



**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 21 March 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.

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**Items for Consideration of Council:**

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## REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

### ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

#### Evaluation

#### 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.

**19 [PR-CM] Development Application DA12/0537 for a Two Lot Subdivision at Lot 7 DP 849520 No. 207 Howards Road, Burringbar**

**SUBMITTED BY: Development Assessment**

**FILE NUMBER: DA12/0537 Pt1**



## **Civic Leadership**

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### **SUMMARY OF REPORT:**

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning and Infrastructure, officers have resolved to report this application to full Council. The standard is varied 98%.

The SEPP No. 1 variation relates to Clause 20(2)(a) of the Tweed Local Environmental Plan 2000 (LEP 2000) which states that consent may only be granted to subdivision of land within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of zoned land within each allotment created is at least 40 hectares.

The applicant seeks consent to create a two lot rural residential subdivision from the one allotment currently at 207 Howards Road, Burringbar. The site has an area of 42.61 hectares and is zoned 1(a). The applicant proposes the following:

- Proposed Lot 1 has a total area of 8211m<sup>2</sup> and is 1(a) zoned land, which is less than 40 hectares as required by the development standard. This is proposed to accommodate the current primary dwelling.
- Proposed Lot 2 has a total area of 41.79 hectares and is 1(a) zoned land. This is proposed to accommodate the current rural workers dwelling and associated rural sheds.

Assessment of the application has taken into account the existing dwelling entitlement history.

Concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 1 of 8,211m<sup>2</sup> for the following reason:

*"Concurrence was not granted in this instance because the proposal will result in further fragmentation of rural land undermining the 40ha development standard of the zone. In this case the subdivision would result in a lot that will be 98% below the 40ha subdivision standard.*

*Further, subdivision of a rural worker's dwelling is inconsistent with the intent of the definition of that type of dwelling. Approval would create a precedent for other rural worker's dwellings across the state and is not in the public interest."*

As the Department of Planning and Infrastructure has not granted concurrence Council is required to refuse the application.

The proposal was referred to the NSW Rural Fire Service (RFS) as Integrated Development. The NSW RFS responded on 20 December 2012 with recommended conditions.

Having regard to relevant statutory controls and an assessment against Clause 20(2)(a) of the Tweed LEP 2000, the proposed two lot subdivision is not considered suitable and therefore the proposed development is recommended for refusal. This recommendation is in accordance with direction from the Department of Planning and Infrastructure.

**RECOMMENDATION:**

**That Development Application DA12/0537 for a two lot subdivision at Lot 7 DP 849520; No. 207 Howards Road, Burringbar be refused for the following reasons:**

- 1. The Department of Planning and Infrastructure has not issued concurrence.**
- 2. The proposed subdivision does not comply with the 40 hectare minimum development standard contained within Clause 20(2)(a) of the Tweed Local Environmental Plan 2000.**
- 3. The State Environmental Planning Policy No. 1 objection has not demonstrated that the development standard is unnecessary and unreasonable.**

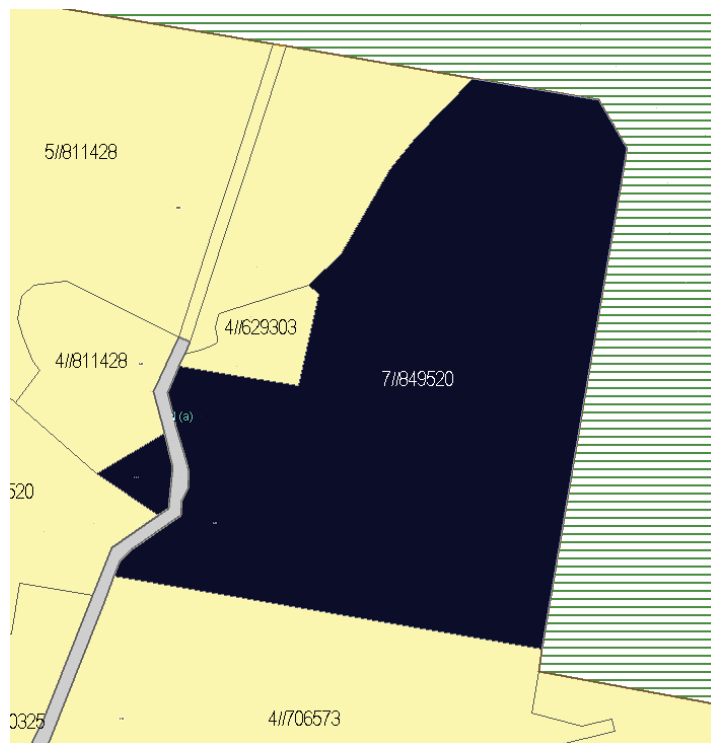
## REPORT:

**Applicant:** Ms BA Nunan  
**Owner:** Estate of Sheila Howard  
**Location:** Lot 7 DP 849520; No. 207 Howards Road, Burringbar  
**Zoning:** 1(a) Rural  
**Cost:** Nil

## Background:

### The Subject Site

The subject site which is located east and west of Howards Road currently comprises a total area of 42.61 hectares. It comprises one parcel of 1(a) rural zoned land.



Lot 7 DP 849520

The site is bound to the north and east by National Parks and to the south and west by rural properties utilised for agricultural purposes.

### The Proposed Development

The proposal includes:

- Subdivision of the site into two lots:
  - Lot 1 = 8,211m<sup>2</sup> (contains the existing primary dwelling)
  - Lot 2 = 41.79 hectares (contains the existing rural workers dwelling and decommissioned dwelling)

The application seeks to create separate lots over each dwelling.

### History

The subject site has an extensive development history including references to unauthorised structures. A search of Council records has revealed that an unapproved dwelling on the

eastern side of the road on the property was required to have been decommissioned by July 2012.

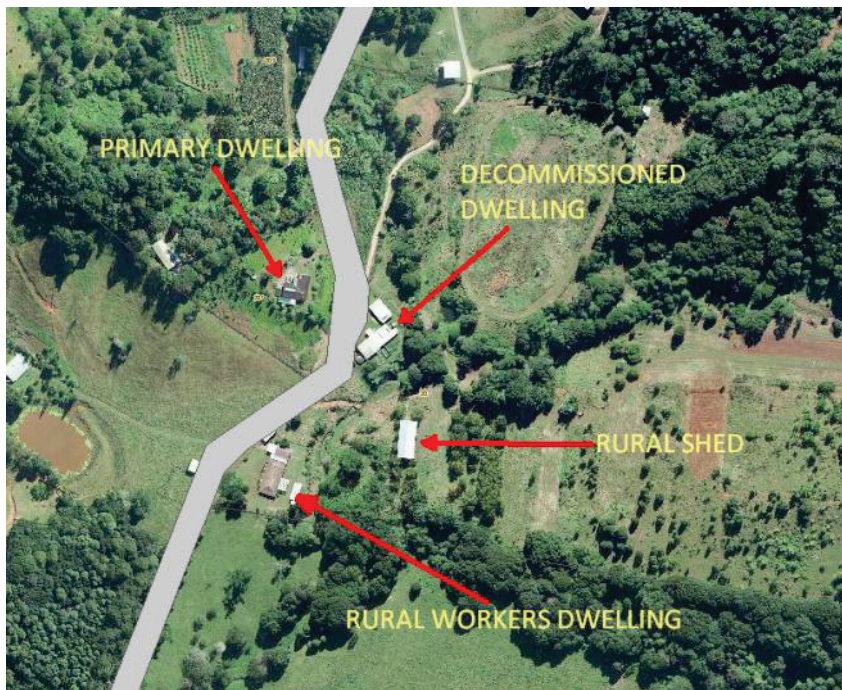
The dwelling house on proposed Lot 1 is the primary dwelling and was approved pursuant to Building Permit No. 0287/84B. A rural workers dwelling which is located on the south western corner of proposed Lot 2 was approved by Development Consent No. 94/263. Lot 7 DP 849520 was created pursuant to Development Consent No. S94/87.

It was also noted the Development Assessment Panel at its meeting 1/7/1994 discussed a proposed boundary alteration between Lot 5 DP 629303 and Part Lot 169 DP 755721, Howards Road, (the previous lot descriptions) and mentioned the following with relation to the creation of Lot 7.

*"As the proposal is an alteration between two (2) existing lots, no additional lots are created and Council does not require road upgrading for rural workers dwellings, it is considered that the SEPP No. 1 objection should be supported. The Director's concurrence can be assumed.*

*Clause 33 of the Tweed Local Environmental Plan 1987 sets out the requirements for a rural workers dwelling. Proposed Lot 7 is used for banana growing and for fruit trees. The applicant has demonstrated that a rural worker needs to reside on the land and the rural workers dwelling can be justified.*

*Proposed Lot 7 is severed by Howards Road. The severed piece of land has an area of 8211m<sup>2</sup> and contains a dwelling. Whilst this arrangement is not ideal, it is highly unlikely that Council would at any time in the future support an application to create this area as an individual allotment. The minimum lot size under the Tweed Local Environmental Plan is two (2) hectares. Also, the previously approved boundary alteration was approved with two severed lots."*

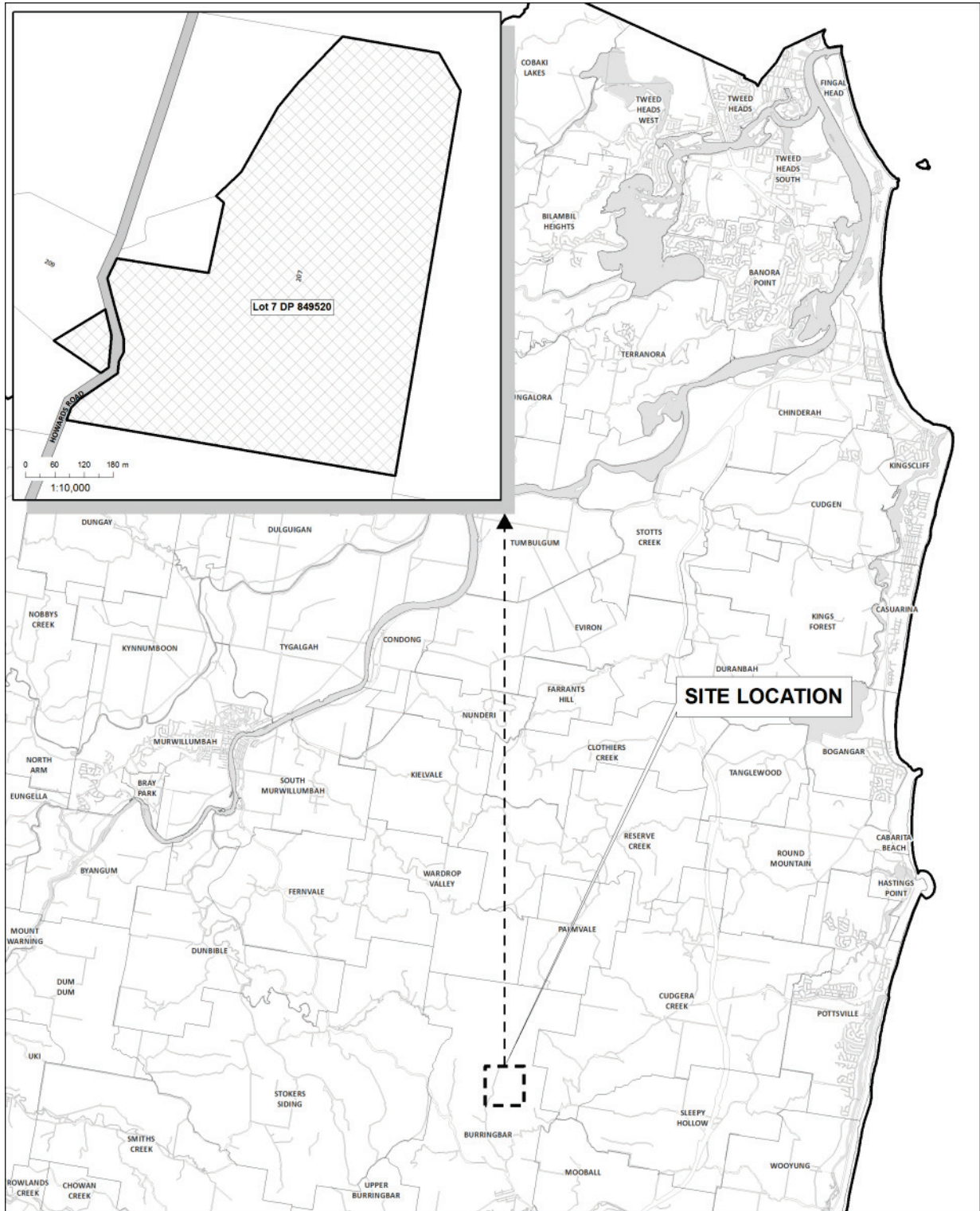


### Summary

Having regard to relevant statutory controls and an assessment against Clause 20(2)(a) of the Tweed LEP 2000, the proposed two lot subdivision is not considered suitable and therefore the proposed development is recommended for refusal. This recommendation is in accordance with direction from the Department of Planning and Infrastructure.



**SITE DIAGRAM:**



**Locality Plan**

Lot 7 DP 849520  
No. 207 Howards Road, Burringbar

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Cadastre: 20 February, 2013  
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Boundaries shown should be considered approximate only.

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1:125,000 @ A4 Portrait  
DO NOT SCALE  
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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

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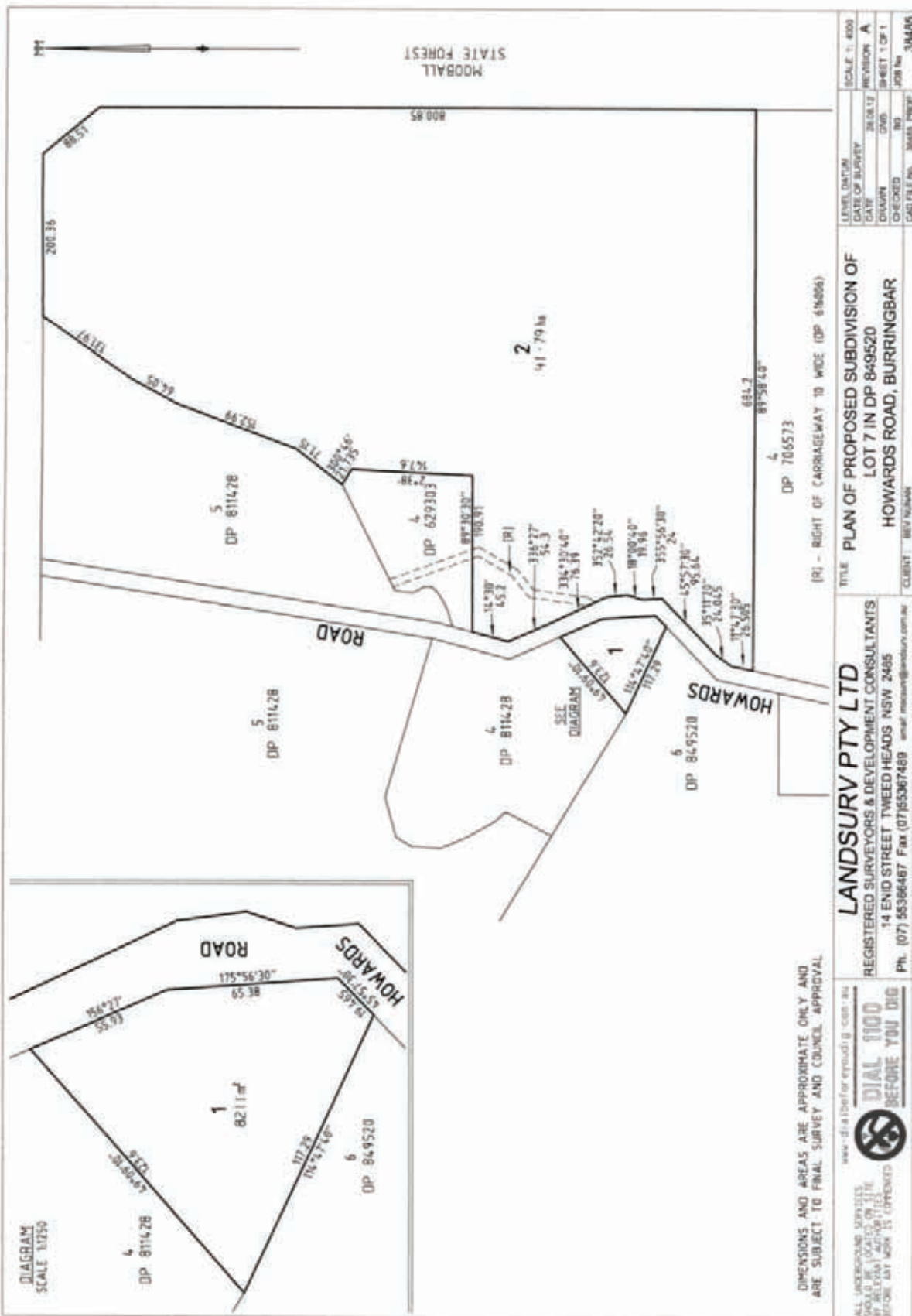


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Author: C. Lees - Information Technology Unit

Date Printed: 20 February, 2013

DEVELOPMENT/ELEVATION PLANS:





**Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is not considered to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is not considered to be consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.” The proposed development is for a two lot subdivision which does not comply with the minimum development standards (particularly lot size) contained within the Tweed Local Environmental Plan 2000.

The proposed development is significantly non-compliant with the Tweed LEP, therefore it is considered not to be in keeping with the aim of the plan in particular to the aim that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

Clause 5 - Ecologically Sustainable Development

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

As there are no physical changes to the subject site it is considered that intergenerational equity and conservation of biological diversity and ecological integrity will not be impacted.

Clause 8 - Consent Considerations

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

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

The land is within the 1(a) zone and the proposed subdivision is not consistent with the primary objective of the zone. The fragmentation of the agricultural land will not protect the rural character and amenity of the area.

The proposed development is for a two lot subdivision which does not comply with the minimum development standards (particularly lot size) contained within the Tweed Local Environmental Plan 2000.

The proposed development if approved may result in unacceptable cumulative impacts. The creation of a freehold lot may encourage, or allow for further subdivision and non-rural development in the surrounding locality.

#### Clause 11 - Zone Objectives

The subject land is zoned 1(a) Rural. The objectives of the 1(a) Rural zone include:

##### *Primary objectives*

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

##### *Secondary objectives*

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

The proposed subdivision is to create an allotment for the purpose of residential uses and the other for rural residential uses. It is considered that the intent of the proposed subdivision does not satisfy the objectives of the Tweed LEP as proposed Lot 1 will not be used for agricultural purposes and will create unnecessary fragmentation of land. This configuration may lead to establishing rural land use conflicts which will result in the rural character and amenity being compromised.

Furthermore, Clause 11 of the TLEP states, for land within the 1(a) zone, dwelling houses are permissible if each is on an allotment of at least 40 hectares or on an allotment referred to in Clause 57. Currently the subject site has one dwelling entitlement being the primary dwelling on the western side of Howards Road.

The rural workers dwelling is required to be on a block of land associated with the primary dwelling as defined below.

***Rural workers dwelling*** - a dwelling which is on land on which there is already erected a dwelling or dwellings and which is occupied by persons engaged in rural occupation on that land.

It is therefore considered that there is only one dwelling entitlement and the subdivision of the land would create another dwelling entitlement.

The proposal is therefore not consistent with the relevant zone objectives.

#### Clause 15 - Essential Services

Clause 15 of the TLEP 2000 requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The site is located within an established area, with connection to all essential services available. The proposal will not impact those services.

The proposal does not require and will not impact upon essential services to the site.

#### Clause 16 - Height of Building

Not applicable. There are no new dwellings proposed.

#### Clause 17 - Social Impact Assessment

An assessment under DCP A13 – Socio-Economic Impact Assessment has revealed that a Social Impact Assessment is not necessary for this type of development and accordingly Clause 17 is deemed satisfied.

#### Clause 20 - Subdivision

This clause requires a minimum allotment size of 40 hectares in the 1(a) zone. The proposed lots do not comply with this development standard. An objection under State Environmental Planning Policy No.1 has been prepared by the applicant in this regard and is addressed later in this report.

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

This clause is in place to ensure land adjacent to Zone 8 (a) does not have a significant impact on wildlife habitat. The proposed development would not result in any physical changes to the property and as such would not result in an impact on the 8(a) zoned land. It is therefore considered that this clause is satisfied.

#### Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP 2000 requires Acid Sulfate Soils (ASS) management in relation to development where such is likely to be impacted upon. Part of the

subject site exhibits Class 5 ASS however, due to the nature of the development being no excavation it is considered that ASS will not be impacted.

Clause 57 - Protection of existing dwelling entitlement

The aim of this plan is *to protect an existing dwelling entitlement on an allotment lawfully created or the creation of which was lawfully consented to before the commencement of this plan.*

Currently the subject site has one dwelling entitlement as it has 42.61 hectares. If the subdivision was to be approved it would create a situation where the primary dwelling will be located on an allotment which does not comply with the Tweed LEP Clause 20 and a second dwelling entitlement would be created contrary to the Tweed LEP.

Clause 20(3) states that:

*Neither clause 20 nor the Table to clause 11 prevents consent being granted:*

- (a) To a subdivision of an area of land in Zone 1 (a), 1 (b), 7 (d) or 7 (1) to excise an allotment of at least one hectare to be used for the purpose of a dwelling house, but only if the consent authority is satisfied that each other allotment created by the subdivision is created for a public purpose, and*

Although the proposed subdivision excises an allotment of at least one hectare for a dwelling house the remainder of the land is not created for a public purpose.

- (b) To the erection of a dwelling house on the excised allotment, but only if no more dwelling houses will be erected on the area after its subdivision than the greatest number of dwelling houses that could have been erected on the area in accordance with subclause (2) immediately before its subdivision.*

As a result of the subdivision the primary dwelling house will be located on the excised allotment. Currently, the greatest number of dwellings that can be erected on the 42.61 hectares block of land is one. The site has a rural workers' dwelling located on it which needs to be associated with the primary dwelling for it to be compliant with the definition of a rural workers dwelling. As a result of the proposed subdivision it would create an additional dwelling entitlement which is not in accordance with Clause 20(3)(b). It is therefore considered that the proposed development contravenes Clause 20 of the Tweed LEP 2000 and is recommended for refusal.

**State Environmental Planning Policies**

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

**Clause 12: Impact on agricultural activities**

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

It is considered that the proposed subdivision will result in the unnecessary fragmentation of land. This configuration may lead to establishing rural land use conflicts which will result in the rural character and amenity being compromised.

#### Clause 15 - Rivers, Streams and Wetlands

This Clause requires the consent authority to take into account the likely impact of the proposed development on rivers, streams and wetlands.

On the basis that the proposal is only for a subdivision that does not involve any change of use of the land or subdivision works, it is submitted that approval of the application would not create any additional impact to any river stream or wetland and would not be inconsistent with this Clause or any other relevant provisions of this Plan.

#### **SEPP No. 1 - Development Standards**

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

As established, the proposed subdivision requires a variation to the 40 hectare minimum allotment size stipulated under Clause 20(2)(a) of the LEP.

Clause 20(2)(a) states:

(2) *Consent may only be granted to the subdivision of land:*

(a) *within Zone 1(a), 1(b2), 7(a), 7(d) or 7(l) if the area of each allotment created is at least 40 hectares*

The variation is required in relation to proposed Lot 1 being under the 40 hectare development standard.

The underlying objectives of the development standard are to prevent the fragmentation of rural land, ensure the scenic and natural environments are protected and maintain agricultural viability.

The Court has consistently emphasised that there is no single determinative test for assessing a SEPP 1 Objection. However, it has become usual practice in recent years to apply the “underlying object test” and to use the formulation suggested by Lloyd J in *Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79*.

In *Wehbe v Pittwater Council [2007] NSW LEC 827*, Chief Judge of the Land and Environment Court, Preston J recast the long standing 5 part test for consideration of a SEPP 1 Objection set out in *Winten Property Group Ltd v North Sydney Council (2001)*.

The Chief Judge suggests that a consent authority must be satisfied of three matters before a SEPP 1 Objection can be upheld:

- (1) That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- (2) That the granting of consent is consistent with the aims of SEPP 1.
- (3) That Clause 8 matters (in SEPP 1) are satisfied, ie.
  - Whether noncompliance raises matters of State or Regional planning significance.
  - The public benefit of maintaining the planning controls.

The applicant has provided the following assessment against the three key matters:

**"1. That the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.**

*The Chief Judge advised that the requirement to demonstrate that an objection is well founded and that the approval of the objection may be consistent with the aims of the policy could be satisfied in any one of the following ways:*

- (i) *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- (ii) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

- (iii) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
- (iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- (v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*We submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard.*

*Clause 20(1) of the Local Environmental Plan provides the following objectives in relation to subdivisions in zones 1(a), 1(b), 7(a), 7(d) and 7(l), which is directly associated with development standard in question.*

- To prevent the potential for fragmentation of ownership of rural land that would;
    - i) Adversely affect the continuance or aggregation of sustainable agricultural units,**
- OR*
- ii) Generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- To protect the ecological or scenic values of the land.*
  - To protect the area of Tweed's water supply quality.*

*The terms of Clause 20(1) of the LEP are not to prevent any fragmentation, rather it is to prevent only fragmentation that has potential to create certain adverse impacts.*

*The relevant questions to properly assess whether the objectives of the standard are achieved notwithstanding non-compliance with the standard are as follows:*

- a) *Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?*
- b) *Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manner?*
- c) *Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?*
- d) *Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?*

The responses to these questions are provided as follows:

- a) ***Will the proposed subdivision result in fragmentation that has potential to adversely affect the continuance or aggregation of sustainable agricultural units?***

*As indicated in Section 4.3 of the Statement of Environmental Effects, part of proposed Lot 2 is mapped as Regionally Significant Farmland and as being suitable for banana production. The whole of the mapped land will be contained within Lot 2 and will not be fragmented as a result of the subdivision and therefore the proposal will not result in fragmentation with the potential to adversely affect the continuance or aggregation of sustainable agricultural yields.*

- b) ***Will the proposed subdivision result in fragmentation which would generate pressure to allow isolated residential development in an uncoordinated manor?***

*The proposed subdivision will not result in any additional dwellings or dwelling entitlements. Therefore the proposal cannot be considered to generate any pressure to allow isolated residential development as the dwellings already exist.*

- c) ***Will the proposed subdivision result in any adverse impact upon the ecological or scenic values of the land?***

*The proposal does not alter the existing built form and does not require vegetation removal or landform changes. Therefore the proposal will not affect the ecological or scenic values of the land.*

- d) ***Will the proposed subdivision result in any adverse impact upon the area of Tweed's water supply quality?***

*The proposal is not located in the Tweed's water supply catchment and therefore will not affect the quality of the water supply catchment.*



*It is therefore submitted that the proposed development is consistent with the objectives for subdivision in the Rural 1(a) zone as set out in Clause 20(1) of Tweed LEP 2000.*

*For the above stated reasons we submit that the objectives of the standard are achieved notwithstanding non-compliance with the standard. Following from the first test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827, we conclude that the objection is well founded and that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

**2. That the granting of consent is consistent with the aims of SEPP 1.**

*The aims and objectives of the Policy (SEPP 1) are as follows:*

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

*Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 is stated inter alia:*

*“(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,”*

*Compliance with the 40ha development standard would preclude a logical subdivision of the site to provide separate titles for each of the lawfully established dwellings.*

*The proposed subdivision will not create any additional dwelling entitlements and will not involve any site works. The proposal will not alter the current or future agriculture potential of the site because all land with high agricultural suitability will be contained within proposed Lot 2.*

*In this case, where the proposed development would not alter the status-quo, compliance with the development standard would hinder attainment of the EP&A Act’s object to promote orderly and economic*

*use and development of land in accordance with the zoning of that land and its physical capabilities.*

**3. That clause 8 matters (in SEPP 1) are satisfied, ie.**

- *Whether noncompliance raises matters of State or regional planning significance.*
- *The public benefit of maintaining the planning controls.*

*In considering whether the proposal creates any matters of Regional or State planning significance or raises any issues in relation to the public benefit of maintaining the standard the following points are relevant.*

- *No change in land use results from the subdivision;*
- *No physical disturbance to the landform or vegetation results from the subdivision;*
- *Two lawful detached dwelling houses exist on the land;*
- *No additional dwelling entitlements will be created;*
- *The shape of each lot and common boundary location provides a logical and efficient layout, as the existing lot is already divided by Howards Road; and*
- *No impacts will be created by the proposal on the surrounding area.*

*We conclude that the proposed two lot subdivision does not raise any matters of Regional planning significance and there is considered to be no public benefit in maintaining the standard."*

**Assessment of the applicant's submission**

The applicants Objection to State Environmental Planning Policy was referred to the Department of Planning and Infrastructure for concurrence.

Concurrence was **not granted** by the Director General in this instance to permit the creation of proposed Lot 1 of 8,211m<sup>2</sup> for the following reason:

*"Concurrence was not granted in this instance because the proposal will result in further fragmentation of rural land undermining the 40ha development standard of the zone. In this case the subdivision would result in a lot that will be 98% below the 40 ha subdivision standard.*

*Further, subdivision of a rural worker's dwelling is inconsistent with the intent of the definition of that type of dwelling. Approval would create a precedent for other rural worker's dwellings across the state and is not in the public interest."*

As the Department of Planning and Infrastructure has not granted concurrence based on the fragmentation of rural land and there only being one dwelling entitlement currently, the proposed development is therefore recommended for refusal. The applicant provided an additional letter asking the Department of Planning and Infrastructure to reconsider their position. The Department responded on 25 January 2013 stating that *"The concerns with respect to this application remain. In particular, the Department does not support subdivision of land that would result in a rural workers dwelling being located on a separate lot to the one on which the principal residence that it is associated with is located."* As such the proposed development is recommended for refusal.

#### **SEPP No. 44 - Koala Habitat Protection**

The proposed development does not involve any clearing of land or physical works. It is therefore considered that Koala Habitat will not be impacted upon as a result of this proposal and this SEPP has therefore been complied with. No further assessment is required.

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

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

The Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environment Protection Authority, 1998) provide information relating to preliminary contamination investigations. In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with applications for development.

The applicant has done an assessment against Section 3.4.1 of the Policy as shown below:

***"Please specify all land uses to which the site has been put, including the current use.***

*Dwelling house and agriculture.*

***Is the proponent aware of uses to which properties adjoining the site have been put? If so, please specify.***

*Adjoining land uses are agricultural.*

***Do any of the uses correlate with the potentially contaminated activity set out in table 1 in schedule 1 of this policy?***

*Yes.*

***If the answer to 3 is yes – has there been any testing or assessment of the site and, if so, what were the results?***

*No.*

***Is the proponent aware of any contamination on the site?***

*No – the proposal does not involve any change in land use and lawful dwellings exist on each proposed lot.*

*The dwelling sites are unlikely to be contaminated and are suitable for the proposed development.*

The proposed development does not involve any physical works. It is therefore considered that Contaminated Lands will not be impacted upon as a result of this proposal and this SEPP has therefore been complied with. No further assessment is required.

### **SEPP (Rural Lands) 2008**

The land is zoned Rural 1(a) and therefore this Policy applies. The applicant has assessed the relevant clauses of the Policy as follows:

#### ***Clause 7 - Rural Planning Principles***

*The principles are stated and addressed as follows:*

- (a) *The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

*Dwelling houses exist on each lot and proposed Lot 1 (8211m<sup>2</sup>) is severed from the remainder of the parcel by Howards Road and is not a viable agricultural unit. Proposed Lot 2 will have an area of 41.7 hectares and will be potentially suitable for sustainable agriculture.*

*As indicated in Section 4.3, part of Lot 2 is mapped as containing land suitable for bananas in terms of agricultural suitability and is also identified under the Farmland Protection Project as containing Regionally Significant Farmland in the south western corner.*

*The whole of the higher value agricultural land will be contained within proposed Lot 2 and it will not be fragmented by the subdivision. Therefore, the proposal is unlikely to affect the continuance or aggregation of sustainable agricultural units as none presently exist.*

#### **Council's Response:**

Council's assessing officer does not concur with this information.

- (b) *Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*

*The proposed subdivision will not create any additional dwelling entitlements and as both dwellings presently exist, the proposed subdivision will make no difference to future activities on the site.*

Council's Response:

Council's assessing officer does not concur with this information.

- (c) *Recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*

*As stated above, since the proposal relates to the subdivision of the two existing dwellings which have been established on the site for many years, it is considered that the proposal will not result in any significant impact on the rural community or create any material social or economic issues.*

Council's Response:

Council's assessing officer does not concur with this information.

- (d) *In planning for rural lands, to balance the social, economic and environmental interests of the community,*

*As no new dwelling entitlements will be created and both dwellings already exist, the proposal will not create any additional demand upon social, economic or environmental planning considerations.*

Council's Response:

Council's assessing officer does not concur with this information.

- (e) *The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*

*The proposal does not involve any subdivision works or change in land use and is therefore not inconsistent with this principle.*

Council's Response:

Whilst no physical changes are involved the proposed development is recommended for refusal.

- (f) *The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

Council's Response:

The application is recommended to be refused as the proposal would create the fragmentation of rural land which is out of character with the surrounding area. *The proposed subdivision will allow the creation of lots containing existing dwelling houses that are characteristic of the surrounding area.*

- (g) *The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

*The existing dwellings are adequately serviced and no additional demand will be generated.*

Council's Response:

The proposed development will not impact services and infrastructure as there are no additional dwellings being created.

- (h) *Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

*No regional or local strategies are relevant.*

Council's Response:

The proposed development has not been given concurrence from the Department of Planning and Infrastructure.

**Clause 8 - Rural Subdivision Principles**

*The principles are stated and addressed as follows:*

- (a) *The minimisation of rural land fragmentation.*

*The proposed subdivision will not result in any additional dwellings and therefore will not affect the continuance or aggregation of sustainable agricultural units. Since the dwellings already exist and no new dwelling entitlements will be created, the proposed subdivision will not generate any additional pressure to allow isolated residential development.*

Council's Response:

The application is recommended to be refused as the proposal would create the fragmentation of rural land which is out of character with the surrounding area.

- (b) *The minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*

*The proposal does not alter the existing built form and therefore will not affect the potential for any additional residential and rural land use conflicts.*

Council's Response:

The application is recommended to be refused as the proposal would create the fragmentation of rural land which is out of character with the surrounding area.

- (c) *The consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*

*The site is remote from major urban centres and is generally not suitable for large scale rural residential development. Proposed Lot 1 is not a viable agricultural unit because of its size, shape and agricultural suitability and separation from the main parcel by Howards Road. Proposed Lot 2 (41.79 hectares) will continue to be a potentially sustainable agricultural unit.*

Council's Response:

Council does not concur with this information.

- (d) *The consideration of the natural and physical constraints and opportunities of land,*

*The proposed subdivision will retain the natural features of the site and will not require any subdivision work.*

Council's Response:

The proposed subdivision will not impact the natural and physical constraints of the land.

- (e) *Ensuring that planning for dwelling opportunities takes account of those constraints,*

*The proposed subdivision layout relates to the existing dwellings and the constraints of the site. The proposed development will not create any additional dwellings or dwelling entitlements and will not create any additional impacts on the natural features of the site.*

Council's Response:

Council does not concur with this information.

**Assessment of the applicant's submission**

The proposed development is likely to cause undue fragmentation of rural land which is not in keeping with the surrounding locality. Additionally, there is currently only one dwelling entitlement on the land and if the subdivision was to be approved it would create an additional dwelling entitlement. Therefore the subdivision cannot be approved under this SEPP.

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

Draft Tweed Local Environmental Plan 2012 applies to the subject site. Within the Draft TLEP the land is zoned RU2 - Rural Landscape. The minimum lot size for the site is 40 hectares in the Draft TLEP. Clause 4.2 relates to subdivision of land within the RU2 - Rural Landscape zone as follows:

**4.2 Rural subdivision [compulsory if clause 4.1 adopted and land to which Plan applies includes land zoned RU1, RU2, RU4 or RU6]**

- (1) *The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*
- (2) *This clause applies to the following rural zones:*
  - (a) *Zone RU1 Primary Production,*
  - (b) Zone RU2 Rural Landscape,**
  - (c) *Zone RU4 Primary Production Small Lots,*
  - (d) *Zone RU6 Transition.*
- (3) *Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.*
- (4) *However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*
- (5) *A dwelling cannot be erected on such a lot.*

**Note 1.** *A dwelling includes a rural worker's dwelling (see definition of that term in the Dictionary).*

**Note 2.** *When this plan was made it did not include Zones RU4 and RU6.*

It is considered that the proposed development would contravene the intent of the Draft TLEP by causing fragmentation of rural land. Additionally it would create two allotments with dwellings located on them. The proposed development would not be permissible under the Draft LEP 2012 and is therefore recommended for refusal.

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

Tweed Development Control Plan

A5-Subdivision Manual

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Section A5.5 - Rural Subdivision Guidelines and Development Standards apply to the site as the proposed is located within a rural zone. A number of criteria relate to the proposed development.

#### A5.5.2 Physical Constraints

##### **Bushfire risk**

The proposed development was referred to the NSW Rural Fire Service who provided conditions of consent to be included in the recommendation. It is considered that this constraint has been complied with.

##### **Suitability for on-site effluent disposal**

The development was referred to Council's Environmental Health Unit who requested further information in relation to the on-site effluent disposal. The requested information was as follows:

*"Please provide a capability/design report to Council demonstrating that an on-site sewage management system is capable of operating on each proposed property as per the requirements of Environment and Health Protection Guidelines On-Site Sewage Management for Single Households (NSW Health, 1998), and Australian Standard AS/NZS 1547:2000. The capability/design report is required to be prepared by a suitably qualified wastewater consultant."*

As the proposed development did not received concurrence from the Department of Planning and Infrastructure the information was not requested. If the application was to be approved this information would be required prior to a decision.

#### A5.5.4 Rural Subdivision Structure

##### **Objectives**

Facilitate rural subdivision that is consistent with zone objectives, provides land for uses that are appropriate to rural areas and protect rural character and amenity.

- Ensure the viability of agriculture by:
  - Protecting prime agricultural land from fragmentation and competing land uses;
  - Discouraging fragmentation of ownership that will adversely affect the continuance or aggregation of sustainable agricultural units;
  - Discouraging potentially incompatible residential development adjacent to or near agricultural land.

- Discourage isolated residential development, and the likely resultant demand to provide public amenities and services, in an uncoordinated and unsustainable manner.
- Discourage fragmentation of land needed of for long term urban expansion.

It is considered that the proposed development does not meet the objectives of this clause. The subdivision would result in fragmentation of ownership and creates an isolated residential block surrounded by rural/agricultural land. Therefore the proposed development is recommended for refusal.

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

Clause 92(a) Government Coastal Policy

Not applicable. The proposed development does not impact the Government Policy. No further assessment is required.

Clause 92(b) Applications for demolition

Not applicable. No demolition is proposed as a part of this application.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

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

The site is not located within a coastal zone management area.

**Tweed Shire Coastline Management Plan 2005**

The site is not affected by the Tweed Shire Coastline Management Plan 2005. No further assessment is required.

**Tweed Coast Estuaries Management Plan 2004**

The site is not affected by the Tweed Coast Estuaries Management Plan 2004. No further assessment is required.

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

The site is not affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater. No further assessment is required.

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

Context and Setting

It is considered that the proposed subdivision is not in keeping with the nature of the area. It will cause the fragmentation of rural land and creates an allotment that is 98% below the minimum allotment size. It will also create an additional dwelling entitlement.

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

Surrounding Landuses/Development

The surrounding landuses/development is primarily for agricultural purposes. If the proposed subdivision is approved it creates a rural block of land that is well under the minimum and could create a precedent for future subdivisions of a similar nature in the area. It is therefore considered that the proposed development is refused.

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

Public Authority Submissions Comment

The proposed development was referred to the Department of Planning and Infrastructure for concurrence and to the NSW Rural Fire Brigade.

Department of Planning and Infrastructure

Concurrence was not granted by the Director General in this instance to permit the creation of proposed Lot 1 of 8,211m<sup>2</sup> for the following reason:

*"Concurrence was not granted in this instance because the proposal will result in further fragmentation of rural land undermining the 40ha development standard of the zone. In this case the subdivision would result in a lot that will be 98% below the 40 ha subdivision standard.*

*Further, subdivision of a rural worker's dwelling is inconsistent with the intent of the definition of that type of dwelling. Approval would create a precedent for other rural worker's dwellings across the state and is not in the public interest."*

NSW Rural Fire Service (RFS)

The proposal was referred to the NSW RFS as Integrated Development. The NSW RFS responded on 20 December 2012 with recommended conditions.

Public Submissions Comment

The proposed development was not required to be notified or advertised. As such there were no public submissions.

**(e) Public interest**

The proposed development is not in the public interest. The proposed development is for a two lot subdivision which does not comply with the minimum development standards (particularly lot size) contained within the Tweed Local Environmental Plan 2000.

The proposed development if approved may result in cumulative impacts. The creation of a freehold lot may encourage, or allow for further subdivision and non-rural development in the surrounding locality.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal. Concurrence has not been issued therefore Council cannot approve the application.

**CONCLUSION:**

As a result of the Department of Planning and Infrastructure not issuing concurrence, Council cannot approve the application in its current form.

Having undertaken an assessment against Clause 20(2)(a) of the Tweed LEP 2000 taking into account the potential to consolidate fragmented parcels of land in single ownership, the proposed subdivision is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable.

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

Not applicable.

**c. Legal:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the NSW Land & Environment Court.

Council will incur costs as a result of legal action, however, upon resolution of the matter the Land & Environment Court may award costs.

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

**SUBMITTED BY: Director**



**Civic Leadership**

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**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the February 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.

<b>DA No.</b>	DA12/0243
<b>Description of Development:</b>	three lot subdivision (two residential allotments and one residue)
<b>Property Address:</b>	Lot 58 DP 1083567 Collins Lane, Casuarina
<b>Date Granted:</b>	18/2/2013
<b>Development Standard to be Varied:</b>	Clause 21A(2)(a) - Minimum lot size 40ha
<b>Zoning:</b>	7(f) Environmental Protection (Coastal Lands)
<b>Justification:</b>	Concurrence was granted by the Department. The land area of the 7(f) zone remains unchanged, which is currently undersized. No building works are to be permitted within the land zoned 7(f). Approving the variation does not undermine relevant policy/s. The variation was supported as it was demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection.
<b>Extent:</b>	7(f) zone 13.50% or 857.79m <sup>2</sup> . 2(e) zone 86.50% or 5496.21m <sup>2</sup> . Total land area of 6354m <sup>2</sup> .
<b>Authority:</b>	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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- 21 [PR-CM] Development Application DA12/0588 for Addition of Decks (Front and Side), Rear Enclosed Deck and Building Line Variation for Double Carport at Lot 1 Section 1 DP 30148 No. 2 Dobbys Crescent, Terranora

SUBMITTED BY: Building and Environmental Health

FILE NUMBER: DA12/0588 Pt1



**Civic Leadership**

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### **SUMMARY OF REPORT:**

An application has been lodged for alterations and additions to the existing dwelling house at 2 Dobbys Crescent Terranora for front and side decks, rear enclosed deck and a double carport to be constructed within the 30m building line to Terranora Road.

The rear of the property backs onto Terranora Road which is classified as a designated road and requires a 30m building setback under the provisions of part 5, clause 24 of the Tweed Local Environment Plan 2000 (*TLEP2000*).

The applicant has included an objection statement to the planning controls as permitted under State Environmental Planning Policy No. 1 (SEPP1) guidelines for the front and side decks, rear enclosed deck and a double carport which are proposed within the 30m building line to Terranora Road. Given the proposed SEPP1 objection is greater than 10% this development application has been referred to Council for determination in accordance with previous directions of the NSW Department of Planning and Infrastructure.

There is also a carport component which is part of the proposal that does not satisfy the mandatory control; Design Control 3 Setbacks front setbacks (building lines) of Tweed Development Control Plan (DCPA1) in relation to the front building line setback for the double carport.

The carport has been assessed as a front building line variation to the property's primary road frontage of Dobbys Crescent and is consistent with past Council development approvals for similar structures in the area.

The SEPP1 objection and the variation to the DCPA1 mandatory controls are considered to be worthy of support by Council.

### **RECOMMENDATION:**

That:

1. **State Environmental Planning Policy No. 1 objection to Clause 24 of Tweed Local Environment Plan 2000 regarding setbacks to designated roads be supported and the concurrence of the Director-General of the Department of Planning be assumed.**

2. **Development Application DA12/0588 for addition of decks (front and side), rear enclosed deck and building line variation for double carport at Lot 1 Section 1 DP 30148 No. 2 Dobbys Crescent, Terranora be approved subject to the following conditions:**

**GENERAL**

1. **The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.**  
[GEN0015]
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. **The Deep Soil Zone (DSZ) identified on approved plans shall not incorporate any hard impervious surfaces, unless otherwise approved by the General Manager or his delegate.**  
[GEN0285]
5. **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]
6. **The carport must not be enclosed to ensure adequate sight lines are maintained for safe vehicular access to and from the property.**

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. **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]
8. **The 75mm galvanised posts located 400mm off the front boundary are to be replaced with masonry or similar columns having a minimum dimension of 230 mm by 230 mm in order to be sympathetic to the design of the existing dwelling house and reduce the impact upon the streetscape. Details of the above column design are to be submitted to the PCA before the issue of the construction certificate.**

[PCCNS01]

## **PRIOR TO COMMENCEMENT OF WORK**

9. The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (c) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

### **11. Residential building work:**

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - \* in the name and licence number of the principal contractor, and

- \* the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - \* the name of the owner-builder, and
  - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

12. 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]

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

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

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

[PCW0985]

## **DURING CONSTRUCTION**

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

[DUR0005]

15. **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]
16. **The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.**
- [DUR0245]
17. **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]
18. **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]
19. **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]
20. **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]
21. **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]
22. **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]

23. 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]

24. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

[DUR1945]

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

[DUR2185]

26. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR2245]

27. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

28. The structure is to be sited at least one metre horizontally clear of sewer main on site and the carport slab must not impact upon the integrity of the sewer line

[DUR2645]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

29. 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]

30. 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]

31. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

#### **USE**

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

[USE0125]



- 33. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.**

[USE0175]

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

[USE0225]

**REPORT:**

**Applicant:** Cobine Pty Ltd  
**Owner:** Ms Francesca Radice  
**Location:** Lot 1 Section 1 DP 30148 No. 2 Dobbys Crescent, Terranora  
**Zoning:** 1(c) Rural Living  
**Cost:** \$122,339

**Background:**

An application has been lodged to construct dwelling additions, consisting of front and side decks, a rear enclosed deck with a rear boundary setback of 5.059m to Terranora Road and a front building line variation for a double carport to the primary street frontage of Dobbys Crescent. The subject site is irregular in shape and has a depth of 33.712m at its deepest point and therefore the existing dwelling house also stands wholly within the 30m setback.

The subject land is zoned 1(c) Rural Living and is a corner allotment with a road frontage to Dobbys Crescent and a rear boundary to Terranora Road. The allotment has a moderate to steep slope from Dobbys Crescent to Terranora Road and due to the varying widths of the allotment, its unusual geometric shape and the fact that the allotment is a corner block all structures built on the allotment will be located within the 30m building line setback to Terranora Road.

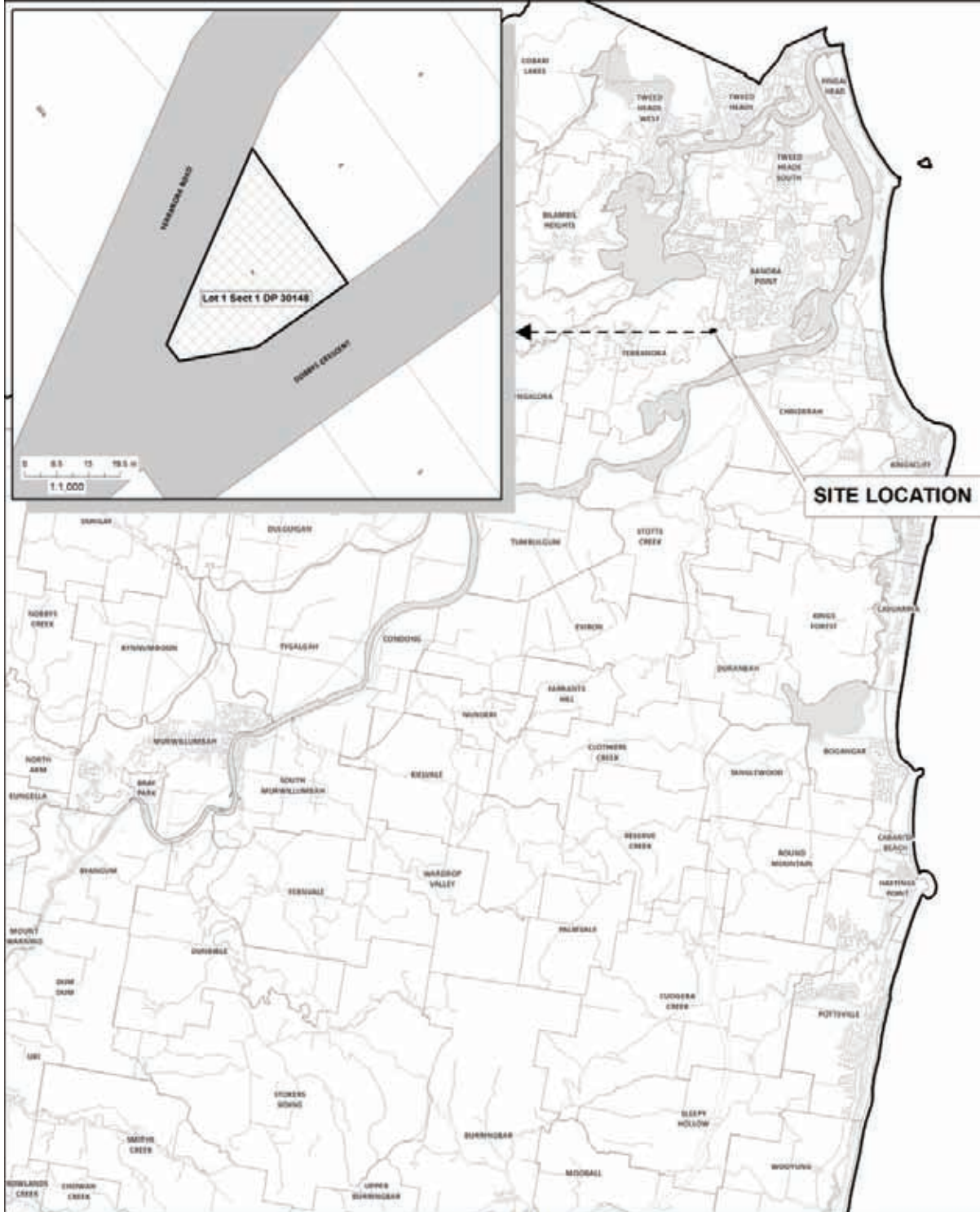
The rear enclosed deck is proposed to be setback 5.059m from Terranora Road and it is not physically possible for the proposed deck additions and carport to meet the 30m building setback to Terranora Road due to the slope, geometric shape, width and topography of the allotment. Vehicular access exists from Dobbys Crescent and the proposed carport cannot be located in a more favourable or alternate site position due to the above constraints and the location of the sewer pump well and associated drainage infrastructure.

As Terranora Road is classified as a designated road; Tweed Local Environmental Plan (TLEP2000) Part 5, Clause 24 prescribes a 30m building setback. The applicant has provided a SEPP1 objection statement detailing the reasons for a request to vary the 30m setback requirement to Terranora Road.

Due to the above constraints impacting on the allotment and the minor scale of the development and the fact that the proposal is comparable to existing approved development in the area it is considered that the additions and alterations will not adversely affect the amenity of the local environment, the streetscape or public domain of Terranora Road and Dobbys Crescent.

The SEPP1 objection is considered below in this report and the carport does not satisfy the mandatory controls of DCPA1 in relation to the front building line setback and this matter is also further considered in the report.

**SITE DIAGRAM:**



**Locality Plan**  
 Lot 1 Section 1 DP 30148  
 No. 2 Dobbys Crescent, Terranora

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**Created: 28 February 2013**  
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 Boundaries shown should be considered approximate only.

Scale: 1:125,000 @ A4 Portrait  
 GDA 1984 UTM - NZG 581162

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 F: (02) 6670 2429  
 W: www.tweed.nsw.gov.au  
 E: planning@twc.tweed.nsw.gov.au

**TWEED SHIRE COUNCIL**



**AERIAL PHOTOGRAPH:**



**Aerial Photography 2012**  
 Lot 1 Section 1 DP 30148  
 No. 2 Dobbys Crescent, Terranora

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 Boundaries shown should be considered approximate only.

Scale: 1:125,000  
 GDA  
 Map of Australia, Zone 56

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**TWEED**  
 SHIRE COUNCIL

DEVELOPMENT/ELEVATION PLANS:

**VERIFICATION**  
Prior to construction commencement an independent verify all drawings and specifications for compliance with the relevant standards and codes. It does not discharge the responsibility of the designer or the Council. It is the responsibility of the Council to ensure that all drawings and specifications are in accordance with the relevant standards and codes.

**COPYRIGHT**  
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**REVISIONS**

NO.	DESCRIPTION	DATE
1	PRELIM. WORKSHEET	01/11/12
2	DATE	01/11/12

**RPD**

LOT	1
STREET	- 301AB
PARISH/CP	- TERRANORA
COUNTY OF	- ILLAWARRA

**RPD SCHEDULE**

LOT COVER	- 23662
STREET FRONT FOOTPRINT	- 738602
SITE AREA	- 738602
SITE COVER	- 28.9%

**Council Plans**



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 NSW Australia  
 Email: office@cobine.com.au

**CLIENT**  
MR & MRS RADICE

**PROJECT**  
RADICE HOUSE ADDITIONS

**LOCATION**  
2 DOBBYS CRES.  
TERRANORA QLD

PROJECT NO	STAGE
0051	WD

DATE	SCALE
NOV/11	AS SHOWN @ A3

**DRAWING TITLE**  
SITE PLAN

DRAWING NO	ISSUE	STATUS
A.02	B	SP

**GENERAL NOTES**

The accompanying working drawings detail the necessary work and materials used for the construction of the works as described. These drawings have been prepared only for the purpose of obtaining building approval & for construction where the owner's interest design intent. It does not discharge the responsibility of the designer or the Council. It is the responsibility of the Council to ensure that all drawings and specifications are in accordance with the relevant standards and codes.

Owner must ensure these drawings are in accordance with the relevant standards and codes prior to & during the works.

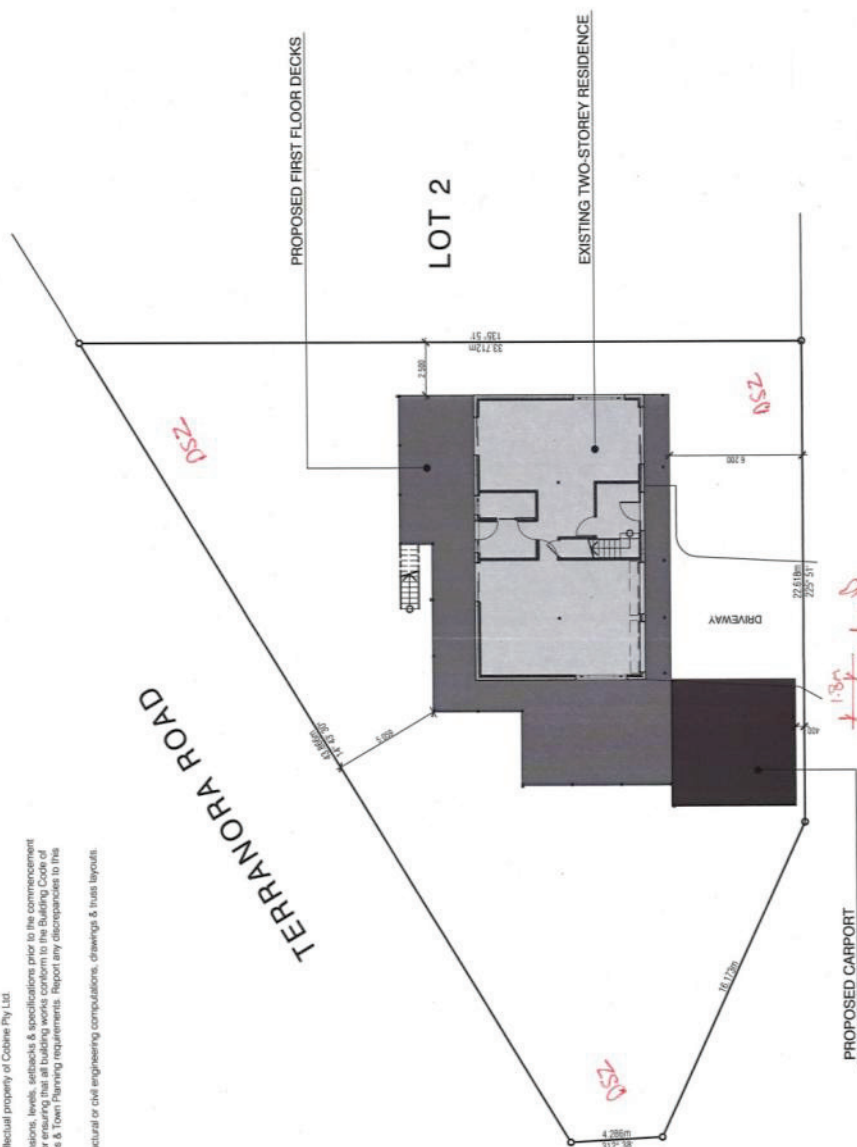
**COPYRIGHT**  
The drawings and working drawings remain copyright & intellectual property of Cobine Pty Ltd.

**VERIFICATION**  
The drawings & specifications shall comply with all dimensions, levels, setbacks & specifications prior to the commencement of the works or ordering materials & shall be responsible for ensuring that all building works conform to the Building Code of Australia, current Australian Standards, Building Regulations & Town Planning requirements. Report any discrepancies to this office.

**CONSULTANTS**  
These documents shall be read in conjunction with any structural or civil engineering computations, drawings & trust layouts.

**GENERAL LEGEND**

- AC - air-conditioner condenser unit
- BFC - balustrade
- BL - balustrade
- CBG - colorbond box gutter
- CC - colorbond capping
- CG - colorbond gutter
- CU - construction unit
- DP - downpipe
- DPS - downpipe with spreader
- DW - dishwasher
- DW - dishwasher
- FC - form cement
- FCU - air-conditioner fan coil unit
- FF - fridge/freezer
- FL - finished floor level
- FG - finished ground level
- FW - floor waste
- GB - gas bottles
- GD - graded drain
- GP - hopscotch
- HP - hand rail
- HR - hand rail
- HWS - hot water system
- LB - letter box
- LS - laundry chute
- LS - laundry chute
- NSL - natural ground level
- OF - overflow
- OW - overwater
- RH - range hood
- RL - reduced level
- S - sink
- SA - smoke alarm to comply with AS 3786
- SHS - square hollow section
- SL - skylight
- SPD - spoon drain
- STC - solar tube
- TP - timber post
- UBO - under bench oven
- VB - vanity basin
- WC - wall cabinet
- WM - washing machine
- WR - walk in robe
- WO - wall oven



**DOBBYS CRESCENT**

**1 SITE PLAN**  
SCALE 1:200 (A3)



**VERIFICATION**  
 Prior to construction commencement or installation of any work, all drawings must be checked for accuracy and compliance with all applicable codes and standards. The Designer is responsible for ensuring that all drawings are in accordance with the relevant codes and standards. Any discrepancy immediately to Cobine Pty Ltd for resolution.

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**AMENDMENT REGISTER**  
 ISSUE DESCRIPTION DATE  
 A PRELIM ISSUE 01/11/12

**ELEVATION KEY NOTES**

Provide colour charts to comply with CCA 1161-1998. Lined with flexible caulking compound.  
 LIGHTWEIGHT EXTERNAL WALL LININGS  
 Lightweight external wall linings are to be installed in accordance with manufacturer's specifications.

*pk*  
**Council Plans**



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 Fax: 07 4554 7200  
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 Australia  
 OHS&E Lic: 7202047 | NSW Lic: 375209  
 Email: office@cobine.com.au

CLIENT  
**MR & MRS RADICE**

PROJECT  
**RADICE HOUSE ADDITIONS**

LOCATION  
**2 DOBBYS CRES. TERRANORA QLD**

PROJECT NO  
**0051**

STAGE  
**WD**

DATE  
**NOV '11**

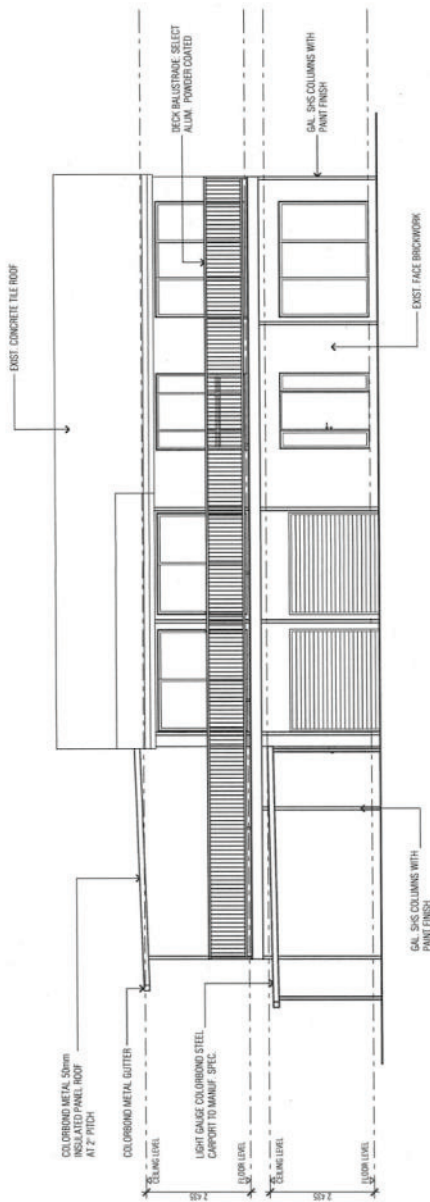
DRAWING TITLE  
**ELEVATIONS**

SCALE  
**AS SHOWN @ A3**

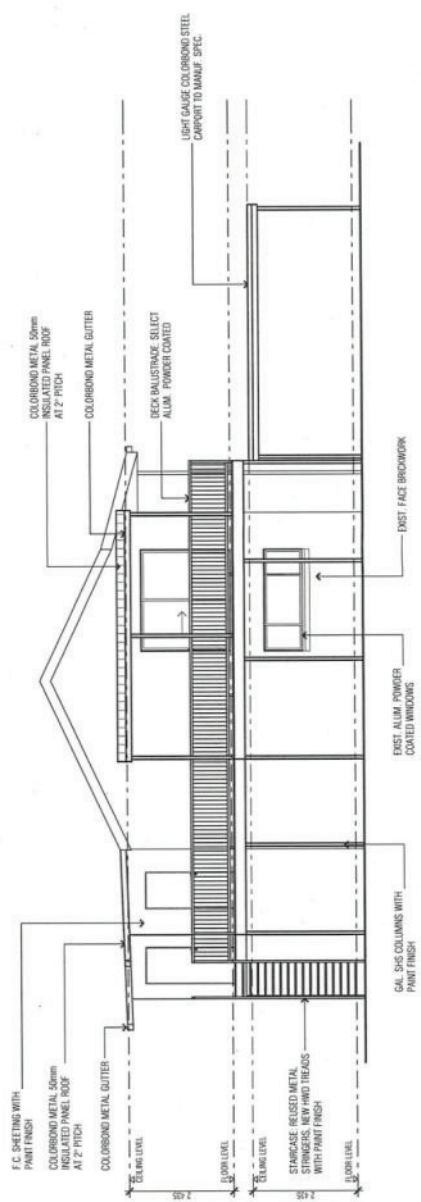
DRAWING NO  
**A.08**

ISSUE  
**A**

DESIGN  
**SP**



**1 SOUTH-EAST ELEVATION**  
 SCALE 1:100 (A3)



**2 SOUTH-WEST ELEVATION**  
 SCALE 1:100 (A3)

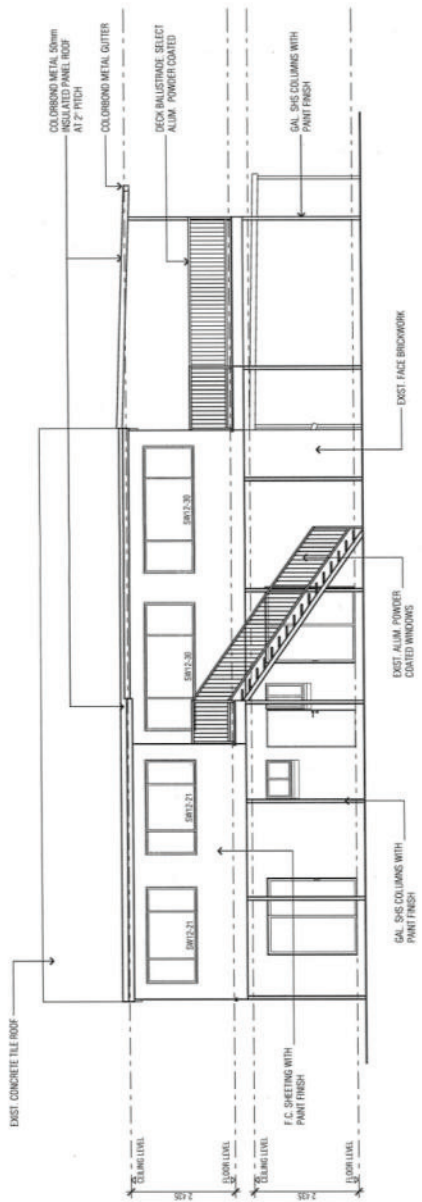
**VERIFICATION**  
 Prior to construction commencement or installation, verify all materials, components, and workmanship against the approved drawings and specifications. All work must be done in accordance with the approved drawings and specifications. Any discrepancy must be reported immediately to Cobine Pty Ltd for resolution.

**COPYRIGHT**  
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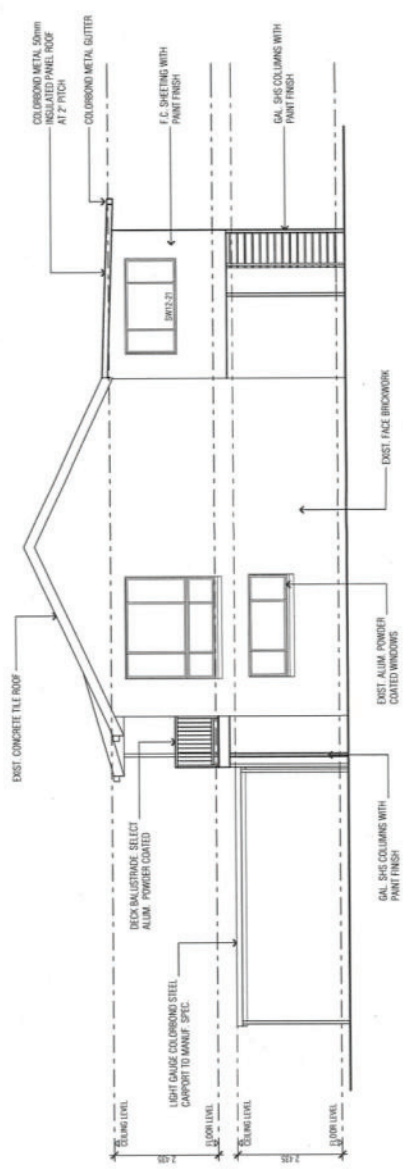
**AMENDMENT REGISTER**  
 ISSUE DESCRIPTION  
 A PRELIM. WD ISSUE

DATE  
 01/11/12

**ELEVATION KEY NOTES**  
 Provide control joints to comply with CCA (MS) 1999, lined with flexible caulking compound.  
 LIGHTWEIGHT EXTERNAL WALL LININGS  
 To be installed in accordance with manufacturer's specifications.



3 NORTH-WEST ELEVATION  
 SCALE 1:100 (A3)



4 NORTH-EAST ELEVATION  
 SCALE 1:100 (A3)

*d/h*  
**Council Plans**



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CLIENT  
**MR & MRS RADICE**  
 PROJECT  
**RADICE HOUSE ADDITIONS**  
 LOCATION  
**2 DOBBYS CRES. TERRANORA QLD**

PROJECT NO  
**0051**  
 STAGE  
**WD**  
 SCALE  
**AS SHOWN @ A3**

DATE  
**NOV '11**  
 DRAWING TITLE  
**ELEVATIONS**  
 DRAWING NO  
**A.09**  
 ISSUE  
**A**  
 DRAWN  
**SP**

**Considerations Under Section 79C Of The Environmental Planning And Assessment Act 1979:**

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

Development complies with the aims of the TLEP2000.

Clause 5 - Ecologically Sustainable Development

Development is ecologically sustainable; the additions and alterations and carport are located in a residential zone and meet the four principles of ecologically sustainable development as listed in clause 5.

Clause 15 - Essential Services

All essential services are provided and appear adequate.

Clause 16 - Height of Building

The proposed development complies with height restrictions permissible in the area.

Clause 17 - Social Impact Assessment

Normal residential influences are anticipated with the proposed development being a permitted landuse in the area.

Clause 35 - Acid Sulfate Soils

Council records show the site is located in Class 5 ASS area. ASS management plan not required.

Other Specific Clauses

None apparent.

Specific Clauses

None apparent.

**State Environmental Planning Policies**

**SEPP No. 1 - Development Standards**

A SEPP1 objection has been received from the applicant in relation to the 30m setback to Terranora Road, (*a designated road*) which is required by clause 24 of the TLEP2000. A variation to the required setback is requested to permit an enclosed deck to (which stands up to 5.059m from the Terranora Road boundary), front and side decks, rear enclosed deck and a double carport to be located within the 30m setback to Terranora Road.

Below is a copy of the applicants SEPP1 objection response:

***"Clause 22 – Designated Roads***

*Clause 22 applies to the proposed development as the site has frontage to a designated road (Terranora Road). The consent authority must consider the listed matters in Clause 22 (4), as follows:*

- (a) *The development (because of its nature, appearance cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a*



*traffic hazard or materially reduce the capacity or efficiency of the designated road, and*

**Comment:** *The site is located within an area with a Residential Character, with access from Dobbys Crescent. The site contains an existing dwelling, and the proposed development would not increase traffic flows from the site. The development would not cause a traffic hazard or reduce the capacity or efficiency of the road.*

(b) *The location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

**Comment:** *The development would be serviced by a standard driveway from Dobbys Crescent. The driveway crossover has been designed so that access to/from the property is convenient and meets safety requirements. No delays would occur through traffic. The driveway access is sufficiently removed from the intersection with Terranora Road.*

(c) *The development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*

**Comment:** *The development is not located where it would prejudice any future road improvements or realignments.*

(d) *Where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*

**Comment:** *Not applicable.*

e) *The development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*

**Comment:** *The development involves a carport and replacement of decks to a residential dwelling. Numerous residential dwellings exist along Terranora Road. The Terranora Road environment is not unsuited for residential development.*

(f) *The development would not detract from the scenic values of the locality, particularly from the point of view of road users, and where practicable, access to the land is provided by a road other than the designated Road.*

**Comment:** *The development will not detract from the scenic values of the locality.*

(g) *Where practicable, access to the land is provided by a road other than the designated road.*

**Comment:** *Access is provided via Dobbys Crescent, and not from Terranora Road.*

#### **Clause 24 – Setbacks to Designated Roads**

*Clause 24 of the LEP requires 'other' development to have a setback of 30m to a Designated Road. This Development Standard is unnecessary and unreasonable in this instance, and an Objection under State*

*Environmental Planning Policy No. 1 is submitted to this Development Standard for the following reasons:*

- *The site and surrounding sites are of a residential nature and size. Enforcing a 30m setback to Terranora Road is unreasonable as it would render the site and surrounding sites undevelopable.*
- *The site contains an existing dwelling and it would be unreasonable to restrict the upgrading of the dwelling and the replacement of decks due to the 30m setback requirement. The subject application does not intensify the development of the site, and the development standard is therefore unreasonable.*
- *There are many dwellings erected along Terranora Rd in close proximity to the subject site. These dwellings are within 30m of Terranora Rd. It would be unreasonable to restrict the subject development, when there are numerous precedents for development closer than 30m to the Designated Road.*
- *Approximately 400m to the east the zoning changes to a Residential zoning. Houses are permitted to be constructed to within 6.0m of Terranora Rd within the residential zoning.*
- *The application is to replace existing decks, with only a small part of the new deck extending closer to Terranora Road, by approx 1.5m only. Adequate setback will be retained. As such the setback requirement is unreasonable in this instance.*

*For the above reasons, Council is requested to support the objection under SEPP 1 to allow the development with 30m of the Designated Road."*

Response:

It is considered that the above submission by the applicant should be supported as the points listed in Clause 22(4)(a) to (g) have been met and the design, scale and type of development will have negligible impact to Terranora Road precinct and it is considered that the proposal meets acceptable residential planning principles.

SEPP No 71 – Coastal Protection

**SEPP No. 71: Coastal Protection**

The subject site falls within the coastal protection zone as identified under SEPP 71 and referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from sensitive coastal locations. Potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, wildlife corridors, the suitability of the site for the development and any measures to reduce other adverse environmental impacts have been considered and having regard to these items, the property distance from any waterway or foreshore; and the existence of developments of similar design and scale on nearby and adjoining properties. It is considered that the proposed development is consistent with the matters for consideration under SEPP 71.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a **Basix Certificate** (*Cert No A152745*) as required under legislation and the development is conditional that the basix requirements are met during construction and prior to the occupancy certificate being issued for the property.

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

N/A

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

**External Building Elements Part A - Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools**

Public Domain Amenity

**Streetscape**

The proposed development is consistent with the establishment character of the area whilst being sympathetic to the surrounding developments.

The deck alterations and additions will be partially visible from Terranora Road due to the differences in elevation whilst the double carport proposed within the front 6 metre setback will be highly visible from Dobbys Crescent. The design of the carport is consistent with the other four carports which exist in the immediate locality.

**Public Views and Vistas**

The proposal will result in minimal view loss of public views and vistas given that the overall design does not exceed the overall height of the existing development.

Site Configuration

**Impermeable Site Area**

The area of the site is 788m<sup>2</sup>, and therefore the maximum impermeable site area permitted at the completion of the development must be not greater than 60%. The existing and proposed development will create an impermeable area of approximately 33% of the site and will comply with the design control.

**External Living Areas**

The proposed deck additions and alterations located on the northern and western sides of the existing dwelling house will improve the amenity between internal and external living areas as well as increasing solar access to the living areas.

**Landscaping**

There is an established heavily landscaped area which exists on the down slopes existing on the northern and western sides of the subject property which also extends onto the adjoining road reserve. This application does not propose any removal of the aforementioned landscaping.

**Topography, Cut and Fill**

The existing dwelling house stands upon a level building platform and the areas to the northern and western boundaries have moderate to steep fall which has

been intensively landscaped. The proposal does not require any significant cut and fill.

#### Setbacks

A variation to the required 6 metre front building line setback is requested for a proposed double carport to be located 400mm off the front boundary due to the constraints of the site. The proposed double carport is to be located adjacent to the existing driveway as there is no alternate position on the property for the carport due to the position of a sewer pump well and associated drainage infrastructure, the slope and geometry of the property. The proposed carport is to be of an open design and access will be at 90 degrees off the existing driveway which negates the requirement for a two by two metre sight triangle. It is to be noted that there are four double carports located within the front 6 metre setback existing in Dobbys Crescent. It is recommended that a condition of consent be included requiring the proposed 75mm galvanised posts located 400mm off the dimension of 230mm by 230mm in order to be sympathetic to the design of the existing dwelling house and reduce the impact upon the streetscape. The carport support posts cannot be positioned 2m from the front boundary as vehicular access to the carport will be compromised due to vehicle turning circles and clearly would not allow the carport to be functional.

#### Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the Development Control Plan. Two off street car parking spaces exist behind the 6 metre front building line and vehicle access to these spaces is considered adequate. The proposal includes the construction of a double carport to be located 0.4 metres off the front boundary which can be considered under this control subject to assessment under Design Control 3 - Setbacks.

#### Building Amenity

##### **Sunlight Access**

Private open space for the existing dwelling house receives sufficient access to sunlight. The proposed decks alterations and additions have been located to the northern and western sides of the existing dwelling house in order to take advantage of the solar access, views to the Broadwater and the prevailing breezes. Also these deck areas will expand the versatility of the internal living areas of the existing dwelling house. The bulk and scale of the existing dwelling house and proposed additions is in keeping with character of dwellings already approved in the area.

##### **Visual Privacy**

The existing rear deck is proposed to be increased in depth and enclosed which will result in less privacy impact upon the adjoining property as the opportunity to overlook the neighbouring property will be minimised. It is to be noted that the dwelling house at No. 4 has a greater depth than that of the proposal and has been orientated to take advantage of the northern aspect which establishes a level of privacy.

##### **Acoustic Privacy**

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating that the noise

of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

### **Natural Ventilation**

The design of the dwelling house provides for adequate natural cross flow ventilation by the use of a breeze path that is orientated in an east-west direction.

### **Building Orientation**

The deck additions and alterations and double carport have been sited on the property to optimise solar access and views as well as providing an acceptable street presentation.

### External Building Elements

#### **Roof**

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been recommended in the conditions.

### Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

### Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1. The proposed dwelling is consistent with this design control having an FSR of approximately 0.20:1.

### A11-Public Notification of Development Proposals

The carport component of the development was advertised in accordance with DCP A11 and no submissions have been received regarding the proposed development.

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

Not applicable.

**(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

Refer to SEPP 71 comments above in this report.

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

The development is of such a scale that it will not impact upon Terranora Coastal Zone Management Plan.

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

### Context and Setting

The property is within an established residential subdivision which has been specifically created for residential development. The proposed development is in keeping with the architectural style and residential character of the area.

### Access, Transport and Traffic

Residential traffic movements to the property are via Dobbys Crescent and will not significantly impact upon the local area and streetscape and will not affect Terranora Road.

### Flora and Fauna

Minimal impact is envisaged as the development is proposed upon established levelled areas of the site.

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

### Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The property is located within an existing residential area and utilities including reticulated water, public sewer and power are provided to the site. The design of the development is in keeping with the residential character of the site.

### Site Orientation

Part of the proposed development will be replacing an existing rear deck which will be slightly increased in size and the rear boundary setback to Terranora Road will be 5.059m, refer to background section in the report above. The proposed decks have been located to the northern and western sides of the existing dwelling house in order to take advantage of the views of the Broadwater and the prevailing breezes. Also these deck areas will expand the versatility of the internal living areas of the existing dwelling house.

### Topography

The site slopes from Dobbys Crescent to Terranora Road and the proposed carport is located adjacent to the existing driveway and vehicular access is achieved from this driveway to Dobbys Crescent. It should be noted that there is no suitable alternate for the carport due to the slope of the site and the location of a sewer pump and rising main sewer infrastructure located on the site.

### Site Orientation

Part of the proposed development will be replacing an existing rear deck which will be slightly increased in size and the rear boundary setback to Terranora Road will be 5.059m, refer to background section in the report above. The proposed structures have adequate site orientation in relation to the existing dwelling house and the property boundaries.

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

Not applicable.

## **(e) Public interest**

The development is not prejudicial to the public interest.

**OPTIONS:**

1. Council approves the development application subject to conditions; or
2. Council refuses the development application.

Council officers recommend option 1.

**CONCLUSION:**

The proposed site location and scale of the development is consistent with the objectives of clause 22 TLEP2000 and the primary and secondary objectives of TLEP2000 1(c) Rural Living zone. Site inspection and perusal of Council records confirms the validity of the SEPP1 objection to vary the rear deck building line to 5.059m from the Terranora Road boundary. It is therefore recommended that Council supports the development.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

A SEPP1 objection with development near designated roads is considered on its merits in accordance with the requirements of Clause 22 and 24 of TLEP2000 and associated planning instruments.

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

Not applicable.

**c. Legal:**

It is envisaged no legal implications will be apparent due to the type of residential development considered for approval; it is similar in type scale and design to previously approved structures in the local area and generally meets the planning requirements of DCPA1

**d. Communication/Engagement:**

The carport component has been advertised in accordance with DCPA11 Public Notification of Development Proposals.

**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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**22 [PR-CM] Development Application DA12/0565 for an Eight Lot Subdivision at Lot 58 DP 1083567 Collins Lane, Casuarina**

**SUBMITTED BY:** Development Assessment

**FILE NUMBER:** DA12/0565 Pt1



**Civic Leadership**

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**SUMMARY OF REPORT:**

The proposal seeks approval for an eight lot residential subdivision of a residue lot created from DA12/0243.

One of the eight lots (Lot 3) will have access from Collins Lane. Lot 3 is battle axe in shape with an area of 508m<sup>2</sup> and is burdened by a restriction to provide one visitor car parking space at the front of the lot. The requirement to provide one visitor car space within Lot 3 is due to Lot 3 having less than nine metres of road frontage which would provide for one car space. Lot 4 (497m<sup>2</sup>), Lot 5 (502m<sup>2</sup>) and Lot 6 (496m<sup>2</sup>), each have direct access from Dryandras Court. Lots 4 and 5 will have a shared driveway access and Lot 6 will have a separate driveway access. Lot 7 (677m<sup>2</sup>), Lot 8 (672m<sup>2</sup>), Lot 9 (707m<sup>2</sup>) and Lot 10 (1194m<sup>2</sup>) will all gain access from a proposed Right of Way (ROW) from Dryandras Court. Lots 7, 8 and 9 propose a restriction to provide one visitor car parking space at the front of each lot.

The number of existing on-street car parking spaces that are being removed by the proposed two vehicular footpath crossings for Lots 6 and ROW for Lots 7-10 (four car parking spaces), are to be replaced with the creation of additional car parking spaces (four car parking spaces) at the end of Dryandras Court. This is supported by Council's Traffic Engineer and subject to conditions.

A State Environmental Planning Policy No. 1 – *Development Standard* (SEPP 1) objection also accompanies the application. 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) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land which has a minimum lot size requirement of 40 hectares, represents approximately 16% or 857.79m<sup>2</sup> of the site, with the remainder of the site zoned 2(e) Residential Tourist, which has a minimum lot size requirement of 450m<sup>2</sup> representing approximately 84% or 5255m<sup>2</sup>.

The application was referred to the NSW Department of Planning and Infrastructure requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to a condition being placed on the development consent to the effect that no residential, associated buildings or structures permitted on land zoned 7(f).

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard in accordance with the Department of Planning directive (circular PS 08-014).

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

**RECOMMENDATION:**

**That Development Application DA12/0565 for an eight lot subdivision at Lot 58 DP 1083567 Collins Lane, Casuarina be approved subject to the following conditions:**

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans, except where varied by the conditions of this consent.

- Overall Site Subdivision Layout - Plan 1A by Planit dated 01/13 Rev. 2.
- Proposed Eight Lot Subdivision - Plan 1C by Planit dated 01/13 Rev. 2.
- Car Parking Layout Concept by Planit dated 02/13.
- Proposed Sewer Reticulation Layout plan by Opus No. TW\_N-T2013.01 sheet Rev.1 dated 21.9.12 - subject to relocation of the sewer main to avoid Lot 3.

[GEN0005]

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

[GEN0125]

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

[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. If landscaping is proposed. 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.**

[GENNS01]

6. **No residential, associated buildings or structures are permitted on land zoned 7(f) Environmental Protection (Coastal Lands).**

[GENNS02]

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

7. **Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.**

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

**The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.**

[PCC0275]

8. **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]

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

[PCC0465]

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

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

[PCC0485]

11. **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 as part of the construction certificate application.

[PCC0485]

12. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

13. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

#### OTHER

- (a) Provision of water connections generally as per "Proposed Water Reticulation Layout" plan by Opus No. TW\_N-T2013.01 sheet 4 Rev. 1 dated 21.9.12 - except that the depicted water service lines for Lots 7 to 10 shall follow the route of the Right of Way as depicted on plans by Planit.
- (b) Construction of sewer infrastructure generally as per "Proposed Sewer Reticulation Layout" plan by Opus No. TW\_N-T2013.01 sheet 3 Rev.1 dated 21.9.12 - subject to:
- Relocation of the sewer main to avoid Lot 3.
  - The sewer junctions for Lots 8 and 9 will be required to extend beyond the 'Easement for Services' to avoid possible future conflicts with conduits for other services.
  - **OPTION:** To avoid extra works within the 7(f) zone, the sewer connection for Lot 7 could be provided at the western side of the lot, via a short dead-end line coming from the manhole within Lot 9 (ie: relocated out of Lot 8).

Note: sewer main construction will need to be of sufficient depth to enable internal house service lines to fall to the connection points, primarily regarding Lots 8 and 9 but also as an option for Lot 7, as this would be against the fall of the land: site filling is necessary as per the following requirement.

- (c) Site filling to facilitate fall to the Collins Lane road frontage for Lot 3. This is to enable stormwater infiltration surcharges to gravitate to the street. Note that excessive filling is to be avoided, as sewer connections for Lots 8 and 9 (at least) will be located at the high side of those lots.
- (d) The driveway within the access handle for lot 3 is to be constructed as part of the subdivision works, as well as a concrete area for the off-street visitor car parking space within the allotment.
- (e) Construction of a 4.5m (minimum) wide concrete driveway within the Right of Way over lots 8, 9 and 10, generally as depicted on Plan No. 1C by Planit dated 01/13.

- (f) Provision of appropriate conduits to cater for all services to lots 7, 8 and 9, within the Right of Way (overlapped by an Easement for Services).
- (g) Construction of appropriate off-street visitor parking spaces within Lots 7, 8 and 9 generally as depicted on Plan No. 1C by Planit dated 01/13.
- (h) Proposed Lot 6 is required to have a concrete vehicular footpath crossing constructed at the western side of the lot frontage
- (i) The construction of the two vehicular footpath crossings for Lots 6 and 7-10 will necessitate some removal of existing on-street pavement marking (for car parking), and accordingly will require appropriate new marking or signage to easily delineate the two driveways amongst the existing marked parking bays.
- (j) The Dryandras Court frontage will require submission of a landscaping plan.
- (k) The footpath area of the Collins Lane frontage is to be turfed.
- (l) Construction of four (4) replacement car parking spaces at the end of the cul-de-sac of Dryandras Court as per e-mail advice from Planit dated 14.2.2013 and attached plan by Planit 'Car Parking Layout Concept' dated 02/13.
- (m) Provision of an area for refuse bin enclosure and letterboxes, for use by Lots 7, 8 and 9 within Lot 10, is to be addressed by the construction certificate.
- (n) Compliance of the Right of Way with Section 4.1.3(2) of Planning For Bushfire Protection will need to be verified prior to issuing a construction certificate.

[PCC0875]

14. Prior to the issue of a Construction Certificate for civil works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) Copies of compliance certificates relied upon
- (b) Four copies of detailed engineering plans and specifications, prepared in accordance with Development Design Specification D13 - particularly Section D13.09. The detailed plans shall include but are not limited to the following:
  - Earthworks
  - Roadworks/furnishings
  - Stormwater drainage
  - Water supply works
  - Sewerage works
  - Landscaping works
  - Sedimentation and erosion management plans

- Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations

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

[PCC0985]

15. A construction certificate application for works that involve any of the following:
- Connection of a private stormwater drain to a public stormwater drain
  - Installation of stormwater quality control devices
  - Erosion and sediment control works

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

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

[PCC1145]

16. 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]

17. Prior to the issue of a construction certificate, evidence of registration of the adjoining subdivision that dedicates Dryandras Court as public road, must be provided.

[PCNS01]

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

18. 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]

19. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3<sup>rd</sup> Edition, NSW Government, or
  - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
  - (c) WorkCover Regulations 2000

[PCW0025]

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

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

[PCW0375]

21. Civil work in accordance with a development consent must not be commenced until:
- (a) A Construction Certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
    - (i) The consent authority, or
    - (ii) An accredited certifier, and
  - (b) The person having the benefit of the development consent:
    - (i) Has appointed a principal certifying authority,
    - (ii) Has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
      - C4: Accredited Certifier - Stormwater management facilities construction compliance
      - C6: Accredited Certifier - Subdivision road and drainage construction complianceThe SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and
    - (iii) Has notified the consent authority and the council (if the council is not the consent authority) of the appointment,

- (iv) A sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) The person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

**Note:** For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than \$30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

[PCW0815]

- 22. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

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

[PCW0985]

#### **DURING CONSTRUCTION**

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

[DUR0005]

- 25. 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]

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

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

**$L_{Aeq, 15 \text{ min}}$  noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background**



level by more than 20dB(A) at the boundary of the nearest likely affected residence.

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

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

[DUR0215]

- 27. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.**

[DUR0745]

**28. During filling operations,**

- **No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**
- **All fill and cut batters shall be contained wholly within the subject land.**
- **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 and to the satisfaction of the Principal Certifying Authority.**

**and upon completion,**

- **All topsoil to be respread and the site to be grassed and landscaped including battered areas.**

[DUR0755]

- 29. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.**

**No filling of any description is to be deposited, or remain deposited, within adjacent properties.**

[DUR0765]

- 30. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

**The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.**

[DUR0795]

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

[DUR0815]

32. 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]

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

[DUR0995]

34. 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]

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

[DUR1025]

36. All works shall be carried out in accordance with Councils Acid Sulfate Soils Management Plan for Minor Works. A signed copy of this Management Plan shall be submitted to Council prior to the commencement of works.

[DUR1075]

37. The existing concrete footpaths are to be saw cut and removed to facilitate the construction of the concrete driveway accesses.

[DUR1745]

38. 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]

39. 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]

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

**Right of Way/Driveway works**

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Formwork/reinforcement
- (e) Final inspections - on maintenance
- (f) Off Maintenance inspection

**Water Reticulation, Sewer Reticulation, Drainage**

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Final inspection - on maintenance
- (h) Off maintenance

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

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

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

[DUR1895]

41. 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]

42. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

43. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.

[DUR2025]

44. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and

removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

45. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

46. No acid sulfate soils to be disturbed without the prior written approval of Council.

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

47. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

48. 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 Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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 DSP6: 7 ET @ \$12150 per ET \$85,050

South Kingscliff Water Levy: 7 ET @ 282 per ET \$1,974

Sewer Kingscliff: 7 ET @ \$5838 per ET \$40,866

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]

**49. Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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.

- |  |                 |
|--|-----------------|
| <b>(a) Tweed Road Contribution Plan:</b>   |                 |
| 45.5 Trips @ \$1155 per Trips  | <b>\$52,553</b> |
| (\$1145 base rate + \$10 indexation)   |                 |
| S94 Plan No. 4   |                 |
| Sector7_4  |                 |
| LCA4 - Casuarina:  | <b>\$7,690</b>  |
| 45.5 trips at \$169 per trip   |                 |
| (\$168 base rate + \$1 indexation)   |                 |
| <b>(b) Shirewide Library Facilities:</b>   |                 |
| 7 ET @ \$816 per ET  | <b>\$5,712</b>  |
| (\$792 base rate + \$24 indexation)  |                 |
| S94 Plan No. 11  |                 |
| <b>(c) Bus Shelters:</b>   |                 |
| 7 ET @ \$62 per ET   | <b>\$434</b>    |
| (\$60 base rate + \$2 indexation)  |                 |
| S94 Plan No. 12  |                 |
| <b>(d) Eviron Cemetery:</b>  |                 |
| 7 ET @ \$121 per ET  | <b>\$847</b>    |
| (\$101 base rate + \$20 indexation)  |                 |
| S94 Plan No. 13  |                 |
| <b>(e) Extensions to Council Administration Offices<br/>&amp; Technical Support Facilities</b> |                 |

7 ET @ \$1812.62 per ET (\$1759.9 base rate + \$52.72 indexation) S94 Plan No. 18	\$12,688.34
(f) Casuarina Beach/Kings Forest Community Facilities: 7 ET @ \$2203 per ET (\$2153 base rate + \$50 indexation) S94 Plan No. 19	\$15,421
(g) Casuarina Beach/Kings Forest Open Space: 7 ET @ \$1245 per ET (\$717 base rate + \$528 indexation) S94 Plan No. 19	\$8,715
(h) Cycleways: 7 ET @ \$460 per ET (\$447 base rate + \$13 indexation) S94 Plan No. 22	\$3,220
(i) Regional Open Space (Casual) 7 ET @ \$1064 per ET (\$1031 base rate + \$33 indexation) S94 Plan No. 26	\$7,448
(j) Regional Open Space (Structured): 7 ET @ \$3730 per ET (\$3619 base rate + \$111 indexation) S94 Plan No. 26	\$26,110

[PCC0215/PSC0175]

#### 50. Section 94 Contributions

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision 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 the subdivision 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

[PSC0185]

51. Prior to the issue of a Subdivision 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 (minimum as tabled 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 plan of subdivision is registered.

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

[PSC0215]

52. A bond to ensure acceptable plant establishment and landscaping performance at time of handover to Council shall be lodged by the Developer prior to the issue of the Subdivision Certificate. The bond shall be held by Council for a period of 12 months from the date of issue of the Subdivision Certificate and may be utilised by Council during this period to undertake essential plant establishment or related plant care works, should non compliance occur. Any balance remaining at the end of the 12 months establishment period will be refunded.

The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

53. Prior to the issue of a subdivision certificate, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments" and is suitable for residential purposes.

The submission shall include copies of all undertaken test results.

[PSC0395]

54. All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.

[PSC0485]

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

[PSC0725]

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

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

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

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

[PSC0735]

57. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

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

[PSC0830]

59. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- (b) The existing Restrictions on Title over this site numbered 9, 12 and 13 as created by DP1083567, as well as the Positive Covenant (No. 18), are to be reiterated on the 88B instrument over all relevant lots created by this subdivision.



- (c) The existing Restriction on Title No.15 (per 88B instrument annexed to DP 1083567) relating to compulsory use of the site for multi-unit tourist accommodation, is to be extinguished.
- (d) A Restriction on Title OR Positive Covenant shall be created over Lots 3, 7, 8 and 9 for a designated off-street visitor parking space.
- (e) Creation of a 6m / 9m Right of Way over Lots 8, 9 and 10.
- (f) Creation of an appropriate easement for bin enclosures and letterboxes over Lot 10, benefitting Lots 7, 8 and 9.
- (g) Creation of an Easement for Services over Lots 8, 9 and 10. The location of future water meters for Lots 7, 8 and 9, over Lot 10, must also be covered by this easement.
- (h) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the "Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway / easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

60. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each new lot in the deposited plan.

[PSC0845]

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

[PSC0855]

62. Pursuant to Section 80A(1)(b) of the Environmental Planning and Assessment Act, 1979 (as amended) and Clause 97 of the Environmental Planning and Assessment Regulations, 2000 Development Consent No. DA06/1289 dated 24 January 2008 shall be surrendered by lodgement of the prescribed information, suitably executed, PRIOR to the issue of a Subdivision Certificate.

[PSC0875]

63. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) Original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and

application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

- (b) All detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

64. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-
- (a) Compliance Certificate - Right of Way / Driveways
  - (b) Compliance Certificate - Water Reticulation
  - (c) Compliance Certificate - Sewerage Reticulation
  - (d) Compliance Certificate - Drainage

**Note:**

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

[PSC0915]

65. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

66. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and sewerage system installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

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

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

[PSC1065]

67. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

68. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

69. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard - if necessary. Such lights to be capable of being energised following a formal request by Council.

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

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

[PSC1185]

70. The subdivision certificate for DA12/0243 must be issued prior to, or in conjunction with, the subdivision certificate for this proposal.

[PSCNS01]

71. The existing Restriction on Title (No. 15 per 88B instrument annexed to DP 1083567) relating to compulsory use of the site for multi-unit tourist accommodation, is to be extinguished.

[PSCNS02]

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

1. The development proposal is to comply with the subdivision layout identified on the plan prepared by Planit Consulting, Plan No. 1B (rev: 02), dated 01/13.

**Asset Protection Zones**

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

2. At the issue of subdivision certificate and in perpetuity, the entire area of proposed Lots 3 - 10 shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bushfire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

### **Water and Utilities**

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

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

### **Access**

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

4. Property access roads (including the proposed right of way to Lots 7-10) shall comply with section 4.1.3(2) of 'Planning for Bush Fire Protection 2006', except that dedication of the right of way as a public road is not required.

### **General Advice - consent authority to note**

Any future development application lodged within this subdivision under section 79BA of the 'Environmental Planning & Assessment Act 1979' will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

Future development on lots within this subdivision that are not mapped as bushfire prone land may still be subject to the impacts from bushfire on surrounding land. Council should consider assessment of future development application on these lots against the requirements of s. 79C of the Environmental Planning and Assessment Act, 1979 and AS3959 Construction of building in bushfire prone areas.

To aid in fire fighting activities, future development on proposed Lots 7-10 should maintain unobstructed pedestrian access to the rear of the property.

**REPORT:**

**Applicant:** Heaven Forbid Pty Ltd

**Owner:** Heaven Forbid Pty Ltd

**Location:** Lot 58 DP 1083567 Collins Lane, Casuarina

**Zoning:** 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)

**Cost:** Not Applicable

**Background:**

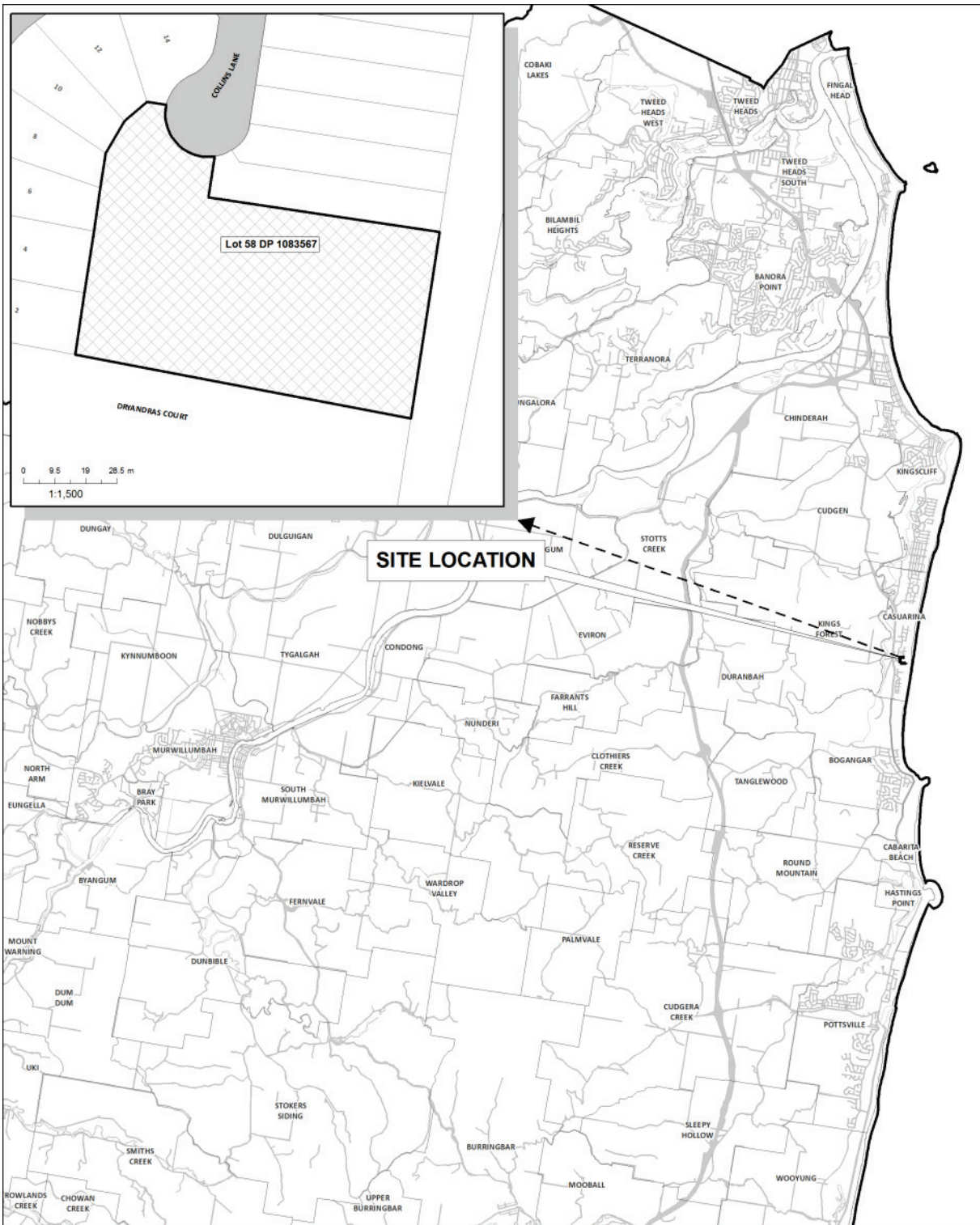
The subject site obtained development approval for the construction of 92 tourist accommodation units within a three storey configuration (DA06/1289). The proposal included a swimming pool on the ground level with basement car parking for 99 vehicles with vehicular access provided from the proposed extension of Casuarina Way. The proposal involved a mixture in bedroom numbers, 81 x 1 one bedroom units, 8 x 2 bedroom units and 3 x 3 bedroom units. The applicant has advised that due to current market conditions this consent is not viable and that a traditional subdivision would better suit the current market conditions. Development Consent (DA06/1289) is required to be surrendered subject to consent Condition No. 52 of Development Consent DA12/0243 requiring the voluntary surrender of DA06/1289 prior to issue of a Subdivision Certificate.

Council has recently (14 February 2013) approved development application DA12/0243 for the subdivision of Lot 58 DP 1083567 into three lots, two of the lots for immediate residential use with the third lot a residue lot. The residue lot created from DA12/0243 is the subject of this development application (DA12/0565) to be subdivided into eight residential lots.

The reason for two separate development applications to Council (as opposed to one staged application) is that the second application (DA12/0565) required access from Dryandras Court and Dryandras Court had not at that time been dedicated to Council ownership and the current land owner had not granted owners consent. Owners consent has now been granted, therefore the subject development application (DA12/0565) can be determined by Council.

Accordingly the application currently before Council is an eight residential lot subdivision of the residue lot created from DA12/0243.

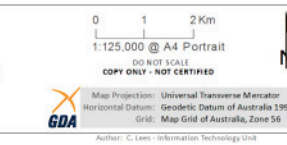
**SITE DIAGRAM:**



**Locality Plan**  
 Lot 58 DP 1083567  
 Collins Lane, Casuarina

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastral: 27 February, 2013  
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 Boundaries shown should be considered approximate only.



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 3 Tumbulgum Road  
 Murwillumbah NSW 2484  
 PO Box 816  
 Murwillumbah NSW 2484  
 T | (02) 6670 2400 | 1300 292 872  
 F | (02) 6670 2429  
 W | www.tweed.nsw.gov.au  
 E | planning@tweed.nsw.gov.au



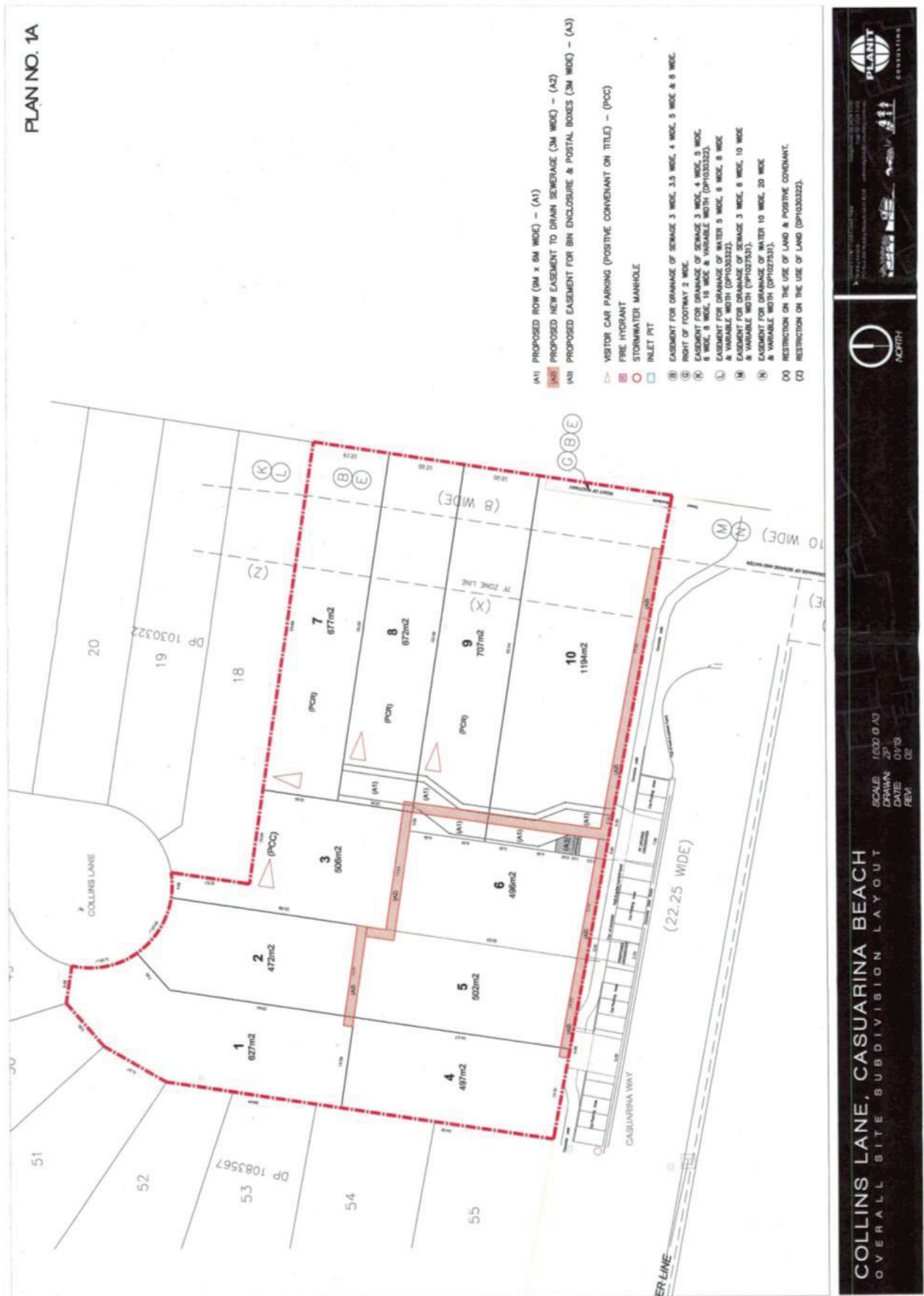
Filepath: Z:\GIS\Info\2006\2013\to 3006\3006\006\3091\04\Map - LocalityPlan.mxd

Author: C. Lewis - Information Technology Unit

Date Printed: 27 February, 2013

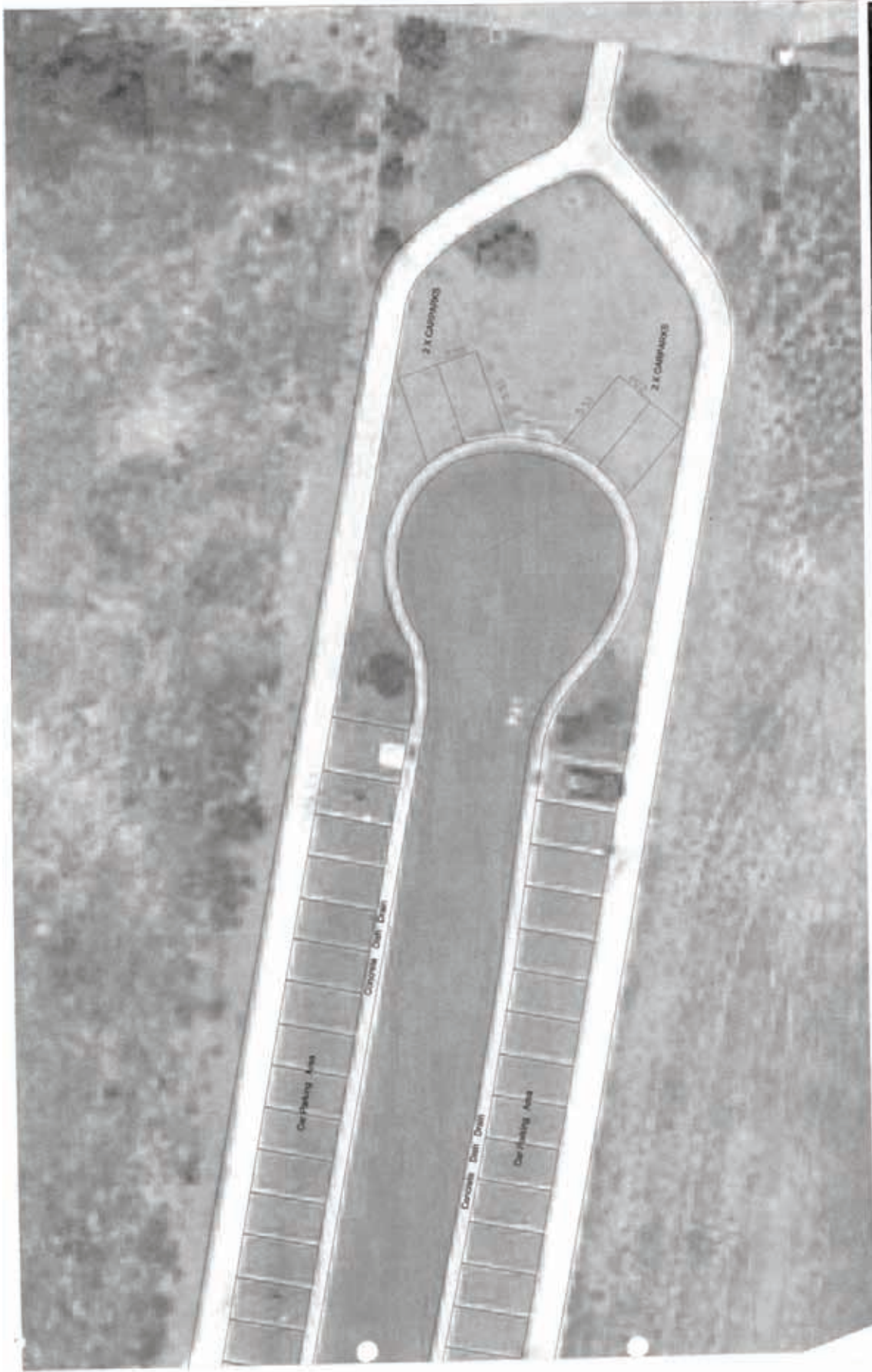


DEVELOPMENT/ELEVATION PLANS:







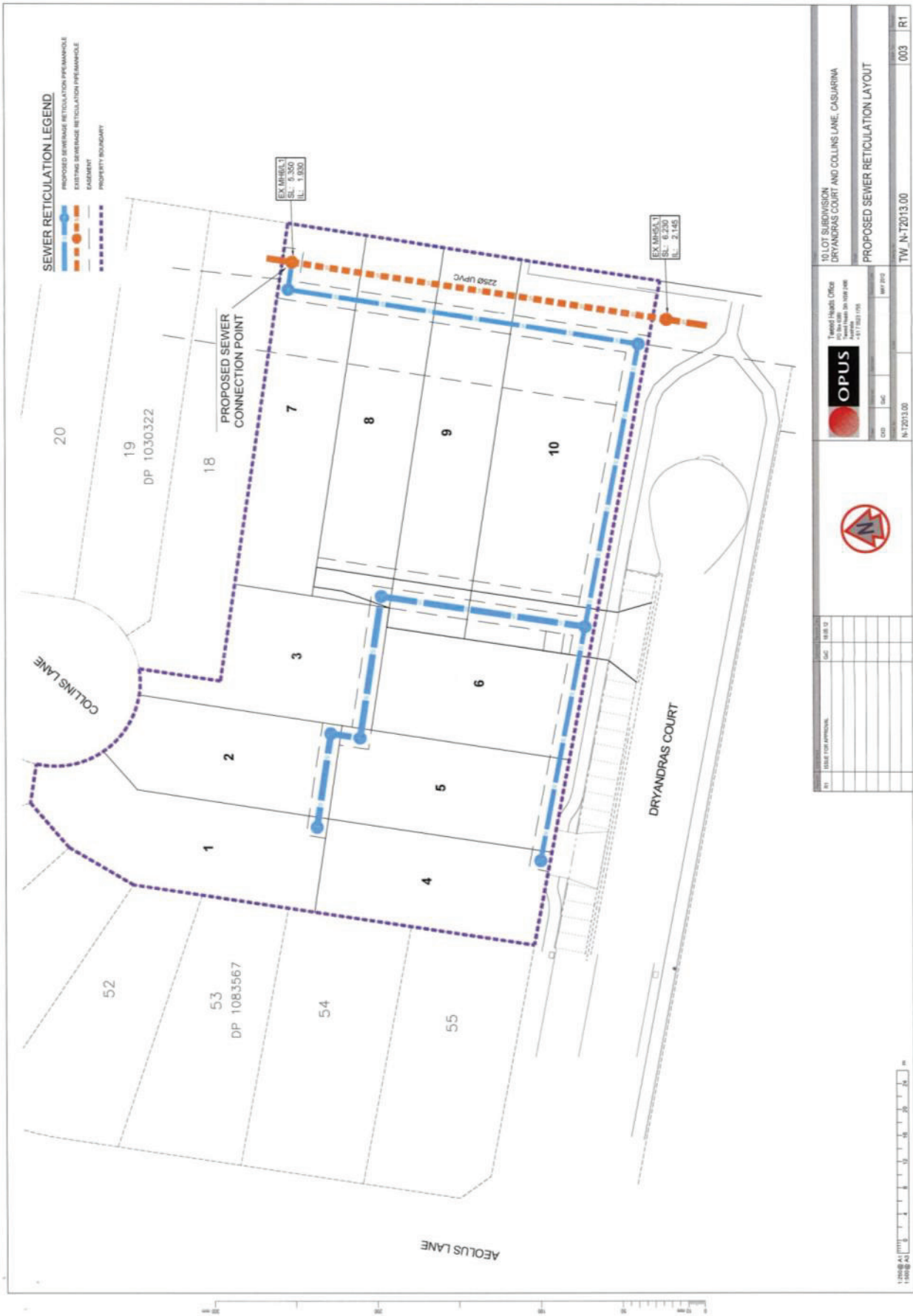


**OLLINS LANE, CASUARINA BEACH**  
PARKING LAYOUT CONCEPT

SCALE: 1:500  
DATE: 20/03/13  
REV: 02

PLANITY  
PLANNING

NOTIFY



<b>10 LOT SUBDIVISION</b> DRYANDRAS COURT AND COLLINS LANE, CASUARINA	
<b>PROPOSED SEWER RETICULATION LAYOUT</b>	
TW. N-12013.00	
003   R1	
Prepared: 18/03/13	
Checked: 18/03/13	
Drawn: 18/03/13	
Date: 18/03/13	
Scale: 1:1000	
Project: N-12013.00	
Drawing: 003	
Title: PROPOSED SEWER RETICULATION LAYOUT	
Author: [Name]	
Designer: [Name]	
Checker: [Name]	
Date: 18/03/13	
Scale: 1:1000	
Project: N-12013.00	
Drawing: 003	
Title: PROPOSED SEWER RETICULATION LAYOUT	
Author: [Name]	
Designer: [Name]	
Checker: [Name]	
Date: 18/03/13	
Scale: 1:1000	
Project: N-12013.00	
Drawing: 003	
Title: PROPOSED SEWER RETICULATION LAYOUT	

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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 (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

Clause 5 of the TLEP 2000 relates to ecologically sustainable development. The TLEP 2000 aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

The subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the Ecologically Sustainable Development (ESD) principles.

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 mostly zoned 2(e) Residential Tourism and partly zoned 7(f) Environmental Protection (Coastal Lands), the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

Other relevant clauses of the TLEP 2000 have been considered elsewhere in this report and it is considered that the proposed subdivision 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 established residential nature of the local area.

#### Clause 11 - Zone Objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

#### **2(e) Residential Tourist Zone**

Primary objective

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

Secondary objective

- *To permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The proposed development for an eight lot residential subdivision within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

#### **7(f) Environmental Protection**

Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

Secondary objective

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

The proposed subdivision is considered to be appropriate in the 7(f) zone as any future residential dwelling/structure will be required to be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The approved use of all allotments will be residential, which is consistent with the surrounding land uses.

#### Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

#### Clause 16 - Height of Building

A 3 storey height limit applies to the site. No buildings are proposed as part of this application. The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

#### Clause 17 - Social Impact Assessment

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

#### Clause 21A

Clause 21A requires a minimum 40 hectares for land zoned 7(f) Environmental Protection. The proposed development site incorporates an approximate 15m wide strip of land zoned 7(f) along the eastern boundary of the site, approximately 16% of the site or 857.79m<sup>2</sup>. The area in question does not meet the 40 hectare requirement and as such, the applicant has lodged a SEPP 1 Objection with the application, specifically seeking variance to the minimum lot size development standard for the 7(f) zone. Further assessment in terms of the SEPP 1 Objection is detailed later in this report.

#### Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development.

It is considered that the proposed eight lot Torrens title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

Although the 2100 Coastal Hazard line is located within the development site (approximately 8m from the eastern property boundary), the 2100 Coastal Hazard line is within the 20m wide 7(f) zone. As such, no development is allowed within the 7(f) zone, including earthworks or vegetation removal is not permitted to take place that could influence coastal erosion processes. Therefore, the proposed development is considered to satisfy the provisions of Clause 27.

#### Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulfate Soils. Council's Environmental Health Unit has advised that the Statement of Environmental Effects (SEE) that accompanied DA06/1289 included an Acid Sulfate Soils Management Plan (ASSMP) (Cardno, 12 October 2006). The Environment and Health Services Report prepared for DA06/1289 outlined that the ASSMP was reviewed and considered to be adequate. A condition was recommended requiring compliance with the ASSMP.

The proposal requires infrastructure connections throughout the site, which is claimed by the applicant not to exceed 1.5 metres in depth.

Due to no works being proposed beyond 2 metres and that the site is highly disturbed, it is considered that no further assessment is required in this regard subject to conditions. It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit has advised that in accordance with a Council Resolution of 21 November 2001, no further testing for contamination was necessary. It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

Clause 39A - Bushfire Protection

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW Rural Fire Services has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

**State Environmental Planning Policies**

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

Clause 29A: Natural areas and water catchment

Clause 29A relates to the clearing of natural vegetation in environmental protection areas. The proposed development does not propose any vegetation removal within the 7(f) zone.

Clause 32B: Coastal Lands

The proposal is considered not to negate the objectives of the following policies;

- (a) The NSW Coastal Policy 1997;
- (b) The Coastline Management Manual, and
- (c) The North Coast: Design Guidelines.

This clause applies to the subject site as the NSW Coastal Policy applies. The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

Clause 33: Coastal hazard areas

*Before granting consent to development on land affected or likely to be affected by coastal processes, the council shall:*

- (a) Take into account the Coastline Management Manual;*
- (b) Require as a condition of development consent that disturbed foreshore areas be rehabilitated, and*
- (c) Require as a condition of development consent that access across foredune areas be confined to specified points.*

The proposal is for subdivision of existing residential allotments within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

As noted above, the 2100 Coastal Hazard line is located within the residue lot (approximately 8m from the eastern property boundary). No development is



allowed within the 7(f) zone, therefore no earthworks or vegetation removal will take place that could influence coastal erosion processes. The applicant states:

*“The proposal is for subdivision of an existing residential allotment within the Casuarina Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.”*

The proposal is consistent with the objectives of the Coastline Management Manual, a condition is recommended requiring disturbed foreshore areas be rehabilitated and access across foredune areas be confined to specified points.

#### 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.*

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised (in terms of low density residential development) without adversely affecting the environmental features of the land.

#### Clause 81: Development adjacent to the ocean or a waterway

- (1) *Council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:*
  - (a) *There is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,*

The proposal will not permanently reduce or affect access to or along the foreshore open space.
  - (b) *Buildings to be erected as part of the development will not detract from the amenity of the waterway, and*

No buildings are proposed as part of this development however, the future dwellings would be assessed to ensure that they do not detract from the amenity of the waterway.

(c) *The development is consistent with the principles of any foreshore management plan applying to the area.*

The proposal is consistent with the objectives of the Coastline Management Manual, a condition is recommended requiring disturbed foreshore areas be rehabilitated and access across foredune areas be confined to specified points.

(2) *Nothing in sub-clause (1) affects privately owned rural land where the development is for the purpose of agriculture.*

The site is not for the purpose of agriculture.

### SEPP No. 1 - Development Standards

A SEPP 1 objection accompanies the application. 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.

The 7(f) zoned land represents approximately 16% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size requirement of 450m<sup>2</sup>. It is proposed as part of this subdivision to include the 7(f) zoned land within proposed lots 7, 8, 9 and 10.

A SEPP 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

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

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

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

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

The applicant has adopted the first option being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted. Which states:

#### **21A Subdivision in Zone 7 (f)**

##### **(1) Objectives**

- *To protect the ecological or scenic values of coastal lands,*
- *To protect land that may be susceptible to coastal erosion processes from inappropriate development.*

In this regard, the applicant notes the following:



*“As discussed above and confirmed by judgments supported by the Land & Environment Court, the ability of a proposal to attain the objective of the standard and its intent are fundamental to the appropriateness of applying the standard in the first instance. Specifically the objective of Clause 21A seeks to protect the ecological or scenic values of coastal lands and protect land that maybe susceptible to coastal erosion processes from inappropriate development.*

*With reference to the above objective, it is noted that the site is located within the Central Precinct of the Casuarina Beach Estate. The proposed subdivision has been designed to replicate the existing layout with regard to the ‘beach front’ allotments and is clearly representative of the established subdivision pattern.*

*In this regard the established subdivision pattern provides ‘beach front’ residential allotments (inclusive of the subject site) which incorporate a part 2(e)/7(f) zoning. This configuration sees all 7(f) zoned land within the existing residential allotments provide areas less than 40 hectares. An effective visual representation of this situation can be found within Councils zoning maps, an extract is provided right:*

*Despite the lot size variation all existing ‘beach front’ allotments within Casuarina Beach achieve land uses generally in accord with the objectives for the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas. By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining ‘beach front’ allotments and that of the subject property. No adverse impacts will result to the established environmental character nor will development be permit on land subject to coastal erosion hazard.*

*The proposal meets the objectives of the development standard notwithstanding the non compliance with minimum lot size.”*

**Comment:**

Council agrees with the applicant in that compliance with the development standard not possible, and that the zone objectives are complied with. It is considered that the objectives of Clause 21A will be maintained by the proposed development, despite the minimum 40ha requirement not being met. As noted elsewhere in this report, there is no development proposed within the 7(f) zone and conditions of consent will prohibit any structures within the zone.

Therefore, it is Council’s opinion that the objectives of the standard (particularly relating to the protection of the ecological values of the land) are achieved, notwithstanding non-compliance with the standard. Land susceptible to coastal erosion processes will be protected from inappropriate development, by way of restrictions of use applied to each new allotment.

It is considered that strict compliance with the minimum lot size of 40ha for the 7(f) zone is unreasonable and unnecessary in this instance.

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

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

The applicant has noted the following:

*"It is noted that the variation requested is done so with particular reference to the content and wording of the objective to the standard. Accordingly, we have broken down the request for variation in to three (3) specific headings, each of which is identified within the objective proper.*

*An analysis in this context has been carried out as follows:-*

***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; and*
- 4. Will the development translate into excessive or avoidable impacts?*

*With reference to the above objective, it is noted that the subdivision partner of part 2(e) / 7(f) zoned allotments is well established within the Casuarina Estate. The intent objectives of the 7(f) zone as it relates to the Casuarina Estate has been achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas. The proposal will not alter this approach and will emulate the existing character of the locality'.*

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

*Despite the lot size variation all existing 'beach front' allotments within Casuarina Beach achieve land uses generally in accord with the objectives for the 7(f) zone. This is achieved by way of the regulatory requirements of Tweed Development Control Plan 2008 Section B5 and 88b Covenants which enforce no development and strict landscaping standards (native coastal dune species) in these areas.*

*By virtue of the proposal applying these existing controls the subdivision will effectively duplicate the established environmental and scenic characteristics of both the adjoining 'beach front' allotments and that of the*

*subject property. No adverse impacts will result to the established environmental character.*

*The SEPP No.1 Objection is considered to warrant support in that flexibility in planning controls is achieved and imposing compliance with the development standard is clearly a hindrance to the objects as listed in s 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979."*

**Comment:**

The proposal provides for the subdivision of a residue allotment into eight residential Torrens title subdivision in an existing subdivision that incorporates a development with access to utility services and is within close proximity to community facilities. The subject allotment has been identified for development since the creation of the Casuarina Beach Estate.

The SEPP 1 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 above objectives.

**3. It is also important to consider:**

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

The Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f). As such, the proposed non-compliance with clause 21A of the Tweed LEP 2000 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 only a minor portion of the site (16%) is zoned 7(f) Environmental Protection (Coastal Lands) and the proposed subdivision will have no impact upon that particular zone. That is, the area of land zoned 7(f) will remain unchanged, with all new development required to be located entirely within the 2(e) zoned land.

The streetscape and amenity of the locality will remain relatively the same, noting that the subject site is infill development within a well established residential precinct of Casuarina Beach estate.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. 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 21A is considered unreasonable and unnecessary in this instance. As such, the SEPP 1 Objection warrants support.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- "i. The majority of the lot is zoned 2(e) Residential Tourist and is clearly intended for residential purposes;*
- ii. The proposed subdivision is appropriate to separate the land intended for residential development from the remainder of the current allotment; and*
- iii. The proposal is unlikely to cause any detrimental impacts to the surrounding area.*

*Concurrence was granted on the basis that no structured works will be undertaken in the 7f) – or E2 zone."*

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

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's Environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

#### SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone or the subdivision of residential land into more than 25 lots, unless the Minister has waived the need for a master plan. As the proposal is for less than 25 lots (being eight lots, plus the two approved lots equates to 10 lots in total) correspondence from the Department of Planning and Infrastructure regarding a master plan requirement is not required.

#### SEPP (State and Regional Development) 2011

The proposed development is not required to be determined by the Joint Regional Planning Panel (JRPP) therefore the application can be determined by Council.

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

#### Draft Tweed LEP 2010

Under the Draft LEP 2010, the subject site is zoned R1 – General Residential and E2 Environmental Conservation. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP 2000. That is, the R1 land currently zoned 2(e) is identified as

Lot Size code G, which requires 450m<sup>2</sup>; the E2 land currently zoned 7(f) is identified as Lot Size code AB2, which requires 40ha.

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP 1 Objection); Council is satisfied that the written request adequately addresses all matters; the proposal will be in the public interest; and concurrence has been granted.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant was able to demonstrate that a dwelling could comply with Section A1 of Council's Tweed Development Control Plan for proposed Lot 3.

A2-Site Access and Parking Code

The proposal complies with Council's policy.

Council's design specifications also require that a minimum 9m kerb frontage is provided for each lot within a cul-de-sac arrangement, unless alternative provision for parking is made.

Proposed Lot 3 is a battleaxe allotment and meets the minimum requirements in regards to access handle width (4m). Therefore the lack of the 9m frontage in regards to Lot 3 is considered acceptable as the application proposes alternative provision for onsite parking and will be enforced via a consent condition - requiring an 88B restriction over Lot 3 for a designated off-street visitor parking space. The driveway within the access handle is to be constructed as part of the subdivision, as well as a concrete area for the off-street car parking space within the allotment.

Proposed Lots 4 and 5 will gain access from Dryandras Court.

Proposed Lots 4 and 5 will gain access via the shared use of an existing 8m wide concrete vehicular footpath crossing.

Proposed Lot 6 will have a concrete vehicular footpath crossing constructed at the western side of the lot frontage. Usually this would not be done at subdivision stage but due to the existing on-street marked parking spaces, and necessary separation distance to be provided to the shared driveway access for Lots 7 to 10, it will be required to be constructed at subdivision stage.

Proposed Lots 7 to 10 will gain access to Dryandras Court via a shared Right of Way (ROW) varying in width from 6m to 9m. A 4m wide concrete driveway will meander within this ROW.

The construction of the two vehicular footpath crossings for Lots 6 and 7-10 will necessitate some removal of existing on-street pavement marking (for car parking), as well as new marking or signage to easily delineate the two driveways amongst the existing parking bays. This can be addressed at construction certificate stage.

The number of existing on-street car parking spaces that are being removed by the proposed two vehicular footpath crossings for Lots 6 and 7-10, are to be replaced with the creation of additional car parking spaces at the end of

Dryandras Court. This is supported by Council's Traffic Engineer and subject to conditions.

#### A5-Subdivision Manual

#### **Lot size and solar orientation**

Regarding the relevant provisions governing lot size and geometric requirements, all allotments are compliant meeting both the 450m<sup>2</sup> minimum size and providing sufficient width and length to accommodate the required 10m by 15m building envelope and winter solar access and summer sun deflection.

#### **Geotechnical/Earthworks/Landforming**

The site is currently cleared and grassed. An existing 8m wide concrete cross over is on the Dryandras Court frontage, and fences are present on all boundaries. The land is generally flat with a gentle slope towards the south and east. Existing ground levels range from RL 8.4m to RL 7.8m along the western boundary, with a gentle slope towards the eastern and southern boundaries where ground levels range from RL 6.5m to 5.5m. Average gradients for the site range from 2.6% in the west-to-east direction and 1.3% in the north-to-south direction. No major bulk earthworks are proposed. The land has been previously filled in conjunction with prior development of the entire Casuarina estate. The existing land grading is appropriate for a single larger scale development over the site – but not for a subdivision.

A consequence of the site being subdivided is that stormwater management is now more difficult to satisfactorily achieve for individual lots, in accordance with the regime adopted consistently over the Casuarina estate. Most sites have been filled/graded to fall to the street, where roofwater infiltration pits – which are usually located in the front yards – can surcharge in large storm events and overflows can gravitate to the street. Some filling of the site will be necessary to facilitate fall to the street for relevant Lots (1 and 6). All new allotments will be required to infiltrate roof water, as per the rest of the Casuarina estate. An existing 88B restriction currently imposes this requirement, which will be required to be reiterated (for clarity) on the 88B instrument for this subdivision. Appropriate consent conditions will be imposed accordingly.

#### **Road Network/Horizontal/Vertical Alignment, Cross Section**

Collins Lane is classed as an Access Street and has a pavement width of 7m with roll over kerb and guttering. Collins Lane terminates in a cul-de-sac head at the northern boundary of the subject lot. Dryandras Court will be classed as an Access Street also, and has a pavement width of 7.8m and roll over kerb and guttering. Both roads have flat vertical and horizontal alignment. The roads are relatively new and the pavement is in good condition. No roadworks are required as a consequence of this subdivision proposal.

#### **Bus routes/Shelters**

The nearest bus route is located on Casuarina Way. All proposed lots within the subdivision are located within 400m of the existing bus shelters situated on Casuarina Way.

#### **Access**

Access to proposed Lot 3 is via the cul-de-sac in Collins Lane. Proposed Lots 4, 5 and 6 will gain access from Dryandras Court. Proposed Lots 7 to 10 will gain

access to Dryandras Court via a shared Right of Way (ROW) varying in width from 6m to 9m. A 4m wide concrete driveway will meander within this ROW, which must be widened to 4.5m to comply with A5.4.12 Lot Layout: Access to lots.

### **Battleaxe allotments/Cul-de-sac parking**

Proposed Lot 3 is a small residual battleaxe allotment and meets the minimum requirements in regards to access handle width (4m). Council's design specifications also require that a minimum 9m kerb frontage is provided for each lot within a cul-de-sac arrangement, unless alternative provision for parking is made. Proposed Lot 3 will create a small battleaxe lot accessing Collins Lane, within which the applicant will provide a designated off-street parking area. This is considered to be an acceptable alternative solution and will be enforced via an 88B restriction on that future subdivision. A concrete area for this off-street car park is to be constructed within the allotment.

### **Pedestrians/Footpaths/Cycleway**

The Collins Lane frontage has an existing 1.2m wide concrete footpath.

The Dryandras Court frontage has an existing 2m wide concrete footpath.

With regard to the treatment of the footpath areas, advice from Recreation Services is that the Collins Lane frontage will be required to be turfed, and that no street trees are necessary. The Dryandras Court frontage will require submission and approval of a landscaping plan.

### **Traffic Generation/Assessment**

Traffic generation has not been addressed in the development application, but it is considered that the proposed subdivision will not have any detrimental effect on the surrounding road network.

### **Parking/Manoeuvring**

The provision of appropriate visitor parking is usually addressed by the construction of new roads for subdivisions, which provide ample on-street parking. However the creation of multiple lots that don't have an actual street frontage creates an issue – especially when the lots are not generously sized.

To address this, provision for a designated off-street visitor parking space within Lots 3, 7, 8 and 9 has been nominated. This is considered to be an acceptable alternative solution and will be enforced via a consent condition - requiring an 88B restriction over those lots for a designated off-street visitor parking space. Construction of a concrete area for the off-street car parking space within those allotments will be a requirement of this consent.

### **Lawful point of discharge**

The subdivision is an infill subdivision with all major surrounding stormwater infrastructure installed. Stormwater is managed mainly by infiltration into the existing sandy soils, with most overland flows gravitating to the south-east and collected in existing gully pits located in Dryandras Court. The stormwater is then directed towards existing infiltration basins located to the east of the subject land. Minor filling will be required to ensure proposed Lots 1 and 2 – as well as future Lot 3 - drain towards Collins Lane. Most of the properties within the Casuarina estate have been graded to fall to the street, where roofwater infiltration pits –

which are usually located in the front yards – can surcharge in large storm events and overflows can gravitate to the street.

The alternative of providing an inter-allotment stormwater drainage line, and associated swale drain, would have a detrimental impact on the developable areas of the lots, particularly proposed Lot 3, due to its small size and irregular battleaxe shape. Therefore site filling to facilitate this stormwater management regime will be a condition of consent. All new allotments will be required to infiltrate roof water, as per the rest of the Casuarina estate. An existing 88B restriction currently imposes this requirement, which will be required to be reiterated (for clarity) on the 88B instrument for this subdivision.

### **Water Supply**

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

There are no concerns raised regarding new connections for each proposed lot.

Lots 7, 8, 9 and 10 will be serviced via an Easement for Services located at the rear of those lots, overlapping with the Right of Carriageway. Water service conduits for Lots 7, 8 and 9 will be required to be laid beside the driveway as part of the subdivision works, due to the minimal area available for provision of services within the ROC/Easement for Services. The location of the water meters for Lots 7, 8 and 9 will be covered by an easement.

Recommended conditions of consent shall require the provision of service in accordance with Council's standards.

### **Sewer**

Council's piped sewer infrastructure is available within the area. There is an existing sewer manhole in the north-eastern corner of the site, and a 225mm gravity main is located along the eastern boundary of the subject lot in the 7(f) environmental zone. Due to the excessive depth of the sewer main it is classified as a trunk main, and individual property connections directly from this main are not permissible.

Matters for mention:

- To avoid extra works within the 7(f) zone, the sewer connection for Lot 7 could be provided at the western side of the lot, via a short dead-end line coming from the manhole within Lot 9 (ie: relocated out of Lot 8).
- The sewer junctions for Lots 8 and 9 will be required to extend beyond the 'Easement for Services' to avoid possible future conflicts with conduits for other services.

Recommended conditions of consent shall require the applicant to provide a service to all lots in accordance with Council's standards.

### **Electricity**

Electricity services are currently provided to the area via Country Energy underground infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.



As Lots 7, 8 and 9 have no street frontage but will be benefited by an Easement for Services, it will be a condition of consent that appropriate conduits be laid within this easement to cater for all service provisioning of those lots, as part of the subdivision works. This is necessary as the Easement for Services overlaps with the Right of Carriageway, with minimal room available for all required conduits. These comments also apply for the following telecommunication provisioning.

#### **Telecommunication**

Telecommunication services are currently provided to the area via Telstra underground infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.

#### **Waste/Refuse collection**

Lots 7, 8, 9 and 10 are being provided with a designated bin enclosure area within the Right of Carriageway over Lot 10. This arrangement has been accepted by Council's waste contractors Solo Resource Recovery per Solo Resource Recovery letter dated 22.5.2012.

#### A11-Public Notification of Development Proposals

The proposed development was notified for a period of 14 days from 24 December 2012 to 18 January 2013. Council did not receive any submissions in relation to this application.

#### B5-Casuarina Beach

The proposed subdivision is not inconsistent with the plan, with the proposed subdivision layout consistent with established subdivision pattern within the Casuarina locality.

The applicant proposed the following comment in relation to Section B5:

*"The site has been approved for the development of ninety two (92) one (1) bed tourist accommodation units under development consent DA06/1289. As demonstrated through other developments within Casuarina and surrounding areas demand no longer exists for such proposals and development of such a product on the site is commercially unviable.*

*Subdivision of the site is consistent with a number of existing approvals issued within Casuarina for allotments that were identified for medium density purposes within the Casuarina master plan. Councils support for lower density development within Casuarina has again been demonstrated within the recently determine consent DA11/0444. This proposal has seen the redevelopment of lots previously approved for medium density uses within the master plan subdivided into low density residential allotments in response to market conditions.*

*The proposal is consistent with the established approach and will enable the timely, orderly and economic development of the land."*

#### B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast.

#### B25 – Coastal Hazards

The Aim of this Section are:

- *To provide guidelines for the development of the land having regard to minimising the coastal hazards risks (a function of likelihood and consequence) to development on land in proximity to the Tweed Coast.*
- *To establish if the proposed development or activity is appropriate to be carried out, and the conditions of development consent that should be applied if it is to be carried out, having regard to the coastal hazard lines established in the Tweed Coastline Hazard Definition Study 2001 (as amended).*
- *To minimise the risk to life and property from coastal hazards associated with development and building on land that is in proximity to the Tweed Coast.*
- *To maintain public access to public land on the Tweed Coast.*

The subject site is partially located within the 2100 hazard line shown on the mapping to Section B25. This subdivision will propose Lots 7, 8, 9 and 10 located partially within the 2100 hazard line. As the proposal will be replicating all existing covenant restrictions and will be subject to the provisions of Section B5 of the TDCP 2008. No structures other than coastal themed fencing will be permitted within the parts of the allotments which fall within 2100 hazard line.

The proposal does not compromise the provisions of Section B25 of the TDCP 2008.

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

##### Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is considered to be consistent with the relevant provisions of the NSW Government Coastal Policy 1997.

##### Clause 92(b) Applications for demolition

Not Applicable.

##### Clause 93 Fire Safety Considerations

Not Applicable.

##### Clause 94 Buildings to be upgraded

Not Applicable.

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

##### **Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. This management plan is applicable to the proposed

development. Appropriate conditions of consent have been applied to ensure that the proposal will comply with the provisions of the management plan.

**Tweed Coast Estuaries Management Plan 2004**

This Plan relates to the Cudgen, Cudgera and Mooball Creeks and is therefore not applicable to the proposed development.

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

This Plan relates to the Cobaki and Terranora Broadwater's and is therefore not applicable to the proposed development.

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

The proposal is considered not to create significant impacts on the natural and built environments or social or economic impacts in the locality.

**Context and Setting**

The proposal is considered compatible with the existing density and character of surrounding Casuarina Beach development and locality.

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

The property is/can be fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to main roads. The site and surrounding properties are zoned for residential development. It is therefore considered that the site is suitable for the proposed development.

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

The proposed development was notified for a period of 14 days from 24 December 2012 to 18 January 2013. Council did not receive any submissions in relation to this application.

**Department of Planning and Infrastructure**

As noted previously within this report, the Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f).

**NSW Rural Fire Services**

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act, the proposed subdivision was referred to the NSW RFS as Integrated development. The NSW RFS has granted a bushfire safety authority, subject to conditions of consent which have been applied.

**(e) Public interest**

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

**OPTIONS:**

1. Approve the development application with conditions; or
2. Refuse the development application and provide reasons.

Council officers recommend Option 1.

**CONCLUSION:**

The proposed development is consistent with the applicable environmental planning policies. The proposal is considered not to result in adverse cumulative impacts on the natural or built environments, with the site suitable for the development.

**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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**23 [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**

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**Civic Leadership**

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**SUMMARY OF REPORT:**

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 2586m<sup>2</sup> 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 245m<sup>2</sup>.

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:**

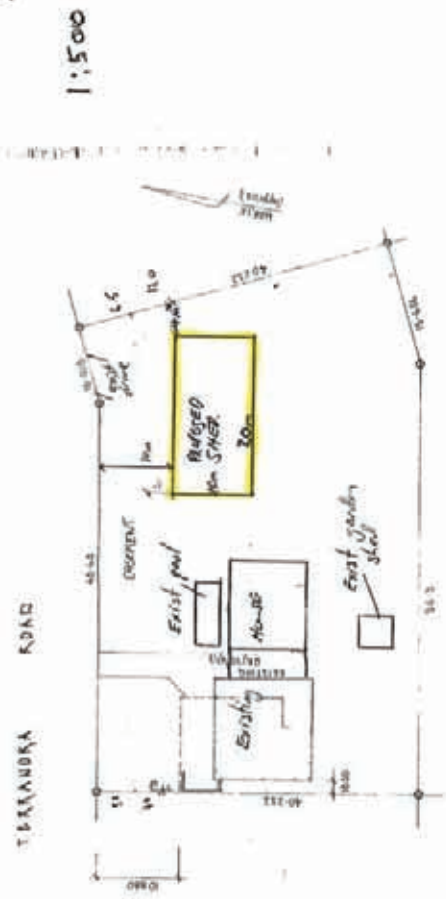


**Locality Plan**  
 Lot 3 DP 211196;  
 No. 385 Terranora Road, Banora Point

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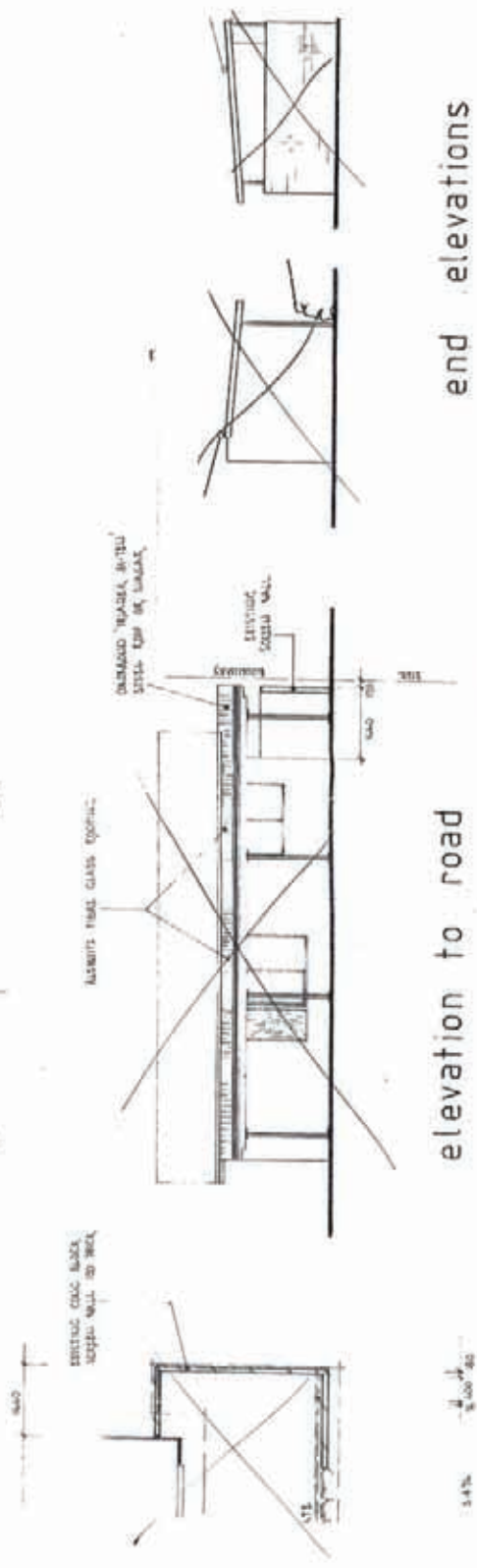
APPROVED PLANS UNDER DA11/0254:

Justin Erner 042133673



site plan

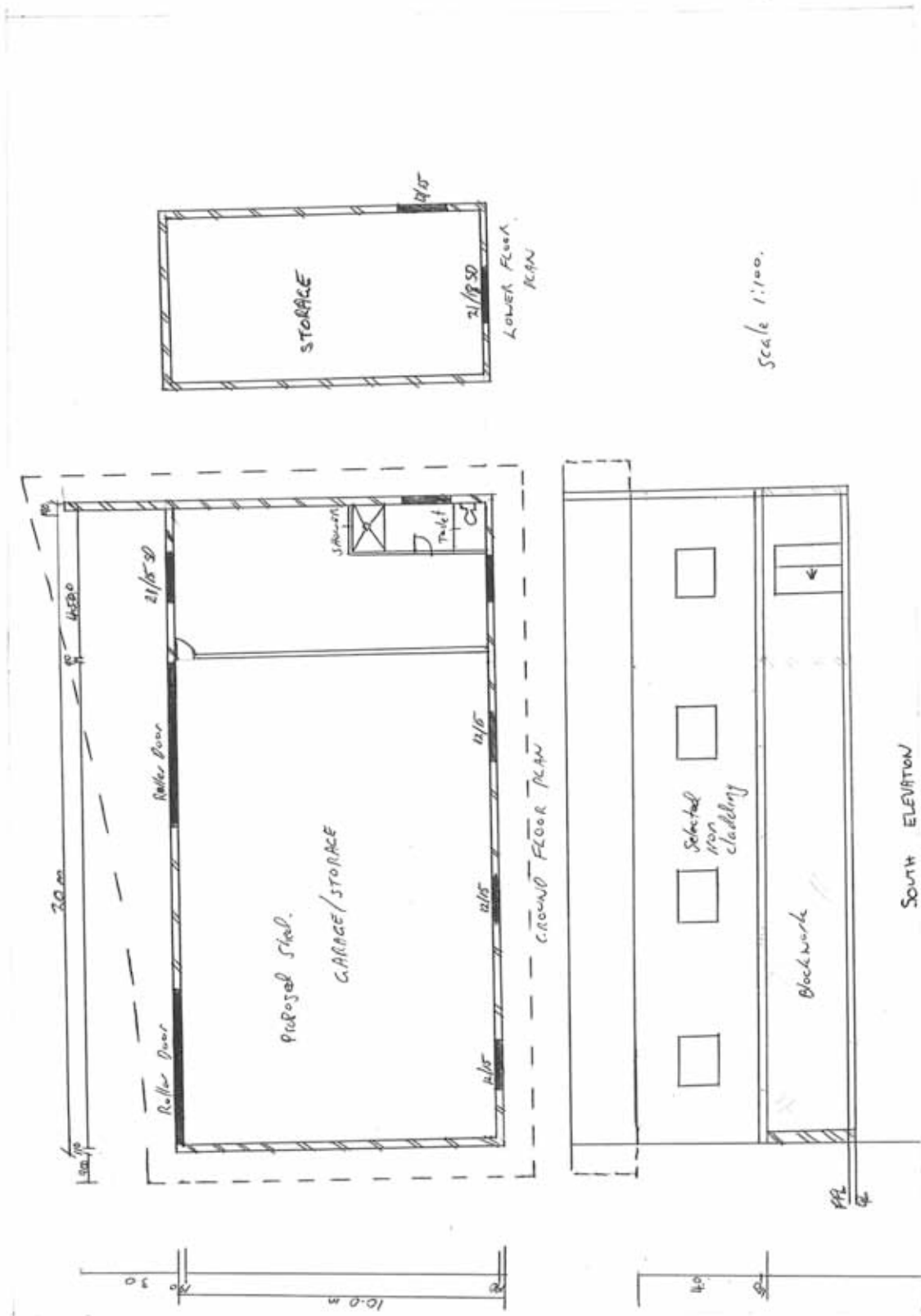
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FOR THIS PROJECT IS NOT  
GUARANTEED. APPROVAL  
IS SUBJECT TO THE  
COUNCIL'S DECISION.

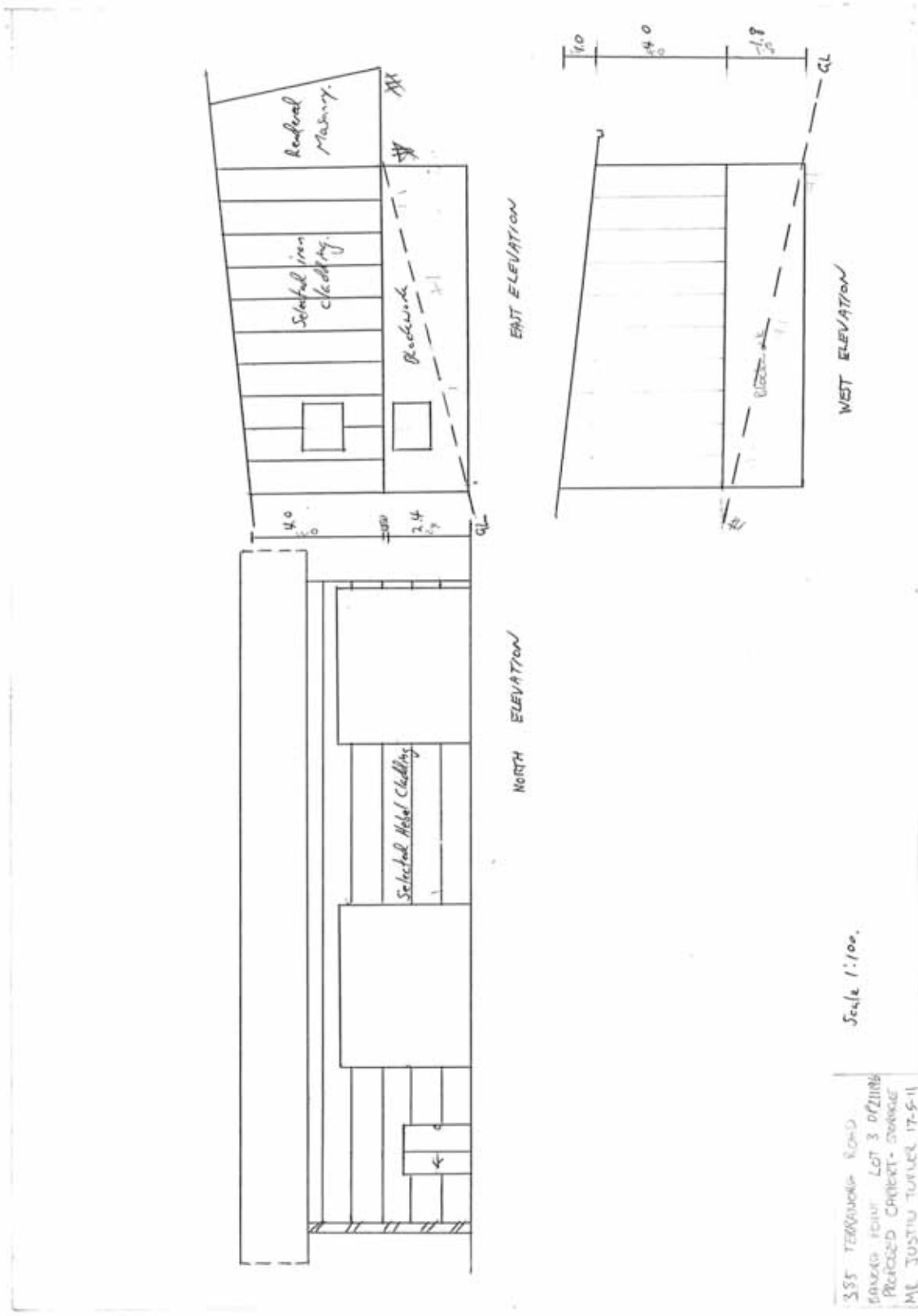


elevation to road

end elevations

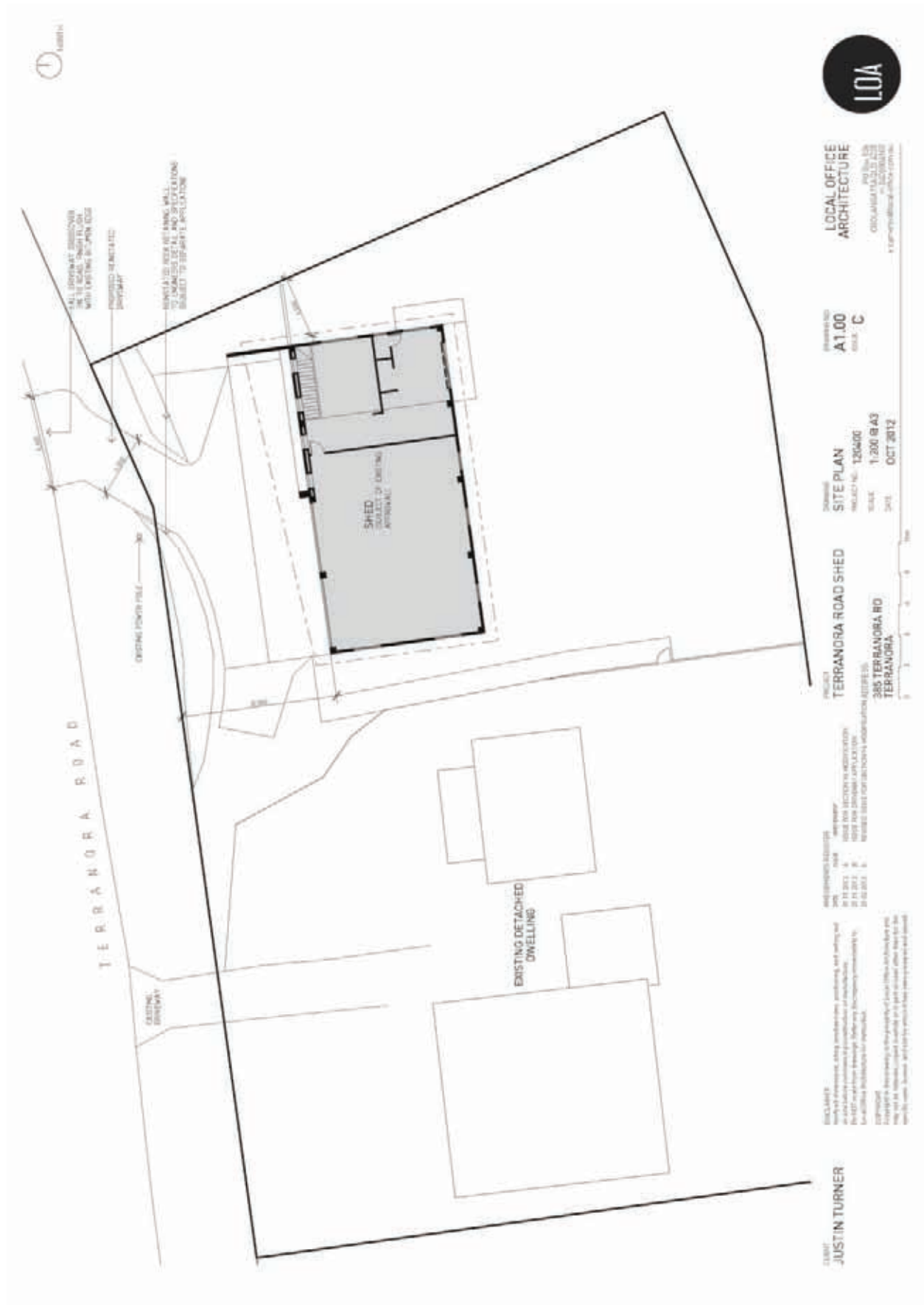
OK TO SUBMIT  
10/03/13  
10/03/13







AMENDED PLANS:



**LOCAL OFFICE ARCHITECTURE**  
 10/111 128  
 GOULBURN RD  
 WARRANCOHALLE  
 WARRANCOHALLE NSW 2570  
 t 61 61 4371 1111  
 www.localoffice.com.au

PROJECT NO: **A1.00**  
 TITLE: **C**

DATE: **1.200.8.13**  
 DATE: **OCT 2012**

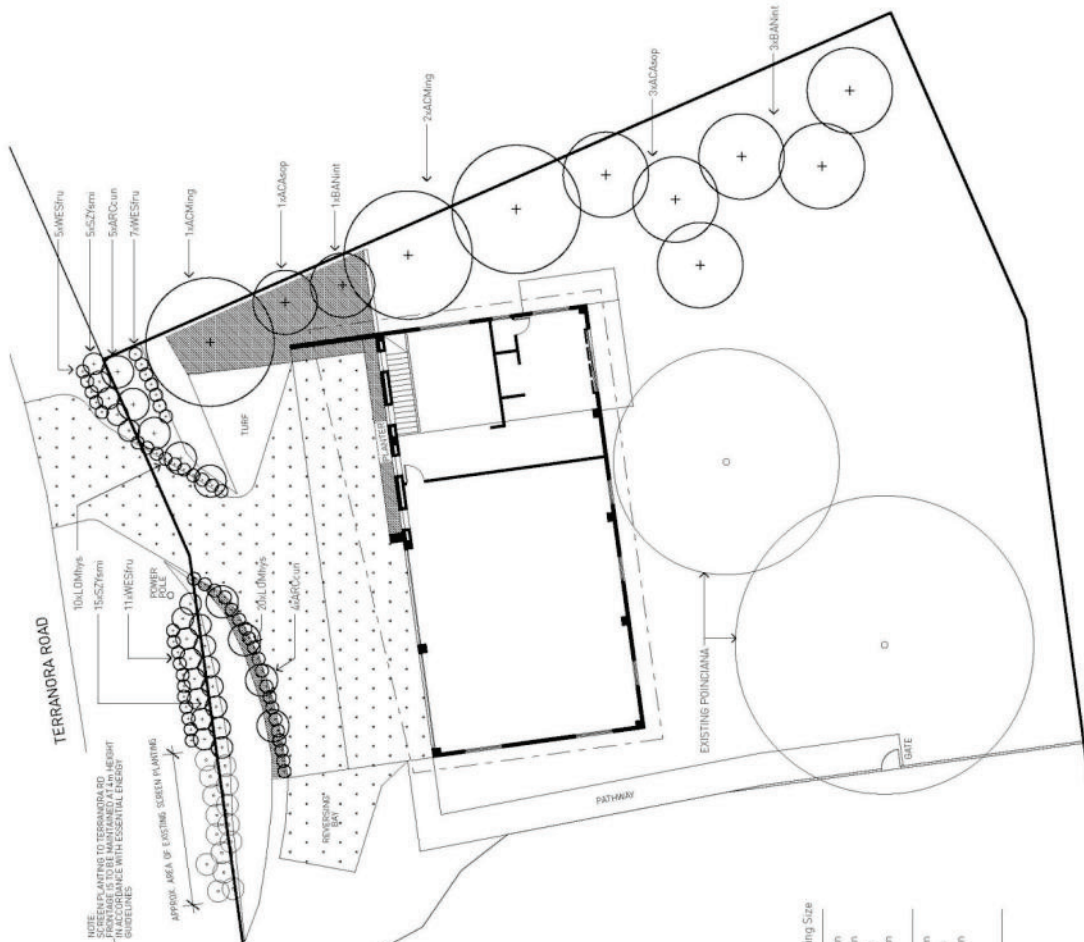
PROJECT: **TERRANORA ROAD SHED**  
 385 TERRANORA RD  
 TERRANORA

DATE: **11.2012**  
 DATE: **11.2012**  
 DATE: **11.2012**  
 DATE: **11.2012**

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DESIGN: **JUSTIN TURNER**





**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	ACAasp	Acacia sophorae	Coastal Wattle	3000	3000	140mm
	3	ACMing	Acmena integrifolia	Red Apple	5000	3000	75mm
	4	BANhit	Banksia integrifolia	Coast Banksia	5000	3000	140mm
Shrubs	20	SZ7em	Syzygium smithii	Firescreen	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

ARCHITECTURE REGISTER: 44242497  
 DATE: 21.02.2013  
 ISSUE: A  
 ISSUE FOR SECTION 116 MODIFICATION

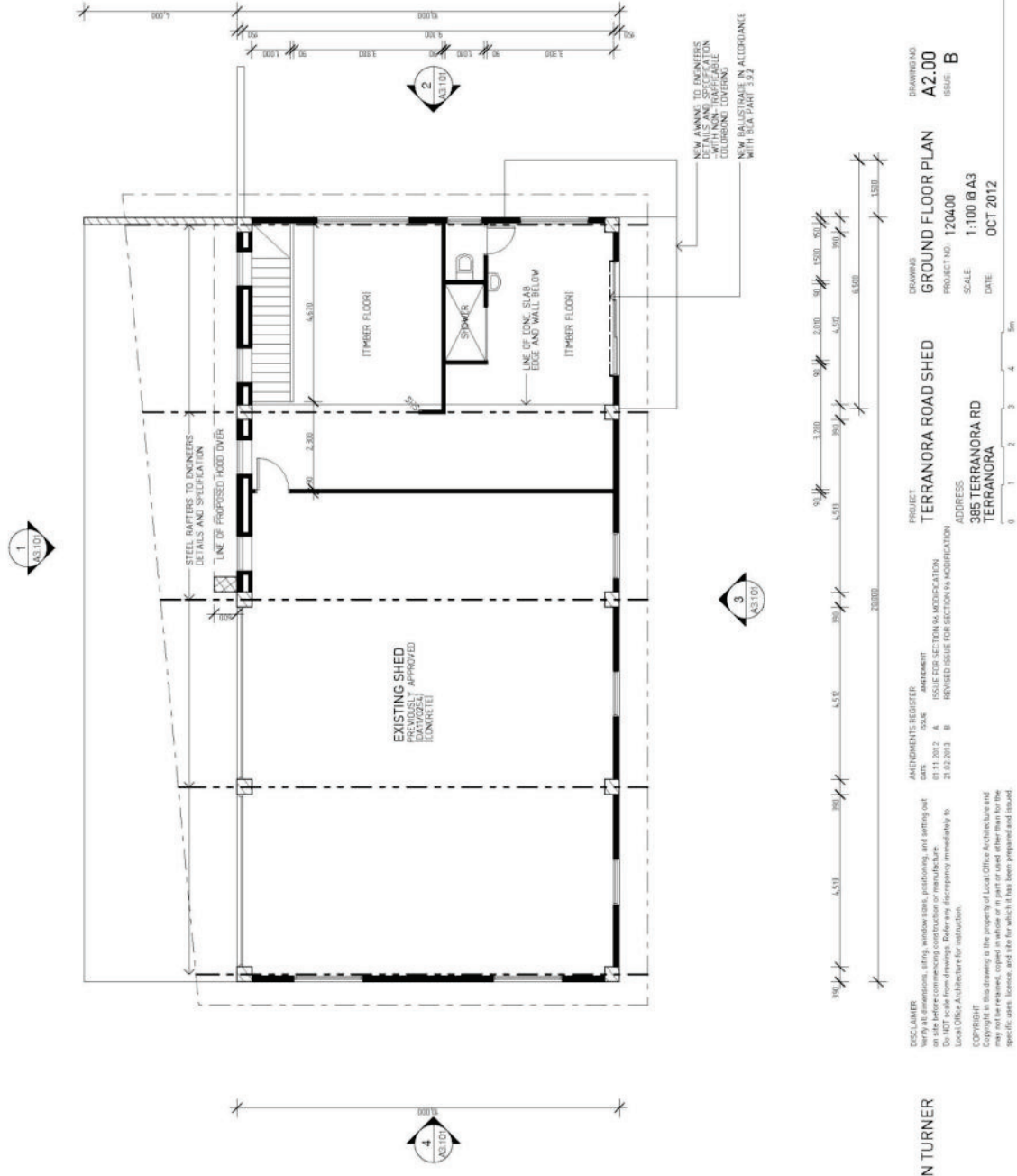
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 ADDRESS: 385 TERRANORA RD  
 TERRANORA

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**

AMENDMENTS REGISTER  
DATE  
ISSUE FOR SECTION 16 MODIFICATION  
08.11.2012 A  
21.02.2013 B  
REVISED ISSUE FOR SECTION 16 MODIFICATION

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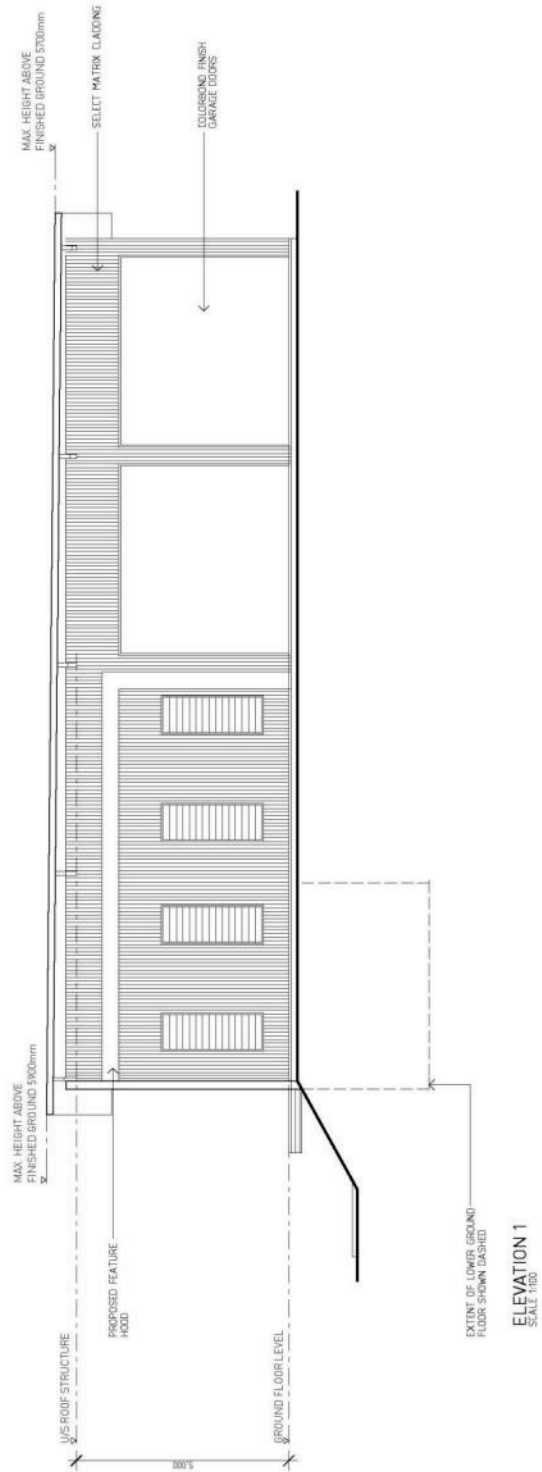
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PROJECT  
**TERRANORA ROAD SHED**  
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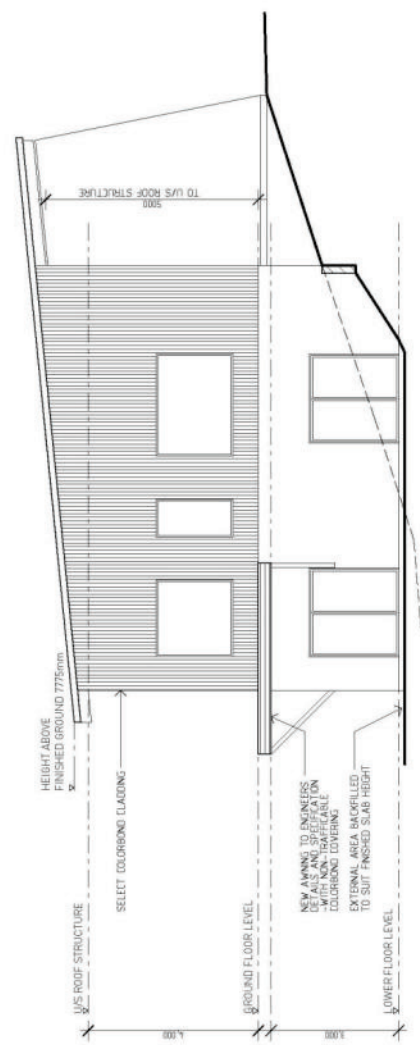
DRAWING NO.  
**A2.00**  
ISSUE  
**B**

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





ELEVATION 1  
SCALE 1/80



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 ISSUE FOR SECTION A MODIFICATION

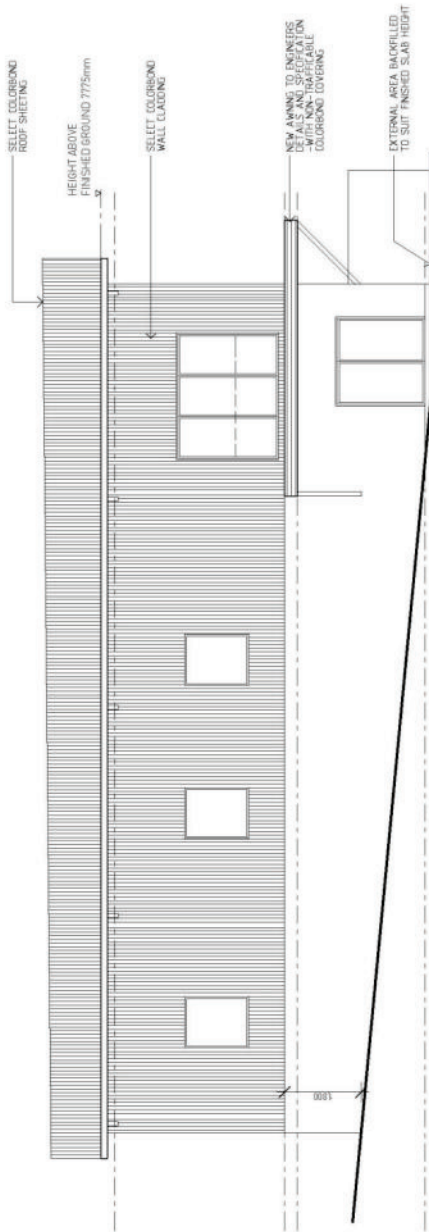
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ADDRESS  
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TERRANORA**

DRAWING NO  
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ISSUE  
**B**

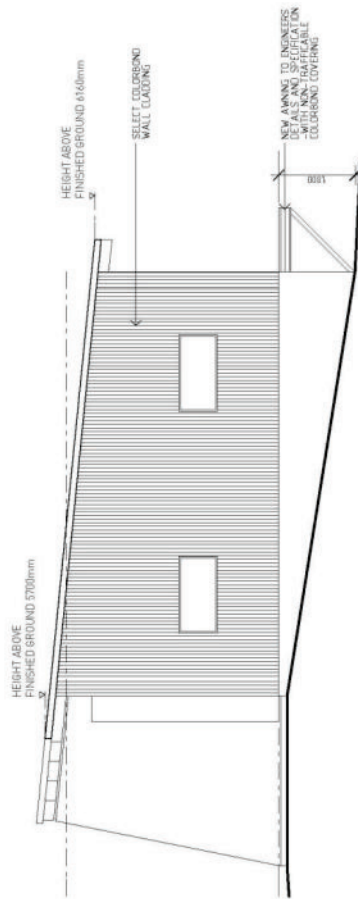
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PROJECT NO. **120400**  
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DATE: **OCT 2012**

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ELEVATION 3  
SCALE 1:50



ELEVATION 4  
SCALE 1:50

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DRAWING NO  
**A3.01**  
ISSUE **B**

DRAWING  
**ELEVATIONS 2**  
PROJECT NO. **120400**  
SCALE: **1:100 @ A3**  
DATE: **OCT 2012**

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

AMENDMENTS REGISTER  
DATE  
08.11.2012  
21.02.2013  
ISSUE  
ISSUE FOR SECTION 94 MODIFICATION  
REVISED ISSUE FOR SECTION 94 MODIFICATION

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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 2586m<sup>2</sup> 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 120m<sup>2</sup> 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.

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**24 [PR-CM] Planning Proposal PP12/0001 - No. 420-434 Terranora Road, Terranora**

**SUBMITTED BY: Planning Reforms**

**FILE REFERENCE: PP12/0001 Pt1**

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**Civic Leadership**

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**SUMMARY OF REPORT:**

This report seeks Council's conditional support for Planning Proposal PP12/0001 No. 420-434 Terranora Road, Terranora. The planning proposal seeks to rezone Lots 2-8 in DP 28597 from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan (LEP) 2000 and R2 Low Density Residential under the Standard Instrument LEP, to permit the construction of a dwelling on each lot.

The request as lodged with Council consists of seven allotments, none of which have a dwelling entitlement, and which are heavily constrained, requiring further investigations to ensure that constraints such as effluent disposal, water supply, stormwater management, access to Terranora Road, and visual impact are adequately addressed to progress this rezoning.

Consistent with the intention of the Gateway planning process to minimise up-front costs to the proponent, it is proposed that, should the landowner agree to enter into a planning agreement, (which guarantees planning outcomes and ensures that critical constraints are addressed to the satisfaction of Council prior to public exhibition), that Council will forward the proposal to the Department of Planning and Infrastructure for an initial Gateway Determination.

Whilst the Gateway determination does not infer concurrence or latent approval of the proposal, it does provide guidance on mandated studies and public consultation requirements should the proposal proceed this far. However, should agreement with the landowner regarding a planning agreement not be reached prior to sending the Planning Proposal to the Gateway, there will be no certainty about planning outcomes, such as provision of sewerage. If this cannot be achieved the planning proposal should not be supported and the rezoning should not proceed to the Gateway.

While this request and Planning Proposal is for seven vacant allotments, an additional four allotments adjoin the site and Terranora Road, which have all previously been developed and contain residential dwellings. These 11 allotments form a remnant of land not zoned at the time that Area E, which adjoins the northern boundary, was rezoned to 2(c) Urban Expansion.

Whilst this planning proposal does not include the four adjoining developed sites, it is considered logical for these sites to be included; however, because these landowners were not included in the original rezoning request, and have not been consulted at this time, it is proposed that the planning proposal as per the initial request be presented to the Gateway for an initial determination, and that discussions with affected landowners for inclusion of the

additional four sites commence and be considered as part of a subsequent review of the Planning Proposal post-Gateway, with a further report being presented to Council.

**RECOMMENDATION:**

**That:**

- 1. Council provides conditional support for Planning Proposal PP12/0001 to rezone Lots 2–8 DP 28597 from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed Local Environmental Plan (TLEP) 2000, subject to Recommendations 2, 3, 4 and 5 below;**
- 2. Council officers enter into negotiations with the owner of Lots 2-8 DP 28597, 420-434 Terranora Road, Terranora, for the preparation of a Planning Agreement pursuant to s 93F of the *Environmental Planning and Assessment Act* 1979, which ensures that development of vacant allotments does not occur until such time as critical constraints affecting the site, the number and configuration of allotments are addressed to the satisfaction of Council, and prior to public exhibition of the Planning Proposal, and that ongoing maintenance and management requirements are secured within the planning agreement; and**
- 3. Should the landowner agree in writing to enter into a planning agreement as described in '2' above, that the draft Planning Proposal attached to this Council Report be amended to incorporate an acknowledgement of this concurrence and that the Planning Proposal be forwarded to the Department of Planning and Infrastructure for an initial Gateway Determination; and**
- 4. Should the proponent not agree in writing to enter into a planning agreement prior to forwarding the Planning Proposal to the Department of Planning and Infrastructure for an initial Gateway Determination, that the planning proposal not be referred for a Gateway Determination.**
- 5. Should any one of the critical constraints affecting the site not be resolved to the satisfaction of Council, that the planning proposal not be placed on public exhibition and a further report be prepared for Council's consideration detailing any prevailing issues.**
- 6. Consultation with the landowners of the four adjoining properties, Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597 commence regarding their inclusion within a revised planning proposal post receipt of the initial Gateway Determination for Lots 2-8 DP 28597, and a further report be prepared for Council's consideration detailing the specifics of the consultation and recommendations for proceeding with the rezoning of those properties.**
- 7. The Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance.**

## REPORT:

### Background

A request was received on 13 July 2012 from Planit Consulting on behalf of the landowner Mrs Julie Stone for a rezoning of Lots 2-8 DP 28597, No. 420-434 Terranora Road, Terranora, from 1(a1) Agricultural Protection to 2(a) Low Density Residential.

The site consists of seven allotments fronting Terranora Road, each with an area of less than 900m<sup>2</sup> with a total combined area of 6,020m<sup>2</sup>. None of the lots enjoy an entitlement for the erection of a dwelling.

The site is located approximately 1.8 km to the east of Terranora Village. The site is vacant and slopes steeply to the north away from Terranora Road. The land is surrounded to the north by the Area E urban release area, which has previously been rezoned from Agricultural Protection and non-urban zones to 2(c) Urban Expansion under Tweed LEP 2000. The land to the south has been developed as large lot rural residential subdivision, known as 'Azure'.

An additional four adjoining allotments (one to the east and three to the west), each of which contains a residential dwelling, make up the remainder of remnant allotments not rezoned as part of the Area E residential rezoning, making a total of eleven lots zoned 1(b1) Agricultural Protection north of Terranora Road covering a total area of 1.005 hectares. Refer to Figure 1 Site Locality, and Figure 2 relationship to adjoining land.

In accordance with Council's Schedule of Fees and Charges 2012-2013 and competitive tender process, a Contract for Service was issued to GHD who were successful in tendering for review of the original request, preparation of the draft Planning Proposal and Council Report. Their assessment of the request and Planning Proposal as endorsed by the Planning Reform Unit project manager follows.

### Site Context

The Area E urban release area lies directly to the north and downslope of the site. Area E has been zoned 2(c) Urban Expansion and a Development Control Plan has been endorsed but not adopted by Council. Refer to Figure 3 LEP 2000 zones. Figure 4 Proposed Zoning under Tweed LEP 2000 shows the potential rezoning outcome of this planning proposal.

The site was not considered during the environmental, suitability and capability investigations into 'Area E'; as a result, planning strategies such as the Far North Coast Regional Strategy (FNCRS) 2006 and Tweed Urban and Employment Land Release Strategy (TUELRS) 2009 have also excluded the site from their mapping.

The rezoning of Area E excluding the subject site has effectively resulted in a small, fragmented (previously subdivided) rural zoned pocket of land surrounded by existing and proposed residential and rural residential development. The subject site cannot be reasonably, economically or productively used for agricultural uses, nor developed for residential uses due to existing allotment size restrictions and lack of dwelling entitlements.

The proponent has argued that the proposal is justified as the existing zoning is anomalous and that the site's omission from Area E was an oversight. It is also claimed that the attainment of the objectives of the *Environmental Planning and Assessment Act 1979*, primarily the orderly and economic development of the site, is restricted by the existing zoning.

A review of the request to prepare a planning proposal has been undertaken by GHD and Council, with a discussion of the issues presented below:

FIGURE 1: LOCALITY PLAN:

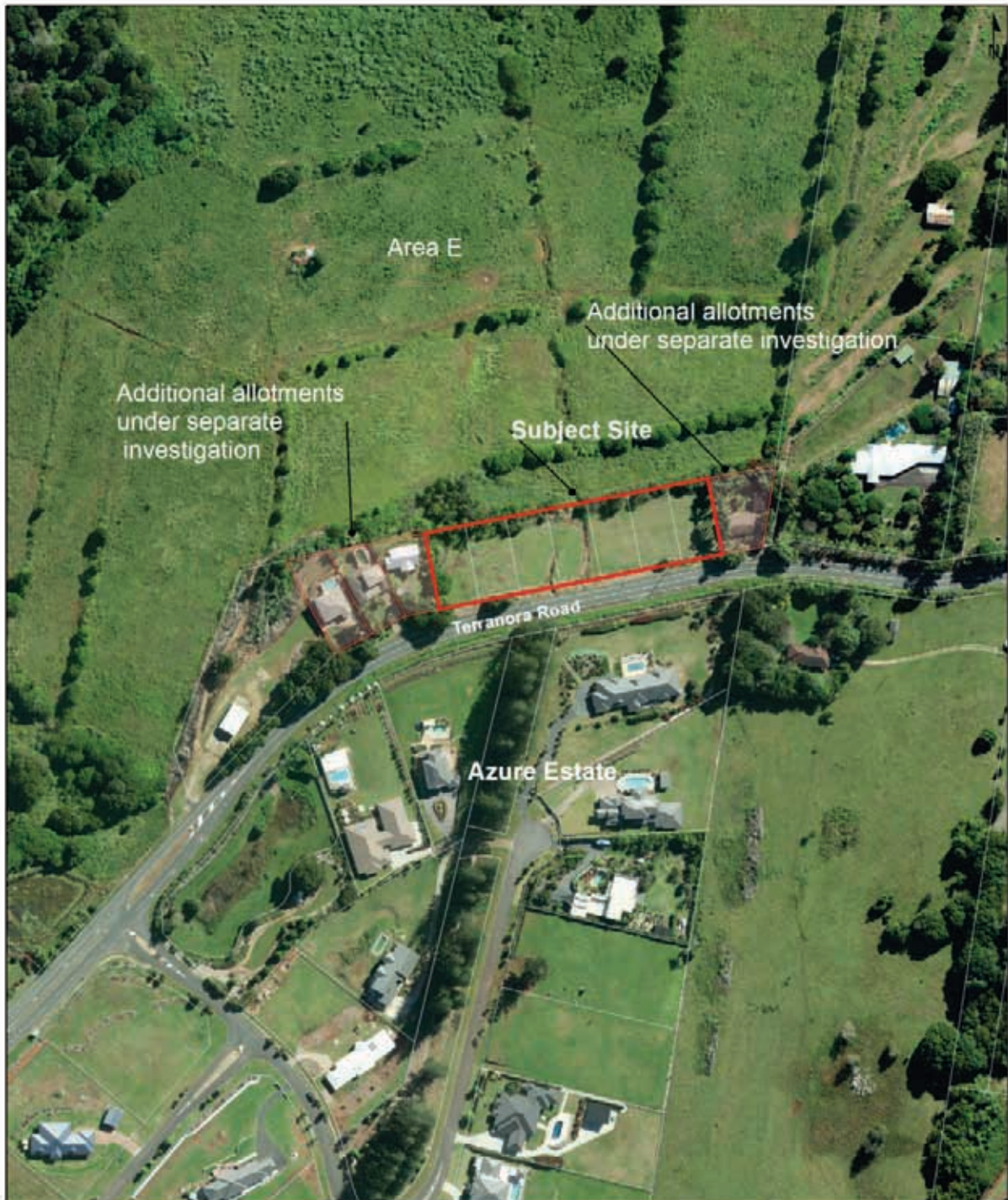


**Figure 1. Locality Plan**  
 Lots 2-8 DP 28597  
 Terranora Road, Terranora

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, in relation to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and it is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any acquisition a "due diligence" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of issue.</small></p>	<p>Calendar: 06 March, 2013                  © Land and Property Management Authority (LPMA) &amp; Tweed Shire Council                  Boundaries shown should be considered approximate only</p>	<p>0 1 2 Km                  1:125,000 @ A4 Portrait                  GDA 94 MGA                  GDA  <small>Map Projection: Universal Transverse Mercator                  Reference Datum: Geocentric Datum of Australia 1984                  SRS: Map Grid of Australia, Zone 56</small></p>	<p><b>Civic and Cultural Centre</b>                  2 Cambridge Road                  Murwillumbah NSW 2484                  PO Box 816                  Murwillumbah NSW 2484                  T: (02) 6676 2400   (02) 6676 8172                  F: (02) 6676 2425                  W: www.tweed.nsw.gov.au                  E: planning@tweed.nsw.gov.au</p> 
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FIGURE 2: AERIAL VIEW OF THE SUBJECT SITE AND PROPOSED ADDITIONAL ALLOTMENTS



**Figure 2. Aerial View of subject site and proposed additional allotments**  
 Lots 2-8 DP 28597  
 Terranora Road, Terranora

<p>SOURCE: Aerial imagery taken May 2012 by AAB</p>	<p>Collective: 06 March 2013          © Land and Property Management Authority (LPM) &amp; Tweed Shire Council          Boundaries shown should be considered approximate only.</p>	<p> Subject parcels   Additional Allotments Proposed for Inclusion</p>		
<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation liability or responsibility for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred) as a result of data being inaccurate in any way and for any reason. This information is supplied for the general public and is to be considered subjective and approximate only. It should not be used for survey or construction purposes and prior to any excavation a "Hit before you Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of issue.</small></p>	<p> Geospatial Systems          BSA Zone 55          datum - GDA94</p> <p><small>Drawn: 06 March 2013          Author: J. Lepp - Information Technology Unit          Project: 1100 - Addressed lot 1 to 8 (DP 28597) (Terranora - part 2)</small></p>	<p>0 12.5 25 50 M          1:2,500          DO NOT SCALE          COPY ONLY - NOT CERTIFIED</p>	<p>Civil and Catalog Centre          3 Tomingley Road          Murumbidgee NSW 2458</p> <p>610 Blue Hill          Murumbidgee NSW 2458</p> <p>T: (02) 6670 2400   1300 200 877          F: (02) 6670 2429          W: www.tweed-shire.nsw.gov.au          E: lpm@twedshire.nsw.gov.au</p>	

FIGURE 3: TWEED LOCAL ENVIRONMENTAL PLAN 2000

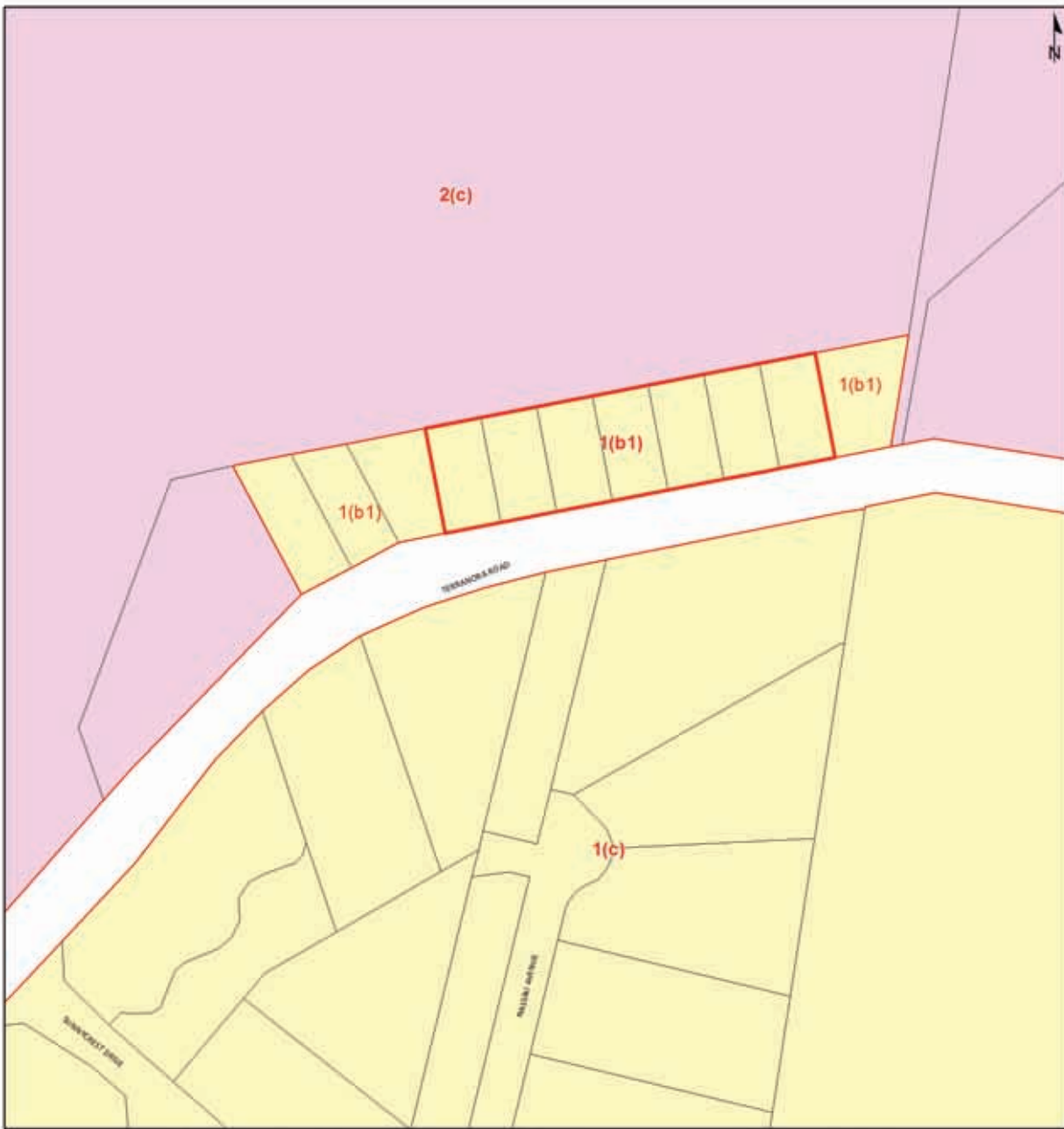


Figure 3. Tweed Local Environmental Plan 2000

Lots 2 - 8 DP 28597  
Terranora Road, Terranora

ZONING	RESIDENTIAL	BUSINESS	INDUSTRIAL	ENVIRONMENTAL PROTECTION	NATIONAL PARKS & NATURE RESERVES
<b>RURAL</b> 1(a) Rural 1(c) Rural Living 1(b1) Agricultural Protection 1(b2) Agricultural Protection	2(a) Low Density Residential 2(b) Medium Density Residential 2(f) Tourist 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist	3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourist 3(f) Jack Evans Road Harbour	4(a) Industrial <b>SPECIAL USES</b> 5(a) Special Uses <b>OPEN SPACE</b> 6(a) Open Space 6(b) Recreation	7(a) Environmental Protection (Wetlands and Littoral Rainforest) 7(b) Environmental Protection (Coastal / Escarpment) 7(c) Environmental Protection (Coastal Lands) 7(d) Environmental Protection (Harbour)	8(a) National Parks and Nature Reserves <b>DEFER</b> 9(a) Deferral 9(b) Subject parcels
<b>ADDITIONAL CONTROLS</b> Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Area)	Clause 52 (Cibak)(A) Clause 52 (Cibak)(B) Clause 52 (Existing and Future Dam Areas)	Clause 52 (Minimum Lot Size) Clause 52 (Stormwater and F&E) Clause 52 (Schedule 3 Sewer)	Clause 52 (Pottery)	Clause 52 (Pottery)	Clause 52 (Pottery)

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**Coordinate System:**  
 WGA Zone 56  
 Datum: GDA94

Date Printed: 06 March 2013  
 Author: C. Leary - Information Technology Unit  
 Filepath: Z:\GIS\_data\20002009\2000\_4000\WGS84\2000\_LTP2000\_A4F.mxd

Scale: 0 10 20 40 M  
 1:2,000  
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Created: 06 March 2013  
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FIGURE 4: PROPOSED TWEED LOCAL ENVIRONMENTAL PLAN 2000

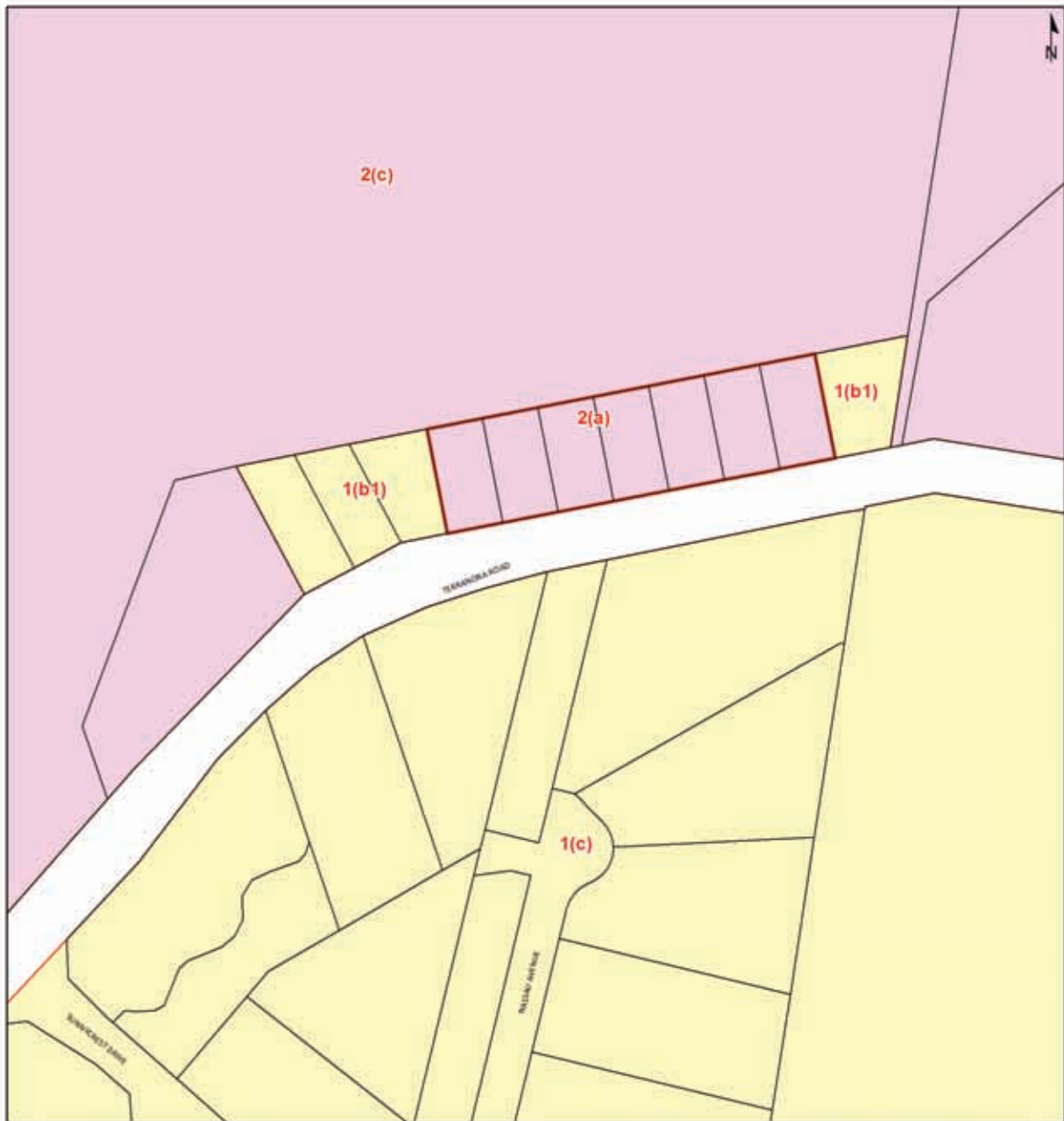


Figure 4. Proposed Tweed Local Environmental Plan 2000  
 Lots 2 - 8 DP 28597  
 Terranora Road, Terranora

<b>ZONING</b> <b>RURAL</b> 1(a) Rural 1(c) Rural Living 1(b1) Agricultural Protection 1(b2) Agricultural Protection	<b>RESIDENTIAL</b> 2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Tourism 2(d) Urban Expansion 2(e) Village 2(f) Residential Sound	<b>BUSINESS</b> 3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourism 3(f) Jack Evans Road Harbour	<b>INDUSTRIAL</b> 4(a) Industrial <b>SPECIAL USES</b> 5(a) Special Uses <b>OPEN SPACE</b> 6(a) Open Space 6(b) Recreation	<b>ENVIRONMENTAL PROTECTION</b> 7(a) Environmental Protection (Wetlands and Littoral Rainforest) 7(b) Environmental Protection (Coastal Land) 7(c) Environmental Protection (Coastal Land) 7(d) Environmental Protection (Habitat)	<b>NATIONAL PARKS &amp; NATURE RESERVES</b> 8(a) National Parks and Nature Reserves <b>DESER</b> 9(a) Other 9(b) Proposed Zone 2(a)
<b>ADDITIONAL CONTROLS</b>					
Cadastre: 06 March, 2013 © Land and Property Management Authority (LPM) & Tweed Shire Council Boundaries shown should be considered approximate only					
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Scope of Planning Proposal and Consultation with Adjoining Landowners

The request as presented addresses only 7 of 11 remnant rural zoned residential scale allotments along the northern side of Terranora Road. The seven allotments, subject of this planning proposal, request are all vacant; however, one allotment to the east, and three to the west contain existing dwellings have not at this stage been included in this planning proposal.

Consistent with the objective of the *Environmental Planning and Assessment Act 1979* which seeks to promote and coordinate the orderly and economic development of land, it is considered reasonable to include all remnant allotments in the planning proposal. However, at this time, landowners of the adjoining developed allotments have not been notified, and therefore, in line with Council's guidelines which promote consultation and engagement, it is considered appropriate that the original planning proposal be presented for an initial Gateway Determination and that discussions with adjoining landowners commence regarding having all eleven sites included in a revised Planning Proposal post-Gateway.

It should be noted, that due to the extent and significance of constraints affecting the site, which have not been addressed at this stage, and as discussed below, there is no guarantee that all constraints affecting the site can be addressed, and as such, until such time as these constraints are addressed to the satisfaction of Council, a final decision regarding whether the Planning Proposal should be amended to include these additional allotments, and/or proceed to public exhibition cannot be made.

Assuming a Gateway Determination to proceed is received, and investigations into constraints affecting the subject site have been concluded; should they demonstrate an ability of the site to be developed as proposed, or not, and discussions with adjoining landowners concluded, a separate report will be presented to Council.

Constraints affecting the site

Constraints affecting the seven vacant allotments are significant and have the potential to prevent rezoning of the site; these constraints include:

- Lack of connection to Council's reticulated sewerage mains;
- Water supply;
- Stormwater management;
- Access to Terranora Road, and to a lesser degree
- Visual amenity and scenic impact.

Sewerage

No reticulated sewerage or trunk drainage service is currently available to service the site. It is proposed that a two stage approach to managing wastewater disposal be applied, initially through a pressure sewer system pumping across Terranora Road into the system now servicing the Azure Estate on the top side of the road. Once adjoining development within Area E, on the downslope side of the site commenced, the Azure Estate line would be decommissioned and a gravity feed line connected into Area E; however, it is likely to be some time before development within Area E could reach a point where this site could be connected.

The sewerage system currently servicing adjoining development, including Azure Estate, is currently under stress both in the gravity system and in the downstream pumping systems. Development of a computer model of the entire catchment to Banora Point Wastewater Treatment Plant is currently in progress which would enable Council to better consider the

effects of added loads.

The downstream pumping stations and associated pressure and gravity mains are also under stress and may require significant upgrades before further loading can be added. In addition, there are reaches of the sewerage system within the catchment that are overloaded and an investigation into augmentation options has recently been initiated. This study should be completed within the next month and enable Council to better assess the ability of the site to be connected to this system.

If Council were to permit this style of system, it would be on a temporary basis until gravity sewerage reticulation became available in Area E. It would therefore be incumbent on any development of the site to provide the necessary gravity sewerage system within the subject land at development so that the system can be switched over and the pumped system decommissioned at some future date.

Until such time as Council's internal investigations into the capacity of the local reticulated sewerage system is completed, it is not possible to make an assessment of the ability of the proposed development to be connected.

Further investigations by the proponent are required into the ability of any development proposed for the site to be connected to Council's reticulated sewerage system along with resolution of other matters as listed below. Any solution acceptable to Council should be covered in a planning agreement to be prepared by the Council and at the proponent's cost which ensures that development does not occur until such time as connection to Council's sewerage mains is possible.

Should there be no option to provide a sewerage connection, then rezoning of the sites should not proceed.

#### Water Supply

The proponent asserts that water supply and sewerage services can be provided but has not provided detailed information on available capacity.

A 200 mm water main exists in Terranora Road at the frontage to the site and a domestic level supply could be made available to each lot. It is noted that the seven lots are rated as two individual properties and have been paying a water access charge. Accordingly, should more than two of the lots require a water service, Local Government Act S64 charges would apply to five of the seven lots.

Council's Water Unit has advised that there is overloading of the Rayles Lane Small Reservoir which has a theoretical supply for about 500 persons but currently has a load equivalent to 1000 persons. There is no current back-up generator and it is conceivable that it may run dry during a power failure coinciding with peak demand. The addition of this site would exacerbate this situation but Council's Water Unit intends to investigate solutions to this problem in the coming years as sections of Area E adjoining Terranora Road, and immediately adjoining the downslope side of this site, may also require service from the reservoir.

Further investigations into the ability of the site to be connected to Council's water supply will be required and resolved to the satisfaction of Council prior to public exhibition.

#### Stormwater

A significant upstream catchment discharges runoff onto the site through a 300mm pipe located under Terranora Road. Because of the soil type, slope and lack of vegetation in the flow lines, overland flow through the site has created significant gullies and scour areas as seen in Figure 6 below.

**FIGURE 6: EXISTING SCOURED DRAINAGE LINE BELOW PIPE OUTLET UNDER TERRANORA ROAD**



Recent heavy rain resulted in runoff from the catchment sheeting across Terranora Road at this location for a distance of more than 30 metres prior to scouring the shoulder of the road and entering the subject site. Management of surface flows must be addressed in any final proposal for the site and prior to any rezoning of the site.

The current proposal shows drainage lines from the 300mm pipe and sheet flow crossing the road running through the central allotment, the same allotment within which it is proposed to construct the site access, plus a potential dwelling house.

The engineering report accompanying the planning proposal request proposes upgrading the road drainage to cater for a major (100 year ARI) event, and continuing this piped system around the driveway structure and through the site. This approach is hard to justify under Council's adopted drainage specifications and Subdivision Manual, which aim to preserve overland flow paths and not alter catchments significantly. Such alterations to the flow regime may also have significant downstream impacts by concentrating sheet flow, and further constrain the development of the already urban zoned land to the north.

Maintenance of the proposed drainage line would be problematic given the retaining walls and changes in grade that would be encountered.

As the planning proposal is contingent on such major drainage work, it is not supported in its current form.

Further investigations are required to address the risk of locating a house in an overland flow path. In addition, the design of the proposed shared driveway access conflicts with this outlet and means that the preservation of overland flow paths is not possible.

In addressing access to the site and stormwater management issues, modifications would need to be made to the planning proposal to facilitate a drainage easement through the site which could accommodate both low flows through the existing 300mm pipe under Terranora Road and overland flow should the capacity of the pipe be exceeded and flood waters surge across Terranora Road, as was the case recently. The ultimate location of this easement requires further investigation by the proponent should they agree with such an option, and is likely to necessitate a reconfiguration and consolidation of the existing lots.

While not supported in its current form, alternatives to the concept proposed may exist which have not been investigated by the proponent at this time, which could include alternate locations for the road access, drainage easement, the number of lots and allotment configuration.

Any solution acceptable to Council would require a planning agreement to be prepared by the Council at the proponent's cost ensuring that rezoning did not occur until such time as revised site plans demonstrated an ability to accommodate stormwater flows through the site without adversely affecting potential development on the site or downslope properties.

#### Traffic and Access

The proponent concedes that individual driveway accesses to each lot would be unachievable due to the steep frontages and potential impacts on Terranora Road. A shared driveway from a single access point to Terranora Road within a right of carriageway (ROW) is proposed to overcome this (see Figure 7 below).

An engineering design has been provided by the proponent for this shared driveway. This is an extensive structure with tiered retaining walls up to 3.7m combined height (2.5m + 1.2m). The footprint of this structure is so significant that it takes up over half the depth of many of the allotments, leaving little room for building pads and useable open space. The location of the driveway also interferes with existing piped and overland stormwater paths.



Maintenance of shared driveways is often problematic, and major issues are foreseeable with such significant retaining structures, slopes, landscaping etc.

The development of the site is constrained by the 30 metre setback requirement to Terranora Road, being a designated road. This eliminates almost the entire depth of these lots from buildings, but ensures that the operation of the designated road is not compromised and that traffic noise impacts are reduced for any development of the site. Despite this, existing dwellings adjacent to the site have been constructed well within the 30 metre setback. This setback would no longer apply following rezoning to residential.

The proposed access arrangements to Terranora Road are not supported by Council's Planning and Infrastructure Engineer.

Whilst the proposed access arrangements are not supported by Council's Planning and Infrastructure Engineer, a range of options may exist to relocate the shared driveway access, which may include relocation further to the west or provision of two separate driveway access points either side of the drainage line, thereby reducing the extent of cut and fill required to service proposed lots.

Given the difficulties identified for the proposed access, and potential for alternative locations which have not yet been explored, further investigation of alternative locations for site access should be explored by the proponent. Should a suitable alternative access arrangement be designed that meets Council's requirements for the site, a planning proposal prepared by the Council at the proponent's cost would be required to ensure that maintenance, and no future claims for access direct to Terranora Road from individual allotments created would occur.

#### Visual Amenity and Scenic Impact

Because the site is one of the last remaining undeveloped and un-vegetated sites adjoining the northern, downslope side of Terranora Road, passersby are able to experience extensive views across the site towards the Terranora Broadwater, Tweed Heads and the Gold Coast.

Terranora Road lies at approximately 127.5 metres Australian Height Datum (AHD) whilst the site slopes from 126.5 to 116 metres AHD. The proposed building pads nominated in the planning proposal are at 120.35 metres (Lots 2-6), 122 metres (Lot 7) and 123 metres AHD (Lot 8) respectively.

Tweed DCP 2008 allows a maximum building height of 9 metres for residential dwellings. Any dwellings constructed on the site to 9 metres in height would therefore extend to 129.35 metres (Lots 2-6), 131 metres (Lot 7) and 132 metres AHD (Lot 8) respectively.

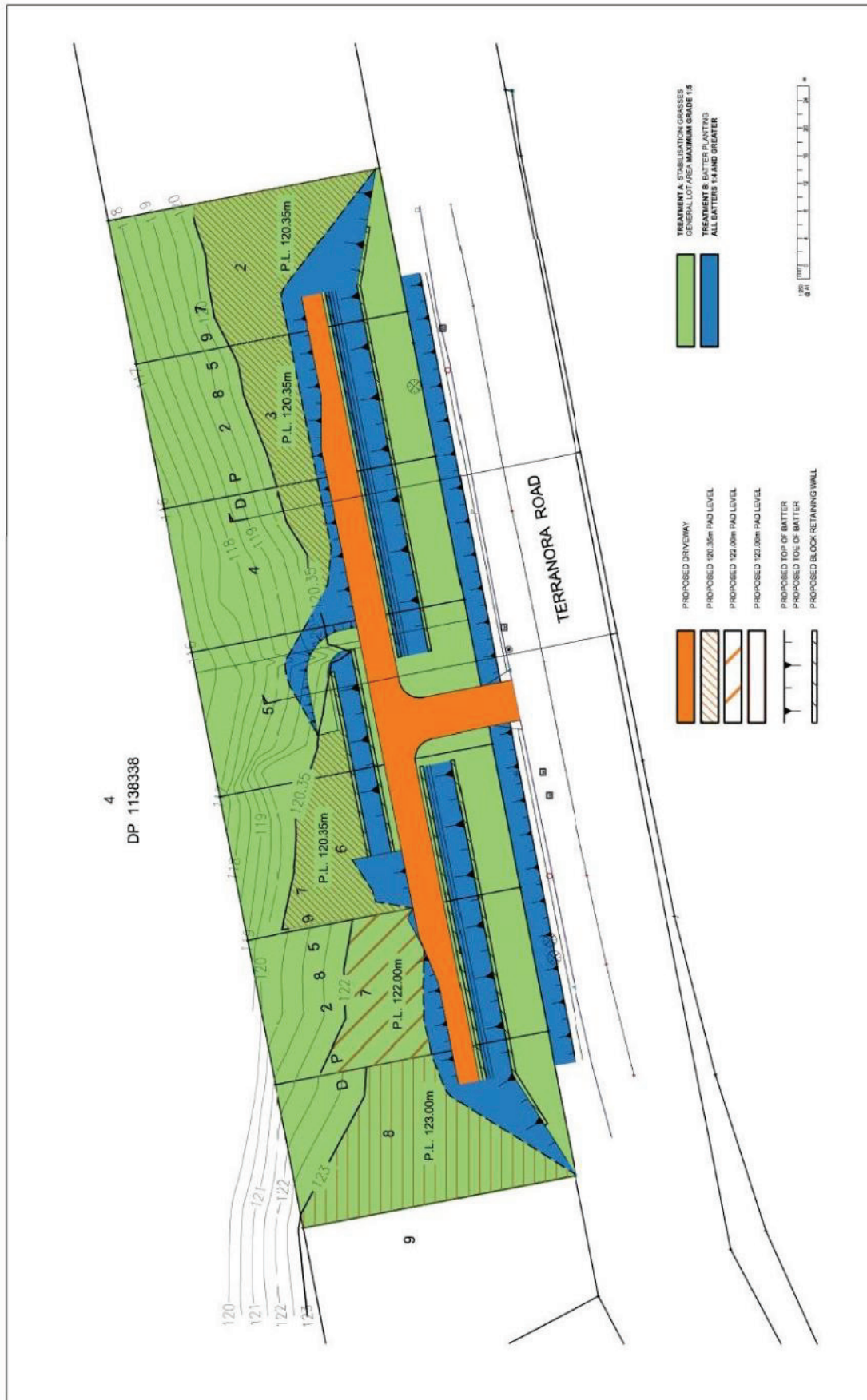
Dwellings constructed to 9 metres in height on Lots 7 and 8 in particular would therefore obscure the views from Terranora Road towards the Terranora Broadwater, Tweed Heads and the Gold Coast. It should be noted however that Terranora Road, in the vicinity of the site, does not offer any public vantage points (i.e. rest areas, lookouts, parking bays etc) to allow locals or visitors the opportunity to take advantage of this view and therefore this impact is not considered to require any mitigation.

The two existing dwellings immediately south (Lots 16 and 19 DP 1092500), on the upslope side of Terranora Road within the Azure Estate which have views over the site have been constructed at approximately 131 metres and 130.5 metres AHD respectively. Views would continue to be available from these dwellings over Lots 2 – 6 with minor obstructions over Lots 7 and 8 should dwellings on these lots be built to the maximum 9 metre building height, with interrupted views still available between potential dwellings on these lots.

Given the already developed nature of the northern side of Terranora Road, infill development of this site is consistent with existing development in the area. The potential impact of construction of dwellings built to the maximum 9 metre height limit on public vantage points or on any existing private dwellings is expected to be minimal and as such, the only restrictions on building heights for the site would be the standard maximum 9 metre height control.

Further investigations and assessment will be required into building heights, materials, form and colour at the development application stage should the rezoning proceed.

**FIGURE 7: PROPOSED DEVELOPMENT CONCEPT SHOWING THE EXTENT OF EARTHWORKS ON EACH PROPOSED ALLOTMENT**



TITLE

**Teranora Road**  
LANDSCAPE TREATMENT 01

DETAILS

Scale: As Shown  
Drawing No: TR\_LC\_01  
Date: May 2012  
Base Provided by: OPUS

Drawn: JB  
Checked: AS  
Issue: A

NORTH

PLANIT CONSULTING

1

### Lot Configuration and Earthworks

As a result of the extensive earthworks required to accommodate the shared central driveway, and need to accommodate overland flows, only limited area exists for building pads and associated private open space within each of the middle allotments, as seen in Figure 7. The limited size of each building pad also restricts the type and form of dwellings on each lot.

Given the nature and severity of constraints affecting the site, a reconfiguration of allotment boundaries and some consolidation may be necessary to ensure that sufficient useable land is available for building pads and open space within each lot.

Subject to the resolution of the shared access driveway, this reconfiguration and consolidation, which may result in a reduction of allotments, needs to be agreed by the proponent and be identified in a planning agreement for the site (prepared at the proponent's expense) prior to public exhibition.

Should the rezoning proceed without such an agreement, then it would automatically infer a dwelling entitlement to each and every existing allotment regardless of the ability of each allotment to accommodate a dwelling or not. This would be highly undesirable given the extent and potential risks associated with development as discussed above.

### Landscaping

Proposed site works in particular associated with the shared access road, are likely to result in very steep, exposed batters, close to Terranora Road creating potential safety issues. As part of the overall site management and ownership of a shared access, a right of carriageway and any landscape works undertaken within Council's road reserve would need to be maintained by the residents. Council would still retain all rights over the land and the landscaping but the day-to-day maintenance thereof would be undertaken through an agreement with the residents and written into the title.

### Contamination

Pursuant to State Environmental Planning Policy (SEPP) No. 55, land must not be developed if contamination renders it unsuitable for a proposed use. If the land is unsuitable, remediation must take place before the land is developed.

The proponent has advised that the lots which make up the site were created by way of subdivision in 1958 and have remained vacant since this time. Prior to this time it is understood the area was used for grazing only due to site topography.

Given the limited information presented by the proponent, a Phase 1 assessment would need to be submitted prior to public exhibition in accordance with the requirements of SEPP 55 – Remediation of Land.

### Cultural Heritage

Aboriginal cultural heritage has not been considered. Pursuant to Council's Guideline – *Planning Proposal Process and Procedure – Amending a LEP*, an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") must be prepared with a planning proposal. In addition to the bare requirement to prepare an ACHA, the landowner is to also prepare an assessment report, including consultation with the local Aboriginal Advisory Committee (AAC) and a response to any matters that arise, prior to a request for a planning proposal being made. The proponent would need to provide this additional information in order to progress the rezoning.



## **Plan Making Provisions**

As a result of recent changes to the NSW Department of Planning and Infrastructure's (DP&I) plan-making provisions Council is now required to nominate whether it seeks the delegation powers from DP&I to make the Planning Proposal.

Due to the as yet unresolved nature and complexity of constraints affecting the site, and scale of the proposal as presented in this report, it is considered appropriate to request that plan-making delegations remain with the DP&I.

### **CONCLUSION:**

The proponent has requested that Council prepare a planning proposal to have seven vacant allotments at No. 420-434 Terranora Road, Terranora rezoned from 1(b1) Agricultural Protection to 2(a) Low Density Residential under Tweed LEP 2000.

The planning proposal request for the seven vacant allotments relies heavily on engineered solutions to resolve significant constraints affecting the potential future development of the site including lack of sewerage services, water supply, substantial earthworks and retaining walls, access to Terranora Road, limited building envelopes, and, stormwater management.

Given the extent and significance of constraints affecting the site and the lack of investigation into these issues, yet the potential for the site to be developed to some extent, and ability to rationalise zoning of these remnant allotments, conditional support only is proposed at this time.

Should the vacant sites be rezoned prior to addressing constraints mentioned above, an automatic dwelling entitlement would be inferred to all allotments which could have significant adverse impacts both for potential purchasers and Council.

To ensure that all significant constraints affecting the site, allotment numbers and configurations are addressed to the satisfaction of Council, it is proposed that Council officers enter into negotiations with the landowner for the preparation of a planning agreement through which site constraints are addressed to the satisfaction of Council, and certainty about planning outcomes for the site are guaranteed to the benefit of the landowner and Council. Should such an agreement not be achieved, the planning proposal request as received should not be supported.

Should the landowner agree to enter into a planning agreement, then it is recommended that the planning proposal for rezoning of Lots 2-8 DP 28597 from 1(a1) Agricultural Protection to 2(a) Low Density Residential be referred to the Department of Planning and Infrastructure for an initial Gateway Determination.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

The site has not been identified within the Far North Coast Regional Strategy (FNCRS) and is located outside of Area E in the Tweed Urban Environmental Land Regional Strategy. The planning proposal is therefore considered to be inconsistent with the objectives and actions within these strategies. The FNCRS allows for inconsistency where they are minor and don't undermine the intent of the strategy. Given the small scale of this planning proposal and the opportunity to rationalise zoning boundaries, it is regarded as minor.

The basis of this report is to seek Council's conditional support to the planning proposal, subject to further post-Gateway determination, and the preparation of a planning agreement.

The modifications to the planning proposal are required to comply with Council's policies and guidelines in relation to traffic and access, stormwater, water and sewerage.

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

The costs associated with progressing the planning proposal will be borne by the proponent in accordance with Council's adopted Fees and Charges Schedule 2012/13.

**c. Legal:**

There are no appeal rights available to proponents for planning proposals seeking the rezoning of land under the *Environmental Planning and Assessment Act 1979*. However, should Council refuse to proceed with the planning proposal there is an avenue for an applicant to seek a review of this decision by the Department of Planning and Infrastructure. There are no legal implications associated with the planning proposal.

**d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
- 1.5.3.1 Effective updating of Tweed LEP

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1: Planning Proposal (Gateway Version) (ECM 64417147)

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**25 [PR-CM] Planning Proposal PP11/0005 Club Banora, Leisure Drive, Banora Point**

**SUBMITTED BY: Planning Reform Unit**

**FILE REFERENCE: PP11/0005 Pt2**

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**Civic Leadership**

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**SUMMARY OF REPORT:**

A planning proposal has been received from Darryl Anderson Consulting Pty Ltd on behalf of Twin Towns Services Club for the rezoning of Part Lot 2 DP 1040576 Leisure Drive, Banora Point. The site is currently zoned 6(b) Recreation and the request is that it be changed in part to 3(b) General Business zone under the Tweed LEP 2000. The rezoning will facilitate commercial/retail development comprising a supermarket, speciality shops and a car park.

Council resolved to prepare a planning proposal at its meeting of 13 December 2011, subject to the prior execution of a costs and expenses agreement, which occurred on 20 August 2012.

This report seeks Council's support of the rezoning application and recommends the attached Planning Proposal be forwarded to the Department of Planning and Infrastructure (DP&I) for a Gateway Determination.

The site is currently known as 'Club Banora', was constructed in the early 1980s and comprises an 18 hole golf course, licensed club (with a GFA of approximately 7000m<sup>2</sup>), bowling greens, tennis courts, heated Olympic pool and wading pool and approximately 700 onsite car parks. 'Club Banora' occupies a site of approximately 60.1 hectares.

The proposal will essentially be an expansion of the existing Banora Shopping Centre, with the master plan for the development presenting elements that integrate development with the existing shopping centre adjacent to the site. This will increase competition for the existing businesses and broaden the shopping services to the local community. An economic assessment of the proposal suggests that there will be some impact on the existing Banora Shopping Village and other centres as a consequence of the development. However, the Planning Proposal will facilitate permanent employment generating activity and will not result in a loss of employment positions or employment generating land.

Although the site is low lying and affected by the 1 in 100 year flood event and is within the 25-30 ANEF (aircraft noise exposure) zone, preliminary assessment indicates that the site is suitable for the proposed zoning and development.

One issue that will need further investigation as part of any advancement of this Planning Proposal relates to a major drainage easement that is located along the eastern boundary,

adjacent to Banora Shopping Village. This drainage infrastructure forms part of Council's broader Eastern Drainage Scheme for the Banora region. The easement includes culverts relating to the existing drainage network. The proponents have advised that the easement is not proposed to be changed as part of the redevelopment proposal, but will need to be considered any future design details.

The Planning Proposal is considered suitable for referral to the DP&I's 'Gateway Determination' process for the Director-General's consideration about whether to prepare a draft local environmental plan amendment.

**RECOMMENDATION:**

**That:**

- 1. Planning Proposal PP11/0005 to rezone Part Lot 2 DP 1040576 (a total of 30,000m<sup>2</sup>), Leisure Drive, Banora Point to facilitate commercial/retail development be forwarded to the Department of Planning and Infrastructure for a Gateway Determination under section 56 of the *Environmental Planning and Assessment Act 1979*, and**
- 2. Upon receipt of a Gateway Determination, to undertake all necessary investigations and reports, consultation, and public exhibition as required by the Gateway Determination and Council.**
- 3. The Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance.**

## REPORT:

### Background

The Proponent states in its Planning Proposal (PP) request that due to significant changes in the club industry relating to poker machines, indoor smoking and increased taxation, the continued operation of Club Banora as a viable standalone entity in the Twin Towns Group is not possible in the current format. The Club is in a financial predicament and therefore has decided to redevelop Club Banora to ensure its long term viability. As a result of this redevelopment it will have excess land that it considers is suitable for retail purposes.

The whole site will be redeveloped with the master plan for the site including the following:

1. A smaller Club building partly suspended over the existing lake with a gross floor area (GFA) of 3,820m<sup>2</sup>;
2. Function centre on the island;
3. Relocation of the tennis courts;
4. Relocation of the bowling greens;
5. A proposed sports club including gym, squash, billiards and table tennis;
6. A retail development adjacent to Leisure Drive (supermarket and specialty shops);
7. Reconfiguration of the existing car parking and access arrangements, and
8. Landscaping throughout the site.

All of the proposed development is permissible in the 6(b) Recreation zone except for the retail component.

In 2010, the proposal was being dealt with as a Part 3A project. A formal Request for Authorisation of a Concept Plan was lodged with the Department on 2 March 2011. The Executive Director of the Department agreed to the request on 25 March 2011 and authorised the preparation of a Concept Plan. A formal letter would not be issued until after the State Election.

Twin Towns Services Club received a formal letter on 16 June 2011 advising that the Club Banora Concept Plan Authorisation was one of the projects cut from Part 3A because it had not reached the stage of Director General Environmental Assessment Requirements having been issued.

Twin Towns Services Club subsequently lodged a formal Planning Proposal request with Tweed Shire Council on 25 August 2011.

### Variations to the Planning Proposal request

The original master plan and attached Planning Proposal request for the site also included an aged care development with a GFA of approximately 11,000m<sup>2</sup>.

Following consultation with Council staff on the proposal, flooding was identified as a critical limiting factor for the aged care component under Tweed Council's Flood Risk Management Policy (2007). As the site is flood prone the aged care units needed a refuge in place and permanent high level evacuation route. The proponent could not demonstrate a means of creating a permanent high level evacuation route from the subject site to land above the probable maximum flood.

FIGURE 1 - LOCALITY PLAN:

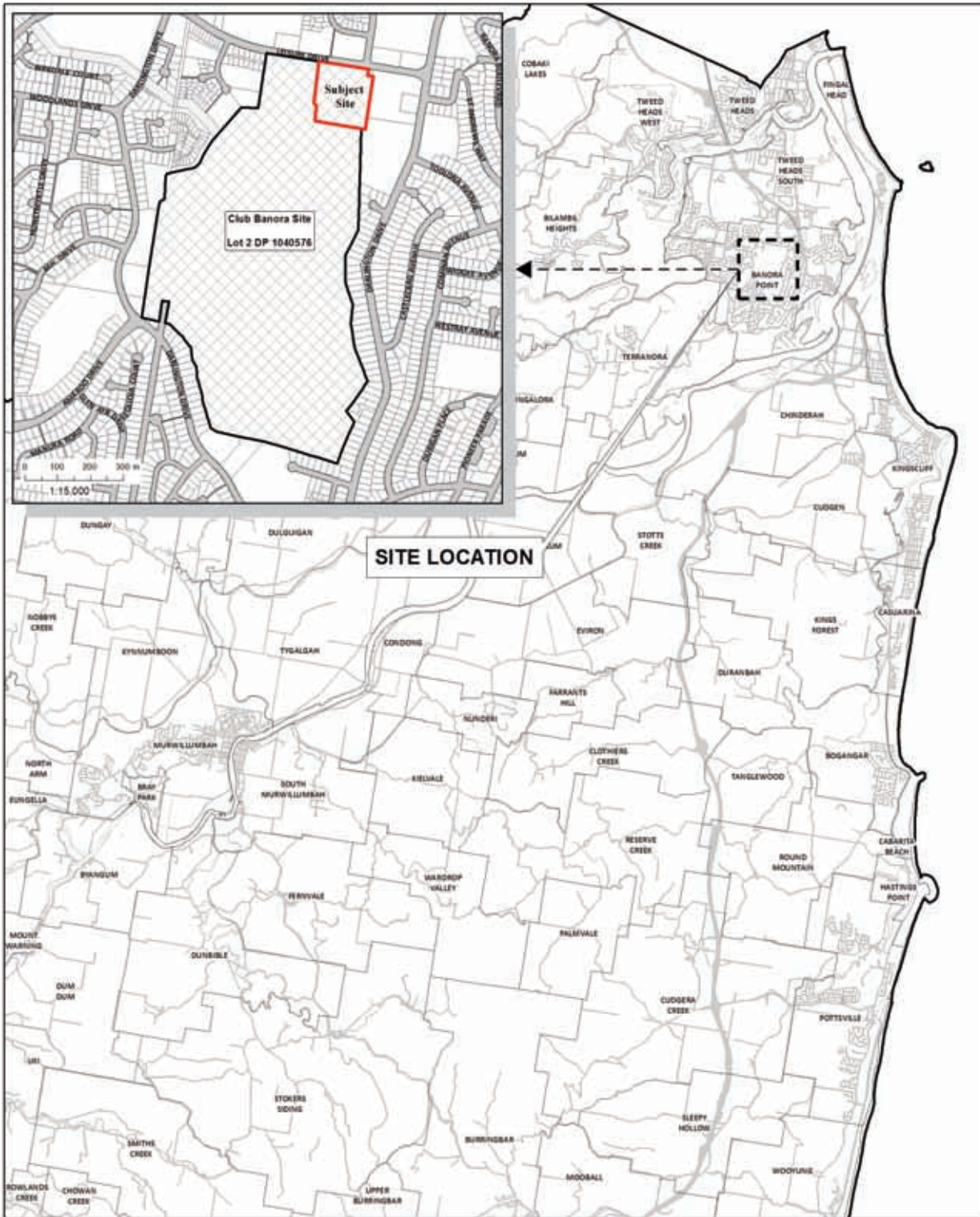


Figure 1. Locality Plan

Part Lot 2 DP 1040576  
Club Banora, Banora Point

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FIGURE 2: AERIAL VIEW OF THE SITE:



Figure 2. Aerial View of the Site

Lot 2 DP 1040576  
Club Banora, Banora Point

SOURCE: Aerial imagery taken May 2012 by AAM

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 Subject Site

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Datum - GDA 94

Date Printed: 01 March, 2013  
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In January 2013 the proponent amended the Planning Proposal request and removed the aged care units from the proposal and slightly increased the proposed 3(b) General Business zone from 23,139m<sup>2</sup> to 30,000m<sup>2</sup>.

Subject Site

Lot 2 DP 1040576 is located on Leisure Drive, Banora. The site is currently known as 'Club Banora' which was constructed in the early 1980s and comprises an 18 hole golf course, licensed club (with a GFA of approximately 7000m<sup>2</sup>), bowling greens, tennis courts, heated Olympic pool and wading pool and approximately 700 onsite car parks. 'Club Banora' occupies a site of approximately 60.1 hectares (see Figures 1, 2 and 3).

The subject site (part lot 2 only) is generally flat and is currently used for car parking, part of the bowling green and part of the licensed club. Bounding the site to the east is Banora Shopping Centre which is anchored by a Bi-Lo supermarket. The Banora Shopping Centre is mapped as a Business Centre as set out in Schedule 6 of the TLEP 2000. To the north of the site beyond Leisure Drive are residential dwellings, Winders Lodge Retirement Village, Banora Point Retirement Village and St James Primary School. To the west are residential dwellings, Darlington Retirement Community and Banora Point High School.

Leisure Drive is the main east-west connector route through the surrounding area, and therefore has a significant amount of through traffic. The Pacific Highway is located to the north east of Club Banora. The Pacific Highway has recently undergone an upgrade (at Banora Point) resulting in a new 2.5km segment of highway stretching from Barneys Point Bridge in the south to the Tweed Heads Bypass in the north. It provides a dual carriageway link between the existing Chinderah and Tweed Heads bypass.

The site is low lying and affected by the 1 in 100 year flood event, and the majority of the site lies within the 25-30 ANEF zone associated with the Gold Coast Airport at Coolangatta. For large storm events the Golf Course provides stormwater storage for the Banora Point area. In addition, the site has been identified as Class 2 Acid Sulfate Soils and has high ground water vulnerability.

**FIGURE 3: - VIEW LOOKING NORTH FROM SOUTHERN BOUNDARY OF PROPOSED DEVELOPMENT TOWARDS LEISURE DRIVE:**





### The Proposal

The site is currently zoned 6(b) Recreation and the request is that it be changed in part to 3(b) General Business zone under the Tweed LEP 2000 (Refer to Figure 4 for current LEP 2000 zoning and Figure 6 for proposed LEP 2000 amendment). This translates into B2 Local Centre in accordance with the Standard Instrument (Local Environmental Plans) Order 2006, as proposed in the Draft Tweed LEP 2012 (Refer to Figure 5).

This will facilitate commercial/retail development comprising a supermarket, speciality shops and a car park. Concept drawings have been submitted with the planning proposal to demonstrate a possible form of future commercial development. The drawings show a single storey retail development with a supermarket and several speciality stores. The proposal also includes providing a four way, signalised intersection at Winders Place and Leisure Drive together with rationalisation and reduction of the existing access points onto Leisure Drive from three access points to two. The revised access arrangements will also facilitate improved access to the existing shopping centre adjoining the site to the east. The applicant has also made provision for widening of Leisure Drive for the frontage of the site and significant improvements will be achieved to the built form and streetscape of the site.

### Strategic Context

#### *Far North Coast Regional Strategy 2006*

The site is included in the Far North Coast Regional Strategy 2006 (FNCRS), and mapped as being within the Town and Village Growth boundary. The FNCRS promotes a clear hierarchy of commercial centres consistent in scale and centrally located within each community.

Within the Tweed Shire, Tweed Heads as the major regional centre includes Tweed City Shopping Centre. Tweed City includes both a Coles, Woolworths, Big W, Kmart as well as speciality stores and is considered as a major district retail centre. The site occupies approximately 13.2 ha and has over 36,700m<sup>2</sup> GFA, with access afforded to the site from both the north and south along Minjungbal Drive.

Other shopping centres within the trade area of Banora include the following:

- Banora Central Shopping Centre is located approximately 1 km west of Banora Shopping Village and includes a Coles Supermarket (2,800m<sup>2</sup> GFA). It has a total GFA of 3400m<sup>2</sup>.
- Tweed Heights Shopping Village is located approximately 1.4 km south west of Banora Shopping Centre and includes an IGA super market (200m<sup>2</sup> GFA). It has a total GFA of 700m<sup>2</sup>.
- Tweed Heads South is located approximately 1.5 km north of Banora Shopping Centre and includes an Aldi of approximately 1,350m<sup>2</sup> GFA.

FIGURE 4: TWEED LOCAL ENVIRONMENTAL PLAN 2000:

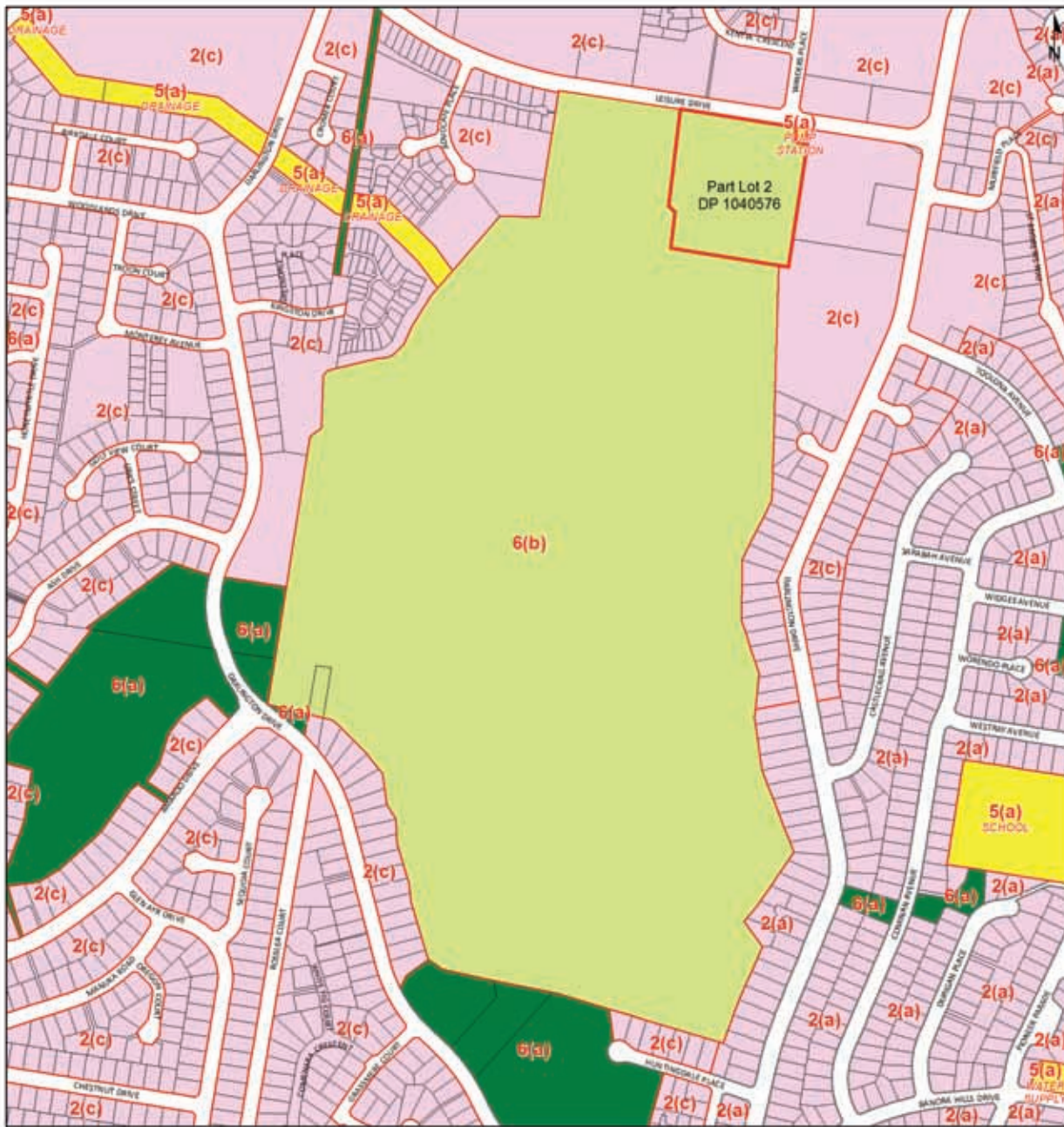


Figure 4. Tweed Local Environmental Plan 2000

Lot 2 DP 1040576  
Club Banora, Banora Point

ZONING	RESIDENTIAL	BUSINESS	INDUSTRIAL	ENVIRONMENTAL PROTECTION	NATIONAL PARKS & NATURE RESERVES
<b>RURAL</b> 1(a) Rural 1(b) Rural Living 1(b-1) Agricultural Protection 1(b-2) Agricultural Protection	2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist	3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourist 3(f) Link Events (not Harbour)	4(a) Industrial <b>SPECIAL USES</b> 5(a) Special Uses <b>OPEN SPACE</b> 6(a) Open Space 6(b) Recreation	7(a) Environmental Protection (Wetlands and Littoral Rainforest) 7(b) Environmental Protection (Science / Encouragement) 7(c) Environmental Protection (Coastal Lands) 7(d) Environmental Protection (Marine)	8(a) National Parks and Nature Reserves <b>DEFER</b> 9(a) Defer <b>Subject Site</b>
<b>ADDITIONAL CONTROLS</b> Clause 37 (Transmission Line Corridor)    Clause 52 (Cobaki)    Clause 52 (Minimum Lot Sizes)    Clause 52 (Potterville) Clause 38 (Future Roads)    Clause 52 (Cobaki)    Clause 52 (Stormwater and Fill)    Clause 52 (Schedule 3 Beer) Clause 41 (Heritage Conservation Areas)    Clause 52 (Existing and Future Dam Areas)					
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FIGURE 5: DRAFT LEP 2012:

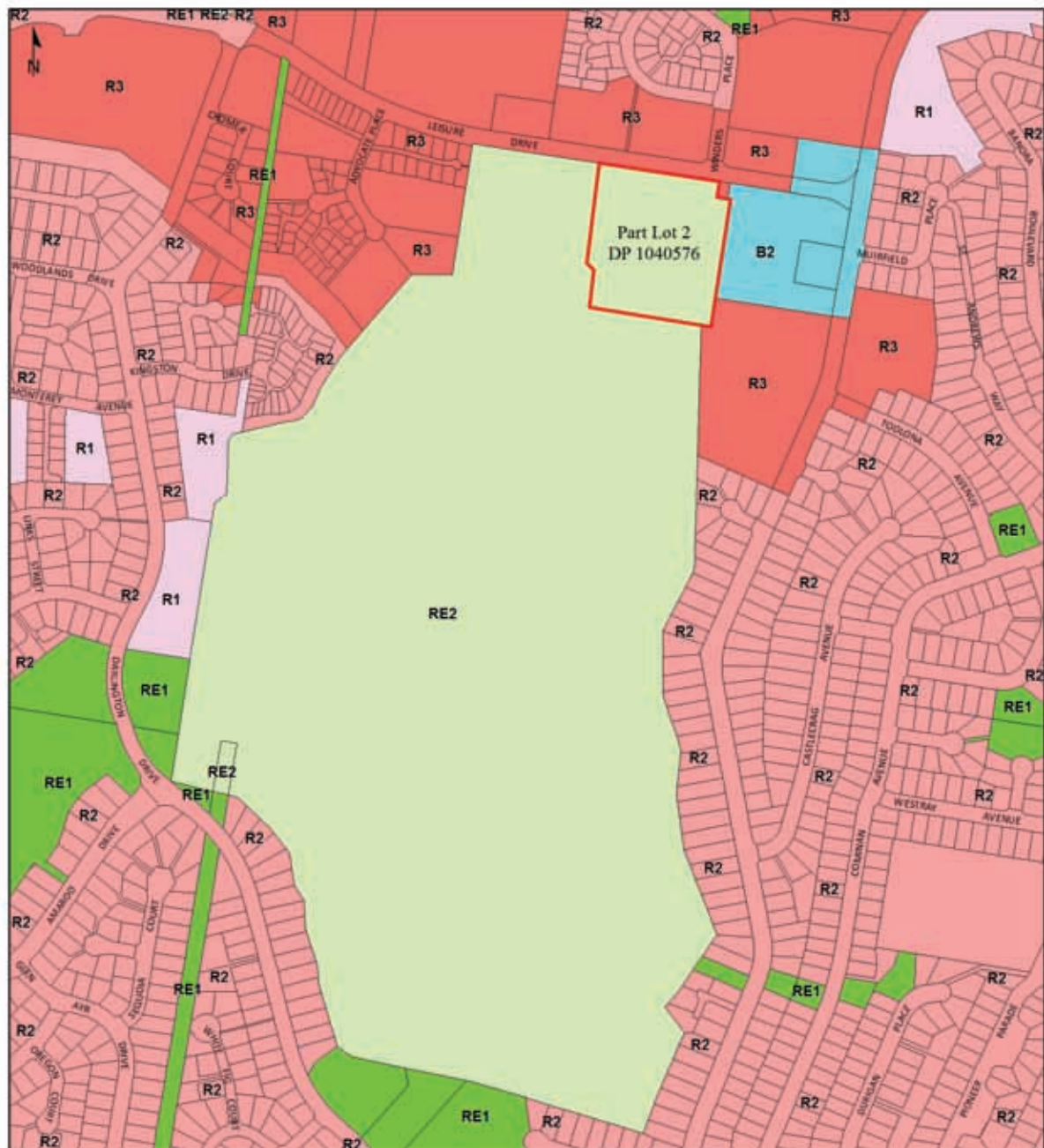


Figure 5. Draft LEP 2012

<b>ZONING</b>		<b>RESIDENTIAL</b>		<b>BUSINESS</b>		<b>INDUSTRIAL</b>		<b>ENVIRONMENTAL PROTECTION</b>		<b>SPECIAL USES</b>	
RU1 Primary Production	R1 General Residential	B1 Neighbourhood Centre	I1 General Industrial	E1 National Parks & Nature Reserves	SP1 Special Activities	SP2 Infrastructure	SP3 Tourist	UL Unplanned Land	DM Deferred Matters	<b>Subject Site</b>	
RU2 Rural Landscape	R2 Low Density Residential	B2 Local Centre		E2 Environmental Conservation							
RU3 Village	R3 Medium Density Residential	B3 Commercial Core		E3 Environmental Management							
	R5 Large Lot Residential	B4 Mixed Use									
		B5 Business Development									
				<b>OPEN SPACE</b>		<b>WATERWAYS</b>					
				RE1 Public Recreation	W1 Natural Waterways	W2 Recreational Waterways	W3 Working Waterways				
				RE2 Private Recreation							

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**TWEED SHIRE COUNCIL**

FIGURE 6: TWEED LOCAL ENVIRONMENTAL PLAN 2000 PROPOSED ZONING:

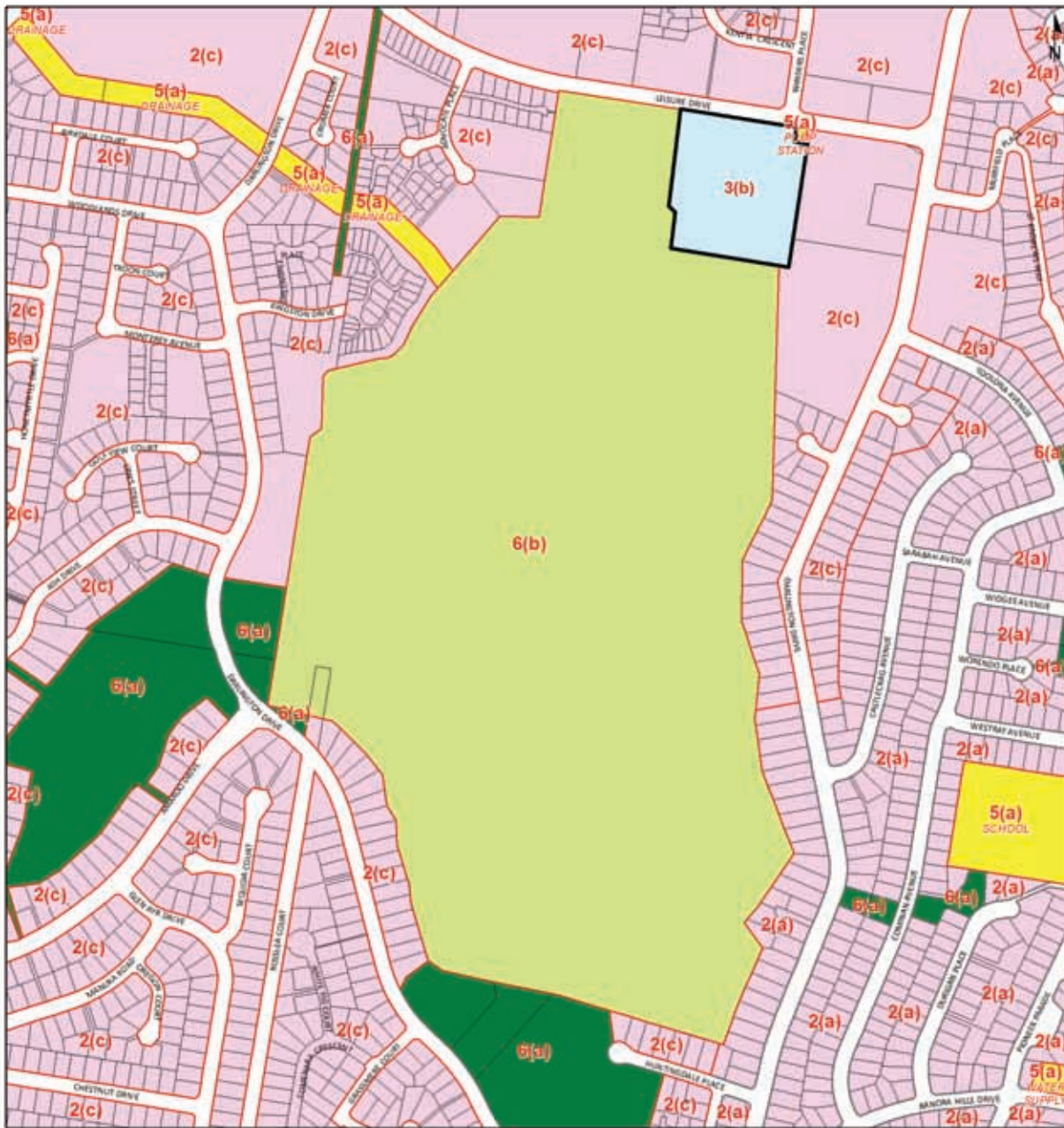


Figure 6. Tweed Local Environmental Plan 2000 Proposed Zoning  
 Lot 2 DP 1040576  
 Club Banora, Banora Point

ZONING		RESIDENTIAL		BUSINESS		INDUSTRIAL		ENVIRONMENTAL PROTECTION		NATIONAL PARKS & NATURE RESERVES	
<b>RURAL</b>	1(a) Rural 1(c) Rural Living 1(b-1) Agricultural Protection 1(b-2) Agricultural Protection	2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Tourism 2(d) Urban Expansion 2(e) Village 2(e) Residential Tourist	3(a) Sub-Regional Business 3(b) General Business 3(c) Commerce & Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (G&S Evans Boat Harbour)	4(a) Industrial	5(a) Special Uses 5(b) Open Space 5(c) Recreation	7(a) Environmental Protection (Wetlands and Linear Features) 7(b) Environmental Protection (Coastal Escarpment) 7(c) Environmental Protection (Coastal Lands) 7(d) Environmental Protection (Protected)	8(a) National Parks and Nature Reserves	<b>DEFER</b>		<input type="checkbox"/> 8(a) <input type="checkbox"/> 8(b) <input checked="" type="checkbox"/> Proposed Zone 3(b)	
<b>ADDITIONAL CONTROLS</b>		Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Areas)		Clause 52 (Cobak/A) Clause 52 (Cobak/B) Clause 52 (Existing and Future Dam Areas)		Clause 52 (Minimum Lot Sizes) Clause 52 (Storm-water and F&I) Clause 53 (Schedule 3 Rest)		Clause 52 (Floodline) Clause 52 (Floodline)		Cadastre: 01 March, 2013 CLand and Property Management Authority (CLPA) & Tweed Shire Council Boundaries shown should be considered approximate only.	
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Adjacent to the proposed commercial area to the east is the existing Banora Shopping Centre and includes a Bi-Lo and several specialty shops and is approximately 2000m<sup>2</sup> GFA. The development of Club Banora will provide direct competition with the Bi-Lo supermarket sited next to the site. The proponent provided a detailed Market Potential and Economic Impact Assessment (Pitney Bowes, 2010). The assessment states that the major retail facilities will be a 3000m<sup>2</sup> supermarket which is likely to be Woolworths and specialty shops at approximately 400m<sup>2</sup> each:

*"The retail facilities at Club Banora will play a predominantly convenience oriented role for trade area residents, but also that a small, targeted comparison good offer (apparel and household goods) is warranted to serve the needs of the retiree population."*

The Assessment also stated the following in terms of trade area competition:

*"Typically in Australia, a full-line supermarket of at least 3,000 sq.m is provided for every 8,000–9,000 persons. The Club Banora primary trade area sector alone currently includes over 19,500 persons, and is expected to grow solidly to exceed 24,000 persons by 2013. Such a catchment could support two full-line supermarkets within the main trade area in 2013, even allowing for a proportion of residents to be attracted to facilities located at higher order retail centres located beyond the trade area. Both the existing supermarkets within the main trade area are relatively small in size. The Coles store is 2,800 sq.m, while the Bi-Lo store is slightly less than 2,000 sq.m. Typical Coles or Woolworths full-line supermarkets are generally around 3,200 sq.m in size, with many being 3,800 sq.m or greater."*

However, it is stated that there will likely be only minor impacts in redirection of retail spending of full line supermarkets in Tweed City by less than 5%. The Assessment concludes that generally, the levels of impact projected above (on retail facilities both within and beyond the main trade area) will not threaten the ongoing viability of existing retail centres or precincts in the area, or the future potential for expansion of retail facilities in the region. All facilities in the region would continue to trade viably after the opening of the proposed Club Banora retail centre.

It is likely that there will be direct competition with other supermarkets; however, given the size of the proposed supermarket it is unlikely it will have a direct impact on the hierarchy of centres. The proposal is therefore consistent with the objectives of the Far North Coast Regional Strategy.

#### *Tweed Retail Principles*

Following the preparation of a "Draft Tweed Retail Strategy" document by consultants Core Economics, and in conjunction with a determination of Development Application for extensions to the Tweed City shopping centre, Council resolved at its meeting of 16 November 2005 to adopt seven principles as a Retail Strategy for the Tweed Shire.

The planning proposal is consistent with the Tweed Retail Principles as the proposal is effectively an expansion of the existing Banora Shopping Village. It is not a completely new centre and is unlikely to fracture the existing centre. It will largely provide trade for the local community and is not a district level centre. In addition, the character of Banora will not be compromised by the development, as a shopping village already exists next door and Club Banora will remain in operation in a smaller building located slightly further west on the same site.

#### *Draft Centres Policy*

The draft Centres Policy, while still in draft, helps guide planning for retail and commercial development in New South Wales.

The planning proposal is consistent with the planning principles identified in the draft Centres Policy. A net community benefit test was undertaken which found the Planning Proposal will facilitate permanent employment generating activity. It will not result in a loss of employment generating lands.

The Planning Proposal request reports that the proposed development, as sourced from the Market Potential and Economic Impact Assessment (Pitney Bowes, 2007), the redevelopment of the shopping facilities will likely employ approximately 289 people. Allowing for an estimated 5% of the total increase as a result of reduced employment at existing retail facilities in the region, the net additional jobs for the area provided at the Club Banora retail development are estimated at 275.

Pitney Bowes also state that in terms of wages and salaries, the additional 275 permanent retail employees within the proposed retail development would earn an average annual wage of around \$28,000 (as sourced from the latest ABS average weekly earnings statistics). This represents an additional \$7.7 million in salaries and wages for the local region, directly as a result of the development.

As the actual Banora Club is proposed to be redeveloped as well (permissible under the 6(b) Recreation Zone), this is also likely to increase employment in the area in the short term in terms of construction and with no net loss of staff in the longer term in terms of operation of the new club facility.

#### 117 Directions

The following Local Planning Directions pursuant to Section 117 (2) of the Environmental Planning & Assessment Act 1979 are relevant to the Planning Proposal:

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
5. Implementation of Regional Strategies

The Planning Proposal is consistent with all of the above directions.

#### State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988

The planning proposal is consistent with the provision under SEPP (North Coast REP) as summarised below:

- Clause 32A Coastal Lands: The site is subject to the NSW Coastal Policy 1997; however the site is not located on a dune, beach or headland.
- Clause 39 – Retail, Commercial or Business Activities: The Planning Proposal is for the rezoning of land directly adjacent to land to be zoned B2 Local Centre in the Draft LEP.

- Clause 45A – Flood Liable Land: As discussed below, some of the subject site is flood affected in a 100 year ARI event based on the Tweed Valley Flood Risk Management Study and Plan 2012. In addition, the golf course at Club Banora provides flood storage in events larger than the 5 year ARI with flood levels up to 1.84m AHD in the 100 year ARI event. Flooding is discussed further below. A study completed by the proponent concluded that minor loss of flood storage will occur due to the development. It is considered the risk of flooding can be adequately assessed during the Development Application stage
- Clause 47 – Principles for Commercial and Industrial Development: The Planning Proposal seeks to rezone land that is currently 6(a) Private Recreation to commercial land. The site is not isolated and is directly adjacent to existing retail uses and essentially provides an expansion to these uses.
- Clause 50 – Height Controls: The Planning Proposal will result in commercial development of a similar height to the surrounding commercial and business areas
- Clause 58 – Servicing Urban Area: All necessary urban infrastructure is available in the immediate area, and will be at the cost of the developer dependent upon future expansion plans within the site boundaries.

#### State Environmental Planning Policy No. 71 – Coastal Protection

The site is located within the Coastal Zone. Clause 8 of the SEPP sets out the relevant matters that should be considered in the preparation of a draft LEP. Matters relevant to the Planning Proposal are:

- The suitability of the development given its type, location and design and its relationship with the surrounding area.
- The site is suitable for general business purposes as a result of the predominant use of the site for retail purposes, and the limited environmental values of the site.

The Planning Proposal is located adjacent to an existing centre designated for commercial development, and is well serviced by transport and infrastructure services

#### Matters for consideration

##### *Flooding*

Some of subject site is flood affected in a 100 year ARI event based on Tweed Council Flood Study. In addition, the golf course at Club Banora provides flood storage in events larger than the 5 year ARI with flood levels up to 1.84m AHD in the 100 year ARI event.

A flood study completed by the proponent stated that the proposed new floor levels in the existing developed area will be raised to 3.2m AHD. The flood model adopted by the study concluded that most of Banora Point is flood free in a 100 year ARI event based on model results. The golf course at Club Banora provides flood storage in events larger than the 5 year ARI with flood levels up to 1.84m AHD in the 100 year ARI event. Leisure Drive is known to flood during intense, short duration rainfall events, although this type of flooding was not explicitly modelled in the Tweed.

The study concluded that:

*"The impact assessment indicates there would be a minor loss of flood storage (less than 5%) in the immediate area, due to the proposed development. This assessment is preliminary and provides a rough estimate only. Calculating the loss of flood*

*storage does not fully describe the potential flood impacts, only that proposed development may result in a loss of flood storage which may affect flood levels and flood velocities across the site and/or in the adjacent land. In addition, it is possible that (on site) flood mitigation works could reduce the flood impacts to an acceptable level.*

*Based on the estimated loss of flood storage, there is a potential for flood impacts as a result of the proposed development. It is possible that any impacts resulting from the proposed development will continue to be restricted to the golf course. The golf course acts as a flood basin for Banora Point, storing water which would otherwise affect surrounding residential and commercial development. Based on results from the Tweed Valley Flood Study, most of the flood waters in a 500 year ARI event are contained within the golf course basin, under existing conditions."*

During the development assessment stage will need to quantify the scale and nature of the impact and recommend mitigation measures to address them.

#### *Acid Sulfate Soils and the Water Table*

The site is identified as Class 2 on Council's Acid Sulfate Soils Planning Maps, and therefore any future development on the site will require development consent for any works which will occur below the surface. However, acid sulfate soils are not considered to be a prohibitive issue for this proposal as the site has already been filled. The site is also identified as having high ground water vulnerability. This is also unlikely to be a problem given that the site is filled and major excavation is unlikely.

#### *Contamination*

Potential site contamination would need to be addressed prior to any rezoning of the site. Only limited information has been provided by the proponent to address SEPP 55. A Phase 1 assessment would be the minimum requirement to satisfy SEPP 55. This should be undertaken prior to public exhibition of the Planning Proposal.

#### *Bushfire*

The site has not been identified as bushfire prone.

#### *Development Near Licensed Aerodromes*

The site of the proposal is within the 20 – 25 ANEF Contour associated with the Gold Coast Airport at Coolangatta.

The 117 direction 3.5 Development Near Licensed Aerodromes states that for commercial development purposes where the ANEF is above 30 then AS2021 interior noise levels apply. However, the proposal is within the 20 – 25 ANEF Contour. This noise level is generally compatible with commercial development.

Clause 32 of Tweed Local Environmental Plan 2000 states that any commercial development must consider Australian Standard AS 2021–1994(Acoustics–Aircraft noise intrusion—Building siting and construction). The proposal during the detailed design phase will need to consider acoustics as part of a future development application.

#### *Traffic and Transport*

TTM Group conducted a traffic impact assessment for the development however since the time of developing this report; the proponent has removed the assisted living facility (aged care housing) from the proposed development.

The Planning Proposal includes the following changes in terms of traffic:



- The Leisure Drive / Winders Place intersection is currently a signalised 3 way intersection to the east of the development site. The redevelopment of the site will shift the eastern existing access into this intersection to form a 4 way signalised intersection.
- Pedestrian connection to the development from surrounding areas is enabled by a number of existing facilities. The signalised intersection of Leisure Drive and Winders Place provides pedestrian phases to enable safe road crossing. Footpaths surrounding the site will remain as part of the redevelopment.
- The development proposes to include 207 bicycle spaces to be placed around the site to suit demand. This provision meets Council's requirement for bicycle parking.
- Provide internal connectivity to adjoining car park.

The traffic impact assessment makes the following comments:

- Vehicular access to the development will be retained on Leisure Drive. Council had planned upgrades to form the Fraser Drive and Kirkwood Road link by approximately 2015. Council plans to widen Leisure Drive to 4 lanes between Winders Place and Eucalyptus Drive but the timeline is currently unknown. The proposed site will be large enough to comply with Council's car parking standards. Site access designs and locations are to comply with the relevant Council and authority guidelines.
- Proposed site servicing arrangements achieve compliance with Council and Australian Standards requirements.
- The performance of the Leisure Drive/Winders Place signalised intersection remains acceptable under TMR's GARID thresholds and will not need further works. The Leisure Drive/Darlington Drive/Greenway Drive roundabout operates above the guideline's threshold and will reach full saturation during 2013 under background growth alone. The roundabout will require ameliorative works but no burden should be placed on the developers. All other intersections effected by the development have acceptable performance under GARID.

The proposal to change Leisure Drive/Winders Place intersection and widen Leisure Drive along the site frontage and provide connectivity to the adjoining retail site are consistent with previous discussions with Council staff and are supported in principle. Therefore the traffic related issues addressed in the reports have been accepted as satisfactory.

#### Vegetation

The site has been extensively disturbed as it is a car park and bowling greens. It includes expansive hard paved areas and cleared areas.

Council's Vegetation Management Plan mapping identifies the site as mainly highly modified and disturbed. It is highly unlikely that development that will follow this Planning Proposal will impact on critical habitat or threatened species.

#### Heritage

The site contains no identified heritage items under the LEP 2000 or Draft LEP 2012. The site is a significantly disturbed site but no information has been presented to determine the likelihood of any heritage significance and potential impact at the site. Pursuant to Council's Guideline – Planning Proposal Process and Procedure – Amending a LEP, an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") must be prepared with a planning proposal.

An Initial consultation with Converge Heritage and Community have advised that there are no known sites or artefacts in close proximity to the site and as such, it is considered

appropriate to require an Aboriginal Cultural Heritage Due Diligence Assessment to be completed post-Gateway and prior to public exhibition.

Water

The subject land is serviced by existing 150mm diameter and 250mm diameter water mains within the Leisure Drive frontage and appropriate services can be provided from these mains subject to detailed design.

Sewer

The subject land is serviced by an existing gravity sewer main and sewer pump station/rising main in the Leisure Drive frontage. The subject land can be serviced by this infrastructure, subject to detailed design.

Connection to Council's reticulated waste water treatment system should be possible and is not considered a constraint to development of the site.

Power

The subject land is serviced by existing underground power in the Leisure Drive frontage and sufficient capacity is available to service the land subject to formal consultations with Essential Energy.

**Plan Making Provisions**

As a result of recent changes to the NSW Department of Planning and Infrastructure's (DP&I) plan-making provisions Council is now required to nominate whether it seeks the delegation powers from DP&I to make the Planning Proposal.

Due to the as yet unresolved nature and complexity of constraints affecting the site, and scale of the proposal as presented in this report, it is considered appropriate to request that plan-making delegations remain with the DP&I.

**CONCLUSION:**

Assessment of the Planning Proposal to rezone Part Lot 2 DP 1040576 to 3(b) General Business zone under the Tweed LEP 2000 with regards to the matters considered in this report reveals that the Planning Proposal has merit and it is worthy of support.

It is therefore recommended that the Planning Proposal be submitted to the Department of Planning and Infrastructure for Gateway Determination. The rezoning will facilitate commercial/retail development comprising a supermarket, speciality shops and a car park.

The proposal will essentially be expansion of the existing Banora Shopping Centre. The master plan for the development presents elements that integrate development with the existing shopping centre adjacent to the site. Notwithstanding this there will be additional competition and resulting loss of trade to existing retailers, at least initially. The economic assessment undertaken suggests that there will be some impact on the existing Banora Shopping Village and other centres as a consequence of the development. However, the Planning Proposal will facilitate permanent employment generating activity and will not result in a loss of employment generating lands.

The site is affected by the 1 in 100 year flood event, lies within the 25-30 contour zone on the Australian Aircraft Noise Exposure Forecast (ANEF) map for Gold Coast City Airport, has been identified as Class 2 Acid Sulfate Soils and high ground water vulnerability; however, these issues are unlikely to limit the commercial use of the land. These matters are addressed in further detail in the attached document: Planning Proposal v.1 'Gateway', dated February 2013.

Preliminary traffic assessment indicates that the issues raised by future development can be dealt with on site and through modifications to existing access arrangements.

The Planning Proposal complies with Council and State strategies and policies, and through the Development Application process, will have the ability to comply with detailed provisions pertaining to the site.

### **COUNCIL IMPLICATIONS:**

#### **a. Policy:**

The proposed expansion of the retail services in the Banora Point locality is consistent with Council's adopted retail strategy and the broader regional strategic plan; Far North Coast Regional Plan 2006-31.

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

The costs associated with progressing the planning proposal will be borne by the proponent in accordance with Council's adopted Fees and Charges Schedule 2012/13.

#### **c. Legal:**

There are no appeal rights available to proponents for Planning Proposals seeking the rezoning of land under the *Environmental Planning and Assessment Act 1979*. However, should Council refuse to proceed with the Planning Proposal there is an avenue for an applicant to seek a review of this decision by the Department of Planning and Infrastructure. There are no legal implications associated with the Planning Proposal.

#### **d. Communication/Engagement:**

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

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

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community
- 1.5.3.1 Effective updating of Tweed LEP

### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

- Attachment 1: Request for Planning Proposal (ECM 64376401)
  - Attachment 1A: Request for Planning Proposal (ECM 64376402)
  - Attachment 1B: Request for Planning Proposal (ECM 64376403)
  - Attachment 1C: Request for Planning Proposal (ECM 64376404)
  - Attachment 2: Draft Tweed LEP Amendment Number 95 Planning Proposal Version – Gateway (ECM 64408570)
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26 [PR-CM] Planning Proposal PP10/0007 - Mooball Planning Proposal Lot 2  
DP 534493 No. 5867 Tweed Valley Way, Mooball

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0007 Pt2



**Civic Leadership**

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### **SUMMARY OF REPORT:**

Council is currently processing a planning proposal for land in Mooball, which aims to urbanise land currently zoned rural consistent with the overarching strategic policy; *Tweed Urban and Employment Land Release Strategy 2009*. This was the subject of a report to the Council meeting of 13 December 2012 at which it was resolved to forward the planning proposal to the Department of Planning and Infrastructure (DP&I) for consideration under its 'Gateway Determination' system.

Subsequent to the December meeting it was brought to the attention of Council staff that within the identified future development site there was a property for which the owners are neither a party of the proponent, nor supports the proposal to rezone their land.

Council staff has taken steps to successfully withdraw the gateway request from the DP&I and have met with both the landowners and the proponent. Both parties are now considered to be on equal standing with respect to the information made available to them about the planning proposal and the process being employed by staff to ensure that each party has the information and time to adequately evaluate their position.

It is expected that the outcome of the current communication and facilitation processes will lead to a further report to Council which will provide options or strategies for progressing the planning proposal or in the alternative managing the strategic implications of any intention not to proceed with the proposal.

### **RECOMMENDATION:**

**That the report on Planning Proposal PP10/0007 - Mooball Planning Proposal Lot 2 DP 534493 No. 5867 Tweed Valley Way, Mooball 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, as depicted in Figures 1 and 2 below.

A report on the proposal was last considered by Council at its meeting of 13 December 2012, whereby Council resolved among others that:

- "1. *The proposal be referred to the NSW Department of Planning and Infrastructure (DP&I) requesting a Gateway Determination, that is; it is a request of the Director-General to approve the preparation of a draft Local Environmental Plan amendment and to provide instruction on any formal requirements pertaining to: public exhibition, State Government agency referral, and the preparation of any specific study; and that,*
2. *The landowner/proponent be advised that a Planning Agreement is necessary to address the Aboriginal Advisory Committees recommendation and the requirements regarding the need for further site testing, as well as, to address the need for a standalone private waste water management system."*

A full copy of this report can be found as Attachment 1.

### **Post Council Resolution of 13 December 2012**

In pursuance of the Council's resolution a referral of the proposal was made to the Department of Planning and Infrastructure (DP&I) to obtain a Gateway Determination. This event occurred on 19 December 2012.

### **Notification of Non-Party Approval for the Inclusion of Lot B DP419641**

Council received notice from the owners of Lot B DP419641 ("Lot B") that they are not a participant or member of the 'development party' proposing the rezoning of the land and to the contrary, disapprove of and have objected to the rezoning of their property.

Consequently, what has occurred is that the planning proposal documentation, in particular the mapping and proposed structure plan, has been based on three properties as opposed to two. The additional property was included by error in the preparation and drafting of the mapping in support of the developer's request for a planning proposal and was not identified by Council staff.

### **What does this mean for Council and the Planning Proposal?**

There are two key and distinct aspects to understanding the implications of not identifying Lot B, these are; firstly, a legal/statutory perspective and secondly, a practice and procedure perspective.

The first of these two aspects is arguably of minimal concern to the process as a whole as there is no requirement for a council to seek or obtain the consent of a landowner when making an LEP amendment. The statutory process does not mandate consultation with the landowner and nor does it provide any right of appeal to a court. The latter arises only in respect of procedural rather than merit based appeals, which are mainly concerned with process and jurisdictional matters.

The second aspect is more relevant because Council has established a clear practice and procedure and in the present the confusion within the planning request led to a departure

from an important aspect of it namely; the landowners consent being provided or alternatively consultation with the landowner.

The Unit's practice and procedure is detailed in their: *Guideline, Planning Proposal Process and Procedure - Amending a Local Environmental Plan v 1.4* of 14 September 2011, states in-part:

*6.4.1 General*

*The following is a guideline on the requisite level of information required to form the basis of a request for a planning proposal.*

- i. Landowners un-limited consent authorising the making of a draft LEP over the subject land(s).*
- ii. Legal property description in full.*

It further states at s 1.1:

*It is important to us and you that the opportunity for informed dialog and decision making exists through guidelines such as this.....*

*We want to promote an open and meaningful line of communication with prospective proponents and the community about the process. We also want to ensure that proponents of planning proposals understand their role and commitments in this process,.....*

The guideline is available on Council's web site and is well known to local consultancies. Experience to-date has shown that proponent's ordinarily meet Council's expectations and requirements.

The present case is a rare occurrence. The Proponent has accepted there was a breakdown in communication within their project team, which led to Lot B being mistakenly identified and it is apparent from the written documentation that this was a genuine oversight.

The facts are:

- i. The owners of Lot B have not consented to authorising the making of draft LEP;
- ii. The request form completed by the Proponent for the planning proposal request did include the owner's consent for the properties identified and detailed on the form;
- iii. The legal description of the properties intended to be the subject of the planning proposal request were included on the relevant form;
- iv. The relevant form did not include the property description for Lot B or the owner's consent.

In regard to the consultation with the community and landowners generally this would occur post gateway and is described by the Environmental Defenders Office (EDO), in their on-line publication: *Fact Sheet 2.1 - LEPs and SEPPs* [[http://www.edo.org.au/edonsw/site/factsh/fs02\\_1\\_3\\_print.php](http://www.edo.org.au/edonsw/site/factsh/fs02_1_3_print.php)] which states:

***"Community consultation***

*The Planning Minister decides, as part of the Minister's gateway determination, what sort of community consultation is required for making an LEP or spot rezoning. The Planning Minister can decide that the matter does not require any community consultation. The EPA Regulations can set out standard community consultation*



requirements. *If the Planning Minister does decide that community consultation is required, then the process is as follows:*

- *The relevant planning authority must make the planning proposal publicly available during the period of community consultation. A summary is permitted for detailed provisions.*
- *During the period of community consultation, any person can make a written submission to the relevant planning authority (remembering that the planning authority cannot vary those parts of the LEP which are mandatory under the Standard LEP Instrument).*
- *The relevant planning authority can choose whether to make the submissions available to the public.*
- *The relevant planning authority can vary a planning proposal at any time during the LEP process, but must give the varied proposal to the Planning Minister. Further community consultation is not required following a variation unless the Minister directs.*

It is clear from the above that whilst the statutory scheme might set out and control the overall process and mandate that certain requirements must or need not occur, it is not the only source of guidance for the Council about how to conduct an amendment to the LEP.

This is particularly so when, as in the present case, the procedural aspects being progressed occur prior to the gateway determination. When this occurs Council is to be guided by its established practice and procedure rules.

#### **What steps have been taken to address this issue?**

Once Council staff were aware of the error a request was made to the DP&I to retract the request for the gateway determination.

Whilst written confirmation has not been received at the time of writing DP&I staff have confirmed by email correspondence that the Council's request for a gateway determination has been retracted.

Council staff sought clarification from the proponent concerning the apparent error and as discussed above has received advice confirming that an error had occurred in their preparation of the request documentation.

In addition, Council staff have met with the landowner's of Lot B and further facilitated a meeting between them and the proponent. The salient points raised by way of the discussion were noted as:

- The owner's of Lot B expressed their concern for their lifestyle and current standard of living should the rezoning proceed as proposed;
- It was noted that non-commercial poultry is reared and kept on the property for show purposes and is a long-time hobby, which could be jeopardised by any future residential zoning;
- That the Lot B landowner's 'truck' (an articulated heavy goods vehicle), which is kept on the Tweed Valley Way road reserve, would likely attract noise complaints from future residents and that a new storage location would need to be found;
- That the Lot B owners were not opposed to development of the site generally but are in respect of the small lots proposed;

- The landowners of Lot B are, in principle only, open to the idea of being buffered from any new development; and,
- Made enquiry with the proponent with regard to their property being bought out.
- The proponent acknowledged and was apologetic in regard to the error made with the planning proposal which led to Lot B being included;
- The proponent was open-minded and willing to work with the landowners to find a solution agreeable to both parties;
- The proponent had not ruled out any buffering or offering of additional land;
- The proponent had not ruled out concessions to connecting Lot B to the proposed reticulated sewer works;
- The proponent would consider an option that included the purchase of Lot B if that was the landowner's preferred option; and,
- The proponent is willing to maintain an open dialog with Council and the landowner.

A further step in this process is for Council staff to liaise with both parties, to ascertain whether there is any agreement on the issues discussed, to clarify any issues or to consider any new issue, and to assist the parties in reaching a conclusive position as to where they stand in relation to the planning proposal.

It is for the need to continue with this process that this report does not seek any recommendation in regard to how the planning proposal should best be proceeded with.

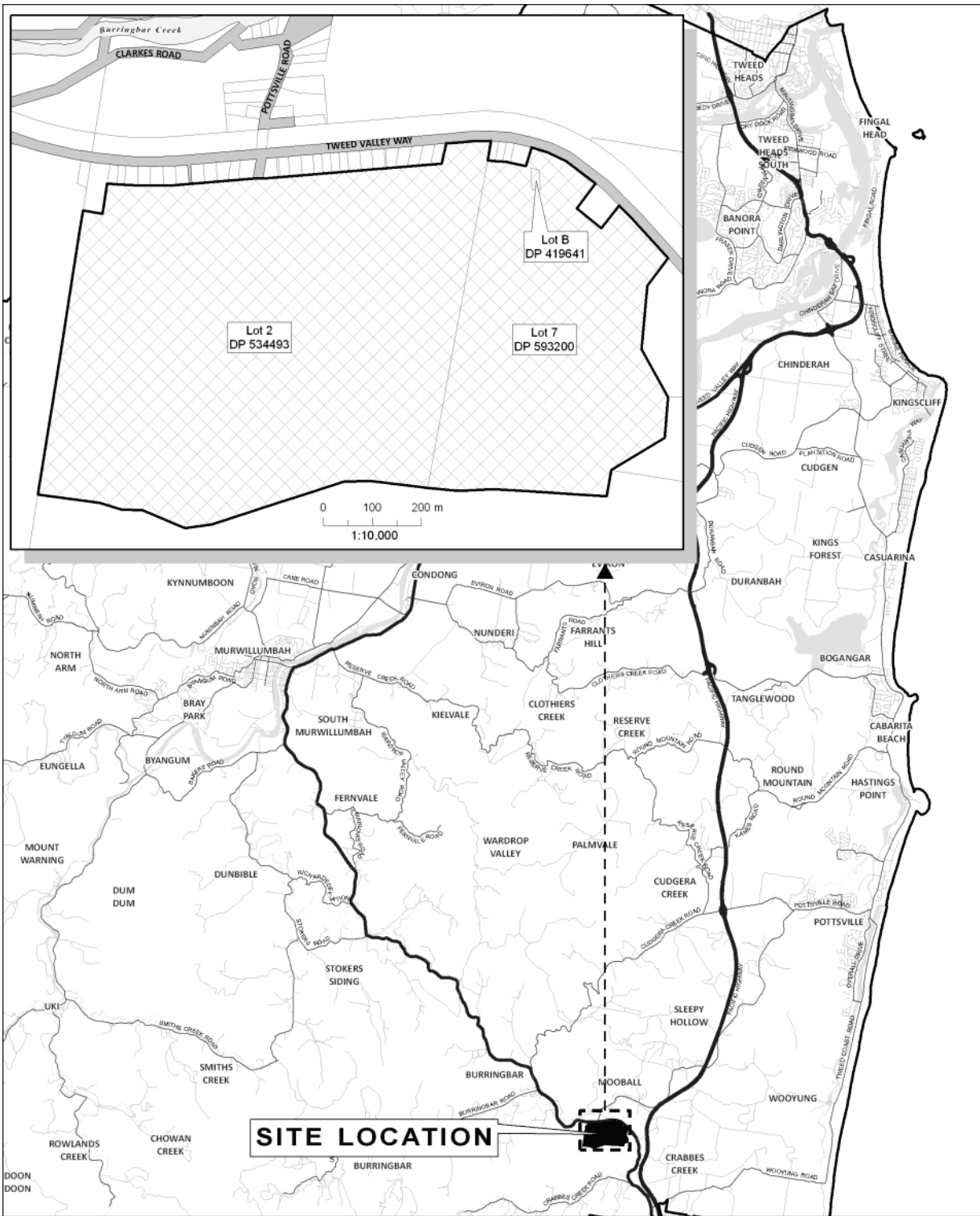
#### **Background Information Relating to Lot B DP 419641**

Lot B DP 419641, No. 5859 Tweed Valley Way, comprises an area of 714m<sup>2</sup> and is currently zoned 1(a) Rural under the Tweed Local Environmental Plan 2000. The site contains a single dwelling house and has a registered Right of Way through Lot 7 DP 593200 and Lot 1 DP 231846 to Tweed Valley Way.

The lot is identified within 'Area 9' of the Tweed Urban and Employment Land Release Strategy 2009 (TUELRs), which forms the strategic basis for the subject planning proposal.

The relationship of the site to the proposal and the TUELRs is identified within Figures 2 and 3 below:

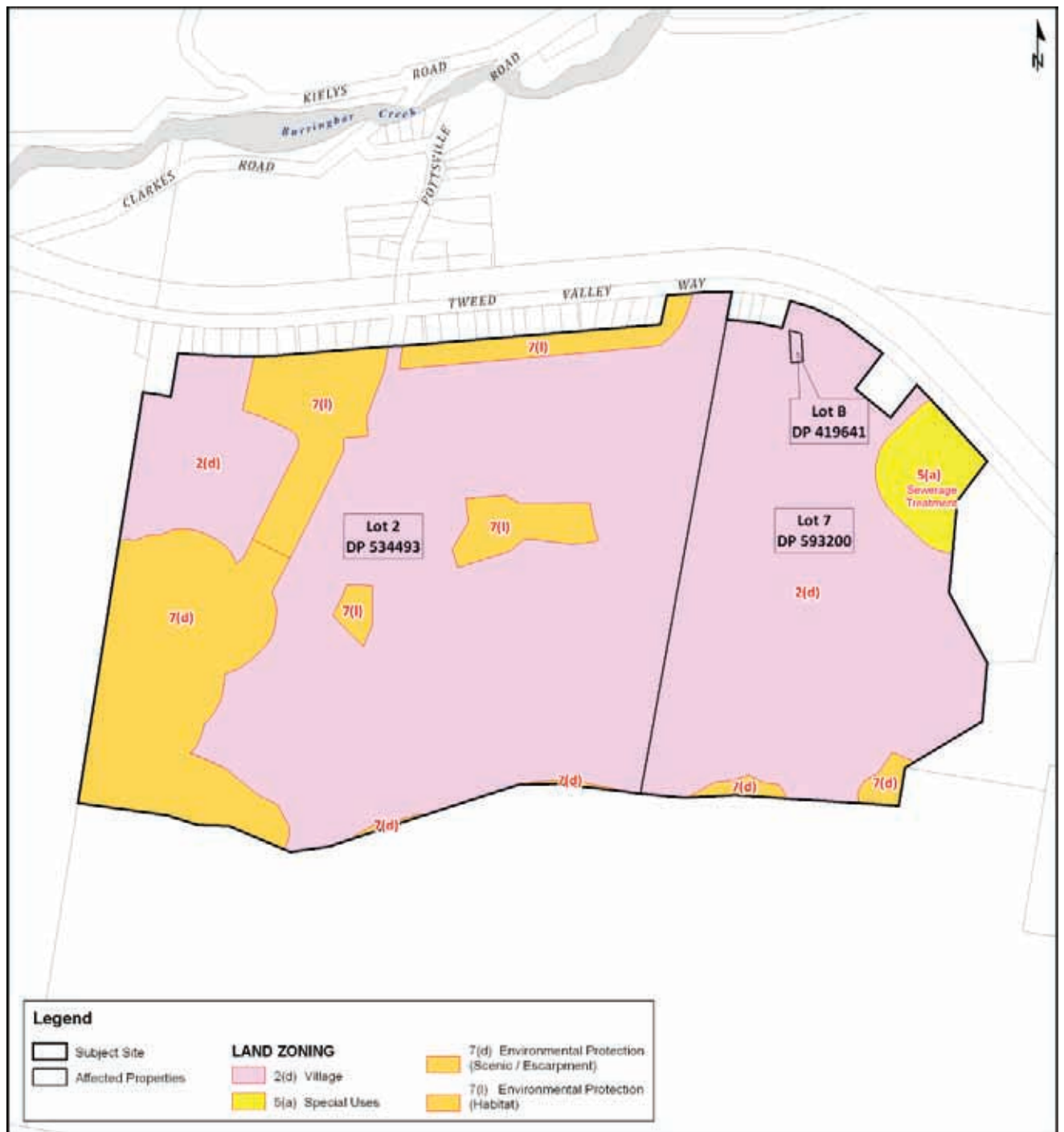
FIGURE 1 – PP10/007 SITE LOCALITY PLAN



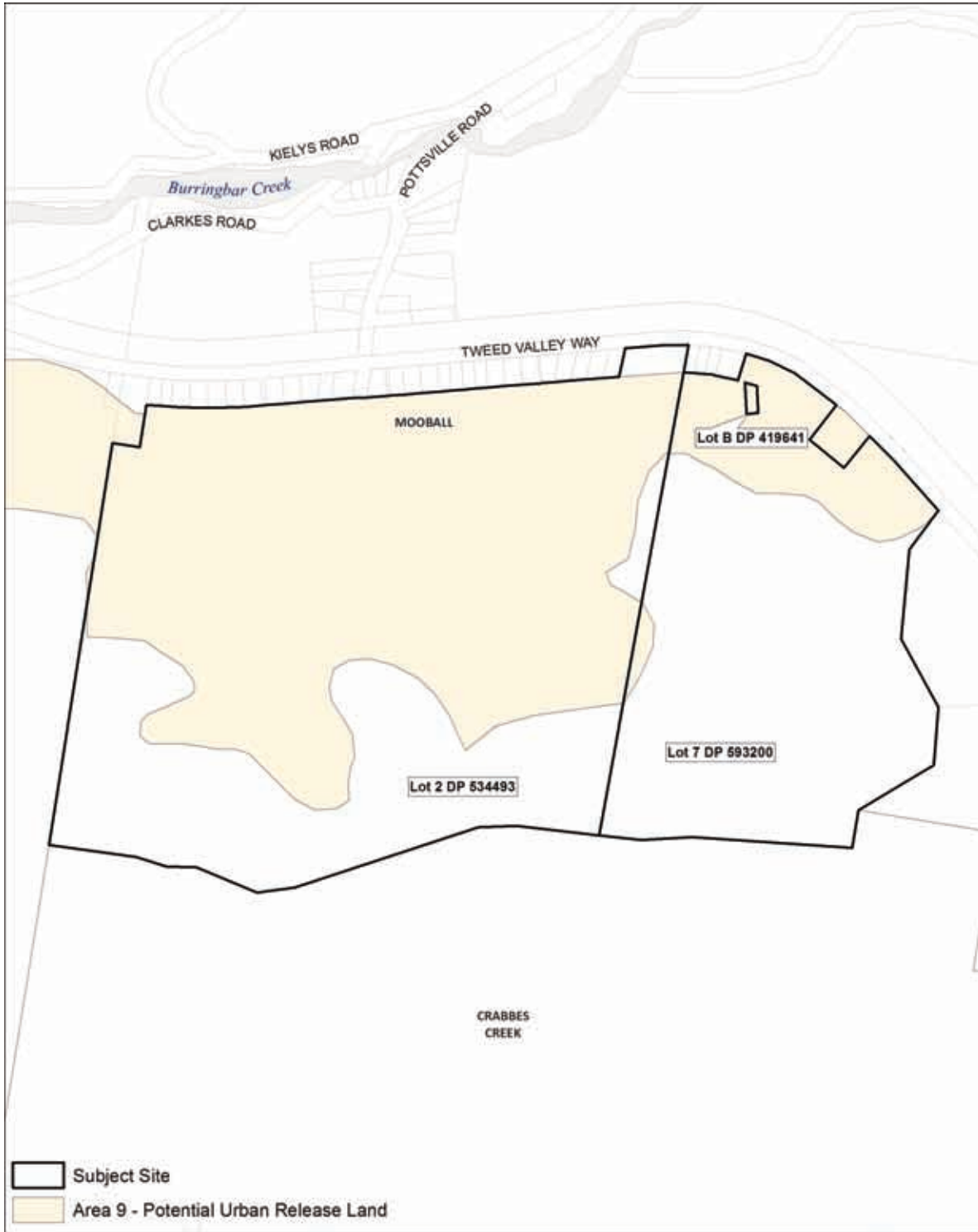
Locality Plan

Planning Proposal PP10/007 -- Lot B DP 419641, Lot 2 DP 534493 and Lot 7 DP 593200  
Tweed Valley Way, Mooball

FIGURE 2 – LOT B DP 419641 WITHIN PP10/0007



**FIGURE 3 – LOT B DP 419641 WITHIN AREA 9 OF THE TWEED URBAN AND EMPLOYMENT LAND RELEASE STRATEGY 2009**



**Tweed Urban & Employment Land Release Strategy 2009**

Area 9 - Potential Urban Release Land - Mooball

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As discussed earlier in this report, the planning proposal request did not include Lot B but is included in the proposed zoning scheme as well as a several other supporting documents.

In accordance with Council's resolution of 19 April 2011, the Mooball Planning Proposal and enacting DCP was included as an immediate term priority and an independent planning consultant has been engaged to undertake the assessment and preparation of the Council's planning proposal.

By way of information only at this stage, Council's consultants have assessed Lot B, within the context of the planning proposal as a whole, and concluded that there are no significant environmental or planning constraints affecting Lot B.

### **OPTIONS:**

1. Receive and note this report; or
2. Proceed with a decision regarding the planning proposal as stipulated by a resolution of the Council's own making.

### **CONCLUSION:**

It has become very apparent that the planning proposal (PP10/0007) process has not been carried out under the terms and in accordance with the expectations detailed in the Council's guideline for preparing draft LEP amendments and notwithstanding that there has been no statutory breach.

Council staff have acted on the information as it came to light and have, as far as is practicable, put the process and the owners of Lot B in a position as near as possible to that which they would have been in but for the error occurring.

It is imperative that the processes that would have ordinarily occurred now be permitted to occur prior to any reconsideration of the planning proposal regarding its progression, or otherwise. This would include the further discussion between the Council staff, landowner and proponent. It may also include private negotiation between the latter two.

For these reasons the planning proposal should be held in abeyance whilst the parties have the opportunity to evaluate their position and how they would like matters to proceed.

Having regard to the steps taken to remedy the error in the planning proposal and process and the position the parties have been restored to it is considered that the project as whole is now back in line with Council's practice and procedure guidelines.

It is intended that a further report to Council 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:**

Attachment 1. Council report of 13 December 2012 (ECM 64370130)

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**a26 [PR-CM] Class 1 Appeal in Relation to DA11/0456 for Additions to Existing Manufactured Home Estate Including 32 New Manufactured Home Sites, Recreation Area, Visitor Parking and Extension of Internal Road and Revegetation Work at Lot 193 DP 1014329 No. 34 Monarch Drive, Kingscliff**

**SUBMITTED BY: Development Assessment**

**FILE NUMBER: DA11/0456 Pt4**

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**Civic Leadership**

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### **SUMMARY OF REPORT:**

At its meeting on 25 October 2012, Council refused Development Application DA11/0456 for additions to an existing manufactured home estate including 32 new manufactured home sites, recreation area, visitor parking and an extension of an internal road and revegetation work at Lot 193 DP1014329, 34 Monarch Drive, Kingscliff.

Council has been served notice of a Class 1 Appeal against Council's determination in the NSW Land and Environment Court. A telephone directions hearing has been set down for Friday 12 April 2013 and it is requested that Council's position on defending the Appeal be determined to enable engagement of solicitors and consultants.

### **RECOMMENDATION:**

**That Council in respect of its decision to refuse DA11/0456 for additions to an existing manufactured home estate at Lot 193 DP1014329, 34 Monarch Drive, Kingscliff, determines to either:**

- 1. Engage its solicitors to negotiate Consent Orders for the proposed additional 32 manufactured home sites; or**
- 2. Engage its solicitors to defend the refusal of the proposed additional 32 manufactured home sites.**

## REPORT:

The proposed development (DA11/0456) is for the addition of 32 new manufactured home sites located on the northern side of the on-site lake/artificial waterbody. Each new home is proposed to be constructed off-site and transported and installed on the property. Each manufactured home will contain two bedrooms and a study or media room as well as a garage.

The proposal also comprises an internal road from Monarch Drive, recreation area, additional car parking, and emergency access point from Tweed Coast Road, an acoustic fence located adjacent to Tweed Coast Road and revegetation/compensatory habitat.

The proposed additional dwellings will use this access and continue through the existing internal road network, from Les Noble Drive along the north-west boundary and the northern perimeter of the lake.

The proposal includes filling and retaining walls around the north and western boundary of the lake to support the internal access road and to achieve a flat surface for dwelling platforms. Fill height ranges from approximately 2m to approximately 3m.

Each of the 32 manufactured dwellings will be partially cantilevered over the existing lake and in part supported by fill material, retaining walls and pier structures. The fill is required for dwellings to achieve Council's design flood level of 3.2m AHD and minimum habitable floor level of 3.7m AHD. The fill is to be supported by retaining walls 2.9m in height above the water line (with approximately 1.4m of retaining wall remaining below the water line), with the pier foundations located in the lake itself.

The site is described as Lot 193 DP1014329 and is located at 34 Monarch Drive, Kingscliff. It has an area of approximately 21.9 hectares and includes a large artificial lake on the northern portion of the site.

The site is relatively flat, with the land adjacent to the northern boundary at approximately RL 1.7m AHD with the site sloping down towards the lake to approximately RL 0.70m AHD.

The allotment is currently improved with 254 existing manufactured homes, an existing community building, internal roads, services and a recreational hall.

The development application was notified and advertised for a period of 30 days, during which time approximately 130 submissions were received.

Council officers submitted a report to Council's meeting of 25 October 2012 recommending approval of DA11/0456, subject to conditions. At this meeting Council resolved to refuse the application based on the following reasons:

1. In accordance with Section 79C (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to have a detrimental impact on the natural and built environment and detrimental social and economic impacts in the locality as the development will result in:
  - Loss of visual amenity for existing residents in the development because of loss of vegetation and change of view to urban environment;
  - Loss of amenity for existing residents due to loss of access to the nature walk;
  - Loss of amenity for existing residents due to increased noise from the proposed residences affecting the open space on the southern side of the lake;
  - Loss of visual amenity to adjoining properties due to the impact of the proposed fill, retaining walls and noise attenuation fencing;

- There is insufficient information to demonstrate that the development will not have a negative impact on flooding affecting neighbouring properties; and
  - The noise level impact assessment indicates noise from the adjacent trotting track will exceed background noise levels.
2. Pursuant to Section 79C (1)(c) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development for the following reasons:
- The proposed development will have a negative impact on the natural environment as the site is of ecological significance as part of a regional wildlife corridor and in providing habitat for wading birds and other wetland species, a number of which are listed as threatened on the Schedules of the Threatened Species Conservation Act 1995 and significant parts of the existing vegetation is proposed to be removed.
  - A geotechnical report addressing the potential impacts of the development has not provided certainty that the site is suitable for the development.
  - The design of the internal road as a combined road and walkway will adversely affect the safety and amenity of all residents.
  - The development requires excessive fill and alteration to the natural landform and the proposed cantilevered buildings overshadowing the lake which demonstrates that the proposal is an overdevelopment of the site.

## **OPTIONS**

1. Negotiate Consent Orders; or
2. Defend the Appeal.

Council officers recommend Option 1.

## **COUNCIL IMPLICATIONS:**

### **a. Policy:**

Corporate Policy Not Applicable.

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

Not Applicable.

### **c. Legal:**

Council will be required to engage legal representation regarding the Appeal. As Council staff recommended approval for the application it will also be necessary to engage planning, ecological and engineering consultants to be expert witnesses on behalf of Council if it is resolved to defend the Appeal. Considerable legal costs will be incurred as a result of the Appeal.

### **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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## CONFIDENTIAL ITEMS FOR CONSIDERATION

### REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

### REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

#### 1 [PR-CM] Leda Cobaki Development Site - Compliance Issues - Unauthorised Subdivision Works

##### REASON FOR CONFIDENTIALITY:

Report contains "Without Prejudice" matters

##### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.



**Civic Leadership**

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#### 2 [PR-CM] Breach of Legislation, Tweed River Hacienda Caravan Park

##### REASON FOR CONFIDENTIALITY:

This report has been made Confidential so as not to prejudice any future legal proceedings.

##### Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.



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