

**TWEED SHIRE COUNCIL
MEETING TASK SHEET**

User Instructions

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Action Item - PLANNING MEETING Wednesday, 30 November 2005

Action for Item 1 as per the Committee Decision outlined below.

ATTENTION:

TO BE RECOMMENDED TO COUNCIL FOR ADOPTION AS PER THE COMMITTEE RECOMMENDATION

TITLE: [PD] Development Application DA05/0924 - Use of Existing Premises as a Bulk Store at Lot 21 Sec 4 DP2379, No. 56 Recreation Street, Tweed Heads

The following person addressed the meeting of the Planning Committee on this matter.

Miss Valletta Schelling

COMMITTEE DECISION:

**Administrator Turnbull
Administrator Boyd**

RECOMMENDED that this item be deferred pending the provision of appropriate legal advice in relation to the zoning for this application.

FOR VOTE - Unanimous

TITLE: [PD] Development Application DA05/0924 - Use of Existing Premises as a Bulk Store at Lot 21 Sec 4 DP2379, No. 56 Recreation Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0924 Pt1

SUMMARY OF REPORT:

It is recommended that the existing building be approved for the storage of bulky goods associated with the existing engineering business which provides essential telecommunication installation and maintenance services within the local area. The building has been used for similar purposes for a number of years and no extension or modification is proposed. It is adjacent to a mix of commercial and service type land uses and the planning assessment is that this application, if approved, will not unreasonably impact upon the existing streetscape or local amenity. A similar "bulk store" was approved by Council recently at 44 Recreation Street. No change to the zoning is proposed under the current Amendment 21 of the Tweed Local Environmental Plan. Any commercial operation will generate some adverse impacts, but it should be noted that only one resident has raised complaints and lodged an objection to the application for the use which has been in operation for a number of years.

RECOMMENDATION:

That Development Application DA05/0924 for the use of existing premises as a bulk store at Lot 21 Section 4 DP 2379, No. 56 Recreation Street, Tweed Heads be approved, subject to the following conditions: -

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos A1-2 dated July 2005, except where varied by the conditions of this consent.**

[GEN0005]

- 2. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.**

[POC0525]

USE

- 3. No items or goods are to be stored or displayed at the front or side of the building so as to be visible from the street.**

[USE0445]

- 4. 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]

- 5. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of Council's Director of Environment and Community Services where necessary or required so as to prevent the spill of light creating a nuisance to neighbouring or adjacent premises.**
[USENS01]
- 6. All loading and unloading is to occur within the property boundary.**
[USENS02]
- 7. All deliveries to and from the bulk store are to occur between the hours of 7:00am and 5:00pm Monday to Saturday. No deliveries outside these times are permitted without the prior written approval of Council's Director of Planning and Development, unless it is an emergency.**
[USENS03]

REPORT:

Applicant: Downer Connect Pty Ltd
Owner: Morgan Surfing Accessories Pty Ltd
Location: Lot 21 Section 4 DP 2379 No. 56 Recreation Street, Tweed Heads
Zoning: 3(b) General Business
Cost: \$1

BACKGROUND:

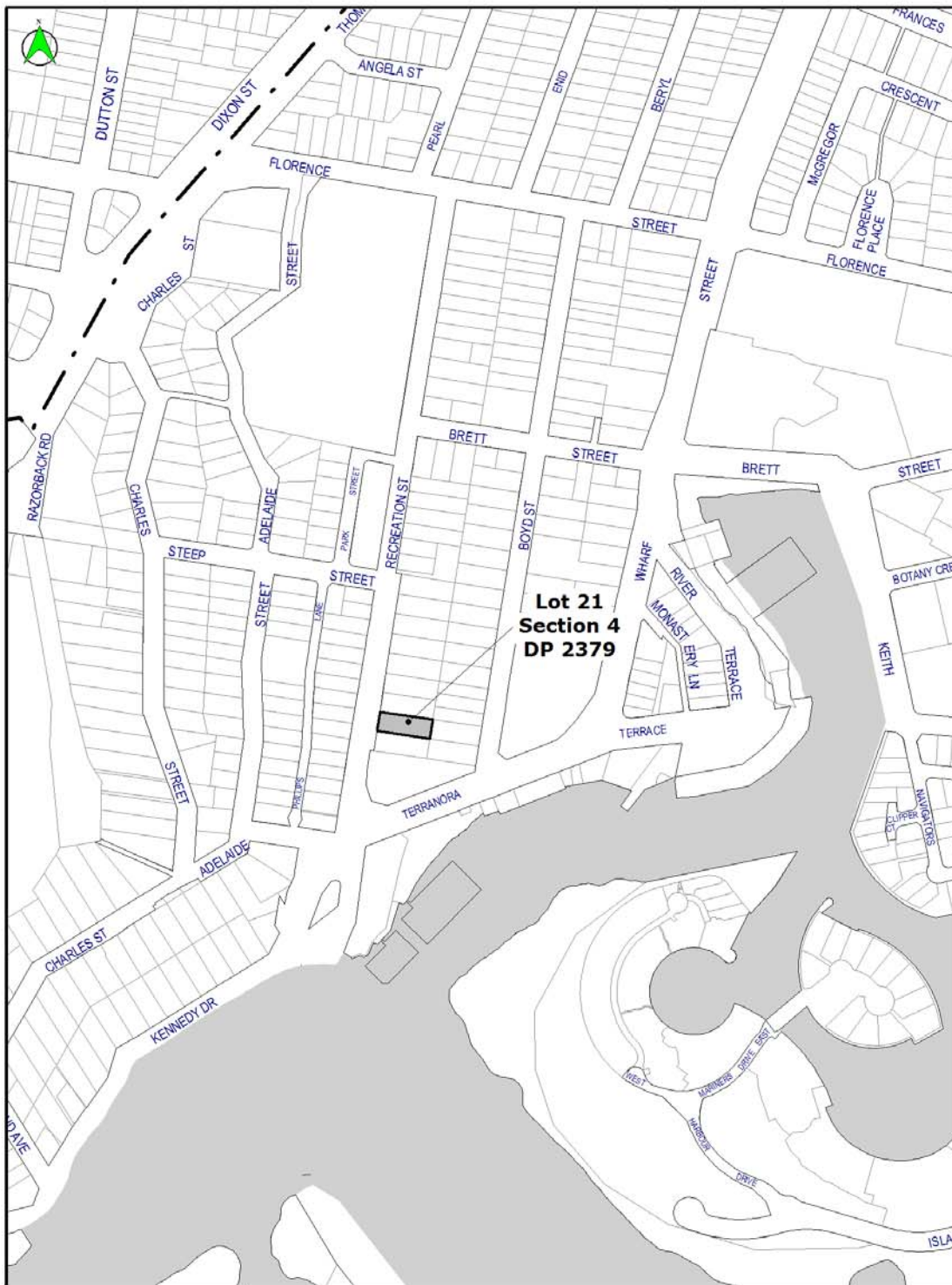
- Prior to 1990, a second hand furniture business operated within the warehouse building for several years. Although there is no record of consent, a sign for “New & Used Furniture” was approved by Council in May 1993.
- An application for a warehouse displaying and selling steel was approved in March 1997. Cutting and bending of steel was permitted, but only within the building.
- An application for a warehouse for wholesale surfing accessories was approved in September 1997.
- Following a complaint in September 2004 about the new lessor [Downer Engineering] storing materials in the front car park, a meeting was held on site with the management who agreed to comply with the approved plan and store all materials at the rear or inside the building and reinstate car parking on the approved car parking area at the front. The company complied with Council’s directive in March 2005 by undertaking works to seal the rear section to allow storage of bulky cabling and pipes, and reinstate car parking in the front area.

PROPOSAL

- The applicant proposes to use the existing premises as a bulk store.
- The key operation of the company is the installation and maintenance of telecommunications networks. These works occur off site.
- Bulky items such as cabling and installation equipment are stored on site – principally inside the existing warehouse.
- Two staff only occupy the site, with field crew primarily being employed in the field. These employees travel direct from their home to the field and only frequent the site sporadically to obtain materials.
- The building is generally used from between 7am and 4pm Monday to Friday, but occasional access is necessary in emergency/crisis situations on a needs basis.

The site is situated 75m from the junction of Wharf Street and Recreation Street. The lot comprises an area of 1088m². The land is flat and predominantly occupied by an existing warehouse with associated office at the rear. There is hard standing parking at the front and rear of the lot. A sealed driveway exists along the northern side boundary.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2005 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P. O. Box 816 Murwillumbah NSW, 2484 Tel: (02) 6670 2409 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i> Lot 21 Section 4 DP 2379 No. 56 Recreation Street, Tweed Heads</p>		<p>STRATEGIC PLANNING UNIT Site Plan</p>
<p>File: N:\MapInfo 7...\A4P Site Plan.Wor</p>		<p>Author: J Batchelor</p>	<p>Date: 21/Nov/2005</p>
<p>Scale: 1:5,000</p>		<p>Sheet: 1 of 1</p>	

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)

Clause 11 – Zone Objectives

The subject land is zoned 3(b) General Business under the provisions of the TLEP. The proposed 'Bulk Store' is permissible with consent.

The **primary objectives** for the zone are:

“to provide business centres in which the community’s shopping, business, welfare and social needs can be met

to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.”

The secondary objectives are:

*“to provide tourist orientated development
to encourage upper floor residential or tourist accommodation.”*

The applicant states that the proposal is entirely consistent with a primary objective of the zone in so far as it utilises an existing commercial site which has facilities suitable to cater for the intended use with no additional improvements. They contend that given the relatively unobtrusive nature of the use and the ability to screen the stored materials from the street, the use is compatible with the surrounding commercial and residential land uses.

Response:

The current building is well maintained – not dilapidated or ready for demolition. The proposed use of these existing premises is considered to be acceptable and consistent with both the existing facility and the surrounding mix of commercial and public uses. Any assessment needs to balance the preferred land use with the existing site constraints and development. No intensification or improvements are proposed. The existing building is setback ensures a relatively unobtrusive street presence. The landscaping is limited but includes mature palm trees. Additional landscaping can be required to assist any screening if necessary. There is minimal visual impact as the materials are stored either inside the building or at the rear. The use involves no processing or noisy activity – it is primarily a store for bulky goods where only two employees work on site, with the remainder working in the field. The proposal is accordingly considered to be compatible with surrounding commercial and residential land uses.

The application must also satisfy the provisions of Clause 8(2).

Clause 8(2) assessment:

- "(2)(a) *the development is necessary for any one of the following reasons:*
- (i) It needs to be in the locality in which it is proposed to be carried out due to the nature, function and service catchment of the development;*
 - (ii) it meets an identified urgent community need;*
 - (iii) it comprises a major employment generator, and..."*

The applicant states that the building is an existing lawful commercial building which is well maintained, structurally sound and suitable for the proposed use. The site is relatively central and accessible to the operation which is essential to enable efficient and prompt access and maintenance of local telecommunications network. As it only involves a change of use, it satisfies the subclause.

Response:

The premises were leased by Downer Engineering as the site was considered to be reasonably central to their service area and where their staff lived (as they travel direct to the work site from home). As part of their core business is efficient accessibility for local servicing responsibilities and a prompt response time in cases of emergency, it is considered to satisfy the requirements.

- "(b) there is no other appropriate site on which the development is permitted with consent (other than an advertised development) in reasonable proximity, and..."*

The applicant states that they had investigated the availability and suitability of a range of sites in the Tweed Heads and South Tweed Heads area. They utilised real estate agents (Ray White Commercial Real Estate and LJ Hooker Real Estate) as well as Internet based searches. The instruction criteria included: short lead time to start up from when awarded telecommunication contract for the area; need for offices and meeting room on site; undercover storage for stores; ready availability of data and phone communications; asphalt area for forklift; suitable pricing and lease terms; close to commercial and retail facilities; close to mobile field staff work site to allow efficient access to stores; central to telephone installation and maintenance work on behalf of their client and being based in the community they serve. In addition, the site needed to be central to their mobile work force who travel to and from their homes to the field jobs. After considering all the locational requirements, this site was assessed as being medium to high and the preferred site for the bulk storage of goods.

Response:

In view of the shortage in availability of suitable sites according to the company's criteria at that particular time within that particular local catchment area, the company's specific locational needs should be taken into account. As the proposal is for a change of use only, it is considered to satisfy this clause.

"(c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and..."

The applicant states that no change to the building or site is proposed. The use would be similar in character to previously approved uses including a paint store and the wholesale and retail of surfing accessories.

Response:

Given the fact that there will essentially be no material change to a building where its former uses were lawfully established, there should be no greater impact or change in local character to that which existed immediately prior to the applicants occupying the building. It would not affect the existing character of the streetscape which reflects a mix of land use. More specifically, its scale is consistent with the adjoining fruit and vegetable market, Police station/courthouse, auto/tyre service centre, maintenance workshop and wholesale meat outlet. It should be noted that Dental Practice is situated immediately opposite on the residential side of Recreation Street which adds to the local mix of land use. This clause is clearly satisfied.

"(d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located."

The applicant states that the aims of the LEP include "to encourage sustainable economic development of the area". It is argued that this engineering business installs and supplies maintenance to the essential local telecommunications network. The infrastructure requires convenient and accessible bulk storage and ancillary administrative support services to ensure they continue to operate efficiently. The facility is an integral part of the company's core business.

Response:

The proposition that the proposal encourages economic development and contributes to the Tweeds 'economic vitality' is accepted. It is acknowledged they employ a large staff and provide extensive field work in both the installation and maintenance of a valuable community asset. Satisfaction of the Primary Objectives are discussed further above and are considered to have been adequately met.

Clause 15 – Essential Services

All required infrastructure and services are currently connected to the site and adequate to service the proposed use. No new services are required.

Clause 17 – Social Impact Assessment

The proposed use satisfies the expectations and objectives of the TLEP 2000 and will facilitate the maintenance of essential telecommunications networks. It offers local employment and services local infrastructure and community assets.

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

None applicable.

(a) (iii) Development Control Plans (DCP's)DCP No.2 – Site and Access Parking

The parking rate for Bulk Store is 1 space per staff member, as the use envisages no customers visiting the site. As the operation of the business requires only two full time staff, two spaces are required.

The hardstanding car park at the front provides for 4 cars with a further four tandem spaces to the rear without affecting on site circulation or manoeuvrability.

Accordingly, the provision of 8 on site spaces satisfies the Code's requirements for the site.

DCP No.18 – Tweed Heads

The aims and objectives for the Southern Precinct are:

*“cater for businesses that are not preferred in the Central Precinct;
provide for tourism support businesses that reinforce the local economy;
reinforce the commercial role of Wharf Street;
provide development incentives that result in a high standard of mixed use commercial and residential development
encourage a local building aesthetic that responds favourably to the sub-tropical climate, retains important view corridors and reflects the maritime location and history of the locality.”*

The Preferred Development:

“Mixed use developments orientated towards Wharf Street, where achievable, are the preferred forms of development in this precinct. Ideally, lots should be consolidated to form larger development sites with Wharf Street frontages where possible. The precinct will cater for commercial uses that are not appropriate in the central precinct, such as car hire businesses, motels and motor showrooms.”

The use is not listed amongst the uses considered to be “preferred development”, however it is an acceptable activity within an existing building. Until such time as the building is demolished and/or site amalgamated or rationalised, it appears to be a reasonable interim use. The warehouse has limited potential for other non-commercial uses.

On the basis that it is not proposed to expand the existing structure nor introduce any improvements, it will not limit future development options nor prejudice the site's potential. The DCP prefers the ultimate amalgamation of sites to larger, mixed use sites orientated to Wharf Street. This is not a practical option for this particular building and site at this point in time,

although future possibilities might include incorporation with the adjacent commercial site (Scott's Market Basket).

In conclusion, the proposed interim use for the existing building is not viewed as inconsistent with the objectives for the Southern Precinct. Any inconsistency with the Precinct's preferred development options can be justified on the basis that the proposal is a reasonable and economic interim use.

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

None 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

Noise:

The operation is considered to have limited environmental impact as no processing, production or manufacturing occurs on site. It is principally a storage facility – a warehousing base from which bulky cabling, piping and telecommunication components are delivered, stored then despatched for fieldwork and maintenance. The building is primarily quiet – apart from the use of a forklift to unload/load trucks. This loading is always done on site.

Traffic:

Apart from the movement of delivery trucks to and from the store, very little traffic or vehicular movement occurs on site. Traffic movement related to on site staff parking is limited to one morning and evening ingress/egress by the two staff. All other employees drive directly from home to the off-site works. They only occasional return to the store for materials on an intermittent basis and always park on site. All unloading/ loading occurs on site.

As there is no retailing, the general public do not frequent the site. Consequently Recreation Street is well able to manage the limited traffic generated – especially when compared to the constant customer turnover associated with the adjoining retailing premises and the Court House/Police Station, as well as the dental practice directly opposite.

Visual Appearance:

The building is maintained to a suitable standard being freshly painted. All the materials which were formerly stored at the front of the site in the initial stage of the company occupying the site have been relocated to the rear and inside the warehouse. No materials are stored outside or visible from the street. The business is quite presentable and does not detract from the streetscape.

It should be noted that the photos the objector submitted indicating bulk goods being stored at the front are not relevant nor reasonable as they were taken prior to Council becoming involved. The former management responded to

Council's directive to comply with the approved plan and immediately tidied up the site. The visual presentation of the business has been tidy and well managed for most of 2005. This is not therefore considered to be a reasonable ground of complaint.

Dust and waste/pollutants:

The entire site is now sealed with acceptable drainage. There is no evidence of any undue environmental impacts created by waste or irritants leaving the site.

Hours of operation and general disturbance:

The store operates within normal business hours and creates no particular intrusive impact upon the adjacent residents. Even whilst undertaking occasional emergency works after hours or on week-ends, there is no record of complaint in respect to noise.

(c) Suitability of the site for the development

The building is existing and in sound repair/condition. It is probably premature to contemplate demolition and amalgamation with other sites. In its current configuration, and in view of the need for quick, efficient access to the local community which it services, the site is not considered inappropriate. The company had searched for other equivalent storage buildings within the vicinity for considerable time and had occupied the current premises for 12 months without local complaint (except for the resident who lodged the sole presentation).

It should be noted that the building has been historically used for a mix of uses over the years. One previously approved use for the warehouse was for the display and sale of steel where cutting and bending of the steel was permitted. The previous uses may have created more impact than the current use.

In relation to context, other local land uses create far greater impacts upon the local residential amenity than the proposed use. In terms of commercial presence, generation of noise and traffic, and general activity, the adjoining land use on either side and opposite are more detrimental.

The immediate neighbour to the south is a fruit and vegetable market which has been operational for many years. The northern neighbour is a public building in the form of a Court House and Police Station. Directly opposite is a Dental Practice. All three immediate neighbours generate large volumes of community activity and traffic compared to the quiet and low key use of the warehouse building for storage purposes. By contrast, the proposed bulk store has no direct customers coming and going – but rather the storage of bulky items for occasional delivery off site.

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

The application was notified in accordance with DCP No.42 and one written submission was received within the 14 day public notification period from the

24 August and 7 September 2005. [A second letter was received a fortnight after the notification period closed, but in any event raised no new grounds of objection.] The submission can be summarised as follows:

Issue	Response
<p>1. Applicants occupied site without consent for approximately two years.</p>	<p>The lessee considered that the use of the building for storage purposes was an acceptable use within a commercial building within a commercial precinct. Council was unaware of the occupation of the building until the objector first raised concerns 14 months ago.</p> <p>Upon Councils direction, the operator did tidy up the site and fully co-operated by reinstating the front car park in accordance with the previously approved plan on file. They relocated the stored materials to the rear or inside the warehouse and tidied up the site. To be certain of its legal standing, it was considered appropriate to lodge a fresh Development Application. Downer Engineering has done so and is the subject of this report. Pending the outcome of this application, no further action is proposed in relation to the current use.</p>
<p>2. Application fails to satisfy primary and secondary objectives</p>	<p>As described above under (a)(i), the existing commercial building is flanked by a mix of commercial and service type land uses and occupies a site which caters for the intended use without requiring any further additions or improvements. The scale and character of the proposed bulk store is not considered to be incompatible with surrounding commercial and residential land uses. On balance, the proposal satisfies the primary objectives.</p>
<p>3. Incompatible with the Visions for Tweed Heads</p>	<p>The 'residential and tourist mecca' is a general statement of preference and aspiration for the</p>

	<p>whole of Tweed Heads. This precise site however is situated within a commercial/business zoning. Amendment 21 of the TLEP does not change this zoning.</p>
4. Prohibited use within zone	<p>Under the Tweed LEP 2000, a 'bulk store' is defined as "land used for the bulk storage of goods, where the goods stored or to be stored are not required for use in a shop or commercial premises on the same parcel of land or on an adjoining land in the same ownership."</p> <p>A 'depot' is defined as " land used for the storage or maintenance, or both, of plant, machinery, equipment, building materials and the like."</p> <p>The proposed use of the existing building for the storage of bulky items [such as cabling, pipes and electrical components] would more properly be defined as a 'bulk store', compared to a depot which more often relates to open land/sheds used for storage and maintenance of vehicles and plant.</p> <p>Accordingly, it is not prohibited – but rather an Item 3 activity (allowed with consent).</p>
5. Fits the definition of an industrial site	<p>As described above, under the Tweed LEP 2000, it is more properly defined as a 'Bulk Store'.</p>
6. Unsuitable for the proposed development	<p><u>Streetscape –</u></p> <p>It is agreed that hard paving covers most of frontage with limited landscaping. However, these aspects of the site have been evident at least prior to 1997 when an application with photos identified them as having been already established. It may be appropriate to require a limited upgrade of the existing</p> <ul style="list-style-type: none"> - Streetscape – unsightly hardstanding with no scope for plantings - on site parking – more vehicles park onsite than described in DA

<ul style="list-style-type: none"> - on street parking – a few park in Street on occasions - access – no turning space so trucks reverse out - inadequate loading facilities – forklift can not operate on site - garbage collection areas – large skip and 3 garbage bins 	<p>landscaping if warranted.</p> <p><u>On-site parking -</u> Any tandem parking of staff vehicles which may occur from time to time is not considered to be inappropriate as they are generally not moved all day. This arrangement optimises the site thereby minimising any imposition on local kerb side parking. As no general public visit the bulk store, the optimal use of sealed area on site parking is viewed as sensible, provided it does not restrict any on site unloading or manoeuvring of delivery trucks.</p> <p><u>On street parking –</u> All staff parking occurs on site. However, if on any occasion staff cars did park on street, provided they are parked legally and comply with local street laws, it should not become an issue which is granted determining weight.</p> <p><u>Access –</u> The access is approved and standard in width. It has not been observed or indicated that trucks have unloaded or loaded on public land or road reserve. The site has operated for years as a warehouse or similar and is likely to continue in at least the intermediate future.</p> <p><u>Inadequate loading facilities –</u> Discussed above.</p> <p><u>Garbage collection -</u> The skip is situated near the front corner of the building for convenient collection. This is not an unreasonable component in any commercial premise.</p>
7. DCP No.2 – Site Access & car Parking Code	Discussed above under (a)(iii) and (b).
8. Clause 8(2)	Discussed above under (a)(i).

<p>9. Insufficient detail on 'interim use'</p>	<p>The commercial reality is that no individual landowner can force or know exactly when an adjoining property might become available. All that can be reasonably determined is that the current building has not exhausted its useful, commercial life and is probably not an asset ready for demolition. A preferred option would be to ultimately consolidate parcels in the future as market forces dictate. In the interim, the proposed bulk storage is not an inappropriate use for the existing building.</p>
<p>10. SEPP 71 impacts</p>	<p>The site falls within the Coastal Zone. The application is generally consistent with the Policy. Given the site has no direct frontage to any foreshore reserve, it would have minimal impact upon the Tweed River system or coast.</p>
<p>11. Long term effects, with 'nuisance' created by:</p> <ul style="list-style-type: none"> - streetscape - traffic generation - parking - noise - 'slummy intrusion' - loss of amenity - residential area becoming industrial - lower property values - social concerns - less maintenance of homes - precedent strengthened to allow new intrusions - fear the future 'vision for tweed' will bypass area - deterrent to investors - stagnation of area in perpetuity 	<p>As described earlier, the building has functioned on the site for many years. The current proposal does not extend or unduly intensify that continuing operation on the site. No particular accumulative impacts are envisaged by this proposal.</p> <p>The mix of land use along the eastern side of Recreation Street has been established for many years. Advice from the Strategic Planning Unit indicates there will be no amendment to the zoning as a result of the current Amendment 21 to the Tweed LEP [although all the public submissions have not been fully appraised.] It is not anticipated that the character of the area will change significantly in the intermediate future.</p>

(e) **Public interest**

As the bulk store provides a service in maintaining community telecommunication assets – particularly in an emergency/crisis, the use of the existing warehouse building is considered to be appropriate. It provides convenient access to local residential suburbs – particularly in an urgent after hours circumstance. It provides local employment and would not unduly impact upon the adjoining properties.

OPTIONS:

1. Approve the application subject to conditions.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Having regard to the fact that the building has been used for similar purposes over the years, is not proposing any extension or modification, is flanked by a mix of commercial and service type land use, it is considered that it should not unreasonably impact upon the existing streetscape or local amenity. The facility would effectively allow the applicant to provide essential telecommunication installation and maintenance services within the local area. A similar “bulk store” was approved by Council recently at 44 Recreation Street and no change to the zoning is proposed under the current Amendment 21 of the Tweed LEP. Any commercial operation will generate some adverse impacts, but it should be noted that no other residents (apart from the current objector) have lodged any complaint either recently or in past years. On balance, the application is suitable for approval.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
