



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 18 April 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.

25 [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 March 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.	DA12/0537
Description of Development:	Two lot subdivision
Property Address:	Lot 7 DP 849520 No. 207 Howards Road, Burringbar
Date Granted:	25/3/2013
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	<p>The proposed development incorporates a two lot subdivision of 1(a) - Rural Zoned land to create:</p> <ul style="list-style-type: none">- Proposed Lot 1 - 8211m²- Proposed Lot 2 - 41.79Ha <p>The proposed variation is greater than 10% and as such requires concurrence from the Department of Planning and Infrastructure</p>
Extent:	Greater than 10%
Authority:	Director General of the Department of Planning

DA No.	DA12/0588
Description of Development:	Addition of decks, rear enclosed deck and building line variation for double carport
Property Address:	Lot 1 Section 1 DP 30148 No. 2 Dobbys Crescent, Terranora
Date Granted:	25/3/2013
Development Standard to be Varied:	Clause 24 - Setbacks to designated roads
Zoning:	1(c) Rural Living
Justification:	Setbacks to designated road
Extent:	84% variation
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0565
Description of Development:	Eight lot subdivision
Property	Lot 58 DP 1083567 Collins Lane, Casuarina

Address:	
Date Granted:	25/3/2013
Development Standard to be Varied:	Clause 21A(2)(a) - Minimum lot size 40ha
Zoning:	7(f) Environmental Protection (Coastal Lands)
Justification:	The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone
Extent:	7(f) zoned land = 1139.5m ²
Authority:	Director General of the Department of Planning

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.

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26 [PR-CM] Results of the Department of Planning and Infrastructure's Local Development Performance Monitoring Report 2011/12

SUBMITTED BY: Director Planning and Regulation



Civic Leadership

SUMMARY OF REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning and Infrastructure report, "Local Development Performance Monitoring 2011/12", which was released through a media announcement of the Minister for Planning and Infrastructure, the Hon, Brad Hazzard MP on 30 March 2013.

The Department of Planning and Infrastructure commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 6 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

There are additional results produced in this year's report relating to the performance of Joint Regional Planning Panels as DA determination bodies.

The 2011/12 results are validation of a very positive trend in improved in reduced determination times for applications processed by Tweed Shire Council, with a 30% reduction in the mean gross (or average) determination days for DAs from **133** in 2010/11 to this year's figure of **93** days. Similarly, the gross mean determination time for Section 96 applications has been reduced by 48% from **151** days in 2010/11 to this year's result of **79** days.

As a means of general comparison, the State averages for determination of DAs and Section 96 applications were **71** days and **54** days respectively.

As explained in the report to Council on last year's results, Tweed Council experienced an upward spike in its determination times as a result of its efforts to clean out a number of long-standing, problematic DAs (between 3 to 10 years old), which had previously reached a stalemate, predominantly as a result of various legal and administrative obstacles. The resolution of these older applications now allows Tweed Council's development assessment performance to be measured in a more realistic and fairer context.

Further to this general clean out of problematic applications, Council management and staff have implemented a series of strategies for improved performance, including a more detailed statistical reporting system to better track both the overall and individual officer progress and performance on DAs; increasing the practice of issuing only one, consolidated Request for Information (RFI) per DA, where possible; and the alert and elevation of more

problematic DAs to a senior management forum to better problem-solve and seek a more timely determination of these DAs.

These strategies have had a further, positive impact on Council's processing performance in the 2012/13 performance period to date (July 2012 to end of March 2013), with the mean gross determination times being significantly reduced to **61** days for DAs, and **57** days for Section 96 applications, which now compares very favourably to the 2011/12 State and Group 5 Councils average results. The average assessment times for Council's Building Unit DAs and Section 96 applications (residential alterations and additions and new single dwellings) have been reduced in this period to a respective **40** and **28** days, an important indicator for the local property market.

Council's Building Unit has also performed extremely well in its determination times in the 2011/12 period for the issue of Complying Development Certificates, with a gross mean determination of **7** days (within the statutory period of 10 days), as compared to the State average of **18** days.

The State Government is soon to release a White Paper and Draft Exposure Bill for a New Planning Act as part of the review of the NSW Planning System. It is anticipated that these reforms will have a significant impact on the current development assessment systems.

RECOMMENDATION

That the results of the Department of Planning and Infrastructure's Local Development Performance Monitoring Report 2011/12 be received and noted.

REPORT:

Background Explanation of the LDPM Report Process

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning and Infrastructure (DP&I) report, "Local Development Performance Monitoring 2011/12", which was released through a media announcement of the Minister for Planning and Infrastructure, the Hon, Brad Hazzard MP on 30 March 2013.

Copies of the LDMP report are provided as an attachment to this report. The report can also be viewed on-line through the DP&I's web site www.planning.nsw.gov.au.

The DP&I commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 6 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

In terms of interpreting the report, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined).

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

The DP&I report provides a useful explanation on how best to interpret these forms of measurement:

"Gross time is important to applicants as it measures the total processing time taken between lodging an application and receiving the final decision. Net time is an indicator of the time taken by councils to determine the application, including the time taken to assess the application but excluding the time taken for delays for which they are not responsible.

Both net and gross times are examined to assess the service provided to applicants and to understand the factors affecting processing time, including the time taken by applicants to submit further information and the time taken by state agencies to assess referred DAs.

Only by understanding all components of the process can planning reforms be targeted to improve overall assessment times.

The differences between mean gross (processing) and mean net (determination) times indicate the significant impacts of stop-the-clock (STC) and referrals on processing times.”

DLG Group Averages

Many data tables in the DP&I report refer to NSW Division of Local Government (DLG) groups. All 152 councils are grouped into one of 11 council types or groups based on population, size, location and development. Grouping councils according to similar socio-economic characteristics allows comparison between councils' results and the performance of like councils.

The DLG groupings are based on the Australian Classification of Local Governments (ACLG) classification of local government areas as adapted by the NSW DLG for NSW Local Government Councils Comparative Information publication.

The source data tables show the DLG code for each council and the average result for each of the 11 DLG groups. These tables allow anyone to see how a council's data compares to the average for the relevant DLG group.

Tweed Shire Council is classified in DLG Group 5, and referred to as a Regional City/Town, which also consists of the major regional councils of Coffs Harbour, Lake Macquarie, Port Macquarie-Hastings, Shoalhaven and Wollongong.

Summary of Main Results for Tweed Council

In terms of determination times for DAs and Section 96 Applications, Council's results, as compared to the State and Group 5 (comparably sized) Councils were:

Development Applications

	MEAN GROSS	MEAN NET	MEDIAN GROSS	MEDIAN NET
Tweed Shire Council 2010/11	133	54	45	36
Tweed Shire Council 2011/12	93	47	45	31
Tweed Shire Council 2012/13 (as at end of March 2013)	61	38	39	31
All NSW Councils 2011/12	71	46		31
DLG Statistical Division 5 2011/12	68	36	42	27

Section 96 Applications

	MEAN GROSS	MEAN NET
Tweed Shire Council 2010/11	151	76
Tweed Shire Council 2011/12	79	-
Tweed Shire Council 2012/13 (as at end of March 2013)	57	42
All NSW Councils 2011/12	54	-
DLG Statistical Division 5 2011/12	52	-

Analysis of Main Tweed Shire Council Results

The 2011/12 results are validation of a very positive trend in improved in reduced determination times for applications processed by Tweed Shire Council, with a 30%

reduction in the mean gross (or average) determination days for DAs from **133** in 2010/11 to this year's figure of **93** days. Similarly, the gross mean determination time for Section 96 applications has been reduced by 48% from **151** days in 2010/11 to this year's result of **79** days.

As a means of general comparison, the State averages for determination of DAs and Section 96 applications were **71** days and **54** days respectively.

As explained in the report to Council on last year's results, Tweed Council experienced an upward spike in its determination times as a result of its efforts to clean out a number of long-standing, problematic DAs (between 3 to 10 years old), which had previously reached a stalemate, predominantly as a result of various legal and administrative obstacles. The resolution of these older applications now allows Tweed Council's development assessment performance to be measured in a more realistic and fairer context.

Further to this general clean out of problematic applications, Council management and staff have implemented a series of strategies for improved performance, including a more detailed statistical reporting system to better track both the overall and individual officer progress and performance on DAs; increasing the practice of issuing only one, consolidated Request for Information (RFI) per DA, where possible; and the alert and elevation of more problematic DAs to a senior management forum to better problem-solve and seek a more timely determination of these DAs.

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Recent Trend of Declining Local Development and Construction Activity

Development Applications

Consistent with the broader national and state trend of a downturn in the residential property market, the following table shows a corresponding decline in development applications received and determined by Tweed Shire Council:

MONITORING PERIOD	DAs RECEIVED	DAs DETERMINED
2006/07	1,420	1,399
2007/08	1,623	1,340
2008/09	777	1041
2009/10	878	815
2010/11	719	843
2011/12	711	599
2012/13 (as at end of March 2013)	594	631

Construction Certificates and Occupation Certificates Issued by Council

CONSTRUCTION CERTIFICATES 2011/12	CONSTRUCTION CERTIFICATES 2010/11	OCCUPATION CERTIFICATES 2011/12	OCCUPATION CERTIFICATES 2010/11
562	705	692	820

Other Key Results

The following statistics have been drawn from the LDMP report as they apply to the Tweed LGA:

Table 2-12: Volume and Value of TSC DAs and S96

Number of DAs determined	Total estimated value of DAs determined	Total estimated value of DAs approved	Number of S96 determined
599	\$153.6M	\$150.7M	110

Table 2-14: Volume and Value of TSC Complying Development Certificates

Number determined	Total estimated value	% determined by Council	% determined by private certifiers
120	\$8.2M	51	49

Tables 3-29: Mean Gross DA determination times (days) for all councils by value

	<\$100k	\$100-\$500k	<\$1M	\$1M-\$5M	\$5M-\$20M	>\$20M
Tweed Mean Gross	88	73	85	324	252	-
DLG Division 5 Mean Gross	60	65	64	192	225	398

Table 3-31: Mean gross DA determination (days) by type

	Residential alterations and additions	Single new dwelling	Commercial Retail Office
Tweed	51	67	117
DLG Division 5	49	59	85

Table 6-6: Legal Appeals

Tweed Council had a relatively limited amount of Land and Environment Court appeal activity, with 3 Class 1 appeals (none upheld) and no Class 4 or 5 matters.

New LDMP Assessment Results

Comparison of Council and Delegated Determined DAs

The report identified that for all DAs determined across the State, Council determined DAs took an average of **171** days, as compared against **66** days for Council officer determinations under delegation.

Joint Regional Planning Panel (JRPP) DA Determinations

	No. of DAs Determined	Average Days for Determination	Average Days for DAs in Value \$5M to \$20M	Average Days for DAs in Value over \$20M
ALL JRPP DETERMINATIONS	305	222	211	241
NORTHERN REGION JRPP DETERMINATIONS	22	189	136	270

Other Contributing Factors to Council's Overall Performance

Despite the downturn in local application activity, another important factor to consider in TSC's overall performance was the continuing high proportion of Part 3A redevelopment assessment processes in 2011/12, such as Cobaki, Kings Forest, Lot 490 Kingscliff and Lot 156 Creek Street Hastings Point, that Council staff and the elected Councillors were required to contribute to, which significantly impacts on Council's general assessment capacity and resources.

It should also be noted that the determination times for JRPP DAs are included within Council's LDPM performance reporting. The original JRPP DA for a new police station at Kingscliff was determined in the 2011/12 performance period, with the subsequent Class 4 appeal in the NSW Land and Environment Court further impacting on Council's staff resources.

Council's Actions to Improve its Development Assessment Performance

Over the last several years, the Planning and Regulation and Technology and Corporate Services Divisions have been working together on a program of improvements to the efficiency of the full range of development and building approvals processes, with an initial emphasis on development applications (DAs). These actions are in response to the recommendations of an audit conducted by consultant Gary Poole in 2007/08, as well as Tweed Council's performance in DA processing, when measured against the annual performance monitoring reporting of the NSW Department of Planning for all NSW councils.

The internal Development Assessment Review Working Group (DARWG) has been coordinating an extensive program of process improvements, with an initial priority given to the "front-end" elements of DA lodgements, in recognition of the fact that many of the delays experienced have been attributed to deficient DAs being accepted, and then creating the need to make a number of requests to the applicant to submit additional information. The Group has been responsible for implementing a series of major enhancements to the web site information for potential DA applicants, including new mapping and checklists which provide a clearer guide to the full range of information required to lodge DAs in both hard copy and electronic formats. Council introduced the new requirement for the submission of a CD (documents in electronic format) with all DAs on 1 July, 2009.

E Planning has been a key strategy for enhancing the efficiency of Council's building and development approvals systems, as it strives to be a leader throughout the region. The introduction of the DA Tracker and Property Enquiry services on Council's web site has proven to be extremely popular and successful means for the local consulting industry and the wider community to gain comprehensive, on-line information relating to property development potential and access to the documents and progress of DAs lodged with Council.

The ultimate goal of Council's e planning is to achieve end-to-end electronic lodgement processes, and further enhanced e planning information tools by 2013/14. However, it is important to recognise that this can only be achieved through a major cultural change to both internal Councils practices, as well as the external participants in e planning processes. Council has therefore adopted a gradual, staged approach to this change in practices, inclusive of local industry and the general public.

In the shorter term, the DARWG is focusing its shorter term efforts to a major upgrade of its Property and Rating and records management systems, which will provide the platform and capacity for the introduction of comprehensive electronic lodgement systems. As an interim measure, DARWG has also initiated ways of reducing the reliance on the quantity of hard copy documents for DA lodgements, through the following:

External Actions

- Offering local consulting firms a free pre-lodgement check of electronic DA documents via email.
- Ceased requiring hard copies of DA documentation for referral to external agencies.
- The installation of larger monitors in Council's 3 libraries to provide members of the public with an enhanced opportunity to view DA documentation and other e planning information on Council's web site.

Internal

- Introduction of larger screens and document editing programs for all assessment staff, thereby promoting a culture of greater reliance on electronic assessment of DAs, rather than hard copies.

Another key priority has been Council's participation in the NSW State Government's EHC Pilot Program project. The project had its origins in 2008 through the Federal Government's Housing Affordability Fund. It is jointly managed by the NSW Department of Planning and Infrastructure and Shires Association of NSW, and 11 NSW Councils, including Tweed Shire Council, and a number of private certifiers were originally chosen from selection process to develop and pilot a shared, state-wide, web based platform for complying development applications under the NSW General Housing Code SEPP.

The NSW Minister for Planning launched the pilot project in mid October 2011.

Tweed Council staff are working closely with its local consulting industry to facilitate the lodgement of complying development certificates through the new EHC web site.

The EHC Program has provided Council with substantial funding and the up-skilling of its staff and the local consulting industry, as a necessary transition and learning experience for our ultimate goal of providing end-to-end electronic building and development assessment processes.

Council management and staff have also implemented a more recent series of strategies for improved performance, including a more detailed statistical reporting system to better track both the overall and individual officer progress and performance on DAs; increasing the practice of issuing only one, consolidated Request for Information (RFI) per DA, where possible; and the alert and elevation of more problematic DAs to a senior management forum to better problem-solve and seek a more timely determination of these DAs.

OPTIONS:

That the results of the Department of Planning and Infrastructure's Local Development Performance Monitoring Report 2011/12 be received and noted.

CONCLUSION:

The 2011/12 LDMP results are validation of a very positive trend in improved in reduced determination times for applications processed by Tweed Shire Council. Council management and its staff have been working towards the goal of being one of the better performing regional sized councils.

The State Government is soon to release a White Paper and Draft Exposure Bill for a New Planning Act as part of the review of the NSW Planning System. It is anticipated that these reforms will have a significant impact on the current development assessment systems.

COUNCIL IMPLICATIONS:

a. Policy:

Not applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

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. Copy of Department of Planning and Infrastructure report, "Local Development Performance Monitoring 2011/12", released on 30 March 2013 (ECM 65679897)

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27 [PR-CM] Development Application DA11/0254.05 for an Amendment to Development Consent DA11/0254 for a Shed at Lot 3 DP 211196 No. 385 Terranora Road, Banora Point

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA11/0254 Pt1



Civic Leadership

SUMMARY OF REPORT:

At its meeting held 21 March 2013 Council resolved:

"RESOLVED that this item be deferred to a Council workshop."

A workshop was held on 9 April 2013, therefore the report is re-submitted for consideration by Council.

At its meeting on 21 June 2011 Council approved a development application for the construction of a shed ancillary to an existing residence on the subject allotment. The plans for the approved development application designate a part one; part two storey shed structure, for storage and garage use with associated shower and toilet facilities.

Pursuant to the requirements of Council's Tweed Development Control Plan (DCP) 2008 - Section A11, it was determined by Council officers that advertising or notification of the proposal was not warranted.

The approval included an objection under the provisions of State Environmental Planning Policy No. 1 (SEPP No. 1) due to the building alignment from Terranora Road (which is a designated road) being less than 30 metres as stipulated under part 5, clause 24 of the Tweed Local Environment Plan 2000 (TLEP 2000). The setback of the approved shed to Terranora Road is 10m to the wall with a masonry feature fin wall encroaching 3m closer to the road.

A key factor in Council's previous support of the encroachment of this front building line restriction was that the site at that time had a relatively dense range of vegetation which was expected to provide a substantial screening of the views of the shed along the site's Terranora Road frontage.

A condition of consent was also imposed to restrict any habitable, commercial, or industrial use of the shed.

Following the initial development consent, the site owner sought a Construction Certificate approval from a private certifier for the shed in November 2011, who was then appointed as the Principal Certifying Authority for its construction. In early 2012 Council received a number of complaints from adjoining owners regarding the commencement of construction, involving alleged unauthorised earthworks and vegetation removal, primarily along the site's frontage to Terranora Road. Council officers investigated these issues, and whilst it was determined that no action was necessary for the vegetation removal, the owner was instructed to seek amended approvals for the unauthorised earthworks and retaining wall.

Throughout 2012 the owner proceeded with the construction of the shed. Further complaints were received from adjoining owners, raising further concerns that the emerging shed structure was not being built and used in accordance with the plans of the original DA consent.

Council officers responded to these concerns with the issue of a Penalty Infringement Notice to the owner in November 2012 for a failure to respond to Council's earlier direction to seek approval for the construction of a retaining wall and other works in the frontage of the subject site. The officers also requested that a Section 96 application be lodged for the apparent differences in the emerging shed construction with the plans of the original DA consent. These differences included relatively minor changes to the external building appearance (windows, doors and masonry feature wall), and a separately partitioned area on the upper level of the shed, for which the owner has advised that this area will be used as an office. The owner was also asked to provide further clarity regarding apparent changes to the overall height and envelope of the shed structure. A stop work order was also issued at the time relating to the unauthorised works.

A Section 96 application was lodged by the owner in November 2012. In accordance with Section 96 of the Act, adjoining and surrounding owners were notified of the application. A total of 7 written submissions were received, objecting to both the original DA and current Section 96 application on a variety of grounds, including a loss of views, visual impact of the size, scale, building style on the sites Terranora Road frontage, loss of amenity through the removal of existing vegetation, traffic safety of the new driveway construction, and a querying of the permissibility of the use of the shed in its emerging form.

In terms of the concerns regarding the use of the proposed shed, Council has received written advice from the owner of the subject property dated 7 March 2013, confirming his intentions to cease an existing tenancy arrangement, and that he would move back the existing dwelling house. This action satisfies the ancillary arrangement between the dwelling house and the shed. In terms of the proposed office use in the shed, the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 currently allows for such a use to be exempt, if it satisfies either of the home business, home industry or home occupation definitions. The home business definition appears to best suit the owners proposed office use in the shed.

Through the amended plans and further clarification of details sought from the owner, the Council officers have assessed and taken account of the concerns raised by adjoining and affected owners, as well as the relevant provisions of the Act and Council's planning controls, and have concluded that the amended building design of the owner's Section 96 application will not result in any substantial increase in planning impacts to that compared with the plans of the original DA consent.

It is therefore recommended that Council supports the Section 96 application, subject to amendments to the conditions of the original DA consent.

RECOMMENDATION:

That:

PART A

- 1. Development Application DA11/0254.05 for an amendment to Development Consent DA11/0254 for a shed at Lot 3 DP 211196; No. 385 Terranora Road, Banora Point be approved and the consent be amended as follows:**

1. **Delete Condition No. 1 and replace it with Condition No. 1A which reads as follows:**
 - 1A. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 120400 sheets A1.00(C), A1.03(A), A2.00(B), A3.00(B), A3.01(B) prepared by Local Office Architecture and dated Oct. 2012, except where varied by the conditions of this consent.**

2. **Add the following new Condition No. 29A under the heading PRIOR TO ISSUE OF OCCUPATION CERTIFICATE:**
 - 29A. **Prior to the issue of an occupation certificate established landscaping shall be provided to the site to the satisfaction of Council's General Manager or his delegate in accordance with Landscape Plan No. A1.03(A) prepared by Local Office Architecture and dated October 2012.**

3. **Add the following new Condition No. 31A under the heading USE:**
 - 31A. **The partitioned area at the eastern end of the shed shall not be used for any purpose other than storage ancillary to the dwelling or a home business without the consent of Council.**

PART B

A penalty infringement notice be issued to the owner of the property for carrying out building work which is not in accordance with the approved development consent.

REPORT:

Applicant: Mr J Turner
Owner: Turner Property Developments Pty Ltd
Location: Lot 3 DP 211196; No. 385 Terranora Road, Banora Point
Zoning: 1(c) Rural Living
Cost: N/A

Background:

Site Details

The allotment is zoned 1(c) Rural Living under the Tweed Local Environmental Plan 2000 (TLEP 2000), is located on the southern side of Terranora Road, contains an existing two storey dwelling house and swimming pool and slopes downhill from Terranora Road.

The allotment has a frontage to Terranora Road which under the provisions of the TLEP 2000 is classified as a designated road.

The allotment encompasses an area of 2586m² and is accessed from Terranora Road.

Original Development Consent

At its meeting on 21 June 2011 Council approved a development application for the construction of a shed ancillary to an existing residence on the subject allotment. The plans for the approved development application designate a part one; part two storey shed structure, for storage and garage use with associated shower and toilet facilities.

The plans showed a maximum building height of the shed varying between 5-6 metres along the front elevation and 7-8 metres along the rear elevation, although it was difficult to determine a precise height measurement, given the variances between the plan scale and dimensions provided, as well as a reference in the Statement of Environmental Effects stating a "height varying from 7m to 8.6m". The actual maximum height control of Tweed Local Environmental Plan 2000 is measured in number of storeys, for which the proposed part one, part two storey shed complied with the LEP maximum of three storeys.

The total floor area of the approved shed was approximately 245m².

Pursuant to the requirements of Council's Tweed Development Control Plan 2008 - Section A11, it was determined by Council officers that advertising or notification of the proposal was not warranted. Table 1 of the DCP provides guidance for these requirements based on the zone of the land and the development type. In terms of the Rural Living 1(c) zone, a relevant extract of Table 1 is provided below:

Zone	Type of Development	Type of Notification or Advertisement
Rural 1(a), 1(b) and 1(c)	subdivision comprising 5 or more lots all other development except for:- environmental facility dwelling houses and additions sheds, garages and structures ancillary to the agricultural use of the land located on properties greater than 5 hectares in area which are located more than 50 metres from any adjoining property boundary rural workers dwellings development which may be classified as exempt or complying development advertisements/signs agriculture development listed in Clause 7.2	Letter to adjoining or affected owners

It is the officers' interpretation of this Table that as the proposed shed was applied for under DA11/0254 as ancillary to the existing residence, and that the reference to "sheds, garages and structures ancillary to the agricultural use of the land ..." is therefore not relevant to the subject proposal, which negated the need to notify the DA. It was also recognised at the time of the original DA that there was existing vegetation on the site which was expected to substantially screen any visual impact of the shed's appearance along the site's Terranora Road frontage.

The approval included an objection under the provisions of State Environmental Planning Policy No. 1 (SEPP No. 1) due the building alignment from Terranora Road (which is a designated road) being less than 30 metres as stipulated under part 5, clause 24 of the Tweed Local Environment Plan 2000 (TLEP 2000). The setback of the approved shed to Terranora Road is 10m to the wall with a masonry feature fin wall encroaching 3m closer to the road.

A key factor in Council's previous support of the encroachment of this front building line restriction was that the site at that time had a relatively dense range of vegetation which was expected to provide a substantial screening of the views of the shed along the site's Terranora Road frontage.

A condition of consent was also imposed to restrict any habitable, commercial, or industrial use of the shed.

Emerging Compliance Issues During the Construction of the Shed

Following the initial development consent, the site owner sought a Construction Certificate approval from a private certifier for the shed in November 2011, who was then appointed as the Principal Certifying Authority for its construction. In early 2012 Council received a number of complaints from adjoining owners regarding the commencement of construction, involving alleged unauthorised earthworks and vegetation removal, primarily along the site's frontage to Terranora Road. Council officers investigated these issues, and whilst it was determined that no action was necessary for the vegetation removal, the owner was instructed to seek amended approvals for the unauthorised earthworks and retaining wall.

Throughout 2012 the owner proceeded with the construction of the shed. Further complaints were received from adjoining owners, raising further concerns that the emerging shed structure was not being built and used in accordance with the plans of the original DA consent.

Council officers responded to these concerns with the issue of a Penalty Infringement Notice to the owner in November 2012 for a failure to respond to Council's earlier direction to seek approval for the construction of a retaining wall and other works in the frontage of the subject site. The officers also requested that a Section 96 application be lodged for the apparent differences on the emerging shed construction with the plans of the original DA consent. These differences included relatively minor changes to the external building appearance (windows, doors and masonry feature wall), and a separately partitioned area on the upper level of the shed, for which the owner has advised that this area will be used as an office. The owner was also asked to provide further clarity regarding apparent changes to the overall height and envelope of the shed structure. A stop work order was also issued at the time relating to the unauthorised works.

Complaints were also received from adjoining owners in respect of the erection of timber fencing along the southern and eastern boundary of the site, as well as to separate the shed and the existing residence within the subject site. This complaint was referred by Council officers to the PCA for the construction. The PCA advised that the fencing has been erected as Exempt Development under the Exempt and Complying Development State Environmental Planning Policy (SEPP) which allows for fencing behind the building alignment to be built up to a maximum height of 2.2 metres on sloping sites.

Details of the Section 96 Application

A Section 96 application was lodged by the owner in November 2012.

It contained the following modifications from the original consent:

- Garage doors repositioned;
- Sliding door from front elevation removed and replaced with four louvered windows with architectural hood over;
- Two additional windows to east elevation and two additional windows to west elevation to upper level;
- One window to upper floor (south elevation) changed to sliding door;
- Window to ground floor east elevation removed and two sliding doors added;
- Internal wall to upper level repositioned and additional internal walls included;
- Shower toilet and basin repositioned;
- Deck to south eastern corner of shed upper level included (partly completed);

- Concrete floor over storage area changed to timber floor;
- Void for internal stairs from upper level to lower level provided;
- Width of masonry feature fin wall increased by one metre;
- Existing mature vegetation, which would have provided effective visual screening of the shed, has been removed from the front of the site contrary to the advice given in the statement of environmental effects which was submitted in support of the original development application. A Landscaping Plan has been submitted with the Section 96 application which proposes some re-planting for screening purposes along the sites Terranora Road frontage; and
- A maximum building height depicted more accurately, with a height ranging from 5 to 5.8 metres along the front elevation up to 7.7 metres along the rear elevation.

The modified plans for the main part of the shed at both upper and lower level still remains as storage/garage purposes. A separately partitioned area on the upper level of the shed also forms part of the modified proposal. The owner of the site has advised Council that this area will be used as an office, most likely in the form of a home business.

The proposed deck is regarded as being inconsistent with the use of the shed and its retention is not supported.

The Applicant has submitted amended plans which have identified that this deck will be converted to an awning to provide weather protection to the doors beneath.

This awning will be fitted with a sloping metal roof and will therefore be incapable of being used as a deck.

A balustrade has been proposed to protect the sliding doors to the southern side of the upper level.

There are no changes to the floor plan of the lower level and subsequently an amended plan has not been provided. The changes to external windows and doors on this level are identified on the amended elevations.

SITE DIAGRAM:



Locality Plan
 Lot 3 DP 211196;
 No. 385 Terranora Road, Banora Point

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Cadastre: 31 December, 2012
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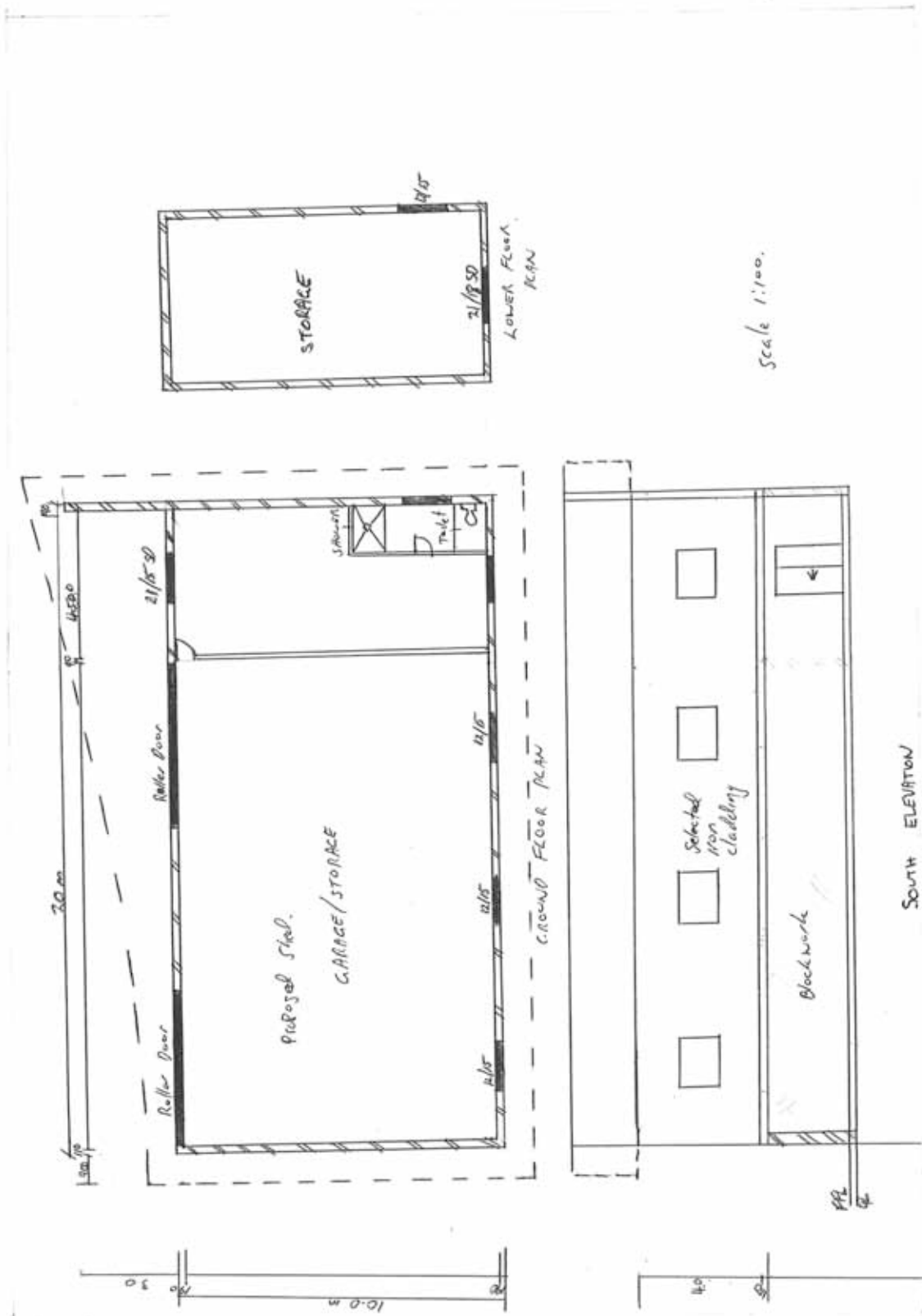
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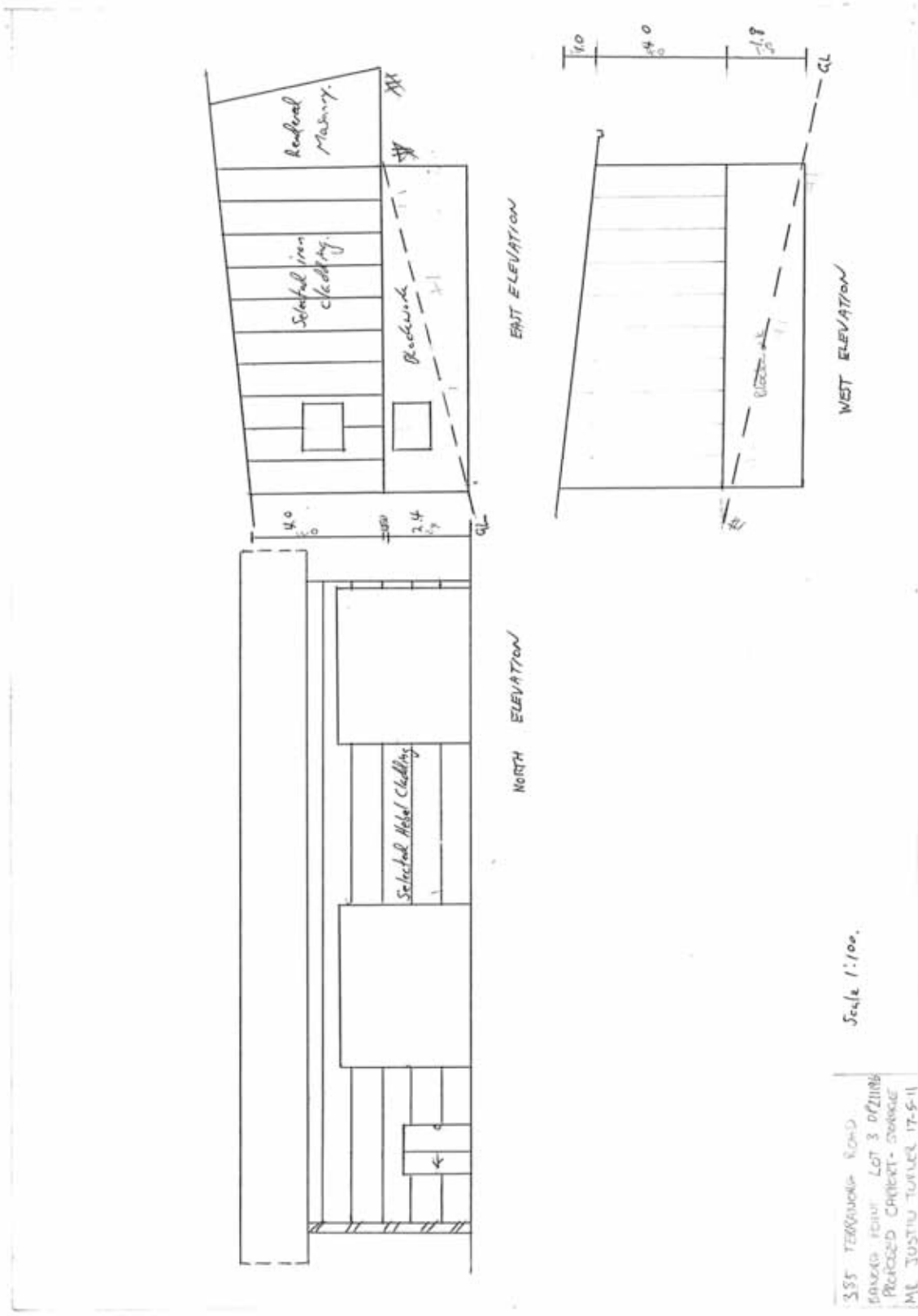
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 Grid: Map Grid of Australia, Zone 56

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 PO Box 816
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 F | (02) 6670 2429
 W | www.tweed.nsw.gov.au
 E | planning@tweed.nsw.gov.au

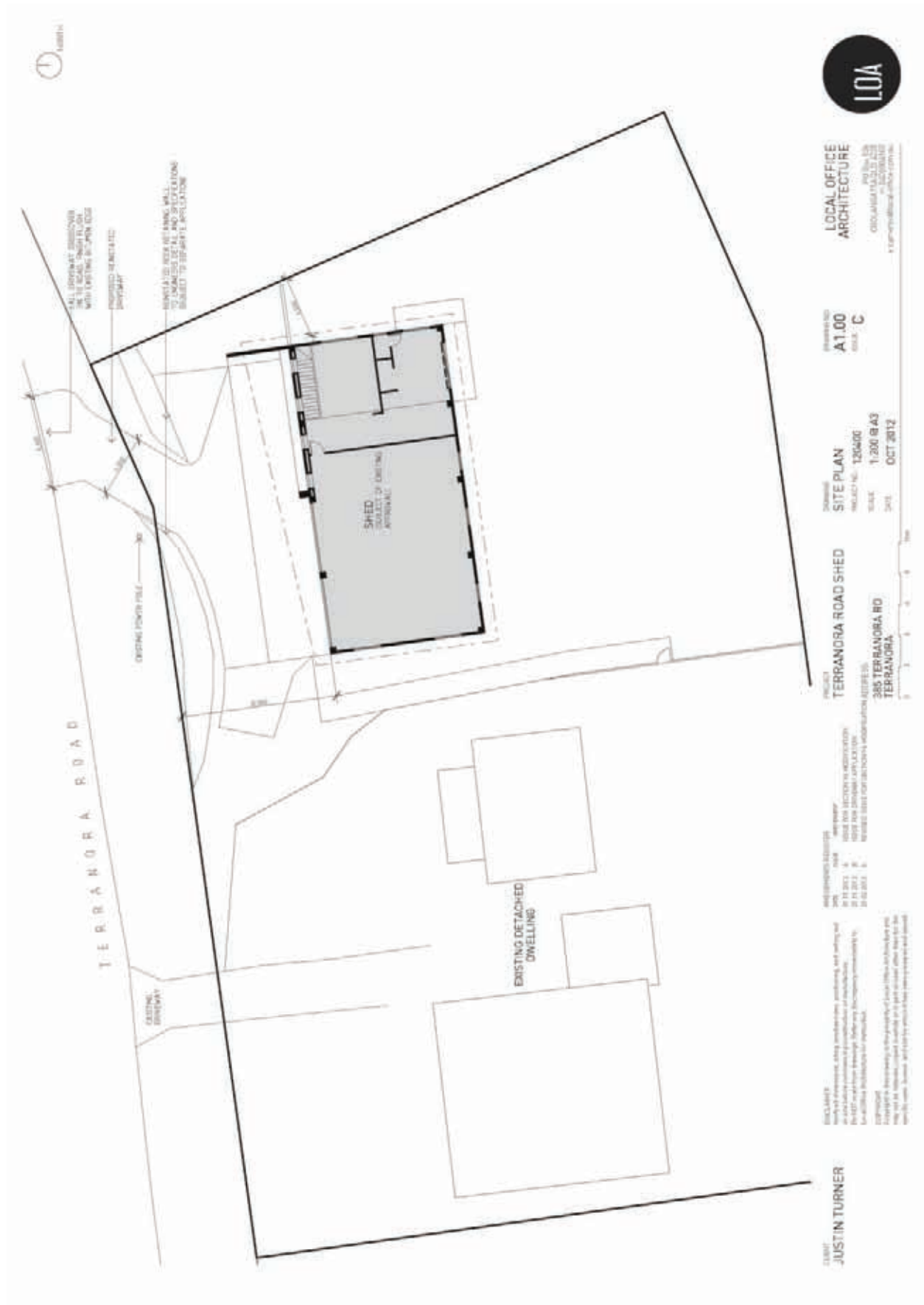


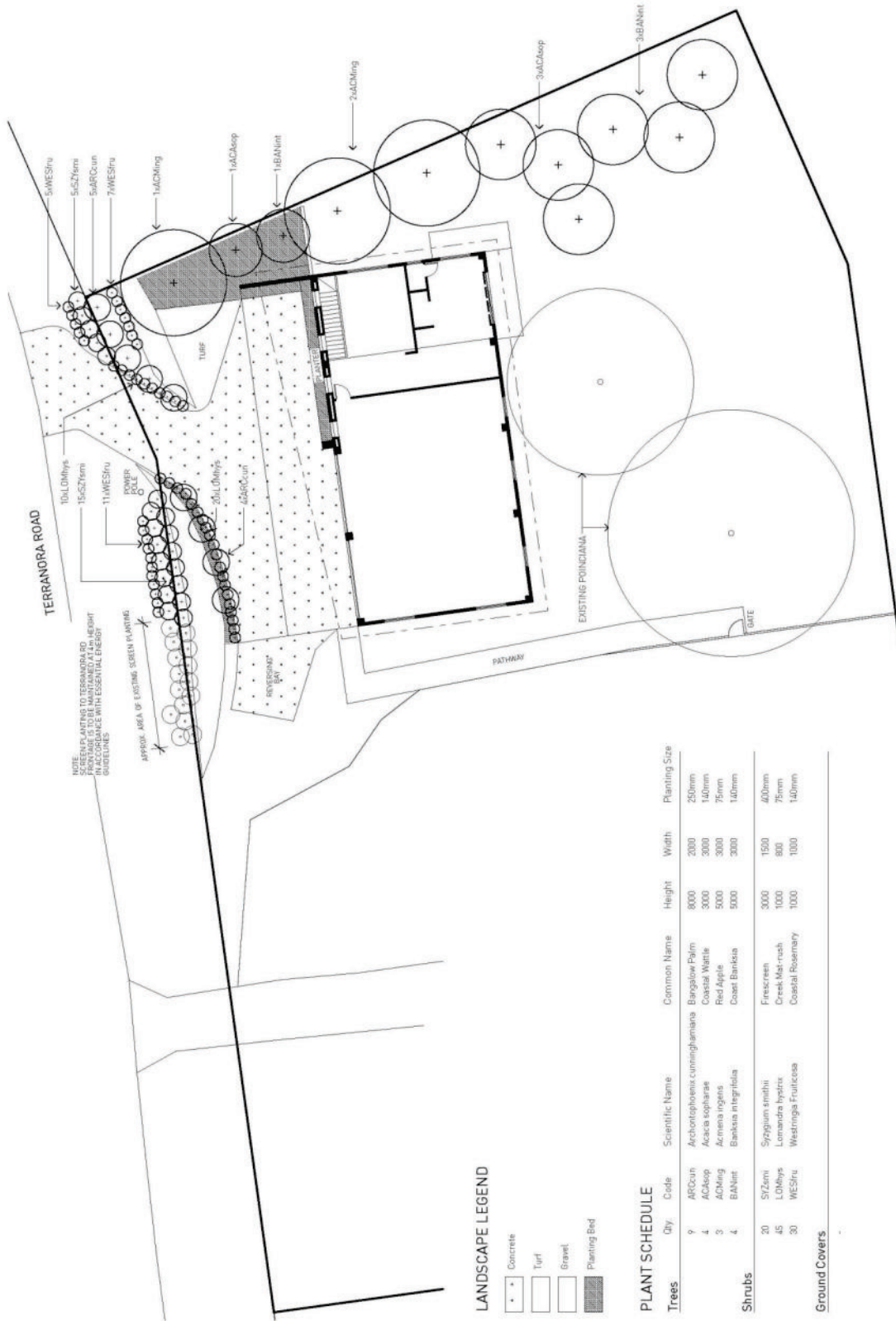
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AMENDED PLANS:





LANDSCAPE LEGEND

- • Concrete
- Turf
- Gravel
- Planting Bed

PLANT SCHEDULE

Trees	Dy	Code	Scientific Name	Common Name	Height	Width	Planting Size
	9	ARCoun	Archontophoenix cunninghamiana	Bangalow Palm	8000	2000	250mm
	4	ACAsop	Acacia sophorae	Coastal Wattle	3000	3000	140mm
	3	ACMing	Acmena integrifolia	Red Apple	5000	3000	75mm
	4	BANnit	Banksia integrifolia	Coast Banksia	5000	3000	140mm
Shrubs	20	SZem	Syzygium smithii	Freesian	3000	1500	40mm
	45	LDMyrs	Lomandra sylvatica	Creek-Mat-rush	1000	800	75mm
	30	WESfru	Westringia Fruticosa	Coastal Rosemary	1000	1000	140mm

Ground Covers

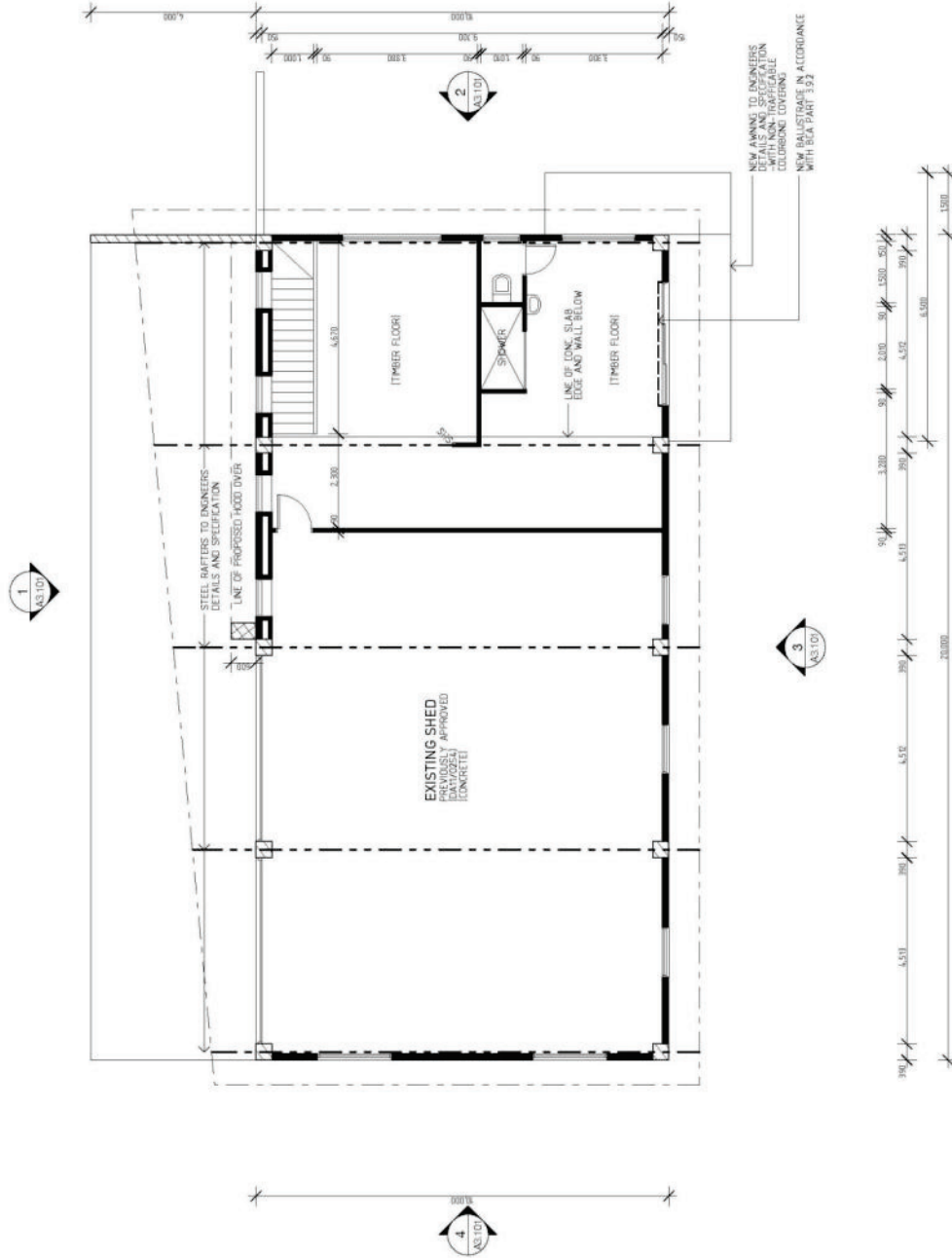
CLIENT: JUSTIN TURNER

DESIGNER: ARCHITECTURE REGISTERED ARCHITECT
 DATE: 21.02.2013
 ISSUE: A
 ISSUE FOR SECTION 116 MODIFICATION

PROJECT: TERRANORA ROAD SHED
 ADDRESS: 385 TERRANORA RD
 TERRANORA

DRAWING NO: A1.03
 PROJECT NO: 120400
 SCALE: 1:200 @ A3
 DATE: OCT 2012





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PROJECT TERRANORA ROAD SHED
 ADDRESS 385 TERRANORA RD TERRANORA
 PROJECT NO 120400
 SCALE 1:100 @ A3
 DATE OCT 2012

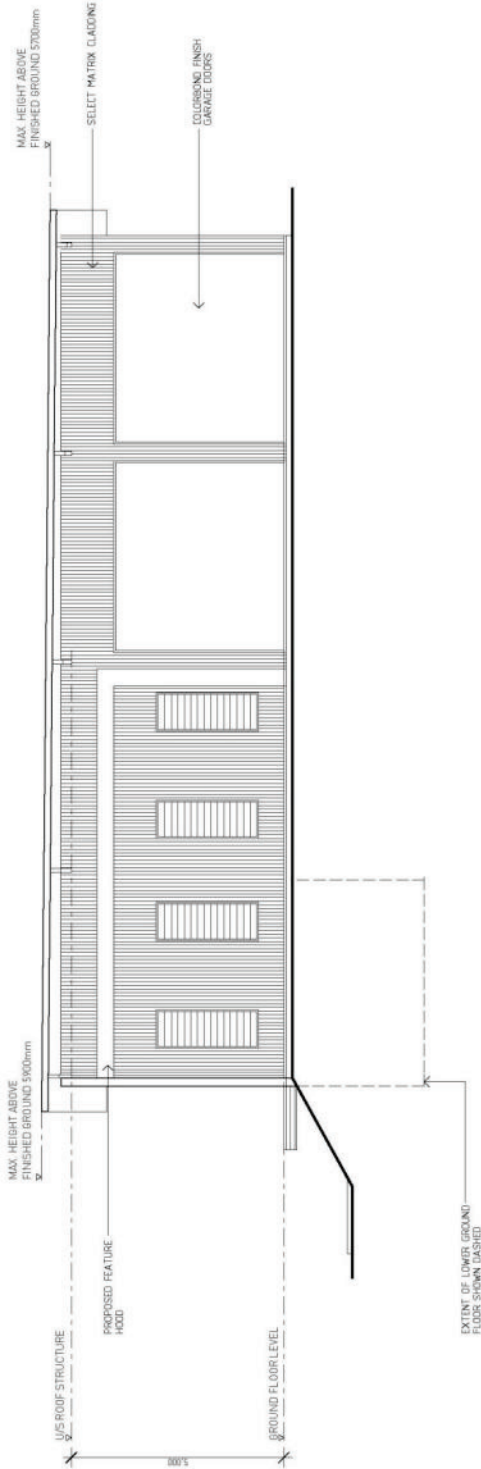
CLIENT JUSTIN TURNER

AMENDMENTS REGISTER
 DATE ISSUE
 08.11.2012 A ISSUE EDS SECTION 16 MODIFICATION
 28.02.2013 B REVISED ISSUE FOR SECTION 16 MODIFICATION

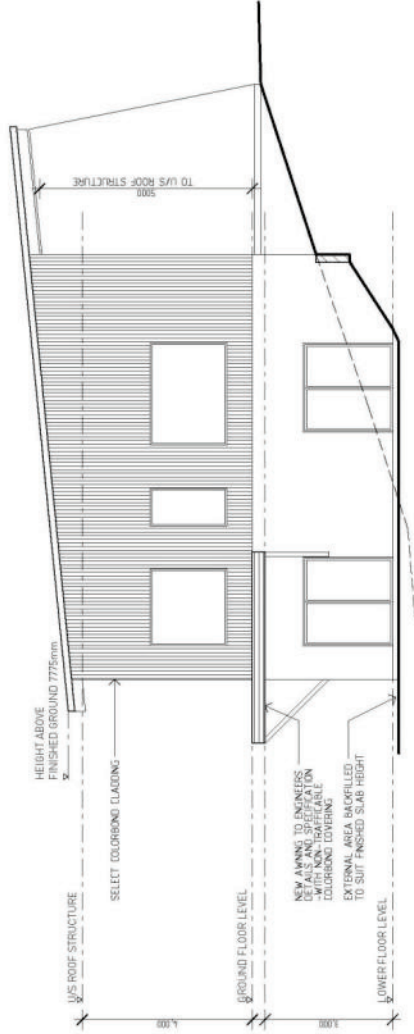
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GROUND FLOOR PLAN
 PROJECT NO 120400
 SCALE 1:100 @ A3
 DATE OCT 2012



ELEVATION 1
SCALE 1:100



ELEVATION 2
SCALE 1:100

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AMENDMENTS REGISTER
DATE ISSUE AMENDMENT
01/11/2012 A ISSUE FOR SECTIONS A - MODIFICATION
21/02/2013 B REISED OFFSET FOR SECTION IN MODIFICATION

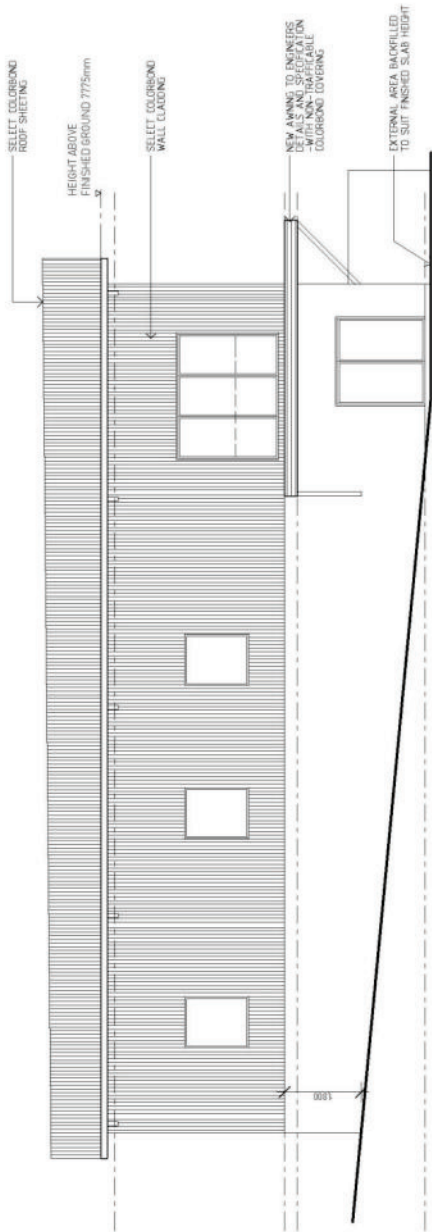
PROJECT
TERRANORA ROAD SHED
ADDRESS
**39E TERRANORA RD
TERRANORA**

DRAWING NO
A3.00

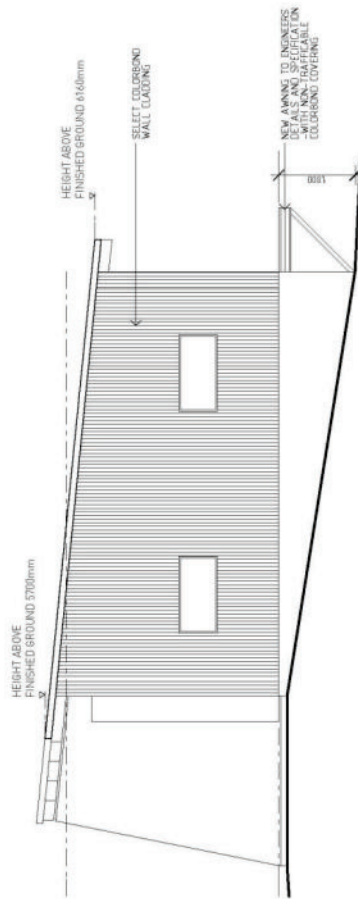
ELEVATIONS 1
PROJECT NO. 120400
SCALE: 1:100 @ A3
DATE: OCT 2012

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ELEVATION 3
SCALE 1:50



ELEVATION 4
SCALE 1:50

CLIENT
JUSTIN TURNER

AMENDMENTS REGISTER
DATE
08.11.2013
21.02.2013
ISSUE
B
REVISED ISSUE FOR SECTION 6 MODIFICATION

DRAWING NO
A3.01
ISSUE
B

PROJECT
TERRANORA ROAD SHED
ADDRESS
**385 TERRANORA RD
TERRANORA**

DRAWING
ELEVATIONS 2
PROJECT NO.
120400
SCALE
1:100 (B A3)
DATE
OCT 2012

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Considerations under Section 79c of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

The proposed modifications are considered to be consistent with the aims and objectives of Tweed LEP 2000.

Clause 8 – Consent Considerations

The site is zoned 1(c) Rural Living under Tweed LEP 2000. The modified proposed shed is ancillary to the primary residence on the site, and is therefore considered to be permissible under this zoning. A home business use of part of the shed is also permissible under this zone.

The proposed modification is considered acceptable under clause 8 as the proposed use is consistent with the primary objective of the 1(c) Rural Living zone, other aims and objectives of the Tweed LEP 2000 and is unlikely to have an unacceptable cumulative impact.

Clause 11 – The zones

The proposed modification is considered to be permissible and consistent with the objectives of the 1(c) zone.

Any habitable, commercial or industrial use of the shed will need to be the subject of separate approval by Council.

Clause 16 - Height of Buildings

The allotment is subject to a three storey height limit under the LEP.

The modified shed proposal is part one storey and part two storey, which satisfies the LEP height limit.

Clause 24 - Setback to Designated Roads

Terranora Road in this location is a designated road which requires a 30m building setback.

The original approval of the shed was issued by Council after consideration of a SEPP1 variation to this control with a building setback to Terranora Road of 10m to the front wall of the shed with a feature masonry fin wall standing 7m from the front boundary.

The application to modify the consent includes the extension of the feature masonry fin wall a further 1.0m closer to the front boundary.

Due to the position of the shed partly below road level the extension of this fin wall 1.0m closer to the front boundary is not considered likely to have any significant impact on the scenic attractiveness of the locality from the road.

In terms of the road traffic safety aspect of this setback variation and new driveway access from Terranora Road, Council's Engineering and Operations Division are satisfied that the subject proposal will generate minimal concerns.

Clause 35 - Acid Sulfate Soils

The subject allotment has been identified as being affected by Class 5 Acid Sulfate Soils (ASS).

Works carried out in soils which are affected by Class 5 acid sulphate require special consideration where any works within 500m of Class 1, 2, 3 or 4 land which are likely to lower the water table below 1.0m AHD in adjacent Class 1, 2, 3 or 4 land.

The allotment is located about 390m from land which is identified as Class 2 ASS however the proposed modifications to the consent will have no impact on the watertable and therefore will satisfy the objectives of this part.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

SEPP No. 1 - Development Standards

A SEPP No. 1 objection to the 30m building alignment was previously approved by Council. A further SEPP1 objection is not required for a Section 96 application.

SEPP No 71 – Coastal Protection

The subject site falls within the coastal protection zone as identified under SEPP 71 however it is considered that the proposed modification is consistent with the matters for consideration under SEPP 71.

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

The draft Tweed Local Environmental Plan 2012 has been publicly exhibited and is a relevant consideration for development applications and Section 96 applications under Section 79C of the Act.

The proposed shed is permissible under the R5 Large Lot Residential zone of the Draft LEP. The maximum height limit of the Draft LEP for this site is 9 metres. The amended design complies with this requirement.

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

Tweed Development Control Plan (TDCP)

A1-Residential and Tourist Development Code

The original application was assessed under Part A of Section A1 of the DCP, although it is acknowledged that these controls are primarily relevant to residential developments in more built up parts of the Shire.

The DCP controls most relevant to sheds are contained with Design Control 9 - Outbuildings. These controls provide restrictions on the scale and orientation of such structures, although greater flexibility is provided for structures in large lot rural and agriculturally zoned land.

It is considered that the scale and orientation of the proposed shed are consistent with the controls of Design Control 9, and other broader aims and objectives of the DCP.

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

Clause 92(a) Government Coastal Policy

This has been previously assessed. The proposed modifications will have no adverse impact on the aims and objectives of the policy.

Clause 93 Fire Safety Considerations

The proposed modifications raise no fire safety considerations.

Clause 94 Buildings to be upgraded

The proposed modifications do not warrant any upgrading of the existing building.

(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 size, height and location of the proposed shed are considered to be appropriate in terms of other similar structures approved in this locality. This part of Terranora contains a great mix of more traditional agricultural structures, as well as more contemporary, denser residential development.

Access, Transport and Traffic

The issue of traffic safety impacts have been thoroughly assessed by Council's Engineering and Operations Division, and a new driveway to the shed has been approved by Council's Planning and Infrastructure Unit under application DWY12/0198.

Flora and Fauna

Prior to the emerging construction of the shed, the subject site had substantive vegetative cover, including mature trees, much of which have been since been removed. The owner of the site claims that much of the removal of the vegetation along the site's frontage was carried out by a contractor of Essential Energy to address safety concerns relating to the overhead power lines.

Council's DA Unit compliance officers investigated complaints about the vegetation loss in early 2012. In terms of the Tweed Tree Preservation Order 2011, the officers determined that there was no evidence of the removal of koala food trees or habitat. It was also determined that there appeared to be no contravention of Tweed Tree Preservation Order 1990, noting that both TPOs provide for an exemption from gaining Council approval for the clearing of vegetation within 8 metres of a Council approved building or building site. It was therefore concluded that no further compliance action was considered necessary for these actions.

In terms of the amended proposal, it is recognised that the owner has submitted a Landscaping Plan that involves the re-planting of mature trees and other landscaping features.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The allotment contains an area of 2586m² and is zoned 1(c) Rural Living. Adjoining allotments contain dwellings on large semi-rural allotments, some with sheds however not as large as the shed on the subject lot.

Topography

The site slopes downhill from Terranora Road and the walls of the lower level of the shed were originally designed to be retaining walls.

These walls are now exposed with alternate retaining walls used.

This will impact on the appearance of the eastern elevation only. However as this part of the shed is not readily visible from the roadway this modification is considered to be of little impact on the streetscape or appearance to Terranora Road.

Site Orientation

The orientation of the shed on the site will be unchanged by the modifications.

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

In accordance with the requirements of Section 96 of the Act, adjoining and surrounding owners were notified of the application. A total of 7 written submissions were received.

The main issues raised in these objections are addressed below:

- ***Original development application not notified despite SEPP 1 objection***

As explained in an earlier section of this report, Council officers determined that the advertising or notification of the original DA was not warranted in terms of the requirements of Tweed DCP 2008 Section A11. It was also recognised at the time of the original DA that there was existing vegetation on the site which was expected to substantially screen any visual impact of the shed's appearance along the site's Terranora Road frontage.

- **Two storey shed, 6m high will dwarf existing dwelling houses and will have a severe visual impact on the local area.**

The location of the shed partly below road level and the above screening was considered to be adequate to minimise the impact of the shed on the streetscape.

The dwelling houses which have been constructed on number 373 and 375 Terranora Road which adjoin this site, have a lesser building alignment than the shed and are more prominent in the streetscape than the shed.

- **Original assessment made no mention of the visual impact of the shed.**

The original assessment was carried out on the undertaking in the Statement of Environmental Effects that existing established dense landscaping across the front of the site would be retained. This was expected to provide effective screening of the shed.

In association with the proposed level of the shed below road level it was considered unlikely that the shed would result in any significant adverse visual impact.

- **The original application contained false information which misrepresented the size of the shed.**

Whilst the information in the original DA could have been presented by the applicant in a clearer fashion, there were sufficient dimensions, scale height and setback details to determine the application.

It was evident in the construction of the shed that it was not being built in accordance with the approved development consent.

Council officers have taken appropriate compliance action and have required a Section 96 application to provide due process to assess and consider the plan modifications.

- **The size and design of the shed is inconsistent with the local area.**

This aspect was considered with the original application.

The zoning of the allotment is rural living.

Allotments in this zoning are larger than normal residential allotments and large sheds are consistent with the objectives of the zone to suit the needs of property owners for additional storage, hobbies etc.

- **Structure being built as a dwelling not a shed due to internal partitions, air conditioning, gas bottles, rear deck & bi-fold door access to deck.**

The shed was originally approved with a partitioned area at the eastern end which included a bathroom. The applicant is a builder and wanted an office area where he could do paperwork etc and has the bathroom for ancillary use.

There is no kitchen or laundry nor is there any provision to install these fixtures.

The 'office area' has been provided with air conditioning for the comfort of the occupants.

The gas bottles are to power a hot water system for the shower which has been previously approved.

A condition was imposed on the original development consent that the building was not to be used for any 'habitable, commercial or industrial purpose'.

The rear deck off the office area has not been approved and will not be supported.

The Applicant has submitted amended plans which identify this deck being modified to become an awning which will provide weather protection for the doors to the lower storage level.

The amended plans identify that a metal roof will be provided to the framework of the deck which will eliminate the possibility of the awning being used as a deck.

The amended plans identify that a balustrade, which complies with part 3.9.2 of the Building Code of Australia, will be permanently fixed over the opening in the eastern wall which provided access to the former deck.

- **A fence has been erected between the shed and existing dwelling which effectively subdivides the allotment and makes it easier to use the shed as a separate dwelling.**

The owner has previously leased the existing dwelling on site to a family who own a dog and the fence was erected to provide a 'dog safe' yard for the tenants.

Amended plans have been submitted which identify a pathway between the shed and fence with a gate in the fence which provides a physical connection between the existing dwelling and the shed.

No application has been made to subdivide the allotment.

The owner has recently advised that he will now reside in the dwelling house on the allotment.

- **The existing dwelling on site has been leased which lends weight to the suspicion that the Applicant will live in the shed.**

The Applicant has advised that he will be moving into the dwelling on the property to facilitate the use of the shed as being ancillary to the residential use of the dwelling.

The shed has no kitchen or laundry and is therefore not suitable for residential habitation.

- **The structure looks like an architecturally designed contemporary dwelling not a shed**

The applicant advised that he did not want to construct an industrial type shed on the property as this would detract from the streetscape therefore, as a builder, he wanted something more contemporary and attractive as an example to his clients of the standard of work that he carries out.

There is no Council policy which states that a shed cannot have a contemporary appearance.

- **The proposal will have a significant impact on coastal and river views.**

The site originally contained significant mature vegetation along the front property boundary which screened the site from Terranora Road and surrounding properties. This vegetation would also have resulted in views to the ocean from properties on the opposite side of Terranora Road being restricted.

It is only since the removal of this vegetation that the concerns about coastal views have emerged.

Had this vegetation been retained, as undertaken in the application, the view of the ocean and river (and shed) would have been restricted.

The shed was originally approved with an approximate height of 5.0m above finished ground level to the underside of the roof framing at the front elevation. The modified plans identify that this height is relatively consistent with the original approval, although slightly higher in some parts.

Properties on the opposite side of Terranora Road to the subject site are likely to experience some impact on existing views to the coast as a result of the construction of the shed, however any loss of view will be partial only, and the vast majority of the previously available view will still be accessible.

The increased depth of the masonry feature fin wall by one metre is not considered likely to have a significant impact on views.

It is therefore considered that the proposed modifications to the consent will have no significant additional impact on views and that the structure generally will satisfy established principles of view sharing.

- **The proposal will create a precedent in the area.**

Each application is considered on its merits and therefore it is considered that no precedent will be created.

- **The second driveway to the property is dangerous**

The driveway to the shed was assessed and approved by Council's Planning and Infrastructure Engineer through application DWY12/0198.

Council's Planning and Infrastructure Engineer advised an objector that:

"A second access to a property may be approved if it leads to a structure, ie: dwelling, garage, shed or carport provided compliance with Council specifications is met.

In this instance, the sight line when exiting the property to the right is 119 metres and to the left is 205 metres.

This is consistent with requirements for an 80kph speed environment while Terranora Road is posted at 60kph.

The new access, when formed square to the road edge will be a minimum of 33 metres from the existing access, while Council requires a minimum of 6 metres.

From inspection, it appears that vehicles enter and leave the property in a forward direction, and there is a sealed road shoulder 2.7m wide at this location to provide a safe buffer for turning vehicles. These aspects are favourable in considering the safety issues that you raise."

- **The structure is inconsistent with the original approval and the modifications should be subject to a new development application..**

The relevant scale and extent of the revised design of the proposed shed are considered to be appropriate for assessment under Section 96 of the Act, as opposed to the need to require a new DA.

- **Front façade changed increasing partitioned space at eastern end.**

The front façade of the shed has been changed by:

- Moving the eastern end vehicular door closer to the western door, and

- Deleting the sliding door and replacing it with 4 x panels of louvered windows, and
- Constructing an architectural hood over the louvered windows.

The partitioned space at the eastern end has been increased in width from 4.5m to 6.97m.

The applicant has advised that this area will be used as a home business office.

The removal of the sliding door would make the partitioned area less attractive for use as a dwelling as the only access to the building at ground level is via the vehicular doors.

- **Contemporary features added which are inconsistent with shed.**

The contemporary features such as architectural hood over the front louver windows, fin wall to eastern elevation and colour scheme were intentional features by the applicant to make the shed not look like an industrial building.

These features are considered to be aesthetically pleasing and do not (on their own) render the building suitable for use as a residence.

Council has no policy which mandates that a shed cannot have a contemporary appearance.

- **Shed has no relationship to existing dwelling on site due to its character and style.**

The applicant has attempted to provide a modern contemporary building in lieu of a utilitarian metal shed.

- **Additional retaining walls added.**

The eastern end of the shed was designed to be used as a retaining wall however due to the installation of additional doors to this elevation an alternate retaining wall has been constructed from the front wall of the shed to the eastern property boundary.

The impact of this is that the ground floor level at the eastern end is more prominent however due to the sloping ground and the level of this part of the structure below road level it will have minimal impact on the streetscape.

- **Original application dishonest – why weren't additional windows and doors shown**

The applicant advised that the additional windows and doors were offered to him by the window manufacturer at a significantly reduced price as they were part of a cancelled order and he decided to install them to provide more light and ventilation to the structure.

The additional windows and doors were offered after the application was approved and after commencement of construction of the shed.

- **Landscape screening at front of site removed**

The original development consent for the shed was issued on the undertaking in the Statement of Environmental Effects that the landscaping across the front of the site would be retained.

The applicant advised that the landscaping was removed for the construction of a retaining wall inside the front property boundary to allow for a driveway.

The applicant has further advised that he was prepared to reinstate landscaping to this area to Council's satisfaction.

A landscape plan has been submitted which identifies the reinstatement of landscaping across part of the front of the site and along the eastern property boundary.

- **Send wrong message to community – build what you want and seek modification later.**

The completed structure is not significantly different to the structure which was approved under the original development consent.

The location, size, height and footprint of the building are relatively unchanged and the external cladding is unchanged.

The only external changes are to the number and position of windows and doors and the architectural hood. The applicant has advised that the partly constructed rear deck will be converted into a metal roofed awning to provide weather protection to the doors beneath.

The colour of the shed was not identified at approval stage however a condition of consent was imposed that the wall and roof cladding have a low reflectivity where they would cause a nuisance to the occupants of buildings with a direct line of sight to the shed.

The application to modify the consent was made under part 96 1(A) of the Environmental Planning and Assessment Act 1979 which permits the consent to be modified by Council if:

- a) It is satisfied that the proposed modification is of minimal environmental impact, and
- (b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) It has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The applicant is therefore within their rights to submit an application to modify the development consent as the above prerequisites have been satisfied.

- **The section 96 modification should be refused and the original development consent revoked due to misleading information.**

The proposed modifications to the original proposal are not considered to be significantly different from the original approval.

Changes to window and door locations do not significantly change the overall appearance or impact of the structure on the community.

The applicant advised that the shed will be used for storage and the partitioned area for office use and subsequent inspection by Council Officers has not revealed any departure from this advice.

There is no conclusive evidence that the shed will be used as a dwelling therefore the information contained in the application is considered to be accurate.

Under the provisions of part 3.8.3 of the Building Code of Australia a Class 1 building (dwelling) **must** be provided with:

- i. A kitchen sink and facilities for the preparation and cooking of food;
- ii. A bath or shower;
- iii. Clothes washing facilities, comprising at least one wash tub and space in the same room for a washing machine; and
- iv. A closet pan and wash basin.

The shed does not contain a kitchen or laundry facilities and therefore cannot be considered as a dwelling.

The proposed modifications are considered to be reasonable and the application is considered to be worthy of support.

The original development consent was lawfully approved by Council and there is no provision or justification available to Council to revoke the original development consent.

- **Increase in traffic due to use of shed as dwelling.**

The shed is not approved or intended for use as a dwelling therefore the claim of additional traffic generation is speculative only.

- **Shed has no increased parking or turning facilities.**

The floor area of the shed, which is available for vehicular access is about 120m² which would provide adequate area for parking.

The concrete apron in front of the shed contains adequate manoeuvring area for vehicles to turn.

Council's Planning and Infrastructure Engineer, who issued the approval for the additional driveway, advised that vehicles can enter and leave the site in a forward motion.

- **Building is too close to Terranora Road creating traffic hazard.**

Terranora Road is a Council designated roadway which requires a 30 metre building alignment.

The shed was approved at a Council meeting on 21 June 2011. The application warranted a variation under the provisions of SEPP No. 1 due to the 10m building line which was supported by Council.

Dwelling houses at 373 and 375 Terranora Road, which are adjacent to the subject site, have lesser building setbacks from the front boundary than the shed.

- **Additional driveway creates unsafe precedent.**

The additional driveway was approved by Council's Planning and Infrastructure Engineer under application DWY12/0198 after consideration of the merits of the application.

Each application is considered individually and on its merits therefore no precedent is created.

- Excavation for the shed is partly on the adjoining allotment, boundary fence constructed over property boundary, no rainwater disposal or sediment control.

These matters are not relevant to the application to modify the original consent.

The excavation and fencing issues are civil matters between the relevant property owners and not a matter for Council to become involved in.

The issues concerning rainwater disposal and sediment control have been referred to the Private Certifier (Principal Certifying Authority) for follow up action as these matters were included in the original conditions of consent and are the responsibility of the Certifier to pursue.

(e) Public interest

The public interest has been thoroughly examined in this report by consideration of all objections and it is considered that approval of this application would not result in any adverse public interest issues.

OPTIONS:

That Council:

1. Approve the Section 96 application in respect of the modifications to the original conditions of consent; or
2. Refuse the Application, providing reasons for any refusal.

Council officers recommend Option 1.

CONCLUSION:

Following the receipt of various complaints, Council officers have responded to a number of compliance issues in respect of the construction of the approved shed for this site. In this regard, it is noted that the construction is being managed by a private certifier.

The revised plans and "as built" form reflect a structure which are relatively consistent with the scale, height and form of the original approved plans.

It is therefore considered appropriate for Council to support the approval of the amended application.

COUNCIL IMPLICATIONS:

a. 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 unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

28 [PR-CM] Development Application DA10/0853.02 for an Amendment to Development Consent DA10/0853 for Construction and Subdivision of Central Open Space Area Including Two Lakes Rehabilitation of Saltmarsh and Freshwater Wetlands Installation of Stormwater

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0853 Pt 16 & GT1/52 Pt25



Civic Leadership

SUMMARY OF REPORT:

This report has been prepared to provide Council with an overview of staff comments in relation to the proposed modifications to the approved Concept Approval and Project Approval for the Leda Cobaki subdivision development. The report also seeks Council's endorsement of recommended compliance actions in respect of unauthorised works within the "Missing Link - Central Open Space Corridor" and "Northern Hillside" parts of the site, which relate to the above modifications.

Council has been requested to provide the NSW Department of Planning and Infrastructure (DP&I) with comments on the proposed modifications, which largely relate to the need to revise some Environmental Management Plans so that they specifically reference off-site compensatory offsets, as opposed to the originally approved on-site compensatory areas.

In addition to the compensatory offsets, the proposed modifications include taking fill from Precinct 1 and 2 to be used as part of the bulk earthworks for the Central Open Space area.

The staff comments are being reported to Council for endorsement, which will then to be submitted formally to the Department for consideration.

In terms of compliance actions, it was previously reported to Council's March Meeting that, as the consent authority for the Concept Plan and Project Application for the Central Open Space Works, the DP&I had investigated the "Missing Links" unauthorised works, and had subsequently issued Leda two penalty notices (\$3,000 each) and an order for rehabilitation works. In light of this action, as well as the current modification applications submitted to the Department, it is the officers view that Council take no further compliance action in respect of the unauthorised works in this part of the site.

In terms of the unauthorised works in the "Northern Hillside" area, which is the subject of two Section 96 applications for residential subdivision precincts 1 and 2, for which Council is the consent authority, the report outlines two main compliance options for Council to consider:

- The first option is to allow the planning process to simply take its course. The JRPP approval for Precinct 1 and 2 (DA10/0800) incorporates specific conditions which require the proponent to take into consideration previous consents. Condition 9 of DA10/0800 requires all existing consents applicable to Precinct 1 and 2 to be modified (where relevant) to be consistent with DA10/0800.

Condition 50 requires a detailed description demonstrating compliance with previous consents, with particular regard to ecological conditions of consent. This condition will involve the reconciliation of K99/1124 or

- The second option is to obtain advice from Council's solicitors in terms of potential legal proceedings for compensatory measures (rather than rectification) relating to the loss of environmental vegetation and habitat in the Northern Hillside.

In light of Leda's recent willingness to provide a reconciliation of previous conditions of consent in advancing the subdivision proposal for Precinct 6, the Council officers have recommended that Council endorse the first option as an appropriate means of rectifying the concerns of the unauthorised works in the "Northern Hillside" part of the site.

RECOMMENDATION:

That:

1. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
 - (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
2. **Council endorses that the draft comments contained in Ordinary Attachment 1 of this report be submitted to Department of Planning and Infrastructure with regard to all proposed modifications of the Concept Approval (MP06_0316 MOD1) and Project Approval (MP08_0200 Mod 1) for the initial subdivision and site works for the Central Open Space Corridor of the Cobaki residential subdivision development; and**
3. **Council endorses that the unauthorised works at the Northern Hillside of the Cobaki site be addressed at this stage through the conditions of development consent for Precinct 1 and 2 (DA10/0800).**

REPORT:

Applicant: Leda Manorstead Pty Ltd
Owner: Leda Manorstead Pty Ltd
Location: Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570077; Lot 1 DP 823679; Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076 Piggabeen Road, Cobaki Lakes
Zoning: 2(c) Urban Expansion; 7(d) Environmental Protection (Scenic/Escarpment); 7(l) Environmental Protection (Habitat); 6(b) Recreation; 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: Not Applicable

Background:

All environmental management plans referred to by the Concept Approval and the Project Approval for the Leda Cobaki development were based on offset compensatory habitat to be largely provided on the subject site, with the Central Open Space corridor having a dual use as habitat and drainage.

Following the assessment of the two Joint Regional Planning Panel (JRPP) approvals for Precinct 1 and 2 (DA10/0800) and Precinct 6 (DA10/0801), it was determined that the Central Open Space corridor was only to be used for drainage purposes.

All of the recent environmental management plans associated with the Construction Certificate (CC) for the Project Approval have been prepared with the majority of the compensatory offsets being provided offsite. The Management Plans have been assessed by Council staff against the conditions of consent of the Concept Approval and the Project Approval. During the assessment it became clear that several Management Plans were inconsistent with the Concept Approval and the Project Approval in that the approvals referred to **on-site** compensatory offsets, whereas the latest Management Plans being assessed referred to **off-site** compensatory offsets. As such, several Management Plans have not yet been approved.

In order to resolve this issue and to allow the approval of the Management Plans and subsequently the issue of the CC for the Central Open Space corridor, the applicant has lodged modification applications with the Department of Planning & Infrastructure to amend the Concept Approval (MP06_0316 MOD 1) and the Project Approval (MP08_0200 MOD 1).

During Council's assessment of the CC for the Central Open Space, it was noted that the proponent was proposing to use fill from Precinct 1 and 2 as part of the bulk earthworks for the Central Open Space area. Council staff did not consider that the Project Approval MP08_0200 incorporated such a proposal. The Department of Planning & Infrastructure (DP&I) confirmed that insufficient detail had been provided at the time of the original assessment of the Project Approval and as such, the proposed use of fill was not approved. As a result, the applicant has requested an amendment to the initial modification, incorporating the use of fill from Precinct 1 and 2.

Initial Proposed Modifications:

The following is a list of all of the initial proposed modifications for the Concept Approval and the Project Approval. A copy of Council's draft comments to the DP&I is attached as Attachment 1.

1. Concept Approval 06_0316 MOD1

Condition A3 – Project in Accordance With Documents

Condition A3 refers to the documents that the development must be undertaken generally in accordance with. The applicant notes that modification to Condition A3 is required to correctly reference the amended Ecological Assessment and Management Plans, proposing the following amendment to Condition A3:

“A3A – Project in Accordance With Documents

The project is to be undertaken generally in accordance with the following documents:

Environmental Assessment

- (1) Cobaki Lakes Estate Concept Plan Environmental Assessment Report prepared by JBA Urban Planning Consultants P/L, Volumes 1, 2, 3 and 4 December 2008.*

Preferred Project Report

- (2) Preferred Project Report prepared by JBA Urban Planning Consultants P/L, Volumes 1, 2 and 3, October 2009.*
- (3) Addendum to Preferred Project Report prepared by JBA Urban Planning Consultants P/L, June 2010.*

Additional Information

- (4) Final Cobaki Lakes Aboriginal Cultural Heritage Assessment prepared by Everick Heritage Consultants P/L, April 2010.*
- (5) Final Cobaki Lakes Cultural Heritage Management Plan prepared by Everick Heritage Consultants P/L, April 2010.*
- (6) Revised Site Regeneration and Revegetation Plan prepared by James Warren and Associates P/L, November 2012.*
- (7) Revised Saltmarsh Rehabilitation Plan prepared by James Warren and Associates P/L, November 2012.*
- (8) ~~Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates P/L, October 2010.~~*
- (9) Cobaki Estate Development Code, October 2012.*
- (10) Revised Final Statement of Commitments, November 2012.*
- (11) Revised Ecological Assessment prepared by James Warren and Associates P/L, November 2012.*
- (12) Revised Assessment of Significance prepared by James Warren and Associates P/L, November 2012.*
- (13) Modification Report prepared by Darryl Anderson Consulting Pty Ltd, dated November 2012.”*

The applicant provided the following explanation of the proposed modifications to the documents affected by the amendments:

“Deletion of the Revised Freshwater Wetland Rehabilitation Plan

It is proposed to delete the reference to the Revised Freshwater Wetland Rehabilitation Plan as it can no longer be wholly provided on site. Instead offsets for the removal of the degraded Freshwater Wetland from the site, other than a 2 hectare area on the eastern side of the Cobaki Parkway, will be addressed off site.

Details for the proposed on site offset of 2 hectares of Freshwater Wetland are presently being assessed by Tweed Shire Council as part of the implementation of DA10/0800 (Precincts 1-2) and DA 10/0801 (Precinct 6).

Since the nature of the off site offset is still being determined it will be the subject of further detailed reports. The requirement for further detailed reports is to be addressed by an amendment to the Statement of Commitments as described in Section 4.7 of this Report.

Revised Ecological Assessment

*The Revised Ecological Assessment - prepared by James Warren & Associates Pty Ltd dated November 2012 is attached as **Annexure C**. A summary of the amendments made to this document is provided as follows.*

- **Section 2.1 Concept Plan:** proposed development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- Some species names have been updated;
- Impact areas in **Section 4.2.4.2** and **TABLE 4** have been amended along with all references to the calculations within this table;
- **TABLE 5:** Potential loss of Koala habitat has been amended along with all references to the calculations within this table;
- **TABLE 6:** Potential loss of threatened flora habitat has been amended along with all references to the calculations within this table;
- **TABLE 7:** Potential loss of EECs has been amended along with all references to the calculations within this table;
- **TABLE 8:** Proposed EEC offsets has been amended along with all references to the calculations within this table;
- **TABLE 9:** Potential loss of threatened fauna habitat has been amended along with all references to the calculations within this table;
- **TABLE 10:** Potential vegetation loss has been amended along with all references to the calculations within this table;
- **TABLE 11:** Proposed EEC offsets has been amended along with all references to the calculations within this table;
- **TABLE 12:** Summary of impacts, mitigation and offsets has been amended along with all references to the calculations within this table;
- EEC area calculations have been amended to be consistent with the most recent plans;
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;

- *It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will be addressed off-site;*
- **FIGURES 9, 16, 18, 21, 22, 25, 25A, 25B, 25C, 26, 27, 28, 31, 32, 33A & 35** have been amended; and
- *References have been updated to include the most recent reports.*

Revised Assessment of Significance (7-Part Test)

*The Revised Assessment of Significance - (7 Part Test) - prepared by James Warren & Associates Pty Ltd dated November 2012 is attached as **Annexure D**. A summary of the amendments made to this document is provided as follows:*

- **Section 1.3** *Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;*
- *Some species names have been updated;*
- **TABLE 1:** *Potential loss of EECs has been amended along with all references to the calculations within this table;*
- **TABLE 2:** *Proposed EEC offsets has been amended along with all references to the calculations within this table;*
- **TABLE 3:** *Potential loss of threatened flora habitat has been amended along with all references to the calculations within this table;*
- *Amelioration/offsets areas have been amended in **Section 3.3.2**;*
- **TABLE 4:** *Potential loss of threatened fauna habitat has been amended along with all references to the calculations within this table;*
- *EEC area calculations have been amended to be consistent with the most recent plans;*
- *References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed, as Condition 12 of DA10/0801 specifies that the low flow component of the central drainage reserve is to be maintained by Council for drainage purposes only and not utilised for any environmental offsets. This has overruled original plans to rehabilitate Freshwater Wetland onsite within the Central Open Space area;*
- *It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site and that the nature of this off-site offset is still being negotiated;*
- **FIGURES 5, 12, 13, 14, 15, 15A, 15B, 15C, 16, 17 & 19** have been amended; and
- *References have been updated to include the most recent reports.*

Revised Site Regeneration and Revegetation Plan

*The Revised Site Regeneration and Revegetation Plan – Cobaki, November 2012 is attached as **Annexure E**. A summary of the amendments made to this document is provided as follows:*

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4.1** Specifies that references to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed, as Condition 12 of DA10/0801 specifies that the low flow component of the central drainage reserve is to be maintained by Council for drainage purposes only and not utilised for any environmental offsets;
- **Section 4.4** Revegetation/Regeneration areas have been amended;
- **Section 4.4.1** refers to 2ha of Freshwater Wetland that will be regenerated/revegetated on the site in accordance with a Freshwater Wetland Compensatory Habitat Management Plan (SMEC 2012);
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site;
- **FIGURES 3, 4, 5, 8, 8A, 8B, 7, 8C & 9** have been amended; and
- References have been updated to include the most recent reports.

Revised Saltmarsh Rehabilitation Plan

The amended Revised Saltmarsh Rehabilitation Plan – Cobaki, November 2012 is attached as **Annexure F**. A summary of the amendments made to this document is provided as follows:

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4** Offset areas have been amended for consistency with other plans;
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater wetland vegetation from the subject site will largely be addressed off-site;
- **Section 5.3.3** Compensation and rehabilitation areas have been amended;
- **FIGURE 5** has been amended; and
- References have been updated to include the most recent reports.”

Comment:

Council staff has no objection to the proposed referencing of amended ecological assessment and management plans (November 2012), as well as reference to the Modification Report November 2012, with the exception of the comments below:

- Deletion of the Revised Freshwater Wetland Rehabilitation Plan

The deletion of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010) is proposed due to changes in the intended use of the Central Open Space

area. The October 2010 Freshwater Wetland Rehabilitation Plan specified the provision of 24.27ha of offset area for Freshwater Wetland across the site. The proposed modification seeks to provide the majority of this offset offsite, with the exception of a 2.25ha area located to the east of Cobaki Parkway.

Council considers this modification appropriate and necessary in order to address the resulting inconsistency between plans, **provided that** there remains a commitment to manage the 2.25ha compensatory habitat area in accord with the new Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP) and Wallum Froglet Compensatory Habitat Management Plan (WFCHMP) currently being prepared by the proponent (SMEC 2012) as discussed below.

- Revised Ecological Assessment (JWA 2012)

The Revised Ecological Assessment commits to the provision of offsets for the removal of areas of Endangered Ecological Community (EEC) associated with the proposed development. Whilst some of these offsets are achievable onsite, some of the required offsets will not be achievable in conjunction with the proposed development layout.

This revision proposes locating the balance of committed Freshwater Wetland and Swamp Sclerophyll Forest EEC offsets offsite rather than onsite.

Council has provided extensive comment and feedback regarding this issue in relation to the preparation of the Site Regeneration and Revegetation Plan (SRRP) for the Central Open Space and Precincts 1, 2 & 6 (SMEC 2012), with EEC offsetting information changing between revisions and now differing considerably from that approved in the Concept Plan although these plans now appear to be consistent with regard to the location and area of proposed onsite offsets.

Given that the likely requirement for offsite offsets was identified during review of plans submitted with the Preferred Project Report in 2009, Council remains concerned that neither the required areas nor suitable locations of proposed offsite offsets have yet been specified nor is there evidence of the proposed Planning Agreement with the Office of Environment & Heritage (OEH) that demonstrates the proponent's commitment to offsite offsetting. Council considers that this issue must be resolved prior to approval.

The Revised Ecological Assessment proposes the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, in the southern portion of the subject site (Saltmarsh Rehabilitation area). **Council does not consider that this overlap of offsets is appropriate.**

Coastal Saltmarsh is a treeless community consisting of reed and grass species, whereas the Scientific Community Determination of Swamp Oak Floodplain Forest states that the community "...has a dense to sparse tree layer in which *Casuarina glauca* is the dominant species..." Whilst these two EECs typically occur adjacent to one another in the landscape and form small-scale mosaics within the intertidal zone, they are distinguished by their floristic composition and structure, fauna, hydrology, soil, position in the landscape and a range of other abiotic factors, the location of each being restricted by topography and incidence of inundation.

Council considers that the offsetting requirements for these two EECs should be treated separately and suitable offset locations identified and managed accordingly for each.

- Revised Saltmarsh Rehabilitation Plan (JWA 2012)

Similar to that noted above, the Revised Saltmarsh Rehabilitation Plan proposes the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, in the southern portion of the subject site (Saltmarsh area). **Council does not consider that this overlap of offsets is appropriate.**

Council considers that the offsetting requirements for these two EECs should be treated separately and suitable offset locations identified and managed accordingly for each.

Condition C1 – Plan of Development

Condition C1 refers to the information that must be provided in each Plan of Development for future subdivision applications.

The applicant states that modification to Condition C1 is required to delete bushfire requirements C1(1) and C1(2), which are now redundant due to the adoption of AS3959-2009 and the ability for a BPAD Accredited Certifier to determine the relevant asset protection zone (APZ) and bushfire attack level (BAL) at the Complying Development Certificate (CDC) Stage. The applicant states that modification to the condition will provide flexibility to future landowners and ensure that appropriate APZs and BALs are applied to the construction of dwellings.

The applicant also proposes a modification to C1(4) to remove the word 'fill', stating that the modification is requested since the finished levels of the site will be filled to a level above the minimum flood level as specified by TDCP 2008, Section A3 (Development of Flood Liable Land) as part of the subdivision work prior to the lots being registered. The applicant states that therefore requiring the minimum fill level on the POD is redundant.

The applicant has requested the following amendment to Condition C1:

“C1A – Plan of Development

A Plan of Development must be submitted with each future application for subdivision on the Cobaki Estate site. The Plan of Development must, at a minimum, include the following information:

- ~~(1) Location and width of Asset Protection Zones.~~
- ~~(2) Level of construction required for dwellings/buildings adjacent to Asset Protection Zones in accordance with Planning for Bushfire Protection 2006 and Australian Standard 3959-1999 Construction of Building in Bushfire Prone Areas.~~
- (3) Type of development permissible on each lot, eg: zero lot housing, plex housing, etc.
- (4) ~~Fill and Finished~~ floor levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan - Section A3 - Flood Liable Land (or any replacement document).
- (5) All other matters specified for Subdivision in the Cobaki Development Code.”

Comment:

- Deletion of C1(1) and C1(2) – Bushfire Requirements

The proponent wishes to delete Asset Protection Zone (APZ) setbacks and Bushfire Attack Level (BAL) requirements from the Plan of Development for development

applications, stating that such requirements are redundant due to the adoption of AS3959-2009 and the ability for a BPAD Accredited Certifier to determine APZ and BAL at the Complying Development Certificate stage.

APZ setbacks and BAL ratings will vary according to location, proximity to bushland, slope etc and a "one size fits all" approach is not acceptable across an entire development site without allocation of sufficient setback for APZs.

APZ's also need to be established for long-term practical management. Determination of setbacks is required at the DA stage to ensure compliance with *Planning for Bushfire Protection 2006*.

The proposed modified Condition C1A (1) and (2) are **not supported**.

- **Deletion of C1(4) – Flooding Requirements**

Council's initial draft comments to the DP&I did not support the proposed amendment to C1(4). However, upon further review and consideration of Council's stance on a similar issue with Kings Forest, Council has advised DP&I that they no longer opposed the proposed modification.

Condition C4 – Management & Restoration Plans

Condition C4 relates to management and restoration plans that are required for future applications.

The applicant states that modification to Condition C4 is proposed to defer the preparation of various detailed Management Plans from the Development Application (DA) stage to the Construction Certificate (CC) stage, as in their experience, various changes to the detail of the subdivision design and assessment requirements of Council have potential to require numerous revisions to Management Plans when they are prepared at the DA stage.

As such the applicant prefers that the Management Plans are provided at the CC stage, once the approval is secured and there is less likelihood of amendments or modification to the design. The applicant has requested the following amendment to Condition C4:

"C4A Management and Restoration Plans

(1) **Stage –specific management plan updates**

All future applications for Construction Certificates are to include, where relevant, stage-specific management plan updates to the Site Regeneration and Revegetation Plan, Freshwater Wetland Rehabilitation Plan, Fauna Management Plan, Vegetation Management Plan, Scribbly Gum Management Plan, Principal Buffer Management Plan, Landscape Concept Plan, Stormwater Concept Plan, Cultural Heritage Management Plan, Preliminary Acid Sulfate Soils Management Plan providing, where relevant, details on timelines for implementation of recommended works including maintenance periods funding arrangements and measurable performance and completion criteria.

Each plan is to consider all other existing plans for the site to ensure management strategies do not conflict and each plan can be implemented without negatively impacting on the objectives of another.

(2) **Construction Environmental Management Plan (CEMP)**

All future applications for Construction Certificates in relation to residential subdivision are to include stage-specific CEMPs that detail measures to address the impacts of construction including, but not limited to: erosion and

sediment control (in accordance with Managing Urban Stormwater-Soils-Construction Version 4, Landcom 2004, or the latest version); protection of fauna (generally in accordance with the Fauna Management Plan - Cobaki Lakes PPR 2009); groundwater and acid sulfate soils; and, protection of trees and vegetation to be retained (generally in accordance with the Vegetation Management Plan, Cobaki Lakes PPR 2009).

(3) Restoration Plans

Detailed regeneration and revegetation plans for each Rehabilitation and Management Precinct as detailed in the Site Regeneration and Revegetation Plan (SRRP) are to be prepared as per the SRRP and accompany the application for Construction Certificates in relation to residential subdivision. These detailed plans for each Rehabilitation and Management Precinct, as well as the Revised Saltmarsh Rehabilitation Plan and Freshwater Wetland Rehabilitation Plan are to include, but not be limited to:

- a. performance objectives detailing measurable performance and completion criteria;*
- b. Detailed planting species list, composition and density for each vegetation community and, for EECs to be rehabilitated, this is to include ground, mid and canopy species and species composition must be benchmarked against reference EEC community;*
- c. Details on creek bank erosion management;*
- d. Timing and responsibilities; and*
- e. Developer maintenance period reflecting completion criteria.*

(4) Buffer Management Plan

The stage-specific Buffer Management Plans are to accompany an application for Construction Certificates in relation to residential subdivision and are to be prepared as per the Overview Buffer Management Plan - Cobaki Lakes - Preferred Project Report (James Warren & Associates 2009) including, but not limited to, rehabilitation and revegetation strategies, bushfire protection measures, weed management, fencing, biodiversity and water quality monitoring and reporting.

(5) Flora and Fauna Monitoring Plan

Updates to the Flora and Fauna Monitoring Report are to be provided with an application for Construction Certificates in relation to residential subdivision in accordance with the draft outline to be approved by the Director-General."

Comment:

The proponent seeks to modify Concept Plan Condition C4 such that Management Plans for future stages are delayed until CC stage rather than the earlier DA stage.

The proponent thus seeks to delay preparation of management plans until "*approval is secured.*" Given that flora and fauna management and restoration requirements could influence detailed subdivision design and that preparation of adequate management plans is integral to the assessment process, this is **not considered appropriate**.

For reasons of transparency, accountability, the ability of future management plans to be formally assessed on their merits for adequacy of management intentions and to allow for the imposition of any required conditions, Council considers that the retention of Condition C4 in its current form is appropriate.

Development matters such as Site Regeneration and Revegetation, Freshwater Wetland Rehabilitation, Fauna Management, Vegetation Management, Scribbly Gum Management, Stormwater Management, Cultural Heritage, Construction Environmental Management Plans, Buffer Management, Restoration Plans and Acid Sulfate Soils Management are complex matters associated with the approval of a development and should not be deferred to the CC stage.

For these reasons this amendment is **not supported**.

However, as an alternative, draft Management Plans and Restoration Plans could be required with the DA. This would allow some certainty at the DA stage in terms of the subdivision design. More detailed / final Plans could then be submitted at CC stage.

Condition C7 – Geotechnical Assessments

Condition C7 refers to the minimum geotechnical assessment requirements for future subdivision applications.

The applicant states that modification to Condition C7 is requesting to defer the Geotechnical Assessments from the DA stage to the CC stage. They note that as the geotechnical conditions are generally known, it is considered that the Detailed Geotechnical Assessments for subdivision purposes are more relevantly to be undertaken at the CC stage. The applicant has requested the following amendment to Condition C7:

“C7A Geotechnical Assessments

- (1) *In order to ensure the stability of development lots, a detailed geotechnical assessment prepared by a suitably qualified person must be submitted with each future ~~development~~ Construction Certificate application for subdivision. The assessments must, at minimum, include the following:*
 - a. *A geotechnical map of the site clearly showing ground surface contours geotechnical engineering soil types and geotechnical hazards. The delineation of hazards should include hazard locations and possible hazard impact areas. That map should be occupied by an explanatory text describing the nature and delineation of soil types and hazard types. The map and text should be prepared by a suitably experienced geotechnical practitioner; and*
 - b. *A synthesis site plan clearly showing ground surface contours and the locations of all test pits, boreholes and monitoring wells drilled on the site to date.*
- (2) *Any hillside construction must be in accordance with 'Some Guidelines for Hillside Construction and Practice', Appendix G of Landside Risk Management by Australia Geomechanics 2002."*

Comment:

The Applicant is requesting that Geotechnical Assessment be deferred from the DA stage to the CC approval.

As an alternative solution it is suggested that a Preliminary Geotechnical Assessment be provided at the Development Application stage for each future application. This Preliminary

Geotechnical Assessment must contain adequate technical information that clearly identifies any geotechnical constraints to the creation of residential allotments and if required recommendations for the rehabilitation of these constraints.

A Detailed Geotechnical Assessment could then be provided at the CC stage.

It is recommended that condition C7 be modified to require a **Preliminary Geotechnical Assessment at the Development Application Stage and a Detailed Geotechnical Assessment at the Construction Certificate stage.**

Condition C8 - Bushfire Assessment

Condition C8 relates to requirements for bushfire assessment and management plans for future applications.

The applicant states that modification to Condition C8 is requesting to remove unnecessary restrictions of the APZ to be provided to each lot since Certification that the dwelling is not located within the flame zone in accordance with AS3959-2009 is required in association with any CDC, noting that normal bushfire hazard assessment requirements would apply for other DA's. The applicant has requested the following amendment to Condition C8:

“C8A Bushfire Assessment

In order to ensure the protection of property and assets, a detailed bushfire assessment and management plan, prepared by a suitably qualified person, must be submitted with each future project/development application for subdivision. The assessment must, at a minimum, demonstrate consistency with the requirements of Planning for Bushfire Protection 2006. ~~All asset protection zones must be clearly specified on the Plan of Development and all affected lots are to be encumbered to this effect with a Section 88B instrument under the NSW Conveyancing Act 1919.~~”

Comment:

Condition C8 requires a detailed bushfire assessment and management plan to be prepared and submitted with each DA for a subdivision. The plans must clearly delineate APZ's on the Plan of Development. Condition C8 also requires all affected lots to be encumbered with an 88B instrument to this effect.

The applicant is requesting to remove to APZ restriction from each affected lot, stating that it is unnecessary...*‘since Certification that the dwelling is not located within the flame zone in accordance with AS3959-2009 is required in association with any Complying Development Certificate.’*

Identification of APZ's should be clearly identified on the Plan of Development and eventually linked to a maintenance regime. Failure to indicate this land usage is a misrepresentation of the situation that exists adjoining Lots that are for sale. For the same reason, failure to encumber Lots as required with a S88B Instrument misleads prospective purchasers regarding building constraints that will be enforced at the DA stage. It is also noted that the decision to encumber Lots with a S88B restrictions / constraints is Council's to make.

The proposed modified Condition C8A is **not supported**.

Schedule 3 - Statement of Commitments

- Statement of Commitment 4.1 – Saltmarsh Rehabilitation Plan

The applicant is requesting a modification to Statement of Commitment 4.1 to update the reference to the latest Saltmarsh Rehabilitation Plan dated November 2012.

Comment:

No objection to the proposed reference to the revised Saltmarsh Rehabilitation Plan November 2012, with the exception of the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, as noted previously.

- Statement of Commitment 4.3 – Revised Site Regeneration and Revegetation

The applicant is requesting a modification to Statement of Commitment 4.3 to update the reference to the latest Revised Site Regeneration and Revegetation Plan dated November 2012.

Comment:

No objection to the proposed reference to the amended Revised Site Regeneration and Revegetation Plan November 2012.

- Statement of Commitment 4.7 – Freshwater Wetlands

The applicant is requesting a modification to Statement of Commitment 4.7 to refer to the altered biodiversity offset arrangement whereby 2 hectares of rehabilitated freshwater wetland is to be provided on site with a Freshwater Wetland Compensatory Habitat Management Plan to be prepared to address the rehabilitation of 2 hectares of freshwater wetland on the eastern side of Cobaki Parkway.

The applicant also notes that the offset is to be provided off site subject to a Planning Agreement with the Office of Environment and Heritage (OEH) as per Commitment 4.8.

Comment:

The proposed modification to Statement of Commitment 4.7 refers to the preparation of a Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP) and for this plan to be approved by Council. This is considered appropriate and this process is currently nearing finalisation.

This commitment now refers only to a 2.25ha area of land east of the Cobaki Parkway for the purpose of providing the on-site portion of the required Freshwater Wetland and Wallum Froglet Habitat offsets.

Section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010) requires the preparation of a detailed Wallum Froglet Compensatory Habitat Management Plan (WFCHMP). The proponent has prepared a WFCHMP in conjunction with the FWCHMP (both of which are currently being assessed by Council). The proposed Statement of Commitment would no longer make reference to the JWA management plan, which raises the concern that the WFCHMP would no longer be triggered as a requirement.

In order to ensure that the WFCHMP continues to be a requirement, Council considers that it would also be appropriate to **either** include the WFCHMP in the proposed modification of Statement of Commitment 4.7, **or** to insert an additional commitment to the preparation of a WFCHMP. Both of these plans pertain to the management of the 2.25ha area.

The modifications have resulted in a minor inconsistency between the Concept Plan modification and the abovementioned management plans in that the modification application refers to this area being 2ha however management plans refer to this area being 2.25ha.

It is also noted that the existing wording under the heading 'Timing for Completion' for Commitment 4.7 still makes reference to the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010), which is being proposed to be replaced with the FWCHMP.

- Statement of Commitment 4.8 – Offsets for Freshwater Wetlands and associated Wallum Froglet Habitat

The applicant is requesting a modification to Statement of Commitment 4.8 to refer to the altered biodiversity offset arrangement whereby the rehabilitated freshwater wetland is to be provided off site and in accordance with a Planning Agreement between the Proponent and OEH.

Comment:

No objection to the proposed reference to OEH and the inclusion of offsets that are "either on-site or offsite".

- Statement of Commitment 8.1.1 – Management of Soils and Geotechnical Conditions

The applicant is requesting a modification to Statement of Commitment 8.1.1 to refer to the implementation of the Geotechnical investigation at the Construction Certificate stage as per the proposed modification to Condition C7.

Comment:

Reference is made to Council's comments for Condition C7, whereby Council proposes an alternative solution. That is, a Preliminary Geotechnical Assessment be provided at the Development Application stage for each future application and a Detailed Geotechnical Assessment be provided at the CC stage.

It is recommended that Statement of Commitment 8.1.1 reflect such an alternative solution.

Amended Cobaki Estate Development Code

The applicant proposes a number of 'housekeeping' amendments to the Code, which have been identified in the assessment and approval of Precincts 1 and 2 (DA10/0800) and Precinct 6 (DA10/0801).

- Section 1.0 - Introduction

The applicant has identified a typographical error in the summary.

Comment:

No objection is raised to the proposed correction of the typographical error.

- Part A, Section 2.2 – Complying Development

The applicant has noted that this section of the Code does not make reference to the requirement to provide rainwater tanks. It is proposed to include a new Control 5 in Section 2.2, which requires rainwater harvesting to be provided.

Comment:

No objection is raised to the requirement to provide a rainwater tank in Control 5.

- Table 5.4.1

Given that the term "frontage" is not defined within the Code, the applicant proposes to amend the controls and table to call up "effective lot width" as defined in Appendix A of

the Code. The heading Minimum Frontage Corner Allotments is also proposed to be changed to read “Minimum Effective Lot Width”.

Comment:

The applicant has attempted to define the term 'frontage' with the term 'effective lot width'. No objection is raised to the applicant's proposal.

- Section 5.4, Control 8

The applicant proposes to amend Control 8 by replacing the word “frontage” with “effective lot width”.

Comment:

No objection to the proposed amendment to Control 8 regarding the term ‘frontage’.

- Section 5.4, Control 10

The applicant proposes to amend Control 10 by adding the words “or public footway”.

Comment:

No objection to the proposed amendment to Control 10 regarding the addition of the words ‘or public footway’.

- Section 5.6, Control 1(a)

Section 5.6, Control 1(a) requires the Plan of Development (POD) to include “*the location and width of Asset Protection Zones*”. The applicant proposes to delete Control 1(a), claiming it is an onerous and unnecessary requirement to be shown on the POD.

Comment:

The applicant is requesting deletion of the requirement to include the location and width of Asset Protection Zones. As noted under Condition C1(1) and (2), the proposed deletion is **not supported**.

- Section 5.6, Control 1(d)

Section 5.6, Control 1(d) requires the POD to include the “*fill and finished floor levels requirements on flood prone lots*”. The applicant proposes to delete the word “fill”, claiming that the POD does not need to contain this information as the land will be filled to the design flood level at the subdivision stage.

Comment:

As noted under Condition C1(4), the proposed deletion of the word ‘fill’ is not opposed.

- Section 5.6, Control 1(e)

Section 5.6, Control 1(e) requires the POD to include “*all necessary easements and Section 88B instruments*”. The applicant proposes to delete Control 1(e), claiming it is an onerous and unnecessary requirement to be shown on the POD and stating that all necessary easements will be shown on the final Plan of Subdivision when actual service locations are known based on Works As Executed Plans.

Comment:

The identification of easements and the submission of Section 88B Instruments typically occurs at the Subdivision Certificate stage. The preparation of these documents prior to the lodgement of the Subdivision Certificate would be

advantageous however it is not necessary for it to be included in the Plan of Development. Council raises no objection to the proposed amendment.

• Section 5.6, Control 1(j)

Section 5.6, Control 1(j) requires the POD to include “for pews, mews and development lots, the maximum number of dwellings and bedrooms per lot”. The applicant proposes to amend Control 1(j) by changing the words “dwellings per lot” to read “bedrooms per dwelling”, claiming that it is a more relevant consideration for the purposes of determining contributions etc at the subdivision stage.

Comment:

The applicant proposes to change the wording from ‘*dwellings per lot*’ to ‘*bedrooms per dwelling*’. Without further explanation / justification from the proponent, the proposed modification is **not supported**.

Alternatively, the Plans of Development could provide both the maximum number of dwellings **and** the maximum number of bedrooms per dwelling.

2. Project Approval 08_0200 MOD1 (Central Open Space)

Schedule 1 – Part A – Table

Part A Table references the approved works and which allotments the works relate to. The applicant proposes to amend the Table to delete the reference to “establishment of freshwater wetlands and fauna corridors on **Lots 801 and 803**”, as noted below:

for the carrying out of:	<ul style="list-style-type: none"> • Subdivision of the entire Cobaki Estate site into seven (7) lots including one residue lot for future urban development–Lot 807); • Staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater drainage area; • Road forming works and culverts crossing the central open space(including Lot 802); • Road forming works across saltmarsh area, including culverts and trunk sewer and water services (Lot 804); • Revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and • Establishment of freshwater wetland and fauna corridors (Lots 801 and 803).
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Comment:

No objection to the proposed amendment to Table A to delete reference to Lots 801 and 803.

Condition 1 – Project Description

Condition 1 describes the approved development, breaking down the development into the relevant stages. The applicant proposes to amend the description to delete the reference to “establishment of freshwater wetlands and fauna corridors on **Lots 801 and 803**”, proposing the following amendment to Condition 1:

“1A. Project Description

Project approval is granted only to:

PART ONE - SUBDIVISION

- Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);

PART TWO – BULK EARTHWORKS AND CIVIL WORKS

- Staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater drainage area;
- Road forming works and culverts crossing the central open space (including Lot 802);
- Road forming works across saltmarsh areas, including culverts and temporary trunk sewer and water services (Lot 804);

PART THREE – ENVIRONMENTAL ENHANCEMENT WORKS

- Revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and
- Establishment of freshwater wetland and fauna corridors (~~Lots 801 and 803~~).

Comment:

No objection to the proposed amendment to the Project Description to delete reference to Lots 801 and 803.

Condition 3 – Project in Accordance with Plans

Condition 3 lists all of the approved plans including Managements Plans. The applicant proposes to update the list to reference the amended Ecological Management Plans, proposing the following amendment to Condition 3:

“3A. Project in Accordance with Plans

The project shall be undertaken generally in accordance with the following plans, except where varied by conditions of approval:

Management Plans		
Author	Title	Date
Yeats Consulting Engineers	Stormwater Quality Concept Plan	September 2010 Revision 02
James Warren and Associates	Revised Saltmarsh Rehabilitation Plan – Cobaki Lakes	October 2010 November 2012
James Warren and Associates	Revised Freshwater Wetland Rehabilitation Plan – Cobaki	October 2010
James Warren and Associates	Revised Site Regeneration and Revegetation Plan – Cobaki Lakes	October 2010 November 2012
Mosquito Consulting Services	Biting Midge and Mosquito Control Plan – Cobaki Lakes	May 2008
Everick Consultants P/L	Final Cobaki Lakes Cultural Heritage Management Plan approved as part of the Cobaki Estate Concept Plan (06_0316).	April 2010
James Warren and Associates	Fauna Management Plan	October 2009

The applicant provided the following explanation of the proposed modifications to the documents affected by the amendments:

“Revised Saltmarsh Rehabilitation Plan

The Revised Saltmarsh Rehabilitation Plan – Cobaki, November 2012 is attached as **Annexure C**. A summary of the amendments made to this document is provided as follows:

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4** Offset areas have been amended for consistency with other plans;
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site;
- **Section 5.3.3** Compensation and rehabilitation areas have been amended;
- **FIGURE 5** has been amended; and
- References have been updated to include the most recent reports.

Revised Site Regeneration and Revegetation Plan

The Revised Site Regeneration and Revegetation Plan – Cobaki, November 2012 is attached as **Annexure D**. A summary of the amendments made to this document is provided as follows:

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4.1** Specifies that references to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed, as Condition 12 of DA10/0801 specifies that the low flow component of the central drainage reserve is to be maintained by Council for drainage purposes only and not utilised for any environmental offsets;
- **Section 4.4** Revegetation/Regeneration areas have been amended;
- **Section 4.4.1** refers to 2ha of Freshwater Wetland that will be regenerated/revegetated on the site in accordance with a Freshwater Wetland Compensatory Habitat Management Plan (SMEC 2012);
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site;
- **FIGURES 3, 4, 5, 8, 8A, 8B, 7, 8C & 9** have been amended; and
- References have been updated to include the most recent reports.”

Comment:

This revision proposes removal of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010). This is considered appropriate given that it referred to the provision of Freshwater Wetland within the Central Open Space area, which is no longer achievable.

It should be noted that the revised condition lists the Fauna Management Plan (JWA October 2009) as one of these plans, however this plan has not been updated to be consistent with the other revised plans submitted with the modification application.

Condition 4 – Project in Accordance with Documents

Condition 4 references documents that the project must be undertaken generally in accordance with. The applicant proposes to update the list to reference revisions to the Assessment of Significance report that formed part of the original application, as well as a reference to the current modification report, proposing the following amendment to Condition 4:

4A. Project in Accordance with Documents

The project will be undertaken generally in accordance with the following documentation (including any Appendices contained therein):

- a. *Environmental Assessment Report: Cobaki Lakes Estate – Project Application No. 08_0200 for Central Open Space, Lake and Riparian Corridor, Volumes 1 and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead PTY LTD, dated December 2009; and*
- b. *Preferred Project Report: Cobaki Lakes Estate – Project Application No. 08_0200 for Central Open Space and Riparian Corridor, Volumes 1 and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead PTY LTD, dated July 2010; and*
- c. *Addendum to the Preferred Project Report: Cobaki Estate Part 3A Project Application (MP08_0200) for Central Open Space and Riparian Corridor, Volumes 1 and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead PTY LTD, dated October 2010; and*
- d. *Revised Assessment of Significance – Cobaki Parkway ‘Missing Link’ & Re-alignment of Sandy Lane (southern portion) prepared by Jmaes Warren & Associates Pty Ltd dated November 2012; and*
- e. *Modification Report prepared by Darryl Anderson Consulting Pty Ltd, dated November 2012.”*

The applicant provided the following explanation of the proposed modifications to the documents affected by the amendments:

“Revised Assessment of Significance (Cobaki Parkway ‘Missing Link’ & Re-alignment of Sandy Lane (southern portion))

*The Revised Assessment of Significance - Cobaki Parkway ‘Missing Link’ & Re-alignment of Sandy Lane (southern portion) - prepared by James Warren & Associates Pty Ltd dated November 2012 is attached as **Annexure E**. A summary of the amendments made to this document is provided as follows.*

- *Some species names have been updated;*
- **Section 3.2** *Proposed habitat offset areas have been amended;*
- *Remove references to Revised Freshwater Wetland Rehabilitation Plan;*
- *Specify that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will now be largely be addressed off-site and that the nature of this off-site offset is still being negotiated and will therefore be detailed in subsequent reports;*
- **Section 3.4.2** *Proposed EEC offset areas have been amended;*

- **FIGURES 6, 11, 12, 15, 16 & 17** have been amended; and
- References have been updated to include the most recent reports."

Comment:

No objection to the proposed reference to the Revised Assessment of Significance November 2012 or the reference to the Modification Report November 2012.

Condition 8 (b) - Certification

Condition 8 references the entity that a Subdivision Certificate may be obtained from. The applicant proposes to amend Condition 8 such that an Accredited Certifier can issue the Subdivision Certificate, pursuant to the provisions of Clause 11 of the State Environmental Planning Policy (Major Development) 2005. The following amendment to Condition 8 is proposed:

"8A. Certification

- a. *Construction Certificate: Prior to the commencement of works, the proponent must obtain the appropriate Construction Certificate(s) for the proposed works from either the Council or an Accredited Certifier.*
- b. *Subdivision Certificate: Prior to registration of the plan of subdivision of the project, under Division 3 of Part 23 of the Conveyancing Act 1919, a Subdivision Certificate pursuant to Section 109C(1)(d) of the Act must be obtained from the Council or an Accredited Certifier.*
- c. *Notwithstanding any other condition of this approval, separate Construction Certificates for bulk earthworks and civil works (including any approved staging) may be issued.*
- d. *Submission of relevant certificates may occur in a staged manner consistent with the indicative construction timing approved as part of the CEMP, or as otherwise agreed to by the PCA."*

Comment:

Council's initial draft comments issued to the DP&I noted that the proposed modification to Condition 8 was not supported, citing concern with the standard of construction for new public infrastructure.

However, Council's stance on this matter has since changed, with the knowledge that legislation is already in place which allows Accredited Certifiers to become the Principal Certifying Authority (PCA) and issue Subdivision Certificates for Project Approvals such as the Central Open Space Approval.

Thereby, the proposed amendment to Condition 8 is not opposed.

As noted in the March Council report, Council officers are in discussions with the proponent's private certifier with regard to ascertaining the applicable responsibilities for each condition of consent, noting that Council is the authority for all water and sewer infrastructure.

Condition 38 - Biodiversity Offsets

Condition 38 relates to the requirement of an agreement between the proponent and the OEH with regard to biodiversity offsets, as well as requirements for a Wallum Froglet Compensatory Habitat Plan. The applicant proposes to amend the condition to reflect the revised arrangements for the provision of Freshwater Wetland biodiversity offsets, proposing the following amendments to Condition 38:

“38A. Biodiversity Offsets

- (1) No works shall be undertaken within the central open space area that may impact upon (or contribute to an impact upon) the freshwater wetlands and associated Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and DECCW OEH that offsets (either on site and/or off site) the project’s impacts on biodiversity. This agreement shall include provision for alternative offsets to be delivered should monitoring indicate that an appropriate wetland environment is not achieved after an appropriate time. Evidence of such an agreement shall be forwarded to the Director-General no later than 5 working days prior to works commencing in those areas.
- (2) Notwithstanding the above, the proponent shall prepare a Freshwater Wetland Compensatory Habitat Management Plan to address the rehabilitation of approximately 2 hectares of freshwater wetland on the eastern side of Cobaki Parkway. The Compensatory Habitat Management Plan shall be submitted for approval by the General Manager of Tweed Shire Council or his delegate prior to any works being commenced that may cause or contribute to the relevant impact.
- ~~(3) Notwithstanding the above, the proponent shall prepare a detailed Wallum Froglet Compensatory Habitat Plan as per section 4.3 of the *Revised Freshwater Wetland Rehabilitation Plan* prepared by James Warren and Associates, dated October 2010. In addition to these requirements, the Wallum Froglet Compensatory Habitat Plan must include the following information on the core breeding habitat areas:
 - ~~(i) Detail on how Wallum Froglet core breeding habitat will be constructed and maintained;~~
 - ~~(ii) Detail on the design of fauna crossings where the fauna corridor is bisected by a road to ensure Wallum Froglet movement between core breeding habitat ponds is available;~~
 - ~~(iii) How threats to the survival of Wallum Froglet will be managed;~~
 - ~~(iv) Monitoring and reporting requirements including monitoring of Wallum Froglet usage of the core breeding habitat area, usage of fauna corridors, Wallum Froglet population size and breeding success, water quality, habitat suitability and presence of exotic species (particularly Cane Toads and Gambusia);~~
 - ~~(v) A mechanism for on-going funding of this Wallum Froglet Habitat areas to ensure the long-term viability of the population; and~~
 - ~~(vi) A contingency planning option in the case of system failure.~~~~

Comment:

The proposed amendment to Condition 38 seeks to remove the requirement to prepare a Wallum Froglet Compensatory Habitat Management Plan (WFCHMP). That is, the proponent proposes to replace the trigger for a WFCHMP with the requirement for a Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP).

Council has been reviewing the FWCHMP and WFCHMP prepared by SMEC (2012) both of which pertain to management of the 2.25ha compensatory habitat area on the eastern side of Cobaki Parkway.

As noted above under the Concept Approval comments, Council is concerned that the deletion of existing Condition 38 (2), whilst specifically requiring preparation of the

FWCHMP, will result in the lack of a trigger for the preparation or implementation of the WFCHMP for the 2.25ha onsite Compensatory Habitat Area.

It is considered appropriate that **either** the proponent be required to include the preparation of the WFCHMP in the new condition 38A (2) **or** to retain the current Condition 32A (2), with the removal of (ii) which is no longer relevant, in conjunction with the new proposed condition 38A (2). The removal of any trigger for the WFCHMP is **not supported**.

It is also noted that the proponent has not provided any explanation for the deletion of Condition 38(2). This component of the condition deals with the requirements for the WFCHMP, including the need for a...*'mechanism for ongoing funding of the Wallum Froglet Habitat area to ensure the long term viability of the population'* (Condition 38 (2)(v)).

In order to facilitate the finalisation of the WFCHMP, the proponent was requested on 31 October 2012 to provide written confirmation that the condition of consent would be adequately addressed and complied with. In addition, the proponent was requested to provide details of the proposed mechanism for the on-going funding for Council's consideration.

The proponent provided the following response on 31 October:

"The condition to which you refer is amongst the matters for which we will shortly be making a Modification Application to DoP. The condition was set in light of the then proposed substantial area of wetland/wallum froglet habitat to be provided on site. The bulk of this is now to be provided off site, such that only about 2ha remains on site – the area east of Cobaki Parkway.

The funding source for the long term maintenance of this small area will be Council rates."

The approval of the Concept Plan and the Project Approval was granted subject to appropriate mechanisms being put in place by the proponent for the funding for the long term maintenance of the environmental areas. Although it is acknowledged that the on-site Freshwater Wetland and Wallum Froglet Compensatory Habitat area have been significantly reduced, it is **not considered acceptable** that the cost of maintenance of these areas should now be taken up by the rate payers of the Shire.

The removal of the requirement for a mechanism for funding of the Wallum Froglet Habitat area is **not supported**. The use of Council rates for the ongoing funding of the area is **not supported**.

Condition 65 – Saltmarsh Rehabilitation Works

Condition 65 incorporates specific requirements in relation to Saltmarsh rehabilitation works. The applicant proposes to modify the condition to reflect the amendments to the Saltmarsh Rehabilitation Plan, proposing the following amendments to Condition 65:

"65A. Saltmarsh Rehabilitation Works

- a. *The saltmarsh area shall be appropriately rehabilitated generally in accordance with the provisions of the Revised Saltmarsh Rehabilitation Plan – Cobaki Estate October 2010 November 2012, prepared by James Warren and Associates) and other relevant plans and documents listed in conditions 3 and 4 of this approval.*
- b. *Pursuant to the Terms of Approval of the Cobaki Estate concept plan (06_0316), and prior to works commencing in the affected areas, the proponent shall submit to the Director-General for approval a final saltmarsh rehabilitation plan that is to include, but not be limited to:*

- i. *Detailed aims and objectives, and measurable performance and completion criteria tracking success against those aims and objectives (for each stage and overall);*
- ii. *Detailed planting species list, composition and density for each ecological community and, for endangered ecological communities (EECs), this is to include species composition that is benchmarked against a reference EEC community;*
- iii. *Details on creek bank erosion management;*
- iv. *Management of tidal flux and hydrological management;*
- v. *Timing and responsibilities; and*
- vi. *Developer maintenance period reflecting completion criteria.*

This plan shall be prepared in partnership with the scientist required in condition 65e below. A copy of this plan shall also be forwarded to the DECCW OEH, NSW Industry & Investment – Fisheries and Council for their information.

- c. *Notwithstanding anything else in this approval, the resulting ecological community must be consistent with the NSW Scientific Committee's classification of Coastal Saltmarsh, or Swamp Oak Floodplain Forest (as applicable), and its classification as an Endangered Ecological Community.*
- d. *The damaged floodgate at the entrance to Dunn's Drain must be replaced by a fish friendly floodgate allowing regulated tidal inundation into the Saltmarsh Rehabilitation Area. This must be undertaken in accordance with the approved Addendum to the Revised Saltmarsh Rehabilitation Plan (James Warren and Associates, October 2010 November 2012) prior to issue of construction certificate for any saltmarsh works. Additional detail on the design and monitoring and maintenance of the flood gate shall be submitted for referral to and approval by NSW Industry & Investment – Fisheries and Council.*
- e. *The proponent shall engage (and fully fund) an appropriately qualified scientist (preferably with established expertise in coastal saltmarsh ecology and hydrology), to peer review the detailed plan and guide its development, and periodically monitor, provide advice and review progress with the saltmarsh rehabilitation throughout the duration of works. The nominated scientist must receive the approval of the Director- General prior to engagement by the proponent.*
- f. *Any adaptive management actions/corrective works required to ensure compliance with condition 65c must be pre-approved by the scientist referred to in condition 65e prior to such works commencing.*
- g. *The proponent must ensure that whilst undertaking saltmarsh rehabilitation works on-site and in the manner set out in the approved staging plan that no adverse impacts occur on other areas of saltmarsh."*

Comment:

No objection is raised to the proposed references to the revised Saltmarsh Rehabilitation Plan November 2012.

Condition 68 – Site Regeneration and Revegetation

Condition 68 relates to the requirements for the regeneration and revegetation plans for each of the Rehabilitation and Management Precincts impacted upon by works. The applicant proposes to modify the condition to reflect the amendments to the Site Regeneration and Revegetation Plans, proposing the following amendment to Condition 68:

“68A. Site Regeneration and Revegetation

Detailed regeneration and revegetation plans shall be prepared for each of the Rehabilitation and Management Precincts impacted upon by works approved under this project as detailed in the Revised Site Regeneration and Revegetation Plan (SRRP), prepared by James Warren and Associates and dated October 2010 November 2012. These plans shall be submitted to, and approved by, the Director-General prior to works commencing in those areas.

These detailed plans for each Rehabilitation and Management Precinct are to be consistent with the SRRP and must include as a minimum:

- a. performance objectives detailing measurable performance and completion criteria (for each stage and overall);*
- b. Detailed planting species list, composition and density for each vegetation community and, for endangered ecological communities (EECs) to be rehabilitated, this is to include ground, mid and canopy species and species composition must be benchmarked against an appropriate reference EEC community;*
- c. Details on creek bank erosion management;*
- d. timing and responsibilities; and*
- e. developer maintenance period reflecting completion criteria.”*

Comment:

No objection is raised to the proposed reference to the revised Site Regeneration and Revegetation Plan November 2012.

Schedule 3 – Statement of Commitments

- **Statement of Commitment 3 – Native Vegetation**

The applicant is requesting a modification to Statement of Commitment 3 to update the reference to the latest Site Regeneration and Revegetation Plan prepared by James Warren & Associates, dated November 2012.

Comment:

No objection is raised to the proposed reference to the revised Site Regeneration and Revegetation Plan November 2012.

- **Statement of Commitment 4 – Freshwater Wetlands**

Given that the majority of the freshwater wetland offset will no longer be provided on site, the applicant is requesting a modification to Statement of Commitment 4 to refer to the Planning Agreement between the proponent and OEH, as required by Statement of Commitment 4.7 of the Concept Approval.

Comment:

No objection is raised to the proposed wording of the commitment, referencing the terms of agreement between the proponent and OEH and the requirement of the

Statement of Commitment 4.7 of the Concept Approval, subject to the comments provided under the Concept Approval's Statement of Commitments 4.7 Freshwater Wetlands heading being applied.

- Statement of Commitment 5 – Saltmarsh

The applicant is requesting a modification to Statement of Commitment 5 to update the reference to the latest Saltmarsh Rehabilitation Plan prepared by James Warren & Associates, dated November 2012.

Comment:

No objection is raised to the proposed reference to the revised Saltmarsh Rehabilitation Plan November 2012, subject to the comments made under the Concept Approval comments in relation to the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area.

- Statement of Commitment 7 – Fauna Management

The applicant is requesting a modification to Statement of Commitment 7 to update the reference to the latest Revised Assessment of Significance – Cobaki Parkway 'Missing Link' & Realignment of Sandy Lane (southern portion) prepared by James Warren & Associates, dated November 2012.

Comment:

No objection is raised to the proposed reference to the Revised Assessment of Significance November 2012.

As noted previously, the above comments have been sent in draft form to the DP&I on 14 January 2013. The DP&I subsequently issued the applicant with a request for further information on 15 January 2013, which incorporated comments from the DPI, various other agencies and Council with regard to the proposed modifications. A copy of the request is attached as Attachment 2.

The applicant has not yet responded to DP&I's request for information. It is also not yet known if the DP&I will forward the applicant's submission to Council for further consideration and comment.

Additional Proposed Modifications:

As noted at the start of this report, the applicant has also requested an amendment to the initial modification, incorporating the use of fill from Precinct 1 and 2. The information initially submitted by the applicant for the amendments were not accepted by the DPI and a request for further information was issued on 8 January 2013 (see Attachment 3). Following the applicant's submission of additional information, DP&I referred the amendments to Council for consideration on 4 March 2013, requesting a combined response on the initial modification and the proposed amendments to the modification of the Project Approval.

The applicant provided information in response to each of the ten items on the DP&I's request for further information. Council's comments on each item are noted below.

1. **Survey drawings of existing surface levels across Precincts 1 and 2 (minimum A1 size).**

The applicant provided a set of survey drawings of the existing surface levels across Precincts 1 and 2 at A1 size, prepared by Michel Group Services – Surveyors.

Comment:

The Michel Group confirmed (via email on 6 March 2013) that the documented natural surface is the current natural surface, as of their March 2010 survey. No earthworks have occurred over the area in question since this survey was undertaken.

Council considers the submitted Survey Plans to be a true representation of the existing surface on site.

2. Contour Plans showing proposed surface levels across Precincts 1 and 2 (minimum A1 size).

The applicant provided a set of Contour Plans showing the proposed surface levels across Precincts 1 and 2 (along with the area forming the borrow material for the purpose of the Central Open Space area) at A1 size, prepared by Yeats – Consulting Engineers.

Comment:

Council accepts that the submitted plans reflect Leda's proposed design (as requested) by the Departments letter, however:

- Council does not support Leda's proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant's Consultants) and as represented in Yeats' contour plans and associated cross sections (Sheets 1 - 4 of Drawing No's YC0229-1E1-ES04 D, -ES05 A, -ES06 A, -ES07 A) submitted with the modification.

3. Cut and Fill Plans including cross-sections of landformed areas showing predevelopment finished ground levels at intervals of approximately 200m around Precinct 1 and 2. Sections shall extend at least 50m beyond stage or site boundaries to demonstrate continuity.

The applicant provided a Cut and Fill Plan, along with Sections as requested at A1 size, prepared by Yeats – Consulting Engineers.

Comment:

Council assumes that when the DP&I reference "predevelopment finished ground levels", they are referring to "existing surface levels".

The submitted sections show both proposed design and existing surface levels.

- Dwg YC0229-1E1-EC02, Rev D - Council accepts that this drawing shows the existing surface levels/contours.
- The referenced Section K on Dwg EC02 D does not reflect the section shown on Dwg -ES05 A. Either the referenced Section K on Dwg -EC02 D needs to be reversed or the Section K on Dwg ES05 A needs to be reversed.
- Dwg YC0229-1E1-ES04, Rev D - Council does not support Leda's proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant's Consultants).
- Dwg No. YC0229-1E1- ES05 Rev A:
 - Council does not support Leda's proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant's Consultants).

- As per above (-EC02 D), either referenced Section K on -EC02 D needs to be reversed or the associated section on -ES05 A needs to be reversed.
- Council requires clarification as to what the large vertical drop near Proposed Future Lot Area is on Section K and confirmation of compliance with the Development Code.
- Dwg YC0229-1E1- ES06 Rev A:
 - Council does not support Leda's proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant's Consultants).
 - Council requires clarification that the proposed internal 1.75m retaining wall / batter complies with the development's Development Code.
- Dwg YC0229-1E1- ES07 Rev A:
 - Council does not support Leda's proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant's Consultants).

4. An Erosion and Sediment Control Plan

The applicant provided an Erosion and Sedimentation Control Plan showing measures to be implemented in relation to the borrow area within Precincts 1 and 2 (along with the Central Open Space Area), prepared by Yeats – Consulting Engineers.

Comment:

Council supports the submitted Dwg -E02 Rev D, provided it is accompanied by Yeats Drawing No. YC0229-1E1-E03 Rev B, YC0229-1E1-E04 Rev B and Yeats' Erosion and Sedimentation Control Plan document, dated April 2012, Rev 02, which was supported by Council on 06 June 2012.

5. Methods of excavation, transportation and spreading of fill.

The applicant provided details of the excavation methodology, prepared by Yeats – Consulting Engineers.

Comment:

- Yeats letterhead (dated 21 January 2013) noted the following:

“Earthworks shall involve all operations necessary to remove and stockpile any topsoil, excavate, stockpile (if required), manage moisture, place and compact fill to the Central Open Space and associated works as detailed on the design drawings and construction specifications of Tweed Shire Council.....Where rock is encountered in the borrow areas and the rock material cannot be excavated at a specified rate, alternative methods may be adopted such as blasting. If the blasting method is to be adopted, all the relevant licences and certifications will be obtained prior to these works commencing on site.”

Council accepts Yeats response.

- Yeats letterhead (dated 21 January 2013) noted the following:

“Transportation of the excavated material will be carried out by truck along existing haul roads where possible and transported to the fill area locations of the Central Open Space.”

Council accepts this response. All material is to remain on site.

- Yeats letterhead (dated 21 January 2013) noted the following:

“Excavated material from the Precinct 1 & 2 borrow areas will be spread and placed uniformly in layers. The maximum thickness of uncompacted layers will not exceed 300mm and the minimum thickness of uncompacted layers will be 750mm.”

Fill spreading and compaction must be the subject of Level 1 supervision and certification by a registered Geotechnical Engineer in accordance with the Consent.

6. Commentary and Plans (in plan and cross-section) to clearly demonstrate the relationship of existing and proposed levels to those levels and landforming approved by the Northern Joint Regional Planning Panel under DA10/0800 for Precinct 1 and 2.

The applicant provided commentary and plans of the existing and proposed levels and the land forming approved by the JRPP under DA10/0800, prepared by Yeats – Consulting Engineers.

Comment:

Michel Group has confirmed (via email on 6 March 2013) that the natural surface/contours shown in the Yeats plans is the current natural surface, as of their March 2010 survey. No earthworks have occurred over the area in question since.

Council accepts that the submitted documentation reflects the existing natural surface and that the proposed works are progressing towards the landform intended and endorsed for Precinct 1 & 2 under DA10/0800.

The submitted design reflects the bulk earthworks cut and fill plans (YC0229-2M5-EW02 B to -EW06 B) approved under DA10/0800.

Council does not support Leda’s proposed Fire Trail profiles, as documented in previous correspondence sent to Council (by the Applicant’s Consultants).

7. Commentary on the relationship of the proposed works to alleged unauthorised works in Precincts 1 and 2.

The applicant provided commentary on the relationship of the proposed works to the alleged unauthorised works in Precincts 1 and 2, prepared by Leda’s legal advisors (Gadens Lawyers).

The commentary states the following:

- *“There is no relevant relationship between the proposed works under the modification (i.e. the sourcing of fill material for the central open space from precincts 1 and 2) and the alleged unauthorised works. None of the works that are the subject of the modification application have been carried out.*
- *Given that the existing ground levels depicted in the plan prepared for the proposed modification are the same in the plans prepared for DA10/0800, there can be no suggestion that the approval of the modification gives any new endorsement (of consequence) to the current landform in precincts 1 and 2.*
- *Furthermore, the fact that Tweed Shire Council is raising concerns about the authorisation for historical works is irrelevant to the Department’s consideration of the modification request.*

- *The existence (alleged or otherwise) of any prior unlawful work is not a lawful reason for the determination of a modification request to be delayed or refused.*
- *It is, of course, appropriate for the Department to consider the merit of the landform changes proposed under the modification request. However, in performing this task, the Department is legally obliged to ignore any question about the legality of the works that led to the existing land form."*

Comment:

It should be noted that at the time of assessment of DA10/0800, Council was not aware of the existence or extent of the unlawful works.

In reference to the commentary above, it is acknowledged that the DP&I are under no legal obligation to take the unauthorised works at the Northern Hillside (under development sent K99/1124) into consideration.

However, Council staff are of the opinion that the DP&I have an opportunity to address the unlawful works as part of the proposed modifications and that it is considered good planning practise to use the planning process to rectify compliance issues, including the reconciliation of old consents such as K99/1124.

Options with regard to possible future compliance action are addressed later in this report.

8. Confirmation that earthworks in Precincts 1 and 2, which are subject to investigation for unauthorised works by Tweed Shire Council, do not affect the existing or proposed levels for the proposed modification.

The applicant provided commentary on the relationship of the proposed works to the alleged unauthorised works in Precincts 1 and 2, prepared by Leda's legal advisors (Gadens Lawyers).

The commentary states the following:

- *"As its stands today, an order requiring a reversal of the allegedly unlawful works would not be reasonable, given that development consent DA10/0800 takes the current landform as a starting point and authorises further works that would be entirely inconsistent with such an order.*
- *Accordingly, the modified project approval could not be taken to confer any additional approval for the present condition of the site (which is alleged by Council to be partially the product of unlawful works) beyond that which is inherent in the existing development consent DA 10/0800.*
- *Neither the existing development consent 10/0800, nor the possible grant of the modification request, will provide a basis for any party to avoid prosecution for any unlawful works.*
- *There can be no suggestion that the modified project approval is capable of conferring any form of retrospective approval for unlawful works."*

Comment:

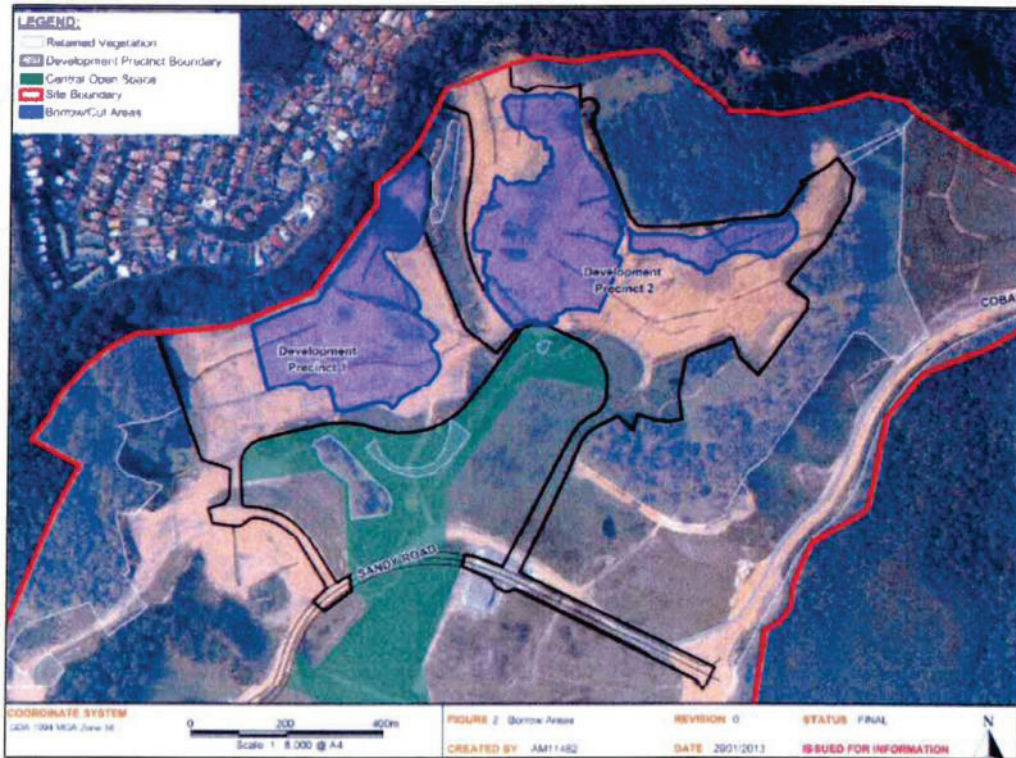
Council confirms that the area of which unlawful earthworks have occurred overlaps with the area proposed for obtaining source material, being the subject of this modification.

Without a thorough investigation of the unauthorised works, the affect on existing or proposed levels for the proposed modification cannot be determined.

9. Site Analysis, including a description of the existing environment.

The applicant provided a very basic Site Analysis of the Borrow Area for Precinct 1 and 2, prepared by Darryl Anderson Consulting (Planning Consultant).

The analysis included the following overlaid aerial photograph:



The description noted the following:

“The site of the borrow area has been subject to prior earthworks and is presently devoid of all vegetation. Various sediment and erosion control bunds are in place to manage runoff.

The Borrow Area is accessed via various haul roads and access tracks that exist within the Cobaki Estate.

Complete details of the borrow area including the surface levels are depicted on the Survey Plans and Engineering Plans attached to this letter. In summary, the area comprising the borrow area is sited clear of the surrounding vegetated areas and does not contain any ecological features.”

Comment:

The site analysis is very limited, although it is acknowledged that there is very little to comment on, with the area being devoid of vegetation (largely as a result of the unlawful works taking place).

10. An assessment of the potential environmental impacts of the proposal and a description of the proposed environmental management, mitigation and monitoring measures to minimise potential impacts of the proposal.

The applicant provided an Environmental Assessment Report of the potential environmental impacts associated with the Borrow Area, prepared by SMEC.

Comment:

Council has NRM Unit has briefly reviewed the Environmental Assessment Report for Bulk Earthworks, Cobaki Estate Development Precincts 1 & 2 (EAR) (SMEC February 2013) with particular focus on the mitigation measures for vegetation and fauna and their consistency with the approved Vegetation Management Plan and Fauna Management Plan for the Central Open Space and Precincts 1, 2 & 6, noting the following:

- Tables 4 and 5 in the EAR contain a summary of the relevant mitigation measures for fauna and vegetation and are essentially a subset of those provided in the above approved Plans. The EAR however, does not provide the background or detail to support each measure.

For example, one of the measures in Table 5 (p17) is "*Primary weed control within rehabilitation and management areas at commencement of earthworks in adjacent Development Precincts.*" This measure refers to works that are detailed in the Vegetation Management Plan and the Site Regeneration and Revegetation Management Plan. It is therefore suggested that explicit reference be made to the relevant management plans within the EAR under the various sections for ease of reference.

- Otherwise, in general the mitigation measures in the EAR are consistent with the relevant measures outlined in the approved plans and are considered sufficient.

Compliance Matters

- As noted in previous Council reports, unauthorised works have taken place on the Cobaki site in the Northern Hillside and the Missing Link. Refer to Confidential Attachment 1 to review the full status update on compliance matters which were received and noted at the March Council meeting.
- In summary, the Missing Link compliance matters (being related to the DP&I's Project Approval) have been addressed by DP&I. An Order has been served upon the proponent to undertake certain works and two Penalty Infringement Notices have been issued.
- As a result of the compliance action taken by DP&I and the ability for Leda to proceed lawfully with the construction of the Missing Link, no further action is considered necessary from Council with regard to the unlawful works undertaken in this part of the site.
- In terms of the Northern Hillside, a full and detailed assessment of the unauthorised works is yet to be undertaken. Given that the DP&I has determined that it is not their role to address the issue, in terms of requiring the applicant to undertake a full reconciliation of old consents such as K99/1124, it will be left to Council to address the issue. It is considered that there are two options available:
 - The first option is to allow the planning process to simply take its course. The JRPP approval for Precinct 1 and 2 (DA10/0800) incorporates specific conditions which require the proponent to take into consideration previous consents. Condition 9 of DA10/0800 requires all existing consents applicable to Precinct 1 and 2 to be modified (where relevant) to be consistent with DA10/0800. Condition 50 requires a detailed description demonstrating compliance with previous consents, with particular regard to ecological conditions of consent. This condition will involve the reconciliation of K99/1124.

- The second option is to obtain legal advice from Council's solicitors in terms of potential legal proceedings for compensatory measures (rather than rectification) relating to the loss of environmental vegetation and habitat in the Northern Hillside.
- Council staff recommend the first option. Similar conditions were applied to the JRPP approval for Precinct 6 (DA10/0801). The proponent has provided documentation with regard to compliance with previous consents. Although a final assessment of this documentation has not been finalised by Council staff, it is considered that it's submission demonstrates the proponents willingness to comply with the requirement for reconciliation of old consents. Should the applicant reciprocate the documentation for Precinct 1 and 2, Council will be in a position to further assess the Northern Hillside compliance issues without the need to formalise the matter through court and therefore avoid additional legal costs as well.

OPTIONS:

1. Council endorses the comments to be submitted to DP&I with regard to all proposed modifications of the Concept Approval and Project Approval; and allows the unauthorised works at the Northern Hillside to be addressed through conditions of consent for Precinct 1 and 2 (DA10/0800); or
2. Council endorses the comments to be submitted to DP&I with regard to all proposed modifications of the Concept Approval and Project Approval; and obtains further legal advice with regard to legal proceedings in relation to the Northern Hillside unauthorised works.

Council officers recommend Option 1.

CONCLUSION:

The majority of the proposed modifications are required in order for the development to proceed as proposed i.e. with off-site compensatory offsets. Council comments will be taken into consideration by the DP&I.

Council staff will continue to work through issues with Leda, the private certifier and DP&I, in order to lawfully allow the overall development of the site to proceed.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Provision for legal expenses are included within the operating budget.

c. Legal:

The costs of any legal action taken by Council to address the non-compliance could be substantial.

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:

- (Confidential)* Attachment 1. Report from 21 March 2013 Council meeting regarding DA10/0853 (ECM 65833862)
 - Attachment 1. A copy of Council's draft comments to the DP&I (ECM 65969363)
 - Attachment 2. DP&I request for further information from the applicant dated 15 January 2013 (ECM 65791220)
 - Attachment 3. Request for further information dated 8 January 2013 (ECM 65791221)
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29 [PR-CM] Development Application DA12/0411 for a Detached Dual Occupancy at Lot 27 Section 2 DP 3123 No. 70 Charles Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0411 Pt 1



Civic Leadership

SUMMARY OF REPORT:

The proposal is for the construction of a two storey detached dual occupancy at Lot 27 Section 2 DP 3123; No. 70 Charles Street, Tweed Heads.

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

The SEPP No. 1 variation relates to Clause 16 Building Heights of the Tweed Local Environmental Plan 2000 (TLEP 2000) which prescribes a two-storey height limit for the site. Although the design of the proposal has regard for the steep topography by proposing post and bearer construction as opposed to slab on ground construction and 'steps up' the site, a minor portion of the proposal represents a three-storey building height. The location of the variation is setback approximately 23 metres from the front property boundary, and is created by a foundation area within the building footprint, which is not to be used for residential purposes. The length of horizontal variation is approximately 0.8 metres when viewed from the south and 2.6m when viewed from the north, with the total building length being approximately 21.1 metres. The proposed building height is less than the adjoining buildings, with the proposed building height considered not to significantly or unreasonably reduce views. The SEPP No. 1 Objection is supported and Council can assume concurrence.

The proposal was required to be placed on public exhibition. Two submissions objecting to the proposal were received during the exhibition period. Matters raised within the submissions have been addressed and considered in the assessment of the proposal.

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

RECOMMENDATION:

That Development Application DA12/0411 for a detached dual occupancy at Lot 27 Section 2 DP 3123; No. 70 Charles Street, Tweed Heads be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Job No 38295 sheet 1 of 1 revision C prepared by Landsurv Pty Ltd and dated 26.04.12, Plan No 000112 revision A Sheets 1 to 12**

prepared by No Name, dated 1-5-12, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

3. 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]

4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

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

[GEN0265]

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

[GEN0300]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

These charges include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

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- (a) **Tweed Road Contribution Plan:**
1.3 Trips @ \$822 per Trips **\$1069**
(\$815 base rate + \$7 indexation)
S94 Plan No. 4
Sector1_4
- (b) **Open Space (Casual):**
1 ET @ \$526 per ET **\$526**
(\$502 base rate + \$24 indexation)
S94 Plan No. 5
- (c) **Open Space (Structured):**
1 ET @ \$602 per ET **\$602**
(\$575 base rate + \$27 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
1 ET @ \$816 per ET **\$816**
(\$792 base rate + \$24 indexation)
S94 Plan No. 11
- (e) **Bus Shelters:**
1 ET @ \$62 per ET **\$62**
(\$60 base rate + \$2 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
1 ET @ \$121 per ET **\$121**
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
1 ET @ \$1352 per ET **\$1352**
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
1 ET @ \$1812.62 per ET **\$1812.62**
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18
-

- (i) **Cycleways:**
1 ET @ \$460 per ET \$460
(\$447 base rate + \$13 indexation)
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
1 ET @ \$1064 per ET \$1064
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
1 ET @ \$3730 per ET \$3730
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

[PCC0215/PSC0175]

8. Section 94 Contributions

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads

(trip one way)

\$Unit the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water DSP4: 1 ET @ \$12150 per ET \$12150

Sewer Tweed Heads: 1 ET @ \$5838 per ET \$5838

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

[PCC0265/PSC0165]

10. 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]

11. All imported fill material shall be from an approved source. Prior to earthworks commencing details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.

[PCC0465]

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

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

The earthworks shall be in accordance with the slope stability risk assessment report by Earthsolve dated 19 November 2012. In particular fill/cut restrictions and no batters to exceed 1 vertical: 2 horizontal.

[PCC0485]

13. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The Landscape Plan is to contain a detailed plant schedule indicating the location of all proposed planting and any existing vegetation to be retained on the site and including:

- Species listed by botanical and common names, with a minimum of 80% of plants constituting local native species;
- Specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.

[PCC0585]

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

- (a) Vehicular access
- (b) Roof drainage from dwelling number one (1) to be piped by a charged line to the street frontage. A charged pipe cleanout and silt arrestor pit to be installed on this line as per the details site based assessment report by Earthsolve dated 19 November 2012.

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

- Stormwater drainage
- Water and sewerage works

Dwelling 2 is shown 1500mm clear of the line of the sewer. Foundations for this wall should be constructed in accordance with the requirements of the policy "Sewers - Works in Proximity" with particular reference to Sketch 1A in that policy.

The roof water tank for Dwelling 2 is to comply with the requirements of the Sewers - Works in Proximity policy with its foundation being in accordance with Sketch 1A to ensure that it is outside the zone of influence of the sewer.

The house connection for the lot is likely to be close to the western boundary and under the proposed driveway to the lower dwelling. This is the most likely location that Council may have to excavate to do a sewer repair. If the driveway has an ornate pattern of difficult to match surface

finish, Council will not be able to reinstate the driveway in such an event. Plain concrete in the vicinity of the sewer line is preferred.

The 500 High Retaining Block Wall along the eastern boundary is shown terminating above the sewer line. This wall should be terminated no closer than 1m to the sewer line and have a foundation under that end that complies with the Sewers - Works in Proximity policy, in particular, Sketches 2A and 3A.

- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan
- Location of all services/conduits
- Traffic control plan

[PCC0895]

15. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

16. A construction certificate application for works that involve any of the following:-

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

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
- b) Stormwater drainage to be generally in accordance with the site based assessment report by Earthsolve dated 19 November 2012, subject to the requirements in (c) below.
- c) The stormwater drawings are to demonstrate that runoff from the proposed driveway is collected and discharged in a controlled manner to a legal point of discharge, such that the downstream neighbouring properties are not affected by stormwater discharge.

[PCC1145]

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

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council*

Development Design Specification D7 - Stormwater Quality and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

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

[PCC1185]

19. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage, on site sewerage management system or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to works commencing.

[PCC1195]

20. Prior to the issue of a Construction Certificate the Principal Certifying Authority shall be provided with a copy of a report from a practising Geotechnical Engineer which states that the site will be suitable for the proposed development in relation to the extent of cut & fill and the proposed method of construction of the dwellings.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

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

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

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

[PCW0255]

27. Any imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

28. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

Any retaining walls shall be required to have a factor of safety of 1.5 minimum as outlined in the slope stability assessment report by Earthsolve dated 19 November 2012. A certificate of adequacy signed by a practising Structural Engineer is to be provided for any fill/cut on the existing neighbouring block wall.

29. 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]

- 30. 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]

- 31. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:**

- (a) The person must, at the person's own expense:**
- (i) preserve and protect the building/property from damage; and**
 - (ii) if necessary, underpin and support the building in an approved manner.**
- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.**

[PCW0765]

DURING CONSTRUCTION

- 32. 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]

- 33. 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]

- 34. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**

[DUR0245]

- 35. 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]

- 36. 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]

37. 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]

38. 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]

39. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

40. 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]

41. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0845]

42. 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]

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

[DUR0985]

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

[DUR0995]

45. 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]

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

[DUR1795]

47. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

48. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

49. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

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

[DUR1955]

51. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

52. 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]

53. 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]

54. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

55. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

56. 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]

57. Dwelling 2 is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not affect or be affected by the sewer main.

[DUR2645]

58. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

59. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

60. Prior to the issue of an Occupation Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the public infrastructure works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act (as set out in Councils Fees and Charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

61. 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]

62. Prior to the issue of an occupation certificate,
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) The method of protection; and
 - (ii) The date of installation of the system; and
 - (iii) Where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) The need to maintain and inspect the system on a regular basis.

[POC0235]

63. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

64. 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]

65. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[POC0475]

66. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

67. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be

removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

68. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

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

[POC0985]

70. 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]

71. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of a minimum 3m wide easement for drainage of sewer, located over any reticulated public sewer within the subject property. This easement shall be created in favour of Council.

No permanent structures are permitted within this easement, unless in compliance with Council's "Sewers - Work in Proximity" policy and approved by Council.

[POCNS01]

72. On completion of work, a certificate signed by a practicing NPER civil engineer is to be submitted to the Principal Certifying Authority to certify compliance with the consent and good engineering practice.

[POCNS02]

73. Prior to issuing an Occupation Certificate, reticulated water supply and outfall sewerage reticulation shall be provided in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[POCNS03]

REPORT:

Applicant: Mrs PT Barrett
Owner: Mrs Pamela T Barrett
Location: Lot 27 Section 2 DP 3123; No. 70 Charles Street, Tweed Heads
Zoning: 2(a) Low Density Residential
Cost: \$550,000

Background:

The proposal is for the construction of a two storey detached dual occupancy at Lot 27 Section 2 DP 3123; No. 70 Charles Street, Tweed Heads. Both dwellings will utilise the same vehicle access/driveway from Charles Street.

Dwelling 1 is a two storey building with a partial three storey element. Located on the ground floor are three bedrooms, bathroom, laundry, verandah and double car garage. The first floor consists of; one bedroom, dining room, family room, media room, en-suite, kitchen and verandah.

Dwelling 2 is a two storey building. The ground floor consists of a double garage only. The first floor contains three bedrooms; one office, en-suite, bathroom, kitchen, lounge room, dining room and verandahs.

The site has a land area of 1119 Square Metres with frontage to Charles Street (the site is located on the south side of Charles Street), with no significant vegetation located on the site.

The site is vacant and falls steeply from the street to the rear of the site, with a RL 39.5 at the street frontage to RL 24.4 at the rear of the site.

SITE DIAGRAM:

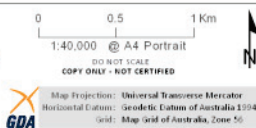


Locality Plan

Lot 27 Section 2 DP 3123;
No. 70 Charles Street, Tweed Heads

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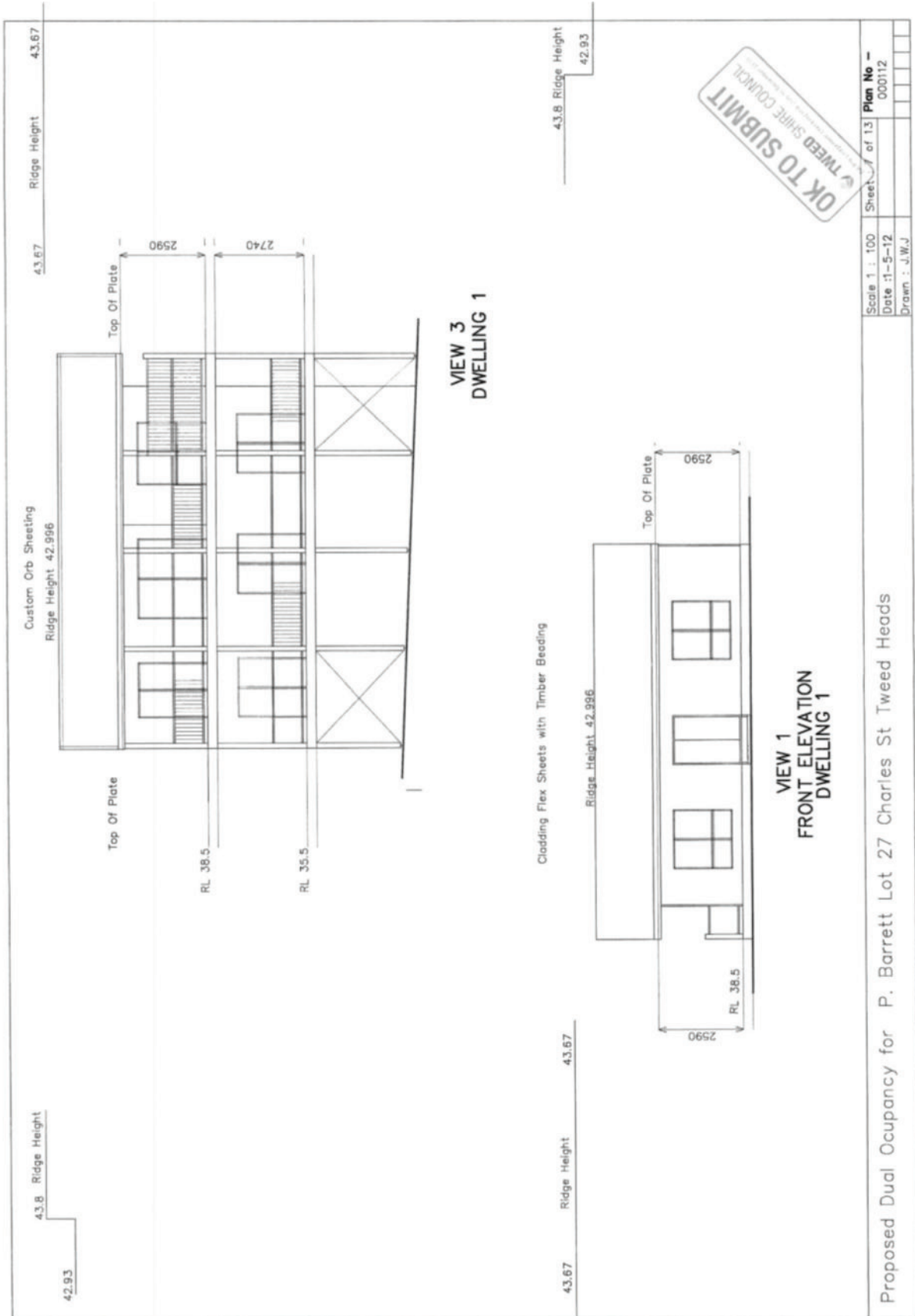


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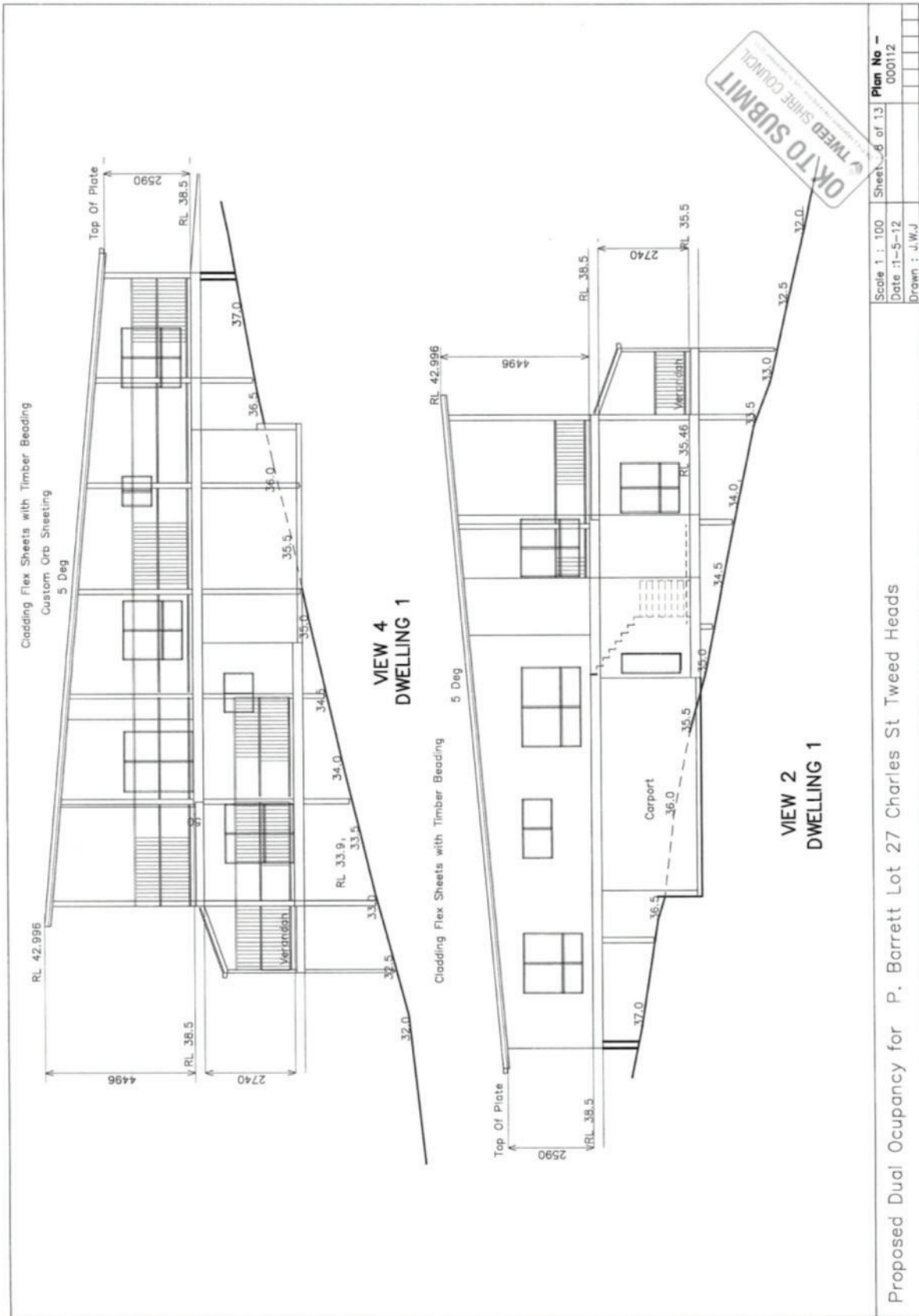
Author: jbarclay - Planning Referral Unit

Date Printed: 04 April, 2013

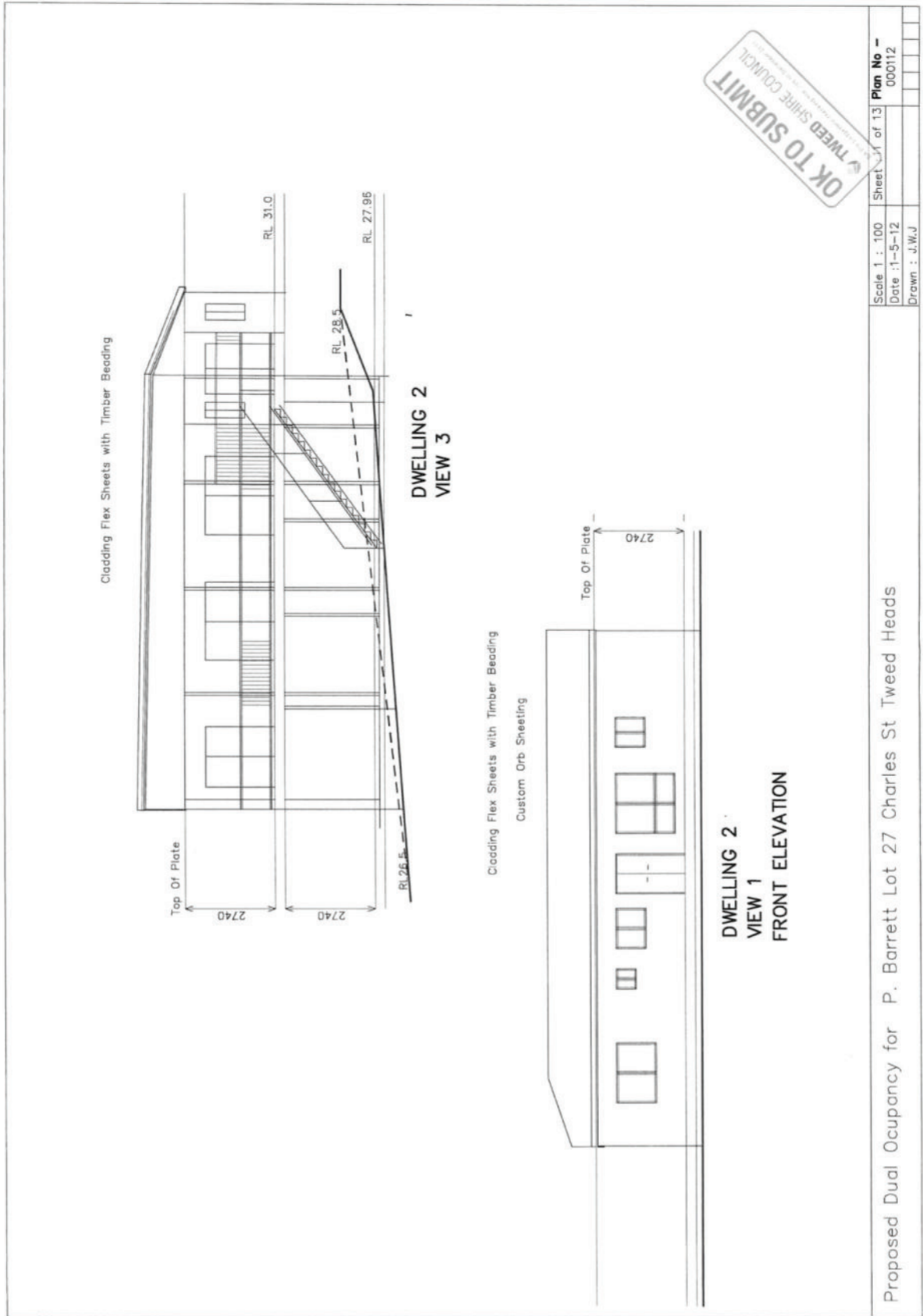
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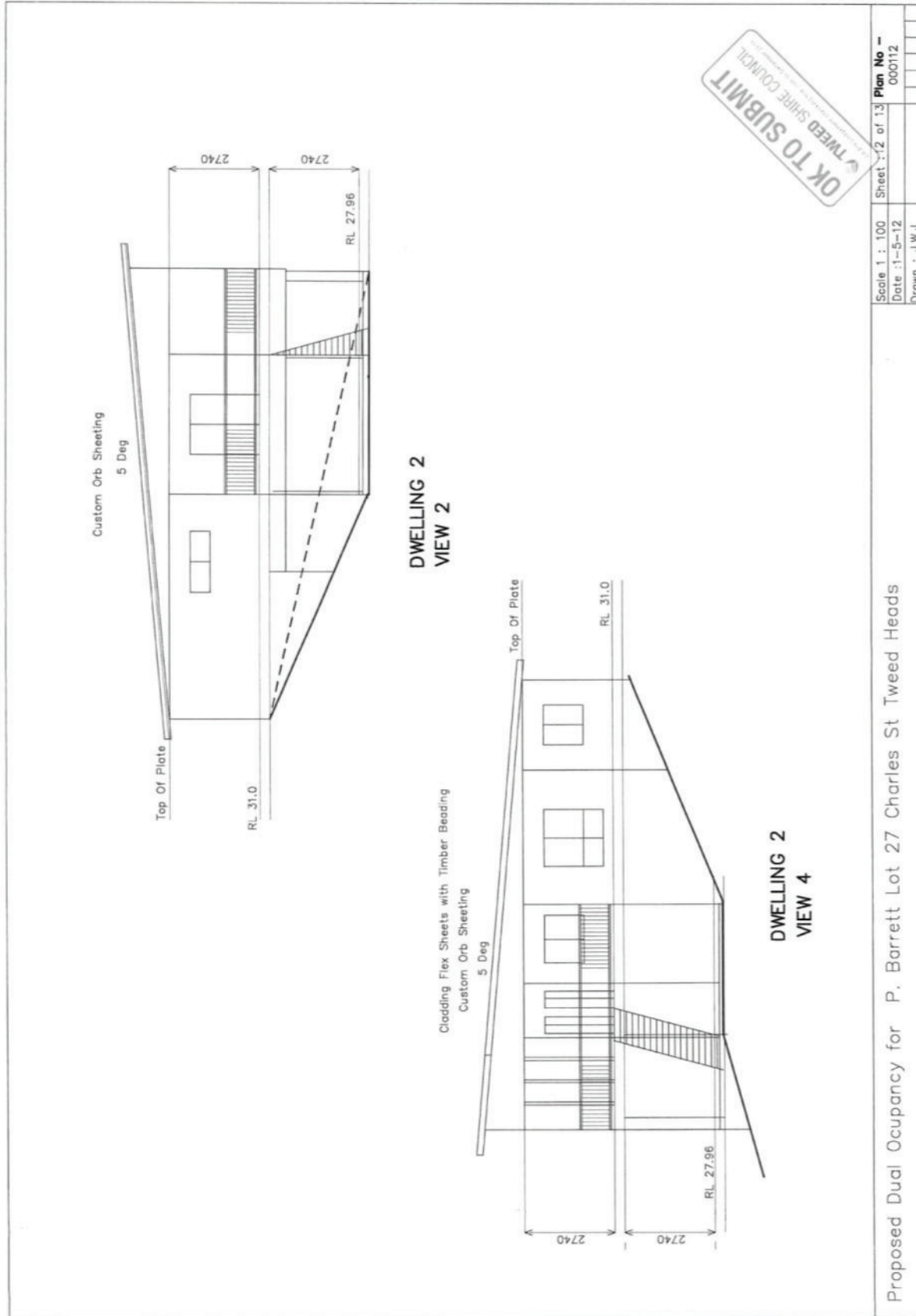
Proposed Dual Occupancy for P. Barrett Lot 27 Charles St Tweed Heads



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Proposed Dual Occupancy for P. Barrett Lot 27 Charles St Tweed Heads		

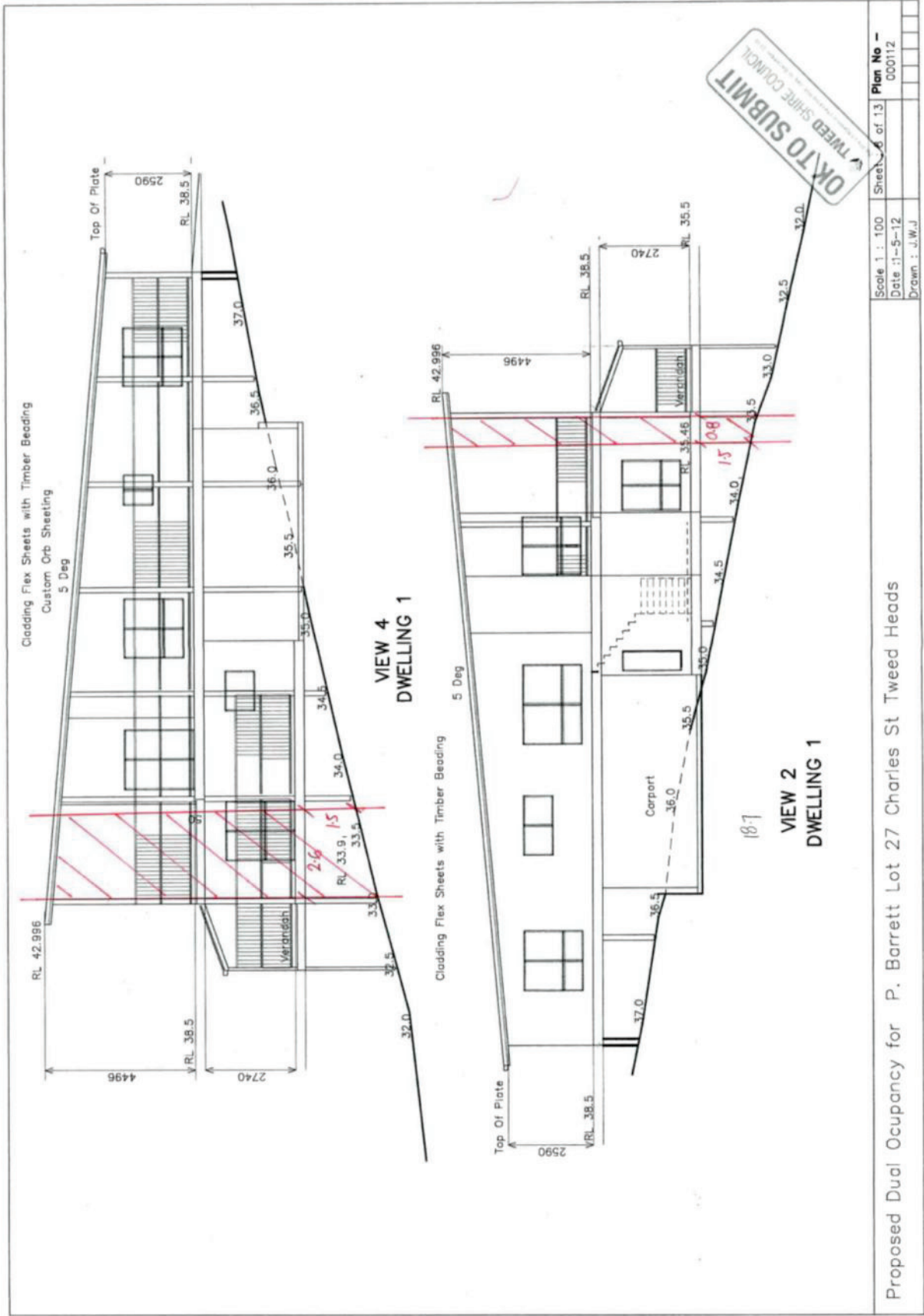


Proposed Dual Occupancy for P. Barrett Lot 27 Charles St Tweed Heads

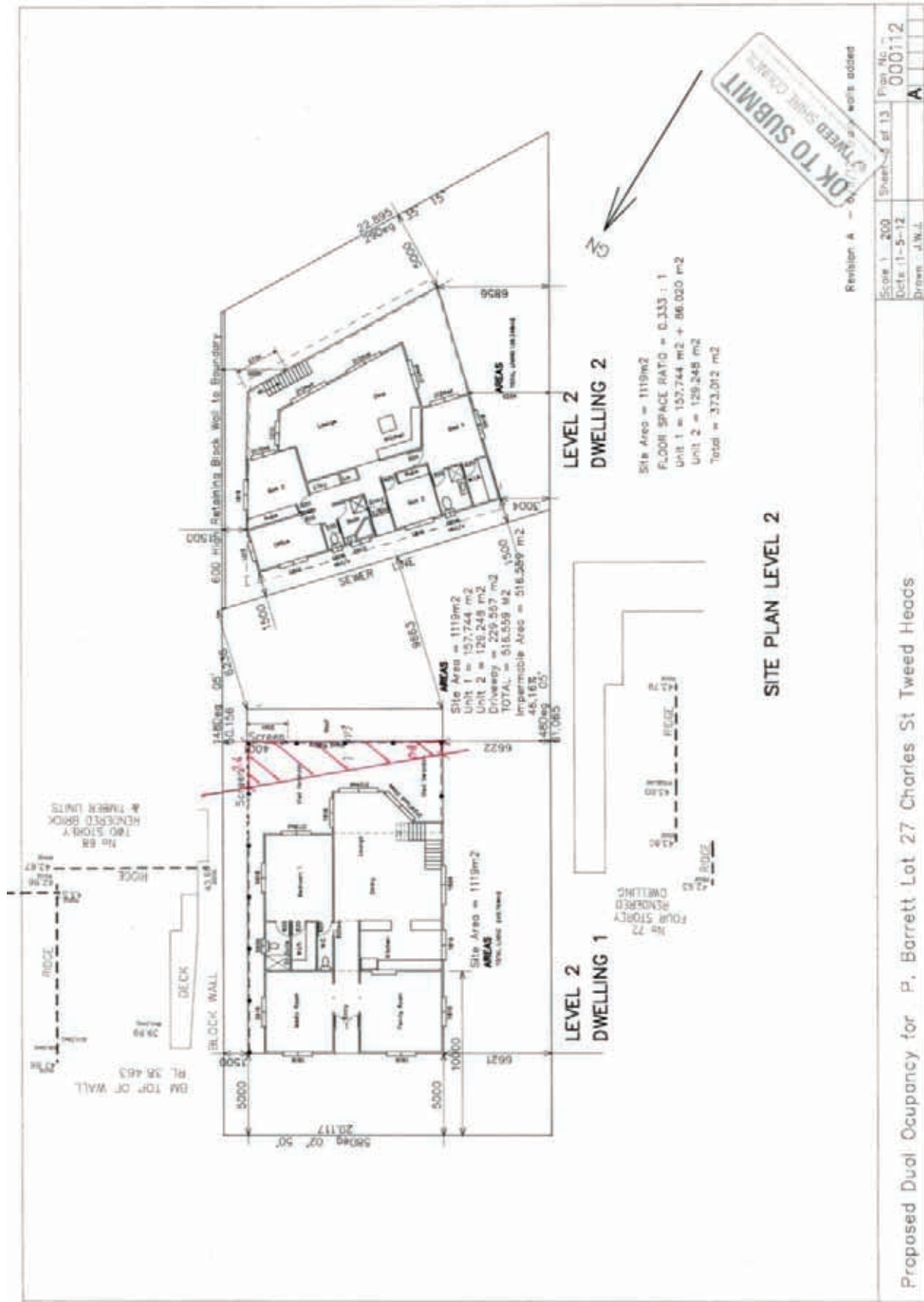


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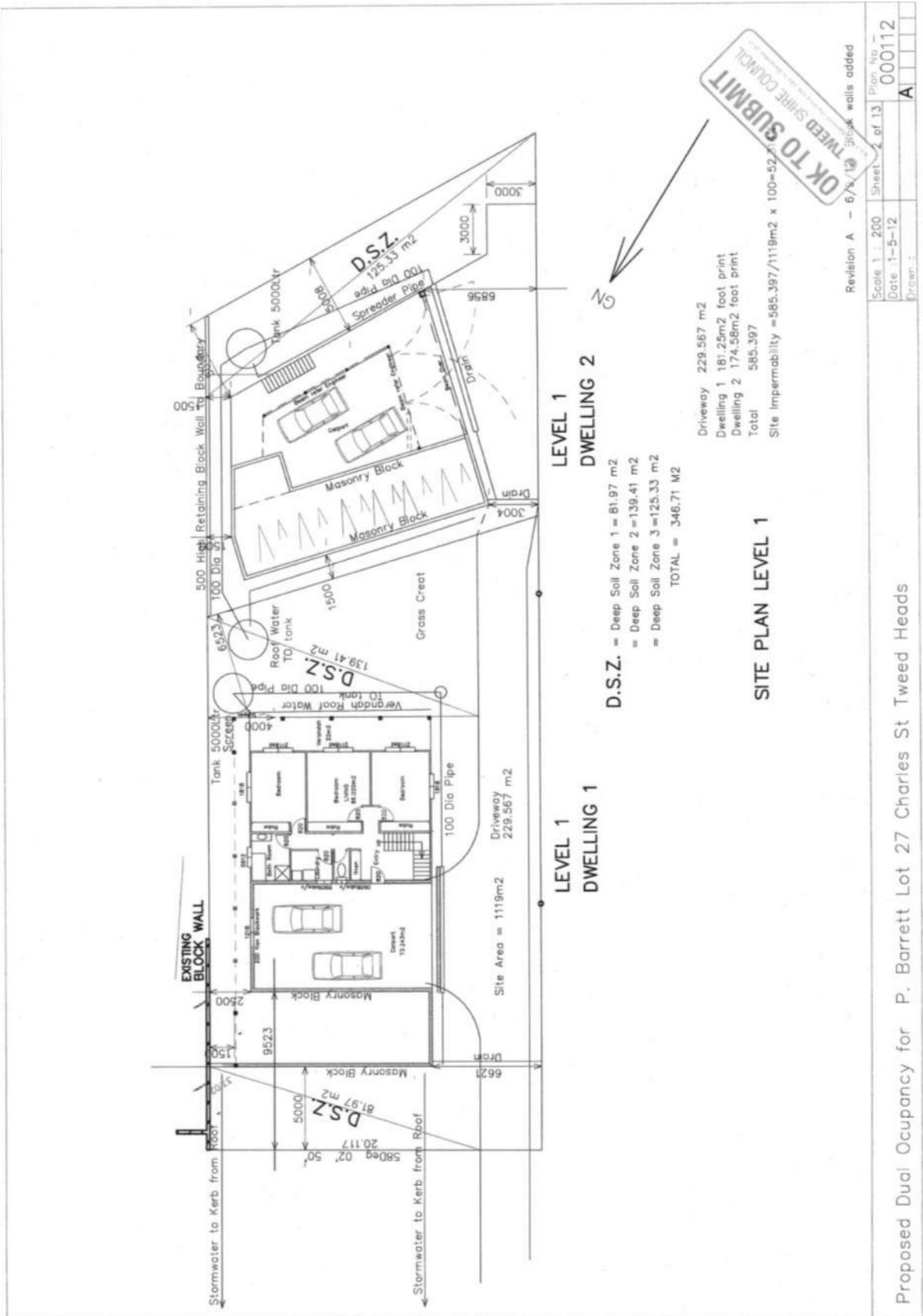
Proposed Dual Occupancy for P. Barrett Lot 27 Charles St Tweed Heads



Scale: 1:100	Sheet: 6 of 13	Plan No: 000112
Date: 11-5-12	Drawn: J.W.J	
Proposed Dual Occupancy for P. Barrett Lot 27 Charles St Tweed Heads		



LANDSCAPE PLAN:



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

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

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

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

Broadly, the subject proposal is considered consistent with the above criteria, as the proposed detached dual occupancy is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Consent Considerations

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

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

In this instance, the subject site is zoned 2(a) Low Density Residential, the primary objective of which is to provide for low density residential development.

The proposed detached dual occupancy is considered consistent with the primary objective of the zone, by proposing detached housing character and amenity.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed attached dual occupancy generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the size of the lot being 1119m² and the established residential nature of the subject area being a mixture of single and multi dwelling densities.

Clause 11 - Zone Objectives

The subject site is located within the 2 (a) Low Density Residential zone.

The primary and secondary objectives of Zone 2 (a) Low Density Residential are:

"In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:

- *to minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.*

In the case of all other land within Zone 2 (a):

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

Secondary objectives

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

The proposed detached dual occupancy is considered consistent with the objectives of the zone, by proposing detached housing on a lot being 1119m² and the established residential nature of the subject area being a mixture of single and multi dwelling densities.

Clause 15 - Essential Services

All essential services are provided for on the subject site.

Clause 16 - Height of Building

The proposal does contravene the imposed two storey height restriction on the subject site, with Dwelling 1 consisting of a partial three storey element. As such, a SEPP 1 Objection to this clause has been addressed within this report.

The proposed ridge height of the dwelling fronting Charles Street of 42.996m, is lower than the neighbouring buildings that have building heights of 43.67 and 43.8m (eastern dwelling and western dwelling respectively). The proposal as seen from Charles Street appears as a single storey dwelling and does not significantly or unreasonably impact on views of surrounding properties.

The proposal is considered to be of a height and scale appropriate to its location and the SEPP 1 objection is supported in this circumstance.

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment, in accordance with Council's policy (Section A13).

Clause 35 - Acid Sulfate Soils

Council's ASS planning maps indicate that the site is located within in an area identified as Class 5 ASS. No works are proposed within 500m of adjacent classes which are likely to lower the water table. It is given the proposal complies with Clause 35, no further assessment required (Council's Environmental Health Unit did not request referral of this application).

Clause 51A Multi-dwelling housing densities in zone 2(a)

(1) *Objective*

- *to control the density of multi-dwelling housing in Zone 2 (a) (the Low Density Residential zone) by the use of a development standard.*

(2) *Multi-dwelling housing proposed to be erected on land within Zone 2 (a) is to be at a density not greater than:*

- (a) *one dwelling per 450 square metres of site area, or*
- (b) *if the site is within 300 metres of a business centre as indicated on the Business Centres Map—one dwelling per 250 square metres of site area.*

The proposal complies with this clause with the site having an area of 1119m² proposing two dwellings, this equates to one dwelling per 559.5m².

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B – Coastal Lands

The subject land is designated coastal land and therefore this clause applies. The clause requires the consideration of the NSW Coastal Policy 1997 which seeks to: protect, rehabilitate and improve the natural environment; protect and enhance aesthetic qualities and cultural heritage; and to provide for ecologically sustainable human development in the coastal zone.

The provisions state:

- (1) *This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
 - (a) *the NSW Coastal Policy 1997,*
 - (b) *the Coastline Management Manual, and*
 - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
 - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being*

overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or

- (b) *elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

Given the development comprises the construction of a two storey detached dual occupancy development, on residential zoned land in a previously approved subdivision, it is considered unlikely that the proposal will impact on the coastal values or cultural heritage. The proposed dual occupancy does not overshadow any beaches or adjacent open space.

Clause 43 – Residential Development

The provisions of Clause 43 of the REP relate to residential development on urban zoned land. The provisions state:

- (1) *The council shall not grant consent to development for residential purposes unless:*
- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed development is not considered to adversely affect environmental features of the site or generate any unreasonable burden onto the local road network. As a dual occupancy development, the proposed density is considered to be a reasonable response to the land use character of the area and will not result in the creation of any adverse physical impacts upon the locality.

SEPP No. 1 - Development Standards

The applicant's SEPP 1 Objection relates to Dwelling 1 of the proposed development being three (3) storeys within the two (2) storey height limit prescribed by Clause 16 of the TLEP.

The applicant has acknowledged that the proposed development does not accord with the TLEP's height limit provisions, noting the following:

“Objection to the Standards:

It is submitted that the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *The existing dwelling and dual occupancy on the adjoining allotments at No. 72 and 68 Charles Street respectively are each at four (4) and three (3) stories in height as demonstrated and confirmed in the submitted Statement of Environmental Effects and photos below.*
- *The proposal is in keeping with the existing and surrounding development of the area. The changes will not be significant to the adjoining properties. The height and scale of the existing dwelling is sympathetic to existing uses and development within this street and locality.*
- *There are numerous other dwellings and units located within the nominated two storey height limitation area that have exceeded the maximum height limitation.*
- *The land is sloping and rather than undertake significant earthworks to allow for a continuous slab on ground the construction involves post and bearers which Council's DCP Section A1 Residential and Tourist Development Code encourages on sloping sites."*

“Conclusion

It is considered that the proposed variation to the height limitation has been reasonably justified and satisfies the objective of Clause 16. It has been demonstrated in this SEPP 1 Objection and the submitted Statement of Environmental Effects that the proposed three (3) storey variation has a height and scale that is appropriate to its surrounding development, particularly the adjoining allotments and the environmental characteristics of the land being a sloping site and will not likely have a detrimental effect. It is therefore submitted that strict compliance with this development standard is not appropriated in the circumstances of this case.

Council is therefore requested to uphold the objection and grant consent to the application.”

Additional reasons why strict adherence with the clause is considered unreasonable and unnecessary in this specific circumstance are:

- The building heights of both buildings located on either side of the proposal (RL 43.8m and RL43.67m) are higher than the proposed building height (42.99m dwelling one).
- Both buildings located on either side of the proposal are four storeys and three storeys in height.
- The proposed building when viewed from Charles Street appears as a single storey building.
- The proposed building height is in keeping with the surrounding development of the area.
- The sites topography is extremely steep.
- Although the design of the proposal has regard for the steep topography by proposing post and bearer construction opposed to slab on ground construction and 'steps up' the site, a minor portion of the proposal represents a three-storey building height.

- The location of the variation is setback approximately 23 metres from the front property boundary, and is created by a foundation area within the building footprint, which is not to be used for residential purposes. The length of horizontal variation is approximately 1.2 metres, with the total building length being approximately 19.1 metres. The percentage of total floor area variation is minor at approximately 6.28%.
- The proposed building height is less than the adjoining buildings, with the proposed building height considered not to significantly or unreasonably reduce views of surrounding properties.

The first principle in assessing a SEPP 1 Objection is that the applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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

The objective of Clause 16 is to ensure that *the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

Is the development appropriate to its location and surrounding development?

It is contended that the development responds in the positive in relation to this question. In this regard, the key elements to consider are defined as follows:-

1. *What is the character of the locality;*
2. *What elements form or shape development in the locality;*
3. *Will the development appear out of character with surrounding development.*

Comment:

The proposed development is considered appropriate to its location and surrounding development due to surrounding and neighbouring buildings exceeding the two storey limit. As stated previously, existing developments on the adjoining allotments at No. 72 and 68 Charles Street respectively are each at four (4) and three (3) stories in height.

Is the development appropriate to the environmental characteristics of the land?

Comment:

Despite the proposal incorporating a portion of the development which is technically defined as three storeys, the proposal is not considered to be out of character with surrounding development. The three storey component is not considered likely to dominate the landscape. Rather, it achieves a transition from the surrounding four and three storey development down to two storeys.

Therefore, it is considered that strict compliance with the building height provisions of Clause 16 of the TLEP is unreasonable and unnecessary in this instance.

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

Comment:

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

It is considered imposing strict compliance with Clause 16 on the development would effectively override a well established built scale within the locality (existing three and four storey development) and preclude development which is similar in scale to the established built scale of the surrounding locality.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the objectives of Section 5(a)(i) and (ii) of the EP&A Act.

The third principle states that it is important to consider:

- a. Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
- b. The public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

Comment:

The proposed non-compliance with Clause 16 of the TLEP is not considered to raise any matter of significance for State or regional planning. There would be little public benefit in maintaining the development standard in this particular case. As noted by the applicant, the proposed three storey building is actually lower in scale than the adjoining buildings and other surrounding development.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with Clause 16 of the TLEP is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is quite site specific. As such, the granting of this application is unlikely to impact upon public benefit.

Conclusion

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under Clause 16 of the Tweed LEP 2000 is considered unreasonable and unnecessary in this instance.

As such, the SEPP1 Objection warrants support, particularly as it is considered that the non-compliant building is of a scale that would not result in any significant impact upon the surrounding locality.

It is recommended that the concurrence of the Minister administering the Environmental Planning and Assessment Act, 1979 be assumed in this instance.

The SEPP 1 Objection is supported.

SEPP 71 – Matters for Consideration

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

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

Clause 8 – Matters for consideration

(a) The aims of this Policy set out in clause 2,

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

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

The proposed development will in no way alter or restrict the public's access to the foreshore reserve areas, nor are there any physical opportunities to provide improvements given the spatial separation between the site and foreshore areas.

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

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so, given the spatial separation between the site and foreshore areas.

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

The proposed development is sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or usage. The design of the development is contemporary in nature incorporating a variety of elements consistent with current design trends for the area.

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

The proposal will not result in any detrimental impact on the coastal foreshore.

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

The proposal will in no way have any detrimental impact upon the scenic quality of the NSW coast. The proposal is consistent with surrounding properties. The developments design is contemporary and of a high quality which is consistent with the built environment of the area.

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

The proposal will not have an adverse impact upon threatened species. The proposal will be carried out on property that has been significantly developed over time for urban purposes and contains little vegetation.

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

The proposal will not have an adverse impact upon marine environments or habitats. Stormwater is to be appropriately treated in accordance with Councils requirements, this is to be conditioned.

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

The proposal will not have an adverse impact upon wildlife corridors or the like. The proposal will be carried out on property that has been significantly developed over time for urban purposes and contains little vegetation.

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

The subject site is not located within an area affected by Coastal Erosion (TDCP Section 25- Coastal Hazards), and is significantly landward of the defined Coastal Erosion Zones. The development will not have an adverse impact upon Coastal Processes or be affected by Coastal Processes

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

Not applicable.

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

The subject site is not identified as a cultural place or the like.

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

The proposal will in no way create any adverse impacts upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment finds its way to local waterways and ongoing stormwater management will be provided as part of the development. This is to be conditioned.

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

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

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

Not applicable.

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

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

No cumulative impacts are likely as a result of the proposed development.

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

Appropriate measures have been adopted in terms of design to minimise energy usage including the orientation of the building to maximise solar access and allow natural light to filter into all dwellings. BASIX certificate has been prepared.

Clause 14 – Public Access

The proposed development does not impede public access to the Coastal foreshore.

Clause 15 - Effluent Disposal

The proposal will be connected to Council's sewer.

Clause 16 - Stormwater

Stormwater will be treated in accordance with Councils requirements and will not discharge untreated into the sea, coastal water body or the like.

Conclusion

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

Tweed Shire Council in collaboration with the Department of Planning's City Centre Taskforce has prepared a new LEP for Tweed City Centre, which is also supported by an amendment to Tweeds Development Control Plan and a Vision Document. These Plans were considered and adopted at Council's 13 December 2011 meeting. The Tweed City Centre (TCCLEP) LEP 2012 was ultimately made on 18 January 2013.

The TCCLEP 2012 contains a savings provision for development applications that states the following:

1.8A Savings provision relating to development applications

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 not commenced.

The subject development application was lodged prior to the commencement of the

Plan. Accordingly, the subject development application is to be assessed against the provisions of the Tweed LEP 2000.

However, with regard to the TCCLEP the site is proposed to be zoned R2 low density residential zone. Within the R2 low density residential zone, the proposal is permitted with consent. The proposal is consistent with the permitted building lot size and FSR of 0.8 (proposed 0.33:1), however, the proposed building exceeds the height of building standard with dwelling 1 being 9.6m in height and dwelling 2 being 9.056m in height.

The variation is supported as the increase in building height does not significantly impact on surrounding properties in terms of views or amenity. The proposed dwelling heights are less than both adjoining buildings (700mm to 800mm less). The proposed building heights are consistent with surrounding developments.

It is therefore considered that the proposal complies with the TCCLEP 2012.

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

Tweed Development Control Plan

A1- Residential and Tourist Development Code

Detailed assessment under the DCP Section A1 has been undertaken with the variations provided below. It is considered that the proposed dual occupancy is consistent with relevant provisions set out in the DCP Section A1 - Residential and Tourist Development Code.

Variation

Cut and fill control

Cut of 1.5m is proposed within dwelling two, however, a variation is considered acceptable in this instance as the variation complies with the variation controls, as the variation will not adversely affect the adjoining properties, the cut is required for the construction of the dwelling and not for outdoor living, recreation, clothes drying, swimming pool and the like.

Building height control

Dwelling one is 9.6m in height with dwelling two being 9.056m. The variation is supported as the increase in building height does not significantly impact on surrounding properties in terms of views or amenity. The proposed dwelling heights are less than both adjoining buildings (700mm to 800mm less). The proposed building heights are consistent with surrounding developments.

A2 – Site Access and Parking Code

The proposed dual occupancy includes a double garage for each dwelling. There is also sufficient parking for visitors in the driveway. The proposal complies with the required number of car parking spaces specified in A2.

A11 – Public Notification

The application was notified for a period of fourteen days from Wednesday 26 September 2012 to Thursday 11 October 2012. Council received two submissions both objecting to the proposal. These submissions are addressed later within this report.

B2 – Tweed Heads/Section B2 – Tweed City Centre

This Plan was adopted by Tweed Shire Council on 13 December 2011 and came into effect on 18 January 2013. This Plan repeals Section B2 of the Tweed Shire Development Control Plan.

This Plan contains a savings provision - 1.5 SAVINGS which states,

This Plan does not apply to any development application lodged but not finally determined before the commencement of this Plan.

Accordingly, this Plan (Tweed City Centre) does not apply, however, the proposal is consistent with both Plans.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is considered that the proposed residential development does not contradict the objectives of the Government Coastal Policy.

Clause 92(b) Applications for demolition

There is no demolition proposed as part of this proposal.

Clause 93 Fire Safety Considerations

No fire safety considerations.

Clause 94 Buildings to be upgraded

No buildings are to be upgraded.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by the policy.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by the policy.

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

The site is not covered by the policy.

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

The proposed development is considered not to create any significant impact on the natural or built environments or social or economic impacts on the locality.

All matters are considered to be suitably addressed elsewhere in this report.

(c) Suitability of the site for the development

Council's Building Surveyor assessed the proposal and did not object to the proposal subject to recommended conditions and on the provision that the proposal:

- *“being subject to thorough engineering design for dwellings, earth works & site retaining.*
- *Design for stormwater management plan from practising hydraulic/civil engineer required for collection and disposal of rainwater from roof of dwellings, driveway and any impermeable area prior to the issue of a construction certificate.”*

With regard to stormwater, the applicant has submitted a Stormwater Management Plan for the proposed development. Council’s Engineers assessed the proposal and did not object to the proposal subject to recommended conditions, noting that stormwater can effectively be managed on-site.

Appropriate conditions of consent have also been applied with regard to the steep slope of the site, access provisions and location of a sewer main within the property.

In summary, the site is considered suitable for the proposal, subject to recommended conditions of consent. All other matters are considered to be suitably addressed elsewhere in this report.

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

The application was notified for a period of fourteen days from Wednesday 26 September 2012 to Thursday 11 October 2012. Council received two submissions both objecting to the proposal. These submissions are addressed in the table below.

Summary of Submissions	Response
Noise from residents vehicles using driveway adjacent to existing neighbouring resident.	A section 138 certificate is required as part of this consent for the construction of the driveway and will be required to comply with Council’s standards. There are not specific standards to limit location of driveways. Compliance with Council’s standards will minimise noise created/associated with vehicles travelling up and down the driveway.
Safety barrier required to be constructed on the boundary due to steepness of proposed driveway.	A section 138 certificate is required as part of this consent for the construction of the driveway and will be required to comply with Council’s standards. The potential safety impact from residential vehicles utilising the driveway considered acceptable by Council’s engineering department.
Rain water runoff (stormwater drainage).	A Stormwater Management Plan dated 19 November 2012 has been provided by the applicant and assessed by Council. Council supports the SMP and recommended appropriate conditions.
Requesting a condition to prohibit a thoroughfare through the subject site and the southern adjoining property at 21 Kennedy Drive.	The application does not propose the construction of a thoroughfare form Charles Street through to Kennedy Drive, which would require separate

	approval. A condition is not warranted.
Retaining wall to protect the stairs of the neighbouring property from the construction of the driveway.	The neighbouring property boundary to the west already contains a retaining wall. The construction of the driveway is considered not to damage the neighbouring dwellings stairs. However, condition PCW0765 is recommended, which covers the integrity of adjoining land, from building works associated with the proposal.
Is there enough room to relocate the sewer if required?	Council has recommended appropriate conditions relating to the existing sewer and works within proximity of the sewer. Council's Water Unit assessed this particular issue and advised that there would be adequate space to carry out the necessary work to relocate the sewer if required.
The height of the proposed dwelling two will impact on views from the eastern neighbouring property.	Dwelling two is situated at the southern or lower end of the site and is two storeys in height and is not located directly in front of the neighbouring building or direct views. In addition, the proposed building height of dwelling two is approximately RL35m AHD, with the floor height of the ground level of the neighbouring building being approximately RL35m AHD. Therefore, dwelling two will not significantly or unreasonable impact on the views of the neighbouring property/s.
The proposal will cause coastal erosion, landslip and negatively impact on existing flora and fauna.	The site does not contain any significant flora or fauna. The site is not located on the coast and a slope stability risk assessment report dated 19 November 2012 was provided which recommend that the proposal should not affect the stability of the block. Conditions of consent will require compliance with the slope stability report.

(e) Public interest

The proposal is considered to be in accordance with public interest.

OPTIONS:

1. Approve the application subject to the recommended conditions; or
2. Refuse the application and provide reasons for refusal.

Council officers recommend Option 1.

CONCLUSION:

Subject to the recommended conditions of consent, the proposal generally complies with all the applicable provisions and is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

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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30 [PR-CM] Draft Tweed Development Control Plan (DCP) Section A1 - Residential and Tourist Development Code Part A Single Dwellings, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Outbuildings

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: GT1/DCP/A1 Pt6



Supporting Community Life

SUMMARY OF REPORT:

This report provides feedback on the public exhibition and submissions received in relation to *draft Tweed Development Control Plan Section A1 Residential and Tourist Code, Part A – Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development* (the draft DCP) and **Part B – Town Houses and Row Houses**.

Low scale residential development, as guided by draft DCP A1 Part A, is the most common form of development within the Tweed Shire, and has the potential to significantly impact on and, determine the character, of its various settlement areas, particularly on hilly areas where the topography is steep and the sites prominent. Understanding the residential character, wider landscape values and sub-tropical climate of the Tweed has been a key consideration in the review process, which commenced with a series of public consultation papers and culminated with a general public exhibition.

The draft DCP has been prepared to enable greater flexibility for residential housing and tourist development. In doing so the draft DCP has moved away from relying on prescriptive controls to a more performance based approach. While this should allow for greater diversity and innovation in design it will also require a more thorough and detailed approach to understanding and planning the site in context with its surrounding and constraints. The new planning and design principles, developed from feedback received on the discussion papers, establishes a clear statement of the development aims sought to achieve the desired outcome.

The draft DCP has been reviewed and updated within the context of the submissions received. The amendments are not substantive in that they do not alter the intent of the controls or requirements but instead simplify and rationalise the format and expression of the DCP for ease of use.

The changes are not considered to have a significant impact and therefore, it is not considered that the draft DCP requires re-exhibition. The draft DCP as amended is suitable for adoption.

RECOMMENDATION:

That:

- 1. Draft Tweed Development Control Plan Section A1 Residential and Tourist Code Part A – Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development, and Part B – Town Houses and Row Houses, is adopted, and**
- 2. The Draft Tweed Development Control Plan adopted under Resolution No.1 be publicly notified in accordance with Regulation 21 of the *Environmental Planning and Assessment Regulation 2000*; and**
- 3. Council forwards to the Director-General of the NSW Department of Planning and Infrastructure a copy of the adopted *Tweed Development Control Plan Section A1 Residential and Tourist Code Part A – Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development, and Part B – Town Houses and Row Houses* in accordance with Regulation 25AB of the *Environmental Planning and Assessment Regulation 2000*.**

REPORT:

Background

Consultation to inform the review of the *Tweed Development Control Plan Section A1 – Residential and Tourist Development Code Part A – Single Dwellings, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts* (DCP A1 Part A) has been ongoing over the last 24 months as discussed in the previous report to Council, dated 25 October 2012 and provided in Attachment 1.

Following extensive consultation on a range of discussion papers an amended *draft Development Control Plan Section A1 Residential and Tourist Code Part A – Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development (draft DCP A1)* and amended *Part B – Town Houses and Row Houses* was prepared for Council's consideration. Council resolved, at the meeting of 25 October 2012:

1. *The draft Tweed Development Control Plan Section A1 – Residential and Tourist Development Code Part A – Single Dwellings, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development and Part B – Town Houses and Row Houses be placed on public exhibition for a minimum period of 28 days; and*
2. *Following public exhibition a further report addressing all submissions is to be submitted to Council.*

Public Exhibition and Consultation

Statutory Public Exhibition

The draft DCP A1 Parts A and B and associated supporting information (including the Council report of 25 October 2012, a suite of fact sheets and the previous consultation summary) were publicly exhibited for a period of 38 days from 7 November to 14 December 2012.

Notification was provided through the Tweed Link on 6 November 2012 (statutory advertisement) and again on 20 November 2012 in a more "plain English" manner.

The exhibition information was available on Council's website and in hard copy at the Council's Civic Centre Murwillumbah, Civic Centre Tweed Heads and Kingscliff Library.

In addition, three public presentation sessions were held as follows:

- On 12 November 2012 at Pottsville Neighbourhood Centre attended by five people.
- On 13 November 2012 at Murwillumbah Canvas and Kettle Room attended by one person.
- On 14 November 2012 at the Sustainable Living Centre, Kingscliff attended by one person.

This consultation stage also included:

- Direct mail out to 117 community groups and industry professionals.
- Invitation to local architects for individual issue and review meetings (five held by request during June/July 2012).
- An industry breakfast forum on 19 September 2012 attended by approximately 30 people.

- Two Councillor workshops on 18 October 2012 and 29 May 2012.
- An internal staff information/feedback session on 29 August 2012.

A total of seven submissions were received in response to the public exhibition, as discussed in the following section.

Previous Consultation - Discussion Papers

The statutory public exhibition follows extensive consultation seeking community and industry feedback on a suite of six discussion papers, which outlined the issues, trends, considerations and a range of options for low-scale residential housing, in order to inform the amendments to the draft DCP.

The discussion papers were also available on Council's website, in hard copy at the same locations and through the "Your Say Tweed" electronic forum through two previous consultation periods: August to October 2011 and May – June 2012.

During the discussion paper consultation a total of 20 written submissions and between 5 and 41 survey responses to individual discussion papers were received. Feedback from this consultation informed the amendments to the draft DCP placed on formal public exhibition.

Throughout the review of the DCP there has been extensive consultation in order to:

- Initially seek staff, community and industry feedback on what is and is not working with the current DCP;
- To understand what type and scale of housing and associated development is or is not perceived to be acceptable to the Tweed community; and,
- To inform the community and industry of the review and to seek their feedback on the draft DCP's proposed amendments.

Low-scale residential development is the most common form of development within the Tweed and therefore has the potential to have the most significant impact on the character of the Shire's villages and settlements. The comprehensive consultation program undertaken nevertheless attracted a low level of community interest and participation, as evidenced both at the attendance of community meetings and the number of submissions received.

The level of feedback from participating community members was nonetheless very informative and valuable in the preparation of the draft DCP.

Submissions

The statutory public exhibition attracted seven submissions, comprising:

- Six industry; and
- One community association submission.

No government agency submissions were received. A summary table of the submissions, including a planning response and recommended actions, is provided as Attachment 2. The submissions and the recommended actions are broadly summarised through the following themes:

General

There is a general level of support for an outcome of community friendly and sustainable development, through the consultation on the discussion papers and submissions to the exhibition.

Two submissions also raised some concerns that the draft DCP is not in a format that can be readily understood by the general public. In addition, the submissions raised concern overall about the excessive use of controls comparing and stating that the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Housing Code SEPP) does not include excessive controls nor require a site analysis.

Planning comment

The draft DCP has been structured to both educate and inform as well as to provide guidance. A brief *explanation* is provided under each *design theme* to assist the public with their understanding of the issues and what the controls are seeking to achieve. The draft DCP also includes images to visually assist an understanding of the principles and intent of the controls.

The Housing Code SEPP provides for the construction of dwellings as complying development, where a prescribed range of development standards are met. This is a prescriptive Code which relies on mandatory, non-discretionary, standards aimed at allowing development considered to be of minimal environmental impact. It does not relate to many of the larger dwelling houses being constructed in the Tweed or those that are more environmentally intrusive.

Development that does not meet the mandatory threshold provisions for minimal environmental impact development under the Housing Codes SEPP therefore requires an alternative means for evaluation. The Council's DCP provides the assessment criteria for all other development requiring development approval and the draft DCP has been tailored to be more flexible in regard to how the overall objectives can be achieved. The trade-off for this increased flexibility does however require a more detailed site analysis, which is used to demonstrate that the development outcomes are compatible with the site and the local context.

Recommendation/Action

No further amendment required.

Site analysis

One submission supported the introduction of stronger emphasis on site analysis, whilst four submissions raised concern that the stronger emphasis is onerous, will increase costs to applicants, and that the controls are too complex.

Planning comment

The current DCP Section A1 requires a site analysis plan and the inclusion of site analysis planning is not new to residential development. The draft DCP places stronger emphasis on the understanding of the site through a site analysis plan to inform dwelling design and selection and to support alternative solutions. The greater emphasis on site analysis is the trade-off for more flexible and performance based provisions, without which the outcomes would prove more difficult to achieve.

As part of the design process a site analysis is typically undertaken by housing designers in any event but it is seldom submitted in support of or to justify the development being sought. The draft DCP seeks to ensure that this level of detail is provided as it shows the evaluation and thought that underlies the ultimate development. It is extremely useful for demonstrating the process leading to the choice of design, especially where there is a contentious issue, because it provides a visual narrative or explanation of why something did or did not occur in a particular way. This can benefit the landowner, the broader community and the Council.

A site analysis may be based on a simple survey which includes additional consideration of the site features identified at the site visit, and will need to be adapted to suit the scale and potential impact of the development being sought. This has been further clarified in the revisions to the draft DCP.

Undertaking a site analysis is the first step in good design and ensuring that the house design or choice is suited to the site, its aspect and features. Undertaking a site analysis also ensures consideration is given to the impact a dwelling may have on the streetscape or neighbourhood character and results in a more livable dwelling.

To enable greater design flexibility, which the draft DCP permits and encourages, site analysis is a key consideration in the understanding and assessment of what alternative solutions may or may not be suitable.

Recommendation/Action

The site analysis provisions have been retained with minor review to avoid excessive controls and to improve clarity, whilst keeping the intent. The site analysis checklist and DA and pre DA submission requirements have been relocated to an Appendix to the draft DCP Section A1.

A site analysis template is being prepared to be made available on the Council website along with updated application forms and guidelines.

Consistency with State Government Directions

Four submissions raised concern that the draft DCP is not consistent with the State Government position on DCPs as “guideline documents” and how requirements are to be taken into account during the assessment process.

Planning comment

The Environmental Planning and Assessment Amendment Bill 2012 was assented to by Parliament in November 2012, with some amendments following its introduction in October 2012, and commenced in March 2013. The Bill, amongst other matters, clarifies the status of DCPs as “guidelines” and that Local Environmental Plans (LEPs) have precedence over DCPs. The Bill has the practical effect of not preventing or unreasonably restricting development that is otherwise permissible under an applicable LEP and giving effect to the aims and objectives of an applicable LEP. The amendment clarifies a prevailing situation under the Act rather than introducing anything new.

The role of a DCP is *to provide guidance for: giving effect to the aims; achieving the objectives; and facilitating development which is permitted in an environmental planning instrument applying to the land concerned* (EP&A Act Section 74BA). The draft DCP has been prepared consistent with the intent of this Bill and the legislative framework for DCPs.

The draft DCP A1 does not seek to restrict development (or standards) otherwise permitted under the applicable LEP, and has never had the effect or legal status to do so. To assist with this unification in the terminology the current 'mandatory' controls of the current DCP have been removed in the draft DCP and in their place are performance based provisions guiding how development could or should be developed. In this way there is greater flexibility and acknowledgement that there may be alternative and better solutions.

The Department of Planning and Infrastructure (DP&I) have reviewed the draft DCP and have informally confirmed that the draft DCP is not inconsistent with their policy approach.

Recommendation/Action

No further amendments made.

Cut and fill

One submission supports the cut and fill controls which relate more specifically to slope, stating that they feel the concerns of the community have been heard. Two submissions raised concern that the controls are too complex and confusing, especially for slopes in excess of 10 degrees.

Planning comment

The discussion paper consultations attracted strong support for maintaining the undulating landscape character of the Tweed and encouraging the structural design of a house to be based on the existing slope of the site. It is based on this feedback and design analysis that the cut and fill controls have been drafted.

The draft DCP requirements do not limit cut and fill within the building footprint, as is currently the case, thereby encouraging and allowing greater flexibility for the level change of the site to be taken up within the building footprint. Designing to suit the slope is considered a more sensitive building approach to ensure that development fits within the Tweed's undulating character rather than modifying the site extensively to fit a house, which might otherwise be suited to a flat site.

Under the draft DCP cut and fill outside of the building footprint is permitted up to 1m for up to 10% of the site or a maximum of 100sqm. This guideline enables some levelling of the site for private open space usage, drying courtyards and the like.

Outside of the building footprint, fill to 600mm and cut to 1m is also permitted under the Housing Code SEPP. This allows for small retaining walls and small scale levelling of the site.

These provisions, in addition to the generous cut and fill provisions applying to subdivision under *Tweed DCP Section A5 – Subdivision Manual* are considered to provide a suitable balance between enabling construction of dwellings and minimising construction costs whilst maintaining the undulating landscapes of the Tweed.

Recommendation/Action

The approach of applying construction methods appropriate to the slope is retained with minor amendments made to reduce and simplify the planning and design principles and objectives and clarify the intent of the controls.

Landscaping and deep soil zones

One submission supports the retention of deep soil and landscaping controls stating this is important for healthy communities. Two submissions raised concern that the draft DCP contains excessively detailed controls, and cites the landscaping section in particular, and requests they be simplified. The same two submissions raised concern that it is unnecessary for private gardens to be detailed at DA stage as most landscaping is done at a later stage. These submissions noted that each time a variation is sought this will require a significant amount of work.

Planning comment

The current DCP uses a combination of “deep soil zone”, “impermeable surface area”, “external living area” and “landscaping” controls to manage the balance of built form and landscape/deep soil areas.

The exhibited draft DCP consolidated these controls to “site coverage”, and “landscaped area”, of which a “deep soil zone” other private open space and “external living areas” are a part. The controls included in the draft DCP currently exist and were drawn from the above

four themes, however, it is acknowledged the exhibited draft DCP contained an excessive number of landscaping controls.

Further review of the landscaping controls has resulted in consolidation of the controls and redrafting the landscaping requirements in a more simplified manner, whilst retaining the minimum landscaping and deep soil requirements.

The reference to a definition and use of the term "*landscape area (total)*" has been removed as this is essentially superfluous as it refers to the area of the site left over from site coverage and complicates the understanding of the term "*landscape area*" within the Draft Local Environmental Plan 2012 (DLEP 2012). The term "*deep soil zone*" has been retained as it is an accepted term within the Tweed Shire that further clarifies an area of the landscape area that is "principally to allow planting of larger trees and landscaping".

The use of "*landscape area (total)*" encompassed the balance of the site outside of the site coverage and included pathways, driveways, outdoor living areas and the like. Further testing of the application of these requirements, in particular including the "*other principle private open space and external living area*" within the landscaping table restricts the flexibility for use of a site and effectively restricts the amount of area permitting hard surface areas making provision of a driveway and external living area very difficult, especially on smaller lots. Overall whilst the landscaped area outcome in the exhibited draft DCP is essentially similar to the revised draft DCP, less flexibility was placed on hard surface areas, including driveways, patios and other forms of external living areas.

Removing the "*landscape area (total)*" definition and relying on the "*landscape area*" definition of the DLEP 2012 as well as amending the landscape requirement Table 2 in C1 encourages the same level of landscape area (equivalent to the current permeable surface requirements), sets up minimum dimensions to encourage adequately dimensioned private open space which allows for planting of larger trees and landscaping as encouraged in the deep soil zone definition and allows flexibility in where the landscaping and deep soils zones are located to enable the dwelling and site to be more responsive to solar orientation. In addition removing the "*other principle private open space and external living areas*" minimum requirement column in Table 2 in C1 allows greater flexibility for site planning.

In essence a site will have a maximum percentage allowed for site coverage, a minimum percentage required for landscaping, of which an area must be a deep soil zone, and the remainder of the site, may be flexibly used for driveways, external living areas or further landscaping. In addition the *planning and design principles* and *objectives* have been reviewed and consolidated for greater clarity and ease of use, whilst retaining the intent.

The minimum landscape requirements under the revised draft DCP are essentially the same as the current DCP landscape and permeable surface requirements. A table summarising the landscape outcomes under the current DCP 2008, the exhibited DCP and the revised DCP within this report, is provided in Attachment 5.

The draft DCP has been amended to only require a "landscape plan" for dual occupancy development within Part A. Single dwellings, granny flats, alterations and additions will only be required to identify the location of landscape areas and total landscape calculations to ensure that the minimum landscape area and deep soil requirements and the maximum site coverage requirements have been met and to demonstrate that the landscape and outdoor living areas are located to respond to the site and its orientation.

Recommendation/Action

The landscaping requirements have been amended to reduce the number of controls and simplify the landscaping requirements, whilst retaining essentially the same total landscaped and permeable surface area requirements.

Site coverage

Two submissions raised concern that the site coverage controls are excessive and superfluous.

Planning comment

The setbacks provide the maximum envelope for the dwelling footprint, whereas the site coverage controls (complimentary to the landscaping controls) provide the total area that may be covered in built form (impervious surfaces). The site coverage, landscaping and setback controls work together to guide the maximum boundary of the building footprint, the maximum size of the building footprint, the total area of impervious surfaces and to retain and encourage both hard and soft landscaping elements.

This approach, using setbacks, site coverage and landscape controls is also consistent with the Housing Code SEPP.

Recommendation/Action

No amendments made.

Building form

Two submissions raised concern with requirement for the articulation of walls exceeding 15m in length, suggesting this is unnecessary and will add to the cost.

Planning comment

This control is guiding articulation of excessively large expanses of blank wall to minimise the visual and overshadowing impacts. Articulation may be provided, for example, in the form of change of materials, stepping in or out of the walls, planting of landscaping to screen the wall, or may be as simple as providing windows with hoods or screens to break up the expanse of blank wall.

It is considered that there are many ways of meeting the articulation requirements which may not significantly add to the cost. Where it is not possible to meet the objective this is likely to be demonstrated through the use of an appropriately detailed site analysis plan, which is a primary purpose for maintaining this requirement.

Recommendation/Action

No amendments made.

Affordable Housing

One submission raised concern with affordable housing and the need to ensure it is well designed for the people that can least afford it.

Planning Comment

It is noted that the draft DCP does not make provision for *affordable housing*, as this has very specific development and management requirements. Instead the draft DCP makes provision for small lot housing through encouraging and providing the flexibility for greater diversity in housing types, sizes and potentially costs.

It is also noted that the recently exhibited DLEP 2012 applies a minimum residential subdivision lot size of 450m² to all residential zones with exception of the R3 Medium Density zone, thereby maintaining the residential subdivision lot size allowances under the current LEP.

Including the small lot housing provisions in the draft DCP Part A will provide the framework for new land releases, through a planning proposal and medium density development to provide an integrated mix of lot sizes and housing types.

The inclusion of small lot housing is also consistent with the approach and provisions of the Housing Code SEPP, which allows complying development dwellings on lots ranging from 200m².

Recommendation/Action

No amendments made.

Roof design and eaves

Three submissions note that the requirement for 2.7m ceilings and 600mm eaves will add considerably to the cost of housing.

Planning comment

The draft DCP does not require 2.7m ceilings, instead encourages this ceiling height to enable quality design, sunlight and ventilation more suitable to the Tweed's subtropical climate. As with all controls, alternative solutions can be considered.

The draft DCP has been amended enable eaves less than 600mm, whilst retaining the intent that eaves should be greater and/or window shading provided as is suitable for the Tweed climate.

Recommendation/Action

Amendments have been made to *3.1 Setbacks* and *4.6 Roofs, dormers, attics and skylights* to clarify wider eaves are encouraged, though not specifically required.

Setbacks

Two submissions raised concern that the rear setbacks are inconsistent with those of the Housing Code SEPP. One submission raised inconsistency with setbacks to external living areas under two sections. In addition two submissions raised general concern with the excessive number of controls.

Planning comment

As noted above the development standards of the Housing Code SEPP are aimed to allow Code based assessment of development considered to be of minimal impact. Development that cannot meet these mandatory development standards requires a development application. Whilst the draft DCP has been prepared to be consistent with the approach of the Housing Code SEPP, including lot size categorisations, it is appropriate that the draft DCP guidelines for development, which does not meet the minimal impact standards, guides development outcomes compatible with the site and the local context and character. In this context, the rear yard setbacks in the draft DCP better reflect the character of the housing in the Tweed but may nevertheless be varied where justified and demonstrated through a site analysis plan.

Following review of the setback section, the setback requirements have been reordered and consolidated for greater clarity. As part of this review, the front setback provision for lots 600-900m² has been increased from 4.5 to 6m. This is the most common lot size where infill development is likely to occur and a 6m setback is considered more consistent with the development pattern of established areas.

The inconsistency in the side boundary external living privacy setbacks has been amended through deleting the privacy setback to external living areas from the *2.2 Landscaping* section and retain in the *4.5 Visual and acoustic privacy* section.

Recommendations/Actions

Minor amendments to the setback controls have been made, as detailed above, and the section simplified and reordered for greater clarity.

Solar access

Two submissions raised concern that requiring shadow diagrams for two storey development is excessive.

Planning comment

The current DCP A1 requires shadow diagrams for both single and two storey dwellings therefore, this was not a new control in the exhibited draft DCP. Whilst single storey development generally has minimal impact, the draft DCP acknowledges there may also be situations where overshadowing occurs, such as on sloping sites. Notwithstanding, single level development is considered to be of minimal impact. Two storey development has the potential to overshadow and impact on adjoining development. The revised draft DCP A1 amends this requirement such that shadow diagrams are to be submitted for two storey development or greater.

Recommendations/Actions

The draft DCP A1 has been amended to require shadow diagrams for two storey development or greater.

Minor amendments have been made to the draft DCP to incorporate the feedback received during the public exhibition as discussed. Some controls have been removed and refined to avoid duplication and excessive complexity; others have been reworded to improve the understanding. Wording of the DCP that has been amended is in red text in the draft DCP A1 Part A, as provided in Attachment 3.

Amendments made to the draft DCP are not significant and it is considered do not warrant re-exhibition of the draft DCP.

Draft DCP A1 Part B

An amended draft DCP A1 Part B Row Houses and Town Houses was also exhibited. No changes or amendments were made to Part B other than the removal of the dual occupancy and granny flat provisions, which have been incorporated in Part A.

No submissions were received in relation to moving the dual occupancy and granny flat provisions from Part B into Part A.

Subsequent to the public exhibition of the draft DCP, the DLEP 2012 has been publicly exhibited. Internal review has identified one of the implications of the translation of the current LEP into the required format of the standard LEP template is the loss of the current LEP Clause 51A. Whilst the floor space ratio provisions are translated into the draft LEP, the effective density controls for town house development, under Part B for low density residential zones is not.

In order to maintain the current density provisions, thereby not significantly increasing them, it is proposed to include the intent of Clause 51A in Part B, as provided red text in Attachment 4.

Recommendations/Actions

The *draft DCP A1 Part B Row Houses and Town Houses Chapter 1 Building Types – Town Houses (villas)* has been amended to include the density provisions of LEP 2000 Clause 51 A of 1 dwelling per 450m² for multi unit housing within a low density residential zone and 1

dwelling per 250m² within 300 metres of a business zone. The same density provisions have been included in Part 1.4 of the draft DCP A1 Part A.

It is noted that further review of DCP A1 Parts B and C will follow, subject to resourcing in the Planning Reform Unit workplan.

Fact Sheets

The exhibition material included a suite of eight fact sheets on the following topics:

- How do I get my approval to build?
- Designing to suit the Tweed's climate.
- Understanding your site.
- Planning your house layout.
- Choosing your building materials.
- Landscaping your site.
- Sloping sites, and
- Small lot housing.

The facts sheet aim to provide plain English information to assist people when making decisions about building a new house.

No submissions were made in relation to the fact sheets.

Subject to the resolution of Council to proceed with the DCP amendment, these fact sheets will be made available on Council's website and further opportunities for distribution of the fact sheets will be investigated, such as:

- The opportunity for sending a package of information with s149 certificate applications;
- Information packages available at display villages and exhibition homes in the Tweed.

The fact sheets will form part of a suite of information providing design advice for housing to support the objectives of the draft DCP.

OPTIONS:

1. Council adopts the revised draft DCP A1 Part A, as provided in attachment 3 and revised DCP A1 Part B, as provided in attachment 4; or
2. Council does not adopt or proceed with the revised draft DCP A1 Part A, as provided in attachment 3 and revised DCP A1 Part B, as provided in attachment 4; or
3. Council defers the revised draft DCP A1 Part A, as provided in attachment 3 and revised DCP A1 Part B, as provided in attachment 4 subject to further review.

CONCLUSION:

The draft DCP has been prepared to enable greater flexibility for residential housing and tourist development. In doing so the draft DCP changes from a very prescriptive document,

which sets various controls, to a document which is more performance based and therefore requires a greater understanding of the site and design.

The introduction of planning and design principles, which were developed using the feedback received from public consultation on the discussion papers, provides the overall residential outcomes being sought. Achieving these outcomes within a flexible document relies on a sound understanding of a site's opportunities and constraints, the broader Tweed and local character and the subtropical climate characteristics. As such site analysis plays an important part in the design process and facilitates this flexibility.

This flexibility has been incorporated into more appropriate cut and fill requirements. The discussion paper consultations attracted strong support for maintaining the undulating landscape character of the Tweed and encouraging the structural design of a house to be based on the existing slope of the site.

It is based on this feedback and design analysis that the cut and fill controls have been drafted to remove cut and fill restrictions within the building footprint, thereby encouraging construction methods suitable to the slope, whilst allowing modest cut and fill outside of the building footprint to allow flatter areas for outdoor living, clothes drying and the like.

The review has simplified and rationalised the objectives and controls, notably with regard to the landscaping and setback sections. The framework for landscaping and setback requirements, including such things as lot size categories and using site coverage and landscaping controls to guide the balance of hard and permeable surfaces on a site, closely correlates with the Housing Code SEPP.

An objective of the review of the DCP has also been to ensure greater consistency generally with the structure of the Housing Code SEPP. This approach will assist applicants who may commence a complying development application to translate more simply to a development application should it be required.

The review incorporates secondary dwellings and dual occupancy development within Part A as these are also forms of low density residential development that increase the diversity of housing. The draft DCP has rationalised the current 202 development controls to 142 controls, whilst encouraging site appropriate housing and managing a balance of flexibility for the built form and maintaining landscape areas, deep soil zones and amenity.

The draft DCP, as amended, is suitable for adoption.

COUNCIL IMPLICATIONS:

a. Policy:

The proposed changes to the draft DCP A1 should bring a closer correlation with the expectations of the community and the development/building industry in terms of future, small scale residential developments.

b. Budget/Long Term Financial Plan:

The review of DCP A1 is included in the current financial year budget.

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.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.2 Improve opportunities for housing choice
- 2.2.1.1 Investigate appropriate building typologies and construction methods that foster environmentally sensitive site design and good urban design practice.
- 2.2.1.1.1 Investigate and conduct review of Tweed Development Control Plan 2008 – Section A1

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Council report of 25 October 2012 (ECM 65730054)
 - Attachment 2 Submissions summary table March 2013 (ECM 65730055)
 - Attachment 3 Draft DCP A1 Part A as revised (ECM 65732162)
 - Attachment 4 Draft DCP A1 Part B as revised (ECM 65732163)
 - Attachment 5 Summary table of landscape controls and amendments (ECM 65732164)
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31 [PR-CM] Compliance Matter - 76 Marine Parade (DA12/0515)

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA12/0515 Pt1



Civic Leadership

SUMMARY OF REPORT:

The subject site, 76 Marine Parade Kingscliff (Lot A DP 374174), is a prominent site on the corner of Marine Parade and Seaview Road. Historically it was occupied by a BP Service Station. In 2010 the BP Service Station ceased to operate and since this time there has been no development approvals issued over the site to change the use of the premises from a service station to any other land use.

Council has been made aware that 76 Marine Parade has been partially leased to a shop (Watersports Guru) without a corresponding Development Approval for the use of this site. A Development Application (DA12/0515) was lodged to accommodate this and other land uses but was later withdrawn without issues of potential site contamination being adequately addressed.

The current tenant of the site (Watersports Guru) has requested that Council allow the ongoing use of the premises until 1 July 2013. The tenant has offered to lodge a Development Application for this use, however, Council Officers are of the view that any development application would have to address potential site contamination which could be quite costly and take a substantial amount of time to resolve.

While the subject site is transferring ownership it is recommended to allow the existing tenant an opportunity to continue operating until 1 July 2013 to enable time to find an alternative lawful premises.

RECOMMENDATION:

That the existing unlawful business “Water Sports Guru” at 76 Marine Parade, Kingscliff be given until 2 July 2013 to vacate the premises before compliance action is taken.

REPORT:

The subject site, 76 Marine Parade Kingscliff, has historically been used as a BP Service Station. It is a prominent site on the corner of Marine Parade and Seaview Road.

It appears that in the latter half of 2010 the BP Service Station ceased to operate.

Since this time there has been no development approvals issued over the site to change the use of the premises from a service station to any other land use.

On 5 October 2011 Council received an enquiry from Mr Tim Jack Adams (from Watersports Guru business) about what would be required to set up a fruit and vegetable shop at 76 Marine Parade Kingscliff.

On 14 October 2011 Council responded to this enquiry as follows:

"I refer to your enquiry dated 5 October 2011 in relation to the abovementioned and wish to advise the following.

The subject site is zoned 3(b) General Business under the provisions of the Tweed Local Environmental Plan 2000. From the information you have provided Council the proposed development of a 'fruit stall' may be defined as a shop.

A shop is defined 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.

Shops are permissible development within the 3(b) zone, with development consent.

Any proposal would have to meet Council's usual requirements including the lodgement of a Development Application and an application for Construction Certificate, if applicable, and would be subject to merit assessment under Section 79C of the Environmental Planning and Assessment Act, 1979 (as amended)."

The proposed fruit and vegetable shop did not proceed.

It appears that the owners of the subject site leased a part of the existing building to Mr Tim Jack Adams who then proceeded to set up the Watersports Guru business. This business hires out items such as surf boards, bicycles, skateboards, fishing gear and snorkelling gear. Many of these goods get stored outside the structure under temporary shade structures.

On 9 January 2012 Council sent a letter to the owners of the property stating:

"It has come to the attention of Council that you have an unauthorised Shop located on your parcel of land. Under the Tweed Local Environmental Plan 2000, the structure and land use is defined as a 'Shop' and requires development consent.

Council records indicate that no approval has been granted for this use at the above property.

To rectify the situation, please complete the attached Development Application and lodge with Council within 21 days of the date of this letter. Provided a Development Application is submitted within this time frame, no further action will be taken by Council for the illegal works.

It is recommended a Planning Consultant be engaged to assist with the submission of this development application.

In the interim, no further trading is to be undertaken until the matter is resolved."

On 17 January 2012 the owners of the site advised that the offending tents have been removed and that they would be seeking input from a private planning consultant to address the situation at 76 Marine Parade Kingscliff and expect a Development Application to be lodged in the next 3 – 6 months.

On 2 November 2012 Council staff sent a second letter to the owners of the subject property (and a similar letter to the tenant) which stated:

"It has recently come to my notice that the retail shop operating from the above premises is unauthorised. A 'shop' represents a change of use from the 'Service Station' which formerly operated on the site for many years.

Council records indicate your tenant, Tim Jack Adams was advised by letter dated 14 October 2011 (copy attached) that a 'shop' was permissible within the 3(b) General Business zone, but that a Development Application was required to allow proper assessment and approval. A similar letter was sent by another Town Planner to yourselves on 9 January 2012 (copy attached) reaffirming this directive.

To date, Council has not received any Development Application. The current use remains an illegal one.

Consequently, in view of the time which has lapsed and the prior correspondence, this is the final request for lodgement of a Development Application. The Development Application should be lodged within 21 days from the date of this letter. If no Development Application is lodged by 23 November 2012 and the shop is still operational, Council may take legal action to enforce compliance."

On 6 November 2012 Council received a Development Application (DA12/0515) seeking approval to establish the use of the existing building at the site for retail purposes, external stalls, signage and shade cover.

The Development Application was being assessed as statutorily required. It is a requirement of State Environmental Planning Policy (SEPP) 55 – Remediation of Land that a Consent Authority must consider the findings of a preliminary investigation before determining an application to carry out development that would involve a change of use.

Council had asked the applicant for further information in this regard however before this information was received the applicant withdrew the application on 19 February 2013 as Council understands the property was being sold and the owner no longer needed to proceed with the application.

The withdrawal of this Development Application has left the existing tenant (Watersports Guru) without a lawful tenancy.

Discussions with the existing tenant indicate that he would like to retain his occupancy of the Watersports Guru business and he has written to Council stating that:

"This email is a request to council to allow Watersports Guru (76 Marine parade, Kingscliff) to operate from current premises until the 1st July 2013. During this period I am happy to seek DA approval for current use of site and if not viable look for alternative premises to operate our business.

It would greatly appreciate having an audience with Tweed Shire councillors on this matter to see if an amicable arrangement can be made towards the prosperity of our business and the community.

The landlord Norm Mavor has given permission to pursue this matter."

Council would normally allow businesses to remain on site while compliance matters are resolved with a corresponding Development Application. However in this instance (as with Development Application for the change of use of the premises) the applicant would need to address site contamination which could be timely and costly.

While the subject site is transferring ownership it is recommended to allow the existing tenant an opportunity to continue operating until 1 July 2013 to enable time to find alternative lawful premises.

Council would normally allow businesses to remain on site while compliance matters are resolved with a corresponding Development Application. However in this instance (as with DA12/0515 for the change of use of the premises) the applicant would need to address potential site contamination which could be timely and costly.

While the subject site is transferring ownership it is recommended to allow the existing tenant an opportunity to continue operating until 1 July 2013 to enable time to find an alternative lawful premises.

Below are photographs of the premises:



Google Street View January 2010 – Before the BP Service Station Closed



Photo from 17 January 2012 – after BP vacated the premises



Photo from 17 January 2012 – after BP vacated the premises

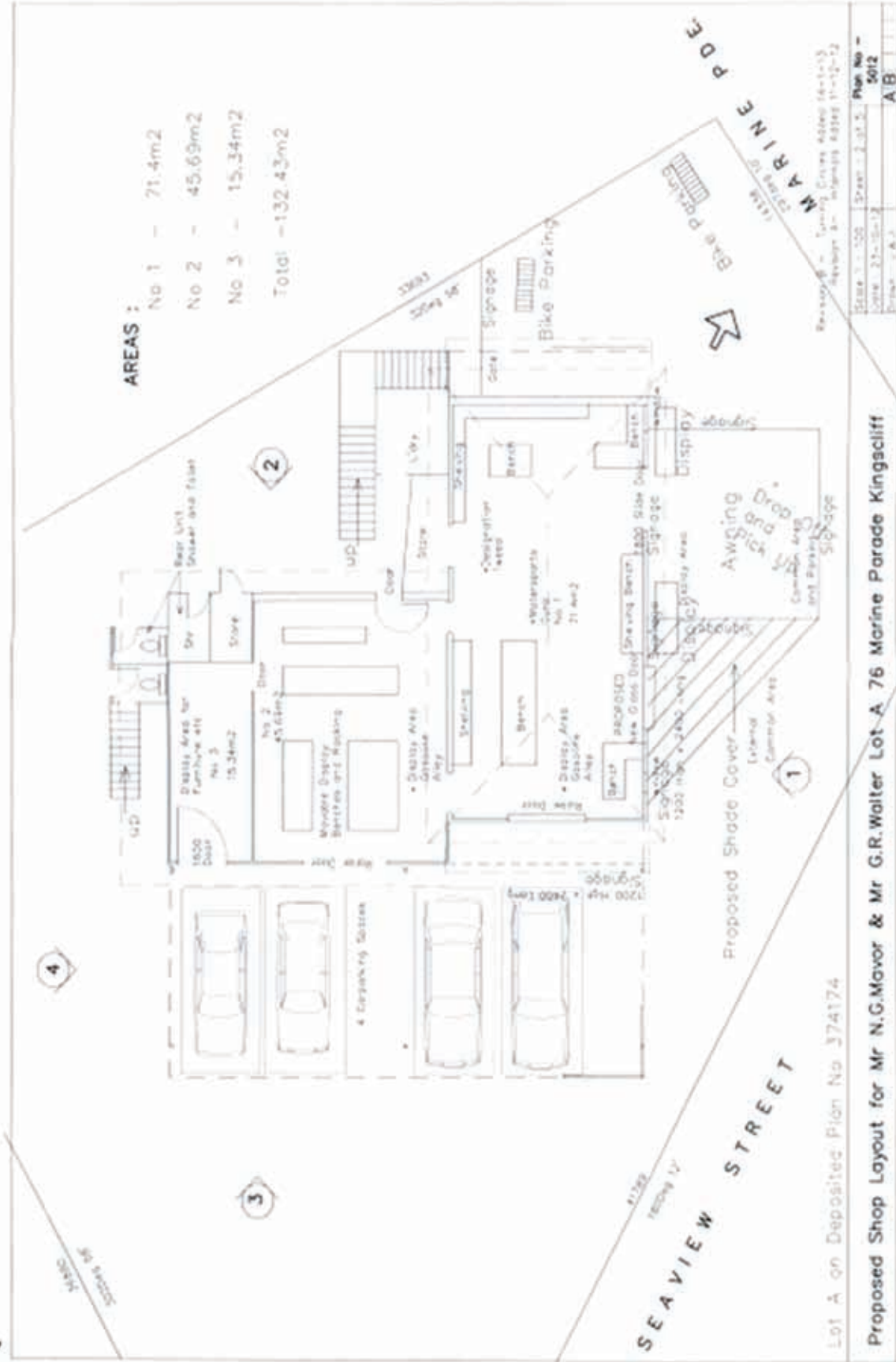
SITE DIAGRAM



Locality Plan
 Lot A DP 374174
 No. 76 Marine Parade, Kingscliff

Disclaimer: This map is provided to assist in the accuracy of this data. Council does not warrant or represent or guarantee or provide any warranty or liability for the accuracy, reliability, completeness or suitability for any particular purpose and does not accept any responsibility for any errors, including without limitation, liability in negligence, for all purposes, losses, damages (including indirect or consequential damage) and costs that may be incurred as a result of data being inaccurate in any way and for any reason. This information is provided for the general public and is for general information only and does not constitute a 'fit for purpose' or 'as is' statement. The information contained on this document remains valid for 12 days only from the date of upload.	Cadastre 05/04/2013 © Land and Property Information (LPI) & Tweed Shire Council Boundaries shown should be considered approximate only.	0 20 40 80 160 M 1:4,000 @ A4 Portrait DPPI 0847 - 501 0871100	Civic and Cultural Centre 3 Tumbulgum Road Murumbidgee NSW 2404 PO Box 616 Murumbidgee NSW 2404 T (02) 6572 2400 0800 250 872 F (02) 6470 2420 W www.tweedshire.nsw.gov.au E info@tweedshire.nsw.gov.au
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SITE PLAN AS DETAILED IN DA12/0515



OPTIONS:

1. That the existing unlawful business "Water Sports Guru" at 76 Marine Parade, Kingscliff be given until 2 July 2013 to vacate the premises before compliance action is taken; or
2. The existing unlawful business "Water Sports Guru" be given 21 days to vacate the premises before compliance action is taken.

Option 1 is recommended.

CONCLUSION:

The long term development of the subject site will require detailed site remediation. While the subject site is transferring ownership it is recommended to allow the existing tenant an opportunity to continue operating until 1 July 2013 to enable time to find alternative lawful premises.

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.

32 [PR-CM] Camphor Laurel Harvesting - Premises No. 536 Smiths Creek Road, Stokers Siding

SUBMITTED BY: Development Assessment



Caring for the Environment

SUMMARY OF REPORT:

This report has been prepared to both update Council on the broader changing regulatory and management aspects of camphor laurel harvesting in the Tweed Shire, 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.

Camphor Laurel (*Cinnamomum camphora*) is a serious environmental weed on the North Coast of NSW. It was declared a Class 4 Noxious Weed in Tweed Shire in March 2009.

The need to effectively control weeds such as Camphor Laurel is recognised within Council's adopted Vegetation Management Strategy, however, the Strategy also acknowledges that large-scale removal needs to be carefully managed to avoid adverse impacts on the environment.

The advent of electricity co-generation plants at Condong and Broadwater sugar mills has generated substantial interest in the supply of Camphor Laurel as a biofuel. The joint venture between Delta Electricity Australia Pty Ltd and Sunshine Renewable Energy Pty Ltd which administers the co-generation plants has appointed contractors to source significant quantities of Camphor Laurel.

Camphor Laurel harvesting for the Condong mill co generation plant has been underway for the last few years. A procedure for the conduct of the harvest was put in place by the stakeholders however a review of the procedures is required given the position of Far North Coast Weeds ending their involvement with site management plans. A review is also necessary given the performance of the management plans, the impact on the environment and the long term control of camphor as a noxious weed.

Further uncertainty has been created by the fact that the draft Tweed Local Environmental Plan 2012 and draft Development Control Plan Tree and Vegetation Preservation Order significantly change the development control provisions for camphor removal in the Tweed.

Whilst it is acknowledged that the extensive rainfall over the last several months has adversely affected the camphor laurel removal operation at No. 536 Smiths Creek Road, it is the officers' opinion that this was an example of a poorly managed operation. Nonetheless,

given that it is questionable as to whether or not a development application was required for this operation, it is recommended that Council take no further enforcement action on this matter.

The NSW Environment Protection Authority (EPA) is conducting its own investigation of the above operation in accordance with its legislation in respect of a complaint received from an adjoining owner. The results of this investigation have yet to be received by Council.

In light of this changing regulatory environment, at the time of finalising this report, a meeting had been scheduled to take place on 16 April 2013 between Council officers and representatives of the EPA, Far North Coast Weeds and NSW Sugar, to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting. The outcomes of this meeting will be reported to a further Council Meeting.

RECOMMENDATION:

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.**

REPORT:

Indigenous to parts of Asia, Camphor Laurel (*Cinnamomum camphora*) was introduced to Australia as a shade tree in 1854. It is now a serious weed throughout northern NSW, invading large tracts of agricultural land and native vegetation. In 2009, Camphor Laurel was listed as a Class 4 weed under the Noxious Weeds Act 1993 within Tweed Shire.

The Condong Mill co generation plant uses camphor laurel woodchip for fuel. The camphor trees are sourced from private land by contractors engaged by the Mill. Camphor Laurel is an exotic species and is a noxious weed under the Noxious Weed Act.

The Mill contracts out the supply of the woodchip, the contractors source the camphor from private landowners who have the camphor removed for free. Objectives are fulfilled with the Mill sourcing biofuel and the landowners complying with the Noxious Weed Act for weed removal. Camphor Laurel often grows in sensitive locations such as gullies, creek lines, steep slopes and mixed in with native vegetation and threatened flora. Removal with heavy machinery needs careful planning and management. Cutting the camphor trees at stump level does not control camphor as cutting needs to be combined with poisoning and an ongoing removal program of germinating seeds in the location of the removed trees.

The legislation for camphor removal in the Tweed is not straight forward. The majority of the rural zoned land in the Tweed does not have a Tree Preservation Order and Tweed Local Environmental Plan 2000 does not require consent for tree removal on rural land and the Native Vegetation Act does not include exotic species. Council's Exempt and Complying Development Control Plan exempts noxious weed control from requiring development consent.

Harvesting could be defined as forestry or as "works". Forestry is permissible without consent in rural zones and works require consent.

Development under the Environmental Planning and Assessment Act is defined as:

- (a) The use of land, and
- (b) The subdivision of land, and
- (c) The erection of a building, and
- (d) **The carrying out of a work**, and
- (e) The demolition of a building or work, and
- (f) Any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument, but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

Forestry under the TLEP 2000 is permissible **without consent** and is defined as:

***Forestry-** includes arboriculture, silviculture, forest protection, the cutting, dressing and preparation, other than in a sawmill, of wood and other forest products and the establishment of roads required for the removal of wood and forest products and for forest protection.*

Tree removal, road construction, chipping could fall under a broad heading of works which generally require consent under the Environmental Planning and Assessment Act however given the above definition it is considered that the more precise existing definition of forestry covers the camphor removal activity at the Smith Creek site. A threshold of less than twenty

trees for small scale camphor removal not necessarily associated with the harvesting operations was instigated given the desire of landowners to control camphor on their properties.

Despite in some instances it could be argued that camphor harvesting may require development consent depending on the nature of the "works" a process was put in place whether development consent was required or not during 2009/10 following agreement between Far North Coast weeds, the Mill, contractors and Council and the objective was to manage the removal in a responsible manner. A voluntary code of practice for noxious weed removal has been established and it was agreed that a management plan for each site would be produced and signed off by Far North Coast Weeds. It was also argued that there were limited resources to prepare development applications and the associated specialists reports such as threatened species assessments.

This process has worked in some instances and not in others. The recent activity at No. 536 Smiths Creek Road is an example where the Management Plan process has not been optimum.

Council received complaints regarding the operation particularly regarding noise, operation hours and regulation of the activity.

Council Officers enquired with the Environment Protection Authority (EPA) the following questions regarding regulation of the harvesting operations and the responses are provided below each question.

1. ***What is the status of 'Selective Harvesting of Camphor Laurel and other Non-Native Environmental Weeds - Voluntary Code of Practice (SEJV, 2010)'? Council is in receipt of a draft copy of the document, or a draft copy of a similar document (as enclosed).***

The use of camphor at the Condong Cogen plant is conditional on it having been harvested in accordance with the draft Code of Practice. The contracts in place to supply this material should be conditional on compliance with the code.

2. ***Who is the Appropriate Regulatory Authority (ARA) responsible for investigating environmental complaints relating to the harvesting and chipping of camphor laurel by contractors for use as fuel at the cogeneration plant?***

If there are issues of non compliance and the EPA is notified then we are in a position to require the licensee (the Sugar Milling Cooperative) to ensure its contractors comply with the code or refuse to accept the material.

3. ***What is the recommended procedure for the ARA to follow when environmental complaints are received, and which stakeholders should be notified?***
4. ***What is the recommended procedure for the ARA to follow if it is revealed that the Code has not been complied with, and which stakeholders should be notified?***

3 and 4. In the event of an environmental complaint this is likely to also be a failure to comply with the code. I would suggest that this be referred to the EPA and/or the milling cooperative. If there is an alleged environmental breach, that is not a breach of the code, then I would welcome the opportunity to discuss this as it may represent a need to revise the code.

Issues that have had an undesirable outcome include, the management plan itself, hours of operation, noise, erosion and sedimentation control, riparian and waterway management and long term camphor laurel control and ongoing landowner land management costs. It is recognised that that the prolonged rainfall throughout January, February and March has impacted on the operation.

The property has been inspected by Council's Development Assessment, Natural Resource Management, Environmental Health staff and Officers from The Environment Protection Authority.

The contractor has been provided with advice regarding rehabilitation of the site and is working with the owner in this regard. The EPA has not provided Council with their assessment of the Smiths Creek Road site.

Enforcement action is not considered an appropriate response in this instance as it is unlikely that any planning laws have been breached and any punitive action under the POEO Act if an offence could be proved will reduce the opportunity for the elderly landowner to rehabilitate and manage the site.

Broader Camphor issues

Council has been advised at a meeting with FNCW on 6 February 2013 that they will no longer assess management plans due to a lack of resources to carry out this function.

The mill is a 'scheduled premises' under the *Protection of the Environment Operations Act* 1997, and is therefore licensed by the EPA. The EPA licence for the mill (no. 170) includes the following condition:

'The licensee must not accept camphor laurel biomaterial onto the premises which has not been harvested in accordance with the document "Selective Harvesting of Camphor Laurel and other Non-Native Environmental Weeds - Voluntary Code of Practice (SEJV, 2010)'.'

If Harvest Plans aren't being reviewed (as per advice from FNCW), the Voluntary Code of Practice can't be complied with, and the EPA licence can't be complied with.

At the time of finalising this report, a meeting had been scheduled to take place on 16 April 2013 between Council officers and representatives of the EPA, Far North Coast Weeds and NSW Sugar, to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting. The outcomes of this meeting will be reported to a further Council Meeting.

Draft Tweed Local Environmental Plan 2012 and Draft Development Control Plan Tree and Vegetation Preservation Code.

The draft LEP defines *Forestry* as:

*Forestry has the same meaning as **forestry operations** in the Forestry and National Park Estate Act 1998.*

Forestry operations means:

- (a) *Logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or*
- (b) *Forest products operations, namely, the harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value, or*
- (c) *On-going forest management operations, namely, activities relating to the management of land for timber production such as thinning, bush fire hazard reduction, bee-keeping, grazing and other silvicultural activities, or*
- (d) *Ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations.*

Forestry is permitted with consent in the Rural and Environmental Management zones.

The draft DCP exempts noxious weed control from requiring approval provided the removal is in accordance with the following:

- *Does not include large scale harvesting, processing or transport of noxious weeds such as Camphor Laurel exceeding 20 trees (> 3m high) on a single property over a 12 month period. Large scale harvesting is a form of "forestry" and is subject to development consent under the Tweed LEP 2012.*
- *Vegetation clearing for noxious weed control must be carried out to a minimum extent necessary to allow for the removal or destruction of noxious weeds.*
- *Does not include vegetation identified in sub clause 1.2(c) (ie. very large trees) or sub-clause 1.2(e) (listed significant trees)*

Very large trees (locally indigenous or otherwise) that have a trunk diameter of greater than or equal to 0.8m at 1.4m above the ground.

Camphor harvesting for the co-generation plant will require development consent when the draft plans are adopted. The development applications will be required to be funded including fees, plans, assessment reports for threatened species, noise, erosion and sedimentation control plans and operation and ongoing management plans. Approvals from other agencies may also be required such as for work within 40 metres of a waterway (Office of Water). The cost of applications may make the harvesting operations unviable.

OPTIONS:

1. Council works with the industry representatives and State Agencies regarding a future process for approvals and environmental management for camphor laurel removal, and no legal action be undertaken regarding the camphor laurel harvesting operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding; or

2. Seek legal advice regarding prosecution options regarding the camphor laurel operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding and report back to a future Council meeting.

Option 1 is recommended.

CONCLUSION:

Camphor laurel removal for the cogeneration plant operations needs to a new regime of assessment and all stakeholders need to play role with developing a new system that satisfies the various objectives for the Mill, landowners, noxious weed removal and environmental management.

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 Photos from Council officers' site inspection of works undertaken at No. 536 Smiths Creek Road Stokers Siding (ECM 65732180)

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33 [PR-CM] Tweed Development Control Plan - Section B11 Seaside City

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B11 Pt1



Civic Leadership

SUMMARY OF REPORT:

This report provides feedback on the public exhibition and submissions received in relation to *draft Tweed Development Control Plan – Section B11 Seaside City* (draft DCP).

A request from the Proponent, Richtech Pty Ltd, as majority landowner of the Seaside City residential subdivision, for a DCP amendment, seeking greater flexibility in building controls to enable a broader range of housing types throughout the Estate, was received in May 2012, and initially considered by Council in June 2012.

The amendments are driven largely by the significant change in the demand for higher density, residential flat building and compact housing, resulting from changes in the domestic economy; on the back of the global financial crisis, and the long term impacts foreshadowed on income growth, job security and access, and the rising cost of living.

In response to current market demand, the amendments sought aim to facilitate a more flexible and responsive approach by broadening the permissible housing types throughout the Estate. Council considered a further report on the draft DCP at its meeting of 13 December 2012, where it resolved to publicly exhibit the draft Plan. A total of six public submissions were received.

Arising from an assessment of the submissions by Council's consulting planner, the Council officers consider that certain amendments to the exhibited Draft DCP are warranted. The changes are not considered to have a significant impact and therefore, it is not considered that the draft DCP requires re-exhibition. The draft DCP as amended is considered suitable for adoption.

RECOMMENDATION:

That Council:

- 1. Adopts Draft Development Control Plan Section B11 – Seaside City; and**
- 2. Endorses that the Draft Tweed Development Control Plan adopted under Resolution No. 1 be publicly notified in accordance with Regulation 21 of the *Environmental Planning and Assessment Regulation 2000*; and**

3. Council forwards to the Director-General of the NSW Department of Planning and Infrastructure a copy of the adopted *Tweed Development Control Plan Section B11 – Seaside City* in accordance with Regulation 25AB of the *Environmental Planning and Assessment Regulation 2000*.

REPORT:

At its meeting of 13 December 2013, Council considered a report (Attachment 1) regarding a request to amend the *Tweed Development Control Plan – Section B11 Seaside City* (DCP B11).

The report detailed the amendments sought by the Proponent, Richtech Pty Ltd, who are also the majority landowner. It was resolved to publicly exhibit the draft DCP for a minimum period of 28 days. The public exhibition occurred between December and February with six submissions received. The detail of this consultation appears later in this report.

Background

Seaside City has a long history dating back to the 1920s when the subdivision was originally created. In more recent times Seaside City has become the subject of a revitalisation development, with land clearing, earthworks, construction of roads and other infrastructure and single dwellings occurring within the past five years.

Situated between the Salt and Casuarina developments, the subject site is predominately zoned 2(e) Residential Tourist pursuant to the Tweed Local Environmental Plan 2000 (TLEP 2000). Environmental Protection zones frame the estate to the east and west, specifically 7(l) Environmental Protection (Habitat) bordering on the banks of the nearby Cudgen Creek to the west, and 7(f) Environmental Protection (Coastal Lands) bordering the sand dunes to the east.

The Seaside City DCP establishes a vision as *'a casual coastal community with a comfortable and welcoming atmosphere and a vibrant and attractive village centre'*. This vision is supported by a structure plan, locating a mix of single, two and three storey development including single 'coastal' housing, coastal multi dwelling housing, and mixed use building types.

In summary, the request sought several amendments that would better place the DCP to meet the local housing market now and for the foreseeable future. This includes:

- Removal of the mandatory tourist accommodation component within the central core area, allowing a choice of either tourist or permanent residential;
- Increasing the extent of low density housing areas by re-nominating portions of Coastal Multi Dwelling Housing and Coastal Units to a Coastal Housing designation;
- Increasing the variety and multi dwelling opportunities by removing the Coastal Units type in favour for the Coastal Multi Unit designation;
- Including site requirement controls for dual occupancy development in the Coastal Housing designation to require a minimum lot size of 700m² and dual frontage (Lots without dual frontage default to the DCP A1 provision of 900m²); and
- General housekeeping and formatting to clarify certain provisions and to strengthen the relationship to DCP A1, which is the Council's general housing code.

Public Exhibition

The draft DCP was publicly exhibited for a total of 52 days, from 18 December 2012 to 7 February 2013, with six submissions received.

Copies of the draft DCP, the current DCP, and the Report to the 13 December 2012 Council Meeting were made available on Council's website, at the Murwillumbah and Tweed Civic Centres and the Kingscliff Library. In addition, the Proponent and all other landowners the subject of the amendments were personally notified.

A detailed report on the public exhibition process and submissions was prepared by Council's consultant and is Attachment 2 to this report.

For immediate purposes the salient points may be summarised as:

1. Coastal Multi Dwelling Building Height

Requesting that the uniform building height controls contained within the draft DCP, as they related to Coastal Multi Dwelling Housing, be amended to reflect the height controls within the current DCP B11.

Planning comment

The current DCP B11 contains a 'Coastal Units' precinct which allows a maximum height of 11m to the building's ridgeline and 9m to the ceiling, whereas the 'Coastal Multi Dwelling Housing' is 9m to the building's ridgeline and 7m to the ceiling.

The draft DCP proposes a maximum height control of 9m to the building's ridgeline and 7m to the ceiling uniformly across the Coastal Multi Dwelling precinct, which is now inclusive of the Coastal Unit precinct.

The initial amendment resulted with a restriction in building height by confining buildings to two-storeys in height, when the intent of the DCP amendment was to enable greater flexibility by relaxing the minimum thresholds not to reduce the development potential, which this change would effect through a default to lower density housing types from barring residential flat buildings and three-storey town/row-housing.

Recommendation/Action

The request essentially seeks to retain the status quo under the current DCP B11, with minor exception to several additional properties requested to be included within this change also.

The draft DCP proposes to use the Coastal Multi Dwelling typology more expansively, including incorporation of the Coastal Unit housing type, and as such it is essential, and recommended, that the building height retains the 11m building ridgeline and 9m ceiling height provision.

2. Coastal Multi Dwelling Floor Space Ratio Controls

Request that the floor space ratio (FSR) controls contained within the draft DCP relating to Coastal Multi Dwelling Housing be removed.

Planning comment

The current DCP B11 contained a mixture of FSR controls for this precinct, ranging from 0.7:1 – 1.25:1, however like controls relating of building height, the draft DCP restricted FSR to 0.7:1, without a broader consideration relating to the expanded housing typologies permitted. Consequently a contradiction arose with the intent of the DCP amendment because it aimed to reduce the minimum 'density' threshold requirement and not at removing medium density development.

The built form provisions, such as height, site coverage and setbacks, control the three-dimensional building envelope and as such the FSR control serves no real design related purpose. FSR is principally a regulator of density not of building mass, although it is widely employed for that purpose, and without the corresponding density (bedroom/floor area)

criteria is incapable of achieving that level of regulation. Anecdotal evidence from evaluation of a range of development applications has shown that an FSR can actually stifle good design solutions and outcomes.

The draft DCP has several key provisions for regulating height, depth, width and form of a building and has controls specifically targeting density, without the need to rely on FSR measures.

Recommendation/Action

It is recommended that the FSR control for Coastal Multi-Dwelling Housing be removed in light of the range and scope of design related provisions provided.

3. Building Depth Controls

A submission was received requesting the deletion of an existing control which limits building width to 18m.

Planning comment

The draft DCP provides an extensive range of urban design based provisions that can adequately and flexibly regulate the building envelope with the need for a prescriptive building width control.

Recommendation/Action

It is recommended that this control be removed.

4. Setbacks

It was requested that the front and rear setback controls be reduced from 6.0m to 4.5m to allow for more flexible site planning.

Planning comment

The building line setbacks can be reduced (other than garage setbacks), with a necessary trade-off that additional design provisions regulating wider side setbacks to the northern boundary be included. This is a preferred outcome given the existing subdivision pattern, which provides for east-west orientated properties and the larger northern boundary setback will improve solar access.

To ensure there is flexibility to accommodate the range of housing options for the area it is preferable to offer the proponent/designer a choice rather than prescribing a single outcome.

Recommendation/Action

It is recommended that the draft DCP provide the option of either retaining the larger front and rear setbacks combined with the lesser side setback or alternatively to increase the side setback as a trade off for a reduced front and rear setback. This avoids the undesirable outcome of a building encroaching in all directions and allows the proponent to elect for a option that best suits their site and building design.

It is also recommended that a statement which allows for consideration of alternative setback and design solution in the event that alternate access arrangements, such as mid-block laneways, are incorporated within the development. The DCP advocates for the integration of building design, lot amalgamation and access, for Coastal Multi Dwelling Housing development as this is seen to be the better practice for achieving a the DCP's density targets.

5. Single Storey Development in the Coastal Housing Precinct

Requested that single-storey dwellings be allowed within the Coastal Housing precinct in addition to two-storey dwellings.

Planning comment

The existing DCP B11, as well as the draft DCP, provides for a maximum height of two-storeys in the Coastal Housing precinct, not a requirement that it must be two storeys.

Recommendation/Action

It is recommended that the draft DCP include additional wording to overcome the misinterpretation in the provisions objective.

6. The extent of the 'Village Centre'

Request that the Village Centre allotments located on the eastern side of Cylinders Drive (beachfront lots) be residential/tourist lots, to minimise any potential conflict with the adjacent low density Coastal Housing precinct, as well as the commercial development being sited closer to where the off-street parking is likely to be located.

Planning comment

The submission essentially questions whether the beachfront lots should be commercial in nature or residential. One of the key objectives of the DCP is to encourage and foster a strong and viable Village Centre, as the central meeting place or community hub. It is planned to comprise of about 1,000 – 1,500m² of retail and/or office floor space with retail/restaurant or similar at ground level and office/commercial above. The area designated under the current DCP B11 provides for an estimated 11,000m² of site area, excluding the environmental protection areas on the eastern side of Cylinders Drive.

Preliminary assessment of Council's parking and access code indicates that for every 1m² of retail floor space there is an equivalent 1m² demand for parking and access. The estimated retail floor space of 1,500m² would therefore utilise a conservative estimate of between 3,000- 3,500m² of the Village Centre site area. It is highly probable that the low demand for the remaining 7,000m², or thereabouts, to be used for commercial or retail uses would most likely give rise to a future request for this area to be used for additional residential or tourist housing/accommodation.

The Village Centre area is proposed to be zoned B4 Mixed Use in the draft Tweed Local Environmental Plan 2012. While 'Shop-top Housing' is permissible in this B4 zone, the definition specifies that residential accommodation can only occur above commercial premises, and therefore cannot occupy the ground floor level and as such it is estimated that the DCP will significantly oversupply the village with commercial/retail zoning and will likely require a rezoning at a future time.

Current design practice indicates that the location of the Village Centre remains appropriate however; it is evident that there is an opportunity to rectify the anomaly with the oversupply of commercial/retail floor space and opportunities have been identified to reduce the Village Centre footprint to four key allotments around the intersection, as shown below in Figure 1.

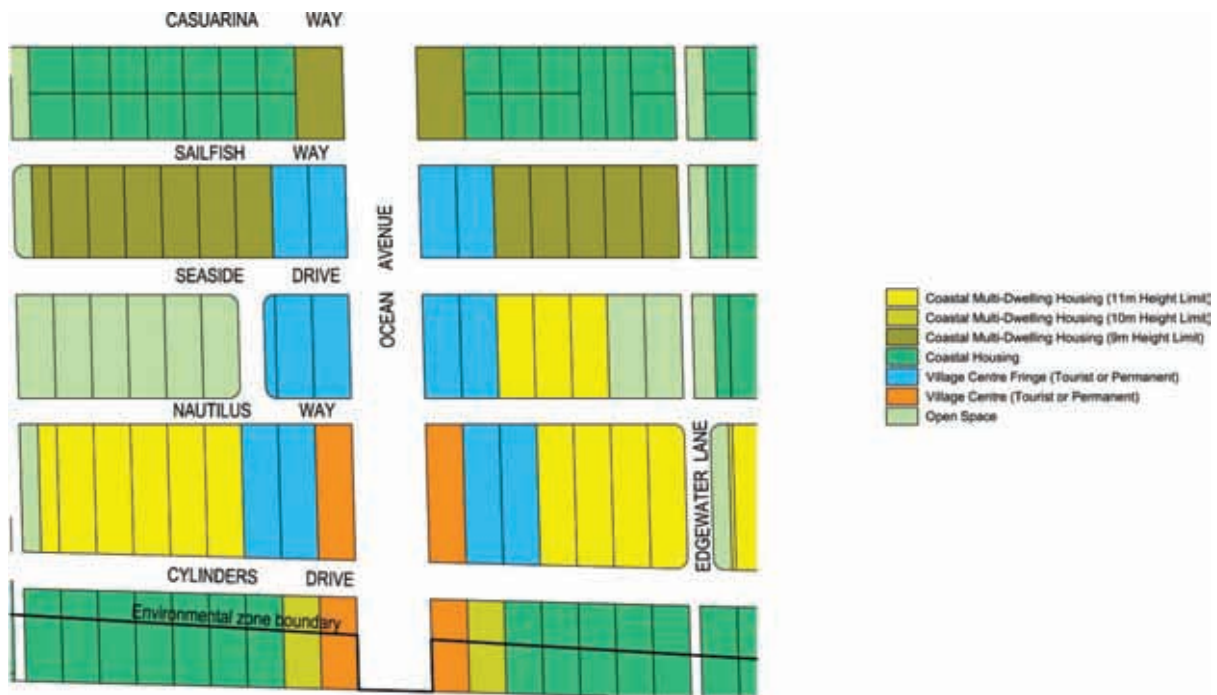


Figure 1 – Proposed Structure Plan Amendment

West of Cylinders Drive, it is recommended that the two lots 'behind' the reduced Village Centre should be designated as Village Centre Fringe (Tourist or Permanent). This will allow three-storey residential or tourist development, including such uses at the ground plane, at a density of 1 unit per 125 m² of site area. This is consistent with the vision for Seaside City and it will ensure that a relatively dense village core can be achieved, assisting to achieve the overall Seaside City population, and supporting the viability of the anticipated retail area.

East of Cylinders Drive, it is recommended that the two allotments 'behind' the reduced Village Centre should be designated as Coastal Multi Dwelling Housing, with the existing 10m maximum height limit maintained, to support the density of the village core.

The recommended amendments to the structure plan were raised in consultation with affected property owners and received strong support from all.

Within that consultation, a final issue was about the prescribed building heights for land east of Cylinders Drive (previously Lorna Street), which are 10m to the building's ridgeline and 8m to the ceiling. The request is that the maximum internal ceiling height of 8m be increased to 9m to provide greater flexibility in design and floor-to-ceiling heights.

The proposed amendment will not lead to any significant external impact. The maximum allowable building height will remain unchanged, as will the building mass, which is regulated through several key building provisions. This is particularly the case when considering that maximum allowable building height is regulated under the current LEP (by definition) and the draft LEP 2012 (via a map) in metres, and which the DCP cannot override.

Recommendation/Action

It is recommended that the structure plan be amended and the internal floor to ceiling height be increased from 8m to 9m.

OPTIONS:

That Council:

1. Adopt the draft DCP as amended; or
2. Refuse the Proponent's request and retain the current version of DCP B11; or
3. Defer a resolution on the draft DCP and seek clarification of any issues arising.

Option 1 is recommended.

CONCLUSION:

The proponent has cited financial pressures and a depressed housing market as the main reasons for the requested amendments. Their market research and experience is suggesting that neither tourist nor medium density housing development is viable in the Tweed market as there is neither a demand for it nor is there likely to be for the foreseeable future, which is estimated upwards of 10 years. However, market indicators show a much stronger market demand for a variety of smaller lot and compact dwelling forms both now and in the future.

Seaside City Estate had remained undevelopable for many years and was reliant on the neighbouring development of Salt and Casuarina and the infrastructure they provided. It was not itself constructed without great cost and investment in infrastructure and earthworks and until more recently was tracking well in its development and progress, supported by a strong local market. Times have since changed and world economic events have had a significant local impact and brought significant misfortune and lost opportunity to Tweed's housing, tourism and commercial property market. Seaside City Estate and the Development Company were, like many others, not immune from these events.

Despite these significant events and changes the developer has continued with the construction of the Estate and has positioned it ready for the next and final stage of development and sale. However, the housing product envisaged in the current DCP B11 renders it unmarketable and unattractive in the main because of its substantial reliance on higher density housing and tourism and expansive commercial/retail village centre.

The draft DCP is intended to facilitate a more flexible approach to the development of the Estate while maintaining the original vision and without compromising a density threshold required to support the village centre.

Public exhibition of the draft DCP attracted no opposition to the change or expansion of the development choice offered throughout the Estate and will facilitate a development outcome that is consistent with the current vision for the area and that is in keeping with the broader locality.

The revised draft DCP is provided as Attachment 3 to this report and is recommended for adoption.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

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:

Attachment 1: Council report of 13 December 2012 (ECM 65732202)

Attachment 2: Seaside City Submissions Report (ECM 65732204)

Attachment 3: Tweed Development Control Plan - Section B11 – Seaside City for adoption (ECM 65732206)

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34 [PR-CM] Planning Proposal PP10/0007 - Mooball Planning Proposal Lot 2 DP 534493 No. 5867 Tweed Valley Way, Lot B DP 419641 No. 5859 Tweed Valley Way and Lot 7 DP 593200 No. 5861 Tweed Valley Way, Mooball

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0007 Pt2



Civic Leadership

SUMMARY OF REPORT:

This report provides an update on the progress of the Mooball Planning Proposal, which was reported to the Council meeting of 13 December 2012 and 21 March 2013, and the associated public workshops regarding Council's Notice of Motion of 14 February 2013, concerning the Tweed Urban and Employment Land Release Strategy.

Subsequent to the March meeting, Council staff have been facilitating a dialog between the landowner of Lot B DP419641 and the Proponent of PP10/0007 so that parties can attempt to negotiate a satisfactory resolution to the outstanding concerns of the current proposal. This process is ongoing at the time of finalising this report, and, depending on the course the negotiated process may take, Council staff are unlikely to be in a position to recommend any options to Council earlier than the June Council meeting.

In relation to the resolution from Council's February Meeting, two public workshops were held, one each occurring at Burringbar and Pottsville on 26 and 27 March, and attended by a total of approximately 75 people. The issues raised by the community are presented in this report, which recommends that it be received and noted.

RECOMMENDATION:

That the report on Planning Proposal PP10/0007 - Mooball Planning Proposal, Lot 2 DP 534493 No. 5867 Tweed Valley Way, Mooball, Lot B DP 419641 and Lot 7 DP 593200, and information regarding the public meetings and the issues raised there by the community, be received and noted.

REPORT:

The purpose of this report is to provide further information and an update on the Mooball Planning Proposal PP10/0007 ("the proposal"), which seeks a rezoning of land from 1(a) Rural, to 2(d) Village, 5(a) Special Uses (Sewerage Treatment), 7(d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat). The subject site is immediately south of, and adjoins, the existing Mooball village.

A report on the proposal was last considered by Council at its meeting of 21 March 2013. In summary, the key issue addressed related to the identification of a property that had been included within the planning proposal (Lot B DP 419641 (Lot B) and which had proceeded without the landowners knowledge and permission. These matters were addressed in the Council report, which was received and noted, thus allowing discussion between the parties to proceed. Council may recall that obtaining owners consent for an amendment to the Local Environmental Plan is not a statutory requirement.

Following a meeting with the parties the Proponent has indicated a preference to negotiate with the owners of Lot B and has submitted its confidential preliminary points of offer to those owners.

Given the importance of maintaining the integrity of Council's long-term strategic planning strategies by ensuring that adopted targets and objectives are met, within reasonable limits, it is essential that the parties have an appropriate opportunity to reach agreement, where achievable, prior to Council making any further determination on the planning proposal.

Depending on the course the negotiation process may take it is likely that Council staff will not be in a position to formulate any options for proceeding with the planning proposal for Council's consideration prior to the June Council meeting at the earliest.

Public Meetings (Community Conversations)

At its meeting of 14 February 2013, a Notice of Motion was resolved by Council in relation to the Urban Land Release Strategy, *"that Council holds a meeting with the Pottsville, Mooball and Burringbar community to advise of Council's Urban Land Release Strategy and the potential rezoning in their areas."*

Council's Planning Reform Unit conducted two 'Community Conversations', firstly at Burringbar on 26 March 2013 and secondly in Pottsville on 27 March 2013. Both meetings were advertised within the Tweed Link as well as local posters and were well attended (approximately 55 people at Burringbar and 20 people at Pottsville).

The salient issues raised by the community are provided by way of dot point and are in no particular order of priority:

Burringbar

- Effect of sea level rise on new development areas, particularly on the Tweed Coast, and the long-term impact it will have as the focus of development pressure will increase on western/rural areas;
- The loss of environmental habitat arising along the Tweed Coast as a result of new development;
- The lack of public consultation in relation to and the location of the Mooball sewer treatment plant and the impact on the local community from having two sewer treatment plants in Mooball within close proximity of each other and residential properties

- Concern about the transparency and level of information provided to the community about the process of establishing a new treatment plant;
- Concerns about the different advice provided about the Mooball treatment site, as many residents understood that a second stand-alone plant was not required and that the 'new' Mooball treatment plant would cater for new development;
- Concerns not so much that new development may occur in Mooball in the future but that the higher density, smaller lot, development proposed will irreparably change the rural character of the village;
- Felt that allowing rural land to go to 'rural living' type lots in order to accommodate growth would be more acceptable and would better retain the character of the village;
- Small lot housing generally not supported;
- Concerned that increased residential development is not supported by employment and is isolated from opportunity due to the lack of public transport;
- Lack of public consultation generally on infrastructure and future planning with limited opportunity community involvement;
- Concerned that Council does not investigate the viability or suitability of companies wanting to develop in the Tweed and therefore exposes the community to the risk of company insolvency and their inability to follow through with projects, which in turn leads to property fire sales and a devaluation of local properties; and
- Concerned about the alleged relationship between certain landowners and elected members of the Council.

Pottsville

- Concerned that there is not a clear coordination of sewer treatment facilities for West Pottsville and that the process is unknown to the community;
- Desire to see master-planned solutions and outcomes for Pottsville and concerned about continuing with ad hoc development;
- Desire to maintain riparian buffers to creeks and environmental areas;
- Noted differences between the areas identified areas in the NSW Far North Coast Regional Strategy and the Tweed Urban Land Release Strategy 2009 but concerned about that increase;
- Wants to see the creation/location of jobs and employment that addresses the demographic trends and that is self sustaining;
- Generally want to be assured that there is appropriate infrastructure planning being undertaken and that new developments will not impact on existing areas;
- Greater opportunities for community involvement in the whole of strategic planning processes for the locality; and
- Concerned that the *Environmental Planning and Assessment Act 1979* does not require landowners consent for rezoning to occur and felt that this would lead to unfair outcomes.

Within the two presentations, genuine community interest in the Mooball Planning Proposal was conveyed by the community, and was evident in the issues discussed, particularly concerning infrastructure and planning to protect rural village character and lifestyle.

OPTIONS:

1. Receive and note this report; or
2. Receive and note this report and resolve that Council's Infrastructure and Engineering Divisions prepare and undertake public meetings in the Mooball and Pottsville localities to discuss Council's current and future infrastructure planning with the community, in particular in relation to waste water treatment, water supply and roads.

CONCLUSION:

The Mooball Planning Proposal is being held in abeyance while the relevant parties attempting to resolve their outstanding issues. This is occurring at present through a facilitated process with Council staff assisting. It is anticipated that the process will proceed for 6-8 weeks and until it is complete Council staff will not be in a position to evaluate and present Council with options for proceeding with the planning proposal. It is expected that a further report will be submitted to the June Council Meeting at the earliest.

It is expected that the further report will detail the outcome of any negotiation or sustained objection and in the meantime it is recommended that this report be received and noted.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

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:

Nil.

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