

TITLE: [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 310m² 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)

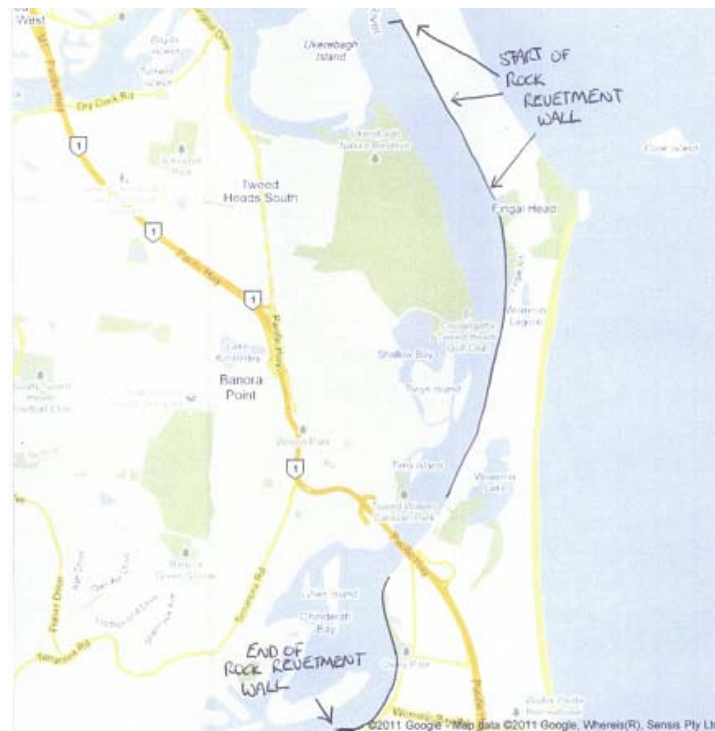


Figure 2: operation area as proposed by the applicant

- 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 34m² 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

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 6th December 2009, and
- The Tigé Tour 2011: Saturday 23rd / Sunday 24th 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 10th / Sunday 11th 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

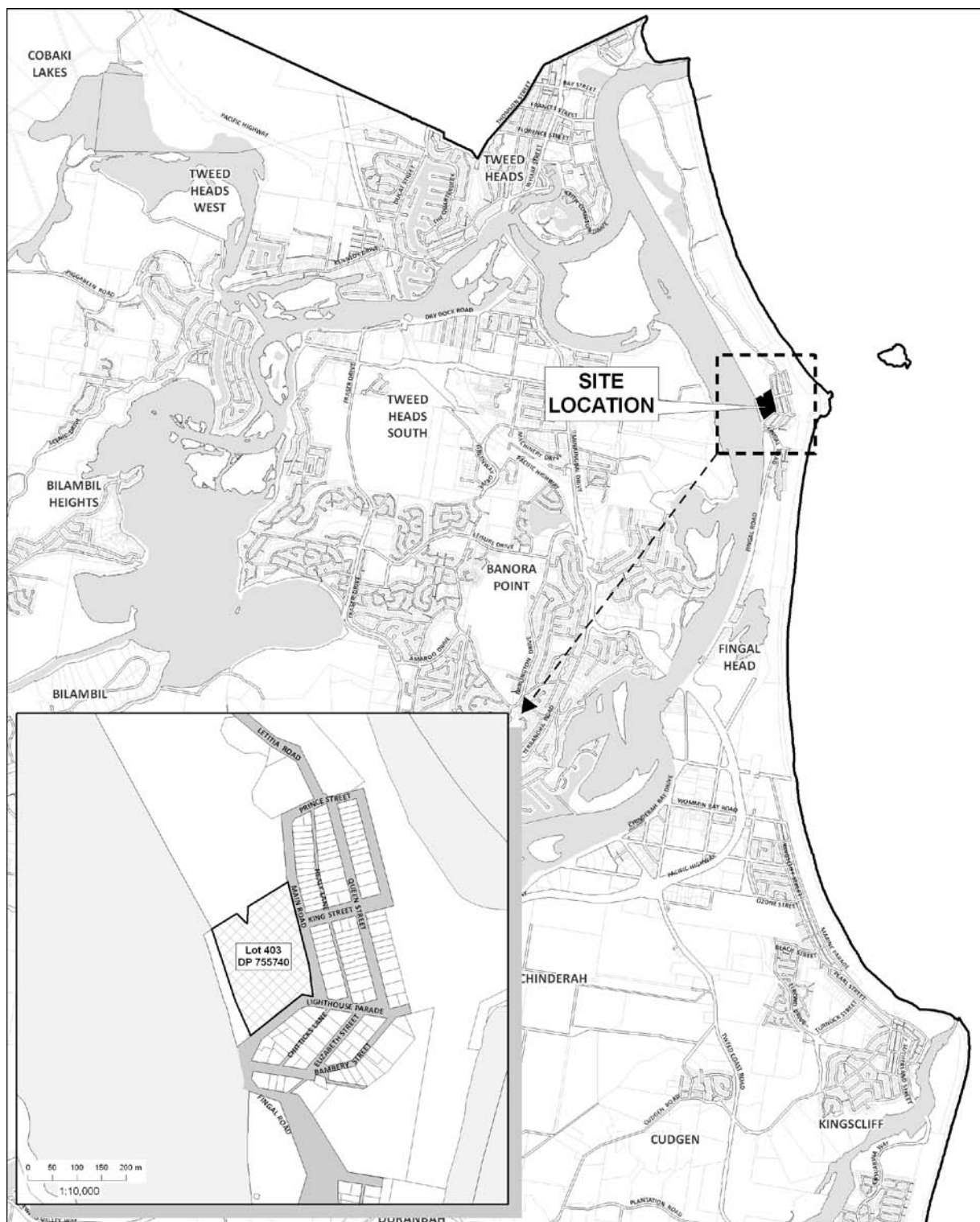
The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 10 August to Wednesday 24 August 2011. Submissions were received up until close of business Tuesday 30 August 2011. During this time, 39 submissions were received. 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 755740
 Main Road, Fingal Head

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Cadastre: 30 January, 2012
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 Boundaries shown should be considered approximate only.

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 DO NOT SCALE
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 GDA
 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoid to datum of Australia 1994
 Grid: Map Grid of Australia, Zone 55

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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

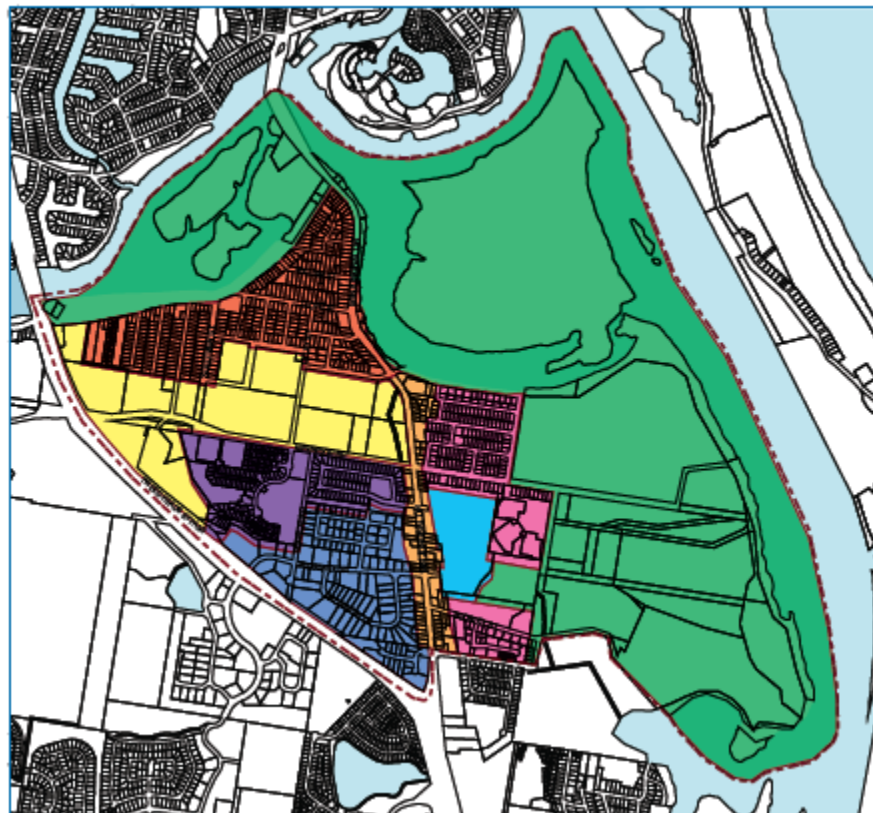











Figure 3: Tweed South Character Precincts

	Tweed River Environmental & Recreation Precinct
	Southern River Precinct
	Recreation & Public Use Precinct
	Munjungbal Drive Enterprise Corridor Precinct
	Tweed South East Precinct
	Kirkwood Road West Residential Precinct
	Tweed South Retail Precinct
	Tweed South Business Core Precinct
	DCP Area

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.

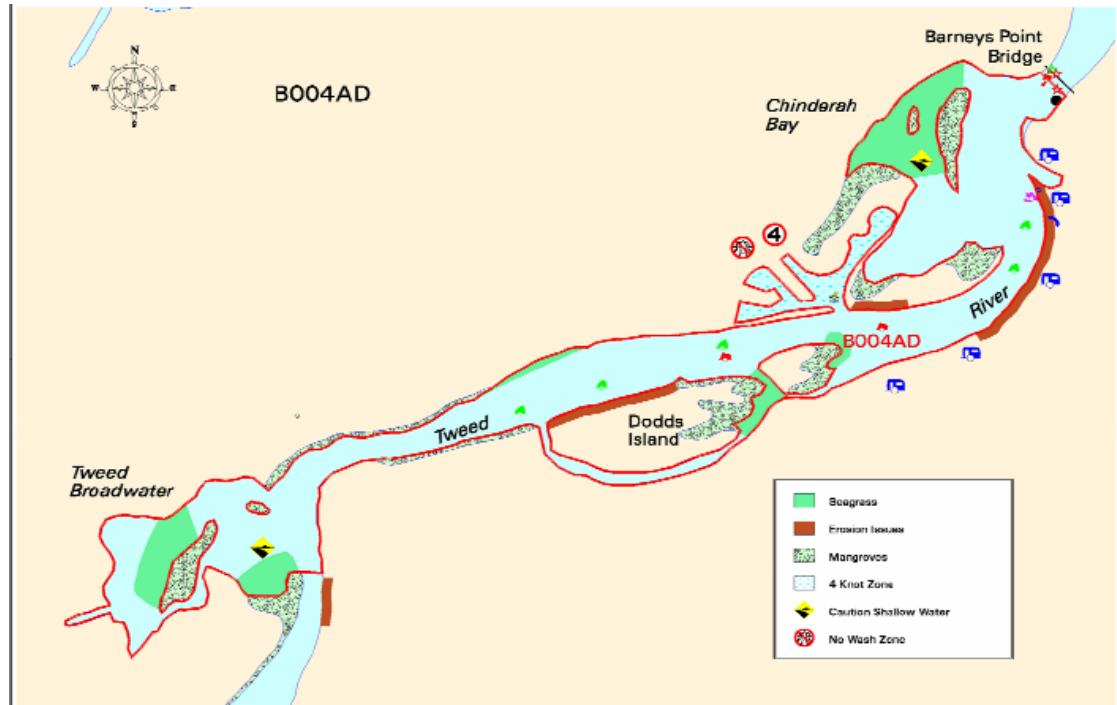


Figure 6: Barneys Point Bridge to Tweed Broadwater

(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.

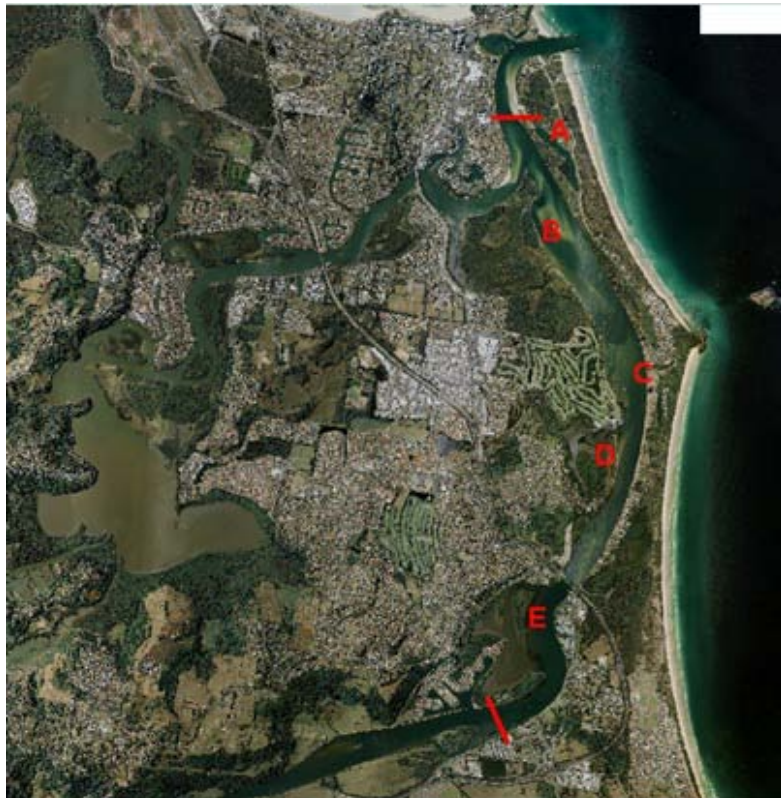


Figure 7. Proposed operating area and location of specific environmental receptors

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

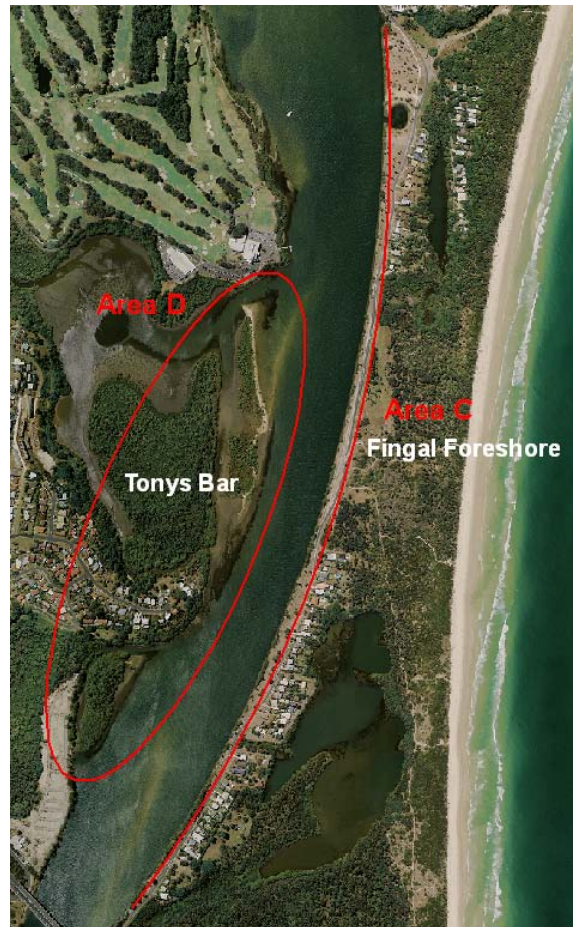


Figure 10 – Area C and D, Fingal Foreshore and Tonys Bar

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"> • The application is premature and should be withdrawn given that the review of the Tweed River Estuary Bank Management Plan has not been completed • 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 • Residents are tired of being asked to be the eyes and ears of TSC • This operation only benefits the operators and TSC should not give away a huge asset for one company to destroy for little public benefit • There is only one area that allows commercial activity which is at the beachfront at Fingal Beach • The operation has nothing to do with the enjoyment of fauna and 	<p>Our operation:</p> <ul style="list-style-type: none"> • Complies with all NSW waterway rules and vessel survey standards • Has not received any fines • Has not been involved in any accidents • Prevents our students boats coming to the Tweed River on days of operation • Teaches our students about safety • Complies with the 75dbA noise standard • Is quieter than car traffic and road usage • Is not accompanied by loud music • Is only one boat on the waterway • Uses the waterway the same as the social boat user • Operates within the widest channel along the Tweed River enabling the minimum 60m rules to be

Summary of Submissions	Response from applicant
<p>flora of the Tweed River</p> <ul style="list-style-type: none"> • Fingal Head was classified in April 1989 by the National Trust as a Coastal Conservation Area thus protecting the area from inappropriate development and ensuring that its unique environment was preserved for generations to come • 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) • Impact upon the critically endangered Beach Stone-Curlew (<i>esacus neglectus</i>) which has been sighted at Letitia Spit • Fingal Head has become a refuge for wildlife fleeing from areas of development such as south of Kingscliff and Banora Point • Impact upon dolphins frequenting this area of the river • Promotion of Fingal Head should be based on sustainable, low impact recreational activities – passive activities are not compatible with power boat usage • Impact upon businesses that promote the area as a place to come for a relaxed and peaceful experience • 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 • General water safety and amenity is compromised by creation of hazards to other users of the river (houseboats, sailboats, fishing, sightseeing, recreational skiers, 	<p>adhered to</p> <ul style="list-style-type: none"> • Does not use ballast to make the wake bigger • Does not perform power turns • Does not refuel on water • Includes clear driver visibility over the windscreen of the boat – booster seat • Does not commence activity within 60m of moored houseboats, fishermen and canoeists • Slows down to 6 knots under the Pacific Hwy bridge • Keeps 60m off the shoreline rock revetment wall and other waterway users • Adheres to the 6 knot speed limit into Fingal boat ramp • Adheres to the no wake zone in front of Fingal Head Charters • Has an average speed of 20 miles per hour • Does not commence lessons before 8am • Includes regular servicing on the vessel and regular waterway checks on debris for participant safety • Does not run from a residential address • 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 • Utilises many different businesses around the area and brings in clients from overseas and around Australia • Has removed reference to Tweed Heads and Fingal Head from all online and print media since June

Summary of Submissions	Response from applicant
<p>kayaking, paddleboarding)</p> <ul style="list-style-type: none"> • Disruption of local amateur fishing and teaching of junior anglers in boats and on the bank • Disruption to young surf lifesaving members training on their skis and boards to develop their skills in calm water • It is unlikely that the applicant will adhere to any formal hours / days of operation • Future expansion of the business operating from Fingal Head boat ramp (“growing leisure activity”) leading to even more pressure on the river system • 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 • The narrow nature of the river and navigation buoys in place at many points • 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 • 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 • 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 • 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 	<p>2011</p> <ul style="list-style-type: none"> • Does not operate within 250m of Ukerebagh Island as prevented by the sand bar • 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 • Adheres to the highest safety standards.

Summary of Submissions	Response from applicant
<p>supply which would be well above 75dbA</p> <ul style="list-style-type: none"> • Proliferation of vehicles and boats parked on public open space in a residential area advertising the company via branding • Increase in traffic in and out of the boat harbour car park and the access road is unsuitable for high volumes of traffic • The Fingal Head boat ramp is an overloaded facility and is over capacity on weekends • 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 • The boat should be removed from the water for refuelling • Wake will cause bank erosion in a highly sensitive flooding / tidal zone – homes need to be protected by the river bank • 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 • There are no rock walls on the western side of the river and no protection • Wakeboats created a larger wake than the 60 foot long whale watching vessel that works out of the golf club • 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 • With power boats having to stay 	

Summary of Submissions	Response from applicant
<p>60m from a sailing vessel the wakeboat would be in breach of maritime regulations on any weekend when sailing occurs</p> <ul style="list-style-type: none"> • Wakeboats travel 'nose up' and create a hazard where the driver is not visible to other river users • The wakeboats are too large which make them harder to stop and turn in an emergency 	

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 5th 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 1st 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 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)
-