

TITLE: [PD-PC] Development Application DA05/0793 for Clearing and Replanting Vegetation at Lot 1971 DP 133919, Ocean Avenue, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0793 Pt2

SUMMARY OF REPORT:

A development application has been submitted to undertake vegetation management for the purposes of rehabilitation and bushfire protection. The application accompanies the application for infrastructure works within the Seaside City estate. A management plan has been prepared for the site which will be the responsibility of the proponent for five years.

The site has been divided into management units including a unit for a cycleway and a bushfire asset protection zone.

Lot 1971 is proposed to be dedicated to Council. The work is required to be carried out in conjunction with the infrastructure and landforming works on the adjacent land.

RECOMMENDATION:

That upon written notification that Appeal No. 10216 of 2006 has been withdrawn Development Application DA05/0793 for clearing and replanting vegetation at Lot 1971 DP 133919, Ocean Avenue, Kingscliff be approved subject to the following conditions: -

GENERAL

- 1. This consent shall be completed in accordance with the Vegetation Management Plan - Western Boundary dated 27 June 2006 prepared by Cardno except where varied by the conditions of this consent.** [GEN0005]
- 2. A restriction under the provisions of Section 88B of the Conveyancing Act is to be placed on the title of Lots 1 to 9 Section 8 DP14895 and Lots 17 and 18 Section 4 DP14895 indicating that part of the lots as indicated on plan 296703-VMP01 Rv 4 contained in DA 05/ 0793 are located within the 50m Cudgen Creek buffer area and no works, swimming pools or structures except fences are to be placed within this buffer area.**
- 3. Prior to completion of the five year maintenance period coastal tea tree (*Leptospermum laevigatum*) is to be removed completely from Lot 1971 DP133919.**
- 4. The maintenance period is to be five years from the date of planting works commencing.**

5. **The reports required by Section 10 of the Vegetation Management Plan are to be prepared by an independent suitably qualified and experienced environmental scientist/ecologist. The environmental scientist/ecologist is to be approved by the General Manager or his delegate.**
6. **Separate development applications are to be submitted to Council for the viewing platforms and creek access facility within one month of commencement of work.**
7. **All dangerous goods, fuels and chemicals shall be stored in a secure area and shall not be permitted to flow or percolate to any watercourse or drain.**
8. **Acid sulfate soils shall not be exposed or disturbed. The approved works shall not include earthworks, except as strictly necessary for approved vegetation clearing and replanting.**
9. **Existing vegetation shall not be removed, lopped or damaged, except as strictly necessary to complete the proposed works.**
10. **Runoff from the site shall not be permitted to flow or percolate to the Creek when pH is outside the range 6.5-8.5 or SS exceed 50mg/L.**
11. **Following clearing works and prior to earthworks or commencement of construction works surface radiation monitoring is to be undertaken for the entire Seaside City site including Lot 500 DP 747420 and Lot 1971 DP 133919. The draft Seaside City Radiation report dated June 2006 is to be amended to include the results of the surface monitoring and the final report submitted to Council (including proposals for continuous monitoring during bulk earthworks and remediation plans, if applicable) for approval by the General Manager or his delegate. All works shall comply with the approved plan. Additionally, a post earth works surface radiation survey shall be completed and a validation statement provided to Council to the satisfaction of the General Manager or his delegate, prior to issue of a Construction Certificate or commencement of construction works, which (provides details of radiation monitoring on the site) establishes that surface radiation levels are below relevant NSW Health Action Levels and the site is suitable for the proposed use.**
12. **Lot 1971 DP 133919 is to be dedicated to Council at full cost to the applicant within one month of completion of the planting works. In this regard the land is to be classified as operational following completion of the dedication.**

[GENNS01]

PRIOR TO COMMENCEMENT OF WORK

13. **Prior to commencement of work all native vegetation that is not proposed to be removed is to be identified and clearly marked.**
14. **Prior to commencement of work liaison with the Department of Natural Resources is to be undertaken regarding any approvals required under the Native Vegetation Act.**

15. Prior to commencement of work consultation with the Tweed Byron Local Aboriginal Land Council and the local Aboriginal community is to be undertaken regarding the presence of any heritage sites within the site. Additionally a search of the Department of Environment and Conservation's Aboriginal Heritage Information Management System (AHIMS) is to be undertaken. If the consultation or AHIMS reveals any sites requiring protection a report from a suitably qualified and experienced person is to be prepared and submitted to Council and the Department of Environment and Conservation for approval (in Council's case by the General Manger or his delegate) detailing mitigation and management of the site (s).

[PCWNS01]

16. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, 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]

17. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

[PCW0985]

DURING CONSTRUCTION

18. All vegetation that is identified for retention is to be protected during vegetation removal works.
19. The works proposed in DA 05/0793 are to be undertaken in conjunction with the works proposed in DA 05/1464 and DA05/0775. Final approval for the works in DA05/1464 will not be issued unless the works proposed in DA05/0775 and DA 05/0793 have progressed to a satisfactory level as determined by the General Manager or his delegate.
20. All vegetation clearance works are to be supervised by a suitably qualified and experienced environmental scientist/ecologist.

21. All sedimentation and erosion control measures shall be installed and maintained to the satisfaction of the Director of Environment and Community Services.

[DURNS01]

22. Construction 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 7.00pm

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]

23. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations.

[DUR0415]

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

[DUR0985]

25. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

26. 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]

27. Where potential or actual Acid Sulfate Soils are disturbed as a result of on-site excavation works, all such disturbed soils are to be managed in strict compliance with the Acid Sulphate Soil Management Plan for minor works.

[DUR1075]

28. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.

[DUR2185]

29. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

USE

- 30. 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, fumes or the like.**

[USE0125]

REPORT:

Applicant: Cardno MBK Pty Ltd
Owner: Richtech Pty Ltd
Location: Lot 1971 DP 133919 Ocean Avenue, Kingscliff
Zoning: Part 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and Part 7(l) Environmental Protection (Habitat)
Cost: \$200,000

BACKGROUND:

The application is one of three that has been submitted to carry out work at the Seaside City site. This application proposes vegetation management on the lot between Cudgen Creek and the subdivided lots within the estate. The aims of the proposal are protection of biodiversity, enhancement of biodiversity and bushfire protection for future dwellings.

Proposal

Clearing

Vegetation Management Unit 1 (VMU 1)

VMU 1 is the bushfire asset protection zone (APZ). Clearing involves removal of environmental weeds and reducing bushfire fuel loads to less than 5t/ha. Environmental weeds consist of Coast Tea-tree, Bitou bush and Lantana.

VMU 2

VMU 2 is one of two biodiversity enhancement zones between the APZ and the creek protection area. Clearing involves removal of all Bitou Bush and Mile-a-Minute, removal of immature Coast Tea-Tree, pruning of mature Coast Tea-Tree that forms part of a closed canopy layer to remove all lower branches to a height of at least three metres above ground surface level and removal of dead trees.

VMU 3

VMU 3 is located in the southern area of the site between the APZ and the biodiversity protection area. Bitou bush and Coast Tea trees are to be removed.

VMU 4 and 5

VMU 4 and 5 are the units closest to the creek and no clearing is proposed in these zones.

Replanting

Planting is proposed in VMU 1, 2 and 3. Trees and groundcovers are proposed in VMU 1 to maintain the unit as an APZ. Planting in VMU 2 is designed to re-establish the unit as a littoral rainforest community. Planting in VMU 3 is aimed at eventual re-establishment of a Banksia Dry Sclerophyll Open Forest to Shrubland community.

Planting rates and species schedules are detailed in the Management Plan.

Bushfire

VMU 1 is designed to be an asset protection zone. The zone varies in width depending on the distance from Cudgen Creek. The APZ is 10m wide near the creek, 20m wide at the southern end and 40m wide at the northern end that incorporates the detention basin. If development of the adjoining lots require a larger APZ this will be required to be incorporated into the lots. Additional APZ areas within Lot 1971 will not be permitted given the proposed vegetation management in the Cudgen Creek riparian zone and the maintenance burden for Council.

Cycleway

The cycleway path is located within the VMU 1. It is proposed to link up with the existing path to the north in Salt and make provision for linking to the future cycleway to the south in Casuarina.

50m Buffer

The Tweed Coast Estuary Management Plan nominates a buffer distance of 50m should be maintained along Cudgen Creek. The plan proposes a buffer consisting of an inner 20m core riparian zone and a 30m outer riparian zone. Part of the APZ and the cycleway is located within the outer zone. The proposed Creek access and viewing platform are located within the core zone. These items are considered acceptable as they are low key and low impact recreational uses. The buffer zone extends into the rear of ten of the existing Seaside lots. A condition requiring a restriction as to use be placed on the title of each of these lots is proposed in DA05/1464. Walking trails based on the existing tracks are also proposed within the site.

Compensatory habitat

The compensatory habitat area developed for the Casuarina development within lot 1971 is located in VMU1 and 5. Additional plantings are proposed in VMU 3 to enhance this area. Weed control is proposed for VMU 5.

Rear lane

A laneway currently exists at the rear of the existing lots and is not proposed to be constructed for access. The cycleway will be located in this area.

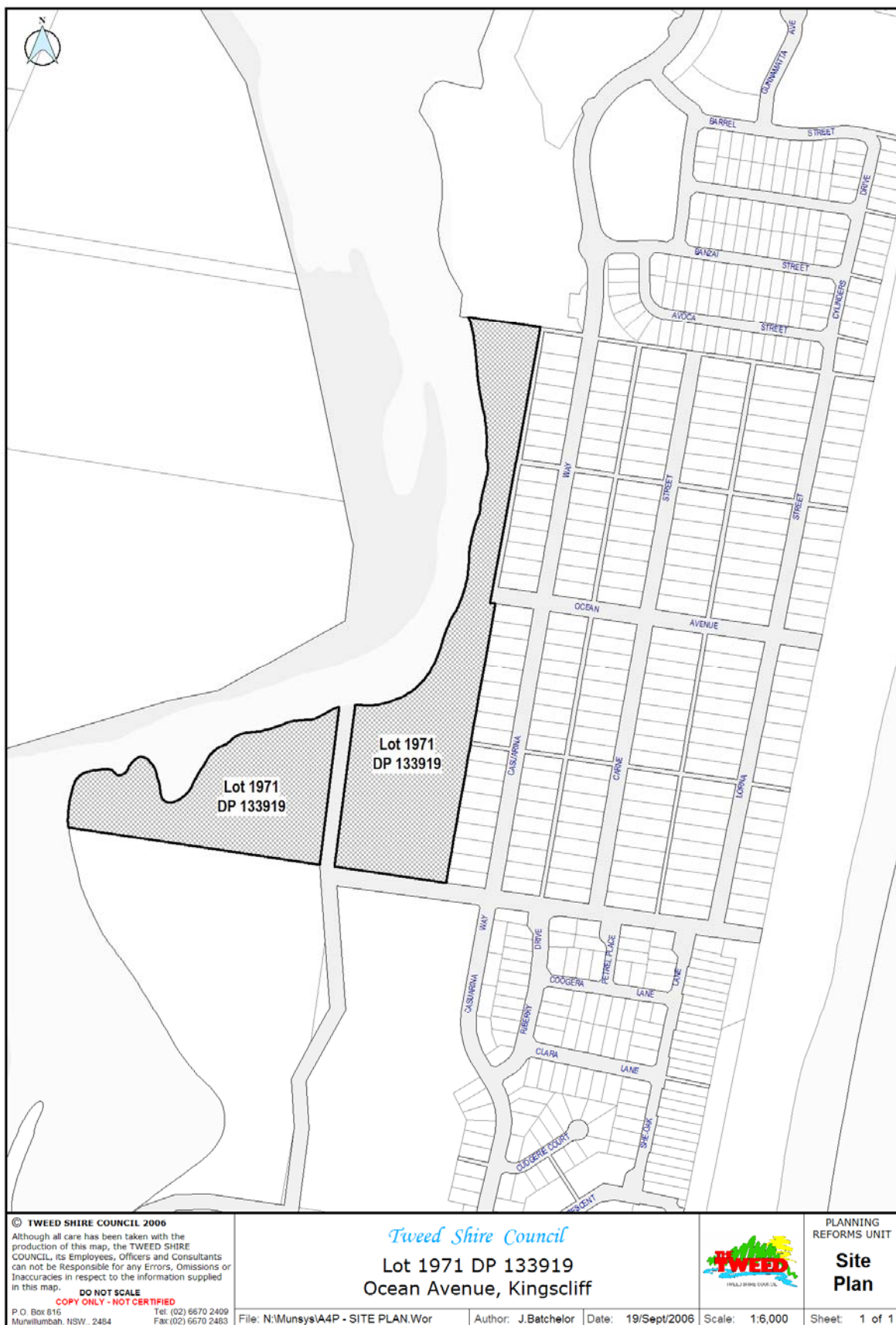
Viewing platform and Boat launching ramp

These two items are subject to separate approval and form part of the passive open space required for the anticipated population of Seaside City.

Stormwater Detention Basin

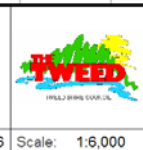
The detention basin is a key infrastructure item for management of stormwater for the estate.

SITE DIAGRAM:



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Tweed Shire Council
Lot 1971 DP 133919
Ocean Avenue, Kingscliff
 File: N:\Munsys\A4P - SITE PLAN.Wor Author: J.Batchelor Date: 19/Sept/2006



PLANNING REFORMS UNIT
Site Plan
 Scale: 1:6,000 Sheet: 1 of 1

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 rezoning of the land to 7(l) Habitat was gazetted on 29 September 2006. The development is permissible in the zone subject to consent from Council. Clause 53 C of the LEP requires rehabilitation of the subject land. The proposed development complies with this requirement.

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

Clause 25 in part states as follows-

- 3) Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:
 - (a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and
 - (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
 - (c) a plan of management showing how any adverse effects arising from the development can be mitigated, and
 - (d) the likely effects of the development on the water table, and
 - (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.
- (4) The consent authority must not grant consent to development (other than development for the purpose of agriculture or a home business) on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) without taking into consideration any representations made by NSW Fisheries or the Department of Environment and Conservation in respect of the development.

A small part of lot 1971 is zoned 7(a). It is not proposed to undertake clearing in this area only weed control. It is considered that the matters for consideration are satisfied and the impact on the land zoned 7(a) will not be detrimental. See submissions section below regarding consultation with the DEC and NSW Fisheries.

Clause 28- Development in Zone 7 (I) Environmental Protection (Habitat) and on adjacent land

Clause 28 of the LEP states in part-

- 3) The consent authority must not grant consent to development (other than for the purpose of agriculture, a dwelling house or a home business) on land within Zone 7 (I) without having regard to any representations made by NSW Fisheries and the National Parks and Wildlife Service.
- 4) The consent authority must not grant consent to development on or adjacent to land within Zone 7 (I) unless it has taken into consideration:
 - (a) the likely effects of the development on the flora and fauna found in the locality, and
 - (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
 - (c) a plan of management showing how any adverse effects arising from the development are to be mitigated.

Clause 28 is satisfied by preparation of the vegetation management plan, consultation with the Fisheries and DEC. The proposal is unlikely to have a significant impact on threatened species.

Clause 31 Development adjoining waterbodies

Clause 31 of the LEP states -

- 1) Objectives
 - * to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.
 - * to provide adequate public access to waterways.
 - * to minimise the impact on development from known biting midge and mosquito breeding areas.
- (2) This clause applies to land that adjoins the mean high-water mark (or the bank where there is no mean high-water mark) of a waterbody.
- (3) Consent must not be granted to development on land to which this clause applies, within such distance as is determined by the consent authority of the mean high-water mark or, where there is no mean high-water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:
 - (a) the development will not have a significant adverse effect on scenic quality, water quality, marine ecosystems, or the bio-diversity of the

riverine or estuarine area or its function as a wildlife corridor or habitat, and

- (b) adequate arrangements for public access to and use of foreshore areas have been made in those cases where the consent authority considers that public access to and use of foreshore areas are appropriate and desirable requirements, and
 - (c) the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the [Local Government Act 1993](#) that applies to the land or to land that may be affected by the development, and
 - (d) the development addresses the impact of increased demand from domestic water supply on stream flow.
 - (e) the development addresses the likely impact of biting midge and mosquitoes on residents and tourists and the measures to be used to ameliorate the identified impact.
- (4) The consent authority may require as a condition of consent to any development that the following be carried out:
- (a) the rehabilitation of land adjoining the waterbed to create a vegetated riparian zone or wetland,
 - (b) works to stabilise the bank or shoreline of a waterbed.
- (5) In determining a distance for the purposes of this clause, the consent authority shall have regard to:
- (a) the preservation of the scenic quality of foreshores, and
 - (b) minimising the risk of pollution of waterways, and
 - (c) the protection of foreshore ecosystems, and
 - (d) the intended or planned use for the foreshore.

Clause 31 is satisfied as the development is for rehabilitation of the riparian area and a management plan has been prepared. A buffer is proposed in accordance with the Tweed Coast Estuary Management Plan and public access is facilitated by the bicycle track, boat launching ramp and viewing platform.

Clause 35 Acid Sulfate Soils

The site is a Class 4 acid sulfate area and works 2 meters below ground level require management. Works are not proposed at this depth however a management plan has been prepared for DA05/1464 which can be utilised for this site as necessary.

Clause 39 Contamination

North Coast Regional Environmental Plan 1988

The relevant provisions of the REP are as follows-

15 Development control-wetlands or fishery habitats

The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:

- (a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,
- (b) the need to conserve the existing amateur and commercial fisheries,
- (c) any loss of habitat which will or is likely to be caused by the carrying out of the development,
- (d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,
- (e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,
- (f) the proximity of aquatic reserves dedicated under the [Fisheries Management Act 1994](#) and the effect the development will have on these reserves,
- (g) whether the watercourse is an area of protected land as defined in section 21AB of the [Soil Conservation Act 1938](#) and any measures to prevent soil erosion, and
- (h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and
- (i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.

The proposal involves rehabilitation of the vegetation in close proximity to the Creek. It is unlikely that the proposal will have any significant impact on fish habitat. The proposal is not inconsistent with the Management Plan for Cudgen Creek.

29A Development control-natural areas and water catchment

- (1) The council must not grant consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones unless it is satisfied that:
 - (a) the wildlife habitat will not be significantly disturbed by the proposed development, and
 - (b) the scenery will not be adversely affected by the proposed development, and
 - (c) an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.

- (2) In this clause, ***clearing of natural vegetation*** means:
 - (a) the removal of the majority of the vegetation, ground cover, topsoil or flora (other than noxious weeds, or trees which are dead, dangerous, exotic or propagated for horticultural purposes) within an area in excess of 1 hectare, or
 - (b) the reduction of the canopy or the population of any one tree species in excess of 20 per cent within an area in excess of 1 hectare,

but does not include such removal or reduction:

 - (c) within 3 metres of the boundary of land in different ownership or occupation for constructing or maintaining a fence, or
 - (d) within 0.5 metre of the common boundary of land in different ownership or occupation to allow a registered surveyor to survey the boundary.

The development is proposal to improve habitat with weed removal and management and planting of native vegetation as such the scenery is likely to be improved in this location as a result. An erosion and sedimentation plan is required to be implemented.

32B Development control-coastal lands

- (1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
- (2) In determining an application for consent to carry out development on such land, the council must take into account:
 - (a) the NSW Coastal Policy 1997,
 - (b) the Coastline Management Manual, and

- (c) the North Coast: Design Guidelines.
- (3) The council must not consent to the carrying out of development which would impede public access to the foreshore.
- (4) The council must not consent to the carrying out of development:
 - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
 - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

The matters in the above documents are considered to be satisfied. Public access will not be impeded. Public access will be controlled to minimise adverse impacts to the riparian zone.

81 Development control-development adjacent to the ocean or a waterway

- (1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:
 - (a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,
 - (b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and
 - (c) the development is consistent with the principles of any foreshore management plan applying to the area.
- (2) Nothing in subclause (1) affects privately owned rural land where the development is for the purpose of agriculture.

The above matters have been satisfied with provision of access and the cycleway and proposed buffer area.

State Environmental Planning Policies

SEPP-71- Coastal Protection- Council is required to consider the matters raised clause 8 of the Policy. The matters are considered to be satisfied.

SEPP-14- Coastal Wetlands – A small part of the site is affected by SEPP-14 Wetlands. It is not proposed to remove vegetation within this area.

SEPP-55- Remediation of Land- See comments under Clause 39 of the LEP

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

N/A

(a) (iii) Development Control Plans (DCP's)

N/A

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

Coastal Policy

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

The proposal involves removal of vegetation close the Cudgen Creek . Whilst this involves removal of undesirable species care is required to minimise the impact upon trees to be retained and erosion and sedimentation. The management plan makes provision for how the selective clearing is to be undertaken. An example of this is provided below for VMU 2-

1. Established Coastal Banksia, Black She oak and Coast Tea-tree are to be identified and clearly marked in the field prior to the commencement of vegetation clearance works.
2. Mechanical clearance of vegetation is to be restricted to areas outside of the canopy spread of mature trees identified for retention.
3. Mechanical clearance of vegetation is to be restricted in areas close to the high bank of Cudgen Creek
4. Weed species located within the canopy spread of trees identified for retention or close to the high bank of Cudgen Creek are to be cleared using manual clearance techniques.

Conditions are proposed to require protection of native vegetation and erosion and sedimentation control during works.

Maintenance of the of the vegetation is required to be undertaken for five years by the proponent.

(c) Suitability of the site for the development

The site is located between the creek and the existing lots in Seaside City. Management of the site is a key aspect for development of Seaside City.

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

The application was exhibited in accordance with Council's Policy. Exhibition was undertaken jointly with the DA05/1464 and DA05/775. Matters raised in the submissions related to protection of the Creek and maintaining a buffer. These matters have been discussed previously in this report and DA05/1464. Bank stability was also raised. Council's Environmental Scientist and Waterways Engineer have inspected the creek bank at this location and advise that erosion is occurring at a slow rate. It is concluded that the optimum management of this area is to establish and maintain a buffer, undertake vegetation management and control access to the Creek at this location. These measures are being undertaken as part of the Seaside development.

Department of Natural Resources

The Department advised that the application is not integrated and a Part 3A approval under the Rivers and Foreshores Improvement Act is not required. The Department raised the Native Vegetation Act as an issue but later advised that the Act didn't apply because of the urban zoning. Given the recent gazettal of the environmental protection zone for lot 1971 approval may be required under the Native Vegetation Act. A condition is to be imposed requiring consultation with the Department on this matter.

NSW Rural Fire Service

The RFS provided Council with general advice regarding bushfire management. Council has negotiated the asset protection zone within lot 1971 however it should be noted that this is the minimum for a APZ and if future developments require a larger APZ it will be required to be provided within the private lots.

Department of Environment and Conservation

The Department provided an unsigned submission which stated that the application was deficient in the extent of clearing and vegetation retention and the impact on bank erosion. It should be noted that the DEC commented on the initial version of the management plan which subsequently was amended. The DEC whilst acknowledging the site had been sand mined recommend that an Aboriginal heritage assessment should still be undertaken. Given the limited amount of work to be undertaken regarding earthworks it is considered that a condition requiring consultation with the Local Land Council and a search of the Aboriginal Heritage Information Management System is considered appropriate in this instance.

Department of Primary Industries (NSW Fisheries)

The Department have advised that the 50m buffer has not been achieved and required plantings within the buffer have not been achieved. The Department has recognised that the need for APZs and has therefore recommended that the buffer be 100m wide consisting of 50m vegetated and 50m underscrubbed/grassed. This recommendation is clearly not feasible as a 100m buffer would consume most of the lots on the western side of Casuarina

Way and a large portion of Casuarina Way. The negotiations with the applicants have resulted in an increased density of plantings in the buffer zone. It is also considered that an appropriate balance is established between the buffer zone and passive recreational uses. Accordingly construction of the rear laneway has been removed from the proposal, the APZ has been reduced at it's closet point to the Creek and VMU 2 has been increased. The DPI also advised that they did not support the application until finalisation of the LEP, this has now occurred.

(e) Public interest

It is considered that the public interest is satisfied by balancing vegetation management, passive recreation, bushfire management and dedication of the land to Council.

OPTIONS:

1. Approve the application as recommended.
2. Refuse for specified reasons.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will incur further legal expenses if the matter proceeds to an Appeal.

POLICY IMPLICATIONS:

Much of the discussions have revolved around the appropriate level of vegetation and APZ management under Council control. Consideration should be given to formulation of a Policy for both these issues for future applications throughout the Shire.

CONCLUSION:

It is considered that the proposal balances competing demands and enables an appropriate level of development to be undertaken at this location.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.
