



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

Councillors: M Armstrong (Deputy Mayor)
G Bagnall
C Byrne
K Milne
W Polglase
P Youngblutt

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Thursday 16 May 2013

held at Murwillumbah Cultural and Civic Centre
commencing at 4.45pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

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REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

79C Evaluation

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

(a) the provisions of:

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

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

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or

(b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

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

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

and the discretion of the consent authority under this section and section 80 is limited accordingly.

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

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

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

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

(6) Definitions In this section:

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

CNL-25 [PR-CM] Draft Local Environmental Plan (LEP) 2012

SUBMITTED BY: Planning Reform Unit

FILE REFERENCE: GT1/LEP/2012



Civic Leadership



Strengthening the Economy



Caring for the Environment

SUMMARY OF REPORT:

This report has been prepared to ensure statutory compliance with Sections 57 and 58 of the *Environmental Planning and Assessment Act 1979*. Its purpose is to inform Council of the issues arising from the public exhibition of *Draft Tweed Local Environmental Plan 2012* (DLEP2012) and *Draft Tweed Local Environmental Plan 2010* (DLEP2010) and seek guidance on the most appropriate approach to implementing a comprehensive Local Environmental Plan under the State Government's the *Standard Instrument (Local Environmental Plans) Order 2006*.

In addition to identifying all major issues raised during the submission periods by the public, Council and other government agencies, this report identifies a number of competing factors which will need to be balanced in order to achieve an acceptable outcome. While there are a large number of minor issues arising from the exhibition process, the main concerns revolve around the following:

1. **The extent to which the DLEP(s) implement existing Council and State Government policy on environmental protection.** Council's adopted approach to environmental management outlined in the Tweed Vegetation Management Strategy (2004) recommended substantial changes to LEP 2000 to better recognise, protect and manage natural areas consistent with contemporary State Government policy (see Attachment 2). Although there were initial problems implementing Council's recommended approach under the Standard Instrument template, these have been largely overcome, such that it is now possible to produce a draft LEP that reflects the intent of the Council's adopted policy position. However, at this stage, the draft LEPs only partially implement Council's adopted policies on environmental protection and some further work including re-exhibition would be necessary to more fully realise Council's adopted policy position.

- 2. The weight of public submissions calling for better environmental outcomes.** The analysis of submissions from both draft LEPs identifies environmental protection as a significant concern for the community at large. Particular issues of concern included protection of Koala habitat and native vegetation, riparian areas and wildlife corridors, mining, and control of domestic animals. Many respondents also questioned Council's commitment to implementing its own policies on environmental protection and some questioned the process calling for a public hearing under Section 68 of the *Environmental Planning and Assessment Act 1979*.
- 3. Council resolutions seeking to implement its environmental policies through the LEP process.** As a result of community concern relating to environmental outcomes of the draft LEP, Council has resolved on two occasions to seek further consideration of environmental issues within the LEP. Firstly, on 24 January 2013 Council resolved to seek consideration of the draft recommendations of the Revised Environmental Strategy which sought to implement the adopted Tweed Vegetation Management Strategy 2004 under the Standard Instrument LEP framework (which itself was prepared in response to an earlier Council resolution of 20 July 2010). Secondly, on 18 April 2013, Council resolved to revise the draft LEP 2012 to include, where possible, bushland within core koala habitat on the Tweed Coast within an appropriate environmental zone.
- 4. Pressure from the State Government to finalise the LEP.** Since the Council resolution of 27 January 2009 Council has sought to "roll over" its current LEP 2000 and adopted strategies into a Standard Instrument LEP format. For various reasons this process has proved far from straightforward. Nonetheless the Department of Planning and Infrastructure (DP&I) are now very keen to see Council complete the process.
- 5. Uncertainty regarding the outcomes of the yet to be completed State-initiated review of Environmental zones.** On 20 September 2012 the Minister for DP&I announced that he had concerns that environmental zonings in some Council areas on the Far North Coast were being applied to agricultural land and that such areas would be excised from draft LEPs prior to their gazettal. Subsequently the DP&I initiated a review of environmental zonings and overlays on the Far North Coast. This review has not yet been completed but is due to be finalised in the third quarter of this year. This review is likely to have a significant bearing on the scope and form of environmental zoning and overlays permissible within an LEP.
- 6. Uncertainty regarding the new planning system for NSW.** In April this year, the DP&I released a white paper which foreshadows a new planning system for NSW. Under the new system LEPs will need to be translated into Local Plans. To ensure this process runs smoothly, it is important that the Council preferred approach to zoning and other provisions (including those seeking better environmental outcomes) are in place as soon as possible.
- 7. Community concern about the LEP process.** A large number of submissions, particularly those seeking better environmental outcomes, expressed concerns about the process that led to the exhibition of draft LEP 2012 calling for a public hearing under Section 67 of the *Environmental Planning and Assessment Act 1979*.

Issues were raised during the public exhibition about the currency of the section 65 Certificate, which is a precondition of exhibition. The current Certificate was issued for the exhibition of draft LEP 2010.

Council staff sought clarification from the DP&I about whether a new certificate was required owing to the extent of subsequent amendments. Advising that a reissue was not necessary staff were referred to the legislative provisions, of s 68(3B), which state: "a council may (but need not) give public notice of and publicly exhibit, wholly or in part, a draft local environmental plan that has been altered pursuant to subsection (3)." "The provisions of this section and sections 66 and 67, with any necessary adaptations, apply to any such exhibition of a draft plan, but not so as to require a further certificate under section 65." This enquiry concluded that a new Certificate was not required.

There is nonetheless a real risk of prolonging the process of translating Council's current LEP and adopted strategies into a Standard Instrument LEP without any real benefit if opportunities for managing the community's concerns are not addressed by ensuring as much consistency with Council's adopted policy at this point. What is proposed in the preferred Option may lead to avoidance of some of those risks in the longer term.

Consideration of the factors above suggest that the options before Council relate primarily to the time required to revise the LEP consistent with Council policy and community aspirations in the context of continued pressure from the State Government to finalise the LEP and uncertainty regarding the current review of Environmental zones. Three options emerged which are summarised as follows:

1. Minimal changes to DLEP2012 consistent with a simple translation of LEP2000 without the need for re-exhibition. This would be followed by a separate LEP amendment to address Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat). This latter work will occur in the context of the outcomes of the State Government review of Environmental zones. This option gives the greatest weight to completing an LEP in the Standard Instrument format but least weight to progressing Council's adopted environmental protection policies.
2. Partial implementation of Council's adopted approach to environmental protection without the need for re-exhibition. This would involve the following:
 - Inclusion of Environmental Protection zones exhibited under DLEP2010 on the Tweed Coast.
 - Retention of Environmental Protection zones exhibited under DLEP2012 in the rural hinterland (as per LEP2000).
 - Rationalisation of Environmental Protection zones on Council controlled land to reflect existing and planned use.
 - Inclusion of a riparian Clause to reflect Clause 31 of LEP2000.

This initial work will then be refined by a separate LEP amendment consistent with Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat). This latter work will occur in the context of the outcomes of the State Government review of Environmental zones.

This option would recover a large proportion of koala habitat and other significant bushland on the Tweed Coast that had previously been identified for Environmental Protection under DLEP2010 and LEP2000 (Amendment 21) but removed from DLEP2012. It would therefore address many of the community concerns for better environmental outcomes on the Tweed Coast but would leave further refinement of environmental zoning to a later stage. It is suggested that advice from DP&I is sought to confirm that this option would be supported without the need for further public re-exhibition of the draft LEP.

3. Defer changes to DLEP2012 pending further work to address Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat) in the context of the outcomes of the State Government review of Environmental zones. This option gives the greatest weight to systematically progressing Council's adopted environmental protection policies and will allow Council to consider the outcomes of the State Government review of Environmental zones. However, despite the fact that the DP&I initiated the review of environmental zoning on the Far North Coast it is unlikely to satisfy their desire to see a completed Standard Instrument LEP. Notwithstanding this, most of the elements considered necessary to revise the LEP consistent with Council's policy position are well advanced and could be ready for re-exhibition within a month of the release of the environmental zone review which is expected to be completed in the third quarter of this year.

Option 2 is recommended as it makes substantial progress toward; implementing Council policy, responding to concerns of council and the community, and can be implemented promptly to satisfy the requests of the DP&I to complete a Standard Instrument LEP. It also provides for further refinement once the outcomes of the current State Government review of environmental zones and overlays is complete. All Options are presented and discussed under Section 3.4 of this Report.

RECOMMENDATION:

That draft Tweed Local Environmental Plan 2012 is endorsed subject to the amendments recommended under Part 3 of this Report, including recommendation No 52a to include environmental zones as exhibited under the draft Tweed Local Environmental Plan 2010, recommendation No 29 to include riparian clause, and including rationalisation of environmental protection zones on Council controlled land and:

- (1) Council seeks advice from the Department of Planning and Infrastructure that the abovementioned changes can be made without the need for further public re-exhibition; and**
- (2) The draft Tweed Local Environmental Plan 2012 be referred to the Director-General of the Department of Planning and Infrastructure, following its amendment under Resolution 1 above, for the draft local environmental plan to be made; and**
- (3) That a draft local environmental plan (planning proposal) be prepared to fully implement Council's adopted approach to environmental protection (including State Environmental Planning Policy 44 Koala Habitat) consistent with outcomes of the State Government's review of the Environmental Zones and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region.**

REPORT:

1 BACKGROUND

Council considered a report on the DLEP at its meeting of 25 October 2012, at which time it was resolved:

- "1. The draft Tweed Local Environmental Plan 2012 be placed on public exhibition for a minimum period of 60 days;*
- 2. The supplementary draft Tweed Development Control Plan (DCP) Section A16 Trees and Vegetation Preservation Code be placed on public exhibition concurrently with the draft Tweed Local Environmental Plan 2012; and*
- 3. Following public exhibition a further report addressing all submissions is to be submitted to Council.*
- 4. A series of PowerPoint presentations being included in the community consultations."*

This report provides a summary of the public exhibition submissions received and recommendations for Council's consideration.

The report is structured to address the submissions based on common themes arising. The evaluation of each theme contains identification of an issue, a planning response and a recommended action.

The DLEP was previously exhibited in 2010. LEPs are 'living' instruments. They are regularly amended and periodically updated, as evidenced with the current LEP having been amended 57 times since its commencement in 2000.

The changes to the LEP format witnessed under the Standard Instrument (Local Environmental Plans) Order 2006 are unparalleled with any other in their history. Underestimating the change in the format and structure of the template LEP and the ability of councils to vary the template to their specific needs may obscure the reasoning or necessity for changes proposed for the transition of the current Tweed LEP 2000 to a template format.

The Standard template is not perfect but it has improved significantly with the amendments made since it first came into operation. It provides a good starting point for a uniform LEP format across the State and with further refinement over time will provide greater clarity for land-use management, conservation, and development.

It is upon that basis; the limitations and the recognition of the need for additional strategic work that sets the context within which the DLEP has been drafted and the submissions assessed.

2 PUBLIC EXHIBITION

The DLEP was publicly exhibited for a period of 65 days from 14 November 2012 – 18 January 2013 at

- Murwillumbah Civic Centre;
- Tweed Heads Civic Centre;
- Kingscliff Library; and
- Council's website.

The DLEP included the following supporting material:

- The DLEP 2012;
- A suite of fact sheets to aid in understanding the information;
- Tweed DCP Section A16 – Trees and Vegetation Preservation Code;
- Media release on the E2 and E3 zones to be reviewed in the North Coast LEPs;
- Statement on Council owned land;
- Council report of 25 October 2012 and attachments;
- Section 65 notice;
- Statement about other environmental planning instruments and directions that substantially govern the content and operation of this draft LEP;
- Standard Instrument (Local Environmental Plans) Order 2006;
- Section 117 Directions;
- NSW Coastal; Policy 1997 and Far North Coast Regional Strategy; and
- Tweed LEP 2000.

During the Public exhibition period eight community information sessions were held as follows:

- Tuesday 27 November - Tyalgum (Community Hall) attended by 5 people;
- Wednesday, 28 November - Murwillumbah (Civic and Cultural Centre, Canvas and Kettle Room) attended by 7 people;
- Tuesday, 4 December - Pottsville (Pottsville Beach Neighbourhood Centre) attended by 7 people;
- Wednesday, 5 December - Kingscliff (Community Hall, Marine Parade) attended by 13 people;
- Wednesday 9 January, 2013 Banora Point (Banora Point Community Hall) attended by 3 people;
- Wednesday 16 January, 2013 Tweed Heads (South Sea Islander Room) attended by 59 people;
- Kingscliff Resident and Ratepayers Association (members only by request); and
- Tyalgum Community Association (invitees only by request).

Councillor workshops were held on:

- 10 July 2012 on the revised environmental strategy;
- 18 October 2012 updating on the methodology of preparing the DLEP; and
- 9 April 2013 updating on the exhibition of the DLEP.

3 SUBMISSIONS

In response to the public exhibition period a total of 1510 submissions were received. These can generally be broken down as:

Number of submissions	Type
12	From Government Agencies
0	From Members of Parliament representing constituents
225	Submissions by individuals
600	Proforma type A submissions
94	Proforma type B submissions
18	Proforma type C submissions
12	Proforma type D submissions
219	Proforma type E submissions
330	Proforma type A and E submissions

In addition, consultation with eight divisions of Council has raised a number of issues, as addressed in section 3.3 Internal Review.

Detailed summaries of the submissions are provided in Attachment 1 to this report.

In summary, the submissions are grouped into and discussed in the following themes:

- Protection of the koala habitat along the Tweed Coast;
- Accuracy of environmental zones based on the LEP 2000;
- Koala Plan of Management;
- Revised Environmental Strategy;
- Appropriate zoning of Pottsville Wetlands;
- Recreational facility near Black Rocks estate;
- Trees and Vegetation Preservation Code (DCP A16);
- Site-specific requests to rezone land or amend the land use table to facilitate development;
- Heritage issues;
- Accuracy of rural and environmental zones in agricultural land;
- Rural subdivision controls;
- Development standards (height of buildings, floor space ratio, lot size); and
- LEP Clauses.

3.1 Submissions by Members of Parliament on behalf of constituents

No submissions have been received by members of Parliament on behalf of constituents.

3.2 Submissions by Government Agencies

Notification letters were sent to 38 Government Agencies and 12 submissions have been received in response.

The agency submission are summarised as follows:

3.2.1 Office of Environment and Heritage (two submissions received)

The Office of Environment and Heritage (OEH) has requested that the sites listed on the Aboriginal Heritage Information Management System (AHIMS) database be included in Schedule 5 – Environmental Heritage. In addition OEH suggests that Aboriginal heritage is inadequately addressed in the DLEP and that Council undertake an Aboriginal heritage study to meet the requirements of the *Ministerial Direction 117(2) 2.3 Heritage Conservation*.

Planning comment:

Council is currently undertaking an Aboriginal Cultural Heritage Management Plan (ACHMP) for the Tweed Shire Council area. This plan is being undertaken with extensive consultation with the Aboriginal community and once completed will be suitable for inclusion as an amendment to the LEP. This study has already audited and ground truthed data on the AHIMS database and has revealed many errors.

The outcomes, management and mapping of the ACHMP will be subject to a future report to Council, public exhibition and adoption by Council. It is considered appropriate that incorporation of the corrected and updated AHIMS data and Aboriginal landscape heritage is best undertaken following the endorsement by the Aboriginal community under the Memorandum of Understanding signed as part of the ACHMP process and adoption by Council of the ACHMP, as is the methodology used for incorporation of all strategies, plans and policies within the LEP.

Recommendation/Action:

- 1 No amendment to the DLEP.

Council is commended for the inclusion of Clauses 7.8 and 7.9.

OEH provides detail and explanation behind the following list of recommendations:

1. All rural, business, residential, industrial and infrastructure zones should have an additional zone objective: to protect and enhance the native flora, fauna and biodiversity links.
2. Agriculture and environmental facilities in RU1 and RU2 zones should be permitted only with consent.
3. Extractive industry and open cut mining should be prohibited in the RU2 zone.
4. Environmental facilities should be made permissible with consent in RU5, W1, W2, W3, R1, R2, R3 and R5 zones.
5. Forestry should be prohibited under RE1 and RE2 zones.
6. Additional clause on development near E1, E2 and E3 zones should be included into the plan.
7. Roads, emergency services facilities, community facilities, environmental facilities, research stations and sewerage systems should be made prohibited in the E2 zone.
8. Environmental protection works should be made permissible with consent in the E2 zone.
9. Environmental facilities should be made permissible with consent in the E3 zone.
10. Tweed Development Control Plan should provide controls managing development within the E3 zone.

11. Health consulting rooms, helipads and veterinary hospitals should be prohibited in the E3 zone.
12. Aquaculture, community facilities, emergency services facilities, research stations and roads should be prohibited in the W1 zone.
13. Riparian and watercourse clause should be included in the LEP.
14. An additional objective should be included in the Clause 4.1 similar to subclause 4.1(1)(b) of the draft Byron LEP 2012 to ensure lot sizes are compatible with local environmental values and constraints.
15. An additional provisions should be incorporated into Clause 4.1B to ensure that future subdivision of land with split zones will result in continued protection and long term maintenance of high conservation value (refer sub clause 4.1A(4) of the draft Coffs Harbour LEP 2012).
16. Clause 5.5 Development within the coastal zone and 7.16 Coastal risk planning should be reworded to ensure that a planning horizon is defined and adopted by the consent authority for coastal hazard assessment of development on land with 'coastal risk'.
17. Council should liaise with the DP&I in relation to subclause 7.16(3)(f) to ascertain its relevance, given that the use of the NSW sea level rise benchmarks has been withdrawn as such this government policy is no longer applicable.
18. 5m contour should be used for Class 5 potential ASS, rather than mapping the entire LGA that is not 1-4.
19. Additional local provisions similar to clause 6.12 Riparian land and water courses and Clause 6.13 Development near the E2 and E1 zone, of the draft Byron LEP 2012, should be included in the draft LEP to afford additional protection to high conservation value land, and a water courses map should be prepared to accompany such clause.
20. The following controls should be included in the Tweed DCP in relation to land for which Clause 7.8 applies *"where impacts to HCV land cannot be avoided, offsets should be provided in accordance with the Offset Principles endorsed by the State Government and may be calculated via the use of the NSW BioBanking Assessment Methodology or via alternative methodologies based on the value of such habitat to be removed and/or impacted."*
21. Further investigation should be undertaken by Council in relation to the land gazetted under the National Parks and Wildlife Act 1974 and the E1 zone be applied accordingly.
22. Further investigation should be undertaken in relation to the HCV land within Crown Reserve Number 59360 and the E2 zone should be applied to the E3 areas.
23. The DCP Trees and Vegetation Preservation Code should be amended so that similar provisions as per the E2 zone are applied to the E3 zone.
24. References to the RU5 zone in the heading group for the rural zones in clause 1.7 of the draft DCP should be deleted.
25. The draft DCP should be referenced "endangered ecological communities" as opposed to ecological communities.
26. The text in the third and fourth paragraph for Clause 2.3 Vegetation removal consideration, should read "unless it is satisfied".

27. The draft DCP should include additional controls (or footnotes) to address Subclause 5.9(7) of the DLEP and to ensure that proponents are aware of the requirements in relation to cultural heritage (including where development consent may be required).

Planning comment:

While the benefit of protecting and enhancing native flora, fauna and biodiversity links is acknowledged, the addition of a local subclause in the exhibited version of the DLEP to the Aims of the Plan which reads “*to conserve and enhance the biological diversity, scenic quality and ecological integrity of the Tweed*” is considered sufficient to ensure that the requirements of this request are satisfied.

Zones and landuses, as listed in the Landuse Table of the DLEP represent a translation and ‘best fit’ of current zones into the Standard Instrument LEP format; and while existing use rights would apply where there is lawful consent, any request for inclusion of additional permitted uses, or change of zoning is more appropriately pursued through a separate planning proposal.

Council is committed to review the LEP to implement recommendations of the Tweed Vegetation Management Strategy 2004. One of those recommendation is to protect riparian areas through an additional LEP overlay map and clause. Implementation of these recommendations will be undertaken through a separate LEP amendment process.

In relation to comments on the Coastal Risk Planning clause, it needs to be noted that this clause has been prepared by the Department of Planning and Infrastructure (DP&I) for optional inclusion into the LEPs. Councils have limited ability to amend wording of this clause, although Tweed Council will raise this issue with DP&I through separate consultations.

The inclusion of Forestry in the RE 1 and RE2 zones is only permitted with consent, making development application assessment an appropriate safeguard against inappropriate development or activity in this case.

However, with respect to matters raised relating to environmental zones, until such time as the revised Vegetation Management Strategy, and the DP&I provide advice on the outcome of their review of environmental zones in the Far North Coast, it is appropriate to translate the zoning of the land to the corresponding “best fit” zone, as is the methodology behind the DLEP preparation. This rationale applies equally to watercourses and riparian areas as well.

The adjustment of lot sizes without a supporting strategy is not supported by the DP&I; however, a Rural Land Strategy is currently being prepared which will assess the appropriateness of existing lot sizes in relation to current and potential future rural land uses. It is envisaged that this strategy will inform any future amendments to lot sizes.

With respect to Acid Sulfate Soil mapping, only part of the Shire is covered by mapping and the mapping as exhibited was generated from data provided by the DP&I; however, should a new approach to mapping be required by the Department, a formal letter and amended mapping should be provided to Council advising of changes and the use of the 5m contour to delineate the cut-off for Class 5 ASS.

Recommendation/Action:

2 No amendment to the DLEP.

3.2.2 Heritage Council of NSW

The Heritage Council has requested amendment to the aims of the DLEP, including to Clause 1.9A (Suspension of covenants) and 7.11 (Earthworks and drainage) to ensure the due consideration of heritage significance as part of development assessment.

Planning Comment:

These suggestions amend what are considered “model clauses”. It is not a given that these changes will be accepted for inclusion, however they do warrant negotiation with the DP&I to facilitate their inclusion.

Recommendation/Action:

- 3 Council include the suggested inclusion in Clause 1.9A as follows, as the basis for negotiation with the DP&I:

1.9A (2)(h) to any heritage agreement within the meaning of Part 3B of the Heritage Act, 1977.

- 4 Council replace Clause 7.11(1) with the new draft model clause objective for earthworks as follows:

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

- 5 Council include the suggested inclusion in Clause 7.11 (3)(f) as follows, as the basis for negotiation with the DP&I.

7.11(3)(f) The proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.

The submission identifies a number of advertising and signage uses within *Schedule 2 – Exempt Development*, which is considered, in relation to a heritage item, requires assessment rather than allowing as exempt development, given the potential for signage to physically and visually impact on the heritage significance.

Planning comment:

This request is considered suitable given the potential impacts on heritage items.

Recommendation/Action:

- 6 *Schedule 2 Exempt Development* signage in subclauses (1), (2), (3), (4) and (7) to be amended to include an additional development standard:

(a) Must not be on a heritage item.

The submission raised concern regarding the potential physical and visual impact of hit up walls and tennis courts under *Schedule 3 - Complying Development* on heritage items.

Planning comment:

These uses are not currently listed in the Complying development provisions of the *DCP A10 Exempt and Complying Development*. In addition tennis courts are permitted as exempt development in rural and large lot residential land. Therefore it is recommended that these items be removed from Schedule 3.

Recommendation/Action:

- 7 Hit up walls and tennis courts provisions be deleted from Schedule 3 Complying Development Part 1 Types of Development and the relevant inclusions in Part 2 Complying Development Certificate Conditions also be deleted.

The submission has identified a number of inconsistencies within the *Schedule 5 – Environmental Heritage*, including: the incorrect listing of the Remains of the Condong

Sugar Mill rail line as a “State” item, which should be “local”; and the omission of the State heritage listed *High Conservation Old Growth Forest*” (SHR No 01487).

Planning comment:

The DLEP needs to accurately reflect the heritage listing and both listings are to be amended and correctly represented in the DLEP.

Recommendation/Action:

- 8 *Item I15 - Remains of the Condong Sugar Mill Rail Line within Schedule 5 – Environmental Heritage* to be listed as a local item.
- 9 The areas identified as State heritage listed *High Conservation Old Growth Forest*” (SHR No 01487) to be identified on the Heritage Map and listed within *Schedule 5 - Environmental Heritage* as State heritage items.

3.2.3 Transport Roads and Maritime Services (separate submissions received from Sydney office and Northern Rivers office):

1. State Roads, such as the Pacific Highway should be zoned SP2;
2. Roads should be made permissible without consent under the SP2 zone;
3. The LEP should make provisions for developer funding of required road/transport infrastructure improvements that may be a result of future development;
4. For safety reasons child care centres should be prohibited within any zones where the subject property has a direct frontage to a classified road;
5. Council should consider the definition of “permissible development” in rural zones – for example prohibiting educational facilities in rural zones with direct frontage to classified roads in rural zones;
6. Highway Service Centres are prohibited in all zones. It is requested Council permit highway service centres in a zoning to allow for these facilities as identified under Section 117;
7. No direct vehicular access should be permitted via individual properties to/from classified roads;
8. The key design consideration defined under the Premiers Council for Active Living “Designing Places for Active Living” should be taken into account in the preparation of the new LEPs or major rezoning; and
9. Further development should be designed such that the road traffic noise from classified roads is mitigated in accordance with the Department of Environment and Conservation’s criteria for new developments Environmental Criteria for Road Traffic Noise (ECRTN).

Planning comment:

The Pacific Highway has been zoned SP2 Infrastructure in the exhibited DLEP.

Roads by definition covers an extremely broad array of standards from small private ‘tracks’ to major local and regional transport links. Due to the potential significant impact of road construction on the environment and community, roads are proposed to remain as permitted with consent in the SP2 Infrastructure zone.

Development in areas adjoining to road corridors and road reservations is managed under the State Infrastructure Planning Policy (Infrastructure) 2007. According to the hierarchy of

the planning system in New South Wales, this policy supersedes a local environmental plan, therefore those provisions should not be repeated under a local plan.

Please refer to Sections 98-104 of the Infrastructure SEPP for further details.

Section 94 contributions make provide the opportunity to levy funds for future works.

Applications for the construction of childcare facilities and educational facilities triggers a range of assessment requirements which would include proximity to classified roads, therefore, it is not considered warranted include additional controls within the LEP.

The Far North Coast Regional Strategy notes that s117 Ministerial Directions are the likely mechanism through which LEPs will be required to be consistent with the Strategy; and makes provision for the location of Highway Service Centres along to Pacific Highway. S117 Ministerial Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast specifies requirements that must be complied with when considering a planning proposal, rather than by incorporation within an LEP. Direction 5.4 states that preferred location of a highway service centre is within an urban zone at Chinderah.

Other advice is noted and is considered at the subdivision and development assessment stages.

Recommendation/Action:

10 No amendment to the DLEP.

3.2.4 NSW Land and Housing Corporation

Submission represents the interests of both NSW Land and Housing Corporation (LAHC) and Housing NSW.

Social housing assets on land between Cunningham Street, Lloyd Street, Sullivan Street and Oxley Street, Tweed Heads South be zoned R3 Medium Density Residential rather than the proposed R2. Request that the building height be increased to 13.6m and the minimum lot size removed, consistent with other R3 zones.

Planning comment:

The area is current zoned 2(a) Low Density Residential, and consistent with the methodology of the preparation of the DLEP, has been translated to the corresponding R2 Low Density Residential. Rezoning of land is outside the scope of the DLEP process and is appropriately undertaken as a planning proposal under the requirements of the EP&A Act, whereby all potential impacts may be considered and appropriate community consultation undertaken.

Recommendation/Action:

11 No amendments to the DLEP.

3.2.5 Trade and Investment Crown Lands

Crown Land seeks to maintain 'open zones' that facilitate multiple-use of Crown land and favour adaptable merit-based development proposals.

Notes that there are some constraints to permitted uses in the RE1 zone, as below:

1. Tourist and visitor accommodation, function centre and dwelling houses should be included as permissible with consent in the RE1 zone at venues such as showgrounds and sporting grounds.

2. E2 zone for Crown Lands is not supported unless justified by an appropriate environmental study. Extensive application of E2 is not appropriate where recreation is the predominant purpose. Suggests instead E3.
3. Zoning of Lots 222 and 223 on DP 877868 (Burringbar Recreation Reserve) should allow 'registered clubs' with consent as the Burringbar District Sports Club is the current use.
4. Reserve at Byangum Bridge, Lot 4 DP 1060253, should be rezoned from RU1 to RE1.
5. Lots 466 and 467 DP 755701 at Cabarita Gardens should be zoned RE1 not RE2.
6. E2 zone over various sections of beach and coastline is not supported.
7. W1 zone along the foreshore inside Foysters Wharf is not supported. W3 is a more appropriate zone.
8. Reserves for public recreation at Kunghur should be rezoned RE1: Lot 7005 DP 1045349, Lots 1 & 2 Section 5 DP 758588, Lots 2-5 Section 9 DP 758588.
9. Reserves at Limpinwood should be zoned RE1 not part RU1 and RU2: Lot 7004 DP 1053480, Lot 7006 DP 1053479.
10. Reserves at Piggabeen should be zoned RE1 not RU1: Lot 398 DP 755740, Lot 204 DP 755740.
11. Reserves at Pottsville are proposed to be zoned part E2 and Part R3 – the land is currently 2(c) and should be zoned R3: Lot 7338 DP 1159863 and Lot 347 DP 755701.
12. Reserves at Uki zoned RU5 should be RE1: Lot 203 DP 755730 and Lot 5 DP 1024230.
13. Reserves at Tweed Heads for dock site should be zoned RE1 not RE2: Lot 7023 DP 1054058 and Lot 7039 DP 92898.
14. Reserve for caravan & camping park at Tyalgum: Lot 105 DP 728111 should be zoned RE1 or the RU5 zone permit "caravan parks".
15. Reserve at Tyalgum for public recreation & preservation of native flora and fauna: Lots 102-104 DP 727788, Lots 1-7 Section 2 DP 759012 should be zoned RE1 not part RU5.
16. Reserve at Tyalgum should be RE1 not RU5: Lot 107 DP 728117.

Planning comment:

The land use table for the RE1 Public Recreation zone has been prepared as a conversion of the land use table from the current LEP 2000, in line with guidelines published by the DP&I. In accordance to those guidelines, the RE1 zone is generally intended for a wide range of public recreational areas and activities including local and regional parks and open space. The uses may include 'recreation facilities,' 'community facilities' such as lifesaving clubs, 'environmental facilities', 'environmental protection works' and other uses compatible with the primary use of the land. Dwelling houses, tourist and visitor accommodation and function centre land uses generally have private/commercial character and as such are inconstant with the intended use of land. Caretakers' dwellings can, in some circumstances be considered as ancillary development, therefore there is no need to permit dwelling houses in the RE1 zone.

The Practice Note PN 09-006 *Providing for tourism in Standard Instrument local environmental plans* recommends camping ground, caravan park and eco-tourism provides guidance on the provision of tourism opportunities in principle LEPs; the uses as listed in this submission are consistent with the mandatory zone objectives and mandatory zone uses.

The DLEP Land Zoning Map has been prepared as a conversion of the current Tweed LEP 2000 Land Zoning Map. As such, there is no increase (nor decrease) in the application of environmental zones over land owned or managed by Crown Lands. With respect to matters raised relating to environmental zones, until such time as the revised Vegetation Management Strategy, and the DP&I provide advice on the outcome of their review of environmental zones in the Far North Coast, it is appropriate to translate the zoning of the land to the corresponding “best fit” zone, as is the methodology behind the DLEP preparation.

The Burringbar Recreation Reserve has been zoned RE1 Public Recreation, consistent with previous request received from the Crowns Land. The request to include ‘registered clubs’ as a land use permissible with consent under the RE1 zone is not supported, as this use has commercial character inconsistent with the objectives of this zone. Under this zone the Burringbar District Sports Club would continue to operate under existing use rights.

Land currently zoned 6(a) Recreation, and where the land and facilities are of a predominantly public recreational use, is proposed to be zoned RE1 Public Recreation.

The request for reserves at Tweed Heads for dock site to be zoned RE1 not RE2 is considered appropriate as the site is a public wharf and is currently partly unzoned and partly 6(a) Recreation. Translation to a public recreation zone is appropriate.

Cabarita Gardens, Lots 466 and 467 DP 755701, are currently zoned 8(a) National Parks and Nature Reserves, however are not part of the Cudgen Nature Reserve and were translated to RE2 Private Recreation. Given the site is mostly cleared and public recreational in nature it is considered an appropriate request that the site be translated to RE1 Public Recreation.



Figures 1a and 1b: Tweed Heads dock site at Dry Dock Road, Tweed Heads South.



Figure 2: Cabarita Gardens site at Willow Avenue, Bogangar

Caravan parks are not supported in the RU5 Village zone although this zone allows for a variety range of tourism-related uses not associated with movable cabins or structures. Camping grounds are permissible with consent under this zone.

Recommendation/Action:

- 12 The Draft Tweed LEP 2012 be amended to zone the Tweed Heads dock site, Lot 7023 DP 1054058 and Lot 7039 DP 92898, RE1 Public Recreation.
- 13 The Draft Tweed LEP 2012 be amended to zone Lots 466 and 467 DP 755701 as RE 1 Public Recreation.

3.2.6 Trade and Investment Resources and Energy

Submission highlighted that underground mining, mining, petroleum production and extractive industry may be undertaken with development consent within a zone which permits agriculture or industry with consent.

In addition, the Minerals Resource Branch (MRB) submission reiterates that maintaining a supply of sand and coarse aggregate is imperative to the increasing demand for construction materials and declining resource base is a major concern in the Tweed. A minerals resource audit (MRA) has been undertaken. The MRB raises concern that the E3 zone prohibits open cut mining and extractive industries by omission and expansion of the E3 zone is a concern for the MRB. In addition the E3 zone does not permit agriculture or industry, therefore open cut mining is prohibited under the Mining SEPP. Some examples of this impact are the quarry site at McAuleys Road (F Raye) and significant identified resource area included in the Mineral Resource Audit 2011: Bilambil Potential Resource Area and Round Mountain Deposit.

Planning comment:

The E3 zone is a translation of the 7(d) Environmental Protection - Scenic Escarpment and 7(l) Environmental Protection – Habitat zones. The Draft LEP 2012 seeks to maintain the existing zone boundaries between Rural and Environmental Protection zones. In addition, the permissibility of agriculture within the areas of environmental protection, whilst not as unequivocally direct in translation, are primarily unchanged as these uses are discouraged within the current Tweed LEP 2000 and prohibited within the Draft LEP 2012.

Any request to rezone the land should be subject to a separate planning proposal process.

Recommendation/Action:

14 No amendments to the LEP.

MRB raised concern that in certain areas the land zoning map is incompatible with the adjacent resource areas identified in the MRA “transition area”. These areas identify where proposed developments and land uses changes may impact on mineral and extractive operation or resources. The MRB identifies issues with: McAuleys Road – F Raye; Tweed Quarry – Holcim Pty Ltd; Round Mt Depot; Duroby – Tweed Shire Council; and Cudgen Lakes – Gales Projects Pty Ltd. Brims Quarry and Wardrop Valley Quarry are located within IN1 and the “transition area” transects section of SP2 (infrastructure – Airport).

Planning comment:

Boundaries of environmental zones as exhibited are a direct translation of the LEP 2000 environmental zones, there has been no expansion of environmental zone boundaries.

Currently operating approved activities would continue to operate under existing use rights; however, for land identified to contain potential mineral resources, should extraction of resources be proposed and the zone is inappropriate, a planning proposal to rezone would be required. Such rezoning would include matters relating to buffers and the transition areas discussed in the submission.

Recommendation/Action:

15 No amendments to the DLEP.

The submission requests that the Dodds Island and Chinderah (Action Sands Pty Ltd) sand dredging operations areas should be zoned W3 not W as extractive industries are prohibited are prohibited in the W2 zone. Both sites are included in the 2004 Section 117 Ministerial Directions advice as identified resources (with an associated buffer).

Planning comment:

With respect to the Dodds Island and Chinderah (Action Sands Pty Ltd) sand dredging operations, it is acknowledged that the proposed re-zoning will present some future limitations at the subject site. However, it is also noted that a lawful development consent to extract sand at the subject location is current. Provided that a valid development consent is maintained, the ongoing extraction of sand at this location would be lawful.

Recommendation/Action:

16 No amendments to the DLEP.

The Uki Quarry (Hardings Earth Moving Pty Ltd) is located in the R5 zone and the transition area transects R5, RU2, RE1, SP2 and W1 zones. MRB has concerns regarding further subdivision and development in proximity to the quarry.

Planning comment:

With respect to transition areas and potential of development in proximity to quarries; it is not the role of this planning process to implement new buffer areas between potentially incompatible landuses. Future subdivision proposals for adjoining land will be notified to all neighbours, at which time opportunity will exist for such concerns to be raised.

Recommendation/Action:

17 No amendments to the DLEP.

3.2.7 NSW Rural Fire Service

Where Council zones land for development (rural, residential, commercial or industrial), vegetation management including clearing maybe required to enable compliance with the requirements of Planning for Bush Fire Protection 2006 and any other RFS bush fire planning standards.

Other comments provided by NSW Rural Fire Service were not directly related with the provisions of the draft Tweed LEP 2012. Comments focused on development application and planning proposal procedures and are not relevant to the finalisation of the DLEP:

1. All future planning proposals on land mapped bush fire prone will need to demonstrate compliance with *Planning for Bush Fire Protection 2006* and any additional RFS documents.
2. All future development applications will need to satisfy the requirements of Planning for Bush Fire Protection 2006.
3. Australian Standard AS 3959-2009 Construction of buildings in bushfire-prone areas includes grasslands as a hazardous vegetation category.
4. There is a lack of correspondence between AS 3959-2009 and Planning for Bushfire Protection in relation to provisions for asset protection zones.

Planning comment:

The comments provided are noted and while not directly related to the current LEP processes are relevant to the day-to-day operations of Council's Development Assessment Unit, and as such, are addressed at the DA stage.

Recommendation/Action:

18 No amendments to the DLEP.

3.2.8 Department of Primary Industries Office of Water

Supports the protection of key water features through separate zoning, additional local provisions and related overlay maps (clauses 7.1, 7.6, 7.9, 7.11 and 7.14), however has some concerns regarding uses permitted with consent in environmental zones.

Recommends mapping watercourses and riparian lands as separate zones (E and W).

Concern about impact of the following land uses in the E2 zone: business identification signs, home businesses, home based child care and roads. Refers to Practice Note 09-002.

Requests additional clause should be included to protect identified coastal sand aquifers from contamination and saline intrusion for vulnerable groundwater sources.

Requests an additional clause and overlay should be included for Coastal Wetlands.

Planning comment:

The methodology for implementing this requirement has been based on translation of the current LEP with limited changes and addition of local context based on adopted policies and strategies.

Following exhibition of the LEP in 2010, amendments to the recommendations of the Tweed Vegetation Management Strategy (TVMS), and a new approach to the Land Zoning Map with the E3 Environmental Management zone resulted in a "Revised Environmental Strategy" being developed to link the TVMS 2004 and the Standard Instrument LEP. This document requires further review in line with DP&I's approach towards environmental zones in the Northern Rivers region.

Due to ongoing pressure from State Government to finalise the SI implementation process, Council decided to place the draft Tweed LEP 2012 on public exhibition with the intention to implement certain recommendations of the TVMS and to implement the remainder through a separate LEP amendment process (subject to separate public consultations).

The following recommendations of the TVMS are recommended for implementation through a separate LEP amendment process:

- A refined E2 Environmental Conservation zone focussing mostly on the Tweed Coast, public lands and areas already protected;
- A new but flexible E3 Environmental Management zone;
- Revised Waterways zones which more closely reflect existing waterway character and uses;
- A new riparian land overlay map and revised clause; and
- A revised approach to tree preservation.

Coastal Wetlands are currently protected SEPP 14 Coastal Wetlands, and SEPP 71 Coastal Protection.

The DLEP implements the principles of the NSW Coastal Policy through clause 5.5 Development within the coastal zone. This clause provides additional conditions to be considered while assessing development within the coastal zone.

Coastal aquifers are in part protected under separate the *Water Management Act 2000*, and *Water Act 1912* and the NSW Groundwater Protection Policy 1998, through agencies such as the Office of Water under the Office of Environment and Heritage. Council and the Environment Protection Authority are also involved, through the *Protection of the Environment Operations Act 1997*. Notwithstanding this, the opportunity exists for Council to undertake more detailed investigations into protection of vulnerable groundwater systems through the landuse planning process.

Matters raised in this submission will be referred to Council's Natural Resource Management Unit for consideration during the review of the TVMS as discussed above.

Recommendation/Action:

19 No amendments to the DLEP.

3.2.9 Gold Coast Airport

The inclusion of model Clause 7.4 addresses the previous major issues of concern regarding airspace protection and is now comprehensive, strict and enforceable.

Heading of Clause 7.4 – the heading of this clause “airspace operations” does not properly reflect the purpose or content of the clause; the heading should be changed to “protection of airspace”.

Wording of Clause 7.4 should be amended to require consultations with the “airport operator” or “Commonwealth Department” instead of “relevant Commonwealth body”.

“Limitation or Operations Surface” term should be replaced with OLS (defined as the Obstacle Limitation Surface for Gold Coast Airport) or PANS-OPS (defined as the Procedures for Air Navigation Services - Aircraft Operations for Gold Coast Airport) as the exhibited term is unnecessary and confusing.

Similarly, Clause 7.5 – definition of ANEF contour should be simplified as follows: “ANEF contour means a noise exposure contour shown on the current approved ANEF mapping for Gold Coast Airport”.

Land zoning map – all land owned by Gold Coast Airport, including within Cobaki Broadwater, should be zoned as SP1 Special Activities – Airport. E2 zone applied to the Cobaki foreshore does not accurately represent the tenure or land uses status of the land. The airport is regulated by Part 5 of the Commonwealth Airports Act and the SEPP (Infrastructure) 2007 is not applicable to the GC airport. The associated zoning of public infrastructure land cannot therefore affect Commonwealth Land. GC Airport considers that the differentiated zoning will inevitably create an inaccurate presumption for LEP users that the use of the land is regulated under the LEP.

The GC Airport master plan contains an environmental strategy which among other things identifies key NSW legislation ie *Threatened Species Act*, *Fisheries Management Act*, *SEPPs 14, 26, 44 and 71* and safe guard these areas.

The part of the Cobaki Broadwater within the boundary of the GC airport is not a recreational waterway, but forms part of the airport property.

Planning comment:

While the use of the suggested heading of “Protection of Airspace” as an alternative heading is appreciated, Clause 7.4 has been generated from the DP&I Model Local Clauses and as such, the heading and content remain unchanged.

Comments made relating to terminology and content of clauses is acknowledged and appreciated. Again given that this is a model clause, the content of this submission should be discussed with the DP&I for amendment to the model clause if warranted.

LEP Practice Note PN11-002 states that land that is highly unlikely to be used for different purposes should be zoned SP2 Infrastructure and lists airports as one such category; as such, the zoning applied to the Gold Coast Airport site is considered appropriate and in accordance with DP&I requirements.

With respect to matters raised relating to environmental zones, until such time as the revised Vegetation Management Strategy, and the DP&I provide advice on the outcome of their review of environmental zones in the Far North Coast, it is appropriate to translate the zoning of the land to the corresponding “best fit” zone, as is the methodology behind the DLEP preparation.

While it is acknowledged that part of the GCAL property covers the Cobaki Broadwater, tenure does not necessarily infer changes in zoning and as such it is considered that the zoning is consistent with Departmental Practice Notes.

Recommendation/Action:

20 No amendments to the DLEP.

3.2.10 Queensland Department of Main Roads and Transport

Is the owner of the land adjoining the Tugun Bypass. Objects to translating Lots 103 and 105 on DP 1127593 from 1(a) Rural to RU2 Rural Landscape and request these properties as IN1 General Industrial.

Planning comment:

The proposed RU2 Rural Landscape zone is a direct translation of the current 1(a) Rural zone and as such, the request for an alternative zone is outside the scope of this planning process and requires a separate rezoning process.

Any rezoning outside the methodology applied for LEP conversion should be subject to a separate planning proposal.

Recommendation/Action:

21 No amendment to the DLEP.

3.3 Internal review

3.3.1 Water and sewer

Byrill Creek Dam and Clarrie Hall Dam

The DLEP changes the permissibility status of a water storage facility development on the land previously identified for augmentation of the Clarrie Hall Dam and for potential dam at Byrill Creek (and as identified on the DLEP map as “Existing and Future Water Storage Facilities”). The Water Unit consultation request that the draft Tweed LEP 2012 maintain the status quo of the Tweed LEP 2000.

Planning comment:

Under the current LEP, and in conjunction with the State *Environmental Planning Policy (Infrastructure)* 2007, the development of a water storage facility on both sites is permitted without consent and is therefore able to be assessed under Part V of the EP&A Act. The DLEP 2012 permits this type of development without consent on those part of the sites which are zoned RU2 Rural Landscape and with consent on parts which are zoned W1 Natural Waterways, thus requiring both a Part IV and Part V assessment.

The need to obtain two different forms of approval has been raised as a substantive issue as it will lead to delay, possibly greater cost, is less certain, and is therefore not in the public interest.

The application of the W1 zone over the Byrill Creek and Doon Doon Creek corridors is a consistent with the:

- Requirement mandated by DP&I that Standard Instrument LEPs must apply zones for all land and waterways within a LGA (waterway corridors are unzoned under the current LEP); and
- Methodology of applying the W1 Natural Waterway zone consistently across the Tweed Shire.

It is noted that this approach is not universally accepted and that consultation with the NRM Unit has also raised concern, albeit on different grounds were it is said that cattle on adjoining lands will not be able to 'lawfully' access the creek for drinking water.

In the case of the proposed site for the Byrill Creek dam, the standard conversion of zones and associated land use table has been difficult to achieve due to the requirement to apply a zone to the (currently unzoned) waterway corridors. While preparing the DLEP for exhibition, extensive internal discussion failed to provide an agreed position about whether the development should be facilitated with or without consent, with rationale both for and against.

In their comments to the DLEP, the Water Unit requested that the land use table of the W1 zone should be amended to allow for the development of water storage facilities “without consent”, instead of ‘with consent’ as in the exhibited version of the DLEP. It was argued that this was the better approach as it would permit one kind of approval process and would provide greater certainty.

Notwithstanding, allowing water storage facilities without consent in all areas zoned with the W1 zone across the shire nonetheless appears contrary to the primary objectives of the zone, which are to:

- Protect the ecological and scenic values of natural waterways; and
- Prevent development that would have an adverse effect on the natural values of waterways in this zone.

It is difficult to see how those objectives can be reasonably attained by permitting works that could occur at a relatively large scale without consent. The environmental assessment mechanism of such works under Part 5 of the Act would also only arise if they fall within the criteria set out under cl.110, without which no environmental assessment would be required. A detailed examination of the range of activities and corresponding licensing or approvals arising under other legislation that would trigger Part 5 assessment has not been undertaken, and it may lead to unnecessary or unforeseen exposure to risk from environmental harm.

Consequently, the requested amendment is not recommended. It is recommended as an alternative that Council seek the approval of DP&I to amend the DLEP *Schedule 1 - Additional Permitted Uses* to allow development of water storage facilities without consent for those parts of Byrill Creek and Doon Doon Creek corridors which are within the area identified on the Existing and Future Water Storage Facilities Map of the DLEP and to apply the SP2 Infrastructure zone to public land at Doon Doon Creek identified on the Existing and Future Water Storage Facilities Map of the draft LEP.

It is noted, however, that Tweed Shire Council received a number of submissions from both individuals and environmental groups expressing strong objection against the proposed development of the Byrill Creek dam and requesting that the Byrill Creek valley be zoned with an environmental zone.

This matter was discussed with the Executive Management Team on 4 April 2013 where it was agreed to seek amendment to the DLEP 2012 through Land Zoning Map and/or Additional Permitted Uses Map to allow permissibility without consent for the area of the Byrill Creek and Clarrie Hall Dam, subject to the agreement of the DP&I.

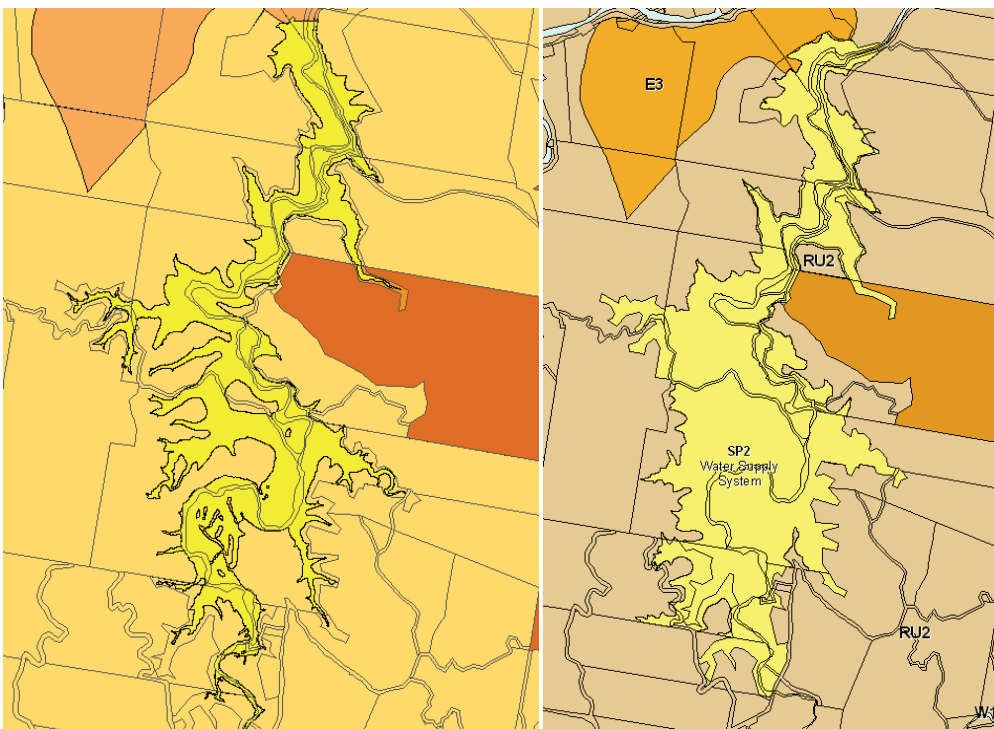


Figure 3: Zoning of the Clarrie Hall Dam as exhibited (left) and after proposed amendments (right).

Consultation with the Water Unit pointed out that at Clarrie Hall Dam, an additional Council-owned land and all "islands" of Council owned land within the water body must also be mapped on the "Potential and Future Water Storage Facilities Map", and as SP2 Infrastructure zone on the Land Zoning Map, given these are part of the operational land on which the dam is situated.

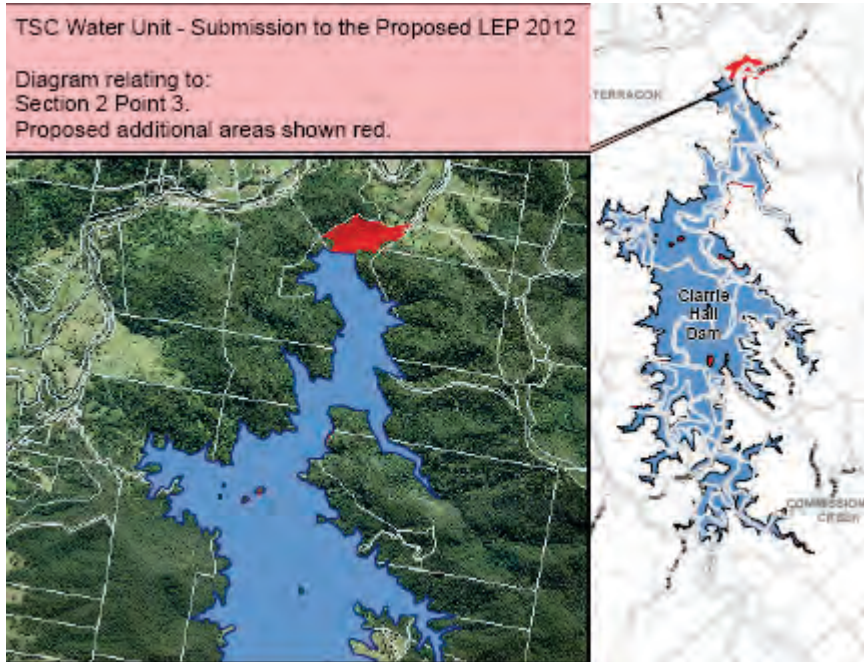


Figure 4: Proposed amendments to the Existing and Future Water Storage Facilities Map for the Clarrie Hall Dam site.

Recommendation/Action:

- 22A The draft Tweed LEP 2012 Land Zoning Map be amended as shown on Figure 3, and
- 22B The draft Tweed LEP 2012 Additional Permitted Uses Map and Schedule 1 be amended to allow water storage facilities without consent for those parts of Byrill Creek and Doon Doon Creek corridors which are within the area identified on the Existing and Future Water Storage Facilities Map of the draft LEP and
- 22C The draft Tweed LEP 2012 Potential and Future Water Storage Facilities Map be amended as shown on Figure 4.

Definition of Council Infrastructure Development

Water Unit requests that should Council wish to pursue inclusion of Clause 7.3, a clear definition of "Council Infrastructure development" must be included as such a definition is not currently provided in the DLEP2012.

Planning comment:

Councils do not have the ability to include additional definitions into the Standard Instrument Dictionary of Definitions. Notwithstanding, Council will formally notify the DP&I to consider an amendment to the Standard Instrument to include this definition into the dictionary.

Recommendation/Action:

- 23 No amendment to the DLEP.

Zoning of certain, existing infrastructure sites

Consultation with the Water Unit raised a number of comments in relation to the appropriate land zone for certain existing infrastructure sites, as follows:

- Bray Park Weir: The SP2 zone must also include Council owned land at Lot 31 DP 217422 and Lot 1 DP 420380 which contain water supply infrastructure intrinsic to the Water Supply System zone.
- Part of an unnamed road reserve at the confluence of the Tweed and Oxley rivers should also be zoned SP2 given aerial imagery confirms it is part of the existing weir water body.
- Bray Park Water Treatment Plant (WTP): the SP2 zone must also include Council owned land at Lot 103 DP 616049 and Lot 92 DP 621415 which contain water supply infrastructure intrinsic to the Water Supply System zone.
- West Tweed Waste Water Treatment Plant: The SP2 zone must extend over the entire WWTP site of Council owned land including Lot 2 DP 1011625, and must extend over the entire WWTP site including the road reserve "Hakea Drive".
- Kingscliff Waste Water Treatment Plant: The SP2 zone must be placed over the entire WWTP site of Council owned land in Lot 20 DP 1082482.
- Clarrie Hall Dam: The SP2 zone must also include Council owned land at Lot 2 DP 628704 which is operational land on which the existing dam is situated.
- At Banora Point WWTP outfall: The SP2 zone does not have a label. It must be labelled *SP2 Sewerage System*.
- The SP2 zone containing the water supply reservoir to the east of the Koala Beach R2 zone is incorrectly labelled *SP2 Sewerage System*. It must be labelled *SP2 Water Supply System*.
- The SP2 Infrastructure zone should be applied to Regional Sewer Pump Stations on Lot 108 DP 817783 and Lot 22 DP 1013812.
- The SP2 Infrastructure zone should be applied to significant water pump stations on Lot 1 DP 420380 and Lot 92 DP 621415.
- The SP2 Infrastructure site on Lot 1 DP 623932 should be labelled as Sewerage System, not Classified Road.

Planning comment:

The proposed amendments refer to existing infrastructure sites and are in line with DP&I Practice Notes which guide the Standard Instrument Implementation process.

Recommendation/Action:

24 The draft Tweed LEP 2012 Land Zoning Map be amended as provided above.

Amendments to the land use table

Water supply systems should be made permissible with consent in the RU1 Primary Production zone.

Water supply systems should be made permissible with consent in the E2 Environmental Conservation zone.

Planning comment:

Development of water supply systems by or on behalf of a public authority is managed under the State Environmental Planning Policy (Infrastructure) 2007. According to this

Policy, water supply systems are permissible without consent (if developed by or on behalf of a public authority).

Water reticulation systems are permissible without consent in the E2 zone (through the ISEPP) with the remaining land uses from the water supply systems being prohibited. The E2 zone is considered inappropriate for water treatment facilities and water storage facilities.

Recommendation/Action:

25 No amendment to the DLEP.

3.3.2 Natural resource management

Aims of the Plan

Additional aim should be added to the Aims of the Plan: *(f) to promote sustainable transport, public transport use, walking and cycling.*

Planning comment:

While the proposed aim is generally consistent with Council's approach towards sustainability, there are two factors that should be considered:

- Council methodology for developing this LEP has been based on the "best fit" conversion of the current LEP with local context based on adopted policies and strategies. For example, the draft Tweed LEP 2012 contains two clauses regulating development on the flood prone lands, which must be read in conjunction with Council adopted policy: DCP A3 Development on Flood Liable Land. At this moment there is no adopted, Shire-wide policy promoting sustainable transport, public transport use, walking and cycling.
- As stated in clause 1.2 of the Standard Instrument, an LEP is required to set out the particular overarching aims of the plan. Each zone then includes core objectives which describe in more detail the purpose of the land it refers to. Permitted land uses and principal development standards are the key tools to be used to achieve objectives of a zone. This means there are three levels of information (aims, zone objectives and land use controls) and they form a hierarchy of policy intention. Any amendments to the aims of the LEP as part of the post-exhibition review may trigger re-exhibition of the entire document as the aims affect all zones, thus all properties within the Shire.

Recommendation/Action:

26 No amendment to the LEP.

Sustainable Urban Design

Additional clause should be included into the DLEP:

(7.14a) Good Design

- (1) The objective of this clause is to deliver a high standard of resource efficiency in development design.
- (2) This clause applies to all new developments.
- (3) Development consent must not be granted to development to which this clause applies unless, the consent authority is satisfied that, the proposed development exhibits a high standard of design in regards to resource-efficient land use patterns, development standards and precautions against climate change.
- (4) In considering whether proposed development exhibits a high standard of design, the consent authority must have regard to the following matters:
 - (a) How the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on neighbouring sites,
 - (b) Whether settlement patterns and buildings meet sustainable design principles in terms of access to active transport options, sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency, and
 - (c) Whether the proposed development detrimentally impacts on view corridors and landmarks.

Planning comment:

The clause would provide legislative rigour to some of the key issues Council has recently incorporated into the revised DCP A1. It also combines key environmental design criteria with a required compatibility with existing environmental, building and neighbourhood character. In light of new legislative reform which will somewhat 'homogenise' the development assessment process, understanding and maintaining landscape and built form character will be vital to future establishing future development and in the Tweed and identity of our subregion. In this regard, the intent of the clause is good in terms of establishing a baseline of good design criteria and should be considered for inclusion.

The key question is how the 'all encumbering' wording of the clause would apply to diverse range of development types, particularly our more regional and agricultural focussed context within the Tweed. This can be assessed by analysing each component:

- (1) *The objective of this clause is to deliver a high standard of resource efficiency in development design.*

This is a good objective reinforcing the overall direction of where Council is currently trying to take out DCP's. It does however contain some ambiguities including what constitutes a 'high standard', and similarly it is uncertain whether the three criteria provided in subclause 4 fully constitute the meaning and application of 'resource efficiency in development design' as it is applied to the Tweed context.

- (2) *This clause applies to all new developments.*

This could be onerous when dogmatically applied to all forms of development, particularly in regard to more agricultural based activities more typical of our regional location.

The question is whether due regard of the criteria in terms of relevance of certain criteria would satisfy the terms of this clause. For example, the criteria for achieving land-use, resource, and energy and water efficiency may be relevant to agricultural development, where as having regard to sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy may not be relevant.

In the same context, the requirement to producing a 'high standard or resource efficiency in development design' in terms of some of our Part 3 applications (including infrastructure) and some of the more minor development applications may not require the same level of scrutiny as a major Greenfield residential development.

The consideration of each of the criteria in terms of implementation and assessment would therefore require the flexibility to determine the relevance and application of the criteria to proposed development.

(3) *Development consent must not be granted to development to which this clause applies unless, the consent authority is satisfied that, the proposed development exhibits a high standard of design in regards to resource-efficient land use patterns, development standards and precautions against climate change.*

The interpretation of this clause revolves around an understanding of what constitutes a 'high standard of design' (particularly when considering budgets), and whether the three 'measurable' criteria define resource efficient land use patterns as they apply to the Tweed context.

In conclusion, the inclusion of this clause would add additional legislative weight to the core issues of site specific and sustainable development design and as such consideration should be given to its inclusion within the LEP.

Each of the criteria within the clause is currently (disjointedly) contained within some of DCP's. The inclusion of this Good Design Clause within the LEP would further ensure consideration of these core criteria within the preparation of future DCPs and DCP revisions as well as capturing development which may currently sit outside the guidance of our DCP. It will also ensure that all new development has due regard for these criteria.

Consideration however needs to be given to how the clause would be implemented and assessed against, particularly in terms of understanding what constitutes a 'high standard of design', and whether each of the criteria could be assessed in terms of its relevance to a given development.

Similarly to planning response provided to request to include additional aim, there is concern that the inclusion of a clause with a Shire-wide application may trigger a re-exhibition of the entire document.

Recommendation/Action:

27 *No amendment to the LEP.*

Environmental facilities should require consent in all zones

Planning comment:

The methodology of preparing the draft LEP has been based on two guiding principles:

- The "best fit" conversion. This approach has been taken to simplify the translation of the current LEP 2000 into the format of the standard LEP template in the absence of a Shire wide strategic review of the LEP and zones.
- Local context based only on Council adopted strategies, plans and policies.

Analysis of the current LEP indicates that environmental facilities are prohibited in the 8(a) National Parks zone, permissible with consent in the 1(b) Agricultural Protection, 6(b) Recreation and environmental zones 7(a), 7(d) and 7(l) and without consent in all other zones.

The draft LEP 2012 permits environmental facilities without consent in all zones except for the E2 and E1 zones. According to the methodology of preparing the LEP (outlined above) the land use table for each zone should provide, where possible, identical list of land uses as in the current LEP 2000. As such, the land use table is to be amended to make environmental facilities permissible with consent in RE2 Private Recreation, RU1 Primary Production, and E3 Environmental Management zones.

Any amendments to the land use table outside of the "best fit" translation should be based on an adopted policy or strategy.

Recommendation/Action:

28 *Environmental facilities land use to be made permissible with consent in the following zones: RU1 Primary Production, RE2 Private Recreation and E3 Environmental Management.*

E2 Environmental conservation zone to reflect SEPP14, SEPP26, Endangered Ecological Communities or otherwise significant vegetation where accurately mapped, larger areas of public owned or administered bushland, shallow or minor waterway reserves or road reserves within or adjacent National Parks and Nature Reserves and minor zone boundary anomalies.

E3 Environmental Management zone to reflect the Revised Environmental Strategy

Koala habitat protection

Changes in environmental zones between 2010 and 2012 versions of the draft LEP

Planning comment:

Please refer to Section 3.4 of this Report for response regarding environmental zones, koala habitat protection and timeframes of necessary amendments to the LEP.

Rationale for zoning the waterways and the land use table

Planning comment:

The rationale behind applying waterway zones has been based on relevant Practice Notes issued by the DP&I and on objectives of each zone, and includes:

- W1 Natural Waterways zone is generally intended for natural waterways that are to be protected for their ecological and scenic values. These may include sea grass beds or shelf, bed or reef formations of high ecological significance. A limited number of low impact uses that do not have an adverse effect on the natural value of the waterway can be permitted in this zone, such as development associated with recreational fishing, boating and commercial fishing industries.
- W2 Recreational Waterways zone includes water-based recreation, boating and water transport, and development associated with fishing industries, such as natural water-based aquaculture and recreational fishing. When zoning adjoining land, council must consider whether the land uses are compatible with uses in the waterway, and should make sure that uses complement and support uses in the W zone where necessary. For example, where uses such as 'marinas' that facilitate access to the land are permitted in the waterway, then there needs to be complementary and supporting land uses in the adjoining terrestrial zone.

- W3 Working Waterways zone is intended for waterways that are primarily used for commercial shipping, ports, water-based transport, maritime industries and development associated with commercial fishing industries. When zoning adjoining land, councils must consider whether the land uses are compatible with uses in the waterway. For example, where land based maritime industries, ports, boating facilities etc. adjoin the waterfront, the Working Waterway zone may be appropriate for use.
- The Waterway zones are generally intended for application to the waterway's channel and banks and not for land based development associated with the waterway.
- Waterways within a National Park should be zoned E1 National Parks and Nature Reserves.
- Small and intermittent waterways should generally be zoned according to the surrounding zone.
- Objectives of the W1 zone which aim to protect the ecological and scenic values of natural waterways, to prevent development that would have an adverse effect on the natural values of waterways in this zone and to provide for sustainable fishing industries and recreational fishing.
- Objectives of the W2 zone which aim to protect the ecological, scenic and recreation values of recreational waterways, to allow for water-based recreation and related uses and to provide for sustainable fishing industries and recreational fishing.
- Objectives of the W3 zone which aim to enable the efficient movement and operation of commercial shipping, water-based transport and maritime industries, to promote the equitable use of waterways, including appropriate recreational uses and to minimise impacts on ecological values arising from the active use of waterways.

This approach is essentially similar to the one that was used while preparing the first version of the DLEP, exhibited in 2010. It is noted that this approach is not universally accepted and concerns regarding the waterway zones have been raised on the number of meetings. One of the recommendations of the Revised Environmental Strategy is to implement revised Waterways zones which more closely reflect existing waterway character and uses.

Riparian Land clause and overlay map

Planning comment:

Riparian land clause and overlay map are recommended for implementation in the Revised Environmental Strategy. It was initially intended to implement the riparian clause through a separate LEP amendment, however concerns raised by the community during the public exhibition led to a revision in Council's approach towards this matter, with a recommendation to include this clause (without a map, similarly to the current status under LEP 2000) into the DLEP.

Riparian clauses and overlay maps are subject to "review of environmental zones and overlays" undertaken by the DP&I. At this time, the exact date for completing "the review" is uncertain.

Recommendation/Action:

29 *Riparian clause – in a version consulted with the Department of Planning and Infrastructure is to be included into the DLEP.*

Biting Midge and Mosquitoes breeding areas overlay map and clause

Planning comment:

Council initially intended to include the biting midge and mosquitoes breeding areas overlay map and clause. Pre-exhibition consultations with the legal branch of the DP&I indicated that the inclusion of this clause into the draft LEP would not be supported. The DP&I advised that this matter should remain at the development control plan level.

Recommendation/Action:

30 No amendment to the LEP.

Lot 3 DP 837715 and Lot 2 DP 1126205 were transferred to the National Parks and Wildlife Services and should be zoned E1 National Parks and Nature Reserves

Planning comment:

Lot 3 DP 837715 has not been gazetted as a Nature Reserve, however DP&I guidelines indicate that the environment protection zone E1 can be applied to areas identified as proposed for national park or nature reserves agreed by the NSW Government. Internal review identified.

Recommendation/Action:

31 Amend the Land Zoning Map to apply E1 zone for Lot 3 DP 837715 and Lot 2 DP 112605.

3.3.3 Development assessment

Consultation with the Development Assessment Unit has raised a number of questions and concerns which include:

Events on Council land to be included as Exempt Development

Under the current LEP, events on Council land are considered as exempt development through DCP A10 where consistent with the Council Policy 'Procedure for issuing temporary licences for events on Council administered land, including Road Reserves'. Request that events on Council owned land be included within Schedule 2 Exempt Development.

Planning comment:

As the DCP A10 - Exempt and Complying DCP will be repealed upon publishing the Standard Instrument LEP, consistent with the State Environmental Planning Policy Exempt and Complying Development Codes implementation directions, the only mechanism to maintain this land use as exempt development is within Schedule 2 Exempt Development of the DLEP. The exhibited version of the draft Tweed LEP 2012 did not list events on Council land as exempt development due to ongoing concerns on consistency with the Standard Instrument template. Those concerns have been clarified now that a number of LEPs regulating use of public land have been "made" by the Minister. Additional entry to Schedule 2 of the DLEP 2012 has been developed and is recommended for inclusion.

32 *Recommendation/Action:*

The DLEP 2012 Schedule 2 Exempt Development to be amended to include the following:

Events on Council land:

- (1) Must be consistent with any applicable plan of management under the [Local Government Act 1993](#) for the land,
- (2) Development must have obtained all required approvals to stage the event.

Footpath trading to be considered as exempt development

Under the current LEP, footpath trading is considered as exempt development through DCP A10 where consistent with the 'Tweed Footpath Trading' policy. It is requested that footpath trading remain as exempt.

Planning comment:

As the DCP A10 - Exempt and Complying DCP will be repealed upon publishing the Standard Instrument LEP, the only mechanism to maintain this land use as exempt development is within Schedule 2 Exempt Development of the Standard Instrument LEP. The exhibited version of the draft Tweed LEP 2012 did not list footpath trading as exempt development due to ongoing concerns on consistency with the Standard Instrument template. Those concerns have been clarified now that a number of LEPs regulating use of public land have been "made" by the Minister. Additional entry to Schedule 2 of the DLEP 2012 has been developed and is recommended for inclusion:

33 Recommendation/Action:

The DLEP 2012 Schedule 2 Exempt Development to be amended to include the following:

Footpath trading:

- (1) Must be on public land or a public road within the meaning of the [Local Government Act 1993](#) or on land to which the [Crown Lands Act 1989](#) applies,
- (2) Use of footpath as outdoor eating areas must be associated with lawful food and drink premises.
- (3) Must not involve erection of any structures.
- (4) Must have obtained all required approvals.

Amendment to Terrestrial Biodiversity Clause 7.9 to remove a reference to DCP and reference to preliminary assessment of vegetation.

Development Assessment Unit sought to clarify wording of the Terrestrial Biodiversity Clause. Subclause (3) of this clause provides a reference to a DCP which has not been prepared yet.

Planning comment:

The Terrestrial Biodiversity clause of the draft LEP has been adopted from the list of 'model local provisions', a list of clauses for optional inclusions 'as they are', published by the DP&I. The Terrestrial Biodiversity clause of the DLEP 2012 is based on relevant 'model clause' but has been modified to include additional subclause as follows:

- (3) *This clause does not apply if:*
 - (a) *A copy of a preliminary assessment of the land subject to the development (undertaken in accordance with a development control plan made by the Council) has been given to the Council; and*
 - (b) *The Council has provided written advice to the person proposing to carry out the development confirming that results of the preliminary assessment indicate the proposed development is not within an identified area of environmental significance.*

Part (a) of the above subclause makes a reference to a DCP which has not as yet been prepared. It is recommended to remove subclause (3) from the Terrestrial Biodiversity clause until relevant DCP chapter providing necessary guidelines is developed and adopted by Council. Similar requests have been made under several submissions lodged by landowners affected by the Biodiversity Map.

Recommendation/Action

34 Clause 7.9 Terrestrial Biodiversity of the draft Tweed LEP 2012 be amended by removing subclause (3).

Permissibility of telecommunications facilities in the rural zones.

The permissibility status of telecommunications facilities under the Standard Instrument LEP is unclear.

Planning comment:

Guidelines prepared by the DP&I specifically prohibit listing this land use under LEPs. The *State Environmental Planning Policy (SEPP) Infrastructure* provides that telecommunications facilities are permissible without consent if listed under a LEP Land Use Table.

This inconsistency has been discussed with the DP&I, who in principle support inclusion of this land use into the rural and industrial zone land use tables.

This solution is in line with submission (No 1510) lodged by Visionstream Pty Ltd in relation to development of the National Broadband Network (NBN).

Recommendation/Action:

35 The Tweed LEP 2012 be Land Use Table for the RU1 Primary Production, RU2 Rural Landscape and IN1 General Industrial zones be amended to permit development of “telecommunications facilities”, with consent.

3.3.4 Engineering and Operations

Floodplain management

Consultation with Engineering and Operations has requested that the Flood Planning Map be updated in line with most recent flood modelling study.

Planning comment:

The Flood Planning Map is an essential component of the draft Tweed LEP 2012. The recent flood modelling study amends the land area, and therefore properties potentially affected by the flood planning Clause 7.6. Inclusion of the mapping requires consultation with affected landowners and would, if included within the DLEP, require the re-exhibition of the LEP. This would significantly delay the finalisation of the DLEP. Given the consultation required to implement the revised flood modelling, it is recommended to amend the “Flood Planning Map” through a separate LEP amendment process.

Recommendation/Action:

36 No amendment to the DLEP at this stage. The revised flood modelling and amendment to the Flood Planning Map to be undertaken through a separate LEP amendment process.

Designated Roads Map and future road and infrastructure corridors to be maintained under the draft LEP.

Consultation with Engineering and Operations has raised a request that future roads and infrastructure corridors of the current LEP be maintained under the draft Tweed LEP 2012.

Planning comment:

The Land Zoning Map of the current LEP 2000 contains future roads and electricity transmission corridors. Any development within those corridors need to be assessed under Clauses 37 (electricity) or 38 (road) of the LEP.

The structure of the Standard Instrument template for LEPs does not allow for any additional information (i.e. infrastructure corridors) to be shown on the Land Zoning Map.

The ongoing reform of the planning system in NSW has resulted in new, consistent state-wide provisions for considering the impacts of certain types of development on land adjacent to linear infrastructure and vice versa, provided under the Infrastructure SEPP. Any duplication of those State provisions under the LEP would not be supported by DP&I. As such, this request is not consistent with the Standard Instrument Template Order or the DP&I Practice Notes and Guidelines.

Recommendation/Action:

37 No amendment to the DLEP.

Shop top housing in flood prone areas to be made prohibited.

Consultation with Engineering and Operations highlights the permissibility of shop top housing within areas of the former 3(c) Commerce and Trade Zone is in conflict with Council's Policy position under The Flood Risk Management Policy, which limits LEP amendments that permit additional habitable development unless the areas subject to those amendments are capable of "high road" evacuation in floods.

Planning comment:

Under LEP 2000, there are various restrictions on dwellings in business zones. In the current LEP 2000 3(c) Commerce and Trade Zone dwelling houses are only permissible if a "caretakers dwelling", and multi-dwelling housing is not permissible. The 3(c) zone applies to business areas in South Murwillumbah (Prospero Street, Tweed Valley Way etc), and Tweed Heads South (Minjungbal Drive, Machinery Drive, Greenway Drive etc).

Under the draft LEP 2012, multi dwelling housing remains prohibited in business zones, however shop top housing was proposed to be made permissible with consent. The B5 - Business Development zone has been used as the "best fit conversion" for 3(c) zoned land under the draft, and hence applies to South Murwillumbah and Tweed Heads South.

The Tweed Valley Floodplain Risk Management Study (draft) confirms that the areas of South Murwillumbah and Tweed Heads South have significant evacuation constraints, and hence the policy should apply. It is also noted that the South Murwillumbah Business & Owners Group made a submission (No 317) supporting shop top housing within the B5 zone.

The DLEP is prepared, as far as possible, to be a translation of the current LEP provisions and should not contravene other policies and Council. Prohibiting "shop top housing" within the B5 Business Development zone is consistent with the Tweed LEP 2000.

Recommendation/Action:

38 The draft Tweed LEP 2012 be amended to prohibit "shop top housing" in the B5 Business Development zone.

Zoning of Tweed Coast Road between Casuarina and Bogangar

Engineering and Operation have requested the zoning of the Tweed Coast Road between Casuarina and Bogangar should be changed from an environmental zone to an urban zone to reflect its use as a road.

Planning comment:

Currently roads are unzoned under the Tweed LEP 2000. Under the Standard Instrument LEP, all roads must be zoned in accordance with Practice Notes published by the DP&I. Generally it is advised to apply adjoining urban zones and the majority of roads in the Tweed LGA have been zoned in this manner. The section of the Tweed Coast Road subject to this submission is an exception given the adjoining land to either side is zone E2 Environmental Conservation as this section of the road runs through a Nature Reserve.

Roads are classified as infrastructure under the SEPP Infrastructure which, consistent with the hierarchy of the planning system in NSW, prevails over the LEP. Section 94(1) of the SEPP Infrastructure states that *Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land.* As such, the E2 zone applied to the roadway does not impose any constraints on road infrastructure and is in line with adjoining zone (E1 National Parks and Nature Reserves).

Recommendation/Action:

39 No amendment to the draft Tweed LEP.

Events on Council land

Consultation with Engineering & Operations sought additional entry into the Schedule 2 - Exempt Development of the DLEP to recognise events on Council land as exempt development, if consistent with Council policy position. This is a similar request to the one raised by Development Assessment in Section 3.3.3 above.

Appropriate zoning of the Black Rocks Sportsfield

Engineering and Operations have requested that the Black Rocks Sportsfield be zoned for recreation rather than environmental to reflect the use of the site.

Planning comment:

The DLEP2012, as exhibited, proposed to essentially translate the zoning of the current LEP 2000, being an environmental zone with the additional permitted uses of a sporting facility allowed through Schedule 1 and the associated Additional Permitted Uses Map.

The rationale of this approach was to provide balanced controls for managing the sporting field within environmentally sensitive areas, without an intention to expand the existing sporting site.



Figure 5: Location of Lot 301 DP 1125090

This approach resulted in serious concerns and confusion among the local community in Pottsville, concerned that these planning controls may result in additional sporting facility to be erected within the koala habitat.

To clarify Council's intention, it is considered reasonable to remove Area 9 from the Additional Permitted Uses Map and zone the existing sporting field site to RE1 Public Recreation zone, with adjoining areas to be zoned with an environmental zone, as exhibited.

Recommendation/Action:

- 40 The draft Tweed LEP 2012 Land Zoning Map be amended to zone Lot 301 DP 1125090 (Figure 5 above), excluding the access road, as RE1 Public Recreation and to amend the Additional Permitted Uses Map to remove area labelled as "Area 9".

3.3.5 Economic development

Height controls at/near Murwillumbah Airfield

It is requested that the Maximum height of buildings should be limited to 0 within 30 metres from Runaway Centre Line (RWCL).

Planning comment:

Analysis of the Murwillumbah airfield RWCL indicates that the 30 metres buffer does not encroach into private land and is contained within the airfield site, with the exception of the northern edge, where the buffer covers a small portion of Council owned land zoned RE1 Public Recreation.

As the land within the 30 m buffer is in public ownership, restricting building height to 0 m does not appear to be justified.



Figure 6: DLEP Height of Building Map with Runaway Centre Line and 30 m buffer.

Recommendation/Action:

41 No amendment to the draft Tweed LEP.

3.3.6 Waste management

Appropriate zone for closed Murwillumbah landfill facility

The Waste Management Unit requested that the zoning of the Murwillumbah landfill facility should be amended to reflect recent Council decision to close the facility and commence an EPA approved closure and capping program.

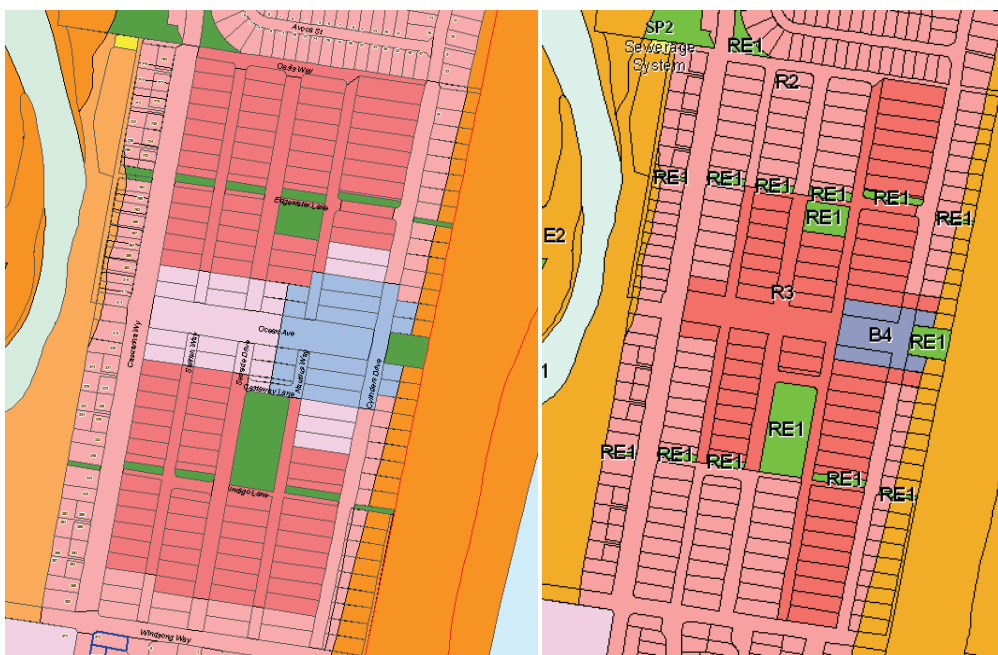
In addition, on 13 December 2012 council resolved to endorse, subject to development consent, lease conditions to enable a motorcycle club to construct, maintain and operate a motorcycle (dirt) track on this site. This land use would be classified, under the Standard Instrument dictionary, as a recreational facility (outdoor).

Planning comment:

The exhibited draft LEP is proposing to change the zone from 5(a) Special Uses, to IN1 General Industrial, where the recreational facility (outdoor) land use would be prohibited.

An advice from the Executive Management Team (EMT) was sought to determine preferred options for future use of this site and an appropriate zone to facilitate this use. On its meeting of 4 April 2013, the EMT resolved to recommend amendment to the Land Zoning Map on this site to RE1 Public Recreation, in line with intended use of land.

- LEP Amendment No 35 to facilitate the expansion of the Tweed Coast Holiday Park (gazetted on 21 December 2012). This amendment rezones the site from 2(a) Low Density Residential to 6(b) Recreation zone in the current Tweed LEP 2000. This site is to be zoned the corresponding RE2 Private Recreation within the DLEP.
- LEP Amendment No 93 to rezone the Boyds Bay Garden World Site (gazetted on 16 November 2012). This amendment rezones the site from 1(a) Rural to 3(c) Commerce and Trade. This site is to be zoned the corresponding B7 Business Park within the DLEP.
- LEP Amendment No 96 to facilitate redevelopment of the Tweed City Shopping Centre (gazetted on 18 January 2013). This amendment rezones the site to part 2(b) Medium Density Residential and 6(b) Recreation to 3(b) General Business. This site is to be zoned B3 Commercial Core within the DLEP.



Figures 8&9: Land Zoning Map for the Seaside City Area as exhibited (left) and after proposed changes (right)

Council at its meeting of 18 April 2013, resolved to endorse amendments to the Tweed Development Control Plan 2008 Section B11 Seaside City. It is noted that the draft Tweed LEP 2012 Land Zoning Height of Buildings, Floor Space Ratio and Lot Size maps for the Seaside City area were based on the previous version of the DCP B11, therefore an update to these maps is required in ensure consistency. The key changes of the DCP amendment include:

- Land Zoning Map: the extent of 'medium density' footprint (Coastal Multi Dwelling and Coastal Units) has been reduced in favour of 'low density' residential development (Coastal Housing). Further, the 'Village Centre' footprint has been reduced in preference for 'medium density' development (Village Centre Fringe and Coastal Multi Dwelling). In addition, previously the Village Centre Fringe area had been translated to the R1 – General Residential zone. The Village Centre Fringe precinct contains a strong residential and tourist focus, along with a high minimum density requirement of 1 unit per 125m² site area. Whilst the R1 zone enables these objectives, it is considered that these attributes are better facilitated within the R3 Medium Density Zone.

- Height of Buildings Map: Minor building height changes were made to the Seaside City DCP based on the proponents request, as per adopted amendments to the DCP B11.
- Floor Space Ratio Map: Minor floor space ratio changes were adopted to the Seaside City DCP following the proponents' request. Beyond the DCP based changes, it is considered appropriate to remove the imposition of a maximum FSR from the DLEP for Coastal Housing lots East of Lorna Street / Cylinders Drive. At present, a maximum FSR of 0.5:1 is applicable to these properties, however when considering this control in light of the small residential footprint and the provisions of Clause 4.5(4) of the Draft LEP, the maintenance of this control is considered undesirable towards facilitating the vision and aims within the Seaside City DCP. Maintaining the existing 2:1 FSR control for 'Village Centre' is considered appropriate as it enables appropriate development opportunities to facilitate the visioned development of those lots.
- Lot Size Map: With the changes made to the R2 and R3 footprint, the extent of the corresponding minimum lot size controls also require amendment. The recommended changes are displayed in It is noted that the amendments to the Seaside City DCP enable Dual Occupancy on lots not smaller than 700m² (if those lots possess dual frontages) within the Coastal Housing precinct. These provisions create a potential density yield of 1 dwelling per 350m², whereas the minimum lot size within the DLEP 2012 restrict development to 1 dwelling per 450m² of site area. The reduction of minimum lot size from 450m² to 350m² is outside the scope of this planning process, therefore it is recommended to maintain the minimum lot size control for the R2 zone unchanged.

Recommendation/Action:

- 44 The draft Tweed LEP 2012 Land Zoning, Floor Space Ratio, Lot Size and Height of Buildings Maps be amended as per recently gazetted LEP Amendments No 35, 93 and 96,
- 45 The draft Tweed LEP 2012 Land Zoning, Floor Space Ratio, Lot Size and Height of Buildings Maps be amended consistent with recent amendments to the DCP B11 Seaside City.

3.3.8 Other minor amendments to the draft Tweed LEP 2012 resulting from internal post-exhibition review

A number of inconsistencies with the translation of zones and mapping have been identified through final review, as follows:

- Translation of zone for land located at 77 Tamarind Avenue at Bogangar (Deposited Plan No 76700) from 2(e) to RE2 should be amended to R1, in line with recent amendments to development consent and consistently with the current use of land, which is residential with serviced apartments.
- Old Pacific Motorway corridor at Banora Point (now called Sexton Hill Drive) is no longer classified as a State Road, and is recommended to be rezoned from SP2 to the adjoining zone, in line with relevant Practice Notes.

- Zoning of Lot 400 DP 776483, located at 165 Darlington Drive, Banora Point. Under the current LEP the site is zoned 2(a) Low Density Residential. Under the draft Tweed LEP 2012 the site was proposed to be zoned RE1 Public Recreation, as the site is owned by Council and classified as operational land. At its March meeting, Council resolved to sell the parcel by public tender. It is therefore recommended to revert the zoning back to Low Density Residential (R2), in line with the current zoning of the site.
- Land Zoning Map for Lot 6 DP 870582 and Lot 78 DP 502697 to be amended to provide a correct translation of zones 1(a) Rural to RU2 Rural Landscape and 2(a) Low Density Residential to R2 Low Density Residential.
- Internal review of development controls in Salt Village highlighted an inconsistency on Height of Buildings and Floor Space Ratio Maps for areas zoned with the R1 General Residential zone. These two maps, when placed on exhibition in 2012, were to be read in conjunction with development controls of the DCP A1 which were restricting low density residential development to 9 metres. On 18 April 2012 Council resolved to adopt the revised DCP A1. The revised DCPA1 does not maintain the 9 metres restriction for dwelling houses, which can potentially lead to an increase in height of buildings in this locality. Similarly, the revised DCP A1 is silent on the floor space ratio controls, which are defined under the Floor Space Ratio Map of the DLEP. To avoid an increase in density of residential development, and to maintain consistency with current planning controls, it is recommended to amend Height of Buildings and Floor Space Ratio Maps for Lots 553-589 DP 1180830 and 506-513 DP 1137688, located in Kingscliff (as provided on Figure 10 below).

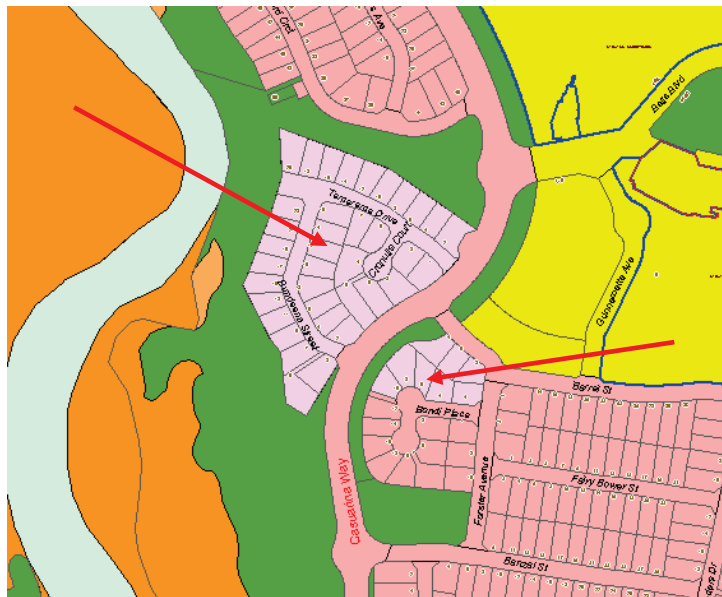


Figure 10: Areas zoned R1 General Residential in Salt Village.

Recommendation/Action:

Amend the Land Zoning Map as follows:

- 46 77 Tamarind Avenue at Bogangar (Deposited Plan No 76700) to be zoned R1 General Residential, and
- 47 Old Pacific Motorway corridor at Banora Point, now called Sexton Hill Drive, to be rezoned from SP2 to an adjoining zone, and

-
- 48 Lot 400 DP 776483 to be zoned R2 Low Density Residential, and
- 49 The conversion of zones on Lot 6 DP 870582 and Lot 78 DP 502697 to be reviewed to translate zones with no variations to their boundaries, and
- 50 Height of Building Map for Lots 553-589 DP 1180830 and Lots 506-513 DP 1137688 in Salt Village, Kingscliff, to be amended to provide a 9 m maximum height control and
- 51 Floor Space Ratio Map for Lots 553-589 DP 1180830 and Lots 506-513 DP 1137688 in Salt Village, Kingscliff, to be amended to provide a 0.8:1 floor space ratio control.

3.4 Environmental protection

3.4.1 Submissions objecting to the proposed environmental protection controls

Concerns regarding protection of environment, in particular the koala habitat along the coast and the methodology of converting the current LEP 2000 into the DLEP and the suitability and application of environmental zones elicited the most comments and variety of views during the public exhibition. For this reason the submissions relating to environmental concerns and zoning are discussed separate from the remainder of the submissions following.

All submissions received have been carefully analysed and are detailed in Attachment 1 to this Report. In response to environmental concerns, Council provided a broad analysis of three options for proceeding with the LEP review.

In summary, environmental concerns included:

- Protection of the koala habitat along the Tweed Coast.
- Accuracy of environmental zones based on the LEP 2000.
- Delay the LEP until the Koala Plan of Management is finalised.
- Vegetation clearing controls in koala habitat.
- Delay the LEP until the Revised Environmental Strategy.
- Appropriate zoning of Pottsville Wetlands.
- Objections to any new recreational facilities near Black Rocks estate.
- The DLEP should be deferred until the E-zone review commenced by the DP&I is completed.
- Vegetation and biodiversity must remain a priority and high conservation values should be protected.
- Riparian corridors should be protected.
- The draft LEP does not meet the NSW state government requirement to protect the environment (SEPP 44 or Directions under Section 117).
- The process of preparing the LEP has not been open and Council did not provide accurate information.
- The DLEP should take account of climate change.
- Comments regarding Byrill Creek Dam, (addressed in section 3.3.1).
- Requests for a public hearing, (addressed in section 3.5.3).
- Council should stand up to the State Government.

- Name of the E3 zone “Environmental Management” is inappropriate and does not inform what the intention of the zone is.
- Open cut mining should be prohibited in the rural zones and CSG should be listed as a prohibited land use.
- Domestic animals should be banned in all new developments.
- A range of site or zone specific use comments.

The above concerns were raised in individual submissions, as well as in proforma submissions. Six different proforma letters were submitted, as follows:

Proforma	Number submitted	Summary of Key Issues
A (two versions)		<p>I reject the draft Tweed LEP for the following reasons:</p> <ol style="list-style-type: none"> 1) The draft is a step backwards for conservation of native vegetation and biodiversity in Tweed Shire. 2) Loss of protection of 1200ha of coastal habitat including Koala habitat. 3) Habitat currently protected by way of Tree Preservation Orders have decreased by about 10000ha. 4) Council exhibited the draft LEP without supporting documents such as the revised Environmental Strategy. 5) Council has not been open with councillors and the community by claiming that this LEP is a rollover of the current LEP 2000. 6) Council has not provided information on the implications for restrictions of clearing of native vegetation. 7) Revised Environmental Strategy and Tweed Coast Koala Plan of Management to be available to community prior to decision on draft LEP 2012. 8) Public Hearing as due process has not been followed. <p>Alternative version of this submission:</p> <p>I reject the draft Tweed LEP 2012 for the following reasons:</p> <ol style="list-style-type: none"> 1) The draft LEP 2012 is a step backwards for conservation of native vegetation and biodiversity in Tweed Shire. 2) It fails to include critical recommendations of Council's own Tweed Vegetation Management Strategy; 3) It removes protection of 1 200 ha. of coastal habitat including Koala habitat; 4) It reduces the area of habitat currently protected by the Tree Preservation Order by approx. 10 000 ha.; 5) Public Hearing given that due process has not been followed: <ul style="list-style-type: none"> • The Plan was placed on exhibition without all the necessary supporting documentation (e.g. the revised Environmental Strategy); • Council has not been open with Councillors and the community in claiming that this LEP is a rollover of the current LEP 2000, and has failed to adequately document the significant differences between these two plans; • Council has failed to clearly outline the process regarding the protection/clearing of native vegetation on rural land. 6) Protect our natural areas from inappropriate development.

Proforma	Number submitted	Summary of Key Issues
B		1) Approval of the draft Tweed LEP 2012 will have impacts on Council's ability to protect and recover the koala population. 2) Effective protection of koala habitat within the Tweed Coast Koala Study Area will be reduced from 19,725 ha to approximately 9,435 ha. 3) Approx. 1244 ha within the Tweed Coast Koala Study Area identified for environmental zoning under the draft LEP 2010 have been reassigned to other zones. 4) Request to keep the areas protected by the tree preservation order at 19,725 ha.
C		Support to the following in the draft LEP: 1) The application of the E2 and E3 zones over high conservation values, 2) The application of wildlife corridors and riparian overlays, Objection to abandoning zones defined for the Tweed Coast under the draft Tweed LEP 2010. Concern about the intensions of the "E-zone review" project undertaken by the DP&I.
D		Support to the following in the draft LEP: 1) The application of the E2 and E3 zones over high conservation values, 2) The application of wildlife corridors and riparian overlays, Objection to: 1) Abandoning zones defined for the Tweed Coast under the draft Tweed LEP 2010. 2) The removal of 1 200 ha. of coastal habitat including Koala habitat. 3) The reduction of the area of habitat currently protected by the Tree Preservation Order by approx. 10 000 ha.; 4) Not providing access to Council's Environmental Strategy. Concern about the intensions of the "E-zone review" project undertaken by the DP&I. Request to extend the exhibition period to allow additional time to consider the draft Environmental Strategy.
E		Objection to any development within the area referred to as "Area 9" on the Additional Permitted Uses Map of the draft Tweed LEP 2012. Request to amend the Land Zoning Map for Pottsville Wetlands from E3 Environmental Management to E2 Environmental Conservation.
F		This proforma submission consisted of both letters "A" and "E".

In addition, many of the proforma submissions had additional, individual comments, related with key issues raised in the submissions, such as increased protection for koala habitat, objection to further development in Pottsville or request for a public hearing. Those comments are responded to in this section of the Report.

Planning comment:

The first version of the Tweed (Standard Instrument) Local Environmental Plan exhibited in 2010 intended to implement, where possible, recommendations of the Tweed Vegetation Management Strategy 2004 (TVMS). The TVMS had been completed prior to the State Government's request to prepare an LEP under the standard LEP instrument, which resulted in some of the recommendations of the Strategy being extremely difficult to implement in the new template. As a consequence, the DLEP 2010 proposed an increase in the overall areas zoned for environmental protection along the Tweed Coast (including koala habitat), and rezoning areas in the west from current environmental zones to a rural zone with limited, if any, levels of environmental protection.

Following the 2010 exhibition, Council amended the recommendations of the TVMS, which, following consultation with NSW DP&I, resulted in a new approach to the Land Zoning Map with the E3 Environmental Management zone intended to cover rural land constrained by slope, scenic and bushland values. A bridging document, the "Revised Environmental Strategy" (discussed further below) was developed to provide a linkage between the TVMS 2004 and the Standard Instrument LEP, providing a set of eleven recommendations for implementation into the LEP.

Due to ongoing pressure from the State Government to finalise implementation of the Standard Instrument, it was recommended and resolved to place the draft Tweed LEP 2012 on public exhibition with the intention to implement a number of recommendations of the TVMS and with a view to implement the remaining recommendations through a separate LEP amendment process (subject to separate public consultations). It needs to be noted that LEPs are 'living' instruments. They are regularly amended and periodically updated, as evidenced with the current LEP having been amended 57 times since its commencement in 2000.

Notwithstanding this, and in an attempt to implement the intent of the TVMS, the following clauses and maps were added to the 2012 exhibited LEP:

- Bushland overlay map and clause;
- Steep land overlay map and revised clause;
- Drinking water catchment land overlay map and clause;
- Acid sulfate soils clause; and
- A new earthworks clause to reflect existing consent provisions for innominate works under LEP 2000.

Initially, a sixth recommendation related with biting midge and mosquito breeding areas was proposed; however, this recommendation has not been supported by the DP&I as it is considered more suitable as a Development Control Plan control, rather than a LEP clause.

Vegetation Management Implementation Principles

In general, the methodology of the preparation of the DLEP 2012 is based on:

- The State Government directions associated with the preparation of a standard instrument LEP: the *Standard Instrument (Local Environmental Plans) Order, 2006*, the suite of State Practice Notes and Planning Circulars; S117 Ministerial Directions; and relevant State Environmental Planning Policies (SEPPs). These documents provide the legal framework the LEP must be consistent with.

- Council's endorsement that the LEP be prepared as both a "best fit" conversion of the current LEP 2000 into the format of the standard LEP template and that local context and clauses be based only on adopted strategies, plans and policies (as discussed further under 3.5.3 below).
- Acknowledgement of the limitations of the current Tweed Vegetation Management Strategy 2004, and development of the bridging "revised Environmental Strategy" which is yet to be publicly exhibited and adopted by Council.
- The DP&I direction of September 2012 stating a strong concern with restrictive controls and extensive use of environmental overlays, E2 Environmental Conservation and E3 Environmental Management on agricultural lands and potentially reducing the value of those properties. As such the DP&I have stated that any E2 or E3 land will be excised from draft LEPs when they are finalised by the State Government.
- Following this announcement the DP&I have engaged Parsons Brinckerhoff (PB) to undertake a review of the use of environmental zones on the Far North Coast. This review is underway; however, is not anticipated to result in a report to the Minister until mid 2013, beyond the deadline for the making of the DLEP.

Revised Environmental Strategy

Given current level of constraints on the implementation of a comprehensive environmental strategy, as discussed above, Council's preferred approach was to finalise the "Revised Environmental Strategy" which, once endorsed by Council would, via a separate LEP amendment process deliver:

- A refined E2 Environmental Conservation zone focusing on the Tweed Coast, public lands and areas already protected;
- A new flexible E3 Environmental Management zone;
- Revised Waterways zones which more closely reflect existing waterway character and use;
- A new riparian land overlay map and revised clause; and
- A revised approach to tree preservation.

The DP&I environmental zone review is expected to provide a new approach to the application of environmental zones and environmental overlay maps in LEPs in the Far North Coast region. As such, it is considered appropriate to hold the "revised Environmental Strategy" until the outcomes of the environmental zone review project are released. Initially, the review was scheduled for completion by March-April 2013 but this has been delayed to an unknown completion date.

The recent public exhibition revealed that this approach is not accepted by the Tweed community, which requested immediate improvements to protect the koala habitat through the application of environmental zones over the koala habitat, as was proposed in 2010 exhibition. In response to this request, Council has provided alternative options to move forward with the LEP, with one of those options – discussed below – to implement additional recommendation of the TVMS, being "a refined E2 Environmental Conservation zone focusing on the Tweed Coast, public lands and areas already protected".

Vegetation clearing

The DLEP amends the approach towards vegetation clearing, which has caused significant concerns expressed in submissions from community. Under the DLEP, vegetation clearing on any land is managed under clause 5.9 *Preservation of trees or vegetation*. Clause 5.9 provides that in certain circumstances defined under the Native Vegetation Act 2003 vegetation clearing is permitted. These circumstances include:

- Routine agricultural management activities,
- Continuation of existing farming activities,
- Vegetation clearing permitted under a property vegetation plan approved for the site,
- Clearing of native vegetation that is only regrowth, but not protected regrowth,
- The clearing of native vegetation that comprises only groundcover is permitted if:
 - (a) The vegetation comprises less than 50% of indigenous species of vegetation; and
 - (b) Not less than 10% of the area is covered with vegetation (whether dead or alive); and
 - (c) Those percentages are calculated in accordance with the regulations.

Those exemptions do not apply to land zoned R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living.

Other exemptions include:

- Clearing that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*
- The clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause; or
- Clearing of trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*; or
- Action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*; or
- Plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Under the DLEP2012, vegetation clearing which is not captured by any of the above is subject to Council's DCP A16 - Trees and Vegetation Preservation Code. Council's current Tree Preservation Orders will be repealed upon making of the Standard Instrument LEP.

Prior to the 2012 exhibition, Council's Natural Resource Management Unit advised that the best method to ensure adequate clearing controls were maintained was to apply environmental zones (or the R5 zone) to areas which should be specifically protected from native vegetation clearing. This however should be supported by accurate mapping and justified by an adopted strategy.

Koala Plan of Management

The Koala Plan of Management (KPoM) is currently being prepared and is in a draft form, anticipated to be completed in early 2014. This strategy has not been publicly exhibited for community and landowners to have an opportunity to contribute and provide comments, or adopted by Council.

Subsequently, Council at its meeting of 21 February 2013, resolved:

2. *Given the unique biodiversity of our region:*
 - a) *The recommendations [11] contained within the document presently known as the draft Environmental Strategy (based on the Tweed Vegetation Strategy) be accepted as a late submission to the Draft Local Environmental Plan 2012.*
 - b) *The recommendations included in the Tweed Coast Koala Habitat Study (2011) relating to environmental protection be also accepted as a late submission to the Draft Local Environmental Plan 2012.*

In addition, Council at its meeting of 18 April 2013, endorsed the recommendations of the Minutes of the Tweed Coast Koala Advisory Group Committee Meeting held Tuesday 4 April 2013 and resolved:

2. *The Executive Management Team's recommendations be adopted as follows:*
 2. *LEP update*
 1. *That Council notes that:*
 - a) *Clause 15(b) of SEPP 44 Koala Habitat Protection requires Council: to make or amend a local environmental plan: (i) to include land identified as core koala habitat within an environmental protection zone, or (ii) to identify land that is a core koala habitat and apply special provisions to control development on that land.*
 - b) *The Draft Tweed Coast Koala Plan of Management recommends that Council's comprehensive LEP should be reviewed to include zoning for environmental protection of all areas of remnant bushland that occur within identified core koala habitat on Tweed coast.*
 - c) *Under a Standard Instrument LEP environmental protection zoning is necessary if Council seeks to maintain its tree preservation provisions in areas of identified core koala habitat.*
 2. *Consistent with the requirements of SEPP 44 Koala Habitat Protection, Council considers the revision of Draft LEP 2012 to include, where possible, remnant bushland identified as core koala habitat on the Tweed Coast within an appropriate environmental zone.*

In order to respond to Council's resolution of 21 February 2013, this Report recommends an amendment to the Land Zoning Map to apply the E2 Environmental Conservation zone over the koala habitat, as proposed in 2010 exhibition. This recommendation appears to respond – to a degree – to concerns raised by the community during this exhibition. It needs to be noted that this approach creates a significant risk of re-exhibiting the LEP which would add significant delays to a project which has been ongoing since 2010, but will also run the significant risk of losing local input into the review and application of environmental zones. The DP&I have made strong representation to all Council's that standard instrument LEPs

are to be completed as the highest priority pending the introduction of a new Environmental Planning and Assessment Act.

The recently released Planning White Paper announces that all local environmental plans (and development control plans) will be converted into Local Plans under the new planning system. The new Act will contain provisions to transition existing Standard Instrument Local Environmental Plans and Development Control Plans into the relevant parts of the Local Plan (White Paper, Chapter 5 *Strategic Planning*, page 92). This creates a significant risk that the current LEP 2000 (if not replaced by the Standard Instrument) may not be recognised by the new planning system.

In addition, given the recent “making” of the Ballina, Kyogle and Lismore LEPs, where the E2 Environmental Conservation and E3 Environmental Management zones have been removed from the written instrument and deferred from the mapping, it is almost a certainty that anything other than a direct translation will be deferred from the finalisation of the DLEP, until such time that DP&I finalises the review of environmental zones and provides new guidelines (and potentially an updated Standard Instrument) for finalising LEPs in the Northern Rivers region, as per example below:

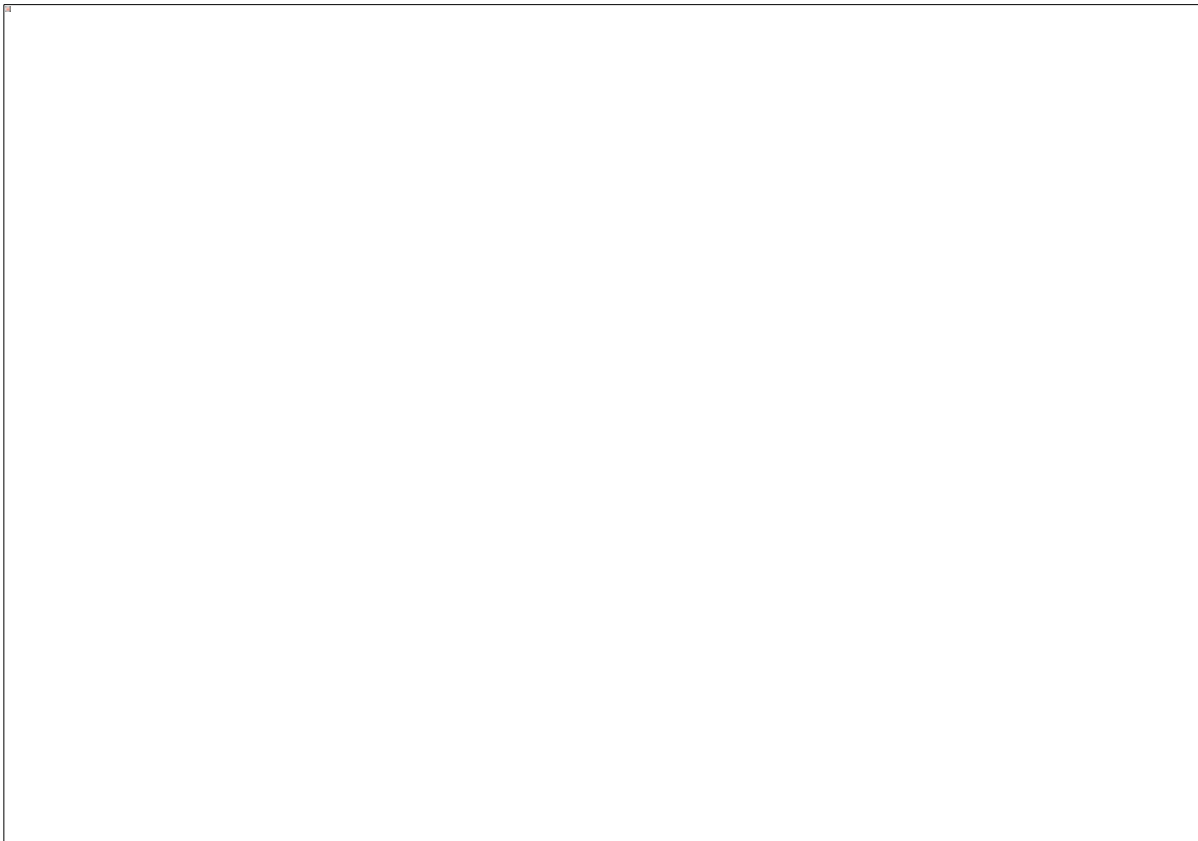


Figure 11: Ballina Local Environmental Plan with areas proposed for environmental zones deferred from the Plan.

Translation of the current Tweed LEP 2000 zoned environmental lands into the E2 and E3 zones within the DLEP maintains the current environmental protection and represents a continuation of the status quo, i.e. no net loss of environmental protection zoning. This way forward has been presented as an alternative option and is considered to represent an opportunity for Tweed to maintain the current environmental protection through the finalisation and “making” of the DLEP with a view for further amendments through a separate planning proposal.

Options

This Report provides three alternative options, with **Option 2** being the recommended option. **Option 2** attempts to achieve a compromise between community expectation to improve environmental protection, particularly along the Tweed Coast, and State Government's pressure to finalise implementation of the Standard Instrument LEP.

Option 1:

That draft Tweed Local Environmental Plan 2012 is endorsed subject to the amendments recommended under Part 3 of this Report but without amendments to include riparian clause and environmental zones on the Tweed Coast (proposed under recommendations No 29 and No. 52a); and:

- (1) The draft Tweed Local Environmental Plan 2012 be referred to the Director-General of the Department of Planning and Infrastructure, following its amendment under Resolution 1 above, for the draft local environmental plan to be made; and
- (2) A draft local environmental plan (planning proposal) be prepared to bring about a greater level of protection for Koala Core Habitat, in accordance with State Environmental Planning Policy No.44 Koala Habitat Protection; and
- (3) Following the completion of the State Government's review of the Environmental Zones (E2, E3 & E4) and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region, a report detailing the process and strategy for Council to implement its broader environmental strategies be brought forward.

Option 2:

That draft Tweed Local Environmental Plan 2012 is endorsed subject to the amendments recommended under Part 3 of this Report, including recommendation No 52a to include environmental zones as exhibited under the draft Tweed LEP 2010, recommendation No 29 to include riparian clause, and including rationalisation of environmental protection zones on Council controlled land; and:

- (1) Council seeks advice from the Department of Planning and Infrastructure that the abovementioned changes can be made without the need for further public re-exhibition; and
- (2) The draft Tweed Local Environmental Plan 2012 be referred to the Director-General of the Department of Planning and Infrastructure, following its amendment under Resolution 1 above, for the draft local environmental plan to be made;
- (3) That a draft local environmental plan (planning proposal) be prepared to fully implement Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat) consistent with outcomes of the State Government's review of the Environmental Zones and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region.

Option 3:

1. That draft Tweed Local Environmental Plan 2012 is revised to:
 - (i) Include the amendments recommended under Part 3 of this Report.
 - (ii) More fully implement Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat) consistent with outcomes of the State Government's review of the Environmental Zones and Overlays for the Far North Coast Region.
2. That the revised Tweed Local Environmental Plan referred to in Resolution 1 above is publically re-exhibited in accordance with Section 68 of the *Environmental Planning and Assessment Act 1979*.

While considering recommended **Option 2**, the following need to be measured:

- Re-instatement of environmental zoning along the Tweed Coast, in line with the Land Zoning Map exhibited in 2010 may be considered a significant change and may require re-exhibition of the LEP. The re-exhibition can be limited to the extent of area subject to proposed changes.
- Whilst there is a clear will on behalf of Council to extend the "translation" of the LEP to incorporate protection of environmental lands and core koala habitat, amendments to the Land Zoning Map at this stage of its progress are likely to not only add significant delays to this project which has been ongoing since 2010, but will also run the significant risk of losing local input into the review and application of environmental zones. The DP&I have made strong representation to all Council's that standard instrument LEPs are to be completed as the highest priority pending the introduction of a new Environmental Planning and Assessment Act.
- It is highly likely that the Tweed LEP 2012 will be gazetted without environmental zones at all – similarly to recently published Ballina or Lismore LEPs (refer to Figure 11). Under that scenario, environmental zones will be re-instated through a separate LEP amendment commenced upon finalisation of the DP&I's review of environmental zones in the Northern Rivers region. This LEP amendment, through public exhibition stage, would provide an opportunity to further discuss the application of environmental zones with landowners and the community.

In considering **Option 1**, the following must be taken into account:

- Whilst it is considered that the improvement of the vegetation clearing controls through amendments to the Land Zoning Map, particularly within the core koala habitat, is a matter of high priority, any such amendments at this time are likely to result in significant delays in the making of the LEP and generally should be undertaken as a separate amendment to the LEP.
- This option represents the methodology of developing the Standard Instrument LEP in stages, with this stage being a translation of the current LEP 2000, with the view to implement required changes through separate LEP amendments. This approach is in line with DP&I's requirements outlined through practice notes, circulars and ongoing consultations.
- Option 1 does not expose Council of the risk of having the LEP finalised by the DP&I.

In considering **Option 3**, the following must be taken into account:

- The Koala Plan of Management is scheduled for completion in early 2014.

- The exact date for completion of the DP&I review of Far North Coast environmental zones is unknown.
- Proceeding with anything other than a direct translation of environmental zones, before the review of environmental zones is finalised, is likely to require subsequent review to ensure consistency with revised DP&I directions.
- Once the review is finalised, the DP&I will consider amendments to the Standard Instrument template to implement the outcomes of the review (for example, the potential for a new zone to be added to the list of standard zones).
- The Revised Environmental Strategy will need to be updated in line with the outcomes of the DP&I review and in line with the updated version of the Standard Instrument.
- The Revised Environmental Strategy and mapping will need to be prepared to exhibition standards.
- The recently released Planning White Paper, announces that all local environmental plans (and development control plans) will be converted into Local Plans under the new planning system. The new Act will contain provisions to transition existing Standard Instrument Local Environmental Plans and Development Control Plans into the relevant parts of the Local Plan (White Paper, Chapter 5 *Strategic Planning*, page 92). This creates a significant risk that the current LEP 2000 (if not replaced by the Standard Instrument) may not be recognised by the new planning system.
- Diversion of significant Planning Reform and Natural Resource Management staff resources and therefore delays to other programmed work.
- The possibility that these resources will not be effectively used should the State Government report make findings and directions that environmental zoning proceed in a different manner to that embarked on by staff in the interim.

Recommendation/Action:

52 It is recommended that Council proceeds with the making of the DLEP 2012, and:

- a) A draft planning proposal be prepared to bring about a greater level of protection for Core Koala Habitat, in accordance with State Environmental Planning Policy No 44 Koala Habitat Protection, and
- b) Following the completion of the State Government's review of the Environmental Zones (E2, E3 & E4) and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region, a report detailing the process and strategy for Council to implement its broader environmental strategies be brought forward, and

52a It is recommended to include Environmental Protection zones on the Tweed Coast, as exhibited under the draft Tweed Local Environmental Plan 2010 and to rationalise environmental protection zones on Council controlled land.

3.4.2 Site specific objections to accuracy of environmental zones

A number of submissions (10) received raised objection to the environmental protection zones (E2 Environmental Conservation and E3 Environmental Management) being imposed on land that was not considered to reflect significant environmental status or sensitivity, nor provide compatibility with the existing land use. The majority of submissions of this nature applied to land that is reported to be farmed at present; however both the E2 and E3 zones prohibit Agriculture.

Many of the submissions provide a detailed account of vegetation types and agricultural activities, articulating that components of the zone boundaries require amendment to better reflect on-ground conditions and farming practices. Predominately, the use of the RU2 Rural Landscape zone in areas where the qualities of the site do not justify environmental protection is requested.

The Draft LEP 2012 seeks to maintain the existing zone boundaries between Rural and Environmental Protection zones. In addition, the permissibility of agriculture within the areas of environmental protection, whilst not as unequivocally direct in translation, are primarily unchanged as these uses are discouraged within the current Tweed LEP 2000 and prohibited within the Draft LEP 2012.

Notwithstanding the above, Council acknowledges that a review of the Environmental zones is needed however is to be pursued through a separate process.

A more detailed assessment of these submissions is under Section 3.5.5 of this Report.

3.5 Community submissions

3.5.1 Public hearing

Public hearing requests have arisen with regard to two issues: the need for investigation into Council's approach to environmental zones and public hearing required in respect of the reclassification of Council owned "community land" to "operational land".

Public hearing – public concerns

The proforma submissions included a request that "*the draft LEP 2012 should be rejected and a call made for a public hearing as due process has not been followed in the development and exhibition of the draft LEP 2012*". This request was similarly made through 24 individual submissions.

Planning Comment:

The DLEP as exhibited is consistent with the resolution of Council of 25 October 2012, which was premised on the methodology of drafting the draft Tweed LEP 2012, based on two guiding principles:

- i. The "best fit" conversion. This approach has been taken to simplify the translation of the current LEP 2000 into the format of the standard LEP template in the absence of a Shire wide strategic review of the LEP and zones.
- ii. Local context based only on Council adopted strategies, plans and policies. This transparent approach is consistent with the accepted methodology of preparation of an LEP/amendment. An LEP, whether Council or landowner initiated, is premised on incorporating those studies and support information that has been the subject of a report to Council to endorse the strategy/study, public exhibition and final adoption of the same by Council. The DLEP has incorporated adopted strategies, plans and policies, however, has not incorporated those strategies, plans and policies which have not yet been public exhibited or reported to Council as these are not resolved directions of Council.

The draft LEP has also been prepared within the context of a State Government review of environmental zones within the Far North Coast. As advised in the previous report seeking Council endorsement to publicly exhibit the DLEP, the State Government has issued advice that in the interim period until the review is completed, Environmental E2 and E3 zones will be excised by the State Government when the LEPs are finalised. This approach has been taken with the recent “making” of the Ballina, Kyogle and Lismore LEPs, where the E2 Environmental Conservation and E3 Environmental Management zones have been removed from the written instrument and deferred from the mapping, therefore reverting to the zoning in place prior to the making of the LEP under the standard LEP instrument.

The DLEP 2012 has been prepared to translate the current environmental zoned land into the corresponding Standard LEP template environmental zone, thus retaining the current environmental zone, not applying environmental zones to other land, and with the aim of retaining the current environmental protection in light of the State Government review.

The latest information on the State Government environmental zone review is that a draft report by Parsons Brinkerhoff (PB) is due to the State Government potentially June, though this is not confirmed. It is envisaged that the findings of the PB report will be used by the DP&I to review the Standard LEP template. This will result in new directions/ guidelines for the far north coast, potentially new environmental zones and is likely to take some time to complete.

Therefore, given the LEP incorporates a translation of the current environmental zones and that the State Government is reviewing the environmental zones on the far north coast, it is considered the LEP has been prepared following due process. Holding a public hearing at this stage would not achieve any relevant outcome as any recommendations for amending the environmental zones is most likely to be critically dependent on the findings and directions of the State Government review and on the completion and public exhibition of the updated environmental strategy (currently underway) and therefore at this stage the issue is not considered of such significance to require a public hearing.

The recommendation of this Report is to endorse the LEP and commence the LEP amendment process to apply environmental zones in certain areas of the core koala habitat on the basis of mapping that has been developed as part of the Koala Habitat Study 2011 and (draft) Koala Plan of Management. This LEP amendment process will involve extensive community consultations where everyone will have a chance to contribute, provide comments, and request additional information relevant to the process. Subsequently, Council is committed to implement the remaining recommendations of the “revised Environmental Strategy, following the completion of the environmental zones review. This will provide another opportunity for community to take part in the LEP amendment process.

Given that the submission concerns relate predominantly to the environmental zones and that due process has been followed, should Council be of a mind to accept the request of a public hearing into the *due process in the development and exhibition of the draft LEP 2012 [as it relates to the environmental zones]* the following will need to be considered:

A public hearing, under S734 of the *Local Government Act, 1993*, the former S68 of the *Environmental Planning and Assessment Act, 1979* and the former s14 of the *Environmental Planning and Assessment Regulation 2000* (as both captured by the savings provisions of the EP&A Regulations 2000 S12) requires advertising in the local paper and a letter to all people who requested a public hearing, providing at least 21 days notice of the public hearing details. Given that a large number of people requested a public hearing through the pro forma submissions, it is envisaged that approximately 28 days would need to be set aside for individuals to attend at the hearing process. A report on the public hearing would then need to be prepared and subsequently reported to Council for their consideration. This is likely to, conservatively, take 2-3 months and may return findings that may be inconsistent with the review outcomes and State Government Directions to follow on environmental zones, likely to be finalised around the same time.

Recommendation/Action:

53 No public hearing is required.

Public hearing – reclassification of land to operational

The DLEP included three properties within the *Schedule 4 - Classification and Reclassification of Public Land, Part 2 - Land to be classified, or reclassified as operational land – interests changed*.

Under the requirements of the *Local Government Act, 1993* s29 and s57 of the *Environmental Planning and Assessment Act, 1979*, a public hearing is required “*in respect of a planning proposal under Part 3 of that Act to reclassify community land as operational land*”.

A public hearing with respect of the three properties is yet to be advertised and held. Given this has the potential to delay the progress of the DLEP, it is recommended that the reclassification of these parcels of land be deferred from the DLEP and the subject of a separate planning proposal for the reclassification of these lands.

Recommendation/Action:

54 The lots listed in Schedule 4 - Classification and Reclassification of Public Land, Part 2 - Land to be classified, or reclassified as operational land – interests changed to be deleted from the DLEP and to proceed as a separate planning proposal.

3.5.2 Requests to rezone land which is based on inaccurate translation of the current LEP into the zones of the Standard LEP template

Note: For detailed analysis of rezoning requests please refer to Attachment 1 (Table 4) of this Report.

3.5.2.1 Submission No. 392: Request to zone the Murwillumbah Hospital site SP2 Infrastructure

Planning comment:

Given the consistency of the proposal with DP&I's guidelines spelt under the Practice Note Zoning For Infrastructure in LEPs, and general consistency with relevant State and local plans, it is considered that the rezoning has merit in terms of applying SP2 Infrastructure zone as a more suitable zone for the hospital site.

Recommendation/Action:

55 Lots 7, 8 and 9 DP 8520 and Lot 1 DP 722529 to be zoned SP2 Infrastructure.

3.5.2.2 Submission No 197: Request to amend zone of undeveloped land at the Salt Village, Kingscliff, from SP3 Tourist zone to R1 General Residential.

Planning comment:

The submission was lodged in relation to Lot 930 DP 1079118 and part of Lot 169 DP 1075495. The submission is based on analysis concluding that in the short to medium term it is highly unlikely that a further resort will be required or viable on the subject site and the SP3 zoning appears to be inappropriate in the circumstances. The submission seeks rezoning of the part of the site as R1 General Residential.

The site is located within the Salt Village Precinct with two major tourist resorts of Peppers and Mantra, retail precinct and open space area for recreation located to the north and east and low density residential development located to the south and west.

The Standard Instrument does not provide a directly comparable zone with the 2(f) Tourist zone, therefore areas subject to the 2(f) zone have been rezoned in line with current land use or with the Master Plan approved for the site.



Figure 13: Area in Salt Village proposed to be rezoned to R1 General Residential

The proposal is generally consistent with all relevant planning strategies and policies. It is considered that the rezoning has merit in terms of proposed uses; the proposal is supported.

Recommendation/Action:

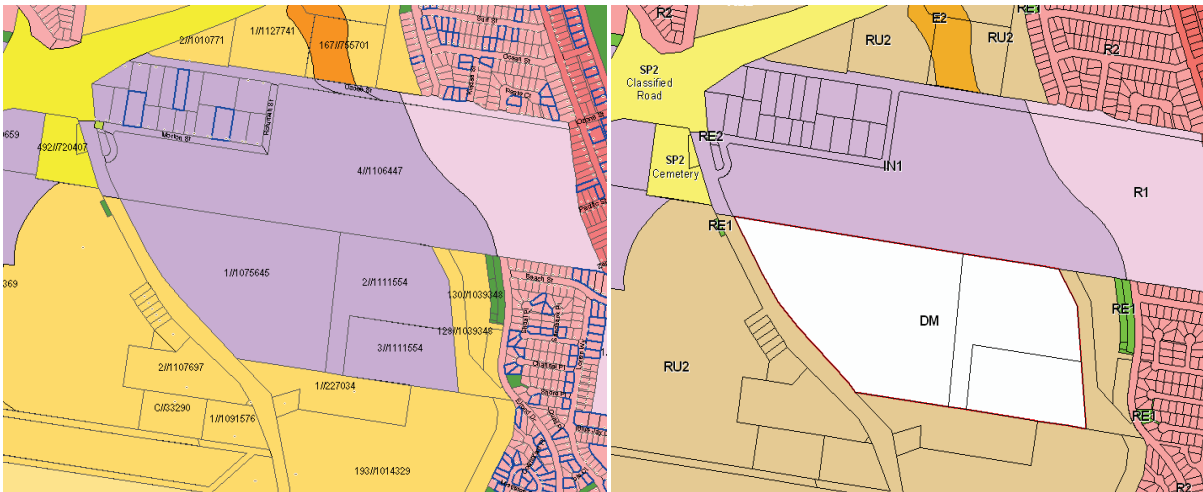
56 Lot 930 DP 1079118 and part of Lot 169 DP 1075495 to be zoned R1 General Residential.

3.5.2.3 Submission No 33: Gales Holding Pty Ltd. Request to leave the former Sewerage Treatment Plant in Kingscliff unzoned; request to amend the land use table to permit with consent the development of a shop on Lot 13 DP 871753, located at Turnock Street Kingscliff; request to amend the Biodiversity Map for Lot 12 DP 871753 to remove Biodiversity Overlay from this site; request to correct mapping anomaly on Lot 4 DP 727425.

Planning comment:

The submission objects to the application of the Practice Note *Zoning for Infrastructure in LEPs* which resulted in change of the zoning over the subject site from 5(a) Special Uses to IN1 General Industrial. It needs to be noted that this is the only major site in private ownership that has been significantly affected by the application of a Practice Note, which largely refers to public infrastructure sites. In addition, the former sewerage treatment plant site is currently subject to a planning proposal seeking for alternative zoning. The site is also within proposed Kingscliff Locality Plan, scheduled for preparation in the next financial year. In such circumstances, zoning the site with an industrial zone, although supported by DP&I's guidelines, does not achieve its desired outcomes.

The submission requests to leave the site unzoned, however this cannot be supported as unzoned land can be developed in accordance with Clause 2.4 Unzoned land. An alternative solution, supported by the landowner, would be to defer the site from the LEP until such time that the planning proposal is completed or a locality plan for Kingscliff provides guidelines for future use of this land.



Figures 14&15: Zoning of the former sewerage treatment site in Kingscliff as exhibited (Fig. 14, left) and after recommended amendments (Fig. 15, right).

Request to revise the translation of zone on Lot 13 DP 871753 from 2(c) Urban Expansion to R1 General Residential by allowing retail development (shops) through Additional Permitted Uses Map. The Standard Instrument does not provide an equivalent zone for the 2(c) Urban Expansion zone of the current LEP. In most cases, this zone has been converted to R1 General Residential zone, considered to be “the closest translation” of the 2(c) zone. Shops, as well as the majority of commercial land uses are prohibited under this zone as they are inconsistent with the mandatory objectives of this zone. The proposal to allow shops at Turnock Street (as per image below) is consistent with Section B9 Tweed Coast Strategy which recognises this site for potential expansion of the adjoining centre at Pearl Street. In addition, the proposal is consistent with Principle 2 of the Tweed Retail Policy, which states: *where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*

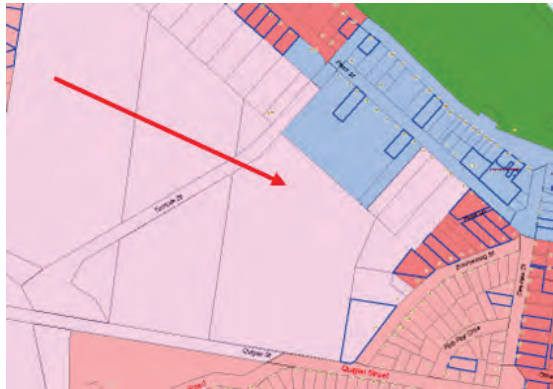


Figure 16: Site at Turnock Street proposed for amendment to the land use table.

The biodiversity mapping has been reviewed on the basis of 2009 aerial photos and captures bushland and wetland areas broadly consistent with reports referred to in the submission. Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts will be determined through the application of the clause when a DA is required. The clause does not influence approved DAs such as the approved fill north and south of Turnock Street nor does it affect routine land management.

A strip of land zoned RU2 Rural Landscape Lot 4 DP 727425 is a result of rezoning a drainage reserve corridor zoned 5(a) Special Uses, in line with the Practice Note *Zoning for Infrastructure in LEPs*. An adjoining zone has been applied, which, in this instance, is the RU2 Rural Landscape.

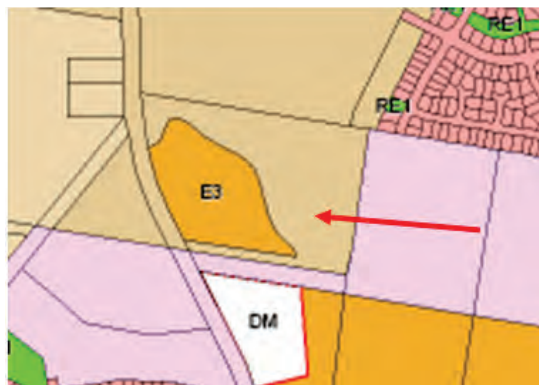


Figure 17: Lot 4 DP 727425.

Recommendation/Action:

57 That the former sewerage treatment plant site at Kingscliff be deferred from the draft Tweed LEP 2012, and

58 The Additional Permitted Uses Map be amended to include Lot 13 DP 871753, and Schedule 1 Additional Permitted Uses be amended to list shops as a permissible land use for Lot 13 DP 871753.

3.5.2.4 Submission No 30: request to zone the caravan park site at Coast Road, Cabarita Beach, with R3 Medium Density Residential zone, consistently with the Major Project Application, approved by the Planning Assessment Commission in September 2012.

Planning comment:

The submission questions the methodology of translating the zoning of Lots 1-3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209 at 2-6 Coast Road, Cabarita Beach. Under the

draft LEP, the current zone 2(e) Residential Tourist has been converted into the RE2 Private Recreation. The submission requests that the land in question be rezoned as R2 or R3, in line with Major Project Application, recently approved by the Planning Assessment Commission in September 2012.



Figure 18: Cabarita Beach Caravan Park site subject to an approved Major Project Application.

Recommendation/Action:

59 Lots 1-3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209 at 2-6 Coast Road, Cabarita Beach to be rezoned from RE2 Private Recreation zone to R3 Medium Density Residential zone.

3.5.2.5 Submission No 1411: Submission seeks amendments to the Land Zoning Map for Lot 2 DP 815182 to apply the E2 Environmental Conservation zone over that part of the site which is subject to the trust agreement between the landowner and the Nature Conservation Trust of NSW.

Planning comment:

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the Land Zoning Map was based on the conversion of the existing zones into zones under the Standard Instrument with zero or minimum variations.

Minor variations to the Land Zoning Map were carried out for areas subject to an approved master plan or a Major Project Application. Given approved agreement between landowners and the Nature Conservation Trust of NSW, available mapping supporting this agreement and general consistency with Section 117 Directions and State Environmental Planning Policies, this request has merit and is supported.

Council is preparing a revised Environmental Strategy which provides recommendations to update the land zoning map (particularly rural and environmental zones) in line with mapping developed under the Tweed Vegetation Management Strategy 2004. Council is committed to implement those recommendations, although this process is now delayed due to the review of environmental zones commenced by the DP&I in October 2012.

Recommendation/Action:

60 Lot 2 DP 815182 to be zoned E2 in those areas which are subject to the trust agreement between the landowner and the Nature Conservation Trust of NSW.

- 3.5.2.6 Submission No 4: Submission seeks amendments to the Land Zoning Map for Lot 17 DP 778624 and Lots 165 and 167 DP 755696 to apply the E2 Environmental Conservation zone over that part of the site which is subject to the trust agreement between the landowner and the Nature Conservation Trust of NSW.

Planning comment:

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the Land Zoning Map was based on the conversion of the existing zones into zones under the Standard Instrument with zero or minimum variations.

Minor variations to the Land Zoning Map were carried out for areas subject to an approved master plan or a Major Project Application. Given approved agreement between landowners and the Nature Conservation Trust of NSW, available mapping supporting this agreement and general consistency with Section 117 Directions and State Environmental Planning Policies, this request has merit and is supported.

Council is preparing a revised Environmental Strategy which provides recommendations to update the land zoning map (particularly rural and environmental zones) in line with mapping developed under the Tweed Vegetation Management Strategy 2004. Council is committed to implement those recommendations, although this process is now delayed due to the review of environmental zones commenced by the DP&I in October 2012.

Recommendation/Action:

- 61 Lot 17 DP 778624 and Lots 165 and 167 DP 755696 to be zoned E2 in those areas which are subject to the trust agreement between the landowner and the Nature Conservation Trust of NSW.

- 3.5.2.7 Submission No 448: Submission seeks amendments to the Land Zoning Map for the following properties: Lot 1 DP 122620, Lots 164, 271 and 329 DP 755701 and Lot 174 DP 755721. The RU2 Rural Landscape zone applied to these lots should be replaced with the E2 Environmental Conservation zone in those areas, which are subject to an approved property vegetation plan or mapped on the Terrestrial Biodiversity Map.

Planning comment:

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the Land Zoning Map was based on the conversion of the existing zones into zones under the Standard Instrument with zero or minimum variations.

Minor variations to the Land Zoning Map were carried out for areas subject to an approved master plan or a Major Project Application. Given approved agreement between landowners and the Nature Conservation Trust of NSW, available mapping supporting this agreement and general consistency with Section 117 Directions and State Environmental Planning Policies, this request has merit and is supported.

Council is preparing a revised Environmental Strategy which provides recommendations to update the land zoning map (particularly rural and environmental zones) in line with mapping developed under the Tweed Vegetation Management Strategy 2004. Council is committed to implement those recommendations, although this process is now delayed due to the review of environmental zones commenced by the DP&I in October 2012.

Recommendation/Action:

62 Lot 1 DP 122620, Lots 164, 271 and 329 DP 755701 and Lot 174 DP 755721 to be zoned E2 in those areas which are subject to an approved property vegetation plan or mapped on the Terrestrial Biodiversity Map.

3.5.2.8 Submission 651: Objection to the conversion of the zones on Lot 7060 DP 1113577 (proposed Cabarita Holiday Park Site). The conversion resulted in reduction of the area zoned RE1 Public Recreation and in increase of area zoned with the E2 Environmental Conservation zone which is inconsistent with the zone conversion methodology.

Planning comment:

This submission pointed out a mapping anomaly that occurred during the translation of zones into the Standard Instrument template.



Figures 19&20: LEP 2000 (left) and DLEP 2012 (right). Mapping anomaly circled in red.

Recommendation/Action:

63 Zoning on Lot 7060 DP 1113577 to be corrected in line with the current extent of 6(a) and 7(f) zone boundaries.

3.5.2.9 Submission No 1510: Request to amend the land use table of the following zones: RU1 Primary Production, RU2 Rural Landscape and IN1 General Industrial to list telecommunication facilities as permissible with consent.

Planning comment:

Guidelines prepared by the DP&I specifically prohibit listing this land use under LEPs. The *State Environmental Planning Policy (SEPP) Infrastructure* provides that telecommunications facilities are permissible without consent if listed under a LEP Land Use Table.

This inconsistency has been discussed with the DP&I, who in principle support inclusion of this land use into the rural and industrial zone land use tables.

Recommendation/Action:

64 Amend the land use table to permit development of telecommunications facilities with consent in the RU1 Primary Production, RU2 Rural Landscape and IN1 General Industrial zones.

3.5.3 Requests to rezone land to a different zone, which are outside the scope of the LEP translation process

- 3.5.3.1 Submission No 1 The submission requests amendment to the Land Zoning Map to change zoning of the Dodds Island, Chinderah (Lot 176 DP 755701 and Lot 177 DP 755701), from RU1 Primary Production to RU2 Rural Landscape. The purpose of this request is to allow for development of a rural tourist facility located above flood level, with extensive agricultural activities involving olive and avocado groves with fruit/vegetable gardens, using organic farming techniques.

Planning comment:

This proposal has been subject to discussion at Development Assessment Panel in April.

The site is flood liable and DCP-A3 Development of Flood Liable Land severely limits the ability to develop the site, particularly for habitable purposes. The site cannot provide an adequate evacuation route to flood free land, and the provision of refuge areas above the PMF level is considered impractical for small scale, isolated dwellings with extreme flood depths and velocities possible. Restrictions to fill and building scale within the high flow area means that raising the land and/or construction of a consolidated facility with a shared refuge also cannot be practically achieved for this site.



Figure 21: Aerial imagery - Dodds Island, Chinderah

Recommendation/Action:

65 No amendments to the LEP.

- 3.5.3.2 Submission No 613 Petition submitted by Kielvale residents with request to rezone portion of Lot 3 DP 877860 zoned RU5 Primary Production to RU2 Rural Landscape.

Planning comment:

Lot 3 DP 877860 is located directly to the north of the existing village. The total area of the lot is 37.5 ha with approximately 20% zoned RU5 for village expansion. The lot is currently in use for sugar cane cultivation. Vehicular access to the site is provided via Wulffs Lane.

The subject site has been zoned with a village zone 2(d) in both the LEP 2000 and the LEP 1987.

The Tweed Shire Urban Land Release Strategy 2009 considers the subject site as suitable for village expansion.

The site is not identified as Regionally or State Significant Farmland.



Figure 22: The draft Tweed LEP 2012 Land Zoning Map for the subject site.

Recommendation/Action:

66 No amendments to the LEP. Council to advise the signatories of the petition of this recommendation and that any rezoning will need to be sought through a separate planning proposal process.

3.5.3.3 Submission No 29 Lot 1 DP 1168904 (Firetail Street and Harrier Street, Tweed Heads South). Request to apply the SP3 Tourist zone to the section of the lot which, under the draft LEP 2012, is proposed to be rezoned from 2(e) Residential Tourist to RE2 Private Recreation.

Planning comment:

The subject site is currently zoned 2(e) Residential Tourist. The primary objectives of this zone are to encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development. The Standard Instrument LEP does not provide an equivalent zone, therefore all allotments within the Shire zoned 2(e) have been rezoned in relation to existing use of land, existing constraints and adjoining land use zones.

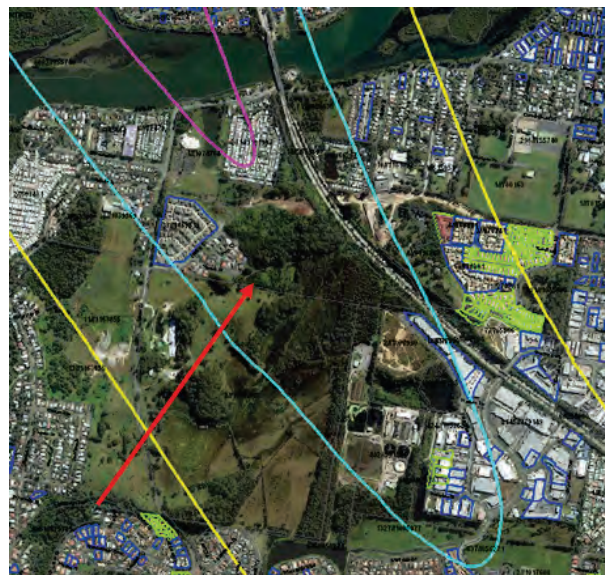


Figure 23: The subject site within the ANEF contour 25-30 (blue line).

The site is located within 25-30 ANEF contour. Under the Gold Coast Airport Master Plan and AS2021-2000, the following land uses are acceptable, or conditionally acceptable: hotel, motel, hostel, public buildings, commercial buildings, light and other industrial.

Under the Practice Note PN 09 -006 *Providing for tourism in Standard Instrument local environmental plans*, the mandatory zone objectives of the SP3 zone provide for a variety of tourist-oriented development and related uses. Any additional local objectives should reflect the particular intention of council's strategy or outcomes of council's study, e.g. council may wish to provide area-specific objectives to identify a particular precinct or local attraction.

The draft Tweed LEP 2012 applies the SP3 zone only for the major tourist resorts in Salt Village, Kingscliff.

Council is open for further discussions with the landowner on appropriate zoning of the site, with consideration given to land constraints and local and regional strategies and policies. Given that the SP3 zone proposed in this submission will not be supported by DP&I and that the ANEF contours identify under Gold Coast Airport Master Plan 2011 preclude residential development on the site, the application of the RE2 zone appears to be the "best fit" conversion of the existing zone.

Recommendation/Action:

67 No amendments to the LEP

3.5.3.4 Submission No 26 Lot 379 DP 1148511 at Kellehers Road, Pottsville. Request to rezone part of the site from E3 Environmental Management to RU2 Rural Landscape.

Planning comment:

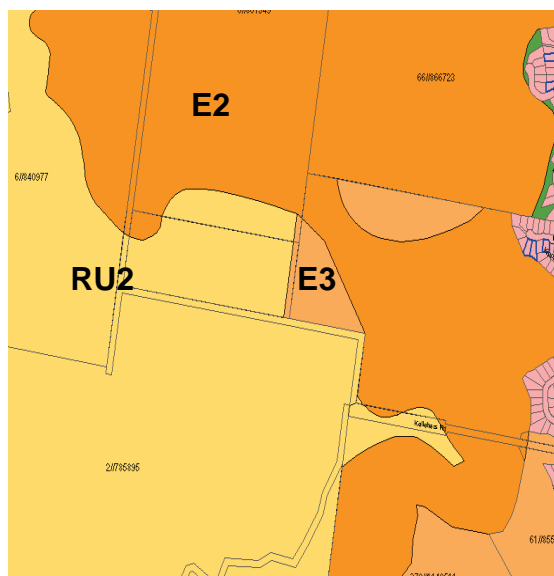


Figure 24: The Draft Tweed LEP Land Zoning Map proposed for the subject site.

The site is currently zoned 7(l) Environmental Protection (Habitat) and is proposed to be zoned E3 Environmental Management, which is a conversion of the current zone into a zone mandated under the Standard Instrument LEP, in line with the methodology of the Standard Instrument implementation process.

The site is identified for urban expansion under the Tweed Shire Urban Land Release Strategy 2009, as part of "Area 7". The proposal to zone the land with a rural zone is inconsistent with this Strategy.

The site is identified as Proposed Future Urban Release Area under the Far North Coast Regional Strategy. The proposal to zone the land with a rural zone is inconsistent with the Strategy.

It is considered that appropriate zone should be applied to the site via a separate planning proposal for Area 7 Dunloe Park Urban Release Area.

Recommendation/Action:

68 No amendments to the LEP

3.5.3.5 Submission No 1416 Chinderah Bay Drive, Chinderah: Lot 1 DP 371689, Lot 2 DP 781464, Lot 1 DP 1080842, Lots 462, 463 and 470 DP 755701, Lots 12 and 21 DP 260772, Lot 1 DP 32406, Lot1 DP 781888 and Lot 3 DP 913262. Request to amend the land use table of the B4 Mixed Use zone to permit dwelling houses with consent and to include additional zone objective: *to encourage employment opportunities and a focal point for the local community.*

Planning comment:

The subject site is currently zoned 3(d) Waterfront Enterprise. The primary objective of this zone is to encourage development related to waterfront and marine activities, dwelling houses, recreation or tourism. The Standard Instrument LEP does not provide a zone equivalent to the 3(d) zone. Site has been proposed to be zoned B4, which is an open zone promoting integration of wide range of uses. It is noted that dwelling houses, permissible with consent under the 3(d) zone, are prohibited in B4 zone. The only residential development permissible under the B4 zone is shop top housing.

The standard zones provided under the Standard Instrument Template have very limited flexibility in terms of integrating residential and commercial uses under one zone. Request to allow dwelling houses under the B4 zone, would not be supported by the DP&I.

The Tweed Valley Flood Management Study 2012 (draft) identifies Chinderah Village as “hydraulically sensitive, with the future development potential of these areas extremely constrained”.

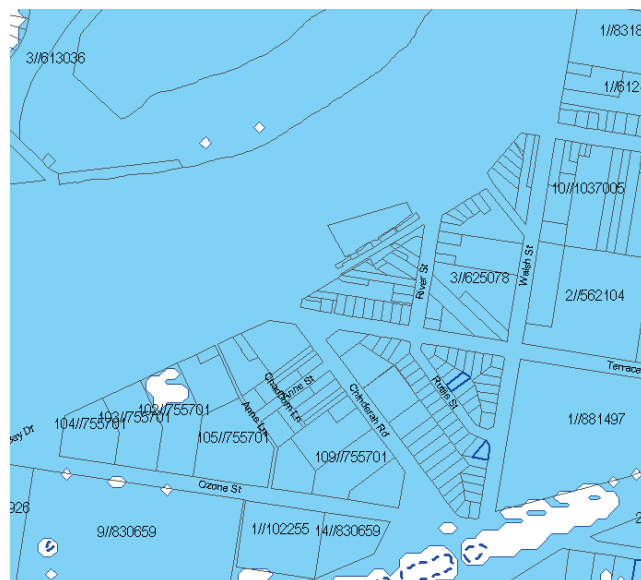


Figure 25: DLEP Flood Planning Map for Chinderah village centre.

The proposal is inconsistent with Section 117 Direction 1.1 Business and Industrial Zones. Allowing dwelling houses in a business zone would reduce the total potential floor space area for employment uses and related services.

The proposal is inconsistent with Part 6 of the Far North Coast Regional Strategy: “Local environmental plans will zone areas subject to high hazard (including flooding) to reflect the capabilities of the land”.

The proposed additional objective of the B4 zone to large extent duplicates the current objectives of this zone, thus there is no need to include it in the draft LEP.

Recommendation/Action:

69 No amendments to the LEP

3.5.3.6 Submission 1388 Wooyung Properties (Lot 1 DP 779817 and Lot 1 DP 408972). Request to apply SP3 Tourist zone for the footprint of development approved for the site and B4 Mixed Use zone for the north-western corner of the site.

As an alternative, Land Zoning Map should be amended to apply the E3 Environmental Management zone over the site and development standards tailored to allow for subdivision and erection of 25 dwellings.

Planning comment:

The proposal is inconsistent with the methodology of converting the Tweed LEP 2000 into the Standard Instrument LEP with no or minimum variations.

Under the Far North Coast Regional Strategy, the site is located in Coastal Area, outside of Town and Village Growth Boundaries. The Strategy states that "In the Coastal Area, only land within a Town and Village Growth Boundary may be released for urban purposes. This will ensure that the high coastal environmental values that attract people to the Region are protected".

Preliminary analysis of the consistency of the proposal with the Section 117 Directions.

The proposal is inconsistent with Direction 2.2 Coastal Protection.

The proposal is inconsistent with SEPP 71 Coastal Protection, SEPP 26 Littoral Rainforests and North Coast Regional Environmental Plan 1988 (deemed SEPP). Consistency with SEPP 44 Koala Habitat Protection should be verified in details (the Tweed Coast Koala Habitat Study 2011 defines this area as of significant koala activity with unidentified boundaries).

Recommendation/Action:

70 No amendments to the LEP.

3.5.3.7 Submission No 602 Request to rezone Lot 6, DP 524303, 26 George Street, Murwillumbah from RU2 Rural Landscape to R2 Low Density Residential

Planning comment:

The proposal is inconsistent with the methodology of converting the Tweed LEP 2000 into the Standard Instrument LEP with no or minimum variations.

When analysing consistency of the proposal with relevant local, regional and state planning initiatives, consideration needs to be given to flood hazard on the site.



Figure 26: Draft Tweed LEP 2012 Flood Planning Map for the subject site.

The proposal is inconsistent with Direction 4.3 Flood Prone Land of Section 117 Directions.

The proposal is inconsistent with recommendations spelt under Part 6 of the Far North Coast Regional Strategy: “Local environmental plans will zone areas subject to high hazard to reflect the capabilities of the land”.

There is an existing approval of a seniors living development (DA 2011/292) granted in April 2012.

Recommendation/Action:

71 No amendments to the LEP.

3.5.3.8 Submission 194 Request to amend the land use table for the RE2 Private Recreation zone proposed for the Seagulls Club, (Lot 2 DP 881169, 54-68 Gollan Drive, Tweed Heads West) to allow for development of shops with consent.

Planning comment:

When analysing consistency of the proposal with relevant local, regional and state planning initiatives, consideration needs to be given to the methodology of converting the current LEP 2000 into the Standard Instrument LEP:

- The subject site is currently zoned 6(b) Recreation zone. This zone permits general stores with development consent if consistent with the primary objective of this zone, which is to *designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*
- The Standard Instrument LEP provides the RE2 Private Recreation zone as an equivalent to the 6(b) zone of the current LEP. Under the new zone, the land use table has been tailored to achieve consistency with the objectives of the zone. In result, the only types of ‘retail’ land uses permissible with consent under the RE2 zone are kiosks, markets and food & drink premises.
- The standard zones provided under the Standard Instrument Template have limited flexibility in terms of integrating recreational and commercial uses under a recreational zone. A more suitable approach would be to look at options to rezone the entire site to a commercial zone. This however should be carried out via a planning proposal process, separate to the SI Template implementation process.

Given inconsistency between development of a full line supermarket and objectives of the RE2 zone, the proposal is not supported.

Recommendation/Action:

72 No amendments to the LEP.

3.5.3.9 Submission 568 Request to amend the draft Tweed LEP to allow for development of a highway service centre on part of Lot 11 DP 1134229, Tweed Valley Way, Chinderah.

Planning comment:



Figure 27: Aerial imagery for the subject site.

The proposal is inconsistent with the methodology of converting the Tweed LEP 2000 into the Standard Instrument LEP with no or minimum variations.

The subject site is mapped as Regionally Significant Farmland, therefore the proposal is inconsistent with Direction 5.3 (of the Section 117 Directions) Farmland of State and Regional Significance on the NSW Far North Coast. In addition, the proposal is inconsistent with Direction 1.2 Rural Zones (a draft LEP shall not contain provisions that will increase the permissible density of land within a rural zone other than land within an existing town or village).

The proposal is inconsistent with Direction 5.4 Commercial and Retail Development Along The Pacific Highway, North Coast which requires a highway service centre to be located within an urban zone.

The subject site is located on flood prone land.

Recommendation/Action:

73 No amendments to the LEP.

3.5.3.10 Submission 1417 Kingscliff Beach Hotel (Lot B DP 378968, Lot 17 DP 5879 and Lot 1 DP 356102) made a request to amend Height of Buildings and Floor Space Ratio Maps to allow development of up to 5 storeys (16.6 m) and floor space ratio of 3.5:1.

Planning comment:

Although generally consistent with relevant planning policies and strategies, the proposal is inconsistent with the methodology of converting the current LEP into the Standard Instrument Template with no, or minimum variations. Under the current LEP the maximum allowed height limit is 3 storeys and the draft LEP is maintaining this limit (expressed in metres).



Figure 28: Kingscliff Beach Hotel site

Council is committed to prepare a locality plan for Kingscliff. A matter of appropriate height limit will be investigated during this process. Any proposal to increase maximum building heights will be subject to community consultations with local residents.

Recommendation/Action:

74 No amendments to the LEP.

3.5.3.11 Submission No 762 Request to rezone the extractive industry site located on Lot 28 DP 615931 and Lot 2 DP 590220 from RU1 Primary Production to RU2 Rural Landscape. Objection to the application of the Biodiversity Map over the site and subclause (3) of Clause 7.8 Biodiversity Map.

Planning comment:

The request to rezone the site has been referred for Rural Land Strategy which is currently under preparation. It is acknowledged that the Land Zoning Map of the draft Tweed LEP 2012 is in certain rural areas outdated, but any site-specific amendments should be supported by an adopted strategy. The Rural Land Strategy involves extensive community consultations commencing in May 2013 and is expected to provide recommendations for amendments to the Land Zoning Map.

The methodology of the process of converting the current LEP 2000 into the Standard Instrument Template is based on a 'best fit' conversion of the Land Zoning Map with zero or minimum variations (where no compatible zones were provided).

In response to objection to the application of the Biodiversity overlay to the site, it needs to be noted that highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts will be determined through the application of the clause

The bushland overlay does not prohibit consent uses and is not inconsistent with t SEPP North Coast REP and SEPP Mining

The reference to a DCP is to be removed until relevant section of the DCP is in place.

Recommendation/Action:

75 Subclause (3) of the Terrestrial Biodiversity Clause 7.8 to be removed from the draft LEP.

3.5.3.12 Submission No 823 Request to amend the boundary between RU1 and RU2 zones in line with natural features and agricultural suitability on Lot 10 DP 1014723.

Objection to the application of the Biodiversity overlay map and wording of the Biodiversity Clause (7.8).

Planning comment:



Figure 29: Lot 10 DP 1014723

The request to rezone the site has been referred for Rural Land Strategy which is currently under preparation. It is acknowledged that the Land Zoning Map of the draft Tweed LEP 2012 is in certain rural areas outdated, but any site-specific amendments should be supported by an adopted strategy. The Rural Land Strategy involves extensive community consultations commencing in May 2013 and is expected to provide recommendations for amendments to the Land Zoning Map.

The methodology of the current process of converting the LEP 2000 into the Standard Instrument Template is based on a 'best fit' conversion of the Land Zoning Map with zero or minimum variations (where no compatible zones were provided).

In response to objection to the application of the Biodiversity overlay to the site, it needs to be noted that highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts will be determined through the application of the clause.

The reference to a DCP is to be removed until relevant section of the DCP is in place.

Recommendation/Action:

76 Subclause (3) of the Terrestrial Biodiversity Clause 7.8 to be removed from the draft LEP.

3.5.3.13 Submission No 763 Objection to the wording of the Biodiversity Clause (7.8) (reference to a section of the DCP which has not been prepared yet).

Planning comment:

The reference to a DCP is to be removed until relevant section of the DCP is in place.

Recommendation/Action:

77 Subclause (3) of the Terrestrial Biodiversity Clause 7.8 to be removed from the draft LEP.

3.5.3.14 Submission No 395 Support to the inclusion of the Biodiversity mapping.

Planning comment: Submission noted.

Recommendation/Action:

78 No amendments to the LEP..

3.5.3.15 Submissions No 635 and 638 Objections to the methodology of applying the Terrestrial Biodiversity overlay map in Tanglewood and Nunderi, implications of this overlay on routine management activities, consistency with State legislation. Objection to duration of the public exhibition and inadequate community consultations.

Planning response

The Biodiversity overlay is consistent with councils adopted TVMS and has been included in all draft Comprehensive LEPs since 2004. The clause does not prohibit development; it indicates areas that will require consideration with regards to biodiversity issues when a DA is required. The clause does not have any implications on routine management activities as it is only triggered at the DA stage. Further noxious weed control and bushfire hazard reduction do not trigger a DA and are in fact exempt development.

The DLEP was on exhibition from 15 November 2012 until 18 January 2013. During that time, eight (8) public meetings were held, six of them open for general public and two held by request of community groups. Council staff was providing additional information and guidelines when requested and considered late submission that were lodged after the exhibition closed.

Recommendation/Action:

79 No amendments to the LEP.

3.5.3.16 Submissions 605, 606 and 607 with site specific objection to the application of the Terrestrial Biodiversity Map over a site in Nunderi.

Planning comment:

Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts are determined through the application of the clause.

The clause is only triggered by a DA. Routine property management does not trigger a DA

Recommendation/Action:

80 No amendments to the LEP.

3.5.3.17 Submission 585 Site specific objection to the application of the Biodiversity Map over camphor laurel and concerns about the accuracy of this overlay. Comments about public consultations and complexity of documentation exhibited.

Planning comment:

Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts determined through the application of the clause and only applies when a DA is required.

The DLEP was on exhibition from 15 November 2012 until 18 January 2013. During that time, eight public meetings were held, six of them open for general public and two held by request of community groups. Council staff was providing additional information and guidelines when requested and considered late submission that were lodged after the exhibition closed. In addition, Council staff have prepared explanatory material which was available on Council website and in specific locations across the Shire.

Recommendation/Action:

81 No amendments to the LEP.

3.5.3.18 Submission No 5 Objection to the application of the Biodiversity Map over the Hundred Hills site.

Planning comment:

The purpose of the Biodiversity Map is to provide additional consideration at the DA stage.

Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts determined through the application of the clause and only applies when a DA is required.

Recommendation/Action:

82 No amendments to the LEP.

3.5.3.19 Submission No 1426 Objection to the application of the Biodiversity Map over Tweed Coast Holiday Park North and South in Pottsville.

Planning comment:

Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts determined through the application of the clause – all issues raised by the clause will need to be addressed for the development in any case.

The reference to a DCP is to be removed until relevant section of the DCP is in place.

Recommendation/Action:

83 Subclause (3) of the Terrestrial Biodiversity Clause 7.8 to be removed from the draft LEP.

3.5.3.20 Submission No 1492 Site specific objection to mapping camphor laurel on the Biodiversity Map and objection to wording of Clause 7.8 Terrestrial Biodiversity (reference to a DCP which has not been developed yet).

Planning comment:

Highly disturbed vegetation is consistent with the bushland mapping criteria. Conservation significance and on site impacts will be determined through the application of the clause.

The DCP referred to in clause 7.8 is not A16 and has not been made. The reference to a DCP is to be removed until relevant section of the DCP is in place.

Recommendation/Action:

84 Subclause (3) of the Terrestrial Biodiversity Clause 7.8 to be removed from the draft LEP.

3.5.3.21 Submission No 444: The Land Use Table for zone IN1 should be amended to allow highway service centres with consent.

Planning comment:

Permissibility of a highway service centre land use in the draft Tweed LEP has been based on 117 Directions, in particular Direction 5.4 *Commercial and Retail Development along the Pacific Highway, North Coast*.

According to this Direction, the establishment of highway service centres may be permitted in Chinderah, at Chinderah Bay Road interchange (southbound) and at the western side of highway in urban zone (northbound). In addition, the RMS needs to be satisfied that the highway service centre(s) can be safely and efficiently integrated into the Highway interchange(s).

While a southbound highway service station has already been developed, the exact location of the northbound station is yet to be identified. This should be done through a planning proposal stage, rather than through amendments to the land use table for the IN1 General Industrial zone.

Recommendation/Action:

85 No amendments to the LEP.

3.5.3.22 Submissions 1348 and 796: Requests to amend to the extent of the E2 Environmental Conservation zone in Seaside City in line with 2050 Hazard Line defined on the Coastal Risk Planning Map.

Planning comment:

The environmental zones on the draft Tweed LEP 2012 Land Zoning Map for Seaside City are based on the LEP 2000.



Figure 30: DLEP Land Zoning Map for Seaside City area.

The draft Tweed LEP 2012 Coastal Risk Planning Map is based on the Tweed DCP B25 Coastal Hazards.



Figure 31: DLEP Coastal Risk Planning Map for the Seaside City area.

This request to amend the Land Zoning Map on the basis of Coastal Risk Planning Map is outside the scope of this planning process which is to convert the Tweed LEP 2000 into the Standard Instrument template. In addition, The Coastal Hazard DCP is scheduled for amendment which will result in an update to the Coastal Hazard Maps.

Any request to reduce environmental zones in favour of a residential zone should be subject to a planning proposal.

Recommendation/Action:

86 No amendments to the LEP.

3.5.3.23 Submission 1420: Site specific request to identify future land uses for certain areas in Kingscliff zoned with a rural zone.

Planning comment:

Submission noted. The draft Tweed LEP2012 has been prepared to convert the current LEP 2000 into the Standard Instrument Template, common for all councils in New South Wales.

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the land zoning map was to convert the existing zones into zones under the Standard Instrument with zero or minimum variations.

Any requests to rezone the land 'outside' of the standard conversion process should be subject to a separate planning proposal process.

Council is committed to prepare a locality plan for Kingscliff. This task has been proposed for commencement in the next financial year.

Recommendation/Action:

87 No amendments to the LEP.

3.5.3.24 Submission No 186: request to rezone the established residential area of Parkes Lane, Trutes Lane, Dobbys Crescent and Terranora Road to R1 or R2, instead of proposed R5 Large Lot Residential zone.

Planning comment:

Submission noted. The draft Tweed LEP 2012 has been prepared to convert the current LEP 2000 into the Standard Instrument Template, common for all councils in New South Wales.

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the land zoning map was to convert the existing zones into zones under the Standard Instrument with zero or minimum variations. The area in subject has been zoned R5 Large Lot Residential, which is a conversion of the current zone 1(c) Rural Living.

Any requests to rezone the land 'outside' of the standard conversion process should be subject to a separate planning proposal process.

Recommendation/Action:

88 No amendments to the LEP.

3.5.3.25 Submission No 1446 made by Friends of Terranora: Horticulture land use should be permissible with consent under the R5 Large Lot Residential zone. Group homes should be prohibited in the R5 zone. Terranora sub-station should be zoned with an environmental protection zone. R1 General Residential zone within Area E should be changed to R2 Low Density Residential. Unstable map for Area E urban release should be amended to show a real extent of unstable land.

Planning comment:

The R5 Large Lot Residential is a conversion of the 1(c) Rural Living zone of LEP 2000. While the land use of the R5 zone has been tailored to match the land use of the current zone, it needs to be acknowledged that the R5 zone is part of residential zones, while the previous one belonged to the rural zones. This change is reflected in the new land use table by restricted ability to use the land for farming purposes. The request to maintain horticulture as a land use permissible with consent is in line with the current permissibility under the 1(c) zone and is supported.

Group homes is a land use permissible with consent, subject to merit assessment at the development assessment stage.

The request to allow horticulture with consent is however supported, given the current zone and land use table, and minimum impacts of this land use.

Terranora sub-station has been zoned in accordance with DP&I requirements to apply an adjoining zone for minor infrastructure sites.

Zone R1 has been applied for land within Area E Urban Release Area in line with the methodology of converting the current zones into the Standard Instrument zones. According to this methodology, all undeveloped areas zoned 2(c) Urban Expansion have been zoned R1 General Residential.

Recommendation/Action:

89 Amend the land use table for the R5 Large Lot Residential zone to permit horticulture with consent.

3.5.3.26 Submission 6: Submission requests to permit development of Dual Occupancies and Secondary Dwellings in the RU5 Village Zone. Submission also seeks amendments to the land use table of the RU5 Village zone to allow for restaurants with consent.

Planning comment:

Dual occupancies, secondary dwellings and restaurants are already permitted (with consent) in the RU5 Village zone.

Recommendation/Action:

90 No amendments to the LEP.

3.5.3.27 Submission No 1451: Crown Reserve 59360 at Cobaki Broadwater (Tweed Heads Pony Club) should be zoned with an environmental protection zone.

Planning comment:

The Land Zoning Map of the draft Tweed LEP2012 is a conversion of the LEP 2000 Land Zoning Map. Any amendments to this map should be supported by an adopted Strategy or subject to a planning proposal stage. This submission will be referred to Revised Environmental Strategy.

Recommendation/Action:

91 No amendments to the LEP.

3.5.3.28 Submission 1421 made by Pottsville Community Association. Multiple issues were raised in the submission:

Site specific objection to the application of the R1 General Residential zone and relevant development controls for certain areas in Seabreeze estate. Enquiry about lack of minimum lot size controls for the R3 Medium Density Residential zone. Objection to proposed floor space ratio controls for Seabreeze areas zoned R1.

Objection to proposed maximum height of buildings of 13.6 m proposed to Seabreeze estate areas zoned R1. Objection to the Height of Building Map control of 10 metres for public recreation areas zoned RE1.

Three levels of coastal risk should be incorporated into mapping on Coastal Risk Planning Map. All land identified on Biodiversity Overlay Map should be given adequate protection through the land zoning map. CSG should be listed as prohibited land use.

Other concerns and objections raised in this submission in relation to environment protection have been addressed and responded to in Attachment 1, Table 2 of this Report.

Planning comment:

The Land Zoning Map of the draft Tweed LEP2012 is a conversion of the LEP 2000 Land Zoning Map. The 2(c) Urban Expansion zone has been converted to corresponding R1 General Residential zone. Any request to change this zone should be subject to a planning proposal stage.

Development controls such as floor space ratio, heights of buildings and lot sizes have been based on the Tweed DCP A1.

There is no minimum lot size for land zoned R3 Medium Density Residential. This approach is in line with objectives of this zone, which are to provide a variety of housing types within a medium density residential environment. The Lot Size Map is not a compulsory component of the Standard Instrument LEP, and does not have to be applicable on the Shire-wide basis.

The Coastal Risk Planning Map and the Coastal Risk Planning clause are based on a model local provision prepared by DP&I for implementation in LEPs. Councils have had a very limited ability to modify this clause and map.

The Coastal Hazard DCP is scheduled for amendment which will result in an update to the Coastal Risk Planning Maps. The request to provide three levels of protection will be addressed as part of this review.

Matters related with environmental protection have been addressed under Table 2 of this attachment.

Permissibility of mining activities under the draft LEP needs to be considered in conjunction with the State Environmental Planning Policy (Mining, Petroleum Production and

Extractive Industries), referred to as "The Mining SEPP". The Mining SEPP provides that mining activities may be carried out on land where development for the purposes of agriculture or industry is permitted with or without development consent. According to the hierarchy of planning documents (environmental planning instruments, EPI) in New South Wales, local environmental plans must not be inconsistent with State EPI.

The purpose of the Biodiversity Map is to provide additional consideration at the development assessment stage. Council is committed to undertake a Shire-wide review of environmental zones (through implementation of the Revised Environmental Strategy) which will result in appropriate environmental zones applied where necessary.

Recommendation/Action:

92 No amendments to the LEP.

3.5.3.29 Submissions 51 and 656: Site specific objection to the land zoning map. Lot 5 DP 1178620 in Council ownership should be zoned E2.

Planning comment:

The draft Tweed LEP 2012 has been prepared to convert the current LEP 2000 into the Standard Instrument Template, common for all councils in New South Wales. As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the land zoning map was to convert the existing zones into zones under the Standard Instrument with zero or minimum variations.

Council is preparing a revised Environmental Strategy which provides recommendations to update the land zoning map (particularly rural and environmental zones) in line with mapping developed under the Tweed Vegetation Management Strategy 2004. Council is committed to implement those recommendations, although this process is now delayed due to the review of environmental zones commenced by the DP&I in October 2012.

Recommendation/Action:

93 No amendments to the LEP.

3.5.3.30 Submission 587: Submission objects to the application of E3 and R1 zones on the Land Zoning Map for Lot 6 DP 1117326 and seeks amendments to apply the E2 zone for bushland on the site.

Planning comment:

The draft Tweed LEP 2012 has been prepared to convert the current LEP 2000 into the Standard Instrument Template, common for all councils in New South Wales. As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the land zoning map was to convert the existing zones into zones under the Standard Instrument with zero or minimum variations.

Council is preparing a revised Environmental Strategy which provides recommendations to update the land zoning map (particularly rural and environmental zones) in line with mapping developed under the Tweed Vegetation Management Strategy 2004. Council is committed to implement those recommendations, although this process is now delayed due to the review of environmental zones commenced by the DP&I in October 2012.

Recommendation/Action:

94 No amendments to the LEP.

3.5.3.31 Submission 600 made by Wooyung Defenders. Multiple issues were raised in the submission:

Clause 5.9 8a(i) of the draft Tweed LEP 2012 should be amended to provide an expiry' of the exemption for Tree Preservation Order when a development consent exists.

The draft Tweed LEP 2012 provides the same colour coding for E2 and E3 zones.

Three levels of coastal risk should be incorporated into mapping on Coastal Risk Planning Map. Other concerns and objections raised in this submission in relation to environment protection have been addressed and responded to under Part 3.4 of this Report.

The draft Tweed LEP 2012 Land Zoning Map has been prepared in accordance with the Standard Technical Requirements for LEP Maps. These requirements have been prepared by the DP&I and are standard for all councils in NSW. Councils do not have the ability to amend colours of zones on the Land Zoning Map.

The request to provide an 'expiry date' for clearing exemptions where development consent exists appears to be inconsistent with *Division 7 Post-consent provisions* of Part 4 of the EP&A Act, in particular with Section 95 Lapsing of consent.

The Coastal Risk Planning Map and the Coastal Risk Planning clause are based on a model local provision prepared by DP&I for implementation in LEPs. Councils have had a very limited ability to modify this clause and map.

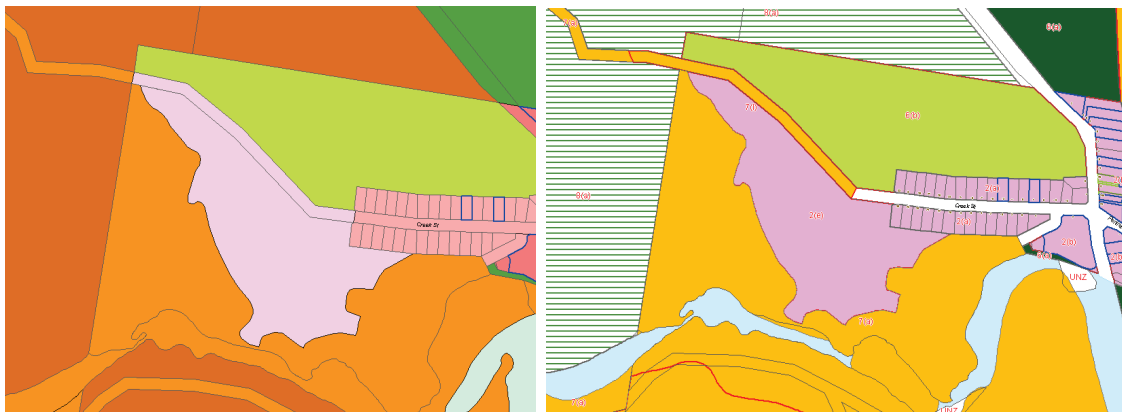
The Coastal Hazard DCP is scheduled for amendment which will result in an update to the Coastal Risk Planning Maps. The request to provide three levels of protection will be addressed as part of this review.

Recommendation/Action:

95 No amendments to the LEP. For referral to Coastal Hazard DCP review.

3.5.3.32 Submission 1378 made by Hastings Point Community Association: Submission seeks an alternative option to development of Lot 156 DP 628026 at Hastings Point.

Planning comment:



Figures 32&33: DLEP and LEP 2000 Land Zoning Maps for the subject site.

The methodology of the current process of converting the LEP 2000 into the Standard Instrument Template is based on a 'best fit' conversion of the Land Zoning Map with zero or minimum variations (where no compatible zones were provided). Council is committed to prepare an LEP amendment with recommendations of the Hastings Point Locality Plan. The matter of identifying optimal zone for this site will be assessed at that stage.

A mapping anomaly on the Land Zoning Map has been identified while analysing this submission. The road reserve adjacent to the subject site has been zoned 7(l) under the current LEP, but that zoning was changed to R1 General Residential under the draft. This change of the Land Zoning Map is not consistent with the methodology of zone conversion and should be corrected.

Recommendation/Action:

96 The DLEP Land Zoning Map to be amended to zone road reserve adjacent to Lot 6 DP 1117326 with the E3 Environmental Management zone, consistently with the extent of the 7(l) zone over this reserve on the LEP 2000 Land Zoning Map

3.5.4 Miscellaneous issues

- 3.5.4.1 Submission No 1509 made by Chinderah District Residents Association in relation to flood planning controls: Objection to the wording of the Floodplain Risk Management clause and Flood Planning Map: term probable maximum flood.

Planning comment:

Both the Flood Planning and Floodplain Risk Management clauses are the “model local provisions” prepared by DP&I and recommended for inclusion in LEPs across the State. Councils have limited ability to amend wording of these clauses. Council may send a formal request to DP&I to review and amend, if necessary, wording of these clauses, as suggested in the submission.

Other comments – for referral to Coastal Hazard DCP review and for Tweed Valley Floodplain Risk Management Plan (draft).

Recommendation/Action:

97 No amendments to the LEP.

- 3.5.4.2 Submission No 317 lodged by South Murwillumbah Business & Owners Group: Submission seeks assurance that shop top housing will be retained in the B5 Business Development zone as proposed in the exhibited draft.

Instead of prohibiting residential accommodation, a more efficient early warning system should be investigated to enable people to make a rational decision regarding evacuation.

The draft LEP does little to stimulate economic development of Murwillumbah.

Planning comment:

Under LEP 2000, there are various restrictions on dwellings in business zones. In the current LEP 2000 3(c) Commerce and Trade Zone dwelling houses are only permissible if a "caretakers dwelling", and multi-dwelling housing is not permissible. The 3(c) zone applies to business areas in South Murwillumbah (Prospero Street, Tweed Valley Way etc), and Tweed Heads South (Minjungbal Drive, Machinery Drive, Greenway Drive etc).

Under the draft LEP 2012, multi dwelling housing remains prohibited in business zones, however shop top housing was proposed to be made permissible with consent. The B5 - Business Development zone has been used as the "best fit conversion" for 3(c) zoned land under the draft, and hence applies to South Murwillumbah and Tweed Heads South.

The Tweed Valley Floodplain Risk Management Study (draft) confirms that the areas of South Murwillumbah and Tweed Heads South have significant evacuation constraints, and hence the policy should apply. It is also noted that the South Murwillumbah Business & Owners Group made a submission (No 317) supporting shop top housing within the B5 zone.

The DLEP is prepared, as far as possible, to be a translation of the current LEP provisions and should not contravene other policies and Council. Prohibiting “shop top housing” within the B5 Business Development zone is consistent with the Tweed LEP 2000.

Other comments: for referral to Economic Development Strategy and the Tweed Valley Floodplain Risk Management Study.

Recommendation/Action:

98 The Land Use Table for the B5 Business Development zone to be amended by prohibiting “shop top housing” land use.

3.5.4.3 Submission No 542: Submission expresses concerns about the implications of the proposed wording of clauses 7.6 Flood Planning and 7.6 Floodplain Risk Management.

Planning comment:

The flood planning and floodplain risk management clauses do not aim to prohibit development but to minimise the flood risk to life and property. It is acknowledged that the majority of residential allotments affected by the Flood Planning Map already have dwelling houses.

Whether proposing to replace an existing or construct a new dwelling, each applicant needs to address clauses 7.6 and 7.7 and Section A3 Development of Flood Liable Land of the Tweed Development Control Plan 2008.

There have been a small proportion of allotments from across the Local Government Area affected by flooding in the past that have been unable to obtain consent for the erection of a dwelling. Most, however, have been able to provide a suitable location for a dwelling and safe wading if necessary that does not unduly provide a risk to residents or rescue personnel.

Recommendation/Action:

99 No amendments to the LEP.

3.5.4.4 Submissions No 3 and 1451: Submission requests additional public presentation for Tweed Heads residents. The submission also seeks amendments to the Height of Buildings Map in line with Obstacle Limitation Surface Map of the Gold Coast Airport Masterplan and objects to reverting the Land Zoning Map from what was proposed in the draft Tweed LEP 2010 back to the LEP 2000.

Planning comment:

Additional public presentation for Tweed Heads was held on 16 January 2013.

Consistency of any proposed development with the Obstacle Limitation Surface Map of the Gold Coast Airport Master Plan 2011 is being assessed under clause 7.4 *Airspace operations*.

Please refer to section 3.4 of this Report for a detailed response to concerns regarding environmental protection.

Recommendation/Action:

100 No amendments to the LEP.

3.5.4.5 Submission No 1458 lodged by the Kingscliff Ratepayers and Progress Association Inc. Multiple issues were raised in the submission:

Submission seeks changes to the Land Zoning Map to zone all farmland areas bordered by the Tweed Coast Rd, Cudgen Ck, Cudgen Rd and where the Tweed Coast Rd joins Casuarina with the RU1 Primary Production zone.

Height of buildings limit should be lowered from 13.6 m to 13 m and from 10 m to 9 m along Cudgen Creek. There is a lack of consistency on Biodiversity Map: seaward side of the Seaside City is not mapped as biodiversity. Submission expresses concern that Council may still be allowing some owners to build in known flood zones.

Submission raises concerns about the lack of Koala Plan of Management and the Revised Environmental Strategy.

Planning comment:

Submission noted. The draft Tweed LEP 2012 has been prepared to convert the current LEP 2000 into the Standard Instrument Template, common for all councils in New South Wales.

As provided in this Report, and in the Report of 25 October 2012, the methodology for preparing the land zoning map was to convert the existing zones into zones under the Standard Instrument with zero or minimum variations.

Any requests to rezone the land 'outside' of the standard conversion process should be subject to a separate planning proposal process.

Council is committed to prepare a locality plan for Kingscliff. This task has been proposed for commencement in the next financial year.

The Terrestrial Biodiversity Map for areas at the Seaside city will be updated consistent with the methodology of preparing this map.

Recommendation/Action:

101 The Terrestrial Biodiversity Map to be amended to map the seaward side of the Seaside City. Matters related with Kingscliff to be referred for Kingscliff Locality Plan.

3.5.4.6 Submission No 518: Clause 5.9 8a(i) of the draft Tweed LEP 2012 should be amended to provide an "expiry date" of the exemption for Tree Preservation Order when a development consent exists.

The draft Tweed LEP 2012 provides the same colour coding for E2 and E3 zones.

Other concerns and objections raised in this submission in relation to environment protection have been addressed and responded to under Table 2 of Attachment 1 of the Report.

Planning comment:

The request to provide an 'expiry date' for clearing exemptions where development consent exists appears to be inconsistent with *Division 7 Post-consent provisions* of Part 4 of the EP&A Act, in particular with Section 95 Lapsing of consent.

The draft Tweed LEP 2012 Land Zoning Map has been prepared in accordance with the Standard Technical Requirements for LEP Maps. These requirements have been prepared by the DP&I and are standard for all councils in NSW. Councils do not have the ability to amend colours of zones on the Land Zoning Map.

Matters related with environmental protection have been addressed under Section 3.4 of this attachment.

3.5.4.7 Submissions 2 and 199: Submission seeks to restore vehicular access to the property described as Lot 88 DP 755715, at Upper Crystal Creek.

Planning comment:

This matter is outside the scope of this planning process. Submission No 2 has been forwarded to Engineering & Operations Division for action.

Recommendation/Action:

102 No amendments to the LEP.

3.5.4.8 Submission No 196: Landowner informed about his intention to lodge a planning proposal to facilitate development of a waste disposal facility.

Planning comment:

Submission noted.

Recommendation/Action:

103 No amendments to the LEP.

3.5.4.9 Submission No 1409: Support to the current process, followed by request to update the LEP on the basis of the most recent, accurate mapping.

Planning comment:

Submission noted.

Recommendation/Action:

104 No amendments to the LEP.

3.5.4.10 Submission No 619 made by Murwillumbah Ratepayers and Resident Association Inc. The submission raised a few issues:

The new LEP should not be based on the LEP 2000 but should include work and consultation involved to produce the LEP 2010. Public exhibition was not adequately advertised. The standard LEP template does not fit to Tweed.

The Association requested to consider submission sent in relation to the Tweed LEP 2010 exhibition, when the following concerns were raised:

Building heights in M'bah should be kept on reasonable levels to protect the local character, concern about buffers to National and State Parks which were lost in 2010 version of the Land Zoning Map, accuracy of the Bushland Map, request to maintain dual consent for vegetation clearing.

Planning comment:

The current LEP has been prepared in response to NSW State Government request for all Councils to convert their LEPs into a single format under the Standard Instrument template. Council's methodology for this conversion has been based on two principles: conversion of the current zones with minimum variations and local context based on adopted policies and strategies.

Council is committed to undertake a Shire-wide update of the Land Zoning Map on the basis of the Revised Environmental Strategy. The Strategy has been prepared to link the Standard Instrument LEP with the Tweed Vegetation Management Strategy 2004. The implementation of the Revised Strategy has been delayed due to the review of environmental zones commenced by the DP&I. The Strategy will be updated to correspond with the outcomes of the review and will be implemented through an LEP amendment process.

The draft LEP exhibition was advertised in two editions of Tweed Link and on Council's website.

Response to the 2010 submission: the draft Tweed LEP 2012 is implementing the Community Based Heritage Study which includes Murwillumbah CBD as a heritage conservation area with additional controls imposed to protect its character. The building height limits are maintaining the current standards defined under the LEP 2000.

The Bushland Map (now Terrestrial Biodiversity Map) has been updated on the basis of the 2009 Aerial Photography.

Request to maintain the dual Council approval for vegetation clearing in its current form, cannot be supported. Under the planning system, the native vegetation clearing is managed under the Native Vegetation Act. This Act provides certain exemptions to carry out clearing in rural areas. In these circumstances, the best method to protect areas with native vegetation is by applying an environmental zone. This is proposed to be implemented through a separate LEP amendment to be undertaken on the basis of the Koala Plan of Management (which is in a draft form) and the Revised Environmental Strategy (delayed due to ongoing review of the environmental zones in the Northern Rivers Region).

Recommendation/Action:

105 No amendments to the LEP.

3.5.4.11 Submissions 1467 and 1384 by Fingal Head Community Association and Fingal Head Coastcare. Multiple issues were raised in these submissions:

Submissions objected to the approach towards environmental protection zones and vegetation clearing controls in the draft Tweed LEP 2012. Objection to the community consultation process and timing, Objection to extractive industries and open cut mining land uses permissible with consent under RU1, RU2 and RU3 zones.

Submissions made several site-specific recommendations to increase the application of environmental zones. Request to include National Trust classification of Fingal Head Coastal Conservation Area in Schedule 5 Environmental Heritage.

Submissions included matters related with Significant Tree Register, which will be addressed under a separate report on DCP A16 Trees and Vegetation Preservation Code.

Planning comment:

Matters related with the methodology behind the application of environmental zones, and options for further amendments to the LEP has been addressed under Section 3.4 of this Report.

Permissibility of mining activities under the draft LEP needs to be considered in conjunction with the State Environmental Planning Policy (Mining, Petroleum Production and

Extractive Industries), referred to as "The Mining SEPP". The Mining SEPP provides that mining activities may be carried out on land where development for the purposes of agriculture or industry is permitted with or without development consent. According to the hierarchy of planning documents (environmental planning instruments, EPI) in New South Wales, local environmental plans must not be inconsistent with State EPI.

The land use table of the draft Tweed LEP 2012 has been prepared as a conversion of the current LEP 2000. Open cut mining and extractive industries have been permitted land uses since the first LEP gazetted in 1987.

The draft LEP 2012 does not change the maximum height of buildings. It provides maximum height in metres. Maximum heights have been determined on the basis of the current LEP 2000 Height of Building overlay, the Tweed Development Control Plan 2008 and standards and guidelines provided by the DP&I.

Site-specific requests to amend the Land Zoning Map of the draft Tweed LEP will be referred to the Revised Environmental Strategy for implementation through a separate planning proposal amendment.

The request to nominate Fingal Head Coastal Conservation Area for listing under Environmental Heritage schedule will be discussed with the Office of Environment and Heritage NSW.

Recommendation/Action:

106 No amendments to the LEP. Refer to Recommendation No 52a.

3.5.4.12 Submission No 1365: Request to amend the Height of Buildings Map to provide a 21 m limit for the Tweed City Shopping Centre site.

Planning comment:

The request is generally consistent with relevant planning policies and strategies. Under the Far North Coast Regional Strategy, the site is located in the identified Town and Village Growth Boundary of the Tweed region, within the existing urban footprint. Increasing the maximum height of buildings limit for the site would assist in achieving the aims of the Regional Strategy, in particular through Assisting in the revitalisation of the Tweed CBD, enabling it to provide a high level of services and employment and Assisting in the development of Tweed Heads as a major centre for tourism through the provision of a variety of retail services.

The request is consistent with Tweed Shire Council Retail Policy Principles:

Principle 1: The character of existing towns and villages and the retail facilities they already have been protected.

Principle 2: Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.

Principle 3: Reinforce Tweed Heads south as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.

Council has recently finalised a planning proposal for redevelopment of the Tweed City Shopping Centre. Amendments to the Height of Buildings Map to facilitate this expansion were not adequately analysed by proponent and resulted in no amendments to the LEP Height of Buildings Map at that stage.

Given that this proposal is generally consistent with relevant policies and strategies, responds to Retail Strategy Principles and that the site was recently rezoned to facilitate the expansion, it is considered that this request has merit and is supported.

Recommendation/Action:

107 The DLEP Height of Buildings Map be amended to provide a 21 m maximum height of buildings for the Tweed City Shopping Centre site.

3.5.4.13 Submission No 189: Wharf or boating facilities, water recreation structures and water storage facilities will encourage further degradation of biological systems.

Planning comment:

The land uses listed in the submission are considered to be consistent with objectives of this zone, which include "providing for sustainable fishing industries and recreational fishing".

It is a role of the merit-based development assessment process to determine whether a proposed development is consistent with objectives of a zone and other relevant considerations.

Recommendation/Action:

108 No amendments to the LEP.

3.5.5 Rural or agricultural land issues

3.5.5.1 Submission No 569 by Combined Tweed Rural Industries Association. Multiple issues raised in submission included: concerns about subdivision standards in rural areas, necessity for and accuracy of Biodiversity overlay, implications of the Flood Planning Map, and limited consultation on exhibition

Planning comment:

A shire-wide approach to investigating the opportunity for revising the minimum lot size maps and creation of smaller lot subdivision for residential purposes is needed, in part, through the preparation of a Rural Land Use Strategy which is due for completion in late 2013.

The Terrestrial Biodiversity overlay is consistent with councils adopted TVMS and has been included in all draft Comprehensive LEPs since 2004. Developments may be refused or conditioned on any number of grounds including biodiversity considerations. The Biodiversity clause simply seeks to clarify some of the common issues that require consideration. Camphor laurel harvesting for commercial purposes falls under the definition of Forestry under the SILEP

The Biodiversity mapping needs to be detailed to pick up relevant issues. The alternative would be to require similar considerations for all DAs. Specific inaccuracies are not stated however if there are errors these can be addressed via the provisions of Biodiversity clause 7.8.

The DLEP Flood Planning Map is scheduled for amendment in line with the most recent flood modelling data provided to council as part of developing the (draft) floodplain management study.

The DCP A16 does not apply to noxious weeds such as camphor laurel by virtue of clause 5.9(8) of the DLEP.

The control of noxious weeds is exempt development providing it is carried out in a manner that does not cause significant environmental impacts.

The DLEP was on exhibition from 15 November 2012 until 18 January 2013. During that time, eight (8) public meetings were held, six of them open for general public and two held by request of community groups. Council staff was providing additional information and guidelines when requested and considered late submission that were lodged after the exhibition closed.

Recommendation/Action:

109 No amendments to the LEP. For referral to DCP A16 Report and for Rural Land Strategy

3.5.5.2 Submissions 27, 601, 757, 1195, 1432, 1435, 1448, 689, 581, 305, 304, 303, 569 raised generally similar concerns on rural subdivision standards and flexibility of the draft LEP 2012 to allow viability of farming in the Tweed.

Planning comment:

A shire-wide approach to investigating the opportunity for revising the Lot Size Map and creation of smaller lot subdivision for residential purposes is being analysed through the preparation of a Rural Land Use Strategy which is due for completion in late 2013. The Strategy is expected to provide a number of recommendations regarding viability of farming in the Tweed Valley; some of those recommendations will be used to amend the LEP through a separate LEP amendment process.

Recommendation/Action:

110 No amendments to the LEP. For referral to Rural Land Strategy

3.5.5.3 Submissions 8, 43, 187, 372, 478, 1377, 1403, 1460 and 1475 raised similar concerns regarding the accuracy of rural and environmental zones in farmlands and requested an update to the Land Zoning Map to correctly zone areas with farming activities with a rural zone and areas of high conservation values with an environmental zone.

Planning comment:

The Draft LEP 2012 maintains the existing Environmental Protection zone boundaries with a recommendation put forward in this report to amend the Land Zoning Map for the koala habitat.

Notwithstanding the above, Council acknowledges that a review of the Environmental zones is needed however is to be pursued through a separate process. Amendments to the environmental zones have been included in the Revised Environmental Strategy. The Strategy is scheduled for implementation as a matter of priority, however has been delayed due to the ongoing review of environmental zones commenced by the DP&I in October 2012. Once the review is finalised, its outcomes will be used to amend the Environmental Strategy for implementation to the LEP through a separate LEP amendment process.

Recommendation/Action:

111 No amendments to the LEP. For referral to Revised Environmental Strategy

3.5.5.4 Submission No 135: The submission raised objection to the Draft LEP 2012 on the grounds that the Land Zoning Map is highly inaccurate. Further, concern is raised that no provision to convert Multiple Occupancies to Community Title is provided under the Draft LEP 2012.

Concern is raised that the Draft LEP 2012 does not reflect existing land use, therefore disadvantaging landholders who are actively involved in environmental enhancement. The submission details areas of environmental rehabilitation that are inconsistent with zone boundaries.

Issue is raised that approved Multiple Occupancies should be able to convert to Community Title, as is the case in Byron Shire.

Planning comment:

The Draft LEP 2012 maintains the existing Environmental Protection zone boundaries with a recommendation put forward in this report to amend the Land Zoning Map for the koala habitat.

Notwithstanding the above, Council acknowledges that a review of the Environmental zones is needed however is to be pursued through a separate process.

Multiple Occupancies are primarily governed by the State Environmental Planning Policy – Rural Landsharing Communities as opposed to the Tweed LEP.

Council does not currently have any specific planning provisions that apply to Rural Landsharing Communities and as such the inclusion of new controls is beyond the scope of this LEP.

Recommendation/Action:

112 No amendments to the LEP. For referral to Revised Environmental Strategy and Rural Land Strategy

3.5.5.5 Submission No 372: The submission raises objection to the use of the E3 Environmental Management zone on land. Concern is raised that agriculture is prohibited within the E3 Environmental Management zone, however substantial areas of the property affected by this zone are currently farmed and have been for over 100 years. The prohibition of agriculture would cost the landowner between \$60,000 - \$90,000 per annum and employment of one or two staff or affect land sale value by in excess of \$550,000 in reduction.

Solutions offered include changing the zoning of the property to RU2 Rural Landscape, as per the Draft LEP 2010 (as exhibited) or Tweed Shire Council purchase the E3 affected land, at a price of \$700,000.

The property has been purchased in 2010. The draft LEP 2010 was proposed to remove the environmental zone from the lot and replace it with the RU2 Rural Landscape zone.

Planning comment:

The Draft LEP 2012 maintains the existing Environmental Protection zone boundaries with a recommendation put forward in this report to amend the Land Zoning Map for the koala habitat.

Notwithstanding the above, Council acknowledges that a review of the Environmental zones is needed however is to be pursued through a separate process.

Whilst Council may wish to purchase land of environmental quality in order to facilitate strategic land management, such an action has not been identified to-date and is not recommended to be instigated in this instance.

Recommendation/Action:

113 No amendments to the LEP. For referral to Revised Environmental Strategy.

3.5.6 Heritage issues

Submissions by the Heritage Council of NSW and the Office of Environment and Heritage (OEH) are addressed in sections 3.2.1 and 3.2.2 above. In addition to these two agency submissions, eight submissions were received from seven organisations/people.

The heritage submissions are detailed in Attachment 1. The issues raised can be summarised as follows:

One submission, from the Tweed Byron Local Aboriginal Land Council (TBLALC) relates specifically to both built and environmental Aboriginal heritage issues and management. The submission notes anticipated community engagement on community projects, such as affordable housing strategies and Aboriginal cultural heritage and supports the use spatial mapping of development controls and linkages between the Tree Preservation Order and vegetation management responsibilities.

The submission has raised concern about the need to lodge a DA to undertake "weed removal" as it may constitute "forestry" as this may impact on land management, rehabilitation and revegetation.

This submission has raised concern regarding high value archaeological sites associated with estuarine and beach areas. The submission requests that future consultation in relation to climate change and impacts of proposed management and development assessment controls concerning the areas omitted from the LEP and adjacent lands that may be subject to high hazard for coastal erosion, include consideration of planning protection and management options for such heritage sites on a locality and cultural landscape basis.

TBLALC coastal holdings may be subject to climate change / erosion processes and management needs to manage multiple hazards. There is some concern regarding inconsistency of the Coastal Risk clause 7.16 and maps with adjoining Byron Council lands, where some areas have been deferred. Suggest consistency be sought and that some areas may need to be omitted from the LEP until this can be demonstrated across LGAs.

This submission suggests that a cultural landscapes mapping is a desirable project and acknowledges the project underway as it facilitates awareness and sensitivity towards Aboriginal heritage. Consultation with the TBLALC will permit input into the design of these projects, which meet multiple agency objectives within the context of the importance of these projects.

Planning comment:

Council commenced the preparation of an Aboriginal Cultural Heritage Management Plan (ACHMP) in January 2012. This plan is guided by the Memorandum of Understanding signed by the members of the Aboriginal Advisory Committee, TSC and our consultants, Converge Heritage + Community. The MOU outlines the roles and responsibilities of the parties and the manner information may be shared or used. The ACHMP project is a major step forward in developing an ongoing engagement with the Aboriginal community on planning matters.

Land that is the subject of “forestry activities” as defined in the LEP will continue to operate and relate to such things as logging and harvesting of timber. Weed removal should not be captured by the “forestry” definition. Weed removal is more suitably considered as “environmental protection works”, which is permitted without consent in most zones.

With regards coastal risk management and the inconsistencies of the Clause 7.16 and associated mapping between TSC and Byron Council, in the absence of State lead policy, each Council is at different stages in their coastal planning and subject to the decisions of their respective Council’s as to how coastal risk is managed. Clause 7.16 is based on the DP&I model clause for coastal risk planning and the mapping is based on the TSC adopted coastal hazard area identified in the DCP B25 Coastal Hazard Guidelines.

Given that Council has adopted the Coastal Hazard DCP (currently under review) and the management strategy for such land, it is appropriate that this be included in the DLEP.

Recommendation/Action:

114 No amendments to the DLEP.

One submission raises concern regarding the DLEP deliberately exhibited false information and misuses Council funds, based on the previously submitted issues with the official Tweed history, the naming of Mount Wollumbin and the incorrect term of “Bunjalgung” for the Aboriginal people.

Planning comment:

The issues with the documented history of the Tweed are outside the scope of the DLEP. The inclusion of heritage items is based on the resolution of Council with regard to the Community Based Heritage Study (CBHS) in August 2012.

Recommendation/Action:

115 No amendment to the DLEP.

One submission has raised concern over the incorrect heritage listing of the Willis residence at Tyalgum (listed under item I107 as 7 Coodgee Street and should be listed as 5 Coodgie

Street). The owners of 5 Coodgie Street were contacted by mail and discussions held with them on the implications for them of amending the listing to 5 Coodgie Street.

The owners advise that given they have not been aware of the heritage listing of this property, they object at this time. Given the address has been listed incorrectly, consultation on the listing of this property has not been adequate and it is recommended that this item be removed from the heritage list, subject to assessment, review and consultation on the correct property in a subsequent heritage study.

Recommendation/Action:

116 The Draft Tweed LEP 2012 be amended to remove the heritage listing of item I107, listed as 7 Coodgee Street, Tyalgum.

Six submissions related to requests to have the heritage listing or conservation area listing removed from their property due to a range of factors including: the additional cost of preparing a Statement of Heritage Impact (SOHI); the lack of detail provided with regard to the significance of the conservation area; clarity surrounding the process, requirements and assessment of development to a heritage item or within a conservation area; properties have been renovated; and concerns with home insurance of property not being provided at a competitive cost.

The properties and areas requested to be removed and the reasons are detailed in the Attachment 1. In summary they include:

- The Tyalgum Community Hall;
- The Tyalgum Conservation Area (2 submissions by one author);
- Flutteries Café, Tyalgum;
- Bungalora, Terranorra; and
- Campbell Residence, Tyalgah – listing of three lots covering farmland and the residence.

Planning comment:

With regard to all above properties, assessment of the items and their heritage significance was undertaken through the Community Based Heritage Study (CBHS) and reported to Council in August 2012. Council resolved at this time to proceed with the listing of these items, given their assessed heritage significance.

Council also considered a report in December 2012 to adopt the management recommendations for appointment of a Heritage Advisor and commencement of a local heritage assistance fund (LHAF) and to seek grant funding for this. This will provide free heritage advice and a small fund to assist owners of heritage items or within conservation area with maintenance and improvement works. Implementation of the heritage advisor and LHAF is dependent on successful Heritage Branch grant funding, once the funding cycle opens.

There is submitted concern that heritage listing will generate public interest, requests to open their house to the public and public dissemination of personal information. Heritage listing of a property does not imply or result in any loss of privacy. As with any privately owned property, heritage listing does not allow the general public to visit your property, nor are owners required to make their property accessible to the public. A site card is maintained on the heritage database which is used as the summary of the property history and significance details.

Submissions regarding the Tyalgum Conservation area are generally concerned with process and the extra consideration and cost of the requirement for a SOHI. All development must be consistent with the requirements of the applicable LEP. With specific regard to heritage items there are two distinct issues clarification has been sought on: when is development consent required; and when is a Statement of Heritage Impact (SOHI) required?

Development consent is required under the provisions Clause 5.10 (2) of the DLEP, which outlines what development requires consent. With regard to a heritage item, heritage significance applies to the identified site unless specifically defined. Where development consent is required the consent authority is required to take into consideration the effect of the proposed development on the heritage significance before granting consent through Clause 5.10 (4) of the DLEP 2012 (and also required by Clause 42(3) of the current LEP 2000) . This consideration of the impact on heritage is a SOHI, and therefore is required for all development requiring development consent.

Notwithstanding DLEP Clause 5.10 (2), Clause 5.10 (3) also makes provision for minor or maintenance works, which do not require development consent and therefore do not require a SOHI. "Maintenance" is defined in the DLEP 2012. This process is outlined in the "*Guide for Heritage Owners*", which is a support document to assist in understanding the requirements of heritage owners. In addition some works may be undertaken under the Exempt and Complying Code SEPP.

Concern has also been raised that there are insufficient guidelines for guiding the assessment of significance of development within the conservation area. Council has previously resolved to prepare a Heritage DCP to specifically address development controls guidelines and the significance criteria of conservation areas. This is scheduled to commence this year.

With regards home insurance, whilst it is acknowledged that some insurance companies will not insure heritage listed properties, the Heritage Branch provides guidelines and advice as to insurers who do not discriminate against heritage listing and provide insurance at a competitive rate.

A couple of submissions raised concerns that the heritage listing is not appropriate given the heritage items have been renovated. Heritage listing is not limited to exemplary examples of architecture or condition; in fact there are few examples of this nature which are generally State heritage listed. Local heritage registers aim to select a broad range of examples for inclusion on the heritage register and also aim to include a sample of buildings representing all eras, styles, materials and significant historic associations. Those selected are not necessarily the 'best' or 'grandest' examples, but represent well a type of building characteristic to an area at a certain time or local association. The current best practice with regards heritage listing is to allow an item to be adaptively reused and renovated, subject to heritage assessment of the suitability of the development and impact on the significant fabric.

With regard to the Campbell residence (Lot 1 DP 308105 (the residence) and Lot 1 DP 117073 and Lot 2 DP 557660) the CBHS and inventory site card identifies significance based on associated significance with the family, pioneering history and demonstrating aesthetic characteristics of a c.1890's brick federation home. The site card assessment lists all three lots. Whilst the dwelling is on Lot 1 DP 308105, the other lots contain associated outbuildings significant to the family's settlement.

Heritage listing will not hinder the continued framing of the property; however, it does recognise the historic significance of the family's settlement and the brick federation dwelling. Council has previously considered the listing of this property in 2007 and in 2012 and has consistently resolved to proceed with listing as a heritage item.

Recommendation/Action:

- 117 The Tyalgum Community Hall (item I110) as mapped and listed in Schedule 5 – Environmental Heritage be retained as a heritage item.
- 118 The Tyalgum Conservation as mapped and listed in Schedule 5 – Environmental Heritage be retained.
- 119 Flutterbies Café” (item I105) as mapped and listed in Schedule 5 – Environmental Heritage be retained as a heritage item.
- 120 “Bungalora” residence (item I2) as mapped and listed in Schedule 5 – Environmental Heritage be retained as a heritage item.
- 121 “Campbell” residence (item I111) as mapped and listed in Schedule 5 – Environmental Heritage (including Lot 1 DP 308105, Lot 1 DP 117073 and Lot 2 DP 557660) be retained as a heritage item.

OPTIONS:

Option 1:

That draft Tweed Local Environmental Plan 2012 is endorsed subject to the amendments recommended under Part 3 of this Report, without amendments to include riparian clause and environmental zones on the Tweed Coast (proposed under recommendations No 29 and No. 52a); and:

- (1) The draft Tweed Local Environmental Plan 2012 be referred to the Director-General of the Department of Planning and Infrastructure, following its amendment under Resolution 1 above, for the draft local environmental plan to be made; and**
- (2) A draft local environmental plan (planning proposal) be prepared to bring about a greater level of protection for Koala Core Habitat, in accordance with State Environmental Planning Policy No.44 Koala Habitat Protection; and**
- (3) Following the completion of the State Government's review of the Environmental Zones (E2, E3 & E4) and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region, a report detailing the process and strategy for Council to implement its broader environmental strategies be brought forward.**

Option 2:

That draft Tweed Local Environmental Plan 2012 is endorsed subject to the amendments recommended under Part 3 of this Report, including recommendation No 52a to include environmental zones as exhibited under the draft Tweed LEP 2010, recommendation No 29 to include riparian clause, and including rationalisation of environmental protection zones on Council controlled land; and:

- (1) Council seeks advice from the Department of Planning and Infrastructure that the abovementioned changes can be made without the need for further public re-exhibition; and**

- (2) The draft Tweed Local Environmental Plan 2012 be referred to the Director-General of the Department of Planning and Infrastructure, following its amendment under Resolution 1 above, for the draft local environmental plan to be made; and
- (3) That a draft local environmental plan (planning proposal) be prepared to fully implement Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat) consistent with outcomes of the State Government's review of the Environmental Zones and Overlays under the Standard Instrument (Local Environmental Plans) Order 2006, for the Far North Coast Region.

Option 3:

That:

1. Draft Tweed Local Environmental Plan 2012 is revised to:
 - (i) Include the amendments recommended under Part 3 of this Report.
 - (ii) More fully implement Council's adopted approach to environmental protection (including SEPP 44 Koala Habitat) consistent with outcomes of the State Government's review of the Environmental Zones and Overlays for the Far North Coast Region.
2. The revised Tweed Local Environmental Plan referred to in Resolution 1 above is publically re-exhibited in accordance with Section 68 of the *Environmental Planning and Assessment Act 1979*.

CONCLUSION:

This Report provides three alternative options to advancing the DLEP with a recommendation to support Option 2.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

In accordance with State Government LEP template.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
- 3 Strengthening the Economy
- 3.3 Maintain and enhance the Tweed lifestyle and environmental qualities as an attraction to business and tourism
- 3.3.1 Establish planning controls and balance the need for urban growth against the protection of agriculture, village character and the environment
- 4 Caring for the Environment
- 4.2 Conserve native flora and their habitats
- 4.2.1 Promote the protection of native vegetation and wildlife habitat of high conservation value, social or cultural significance in Tweed Shire

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Submission Review Table (ECM 3051915)
 - Attachment 2. Background on Policy Position (ECM 3051742)
 - Attachment 3. Draft Tweed Local Environmental Plan 2012 (ECM 3051755)
-

CNL-26 [PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the April 2013 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

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

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

DA No.	DA12/0411
Description of Development:	Detached dual occupancy
Property Address:	Lot 27 Sec 2 DP 3123 No. 70 Charles Street, Tweed Heads
Date Granted:	23/4/2013
Development Standard to be Varied:	Clause 16 - Heights of Buildings
Zoning:	2(a) Low Density Residential
Justification:	Variation to clause 16 Height of Buildings as the proposal incorporates a partial three storey element within a two storey restricted area. The proposal is supported as the variation does not significantly impact on the view sharing opportunities which are afforded to neighbouring developments. The topography of the site (steep sloping site) creates a void area within the building footprint creating an additional storey that is not used.
Extent:	The proposed dwelling one, has an approximate length of 20.3m, with the variation representing 2.5m in length when viewed from the north-east (side) elevation and 0.6m in length when viewed from the south west (side) elevation.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0596
Description of Development:	Dwelling with pool
Property Address:	Lot 357 DP 1087716 No. 31 Cylinders Drive, Kingscliff
Date Granted:	2/4/2013
Development Standard to be Varied:	Clause 16 of Tweed Local Environmental Plan 2000 and Clause 32B of the North Coast Regional Environmental Plan
Zoning:	2(f) Tourism
Justification:	<p>Council has received an application to construct a single residence on the subject property. The property is beach front land in an approved residential subdivision. A SEPP No. 1 variation is sought to Clause 32B of the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space. The proposed two storey dwelling will cast a shadow on the adjacent waterfront open space during the nominated times in the development standard.</p> <p>The Shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impacts on the coastal dune vegetation and do not reach the beach.</p>
Extent:	The Shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impact approximately 15 metres into the coastal dune vegetation and do not reach the beach, which is approximately 100m from the rear property boundary.
Authority:	Tweed Shire Council under assumed concurrence.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.

Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
- 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CNL-27 [PR-CM] Planning Reform Unit Works Program 2013

SUBMITTED BY: Planning Reforms



Civic Leadership

SUMMARY OF REPORT:

This report seeks Council's endorsement of the Planning Reform Unit's Work Program 2013/2016.

This report was preceded by a Councillor Workshop relating to the revision of the works program held on 4 April 2013.

The report acknowledges the competing resource commitments and limitations that were raised at the April workshop and in particular the high level of requests arising from Council's commitment to improving strategic land-use planning for the Tweed as well as the need to allocate resourcing for shorter-term development through planning proposals originating from the private sector.

The works program is an essential project management tool. It assists staff in providing more accurate estimates of the Council's planning resource capability in their advice to the development industry, who require greater certainty and confidence on which their preparation of commercial scheduling and planning for future projects and forecasts can be based.

It also provides an insight into the current direction in the Shire's strategic land-use planning and the key projects on which it is comprised, in a format that can be readily understood by the broader community.

The report concludes that it is essential to maintain a balanced work program to assist with the ongoing resource allocation to key strategic projects and for providing greater certainty in the timing and allocation of resources for accepting private planning proposals and delivering important strategic projects.

The report identified a current imbalance in the available resources and the demand for them and recommends strategies for managing an efficient work stream that is balanced and aims to deliver the greatest utility in the shortest time. It concludes as a consequence that there will typically be a small number of projects that will be held-off in the shorter term to make way for those with a higher net benefit or priority and that this is an acceptable project management response.

RECOMMENDATION:

That:

- 1. Council approves the Planning Reform Unit's Work Program 2013/2016 identified as Tables 2-4 in this report.**
- 2. Council approves Recommendation 1 - *Planning Proposal PP10/0006 225 Terranora Road* within the report relating to the reprogramming of projects.**
- 3. Council approves Recommendation 2 - *Planning Proposal PP10/0004 Enterprise Avenue* and Recommendation 3 - *Planning Proposals PP10/0002 & PP10/0005* within the report and the proponent(s) of the projects detailed are, on request, to provide to the Coordinator Planning Reform a sufficiently detailed schedule demonstrating a commitment to progress the project(s) through to completion within an agreed timeframe and a failure to comply within a reasonable time or to show adequate commitment to the completion of the project(s) will terminate Council's resourcing of the project(s).**
- 4. A mid-year Work Program review and update be reported to Council no later than February 2014.**

REPORT:

As part of the on-going project management of Council's strategic land-use planning resources the Planning Reform Unit's Work Program is reviewed annually and where appropriate revised to reflect and 'match' resource-to-commitment. First adopted in June 2009 it has been successfully utilised to manage expectations arising from speculative requests and investigations as well as genuine development opportunity proposals arising either through Council or from the private sector.

Preceding this report a Councillor's workshop was held on 4 April 2013 to enable Council officers to provide an up-date on the work program and how project commitment targets were being met as well as providing an overview of current resourcing and funding allocations and shortfalls for existing and future projects.

One the key issues raised was the current over-commitment of resources, which had been consistently increasing over the preceding 12 months driven by several factors, including:

- i. The ongoing advancement and amendment of the Draft LEP 2012 which draws significant resources both from within the Planning Reform Unit as well as from other Divisional work areas and which is a major contributor in the delay and consequent reprogramming of several key strategic projects.
- ii. There has been a tendency to over rely on external consultants to assess and prepare planning proposals that was based on an initial estimated resource commitment regarding project management and administration. The use of consultancies has undoubtedly proved to be beneficial both in terms of planning outcome and the number of proposals able to be advanced. However, the project management and resourcing required of council staff has proven to be in excess of initial estimates and quite significant with some of the more complex projects.

Consequently the ability of the Unit to progress/undertake planning proposals needs also to be balanced against the resourcing required to both administer, project manage and assist in the preparation of project planning proposals efficiently. This is essential within a user-pays system where the expectation on service delivery is higher.

- iii. Some of the more recent larger and complex policies have generated the need for post project resourcing to assist council staff and external clients with effective implementation. This has generated the need for additional guiding plans or policy in some instances.

By way of example, the Tweed City Centres LEP, gazetted in January this year, has necessitated the preparation of policy to manage the process and outcomes for the new clauses relating to the 'key sites: architectural design competition' and 'architectural roof features'. The adoption of the Community Based Heritage Study has led to internal staff and external community group workshops and consultations, and further work on the guidelines and explanation / interpretation of the project outcomes to achieve effective implementation of the processes it triggers for development applications and works. The 'Area E' locality based DCP has necessitated ongoing support for other Units' and prospective developers with the effective implementation and interpretation of its aims and design orientated outcomes, as has several of the other recent detailed strategic policies.

- iv. The slowed progression of some projects driven by the reprioritisation of commercial priorities and realities of some proponent developers, which is undoubtedly driven by prevailing economic conditions. This situation presents project management challenges for the work program because proponents are unwilling to relinquish their place in the queue once work has commenced because there is typically no guarantee that the project will be resourced at a later time convenient to them. This risk is heightened with projects that have a relatively long lead time because the currency of information can change, become obsolete, and costly to update.

The flow on effect creates a barrier to the reallocation of resources to other like projects because there is a risk that those resources may need or be expected to be allocated back to the original project when the proponent is again ready. Given the absolute uncertainty attaching to the pre-gateway assessment stages of most planning proposals about how long a given project is 'likely' to take and what level of resourcing will be required there can typically be no assurance about when a deferred project may recommence.

The better practice remains to keep the resource allocation or terminate the project and in exceptional circumstances defer the project subject to a combination of agreed time frames and automatic termination milestones established in advance.

When preparing the 2013-2016 work program the direction provided by Councillors at the workshop in conjunction with the Tweed Shire Council Community Strategic Plan 2013-2023, Delivery Program 2011/2015 and Operational Plan 2012/2013 were taken into account.

From the above, three salient limitations for acting on a range of projects and or acting on those within certain timeframes are guided by:

1. The direction the Council seeks to take with any given project;
2. The availability of financial resources; and
3. The availability of human resources to either undertake a project or project control external consultancies.

There are several projects identified within this report that have previously been identified as important strategic projects and which the Council has indicated should be pursued. There are however one or more of the limitations mentioned above operating to impact on the progression of all projects simultaneously or within the same time horizon and consequently the works schedules have been developed using available knowledge and indicators to determine the base project priorities from where further refinement or reprioritisation of projects can be made by Council.

The works program is premised on a presumption that any additional projects introduced by the Council will result in the deferral of another project of the same kind off the work schedule to a later date (reprioritisation) rather than displacing the allocated resources to current projects. The exception to that presumption being the allocation of additional resources commensurate with those required to accommodate the new project.

The Works Program serves as an important and helpful project control tool, in particular:

- i. It is normal practice during any given year that new projects will come to light and will be reported to Council. These occurrences take into account the impact on the Work Program and the Unit's ability to resource the project. In that way the Work Program is not intended to be immovable or to raise a barrier to important projects that the Council wishes to prioritise but instead is designed to aid Council with those decisions;

- ii. It provides a medium through which Council can identify additional and future projects; and
- iii. It can be used to guide decisions regarding future budgetary considerations and or allocations.

The allocation and redistribution of budgetary funds available within the Planning Reform Unit was addressed in the previous work program report in May 2012 and the related projects were programmed. There are no additional or available funds.

The Work Program Generally

The revised works program has taken into account four key project constraining and opportunity factors:

- i. Total PRU staff resources;
- ii. Committed resource allocation;
- iii. Current funding & commitments; and
- iv. Potential future funding.

Based on those four elements and the feedback from the 4 April Councillors' workshop the Tables below provide a proposed work program for the period 2013-2016.

As mentioned above, and with most work programs of this kind, it is in a constant state of change as projects both come and go and it needs to be sufficiently flexible to allow for projects that are not completed within the projected timeframe and rollover into successive program schedules.

Based on the above, the program is based on the same format previously used, which utilises a 'traffic light system'. This is designed to allow a more flexible measure of resourcing at a given point in a project's lifecycle. For example, a project that has a long lead time to its proper commencement or a project that is nearing its completion generally requires less resourcing than one that has a deferred commencement or is in its peak development and so is correspondingly shown with a red or amber 'indicator or light'.

Referring to Table 1 below the indicators may be summarised as:

Green light: typically signifies a project in peak development and requiring a significant resource allocation. These are projects typically prepared in-house or where the project is outsourced but the complexity and size of the project requires a significant contribution to both project control and preparation/assessment of related studies and the like.

Yellow light: a project that requires a moderate allocation of resources. This could be a comparatively simple project or one that has a long lead in or lead out time that is predominately administrative. It is also used to indicate the level of resourcing required to project control least complex or contentious projects that are outsourced to consultancies.

Red light: typically used to indicate a project that is yet to start, or be reported to Council, or is in the final stage of completion but nonetheless involves administration and project management. This might for example include the raising of invoices, contract preparation, report to Council, meeting advice and the like.

Black light: projects that have been brought to attention through various media, e.g. proponents of development, Council's delivery and operational plans, community advocacy for key projects and or topics, and the Council, but that are not proposed to be commenced within the specific work program period. These projects are listed to firstly maintain an awareness of them and also because it provides a more seamless and transparent transition of the proposed work stream between the work program schedules (years).





Rating Schedule	
Current Projects (Resourced)	
Current Projects (moderate resources)	
Project Pending / finalising (minor resources)	
Not proceeding at this stage / Future Project	

Table 1 - Work Program Project Resources Rating

Work Program Schedules 2013/2016

The following schedules have been prepared taking into account the considerations and factors discussed above. Several projects are identified as requiring a funding allocation or that require Council's endorsement before they can be commenced. This appears as an initialism abbreviation following the project title description:

- (SCA) Subject to a costs and expenses agreement.
- (SCR) Subject to Council resolution.
- (STF) Subject to funding.
- (STGF) Subject to grant funding approval.

Table 2 - 2013/2014

Planning Proposals (PPs)		CSP Code	Strategic Plans		CSP Code	General Tasks	
Total (weighting)	15.5		Total (w)	15.0		Total (w)	6.8
PP10-0007 Mooball (Perlo)	●	1.5	Rural Lands Strategy	●	1.5, 3.1, 3.2, 4.5	Briefing notes, workshops & presentations or similar (public & internal)	●
PP12/0002 Mooball No.2	●	1.5	LGMS	●	1.5, 3.1, 3.4	Meetings / Committees / workshops / Seminars	●
PP10-0005 Hundred Hills	●	1.5	Murbah Main street Heritage Project (STGF)	●	1.5	General Corro, GIS & s149 support	●
DLEP 85 Pottsville Employment	●	1.5	Com-Retail Dev. Strategy (STGF)	●	1.5, 3.1	Student / University Programs assistance	●
PP10- 0002 Marana Street	●	1.5	Kingscliff Locality Plan	●	1.5, 2.2	Strategic Planning Advice (internal & external) (NOMs)	●
PP11/0005 Club Banora T/Towns	●	1.5, 3.1	FNCRS Review	●	1.5, 2.2	DA comments	●
DLEP Shirewide 2012	●	1.5	ACHMP	●	1.5, 2.1	Grant & Funding Applications	●
		1.5	Tyalgum Locality Plan	●	1.5, 2.2	NSW Housing Monitor / SEPP Compliance GIS	●
		1.5	Rural Villages DCP	●	1.5, 2.2	Post Project Works, Contracts & Agreements	●
Environmental Zones / Koala LEP Amendment	●	1.5, 4.1, 4.2	DCP A5 (subdivision) Review	●	1.5, 2.2	Procurement	●
			Housing Adaptability	●	1.5, 2.2		●
Total ALL Task							37.3
Parked - stalled			Work Program Items				
DA10/0737 s72J BP Chinderah	●	1.5, 3.1	Policy Maintenance	●	1.5		
PP10/0006 225 Terranora (SCA)	●	1.5	Seabreeze (Stage 2)	●	1.5		
PP10/0004 Enterprise Ave (SCA)	●	1.5, 3.1	CBHS Heritage DCP	●	1.5, 2.1		
Total Resource Allocation 2013/2014							120.5%
Facilitating Planning Proposal			Facilitating DCP (From LEP/PPs)			Resource Commitment by Project Area <ul style="list-style-type: none"> ■ Planning Proposals (PPs) ■ Strategic Plans ■ General Tasks 	
Hastings Point LDCP		1.5,2.2	Industry & Business Park DCP	●	1.5, 3.1		
Pottsville LDCP		1.5,2.2	Key Sites: Architectural Design Comp (LEP2009)	●	1.5		
Cabarita LDCP	●	1.5,2.2	Architectural Roof Features (LEP 2009)	●	1.5		
Review Caba Village Controls		1.5					
Planning Proposal / Project (notified)			Other (from Council)				
Border Park - Bunnings Rezoning Request (SCA)(SCR)	●	1.5, 3.1					
Palms Village Rezoning (SCA)(SCR)	●	1.5					
Tweed City S/Centre Height Rezoning (SCA)(SCR)	●	1.5, 3.1	Iconic Landscapes DCP	●	1.5, 2.2		
Elrond Drive (SCA)(SCR)	●	1.5					
West M/bah Industrial (TUELRS Area 6) (SCA)(SCR)	●	1.5, 3.1					

Table 3 - 2014/2015

Planning Proposals (PPs)		Strategic Plans		General Tasks	
Total (weighting)	CSP Code	Total (w)	CSP Code	Total (w)	CSP Code
7.7		13.7		6.8	
PP10-0007 Mooball (Perlo)	1.5.3.1	Rural Lands Strategy	2.2.2.1	Briefing notes, workshops & presentations or similar (public & internal)	2.1.2.2
PP12/0002 Mooball No.2	1.5.3.1	LGMS	3.3.1.1	Meetings / Committees / workshops / Seminars	
PP10-0005 Hundred Hills	1.5.3.1	Murbah Main street Heritage Project (STGF)	1.5.2.2	General Corro, GIS & s149 support	2.1.2.2
DLEP 85 Pottsville Employment	1.5.3.1	Com-Retail Dev. Strategy (STGF)	2.1.2.3	Student / University Programs assistance Strategic Planning Advice (internal & external) (NOMs)	
PP10- 0002 Marana Street	1.5.3.1	Kingscliff Locality Plan	2.2.1.1		
PP11/0005 Club Banora T/Towns	1.5.3.1	FNCRS Review	3.4.1.1	DA comments	
DLEP Shirewide 2012	2.1.2.3	ACHMP	3.2.1.2	Grant & Funding Applications	
	1.1.1.2	Tyalgum Locality Plan	2.6.1.1	NSW Housing Monitor / SEPP Compliance GIS	3.4.1.1
	1.1.1.2	Rural Villages DCP	4.4.2.1	Post Project Works, Contracts & Agreements	
Environmental Zones / Koala LEP Amendment	1.5.3.1	DCP Murwillumbah (South)	2.1.2.3	Procurement	
	1.5.3.1	Housing Adaptability	2.3.7.1		
	1.5.3.1	Chinderah Locality Plan (STF)	2.3.7.1		
				Total ALL Task	28.2
Parked - stalled		Work Program Items			
DA10/0737 s72J BP Chinderah	1.5.3.1	Policy Maintenance	1.5.2.2		
PP10/0006 225 Terranora (SCA)	1.5.3.1	Seabreeze (Stage 2)	1.5.2.2		
PP10/0004 Enterprise Ave (SCA)	1.5.3.1	CBHS Heritage DCP	2.3.7.1		
			1.5.2.2		
			2.3.7.1		
Facilitating Planning Proposal		Facilitating DCP (From LEP/PPs)			
Hastings Point LDCP	2.3.7.1	Industry & Business Park DCP	1.5.2.2		
Pottsville LDCP	2.3.7.1	Key Sites: Architectural Design Comp (LEP2009)	1.5.2.2		
Cabarita LDCP	2.3.7.1	Architectural Roof Features (LEP 2009)	1.5.2.2		
Review Caba Village Controls	2.3.7.1	Pottsville Employment Lands DCP	1.5.2.2		
Planning Proposal / Project (notified)		Other (from Council)			
Border Park - Bunnings Rezoning Request (SCA)(SCR)	1.5.3.1	Iconic Landscapes DCP	1.5.2.2		
Palms Village Rezoning (SCA)(SCR)	1.5.3.1		2.3.7.1		
Tweed City S/Centre Height Rezoning (SCA)(SCR)	1.5.3.1				
Elrond Drive (SCA)(SCR)	1.5.3.1				
West M/bah Industrial (TUELRS Area 6) (SCA)(SCR)	1.5.3.1				

Total Resource Allocation 2014/2015
88.5%

Resource Commitment by Project Area

Category	Percentage
Strategic Plans	51.4%
Planning Proposals (PPs)	27.0%
General Tasks	10.2%

Table 4 - 2015/2016

Planning Proposals (PPs)		CSP Code	Strategic Plans		CSP Code	General Tasks		CSP Code
Total (weighting)		9.5	Total (w)		13.3	Total (w)		6.8
Dunloe Park Residential (TUELRS Area 7) (SCA)(SCR)	●	1.5.3.1	Rural Lands Strategy	●	2.2.2.1	Briefing notes, workshops & presentations or similar (public & internal)	2.1.2.2	●
Cudgera Road Residential (TUELRS Area 5) (SCA)(SCR)	●	1.5.3.1	LGMS	●	3.3.1.1	Meetings / Committees / workshops / Seminars		●
Pottsville Employment (TUELRS Area 7) (SCA)(SCR)	●	1.5.3.1	DCP Murwillumbah (South)	●	1.5.2.2	General Corro, GIS & s149 support	2.1.2.2	●
Spare	●	1.5.3.1	Com-Retail Dev. Strategy	●	2.1.2.3	Student / University Programs assistance		●
Spare	●	1.5.3.1	Kingscliff Locality Plan	●	2.2.1.1	Strategic Planning Advice (internal & external) (NOMs)		●
spare	●	1.5.3.1	Housing Adaptability	●	3.4.1.1	DA comments		●
PP10/0006 225 Terranora	●	2.1.2.3	Chinderah Locality Plan (STF)	●	3.2.1.2	Grant & Funding Applications		●
PP10/0004 Enterprise Ave	●	1.1.1.2	Review TUELRS	●	2.6.1.1	NSW Housing Monitor / SEPP Compliance GIS	3.4.1.1	●
			Rural Tourism DCP	●	4.4.2.1	Post Project Works, Contracts & Agreements		●
			Housing Affordability Strategy (STF)	●	2.1.2.3	Procurement		●
			Urban Design Charter	●	2.3.7.1			●
					2.3.7.1			●
						Total ALL Task		29.6
Parked - stalled			Work Program Items					
			Policy Maintenance	●	1.5.2.2			
			Heritage Advisor Project Officer	●	1.5.2.2			
					2.3.7.1			
					1.5.2.2			
					2.3.7.1			
Facilitating Planning Proposal			Facilitating DCP (From LEP/PPs)					
			Spare	●	1.5.2.2			
			Spare	●	1.5.2.2			
					1.5.2.2			
					2.3.7.1			
Planning Proposal / Project (notified)			Other (from Council)					
West M/bah Industrial (TUELRS Area 6)	●	1.5.3.1	Iconic Landscapes DCP	●	1.5.2.2			

Total Resource Allocation 2015/2016
93.1%

Resource Commitment by Project Area

- Planning Proposals (PPs)
- Strategic Plans
- General Tasks

Balancing Public - Private Interests

The work program is limited by several factors as mentioned above. Ultimately there will always be a limit on capacity and a corresponding body of work commitments.

Tweed Council is performing well and making good progress with new and updated strategic planning work and within the confines of the strategic planning resources. Like those before it, this work program seeks to strike a balance between planning proposals originating on demand from the private sector and broader community driven strategic planning policy. This can be further stated as that body of work that investigates and makes permissible new land-uses versus that other body of work which provides the guidelines for how that new development should best proceed.

Despite a large volume of planning proposals within the work program the greater part of the Unit's resources are being taken up by broader strategic policy work. This occurs for many reasons but noticeably is the Council's sustained commitment to good strategic land-use planning and the weaker economy which is both highlighting the need for stronger policy whilst at the same time reducing the pressure for new and more expedient planning decisions, tempered by reduced availability and access to funding for commercial projects.

Council initiated projects

Council, at the 13 December 2012 meeting, resolved to bring forward a report detailing the current planning reforms agenda and options for reprioritising the planning reforms agenda to include:

- a) *a Sustainability policy for Council*
- b) *a Sustainability Development Control Plan for new developments*
- c) *a National Iconic Landscapes Development Control Plan*

Item a)

This relates to a wider, corporate, policy for Council, the scope and extent of which is to be addressed at an upcoming Councillors' workshop by Council's Director Community and Natural Resources.

Item b)

This is a more specific and targeted approach than the broader 'whole of council operations' policy foreshadowed at Item a), and will be most effective when tailored to key and identifiable areas.

Council's Director Engineering Operations is evaluating how sustainable development principles can be incorporated into Council's subdivision DCP, which is currently being reviewed. The review will look at ways in which the sustainability criteria can be assessed, and benchmarked; acknowledging that performance and monitoring is a fundamental key to effective implementation a success of embedded sustainability. It is envisaged that these criteria will act as a precedent model for incorporation more widely into all development related policies and standards.

Item c)

A 'National Iconic Landscapes' DCP has been included within the Work Program for commencement in 2013-14, as shown in Table 2.

Benefits and Impacts with the Proposed Work Program

As with the previous work program this program proceeds with an emphasis on the maintenance of Council's current strategic planning policies, which is an area previously identified as lagging other areas of policy development.

A robust and informed planning policy framework has positive impacts not only on the ability to provide certainty to the development industry but it should also initiate and drive more economically sustainable outcomes for the Tweed. This can occur through achievement of the best use of land in key delivery areas including; supply of lower cost and diverse housing, employment generating development, and a reduction on development pressure and release of further large Greenfield development, as well as, protection of agricultural and environmentally sensitive land.

There are several key strategic projects underway that will seek to address a number of those issues. However, there are still many policy challenges ahead that should not be underestimated and which will provide Council with an opportunity to improve the community participation rate in the preparation of important strategic projects as a means of managing decisions about Tweed's future.

As well as the State Government's agenda to reform the NSW planning legislation, which may present many new opportunities and challenges, there are regional issues that Council and community will need to participate in. In particular, the Far North Coast Regional Strategy (FNCRS) is set to recommence its review in April, with the Department of Planning and Infrastructure due to recommence high level meetings with representatives from each of the five councils on how best to inform and develop the Strategy, in-line with the Government's expectations.

The FNCRS is pivotal to the Council's long-term planning. It sets the tone for how the region should be developed, where the major and smaller centres are/will be, and what the population, employment and housing projections are for each local area.

The benefit with this work program is that it attempts to foreshadow some of the likely and probable events (by way of related project) and has sought to both inform processes by ensuring that Council's key strategies are in place (e.g. rural land strategy) and that others will follow suit and be aligned with any change (e.g. review of the TUELRS, local growth management strategy, heritage), ultimately with a view to improving the overall benefit from having a strong policy position and also as a means of lessening any direct impact or flow-on effect arising from the transition into a new legislative framework. This is achieved within the limitations set by this kind of program but remains instructive about the level and kind of policy work and change required.

The principle impact arising from the proposed work program in the shorter term results from there being a fixed resource base, which is out-stripped by project demand for it, and therefore requires projects to be reprogrammed or similar.

Project Reprogramming & Notice of Commitment Recommendations

It is necessary, in order to maintain an appropriate level of resourcing to the key priority projects, to defer several others to be reprogrammed at a later stage. It is also essential that projects abandoned or not receiving an appropriate level of resourcing from the proponent be brought to account or terminated. This latter class of proposals is a significant drain on Council's resources and its ability to undertake other projects.

The projects identified below fall into one of those categories discussed.

Recommendation 1 - *Planning Proposal PP10/0006 225 Terranora Road*

This planning proposal request seeks to rezone land, which is about 10 hectares in area and currently zoned for the most part 7(d) Environmental Protection and part Rural 1(c), to

expand or extend the Rural 1(c) zoning of the land. The request was informed in part by the environmental zones exhibited in the Draft LEP 2010, which resulted in a significant reduction of the environmental zoning and in its place a Rural 1(a) zoning.

The rezoning therefore seeks to reclassify the area land that was proposed to revert from 7(d) to 1(a), for rural living and utilising the standard instrument zoning of R5 Large Lot Residential.

Given the prevailing uncertainty about how these lands and in particular the rationalisation of environmental zoning will be managed through Council's future zone review or that currently being investigated through the Department of Planning and Infrastructure, it is recommended that this project should be deferred and reprogrammed in to the 2014-2015 work period.

Recommendation 2 - *Planning Proposal PP10/0004 Enterprise Avenue*

This planning proposal request sought certain lands in Tweed Heads South to be developed and re-developed for a large format retail precinct and waste transfer station, as well as to enable land to be used for direct factory outlet retailing.

Reported to Council's Meeting of 17 August 2010 it was resolved to notify the proponent that the project would not proceed without several key issues first being addressed. These items, including traffic, impact on Council's Banora Point waste water treatment plant and assessment of ecological constraints, remain to be addressed. Consequently the project remains unsuitable to proceed.

It is recommended that whilst the project has been reprogrammed for the 2014-2015 period that Council seek formal advice and commitment from the proponent to proceed with the project within an agreed timeframe, failing which it should be terminated and removed from the Work Program.

Recommendation 3 - *Planning Proposals PP10/0002 & PP10/0005*

Both of these planning proposals seek rezoning of the land for urban residential purposes. Whilst both have been underway for sometime their progress is slow and disjointed with no demonstration of a real commitment to complete the projects within a reasonable time.

Although it is recommended that they remain in the 2013-14 work period it is also recommended that Council seek a firm commitment from the respective proponents to finalise the projects within an agreed time, failing which they should be terminated and removed from the Work Program. This would free-up capacity to undertake other projects where that commitment exists and best utilises the use of Council's resources.

OPTIONS:

1. That the Work Program 2013-2016 presented in Tables 2-4 within this report and the recommendations presented in relation to the deferral of specific projects and proponent show cause notifications be approved; or
2. That any amendments to the Work Program be identified and the report deferred to allow amendments to be made and reported on.

CONCLUSION:

The benefits and impacts associated with the Planning Reform Work Program are discussed above in this report. Noticeably it serves as a means of project control for aiding decisions

about resource allocation, budgetary considerations and allocations, and for identifying important key strategic projects.

The Work Program is a guide but nonetheless serves as a means of ensuring that changes and challenges originating externally, whether from government policy or the commercial sector, are foreshadowed, contemplated and managed through a transparent projection of the work needed to address emerging issues.

For the reasons discussed in this report the Work Program 2013-2016 is seen to be a balanced approach to managing the strategic land-use functions required of Council, within the resources available. It is suitable for approval.

COUNCIL IMPLICATIONS:

a. Policy:

This report seeks a clear direction and prioritisation of Council's strategic land-use planning program.

b. Budget/Long Term Financial Plan:

Forward budget estimates may arise from Council's endorsement of the Planning Reforms work program as key strategic projects are taken up.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 1.5.2.2 Planning Controls updated regularly

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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CNL-28 [PR-CM] Update on Development Assessment and Monitoring of Camphor Laurel Harvesting Activities in the Tweed Shire

SUBMITTED BY: Development Assessment



Caring for the Environment

SUMMARY OF REPORT:

A report was previously reported to Council's Meeting of 18 April 2013 to both update Council on the broader changing regulatory and management aspects of camphor laurel harvesting in the Tweed Shire, particularly in respect of the supply of harvested material to the Condong Mill co-generation plant, as well as to inform Council on the compliance actions taken in respect of a complaint received relating to the recent camphor laurel harvesting activity on premises No. 536 Smiths Creek Road, Stokers Siding.

Council resolved the following in respect of this report:

“That:

- 1. Council works with the industry representatives and State Agencies regarding a future process for approvals and environmental management for camphor laurel removal; and***
- 2. No legal action be undertaken regarding the camphor laurel harvesting operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding for the reasons outlined in the report.”***

Council were also made aware of a meeting held on 16 April, 2013 between Council officers and representatives of the NSW Environment Protection Authority (EPA), Far North Coast Weeds FNCW) and NSW Sugar (representing the Condong Mill), to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting in the Tweed Shire, in order to respond to the environmental impacts issues arising from a number of recent camphor harvesting activity, such as that at No. 536 Smiths Creek Road.

The meeting was very productive as it assisted in clarifying the regulatory roles of each agency in respect of the assessing and monitoring of camphor laurel harvesting activity, the operational aspects of the Condong Mill co-generation, and the changing approach to camphor laurel by Far North Coast Weeds.

A positive outcome of the meeting was that the agencies have produced a clearer system and definition of roles for both Council and the EPA in responding to complaints on unauthorised or inappropriate camphor laurel activities.

However, it was evident that there is a divergence of views among the agencies as to how the harvesting of camphor laurel is defined in statutory terms under both the NSW Environmental Planning and Assessment Act, 1979 (EP&A Act) and the NSW Native Vegetation Act (NVA), and the related extent of approvals and environmental assessment

required. Tweed Council officers are of the view that, depending on the scale of the activity, it could be defined as “forestry”, which is considered to require a development application under the upcoming Tweed Draft Local Environmental Plan 2012. Under the Draft LEP “forestry” includes *b) forest product operations, namely, the harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value....*

The Council officers have previously supported an exemption from the lodgement of a development application under the Tweed Council Exempt and Complying Development Control Plan, subject to an agreed process between Council, the EPA, FNCW and NSW Sugar, requiring camphor removal contractors to comply with the Camphor Harvesting Code of Practice, necessitating a Weed Control Management Plan signed off by the FNCW and Council before any works were commenced.

Contrary to the view of the Council officers, the EPA and NSW Sugar consider that the activity is best defined as noxious weed control, and therefore should be exempt from requiring approval under either the EP&A Act or the NVA. Council officers maintain camphor laurel harvesting at the scale currently being undertaken goes well beyond any exemption for noxious weed control which must be undertaken to the *minimum extent possible* under the NVA and by methods that *will not: have a significant impact on native flora and fauna; create significant problems with land degradation including soil erosion, coastal erosion and siltation of water bodies* under Councils DCP – A10 Exempt and Complying Development.

Further doubt on the extent of approvals and assessment required and the feasibility of continuing the voluntary Camphor Harvesting Code of Practice, was created through the advice provide by the FNCW, who will no longer be resourcing any environmental assessment of plans of management for camphor removal jobs relating to the Condong Mill, and have also proposed the de-classification of camphor as a noxious weed in the draft Weed Control Order 30 soon to be released for full public consultation by the State Government.

NSW Sugar has also indicated that they are unlikely to require any further camphor harvesting over the next six weeks prior to the start of crush.

The Group therefore concluded that there was a need to seek a more qualified, independent opinion on the interpretation of the planning definition and associated approvals required for camphor harvesting. In this respect, it is proposed that Council officers seek advice through the NSW Department of Planning and Infrastructure as part of its resolution of outstanding issues for finalising the current Draft Tweed LEP 2012.

In the interim, the Group will continue discussions on how best to resource and monitor the environmental assessment of any upcoming camphor laurel harvesting jobs relating to the co-generation fuel demands of the Condong Mill.

RECOMMENDATION:

That the report on Update on Development Assessment and Monitoring of Camphor Laurel Harvesting Activities in the Tweed Shire be received and noted.

REPORT:

A report was previously reported to Council's Meeting of 18 April 2013 to both update Council on the broader changing regulatory and management aspects of camphor laurel harvesting in the Tweed Shire, particularly in respect of the supply of harvested material to the Condong Mill co-generation plant, as well as to inform Council on the compliance actions taken in respect of a complaint received relating to the recent camphor laurel removal activity on premises No. 536 Smiths Creek Road, Stokers Siding.

Council resolved the following in respect of this report:

“That:

- 1. Council works with the industry representatives and State Agencies regarding a future process for approvals and environmental management for camphor laurel removal; and***
- 2. No legal action be undertaken regarding the camphor laurel harvesting operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding for the reasons outlined in the report.”***

Council were also made aware of a meeting held on 16 April, 2013 between Council officers and representatives of the NSW Environment Protection Authority, Far North Coast Weeds and NSW Sugar (representing the Condong Mill), to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting in the Tweed Shire, in order to respond to the environmental impacts issues arising from a number of recent camphor removals activity, such as that at No. 536 Smiths Creek Road.

A summary of the main issues of discussion and recommended actions from the meeting is provided below:

Clarification of Regulatory Compliance Roles of Council and the EPA

The recent camphor harvesting activity by a contractor at the premises No. 536 Smiths Creek Road generated some confusion about the compliance and enforcement roles of Council and the EPA in terms of responding to amenity and environmental impacts complaints made by adjoining owners.

The EPA outlined their understanding of the current regulatory framework for camphor laurel harvesting. The EPA was supportive of the initial arrangement for harvesting operations based on the requirement that contractors comply with the Camphor Harvesting Code of Practice, (which requires FNCW endorsed Weed Control Management Plans) developed between the Mill, FNCW and Council. Through this process, the EPA's primary role is exercised through the Sugar Milling Cooperative Environment Protection Licence which requires that camphor laurel chips used as fuel at the premises are harvested in accordance with the Camphor Harvesting Code of Practice. The EPA elaborated their understanding that where complaints received from adjoining or surrounding property owners persisted after being referred by the EPA to the Mill, then the EPA would further investigate and take appropriate action. This had rarely been necessary over the years that this system has been in place.

In terms of the camphor laurel harvesting activity, the EPA had a further understanding that Council is the appropriate regulatory authority under the Protection of Environmental Operations Act (POEO Act) for noise, water, and air impact issues, in addition to Council's land use role under the Environmental Planning and Assessment Act (EP&A Act), as it is an unscheduled activity.

In those instances where a camphor laurel contractor was not carrying out work in accordance with the Camphor Harvesting Code of Practice, the EPA advised of their understanding that Council should report these actions to the EPA, who have generally responded in a prompt fashion to address these concerns with the Mill. In respect of the recent non-compliance of the contractor on the premises No. 536 Smith Creeks Road, Stokers Siding, it was acknowledged that there appeared to have been some breakdown in communication, which resulted in the EPA not immediately acting upon concerns raised by Council regarding a complaint from an adjoining owner.

The EPA further elaborated that they had acted in response to the complaints by responding to the complainant, visiting the site and requiring the contractor to tidy up the site, and concluded that they will not be taking any further legal or punitive action.

The Council officers pointed out their mis-understanding of the compliance role under the POEO Act, as in many other instances, the EPA is the responsible compliance authority for activities relating to Environment Protection Licences, such as the Condong Mill co-generation operations.

In light of this mis-understanding on compliance roles for Condong Mill related camphor harvesting, the Group have since agreed on a more effective and responsive complaint management procedure, as outlined below:

1. Should a complaint be received by Council, record it on Council's complaint registration system CRM noting all concerns raised (noise, erosion, threatened species etc). Advise the complainant that the EPA and NSW Sugar are initially responsible for responding to the complaint, and that they should contact the EPA Environment Line and NSW Sugar.
2. Advise Council's Manager Development Assessment of the complaint. If considered necessary, complaint to be investigated by Planning Compliance Officer.
3. If complaints are received after five working day after the date of the initial complaint, advise specifically nominated EPA and NSW Sugar officers. Discuss potential Council action with Director Planning and Regulation. Council action may include an investigation to determine compliance with the *Protection of the Environment Operations Act 1997 (POEO Act)*. Breaches of the *POEO Act* may result in the issuing of Notices or prosecution.

Note: The EPA and NSW Sugar advised that they will respond to such complaints as soon as practicable. The EPA advised that it is the appropriately regulatory authority (ARA) to regulate the licensed cogeneration plant, which includes ensuring that only material harvested in accordance with the Draft Voluntary Code of Practice is received. The EPA also advised that Council is the ARA for harvesting and associated on-ground works.

This procedure has now been put into place.

Discussion on the Relevant Approvals Processes Required for the Environmental Assessment of Camphor Laurel Harvesting

It was evident that there is a divergence of views among the agencies as to how the harvesting of camphor laurel is defined in statutory terms under both the NSW Environmental Planning and Assessment Act, 1979 (EP&A Act) and the NSW Native Vegetation Act (NVA), and the related extent of approvals and environmental assessment required. Tweed Council officers are of the view that, depending on the scale of the activity, it could be defined as “forestry”, which is considered to require a development application under the upcoming Tweed Draft Local Environmental Plan 2012. The Council officers have previously supported an exemption from the lodgement of a development application under the Tweed Council Exempt and Complying Development Control Plan, subject to an agreed process between Council, the EPA, FNCW and NSW Sugar, requiring camphor removal contractors to comply with the Camphor Harvesting Code of Practice, necessitating a Weed Control Management Plan signed off by the FNCW before any works were commenced.

Contrary to the view of the Council officers, the EPA and NSW Sugar consider that the activity is best defined as noxious weed control, and therefore should be exempt from requiring approval under either the EP&A Act or the NVA. Council officers maintain camphor laurel harvesting at the scale currently being undertaken goes well beyond any exemption for noxious weed control which must be undertaken to the *minimum extent possible* under the NVA and by methods that *will not: have a significant impact on native flora and fauna; create significant problems with land degradation including soil erosion, coastal erosion and siltation of water bodies* under Councils DCP – A10 Exempt and Complying Development.

Further doubt on the extent of approvals and assessment required and the feasibility of continuing the voluntary Camphor Harvesting Code of Practice, was created through the advice provide by the FNCW, who will no longer be resourcing any environmental assessment of plans of management for camphor removal jobs relating to the Condong Mill, and have also proposed the de-classification of camphor as a noxious weed in the draft Weed Control Order 30 that will soon be released for full public consultation by the State Government.

The Group therefore concluded that there was a need to seek a more qualified, independent opinion on the interpretation of the planning definition and associated approvals required for camphor harvesting. In this respect, it is proposed that Council officers seek advice through the NSW Department of Planning and Infrastructure as part of its resolution of outstanding issues for finalising the current Draft Tweed LEP 2012.

Update on the Condong Sugar Mill Operations

In terms of the Condong Sugar Mill and Co-Gen operations, NSW Sugar provided the Group with an update. Although under receivership, the Mill is still continuing with the co-gen project, but the Mill is in only in production mode during a six month crushing season. It was further explained that the Mill’s demand for camphor fuel had declined in recent years due to the corresponding poor seasons in cane production. Camphor is currently the highest cost fuels for its operations, and if it was not available, alternative fuels would have to be used. There are currently no local camphor fuel supply jobs for the Mill during this off season, as there are other fuel sources being stockpiled.

In terms of the Stokers Siding job, the Mill will not use their resulting camphor supply, as it would not be compliant with their licensing arrangement with the EPA, as the contractor did not comply with the Plan of Management.

OPTIONS:

It is recommended that Council receives and notes this report.

CONCLUSION:

Camphor laurel harvesting for the Condong cogeneration plant operations needs a new regime of assessment and all stakeholders need to play a role with developing a new system that satisfies the various objectives for the Mill, landowners, noxious weed removal and environmental management. Representatives of the relevant agencies have recently met and are working towards clarifying a more efficient and accountable system of development assessment and monitoring of these activities.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Meeting to be held with stakeholders.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.2 Conserve native flora and fauna and their habitats
- 4.2.3 Recognise the social and economic impacts of managing vegetation
- 4.2.3.1 Noxious weed management

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Copy of report to Council's Meeting of 18 April 2013 relating to camphor laurel removal issues and the compliance response to the works undertaken at No. 536 Smiths Creek Road, Stokers Siding (ECM 3048590)
-

CNL-29 [PR-CM] Electoral Signage

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

Following a complaint received regarding large electoral signage along the Tweed Valley Way road reserve, an investigation has been undertaken with regard to the permissibility of the signage and road safety issues.

The assessment of the existing signage concludes that whilst the signage is not posing a safety hazard, development consent is required. As such, the signage in this particular instance is required to be removed and the owner of the gates (as well as the electorate candidate) needs to be advised that electoral signage is not permitted without development consent.

In addition, Council has been advised of electoral signage within Murwillumbah town centre, which requires development consent. Similarly, the signage needs to be removed and the land owner advised accordingly.

The report also provides a review of all relevant legislation for electoral signage, with the assessment concluding that unless the signage is exempt, signage on public and private land requires development consent where such development is permissible. Historically, applications for signage on public land have not been supported. Electoral signage in residential or rural areas is not permitted by State Environmental Planning Policy (SEPP) 64.

In summary, to be exempt development under Council's Development Control Plan (DCP) A10, signage can only be temporary development, which is limited to 28 days prior to the event. SEPP 64 also has exempt provisions for electoral signage, but this is limited in size and can only be erected 5 weeks prior to the Election Day. In addition, the SEPP requires the signage to be displayed in accordance with any requirements of the Act under which the election is held. It should be noted that electoral signs are not permitted to be erected within any public land, under the provisions of Clause 151B(2A)(a)(ii) of the Parliamentary Electorates and Elections Act 1912.

RECOMMENDATION:

That:

- 1. The two instances of electoral signage noted in this report are unauthorised and require removal until such time that development consent is obtained. The owners of the gates and shop are to be advised accordingly; and**
- 2. Communication is to be developed in order to highlight all statutory requirements in relation to signage for all upcoming elections. All candidates for future elections are to be informed of the outcome.**

REPORT:

Council is in receipt of a complaint with regard to two large electoral signs in relation to the upcoming federal election on the eastern side of Tweed Valley Way, near the village of Tumbulgum. The signs are located on the existing double gates at the entrance of the gravel road running off Tweed Valley Way, approximately 1km south of the main intersection of Tweed Valley Way and Riverside Drive (as shown in Figure 1 below).

The signs are quite large (i.e. more than twice the size of a normal real estate sign) with a sign on each of the gates, such that the north and south approaches to the gate has a view of the signs.



FIGURE 1: Existing gates on the Tweed Valley Way road reserve, near Tumbulgum

The complainant raises the issue of road safety, stating that the signs are a “serious distraction” to motorists travelling along Tweed Valley Way. Council’s Traffic Engineer has investigated the matter, noting the following:

“The signs are not located at a decision making point in the road. The signs are located on an existing structure which is approximately 7m from the travel lane. The signs are not animated or directing drivers to carry out an action. In review of the above I do not consider the signs to present a significant hazard to road users.”

The existing gates are currently opened out onto the road reserve, which is unzoned public land. As such the placement of the electoral signs in this instance would require development consent, pursuant to the provisions of Clause 13 of the Tweed Local Environmental Plan (TLEP) 2000. The lodgement of a development application for signage within the road reserve would require owners consent from Council and would also require a Section 138 approval. Council general practice is that it does not support this type of signage erected on the road reserve.

It is recommended that the landowner of the gates be advised that development consent is required for the placement of signage on the existing gates and that the current signage is to be removed.

Council staff have also been made aware of another large electoral sign within the window of a vacant premises in the Murwillumbah town centre (as shown in Figure 2 below). This signage is not considered to be exempt development and as such requires development consent. The sign should be removed until such time that consent has been obtained. The electoral candidate should also be advised of the statutory requirements for signage.

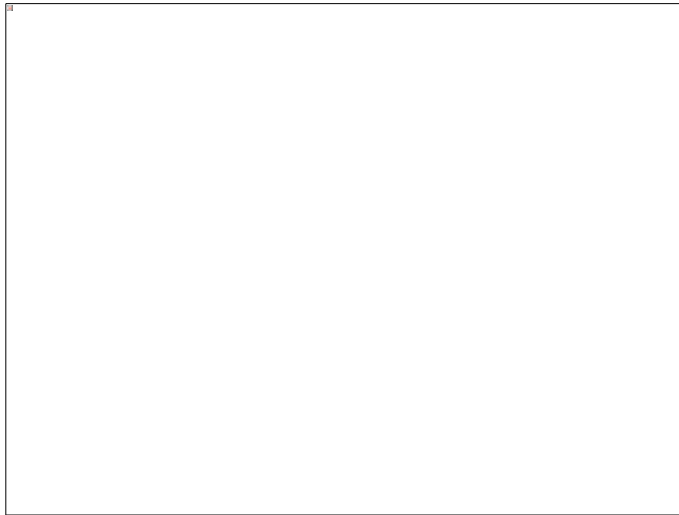


FIGURE 2: Electoral signage within vacant shop front in Murwillumbah

Tweed Local Environmental Plan 2000

Clause 47 of the TLEP 2000 relates to advertising signs. Clause 47(2) requires development consent for signage on land within a zone other than a rural, open space or environmental protection zone, unless it is prohibited by Clause 47(4) which relates to roof signs, A-frame signs on public land, flashing signs and animated signs.

It should be noted that electoral signage (other than signage that is exempt) in a residential zone (but not including mixed residential or business zone) is prohibited under the provisions of SEPP 64. Electoral signage within commercial and industrial zones is permitted with consent.

Clause 47(3) only permits advertisements on land within a rural, open space or environmental protection zone if it is either:

- (a) *a temporary sign in Zone 7 (a), 7 (d) or 7 (l), or*
- (b) *an advertisement that directs the travelling public to a specific tourist facility, lawful business or place of scientific, historic or scenic interest and the consent authority is satisfied that:
 - (i) *the principal purpose of the advertisement is to direct the travelling public to that building or place, and*
 - (ii) *the dimensions and overall size of the advertisement are not larger than would reasonably be required to so direct the travelling public, or**
- (c) *an advertisement relating to a lawful use on the land on which the advertisement is to be displayed.*

As noted above, signage within the road reserve (other than that prohibited by Clause 47(4)) is on unzoned land and therefore requires development consent, pursuant to the provisions of clause 13 of the TLEP 2000. However, signage within the road reserve is unlikely to be supported by Council staff.

Draft Tweed Local Environmental Plan 2012

The draft TLEP 2012 defines advertisements as 'Signage'. Signage is permitted with consent in the majority of zones under the draft, with the exception of the following zones: RU1 Primary Production; SP1 Special Activities; SP2 Infrastructure; E1 National Parks and reserves; E2 Environmental Conservation; E3 Environmental Management; and W1 Natural Waterways, whereby signage is prohibited.

DCP A4 – Advertising Signs Code

DCP A4 does not have any specific requirements/restrictions for election signage. Although section A4.6 makes reference to signs within road reserves, noting that Council may consider such applications, it is unlikely that an application for electoral signage in the road reserve would be supported.

DCP A10 – Exempt and Complying Development

Council's Exempt and Complying DCP does not make specific provisions for electoral signage. To be exempt, the signage could be defined as a "Temporary Sign". However, to be considered exempt development, the signs: cannot be in zone 7(a), 7(d) or 7(l); **must not be displayed earlier than 28 days before the event**; and would have to be removed within 14 days of the event.

State Environmental Planning Policy No 64 – Advertising and Signage

SEPP 64 does have provisions for advertisements on rural land. However, unless a specific signage DCP has been developed for the area, the SEPP requires the advertisement to...*'relate to the land on which the advertisement is displayed or to premises situated on that land'*, or to be a notice directing the travelling public to tourist facilities etc. Electoral signage is not considered to meet the provisions for rural land under the SEPP. As noted above, signage in a residential zone (but not including mixed residential or business zone) is prohibited under the provisions of SEPP 64.

SEPP 64 also has exempt provisions for electoral signage, but these provisions limit the size of the signage to 8,000 square centimetres in area (0.8m x 1m) and can **only be displayed 5 weeks prior to the Election Day**. In addition, the SEPP requires the signage to be displayed in accordance with any requirements of the Act under which the election is held. The requirements of the Act are noted below.

Therefore, proposed signage within zones other than Residential and Rural, development consent is required. Any development application must include an assessment against the provisions of Schedule 1 Assessment Criteria of SEPP 64.

Parliamentary Electorates and Elections Act 1912

The following is an extract from the Act in relation to the exhibition of posters, which relates to the signage display requirements for electoral signage (posters) to be considered as exempt under the provisions of SEPP 64.

151B Exhibition of posters

(1) Posters at polling place

A person must not, at any time on the day of polling for an election, display or cause to be displayed any poster of any size:

- (a) within a polling place, or*
- (b) within 6 metres of an entrance to a polling place, or*
- (c) on the exterior of a building used as a polling place.*

Maximum penalty: 3 penalty units.

(2) Posters in grounds of enclosure of polling place

Without limiting subsection (1), a person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area within the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

(2AA) Posters on boundary of enclosure of polling place

A person must not, at any time on the day of polling for an election, display or cause to be displayed any poster exceeding 8,000 square centimetres in area on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated.

Maximum penalty: 3 penalty units.

(2A) A person shall not post up, or permit or cause to be posted up, a poster:

(a) on or within any premises occupied or used by, or under the control or management of:

(i) the Crown, any instrumentality or agency of the Crown, or any statutory body representing the Crown or any other body prescribed by the regulations as a statutory body representing the Crown, or

(ii) any local authority, or

(b) in the case of premises which have no one in occupation, on or within those premises, unless that person has obtained:

(i) in the case of premises owned by one person alone, the permission in writing of that person, or

(ii) in the case of premises owned by two or more persons, whether as joint tenants or as tenants in common or otherwise, the permission in writing of at least one of those persons.

(3) Nothing in this section shall prohibit:

(a) the posting up, exhibiting, writing, drawing or depicting of a sign on or at the office or committee room of a candidate or political party indicating only that the office or room is the office or committee room of the candidate or party, and specifying the name of the candidate, or the names of the candidates, or the name of the party concerned,

(b) the projection by means of any cinematograph or other similar apparatus of any electoral matter on to any screen in any theatre or public hall the subject of a development consent in force under the [Environmental Planning and Assessment Act 1979](#) in relation to its use as a place of public entertainment,

(c) the posting up, exhibiting, writing, drawing or depicting of any poster within a hall or room that is being or is about to be used for a meeting held by or on behalf of a candidate in connection with an election, or

(d) the posting up or exhibition of any poster on or at the electoral office of any member.

(4) Subsection (2A) (a) does not apply in relation to a poster:

(a) on the outer wall, fence or other boundary of the grounds of an enclosure in which a building used for polling is situated, or

(b) within the grounds of an enclosure in which a building used for polling is situated, or

- (c) *on a vehicle on a road or road related area (within the meaning of the [Road Transport \(General\) Act 2005](#)), or*
- (d) *fixed or attached to a table or stall on a footpath or other public place at any time on the day of polling for an election.*
- (5) *Any person who writes, draws or depicts any electoral matter directly on any roadway, footpath, building, vehicle, vessel, hoarding or place (whether it is or is not a public place and whether on land or water) shall be liable to a penalty not exceeding 3 penalty units.*
- (6) *In this section:*

electoral matter means any matter which is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held under this Act or of any referendum of the electors held or to be held in accordance with the provisions of any Act or which is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at any such election or referendum.

electoral matter also includes the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter which purports to depict any such candidate or to be a likeness or representation of any such candidate.

local authority means a council or a county council within the meaning of the [Local Government Act 1993](#).

poster means any electoral matter printed, drawn or depicted on any material whatsoever and where any electoral matter is printed, drawn or depicted in sections, such sections, both severally and collectively, shall be deemed to be a poster.

premises includes any structure, building, vehicle or vessel or any place, whether built on or not, and any part thereof.

- (7) *Where premises referred to in paragraph (b) of subsection (2A) are subject to a lease for a term of six months or more, the reference in that paragraph to the owner of the premises shall be read as a reference to the lessee of the premises.*
- (8) **Extension of poster offence provisions to pre-poll voting places**

For the purposes of subsection (1):

- (a) *a reference to a polling place is taken to include a reference to a pre-poll voting place, and*
- (b) *in relation to such a pre-poll voting place, a reference to “at any time on the day of polling for an election” is taken to be a reference to “during the hours appointed for that place under section 114P”.*

OPTIONS:

1. The electoral signage on the Tweed Valley Way road reserve and within the window of the vacant premises in the Murwillumbah town centre are considered to be unlawful and should be removed until such time that development consent is obtained; or

2. Council staff seek further direction on how to proceed with any upcoming electoral signage, following discussion and review of all statutory requirements for such signage.

CONCLUSION:

Given the two instances of signage noted above are considered to be unlawful, the electoral signs need to be removed and the owners advised of the requirements for any future signage.

Discussion needs to be held to provide further direction on how best to proceed with electoral signage, so that Councillors, Council Officers, candidates and the general public are aware of the specific requirements for any upcoming local, state or federal elections.

COUNCIL IMPLICATIONS:

a. Policy:

Incorporated within State legislation and local planning controls.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CNL-30 [PR-CM] PP11/0002 Pottsville Employment Land - Change of Ownership and Proposed Use

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP11/0002 Pt4



Civic Leadership

SUMMARY OF REPORT:

On 27 March 2013 Council was advised that Pottsville Development Corporation Pty Ltd (PDC), had purchased Lot 12 DP 1015369, No. 39 Kudgerie Avenue, Cudgera Creek (the property).

The new landowner is keen to pursue finalisation of all outstanding financial obligations of the previous proponent, and to proceed with rezoning of the site on the basis of a business park style development rather than industrial landuse as proposed in the original planning proposal.

While amendment to the original Planning Proposal is possible under delegation by the Director General of the Department of Planning and Infrastructure, rather than needing to lodge a new planning proposal, a range of outstanding matters were close but not finalised prior to the transfer of ownership to PDC. Addressing these matters to the satisfaction of Council and entering into an arrangement with the new landowner and proponent will be required.

The majority of investigations and reports for the previous proposal had been concluded to the satisfaction of Council officers, but will need to be modified to suit the new proposal.

Issues relating to the disposal of waste water and rehabilitation of steep cleared land on the south of the property require the proponent to enter into a Planning Agreement consistent with Council's previous resolutions.

With a change of ownership and purpose of the planning proposal a range of procedural matters will need to be resolved, including entry into an appropriate Costs and Expenses Agreement, Contract for Services, and Voluntary Planning Agreement with the new proponent, in accordance with previous resolutions of Council, but given the extensive undertaking both by Council officers and the previous proponent to progress the planning proposal to this point, it is recommended that the proposal be amended and proceed to public exhibition.

RECOMMENDATION:

That Council proceeds with amendment of Planning Proposal PP11/0002 Pottsville Employment Land (Lot 12 DP 1015369) No. 39 Kudgerie Avenue, Cudgera Creek for the purpose of a business park development and environmental protection subject to entry into appropriate Costs and Expenses Agreement, Contract for Services, and Voluntary Planning Agreement with the proponent, and in accordance with previous resolutions of Council.

REPORT:

Background

On 27 March 2013 Council was advised that Pottsville Development Corporation Pty Ltd (PDC), had purchased Lot 12 DP 1015369, No. 39 Kudgerie Avenue, Cudgera Creek (the property).

PDC is keen to pursue finalisation of all outstanding financial obligations of the previous proponent, and to proceed with the rezoning on the basis of a business park style of development rather than industrial landuse as proposed in the original planning proposal.

This Planning Proposal has been the subject of exhaustive negotiations regarding the extent of potential development of the site, and investigations and reporting to Council following investigations into alleged illegal clearing of native vegetation and wilful damage of Aboriginal heritage scar tree as reflected in previous resolutions of Council listed below.

On 16 August 2011 Council resolved that:

- "1. The Planning Proposal for Lot 12 DP 1015369 Kudgerie Avenue, Cudgera Creek be referred to the Department of Planning and Infrastructure for a 'Gateway' determination under Section 56 of the Environmental Planning and Assessment Act 1979.*
- 2. Any Ministerial conditions imposed on any Gateway Determination approval be complied with prior to a further report to Council.*
- 3. Any fees arising in association with the preparation of the Planning Proposal shall be recovered from the Proponent in accordance with the Environmental Planning and Assessment Regulation 2000 - Reg 11 and Council's adopted Fees and Charges Schedule, including all charges and disbursements incurred by Council arising in association with the preparation and execution of a Voluntary Planning Agreement.*
- 4. Any fees arising in association with the preparation of a Development Control Plan prepared in response to a rezoning of Lot 12 DP 1015369 shall be recovered from the Proponent in accordance with the Environmental Planning and Assessment Regulation 2000 - Reg 25AA(2) &(3) and Council's adopted Fees and Charges Schedule.*
- 5. Any required vegetation restoration management plan and/or the proponent's commitment to undertake environmental restorative works shall be included within the Voluntary Planning Agreement being prepared in relation to the proponent's commitment to provide waste-water management supply infrastructure for the industrial development and use of the site.*
- 6. The Voluntary Planning Agreement being prepared in relation to the proponent's commitment and Council's requirement to provide a stand-alone private wastewater disposal utility scheme and corresponding requirement for a prior licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART) is to require that the licence be obtained following an amendment to the zoning under the Tweed Local Environmental Plan and prior to the lodgement of any development application, in accordance with the Environmental Planning and Assessment Regulation 2000 - Reg 25C and the Environmental Planning and Assessment Act 1979 - Sect 93F.*

7. *The Voluntary Planning Agreement once agreed to by the parties be publicly notified in accordance with the Environmental Planning and Assessment Act 1979 - Sect 93D, F, G & L.*
8. *The Voluntary Planning Agreement be registered against the land in accordance with the Environmental Planning and Assessment Act 1979 - Sect 93H, prior to the final planning proposal being submitted to the Minister for the environmental planning instrument amendment to be made."*

On 15 March 2011 Council resolved that:

- "1. *Council endorses the preparation of a planning proposal for the rezoning of the site for industrial and environmental protection purposes consistent with Council's resolutions of 17 August 2010;*
2. *The proponent be requested to confirm their commitment to the provision of a private waste water system by entering into a Voluntary Planning Agreement, to be prepared by Council's Solicitors at the proponents' cost, pertaining to their commitment to provide a stand-alone private wastewater disposal utility scheme and the obtainment of a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART);*
3. *Council compliance and enforcement officers implement a protocol for the reporting of alleged damage of Aboriginal artefacts to the Department of Environment, Climate Change and Water consistent with a Notice of Motion endorsed at the Council meeting of 16 March 2010, which requires early notification of any alleged damage of Aboriginal artefacts;*
4. *The General Manager seeks a high level meeting with the Department of Environment, Climate Change and Water regarding a more proactive involvement of the Department in the investigation, enforcement and management of alleged damage of Aboriginal artefacts, and native vegetation within the Tweed."*

On 17 August 2010 it was resolved that Council:

- "1. *Endorses the boundary redefinition of the land subject to the rezoning as identified in Figure 5: Option 5 – Revised development footprint and excluded land as proposed by the Proponent; to this report;*
2. *Defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 3 below;*
3. *Endorses that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85);*
4. *Endorses that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land; and*
5. *Endorses that the Applicant be advised of Council's concern over the proposed method of waste water treatment proposed and the need for the Applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction."*

On 15 December 2009 it was resolved that:

"RESOLVED that Council endorses Parts A and B in respect of land affected by Draft Local Environmental Plan No. 85 – Pottsville Employment Land.

PART A – THE REZONING APPLICATION

1. The resolution of 13 June 2006 in respect of preparing a draft Local Environmental Plan on Lot 12 DP 1015369, Lot 4 DP753328, Lot 1 DP 215998 and Lot 1 DP 1080884 is amended to relate to Lot 12 DP 1015369 only comprising the land bounded by a heavy black line identified in Figure 2 – ‘Extent of Draft LEP 85 Area Boundary’ of this report.
2. That item 2, 3 and 4 of the resolution of 13 June 2006 in relation to the preparation of the Draft Local Environmental Plan known as Amendment No.85 as referred to in this report be rescinded.
3. The rezoned land is to be rolled over into the new Local Environmental Plan as Industrial Land in accordance with its designation in the Far North Coast Regional Strategy.

PART B – ALLEGED BREACH OF TWEED LOCAL ENVIRONMENTAL PLAN 2000

3. That the Director of Planning and Regulation refer the alleged breaches of the Tweed Local Environmental Plan relating to vegetation clearing in contravention of the Tweed Tree Preservation Order to Council’s Solicitors for legal advice in respect of ascertaining options in respect of legal proceedings.
4. That the restoration, regeneration, contributory off-set planting and protection of significant vegetation and or areas be included in any rezoning proposal on the land and in any legal proceedings for orders to remedy any established breach of the Tweed Tree Preservation Order.
5. That the fire damage to the ‘scar’ tree sited in the Aboriginal site referred to on the State Aboriginal Heritage Information Management System Register as “Kudgerie Avenue 1” be referred to the NSW Department of Environment, Climate Change and Water for their information and advice.
6. That the Full Council receives regular briefings and/or updates on the outcome as they come to hand with regard to Part B recommendations 4 and 5 from the General Manager and/or the Director Planning and Regulation."

Gateway Determination

On 13 September 2011 a Gateway Determination was received from the Department of Planning and Infrastructure which determined that the proposal for a rezoning from 1(a) Rural to 4(a) Industrial and 7(d) Scenic/Escarpment should proceed subject to a range of mandatory requirements.

Due to financial difficulties experienced by the previous proponent (Heritage Pacific) considerable delays in bringing this project to a conclusion resulted, with two extensions of the Gateway deadline approved by the Department of Planning and Infrastructure, the current extension being to 20 March 2014.

The change of landowner and proponent has resulted in renewed interest and ability to proceed with this proposal, with the new owner requesting that the proposal now proceed as a Business Park style of development in contrast to the Industrial zoning endorsed by the Gateway Determination.

Discussions with Department of Planning and Infrastructure suggest that an amendment to the planning proposal will simply require an authorisation from the Director General, rather than submission of a new proposal, and is a procedural matter not requiring further referral to Gateway for a revised determination.

A copy of the original Gateway Determination can be viewed in Attachment 1.

Outstanding Matters

Notwithstanding the ability of this proposal to proceed, a number of issues raised in the Gateway Determination and by Council officers need to be resolved to the satisfaction of Council, along with the finalisation of a Planning Agreement for the installation of a wastewater treatment facility prior to any development occurring, and rehabilitation of steep land on the southern portion of the property.

These unresolved matters have been the subject of previous resolutions of Council and include:

- Ability to provide stand alone waste water treatment facilities;
- Traffic impact assessment on the local road network and intersection of the Pacific Highway with Cudgera Creek Road interchange;
- Buffers along the Pacific Highway;
- Contaminated land report; and
- Rehabilitation of steep land on the south of the site.

A draft Planning Agreement has been prepared to address wastewater management and rehabilitation of certain land on the southern side of the property, and is close to being finalised should the new proponent agree with the intention of the Agreement.

On 23 April 2013 a meeting between Council, the new proponent and Roads and Maritime Service was held to agree on traffic assessment criteria to meet the requirements of the proposed change in landuse, and broader traffic management issues for the west Pottsville area.

Apart from these further investigations and reports, Council will require a new Costs and Expenses Agreement to be entered into with the proponent and a new Contract for Services to be agreed as a demonstration of the proponent's intention to continue with the planning proposal.

Benefits of the revised concepts for the site

While the site has been identified as an employment generating land site in the Far North Coast Regional Strategy 2006-2031, the previous proposal for an industrial park was considered to produce a less than optimal use of the land and failed to present strong strategic planning benefits.

Should a business park style of development be established on the site, as proposed by the new landowner, the ability of the site to generate a larger number and greater diversity of employment opportunities is considered a benefit of the revised approach, which has the potential to provide greater employment opportunities for the workforce residing both in the existing Pottsville locality and surrounds, and for the proposed Dunloe Park residential development immediately across the road. While Council had previously endorsed a footprint for development of the site, the preliminary draft concept plan seen in Attachment 2 shows a substantially reduced development envelope with significantly increased buffer to the Pacific Highway.

OPTIONS:

Option 1: Proceed with amendment of the Planning Proposal for Business Park and environmental protection purposes subject to entry into appropriate Costs and Expenses Agreement and Contract for Services, and Voluntary Planning Agreement with the proponent, in accordance with previous resolutions of Council; or

Option 2: Defer further action on this project until such time as the workload of the Planning Reform Unit provides opportunity to finalise the proposal; or

Option 3: Remove this planning proposal from the Planning Reform Unit Work Program.

Council officers recommend Option 1.

CONCLUSION:

Considerable resources have been invested in the assessment and development of this planning proposal over many years, both by Planning Reform Unit officers and the previous proponent, to the point where agreement was imminent on the last remaining issues to be addressed prior to sending the proposal to public exhibition.

With a change of landowner and apparent commitment to see the proposal proceed to a conclusion as soon as possible it is recommended that Council endorse an amendment of the original proposal to accommodate a business park style of development and enter into appropriate legal arrangements with the proponent to fulfil the previously endorsed position of Council as resolved in past reports to Council.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

All reasonable costs and disbursements incurred by Council in association with preparing the planning proposal and the s93 Voluntary Planning Agreement are to be recovered from the proponent in accordance with NSW planning statute law, Council's adopted Fees and Charges Schedule, and by prior agreement with the proponent.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

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

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
- 1.5.3.1 Effective updating of Tweed LEP

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Gateway Determination dated 13 September 2011 (ECM 3049528)
 - Attachment 2. Draft Concept Plan (ECM 3051010)
-

CNL-31 [PR-CM] Development Application DA12/0605 for a Two Lot Subdivision at Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights

SUBMITTED BY: Development Assessment Unit

FILE NUMBER: DA12/0605 Pt1



Civic Leadership

SUMMARY OF REPORT:

On 21 December 2012 Council received a Development Application for a two lot subdivision at 217 McAllisters Road, Bilambil Heights.

The proposed subdivision is to create an allotment for the purpose of creating an additional lot for residential purposes. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as both proposed lots will not be serviced in accordance with council's Development Control Plan. Additionally, the subdivision may lead to establishing land use which conflicts with the future urban expansion and strategic planning for the Bilambil area.

The applicant was given the opportunity to provide additional information in regards to servicing the allotments although has provided a letter from a solicitor outlining that they will not supply any additional information.

As the proposed development cannot provide the essential services as required by Council it is considered appropriate to refuse the application.

It is considered that the purpose of the Environmental Planning and Assessment Act 1979 is to secure the orderly development of land. This includes having the necessary infrastructure available in order to service the development. As these necessary services cannot be provided to the subject site the application is recommended for refusal.

RECOMMENDATION:

That Development Application DA12/0605 for a two lot subdivision at Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights be refused for the following reasons:

- 1. The subdivision proposal is not consistent with the provisions of the Tweed Local Environmental Plan 2000 and in particular Clause 4(a), Clause 8[1(a), (b) and (c)] and Clause 11.**
- 2. The proposal would have a negative cumulative impact.**
- 3. The proposal is not in the public interest.**
- 4. The subdivision proposal is not consistent with the provisions of Tweed Development Control Plan Part A5 and in particular Section A5.4.13 Infrastructure.**

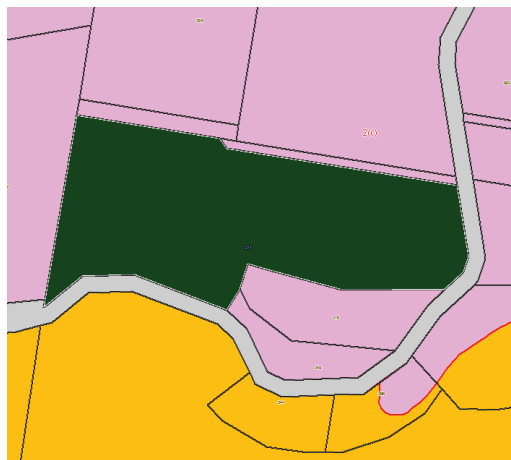
REPORT:

Applicant: Landsurv Pty Ltd
Owner: Mrs Alina E Lech
Location: Lot 1 DP 775668 No. 217 McAllisters Road, Bilambil Heights
Zoning: 2(c) Urban Expansion
Cost: Nil

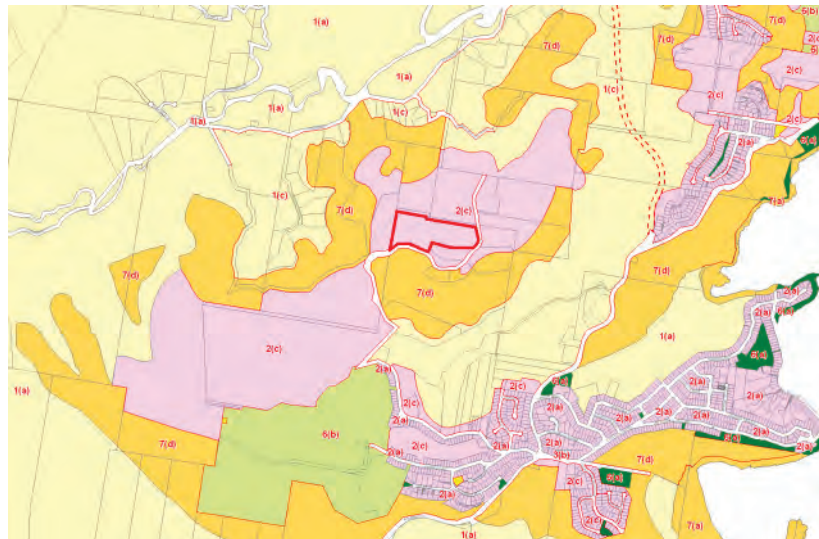
Background:

The Subject Site

The subject site is located on the northern and western side of Howards Road currently comprises a total area of 8.017 hectares. It comprises one parcel of 2(c) Urban Expansion zoned land.



Lot 1 DP775668



Subject site within Bilambil Heights Urban Release Area

The Proposed Development

The application seeks consent to subdivide the 2(c) zoned land (which comprises one allotment) to create two allotments.

The existing allotment comprises:

- Lot 1 DP 775668 with a total site area of approximately 8.017ha.

The proposed layout is as follows:

- Proposed Lot 11 with a total area of approximately 4.009 ha with frontage to McAllister's Road. This allotment would be vacant but would have the benefit of a dwelling entitlement; and
- Proposed Lot 12 with a total area of 4.009 ha with no frontage to McAllister's Road. It is proposed to utilise the existing, unformed access for proposed Lot 12.

History

Upon review of the submitted detail Council responded to the applicant with the following information request:

"1. *The application is requested to be amended to show compliance with Section A5.4.13 Infrastructure – CRITERIA of Council's DCP A5 Subdivision Manual, which states that the following infrastructure is required;*

- *All lots created in urban areas for private occupation must be fully and individually serviced with sealed road (equipped with kerb and gutter both sides of the road) frontage, water supply, sewerage, underground electricity and telecommunications.*
- *A drainage system that provides Q100 immunity from local stormwater flooding and must have surface levels above the Q100 flood levels of regional river/creek flooding.*
- *Utilities and services are to be designed to minimise long term maintenance and ownership costs.*
- *Urban subdivision infrastructure must be provided in accordance with Table A5-10.*

The submission and assessment of this requested documentation may result in additional Request for Information letters being required.

The above services are required to be provided by the developer in accordance with Council's DCP A5."

As a result of the information request the applicant sought legal advice in regards to the need to provide the infrastructure. The following is correspondence received from McCartney Young Lawyers on 28 March 2013:

"Summary of Advice

The provisions of the "Tweed Shire Development Control Plan 2008" (DCP) identified in Council's letter are irrelevant to this DA. The DA should be determined without regard to those provisions of the DCP.

Development permissible in accordance with the provisions of the LEP

The DA proposes a two lot subdivision of the Land. The DA form notes that the area of the Land is approximately 8 ha: the consent will permit the creation of two lots of approximately 4 ha each.

The Land is zoned 2(c) under clause 11 of the LEP. Subdivision is permitted within the 2(c) zone.

Subdivision is controlled by Part 4 of the LEP. Clause 19 (which is in Part 4) provides that subdivision of land requires consent in accordance with the provisions of Part 4 of the LEP. There are no provisions in Part 4 that particularly control the subdivision of land in the 2(c) zone (other than provisions pertaining to strata subdivision which are not relevant here).

The SEE states:

"The subdivision of the land will not diminish the ability to satisfy the Primary and Secondary objectives of the Zone and continue to provide suitable sized holdings for the grazing of livestock or other agricultural pursuits until the Master plan and future development takes place."

In summary, the proposed subdivision is development within the 2(c) zone that is permissible with consent.

Development not constrained by the operation of the DCP Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 requires Council to "take into consideration" such provisions of the DCP "as are of relevance to the development the subject of the development application".

The DCP applies to all land in the Tweed Shire. The Land is not a "specific site" in the DCP and thus does not have specific development standards applicable to it.

Section A5 of the DCP is titled "Subdivision Manual". There are a number of components to the Manual which I do not review here as such a review is unnecessary.

Chapter A5.4 is titled "Urban Subdivision Design Guidelines & Development Standards".

Clause 5.4.13 is titled "Infrastructure" and this is the clause referred to in Council's letter of 12 February 2013.

If the DCP is not relevant to the DA, then it should not be taken into account. To take into account an irrelevant consideration is an error of law (Parramatta City Council v Hale (1982) 47 LGRA 319; Centro Properties Limited v Hurstville City Council & Anor [2004] NSWLEC 401).

Chapter A5.4 does not apply to this development. It is irrelevant. I note the following matters.

The Chapter, on its own terms, does not apply

Chapter A5.4 commences with the following words (page A5-13 of the Chapter A5):

"This chapter provides guidelines for urban master planning and subdivision design which elaborate on the principles and policies of Council's Strategic plan and provide the overall framework for neighbourhood and subdivision design in Tweed Shire."

I appreciate that the future potential development of the Land includes urban subdivision of a "neighbourhood" design. However this is not the development that is the subject of the DA. A simple subdivision of Land is proposed, from one lot (of 8 hectares) into two separate lots (approximate 4 hectares). There is no component of the DA that relates to "urban master planning and subdivision design" These provisions of the DCP are simply irrelevant to the DA.

“Urban Areas”

The first bullet point of clause A5.4.13 contains the phrase: "All lots created in urban areas...". Thus the rest of that bullet point (concerning services to the lots) should be read to only apply to lots created in urban areas.

The term "urban areas" is not defined in clause A5.4.13 nor is it defined within Chapter A5.4. I am unable to locate a definition of "urban areas" provided in the DCP. In these circumstances, a Court would be obliged to give the words "urban areas" their normal meaning.

The lots that are proposed in the DA are not in an urban area. To define "urban area" as meaning any area in which residential development can be undertaken (which would include land in the 2(c) zone) would be unreasonable. The 2(c) zone is land that is not currently "urban" but rather earmarked for future urban expansion. It has the character of "rural residential" land. Accordingly, the first bullet point in A5.4.13 does not apply to the proposed subdivision.

"Urban Subdivision"

The final bullet point of clause A5.4.13 contains the words:

"Urban subdivision infrastructure must be provided in accordance with Table A5-10."

(This is also the final dot point in Council's letter.)

As with urban areas, the term "urban subdivision" is not defined in clause A5.4.13 nor is it defined within Chapter A5.4. I am unable to locate a definition of "urban areas" provided in the DCP. In circumstances where the phrase "urban subdivision" is not defined, a Court would be obliged to give these words their usual meaning.

The DA does not seek consent for an "urban subdivision". This is because, as noted above, you are seeking a simple subdivision of land that is more appropriately described as rural residential land.

Furthermore, Chapter A5.4 is titled "Urban Subdivision Design Guidelines & Development Standards" and accordingly clause AS.4.13 should be construed as applying only to "urban subdivision". An urban subdivision is a subdivision which has the characteristics that are the focus of much of this chapter of the DCP: that is, a subdivision to undertake residential development of a particular density and lot size that is characteristic of a residential area (see Table AS-9.1 to Table AS-9.4). Your proposed subdivision of an 8 hectare lot into two 4 hectare lots does not exhibit any of the characteristics one would reasonably expect of an "urban subdivision", particular the type anticipated in this DCP.

The DA does not seek consent for an "urban subdivision". The provisions of Chapter A5.4 do not apply.

Conclusion

A consideration of the LEP and the DCP leads to the following conclusions:

- 1. The subdivision proposed by the DA is development permitted within the 2(c) zone of which the Land is a part.*
- 2. Chapter A5.4 of the DCP, and in particular clause A5.4.13 "Infrastructure", do not apply to the proposed subdivision. These provisions of the DCP are clearly intended to apply to development that is of an "urban" nature which requires "urban master planning". The Land is not "urban" and the subdivision proposed is a simple development that cannot be characterised as urban residential development of the density and lot size anticipated by these provisions. My clients will not provide the information requested in Council's letter of 12 February 2013. Furthermore my clients request that Council proceed to determine the DA without delay."*

Summary

Having regard to relevant statutory controls in particular Section 79C Clause 1(a)(iii):

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

(iii) any development control plan

The proposed development is located in the 2(c) Urban Expansion zone which is intended for future urban development. As such, an assessment against the provisions of the urban subdivision objectives of Council's Development Control Plan Section A5 was deemed appropriate. Council does not agree with the representations made above which will be addressed in greater detail throughout this report. The proposed development was assessed against the Tweed LEP 2000 and other relevant statutory controls and it was determined that the proposed two lot subdivision is not considered suitable. The proposed development is recommended for refusal.

Strategic Plans

Clause 4 of the Tweed Local Environmental Plan 2000 states the following:

(c) to give effect to and provide reference to the following strategies and policies adopted by the Council:

- Tweed Shire 2000+ Strategy

An assessment has been undertaken in regards to Council's Strategic plans. There are three (3) strategic plans which will be addressed with the Tweed Shire 2000+ Strategy and the Tweed 4/24 Strategic Plan being superseded plans and the most recent plan in force being the Community Strategic Plan 2011/2021. Although the earlier plans have been superseded they are still important in outlining the overall strategic plan for the Bilambil Heights area and the direction Council has been working towards strategically for the area. Each of the plans have been assessed below.

Tweed Shire 2000+ Strategy

The Strategic Plan for Tweed 2000+ which has now been superseded was adopted on 17 December 1996. The Plan provides the broad directions for future planning in the Tweed. Within the policies and actions section, references specifically to Bilambil Heights are made as follows:

114. Long Term Urban Release - *The Bilambil Heights Release Area has major infrastructure impediments and requires a comprehensive multi-ownership planning approach. No development approvals for the release of land for residential development will be granted until such time as the Tugun Bypass and Cobaki Parkway are commenced to provide appropriate access to the regional road network. Council resolution 17 May 2000.*

120. Bilambil Heights - *The detailed planning for Bilambil Heights is to include the following principles:*

- *Commitment by the landowners for funding of Scenic Drive Diversion (to the Piggabeen Road intersection).*
- *Water and sewerage provisions so that there is no unnecessary duplication of mains and pump stations.*
- *Completion of investigation into clearway provisions for Kennedy Drive.*
- *Defined areas of potential dual occupancy and medium density development.*
- *Collector road access to all properties.*
- *Consideration of current 1(c) zoned land for urban density development if land is hazard free, if it can be economically serviced with water and sewer, and if there are no unacceptable impacts on water quality and scenic values.*
- *Houses not permitted on prominent ridgelines.*
- *Commitment to the funding of Kirkwood Road and Lakes Drive Bridge.*

From the information above it can be seen that there are a number of strategic directions for the Bilambil Heights area. It identifies a number of issues which need to be addressed prior to the release of the urban land including *major infrastructure impediments and requires a comprehensive multi-ownership planning approach*. If this subdivision was to be approved it would create a situation where there are increased numbers of owners and therefore this would make it increasingly difficult to strategically plan the area. The cumulative impact of approving this application could be that a number of other land owners in the locality undertake similar subdivisions thereby increasing the number of owners substantially. The approval of this subdivision would create an undesirable precedent for the area. It is therefore considered that the proposed development should be refused.

Tweed 4/24 Strategic Plan

The Tweed 4/24 Strategic Plan which has now been superseded was adopted in September 2004. A key element of the strategy is as follows:

Urban Development. *Implement current plans for urban expansion including Cobaki and Bilambil Heights. Complete assessments of Terranora 'Area E' and Kings Forest. Retain green belts or buffers between settlements.*

Furthermore, Part 7 - Managing Urban Development outlines the following:

Continued urban expansion over the next two decades is inevitable. Substantial areas of land at Cobaki Lakes, Bilambil Heights, Kings Forest and elsewhere have been zoned for development for many years. Population growth has slowed somewhat in recent years, but remains strong.

Further urban development depends on improved infrastructure, including roads, water and sewerage, drainage and flood control, parks and a wide range of community facilities (education, health, police etc). Whilst some of this infrastructure is Council's responsibility, State and Federal governments, the private sector and community organisations all have important roles to play. Adequate funding and effective coordination are essential.

Challenges and Opportunities - *Council's investigations indicate few physical infrastructure impediments to planned release areas except for road access to Cobaki Lakes and Bilambil Heights. Other necessary road and traffic management improvements include on-ramps to the Tweed Heads Bypass at Kirkwood Road and upgrading of Minjungbal Drive.*

Strategic Directions - *Council will liaise with developers to seek the timely release of zoned urban land to meet market needs. Master Plans for Kings Forest, Bilambil Heights (subject to adequate road access) and 'Area E' at Terranora (subject to rezoning) will be completed as quickly as possible.*

Four-Year Priorities Urban Planning - *Review the likely capacity and timing of proposed urban release areas (Cobaki Lakes, Kings Forest, Terranora 'Area E' and Bilambil Heights) taking into account:*

- *Housing demand and affordability*
- *Infrastructure, road access and environmental issues*
- *Redevelopment potential in existing areas*
- *Needs for land for non-residential uses*
- *Possible alternative locations for development.*

Complete essential improvements to major road links including access to Cobaki Lakes and Bilambil Heights, and upgrading of Minjungbal Drive at South Tweed Heads.

It can be seen from the information above that Bilambil Heights is still regarded as an area for future urban development. A number of infrastructure improvements need to be completed before this can happen. It puts the onus on not only Council but landowners in the area. If the urban release is to go forward then Council needs to take a coordinated approach to the development. If this subdivision was to go forward then there would be an increase in land owners which could make it increasingly difficult to plan the area.

It is considered that urban land release cannot be undertaken until such time that adequate infrastructure has been provided for the area. This is reliant on a number of areas in the Tweed Heads West and Cobaki area. Council at a meeting held on 22 April 2008 decided on a number of recommendations in regards to the Distributor Road network planning for Tweed Heads West, Cobaki and the Bilambil Heights areas. An extract from the report is as follows:

Bilambil Heights Urban Land Release Area

This area is identified as future urban release land in the Tweed Development Program 1996 (TSC) and the Far North Coast Regional Strategy (Department of Planning) 2006. It is expected that approximately 9,000 people will be accommodated in this area in approximately 4,000 dwellings.

A major constraint to development of this area is current road network capacity. In the absence of the Scenic Drive Diversion and Cobaki Parkway any development in this area would rely on traffic capacity on Kennedy Drive which is restricted as discussed in Part 3.

The Cobaki Parkway is currently being constructed but there is no definitive date for which this will be complete as a number of infrastructure services still need to be provided. The Scenic Drive Diversion will not be undertaken until the Cobaki Parkway is complete and operational. The Kennedy Drive traffic capacity which is currently at 150.5 trips still has enough capacity to cater for development however it is considered that there would be a negative cumulative impact if this subdivision was to be approved. It would set a precedent for the area of possibly a number of other owners doing the same type of subdivision. These trips would be significantly impacted upon if similar subdivisions were to go ahead. It is therefore considered appropriate to refuse the application based on the cumulative impact.

Community Strategic Plan 2011/2021

The Strategic Plan 2011/2021 is the current plan and was adopted by Council on 14 December 2010. *The Tweed Community Strategic Plan 2011/2021 is the community's 10-year vision for the Tweed, to protect the qualities that make the Tweed a great place to live and to create communities which are strong and well connected. This plan creates a framework to implement Council's four-year Delivery Program and annual Operational Plan, which will align the community's aspirations with the necessary strategy development, planning and resourcing required to achieve the long-term vision and deliver the outcomes.*

The Community Strategic Plan outlines a number of other plans and policies which are to be used in conjunction with the Plan. These include the Tweed Urban and Employment Land Release Strategy 2009 which was implemented on 17 March 2009. This document is intended to examine growth options that would guide Tweed Shire towards 2031. Section 11 and 13 of this Plan relates to the directions for urban land development and implementation. Council could take a range of planning approaches or a combination of planning approaches to deal with growth and change over the next 25 years. A number of these are outlined as follows:

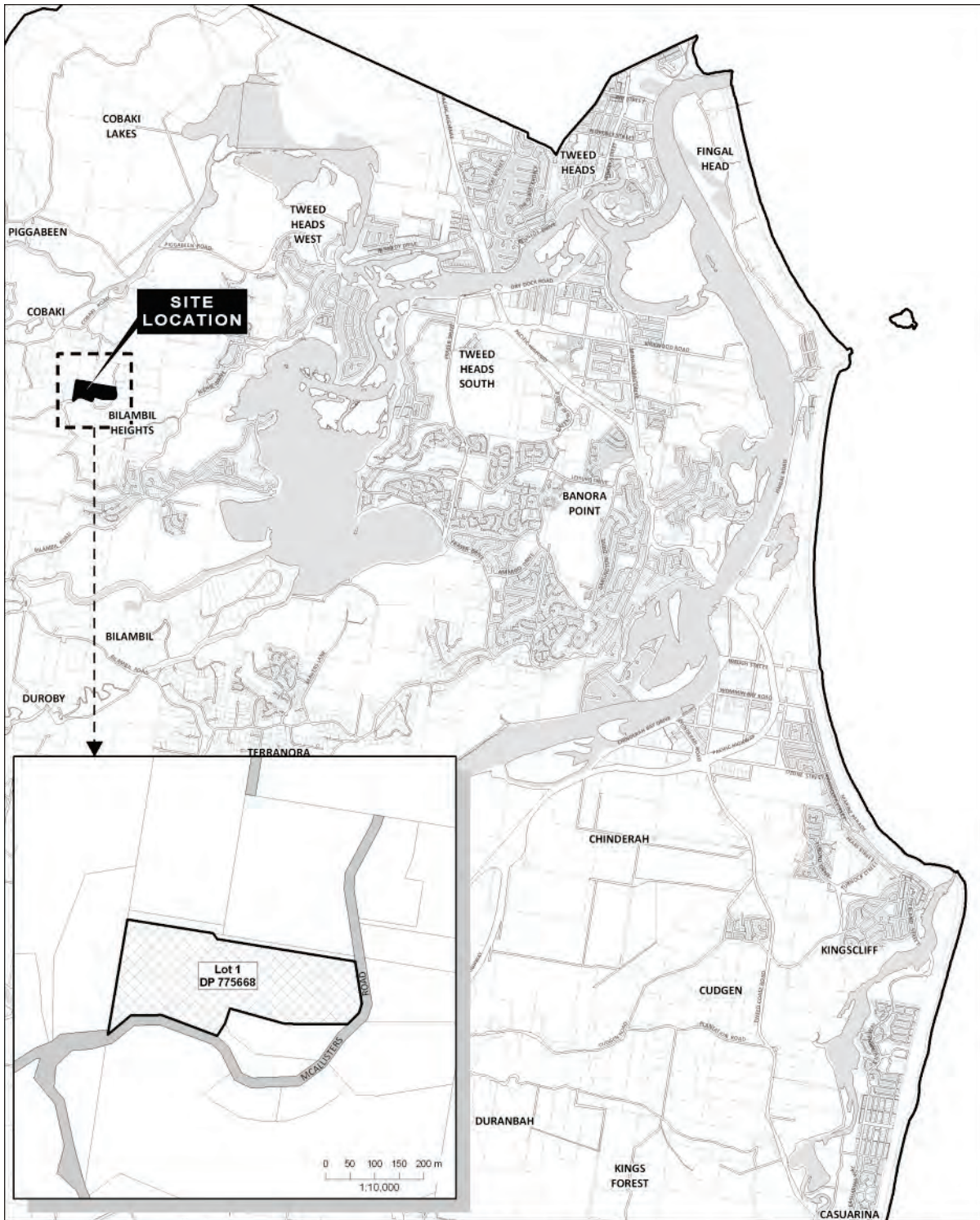
11.1 Rely on Existing Zoned Areas - *This option would see Council not rezone any more land for residential development over the life of the Strategy (till 2031) relying on existing zoned land to meet the demands of the market. Given the amount of land that Council has already zoned and the predicted growth rates, it is an option that would have some advantages. These would include allowing Council to concentrate on servicing the existing established areas and current zoned lands with infrastructure and social services; allow Council to focus on urban design issues; and allow Council to review existing planning controls (particularly DCP's) to better address local issues.*

13.1.3 Land Release - *The potential urban release lands nominated in this Strategy are considered in a short, medium and long term land release program based on a 0-10 year, 10-20 year and 20+ year time frame. This Strategy recognises the large existing supply of zoned land located predominantly at Kings Forest, Cobaki Lakes, Bilambil Heights, Area E and West Kingscliff and the role that these lands will play in supplying the residential needs of the Tweed over the next 10 years in particular.*

Bilambil Heights is still considered to be a major land release area identified within the strategic plan for Tweed Shire. For effective urban planning to be undertaken it is considered that the fragmentation of urban expansion zoned land should be limited. If this subdivision is approved it will set a precedent for other land owners to undertake similar types of developments reducing Council's ability to move forward with its urban release of the area.

Based on the above strategic plans outlined for the Bilambil Heights area it is considered that the proposed development would have a negative cumulative impact on the surrounding locality. It is therefore recommended that the proposed subdivision be refused.

SITE DIAGRAM:



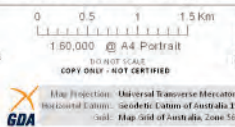
Locality Plan

Lot 1 DP 775668

No. 217 McAllisters Road, Bilambil Heights

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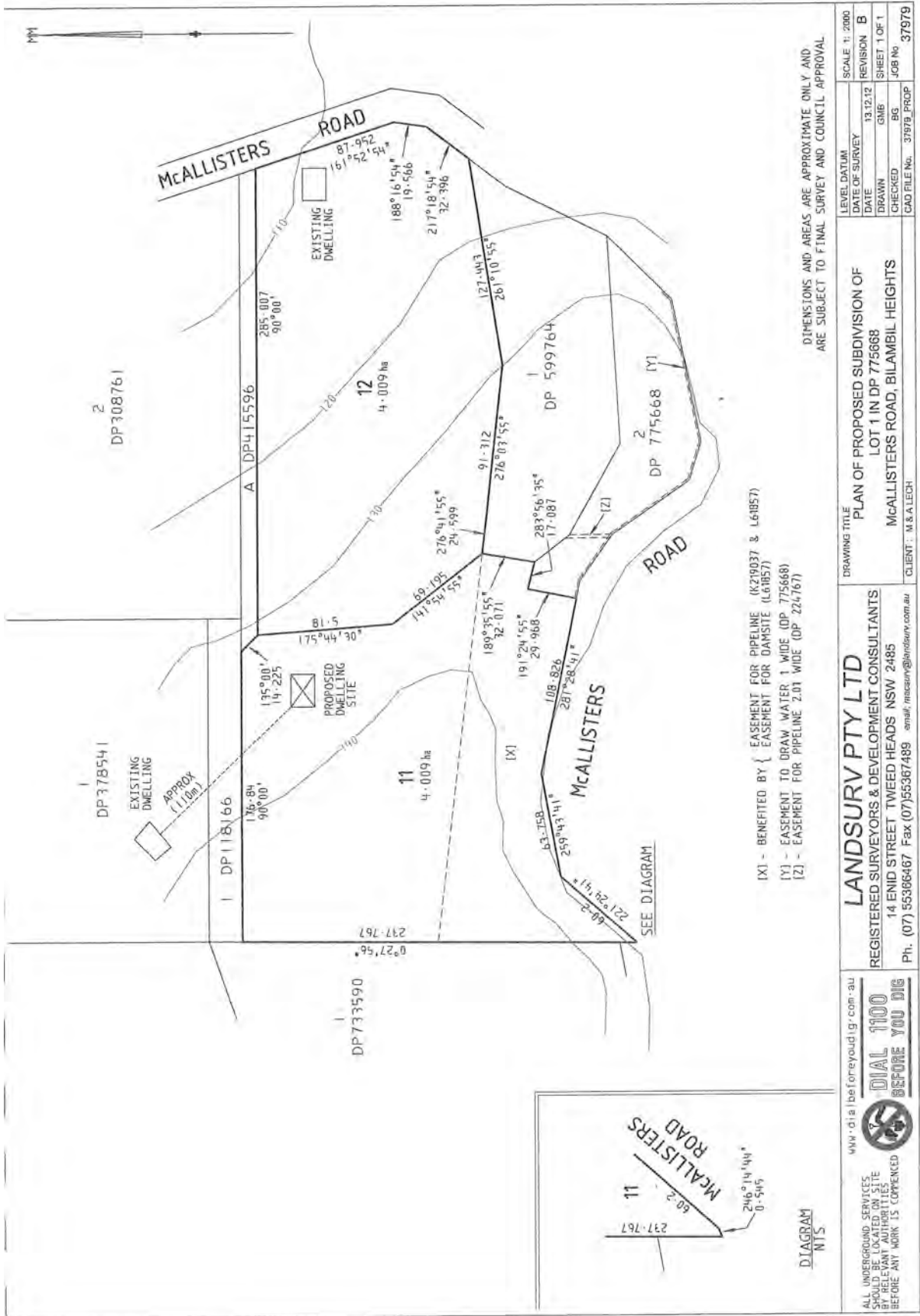
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Civic and Cultural Centre
3 Tumbulgum Road
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PO Box 816
Murwillumbah NSW 2484
T | (62) 6670 2400 | 1300 292 872
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W | www.tweed.nsw.gov.au
E | planning@tweed.nsw.gov.au



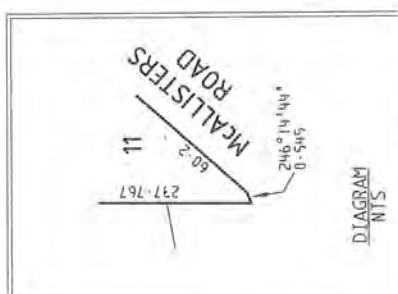
DEVELOPMENT/ELEVATION PLANS:



DIMENSIONS AND AREAS ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL SURVEY AND COUNCIL APPROVAL.

- (X1) - BENEFITED BY { EASEMENT FOR PIPELINE (K29037 & L61857)
- { EASEMENT FOR DAMSITE (L61857)}
- (Y1) - EASEMENT TO DRAW WATER 1 WIDE (DP 775668)
- (Z1) - EASEMENT FOR PIPELINE 2.01 WIDE (DP 224767)

LEVEL DATUM		SCALE 1: 2000
DATE OF SURVEY	13.12.12	REVISION B
DRAWN	GMB	SHEET 1 OF 1
CHECKED	BGB	JOB No
CAD FILE No.	37879_PROP	37979
DRAWING TITLE		
PLAN OF PROPOSED SUBDIVISION OF LOT 1 IN DP 775668		
McALLISTERS ROAD, BILAMBIL HEIGHTS		
CLIENT: M & A LECH		
LANDSURV PTY LTD		
REGISTERED SURVEYORS & DEVELOPMENT CONSULTANTS		
14 ENID STREET TWEED HEADS NSW 2485		
Ph. (07) 55366467 Fax (07) 55367489 email: msurvey@landsurv.com.au		
 DIAL 1100 BEFORE YOU DIG		
ALL UNDERGROUND SERVICES SHOULD BE LOCATED ON SITE BY RELEVANT AUTHORITIES BEFORE ANY WORK IS COMMENCED		
www.dial1100beforeyoudig.com.au		



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 (TLEP 2000)

Clause 4 - Aims of the Plan

The aims of this plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which 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”, and*
- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*
- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*
- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*
- *Tweed Shire 2000+ Strategy*
 - *Pottsville Village Strategy, and*
- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The proposed development is not considered to be consistent with the aims of the TLEP 2000. The proposed development is not considered to be consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is for a two lot subdivision which does not comply with the primary objective of the zone as seen below, and the consent considerations contained within the TLEP 2000.

Tweed Shire 2000+ Strategy has been superseded through by both Tweed 4/24 and the adoption of the Community Strategic Plan 2011/2021. All three documents include references to Bilambil Heights' urban release and have been assessed above.

The proposed development is non-compliant with the TLEP 2000 in terms of creating negative cumulative impacts being that it creates a precedent for other similar types of development to go ahead in the area. It is considered not to be in keeping with the aim of the plan in particular, that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

Clause 5 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.

As there are no physical changes to the subject site it is considered that intergenerational equity and conservation of biological diversity and ecological integrity will not be impacted.

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.*

The land is within the 2(c) zone and the proposed subdivision is not consistent with the primary objective of the zone which is as follows:

"to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake."

It is considered that the proposed subdivision does not ensure optimum utilisation of the land. A secondary objective of the zone is to:

"enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan."

As the proposed development does not comply with Council's Development Control Plan Section A5 - Subdivision Manual as detailed later in this report it is considered that it also does not meet the secondary objective of the zone.

The proposed development if approved may result in unacceptable cumulative impacts. The creation of a freehold lot may encourage, or allow for further subdivision development in the surrounding locality. The subject site is within the 2(c) Urban Expansion zoned land and has been identified for future urban development. Allowing this subdivision could create a negative cumulative effect being the first subdivision in the urban expansion area of Bilambil Heights which is underutilised and not serviced by the essential services outlined in Council's Development Control Plans (DCPs). It could lead to a number of other residents within the locality applying for similar subdivisions and hence reducing the likelihood of the area to be strategically planned for its future urban purposes. It is therefore recommended that the application be refused.

Clause 11 - Zone Objectives

The subject land is zoned 2(c) Urban Expansion. The objectives of the 2(c) zone include:

Primary objective

- *Identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *To allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *To ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*
- *Enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.*

The proposed subdivision is to create an allotment for the purpose of creating an additional lot for residential purposes. The proposal has not ensured its optimum utilisation as the zone is for future urban development. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as both proposed lots will not be serviced in accordance with council's Development Control Plan. Additionally, the subdivision may lead to establishing land use which conflicts with the future urban expansion and strategic planning for the Bilambil area.

The proposal is therefore not consistent with the relevant zone objectives and recommended for refusal.

Clause 15 - Essential Services

Council's Strategic and Asset Engineer has provided the following:

Sewer

No sewerage is available to this area at present and it is unlikely to be available until the whole area zoned 2(c) is in a position to develop as urban. At present, there are a number of other infrastructure issues preventing urban development in this area.

Water

The Statement of Environmental Effects states that "The allotments are presently serviced by ... Tweed Water." However it doesn't currently have a water meter and the water meter that used to serve this property was split off to service an adjoining property in March 2007. Water charges associated with this property ceased in 2007. In addition, the meter serving the adjoining lot was removed in June 2007.

The meter itself was located at the water main and not at the property boundary, indicating that there must be a private water pipe along McAllisters Road to the property. Such private water mains are no longer permitted to be installed as the Works Unit (Asset owner of roads) doesn't want a proliferation of private mains in road reserves.

As there is no current water service and no water main at the frontage of either of the proposed blocks, it is considered that water is not currently available at the lots.

The applicant was given the opportunity to provide additional information in regards to servicing the allotments although has provided a letter from a solicitor outlining that they will not supply any additional information.

Electricity services are currently provided to the area via Essential Energy infrastructure.

Telecommunication services are currently provided to the area via Telstra infrastructure.

As the proposed development cannot provide the essential services as required by Council it is considered appropriate to refuse the application.

Clause 16 - Height of Building

Not applicable. There are no new dwellings proposed.

Clause 17 - Social Impact Assessment

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

Clause 22 - Development near designated roads

McAllisters Road is classified as a Council Designated Road. As per the Objectives of Clause 22 of Council's LEP, in isolation, it is considered that the proposed development is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road. However, the cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, there would be a significant impact.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires Acid Sulfate Soils (ASS) management in relation to development where such is likely to be impacted upon. Part of the subject site exhibits Class 5 ASS however, due to the nature of the development being no excavation it is considered that ASS will not be impacted.

Clause 39A - Bushfire Protection

The subject site has a portion which is identified as being bushfire prone land. The proposed development was referred to the NSW Rural Fire Service who responded on 6 February 2013 with 4 conditions of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

State Environmental Planning Policies (SEPPs)

SEPP (North Coast Regional Environmental Plan) 1988

SEPP No 71 – Coastal Protection

SEPP 71 applies to land within the 'coastal zone' which is defined as having the same meaning as in the *Coastal Protection Act 1979*. The subject land is located within the coastal zone and the provisions of SEPP 71 therefore apply to the proposed development. Clause 7(b) of SEPP 71 requires the matters for consideration in clause 8 to be taken into account by a consent authority when it determines a development application to carry out development on land to which the policy applies. A Master Plan is not required for the site as the subdivision is not located within a sensitive coastal location and is under 25 allotments.

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

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

The Draft Tweed Local Environmental Plan 2012 relates to the subject site and zones the land R1 - General Residential. Within the R1 - General Residential zone the minimum subdivision size is 450m². The proposal complies with this minimum allotment size.

Clause 1.2 - Aims of Plan provides the following:

(2) *The particular aims of this Plan are as follows:*

(a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents.*

The greater strategic plan for the area is for future urban development as per Council's Strategic policies outlined above. It is considered that the proposed development is not consistent with the aims of the Draft LEP 2012 and is recommended for refusal.

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

Tweed Development Control Plan

A5-Subdivision Manual

The subject application was referred to Council's Development Engineering Section who provided comment on the application against the provisions of DCP A5. Further information was requested in relation to a number of DCP A5 issues including the provision of sewer and water reticulation to the site.

Council's Strategic and Asset Engineer has provided the following:

"This application is for the division of one lot into two 4.09 ha lots in an area that is essentially rural but is zoned in LEP2000 as 2(c) Urban Expansion.

No sewerage is available to this area at present and it is unlikely to be available until the whole area zoned 2(c) is in a position to develop as urban. At present, there are a number of other infrastructure issues preventing urban development in this area as well as an apparent lack of a coordinated approach from land holders.

The nearest water main to the site is in McAllisters Road approximately 120m west of the western boundary of the site. It is a 100mm reticulation main that supplies various rural properties and a group of tanks that supply an area on Cobaki Road.

The Statement of Environmental Effects states that "The allotments are presently serviced by ... Tweed Water." However it doesn't currently have a water meter and the water meter that used to serve this property was split off to service an adjoining property in March 2007. Water charges associated with this property ceased in 2007. In addition, the meter serving the adjoining lot was removed in June 2007.

The meter itself was located at the water main and not at the property boundary, indicating that there must be a private water pipe along McAllisters Road to the property. Such private water mains are no longer permitted to be installed as the Works Unit (Asset owner of roads) doesn't want a proliferation of private mains in road reserves.

As there is no current water service and no water main at the frontage of either of the proposed blocks, it is considered that water is not currently available at the lots.

The water main in question also cannot provide a fire flow in accordance with Council's standard D11 due to the length of the main and its diameter which results in a high head loss at the fire flow rate, even though its current static head is adequate.

It is recommended that the applicant provide a submission either justifying why the lots created should not be serviced as required by DCP Section A5 or how it is proposed to service the lots in accordance with DCP Section A5."

The existing water service can be used to supply the existing allotment, but as a subdivision, it is required that the development provide water reticulation to service both allotments. It is noted by Council's Engineer that at a minimum this would entail construction of approximately 120m of reticulation main from the nearest connection point subject to required Council Standards.

The current site is not provided with sewerage reticulation and previous approval had allowed for an on-site sewage management system to service the site. Under Section A5 of this DCP the subdivision would require connection to sewerage which is not envisaged in the near future.

Following further correspondence with the applicant and a meeting with members of Councils Development Engineering Section, it was considered that it is unlikely that the applicant would be willing to provide information in relation to the number of issues raised in the Request for Further Information letter in relation to the provision of separate water and sewer facilities for each site. It is therefore considered appropriate to assess the application based on the information on the file.

The proposed development is considered to be in contravention of DCP A5, in particular Section A5.4.13 Infrastructure, and as such should be refused.

It is noted that Council's Water and Wastewater Strategic and Assets Engineer did make the comment that *"If the subdivision is allowed, it is likely, subject to satisfactory soil and slope conditions, that both sites could be serviced by on site sewerage management systems and there would be adequate room for sufficient rainwater tanks to be provided for water supply, meaning that provision of reticulate water supply and sewerage could be obviated for this particular application, but this would have to be justified by submission of appropriate reports for Council's consideration. Otherwise, strict enforcement of the requirements of DCP Section A5 would require conditioning of Water Supply and Sewerage connections and Section 64 Water and Sewer contributions for each lot created.*

Such justification has not been provided by the Applicant, but this would only be applicable if Council decided to assess the application as a rural subdivision. A table has been included outlining the differences in requirements between urban and rural subdivisions.

Key Item/Description	Urban	Rural
Road Upgrade	Yes Will be required to provide kerb and gutter for the developments frontage to McAllisters Road	No.
Access Upgrade	Yes The existing unformed accesses would need to be upgraded to provide a sealed access in accordance with Council standards. Tree clearing within the road reserve may be required to achieve adequate sight distances to the south.	Yes The existing unformed accesses would need to be upgraded to provide a sealed access in accordance with Council standards. Tree clearing within the road reserve may be required to achieve adequate sight distances to the south.
Water Retic supply (and fire fighting requirements)	Yes The proposed lots are required to be connected to Council's reticulation network.	No The proposed lots could rely on water tanks or bore water.
Sewer Retic	Yes The proposed lots are required to be connected to Council's reticulation network.	No The proposal could rely on On-Site Sewage Treatment, provided acceptable, supporting documentation was submitted.
Electricity	Yes Must be underground	Yes Can remain above-ground
Telecommunications	Yes Must be underground	Yes Can remain above-ground

Drainage Upgrade	<p>Yes</p> <p>Must provide major & minor drainage. As per above kerb and gutter is required along frontage.</p>	<p>May be required as Council's DCP Section A5 states that the road drainage must be sufficient to eliminate any adverse upstream or downstream impacts on other land and property.</p> <p>The existing concrete and earth V drains fronting the subject allotments along McAllisters Road may be sufficient. This could be conditioned accordingly and assessed at CC stage.</p>
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Based on the information provided and the Council's strategic planning direction it is considered that the application is required to comply with the urban standards of this section of the Development Control Plan. The application is therefore recommended for refusal.

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

Clause 92(a) Government Coastal Policy

The proposed development is consistent with the objectives and strategic actions of the NSW Coastal Policy 1997.

Clause 92(b) Applications for demolition

No demolition is proposed with the application.

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

The site is not located within a coastal zone management area.

Tweed Shire Coastline Management Plan 2005

The site is not affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

Tweed Coast Estuaries Management Plan 2004

The site is not affected by the Tweed Coast Estuaries Management Plan 2004. No further assessment is required.

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

The site is not affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

Context and Setting

The proposed subdivision whilst considered minor in nature by itself. However looking at the precedent it could start it would cause a negative cumulative impact upon the locality. As outlined previously, the subdivision is located within the Bilambil Heights Urban Release Area. If this application was to be approved it would create a precedent for a number of other similar applications to come in creating a large number of smaller allotments with numerous landowners making it difficult to strategically plan the area. A number of infrastructure issues need to be rectified before this happens.

Access, Transport and Traffic

There will be only one additional allotment if this application was to be approved and would be considered minor in nature. Although, as stated above, the cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, there would be a significant impact. It is therefore recommended that the proposal be refused.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is located within the Bilambil Heights Urban Release Area. The surrounding sites are currently of a similar size as the subject site and utilised for rural residential purposes. The sites are located within the 2(c) Urban Expansion zone and are earmarked for future urban development. The fragmentation of land zoned urban expansion in the area should be limited until such time that the urban release is going to be undertaken. The cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, would be significant.

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

Public Submissions

The proposed development was not required to be notified or advertised in accordance with the Act and Regulations. As such there were no submissions received.

Rural Fire Service

The proposed development was referred to the NSW Rural Fire Service who responded on 6 February 2013 with 4 conditions of consent to be included in the recommendations. The proposed development is being recommended for refusal however if required the NSW Rural Fire Service conditions can be inserted into any approval.

(e) Public interest

The proposed two lot subdivision is of a relatively minor scale and nature however should the application be approved, it would set a harmful precedent for the continued urban release of the area. As such it is considered that the proposal is not in the public interest.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal; or
2. That Council grant in-principle support for the proposal, and that officers bring back a further report to Council with possible conditions of development consent.

CONCLUSION:

The proposed development does not provide infrastructure in accordance with Council's Development Control Plan. Additionally, the cumulative effect if all (or a significant number) of allotment owners in the vicinity of this development did the same, would be significant.

Having regard to the assessment of the development against the applicable planning instruments and the objections received following notification, the proposal is not considered suitable and therefore the subject development is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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CNL-32 [PR-CM] Development Application DA12/0498 for the Demolition of Existing Dwelling and Construction of a Three-Storey Dwelling at Lot 1 DP 214686 No. 4 Marine Parade, Kingscliff

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0498 Pt1



Civic Leadership

SUMMARY OF REPORT:

An application has been received to demolish an existing two storey dwelling house at No. 4 Marine Parade, Kingscliff and construct a new three storey dwelling house with a total floor area of 325m². The property has a site area of 417 m², is located on the west side of Marine Parade, is zoned 2(b) Medium Density Residential and is currently subject to a two storey height limit.

The application was notified to adjoining property owners and three submissions were received to the proposal. The objectors' main concerns were the loss of privacy and amenity, non-compliance with two storey height limit, the lift and spa/swimming pool on the roof will be visually offensive, and the potential destabilisation of the hillside. After consultation with key parties the proposal was modified by the applicant and re-notified with one submission being received reiterating previous concerns.

The amended design removed the lift shaft from the roof deck, lowered the spa and indented the balustrading away from the edge plane of the building. A further late amendment to the design was received on 29 April 2013 which attempts to address the noise nuisance concerns by the inclusion of an 'acoustic green screen' on the back edge of the roof top deck. Those latest plans are now the subject of this report.

The proposal is a three storey building in a two storey height limited area that incorporates a large roof top entertainment area that is likely to have an adverse impact on the amenity of the occupants of the elevated dwelling to the rear. The building exceeds the maximum building height prescribed by the current Development Control Plan and the draft Tweed Local Environmental Plan 2012. The roof top deck which has 118 square metres of usable outdoor living area may result in an undesirable precedent for development on the lower part of a hillside where higher level dwellings can be affected.

On the balance of the assessment of the relevant planning matters, it is considered that the proposed development is not suitable for approval and should be refused.

RECOMMENDATION:

That Development Application DA12/0498 for the demolition of existing dwelling and construction of a three-storey dwelling at Lot 1 DP 214686; No. 4 Marine Parade, Kingscliff be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated that compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards:**
 - The impact of the additional storey incorporating a roof top deck has not been adequately justified.**
- 2. Pursuant to Section 79C(1)(b) the development proposal has not demonstrated acceptable impacts on the built environment:**
 - The development is considered to have negative impact on the amenity of the adjoining property to the southwest.**
- 3. Pursuant to Section 79C(1)(a)(iii) the development has not demonstrated compliance with Tweed Shire Council Development Control Plan 2008 Section A1 in particular:**
 - The development proposal exceeds the nine (9) metre height limit.**

REPORT:

Applicant: Mrs K Carter and Mr R Carter
Owner: Ms Kristine A Carter
Location: Lot 1 DP 214686; No. 4 Marine Parade, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,225,000

Background:

The property is zoned 2(b) Medium Density Residential under Tweed Local Environmental Plan 2000 and is located on the western side of Marine Parade Kingscliff, is 417 m² and currently subject to a two storey height limit.

An application has been received to demolish an existing two storey dwelling house at 4 Marine Parade, Kingscliff and construct a new three storey dwelling house with a total floor area of 325 m². The application was notified to adjoining property owners and three submissions were received to the proposal. The objectors' main concerns with the proposal were the loss of privacy and amenity, not consistent with two storey height limit, the lift and spa/swimming pool on the roof will be visually offensive and the potential destabilisation of the hillside. A letter dated 3 December 2012 summarising the concerns and objections of the neighbours and council's assessing officer, was sent to the applicants, care of their planning consultant. In addition, an email was sent by the assessing officer to the applicants dated 7 December 2012 which read:

"Hi Brock & Mr Mrs Carter,

I have read the SEE (Statement of Environmental Effects) submitted and reviewed the plans and visited all the surrounding properties.

My impression is that the proposal is pushing the limits by designing the roof top deck on a three storey building that is in a two storey zone and does not comply with the height limits, rear setbacks, front setbacks and FSR.

The use of the roof top deck will have an adverse impact on the rear property occupants and it is hard to justify this impact when it is largely the result of the other variations above.

It is my feeling that the roof top deck should be removed from the design.

The SEE needs to provide further argument in relation to the 2b zone objectives, provide some justification for the increase in wall plate height, and the front fence does not comply with the DCP regarding openness and driveway sight lines do not comply.

It is requested that you include a response to the above in your response to Council's letter dated 3/12/12."

After consultation with key parties the proposal was modified from the original submission and re-notified with one submission from the owner of 34 Hungerford Lane being received reiterating previous objections.

The amended design removed the lift shaft from the roof deck, lowered the spa and indented the balustrading away from the edge plane of the building. A further late amendment to the design was received on 29 April 2013 which attempts to address the noise nuisance concerns by the inclusion of an 'acoustic green screen' on the back edge of the roof top deck. Those latest plans are now the subject of this report.

The applicant has provided photo montage images which show that the proposed building is well designed in context with the streetscape and fits well with the scale of the two adjoining three storey dwellings. There will be no significant loss of views from any surrounding properties as a consequence of the proposed development.

The inclusion of the roof top deck on the proposed three storey building is the primary concern in this development. It raises the level of outdoor living area to a level and position that will impact on the residents of at least one property above. Noise and potential evening illumination will impact of on their amenity. Acoustic advice by CRG Acoustic Consultants has been provided and is noted as conservative but suggests that to be fully effective an acoustic screen would need to be 4.5m high and return half way along the sides of the building and as an alternative recommends conditions to control the hours of use and to prevent music being played on the deck.

A geotechnical report has been submitted which concludes that the development could proceed without destabilising the surrounding properties.

The applicant has been given clear indication of the concerns with this development primarily being the roof top deck and has proceeded to seek Council's determination of the proposal without further amendment.

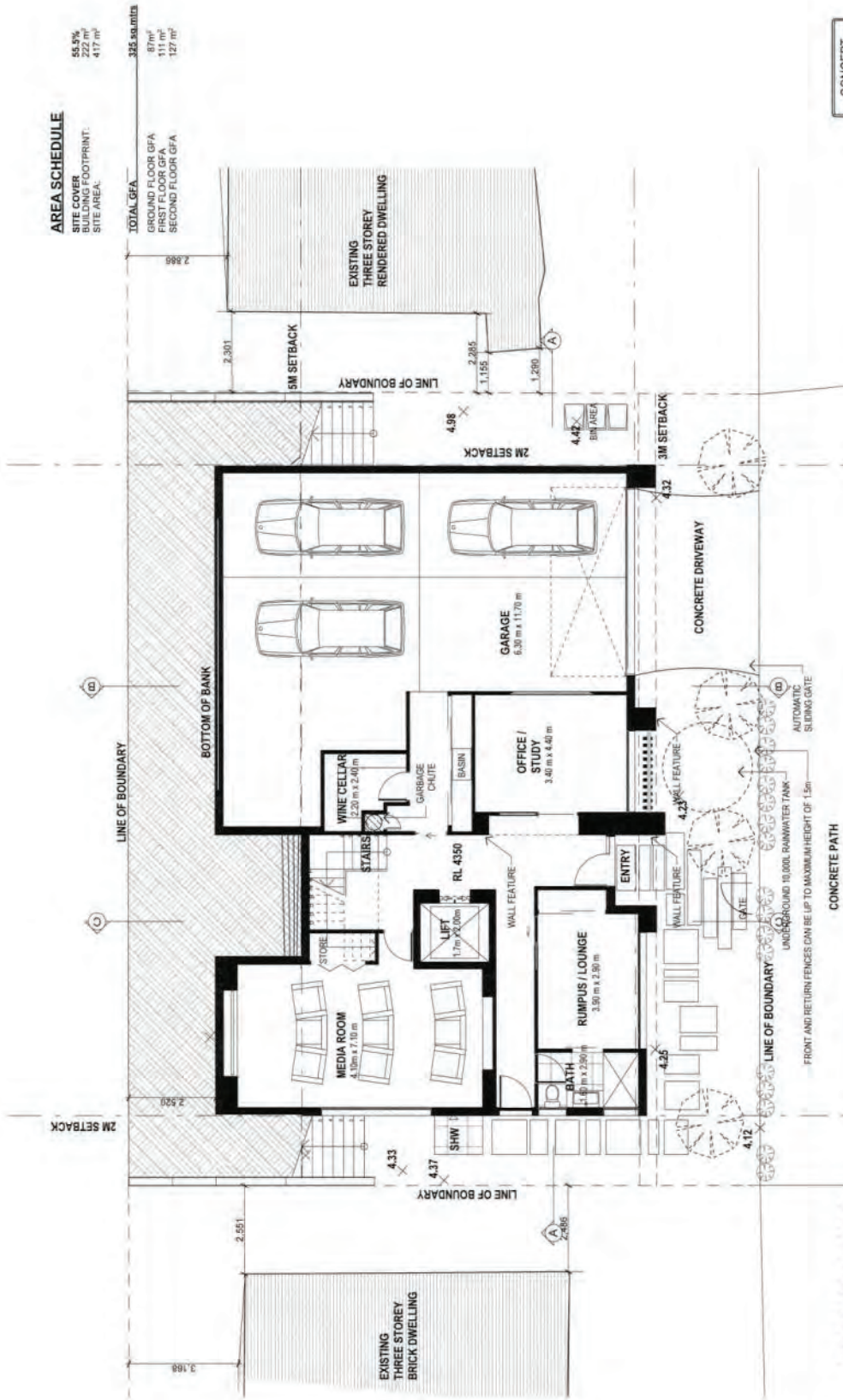
SITE DIAGRAM:



Locality Plan
 1 DP 214686
 No. 4 Marine Parade, Kingscliff

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a 'Call before you Dig' enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral 24/04/2013 © Land and Property Information (LPI) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 1.5 Km 1:60 000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1994 GCR: Map (and of Australia, Zone 55)</p> <p>Author: J. Smith/John - Planning Services Unit</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484</p> <p>PO Box 816 Murwillumbah NSW 2484</p> <p>T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT/ELEVATION PLANS:



AREA SCHEDULE

SITE COVER	56.5%
SITE FOOTPRINT	222 m ²
SITE AREA	417 m ²
TOTAL GFA	385 SQUARE METERS
GROUND FLOOR GFA	87 m ²
FIRST FLOOR GFA	111 m ²
SECOND FLOOR GFA	127 m ²

CONCEPT
29/04/2013

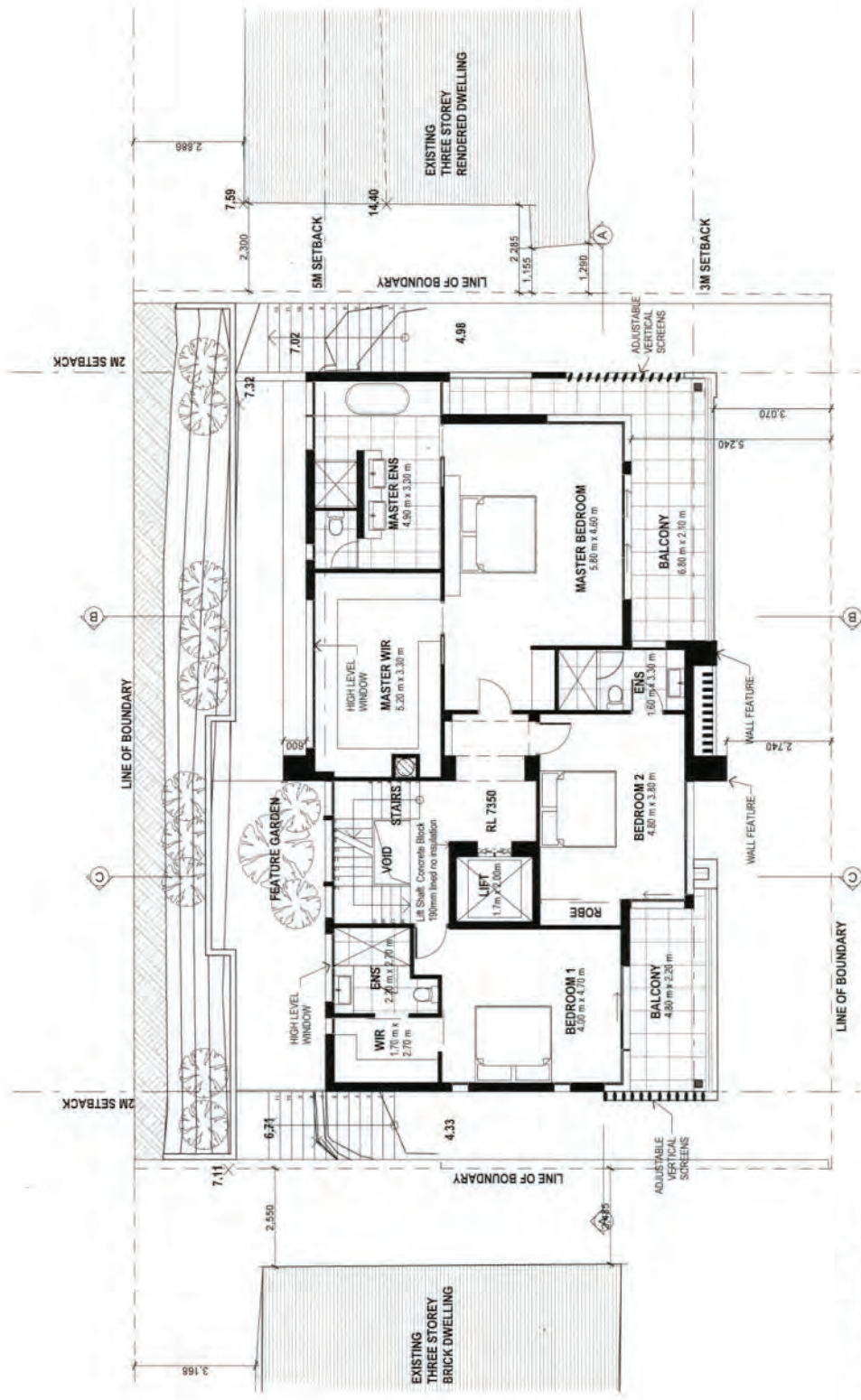
RAJUNIK
design group

PROJECT NO: 12656
DWG NO: 01
ISSUE DATE: 29/04/2013
SCALE: 1:100 @ A3

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

RAJUNIK CONSULTANTS
139 Avenue Road Level 04/01/07
PO Box 144 COCK, QLD 4170
AM 12 887 854

GROUND FLOOR
SCALE 1:100



FIRST FLOOR
SCALE 1:100

CONCEPT
29/04/2013

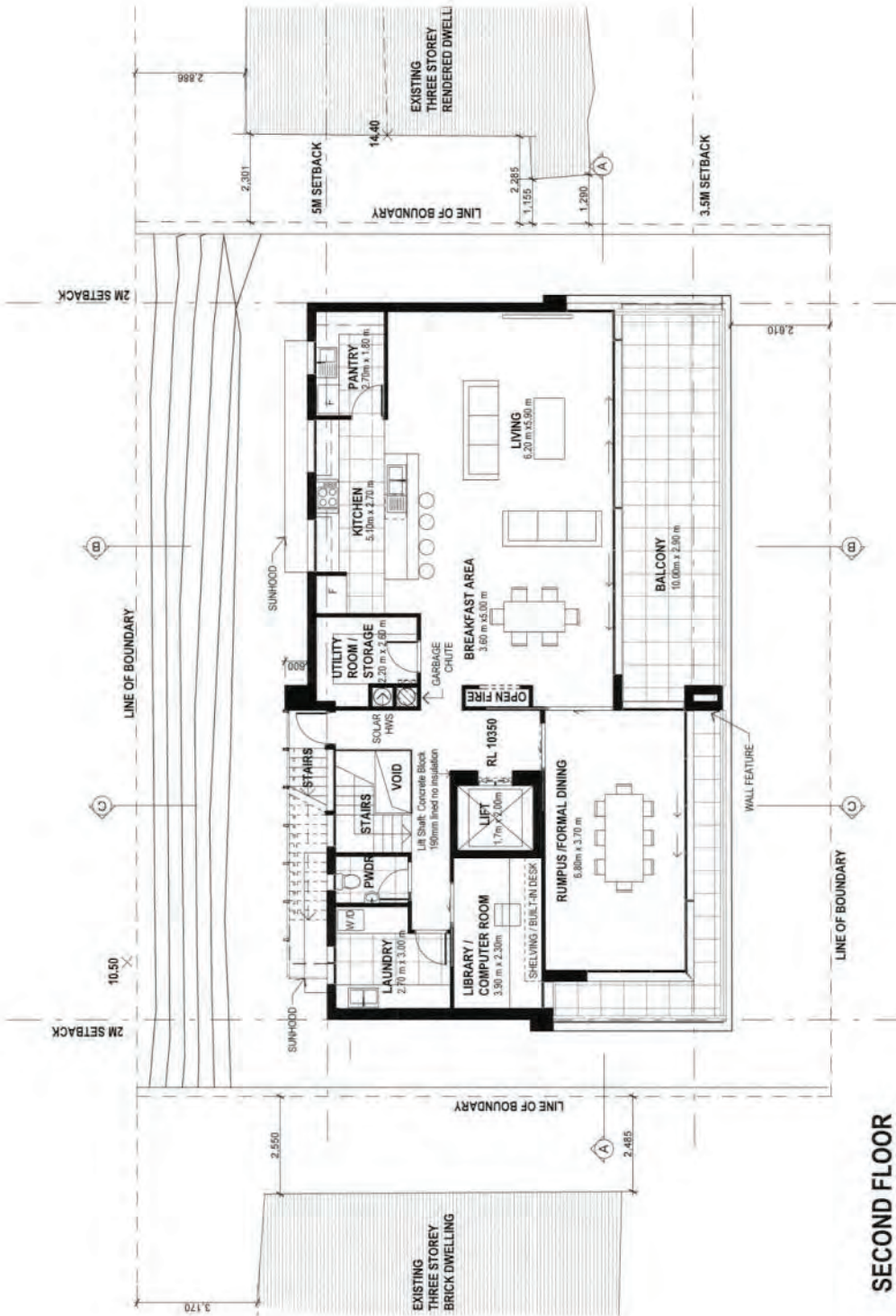
RAJNLIK
design group

1 817 554 9482
1 800 544 7407
www.rajnlikdesign.com.au
120 Johnson Road, Inverell, NSW 2345
PO BOX 200C, OLD 1724
ABN 12 89 885 645

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 02
issue date: 29/04/2013
scale: 1:100 @ A3





CONCEPT
NOT FOR CONSTRUCTION
29/04/2013

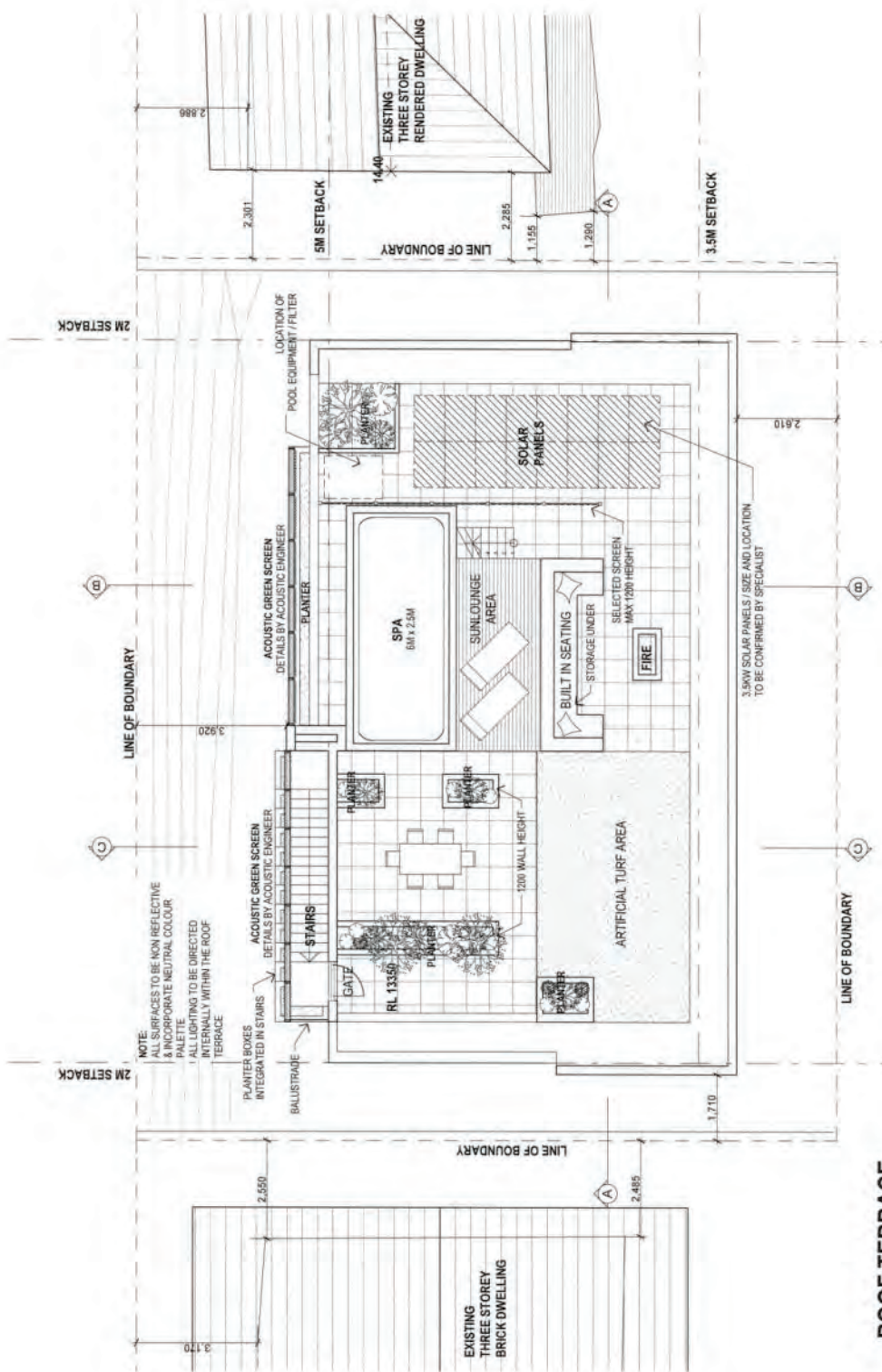
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14/17, SOVA STREET
L. ARCHITECTS/RAJNINIK.COM.AU
177, MILLMERR ROAD, FERRISDALE QLD 4117
PO BOX 7894, QLD 4101/726
A/N: 19 287 828 845

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 03
issue date: 29/04/2013
scale: 1:100 @ A3





ROOF TERRACE
SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION

29/04/2013

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RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 04
issue date: 29/04/2013
scale: 1:100 @ A3



Registered QLD 2948



ELEVATION NORTH-EAST
SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION
29/04/2013

RAUNNIK
design group

11/17/2004 1902
E:\architect\raunnikdesign.com.au
100 Alameda Road Boreddell Qld 4317
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A/N: 11337/283345

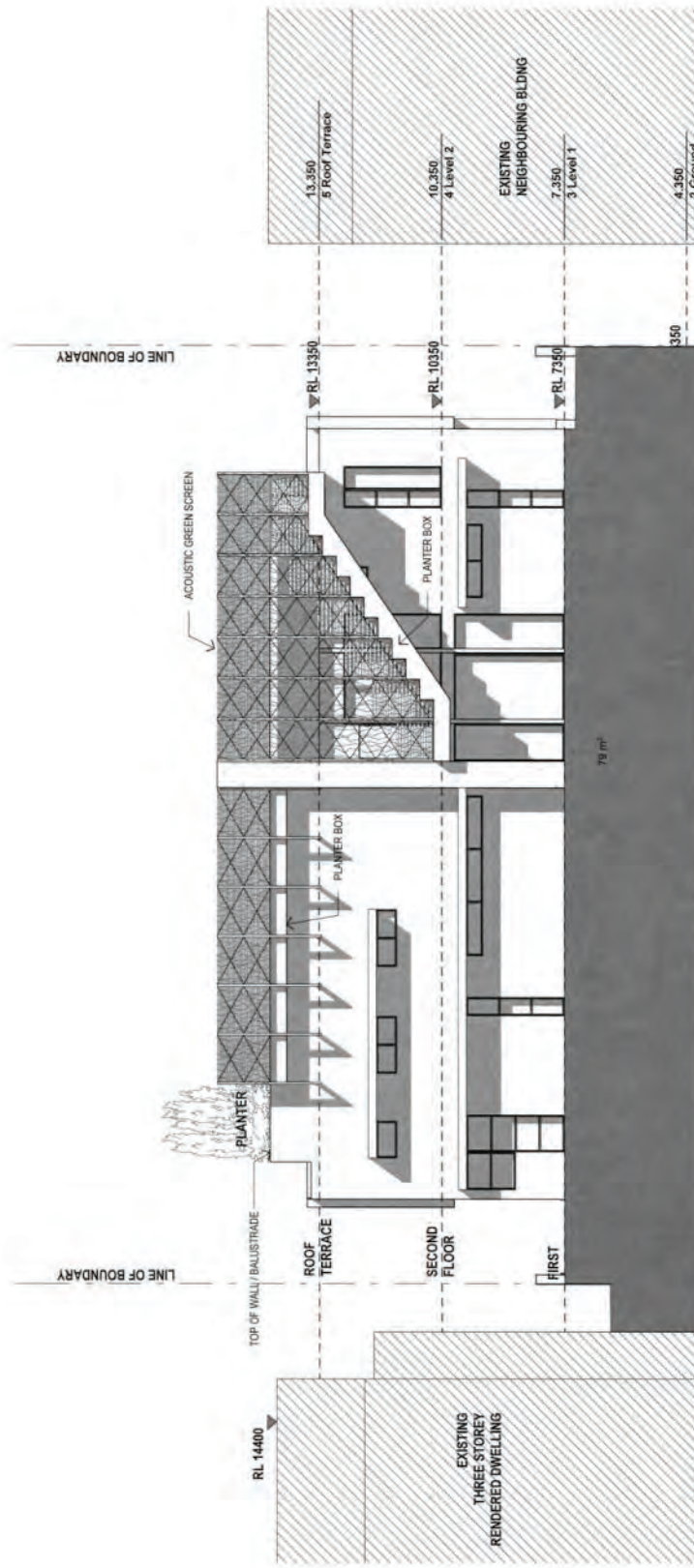
RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 07
issue date: 29/04/2013
scale: 1:100 @ A3





Registered QLD BArch



ELEVATION SOUTH-WEST

SCALE 1:100

CONCEPT
29/04/2013

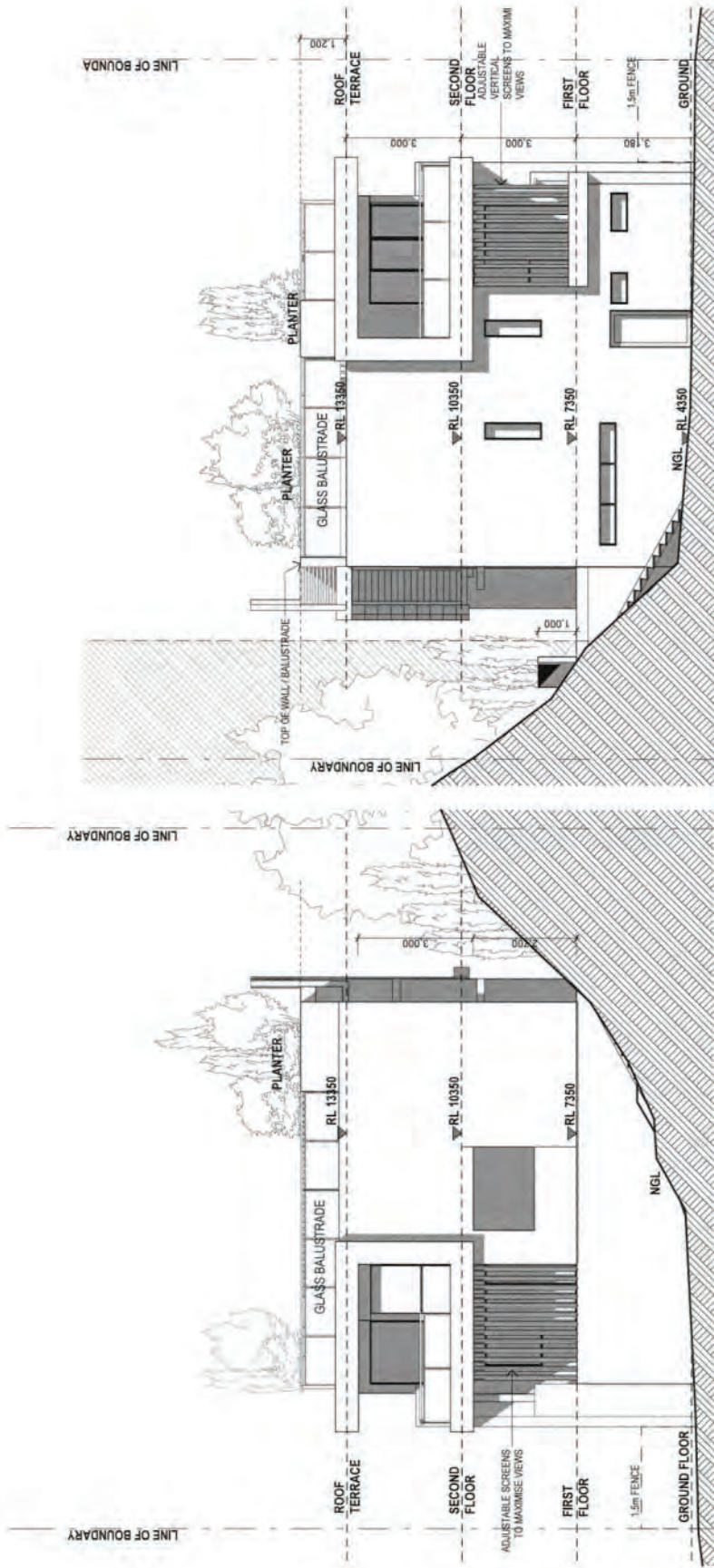
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design group

RAJNLIK
101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 08
issue date: 29/04/2013
scale: 1:100 @ A3





ELEVATION SOUTH-EAST

SCALE 1:100

ELEVATION NORTH-WEST

SCALE 1:100

CONCEPT
NOT FOR CONSTRUCTION

29/04/2013


RAJINIK
 design group
 1/11 ESCR BLVD
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 www.rajinikdesign.com.au
 132 Alameda Road, Soudal, QLD 4317
 PO BOX 7044 CMC QLD 4725
 438 13 27 25 5 5 5

project no: 12656
 dwg no: 09
 issue date: 29/04/2013
 scale: 1:100 @ A3

RESPONSE TO RFI - Proposed Residence
 for Rob and Kristine CARTER

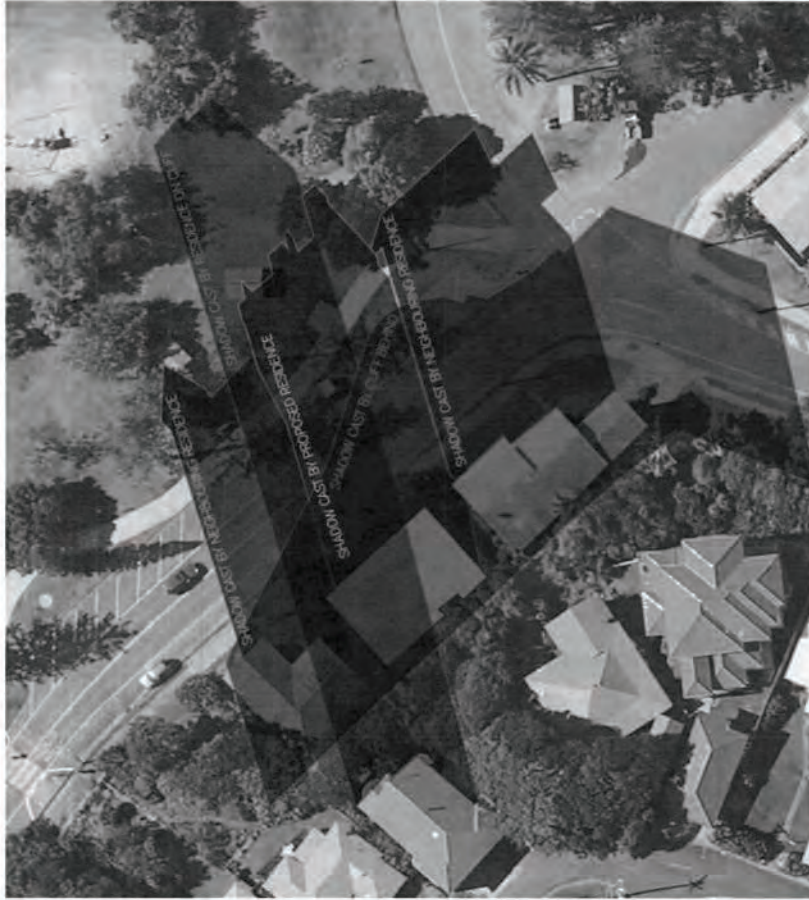
N
 Registration QLD 3441



SUMMER SOLSTICE 9AM








SUMMER SOLSTICE 3PM



SUMMER SOLSTICE 6:30PM

LEGEND

-  SHADOW CAST BY PROPOSED RESIDENCE
-  SHADOW CAST BY NEIGHBOURING RESIDENCES
-  SHADOW CAST BY CLIFF BEHIND

-  SHADOW CAST BY NEIGHBOURING RESIDENCES
-  SHADOW CAST BY RESIDENCE ABOVE CLIFF

CONCEPT
for administration

29/04/2013

RAUNIK
design group

12656
120 Alameda Road, Warragul, VIC 3178
PO Box 1094, Geelong, VIC 3216
PH 03 5247 8345

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER

project no: 12656
dwg no: 10
issue date: 29/04/2013





WINTER SOLSTICE 3PM



WINTER SOLSTICE 12PM



WINTER SOLSTICE 9AM

SHADOW CAST BY PROPOSED RESIDENCE

CONCEPT
29/04/2013

29/04/2013

RAJNLIK
design group

F 61 7504 1802
E 08 8371 7000
W www.rajnlikdesign.com.au
130 Alameda Road, Fyshwick, VIC 3107
PO Box 7904, CCAC, 3107 WA
A/N 13 00 788 845

WINTER SHADOWS

project no: 12656
dwg no: 11
issue date: 29/04/2013

RESPONSE TO RFI - Proposed Residence
for Rob and Kristine CARTER



The following photo is provided of the site taken by Council's assessing officer.



Northern view from rear affected dwelling at 34 Hungerford Lane across subject site.



Street montage view of proposed dwelling



Example provided by applicant of a 'green screen'

ASSESSMENT:

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties and involving many hours. Impacts have been discussed by phone with the objectors and concerns raised have been discussed in meetings with the applicant planning consultant.

The assessment also utilised the expertise of Council Senior Urban Design Planner who gave assistance in gauging the impact of the development in the context of streetscape and design merit of the building relative to the adjoining buildings and constraints of the site.

Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development.

Clause 5 - Ecologically Sustainable Development

For the scale of this development compliance with the submitted BASIX certificate achieves the objective of this clause.

Clause 8 - Consent Considerations

Zone Objectives

The subject site is zoned 2(b) Medium Density Residential. The primary objective of the zone is to encourage development for the purpose of medium density housing that achieves good urban design outcomes. The secondary objectives relate to allowance for non residential and tourist development and to discourage the under-utilization of the land for residential purposes, particularly close to the Tweed Heads sub region area.

The proposed development is not consistent with the primary objective of the zone but it has been argued by the applicant that there are a number of constraints to the site that justify the single dwelling being proposed. The allotment is small, with an area of 417 m², and is only 17m in depth from front to rear making the potential for medium density difficult. Also, the applicant points out that this could be categorised as small lot housing being on a lot less than 450m² which is an alternative form of medium density.

Cumulative Impacts

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Kingscliff hill.

There is an argument for cumulative impact on the locality in that the building does not comply with the two storey height limits of current Local Environmental Plan (LEP). This is somewhat countered by the existing three storey development along Marine Parade. In addition, the draft Tweed LEP 2012 seeks to remove the reference to number of storey and instead limit the height in this area to 9 metres. The proposed development will have a total height of 10.2m (RL 14550) measured to the top of the roof top deck balustrade.

Clause 11 - Zone Objectives

As discussed above.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

In this case a State Environmental Planning Policy No. 1 objection to the number of permissible storeys has been included in the application.

The proposed dwelling exceeds the two storeys permissible and exceeds the total height of 9m contained in the current DCP part A1 by 1.2m. It should be noted however that the proposed 'acoustic green screen' complies with the height provisions of the LEP and DCP because the site rises steeply at the rear and therefore measuring from existing ground level at that point shows compliance.

The proposed building at three storeys is consistent with other buildings in the area and is unlikely to be dominant amongst the Kingscliff hill.

The roof top deck associated with the extra storey will result in an adverse impact on the amenity of residence of at least one rear adjoining property.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the proposal being satisfied that it is unlikely to have a significant social or economic impact in the locality.

Clause 35 - Acid Sulfate Soils

The site is classified as having the potential for Class 5 soils under the Acid Sulphate Soils mapping. The works proposed are not likely to impact on the affected soils zone.

Clause 39A – Bushfire protection

The site is mapped as bushfire prone however the vegetation resulting in the mapping no longer exists and therefore no further consideration is required.

Other Specific Clauses

None apparent.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

This clause controls development which could impede public access to a foreshore or overshadow the foreshore before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

It is recognised throughout all coastal areas that existing urban areas will have some impact in regards to the shadow of the foreshore.

In this case a State Environmental Planning Policy No. 1 objection has been included in the application and the facts and argument presented are acceptable.

The extent of the shadow is minor and is in fact intercepted by the shadow cast by the hillside and vegetation behind. The applicant describes the shadow as 'invisible' because of the hillside at the rear and there is no significant adverse impact resulting on the foreshore parkland to the east of Marine Parade.

Clause 43: Residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

Clause 81: Development adjacent to the ocean or a waterway

Extract

- (1) *The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
 - (a) *there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*
 - (b) *buildings to be erected as part of the development will not detract from the amenity of the waterway, and*
 - (c) *the development is consistent with the principles of any foreshore management plan applying to the area.*

(2) *Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The proposed development does not impact on the available foreshore open space, accessibility or amenity of the waterway.

SEPP No. 1 - Development Standards

An objection to development standard contained in the Council's LEP regarding number of storeys and the standard contained in Clause 32B of the North Coast Regional Environmental Plan have been lodged with the development application and have been addressed under separate headings.

SEPP No 55 – Remediation of land

There is no evidence or past land use activity that would suggest that the land is contaminated.

SEPP No 71 – Coastal Protection

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

NSW Coastal Policy, 1997

The proposed dwelling is not inconsistent with the Coastal Policy

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

Council staff are working on a Draft Tweed Local Environmental Plan 2012 which proposes similar controls to the site as currently exist with the exception of one significant variation. The Draft Plan proposes to remove the two storey height limit and instead apply a maximum building height of 9m.

The proposed building has a height of 9m to the floor level of the roof top deck and has balustrading a further 1.2m higher again. The proposed development would not comply with the height controls of the draft plan unless the roof top deck use was removed and therefore not require the balustrading and spa pool.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Variation to A1 have been sought for the height of the building, wall plate height, rear deep soil zone, front building line, rear setback and the floor space ratio requirement.

Council's recently adopted amendment to DCP part A1 version 1.5 has effectively removed or minimised some of the non-compliant aspects of this development. Wall plate height and floor space ratio have been removed. Deep soil zone requirements a relaxed and setbacks are also reduced and the consequence is that there are fewer variations to the DCP applicable to the development.

A2-Site Access and Parking Code

Complies generally.

If approved, a condition requiring separate approval for front fencing incorporating driveway sight clearances has been included.

A11-Public Notification of Development Proposals

The application was notified in accordance with policy. Please refer to a further section in the report to view a summary of the submissions and the officer's response to those submissions.

B9-Tweed Coast Strategy

The proposal does not contradict any parts of the Tweed Coast Strategy.

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

Clause 92(a) Government Coastal Policy

The proposed dwelling is not inconsistent with the Coastal Policy.

Clause 92(b) Applications for demolition

Australian Standard 2601 is referred to in the demolition work plan and will be reinforced by conditions should the application be approved.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

The proposed building is outside the 2100 erosion escarpment line and no specific development controls need to be applied.

Tweed Shire Coastline Management Plan 2005

This plan does not apply to the subject site.

Tweed Coast Estuaries Management Plan 2004

The proposed development will not adversely impact on the Cudgen Creek water quality as the proposal will discharge roofwater only into the existing street stormwater system.

Coastal zone Management Plan for Cobaki and Terranora Broadwater

This plan does not apply to the subject site.

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

Context and Setting

An infill development is proposed, within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall in the area, with the exception that the roof top deck which has 118 square metres of usable recreation area may result in an undesirable precedent

for development on the lower part of a hillside where higher level dwellings can be affected.

Access, Transport and Traffic

Minimal impact is envisaged, the proposal is a single residence within an approved residential subdivision.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Site design and Internal design

The roof top deck will have adverse impact on the amenity of the residents of the property to the rear No. 34 Hungerford Lane.

The inclusion of the roof top deck on the proposed three storey building is the primary concern in this development. It raises the level of outdoor living area to a level and position that will impact on the residents of at least one property above. Noise and potential evening illumination will impact of on their amenity. The design now incorporates a 2.5m high 'acoustic green screen' on the back edge of the deck which is likely to reduce a little of the noise impact and provide for some greater visual privacy particularly in relation to the position of the spa/pool. It is to be noted that the total height of the building measured from natural ground level at the point of the 'acoustic green screen' does comply with the 9m maximum height requirements of the DCP.

Acoustic advice by CRG Acoustic Consultants has been provided and is noted as conservative but suggests that to be fully effective an acoustic screen would need to be 4.5m high and return half way along the sides of the building. That would be unsightly and contribute further to the non compliant height of the building.

It is difficult to evaluate the frequency of use of the proposed roof top deck which needs to be taken into account when considering what is reasonable. The design of this deck at 118 square metres of usable floor area and a spa/pool would suggest frequent use.

Other than the concern about the roof top deck the building is considered to be of reasonable design taking into account the relationship with the adjacent buildings on either side. The external finishing is mixed and provides good architectural merit. The design provides four off street car parking spaces and includes privacy screening to the second floor balconies to minimise impact on adjoining residences either side.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposal is consistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities including reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

Topography

The site rises steeply at the rear of the allotment and the geotechnical reports submitted state that the development could proceed without destabilisation of the adjoining properties.

Site Orientation

The living areas of the dwelling have been mainly orientated to the north and northeast to optimise ocean views and breezes and solar access to the north.

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

The application was notified to surrounding properties when first received and again after the first amendment. During the initial notification, three (3) written submissions were received. After notification of the amended plans a single submission of objection was received. The main issues raised have been summarised below:

Issue	Objection Comment	Assessment
Loss of privacy to the residents of 34 Hungerford Lane	The proposed roof top deck will impact on privacy as it is clearly visible and raised to the yard level of the of the rear property.	The deck will be visible by the residence of the property at the rear but will be partially screened by some of the existing vegetation. In addition the applicant has made a late inclusion of a 2.5m high 'acoustic green screen' which will further improve visual privacy concerns.
Loss of amenity to the residents of 34 Hungerford Lane	The proposed roof deck is elevated to within 6m height and 15m distance from the lower balcony of 34 Hungerford Lane and will therefore transfer noise and light spill.	There is likely to be considerable noise transfer from the use of the substantial roof deck. Its elevation due to the third storey contributes to the impact. The inclusion of the spa/swimming pool and barbeque intensify the potential use of the area and this will impact on the rear properties. The frequency of use of the upper deck is an unknown and makes it difficult to quantify the impact to occasional or regular. The small nature of the site makes it good sense to utilize the roof area as additional outdoor recreation space but given the increase in height and number of storeys it is not reasonable to justify.
Height and setbacks are non-compliant	Height and rear setbacks do not Comply with LEP or DCP A1 and impact on streetscape and amenity.	Impacts of height in relation to amenity have been discussed above. The reduced setback to Marine parade is not considered to have any significant impact on the streetscape given the openness of the area and articulation used in the design of the building.
Possible instability of the adjacent property and structures	Hillside is steep and has existing instability	A geotechnical report has been provided which states that the development could proceed without de-stabilisation of adjoining properties and structures.

Issue	Objection Comment	Assessment
Additional shade structures are likely on the roof deck.	Due to the sun and wind it is likely that additional roof shade structures will be erected creating four storeys.	Consideration of what someone might do in the future is not grounds to influence the determination of the application presented. However if the development was to be approved it would include conditions to preclude any roof structures other than basic not permanent shade umbrellas.

(e) Public interest

The development will not have an adverse impact or compromise public interest.

OPTIONS:

1. Council refuses the development application; or
2. Council supports in principle the development application and that a report be brought forward to the next Council meeting providing recommended conditions of consent.

Council officers recommend Option 1.

CONCLUSION:

The proposed development exceeds the number of storeys permitted by the current LEP and the use of the roof as a deck necessitates the provision of a balustrade which then creates non-compliance in the height of the building of 1.2m. It is these two variations that will result in the adverse impact on the amenity of the residents behind and although there is uncertainty in the likely frequency of use of the deck it is considered that these variations are not justified and the proposal should be refused.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)
- 1.1.1.3.1 Assessment in accordance with the sustainability objectives of the Environmental Planning and Assessment Act 1979 and other relevant legislation

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CNL-33 [PR-CM] Development Application DA13/0065 for Dwelling Additions Including Creation of Second Storey and Detached Double Garage with Carport with SEPP No.1 Objection at Lot 3 DP 712922; No. 13 Dalton Street, Terranora

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA13/0065 Pt1



Civic Leadership

SUMMARY OF REPORT:

An application has been lodged to carry out alterations and additions to an existing single storey dwelling house on the subject allotment comprising a first floor addition, roofed verandahs and a detached double garage with carport.

The land is zoned 1(c) Rural Living, encompasses an area of 5000m², and contains an existing single storey dwelling house.

The allotment has vehicular access from Dalton Street, however also fronts Terranora Road which, under the provisions of Tweed Local Environmental Plan 2000, is a designated road.

The required setback of any residential or ancillary structure to a designated road, specified in part 5, clause 24 of the Tweed Local Environment Plan 2000 (TLEP2000), is 30m.

The existing dwelling house has a building alignment to Terranora Road of about 15m however, the proposed additions will extend to within 11.60m of this property boundary and the proposed garage/carport will observe a setback to Terranora Road of 11.00m. The applicant has included an objection statement to the planning controls as permitted under State Environmental Planning Policy No. 1 (SEPP No. 1) in respect of the above proposed encroachments within the 30m building alignment. As the extent of the building line variation exceeds 10% the objection as permitted under SEPP No. 1 is referred to Council for determination in accordance with previous directions of the NSW Department of Planning and Infrastructure.

The SEPP1 objection is considered to be worthy of support by Council. It is therefore recommended that Council supports the application, subject to conditions.

RECOMMENDATION:

That:

- A. State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environmental Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning be assumed.**

- B. Development Application DA13/0065 for construction of a first floor addition and roofed verandahs to an existing dwelling house and detached double garage with carport at Lot 3 DP 712922 No. 13 Dalton Crescent, Terranora be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 4625- cover sheet & sheets 4-10 & 17 prepared by Stuart Osman Building Designs and dated 26/03/13, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

5. The footings to the dwelling additions and floor slab to the garage/carport are to be designed by a practising Structural Engineer and details shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

6. A construction certificate application for works that involve any of the following:

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

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

- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

7. Prior to the issue of a construction certificate for the dwelling house additions the Principal Certifying Authority shall be provided with written confirmation from a practising Structural Engineer that the existing dwelling house is structurally adequate to support the proposed first floor additions.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0005]

9. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and

- (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

- 11. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:

- * in the name and licence number of the principal contractor, and
- * the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:

- * the name of the owner-builder, and
- * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

- 12. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

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

[PCW0985]

14. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

16. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

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

[DUR0245]

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

[DUR0375]

19. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

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

[DUR0405]

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

[DUR0415]

22. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

23. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

24. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution
- Dust during filling operations and also from construction vehicles
- Material removed from the site by wind

[DUR1005]

25. No portion of the structure may be erected over the existing easements along the eastern property boundary.

[DUR1945]

26. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

27. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) Internal drainage, prior to slab preparation;
- (b) Water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) External drainage prior to backfilling.
- (d) Completion of work and prior to occupation of the building.

[DUR2485]

28. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the Plumbing Code of Australia and AS/NZS 3500.

[DUR2495]

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

- * 45°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

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

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0205]

31. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

32. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

33. Prior to the issue of an occupation certificate the existing dwelling shall be provided with smoke detectors in accordance with the provisions of part 3.7.2 of the Building Code of Australia and which comply with the provisions of Australian Standard AS 3786.

[POCNS01]

USE

34. The garage is not to be used for any habitable, commercial or industrial purpose without prior approval of Council.

[USE0455]

REPORT:

Applicant: Mrs JA Drew and Mr M Drew
Owner: Mr Mervyn W Drew & Mrs Jeanette A Drew
Location: Lot 3 DP 712922; No. 13 Dalton Street, Terranora
Zoning: 1(c) Rural Living
Cost: \$199,828

Background:

An application has been lodged to construct a first floor addition and roofed verandahs to the existing dwelling house, and a new detached double garage and carport on the subject allotment with the proposed development standing wholly within the required 30m setback.

The subject land is zoned 1(c) Rural Living, is 5000m² in area and the allotment has a moderate slope from Dalton Street to Terranora Road. The proposed roofed deck as part of the dwelling additions is to be setback 11.60m from Terranora Road and the detached garage and carport will have a rear setback to Terranora Road of 11m.

Vehicular access exists from Dalton Street and the proposed development will not impact upon the streetscape of Terranora Road as there will be no vehicle access to Terranora Road.

The detached garage will be obscured from the Terranora streetscape by existing mature landscaping and the neighbouring dwelling house.

The first floor additions to the existing dwelling house comprise two bedrooms with en-suites, living area and covered verandahs to the northern, eastern and southern sides of the additions.

The garage/carport will be 10m x 9m with colorbond walls and have a low pitched metal roof. It will be located in the north eastern corner of the allotment utilising the existing vehicular entrance to the site.

Adjoining property owners were notified of the proposal due to the SEPP No. 1 variation and one objection was received in relation to impacts of coastal views due to the design of the dwelling house roof.

In response to this objection the Applicant submitted an amended roof design which reduced the impact of the roof on the views from the objector's residence and maintains a substantial coastal view including the ocean-horizon interface.

The objector's residence is located about 120m from the subject dwelling house and this spatial separation accompanied by the modified roof design is considered to satisfactorily reduce the dominance of the roof to the objector.

The first floor addition will still have some impact on the coastal views currently enjoyed by the objector however as stated above due to the spatial separation of the objector's dwelling from the subject dwelling house the objector will still have a panoramic view available which is considered to be acceptable and satisfies view sharing principles.

As Terranora Road is classified as a designated road under the Tweed Local Environmental Plan (TLEP2000) Part 5, Clause 24 prescribes a 30m building setback. The applicant has provided a SEPP No. 1 objection statement detailing the reasons for a request to vary the 30m setback requirement to Terranora Road.

Due to the above amended roof redesign, the large size of the allotment and the zoning of the property (large lot residential) it is considered that the proposed development is comparable to existing approved development in the area and the additions and alterations and detached garage and carport will not adversely affect the amenity of the local environment, the streetscape or public domain of Terranora Road and Dalton Street.

SITE DIAGRAM:



Locality Plan

Lot 3 DP 712922
No. 13 Dalton Street, Terranora

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Cadastrre 01/05/2013
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Boundaries shown should be considered approximate only.

0 0.2 0.4 0.6 0.8 1 Km
1:40,000 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1984
Grid: Map Grid of Australia, Zone 56

GDA

Author: MapInfo - Planning Services Team

Civic and Cultural Centre
3 Tumbulgun Road
Murwillumbah NSW 2484
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Murwillumbah NSW 2484
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E | planningreform@tweed.nsw.gov.au

TWEED
SHIRE COUNCIL

Blank Template: 01.05.16.2013

DEVELOPMENT/ELEVATION PLANS:



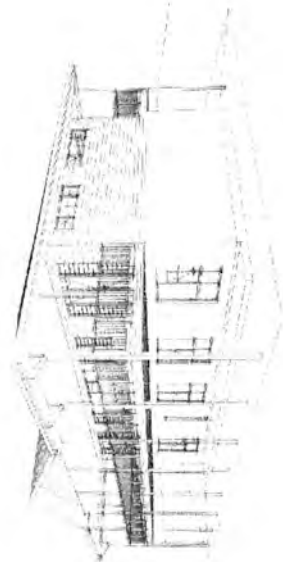
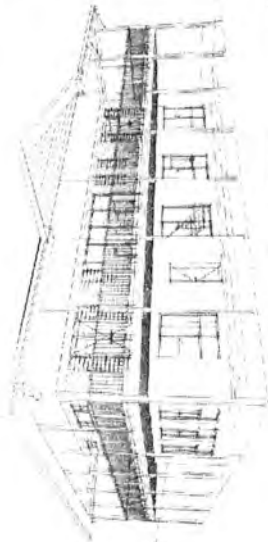
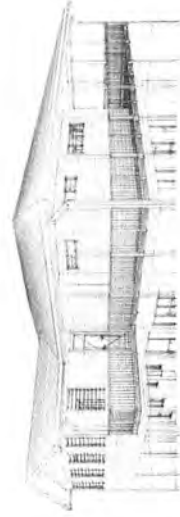
STUART OSMAN
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PROPOSED EXTENSION FOR

DREW






No. 13
DALTON STREET
TERRANORA

JOB NUMBER - 4625



NOTES:
* IMAGES ARE DIAGRAMATIC ONLY
* REFER TO ELEVATIONS FOR DETAILS



 <p>STUART OSMAN BUILDING DESIGNS</p> <p>Phone 07133 281 022 Fax 07133 200 033 PO Box 2460, Dalston, QLD 4008 Address: 2711 Sealing Drive, West Stomax, QLD 4017 A/100 23/01/08/18 Email: stuart@stuartosman.com.au</p>	<p>MEMBER OF</p>  <p>HIA MEMBER OF</p>	<p>MEMBER OF</p>  <p>Master Builders</p>	<p>MEMBER OF</p>  <p>Building Designers Association of QLD</p>	<p>MEMBER OF</p>  <p>Professional Engineers Australia</p>
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<p>BUILDER</p>		<p>CLIENT</p> <p>DREW</p>		<p>PROJECT</p> <p>PROPOSED EXTENSION No. 13 DALTON STREET TERRANORA</p>
<p>DRAWN BY: PK</p>		<p>CHECKED BY: SCD</p>		<p>DESIGN: CUSTOM</p>
<p>DATE: A 11/02/2012</p>		<p>SCALE: 1:100 @ A3</p>		<p>AMENDMENTS</p> <p>1: 2012/12 2: 2012/12 3: 2012/12 4: 2012/12 5: 2012/12</p>
<p>SHEET NUMBER: 4 of 18</p>		<p>JOB NUMBER: 4625</p>		<p>© Copyright reserved in part by Stuart Osman Building Designs. All rights reserved. Contractor to verify dimensions. Notify designers of discrepancies. Failure to do so shall void the designers' responsibilities.</p>

G.L.	GL 100,000
CUT	NIL
FILL	NIL
F.L.	FL 100,300

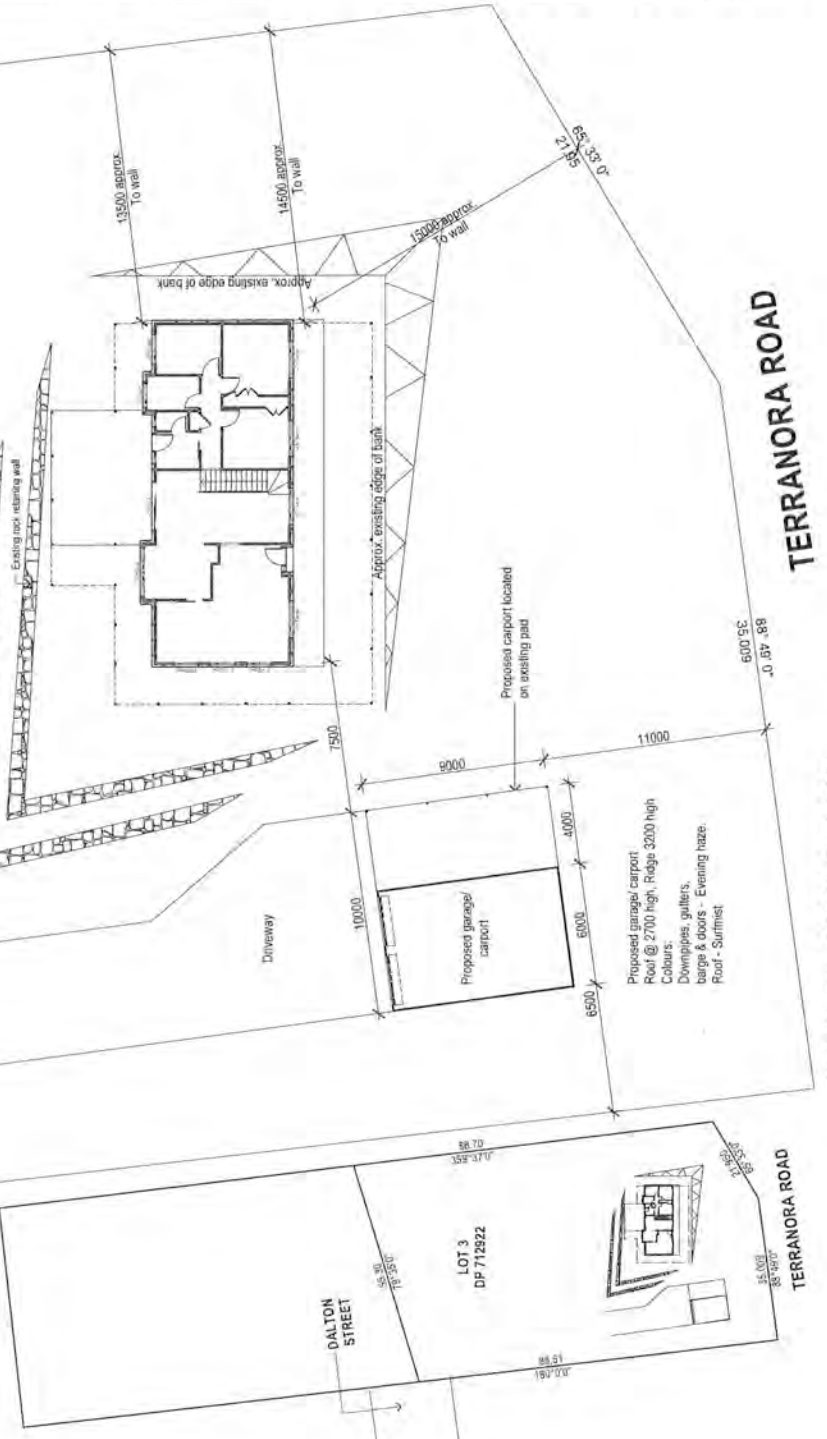
approx.

**** 1:5 MAX DRIVEWAY SLOPE TO LOCAL GOVERNMENT REQUIREMENTS AND STANDARDS ****


- NOTES
- Discharge waste to connection point.
 - Provide sediment control to site where req'd
 - Discharge stormwater to TANK, where possible, all other stormwater & overflow to kerb & channel
 - Meter box position T.B.C on site
 - All retaining walls by owner

****NOTE** ALL STORMWATER & DRAINAGE TO BE IN COMPLIANCE WITH BCA PARTS 3.1.2, & 3.1.2. AS WELL AS AS/NZS3500**

- GUTTERS TO BE PERMID-SECTION COLORBOND GUTTERS
- 2 DOWNPIPES MAX. TO EACH 100mm STORMWATER PIPE, SUBSURFACE PIPES TO BE 100mm DIA. MIN. ANY UNDERSLAB PIPING TO HAVE AN INSPECTION OPENING AT UPPER END, THEN TO BE 100mm SEWER GRADE PIPING WITH NO JOINS UNDER SLAB.




SITE PLAN - GROUND FLOOR
SCALE 1:200 SHEET 4 OF 18




STUART OSMAN
BUILDING DESIGNS

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MEMBER OF




Master Builders
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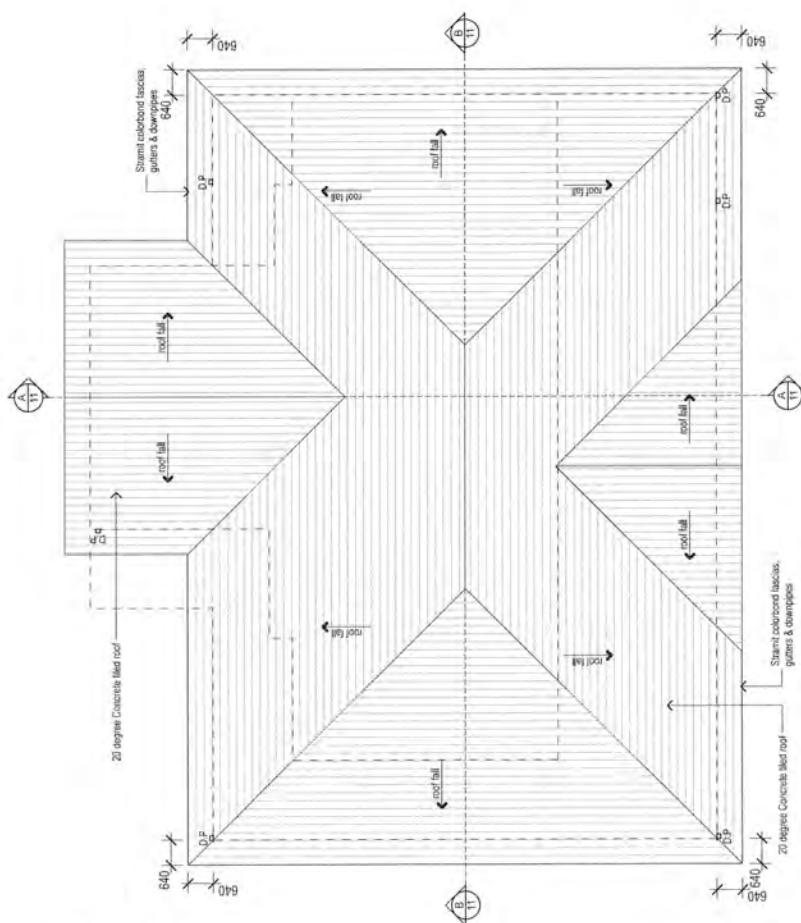


QIDA
QUEENSLAND INDUSTRIAL DESIGN ASSOCIATION

CLIENT	DREW
PROJECT	PROPOSED EXTENSION No. 13 DALTON STREET TERRANORA
DRAWN BY	PK
CHECKED BY	SD
DESIGN	CUSTOM
DATE	A 11/05/2012
SCALES	INCHMENTS 1:100 @ AS 1:50 @ AS 1:20 @ AS 1:10 @ AS
SHEET NUMBER	B of 18
JOB NUMBER	4625

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- NOTES**
- * All fittings to PVC door, as per BCA 5.3.3
 - * All fittings to PVC door, as per BCA 5.3.3
 - * All External and Internal doors & windows to be measured on site and confirmed by builder.
 - * Spalling to external walls.
 - * Insulation to ceiling (living only) R2.5 batts
 - * All windows & SDD to be fitted with external radial ventilation
 - * All storm roses to be AA1 rated
 - * Maximum water supply pressure not to exceed 500kPa at any outlet
 - * Hot water system shall be heat pump, solar or gas
 - * Water supply system to have R1C2 rating
 - * All handrails to be 1000mm above finished floor level

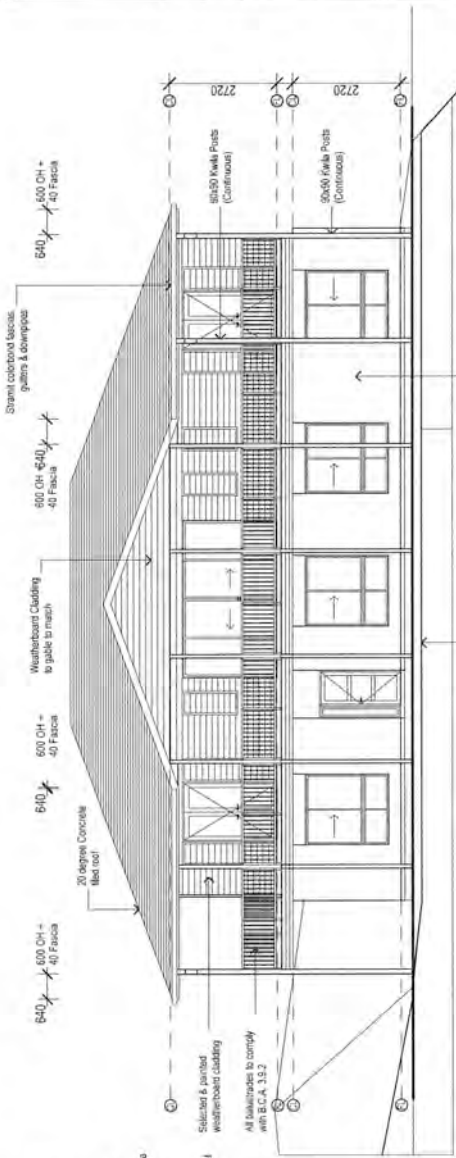


ELEVATIONS

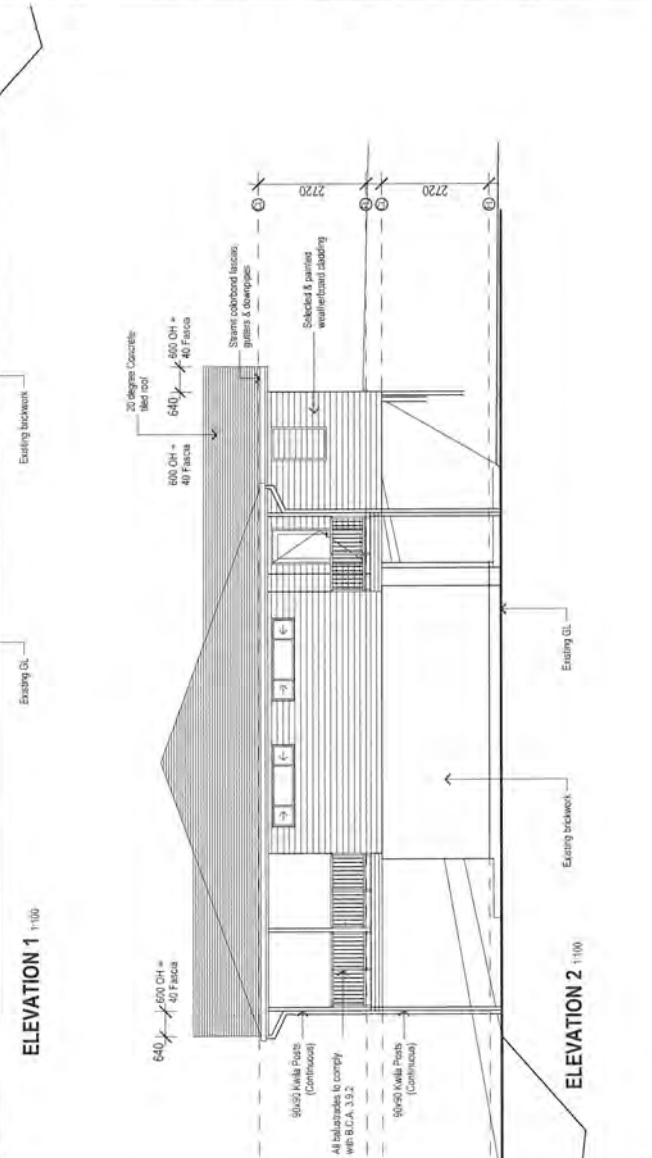
ROOF PLAN





SCALE 1:100

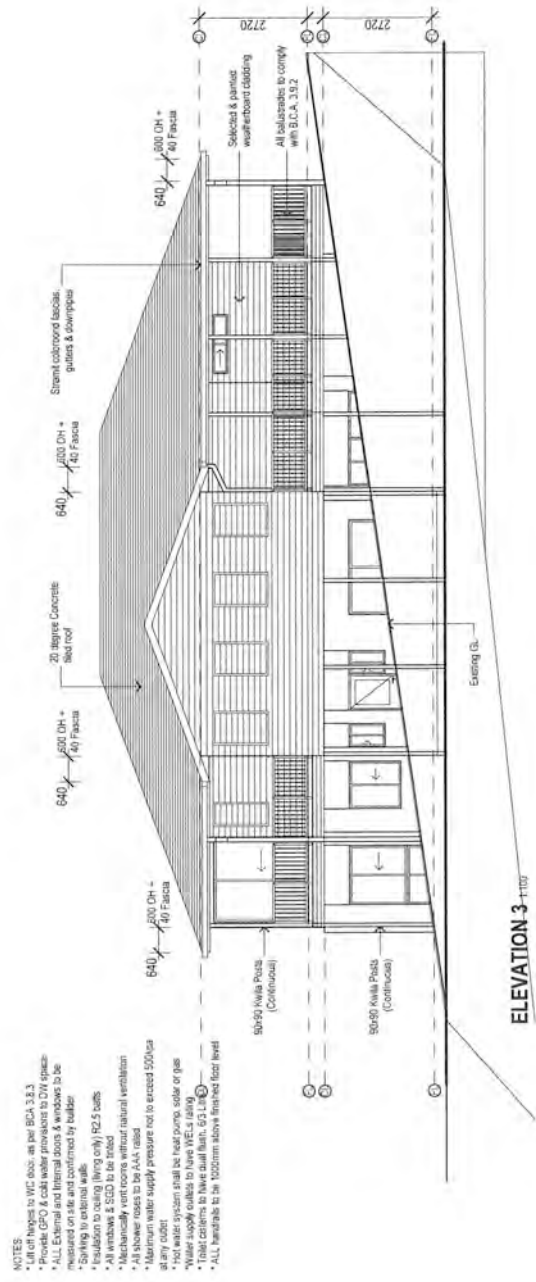
<p>STUART OSMAN BUILDING DESIGNS</p> <p>Phone 075 34 83307 Fax 075 34 83333 15 The Vale, Highgate, VIC 3042 Avenue 2/111 Highgate, VIC 3042 SA - street to 152nd St. www.stuartosman.com.au</p>	<p>MEMBER OF Master Builders</p> <p>CHARTERED MEMBER OF IBD</p> <p>building designers interior architects</p>	<p>MEMBER OF THE BUILDING INDUSTRY FEDERATION (BIF) - THE NATIONAL ASSOCIATION OF BUILDING INDUSTRY PROFESSIONALS</p>	
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<p>BUILDER</p>			
<p>CLIENT</p>			
<p>DREW</p>			
<p>PROJECT</p> <p>PROPOSED EXTENSION No. 13 DALTON STREET TERRANORA</p>			
<p>DRAWN BY: PK</p>		<p>CHECKED BY: SG</p>	
<p>DESIGN: CUSTOM</p>			
<p>DATE: A 11/05/2012</p>			
<p>SCALES</p> <p>1:100 @ A3 1:50 @ A2 1:20 @ A1 1:10 @ A0</p>			
<p>SHEET NUMBER</p> <p>9 of 10</p>		<p>JOB NUMBER</p> <p>4625</p>	
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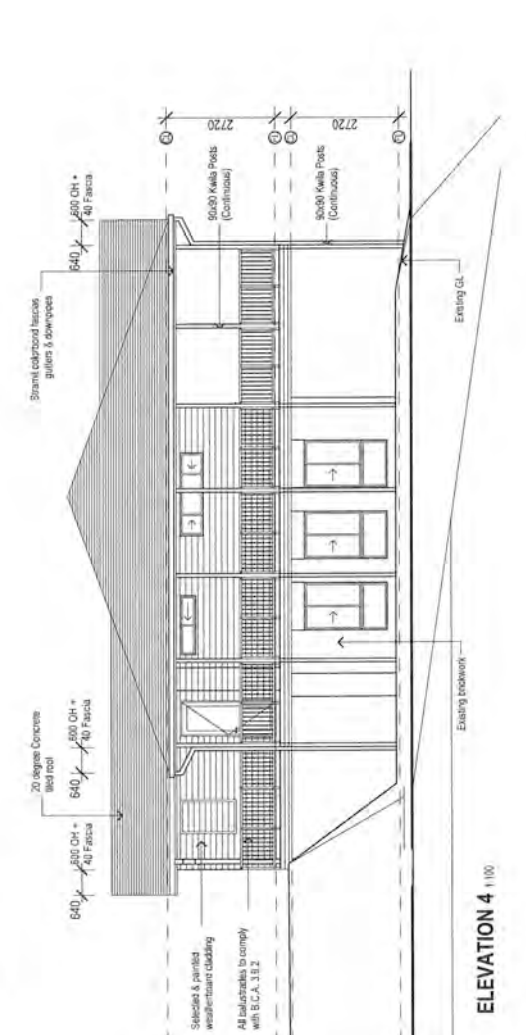
- NOTES:**
- * LIFT cages to VC floor, as per B.C.A. 3.8.3
 - * Provide GPO & cold water provisions to DW spaces
 - * ALL External and Internal doors & windows to be measured on site and confirmed by builder
 - * Siding to external walls:
 - * - Mechanically ventilated (M.V.) only R2.5 walls
 - * - All windows & SGD to be airseal
 - * - Mechanically vent rooms without natural ventilation
 - * - All shower rooms to be AAH rated
 - * - Maximum water supply pressure not to exceed 300kpa in any duct
 - * - Water supply system shall be hot/cold, solar or gas
 - * - Water supply outlets to have WELS rating
 - * - Toilet outlets to have dual flush, 6.0 Litre
 - * - ALL handrails to be 1000mm above finished floor level



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	<p>THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.</p>		
<p>BUILDER</p>			
<p>CLIENT DREW</p>			
<p>PROJECT PROPOSED EXTENSION No. 13 DALTON STREET TERRANORA</p>			
<p>DRAWN BY</p>	<p>PK</p>	<p>CHECKED BY</p>	<p>SD</p>
<p>DESIGN CUSTOMER</p>			
<p>DATE A 11/05/2012</p>			
<p>SCALES 1:100 @ A3</p>			
<p>DRAWINGS B100012 C001212 E002013 F000213 F000313</p>			
<p>SHEET NUMBER 10 of 18</p>			
<p>JOB NUMBER 4625</p>			
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- NOTES:
- * All fittings to VIC code, as per BSA 3.2.3.
 - * All external doors & windows to be measured on site and confirmed by builder.
 - * Symping to external walls.
 - * Insulation to ceiling living only R2.5 batts.
 - * All windows & SSD to be tinted.
 - * All windows to be AAS rated natural ventilation.
 - * All shower water supply pressure not to exceed 500kpa at any point.
 - * Hot water system shall be heat pump, solar or gas.
 - * Water supply outlets to have WEC 2 rating.
 - * All materials to be 1000mm above finished floor level.



Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is in keeping with ecologically sustainable development principles and is in line with community expectations for the site having regard to the zoning provisions, development control plan provisions and the limitations of the site.

Clause 8 - Consent Considerations

The development will be consistent with the primary objective of the zone, all relevant aims and objectives of the plan and will be unlikely to have any adverse cumulative impact on the community or locality.

Clause 11 - Zone Objectives

The proposal will be consistent with the objectives of the zone.

Clause 15 - Essential Services

All necessary services are available and adequate.

Clause 16 - Height of Building

The height of the dwelling house addition will satisfy the controls of DCP A1.

Clause 17 - Social Impact Assessment

The proposed first floor additions and garage are considered to be unlikely to result in any adverse social impact due the large area of the allotment, spatial separation between dwellings on adjoining properties and existing mature vegetation.

Clause 35 - Acid Sulphate Soils

The allotment is subject to class 5 Acid Sulphate Soils however the building works are unlikely to have any adverse environmental impact in relation to this matter.

Other Specific Clauses

Not applicable.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

A SEPP No. 1 objection has been received from the applicant in relation to the 30m setback to Terranora Road, (*a designated road*) which is required by clause 24 of the TLEP2000. A copy of this objection has been reproduced below:

"Clause 24 - Setbacks to Designated Roads

Clause 24 of the LEP requires 'other/ development to have a setback of 30m to a designated road, This Development Standard is unnecessary and unreasonable in this instance, and an Objection under State Environmental Planning Policy No. 1 is submitted to this Development Standard for the following reasons:

- *The site and surrounding sites are of a residential nature. Enforcing a 30m setback to Terranora Road is unreasonable as it would render it inappropriate for additions to an existing dwelling.*
- *The site contains an existing dwelling and it would be unreasonable to restrict the upgrading of the dwelling and the garage/carport due to the 30m setback requirement. The subject application does not intensify the development of the site (remaining at 1 detached dwelling), and the development standard is therefore unreasonable.*
- *There are many dwellings erected along Terranora Rd in close proximity to the subject site. These dwellings are within 30m of Terranora Rd, It would be unreasonable to restrict the subject development, when there are numerous precedents for development closer than 30m to the Designated Road.*
- *Approximately 20m to the north and east the zoning changes to a Village zoning (on the opposite side of Terranora Rd). Houses are permitted to be constructed to within 6.0m of Terranora Rd within the Village zoning.*
- *The application is to extend the existing dwelling and to erect a garage/carport. Adequate setback will be retained. As such the setback requirement is unreasonable in this instance.*
- *The dwelling additions and garage/carport wouldn't be highly visible or visually obtrusive when viewed from Terranora Road due to the presence of treed vegetation adjacent to the Terranora Rd boundary of the site.*

For the above reasons, Council is requested to support the objection under SEPP 1 to allow the development with 30m of the Designated Road.

Clause 22 - Designated Roads

Clause 22 applies to the proposed development as the site has frontage to a designated road (Terranora Road)' The consent authority must consider the listed matters in Clause 22 (4), as follows:

- (a)** *The development (because of its nature, appearance cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

Comment: *The site is located within an area with a residential character, with access from Dalton Street. The site contains an existing dwelling, and the proposed development would not increase traffic flows from the site. The development would not cause a traffic hazard or reduce the capacity or efficiency of the road.*

- (b)** *The location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

Comment: *the development would be serviced by an existing driveway from Dalton Street. The driveway crossover has been designed so that access to/from the property is convenient and meets*

safety requirements. No delays would occur to through traffic, as the road is a cul de sac.

- (c) *The development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

Comment: *The development is not located where it would prejudice any future road improvements or realignments*

- (d) *Where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

Comment: *Not applicable.*

- (e) *The development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

Comment: *the development involves dwelling additions and a garage/carport. Numerous residential dwellings exist along Terranora Road. The Terranora Road environment is not unsuited to residential development'*

- (f) *The development would not detract from the scenic values of the locality, particularly from the point of view of road users, and where practicable, access to the land is provided by a road other than the designated Road.*

Comment: *The development will not detract from the scenic values of the locality'*

- (g) *Where practicable, access to the land is provided by a road other than the designated road.*

Comment: *Access is provided via Dalton Street, and not from Terranora Road".*

SEPP No 71 – Coastal Protection

The subject site falls within the coastal protection zone as identified under SEPP 71 however referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from sensitive coastal locations. Potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, wildlife corridors, the suitability of the site for the development and any measures to reduce other adverse environmental impacts have been considered and having regard to these items, the property distance from any waterway or foreshore; and the existence of developments of similar design and scale on nearby and adjoining properties, Council is of the opinion that the proposed development is consistent with the matters for consideration under SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

Basix Certificate A 156086 has been submitted in support of the application.

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

The draft Tweed LEP 2010 is nearing adoption and the provisions of this draft plan raise no implications for the proposal. The proposal is still permissible with consent.

The proposed Tweed LEP 2010 does not identify designated road and once this instrument is adopted applications such as the subject application will be considered without the need for a SEPP No. 1 variation or referral to Council for determination.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed first floor addition will satisfy the provisions of DCP A1, whereas the garage and carport do not have to satisfy this instrument due to the zoning of the allotment.

A11-Public Notification of Development Proposals

The proposal was notified due to the encroachment into the 30m building alignment to Terranora Road.

One objection was received concerning obstruction of views due to the gable roof shape of the first floor addition.

In response to this objection the applicant modified the roof design to a hipped roof in order to reduce the bulk of the roof and thereby reduce the overall impact.

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

Clause 92(a) Government Coastal Policy

The proposed alterations and additions to the dwelling and garage/carport will have no adverse impact on the aims & objectives of the policy.

Clause 92(b) Applications for demolition

Removal of the roof to the dwelling house will occur however this will be controlled by the necessity to comply with relevant building standards.

Clause 93 Fire Safety Considerations

The existing dwelling, as well as the first floor addition, will be required to install smoke detectors which comply with the provisions of the Building Code of Australia and Australian Standard AS 3786.

Clause 94 Buildings to be upgraded

The existing dwelling house will require certification from a practising Structural Engineer that it is structurally capable of supporting the first floor addition.

Certain structural elements may require upgrading depending on the Engineers recommendation.

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

Not applicable.

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

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

Not applicable.

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

Context and Setting

The dwelling house additions will be consistent with the prevailing residential nature of the locality.

Access, Transport and Traffic

Vehicular access to the site exists from Dalton Street and the proposed alterations and additions will not require any new access to the allotment.

Flora and Fauna

Minor land clearing will be required for the construction of the garage/carport however this is unlikely to result in any significant adverse impact on fauna and flora.

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

Surrounding Land uses/Development

The proposal will be consistent with surrounding land uses.

Flora and Fauna

No fauna or flora will be affected by this proposal.

Topography

Allotment is gently sloping.

Site Orientation

Site is oriented to north.

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

In response to the neighbour notification process one written objection to this proposal was received.

The objection related to the impact of coastal views by the roof of the first floor addition to the dwelling house.

In response to this objection the Applicant modified the roof design to reduce the impact on the views from the objector's dwelling house.

The objector's residence is located about 120m from the subject dwelling house and this spatial separation accompanied by the modified roof design is considered to satisfactorily reduce the dominance of the roof to the objector. And protect coastal views.

(e) Public interest

The proposed first floor dwelling house addition and freestanding garage/carport is considered to be unlikely to be against the public interest.

OPTIONS:

1. Approve the application with conditions; or
2. Refuse the application.

Council's Officers recommend option 1.

CONCLUSION:

The proposed first floor addition to the dwelling house and freestanding garage/carport are considered to be an acceptable development for this allotment.

Notwithstanding that the additions and garage/carport will encroach into the 30m building alignment to Terranora Road it is recommended that the SEPP No. 1 objection to this setback be supported by Council as the requirement for such a setback is considered to be unnecessary and unreasonable in this location.

The existing dwelling house already stands within the 30m setback and the construction of a first floor addition to this dwelling house will have no adverse impact on Terranora Road and minimal impact on adjoining properties or the locality generally.

Similarly the construction of a garage/carport is consistent with the local area and will have no adverse impact on the streetscape.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Refusal of the application may result in an appeal by the applicant in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment Services)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

CNL-34 [PR-CM] Development Application DA12/0527 for Internal Alterations and Additions Comprising a New General Store, Extension of Entrance and Carpark Reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0527 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a Development Application which seeks approval for alterations and additions to the existing Seagulls Club to accommodate a full line supermarket. The supermarket is proposed to be operated by the Independent Grocers of Australia (IGA) franchise comprising a gross floor area of 1965m².

The application would involve a change of use of part of the existing club to accommodate the supermarket. The application proposes works to the north eastern façade to improve the access for the IGA and this would involve the creation of an additional 314m² of floor area to the existing building. The application also incorporates an amended car parking layout.

The subject site is zoned 6(b) Recreation in accordance with Tweed Local Environmental Plan 2000 (TLEP 2000). In accordance with the current TLEP 2000 shops (by definition) are prohibited in this zone.

The subject site is proposed to be zoned RE2 Private Recreation under Draft LEP 2012. In accordance with the Draft LEP 2012 shops (by definition) and neighbourhood shops (of less than 300m²) will be prohibited in this zone. Only kiosks, markets and food and drink premises will be permissible.

The applicant has lodged this application as a "general store" by definition (TLEP 2000) and seeks Council's approval for this as a permissible land use. The applicant has submitted legal advice to support this view and such advice is discussed in this report and provided in full as an attachment to this report.

This report assesses the application for a supermarket on its merits having regard to the matters for consideration under the Environmental Planning and Assessment Act 1979.

In undertaking this merit assessment the size, scale and relationship of the 1965m² supermarket with the existing Seagulls Club has been considered. The proposed supermarket is proposed as a separate but complimentary use to the existing club and not an ancillary use and accordingly the merit assessment needs to review this development as a standalone business separate to the existing Seagulls Club. If the Seagulls Club for some reason was to cease operations the proposed supermarket if approved would be lawfully allowed to continue operations in accordance with their consent on the subject site. For this reason the proposed development for a supermarket must be assessed as a separate use to that of the Seagulls Club.

Whether the development is legally defined as a general store or a shop the proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the strategic objectives for the Tweed;
- Satisfies the primary objective of the recreational zone;
- Satisfies the test of cumulative impact;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2012;
- Satisfies Council Retail Strategy; and
- Satisfies the general public interest and the impact the proposal would have on the existing commercial zones in the locality.

Accordingly the application is recommended for refusal.

RECOMMENDATION:

That Development Application DA12/0527 for internal alterations and additions comprising of a new general store, extension of entrance and car park reconfiguration at Lot 2 DP 881169 No. 54-68 Gollan Drive, Tweed Heads West be refused for the following reasons:

- 1. The development is not considered to be consistent with Clause 4 - The aims of the Tweed Local Environmental Plan 2000 and the Strategic Planning documents that support the Local Environmental Plan.**
- 2. The development is not considered to satisfy Clause 8(1)(a) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the primary objective of the 6(b) Recreation Zone has not been met.**
- 3. The development is not considered to satisfy Clause 8(1)(c) – Consent Considerations of the Tweed Local Environmental Plan 2000 as the development would have an unacceptable cumulative impact on the community, locality and catchment.**
- 4. The development is not considered to satisfy Clause 17 of the Tweed Local Environmental Plan 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.**
- 5. The development is not considered to comply with Council's adopted Retail Strategy.**

6. The development is not considered acceptable having regard to Draft LEP 2012 as the proposed development would be prohibited in the zone and fails to satisfy the zone objectives of the RE2 Private Recreation zone.
7. The development is not considered acceptable having regard to the general public interest and the impact the proposed development would have on the existing commercial zones in the locality.

REPORT:

Applicant: Think Planners Pty Ltd
Owner: North Sydney Leagues Club Limited
Location: Lot 2 DP 881169; No. 54-68 Gollan Drive, Tweed Heads West
Zoning: Part 6(a) Open Space and Part 6(b) Recreation
Cost: \$2,750,000

Background:

Site Details and History

The subject land is described as Lot 2 DP 881169 Gollan Drive, Tweed Heads West and is located approximately 1km west of the Pacific Highway (Kennedy Drive interchange). The site has a total land area of 4.94ha.

The site presently contains the substantial Seagulls Leagues Club building. Bituminised car parking areas providing a total of 582 car parking spaces are located around the club building. The grassed area adjacent to the northern boundary has approval for 232 car parking spaces. This grassed area is used for “over flow” car parking in association with major events at the club.

Vehicular access to the site is primarily via the main driveway at the north-eastern part of the site from Gollan Drive. A secondary driveway also accessing Gollan Drive is located to the southern side of the building.

The area surrounding the club comprises a mixture of remnant bushland, the Terranora Broadwater and low density residential housing.

The existing Seagulls Club was constructed in several stages with initial buildings constructed in the 1960's. At this time and up until the late 1990's the Club had the benefit of an adjoining sports field. These fields have since been re-developed for residential use. The last major addition to the club was constructed in 1983.

Since 1983 there has been multiple development applications, building applications, and complying development certificates that have shuffled the land uses within the approved building footprint. More recently the following applications have been determined:

- DA05/1134 – approved a public market each Sunday on the bitumen car park area. It is understood that these markets were not successful due to the heat of operating markets on the bitumen car park area.
- DA05/1452 – approved alterations and minor additions to the club over three stages. The club has acted upon Stages 1 and 2 of these works but has yet to commence Stage 3 works which trigger the formalisation of additional parking areas over the grassed areas of the site. The subject Development Application seeks to alter the methodology in calculating required onsite parking spaces on this site and accordingly if Council were to approve this application then DA05/1452 may need to have a Section 96 Modification to align the required car parking spaces across the site.
- CDC05/0213 – approved the relocation of gaming machines and staff room and a refurbishment of the toilets.
- CDC06/0023 - approved alterations to restaurants and gaming rooms including roof maintenance.

- CDC10/0005 – approved the redevelopment of internal areas for doorways and storerooms.
- CDC10/0042 – approved a new cool room relocation of an existing bottleshop and minor internal alterations.
- CDC10/0159 – approved minor internal alterations to level 1 and 2.
- CDC11/0145 – approved restaurant alterations.
- CDC12/0107 – approved restaurant alterations and modifications to the existing building to accommodate a children’s play centre (Tabatinga) within the Seagulls Club.

The total gross floor area of the building is 16,508m² however the above alterations have had the effect of the club utilising less floor space within the building in an attempt to lower the overhead operating costs of the large facility. The Seagulls Club, futsal courts, ancillary gymnasium and the childrens' play centre (Tabatinga) do not occupy the entire 16,508m² as many areas of the club are not presently being used. Through the implementation of the gymnasium, a child’s play centre (Tabatinga) and now an IGA supermarket the Club is trying to add alternative but complimentary uses to the existing club in a hope of eventually being able to grow back into the size of the Club.



Proposed Development

Council is in receipt of DA12/0527 which seeks approval for a new full line supermarket to be operated by the Independent Grocer of Australia (IGA) franchise comprising a gross floor area of 1965m² predominantly within the existing footprint of the Seagulls Club.

The applicant has provided the following breakdown of the proposal:

- *Internal alterations and additions to existing ground level floor space and fit out for a General Store;*
- *External works to a part of the ground floor façade and slight increase in floor space to provide for an improved entry to existing Club facilities and the proposed General Store;*
- *Reconfiguration of existing and previously approved carparking on site, to improve traffic flow and delineation; and*
- *Other incidental works such as landscaping and paving.*

The proposal is predominantly contained within the existing building bulk. Notwithstanding the significant scale and bulk of the existing building, the proposal effectively “softens” this bulk through the introduction of greater articulation of the ground floor façade and introduces improved activity to that part of the building.

The below diagram shows in yellow the proposed footprint of the proposed IGA in comparison to the Club layout:



The applicants have stated the following in regards to the need for the proposal:

"The Seagulls Club has been an iconic institution within the Tweed Heads region for several decades. The Club has operated successfully over these years however in recent years the club has been running a number of operating losses which have grown steadily since 2010. By way of context the last seven (7) years of operations on the site has only seen an operating profit in two (2) of these years, with these operating profits only being 0.67% and 2% of revenue. In 2009 a modest profit was recorded, which was largely due to accounting changes including a shift in the consideration of staff entitlements and the application of depreciation. However since that date, there has been a steady stream of increasing losses:

- *\$915,000 loss in 2010;*
- *\$1,920,000 loss in 2011; and*
- *\$1,768,000 loss (projected) in 2012.*

If it were not for the accounting adjustments in the 2009 financials the Club would have made a loss over each of the past 5 years, with a further loss in 2006 and a minimal profit of less than \$300,000 in 2007.

These increasing losses and a shrinking revenue base means that the operation of the Seagulls Club is not financially viable. In the absence of an increase in revenue and a return to profitability it is unlikely that the Club will continue to operate in the short term. The club has been examining a range of options and the leasing of a portion of the site for an alternate but complimentary use to the existing club was considered most appropriate. In particular given the demographic trends and the future expansion of release areas it was considered that the establishment of a general store to serve the needs of local residents would be most appropriate.

It is highlighted that in the absence of the redevelopment of the site there are serious doubts about the ongoing viability of the Seagulls Club."

It is important to note that the applicants have lodged this application on the basis of the supermarket being legally defined as a general store rather than a shop.

The subject site is zoned 6(b) Recreation and a general store is permissible in the zone with consent while a shop is a prohibited type of development.

This aspect of the development is discussed in detail below.

Land Use Definition

Tweed Shire Council has consistently defined supermarkets as a shop in accordance with the TLEP 2000 definitions which define a shop as:

"land used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this Schedule or used for a land use elsewhere specifically defined in this Schedule."

The subject site is zoned 6(b) Recreation and a shop is prohibited in this zone.

Given this prohibition the applicant has lodged the subject application as a general store in accordance with the TLEP 2000 definitions which define a general store as:

"a shop used for the sale by retail of general merchandise and which may include the facilities of a post office."

A general store is permissible with consent in the 6(b) Recreation zone subject to satisfying all the other merit considerations in accordance with Section 79C of the Environmental Planning and Assessment Act 1979.

The applicant has provided the following discussion on permissibility:

"Minutes of the Development Assessment Panel held at Tweed Council on Wednesday 9 November 2011 noted that a supermarket facility has been traditionally defined as a "shop", but "General Store" was a permissible use in the zone. This matter of characterisation of the proposal is fundamental and therefore is discussed in some detail below.

It is noted that the application proposes a General Store that may be more commonly referred to as a "supermarket". The day to day operator of the General Store is likely to be a company such as IGA. The General Store is intended to comprise the following types of items for sale:

- (a) *The majority of the retail display area will consist of food including:*
- *General food lines;*
 - *Grocery items;*
 - *Refrigerated meat;*
 - *Fresh fruit and vegetables;*
 - *Dairy products and juices;*
 - *Frozen food;*
 - *Hot food (including chicken);*
 - *Delicatessen items;*
 - *Alcohol; and*
 - *Bakery items.*
- (b) *The remaining retail display areas will consist of, but not be limited to, the following food items:*
- *Pet care and pet food;*
 - *Magazines;*
 - *Audio visual;*
 - *Electrical items;*
 - *Beauty and health care products;*
 - *Baby care products;*
 - *Pharmaceuticals;*
 - *Batteries;*
 - *Laundry and cleaning equipment;*
 - *Plastic bags and wraps;*
 - *Household cleaning products;*
 - *Clothes;*
 - *Manchester;*
 - *Gardening items;*
 - *Cigarettes/tobacco;*
 - *Toys;*
 - *Car care products;*
 - *Hardware items;*

- Fresh flowers; and
- Other miscellaneous items.

In determining the correct categorisation of whether the proposal is to be considered a "General Store" or "Shop", consideration has been given to a number of relevant cases that have dealt with either categorisation of uses and/or a supermarket. Such cases include:

- *Shire of Perth v O'Keefe (1964) 110 CLR 529 at 535;*
- *Warriewood Properties Pty Ltd v Pittwater Council (2010) NSWLEC 215;*
- *Snowside Pty Ltd v Holroyd City Council (2003) 126 LGERA 279;*
- *Maryland Development Co Pty Ltd v Penrith City Council (2001) NSWLEC 135;*
- *Hastings Cooperative Ltd v Port Macquarie Hastings Council & Anor (2009) NSWLEC 99;*
- *Hastings Cooperative Ltd v Port Macquarie Hastings Council & Anor (2009) NSWCA 400*

The Hastings Cooperative Ltd matters are particularly relevant as this deals with a proposal for a General Store / Supermarket in a zone where "shops" are prohibited and "general store" is permissible. Further, the proposal considered by the Land and Environment Court and the Court of Appeal was for a supermarket with a retail gross floor area of about 2012m².

The Hastings LEP contained an identical definition of general store to the Tweed LEP and a very similar definition of a shop.

The Land and Environment Court noted that the essential difference between a "shop" and a "general store" is that a "shop" offers for sale by retail "goods, merchandise or materials" and a "general store" offers for retail "general merchandise":

The same distinction was discussed in Maryland Development Co Pty Ltd v Penrith City Council where it was held that "the operative element of the statutory definition is the retailing of "general merchandise": It is that concept which distinguishes "general store" from "shop": The distinction between a "shop" and a "general store" observed in this case is directly applicable to the supermarket proposal contemplated in this development application.

It is further noted that the Hastings Cooperative matters was appealed to the Court of Appeal. The Court of Appeal, in a majority decision, determined that a supermarket was properly characterised as a "general store" and was permissible with consent. It is noted that the provisions of the Hastings LEP and the Tweed LEP are effectively identical.

Having regard to the provision of the Tweed LEP, the directly relevant decisions of various Courts and the nature of the proposed supermarket that will offer for sale by retail a broad range of general merchandise, it is concluded that the proposal is rightly characterised as a "general store" which is permissible with consent in the 6(b) Recreation Zone."

In addition to this information the applicant has recently submitted their own legal advice from C W McEwen SC dated 2 May 2013. The advice states:

"Is the proposed supermarket properly characterised as a 'general store'?"

I am firmly of the opinion that the proposed supermarket is properly characterised as a general store as defined in TLEP. Further, the facts in this case, on the question of characterisation, are identical to those in Hastings Co-operative Ltd v Port Macquarie Hastings Council & Anor (2009) 167 LGERA 205 where Lloyd J determined that a proposed supermarket selling a range of goods identical to those proposed in the present case, was a 'general store'. The definition of general store was the same, as was the definition of shop. In Hastings Lloyd J summarised and applied other decisions of the Court to the same effect. In my opinion the weight of authority is overwhelmingly in favour of the opinion which I have expressed.

Although in general parlance a general store would be described as a shop; that is not to the point. It is the definitions which must be interpreted. Further, historical notions of general stores being small, general outposts must also be put to one side because the definition in TLEP will prevail. Pursuant to TLEP the definition of shop does not include a building or place elsewhere specifically defined. 'General store' is so defined as a shop used for the sale by retail of general merchandise.... The fact that the definition of general store refers to 'a shop' is of no consequence. For the purposes of TLEP a 'general store' is excluded from the definition of 'shop'. This fact was confirmed by the Court of Appeal in Hastings Co-op Ltd v Port Macquarie Hastings Council (2009) 171 LGERA 152.

As was made clear by Lloyd J in Hastings:

It is clear from the definitions above that the essential difference between a 'shop' and a 'general store' is that a 'shop' offers for sale by retail 'goods, merchandise or materials' and a 'general store' offers for retail 'general merchandise'. Hastings Co-operative rightly submits that, as there is little difference between goods, merchandise and materials, the significant difference between the definitions comes from the use of the word 'general' [8]. As noted by Sheahan J in Merryland at [132], the definition is satisfied where a range and variety of product lines are offered for sale by retail. In the present case, it seems to me that the supermarket does offer a range and variety of product lines, and that they are by no means specialised merely because they may broadly be characterised as 'food and household items' ... Having regard to the broad range of merchandise which will be sold at the proposed supermarket, it is my view that the merchandise is general rather than specific in nature, particularly the range of non-food items. I conclude, therefore, that the proposed supermarket in the present case is, for the purposes of the Hastings Local Environment Plan, correctly characterised by the Council as a 'general store' [23].

As previously noted, the range of goods proposed to be sold in the Hastings case is identical to that in the present case and there is no reason to distinguish the Hastings decision. It stands as clear authority for characterisation of the proposed supermarket as a general store. Indeed, in the present case the argument in favour of the proposal being a general store is even stronger than in Hastings. In that case general stores were not specifically permissible with consent. Permissibility arose because the use was not specifically prohibited, even though use for the purpose of a shop was specifically prohibited. In the present case use for the purpose of a general store is specifically identified as a permissible use in the 6(b) zone.

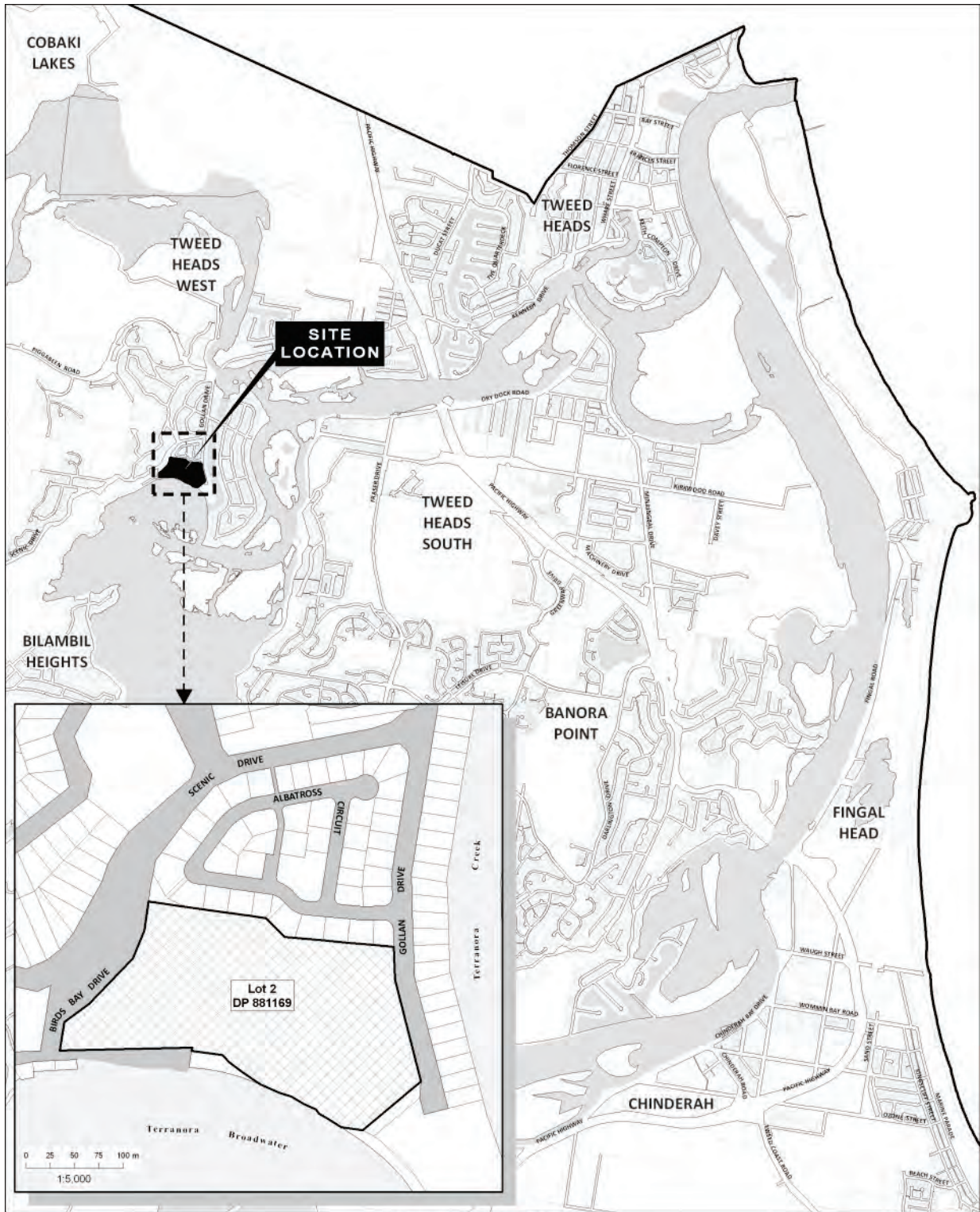
Finally, the size of the proposed store is of no relevance for the purpose of the definition because the general store definition does not limit the store to being of a maximum floor space. In Hastings the proposed supermarket had an area of approximately 3,011 m². In Merryland Development Company Pty Limited v Penrith City Council (2001) 115 LGERA 75 Sheahan J held that a proposed supermarket was a general store in circumstances where it proposed a floor space of 3,800 m² and a range of products which was less extensive than in the present case. The definition of 'general store' in TLEP requires only that the premises sell, by retail, general merchandise. If the range of products to be offered can be so described (as it clearly can in this case), then that is the end of the inquiry into permissibility and the development is a general store for the purposes of the planning instrument. This is reinforced by the fact that item 4 in the zoning table sets out prohibited development. What is prohibited is any buildings, works, places or land uses not included in item 1, 2 or 3. Because general stores is included in item 2, it must follow that use for the purpose of a general store is not a prohibited land use.

Tweed Shire Council has historically applied a delineation between general stores and shops by assuming a general store is a smaller corner store scenario as opposed to a shop which was more like a larger retail supermarket. However, based on the above advice this opinion does not appear to be legally correct and accordingly Council staff now accept the legal advice provided and confirm that the proposed supermarket (Supa IGA) can be legally determined to be a general store.

It should be noted that this matter will be better addressed by the Draft TLEP 2000 which proposes to restrict neighbourhood shops (general stores) to a floor area of 300m². This will clearly delineate between corner stores and larger retail developments into the future.

The acknowledgement that this supermarket can now be legally defined as a general store does not change the merit assessment undertaken within the rest of this report and accordingly the application (despite being permissible with consent) is recommended for refusal having regard to other merit considerations.

SITE DIAGRAM:



Locality Plan

Lot 2 DP 881169
No. 54-68 Gollan Drive, Tweed Heads West

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Cadastral 19/04/2013
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1:40,000 @ A4 Portrait
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Map Projection: UTM
Horizontal Datum: Geocentric Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

GDA

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TWEED SHIRE COUNCIL

1400 751000 | 17 April 2013

DEVELOPMENT/ELEVATION PLANS:



<p>graphite architects 1273 Alfred St (Rt) North Sydney NSW 2060 Tel: 02 8011 0710 Fax: 02 8011 0720 www.graphitearchitects.com.au Non-Residential (Professional) (Low-Mid) 5002</p>		<p>PROJECT NAME PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS</p>		<p>SCALE 1:1948 DA 0.01 A</p>	
<p>EXISTING LIFE: EXISTING OFFICES EXISTING CLUB EXISTING PARKING LAYOUT EXISTING GREENED PARKING</p>		<p>PROPOSED DEVELOPMENT: PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS</p>		<p>DATE: 27/11/12 A</p>	
<p>ORIGINAL SHEET SIZE: A1 (420x594)</p>		<p>AMENDMENTS:</p>		<p>DATE: 27/11/12 A</p>	
<p>SCALE: 1:1948 DA 0.01 A</p>		<p>PROJECT NAME: PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS</p>		<p>SCALE: 1:1948 DA 0.01 A</p>	

ORIGINAL SHEET SIZE: A1:584 x 420

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DIMENSIONS

Check all dimensions on site before fabrication or install.

DATE: REV: COMMENTS: DRAWN: CHK: NS: MS:

AMENDMENTS:



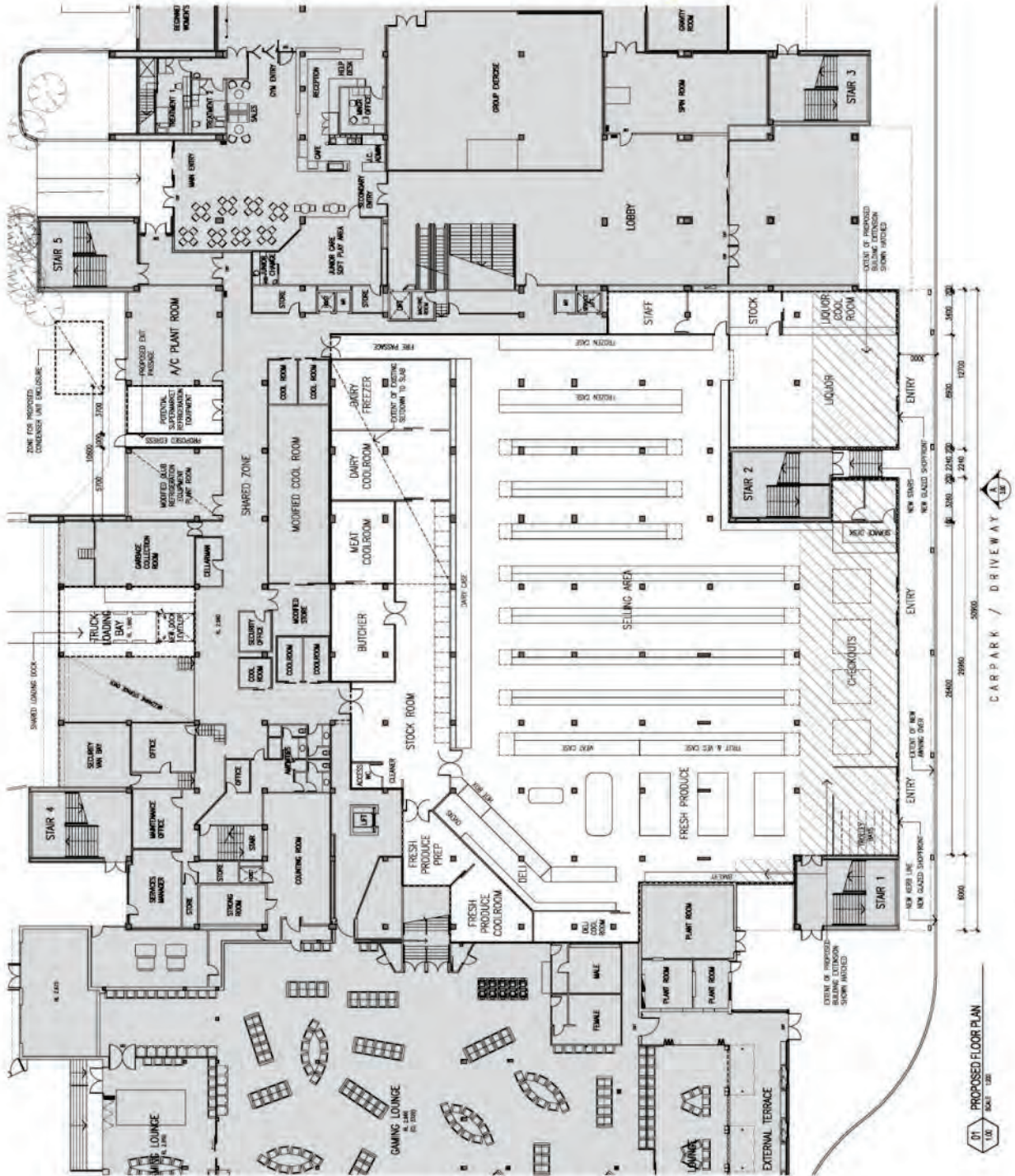
CLIENT: NORTH SYDNEY LEAGUES CLUB



PROJECT NAME: PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS

DRAWING NAME: PROPOSED FLOOR PLAN

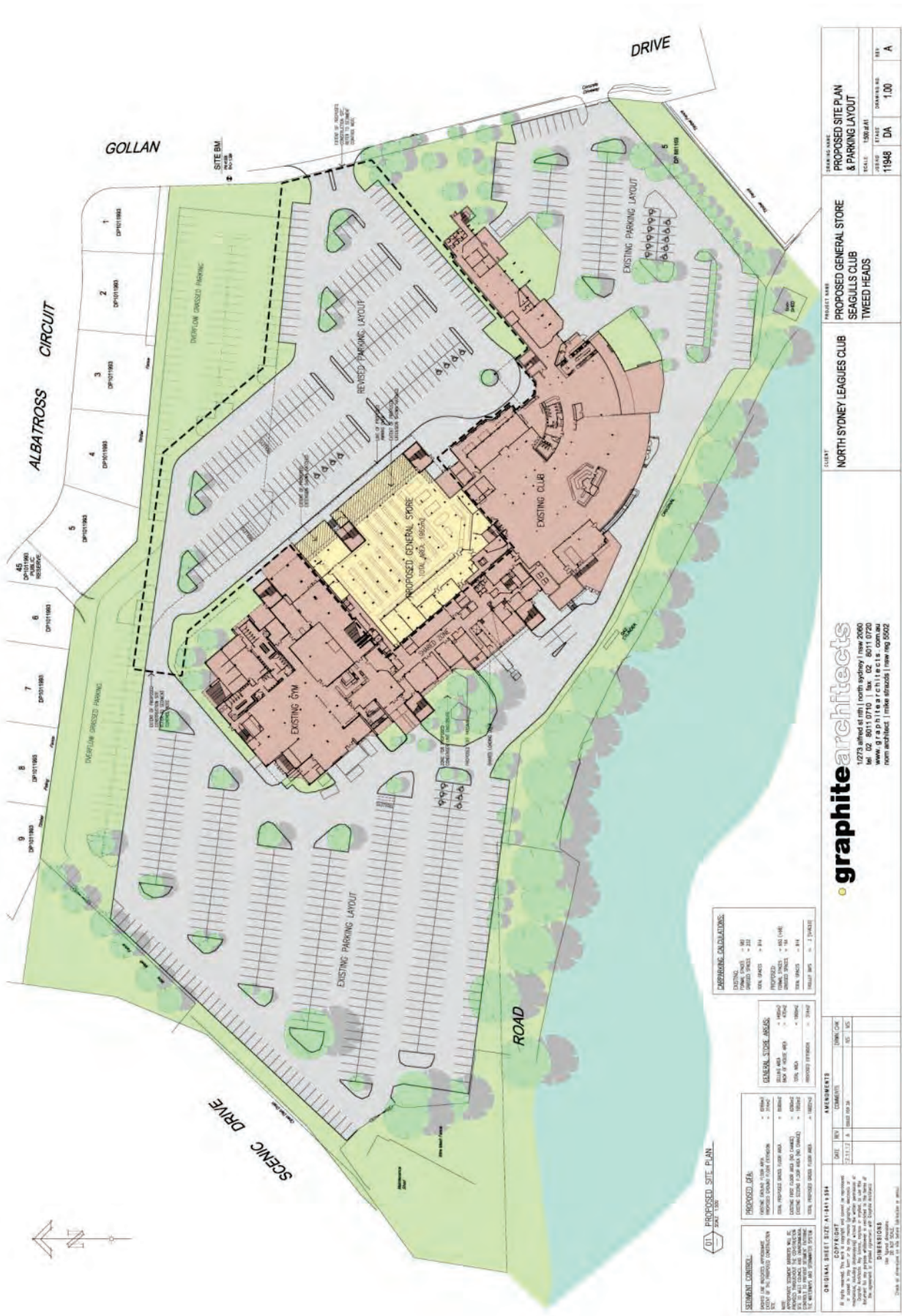
SCALE: 1:200 @ A2	STAGE: DA	DRAWING NO: 2.00	REV: A
JOB NO: 11948	DATE: DA		



01 PROPOSED FLOOR PLAN
SCALE: 1:200

CARPARK / DRIVEWAY





CARPARKING CALCULATIONS:

EXISTING:	PROPOSED:
EXISTING SPACES = 222	PROPOSED SPACES = 222
PROPOSED SPACES = 234	PROPOSED SPACES = 234
PROPOSED SPACES = 145 (145)	PROPOSED SPACES = 145 (145)
PROPOSED SPACES = 145 (145)	PROPOSED SPACES = 145 (145)
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PROPOSED SPACES = 145 (145)	PROPOSED SPACES = 145 (145)
PROPOSED SPACES = 145 (145)	PROPOSED SPACES = 145 (145)

GENERAL STORE AREAS:

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PROPOSED AREAS = 400	PROPOSED AREAS = 400
PROPOSED AREAS = 400	PROPOSED AREAS = 400
PROPOSED AREAS = 400	PROPOSED AREAS = 400
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PROPOSED SPA:

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PROPOSED SPA = 100	PROPOSED SPA = 100
PROPOSED SPA = 100	PROPOSED SPA = 100
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PROPOSED SPA = 100	PROPOSED SPA = 100
PROPOSED SPA = 100	PROPOSED SPA = 100

AMENDMENTS:

NO.	REV.	DATE	COMMENTS
1	1	27/11/12	AS SHOWN
2	1	28/02/13	AS SHOWN

PROPOSED SITE PLAN & PARKING LAYOUT

SCALE:	1:500 (A1)
DATE:	11/04/13
PROJECT NO.:	DA 1100
CLIENT:	A

PROJECT NAME: PROPOSED GENERAL STORE SEAGULLS CLUB TWEED HEADS

SHEET: NORTH SYDNEY LEAGUES CLUB

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ORIGINAL SHEET SIZE: A1 (841x594)

COPIES: 100

DATE: 27/11/12

BY: [Signature]

FOR: [Signature]

SCALE: 1:500

DATE: 28/02/13

BY: [Signature]

FOR: [Signature]

ORIGINAL SHEET SIZE: A2-594 x 420

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DIMENSIONS

Check all dimensions in this before fabrication or build

DATE	REV	COMMENTS	DRAWN	CHK
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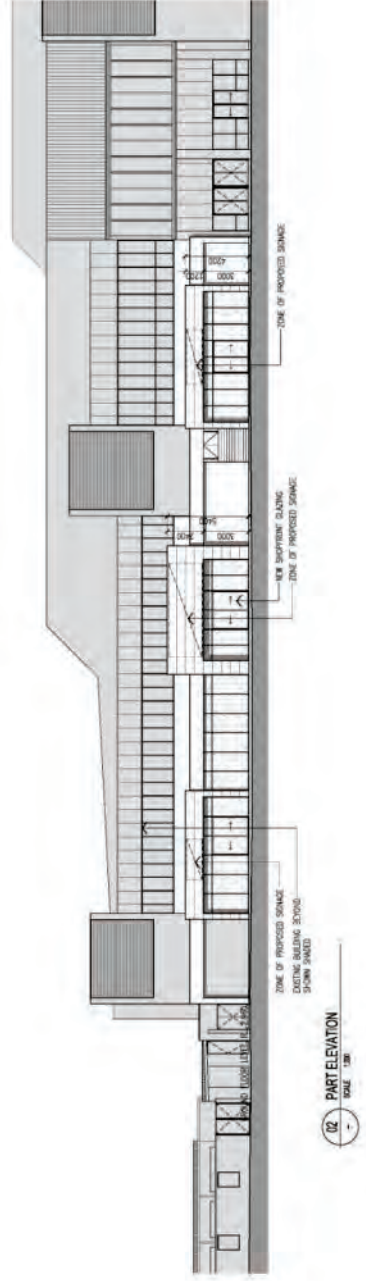
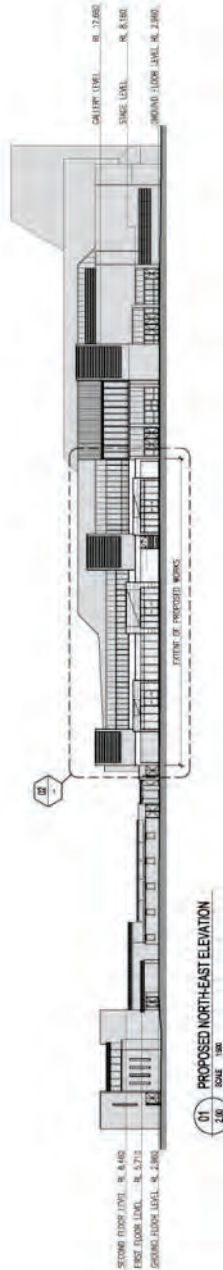
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PROJECT NAME
**PROPOSED GENERAL STORE
SEAGULLS CLUB
TWEED HEADS**

DRAWING NAME
PROPOSED ELEVATION

SCALE	AS SHOWN #/2
JOB NO	11948
STAGE	DA
DRAWING NO	3.00
REV	A



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 of the TLEP 2000 specifies that the aims of the plan are:

- (a) *to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which 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”, and

- (b) *to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:*

- (i) *that some or all development should be restricted to certain land within a zone,*
- (ii) *that specific development requirements should apply to certain land in a zone or to a certain type of development,*
- (iii) *that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and*

- (c) *to give effect to and provide reference to the following strategies and policies adopted by the Council:*

- *Tweed Heads 2000+ Strategy*
- *Pottsville Village Strategy, and*

- (d) *to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.*

The Tweed Shire 2000+ Strategic Plan (published in 1997) in conjunction with Tweed 4/24 Strategic Plan 2004-2024 (published in September 2004) in conjunction with Tweed Community Strategic Plan 2011/2021 (published in December 2010) in conjunction with the Tweed Urban and Employment Land Release Strategy (published in 2009) in conjunction with the Far North Coast Regional Strategy (published in 2006) all form the strategic framework and visionary direction for the Tweed Shire. They set overarching goals that will help manage the Tweed into the future.

The following principals from Tweed Shire 2000+ Strategic Plan should be considered:

8. *Consolidate higher order retailing and commercial centres at Tweed Heads as a sub regional centre and at the district centres of Murwillumbah and Kingscliff. Assess and approve future district and neighbourhood centres with a view to encouraging reduced car dependence and self contained "village" communities.*
103. *Integrated Development – Future development will be based on the integration of land use and transportation planning, i.e. urban settlement patterns which promote neighbourhood self containment; provision for alternative access ways for walking/cycling; provision for public transport and mixed used developments to reduce private car dependence.*
104. *Council will employ contemporary urban design principals to maximise the desirability of town and district centres for public use. Consideration will be given to social interaction, recreation, amenity, culture, delivery of support services and the transaction of commerce.*

The following principals from Tweed 4/24 Strategic Plan 2004-2024 should be considered:

- Pg 12. *Finalising retail and commercial development frameworks to support existing centres, guide investment in new facilities, and implement the recommendations of the Tweed Heads Task Force.*
- Pg 12. *Identify suitable areas of industrial and commercial land to meet current and projection needs, and promote its timely release to the market.*
- Pg 21. *Finalise the retail development strategy.*

The following principals from Tweed Community Strategic Plan 2011-2021 should be considered:

- 1.5.2 *Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development*

The Tweed Urban and Employment Lands Release Strategy 2009 puts forward an urban centres hierarchy that gives direction to the existing and future size, role and function of the urban areas of Tweed Shire.

The Far North Coast Regional Strategy promotes a clear hierarchy of commercial centres. New commercial development outside of the major centres, are to be *"located within the boundaries of towns and villages, utilising existing commercial centres where possible, and integrated with the Initial planning of new release areas"*.

Whilst these documents do not specifically relate to the current scenario in which an existing recreational facility wishes to expand their operations to incorporate a supermarket they can be used to understand the broad parameters in which Tweed Shire Council assesses the appropriateness of development.

The Tweed's retail hierarchy has historically been based on higher order retailing in the main townships of Tweed, Murwillumbah and Kingscliff with additional neighbourhood shopping available in other villages to provide for the local shopping needs of its residents. This philosophy has been reinforced with Council's zoning maps which have facilitated commercial activity in nominated business zones in close proximity to residential development.

This is now reinforced in Council's 7 Point Retail Strategy which has the following objectives:

- 1. The character of existing towns and villages and the retail facilities that have to be protected.*
- 2. Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*
- 3. Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*
- 4. Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*
- 5. Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.*
- 6. Council does not support the establishment of another district retail shopping centre.*
- 7. The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

In the Tweed Heads West area there are three nominated business zones to provide services to the residential development in this area:

- 1. The corner of Gull Place and Scenic Drive two land parcels (Lot 200 in DP 29194 and Lot 4 in DP 700873) comprising a total land area of 3744m². This site is presently occupied by Panorama Plaza Shopping Centre which is a small local shopping area currently comprising of a small supermarket (including post office), bakery, butcher, hairdresser, takeaway food shop, bottle shop, a restaurant (Thai), and two vacant tenancies. This 3(b) General Business zone is located 280m north of the subject site (as the crow flies).*

2. The southern side of Kennedy Drive (Numbers 212 – 226 Kennedy Drive which include 6 lots as follows: Lot 100 in DP 1128372, Lot A in DP 407658, Lot 4 in DP 203865, Lot 3 in DP 203865, Lot 2 in DP 203865 and Lot 1 in DP 203865) comprising a total land area of 6817.21m². This site is presently occupied by 5 residential houses and one commercial allotment which is used as a fish and chip shop, and a recently approved chemist and doctors surgery. This 3(b) General Business zone is located 1.2km north east of the subject site (as the crow flies) across Cobaki Bridge.
3. The western side of Wollemi Place (west of the service road to the Pacific Highway) which comprises Lot 10 in DP 1084319. This site has recently been rezoned to 3(c) Commerce and Trade for a new Boyds Bay Business Park consisting of 51500m². This site is located 1.8km north east of the subject site.

These are shown diagrammatically below as blue business zones and are labelled 1, 2 and 3 according to the above text.



As detailed above the subject site has been used for recreational purposes since the mid 1960's and accordingly the zoning of the site has followed the historical land use pattern. This site has never been considered for commercial activities as the whole planning framework for Tweed Shire Council has been to consolidate higher order retailing and commercial centres at Tweed Heads. The registered club is more akin to recreational purposes as reflected by the site's zoning.

The Development Application states at Page 11 of the Statement of Environmental Effects that:

“These increasing losses and shrinking revenue base means that the operation of the Seagulls Club is not financially viable. In the absence of an increase in revenue and a return to profitability it is unlikely that the club will continue to operate in the short term. The club has been examining a range of options and the leasing of a portion of the site for an alternative but complimentary use to the existing club was considered most appropriate.”

This statement raises significant concerns for Council in understanding the core function of the site and the relationship and scale that the proposed supermarket will have in comparison to the Seagulls Club itself.

Whilst the proposed supermarket may compliment the sites use as a registered club in an economic sense it does not mean that the proposed use is ancillary in nature. The proposed IGA is a separate land use that needs to be considered having regard to Section 79C of the Environmental Planning and Assessment Act 1979. This report details this assessment and concludes that the proposed supermarket is contrary to the zone objectives and Clause 8(1)(a) of the TLEP 2000 which requires development to be consistent with the primary objective of the zone which in this instance is:

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

The applicant has argued that the IGA will operate as a secondary offering to the Seagulls Club, with the intention to extract synergies between the club, restaurant, fitness centre, child minding and supermarket.

In addition to this information the applicant has recently submitted their own legal advice from C W McEwen SC dated 2 May 2013. The advice states:

“Will the proposed development be consistent with the primary objective of the 6(b) zone?”

Clause 8(1)(a) prevents the grant of development consent unless the consent authority is satisfied that the development is consistent with the primary objective of the zone within which it is located.

I am of the opinion for the reasons which follow that, having regard to the proper context of the clause, construed as part of the planning instrument as a whole, the relevant state of satisfaction can properly be reached.

In the 6(b) zone the primary objective is to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes. It is of particular importance to note that the secondary objective is to allow for other development that is compatible with the primary function of the zone. That other development must include the land uses which are specifically stated to be permissible with consent, including general stores, childcare centres, markets, tourist facilities, clubs, motels and refreshment rooms which are not generally for recreational purposes. The zoning table when read with the primary and secondary objectives makes it plain that such permissible land uses, although different in nature, are assumed to be compatible with the primary function which is the use of land for recreational purposes.

*Returning to the primary objective, one must focus on the word 'primarily'. In context, 6(b) land is not required to be used solely for recreational purposes. 'Primarily' is an ordinary English word which should bear its ordinary English meaning of 'chiefly' or 'principally': see *Modog v Baulkham Hills Shire Council* (2000) 109 LGERA 443 at [12]; *Retirement by Design v Warringah Council* (2007) 153 LGERA 372 [97].*

Thus, in order to correctly approach the task set by c18, it must be recognised that the 6(b) zone intends to allow for development which, of itself, is not for recreational purposes but which will be compatible with the primary function of the zone. That primary function is described in the primary objective.

Clause 8(1)(a) refers to development that is consistent with the primary objective of the zone. Again, that word bears its ordinary meaning and has been considered in a number of decisions of the Court.

I would hold that it has its ordinary and natural meaning (eg as in the Macquarie Dictionary: 1. Agreeing or accordant; compatible; not self-opposed or self-contradictory; 2. Consistently adhering to the same principles, course, etc.): Dem Gillespies v Warringah Council (2002) 124 LGERA 147.

The word compatible is accepted to mean 'capable of existing together in harmony'. It follows, in my opinion that c18(1)(a) is to be approached by asking whether or not the use of part of the subject land for a general store will conflict with or be incompatible with the land being otherwise used primarily for recreational purposes. Put another way, will the proposed use of general store prevent the land being mainly or principally used for recreational purposes? In my opinion, it will not do so for the following reasons.

First, the primary objective must refer to all land within the Tweed Local Government area which is zoned 6(b) and not just the subject site. So understood, it is highly unlikely that a permissible non-recreational purpose on part of the subject land could be inconsistent with the primary objective. Second, even if limited to the subject land, as previously noted, the proposed supermarket will occupy only part of the ground floor of the three storey club and a minor proportion of the floor space of the Club (1,965 m² out of 16,822 m² [11.68 %]). The carparking needs of the supermarket will occupy a similar percentage of the available formal parking (69 spaces out of 582 [12%]). Numerically therefore the Club, and the land upon which it is located, will continue to be used primarily for recreational purposes because the existing uses of the Club will continue upon 90% of its area and those uses are properly described as recreational purposes. I refer to (and agree with) the comments of Mr Byrnes (Think Planners Pty Limited) addressed to the Council in a letter of 22 January 2013:

It is apparent from a review of the floor space and car parking demand that the General Store comprises a minor component of the site's use, which is predominantly that of a recreational facility. The Club provides a wide range of recreational activities on site. Members and their guests visit the Club for numerous reasons such as enjoying meal, dining/bistro facilities; socialise in the lounges; participate in recreational bingo, keno or gaming; meet with people at the bar; attend the gymnasium; allow their children to enjoy the recreation facilities; and play indoor sports at the futsal courts. The broadening of the site's uses to include a general store does not diminish the primary purpose and predominant business of Seagulls Club being that of a recreational facility. The general store forms a complementary activity on site.

Finally, the subject land has a total area of almost 5 ha (49,400 m²). The use of 2,000m² for a general store and 12% of the formal parking is, on any reasonable view, a minor use of the land and as such will in no way preclude it from being used primarily for recreational purposes. Accordingly the Council should be able to readily be satisfied that the proposed development is consistent with the primary objective of the 6(b) zone. There is no conflict. Indeed, it will be an harmonious relationship where the primary use will remain as one for recreational purposes thereby satisfying the requirements of c18(1)(a).

With respect Council staff do not concur with the legal advice as outlined above.

The nature, scale and relationship between the existing Seagulls Club operations and the proposed supermarket is not accurately reflected in the above advice.

The existing Seagulls Club does not utilise the entire available gross floor area and accordingly based on current operations the proposed shopping centre will actually reflect 26% of the site's existing businesses not 12% as detailed above. This is based on the applicant's traffic report which provides a breakdown of usable floor area as follows:

- Lounge Area 2222m²
- Gaming Area 1572m²
- Futsal 1174m²
- Gym 1045m²
- Children Play Centre (Tabatinga) 490m²
- Proposed Supermarket 1965m²

This total's 7479m² of current utilised gross floor area. The proposed supermarket will utilise 1965m² which represents 26% of the total gross floor area.

In regards to the parking allocation the proposed supermarket will actually reflect 24% of the site's car parking demand not 12% as detailed by the above legal advice. This is based on the applicant's traffic report which provides a breakdown of parking demand as follows:

- Club = 140 car spaces
- Gym = 19 car spaces
- Futsal = 38 car spaces
- IGA store = 69 car spaces
- Children's adventure = 17 spaces

Total Parking = 283 parking spaces. The proposed supermarket will generate 24% of the total parking demand.

Once the scale of the proposed supermarket is established (26% of the current utilised floor area) Council needs to consider the relationship between the existing Seagulls Club and the proposed supermarket.

It is acknowledged that the Club may grow back into its total gross floor area however it must also be acknowledged that the Club due to unforeseen circumstances may have to cease operating.

The supermarket will be its own separate commercial entity. Customers would not need to be a member of the club to utilise the facility and customers would not need to enter the club to get to the supermarket. If the Seagulls Club happened to cease operations the proposed supermarket if approved could continue operating despite the club ceasing to operate.

Accordingly the applicant's argument that the proposed development satisfies the primary objective of the zone is not concurred with. If the proposed supermarket was in some way ancillary to the club then the recreational zone objective could be better satisfied however the application is very clear that the proposed supermarket is a separate use not an ancillary use.

Therefore the supermarket itself needs to be assessed against Clause 8(1)(a) of the TLEP 2000 and the corresponding zone objectives. When this exercise is undertaken the proposed development cannot be justified in this zone.

The proposed application is inconsistent with the orderly development of land as required by the Environmental Planning and Assessment Act, and the strategic planning instruments applicable to the site which inform the TLEP 2000 and its zoning hierarchy.

For these reasons the proposed development is not considered to be consistent with the aims of the TLEP 2000.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the TLEP requires consideration of the four principals of ecologically sustainable development. The proposed development seeks alterations and additions to an existing building. The additional footprint is limited in size and occurs in a highly modified urban area. The principals of ecologically sustainable development have not been comprised by this application.

Clause 8 - Consent Considerations

Clause 8 of the TLEP 2000 sets out the consent considerations when determining a development application.

- 8(1) *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 those other aims and objectives of this plan 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.*

To address Clause 8(1) (a) the primary objectives of the 6(b) zone states:

Primary objective

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

The proposed supermarket comprises a floor area of 1965m². Whether the facility is legally defined as a general store, a shop or a commercial premises it does not change the nature of the proposed use. The nature of the use is a supermarket and this use needs to be assessed against the primary objective for the 6(b) Open Space Recreation Zone.

According to the applicants traffic report the building's existing and proposed land uses area broken down as follows:

- Lounge Area 2222m²;
- Gaming Area 1572m²;
- Futsal Area 1174m²;
- Gym 1045m²;
- Children Facility – 60 children 490m² (Tabatinga Play Centre);
- Existing General Store – 68m² (kiosks throughout the club); and
- Proposed IGA – 1965m²

Please note that there is additional floor area unaccounted for in these figures such as back of house areas and currently unutilised floor area. The club hopes to grow back into the total floor area and at some stage in the future may expand.

The lounge and gaming areas are obviously directly related to the registered clubs use (recreational purposes).

The Futsal and Gym areas are also recreational activities by nature.

The children's facility is a separate commercial business that could be considered ancillary to the other recreational facilities on the site.

The existing kiosks throughout the club are minor in nature and could also be considered ancillary in nature.

Based on the above figures the proposed supermarket development at 1965m² represents approximately 26% of the buildings current land uses. The proposed supermarket would be a standalone retail business with no direct correlation to the existing recreational purposes on site. It is a large retail use that the applicant's say will increase revenue to enable the club to continue operating.

Whilst the registered club will continue to operate the proposed supermarket in itself is not deemed ancillary to the club but rather it is a standalone retail use which must be assessed against the primary objective of the zone.

The proposed IGA is not considered to satisfy Clause 8(1) of the TLEP 2000 as Council staff are of the view that the primary objective of the 6(b) zone has not been met as the supermarket use is retail in nature and not recreational.

To address Clause 8(1)(b) this report considers those other aims and objectives of this plan that are relevant to the development.

To address Clause 8(1)(c) this report in its entirety represents a cumulative impact report. This planning report weighs up the development as a whole and makes a recommendation based on consideration of the implications on or from the perspective of site suitability, permissibility, social impacts, retail hierarchy, traffic, amenity, character, economic ramifications, and the general public interest. However specifically in regard to cumulative impact Council has considered various cases before Justice Pain and Justice Pearson (which specifically involved Tweed Shire Council) in which it was provided that cumulative impact incorporates the consideration of what effect this development could have on existing developments and the approval of further similar developments and how these developments might impact on a locality, community and catchment.

The potential impacts as a result of the development need to be considered assuming a duplication of a similar development on other adjoining properties to consider the overall cumulative impact.

The Tweed Local Government area has many registered clubs operating on land zoned 6(b) Recreation. Were all of these registered clubs to be developed for supermarket purposes in the manner proposed by this application there would be an unacceptable impact on the retail hierarchy of planning in the Tweed. Such an action would have major economic impacts on the existing businesses operating in commercial zones and potentially render those existing businesses unviable and undermine the objectives of the zone and the LEP.

Furthermore, the Tweed Heads West area is predominantly residential with existing business zones located along the major roads. This establishes a character of development with local shops easily identifiable for the travelling public. Were the subject application to be approved it would be contrary to the existing established pattern of development in the area.

Therefore it is concluded that the development would have an unacceptable cumulative impact on the community, locality and catchment and accordingly cumulative impact forms one of the recommended reasons for refusal.

Clause 11 - Zone Objectives

The subject site is zoned 6(b) Recreation and has the following zone objectives which must be considered:

Primary objective:

“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.”

Secondary objective:

“to allow for other development that is compatible with the primary function of the zone.”

As discussed above Clause 8(1)(a) mandates that that consent may only be granted if the development is consistent with the primary objective of the zone within which it is located.

The proposed supermarket in itself cannot be considered to be recreational in any way. It is a retail use that must be considered as a standalone development. Therefore the primary objective of the zone has not been satisfied. This forms one of the reasons for the recommendation for refusal of this application.

The secondary objective of the zone offers some additional flexibility for the 6(b) Recreational zone. To understand the level of flexibility that is afforded to the 6(b) Recreational zone you need to review the permissible uses in the zone table of the Tweed LEP 2000 which are as follows:

Item 1 allowed without consent:

- beach maintenance

Item 2 allowed only with consent:

- | | |
|--|---|
| • agriculture | • bed and breakfast |
| • boating facilities | • bushfire hazard reduction |
| • camping grounds | • car parks |
| • child care centres | • clubs |
| • community buildings | • cruise craft docks |
| • dwelling houses if for caretakers | • earthworks |
| • emergency service facilities | • environmental facilities |
| • forestry | • general stores |
| • hotels | • marinas |
| • markets | • motels |
| • outdoor eating areas | • places of assembly |
| • public buildings | • public utility undertakings |
| • recreation areas | • recreation establishments |
| • recreation facilities | • refreshment rooms |
| • roads | • tourist accommodation |
| • tourist facilities | • urban stormwater water quality management |
| • utility installations (other than gas holders or generating works) | • works for drainage & landfill |

Item 3 allowed only with consent & must satisfy the provisions of clause 8 (2):

- caravan parks
- helipads
- retail plant nurseries
- educational establishments
- heliports
- tourist resorts

Item 4 prohibited:

- any buildings, works, places or land uses not included in Item 1, 2 or 3

This list demonstrates the additional permissible uses that can be considered subject to compliance with all other aims, objectives and clauses of the LEP.

As detailed in the above report a general stores is listed as “allowed only with consent” in the subject zone. However, the interpretation of this definition needs to be reviewed having regard to other possible definitions within the LEP.

Council staff are of the opinion that the proposed development is better defined as a shop in accordance with the TLEP 2000 and accordingly a shop is prohibited by Item 4 above. However, whether the proposed supermarket is legally defined as a general store or a shop the development has been assessed against all relevant considerations. Having regard to all these considerations the proposed development is considered inappropriate for the subject site and therefore the legal definition of the development has not been the only contributing factor in the recommendation for refusal.

Clause 15 - Essential Services

Clause 15 of the TLEP requires Council to ensure adequacy of services prior to determining any application. All essential services are currently provided to the subject site.

Clause 16 - Height of Building

Clause 16 of the TLEP requires Council to ensure that the height and scale of development is appropriate to the site and the surrounding built and natural environment. The subject land has a maximum height limitation of 3 storeys.

The existing club is a large building with multiple mezzanine levels. The proposed development represents a change of use within the existing building. The change of uses will incorporate additional floor area at ground level only and thus satisfy the statutory three storey height limit.

Clause 17 - Social Impact Assessment

The TLEP specifies that:

“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the local government area of Tweed, the consent authority may grant consent to the proposed development only if it has considered a socio-economic impact statement in respect of the proposed development.”

Tweed DCP Section A13 – Socio-Economic Impact Assessment specifies that a Socio Economic Impact Assessment is required where a place of employment employees more than 25 people, where a club exceeds a gross floor area of 1000m², or where a retail development exceeds a gross floor area of 1500m². Given the proposed supermarket has a gross floor area of 1965m² the proposed development requires a Socio Economic Impact Assessment.

Below is a duplication of the applicant's summary of their findings in regards to socio economic impact:

"Summary

At one point Seagulls was a heavily patronised club (driven by poker machine patrons from Queensland) with a national rugby league side. The club has contracted significantly since that time due to changes in legislation in Queensland reducing visitor numbers and the loss of the football team. The land abutting the club to the north was once the playing fields and stadium but has subsequently been redeveloped for residential.

The site is now occupied by a modest club operation with entertainment, gym and indoor sporting facilities. Redevelopment of the club to include a 1,965 Sq M supermarket (SupalGA) is required for the club to remain viable.

Catchment

The proposed SupalGA on the Seagulls site will be the first full line supermarket (albeit a small footprint full line supermarket) on the western side of the Pacific Motorway in this part of Tweed Shire. As such it will trade to a wide area that utilises the Kennedy Drive, Gollan Drive, Scenic Drive corridor. The Primary Trade Area is defined as those parts of Tweed Heads West to the west of the Kennedy Drive Bridge, Bilambil Heights and surrounding areas. Tweed Heads West between the motorway and the Kennedy Drive Bridge will form the secondary trade area (STA). The subject site will be the closest and most convenient supermarket for these residents. The new supermarket will enable local residents to more easily conduct regular and bulk weekly supermarket shopping.

Demand

The population of the total catchment at capacity is projected to be over 17,400 people and these residents will generate in the order of \$78 million of supermarket related expenditure. This expenditure will be distributed amongst full line supermarkets, convenience supermarkets, convenience (general) stores and a range of specialty shops that carry the same product lines as supermarkets (e.g. fruit and veg, butcher, deli).

The future 17,400 residents of the trade areas will generate demand for over 10,000 Sq M of supermarket (and related) floorspace. This is sufficient to support two full line supermarkets in the order of 3,000 Sq M each and 4,000 Sq M of smaller supermarkets and specialty retailers distributed through a number of centres.

The implication of the population capacity assessment of the Bilambil Heights urban expansion area is that the primary and secondary trade area as currently defined will have the future capacity to support two full line supermarkets: the first to be located at the Seagulls site and the other to be located on a yet to be identified site central to the future Bilambil Heights urban expansion area. It is noted that at 1,965 Sq M the subject site can be considered a small format full line supermarket.

Tweed Retail Strategy

The intent of the Retail Strategy principles is to develop supermarket anchored shopping centres throughout the Shire to service the needs of the population while directing development of higher order and specialised retail to the district centres of Tweed Heads and Tweed Heads South. Where possible, these supermarkets should be integrated with existing centres and towns. The development of a SupalGA at the Seagulls Club fulfils these requirements (without impact the role and function of the district centres at Tweed Heads and Tweed Heads South) and provides for the needs of the local community.

Impact

Any impacts on existing centres in Tweed Shire are expected to be alleviated over time as the population of the total catchment (Bilambil Heights urban expansion area) continues to grow. As such, the proposed supermarket development on the subject site is not expected to affect the viability of any current centres with all centres maintaining the opportunity to operate at viable levels.

The proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.

Conclusion

The establishment of a small format full line supermarket at the Seagulls Club is considered to be a good fit with the needs of the community. The development (the supermarket in conjunction with the revitalised club) will offer a range of economic and social benefits to the community. A supermarket will also benefit the community through a greater level of convenience and an increase in choice, local jobs, competition (resulting in lower prices) and product offer.

The proposed supermarket will fulfil an established need of the local community. Local residents are currently required to travel four or five km to the larger centres at Tweed Heads and South Tweed Heads in order to undertake what is it regular shopping activity. The redevelopment of the club will also provide 20 equivalent full-time (EFT) construction jobs with the ongoing workforce being approximately 80 EFTs. The operational workforce will consist of a large number of part-time and casual staff which will provide employment opportunities for people entering or re-entering the workforce.

The redevelopment of the Seagulls Club will also allow this facility to remain viable and continue to service the community and entertainment needs of local and regional residents.

The above summary and the full socio economic assessment are not considered to represent all issues that may arise from the proposed development. Council staff have the following issues with the report:

- The terminology throughout the report indicates a distribution of expenditure through full line supermarkets, convenience supermarkets, convenience (general) stores and a range of speciality shops. The report then acknowledges that the land use is a proposed small format full line supermarket (SupalGA). The report does not assess the proposed use as a convenience (general) store.
- The report acknowledges that “*planning for a number of supermarket anchored centres to service the designated growth areas will help ensure the local retail network will successfully cater for residents to retain needs in the short, medium and long term*”. The current planning (zoning) regime has already undertaken this exercise and it ensures all residential areas have sufficient land zoned for commercial use to enable residents to have the convenience of localised shopping. The proposed development will undermine this planning process by authorising a retail development within a recreational zone.
- The report states that the retail catchment area will incorporate Bilambil Heights expansion area. The Bilambil Heights expansion area will be planned to accommodate its own local commercial areas and will not need to travel to the subject site for local shopping needs.

- The report indicates that the nearby Panorama Plaza caters primarily to passing traffic and impulse shopping and offers a different experience to the larger full line supermarkets and thus is complimentary to all centres currently located in the local area. These comments are contrary to the objections which have been received that clearly state that if the development is approved it would jeopardise the viability of Panorama Plaza. Furthermore the report contradicts the above statement by stating that *“the proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.”* The impact of the proposed development on the local commercially zoned sites is a major concern to Council.
- The report reiterates the applicants position that the proposed development will allow the Seagulls Club to remain viable. The primary objective of the 6(b) Recreational Zone is *“to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes”*. A retail use at the subject site is not consistent with the primary objective of the zone and should not be used to justify the viability of the registered club.
- The report indicates that the proposed development complies with Council's Retail Strategy (7 Point Strategy) which are:
 1. *The character of existing towns and villages and the retail facilities that have to be protected.*
 2. *Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*
 3. *Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*
 4. *Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*
 5. *Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.*
 6. *Council does not support the establishment of another district retail shopping centre.*
 7. *The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

This statement is not concurred with as:

- The proposed development will change the character of the local area as presently commercially zoned areas are located on major roads (not residential streets as proposed by this application) and furthermore the proposed development will have a greater than 7% reduction on trade for local centres;
 - The report indicates that existing centres do not have the capacity to expand to cater for a full line supermarket. These comments are not concurred with. The existing commercially zoned sites are underutilised and could be re-developed to expand operations; and
 - The development does not integrate with existing centres or towns and actually impacts and jeopardises the existing commercial areas.
- The report states that the development will not have any unsustainable impacts on existing centres yet then goes on to state that “*The store at Panorama Plaza that is most directly comparable/competitive with the proposed supermarket is the existing convenience store. The store will need to rely on convenience (exposure, parking and accessibility) and marketable points of difference (as a Lotto agent) in order to avoid a significant impact on turnover.*” This statement indicates that the proposed development could have an unsustainable impact on an existing centre.
 - The report appears to identify that the local population could accommodate additional retail opportunities. However it fails to demonstrate that the subject site is the most suitable and appropriate for this use given the sites zoning.
 - The report does not discuss what if any impact there may be from having a supermarket located within a registered club that incorporates gaming machines.

Council communicated the concerns in regards to this application with the applicant and accordingly the applicant has provided an addendum letter addressing socio economic impacts. Both of these documents are attached to this report to enable the elected Councillors to read them in full in conjunction with this report.

Upon review of the addendum letter Council maintains the view that the proposed development is not suited to the subject site given the sites recreational zoning and the potential impact on adjoining commercial zones.

For the above reasons the proposed development is considered unacceptable having regard to Clause 17 of the TLEP 2000 as the application has not adequately demonstrated that the development won't have an unacceptable social or economic impact on the locality.

Clause 22 – Development near designated roads

This clause applies to land that has frontage to a Designated Road. The subject site has frontage to Scenic Drive but vehicular access is via a residential area off Gollan Drive. The proposed development has been referred to the Development Traffic Advisory Group in accordance with Schedule 3 of the SEPP (Infrastructure) 2007 and accordingly the applicant was requested to provide additional information to satisfy Council's Traffic Engineer of the sites capacity to cater for the proposed development. Based on the additional information submitted Council has no objection to the proposal from a traffic or parking perspective. The development as proposed is capable of satisfying Clause 22 subject to a statutory assessment of any signage that may be visible from Scenic Drive.

Clause 25 – Development in 7(a) Environmental Protection and on adjacent land

The subject site adjoins land zoned 7(a) off Birds Bay Drive, however the proposed development will have no impact on this environmental zone. Onsite drainage can be suitably accommodated if the application were to be approved.

Clause 31 – Development adjoining waterbodies

The subject site adjoins Terranora Broadwater, however the proposed development will have no impact on this waterway. Onsite drainage can be suitably accommodated if the application were to be approved.

Clause 34 Flooding

The site is partially mapped as being affected by flooding. The proposed change of use within an existing building is suitable for the subject site subject to normal conditions of consent ensuring commercial operations have adequate storage for times during flood events.

Clause 35 - Acid Sulfate Soils

The subject site is located on land identified as Class 2 on the Acid Sulfate Soil Planning Maps. The applicants Statement of Environmental Effects (Pg 29) states:

"the proposal does not involve any significant works below the ground surface or works that are likely to lower the water table. It is noted that the construction method will comprise screw piles for support and only minor trenching under the existing building for the purpose of laying hydraulic services. Therefore the detailed provisions of this clause are not relevant to the proposal. An acid sulphate soils management plan for minor works can be found at Attachment 2 of this SEE".

The level of site disturbance is considered to be very minor. Further the degree of historical disturbance and oxidation of existing site materials is also relevant. Council has no objection to the application of the Acid Sulfate Soil Management Plan for minor works and if Council wanted to approve this application appropriate conditions could be drafted.

Clause 39A Bushfire Protection

The subject site is partially mapped within a bushfire buffer. The proposed change of use would be considered an acceptable land use despite this constraint subject to suitable conditions of consent.

Clause 47 – Advertising Signs

There is no signage proposed as part of this development application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 46 & 47 Objectives and Principles for Commercial and Industrial Development

This Clause states:

46 Objectives

The objective of this plan in relation to commercial and industrial development is to encourage an adequate supply of zoned land located where there are planned growth areas foreshadowed and where essential services can be provided with minimal environmental damage.

47 Plan preparation and development control—principles for commercial and industrial development

- (1) *Before preparing a draft local environmental plan relating to commercial or industrial development, the council should take into consideration the following principles:*
 - (a) *strong multi-functional town centres should be maintained to focus the drawing power of individual businesses and maintain the integrity of the main business area by only zoning land for further commercial or retail development where that development adjoins or is adjacent to the existing town centre,*
 - (b) *provisions contained in local environmental plans relating to retail, commercial, business and industrial zones should be flexible, especially to enable the development of light service industry near the central business district,*
 - (c) *there should be an adequate supply of zoned industrial land located where it is physically capable of development for industrial purposes, is not environmentally fragile and can be serviced at a reasonable cost.*
 - (d) *(Repealed)*
- (2) *Before granting consent for industrial development, the council must take into consideration the principle that land used for such development should be located where it can be adequately serviced by the transport system and is accessible from urban areas."*

The above clause reinforces the importance of land zoning in determining appropriate sites for commercial and industrial development.

The subject site is not zoned commercial but is relying on the proposed supermarket being defined as a "general store" to be capable of consideration under the 6(b) Recreation zoning.

The proposed development is considered contrary to the objectives of this SEPP in that the site as a Recreational site is not suitable for the proposed retail development.

SEPP No 71 – Coastal Protection

The subject site is located within the coastal zone and is subject to the normal matters for consideration under Clause 8 of this Policy. The proposed development will primarily be located within the footprint of an existing development. The application satisfies the provisions of Clause 8.

SEPP (Infrastructure) 2007

Section 104 of SEPP (Infrastructure) 2007 requires Council to consider all traffic generating developments and consult with the local Development Traffic Advisory Group to determine the accessibility of the site concerned, the efficiency of movement and any potential traffic safety, road congestion or parking implications of the development.

A traffic generating development is considered an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.

In this regard Schedule 3 of the SEPP lists different land uses and specifies a size or capacity deemed to be traffic generating. The proposed development was referred to Council's Development Traffic Advisory Group as any shop over 500m² requires consideration by this Group.

The Group requested additional information in regards to the adequacy of the storage bay on Scenic Drive for vehicles turning right into Gollan Drive.

This additional information was received by the applicant and endorsed by Council's Traffic Engineer as being suitable for the proposed development. Accordingly Council has no objection to the proposed development from a traffic or parking perspective.

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

The Draft LEP 2012 as exhibited proposes to re-zone the subject site from 6(b) Recreation to RE2 Private Recreation.

The RE2 zone has the following objectives and permissible uses

Zone RE2 Private Recreation

1 Objectives of zone

To enable land to be used for private open space or recreational purposes.

To provide a range of recreational settings and activities and compatible land uses.

To protect and enhance the natural environment for recreational purposes.

2 Permitted without consent

Environmental facilities; Environmental protection works

3 Permitted with consent

Boat launching ramps; Boat sheds; Camping grounds; Car parks; Caravan parks; Charter and tourism boating facilities; Child care centres; Community facilities; Eco-tourist facilities; Emergency services facility; Entertainment facilities; Flood mitigation works; Food and drink premises; Forestry; Function centres; Helipad; Heliport; Industrial training facilities; Information and education facilities; Jetties; Kiosks; Marinas; Markets; Mooring; Mooring pens; Places of public worship; Public administration building; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Respite day care centres; Roads; Sewerage systems; Signage; Tourist and Visitor accommodation; Waste or resource management facilities; Water recreation structures; Water supply systems; Wharf or boating facilities

4 Prohibited

Any development not specified in item 2 or 3

Based on the new definitions within the Draft LEP 2012 the proposed development would be best defined as a commercial premises, which has a more

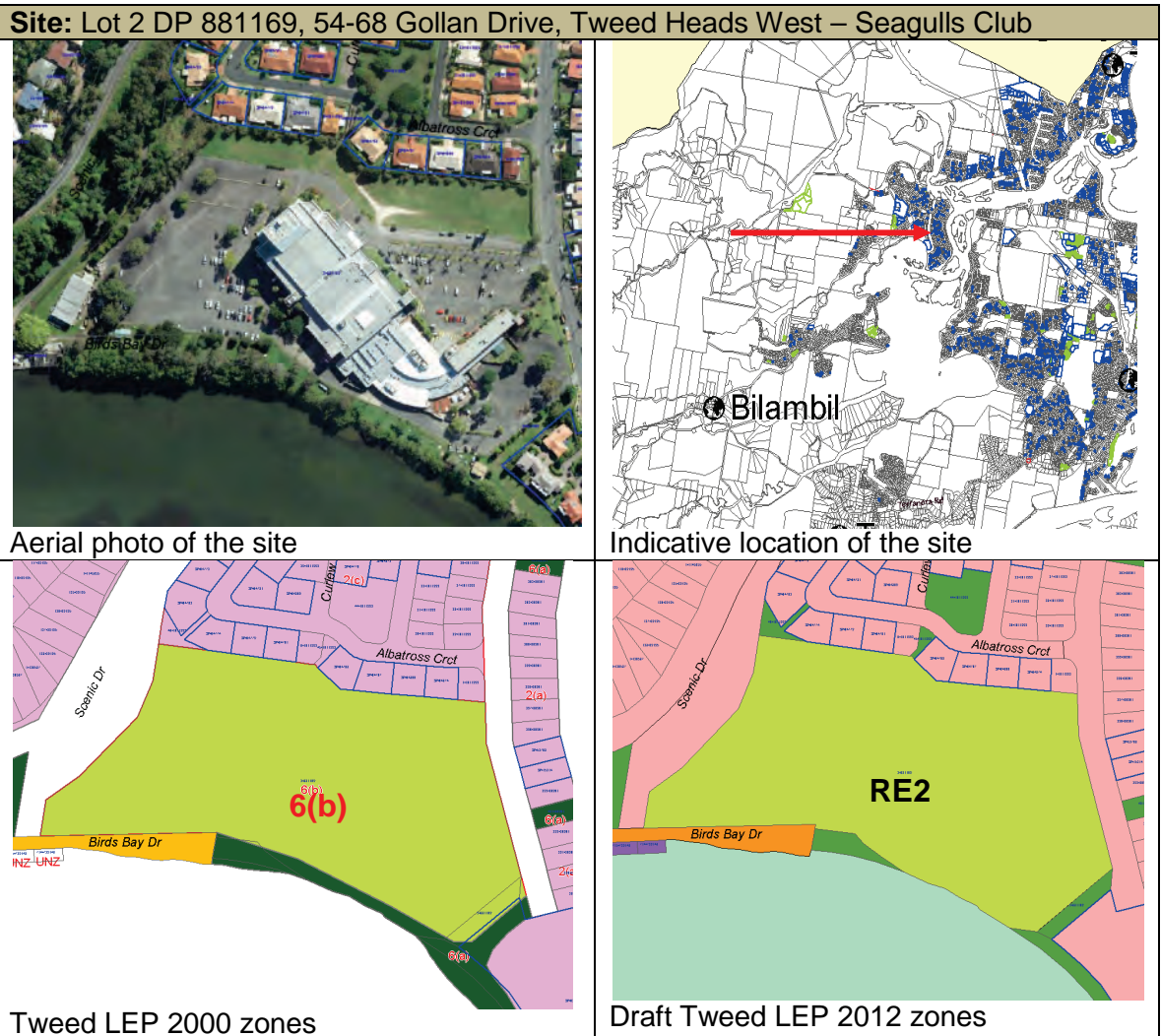
specific definition of retail premises which has a more specific definition of a shop which has a more specific definition of a neighbourhood shop (limited to 300m²).

All of which are **prohibited** in the RE2 Private Recreation zone.

The applicant for this Development Application has objected to the Draft Tweed LEP 2012 and has requested that Council consider an inclusion to Schedule 1 – Additional Permitted Uses of the Draft LEP 2012 identifying development for the purposes of a “shop” as permitted with consent.

A copy of the applicant’s submission is attached to this report.

This request has not been supported by Council staff with the following justification:



Applicant: Think Planners on behalf of Seagulls Club	
Summary of the request:	Request to amend the draft TLEP 2012 to permit development of a shop on the site.
Details of the proposal:	The submission seeks amendments to the draft LEP to facilitate development of a shop (IGA supermarket) through Clause 2.5 Additional Permitted Uses for Particular Land and overlay map Additional Permitted Uses Map.
Analysis:	
Site description	<p>The site is located at Terranora Broadwater and comprises club with associated car park. The overall area of the lot is 4.94 ha.</p> <p>The site is located within low density residential suburb of Tweed Heads West.</p>
Consistency of proposal with State and Council strategic planning initiatives	<p>When analysing consistency of the proposal with relevant local, regional and state planning initiatives, consideration needs to be given to the methodology of converting the current LEP 2000 into the Standard Instrument LEP:</p> <ul style="list-style-type: none"> • The subject site is currently zoned 6(b) Recreation zone. This zone permits general stores with development consent if consistent with the primary objective of this zone, which is to <i>designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.</i> • The Standard Instrument LEP provides the RE2 Private Recreation zone as an equivalent to the 6(b) zone of the current LEP. Under the new zone, the land use table has been tailored to achieve consistency with the objectives of the zone. In result, the only types of 'retail' land uses permissible with consent under the RE2 zone are kiosks, markets and food & drink premises. • The standard zones provided under the Standard Instrument Template have limited flexibility in terms of integrating recreational and commercial uses under a recreational zone. A more suitable approach would be to look at options to rezone the entire site to a commercial zone. This however should be carried out via a planning proposal process, separate to the Standards Instrument Template implementation process. <ol style="list-style-type: none"> 1. <u>Preliminary</u> analysis of the consistency of the proposal with Section 117 Directions. <ul style="list-style-type: none"> • The proposal is generally consistent with Directions. 2. <u>Preliminary</u> analysis of the consistency of the proposal with the Far North Coast Regional Strategy. <ul style="list-style-type: none"> • The proposal is generally inconsistent with the Strategy. 3. <u>Preliminary</u> analysis of the consistency of the proposal with State Environmental Planning Policies (SEPPs). <ul style="list-style-type: none"> • The proposal is generally consistent with the SEPPs.

Land use and land use pattern in the surrounding area:	The surrounding area combines low and medium density residential allotments located along Terranora Broadwater.
Proximity to nearest centre:	The site is located approximately 2.5 km from Tweed Heads South business and commercial precinct.
Access:	Access is available from Gollan Drive.
Planning Consideration:	Given recent advice received from Department of Planning & Infrastructure that use of Clause 2.5 should be limited to exceptional circumstances only, and inconsistency of a full line supermarket development with objectives of the RE2 zone, the proposal is not supported.
Recommendation:	The proposal is not supported. Amendments to the LEP in order to facilitate the development of a supermarket should be subject to a separate planning proposal process.

Draft TLEP 2012 is being reported to Council for consideration of the submissions at the Council Meeting of 16 May 2013. This Draft LEP 2012 is considered to be imminent and accordingly should be given significant weight.

It should be noted that Draft LEP 2012 has a savings provision relating to development applications which state:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced."

Based on this Clause the subject Development Application must consider Draft LEP 2012 only ever as a Draft as the subject Development Application was lodged prior to Draft LEP 2012 being adopted. However, as a Draft the document can still be given considerable weight in terms of establishing the future desired character of an area.

It is clear that the objectives of the RE2 zone reinforce the site as a recreational area, not a retail or commercial area, as the only types of 'retail' land uses permissible with consent under the RE2 zone are kiosks, markets and food and drink premises.

Commercial premises, retail premises, shops and even neighbourhood shops (limited to 300m²) are all prohibited.

Therefore, the lack of ability for the subject development application to even be considered under Draft LEP 2012 (as the use is prohibited) forms another reason why this application has been recommended for refusal.

Given the site's difficulty in maintaining viability as a registered club the applicants may be best pursuing a re-zoning process to establish the best utilisation of the site.

For the reasons outlined in this report and having regard to Draft LEP 2012 the proposed development for a supermarket at the subject location is not supported.

(a) (iii) Development Control Plan (DCP)Tweed Development Control PlanA2-Site Access and Parking Code

The subject site has a long and detailed history in regards to changes to the internal configuration of the existing building. In more recent times there have been a series of Complying Development Certificates issued that authorised the internal reshuffling of spaces and uses.

The last Development Application that reviewed the onsite parking requirements in regards to the existing building was DA05/1452 which approved substantial changes to the internal configuration of the building. Below is an extract from the car parking assessment for DA05/1452 to understand the history of parking on the site:

“Below is an extract from the applicant’s submission detailing the car-parking breakdown:

TABLE 3 – DCP NO.2 CAR PARKING REQUIREMENTS DA05/1432						
CLUB ELEMENT	PARKING UNIT	DCP NO.2 RATE		DCP NO.2 REQUIREMENT		Total (Incl reduction on ESD principle)
		CUSTOMER	STAFF	CUSTOMER	STAFF	
Lounge Area	1,063m ²	1 space /7m ²	-	151.86	-	121.49
Indoor Dining Area	1,241m ²	1 space /7m ²	-	177.29	-	141.83
Outdoor Dining Area	932m ²	1 space /7m ²	-	133.14	-	106.51
Gaming Area	1,097m ²	1 space /7m ²	-	156.71	-	125.37
Auditorium Area	1,299m ²	1 space /15m ²	-	86.60	-	69.28
Function Area	576m ²	1 space /7m ²	-	82.29	-	65.83
Shops	424m ²	3.5 spaces /100m ²	-	14.84	-	11.87
Gymnasium	850m ²	6 space /100m ²	-	51.00	-	40.80
Staff	130 (max)	-	0.3 spaces / staff	-	39	31.20
TOTALS				853.73	39	714.18

The current club relies upon 582 formed car spaces and a grassed overflow parking area, which can accommodate approximately 232 spaces. The applicant’s submission indicates that this club after refurbishment would require a total of 714 spaces.

On this basis it is likely that at least 132 spaces within the grassed areas would need to be constructed with weather proof seal and formal spaces marked out.

The applicant originally provided that:

"It is certainly the experience of the senior management of the Club, that the existing bitumen car parking spaces easily account for the normal day to day operation of the Club. We have been informed that it is only on a limited number of occasions per year such as a high profile concert that the grass "over flow" car parking area is utilised. This observation is confirmed in the letter attached.

Considering the benefits that the "green space" adjacent to the northern boundary provides to the area in terms of visual amenity, reduced surface water runoff and improvements to stormwater quality, it is considered unnecessary to alter the existing car parking arrangements.

The existing car parking arrangements also comply with Council's requirements in terms of driveway access, gradients, circulation aisle and end aisle extension dimensions.

However, once car parking was raised with the applicant as an issue the following response was received:

"The possibility that Seagulls will have to extend the existing sealed car park, as a condition of consent has been discussed with our client.

Our client agrees in principle to addressing the car park issue despite the recommendations set out in the Statement of Environmental Effects submission December 2005 on the following proviso:

We refer to the attached marked up plan 11176 DA 1.00A and wish to express the following:

It is acknowledged that Seagulls has 582 formed spaces with 232 as "overflow parking" on grassed area - a total of 814 car spaces.

With the current number of 582 formed car spaces, the Club would need to seal an extra 133 spaces. The plan indicates a proposed 135 car spaces that is proposed to be sealed at the completion of the building program.

The required number of 715 formed car spaces would be exceeded by 2 – 717 total. The Club would therefore maintain a grassed area as indicated"

It is therefore recommended that the following conditions of consent be imposed:

- 1. Prior to issue of a Construction Certificate for Stage 3 the applicant is to submit to Tweed Shire Council's General Manager or his delegate a car parking layout plan that details a weather proof seal and formal spaces marked out within the existing overflow grass parking area. This sealed area is to comprise 135 spaces to achieve total on site parking requirements as specified within DCP No. 2.*
- 2. Prior to use of Stage 3 part of the overflow grassed parking area is to be constructed in accordance with the approved Plan required by this consent."*

The above conditions were adopted as part of DA05/1432.

In summary the last development consent issued for the site required 715 onsite parking spaces for the registered club. In addition the site had approval to operate markets each Sunday morning on the bitumen parking area however this was deemed to be at a time when club patronage was low and accordingly consent was granted for this use. These markets no longer operate.

Since the approval of DA05/1452 the club has been scaling back operations to try to ensure lower operating costs. The applicants hope to grow back into the club and accordingly if the club did return to full scale operation the original level of parking may still be necessary.

In regards to the subject application for the IGA (DA12/0527) the applicant has submitted a new traffic report that only analyses the floor space currently being used by the club and how the proposed IGA can be accommodated by the existing parking on site (it does not review the entire gross floor area as many parts of the club are currently not being utilised, it appears that approximately 8200m² is unaccounted for in these figures as the total gross floor area of the building is 16508m²).

The applicant's current traffic report can be summarised as follows:

TABLE 5: FUTURE PARKING REQUIREMENT AS PER DCP

Club Element	Parking Unit	Customer Rate	Staff Rate	Customer	Staff	Total Parking
Lounge Area	2222m ²	1/7m ²	-	317	-	317
Gaming Area	1572m ²	1/ 7m ²	-	224	-	224
Futsal	1174m ²	6/100m ²	-	70	-	70
Gym	1045m ²	6/100m ²	-	63	-	63
Children facility	60 children	1/ 6 children	-	10	-	10
Existing General Store	68	3.5/100m ²	-	2	-	2
IGA General Store	1,965	3.5/100m ²	-	69	-	69
Total Staff	90	-	0.3 per staff	-	27	27
TOTALS				755	27	782

The applicant then applies a 20% ecologically sustainable development discount as per the DCP and reduces this total of 782 down to 626 on site parking spaces.

The applicant has then undertaken a parking demand assessment drawing upon actual patronage of the club and the Roads and Maritime Services "Guide to Traffic Generating Developments" and estimates that the club as proposed will only generate the need for the following parking demands:

- Club=140 car spaces
- Gym= 19 car spaces
- Futsal= 38 car spaces
- IGA store= 69 car spaces
- Children's adventure= 17 spaces

TOTAL Parking = 283 parking spaces

This is a significant reduction in the required car parking compared to the Tweed DCP Section A2 figures above (however this is partly due to the traffic report only assessing current uses not total gross floor area and partially due to the revised methodology. Despite these anomalies Council's Traffic and Transport Engineer has stated that:

"The submitted traffic analysis accompanying the application is thorough and addresses parking and traffic generation.

Parking on site is considered adequate for the proposed development.

The additional traffic implications on the intersection of Gollan Dr and Scenic Dr has been assessed and indicates that a level of service A will be available and queue lengths turning right into Gollan Dr will not impact on through traffic.

The modelling indicates that actual traffic volumes on Kennedy Drive at Cobaki Bridge will decrease as a result of the development as trips towards Tweed Heads are reduced due to residents from the west (Bilambil) accessing the IGA.

Accordingly, based on the submitted traffic report I have no concerns with the proposed development."

It should be noted that at present there are 582 approved formalised car parking spaces located at the front and rear of the site. In addition the site has access to a further 232 informal parking spaces which could be used in an overflow manner.

The proposed plans show a reconfigured parking arrangement that demonstrates 650 formalised car parking spaces with capacity for a further 164 informal parking spaces which could be used in an overflow manner.

Therefore if Council wanted to approve the subject application there is considered to be sufficient parking on site to cater for the proposed development.

Furthermore the existing road network and servicing provisions are also considered adequate to cater for the proposed development.

A3-Development of Flood Liable Land

As detailed under Clause 34 of the TLEP 2000 in the above report the site is affected by flooding but not to the extent to warrant refusal of this application on flooding grounds. If the application were to be approved appropriate conditions of consent could be recommended to mitigate flooding implications.

A4-Advertising Signs Code

No signage is proposed as part of this application.

A11-Public Notification of Development Proposals

The proposed development was notified to adjoining neighbours and publically exhibited in the Tweed Link. Following the exhibition period Council received 16 letters of objection raising issues with the possible impact on the existing Panorama Plaza commercial development, traffic impacts, the incompatibility with the existing zoning, permissibility, the effect of Draft LEP 2012 and the site suitability given the location of the existing club. These submissions are considered in detail later in this report.

A13-Socio-Economic Impact Assessment

As detailed under Clause 17 of the TLEP 2000 in the above report the proposed development is not considered suitable having regard to the potential social and economic impacts as a result of the proposed development.

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

Clause 92(a) Government Coastal Policy

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

Clause 92(b) Applications for demolition

The proposed development could be appropriately conditioned to satisfy the demolition requirements.

Clause 93 Fire Safety Considerations

The proposed development could be appropriately conditioned to satisfy the fire safety requirements.

Clause 94 Buildings to be upgraded

The proposed development could be appropriately conditioned to satisfy the building code of Australia provisions.

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

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

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

The proposed development will have no negative impact on the adjoining waterway and satisfies the objectives of this Policy.

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

As detailed in the above report the proposed development would have an unacceptable economic impact on the existing commercial zones in the locality. The applicant's own report indicates that there will be at least a 7% reduction in revenue for these businesses with Panorama Plaza experiencing a possibly higher level of impact. It is unreasonable to have such an impact on these businesses when the proposed land use does not comply with the primary zone objective in which the site is located.

(c) Suitability of the site for the development

This report details that from a physical perspective the site is capable of adequately accommodating this business, however from a planning perspective the proposed development should not be approved on the subject site due to the site's recreational zoning.

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

Development Traffic Advisory Group and Roads and Maritime Services

The proposed development was referred to both the Development Traffic Advisory Group and the Roads and Maritime Services in regards to traffic and parking considerations. Upon receipt of additional information the proposed development was deemed to be acceptable on traffic and parking grounds.

Public Notification

The proposed development was publically exhibited between 28 November 2012 and 12 December 2012. Following the exhibition period Council received a total of 16 submissions objecting to the proposed development. The following table summarises these objections:

Objection 1	<i>I like the services I have now and don't see any need for any more. I feel the shops we have now will suffer if this application is approved.</i>
Objection 2	<p><i>The applicants community needs and benefits analysis is misleading as the community has not received any benefit of income produced but rather we lost iconic Cunningham Oval.</i></p> <p><i>An IGA shop on gaming club premises brings with it added negative repercussions.</i></p> <p><i>The existing services in the area already offer the same services in a personalised and community driven manner.</i></p> <p><i>The store would bring negative social impacts from loitering and vandalism.</i></p> <p><i>The application is driven by North Sydney Leagues Club without consultation with the local community.</i></p> <p><i>The declining revenue of the club should not result in ad hoc planning.</i></p>
Objection 3	<p><i>A general store should not go into the Seagulls Club. It should go in Kennedy Drive.</i></p> <p><i>It will affect existing business which are trying to make a living.</i></p>
Objection 4	<p><i>The supermarket will duplicate services provided by Panorama Plaza which is 500m from Seagulls Club.</i></p> <p><i>The IGA will rely on the custom currently using Panorama Plaza</i></p> <p><i>Our businesses have been built over 20 years at considerable cost and the financial loss if the DA is approved will be substantial if the supermarket is established.</i></p> <p><i>The proposed supermarket has the financial support of the IGA conglomerate which we do not have.</i></p> <p><i>If this supermarket were approved Panorama Plaza would have to reduce staff.</i></p> <p><i>If approved business in Panorama Plaza would have to close as at present they operate on a small margin of profit</i></p>
Objection 5	<p><i>There are adequate existing services already.</i></p> <p><i>The Clubs have double standards as they were afraid of losing jobs when the poker machine laws changed and now they are happy for other businesses to lose staff to suit their needs.</i></p>
Objection 6	<p><i>It will impact on local businesses.</i></p> <p><i>People with a gambling or drinking problem will be more tempted to just drop into the pub "for a quick one" prior to doing their groceries. This may in turn lead to the grocery money being fed into the poker machines or spent on alcohol instead. Alcohol and gambling are the two biggest family destroyers and are in your face wherever you go. Lets not have it a temptation when doing the groceries too,</i></p> <p><i>You will end up with young employees serving the intoxicated patrons of Seagulls. Not an environment I would be allowing my child to be placed in.</i></p>

Objection 7	<i>The proposal is not viable as IGA can not compete with the major supermarkets on price and shop keepers do not need a dilution of their customer base and I as a local resident will not be using it preferring to shop at Woolworths at Tweed Centro.</i>
Objection 8	<i>The development is next door to Seagulls Shore a gated security complex . The end of Gollan Drive is not suitable for any more traffic coming in to the area as we already have cars from the club to contend with. The entrance to this end of Gollan Drive from Scenic Drive is unsafe both coming and going and is not big enough to take any more traffic.</i> <i>It would do so much harm to the Panorama Shopping Centre. It would probably shut them down.</i>
Objection 9	<i>See Objection 3 and Objection 4</i>
Objection 10	<i>The development would make the Panorama Plaza unviable.</i> <i>The nearby G&G Seafood closed recently. The nearby Fruit and Veg shop may also be closing. There are too many similar businesses. Panorama Plaza fulfils the needs of the local community.</i> <i>This application is disappointing. A supermarket off the main road is not the answer. It will not solve the clubs problems and has the potential to reap financial havoc on local traders not to mention damage Seagulls reputation as a great community player.</i>
Objection 11	<i>If this DA is approved it will financially strain every business in Panorama Plaza.</i> <i>The zoning is not appropriate.</i> <i>People with gambling problems would spend their money on poker machines before even going into the supermarket.</i> <i>Consider locals before interstate club who have no idea about the local community.</i>
Objection 12	<i>A licensed club with gaming is not the place to have a supermarket.</i> <i>Panorama Plaza would be ruined if the IGA goes ahead.</i> <i>The area is not zoned for commercial use.</i> <i>Seagulls need to look at other avenues to help the community not destroy it.</i>
Objection 13	<u><i>Permissibility and Appropriateness</i></u> <i>The Seagulls Club site is zoned 6(b) Recreation under the Tweed LEP 2000. General Stores' are permissible with consent within the zone, however 'Shops' are prohibited. While supermarkets are traditionally defined as Shops the applicant has used case law to argue that the supermarket can be defined as a General Store and is therefore permissible. The reliance upon case law to support the use, requires careful consideration on terms of merit and appropriateness. The primary objective of the 6(b) Recreation zone is:</i> <i>to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.</i> <i>The secondary objective of the zone is:</i> <i>to allow for other development that is compatible with the primary function of the zone.</i> <i>A supermarket is not a recreational use and the proposed supermarkets size and prominence will erode the presentation of the Club as the primary function on the site and will be at odds with the primary objective of designating land for recreational purposes.</i> <i>The proposed supermarket will encompass approximately a quarter of the Club's total floors pace at ground floor level and is located within the centre of the Club and within its main frontage. The supermarket is also positioned to benefit from</i>

the prime carparking area at the front of the site.

The proposed shared loading dock to the rear of the site will further impact upon the Clubs operations, requiring stock to be brought in through the Club's retained back of house office areas. This will result in the floorplate of the club being effectively divided in two, which will fragment the club operations and reduce the presence of the club across the site.

Equally a supermarket use is not considered to be a compatible or complementary or land use such as other small smaller scale uses such that relate to the site such as refreshments rooms/cafes, a merchandise store relating to the sporting teams of the Club or tourist accommodation. These types of uses would be used in conjunction with the Club, supporting its primary recreational purpose. The proposed supermarket however will attract users for the sole purpose of shopping and as such is not compatible with the primary function of the site.

Inconsistency with the Draft LEP 2010

it is also noteworthy that under the Draft Tweed LEP 2010 the proposal is prohibited. This provides a clear direction that a development of this nature is not a strategic direction held by Council for this site. Furthermore, a supermarket of the size and nature proposed, coupled with the proposed central location of the supermarket indicates a clear erosion of a use which the site currently supports, and is proposed to be preserved into the future by way of land use zoning and permissibility. The proposed supermarket does not support the site's primary purposes of supporting 'recreational purposes', nor providing a compatibly development which supports the primary function.

Accordingly it is not considered an appropriate form of development for the 6(b) Recreation zone.

Inconsistency with Draft Retail Strategy and Centres Policy - Creation of a New Centre

Following the preparation of a Draft Tweed Retail Strategy, Council resolved at its meeting of 16 November 2005 seven principles as a Retail Strategy for the Tweed Shire. The Draft Tweed Retail Strategy and these principles support the expansion of existing retail centres rather than the creation of new centres or out of centre retailing.

The Tweed Urban and Employment Lands Release Strategy 2009 puts forward an urban centres hierarchy that gives direction to the existing and future size, role and function of the urban areas of Tweed Shire.

The Far North Coast Regional Strategy promotes a clear hierarchy of commercial centres. New commercial development outside of the major centres, are to be "located within the boundaries of towns and villages, utilising existing commercial centres where possible, and integrated with the Initial planning of new release areas".

The provision of a full line supermarket on the Seagulls Club site would constitute the creation of a new small centre which cumulatively would impact the retail hierarchy of the Tweed Shire.

Similarly the NSW Draft Activities Centres Policy (May 2010) (the 'draft Centres Policy') seeks to locate new retail activity in existing centres, or planned new centres. While new centres will need to be formed, these should be considered on a strategic basis and would require a rezoning of the land. Further it requires a demonstration of existing undersupply prior to creating new out of centre retailing. Consideration of the draft Centres Policy and the existing supply of zoned land to support a supermarket have not been included in this DA.

Conclusions and Recommendations

The proposed development includes an excessive retail area in the form of a full line supermarket.

	<p><i>The proposal in its current form:</i></p> <ul style="list-style-type: none"> • <i>Despite potential classification as a General Store which is permissible, represents a full line circa 2,000m² supermarket, which is inappropriate and inconsistent with the intent of the 6(b) zoning objectives;</i> • <i>Demonstrates excessive retail development of a site zoned 'primarily for recreational purposes', creating a new centre;</i> • <i>By nature of the proposed uses, an approval would be tantamount to a rezoning of the site;</i> • <i>It will negatively impact upon established retail hierarchy of the Tweed Shire.</i> • <i>Has the potential to create a precedent of Council to depart from its retail hierarchy which would create an undesirable level of uncertainty for other established retail centres in the locality such.</i> • <i>Demonstrates non-compliance with strategic planning documents including Council's Draft Tweed Retail the NSW State Governments draft Centres Policy.</i>
<p>Objection 14</p>	<p><i>Small businesses will be profoundly impacted and staff loses would occur.</i></p>
<p>Objection 15</p>	<p><u><i>1. Economic Impacts on Our Clients and Existing Business's in the local area</i></u></p> <p><i>Tweed Heads West, and more specifically the area surrounding the Seagulls Club, is primarily a low to medium density residential area. This is demonstrated visually by the land use zoning pursuant to the Tweed Local Environmental Plan 2000 (TLEP2000) which is shown in Figure 1 (residential zonings shown in pink).</i></p> <p><i>The potential approval and location of a 'full line supermarket' in a primarily residential area would show a complete disregard for basic retail planning strategy. The creation of satellite development projects, such as the proposed Supa IGA at Seagulls, would serve only to tear business away from pre-existing and established retail centres within the Tweed. Residents of Tweed Heads West would make fewer trips into the existing Tweed Heads CBD and therefore result in a decrease in the level of economic activity taking place in established retail areas.</i></p> <p><i>The proposed Supa IGA is not to be located in a retail space where other local businesses can operate and benefit from the positive externalities that a 'full line supermarket' provides. Small scale butchers, bakers and fresh produce stalls would have a large portion of their regular consumer base taken away as all of their services would now be provided within the Supa IGA, monopolising the Tweed Heads West area.</i></p> <p><i>An example of the economic impact that this development would have on small business can be demonstrated when looking at the most immediate business centre dealing in the similar trade of goods and services; Panorama Plaza. Panorama Plaza is located only 160m away from the Seagulls site and would be the business hub most affected should this development proceed. The centre provides the following services;</i></p> <ul style="list-style-type: none"> • <i>General store;</i> • <i>Bottleshop;</i> • <i>Butcher;</i> • <i>Baker;</i> • <i>Takeaway;</i> • <i>Chicken Carvery;</i> • <i>Chemist; and</i> • <i>Hairdresser.</i> <p><i>It is noted that the Supa IGA proposal includes a general store, bottleshop, fresh produce, butcher and bakery. Being a 'full line supermarket', the proposal will also draw on elements of a chicken carvery and chemist by selling roast chickens from the deli as well as cosmetics and various healthcare items.</i></p>

The similarities between the existing Panorama Plaza and the proposed Supa IGA are numerous and only serve to demonstrate that the subject application would have negative economic impacts upon small business owners within the Panorama Plaza. A 'one-stop-shop' development such as the Seagulls Supa IGA will effectively dismiss the need for consumers to visit the Panorama Plaza.



Figure 1 – Land Use Zoning – Source; Tweed SC GIS Mapping

The Socio-economic Impact Assessment submitted as part of the proposal states;

“Impact

Any impacts on existing centres in Tweed Shire are expected to be alleviated over time as the population of the total catchment (Bilambil Heights urban expansion area) continues to grow. As such, the proposed supermarket development on the subject site is not expected to affect the viability of any current centres with all centres maintaining the opportunity to operate at viable levels.

The proposed supermarket also has the potential to impact on the trading performance of local retail centres. While most local retail centres currently serving the trade area will likely see a reduction in trade in the vicinity of 4% to 7%, the impact on the nearby Panorama Plaza could potentially be greater. Individual stores located in this centre will need to rely on convenience (exposure, parking and accessibility), a response to new competition (price, product range etc) and marketable points of difference in order to avoid a significant impact on turnover.”

The proponent states within their application that there will be an impact on local business, as well as a significant impact upon the Panorama Plaza complex. The development application makes reference to the poor economic standing of the Seagulls Club being the reasoning behind the proposal. It is considered that a lack of profitability does not justify a poorly sited retail facility. The approval of such a facility would only serve to shift the problem onto local businesses such as that of our client. It is considered that no impact upon the viability of surrounding businesses is acceptable.

2. Social Impacts associated with the Proposed Development

Another significant aspect that should be taken into consideration regarding this

	<p>application is the relationship between a 'full line supermarket' and a registered licensed club.</p> <p>A supermarket is a family based development which provides residents of the Tweed with day to day living items. A registered club offers recreational services, the service of alcohol and gambling facilities. These uses are not seen as compatible when located in such close proximity.</p> <p>Examples of situations that have the potential to arise are as follows;</p> <ul style="list-style-type: none"> • Supermarket staff being harassed by intoxicated patrons leaving the registered club; • Customers and families feeling threatened by intoxicated patrons leaving the registered club; • Night workers starting and finishing work during peak patron times (5-6pm after work and 11-12pm club closing); and • General stores and supermarkets are typical meeting points for children and adolescents. The location of such a development within a busy car park and in close proximity to alcohol and gambling services is not considered to be a desirable arrangement. Car accidents, anti-social behaviour, sexual harassment, assault, loitering and vandalism may result. <p>Council is directed to look further into the compatibility of uses for this development application to assess potential issues that may arise in the future.</p> <p><u>3. Transport Impacts associated with the Proposed Development</u></p> <p>The proposed location of the supermarket within the Seagulls Club does not allow for a steady dispersment of patrons on the site. With a registered club already considered a high demand development, the addition of a 'full line supermarket' will only increase the total amount of patrons wishing to enter and exit the site. As there is no spread of businesses, all patrons that enter the site will be making their way to a single point. This has the potential to create heavy on-site traffic congestion in close proximity to the Seagulls Club. It is envisaged that this would be similar to the level of congestion experienced within the car parks of regional shopping centres and is at odds with a suburban club located in a residential area.</p> <p><u>4. Compliance with 'The Right Place for Business and Services' – NSW Planning Policy; Integrating Land Use and Transport - NSW Department of Urban Affairs and Planning, Roads and Maritime Services and Transport NSW</u></p> <p>The above policy outlines why businesses and services which generate transport demand should be in locations that offer a choice of transport. It is noted that dispersed locations cannot be accommodated without significant community and environmental cost. This is clearly the case with this proposal.</p> <p>The objectives of the 'Right Place for Business' document are as follows:</p> <p>Note - (DNC = Does not comply)</p>										
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;">Assessment Criteria</th> <th style="text-align: left;">Compliance</th> </tr> </thead> <tbody> <tr> <td data-bbox="529 1765 1123 1841">To locate trip generating development which provides important services in places that:</td> <td data-bbox="1123 1765 1519 1841"></td> </tr> <tr> <td data-bbox="529 1841 1123 1917">Help reduce reliance on cars and moderate the demand for car travel.</td> <td data-bbox="1123 1841 1519 1917" style="text-align: center;"><u>DNC</u></td> </tr> <tr> <td data-bbox="529 1917 1123 1966">Encourage multi-purpose trips.</td> <td data-bbox="1123 1917 1519 1966" style="text-align: center;"><u>DNC</u></td> </tr> <tr> <td data-bbox="529 1966 1123 2042">Encourage people to travel on public transport, walk or cycle, and</td> <td data-bbox="1123 1966 1519 2042" style="text-align: center;"><u>DNC</u></td> </tr> </tbody> </table>	Assessment Criteria	Compliance	To locate trip generating development which provides important services in places that:		Help reduce reliance on cars and moderate the demand for car travel.	<u>DNC</u>	Encourage multi-purpose trips.	<u>DNC</u>	Encourage people to travel on public transport, walk or cycle, and	<u>DNC</u>
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Encourage multi-purpose trips.	<u>DNC</u>										
Encourage people to travel on public transport, walk or cycle, and	<u>DNC</u>										

	<i>Provide people with equitable and efficient access.</i>	-
	<i>Minimise dispersed trip generating development that can only be accessed by cars.</i>	-
	<i>Ensure that a network of viable, mixed use centres closely aligned with the public transport system accommodates and creates opportunities for business growth and service delivery.</i>	<u>DNC</u>
	<i>Protect and maximise community investment in centres, and in transport infrastructure and facilities.</i>	-
	<i>Encourage continuing private and public investment in centres, and ensure that they are well designed, managed and maintained.</i>	-
	<i>Foster growth, competition, innovation and investment confidence in centres, especially in retail and entertainment sectors, through consistent and responsive decision making.</i> <u>DNC</u>	<u>DNC</u>
	<p><i>The policy then goes on to discuss the 'net community benefit' and 'net community cost' assessment criteria. It is stated that 'Development on isolated, stand alone sites is generally not acceptable. However alternatives may be acceptable when a net community benefit can <u>clearly</u> be established'. The Socio-economic Impact Assessment that was submitted as part of the proposal does not address this policy and does not establish a <u>clear</u> net community benefit. Using the assessment criteria discussed within the Policy, the following is an assessment of the proposal to deduce the level of community benefit.</i></p> <p><i>In determining the net community benefit or cost, the following assessment criteria must be considered:</i></p>	
	Assessment Criteria	Comment
	<i>the degree to which the policy and its objectives can be satisfied</i>	<i>It is noted in the above objectives assessment that the proposed development does not comply with all aims of the policy. Particular reference is made to the non-compliance with reducing reliance on personal transport and multi-purpose trips.</i>
	<i>the proposed level of accessibility to the catchment of the development by public transport, walking and cycling</i>	<i>Does not make provision. Community cost.</i>
		<i>The location of the proposed 'full line supermarket' within the Seagulls Club, West Tweed Heads is considered to be isolated and not easily accessible to pedestrians and cyclist. Being a satellite development, far removed from the established high streets and CBD of Tweed</i>

		<i>Heads, it is considered that the proposal does not satisfy this clause.</i>	
	<i>the likely effect on trip patterns, travel demand and car use</i>	<i>Increased traffic generation to a site that is located away from high level Council infrastructure. Pressure put on roads and services. Adjacent hills and isolation from CBD does not allow for high level of pedestrian or cycle activity. Therefore heavy reliance on personal transport or bus lines.</i>	<i>Generates heavy traffic pressure. Community cost.</i>
	<i>the likely impact on the economic performance and viability of existing centres (including the confidence of future investment in centres and the likely effects of any oversupply in commercial or office space on centres — see section B of the explanatory notes)</i>	<i>The nearby Panorama Plaza, which provides all of the goods and services proposed within the Supa IGA, will be the most effected should this development proceed. Other small businesses existing within the Tweed CBD will lose consumer base due to the 'one-stop-shop' nature of a supermarket. Will impact upon any potential for commercial investment in West Tweed Heads as club/supermarket development has the potential to monopolise consumer choice and will shut small business investment out of the market.</i>	<i>Harmful impact upon small business. On-stop-shop nature of development would destroy Panorama Plaza. Community cost.</i>
	<i>the amount of use of public infrastructure and facilities in centres, and the direct and indirect cost of the proposal to the public sector</i>	<i>Roads and service infrastructure within the West Tweed Heads area has not been designed for substantial retail development. Increased pressure due to traffic congestion will generate the need for upgrades.</i>	<i>Roadways and service infrastructure not equipped. Community cost.</i>
	<i>the practicality of alternative locations which may better achieve the outcomes the policy is seeking</i>	<i>Supermarket development is much more suited to be located within the Tweed Heads CBD and high street areas. Established retail and commercial precincts allow for multipurpose trips, integration with existing street character and will</i>	<i>More suitable locations for this type of development. Neutral benefit/cost.</i>

		<i>not detract from small business centres such as the Panorama Plaza.</i>	
	<i>the ability of the proposal to adapt its format or design to more likely secure a site within or adjoining a centre or in a better location.</i>	<i>Supermarkets are designed to form a retail anchor within a complex where other small businesses prosper from positive externalities. The proposal seeks to create a satellite centre where only the club and supermarket gain whilst surrounding small business loses. A more appropriate location for this type of development would be within the Tweed Heads CBD or high street area.</i>	<i>Satellite supermarket development not suited to the West Tweed Heads area. Neutral benefit/cost.</i>
	<p><i>As determined within the above assessment, the proposed Supa IGA development would generate a significant net community cost. Where an isolated, stand alone site cannot clearly establish the generation of a net community benefit it is deemed not acceptable.</i></p> <p><i>5. Compliance with the Tweed Retail Strategy 2005</i></p> <p><i>Tweed Shire Council resolved to adopt the Tweed Retail Strategy on the 16th November 2005. This strategy outlines the aims and objectives for substantial retail development within the Tweed into the future. A number of key objectives are raised within this document which can be applied to the subject proposal to assess its suitability and compliance with Tweed Shire Council's strategy. The Socio-economic Impact Assessment that was submitted as part of the proposal has been written to promote compliance with the Retail Strategy. However, the following information should also be taken into account when undertaking assessment as the proposal does not comply in this regard.</i></p>		
	Assessment Criteria	Comment	Compliance
	<i>1. The character of existing towns and villages and the retail facilities that have to be protected.</i>	<i>West Tweed Heads is a primarily residential area with limited retail and commercial development. The retail development that does exist is small in scale and suited to servicing the surrounding population. As previously mentioned, the Panorama Plaza will be the business centre most impacted by the potential approval of this application. A large scale, 'one-stop-shop' style development will monopolise the area and give consumers no reason to continue their patronage to the Panorama Plaza and</i>	<i>Small businesses will suffer from the potential approval of the application. Competition will be destroyed and a monopoly will form over the West Tweed Heads area. <u>DNC.</u></i>

		<p><i>other small businesses.</i></p> <p><i>The proposed Supa IGA will be a conglomerate general store, bottleshop, baker, butcher, chemist, carvery and fresh produce store. No competition will remain.</i></p>	
	<p>2. Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.</p>	<p><i>The proposal does not seek to improve upon an existing retail centre. It seeks to create a new retail hub and effectively capture the patronage from small businesses within the one complex.</i></p>	<p><u>DNC</u></p>
	<p>3. Reinforce Tweed Heads South as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.</p>	<p><i>The proposal seeks to expand retail development into West Tweed Heads, therefore fracturing the retail centre of the Tweed. A satellite development will reduce patronage to the Tweed CBD and high street area.</i></p>	<p><u>DNC</u></p>
	<p>4. Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.</p>	<p><i>N/A – The subject site is far removed from Murwillumbah.</i></p>	<p>N/A</p>
	<p>5. Limit the scale of new retail centres in the coastal region to a level which caters for the majority of localised daily needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre.</p>	<p><i>N/A – The subject site is not located within the coastal region.</i></p>	<p>N/A</p>
	<p>6. Council does not support the establishment of another district retail shopping centre.</p>	<p><i>N/A – The proposal is not for a district retail shopping centre.</i></p>	<p>N/A</p>

	<p>7. The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.</p>	<p>The proposal does not meet the objectives of the Tweed Retail Strategy 2005 and therefore should not be supported.</p>	<p><u>DNC</u></p>
	<p><u>Conclusion</u></p> <p>DA12/0527 is considered to be an unacceptable development that would serve only to fragment and destroy the existing retail environment within the West Tweed Heads area. Justification of the development application based on the future viability of the Seagulls Club is no reason to shift economic struggle onto other business owners within the area. When assessing the development application, it is essential that Council look to the impacts and content that was not included in the developers submission so as to see the effect that such a development would have on small business and the Tweed retail environment as a whole.</p> <p>Our clients reserve the right to further challenge any approval given, based on the significant economic impact that will result from the approval of the application.</p>		
<p>Objection 16</p>	<p>Business in the Tweed has taken a nose dive. If this business is approved it will ruin another centre nearby. There are already enough empty shops in the Tweed.</p> <p>To have a supermarket which is family friendly inside a club which serves alcohol and supports gambling is morally wrong. A lot of locals have stated they are not conformable with this at all.</p>		

Some of the issues raised in these objections have contributed to the recommendation for refusal of this application.

(e) Public interest

There are two opposing views on the matter.

The first is the developer's interest in maintaining their right to apply to develop their property to assist the financial feasibility of the existing registered club.

The second comprises some residents and business owners view of wanting to maintain the viability of the existing commercial zones and not develop the subject site for the purpose of a retail premises contrary to the zone objectives.

Despite these two opposing viewpoints each Development Application needs to be assessed on its individual merits.

On review of this application it is recommended that this DA be refused as the development has failed to demonstrate suitable compliance with the relevant heads of consideration in accordance with Section 79C of the Environmental Planning & Assessment Act 1979.

OPTIONS:

1. Refuse the application in accordance with the recommended reasons for refusal; or
2. Request that conditions be brought back to the next Council Meeting to enable the Council to consider approving the subject application.

Council officers recommend Option 1.

CONCLUSION:

The proposed development seeks approval for a general store (1965m² of retail space for a full line supermarket) within a recreational zone.

Whether the development is legally defined as a general store or a shop the proposed development has failed to adequately demonstrate how the proposed development:

- Satisfies the strategic objectives for the Tweed;
- Satisfies the primary objective of the recreational zone;
- Satisfies the test of cumulative impact;
- Satisfies the objectives behind social and economic impact;
- Satisfies the zone objectives and permissibility under Draft TLEP 2012;
- Satisfies Council Retail Strategy; and
- Satisfies the general public interest and the impact the proposal would have on the existing commercial zones in the locality.

Accordingly the application is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

If the applicant lodges an appeal with the NSW Land and Environment Court Council will incur legal costs to defend any such appeal.

c. Legal:

The applicant may appeal any decision of the Council before the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Applicants Submission to Draft Tweed Local Environmental Plan 2012 (ECM 3049470)
 - Attachment 2. Applicants Socio Economic Assessment (ECM 3050676)
 - Attachment 3. Applicant's Addendum Letter 15 April 2013 (ECM 3050686)
 - Attachment 4. Applicant Legal Advice on Permissibility 2 May 2013 (ECM 3051183)
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