Country Energy infrastructure. Telecommunications services are currently provided to the area via Telstra Infrastructure.

#### Clause 16 - Height of Building

The subject site is constrained by a three storey building height. The maximum height of the proposed buildings is 3.85m which is considered acceptable.

#### Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

#### Clause 35 - Acid Sulfate Soils

The subject site is located within Class 5 Acid Sulfate Soils and it is identified that works within 500m of adjoining Class 1, 2, 3 or 4 land which is likely to lower the watertable below 1m AHD in adjacent Class 1, 2, 3 or 4 land require the consent of Council.

The subject site is not located within 500m of Class 1, 2, 3 or 4 land and the works associated with the development are unlikely to affect the water table. There will be no disturbances below natural ground level apart from placement of the on site sewage facilities.

#### Other Specific Clauses

##### Clause 34 – Flooding

Based on the submitted plans, the ground level of the site ranges from 12.3m - 12.9m AHD. The applicant proposes to fill the storage shed site to 13.8m AHD, with floor levels of 13.9m AHD. This compares with a design flood level (DFL) under DCP-A3 of 13.2m AHD.

The proposal therefore complies with Council's adopted policy of self storage facilities providing a minimum habitable floor level of DFL + 0.3m. The shed site is not located in a high flow area.

While the applicant has not provided any engineering assessment of the potential impact of the development to impact on local flood behaviour, it is considered that

the development is acceptable under the terms of Clause 34 and DCP-A3 subject to standard conditions.

### Specific Clauses

#### Clause 22 – Development near Designated Roads

Cudgera Creek Road is a Council Designated Road from the Pottsville Road intersection to the Reserve Creek Road intersection – i.e. the subject site is the last property to the west that has frontage to that point of Cudgera Creek Road which is designated for the purpose of this clause.

The objectives of this clause are to protect and improve the operation of designated roads and prevent development being unsuitably located near a noisy designated road, or prevent development spoiling the scenic attractiveness of such a road.

Existing access to the landscape supply business and storage shed business on the subject site is from Cudgera Creek Road as approved in previous development consents.

Existing access will not be changed as a part of this application and therefore the objectives of this clause are considered to be satisfied.

#### Clause 24 – Setbacks to Designated Roads

As discussed previously in this report, the applicant proposes a reduced setback of 22.4m to the designated road which results in a variation to the development standard contained within this clause (minimum of 30m setback to designated roads). The applicant has lodged a SEPP 1 objection in support of the variation. Please refer to the assessment of these matters under the SEPP 1 heading below.

#### Clause 31 – Development adjoining waterbodies

This clause applies to land that adjoins the mean high water mark (or bank) of a waterbody. The subject site is adjacent to Cudgera Creek. This clause requires consideration of the impacts of development on adjoining waterbodies, with particular emphasis on scenic quality, water quality, aquatic ecosystems, flora/fauna and public accessibility. With the implementation of proposed erosion and sediment control measures, the impacts associated with the proposal are considered to be within reasonable limits. The application is therefore considered satisfactory with respect to the Clause.

#### Clause 39 – Remediation of Contaminated Land

The applicant proposes to fill part of the site which will be separated from the former cattle dip site by the existing storage sheds resulting in an increased separation distance and reduced exposure than existing development. The matter has been satisfactorily dealt with previously during assessment of DA06/1035 and there is minimal risk, if any, compared to the existing approved development.

The site for the storage shed extension has however been used as part of the landscape supply and truck storage yard, which will be filled for the proposed new storage sheds. The applicant was requested to provide a statutory declaration to confirm that the site has not been used for chemical storage/application or fuel storage and there has been no contamination of the site due to the commercial activities on the site.

The applicant provided a statutory declaration indicating that vehicle refuelling occurs off site and that there has been no chemical or fuel storage on site since at least 2003.

#### Clause 47 – Advertising Signs

Clause 47(3)(c) states that development for the purpose of an advertisement on land within a rural zone may be carried out with development consent only if it is not prohibited under subclause (4) and it is an advertisement relating to a lawful use on the land on which the advertisement is displayed.

This is the case with the proposed development. The small 1m x 1m sign, located on the fence on the northern boundary of the site directly relates to the landscaping supplies business and provides essential information only about the business operation. It is not considered a prohibited form of advertising as per subclause (4).

As such, the proposed signage is consistent with this clause.

#### **State Environmental Planning Policies**

##### **SEPP (North Coast Regional Environmental Plan) 1988**

#### Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The history of the use of the site constitutes grazing, minor cropping and equine facilities with a rural residential use. Adjoining and surrounding land is utilised primarily for grazing and rural residential use.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon any nearby agricultural activities.

#### Clause 47: Principles for Commercial and Industrial Development

Clause 47(2) requires consideration that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas.

The subject site is accessed from a designated road that is within 330m of the Pacific Highway and a few kilometres from the urban outskirts of Pottsville village. As such, there are no issues with regard to accessibility to the site and the proposal satisfies this clause.

#### SEPP No. 1 - Development Standards

The applicant has lodged an objection under SEPP No.1 to Clause 24 of the Tweed LEP which requires a 30m setback to a designated road. The principal objective of the development standard is to ensure that a satisfactory standard of visual amenity and traffic safety is maintained along designated roads.

In the case of the proposed development, the storage sheds are located 22.4m from the boundary with Cudgera Creek Road.

The applicant submits that under the circumstances, the objective of the relevant standard will be satisfied despite the proposed non compliance with the minimum numerical set back requirement of 30m as expressed in the clause.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

**The applicant has raised the following arguments in support of the variation sought:**

- the development is not visible from the major highway route of the Pacific Highway and is located on the rural hinterland side of the route to Pottsville which is not a heavily trafficked road at this time
- the site is already developed for multiple purposes that fall within a general commercial nature and the existing self storage facility was approved by Council at a setback of 22.4m from Cudgera Creek Road ostensibly based upon the low volumes of traffic generated by the development and its ability to be landscaped to mitigate any visual impacts it may have.
- the subject land is a small landholding within a rural area that is unlikely to have any agricultural potential and would at best be suited for lifestyle purposes. However, its use as a landscape supplies yard, depot and self storage facility make good economic use of land within proximity of its market without any significant environmental impacts.
- The nature of the development is of low traffic generation, is not visually prominent and can by landscaping reduce any potential visual impacts on road users of Cudgera Creek Road. It allows for an economic development of the land to demand for a specific development that was anticipated by the Council in its LEP 2000.

The applicant concludes that *the objectives of the standard are achieved notwithstanding non compliance with the standard and the underlying object of purpose of protecting traffic efficiency and safety and visual amenity would not be defeated if non compliance was allowed.*

**Assessment of the applicant's submission:**

The following assessment of the SEPP No. 1 objection is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

**1. The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard, are achieved notwithstanding non-compliance with the standard that has been adopted.

The objective of Clause 24 of the Tweed LEP is achieved despite the variation to the development standard pertaining to minimum setback from a designated road. The objectives of this clause ensure there are no detrimental impacts to visual amenity and traffic safety along the designated road.

The proposed development is logical and consistent with existing development on the land. It does not compromise visual amenity or traffic safety along Cudgera Creek Road.

The applicant's submission in relation to being well founded is supported.

---

2. **The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal provides for an addition to an existing storage facility and represents an orderly, economic use of the land. There is no evidence of an unreasonable burden on public infrastructure being created.

It is not considered that the granting of this application would hinder the attainment of such objectives.

3. **It is also important to consider:**
- a. **whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
  - b. **the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 24 of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

No public benefit issues are adversely affected by not being able to maintain the development standard in this case. The existing storage facility maintains a 22.4m setback from Cudgera Creek Road and is already non-compliant and the degree of non-compliance will not be increased.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised and specific for the ongoing use of the land. As such, the granting of this application is unlikely to impact upon public benefit.

Having regard to the minor extent of the variation sought and in light of the comments raised by the applicant and outlined above, it is considered that a departure from the development standard requiring a 30m setback is acceptable in this instance.

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

As previously discussed in this report, the location of the additional storage sheds is sufficiently distanced from the former cattle dip on the north-western boundary of the site. In addition, the owner has confirmed that there has been no chemical or fuel storage on site since 2003. As such, there is no requirement for further investigation of contaminated land.

#### SEPP No. 64 – Advertising and Signage

There are no specific provisions for 'business identification signs' within this SEPP. The SEPP deals with 'Wall Advertisements' and states that there should



only be one per elevation of a building. However, this is not the definition of the proposed signage.

An assessment against Schedule 1 of the SEPP indicates that the proposed signage is compatible with the low key rural character of the area, it does not detract from the amenity of any special areas, it does not jeopardise any views or vistas, and is of an appropriate low-key form and scale for the rural location and subject land use. There is no illumination and no safety hazards as such.

Therefore, the proposal is considered to comply with the provisions of SEPP 64.

#### SEPP (Rural Lands) 2008

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

The land is not considered State significant agricultural land. Measures designed to reduce land use conflicts are aimed at creation of denser residential land uses through subdivision on land that is adjacent existing farming activities, which does not apply to this development.

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

The shire-wide Draft Local Environmental Plan was placed on exhibition in 2010. The draft zone for the subject site is RU2 Rural Landscape. The components of the proposed development are best defined as 'storage premises', 'depot' and 'landscape and garden supplies'.

The use of the land for the purposes of a 'depot' and 'landscaping and garden supplies' is permitted with consent in accordance with Item 3 and the use of the land for the purposes of a 'storage premises' is prohibited as the development is not specified in either Item 2 or 3.

As such, the continuing use of the truck depot and landscaping supplies business on the land is a preferred form of development under the provisions of the draft LEP. Continuing use of the land as a storage facility is recognised as a prohibited use but would be considered an 'existing use' as defined by the EP&A Act 1979. Development consent is required for any enlargement, expansion or intensification of an existing use.

Provisions for setbacks to higher order roads are no longer contained within the LEP and SEPP 1 - Development Standards will no longer apply. Similar setback standards are located within the SEPP (Infrastructure) 2007 and this instrument will be referred to for compliance with setback requirements to designated roads.

RU2

#### **3 Permitted with consent**

Airstrips; Animal Boarding or Training Establishments; Aquaculture; Bed and breakfast accommodation; Biosolid waste applications; Boat sheds; Caravan parks (camping ground only); Cellar door premises; Cemeteries; Community facilities; Crematorium; Depots; Dual occupancies (attached); Dwelling houses; Educational establishments; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Funeral Chapels; Funeral homes; Helipads; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Intensive Livestock Agriculture; Landscape and garden

supplies; Mining; Places of public worship; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Research Stations; Restaurants; Roadside stalls; Rural industries; Rural Supplies; Rural workers' dwellings; Serviced Apartments; Sewerage Systems; Timber and Building Supplies; Transport Depots; Truck Depots; Turf Farming; Veterinary Hospitals; Water recreation structures; Water Supply Systems.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Item I16 of this DCP requires:

*Parking space of 0.5/staff or a minimum of two (2) parking spaces. Parking is to be provided adjacent to each unit and aisle widths are to be sufficient to accommodate parking plus through traffic.*

The applicant proposes to provide the following parking:

- Two (2) staff parking spaces
- Parking adjacent to each unit
- Aisle widths sufficient to accommodate parking and through traffic
- Fifteen (15) spaces in the landscaping yard

Adequate manoeuvring area exists within the site and the parking proposed by the applicant satisfies Council's parking requirements.

However, parking area pavement design and construction does not satisfy Council's requirements. Car parks with more than three (3) parking bays must be sealed with an all weather wearing surface such as a two coat bitumen seal (flush seal). In addition, the circulation aisle around the storage sheds should also be sealed with a two coat bitumen seal to prevent discharge of pollutants and dust generation.

An appropriate condition of consent will be applied to address these issues.

A3-Development of Flood Liable Land

Based on the submitted plans, the ground level of the site ranges from 12.3m - 12.9m AHD. The applicant proposes to fill the storage shed site to 13.8m AHD, with floor levels of 13.9m AHD. This compares with a design flood level (DFL) under DCP-A3 of 13.2m AHD.

The proposal therefore complies with Council's adopted policy of self storage facilities providing a minimum habitable floor level of DFL + 0.3m. The shed site is not located in a high flow area.

While the applicant has not provided any engineering assessment of the potential impact of the development to impact on local flood behaviour, it is considered that the development is acceptable under the terms of DCP A3 subject to standard conditions.

A4-Advertising Signs Code

Proposed signage constitutes a 1m x 1m business identification sign located on the low wire fence along the northern boundary of the site. The sign is associated with the landscaping supply business. The sign is not prohibited and is not within

the road reserve. The area of the sign is well below that which is permissible for the site. As such, the proposed signage complies with this DCP.

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

Clause 92(a) Government Coastal Policy

The subject land is not affected by the coastal policy.

Clause 92(b) Applications for demolition

No demolition is proposed as part of this proposal.

Clause 94 Buildings to be upgraded

Clause 94 is considered satisfied as the existing building utilised in association with the landscaping supplies business generally complies with the Building Code of Australia.

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

**Tweed Shire Coastline Management Plan 2005**

The subject site is not located within an area that is affected by this management plan.

**Tweed Coast Estuaries Management Plan 2004**

The subject site is not located within an area that is affected by this management plan.

**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 an area that is affected by this management plan.

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

Access, Transport and Traffic

The subject site has frontage to Cudgera Creek Road which is a rural collector road with a 5.8m wide bitumen sealed pavement in good condition and a rural cross section within an 18m road reserve. A table drain in good condition exists along the frontage of the proposed development.

The storage facility will continue to obtain access from the existing 9.0m wide concrete driveway. The concrete cross over is in good condition with satisfactory cross pipe drainage. Site distance in both directions is considered good.

Access to the existing landscape yard is currently via a gravel cross over. Evidence of pavement surface failure on Cudgera Creek Road at the gravel/bitumen interface was observed. This cracking is most likely caused by heavy vehicle traffic entering and existing the landscape yard. Furthermore, loose gravel is being tracked onto Cudgera Creek Road.

To prevent a continuation of this problem, the access cross over to the landscape yard from Cudgera Creek Road should be sealed with a two coat bitumen seal or constructed from concrete. Conditions have been applied.

### Development Trip Generation

The applicant supplied information from a 2009 Aurecon report that discusses the likely traffic impacts of new storage facilities on the surrounding road networks. Council's engineers have concluded that the additional traffic impact on Cudgera Creek Road will not have an adverse impact.

The abovementioned report is limited to urban frameworks and is useful in estimating the number of storage units applicable to a particular site area but does not offer a practical daily trip rate for such facilities.

The applicant for a recent development application approved for storage units within the Tweed Shire supplied a development traffic analysis that included a summary of findings of the *2010 Australian Self Storage Demand Study* issued by the Self Storage Association of Australasia.

This study was helpful in determining an up-to-date trip rate for storage unit facilities, as Council's Tweed Road Contribution Plan does not include an applied rate for such specific purpose. An average daily visit rate per unit was calculated from the survey results as 0.053, equating to a conservative trip generation rate of 0.11 trips per unit per day.

This rate has been applied previously to the approval of a similar development application and endorsement of the rate confirmed by Council's Traffic Engineers. As such, a rate of 0.11 trips per unit has been applied to the current proposal.

### Stormwater

The site discharges to the table drain located in Cudgera Creek Road and the subject property is not affected by external catchments.

The applicant has prepared an Erosion and Sedimentation Control Plan (ESCP) for the construction phase works. Adoption of the plan during construction will manage erosion from the site.

The applicant has not provided any details to manage stormwater quality during the operational phase. However, given the additional storage sheds are being developed in place of the landscaping supply business, the development is not expected to result in significant increases in stormwater discharge from the site and will potentially reduce sediment and other pollutant loads leaving the site.

Sealing the car park, circulation aisle and provision of a sealed vehicular access to the landscaping yard will greatly assist to manage stormwater discharging from the site. Standard conditions have been applied.

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

### Location of nearby Land zoned for Industrial Purposes

The proposal was referred to Council's Planning Reform Unit for review and in order to provide an update on the progress on provision of industrial zoned land to service the Pottsville area. Comments received are as follows:

*"Council is in the process of reviewing a planning proposal for the rezoning of land for industrial purposes in Kudgerie Avenue, off the Pottsville/Mooball Road (lot 12 DP 1015369), east of the Pacific Highway and not far from the subject site.*

*The rezoning proposal covers land identified within the Far North Coast Regional Strategy (FNCRS) as potential employment land and as such, it is*

*Council's intention to support the rezoning proposal within the constraints affecting the site. The subject site west of the Pacific Highway is not recognised in the FNCRS and as such is not a preferred site for development at this time.*

*The Department of Planning and Infrastructure has commenced a review of the FNCRS and has requested that Council provide details of land to be included in the next update. Land identified in Council's Tweed Urban and Employment Land Release Strategy 2009 as Area 7 West Pottsville will be recommended for inclusion in this review and as such is expected to come on line for development within the next 5 years, infrastructure and other constraints permitting.*

*The Kudgerie Avenue site is currently not serviced by Council's reticulated sewerage system and while investigations are being undertaken into the provision of private treatment plants to manage disposal of effluent from development on land to the west of Pottsville, Council has no plans to provide such services as part of its reticulated waste water system.*

*It is now the responsibility of the proponent for the rezoning proposal to demonstrate intent to service the site prior to the site being rezoned. This does not mean that the site will then be developed, as the intent mentioned will be provided through a voluntary planning agreement (VPA) which ensures that the site is not developed until such time as a Water Industry Competition (WIC) Licence is obtained demonstrating an absolute ability to provide this critical infrastructure; a potentially costly and lengthy process which has no certain outcome at this time.*

*Until such time as the VPA is signed, and the WIC Licence secured, Council will not be in a position to make the plan for this site. At this time, there is no certainty as to when this will occur.*

*In addition to the uncertainty regarding time frames, Council is currently looking into the creation of a Business Park zone for the Shire, which may be applied to the Kudgerie Avenue site, and thereby alter the list of permissible landuses and change the objective of the zone from industrial to light industry, offices, technology etc. Until this matter has been further investigated and discussed with the proponent Council is not in a position to advise whether the current industrial, or the alternative business park land use will be applied to the Kudgerie Avenue site.*

*Should it be determined that this development can proceed, it will be essential to ensure that this does not provide a signal to adjoining landowners that the locality is seen as appropriate for industrial or other higher order development. The strategic direction for development of industrial land within the west Pottsville locality is clearly defined as east of the Pacific Highway."*

#### On Site Sewage Management

WC and associated on site sewage management facilities (OSSMF) have not been upgraded in accordance with the previous approvals for current operations on site. Staff currently utilise the WC associated with the dwelling on the site. No failure of this system has been identified on site.

Condition 62 of DA06/1035 states "A separate water closet shall be provided on site for use in association with commercial activities. This toilet shall be

constructed and operational prior to use of proposed storage facilities. The toilet and updated on site sewage management facility and waste water disposal field shall be inspected by Council's Environmental Health Officer prior to use of the storage facilities". This condition does not appear to have been complied with.

The Statement of Environmental Effects submitted indicates that "the proposal will not increase the number of employees". Council's Building Services Unit advised that one unisex disable toilet would meet BCA requirements.

An On-Site Sewage Management Design Report, HMC Environmental, November 2006 was submitted with DA06/1035. A Section 68 Approval to Install dated 19 December 2006 was issued requiring compliance with this OSSMF Report.

Given the nature of the proposed development, it is considered likely that the design will still be suitable. The applicant was requested to provide a support statement or addendum from the HMC Environmental to confirm that the On-Site Sewage Management Design Report, HMC Environmental, November 2006 remains suitable for the development, as modified.

The applicant provided a support statement from HMC Environmental dated 24 November 2011 which indicates that the original 2006 Design report, subject to minor amendments, is suitable for the proposed development and plans have been amended to include the provision of a disabled WC in the office / shed.

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

The application was advertised for two (2) weeks in accordance with the requirements of Clause 8(3) of the Tweed LEP from 16<sup>th</sup> to 30<sup>th</sup> November 2011. During this period, eight (8) letters of support were received. Comments provided the letters of support are summarised below:

- The sheds are kept neat and tidy and blend into the rural area
- The facility is the best in the area offering spotless storage sheds and well managed grounds as well as being conveniently located near the highway
- Local storage facilities, including those at Billinudgel and Kingscliff are full to capacity
- The hedge that is planted along our boundary ensures no visibility of the landscape yard when driving past and the sheds are not visible from our house
- The sheds are very accessible but are always booked
- It is good to see that they will be extending their sheds, especially for people like me (pensioner) that live in the area needing storage
- The current storage facility has proved to be a well used asset to the community of Pottsville and surrounds.

Transport Roads and Maritime Services

The application was referred to RMS on 18<sup>th</sup> November 2011 consistent with previous development applications for the site, given that the north-eastern corner of the site has frontage to roadway within the interchange which is considered part of the Pacific Highway.

A response from the RMS was received on 22<sup>nd</sup> December 2011 stating that they had no objection to the proposal but that any on site advertising signage must be directed towards Cudgera Creek Road and not the Pacific Highway.

**(e) Public interest**

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

**OPTIONS:**

1. Resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The extension to the existing storage facility and reconfiguration of existing depot for truck storage and landscaping supplies is recommended for conditional approval. Clause 8(2) considerations have been addressed and found to be satisfactory subject to certain conditions of consent.

Whilst it is acknowledged that approving industrial uses in rural zones is not to be encouraged, it is considered the recent history of existing use and attributes of the subject site make it acceptable in this instance. Of particular relevance in this regard is the site's proximity to the Pacific Highway and the village of Pottsville as well as the already highly disturbed nature of the site. These characteristics, the lack of suitably zoned land within proximity and the draft future prohibition of storage premises use within the 1(a) rural zone ensure that the proposal does not set any kind of precedent for similar industrial development in other rural locations.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**THIS PAGE IS BLANK**



**10 [PR-CM] Development Application DA11/0356 for a Wakeboarding Coaching Clinic between Fingal and Chinderah along the Tweed River (Operating from Fingal Boat Ramp) at Lot 403 DP 755740 Main Road, Fingal Head**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0356 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a Development Application for the continuing operation of a wakeboarding coaching clinic between Fingal and Chinderah along the Tweed River. The proposal requires the use of the Fingal Head boat ramp for launching and car parking and the Tweed River upon which to undertake commercial wakeboarding activities.

The proposal is best defined as 'tourist facilities' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000). In order for a 'tourist facility' to be permissible on unzoned land (the Tweed River), it must be compatible with surrounding development and zones, which in this case are 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment), 8(a) National Parks and Nature Reserves and 2(a) Low Density Residential. It also must be compatible with development permissible in the adjoining zone.

'Tourist facilities' are permissible with consent (listed under Item 2) in the 6(a) and 6(b) zones. However, the commercial nature of the proposed use is secondary to the desired use of such land primarily for recreational purposes, as expressed in the primary zone objectives. 'Tourist facilities' are prohibited in the 7(a), 7(d), 8(a) and 2(a) zones.

The character and use of existing development in the vicinity has been taken into account in the assessment of the proposal. An attachment to this report provides a summary of development applications proposing use of the Tweed River for commercial purposes over the last 14 years.

The proposed development raises issues regarding intensity of use, local amenity, impact upon the ecosystem and critical habitats, conflict with existing recreational river uses, proximity to residential development and suitability for the site given the environmental sensitivity of the area.

A total of 39 submissions and four (4) late submissions were received objecting to the proposal following exhibition of the development application for a two-week period in August. Three (3) letters of support were submitted with the application documentation from businesses associated with the unauthorised operation of the ProWake Academy Clinic prior to the lodgement of this development application.

Having regard to relevant statutory controls and an assessment against Clauses 11 and 13 of the Tweed LEP 2000, the proposed wakeboarding coaching clinic is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**RECOMMENDATION:**

That Development Application DA11/0356 for a wakeboarding coaching clinic between Fingal and Chinderah along the Tweed River (operating from Fingal boat ramp) at Lot 403 DP 755740; Main Road, Fingal Head be refused for the following reasons:

1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(i), the orderly and economic use and development of the land.

It is Council's view that the proposal has the ability to impact negatively upon adjacent land; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development cannot be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

It is Council's view that the proposed development is inconsistent with the aims of:

**State Environmental Planning Policies:**

- SEPP 14: Coastal Wetlands
- SEPP 26: Littoral Rainforests
- SEPP 64: Advertising and Signage (Clauses 10 and 27)
- SEPP 71: Coastal Protection (Clause 8(a), (d), (g), (h), (i) and (p)(i))
- NCREP: Clauses 15, 32B, 75, 76 and 81

It is Council's view that the proposed development does not satisfy the provisions contained within:

**The Tweed LEP 2000:**

- Clause 4: Aims of this plan
- Clause 5: Ecologically sustainable development
- Clause 8(1): Consent Considerations

- **Clause 11: Zoning**
  - **Clause 13: Development of uncoloured land on the zone map**
  - **Clause 25: Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land**
  - **Clause 29: Development adjacent to Zone 8(a) National Parks and Nature Reserves**
  - **Clause 31: Development adjoining waterbodies**
4. **The proposal is inconsistent with management plans produced by Council and the Maritime authority that highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River.**
  5. **Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.**

**It is Council's view that use of unzoned land adjacent to environmental conservation areas of State significance for the purposes of a wakeboarding coaching clinic is considered unacceptable due to its impact upon the habitat of estuarine fauna, in particular that of migratory shorebirds.**

6. **In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

**It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 6(a) Open Space, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment), 8(a) National Parks and Nature Reserves and 2(a) Low Density Residential zones.**

**REPORT:**

**Applicant:** Pro-Wake Academy Pty Ltd  
**Owner:** Tweed Shire Council  
**Location:** Lot 403 DP 755740; Main Road, Fingal Head  
**Zoning:** 6(a) Open Space; 7(a) Environmental Protection (Wetlands & Littoral Rainforests)  
**Cost:** \$60,000

**BACKGROUND:**

The Subject Site

The land upon which the Fingal boat ramp is situated is a recreational reserve with an area of 4.123 hectares. It is bounded by Main Road to the east and south with vehicle access on the western corner of the southern boundary. The eastern portion of the land is heavily vegetated and zoned 7(a) Environmental Protection. The remaining portion of the land (and perimeter - eastern and southern boundaries) is zoned 6(a) open space. It contains a long, narrow, circular driveway access with marked parking spaces, a public amenity building, helicopter landing pad and patches of vegetation. The boat ramp, pontoon and small lagoon are located in the north western section of the site.



Figure 1: 2009 aerial view of subject site

A long narrow allotment Lot 7022 DP 1113031 (part privately leased *permissive occupancy* from Crown Lands, area of 310m<sup>2</sup> historically used as Fingal Head Boat Hire (since 1984) incorporating Fingal Charters since 2002), also with access from the southern boundary with Main Road, separates the boat ramp site from the Tweed River. Access from the boat ramp to the river is achieved through the adjacent site.

The tenure status of both sites is 'council administered crown land'.

Land to the north of the site (14.78ha) is managed by the Tweed Byron Local Aboriginal Land Council. Most of the land along the Tweed River from Fingal boat ramp to Chinderah is either state crown land or council administered crown land. Other land areas include community land, unzoned roadways and riverbanks, recreation areas and significant environmental protection areas.

Surrounding residential land to the east and south of the boat ramp site is zoned 2(a) Low Density Residential with a two-storey height limit, as is the residential land near the river down to the pacific motorway bridge.

The Tweed River is described as a 'Crown tidal waterway' and defined as Reserve 1001008. This reserve is managed by the Tweed Coast Reserve Trust appointed 7 November 1997 of which Tweed Shire Council is the appointed Corporate Trust Manager. Land adjacent to the (unzoned) river is zoned 6(a), 6(b), 7(a), 7(d), 8(a) and 2(a).

### The Proposed Development

The proposal includes:

- Commercial operation of a wakeboarding coaching clinic (school) on the Tweed River for 10 months of the year
- Summer season: December to April for 4 days per week and up to 5 hours per day – amended to Friday to Monday from 10am to 3pm
- Winter season: April to September for 3 days per week and up to 4 hours per day – amended to Friday to Sunday from 10am to 1pm
- Business hours between the hours of 8:30am and 5pm
- Approximately 4 students taken out on the boat with an operator (age range from 10 to 40) to undertake instruction for activities such as 'trampolining wakeboarding', 'wakeskating', 'power boat driving' and 'personal watercraft operating' (as per Appendix A)
- Parking required for 3 vehicles and boat trailer at the Fingal boat ramp
- Launching of commercial vessel from Fingal boat ramp: the 22ft 2010 Tigé RZ2 waterski boat with PCM 343hp marine engine, 14.5 x 14.25 propeller pitch, Convex V hull and TAPS 2 system
- Visible external corporate signage and third party advertising signage on vessel promoting sponsor's such as Holden, Liquid Force, Tigé Boats and 'Monster Energy' drinks
- Operation area of 6.8km which includes:
  - northern end of Letitia Rd (start of rock revetment wall), Fingal Boat Harbour (2.5km)
  - Dog Leg Port Channel Marker (south of Fingal Boat Harbour no wash zone) (2.8km)
  - Homestead Caravan Park and Chinderah Tavern (end of rock revetment wall) (1.5km)



Figure 2: operation area as proposed by the applicant

- Rubbish to be contained on the vessel during the day and emptied at the operator's home
- Use of public amenities at Fingal Boat Harbour, Oxley Park (Chinderah) and Turncock Park (Chinderah)
- Compliance with 75DbA noise restrictions
- Maintenance of 60m distance from the shoreline rock revetment wall
- Marketing of the commercial venture on the ProWake website with a mailing list of approximately 10,000
- Promotion and generation of customer / client base via an annual national Tigé Tour from October to December and through international wakeboarding operators in Japan and Russia with associated visual media appearing on wakeboarding online forums and in magazines

The application references the following:

- Tweed River Estuary Bank Management Plan Issue No 2, 1998
- Tweed River Estuary Boating Plan 2006 – 2010
- Fish Habitat Protection Plan No 2: Seagrass
- Tigé Boats USA
- ProWake Academy Competition Risk Assessment
- Australian Maritime College Vessel impact on the Noosa and Brisbane River case study
- Boating Safety
- Operator's qualifications and commercial hull / public liability insurance.

The application addresses bank erosion and concludes that the 8.2km long rock revetment wall contains the impact from wake arising from wakeboarding activities. The applicant states

that the boat design (Convex V hull) results in the boat sitting deeper in the water which 'results in less damage to the natural bank environment'. The TAPS 2 system (hydraulic trim tab at rear of boat) allows the boat to 'sit flatter on take off' and configures 'clean wake' during operation.

The application addresses noise pollution with relevance to engine noise and 'local resident' receptors only. It states that because of housing locations, environmental conservation areas (high tree line) and the 75db noise restriction, any effects are minimised. The application fails to take into account the impact of operations upon the natural environment and conservation area habitat.

The application notes the provisions for protection of sea grass and mangroves (fish habitat) and concludes that since the 200m - 250m wide main river channel (average depth 6.1m – 7.6m) is used for the wakeboarding activity, there is minimal impact to the river bank and river bed.

Landowner's consent for the *lodgement* of the application was provided by the Crown Lands Division (CLD) in Grafton both on the application form and in correspondence dated 13 July 2011. This followed a letter to CLD from the General Manager of TLC, under delegation, dated 29 June 2011 providing the consent of the Tweed Reserves Trust for the applicant to lodge the application.

The applicant had provided the same documentation to CLD that was lodged with Council on 28 July 2011. The CLD consent does not imply the concurrence of the Minister for Primary Industries for the proposed development. Recent discussion with CLD has indicated verbal support for Council's assessment of the application.

The SEE states that the ProWake Academy has the support from local businesses and NSW Maritime. The latter has clarified in their referral response dated 11 November 2011 that 'maritime policy is not to give support to any particular business or operation'.

#### Development History of Subject Site

The Fingal boat ramp area is known as Fingal New Boat Harbour and is managed by Recreation Services. This property does not incorporate the adjacent Lot 7022 DP 1113031.

Relevant applications and consents for the subject and adjacent site include:

- D88/0094: establishment of a boat harbour, boat ramp and associated facilities – approved 5/2/1988  
Council application for the provision of public recreation facilities. Conditions take into account tidal exchange, buffer to, and management of the adjacent wetlands.
- D88/0318: erection of resort development comprising boat harbour & marina – lodged 20/5/1988 and subsequently withdrawn  
Boat store, boat hire and sales, tavern, restaurant, yacht club and retail. Prohibited development in both 6(a) and 7(a) zones requiring rezoning in order to proceed.
- 0854/91B: amenities building – approved 6/8/1991  
Double brick with aluminium roof and an area of 34m<sup>2</sup> on concrete slab.
- D92/0266: piping of open drain – approved 1/9/1992  
The piping of part of an open drain opposite the Post Office / General Store at the corner of Fingal Road and Main Road due to it being unhealthy, unsightly and a safety hazard.
- DA02/1308: commercial dive boat operation – approved 3/10/2002



Dive charters to take passengers to open waters from Fingal Head Boat Hire via Tweed Bar. This application was lodged for the continuation of the 'Jus Diving' business following compliance action and as a result of the Council resolution of 6/12/2000 that sought development applications within 40 days from all commercial boating operators that did not have a current consent.

- DA05/0861: commercial whale watching and snorkelling charter boat operation – approved 31/10/2005

Pick up from Kennedy Drive and Fingal Head boat ramps and out to Cook Island via Tweed Bar to snorkel.

- PTV03/0001: improvement to the Fingal Head stormwater drainage network – approved 23/1/2003

Included stormwater outlet works (i.e. headwall and scour protection) within lot 403 DP 755740 and the Main Street road reserve.

- DA11/0144: commercial boat hire operations on the Tweed River from Fingal boat ramp – lodged 25/3/2011 and withdrawn 19/5/11

Two boats to be hired out / skippered commercially by Tweed River Wake and Ski seven days a week from 8am to 4pm for unspecified water sports activities and ancillary recreation purposes along the Tweed River in unspecified locations from Bray Park Weir to Cobaki Creek. Vessels were proposed to be launched primarily from Fingal Head boat ramp.

Insufficient information was provided with regard to the description of the development, the environmental impact and implementation of systems to address potential impact in order for Council to continue an assessment. It was also recommended internally that Council reserve its decision until the review of the Tweed River Estuary Bank Management Plan had been completed.

Issues raised in the 12 submissions received during the exhibition period included the general ambiguity of the proposal, the threat to marine life and bird species, noise impact (the carrying of low frequency noise over water in particular from vibration of the engine), inappropriate boat size, increase in water turbidity, operation within vicinity of mooring areas, capacity of public car parks and the purpose-built nature of wake board boats to require larger engines, consume more fuel, create larger wake and sit lower in the water. Managing the 'trim' of the boat (or filling the vessels with ballast water) to keep the nose in the air and create larger wake was seen to be a major safety hazard.

Objectors had regularly observed conflict with feeding birds and marine life (habitat displacement) from the sound and wake of vessels. The status of the area as a National Trust Coastal Conservation Area and major foraging area / roost site for protected migratory birds was stressed for the conservation of migratory shorebirds and depends greatly on preserving their habitat. The high risk of boat strike to turtles and marine mammals was noted given the low 'under water sound signature' emitted by vessels driven by water jet propulsion units.

The gaining of commercial profit at the expense of ratepayers was also mentioned as was the utilisation of large stereo systems that increase noise impact and interfere with communications on the river by other users. It was acknowledged that such activities may compromise the long term stability of regular future visitors to the area that value the natural environment in its undisturbed state.



Lack of policing resources was seen to be a major issue along with incompatibility with and compromise of, safety and viability of other, more passive recreational operations (kayaks, sailing, houseboats etc.). The proximity of the proposed use to sensitive SEPP 14 Wetlands (valued as a significant food resource area and refuge for estuarine fauna, particularly birds) and its general inconsistency with the established character of Fingal Head was paramount and more specifically, the negative impact on important cultural and environmental sites along the Tweed River.

It is possible that objectors to DA11/0144 were referring to unauthorised operations the subject of DA11/0356 as it was not established through the assessment of DA11/0144 whether the applicant had already been operating on the river prior to lodgement of the application. It is fact that the applicant of DA11/0356 was operating on the river up until the middle of 2011.

### Compliance Matters and Operational History

Compliance action in June 2011 led to the lodgement of the current application. Unauthorised commercial operations have been taking place on this stretch of the Tweed River since February 2006 by the applicant originally as a franchise operator of 'Black Diamond Wakeboarding School' located in Sydney and then from 2009 as the operator of the Tweed Heads/Gold Coast ProWake Academy Wakeboard School. The nature of current operations is advertised on the ProWake website [www.ProWake.com.au](http://www.ProWake.com.au)

ProWake is a company that sponsors the applicant and has several retail outlets on the Gold Coast. The company retails clothing, watersports and ski accessories, boats, boat parts and has partnered with four national 'wake and ski' schools: The ProWake Academy (Tweed Heads/Gold Coast – subject of the current application), Flyin' High Wake School (Newcastle), TJS House of Wake (Tailem Bend, SA) and Synergy Ski School (Grafton).

Their 5-hour annual international event, the 2011 Monster Energy ProWake Show was held on the weekend of 19-20 March in Grafton in 2011. It was presented by Tigé Boats of which ProWake has been the official national distributor since 2010. The equivalent 2012 event was held in Grafton on 21 January 2012.

The ProWake website promotes the Tweed Heads/Gold Coast ProWake Academy as being 'the number 1 location to wakeboard no matter what level of rider'. It also states that the academy is 'able to accommodate any level and any number of riders'.

The wake is fully adjustable to suit any level of riding and can be 'customised within 3 minutes' for either a small wake or large wake. The site states that in their 10 year history riding in the area they have never seen a shark 'but we do see lots of dolphins who like to swim up alongside the boat'. Parents are encouraged to accompany their children on the vessel for the day.

The most recent 3-day school holiday 'clinics' were advertised to be held on the Tweed River from 26 June – 7 July 2011. Tigé Group Russia brought out 25 students for a wakeboarding holiday from 1 -14 May 2011. Must Wakeboarding (Japan) bring an average of 300 students to the Tweed River for Wakeboarding holidays each year.

The applicant is anticipating a larger number of participants and increased intensity of commercial activity in 2012 inclusive of international groups, families, interstate students and tourists. The applicant offers local accommodation packages in association with multiple day wakeboarding packages – essentially wakeboarding 'holidays'. Various coaching packages are available with the average half hourly rate being approximately \$90.

Students stay for up to five nights at either of two caravan parks located north of Oxley Park at Chinderah. The application does not clarify how the students travel to Fingal Head boat ramp to board the vessel or whether they are picked up from the jetty associated with the caravan parks, or even Oxley Park boat ramp itself.

The applicant (ProWake Academy) undertook the Monster Energy Tigé Tour from 14 September to 4 December 2011. It is an annual national coaching clinic tour to cater for a large number of students here and elsewhere in Australia. The applicant indicated verbally that the nature and level of activity undertaken upon the tour is equivalent and not inconsistent with that proposed in the development application.

Two 'legs' of the annual tour have taken place as unauthorised events on the Tweed River to date. They include:

- The Tigé Tour 2010: Sunday 6<sup>th</sup> December 2009, and
- The Tigé Tour 2011: Saturday 23<sup>rd</sup> / Sunday 24<sup>th</sup> October 2010.

Both events operated on the Tweed River from Tumbulgum to the Chinderah area. Photos from both events (on file) indicate activities taking place within close proximity to revetment walls, unprotected shorelines, nature reserves and other recreational river users. Waves created from the vessel to facilitate activities are of considerable size.

The 2011 tour was held during a significant rain event which had led to minor flooding of the river thus increasing the degree of water turbidity and creating the opportunity for greater shoreline impact. The local 'leg' of the proposed 2012 tour advertised for Saturday 10<sup>th</sup> / Sunday 11<sup>th</sup> December 2011 was held on an unspecified waterway on the Gold Coast according to the applicant.

The ProWake Academy Clinic and Tigé Tour *Declaration of assumption of risk and exclusion of liability agreement* at Appendix A of the application documentation acknowledges that 'adventurous and dangerous recreational activities' involve 'a real risk of serious injury or even death from various causes including but not limited to equipment failure, accidents with other participants, spectators, course or weather conditions or other causes'.

The level of environmental / habitat impact that the operation has already had on the Tweed River over the last 6 years is unknown.

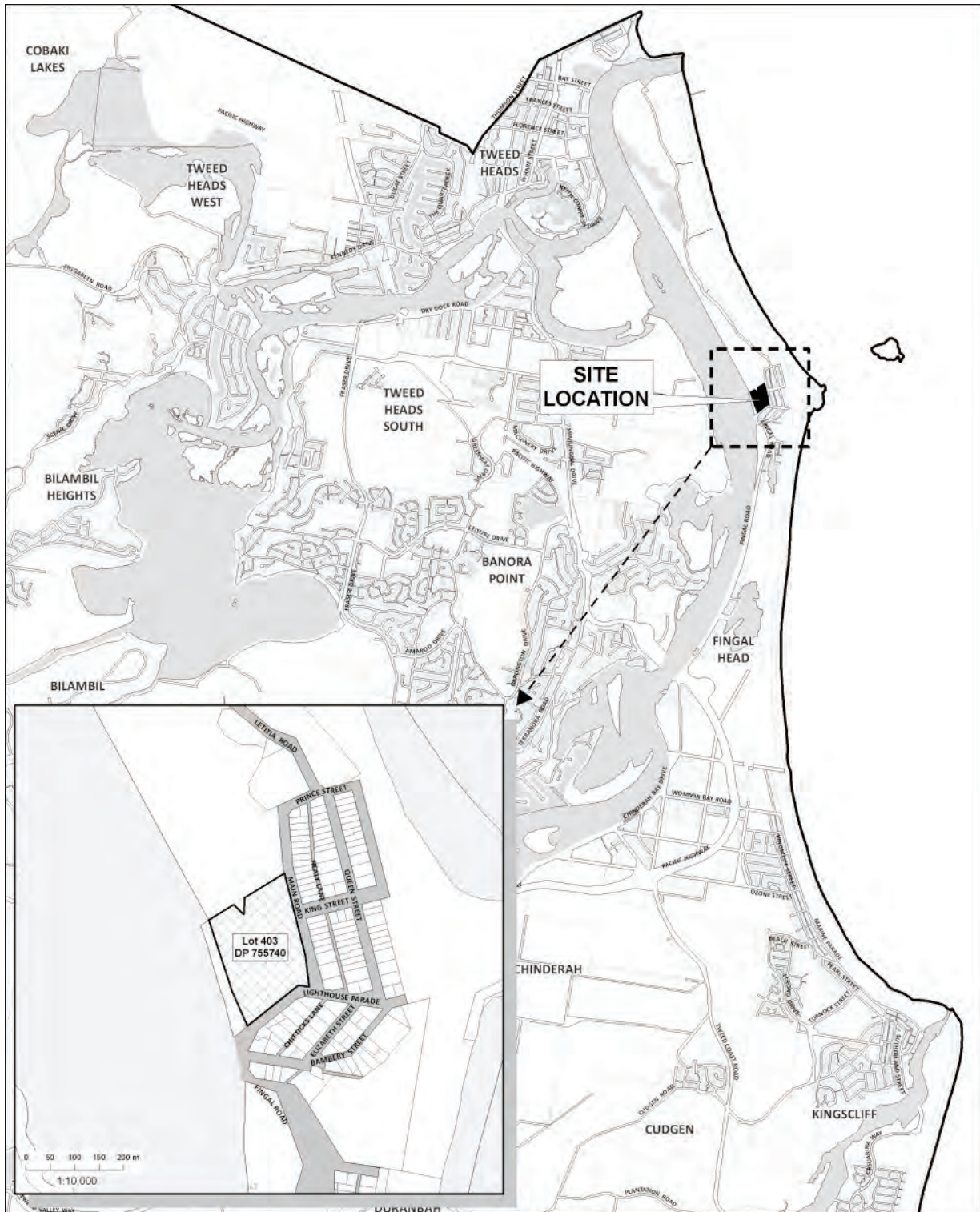
### Public Submissions

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 10 August to Wednesday 24 August 2011. Submissions were received up until close of business Tuesday 30 August 2011. During this time, 39 submissions were received. After this time, 4 informal submissions were received. A full assessment of the submissions is provided in the body of this report.

### Summary

Having regard to relevant statutory controls and an assessment against Clauses 11 and 13 of the Tweed LEP 2000, the proposed wakeboarding coaching clinic is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 403 DP 75574  
 Main Road, Fingal Head

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagnostic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 30 January 2012                  © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council.                  Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km                  1:50,000 @ A4 Portrait                  DO NOT SCALE                  COPY ONLY - NOT CERTIFIED</p> <p>Map Information: Universal Transverse Mercator                  Horizontal Datum: Geocentric Datum of Australia 1994                  Vertical Datum: Mean Sea Level                  GDA</p>	<p>Civic and Cultural Centre                  3 Tambourine Road                  Murwillumbah NSW 2484                  PO Box 816                  Murwillumbah NSW 2484                  T   (02) 6670 2400   1300 292 872                  F   (02) 6670 2429                  W   www.tweed.nsw.gov.au                  E   planning@tweed.nsw.gov.au</p>	 <p><b>TWEED</b> SHIRE COUNCIL</p>
---	--	---	---	---

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The subject development application is not considered to be in accordance with the above in that it is likely to compromise the unique natural character of the Tweed River. It is not compatible with the Shire's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Broadly, the subject proposal is not considered consistent with the above criteria in that the proposed activities on the Tweed River threaten biological diversity and ecological integrity. Approval of the proposal is likely to have significant ramifications for ecologically sustainable development on the Shire's waterways.

Clause 8 – Consent Considerations

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
- (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
- (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the waterway is unzoned land adjacent to areas of open space zoned 6(a), recreation areas zoned 6(b), environmental protection zones 7(a) and 7(d), National Parks and Nature Reserves zoned 8(a) and 2(a) Low Density Residential zoning over road reserves. Use of the waterway must be considered in relation to the consistency of the use with the primary objective of the adjacent zones.

The primary objectives of the abovementioned zones (and consistency of the proposal with the objectives) are as follows:

6(a) Open Space

- To identify existing public land and land that is proposed to be acquired for public ownership to satisfy the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.

The purpose of 6(a) zoned land is to 'satisfy the open space and recreational needs of local residents and visitors to the area of Tweed'. Development should only be encouraged to assist this recreational use and enjoyment.

Zoned land of this type is located around the Fingal Head boat ramp site, on the other side of the river to the ramp site, at the end of Hibiscus Parade and south of the Pacific Motorway bridge along both sides of the river. The proposal represents a commercial use of the river and commercial activities undertaken by visitors to the area. It competes with the recreational use and enjoyment of the land by local residents and visitors to the area solely for recreational purposes.

6(b) Recreation

- To designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.

Similar to the previous zone, tourist facilities are permissible with consent (Item 2) in this zone which occurs on the northern side of the Pacific Motorway bridge at Barney's Point. It is land upon which recreational activities may take place. The nature of the proposal is commercial and is secondary to the desired use of this land primarily for recreational purposes.

7(a) Environmental Protection (Wetlands and Littoral Rainforests)

- To identify, protect and conserve significant wetlands and littoral rainforest.
- To prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.

Land in this zone is represented on the boat ramp site and along both sides of the river in the designated area of operation as islands or foreshore. The proposal is inconsistent with both primary objectives of this zone and is prohibited. The commercial intensity and nature of the proposal compromises protected areas and is likely to impact negatively upon wetland and/or littoral rainforest ecosystems.

7(d) Environmental Protection (Scenic/Escarpment)

- To protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.



Land in this zone is represented north of the Fingal Head boat ramp on the eastern side of the river and south of the boat ramp on Fingal Road separating 2(a) zoned residential land.

The proposal does not protect and enhance areas of particular scenic value to the Tweed. It is a prohibited form of development in this zone and is inconsistent with the primary objective.

#### 8(a) National Parks and Nature Reserves

- To identify land which is reserved or dedicated under the *National Parks and Wildlife Act 1974*
- To allow for the management and appropriate use of that land as provided by that Act.

Use of the Tweed River adjacent to this zone for tourist facilities is prohibited and not consistent with the management and appropriate use of that land in accordance with the Act.

#### 2(a) Low Density Residential

- To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.

Commercial use of the river of this nature and intensity adjacent to dwellings is likely to impact negatively on low density residential amenity and is not consistent with the primary objective for this zone within which tourist facilities are prohibited.

Other aims and objectives of the TLEP that are relevant to the proposal have been considered and are discussed in the body of this report.

The Tweed River is recognised as having a unique value within the Northern Rivers Region. The proposal has the potential to impact negatively and detrimentally upon the river system and existing recreational use of the river. The development sets an unwarranted precedent and is considered to have an unacceptable cumulative impact on the community, the locality and on the area of Tweed as a whole.

### Clause 11 – Zone Objectives

Primary objectives of the relevant zones have been discussed above in relation to the proposal.

Secondary objectives for the relevant zones include the following:

#### 6(a) Open Space

- To allow other development that is compatible with the recreational use of the land.

The proposal is not considered to be compatible with the recreational use of the land as it creates conflict with other passive river uses.

#### 6(b) Recreation

- To allow for other development that is compatible with the primary function of the zone.

The proposal constitutes a commercial use of a type and intensity that is not compatible with passive, recreational use of the river.

7(a) Environmental Protection (Wetlands and Littoral Rainforests)

- To protect the scenic values of wetlands and littoral rainforests.
- To allow other development that is compatible with the primary function of the zone.

The proposal does not protect the scenic values of wetlands and littoral rainforests and is not compatible with the primary function of the zone.

7(d) Environmental Protection (Scenic/Escarpment)

- To allow other development that is compatible with the primary function of the zone.

The proposal does not constitute a use that is compatible with the primary function of the zone.

8(a) National Parks and Nature Reserves

There are no secondary objectives for this zone. The proposal is not compatible with the primary objectives of this zone.

2(a) Low Density Residential

- To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.
- To allow for non-residential development that is domestically based, or services, the local needs of the community, and does not detract from the primary objective of the zone.

The proposal is not domestically based, nor does it service the local needs of the community. It detracts from the primary objective of the zone.

The proposal is not consistent with any of the relevant zone objectives.

Clause 13 – Development of uncoloured land on the zone map

The Tweed River, an island to the north east of Hibiscus & Oyster Point Park and the north eastern tip of Oxley Cove are uncoloured land on the zone map.

The objectives of Clause 13 are as follows:

- To enable the control of development on unzoned land
- To ensure that development of unzoned land is compatible with surrounding development and zones
- To ensure that development of certain waters takes account of environmental impacts and other users of the waters.

In deciding whether to grant consent to development on unzoned land, the consent authority must consider:

- a) whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

The discussion under Clause 8 and Clause 11 concludes that the proposed development is incompatible with existing passive recreational uses of the river in accordance with the objectives of zones 6(a) and 6(b).

It is also concluded that the proposed development is inconsistent with the objectives of the 7(a), 7(d), 8(a) and 2(a) zones.

- b) in the case of unzoned land that is below the mean high-water mark of the ocean or an estuary, bay, lake or river:
  - (i) whether or not the proposed development would alienate the use of the waters of the ocean, estuary, bay, lake or river from recreational uses or from commercial fishing and, if so, whether there is sufficient area in the locality for those uses to mitigate the adverse effect of the proposed development on those uses, and
  - (ii) the provisions of any coastal, estuary or river plan of management in force from time to time that applies to the unzoned land or land in the vicinity, and
  - (iii) any impact the proposed development may have on the natural environment.

The proposed development conflicts directly with passive recreational uses of the river such as sailing, kayaking, canoeing, bird watching, recreational fishing, sightseeing and the mooring of vessels such as houseboats. Commercial fishing is more often undertaken in open waters beyond the Tweed Bar and beyond the area of operation proposed.

The channel marked for operations in this area is limited and all river users must share this space. In addition, the locality is a specific area of scenic and environmental interest for locals and visitors to the region.

The proposal is inconsistent with management plans produced by Council and the Maritime authority that regulate the use and formulate strategies to preserve and maintain the unique character of the Tweed River and environment.

The impact that the proposal may have on the natural environment is discussed later in this report. A thorough assessment has been provided by Council's Natural Resource Management Unit and refusal of the proposal has been recommended.

#### Clause 15 - Essential Services

The proposed development is predominantly on the Tweed River and therefore does not require the provision of essential services.

#### Clause 17 - Social Impact Assessment

In accordance with DCP A13 a socio-economic impact assessment is not required in association with this proposal.

#### Specific Clauses

#### **Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land**

The eastern portion of the Fingal Boat Harbour site is zoned 7(a). More importantly, the uncoloured land upon which the proposal is to take place is located adjacent to land zoned 7(a).

The objective of this clause is:



- to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed.

In relation to the proposal, the consent authority must take into account 'the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest'.

The proposal is at odds with both the objective of this zone and the objective of this clause. It is not in the environmental and economic interests of the area of Tweed to support the proposal as it impacts negatively and cumulatively on sensitive environmental areas of significance.

### **Clause 29 – Development adjacent to Zone 8(a) National Parks and Nature Reserves**

The proposal extends to the river north of Fingal Head boat harbour adjacent to Ukerebagh Nature Reserve, a State significant wetland.

The objective of this clause is:

- to ensure that development of land adjacent to Zone 8(a) does not have a significant impact on wildlife habitat.

The proposal is not consistent with the management and appropriate use of the reserve in accordance with the *National Parks and Wildlife Act 1974*. The proposed development does not ensure a high level of protection for this area and resultant disturbance may lead to a significant and permanent impact on wildlife habitat.

### **Clause 31 – Development Adjoining Waterbodies**

The relevant objective of this clause is:

- to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.

The proposal does not impact upon the provision of adequate public access to waterways given that the Fingal Head boat ramp is available to the public.

In the issue of consent, the following matters relevant to the application must be considered and the consent authority must be satisfied that:

- a) the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and
- c) the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the *Local Government Act 1993* that applies to the land or to land that may be affected by the development.

The development is clearly not compatible with plans of management adopted by Council and as a result, the integrity and function of the riverine / estuarine area may be compromised.

### **Clause 34 - Flooding**

The whole of the operation area and adjacent land is considered to be flood prone. It is noted that higher levels of the river resulting from flooding increases the risk of impact upon river banks and habitat within the riverine / estuarine area.

### **Clause 47 – Advertising Signs**

Advertising permitted on a waterway and a vessel within navigable waters is regulated by Clauses 10 and 27 of SEPP 64.

An objective of Clause 47 of the TLEP is to ensure that outdoor advertising:

- does not detract from the rural character or scenic qualities of the area of Tweed.

The proposed vessel has extensive visible external signage with third party advertising signage promoting sponsors such as ProWake (retail company), Holden, Liquid Force, Tigé Boats and 'Monster Energy' drinks. The external advertising detracts from the scenic character of the waterways and is not consistent with this clause.

### **Clause 54: Tree Preservation Order**

Clause 54 of the TLEP provides for the protection of vegetation for reasons of amenity or ecology by way of a Tree Preservation Order.

The subject site (boat ramp site) is covered by the 2004 Tree Preservation Order in the eastern 7(a) zoned portion of the site and the 2011 Tree Preservation Order (Koala Habitat Study Area) over the whole site.

The proposal does not involve the removal of any vegetation.

No further issues have been identified and this Clause is deemed to be satisfied.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### **Clause 15: Wetlands or Fishery Habitats**

The primary concern in relation to this clause is the possible impact on and loss of habitat within wetland environments that may be compromised by the proposal. As such, the proposal is inconsistent with Clause 15.

##### **Clause 32B: Coastal Lands**

This clause applies to land (coastal river, estuaries and islands) within the region to which the NSW Coastal Policy 1997 applies. The 1997 Coastal Policy has as its central focus the ecologically sustainable development (ESD) of the NSW coastline and is based on the four principles of ESD contained in the Intergovernmental Agreement on the Environment (IGAE) signed in 1992:

- conservation of biological diversity and ecological integrity
- inter-generational equity
- improved valuation, pricing and incentive mechanisms, and
- the precautionary principle.

ESD is particularly relevant to the coastal zone in view of the nature of the coastal environment and the varied and intense demands placed on its resources.

Of these four principles, the proposed development is inconsistent with three. The nature and intensity of the proposed development threatens critical habitat and compromises the preservation of biological diversity. It does not assure that essential natural and cultural resources of the coastal zone are preserved for the benefit and enjoyment of future generations. The precautionary principle operates in this instance as locational considerations are critical and environmental impacts are uncertain but potentially significant.

Clause 75: Tourism development

Of particular relevance is Clause 75(1)(c) which states that council must not grant consent to tourism development unless it is satisfied that *the development will not be detrimental to the scenery or other significant features of the natural environment*. It has been established that the nature and intensity of the proposal has the capacity to affect shorelines and critical habitat located within the river and upon shorelines. As such, the proposal is inconsistent with this clause.

Clause 76: Natural tourism areas

The operational area proposed by the applicant is a natural tourism area. It adjoins nature reserves, Crown land, protected areas and is, in the opinion of Council, a natural area with qualities which make it a major attraction. The physical setting of the proposal is 'coastal'. This category includes foreshores, dunes, coastal lakes, wetlands and estuaries, headlands and the immediate environs.

Nature reserves are areas of special scientific interest containing wildlife or natural phenomena. In these reserves, management practices aim at maximising the value of the area for scientific purposes. Because they are preserved for their scientific value and are usually small in area, public access to them is generally limited.

Most ocean headlands, coastal foreshores, river foreshores and beaches are Crown land. Protected areas include coastal, habitat and scenic protection zones and specially designated areas under SEPPs 14 and 26.

Assessment of the application must take into account the regional policy: 'Tourism Development Near Natural Areas: Guidelines for the North Coast'. This policy was created to expand upon the basic concepts put forward in the NCREP and relates specifically to tourism developments the attraction of which depends on their proximity to major natural areas. The aim of the guidelines is to encourage the development of viable yet environmentally sensitive tourism developments. Specifically it aims to:

- promote developments which enhance rather than erode the values of the adjacent natural areas
- encourage a broader awareness and understanding of the natural areas of the North Coast
- identify the potential markets for tourism developments adjacent to major natural areas and the type of facilities suited to those areas
- assist potential developers and landowners in developing appropriate tourism projects, taking into account location, scale, site, design, operations and feasibility
- provide guidance for local councils to assess applications for tourism developments of this type

- set out a feasibility assessment procedure to be followed in developing a proposal.

The policy states that any tourism development near a natural area needs to be compatible with the prime purpose of the natural area. In this case, the prime purpose of the natural area is conservation of critical habitat. Passive recreational activities within the locality are aimed at the enjoyment of the natural area and appreciation of conservation initiatives.

The major issues of tourism in natural areas arise from the interaction between conservation, development and planning objectives. Essential conservation issues relate to maintenance of the natural and cultural resources of the area and their protection for the long term benefit of people and for the wildlife dependent on the area.

Appropriate forms of development are encouraged with regard to the nature of the recreation use and should allow a greater number and wider cross-section of visitors to enjoy and appreciate the natural area. It is important that such developments respect natural character and not detract from the natural values of the area.

Essential planning issues centre on achieving environmentally sensitive development – an environmentally sustainable development that can provide benefits but not decrease the natural values or options available to future generations. The policy advocates that any tourist development adjacent to a natural area must limit its proposed activities to those which will not threaten the value or integrity of the natural area and that activities which pose a threat should be excluded altogether.

In addition, the tourist development should be sufficiently separated from the natural area so that the noise it generates does not cause nuisance to users of the natural area or distress its native fauna. Scale of development must be limited so that it does not dominate the natural area or cause use of it to exceed its environmental capacity.

Recreation facilities recommended in coastal lake, estuary and beach areas include the provision of equipment such as canoes, sail boards and other unpowered craft which provide access to the area's main waterways, beaches etc. Any educational facilities should be aimed at promoting an understanding of the values of the natural environment.

It is considered that the proposed development is inconsistent with the objectives of this clause.

Clause 81: Development adjacent to the ocean or a waterway

Clause 81(1)(c) requires council to be satisfied that the development is consistent with the principles of any foreshore management plan applying to the area. The Tweed River Estuary Bank Management Plan 2000 addresses the impact of boat wake on the entire river bank over which a vessel is travelling. The proposal is dependent upon the creation of wake in order for commercial coaching clinic activities to take place. As such, it is in direct conflict with the aims and objectives of the aforementioned management plan.

The Tweed River Estuary Bank Management Plan 2000 is currently under review. It is anticipated to be released in the first instance as a wake impact study early in 2012 with the final management plan to follow at a later date.

### SEPP No. 14 - Coastal Wetlands

The aim of this policy is to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the State.

SEPP 14 wetlands are located on the subject site (Fingal Head Boat Harbour) and on adjacent land to the north managed by the Tweed Byron Local Aboriginal Land Council. They also cover most of Ukerebagh Nature Reserve, Tony's Bar and Lillie's Island / Chinderah Bay on the western side of the river. The SEPP 14 100m buffer extends into the waterway.

Clause 4(2) states that 'this policy does not apply to land dedicated or reserved under the [National Parks and Wildlife Act 1974](#) as an Aboriginal area, historic site, national park, nature reserve, state game reserve or state recreation area.' This would include land zoned 8(a) under the TLEP 2000 (Ukerebagh Nature Reserve).

Clause 7 outlines 'restriction on development of certain land' (clearing, constructing a levee, draining, filling) that require the concurrence of the Director-General. The proposal does include these actions.

The proposed development is not consistent with the aim of this SEPP in that it does not preserve and protect coastal wetlands in the environmental and economic interests of the State.

### SEPP No. 26 - Littoral Rainforests

The aim of this Policy is to provide a mechanism for the consideration of applications for development that is likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state.

SEPP 26 areas are located on land within proximity of the Fingal Head boat ramp to the east, north and south of Lagoon Road on the eastern side of the river and on the western side opposite the boat ramp site where the 100m buffer area extends into the river.

In accordance with Clause 7(1), the following acts are considered 'designated development' which require consent and concurrence from the Director-General: *erect a building, carry out work, use land for any purpose, or subdivide it, disturb, change or alter any landform or disturb, remove, damage or destroy any native flora or other element of the landscape or dispose of or dump any liquid, gaseous or solid matter.*

Within the 100m buffer zone, the following acts require consent: *erect a building, disturb or change or alter any landform or disturb, remove, damage or destroy any native flora, or dispose of or dump any liquid, gaseous or solid matter.*

It is unknown whether the proposal will damage littoral rainforest areas but as the buffer extends into the water adjacent to the proposed operational area, it is possible that there may be impact upon native flora within those areas.

### SEPP No. 64 – Advertising and Signage

Clause 10 of this policy prohibits advertisements within any of the following zones or descriptions:

- environmentally sensitive area
- heritage area (excluding railway stations)

- natural or other conservation area
- open space
- waterway
- residential (but not including a mixed residential and business zone, or similar zones)
- scenic protection area
- national park
- nature reserve.

In addition, Clause 27 of this policy prohibits advertisements within any navigable waters except an advertisement on a vessel that is ancillary to the dominant purpose of the vessel.

The waterway is uncoloured land within an environmentally sensitive area. Assessment of development within the waterway is related to adjoining zones which include descriptions such as 'natural or other conservation area', 'open space', 'residential', 'scenic protection area' and 'nature reserve'.

Third party advertising such as that incorporated into the proposal is not permitted. As a commercial vessel, only advertising which is ancillary to the dominant purpose of the vessel is permitted.

As such, acceptable visible external signage on the vessel would reflect the actual name of the business eg. pro-wake academy.

#### SEPP No 71 – Coastal Protection

Aims of this policy are as follows:

- a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- e) to ensure that the visual amenity of the coast is protected, and
- f) to protect and preserve beach environments and beach amenity, and
- g) to protect and preserve native coastal vegetation, and
- h) to protect and preserve the marine environment of New South Wales, and
- i) to protect and preserve rock platforms, and
- j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the [\*Protection of the Environment Administration Act 1991\*](#)), and

- k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- l) to encourage a strategic approach to coastal management.

Land on the subject site and on either side of the river is described as a *sensitive coastal location*, primarily land within 100m above mean high water mark of the sea, a bay or an estuary. Some of the operational area includes land to which SEPP 14 applies and land reserved / dedicated under the *National Parks and Wildlife Act 1974*.

Assessment of the proposal involves consideration of the matters for consideration at Clause 8 of this policy, as follows:

- a) the aims of this Policy set out in clause 2,
- 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,
- c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
- d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- 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,
- f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
- 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,
- 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
- i) existing wildlife corridors and the impact of development on these corridors,
- j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
- k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
- l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
- m) likely impacts of development on the water quality of coastal waterbodies,

- n) the conservation and preservation of items of heritage, archaeological or historic significance,
- 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,
- 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
  - ii. measures to ensure that water and energy usage by the proposed development is efficient.

An assessment of the proposal against Clause 8 highlights that the proposal is not consistent with the aims of the policy as set out in Clause 2, specifically but not limited to, a), e), h) and k). The nature and intensity of the proposal is unsuitable for and incompatible with, the surrounding area. It conflicts with measures to conserve animals and plants and their habitats, and fish and marine vegetation and their habitats. It impacts upon existing wildlife corridors, in particular for migratory shore birds. The cumulative impact of the proposed development on the environment is not considered sustainable.

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

The shire-wide Draft Local Environmental Plan was placed on exhibition in 2010. It is anticipated that the revised draft LEP will be placed on exhibition in 2012. Draft zoning includes new zoning of the currently 'uncoloured' and unzoned waterway / foreshore roadways / pacific motorway and islands. The draft LEP contains substantial revision of development descriptions.

The following table clarifies changes from current zoning to draft zoning for land on the subject site, the waterway and adjacent zones for reference purposes.



Table 1:

	Zoning under TLEP 2000	Zoning under draft shire-wide LEP 2010
1	Uncoloured Land	W3 Working Waterways (north of Pacific Motorway Bridge) W2 Recreational Waterways (south of Pacific Motorway Bridge) SP2 Infrastructure (Pacific Motorway and Bridge) RE1 Public Recreation (Eastern foreshore road reserves)
2	2(a) Low Density Residential	R2 Low Density Residential
3	6(a) Open Space	RE1 Public Recreation E2 Environmental Conservation
4	6(b) Recreation	RE2 Private Recreation
5	7(a) Environmental Protection (Wetlands and Littoral Rainforests)	E2 Environmental Conservation
6	7(d) Environmental Protection (Scenic/Escarpment)	E2 Environmental Conservation
7	8(a) National Parks and Nature Reserves	E1 National Parks and Nature Reserves (prohibited)

The proposal utilises a public 'boat launching ramp' to launch the commercial vessel in draft zone RE1 (Public Recreation) and draft zone E2 (Environmental Conservation) in order to undertake commercial activity on the Tweed River which is a waterway draft zoned W2 (Recreational Waterways) and W3 (Working Waterways). The proposal essentially utilises the Tweed River, a public recreation area, as a 'business premises' in order to conduct a business. There is no equivalent description in the draft LEP of 'tourist facilities' which applies under the current TLEP. 'Charter and tourism boating facility' and 'Recreational facility (outdoor)' do not apply.

Permissibility within zones:

Consideration of permissibility in adjacent zones does not apply with regard to the draft LEP as the waterway will no longer be unzoned.

A 'business premises' is prohibited by way of Item 4 in the RE1 Public Recreation zone, the E2 Environmental Conservation zone, the W2 Recreational Waterways zone and the W3 Working Waterways zone.

Definitions:

**boat launching ramp** means a structure designed primarily for the launching of trailer borne recreational vessels, and includes associated car parking facilities.

**business premises** means a building or place at or on which:

(a) *an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*

(b) *a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.*

**Note.** *Business premises are a type of commercial premises - see the definition of that term in this Dictionary.*

**charter and tourism boating facility** *means any facility (including a building or other structure) used for charter boating or tourism boating purposes, being a facility that is used only by the operators of the facility and that has a direct structural connection between the foreshore and the waterway, but does not include a marina.*

**recreation facility (outdoor)** *means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).*

**waterway** *means the whole or any part of a watercourse, wetland, waterbody (artificial) or waterbody (natural).*

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The provisions of this DCP do not make specific reference to car parking requirements for commercial boating operations. The matter has been discussed with Council's Traffic Engineer. Fingal Head Boat Harbour parking facility is generally at full capacity on weekends (64 formal spaces) and parking associated with a commercial activity will compete with parking required for general public recreational purposes. There is no capacity to cater for designated parking for the proposal or to formalise parking within the Fingal Head Boat Harbour.

A4-Advertising Signs Code

Third party advertising signage is visible on the exterior of the proposed vessel to be utilised as part of the development application. There is no specific reference within this code to signs that are not located on land. However, the aims of this DCP include the following which may be relevant to the location of advertising signage on a vessel whilst located on a waterway.

- Ensure that advertising signs do not detract from the scenic beauty and amenity of the shire

- Ensure that advertising signs do not reduce the safety of any road, pedestrian path or navigable waterway.

As previously discussed, Clause 27 of SEPP 64 directly addresses advertising signage on vessels within navigable waters.

Tweed City Centre Draft DCP 2009

This draft DCP extends the area to which the draft Tweed City Centre LEP 2010 relates to incorporate Tweed South character precincts as shown below:

FIGURE 2-2: CHARACTER PRECINCTS – SOUTH

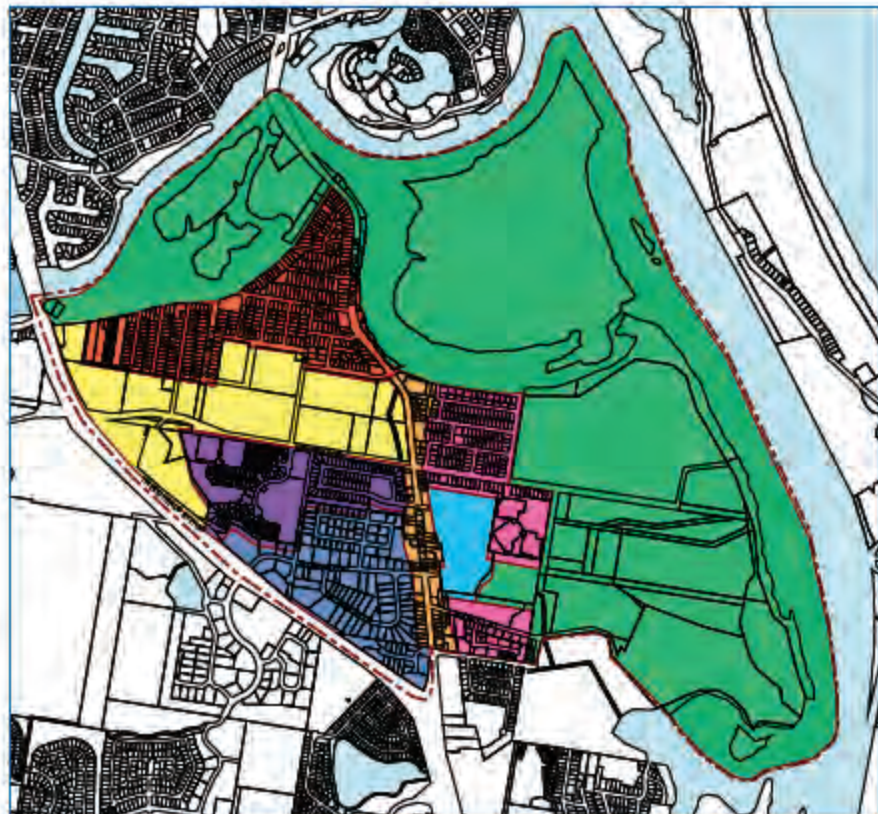
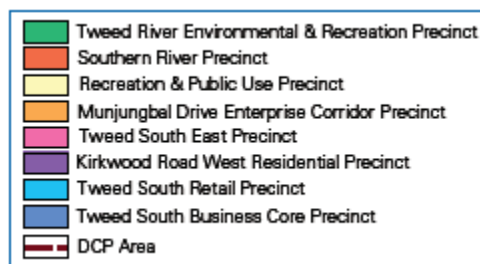


Figure 3: Tweed South Character Precincts



Legend

Land adjacent to and within the currently unzoned waterway is located within the Tweed River Environmental & Recreation Precinct which is described as ‘the major natural area within Tweed Heads City’, comprising of ‘significant wetland areas, watercourses and the golf course’. The significant biodiversity of the area is recognised. Development is recommended to be limited to ‘land uses that complement the natural qualities of the precinct, and have tourist and recreational qualities’.

Tweed River Management Plans:

There are a number of management plans written for the Tweed River which outline values, issues and management strategies for the river.

Lower Tweed Estuary River Management Plan 1991

Prepared by NSW Public Works Department and based on a comprehensive suite of biophysical and socio-economic studies, this plan sets broad objectives for the use and management of the Tweed Estuary. Of significant note is the high level of protection recommended for migratory shorebird roosts in the area of the river subject to the application and the theme of development needing to be consistent with the fragile nature of the estuary ecosystem.

Tweed River Estuary Bank Management Plan 2000

As mentioned previously, the *Tweed River Estuary Bank Management Plan 2000* is currently under review. It is anticipated to be released in the first instance as a wake impact study early in 2012 with the final management plan to follow at a later date. The plan refers to the potential of boat wake waves causing an impact on the entire river bank over which the vessel is travelling, including those sites which are both exposed and protected from wind generated waves. Sites which are vulnerable to wave action, but protected from the wind, may start to erode due to boating activities, while erosion at sites which are already affected by wind waves may be compounded by boat wake.

Tweed River Estuary Recreational Boating Study 2008

The study was carried out to determine the level of facilities and services required to encourage an appropriate level of boating utilisation of the Tweed River Estuary and therefore is not relevant to the subject commercial application.

Tweed Estuary Boating Plan 2006 – 2010 (NSW Maritime)

The *Tweed Estuary Boating Plan 2006 – 2010 (NSW Maritime)* remains current and is now implemented by NSW Transport Roads and Maritime Services. The plan states that 'the Tweed presents a complex boating management challenge' due to a 'rapidly expanding catchment' and 'increased demands on the river'. Boating plans are designed to identify and protect the recreational and environmental values of a waterway.

Operational areas proposed by the applicant are captured in this document as 'Ukerebagh Island to Rocky Point', 'Rocky Point to Barneys Point Bridge' and 'Barneys Point Bridge to Tweed Broadwater'.

- Ukerebagh Island to Rocky Point:

One of the issues in this area is 'the effects of vessel wake action on the environmentally sensitive areas of Ukerebagh Island and Ukerebagh Nature Reserve'. This section of the river is considered to be very busy and safety issues have been raised regarding power vessels ignoring "No Wash" signage in both boat harbours.



Figure 4: Ukerebagh Island to Rocky Point

- Rocky Point to Barneys Point Bridge:

NSW Fisheries and the professional fishing industry value the Tonys Island / Shallow Bay area for its importance in terms of seagrasses and the density and diversity of benthic animals found there. This plan aims to discourage general access to these important habitat areas.



Figure 5: Rocky Point to Barneys Point Bridge

- Barneys Point Bridge to Tweed Broadwater:

Navigational restrictions include a large area of shallow water at Chinderah Bay and the stretch of water north of Lillies Island. There is an informal boat ramp located opposite the Chinderah Bay Café. Values for this area include the



Chinderah Bay / Lillies Island precinct as an important seagrass and mangrove area and as a nursery for a variety of benthos, fish and shellfish species, and the peaceful nature of this section of the river. Issues include all but the smallest of vessels impacting upon the extensive areas of shallow water and bank stability in an area near the entrance to Oxley Cove and an area between the Chinderah Boat Ramp extending to the revetment work at Jenner's Corner on the old Pacific Highway.



Figure 6: Barneys Point Bridge to Tweed Broadwater

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

Clause 92(a) Government Coastal Policy

The NSW Coastal Policy 1997 has as its central focus the ecologically sustainable development (ESD) of the NSW coastline and is based on the four principles of ESD contained in the Intergovernmental Agreement on the Environment (IGAE) signed in 1992:

- conservation of biological diversity and ecological integrity
- inter-generational equity
- improved valuation, pricing and incentive mechanisms, and
- the precautionary principle.

ESD is particularly relevant to the coastal zone in view of the nature of the coastal environment and the varied and intense demands placed on its resources.

Of these four principles, the proposed development is inconsistent with three. The nature and intensity of the proposed development threatens critical habitat and compromises the preservation of biological diversity. It does not assure that essential natural and cultural resources of the coastal zone are preserved for the benefit and enjoyment of future generations. The precautionary principle operates in this instance as locational considerations are critical and environmental impacts are uncertain but potentially significant.

- (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 operational area along Tweed River and the subject site are not located on the coastal foreshore and are not included in coastal hazards mapping.

**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 Terranorra Broadwater (adopted by Council at the 15 February 2011 meeting)**

The subject site is not located within the Cobaki and Terranorra Broadwater Catchment. The eastern boundary of the catchment is Boyd's Bay Bridge over the Terranorra Inlet. This Plan is 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**

Water

Regulation of the use of navigable waters of the Tweed River and operation of a vessel are the jurisdiction of NSW Transport Roads and Maritime Services (formerly NSW Maritime Authority) and will be guided by their interpretation of the Tweed River Boating Plan of Management and the Marine Safety Act 2005. This regulation covers issues such as noise, speed, wake generation and the impact of the operation on other river vessel users.

Noise and Vibration

The applicant states that operations are below the 75dB limit imposed by NSW Transport Roads and Maritime Services. This has been noted by the authority. Onboard noise such as that from stereo speakers is generally regulated by way of Council condition as noted by the Environmental Health Unit. However, it is noted that Council may only be able to legally impose conditions that will affect land based activities such as parking, the use of boat ramps and hours of operation. This excludes the issue of associated noise emanating from water based activities.

Cumulative Impacts

The ongoing intensity of operations within a growing water sports industry and the resultant impact upon adjoining land and sensitive environmental areas is considered to be an unacceptable cumulative impact.

Natural Resource Management

The proposal was referred to the Waterways Program Leader for review and an assessment against relevant Council policy. Comment has been made from the perspective of potential impacts on the environmental values of the Tweed Estuary. Environmental values have been identified in discrete locations within the overall operating area proposed by the applicant and a description of potential impacts on environmental values is presented.

Issues that are of significance to the consideration of this proposal include:

- wake impacts on river bank erosion
- impacts on estuary habitat (seagrass and mangroves)
- impacts on the use of the estuary by shorebirds and other wildlife
- impacts on residents and other recreational values.

Figure 7 shows the location of sensitive environmental receptors in the area proposed for use by the applicant. Red lines indicated the proposed boundaries of the operating area.



Figure 7. Proposed operating area and location of specific environmental receptors

Each of the areas above is presented in more detail in figures 8-11, where a brief description of environmental values is provided.



## ENVIRONMENTAL VALUES

### *Area A - Kerosene Inlet*



Figure 8 Area A – Adjacent to Kerosene Inlet

The most sensitive environmental value in proximity of Area A, Kerosene Inlet (and Area D, Tony's Bar) is the frequent presence of roosting shorebirds. Shorebirds which utilise these areas for resting include both migratory and local species and their disturbance by vehicles, vessels, people and domestic animals is a significant threat to their populations in the Tweed estuary (Rohweder, 2003). The Tweed estuary provides habitat for several threatened species (NSW TSC Act 1995) and species which are included in international agreements on shorebird conservation (JAMBA and CAMBA).

A summary of bird roost use, quality and threats in 2003 (Rohweder, 2003), found that from amongst all Tweed Estuary shore bird roosts, Kerosene Inlet and Tonys Bar scored highest for biological attributes, had highest species richness, supported greatest numbers of priority coastal species and threatened species and a high proportion of the estimated population size for priority coastal species and threatened species.

The shore bird roost at Kerosene Inlet, which is located at its north eastern extremity closest to the Tweed River, received the highest threat scores in the Tweed, due mainly to the presence of development proposals, high levels of recreational activity and impacts from mangrove encroachment.

Kerosene Inlet and Tonys Bar are critically important shorebird habitats at both high and low tide. The high level of threat experienced at both Tonys Bar and Kerosene Inlet makes them the highest priority for shorebird habitat protection in the Tweed Estuary, (Rohweder, 2003).

### ***Area B – Ukerebagh Nature Reserve***



Figure 9 – Area B, Ukerebagh Nature Reserve

Ukerebagh Nature Reserve provides habitat for shore birds at its north eastern tip and adjacent to the eastern channel opening.

The majority of the eastern foreshore is not protected by rock armour, making it one of the only sandy beaches in the lower Tweed estuary. The foreshore supports mangroves and saltmarsh, and the reserve is almost completely covered by a SEPP 14 (State significant wetland) designation.

The specific objectives for Ukerebagh Nature Reserve are:

- To protect and maintain the diversity of native plant communities, particularly littoral rainforest and salt marsh.
- To ensure impacts from surrounding residential areas are minimised.
- To provide for low levels of passive, nature based recreation not requiring visitor facilities. (NSW National Parks, 1999).

South of the Ukerebagh Nature Reserve the foreshore adjacent to the Tweed Golf Course also supports scattered seagrass and mangroves, particularly in the southern boundary of the golf course, adjacent to Tonys Bar.



**Area C and D – Fingal Foreshore and Tonys Bar**

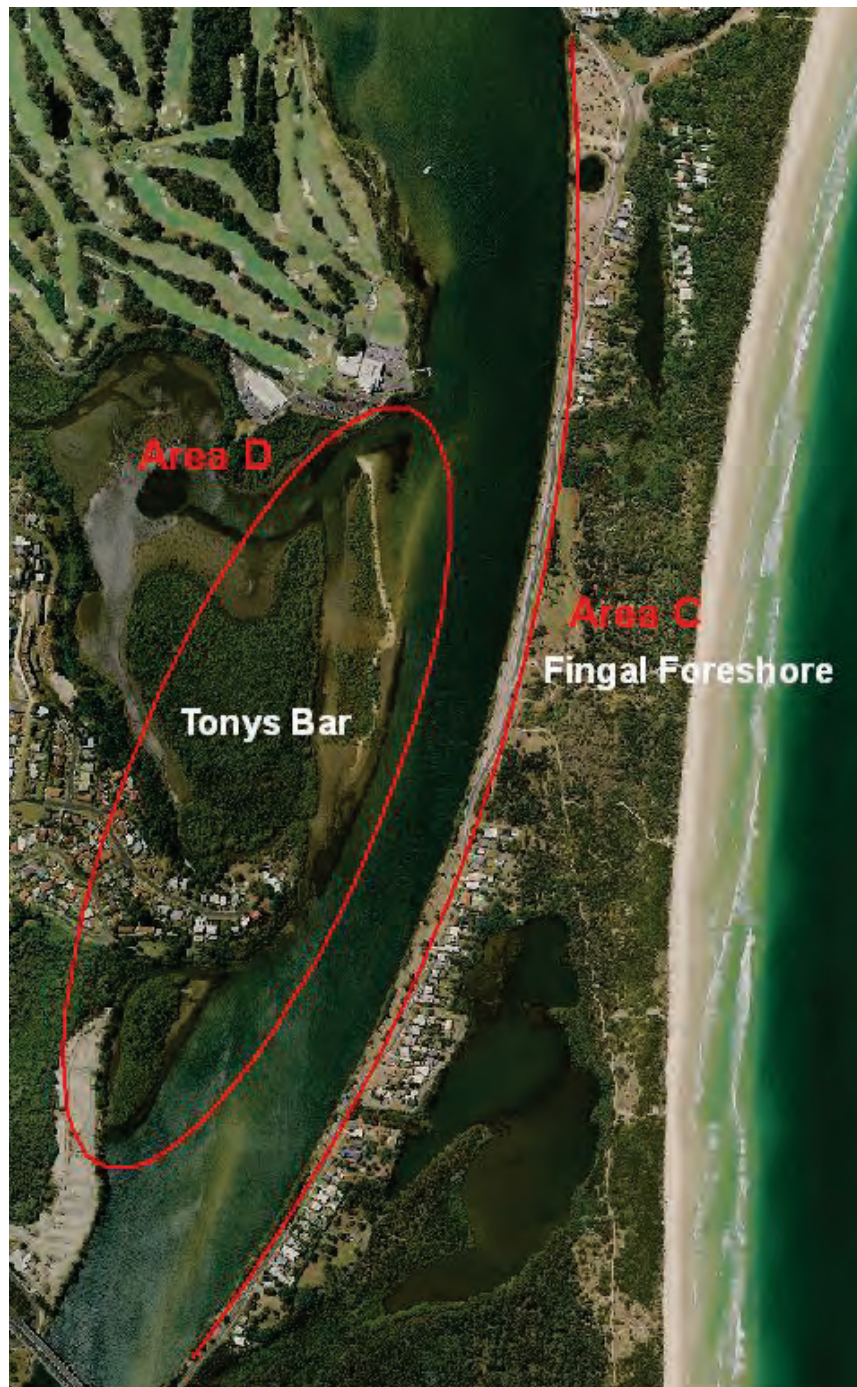


Figure 10 – Area C and D, Fingal Foreshore and Tonys Bar

Tonys Bar is located in one of the narrowest sections of the river and is one of the most important shorebird roosts in the lower Tweed Estuary. It is fringed by seagrass. As noted in section A, Tonys Bar is classified as having the highest requirement for protection as a shorebird habitat in the Tweed Estuary.

The Fingal foreshore runs for approximately 2.5 km from the new Fingal Boat Harbour to Barneys Point. The river bank is rock armoured for the entire length, and in places the revetment needs maintenance and repair. Houses are located on the eastern side of Fingal Road. The river bank is popular for recreation, though opportunities for swimming are limited due to the presence of a rocky bank.

**Area E – Chinderah Bay and Lillies Island**



Figure 11. Area E, Chinderah Bay and Lillies Island

Chinderah Bay and Lillies Island are fringed on the eastern and southern side by one of the largest sea grass beds in the Tweed Estuary. The spit of land at its southern boundary is swamp sclerophyll and regenerating littoral rainforest and is eroding on its unprotected, southeast shoreline.

**POTENTIAL IMPACTS**

The potential impacts of the proposed operation on environmental values outlined above are created by:

- Wake
- Activity and visual disturbance
- Noise

Given that regulation of vessel noise is a function of NSW Transport Roads and Maritime Services under their delegated enforcement of the POEO Act, this issue will not be given further consideration in this submission.

The impacts of wake and disturbance are discussed with respect to specific locations in the river reach below.

## Wake

Studies of wake generated by wake board boats have confirmed that these vessels have a wake with a wave energy that can have a significant impact on river bank erosion.

*“The energy within a boat wake wave may cause damage to a shoreline by initiating sediment transport. Damage may be caused by the effect of a single wave or the cumulative effect of several wave trains from many boats. Often the general public are concerned with waves of observably large amplitudes, however damage caused by a wave is a function of both the wave height and wave period. The preferred criteria for analysing the relative effects of waves is, therefore, wave energy; a function of both wave height and wave period.” (Glamore, 2007)*

This research, which included a full-scale field test, found that wave energy produced by a wake board boat was almost five times greater than that produced by a water skiing boat.

It can be expected that the applicant's activities will include frequent starting, stopping and turning within the river reach in which it is operating. The proposed activity will maximise the potential for and duration of wake generation within the area in which it operates on any given day.

Wake generated by the proposed vessel has the potential to affect environmental values on both banks of the Tweed River. This includes Ukerebagh Reserve (Area B), Fingal Foreshore (Area C), Tonys Bar (Area D) and Chinderah Bay/Lillies Island (Area E).

Wake also has significant potential to disturb other river users, for example, other small fishing craft, canoeists and/or houseboats. Impact of the proposal in this regard is the concern of NSW Maritime Authority and not within the ability of Council to have full knowledge of or regulate. It has not been considered further in this submission.

### *Ukerebagh Reserve (Area B)*

There are clear signs of erosion on the eastern foreshore of Ukerebagh Nature Reserve, evidenced by numerous large trees that have fallen onto the beach. The process leading to this erosion is likely to be wind wave dominated, given the large fetch over which prevailing winds travel and therefore potential for wind wave generation in this area.

Wake reaching Ukerebagh Island generated from a boat operating in the channel (closest to the eastern side of the river, typically 100-300 m from the western shore), will be attenuated by the distance over which it would pass before breaking on the shore of the nature reserve. At low tide when sand banks are exposed, wave energy reaching the western shore will be greatly reduced. Local channel and sand bank orientation is also directing tidal flow against this beach. It is likely that erosion in this area is dominated by natural processes, however existing wake generation would be an underlying contributing factor.

Importantly however, it is considered likely that the operation of a commercial wakeboard vessel in the navigation channel on the eastern side of the river has the potential to increase erosion of the foreshore of Ukerebagh Nature Reserve and the Tweed Golf Club foreshore, over and above that experienced due to natural wind wave and current generated erosion.



Tweed Shire Council's draft report, Impact of Wake on Tweed River Bank Erosion and Review of Tweed River Estuary Bank Management Plan (prepared by SMEC, October 2011) identifies the potential for waves resulting from towing activities to significantly alter the natural wave climate in this river reach if towing activities occur frequently. There will be a significant concentration and intensification of wake generation in this area if a commercial wake board school is approved.

*Fingal Foreshore (Area C)*

Wake could impact upon the rock lined walls of the eastern river bank, potentially exacerbating erosion in area where existing rock revetment needs repair and maintenance.

*Tonys Bar (Area D)*

This point in the river is one of its narrowest reaches, being approx 160m from the east bank to Tonys Bar. It is likely that operation of the proposed vessel in this vicinity would lead to high energy wake breaking directly onto Tonys Bar.

The eastern foreshore of Tonys Bar is a low profile sandy shoreline. The foreshore does not appear to be eroding due to either wind, tidal current or wake generated wave energy. Over the past 30 years Tonys Bar has grown in size and been colonised by mangroves, and sea grass beds have developed along its eastern shore. This is characteristic of an accreting environment.

It is difficult to confidently predict or assess the potential impact of the boat wake on the existing morphology of Tonys Bar. However it is considered unlikely, given the bars growth and increasing stability of over the past three decades, that a single vessel operation could significantly impact upon the stability of this area. In the short term however, as per the potential impact on Ukerebagh impacts, concentration and intensification of wake in this location due to a commercial approval could have detrimental impacts.

Of more concern in the vicinity of Tonys Bar is the potential impact of boat wake (or propeller damage) on seagrass beds.

Running propellers or vessel anchoring in shallow water over seagrass beds has a direct and well documented destructive impact. Should the proposed operation maintain a distance of at least 20m or more from shallow water and Tonys Bar seagrass beds, it is unlikely that the proposed operation would result in direct physical damage to the seagrass beds.

The other potential impact of the activity is turbulence from wake affecting seagrass beds, or turbulence from wake causing suspension of sediments to the degree that water turbidity is increased and seagrass loss occurs due to water quality degradation.

No information has been found which describes the impact of wake or wave energy on the sub-tidal environment where seagrass grows. It is likely that if a significant increase in wave energy were to be experienced in a site occupied by seagrass, loss would occur due to a destabilisation of the sediment in which it was rooted. Seabed instability is a major factor affecting the growth and distribution of seagrass. The potential for the proposed operation to destabilise submerged, seagrass colonised sediments in the vicinity of Tonys Bar is unknown.

It is unlikely that the proposed vessel and its wake could singularly affect water quality in the river reach proposed for operation to a degree that seagrass health could be affected. To do this it would have to mobilise a very large amount of fine sediment. Water quality affecting seagrass is controlled by catchment pollutant discharge, release of treated wastewater and river flow.

#### *Chinderah Bay and Lillies Island*

The potential for wake impact on the seagrass beds of Lillies Island is similar to that described above.

- It is considered likely that intensification and concentration of wake generated by a commercial wake board vessel could cause erosion of the foreshore of Lillies Island.
- It is considered unlikely that the vessel would operate in shallow water and thus cause physical destruction of seagrass through propeller damage.
- The potential impact of wake on the sub-tidal bed stability and condition of seagrass in the Lillies Island beds is unknown.
- It is unlikely that operation of the vessel could influence water quality in the Tweed River to the degree that seagrass condition would be changed.

The most significant potential impact of the operation in this area is wake erosion on the unprotected river bank immediately south west of Chinderah Bay. There is significant bank erosion occurring in this area, and highly probable that operation of a wake boarding vessel in this area would contribute to ongoing erosion.

#### **Activity and visual disturbance**

The primary environmental value of concern with regard to disturbance is the shorebird roosts at Kerosene Inlet (Area A), Ukerebagh Nature Reserve (Area B) and Tonys Bar (Area D).

Surveys undertaken by Sandpiper Ecological Surveys of the Tweed estuary shorebird population emphasise the local, regional and State importance of the lower Tweed estuary, particularly Kerosene Inlet and Tonys Bar, as shorebird roosts. Tonys Bar and Kerosene Inlet are priorities for habitat protection in the Tweed Estuary (Rohweder, 2003).

Disturbance of nesting, roosting and foraging shorebirds is a key factor contributing to their vulnerability. (DECC 2008). Disturbance of shorebirds causes them to make short period 'alarm flights'. This is a serious issue as it uses energy which they need to incorporate through feeding, and conserve, so that they may complete their gruelling migratory flights.

The applicant has stated that their operation will not involve landing on the shoreline within the area of operation. On this basis, assuming that the applicant complies with this commitment, it could be concluded that birds using these roosts would not be directly disturbed by clients or proposed operations, in the form of their walking on or accessing roost areas.

To determine whether or not the wakeboarding activity proposed will have an impact on bird occupation of the existing roosts, knowledge of the degree to which birds are disturbed by the passage of vessels or their noise is required.



A review of research on disturbance of roosting shorebirds by recreational vessels has shown that impact can have both short and long term effects, leading in severe cases to lack of breeding success and impacts on territorial occupation (Ambrose, 2009). It can be concluded that the noise and visual impact of a high powered vessel operating regularly, repeatedly and within close proximity of a shorebird roost would have a high potential to disturb birds, or prevent their landing to roost, and therefore have a detrimental impact on shorebird habitat and the long term future of these populations in the Tweed Estuary.

### **Conclusion**

The area proposed for use by the applicant supports some of the most important environmental values in the Tweed Estuary including extensive seagrass beds and critical shorebird roosts.

Approval of a commercial operation that is based upon a high powered vessel producing high energy wake and associated noise will increase the potential for damaging impacts on seagrass beds and shorebird roosts, over and above that which currently exists due to recreational activity. While recreational activity is largely confined to weekends, the applicant could operate throughout the day, on any day of the week, reducing the potential for quiet periods during which bird roosts remain undisturbed by boating activity.

Analysis of potential impacts in isolation suggests that the proposal will not have a clear, direct and acute impact over and above that which already exists due to present levels of recreational boating. It can however be concluded that in the long term, intensification and concentration of impacts, namely the constant and repetitive impact across all sensitive receptors, will have a cumulative detrimental impact across the river reach.

The Lower Tweed Estuary River Management Plan (PWD, 1991) states its primary aim as, "To sustain a healthy river". It contains a secondary aim of, "To educate all river users and development proponents as to the complexity, fragility and finite capacity of the river system."

It is considered that the proposal is inconsistent with the fragile nature of this part of the lower estuary, and that it increases the likelihood of boating activity exceeding the capacity of the ecosystem to accommodate boating impacts.

It is considered that approval of a commercial wakeboard operation is contrary to the aim of educating all river users and development proponents about the complexity, fragility and finite capacity of the river.

The Lower Tweed Estuary River Management Plan recommendations for the Tonys Bar and Rocky Point reaches of the River include:

- Habitat conservation and creation
- Create additional secure bird habitat on Tonys Bar for Little Tern and other vulnerable birds
- Seek a high level of protection for vulnerable bird habitats.

It is considered that commercial wake boarding in this reach of the Tweed River is clearly contrary to these management recommendations, in particular seeking a high level of protection for vulnerable bird habitats. It is therefore recommended that Council refuse the application.

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

Surrounding Landuses/Development

The nature of surrounding land uses is dealt with in detail earlier in this report under Clauses 8, 11 and 13 of the TLEP 2000. The nature and intensity of the proposal is inconsistent with surrounding land uses, passive recreational enjoyment of the natural area and the general lack of intensive development along the river foreshore.

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

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 10 August to Wednesday 24 August 2011. Submissions were received up until close of business Tuesday 30 August 2011. During this time, 39 submissions were received. After this time, 4 informal submissions were received.

Issues raised within the submissions are many and varied. A summary of the issues is provided below along with any response provided by the applicant following receipt of submission copies.

Summary of Submissions	Response from applicant
<ul style="list-style-type: none"> <li>• The application is premature and should be withdrawn given that the review of the Tweed River Estuary Bank Management Plan has not been completed</li> <li>• Lack of resources / infrastructure to monitor, police and enforce compliance of regulations and restrictions on wakeboarding activities and other dangerous jet ski and speedboat activities on the river</li> <li>• Residents are tired of being asked to be the eyes and ears of TSC</li> <li>• This operation only benefits the operators and TSC should not give away a huge asset for one company to destroy for little public benefit</li> <li>• There is only one area that allows commercial activity which is at the beachfront at Fingal Beach</li> <li>• The operation has nothing to do with the enjoyment of fauna and flora of the Tweed River</li> <li>• Fingal Head was classified in April 1989 by the National Trust as a Coastal Conservation Area thus</li> </ul>	<p>Our operation:</p> <ul style="list-style-type: none"> <li>• Complies with all NSW waterway rules and vessel survey standards</li> <li>• Has not received any fines</li> <li>• Has not been involved in any accidents</li> <li>• Prevents our students boats coming to the Tweed River on days of operation</li> <li>• Teaches our students about safety</li> <li>• Complies with the 75dbA noise standard</li> <li>• Is quieter than car traffic and road usage</li> <li>• Is not accompanied by loud music</li> <li>• Is only one boat on the waterway</li> <li>• Uses the waterway the same as the social boat user</li> <li>• Operates within the widest channel along the Tweed River enabling the minimum 60m rules to be adhered to</li> <li>• Does not use ballast to make the wake bigger</li> </ul>

Summary of Submissions	Response from applicant
<p>protecting the area from inappropriate development and ensuring that its unique environment was preserved for generations to come</p> <ul style="list-style-type: none"> <li>• Impact upon roosting sites for migratory birds and the delicate ecosystem (this is in addition to the daily impact of jet aircraft noise which has been brought to the attention of Air Services Australia)</li> <li>• Impact upon the critically endangered Beach Stone-Curlew (<i>esacus neglectus</i>) which has been sighted at Letitia Spit</li> <li>• Fingal Head has become a refuge for wildlife fleeing from areas of development such as south of Kingscliff and Banora Point</li> <li>• Impact upon dolphins frequenting this area of the river</li> <li>• Promotion of Fingal Head should be based on sustainable, low impact recreational activities – passive activities are not compatible with power boat usage</li> <li>• Impact upon businesses that promote the area as a place to come for a relaxed and peaceful experience</li> <li>• Impact upon passive enjoyment of the river and peaceful weekends (family picnics, swimming, bush / beach walking, cycling, sightseeing) detracts from the character of the area – a quiet day's fishing will be impossible</li> <li>• General water safety and amenity is compromised by creation of hazards to other users of the river (houseboats, sailboats, fishing, sightseeing, recreational skiers, kayaking, paddleboarding)</li> <li>• Disruption of local amateur fishing and teaching of junior anglers in</li> </ul>	<ul style="list-style-type: none"> <li>• Does not perform power turns</li> <li>• Does not refuel on water</li> <li>• Includes clear driver visibility over the windscreen of the boat – booster seat</li> <li>• Does not commence activity within 60m of moored houseboats, fishermen and canoeists</li> <li>• Slows down to 6 knots under the Pacific Hwy bridge</li> <li>• Keeps 60m off the shoreline rock revetment wall and other waterway users</li> <li>• Adheres to the 6 knot speed limit into Fingal boat ramp</li> <li>• Adheres to the no wake zone in front of Fingal Head Charters</li> <li>• Has an average speed of 20 miles per hour</li> <li>• Does not commence lessons before 8am</li> <li>• Includes regular servicing on the vessel and regular waterway checks on debris for participant safety</li> <li>• Does not run from a residential address</li> <li>• Has included wakesurfing which is not illegal behind the vessel but the minimum rope length is now restricted to 7m which prevents wakesurfing to occur</li> <li>• Utilises many different businesses around the area and brings in clients from overseas and around Australia</li> <li>• Has removed reference to Tweed Heads and Fingal Head from all online and print media since June 2011</li> <li>• Does not operate within 250m of Ukerebagh Island as prevented by</li> </ul>

Summary of Submissions	Response from applicant
<p>boats and on the bank</p> <ul style="list-style-type: none"> <li>• Disruption to young surf lifesaving members training on their skis and boards to develop their skills in calm water</li> <li>• It is unlikely that the applicant will adhere to any formal hours / days of operation</li> <li>• Future expansion of the business operating from Fingal Head boat ramp (“growing leisure activity”) leading to even more pressure on the river system</li> <li>• Increase in noise, traffic and near-collisions on the river consistent with the massive increase in boating numbers as seen over the last few years</li> <li>• The narrow nature of the river and navigation buoys in place at many points</li> <li>• Motor engine noise / high pitched noise of speedboats / loud music disturbing tranquillity of the area, making communications difficult for other river users and scaring away feeding birds and marine animals</li> <li>• The low frequency noise created by the vibration of high powered engines of wakeboats travels over water for large distances and cannot be contained by exhaust systems</li> <li>• Amplified music is being played from the boat on large stereo systems at levels louder than the engine as part of the subculture of this sport and is transmitted in all directions for significant distances</li> <li>• Current users of the boat ramp (apart from fishermen) launch and return to the car park to clean out the motors using the town water supply which would be well above 75dbA</li> </ul>	<p>the sand bar</p> <ul style="list-style-type: none"> <li>• Does not produce excessive noise levels that danger wildlife and roosting sites or cause a nuisance to Fingal Head residents – Minjungbal Drive produces far more road traffic and road noise than the river channel</li> <li>• Adheres to the highest safety standards.</li> </ul>

Summary of Submissions	Response from applicant
<ul style="list-style-type: none"><li>• Proliferation of vehicles and boats parked on public open space in a residential area advertising the company via branding</li><li>• Increase in traffic in and out of the boat harbour car park and the access road is unsuitable for high volumes of traffic</li><li>• The Fingal Head boat ramp is an overloaded facility and is over capacity on weekends</li><li>• Over 90% of vehicles parking at the boat ramp have Queensland registration due to high impact activities being banned from many waterways on the Gold Coast</li><li>• The boat should be removed from the water for refuelling</li><li>• Wake will cause bank erosion in a highly sensitive flooding / tidal zone – homes need to be protected by the river bank</li><li>• Rock walls are damaged in many places and bank erosion is taking place – they attenuate wash and are not designed to defend against a boat specifically designed to create wake</li><li>• There are no rock walls on the western side of the river and no protection</li><li>• Wakeboats created a larger wake than the 60 foot long whale watching vessel that works out of the golf club</li><li>• Wakeboats have been seen operating within 200m of the mooring area at Fingal Head clearly impacting upon houseboats and moored yachts which is incompatible due to damage caused by heavy wakes</li><li>• With power boats having to stay 60m from a sailing vessel the wakeboat would be in breach of</li></ul>	

Summary of Submissions	Response from applicant
<p>maritime regulations on any weekend when sailing occurs</p> <ul style="list-style-type: none"> <li>• Wakeboats travel 'nose up' and create a hazard where the driver is not visible to other river users</li> <li>• The wakeboats are too large which make them harder to stop and turn in an emergency</li> </ul>	

### Council Assessment of Submissions

Issues raised within the submissions have been dealt with in the body of the report where Council is the regulatory authority. NSW Transport Roads & Maritime Services (formerly NSW Maritime Authority) have jurisdiction for regulating the proposed use of navigable waters and the operation of the proposed vessel. They also are the consent authority in relation to advertising upon vessels. This authority has stated in their submission response that information provided by the applicant was inadequate to fully address the environmental issues.

It is clear that the applicant's response does not incorporate an applied knowledge and understanding of the significant environmental significance of the area. Nor does it consider the fragile state of the rock wall on the eastern side of the river in relation to bank erosion. There were many issues that the applicant did not address.

### Public Authority Submissions Comment

The application was referred to the following external agencies for consultation purposes (the proposal was not identified as integrated development):

- NSW Transport Roads & Maritime Services (formerly NSW Maritime Authority)
- Tweed Byron Local Aboriginal Land Council (TBLALC) – major land holder of adjacent land
- Office of Environment & Heritage (National Parks) – management / protection of adjoining land

The NSW Government Crown Lands Department were provided with a copy of the proposal by the applicant. A verbal discussion regarding the proposal was held with the department on 5<sup>th</sup> December 2011. Council's assessment of the proposal was supported.

NSW Transport Roads & Maritime Services have jurisdiction for regulating the proposed use of navigable waters and the operation of the proposed vessel. They also are the consent authority in relation to advertising upon vessels. The department is aware that the current level of third party advertising on the subject vessel is unauthorised.

Details in the documentation about noise levels emanating from the engine were noted and it was recommended that any stereo noise emanating from the vessel should be regulated by Council. However, Council is restricted in the placement of conditions relating to land-based activity only.

The Statement of Environmental Effects (including additional information supplied by the applicant following receipt of submission copies) was considered to be inadequate to fully address the environmental issues, particularly the impact of wash or wake on the foreshores surrounding the proposed area of operation.

TBLALC lodged a submission in August 2011 requesting refusal, highlighting concerns with the proposal and describing the proposal as a 'Gold Coast style action sport business'. An opportunity for a more formal response was provided to TBLAC but no further comment was supplied.

Concerns raised are as follows:

- Impact of noise upon residents on Letitia Road
- Impact upon roosting sites for endangered migratory birds and the compromise of the Australian Government's ability to meet its obligations under international treaties designed to protect breeding and roosting areas
- Damaged revetment walls leading to bank erosion
- Conflict with low impact eco tourism proposals being considered by TBLALC
- Conflict with ongoing traditional activities at traditional cultural sites accessed from the river and safety concerns.

The Office of Environment & Heritage supplied comment on 1<sup>st</sup> November 2011. Most of the issues raised by this department have been dealt with internally by Council's Community and Natural Resources Unit or by the assessing officer. The OEH provides clarification and confirmation of Council's position and states:

*It is likely that an increase of this activity to a commercial scale will generate significant wake within the Tweed River that will add additional impact to areas of unprotected foreshore. Much of the foreshore on the western bank of the river is not protected by revetment and much of the foreshore generally is unvegetated dredge spoil that provides high tide roosting habitat for shorebirds, while also highly prone to erosion.*

*The proposal adjoins Ukerebagh Nature Reserve for approximately one kilometre of the eastern shore. The 1999 Plan of Management (POM) for this reserve identifies foreshore erosion along the mideastern shore of Ukerebagh Island as "of particular concern" (POM section 3.2.1).*

*The proposal area has been identified as a significant conservation area for many shorebirds including migratory species covered by JAMBA and CAMBA international agreements. Records indicate that over one percent of the NSW population for Eastern Curlew and Whimbrel occur in the proposal area which triggers obligations under both treaties to protect and enhance all relevant habitats (POM section 3.2.3).*

*The proposal area contains significant estuarine and foreshore habitats including mangrove, seagrass and saltmarsh that have not been well considered in the application. In particular, OEH does not support the view in the DA that there is no seagrass within the area in question and we recommend that Council seeks further advice on this matter from NSW Fisheries.*



It was drawn to Council's attention that if the proposal resulted in significant impacts to threatened species that the proposal should be formally referred to OEH for issuing of Director-General's requirements for the preparation of a Species Impact Statement. Further, if the proposal affects any species requiring consideration under the *Environment Protection and Biodiversity Conservation Act 1999*, approval may be required from the Commonwealth Department of Sustainability, Environment, Water, Population and Communities.

Other matters referred to by OEH such as consistency with relevant policies and legislation, and impact upon areas of cultural and environmental significance have been dealt with in the body of this report. Seagrass locations within the operational area have been detailed adequately within the information provided by Council's Community and Natural Resources Unit.

**(e) Public interest**

The nature and intensity of the proposed wakeboarding coaching clinic is inconsistent with relevant environmental planning instruments, Council policy requirements and Tweed River management plans. The proposal is considered unsuitable and inappropriate for the subject site, given its conservation status and State environmental significance.

The proposal impacts significantly upon the amenity of the surrounding residential area and conflicts with passive shore-based and water-based recreational activities undertaken by locals and tourists within this major natural area.

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

As such, the application is not considered to be in the public interest and is recommended for refusal.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal.
2. Grant in-principle support for the proposal, and that officers bring back a further report to Council with possible conditions of development consent.

The Council officers recommend Option 1.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

Council will incur costs as a result of legal action, however, upon resolution of the matter the Land & Environment Court may award costs.

**POLICY IMPLICATIONS:**

The proposed development is inconsistent with policy directives within Council's management plans for the Tweed River.

The proposed development could potentially set an unwarranted precedent for inappropriate use of waterways adjacent to environmentally constrained sites.

**CONCLUSION:**

Important operational and cumulative environmental issues have been isolated during the assessment of the proposal that warrant its refusal. Further, management plans produced by Council and the Maritime authority highlight the need to protect ecology and reduce erosion within the vicinity of the Tweed River.

Accordingly, assessment of the proposal against the relevant statutory legislation and an internal referral to the Waterways Program Leader (Community and Natural Resources) has resulted in a recommendation for the application to be refused.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Historic Commercial Uses of the Tweed River (ECM 45597521)
-

**11 [PR-CM] Development Application DA11/0487 for a Two Storey Dwelling with Basement Garage, Gatehouse and Inground Concrete Swimming Pool at Lot 51 DP 1031933 No. 51 She-Oak Lane, Casuarina**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA11/0487 Pt1**

**SUMMARY OF REPORT:**

The subject application involves the erection of a new two storey dwelling house, basement car parking, an inground swimming pool on the northern side of the dwelling, and a gate house adjacent to the front boundary.

The proposal will be positioned on a building line of 8.31 metres and will have design and scale characteristics similar to other development within the Casuarina area. The proposal has gained the concurrence of the Casuarina Architectural Review committee. The rear property boundary will adjoin waterfront open space and this will result in minor overshadowing of this area. The application has been supported by an objection under State Environmental Planning Policy No. 1, which satisfactorily addresses the overshadowing issues.

The proposal was notified to two adjacent property owners and this did result in the receipt of four objections from interested persons. The main issues of concern raised in these submissions included bulk of building, heights, loss of privacy, overshadowing and inconsistency with existing scale and character of the Casuarina area. On the balance of assessment of these statutory and policy issues, the Council officers consider that this development application is worthy of approval, subject to conditions.

**RECOMMENDATION:**

**That Development Application DA11/0487 for a two storey dwelling with basement garage, gatehouse and an inground concrete swimming pool at Lot 51 DP 1031933; No. 51 She-Oak Lane, Casuarina be approved subject to the following conditions:**

**GENERAL**

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

[GEN0015]

[GEN0115]

3. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.

[GEN0300]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

4. 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. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

#### **5. Stormwater**

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
- \* As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to 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.

- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

6. 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 S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision 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 LG Act will then NOT be required.

[PCC1145]

7. The swimming pool waterline is to be relocated to be not closer than 450mm from the northern boundary. That is, the pool is not to be constructed on the boundary.

[PCCNS01]

8. The entrance gate house is to be positioned to be at least 3 metres from the She-Oak Lane boundary. It shall also be positioned not closer than 1.5 metres from the southern boundary.

[PCCNS02]

9. Show on the plans a suitably designed 2.2 metre high privacy screen which has a width of 3 metres. This is to be positioned directly opposite the main entrance to the dwelling and is to be positioned within the property boundary. This is required to prevent direct overlooking into the adjacent property from the entrance way.

[PCCNS03]

**PRIOR TO COMMENCEMENT OF WORK**

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and

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

[PCW0215]

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

[PCW0225]

12. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - \* in the name and licence number of the principal contractor, and
    - \* the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - \* the name of the owner-builder, and
    - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried

out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

13. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

14. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

15. 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 to the satisfaction of the Principal Certifying Authority.

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]

16. All roof waters are to be disposed of through properly jointed pipes to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2.

[PCW1005]

#### **DURING CONSTRUCTION**

17. Construction and/or demolition site work including the entering and leaving of 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]

18. **The roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

19. **All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**

[DUR0375]

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

[DUR0395]

21. **The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

22. **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 Occupational Health and Safety Regulation 2001.**

[DUR0415]

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

[DUR0905]

24. **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]

25. **All landscaping is to comply with the 88B Instrument pertaining to the site.**

[DUR1055]

26. 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]
27. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.  
[DUR1945]
28. **Swimming Pools (Building)**
- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 - 2003. (Refer Council's web site [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au))
  - (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
  - (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
  - (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.  
[DUR2075]
29. Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.  
[DUR2085]
30. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.  
[DUR2185]
31. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- (a) internal drainage, prior to slab preparation;
  - (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
  - (c) external drainage prior to backfilling.
  - (d) completion of work and prior to occupation of the building.  
[DUR2485]
32. **Plumbing**
- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
  - (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.  
[DUR2495]

33. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

34. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

35. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

36. Sewer connections within the 7(f) zone are to comply with the following:-

- (a) Two inspection shafts shall be provided to each lot. The first shall be provided immediately adjacent to the connection point provided by the developer. The second inspection shaft at 0.5 metres inside the 2(e) zone boundary on each property. Inspection shafts are to be finished at surface level with a standard bolted trap screw cap and concrete surround.
- (b) Pipe work size for all lots under this approval are to have a 100mm diameter sewer.

[DUR2695]

37. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

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

38. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

39. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with

**Council and emergency services before street number identification is provided.**

**The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.**

[POC0265]

- 40. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.**

[POC0435]

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

[POC0905]

## **USE**

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

[USE0175]

- 43. The building is to be used for single dwelling purposes only.**

[USE0505]

**REPORT:**

**Applicant:** Fitzgerald Holdings Qld Pty Ltd  
**Owner:** Fitzgerald Holdings Qld Pty Ltd  
**Location:** Lot 51 DP 1031933 No. 51 She-Oak Lane, Casuarina  
**Zoning:** 2(e) Residential Tourist, 7(f) Environmental Protection (Coastal Lands)  
**Cost:** \$650,000

**BACKGROUND:**

A development application has been received which involves the construction of a two storey dwelling which also has a basement carpark. An inground swimming pool is proposed on the northern side of the dwelling and a gate house is proposed adjacent to the front boundary.

The site is positioned on the eastern side of She-Oak Lane Casuarina and has fall towards the rear of the site. A two storey dwelling exists on the southern side of the property at 53 She-Oak Lane, whereas the site to the north at 49 She-Oak Lane is vacant. The rear of the property is bounded by environmentally protected coastal land (waterfront open space).

**SITE DIAGRAM:**

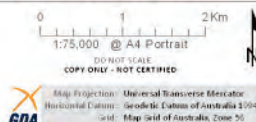


**Locality Plan**

Lot 51 DP 1031933  
No. 51 She-Oak Lane, Casuarina

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and non-absolute only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 06 February, 2012  
© Land and Property Management Authority (LPMA) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.



**Civic and Cultural Centre**  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2429  
W | www.tweed.nsw.gov.au  
E | planningreforms@tweed.nsw.gov.au



Filepath: Z:\GIS\FINAL\DRAWING\TEMPLATE\645644\11\1106\locality\1106\_1106\_A4.apr

Author: @BULBARK - Planning Information Unit

DATE PRINTED: 21 February 2012







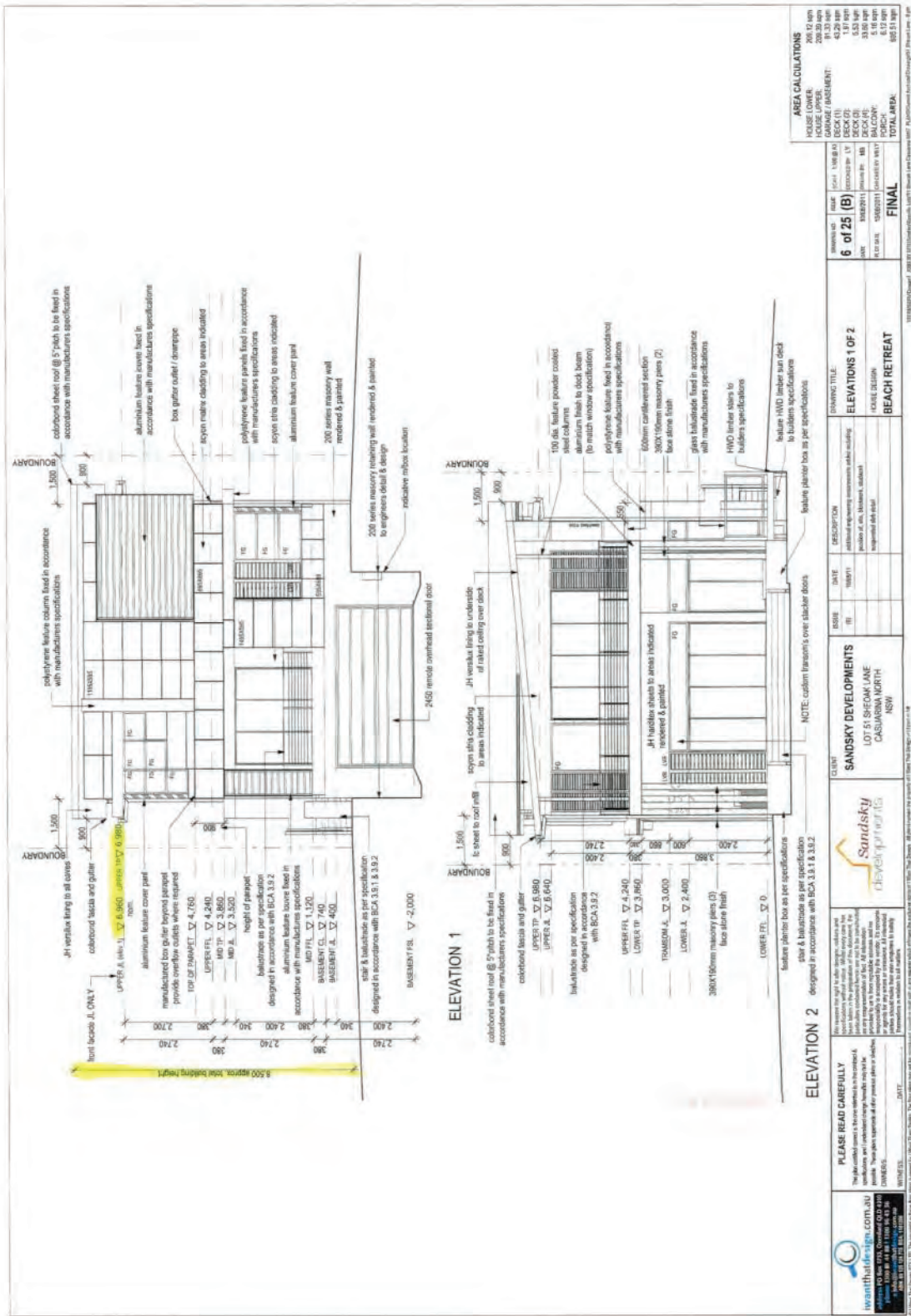














---

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the four principles of ecologically sustainable development. A BASIX Certificate has also been submitted with the proposal.

Clause 8 - Zone objectives

The subject site is zoned 2(e) Residential Tourist. The primary objective of the zone relates to the provision of family orientated tourist accommodation and related facilities and services in association with residential development.

The secondary objective permits other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use. The proposed development is consistent with the primary objective of the zone.

Clause 15 - Essential Services

All suitable essential services are provided to the property.

Clause 16 - Height of Building

The site is located in an area where three storey development is permissible.

The proposal is two storey by definition. The proposed height of the development (8.65m) complies with the three (3) storey control under the TLEP 2000 and 9m maximum height limitation affecting the subject site under Section A1 of the Tweed Development Control Plan.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the residential development within a residential area. The proposal is unlikely to have a significant social or economic impact in the locality.

Clause 35 - Acid Sulfate Soils

The site is mapped as disturbed terrain as the area has been filled.

An Acid Sulphate management plan for minor works has been submitted with the proposal.

Other Specific Clauses

None apparent.

**Draft Tweed Local Environmental Plan 2010**

The proposal is consistent with the objectives of this plan.



## **State Environmental Planning Policies**

### **SEPP (North Coast Regional Environmental Plan) 1988**

#### **Clause 32B: Coastal Lands**

This clause is applicable to the site and states that Council must not consent to the carrying out of development on urban land within the Shire if that development would result in the beaches or waterfront open space being overshadowed before 4pm midwinter (standard time) or 7pm midsummer (daylight saving time). Shadow diagrams submitted with the proposal indicate that the waterfront open space will be overshadowed before the stipulated times.

It is for this reason that an objection under SEPP1 has been submitted to accompany the application. The applicant's objection states:

*"It is submitted that the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:*

- *Existing buildings in Casuarina Beach result in overshadowing of the foreshore areas prior to the relevant times in both mid winter and mid summer.*
- *Existing trees on the foreshore dunal areas result in significant overshadowing of the foreshore reserve and beach prior to the relevant times.*
- *The immediate foreshore areas to be overshadowed are not useable passive open space areas and do not contain any public amenities or facilities at which members of the community would be expected to congregate. The overshadowing will therefore not alienate the physical use of the area.*
- *The shadows do not extend to the beach area during winter.*

*The NSW Government Coastal Policy contains, at Table 3, a strategic action in relation to beaches and waterfront open space, which is referred to in Clause 32B of the North Coast REP. The principle contained in the Coastal Policy is that:*

*"Beaches and waterfront open space will be protected from overshadowing. The standard to be applied will vary according to local circumstances, however, generally the standard to be applied is:*

*In cities or large towns, no overshadowing before 3pm mid winter and 6.30pm summer daylight saving time. Elsewhere, no overshadowing before 4pm mid winter and 7pm midsummer daylight saving time."*

*The policy contains a note relating to this standard which states that:*

*"The suggested standard in principle may be difficult to apply in highly urbanised environments. An LEP or Development Control Plan which is tailored to local conditions and which has the overriding objective of minimising overshadowing may be required in these situations".*

*It is apparent from the note to the policy that it is difficult to achieve the objective of nil overshadowing of waterfront open space or beach areas in urban environments and it is therefore submitted that strict compliance with this development standard is not appropriated in the circumstances of this case.*

*Council is therefore requested to uphold the objection and grant consent to the application."*

After the review of the information, it is considered that the circumstances to vary the standard are suitable and recommend that the objection be upheld.

Clause 36: Coastal Erosion

The objective of this clause is to protect land that may be subject to coastal erosion but not within Zone 7(f) from inappropriate development. The coastal erosion hazard lines fall outside the subject site.

SEPP No. 1 - Development Standards

As previously noted, an objection under SEPP1 has been submitted with the proposal and it is recommended that this objection be supported. The concurrence of the Director of the Dept of Planning and Infrastructure is assumed.

SEPP No 71 – Coastal Protection

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX Certificate with the proposal and this is consistent with the required energy targets.

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

The proposal is consistent with the objectives contained in Draft LEP 2010 and involves the construction of a two storey dwelling on suitably zoned land within the Tweed Shire.

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

Tweed Development Control Plan

Section B5 – Casuarina Beach

This is the site specific Development Control plan applicable to the site and contains Urban Design Principles and setback controls. The setback controls require a building line of 6 metres, side boundary setbacks of 900mm and minimum setbacks of 675mm for eave/gutters. The DCP also requires that special design elements such as verandas and entrances shall be setback a minimum of 3 metres from the front boundary.

The proposed dwelling has a building line of 8.310 metres and side boundary setbacks of 1500mm. Both the southern and northern elevations are articulated to provide visual interest which is commensurate with the overall design of the dwelling. The minimum eave/gutter setback will be 900mm. It can be seen that all of these setbacks comply with the site specific design requirements.

The adjacent dwelling at 53 She-Oak Lane Casuarina has an approved building line of 5 metres when measured to the garage wall.

A gate house is proposed to be positioned in close proximity to the street alignment and it is recommended that any consent be conditioned to require that this comply with the 3 metres setback.

The plans also identify that a small deck, having an area of 1.98square metres is proposed to be positioned adjacent to the laundry and this will be setback 450mm from the side boundary. This point encroachment does not comply with the 900mm requirement, however given the small scale of the deck this is considered to be inconsequential as its size lends itself for use as a landing only.

#### Private Covenant Restriction

Covenant restrictions are applicable to the property and other properties within the estate are the beneficiaries of the restrictions relating to design. The proposal has gained the concurrence of the Casuarina Architectural Review Committee and the plans have been endorsed accordingly. Council however, is able to consider the suspension of covenants under Clause 56 of the TLEP 2000 where considered appropriate.

#### A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence.

Section A1 of the DCP is divided into two chapters.

#### Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that quality housing developments provide a high level of residential amenity for residents whilst also contributing to the character of the street, the surrounding suburb and not unduly affecting neighbouring dwellings or lots.

The DCP envisages primarily up to two storeys, but does not prohibit three storeys, although it follows, that they demonstrate compliance with the controls of the DCP and must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

#### Objectives

- To be well designed and attractive.
- To be of an appropriate scale relative to the existing or desired future pattern of development.
- To provide landscaped and deep soil areas on the lot.
- To provide amenity for residents without compromising the amenity of neighbouring properties.
- To address the street and to make a positive contribution to its established or envisaged streetscape character.
- To maximise the sustainability of the building during its lifecycle.
- To minimise the impact on the natural environment.

To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.

## Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

## Comment

The dwelling is considered to be consistent in scale and character with dwelling houses in the area. There are several other examples of dwellings that have basement carparking and articulated front facades within the Casuarina area. The entrance way will be clearly defined from the street by the construction of a gate house and a defined pathway.

The proposal is considered to satisfy the objectives and controls as outlined in chapter 1 above.

Further details are provided in the latter sections of this report.

## Chapter 2- Site and Building Design Controls

### Design Control 1-Public Domain Amenity

#### Streetscape and Public Views and Vistas

The proposed development is infill development that will be constructed on a rectangular parcel of land towards the end of a Cul-de-sac. The site adjoins waterfront open space. Streetscape design is concerned with ensuring there is consistency in built and landscape form along streets on private sites. The proposal is considered to be consistent with the objectives outlined within this design control.

### Design Control 2 -Site Configuration

#### Deep soil zones (DSZs)

- A large area of deep soil zone is available at the rear of the site and is considered consistent with the objectives of this design control.

The front deep soil zone is also compliant. Detailed landscaped plans have been included with the proposal and it is considered that the landscape planting will compliment the built form.

#### Impermeable Site Area

The area of the site is 718m<sup>2</sup>, subsequently the maximum permissible impermeable site area permitted at the completion of the development is 65%. The plans indicate the development will create an impermeable area of approximately 36% and this will comply with the design control. This will enable water to infiltrate into the sandy site and reduce urban runoff.

#### External Living Areas

The proposal incorporates suitable external living areas that can be used for external relaxation and recreation. Suitable screening has been installed where considered appropriate.

#### Landscaping

A landscaping plan is compliant with the DCP has been submitted with the application and has been designed specifically to soften the building into its surrounds and strategically to provide privacy to the neighbours.

#### Topography, Cut and Fill

The property has a gentle slope towards the rear of the property. The basement garage will be excavated into the site and this is permissible as it is within the confines of the building.

#### Design Control 3 -Setbacks

The proposal is consistent with or in excess of the set back controls.

The side boundary setback controls are 1.5 metres for a two storey dwellings. This is in excess of the 900mm Section B5 Casuarina Beach DCP requirement. The proposal complies with each of these controls.

#### Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies as it has two off street basement car parking spaces provided behind Council's building line.

#### Design Control 5 -Height

##### Building Height

The proposed height of the dwelling house is 8.65 metres which is compliant with the maximum design control height of 9 metres. The wall plate height is 7.8m which is also compliant with the maximum design control height of 8.50 metres.

##### Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show ceiling heights of 2.740m which complies with the DCP.

#### Design Control 6- Building Amenity

##### Sunlight Access

The dwelling includes private open space by the provision of balconies, decks and a large rear yard area. The dwelling will receive sufficient access to sunlight.

The proposed dwelling being a large rectangular shape, and proposed to be constructed on a 12 metre wide narrow parcel will overshadow the adjoining property to the south.

The shadow diagrams indicate that some over shadowing will occur to different portions of the southern property during the winter and summer months as the sun moves through the sky. Shadowing is more extensive during the winter months as is to be anticipated.

The prescriptive requirement of this control is to ensure for neighbouring properties,

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9 am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The proposed dwelling complies and exceeds the minimum sunlight requirements above.

#### Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

#### View Sharing

The proposal satisfies this control and will not unreasonably affect important primary and iconic views from neighbouring properties. The proposal will allow for view sharing in the area and viewing corridors will be available on each side of the dwelling.

#### Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

#### Building Orientation

The dwelling has been sited on the property to optimize coastal views and solar access and complies with the objectives of this control.

#### Building separation

The proposed building has been sited with sufficient boundary setbacks and therefore achieves adequate separation with the adjacent building.

#### Design Control 7 – External Building Elements

##### Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that no fences are proposed with this application.

##### Roof

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been included in the conditions.

Design Control 8 -Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP.

Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

Design Control 10- Swimming pools and spas

There is a swimming pool proposed as a part of this application. The pool is proposed to be positioned directly adjacent to the northern boundary. This is considered to be unreasonable due to the construction requirements. It is therefore proposed to condition the consent to require a setback of 450mm from the property boundary to the waterline. This will minimise the construction impact of the pool on the adjacent property and as the subject lot and the adjoining lot are at the same level there will be no adverse impacts envisaged from the reduced 450mm setback. This will be consistent with other approvals in the area given the narrow width of the land. This is a variation of the 1.5m waterline setback control.

Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application.

Design Control 12 - Floor Space Ratio (FSR)

Floor space ratio control provides a guide as to the allowable densities for an area. Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.65:1 for the dwelling as the site has an area of 718 m<sup>2</sup> and the site coverage is less than 50%. The proposed FSR for the dwelling is 9.61:1. This complies with the FSR control.

It is also considered that the proposal does comply with the objectives of the control as it does match the building scale with the capacity of the site.

A3-Development of Flood Liable Land

The site is not flood liable.

A11-Public Notification of Development Proposals

Council notified the proposal to two adjacent property owners and this did result in the receipt of four submissions from interested persons. These have been addressed later in this report.

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

Clause 92(a) Government Coastal Policy

The proposal is consistent with the goals and objectives outlined within the policy

**(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 property is development within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

Minimal impact is envisaged, the proposed is a single residence within an approved residential subdivision.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

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

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site. Varying architectural styles exist within the area. The design of the dwelling is considered to be in keeping with the existing residential character of the area.

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

As previously noted the application was notified to the adjacent property owners. This notification process did result in the receipt of four written submissions.

A summary of the main issues raised in these submissions are provided below:

**Bulk of building**

Comment:

The proposed dwelling is similar in scale to existing development within the Casuarina area and has the concurrence of the Casuarina Architectural Review Committee.

**Height of floor levels and 3 levels at west side**

Comment:

Three storey development is permissible within the area, subject to compliance with the design controls. The proposal is two storey by definition.

**Loss of privacy**

Comment:

The bedrooms of the objectors' property are located 6 metres from the windows of the proposed dwelling. As the proposed windows on the upper floor are not living areas (ensuite/bedrooms/office) it is not considered that the impact on privacy will exceed what could be reasonably anticipated within a residential environment. The entrance of the proposed dwelling may overlook the pool of the adjacent property. It is for this reason it is recommended that any consent be conditioned to reduce the likelihood of this occurrence by requiring appropriate screening.

**Fundamental conflict with existing residences**

Comment:

The ground floor of the dwelling will be at RL9.92 which is approximately 1.2 metres above ground level. As previously noted the overall height of the dwelling complies with Council policy and it is not considered that this will result in conflict with the amenity of the adjacent residence due to the design of the dwelling and the location of the adjacent dwelling.

### **Shadowing**

Comment:

It is acknowledged that overshadowing will occur into the objectors property at 53 She-Oak lane Casuarina. This is particularly likely to occur into the swimming pool and courtyard areas during the winter period. This type of overshadowing should be reasonably anticipated in an area where both two storey and three storey dwellings are permissible on narrow allotments. The subject dwelling will also be overshadowed if a two or three storey dwelling is constructed at 49 She-Oak Lane.

### **Roof height bulk and proximity to boundaries full width and length of property**

Comment:

The proposal has received the concurrence of the Casuarina Architectural review Committee and complies with Council policy.

### **Building out of character with Casuarina dwellings**

Comment:

The proposal has received the concurrence of the Casuarina Architectural review Committee and complies with Council policy. It is acknowledged that the proposal will be approximately 1.3 metres higher than the existing dwelling at 53 She-Oak lane Casuarina however it is not considered that this will have an adverse impact on the character Casuarina.

### **The GFA exceeds regulations**

Comment:

The basement/storeroom and the access area thereto, are not included in the floor area calculations as it does not constitute a storey by definition. The proposal does not exceed the 0.65:1 Floor Space Ratio control.

### **Change in design principles and or moving the goal posts.**

Comment:

It is acknowledged development standards do change with time and that Section A1 of the Tweed Development Control Plan was not enacted by Council until 2008. The neighbouring objectors' proposal was approved by Council on 31 October 2005. The Casuarina Architectural Review Committee has endorsed each of the proposals.

### **Precedent for future buildings on beachfront blocks**

Comment:

The proposal was notified in accordance with Council policy and it is unlikely to create an undesirable precedent in the area.

**(e) Public interest**

It is not considered that the proposal will prejudice the public interest.

**OPTIONS:**

1. Council resolves to approve the development application subject to conditions
2. Council resolves to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The officers have considered the merits of the subject proposal in accordance with relevant statutory and policy requirements, as well as a number of detailed public submissions. On the balance the assessment of these matters, the officers consider that the subject proposal is worthy of approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Correspondence from applicants' consultants Coastline Building Certification Group dated 6 December 2011 - response to objection and further shadow diagrams (ECM 43256254)
  2. Photos of the subject site and its' surrounding context (ECM 46235605)
  3. Plans of approved and constructed DA of adjoining property to the south, Lot 53 Sheoak Lane, Casuarina (ECM 46236646)
-

**THIS PAGE IS BLANK**

**12 [PR-CM] Development Application DA11/0520 for Alterations and Additions to Existing Dwelling, Including House-Raising, Rooftop Viewing Area, Retaining Walls on Western and Southern Boundaries, Front Fence and Water Feature at Lot 16 DP 18026; No. 2 Prince Street, Fingal Head**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA11/0520 Pt1**

**SUMMARY OF REPORT:**

Application has been received to carry out alterations and additions to an existing two storey timber framed dwelling house on the subject allotment.

This report has been submitted to Council to determine given the nature of concerns raised by adjoining neighbours.

The proposed works include raising the existing dwelling house, substantial additions and roof top viewing area.

The allotment is located at the northern end of Fingal Head Village and is zoned 2 (a) - Low Density Residential.

The allotment is also subject to a two storey height limit under the provisions of clause 16 of the Tweed Local Environmental Plan 2000.

The dwelling additions have been designed to satisfy the definition of two storey dwelling in the Tweed Local Environmental Plan 2000.

The footprint of the existing dwelling house will be substantially increased by the proposal.

Under the provisions of DCP A11 the proposal was notified to adjoining and nearby property owners and in response to this process two written objections were received.

The objections have been dealt with later in this report and it is considered that, notwithstanding these objections, the proposal is considered to be generally consistent with Council's policies.

In accordance with Section 79c (1c) of the EP&A Act an evaluation of the suitability of the site for the proposed use has been undertaken. Having regard to the characteristics of the site and its location, the proposed development is considered appropriate for the site as it represents a contemporary and streamlined addition to an existing residential area currently in a state of transition. The proposal incorporates a number of design features which assists in breaking up & articulating the development on the site. In this regard the building also possesses its own architectural character and appeal which responds well to other buildings in the surrounding area.

The proposal, on balance, is considered to be worthy of support.

**RECOMMENDATION:**

**That Development Application DA11/0520 for alterations and additions to existing dwelling house, including house-raising, rooftop viewing area, retaining walls on western and southern boundaries, front fence and water feature at Lot 16 DP 18026; No. 2 Prince Street, Fingal Head be approved subject to the following conditions:**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos EP:01- EP:05 (issue K) prepared by Brian Kenny, Architect dated 13/10/11 and Plan Nos DA:01-DA:13 (issue O) prepared by Brian Kenny, Architect and dated 23/01/12, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

- 3. Any future shading structures (temporary or otherwise) to the roof top terrace must be the subject of separate development consent and does not form part of this consent.**

[GENNS01]

- 4. The floor of bedroom 3 shall be no higher than 1.50m above the finished ground level adjacent to this room.**

[GENNS02]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

- 5. 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. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.**

[PCC0285]

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

[PCC0945]

- 7. 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 S68 of the Local Government Act.**

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
  - b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision 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 LG Act will then NOT be required.
- [PCC1145]
8. Prior to the issue of a construction certificate, application shall be made to Tweed Shire Council under section 138 of the Roads Act 1993 for any works within the road reserve such as a new driveway crossing.

[PCCNS01]

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

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

[PCW0215]



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

[PCW0225]

11. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:

- \* in the name and licence number of the principal contractor, and
- \* the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:

- \* the name of the owner-builder, and
- \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

12. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

13. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

14. 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 to the satisfaction of the Principal Certifying Authority.

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]

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

[PCW1005]

16. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

#### **DURING CONSTRUCTION**

17. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

18. Construction and/or demolition site work including the entering and leaving of 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]

19. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

20. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

21. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

22. 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 Occupational Health and Safety Regulation 2001.

[DUR0415]

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

[DUR0445]

24. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

25. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0845]

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

[DUR0905]

27. 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]

28. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

29. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

30. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

31. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

32. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

33. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

34. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

35. Prior to the issue of an occupation certificate,

- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
- (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
  - (i) the method of protection; and
  - (ii) the date of installation of the system; and
  - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
  - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

36. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

37. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

38. Prior to the issue of an occupation certificate, including an interim occupation certificate, a privacy screen which will effectively restrict direct visual contact with adjoining allotments shall be provided to the western window of the Lounge Room.

[POCNS01]

## USE

39. The southern two storey addition is not to be used or adapted for separate residential habitation or occupation.

[USE0465]

## REPORT:

**Applicant:** ABK Australia  
**Owner:** Mr Norman Ms Meredith & Mrs Jeanette D Meredith  
**Location:** Lot 16 DP 18026 No. 2 Prince Street, Fingal Head  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$300,000

## BACKGROUND:

A development Application has been received to raise the existing dwelling house on the subject allotment and to carry out alterations and additions including partial site retaining, water feature in front yard and front fence.

The allotment is zoned 2(a) – Low Density Residential and is subject to a two storey height limit under the provisions of clause 16 of the Tweed Local Environmental Plan 2000.

Located on the southern side of Prince Street and the western side of Healey Lane the allotment encompasses an area of 404.7m<sup>2</sup> and generally slopes downhill to the south west.

The allotment is serviced by a reticulated sewerage system, town water supply and has access to the stormwater drainage system in Healey Lane.

The allotment is located opposite Fingal Head Primary School, is surrounded by residential developments comprising mainly individual residences and is not burdened by any services or easements.

The existing ground levels of the lot vary from RL 5.08m to RL 2.84m AHD which places it above the minimum design flood level of RL 2.60m as determined in DCP A3- Development of Flood Liable land.

The proposed minimum habitable floor level for the ground floor of the development will be RL 4.0m AHD which exceeds the minimum required habitable floor level of RL 3.10 m AHD pursuant to DCP A3.

Council's records identify that the allotment is not bushfire prone, is not affected by SEPP 26- Littoral Rainforest and is subject to class 5 Acid Sulfate Soils which will not be impacted upon by the proposed building works.

The existing dwelling house has been on the site for a considerable time and has an existing setback to Prince Street of less than 1.0m.

The proposed work includes the following:

- raising the existing dwelling house in its current location and converting the floor space to kitchen, dining, living, bedroom & ensuite.
- constructing a new store, laundry, bathroom, bedroom & double garage beneath the existing dwelling house with access to the garage via Healey lane.
- construction of a new attached split level wing comprising two bedrooms & bathroom, lounge and open roof top deck accessible from the lounge room via a spiral stairway.
- retaining walls up to 500mm high and filling in the south western corner of the allotment.
- water feature and 1.20 m high fence in the front yard.

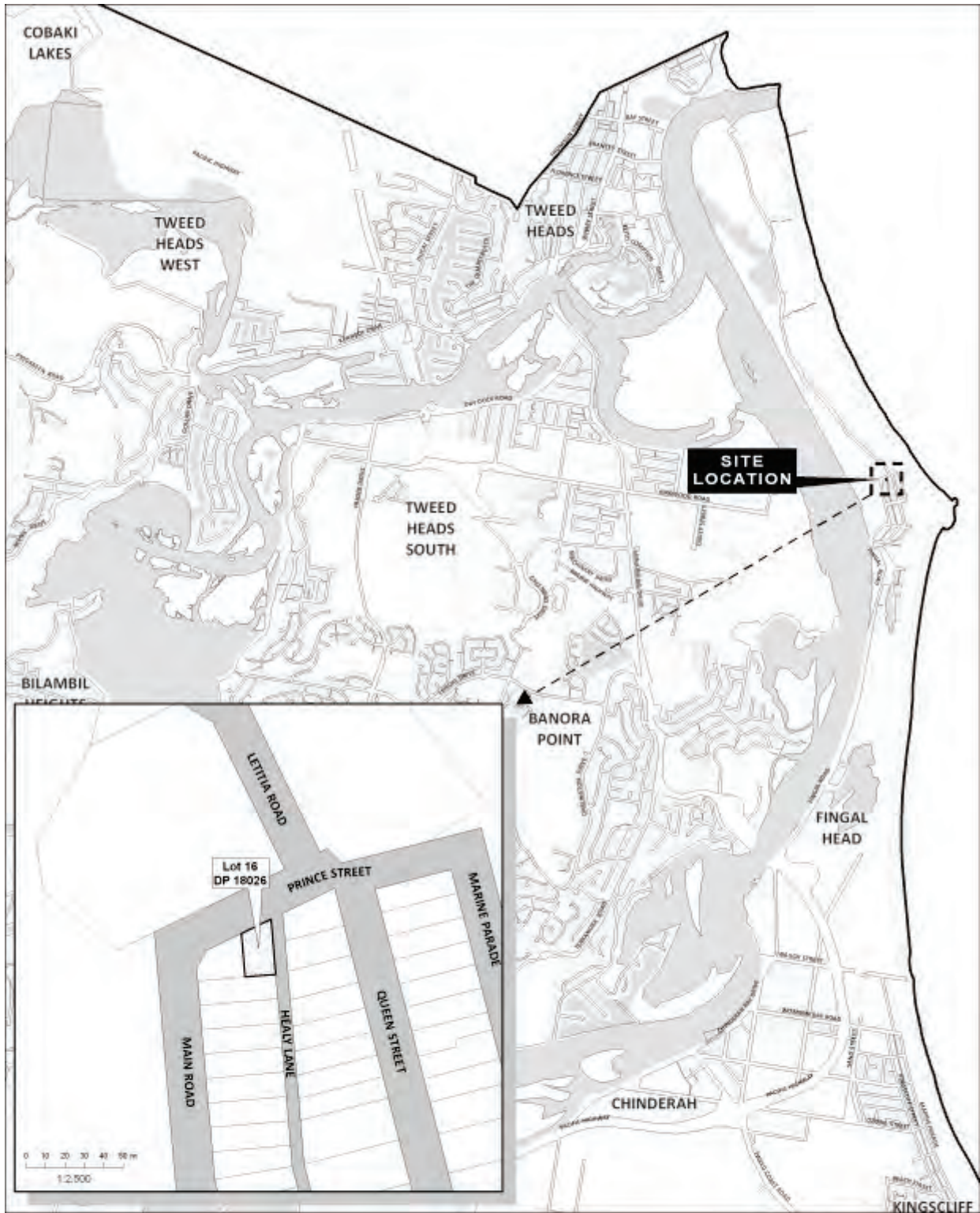
As part of the assessment of the application adjoining property owners were notified of the proposal and in response two written objections were received.

The objections are discussed later in this report however on balance it is considered that the proposal is a reasonably expected development in an area which is currently in a stage of transition and urban renewal.

Council's Development Assessment Unit has recently approved the construction of two roof top decks on a nearby dual occupancy at 1 Queen Street which is on the opposite side of Healy Lane to the subject site.



**SITE DIAGRAM:**



**Locality Plan**

Lot 16 DP 18026  
No. 2 Prince Street, Fingal Head

Disclaimer: While every care has been taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including without limitation consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general public and is to be considered indicative and does not constitute a 'Statutory Plan' and should not be used for conveyance purposes and prior to any conveyance a 'Statutory Plan' enquiry must be made to Cadastrol. The information contained on this document remains valid for 30 days only from the date of issue.

Cadastre: 03 February, 2012  
© Land and Property Management Authority (LPMA) & Tweed Shire Council.  
Boundaries shown should be corroborated against maps only.



Civic and Cultural Centre  
7 Tambourine Road  
Murrumbidgee NSW 2668  
PO Box 876  
Murrumbidgee NSW 2668  
T (02) 6516 2400 | 1300 292 872  
F (02) 6516 2429  
W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au





**PHOTOS OF EXISTING DEVELOPMENT ON NO. 2 PRINCE STREET AND SURROUNDING PROPERTIES**







View of existing dwelling from Prince Street



View of existing deck adjacent to front entrance













**BRIAN KENNY**  
B.Sc.(Arch) B.Architectu

byron to brisbane  
concept to constructic  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
ABK Australia Pty Ltd  
& may not be copied  
or reproduced in any way  
without written permission

notes

Verify all dimensions & levels  
before commencing work.  
All dimensions refer to  
engineers specifications.  
All materials & workmanship  
to comply with relevant  
codes & by-laws

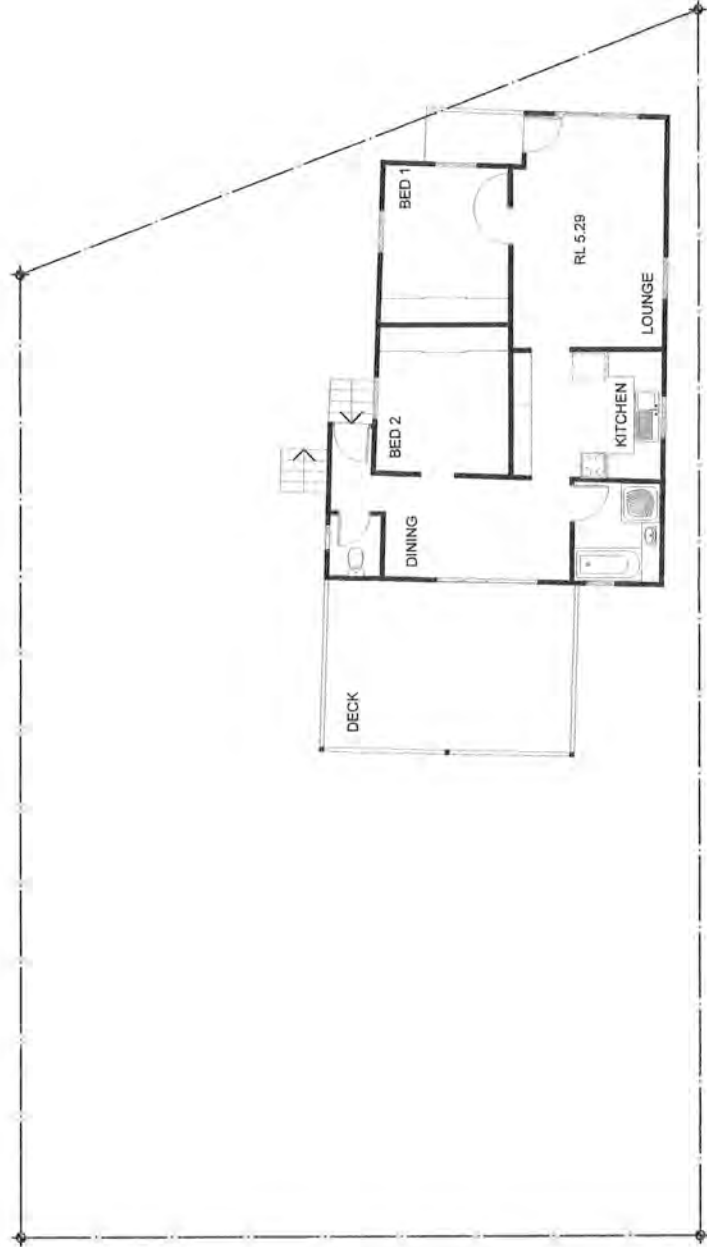
scale

**1:100**

drawing no.

**MEREDITH  
EP-02**

issue	date
A	08/02/11
B	11/02/11
C	10/03/11
D	25/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11



**EXISTING FIRST FLOOR PLAN**

kingstcliff office tel/fax 0266 743 888 bangalow office tel/fax 0266 870 708 po box 1166 kingscliff 2487 nsw  
kenny@baker.net.au

**BRIAN KENNY**  
B. Scz (Arch) B. Architect.

byron to brisbane  
concept to constructi  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 15 DP 18025  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
ABK Australia PTY LTD  
& may not be used, altered  
or reproduced in any way  
without written permission

notes

Verify all dimensions & levels  
before commencing work.  
All structural details to  
comply with relevant  
All materials & workmanship  
to comply with relevant  
codes & by-laws

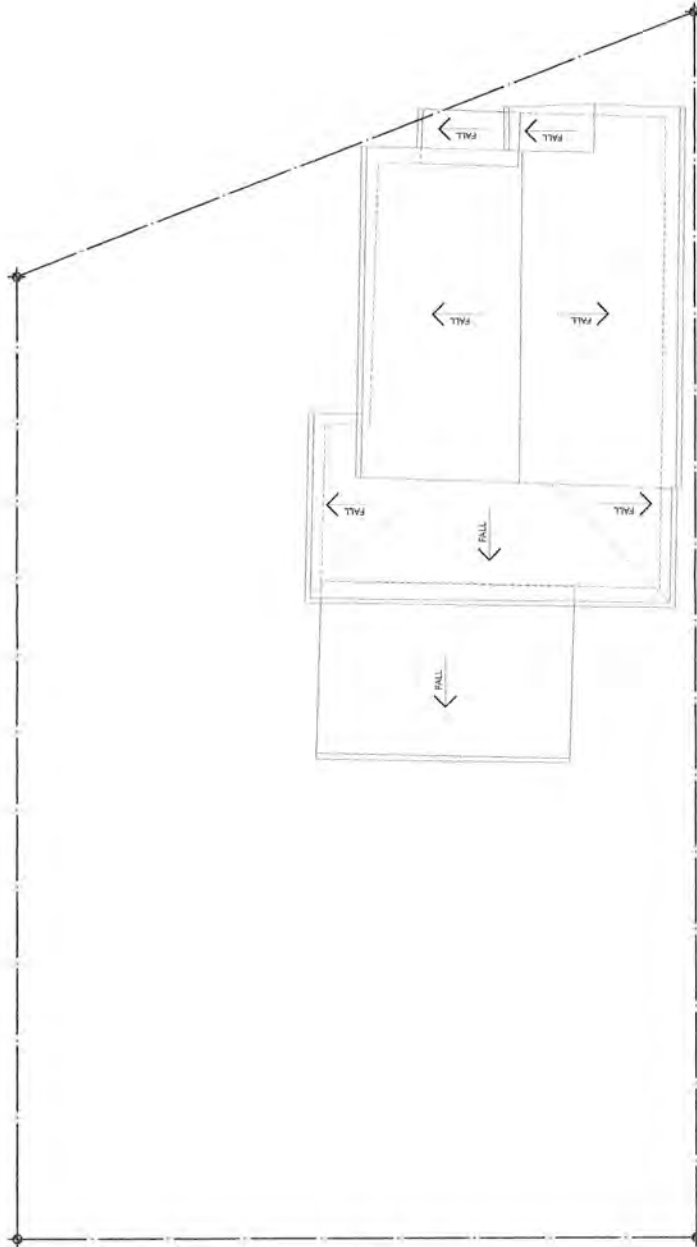
scale

**1:100**

drawing no.

**MEREDITH  
EP:03**

issue	date
A	09-02-11
B	11-02-11
C	10-03-11
D	25-03-11
E	12-04-11
F	10-05-11
G	08-06-11
H	08-07-11
I	03-08-11
J	11-08-11
K	13-10-11



**EXISTING ROOF PLAN**

**BRIAN KENNY**  
B.Sc.(Arch) B.Architectu

byron to brisbane  
concept to constructi  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 16026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
B.Kenny Pty Ltd  
& may not be used, altered  
or reproduced in any way  
without written permission

**notes**

Verify all dimensions & levels  
before commencing work.  
All structural details to  
engineers specifications.  
All materials & workmanship  
to comply with relevant  
codes & by-laws

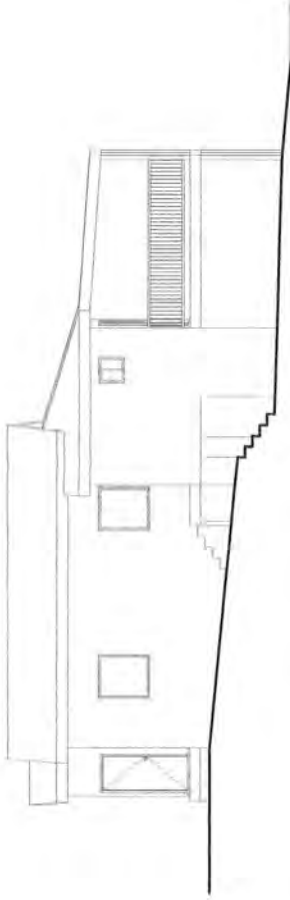
**scale**

**1:100**

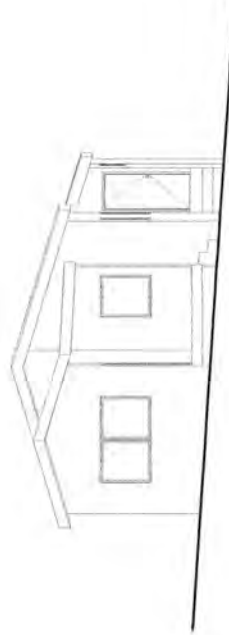
drawing no.

**MEREDITH  
EP:04**

issue	date
A	09.02.11
B	11.02.11
C	10.03.11
D	25.03.11
E	12.04.11
F	10.05.11
G	08.06.11
H	08.07.11
I	03.08.11
J	11.08.11
K	13.10.11



**EXISTING WEST ELEVATION**



**EXISTING NORTH ELEVATION**

edding as abk australia p/l acn 111 306 9998 kingscliff office tel/fax 0265 743 886 bangalow office tel/fax 0266 870 708 po box 1166 kingscliff 2487 nsw kenny@bkuat.net.au





**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

Byron to Brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
7 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
ABK Australia Pty, Ltd  
& may not be used, altered  
or reproduced in any form  
without written permission

notes

Verify all dimensions & levels  
before commencing work.  
All structural details to  
engineers specifications.  
All materials & workmanship  
to comply with relevant  
codes & by-laws

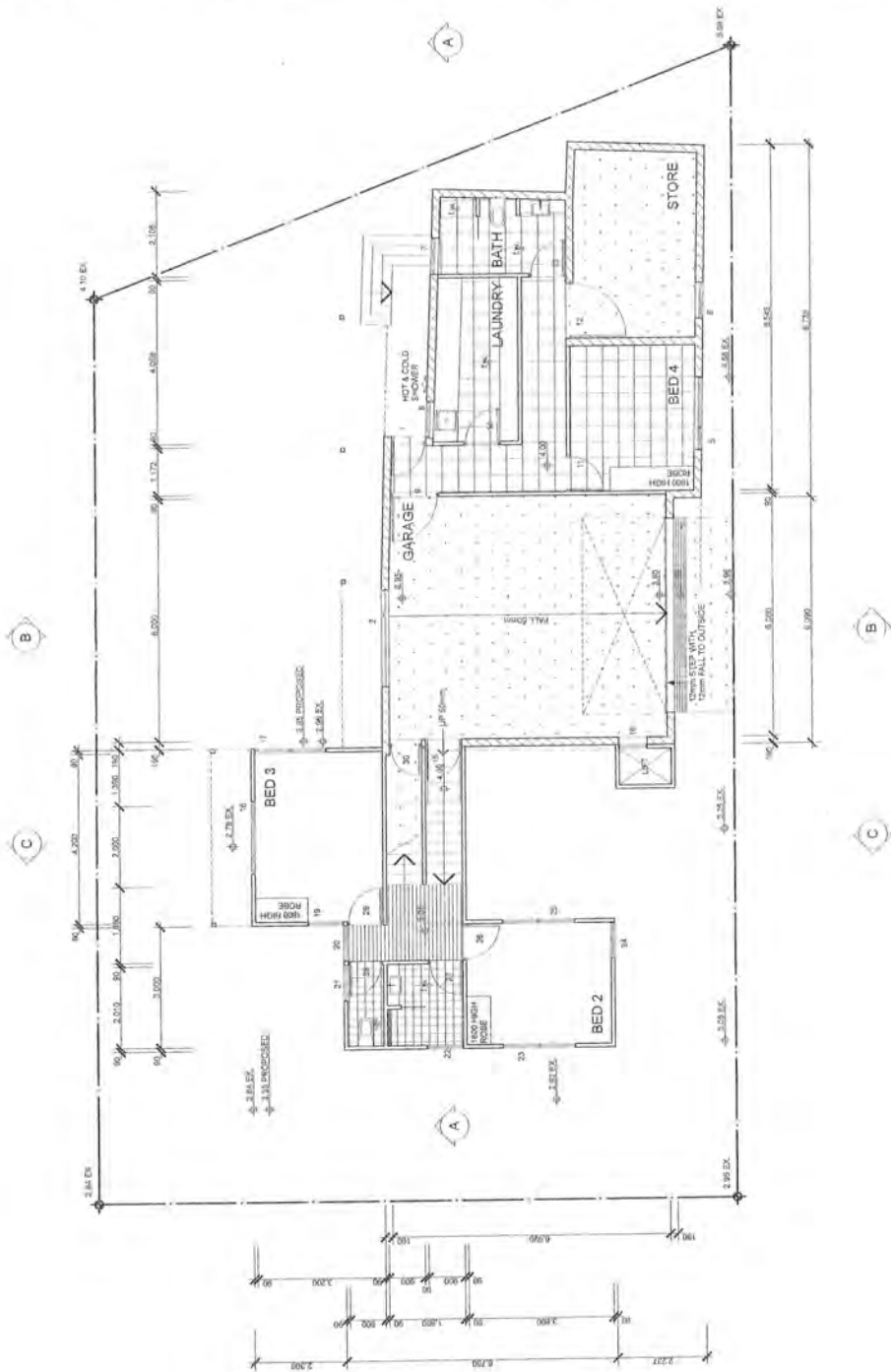
scale

**1:100**

drawing no.

**MEREDITH  
DA:02**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	29/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	18/01/12
O	23/01/12



**PROPOSED GROUND FLOOR PLAN**

trading as abk australia pt arch 111-306-999 kingscliff office tel/fax 0265 743 888 ceasinglow office tel/fax 0265 870 708 po box 1166 kingscliff 2487 nsw kenny@baita.net.au

**BRIAN KENNY**  
B.Sc. (Arch) B.Architecture

byron to Brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
BRIAN KENNY ARCHITECTS  
& may not be used, altered  
or reproduced in any way  
without written permission.

notes

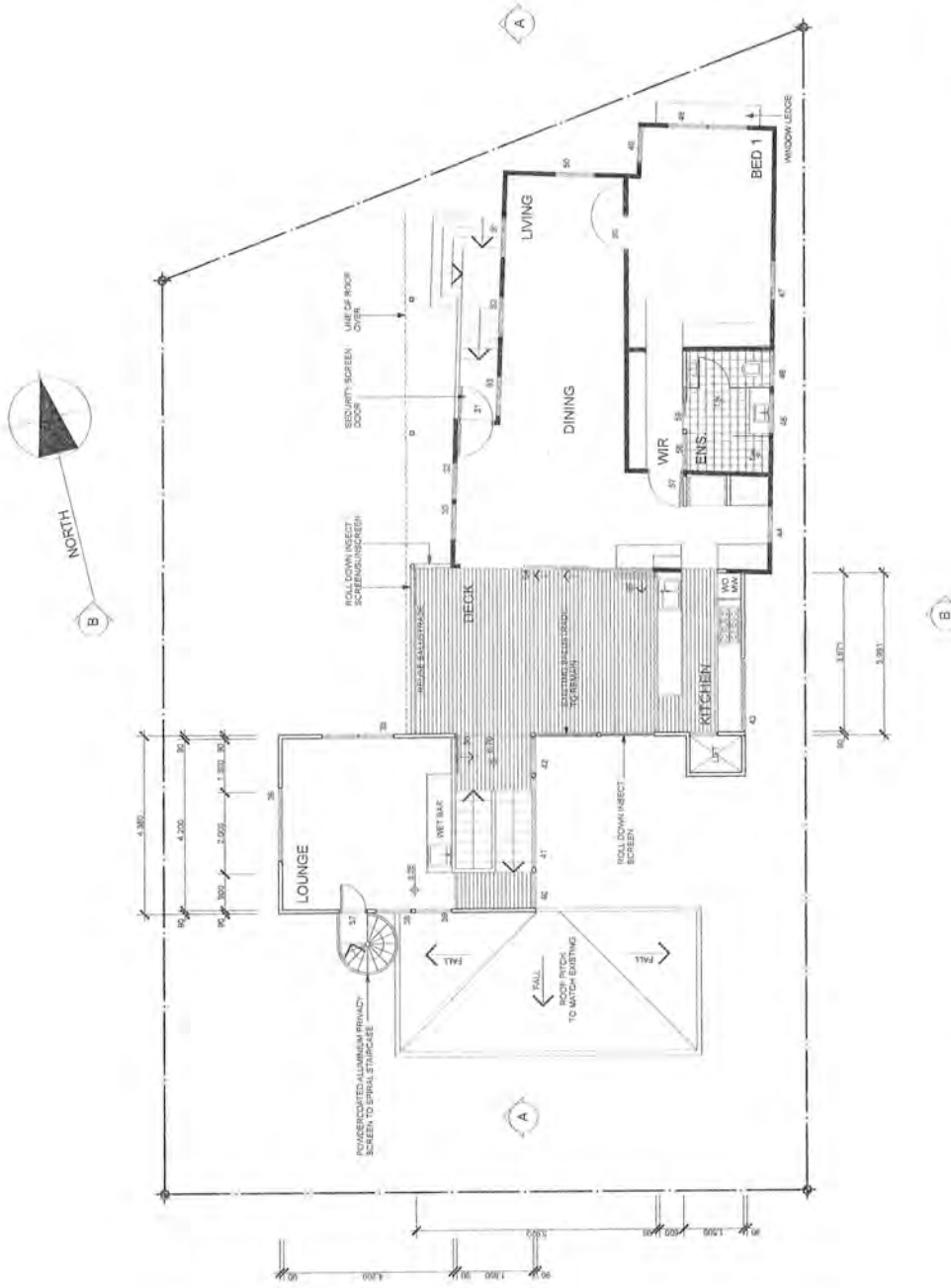
Verify all dimensions & levels  
before commencing work.  
All structural details to  
comply with relevant  
codes & by-laws.

scale

**1:100**  
drawing no.

**MEREDITH  
DA-03**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	26/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	18/01/12
O	23/01/12



**PROPOSED FIRST FLOOR PLAN**

training.as.auk.australia.pdf arch 11 306 699 kangasall office keltax 0956 743 388 bangalow office tel/fax 02659 870 708 po box 1169 bangalow 2487 nsw kennyc@bnet.net.au



**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is the copyright of ABK Australia Pty Ltd & may not be used, altered or reproduced in any way without written permission

notes

Verify all dimensions & levels before commencing work. All structural details to comply with relevant codes & by-laws

scale

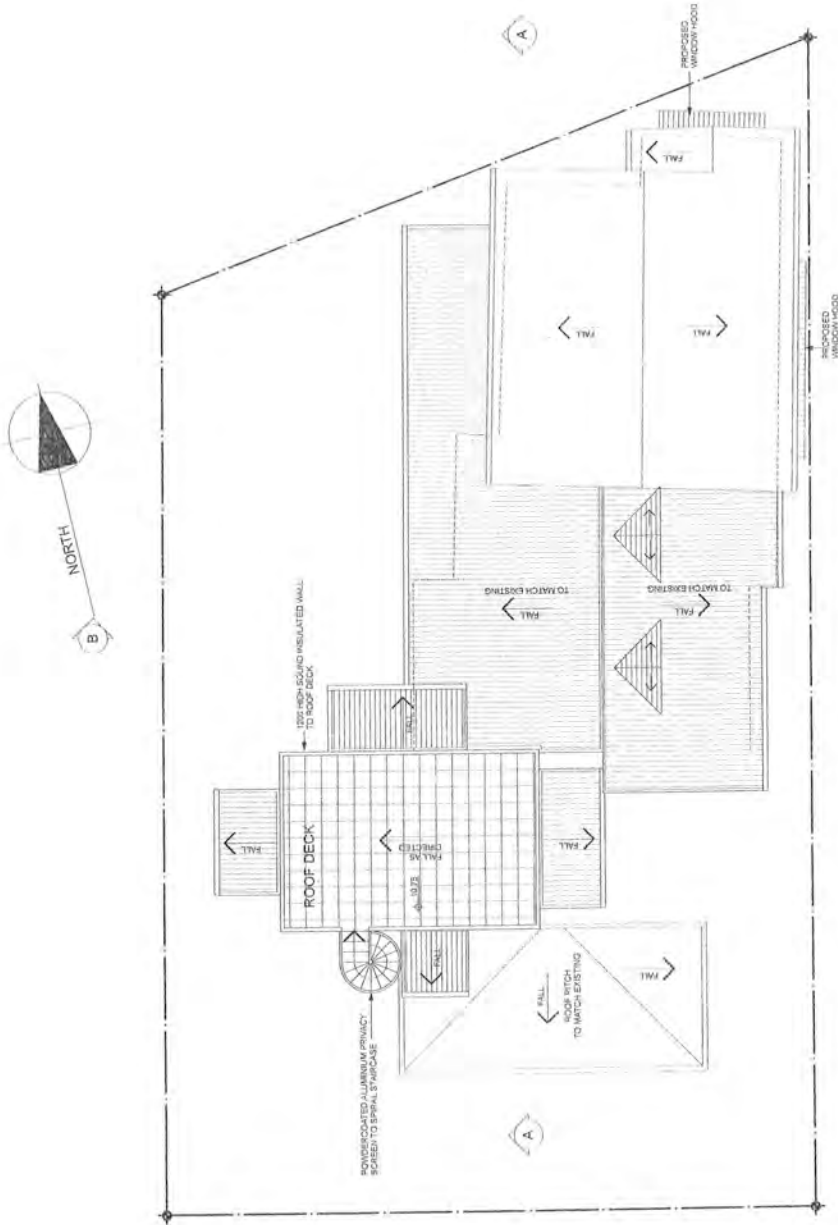
**1:100**

drawing no.

**MEREDITH**

**DA:04**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	25/03/11
E	12/04/11
F	10/05/11
G	06/06/11
H	05/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	15/01/12
O	23/01/12



**PROPOSED ROOF PLAN**

**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is the exclusive property of Brian Kenny Architects & may not be used, altered or reproduced in any way without written permission.

notes

Verify all dimensions & levels before commencing work. All structural details to comply with the Australian Engineers Association & workshop to comply with relevant codes & by-laws.

scale

**1:100**

drawing no.

**MEREDITH  
DA-05**

issue	date
A	09.02.11
B	11.02.11
C	10.03.11
D	25.03.11
E	12.04.11
F	10.05.11
G	08.06.11
H	08.07.11
I	03.08.11
J	11.08.11
K	13.10.11
L	14.12.11
M	21.12.11
N	18.01.12
O	23.01.12



**PROPOSED NORTH ELEVATION**

kenny@brian.net.au

kingstiff office tel/fax 0266 743 886 bangalow office tel/fax 0266 870 708 po box 1166 kingstiff 2487 nsw

trading as abk australia p/l acn 111 306 899



**BRIAN KENNY**  
B.Sc./Arch) B.Architecture

Byron to Brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
BK Australia Pty Ltd  
& may not be used, copied  
or reproduced in any way  
without written permission

notes

Verify all dimensions & details  
before commencing work.  
All structural details to  
engineers specifications.  
All materials & workmanship  
to comply with relevant  
codes & by-laws

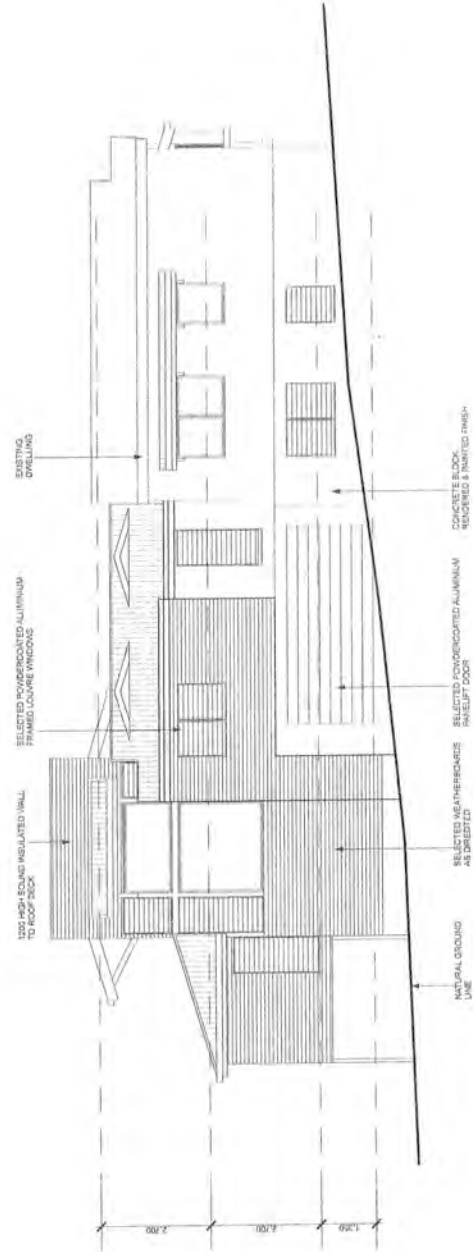
scale

**1:100**

drawing no.

**MEREDITH  
DA:08**

issue	date
A	09.02.11
B	11.02.11
C	10.03.11
D	26.03.11
E	12.04.11
F	10.05.11
G	08.06.11
H	08.07.11
I	03.08.11
J	11.08.11
K	13.10.11
L	14.12.11
M	21.12.11
N	18.01.12
O	23.01.12



**PROPOSED EAST ELEVATION**

kenny@baitor.net.au

kingstiff office tel/fax 0266 745 888 byngalow office tel/fax 0266 870 708 pc box 1166 kingscliff 2487 nsw

trading as abk australia pty. ltd 111 306 888

**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is the exclusive property of ABK Australia PTY LTD. No part of this drawing or any information contained herein may be reproduced or transmitted in any form or by any means without written permission.

notes

Verify all dimensions & levels before commencing work. All structural details to engineers specifications. All materials & workmanship to be in accordance with current codes & by-laws.

scale

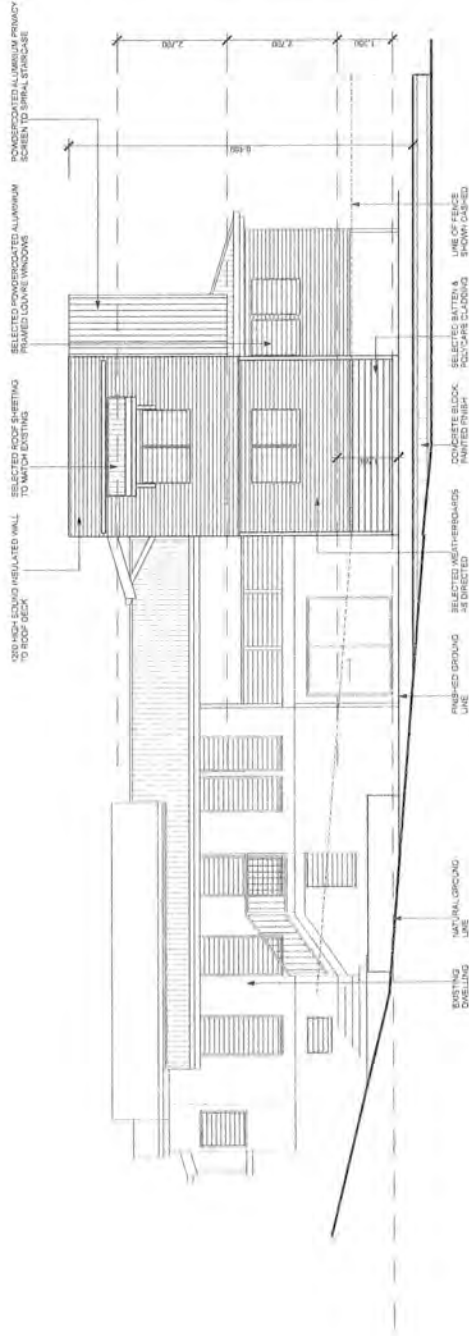
**1:100**

drawing no.

**MEREDITH**

**DA:06**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	26/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	18/01/12
O	23/01/12



**PROPOSED WEST ELEVATION**

kenny@baiter.net.au

bringsdraft.office.tel/fax.02665.743.838 bangalow.office.tel/fax.0266.870.708 ip.box.1165.kingsdill.2457.nsw

trading.as.abk.austrialia.p11.acm.111306.699

**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is the exclusive property of Brian Kenny Architects & may not be used, altered or reproduced in any way without written permission

notes

Verify all dimensions & levels before commencing work. All structural details to comply with relevant Australian & workmanship codes & by-laws

scale

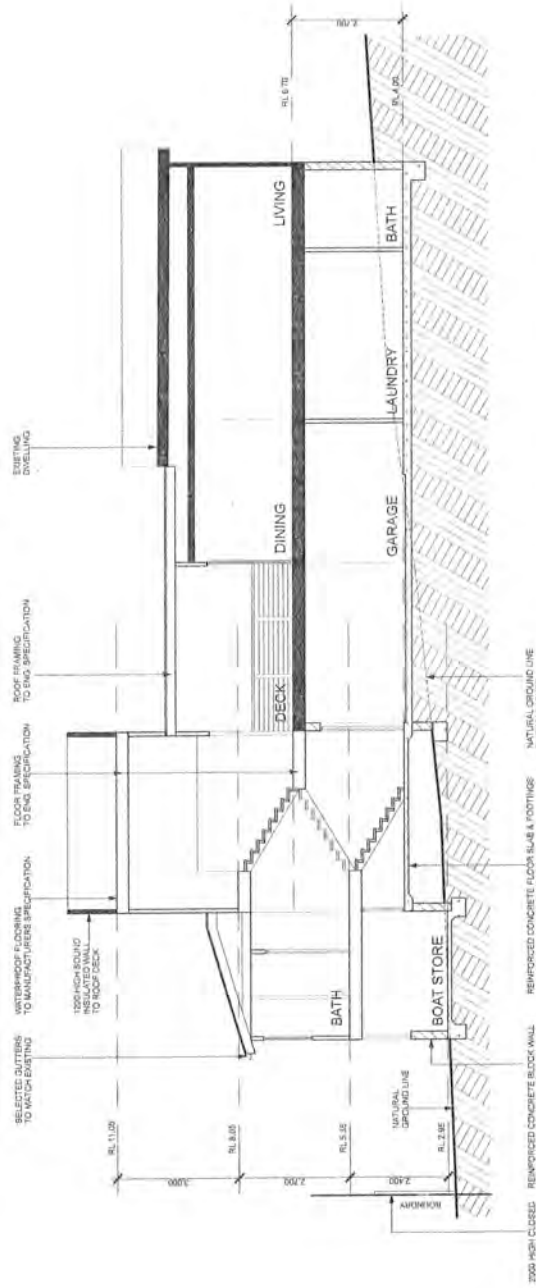
**1:100**

drawing no.

**MEREDITH**

**DA:09**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	26/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	18/01/12
O	23/11/12



**SECTION AA**

trading as abx australia ptl act 111 306 899 kingscliff office tel/fax 0266 43 388 bangalow office tel/fax 0266 870 708 po box 1166 kingscliff 2487 nsw kenny@bhatia.net.au

**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright:

All work on this drawing is  
the exclusive property of  
Abk Australia Pty Ltd.  
It is not to be copied,  
reproduced or otherwise  
reproduced in any way  
without written permission

notes

Verify all dimensions & levels  
before commencing work.  
All structural details to  
engineers specifications.  
For materials & specifications  
to comply with relevant  
codes & by-laws.

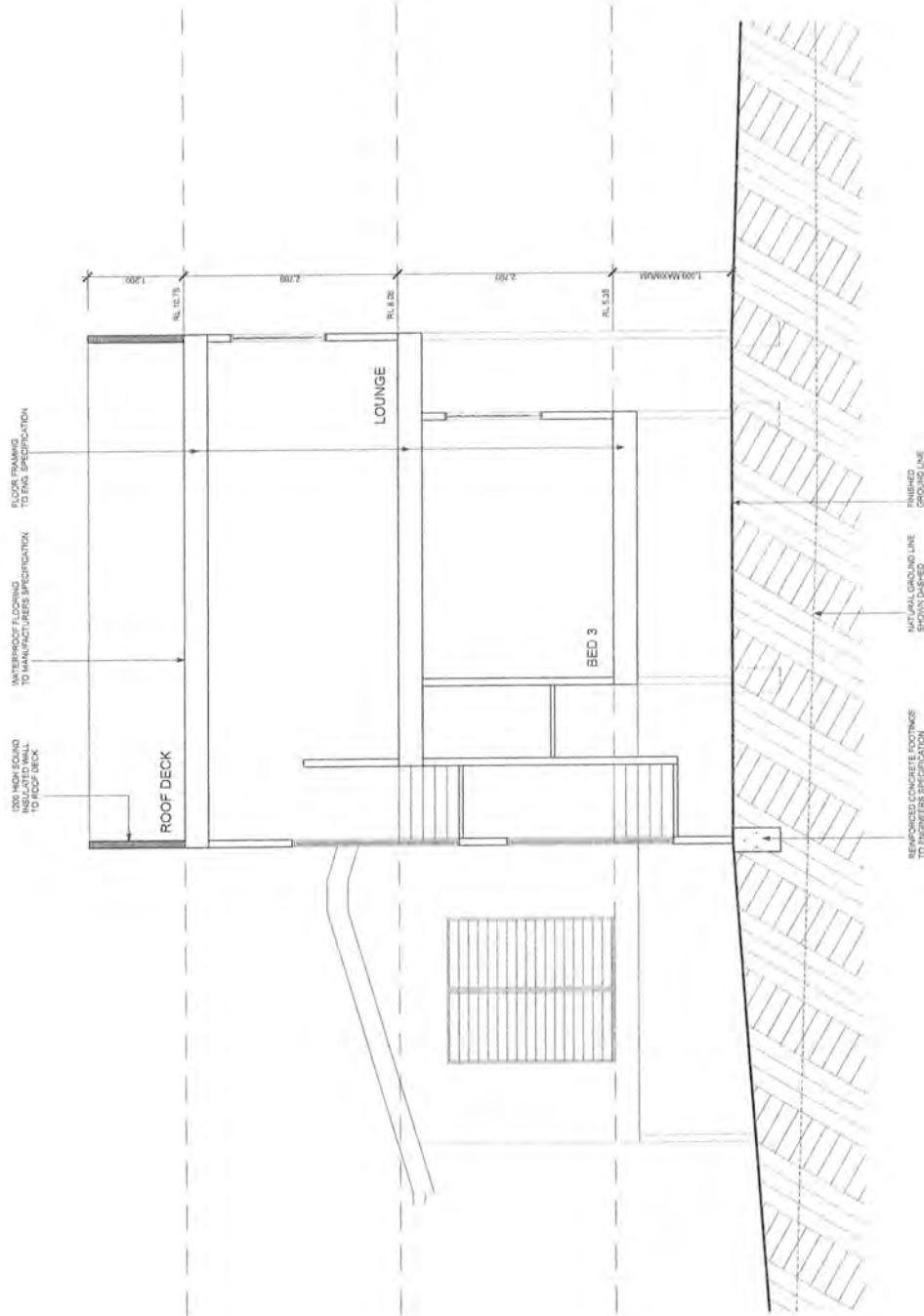
scale

**1:50**

drawing no.

**MEREDITH  
DA-11**

issue	date
A	09/02/11
B	11/02/11
C	10/03/11
D	25/03/11
E	12/04/11
F	10/05/11
G	08/06/11
H	08/07/11
I	03/08/11
J	11/08/11
K	13/10/11
L	14/12/11
M	21/12/11
N	18/01/12
O	23/01/12



**SECTION CC**

trading sis abk australia pty - acf 111 306 989 kingscliff office tel/fax 0256 743 888 bangalow office tel/fax 02668 870 708 po box 4166 kingscliff 2487 nsw kenny@bheer.net.au



**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW

copyright

All work on this drawing is  
the exclusive property of  
ABK Australia PTY LTD  
& may not be used, altered  
or reproduced in any way  
without written permission.

notes

Verify all dimensions & levels  
before commencing work.  
All structural details to  
engineers specifications.  
All materials & workmanship  
to comply with relevant  
codes & by-laws.

scale

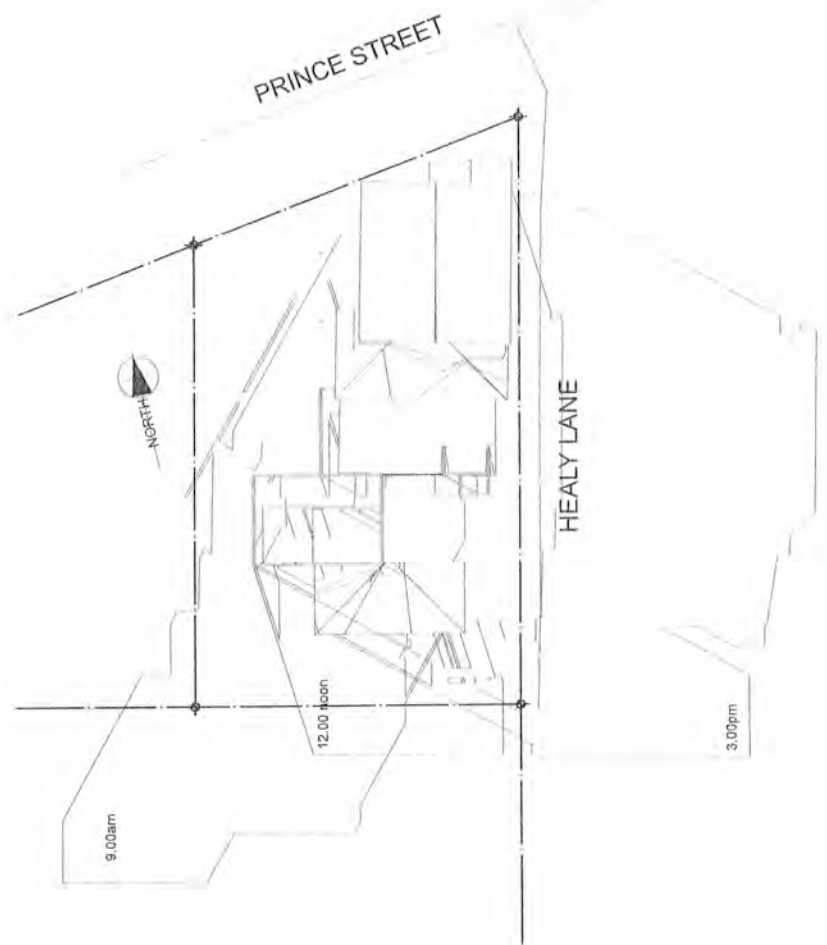
1:200

drawing no.

MEREDITH

DA:13

issue	date
A	09.02.11
B	11.02.11
C	10.03.11
D	25.03.11
E	12.04.11
F	10.05.11
G	08.06.11
H	08.07.11
I	03.08.11
J	11.08.11
K	13.10.11
L	14.12.11
M	21.12.11
N	16.01.12
O	23.01.12



SHADOW PROJECTION PLAN JUNE 21st

**BRIAN KENNY**  
B.Sc.(Arch) B.Architecture

byron to brisbane  
concept to construction  
project

**ALTERATIONS  
& ADDITIONS  
TO EXISTING  
RESIDENCE**

location

**LOT 16 DP 18026  
2 PRINCE STREET  
FINGAL HEADS  
NSW**

copyright

All work on this drawing is  
the exclusive property of  
B.K. Kenny & Associates.  
It is not to be used, altered  
or reproduced in any way  
without written permission.

**notes**  
Verify all dimensions & levels  
before commencing work.  
All structural details to  
comply with relevant  
codes & by-laws.

scale  
**1:100**  
drawing no.

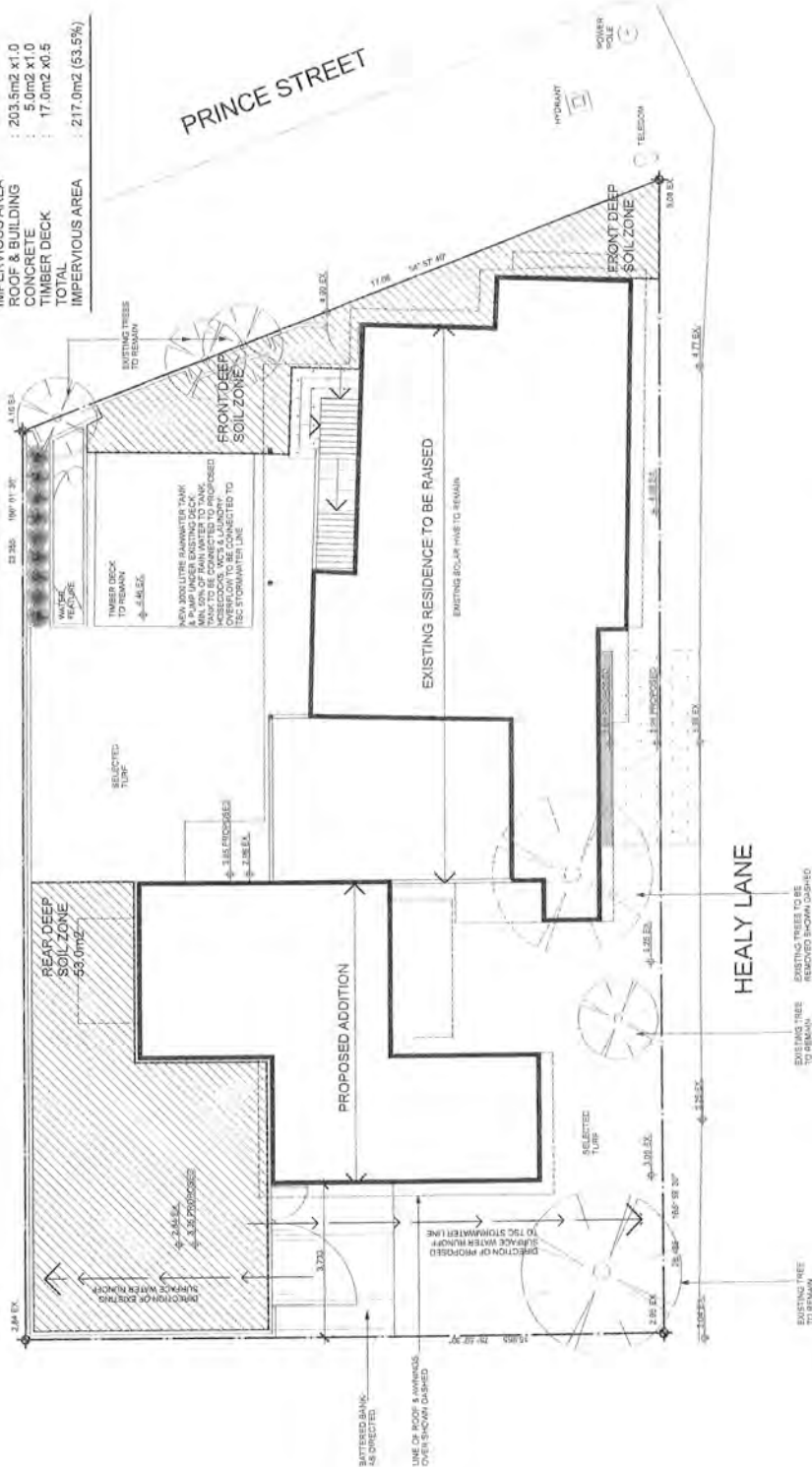
**MEREDITH  
DA:12**

issue	date
A	09.02.11
B	11.02.11
C	10.03.11
D	28.03.11
E	12.04.11
F	16.05.11
G	08.06.11
H	08.07.11
I	03.08.11
J	11.08.11
K	13.10.11
L	14.12.11
M	21.12.11
N	18.01.12
O	23.01.12

**IMPERVIOUS AREAS**

SITE AREA	: 405.3m <sup>2</sup>
ALLOWABLE IMPERVIOUS AREA	: 283.7m <sup>2</sup> (70%)
<b>ACTUAL IMPERVIOUS AREA</b>	<b>ROOF &amp; BUILDING</b>
	: 203.5m <sup>2</sup> x1.0
	: 5.0m <sup>2</sup> x1.0
	: 17.0m <sup>2</sup> x0.5
<b>TOTAL IMPERVIOUS AREA</b>	: 217.0m <sup>2</sup> (53.5%)

**LOT 16  
DP 18026**



**STORMWATER MANAGEMENT PLAN**

kenny@battar.net.au

kingsscliff.office@lra.qld.gov.au 02666 743 888 baingalow.office@lra.qld.gov.au 02669 870 708 po box 1166 kingsscliff 2487 nsw

trading@ebk.australia.pl acrt 111 805 989

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The general aims of the Tweed Local Environment Plan 2000 are to safeguard the natural and developed character of Tweed Shire, whilst also providing for economic vitality, ecological integrity and cultural fabric in the area. The proposal is considered to be generally consistent with these aims by virtue of being alterations and additions to an existing dwelling house which will result in a dwelling with a more contemporary appearance.

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Zone objectives

The subject site is located within the 2 (a) Low Density Residential zone pursuant to the provisions of TLEP 2000.

The primary objective of the 2(a) zone is as follows:

*"to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity".*

The secondary objectives of the 2(a) zone are:

*"to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective", and;*

*"to allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone".*

Having regard to the submitted application, the proposal would satisfy the primary objective and secondary objective of the zone as low density residential development.

Clause 15 - Essential Services

The allotment has access to Council's reticulated water supply, sewerage system and stormwater disposal system.

Clause 16 - Height of Building

The subject land has a height limitation of two (2) stories with the existing building comprising a two storey structure with a height of approximately 5.5m.

It is proposed to raise the existing dwelling house approximately 1.20m to enable new rooms to be constructed underneath.

Negotiation was previously carried out with the applicant to ensure that the additions would satisfy the definition of two storeys in the Tweed LEP 2000.

The height of the undercroft area to bedroom 3 of the rear additions has been noted on the plans as 1.50m, and a condition of consent will be imposed to ensure that this height not be exceeded in order to achieve compliance with the two storey height limit.

The raised portion of the existing dwelling will be about 5.80m high whilst the additional built form to the rear will reach approximately 8.3m high at its highest point which is the top of the balustrade to the roof deck.

A condition of consent has been recommended to limit the use of any such shading structures on the site as their provision could result in non compliance with this Clause. As such the proposal is considered to comply with the provisions of clause 16.

#### Clause 17 - Social Impact Assessment

Having regard to the nature and scale of the development proposed, it is considered that the proposal will not have a significant negative social or economic impact in the locality.

#### Clause 35 - Acid Sulfate Soils

The site is designated as being affected by Acid Sulfate Soils (ASS) Level 5. Notwithstanding the cut and fill which has been proposed as part of this application to create the new ground floor level the proposal is not considered to be likely to result in the exposure of acid sulphate soils.

#### Other Specific Clauses

##### **Clause 34 – Flooding**

The objectives of the clause are to ‘minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land’ and to minimise the adverse effect of flooding on the community.’

Council records indicate that the site is affected by a probable maximum flood level. The proposal is to carry out additions and alterations to an existing building which will provide additional floor space to the ground level.

The proposed minimum ground floor level will be RL 4.0m AHD which exceeds the required minimum habitable floor level of RL3.10m AHD.

As such the proposal is considered to satisfy this clause.

#### State Environmental Planning Policies

##### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands

The proposed development is considered to comply with the provisions of the NCREP as it would not impede public access to the foreshore, or result in any overshadowing to adjacent beaches or associated public open space.

##### SEPP No 71 – Coastal Protection

##### **SEPP 71 – Clause 8 - Matters for Consideration**

The subject site falls within the coastal protection zone as identified under SEPP 71 and referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from sensitive coastal locations. Potential impacts of the development on public access to the foreshore,

views, overshadowing of the foreshore, wildlife corridors, the suitability of the site for the development and any measures to reduce other adverse environmental impacts have been considered and having regard to these items, the property distance from any waterway or foreshore; and the existence of developments of similar design and scale on nearby and adjoining properties.

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

SEPP (Building Sustainability Index: BASIX) 2004

A Basix certificate has been lodged in support of the proposed building works.

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

Draft Tweed Local Environment Plan 2010

The proposal has been assessed against the draft LEP and is considered to be not consistent with the aims & objectives of this plan.

Exhibited Draft State Environmental Planning Policies or Environmental Plan/s

In what ways does the draft impact on the proposal?

There are no relevant Draft State Environmental Planning Policies or Regional Environmental Plans relevant to the site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Notwithstanding that the proposal is considered to be infill development as defined in the DCP due to the age of the subdivision the presence of dwellings on adjoining allotments which do not necessarily satisfy the controls, a general assessment of the DCP has been carried out as follows:

**Design Control 1 – Public Domain Amenity**

- The proposal is to carry out alterations and additions to an existing dwelling house which will render the dwelling a more contemporary appearance.
- The existing dwelling house observes a building alignment to Prince Street of approximately 1.0m which is the established streetscape for this lot and is consistent with the setback of the dual occupancy on the nearby allotment at 1 Queen Street. The proposed additions will enhance the appearance of the dwelling.
- The land opposite the proposed development is Fingal Head Primary School which provides an open vista and therefore the two storey addition on the subject lot would not be detrimental to the streetscape due to the open nature of the area.

**Design Control 2 – Site Configuration.**

- Compliant deep soil zones have been identified on the allotment
- Impermeable site area will be 49.9% which satisfies the maximum allowable amount of 70%.

- An existing deck at the rear of the dwelling will be retained and raised to the new first floor level. The deck will be located about 6.0m from the western property boundary and therefore does not need a privacy screen.
- Some excavation will be undertaken at the front of the allotment to accommodate the new ground floor however it will be located clear of boundaries and to an engineer's design.
- Part of the rear yard will be filled and retained by a 500mm retaining wall on the boundary.

### **Design Control 3 – Setbacks**

- The primary building alignment for the allotment has been established by the existing dwelling house and will remain unchanged, similarly the secondary building alignment to Healy Lane has been established.
- The property which is located directly eastward, on the opposite side of Healy Lane, is a two storey dual occupancy which appears to have a secondary building alignment to Prince Street of about 1m.  

The setback of the subject dwelling is therefore considered to be consistent with the established streetscape in an "infill" area.
- Setbacks to the southern and western boundaries are considered to be acceptable as infill development.

### **Design Control 4 – Carparking & Access**

- The new garage will be located off Healy Lane in accordance with the control.

### **Design Control 5 – Height**

- The maximum building height of the rear addition will be approximately 8.3m which is in accordance with the maximum limit of 9m.

### **Design Control 6 – Building Amenity**

- Living areas have been designed to observe a generally northerly aspect.
- Some shadow will be cast on the property to the south however it will mainly affect the driveway and not any recreation areas.
- The shadow to the east will be mainly cast on Healy Lane.
- The window in the western wall of the lounge room will overlook outdoor areas of adjoining properties and therefore a condition of consent will be imposed to install a privacy screen over this window.
- The orientation of the building is established by the existing dwelling however the alterations and additions have been designed to satisfy the control.
- The proposed roof deck comprises an area of about 24m<sup>2</sup> and is designed primarily to take advantage of river and ocean views. It is considered unlikely to have a significant impact on the privacy of neighbouring properties.
- Similar roof decks have recently been approved on a nearby dual occupancy at 1 Queen Street.

### **Design Control 7- External Building Elements**

- A 1.20 m high fence is proposed along part of the front property boundary however this is exempt development.
- Part of the western and southern boundaries will have a 1.50 m high fence on top of a 500mm high retaining wall which will satisfy the control in relation to height.

### **Design Control 8 – Building Performance**

- A Basix certificate has been submitted in support of the application.

#### A2-Site Access and Parking Code

A new double garage is proposed with the additions and will be accessible off Healy Lane.

Having regard to this application which is for alterations and additions to a previously approved dwelling, it is considered that the car parking provision to the development is acceptable.

#### A3-Development of Flood Liable Land

The land is indicated as being affected by Probable Maximum Flood level on Councils records however the proposed ground floor level will be above the design flood level specified in the DCP.

It can therefore be concluded that the proposal is compliant with part A3 of the DCP relating to Development of Flood Liable Land.

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

#### Clause 92(a) Government Coastal Policy

The proposal is generally consistent with the above policy

#### Clause 92(b) Applications for demolition

No significant demolition is proposed.

#### Clause 93 Fire Safety Considerations

The application is not for a change of use of an existing building

#### Clause 94 Buildings to be upgraded

The proposed alterations and additions will comply with the provisions of the Building Code of Australia subject to the existing dwelling being provided with hard wired smoke detectors.

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

N/A

#### **Tweed Shire Coastline Management Plan 2005**

N/A

#### **Tweed Coast Estuaries Management Plan 2004**

N/A

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

N/A



**(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 existing dwelling house is located at the northern end of Fingal Head village, with frontage to Prince Street and Healy Lane. Having regard to the existing approved dwelling, it is considered that the proposed alterations and additions will not negatively impact on the context or setting in the area.

Access, Transport and Traffic

A new double garage is proposed off Healy Lane which will satisfy the provisions of DCP A1 and DCP A2.

Flora and Fauna

The site contains several mature shrubs which will have to be removed to accommodate the proposed additions. These trees are not considered to be significant and no objection is raised to their removal.

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

Surrounding Landuses/Development

The subject site for the proposed development is located within an existing residential area within Fingal. The bulk and form of the proposed development is considered to be in keeping with the emerging transitional architectural nature of Fingal Head. The surrounding development is predominantly characterised by a range of single level and two storey dwellings. On this basis it is considered that the proposed additions and alterations would not be out of character.

Topography

The site generally slopes down to the south west. Some minor excavation and filling are proposed however neither of these is considered likely to have a significant adverse impact on adjoining properties.

Site Orientation

The orientation of the additions and alterations is determined by the existing dwelling. The design of the additions has been undertaken to take advantage of the northerly aspect.

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

The application was notified to adjoining and nearby property owners due to the significant increase in the size of the dwelling and the roof top viewing deck.

In response to this process two written objections were received and the text of these objections and a response is included hereunder:

- 1. The increase in site coverage and intensity of usage is not in keeping with the zoning of the land, i.e. 2(a) low density residential.**

**Response** - *compliance with the zone objectives has been confirmed earlier in this report.*

*The proposal is for additions to an existing single dwelling house which will remain a single dwelling house and any population density increase of the*

*allotment due to the additional bedroom will be consistent with the zoning and use of the dwelling house.*

*The proposal will provide housing which is compliant with Council's statutory controls and is in keeping with the established and emerging density, scale and height of the locality.*

- 2. The increase in density of usage will lessen the amenity of the surrounding properties generally because there will be an increase in noise and a decrease in privacy in the street caused by the usage of the proposed roof top deck.**

**Response** – *there will be no increase in population density of the site as the dwelling house will be occupied by a single family. The floor plan of the dwelling house is not consistent with multi occupancy.*

*The dwarf walls to the rooftop deck are proposed to be of sound insulated construction to minimise noise disturbance.*

*Similar roof decks have recently been approved on a dual occupancy at 1 Queen Street, directly opposite Healy Lane, with no additional sound mitigation Measures or screening.*

*A condition of consent will be imposed to prevent the erection of any shade structures on the roof deck and this will deter use by large groups.*

*The roof deck is proposed to take advantage of coastal views to the north east which is in the opposite direction to the closest adjoining properties.*

- 3. Site coverage ratios will significantly increase beyond usual ratios in a low density residential area and will not be in keeping with the current state planning policies of creating more usage yard space for physical activities so that our society becomes less sedentary.**

**Response** - *the submitted plans indicate that the site coverage will be 49.9% of the allotment which satisfies the maximum rate of 70% for an allotment with an area of less than 500m<sup>2</sup>. The completed building will therefore not contravene the site cover limits pursuant to DCP A1.*

- 4. There will be a decrease in visual amenity to the streetscape because:**
  - a. There will be significant increase in building envelope.**
  - b. The increased volume of building envelope is not in keeping with the general streetscape and the traditional character of the village and its streetscapes.**
  - c. The addition of the top storey of the building is not in keeping with the existing streetscape which primarily consists of single unit dwellings of a single storey. The bulk of the building would be in contrast to most other buildings in the neighbourhood.**
  - d. There will be a decrease in amenity to our property because of:**
    - i. A reduction in the light to the property caused by the obstruction of the second storey being added to the building and the increase in building envelope. The shadow problem will be especially noticeable in the afternoon.**
    - ii. There will be an increase in noise from the usage of the proposed roof top entertaining area.**

**Response -**

- a. *The increase in the building envelope complies with the floor space ratio and site coverage requirements of DCP A1,*
- b. *The surrounding area is in a state of transition between original single storey dwelling houses and modern two storey dwelling houses that have been constructed in recent times. The area is undergoing urban renewal and the proposal is considered to be consistent with this process.*
- c. *See comment above.*
- d. *A shadow diagram has been submitted in support of the application which identifies that the shadow which would be cast on June 21 will mainly affect the property to the south who has not lodged an objection. The afternoon shadow will primarily affect the driveway of this allotment.*

*Some afternoon shadow will be cast to the east however it will primarily affect Healy Lane and have a minimal impact on the property to the east.*

*See comment above on noise from rooftop deck.*

5. **The proposed 1m high retaining wall along the western boundary and the filling of the block will cause my property to be flooded due to it now being lower. There is no stormwater management plan to alleviate this occurring and the retaining wall is not 1.5m from the boundary.**

**Response -** *The subject allotment generally slopes down to the south west with an overland flow path toward Main Road.*

*The complainant's allotment is slightly downhill from the subject allotment and is therefore unlikely to suffer from obstruction of overland flow of rainwater.*

*Negotiation with the Applicant has resulted in the retaining wall being reduced from 1.0m to 500mm with a 1.50m high fence which satisfies DCP A1 in relation to maximum fence height.*

*The filled portion of the allotment will be graded to drain out to Healy Lane which will redirect overland flow which previously would have drained through the complainant's allotment to this lane.*

6. **The height of the new rear building extension will be greater than 9m from the natural ground level and will impact on our breezeway, sunlight into bedroom and family room on the eastern side of my home. As my home is set on the back of the block our reliance on sea breezes will be compromised.**

**The height of the proposed building will also compromise our privacy, especially from the roof top viewing area.**

**The living area is not 4m from the boundary.**

**Response -** *the height of the additions, when measured from the proposed finished ground level, will be approximately 8.30m which satisfies the height control in DCP A1.*

*The highest part of the additions at the rear of the dwelling will be the balustrade to the roof deck which will be about 4m wide when viewed from the complainant's premises.*

*Whilst the additions may have some impact on breezes to this dwelling house, the building satisfies Council's requirements in relation to height and therefore is permissible in this location.*

*The submitted shadow diagram identifies that the impact of overshadowing on nearby allotments will be minimal.*

*The dwelling to the west has its living room and outdoor recreation area facing Main Road and therefore will not be impacted on by the proposal.*

*There is no requirement pursuant to DCP A1 for the living area to be set back 4.0m from the side boundary however a condition of consent will be imposed to provide a screen to the window in the western wall of the living room to protect the privacy of the adjoining allotment.*

- 7. Proposed addition will compromise the beach shack atmosphere of Fingal. I do not look forward to looking out onto a giant building from my verandah, living room, bedroom and installing air conditioning due to lack of sea breeze.**

**Fingal is not a Casuarina style development and the construction of such a huge home extension on such a small block will compromise the integrity of the Fingal lifestyle and will seriously compromise our lifestyle in retirement in the future.**

**Response** - *Fingal Head is undergoing a gradual process of urban renewal where older beach shack type dwelling houses are being replaced with more modern dwellings of a more contemporary design.*

*This process is consistent with the transitional status of many coastal villages.*

*The alterations and additions to the subject dwelling are in keeping with this transitional development character and the proposal is therefore considered to be consistent with the changing character of the area.*

*The property to the west has its living area and outdoor recreation area facing Main Road and therefore will not be inconvenienced by the additions to the subject dwelling.*

**(e) Public interest**

The proposed development for alterations and additions to an existing dwelling is considered to be generally consistent with the public interest.

**OPTIONS:**

1. Approve the applications with conditions, or
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Refusal of the application may result in an appeal against Council's decision in the Land & Environment Court, and legal costs incurred.

**POLICY IMPLICATIONS:**

Each application is considered on the relative merits of the proposal and therefore approval of this application is considered to be unlikely to undermine the enforcement of Council's policies in this matter.

**CONCLUSION:**

The application for alterations and additions to an existing dwelling house, including house-raising, rooftop viewing area, retaining walls on western and southern boundaries, front fence and water feature at Lot 16 DP 18026; No. 2 Prince Street FINGAL HEAD has been assessed against Council's policies and relative state government legislation.

Two written objections to the proposal were received and were taken into consideration during the assessment of the application.

Having taken all the relevant facts of the matter into account it is considered that the proposal is an allowable site development, is consistent with other emerging developments within the Fingal Head area and is worthy of approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Additional information and photographs submitted by the applicant in response to issues of concern raised by objectors to this development application (DW 45934651)
-

**THIS PAGE IS BLANK**

- 13 [PR-CM] Development Application DA11/0476 for the Demolition of Existing Structures, Construction of a McDonalds Restaurant and Drive-Thru, IGA Supermarket, 2 x Speciality Stores, Carparking and Associated Signage at Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah

**ORIGIN:**

Development Assessment

**FILE NO:** DA11/0476 Pt2

**SUMMARY OF REPORT:**

The subject site is land formerly occupied by the Norco milk and butter factory at 230 Tweed Valley, South Murwillumbah and is a key site along Tweed Valley Way into the gateway of Murwillumbah.

The proposed development is a combined application for a McDonald's restaurant, an IGA Supermarket and two (2) specialty stores.

The McDonald's component includes: a McCafe; Children's Playland and Party Room; drive through facility; and associated signage.

The IGA Supermarket / specialty stores component includes: 915m<sup>2</sup> of retail floor area for the IGA Supermarket; two (2) specialty stores, having a Gross Floor Area (GFA) of 128m<sup>2</sup>; and associated signage.

The proposed trading hours for the McDonald's operation and drive through are 24 hours, 7 days a week. The proposed trading hours for the IGA Supermarket are 5am – 10pm, 7 days a week.

The application has been forwarded to Council for determination as a result of the number of submissions submitted concerning the proposed development. The application is recommended for approval, subject to the applicant meeting specific deferred commencement conditions.

**RECOMMENDATION:**

**That Development Application DA11/0476 for the demolition of existing structures, construction of a McDonalds restaurant and drive-thru, IGA supermarket, 2 x speciality stores, carparking and associated signage at Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah be approved subject to the following conditions:**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within six (6) months of the date of notification.**



Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

It should be noted that the consent will lapse if the matters set out in Schedule A are not satisfied.

#### **SCHEDULE "A"**

#### **Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.**

1. The plans for the proposed development are to be amended and submitted to Council's General Manager or his delegate for approval, to incorporate the following:
  - (a) Modifications to both buildings to incorporate the following:
    - Both buildings address building and roof form to be more reflective of the local context and passive design measures with a series of pitching or skillion roof planes and eave over hangs;
    - Both buildings incorporate a mix of materials more closely associated with the north coast vernacular including but not limited masonry, corrugated iron, cfc sheeting weatherboard/chamferboard with hardwood timber detailing where possible;
    - McDonalds Restaurant incorporate a more generous covered outdoor eating area taking advantage of the view north over the river;
    - IGA incorporate a more main street 'shopfront' dimensioning and articulation to the northern elevation. As a guide shopfront dimensions are approximately 5.0m with the awning height approximately 3.2m high. The northern elevation should be articulated and detailed to generally achieve a similar scale by way of structural bays, or material changes (see material comments above).
    - Screened loading bays with offset openable timber frames
  - (b) The 10.0m high pylon signs (McDonalds and IGA) are to be removed from the development proposal to avoid the juxtaposition of the neon sign with the iconic profile view of Mt. Warning as they would significantly compromise an important view field and therefore entry experience and visual character. The proposed buildings are significantly branded and propose a number of other signs of various sizes and illumination to adequately identify the location of the proposed businesses. Signage along this street edge is to be limited to a maximum of 5.0m. The width of an amended sign is to be proportional to its height. For example the reduction in only the pole height from 10m to 5.0m would not be acceptable'.
  - (c) The proposed signage is to be revised in order to comply with the provisions of DCP A4 in terms of the number of signs per premises and the maximum area of signage, noting that lifestyle images / decals

are considered to be a form of advertisement and must be included in any calculations for signage.

- (d) The Site Plan is to be revised in order to provide additional landscaping along the frontage of the site. Specifically, the car parking layout is to be amended to provide for a wider landscaping strip along the site's frontage between IGA's car spaces 17 to 20 and between McDonald's car spaces 15 to 27 (in reference to Drawing SP2 (Issue Q)), to allow for more substantial landscaping including street trees rather than predominantly low level plantings.
  - (e) The Landscape Plan is to be revised to incorporate street trees capable of growing to a mature height of no less than 5.0m with the species list selected in consultation with Council's Landscape Architect. These street trees would then provide definition to street edge and improve the entry experience into Murwillumbah. All reference to decorative gravel is to be removed from the landscape plans.
  - (f) Details are to be provided indicating improved pedestrian circulation legibility by extending pathways to all car parking areas, and more clearly delineated pedestrian priority at the seven points of conflict by raised threshold, change in surface material, colour or other suitable measure
  - (g) Further detail is to be provided with regard to the proposed electricity transformer, including a cross section through the transformer to clearly indicate the proposed height of the transformer and the proposed screen methods.
2. A Contaminated Land Investigation Report is to be prepared, by a suitably qualified and experienced person, and submitted and approved to by Council's General Manager or his delegate. The Report shall be prepared in accordance with the Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites dated 1997 and other relevant documents made or approved by the NSW Environment Protection Authority in accordance with the Contaminated Land Management Act 1997.

## **SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

### **GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and approved plans under Schedule A of this consent, except where varied by the conditions of this consent.  
[GEN0005]
2. Submission of a further Development Application(s) for the first use of the specialty shops adjacent to the IGA Supermarket, such to be approved by Council prior to their use or occupation.  
[GEN0055]

3. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.  
[GEN0075]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
5. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]
6. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.  
[GEN0190]
7. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.  
[GEN0265]
8. The owner is to ensure that the proposed building is constructed in the position and at the levels as nominated on the approved plans or as stipulated by a condition of this consent, noting that all boundary setback measurements are taken from the real property boundary and not from such things as road bitumen or fence lines.  
[GEN0300]]
9. The proposed development is to be staged in two stages, being the McDonald's stage and the IGA / Shops stage. The access and shared carparking easements must be completed together with the first stage of the development under construction.  
[GENNS01]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

10. Pursuant to Section 80A(1)(B) of the Environmental Planning and Assessment Act, 1979 (as amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 development consent No. DA10/0504 dated 17 September 2010 (relating to an advertising structure in the north western portion of the site) shall be surrendered by lodgement of the prescribed information suitably executed, PRIOR to the issue of a Construction Certificate/Subdivision Certificate. The advertising structure approved under DA10/0504 shall be removed from the site prior to the commencement of works.  
[PCC0005]
11. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

12. The developer shall provide 82 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring 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.

[PCC0065]

13. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 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 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 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- (a) Tweed Road Contribution Plan:

440.598 Trips @ \$1807 per Trips \$796,161

(\$1807 base rate + \$0 indexation)

S94 Plan No. 4

Sector10\_4

[PCC0215]

14. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

#### Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$  heavy haulage contribution

and:

**Prod.** projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist.** average haulage distance of product on Shire roads (trip one way)

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP2: 12.753 ET @ \$11571 per ET \$147,565.00

Sewer Murwillumbah: 20.7824 ET @ \$5560 per ET \$115,550.10

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

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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.

[PCC0265]

16. 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. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

17. 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, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

18. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, Tweed Shire Council Development Control Plan Part A1 and Councils Development Design and Construction Specifications.

Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.

Please note timber retaining walls are not permitted.

[PCC0475]

19. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

20. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:

- (a) Design Flood Level of RL 5.8m AHD.
- (b) All building materials used below Council's design flood level must not be susceptible to water damage.
- (c) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.

[PCC0705]

21. Fencing detail is to be provided detailing a form that will either allow the free passage of flood water or be of a light construction such as timber paling that will collapse as a result of any build up of floodwater or debris, with the exception of 15m long acoustic fence as identified by the acoustic report.

[PCC0725]

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

[PCC0735]

23. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

- (a) Construction of two (2) new vehicular footpath crossings. The eastern (ingress) driveway shall be shall be 7.0m wide at the property boundary, and the western (egress) driveway shall be 7.5m wide at the property boundary.
- (b) Removal of all redundant existing vehicle entries and replacement with kerb and gutter to match existing, as well as appropriate footpath restoration.
- (c) Construction of full width concrete path paving for the full extent of the proposed bus set-down area. The applicant is advised that separate signage for the designation of a bus zone will require separate application to Council's Local Traffic Committee, and that this should be submitted in conjunction with the Sec.138 application. At this time Council may consider the installation of 'No Parking' signage for the remainder of the site frontage is warranted, in conjunction with the bus zone signage.

The above-mentioned Sec.138 application is required to also include details of the proposed bus shelter that will be erected within the site, to ensure it is compliant with Council's standards. The bus shelter will not however gain approval for construction via the Sec.138 application.

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan



[PCC0895]

24. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
  - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
  - (d) Specific Requirements to be detailed within the Construction Certificate application include:
    - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

25. 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 S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision 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 LG Act will then NOT be required.

[PCC1145]

26. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
  - (b) Construction phase 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".

[PCC1155]

27. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

28. In accordance with Section 68 of the Local Government Act, 1993, any premises proposing to discharge into Councils sewerage system waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC1255]

29. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed in accordance with Tweed Shire Councils Trade Waste Policy. Submission of detailed hydraulic plans and specifications indicating size, type, location and drainage installations in accordance with AS 3500 shall be submitted to Council for approval.

[PCC1265]

30. Three copies of detailed hydraulic plans shall be submitted with all trade waste applications which indicate size, type and location of pre-treatment devices. All plumbing and drainage installations to these devices shall comply with AS3500.

[PCC1275]

31. A construction management plan and construction noise management plan shall be submitted to the satisfaction of the General Manager or his delegate prior to issue of a construction certificate. The construction management plan shall include details on the possible staging of the development, with particular regard to access arrangements across the site. All work shall comply with the approved plans.

32. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:

- Floor plan
- Layout of kitchens showing all equipment
- All internal finish details including floors, wall, ceiling and lighting
- Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required

[PCCNS01]

33. An existing overhead power line traverses the western portion of the site, and the applicant is required to make appropriate enquiries with Country Energy for the removal or relocation of this line. Documentary evidence of Country Energy advice will be required prior to issue of any construction certificate.

[PCCNS02]

34. A separate Section 68 application will be required for the extension of existing sewer main infrastructure, to accord with the future subdivision proposal for this site. Construction of sewer infrastructure at this time (in lieu of in the future) will avoid significant disturbance of the proposed landscaping works and internal access and parking areas.

[PCCNS03]

35. The applicant is invited to submit an application for two (2) water connections for the site, to accord with the future subdivision proposal over the site.

[PCCNS04]

36. "No Entry" signage is to be erected at the egress driveway that is clearly visible to eastbound traffic on Tweed Valley Way, to avoid conflict with eastbound traffic that could try to enter the site via the egress driveway.

[PCCNS05]

37. Prior to the Construction Certificate being issued, a Site Management Plan for the ongoing use and management of the entire site shall be prepared and submitted to the satisfaction of Council's General Manager or delegate. The Plan shall include but is not limited to the management of mechanical plant and associated equipment, management of the Playland area, proposed site security including management of patrons and antisocial behaviour, monitoring and management of litter, trolley management, coordination of refuse collection vehicles and delivery vehicles to avoid potential traffic conflict and general site management.

The approved Site Management Plan shall be kept onsite and implemented upon commencement of operations.

[PCCNS06]

38. Prior to the issue of a Construction Certificate a Heritage Impact Statement is to be submitted and approved by Council's General Manager or his delegate, in relation to the existing building along the eastern boundary of the site. The Statement is to be prepared by a suitably qualified heritage consultant documenting the building's heritage value and providing details of its proposed relocation, rehabilitation, funding and ongoing management.

[PCCNS07]

39. Prior to the issuing of a Construction Certificate, a demolition and construction waste management plan is to be provided to Council. The Waste management plan is to include:

- Demolition

The volume and type of waste generated during demolition

The methods of storage of material on site. A site plan should be included.

How recyclable materials will be separated, managed, and where the materials will be sent for recycling

The location and methods of disposal of all residual waste

The licensed transporter of the waste

- **Construction**

The type of waste generated during construction

The method and location of waste storage on site

How any recyclable materials will be managed

The location of the disposal facility for residual waste

During the demolition and construction phases it is the responsibility of the site manager to ensure that the above management measures are inspected and maintained on a daily basis.

[PCCNS08]

40. Prior to the issue of a Construction Certificate, and where required by the approved Contaminated Land Investigation Report, a Remediation Action Plan (RAP) shall be submitted and approved by Council's General Manager or his delegate. The report shall demonstrate that the site is suitable, or made suitable following remedial works, for the proposed land use. Conditions and recommendations imposed by the RAP shall form part of this consent. Where the conditions and recommendations are not consistent with this consent, a section 96 application pursuant to the Environment Planning and Assessment Act 1979 will be required to ensure the conditions form part of the consent conditions.

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

41. 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]

42. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

44. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:
- (a) a standard flushing toilet connected to a public sewer, or
  - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

45. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

46. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further

blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

47. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

48. 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 to the satisfaction of the Principal Certifying Authority.

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]

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

[PCW1005]

50. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

51. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

#### **DURING CONSTRUCTION**

52. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved construction certificate, drawings and specifications.

[DUR0005]

53. **Construction and/or demolition site work including the entering and leaving of 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]

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

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

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

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

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

55. **All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**

[DUR0375]

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

[DUR0395]

57. **The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.**

[DUR0405]

58. **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 Occupational Health and Safety Regulation 2001.**

[DUR0415]

59. **All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the**



relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

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

[DUR0645]

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

[DUR0675]

61. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0765]

62. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

63. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

64. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

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

[DUR0985]

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

[DUR0995]

67. 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]

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

[DUR1025]

69. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that the floor level of the buildings to be at a level of not less than RL 5.8m AHD.

[DUR1445]

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

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

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

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

[DUR1495]

71. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

72. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

73. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and

be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

74. During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.

[DUR1575]

75. 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]

76. Where the 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]

77. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

78. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

79. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

80. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".

[DUR2195]

81. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

82. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures,

make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

83. 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]

84. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

85. During 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 Council's Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

86. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

87. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

88. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

89. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

90. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

91. Individual air conditioning, refrigeration and exhaust fan units for the McDonalds restaurant are to be located behind appropriately constructed roof parapets and/or acoustic screens on the roof level to provide shielding to residential lands uses to the east of the property.
92. A 2.4 metre high acoustic barrier is to be constructed on the northern portion of the eastern boundary of the site. The acoustic barrier is to be 15 m in length, from the northern extent of the eastern boundary. The acoustic barrier is to be gap-free and constructed of materials achieving a minimum surface density of 12.5 kg/m<sup>2</sup>. The acoustic barrier is to be constructed from overlapped timber palings, ply, fibre cement, concrete, steel, glass or any other suitable material achieving the required standard. The barrier shall be maintained to a suitable standard at all times

[DURNS01]

93. All works shall be undertaken in accordance with the approved Contaminated Land Investigation report and the approved Remediation Action Plan.

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

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

[POC0005]

95. Prior to the issue of an Occupation Certificate 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 civil works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (in particular the sewer infrastructure works) as set out in Councils 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 Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

96. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

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

[POC0225]

98. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

99. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

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

[POC0635]

101. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

102. Work as executed plans are to be provided to Council in accordance with Councils Development Design Specification, D13 and a CCTV inspection of the stormwater pipes and sewerage system to be dedicated to Council as public infrastructure including joints and junctions to demonstrate that the standard of the system is acceptable to Council.

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

- a) The plans accurately reflect the work as executed.
- b) All stormwater lines, sewer lines, services and structures are wholly contained within the relevant easements or boundaries.

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 plans.

[POC0765]

103. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

104. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

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

[POC0985]

**106. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.**

[POC1045]

**107. Prior to the issue of an occupation certificate for the IGA Supermarket, a Waste Management Plan for the operational phase of the supermarket is to be submitted and approved by Council’s General Manager or his delegate.**

[POCNS01]

**108. Prior to the issue of an occupation certificate for the McDonald’s restaurant and the IGA Supermarket, written acceptance from the waste contractor (with regard to the restricted collection time) must be obtained and submitted to Council. Refuse collection activities are limited to the period of 7.00am to 7.00pm only Monday to Saturday and 8.00am to 7.00pm Sundays and Public holidays.**

[POCNS02]

## **USE**

**109. 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]

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

[USE0175]

**111. Hours of operation for the McDonald's restaurant are 24 hours, 7 days a week.**

**Hours of operation for the IGA Supermarket are restricted to the following hours:**

**\* 5.00am to 10.00pm – 7 days a week**

[USE0185]

**112. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.**

[USE0225]



113. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.
- [USE0245]
114. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.
- [USE0835]
115. All mechanical ventilation shall comply with AS1668.2 Ventilation Requirements.
- [USE0845]
116. The applicant and occupier of the premises is alerted to the requirements of the Smoke-Free Environment Act 2000 and the Smoke Free Environment Regulation 2007 and the guidelines in the Regulation for determining what is an enclosed public place. Enquires may be directed to the NSW Department of Health. The legislation may be viewed on the following website:
- <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/O>
- [USE1075]
117. Individual air conditioning, refrigeration and exhaust fan units for the McDonalds restaurant are to be located behind appropriately constructed roof parapets and/or acoustic screens on the roof level to provide shielding to residential lands uses to the east of the property.
118. A 2.4 metre high acoustic barrier is to be constructed on the northern portion of the eastern boundary of the site. The acoustic barrier is to be 15 m in length, from the northern extent of the eastern boundary. The acoustic barrier is to be gap-free and constructed of materials achieving a minimum surface density of 12.5 kg/m<sup>2</sup>. The acoustic barrier is to be constructed from overlapped timber palings, ply, fibre cement, concrete, steel, glass or any other suitable material achieving the required standard. The barrier shall be maintained to a suitable standard at all times.
119. Delivery, service vehicle and refuse collection activities are to be limited to the period 7:00 am to 7:00 pm only Monday to Saturday and 8am to 7pm Sunday and Public Holidays.
120. The commercial buildings that currently exist at 228 Tweed Valley Way, Murwillumbah, were considered by the acoustic consultant for the current development application to act as acoustic barriers and provide noise attenuation to the nearest affected residential dwelling. Should alterations to buildings at 228 Tweed Valley Way reduce noise attenuation, and noise pollution results, the owner of the property to which the current development application relates is responsible for addressing the matter within their property and ensuring that noise pollution ceases.

[USENS01]

**121. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.**

[USE0735]

**122. Delivery / service vehicles accessing the site are limited to the following:**

- **14m pallet truck for the McDonald's operation**
- **12.5m Heavy Rigid Vehicle (HRV) for the IGA Supermarket**

[USENS02]

**REPORT:**

**Applicant:** McDonalds Australia Limited  
**Owner:** Tronridge Pty Ltd  
**Location:** Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878 No. 230 Tweed Valley Way, South Murwillumbah  
**Zoning:** 3(c) Commerce and Trade  
**Cost:** \$3,000,000

**BACKGROUND:**

The subject site is located over nine (9) allotments along No. 230 Tweed Valley, South Murwillumbah. The allotment is a key site as you come across along Tweed Valley Way into the gateway of Murwillumbah.

The site is relatively flat and irregular in shape, with a northern frontage of approximately 160m along Tweed Valley Way, with an average depth of approximately 43m. This results in a total site area of 6,251m<sup>2</sup>. The only structure on the site is along the eastern property boundary, with the remainder of the site vacant. There is no vegetation on the site.

The surrounding properties are a mix of commercial and residential, with the properties to the east being commercial and residential buildings. Further to the east are a number of 24 hour service stations. To the west of the site is a truck dealership. To the north of the site (beyond Tweed Valley Way) is the Tweed River. To the south of the site is the old railway line and industrial land beyond.

The land was formerly occupied by the Norco milk and butter factory, which operated on the site for approximately 100 years, until its closure in 1996. The Norco rural store continued to operate in the existing separate building situated on the eastern boundary whilst the remaining buildings were only utilised as storage areas since the factory closed. There were a number of existing buildings and structures on site.

Approval was granted on 7 June 2002 for the staged redevelopment of the former Norco dairy products factory. Development Consent 0119/2002DA incorporated a mixed-use development, including shops, refreshment rooms and bulky goods retailing. The consent also involved the partial demolition of existing buildings and structures, as well as the use of some elements of the existing historic buildings in the approved development.

Development Consent DA05/0535 for the first use for the sale of fresh and packaged food (within the approved fruit and vegetable outlet) was granted on 7 October 2005. This approval has since lapsed.

A further S96 application for consent 0119/2002DA was lodged in August 2005 for a revised loading bay arrangement. During the assessment of the proposed amendments, the unauthorised demolition of the existing buildings (which formed an integral part of the original approval) was brought to Council's attention. The applicant provided documentation to the effect that all of the building structures were demolished due to their structural instability and subsequent safety and insurance concerns.

The site has also previously been the subject of a proposed full-line supermarket development application in 2006, which was not supported by Council.

**PROPOSAL:**

The proposed development is a combined application for a McDonald's restaurant, an IGA Supermarket and two (2) specialty stores.

The McDonald's component has a site area of 2787m<sup>2</sup>, with the restaurant having a Gross Floor Area (GFA) of 431.2m<sup>2</sup>. The restaurant incorporates the following:

- McCafe, Children's Playland and Party Room;
- Seating capacity for 88;
- 29 car spaces;
- Drive through facility;
- Loading dock; and
- Associated signage.

The IGA Supermarket / specialty stores component has a site area of 3464m<sup>2</sup>, with the supermarket having a GFA of 1173.7m<sup>2</sup>. The supermarket component includes the following:

- 915m<sup>2</sup> of retail floor area for the IGA Supermarket;
- Two (2) specialty stores, having a GFA of 128m<sup>2</sup>;
- Loading dock;
- 53 car spaces; and
- Associated signage.

The proposed trading hours for the McDonald's operation and drive through are 24 hours, 7 days a week. The proposed trading hours for the IGA Supermarket are 5am – 10pm, 7 days a week.

In terms of staff numbers, the McDonald's operation anticipates that ten (10) employees will be utilised for any one shift, with a total of eighty (80) staff. The IGA Supermarket will require approximately sixty (60) staff, with up to fifteen (15) staff on any one shift.

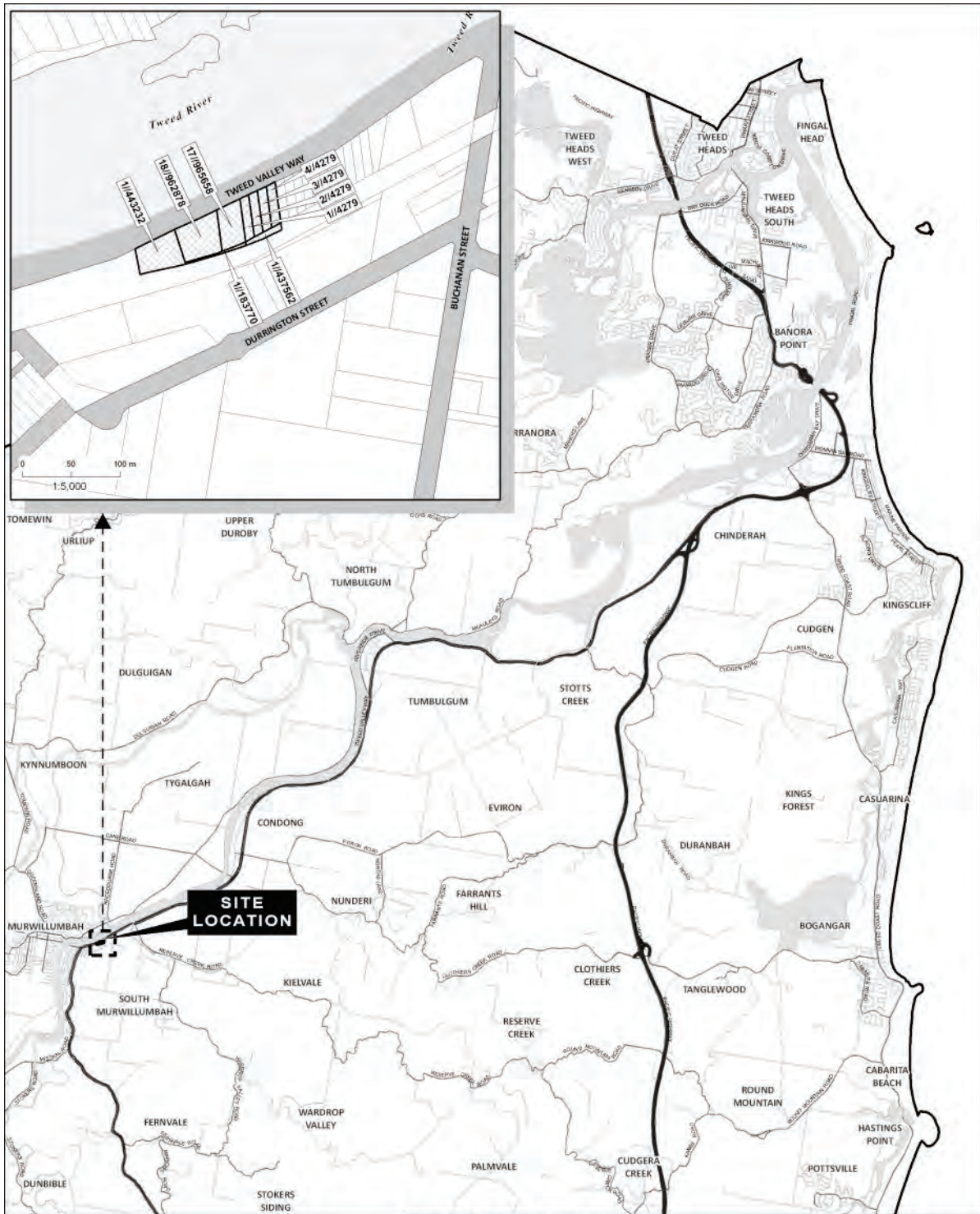
With regard to the existing Norco building on site (which runs the length of the eastern property boundary), the proposal notes that the...*'existing former Norco Building is not being demolished. Rather, the land owner will be donating the building to a suitable local beneficiary for future use'*.

Landscaping is proposed for the site along the frontage of Tweed Valley Way and throughout the car parking area.

The proposed development is staged into two distinct parts, being the McDonald's stage and the IGA/shops stage, so that both operations can open independently of the other in the event that they are finished at different times. The access and shared car parking will be completed together with the first part of the development.

Although not part of this application, it is the intention of both McDonald's and IGA to lodge a future subdivision application to match the intended boundaries of the proposed two uses.

**SITE DIAGRAM:**



**Locality Plan**

Lot 1 DP 183770, Lots 1-4 DP 4279, Lot 1 DP 437562, Lot 1 DP 443232, Lot 17 DP 965658 & Lot 18 DP 962878  
 No. 230 Tweed Valley Way, South Murwillumbah

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for services or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 90 days only from the date of supply.

Cadastre: 01 February, 2012  
 © Land and Property Management Authority (LPM) & Tweed Shire Council.  
 Boundaries shown should be considered approximate only.

0 1 2 Km  
 1:100,000 @ A4 Portrait  
 DO NOT SCALE  
 COPY ONLY - NOT CERTIFIED  
 Map Projections: Universal Transverse Mercator  
 Horizontal Datum: Geoid: East of Australia 2004  
 Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 816  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 282 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



Mapdata: 20110117 11:55:00 AM Standard Time (AEST) (04:58:40 PM) 11/18/11 Map - Locality Plan 2011\_A4P.pdf

Author: 18/08/11 Designer: Robert Little

0108 Project: 911 Urban 01\_2012



**DEVELOPMENT PLANS:**

**DEVELOPMENT SUMMARY**

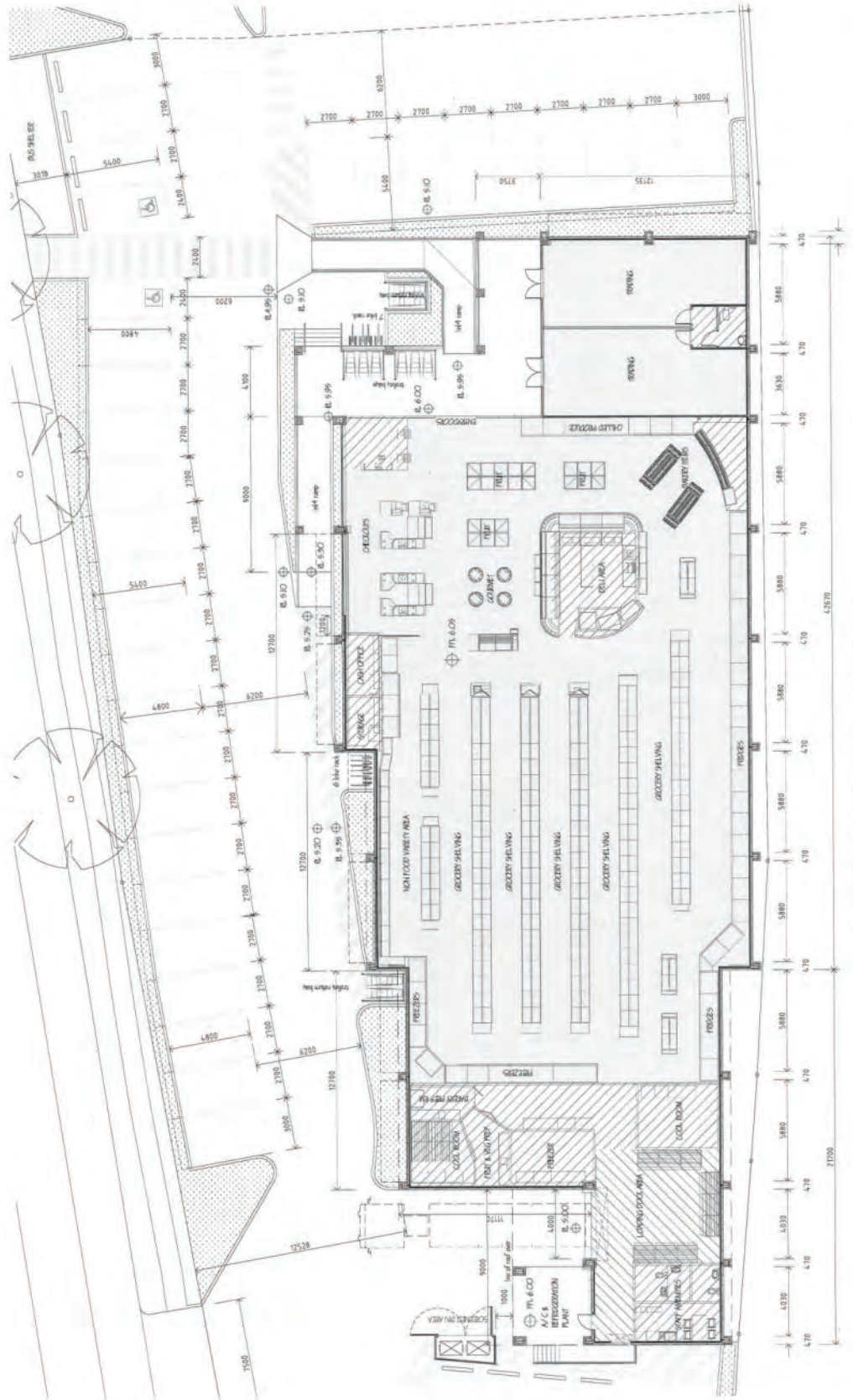
**Site Details**  
 Lot and Plan Description: Lots 1-11 DP 42719, Lot 1 DP 1055770,  
 Lot 1 DP 4375662, Lot 1 DP 445222,  
 Lot 17 DP 965658 and Lot 18 DP 962878  
 Parish: Murrumbidgee  
 County: Ross  
 Total Site Area: 6,251sq.m.  
 McDonald's Site Area: 2,787sq.m.  
 IGA Site Area: 3,464sq.m.

**Building Details**  
 McDonald's GFA: 341.5sq.m.  
 Terrace GFA: 42.8sq.m.  
 Playland GFA: 18.9sq.m.  
 Carrel GFA: 23.2sq.m.  
 Total GFA: 426.4sq.m.  
 Building Site Cover: 29.55%  
 Maximum Building Height: 10.15m

**Parking and Servicing**  
 Car Parking Bays: 79  
 Disabled Parking Bays: 3  
 Total Parking Bays: 82  
 McDonald's Service Bay: 15.4m AV  
 IGA Service Bay: 15.4m AV



<p><b>RJC Architecture</b> (Incl. GST)          100-110 Macquarie Street, Sydney, NSW 2000          Phone (02) 3246 3246          www.rjcarchitect.com.au</p>		<p><b>CLIENT</b>                  TRONBROCK PTY LTD.</p> <p><b>PROJECT</b>                  IGA STORE &amp; McDONALD'S RESTAURANT</p>		<p><b>DATE</b>                  9.2.12</p> <p><b>ISSUE</b>                  Q</p>	
<p><b>23.12</b>                  L REVISED McDONALD'S CARPARK</p>	<p><b>11.12</b>                  K REVISED CARPARK &amp; LANDSCAPING</p>	<p><b>15.11</b>                  J REVISED GFA FIN AREA</p>	<p><b>15.11</b>                  I REVISED GFA FITOUT</p>	<p><b>28.11</b>                  H CORRECTED LOT DESCRIPTION</p>	<p><b>8.11</b>                  G DA SUBMISSION</p>
<p><b>7.11</b>                  I REVISED CARPARK &amp; LANDSCAPING</p>	<p><b>9.11</b>                  H TWEED VALLEY PARK TO IGA STORE</p>	<p><b>28.11</b>                  G DA SUBMISSION</p>	<p><b>8.11</b>                  F TWEED VALLEY PARK TO IGA STORE</p>	<p><b>15.11</b>                  E CORRECTED LOT DESCRIPTION</p>	<p><b>15.11</b>                  D DA SUBMISSION</p>
<p><b>15.11</b>                  H REVISED ENTRY LOCATION</p>	<p><b>7.11</b>                  G DA SUBMISSION</p>	<p><b>15.11</b>                  F TWEED VALLEY PARK TO IGA STORE</p>	<p><b>28.11</b>                  E CORRECTED LOT DESCRIPTION</p>	<p><b>15.11</b>                  D DA SUBMISSION</p>	<p><b>15.11</b>                  C DA SUBMISSION</p>
<p><b>23.12</b>                  L REVISED McDONALD'S CARPARK</p>	<p><b>11.12</b>                  K REVISED CARPARK &amp; LANDSCAPING</p>	<p><b>15.11</b>                  J REVISED GFA FIN AREA</p>	<p><b>15.11</b>                  I REVISED GFA FITOUT</p>	<p><b>28.11</b>                  H CORRECTED LOT DESCRIPTION</p>	<p><b>8.11</b>                  G DA SUBMISSION</p>



**RUG Architecture** Pty Ltd  
 Phone (07) 3286 3288  
 www.rugarchitecture.com  
 P.O. Box 189,  
 Carrivick, Qld. 415

**CLIENT**  
**IRONRIDGE PTY LTD**

**PROJECT**  
**IGA STORE & SPECIALTY SHOPS**

DATE	ISSUE	ISSUE DESCRIPTION
27-11	G	IA SUBMISSION
29-11	F	REVISED CAMPAN LAYOUT
18-11	E	PRE-IA SUBMISSION
16-11	D	ADDITIONAL ENTRY RAMP
14-11	C	REVISED CAMPAN LEVELS
21-11	B	REVISED CAMPAN LAYOUT
19-11	A	AWARDS JUDGED
13-11	L	COUNCIL REQUESTED REVISIONS
11-11	K	REVISED IRL LOCATION
02-11	J	REVISED IRL LAYOUT
21-10	I	AREAS DEFINED
19-10	H	AWARDS JUDGED
18-10	N	ISSUE DESCRIPTION

**RECEIVING DOCK**  
 20m x 10m

**BACK OF HOUSE**  
 10m x 10m

**METAL AREA**  
 10m x 10m

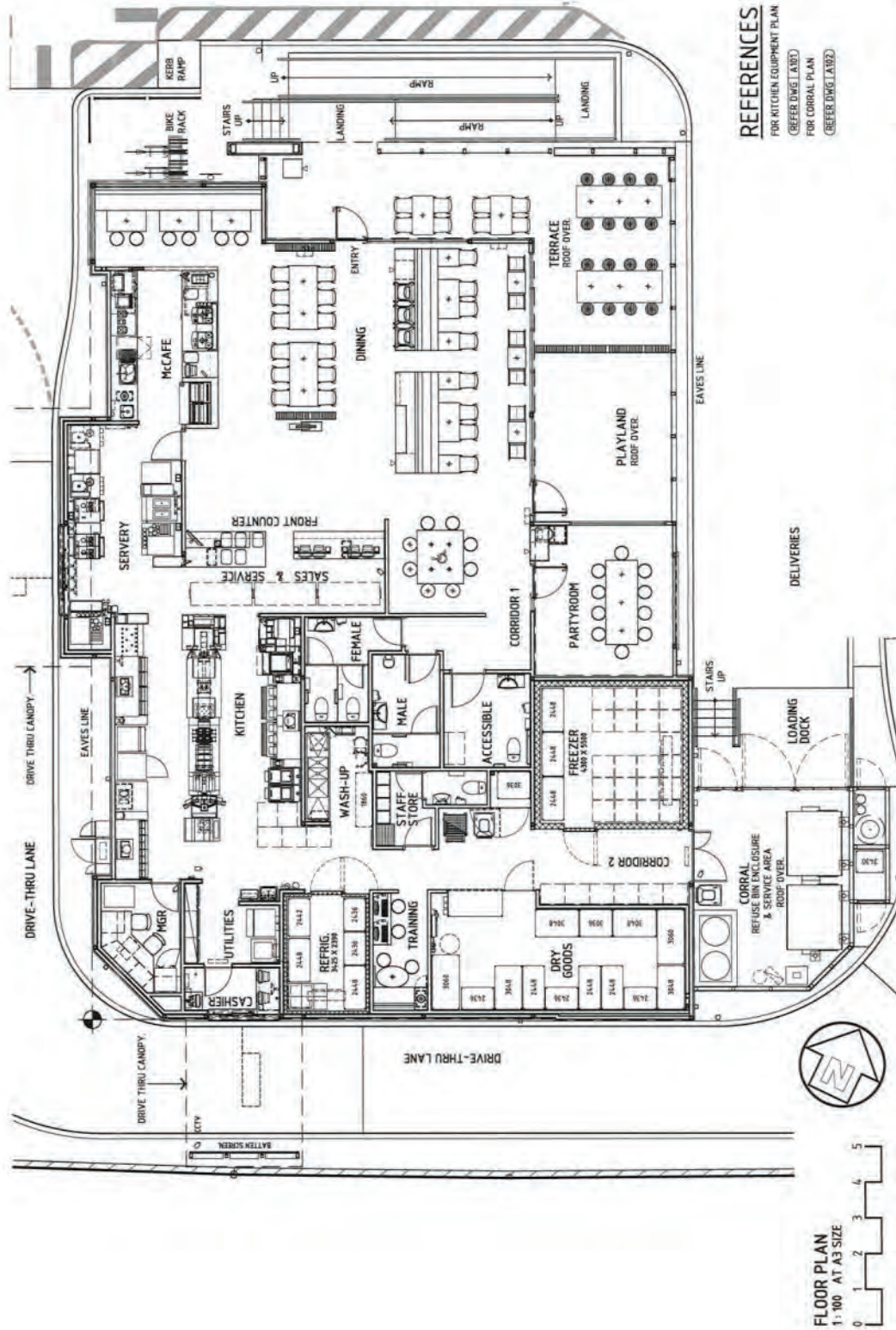
**DATE** 27-11-11  
**SCALE** 1:200 (A), 1:500 (B)  
**PROJECT NO.** 99464  
**ISSUE NO.** 1











**REFERENCES**  
 FOR KITCHEN EQUIPMENT PLAN  
 (REFER DWG L.A107)  
 FOR CORRAL PLAN  
 (REFER DWG L.A102)



SKETCH 0 1 2 3 4 5	THIS IS A COMPUTER DRAWING. ALL DIMENSIONS SHALL BE TAKEN IN PREFERENCE TO SCALING. © 2011 McDONALD'S	NOT TO SCALE 1:100 1:50 1:20 1:10 1:5 1:1	PROPOSED McDONALD'S RESTAURANT AT: 230 TWEED VALLEY WAY MERRILLUMBAH NSW 2464 FLOOR PLAN	UNREVISED MASTER DRAWING DATE: 10/01/11 PROJECT: 01/01/11 DRAWING NO.: DA-A100 SCALE: 1:100 SHEETS: 1/1	PROJECT CONSULTANT ARCHITECTURAL <b>PA ARCHITECTS</b> 4/27 66th STREET BOWEN HILLS QLD 4006 TELEPHONE: 0732571422 FACSIMILE: 0732571272 M.C. 0814
--------------------------------------	--	---	--	--	---













**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of amenity for nearby residential properties or the shire as a whole, subject to conditions of consent.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The proposed development is considered to be in keeping with the ESD principles.

Clause 8 - Zone objectives

- (1) This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:
  - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
  - (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
  - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 3(c) Commerce & Trade, the primary objectives of which are outlined in Clause 11 assessment below.

The McDonalds component of the development is defined as a 'restaurant', which is permissible with consent (Item 2). The IGA component of the development is defined as a 'shop', which is Item 3 - allowed only with consent and must satisfy the provisions of clause 8(2) (see Clause 8(2) assessment below). The proposed development is considered to be consistent with the primary objectives of the zone.



Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community, subject to conditions of consent.

The proposed shop component of the development triggers assessment against Clause 8(2) of the LEP. At a pre-lodgement meeting, the applicant was recommended to supplement their Clause 8(2) assessment with an economic impact assessment (EIA). The applicant has provided the following comments with regard to Clause 8(2):

***"Clause 8(2)(a)***

***It must be demonstrated that the development is necessary for one of the following reasons:***

- ***It needs to be in the locality in which is it proposed to be carried out due to the nature, function or service catchment of the development.***
- ***It meets an identified urgent community need.***
- ***It comprises a major employment generator.***

*Major employment generator*

*As outlined within the EIA, the development of the proposed IGA supermarket will result in a range of important economic benefits which will be of direct benefit to the local community. These key positive employment and consumer impacts will include the following:*

- *The provision of an additional supermarket for local residents, situated in a convenient, easily accessible location.*
- *The supermarket is projected to employ around 60 persons. Taking a conservative view and allowing for an estimated 10% of the total increase to be as a result of the reduced employment at existing retail facilities, the net additional jobs are estimated at 54.*
- *The additional 54 permanent retail employees would earn an average annual wage of around \$28,800 as sourced from the ABS. This represents an additional \$1.6 million in salary and wages for the local economy, directly as a result of the proposed development.*
- *Further jobs would be created from the supplier induced multiplier effects as a result of the retail jobs for the on-going running of the proposed Murwillumbah supermarket as well as from the construction of the store. Jobs created are fulltime equivalent jobs, which may include both full-time and part-time positions. In total, some 51 jobs are projected to be created in the broader community.*

*We therefore consider the proposal to comprise of a major employment generator within the Murwillumbah locality.*

*Further to the above, the EIA identifies a retail demand within the primary trade area that can be overcome through the provision of a retail facility within the identified location. The substantial population within the Murwillumbah area is projected to increase further in the future, and as a*

*result, there will be increased demand for supermarket floorspace in the future. This is a position that is supported by the Detailed Retail Analysis undertaken for Tweed Council by Core Economics.*

*A supermarket at the proposed Murwillumbah East development will be able to satisfy a proportion of this additional demand. Even with the addition of the proposed Murwillumbah East supermarket in 2013, the supermarket floorspace provision within the defined trade area will continue to be well below the non-metropolitan New South Wales average.*

**Clause 8(2)(b)**

***The proposal must demonstrate that there is no other appropriate site on which the development is permitted with consent in a reasonable proximity.***

*The site of the proposed Murwillumbah East development, situated on the eastern side of the Tweed River, along Tweed Valley Way, would promote easy access to convenience food and grocery facilities for the primary east sector population. The Tweed Valley Way site has also been identified as a key location for future retail floorspace as indicated in the Detailed Retail Analysis – Murwillumbah, prepared by Core Economics.*

*The Draft Murwillumbah Town Centre DCP, prepared by Architectus for Tweed Shire Council in September 2007, seeks to detail future opportunities and guidelines to contribute to the growth, protection and character of the Murwillumbah Town Centre. One of the key objectives outlined is the revitalisation of the Prospero Street Precinct which forms the entrance to the Town Centre. This precinct is currently poorly presented and includes several vacancies. The proposed development at Murwillumbah East would help to strengthen this precinct and would revitalise the eastern entrance to the Town Centre.*

*The Draft Murwillumbah Town Centre DCP also outlines the preferred location for a 'second major supermarket.' Three sites are identified within the Murwillumbah Town Centre. Each of the identified sites, however, currently includes several land owners and existing uses and as such, any major development on these sites will likely be restricted for some time. In addition, the proposed Murwillumbah East development will not include a major supermarket and instead will serve a convenience, top-up shopping role only, with a supermarket size of 1,045.7m<sup>2</sup> (retail space totalling 726.5m<sup>2</sup>), much smaller than a typical major full-line supermarket of 3,000m<sup>2</sup>. Furthermore, only two specialty stores occupying 128<sup>2</sup>m are planned to be provided at the proposed site.*

*A Retail Demand Analysis was undertaken by Core Economics on behalf of Tweed Shire Council in November 2006 and attempted to provide a summary of retail and commercial uses within Murwillumbah and to provide an understanding of impacts on the Town Centre if retail facilities were developed outside of the immediate Town Centre.*

*The Core Economics report outlines that two key areas are suitable for additional convenience based retail facilities within Murwillumbah outside the Town Centre, namely:*

- *South-west of Bray Park.*

▪ *Along Tweed Valley Way.*

*The report concludes that "...the most suitable site for development is considered to be along Tweed Valley Way due to its increased exposure to passing traffic and its closer proximity to the existing Town Centre, when compared to a site in Bray Park".*

*The report also outlines that if no sites are selected, the need for additional floorspace will result in increased congestion in the existing Town Centre and resulting increases in escaped expenditure to facilities at Tweed Heads.*

*As demonstrated above, and given there is no land currently available in the Murwillumbah Town Centre to accommodate a second, smaller supermarket, it is considered there is no other appropriate site on which the development is permitted with consent in a reasonable proximity.*

**Clause 8(2)(c)**

***To satisfy Clause 8 of the LEP 2000 the development must demonstrate that it will be generally consistent with the scale and character of existing and future lawful development in the immediate area.***

*The proposal has been designed to meet the key built form controls in terms of height, scale, orientation and setback. The proposal is a lawfully permissible use in the 3(c) Commerce and Trade Zone is consistent with the character of the Murwillumbah East Precinct.*

**Clause 8(2)(d)**

***As outlined throughout this report, the development would be consistent with the aims of the LEP and at least one of the objectives of the zone within which it is proposed to be located.***

*The proposal meets both the primary and secondary objectives of the 3(c) Commerce and Trade Zone under the provisions of the Tweed Local Environmental Plan 2000 as*

*"The proposed Murwillumbah supermarket will strengthen Murwillumbah as a retail destination. The proposed development will not impact on the role served by the Murwillumbah Town Centre, or surrounding retail facilities within the broader region. The proposed store will include a 1,1173m<sup>2</sup> supermarket and will not include any specialty traders which would compete more directly with surrounding facilities. Furthermore, the store will not include a full - sized supermarket and will not detract from the existing full - line supermarket within the Murwillumbah Town Centre, namely Coles at Sunnyside Mall".*

*The proposal is therefore considered to meet the primary objective of the 3(c) zone.*

*As demonstrated above, the proposal fully satisfies the objectives of Clause 8(2)'.*

**Comment:**

The applicant's submission regarding the Clause 8(2) matter is considered to be supportable.

With regard to the first consideration of Clause 8(2), the argument that the proposed IGA Supermarket is a major employment generator is supported, with a net increase of 54 jobs resulting from the development.

In terms of the second matter for consideration, it is considered that the applicant has adequately demonstrated that there is no other appropriate site on which the development is permitted with consent in reasonable proximity.

The proposed development will be considered to be generally consistent with the existing (and future) development in the immediate area, in terms of scale and character, subject to conditions.

With regard the fourth matter for consideration, the proposed development incorporates ESD initiatives, which satisfies one of the aims of the LEP. As noted in Clause 11 below, the proposal as a whole is considered to be consistent with the objectives of the zone.

In summary, the applicant's economic impact assessment is accepted and it is considered that the applicant has satisfactorily demonstrated that the proposal meets the provisions of Clause 8(2). Therefore, the proposed shop is considered to be permissible.

#### Clause 11 - Zone objectives

The nine allotments involved with this application are all zoned 3(c) Commerce and Trade.

The primary objective for land zoned 3(c) Commerce and Trade is:

- *to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.*

Secondary objectives for land zoned 3(c) are:

- *to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.*
- *to allow for other development that is compatible with the primary function of the zone.*

The proposed refreshment room is a permissible use. However, the proposed shop is an Item 3 matter within the zone table. Therefore, this component of the proposed development is only permissible if it can satisfy the provisions of Clause 8(2) of the LEP. As noted in the assessment above, the proposed development is considered to satisfy Clause 8(2) and as such is a permissible use.

Overall, the proposed development is permissible with consent and is considered to be consistent with the zone objectives applicable to the site.

#### Clause 15 - Essential Services

Clause 15 of the TLEP requires that Council be satisfied that the subject land has the benefit of essential services before issuing consent. Connections to Council's reticulated water and sewer services along Tweed Valley Way are available.

#### Clause 16 - Height of Building

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a three (3)

storey height limit, with an objective to ensuring that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*. Both proposed buildings exceed 5m in height and are therefore considered to be two storeys. As such, the proposed development complies with Clause 16.

#### Clause 17 - Social Impact Assessment

Clause 17 of the TLEP relates to social impact assessment, with the objective to *ensure proper consideration of development that may have a significant social or economic impact*.

If a consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality, a socio-economic impact statement is required.

The applicant has noted the following points with regard to positive social aspects of the development:

- *'The development will result in a significant improvement in the range of convenient food and grocery supermarket facilities that will be available to residents, improving choice of location and also allowing for price competition.*
- *Residents of the region, particularly Murwillumbah East, will be provided with a wider range of affordable and conveniently located food and grocery facilities in close proximity to their homes.*
- *The development will result in reduced travel times and fuel costs for the surrounding population.*
- *The development will create additional employment, both during the construction period, and more importantly, on an ongoing basis once the project is completed and operational'.*

The applicant's comments are concurred with. Further comments in this regard are provided under DCP A13 assessment.

#### Clause 22 – Development near a Designated Road

Clause 22 of the TLEP applies to the proposed development, because the subject site has frontage to a designated road (Tweed Valley Way). Access/egress to and from the site is only available from Tweed Valley Way. The nature, appearance, illumination or volume / type of traffic generated by the proposed development is not considered likely to constitute a traffic hazard or reduce the capacity / efficiency of the designated road. Council's Traffic Engineer is suitably satisfied with the proposal, as such the development is not considered to impede the through traffic movement of Tweed Valley Way. The proposed development is not considered to be sensitive to traffic noise and the proposal is not considered to detract from the scenic value of the locality (subject to conditions of consent). As such, Clause 22 is satisfied.

#### Clause 23 – Control of Access

The objective of Clause 23 is to control access to designated roads. As noted above, the only access to the subject site is via Tweed Valley Way. Such access to the designated road will have development consent, thereby satisfying Clause 23.

### Clause 31 – Development adjoining Waterbodies

Although not being directly adjacent to the Tweed River, the subject site is considered to be adjoining the river. As such, Clause 31 applies. The proposed development is not considered to have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the estuarine area or its function as a wildlife corridor or habitat. The proposed development has no impact upon public access to the foreshore area. As such, the provisions of Clause 31 are considered satisfied.

### Clause 34 – Flooding

Clause 34 of the TLEP refers to flooding. The subject site is flood liable; with Council's mapping system indicating that the site is affected by design flood inundation of 5.8m AHD. Further comment is provided later in this report with regard to flooding issues.

### Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 4 soils. Council's Environmental Health Unit has undertaken an assessment the proposed development in this regard, with no objections, noting that no earthworks below 2m will be undertaken.

## **State Environmental Planning Policies**

### **SEPP (North Coast Regional Environmental Plan) 1988**

#### Clause 81: Development adjacent to the ocean or a waterway

For land within 100m of the ocean or any substantial waterway, Clause 81 of NCREP requires Council to be satisfied that:

- (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
- (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
- (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

The subject site does not have direct access to the foreshore area, with Tweed Valley Way between the site and the foreshore. The setback distance of the proposed development from Tweed River (approximately 25m) suggests that the visual amenity of the waterway will not be detracted from (subject to conditions of consent).

Appropriate conditions have been also applied to mitigate any impact upon the waterway in terms of stormwater drainage. There are no foreshore management plans applicable to the subject site. As a result, the application is considered to be consistent with the provisions of Clause 81.

### SEPP No. 55 - Remediation of Land

Council's Environmental Health Unit has assessed the history of the site and the proposed development in terms of contamination. As noted later in this report, in sufficient information has been provided by the applicant with regard to contamination and as such, deferred conditions of consent have been applied. Despite this, Council's Environmental Health Unit is confident that if the land is

contaminated, appropriate remediation measures can be applied to allow the proposed use of the site to take place, thereby satisfying the provisions of SEPP 55.

SEPP No. 64 – Advertising and Signage

The applicant has provided an assessment of the proposed signage against the provisions of SEPP 64:

Assessment Criteria	Acceptable	Comment
<p><u>Character of the Area</u></p> <ul style="list-style-type: none"> <li>▪ Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</li> <li>▪ Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</li> </ul>	Yes	<p>The proposed signage is sympathetic to the surrounding area and has been designed to minimise adverse amenity impacts whilst providing clear and easy to follow identification of the proposed restaurant, supermarket and associated parking.</p> <p>The proposed signage is considered to appropriately respond to the opportunities introduced through the proximity of the site to Tweed Valley Way.</p> <p>Perspectives of the proposed development, including signage are included in <b>Appendix B</b>.</p>
<p><u>Special Areas</u></p> <ul style="list-style-type: none"> <li>▪ Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</li> </ul>	Yes	<p>The site is not located in an environmentally sensitive area, heritage area, natural or other conservation area, open space area, waterway, rural landscape or residential area.</p>
<p><u>Views and Vistas</u></p> <ul style="list-style-type: none"> <li>▪ Does the proposal obscure or compromise important views?</li> <li>▪ Does the proposal dominate the skyline and reduce the quality of vistas?</li> <li>▪ Does the proposal respect the viewing rights of other advertisers?</li> </ul>	Yes	<p>The proposed signs will not interrupt any view or vista.</p>
<p><u>Streetscape, setting and landscape</u></p> <ul style="list-style-type: none"> <li>▪ Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</li> <li>▪ Does the proposal contribute to the visual interest of the streetscape,</li> </ul>	Yes	<p>The scale, proportion and form of the proposed signage is considered appropriate for the surrounding area.</p> <p>The signage of the proposed development is generally limited to one sign per elevation.</p>



Assessment Criteria	Acceptable	Comment
<p>setting or landscape?</p> <ul style="list-style-type: none"> <li>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</li> <li>Does the proposal screen unsightliness?</li> <li>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</li> </ul>		<p>The main identification sign that is located directly above the building entrance of both the McDonald's and IGA is considered appropriate to identify the uses from Tweed Valley Way.</p>
<p><u>Site and building</u></p> <ul style="list-style-type: none"> <li>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</li> <li>Does the proposal respect important features of the site or building, or both?</li> <li>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</li> </ul>	Yes	<p>The proposal is compatible with the scale, proportion and style of the proposed restaurant and supermarket. Given the size of each facade, the proposed signage is not considered to dominate any of the elevations. The facades and signage of the proposed development are consistent with the corporate colour scheme of the two uses. The proposed signage serves a necessary articulation function and is considered appropriate in scale for the proposed use.</p>
<p><u>Associated devices and logos with advertisements and advertising structures</u></p> <ul style="list-style-type: none"> <li>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</li> </ul>	Yes	<p>All lighting and required safety devices will be concealed within the structure of the signs.</p>
<p><u>Illumination</u></p> <ul style="list-style-type: none"> <li>Would illumination result in unacceptable glare?</li> <li>Would illumination affect safety for pedestrians, vehicles or aircraft?</li> <li>Would illumination detract from the amenity of any residence or other form of accommodation?</li> <li>Can the intensity of the illumination be adjusted, if necessary?</li> <li>Is the illumination subject to a curfew?</li> </ul>	Yes	<p>The proposed signage will comply with the relevant design standards for illumination and will be illuminated for the operation hours only.</p> <p>It is anticipated that the illumination of the proposed signage would be subject to specific consent conditions to that would specify the compliance the relevant Australian Standards.</p>
<p><u>Safety</u></p> <ul style="list-style-type: none"> <li>Would the proposal reduce the safety for any public road?</li> <li>Would the proposal reduce the safety for pedestrians or bicyclists?</li> <li>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</li> </ul>	Yes	<p>The proposed signs will not encroach on the roadway or interfere with pedestrian or vehicular sight-lines.</p> <p>The signage will not distract motorists as:</p> <ul style="list-style-type: none"> <li>they are not internally illuminated and will not produce any flashes, dazzle or glare; and</li> <li>they will not resemble a traffic sign or containing a facsimile of a traffic signs.</li> </ul>

The applicant's assessment of the proposed signage is **not** concurred with. In terms of character, the proposed signage is not considered to be sympathetic to the desired future character of the area (refer to DCP A4 and B22 assessments) and therefore, the proposed signage will need to be revised. In addition, the proposed pylon signs are considered to potentially compromise the iconic view of Mt Warning when travelling along Tweed Valley Way. Appropriate deferred commencement conditions have been applied with regard to any future signage,

in order to reduce visual clutter and proliferation of signage, as well as allowing the illumination of signage to be reduced if necessary. The proposed development is only considered to be consistent with the provisions of SEPP 64 with such conditions being applied.

SEPP (Infrastructure) 2007

*Traffic Generating Development*

Pursuant to the provisions of Clause 104 of the SEPP, the proposed development was referred to the Roads and Traffic Authority (RTA – now known as Roads and Maritime Services (RMS)), Regional Traffic Committee. The RMS subsequently advised that the Regional Traffic Committee no longer exists. As such, the development was referred to the local Development Traffic Advisory Group (DTAG) for comment.

DTAG noted the following (with the applicant's response following each issue):

- 1. There were some concerns raised with semi-trailer access to the loading dock off the McDonalds Restaurant, in that the semi-trailer would need to reverse over the top of the marked pedestrian crossing and obstruction of the main access to the restaurant. Limiting service vehicle access to out of peak hours and/or relocation of the marked crossing from the existing location needs to be considered.***

In accordance with standard procedures implemented by McDonald's, traffic conflicts between delivery/refuse vehicles and customers are minimised through the following measures:

- Deliveries and refuse collection are minimised and undertaken outside of peak times (i.e. early mornings); and
- Selected McDonald's staff and truck delivery workers are trained to monitor and control customer traffic when delivery and refuse vehicles are manoeuvring.

- 2. Conditions should also be applied to limit the maximum size of service vehicles to the site as proposed in the application.***

The development has been designed to accommodate the maximum size of service vehicles to the site, being:

- For the McDonald's Operation, a 14m pallet truck; and
- For the IGA and Speciality Shops, a 12.5 metre Heavy Rigid Vehicle (HRV).

- 3. It was noted that level of service for right turning egress movements are less than desirable. While this will result in queuing it will be internal to the site. Consideration should be given to separating left and right turn movements at the egress driveway to allow for storage for the right turn movements.***

McCormick Rankin Cagney have confirmed there is no requirement to provide additional queuing space that would otherwise enable separate left turn movements at the egress point. Given the egress point incorporates a wide crossover designed for large service vehicles, there is adequate scope for exiting vehicles to 'self-regulate' and form separate lines such that right turning vehicles do not block those vehicles turning left.

The provision of line marking (i.e. defining separate left and right exit turn lanes) is not recommended at the egress point. This arrangement will result in a risk that an entering motorist may unintentionally consider the line marking to be a dividing line, and try to enter via the egress point when there is no vehicle propped to turn right out of the development.

In this regard, it is recommended that no changes are made to the existing egress arrangements.

**4. Relevant driveway width standards need to be applied to ensure heavy vehicles can enter and exit the site safely.**

The proposed access driveways have been designed in accordance with the Council's Driveway Access to Property - Design Specification Policy, as described below:

- Ingress: Commercial/Industrial, 7.0m wide at the property boundary; and
- Egress: Commercial/Industrial, 7.5m wide at property the property boundary.

**5. Parking provision based on submitted data appears to be adequate for the site.**

Council's Traffic Engineer noted the following:

*'The applicant's response of 17.1.2012 provided sufficient responses to the above issues, with no amendment of the submission provided or warranted. It is noted that an articulated service vehicle was utilised for turning movement assessment, and therefore no specific condition is considered necessary to address that concern.'*

Clause 104 of the Infrastructure SEPP also requires the consent authority to take into consideration accessibility of the site and potential traffic safety, road congestion or parking implications of the development.

In undertaking his assessment, Council's Traffic Engineer has considered accessibility, traffic safety, congestion and parking issues. No objections have been raised by the Traffic Engineer. Therefore, Clause 104 is considered satisfied, subject to conditions.

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

The Draft (shire wide) Tweed Local Environment Plan 2010 zones the subject site as B5 – Business Development. The IGA component of the proposed development is best defined as Shop, which is permissible with consent. The proposed McDonalds operation is best defined as food and drink premises, which is prohibited under the draft LEP.

Council's Planning Reforms Unit has noted the following with regard to the draft LEP 2010:

*'Zoning: B (5) Business Development*

*Objectives:*

- To enable a mix of business and warehouse uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.

- To provide for retailing activities that are not suited to, or desirable in, the other business zones or that serve the needs of the other businesses in the zone.
- To allow for other compatible development.

*Comment*

*Although a supermarket, which falls under the definition of retail premise, would be permissible with consent under the draft instrument, a restaurant or café, which McDonalds Restaurant purports to be, is a prohibited use. Although within a B (5) Business development zone takeaway food and drink premise is permitted with consent, the McDonalds proposal includes 88 seats and also includes a café. It is also noted that McDonald's call themselves a restaurant within the statement of environmental effects under section 3.2 McDonalds Operation. It is however understood that a proportion of McDonald's business would be of a takeaway nature (particularly the drive-thru element). The applicant has not justified or addressed this inconsistency in the context of the land use zone objectives'.*

It appears that the applicant has not justified or addressed the abovementioned inconsistency as they have incorrectly assumed the proposed McDonald's restaurant would be defined as a 'takeaway food and drink premises' (despite being advised at pre-lodgement that the proposed use would be prohibited under the draft LEP 2010). Nonetheless, the gazettal of the draft LEP is not imminent and therefore does not warrant refusal on these grounds.

Clause 4.3 of the TCCLEP is related to building height. The general objectives for this clause include establishing the maximum height of a building, ensuring the height relates to the lands capability to maintain an appropriate level of urban character, and to encourage greater population density. The maximum height for the subject site under the Draft LEP is 10m. Overall, the proposal complies with the Draft LEP in terms of height provisions.

Clause 4.4 relates to floor space ratio (FSR), and states that the *maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map*. The FSR map indicates a maximum of 0.6:1 over the site. The proposed McDonalds operation has an FSR of 0.15:1 and the IGA component has an FSR of 0.34:1. The combined development has an overall FSR of 0.26:1, which complies with the Draft LEP.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The applicant has provided a Traffic Impact Assessment (McCormack Rankin Cagney) which has broken down the car parking requirements of DCP A2 with regard to the two separate components, as noted below in Figure 1 and 2.



Area	Sub-areas	GFA (m <sup>2</sup> )	Council's parking requirement	
			Rate	No. of parking spaces
IGA & Specialty Shops	Areas generating parking			
	<i>Back of House (used as storage)</i>	253.8	1 space / 40m <sup>2</sup> GFA	6
	<i>Retail area</i>	854.5	5.4 space / 100m <sup>2</sup> GFA	46
	<i>Sub-total</i>	1108.3		52
	Areas not generating parking			
	<i>Receiving dock</i>	65.4	N/A	0
	<i>Sub-total</i>	65.4		0
<b>All Areas</b>	<b>Total</b>	<b>1173.7</b>		<b>52</b>

**Figure 1 – IGA / Specialty Shops parking requirements**

Area	Sub-areas	GFA (m <sup>2</sup> )	Council's parking requirement	
			Rate	No. of parking (space)
McDonald's Restaurant Areas	Areas generating parking			
	<i>Restaurant</i>	341.3	1 space / 8.3m <sup>2</sup> GFA	41
	<i>Terrace</i>	42.8	1 space / 8.3m <sup>2</sup> GFA	5
	<i>Sub-total</i>	384.1		46
	Areas not generating parking			
	<i>Corral</i>	28.2	N/A	0
	<i>Playland</i>	18.9	N/A	0
<i>Sub-total</i>	47.1		0	
<b>All Areas</b>	<b>Total</b>	<b>431.2</b>		<b>46</b>

**Figure 2 – McDonald's operation parking requirements**

*IGA / Specialty Shops*

The applicant's original figures provided in Figure 1 above are concurred with for the original layout however the footprint of the IGA building has increased such that 55 spaces are required. A total of 53 spaces are being proposed for this component of the development.

*McDonald's Restaurant*

The car parking calculations noted in Figure 2 above are not supported. Council's calculations of the car parking result in a total of 57 spaces being required (10 staff spaces plus 47 customer spaces), based on the requirements for a fast food outlet. The applicant has noted that in terms of staffing only 2 spaces will be required as the majority of staff members catch public transport or are under the age limit for obtaining a license. Council has accepted this argument for similar natured development. As such the total requirement for McDonald's is 49 spaces.

The proposed development incorporates only 29 carparking spaces plus 16 queuing spaces for the McDonald's component giving a total of 45 spaces.

### *Combined Site Parking*

Overall, the proposed development generates a total of 104 spaces (based on Council's calculations). The proposed development provides 82 car spaces plus 16 queuing spaces, giving a total of 98 spaces on site.

The RTA Guidelines would require 51 spaces for the IGA component and 29 spaces plus 12 queuing (41 in total) for the McDonald's component, giving a total site requirement of 92 spaces. Therefore the proposed 98 spaces is considered to be acceptable despite it not meeting Council's DCP A2 requirements.

The justification provided by the applicant, with regard to the proposed variation to DCP A2 was assessed by Council's Traffic Engineer. The following comment in terms of the proposed parking provisions noted in the applicant's Traffic Impact Assessment was provided:

*'It is considered that the proponent's determination of parking needs (including drive through queuing storage), based on data from similar sites, is adequate for the development.'*

### *Car Parking Layout*

The car spaces at either end of the proposed development raised concerns with potential conflict with customers having to cross areas of high vehicle movement. At the request of Council, the applicant has updated the site plan to delineate these spaces as staff parking.

### *Drive Through*

The McDonald's component of the proposed development incorporates sixteen (16) spaces at the drive through facility and one (1) waiting space, which exceeds the requirements of DCP A2.

### *Bicycle Parking*

In terms of bicycle parking, the proposed development complies with DCP A2, with the IGA component providing thirteen (13) bike racks and the McDonald's component providing four (4) bike racks.

At the request of Council, the applicant revised the location of the bike racks for the IGA Supermarket. Originally all bike racks were located a long way from the entry point to the supermarket and shops. The revised layout has broken up the proposed bike rack into two separate areas. The first area provides six (6) racks and is located mid way along the building. The second area provides seven (7) racks near the front entrance.

### *Delivery, Service Vehicle Parking*

The applicant's Traffic Impact Assessment includes details on the proposed servicing of the development, with the IGA component serviced by one (1) Heavy Rigid Vehicle (HRV) and a refuse collection vehicle. The assessment report notes that the McDonald's component will be serviced by a 14 pallet semi-trailer and a refuse collection vehicle.

As such, the proposed development is considered to satisfy the provisions of DCP A2, subject to conditions of consent.

### A3-Development of Flood Liable Land

The subject site is flood prone. Section A3.3.4 of DCP A3 (Commercial and Industrial Development on Flood Liable Land) states that...*'Commercial and*

*industrial development will be required to make adequate provision of flood free storage areas for stock and equipment susceptible to water damage'.*

Council's Development Engineer provided the following comment with regard to proposed filling of the site due to flooding issues:

*'Approximately two-thirds of the site will be filled. Half of this covers the access and parking areas which will generally be filled by between zero and 0.5m, except for the south-eastern corner where up to 1m of fill is intended up to the boundary. This is considered satisfactory as the adjoining property to the east has a building on the boundary, and to the south is the disused railway followed by vacant land that falls away to Durrington Street.*

*The other half of the fill area comprises the building footprints: the IGA building will be filled by 850mm; the McDonalds building will be filled by 1300mm; and the transformer site will be filled by 1100mm.*

*Appropriate 'fill' conditions will be imposed accordingly'.*

Council's Planning & Infrastructure Engineer provided the following comment with regard to flooding:

*'The site is flood prone with existing ground levels of approximately RL 5.0m AHD, and a design flood level of RL 5.8m AHD. Portions of the site along the street frontage are located in the mapped high flow area. As such, various clauses of DCPA3 - Development of Flood Liable Land must be complied with to ensure the development has no significant impact on local flood behaviour and minimises its exposure to flood related damages during future events.*

*A Flood Impact Assessment has been provided (Appendix I) to assess the development's impact on the 100 year ARI flood.*

*Impact modelling has been undertaken using a refined version of Council's TUFLOW Tweed Valley Flood Study model. The report states that for the 100 year ARI flood, the development results in "negligible offsite impacts" being less than 30mm. The site is not affected to a great extent in smaller floods (5 year and 20 year ARI).*

*The Flood Impact Assessment does not provide commentary on the requirements of DCPA3. Specifically the development is required to:*

- Limit site coverage to 50% within high flow areas*
- Provide permeable fencing*
- Utilise flood compatible materials*
- Provide flood free storage*

*It is considered that the development adequately meets these requirements, by locating the buildings clear of the high flow areas, maintaining carparking and driveway areas at existing ground level (5.0m AHD or less), raising floor levels of each building (FFL 6.0 and 6.05 for the McDonalds and the IGA buildings respectively), and utilising concrete, concrete panel and brick work construction at ground level. No details of fencing were found in the SEE but this can be conditioned.*

*The subdivision of the commercial land does not pose an issue under DCPA3, given the site consists of 9 lots currently, and the proposal*



*demonstrates that the development will not adversely impact on local flood behaviour’.*

The proposed development was revised to incorporate an acoustic wall along part of the eastern boundary. Councils Planning & Infrastructure Engineer noted the following in this regard:

*‘Generally acoustic fencing is incompatible in flood prone areas, including South Murwillumbah. In this case, the extent of fencing is small and adjoins existing structures that already restrict flood flow. As such, I am not opposed to the acoustic fence as recommended by the applicant’s noise report’.*

#### A4-Advertising Signs Code

The proposed development incorporates a significant number of signs. The McDonalds component incorporates the following signage:

- A freestanding 10m high Pylon sign, with a 3.6m x 3.6m head incorporating large “M” logo, “McDonald’s” wording, “McCafe” wording (2.44m x 0.85m high) and “Open 24 hours” wording (1.245m x 1.22m high);
- 2 x wall signs (5.25m x 0.61m high) with “McDonald’s” wording;
- 2 x wall signs (1.35m x 1.15m high) with “M” logo on blade wall and building parapet;
- Wall sign (1.98m x 0.92m high) with “McCafe” wording;
- Double sided sign (0.7m x 2.3m high) with “M” logo and “Welcome” wording;
- Numerous directional signs at various locations within the car parking and drive through areas; and
- 2 x 8.5m high flagpoles with optional 3.6m x 0.9m high McDonald’s banner between.

The IGA component incorporates the following signage:

- A freestanding 10m high Pylon sign, with a 3.1m x 3.4m head incorporating large “IGA” logo and space for specialty shop signage;
- 2 x light box signs on building facade (5m x 0.9m high) with “Tweed Valley IGA” wording;
- 2 x light box signs on gable roof (3m x 1.9m high) with “IGA” logo;
- 2 x wall signs (3m x 2.875m) with “IGA” logo;
- 1 x light box sign on building façade (5m x 0.9m high) with “Shops for Lease” wording; and
- 6 x “lifestyle” signs / decals on building facade (3m x 2.875m).

#### *Number of Signs & Signage Area*

The DCP limits the maximum number of signs to five (5) per business. In addition, the maximum area per business for all signs shall not exceed the area (calculated by multiplying the first 10m of the frontage of the premises by 1 and each metre thereafter by 0.5m). Pole signs are permitted, with a maximum of one (1) per business, an area not exceeding 44m<sup>2</sup> and a height not exceeding 15m.

The applicant states that...*'both the McDonald's operation and IGA Supermarket will comply with the maximum number of signs (5) for each premises'*. With regard to signage area, the applicant notes that the...*'proposed signage meets the provisions of clause 4.2.4 and will not exceed the maximum area of signage'*.

The information provided by the applicant is incorrect and misleading. The proposed development incorporates seven (7) signs for the McDonald's operation and seven (7) signs (not including 6 lifestyle decals) for the IGA component.

The proposal grossly exceeds the maximum area of signage. Based on the frontage of each building, the McDonalds operation is limited to a maximum of 13m<sup>2</sup> in signage area. The proposal incorporates 31.061m<sup>2</sup> in area (not including any directional signage). The IGA component is limited to 36m<sup>2</sup> in area for signage, yet a total of 52.69m<sup>2</sup> is proposed.

The obvious non compliance with signage is not considered to be acceptable, is clearly excessive and would detract from the amenity of the gateway locality into the township of Murwillumbah. The applicant was requested to amend the proposed development to ensure compliance with DCP A4. The following response was submitted:

*"In terms of non-compliance with the number of signs per business premise, we believe the proposal will not detract from the architectural qualities of the buildings, by relying on the objectives and controls outlined above.*

*Whilst the DCP specifies a limit of five (5) signs per premises, the proposed six (6) signs for the McDonalds, five (5) signs for the IGA, one (1) shared speciality shop sign, and one (1) shared IGA and speciality shop pylon sign is considered a reasonable proposition when assessed against the objectives and controls above. Also it is noted the proposed signage meets the provisions of SEPP64 (Advertising and Signage Explanatory Information), which is state-wide planning document that does not limit the number of signs per elevation.*

*We have also undertaken a preliminary review of the SEPP 64 Schedule 1 Assessment Criteria. Importantly, Urbis is of the opinion that the proposed signage does not compromise important views or reduce the quality of vistas. It is appropriate for the proposal and consistent with existing signage along Tweed Valley Way."*

As noted previously in the SEPP 64 comments, the applicant's assessment of the SEPP's provisions are not supported. The applicant's statement that the proposed signage...*'does not compromise important views or reduce the quality of vistas'* is refuted (see Visual Impact comments later in this report). Although the proposed signage may be somewhat consistent with the existing signage along the Tweed Valley Way, it is not consistent with the desired future character of the area. The existing signage has been approved prior to the adoption of DCP B22. The subject site is considered to be a key site in the locality, at the gateway of Murwillumbah. Therefore any approved signage must be consistent with the provisions of the DCP, to create an acceptable standard for the eventual redevelopment of the area.

In terms of the number of proposed signs and potential visual pollution, the applicant was requested to update the perspectives to include all proposed signage (including directional signage, flagpoles and banners) to provide a clear

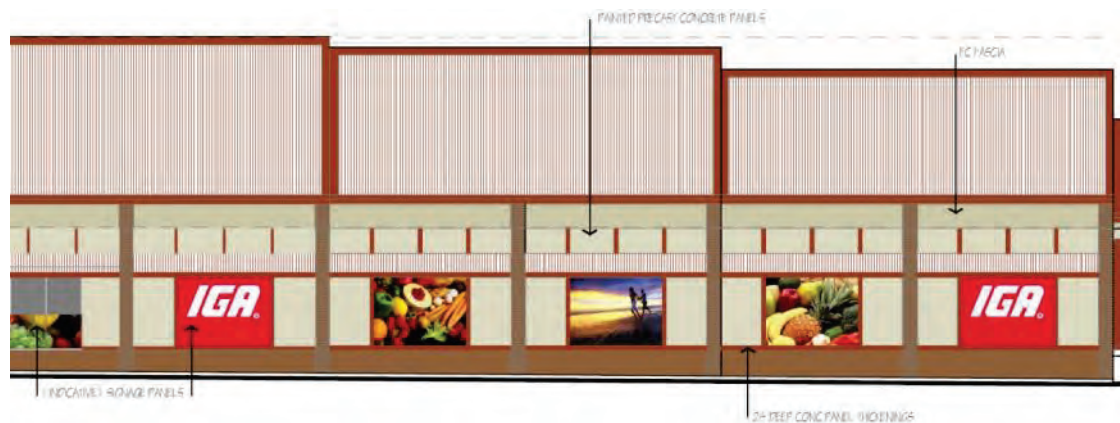
indication of the proposed development in terms of signage. The following response was submitted:

*"At this time the perspectives have not been updated to indicate details of the proposed signage as it is considered that the level of detail that has been provided on the signage plans is sufficient to assess the appropriateness of the proposed signs."*

The above responses from the applicant are not acceptable in terms of meeting the aims and objectives of the DCP. Deferred commencement conditions have been applied requiring the applicant to submit revised signage details, limiting the number of signs to five (5) per premises and reducing signage area to the satisfaction of Council.

#### *Lifestyle Images*

The issue of lifestyle images / decals has been raised in terms of additional signage. Although the applicant has reduced the number of lifestyle images, the proposed development still incorporates five (5) images for the IGA building (see Figure 3 below).



**Figure 3 – Partial front elevation indicating proposed lifestyle images**

The applicant has noted that the...*'proposed decals on the northern façade of the proposed IGA supermarket indicated fresh food and produce are not considered to be signage'*.

This statement is not concurred with, as the proposed decals are considered to be advertisements (as defined by the Tweed LEP 2000):

*Advertisement*      *a display by the use of symbols, messages or other devices for promotional purposes or for conveying information, instructions, directions or the like, whether or not the display includes the erection of a structure or the carrying out of a work.*

When taking the lifestyle decals into consideration as signage, the abovementioned signage area for the IGA component (43.125m<sup>2</sup>) is increased to a total area of 95.815m<sup>2</sup>, which is well above the maximum allowable area of 36m<sup>2</sup> and is not considered to be acceptable.

As mentioned above, a deferred commencement condition has been applied requiring revised signage to be limited to five per premises (including lifestyle images) and a suitable reduction in signage area.

## *Pylons*

Although the proposed pylon signs comply with the provisions of DCP A4, concern is raised in terms of the potential visual impact of the proposed signage in such a prominent site. In addition to pre-lodgement advice that the pylon signs would be an issue, the applicant was requested during the assessment process to give consideration to a reduction in height of the pylon signs or the co-location of the signs so that only one pylon sign is proposed along the road frontage. The following response was submitted:

*"In relation to pylon signage, it is noted the proposed development proposes two (2) 10.0 metre high pylons - one for McDonald's and another for the IGA and two speciality shops. Given the maximum height limit for the site under the Planning Scheme is three (3) storeys, it is considered the proposed pylon heights are consistent with the height limit of the site."*

The applicant has disregarded Council's request to revise the proposed pylon signs. Further comment with regard to potential impact from the proposed signage is provided later in this report.

## A11-Public Notification of Development Proposals

The proposed development was placed on public exhibition for a period of 30 days, during which time fifty six (56) objections were received. The issues raised by the submissions are discussed later in this report. It is also noted that a number of further submissions were received after the exhibition date, eight (8) of which were in support of the proposed development.

## A13-Socio-Economic Impact Assessment

The applicant met with Council staff at a pre-lodgement Development Assessment Panel (DAP) meeting in August 2011. Various issues were raised including the need for an economic impact assessment to justify the proposed land use (in relation to the IGA component being a Clause 8(2) matter).

The applicant submitted an Economic Impact Assessment, for the IGA proposal (with no specific reference to the McDonald's operation). The applicant was advised that Council considers that the provisions of DCP A13 are relevant to the proposed development and must be taken into consideration under s79C of the EP&A Act. The applicant was requested to provide an assessment against the controls of DCP A13. The follow response was submitted:

*"The request for additional information has made reference to DCP A13 in its entirety. However it is acknowledged the supplied assessment is limited to the IGA Supermarket and Shops component of the proposal. The reason being is that a 'shop' is specified in Item 3 of Table 11 of DCP A13, therefore the consent authority may grant consent to the IGA Supermarket and Shops component within the 3(c) zone development only if it satisfies Clause 8(2). In order to satisfy Clause 8(2) the report completed by Location IQ (supplied with the SEE) was considered necessary."*

*The McDonald's Operation is not included within the assessment because it is not specified in Item 3 of Table 11 within the LEP, and therefore the consent authority may grant consent to the proposed restaurant (defined as a refreshment room) within the 3(c) zone development only if it satisfies Clause 8(1) outlined below:*

*Clause 8(1)*

- (a) It is satisfied that the development is consistent with the primary objective of the zone.*
- (b) It has considered those other aims and objectives of the LEP relevant to the development.*
- (c) It is satisfied that the development would not have been an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

*As we have made clear within the SEE, the proposed McDonald's Operation meets Clause 8(1). It follows the McDonald's Operation does not require a Socio-Economic Impact Assessment for the reasons described below:*

*Primary objective of the zone*

*The proposal is consistent with the primary objective of the 3(c) Zone being, "to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres". The proposed McDonald's Operation seeks to provide a valuable service within an appropriately zoned location. The proposed development will be situated some 1.2 kilometres east of the Murwillumbah Town Centre. Located on the Tweed Valley Way, the site is considered to be an appropriate location for the proposed McDonald's Restaurant to meet the needs of the community as well as those passing through Murwillumbah.*

*The development will offer a high degree of customer amenity and convenience by way of its high profile, accessible location and attractive design.*

*Aims and objectives of the LEP*

*The SEE has considered the aims and objectives of both the 3(c) Commerce and Trade Zone and the relevant clauses of the LEP 2000 as they are relevant to the entire development.*

*Cumulative impact*

*The economic, social and environmental impacts of the proposed development have been assessed as per the provisions of Section 79C of the Environmental Planning and Assessment Act and found to not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

*As demonstrated above, the proposed McDonald's Operation satisfies the intent of Clause 8(1).*

*For the reasons described above, we do not believe that a Socio-Economic Assessment is required for the McDonald's Operation. It follows that the development does not hinder the achievement of the aims of this Section as identified in Clause A13.1 of DCP A13."*

As noted by the applicant, the proposed uses within the development do not trigger the need for a social impact assessment. Notwithstanding this, Council undertook an assessment of the proposed development against the standard checklist of social and economic issues. It is considered that the positive outcomes from the

development (i.e. creation of employment during construction and ongoing use of the development) outweigh any potential negative outcomes created by the development.

The size of the proposed IGA Supermarket is not considered to be a full-line supermarket and both the IGA and McDonald's are not considered to impact upon the Town Centre itself. As such, the provisions of DCP A13 are considered satisfied.

### B22-Murwillumbah Town Centre

The main objectives of the DCP are to:

- Maximise density in the town centre
- Ensure a consistency of street setback and street frontage height in the town centre core; and
- Encourage mixed use development in the locality of the development site.

The subject site is located in the Light Industrial area within the Structure Plan and the Riverfront Employment precinct. Values for the Riverfront Employment are as follows:

#### **3.2.5 Riverfront Employment**

*This area extends northwards from the town centre between the Tweed River and Tweed Valley Way. Current activities include businesses, a hotel and accommodation mixed with isolated residential dwellings. The existing zoning is considered an appropriate framework for an objective of maintaining commercial uses in this area.*

*The Precinct is the eastern edge of the town centre and the main entry to the study area. As such, it is important to ensure that development is of a high quality and presentation as this area has the potential to greatly affect the perceived image of the Town. Likewise, the Precinct's river frontage is a feature that can be more clearly expressed in future development. The careful placement of built form can open up views of the River and the town centre, enhancing legibility and the entire "entry" experience.*

Council's Urban Planner has provided the following comments with regard to the DCP B22:

*'As identified in the above B-22 extract, the Riverfront Employment Precinct is to be of high quality and presentation, address the river frontage and also enhancing legibility and the entire entry experience. It is the intention that well designed buildings with integrated landscaping form a strong street edge along this stretch of Tweed Valley Way. This is reinforced within Figure 4.4 of the B-22 DCP which identifies that all buildings should be setback between 2.5m – 4.5m. This setback would provide a built form definition to the street edge whilst also allow room for landscaping.*

*Contrary to this, the proposed McDonald's building will be setback approximately 16.0m and the IGA will be setback between 9.0-16.0m therefore significantly exceeding the intent of this development control (Figure 4.4 B-22). Rather than having a series buildings and defining the street edge along this part of Tweed Valley Way, the development proposes a large hardstand forecourt of car parking and vehicular circulation with very*

*little opportunity for significant vegetation or landscaping which is limited to a strip of approximately 1.0-2.0m along the northern boundary.*

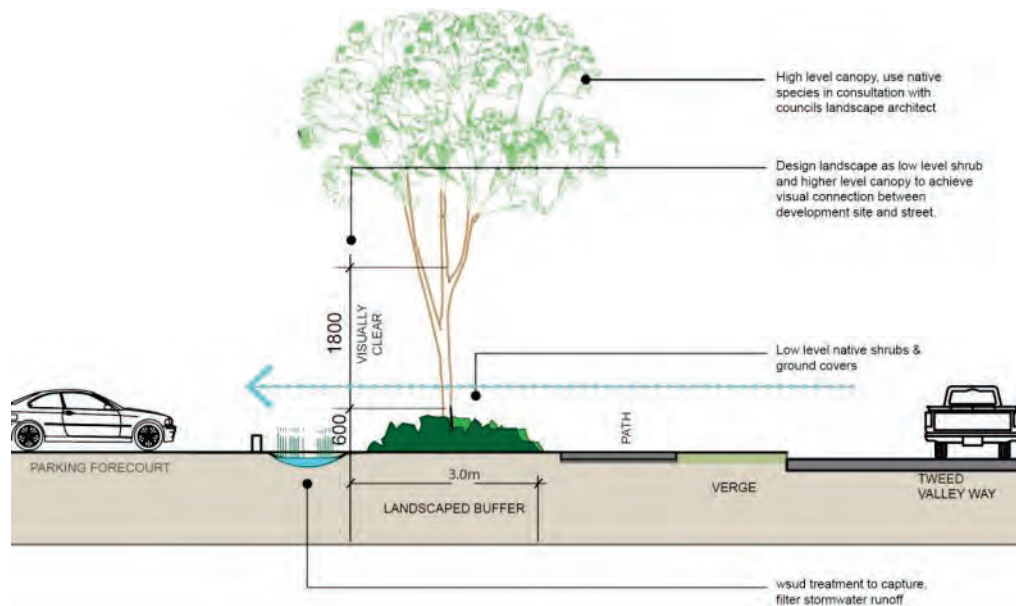
*Whilst it is noted that the forecourt parking configuration has been designed to best suite the applicant's preferred car parking arrangement based on their perception of an efficient and functional configuration (especially the McDonald's Drive thru), as well as incorporating safety by design (passive surveillance) associated largely with the proposed 24 hour use, ameliorative design and landscaping elements proposed are inadequate for offsetting the visual impact, particularly in light of the back drop panorama to the World Heritage listed Mt Warning, of the car parks and traffic manoeuvring forecourts, which are inherently unattractive built form elements.*

*A strong built form edge defining this part of Tweed Valley Way is essential within this development as it represents the most significant redevelopment in this locality and will inevitably have a strong influence on the implementation of the locality plan and future development of the area, which is envisaged to provide a richer built environment. As a minimum the street frontage to the development site should be planted with mature street trees and the undergrounding of communication and electricity cabling along this length of Tweed Valley Way which would significantly improve the visual amenity and contribute to the entry into the Murwillumbah Town Centre travelling west along Tweed Valley Way.*

*It needs to be noted that this stretch of Tweed Valley Way is an area in transition. The shift from light industrial and agricultural distribution uses to a broader range of business development uses will be facilitated by the new Local Environmental Plan B(5) Business Development zoning. As such one cannot take the existing condition as a precedent of what future development, built form and landscape quality should be measured by. Rather the desired future character elements of enhancing legibility (building, visual, character) and the entry experience as per the Murwillumbah DCP needs to be applied to new development to implement this transition.*

*Given there is very little river bank on the north side of Tweed Valley Way to establish significant street trees, it is recommended that in order to define the street edge and improve the visual amenity of this part of the Riverside Employment Precinct and contribute to the entry experience into Murwillumbah that a strong gesture of street trees be established along the length of the development site. As raised above, this would necessitate the undergrounding of the communication and electrical services to achieve this outcome.*





### Indicative Street Interface Section

Further, the applicant was asked to prepare contextual photomontages and a combined street elevation of both buildings with landscaping to cumulatively determine the design merits of the proposal. This request was denied by the applicant. In part this highlights the applicant's failure to recognize the importance and value of the views to and from this site and the impact on the visual amenity to the World Heritage listed Mount Warning. It is questionable whether, on this point alone, the applicant has discharged a fundamental consideration required of them under s 79C (a)(iii) relating to the development control plan provisions and (c) relating to the suitability of the site for the proposed development.

### Recommendation

- *In lieu of built form defining the street edge as per B-22 Riverfront Employment Precinct objective and the setback requirements of between 2.5-4.5m, the applicant should prepare an amended landscape plan which incorporates street trees capable of growing to a mature height of no less than 5.0m with the species selected in consultation with Council's Landscape Architect. These street trees would then provide definition to street edge and improve the entry experience into Murwillumbah.*
- *That the applicant arranges with Country Energy the undergrounding of the electrical infrastructure along the length of the development site to enable the maturing and unimpeded growth of the street trees'.*

The applicant has dismissed the importance of providing a street edge and entry experience. The first recommendation noted above is concurred with and an applicable deferred commencement condition has been applied.

With regard to the second recommendation, the applicant was requested to consider the option of providing underground power supply along the road frontage of the site, in order to provide an opportunity to landscape the frontage properly, thereby satisfying the objectives of the DCP in terms of the gateway / visual amenity issues. The applicant noted the following:

*'Whilst we appreciate the nature of Council's request, unfortunately the relocation of the aboveground power lines to an underground service is a costly exercise that would make the development unfeasible'.*

Although placing the power supply underground may appear to be a sound solution to the issues raised, concern is raised as to the legal ability to require such works given that an aboveground power supply already exists for the subject site. In this regard, Council's Development Engineer agrees that it would be preferable to relocate the overhead service underground. However, they have noted that...*'this would impose a significant financial burden on the applicant and would be difficult to justify such a request in isolation of the remainder of the overhead lines along Tweed Valley Way'.*

#### 4 Detailed Guidelines & Controls

##### 4.1 Floor Space Ratios (FSR)

The subject site is mapped as having a maximum FSR of 0.6:1. The proposed development has an overall FSR of 0.34:1, which is compliant.

##### 4.2 Site Coverage

Site coverage is defined as all areas of a site that are developed upon, or over, such that ground level is not exposed to the sky. The DCP nominates the subject site as having a maximum site coverage of 50%.

The proposed development has a site coverage of 29.55%, which is compliant.

##### 4.3 Building Height

The site is mapped as having a maximum building height of 1-2 storeys. The DCP encourages non-residential development to provide a minimum 4.5m floor to floor height for ground level development (for flexibility of future uses).

The proposed development is two storey (pursuant to the LEP 2000 definition of a storey), which is compliant.

##### 4.5 Building Alignment & Orientation

In terms of public domain, the DCP requires the external facades to be aligned with the street they front, with the main face and entrance of all buildings to be oriented toward and immediately visible from the street.

The proposed development does not strictly comply with the provision of Clause 4.5. Although the entrance of the IGA is not oriented toward the street, the entrance is clearly visible as vehicles enter the site from Tweed Valley Way.

##### 4.6 Street Setbacks

The DCP nominates the subject side as requiring a setback of 2.5 – 4.5m from Tweed Valley Way (although the mapping incorrectly nominates a rear setback).

As noted above by Council's Urban Planner, the proposed development does not meet the setback requirements. Whilst the reasoning behind the increased setbacks (flooding etc) are acceptable, the applicant has not sufficiently addressed the provisions of this clause.

##### 4.11 Signage & Advertising

The DCP has a number of controls with regard to signage, with the applicable controls noted below:

- *The scale proportion and form of advertising devices and entry features are appropriate to the streetscape or other setting in which they are located;*
- *Signage devices are designed and integrated into the building and landscape design so as to minimise visual clutter;*

As noted under the DCP A4 assessment and visual impact assessment, the proposed signage is not considered to be acceptable for the desired future character of the area. The number of proposed signs and area of signage exceed the requirements of DCP A4, resulting in visual clutter. It should be noted that the applicant's perspectives do not incorporate all proposed signage.

#### 7.1.1 Heritage and Contributory Buildings

The DCP notes that proposed developments involving heritage items must comply with the heritage provisions contained within Tweed LEP 2000.

Whilst the subject site is not listed within the LEP, it is being proposed for heritage listing in Council's Community Heritage Plan (which is currently on exhibition). The initial documentation accompanying the application proposed to demolish the existing structure on the site. However, a more recent response to further information noted that the Norco building was '*not being demolished. Rather the land owner will be donating the building to a suitable beneficiary for future use*'.

Council's Urban Planner has provided the following comments with regard to heritage considerations:

*'I am advised that the applicant is unwilling to provide further detail in response to Council's request for additional supporting information, in particular a heritage statement relating to the future plan for the Norco Building.*

*Within the response provide to me it is noted that the applicant, although vague, has stated that the Norco building will not be demolished and that the land owner would be donating the building to a local beneficiary for future use. It is recommended that a Voluntary Planning Agreement should be pursued if this is an actual commitment of the landowner and it forms any part of the consideration leading to a grant of development approval.*

*Notwithstanding the above, the Norco building has been recently advertised with Council's Community Heritage Plan as being proposed for Heritage Listing and as such it is appropriate that a Heritage Statement prepared by a suitably qualified heritage consultant documenting its heritage value and providing details of its proposed relocation, rehabilitation, funding and ongoing management should be submitted as part of the assessment of the proposed development.*

#### **Recommendation**

- *A Voluntary Planning Agreement binding the landowner to their stated commitments should be investigated and were appropriate acted on.*
- *A Heritage Statement prepared by a suitably qualified heritage consultant documenting its heritage value and providing details of its proposed relocation, rehabilitation, funding and ongoing management should be submitted as part of the assessment of the proposed development'.*

It is not considered necessary to require the landowner to enter into a Voluntary Planning Agreement. However, it is considered appropriate to require a heritage impact statement to be prepared and approved by Council. An appropriate condition has been applied.

### 7.3 Major Retail Options

The DCP details several potential sites within the Town Centre for a second major supermarket (and associated specialties), noting that no sites outside the Town Centre were considered appropriate and that any new major retail should contribute to the strength of the town.

Although this clause has not been addressed by the applicant, it is noted that the GFA of the proposed IGA component of the development is not large enough to be regarded as a 'major' supermarket. Rather, it is more of a convenience store. As such, Clause 7.3 is not considered to be applicable to the proposed development.

In conclusion, the proposed development is considered to satisfy the objectives of DCP B22, subject to conditions of consent and being able to meet the provisions of the deferred commencement conditions.

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

Clause 92(b) Applications for demolition

As noted above, originally the proposal involved the demolition of the existing Norco building. A subsequent submission from the applicant advised that demolition is no longer being undertaken. Therefore, Clause 92(b) is not applicable.

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

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

**Tweed Coast Estuaries Management Plan 2004**

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable 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**

Visual Impact

Council's Urban Planner has provided the following comments with regard to visual assessment:

*'To gauge the Murwillumbah entry experience, a sequential photographic analysis was undertaken documenting the entry experience and visual*

*character elements approaching the Murwillumbah Township from the west. The visual character includes a range of hinterland and agricultural views experienced en route to Murwillumbah travelling west along Tweed valley Way, highlighting also the sightlines to the iconic peak of*

*Mt Warning. There are also long stretches where Tweed Valley Way is enclosed by mature street trees and mixed ground vegetation and treatment. Travelling further west a number of residential properties on the northern side of Tweed Valley Way establish the edge of the township before arriving at the Quarry Road Roundabout. This initial entry experience in particular is greatly enhanced by a number of mature trees lining the road way to the south and views out and over the Tweed River to the north.*

*This interplay of rural view and street trees to a certain extent diminishes after Buchanan St intersection where a number of well established light industrial uses dominate the view field to the left (travelling west) however the Tweed River merges much closer the roadway to the right. This area has large amounts of hardstand forecourt, little vegetation and array of mixed cluttered signage. There are a number of older agricultural distribution buildings within the stretch between Quarry Road intersection and the development site which add architectural interest and character including a corrugated Iron Building on the Boral Timber site and the Norco Building on the subject development site, which also add to the historical connection of the Tweed's agricultural and harvesting past by way of their visual / aesthetic association. The remainder is a mix of warehouse and distribution sheds, service stations, car yards and other light industrial uses with limited architectural merit and that occurred in more recent times.*

*Despite the seemingly unappealing visual collection of land uses and signage to the left of this view field, the iconic profile of Mt Warning is revealed straight ahead adding significant visual character to this road approach. This view field terminates at the bend of Tweed Valley Road which visually aligns directly with the subject site (see adjoining photographs). As such, any future use of this site will also form part of the view field which includes this iconic profile of Mt Warning.*

*As part of the McDonald's and IGA development, two 10m pylon signs are proposed at this confluence of view field and bend in the road way. As such there will be a juxtaposition of the 10m high neon sign and the profile of Mt. Warning. A montage has been attached which illustrates this juxtaposition and proposed height of this signage which is considered inappropriate and would significantly impact on this view field.*



*Entrance sequence into Murwillumbah includes views to Mt. Warning, mature street trees lining Tweed Valley Way and other rural and hinterland views.¶*



*Poor Entrance sequence elements into Murwillumbah includes signage tainting view fields, long stretches of wire-mesh-fencing and a limited amount of significant landscape or mature trees. ¶*



*Photo: View Field with Montage 10.0m Pylon Sign from near Buchanan St Intersection ¶*





Photo: View Field with Montage 10.0m Pylon Sign near 212 Tweed Valley Way

**View Field and Proposed Signage Indicative Montage:** - Inappropriate juxtaposition of a 10.0m high neon pylon sign with the world heritage listed Mt. Warning profile which is an iconic view field when approaching Murwillumbah Township. - As a guide the power poles within this area are approximately 10.0m high as confirmed by Country Energy.

### **Recommendation**

*It is recommended that the 10.0m high pylon signs (McDonalds and IGA) be removed from the development proposal to avoid the juxtaposition of the neon sign with the iconic profile view of Mt. Warning as they would significantly compromise an important view field and therefore entry experience and visual character. It is felt that the proposed buildings are significantly branded and propose a number of other signs of various sizes and illumination to adequately identify the location of the proposed businesses. Signage along this street edge should be limited to a maximum of 5.0m. The width of an amended sign should be proportional to its height. For example the reduction in only the pole height from 10m to 5.0m would not be acceptable.*

Concern was raised at the pre-lodgement meeting, particularly in terms of the proposed pylon signs, with Council noting the potential impact on the character of the locality. The applicant made no changes to the proposal, with two 10m high pylon signs being proposed along the road frontage. As noted previously, during the assessment process further concern was raised with the applicant being requested to consider the reduction in size of the proposed height of the pylon signs or the co-location of the signs so that just one pylon sign was proposed. The applicant has made no changes to the proposed pylon signs.

The applicant's response to all of Council's requests to review the proposed pylon signs has been disappointing. The recommendation above (by Council's Urban



Planner) is concurred with. A suitable deferred commencement condition has been applied in this regard, requiring the removal of the 10m high pylons from the proposal.

It is also important to note that in June 2008, Australia's Green Cauldron (referring to the Mt Warning Caldera) along with other iconic landscapes was named a **National Landscape** at the Australian Tourism Exchange. Australia's National Landscapes are: Australian Alps; Australia's Coastal Wilderness; Australia's Green Cauldron; Australia's Red Centre; Flinders Ranges; Greater Blue Mountains; Great Ocean Road; Kakadu; Kangaroo Island, and The Kimberley. Therefore it is considered vitally important to protect the important view of Mt Warning along Tweed Valley Way, as people enter into the Murwillumbah township.

### Site Planning

Council's Urban Planner has provided the following comments with regard to site planning issues:

*'In response to Council's request for additional justification for the proposed setback, building siting and car parking arrangements, the applicant supplied a site analysis plan (ref: BA2402) which generally outlines some design strategy relating to the siting of buildings and car parking arrangements.*

*From this site analysis it can be deduced that the configuration primarily relates to elevating the buildings for flood immunity and efficiency of car parking and car manoeuvring rather than creating a development which has a strong townscape presence underpinned by contextually appropriate sustainable design principles. It would seem that McDonald's drive thru for example would not be able to operate in any other format and be able to achieve required queuing distances and safe vehicular access and egress.*

*As such, this configuration raises a number of design related concerns including:*

- *A large hardstand forecourt which provides little in the way of street edge definition or substantial landscaping opportunities, thereby failing to adequately meet the objectives of the Riverfront Employment Precinct and front setbacks as stated within the B22- Murwillumbah Town Centre (discussed in more detail in previous section); and*
- *Results in seven clear points of pedestrian and vehicle conflict with little built form or designed measures to reinforce the priority of pedestrian movement.*

*It is conceded that in the interests of safety by design and considering the proposed 24 hour use of the McDonald's restaurant, it is more desirable that car parking areas have an element of passive surveillance from Tweed Valley Way. If for example the buildings were brought forward and the car parking was located to that south of the site, car parking areas would be largely obscured from public view and therefore be an increased safety risk. This does not however mean the staff parking couldn't be relocated to the rear of the site and managed by alternate security measures. This may assist in the buildings being able to be brought forward and reducing the front setback.*

*Pedestrian circulation and potential vehicle/pedestrian conflict points is another significant concern. Whilst the site plan indicates two access points from Tweed Valley Way, one of the paths on drawing BA2402 illustrates the path conflicting with a garden bed. Also the link between the McDonalds and IGA has an awkward 'dogleg' which could easily be straightened out to improve legibility. There is also ambiguity relating to the pedestrian path leading out of IGA west towards car parking areas. At one point the path seems to merge with the vehicular carriageway which raises a significant point of conflict. This pathway should link all the way through to the western most car parking area.*

*Of primary importance however is the missed opportunity in terms of how the overall site planning contributes (or fails) to engage with the riverfront employment precinct and the Murwillumbah locality on a whole. The current configuration largely addresses the two proposed land uses as almost separate entities with the only dialogue between them being notional pedestrian link delineated by painted stripes on the hardstand apron, car parking and vehicular circulation. This is made all the more apparent with the applicant's refusal to forward combined street elevations and contextual montages of both uses.*

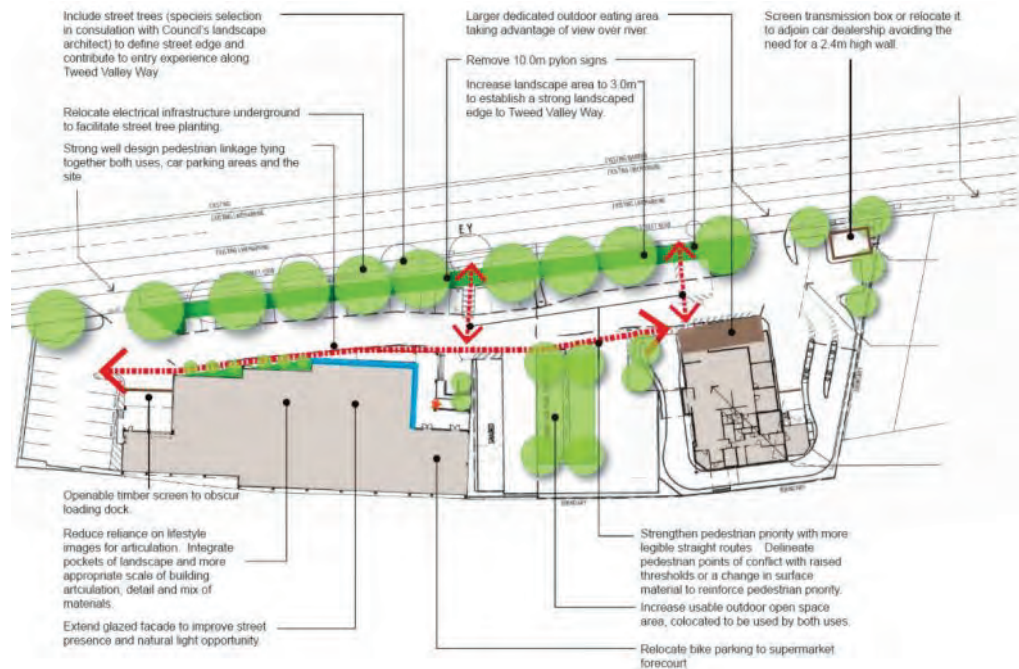
*As a preferred alternative, there is significant opportunity to design the site as a more integrated and combined development that asserts itself as the precinct hub given the nature of the proposed uses. This would not only assist in the future transition of the riverfront employment precinct but would also significantly improve the amenity for the future users of the supermarket, restaurant as well as to some extent the future employment base working within this precinct.*

*A common observation at McDonalds restaurant's, particularly along regional roads and motorways, is that they are used as rest stops for long drives. As a result you often see people stretching and walking dogs (and children) within close proximity. Similarly in supermarket's, there is also an observed case to provide areas suitable for waiting in a shaded and comfortable environment.*

*To facilitate a more integrated development there needs to be more of a site design focus on:*

- creating stronger (pedestrian, visual) connections with the street;*
- stronger (pedestrian, visual) connections between the uses;*
- creating at least one small pocket of shaded and embellished public open space which could be co-used by the supermarket and restaurant;*
- more substantial pockets of shade trees, street trees and landscape and less hardstand;*
- inclusion of more canopies and awnings to provide sun and weather protection to shoppers and restaurant visitors; and*
- incorporation of an integrated water management system and principles of WSUD across the entire site considering it's proximity to the river.*

To achieve this more desirable site design outcomes, and in consideration of the likely cross-utilisation of users between the restaurant and supermarket, there would be a justifiable case for a car park numbers reduction. This is on the basis of establishing a link where one visitor would potentially visit both (cross utilisation) uses. As such there would not be a need to provide two car parking spaces. Where a car park reduction was proposed, the balance of this space would need to be dedicated to the external urban design elements identified above.



### Site Planning Comments

#### Recommendation

- Given the potential for cross utilisation between both uses, there is opportunity to justify a reduction in the amount of car parking required. This reduction could be considered in terms of establishing a stronger more pedestrian friendly linkage between both the restaurant and the IGA and the creation of an area of an outdoor public space. This outdoor space could be used by both proposed land uses and would typically incorporate landscaping, areas of soft surface, seating and shade. Not only would this provide a valuable area for 'waiting' and 'outdoor eating', it would also reduce the amount of hardstand and significantly improve the overall visual amenity of the area. This would go a long way in achieving the objectives of the Murwillumbah DCP which includes improving design quality, improving legibility and contributing to the entry experience of this precinct;
- Increase the width of landscaping along the northern boundary to at least 3.0m to allow for more substantial landscaping including street trees rather than predominantly low level plantings;
- Improve pedestrian circulation legibility by extending pathways to all car parking areas, and more clearly delineate pedestrian priority at the seven points of conflict by raised threshold, change in surface material, colour or other suitable measure;

- *The opportunity to integrate WSUD principles is welcomed (as identified on BA2402) considering the significant amount of hardstand, and proximity to the Tweed River, however no details on an integrated site water management system have been provided. The demonstration of WSUD principles across the site should be considered as a condition of consent;*
- *Remove the decorative gravel from the landscape plan, particularly where it adjoins the Tweed valley way carriageway;*
- *Appropriately screen the proposed large transformer with a timber battened screen or similar;*
- *Investigate relocating transformer along non-residential car dealership building to abate noise and provide opportunity to screen or landscape from the street view'.*

With regard to the first recommendation by Council's Urban Planner (outdoor pedestrian friendly space between McDonald's and IGA), although such a design change would help in achieving the objectives of DCP B22, it would result in a large loss of car parking spaces. As the proposal is already below the minimum car parking requirements of DCP A2, additional loss of spaces for the creation of the outdoor space cannot be supported.

In terms of landscaping, the applicant was request to amend the design to allow for additional width in landscaping along the site frontage. A nominal 3m width was recommended to enable street tree planting. The applicant made some revisions, noting the following:

*'The (a) overall site plan and (b) McDonald's site have been amended to reduce part of the aisle width near the McDonald's which has allowed an additional 1m of landscaping along the site frontage. Unfortunately, due to the narrow shape of the site, it is not possible to reduce the aisle width at the ingress point due to turn movement requirements for service vehicles. It is noted that the proposed landscaping for this development exceeds the quantum provided as part of the previously approved bulky goods showroom use'.*

The applicant's comment about the proposed development exceeds the landscaping for the previously approved development on the subject site is not considered to be applicable. The requested additional landscaping provisions are directly related to trying to meet the aims and objectives of DCP B22. The previous development was assessed and approved prior to the creation and adoption of B22.

A deferred commencement condition has been applied requiring additional landscaping along part of the site frontage (between IGA's car spaces 17 to 20 and between McDonald's car spaces 15 to 27), satisfying the second recommendation. It is not considered reasonable to request additional width of landscaping adjacent to IGA's car spaces 18 to 32 as it would not be possible to gain any additional width without substantial changes to the footprint of the IGA building, due to the limited width of the site. It is noted that the proposed car spaces are designed so that vehicles overhang the landscaped area by 600mm, thereby further reducing the opportunity to provide landscaping along the site's road frontage. It is considered that the increased landscaping covered by the

deferred commencement condition will provide sufficient landscaping to meet the objectives of DCP B22 in terms of the entry experience etc.

In terms of recommendation three, the applicant was advised of Council's concern with the pathway along the front of the IGA building being a point of conflict. The applicant revised the Site Plan accordingly and noted the following:

*'The overall site plan has been amended to provide for a line-marked footpath along the frontage of the IGA, linking a new trolley bay (formerly bike racks) to the northern ramp. The revised path provides a safe passage to all customer car parks along the frontage of the site.'*

At the request of Council, the applicant has revised the proposed Site Plan to remove the 'dog leg' in the pedestrian pathway between the McDonald's and IGA buildings.

An applicable condition of consent will also be applied with regard to further delineation of the pathways by way of changes in surface material, colours etc.

Recommendation four (WSUD details) will be addressed by way of a standard condition of consent, noting that such design details are not usually provided at the DA stage.

The fifth and sixth recommendations (landscaping and transformer screening details) will be addressed by deferred commencement conditions.

In terms of the last recommendation, the applicant was requested to re-position the proposed electricity transformer to allow for increased landscaping (for screening purposes). The applicant was also requested to provide details of the proposed transformer for assessment purposes. The applicant revised plans to indicate the transformer repositioned 1.8m from the front boundary, noting that for maintenance and access purposes, the transformer must be located as close as possible to the street frontage. No details of the transformer have been provided to date, raising potential issues of visual impact. Council's Development Engineer notes that the transformer will need to be above the design flood level and therefore will need to be elevated approximately 1.1m above the existing ground level. Whilst the relocation of the transformer is commended, further details will be required as deferred commencement conditions in terms of screening etc.

When alerted to Council's concerns about the proposed parking area west of the IGA building, in terms of there being no pedestrian access points across to the building and the area being a congregation point at night, the applicant revised the site plan and provided the following comment:

*'The overall site plan has been amended to indicate that the western car park is to be utilised for staff. It is noted the IGA was unable to be positioned in the western corner of the site, primarily due to truck turning restrictions. As a result, the building was shifted towards the east of the site to enable a truck to use the northern end of the IGA staff car park to reverse into the loading bay. High visibility from Tweed valley Way, car park lighting and CCTV are all aimed to improve safety in this part of the site.'*

#### Building Design

Council's Urban Planner has provided the following comments with regard to building design issues:

*'In response to previous urban design concerns relating to the appropriateness of the proposed building design within the Murwillumbah subtropical context, the applicant has provided architectural statements for both buildings. The applicant was also requested to supply Council with a combined street elevation and or context 3D montages to assist in the determination of the design appropriateness and street presentation of both buildings. I am advised that the applicant is not willing to provide the additional information requested of them by Council in support of the proposal.*

*The architectural statement for the McDonalds building eludes to the inclusion of an open framed terrace, however the view from this area back across the river will be largely obscured by a McCafe sign. The applicant further identifies the mix of materials to create visual interest and additional screening and roof projections which also help to articulate the building.*

*Despite these justifications, the overall form and appearance of the proposed McDonalds restaurant building is not seemingly different to any other of their restaurants that I have observed in this and other States. Whilst it is conceded that this uniformity is an important commercial element of the McDonalds business model and branding, with an economy of design, materiality and constructability, there are few indicators of their willingness to proactively address individual site, contextual and climatic conditions.*

*Generally satisfying the minimum design requirements (mix of materials, some articulation, some landscaping), as this proposal does, is not the sole requisite for the grant of development consent and this is particularly so where there is clear intention in Council's community based strategic planning to ensure that new developments are in-tune with their environmental setting and designed specifically to their context (Murwillumbah township and its environs), which has not been fully explored or embraced in this proposal.*

*Design measures could have included significantly larger elevated alfresco areas to get a view out over the river, a deep verandah or balcony along the north elevation and higher internal volumes (and resultant articulated roof form) which could assist in natural ventilation and sunlight access. The buildings materials could have also been more reflective of the north coast vernacular which includes a palette of corrugated iron, weatherboard/chamferboard with hardwood detailing. The existing Norco building located on the subject site is reflective of this material use. It's simple form, materials and embedded passive design elements (high volume, openable windows, roof vents, narrow floor plate) contribute strongly to the enduring nature of its built form which continues to contribute to the character of the area. As such, it has been nominated for inclusion on the Tweed Heritage List as part of the Council Community Heritage Plan.*

*The proposed buildings offers little in the way of material and form references to the architecture in and around Murwillumbah, and little embedded passive design measures. It is also unclear whether the building is designed for collecting rainwater for reuse in toilets and landscape areas which would be desirable.*

*The architectural statement for the IGA building confusedly states that the building establishes a market village appearance consistent with heritage feel of the town although proposes predominantly painted concrete precast panels usually associated with industrial warehouses. The form and materials associated with the heritage conservation area of Murwillumbah included relatively narrow shop fronts (5-10m), decorative brickwork with exposed rendered or stucco finish, large open shopfront windows, timber or steel window and door frames, terrazzo or decorative concrete floor with the footpath protected by a large deep awning. The proposed IGA building doesn't embody any of these materials or design principles.*

*The use of large lifestyle images across approximately 35.0m of the street elevation as a 'stand-in' for building articulation is unacceptable. The amount of glazed façade should be increased by at least two structural bays to the west which would relate to the checkout foyer and back of house office areas. This will improve the proportion between solid precast wall and open transparent frontage as well as providing additional natural light into an area of the building where it is needed.*

*It is conceded that in a supermarket building there is a significant requirement for solid wall against which aisles, back of house storage and particularly freezer aisles are located. Along the remaining solid northern elevation, it is therefore preferable to integrate other architectural measures such as false shop front and landscaping rather than rely on lifestyle images, which would be better used on a reduced scale.*

*Where lifestyle images are proposed to be used, particularly as part of an advertising scheme, the content of the images should be submitted and form part of the overall approval. This form of decorative exterior treatment can have an adverse impact on the visual and aesthetic appeal of the local area. In this context, it needs to be noted that this area has neither the quality characteristics of an urbanised inner city nor of the large scale purpose built retail complexes that have been occurring throughout the country in the last decade or so. This area is long established and is a part of a much wider unique natural landscape. The treatment of new buildings must be designed to protect the environmental and historical characteristics of the area.*

*The proposed restaurant and supermarket are appropriate land-uses for this site and have the potential to add to the built environment of the Murwillumbah as they would to the diversity of services. In that sense, there is no reason as to why the proposed buildings should not be designed for longevity so that they may also be considered a vital component of the richness of the area's history at some future time.*

*It is further noted that the northern (street) elevation of the IGA is a long largely unarticulated elevation. This would be improved by the inclusion of a deep eave (600mm) and a pedestrian canopy providing weather protection for the shoppers accessing car parking areas. The current awnings illustrated hard up against the stepped northern elevation are more decorative and would fail to adequately provide any substantial pedestrian cover.*

*On both buildings it is also noted that the loading bays will be fronting the street elevation. It is understood that this configuration works best for large*



*truck manoeuvring although it would be preferable from a design point of view to have loading bay access off a secondary elevation. Given that this configuration cannot be amended, the design of the loading bays needs to be sympathetically addressed to more adequately integrate with the overall building design. Offset timber screens or fences would go some way in softening these loading bay interfaces. Storage areas and refuse store areas, cardboard bales and like should be allocated an area screened and stored out of public view.*

**Recommendation**

- *Both buildings in their current form fail to achieve a building design which relates to the Murwillumbah and riverfront context, the sub tropical climatic condition and the prominent town gateway positioning that the site occupies. Being the first major development site within this precinct of transition, it is important that the quality and appropriateness of design be given more careful consideration and makes a positive contribution towards the street and townscape. More specifically it is recommended that:*
  - *Both buildings address building and roof form to be more reflective of the local context and passive design measures with a series of pitching or skillion roof planes and eave over hangs;*
  - *Both buildings incorporate a mix of materials more closely associated with the north coast vernacular including but not limited masonry, corrugated iron, cfc sheeting weatherboard/chamferboard with hardwood timber detailing where possible;*
  - *McDonalds Restaurant incorporate a more generous covered outdoor eating area taking advantage of the view north over the river;*
  - *IGA incorporate a more main street 'shopfront' dimensioning and articulation to the northern elevation. As a guide shopfront dimensions are approximately 5.0m with the awning height approximately 3.2m high. The northern elevation should be articulated and detailed to generally achieve a similar scale by way of structural bays, or material changes (see material comments above).*
- *That landscape areas be increased to 3.0m along the northern boundary to provide more substantial landscaping as per previous comments;*
- *That the glazed façade on the IGA building be extended by 2 structural bays to the west to improve the proportion between closed and open facade as well as providing additional natural light into an area of the building where it is needed. Screen loading bay with offset openable timber fence;*
- *Extend the eave along the front elevation to at least 600mm (900m preferred) to assist in shading the building (heat load of precast panels with unshaded north orientation will be excessive) and provide additional building articulation to the street frontage; and*

- *Extend covered pedestrian canopy along the full length of the north elevation to provide some weather protection to shoppers accessing car parking areas and assist with provide additional building articulation to the street frontage’.*



McDonald's restaurants displaying some climatically appropriate design measures including deep verandas, eaves, varying roof forms and internal volumes and references to regional architecture.



New supermarket in Mullumbimby somewhat emulates local architectural style in terms of roof form, deep eaves, deep covered foyer area, materials, colour, fences, screens and landscape.



A deferred commencement condition has been applied with regard to the first and second recommendations of Council's Urban Planner.

In terms of the third recommendation, the applicant was requested to extend the glass façade along two bays of the IGA northern elevation. The applicant revised the plans to extend the glass façade along one additional bay, noting that...*'due to the location of the cash office and storage room, a solid panel remains'*. This revision to the design is considered to be acceptable. The third recommendation also refers to a screened loading bay. This has been included in the deferred commencement conditions.

With regard to the fourth and fifth recommendations, the applicant was requested to provide a pedestrian canopy over the pathway along the IGA's north elevation to improve articulation and pedestrian / shopper comfort. The applicant noted the following:

*'Unfortunately it is not possible for the awnings along the IGA northern elevation to be extended over the line-marked footpath. Whilst the awnings partly cover the footpath, any further widening of the awnings would result in an encroachment into the driveway aisles. The primary purpose of the awnings is to improve articulation along the northern elevation'*.

The applicant's response is considered to be acceptable, given the limited width of the site in this location.

#### Access, Transport and Traffic

Council's Development Engineer has provided the following comment with regard to the local road network:

*'The site frontage currently has six (6) vehicle entries that will need to be removed and replaced with K & G to match existing, as well as some footpath restoration.*

*New access to the site will be via separate ingress and egress driveways, which will be 7m and 7.5m wide (at the boundary) respectively. This will require separate approval via a separate Sec.138 application to Council.*

*To avoid conflict with eastbound traffic that could try to enter the site via the egress driveway, a condition will be imposed for 'No Entry' signage to be erected at the egress driveway that is clearly visible to eastbound traffic on Tweed Valley Way'.*

In terms of bus stop / bus shelters, Council's Development Engineer provided the following comment:

*'Tweed Valley Way is an existing bus route, although there is no bus stop in close proximity to the site. The applicant has proposed a bus set-down area at mid-frontage to the site as well as a bus shelter – which will be built within the site. The existing concrete footpath will be required to be widened to full width, for the extent of the bus set-down area. The footpath works will require a Sec.138 application.*

*The bus shelter will need to comply with Council's standard design, and although its construction will not be covered by the Sec.138 application, details of the shelter will nevertheless be required as part of the application.*

*The existing parking lane (where the bus stop is intended) appears narrow but has been measured as 2.7m wide, which satisfies the minimum width requirement of 2.6m for buses. Approval for a bus zone and appropriate*

*signage requires separate approval by Council's Local Traffic Committee, and this will be stated in the Sec.138 condition.*

*Note: the construction of a McDonalds restaurant could attract or tempt tourist buses to stop there. Since there is no room within the site for bus parking, consideration will be given by Council to creating an extended bus zone for the site frontage, at the time of application to Council.*

*Furthermore, due to the perceived narrowness of the kerbside parking lane and Council's desire to discourage on-street parking along the site frontage, the implementation of extra 'No Parking' signage for the remainder of the site frontage will also be considered at the time of application for a bus zone and signage'.*

Council's Traffic Engineer also noted:

*'The proposed bus shelter will be constructed on site, not on Council's road reserve. Any variance to this proposal would require further assessment and appropriate approvals. Signage for the designation of on road bus zone would be subject to separate application to Council's Local Traffic Committee'.*

#### Stormwater Drainage

Council's Planning and Infrastructure Engineer has provided the following comments with regard to stormwater drainage:

*'The site is currently vacant, except for the north eastern allotment, which contains a timber building, which is to be demolished / relocated. The development of the site to create roof, carpark and driveway areas will create an almost entirely impervious site, with associated increases in peak runoff and stormwater contaminants.*

*Due to the site's proximity to the river, and the location of piped drainage along the frontage, providing an adequately sized and lawful point of discharge is not problematic.*

*A Stormwater Management Plan has been provided for the development (Appendix I), and includes an erosion and sediment control plan for the construction phase.*

*Two separate drainage systems are proposed, to reflect the proposed subdivision of the site between the two uses. Each system collects carpark and driveway runoff and passes through a Humeceptor oil and sediment arrestor before discharging to existing kerb inlet pits on Tweed Valley Way. This is generally acceptable under Development Design Specification D7 - Stormwater Quality, subject to appropriate sizing of the treatment devices. Roofwater (which does not require treatment) is discharged downstream of the treatment devices to minimise the capacity requirements of each device.*

*Standard erosion and sediment controls are proposed on the plans, which given the site's flat grades are generally acceptable, however due to the proximity of the river their performance should be closely monitored during construction. Inlet protection on Tweed Valley Way is also required.*

*These above issues can all be addressed at construction certificate stage via conditions of consent'.*

#### Contamination

---



The site has formerly been utilised for commercial and industrial purposes and would be considered potentially contaminated. After a review of the file by Council's Environmental Health Unit, it was noted that the demolition practices, potential for lead or other contamination and specific site history in recent years was unclear. It was considered necessary that a site history and contamination investigation be completed for consideration.

As such the applicant was requested to submit for consideration a Contaminated Land Investigation (including site history and site sampling, if necessary) prepared by a suitably qualified person in accordance with NSW Environment and Protection Authority (Office of Environment and Heritage) Contaminated Land Guidelines. The applicant was also asked to give consideration to the potential for groundwater contamination.

The applicant's response was assessed by Council's Environmental Unit, with the following comments noted:

*'The applicant's response to Council did not include a Contaminated Land Investigation addressing concerns raised previously. No comment was provided in relation to potential groundwater contamination associated with previous land use. Further demolition works are also proposed on-site.'*

*'It is considered that whilst site specific validation has been accepted by Council following the removal of the underground fuel storage tanks, data gaps exist between the previous investigation and validation carried out in 2002 until current. Further demolition works are also proposed. It is recommended a deferred commencement condition be considered to satisfactorily address these concerns raised.'*

#### Noise Impact

The applicant originally determined that the nearest residence was approximately 150m away from the subject site. Site inspection of the surrounding area found that a dwelling house exists at No. 226 Tweed Valley Way with first floor window openings facing directly onto the proposed site access driveway, internal roads, McDonald's drive through and loading dock areas.

The applicant was requested to submit an acoustic assessment, prepared by a suitably qualified person, that assessed all relevant noise generating activities on the site, determined whether noise levels comply and identifies any necessary amelioration measures.

An Acoustic Impact Assessment was submitted, with the applicant noting that the identified house at 226 Tweed Valley is not immediately adjoining the proposed McDonald's Operation (with a commercial use separating the two uses). The Impact Assessment recommends the construction of an acoustic barrier (2.4m high x 15m in length) along the eastern property boundary (adjacent to the proposed transformer).

Council's Environmental Health Unit provided the following comment with regard to noise issues:

*'In response to Council's concerns regarding potential noise impacts, a report was prepared by MWA Environmental. The report primarily assessed potential noise impacts on the nearest affected dwelling, located at 226 Tweed Valley Way (the 'receiver').'*

*The report included an assessment of intrusiveness criteria and amenity criteria, as outlined in the NSW Industrial Noise Policy (NSW EPA, 2000). The methodology used to nominate noise criteria for the three time periods (daytime, evening and night-time) was considered to be appropriate.*

*The acoustic consultant considered potential noise impacts from plant and equipment, vehicles in drive-thru lanes and in car parks, delivery and waste collection activities, remote order points in drive-thru lanes, and patrons. Both distance attenuation and barrier attenuation was used to calculate predicted noise levels at the nearest affected dwelling.*

*Calculations for plant and equipment at the McDonalds restaurant incorporated barrier attenuation of 7 dB(A) (screening /shielding at source), while calculations for plant and equipment at the IGA supermarket incorporated barrier attenuation of 10 dB(A) (shielding by buildings between source and receiver). Calculations for plant and equipment were considered to be appropriate, and complied with the nominated noise criteria.*

*Potential noise impacts associated with vehicles in drive-thru lanes and in car parks were considered in relation to nominated noise criteria and a sleep disturbance criterion (52 dB(A)). Calculations incorporated barrier attenuation provided by a 2.4 m high acoustic barrier located along the northern portion of the eastern boundary of the site (15 m long), and an existing commercial building located between the site and the receiver. Calculations for vehicles in drive-thru lanes and in car parks were considered to be appropriate, and complied with the nominated noise criteria and the sleep disturbance criterion.*

*Potential noise impacts associated with delivery and waste collection activities were considered in relation to nominated noise criteria and the sleep disturbance criterion. Calculations incorporated barrier attenuation provided by the existing commercial building located between the site and the receiver. Calculations for delivery and waste collection activities were considered to be appropriate. Some calculations for the McDonalds restaurant did not comply with the nominated noise criteria and the sleep disturbance criterion. The acoustic consultant recommended that delivery and waste collection activities at the McDonalds restaurant be limited to daytime and evening periods only i.e. 7:00 am to 10:00 pm.*

*Calculations for remote order points in drive-thru lanes incorporated barrier attenuation provided by the existing commercial building located between the site and the receiver. Calculations for remote order points were considered to be appropriate, and complied with the nominated noise criteria.*

*Calculations for patrons incorporated barrier attenuation provided by the existing commercial building located between the site and the receiver. Calculations for patrons were considered to be appropriate, and complied with the nominated noise criteria.*

*Based on findings of the acoustic report, the potential for noise impacts on any dwelling would be low.*

*It is considered that conditions can be applied that require construction of acoustic screens for plant, the acoustic barrier, and restrict the times at*

*which delivery and waste collection activities can occur at the McDonalds restaurant. The commercial buildings that currently exist at 228 Tweed Valley Way were considered by the acoustic consultant to act as acoustic barriers and provide noise attenuation to the nearest affected residential dwelling. Should alterations to buildings at 228 Tweed Valley Way reduce noise attenuation, and noise pollution results, the owner of the property to which the current development application relates is considered to be responsible for addressing the matter within their property and ensuring that noise pollution ceases.*

*Please note, Council's Planning and Infrastructure Engineer advised that acoustic barrier fences are not generally supported in flood areas, such as South Murwillumbah. However he advised that he is not opposed to the proposed acoustic barrier as it is relatively small'.*

#### Food Preparation

Although plans of both the IGA and McDonald's buildings have been provided, Council's Environmental Health Unit has noted that they do not contain sufficient detail to utilize for approval purposes. A condition will be applied which requires the submission of detailed plans prior to issue of construction certificate.

#### Trade Waste

Council's Trade Waste Connections Officer has recommended the applicable conditions of consent.

#### Waste Management

The proposed development was accompanied by a Waste Management Plan for the McDonald's operation. Council's Waste Management Unit assessed the plan, noting that it was generally satisfactory (in relation to the McDonalds Restaurant). However it was noted that the plan did not reference the remaining activities proposed in the development (IGA Supermarket and speciality shops).

The applicant was requested to update the Waste Management Plan to include the construction and operational phases for the IGA supermarket and specialty shops. The applicant was also requested to provide detail on how the waste bins for McDonald's would be serviced and to include mechanisms to avoid traffic conflict with delivery vehicles.

The applicant's response provided general details on the waste management for the operational phase of the IGA component, noting that a Waste Management Plan for the construction phase could not be provided at this point in time, and requested an applicable condition of consent to be applied.

With regard to the potential traffic conflict between refuse collection vehicles and delivery vehicles, the applicant noted that...*'selected McDonald's staff and truck delivery workers are trained to monitor and control customer traffic vehicles when delivery and refuse vehicles are manoeuvring'*. This is not considered to be an acceptable solution and an applicable condition has been applied requiring details on how potential conflict will be coordinated.

#### Lighting

The proposed development would be serviced by car park lighting and illuminated signs during the night period. Due to the proximity to the dwelling at No. 226 Tweed Valley Way and potential exposure to car park and advertisement signs,



the applicant was requested to submit a confirmation statement from a suitably qualified person which confirmed that lighting can be designed and installed in compliance with relevant standards and is unlikely to cause any unreasonable impact on any residential or other premise.

The applicant confirmed that the car parking area will likely 'be lit between dusk until dawn (pending operator arrangements between McDonald's and the IGA/Shops'. A Car Park Lighting Plan was submitted, which deals directly with potential lighting impacts for the existing dwelling located approximately 30m along Tweed Valley Way.

The applicant was also requested to address the issue of potential impact from 24 hour illuminated signage from across the river along Tumbulgum Road.

The applicant's response made note of the luminous emittance and intensity, with regard to the existing dwelling at 226 Tweed Valley Way. They went on to note that...'*given the properties along Tumbulgum Road are at least 180 – 200 metres away from the subject site, the luminous emittance and intensity of all illuminated signs are therefore well within the compliance limits of AS4282*'. The submission also notes that the Car Park Lighting Plan will have no impact upon properties along Tumbulgum Road or the Murwillumbah Hill.

Council's Environmental Health Unit provided the following comment with regard to lighting:

*'In response to Council's concerns regarding potential lighting impacts, a report was prepared by DMA Professional Engineers. The report included plans that estimated lux levels at various points and along 'isolines' based on an indicative carpark lighting design. With regards to the nearest affected residential dwelling, the report stated that calculated results were well below maximum values permitted by AS 4282 Control of the obtrusive effects of outdoor lighting, even without taking into consideration an adjacent building and proposed fence, which would reduce light spill to the dwelling.*

*Based on the plans included in the report, lighting levels at dwellings along Tumbulgum Road and on Murwillumbah Hill would be well below maximum values permitted by AS 4282.*

*It is considered that standards conditions can be applied regarding lighting'.*

Council's Urban Planner has provided the following comments with regard to lighting considerations:

*'The issue of potential impacts experienced by residents and visitors north of the Tweed River looking back across the river particularly at night time have not been appropriately addressed or understood. The lighting analysis largely focussed on localised lighting levels rather than a wide contextual and visual character assessment. This is particularly pertinent considering the proposed 24hr operation of the McDonald's Restaurant.*

**Recommendation**

- *Remove large pylon signs as identified within the visual assessment section of these comments;*
- *Prior to the issuing of development consent, the applicant considers light spill impacts which may impact residents north of the Tweed River;*

- *Condition signage so that all signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts'.*

The first recommendation has been previously addressed. The second recommendation is not supported given that Council's Environmental Health Unit supports the proposal in terms of lighting impact, subject to conditions of consent. The third recommendation is a standard condition that has been applied.

#### Crime Prevention

The applicant notes that the proposal has been designed having regard to the principles contained within the *Crime Prevention Through Environmental Design (CPTED)* guidelines, giving consideration to key principles such as: surveillance; access control; territorial reinforcement; and space management. A condition of consent has been applied requiring details of all security measures for the site as part of the overall site management plan.

#### Trolley Management

At a pre-lodgement meeting (held 24 August 2011) the applicant was advised to submit a Site Safety and Management Plan, which included trolley management. A Management Plan was not submitted with the application, however the applicant noted the following:

*'Trolley bays will be located at the store entry with trolley corrals also located within the car parking area. The trolley bays / corrals will have signage for customers.*

*Customers are encouraged to return their trolley to the dedicated trolley corral upon completion of their shopping. However, IGA staff will periodically sweep the car parking area to ensure that trolleys are not left unattended'.*

The applicant was verbally asked if a trolley management system such as that used by Aldi would be utilised (with customers requiring a coin to use a trolley and the coin being refunded when the trolley is returned). The applicant verbally advised that system is not being proposed, as it is thought to be a deterrent to new shoppers unfamiliar with the system.

At the request of Council, the applicant revised the trolley bay location, with the revised layout incorporating an additional trolley return bay near the loading dock. The original layout was considered to deter customers to return their trolleys, due to the distance from some of the car spaces to the front of the shops. The revised layout is considered more likely to entice customers to leave the trolleys in the return bay.

#### Construction Management

A detailed construction management plan (CMP) has not been provided. Council's Environmental Health Unit has applied a condition of consent requiring submission of a CMP prior to issue of the construction certificate, as well as the submission of a construction noise management plan.

The construction management plan will need to address the option of a staged development, detailing access arrangements across the site etc.

### Operation Management

A suitable condition of consent has been applied requiring the submission of a Site Management plan to cover the operational phase for both components of the development.

### Future Subdivision

All nine allotments will be required to be consolidated into one allotment as part of the application. The applicant has advised of their intention to lodge a future two lot subdivision, which will involve reciprocal rights of way across the site.

### Water & Sewer

Council's Water Unit has provided the following comment with regard to water and sewer connection:

*'The proposed plan presents no great difficulties from the perspective of water supply and sewerage servicing as the system has been developed with the expectation that this area will be developed as commercial.*

*The existing 200 mm water main in Tweed Valley Way will be adequate to provide the supply of water.*

*The development can be connected to sewer at manhole FM/4 however the proposal to amalgamate existing lots into two separate lots means that a sewer reticulation extension to the second lot will be necessary. Previously all lots had been rated as one property and hence only had a single sewer connection'.*

Appropriate conditions of consent have been applied.

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

The site and surrounding properties are zoned for Commerce and Trade. It is therefore considered that the site is suitable for the proposed development, subject to the deferred commencement conditions being met, along with all other conditions of consent applied.

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

The proposed development was placed on public exhibition for a period of 30 days, during which fifty six (56) submissions were received against the application (including 3 petitions having a total of 545 signatures). It should be noted that a number of submissions have been received since the closing of the exhibition period, including eight (8) letters of support from the community and local businesses.

Issues raised in support of the development include:

- Growth in the town rather than vacant land and an abandoned building with vandalised windows;
- Community support for sports and community groups;
- Employment opportunities, particularly for the local youth;
- Murwillumbah already has KFC, Subway and Eagleboys;
- Consumers choice – option for an occasional easy meal; and

- Employment opportunities for local tradespeople during the construction phase.

The issues raised by the submissions against the proposed development are noted in the table below.

Objection	Response
Visual impact upon the northern side of the river	The issue of visual impact has been addressed in detail within the body of this report. Appropriate conditions of consent have been applied.
Noise impact upon the northern side of the river	The applicant has since provided an acoustic report which assessed a number of noise sources for the entire development. Council's Environmental Health Unit has assessed the acoustic report and has applied application conditions of consent with regard to noise.
Village style construction is needed for the site	The architectural merit of the proposed building has been addressed within the body of this report.
Negative impact upon Murwillumbah's Main Street café's and restaurants by taking away business / division of the Murwillumbah business district	The applicant has noted that the proposal will provide an additional fast food and grocery offer in a convenient location for surrounding residents, particularly those on the eastern side of the Tweed River. The issue of economic impact has been addressed within the body of this report.
Loss of existing jobs to create fewer new jobs	The applicant has noted that the proposed development will not take away jobs from the Murwillumbah Town Centre, resulting in an overall net increase in jobs for the locality.
Health issues with McDonald's food (obesity, lack of nutrition etc)	This issue is not considered to be a valid consideration under S79C of the EP&A Act.
Visual impact – Gateway into Murwillumbah	The issue of visual impact, with particular regard to the subject site being at the gateway into Murwillumbah, has been addressed in detail within the body of this report.
Litter impact – roadside rubbish	The McDonald's Waste Management Plan incorporates measures to minimise litter issues. Unfortunately roadside litter is a problem in society with individual choosing not to use litter bins provided.
Impact upon Murwillumbah's culture / character and image	The applicant has noted that the notion of objecting to the McDonald's Operation itself is not a relevant planning ground. This statement is not concurred with, when looking at the potential impact to the character of the immediate area, with particular regard to the provisions of DCP B22. This issue is

Objection	Response
	assessed within the body of the report.
Destruction of the existing Norco building and replacement with a modern building and corporate logo – incompatible with the heritage feel of the town	Although the original Statement of Environmental Impacts refers to the existing Norco building being demolished, the applicant has since advised that the building is not being demolished, but rather, it is being donated to a 'suitable local beneficiary for future use'. Conditions of consent have been applied in this regard.
Impact on tourism	Appropriate deferred commencement conditions have been applied in order to minimise visual impact on tourist icons such as Mt Warning.
Noise impact due to 24hr operations of McDonalds	The applicant has since provided an acoustic report which assessed a number of noise sources for the entire development. The report recommended a number of noise mitigation measures for the proposed development, including an acoustic wall along part of the eastern boundary. Council's Environmental Health Unit has assessed the acoustic report and has applied application conditions of consent with regard to noise.
Mass production without regard for the environment	This issue is not considered to be a valid consideration under S79C of the EP&A Act.
Traffic impact (24hrs a day) – additional traffic crossing Tweed Valley Way	Council's Traffic Engineer and the local Development Traffic Advisory Group have assessed the proposed development with no objections, subject to conditions of consent.
The development is not compatible with the region which is becoming known as a Food Bowl for organic locally grown produce	The proposed development is not considered to impact upon the regions locally grown produce.
Lighting impact	The applicant has since provided a lighting report which was prepared to ensure that the proposed 24 hour lighting can comply with all relevant Australian Standards. Council's Environmental Health Unit has assessed the lighting report with no objections and has applied application conditions of consent.
Social impact – hang out area for youth, negative impact, increased crime & violence	The applicant has noted that the proposed hours of operation does not necessarily increase crime and anti-social behaviour. Applicable conditions of consent have been applied in this regard, including the requirement for a Site Management Plan which covers security measures etc.

Objection	Response
Lack of connectivity with the town centre	Subject to conditions of consent, the proposed development is considered to be consistent with the provisions of DCP B22 – Murwillumbah Town Centre, specifically the Riverfront Employment precinct which the subject site is located.
Odour impact	The applicant has noted that cooking fumes from the McDonald's Operation will be minimised through use of electric commercial grade cooking equipment and ventilation, ensuring an appropriate standard of health and safety for visitors and adjoining land uses.
Environmental impacts – unsustainable forestry practises, animal cruelty etc	This issue is not considered to be a valid consideration under S79C of the EP&A Act.
Signage will have an unacceptable visual impact	The issue of visual impact, with particular regard to the proposed signage, has been addressed in detail within the body of this report. Appropriate conditions of consent have been applied.
Inadequate Economic Impact Statement re: impact on local café's & restaurants	The applicant has noted that the proposal will provide an additional fast food and grocery offer in a convenient location for surrounding residents, particularly those on the eastern side of the Tweed River. The issue of economic impact has been addressed within the body of this report.
Council is involved with the Northern Rivers Food Links which promotes sustainable local agriculture & local food businesses with a regional character. The development is inconsistent with local community support for a sustainable Northern Rivers	This issue is not considered to be a valid consideration under S79C of the EP&A Act. Nonetheless, the proposed development is not considered to impact upon the regions locally grown produce.
There is a McDonalds only a few kilometres away at Chinderah on the highway. No need for a McDonald's in Murwillumbah.	This issue is not considered to be a valid consideration under S79C of the EP&A Act.

Objection	Response
There are 2 existing supermarkets that already service the community adequately.	An economic impact assessment has been undertaken by the applicant with regard to the proposed IGA. The assessment concludes that the proposal will not threaten the viability or continued operation of any facility, with the IGA not being a full-line supermarket. Rather it will be convenience supermarket, providing an alternative to the existing full-line supermarket in the town centre. It is also noted that the owner of the existing IGA in the town centre will be the owner of the proposed IGA. The owner has advised that the existing IGA will not be closed.
Should be encouraging people to be healthy and active.	This issue is not considered to be a valid consideration under S79C of the EP&A Act.
The area set aside for this development is the wrong place for a commercial area in general.	The subject site is zoned 3(c) Commerce and Trade. The proposed uses are considered to be permissible with consent. Various Council documents have 'earmarked' the subject site as being suitable as a small retail convenience centre.

As shown in the above table, a number of the submissions are based on the submitters' views of the businesses practices of McDonalds, including concerns for the nutritional value of the food sold in their premises, and the related potential health impacts.

In response to these grounds of objection, the officers have expressed their opinion that they are not valid grounds of consideration under section 79C of the Environmental Planning and Assessment Act. This view is based on the extensive case law from the NSW Land and Environment Court, which has consistently dismissed those grounds of objection which are not strictly, town planning based.

The reliance on these non-planning grounds of objection would also place Council in a contradictory position to the significant Federal and State Government legislative and policy framework established to discourage anti-competitive behaviour among private businesses and all levels of government.

The most significant of the legislation is the Competition and Consumer Act (CCA) 2010 (previously named the Trade Practices Act 1974), which prohibits various anti-competition practices that limit or prevent competition.

The NSW Government has also been a signatory of the Competition Principles Agreement (a component of the National Competition Policy) since 1995, which commits the Government to ensuring that any new legislation does not restrict business competition. These principles also apply to local government, even though individual councils are not party to the Agreement.



The NSW State Government has also given strong policy direction in recent years, which aims to restrict anti-competition practices in the strategic and development assessment functions of local councils. The following position papers and draft legislation have all reinforced anti-competition principles:

NSW Department of Planning, "Draft Centres Policy - Planning for Retail and Commercial Development", April 2009.

NSW Planning and NSW Better Regulation Office, "Promoting Economic Growth and Competition through the Planning System - Review Report", April 2010.

Draft State Environmental Planning Policy (Competition 2010).

The federally based Productivity Commission has also advanced the review of anti-competitive activity in planning systems nationally through the document, "Performance Benchmarking of Australian Business Regulation: Planning Zoning and Development Assessments Research", May 2011.

DPI (NSW Office of Water)

As a result of the works involved with the proposed development being within 40m of the Tweed River, the proposal was identified as being Integrated Development, requiring referral to the NSW Office of Water (NOW).

NOW provided the following advice:

*'The NSW Office of Water has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000, a Controlled Activity Approval is not required and no further assessment by this agency is necessary.'*

**(e) Public interest**

Although the proposed development has raised a lot of debate within the community, it is considered that the proposed development does not compromise the public interest. The proposal is generally considered to reflect the provisions of all applicable development control plans and intended development for the locality, subject to conditions of consent.

**OPTIONS:**

1. Approve the application, subject to the recommended conditions of consent
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the option to appeal the matter in the NSW Land and Environment Court, should they be dissatisfied with Council's resolution.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development provides an opportunity to revitalise the existing vacant site, provide employment during construction and operational phases, but this should not be at the detriment of meeting the provisions of DCP B22 in terms of visual impact etc. Therefore, deferred commencement conditions have been applied in an effort to allow the applicant an opportunity to address the concerns of Council and provide a development which sets the standards for the locality in terms of site and building design, visual amenity and entry experience into the township of Murwillumbah. As such, it is considered that conditional consent is warranted.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

---

**THIS PAGE IS BLANK**

## REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

### 14 [CNR-CM] Kingscliff Coastal Zone Management Update

#### ORIGIN:

Natural Resource Management

#### SUMMARY OF REPORT:

The significant issues that have arisen at Kingscliff require Council to review the strategic basis and planning approach for the Kingscliff foreshore.

There is currently a need for Council to prepare a Coastal Zone Management Plan (CZMP) in accordance with the legislation and new guidelines, therefore it is now opportune for Council to undertake the review at Kingscliff Beach as an element of a new shire-wide CZMP.

There are several studies and reports being undertaken by Council at present that will form essential background to the development of a practical CZMP for Kingscliff and the Tweed Coast. If the review of the CZMP confirms the strategy of protection of Kingscliff foreshore, significant funds (in the order of \$8-10m) will be required for protection works. Following development of the CZMP, Council can apply for matching funds from the NSW Government.

A letter was received from the NSW Minister for the Environment, Robyn Parker MP, requesting Council to continue with development of a CZMP for Kingscliff Beach.

#### RECOMMENDATION:

##### That Council:

1. **Advises receipt of the letter from the Hon. Robyn Parker, Minister for the Environment, dated 1 February 2012 and confirms that it has commenced the recommended actions.**
2. **Reconfirms the strategy for the protection of Kingscliff Beach with an update of the Tweed Shire Coastline Management Plan 2005 to a Coastal Zone Management Plan in accordance with the *Coastal Protection Act 1979 No. 13*.**
3. **Officers prepare an application for funding assistance through the NSW Government's Coastal Management Program 2012/2013 for undertaking a socio-economic assessment of the proposed strategy for the long term protection of Kingscliff Beach and developing the Tweed Coastal Zone Management Plan.**

4. **Notes that the option of accepting retreat will result in the Kingscliff Town Centre being under threat in the medium term (2050).**

## REPORT:

### Background

The "Tweed Shire Coastline Management Plan" (CMP2005) was adopted in June 2005 and is a plan prepared in accordance with the relevant legislative requirements and coastal policy. Reflective of the severe and prolonged erosion that may occur at Kingscliff Beach and the positioning of major public assets in the Immediate Hazard Zone, the Plan identifies Kingscliff as the only foreshore area within the Shire warranting protection works within the duration of this Plan.

Since adoption of CMP2005 a number of matters have arisen at Kingscliff Beach that provide a need to re-confirm a strategic direction for foreshore management actions at Kingscliff.

Main management actions provided by CMP2005 for the "Kingscliff - Kingscliff South Area" foreshore are:

- Install a Terminal Seawall - intended as secondary defence i.e. mostly buried - protecting Cudgen Headland SLSC and the foreshore northwards to Kingscliff Beach Club.
- Implement initial and ongoing sand nourishment to maintain beach amenity;
- Revise stormwater management along the foreshore;
- Re-establish the dune, re-vegetate and provide formal access points to the beach.

In developing the above management actions for Kingscliff foreshore primary considerations were:

- cost of planned retreat is comparable with the cost of defensive actions (works);
- intention to retain the Kingscliff Beach Club - defended by a designed seawall constructed in 1995 with assistance from the NSW Government;
- retention of the Kingscliff Beach Club provided some impetus to physically protect the foreshore between Cudgen Headland SLSC and the Kingscliff Beach Club, also thereby bringing benefits of retaining the Surf Club and the amenity of the foreshore;
- the impact, in a relatively short time frame, of the coastal erosion hazard on Marine Parade and potential to necessitate protection of that asset within this time frame (2050 Hazard Line);
- a potential suitable source of sand for ongoing nourishment of Kingscliff Beach was identified as Area 5 in the Tweed River (subject to approval);
- the need for beach amenity to be retained with minimal impact from defensive works actions;
- that this strategy, subject to the considerations above, was strongly supported by the community.

Matters of significance in implementing the Kingscliff foreshore actions and their strategic base that have arisen since CMP2005 was adopted are:

- consultant's advice that a terminal seawall is not necessary if "initial and ongoing nourishment works....." are implemented;
- high cost and long lead-time in achieving an initial sand placement;
- practicality of obtaining ongoing nourishment sand in appropriate quantities, as needed, remains to be proven with operations feasibility and environmental aspects to be defined;

- occurrence of this severe and sustained beach erosion necessitating high cost emergency response works;
- education of the community in regard to the extent and persistence of erosion;
- Sea Level Rise Policy Statement;
- amendments to the Coastal Protection Act requiring amongst other things, the preparation of a Coastal Zone Management Plan (CZMP);
- formalisation of Council's intended foreshore activities in the "Kingscliff Foreshore Master Plan" which is reliant on protection of the foreshore.

### **NSW Coastal Panel Advice**

Attached is the advice on coastal erosion at Kingscliff provided by the NSW Coastal Panel to the NSW Minister for the Environment.

Several recommendations arise from this advice, all of which have been accepted by the Minister.

In response, the Minister has requested that Council:

1. Works with Byron Shire Council on preparing a regionally based Coastal Processes Study, noting that both Shires have applied for funding through the NSW Government.
2. Works with the Office of Environment and Heritage and Department of Primary Industries (Crown Lands) to develop a strategy for management of the erosion risks in the short term for the unprotected section of beach in front of the Kingscliff Beach Holiday Park.
3. Continues with its development of a CZMP for Kingscliff Beach and considers the matters raised by the panel in developing this revised plan.

### **Current Projects**

As noted by the Minister in her letter, Council has applied for 50% funding to update the coastal processes and coastal hazards in conjunction with Byron Shire.

Further grant applications will be forwarded to the Office of Environment and Heritage for funding in 2012/2013 for other studies as listed below to assist with revision of the Tweed CZMP:

In addition to the emergency erosion management works by Council, staff are currently working on the following components to assist with updating the Tweed Shire Coastline Management Plan to a Coastal Zone Management Plan. In particular, reviewing and developing more detailed strategies for managing the coastal erosion hazard at Kingscliff.

### **Alternative Terminal Seawall Designs**

Water Research Laboratory (WRL) has prepared an assessment of alternative seawall designs following engagement by Council. A draft report has been received and is being finalised at present by WRL in consultation with Council staff. The report's finding of alternative seawall types from the Surf Life Saving Club to the Bowls Club is summarised in the table below.



Design material	Main Features	Advantages	Disadvantages	Cost Total and per lineal metre
Rock	Sloping wall of heavy rock with concrete wave return wall on top.	Durable, Flexible Absorbs wave energy Least Cost .	Higher maintenance Higher construction impacts. Rodents and reptiles. Non-recreation space. Crush hazard from rocks. Larger construction footprint. Collision hazard	\$4.3M \$9,700/m
Geotextile Containers	Sloping revetment of geotextile sand filled units with wave return wall on top.	Flexible structure, positive aesthetics, beach user friendly. Good recreation space Fill may be available without cost. Reuse existing 2.5 m3 units Softest option (collision) Least (equal) cost option	Unstable in design waves. Lower durability Higher maintenance Absorbs less wave energy. Larger construction footprint	\$4.3M \$9,700/m
Concrete "Seabee"	Sloping revetment of hexagonal interlocking concrete armour units with wave return wall on crest and secant pile wall toe.	Smallest construction footprint. Lower maintenance Durable. Aesthetics (can add vegetation). Good recreation space. Absorbs more wave energy.	Pedestrian fall hazard if toe exposed. Toe is rigid (more prone to catastrophic failure) Collision hazard.	\$5.9M \$13,300/m
Stepped Concrete	Stepped monolithic seawall with wave return wall and secant pile wall toe	Smaller construction footprint Lower maintenance Adaptable Durability Aesthetics Excellent recreation space	Pedestrian fall hazard if toe exposed. Public space dangerous during storms Rigid (more prone to catastrophic failure) Absorbs less wave energy. algal growth Collision hazard Greatest cost	\$8.2M \$18,600/m

The report recommends rock as the preferred method for construction in this instance. It is considered that geotextile sand bags do not meet the design criteria due to long term performance. There are a few other considerations to be included in the report prior to it being referred to Council.

### ***Sand Nourishment EIS - Area 5 Tweed River***

Preparation of the Environmental Impact Study (EIS) and Preliminary Operations Designs (POD) for Area 5 Sand Extraction and the Delivery Pipeline to Kingscliff Beach are proceeding to schedule.

Scheduled completion dates are:

EIS Mid July 2012

POD Mid April 2012

After considerable work and assessment to date on these studies, no issues have been identified that threaten the feasibility of the project to deliver sand from Area 5 to Kingscliff Beach.

In light of constraints on sand removal (e.g. river bank stability) the maximum volume of marine sand available from Area 5 is estimated to be about 700,000 cubic metres.

### ***Socio-Economic Assessment***

A brief is being developed for consultants to undertake an analysis of the monetary valuation of the social and economic costs of the erosion management options proposed for Kingscliff within different time horizons. The purpose of this study is to assist with determining the value of erosion mitigation works for Council and community against the cost of these works.

### ***Kingscliff Processes Study***

Council has applied for 50% funding through the NSW Government's Coastal Management Program for a study to provide an overview of coastal processes that affect Kingscliff Beach including mechanisms of sand movement, compartment sand source locations, a practical beach monitoring program (including near shore, down drift and up drift), feasibility of a predictive sediment budget tool, and effects of Cudgen Creek training walls and bridge crossing on sediment budgets.

### ***Kingscliff Coastal Zone Management Plan - Update***

These above studies will form the basis for a review of the Tweed Shire Coastline Management Plan 2005 and provide for a detailed coastal management strategy for Kingscliff .

### **Conclusion**

The significant issues that have arisen at Kingscliff require Council to review the strategic basis and planning approach for the Kingscliff foreshore.

Given there is currently a need for Council to prepare a Tweed Shire CZMP in accordance with the legislation and new guidelines, it is now opportune for Council to undertake the review at Kingscliff Beach as an element of a new shire-wide CZMP. The Kingscliff foreshore plan would be prepared in accordance with the CZMP Guidelines with resulting plan being a module to be included in the final Tweed Coast CZMP.

The investigatory work being undertaken by Council at present will form essential background to the development of a practical CZMP for Kingscliff and the Tweed Coast.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The NSW Government's Coastal Management Program requires a 50% contribution for funding provided. Grants are competitively sourced and subject to the budget allocation and priorities of Government.

It is estimated that total funds in the order of \$8-\$10m will be required for permanent protection works with additional ongoing maintenance costs.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Letter and report from Minister (ECM 45984661)
-

**THIS PAGE IS BLANK**

**15 [CNR-CM] Review of Tweed Urban Stormwater Quality Management Plan - Public Exhibition**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

The Tweed River Committee has recently received a final draft report comprising a review and update of the Tweed Urban Storm Water Quality Management Plan (2000). This project has been undertaken by the Waterways Program in conjunction with Council's Works, Recreation Services and Development Assessment Unit. The new Urban Stormwater Quality Management Plan brings Tweed's approach to stormwater quality management into step with existing best management practice. It is proposed that the revised management plan be put on public exhibition so that feedback from the community and development industry can be incorporated prior to the document being adopted by Council.

The Tweed River Committee at its February meeting resolved to recommend to Council that the plan be placed on public exhibition.

**RECOMMENDATION:**

**That the revised Tweed Urban Storm Water Quality Management Plan be placed on public exhibition.**

## REPORT:

The Tweed River Committee has recently received a final draft report comprising a review and update of the Tweed Urban Storm Water Quality Management Plan (2000). This project has been undertaken by the Waterways Program in conjunction with Council's Works, Recreation Services and Development Assessment Unit.

The Tweed River Committee at its February meeting resolved to recommend to Council that the plan be placed on public exhibition.

The Tweed Urban Stormwater Quality Management Plan (Tweed USQMP) was originally adopted in 2000 in response to the Notice issued to all NSW Councils by the Environment Protection Authority (now OEH) under Section 12 of the *Protection of the Environment Administration Act, 1991*. The Tweed USQMP was prepared by Tweed Shire Council (Council) for the urban areas, and Tweed Coast Villages.

Stakeholders in the Tweed Urban Stormwater Quality Management Plan include Service Units within Council, Tweed River Committee, Tweed Coastal Committee, State Government Departments, Interest Groups, Industry Groups and the wider community.

The original purpose of the Tweed USQMP was to ensure urban stormwater management is addressed by Council and that related issues are incorporated into the planning, budgetary and ongoing works activities of the Council. Through ongoing capacity building relating to stormwater management, Council has come to understand the limitations of the existing Tweed USQMP (2000) and that it required updating.

A key problem with the Tweed USQMP (2000) is that its scope is far too broad, making its application difficult. For example, it provides detail on elements such as vegetation communities and creek morphology which are not directly relevant to the management of stormwater.

While written in the late 1990's, the Tweed USQMP (2000) was a good representation of best practice stormwater management at that time, however in the past ten years stormwater management as a practice has evolved and grown considerably both in understanding and expectation of what constitutes best practice. Additionally the ability to devise, quantify and build stormwater treatment strategies is now far more sophisticated.

In response, Council has reviewed the scope of the Tweed USQMP and determined that a revised Tweed USQMP should:

- Confirm Council's stormwater management objectives
- Provide ambient and stormwater quality objectives
- Insist on the use of best practice design guidance available to the industry
- Provide specific and measurable guidance for monitoring and maintenance of stormwater quality improvement devices (SQIDs)

This requires a document that is streamlined and focused upon Council's objectives for waterway health but not complicated by prescriptions that risk becoming dated as the practice of stormwater management evolves. In order to keep Council's stormwater management current, Tweed Shire Council's *Development Design Specification D7 – Stormwater Quality*, as the relevant policy document, refers to the latest versions of current

best practice WSUD guidelines and to the Tweed USQMP for catchment-specific (local) objectives.

The stormwater objectives provided in Tweed Shire Council's *Development Design Specification D7 – Stormwater Quality* apply to all new development in the Tweed region unless there is a catchment specific stormwater objective provided in the Tweed USQMP, a catchment management plan, or a Coastal Zone Management Plan (CZMP).

This USQMP communicates Council's stormwater quality management objectives and directs users to supporting guidelines and coastal zone management plans for specific technical information.

The revised plan is holistic in scope, promoting decision making for stormwater management from a catchment and ecological perspective. The plan seeks to expand on the traditional storm water quality management focus of achieving compliance with water quality objectives, solely within the boundaries of a single development. The plan advocates consideration of practical and collaborative solutions that reduce construction and maintenance costs associated with managing stormwater devices, and encourages consideration and achievement of catchment wide water quality and ecosystem health objectives.

Council has a vision of collaborating with stakeholders to make holistic, catchment-wide, stormwater management decisions, via which the aquatic ecosystems of the Shires waterways are protected and enhanced, while the cost of stormwater management for all parties is kept to a minimum.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

As per report.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Draft Tweed Urban Stormwater Quality Management Plan 2011 (ECM 46039327)
-



**THIS PAGE IS BLANK**

**16 [CNR-CM] Impact of Wake on Tweed River Bank Erosion - Study Exhibition**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

The Tweed River Committee has recently received a consultant's report which contains results of an investigation into the impact of boat wake on erosion of the Tweed River banks. The report discusses cause and effect of bank erosion and outlines options that may be pursued by both Council and Roads and Maritime Services to manage the problem. The Tweed River Committee has recommended that the study be placed on public exhibition. Following exhibition of the study, it is intended that a river bank erosion management plan be prepared. This proposed Management Plan will contain recommendations and actions that can be implemented by Council and others to address river bank erosion through both physical works and other management measures.

**RECOMMENDATION:**

**That the Impact of Wake on Tweed River Bank Erosion Study be placed on public exhibition.**

## REPORT:

SMEC Australia was commissioned by Council and the Tweed River Committee to undertake an assessment of the impact of vessel wake on bank erosion on the Tweed River. The assessment was to include identification of measures available to reduce erosion, including if warranted, those relating to the use of vessels.

An assessment of the mechanisms for bank erosion within the Tweed River has been carried out. This found that both naturally generated wind waves and waves resulting from vessel wake have the potential to result in erosion. A comparison between wind and wake waves was undertaken. It was found that the influence of wind and wake waves vary through the Tweed River depending on the exposure of the river to the dominant wind directions and the frequency of towing activities (waterskiing and wakeboarding).

It was identified that towing activities are the most likely vessel activities to cause wake waves capable of causing significant bank erosion. This is due to the repetitive nature (ie. undertaking numerous laps along the same stretch of the river) and the size of the wake waves these vessels generate when travelling at operational speeds. This assessment has demonstrated that vessel wake resulting from towing activities has the potential to cause and increase bank erosion. Based on current practice the entire stretch of river between Chinderah and Bray Park has been shown to be susceptible to bank erosion as a result of vessel wake, as this area generally experiences limited wind generated waves. Accordingly, wake waves have become the dominant erosion mechanism in the upper Tweed River estuary.

The stretch of river downstream of Chinderah is more exposed to the predominant wind directions and so is subject to larger wind generated waves. Furthermore, this area has been reported as being used less frequently than the upstream areas for towing activities (this is consistent with the exposure of the site to wind energy). Accordingly, wake from towing activities is not expected to significantly increase bank erosion in these areas given current practice. This is not to say that bank erosion does not occur in these locations (where unprotected). However, based on the wave assessment, wake from towing activities is not considered the dominant erosion mechanism. If towing activities were restricted in other areas of the river an increase in towing boats may be expected in this stretch of river resulting in wake waves becoming an increasingly significant mechanism.

A number of mitigation options have been suggested for consideration in managing the accelerated rate of bank erosion within the Tweed River, based on the river characteristics and the physical mechanisms of the erosion mechanism. The possible erosion management options range from non-engineered preventative measures to engineered hard protection.

Based on the findings of the assessment a series of hypothetical management options have been subject to a cost benefit analysis as a means of broadly demonstrating the economic, social and environmental impacts of recreational vessel towing activities that generate wake in the Tweed Estuary. This analysis is presented in the study for discussion purposes only, to inform debate on the relative merits of the types of management options considered.

The Tweed River Estuary Bank Management Plan is being reviewed in light of information generated through the completion of this study. This will result in the formulation of bank erosion rehabilitation recommendations that will be implemented by Council. It is also intended that Council will make recommendations relating to vessel operation that will be presented to Roads and Maritime Services for consideration in a review of the Tweed River

Boating Plan of Management. These recommendations will seek to balance the demand for recreational boating in the upper estuary against the environmental and economic impacts of vessel wake generated river bank erosion.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Impact of Wake on Tweed River Bank Erosion Study (ECM 46038241)
-

**THIS PAGE IS BLANK**

**17 [CNR-CM] Budd Park River Bank Stabilisation and Park Reconfiguration**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

Council's Waterways Program through the Tweed River Committee has developed two options to address river bank erosion in Budd Park. At its December meeting the Committee resolved to recommend to Council that the options be exhibited to the community.

This report summarises the project to allow Council to consider the options in more details.

- Option 1 involves a substantial reconfiguration of the river bank and associated park landscaping.
- Option 2 is significantly cheaper and involves the minimal works required to address existing bank erosion.

Both options will require removal of significant existing vegetation and will change the visual amenity of the park. This report describes each option in more detail and describes a communication plan that will be used to generate community feedback on the preferred option.

**RECOMMENDATION:**

**That Council undertakes a process of consultation to allow the community to provide feedback on its preferred option to undertake stabilisation of the river bank at Budd Park.**

## REPORT:

Budd Park is a highly valued area of public open space in Murwillumbah. It is the only point within walking distance of the town centre where residents and visitors are able to access and interact with the Tweed River. The park frames views of the river that can be glimpsed by vehicle travellers entering the town, and is popular for recreation and public events.

Despite Murwillumbah being immediately adjacent to a beautiful reach of the Tweed River, opportunities to enjoy the amenity provided by this iconic feature are very constrained. Due to the location of flood levees, roads, steep vegetated banks and private property, Budd Park is the only site between Tumbulgum and Byangum where facilities and access are provided for the public to enjoy the river.

The river bank adjacent to Budd Park is affected by severe and active bank erosion. Council's Waterways Program has prioritised stabilisation of the river bank in Budd Park, and has identified additional opportunities to enhance the park landscape, increasing the river's visibility and making it a more accessible feature of the town centre.

Work required to stabilise the river bank at Budd Park will have significant impacts on the park's existing visual amenity. A significant stand of trees growing right on the bank will have to be removed as they are undercut by erosion. The small access road between the Rainforest Information Centre car park and river will need to be removed and access realigned.

Council's Waterways Program through the Tweed River Committee has developed two options to address river bank erosion in Budd Park. At its December meeting the Committee resolved to recommend to Council that the options be exhibited to the community. This report summarises the project to allow Council to consider the options in more detail.

**Option 1** involves a major re-contour of the existing riverbank to establish a level bench closer to the river surface. This will create more space within the park where people can be close to and interact with the river. Earth works associated with this option will require removing a second cluster of trees between the existing Rainforest Information Centre car park and the river. The scale of earth works creates the opportunity to enhance park furniture, landscaping and improve access. A significant outcome will be an increase in the visibility of the river from within the park and adjacent areas. Estimated costs are \$450,000.

**Option 2** is to undertake the minimum possible works to achieve bank stabilisation. This will involve removing existing undercut river bank vegetation and constructing a uniform height rock wall. The bank above this point will remain high and steep and will be planted densely with native grasses. This option will also require removal of the existing access road and its realignment. Minor landscaping works will be undertaken to rehabilitate construction impacts and replace some park furniture. The estimated cost of this work is \$300,000.

Both options will require the park to be largely closed to public access for a period of weeks, with option 1 construction phase estimated to take up to 6 weeks.



### **Communication and Consultation Objective**

- Inform community (particularly in Murwillumbah) of Councils intent to address bank erosion problems in Budd Park.
- Highlight that there are two possible options to address bank erosion, noting that option 1 involves more extensive work, costs and changes to existing amenity.
- Encourage community to assess available information (3D graphic representation and plans) and advise Council of their preferred option.

### **Key Messages**

- As minimum, the work is necessary, and will significantly change existing visual amenity.
- Option 1 involves a larger investment and will result in more extensive changes to the parks existing character.
- Council seeks your opinion - our objective is to gauge the preference of the residents and community groups of Murwillumbah on the proposed options.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The project is funded from the existing Tweed River Program budget.

### **POLICY IMPLICATIONS:**

Nil.

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**THIS PAGE IS BLANK**

**18 [CNR-CM] Interpretation of State Environmental Planning Policy 26 Littoral Rainforest**

**ORIGIN:**

**Natural Resource Management**

**SUMMARY OF REPORT:**

Following a request from a neighbouring resident for tree removal to be undertaken on Council-managed Crown land at Lagoon Road Fingal Head, Council staff undertook an investigation into the necessary approvals process and the health and safety implications of trees overhanging the residential property.

The matter is complicated as the trees occur on land mapped under *State Environmental Planning Policy No. 26 Littoral Rainforest* (SEPP 26) and form part of littoral rainforest which is regarded as Critically Endangered under Federal environmental legislation and Endangered under NSW legislation, with little remaining in Tweed Shire. The SEPP 26 mapping in this case extends over both the Crown land and the residential land in question.

Council's Natural Resource Management Unit, with the support of external funding from the State and Federal Governments is undertaking restoration activities in this SEPP 26 Littoral Rainforest remnant, and has done so over the past 2.5 years. Restoration includes control of weeds, encouraging native species regeneration and community education. Prior to this Fingal Head Coast Care, Council and other funding bodies have also worked to improve the ecological integrity of this littoral rainforest remnant. Council is therefore committed to careful consideration of any application for tree removal in this area.

Tree trimming to remove some branches overhanging the house was initially permitted under a Tree Preservation Order approval; however, the resident remained concerned for the safety of the residence and its occupants. Expert arborist assessment revealed concerns with the health and likely longevity of the trees in question and risk management considerations concluded that minor tree removal was a prudent response.

Clearing within SEPP 26 Littoral Rainforest requires an Environmental Impact Statement (EIS) which is generally a lengthy and complicated process. An exception exists where *"any act ... is carried out in the ordinary course of residential occupation of the land concerned."* Council's interpretation of the legislation is that this clause is relevant and therefore no EIS is necessary in this particular case due to the potential imminent danger posed by the trees on the adjoining residence, where safety concerns would normally prevail where residential occupation occurs.

The NSW Department of Planning and Infrastructure, however, have adopted a more cautious interpretation of the legislation and consider that an EIS should be undertaken prior to tree removal. Council is open to relying on its own advice as the local planning authority to determine whether the SEPP 26 provisions apply. As the SEPP 26 policy does not consider property boundaries and only considers land zonings in the context of the definition of residential land, it is considered that Council's interpretation of the "land concerned" as including the residential land over which the SEPP mapping extends, is fair, and therefore an EIS and concurrence of the Minister is not required.

**RECOMMENDATION:**

That Council prepares the necessary application under the Tweed Local Environment Plan 2000 for the removal of the three nominated trees assessed as being a health and safety risk, being two Tuckeroos (*Cupaniopsis anacardioides*) and one Three-veined Laurel (*Cryptocarya triplinervis*), from Lot 7079 DP 1112977 at Lagoon Road, Fingal Head.

## REPORT:

An inspection of trees on Council managed Crown reserve (Lot 7079 DP 1112977) was undertaken by Council officers in August 2011. This inspection was undertaken at the request of a resident at Lagoon Road (Lot 425 DP 755740) who was concerned that trees on the above mentioned Council managed lands were significantly overhanging the property roof and were a safety hazard. In a recent storm a very large Tuckeroo in the property yard had fallen and caused damage to the property roof.

Lot 425 DP 755740 is private land zoned 2(a) Low Density Residential under the Tweed LEP 2000. The adjoining Council managed land is zoned 7(a) Environmental Protection under the Tweed LEP 2000. Lot 7079 DP 1112977 is covered under TPO 2004 and Lot 7079 DP 1112977 and Lot 425 DP 755740 are covered by State Environmental Planning Policy 26 - Littoral Rainforest (SEPP 26) (refer to Figure 1).



**Figure 1:** Extent of TPO 2004 (orange) and SEPP 26 (hatched red) over 425//755740 and the Council managed Crown Reserve 7079//1112977.

The trees that were inspected form part of remnant Littoral Rainforest at Fingal Head and are wholly covered by SEPP 26. This rainforest community is also listed as critically endangered under the *Environment Protection and Biodiversity Conservation Act 1999* and endangered under the *Threatened Species Conservation Act 1995*.

Based on preliminary advice by Council's Arborist, acknowledgement of the environmental significance of the vegetation and legal constraints of SEPP 26, an application under TPO 2004 was submitted and approved to prune three large littoral rainforest trees that overhang the roof of the house at Lagoon Road, being two large Tuckeroos (*Cupaniopsis anacardioides*) and one large Three-veined Laurel (*Cryptocarya triplinervis*). In accordance with the TPO consent, branch trimming was limited to that considered essential to remove the safety hazard to the resident concerned, and trimming was undertaken in such a way so as not to damage the structural integrity of the affected trees. However, in order to maintain the structural integrity of the trees, tree trimming was minor.

The resident remained concerned that a very real danger of tree fall remained and requested Council take the necessary action to reduce this risk to their property and life. All trees are within five metres of their house (refer ECM number 41591021).

Council's Arborist completed a detailed inspection of the three trees and prepared a tree health assessment report, dated 1 December 2011 (refer ECM number 43563363). This report categorises the two Tuckeroos as having "severe damage/structural defects that cannot be properly addressed by remedial care including cavities, decay, bark wounds and excessively imbalanced, overgrown and vulnerable to adverse weather conditions" and accordingly, are likely to be removed within 10 years because of acute health issues or severe structural failure. The report categorises the Three-veined Laurel as having "severe damage/structural defects where a high risk of failure can be temporarily reduced by reasonable remedial care including cavities, decay, bark wounds and excessively imbalanced and vulnerable to adverse weather conditions" and accordingly, is likely to be removed within 10 years through responsible management of tree population. Whilst the report states that risk of failure of the Three-veined Laurel could be reduced by reasonable remedial care, 98% of the trees crown is over the dwelling. Therefore it is likely removal of a significant portion of the tree crown would affect the health of the tree.

Due to the potential risk of failure of these three trees, proximity to the dwelling house at Lagoon Road and potential consequence of damage to property and/or life, Council proposes to remove all three trees.

Council's NRM Unit, with the support of external funding from the State and Federal Governments is undertaking restoration activities in this SEPP 26 Littoral Rainforest remnant, and has done so over the past 2.5 years. Restoration includes control of weeds, encouraging native species regeneration and community education. Prior to this Fingal Head Coast Care, Council and other funding bodies have also worked to improve the ecological integrity of this littoral rainforest remnant. Council is therefore committed to careful consideration of any application for tree removal in this area.

In its proposed removal of these trees which occur on land mapped as SEPP 26, Council has undertaken investigation into whether the provisions of SEPP 26 apply in this instance and whether an Environmental Impact Statement or Development Application prepared under SEPP 26 is required. Council is the local planning authority in determining whether the provisions of SEPP 26 apply. However in this instance Council requested advice from the NSW Department of Planning & Infrastructure for the proposed removal of these three trees in accordance with its interpretation of the following clauses of SEPP 26:

Clause 7 (1) states "*A person shall not, without the consent of the Council, on land described in clause 4 (1) (a), erect a building, carry out work, use land for any purpose, or subdivide it, disturb, change or alter any landform or disturb, remove, damage or destroy any native flora or other element of the landscape or dispose of or dump any liquid, gaseous or solid matter*" and

Clause 7 (5) states "*Nothing in subclause (1) or (2) requires the consent of the Council to be obtained for: (a) any act which is carried out in the ordinary course of residential occupation of the land concerned.*"

Council has interpreted the above clauses of SEPP 26 to imply that although the trees will be removed from SEPP 26 mapped land, they will be removed on the basis of the tree health assessment report to ensure they do not pose a risk to property or life to the adjacent residential occupation of land. Council's interpretation of the "land concerned" is the SEPP 26 mapped area and the trees under consideration. Whilst the trunk of the three trees are located on Council managed Crown land, the crowns of these trees extend considerably over the adjacent private residential property, and the only reason these trees are being considered for removal is the significant extent the canopies of these trees extend over a residential house, and hence the risk these trees propose to this residential property. Therefore the removal of these trees is considered "an act which is carried out in the ordinary course of residential occupation of the land concerned". As the SEPP 26 does not consider property boundaries and only considers land zonings in the context of the definition of residential land, this interpretation of the "land concerned" is considered fair. Therefore Council has determined in this instance that the provisions of SEPP 26 do not apply. Consequently preparation of an Environmental Impact Statement, the consent of Council and concurrence of the Minister would not be required to remove these three trees.

Advice has been sought from the Department of Planning and Infrastructure on Council's interpretation of SEPP 26 in this instance (refer ECM numbers 43661087 and 44716153). The Department have adopted a more cautious interpretation of SEPP 26. The Department acknowledge that Council is the local planning authority and should rely on its own interpretation of SEPP 26 and its application. However, the Department provided an alternate interpretation of clause 7(5) of SEPP 26 and the term "land concerned". The term "land concerned" was interpreted in this instance to be not the residential property but the adjacent Council managed Crown land. As the Crown Land is not zoned for residential purposes and not used for "residential occupation" the Department inferred that clause 7(5) would not apply and hence an Environmental Impact Statement with Council's consent and the Minister's concurrence would be required to remove the three trees.

Council considers its interpretation of SEPP 26 in this situation to be reasonable and therefore recommends proceeding with the necessary application under the Tweed Local Environment Plan 2000 for the removal of the three nominated trees assessed as being a health and safety risk, being two Tuckeroos (*Cupaniopsis anarcardioides*) and one Three-veined Laurel (*Cryptocarya triplinervis*), from Lot 7079 DP 1112977 at Lagoon Road, Fingal Head.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Potential legal action against Council could be undertaken should tree fall result in damage to life or property. Potential legal action could also be pursued against Council in its interpretation of the application of SEPP 26 in this instance.

**POLICY IMPLICATIONS:**

Potential additional claims for tree removal on private or adjacent Council managed lands may arise, including requests for removal of trees of conservation significance. However the process of detailed arborist reporting should minimise any potential for unwarranted claims.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

**1. Confidential Attachments:**

- Letter from resident (ECM 41591021)
  - Tree Health Assessment Report (ECM 43563363)
  - Advice from Department of Planning and Infrastructure (ECM 44716153 and 43661087)
-

**19 [CNR-CM] Progress Update Eviron Road Quarry and Landfill Proposal**

**ORIGIN:**

**Waste Management**

**SUMMARY OF REPORT:**

In November 2011 Council submitted an Environmental Assessment to the NSW Department of Planning (DoP), under Part 3A of the Environmental Planning and Assessment Act 1979, for proposed quarry, landfill and associated infrastructure on Council land holdings at Eviron Road. NSW DoP, who is the consent authority, has deemed the environmental assessment to be adequate for exhibition.

The public exhibition period closed on 19 December 2011. NSW DoP received four public submissions and three government agency submissions. The submissions were forwarded to Council for consideration. It was noted that the four public submissions were provided by residents living within close proximity to the proposed development.

The environmental assessment was circulated internally to various Council work units for consideration and comment. The internal process was coordinated by Council's Development Assessment Unit, and, as Council is the applicant, the comments forwarded directly to Council's Waste Management Unit.

Council's Waste Management Unit in conjunction with GHD are now preparing a Response to Submissions Report which will address any concerns raised by the public and agency submissions as well as providing response on the internal comments provided by other Council work units.

The Response to Submissions Report will be forwarded to NSW DoP to allow consideration of this proposal to continue.

**RECOMMENDATION:**

**That Council receives and notes the progress update on Eviron Road Quarry and Landfill Proposal.**

**REPORT:**

In November 2011 Council submitted an Environmental Assessment to the NSW Department of Planning (DoP), under Part 3A of the Environmental Planning and Assessment Act 1979, for proposed quarry, landfill and associated infrastructure on Council land holdings at Eviron Road. NSW DoP, who is the consent authority, has deemed the environmental assessment to be adequate for exhibition.

The public exhibition period closed on 19 December 2011. NSW DoP received four public submissions and three government agency submissions. The submissions were forwarded to Council for consideration. It was noted that the four public submissions were provided by residents living within close proximity to the proposed development.

The environmental assessment was circulated internally to various Council work units for consideration and comment. The internal process was coordinated by Council's Development Assessment Unit, and, as Council is the applicant, the comments forwarded directly to Council's Waste Management Unit.

Council's Waste Management Unit in conjunction with GHD are now preparing a Response to Submissions Report which will address any concerns raised by the public and agency submissions as well as providing response on the internal comments provided by other Council work units.

The Response to Submissions Report will be forwarded to NSW DoP to allow consideration of this proposal to continue.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The infrastructure works, if approved, are budgeted for in the long term financial plan and waste management reserves.

**POLICY IMPLICATIONS:**

The proposed quarry and landfill infrastructure is consistent with Council's Community Strategic Plan Delivery Program.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**20 [CNR-CM] NSW Environmental Trust Grant - Raising Illegal Dumping Awareness in the Northern Rivers**

**ORIGIN:**

**Waste Management**

**SUMMARY OF REPORT:**

Council through hosting the North East Waste Forum (NEWF) successfully applied for grant funding through the NSW Environmental Trust to run a project aimed at reducing illegal dumping throughout NEWF Member Council areas.

This project is partly funded through NEWF and partly funded externally through the NSW Environmental Trust's Environmental Education Grants Program. The project has set objectives and deliverables as part of the grants program. It aims to educate businesses and householders on the North Coast of NSW about the social, environmental and economic impacts of illegal dumping. The project will also strengthen the capacity of local councils to enforce illegal dumping prevention strategies. "Reducing Illegal Dumping" is an identified target in the 2011/2012 NEWF operational plan. Prior to the successful grant application, the NEWF funded a research project into the available resources, policies and strategies available to assist council to reduce illegal dumping and the region. From this research, an Options Paper, Raising Illegal Dumping Regionally, provided recommendations on how to achieve the required outcomes of addressing the issue in the NEWF region. This project aims to fulfil these recommendations and help to reduce the incidents of illegal dumping.

**RECOMMENDATION:**

**That Council:**

- 1. Accepts the \$49,625 financial assistance from the NSW Environmental Trust for the implementation of the North East Waste Forum project "Raising illegal dumping awareness in the northern rivers".**
- 2. Votes the funds accordingly.**
- 3. Executes all documentation under the Common Seal of Council.**

## REPORT:

Council through hosting the North East Waste Forum (NEWF) successfully applied for grant funding through the NSW Environmental Trust to run a project aimed at reducing illegal dumping throughout NEWF Member Council areas.

This project is partly funded through NEWF and partly funded externally through the NSW Environmental Trust's Environmental Education Grants Program. The project has set objectives and deliverables as part of the grants program. It aims to educate businesses and householders on the North Coast of NSW about the social, environmental and economic impacts of illegal dumping. The project will also strengthen the capacity of local councils to enforce illegal dumping prevention strategies. "Reducing Illegal Dumping" is an identified target in the 2011/2012 NEWF operational plan. Prior to the successful grant application, the NEWF funded a research project into the available resources, policies and strategies available to assist council to reduce illegal dumping and the region. From this research, an Options Paper, Raising Illegal Dumping Regionally, provided recommendations on how to achieve the required outcomes of addressing the issue in the NEWF region. This project aims to fulfil these recommendations and help to reduce the incidents of illegal dumping.

Specifically this grant will allow the following works to be undertaken by NEWF:

1. Increase awareness for businesses and householders in the NEWF Member Council area, of the financial implications, human and environmental health impacts of illegal dumping in the community by:
  - Coordinating the adaptation, production and screening of a regional television campaign on illegal dumping using existing advertising resources
  - Seeking possible sponsorship opportunities for print, radio and TV advertisements
  - Coordinating the development and publishing of regional newspaper advertisements
  - Developing community announcements/interviews for radio on the consequences of illegal dumping
  - Promoting successful cases of illegal dumping actions through local newspaper editorials
  - Coordinating the development of an on-line survey and providing information about the illegal dumping campaign on the NEWF website
  
2. Improve the tools and skills for NEWF Member Councils to better manage illegal dumping incidents across the region by:
  - Coordinating the development and distribution of regional Illegal Dumping educational materials and Resource Kit for Councils to use
  - Assisting councils to establish processes to collect information on illegally dumped materials and sites in a standardised format
  - Organising training on illegal dumping and enforcement strategies, using existing training packages (OEH) and adapting for our region.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council is a member and host of the North East Waste Forum. Hosting the North East Waste Forum has some inherent costs. There are no additional costs borne to Council for undertaking works associated with this grant.

Policing and cleaning up illegal dumping has an immense real cost. This project aims to reduce this cost to Council.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**THIS PAGE IS BLANK**



**21 [CNR-CM] Draft Waste Minimisation and Management - Tweed Development Control Plan**

**ORIGIN:**

**Waste Management**

**SUMMARY OF REPORT:**

The building and construction industry contributes approximately 15% of the Tweed Shire Council waste stream, much of which is still deposited to landfill. Council currently encourages recycling through landfill gate pricing, where the cost of disposal of recoverable products (eg timber, concrete, soil) is considerably less than mixed landfilled loads. The implementation of an effective waste minimisation development control has the potential to further encourage recycling and recovery of these waste streams.

It is proposed that a Waste Minimisation and Management section be included in the current Tweed Development Control Plan (DCP) with the aim of reducing waste to landfill in the Tweed Shire. A draft Waste Minimisation and Management Section suitable for the Tweed DCP is produced below.

It is now proposed that the Draft be placed on public exhibition for 28 days in order for the development, construction, demolition, and waste transport industry to provide comment.

**RECOMMENDATION:**

**That the Draft Waste Minimisation and Management development control section A15 of the Tweed Development Control Plan be placed on public exhibition for 28 days.**

## **REPORT:**

The building and construction industry contributes approximately 15% of the Tweed Shire Council waste stream, much of which is still deposited to landfill. Council currently encourages recycling through landfill gate pricing, where the cost of disposal of recoverable products (eg timber, concrete, soil) is considerably less than mixed landfilled loads. The implementation of an effective waste minimisation development control has the potential to further encourage recycling and recovery of these waste streams.

It is proposed that a Waste Minimisation and Management section be included in the current Tweed Development Control Plan in order to reduce waste to landfill in the Tweed Shire. This section is commonly referred to as a 'Waste Not DCP'. The draft Waste Minimisation and Management Section is attached. The proposed DCP is based on a Model "Waste Not" DCP that was produced by the NSW Government Department of Environment and Climate Change with amendments developed to suit the needs of Tweed Shire. It is based on four themes:

- Avoiding unnecessary resource consumption
- Recovering resources for reuse
- Recovering resources for recycling or reprocessing
- Disposing of residual waste (as a last resort).

Council currently receives financial payments through the NSW Waste and Sustainability Improvement Payment (WaSIP) program which assists programs that improve resource recovery and promote environmental outcomes. To be eligible to continue to receive WaSIP, Council is required to commit to meeting both the ongoing and current years Standards. One of the 2011/2012 WaSIP standards is that Council is required to adopt a 'Waste Not' DCP or policy of similar nature by 31 May 2012.

It is now proposed that the Draft be placed on public exhibition for 28 days in order for the construction, demolition, and waste transport industry to provide comment.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Failure to adopt a waste not DCP by 31 May 2012 may result in loss of financial payment through the WaSIP program.

Failure to adopt and enforce a waste not DCP may result in loss of landfill airspace due to increased landfilling of potentially recoverable resources.

## **POLICY IMPLICATIONS:**

A new chapter to be inserted into the current Tweed Shire Council Development Control Plan

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Section A15 Waste Minimisation and Management - Draft (ECM 46025037)
- 
-

**THIS PAGE IS BLANK**

**22 [CNR-CM] Tweed River Art Gallery - Memorandum of Understanding -  
Tweed Shire Council and Margaret Olley Art Trust**

**ORIGIN:**

**Art Gallery**

**SUMMARY OF REPORT:**

As resolved at the Council meeting of 13 December 2011, Council officers have prepared a Memorandum of Understanding (MOU) for signature between the Margaret Olley Art Trust (MOAT) and Council.

The purpose of the MOU is to outline the general principles of the collaboration between Council and the Trust to complete the proposed Margaret Olley Art Centre in a mutually respectful and responsible manner to honour the express wish of the late Margaret Olley.

**RECOMMENDATION:**

**That Council:**

- 1. Accepts the terms as laid out in the Memorandum of Understanding.**
- 2. Authorises signing of the Memorandum of Understanding by the General Manager.**
- 3. Forwards the Memorandum of Understanding to the Margaret Olley Art Trust for counter-signature.**

## REPORT:

The MOU has been prepared to outline the responsibilities of both Council and the MOAT and covers operational issues including financial arrangements, insurance matters, communication and exchange of information, marketing and publicity, settlement of disputes, review and evaluation.

Of principal importance are the financial implications relevant to the Council taking receipt of funding promised to the Margaret Olley Art Centre project. Specially, the MOU states that the MOAT will provide the sum of \$2,000,000 in total, comprised of the \$1,000,000 gift and the supplementary Federal Government funding of \$1,000,000.

The MOU also includes clauses relevant to Council covering all costs in relation to all actions necessary over and above the monies described above to complete the Margaret Olley Art Centre.

A timeline of necessary actions including documentation, cataloguing and packing of items from the late Margaret Olley's studio and home by qualified professionals, working to a specified brief, will commence shortly after the signing of the MOU by both parties.

## LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal implications are covered in the MOU.

Ongoing financial support for the Margaret Olley Art Centre, once completed, will also require significant financial responsibility from Council in terms of operational, infrastructure and maintenance costs. Additional staffing will be required for the Gallery to professionally facilitate and deliver quality programs for the Centre, oversee national loans of Olley material, generate income-seeking merchandise including publications and retail items and manage tourism requirements.

## POLICY IMPLICATIONS:

There may be a requirement for the establishment of a separate Accession and De-Accession Policy or Protocol for works housed and collected by Council for the Margaret Olley Art Centre.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Memorandum of Understanding (ECM 46280188)
-

**23 [CNR-CM] Pottsville Beach Neighbourhood Centre**

**ORIGIN:**

**Community and Cultural Services**

**SUMMARY OF REPORT:**

This report outlines the expenditure reconciliation for the Construction of the New Administration Building at the Pottsville Beach Neighbourhood Centre.

Council at its March 2011 meeting resolved in part to:

1. *Approve the award of a construction contract to Anthony Adams Building Services Pty Ltd.*
2. *Approve a revised budget.*

All actions from the March 2011 report have now been completed and this report provides an update on progress and consolidation of expenditure. Due to some unexpected additional works, this report requests additional funds to allow for project completion.

**RECOMMENDATION:**

**That Council:**

1. **Accepts the revised project budget listed in this report on the Pottsville Beach Neighbourhood Centre.**
2. **Votes additional funds to the project of \$90,855 exclusive of GST, with funding to be provided equally from Contribution Plan 15 and Community and Cultural Services Budget (Salary Savings).**
3. **Makes the necessary budget adjustments in the March 2012 Quarterly Budget Review.**



**REPORT:**

**Background**

At Council's 15 March 2011 meeting, Council approved the awarding of contract EC2011-013 for the construction of the Pottsville Beach Neighbourhood Centre (PBNC) new Administration Building and resolved in part that:

1. Council accepts the tender from Anthony Adams Building Services P/L for EC2011-013 Pottsville Beach Neighbourhood Centre to the value of \$1,079,750 exclusive of GST.
2. Council accepts the revised project budget listed in this report.
3. Council votes the expenditure of \$20,000 from the Access Reserve.
4. Council considers the allocation of an additional \$45,000 to fund the project in the March quarterly budget review.
5. The General Manager be given delegated authority to approve variations up to \$150,000 (inclusive of GST) above the initial tender price and those variations are reported to Council following completion of works.

In accordance with the resolution, the contract was awarded to Anthony Adams Building Services. Building construction commenced in early April 2011 and contract works have been completed with only the car park and landscaping works outstanding. The resolution provided authority for the General Manager to approve variations up to \$150,000. This report outlines the variations and identifies the funding sources for same.

The variations have arisen from budget over runs and changes to the scope of works that were not foreseen at the commencement of the project. This report requests approval of additional funds to match this shortfall in the March 2011 budget. The following tables summarise income and expenditure budgets for the project as approved at the March 2011 Council meeting and proposed variations.

<b>Table 1 - PROJECT FUNDING SUMMARY</b>				
<b>Item</b>	<b>Description</b>	<b>Revised Budget (March 2011)</b>	<b>Adjustment Proposed</b>	<b>Adjusted Project Funding at February 2012</b>
<b>Council Funding</b>				
1	CP15 - Community Facilities Funding	1,096,000	0	1,096,000
2	Quarterly Budget Review Funding (Salary Savings)	40,000	0	40,000
3	Quarterly Budget Review Funding (Access Reserve Funding)	20,000	0	20,000
4	Quarterly Budget Review Funding (Community Facilities Asset Management Reserve)	5,000	0	5,000

<b>Table 1 - PROJECT FUNDING SUMMARY</b>				
<b>Item</b>	<b>Description</b>	<b>Revised Budget (March 2011)</b>	<b>Adjustment Proposed</b>	<b>Adjusted Project Funding at February 2012</b>
<b>Subtotal - Council Funding</b>		<b>\$1,161,000</b>	<b>\$ 0</b>	<b>\$1,161,000</b>
<b>Pottsville Beach Neighbourhood Centre Funding</b>				
5	Cash Contribution	60,000	28,800	88,800
6	State Government Funding - Community Partnerships	119,000	65,000	184,000
<b>Subtotal - Pottsville Beach Neighbourhood Centre Funding</b>		<b>\$179,000</b>	<b>\$93,800</b>	<b>\$272,800</b>
<b>TOTAL PROJECT FUNDING</b>		<b>\$1,340,000</b>	<b>\$93,800</b>	<b>\$1,433,800</b>

Note all costs are GST exclusive.

With regard to the funding line items listed above, it is highlighted that:

- Item 1 - Represents 20 July 2010 vote of \$1,096,000 from Contribution Plan 15.
- Item 2 - Additional funding of \$40,000 was realised from the March 2011 quarterly review. This is attributed to savings in the Community and Cultural Services program.
- Item 3 - An additional \$20,000 from TSC Access funds has also been granted for the disabled ramp and access across the site which forms part of the work.
- Item 4 - Additional funding of \$5,000 was realised from the March 2011 quarterly review from the Community Facilities Asset Management Reserve.
- Item 5 - PBNC initially provided \$60,000 to the project. However, to cover additional costs the centre is contributing an additional \$28,800 totalling \$88,800.
- Item 6 - PBNC has successfully applied for two rounds of State Government Community Partnerships funding totalling \$184,000 for the project.

<b>Table 2 - PROJECT EXPENDITURE SUMMARY</b>				
<b>Item</b>	<b>Description</b>	<b>Revised Budget (March 2011)</b>	<b>Adjustment Proposed</b>	<b>Adjusted Project Expenditure February 2012</b>
<b>Contract Expenditure</b>				
7	Demolition of Existing Administration Building	22,000	1985	23,985
8	Design of New Administration Building	42,000	2008	44,008
9	Construction of New Administration Building	1,080,000	20,880	1,100,880
10	Provision of additional parking on site	26,000	(-6,300)	19,700
11	Provision of temporary office accommodation	21,000	(-7,721)	13,279
12	Project Management and Construction Supervision	88,000	50,264	138,264
13	Contingency	20,000	(-20,000)	0
14	Development costs (Construct Certificate, Section 64 and 94	41,000	(-6,379)	34,621

<b>Table 2 - PROJECT EXPENDITURE SUMMARY</b>				
<b>Item</b>	<b>Description</b>	<b>Revised Budget (March 2011)</b>	<b>Adjustment Proposed</b>	<b>Adjusted Project Expenditure February 2012</b>
	contributions)			
15	Transformer (design and installation costs)	0	40,428	40,428
<b>Subtotal - Contract Expenditure</b>		<b>\$1,340,000</b>	<b>\$75,165</b>	<b>\$1,415,165</b>
<b>Non-Contract Pottsville Beach Neighbourhood Centre Expenditure</b>				
<b>Internal Expenses</b>				
16	Air Conditioning	0	25,010	25,010
17	Solar System & Installation	0	14,273	14,273
18	Joinery	0	15,820	15,820
19	PABX Relocation	0	6,473	6,473
20	Carpets	0	1,172	1,172
21	Dishwasher	0	800	800
22	Security Installation	0	7,127	7,127
23	Internal Painting	0	9,132	9,132
<b>Internal Expenses Subtotal</b>		<b>\$ 0</b>	<b>\$79,807</b>	<b>\$79,807</b>
<b>External Expenses</b>				
24	Landscaping (retaining walls, pathways, lighting)	0	13,840	13,840
25	Water Tank - 3000 litre slimline	0	955	955
26	Wooden outdoor settings + installation	0	2,762	2,762
27	External signage	0	1,000	1,000
28	Paint & equipment lower level	0	1,195	1,195
29	Kitchenette lower level	0	3,287	3,287
30	Garage floor tiling	0	4,144	4,144
31	Internal signage	0	1,000	1,000
32	Mechanical ventilation and skylights	0	1,500	1,500
<b>External Expenses Subtotal</b>		<b>\$ 0</b>	<b>\$29,683</b>	<b>\$29,683</b>
<b>TOTAL PROJECT EXPENDITURE</b>		<b>\$1,340,000</b>	<b>\$184,655</b>	<b>\$1,524,655</b>
<b>ADDITIONAL FUNDS RECEIVED TO DATE (from table 1 above)</b>			<b>\$93,800</b>	
<b>ADDITIONAL FUNDS REQUESTED(project Shortfall)</b>			<b>\$90,855</b>	

Note all costs are GST exclusive.

With regard to the expenditure line items listed above, it is highlighted that:

- Item 9 - The contract was awarded after the March 2011 Council meeting approval and works started on site in April 2011. A number of minor variations have been incurred to date. These have mainly been due to omissions or lack of detail on design drawings. Four variations have been approved at a total value of \$20,880 excluding GST. These are detailed below:
  - Variation 1- Delay to concrete pour due to request of TSC Inspector. Pile certification was requested however not detailed in documents or approval conditions. For an amount of \$1, 193.18 excluding GST.
  - Variation 2- Series of minor changes required due to document omissions. For an amount of \$12, 713.23 excluding GST.
  - Variation 3- Additional electrical works due to document discrepancies. For an amount of \$3, 263.93 excluding GST.
  - Variation 4- Installation of new water meter in lieu of reusing existing. For an amount of \$3, 710.00 excluding GST.

In addition there have been a few minor savings. Progress has been exceptional with contract completion early January 2012 – two months ahead of schedule.

- Item 10 - In the March 2011 Council report it was highlighted that a shared car park with the adjacent development (Health Centre-NSW Health) was proposed to best utilise space between both developments. Unfortunately this project has stalled and it is unknown when construction of this car park will be commenced or completed. To meet the DA requirements for five off street car spaces, it was proposed to utilise an existing grassed area fronting Elizabeth Street to construct a small low impact car park. This amendment to the Development Application was approved in early January 2012 and was designed in house by Tweed Shire Council. The basis of cost as listed above is from a Tweed Council Works Department estimate. It is proposed to go to selected tenderers to get competitive pricing on this item and complete in late February 2012.
- Item 11 - Due to early completion of construction contract this has resulted in two months of savings on the temporary accommodation. As illustrated in table above, expenditure shall be less than budget.
- Item 12 - Additional council supervision and other project management costs have been incurred due to:
  - Regular inspections during construction have occurred to ensure building construction meets the specification and design drawing requirements. These costs were not allowed for in the original budget. This has equated to approximately 400 additional man hours.
  - Additional design costs were incurred for the off street car parking which was designed in house by Tweed Shire Council personnel.
  - A considerable additional amount of project management was required to ensure project coordination and completion.
- Item 15 - A new transformer is required to power the centre. It was hoped at the project outset that the transformer to be completed for the adjacent development (Health Centre-NSW Health) would be installed by the time the new administration building was constructed, and that a nominal contribution could be provided to connect to this new transformer. Unfortunately, the Health project has stalled and to allow operation of

the new building, a new transformer has been installed to replace a smaller existing unit. Council have paid all costs associated with the design and installation of this new transformer.

### PBNC Expenditure

As noted in Table 1, PBNC successfully applied for \$184,000 from State Government Community Partnerships funding. In the first round, PBNC was awarded \$84,000 which was allocated towards the substructure, plumbing and foundations. In the next round, PBNC received an additional \$100,000, a proportion of which (\$35,000) was set-aside for general building construction costs. The balance of \$65,000 has been allocated as follows:

- Item 16 - Air Conditioning is funded through the Community Partnerships grant round (\$25,010).
- Item 17 - Solar System + Installation is funded through the Community Partnerships grant round (\$14,273)
- Item 18 - Joinery is funded through the Community Partnerships grant round (\$15,820)
- Items 19-23 - other costs required to finish the interior of the building (\$24,704). Funded in part by remaining Community Partnerships grant (\$9,897) due to savings in the joinery achieved by using a local contractor.
- Items 24-32 - other costs required to generally complete building externally. These costs were necessary to satisfy Development Approval Conditions, enhance the durability of the building and address any safety shortfalls.

Most of the works required to finish PBNC externally (Items 24-31) have been undertaken by volunteers of the centre. It has been calculated that approximately 2490 volunteer hours have been provided to the project to date. Using a standard hourly rate of \$40 per hour, an in-kind total of \$80,900 has been provided to the project, which would otherwise have been real costs incurred by the project.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

#### **Financial Implications**

As noted previously some additional items, not foreseen at tender award time have caused the project budget to be exceeded. The results of Tables 1 and 2 can be summarised as follows:

Table 1 - Total Project Funding (including adjustments)	\$1,433,800
Table 2 - Total Project Expenditure (including adjustments)	\$1,524,655

**Project Shortfall** **\$90,855**

In summary the project shortfall has largely been due to transformer expenses, project and construction management, Council inspections and contract variations arising from changes to scope of works.

It is proposed to fund the shortfall of \$90,855 equally from Contribution Plan 15 - Community Facilities and Community and Cultural Services Budget (Salary Savings).

**POLICY IMPLICATIONS:**

The recommendations in this report are consistent with Council's Procurement Policy, Procurement Procedure, Contracts Management Process document and Tenders Procedure.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**THIS PAGE IS BLANK**



**24 [CNR-CM] Water Demand Management Key Performance Indicators and Progress Report**

**ORIGIN:**

Water

**SUMMARY OF REPORT:**

In April 2011 Council adopted Key Performance Indicators (KPIs) to monitor the overall performance of the Demand Management Strategy (DMS) together with Performance Indicators (PIs) for the individual demand management programs outlined in the Implementation Plan. Council resolved that staff report on the KPIs and PIs on an annual basis.

This report details the performance of the DMS against the KPIs and PIs for the first year of the program. It also summarises other related activities that have been carried out in 2011 and describes future programs and activities to be implemented in 2012.

The figures used to calculate the KPIs in this report are the same as those reported to the NSW Office of Water for 2010/2011. The figures used to calculate the PIs for individual programs, such as participation rates, water savings and ongoing progress have been derived from in-house records and Council's Proclaim database.

The table below shows the performance of the DMS against the overall KPIs.

<b>Measure</b>	<b>KPI</b>	<b>2013 Target</b>	<b>2010/2011 Performance</b>
Residential Demand	average daily per capita residential demand in L/person/d	180 L/person/d	173 L/person/day (observed) 213 L/person/day (climate corrected)
Whole of Shire Demand	average daily per capita total demand in L/person/d	300 L/person/d	286 L/person/day (observed) 301 L/person/day (climate corrected)
Non Revenue Water	as a % of water produced	10%	15.7%
Recycled Water	% of treated WWTP effluent reused	15%	4.8%

**RECOMMENDATION:**

**That Council notes the performance of the Demand Management Strategy implementation against the adopted overall Key Performance Indicators and the Performance Indicators for individual programs.**

## REPORT:

### Key Performance Indicators (KPIs)

The KPIs for the demand management program are reported in the following table.

Measure	KPI	2013 Target	2010/2011 Performance
Residential Demand	average daily per capita residential demand in L/person/d	180 L/person/d	173 L/person/day (observed) 213 L/person/day (climate corrected)
Whole of Shire Demand	average daily per capita total demand in L/person/d	300 L/person/d	286 L/person/day (observed) 301 L/person/day (climate corrected)
Non Revenue Water	as a % of water produced	10%	15.7%
Recycled Water	% of treated WWTP effluent reused	15%	4.8%

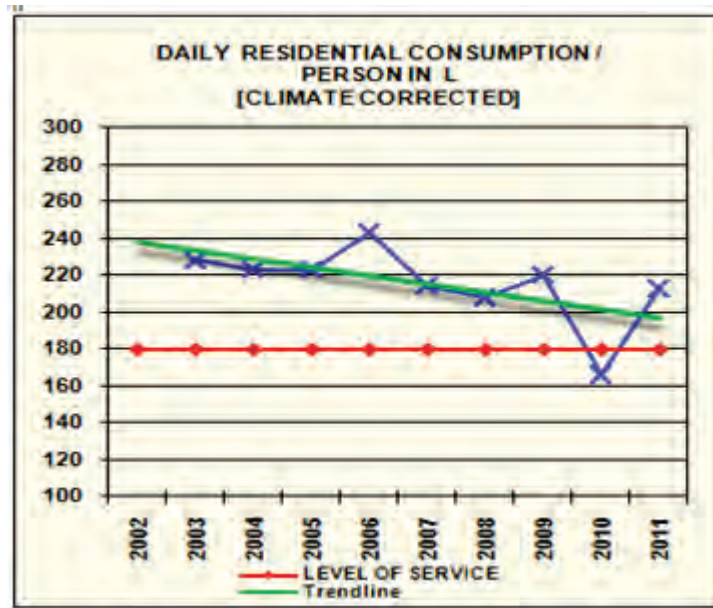
### Discussion of Key Performance Indicators

#### Residential Demand

The raw figure of 173 L/person/day is calculated by dividing the residential water consumption for 2010/2011 by the average number of people connected to Council's water supply in that year, estimated to be 81,303.

Although this result is well under the 2013 target of 180 L/person/day, it is misleading because it must first be corrected for rainfall (climate), which was higher than average in 2010/2011. The graph below shows the trend in residential demand since 2002 using climate corrected figures.

The climate corrected result for 2010/2011 is 213 L/person/day. As a comparison, the climate corrected result for 2009/2010, which was a drier than average year, was 166 L/person/day. These results highlight the variability of residential water consumption, depending on the prevailing rainfall conditions. The results indicate the importance of addressing outdoor water use and the need to focus on further measures to reduce residential water use.



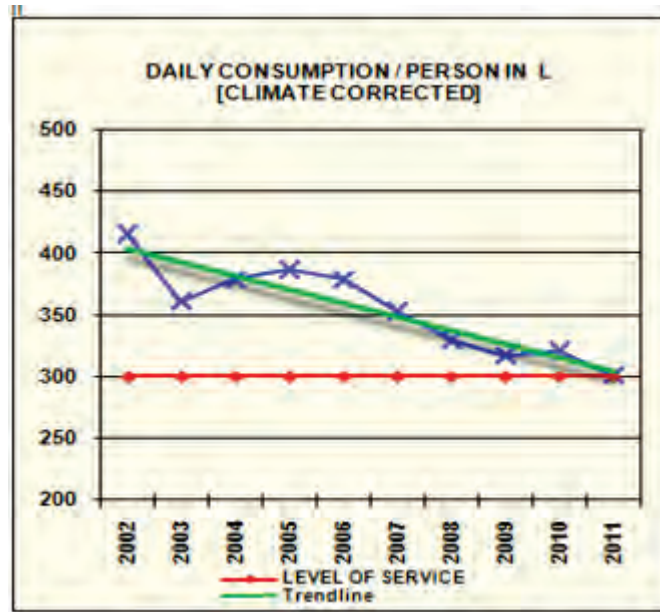
The result for 2011/2012 will indicate whether the demand management programs for residential water users are having enough impact or whether additional programs and measures are required. Expansion of the residential retrofit/rebate program and the introduction of permanent water saving measures, as well as the development/promotion of a water efficient garden policy, identified as future demand management programs in the implementation plan, should be instrumental in addressing residential water use. Encouraging the installation of rainwater tanks to curb outdoor water use, possibly with the introduction of a tank rebate, will also be considered.

**Whole of Shire Demand**

A raw figure of 286 L/person/day was calculated by dividing the total shire-wide water consumption for 2010/2011 by the average number of people connected to Council’s water supply in that year, estimated to be 81,303.

The graph below shows the trend in whole of shire demand since 2002 using climate corrected figures.

The result for 2010/2011 has been corrected for rainfall, giving a revised figure of 301 L/person/day.



This result compares favourably with the 2013 target of 300 L/person/day but the result for 2011/2012 will confirm whether this level is being maintained or whether it is an extraneous result.

### Non-Revenue Water

Non-revenue water is the water that is produced but does not end up raising revenue because it is lost from the system before it makes it to customer's meters. Some of these losses can be measured or estimated while some are unaccounted for until further investigations are carried out. Non-revenue water includes water lost through leakage, meter inaccuracies, maintenance activities such as flushing of mains, main breaks and theft.

The percentage of non-revenue water in 2010/2011 was 15.7%, significantly higher than the 2013 target of 10%. This is being addressed through the water loss management program, which is under way with flow tests being carried out on Council's water reservoirs and water supply zones, as well as the 'unaccounted for water' program, both components of the demand management implementation plan.

### Recycled Water

In 2010/2011 the percentage of wastewater treatment plant (WWTP) effluent recycled was 4.8% compared with the 2013 target of 15%.

The main reason for this lower-than-expected result was a significant reduction in the use of treated effluent by the co-generation plant at Condong sugar mill. It is expected that this figure will increase again as new reuse projects, such as the one at Les Burger Field, come on line. New opportunities for effluent reuse are being investigated on an ongoing basis but stringent NSW State guidelines are impacting on Council's ability to introduce new schemes in a timely manner.

### Performance Indicators (PIs) for Individual Programs

A summary of the PIs for individual demand management programs, implemented to date, is provided in the following table.

Program	PI	2013 Target	Actual Performance to 1/2/12
Residential Rebates	number of participants	2400	199
	cumulative water saving in ML/annum	36ML/a	1.8ML/a
Rainwater Tanks	TSC Rainwater Tank Policy revised	Updated Policy consistent with DMS adopted by Council	Completed – adopted by Council 20/9/11
	% of new dwellings with tank volume equal to or greater than 5000L	100% of single family residences	Average since 2005 is 6,500L. Results for new dwellings being monitored.
Top 20 Water Users (non-residential)	completed water audits	20	6
	individual water saving targets	on a case by case basis	To be determined once projects completed

### Residential Rebates

The first stage of the residential rebate program, providing a rebate for water efficient showerheads, aerators and spouts/mixers has been running since 1 July 2011.

As at 1 February 2011, 199 households have participated in the rebate offer and a total of \$10,830 has been provided by Council. Participating households have installed 3-star WELS rated showerheads, 3-star WELS rated aerators or 4-star WELS rated spouts/mixers and combinations of these, with a maximum of two of any product eligible for the rebate. 96 showerheads, 206 aerators and 60 spouts/mixers have been installed, with the average rebate being about \$55.

Based on a 15 kL/annum water saving for households replacing 1 or 2 showerheads and a 5 kL/annum water saving assumed for those installing aerators and/or new spouts/mixers, the total estimated water saving to date is 1.815 ML/annum.

The program has been well received but is tracking well short of the 2400 participants and 36 ML/annum water saving targeted by 2013. It is proposed that the rebate program be stepped up after the first year in July 2012, to target more households and deliver greater water savings. The option of a residential rebate for dual flush toilets will be investigated, as will other rebate and retrofit opportunities, when the current program is reviewed in May 2012.

An audit of 10% of participating households will be conducted in March 2012 to ensure that products are still installed and to gather information about the performance of products. This information will also be used when the current program is reviewed.

Ozzy Fortune Group P/L, trading as Your Green Planet is carrying out retrofits of showerheads in the Tweed shire under the NSW Energy Saving Scheme which is a NSW Government initiative to promote energy efficiency. To date, 718 showerheads have been installed in 463 homes by Your Green Planet, resulting in estimated water savings of 6.945 ML/annum, using the 15 kL/annum estimate per household. Your Green Planet has also replaced 165 showerheads in 10 hotels and motels. Using a conservative estimate of a 5kL/annum water saving per shower, the resulting water saving is a further 0.825 ML/annum. This gives a total of about 7.77 ML/annum of water saved resulting from Your Green Planet installations.

Given the resources that a company like Your Green Planet can offer to assist Council in its quest to reduce residential water consumption, the option of partnering with a third party to deliver the residential retrofit/rebate program will be revisited when the current rebate program is reviewed.

### **Rainwater Tank Program**

Council adopted a revised policy for "Rainwater Tanks in Urban Areas" in September 2011. The revised policy has been widely promoted in the Tweed Link and through regular media releases. Plumbers and builders located in the shire were notified about the updated policy via a mail out during the public exhibition period. Information about the policy and new resources dealing with the selection, installation and maintenance of rainwater tanks has been posted on Council's website to assist the public.

The new policy is consistent with Council's DMS, encouraging customers intending to install tanks to install the largest volume they can, given space and cost limitations. A minimum tank size of 5,000L and a minimum roof catchment area of 160m<sup>2</sup> are recommended for single dwellings. For duplexes, triplexes, multi-dwellings and other buildings, it is recommended that the rainwater tank volume be maximised with 80-90% of the roof area connected. The policy also encourages more energy efficient ways of connecting rainwater tanks.

An analysis of rainwater tank data collected by Council during final building inspections since 2005 shows that the average tank volume is about 6,500L and the average roof area connected is about 163m<sup>2</sup>. This trend has not changed in recent times. It suggests that tanks being installed in the shire already comply with the size and roof area recommendations stated in the policy. However, as Council only inspects tanks installed to comply with the BASIX requirements of new development and tanks less than 10,000L can be installed without Council approval if they satisfy the conditions for exempt and complying development, this data is not an accurate record of all tanks being installed in the shire.

Currently there are no rebates for rainwater tanks installed in the shire. The Federal rebate for tanks ended in May 2011 and the NSW tank rebate ended on 30 June 2011. Unfortunately, no shire-specific data is available from the Federal tank rebate but some data is available from the NSW rebate. Information received from the Department of Environment and Climate Change shows that 927 tank rebates totalling \$551,101 were paid in the Tweed shire during the NSW rebate offer. The average tank volume installed appears to be well in excess of the 5,000L recommended by Council's policy however, rural properties not connected to Council's water supply are included in this figure.

Without offering a rebate on tanks to encourage compliance with the policy, Council's best option is to encourage the installation of 5,000L and greater at the development approval stage.

The rainwater tank policy will continue to be promoted in 2012 and the option of a tank rebate will be further explored. As the existing policy is specifically for residential applications, it is envisaged that a separate policy for non-residential customers will be developed in 2012.

Rous Water's study of BASIX tank compliance and performance has been on hold due to a lack of resources and unforeseen staff changes. It is envisaged that this study will resume

in 2012 and that Tweed Shire Council may be able to negotiate a revised scope of works to include the Tweed shire in the study.

### **Tweed's Top 20 - Non-Residential Water Users**

The Tweed's Top 20 program for the shire's top non-residential water users is progressing well, with most on board to identify water saving opportunities. Each business is being offered up to \$5,000 to fund a water saving project.

Meetings have now been held with all of the Top 20 and subsequent walk-through water audits have been carried out with seven (7) of these. It appears that audits will not be required for all of the Top 20 because in a number of cases, the highest priority works possible within the \$5,000 budget available, were made clear from the initial meeting.

The majority of businesses involved are in the process of scoping projects and obtaining quotes for identified works. It is envisaged that applications for funding will start to be received in February 2012.

As well as offering funding for actual works, Council will be assisting the Top 20 to promote water saving behaviour in the workplace through the use of posters, information sessions for staff and other promotional activities. Information about reducing business water use and related resources have been posted on Council's website.

Thus far, two (2) of the Top 20 businesses will be unable to participate because they are caravan parks/villages, which are essentially residential, without any public amenities. It is envisaged that information sessions will be run for residents in these premises, providing an opportunity for water education and promotion of Council's residential rebate. Businesses ranked 21 (chicken processor) and 22 (aged care home) have been included in the Top 20 list.

A spreadsheet summarising the progress at each of the Top 20 has been included as a confidential attachment.

### **Other Programs and Initiatives**

#### **Tweed Shire Council Audits (Tweed's Own 20)**

The top 20 Council-owned properties using the most water are being identified and meetings will be held in February and March with the relevant managers to progress water audits and to ascertain any water saving opportunities. The Tweed Coast Holiday Parks, managed by Council, will also be considered in this mix. Training of Council's staff, aimed at raising awareness of efficient water use is also included in this program.

#### **Water Loss Management Program (Leak Reduction)**

A 3-year schedule of flow tests (known as drop tests) for Council's water reservoirs has been implemented, building on previous leak detection surveys conducted by the Water Unit. In 2011, tests were carried out on reservoirs at Tyalgum, Uki, Hillcrest Ave (Tweed Heads West) and Fingal Head. Further investigations are to be carried out at Uki and Fingal Head, based on the results of these initial tests. So far the results of these tests have enabled the identification of possible leaks and an estimate of the resulting water saving will be made once investigations and repair works are completed.

The Water Unit purchased an electronic listening stick to assist in the location of suspected water leaks.



### **Water Billing Process**

With the planned Ci upgrade of Council's Proclaim database, and the implementation of a new water management module, the opportunity existed to review and update customer water bills/notices. The water notices are to be significantly modified to provide more information to customers, increase customers' awareness of their water use and encourage them to take water saving actions. Water notices for all residential and non-residential (business, commercial etc.) customers are being revised.

The new water notices for residential customers will integrate with a new promotional campaign to encourage households to use water efficiently and achieve a certain litre target per person per day. Initially, this will align with the DMS target of 180 L/person/day for residential use.

### **Target 180 Campaign**

Council's DMS highlights a range of initiatives and programs to manage demand for the Tweed's water supply. Overarching all of the programs and activities is a proposed campaign approach to encourage residents and households to be water wise and aim to achieve a certain litre target per person per day.

A logo and a Communications Plan are currently being developed for the campaign. The logo will be run over a long campaign of 8 years with several milestones/stages for the campaign to move through as the targets are achieved. The following targets are proposed:

- Target 180L by 2013
- Target 170L by 2016
- Target 160L by 2019

The campaign will always feature in conjunction with Tweed Shire Council's corporate brand and will not be stand alone. The communication objective is to raise awareness of water consumption and set clear targets for a litre amount per household per person per day by a set year over a period of years.

### **Public Information Session/s**

An information session about Council's current water saving programs and initiatives is to be held on 14 March 2012. Members of the public will be invited via advertisements in the Tweed Link and invitations will be mailed out to plumbers and real estate agents located in the shire. The intention is to further educate the public and key stakeholders about water saving opportunities.

### **General Promotions**

The DM team took advantage of several promotional opportunities during the year. Displays featured information about Council's water saving rebate, rainwater tanks, water efficient products, general water management and a water quiz. Shower timers were given away to the adults and stickers/water toys were provided for young children. Events attended in 2011 included:

- Tweed River Festival
- Unity Festival
- Coastal Conference
- Seniors Expo

- Tweed City Shopping Centre
- Sunnyside Shopping Centre, Murwillumbah

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. **Confidential Attachment** - Tweed's Top 20 - Progress Report @ 1 February 2012 (ECM 46041528)
-

**THIS PAGE IS BLANK**

**25 [CNR-CM] Ageing Disability and Home Care 2009/2012 Funding Variation**

**ORIGIN:**

**Community Options**

**SUMMARY OF REPORT:**

Council is in receipt of correspondence dated 30 January 2012 from NSW Government Family & Community Services, Ageing Disability and Home Care (ADHC) informing Council of changes to our Funding Agreement for the term 1 July 2009 to 30 June 2012.

The change to our funding is the inclusion of a one-off amount of \$11,720.10 Emergency Response Interim Funding (ERIF) for the period 3 January 2012 to 31 March 2012 for a mutual ADHC and Community Options (COPS) Client (Client Episode No. 104038).

**RECOMMENDATION:**

**That Council:**

- 1. Accepts the \$11,720.10 variation of funds from NSW Government Family & Community Services, Ageing Disability and Home Care.**
- 2. Votes the expenditure.**
- 3. Executes the acceptance of funding variation documents under the Common Seal of Council.**
- 4. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(c) and (d) of the Local Government Act, 1993, because it contains:**
  - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business*
  - (d) commercial information of a confidential nature that would, if disclosed:*
    - (i) prejudice the commercial position of the person who supplied it, or*
    - (ii) confer a commercial advantage on a competitor of the council, or*
    - (iii) reveal a trade secret*

**REPORT:**

Council is in receipt of correspondence dated 30 January 2012 from NSW Government Family & Community Services, Ageing Disability and Home Care (ADHC) informing Council of changes to our Funding Agreement for the term 1 July 2009 to 30 June 2012.

The change to our funding is the inclusion of a one-off amount of \$11,720.10 Emergency Response Interim Funding (ERIF) for the period 3 January 2012 to 31 March 2012 for a mutual ADHC and Community Options (COPS) Client (Client Episode No. 104038).

COPS is currently supporting this client with Case Management services and assistance with the goal of obtaining an appropriate long term package of support. ADHC have asked Council to act as a broker for the services required in this ERIF, because they do not have a funding agreement with the service provider required by the client. The client's choice of provider is a member of the Tweed COPS Panel of Preferred Providers.

This is considered a significant change to our funding agreement and as such, the Acceptance of Funding Variation signed under Council Seal is required.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. **Confidential Attachment** - Provision of Funding Variation documentation from Department of Family and Community Services NSW for authorisation (ECM 46230432)
-

## REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

- 26 [EO-CM] Acquisition of Proposed Easement for Underground Powerlines and Multi-Purpose Installation within Lots 63 and 64 DP 855462 and Lot 2 DP 1040120 - Overall Drive, Pottsville**

### ORIGIN:

Design

### SUMMARY OF REPORT:

Council has received a request from the legal representatives of Essential Energy, formerly Country Energy, for concurrence to the acquisition of a proposed Easement for Underground Powerlines and Multi-Purpose Installation within public reserves comprised in Lots 63 and 64 in DP 855462 and a closed road parcel, Lot 2 in DP 1040120 at Pottsville.

The subject parcels contains a cycleway but no park infrastructure, nor any Council utilities.

It is recommended that Council approve the acquisition of proposed Easement for Underground Powerlines and Multi-Purpose Installation within Lots 63 and 64 DP 855462 and Lot 2 DP 1040120 and to approve the execution of all necessary documents under the Common Seal of Council.

### RECOMMENDATION:

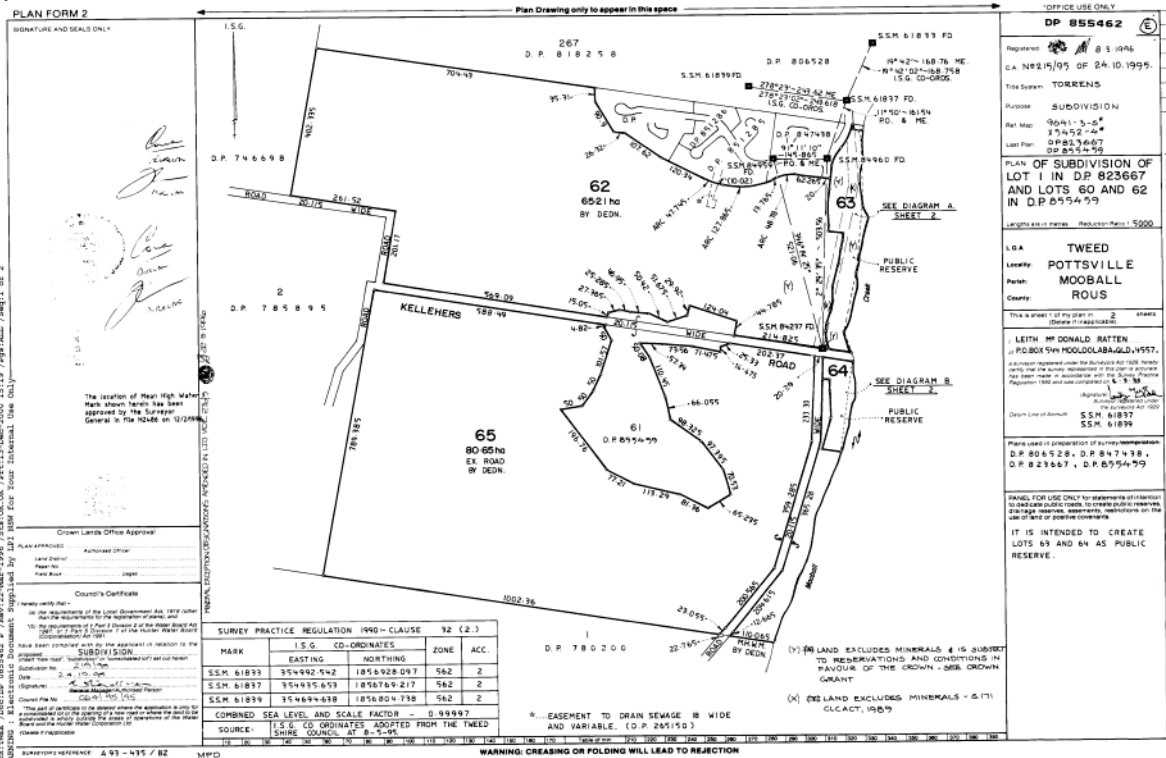
That:

- 1. Council approves the acquisition of proposed Easement for Underground Powerlines and Multi-Purpose Installation within Lots 63 and 64 in DP 855462 and Lot 2 in DP 1040120 at Pottsville; and**
- 2. All documentation be executed under the Common Seal of Council.**

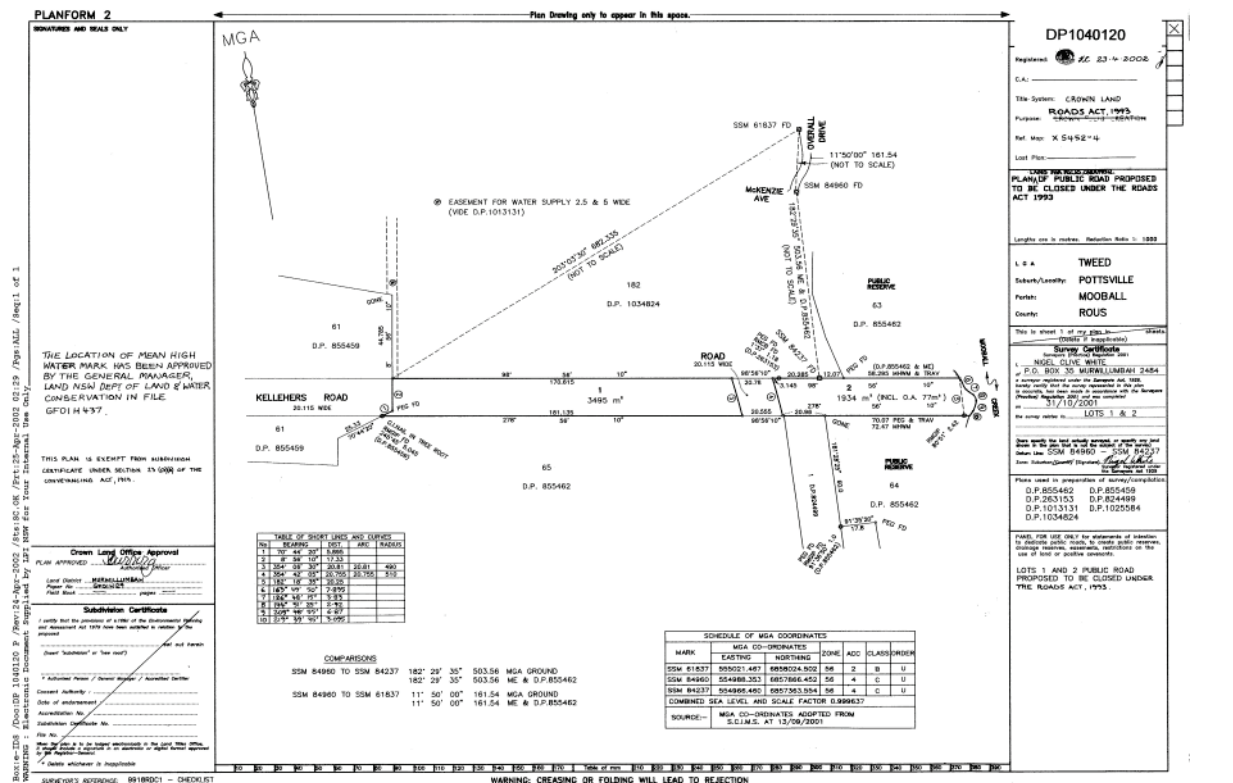
**REPORT:**

Council has received a request from the legal representatives of Essential Energy, formerly Country Energy, for concurrence to the acquisition of a proposed Easement for Underground Powerlines and Multi-Purpose Installation within public reserves within Lots 63 and 64 in DP 855462 and a closed road parcel, Lot 2 in DP 1040120 at Pottsville.

The plan below shows the location of Lots 63 and 64:



The strip between Lots 63 and 64 is now closed road, being Lot 2 in the plan below:





The public reserves contain a cycleway but no park infrastructure, nor any Council utilities.

The subject parcels, however, comprise the western bank of Mooball Creek and contain vegetation that has been identified by Council as having a high conservation value due to the existence of species listed as Endangered Ecological Communities under the *Threatened Species Conservation Act 1995* (1995) as well as providing significant estuarine habitat for threatened fauna species also listed under the Act.

The aerial photograph below shows the extent of the vegetation and the location of the cycleway within the affected parcels:



Council has sought and received confirmation from Essential Energy that the proposed corridor for the easement will be on the western side of the cycleway and will not impact the vegetation on the eastern side of the cycleway. Essential Energy have stated that any damage to the land and cycleway will be remediated to Council's satisfaction. Essential Energy needs to be aware that by Council agreeing to the easement does not constitute any approval to undertake the proposed works.

Lots 63 and 64 are public reserves and classified as community land, there is no Council infrastructure within the proposed easement corridor.

The *Local Government Act 1993*, enables Council to approve the creation of easements within community land pursuant to section 46(1)(a), whereby Council can grant an estate in the land, for the provision of public utilities and works associated with or ancillary to public utilities.

An "estate or interest" in this context is an "interest, right or encumbrance". An easement, by definition is a "right enjoyed by the owner of one piece of land to carry out some limited activity (short of taking possession) on another piece of land".

Lot 2 is a closed road parcel that was transferred to Council as operational land pursuant to section 43 of the *Roads Act, 1993*, so there are no statutory restraints relating to the easement within Lot 2.

A valuation determining compensation to be paid to Council was also provided, showing the sum of \$4,000, and this is acceptable due to the lack of impact on the reserves.

Essential Energy's legal representatives have prepared a Deed of Transfer of Easement and will provide transfer documentation for the easement when a plan showing the location of the easement has been registered.

It is recommended that Council approve the acquisition of the easement and execute all documentation under the Common Seal of Council.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**27 [EO-CM] Acquisition of Proposed Easement for Underground Powerlines Variable Width within Lot 1 DP 780163 - Arkinstall Park, Sullivan Street, Tweed Heads South and Lot 34 DP 258723 - Blundell Estate Park, Amber Road, Tweed Heads South**

**ORIGIN:**

**Design**

**SUMMARY OF REPORT:**

Council has received a request from the legal representatives of Essential Energy, formerly Country Energy, for concurrence to the acquisition of a proposed Easement for Underground Powerlines within Lot 1 DP 780163, Arkinstall Park on Sullivan Street, Tweed Heads South and within Lot 34 in DP 258723, Blundell Estate Park at Amber Road, Tweed Heads South.

Both parcels are public reserves and classified as community land.

The *Local Government Act 1993*, enables Council to approve the creation of easements within community land pursuant to section 46(1)(a), whereby Council can grant an estate in the land, for the provision of public utilities and works associated with or ancillary to public utilities.

An “estate or interest” in this context is an “interest, right or encumbrance”. An easement, by definition is a “right enjoyed by the owner of one piece of land to carry out some limited activity (short of taking possession) on another piece of land”.

A valuation determining compensation to be paid to Council was also provided, showing a total sum of \$7,500 for compensation for the acquisition of the easements, made up as follows:

Arkinstall Park	\$3,800
Blundell Estate Park	\$3,700

These amounts are acceptable due to there being no impact on the use of the parks, the easement corridors do not impact on vegetation, as neither corridor contains trees.

It is recommended that Council approve the acquisition of the easements and execute all documentation under the Common Seal of Council.

**RECOMMENDATION:**

**That Council:**

- 1. Approves the acquisition of Easement for Underground Powerlines Variable Width within Lot 1 DP 780163 at Arkinstall Park, Sullivan Street Tweed Heads South by Essential Energy;**
- 2. Approves the acquisition of Easement for Underground Powerlines Variable Width within Lot 34 DP 258723 at Blundell Estate Park, Amber Road Tweed Heads South by Essential Energy;**
- 3. Approves the quantum of compensation payable for the acquisitions from Council;**
- 4. Executes all documentation under the Common Seal of Council.**

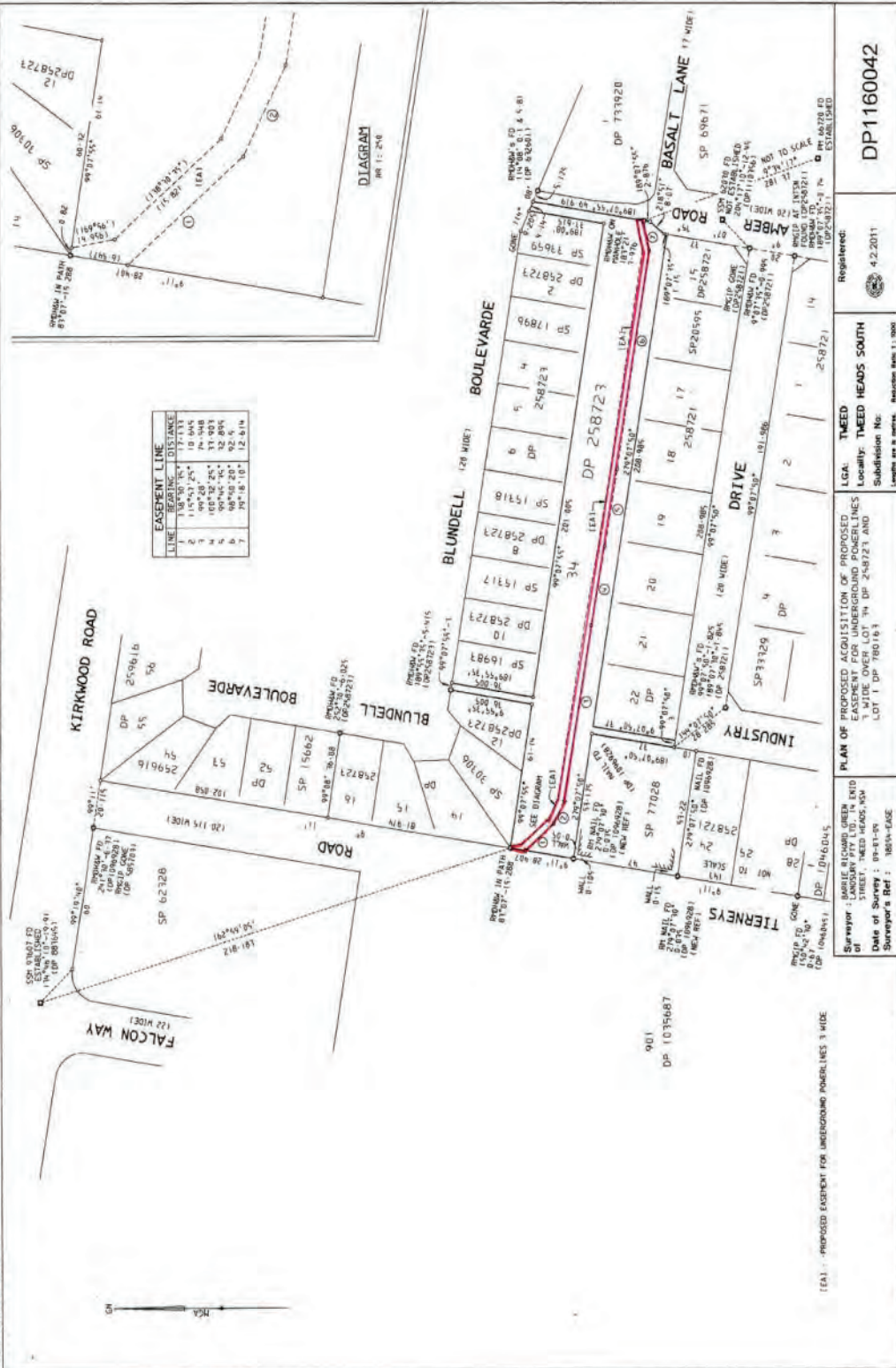




Sheet 1 of 2 sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

PLAN FORM 2 (A2)



DP 1160042

Registered:  
4.2.2011

LGA: **TWEED**  
Locality: **TWEED HEADS SOUTH**  
Subdivision No:

PLAN OF PROPOSED ACQUISITION OF PROPOSED EASEMENTS AND UNDERGROUND POWER LINES TO SERVE THE PROPOSED LOT 1 DP 1160042, AND LOT 1 DP 780163

Surveyor: **EMILIE RICHARD OBER**  
of  
**STREET, TWEED HEADS, NSW**  
Date of Survey: **09-01-09**  
Surveyor's Ref: **18614-EASE**

(EA) - PROPOSED EASEMENT FOR UNDERGROUND POWER LINES 3 MIDE

Reg:1120031/Doc:DP 1160042 P/Rcv:08-Feb-2011/Att:BC.OX /Prc:09-Feb-2011 07:01 /Pg:ALL /Seq:1 of 3 DP1160042

Both parcels are public reserves and classified as community land, and there is Council stormwater infrastructure within the easement corridors. See below:



Arkinstall Park contains a 375mm stormwater pipe and Blundell Estate Park contains 600 and 900mm stormwater pipes.

We have sought an amendment to the standard easement descriptions to accommodate Council's infrastructure and Essential Energy have accepted the amendments.

The *Local Government Act 1993*, enables Council to approve the creation of easements within community land pursuant to section 46(1)(a), whereby Council can grant an estate in the land, for the provision of public utilities and works associated with or ancillary to public utilities.

An "estate or interest" in this context is an "interest, right or encumbrance". An easement, by definition is a "right enjoyed by the owner of one piece of land to carry out some limited activity (short of taking possession) on another piece of land".

A valuation determining compensation to be paid to Council was also provided, showing a total sum of \$7,500 for compensation for the acquisition of the easements, made up as follows:

Arkinstall Park	\$3,800
Blundell Estate Park	\$3,700

These amounts are acceptable due to there being no impact on the use of the parks.



It is recommended that Council approve the acquisition of the easements and execute all documentation under the Common Seal of Council.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

---

**28 [EO-CM] EC2012-003 Supply and Laying of Asphaltic Concrete Overlays**

**ORIGIN:**

**Works**

**FILE NO: EC2012-003**

**SUMMARY OF REPORT:**

This report outlines the tender for EC2012-003 Supply and Laying of Asphaltic Concrete Overlays. Recommendations have been formulated based on the Selection Criteria which is contained in the Tender Evaluation Report included in **CONFIDENTIAL ATTACHMENT A**. A summary of the Selection Criteria is also included in the body of this report.

It is recommended that Council accepts the tender of Fulton Hogan Industries Pty Ltd for the supply and laying of asphaltic concrete overlays to various streets in the shire.

Attachment A is **CONFIDENTIAL** in accordance Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderers in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

**RECOMMENDATION:**

**That:**

- 1. The tender from Fulton Hogan Industries Pty Ltd be accepted to the value of \$496,780.00 exclusive of GST for tender EC2012-003 Supply and Laying of Asphaltic Concrete Overlays.**
- 2. The General Manager be given delegated authority to approve variations up to \$150,000 excluding GST above the initial tender price and those variations reported to Council following completion of works.**

3. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.

## REPORT:

### Background

Council Tender EC2012-003 invited responses for the resurfacing of a number of streets in the shire with asphaltic concrete overlays.

Funding for the works is made up from allocations in the general fund's Road Asphalt Resurfacing and the 2004/05 Rate Rise Asphalt Resheeting budgets.

### Tenders Received

A total of two (2) responses were received for tender EC2012-003 Supply and Laying of Asphaltic Concrete Overlays. Tenders were received from the following:

- Boral Asphalt
- Fulton Hogan Industries

### Variation to Tender

Since the calling of tenders the need has arisen to increase the scope of the asphaltic concrete overlays tender to include asphalt overlay at Kennedy Drive. All tenderers have been requested to submit a variation to include this additional work.

### Tender Evaluation

A Tender Evaluation for the revised scope of works and recommended successful tender will be contained in a late report to be submitted to Council.

The Tender Evaluation was conducted by Council's Tender Evaluation Panel, consisting of the Senior Contracts Engineer, Manager Works and Maintenance Engineer. A copy of the Tender Evaluation Report is included in **ATTACHMENT A** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of non-price criteria. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

The following selection criteria and weightings were determined prior to the issuing of the Tender:

<b>Tender Price</b>	60%
<b>Time Performance</b>	10%
<b>Quality Assurance</b>	10%
<b>Environmental Management</b>	10%
<b>WHS and Risk Management</b>	10%

Based on the Tender Evaluation, it is recommended that Fulton Hogan Industries Pty Ltd be awarded the contract for EC2012-003 Supply and Laying of Asphaltic Concrete Overlays.

Details of Fulton Hogan Industries Pty Ltd relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT A** which was endorsed by the Evaluation Panel.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

This tender process is in accordance with section 55 of the Local Government Act 1993 and Part 7 (Tendering) of the Local Government (General) Regulation 2005.

Funding is provided within the 2011/2012 Budget for these works. Programs to fund the works are the Road Asphalt Resurfacing and 2004/05 Rate Rise Asphalt Resheeting items.

**POLICY IMPLICATIONS:**

The recommendations in this report are consistent with Council's Procurement Policy, Procurement Procedure, Contract Management Process document and Tenders Procedure.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. **Confidential Attachment** - Supplementary Information - EC2012-003 Tender Evaluation Report (ECM 46090632).
-

**REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES**

**29 [TCS-CM] Local Government Elections September 2012**

**SUBMITTED BY: Corporate Governance**

**FILE NUMBER: N/A**

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

To provide an update on the proposed key dates for the Local Government Election to be held on 8 September 2012, and to provide examples put forward by other Councils in regard to the election of Mayor and Councillor numbers.

**RECOMMENDATION:**

**That Council receives and notes the report on the Local Government Elections 2012 update.**

## REPORT:

Council determined at its meeting of 18 October 2011, to conduct two constitutional referendum questions at the September 2012 election for consideration, and if successful to be implemented for the electoral term commencing September 2016, in regard to a popularly elected Mayor and secondly, increasing the Councillor numbers from 7 to 9. The Electoral Commission NSW has advised Council of the proposed timetable which are applicable to any Constitutional Referendum questions. This proposed timetable is:

- **By end April 2012 - council to advise Electoral Commission NSW if they require a poll or referendum; and**
- **By end June 2012 - council to advise final questions(s).**

### **Election of Mayor**

Council is also required to have prepared the required explanatory material on a balanced case both for and against any proposition (question) to be put to a constitutional referendum. Examples of explanatory material provided by a number of councils follows in regard to the Popularly Elected Mayor:

#### ***Strathfield Municipal Council - August 2010***

##### **PURPOSE OF REPORT**

*Council, at its meeting on 4 August 2009, resolved (minute no. 6/09):*

*“That Council investigate the feasibility of calling a Popularly Elected Mayor at the next general election of Council scheduled for September 2012”.*

*This report has been prepared in response to the resolution.*

##### **REPORT (EXTRACT)**

###### *Current System*

*Election of the Mayor from and by Councillors is similar to how the office of the Prime Minister and NSW Premier are elected. In both cases, the Prime Minister and Premier are elected to Parliament and subsequently, they are elected by other members of parliament to these positions. Neither position is directly elected by voters. The election by and from other members of parliament is consistent with the concept of the leader being ‘first among equals’. This system supports quick transitions and continuity of governance when change of occupant is required though resignation, ill-health or death.*

*The Mayor is elected in accordance with section 227 of the Local Government Act 1993, which permits election by:*

- 1. Councillors from among their number, unless there is a decision in force under this Division which provides for the election of the Mayor by the electors, or*
- 2. Electors, if such a decision is in force.*

*The Act requires that the Mayoral term is for one year and an election be scheduled in September each year.*

*In the event that the Mayor vacates office during his/her term, a Council meeting must be scheduled within 14 days to elect a new Mayor.*



How the Mayor is Elected in Direct Elections

The method of election is described in Schedule 4 of the Local Government (General) Regulation 2005.

A candidate can be a candidate for Mayor and Councillor but cannot be elected to both positions.

If elected as Mayor, the person must accept that office. However, the preferences on each Councillor ballot paper for the candidate elected as Mayor are not disregarded. Each preference on ballot papers in the Councillor election for the person elected as Mayor (except 1<sup>st</sup> preferences) is reduced by one e.g. a 2<sup>nd</sup> preference becomes a 1<sup>st</sup> preference, a 3<sup>rd</sup> becomes a 2<sup>nd</sup>, etc.

A person may, if eligible, be a candidate for Mayor in more than one Council area where the Mayor is popularly elected, and can be elected as Mayor in more than one Council area.

The system of voting is optional preferential, which means that the voter must place number '1' in the square next to their first choice candidate, but they have the option whether to mark preferences for other candidates.

Numbers of Councillors

As the Mayor is directly elected, they do not occupy a Councillor position. Therefore, if current numbers were maintained, Strathfield Council would elect 6 Councillors and a Mayor, instead of the current 7 Councillors. The number of Strathfield Councillors was reduced from 9 to 7 in 2005.

Though the size of the Council would appear to be unaltered, the 'quota' required for a Councillor to be elected would be increased as the number of councillors would be 6, not 7. Where there are 3 or more councillors to be elected the method of election is proportional representation and is described in Schedule 5 of the Local Government (General) Regulation 2005.

The quota is determined by the number of formal votes divided by the number of councillors to be elected plus one. Once calculated, the quota remains the same throughout the count.

Some Councils who have proposed changing the election of the Mayor, have included a proposal to increase the number of Councillors in the constitutional referendum presented to voters.

Deputy Mayor

The Local Government Act requires that the Deputy Mayor is elected by and from Councillors.

There is no provision for direct election of the deputy Mayor.

The Deputy Mayor is elected each September for a one year term.

Informing Voters

In the event that a constitutional referendum is held, Council is required to provide the 'for' and 'against' cases so voters can make an informed decision.

Below are common arguments presented to voters:

**For**

*The Mayor is directly elected by voters and therefore voters have a say in the selection of the Mayor.*

*Direct election may increase accountability of the Mayor to voters.*

*Popular election of the Mayor provides certainty and predictability about the style of leadership for the Council term.*

*Popular election of the Mayor by voters would give residents an opportunity to consider the Mayoral candidate's policies and vote accordingly.*

**Against**

*Popularly elected Mayors may not have the support and confidence of other Councillors or voters. The elected Council cannot remove an underperforming or unsatisfactory Mayor. Voters are also unable to change a Mayor before the next election.*

*Direct election of the Mayor may give rise to expectation that their policies have more importance than those of the other elected Councillors. This can be a contributing factor to councils becoming unstable and incapable of managing efficiently as required under legislation.*

*The four year term is a long term commitment for the person who occupies the position of Mayor and over the course of four years, there may be unforeseen conflicts with personal, health, employment or family commitments\* (see 'status of mayors' below). This creates the potential for bi-elections. Direct election of the Mayor increases costs of elections and would require an election to be held if a vacancy arises through resignation, dismissal or death.*

*Mayors are not obliged to implement policies which were presented at the election.*

**Mosman Municipal Council - September 2008 - Report Extract**

*(Sections 15 & 16 of Local Government Act 1993)*

**QUESTION:**

***The Mayor of Mosman Council is currently elected by the Councillors.***

***Do you favour a change to the method whereby the Mayor is directly elected by the people without an increase in the number of Councillors from 9 including the Mayor?***

**YES CASE**

*The position of Mayor, as the leader of Council should be determined directly by the voters with the Mayor accountable to residents.*

*Popular election of the Mayor would give predictability about the style and direction of the Council leadership and stability to the office for a period of four years.*

*The Mayor would be able to provide leadership, adhere to agreed strategic directions and influence long term planning and policy setting.*

*Election of the Mayor by the people would remove the internal politics of Councillors each year during the time leading up to the election of Mayor.*

*Popular election of Mayor would give residents an opportunity to consider Mayoral candidates' policies and vote accordingly.*

*Popular election of Mayor would make the position of Mayor more accountable to residents.*

*The possibility of a Mayor being elected "out of the hat" is avoided in the event of two or more Councillors receiving equal votes from their peers.*

**NO CASE**

*The elected Council (Councillors) should determine the leader of their Council and not have a leader imposed upon them with whom they could be at variance or unable to work co-operatively or constructively.*

*Other Councillors should have an opportunity to lead the Council.*

*The positions of Prime Minister and Premier are not elected by popular vote.*

*Councillors should retain the option of assessing the performance of their leader on an annual basis and be able to change that person if conflict develops or if the leader does not perform to expectation.*

*A popularly elected Mayor and their planning and policy directions, views and actions may not have the support of a majority of the other Councillors.*

*The longer term commitment creates the potential for greater cost of a by-election which must be held across the whole area if an extraordinary vacancy occurs in the office of a popularly elected Mayor.*

*There would be nothing binding the Mayor to carry out the promises made as a Mayoral candidate in the lead up to the election.*

*The voters would not be able to change an unsatisfactory Mayor before the next election*

*If the question is APPROVED, then in 2012 electors will directly elect the Mayor during the election without an increase in the number of Councillors.*

*Mayor elected directly by Voters (Popularly Elected Mayor)*

*When a Council has a popularly elected Mayor, a person who is enrolled as an elector in the Council area may stand for election AS A Mayor only, OR both as a popularly elected Mayor and as a Councillor.*

*If this happens, the votes for the Mayor are counted first.*

*If the successful Mayoral candidate is also a candidate for Councillor, then his/her votes as a Councillor are not counted, and all those votes flow down to the next preference on the ballot papers.*

*If the question is NOT APPROVED the Mayor will be elected annually by the Councillors from the existing number of nine (9) Councillors.*

**Dubbo City Council - Report Extract November 2010**

*As of September 2009, the total number of Councils with popularly elected mayors was 33, being Ballina, Bellingen, Botany Bay, Broken Hill, Byron, Canada Bay, Canterbury, Cessnock, Coffs Harbour, Eurobodalla, Fairfield, Greater Taree, Griffith, Hornsby, Hunters Hill, Lake Macquarie, Lismore, Lithgow, Liverpool, Maitland, Manly, Nambucca, Newcastle, North Sydney, Port Macquarie - Hastings, Queanbeyan, Richmond Valley, Shellharbour, Shoalhaven, Sydney, Warringah, Willoughby and Wollongong.*

**FOR**

*The position of Mayor, as the leader of Council should be determined directly by the voters with the Mayor accountable to residents.*

*Popular election of the Mayor would give predictability about the style and direction of the Council leadership and stability to the office for a period of four years.*

*The Mayor would be able to provide leadership, adhere to agreed strategic directions and influence long term planning and policy setting.*

*Election of the Mayor by the people would remove the internal politics of Councillors each year during the time leading up to the election of Mayor.*

*Popular election of Mayor would give residents an opportunity to consider Mayoral candidates' policies and vote accordingly.*

*Popular election of Mayor would make the position of Mayor more accountable to residents.*

*The possibility of a Mayor being elected "out of the hat" is avoided in the event of two or more Councillors receiving equal votes from their peers.*

*Popular election would give a stronger community focus to the office of Mayor.*

*Popular election would represent a greater level of involvement and participation by residents.*

*The community elects the person that they want as their local community leader.*

*The politics of numbers among elected members is removed from the decision making process.*

*The popular election of Mayor may bring a greater sense of unity and cohesion to the community.*

*Sure knowledge of incumbent simplifies administrative processes.*

**AGAINST**

*The elected Council (Councillors) should determine the leader of their Council and not have a leader imposed upon them with whom they could be at variance or unable to work cooperatively or constructively.*

*Other Councillors should have an opportunity to lead the Council.*

*The positions of Prime Minister and Premier are not elected by popular vote.*

*Councillors should retain the option of assessing the performance of their leader on an annual basis and be able to change that person if conflict develops or if the leader does not perform to expectation.*

*A popularly elected Mayor and their planning and policy directions, views and actions may not have the support of a majority of the other Councillors.*

*The longer term commitment creates the potential for greater cost of a by-election which must be held across the whole area if an extraordinary vacancy occurs in the office of a popularly elected Mayor.*

*There would be nothing binding the Mayor to carry out the promises made as a Mayoral candidate in the lead up to the election.*

*The voters would not be able to change an unsatisfactory Mayor before the next election.*

*Councillors need to be satisfied of their capacity to work in cooperation with the Mayor.*

*The role of the Mayor is quite specific and popular election attaches more importance to the role than exists, giving the Mayor an artificial mandate.*

*Until such time that all elections are publically funded, popular election benefits financially resourced candidates.*

*Popularly elected Mayors are entrenched for four years, precluding rotation and skills development.*

*Conflict between the Mayor and elected members.*

*Performance is only reviewed every four years.*

*No peer review of performance.*

*Councillors are in the best position to judge the performance Of the Mayor and therefore the Mayor should be chosen by the elected Councillors.*

*The cost of running a Mayoral campaign may prevent some worthy candidates from standing for the position of Mayor, Members of the community may have unrealistic expectations about the Mayor's power to achieve specific outcomes.*

### **Councillor Numbers**

Information availability from other councils in regard to the increase of councillors to provide as examples, is not readily available. However, Council has become aware of the following councils taking the opportunity to reduce councillor numbers following the moratorium established by the New South Wales Government:

Balranald	from 10 to 8
Bombala	from 9 to 7
Deniliquin	from 9 to 7
Mosman	to 6 plus popularly elected Mayor, being a total of 7, from previously a total of 9 including the Mayor.

### **Key Dates**

Council further considered at its meeting of 15 November 2011 to appoint the Electoral Commission NSW to administer its Election and Constitutional Referendums to be held on Saturday 8 September 2012.

The Electoral Commission NSW has released currently anticipated key dates associated with the election, which are as follows:

April 2012	Candidate nomination forms/manuals available
Mid May 2012	Expressions of Interest opens for election

	officials/office assistants
May/June 2012	Candidate Seminars
30 July 2012	Close of Authorised Roll (6.00pm)
	Open Nominations
8 August 2012	Close of Nominations (12.00 noon)
	Registration of Electoral Material (how-to-vote) opens
27 August 2012	Pre-poll voting starts
31 August 2012	Registration of how-to-vote closes (5.00pm)
3 September 2012	Postal Vote Applications close (5.00pm)
7 September 2012	Pre-poll voting closes (6.00pm)
8 September 2012	Election Day
10 September 2012	Return of Postal Votes closes (6.00pm)

Should Council determine to not proceed with the proposed Constitutional Referendum questions, and as the resolution of Council was made on 18 October 2011, then relevant rescission motions, signed by one Councillor, as the timeframe has extinguished for the requirement for three signatures would need to be lodged in accordance with Section 6.1 of the Code of Meeting Practice. Any new motions would also need to be submitted in accordance with Section 5.1 of the Code of Meeting Practice to enable adoption by Council Meeting at its meeting of 17 April 2012.

**OPTIONS:**

1. By end of April advise the Electoral Commission NSW if a poll or referendum is required.
2. Should Council determine to not proceed with the proposed Constitutional Referendum questions, and as the resolution of Council was made on 18 October 2011, then relevant rescission motions, signed by one Councillor, as the timeframe has extinguished for the requirement for three signatures would need to be lodged in accordance with Section 6.1 of the Code of Meeting Practice. Any new motions would also need to be submitted in accordance with Section 5.1 of the Code of Meeting Practice to enable adoption by Council Meeting at its meeting of 17 April 2012.

**CONCLUSION:**

Council adopts report on update of September 2012 Local Government Elections.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable

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

Expenses to be incurred on the election are currently contained within the Long Term Financial Plan, with an estimated expenditure of \$415,000 in 2012/2013 financial period for

a poll. Electoral Commission NSW have advised that final costs including those associated with the Constitutional referendum questions will not be available until April or May 2012 and any additional expenditure will have to be factored into the budget.

**c. Legal:**

No-Legal advice has not been received  
Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---



**THIS PAGE IS BLANK**

**30 [TCS-CM] Constitutional Recognition of Local Government**

**SUBMITTED BY:** Corporate Governance

**FILE NUMBER:** N/A

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

Council to reaffirm its commitment for Constitutional Recognition for Local Government.

**RECOMMENDATION:**

**That Council reaffirms its commitment for Constitutional Recognition for Local Government and makes allowance in the current Budget and Long Term Financial Plan for the payment of the requested contribution of \$28,279.51 plus GST.**

## REPORT:

Council resolved at its meeting of 15 March 2011 the following:

- "1. *Tweed Shire Council declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.*
2. *Letters be forwarded to the Prime Minister, the Leader of the Opposition and the local Federal Member outlining Council's commitment to constitutional recognition."*

The Local Government and Shires Association of NSW have provided an update on the process and progress for achieving Constitutional Recognition of Local Government and to provide an indication of Council's financial contribution towards a proposed national advertising campaign. Refer to Attachment 1 for details.

To date more than 85 per cent of councils throughout Australia have resolved to support the Constitutional Recognition of Local Government. In support of this campaign, and leading up to a proposed referendum, the NSW Executive of the Local Government and Shires Associations of NSW have developed a budget to assist in this process, with contributions to be paid in three equal instalments over three financial years, in order to reduce the financial burden on councils.

Council's contribution has been calculated utilising the standard formula at \$28,279.51 plus GST.

## OPTIONS:

Council can reaffirm its commitment to the pursuit of Constitutional Recognition by resolving to pay the requested contribution, or advise the Local Government and Shires Association of NSW that it is not in position to commit to the requested contribution.

## CONCLUSION:

Council can reaffirm its commitment to the pursuit of Constitutional Recognition for Local Government.

## COUNCIL IMPLICATIONS:

### a. Policy:

Not Applicable

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

Allowance will have to be made in current Budget and Long Term Financial Plan within the A029.0101 section to cater for the requested contribution of \$28,279.51 plus GST, to be paid over three equal instalments over three financial years.

**c. Legal:**

No-Legal advice has not been received  
Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- 1. Local Government and Shires Association of NSW - Contribution of Funds (ECM44722449)
-

**THIS PAGE IS BLANK**

---

31 [TCS-CM] Legal Services Register as at 31 December 2011

**SUBMITTED BY:** Corporate Governance

**FILE NUMBER:** N/A



**Civic Leadership**

---

**SUMMARY OF REPORT:**

The Legal Services Report as at 31 December 2011 monitors the status on legal instructions, for current or recently completed matters which have been issued to panel legal providers. The report includes payments to the various legal providers, but also payments for barristers and consultants where applicable.

The total amount paid for legal instructions for the quarter 1 October to 31 December 2011 is \$124,234.

The legal instructions that principally relate to the December quarter expenditure are:

GS4/95/73 - Lizzio Subdivision, Condong - Appeal.	\$5,320
DA10/0160 - Appeal against imposition of conditions upon development consent.	\$9,087
576 Cudgen Road - Class 4 action - institute court order to remove building works and unauthorised use.	\$72,439
8 Urliup Road, Class 4 action - institute court order for OSSM compliance.	\$19,031
DA09/0270 & DA09/0344 - Class 4 action - refusal of S96 application.	\$8,550
CC10/0391 - deem refusal of application for a construction certificate.	\$3,492

In some of the above matters, expenses have also been incurred in previous financial years information is included in the attached register.

**RECOMMENDATION:**

**That Council receives and notes the Legal Services Register as at 31 December 2011.**

**REPORT:**

Expenditure incurred on legal instructions for the period 1 October to 31 December 2011 is as follows:

<b>Category 1 Planning, Environmental &amp; Local Government Law</b>	<b>Category 2 Commercial/Property Law</b>	<b>District/Local Court</b>
\$187,269	\$0	\$2,917

A summary of payments to each of the Legal Service Providers including barristers and consultants where applicable, for current or recently completed matters is as follows:

<b>Legal Service Provider Category 1 Planning, Environmental, Local Government Law</b>	<b>Year to Date</b>	<b>Current Period 1 October to 31 December 2011</b>
HWL Ebsworth Lawyers	\$23,002	\$9,426
Lindsay Taylor Lawyers	\$8,654	\$8,550
Maddocks Lawyers	\$3,396	\$3,396
Marsdens Law Group	\$48,975	\$3,505
Sparke Helmore Lawyers	\$93,773	\$91,470
Stacks – The Law Firm (ongoing matters only)	\$7,661	\$5,320
Wilshire Webb Staunton Beattie	\$1,808	Nil

<b>Legal Service Provider Category 2 Commercial/Property Law</b>	<b>Year to Date</b>	<b>Current Period 1 October to 31 December 2011</b>
HWL Ebsworth Lawyers	Nil	Nil
Lindsay Taylor Lawyers	Nil	Nil
Maddocks Lawyers	Nil	Nil
Marsdens Law Group	Nil	Nil
Stacks – The Law Firm	Nil	Nil
Wilshire Webb Staunton Beattie	Nil	Nil

<b>Legal Service Provider District/Local Court</b>	<b>Year to Date</b>	<b>Current Period 1 October to 31 December 2011</b>
Stacks - The Law Firm	\$2,917	\$2,567

## LEGAL SERVICES REGISTER as at 31 December 2011

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
HWL Ebsworth	1	Class 4 Appeal – DA08/0966 Refusal to determine Development Application and other issues impacting upon on-site sewerage management system at 49 Upper Crystal Creek Road Crystal Creek  File DA08/0966	Defend the matter in the Land and Environment Court	09/10 48,763 10/11 24,185 11/12 10,970 <b>83,918</b>	<b>In Progress</b> – Land & Environment directions hearing held on 4 December 2009. Case heard on 4 February 2010. Case dismissed, costs awarded, Appeal dismissed by Supreme Court. Payment of \$ 7,106.53 for security of costs received. Matter of recovering further costs in progress.
Maddocks	1	Class 1 Appeal - Refusal of Development Application, Morton Street, Chinderah  File D97/0175.02	Represent Council in the Land and Environment Court	11/12 <b>1,053</b>	<b>In Progress</b> - S34 agreement and orders prepared to be ratified by the Land & Environment Court.
Marsdens	1	Class 4 Appeal – 7 year Special Rate Variation  File Budget/Management Plan	Defend the matter in the Land and Environment Court	07/08 24,446 08/09 280,956 09/10 79,879 10/11 58,658 11/12 45,483 <b>489,422</b>	<b>In Progress</b> – Land & Environment judgement handed down 30 December 2008, applicants claim was unsuccessful, part costs claim awarded, Court of Appeal case heard on 5 February 2010. Applicant was unsuccessful, part costs awarded. Costs of LEC and Court of Appeal have been assessed. Application for Special Leave to Appeal refused by High Court on 12 August 2011 with costs. Recovery of costs currently being pursued.



Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
Sparke Helmore	1	Class 4 Action - Institute Court Order to remove building works and unauthorised use 576 Cudgen Road, Cudgen	Commence action in the Land and Environment Court	11/12 <b>74,742</b>	<b>In Progress</b> - Court order case heard on 30 November and 1 December 2011. Judgement handed down on 9 December 2011 in favour of council. Respondent to pay council costs. Action being reported to council to enforce judgement.
Sparke Helmore	1	Class 4 Proceedings - institute action in the Land and Environment Court for compliance of OSSM, 8 Uriup Road.	Represent council in the Land and Environment Court	11/12 <b>19,031</b>	<b>In Progress</b> - Consent orders issued. Matter adjourned for hearing on 3 February 2012 and March 2012 for costs.
Stacks	District/ Local Court	Statement of Claim - DA04/1028- 207 Farrants Hill Road- building encroachment.  File DA04/1028	Defend the matter in the District Court of NSW	07/08 7,594 08/09 34,534 09/10 2,242 10/11 14,936 11/12 2,917 <b>62,223</b>	<b>In Progress</b> – Case has been struck out in the District Court. Costs awarded to defendants, matter of costs now to be pursued internally by council.
Stacks	1	Appeal to Supreme Court of Appeal – M.W. Allen (Lizzio Subdivision – Condong)  File GS4/95/73	Represent Council in the Supreme Court and engage counsel where appropriate	08/09 29,609 09/10 26,100 10/11 3,296 11/12 7,661 <b>66,666</b>	<b>In Progress</b> – second appeal in the Supreme Court heard 16 October 2009, Judge reserved his decision. Judge upheld the appeal, costs awarded to Council. Council instructions to pursue matter of costs and associated expenses. Matter listed for decision in Penrith Local Court on 10 February 2012.

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
HWL Ebsworth	1	Class 4 Appeal- DA09/0727 Noble Lakes Monarch Drive Kingscliff Section 96 Application refused by Joint Regional Planning Panel  File DA09/0727	Represent Council's interest in the Land and Environment Court	10/11 <b>38,711</b> 11/12 289 <b>39,000</b>	<b>Completed</b> – Matter listed for hearing on 1 and 2 March 2011.  Proceedings were withdrawn by the applicant on the first day of the hearing.
HWL Ebsworth	1	Class 1 Appeal - Section 64& 94 fees for change of use development application at 77 Tamarind Avenue, Bogangar  File DA10/0160	Defend the matter in the Land and Environment Court	11/12 <b>11,743</b>	<b>Completed</b> - Notice of Discontinuance issued 20 October 2011.
Lindsay Taylor Lawyers	1	Unauthorised clearing and earthworks – Tomewin Road Tomewin	Provide advice in respect of ascertaining options for legal proceedings	09/10 5,559 10/11 4,347 <b>9,906</b> 11/12 104 <b>10,010</b>	<b>Completed</b> – Advice provided
Lindsay Taylor Lawyers	1	Class 4 appeal - Creek Street, Hastings Point - refusal of S96 applications.  Files DA09/0344 & DA09/0290	Defend the matter in the Land and Environment Court	11/12 <b>8,550</b>	<b>Completed</b> - Matter heard and further amended plan consented.
Maddocks	1	General advice and information.	Provide general advice and information	11/12 <b>2,343</b>	<b>Completed</b> - Advice provided to council.
Marsdens	1	Class 1 Appeal - deem refusal of application for a construction certificate - Wooyung Road, Wooyung.  File CC10/0391	Defend the matter in the Land and Environment Court	11/12 <b>3,492</b>	<b>Completed</b> - Notice of discontinuance issued 10 October 2011.

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
Wilshire Webb Staunton Beattie	1	Appeal against imposition of conditions upon development consent  File DA06/0897.01	Represent Council in the Land and Environment Court	10/11 19,572 11/12 1,808 <b>21,380</b>	<b>Completed</b> –S34 conferences held. Revised 9 lot subdivision plan lodged, S34 agreement entered into.

**OPTIONS:**

Not Applicable.

**CONCLUSION:**

Legal expenses for the quarter related primarily to actions instigated in previous periods.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable

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

As reported with legal expenses allowed for in appropriate areas of Council's Budget.

**c. Legal:**

No-Legal advice has not been received  
Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

Not Applicable.

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

**1 Civic Leadership**

1.2 Improve decision making by engaging stakeholders and taking into account community input

1.2.1 Council will be underpinned by good governance and transparency in its decision making process

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

**32 [TCS-CM] Complaint Analysis Report - 1 October to 31 December 2011**

**SUBMITTED BY: Corporate Governance**

**FILE NUMBER: N/A**

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

Council's Complaints Handling Policy is a framework for the effective management of complaints. The Policy requires a complaint analysis report be reported to Council detailed by type and outcomes/actions on a quarterly basis.

**RECOMMENDATION:**

**That Council receives and notes the Complaint Analysis Report for 1 October to 31 December 2011.**

## REPORT:

Council's Complaints Handling Policy is a framework for the effective management of complaints.

A complaint is an expression of dissatisfaction, made in respect to a Council Officers role in the provision of service delivery or lack of service delivery that has allegedly affected an individual, group or body of stakeholders whether justified or not. It is not a request for service, (customer work request), or information or an explanation of a policy or procedure, or objections to a development application before Council determination.

A complaint can progress from Council's lack of action following the lodgement of a request for service or a request for information.

The Policy requires a complaint analysis report be reported to Council detailed by type and outcomes/actions on a quarterly basis.

It is advised that for the period 1 October to 31 December 2011, 10 items were received which comply with the definition of a complaint.

There are five complaints and one from the September quarter that have not been completely actioned; however they are in the process of being investigated.

The complaints principally refer to the:

- Failure of Council Officers to comply with Council's Customer Service Charter in not responding to items within fourteen (14) days in accordance with the Correspondence - Response to Policy.
- Respondents being dissatisfied with the actions of Council officers in handling their original request for service.
- Respondents being dissatisfied that issues have not been dealt with by Council Officers.
- Complainants being dissatisfied by decisions made by Council.

The type of complaint has been categorised in accordance with categories used by the Division of Local Government. This methodology will assist in monitoring the effectiveness of Council's handling of complaints and improving service delivery.

Information on the 10 complaints follows:

Complaint Type	Ref	Details of Complaint	Comments
Customer Service Service Standards	1. 1.	Council's telephone system, in particular on hold messages.	In progress - matter being investigated.

Complaint Type	Ref	Details of Complaint	Comments
<b>Enforcement and Regulatory Powers Building/Noise</b>	2.	1. Express disappointment that DA not approved, Elizabeth St, Pottsville.	Development Application approved by Council 17 November 2011.
		2. Pollution from Boral site, Tweed Valley Way, South Murwillumbah.	Letter sent 17 January 2012 advising of Council action on the matter.
		3. Email sent 23 November regarding 111 Pacific Highway, Banora Point being used as car storage yard - will forward to the Ombudsman.	In progress - matter being investigated.
<b>Roads and Parks</b>	3.	1. Road surface condition Brett Street, Tweed Heads.	Work undertaken 19 October 2011.
		2. Customer Request TRE11/0855 no response to request of 27 September 2011, Marsupial Drive, Pottsville.	Matter being investigated.
		3. Removal of tree at 5 Ivory Crescent, Tweed Heads.	Letter sent 27 October 2011 advising of the process undertaken prior to authorisation of tree removal.
		4. Car parking problems at the Art Gallery, Mistral Rd, Murwillumbah.	Letter sent 2 December 2011 advising of Council action on the matter.
		5. Waste of money on erecting posts along Philip Pde, Tweed Heads.	Letter sent 13 January 2012 advising of Council action on the matter.
		6. Grass and weeds growing in gutter and other rubbish in Winders Place, Banora Point - street never been cleaned.	Customer Request created. Grass and weeds to be removed.

**OPTIONS:**

Not Applicable.

**CONCLUSION:**

It is recommended that Council receives and notes the Complaints Analysis Report for the period 1 October to 31 December 2011.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable.

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

Not Applicable.

**c. Legal:**

Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

Not Applicable.

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

**1 Civic Leadership**

1.2 Improve decision making by engaging stakeholders and taking into account community input

1.2.1 Council will be underpinned by good governance and transparency in its decision making process

1.2.1.2 Provide information to Councillors to enable them to carry out their civic office functions

1.2.1.4 Comply with Division of Local Government Strategic Task requirements

1.2.1.4.1 Undertake internal program and reporting to ensure Strategic Tasks are completed and timeframes met

1.2.1.6 Access to information

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

**33 [TCS-CM] In Kind and Real Donations - October to December 2011**

**SUBMITTED BY:** Financial Services

**FILE NUMBER:** Not Applicable



**Supporting Community Life**

---

**SUMMARY OF REPORT:**

Details of in kind and real donations for the period October to December 2011 are reproduced in this report for Council's information.

**RECOMMENDATION:**

**That Council notes the total donations of \$16,756.86 for the period October to December 2011.**



**REPORT:**

Council maintains a register of in kind and real donations. Details of these donations for the period October to December 2011 are reproduced as follows:

**Financial Assistance**

Amount	Donated Item	Date
\$500.00	Donation - Elders Indigenous Ball	26/10/2011
\$500.00	Donation - Festival of Ability Far North Coast	9/11/2011
\$30.00	Donation - Annual Presentation Day	30/11/2012
\$4,852.65	Donation - Cage & Net at Walter Peate Oval	14/12/2011
<b>\$5,882.65</b>		

**Provision of Labour and/or Plant & Equipment**

Amount	Recipient	Donated Item	Date
\$4,472.76	Street Christmas Decorations	Provision of Labour & Council Plant	09/12/2011
<b>\$4,472.76</b>			

**Rates**

Amount	Recipient	Donated Item	Date
\$375.55	Twin Towns Police & Community Youth Club	Water Usage	7/12/2011
<b>\$375.55</b>			

**Tweed Link Advertising**

Amount	Recipient	Donated Item	Date
\$83.70	Various Community Notices	Advertising	04/10/2011
\$72.90	Various Community Notices	Advertising	11/10/2011
\$94.50	Various Community Notices	Advertising	18/10/2011
\$94.50	Calendar of Events	Advertising	18/10/2011
\$151.20	Advertising in the Tweed Link	Advertising	18/10/2011
\$153.90	Various Community Notices	Advertising	25/10/2011
\$159.30	Various Community Notices	Advertising	01/11/2011
\$64.80	Various Community Notices	Advertising	08/11/2011
\$113.40	Calendar of Events	Advertising	08/11/2011
\$70.20	Various Community Notices	Advertising	15/11/2011
\$75.60	Various Community Notices	Advertising	22/11/2011
\$256.50	Various Community Notices	Advertising	29/11/2011
\$45.90	Various Community Notices	Advertising	06/12/2011
\$148.50	Various Community Notices	Advertising	13/12/2011
<b>\$1,584.90</b>			

**Room Hire**

Amount	Recipient	Donated Item	Date
\$1,466.50	Murwillumbah Theatre Company	Room Hire - Murwillumbah Civic Centre	06/11/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	04/10/2011
\$188.00	Tweed Heads Hospital (Fete Set Up)	Room Hire - Tweed Heads Civic Centre	06/10/2011

Amount	Recipient	Donated Item	Date
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	06/10/2011
\$185.00	Tweed Heads Hospital (Fete Set Up)	Room Hire - Tweed Heads Civic Centre	07/10/2011
\$185.00	Tweed Heads Hospital (Fete)	Room Hire - Tweed Heads Civic Centre	08/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	11/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	13/10/2011
\$84.00	Northern Rivers Symphony Orchestra	Room Hire - Tweed Heads Civic Centre	16/10/2000
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	18/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	20/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	25/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	27/10/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	01/11/2011
\$42.00	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	03/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	11/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	12/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	13/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	18/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	19/11/2011
\$113.50	Tweed Theatre Company	Room Hire - Tweed Heads Civic Centre	20/11/2011
\$54.00	Christmas Day Lunch Committee	Room Hire - Tweed Heads Civic Centre	24/12/2011
\$370.00	Christmas Day Lunch Committee	Room Hire - Tweed Heads Civic Centre	23/12/2011
\$25.00	Banora Point Rate Payers Association	Room Hire - Coolamon Room Banora Pt Com Centre	10/10/2011
\$44.50	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	17/10/2011
\$50.00	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	21/11/2011
\$44.50	Blind & Vision Impaired Support Group	Room Hire - Coolamon Room Banora Pt Com Centre	19/12/2011
\$30.50	Twin Towns Friends	Room Hire - South Tweed HACC	12/10/2011

<b>Amount</b>	<b>Recipient</b>	<b>Donated Item</b>	<b>Date</b>
\$30.50	Twin Towns Friends	Room Hire - South Tweed HACC	09/11/2011
\$30.50	Twin Towns Friends	Room Hire - South Tweed HACC	14/12/2011
	South Sea Islanders	Room Hire - Tweed Heads	
\$84.00	Meeting	Meeting Room	01/10/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$84.00	Ladies Auxiliary	Meeting Room	04/10/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$72.00	(Fete Set Up)	Meeting Room	06/10/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$72.00	Fete)	Meeting Room	07/10/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$72.00	(Fete)	Meeting Room	08/10/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$84.00	Ladies Auxiliary	Meeting Room	07/11/2011
	Tweed Heads Hospital	Room Hire - Tweed Heads	
\$84.00	Ladies Auxiliary	Meeting Room	05/12/2011
<b>\$4,441.00</b>			

**\$16,756.86 Total Donations 2nd Quarter (October, November, December 2011)**

**OPTIONS:**

Not applicable.

**CONCLUSION:**

For Councillor information and inclusion in Annual Report.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Donations and Subsidies Version 1.2

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

As per Budget estimates.

**c. Legal:**

No-Legal advice has not been received  
Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

Not Applicable.

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

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.3 Provide opportunities for residents to enjoy access to the arts, festivals, sporting activities, recreation, community and cultural facilities

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

**THIS PAGE IS BLANK**

**34 [TCS-CM] Monthly Investment and Section 94 Developer Contributions Report for the Period Ending 31 January 2012**

**SUBMITTED BY:** Financial Services

**FILE NUMBER:** N/A

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

Council had **\$158,434,906** invested as at **31 January 2012** and the accrued net return on these funds was **\$786,880** or **5.95%** annualised for the month.

**RECOMMENDATION:**

**That in accordance with Section 625 of the Local Government Act 1993 the monthly investment report as at period ending 31 January 2012 totalling \$158,434,906.41 be received and noted.**

**REPORT:**

**Report for Period Ending 31 December 2011**

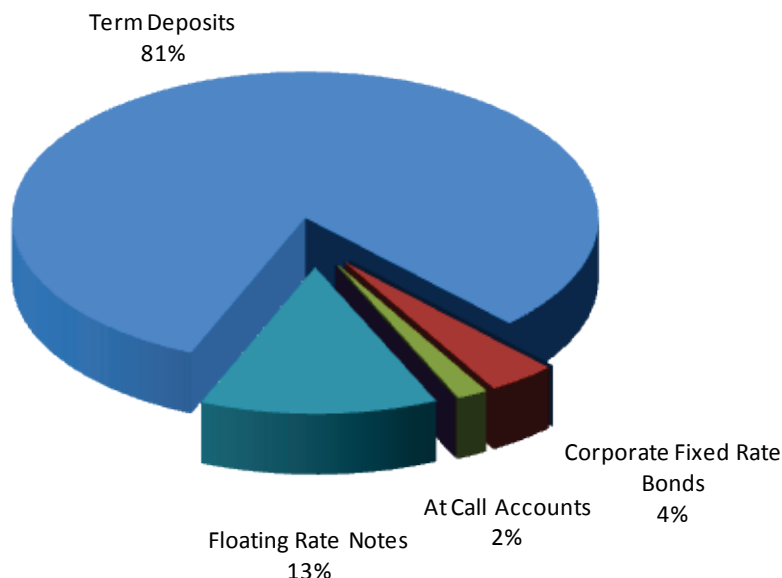
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with Section 625 of the Local Government Act (1993), Clause 212 of the Local Government (General) Regulations and Council policies.

**1. Restricted Funds as at 1 July 2011**

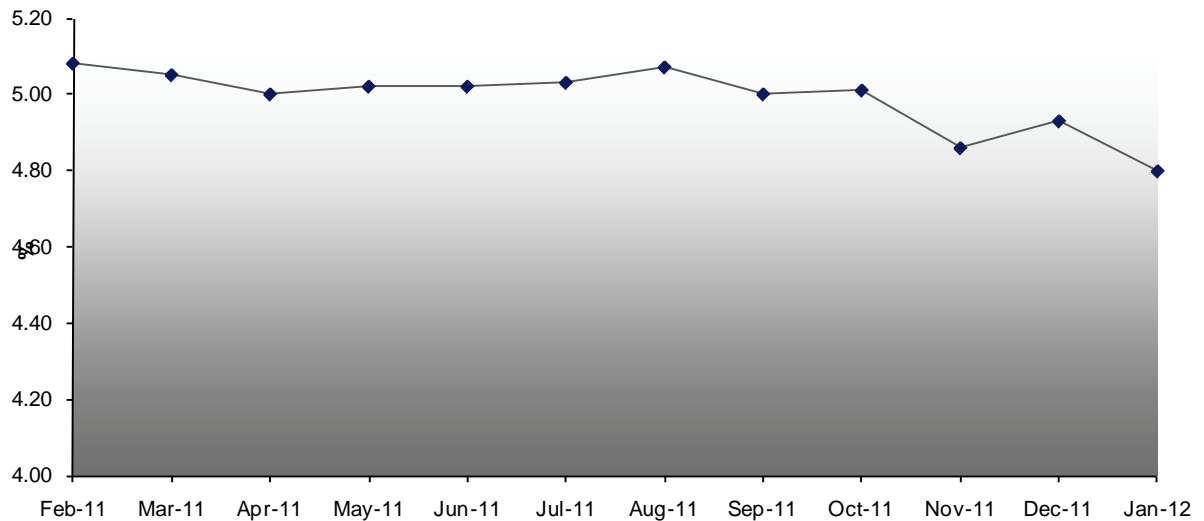
Description	(\$'000)			
	General Fund	Water Fund	Sewer Fund	Total
<b>Externally Restricted</b>	2,864	10,137	61,173	<b>74,174</b>
Crown Caravan Parks	12,430			<b>12,430</b>
Developer Contributions	27,770	15,770		<b>43,540</b>
Domestic Waste Management	8,373			<b>8,373</b>
Grants	3,395			<b>3,395</b>
<b>Internally Restricted</b>	16,613			<b>16,613</b>
Employee Leave Entitlements	2,199			<b>2,199</b>
Grants	3,404			<b>3,404</b>
Unexpended Loans	6,488			<b>6,488</b>
<b>Total</b>	<b>83,536</b>	<b>25,907</b>	<b>61,173</b>	<b>170,616</b>

*Note: Restricted Funds Summary next update September 2012*

**2. Investment Portfolio by Category**



### 3. Benchmark 90 Day Bank Bill Rate



### 4. Direct Securities

Counterparty/ Product Name	Face Value	Market Value	% Return on Face Value	Investment Type	Final Maturity Date
Citigroup Inc.	1,000,000.00	1,010,206.33	4.86	FRN	13/02/2012
Members Equity Bank	2,000,000.00	2,014,700.00	5.56	FRN	08/03/2012
CBA	1,000,000.00	1,004,387.22	5.69	FRN	17/04/2012
Westpac Bank	1,000,000.00	1,042,340.00	7.25	Fixed Rate Bond	24/09/2012
Westpac Bank	1,000,000.00	1,042,340.00	7.25	Fixed Rate Bond	24/09/2012
Deutsche Bank	1,000,000.00	964,947.00	5.62	FRN	23/11/2012
ANZ Bank	1,000,000.00	1,068,880.00	8.50	Fixed Rate Bond	22/04/2013
Suncorp Metway	2,000,000.00	2,016,400.00	5.73	FRN	26/05/2014
AMP Bank	2,000,000.00	2,008,844.00	5.80	FRN	06/06/2014
National Australia Bank	1,000,000.00	985,080.00	5.87	FRN	05/11/2015
Westpac Bank	2,000,000.00	1,991,691.86	5.80	FRN	09/11/2015
CBA Retail Bond	1,000,000.00	977,500.00	5.44	FRN	24/12/2015
CBA Retail Bond	498,250.00	488,750.00	5.44	FRN	24/12/2015
CBA Retail Bond	492,500.00	488,750.00	5.44	FRN	24/12/2015
National Australia Bank	2,000,000.00	1,964,640.00	5.61	FRN	21/06/2016
RaboBank	1,000,000.00	971,460.00	5.51	FRN	27/07/2016
RaboBank	1,000,000.00	971,460.00	5.51	FRN	27/07/2016
CBA	1,000,000.00	973,910.00	5.48	FRN	02/08/2016
CBA	2,000,000.00	1,947,820.00	5.48	FRN	02/08/2016
CBA/Merrill Lynch Zero Coupon Bond	4,000,000.00	2,800,800.00	7.28	Fixed Rate Bond	22/01/2018
<b>Total</b>	<b>27,990,750.00</b>	<b>26,734,906.41</b>	<b>5.96</b>		

ABS = Asset Backed Security  
 Bond = Fixed Rate Bond  
 CDO = Collateralised Debt Obligation  
 FRN = Floating Rate Note



## 5. Term Deposits

TERM DEPOSITS SORTED BY MATURITY AS AT 31/01/12					
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield
16-Aug-11	07-Feb-12	Bankwest	4,000,000.00	151	6.000
14-Nov-11	13-Feb-12	Bank of QLD (Nov 2013)	2,000,000.00	91	6.178
09-Sep-11	14-Feb-12	Adelaide Bendigo Bank	2,000,000.00	182	6.000
18-Nov-11	14-Feb-12	ING (Curve)	1,000,000.00	123	6.020
16-Aug-11	14-Feb-12	ING (Curve)	1,000,000.00	123	5.960
18-Nov-11	14-Feb-12	ING (RIMSEC)	1,000,000.00	362	6.450
21-Jul-10	14-Feb-12	Suncorp Metway	2,000,000.00	95	5.910
16-Nov-11	14-Feb-12	Westpac (Nov 2014)	2,000,000.00	90	6.000
09-Aug-11	16-Feb-12	NAB (Aug 2012)	1,000,000.00	92	5.880
04-Apr-11	20-Feb-12	Westpac (Feb 2016)	2,000,000.00	94	5.813
14-Oct-11	21-Feb-12	Heritage BS	1,000,000.00	180	6.000
16-Nov-11	21-Feb-12	IMB (Nov 2011)	1,000,000.00	95	5.700
30-Aug-11	21-Feb-12	Westpac	2,000,000.00	189	6.030
09-Jun-10	27-Feb-12	NAB (RBS) (Aug 2015)	2,000,000.00	91	5.830
28-Nov-11	28-Feb-12	ING (RIMSEC)	1,000,000.00	126	5.990
30-Aug-11	28-Feb-12	Westpac	2,000,000.00	182	5.950
16-Nov-11	29-Feb-12	IMB (Dec 2013)	2,000,000.00	91	5.750
30-Aug-11	29-Feb-12	ING (RIMSEC) (May 2012)	1,000,000.00	91	5.748
25-Oct-11	29-Feb-12	ING (RIMSEC) (Sept 2012)	1,000,000.00	91	5.748
24-May-11	02-Mar-12	NAB (Sept 2012)	5,000,000.00	91	5.780
18-Oct-11	06-Mar-12	Heritage BS	1,000,000.00	182	5.900
11-Nov-11	06-Mar-12	IMB	1,000,000.00	370	6.360
05-Aug-11	06-Mar-12	RaboDirect (RIMSEC)	1,000,000.00	365	6.600
25-Aug-11	07-Mar-12	ING (RIMSEC Sept 2012)	2,000,000.00	91	5.687
09-Dec-11	09-Mar-12	Investec Bank (RIMSEC) (Jun 2014)	1,000,000.00	91	6.490
11-Jan-12	13-Mar-12	Bank of QLD (direct)	2,000,000.00	126	5.900
22-Mar-11	13-Mar-12	Rural Bank (Curve)	2,000,000.00	189	6.000
11-Nov-11	13-Mar-12	Widebay CU (RIMSEC)	1,000,000.00	210	6.200
20-Dec-11	20-Mar-12	LGFS CRI (Mar 2012)	1,000,000.00	91	5.232
09-Aug-11	20-Mar-12	RaboDirect (RIMSEC)	1,000,000.00	307	6.300
08-Dec-10	20-Mar-12	RaboDirect (RIMSEC)	1,000,000.00	224	6.200

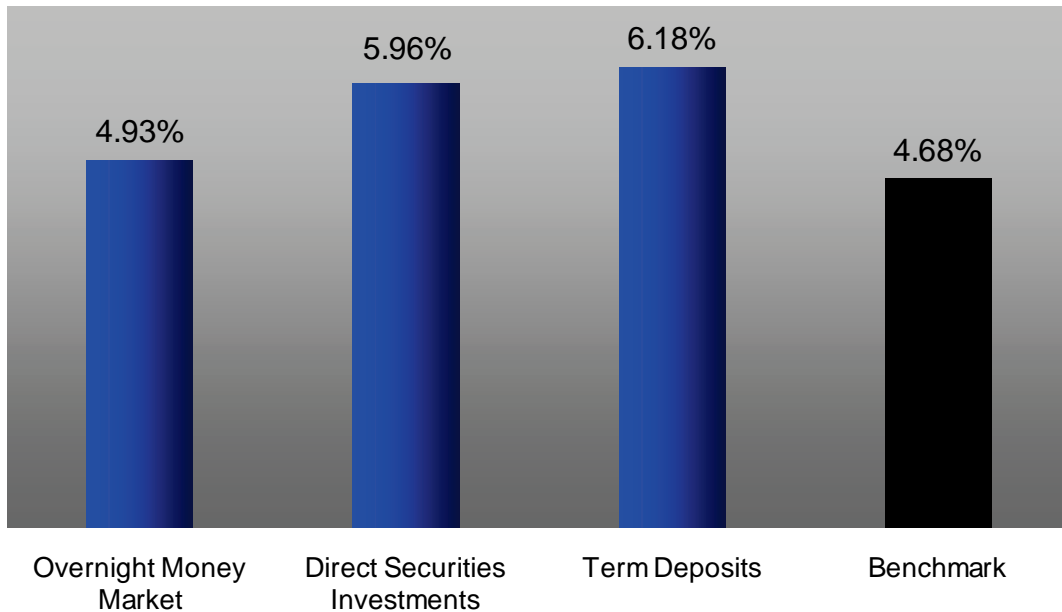
<b>TERM DEPOSITS SORTED BY MATURITY AS AT 31/01/12</b>					
<b>Lodged or Rolled</b>	<b>DUE</b>	<b>Counterparty</b>	<b>PRINCIPAL</b>	<b>TERM</b>	<b>% Yield</b>
28-Dec-11	<b>28-Mar-12</b>	LGFS CRI (Jun 2012)	4,000,000.00	90	5.550
11-Jan-12	<b>11-Apr-12</b>	Westpac (Jan 2016)	8,000,000.00	91	5.708
18-Oct-11	<b>17-Apr-12</b>	Bank of QLD (Direct)	4,000,000.00	186	6.000
17-Jan-12	<b>17-Apr-12</b>	Suncorp Metway	3,000,000.00	91	6.000
24-Jan-12	<b>24-Apr-12</b>	Bank of QLD	2,000,000.00	91	6.000
21-Dec-11	<b>24-Apr-12</b>	NAB	2,000,000.00	125	6.130
27-Jan-12	<b>27-Apr-12</b>	NAB (Jul 2012)	5,000,000.00	91	5.520
06-Sep-11	<b>08-May-12</b>	NAB	2,000,000.00	371	6.330
10-Jan-12	<b>15-May-12</b>	NAB	5,000,000.00	126	6.150
01-Mar-11	<b>22-May-12</b>	Adelaide Bendigo Bank	2,000,000.00	364	6.350
12-Jul-11	<b>22-May-12</b>	ANZ	2,000,000.00	363	6.400
30-Nov-11	<b>12-Jun-12</b>	Investec Bank (June 2012)	1,000,000.00	369	6.420
10-Jan-12	<b>10-Jul-12</b>	Suncorp Metway	3,000,000.00	185	6.050
17-Jan-12	<b>17-Jul-12</b>	Wide Bay CU	1,000,000.00	182	6.000
11-Aug-10	<b>18-Jul-12</b>	Suncorp Metway	2,000,000.00	727	6.720
08-Nov-11	<b>24-Jul-12</b>	NAB	5,000,000.00	369	6.320
13-Sep-11	<b>07-Aug-12</b>	Adelaide Bendigo Bank	2,000,000.00	732	6.600
06-Sep-11	<b>07-Aug-12</b>	Members Equity Bank	1,000,000.00	368	6.300
29-Jun-11	<b>14-Aug-12</b>	AMP Bank (CURVE)	1,000,000.00	371	6.100
17-May-11	<b>11-Dec-12</b>	NAB	2,000,000.00	733	6.950
07-Apr-11	<b>05-Mar-13</b>	Westpac (Mar 2013)	2,000,000.00	735	6.350
20-Sep-11	<b>19-Mar-13</b>	Adelaide Bendigo Bank (Mar 2013)	1,000,000.00	728	6.500
03-May-11	<b>26-Mar-13</b>	NAB (Mar 2013)	1,000,000.00	735	6.380
30-Nov-11	<b>21-May-13</b>	Investec Bank (May 2013)	1,000,000.00	735	7.100
12-Aug-10	<b>23-Jul-13</b>	Suncorp Metway (RBS) (July 2013)	1,000,000.00	1097	7.300
22-Jul-10	<b>11-Aug-13</b>	NAB (RBS) (Aug 2015)	2,000,000.00	1095	6.000
27-Oct-11	<b>13-Aug-13</b>	Bank of QLD (Aug 2013)	2,000,000.00	1096	7.050
25-May-11	<b>02-Sep-13</b>	NAB (Sept 2013)	4,000,000.00	1098	6.520
28-Sep-11	<b>03-Sep-13</b>	AMP Bank (CURVE) (Sept 2013)	500,000.00	735	6.000
04-Apr-11	<b>10-Sep-13</b>	AMP Bank (CURVE) (Sept 2013)	500,000.00	742	6.000
09-Sep-11	<b>25-Mar-14</b>	Bank of QLD (Mar 2014)	1,000,000.00	1099	6.750

TERM DEPOSITS SORTED BY MATURITY AS AT 31/01/12					
Lodged or Rolled	DUE	Counterparty	PRINCIPAL	TERM	% Yield
18-Oct-11	08-Apr-14	Bank of QLD (Apr 2014)	2,000,000.00	1100	6.390
04-Mar-11	22-Mar-16	RaboDirect (RIMSEC) (Mar 2016)	1,000,000.00	1827	7.150
22-Mar-11	07-Apr-16	Westpac (Apr 2016)	2,000,000.00	1825	7.000
21-Jul-11	22-Nov-16	RaboDirect (Curve) (Nov 2016)	1,000,000.00	1835	6.300
			129,000,000.00		6.182

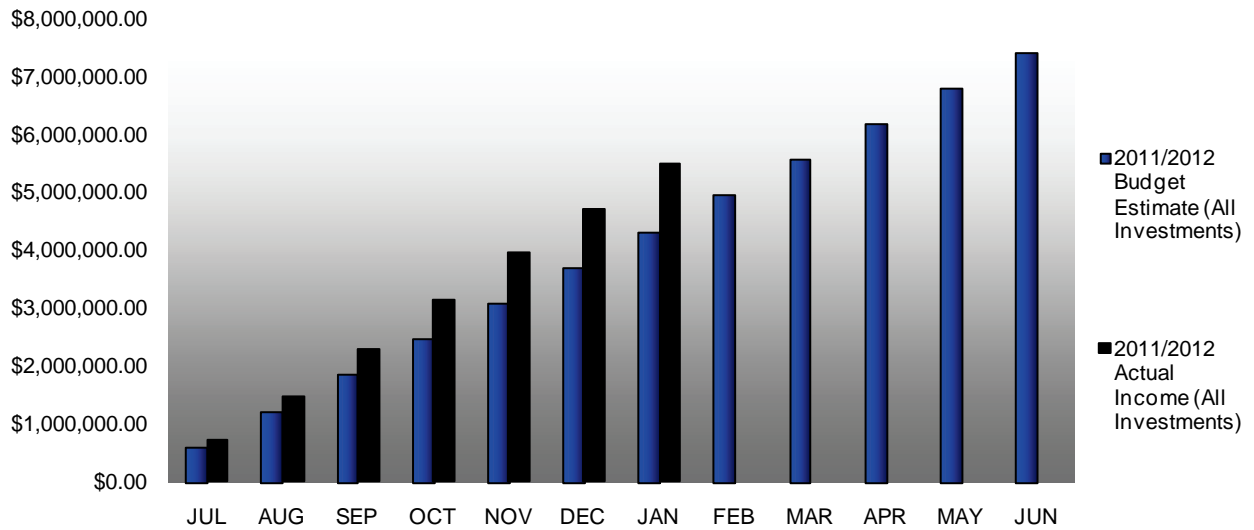
### 6. Performance by Category

Category	Face Value	Market Value	Average Return	Above/(Below) 30 day BBSW Benchmark
Overnight Money Market	\$2,700,000.00	\$2,700,000.00	4.93%	0.25%
Direct Securities Investments	\$27,990,750.00	\$26,734,906.41	5.96%	1.28%
Term Deposits	\$129,000,000.00	\$129,000,000.00	6.18%	1.50%
Benchmark	\$159,690,750.00	\$158,434,906.41	4.68%	Benchmark 30 Day UBS Bank Bill Index

### Performance by Category Compared with Benchmark



**7. Total Portfolio Income Year to Date**



**8. Investment Policy Diversification and Credit Risk**

Total Portfolio Credit Limits Compared to Policy Limits					
Long-Term Credit Ratings	Investment Policy Limit	Actual Portfolio	Short-Term Credit Ratings	Investment Policy Limit	Actual Portfolio
AAA Category	100%	<b>0.00%</b>	A-1+	100%	<b>28.62%</b>
AA Category	100%	<b>25.01%</b>	A-1	100%	<b>13.10%</b>
A Category or below	60%	<b>5.00%</b>	A-2	60%	<b>16.91%</b>
BBB Category or below	20%	<b>6.90%</b>	A-3	20%	<b>1.30%</b>
Unrated	10%	<b>3.10%</b>	Unrated	10%	<b>0.06%</b>
		<b>40.01%</b>			<b>59.99%</b>

**9. Term to Maturity**

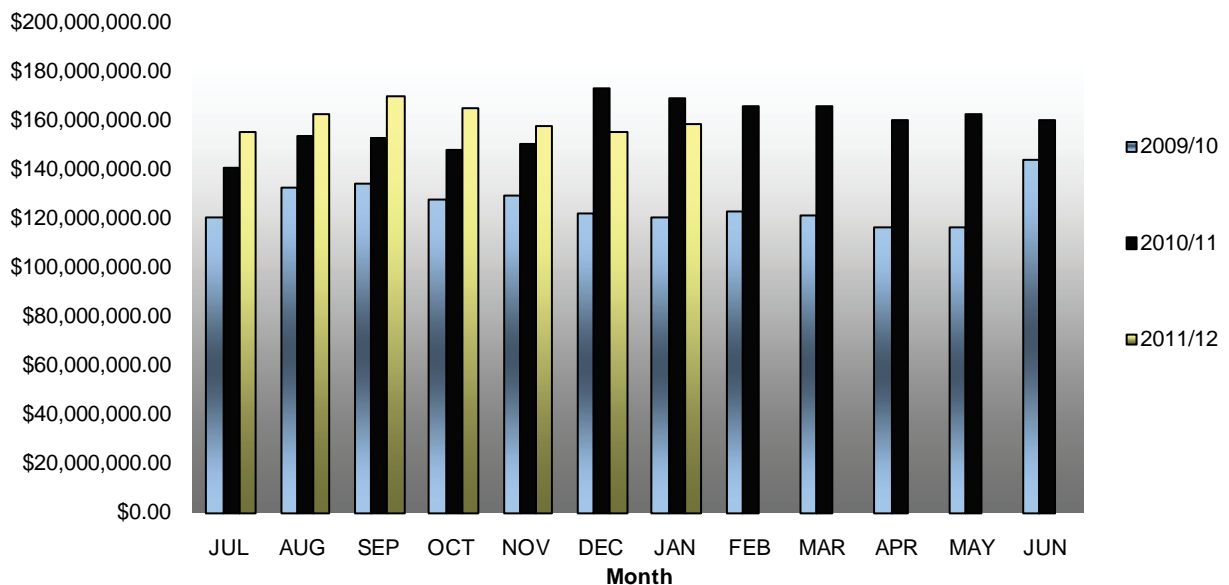
Maturity Profile	Actual % Portfolio	Policy Limits
Less than 365 days	62.44%	Maximum 100% of portfolio minimum 40%
Between 365 days and 2 years	11.27%	Maximum 60%
Between 2 years and 5 years	23.79%	Maximum 35%
Between 5 years and 7 years	2.50%	Grandfathered investment. Outside current policy limit
Total	100.00%	

## 10. Investment Alternatives Explained

Investment Product	Maturity Range	Usual term to maturity	Major Benefits	Major risks
At Call Cash	At Call	Immediate to a few months	Highly liquid - same day access to funds with no impact on capital	Not a capital growth asset
			Highly secure as a bank deposit	Underperforms other asset classes in the long term
Bank Bill	1 - 180 days	Less than 1 year	Highly liquid - same day access to funds, usually with no or minimal impact on capital	Not a growth asset
			Highly secure (bank risk)	Underperforms other asset classes in the long term
				May incur a small loss for early redemption
Term Deposit	Up to 5 years	Less than 2 years	Liquid - same day access to funds	Will incur a small capital loss for early termination
			Highly secure as a bank deposit	Underperforms growth assets in the longer term
Floating rate Note Bond	1 - 5 years	Greater than 2 years	Increased yield over bank bills	Not a growth asset
			Can accrue capital gain if sold ahead of maturity and market interest rates have fallen	Can incur capital losses if sold ahead of maturity and market interest rates have risen
			Coupon interest rate resets quarterly based on 90 day bank bill swap rate	Credit exposure to company issuing the paper
			Relatively liquid	May not be bank guaranteed
			Less administration than bank bills	Underperforms other asset classes in the long term

Investment Product	Maturity Range	Usual term to maturity	Major Benefits	Major risks
Fixed Rate Bond	1 - 5 years	Greater than 3 years	Can accrue capital gain if sold before maturity and market interest rates have fallen	Can incur capital losses if sold before maturity and market interest rates have risen
			Fixed return - semi annual coupons	Credit exposure to company issuing paper
			Generally liquid	
			Can be government or corporate issuer	

### 11. Monthly Comparison of Total Funds Invested



### 12. Section 94 Developer Contributions - Monthly Balances and Receipts Report - 31 January 2012

Contribution Plan	Plan Description	End of Month Balance	Contributions Received for Month
01	Banora Point West/Tweed Heads South Open Space	3,994,747	-
02	Banora Point Western Drainage	508,251	-
03	Banora Point West/ Tweed Heads South Community Facilities	36,953	-
04	Tweed Road Contribution Plan	10,728,595	2,352
05	Local Area Open Space	819,258	-
06	Street Tree Planting in Residential Areas	151,920	-
07	West Kingscliff Opens Space & Drainage	474,024	-

Contribution Plan	Plan Description	End of Month Balance	Contributions Received for Month
10	Cobaki Lakes Open Space & Community Facilities	(771)	-
11	Shire Wide Library Facilities	1,472,824	-
12	Bus Shelters	50,784	-
13	Eviron Cemetery	(39,767)	-
14	Mebbin Springs Subdivision - Rural Road Upgrading	76,500	-
15	Community Facilities	337,275	-
16	Emergency Facilities - Surf Lifesaving	319,654	-
18	Council Administration & Technical Support	1,172,369	43
19	Kings Beach/Casuarina/Kings Forest	699,646	-
20	Seabreeze Estate - Open Space	638	-
21	Terranora Village Estate - Open Space & Community Facilities	26,191	-
22	Shirewide Cycleways	343,941	-
23	Shirewide Carparking	1,835,105	-
25	Salt Development - Open Space & Car Parking	857,322	-
26	Shirewide/Regional Open Space	2,630,082	-
27	Tweed Heads Masterplan Local Open Space & Streetscaping	57,703	-
28	Seaside City	20,794	-
90	Footpaths & Cycleway	-	-
91	DCP14	91,550	-
92	Public Reserve Contributions	112,413	-
95	Bilambil Heights	447,685	-
<b>Total</b>		<b>27,225,687</b>	<b>2,395</b>

### 13. Economic Commentary

#### Australian Cash Rate

The Reserve Bank of Australia (RBA) left the cash rate at 4.25% pa at their 7 February meeting.

Economists continue to expect further rate cuts by the RBA early this year as sovereign debt issues in Europe continue to affect global trade, particularly with China and global confidence in general.

#### Council's Investment Portfolio

Council's investment portfolio is conservatively structured in accordance with Division of Local Government guidelines with 83% of the portfolio held in term deposits or cash at call. Term deposits and bonds continue to provide above trend returns while minimizing capital risk.

All investment categories out-performed the UBS 30 day bank bill benchmark this month. Overall, the investment portfolio has returned an average 1.46% pa above the 30 day UBS bank bill index for the last 12 month period.

Source: Oakvale Capital Limited & Governor of the RBA

**14. Investment Portfolio Summary as at 31 January 2012**

**GENERAL FUND**

CORPORATE FIXED RATE BONDS	5,954,360.00	
FLOATING RATE NOTES	20,780,546.41	
ASSET BACKED SECURITIES	0.00	
FUND MANAGERS	0.00	
TERM DEPOSIT - LOAN 104 OFFSET	0.00	
TERM DEPOSITS	47,000,000.00	
CALL ACCOUNT	2,700,000.00	<b>76,434,906.41</b>

**WATER FUND**

TERM DEPOSITS	28,000,000.00	
FUND MANAGERS	0.00	<b>28,000,000.00</b>

**SEWERAGE FUND**

TERM DEPOSITS	54,000,000.00	
FUND MANAGERS	0.00	<b>54,000,000.00</b>

**TOTAL INVESTMENTS** 158,434,906.41

It should be noted that the General Fund investments of **\$76 million** are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

All Water and Sewerage Fund investments can only be expended in accordance with Government regulation and Council resolution.

**Statutory Statement - Local Government (General) Regulation 2005 Cl. 212**

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulations and Council's investment policies.



**Chief Financial Officer  
(Responsible Accounting Officer)**

**OPTIONS:**

Not Applicable

**CONCLUSION:**

Not Applicable

**COUNCIL IMPLICATIONS:**



**a. Policy:**

Not Applicable

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

In accordance with Budget Projections.

**c. Legal:**

No-Legal advice has not been received

Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

Not Applicable.

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

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
- 1.3.1.35 Council funds are invested in accordance with legislation requirements and Council Policy
- 1.3.1.35.1 Council funds are invested to provide maximum returns whilst having due regard to risk

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

## 35 [TCS-CM] Quarterly Budget Review December 2011

SUBMITTED BY: Financial Services

FILE NUMBER: N/A



Civic Leadership

**SUMMARY OF REPORT:**

This is the second quarter statutory budget review for this financial year and summarises the estimated expenditure and income changes to the 2011/12 Budget.

This statutory report is prepared in accordance with the Local Government (General) Regulations 2005, sections 202 and 203. Council will have a balanced budget as at 31 December 2011 in all Funds.

**RECOMMENDATION:**

That:

1. The Quarterly Budget Review Statement as at 31 December 2011 be adopted.
2. The expenditure and income, as summarised below and detailed within the report, be voted and adjusted in accordance with the revised total expenditure and income for the year ending 30 June 2012.

Description	Change to Vote	
	Deficit	Surplus
<b>General Fund</b>		
<u>Expenses</u>		
Employee costs	0	283,634
Materials & Contracts	0	7,823
Interest	0	0
Other Operating costs	15,702	0
Capital	1,828,432	0
Loan Repayments	0	0
Transfers to Reserves	0	56,449
	<u>1,844,134</u>	<u>347,906</u>
<u>Income</u>		
Rates and Annual Charges	0	0
Interest revenue	0	125,241
Operating Grants & Conts	0	180,013
Capital Grants & Conts	0	1,175,800
User Charges & Fees	209,090	0
Other Operating Revenue	0	0

Description	Change to Vote	
	Deficit	Surplus
Loan Funds	0	262,867
Recoupments	613,634	0
Transfers from Reserves	0	575,031
Asset Sales	0	0
	<u>822,724</u>	<u>2,318,952</u>
Net Surplus/(Deficit)		<u><u>0</u></u>
<b>Sewer Fund</b>		
<u>Expenses</u>		
Employee costs	0	0
Materials & Contracts	0	229,897
Interest	0	0
Other Operating costs	0	0
Capital	0	3,078,200
Loan Repayments	0	0
Transfers to Reserves	532,097	0
	<u>532,097</u>	<u>3,308,097</u>
<u>Income</u>		
Rates and Annual Charges	0	494,011
Interest revenue	0	0
Operating Grants & Conts	0	0
Capital Grants & Conts	0	532,097
User Charges & Fees	0	0
Other Operating Revenue	0	0
Loan Funds	0	0
Recoupments	1,162,200	0
Transfers from Reserves	2,639,908	0
Asset Sales	0	0
	<u>3,802,108</u>	<u>1,026,108</u>
Net Surplus/(Deficit)		<u><u>0</u></u>
<b>Water Fund</b>		
<u>Expenses</u>		
Employee costs	0	0
Materials & Contracts	837,528	0
Interest	0	0
Other Operating costs	0	0
Capital	0	4,985,722
Loan Repayments	0	0
Transfers to Reserves	810,723	0
	<u>1,648,251</u>	<u>4,985,722</u>
<u>Income</u>		
Rates and Annual Charges	0	106,902
Interest revenue	0	0
Operating Grants & Conts	0	0
Capital Grants & Conts	0	1,107,310
User Charges & Fees	0	47,539
Other Operating Revenue	0	0
Loan Funds	0	0
Recoupments	4,624,986	0
Transfers from Reserves	0	25,764
Asset Sales	0	0
	<u>4,624,986</u>	<u>1,287,515</u>
Net Surplus/(Deficit)		<u><u>0</u></u>

## **REPORT:**

### **Budget Review 31 December 2011 (Quarterly Budget Review)**

In accordance with section 203(1) of the Local Government (General) Regulation 2005, a Budget Review Statement and revision of the estimates of income and expenditure must be submitted to council within two months of the close of each quarter.

The Regulation requires that the quarterly financial review must include the following:

- A revised estimate for income and expenditure for the year.
- A report as to whether or not such statements indicate that the financial position of the Council is satisfactory and if the position is unsatisfactory, make recommendations for remedial action.

### **Report by Responsible Accounting Officer – Quarterly Budget Review Statements**

The Quarterly Budget Review Reports are prepared to provide Council and the community with information in relation to Councils financial performance and proposed amendments to its budget and forward estimates. The reports are prepared under accrual accounting principles in accordance with the requirements of the Local Government Act 1993.

From the 2011/12 financial year, councils are required to prepare a Quarterly Budget Review Statement, which includes the following information:

- The original budget
- Approved changes to the original budget
- Recommendations by council officers regarding changes to the revised budget
- A projected year end result
- Actual year to date figures
- Key Performance Indicators
- New contracts entered into during the quarter
- Consultancy and legal expenses

This information is presented in the following reports:

- List of changes which will impact on revenue, i.e. will affect the Operational Plan (budget) or Long Term Financial Plan
- Detailed list of recommended changes, including those recommended by officers and those adopted by Council
- Income & Expenses Statement, consolidated and by fund
- Funding Statement, consolidated and by fund, which gives the total budget result
- Capital Budget Review Statement
- Cash & Investments Budget Review Statement
- Budget Review Key Performance Indicators Statement
- Budget Review Contracts (part A) & Other Expenses (part B)

## Impacts on the Operational Plan and/or Long Term Financial Plan

Some recommended changes will have no net effect on the Operational Plan (1 year budget). Others will have long term effects and will need to be reflected in the next revision of the Long Term Financial Plan. The changes which will have such an effect are listed below:

Description	\$	\$	Comments
<b>General Fund</b>	<b>Net Effect on 2011/12 Budget</b>	<b>Net Effect on LTFP</b>	
Fire & Rescue NSW - Contribution	7,703	7,703	
Rural Fire Service - Contribution	65,863	65,863	
State Emergency Services - Contribution	(41,192)	(41,192)	
Margaret Olley Extension Project	50,000		
Contact Centre staff uniforms	8,000	8,000	
Contact Centre casual staff	8,400	16,800	
Building Control advertising	5,000	5,000	
s138 driveway applications	4,000	4,000	
Registration construction certificate	5,000	5,000	
Registration occupation certificate	3,000	3,000	
Building DA fees	100,000	100,000	
Building DA advertising fees	5,000	5,000	
Building environmental enforcement levy		20,000	
s68 stormwater applications		20,000	
Corporate legal expenses	37,081		
s603 certificates	70,000	70,000	
s94 admin levy	13,000	13,000	
International Day of people with Disability		1,000	
Aged & Disability project costs		(1,000)	
Baby Health Centres	(3,476)	(3,476)	
Infrastructure Planning vacancy saving	(76,000)		
Advance Design/Survey	(10,000)		
Design legal expenses	(21,379)	(21,379)	
Road closure expenses	(25,000)		
Contract Section salary saving	(70,000)		
Lease fees - Community Transport		(13,000)	
BPCC Reserve from lease fees		13,000	
Training - General Manager's section		10,000	
Training - Env & Community Services		(2,500)	
Training - Technology & Corporate		(2,500)	
Training - Engineering & Operations		(2,500)	
Training - Planning & Regulation		(2,500)	
Payment to Works Carried Forward reserve	(29,759)		
Rates Extra Charges	(125,241)		
NSW SLSC Championships	20,000		
	<b>0</b>	<b>277,319</b>	

## Detailed list of changes

In/ Ex	No.	Category	Description	Current Vote	Change to Vote	Details / Comments
<b>1. Proposed Variations</b>						
<b>General</b>						
Ex	1	Ex-Capital	Pottsville Beach Neighbourhood Centre	1,660,901	<b>-1,096,000</b>	Original budget/rollover duplication
In	1	In-Recoup	Contribution Plan 15	(1,511,901)	<b>1,096,000</b>	Original budget/rollover duplication
Ex	1	Ex-Capital	Pottsville Bach Neighbourhood Centre		<b>188,800</b>	Funding for upgrade
In	1	In-CG&C	Contribution from PBNC Inc		<b>-88,800</b>	Contribution
In	1	In-CG&C	State Govt Grant from PBNC		<b>-100,000</b>	Funds received
Ex	2	Operating	Festivals & events	227,140	<b>3,000</b>	Christmas decoration support
Ex	2	Operating	Communications and Marketing	40,964	<b>-3,000</b>	Funding for above
Ex	3	Ex-Capital	Art Gallery construction	5,456	<b>1,000,000</b>	Stage 3/Olley project
In	3	In-CG&C	Margaret Olley Foundation contribution		<b>-1,000,000</b>	Funding for above
Ex	4	Operating	Margaret Olley Extension Project	0	<b>50,000</b>	Preliminary project costs
Ex	5	Operating	Pottsville Environment Park Habitat Plan	5,000	<b>-5,000</b>	Reverse rollover - grant expended 10/11
In	5	In-TFR	Carried forward grants	<b>-5,000</b>	<b>5,000</b>	Reverse rollover - grant expended 10/11
Ex	6	Operating	Fire & Rescue NSW - Contribution	351192	<b>7,703</b>	State Govt Advice - Nov 2011
Ex	6	Operating	Rural Fire Service - Contribution	135000	<b>65,863</b>	State Govt Advice - Nov 2011
Ex	6	Operating	State Emergency Services - Contribution	102000	<b>-41,192</b>	State Govt Advice - Nov 2011
Ex	7	Operating	GM Recruitment Costs	-	<b>26,690</b>	Recruitment costs
Ex	7	Ex-TTR	Civic Reserve - transfer to reserve	26,690	<b>-26,690</b>	Funding for above
Ex	8	Ex-Capital	Clothiers Creek Rd land purchase	399,266	<b>160,734</b>	Budget rollover - see March 2011 QBR
Ex	8	Operating	Roads - FAG grant	2,624,272	<b>-160,734</b>	Funding for above
Ex	9	Ex-Capital	Pottsville SES building	77,306	<b>42,000</b>	Additional funding from 7 year plan
Ex	9	Operating	Emergency Management Plan Implementation	101,345	<b>-42,000</b>	Funding for above
Ex	10	Operating	Limpinwood Hall		<b>47,000</b>	Upgrade
Ex	10	Ex-Capital	Limpinwood Hall		<b>23,000</b>	Upgrade
Ex	10	Operating	Community buildings renovations	187,470	<b>-70,000</b>	Funding for above
Ex	11	Ex-Capital	Disabled ramp museum	20,000	<b>-20,000</b>	Funds no longer required
In	11	In-TFR	Museums reserves funding	<b>-20,000</b>	<b>20,000</b>	Funding for above
Ex	12	Operating	Festivals & Events	227,140	<b>3,000</b>	Christmas decorations support
Ex	12	Operating	Communications & Marketing	437,747	<b>-3,000</b>	Funding for above
Ex	13	Operating	Training - General Manager's section	19,589	<b>10,000</b>	Adjust training budget for contact centre staff
Ex	13	Operating	Training - Env & Community Services	41,169	<b>-2,500</b>	Adjust training budget for contact centre staff
Ex	13	Operating	Training - Technology & Corporate	71,961	<b>-2,500</b>	Adjust training budget for contact centre staff
Ex	13	Operating	Training - Engineering & Operations	54,691	<b>-2,500</b>	Adjust training budget for contact centre staff
Ex	13	Operating	Training - Planning & Regulation	68,403	<b>-2,500</b>	Adjust training budget for contact centre staff
Ex	14	Operating	Contact Centre staff uniforms		<b>8,000</b>	Uniforms required

In/ Ex	No.	Category	Description	Current Vote	Change to Vote	Details / Comments
Ex	15	Ex-Operating	Contact Centre casual staff		8,400	40 hours/month to cover leave
Ex	16	Ex-Operating	Building Control advertising	10,000	5,000	All Building DAs now advertised
In	17	In-Operating	s138 driveway applications	-8,110	4,000	Economic downturn
In	18	In-Operating	Registration construction certificate	-18,000	5,000	Economic downturn
In	19	In-Operating	Registration occupation certificate	-21,268	3,000	Economic downturn
In	20	In-Operating	Building DA fees	-352,000	100,000	Economic downturn
In	21	In-Operating	Building DA advertising fees	-18,000	5,000	Economic downturn
In	22	Operating	Building environmental enforcement levy	-95,145	20,000	Economic downturn
Ex	22	Ex-OpEmp	Environmental compliance (Building)	164,861	-20,000	Saving from unfilled vacancy
Ex	23	Ex-Operating	Acceleration Fund Draft LEP	0	27,188	LEP review
In	23	In-OG&C	Department of Planning grant	0	-27,188	Funding for above
Ex	24	Ex-Operating	Speed Zone Changes (Installation) - Kyogle Road	0	35,950	RTA funded project
In	24	In-OG&C	RTA funding	0	-35,950	Funding for above
Ex	25	Ex-Operating	Speed Zone Changes (Supply) - Kyogle Road	0	16,875	RTA funded project
In	25	In-OG&C	RTA funding	0	-16,875	Funding for above
In	26	In-Operating	s68 stormwater applications	-90,000	20,000	Economic downturn
In	26	In-TFR	Car parking reserve		-20,000	Funding for above
Ex	27	Ex-Operating	Goorimahbah 3 Brothers public art	117,431	15,000	Further expenditure
Ex	27	Ex-Operating	Cultural Development Fund	19,771	-15,000	Funding for above
Ex	28	Ex-OpOther	Corporate legal expenses	45,376	37,081	Sharples
In	29	In-Operating	s603 certificates	-153,042	70,000	Economic downturn
In	30	In-CG&C	s94 admin levy	-109,619	13,000	Economic downturn
Ex	31	Ex-Operating	International Day of people with Disability	800	1,000	Adjustment of budget
Ex	31	Ex-Operating	Aged & Disability project costs	12,000	-1,000	Adjustment of budget
Ex	32	Ex-Operating	Baby Health Centres	3,476	-3,476	Budget no longer required
Ex	34	Ex-OpEmp	Infrastructure Planning	424,536	-76,000	Saving from unfilled vacancy
Ex	35	Ex-OpEmp	Infrastructure Planning	424,536	-117,634	Project engineer not required
Ex	35	In-Recoup	Contribution Plan 4	-117,634	117,634	Funding for above
Ex	36	Ex-Operating	Advance Design/Survey	81,758	-10,000	Projected savings
Ex	37	Ex-OpOther	Design legal expenses	29,809	-21,379	Projected savings
Ex	38	Ex-Operating	Road closure expenses	33,073	-25,000	Projected savings
Ex	39	Ex-OpEmp	Contract Section	642,240	-70,000	Salary booked to projects
In	40	In-Interest	Rates Extra Charges		-125,241	Interest on overdue rates Council resolution 13 Dec 2011
Ex	41	Ex-Capital	Records/Museum Storage Shed	0	1,295,502	
In	41	In-TFR	Internal Loan - Waste Management Reserve		-430,031	Funding of Unit 1
In	41	In-TFR	Land Development Reserve		-150,000	Funding of Unit 2
In	41	In-Loan funds	Loan Funds - Records Storage		-262,867	Funding of Unit 2
Ex	41	Ex-Capital	Tweed Regional Museum - Tweed	1,207,133	-452,604	Funding of Unit 3
Ex	42	Ex-Capital	Depot Road sportsfield		600,000	Ongoing construction
In	42	In-Recoup	Contribution Plan 25		-600,000	Funding for above
Ex	43	Ex-Capital	Chapel relocation		87,000	Finalisation of project

In/ Ex	No.	Category	Description	Current Vote	Change to Vote	Details / Comments
In	43	Ex-Operating	Internal income - Parks Asset Maintenance		-87,000	Funding for above
In	44	In-Operating	Health and Safety Initiatives Fund income		-17,910	Sale of manual
Ex	44	Ex-Operating	Health and Safety Initiatives Fund expenses		17,910	Health & Safety initiatives
Ex	45	Ex-TTR	Payment to Works Carried Forward reserve	124,228	-29,759	Part reversal of transfer (Sep QBR)
Ex	46	Ex-Operating	NSW SLSC Championships	80,000	20,000	Additional in-kind support
					<b>0</b>	
			<b>Sewer Fund</b>			
Ex	47	Ex-Operating	Various Operating Expenses		-229,897	Review of operating budget
In	47	In-Rates	Rates & Annual Charges		-494,011	Annual charges reviewed
In	47	In-CG&C	Grants and Contributions - Capital		-532,097	s64 charges reviewed
Ex	47	Ex-TTR	Reversal of s64 income		532,097	Restriction of above
Ex	47	Ex-Capital	Various Capital Works		-3,078,200	Deferrals and adjustments
In	47	In-TFR	Transfers from Asset Replacement Reserve		2,639,908	Funding adjustment
In	47	In-Recoup	Transfers from Capital Contributions Reserve		1,162,200	Funding adjustment
					<b>0</b>	
			<b>Water Fund</b>			
Ex	48	Ex-Operating	Various Operating Expenses		837,528	Review of operating budget
In	48	In-Rates	Rates & Annual Charges		-106,902	Access charges reviewed
In	48	In-Operating	User Charges and Fees		-47,539	Volumetric charges reviewed
In	48	In-CG&C	Grants and Contributions - Capital		-1,107,310	s64 charges reviewed
Ex	48	Ex-TTR	Reversal of s64 income		1,107,310	Restriction of above
Ex	48	Ex-Capital	Various Capital Works		-4,985,722	Deferrals and adjustments
Ex	48	Ex-TTR	Transfers to Asset Replacement Reserve		-296,587	Funding adjustment
In	48	In-TFR	Transfers from Asset Replacement Reserve		-25,764	Funding adjustment
In	48	In-Recoup	Transfers from Capital Contributions Reserve		4,624,986	Funding adjustment
					<b>0</b>	
			<b>2. Variations Arising from Council Resolutions</b>			
Ex	49	Ex-Operating	Coastal Creeks Floodplain Mgt Study & Plan		150,000	Council meeting 15/11/11
Ex	49	Ex-Operating	Voluntary purchase	139,462	-50,000	Funding for above
In	49	In-OG&C	State Floodplain Management grant		-100,000	Funding for above
Ex	50	Ex-Capital	Banora Point Community Centre additions	0	36,000	Council meeting 19/07/11
In	50	In-Recoup	S94 CP 3 - Community Facilities	0	-36,000	Funding for above
In	51	In-Operating	Lease fees - Community Transport	0	-13,000	Council meeting 19/04/11
Ex	51	Ex-Operating	BPCC Reserve from lease fees	0	13,000	Council meeting 19/04/11
Ex	52	Ex-Capital	Chinderah Bay Drive roundabout	0	410,000	Council meeting 24/1/12
Ex	52	Ex-Capital	Chinderah Bay Drive	450,000	-175,000	Council meeting 24/1/12
Ex	52	Ex-Operating	Chinderah foreshore landscaping		-50,000	Council meeting 24/1/12
In	52	In-CG&C	Black Spot grant		-185,000	Council meeting 24/1/12
					<b>0</b>	
			<b>Summary of Votes by Type</b>			
			2011/12 Variations		0	
			Council Resolutions		0	
			Carried forward		0	
					<b>0</b>	



In/ Ex	No.	Category	Description	Current Vote	Change to Vote	Details / Comments	
<b>Key to Category codes</b>							
		Ex-OpEmp	Employee costs				
		Ex-Operating	Materials & contracts				
		Ex-Interest	Interest on loans				
		Ex-OpOther	Other operating expenses				
		Ex-Capital	Capital works				
		Ex-Loan Reps	Repayment on principal on loans				
		Ex-TTR	Transfers to reserves				
		In-Rates	Rates & annual charges				
		In-Interest	Interest income				
		In-OG&C	Operating grants & contributions				
		In-CG&C	Capital grants & contributions				
		In-Operating	User charges & fees				
		In-OpOther	Other operating income				
		In-Loan funds	Loan funds				
		In-Recoup	Recoupment from s64 & s94 funds				
		In-TFR	Transfers from reserves				
		In-Sales	Proceeds from sale of assets				
		<u>Expenses</u>					
			Employee costs		-283,634		
			Materials & Contracts		599,808		
			Interest		0		
			Other Operating costs		15,702		
			Capital		-6,235,490		
			Loan Repayments		0		
			Transfers to Reserves		1,286,371		
					-4,617,243		
		<u>Income</u>					
			Rates and Annual Charges		-600,913		
			Interest revenue		-125,241		
			Operating Grants & Conts		-180,013		
			Capital Grants & Conts		-2,815,207		
			User Charges & Fees		161,551		
			Other Operating Revenue		0		
			Loan Funds		-262,867		
			Recoupments		6,400,820		
			Transfers from Reserves		2,039,113		
			Asset Sales		0		
					4,617,243		
			Net		0		
		<b>Summary of Votes - by Division</b>					
			Technology & Corporate Services		337,863		
			Planning & Regulation		151,874		
			Community & Natural Resources		-318,580		
			Engineering & Operations		-204,879		
			General Manager		33,722		
					0		

**Results by fund:**

**General Fund**

The General Fund is expected to remain as a “balanced budget”.

The NSW Surf Life Saving have requested some additional support from Council for this year’s NSW Surf Life Saving Championships being held at Kingscliff Beach from 2 March to 11 March 2012. Due to the beach conditions this year’s competition areas will be split with water competition areas in the far north and far south of Kingscliff Beach and the boats competition will be held at either Fingal or Pottsville. This increases the costs to transportation of equipment, officials, and competitors on the competition days and means that administration/scorekeeping will have to occur from various locations close to the competition stages. Considerable extra cost will be incurred by the event organisers in doing so and Council has been asked to help by extending its assistance to ensure the smooth operation of this major sporting event in the Tweed. Therefore this QBR allows for an additional \$20,000 contribution to the 2012 NSW Surf Life Saving competition.

**Water Fund**

The Water Fund is expected to remain as a “balanced budget”.

**Sewer Fund**

The Sewer Fund is expected to remain as a “balanced budget”.

## Quarterly Budget Review Statements

### Income & Expense - Consolidated Budget Review Statement for the quarter ended 31 December 2011

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

#### Income

Rates and Annual Charges	77,934	(123)	-	77,811	601	78,412	40,077
User Charges and Fees	32,034	(89)	-	31,945	(161)	31,784	15,557
Interest and Investment Revenue	7,640	663	-	8,303	125	8,428	6,990
Other Revenues	1,872	-	-	1,872	-	1,872	720
Grants & Contributions - Operating	15,560	341	-	15,901	180	16,081	6,717
Grants and Contributions - Capital	6,362	1,947	-	8,309	2,815	11,124	2,234
- Contributions (S94)	8,862	-	-	8,862	-	8,862	1,181
Net gain from the disposal of assets	-	-	-	-	-	-	270
Share of interests in joint ventures	-	-	-	-	-	-	-
<b>Total Income</b>	<b>150,264</b>	<b>2,739</b>	<b>-</b>	<b>153,003</b>	<b>3,560</b>	<b>156,563</b>	<b>73,746</b>

#### Expense

Employee costs	43,654	(440)	-	43,214	(284)	42,930	21,327
Borrowing Costs	13,307	-	-	13,307	-	13,307	6,673
Materials & Contracts	40,984	15,472	-	56,456	600	57,056	21,599
Depreciation	38,141	-	-	38,141	-	38,141	19,071
Legal Costs	427	-	-	427	37	464	215
Consultants	728	-	-	728	-	728	295
Other Expenses	13,553	(38)	-	13,515	(20)	13,495	4,059
Interest and Investment Losses	-	-	-	-	-	-	-
Net Loss from Disposal of Assets	-	-	-	-	-	-	-
Share of interests in joint ventures	-	-	-	-	-	-	-
<b>Total Expenses</b>	<b>150,794</b>	<b>14,994</b>	<b>-</b>	<b>165,788</b>	<b>333</b>	<b>166,121</b>	<b>73,239</b>

#### Net Operating Result

(530)	(12,255)	-	(12,785)	3,227	(9,558)	507
-------	----------	---	----------	-------	---------	-----

#### Net Operating Result before capital items

(6,892)	(14,202)	-	(21,094)	412	(20,682)	(1,727)
---------	----------	---	----------	-----	----------	---------

**Funding Statement - Consolidated - Source & Application of Funds**

Operating Result (Income Statement)	(530)	(12,255)	-	(12,785)	3,227	(9,558)
<b>Add Back non-funded items:</b>						
Depreciation	38,141	-	-	38,141	-	38,141
		-	-	-	-	-
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	31,153	18,386	-	49,539	(6,401)	43,138
Transfers from Internally Restricted Cash	27,070	24,829	-	51,899	(2,039)	49,860
Proceeds from sale of assets	3,587	762	-	4,349	-	4,349
Loan Funds Utilised	9,443	6,488	-	15,931	263	16,194
Repayments from Deferred Debtors	-	-	-	-	-	-
<b>Funds Available</b>	<b>108,864</b>	<b>38,210</b>	<b>-</b>	<b>147,074</b>	<b>(4,950)</b>	<b>142,124</b>
<b>Funds were applied to:</b>						
Purchase and construction of assets	79,305	36,390	-	115,695	(6,236)	109,459
Repayment of principal on loans	6,435	-	-	6,435	-	6,435
Transfers to Externally Restricted Cash	14,238	-	-	14,238	-	14,238
Transfers to Internally Restricted Cash	8,886	1,820	-	10,706	1,287	11,993
<b>Funds Used</b>	<b>108,864</b>	<b>38,210</b>	<b>-</b>	<b>147,074</b>	<b>(4,949)</b>	<b>142,125</b>
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Income & Expense- General Fund Budget Review Statement for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Income**

Rates and Annual Charges	55,681	2		55,683	-	55,683	28,398
User Charges and Fees	16,439	(18)		16,421	(209)	16,212	8,266
Interest and Investment Revenue	3,512			3,512	125	3,637	3,478
Other Revenues	1,651			1,651	-	1,651	538
Grants & Contributions - Operating	14,668	327		14,995	180	15,175	6,636
Grants and Contributions - Capital	2,264	4,406		6,670	1,176	7,846	970
- Contributions (S94)	8,862			8,862		8,862	1,181
Net gain from the disposal of assets				-		-	
Share of interests in joint ventures				-		-	
<b>Total Income</b>	<b>103,077</b>	<b>4,717</b>	<b>-</b>	<b>107,794</b>	<b>1,272</b>	<b>109,066</b>	<b>49,467</b>

**Expense**

Employee costs	35,010	(440)		34,570	(284)	34,286	16,833
Borrowing Costs	5,765			5,765	-	5,765	2,882
Materials & Contracts	24,899	15,643		40,542	(8)	40,534	18,437
Depreciation	22,934			22,934		22,934	11,467
Legal Costs	377			377	37	414	212
Consultants	81			81		81	246
Other Expenses	10,774	(38)		10,736	(20)	10,716	2,718
Interest and Investment Losses				-		-	
Net Loss from Disposal of Assets				-		-	
Share of interests in joint ventures				-		-	
<b>Total Expenses</b>	<b>99,840</b>	<b>15,165</b>	<b>-</b>	<b>115,005</b>	<b>(275)</b>	<b>114,730</b>	<b>52,795</b>

**Net Operating Result**

	3,237	(10,448)	-	(7,211)	1,547	(5,664)	(3,328)
--	-------	----------	---	---------	-------	---------	---------

**Net Operating Result before capital items**

	(7,889)	(14,854)	-	(13,881)	371	(13,510)	(4,298)
--	---------	----------	---	----------	-----	----------	---------

**Funding Statement - General Fund - Source & Application of Funds**

Operating Result (Income Statement)	3,237	(10,448)	-	(7,211)	1,547	(5,664)
<b>Add Back non-funded items:</b>						
Depreciation	22,934	-	-	22,934	-	22,934
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	13,396	13,029		26,425	(614)	25,811
Transfers from Internally Restricted Cash	1,182	15,013		16,195	575	16,770
Proceeds from sale of assets	3,587	762		4,349	-	4,349
Loan Funds Utilised	9,443	6,488		15,931	263	16,194
Repayments from Deferred Debtors				-		-
<b>Funds Available</b>	<b>53,779</b>	<b>24,844</b>	<b>-</b>	<b>78,623</b>	<b>1,771</b>	<b>80,394</b>
<b>Funds were applied to:</b>						
Purchase and construction of assets	35,739	24,533	-	60,272	1,828	62,100
Repayment of principal on loans	2,587	-	-	2,587	-	2,587
Transfers to Externally Restricted Cash	10,088			10,088		10,088
Transfers to Internally Restricted Cash	5,365	311		5,676	(56)	5,620
<b>Funds Used</b>	<b>53,779</b>	<b>24,844</b>	<b>-</b>	<b>78,623</b>	<b>1,772</b>	<b>80,395</b>
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Income & Expense- Sewer Fund Budget Review Statement for the quarter ended 31 December 2011**

Original Budget	Approved Changes			Recommended changes for Council Resolution	Projected year end result	Actual YTD	
	Sep Review	Dec Review	Revised Budget				
(000's)	(000's)	(000's)	(000's)	(000's)	(000's)	(000's)	
<b>Income</b>							
Rates and Annual Charges	18,683	(107)		18,576	494	19,070	9,860
User Charges and Fees	1,484			1,484	-	1,484	895
Interest and Investment Revenue	2,649	261		2,910	-	2,910	3,090
Other Revenues	20			20	-	20	3
Grants & Contributions - Operating	442			442	-	442	81
Grants and Contributions - Capital - Contributions (S94)	1,330	(798)		532	532	1,064	437
Net gain from the disposal of assets				-		-	270
Share of interests in joint ventures				-		-	
<b>Total Income</b>	<b>24,608</b>	<b>(644)</b>	<b>-</b>	<b>23,964</b>	<b>1,026</b>	<b>24,990</b>	<b>14,636</b>

**Expense**

Employee costs	5,297			5,297	-	5,297	2,584
Borrowing Costs	2,687			2,687	-	2,687	1,355
Materials & Contracts	7,871	31		7,902	(230)	7,672	1,332
Depreciation	7,913			7,913		7,913	3,957
Legal Costs				-		-	3
Consultants	86			86		86	16
Other Expenses	1,511			1,511	-	1,511	668
Interest and Investment Losses				-		-	
Net Loss from Disposal of Assets				-		-	
Share of interests in joint ventures				-		-	
<b>Total Expenses</b>	<b>25,365</b>	<b>31</b>	<b>-</b>	<b>25,396</b>	<b>(230)</b>	<b>25,166</b>	<b>9,915</b>

**Net Operating Result**

	(757)	(675)	-	(1,432)	1,256	(176)	4,721
--	-------	-------	---	---------	-------	-------	-------

**Net Operating Result before capital items**

	(2,087)	123	-	(1,964)	724	(1,240)	4,284
--	---------	-----	---	---------	-----	---------	-------

**Funding Statement - Sewer Fund - Source & Application of Funds**

Operating Result (Income Statement)	(757)	(675)	-	(1,432)	1,256	(176)
<b>Add Back non-funded items:</b>						
Depreciation	7,913	-	-	7,913	-	7,913
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	5,212	256		5,468	(1,162)	4,306
Transfers from Internally Restricted Cash	20,794	9,698		30,492	(2,640)	27,852
Proceeds from sale of assets				-		-
Loan Funds Utilised				-	-	-
Repayments from Deferred Debtors				-		-
<b>Funds Available</b>	<b>33,162</b>	<b>9,279</b>	<b>-</b>	<b>42,441</b>	<b>(2,546)</b>	<b>39,895</b>
<b>Funds were applied to:</b>						
Purchase and construction of assets	26,689	10,873	-	37,562	(3,078)	34,484
Repayment of principal on loans	2,909	-	-	2,909	-	2,909
Transfers to Externally Restricted Cash	43			43		43
Transfers to Internally Restricted Cash	3,521	(1,594)		1,927	532	2,459
<b>Funds Used</b>	<b>33,162</b>	<b>9,279</b>	<b>-</b>	<b>42,441</b>	<b>(2,546)</b>	<b>39,895</b>
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Income & Expense- Water Fund Budget Review Statement for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Income**

Rates and Annual Charges	3,570	(18)		3,552	107	3,659	1,819
User Charges and Fees	14,111	(71)		14,040	48	14,088	6,396
Interest and Investment Revenue	1,479	402		1,881	-	1,881	422
Other Revenues	201			201	-	201	179
Grants & Contributions - Operating	450	14		464	-	464	
Grants and Contributions - Capital - Contributions (S94)	2,768	(1,661)		1,107	1,107	2,214	827
Net gain from the disposal of assets				-		-	
Share of interests in joint ventures				-		-	
<b>Total Income</b>	<b>22,579</b>	<b>(1,334)</b>	<b>-</b>	<b>21,245</b>	<b>1,262</b>	<b>22,507</b>	<b>9,643</b>

**Expense**

Employee costs	3,347			3,347	-	3,347	1,910
Borrowing Costs	4,855			4,855	-	4,855	2,436
Materials & Contracts	8,214	(202)		8,012	838	8,850	1,830
Depreciation	7,294			7,294		7,294	3,647
Legal Costs	50			50		50	
Consultants	561			561		561	33
Other Expenses	1,268			1,268	-	1,268	673
Interest and Investment Losses				-		-	
Net Loss from Disposal of Assets				-		-	
Share of interests in joint ventures				-		-	
<b>Total Expenses</b>	<b>25,589</b>	<b>(202)</b>	<b>-</b>	<b>25,387</b>	<b>838</b>	<b>26,225</b>	<b>10,529</b>

**Net Operating Result**

	(3,010)	(1,132)	-	(4,142)	424	(3,718)	(886)
--	---------	---------	---	---------	-----	---------	-------

**Net Operating Result before capital items**

	242	2,793	-	3,035	(1,531)	1,504	59
--	-----	-------	---	-------	---------	-------	----



**Funding Statement - Water Fund - Source & Application of Funds**

Operating Result (Income Statement)	(3,010)	(1,132)	-	(4,142)	424	(3,718)
<b>Add Back non-funded items:</b>						
Depreciation	7,294	-	-	7,294	-	7,294
<b>Add non-operating funding sources</b>						
Transfers from Externally Restricted Cash	12,545	5,101		17,646	(4,625)	13,021
Transfers from Internally Restricted Cash	5,094	118		5,212	26	5,238
Proceeds from sale of assets				-	-	-
Loan Funds Utilised				-	-	-
Repayments from Deferred Debtors				-	-	-
<b>Funds Available</b>	<b>21,923</b>	<b>4,087</b>	<b>-</b>	<b>26,010</b>	<b>(4,175)</b>	<b>21,835</b>
<b>Funds were applied to:</b>						
Purchase and construction of assets	16,877	984		17,861	(4,986)	12,875
Repayment of principal on loans	939			939	-	939
Transfers to Externally Restricted Cash	4,107			4,107		4,107
Transfers to Internally Restricted Cash	-	3,103		3,103	811	3,914
<b>Funds Used</b>	<b>21,923</b>	<b>4,087</b>	<b>-</b>	<b>26,010</b>	<b>(4,175)</b>	<b>21,835</b>
<b>Increase/(Decrease) in Available Working Capital</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 December 2011 and should be read in conjunction with other documents in the QBRs.

**Capital Budget Review Statement - Consolidated - for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Capital Funding \***

Rates and other untied funding	14,553	1,054		15,607	292	15,899	6,212
Capital Grants & Contributions	4,263	4,406		8,669	1,189	9,858	1,828
Internal Restrictions (Reserves)	26,185	10,142		36,327	(1,696)	34,631	10,460
External Restrictions							
- s64 & s94 funds	29,868	14,152		44,020	(6,283)	37,737	5,606
Other Capital Funding Sources							
- loans	7,284	6,488		13,772	263	14,035	768
Income from sale of assets							
- plant and equipment	2,287			2,287		2,287	608
- Land, Buildings, Furniture, Fittings	1,300			1,300		1,300	
<b>Total Capital Funding</b>	<b>85,740</b>	<b>36,242</b>		<b>121,982</b>	<b>(6,235)</b>	<b>115,747</b>	<b>25,482</b>

**Capital Expenditure**

New Assets

- Plant and Equipment	1,413	1,547		2,960		2,960	38
- Land, Buildings, Furniture, Fittings	6,338	4,328		10,666	2,070	12,736	368
- Roads, Bridges, Footpaths	8,797	7,350		16,147		16,147	647
- Drainage							
- Water & Sewer Infrastructure	21,333	(1,726)		19,607	(6,287)	13,320	2,248
- Other	1,170	54		1,224	600	1,824	662
Renewals (Replacement)							
- Plant and Equipment	5,598	997		6,595		6,595	1,475
- Land, Buildings, Furniture, Fittings	570	781		1,351	65	1,416	144
- Roads, Bridges, Footpaths	7,989	1,874		9,863		9,863	2,605
- Drainage	1,718			1,718		1,718	274
- Water & Sewer Infrastructure	3,540	1,036		4,576	193	4,769	767
- Other	13	86		99		99	383
Upgrades							
- Plant and Equipment	602	185		787		787	
- Land, Buildings, Furniture, Fittings	1,576	4,145		5,721	(907)	4,814	930
- Roads, Bridges, Footpaths	470	3,011		3,481		3,481	376
- Drainage		6		6		6	
- Water & Sewer Infrastructure	18,178	12,548		30,726	(1,969)	28,757	10,557
- Other		20		20		20	1
Loan Repayments (principal)	6,435			6,435		6,435	4,007
<b>Total Capital Expenditure</b>	<b>85,740</b>	<b>36,242</b>		<b>121,982</b>	<b>(6,235)</b>	<b>115,747</b>	<b>25,482</b>

**Capital Budget Review Statement - General Fund - for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Capital Funding \***

Rates and other untied funding	10,024	136		10,160	292	10,452	4,415
Capital Grants & Contributions	4,263	4,406		8,669	1,189	9,858	1,828
Internal Restrictions (Reserves)	1,060	325		1,385	580	1,965	229
External Restrictions							
- s64 & s94 funds	12,108	13,029		25,137	(496)	24,641	1,196
Other Capital Funding Sources							
- loans	7,284	6,488		13,772	263	14,035	768
Income from sale of assets							
- plant and equipment	2,287			2,287		2,287	608
- Land,Buildings,Furniture,Fittings	1,300			1,300		1,300	
<b>Total Capital Funding</b>	<b>38,326</b>	<b>24,384</b>		<b>62,710</b>	<b>1,828</b>	<b>64,538</b>	<b>9,044</b>

**Capital Expenditure**

New Assets

- Plant and Equipment	1,398	1,547		2,945		2,945	33
- Land,Buildings,Furniture,Fittings	5,838	4,328		10,166	2,070	12,236	252
- Roads, Bridges, Footpaths	8,797	7,350		16,147		16,147	647
- Drainage							
- Water & Sewer Infrastructure							
- Other	1,170	54		1,224	600	1,824	662
Renewals (Replacement)							
- Plant and Equipment	5,598	997		6,595		6,595	1,475
- Land,Buildings,Furniture,Fittings	570	781		1,351	65	1,416	144
- Roads, Bridges, Footpaths	7,989	1,874		9,863		9,863	2,605
- Drainage	1,718			1,718		1,718	274
- Water & Sewer Infrastructure							
- Other	13	86		99		99	383
Upgrades							
- Plant and Equipment	602	185		787		787	
- Land,Buildings,Furniture,Fittings	1,576	4,145		5,721	(907)	4,814	930
- Roads, Bridges, Footpaths	470	3,011		3,481		3,481	376
- Drainage		6		6		6	
- Water & Sewer Infrastructure							
- Other		20		20		20	1
Loan Repayments (principal)	2,587			2,587		2,587	1,262
<b>Total Capital Expenditure</b>	<b>38,326</b>	<b>24,384</b>		<b>62,710</b>	<b>1,828</b>	<b>64,538</b>	<b>9,044</b>

**Capital Budget Review Statement - Sewer Fund - for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Capital Funding \***

Rates and other untied funding	3,590	918		4,508		4,508	1,646
Capital Grants & Contributions							
Internal Restrictions (Reserves)	20,794	9,699		30,493	(1,916)	28,577	9,534
External Restrictions							
- s64 & s94 funds	5,214	256		5,470	(1,162)	4,308	2,390
Other Capital Funding Sources							
- loans							
Income from sale of assets							
- plant and equipment							
- Land,Buildings,Furniture,Fittings							
<b>Total Capital Funding</b>	<b>29,598</b>	<b>10,873</b>		<b>40,471</b>	<b>(3,078)</b>	<b>37,393</b>	<b>13,570</b>

**Capital Expenditure**

New Assets

- Plant and Equipment	15			15		15	5
- Land,Buildings,Furniture,Fittings							78
- Roads, Bridges, Footpaths							
- Drainage							
- Water & Sewer Infrastructure	10,825	(2,861)		7,964	(1,250)	6,714	1,282
- Other							
Renewals (Replacement)							
- Plant and Equipment							
- Land,Buildings,Furniture,Fittings							
- Roads, Bridges, Footpaths							
- Drainage							
- Water & Sewer Infrastructure	1,410	875		2,285	193	2,478	185
- Other							
Upgrades							
- Plant and Equipment							
- Land,Buildings,Furniture,Fittings							
- Roads, Bridges, Footpaths							
- Drainage							
- Water & Sewer Infrastructure	14,439	12,859		27,298	(2,021)	25,277	9,736
- Other							
Loan Repayments (principal)	2,909			2,909		2,909	2,284
<b>Total Capital Expenditure</b>	<b>29,598</b>	<b>10,873</b>		<b>40,471</b>	<b>(3,078)</b>	<b>37,393</b>	<b>13,570</b>

**Capital Budget Review Statement - Water Fund - for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			

**Capital Funding \***

Rates and other untied funding	939		939		939	151
Capital Grants & Contributions						
Internal Restrictions (Reserves)	4,331	118	4,449	(360)	4,089	697
External Restrictions						
- s64 & s94 funds	12,546	867	13,413	(4,625)	8,788	2,020
Other Capital Funding Sources						
- loans						
Income from sale of assets						
- plant and equipment						
- Land,Buildings,Furniture,Fittings						
<b>Total Capital Funding</b>	<b>17,816</b>	<b>985</b>	<b>18,801</b>	<b>(4,985)</b>	<b>13,816</b>	<b>2,868</b>

**Capital Expenditure**

New Assets

- Plant and Equipment						
- Land,Buildings,Furniture,Fittings	500		500		500	38
- Roads, Bridges, Footpaths						
- Drainage						
- Water & Sewer Infrastructure	10,508	1,135	11,643	(5,037)	6,606	966
- Other						
Renewals (Replacement)						
- Plant and Equipment						
- Land,Buildings,Furniture,Fittings						
- Roads, Bridges, Footpaths						
- Drainage						
- Water & Sewer Infrastructure	2,130	161	2,291		2,291	582
- Other						
Upgrades						
- Plant and Equipment						
- Land,Buildings,Furniture,Fittings						
- Roads, Bridges, Footpaths						
- Drainage						
- Water & Sewer Infrastructure	3,739	(311)	3,428	52	3,480	821
- Other						
Loan Repayments (principal)	939		939		939	461
<b>Total Capital Expenditure</b>	<b>17,816</b>	<b>985</b>	<b>18,801</b>	<b>(4,985)</b>	<b>13,816</b>	<b>2,868</b>

\* Note, figures in the Actual YTD column of capital funding are estimates only.

Detailed calculations of funding results are performed annually.

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 December 2011

and should be read in conjunction with other documents in the QBRS.

**Cash and Investments Budget Review Statement for the quarter ended 31 December 2011**

Original Budget (000's)	Approved Changes			Recommended changes for Council Resolution (000's)	Projected year end result (000's)	Actual * YTD (000's)
	Sep Review (000's)	Dec Review (000's)	Revised Budget (000's)			
<b>Unrestricted</b>	2,009		2,009		2,009	20,505
<b>Externally restricted</b>						
RTA Contributions	143	(143)	0		0	143
Developer contributions	25,213		25,213	(614)	24,599	27,225
Domestic waste management	8,483		8,483		8,483	8,373
Special Rates	229		229		229	229
Special purpose grants	3,252	(3,252)	0	1,356	1,356	3,252
Water Supplies	20,813	(2,117)	18,696		18,696	25,024
Sewerage Services	42,081	(258)	41,823		41,823	55,218
Other	933		933		933	933
<b>Total Externally restricted</b>	101,147	(5,770)	95,377	742	96,119	120,397
<b>Internally restricted</b>						
Employee Leave entitlements	2,399		2,399		2,399	2,199
Unexpended loans	6,488		6,488		6,488	6,488
Unexpended grants	3,404	(2,190)	1,214	5	1,219	3,404
7 Year Plan	3,535	(2,978)	557		557	2,978
Works Carried Forward	4,584	(3,969)	615		615	4,584
Replacement of Plant and Vehicles	1,102		1,102		1,102	1,075
Tip improvements	3,442		3,442	(430)	3,012	3,065
Asset renewals	958		958		958	943
Other	4,319	(2,387)	1,932	(206)	1,726	3,968
<b>Total Internally restricted</b>	30,231	(11,524)	18,707	(631)	18,076	28,704
<b>Total Restricted</b>	131,378	(17,294)	114,084	111	114,195	149,101
<b>Total cash and investments</b>	133,387	(17,294)	116,093	111	116,204	169,606
<b>Available cash</b>	2,009	0	2,009	0	2,009	20,505

\* Note, the breakdown between various categories of restriction is an estimate only.

Detailed calculations of cash restrictions are performed annually.

**Notes:**

The available cash position excludes restricted funds. External restrictions are funds that must be spent for a specific purpose

and cannot be used by council for general operations. Internal restrictions are funds that council has determined will be used for a specific purpose.

**Statement of compliance with investment policy:**

Council's investments have been made in accordance with Council's investment policies.

**Reconciliation of restricted funds with current investment report:**

	<b>(000's)</b>
Total restricted funds	149,101
Total invested funds as per December Investment Report	155,346
Note, some restricted funds are held as cash as they will be utilised in the current period.	

**Statement of bank reconciliation:**

Cash has been reconciled with the bank statement. The last bank reconciliation was completed to 31 January 2012

**Reconciliation of cash and investments:**

	<b>(000's)</b>
Cash and investments as per above	169,606
<b>Cash on hand and at bank</b>	14,260
<b>Investments</b>	<u>155,346</u>
	169,606

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 December 2011 and should be read in conjunction with other documents in the QBRs.

**Key Performance Indicators Budget Review Statement for the quarter ended 31 December 2011**

Note that KPIs will be distorted by the short reporting period (3 months), and by the fact that detailed calculations are only prepared on an annual basis.

These ratios should therefore be viewed with caution.

	<b>Amounts</b>	<b>Indicator</b>
<b>1. Unrestricted Current Ratio</b>		
	<b>(000's)</b>	
Current assets less all external restrictions	<u>99,725</u>	3.77:1
Current liabilities	26,444	

**Purpose:**

To assess the adequacy of working capital and its ability to satisfy obligations in the short term for the unrestricted activities of Council.

**Comment:**

Higher than it would be for the annual calculation, as expenditure throughout the year will run down cash and receivables.

	<b>Amounts</b>	<b>Indicator</b>
<b>2. Debt Service Ratio</b>		
	<b>(000's)</b>	
Debt Service Cost	<u>10,123</u>	14.93%
Selected operating income	67,824	

**Purpose:**

To assess the impact of loan principal & interest repayments on the discretionary revenue of Council.

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 December 2011 and should be read in conjunction with other documents in the QBR.

**Budget Review Contracts and Other Expenses for the quarter ended 31 December 2011**

PART A-Contracts Listing		Contract value	Commencement	Duration of	Budgeted
Contractor	Contract detail & purpose	\$	date	contract	(Y/N)
Craigiedale	EQ2011-187 Provision of Mowing & Ground maintenance to Council Reserves	\$126,550.00	01/11/2011	17 months	Y
Tinlen	EC2011-203 Design & Construct Records Storage Facility	\$1,027,719.00	To be determined	26 weeks	Y
Fulton Hogan Industries Pty Ltd	EQ2011-229 - Kennedy Drive Asphalt Works Stage 1	\$123,658.04	To be determined	2 weeks	Y

**PART B - Consultancy and Legal expenses**

Expense	Expenditure YTD	Budgeted
	\$	(Y/N)
Consultancies	487,289	Y
Legal expenses	217,666	Partial

This document forms part of Tweed Shire Council's Quarterly Budget Review Statement for the quarter ended 31 December 2011 and should be read in conjunction with other documents in the QBR.



**Statutory Statement – Local Government (General) Regulations 2005  
(Sections 202 & 203) by “Responsible Accounting Officer”**

**202 Responsible accounting officer to maintain system for budgetary control**

*The responsible accounting officer of a council must:*

- (a) establish and maintain a system of budgetary control that will enable the council's actual income and expenditure to be monitored each month and to be compared with the estimate of the council's income and expenditure, and*
- (b) if any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

**203 Budget review statements and revision of estimates**

- (1) Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the Statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.*
- (2) A budget review statement must include or be accompanied by:
  - (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*
  - (b) if that position is unsatisfactory, recommendations for remedial action.**
- (3) A budget review statement must also include any information required by the Code to be included in such a statement.*

**Statutory Statement**

It is my opinion that the Quarterly Budget Review Statement for Tweed Shire Council for the quarter ended 31/12/2011 indicates that Council's projected financial position at 30/6/2012 will be satisfactory at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.



M A Chorlton 10/02/2012  
**“Responsible Accounting Officer”**  
**Manager Financial Services**  
**Tweed Shire Council**

**OPTIONS:**

Not Applicable

**CONCLUSION:**

Refer to Statutory Statement above.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable

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

As detailed in the report.

**c. Legal:**

No-Legal advice has not been received  
Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

Not Applicable

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

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.3 Financial requirements and the community's capacity to pay will be taken into account when meeting the community's desired levels of service
- 1.2.3.1 Financial Services and legislative financial reporting
- 1.2.3.1.1 Prepare and maintain a balanced budget throughout the financial year.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

---

**THIS PAGE IS BLANK**

**36 [TCS-CM] Corporate Quarterly Report - 1 October to 31 December 2011**

**SUBMITTED BY:** Corporate Governance

**FILE NUMBER:** N/A

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

The Corporate Quarterly Report for the period 1 October to 31 December 2011 is presented for consideration by Council.

The report details the quarterly progress of the reporting period to 31 December 2011 on activities identified being undertaken for the Operational Plan 2011/2012 adopted by Council at its meeting on 21 June 2011.

**RECOMMENDATION:**

**That Council receives and notes the Corporate Quarterly Report from 1 October to 31 December 2011.**

## REPORT:

At the Council meeting held Tuesday 21 June 2011 the Operational Plan 2011-2012 was adopted by Council and a reporting structure has been developed which is based upon four themes identified below:



**Civic Leadership** - Aim: To set the overall direction and long-term goals for the Tweed in accordance with community aspirations.



**Supporting Community Life** - Aim: To create a place where people are healthy, safe, connected and in harmony with the natural environment, to retain and improve the quality of community life.



**Strengthening the Economy**- Aim: To strengthen and diversify the region's economic base in a way that complements the environmental and social values of the Tweed.



**Caring for the Environment** - Aim: For Council and the community to value, respect and actively participate in the care and management of our natural environment for current and future generations.

In addition to the quarterly reporting, Council has been successful in the receipt of a number of prestigious awards that relate to the previous financial periods. These awards include:

- **A R Bluett Memorial Award 2011** - presented each year to the Council that, in the opinion of the Trustees, has made the greatest relative progress and is considered to be the highest accolade to which a Council can aspire. An award citation from the trustees highlighted a number of Council's achievements during 2010/11, including:
  - Bray Park Water Treatment Plant construction (\$76 million fully funded by Council)
  - The Jack Evans Boat Harbour revitalisation project (\$8 million funded by grants and S94 funds)
  - The "excellent" *Tweed Link* weekly newspaper and Council's staff newsletters
  - Improved customer services, including SMS and smartphone applications and restructured customer service centre
  - Major refurbishments of Fingal Head Boat Harbour, Arkinstall Park Complex, Cabarita Beach streetscape and completion of Bray Park cycleway.
- **Natural Environment Protection and Enhancement - On Ground Works Category Award**
- **R H Dougherty Award 2011 - Excellence in Communication Division B** - presented for its engagement campaign for the Tweed Community Strategic Plan.
- **Australian Institute of Landscape Architects (AILA) NSW Awards** - "2011 AILA NSW Medal for Landscape Architecture" - Jack Evans Boat Harbour Stage 1.

## OPTIONS:

Not Applicable.

**CONCLUSION:**

The General Manager will report quarterly to Council on the progress in meeting targets and objectives stated in the annual Operational Plan.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Not Applicable

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

As per the impacts of the Operational Plan.

**c. Legal:**

No-Legal advice has not been received

Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.2 Council will seek the best value in delivering services
- 1.3.2.3.1 Regular reviews of progress of Delivery Program

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- 1. Quarterly Report - Civic Leadership (ECM 45070505)
  - 2. Quarterly Report - Supporting Community Life (ECM 45070503)
  - 3. Quarterly Report - Strengthening the Economy (ECM 45070502)
  - 4. Quarterly Report - Caring for the Environment (ECM 45070504)
-

**THIS PAGE IS BLANK**

**37 [TCS-CM] Delivery Program Six Monthly Progress Report - 1 July to 31 December 2011**

**SUBMITTED BY: Corporate Governance**

**FILE NUMBER: N/A**

---



**Civic Leadership**

---

**SUMMARY OF REPORT:**

In establishing the Community Strategic Plan, Council gave an undertaking to provide six-monthly progress reports (July-December and January-June) detailing achievements and progress in meeting stated targets and objectives in the Delivery Program.

Quarterly reporting on the overall progress of the Operational Plan is in place. The Delivery Program Six Monthly Progress Report is presented as an exception report which outlines only those key actions and activities that are not meeting the key performance indicators (KPI) and targets as at 31 December 2011.

The first six monthly progress reports 1 July to 31 December details the progress of these activities and is presented for consideration by Council.

**RECOMMENDATION:**

**That Council notes the Delivery Program Six Monthly Progress Report as at 31 December 2011.**



## REPORT:

At the Council meeting held Tuesday 21 June 2011 the Operational Plan 2011-2012 was adopted by Council and a reporting structure has been developed which is based upon four themes identified below:



**Civic Leadership** - Aim: To set the overall direction and long-term goals for the Tweed in accordance with community aspirations.



**Supporting Community Life** - Aim: To create a place where people are healthy, safe, connected and in harmony with the natural environment, to retain and improve the quality of community life.



**Strengthening the Economy**- Aim: To strengthen and diversify the region's economic base in a way that complements the environmental and social values of the Tweed.



**Caring for the Environment** - Aim: For Council and the community to value, respect and actively participate in the care and management of our natural environment for current and future generations.

In establishing the Community Strategic Plan, Council gave an undertaking to provide six-monthly progress reports (July-December and January-June) detailing achievements and progress in meeting stated targets and objectives in the Delivery Program.

The Delivery Program Six Monthly Progress attachments are presented as an exception report which outlines only those key actions and activities that are not meeting the key performance indicators (KPI) and targets as at 31 December 2011.

## OPTIONS:

Not Applicable

## CONCLUSION:

Council will provide an Annual Report (July-June) including audited financial reports to the community. In addition Council will provide six-monthly progress reports (July-December and January-June) detailing achievements and progress in meeting stated targets and objectives in the Delivery Program.

## COUNCIL IMPLICATIONS:

### a. Policy:

Not Applicable

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

As per the impacts of the Delivery Program

### c. Legal:

No-Legal advice has not been received

Attachment of Legal Advice-Not Applicable

**d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.2 Council will seek the best value in delivering services
- 1.3.2.3.1 Regular reviews of progress of Delivery Program

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- 1. Exception Report - Civic Leadership (ECM 45070499)
  - 2. Exception Report - Supporting Community Life (ECM 45071541)
  - 3. Exception Report - Strengthening the Economy (ECM 45070500)
  - 4. Exception Report - Caring for the Environment (ECM 45070498)
-

**THIS PAGE IS BLANK**

## REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

### 38 [SUB-TRC] Minutes of the Tweed River Committee Meeting held Wednesday 14 December 2011

Venue:

Canvas and Kettle Meeting Room

Time:

9.15am

Cr Milne opened the meeting by welcoming members and recognising the traditional owners of the land on which the meeting was being held.

Present:

Cr Katie Milne (Chair); Robert Quirk (NSW Cane Growers' Association); Richard Hagley, Ben Fitzgibbon (Office of Environment and Heritage); Claire Masters (Tweed Landcare) Rhonda James (Restoration Industry); Max Boyd (Community Representative); Jane Lofthouse, Tom Alletson, David Oxenham, Sebastian Garcia-Cuenca (Tweed Shire Council).

Informal:

Nil.

Apologies:

Lance Tarvey (Office of Environment and Heritage); Ian Hanson (NSW Land & Property Management Authority); Pat Dwyer, Bob Loring (Department of Primary Industries - Fisheries); Judy Robinson (Fingal Head Community Representative); Mark Kingston (Tweed Shire Council).

Minutes of Previous Meeting:

Moved: Max Boyd

Seconded: Richard Hagley

RESOLVED that the Minutes of the Tweed River Committee meeting held Wednesday 12 October 2011 be accepted as a true and accurate record of the proceedings of that meeting.

Business Arising:

BA1. Impact of Wake on Tweed River Banks

Tom reported back on the working group meeting on the wake impact study. It was recommended that the wake study be released to the community as an investigation which contains options to address issues related to wake and river bank erosion, but that it not contain recommendations for actions.

Following a period of public exhibition when the community can make submissions to the findings of the wake study, a river bank erosion management plan will be prepared. This will set out TSC's position with regard to a) works it will undertake to address river bank erosion in specific areas, and b) a policy position on use of vessels in specific areas as it relates to the impact they have on river bank erosion. The management plan will contain

recommendations, and will go on public exhibition in draft form. Council's position on wake will be communicated to NSW Maritime for their consideration in a review of the Tweed River Boating Plan of Management.

**RECOMMENDATION:**

Moved: Max Boyd

Seconded: Claire Masters

That Council places the 'Impact of Wake on Tweed River Bank Erosion Study' on public exhibition.

---

**BA2. Budd Park**

Work to finalise estimates of costs for Budd Park bank stabilisation and park upgrade works are continuing. It was reported that a sum of \$45, 000 can be contributed to the project by Councils flood gate maintenance program.

It was reported that the full scope of work is estimated to cost approximately \$450, 000 and the minimal works required to stabilise the bank costing approximately \$294, 000.

Further discussion regarding the perceived acceptability of Tweed River Committee budget being used to fund this project ensued. Claire Masters requested that Tweed Landcare's objection to the use of Tweed River Committee funds in park rehabilitation works be noted.

The committee was asked to recommend that the project to stabilise the Budd Park river bank through a full re-profile of the bank and associated park upgrade be presented to Council, with a recommendation that it be put on public exhibition, through a process of community consultation.

**RECOMMENDATION:**

Moved: Max Boyd

Seconded: Robert Quirk

That Council places the Budd Park River Bank Stabilisation and Park Enhancement options on public exhibition.

---

**BA3. Stormwater Management**

At the last meeting Cr Milne requested information relating to stormwater management in urban development and what could be undertaken to move beyond what is considered to be industry best practice standards.

Tom explained a range of concepts including:

- Maximising complimentary elements in a treatment train approach.
  - Maximising stormwater infiltration, capture and reuse.
  - Maximising buffers between urban development and waterways, and where practical/appropriate incorporating overland flow through buffers prior to discharge.
  - Consideration of hydrological and hydraulic impacts to reduce the alteration of natural flow regimes.
-

- Applying these principals is very site specific.
- Monitoring the efficacy of stormwater treatment is very difficult and costly to do correctly.

Discussion arising at the completion of this presentation focused on education of householders in the use of chemicals and how this could be delivered, for example by producing a leaflet and issuing it with Tweed Shire Council rate notices. It was observed that to be effective this would need to be a well structured campaign, not just a one off leaflet.

The review of Tweed Shire Council Urban Stormwater Quality Management Plan was then discussed with Tom advising that the draft plan would be tabled at the next Tweed River Committee meeting with a recommendation that it be put on public exhibition.

#### BA4. Gold Coast Airport Water Quality Data

The committee was advised that Council has been briefed on the context of the request for water quality data from the Gold Coast Airport. Council has put the onus on the Tweed River Committee to make a recommendation to Council on the best course of action to pursue.

#### RECOMMENDATION:

Moved: Max Boyd

Seconded: Cr Milne

That Council:

1. Writes to the Gold Coast Airport's regulator, the Commonwealth Department of Infrastructure, to pursue the matter of obtaining water quality data from gold coast airport monitoring of drainage, surface or ground waters that may impact upon Cobaki Broadwater.
2. Includes in the request the context of Tweed Shire Council's role in managing Cobaki Broadwater, and details of previous requests to the airport.
3. Provides a copy of the correspondence to the Commonwealth Department of Infrastructure to the Gold Coast Airport.

---

#### AGENDA:

##### A1. Sustainable Agriculture Program

Sebastian Garcia-Cuenca presented an update of initiatives underway to prepare a sustainable agriculture strategy for the Shire. Information relating to sustainable agriculture can be sourced directly from Sebastian.

---

##### A2. Area 5 Sand extraction – EIS Process

The Area 5 Sand Extraction EIS is in design phase. Director General's requirements for the project and additional detail can be sourced from Jane Lofthouse.

---

A3. Bush Futures Project Update

The Bush Futures Project presentation will be held at the February meeting. It was requested that the bushland audit be presented to the committee with a discussion of opportunities to fund works.

---

A4. Shorebird Education Signs

The Committee discussed expending approximately \$3,000 on the fabrication and installation of 10 shorebird education signs within the Tweed Shire.

---

A5. 2012 World Environment Day

The Committee discussed expending \$5,000 on supporting a world environment day event for school children at the Pottsville Environment Centre.

---

General Business:

GB1. Tweed River Committee Strategic Evaluation and Planning

It was resolved that a special meeting be held to allow the Tweed River Committee to review its existing functions, strategies and priorities. Meeting will be facilitated and involve a review of both issues and approach.

---

GB2. Chinderah Foreshore Issues

A letter from the Chinderah District Residents Association was tabled. Of importance to the Tweed River Committee was the request that a jetty or wharf be provided on the foreshore at Chinderah. The merits of such a structure were discussed and the committee advised that Tom would arrange for a concept plan and costing to be prepared through the Tweed Shire Council waterways infrastructure management program.

The Chinderah Foreshore Master Plan was discussed and a copy requested to be bought to the next Tweed River Committee meeting.

---

GB3. NRCMA CAP Review

Claire advised the committee of the Catchment Management Authority's catchment action plan review process and methods to feed information into this process.

Claire also gave a brief overview of funding opportunities currently available, including those through the Environmental Trust 6 year restoration grants and the Clean Energy Future Carbon Farming Package.

---

**GB4. Treasures of the Tweed Mural – Film Production**

Max made a case for the production of a film focusing on the Treasures of the Tweed Mural, based on its status as (potentially) the longest mural in Australia and that it showcases the Tweed's threatened species and ecological communities.

**RECOMMENDATION:**

Moved: Max Boyd

Seconded: Robert Quirk

That a film focusing on the Treasures of the Tweed mural be made with costs to be shared between NORTEC, Council's Community and Cultural Services Unit and the Tweed River Committee.

---

**Next Meeting:**

The next meeting of the Tweed River Committee will be held Wednesday 8 February 2011.

The meeting closed at 12.40pm.

**EXECUTIVE MANAGEMENT TEAM'S COMMENTS:**

**BA1. Impact of Wake on Tweed River Banks**

Nil.

**BA2. Budd Park**

Nil.

**BA4. Gold Coast Airport Water Quality Data**

Nil.

**GB4. Treasures of the Tweed Mural – Film Production**

Nil.

**EXECUTIVE MANAGEMENT TEAM'S RECOMMENDATIONS:**

**BA1. Impact of Wake on Tweed River Banks**

That Council places the 'Impact of Wake on Tweed River Bank Erosion Study' on public exhibition.

**BA2. Budd Park**

That Council places the Budd Park River Bank Stabilisation and Park Enhancement options on public exhibition.

**BA4. Gold Coast Airport Water Quality Data**

That Council:



1. Writes to the Gold Coast Airport's regulator, the Commonwealth Department of Infrastructure, to pursue the matter of obtaining water quality data from gold coast airport monitoring of drainage, surface or ground waters that may impact upon Cobaki Broadwater.
2. Includes in the request the context of Tweed Shire Council's role in managing Cobaki Broadwater, and details of previous requests to the airport.
3. Provides a copy of the correspondence to the Commonwealth Department of Infrastructure to the Gold Coast Airport.

**GB4. Treasures of the Tweed Mural – Film Production**

That a film focusing on the Treasures of the Tweed mural be produced with costs to be shared between NORTEC, Council's Community and Cultural Services Unit and the Tweed River Committee on an agreed basis.

---

**39 [SUBCOM] Reports from Subcommittees and/or Working Groups**

The following Reports from Subcommittees and/or Working Groups do not contain recommendations for Council decision and are for circulation to Councillor's information.

**UNDER SEPARATE COVER:**

1. Minutes of the Aboriginal Advisory Committee Meeting held Friday 2 December 2011 (ECM 45008804).
  2. Minutes of the Tweed Coastal Committee Meeting held Wednesday 14 December 2011 (ECM 45684998).
  3. Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Thursday 19 January 2012 (ECM 45686007).
  4. Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 29 November 2011 (ECM 46086156)
-

**THIS PAGE IS BLANK**

## **ORDERS OF THE DAY**

### **40 [NOM-Cr B Longland] Small Business Assistance Package**

#### **NOTICE OF MOTION:**

Council regulations, application requirements, fees payable and approval times are often held up as obstacles to the establishment of small business start up in the Shire. In order that Council is able to maximise its assistance in this process:

Councillor B Longland moves that Council seeks the endorsement of the NSW Business Chamber and Destination Tweed to establish a working group with other relevant stakeholders with a view to developing a Small Business Assistance Package for businesses establishing in the Tweed.

---

### **41 [NOM-Cr K Milne] Small Business Incubator Hubs**

#### **NOTICE OF MOTION:**

Councillor K Milne moves that Council brings forward a report on the opportunity to partner with other organisations to provide small business incubators for Tweed Heads and/or Murwillumbah, particularly to support development of the arts, organics, sustainable business, and technological industries.

#### **UNDER SEPARATE COVER:**

1. Technology hub example from Gold Coast and Queensland (ECM 46091702).
- 

### **42 [NOM-Cr K Milne] Seniors' Age Specific Exercise Facilities**

#### **NOTICE OF MOTION:**

Councillor K Milne moves that Council bring forward a report on the possibility of expanding the provision of seniors' age specific exercise facilities in some Council parks.

---

**43 [NOM-Cr K Milne] Budget Allocation Open Space**

**NOTICE OF MOTION:**

Councillor K Milne moves that Council bring forward a report on the apparent over allocation in Council's long term financial plan for open space and the potential to rationalise and redistribute these funds to other priority areas.

---

**44 [NOM-Cr K Milne] Legal Advice Tweed Richmond Regional Library**

**NOTICE OF MOTION:**

Councillor K Milne moves that;

1. Tweed Council bring forward a full report on the serious concerns raised by Byron Shire Council at the last Richmond Tweed Regional library meeting of 7 February, in relation to their inability to accept the terms of the proposed Administrative model and draft Library Service Level Agreements, and in light of Byron Council being the only non executive Council having sought independent legal advice.
  2. Tweed Council seek legal advice on the proposed Richmond Tweed Regional Library Administrative model and service level agreements in relation to addressing the issues raised by Byron Shire Council and particularly the concern raised that the non-executive Councils have no control but all the responsibility.
-

**QUESTIONS ON NOTICE**

**45 [QoN-Cr K Milne] Equal Employment Opportunity for the General Manager**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council outline what actions were taken in relation to promoting Equal Employment Opportunity for disadvantaged groups for the latest recruitment process for the General Manager?

---

**46 [QoN-Cr K Milne] Quarry Activities**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council advise on the Quarry activities being undertaken in this Shire in relation to:

- a) the quantity of Quarry materials currently extracted for use in this Shire and the quantity exported from this Shire per annum? and
  - b) any increases in quantities extracted or exported in this current Council term or proposed increases in these quantities and exports?
- 

**47 [QoN-Cr K Milne] Legal Provider**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council advise if it is still appropriate to retain Stacks Law Firm as one of Council's legal providers in light of Stacks Law Firm also providing legal services to LEDA Developments, who have significant development projects in the Tweed Shire, as well as Stacks Law Firm currently providing legal services to the Chairman of LEDA Developments, Mr Bob Ell, in a defamation case against Councillor Milne?

---

**48 [QoN-Cr K Milne] Fluoride**

**QUESTION ON NOTICE:**

Councillor K Milne asked what are the costs involved in applying fluoride to Tweed's drinking water supply, including for chemicals, staff time and training and infrastructure costs, and can Council comment on the new information in relation to the effectiveness of ingesting fluoride rather than applying fluoride topically with toothpaste?

---

**49 [QoN-Cr K Milne] Richmond Tweed Regional Library**

**QUESTION ON NOTICE:**

Councillor K Milne asked can Council provide an outline and preliminary response to the concerns raised by Byron Shire Council at the recent Richmond Tweed Regional library meeting in relation to the Administrative model and draft service level agreements proposed?

---

**CONFIDENTIAL ITEMS FOR CONSIDERATION**

**REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE**

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

**1 [CNR-CM] Contract for the Provision of Greenwaste Processing and Marketing Services - EC2008-151**

**REASON FOR CONFIDENTIALITY:**

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

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

---

**REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES IN COMMITTEE**

**2 [TCS-CM] Options for Sale of Land for Unpaid Rates**

**REASON FOR CONFIDENTIALITY:**

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

- (a) personnel matters concerning particular individuals (other than councillors)
-



**THIS PAGE IS BLANK**