



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Ordinary Council Meeting Thursday 13 December 2012

held at Murwillumbah Cultural and Civic Centre
commencing at 6.00pm

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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CONFIRMATION OF MINUTES

1 [CONMIN] Confirmation of the Minutes of the Ordinary and Council Meetings held Thursday 15 November 2012

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).

1. Minutes of the Ordinary Council Meeting held Thursday 15 November 2012 (ECM 59408659).
 2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Thursday 15 November 2012 (ECM 59407611).
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SCHEDULE OF OUTSTANDING RESOLUTIONS

2 [SOR-CM] Schedule of Outstanding Resolutions



Civic Leadership

CODE OF MEETING PRACTICE:

Section 2.8 Outstanding Resolutions

No debate is to be allowed on Outstanding Resolutions. Any changes to or debate on Outstanding Resolutions should only be by way of a Notice of Motion or a report to Council.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 *Civic Leadership*
- 1.2.1 *Council will be underpinned by good governance and transparency in its decision making processes*
- 1.2.2.1 *Priority decision making*
- 1.2.2.1.1 *Council decisions will be in accordance with the Community Strategic Plan*

26 June 2012

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

27 [CNR-CM] Management and Dedication of Environmental Lands at Kings Forest and Cobaki

364

Cr K Skinner
Cr W Polglase

RESOLVED that this item be deferred for a Workshop to include the proponent, Council officers and Councillors.

Current Status: A Workshop has been held and Council continues to negotiate with the proponent and the Department and a final report will be considered by Council in the forthcoming months.

21 August 2012

REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

38 [SUB-EAAC] Minutes of the Equal Access Advisory Committee Meeting held Wednesday 20 June 2012

542

**Cr D Holdom
Cr J van Lieshout**

RESOLVED that the:

1. Minutes of the Equal Access Advisory Committee Meeting held Wednesday 20 June 2012 be received and noted; and
2. Director's recommendations be adopted as follows:

General Business Items

1. Regional forum for Equal Access Committees, 7 May

- 1) *That as part of the ongoing official Tweed Shire Council induction process (which new and returning Councillors will undergo post elections on September 8):*
 - *An induction workshop on Access and Inclusion is held.*
 - *The workshop be scheduled and conducted no later than the end of February 2013.*

Current Status: Access and inclusion training to be conducted at a suitable time.

25 October 2012

ORDERS OF THE DAY

43 [NOM-Cr B Longland] Business Expansion/Job Creation

NOTICE OF MOTION:

618

**Cr B Longland
Cr M Armstrong**

RESOLVED that Council brings forward a report as early as possible which:

1. Identifies those fees, charges and regulations which are under Council's current control, that impact on business attraction, start-up and retention.

2. Makes recommendations on a suite of incentives that will facilitate business expansion and job creation.

Current Status:

Response to Recommendation 1

The fees, charges and regulations under Tweed Shire Council's control that impact on business attraction and start up businesses are predominantly S.94 (Developer Contribution Charges) and S.64 (Water & Sewer Charges). The vast majority of statutory planning fees and other associated licensing fees are either not significant compared these charges or are set by the State Government. Those charges which impact on the establishment or expansion of businesses are;

- S.94 No.4 Tweed Roads Contribution Plan
- S.94 No.23 Off Site Parking
- S.64 Water Servicing Development Plan
- S.64 Sewer Servicing Development Plan

There are further S.94 contribution categories, which vary in application depending on the form of activity and location; however in the main they require much lesser contributions from businesses seeking to establish themselves or expand. It is also noted that Council currently reduces scheduled contribution rates for all employment generating development by 40%.

There are very few local government charges beyond rates that impact on existing businesses. Council already has one of the lowest business rates compared to similar size local government authorities in New South Wales.

Response to Recommendation 2

Local government involvement in investment attraction frequently includes a complex array of accompanying arrangements and associations with other government agencies. For example, negotiations around an offer of assistance from a council to a firm may include agreements with those firms to contribute significantly to local infrastructure, such as car parks and recreational areas, as well as the usual requirements to invest locally and create local jobs, and other possible agreements with State and/or Commonwealth Governments.

There are a number of opportunities open to Tweed Shire Council in relation to providing incentives to stimulate business expansion and job creation. These may include but are not limited the following:

- Discounted land
- Leases with honeymoon periods
- Rate relief
- Training subsidies for new staff
- Infrastructure grants
- Subsidisation of utility costs
- Deferral or waiving of developer contributions
- Assistance with planning approvals
- Site selection advice
- Marketing and promotions
- Advocacy to State and Federal Government for incentives and infrastructure
- Introductions to other business

Whilst some of the above can be considered there are many other options. These options or incentives are usually consolidated in a formal Economic Development Strategy or an Incentive Policy. It is important that any incentives that are allocated or applied to an existing business undertaking expansion or a business seeking to establish itself in the Shire are formally endorsed by Council and reported upon. It is important that incentives are only allocated to businesses and organisations after a due diligence process has been undertaken by Council and that the economic benefit to the Shire is able to be defined and demonstrates a clear benefit to the community.

The development of an Economic Development Strategy or an Incentive Policy requires considerable resources and consultation and it is recommended that Council may wish to consider this as part of the forthcoming budget process.

47 [NOM-Cr K Milne] Greenfield Policy Implications

NOTICE OF MOTION:

621

Cr K Milne

Cr G Bagnall

RESOLVED that Council brings forward a report in regard to enhancing Council's policies for major Greenfield developments to improve outcomes for:

1. Ecological sustainability appropriate to Tweed Shire's nationally and internationally significant environment and its current environmental stress,
2. Community health planning, including meeting the needs of seniors and children,
3. Planning for green spaces, community gardens, edible landscapes and wild places,
4. Reduced carbon emissions, energy efficiency, and potential for greater on site waste management, and
5. Opportunities to promote and facilitate a more localised economy through appropriate planning.

Current Status: Report to be prepared.

MAYORAL MINUTE

3 [MM-CM] Mayoral Minute - Period from 2 November to 27 November 2012

SUBMITTED BY: Cr B Longland, Mayor



Civic Leadership

Councillors,

COMMITTEE MEETINGS

Attended by the Mayor

- 02 Nov 2012 - NOROC Meeting and Annual General Meeting - Lismore City Council, Oliver Avenue, Goonellabah.
 - 14 Nov 2012 - Destination Tweed Board Meeting & AGM - Tweed River Art Gallery, 2 Mistral Rd, Murwillumbah.
 - 16 Nov 2012 - Margaret Olley Art Centre Committee Meeting - Tweed River Art Gallery (TRAG), Mistral Rd, Murwillumbah (Warren Polglase also attended as President of the TRAG Foundation).
 - 20 Nov 2012- Tweed River Regional Museum Advisory Committee - Coolamon Cultural Centre (attended as alternate Councillor representative).
 - 21 Nov 2012 - Tweed Coastal Committee - Sustainable Living Centre, Altona Drive, Chinderah (also attended by Cr Bagnall).
 - 22 Nov 2012 - Local Traffic Committee - Murwillumbah Civic Centre, 3 Tumbulgum Road, Murwillumbah.
-

INVITATIONS:

Attended by the Mayor

- 03 Nov 2012 - The Family Centre, Superhero Saturday - Jack Evans Boat Harbour, Corner Bay and Wharf Streets, Tweed Heads.
 - 03 Nov 2012 - Official Opening of the Murwillumbah Agricultural Show - Murwillumbah Showgrounds, Queensland Rd, Murwillumbah.
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- 05 Nov 2012 - Kingscliff Ratepayers and Progress Association Guest Speaker - Kingscliff Public School Library, Orient Street, Kingscliff.
- 11 Nov 2012 - Remembrance Day Service & laying of Flowers - Murwillumbah Cenotaph, Tumbulgum Rd, Murwillumbah.
- 13 Nov 2012 - Tweed Chamber of Commerce Business Breakfast - Tweed Heads Bowls Club, Wharf Street, Tweed Heads.
- 13 Nov 2012 - Private Citizenship Ceremony, 2 new citizens - Mt Warning Room, Murwillumbah Civic Centre.
- 13 Nov 2012 - Tweed Richmond Organic Producers Organisation (TROPO) Meeting and viewing of film Greenhorns - Imperial Hotel, Murwillumbah.
- 14 Nov 2012 - 4CRB Radio Talkback with the Mayor - 4CRB Radio, 8 Stevenson Crt, Burleigh Heads.
- 16 Nov 2012 - Tweed Catchment Catchup & Mayor's Welcome - Pottsville Environment Centre, Centennial Drive, Pottsville.
- 16 Nov 2012 - Ukitopia Festival - Uki Village green, 1452 Kyogle Rd, Uki.
- 18 Nov 2012 - Tweed River Festival 2012 - Jack Evans Boat Harbour, Tweed Heads.
- 11 Nov 2012 - Wollumbin High School Year 8 Portfolio panels - Wollumbin High School, Murwillumbah.
- 19 Nov 2012 - Murwillumbah Historical Society Annual Christmas Party - Condong Bowling Club, 33-35 Kyogle Road, Bray Park.
- 20 Nov 2012 - Kingscliff & District Chamber of Commerce Breakfast Meeting - Kingscliff Beach Bowls Club, Marine Parade, Kingscliff (Crs Polglase & Byrne also attended).
- 20 Nov 2012 - Opening of Tyalgum Water Treatment Plant during Local Government Week - Tyalgum
- 20 Nov 2012 - Official opening of the new Tweed River Regional Museum offsite storage facility - Lot 502, Honeyeater Circuit, Industry Central, Murwillumbah
- 20 Nov 2012 - Kingscliff TAFE Briefing on Capital Works Program and information sharing opportunity with Murwillumbah TAFE - Caldera Restaurant, Kingscliff TAFE, Cudgen Road, Kingscliff (also attended by Crs Polglase, Youngblutt, Byrne, Bagnall)
- 21 Nov 2012 - Official Opening of the Men's Shed - Durroon Avenue, Bray Park
- 22 Nov 2012 - South Murwillumbah Business and Owners Group Meeting - Murwillumbah Civic Centre, 3 Tumbulgum Road, Murwillumbah (also attended by Crs Youngblutt, Polglase, Byrne and Armstrong).

- 23 Nov 2012 - Max Potential Youth Leadership Showcase and dinner with coaches - Seagulls Club, Gollan St, Tweed Heads West
- 24 Nov 2012 - Official Opening by Mayor of the State Pennant Finals hosted by Bowls Queensland - Tweed Heads Bowls Club, Florence Street, Tweed Heads.
- 24 Nov 2012 - Local Government Week Family Fun Day and Official Opening of the Murwillumbah Community Centre - Murwillumbah Community Centre, Nullum Street, Murwillumbah (Crs Milne, Armstrong, Polglase, Byrne, also advised their attendance).
- 25 Nov 2012 - Kingscliff Triathlon Race Starts and Presentations - Cudgen Surf Club, Marine Parade, Kingscliff.

Attended by other Councillor(s) on behalf of the Mayor

No attendance recorded.

Inability to Attend by or on behalf of the Mayor

- 03 Nov 2012 - Queensland Council of Garden Clubs Inc, 2012 Regional Friendship Day - Tweed Heads Civic Centre, Corner Wharf and Brett Streets, Tweed Heads.
- 04 Nov 2012 - Murwillumbah Philharmonic and Uki Schools Concert - Anglican Church, Byangum Rd, Murwillumbah.
- 07 Nov 2012 - Community Safety Precinct Committee meeting - Pottsville Community Hall, Tweed Coast Road, Pottsville (near football oval).
- 07 Nov 2012 - Murwillumbah Community Centre Management Committee - Murwillumbah Community Centre, Nullum Street, Murwillumbah.
- 09 Nov 2012 - Mt St Patrick Year 12 Formal - Murwillumbah Civic Centre, 3 Tumbulgum Road, Murwillumbah.
- 10 Nov 2012 - Annual Paceline Ride for Heart Arrhythmia, Greeting of riders as they enter Tweed Heads South.
- 10 Nov 2012 - Tweed Heads Seagulls Rugby League Football Club, End of 2012 Season Presentation Night - Rainbow Bay Surf Life Saving Club, 2 Snapper Rocks Road, Rainbow Bay, Qld.
- 10 Nov 2012 - Northern Rivers Community Sector Ball and Awards Night - Byron Bay Community Centre, Jonson Street, Byron Bay.
- 14 Nov 2012 - Access All Areas - Regional Arts NSW workshop to learn how to access grants for arts projects for or by people with disabilities - Gordon Pavilion, Oaks Oval Complex, Dawson Street, Lismore.
- 14 Nov - 2012 - 2012 Gold Coast region Homelessness Symposium - Robina Community Centre

- 18 Nov - 2012 - Book Launch of 'Mick Send me a butterfly' by Lorraine Grennan - 58 Fraser Drive, Terranora
 - 18 Nov 2012 - Northern Rivers Symphony Orchestra performance of Brahms and Beethoven - Tweed Heads Civic Centre, Cnr Brett and Wharf Streets, Tweed Heads
 - 19 Nov 2012 - Twin Towns Friends Association Christmas Lunch - Members Lounge, Tweed Heads Bowls Club, Florence Street, Tweed Heads
 - 27 Nov 2012 - Lock the Gate meeting hosted by the Caldera Environment Centre - Murwillumbah Civic Centre, 3 Tumbulgum Rd, Murwillumbah
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REQUESTS FOR WORKSHOPS:

Date of Request	Requested by Councillor	Topic	Councillors For	Councillors Against	Proposed Workshop Date
02/11/12	Cr B Longland	Cycle Tourism - presentation by Kaye Bristow "Rail Trails".	Unanimous	None	Held on 22 Nov 2012.
16/11/12	Cr C Byrne	Meeting Procedures - to include a brief from Cr Byrne on "Effective Chair" Training attended on 26/11/12.	Unanimous	None	To be advised.

CONFERENCES & TRAINING ATTENDED:

Conferences attended by the Mayor and/or Councillors

- 6-9 Nov 2012 - 21st NSW Coastal Conference - The Pavilion Kiama, Kiama, NSW (Crs Longland and Bagnall attended)
- 15 Nov 2012 - Local Government Acts Taskforce Workshop - Lismore Workers Club, 231 Keen Street, Lismore (Cr Longland attended)
- 26 Nov 2012 - Effective Chair in Local Government, LGSA Councillor Development Program - Sydney (Crs Byrne & Bagnall attended).

Information on Conferences to be held

- 15-16 Mar 2013 The Councillor Weekend, LGSA Councillor Development Program - Ballina venue to be advised - *The program for the weekend includes topics such as the Role of the Councillor, Managing Time and Stress, Community Leadership, Planning Legislation, Good Governance, Handling Difficult People. Programs for the Councillor weekends will be designed in consultation with interested councils* - Registration \$990 - Refer [Councillor Weekend course flyer \(PDF. 143KB\)](#) or www.lgsa.org.au/events-training/course-councillors
-

SIGNING OF DOCUMENTS BY THE MAYOR:

- 01 Nov 2012 - Transfer - Lot 2 DP 1085025 Chinderah - Road Widening.
 - 05 Nov 2012 - Release of Positive Covenant DP 1079124 and DP 1066484.
 - 19 Nov 2012 - Transfer - Lot 1 and 2 DP 1179049 - Cowell Park Reservoir - Mooball - Land Acquisition.
 - 20 Nov 2012 - Local Infrastructure Renewal Scheme Funding Agreements - Drainage - General and Blue Jay Circuit Drainage Scheme.
-

RECEIPT OF PETITIONS:

Any petitions received either by Councillors or Council will be tabled.

COUNCIL IMPLICATIONS

a. Policy:

Code of Meeting Practice Version 2.2.

b. Budget/Long Term Financial Plan:

Appropriate expenditure is allowed for attendance by Councillors at nominated conferences, training sessions and workshops.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.2 Decisions made relating to the allocation of priorities will be in the long-term interests of the community
 - 1.2.2.1 Priority decision making
 - 1.2.2.1.1 Council decisions will be in accordance with the Community Strategic Plan
-

RECOMMENDATION:

That:-

- 1. The Mayoral Minute for the period from 2 November to 27 November 2012 be received and noted.**
 - 2. The attendance of Councillors at nominated Conferences be authorised.**
 - 3. Any petitions received by Councillors or Council be tabled.**
-

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,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 of 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.

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes that there are no Variations for November 2012 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, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

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.

5 [PR-CM] Delegation to Council of Functions under the Plumbing and Drainage Act 2012

SUBMITTED BY: Building and Environmental Health



Civic Leadership

SUMMARY OF REPORT:

On 9 November 2011 Parliament passed the Plumbing and Drainage Act 2011 (the Act). The Act established a single scheme of regulation of plumbing and drainage work in New South Wales and established the NSW Department of Fair Trading as the single regulator.

Part of this process is that as the regulator, the Department of Fair Trading would delegate certain functions back to Councils who previously undertook this important regulatory role with respect to on-site plumbing and drainage in their local areas.

Council is now in receipt of an instrument of delegation for its consideration which if accepted will enable Council to continue to undertake activities in relation to the regulation of on-site plumbing and drainage.

RECOMMENDATION:

That Council:

- 1. Accepts the delegation to enable Council to continue to undertake activities in relation to the regulation of on-site plumbing and drainage.**
- 2. Executes the Instrument of Delegation under the Common Seal of Council.**

REPORT:

On 9 November 2011 Parliament passed the Plumbing and Drainage Act 2011 (the Act). The Act established a single scheme of regulation of plumbing and drainage work in New South Wales and established the NSW Department of Fair Trading as the single regulator.

The legislation is being implemented in stages. In the first stage the Act commenced on 1 July 2012 and implemented the Plumbing Code of Australia as the new technical standard across all of NSW. Fair Trading became the plumbing regulator in areas that, immediately before commencement of the Act, were within areas of operation of the Sydney Water Corporation, Hunter Water Corporation and other licenced utility operators under the Water Industry Competition Act 2006. Local Councils in other areas continued to retain compliance and inspection roles in relation to plumbing and drainage work.

In the second stage, from 1 January 2013, Fair Trading will become the single regulator across NSW however it was always intended to delegate certain functions back to Local councils who previously regulated plumbing and drainage works within their respective areas and continue this important regulatory role.

To facilitate this, provisions have been included under Section 21 of the Plumbing and Drainage Act which allows the regulator to delegate any of its functions to a local council or any person the regulator considers has the necessary skills, knowledge or experience to exercise this function. The council in turn may then sub delegate any of these functions but only as set out in the Act.

Traditionally qualified officers within Councils Building and Environmental Health Unit have undertaken the regulatory function with respect to on-site plumbing and drainage ensuring that all work is undertaken by appropriately licenced tradesman and that all work is undertaken in accordance with the relevant codes and standards as well as keeping records of these installations.

Council is now in receipt of the instrument of delegation together with a request that the delegation be submitted to Council for its consideration. Acceptance is required to enable each individual council to continue to undertake activities in relation to the regulation of on-site plumbing and drainage work. Should Council accept this delegation, the delegation will commence on 1 January 2013.

INSTRUMENT OF DELEGATION

Instrument of delegation

under section 21 of the *Plumbing and Drainage Act 2011*

Section 21 of the *Plumbing and Drainage Act 2011* (Plumbing and Drainage Act) provides that:

- (1) The plumbing regulator may delegate any of the plumbing regulator's functions under this Act, other than this power of delegation, to:
 - (a) a local council, or
 - (b) any other person whom the regulator considers has the necessary skills, knowledge or experience to exercise the function.
- (2) A local council may sub-delegate any function delegated to it by the plumbing regulator to:
 - (a) the general manager of the council, or
 - (b) a person engaged as a contractor by the local council whom the council considers has the necessary skills, knowledge or experience to exercise the function.

In accordance with this provision, I, Andrew Gavrielatos, Acting Commissioner for Fair Trading, the plumbing regulator for the purposes of the Plumbing and Drainage Act, hereby delegate the exercise of the following functions to the Tweed Shire Council in the council's area of operations. These functions are to be undertaken by an officer or employee of council holding the necessary skills, knowledge or experience to exercise the functions.

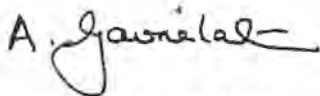
Function	Conditions
To monitor compliance with the Plumbing and Drainage Act (s19 (a))	This function is to be exercised in accordance with the requirements of the Plumbing and Drainage Act, <i>Plumbing and Drainage Regulation 2012</i> (Plumbing and Drainage Regulation) and guidelines (if any) issued by the plumbing regulator.
To ensure that any plumbing and drainage work carried out does not threaten public health or safety (s19 (b))	This function is to be exercised in accordance with the requirements of the Plumbing and Drainage Act, <i>Plumbing and Drainage Regulation</i> and guidelines (if any) issued by the plumbing regulator.
To undertake any other functions conferred or imposed on the plumbing regulator by the Plumbing and Drainage Act (s19 (c)) other than: <ul style="list-style-type: none"> • Receiving notices of work and other documentation required to be submitted to the plumbing regulator concerning proposed 	The exercise of any function by the council as a delegate of the plumbing regulator under the Plumbing and Drainage Act is to be in accordance with the requirements of the Plumbing and Drainage Act, <i>Plumbing and Drainage Regulation</i> and

alternative solutions (s9 (3) of the Plumbing and Drainage Act and clause 10 of the Plumbing and Drainage Regulation), <ul style="list-style-type: none">• Authorising fittings for use in plumbing and drainage work (s20), and• Initiating criminal or other proceedings as provided for in Part 5 of the Plumbing and Drainage Act.	guidelines (if any) issued by the plumbing regulator.
---	---

Commencement:

This delegation commences on 1 January 2013 and continues until revoked or replaced by the Commissioner for Fair Trading.

SIGNED:



Andrew Gavrielatos
ACTING COMMISSIONER FOR FAIR TRADING:
Date: 8 November 2012

Acknowledgment of Delegation

The Tweed Shire Council hereby acknowledges the delegated responsibilities and agrees to act in accordance with the delegation.

The Common Seal of the Tweed Shire Council was hereunto affixed on theday of.....2012 in pursuance of a resolution made by the Council on theday of.....2012)
).....(signature)
)
).....(title of position)
)
).....(signature)
)
).....(title of position)

OPTIONS:

1. That Council accepts the Instrument of delegation; or
2. That Council not accept the instrument of delegation.

CONCLUSION:

As the local water and sewer authority Council has regulated plumbing and drainage since the introduction of legislation which allowed the relevant authority to undertake this role. It is therefore recommended that Council accept the delegation and continue to undertake these functions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Council currently derives income from the regulating of on-site plumbing and drainage.

c. Legal:

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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6 [PR-CM] Current Regulatory and Compliance Issues for Commercial Signage and Other Trading Activities Affecting Council's Public Footpath and Road Reserves

SUBMITTED BY: Director Planning and Regulation



Civic Leadership

SUMMARY OF REPORT:

Council resolved the following in respect to current regulatory and compliance issues for commercial signage and other trading activities affecting Council's public footpath and road reserves:

Council Meeting 25 October 2012

In respect of an officers' report in respect of compliance issues relating to the Courthouse Hotel Murwillumbah, Nos. 60 - 62 Murwillumbah Street, Murwillumbah:

"RESOLVED that Council, in respect of the unauthorised weather protection structures installed in association with the outdoor footpath dining and road blister area of the Courthouse Hotel, located on the premises Nos. 60-62 Murwillumbah Street, Murwillumbah supports that the officers bring back a further report to Council on a suggested policy framework for developments within the footpaths and road reserves of the business centres within the Tweed Shire."

Council Meeting 15 November 2012

In response to a Notice of Motion from Councillor Armstrong, Council resolved the following:

"RESOLVED that Council officers submit a report to Council that outlines the current regulatory framework and compliance issues relating to all forms of signage, A Frames, outdoor dining structures and footpath trading affecting all public footways and road reserves throughout the Shire to inform a subsequent Councillors Workshop".

This report responds to these resolutions in detail, and it is recommended that it form the basis for a Councillors Workshop.

RECOMMENDATION

That:

1. The report on current regulatory and compliance issues for commercial signage and other trading activities affecting Council's public footpath and road reserves be received and noted; and
2. Council endorses that this report form the basis for discussion at a Councillors Workshop to inform an updated policy framework for commercial signage and trading activity on public land throughout Tweed Shire.

REPORT:

Recent Council Resolutions

Council resolved the following in respect to current regulatory and compliance issues for commercial signage and other trading activities affecting Council's public footpath and road reserves:

Council Meeting 25 October 2012

In respect of an officers' report in respect of compliance issues relating to the Courthouse Hotel Murwillumbah, Nos. 60 - 62 Murwillumbah Street, Murwillumbah:

*"**RESOLVED** that Council, in respect of the unauthorised weather protection structures installed in association with the outdoor footpath dining and road blister area of the Courthouse Hotel, located on the premises Nos. 60-62 Murwillumbah Street, Murwillumbah supports that the officers bring back a further report to Council on a suggested policy framework for developments within the footpaths and road reserves of the business centres within the Tweed Shire."*

Council Meeting 15 November 2012

In response to a Notice of Motion from Councillor Armstrong, Council resolved the following:

*"**RESOLVED** that Council officers submit a report to Council that outlines the current regulatory framework and compliance issues relating to all forms of signage, A Frames, outdoor dining structures and footpath trading affecting all public footways and road reserves throughout the Shire to inform a subsequent Councillors Workshop".*

Broader Regulatory and Policy Framework

Commercial signage and trading activities on Council footpaths and road reserve are regulated through quite a complex range of statutory and Council policy requirements.

These requirements apply to all forms of signage, A Frames, outdoor dining structures and footpath trading.

A summary of these requirements are outlined below:

Statutory Planning Requirements

The town planning assessment of these activities is governed by the hierarchy of controls provided below, and are used to determine both the type of approval path that is required (DA, exempt and complying development etc), and also provided the controls to assess the design, scale and appropriateness of any relevant uses and structures.

The Environmental Planning and Assessment Act 1979

This Act provides the primary statutory planning framework for levels of planning and development.

Exempt and Complying Development State Environmental Planning Policy - the Codes SEPP

This SEPP aims to streamline assessment processes for development that complies with specified development standards, and provides exempt and complying development codes that have State-wide application.

The State Government has recently placed on public exhibition quite extensive amendments to the Codes SEPP, proposing exempt development for a range of commercial uses in public spaces, such as outdoor dining areas, signage, public art, events and mobile food and beverage vendors. The proposed exemptions are greatly based on gaining the prior consent of the owners of the land involved. Any resulting adoption of these amendments will need to be accounted for in any new local planning policy framework.

State Environmental Planning Policy No 64 - Advertising and Signage

This SEPP aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

Tweed Local Environmental Plan 2000 and Draft Tweed Local Environmental Plan 2012

These are the primary statutory documents for Tweed Shire, which identify the permissibility and type of approvals required for land uses, works and structures.

A major change in the current Draft LEP 2012 is that all public road reserves and footpaths are proposed to be zoned consistent with adjoining properties, and not unzoned, as is in the current LEP 2000. For example, most public spaces within an existing business centre are proposed to have a commercial zoning, which may impact upon the assessment of permissibility and merits of assessment of particular uses and developments.

Planning Policy Requirements

Tweed Development Control Plan 2008 - Section A10 - Exempt and Complying Development

This document current co-exists with the State Government's Code SEPP providing an alternate approvals path for certain, less impacting developments. The State Government requires councils to cease these DCPs on the gazettal of a Standard Template LEP.

Tweed Development Control Plan 2008 - Section A4 - Advertising Signs Code

This Code provides for most forms of signage relating to both private and public land. A copy of this Code is provided in Attachment 1 of this report.

Tweed Footpath Trading Policy

This Policy was adopted by Council at its meeting on Tuesday 13 November 2007, and contains design controls to maintain a balance between pedestrian movement, convenience and safety, and footpath trading activities. A copy of this Policy is provided in Attachment 2 of this report.

This Policy is referenced in the licensing of outdoor dining areas.

Other Relevant Statutory Requirements

Roads Act 1993

Section 138 of the Roads Act 1993 requires Council Consent for works on road reserves (local roads) which includes driveways, footpaths/retaining walls and gardens.

These applications are assessed by Council's Engineering officers.

More specific approval for "Footway Restaurants" is required under Section 125 of the Act.

Local Government Act 1993

Depending on the type of activity, separate approvals may be required for the following activities:

Sewer Connection

To connect a new building in a sewered area to Council's sewer system or for additions to existing buildings in a sewered area involving plumbing and drainage work (e.g. new bathroom).

Stormwater Drainage

To connect stormwater or roof water drainage from a private property to a Council drain/kerb and gutter and/or install a pipe across a public road, road reserve, footpath or nature strip.

Trade Waste Application

For any discharge of a pollutant to Council's sewer greater than or differing (in constitution) from domestic usage.

There may also be other building and environmental health assessments required to confirm the structural integrity and fire safety or food hygiene aspects of a use or structure on a public reserve or footway.

The Federal Government's Disability Discrimination Act 1992 (DDA)

This Act has an important bearing on the universal rights of accessibility in public spaces, and raises significant liability issues for Council to consider.

The web site of the Australian Human Rights Commission provides the following information on the Act:

"The Federal Disability Discrimination Act 1992 (D.D.A.) provides protection for everyone in Australia against discrimination based on disability. It encourages everyone to be involved in implementing the Act and to share in the overall benefits to the community and the economy that flow from participation by the widest range of people.

A person with a disability has a right to have access to places used by the public.

The Disability Discrimination Act (DDA) makes it against the law for public places to be inaccessible to people with a disability.

Places used by the public include:

- *Public footpaths and walkways*
- *Educational institutions*
- *Shops and department stores*
- *Banks, credit unions, building societies*
- *Parks, public swimming pools, public toilets, and pedestrian malls*
- *Cafes, restaurants, pubs*
- *Theatres and other places of entertainment*
- *Lawyers' offices and legal services*
- *Libraries*
- *Sporting venues*
- *Social and sporting clubs*
- *Government offices*
- *Public transport including trains, buses, ferries, boats, ships and planes*

- *Dentists' and doctors' surgeries*
- *Hospitals*
- *Hairdressers and beauty salons*
- *Travel agents, and*
- *Government-run services*

This applies to existing places as well as places under construction. To comply with the DDA existing places may need to be modified to be accessible (except where this would involve "unjustifiable hardship").

Access to premises is covered principally by section 23 of the D.D.A. Note that issues of access to premises can also arise under other provisions of the D.D.A., such as those prohibiting discrimination in employment (section 15), education (section 23), provision of goods, services or facilities (section 24), accommodation (section 25), and the administration of Commonwealth laws or programs (section 29).

Discrimination under section 23 includes:

- *refusing to allow a person with a disability to enter premises or use facilities that the public is entitled or allowed to enter or use. For example, refusing to allow a blind person accompanied by a guide dog to enter a restaurant*
- *imposing less favourable conditions on a person with a disability in entering premises or using facilities. For example, providing wheelchair access only to more expensive seating areas in a theatre, or providing access which is less convenient, dignified or safe than the access provided for other members of the public*
- *requiring a person to leave premises because they have a disability. For example, someone who has slurred speech because of a brain injury being treated as if he or she is intoxicated.*

Discrimination is unlawful under section 23 except where it can be shown that removing a barrier to access would impose unjustifiable hardship.

Does the DDA cover access to the footpath?

Yes. A footpath would come under the definition of 'premises' and would therefore be covered by section 23 of the Disability Discrimination Act (DDA):

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

In general local government authorities are responsible for footpaths.

What sort of barriers might give rise to a complaint?

- A business operating on the footpath in a way that causes a barrier to access.
- A household or business that allows overhanging trees to encroach on the footpath.
- A tree root that causes an uneven surface.
- A kerb cut that does not allow for safe passage

- A developer who is using the footpath to undertake renovation or building work.

Who can a complaint be lodged against

Complaints could be lodged directly against a local government authority if it is responsible for the footpath. A complaint could also be lodged against the person or organisation directly creating the barrier.

In addition it may be possible to lodge a complaint against the local government authority under section 122 of the DDA if it could be argued that the local government authority was 'permitting' barriers to access by failing to ensure the pathway is clear.

The question of whether or not a local government authority is permitting discrimination requires some evidence they actually have the authority to address the problem.

Any person or organisation subject to a complaint may have a defence if the removal of the barrier would cause an unjustifiable hardship.

Examples of complaints include:

- *A woman who has a vision impairment complained that her local Council was failing to enforce its policies on footpath access against shops which were encroaching onto the footpath with displays. The matter was settled when the Council agreed to issue warnings to businesses identified in the complaint and to revise its policy in consultation with people with disabilities.*
- *A man who uses a wheelchair complained that footpaths in his area were difficult and dangerous to negotiate because of bumps, tree roots and café tables and chairs. The matter was settled when the council advised that it has adopted a footpath trading policy requiring clear lines of passage for people with mobility or vision impairments, and had prioritised capital works for footpath repairs.*

What is an accessible footpath?

A footpath should, as far as possible, allow for a continuous accessible path of travel so that people with a range of disabilities are able to use it without encountering barriers.

While a footpath necessarily follows the natural topography of the area, in the best possible circumstances a continuous accessible path of travel along a footpath should:

- *Have a gradient of no steeper than 1 in 20*
- *Have a cross fall of no steeper than 1 in 40*
- *Have kerb cuts with appropriate kerb ramps*
- *Incorporate appropriate Tactile Ground Surface Indicators where necessary to ensure adequate safety and orientation*
- *Have a minimum clear width of at least 1.8 metres at the narrowest point and minimum clear height of 2 metres with nothing encroaching into that envelope*
- *Be as smooth as possible without raised or cracked paving or tree root damage*
- *Have a slip resistant surface during dry and wet conditions*

(These features of a continuous accessible path of travel are taken from current Australian Standards 1428 part 1 and part 2.)

In addition the Commission is of the view that the continuous accessible path of travel should extend from the property line with no obstructions or projections in order to provide the best possible guidance line for all users including people with a vision impairment.

The Commission encourages Local Governments with responsibility for footpaths to develop policies that reflect this best practice. While every Council will face different issues relating to topography and historical practice examples of a comprehensive policy are provided by the [policy developed by Yarra City Council](#) and the [policy developed by Glen Eira council](#).”

Current Issues with Footpath and Road Reserve Activity

Complex Approvals Processes

As highlighted in the previous section, the approvals processes for footpath and road reserve activity are affected by a complex hierarchy of federal, state and local government legislation and policies. This complexity can act as a major deterrent to a new business start up, or existing businesses that want to expand or further promote themselves in a public space.

The current State Government is seeking to simplify the approvals processes for less impacting developments through the creation of the new Planning Act, primarily by expanding the types of exempt and complying development of its Codes SEPP. Evidence of this attempt for greater flexibility in small business practices can be found in the recently exhibited amendments to the Codes SEPP, which includes proposed exemptions from gaining DA consent for outdoor eating areas up to a maximum of 20m² in area, and allowing for 24 hour trading for retail premises in the period leading up to Christmas.

Whilst these are generally viewed as good initiatives, it still does not address the prevailing complexities of the Codes SEPP, the inconsistencies with other SEPPs, and the complex relationship with the LEPs, DCPs and policies of local councils, and the need for concurrent approvals under other legislation, such as the Roads Act.

Like many other Councils, Tweed Council has created a comprehensive range of design controls to guide appropriate forms of advertising and use of public spaces. However, these controls are spread across a number of documents, making it difficult for both staff and the public to ascertain the relevant matters for low impacting developments.

Councils need to continue to work closely with the State Government in the review of the NSW Planning System to produce a simpler approvals process for the more straightforward development activities.

It is also important that Council develops a clearer communications of its requirements for local business operators and the community to more readily understand. Brisbane City Council's Footpath Dining Permit Guide (See Attachment 3 of this report) is a good example of a clear and comprehensive information source on these matters.

Unauthorised Signage in Road Reserves Adjoining Major Roads

The most visible examples of unauthorised signage can be found in road reserves of major roads throughout the Tweed Shire. Despite Council's policies not favouring, and often prohibiting these commercial forms of advertising in its public spaces, business proprietors recognise that high visual exposure provides an important business advantage.

The downside to this activity is that such random, informal signage is a visual blight on the landscape, and depending on its size, content and location, it can be a threat to the safety of motorists and pedestrians in particular sections of roadway.

The enforcement of these unauthorised signs has become a particularly difficult and resource draining activity for Council's Rangers, as there are often repeat offenders, and any leniency or flexibility shown for one business operator, can often bring complaints from competitors or the general community.

Informal, unauthorised signage on utility poles, trees or Council road management structures within road reserves are other major sources of concern.

The Clutter of Existing Built Up Business Centres

In the absence of up-to-date planning and ongoing management systems, business centres can often become the victims of their own success in respect of providing an accessible and enjoyable pedestrian experience. The more popular a business centre becomes, the greater pressure and constraints are placed on its footpaths and other pedestrian linkages.

Examples of these pressures are most evident in the Tweed Shire's most popular centres at Tweed Heads, Murwillumbah and Kingscliff.

In recent years, Tweed Council has been pro-active in creating policy framework and undertaking various public works improvements to facilitate a greater use of its footways. Council's Footpath Trading Policy provides the regulatory framework for the licensing and occupation of footpaths in its business centres for the outdoor dining and trading from adjoining shops, cafes and restaurants. The outdoor dining option has been most popular in the Murwillumbah and Kingscliff business centres, with a number of businesses choosing the further option of paying for the construction of a footpath blister in front of their premises to gain an additional outdoor dining area.

The licensing of the outdoor areas generally involves the signing of a three year agreement between Council and the business proprietor, and Council has adopted a licensing fee relative to the location of the business area. The licensing system requires the administrative support of various officers across Council.

Whilst this increase in outdoor dining activity has generally made a positive contribution to the diversity of the Shire's shopping experiences, many other businesses have chosen a range of unauthorised advertising and trading practices, such as the placement of A Frames or sandwich board structures, and also a variety of their goods and products on the adjoining footpaths. In addition, a number of the proprietors of the approved and licensed outdoor dining areas are increasingly erecting more prominent and permanent shading and weather protection structures.

This increase in unauthorised activity is starting to create an unsightly clutter in parts of more popular centres, particularly In Murwillumbah. The footpath trading activities also have to compete for space with other street furniture and utility installation structures.

This clutter is also negatively impacting on the accessibility of the footpaths, which is not only inconvenient for pedestrian traffic, but has the potential for a major liability risk for Council in terms of any pedestrian accidents or disadvantage under the Disability Discrimination Act. Other blockages of sight lines by footpath structures can also create a traffic safety risk, and interference with CCTV cameras.

In terms of the enforcement action taken in respect of this unauthorised activity, Council officers have been placed in a very difficult situation in recent years, as there has been very little support from the Council for the officers to issue Penalty Infringement Notices or more substantial legal action against the offenders, given the recent downturn in economic conditions affecting the retail sector. As an interim approach, Council officers generally attempt to negotiate with offending proprietors to address the more prominent and potentially dangerous structures.

Unauthorised Signage in Existing Industrial Precincts and Other Commercial Activities

Established Industrial and commercial precincts, such as those at Tweed Heads, have been traditionally characterised by large amounts of advertising both on the business premises, and also on the public road reserves. Council officers regularly receive complaints from competitors of those businesses that put out additional signs. Once again, it is very difficult for the officers to take any significant punitive action, as there is such a proliferation of unauthorised signage throughout these precincts. All the staff can do in these circumstances is to appeal to the reasonableness of the offending proprietors to make some form of compromise.

Signage in the real estate industry is also very important, and Council's planning laws provide exemptions for most related signs as they are generally temporary by nature. However, due to the constraints of a declining property market in recent years, Council officers are receiving more complaints in respect to the directional and inspection signage being placed on Council's public road reserves. The Council officers have an informal policy to allow this to occur on weekends, but will confiscate those signs not removed by the end of the weekend.

Election Signage

Whilst there is very clear Federal, State and Council legislation that restricts the extent of signage that can be placed on public land in the lead up to, and in the polling of political elections, there has been the informal expectation that Council staff will relax enforcement actions during the election periods in respect of candidate signage being placed on public reserves, utility power poles and on trees.

Once again this places Council officers in a very difficult situation when it receives complaints about the proliferation and safety risks of such signage.

The recently exhibited Draft Codes SEPP Amendments may alter the approvals requirements, as it proposed that the following clause of Exempt Development be implemented:

"Subdivision 11 Election signs

2.102 Specified development

- (1) *The display of any poster that contains electoral matter in relation to an election held under the Commonwealth Electoral Act 1918 of the Commonwealth, the Parliamentary Electorates and Elections Act 1912 or the Local Government Act 1993 is development specified for the purposes of this code.*
- (2) *In this clause, **electoral matter** means:*
 - (a) *any matter that is intended or calculated or likely to affect or is capable of affecting the result of an election or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at an election, or*

- (b) *the name of a candidate at an election, the name of the party of any such candidate and the picture of any such candidate (including any photograph of the candidate and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate).*

2.103 Development standards

The standards specified for that development are that the development:

- (a) *must not be more than 8m² in area, and*
- (b) *must be displayed by or on behalf of a candidate at an election referred to in clause 2.100 or the party (if any) of any such candidate, and*
- (c) *must be displayed in accordance with any relevant requirements of the Act under which the election is held, and*
- (d) *must be displayed only during the following periods:*
- (i) *5 weeks immediately preceding the day on which the election is held,*
 - (ii) *the day on which the election is held,*
 - (iii) *1 week immediately following the day on which the election is held."*

The Council officers are seeking further clarification of this proposed clause, as it still appears that the owners' consent of Council is required for signs on public road reserves.

Given the regular cycle of election processes at all levels of government, it is considered important that Council's preferred means of dealing with enforcement during electoral periods is resolved and clearly communicated to the community.

Initial Suggestions for Council Action

Seeking a Clearer Policy and Approvals Framework

As highlighted in the previous sections of this report, the approvals processes required for the commercial use of public spaces are extremely complex, and can act as a major deterrent to new business activity and start ups.

This complexity also impacts upon the administrative efficiency and enforcement capacity of Council officers in processing these matters.

It is therefore considered important that Council continues to have input to the Review of the NSW Planning Act to seek a more simplified, streamlined process for the less impacting uses.

It is also considered that Council should re-examine the effectiveness of its current licensing system for footpath trading activities. Whilst Council receives a regular flow income for the licensing of outdoor dining areas in certain business areas, there needs to be some form of parity of the income received with the costs of any administration and enforcement services undertaken by Council officers.

Similarly, Council could also investigate other forms of managed licensing systems such as a greater control of the number and design of A Frame signage in the business centres.

Undertaking Detailed Urban Design Investigations for Each Business Centre

There are many examples of local councils throughout Australia undertaking detailed urban design investigations to examine the potential public domain and streetscape improvements for a business centre in a holistic manner, taking account of the prevailing built form character and physical capacity of the road, footpath, and other public spaces. The understanding of the characteristics of the Centre provides a great platform for developing a detailed, costed public infrastructure program, one which can complement any future commercial trading activities.

Many councils seek to fund these urban design investigations through a special rate levy applied to the owners of a business area, and supplemented by existing grants programs.

Just as an example of the benefits of this urban design approach, Council officers have recently taken the initiative to generate some urban design principles for the development of some outdoor dining areas in the Cabarita business area (See Attachment 4). Officers from various disciplines across Council have collaborated to produce a more holistic examination of the potential design aspects of these proposed areas.

Council may wish to consider a program of urban design investigations for the public domain of each of its main centres, commencing with those more immediately under pressure from increased pedestrian and traffic flows.

PHOTOS

A Frames on Footpaths in Centres

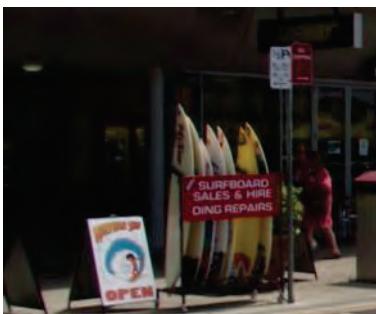
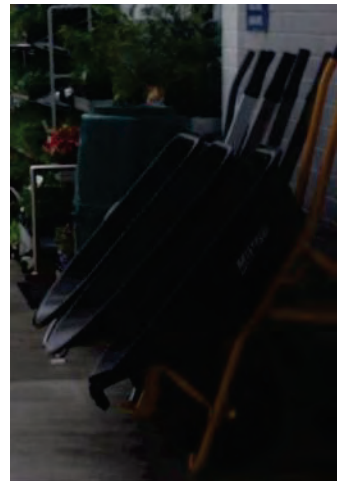


Examples of Outdoor Dining





Goods on Footpath



Unauthorised signage in road reserves



OPTIONS:

1. Council endorses the recommended Councillors Workshop on these issues; or
2. Council resolves an alternate course of action.

The Council officers recommend Option 1.

CONCLUSION:

This report highlights the need for Council to produce an updated regulatory and policy framework for commercial trading and signage activities in public road reserves and footways, as well as a series of urban design investigations for Tweed's major business centres. A Councillors Workshop will be the first step in seeking guidance on a preferred form of short and medium term actions.

COUNCIL IMPLICATIONS:

a. Policy:

This report recommends a review of existing Council policies in respect of commercial activity in public road reserves.

b. Budget/Long Term Financial Plan:

There are no budgetary implications at this stage.

c. Legal:

This report identifies potential public liability and legal challenge risks (Disability Discrimination Act) if action is not taken in respect of inappropriate and unauthorised footpath trading activities.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Copy of Tweed Development Control Plan 2008 - Section A4 - Advertising Signs Code (ECM 59020626)
 - Attachment 2. Copy of Tweed Footpath Trading Policy (ECM 59020628)
 - Attachment 3. Brisbane City Council's "Footpath Dining Permit Guide" (ECM 59020629)
 - Attachment 4. Design Principles for Outdoor Dining Areas in the Cabarita Business Area (ECM 59020630)
-

7 [PR-CM] Northern Joint Regional Planning Panel - Review of Council Appointed Panel Members - Recommended Appointment

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

At its meeting of 25 October 2012, Council resolved the following:

"RESOLVED that:

1. *Council endorses that an expressions of interest process be conducted for Council representation on the Northern Joint Regional Planning Panel; and*
2. *A further report be submitted to Council on the results of the expressions of interest process, with a view to endorsing two Council Panel members, and an alternate Panel member for a three year period, commencing from 1 January 2013."*

The purpose of this report is to advise Council on the outcomes of an Expressions of Interest process and to recommend that Council determine the appointment of two Council Panel members, and an alternate Panel member for the Northern Regional Planning Panel for a three year period, commencing from 1 January 2013. This action is necessary as the period of appointment of the current Council endorsed Panel members, as extended, expires on 31 December 2012.

RECOMMENDATION

That:

1. **Council determines the appointment of two panel members and one alternative member, as taken from the nominations received in the recently advertised Expressions of Interest process, to participate as Council's representatives in the Northern Region Joint Planning Panel, for a three year period, effective from 1 January, 2013;**
2. **The Director-General of the Department of Planning and Infrastructure be advised of these appointments; and**
3. **ATTACHMENTS 1 and 2 be treated as CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act, 1993, because they contain information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

REPORT:

Need for Council to Consider New Local Panel Appointments to the Northern Regional Planning Panel

At its meeting of 25 October 2012, Council resolved the following:

"RESOLVED that:

1. *Council endorses that an expressions of interest process be conducted for Council representation on the Northern Joint Regional Planning Panel; and*
2. *A further report be submitted to Council on the results of the expressions of interest process, with a view to endorsing two Council Panel members, and an alternate Panel member for a three year period, commencing from 1 January 2013."*

This action is necessary as the period of appointment of the current Council endorsed Panel members, as extended, expires on 31 December 2012.

Details of the Expressions of Interest (Eol) Process

Advertisement of Eol Process

An advertisement was placed in the Tweed Link Newspaper, edition 784, 30 October, 2012, seeking Expressions of Interest to become Tweed Council appointed Northern Regional Planning Panel members for a new three year term, commencing from 1 January 2013.

The advertised selection criteria for the nominations were:

- Senior level experience in dealing with multiple stakeholders
- High level communication skills
- Capability to drive high profile outcomes in a credible and authoritative manner
- High level analytical skills
- Knowledge and assessment of complex development and planning matters.

In accordance with the current NSW Department of Planning and Infrastructure Joint Regional Planning Panel Operational Procedures, it was also stated that at least one of the panellists must have high-level experience in one or more of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

Assessment of Eol Nominations

Nominations in respect of the Eol advertisement were received from the following people:

Existing Panel Member Re-Nominations

- Ned Wales
- Robert A Quirk

New Nominations

- Kevin Skinner
- Lisa White
- Dr Stephen Phillips
- David Brown
- Gavin Lawrie

Copies of the Eol submissions and a summary of these submissions are provided as Confidential attachments to this report.

OPTIONS:

1. Council determines the appointment of two panel members and one alternative member, as taken from the nominations received in the recently advertised Expressions of Interest process, to participate as Council's representatives on the Northern Regional Planning Panel for a three year period, commencing from 1 January 2013; or
2. Council defers appointment of new Panel members for further consideration, and requests a further extension of the appointment of the current Panel members.

The Council officers recommend Option 1.

CONCLUSION:

The period of appointment of the current Council representatives on the Northern Regional Planning Panel expires on 31 December 2012. Based on the Expressions of Interest (Eol) process conducted, it is recommended that Council determine those nominees suitable for Council appointed Panel members for a further three year period, commencing from 1 January, 2013.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Council is required to pay for certain costs of the Local Panel members, and the administration of Joint Regional Planning Panel Meetings. Costs incurred to date are as follows:

2009/2010	\$4,250
2010/2011	\$14,400
2011/2012	\$1,900

These costs are allowed within the operational budget.

c. Legal:

The NSW Planning and Environmental Assessment Act 1979 outlines a series of legislative requirements for the assessment of regionally significant developments, and the operation of Joint Regional Planning Panels.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment Copies of Expressions of Interest Submissions from Nominees to be Council Appointed Panel Members on the Northern Regional Planning Panel (ECM 59708208)

(Confidential) Attachment 2. Confidential Attachment Summary of the Expressions of Interest Submissions Identified in Attachment 1 (ECM 59708233)

8 [PR-CM] Community Based Heritage Study 2012 Management Recommendations

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/LEP/2010/Heritage/CHS



Supporting Community Life

SUMMARY OF REPORT:

Council endorsed the Community Based Heritage Plan (CBHP) 2012 in August 2012, with the exception of two management recommendations, which were deferred pending the conclusion of the NSW local government elections, because of the budgetary implications attached to the consideration by Council of the appointment of a part-time and part grant funded heritage advisor position.

This report provides an update on the actions undertaken to enact the resolutions of Council and provides an outline of the benefits and the financial implications of the deferred recommendations 9.4 – Implementation of a Community Heritage Grants Scheme and 9.5 – Appointment of a Council Heritage Advisor.

The report also recommends that subsequent to the adoption of the CBHP that the Tweed City Centres Local Environmental Plan be amended to update the Schedule of heritage items.

RECOMMENDATION:

That:

- 1. Council endorses the Community Based Heritage Plan 2012 recommendations 9.4 – *Implementation of a Community Heritage Grants Scheme* and 9.5 – *Appointment of a Council Heritage Advisor* and the required dollar for dollar budget commitment (estimated at approximately \$16,000) within the 2013-14 budget.**
- 2. Council applies for grant funding to facilitate the appointment of a Heritage Advisor and development of the Local Heritage Assistance Fund through the Office of Environment and *Heritage Local Government Heritage Management Program*.**

3. In accordance with sections 55 and 56 of the Environmental Planning and Assessment Act, 1979 a planning proposal be prepared and referred to the Minister for Planning and Infrastructure for a Gateway Determination to amend the Tweed City Centre Local Environmental Plan to list the relevant items within the Heritage Schedule.

REPORT:

Background

At the Council meeting of 21 August 2012 Council considered and endorsed the Community Based Heritage Plan (CBHP) August 2012, resolving the following:

1. *Council endorses the Community Based Heritage Plan August 2012, which includes a list of heritage items and areas for inclusion (Sections 5 and 6), Management Plan recommendations (Section 9 (with the exception of recommendation 9.4 and 9.5)), and the supporting documents, Guide for Heritage Owners (Attachment B) and Guide for Council Staff (Attachment C), as amended and as outlined in this report and provided in Attachment 3;*
2. *Due to the absence of an allocation in Council's 2012/2013 Operational Plan and Budget, the commencement of Management Plan recommendations 9.4 – Implementation of a Community Heritage Grants Scheme and 9.5 – Appointment of a Council Heritage Advisor be deferred pending a further report for the incoming Council at the November Council Meeting;*
3. *In accordance with Sections 55 and 56 of the Environmental Planning and Assessment Act, 1979 an amendment to the Tweed Local Environmental Plan 2000 to list the items and areas within Schedule 2 (or the equivalent within the draft Tweed Local Environmental Plan under the provisions of the Standard Instruments (Local Environmental Plans Order) 2006 be prepared and referred to the Minister for Planning and Infrastructure for a Gateway Determination; and*
4. *A further report on the Significant Tree Register linked to the Tree Preservation Development Control Plan, under the requirements of Clause 5.9 of the Standard Instrument (Local Environmental Plans) Order 2006 be submitted to Council, with the view for public exhibition and detailing a preferred process for the nomination and listing of significant trees.*

Amendment to the Local Environmental Plan Heritage Schedule (item 3)

At the Council meeting of 25 October 2012 Council considered a report on the draft Local Environmental Plan (LEP) 2012 and resolved to publicly exhibit the draft LEP.

As part of this report Council endorsed including the list of heritage items and conservation area resolved in the CBHP 2012 within the draft LEP 2012.

Consistent with this, the draft LEP 2012, commencing public exhibition in November 2012, includes the CBHP 2012 heritage items and conservation areas within the boundaries of the draft LEP 2012. It is anticipated that formal listing within the heritage schedule will proceed through the draft LEP 2012 process.

Four of the CBHP 2012 items, however, are located within the boundaries of the draft Tweed City Centre LEP area. This plan is in its final stages and has already been referred to the Department of Planning and Infrastructure (DP&I) for the plan to be made. DP&I have informally advised Council that they support a separate planning proposal to include these items within the Tweed City Centre LEP Heritage Schedule.

As such, it is proposed that a planning proposal be commenced to list those items within the boundaries of the imminent Tweed City Centre (TCC) LEP 2012 on the TCC LEP heritage schedule.

Significant tree register (item 4)

The draft LEP 2012 report to Council in October 2012 outlined the requirements of Clause 5.9 Tree Preservation Development Control Plan and included the draft *Tree and Vegetation Preservation Code Tweed Development Control Plan – Section A16 (Tree Preservation Code)* to enact this clause. Council resolved to publicly exhibit the draft DCP in conjunction with the draft LEP 2012.

In accordance with Council's resolution, the draft Tree Preservation Code Section 4 outlines the process for nominating and application for vegetation to be listed on the significant vegetation register. Listing of significant vegetation is within Schedule 2 of the draft Tree Preservation Code. The items listed in Table 5.6 of the CBHP 2012 have been included within Schedule 2 for public exhibition.

Community grants for heritage advisor and local assistance fund (item 2)

In recent years Council has raised the awareness, respect and management of its local heritage. The endorsement of the CBHP 2012 reinforces the importance of a greater level of heritage management within the Shire. The success of heritage management relies on improving the understanding of heritage significance both within the organisation and the wider community and appropriate management of heritage items and conservation areas.

The CBHP 2012 included 18 management recommendations. Recommendations 9.4 – *Implementation of a Community Heritage Grants Scheme* and 9.5 – *Appointment of a Council Heritage Advisor* were deferred at the August Council meeting due to the financial implications for the incoming Council. This report provides information on the deferred matters to enable Council to make a decision on these management recommendations.

The NSW Heritage Branch, part of the Office of Environment and Heritage (OEH), offer annual local government heritage management grants to assist local government to deliver on their heritage planning obligations, education and promotional programs that support heritage conservation.

These grants usually open in October of each year and run over a three year period. Applications for the 2013-15 year grants are anticipated to open in the coming weeks.

The grant structure is designed to assist Council in the early implementation stages of heritage management and education, where greater funding is available, then to encourage Council to develop additional sources of revenue to support heritage programs as management strategies are developed.

The CBHP management recommends the appointment of a heritage advisor and development of a local heritage assistance fund and suggests this be facilitated and supported through the OEH grants program.

Heritage advisor

The heritage advisor grant assists in the appointment of a heritage architect to be located at Council generally for 2-3 days per month. The advisor service generally provides:

- Free advice/guidance to owners of heritage items or within conservation areas on colour and material choices, alterations and additions and development applications;
- Development Application assistance and review of applications subject to heritage controls;
- Management of the Local Heritage Assistance Fund; and

- Liaison with the Heritage Branch and updating of heritage inventory information, site cards and heritage studies.

The 2012-14 year heritage advisor grants were offered at:

- Dollar for dollar grants up to \$7,500 per year (years 1-3), then
- \$1 for \$2 grants up to \$7,500 per year (years 4-7), then
- \$1 for \$3 grants up to \$7,500 per year (years 8+).

It is anticipated that grants will be offered under the same or similar structure for 2013-15.

Local assistance fund

The local heritage assistance fund assists Council to develop a small fund to encourage conservation work to heritage items and contributory buildings in conservation areas. The funding to owners is generally offered up to approximately \$3,000 depending on the scale and significance of the works.

The scheme generally works as follows:

- Applications are called for on a periodic basis;
- Funding is not provided to works already completed or new additions, instead applicants are to outline the conservation works proposed, supported by quotes and works generally commence once funding is approved; and
- Funding is offered to support the conservation of such items as repair and replacement of fencing, roofing, windows; preparation of conservation management plans; painting in appropriate heritage colour schemes.

The 2012-14 year local heritage assistance fund grants were offered at:

- Dollar for dollar grants up to \$8,500 per year (years 1-3), then
- \$1 for \$2 grants up to \$8,500 per year (years 4-7), then
- \$1 for \$2 grants up to \$8,500 per year (years 8+).

It is anticipated that grants will be offered under the same or similar structure for 2013-15.

Council's options with respect to the appointment of a heritage advisor and development of a local heritage assistance fund are:

- a) To proceed with the appointment of a heritage advisor and development of a local heritage assistance fund and apply for grant funding to support these management recommendations; or
- b) To not support the appointment of a heritage advisor and development of a local heritage assistance fund.

Council has the following options with respect of commencing a planning proposal to amend the TCC LEP and list the relevant items within the heritage schedule:

- a) To proceed with a planning proposal to amend the TCC LEP and list the relevant items within the heritage schedule; or
- b) To not support proceeding with a planning proposal to amend the TCC LEP and list the relevant items within the heritage schedule.

OPTIONS:

1. Proceed with the recommendations of this report, which supports the preparation of an amendment to the Tweed City Centres LEP to include the additional heritage items, and to seek funding assistance for a heritage advisor and local heritage assistance fund, or
2. Not proceed with one or more recommendations of the report, or
3. Defer the report and seek further clarification on any aspect of its content.

CONCLUSION:

The endorsement of the CBHP 2012 reinforces the importance of a greater level of heritage management within the Shire. The success of heritage management relies on improving the understanding of heritage significance both within the organisation and the wider community and appropriate management of heritage items and conservation areas.

The listing of the additional heritage items and conservation areas within the LEP requires a higher level of expertise to assess development applications and statements of heritage impact (SOHIs), provide heritage advice and manage the heritage information that is currently available within Council. Implementing the heritage support structure, with the assistance of the OEH local government heritage management grants scheme, will also strengthen the ability of Council to increase the heritage awareness and education of the wider community to better manage heritage within the Shire.

Should Council not support the appointment of a heritage advisor and development of a local heritage assistance fund, Council will be relying on the engagement of external heritage consultants to provide this level of professional assistance, most likely at a greater financial cost than the OEH subsidised local government program.

In addition, the owners of heritage listed items and within conservation areas will not be able to access financial support to assist the conservation of these items/areas. This is a significant incentive to owners to look after their heritage items and benefits the whole of the Tweed Shire through greater respect and understanding of heritage. Local government areas that effectively manage their heritage benefit significantly through the increase in heritage related tourism.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Should Council support applying for the Local Government Heritage Management Grants, a financial commitment (based on the previous year grants assistance) of \$16,000 (\$7,500 towards a Heritage Advisor and \$8,500 towards the Assistance Fund) will be required to meet the dollar for dollar grant contribution for the 2013-15 period. This will ensure a total of \$15,000 towards a heritage advisor and a heritage assistance fund of \$17,000 for the three year period.

It is noted that to maintain the same level of heritage assistance (\$15,000 towards a heritage advisor and a heritage assistance fund of \$17,000), commencing year 4 (2016) Council would be required to contribute \$21,334 (based on the previous year grant assistance).

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:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.2 Preserve Indigenous and Non-Indigenous cultural places and values
- 2.1.2.3 Conserve non-Indigenous heritage and values
- 2.1.2.3.1 Review of Community Heritage Study and advance statutory and policy processes for new heritage item listing in Council Local Environmental Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Council report on the Community Based Heritage Study 2012 of 21 August 2012 (ECM 59711440)

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9 [PR-CM] NSW Department of Planning and Infrastructure - Plan Making and Delegations - Advice to Minister for Planning and Infrastructure

SUBMITTED BY: Planning Reform Unit

FILE REFERENCE: GT1/LEP/2012



Civic Leadership

SUMMARY OF REPORT:

The Department of Planning and Infrastructure (DP&I) exhibited a Draft Policy Statement on Plan-making and Delegations on 27 March 2012. The policy proposed to simplify the procedure for making local environmental plans (LEPs) and to allow for independent review of some local council and DP&I decisions. The policy was considered and recommendations resolved on by Council at its ordinary meeting of 15 May 2012.

The Hon Brad Hazzard MP, as Minister for Planning and Infrastructure, has recently written to all councils advising of the commencement of legislative changes to enable the delegation of the Minister's functions in accordance with section 23 of the *Environmental Planning and Assessment Act 1979* (the Act), in respect to Plan Making, that councils must first indicate their preference for receiving a delegation and to whom it will apply.

Delegation functions will only apply to a limited class of planning proposals and these would typically include those of minor significance, housekeeping and implementation of an endorsed study.

Whilst the report concludes that the delegation of the Plan Making functions will not lead to any significant cost or time savings they nonetheless represent an improvement on current planning practice that the Council should take advantage of. Whether a delegation will be made on a particular planning proposal will be at the Minister's discretion however, the council will need to indicate its preference when making a Gateway Determination request and if dissatisfied with a determination may seek review of it under these new procedures.

This report recommends that Council advises the Minister of its acceptance to participate in this new delegation process and nominates the General Manager and Director Planning and Regulation as the Council Officers to whom a delegation may be granted.

RECOMMENDATION:

That:

- 1. The Minister for Planning and Infrastructure be advised of Council's acceptance to receive a delegation in respect of the Minister's Plan Making functions in regard to planning proposals, and**

2. Pursuant to Part 3 of Chapter 12, Sections 377 to 381, of the *Local Government Act 1993*, Council requests the Department of Planning and Infrastructure to extend the Minister's delegations to the General Manager and, with the General Manager's approval, the Director Planning and Regulation, other than in relation to any proposal involving reclassification of public land, for the purpose of a delegation in respect of section 59 of the *Environmental Planning and Assessment Act 1979* relating to the Plan Making functions of the Minister for Planning and Infrastructure.

REPORT:

The Department of Planning and Infrastructure (DP&I) exhibited a Draft Policy Statement on Plan-making and Delegations on 27 March 2012. The policy proposed to simplify the procedure for making local environmental plans (LEPs) and to allow for independent review of some local council and DP&I decisions.

In the DP&I's Planning Circular, PS 12-006, of 29 October 2012 (Attachment 5) the Department advises of the commencement of the new processes and outlines the key features and procedures. The DP&I have also published two new and updated guidelines for "Preparing Local Environmental Plans" and "Preparing Planning Proposals", which are also attached (Attachments 3 and 4). These documents are largely self explanatory.

The purpose of this report is not to repeat the information in the DP&I's guide notes or circular but to seek Council's acceptance to the new process of delegation, relating to the Minister's Plan Making functions.

The Figure below, extracted from the DP&I's "Guide to Preparing Local Environmental Plans", provides a useful illustration as to where in the overall LEP plan making process the 'handing back of power' to make LEPs occurs. Page 7 of this guideline also speaks about the delegation process and the kind of draft LEPs that will be the subject of routine delegations.

This report has highlighted the two key areas of the new process within the Figure below and highlighted with a RED and GREEN box. The practical impact of an exercise of delegation relating to these changes requires a comment.

Firstly, the delegation of functions under section 59 of the Act (those in the red box) affects the following three sections:

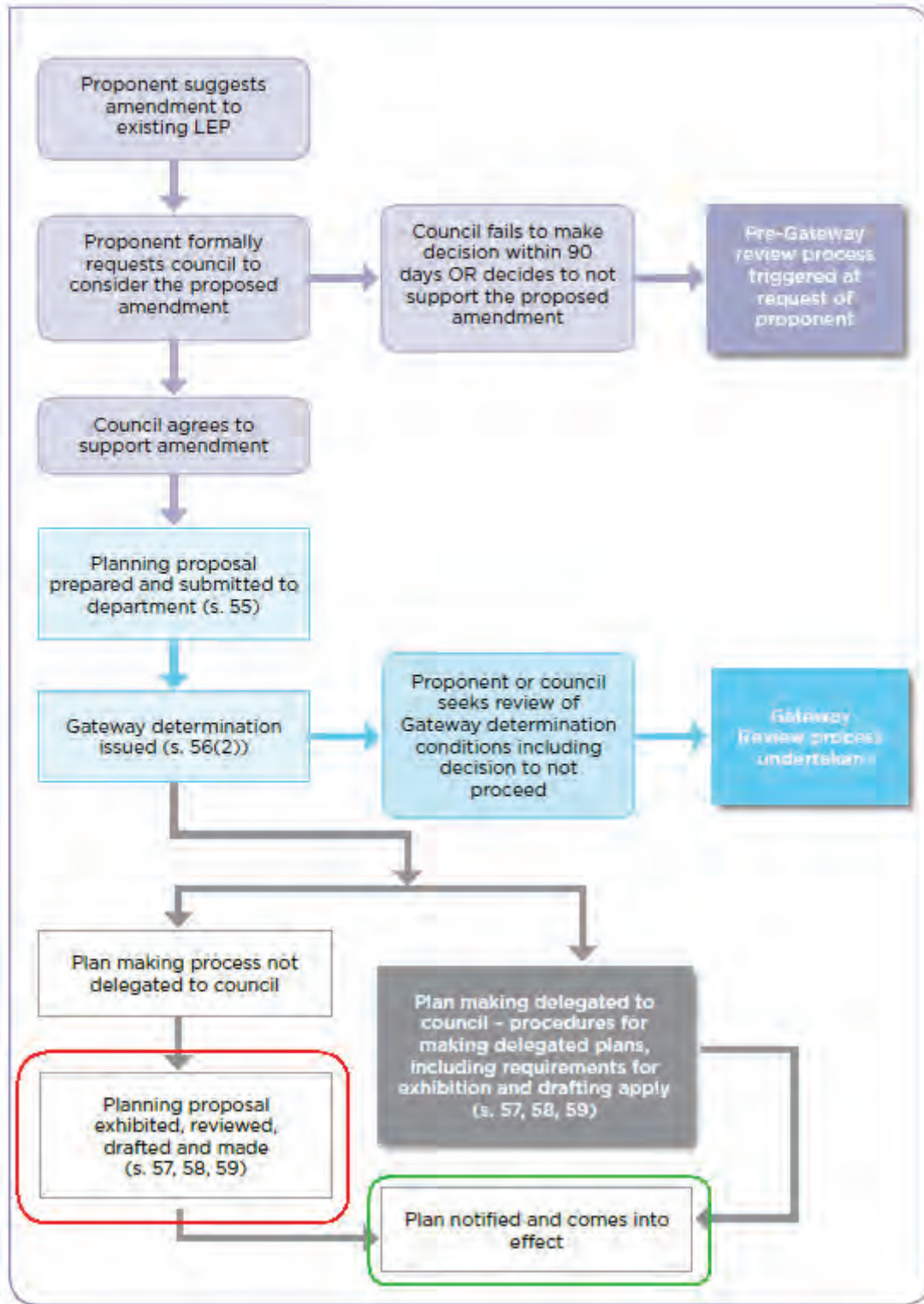
s 57	Community consultation
s 58	Relevant planning authority may vary proposals or not proceed
s 59	Making of local environmental plan by Minister

While a table of comparison between a delegated and non-delegated process is also identified within the guideline mentioned above on pages 18-23, there are some important points that are worth noting when considering whether Tweed Council should take up the Minister's offer of receiving delegable functions, these are:

s 57	Community consultation
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In practice it matters not whether section 57 is delegable or not as the process and procedure remains unchanged. This comes about because the determination about who should be consulted and for how long is determined by the Gateway Determination (DP&I) not by a council. There are no proposed changes to this process and consequently no resource, cost or time savings are likely to accrue from a delegation of this function.

In the event that the Council was not agreeable to the terms of the consultation requirements it would be required to resubmit the proposal and request back to the Gateway, it could not rely on a delegation to amend or vary the requirements notified.



s 58 | Relevant planning authority may vary proposals or not proceed

The practical effect of a delegation under section 58 is of very little consequence. Whether delegated or not any revised planning proposal must be forwarded to the DP&I for review. Where determined to be more than minor the Minister may direct that a new determination be issued and may consist of further requirements for additional consultation.

The distinction between a non-delegated and delegated matter under section 58 is not apparent from DP&I's guideline and in practice may actually be a superficial one. This comes about because notwithstanding that a council with a delegation is encouraged to discuss any proposed revision with their Regional DP&I office the requirement under section 58(2) to forward a copy of the proposed revised proposal, and subsequently await a response, is the aspect of that provision that gives rise to the delay and duplication of assessment in the process.

It would not matter if the Regional office was of the opinion that a revised proposal is not significant because there is an absence of statutory authority under the present legislation that would permit the DP&I to 'turn-off' or dispense with the procedural requirements of section 58(2). Consequently, there is not likely to be any real cost or resource savings with the delegation of this particular function.

s 59 | Making of local environmental plan by Minister

Under a non-delegated proposal the Council would ordinarily consider a planning report detailing public consultation undertaken, public submissions received and any amendments arising from there. The resolution, all things being well, would be to refer the planning proposal (draft LEP) to the DP&I to be made. The process that would follow would typically entail the DP&I staff liaising as an intermediary between council staff and the Office of the Parliamentary Counsel (PCO) in the drafting of the LEP.

Of the three areas of delegation section 59 represents the area with the greatest saving. Removing the need for the DP&I to have an intermediary role and allowing council officers to liaise directly with PCO will streamline this aspect of the plan making process. Further, the need for Council to resolve to both adopt and make (with or without variation) the draft LEP is a minor addition with no resource implication.

"Green Box" | Notification of the LEP

This stage of the process is essentially a continuation from section 59 and the direct liaison between the PCO and Council will mean that there is actually an additional role of a council in that they will need to notify the DP&I that the plan has been made, following which the DP&I will request the PCO to notify the plan on the NSW Legislation website.

Arguably the better practice would have been for the PCO to notify the DP&I directly once council staff had agreed to PCO's drafted LEP instrument however, providing that the formalities of hard copy written advice, that is, allowing for e-mail communication, is not required this additional process is not likely to add any significant delay.

ADDITIONAL INFORMATION NOT PREVIOUSLY REPORTED

To support the changes introduced and as discussed above and in the Council Report of 15 May 2012, three key legislative amendments to the *Environmental Planning and Assessment Regulation 2000* took effect upon their notification on the NSW Legislation website on 19 October 2012. The amendments are:

Clause 10A This is a new clause that requires a council to notify a proponent in writing, as soon as practicable, whose planning proposal it does not support. This is designed to enable the review process timeframes to be readily identified. In that regard, once the proponent has been notified the proponent has 40 days to request a review. It is not totally clear but it seems that where a council fails to indicate its support for a proposal within 90 days the proponent may seek a review anytime thereafter. This seems to be designed to ensure or promote earlier determination of planning proposals by councils.

Clause 11 This clause has been amended to provide clearer guidance on the fee payable for costs and expenses incurred by councils in preparing a planning proposal. This clause does not affect the way in which Tweed currently operates as it further establishes and recognises the use of agreements between the parties; a contractual based system that Tweed has been using for about two years.

Clause 263 This clause has been amended to include fees relating to the review process to cover the costs and expenses incurred by the DP&I and any Commission or regional panel.

OPTIONS:

That Council:

1. Endorses the recommendations of this report; or
2. Resolves to advise the Minister for Planning and Infrastructure that Tweed Shire Council is not agreeable to receiving delegations in respect to Plan Making functions regarding draft local environmental plans; or
3. Defers a resolution on this report to allow time for any issues raised by the Councillors to be assessed and further reported on.

The Council officers recommend Option 1.

CONCLUSION:

The functions of the Minister proposed to be delegated to Council in respect of draft LEPs is quite limited, will only arise in a limited number or class of proposals, and in practice is unlikely to lead to significant resource, cost or time savings.

The planning proposal process is complex and requires a significant amount of procedural involvement and action. The areas of delegation do not in any substantial way address those aspects of the process where most time and resources are committed and consequently the delays that arise through the various reporting processes is not diminished. It could readily be argued that in some respects taking on the responsibility of the Minister in carrying out those delegations would actually add to the level of assessment and reporting required of a council officer.

On the other hand, there is a potential efficiency gain where council staff and the PCO can liaise directly and while this will most likely only save a very short period of time in the scheme of the project life it is nonetheless beneficial.

This initiative responds to requests from local government to allow councils more responsibility for LEP matters of local significance and is to be welcomed.

It is concluded that accepting and consequently seeking delegation of the Plan Making functions within the limited class of minor draft LEPs envisaged by the DP&I is a positive step to ensuring opportunity for greater efficiency in the plan making process and one that should be taken up by Council.

The Minister has also written to all councils about the changes (see Attachment 1) requesting that the Department be notified by 30 November 2012 where a Council is prepared to accept the new delegations.

Delegations may be exercised by the Council as a whole and/or by nominated officers. The recommendation of this report responds to this request, also having regard to the specific provisions of Chapter 12 of the Local Government Act 1993 in relation to delegated authorities.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The acceptance of the delegation process, based on the limited class of draft LEPs which are likely to attract an exercise of the Minister's delegation, is not likely to have a significant increase on the demand for council resources.

c. Legal:

In relation to delegations in particular, Section 381 of the Local Government Act 1993 provides that functions under another Act cannot be delegated to:

- the general manager, except with the approval of council, or
- an employee of the council, except with the approval of council and the general manager.

Moreover, Section 377(1)(l) of the Act precludes the general manager from making decisions in relation to the reclassification of public land.

These requirements have been taken into account in drafting the recommendations.

The risk of there being an increase in the litigious nature of LEP amendments seems minimal. This is the case because several aspects of the new process are administrative functions of the Minister and the Department opposed to deriving statutorily, that is, third party rights of appeal under the legislation have not been broadened to encapsulate plan making.

d. Communication/Engagement:

Not applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 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. Minister Hazzard's Letter (ECM 59017492)

Attachment 2. Council Report of 15 May 2012 (ECM 59017493)

Attachment 3. A Guide to Preparing Local Environmental Plans (ECM 59017494)

Attachment 4. A Guide to Preparing Planning Proposals (ECM 59017495)

Attachment 5. Planning Circular PS 12-006 (ECM 59018498)

- 10 [PR-CM] Development Application DA10/0801.03 for an Amendment to Development Consent DA10/0801 for the Cobaki Estate Subdivision of Precinct 6 Comprised of 442 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrass**

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0801 Pt14



Civic Leadership

SUMMARY OF REPORT:

Approval was granted by the Northern Joint Regional Planning Panel (JRPP) in May 2011 for a 442 residential subdivision, drainage, open space and urban infrastructure within the area of the Cobaki Lakes estate known as Precinct 6.

The applicant has lodged a Section 96(1a) application in relation to the Section 94 Plan No. 4 Tweed Road Contribution Plan (TRCP) development contributions, requesting that all TRCP contributions associated with Precincts 6 be deleted. The justification for the deletion is the road works in Queensland, associated with providing the Boyd Street connection to Cobaki Parkway.

Having taken Council's previous legal advice on this matter into consideration, it is considered that it would be inappropriate for Council to credit the approved development with works carried out within Queensland. As such, the proposed modification is not supported.

The JRPP have previously advised that Section 96(1a) applications are not required to be reported to them for determination. As such, Council is the consent authority for the proposed modification.

The applicant has indicated that they would appeal an unfavourable determination of the proposed modification. As such, the matter is being reported to a full Council meeting for determination.

RECOMMENDATION:

That:

1. Development Application DA10/0801.03 for an amendment to Development Consent DA10/0801 for the Cobaki Estate subdivision of precinct 6 comprised of 442 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure (JRPP) at Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570077; Lot 1 DP 823679; Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076 Piggabeen Road, Cobaki Lakes be refused for the following reasons:
 1. The proposed modification is contrary to Council's adopted S94 Plan No. 4 Tweed Road Contribution Plan.
 2. The proposed modification is contrary to Part 4 Division 6 Development Contributions of the Environmental Planning and Assessment Act 1979 (as amended).
 3. The proposed modification is contrary to Section 96(1A)(b) of the Environmental Planning and Assessment Act 1979 (as amended), in that it is not substantially the same development as that originally approved.
 4. The proposed modification is not considered to be in the public interest.
2. Council defends the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court.
3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains:
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

REPORT:**Applicant:** Leda Manorstead Pty Ltd**Owner:** Leda Manorstead Pty Ltd**Location:** Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570077; Lot 1 DP 823679; Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076 Piggabeen Road, Cobaki Lakes**Zoning:** 2(c) Urban Expansion, 6(b) Recreation, 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat)**Cost:** Nil**Background:**

Cobaki Estate has multiple layers of approvals which allow for subdivision of the site, including a town centre, community facilities, sports fields, parks and other infrastructure.

The following table summarises the key and more contemporary approvals issued over the site:

Determining Authority	Approval	Date
Tweed Shire Council	S94/194 approximately 763 lots and Cobaki Parkway	1995
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Northern Joint Regional Planning Panel	DA10/0801 – 442 Residential Lots (Precinct 6)	May 2011

Note the table above includes only key approvals.

Council has also approved the following Construction Certificates (CC):

- The bridge over Cobaki Creek;
- Town centre earthworks;
- Construction of Cobaki Parkway North; and
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Council's Engineers are also currently assessing:

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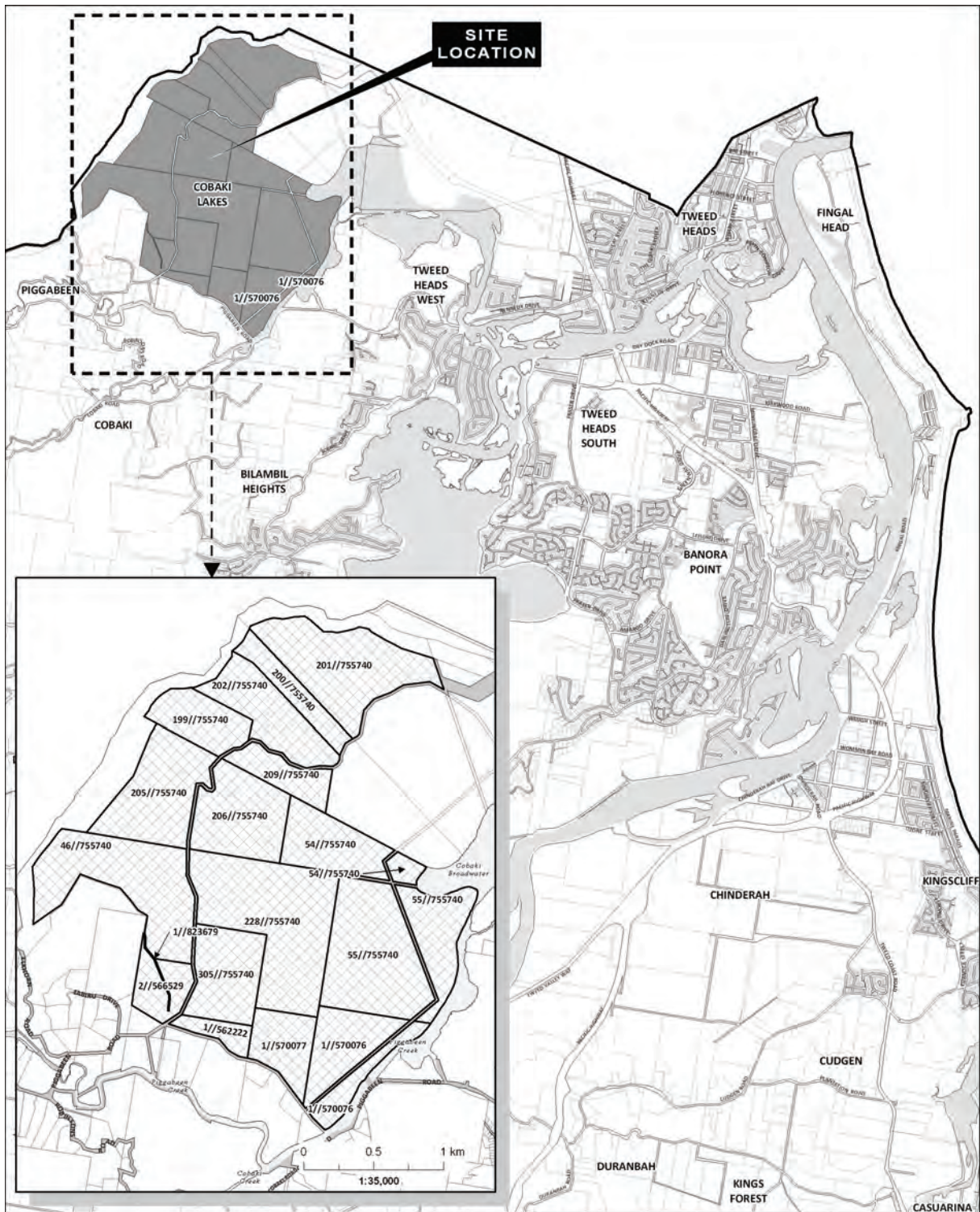
This proposed subdivision utilises works to be completed pursuant to the existing development consents as follows.

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Precinct 6 is to be developed over 10 stages. Standard development contributions, including Section 94 Plan No. 4 Tweed Road Contribution Plan (TRCP), were applied to the approved low density and medium density residential development within each stage. Condition 116 of the development consent incorporates all of the applicable Section 94 development contributions.

Version 6 of the TRCP was adopted by Council on 24 January 2012, after being publicly exhibited from 23 November 2011 to 15 December 2011. The proponent of Cobaki Lakes (Leda Manorstead) made a submission during the public exhibition period, objecting that works in Queensland were not included in the TRCP works program. Despite the objection from Leda, the TRCP was adopted without incorporating any of the proposed Queensland works into the works program.

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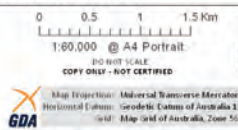


Locality Plan

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 Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076
 Piggabeen Road, Cobaki Lakes

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Cadastral: 22 November, 2012
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Author: 131109\131109 - Planning Definition Layer

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PRECINCT 1 AND 2 PLAN



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

Proposed Modification

This application seeks to modify Condition 116 to delete all TRCP contributions levied on every Stage of the development consent.

The applicant has provided the following background and justification for the proposed modification:

“As set out in the letter prepared by Gadens Lawyers to Tweed Shire Council on 29 March 2012 (refer to Attachment 1) there are substantial works associated with providing the Boyd Street connection to Cobaki Parkway which have not been included in the TRCP despite previous requests from our client. These works include:

- *Intersection of Boyd Street and the Gold Coast Highway (estimated cost of \$4 million).*
- *Boyd Street Extension (Queensland) from and including a roundabout at Inland Drive to the overpass, in two lanes (estimated cost of \$1.5 million).*
- *Four lane upgrade to Boyd Street (estimated Cost \$4 million).*

It is evident that the Boyd Street works, noted in the Gadens Letter, will provide access and additional capacity to the Gold Coast from the Tweed Shire well in excess of the demand generated by the Cobaki development.

It is also clear that this additional capacity will provide a benefit to other new development in the Tweed Shire and is fundamental to the overall long term Traffic Management Plan for the Shire. For example the urban release areas to the south of Cobaki including the substantial development known as ‘RISE’ and the other significant urban land release area at Bilambil Heights are presently subject to a moratorium due to this very traffic capacity issue. The proposed road works will also benefit ‘infill development’ in the area to the west of Cobaki Creek. As at 4 September 2012 there were 150 vehicle trips (23 detached dwellings) of spare capacity remaining before a moratorium is imposed on any further infill development in that area.

Our client has previously requested Council to amend the TRCP to properly include the additional works in Queensland, which would allow for the equitable sharing of the cost of those necessary works among the other developments that will benefit from the work. Instead, Council is insisting that our client provide normal TRCP contributions as well as individually funding the substantial additional road works in Queensland.

Section 94B(3) of the Environmental Planning and Assessment Act 1979 (as amended) is in the following terms:

“A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.”

Our client is firmly of the view that the situation as described above is unreasonable.

The application to modify Condition 111 to delete all TRCP contributions therein is considered to be justified since the amount of the contribution to be deleted is more than offset by the value of the road work to be undertaken.

*For example Condition 111 has calculated **the number of trips generated by the development under TRCP as being 3,142.1** and at the date of determination of DA10/0800 (30 May 2011) the value attributed to each 'trip' was \$999.00 making the value of the TRCP contribution at that time \$3,138,960.00.*

However, those rates are only fixed for a period of 12 months, following which the rates are to be recalculated in accordance with the current rates. More than 12 months has elapsed since that Development Application was determined and an amendment of the TRCP was made during that period to increase the 'trip' value to \$1377.00. Accordingly, the current TRCP liability under this Development Consent is \$4,326,671.00.

*The work to be undertaken in Queensland is estimated to cost \$9.5 million, **which is equivalent to 6899.1 trips** at present TRCP rates. Therefore the requested modification will maintain a credit equivalent to 3757 trips or \$5,173,329.00 at current TRCP rates.*

Our client intends to utilise the remaining equivalent trip credits generated by constructing road work in Queensland to offset TRCP contributions from other consents within the Cobaki Estate."

Comment

Council's Planning and Infrastructure Unit has provided the following comment in response to the applicant's proposed modification:

"The applicant, Leda Manorstead Pty Ltd, has submitted a s96 application to modify the subject approval, to "delete all TRCP contributions levied on every Stage of the development consent", by modifying Condition 116.

The applicant's justification for this request is:

- *That substantial works are required by the developer to construct the Boyd Street connection in Queensland to Cobaki Parkway which have not been included in the TRCP;*
- *These works provide traffic benefits (access and increased capacity) to other development areas within Tweed Shire, as well as existing development, in excess of the demand generated by the Cobaki development;*
- *Excluding these works from the TRCP is inequitable as it does not allow for cost sharing of the Boyd Street connection works, estimated by the applicant to be \$9.5 million;*
- *This situation is unreasonable under Section 94B(3) of the EP&A Act 1979;*
- *Deletion of TRCP contributions is justified since the amount of the contribution to be deleted is more than offset by the value of work to be undertaken;*
- *The difference in the value of works undertaken and the TRCP contributions should be maintained as a credit for other stages of the Cobaki development.*

The applicant provides a letter containing legal advice from Gadens Lawyers, which has previously been submitted to Council (29 March 2012), following Council's adoption of TRCP Version 6 on 24 January 2012, to which similar objections were also raised.

Gadens foreshadows that the applicant will initiate proceedings in the Land and Environment Court following s96 modification applications to the consent, should Council not accept the Queensland works as offsets to TRCP contributions.

In response to initial receipt of the Gadens letter, Council sought its own legal advice from Lindsay Taylor Lawyers, which was the subject of a confidential report to Council on 15 May 2012. Having considered this advice in the context of the subject application, there are few compelling reasons to support the request to delete TRCP contributions.

The following arguments are presented against the applicant's s96 modification:

1. Existing Deeds of Agreement

Three separate deeds of agreement exist between the proponent of Cobaki Estate (previously Calsonic, now Leda) and Gold Coast City Council, Tweed Shire Council and the Queensland Department of Main Roads. The original deeds dealt separately with road infrastructure required each side of the state border and the respective road authorities.

These deeds remain current, and clearly set down obligations of the road authorities and the proponent with respect to the provision of road infrastructure. Council is under no obligation to enter into a new deed with Leda, and based on Council's legal advice, it is unlikely that the court would impose the commercial liability that Leda has voluntarily entered into on the community.

2. EP&A Act Amendment

Gadens states that "the Queensland location of the works is irrelevant" when considering the inclusion of the subject works in the TRCP. Reference is made to the amendment of the Environmental Planning and Assessment Act, which inserted Section 94CA:

94CA Public service or public amenity may be provided outside NSW

A condition may, with the written approval of the Minister, be imposed under section 94 or 94A for the provision of a public amenity or public service on land in another State or Territory if the area in which the development the subject of the condition is to be carried out adjoins the other State or Territory.

There is currently no Ministerial approval for such contributions. Therefore, it is not possible for Council to include the Queensland works in the TRCP and impose related conditions on development.

The history of the above amendment is detailed in the May 2012 Confidential Council report (refer to Confidential Attachment 1), however in summary this was assented to by Parliament after representations by Council to the Minister for Planning, relating to the use of TRCP funds collected for the Tugun Bypass overpass/interchange, which during planning for the M1 had been relocated from NSW to straddle the border. Council subsequently wrote to the Minister for the further approval required by the Act, and this approval was received. The inclusion of additional works wholly in Queensland was not contemplated by Council at the time, possibly as these additional works were already set down in the deeds of agreement.

3. Equity Issues

There is no dispute that the Boyd Street connection works will benefit new and existing development in Tweed Shire, and in the short term will contribute to the overall traffic planning for the Shire. However the Gadens' equity argument that these areas in Tweed Shire should therefore share the cost of these works via TRCP contributions is over-simplistic, and is mitigated by the following points:

- The Cross Border Traffic Masterplan (2011) for the Tweed-Gold Coast consists of an interchange with the Tugun Bypass at Boyd Street, which is included in part in the TRCP. While this appears to be a long term prospect, once this interchange is in place, a very low proportion of traffic from NSW will continue into Tugun via Boyd Street. The collection of contributions for both components is double-dipping and is therefore inequitable.*
- The TRCP can only apportion costs to NSW developments. The Boyd Street works will also significantly benefit traffic derived from Queensland, such as John Flynn Hospital, Gold Coast Airport, the Desalination Plant, substantial low and medium density housing development, and community and sport facilities. The TRCP is unable to further apportion costs on these developments, and it is a reflection of the deeds that Leda has voluntarily undertaken that they will bear the full costs of these works without the Queensland authorities paying their share.*
- Leda has willingly undertaken responsibility for the Queensland works in exchange for the benefits set out in the deeds. It does not seem reasonable that Leda should now demand renegotiation of these terms because Council was successful in negotiating the EP&A Act amendment in order to retain the overpass/interchange, which benefits all parties.*
- The nexus argument for Queensland works to fall under contributions plans using Section 94CA becomes more tenuous the further works are from the border. Given the events involving the relocation of the Tugun Bypass overpass/interchange from wholly within NSW to straddling the border, it is entirely reasonable and essential that this infrastructure be retained in the TRCP works schedule. The works now sought by Leda to be included in the TRCP are located wholly within Queensland and provides benefits for parties outside of Tweed Shire.*

4. Material Public Benefit

Having considered the legal advice received regarding the material public benefit argument put forward by Gadens, the Queensland works should not be recognised as a material public benefit as Council cannot levy contributions for these works under the Act, other essential works in the TRCP would therefore be underfunded in order to carry out the Queensland works, and it is inequitable to impose Leda's commercial liabilities under a voluntary commercial agreement onto the community.

Conclusion

Having considered the merits of the subject Section 96 application, and consistent with legal advice received by Council, the proposed modification to amend the consent to remove TRCP contributions is recommended for refusal."

CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(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 and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

The proposed modifications, being a deletion of the road contribution payments for each stage of the development are not considered to have any direct environmental impact on the surrounding locality.

Substantially the Same Development

The applicant has noted that the proposed modification does not involve any physical change to the development and only involves administrative detail related to the payment of contributions. They also provide a comparative analysis of the originally approved development and the proposed modification, as well as an analysis of relevant principles established in the Land and Environment Court, noting the following:

"Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;*
- The question is whether the development as a whole is essentially or materially similar to the originally approved development;*
- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;*
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.*

Having regard to the comparison between the originally approved development, the proposed changes and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- The proposal remains as a residential subdivision of the subject land;*
- The number of residential lots, open space lots and infrastructure lots and the size and shape of those lots remain unchanged;*
- The administrative changes to the conditions of the consent relate to matters of detail to reflect credits for works which the TRCP should reasonably apply to;*

- *The proposed modifications will not alter the statutory or policy compliance of the proposal, create any other material difference and do not give rise to any significant environmental impacts.*

Accordingly it is submitted that the proposed modifications will not represent a radical transformation of the originally approved development and that the proposed modification to the consent will represent substantially the same development as the development for which the consent was originally granted.”

Whilst it is acknowledged that the proposed amendments do not involve any modifications to the proposed development in terms of design layout, construction works or number of lots within the approved subdivision, the proposed modifications are not considered to be substantially the same as that approved under Development Consent DA10/0801.

The proposal is considered to result in a substantial impact to the community, in that other essential works in the TRCP would therefore be underfunded, if the proposed credit for the Queensland works was to be approved. Therefore, in accordance with Section 96(1A)(b) of the Environmental Planning and Assessment Act, the proposed modification cannot be supported.

Notification/Submissions

The proposed modification did not require notification. Therefore, no submissions were received.

Public interest

The calculation of applicable road contributions was undertaken correctly during the original assessment of the approved development. The proposed credit of works in Queensland would result in an underfunding of the TRCP, which would severely impact upon other essentially works planned for under the TRCP. As such, the proposed modification is not considered to be in the public interest.

OPTIONS:

1. Refuse the proposed modification to Development Consent DA10/0801; and
2. Defend the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court; or
3. Approve the proposed modification, which would result in a credit of \$4,407,713.

CONCLUSION:

As noted above, having taken legal advice into consideration, it is concluded: that Council cannot levy contributions on Leda's development towards the Queensland works; and that other works planned for in the TRCP would be underfunded if a credit was applied. As a result, the proposed modification is not supported.

COUNCIL IMPLICATIONS:

a. Policy:

Issues are raised that may have profound impacts on infrastructure located in Queensland being financed by NSW developer contributions.

b. Budget/Long Term Financial Plan:

The applicant has indicated that if the proposed modification is not favourably determined, they are likely to appeal the determination (Class 1 Appeal) in the NSW Land and Environment Court.

Financial implications would result from legal proceedings involving Class 1 proceedings.

c. Legal:

Yes, legal advice has been received and is attached as Attachment 1.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. See the Confidential Attachment contained in the report titled [PR-CM] Development Application DA10/0800.04 for an Amendment to Development Consent DA10/0800 for the Cobaki Estate Subdivision of Precinct 1 and 2 Comprised of 475 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrastructure (JRPP) at Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570077; Lot 1 DP 823679; Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076 Piggabeen Road, Cobaki Lakes

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- 11 [PR-CM] Development Application DA10/0800.04 for an Amendment to Development Consent DA10/0800 for the Cobaki Estate Subdivision of Precinct 1 and 2 Comprised of 475 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban I

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0800 Pt14



Civic Leadership

SUMMARY OF REPORT:

Approval was granted by the Northern Joint Regional Planning Panel (JRPP) in May 2011 for a 475 residential subdivision, drainage, open space and urban infrastructure within the area of the Cobaki Lakes estate known as Precinct 1 and 2.

The applicant has lodged a Section 96(1a) application in relation to the Section 94 Plan No. 4 Tweed Road Contribution Plan (TRCP) development contributions, requesting that all TRCP contributions associated with Precincts 1 and 2 be deleted. The justification for the deletion is the road works in Queensland, associated with providing the Boyd Street connection to Cobaki Parkway.

Having taken Council's previous legal advice on this matter into consideration, it is considered that it would be inappropriate for Council to credit the approved development with works carried out within Queensland. As such, the proposed modification is not supported.

The JRPP have previously advised that Section 96(1a) applications are not required to be reported to them for determination. As such, Council is the consent authority for the proposed modification.

The applicant has indicated that they would appeal an unfavourable determination of the proposed modification. As such, the matter is being reported to a full Council meeting for determination.

RECOMMENDATION:

That:

1. **Development Application DA10/0800.04 for an amendment to Development Consent DA10/0800 for the Cobaki Estate subdivision of precinct 1 and 2 comprised of 475 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure (JRPP) at Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570077; Lot 1 DP 823679; Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076 Piggabeen Road, Cobaki Lakes be refused for the following reasons:**

1. The proposed modification is contrary to Council's adopted Section 94 Plan No. 4 Tweed Road Contribution Plan.
 2. The proposed modification is contrary to Part 4 Division 6 Development Contributions of the Environmental Planning and Assessment Act 1979 (as amended).
 3. The proposed modification is contrary to Section 96(1A)(b) of the Environmental Planning and Assessment Act 1979 (as amended), in that it is not substantially the same development as that originally approved.
 4. The proposed modification is not considered to be in the public interest.
2. Council defends the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court.
 3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains:
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Cobaki Estate has multiple layers of approvals which allow for subdivision of the site, including a town centre, community facilities, sports fields, parks and other infrastructure.

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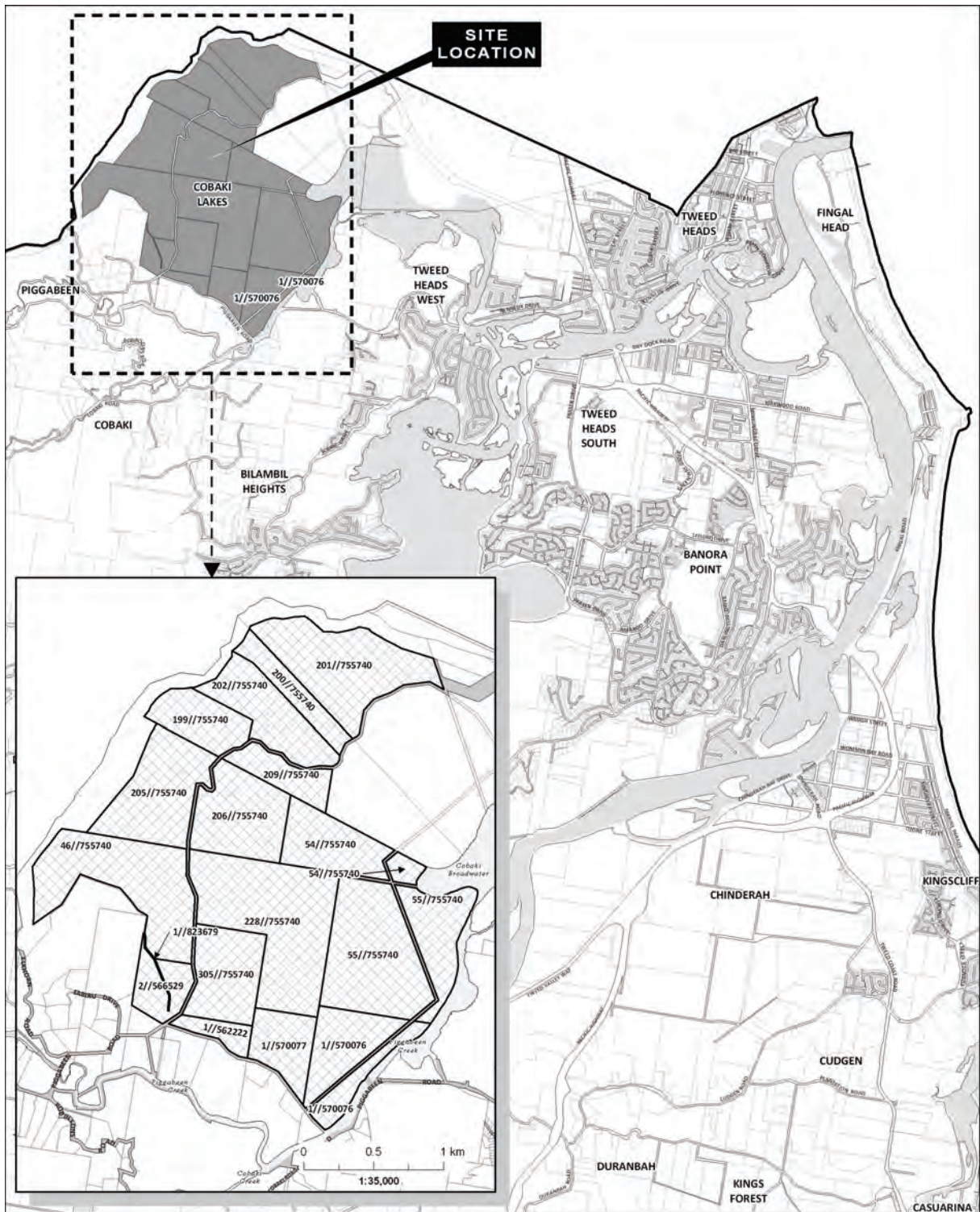
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Precinct 1 and 2 is to be developed over 14 stages. Standard development contributions, including S94 Plan No. 4 Tweed Road Contribution Plan (TRCP), were applied to the approved low density and medium density residential development within each stage. Condition 111 of the development consent incorporates all of the applicable Section 94 development contributions.

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SITE DIAGRAM:



Locality Plan

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 Horizontal Datum: Geocentric Datum of Australia 1994
 (44) Map Grid of Australia, Zone 56

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Author: 2/8/2012 - Planning Definition Layer

Temp Drawn: 22 November 2012

PRECINCT 1 AND 2 PLAN



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

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- *Boyd Street Extension (Queensland) from and including a roundabout at Inland Drive to the overpass, in two lanes (estimated cost of \$1.5 million).*
- *Four lane upgrade to Boyd Street (estimated Cost \$4 million).*

It is evident that the Boyd Street works, noted in the Gadens Letter, will provide access and additional capacity to the Gold Coast from the Tweed Shire well in excess of the demand generated by the Cobaki development.

It is also clear that this additional capacity will provide a benefit to other new development in the Tweed Shire and is fundamental to the overall long term Traffic Management Plan for the Shire. For example the urban release areas to the south of Cobaki including the substantial development known as ‘RISE’ and the other significant urban land release area at Bilambil Heights are presently subject to a moratorium due to this very traffic capacity issue. The proposed road works will also benefit ‘infill development’ in the area to the west of Cobaki Creek. As at 4 September 2012 there were 150 vehicle trips (23 detached dwellings) of spare capacity remaining before a moratorium is imposed on any further infill development in that area.

Our client has previously requested Council to amend the TRCP to properly include the additional works in Queensland, which would allow for the equitable sharing of the cost of those necessary works among the other developments that will benefit from the work. Instead, Council is insisting that our client provide normal TRCP contributions as well as individually funding the substantial additional road works in Queensland.

Section 94B(3) of the Environmental Planning and Assessment Act 1979 (as amended) is in the following terms:

“A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.”

Our client is firmly of the view that the situation as described above is unreasonable.

The application to modify Condition 116 to delete all TRCP contributions therein is considered to be justified since the amount of the contribution to be deleted is more than offset by the value of the road work to be undertaken.

*For example Condition 116 has calculated **the number of trips generated by the development under TRCP as being 3,173.3** and at the date of determination of DA10/0801 (30 May 2011) the value attributed to each 'trip' was \$999.00 making the value of the TRCP contribution at that time \$3,170,126.00.*

However, those rates are only fixed for a period of 12 months, following which the rates are to be recalculated in accordance with the current rates. More than 12 months has elapsed since that Development Application was determined and an amendment of the TRCP was made during that period to increase the 'trip' value to \$1377.00. Accordingly, the current TRCP liability under this Development Consent is \$4,369,634.00.

*The work to be undertaken in Queensland is estimated to cost \$9.5 million, **which is equivalent to 6899.1 trips** at present TRCP rates. Therefore the requested modification will maintain a credit equivalent to 3725.8 trips or \$5,130,426.60 at current TRCP rates.*

Our client intends to utilise the remaining equivalent trip credits generated by constructing road work in Queensland to offset TRCP contributions from other consents within the Cobaki Estate."

Comment:

Council's Planning and Infrastructure Unit has provided the following comment in response to the applicant's proposed modification:

"The applicant, Leda Manorstead Pty Ltd, has submitted a s96 application to modify the subject approval, to "delete all TRCP contributions levied on every Stage of the development consent", by modifying Condition 111.

The applicant's justification for this request is:

- *That substantial works are required by the developer to construct the Boyd Street connection in Queensland to Cobaki Parkway which have not been included in the TRCP:*
- *These works provide traffic benefits (access and increased capacity) to other development areas within Tweed Shire, as well as existing development, in excess of the demand generated by the Cobaki development;*
- *Excluding these works from the TRCP is inequitable as it does not allow for cost sharing of the Boyd Street connection works, estimated by the applicant to be \$9.5 million;*
- *This situation is unreasonable under Section 94B(3) of the EP&A Act 1979;*
- *Deletion of TRCP contributions is justified since the amount of the contribution to be deleted is more than offset by the value of work to be undertaken;*
- *The difference in the value of works undertaken and the TRCP contributions should be maintained as a credit for other stages of the Cobaki development.*

The applicant provides a letter containing legal advice from Gadens Lawyers, which has previously been submitted to Council (29 March 2012), following Council's adoption of TRCP Version 6 on 24 January 2012, to which similar objections were also raised.

Gadens foreshadows that the applicant will initiate proceedings in the Land and Environment Court following s96 modification applications to the consent, should Council not accept the Queensland works as offsets to TRCP contributions.

In response to initial receipt of the Gadens letter, Council sought its own legal advice from Lindsay Taylor Lawyers, which was the subject of a confidential report to Council on 15 May 2012. Having considered this advice in the context of the subject application, there are few compelling reasons to support the request to delete TRCP contributions.

The following arguments are presented against the applicant's s96 modification:

1. Existing Deeds of Agreement

Three separate deeds of agreement exist between the proponent of Cobaki Estate (previously Calsonic, now Leda) and Gold Coast City Council, Tweed Shire Council and the Queensland Department of Main Roads. The original deeds dealt separately with road infrastructure required each side of the state border and the respective road authorities.

These deeds remain current, and clearly set down obligations of the road authorities and the proponent with respect to the provision of road infrastructure. Council is under no obligation to enter into a new deed with Leda, and based on Council's legal advice, it is unlikely that the court would impose the commercial liability that Leda has voluntarily entered into on the community.

2. EP&A Act Amendment

Gadens states that "the Queensland location of the works is irrelevant" when considering the inclusion of the subject works in the TRCP. Reference is made to the amendment of the Environmental Planning and Assessment Act, which inserted Section 94CA:

94CA Public service or public amenity may be provided outside NSW

A condition may, with the written approval of the Minister, be imposed under section 94 or 94A for the provision of a public amenity or public service on land in another State or Territory if the area in which the development the subject of the condition is to be carried out adjoins the other State or Territory.

There is currently no Ministerial approval for such contributions. Therefore, it is not possible for Council to include the Queensland works in the TRCP and impose related conditions on development.

The history of the above amendment is detailed in the May 2012 Confidential Council report (refer to Confidential Attachment 1), however in summary this was assented to by Parliament after representations by Council to the Minister for Planning, relating to the use of TRCP funds collected for the Tugun Bypass overpass/interchange, which during planning for the M1 had been relocated from NSW to straddle the border. Council subsequently wrote to the Minister for the further approval required by the Act, and this approval was received. The inclusion of additional works wholly in Queensland was not contemplated by Council at the time, possibly as these additional works were already set down in the deeds of agreement.

3. Equity Issues

There is no dispute that the Boyd Street connection works will benefit new and existing development in Tweed Shire, and in the short term will contribute to the overall traffic planning for the Shire. However the Gadens' equity argument that these areas in Tweed Shire should therefore share the cost of these works via TRCP contributions is over-simplistic, and is mitigated by the following points:

- *The Cross Border Traffic Masterplan (2011) for the Tweed-Gold Coast consists of an interchange with the Tugun Bypass at Boyd Street, which is included in part in the TRCP. While this appears to be a long term prospect, once this interchange is in place, a very low proportion of traffic from NSW will continue into Tugun via Boyd Street. The collection of contributions for both components is double-dipping and is therefore inequitable.*
- *The TRCP can only apportion costs to NSW developments. The Boyd Street works will also significantly benefit traffic derived from Queensland, such as John Flynn Hospital, Gold Coast Airport, the Desalination Plant, substantial low and medium density housing development, and community and sport facilities. The TRCP is unable to further apportion costs on these developments, and it is a reflection of the deeds that Leda has voluntarily undertaken that they will bear the full costs of these works without the Queensland authorities paying their share.*
- *Leda has willingly undertaken responsibility for the Queensland works in exchange for the benefits set out in the deeds. It does not seem reasonable that Leda should now demand renegotiation of these terms because Council was successful in negotiating the EP&A Act amendment in order to retain the overpass/interchange, which benefits all parties.*
- *The nexus argument for Queensland works to fall under contributions plans using Section 94CA becomes more tenuous the further works are from the border. Given the events involving the relocation of the Tugun Bypass overpass/interchange from wholly within NSW to straddling the border, it is entirely reasonable and essential that this infrastructure be retained in the TRCP works schedule. The works now sought by Leda to be included in the TRCP are located wholly within Queensland and provides benefits for parties outside of Tweed Shire.*

4. Material Public Benefit

Having considered the legal advice received regarding the material public benefit argument put forward by Gadens, the Queensland works should not be recognised as a material public benefit as Council cannot levy contributions for these works under the Act, other essential works in the TRCP would therefore be underfunded in order to carry out the Queensland works, and it is inequitable to impose Leda's commercial liabilities under a voluntary commercial agreement onto the community.

Conclusion

Having considered the merits of the subject s96 application, and consistent with legal advice received by Council, the proposed modification to amend the consent to remove TRCP contributions is recommended for refusal."

CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(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 and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

The proposed modifications, being a deletion of the road contribution payments for each stage of the development are not considered to have any direct environmental impact on the surrounding locality.

Substantially the Same Development

The applicant has noted that the proposed modification does not involve any physical change to the development and only involves administrative detail related to the payment of contributions. They also provide a comparative analysis of the originally approved development and the proposed modification, as well as an analysis of relevant principles established in the Land and Environment Court, noting the following:

"Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;*
- The question is whether the development as a whole is essentially or materially similar to the originally approved development;*
- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;*
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.*

Having regard to the comparison between the originally approved development, the proposed changes and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- The proposal remains as a residential subdivision of the subject land;*
- The number of residential lots, open space lots and infrastructure lots and the size and shape of those lots remain unchanged;*
- The administrative changes to the conditions of the consent relate to matters of detail to reflect credits for works which the TRCP should reasonably apply to;*

- *The proposed modifications will not alter the statutory or policy compliance of the proposal, create any other material difference and do not give rise to any significant environmental impacts.*

Accordingly it is submitted that the proposed modifications will not represent a radical transformation of the originally approved development and that the proposed modification to the consent will represent substantially the same development as the development for which the consent was originally granted."

Whilst it is acknowledged that the proposed amendments do not involve any modifications to the proposed development in terms of design layout, construction works or number of lots within the approved subdivision, the proposed modifications are not considered to be substantially the same as that approved under Development Consent DA10/0800.

The proposal is considered to result in a substantial impact to the community, in that other essential works in the TRCP would therefore be underfunded, if the proposed credit for the Queensland works was to be approved. Therefore, in accordance with Section 96(1A)(b) of the Environmental Planning and Assessment Act, the proposed modification cannot be supported.

Notification/Submissions

The proposed modification did not require notification. Therefore, no submissions were received.

Public interest

The calculation of applicable road contributions was undertaken correctly during the original assessment of the approved development. The proposed credit of works in Queensland would result in an underfunding of the TRCP, which would severely impact upon other essentially works planned for under the TRCP. As such, the proposed modification is not considered to be in the public interest.

OPTIONS:

1. Refuse the proposed modification to Development Consent DA10/0800; and
2. Defend the matter, in the event that the applicant lodges an appeal in the NSW Land and Environment Court; or
3. Approve the proposed modification, which would result in a credit of \$4,364,379.

CONCLUSION:

As noted above, having taken legal advice into consideration, it is concluded: that Council cannot levy contributions on Leda's development towards the Queensland works; and that other works planned for in the TRCP would be underfunded if a credit was applied. As a result, the proposed modification is not supported.

COUNCIL IMPLICATIONS:

a. Policy:

Issues are raised that may have profound impacts on infrastructure located in Queensland being financed by NSW developer contributions.

b. Budget/Long Term Financial Plan:

The applicant has indicated that if the proposed modification is not favourably determined, they are likely to appeal the determination (Class 1 Appeal) in the NSW Land and Environment Court.

Financial implications would result from legal proceedings involving Class 1 proceedings.

c. Legal:

Yes, legal advice has been received and is attached as Confidential Attachment 1.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Confidential Attachment Council Report (including attachments) - May 2012 (ECM 59709308)

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- 12 [PR-CM] Development Application DA12/0170 for Alterations and Additions to Motel (Staged) at Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach**

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0170 Pt2



Civic Leadership

SUMMARY OF REPORT:

Council has received a development application for alterations and additions to an existing motel at Cypress Crescent, Cabarita Beach in three stages, as detailed further below. The existing motel currently comprises: a one bed care takers residence; 14 motel rooms; a small reception, bathroom and kitchen area and one three bed self contained holiday apartment.

The proposal seeks an additional five motel rooms (19 in total), one additional three bedroom self contained holiday apartment (two in total), the construction of a separate one bedroom caretakers residence and the construction of amenities (restaurant area, lounge area, laundry, toilets, multipurpose space and the like).

Stage 1 principally involves the renovation of existing rooms; construction of reception, restaurant, dining space and new kitchen; new communal lounge with amenities and kitchenette; renovation of serviced apartment; creation of second serviced apartment; construction of outdoor food and beverage service area; new at grade car parking; retention of existing swimming pool and partial site landscaping. Stage 2 involves the construction of third level including new motel rooms and new caretakers dwelling; construction of new swimming pool, tennis courts and tennis cabana (which are to be deleted from the consent as detailed further within this report) and landscaping. Stage 3 involves the construction of new caretakers dwelling, storeroom, common amenities and multipurpose space.

The development, by reason of the third storey element, would result in the overshadowing of waterfront open space (Crown Reserve) before 3pm midwinter and before 7pm midsummer (daylight saving time). On this basis the proponent lodged a State Environmental Planning Policy No. 1 (SEPP No. 1) objection seeking a variation to the provisions of Clause 32B of the North Coast Regional Environmental Plan (NCREP) 1988.

On this basis 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 SEPP No. 1 variations greater than 10% to be determined by full Council. Given the Department of Planning and Infrastructure have advised Council Officers to be conservative with the application of the 10% rule, and it is virtually impossible to calculate 10% of the shadow development standard as it is time based, officers have resolved to report this application to full Council.

Please note that Council officers had sought a relaxation of the requirement for all development applications involving SEPP No. 1 variations of more than 10% to be determined by full Council. In a letter dated 16 July 2012 confirmation was received from the Department of Planning and Infrastructure that an interim variation to the reporting requirement for Clause 32B(4) of the SEPP (North Coast Regional Environmental Plan), in relation to overshadowing of waterfront open space. However, it advised that a development application is to be referred to full Council where the development concerned exceeds two storeys in height.

Six submissions and one late submission containing a number of objections to the development have been received as well as a list of signatures (approximately 260) in support of the proposed development.

The subject application has been referred to the relevant departments in Council for consideration and a formal request for further information was sent to the applicant in relation to: asset protection zones for bush fire safety purposes; additional information in relation to coastal hazards; stormwater and drainage and further clarification in relation to parking and access; signage; vegetation removal; residential amenity (overlooking, noise and disturbance to adjoining occupants); design and appearance of the building and existing use rights.

A response to the request for information was received by Council on 24 September 2012 and has since been referred to the relevant departments within Council.

It is considered that the proponent has adequately addressed all of the issues raised within the request for further information and, following an assessment of the additional information against the relevant heads of consideration, the application is recommended for approval.

RECOMMENDATION:

That Development Application DA12/0170 for Alterations and Additions to Motel (Staged) at Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach 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:

- **Site Plan Proposed, DA106 Revision A, dated 29 March 2012;**
- **Ground Floor Plan, DA107 Revision B, dated 13 September 2012;**
- **First Floor Plan Proposed, DA108, Revision A, dated 29 March 2012;**
- **Second Floor Plan Proposed, DA109, Revision A, dated 29 March 2012;**
- **Roof Plan Proposed, DA110, Revision A, dated 29 March 2012;**
- **Elevations North / South, DA201, Revision A, dated 29 March 2012;**
- **Elevations East / West, DA202, Revision A, dated 29 March 2012;**
- **Sections, DA300, Revision A, dated 29 March 2012;**

All prepared by Virginia Kerridge Architect, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[GEN0190]

5. Structures proposed/identified within/over the proposed Drainage Easement on the land are not approved and are to be deleted or located external to the easement. This refers to the "Covered Service Entry" portion of the proposed development.

Council may reconsider this requirement and allow a modified version of an open roofed structure over Council's stormwater pipe infrastructure if appropriate justification is provided that addresses:

- Retention of the existing ground level, without full floor slab construction over the stormwater pipe. "Lightweight" concrete flooring or paving would be acceptable.
- A clear vertical clearance of 2.4m (minimum) from the finished ground/floor level to the underside of any roof structure is provided.
- Verification that the proposed easement is not the relief stormwater overland flowpath route through the site.
- No permanent walls to be erected across the easement.
- Adjacent floor slabs to incorporate appropriate pier and beam design to avoid placing any load on the existing pipe.
- Unimpeded access is to be available to the pipe by Council Officers at all times.

Details are to be provided with the construction certificate application for the relevant Stage of the proposed development.

[GEN0255]

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

[GEN0300]

7. The signage hereby approved shall not include any form of internal or external illumination, unless otherwise approved by the General Manager or delegate officer in order to safeguard the residential and visual amenity of the locality.

[GENNS01]

8. Waste management on the site shall be carried out in accordance with the approved Waste Management Plan prepared by Planit Consulting, dated April 2012.

[GENNS02]

9. The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only.
10. The swimming pool hereby approved shall be used by guests of the motel only and are not to be utilised by members of the general public, unless otherwise approved in writing by the General Manager or delegate officer.
11. This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only (i.e. persons using the premises for overnight accommodation within the motel). This application does not approve the use of the facilities hereby approved for functions, parties or the like or for catering to the general public.
12. The use of the motel for members of the general public or for functions, parties or the like will require an additional development approval.
13. This approval relates to Lots 9, 10, 11 and 12 in Section 4 DP 31209 and does not authorise any works over Lots 1 or 2 in Section 4 DP 29748 (eg. the proposed tennis court and signage).
14. This approval does not include any signage. Where statutorily required any signage should be subject to a future application.
15. The 'multipurpose space' as shown on Ground Floor Plan, DA107 Revision B shall be used as a storage area and games room for the guests of the motel only.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. The developer shall provide 25 parking spaces including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council and approved by the General Manager or his delegate prior to the issue of a construction certificate.

[PCC0065]

17. **Section 94 Contributions**

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

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

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

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

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

- (a) **Tweed Road Contribution Plan:**
14.88 Trips @ \$1155 per Trips \$17186
(\$1145 base rate + \$10 indexation)
S94 Plan No. 4
Sector7_4
- (b) **Open Space (Casual):**
10.4 ET @ \$526 per ET \$5470
(\$502 base rate + \$24 indexation)
S94 Plan No. 5
- (c) **Open Space (Structured):**
10.4 ET @ \$602 per ET \$6261
(\$575 base rate + \$27 indexation)
S94 Plan No. 5
- (d) **Shirewide Library Facilities:**
10.4 ET @ \$816 per ET \$8486
(\$792 base rate + \$24 indexation)
S94 Plan No. 11
- (e) **Community Facilities (Tweed Coast - North)**
10.4 ET @ \$1352 per ET \$14061
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (f) **Extensions to Council Administration Offices
& Technical Support Facilities**
10.4 ET @ \$1812.62 per ET \$18851.25
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18

[PCC0215]

18. Section 94 Contributions

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

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

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

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

Heavy Haulage Component

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

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

where:

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

and:

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

Dist. average haulage distance of product on Shire roads
(trip one way)

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

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

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

Water DSP6: 2.727 ET @ \$12150 per ET \$33133.10

Sewer Hastings Point: 4.1314 ET @ \$5838 per ET \$24119.10

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]

- 20. 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]

- 21. 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]

- 22. 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]

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

- (a) Vehicular access: construction of two (2) vehicular footpath crossings.**
- (b) Construction of concrete path paving for the Cypress Crescent frontage.**

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

- Road works/furnishings**
- Stormwater drainage**

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

[PCC0895]

24. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main, public stormwater infrastructure, or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

25. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
- (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

26. 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.

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.

[PCC1145]

27. 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]

28. The applicant is to provide a report from a suitably qualified person verifying that an environmental risk assessment has been carried out, and that radiation levels throughout the proposed development site do not pose a public health risk. In the event that radiation is detected at levels likely to result in a risk to occupants and/ or users of the site, then a site remediation plan is to be prepared and submitted to Tweed Shire Council for approval to the satisfaction of the General Manager or delegate.
29. A noise management plan shall be prepared and submitted to the satisfaction of the General Manager or his delegate which details the type of plant and equipment proposed, proposed location of all plant and equipment, and proposed noise mitigation measures to ensure that the emission of intrusive noise is prevented. Such management plan shall be submitted and approved prior to the issue of the construction certificate.
30. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas (handling, storage, preparation and service) shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fit-out, and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:
- a. Floor plan;
 - b. Layout of kitchens and bar showing all equipment;
 - c. All internal finish details including floors, wall, ceiling and lighting;
 - d. Hydraulic design in particular method of disposal of trade waste;
 - e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.
31. Prior to the issue of a Construction Certificate, the applicant is to provide details of the location, height and materials of all boundary treatment (fences and walls) to be approved in writing by the General Manager or delegate officer. Boundary treatment shall be constructed in accordance with the approved details and thereafter be retained as such.
32. Prior to the construction certificate being issued plans drawn to a scale of 1:50 detailing the following with regards to all food related areas (handling, storage, preparation and service) shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fit-out, and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate:
- a. Floor plan;
 - b. Layout of kitchens and bar showing all equipment;

- c. All internal finish details including floors, wall, ceiling and lighting;
 - d. Hydraulic design in particular method of disposal of trade waste;
 - e. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.
33. Prior to the issue of a construction certificate for any of the proposed Stages of the development, a Traffic Management Plan shall be submitted to the Principal Certifying Authority to address the access requirements for Heavy Ridge Vehicle/Small Rigid Vehicle movements within the site, to avoid conflict with existing parking arrangements and facilities.

[PCCNS03]

34. Prior to the issue of a construction certificate for Stage 1, a Stormwater Management Plan and detailed stormwater design information is to be provided that must address;
- The requirement for a relief overland stormwater flowpath through the site, from the existing low point at the Cypress Crescent frontage, through the proposed car park, and merging with the existing ground level at the southern boundary, aligning with the existing Drainage Easement.
 - Investigates and assesses the upstream stormwater catchment, for a Q100 year storm event, to determine the required volume, depth, velocity, and top water level of overland flows that must be catered for.
 - The floor levels of any habitable buildings are to be a minimum of 300mm above the top water level as determined by the previous dot point.
 - Revert any concentrated flow (within the relief overland flowpath) back to a broad flow pattern along the southern boundary of the site, to mimic the existing situation as near as possible.
 - Any boundary or internal fencing that crosses the overland flowpath shall be of an open nature to allow for flow-through capability.
 - An appropriate easement is to be created over the overland stormwater flowpath.

[PCCNS04]

35. The applicant is to submit to Council details of proposed signage (including a scaled plan, details of materials, colours and wording) to be approved by the General Manager or delegate office prior to the issue of a Construction Certificate. The signage shall be carried out in accordance with the approved details and shall thereafter be retained as such.
36. Prior to the issue of the Construction Certificate, a detailed plan of landscaping with a minimum 80% of total plant numbers comprised of local native species and no noxious or environmental weed species or threatened species is to be submitted and approved by Council's General Manager or his delegate.
37. The proponent is to prepare a report, to the satisfaction of the Principal Certifying Authority, prior to the issue of the Construction Certificate, detailing how the outdoor food and beverage area is to be dismantled and removed from the site if the erosion escarpment comes within 20 metres of the building.

[PCCNS05]

38. Prior to issue of a construction certificate the applicant is to provide to Council for approval a revised site plan showing all works within Lots 9, 10, 11 and 12 in Section 4 DP 31209 including car parking and access provisions. This plan should retain the same number of car parking spaces as proposed within DA12/0170.

PRIOR TO COMMENCEMENT OF WORK

39. 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]

40. 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]

41. 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]

42. 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]

43. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act and Premises Standard which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

44. 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 any 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]

45. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

47. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

48. 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]

49. 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.

$L_{Aeq, 15 \text{ min}}$ 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 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

50. The existing building is to be upgraded to comply with the Building Code of Australia and 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]

51. 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]

52. 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]

53. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

54. 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]

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

[DUR0815]

56. 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]

57. 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]

58. 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]

59. 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]

60. 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]

- 61. 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]

- 62. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.**

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicant's responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

- 63. A survey certificate signed by a registered surveyor is to be submitted to the Principal Certifying Authority at floor stage to certify that all habitable floor levels are at a level of not less than 300mm above the designed top water level within the overland stormwater flowpath traversing the site.**

[DUR1445]

- 64. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material eg. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 meters.**

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish up to the underside of the ceiling.

Metal stud wall framing in lieu of timber framing shall be used in areas where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

- 65. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.**

[DUR1505]

- 66. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.**

[DUR1515]

67. **Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.**

[DUR1545]

68. **During the course of the construction and fitout of the kitchen/food premises periodic inspections must be arranged with Councils Environmental Health officer to ensure compliance with all health related conditions of approval and respective legislation.**

[DUR1575]

69. **A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Cypress Crescent in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.**

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

70. **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]

71. **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]

72. **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]

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

[DUR1925]

74. **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]

75. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".

[DUR2195]

76. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

77. 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]

78. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

79. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

80. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

81. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50°C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

82. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

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

[DUR2645]

84. The development shall be carried out in accordance with the provisions of the Environmental Noise Impact report prepared by CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) except where modified by this consent.

85. All plant and equipment including swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

86. All plant and equipment including swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located and installed so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

87. Vegetation clearing is limited to three (3) trees and several ornamental palms as identified on the On-site Vegetation Management Plan prepared by Planit Consulting and dated July 2012.

88. Wherever possible an adequate Tree Protection Zone shall be provided around vegetation that is to be retained to limit the extent of works. Tree Protection Zones:

- a. Shall be adequately fenced, marked and sign posted before, during and after construction.**
- b. All trenches, footings and major earth movement shall avoid Tree Protection Zones.**
- c. Materials and soils shall not be stockpiled within Tree Protection Zones.**
- d. Machinery shall avoid Tree Protection Zones during all operations.**

89. The outdoor food and beverage service area is to be constructed as a separate structure and be demountable or relocatable. The structure does not require screw piles as it will be sacrificial.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

90. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.
[POC0005]
91. 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]
92. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.
[POC0225]
93. 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]
94. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.
[POC0615]
95. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.
[POC0625]
96. The premises is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.
[POC0635]
97. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.
[POC0745]
98. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.
[POC0755]
99. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.
[POC0805]
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100. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate for Stage 1 works.

[POC0855]

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

[POC0985]

102. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

103. Prior to the issue of an Occupation Certificate for Stage 1, the following Easements are to be created over the site (and are recommended to be created in conjunction with the consolidation of the site into a single allotment:

- i. Drainage Easement 3m wide over the existing Council stormwater pipe that traverses the site.
- ii. Easement for Overland Stormwater Flowpath over the route of the constructed flowpath through the site. Note that this easement may overlap existing or proposed Drainage Easements.

[POCNS01]

104. Prior to the issue of an Occupation Certificate for Stage 1, existing Development Consent DA07/0966 shall be surrendered.

[POCNS02]

105. As the development subject of this consent has been identified as being within one or more of the Coastal Hazard Zones as described in Tweed Development Control Plan B25 this consent is subject to the owner of the subject land PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE creating a positive covenant under section 88E of the (*Conveyancing Act, 1919*) on the following terms:

- "(i) The registered proprietor of the subject land acknowledges that the subject land is within a Coastal Hazard Zone as described in Tweed Development Control Plan B25 or any other subsequent iteration of that planning instrument.*
- (ii) The registered proprietor also acknowledges that any development within the subject land must comply with the terms set out herein as follows:*
 - a. In the event that the erosion escarpment comes within 20 metres of any building/s on the subject land then the use of any building/s shall cease and the registered proprietor of the subject land shall remove any or all buildings to a location on the subject land that is further than 20 metres from the erosion escarpment where possible, or off site where not possible. In the event that relocation is not possible, then any affected building shall be demolished.*
 - b. The registered proprietor of the subject land shall bear all costs in relation to the relocation or demolition of any or all buildings located on the subject land.*

- c. *The terms "Coastal Hazard Zones", "erosion escarpment" and any other references of this covenant are to be read as having the meaning in accordance with their definitions in the Tweed Development Control Plan B25".*

[POCNS03]

106. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.
107. All proposed works within the 2100 Hazard Zone need to demonstrate they are in accordance with Section 3.3.2 of the Coast Hazard - Tweed DCP B25.

[POCNS04]

USE

108. 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]

109. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

110. 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]

111. Hours of operation of the business are restricted to the following hours:

- * Dining areas, not including BBQ or Outdoor Bar and Dining Areas, 7am - 9pm Sunday to Thursday and Public Holidays, 7am - 12am Friday and Saturday;
- * Outdoor facilities, including Pool, BBQ and Bar and Outdoor Dining Areas, 7am to 9pm Monday to Sunday.

[USE0185]

112. 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]

113. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

114. Any vehicles that remain on site for periods in excess of two (2) minutes are required to switch off their engines.

[USE0255]

115. All trade materials, product and plant to be kept within confines of the building at all times.

[USE0515]

116. All loading/unloading to take place within the boundary of the subject property.

[USE0525]

117. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

118. Amplified music or sound is only to be used in indoor areas which have doors, windows or other openings that can be closed to reduce or prevent noise emissions from the buildings.

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

1. The motel re-development proposal is to comply with the plans attached to the Bush Fire Safety Authority (BFSA) application, referred by Tweed Shire Council under S 100B of the Rural Fires Act and received by the NSW RFS 16 May 2012, along with amendments made by the attached conditions.

The plans referred to (and used for this assessment) are noted as being prepared by Virginia Kerridge Architect, and are identified as:

- Site Plan DA106, Revision A, Dated 29/3/12;
- Ground Floor Plan, DA107, Revision B, Dated 13/09/12;
- First Floor Plan Proposed, DA108, Revision A, Dated 29/3/12;
- Second Floor Plan Proposed, DA109, Revision A, Dated 29/3/12;
- Roof Plan Proposed, DA110, Revision A, Dated 29/3/12;
- Elevations North South, DA201, Revision A, Dated 29/3/12;
- Elevations East West, DA202, Revision A, Dated 29/3/12;
- Sections DA300, Revision A, Dated 29/3/12.

2. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

3. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
4. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
5. Exits are to be located away from the hazard side of the building.
6. Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building.
7. No brushwood fencing shall be used.
8. Structure and shade materials in the inner protection area shall be non-combustible or have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 'Methods for Fire Tests on Building Materials, Components and Structures - Test for Flammability of Materials'.
9. New construction on the Northern, Eastern and Southern elevations of the existing motel building, with a setback distance greater than 16.8m from the Eastern boundary (generally balcony additions), shall comply with Sections 3 and 7 (BAL - 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
10. New construction on the Western elevation of the existing motel building and all other additions located to the West of the existing motel, shall comply with Sections 3 and 6 (Bal - 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
11. The 'Outdoor food and beverage service area' and the 'Equipment store' shall either be constructed from non-combustible materials or comply with Sections 3 and 9 (BAL-FZ) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.

However, any material, element of construction or system when tested to the method described in Australian Standard AS1530.8.2 'Methods for fire tests on building materials, components and structures Part 8.2: Tests on elements of construction for buildings exposed to simulated bushfire attack - Large flaming sources' shall comply with Clause 13.8 of that Standard except that flaming of the specimen is not permitted and there shall be no exposed timber.

Window assemblies shall comply with one of the following:

- a) Clause 9.5.2 of AS 3959-2009 as modified above; or
- b) They shall comply with the following:
 - i. Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS3959-2009 excluding parts (e) & (f).
 - ii. Window frames and hardware shall be metal.
 - iii. Glazing shall be toughened glass minimum 6mm.

- iv. Seals to stiles, heads and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
- v. The openable portion of the window shall be screened internally or externally with screens that comply with Clause 9.5.1A.

External doors and door frames (not including garage doors) shall comply with one of the following:

- a) Clause 9.5.3 or 9.5.4 of AS 3959-2009 as modified above; or
 - b) They shall comply with the following:
 - i. Completely protected by a non-combustible and non perforated bushfire shutter that complies with Section 3.7 of AS 3959-2009 excluding parts (e) & (f).
 - ii. Doors shall be non-combustible.
 - iii. Externally fitted hardware that supports the panel in its function of opening and closing shall be metal.
 - iv. Where doors incorporate glazing, the glazing shall be toughened glass minimum 6mm.
 - v. Seals to stiles, head and sills or thresholds shall be manufactured from materials having a flammability index no greater than 5 or from silicone.
 - vi. Doorframes shall be metal.
 - vii. Doors shall be tight fitting to the doorframe and to an abutting door if applicable.
 - viii. Weather strips, draught excluders or draught seals shall be installed at the base of side-hung external doors.
12. Roofing of the single storey buildings shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall be non-combustible.
13. New construction, located generally on the Eastern side of the motel building, and having a setback of between 16.8m and 21.3m from the Eastern boundary (i.e. additions to: serviced apartments and restaurant), shall comply with Sections 3 and 8 (BAL -40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
14. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Note

The following bushfire-resisting timbers have been determined as being acceptable to withstand exposure up to BAL -29 conditions as per Australian Standard AS 3959-2009 'Construction of buildings in bush fire-prone areas' and are identified within Appendix F of the standard. These species include: Silvertop Ash, Blackbutt, River Red Gum, Spotted Gum, Red Ironbark, Kwila (Merbau) and Turpentine.

REPORT:

Applicant: Western Trust Partnership
Owner: Flaskas Bickle Pty Ltd and Wadley Bickle Pty Ltd
Location: Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach; Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach
Zoning: 2(a) Low Density Residential
Cost: \$1,100,000

Background:

Council has received a development application for alterations and additions to an existing motel at the above mentioned site which faces Cabarita Beach and the foreshore reserve to the south of Cabarita village.

The existing motel has established existing use rights as the motel has been used for a continuous period which is understood as being circa 1960. A search of Council's records has revealed an approval for the erection and completion of luxury holiday apartments (12 units) (Reference No. 218/60). Since then a number of applications have been approved by Council in relation to the renovation and addition to motel units. In 2007 a development application was approved for the demolition of the motel and a four lot re-subdivision and the construction of three detached dwellings (DA07/0966).

The current proposal before Council seeks the refurbishment and expansion of the existing motel in three stages. Upon completion of the three stages the motel will provide a total gross floor area (GFA) of 1450m² with a maximum height of three storeys (11.55m).

The proposed stages are summarised as follows:

Stage 1

- Construction of new covered service entry including common amenities, common laundry and bin store;
- Conversion of existing caretakers dwelling, laundry, reception and restaurant service kitchen area to new circulation space, reception, reception office, restaurant dining space, new kitchen and cold room;
- Renovation of rooms 1 through 5 including room enlargement and new individual ground level balcony areas;
- Conversion of room 6 and adjoining storage space into new store and communal lounge room with amenities and serving kitchenette;
- Renovation of existing serviced apartment and existing rooms 7 through 12 (identified as rooms 6 through 11 on proposed plans);
- Conversion of rooms 14 and 15 into a second serviced apartment;
- Renovation of existing external staircase access upgraded to comply with the Building Code of Australia (BCA);
- Construction of outdoor food and beverage service area;
- Construction of external equipment store;
- Construction of external bin storage area and new at grade car parking;
- Partial site landscaping;

- Renovation of existing stair access to foreshore reserve; and
- Retention of existing swimming pool.

Stage 2

- Construction of third level including new motel rooms 12 through 19;
- Extension of existing external stairs to provide access to third level;
- Construction of new pool;
- Construction of tennis court and tennis court cabana; and
- Partial site landscaping.

Stage 3

- Construction of new caretakers dwelling, storeroom, common amenities and multipurpose space.

The development proposes the construction of new at grade car parking facilities for 25 vehicles including one disabled space utilising the existing cross over and driveway. A second access point is proposed to Cypress Crescent. The new car park would operate in a 'one way' arrangement.

The proposal would be operated by approximately 10-12 staff upon completion of Stage 3 of the proposal. The facilities onsite will be open to guests as follows:

- The restaurant, multipurpose space and ground level patron lounge – 7am to midnight, 7 days per week;
- Outdoor recreation areas (i.e. bbq, pool, tennis court) – open 7am to 10pm, 7 days per week.

The proposal includes a number of ancillary facilities for guests of the motel such as restaurant; communal open space; pools and tennis court. The application originally detailed that the facilities within the motel would not be available to the general public. However, in response to a request for information the applicant proposed that the restaurant and outdoor food and beverage service area only would be available for the use of the general public in accordance with established existing use rights. This is detailed further within this report.

The redevelopment proposes extensive landscaping onsite incorporating in excess of 80% native coastal species however will require the removal of three trees (Coastal Banksia, Golden Penda and Muttonwood) and several ornamental palms.

The site currently comprises an existing pylon sign which is to be retained. A new wall sign is proposed as part of Stage 1 located on the northern access stairs with a maximum signage envelope of 3.8m x 0.6m.

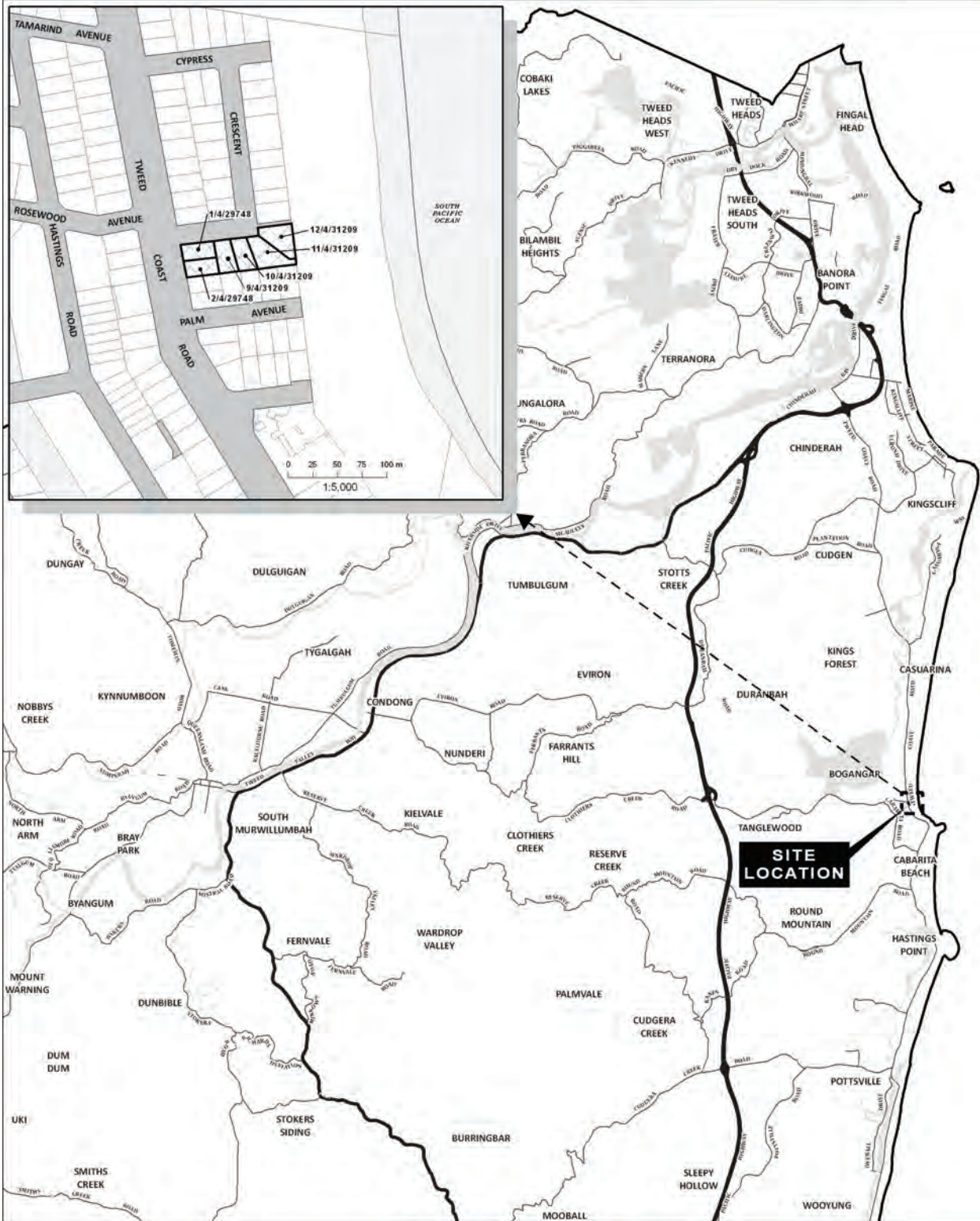
A SEPP No. 1 is sought for a variation to the NCREP 1988 relating to overshadowing of waterfront open space before 3pm midwinter and 7pm midsummer. The proponent has advised that the overshadowing is minor and does not fall upon the beach and will not impact on the recreational integrity of foreshore open space. It is considered that, for reasons detailed further within this report, that the extent of overshadowing is minimal and will not impact on the recreational capacity of the foreshore and compliance with the standard is unreasonable and unnecessary in this instance.

Six submissions and one late submission has been received with concerns in relation to the proposed development. The issues raised within these submissions are detailed further within this report. A list of signatures supporting the proposal has also been received, including approximately 250 signatures.

The subject application has been referred to the relevant departments in Council for consideration and a formal request for further information was sent to the applicant in relation to: asset protection zones for bush fire safety purposes; additional information in relation to coastal hazards; stormwater and drainage and further clarification in relation to parking and access; signage; vegetation removal; residential amenity (overlooking, noise and disturbance to adjoining occupants); design and appearance of the building and existing use rights.

A response to the request for information was received by Council on 24 September 2012 and has since been referred to the relevant departments within Council. It is considered that the proponent has adequately addressed all of the issues raised within the request for further information and, following an assessment of the additional information against the relevant heads of consideration, and provided a number of conditions are applied to any development consent (particularly in relation to hours of operation, restriction of use by motel guests only and the like), the application is recommended for approval.

SITE DIAGRAM:



Locality Plan

Lots 9-12 Section 4 DP 31209 Nos. 19-25 Cypress Crescent, Cabarita Beach;
 Lots 1-2 Section 4 DP 29748 Nos. 26-28 Tweed Coast Road, Cabarita Beach

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Cadastral: 27 November, 2012
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 Boundaries shown should be considered approximate only.

0 0.85 1.7 2.55 Km
 1:120,000 @ A4 Portrait
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Map Project: Universal Transverse Mercator
 Horizontal Datum: Geoidic Datum of Australia 1984
 Grid: Map 56K of Australia, Zone 56

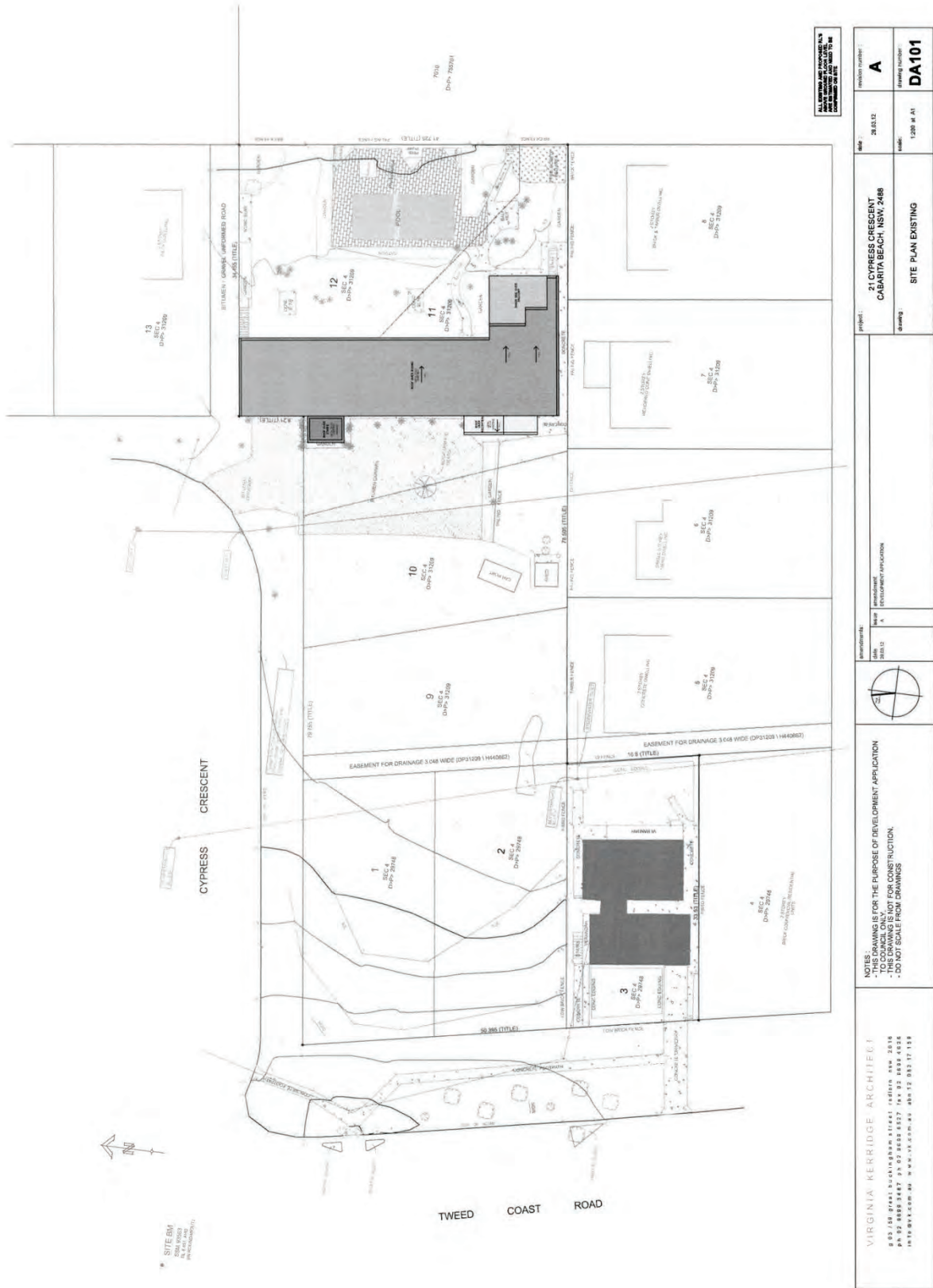
Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T (02) 6670 2400 | 1300 292 872
 F (02) 6670 2429
 W www.tweed.nsw.gov.au
 E planning@tweed.nsw.gov.au

TWEED
 SHIRE COUNCIL

GDA

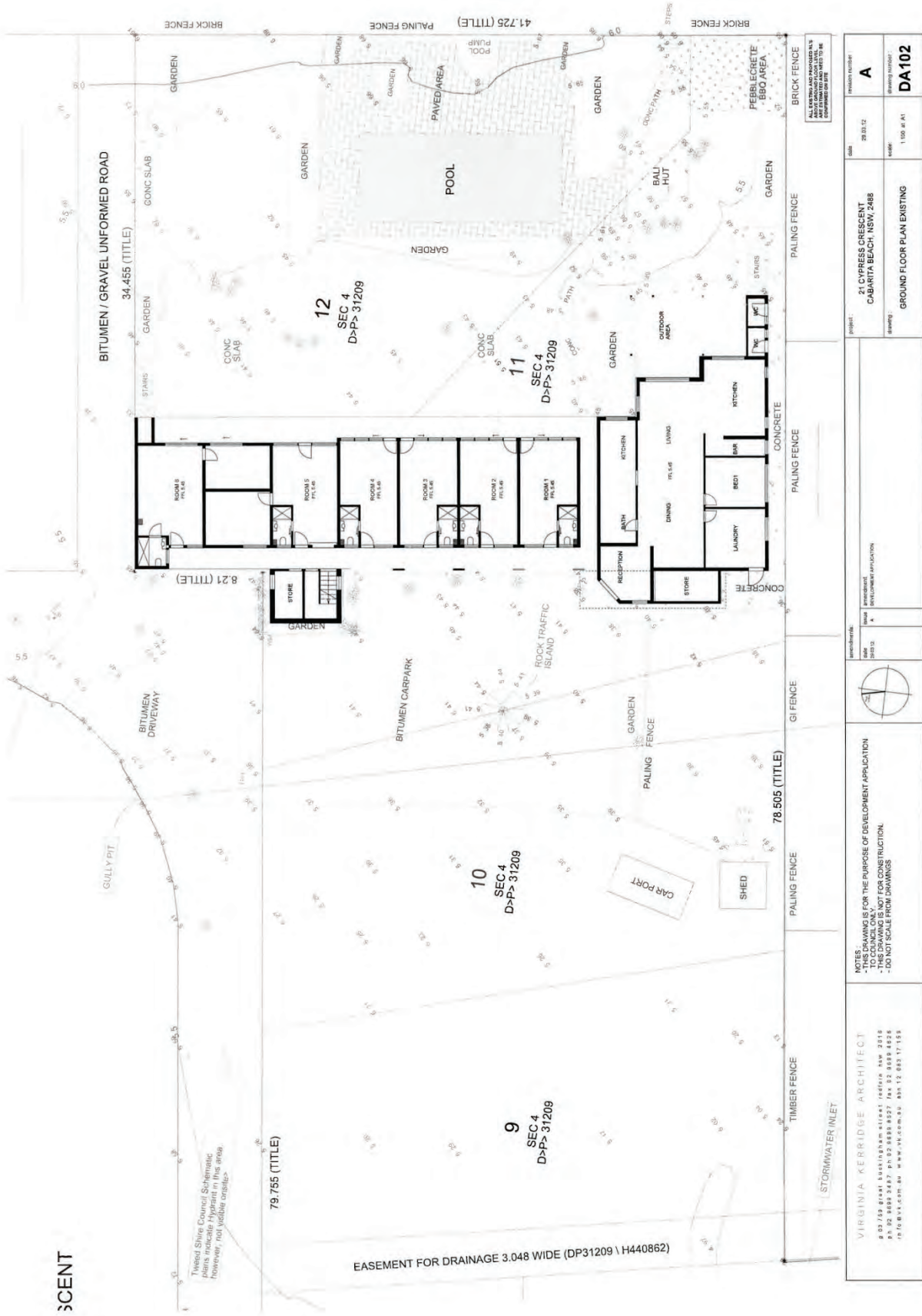
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DEVELOPMENT/ELEVATION PLANS (EXISTING PLANS):



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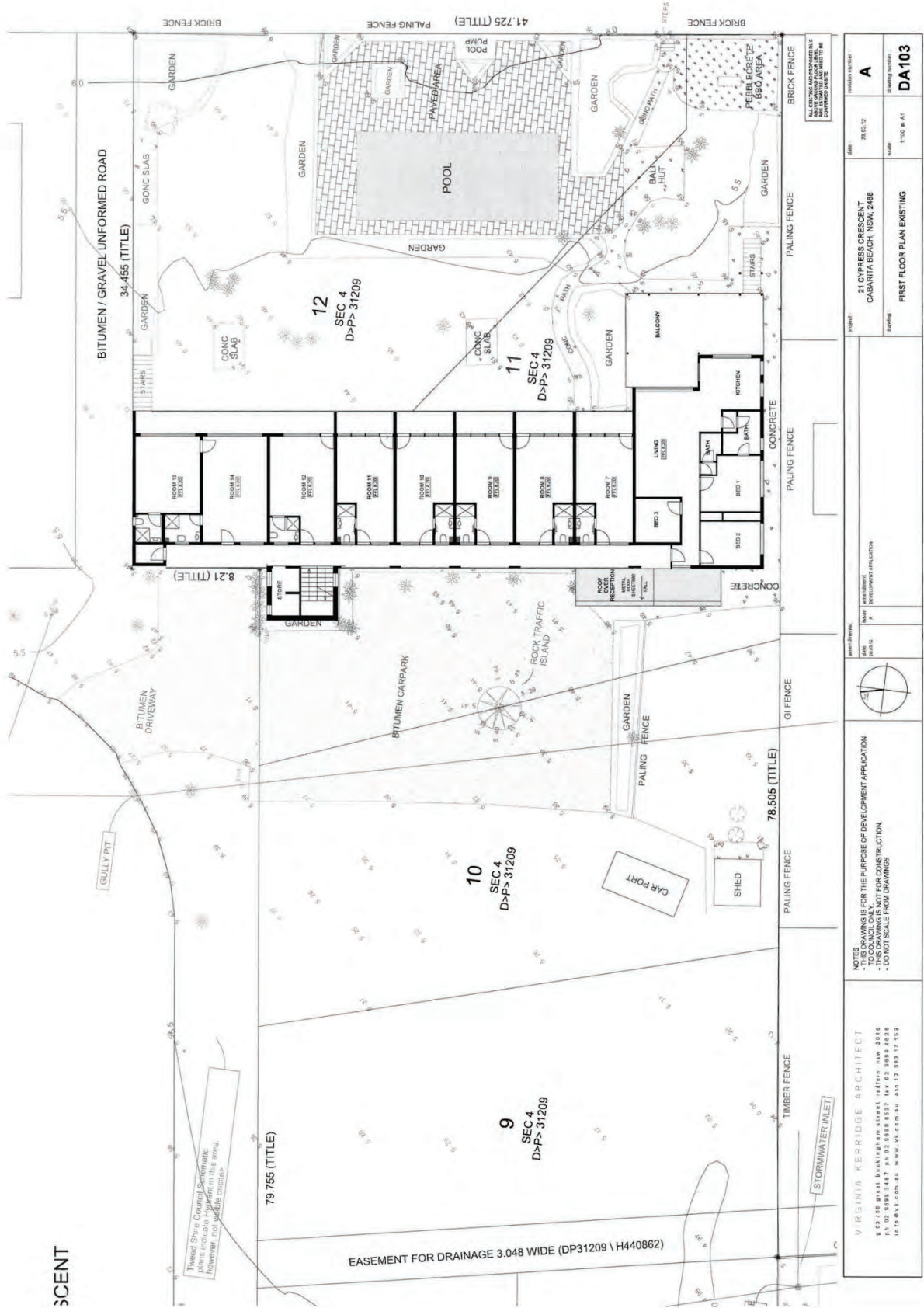
<p>NOTES: - DRAWINGS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. - DRAWINGS ARE NOT TO BE USED FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS.</p>		<p>DATE: 28.03.12 DRAWN: A PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p>		<p>REVISION NUMBER: A DRAWING NUMBER: DA101</p>	
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SCENT

Wood Shire Council Schematic Plans indicate Hydrant in this area, however, not visible on site.

<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS 		<p>DATE: 20/12/12</p> <p>PROJECT: 21 CYPRESS CRESCENT, CABARITA BEACH, NSW, 2488</p> <p>DRAWING NUMBER: DA102</p> <p>SCALE: 1:100 @ A1</p> <p>GROUND FLOOR PLAN EXISTING</p>	
<p>VIRGINIA KERRIDGE ARCHITECT</p> <p>8/07/09 Street, Bushingham Street, Sydney NSW 2018</p> <p>PH: 02 8699 3487 PH: 02 8699 8527 FAX: 02 8699 4528</p> <p>WWW.VK.COM.AU WWW.VK.COM.AU 02 8699 17155</p>		<p>ALL RIGHTS RESERVED AND NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS WITHOUT PERMISSION IN WRITING FROM THE ARCHITECT.</p>	



SCENT



ALL EXISTING DIMENSIONS AND COORDINATES TO BE CHECKED ON SITE.

Twisted Shire Council Schematic plans indicate Hydrant in this area however, not visible on site.

EASEMENT FOR DRAINAGE 3.048 WIDE (DP31209 \ 1440862)

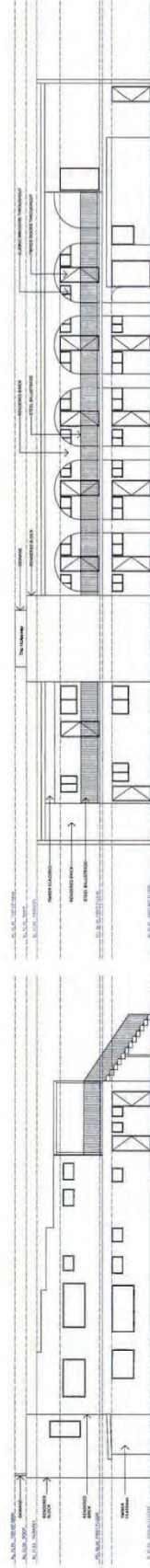
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SCENT



NORTH ELEVATION

EAST ELEVATION

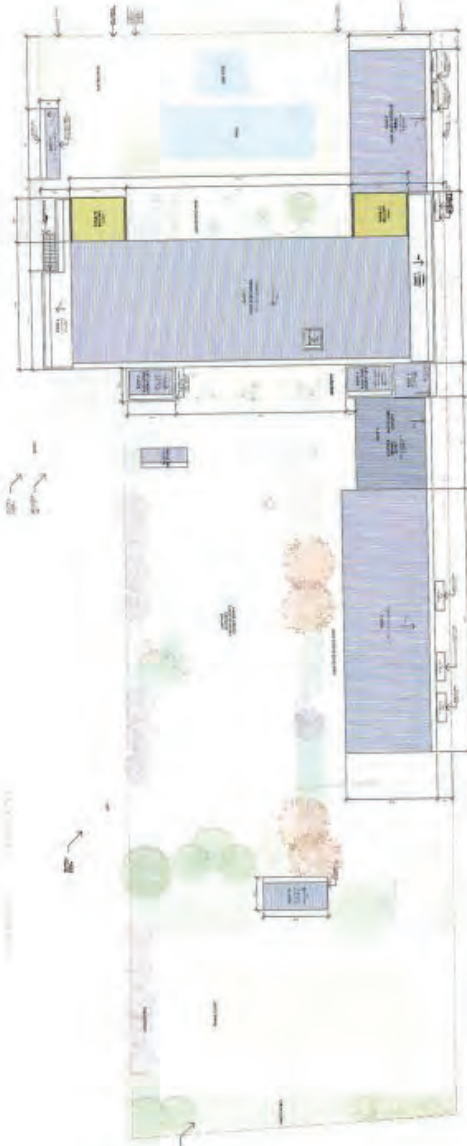


SOUTH ELEVATION

WEST ELEVATION

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<p>VIRGINIA KERRIDGE ARCHITECT 655 / 105 / 165 / 181 / 191 / 205 / 210 / 215 / 220 / 225 / 230 / 235 / 240 / 245 / 250 / 255 / 260 / 265 / 270 / 275 / 280 / 285 / 290 / 295 / 300 / 305 / 310 / 315 / 320 / 325 / 330 / 335 / 340 / 345 / 350 / 355 / 360 / 365 / 370 / 375 / 380 / 385 / 390 / 395 / 400 / 405 / 410 / 415 / 420 / 425 / 430 / 435 / 440 / 445 / 450 / 455 / 460 / 465 / 470 / 475 / 480 / 485 / 490 / 495 / 500 / 505 / 510 / 515 / 520 / 525 / 530 / 535 / 540 / 545 / 550 / 555 / 560 / 565 / 570 / 575 / 580 / 585 / 590 / 595 / 600 / 605 / 610 / 615 / 620 / 625 / 630 / 635 / 640 / 645 / 650 / 655 / 660 / 665 / 670 / 675 / 680 / 685 / 690 / 695 / 700 / 705 / 710 / 715 / 720 / 725 / 730 / 735 / 740 / 745 / 750 / 755 / 760 / 765 / 770 / 775 / 780 / 785 / 790 / 795 / 800 / 805 / 810 / 815 / 820 / 825 / 830 / 835 / 840 / 845 / 850 / 855 / 860 / 865 / 870 / 875 / 880 / 885 / 890 / 895 / 900 / 905 / 910 / 915 / 920 / 925 / 930 / 935 / 940 / 945 / 950 / 955 / 960 / 965 / 970 / 975 / 980 / 985 / 990 / 995 / 1000</p>	<p>NOTES - DRAWINGS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION - TO COUNCIL ONLY - THIS DRAWING IS NOT FOR CONSTRUCTION - DO NOT SCALE FROM DRAWING</p>	<p>DATE: 28/10/12 SCALE: 1:100 @ A1</p>	<p>REVISION NUMBER: A</p>
<p>PROJECT: 21 CYPRESS CRESSCENT CABARITA BEACH, NSW, 2488</p>	<p>DATE: 28/10/12 SCALE: 1:100 @ A1</p>	<p>DATE: 28/10/12 SCALE: 1:100 @ A1</p>	<p>REVISION NUMBER: A</p>
<p>ARCHITECT: VIRGINIA KERRIDGE ARCHITECT</p>	<p>CLIENT: 21 CYPRESS CRESSCENT CABARITA BEACH, NSW, 2488</p>	<p>DATE: 28/10/12 SCALE: 1:100 @ A1</p>	<p>REVISION NUMBER: A</p>
<p>NOTES - DRAWINGS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION - TO COUNCIL ONLY - THIS DRAWING IS NOT FOR CONSTRUCTION - DO NOT SCALE FROM DRAWING</p>	<p>PROJECT: 21 CYPRESS CRESSCENT CABARITA BEACH, NSW, 2488</p>	<p>DATE: 28/10/12 SCALE: 1:100 @ A1</p>	<p>REVISION NUMBER: A</p>



ROAD

LEGEND

EXISTING CONCRETE	EXISTING ASPHALT	EXISTING GRASS	EXISTING PAVEMENT
NEW CONCRETE	NEW ASPHALT	NEW GRASS	NEW PAVEMENT
EXISTING DRIVEWAY	EXISTING DRIVEWAY	EXISTING DRIVEWAY	EXISTING DRIVEWAY
NEW DRIVEWAY	NEW DRIVEWAY	NEW DRIVEWAY	NEW DRIVEWAY

NOTES:

- ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
- ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
- ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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GENERAL NOTES

NO.	DESCRIPTION
1	SEE ARCHITECT'S DRAWINGS FOR MATERIALS AND FINISHES.
2	SEE ARCHITECT'S DRAWINGS FOR MATERIALS AND FINISHES.
3	SEE ARCHITECT'S DRAWINGS FOR MATERIALS AND FINISHES.
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9	SEE ARCHITECT'S DRAWINGS FOR MATERIALS AND FINISHES.
10	SEE ARCHITECT'S DRAWINGS FOR MATERIALS AND FINISHES.

NOTE:

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 45 LINDSEY STREET, SUITE 101, SUVA, FIJI
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 WWW.VIRGINIAKERRIDGE.COM

PROJECT: 41 EXPRESS CASSENET, CARAVITA BEACH, NAMA, ZMHP

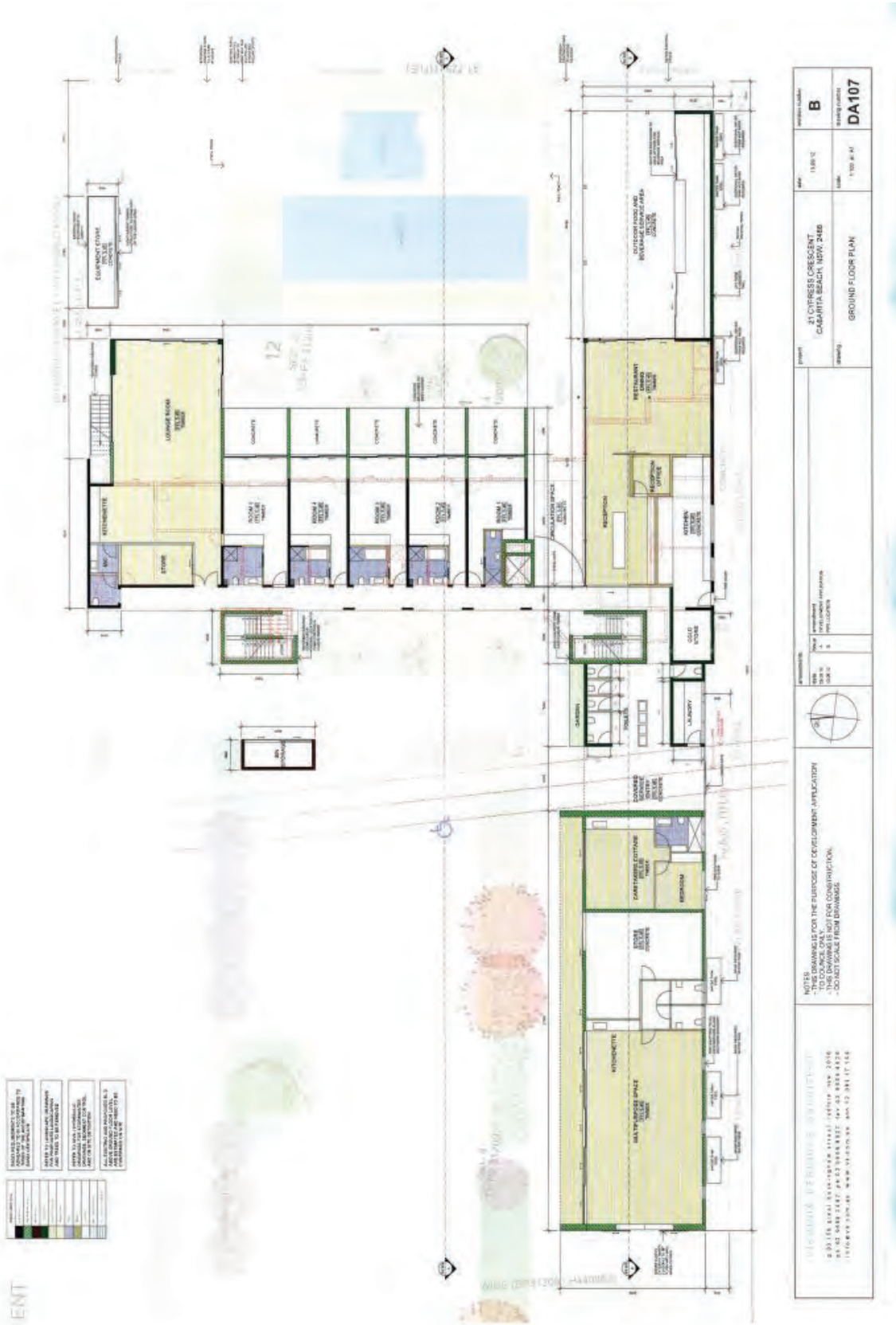
DATE: 28.11.12

SCALE: 1:500 AT A3

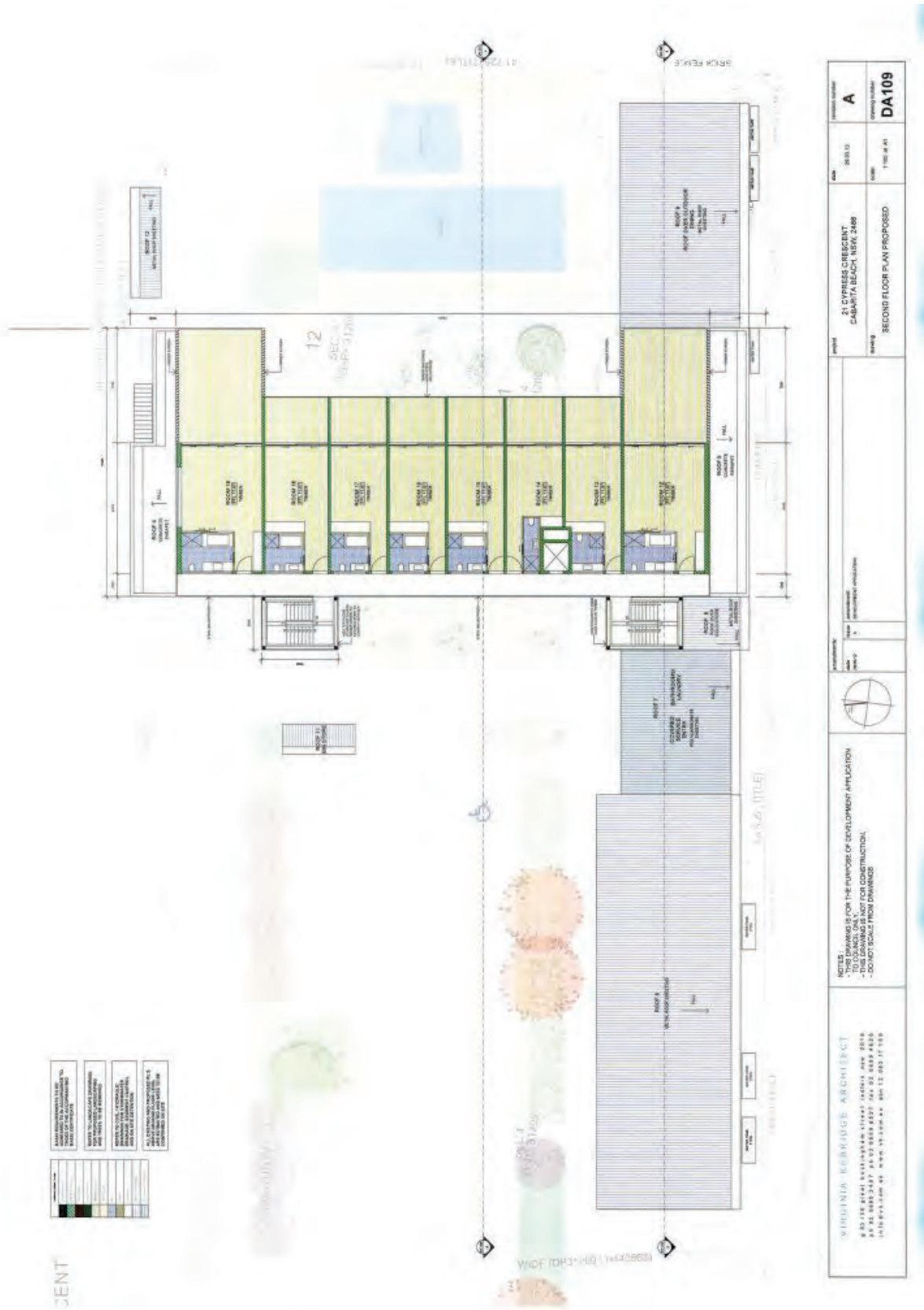
PROJECT NUMBER: A

DRAWING NUMBER: DA106

TITLE: SITE PLAN PROPOSED







ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
DOORS OPEN UNLESS OTHERWISE SPECIFIED.
ALL FINISHES ARE AS SHOWN UNLESS OTHERWISE SPECIFIED.
ALL WORK IS TO BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

<p>NOTES:</p> <ul style="list-style-type: none"> - THIS PLAN IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. - THIS PLAN IS NOT TO BE USED FOR CONSTRUCTION. - CONSULT YOUR BUILDING OFFICER. 		<p>DATE: 28/01/12</p> <p>SCALE: 1:100 @ A4</p>	<p>PROJECT NUMBER: A</p>
<p>21 CYPRESS CRESCENT CARABITA BEACH, NSW, 2469</p>		<p>SECOND FLOOR PLAN PROPOSED</p>	

SENT

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<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT DOUBLE FOLD DRAWING. 		<p>PROJECT:</p> <p>21 CYPRESS CRESCENT CARABATA BEACH, NSW 2488</p>		<p>DATE:</p> <p>28/11/12</p>		<p>SCALE:</p> <p>1:100 (P/L)</p>	
<p>ARCHITECT:</p> <p>VIRGINIA KERRIDGE ARCHITECTS 8/15/12/14/16/18/20/22/24/26/28/30/32/34/36/38/40/42/44/46/48/50/52/54/56/58/60/62/64/66/68/70/72/74/76/78/80/82/84/86/88/90/92/94/96/98/100</p>		<p>DESCRIPTION:</p> <p>ROOF PLAN PROPOSED</p>		<p>PROJECT NO.:</p> <p>DA110</p>		<p>DATE:</p> <p>28/11/12</p>	
<p>SCALE:</p> <p>1:100 (P/L)</p>		<p>DATE:</p> <p>28/11/12</p>		<p>SCALE:</p> <p>1:100 (P/L)</p>		<p>DATE:</p> <p>28/11/12</p>	





EAST ELEVATION

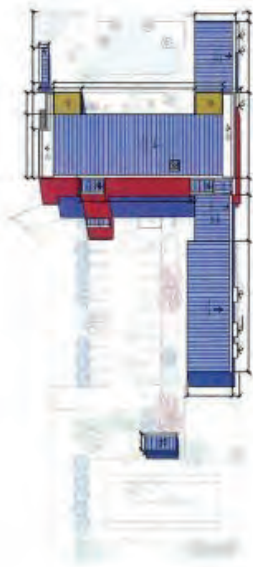


WEST ELEVATION

<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSES OF DEVELOPMENT APPLICATION ONLY. - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS. 	<p>DATE: 2012/11/15</p> <p>SCALE: 1:100</p> <p>PROJECT: 21 CYNBESS CRESCENT, GABARITA BEACH, NSW 2488</p> <p>CLIENT: ELEVATION EAST / WEST</p> <p>DATE: 2012/11/15</p>
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<p>NOTES:</p> <ul style="list-style-type: none"> - THIS DRAWING IS FOR THE PURPOSES OF DEVELOPMENT APPLICATION ONLY. - THIS DRAWING IS NOT FOR CONSTRUCTION. - DO NOT SCALE FROM DRAWINGS. 	<p>DATE: 2012/11/15</p> <p>SCALE: 1:100</p> <p>PROJECT: 21 CYNBESS CRESCENT, GABARITA BEACH, NSW 2488</p> <p>CLIENT: ELEVATION EAST / WEST</p> <p>DATE: 2012/11/15</p>
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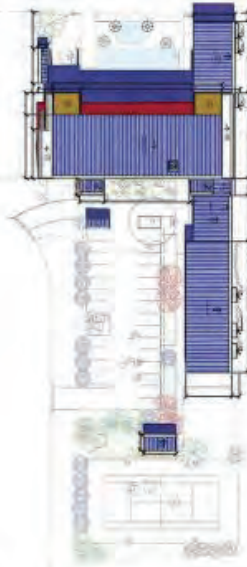




SHADOWS AT 9 AM



SHADOWS AT 12 PM



SHADOWS AT 3 PM

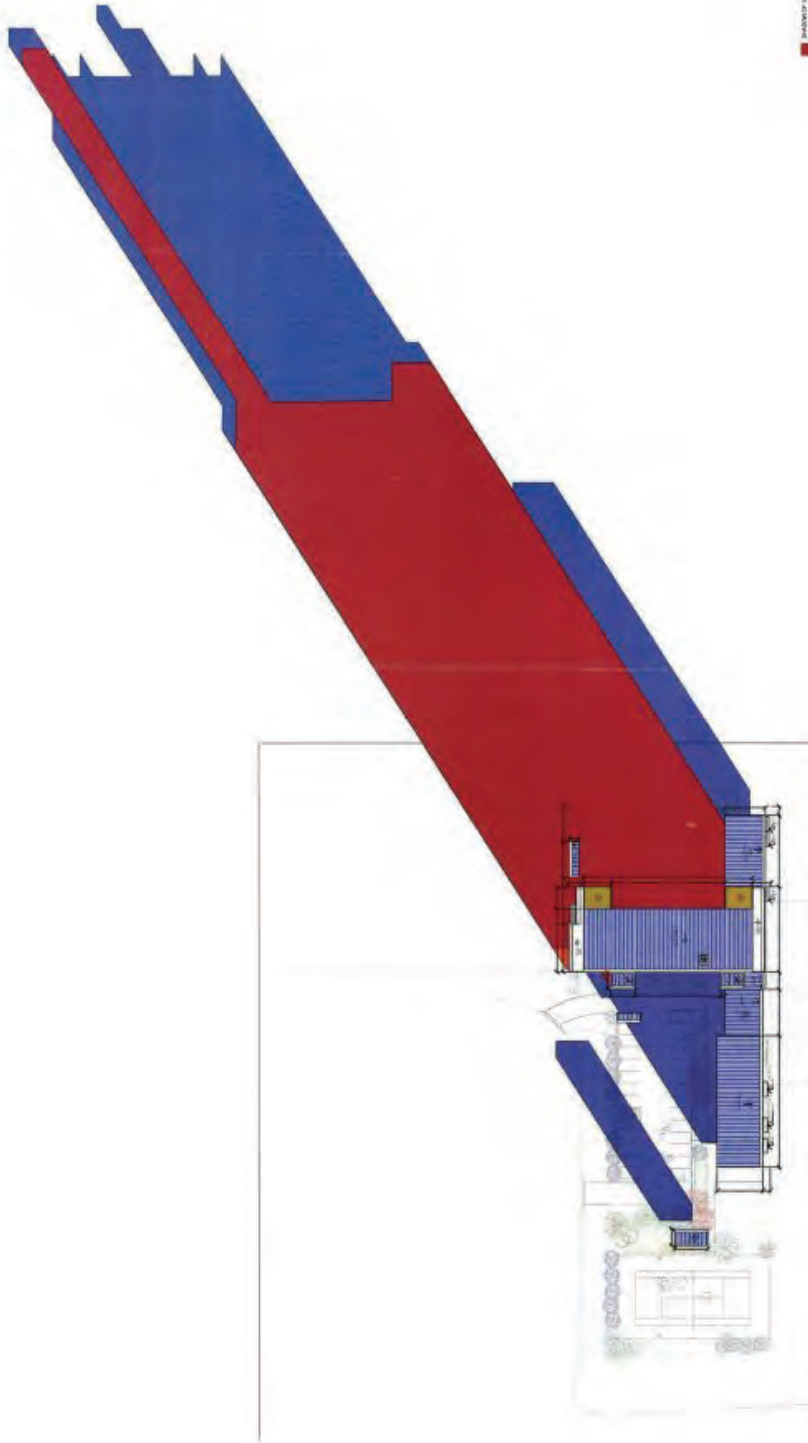
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NOTES:
 - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION
 - THIS DRAWING IS NOT FOR CONSTRUCTION
 - DO NOT SCALE FROM DRAWING



Scale: 1:100
 Date: 12/12/12

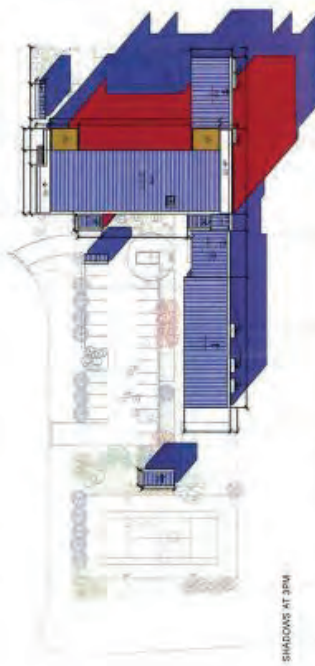
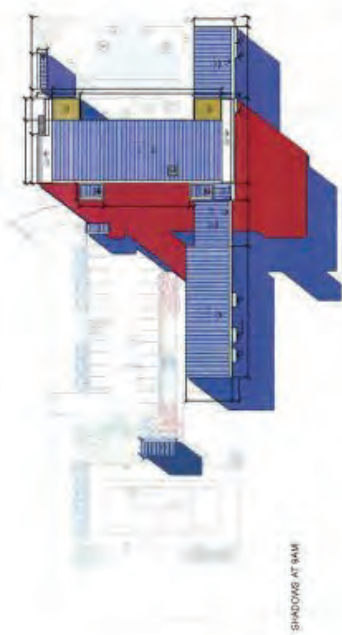
Project:	31 CYRUS STREET, CARABITA BEACH, NSW 2588
Client:	SHAWSON DRAUGHTS SUMMER, DECEMBER 21
Sheet:	DA 401



SHADOWS AT 7PM

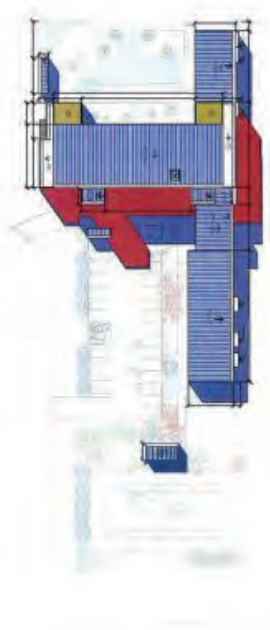


<p>NOTES: DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. THIS DRAWING IS NOT FOR CONSTRUCTION. (DO NOT OBTAIN ANY PERMITS)</p>		<p>Project: EL CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p>		<p>Issue: 02/12/12</p>		<p>Revision number: A</p>	
<p>Client: EL CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p>		<p>Site no: 1</p>		<p>Issue: 02/12/12</p>		<p>Revision number: DA 402</p>	
<p>Architect: GURRAMA GURRAMA ARCHITECT 4/151 ST PAULS STREET, ST PAULS, NSW 2159 PH: 02 9439 4444 FAX: 02 9439 4444 17/17, 20/20, 22/22, 24/24, 26/26, 28/28, 30/30, 32/32, 34/34, 36/36, 38/38, 40/40, 42/42, 44/44, 46/46, 48/48, 50/50, 52/52, 54/54, 56/56, 58/58, 60/60, 62/62, 64/64, 66/66, 68/68, 70/70, 72/72, 74/74, 76/76, 78/78, 80/80, 82/82, 84/84, 86/86, 88/88, 90/90, 92/92, 94/94, 96/96, 98/98, 100/100</p>		<p>Scale: 1:100</p>		<p>Issue: 02/12/12</p>		<p>Revision number: DA 402</p>	
<p>Notes: DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION TO COUNCIL ONLY. THIS DRAWING IS NOT FOR CONSTRUCTION. (DO NOT OBTAIN ANY PERMITS)</p>		<p>Scale: 1:100</p>		<p>Issue: 02/12/12</p>		<p>Revision number: DA 402</p>	

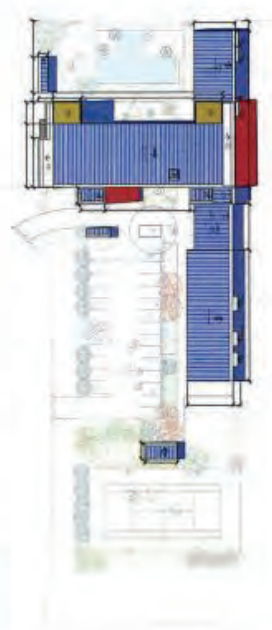


SHADOWS OF EXISTING BUILDINGS
SHADOWS OF PROPOSED BUILDINGS

<p>NOTES: - THIS DRAWING IS FOR THE PURPOSE OF DEVELOPMENT APPLICATION - THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION - DO NOT SCALE FROM DRAWING</p>		<p>Scale 1:100 DATE: 11/15/12 BY: [Signature]</p>	<p>PROJECT: ST CYPRESS CRESCENT CAROLINA BEACH, N.W. 3481</p>	<p>DATE: 08/14/12</p>	<p>PROJECT NUMBER: A</p>
				<p>DATE: 10/10/2012</p>	<p>PROJECT NUMBER: DA 400</p>



SHADOWS AT 8AM



SHADOWS AT 12PM



SHADOWS AT 3PM



<p>NOTES: - SHADOWS ARE FOR THE PURPOSE OF DEVELOPMENT APPLICATION - TO OFFICE ONLY - NOT TO BE USED FOR CONSTRUCTION - DO NOT SCALE FROM DRAWING</p>		<p>DATE: 10/01/12 DRAWN BY: [Name] CHECKED BY: [Name]</p>		<p>PROJECT: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p>		<p>DATE: [Date] SCALE: 1:500 TO SCALE</p>		<p>PROJECT NUMBER: A</p>	
<p>PROJECT ADDRESS: 21 CYPRESS CRESCENT CABARITA BEACH, NSW, 2488</p>		<p>PROJECT NUMBER: DA 402</p>		<p>DATE: [Date]</p>		<p>SCALE: 1:500 TO SCALE</p>		<p>PROJECT NUMBER: DA 402</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

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced [and] to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

The proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The proposal seeks to renovate and refurbish the existing motel and is considered unlikely to impact on the residential amenity of surrounding properties, nor the area's environmental qualities, as detailed further within this report.

It is therefore considered that the proposal would be consistent with this clause. This clause also requires that development complies with the zone objectives. This is addressed below.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors.

It is considered that the scale and nature of the proposed additions and alterations to the existing hotel is minor and, as the site has already been substantially cleared of vegetation, would not conflict with principles of ESD.

Clause 8 - Zone objectives

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 subject site is located within the 2(a) Low Density Residential Zone. The provisions of the Tweed Local Environmental Plan (TLEP) 2000 prohibit the use of a 'Motel' on 2(a) zoned land. However, the proponent advises that the subject site has been utilised for the purpose of a motel for 46 years and the proposal will maintain a motel on the site and is therefore permissible.

Clause 106 of the Environmental Planning and Assessment (EPA) Act 1979 defines existing uses as:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced [...]*

A review of Council's records has revealed that the motel was established on the site circa 1960, before the coming into force of the current TLEP 2000. A motel would have been permissible within the 'Village or Township' zone under the previous Interim Development Order. The Tweed LEP 1987 changed the zoning to 2(a) Low Density Residential which prohibits motels. On this basis it is considered that the existing motel has established existing use rights.

Clause 41 of the Environmental Planning and Assessment (EPA) Regulation 2000 states that:

(1) An existing use may, subject to this Division:

- (a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) _____ be rebuilt, or*
- (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) if it is a commercial use – be changed to another commercial use, or*
- (f) if it is a light industrial use – be changed to another light industrial or a commercial use.*

Therefore under the provisions of Clause 41, (1)(a) of the EPA Regulation 2000, the existing use may be enlarged, expanded or intensified. It is considered that sufficient evidence has been brought to Council's attention to demonstrate that existing use rights for the motel over Lots 11 and 12 in Section 4 DP 31209 have been established. As the subject development is not defined as a commercial or light industrial use, subsections (1)(e) and (f) do not apply.

However, Clause 42 of the EPA Regulation 2000 states that:

- (1) Development consent is required for any enlargement, expansion or intensification of an existing use.*
- (2) The enlargement, expansion or intensification:*
 - (a) Must be for the existing use and for no other use, and*
 - (b) Must be carried out only on the land on which the existing use was carried out immediately before the relevant date.*

Clause 42 allows for the enlargement, expansion or intensification of an existing use, providing the use is for not other use, and that it is carried out on the land on which the existing use was carried out immediately before the relevant date, which in this case is the gazettal of the Tweed LEP in 1987.

Whilst expansion of existing use rights over Lots 11 and 12 in Section 4 DP 31209 have been established, the expansion of the motel (for car parking) over Lots 9 and 10 has been questioned. The applicant has advised that the expansion of the motel in this location relies on Development Consent 54/82 which approved alterations and additions to the motel, as well as the construction of a car park over Lots 9 and 10 in Section 4 DP 31209. Whilst the car parking area has not formally been constructed, the applicant has provided sufficient evidence to demonstrate that the 54/82 consent has been lawfully commenced and therefore remains a valid consent. Therefore Lots 9 and 10 are also considered to benefit from existing use rights for the purpose of a motel.

However, Council officers have been unable to find any evidence of existing use rights over Lots 1 and 2 in Section 4 DP 29748. Lots 1 and 2 propose to contain a tennis court, an advertising sign and part of a vehicular access in association with the motel. The applicant has been unable to provide Council with evidence to show that existing use rights exist for the motel over Lots 1 and 2 and therefore it is Council's view that any works proposed on Lots 1 or 2 should be withdrawn from the application.

On this basis all components located on Lots 1 and 2 will be deleted from the consent via appropriate conditions.

Please note that the Tweed LEP 2000 provides the following definition for a motel:

"A building or buildings (other than a hotel, boarding house or dwelling used to provide bed and breakfast) substantially used for the overnight accommodation of travellers and the vehicles used by them, whether or not the building or buildings are also used in the provision of meals to those travellers or the general public."

The subject application originally proposed the amenities of the motel to be utilised by guests of the motel only. In a response to Council's request for information the applicant requested that the restaurant and outside serving area be open to members of the general public also (with swimming pool and tennis courts being made available to guests of the motel only, although as detailed above the tennis court component of the DA has been deleted).

The applicant has provided legal advice in relation to the use of the restaurant for members of the public. The advice states that *the definition of 'motel' provides that three activities could occur within a motel premises:*

1. *Overnight accommodation provided to travellers and their vehicles;*
2. *The provision of meals to travellers using the accommodation facilities;*
3. *The provision of meals to the general public.*

The advice further states that Justice Cripps of the Land and Environment Court in Scott & Ors v Wollongong Council & Anor [1989] NSWLEC 85 when considering the definition of a 'Motel' within the Model Provisions, confirmed that the operation of a 'restaurant' is also permitted. His Honour commented that *'Most motels in New South Wales have restaurants which serve members of the public not staying at the motel'*.

The advice therefore recommends that the *approval of a 'motel' therefore also permitted the service of food to patrons and to the general public'*.

The legal advice states that the premises has been used as a motel prior to the commencement of the Tweed LEP 1987 and that food has been provided to motel guests for consumption in their rooms and to the general public, with food being prepared in the commercial kitchen (granted consent under Permit Number T4/1551).

The legal advice states that the *premises has continued to operate as a motel with food service to patrons and the general public, particularly to guests associated with weddings and to informal dining in public areas within the curtilage of the site.* The advice concludes that the legal representative is of the *opinion on the information provided, that the motel may prepare and provide meals to the motel patrons and the general public pursuant to the Act's existing use rights provisions.*

Council officers do not concur with this position as there is currently no restaurant area and a search of Council's records has not revealed the presence of a formal restaurant/dining area for guests and members of the general public (separate to living accommodation) on the approved plans. Further, Council's Environmental Health records indicate that food preparation was limited to the preparation of small meals (breakfasts) only in the kitchen, to be delivered to guests in their rooms. Further, there has never been an approval issued for the use of the building for functions and the like.

Whilst it is acknowledged that the motel itself has the benefit of existing use rights, Council officers consider that existing use rights cannot be acknowledged for a restaurant and/or dining area on the subject site, as approval has never been granted for this use and is not demonstrated on the existing or previous plans.

The application currently before Council proposes alterations and additions to an existing motel only. Should the applicant wish to open the facilities to the general public and, in addition, formalise the use of the site for functions and the like, a future development application would be required for such uses (including any additional details of existing use rights not currently before Council; amended noise impact report and details of potential residential amenity issues).

Clause 11 – Zone Objectives

The subject site is located within the 2(a) Low Density Residential Zone. The objectives of which are as follows:

Primary objective:

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

Secondary objectives:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

A motel use is prohibited in the 2(a) Low Density Residential Zone however, the existing motel has been present on the site for approximately 50 years. It has been established the existing motel has the benefit of lawful existing use rights, in accordance with Clause 106 of the EPA Act 1979 and that the expansion and enlargement of the motel is permissible under Clause 41 of the EPA Regulation 2000.

It is considered however that the proposed alterations and additions to the existing motel would be in keeping with the residential character of the surrounding area and would not detract from the primary objective of the zone.

Clause 15 - Essential Services

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

The subject site has existing access to essential services. Accordingly, the proposal is consistent with the provisions of this clause.

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. Clause 16 of the TLEP provides a three-storey height restriction over the subject site.

The development proposes the addition of a third storey and therefore the proposal would be consistent with the clause.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The development proposes alterations and additions to an existing and well established motel that has been in situ for approximately 50 years. Whilst submissions have been received with concerns in relation to noise and disturbance from the proposed outdoor eating and entertainment areas, it is noted that a pool and outdoor seating area already exists on the subject site. A condition would be applied to any development consent to ensure that the facilities are for the use of guests of the motel who are staying at the motel only and under no circumstances are they to be used by members of the public (please also note that the tennis court component has been removed from the application). Conditions relating to the hours of operation of these areas would also be applied to any development consent.

It is considered unlikely that the proposal would have a significant impact on the residential amenity of surrounding properties provided the proposal is carried out in accordance with the conditions of the consent.

The development would improve and modernise a tourist facility and boost the economic viability of the existing business.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP provides for the management of acid sulfate soils. The land has been identified as having Class 4 acid sulfate soils. Council's Environmental Health Services has reviewed the proposal and has advised that the proposed development does not comprise and excavation below 2m or works likely to lower the water table 2m beyond the natural ground surface.

No additional information is required in relation to ASS.

Other Specific Clauses

Clause 22 – Development near designated roads

The land has frontage to the Tweed Coast Road which is a Council designated road and therefore this clause applies. The objectives of this clause are:

- To protect and improve the capacity, efficiency and safety of designated roads.
- To prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.
- To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

The majority of the development is setback from the designated road with ancillary facilities and landscaping fronting the Tweed Coast Road. It is considered that the proposal will not impact on the safety or efficiency of the designated road nor detract from the scenic attractiveness of the area of the Tweed.

Clause 23 – Control of access

The objective of the clause is to control development along designated roads.

The proposal does not gain access from Tweed Coast Road with all site access being from Cypress Crescent. The development is therefore consistent with this clause.

Clause 24 – Set backs to designated roads

This clause does not apply to land within the 2(a) Zone.

Clause 36 – Coastal erosion outside Zone 7(f)

The subject land is located on land that is subject to coastal erosion outside of Zone 7(f) and therefore this clause applies. The objective of the clause is *To protect land that may be subject to coastal erosion (but not within Zone 7(f)) from inappropriate development.*

The clause also states: *In determining whether to grant consent to development involving the erection of a building or the carrying out of a work at or above the surface of the ground on land that in the consent authority's opinion may be subject to coastal erosion, the consent authority must:*

- (a) *consider*
- (i) *the likelihood of the proposed development adversely affecting the behavior or being adversely affected by the behavior of the sea, or of water in an arm of the sea or any other body of water, and*
 - (ii) *the likelihood of the proposed development adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea, any arm of the sea or any other body of water, and*
 - (iii) *the likelihood of the proposed development adversely affecting the landscape or scenic quality of the locality, and*
 - (iv) *the potential impacts of climate change including sea level rise.*

The development proposes alterations and additions to an existing motel located in close proximity to the coastal foreshore. The development application has been referred to Council's Natural Resource Management (NRM) Unit for the assessment of the proposal in relation to coastal hazards.

It is considered unlikely that the proposed extensions and alterations would adversely affect the behavior of the sea, beach or dune or foreshore. The motel is not located immediately adjacent to the sea and the majority of additions are located to the west (rear) of the existing building. The development proposes the construction of a third storey and minor additions to the existing building. It is considered that the proposed alterations will be in keeping with the host building and seek to modernise and improve the visual appearance of the motel. It is therefore considered that the proposal would not adversely affect the landscape or scenic quality of the locality.

Council's NRM Unit have recommended that appropriate conditions are applied to any consent as follows: any consent granted shall be on the proviso that if the erosion escarpment comes within 20m of the building, the use of the building will cease. A Section 88E (*Conveyancing Act 1919*) instrument is to be used to achieve this outcome in accordance with the Tweed DCP B25, as detailed further within this report.. Further, the proponent is to prepare a report detailing how the outdoor food and beverage area is to be dismantled and removed from the site if the erosion escarpment comes within 20m of the building and that the outdoor food and beverage area is to be constructed as a separate structure and be demountable or relocatable; and that all works within the 2100 Coastal Hazard Zone need are to be in accordance with Section 3.3.2 of the Coastal Hazards – Tweed DCP B25.

On this basis it is considered that the proposal is in accordance with the clause.

Clause 39 – Contaminated Land

The applicant has not addressed the issue of contaminated land other than to say that there does not appear to be any historical land use which was potentially contaminated. The application has been referred to Council's Environmental Health Department who have advised that a review of Council's historical aerial photography (1962, 1970 and 1987) show that the land surrounding the motel was vacant, as it is today, and that the motel is clearly visible in its current position.

It is advised that sand mining operations may have occurred in close proximity to the motel site and a condition should be applied to any development consent to ensure that radiation levels throughout the proposed development site are not to pose a public health risk.

Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and therefore this clause applies. The development application was referred to the NSW Rural Fire Service (RFS) as Integrated Development in accordance with Section 91 of the EPA Act 1979. The RFS initially advised that they were not in a position to properly assess the application due to the lack of information regarding asset protection zones within the managed Crown land nature strip and management in perpetuity.

Further information with this regard was received, including the *Tweed Coast Regional Crown Reserve Plan of Management* courtesy of the Land and Property Management Authority, and submitted to the RFS for comment.

On 19 September 2012 general terms of approval were received from the RFS including requirements relating to: asset protection zones; water and utilities; evacuation and emergency management; design and construction and landscaping. A note to the Consent Authority was applied to advise that the *proposed development falls within the Flame Zone. Flame Zone development is high risk development; consequently, in situations such as this, the Service seeks to improve the overall fire safety of the existing development. This requires greater emphasis on construction standards, landscaping, siting and vegetation management practices to ensure improved levels of protection are afforded to the development, its occupants and its fire fighters. The Service has undertaken a merit based assessment of the proposal and provides the above advice in accordance with 'Planning for Bush Fire Protection 2006'.*

Clause 47 – Advertising signs

The objective of the advertising provisions is to ensure that outdoor advertising does not adversely affect the locality in terms of appearance, size, illumination or the like; does not lead to visual clutter through the proliferation of signs; does not detract from the scenic quality of the area and the like.

The applicant has failed to provide Council with sufficient evidence to demonstrate that the existing pylon sign (located on Lot 1) has the benefit of existing use rights. As signage, other than business identification signage, is prohibited in the residential zone, Council is unable to acknowledge existing use rights for the pylon sign. Therefore this element of the proposal has been deleted from the consent until such a time that existing use rights may be demonstrated.

It is considered that the proposed wall sign would be in keeping with the building and would not detract from the scenic quality of the area. A condition will be applied to any development consent to ensure that details of the proposed wall sign are to be received prior to the issue of a Construction Certificate.

Clause 54 – Tree preservation order

The subject site is covered by the Tree Protection Order (TPO) 2011 (Koala Habitat) and therefore this clause applies. The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The application has been referred to Council's Ecologist who has advised that the site is of low ecological value with no Koala food trees and the proposed works are considered minor in nature with regards to vegetation removal. Council's Natural Resource Management Unit has advised that little ecological impact is anticipated. It is therefore considered that the proposal is consistent with the clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

It is acknowledged that the proposal will not restrict public access to the coastal foreshore, nor impact on the ecological values, scenic quality or cultural heritage of the locality.

However, the proposal comprises the construction of a third storey which will result in overshadowing of the waterfront open space (Crown Reserve) before 3pm midwinter and before 7pm midsummer (daylight saving time). On this basis the proponent lodged a SEPP 1 Objection seeking a variation to the provisions of Clause 32B (4) of the North Coast Regional Environmental Plan (NCREP) 1988, as detailed further within this report.

The applicant has submitted shadow diagrams illustrating 8284.5m² of overshadowing at 7.00pm midsummer and 33.5m² at 3.00pm midwinter. The applicants have put forward that the extent of overshadowing on the Crown reserve is minor on the following basis:

- *The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the coastal foreshore;*
- *That the area subject to overshadowing in no way precludes the future use or reclassification of the adjacent reserve;*
- *The overshadowing is minor at 7pm midsummer and is nonexistent at 3pm midwinter.*

It is not precisely understood what is meant by the term 'reclassification of the adjacent reserve', however this has no bearing on the assessment of overshadowing of the proposal as it is considered that the extent of overshadowing is relatively minor in scale in mid Summer and virtually nonexistent in the mid Winter. The shadow diagrams provided indicate that overshadowing only occurs between 3pm and 7pm and will not fall on the beach/sun bathing area. Further, the shadow occupies only a very marginal area of a large foreshore, a significant proportion of which is undeveloped.

With this regard the subject environment is urbanised, although characterised by low density and low rise development. However, the proposal is consistent with the height provisions as set out in the Tweed LEP 2000 and is considered to be compliant with the density nature of surrounding development.

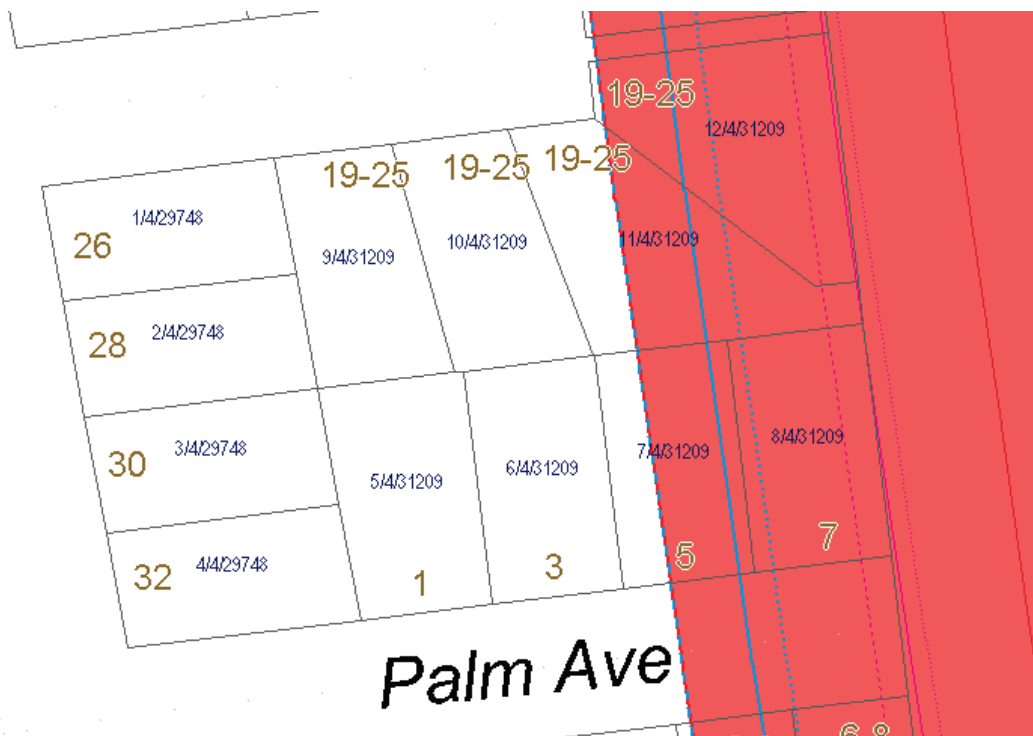
On this basis it is considered that the level of overshadowing does not warrant refusal of the application.

Clause 33: Coastal hazard areas

Clause 33 of the NCREP 1988 requires council to take into account the Coastline Management Manual; require as a condition of development consent that disturbed foreshore areas are rehabilitated; and require as a condition that access across foreshore areas be confined to specified points.

The primary objectives of the Tweed Shire Coastal Management Manual are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The subject site is identified as being subject to the effects of coastal erosion as shown in the following diagram:



Extract of Council's Geographical Information System (GIS) indicating portion of site subject to Coastal Erosion Hazard 2007.

The proponent has provided a Coastal Hazards Report (Cozens, Regan, Williams, Prove dated September 2012). The report advises that the dunes to the east of the site currently provide protection to the site from the affects of coastal erosion and it is expected that no works will be carried out beyond the boundary of the site. The report further advises that the portion of the proposed development beyond the Coastal Hazard 2050 line is in the order of 90m² (being the area for outdoor dining). The report states that this area can be considered as temporary structures and therefore considered sacrificial.

The report concludes that, following assessment of the available information and on the basis of a worst case scenario, the subject site would be subject to the impact of storm surges and coastal erosion which should be considered during the structural design of the building works.

The development application has been referred to Council's Natural Resource Management (NRM) Unit with this regard who have advised that the subject proposal is acceptable providing a number of conditions are applied to the consent.

Clause 75: Tourism development

This Clause stipulates that Council must not grant consent for tourism development unless it is satisfied that suitable access is in place; all social and community services are in close proximity to the development (for permanent residential accommodation); that the development will not be detrimental to the scenery or other significant features of the natural environment; and that satisfactory water and sewerage is available.

As previously detailed the proposal relates to additions and alterations to an existing motel which has been in situ for a considerable length of time. However, the subject site may be accessed by road and is located in close proximity to community services located in the town of Cabarita (shopping facilities, doctors surgery, chemist and the like).

The development proposes the addition of a third storey and additional structures that will improve the visual appearance of the motel and improve facilities for motel patrons. It is considered that these additions will not be detrimental to the scenery of the Tweed Coast, nor impact on the features of the natural environment.

It is considered that the proposal would be consistent with this clause.

SEPP No. 1 - Development Standards

A SEPP No. 1 Objection in relation to the provisions of Clause 32B of the NCREP 1988 has been lodged as the proposed development will result in overshadowing of the adjacent foreshore reserve prior to 3.00pm mid winter and 7pm mid summer.

As previously detailed within this report, it is considered that the extent of overshadowing created is relatively minor and does not impact on any recreation areas within the reserve, nor does it fall upon the beach.

SEPP No. 1 provides a mechanism by which Council can consent to a variation to a development standard where it is considered unreasonable or unjustified to request strict adherence to the standard, or where the granting of such a variance will not result in the compromising of the objects of the Act.

The objective of Clause 32B of the NCREP 1988 is related to the protection of the recreational integrity of the foreshore open space areas and the need to restrict adverse impacts upon the same by the erection of buildings in close proximity.

The applicant has provided a reasonable justification for the variation to the development standard as follows:

- The extent of overshadowing at the prescribed time is considered to be minor in scale, relative to the overall size of the foreshore reserve;
- That the area subject to overshadowing is not an active recreation area;
- The proposed overshadowing in no way precludes the future use or reclassification of the adjacent reserve;
- The overshadowing is minor at 7pm midsummer and is non existent at 3pm midwinter.

Council officers concur with this justification and acknowledge that the extent of overshadowing of the coastal foreshore is minor. On this basis it is considered that compliance with the development standard is both unreasonable and unnecessary and therefore Council support in assuming concurrence of the Director-General, in this instance, is recommended.

SEPP No. 64 – Advertising and Signage

This Policy provides a State wide approach to managing advertising signage and aims:

- (a) to ensure that signage (including advertising):

- (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish, and
- (b) to regulate signage (but not content) under Part 4 of the Act, and
 - (c) to provide time-limited consents for the display of certain advertisements, and
 - (d) to regulate the display of advertisements in transport corridors, and
 - (e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.

The development proposes to retain the existing pylon sign located on the corner of Tweed Coast Road and Cypress Crescent and a new wall sign is proposed as part of Stage 1 of the redevelopment.

As previously detailed within this report, Council is unable to acknowledge that the existing pylon sign has the benefit of existing use rights and therefore this component of the application has been deleted from the submitted plans.

It is considered that the proposed wall sign would be compatible with the visual character of the area and would be integrated with the built form of the development. The sign would not result in a proliferation of signs on the building, or visual clutter. It is therefore considered that the proposal is consistent with the aims of the SEPP.

A condition will be applied to any development consent to ensure that details of the proposed wall sign are received prior to the issue of a Construction Certificate.

SEPP No 71 – Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The proposed development will not restrict public access to the foreshore area and will not impact on the beach environment or coastal/marine ecosystems or vegetation (significant vegetation removal is not proposed on the subject site and the development does not require any vegetation removal or works within the coastal foreshore). It is also considered unlikely, given the established nature of the motel and likely historic land uses (sand mining) that Aboriginal cultural heritage will be impacted upon however a condition will be applied to any consent with this regard.

As previously detailed within this report the proposal will result in the overshadowing of the coastal foreshore. It is however acknowledged that no overshadowing will extend onto the beach area nor impact on recreational areas, with the majority of shadow falling on vegetation within the hind dune area.

With regard to visual impact, it is considered that the proposed third storey and alterations to the facade of the building would provide a contemporary and innovative design. It is important to note however that the building would not be particularly prominent from the beach itself, being screened by the dune vegetation within the foreshore reserve. Further, the existing motel is located within an established residential area and will therefore not result in the significant loss of views from a public place to the coastal foreshore.

The applicant advises that all services are provided including reticulated water, sewer, stormwater and drainage.

It is considered that the proposed development is consistent with the aims of the Policy.

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

The Draft Tweed LEP 2012 is currently on public exhibition. Under the provisions of the Draft LEP the site is located within the R2 Low Density Residential Zone. The objective of this zone is:

- To provide for the housing needs of the community within a low density residential environment, and
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Within the Draft LEP, tourist and visitor accommodation is defined as:

A building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) Backpackers accommodation,*
- (b) Bed and breakfast accommodation,*
- (c) Farm stay accommodation,*
- (d) Hotel or motel accommodation,*
- (e) Serviced apartments,*

But does not include:

- (a) Camping grounds, or*
- (b) Caravan parks, or*
- (c) Eco-tourist facilities.*

Within the Draft Tweed LEP 2012, a motel is defined as a:

hotel or motel accommodation means tourist and visitor accommodation (whether or not licensed premises under the Liquor Act 2007): (a) comprising rooms or self-contained rooms; (b) that may provide meals to guests or the general public and facilities for the parking of guests' vehicles, but does not include backpacker's accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

As the Tweed Draft LEP 2012 is currently on public exhibition, more weight is now afforded to this document. However, akin to the provisions of the current Tweed LEP 2000, tourist and visitor accommodation would be prohibited under the provisions of the Tweed Draft LEP 2012.

Whilst the motel would be prohibited within the Draft Tweed LEP 2012, as previously detailed within this report, the motel relies on established existing use rights. Of importance with this regard is the definition relates to the provision of licensed premises as well as the permissibility for the motel to be used by members of the general public. However Council officers are of the opinion that whilst existing use rights for the motel have been established, they do not exist for a restaurant or dining area open to the general public.

Council officers consider it necessary and reasonable in this instance to apply conditions to any consent in relation to the use of the premises being restricted to patrons of the motel only in order to safeguard the residential amenity of surrounding properties.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant has provided a detailed assessment of the compliance of the proposal against Section A1 of the DCP under the provisions of a residential flat building. It is of importance to note that the existing motel was constructed long before these controls were adopted by Council and it would therefore be unreasonable for Council to request strict adherence with this regard.

The majority of the development is consistent with the controls set out within A1 with minimal cut and fill proposed, adequate landscaping and the proposed alterations are unlikely to impact on view sharing from public places or surrounding properties and orientation and the like is already dictated by the location of the existing building on site. A variation is sought in relation to a rear setback provisions, the proposed outdoor area being setback by approximately 2m from the rear setback. The site backs onto foreshore reserve with no dwelling houses adjoining the rear and it is therefore considered that there will be no amenity or privacy impacts on this basis. It is considered that the proposal provides sufficient outdoor amenity area for guests of the motel and sufficient landscaping.

It is considered that the proposal is generally consistent with the provisions of Section A1.

A2-Site Access and Parking Code

A search of previous approvals on the subject site indicates that 20 car parking spaces were originally approved for the motel under building application 54/82 (that approved alterations and additions to the motel). Further, permit number T4/1551 imposed a requirement for 20 off street car parking spaces to be provided. The 20 required car parking spaces have not been formally provided for the existing motel (for 15 motel rooms and self contained apartment) with an informal parking area provided at the front of the motel.

The application proposes an additional five motel rooms and a self contained three bed unit. The application details acknowledges that the previous requirement for car parking has not been formally provided and is to be constructed as part of stage 1 of the development.

Section A2 of the DCP requires a motel to provide 0.5 spaces per staff member; one (1) space per unit plus one (1) space per 15m² gross floor area (GFA) restaurant open to the public. Section A2 also allows for an ecologically sustainable development (ESD) reduction of 20%, providing sufficient justification is demonstrated.

The applicant originally provided a parking assessment based on 12 staff members, 21 units and 1 dwelling house (caretakers residence). Including the ESD discount of 20%, a total of 24 spaces are required. However, an amended parking assessment has now been provided including the restaurant area, which the applicant wishes to open to the public. The restaurant component would generate a requirement of approximately five spaces (including the ESD discount) and therefore, a total of 29 spaces.

The development proposes 25 car parking spaces (including one disabled parking space) and therefore a shortfall of four spaces. Council's Development Engineer has advised that the applicant has submitted sufficient justification for the application of the ESD reduction and that there would be sufficient room to accommodate the extra four parking spaces required to the west of the proposed parking area. As detailed above, it is Council officers opinion that Lots 1 and 2 do not have the benefit of existing use rights and therefore, could not be used for additional carparking, ancillary to the motel.

However, for reasons outlined within this report, Council officers do not consider that existing use rights for the restaurant to be open to members of the general public is sustained in this instance. Therefore it is considered that proposed parking spaces (25) is adequate (a condition will be applied to the consent restricting use by the general public).

HRV accessibility, also required under Section A2, has been addressed by the applicant and a condition of the consent has been applied with this regard (in relation to the submission of a Traffic Management Plan). Council's Development Engineer has advised that no extra on-site parking provision is required, but accessibility is to be demonstrated (which may be required during the construction of Stages 2 and 3). A condition shall be applied to the consent with this regard.

Please note that it is a requirement that car park construction is carried out as part of Stage 1 works to which the applicant has agreed to.

A4-Advertising Signs Code

As previously detailed within this report the application proposed the retention of the existing pylon sign and the installation of a new wall sign, located on the northern access stairs. Section A4 seeks to preserve the residential amenity and minimise the visual impact of signs in residential areas.

As detailed within this report Council is unable to acknowledge existing use rights for the existing pylon sign. On this basis this element of the proposal has been deleted from the submitted plans.

It is considered that the proposed wall sign would be in keeping with the provisions of Section A4 of the DCP, which allows a maximum of five signs per business.

Further, it is considered that the proposed sign would not cause visual clutter and would preserve the overall residential character of the locality.

It is considered that the proposed sign would be consistent with Section A4.

B19 – Bogangar/Cabarita

Section B19 of the DCP specifically relates to the Bogangar and Cabarita Beach Locality and advises that Cabarita Beach has only limited development due to the proximity of protected wetlands. The DCP acknowledges the importance of the State Government's Coastal Policy 1997 in the protection of the environmental and scenic qualities of the coast as well as encouraging higher density residential development in close proximity to town centres, to create easy access to services and stimulating the town centre environment.

The DCP acknowledges that a Vision Statement for the Bogangar / Cabarita Beach study area has been formulated which expressed the area to be a unique coastal village characterised by: significant natural assets; peaceful, quiet beach lifestyle; a community living in harmony with the natural environment and embracing a beach village atmosphere; an attractive holiday destination for a variety of tourists and a safe environment.

The Steering Committee established for the study reinforced the unique coastal village character with a vision as follows:

'To retain and enhance the unique natural environmental character and coastal lifestyle offered by Bogangar / Cabarita Beach, whilst embracing high quality development promoting the area as a popular location for residential living, tourism and business'.

The DCP provides a number of objectives for the area such as: facilitating economic development through a viable and attractive 'niche market' for tourists, retail and commercial investors; ensuring the compact village form is retained and enhanced through appropriate forms of infill development and ensuring that new development is adequately protected from environmental hazards, such as coastal processes.

As detailed within this report, the application relates to alterations and additions to improve services and amenities to an established motel.

In terms of the visual appearance of the development, the development, which has been referred to Council's Urban Designer, is considered to provide a contemporary uplifting of the existing building and would contribute to the visual amenity of the area. Further, it is considered unlikely that the proposal would impact on matters relating to ecology or environmental conservation.

As discussed in greater detail below, the proposed outdoor eating area located at the front (seaward side) is located in front of the 2050 Hazard Line, the remainder of the motel being located in front of the 2100 Hazard Line. The application has been referred to Council's NRM Unit who have recommended appropriate conditions are applied to any consent.

Council however acknowledges that the proposed alterations to the existing motel will result in a significant expansion of rooms and services (restaurant area, lounge, outdoor eating area, pool, and tennis court). Such additions will undoubtedly impact on the residential amenity of surrounding dwellings in terms of noise and disturbance. It is for this reason that suitable conditions would be applied to any consent to ensure that the amenities within the motel are used by guests who are staying overnight in the motel only, within approved hours of operation.

Should the applicant wish to open the restaurant area and the like to members of the public in the future, a development application would be required including a revised Noise Impact Report and the like. Whilst Council officers consider that the improvement and modernisation of an existing business within the Cabarita Beach locality, it is also recognised that this should not be to the detriment of surrounding residential amenity.

B25 – Coastal Hazards

Section B25 of the DCP provides guidelines for the development of the land in close proximity to the Tweed Coast, having regard to minimising coastal hazard risks as well as to establish whether the proposed development is appropriate to be carried out, and the conditions of the 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).

Coastal hazards are defined as detrimental impacts of coastal processes on the use, capability and amenity of the coastline such as: beach erosion; shoreline recession; coastal inundation; coastal cliff or slope instability; tidal inundation and erosion caused by tidal waters. Erosion escarpment relates to the vertical or near vertical drop in the profile of a beach caused by tidal or storm erosion.

The DCP acknowledges that urban development is expected to continue in proximity to the coast and should therefore be carefully planned and managed to minimise impacts on coastal resources and limit development in areas that may be at risk from coastal hazards.

The existing motel is currently located forward of the 2100 Hazard Line, with proposed extensions to the motel being located forward of the 2050 Hazard Line, as shown in the following diagram:



Extract from Council's GIS showing location of Hazard Lines in relation to existing motel

Part 3.2.2 of Section B25 states that development in the 2050 Hazard Zone is encouraged to be built as modular, detachable and relocatable which will benefit future relocation or removal of development in the future if under threat from coastal hazards. It also advises that no building is to be located within 20m of the current erosion escarpment and should development within the 2050 Hazard Zone be granted consent (subject to a Coastal Risk Management Report) then any consent granted will be subject to the proviso that if the erosion escarpment comes within 20m of any building, then the use of the building will cease, and a Section 88E (*Conveyancing Act, 1919*) instrument will be used to achieve this outcome.

It also advises that should the use or occupation of the building cease, then the owner of the land will be responsible for the removal of any or all buildings from the site further than 20m from the erosion escarpment. Further, Section B5 advises that all structures constructed within the 2050 Hazard Zone shall:

- a) Be compatible with the coastal hazards identified;
- b) Be set back as far landward as practically possible;
- c) Not give rise to any increased hazard or other public or private property;
- d) Be designed to structurally withstand the designated hazard at the risk level required
- e) Be designed with consideration given to the effects of larger events than the designated hazard;
- f) Be constructed in a manner or to a level which caters for the coastal hazards of wave runup and overtopping and inundation from increased water levels.

Section 3.2.3 – Additions, Renovations, Alterations and Maintenance advises that additions and alterations to existing buildings will be considered on their merits with consideration being given to the location of the erosion escarpment, the type of building involved and access to the site. Additions or alterations will be considered where there will be no adverse effect on the ability of the building or buildings to be removed in an emergency.

Council's Natural Resource Management (NRM) Unit have assessed the submitted Coastal Report and have recommended that appropriate conditions are applied to any consent in relation to the removal of the outdoor food and beverage service area and that the building should cease to operate should the erosion escarpment reach 20m of the building. It is considered that the proposal accords with Section B25 of the DCP.

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

Clause 92(a) Government Coastal Policy

Clause 92 of the Regulations requires the consent authority to consider the Government Coastal Policy, or the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*.

The proposal is not inconsistent with the *NSW Coastal Policy*, as previously detailed within this report, as it will not impact or restrict access to any foreshore areas. Further, the level of overshadowing is not considered to result in such a detrimental impact on the recreational area of the coastal foreshore to warrant refusal of the proposal.

It is considered that the proposed development would be consistent with the intentions of the Policy.

Clause 92(b) Applications for demolition

The application has been referred to Council's Building Services Unit with this regard who have recommended suitable conditions are applied to any consent.

Clause 93 Fire Safety Considerations

Section 93 of the Regulations seeks to ensure that the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use. The development application has been referred to Council's Building Unit in this regard who has advised no objections to the proposed development subject to conditions.

Clause 94 Buildings to be upgraded

Section 94 of the Regulations is applicable where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls or the measures contained in the building are inadequate: (i) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or (ii) to restrict the spread of fire from the building to other buildings nearby.

Council's Building Services Unit considers the proposal is adequate in this regard and will generally comply with the requirements of the BCA.

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

Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. This document highlights that the '*current State Government policy strongly advocates the protection and maintenance of beach amenity and access when dealing with coastline hazards*'. The document also provides management objectives to: protect, rehabilitate and improve the natural environment; to recognise and accommodate natural processes and climate change and to protect and enhance the aesthetic qualities of the coastal zone.

The applicant has provided information in relation to the suitability of the proposed development in this coastal location and considered the impact of the proposal on both the aesthetic and recreational value of the coastline, impact on views and in relation to the height and scale of the proposal. As previously detailed within this report the proposed development is considered to generally accord with the provisions of the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast* as well as Section B25 of the Tweed DCP.

It is considered that the proposed alterations and additions will be unlikely to impact on the natural environment or coastal processes, nor on the visual amenity or scenic quality of the area. As detailed within this report, appropriate conditions have been applied in relation to the use of the building ceasing should the erosion escarpment reach 20m of the building as well as the proposed outdoor eating area to be relocatable. It is considered that the proposal is generally consistent with the objectives of the Tweed Shire Coastline Management Plan 2005

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the proposed development as the subject site is not located in the vicinity of the Cobaki or Terranora Broadwater.

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

Context and Setting

The proposed development comprises alterations and additions to an existing and well established motel. The application has been referred to Council's Urban Designer who has advised that the proposed alterations are of a high architectural quality and are generally supported: *'the additional level of hotel rooms, addition of balconies to the existing hotel rooms, addition of new kitchen and outdoor dining areas combined with amenities, caretaker facilities, multi-purpose room and tennis courts will provide a much needed 'facelift' to the classic beachfront coastal hotel. Improving and contemporising the facilities will ensure the continued use of the hotel within this location which contributes to the overall landuse character of this part of Cabarita'*.

It is considered that the use of materials is acceptable with the proposed increase in height of the building being of an appropriate scale and proportion, with the predominantly timber clad materials and replication of strong horizontal banding to the upper level, which reduces bulk and mass. Council's Urban Designer has advised that, despite the additional level, the hotel would retain its generally low scale and understated coastal holiday motel character.

It is considered that the proposed additions to the motel would be in keeping with the context and setting of the locality.

Access, Transport and Traffic

The site currently has a single access driveway constructed with a bitumen surface. This same location will be utilised for the new site ingress, but be reconstructed in concrete and a new egress driveway be constructed to the west.

Council's Development Engineer has advised that the proposed access arrangements are satisfactory, providing further information is submitted in relation to HRV accessibility (as this may be required during the construction phases of Stage 2 and 3). It is considered unlikely that the proposed additions and alterations would generate significant levels of additional traffic and Council's Development Engineer considers that the existing street hierarchy is considered to be capable of easily coping with this extra traffic.

Flora and Fauna

Residential and urban development surrounds the site to the north, south and west and coastal foreshore reserve is located to the east. A large portion of the site is vacant land with a few scattered trees and landscaped gardens within the grounds of the existing motel.

The majority of the site is substantially cleared of native vegetation with several isolated trees located around the motel. Council's Ecologist has advised that these trees would provide minimal habitat and shelter to highly mobile species traversing the site from time to time and that, for this reason, the ecological value of this site is very low.

The proposal requires the removal of three trees (Coastal Banksia; Golden Penda and Muttonwood). A large Norfolk Pine and a Cabbage-tree Palm are to be retained and incorporated into the proposed landscaping of the site.

Council's Ecologist has advised that the proposed works are considered minor in nature and that, although a minor reduction in foraging resources may occur, these will be sufficiently compensated in landscaping. Appropriate conditions shall be applied to any consent to ensure that vegetation is limited to three trees as identified on the On-site Vegetation Management Plan, prepared by Planit Consulting and dated July 2012, and that landscaping should incorporate a minimum of 80% native species.

Road traffic impacts

Council's Environmental Health Services have advise that the submitted Noise Impact Assessment has considered onsite external noise criterion from increased traffic noise by using the *NSW Industrial Noise Policy* as a guide to acceptable noise levels ay [potentially affected residences (for day and night). The Report used methodology from the *RTA Guide to Traffic Generating Developments* to calculate noise levels from increased traffic activity on Cypress Crescent.

Both day and night time calculated values were lower than the *NSW Industrial Noise Policy* values with a total of 24 trips calculated at peak hour, which is an increase of the current calculation of 16 trips. Council's Environmental Health Services have advised that *'given the relatively low frequency of vehicle movements likely to result from the proposed development and the small (3dB(A)) noise increase, noise impacts from vehicle noise may be considered relatively minor. However, there will be a reduction in amenity for existing residents'*.

Whilst a reduction in amenity for existing residents is acknowledged, it is considered that the proposal would be unlikely to generate such a detrimental impact to such amenity so as to warrant refusal of the proposal.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Residential development is located to the north and south of the subject site, as shown in the image below:



A number of submissions have been received from neighbouring properties, as detailed further within this report. Council officers consider that the nature of the surrounding land uses (residential dwellings located in close proximity to the motel, particularly to the southern boundary) are such that the proposal may have the potential to impact on surrounding land uses, as detailed further within this report.

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

A total of seven submissions have been received detailing a number of concerns with the proposed development, as summarised below:

Overlooking

The balcony areas proposed on the southern elevation are to be fully screened. Further, a setback of approximately 3.6m would reduce the ability for guests to be able to walk to the edge of the balcony and look down into the neighbouring properties.

Overshadowing of foreshore

Submissions received by Council have raised concerns in relation to the level of overshadowing of the proposed development. The submissions advise that the area that is to be overshadowed is an active recreation area and any level of overshadowing is considered unjustified and unreasonable.

As previously detailed the proposed alterations and additions to the motel will result in a level of overshadowing to the coastal foreshore reserve and on this basis a SEPP No. 1 Objection has been lodged with Council. For the reasons already outlined within this report, Council Officers are of the opinion that the level of proposed overshadowing is relatively minor and does not warrant refusal of the application.

Overshadowing of Properties

The shadow diagrams submitted with the application details that there will be some level of overshadowing to the properties located to the south of the motel. It is considered that the level of overshadowing to dwellings would not be for lengthy time periods through the day with the shade moving so that each dwelling would have the same level of amenity.

It is considered that the level of overshadowing to the properties to the south is to so unreasonable so as to warrant refusal of the proposal.

Noise and disturbance

A number of the issues raised by submitters relate to noise and disturbance associated with the proposed restaurant and outdoor dining area and construction of new swimming pool. The application also proposes the construction of a tennis court however as detailed this component of the application has been deleted. Submitters have advised that perhaps the most suitable location for the proposed eating area and the like would be to the rear of the motel, in the approximate area of the proposed tennis courts.

The restaurant/outdoor dining area and the swimming pool are located adjacent to the southern boundary to the adjoining domestic dwellings along Palm Avenue (numbers 1, 2, 5 and 7). Council's Environmental Health Unit have advised that residents of these properties would potentially be affected by noise, odour, lighting and hours of operation. The southern wall of motel is proposed to be extended which will provide some noise attenuation.

The applicant has submitted a Noise Impact Report that proposes acoustic treatment and / or management including as follows: restricting operating hours for the indoor areas (restaurant, multi-purpose space and ground level lounge) to 7am to midnight; outdoor areas (pool and BBQ) to 7am to 10pm. It is also acknowledged that amplified music is to be restricted to 'inside areas only' and at a level that does not interfere with normal conversation.

The Noise Impact Report makes further recommendations in relation to the management of potentially noisy areas (closing doors and windows) along with recommendations for construction standards such as: laminate window glass; awning style windows along the southern side of the multi-purpose room; heavy vinyl curtains and the like.

Council's Environmental Health Unit have advised that, in order to protect surrounding residential amenity, hours of operation for dining areas (not including BBQ area) to be changed from the proposed 7am – midnight seven days a week, to 7am to 9pm Sunday to Thursday and 7am – midnight Fridays and Saturdays. Outdoor facilities and activities (swimming pool and BBQ) to be restricted to 7am – 9pm seven days a week with amplified music or sound to be conditioned for internal use only.

Please note that the existing motel already comprises an outdoor swimming pool and outdoor seating areas. Whilst it is acknowledged that the expansion and modernisation of the motel is likely to have the capacity to increase the number of patrons and use of the facilities, it is considered that, providing the use of the motel is carried out in accordance with the Noise Impact Report, that the proposal would be unlikely to impact on surrounding residential amenity to such an extent to warrant refusal of the proposal. It would be unreasonable for Council to request that the proposed extensions are located to the rear of the existing motel, given the proximity of the coastal foreshore and location of existing swimming pool and facilities.

Further, Council's Environmental Health Services have recommended that a condition is applied to any consent requesting the submission of a noise management plan that details the type and location of proposed plant and equipment (such as commercial air conditioners, cool-rooms, kitchen and laundry exhausts and the like). The plan shall also include noise mitigation measures to ensure the emission of intrusive noise is prevented.

Use of the restaurant for the general public

The application originally proposed that the premises would not be open to the general public however in the response to the request for further information the applicant proposed that the restaurant and outdoor serving area is to be opened to members of the general public (please note that pool and tennis court is to be used by guests of the motel only).

The applicant has provided legal advice in relation to the use of the restaurant for members of the public. The advice states that the definition of 'motel' provides that three activities could occur within a motel premises:

1. Overnight accommodation provided to travellers and their vehicles;
2. The provision of meals to travellers using the accommodation facilities; and
3. The provision of meals to the general public.

The advice further states that Justice Cripps of the Land and Environment Court in Scott & Ors v Wollongong Council & Anor [1989] NSWLEC 85 when considering the definition of a 'Motel' within the Model Provisions, confirmed that the operation of a 'restaurant' is also permitted. His Honour commented that '*Most motels in New South Wales have restaurants which serve members of the public not staying at the motel*'.

The advice therefore recommends that the *approval of a 'motel' therefore also permitted the service of food to patrons and to the general public*'.

The legal advice states that the premises has been used as a motel prior to the commencement of the Tweed LEP 1987 and that food has been provided to motel guests for consumption in their rooms and to the general public, with food being prepared in the commercial kitchen (granted consent under Permit Number T4/1551).

The legal advice advises that the *premises has continued to operate as a motel with food service to patrons and the general public, particularly to guests associated with weddings and to informal dining in public areas within the curtilage of the site*. The advice concludes that the legal representative is of the *opinion on the information provided, that the motel may prepare and provide meals to the motel patrons and the general public pursuant to the Act's existing use rights provisions*.

Council officers do not concur with this position as a search of Council's records has not revealed the presence of a restaurant / dining area for guests and members of the general public (separate to living accommodation) on the approved plans. Further, Council's Environmental Health records indicate that food preparation was limited to the preparation of small meals (breakfasts) only in the kitchen, to be delivered to guests in their rooms.

Whilst it is acknowledged that the motel has the benefit of existing use rights, Council officers considered that existing use rights cannot be acknowledged for a restaurant and / or dining area on the subject site, as approval has never been granted for this use and is not demonstrated on the existing or previous plans.

The application currently before Council proposes alterations and additions to an existing motel only. Should the applicant wish to open the facilities to the general public, and formalise the use of the site for functions and the like, a future development application would be required (including any additional details of existing use rights not currently before Council; amended noise impact report and details of potential residential amenity issues).

Liquor licence

The proposal seeks the alteration and addition to a motel which includes a licensed restaurant. It has been brought to Council's attention that the applicant has lodged an application for a liquor licence from Monday to Saturday between the hours of 10am – 12.00am (Monday to Saturday) and 10.00am to 10.00pm (Sunday) (with a 6 hour proposed closure time between 4.00am to 10am). The licence application proposes a total of 100 patrons on the proposed licensed premises.

Submissions have expressed that the likely uses associated with the liquor licence application are inconsistent with the historical use of the site which has been used as a motel since its establishment. Submitters have expressed concerns that, given the proposed hours of operation within the liquor licence application, there is a likelihood that the proposal would be used as a late night bar/nightclub and that the submitted noise report has not taken this into consideration. There are concerns that the Cabarita locality is unable to accommodate such a late night proposal (lack of infrastructure such as policing and transport).

In response to the concerns raised within the submissions, the applicant has advised that having a liquor licence does not allow the premises to be operated as a bar, but allows for the provision of mini bar facilities in rooms, provide alcohol with means and during the occasional function (wedding and the like). The applicant advises that a number of motels/hotels and caravan parks within the area have liquor licences and that the service of alcohol will be primarily to the rooms.

The applicants' justification with this regard is considered to be acceptable in this regard and it is considered reasonable that alcoholic beverages are permitted to be served to guests of the motel. Council however is of the opinion that development consent has never been granted for the use of the building as a restaurant for the use of members of the public, nor for the use of the premises for functions or the like.

The application currently before Council seeks for the alterations and additions only to an existing motel only. It is therefore considered necessary and reasonable in this instance to apply a condition to any consent to ensure that the facilities are to be used by guests of the motel only as well as to apply hours of operation conditions in accordance with the recommendations from Council's Environmental Health Officer. Should the applicant wish to open up the facilities to members of the general public and to formalise the use of the premises for functions and the like. An amended development consent would be required. A suitable condition in this regard is proposed.

Late night venue

A number of submissions have reported to Council that the applicant is associated with a number of late night venues in the Brisbane area and on this basis, are concerned that the Hideaway Motel is looking to attract similar clientele (young backpacker crowd that are seeking a party atmosphere close to the beach).

Whilst such concerns are appreciated by Council officers, the application seeks for the alterations and additions to a motel only. Provided the use of the motel is carried out in accordance with the submitted Noise Impact Assessment Report it is considered that such concerns would not warrant the refusal of the application. As detailed above, Council's Environmental Health Unit have assessed the proposal and consider that the proposed alterations and additions would be unlikely to impact on surrounding residential amenity.

Amended hours of operation conditions will be applied to any consent as well as a condition to ensure that the premises is to be used solely by guests of the motel.

Should Council receive reasonable complaints about the use of the facilities (such as in relation to noise and disturbance), these would be referred to the most appropriate service in Council for further action.

Please note that a submission has been received that states there is no requirement for an additional entertainment venue in the small community of Cabarita, which is already serviced by several liquor venues (bowls club, hotel, restaurant, bottle shops and the like) with all of these venues being located in the main commercial precinct of the town. Council is unable to take issues relating to current facilities or market demand for such a facility into consideration however it is of note to reiterate that the application currently before Council does not comprise a late night bar / drinking establishment but to supplement the services and facilities of the existing motel.

Council officers acknowledge that the concerns of local residents in relation to noise and disturbance from a late night venue are valid and reasonable in this quiet and low density residential area. However, the application currently before Council seeks for the alteration and addition to the existing motel only. Suitable conditions will be applied to the consent to ensure reasonable hours of operation, as recommended by Council's Environmental Health Unit.

Camping site

A submission has also been received that details the expansion of the motel is not required and provision of lower cost camping grounds should be encouraged on such a site.

A camping facility would also be prohibited on the subject site and such a proposal in this location would be likely to generate far significant amenity (noise, parking) issues for proposed residents than that currently before Council. Market demand and perceived suitable land uses is not a material planning consideration.

Traffic generation

Submitters have advised that the planned entry to the motel will generate more traffic usage as the number of rooms has significantly increased. An adjoining property has specific concerns with this regard as they advise that the motel uses a partly shared driveway.

The development application has been referred to Council's Development Engineer who has advised that the proposed access and parking (including disabled parking space) arrangements appear to be satisfactory. Further, the development proposes a relatively minor expansion of the motel accommodation. As previously detailed a condition will be applied to any development consent to ensure that the facilities of the motel are to be utilised by guests of the motel only.

Any future development application to open the facilities to the general public (including functions and the like) would need to consider the impact of traffic generation to surrounding properties.

Inadequate setback distances

Concerns have been raised in relation to inadequate setback distances from the proposed extensions to the building to the boundaries of the site. The location of the proposed extension to the building is in some ways restricted by the location of the existing motel building. However, as detailed previously within this report, Section A1 of the DCP (Part C – Residential Flat Buildings) sets a minimum of 1.5m side setback distances.

The proposal comprises a side setback of 1.5m which accords with the controls. Further, primary windows and doors face the foreshore reserve with secondary windows / doors facing side boundaries. It is considered that the proposal would not have such an impact on the residential amenity of neighbouring properties so as to warrant refusal of the proposal.

Coastal Hazards

Submissions have also addressed the fact that the subject site is located within the 2050 Hazard Line and therefore the suitability of the site for development. This issue has been addressed within the body of this report in great detail and, as discussed, Council's NRM Unit have advised that the proposed development is acceptable with this regard, provided appropriate conditions are applied to the consent (in relation to the use of the building ceasing and the outdoor eating area being a removable structure).

Signage

Concerns have been expressed that signage should be in keeping with the residential amenity of the locality and reflect the quiet and secluded nature of the retreat (as the 'Hideaway Motel' suggests).

As detailed, the existing pylon sign located on Lot 1 has not been included as part of this development application. However, condition will be applied to any consent to ensure that details of signage (wording, materials) for the proposed wall sign are submitted prior to the issue of a Construction Certificate. It is also considered reasonable to ensure that the proposed signage is not to be internally illuminated, to safeguard the character of the area and residential amenity.

Notification of development proposal

One submission has expressed that Council has insufficiently notified adjoining properties as properties within 50m of the subject site have not received notification. The application was advertised for a period of 14 days from Wednesday 16 May to Wednesday 30 May 2012 to a number of properties on land immediately adjoining the subject site. Further, a site notice was displayed adjacent to the site and the proposed development was advertised in the Tweed Link.

It is considered that the proposal was notified in accordance with the requirements of Section A11 (Public Notification of Development Proposals) of the DCP, which seeks that Council notify all persons who own land immediately adjoining the application site. It was considered unnecessary by Council officers to notify additional properties in this instance.

Signatures of support

Approximately 260 signatures in support of the proposed development have been submitted by the applicant in a petition format. The petition reads as follows:

'I fully support the recent development application at the Hideaway Motel at 19-25 Cypress Crs and 30 Tweed Coast Rd, Cabarita Beach. I fully support the restaurant being open to the public. I believe the Cabarita Beach community will benefit enormously from the proposed refurbishment and upgrade put forward by the new owners of the Hideaway. By signing this letter of support I believe that the proposed development will:

- 1. Bring economic benefits to the local business community;*
- 2. Increase local employment;*
- 3. Reinvigorate local tourism.*

The refurbishment plans provide a low impact solution for an essential upgrade of the property that is in tune with the existing peaceful and tranquil atmosphere that is Cabarita Beach'.

The collection of a significant number of signatures is of material consideration to the proposed development however, the concerns from residents of dwelling houses located immediately adjacent to the subject site (in relation to noise and the like) are well founded.

Whilst Council officers acknowledge and welcome the expansion and modernisation of the existing motel, this should not be at the expense of surrounding residential amenity. However, as detailed within this report, the application seeks for the alterations and additions to the motel only and does not seek to provide a noisy, late night establishment.

Council considers that the design and appearance of the proposed modifications are in keeping with the character of the locality. To ensure that the residential amenity of surrounding residents is preserved, suitable conditions will be applied to any development consent to ensure (in relation to hours of operation and the like).

(e) Public interest

The application proposes minor alterations and additions to an existing and well established motel. It is considered that the proposed additions and alterations would improve the visual appearance of the existing motel and improve the facilities for motel guests. It is acknowledged that the proposed development, if approved, would have the capacity to impact on the residential amenity of surrounding properties however, provided the motel is operated in accordance with the submitted Noise Impact Assessment report and is used by guests of the motel only, that refusal of the application on this basis would be unreasonable.

Further, the application proposes a level of overshadowing of the coastal foreshore however, for reasons outlined within this report, it is considered that the level of overshadowing is not so great as to set a harmful precedent for similar development or warrant refusal of the proposal.

It is considered that the proposal is generally in accordance with matters relating to the public interest.

OPTIONS:

1. Approve the development application in accordance with the recommendations within this report; or
2. Refuse the development application.

The Officers recommend Option 1.

CONCLUSION:

The application proposes alterations and additions to an existing motel that, whilst prohibited in the 2(a) Low Density Zone, has established existing use rights. Whilst concerns relating to the use of the motel as a lively bar/entertainment facility are acknowledged, such facilities are intended to be ancillary to the use of the building as a motel.

It is considered that the proposed development is acceptable, providing that the restaurant and outdoor beverage and eating area is to be utilised by guests of the motel only as Council officers do not consider that the subject motel has established existing use rights for the serving of food or beverages to the general public; a condition will be applied to any consent with this regard. Should the applicants wish to expand the use of the motel to accommodate use by the general public, a future development application (including updated Noise and Impact Assessment) is to be submitted to Council for further consideration. Further, conditions shall be applied to any consent to ensure adequate hours of operation, in line with Council's Environmental Health recommendations.

Following an assessment of the submitted information and the response to Council's request for further information against the relevant heads of consideration, and provided a number of conditions are applied to any development consent, the application is recommended for approval.

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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13 [PR-CM] Development Application DA12/0082 for a Two Lot Subdivision at Lot 1 DP 1101049 No. 63 Duranbah Road, Duranbah

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0082 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council has received a development application for a two lot subdivision at No. 63 Duranbah Road, Duranbah. The development proposes to subdivide the existing allotment into two allotments: proposed Lot 1 would comprise 6.55 hectares and would contain an existing hydroponic industry and residential components; proposed Lot 2 would comprise ten hectares with an indicative dwelling site.

Part (2)(b) of Clause 20 of the Tweed Local Environmental Plan (LEP) 2000 requires consent to be granted to the subdivision of land within the 1(b1) zone if the area of each allotment created is at least 10 hectares (unless it does not comprise agricultural or residential components). Proposed Lot 1 would not comply with this clause as it would be only 6.55 hectares in size and would comprise both agricultural (crop growing) and residential (existing primary dwelling and staff amenities building also used for permanent residential accommodation) components.

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 (Department), officers have resolved to report this application to full Council. The standard is varied by approximately 40%.

Concurrence was granted by the Director-General of the Department in this instance to permit the creation of proposed Lot 1 of 6.55ha for the following reasons:

- *The proposal does not raise issues of regional or State environmental planning significance;*
- *There is no public benefit in maintaining the development standard in this instance since a horticultural pursuit, rural industry and a dwelling are established on the proposed undersized lot and its continued operation is unlikely to be adversely affected by the subdivision'.*

The Department have advised that they consider that even though the land would be fragmented in terms of ownership, that it would not affect the current financial or agricultural viability of the existing rural industry. It is also considered by the Department that there would still be room to expand the current agricultural facilities.

Of key importance in the determination of this application is that Concurrence has been granted by the Director-General to permit the creation of proposed Lot 1. Whilst the creation

of an undersized allotment would not normally be encouraged within the Shire, the applicant has demonstrated that, due to the intensive nature of the business, that the ten hectares minimum lot size is not required to facilitate an ongoing rural production and processing business.

It is therefore considered that the proposal would be unlikely to set a harmful precedent for similar development as the proposed subdivision would not affect the existing status quo of the land, given the existing hydroponic activity and residential components are located on proposed Lot 1 only, proposed Lot 2 being currently vacant (not used for agricultural purposes). Further, the subdivision of the land may also enable the remaining ten hectares of the site (proposed Lot 2) to be sold and allow this land to be developed for further agricultural pursuits.

The applicant has advised that the value added as a result of the subdivision will enable additional investment to be secured for the existing rural processing and production business. Further, the applicants have demonstrated the genuine requirement for the managers of the business to live on site (for constant maintenance, site operation and security purposes).

Having regard to the relevant statutory controls and an assessment of the submitted SEPP1 Objection in relation to Clause 20(2)(b) of the Tweed LEP 2000, in particular, it is considered that the proposed two lot subdivision is justified in this instance. On this basis approval of the proposed development is recommended.

RECOMMENDATION:

That Development Application DA12/0082 for a two lot subdivision at Lot 1 DP 1101049; No. 63 Duranbah Road, Duranbah 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 1 (Proposed Lot Subdivision) prepared by Planit Consulting and dated June 2012, except where varied by the conditions of this consent.**

[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. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent. Application shall include engineering plans and specifications for the following required works:**
 - Each lot shall have a sealed driveway, constructed from the road to 3m inside the property boundary. A gate shall be installed for the driveway in the boundary fence. The driveway location must be such that internal two (2) wheel drive access can be constructed from the driveway to the nominated building site.**

5. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 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.
6. Erosion and Sediment Control shall be provided in accordance with the following:
 - 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*.
 - 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".

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0005]

8. 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.

(a) Tweed Road Contribution Plan:

6.5 Trips @ \$1146 per Trips \$7449

(\$1137 base rate + \$9 indexation)

S94 Plan No. 4

Sector6_4

- (b) Open Space (Casual):**
1 ET @ \$526 per ET \$526
(\$502 base rate + \$24 indexation)
S94 Plan No. 5
- (c) Open Space (Structured):**
1 ET @ \$602 per ET \$602
(\$575 base rate + \$27 indexation)
S94 Plan No. 5
- (d) Shirewide Library Facilities:**
1 ET @ \$816 per ET \$816
(\$792 base rate + \$24 indexation)
S94 Plan No. 11
- (e) Eviron Cemetery:**
1 ET @ \$121 per ET \$121
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (f) Community Facilities (Tweed Coast - North)**
1 ET @ \$1352 per ET \$1352
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (g) Extensions to Council Administration Offices
& Technical Support Facilities**
1 ET @ \$1812.62 per ET \$1812.62
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18
- (h) Regional Open Space (Casual)**
1 ET @ \$1064 per ET \$1064
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (i) Regional Open Space (Structured):**
1 ET @ \$3730 per ET \$3730
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

[PSC0175]

9. 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]

10. 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]

11. 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:

- Restriction to be created over Lot 2 stating that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.
- Restriction to be created over Lot 2 stating that the lots are not connected to a reticulated sewer system and any dwelling to be constructed on the site will need to provide on-site sewage management systems.
- A right of carriage way shall be provided to allow a service vehicle to gain access from proposed Lot 1 to the existing irrigation bore located in proposed Lot 2. The right of carriage way width shall be suitable for a service vehicle.
- Provide an easement for any electrical works over Lot 2 servicing the existing and/or proposed new bore.
- Provide an easement for any water reticulation over Lot 2 servicing the existing and/or proposed new bore.
- Positive covenant for the owner of proposed Lot 1 to have rights to use the existing bore within proposed Lot 2.
- Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
- 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.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

12. 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. Furthermore, prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed in accordance with Council's procedure on street numbering.

[PSC0845]

13. 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]

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

[PSC0925]

15. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0945]

16. 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]

17. The production of written evidence from the local electricity supply authority certifying that the reticulation of overhead electricity (rural subdivisions) and energising has been provided to each allotment.

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.

[PSC1175]

18. Prior to issue of a subdivision certificate a Council approved (under section 68 of the NSW Local Government Act) wastewater treatment device is to be installed to service the existing primary dwelling, existing nursery amenities, staff and office amenities. Any proposed onsite sewage management systems is to be designed in accordance with the provisions of Australian Standard AS1547 and *Environment and Health Protection Guidelines On-site Sewage Management for Single Households* 1998.

[PSCNS01]

19. Prior to the issue of a Subdivision Certificate, approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993 shall be obtained from Council.
20. Prior to the issue of a Subdivision Certificate a potable water supply is to be provided for the existing dwelling house and staff amenity building in accordance with the *Australian Drinking Water Guidelines* 2004. In addition, a quality assurance program is to be implemented in accordance with the *NSW Public Health Act 2010*, *NSW Public Health Regulation 2012*, and *NSW Health Private Water Supply Guidelines*.
21. Prior to the issue of a Subdivision Certificate, a dedicated roof catchment water supply, or other suitable Council approved supply source shall be provided to the existing primary residence. Any domestic water supply roof collection system should be fitted with a first flush device and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum dedicated storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided.

[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 drawing identified as 'Proposed Lot Subdivision', drawn by ZP (Planit Consulting) and dated June 2012.
2. Any works associated with the electricity supply, required to be undertaken due to the proposed subdivision, are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
3. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Letusgrow Hydroponics
Owner: Mr Denis G Perry & Mrs Joy M Perry
Location: Lot 1 DP 1101049; No. 63 Duranbah Road, Duranbah
Zoning: 1(b1) Agricultural Protection
Cost: Not applicable

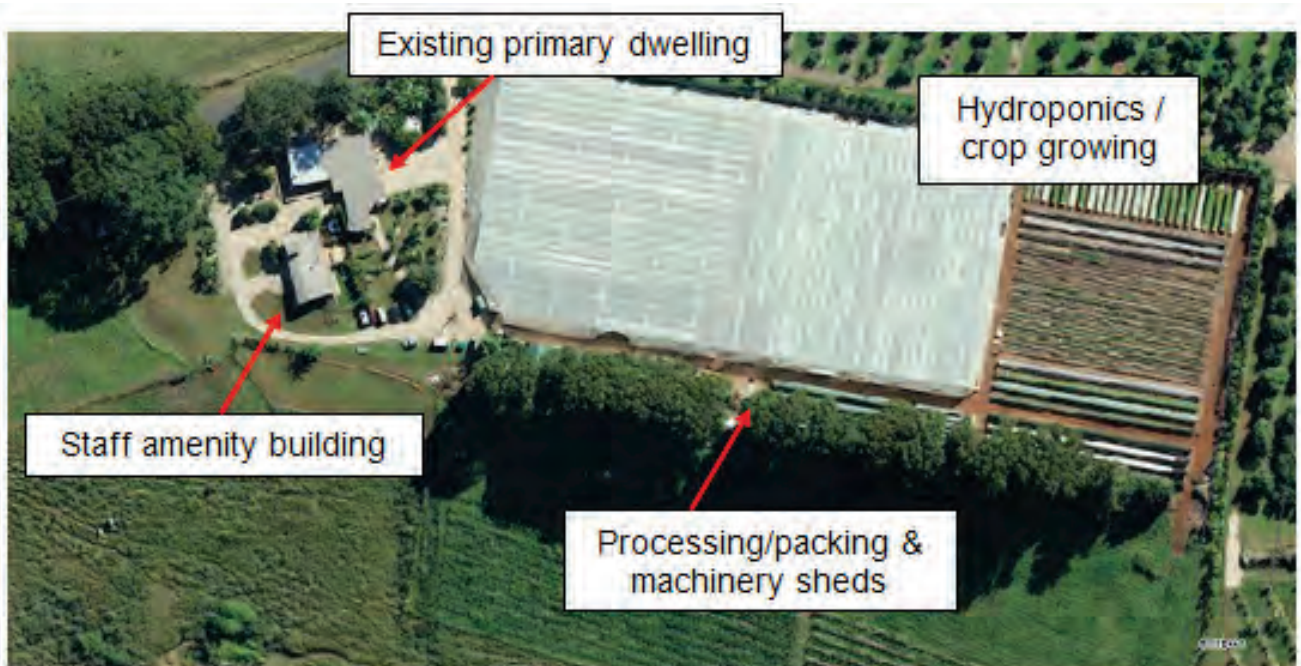
BACKGROUND:

The Subject Site

The subject property is known legally as Lot 1 in DP 1101049, No. 63 Duranbah Road. The site has an area of 16.55 hectares and is relatively regular in shape.

The site currently comprises a dwelling house, staff amenities building (located to the south of the dwelling house) and a hydroponic, small cropping and processing and packing of produce enterprise known as 'Letusgrow'.





Snapshot of residential components and agricultural activities

The site is not serviced by reticulated water or sewer, with onsite effluent disposal and water harvesting and bore being utilised.

The site is accessed from Duranbah Road. To the north/north-west of the lot lies farmland/grazing land; to the north/north-east and east a plantation in association with Tropical Fruit World and to the south, grazing land. The nearest residential property is located approximately 25m to the north east of the subject allotment.

The site slopes dramatically to the south ranging from approximately RL 60m AHD to the north of the site at Duranbah Road to RL 20-10m AHD at the southern section of the site.

The existing agricultural enterprise, known as 'Letusgrow hydroponics', is a well established business which has been operating for approximately eight years. A significant amount of capital investment (in the region of \$2.5 million) has been placed into the existing business which currently turns over approximately \$1 million per annum.

Please note the following photographs that illustrate the well established and intensive nature of the 'Letusgrow' enterprise:



Intensive crop growing



Processing and packaging building



Cool room for storage of produce prior to dispatch

'Letusgrow' supplies produce (spinach, herbs, lettuce and the like) to seven Coles stores in the locality as well as to a number of surf life saving clubs and sports clubs in the area. The business currently employs six permanent staff (four working on site and two delivery drivers) and an average of 10 seasonal workers.

History

The history of this development site is relatively complex however is of relevance to the proposed development. The following information is based on a search of Council's records and previous reports.

Please note the following terminology for the existing structures on the subject site:

1. Proposed new dwelling (which was later deleted);
2. Existing primary dwelling (which was proposed to be the rural workers dwelling associated with No. 1 above however, this is now the primary dwelling as the new dwelling was deleted; and
3. Staff amenity building (old dairy bales).

Development consent was granted in 2005 (DA04/1685) for the construction of several large greenhouse structures, hail netting and the construction of a proposed new dwelling house. This application also permitted the decommissioning of the existing primary dwelling which was to be converted to an office and staff amenities building.

A subsequent modification to the original consent (DA04/1685.03) allowed various extensions and alterations to the existing primary dwelling and staff amenity building. A condition was applied to the staff amenities building prohibiting its use for residential purposes (on the basis of lack of land contamination report for this structure).

In 2007 development consent was granted for further extensions to the existing primary dwelling (DA04/1685.06). Within the assessment of this proposal it was considered that such substantial additions to the existing primary dwelling resulted in no immediate need for the proposed new dwelling and as a result the proposed new dwelling was deleted from the consent.

Within the assessment of a subsequent modification (DA04/1685.07), approved in 2009, it was advised that a 'misunderstanding on behalf of the applicant has resulted in a lot of previous confusion with regard to use of each component of the development. Although not conveyed on any plans in the past, it seems that the use of the dairy bales building as 'staff amenities' was always intended to include a residential component, for a staff member who provides 24 hour security for the existing hydroponics farm'.

Within the assessment of this modification it was advised that, as a result of staff usage, it was appropriate to maintain the kitchenette within the staff amenities building, but that the laundry should be removed. A link between the existing primary dwelling to the staff amenities building, by way of a large media room, was also approved as well other amendments such as an additional bedroom and other internal and external alterations. This resulted in the amalgamation of the staff amenities building and the existing primary dwelling, resulting in only one dwelling house on the site. A contamination report was reviewed by Council's Environmental Health Officer at that time who advised that the staff amenity building site was suitable for residential use; therefore the condition prohibiting its use for residential purposes was deleted.

Please note that the staff amenity building is currently occupied by the applicants' family, who are also employed on the site. To date the link between the staff amenity building and the existing primary dwelling has not been constructed, due to financial constraints. Providing the staff amenity building is not used as a separate form of accommodation and remains ancillary to the existing primary dwelling (i.e. laundry facilities are located in the primary dwelling house), it is considered that this scenario is acceptable as a dwelling is defined as '*a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile*' within the Tweed Local Environmental Plan 2000. The applicants will be required to ensure living arrangements on site are satisfactory in relation to the relevant planning provisions and, if necessary, to modify DA04/1685.07 (in order to remove the requirement for the link between the two structures).

Further, DA07/0976 approved the use of the farm and facilities for the processing of hydroponic vegetables grown on the site. This development did not propose an increase in the production or scale of activities, only that produce could be processed on site within an existing (previously approved) shed. It was advised that staff would not increase as it would be family members (currently living on the site) who would be operating the processing equipment (although this was not conditioned). The development also approved a non-illuminated sign. It was concluded that the new facet of the farm would further confirm its long term economic sustainability.

The Proposed Development

The development application currently before Council is for a two lot subdivision.

The development proposes to subdivide the existing allotment into two allotments, separating the rural industry, agricultural and residential component from the remainder of the lot.

The proposed lot sizes are as follows:

- Proposed Lot 1 would comprise 6.55 hectares and would contain the existing fully functioning hydroponic enterprise 'Letusgrow Hydroponics' (agricultural activities and packaging and processing sheds); existing dwelling house and staff amenities building.
- Proposed Lot 2 would comprise a 10 hectare allotment with dwelling site and would be accessed via an existing entry point off Duranbah Road to the western portion of the property.
- The existing facilities within Proposed Lot 1 would utilise on site effluent disposal and water harvesting with the new house on Proposed Lot 2 being serviced via a new on site sewage management system (OSSM).

The application does not propose any structural works.

Please note that the original Statement of Environmental Effects (SEE) stated that, although proposed Lot 1 is undersized, an objection pursuant to State Environmental Planning Policy No. 1 (SEPP1) was not required as the lot would not be used for either residential or agricultural purposes, the dwelling house being a 'managers residence' ancillary to the rural industry. The applicant advised that proposed lot 1 would be used as a rural industry, a purpose other than agriculture or residential.

A request for further information was sent to the applicant on 23 April 2012 as Council did not concur with this interpretation as proposed Lot 1 would incorporate both an agricultural component and residential use (i.e. managers residence – which is not otherwise specifically defined in the Local Environmental Plan (LEP) 2000). The request for further information required the applicant to submit a SEPP No. 1 Objection specifically in relation to Clause 20(2)(b) of the Tweed LEP 2012, seeking variation to the ten hectare minimum lot size.

Concurrence was granted by the Director-General of the Department in this instance to permit the creation of proposed Lot 1 of 6.55 hectares for the following reasons:

- *The proposal does not raise issues of regional or State environmental planning significance;*
- *There is no public benefit in maintaining the development standard in this instance since a horticultural pursuit, rural industry and a dwelling are established on the proposed undersized lot and its continued operation is unlikely to be adversely affected by the subdivision'.*

The Department have verbally advised that they consider that even though the land would be fragmented in terms of ownership, that it would not affect the current financial or agricultural viability of the existing rural industry and that there would still be room to expand the current agricultural facilities on proposed Lot 1 should this be required.

Summary

The development would result in the creation of two allotments, one of which would be undersized (6.55 hectares). However, the undersized allotment (proposed Lot 1) would comprise an existing and fully established and intensive hydroponic enterprise, dwelling house and staff amenities building.

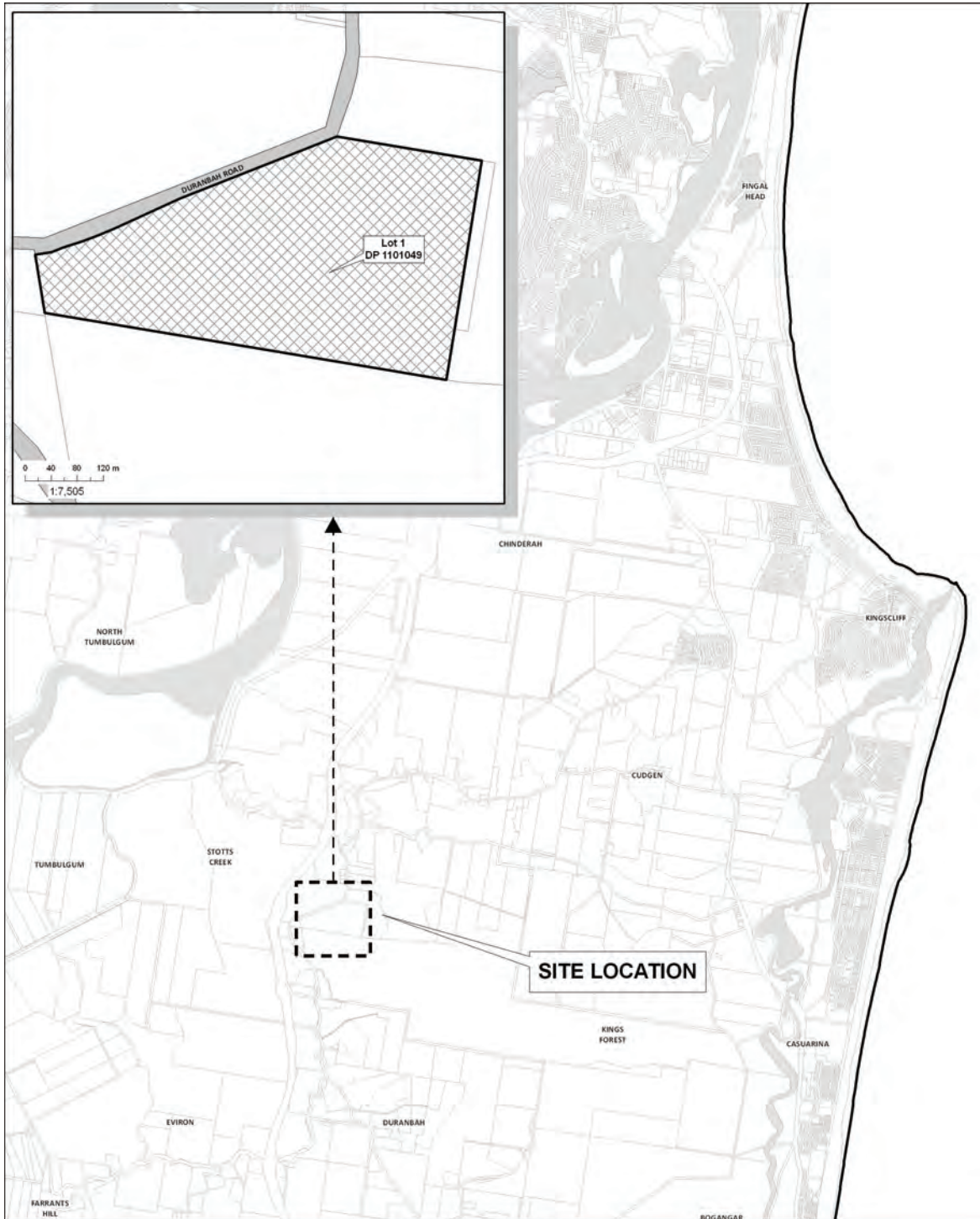
Of key importance in the determination of this application is that Concurrence has been granted by the Director-General to permit the creation of proposed Lot 1. Whilst the creation of an undersized allotment would not normally be encouraged within the Shire, the applicant has demonstrated that, due to the intensive nature of the business, that the ten hectares minimum lot size is not required to facilitate an ongoing rural production and processing business.

It is therefore considered that the proposal would be unlikely to set a harmful precedent for similar development as the proposed subdivision would not affect the existing status quo of the land, given the existing hydroponic activity and residential components are located on proposed Lot 1 only, proposed Lot 2 being currently vacant (not used for agricultural purposes). Further, the subdivision of the land may also enable the remaining ten hectares of the site (proposed Lot 2) to be sold and allow this land to be developed for further agricultural pursuits.

The applicant has advised that the value added as a result of the subdivision will enable additional investment to be secured for the existing rural processing and production business. Further, the applicants have demonstrated the genuine requirement for the managers of the business to live on site (for constant maintenance, site operation and security purposes).

Having regard to the relevant statutory controls and an assessment of the submitted SEPP No. 1 Objection in relation to Clause 20(2)(b) of the Tweed LEP 2000, in particular, it is considered that the proposed two lot subdivision is justified in this instance. On this basis approval of the proposed development is recommended.

SITE DIAGRAM:

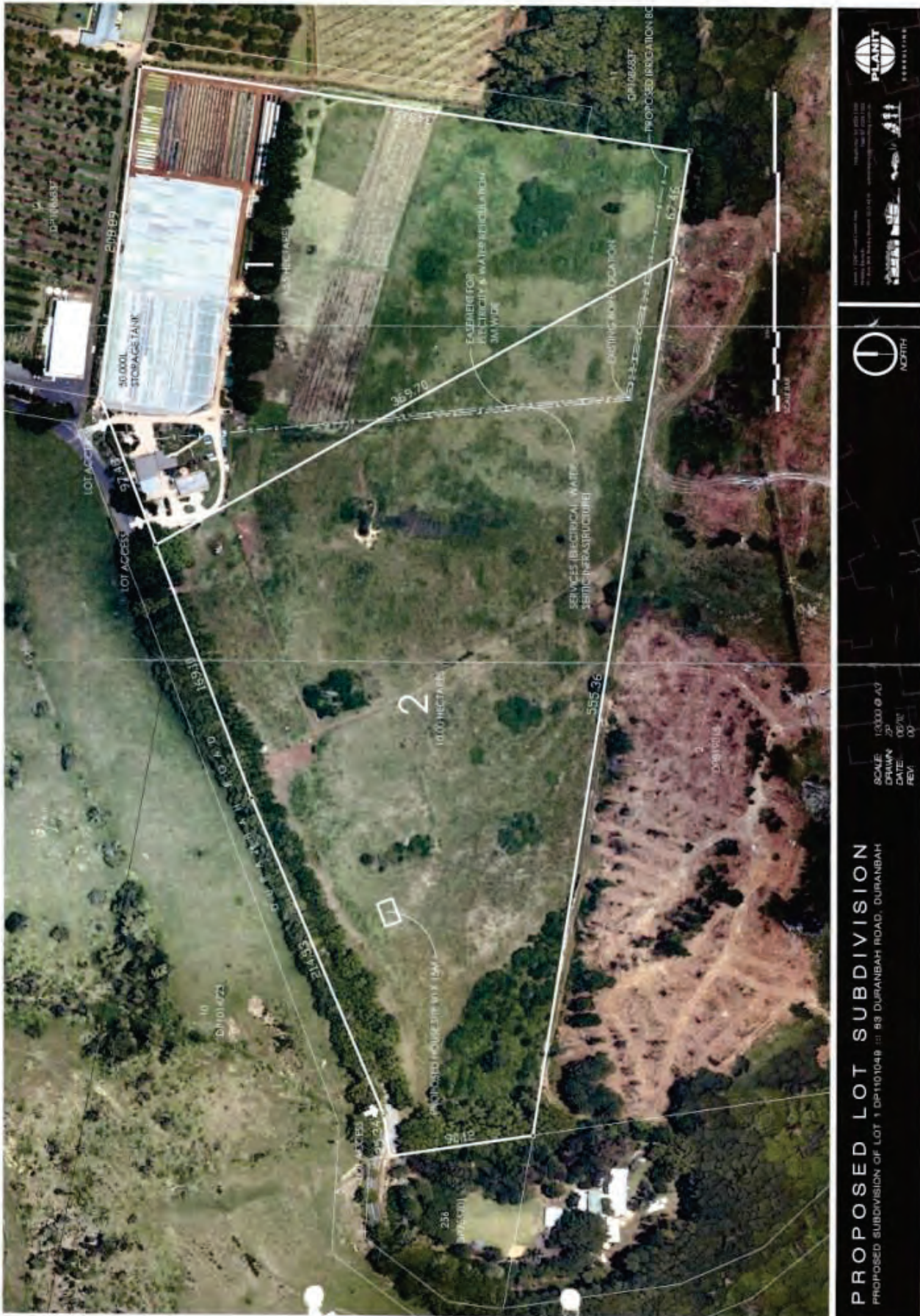


Locality Plan

Lot 1 DP1101049
No.63 Duranbah Road, DURANBAH

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation 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 'Call before you Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastre: 31 October, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 0.55 1.1 Km 1:50,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p> <p><small>Map From: Universal Transverse Mercator Horizontal Datum: Geoidic Datum of Australia 1984 Grid: Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 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</small></p>	
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PROPOSED SUBDIVISION PLAN:



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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

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

The development proposes a two lot subdivision that would result in the creation of an undersized allotment (6.55 hectares) which would not normally be supported in the Shire. However, the proposal would not impact on the existing status quo of the land (the existing hydroponic enterprise and residential components are currently located on the undersized allotment) and would be unlikely to set a harmful precedent for the creation of undersized allotments.

Further, the proposed subdivision may result in the utilisation of proposed Lot 2 (which is currently vacant) either for residential or agricultural purposes.

It is considered that the proposed subdivision would not result in the fragmentation of rural land that would impact on the rural character and amenity of the locality to such an extent to warrant refusal of the proposal, as detailed further within this report.

Clause 5 - Ecologically Sustainable Development

The intent of this clause is to provide for development which is compatible with principles of ecological sustainable development (ESD) including the precautionary principle, inter-generational equity, ecological and environmental factors. The scale and nature of the proposal is minor and will not conflict with principles of ESD.

The four principles of Ecologically sustainable development are the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity and improved valuation, and pricing and incentive mechanisms.

The proposed development is considered to be generally in accordance with these principles.

Clause 8 - Zone objectives

The subject allotment is located in the 1(b) Agricultural Protection, the objectives of which are detailed in Clause 11 below. Clause 8 states that the consent authority may grant consent to development only if:

- (a) it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and

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

The primary objective of the 1(b) Agricultural Protection zone relates to the protection of identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

The existing hydroponic enterprise and residential components are contained within proposed Lot 1 (6.55 hectares) and as such the proposed subdivision will not alter the status quo of the land. Further, the proposed subdivision will allow for the continued operation of the existing and fully established hydroponic business. It is therefore considered that, given the unusual circumstances of the application, that the proposal would be consistent with the primary objective of the zone.

It is also considered that the proposal would accord with the other aims and objectives of the Tweed LEP 2000, specifically Clause 20 that relates to the subdivision of land in Zones 1(b). This clause establishes a minimum allotment size of 10 hectares in the 1(b) zone. A SEPP No. 1 Objection to vary this development standard has been received and referred to the Department of Planning. Concurrence has been granted for the variation of the development standard, as detailed further within this report.

It is considered that the proposal would not have an unacceptable cumulative impact on the community or locality that will be affected by its being carried out or on the area of Tweed as a whole, given a fully functioning and intensive business currently operates on an undersized allotment. On this basis it is considered that the proposal would be consistent with this clause.

Clause 11 - Zone Objectives

The subject site is located in the 1(b) Agricultural Protection zone. The objective of the zone is to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

The development proposes the subdivision of the allotment into two parcels: proposed Lot 1 being 6.55 hectares and proposed Lot 2 being 10 hectares.

Proposed Lot 1 would be utilised for both residential and agricultural (hydroponic crop growing) purposes as well as a rural industry (packing and processing of produce).

The applicant has submitted a detailed explanation as to why the creation of an undersized allotment would be unlikely to set a harmful precedent for similar development in the Shire. The existing hydroponic enterprise occupies a small area of land, given the intensive nature of the business, and, as discussed further within this report, it is considered that the ten hectares is not required to facilitate an ongoing well established rural business.

Further, the creation of an additional ten hectare land parcel may increase the agricultural potential of proposed Lot 2, which is currently vacant.

It is considered that the proposal would be consistent with the objectives of the 1(b) zone.

Clause 15 - Essential Services

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

The property is not connected to reticulated water or sewer. There is an existing bore water supply and the applicants advise that there is a second groundwater bore on Proposed Lot 1 that, should the application be approved, would be installed with an interconnection to the existing bore (Office of Water permit details have been submitted with the application).

The application has been referred to Council's Environmental Health Officer (EHO) who has advised that the proximity of the existing groundwater bore and the proposed bore to onsite sewage land application areas have not been considered by the applicant. It appears that there is adequate distance to achieve the Environment and Health Protection Guidelines On-site Sewage Management for Single Households 1998 (recommended buffer distance of 250m, is available for the proposed dwelling site and a condition in this regard will be applied to any consent

An On Site Sewage Management System (OSSM) is not part of this application but would be required if a future Development Application is submitted for the construction of a dwelling. Council's EHO has advised that the applicant has demonstrated that there would be adequate and suitable land for the treatment and disposal of wastewater on proposed Lot 2 and a condition with this regard will be applied to any consent. Further, a condition will be applied in relation to the provision of an adequate roof water supply for the existing dwelling house and staff facilities.

Council's EHO has advised that the applicant was asked to demonstrate that existing OSSM facilities were adequate for the current proposal (nursery and staff facility). A new report was submitted in which an assessment of the existing facilities was made which recommended that the existing facilities should be upgraded. Should the application be approved, appropriate conditions with this regard would be applied to the consent.

Clause 16 - Height of Building

The application does not propose any modifications to the existing building height.

Clause 17 - Social Impact Assessment

This clause requires Council to consider whether a proposed development is likely to have a significant social or economic impact. Given the minor scale and nature of the development it is considered that the proposal does not require a social impact assessment.

The proposed two lot subdivision would result in the creation of an undersized allotment, contrary to Clause 20 of the Tweed LEP 2000. For reasons detailed further within this report it is considered that, in this instance, it would be unreasonable and not in the public interest to uphold the development standard. The proposal maintains the existing status quo of the land with the undersized allotment clearly comprising a well established and fully functioning hydroponic enterprise.

Clause 19 - Subdivision

The development application proposes the subdivision of the existing lot to form two lots and therefore this clause applies. The objective of the clause is to provide a comprehensive system of planning controls for the subdivision of land in the Tweed local government area.

The application is seeking consent for a subdivision and is therefore in accordance with the provisions of the clause.

Clause 20 - Subdivision in Zones 1(b1)

The subject site is zoned 1(b1) Agricultural Protection and therefore this clause applies. The objectives of the clause is as follows:

(1) *Objectives*

- *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.*

(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, or*
- (b) *within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*

(3) *Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in the case of Zone 1 (b1), if the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or residential purpose, for which consent could be granted.*

The development application seeks the subdivision of the existing allotment to create two lots.

Proposed Lot 1 would be 6.55 hectares and would comprise a dwelling house, a staff amenity building (also used for permanent residential accommodation), agricultural activities (hydroponic crop growing) and packing and storing sheds (associated with a rural industry).

Proposed Lot 2 would be 10 hectares in size and would comprise a dwelling site.

Part (2)(b) of Clause 20 requires consent to be granted to the subdivision of land within the 1(b1) zone if the area of each allotment created is at least 10 hectares. The clause further states that consent will only be granted in the 1(b1) zone if the consent authority is satisfied that the allotment will be used for a purpose other than for agriculture or residential purposes.

Proposed Lot 1 would not comply with this clause as it would be only 6.55 hectares in size and would comprise both agricultural (crop growing) and residential (existing primary dwelling and staff amenities building also used for permanent residential accommodation) components.

On this basis a SEPP No. 1 Objection was received for the creation of an undersized allotment. Within this Objection the applicant advises that *'the circumstances of the existing development demonstrates the proposals compliance with the objectives of the 1(b) zone and reinforces the assertion that maintaining the ten (10) hectare minimum size is unreasonable and unnecessary in this instance. The intensive nature of the business has demonstrated that ten (10) hectares is not required to facilitate an ongoing rural production and processing business and the creation of a 6.55 hectare lot does not result in the fragmentation of prime agricultural land'*.

As detailed further within this report, it is considered that the maintenance of the ten hectare minimum lot size is not justified in this instance and would not be in the public benefit. It is evident that the existing agricultural enterprise is fully functioning and located wholly within proposed Lot 1 and therefore the proposal will not jeopardise the agricultural viability or potential of the land.

It is considered that the variation to this standard is therefore justified in this instance.

Clause 22 - Development near designated roads

Duranbah Road is a Council designated road and therefore this clause applies. The objectives of the clause are:

- To protect and improve the capacity, efficiency and safety of designated roads.
- To prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.
- To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

It is considered that the proposal would be unlikely to impact on the capacity, efficiency or safety of the road. The applicants advises that the existing staff numbers, hours of operation and access arrangements will not alter as part of the proposal with the proposed rural industry maintaining existing crossovers.

Access to the proposed new dwelling on proposed Lot 2 would be via an existing crossover/access point adjacent to the southernmost property boundary.

It is considered that the proposal would not impact the safety of the road, not impact on the scenic attractiveness of the area of the Tweed.

Clause 23 - Control of Access

Duranbah Road is a Council designated Road and therefore this clause applies. The objective of the clause is to control development along designated roads.

The development does not comprise any additional access points onto the designated road.

Clause 24 - Setbacks to designated roads

The subject site is located in the 1(b) Zone and therefore this clause applies. The clause establishes a 30m setback distance from new development to the designated road.

The revised dwelling house location would be located approximately 40m from the designated road and therefore complies with this clause.

Clause 35 - Acid Sulfate Soils (ASS)

The subject site is mapped as being Class 5 ASS. Council's Environmental Health Officer has not advised of any issues in relation to ASS as this proposal does not comprise any alterations to the existing buildings or significant earthworks. Any future development application for a dwelling house would consider ASS impacts.

Clause 39 - Remediation of contaminated land

The applicant provided a preliminary site contamination report that referred to an earlier report which stated that the nominated dwelling and coolroom/office sites were relatively free of contaminating substances. Council's EHO requested that further investigation into contaminated land and the investigation area was to include land on which the applicant was proposing as a future dwelling site (proposed Lot 1) and was to include the area proposed for the treatment and disposal of wastewater.

The report has concluded that concentrations of polluting substances (metals and the like) were all below human health investigation threshold levels and as such no further consideration with this regard was required.

Clause 39A - Bushfire Protection

Portions of the subject site is bushfire prone, therefore this clause applies. The objective of the clause is:

- to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was Integrated Development in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000. The applicants have submitted a Bush Fire Assessment for the proposal which has been referred to the NSW Rural Fire Service (RFS) for their comment.

The NSW RFS granted a bush fire safety authority as required under section 100B of the Rural Fires Act 1997 with appropriate conditions of the consent in relation to water and utility provision and access.

The bush fire safety authority related to the subdivision of land only and that any further development application for class 1, 2 or 3 buildings as identified by the Building Code of Australia (BCA) must be subject to a separate application under section 79BA of the Environmental Planning and Assessment Act 1979 and address the requirements for 'Planning for Bushfire Protection 2006'.

It is considered that the proposal would be consistent with the clause.

Clause 54 - Tree Preservation Order (TPO)

The subject site is covered by the Tweed Shire Council TPO 2011 (Koala Habitat) and therefore this clause applies. The objective of the clause is to enable the protection of vegetation for reasons of amenity or ecology.

The development does not propose any vegetation removal and it is unlikely that the proposal would impact on Koala Habitat. It is considered that the proposal would be consistent with this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) NCREP 1988

Clause 12: Impact on agricultural activities

This clause states 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.

As detailed within this report, the existing hydroponic enterprise is currently operated from proposed Lot 1 only and therefore the proposed subdivision will not alter the status quo. It is considered that approval of this application would not impact on the adjoining or adjacent agricultural land or result in the loss of prime crop or pasture land. There would still be sufficient room for additional agricultural pursuits on proposed Lot 1, and further opportunity would exist for the establishment of agricultural activities on proposed Lot 2, which is currently vacant.

It is considered that the applicant has demonstrated that the business is bona fide, employing a number of staff, attracting agricultural programs, student exchange programs and the like as well as providing produce to local supermarkets and restaurants.

The intensive and innovative nature of the hydroponic and processing / packaging enterprise is considered to be highly productive and provides a source of vegetables and herbs to local suppliers. It is considered that the proposal is consistent with Clause 12 of the NCREP 1988.

Clause 66: Adequacy of community and welfare services

Clause 66 relates to the adequacy of community and welfare services with additional residential developments.

The development proposes to retain the existing primary dwelling on proposed Lot 1 and the creation of a new dwelling on proposed Lot 2. It is considered that there would be adequate capacity within the community and welfare services to cater for the proposal.

SEPP No. 1 - Development Standards

As previously detailed within this report the original application details did not provide a SEPP No. 1 Objection as the applicant considered that proposed Lot 1 would be used as a rural industry, a purpose other than for agriculture or residential.

Council did not concur with this interpretation as proposed Lot 1 would incorporate a residential and agricultural use. A SEPP No. 1 Objection has been received whereby the applicants have retained their position, summarised as follows:

- 10 hectares minimum lot size unless used for a purpose other than agriculture or residential (i.e. a rural industry);

- That the residential component is ancillary to the rural industry and not sought as a standalone dwelling (it is a requirement of the business that staff are present on the site 24 hours a day, seven days a week in order to carry out constant maintenance checks, provide security and the like);
- The location and use of the dwelling would always be tied to the rural industry;
- Having sufficient staff on site to respond to any infrastructure issues and the like is essential to the ongoing business operations and that failure to have managers accommodation on site would lead to the demise of the business;
- Retain their position that the development would not be contrary to the objective of Clause 20 of the LEP 2000;
- Advised that the proposal could be conditioned in such a way so as not to set a precedent.

Further, in relation to s5(a)(i) and (ii) of the Environmental Planning and Assessment Act the applicant advises:

- The proposal would be consistent with surrounding land use character (agricultural, rural industry, dwelling houses);
- All facilities on proposed Lot 1 have been in existence for some time and has been operating on an area of less than 6.55 hectares; and
- The subdivision of the land therefore will have no impact on the environmental characteristics of the land.

The Department have verbally advised that this situation (i.e. a rural industry and dwelling house located on 6.55 hectare land parcel) is relatively unusual and that it would be unlikely for the proposal to set a harmful precedent for the fragmentation of rural land. The Department have advised that even though the land would be fragmented in terms of ownership, that it would not affect the current financial or agricultural viability of the existing rural industry. It is considered by the Department that there would still be room to expand the current agricultural facilities if so required and that the applicants have clearly demonstrated the requirement for onsite accommodation for owners of the business.

In the light of the Concurrence from the Department it is considered that, as there is already a viable industry located on the existing 'undersized' allotment which has been in operation on proposed Lot 1 for eight years, the maintenance of the development standard is not warranted or justified.

It is therefore considered that the proposed subdivision should be supported in this instance.

SEPP No. 55 - Remediation of Land

The aim of SEPP 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

As previously detailed a Contaminated Lands Assessment was required by Council's Environmental Health Officer. Council's EHO has advised that the findings of the report suggest that the subject site has any significant contamination that would prohibit development of the site. It is considered that the proposal is consistent with the SEPP.

SEPP (Rural Lands) 2008

The SEPP outlines the following 'Rural Planning Principles':

- a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;
- 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;
- 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;
- d) in planning for rural lands, to balance the social, economic and environmental interests of the community;
- 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;
- f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities; and
- g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing.

The subject site is not nominated as Regionally Significant Farmland however the site is prime agricultural land.

Council encourages the continuation and longevity of the existing rural industry and agricultural component and acknowledges the intensive and innovative hydroponic activity that is currently operating on the subject site.

It is considered that the proposed two lot subdivision would not impact on the agricultural viability of the subject site. The development does not propose any physical alteration to the existing structures and will not involve the removal of any vegetation/

It is considered that the proposal is consistent with the intentions of the SEPP (Rural Land) 2008.

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

Draft Tweed Local Environmental Plan 2012

The Draft Tweed Local Environmental Plan (LEP) is currently on public exhibition. In this Draft the subject site is nominated within the RU1 - Primary Production Zone. The objectives of the zone are:

RU1 - Primary Production

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

The proposed development for the purpose of a subdivision would be permissible with consent in the RU1 Zone and, for the reasons detailed within this report it is considered that the proposal would be consistent with the objectives of the zone.

Akin to the current Tweed LEP 2000, the Draft Tweed LEP 2012 Lot Size Map indicates that the minimum lot size for the subject site is 10 hectares.

Clause 4.2 of Part 4 – Development standards states the following:

- (3) *Land in a zone to which this clause applies may, with 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.*

Proposed Lot 1 would not comply with this clause as it would be only 6.55 hectares in size and would comprise a residential component.

Further, Clause 4.6 (Exceptions to development standards) provides flexibility in applying certain development standards to particular developments. However, Point (6) states that *Consent must not be granted under this clause for a subdivision of land in Zone RU1 [if]:*

- (a) *The subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) *The subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

The proposal would result in the creation of a lot of less than the minimum area (6.55 hectares). The proposed variation to the development standard is therefore approximately 40%. On this basis the proposed variation greatly exceeds the exceptions to development standard provisions contained within the Draft LEP 2012 (less than 90% of the minimum area).

Council officers are of the opinion that, given the late stage of the assessment process combined with the early stages of the public exhibition of the Draft LEP 2012, it is considered unreasonable to refuse the application for the proposed subdivision on this basis.

Further, as detailed within this report, it is considered that the proposed subdivision would be unlikely to set a harmful precedent for the creation of undersized allotments or the fragmentation of agricultural land. Proposed Lot 1 currently comprises a well established and fully functioning hydroponic, processing and packaging business. The nature of this intensive activity is such that it does not rely on a ten hectare minimum lot size. Further, it is considered that the level of investment and infrastructure in place demonstrates the applicant's intention to maintain the business in perpetuity. Further, should the applicant wish to sell the business, given the level of infrastructure on site it would be likely that any future purchaser would continue operating the hydroponic activity.

On the basis of the unusual circumstances of this application, as well as the late stage of this application process and early stages of the exhibition of the Draft LEP 2012, it is considered that the proposed subdivision should be approved.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Section A2 aims to be consistent with ESD principles, ensure provision of safe, convenient and equitable access to developed land for pedestrians and vehicles. It also sets minimum parking requirements for certain development types.

Parking/Manoeuvring

The application proposes 8 car parking spaces. Council's Development Engineer has not expressed any concerns with regard to car parking on the site.

Site Access

The application has been referred to Council's Development Engineer who has advised that the site has three existing access points into the property off Duranbah Road, two existing access locations will service proposed Lot 1 and one existing access will service proposed Lot 2. Providing suitable conditions are applied to any consent to ensure adequate sealing/upgrade of existing access points (section 138 application) that the proposed accesses would be adequate.

A11-Public Notification of Development Proposals

The development was advertised for a period of 14 days from Wednesday 21 March 2012 to Wednesday 4 April 2012 in accordance with the provisions of the DCP. No submissions were received as a result of the notification process.

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

Clause 92(a) Government Coastal Policy

The subject site is not coastal land and therefore this clause does not apply.

Clause 92(b) Applications for demolition

The application does not propose any demolition and therefore this clause does not apply.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not coastal land and therefore this Plan is not relevant to the proposed development.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

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

Not applicable to the development proposal as the subject site is not located within the vicinity of an estuary ecosystem and is unlikely to impact on waterways or biodiversity of waterways.

(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

As previously detailed within this report the application does not comprise any physical works and will not affect the status quo of the existing land parcel, other than the creation of a dwelling entitlement on proposed Lot 2.

The existing hydroponic enterprise, packing sheds and residential components are currently located on proposed Lot 1. It is therefore considered that the proposal would not have a harmful cumulative impact on the context or setting of the locality to warrant refusal of the proposal.

Access, Transport and Traffic

The application has been referred to Council's Development Engineer who has advised that the site has three existing access points into the property off Duranbah Road, two existing access locations will service proposed Lot 1 and one existing access will service proposed Lot 2. Providing suitable conditions are applied to any consent to ensure adequate sealing/upgrade of existing access points (section 138 application) that the proposed accesses would be adequate.

Cumulative Impacts

The development proposes the creation of an undersized allotment to be utilised for both residential and agricultural purposes. The granting of Concurrence by the Department of Planning is a material consideration in the determination of this application.

As detailed within this report, the existing hydroponic enterprise has been in operation for the last eight years with the existing dwelling house providing accommodation to the business owner, operations manager and their family. This situation will not alter as the applicants have indicated that should the application be approved, proposed Lot 2 would be sold separately.

The applicants have submitted a detailed justification for the variation of the development standard detailing that the business is fully functioning and well established. Details have been provided relating to the level of capital investment, number of staff, produce grown and principal customers and the like. Further, it is evident that the business is currently occupied on the undersized allotment (6.55 hectares) and will not impact on the agricultural viability of either proposed Lot 1 or proposed Lot 2.

Council officers are of the opinion that, on this basis, there is no public benefit in this instance in maintaining the development standard and that there would be no adverse cumulative impact as a result of the proposed subdivision.

Amenity

Council's EHO originally had concerns with the location of the proposed dwelling site on proposed Lot 2 in relation to the proximity of agricultural land uses on proposed Lot 1. An amended site plan has been received which has positioned the proposed building envelope towards the east of proposed Lot 2. Council's concerns with this regard have now been alleviated.

(c) Suitability of the site for the development

Surrounding Landuses/Development

Neighbouring land comprises primarily of single dwellings, with variant building heights between 1 and 2 storeys, with agricultural pursuits being the predominant land use.

It is considered that the proposal would not impact on the residential amenity of surrounding properties, as the development does not comprise any structural alterations to the buildings or hydroponic activities or residential components on proposed Lot 1. Council's Environmental Health Unit have advised that the location of the proposed dwelling site is acceptable.

Further, it is considered that the proposal would not impact on the agricultural viability of the subject site or adjoining allotments.

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

Public Submissions Comment

No Submissions were received as a result of the notification process.

Public Authority Submissions Comment

The proposed development was referred to the NSW Rural Fire Service as the proposed subdivision is integrated development in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000. A bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' has been issued, including a number of conditions to be applied to the consent relating to water and utilities provision and access.

A note to the consent authority was applied to the bush fire safety authority stating that the approval was for the subdivision of the land only and any further development for class 1, 2 and 3 buildings, as identified by the 'Building Code of Australia', must be subject to separate application.

(e) Public interest

The creation of an undersized allotment in the 1(b) Agricultural Protection zone used for both agricultural and residential purposes would not usually be permitted in order to prevent the potential for fragmentation of ownership of rural land that would adversely affect the continuance or aggregation of sustainable agricultural units.

As detailed within this report, the proposal is unique in that an intensive rural processing and production business is well established and has been operating within the confines of the 6.55 hectares (proposed to be Lot 1) for approximately eight years. A considerable amount of capital has been invested in the business with a significant level of customers (including the national carrier Coles) with an annual turnover of approximately \$1 million per annum. The business employs a number of people and is involved in student exchanges and school agricultural programs. Further, the applicants have demonstrated the requirement for staff to live on site for ongoing maintenance and security purposes.

Concurrence has been granted by the Director-General for the creation of the undersized allotment as *'there is no public benefit in maintaining the development standard in this instance since a horticultural pursuit / rural industry and a dwelling are established on the proposed undersized lot and its continued operation is unlikely to be adversely affected by the subdivision'*.

It is considered that the proposed development would be unlikely to set a harmful precedent for the creation of undersized allotments, with agricultural and residential components, given the unusual circumstances of this application. The applicants advise that the facilitation of the subdivision will enable additional investment to be secured for the existing rural processing and production business. It is considered that the continuance of the fully functioning hydroponic activity is consistent with the relevant heads of consideration and would be in the public interest.

OPTIONS:

1. Approve the application with conditions of approval in accordance with the recommendation of approval; or
2. Refuse the application.

CONCLUSION:

The applicant has submitted a detailed justification for the creation of the undersized allotment and as detailed within this report, Concurrence has been granted from the Department of Planning for the proposed subdivision. It is considered unlikely that, due to the unusual circumstances of the proposal, that the development would cause undue cumulative impact in the locality. On this basis, and having regard to the relevant heads of consideration, the proposed subdivision is considered suitable for the location and therefore recommended for approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should Council wish to refuse the application, and the applicant be dissatisfied with the determination, they have the right to appeal the decision in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
- 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
- 1.1.1.3 Assessment of new developments (Development Assessment unit)

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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14 [PR-CM] Kings Forest Preferred Project Report - Stage 1 Project Application and Amendment 2 to the Concept Plan - Council's Submission to the NSW Department of Planning and Infrastructure

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA11/0565 Pt5



Civic Leadership

SUMMARY OF REPORT:

Council considered the original Environmental Assessment (EA) report for the Stage 1 Project Application for Kings Forest in January 2012. Since this time, the applicant has been amending their application to respond to issues raised by the Department of Planning and Infrastructure (DP&I), Council, other Government Agencies and individual submissions. The DP&I is the assessment authority and the Planning Assessment Commission is the determining authority.

Council received an initial copy of the Preferred Project Report (PPR) from the applicant on 14 September 2012. Due to variations requested by DP&I the PPR was amended numerous times and resulted in the Department formally requesting comment from Council on 1 November 2012. The Department sought feedback by 23 November 2012, however, a subsequent extension was granted to enable the application to be reported to Tweed Shire Council's December Council meeting.

The current PPR includes a request for the second amendment to the approved concept plan and a concurrent Stage 1 Project Application for bulk earthworks across the entire site and approval for Precincts 1 (rural supplies development) and Precinct 5 of the site (376 residential allotments).

This report will:

- Detail the changes between the original EA report and the current PPR as explained by the applicant in their PPR; and
- Provide an assessment of the project (having specific regard to matters affecting Tweed Shire Council from an asset perspective). This assessment is intended to be forwarded to the DP&I and form Council's official response to this application.

For background purposes the Council Report of 24 January 2012 in regards to the original EA report should be read in conjunction with this report.

This is not an opportunity for Council to revisit the broad principles that have already been established within the approval of the Concept Plan. This is an opportunity to review and comment on the works and actions proposed in the PPR only. Following a review of this material Council staff are of the view that there has been some improvements to the application since January 2012.

The issues that, in Council's view, need to be addressed prior to determination are the following ecological matters:

- Dedication and Long-Term Management of Environmental Lands - the applicant proposes to dedicate approximately 200ha of environmental land and associated ecological buffers to Council. Council's staff are of the view that managing this land in perpetuity will cost Council approximately \$600,000 per year. If the proposed development does not cover the cost of this maintenance (by way of special environmental levy or other mechanism) Council may decide not to accept the proposed dedication;
- Ecological Buffers and Clearing of Native Vegetation -the applicant proposes to undertake bulk earthworks across the entire site including excavation within the nominated ecological buffers. Council's staff are concerned that this fails to comply with SEPP (Major Development) 2005 and will compromise the off sets proposed by this development;
- Conflicting Rehabilitation and Revegetation Objectives - the applicant proposes to re-establish heathland, plant koala food trees and create habitat for acid frogs over many of the same areas. Council is concerned that this is not ideal restoration for any of these communities/species;
- Koala Management and Dogs - the Concept Plan approved a Koala Plan of Management (KPoM) that would see koalas roaming across the urban landscape. The revised project application saw a change in this method to maintain a complete separation of koalas and their habitat from the residential areas. Council resolved in January 2012 to enable dogs within Kings Forest by separating koalas from the residential areas with appropriate fencing. Council's staff are satisfied with this approach provided suitable fencing is proposed. The current application incorporates grids that they say koalas will not cross to get into residential areas. However, Council is concerned that any roaming dogs will cross these grids and be capable of entering koala habitat areas. To ensure the safety of koalas additional fencing is required. In addition the KPoM needs to explicitly address the threat to koalas from bushfire;
- Bushfire Management - the submitted Bushfire Risk Management Plan does not adequately consider vulnerable ecological assets and needs to be revised to have regard for long term management of bushfire in open space and conservation areas;
- Management Plan Implementation - in order for the plans to be able to be resourced and implemented more detail is required;
- East-West Wildlife Corridor - the applicant is disputing the need for the two east-west corridors. Council maintains the development still requires work to improve fauna corridors;
- Wallum Frog Habitat Compensation - the applicants proposal to create "melon holes" to intercept the water table is largely experimental and it is unclear whether habitat for these frogs will can be recreated successfully;
- Monitoring and Evaluation - the applicants report does not adequately address all requirements of Concept Plan B2. The report lacks any base line data, adequate direction or summary of survey and monitoring effort and any detail on proposed monitoring of potential impacts on the Cudgen Nature Reserve;

- Further Protection of Heathland - the application proposes to remove approximately 19ha of heathland from within ecological buffer areas and contains no formal mechanism for the long term protection of retained and rehabilitated areas apart from the intended dedication of Council. This is inconsistent with Condition B3; and
- Management Plan Updates - the proponent seeks amendment to Concept Plan C2 such that updates to management plans associated with future works are delayed until construction certificate stage. Council objects to this and maintains condition C2 is appropriate.

In addition many issues previously raised by Council can now be resolved by way of recommended conditions of consent and accordingly as an attachment to this report recommended Draft Conditions of consent have been prepared to assist the DP&I and the Planning Assessment Commission (PAC) should they want to ultimately approve this development in its current format. However, if these conditions are not applied by the PAC then Council would still have issues in regards to:

- The plans of development fail to note that some Precinct 5 lots are affected by probable maximum flood (PMF);
- The extent of disturbed area for cut/fill operations at any time needs to be limited to ensure dust and sedimentation transportation issues are not experienced. Council recommend no more than 5ha being disturbed at any time. The applicant's application proposes 49ha;
- A revised traffic impact assessment would be needed to ensure the haul road (for imported fill) is adequate in regards to road suitability and amenity implications;
- The intersection with Tweed Coast Road needs to be redesigned with a roundabout;
- The intersection to Precinct 1 and Old Bogangar Road needs to be aligned in a four way intersection with Tweed Coast Road;
- Kings Forest Parkway and Road 9 needs to be widened to a minimum of 9m to accommodate a bus;
- Maintenance of acoustic fences on public land has not been funded by the developer;
- The proposed cycleway needs to ensure linkages to the local park within Precinct 5 and the existing shared user park on Tweed Coast Road;
- Additional detail is required in regards to water and sewer reticulation as only indicative sizings have been provided;
- The site suitability of the regional pump station needs to be justified having regard to size, access and bushfire constraints;
- The concept plan needs to be amended to reflect the dedication of structured open space based on a population trigger;
- A master plan for the proposed structured open space is required prior to any dedication of structured open space;
- An open space network plan (park hierarchy plan) is required;
- Access to Depot Road sportsfields needs to be maintained during and after bulk earthworks;

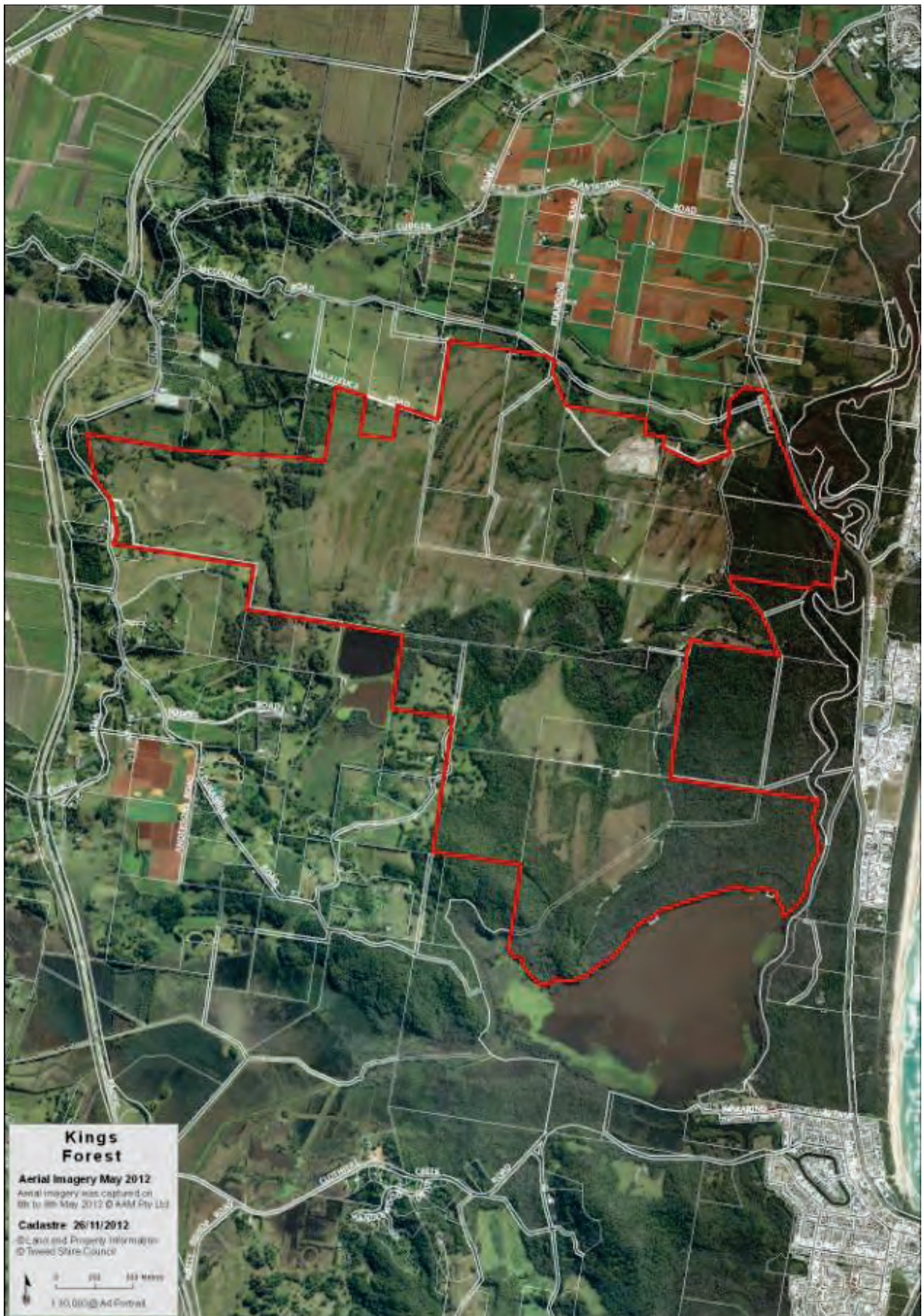
- The applicant's landscaping plans require intensive maintenance which would be expensive for Council to maintain into perpetuity. Revised landscaping plans will be needed to reduce Council's maintenance obligations;
- Development within Precinct 1 is within the agricultural buffer and the proposed roller doors need to be managed to ensure they are not permanently left open for access;
- The submitted acid sulfate plan is inadequate and will need to be revised prior to issue of construction certificate;
- The submitted contamination assessment is inadequate and will need to be revised prior to issue of construction certificate;
- A site auditor will need to be appointed to ensure on site contamination is adequately addressed;
- The plans of development need to be amended to reflect the Kings Forest Development Code;
- The proposed amendments to the Kings Forest Development Code are not supported in their entirety.

It is therefore recommended that Council endorses this report and its attached Draft Conditions as a formal submission to the DP&I.

RECOMMENDATION:

That Council endorses this submission and the attachment “Draft Conditions” and submits it to the consent authority as the formal response to Amendment 2 to the Concept Plan and the Preferred Project Report for the Stage 1 Project Application for Kings Forest.

AERIAL IMAGE 2012:



REPORT:

Applicant: Project 28 Pty Ltd

Owner: Project 28 Pty Ltd

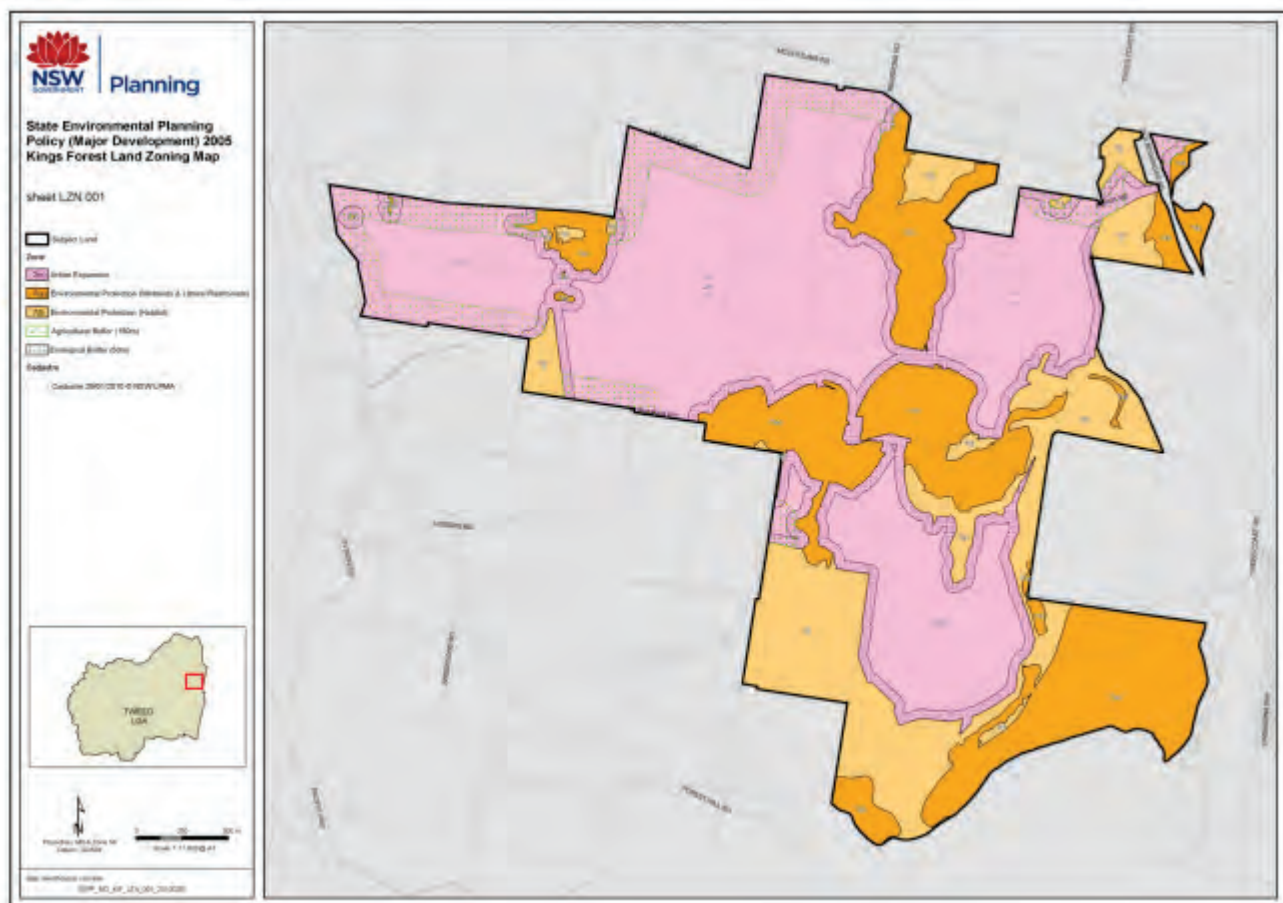
Location: Lot 6 DP 875446; Depot Road, Kings Forest; Lot 2 DP 819015; No. 102 Melaleuca Road, Duranbah; Lot 37A DP 13727; No. 126 Melaleuca Road, Kings Forest; Lot 7 DP 875447; No. 231 Tweed Coast Road Kings Forest; Lot 1 DP 129737 & Lot 1 DP 706497 & Lot 1 DP 781633 & Lot 272 DP 755701 & Lot 323 DP 755701 & Lot 326 DP 755701 & Lot 38A DP 13727 & Lot 38B DP 13727 & Lot 40 DP 7482 & Lot 76 DP 755701; No. 86 Melaleuca Road Kings Forest

Zoning: In accordance with SEPP (Major Development) 2005 Kings Forest Land Zoning Map - 2(c) Urban Expansion, 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(l) Environmental Protection (habitat).

Cost: \$40 Million

BACKGROUND:

The subject site is listed as a State Significant Site under State Environmental Planning Policy (Major Development) 2005 and has an approved zoning map (below) and written instrument provisions under this policy (updated 10/09/2010).



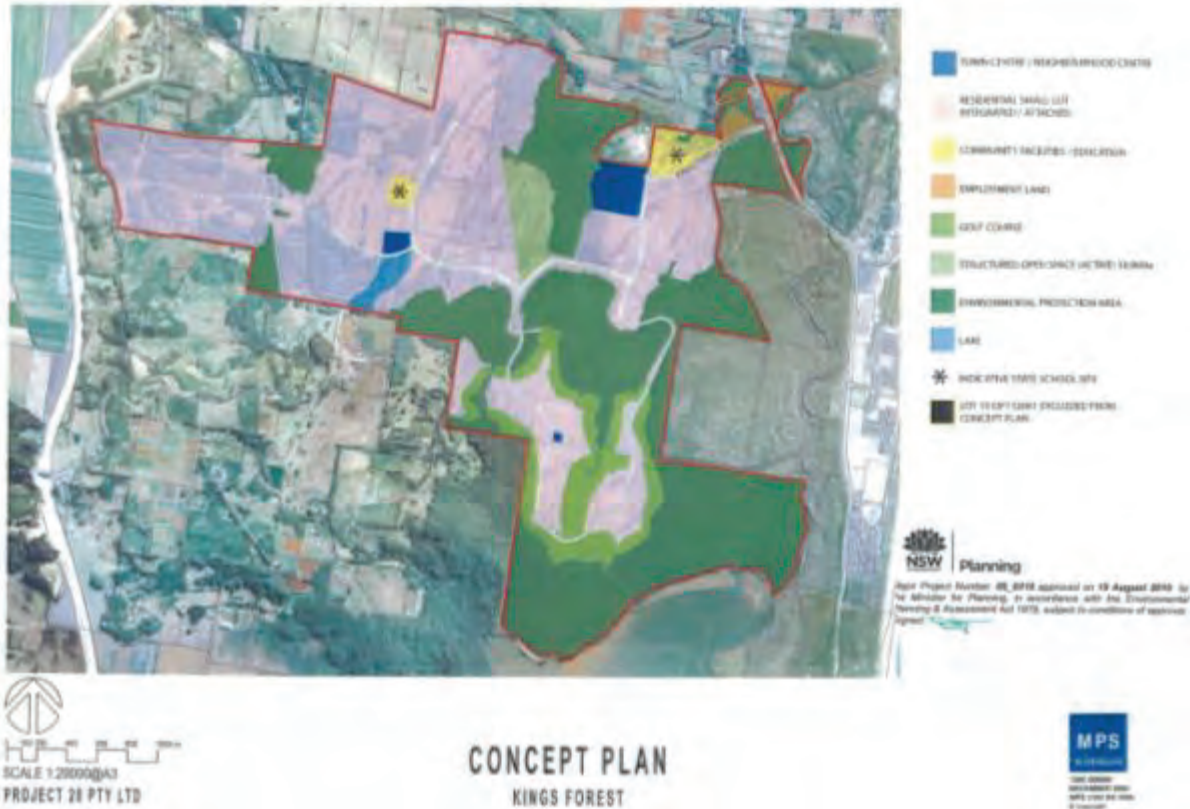
The written instrument component of State Environmental Planning Policy (SEPP) (Major Development) 2005 –Kings Forest is important especially in regard to the treatment of ecological buffer areas which forms much of the discussion within this report. Accordingly following is an extract from the SEPP that details the ecological buffer provisions:

7 Ecological buffers

- (1) Consent must not be granted to development on land within an ecological buffer unless the consent authority is satisfied, after considering a detailed environmental assessment, that:
 - (a) the development complies with the objectives for ecological buffers and other provisions of this clause, and
 - (b) there is no practicable alternative to siting the development within the buffer.
- (2) The objectives for ecological buffers are:
 - (a) to protect wetlands or areas of particular habitat significance, and
 - (b) to restrict development so that, as far as practicable, it does not occur within ecological buffers, and
 - (c) to help ensure that development is designed, sited and managed so as to minimise its impact on the ecological and hydrological functions of ecological buffers, and
 - (d) to encourage the restoration and maintenance of native vegetation and the ecological processes of land within and adjacent to wetlands or areas of particular habitat significance.
- (3) Development on land within an ecological buffer is to:
 - (a) incorporate effective measures to manage wetlands or areas of particular significance, and
 - (b) be designed and sited to maintain connectivity of vegetation and minimise vegetation clearing, soil disturbance and alterations to the rate, volume or quality of surface and ground-water flows, and
 - (c) retain and maintain all existing native vegetation outside the area immediately required for the development, and
 - (d) incorporate measures to regenerate native vegetation for all disturbed areas within the buffer, and
 - (e) incorporate appropriate stormwater and erosion control measures to protect the buffer from surface water run-off or other disturbance.
- (4) When considering whether or not there is a practicable alternative to siting development inside an ecological buffer, the consent authority must consider:
 - (a) the design, type and site cover of the proposed development, and
 - (b) the physical characteristics of the land on which the development is proposed to be carried out, and
 - (c) the suitability of the land for the proposed development.

- (5) Before deciding whether or not to grant consent to development on land within an ecological buffer, the consent authority must consult the Department.

The NSW Minister for Planning approved the Kings Forest Concept Plan under Section 75O of the Environmental Planning and Assessment Act 1979 in August 2010.



The NSW Minister for Planning approved an amended Kings Forest Concept Plan in accordance with 75W of the Environmental Planning and Assessment Act 1979 in December 2010. This amendment was primarily to facilitate the approval of the Kings Forest Development Code and make amendments regarding conditions of the original concept plan approval (the concept plan map was not amended – amendments were only made to the written notice).

The NSW DP&I are now considering a second amendment to the approved concept plan and a concurrent Stage 1 Project Application for bulk earthworks across the entire site and approval for precincts 1 and 5 of the site.

Council originally commented on this document in January 2012, however the applicant has now lodged the amended application (Preferred Project Report – PPR) for the second amendment to the approved concept plan and the Stage 1 Project Application. It is the PPR that Council now has an opportunity to comment on. Following is a summary of the elements proposed as part of this application as detailed by the applicant in their PPR.

CURRENT PROPOSAL:

The current preferred project report includes a request for the second amendment to the approved concept plan and a concurrent stage 1 project application for bulk earthworks across the entire site and approval for Precincts 1 (rural supplies development) and Precinct 5 (residential subdivision comprising 376 lots) of the site.

Modification to the Kings Forest Development Code

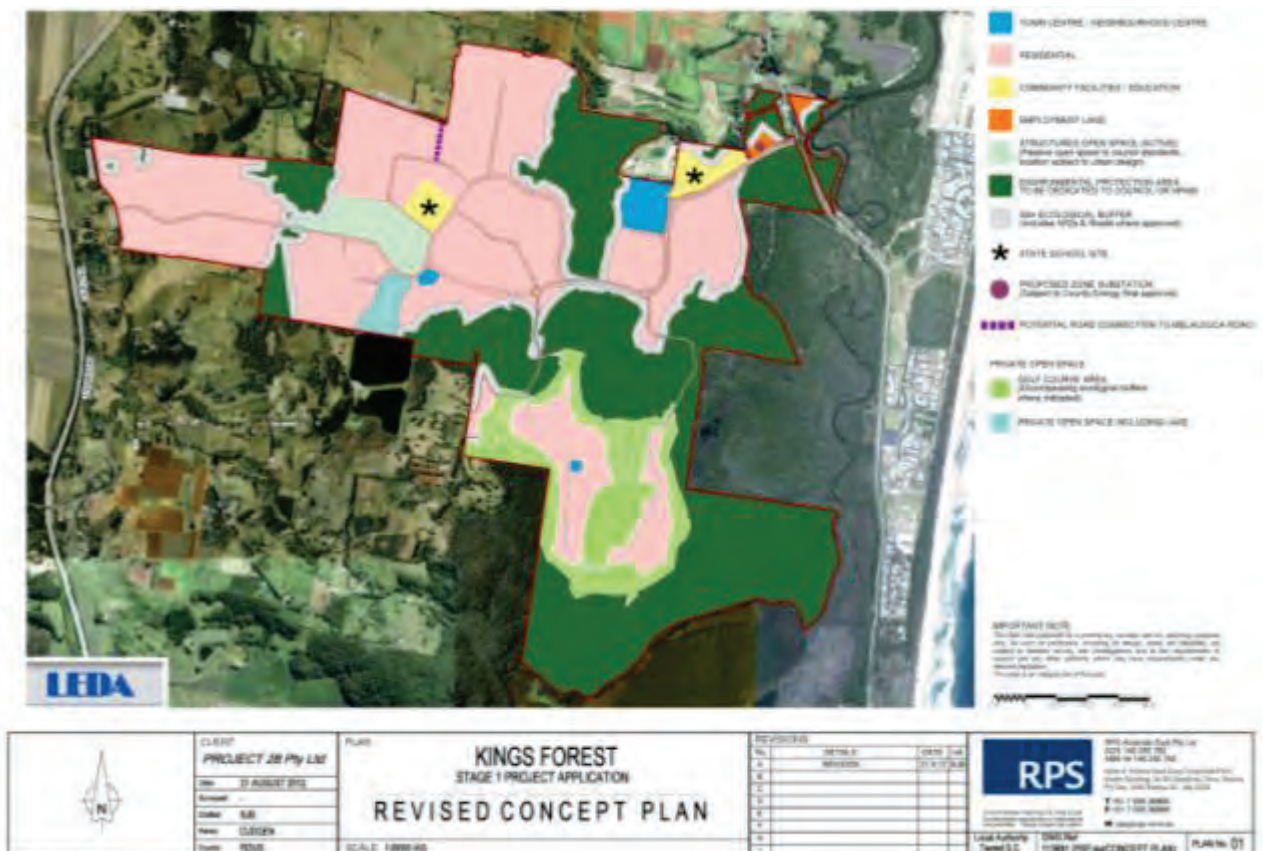
The PPR proposes housekeeping changes to the Kings Forest Code to ensure all the maps reflect the current application and to ensure readability throughout the document. The main changes are to Section 5.6 Plan of Development Requirements and are assessed later in this report.

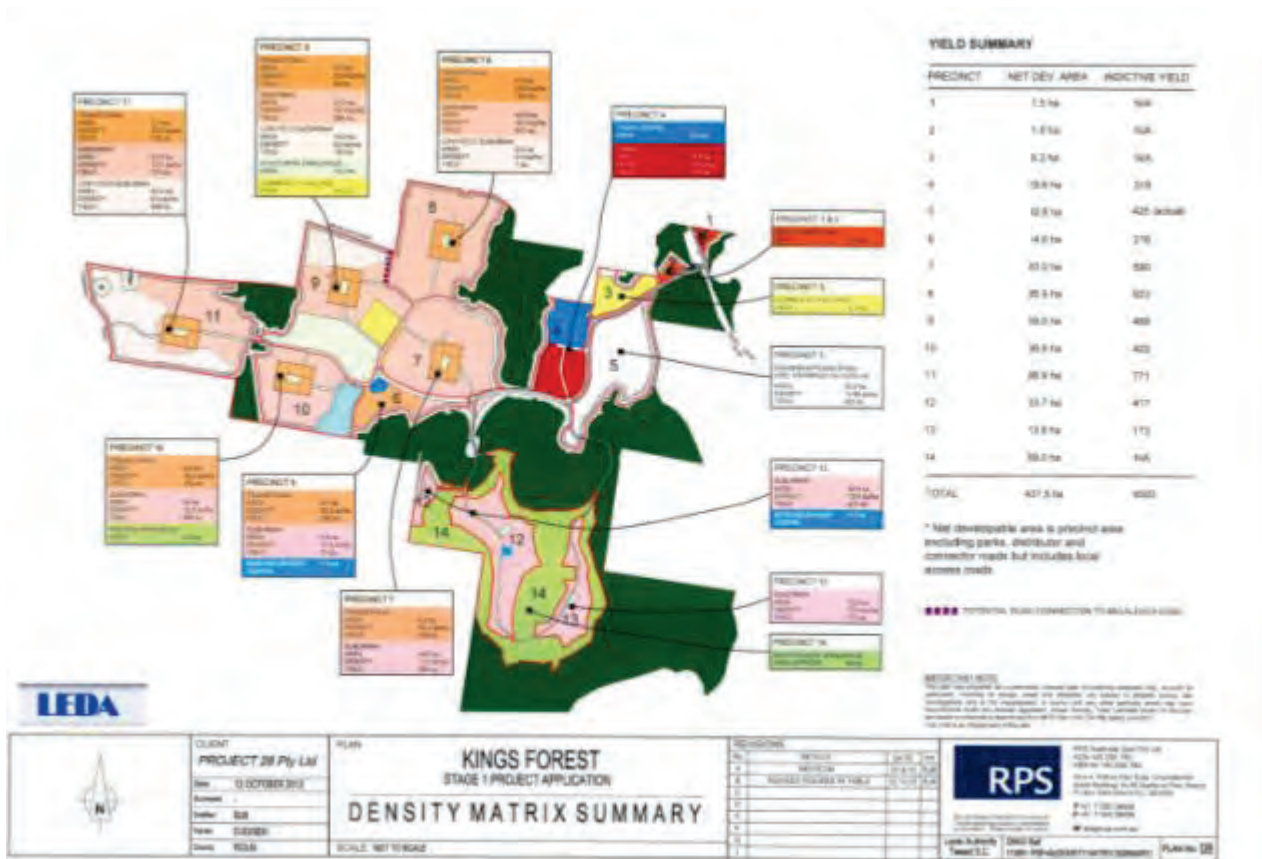
Modification to the approved Concept Plan

The proposed concept plan shows:

- A relocated neighbourhood centre adjoining Precinct 6;
- relocated structured open space to centralise all structured open space (in the middle of Precincts 6,7,9,10 and 11);
- amended road layout – new connection to Melaleuca Road and new Road Types;
- Townhouses instead of apartments in the southern sections of precinct 5 to provide a greater product mix;
- Changes to the East West Drainage Maintenance Statement of Commitment;
- relocated zone substation to within Precinct 2 Employment Land;
- relocated potential affordable housing location within Precinct 7; and
- revised shape to the proposed waterbody;

The proposed concept plan still aims to achieve a yield of 4500 dwellings:





Amendments to the conditions of approval under the Concept Plan

Condition B4 requires details of an east-west wildlife corridor to be submitted prior to determination of Stage 1. A modification of Condition B4 of the Concept Plan Approval is sought to amend Condition B4 such that only a southern corridor is required. This matter is assessed within this report.

Condition C2 requires stage specific management plan updates (in relation to koalas, vegetation, feral animals, weeds, buffers and threatened species) to be included, where relevant, with all future applications. The applicant is seeking this condition be amended for these plans to only be required prior to issue of a construction certificate for the relevant works. The proposed amendment is still to only require this where relevant. Council objected to this originally and has re-assessed this request within this report.

Condition C13 requires a detailed geotechnical assessment to be submitted with each future development application for subdivision. The applicant is seeking this condition be amended for these assessments to only be required where relevant to the proposed application. Council objected to this originally and has re-assessed this request within this report.

Koala Management

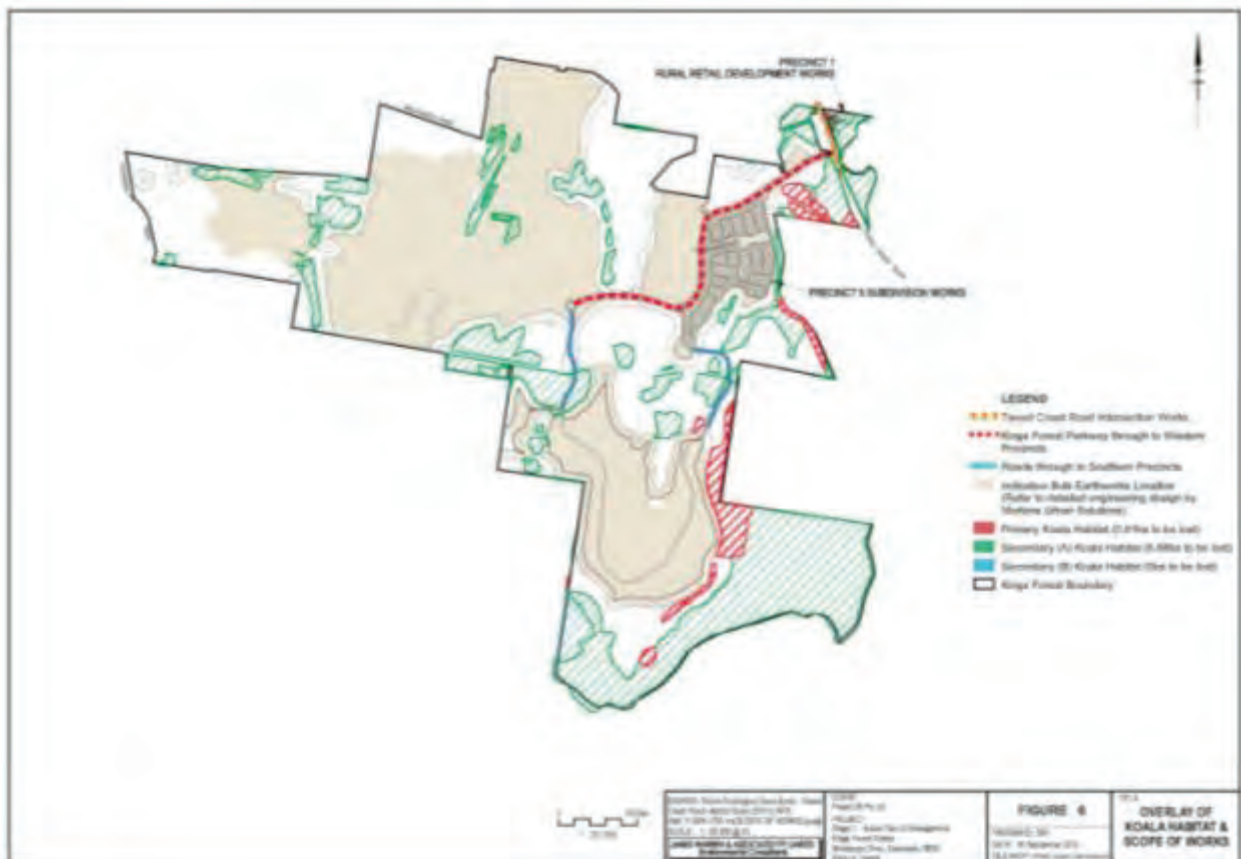
An updated Koala Plan of Management (KPoM) prepared by James Warren & Associates has been submitted with the PPR. The applicant states that the key changes to the KPOM include:

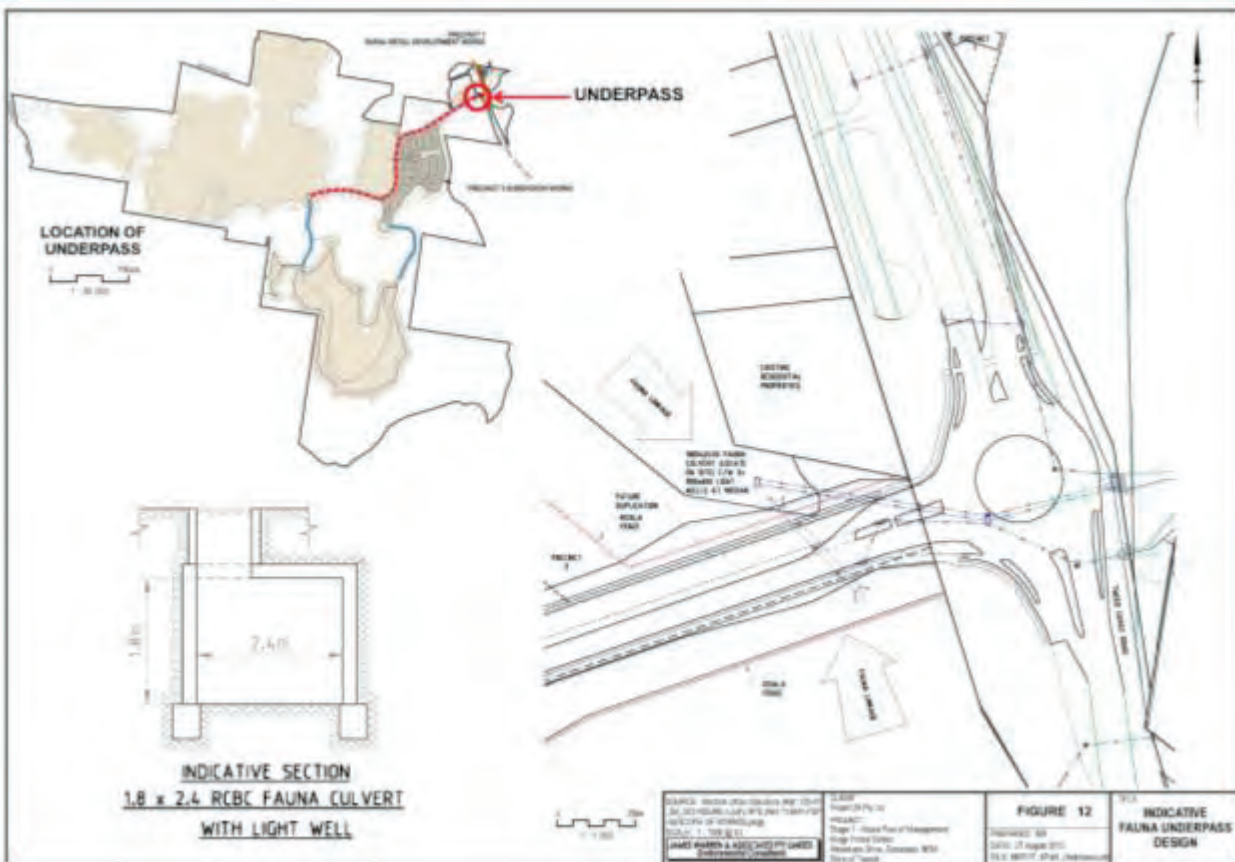
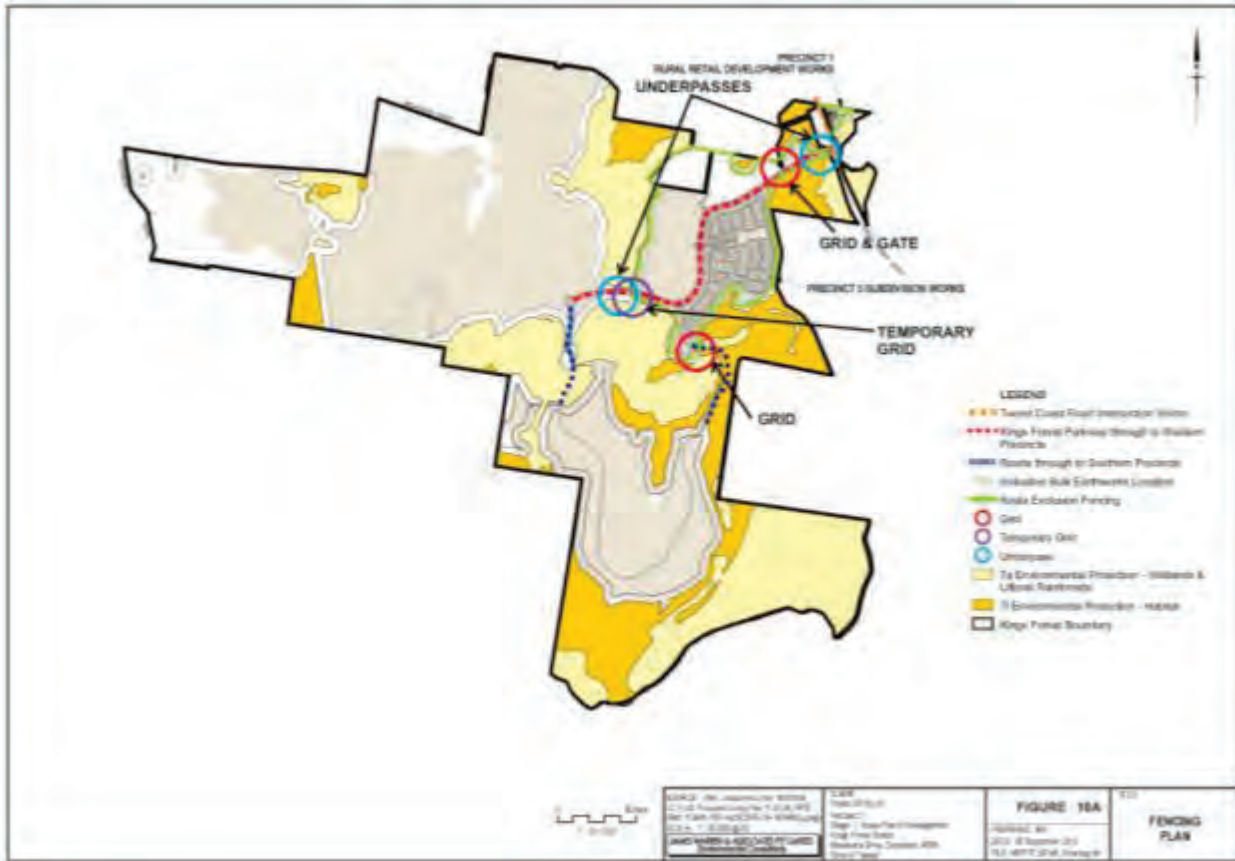
- An Implementation and Summary table that details the purpose, timing and responsibility of management/monitoring actions;
- References to contemporary literature;
- A revised koala exclusion fencing design;

- Further details regarding the impacts to koala habitat from the proposed development;
- A habitat assessment demonstrating that koala trees, acid frog habitat and heathland occur together on the Kings Forest site; and
- Further description of koala food tree plantings and compensatory habitat.

The applicant's PPR makes the following statements in relation to the KPoM:

- There will be minimal losses to koala habitat as only isolated occurrences of koala food trees will be removed;
- No Primary or Secondary (B) koala habitat is to be removed as a result of the Stage 1 works;
- The proposed development will result in the loss of 6.68ha of Secondary (A) habitat (areas where primary food tree species are present but not dominate or co-dominant). This equates to a direct loss of 742 individual trees. Of these trees to be removed only 18 are considered Primary koala food trees comprising 17 swamp Mahogany and one Tallowwood; and
- It is proposed that approximately 7875 koala food trees and 7875 other endemic Sclerophyll Forest species will be planted to offset this relatively minor and unavoidable loss.





The revised KPOM shows in a diagrammatic form that koala fencing will surround Precinct 5. This is shown in the above diagram with a green line (a zoomed in version is duplicated below). At the southern and western ends to Precinct 5 roads will be constructed to link the development to other parts of the site. The diagram shows grids across the roads in this location which will deter koalas getting back into the residential areas but wont necessary deter free roaming dogs from entering the koala areas. If the new koala plan is to ensure koalas are fenced out of residential areas and that dogs cannot get to those koala areas then fences would be required either side of the proposed roads linking Precinct 5 to the rest of the estate. The written text within the KPOM states:

"The location and design of Koala fencing combined with the use of grids and traffic calming devices through the central Environmental Protection Zones (i.e. SEPP 14 wetlands), rather than constructing fences on both sides of the roadways, will allow for unimpeded Koala movements into other Environmental Protection zones, the golf course area and adjacent vegetated properties. Fencing to exclude Koalas from the residential areas of Precincts 12 and 13 (that is, containing the golf course area, being Precinct 14), and additional required underpasses and/or grids, shall be the subject of a future Project Application or Development Application. Such fencing shall be constructed generally at the boundaries between residential allotments and the golf course, be aesthetically appropriate in such a setting and be covenant protected."

It is the above statement that Council raises issue with later in this report as the proposed arrangement would not guarantee the safety of the koala at Kings Forest.



Subdivision to create new lots for future development

It is still proposed to subdivide the Kings Forest site into master lots. The PPR proposes 10 master lots compared to 8 master lots previously proposed.

Stage 1

- Create Lot 1 (Eastern side of Tweed Coast Road - Precinct 1) – 2.368ha;
- Create Lot 2 (Precinct 5 to be subdivided for the first residential blocks within Kings Forest) – 41.28ha;
- Create Lot 3 – Environmental land - 180.6ha to be dedicated to NPWS;

- Create Lot 4 – Environmental land east of Tweed Coast Road– 5.18ha proposed for dedication to TSC via Voluntary Planning Agreement (VPA);
- Create Lot 5 - Environmental land north of the employment land– 4.686ha proposed for dedication to TSC via Voluntary Planning Agreement (VPA);
- Create Lot 6 – Regional Pump Station Eastern side of Tweed Coast Road – 396m²; and
- Create residue allotment.

Stage 2

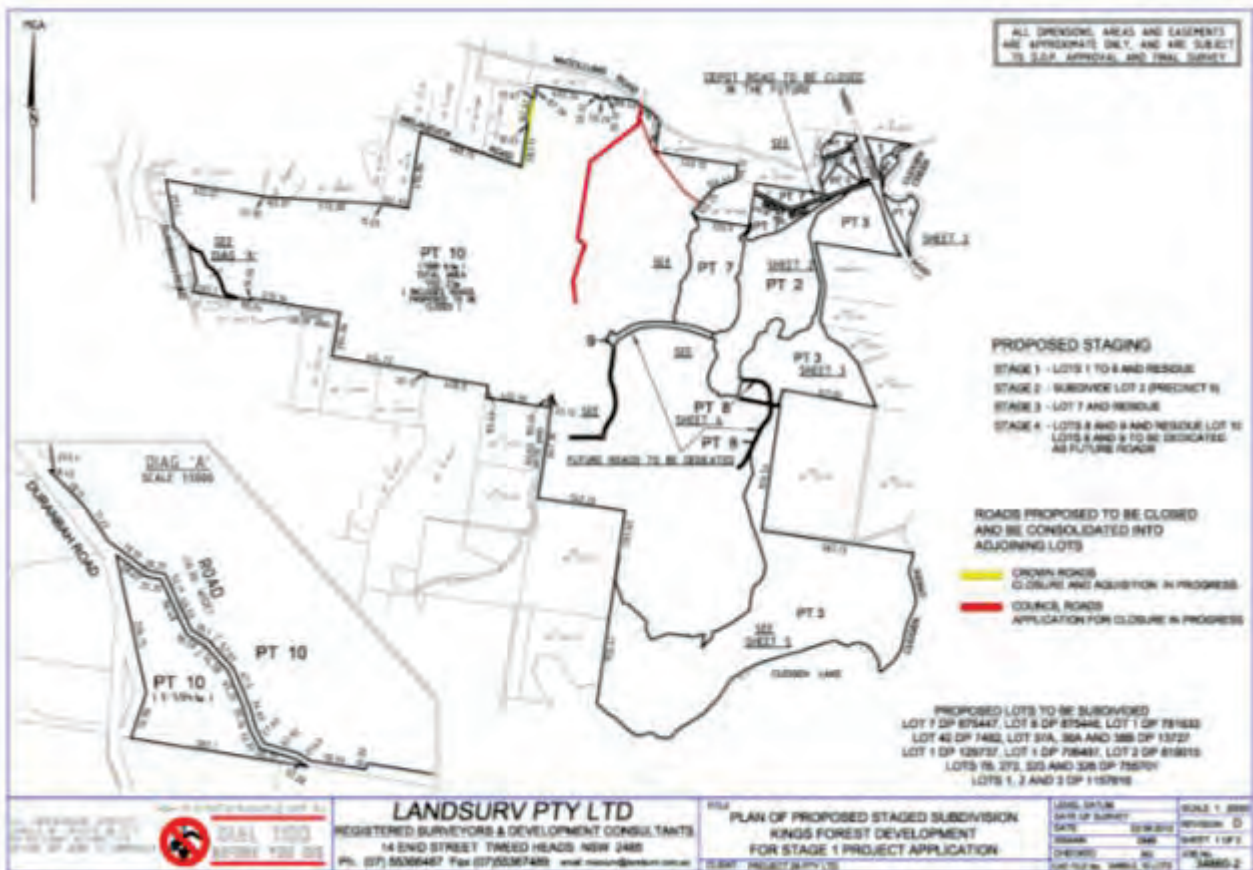
- Subdivide proposed Lot 2 (Precinct 5) into 376 torrens title allotments for residential purposes (425 dwellings). 3 public reserve allotments, 8 drainage reserve and asset protection allotments, 1 sewer pump station allotment, and 1 environmental open space allotments. This will result in 425 dwellings or approximately 1105 people (compared to 442 dwellings in the EA report).

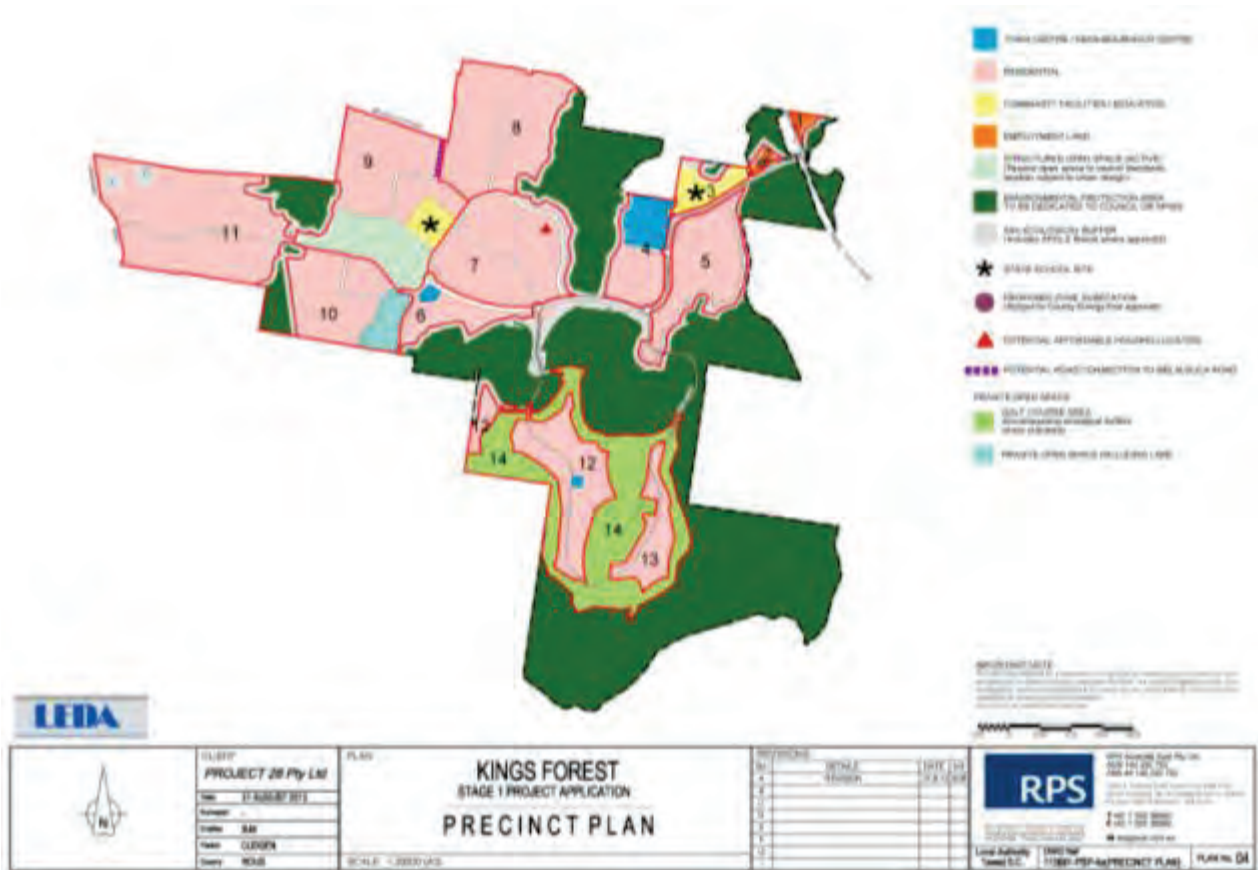
Stage 3

- Create Lot 7 – Employment land, school site town centre site (Precincts 2, 3 and 4) – 36.94ha; and
- Create residue allotment.

Stage 4

- Create Lot 8 – road to Precincts 12,13 and 14 (Cudgen Paddock Area) – 1.194ha;
- Create Lot 9 – Part of Kings Forest Parkway and road to Precincts 12,13 and 14 (Cudgen Paddock Area) – 3.967ha; and
- Create Lot 10 as residue allotment comprising Precincts 6 - 14 – 592.2ha.





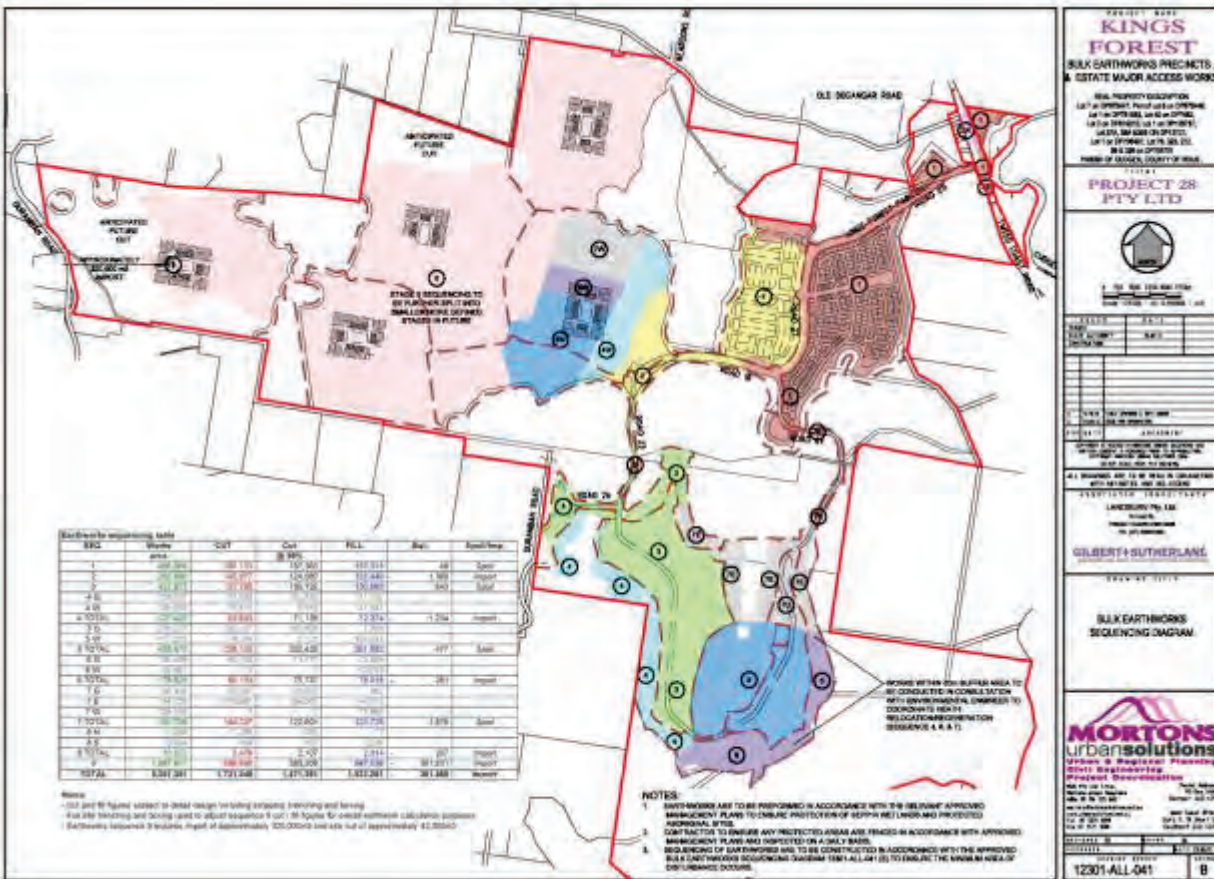
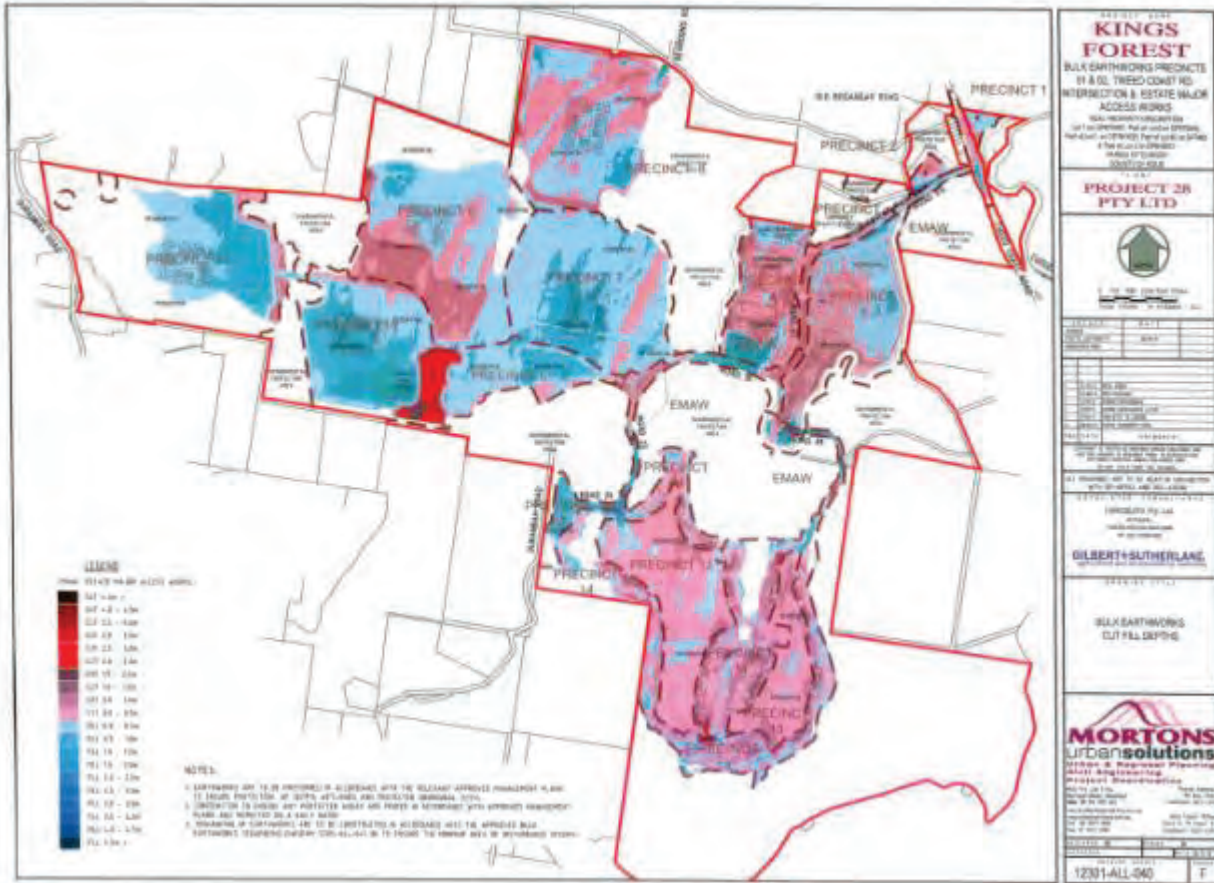
Bulk earthworks across the site

The applicant originally stated that the purpose of the bulk earthworks was to generally to assist with the stormwater management of the site and to lower the site levels in Precincts 2, 4, 5 and 12 to 14 in order to provide fill for Precincts 6 to 11 to form the development pads for the residential precincts and to contour the future golf course.

The development proposes importation of up to 320,000m³ of fill via truck movements for the western stages (6-11) of the development. The PPR confirms the extent of fill required for importation, and provides a Haulage Management Plan (HMP) as part of the Construction Management Plan (Section 6, Appendix 10). The consultant predicts that the actual volume of imported material may be less than estimated, depending on compaction factors etc, however a number of other limits likely to be imposed on the bulk earthworks operations (exclusion of buffer areas, staging of sports fields etc.) risk larger volumes being required.

The HMP nominates a likely source of fill as Pottsville Quarry. After accessing the Pacific Highway, haulage trucks would turn onto Tweed Valley Way at Melaleuca Station, turn onto Cudgen Road, then follow Duranbah Road to the site. The HMP envisages 8 truck movements per day, for 200 days/year, for 4 years, without truck-trailer combinations.

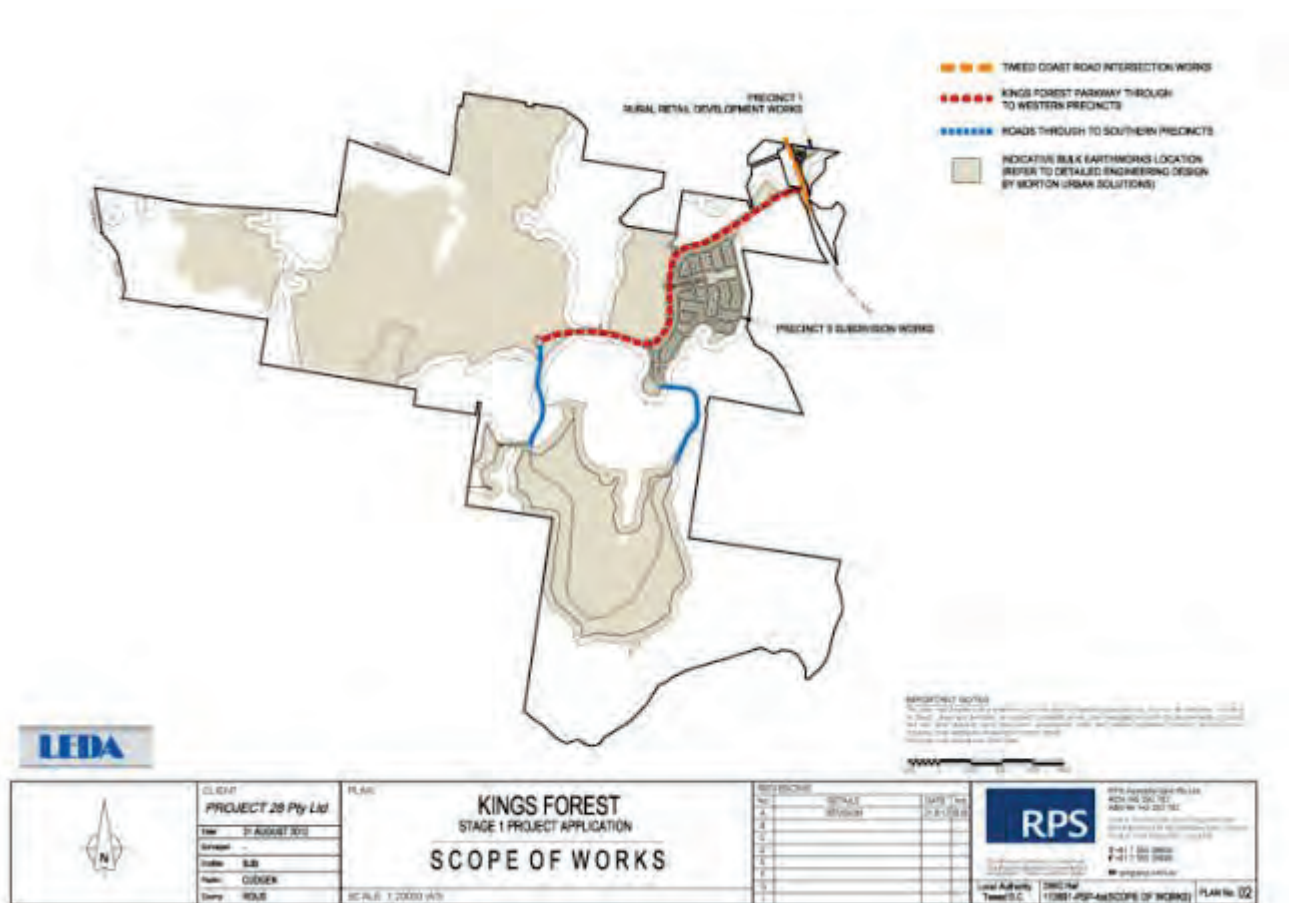
The amended earthworks plan and construction management plan shows this diagrammatically and sequentially as follows:



The proposed development will incorporate the following roadworks:

- The entrance road to Precinct 1 off Tweed Coast Road;
- The amended entrance road to Old Bogangar Road off Tweed Coast Road;
- The entrance road to the site (Kings Forest Parkway) and associated intersection works with Tweed Coast Road;
- Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western precincts;
- Part construction of two proposed roads through SEPP14 areas to access the southern precincts; and
- Internal roadwork's to accommodate Precinct 5.

These are shown diagrammatically below:



Precinct 1 – Rural Supplies Development

The amended application seeks consent for development of 2,036m² of floor space for rural supplies development (as contemplated in the Kings Forest Development Code) within one building with access, parking and landscaping arrangements within Precinct 1.

The applicant has stated that approval for the fit out of the building, use and hours of operation and signage will be the subject of future development applications submitted to Tweed Shire Council and determined under Part 4 of the EP&A Act 1979.

The amended design and location of the building is now located outside the 50m ecological buffer. Outside the 50m buffer is a further 21m asset protection zone. In this location the applicant shows some car parking spaces and the regional pump station.



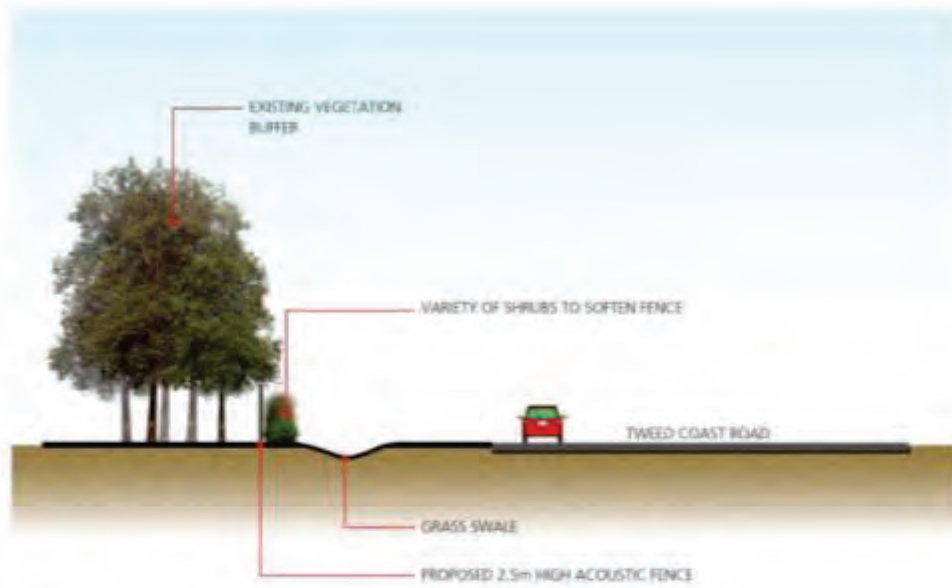
Infrastructure Woks

The application includes infrastructure works to service Precincts 1 and 5 comprising;

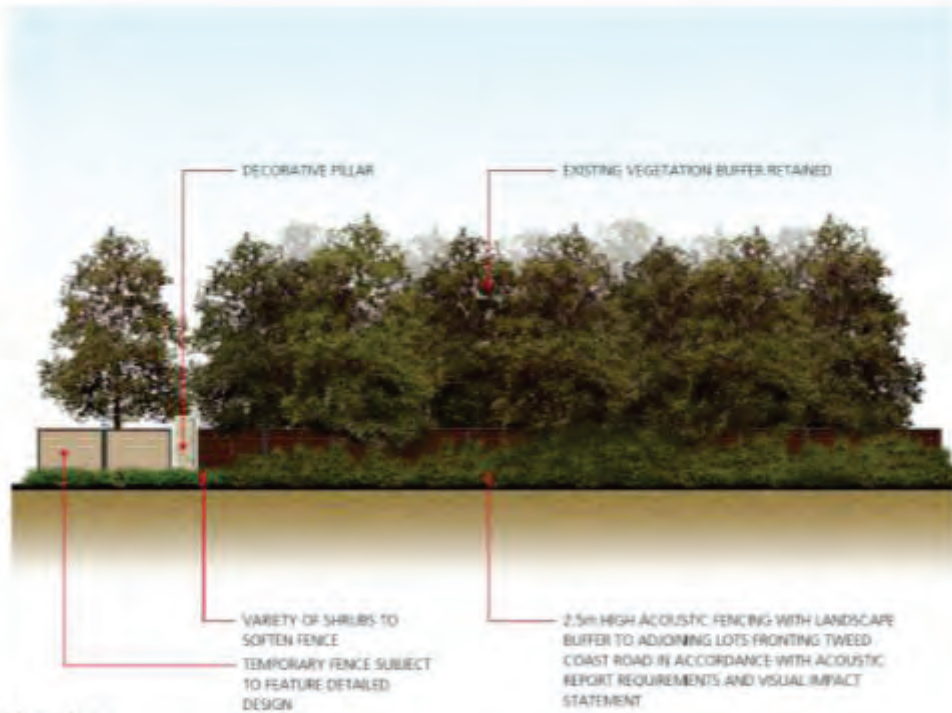
- Sewer reticulation via a conventional gravity system augmented with sewer pump and lift stations;
- A regional pump station located just south of Precinct 1;
- Potable water reticulation connecting with Tweed Coast Road mains;
- Traditional stormwater drainage consisting of concrete pipes with gully pits to capture road runoff which lead to treatment devices;
- Precinct 5 internal roads;
- Connection to power and telecommunication services; and
- 2.5m high acoustic barrier will be constructed fronting Tweed Coast Road (as shown below) and a 2m and 2.1m high acoustic fence along the Kings Forest Parkway abutting Precinct 5.

Sketch No. 2: Tweed Coast Road Existing Dwellings and Recommended Acoustic Barriers (Not to Scale)





Section



Elevation

Fig 8. Illustration of proposed acoustic fence

Fig 11. Recommended Precinct 5 acoustic barriers

Source: D9371a_Report rev2.pdf



Sketch No. 1: Precinct 5 Site Layout and Recommended Acoustic Barriers (Not to Scale)

KINGS FOREST - PRECINCT 5





IMAGE A: Indicative acoustic fencing and landscape detail

Precinct 5

Development of Precinct 5 will authorise 376 Torrens title allotments which will be capable of accommodating 425 residential dwellings across the site.

The approved Kings Forest Development Code overrides Council's existing planning provisions and provides a housing choice (of lots less than 450m² and as small as 150m²) presently not available in the Tweed outside Kings Forest and Cobaki.

Development of Precinct 5 has utilised these provisions and provides a variety of housing types as shown below:

Proposed Dwelling Type	Number
Mews	0
Townhouses	20
Terraces	37
Plexes	55
Zero Lot Dwelling	192
Traditional Detached Dwelling	121
TOTAL	425

A mews dwelling is defined as a group of more than three and up to six dwellings located on a single lot that share a common driveway and often have frontages to two streets or a street and a park but otherwise have no common facilities. These lots can be strata title subdivided.

A Plex dwelling is defined as up to six attached or detached dwellings located on one lot (duplex, triplex etc) but where no common facilities are provided. These lots can be strata title subdivided.

A zero lot dwelling is a dwelling on a single lot where all or at least part of one side wall is built to boundary.

A traditional detached dwelling is a dwelling on a single lot which has no wall touching a property boundary.

A terrace dwelling is where all or at least part of both side walls are built to boundary (excluding corner lots or lots adjoining parks).

A townhouse development means a dwelling within a development in which six or more attached dwellings (that are not plex or mews developments) with direct ground floor access are located on a single lot with a shared common driveway, common property and communal facilities. These dwellings may be strata title subdivided.

No seniors housing is proposed within Precinct 5.

The site will be filled however some allotments will still be affected by the probable maximum flood (PMF) level.

As required by the approved Kings Forest Development Code the applicant has submitted a Plan of Development to accompany the subdivision application. The submitted Plan of Development demonstrates the following:

- Zero-lot boundaries to the zero-lot dwellings;
- Indicative location of vehicular access;
- Indicative location of alternative vehicular access;
- Fire trail;
- Recommended location of 2m high solid acoustic barrier within private property;
- Recommended location of 2.1m high solid acoustic barrier within private property;
- Proposed location of the 1.5m high transparent fence;
- Indicative private open space;
- No build zones to protect views to park;
- Sites where 3 storey development is permitted;
- Entry signage incorporated into acoustic barrier;
- Lots affected by Bushfire Attack Level 12.5;
- Lots affected by Bushfire Attack Level 19;
- Lots affected by Bushfire Attack Level 29;
- Maximum unit and bedroom numbers for plexes; and
- Inner 30m – 20m Ecological Buffer Junction.





PLAN OF DEVELOPMENT

DEVELOPMENT CONTROLS

IMPORTANT NOTE
 The development controls are subject to change without notice. The applicant is responsible for ensuring that the development controls are correctly interpreted and applied. The applicant is advised that the development controls are not intended to be used as a guide for the design of the development. The applicant is advised that the development controls are not intended to be used as a guide for the design of the development.

SYMBOLS

- Red circle: Proposed Lot
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TERRACED
 FLUDES
 2001 - LOT DWELLING
 TRADITIONAL DETACHED DWELLING



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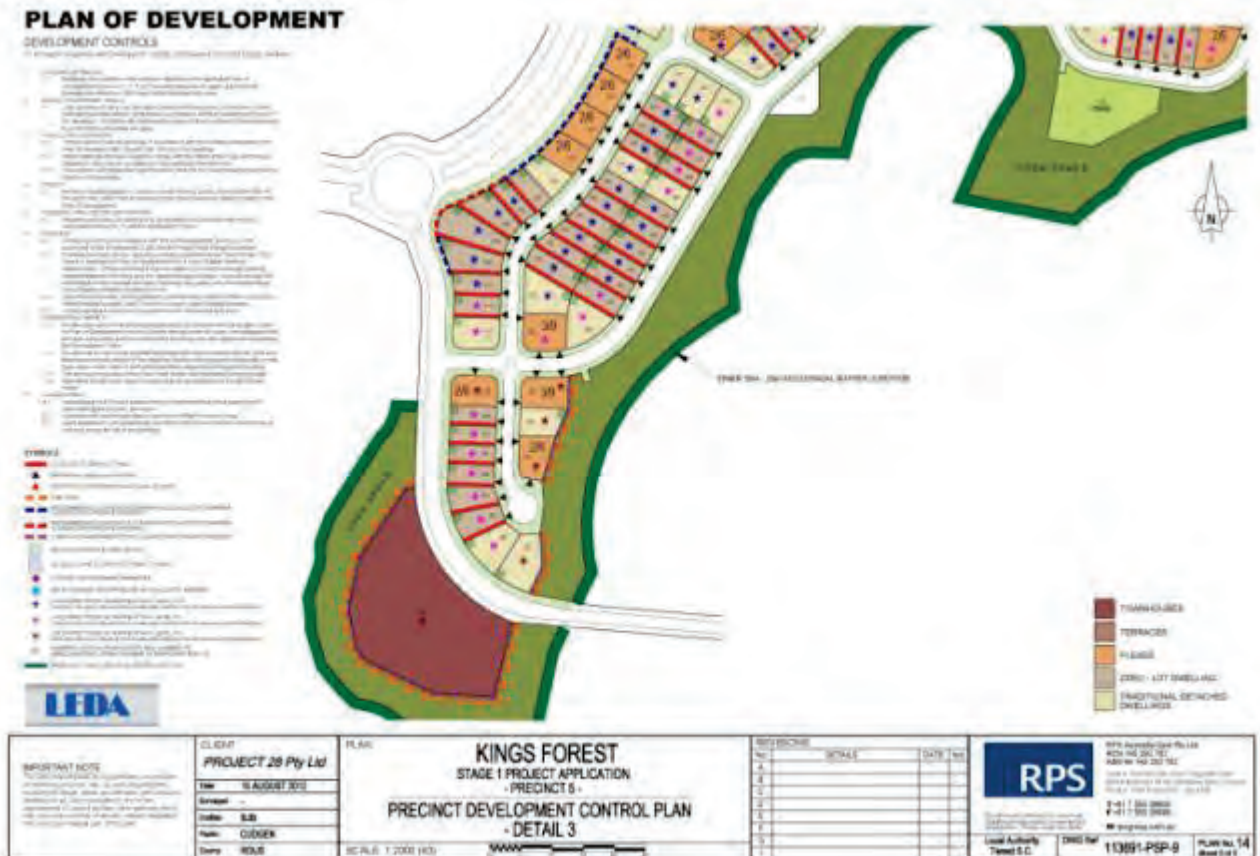
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Landscaping for Stage 1 Development

The main features of the landscape concept are:

- Landscaping throughout the car parking area for Precinct 1;
- Street trees along Kings Forest Parkway and along the internal access streets within Precinct 5;
- Landscaped median strips along the Kings Forest Parkway;
- Planting and signage on the roundabouts and at intersections along Kings Forest Parkway;
- An entry feature at the site entrance on Kings Forest Parkway including a fauna crossing;
- A neighbourhood park within the central part of Precinct 5;
- Bio-retention swale along the eastern boundary of Precinct 5; and
- Multi-use pathway located along the western boundary of Precinct 5.



Drainage Maintenance

The applicant originally stated that the east-west agricultural drainage channel - also known as Blacks Creek - running through the SEPP 14 wetlands within the central part of the site needs to be retained for flood management purposes and will require periodic maintenance to maintain adequate flows in flood events. This will involve removing excessive vegetation growth, obstructions to water flow (e.g. snags etc) and deposited sediment.

The Drainage Maintenance Management Plan (Section 14, Appendix 10) has removed weed and snag removal as a maintenance item, and has limited "mechanical drainage maintenance" to around 10 year frequency to ensure it does not become completely blocked. Associated drainage and flooding assessments have been modified in the PPR to reflect the amended drainage maintenance regime, with adjusted tailwater conditions.

The drain has been routinely maintained under Existing Use Rights. The project application is seeking consent for the on-going routine maintenance of the east-west drain once these rights are relinquished.

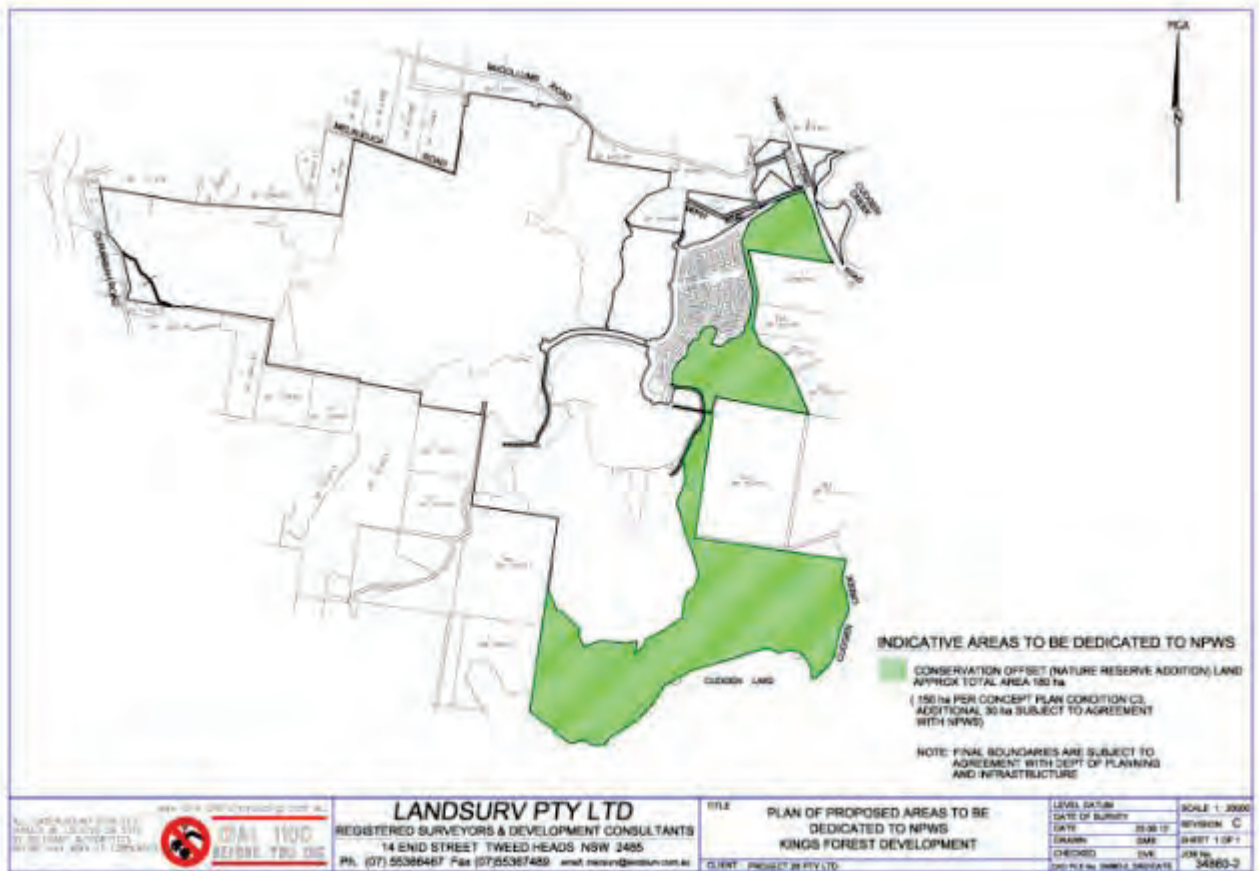
Land Dedication to National Parks and Wildlife Services

In accordance with the Concept Plan approval, approximately 150 hectares of land within the Environmental Protection zones will be dedicated to the NPWS. A further 30 hectares contiguous with this land will also be dedicated to NPWS, and together they will form proposed Lot 3. The applicant states that a Voluntary Planning Agreement is to be entered into between NPWS and Project 28, with the terms to include:

- The area(s) of land to be dedicated;
- Details and timing of rehabilitation and revegetation, fencing, and like works to be carried out;

- Monitoring of impacts of development on the Cudgen Nature Reserve and the additional dedicated land;
- The timing of dedication(s);
- Maintenance responsibilities after dedication and the funding thereof;
- Public access, if any, and the associated conditions.

The agreement will need to meet the requirements of Condition C3 of the Concept Plan approval (as modified 22 December 2010), and the proponent will provide the Director-General with evidence of the agreement prior to the construction of Stage 1, or as otherwise agreed by the Director-General.



Land Dedication to Tweed Shire Council

The applicant has stated that the following land is at this stage intended to be dedicated to TSC subject to a Voluntary Planning Agreement being established between Council and the applicant:

- Conservation Offset (Environmental Protection Zone): 153ha;
- Drainage Reserve: 3.81ha;
- Environmental Open Space (adjoining the southern portion of Precinct 5): 2477m²; and
- Urban Expansion zone: 18ha (structured open space).

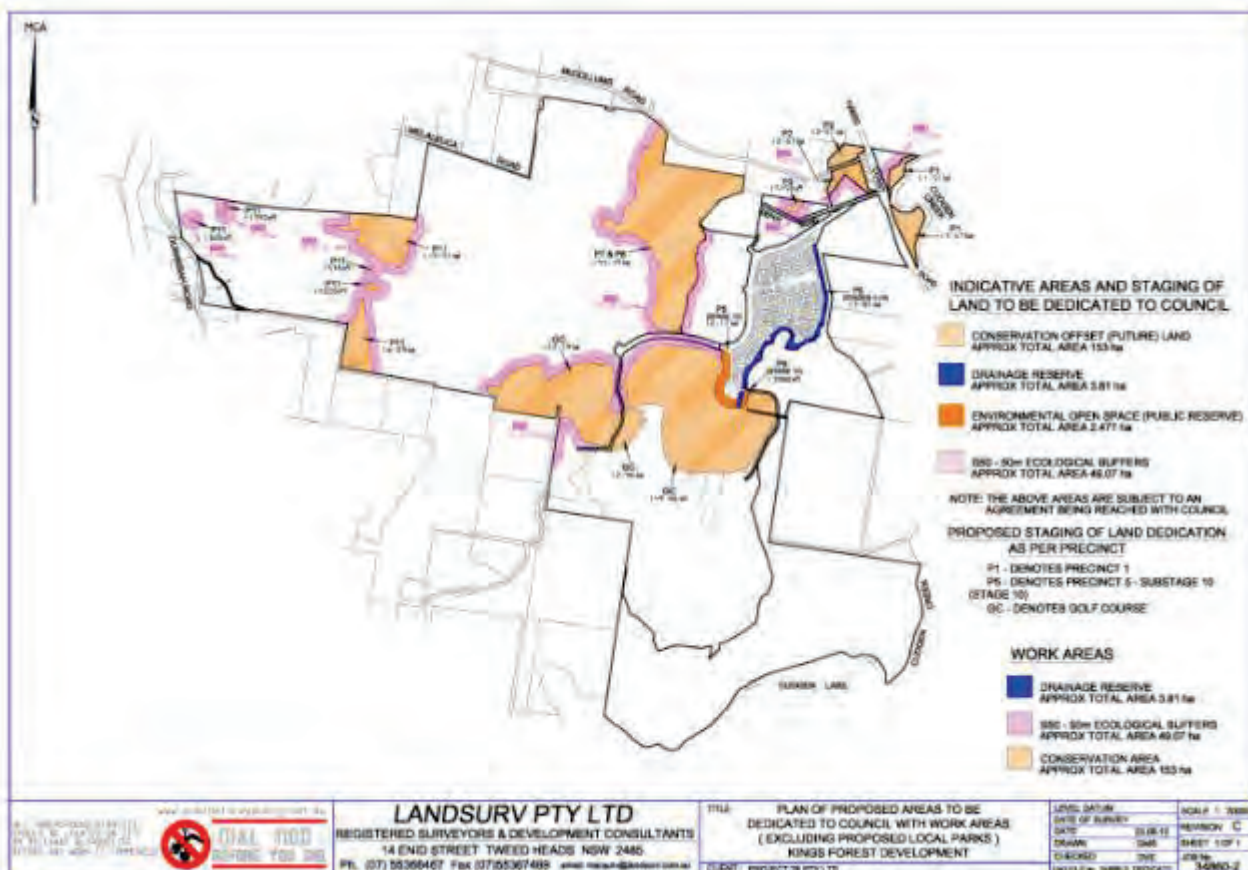
In total the proponent foreshadows the dedication to Council of some 200 ha of environmental lands and associated Ecological Buffers. The terms and conditions of a

Voluntary Planning Agreement (VPA) would need to be agreed prior to approval of the development consistent with DGR 4.2.

Within the PPR the applicant has included a letter of offer to inform a potential VPA. In summary the letter of offer says:

- Project 28 Pty Ltd undertakes prior to issue by the Council of the final Construction Certificate associated with the Project Application MP08_0194, to enter into a Voluntary Planning Agreement with the Council. The terms of the VPA will provide for the dedication, remediation and maintenance of identified lands.
- The terms of such agreement would include land and buffers being offered in stages related to the subdivision of each precinct prior to sealing of the subdivision plan. Project 28 will remediate the land in accordance with the relevant management plans and maintain these areas for five years from the date of their establishment.
- For the provision of security by bond or guarantee in the event of a breach the amount of such security be determined based on the remediation and maintenance obligations in relation to each separate parcel of land to be dedicated.
- In addition Project 28 will commit to constructing the acoustic fences on Old Bogangar Road (on public land) and to maintain it until the Tweed Coast Road is widened to four lanes or for a period of 4 years after completion of the construction whichever is the earlier.

The areas for dedication are shown diagrammatically below.



Council staff have always been concerned that the costs associated with maintenance of environmental land into perpetuity would be a significant burden to Council, with no corresponding budget to accommodate this.

As part of the letter of offer to Council the applicant produced a Environmental Maintenance Management Cost Plan prepared by Boyds Bay Environmental Services. This document stated that:

"A total of 208.35 hectares of environmental protection land (the project area) that will be dedicated to the local council (subject to agreement). It will include (subject to approval), conservation land, restoration zones, ecological buffers, asset protection zones (APZ), storm water management devices, and koala fencing.

This study has divided the project area into three (3) distinct maintenance zones to assist in the formulation of long term resource inputs and maintenance costs (Refer Project Area Plan Section 2). The cost estimates are for maintenance requirements after the initial developer funded maintenance period.

Work Areas	Cost Estimate
Drainage Reserve	\$17,000
Ecological Buffers	\$51,000
Conservation Area	\$17,000
Cost Estimate per Annum (\$408 HA)	\$85,000"

Council has previously stated that the costs associated with long term maintenance are in the order of \$2000 - \$3000 per ha per year once the land has been remediated. This is dramatically different to the figures produced by Boyds Bay Environmental Services.

Accordingly Council has been doing some more research to compare what other Council's and other Consultancy recommend in regard to establishing a costs regime for management of environmental lands. Council has engaged a private firm Practical Ecology to specifically review the management plans at Kings Forest and provide advice on what the true costs of managing environmental lands are. The following provides a summary of the data available:

- Tweed Byron Bushland Audit - \$1900/ha/yr
This would equate to approximately \$600,000 per annum for Kings Forest and \$580,000 for Cobaki
- Gold Coast City \$7500/ha/yr
- Bush Broker (Victoria) \$3400 – \$37000/ha/yr
- Boyds Bay Environmental \$408/ha/yr (\$85K pa Kings forest)

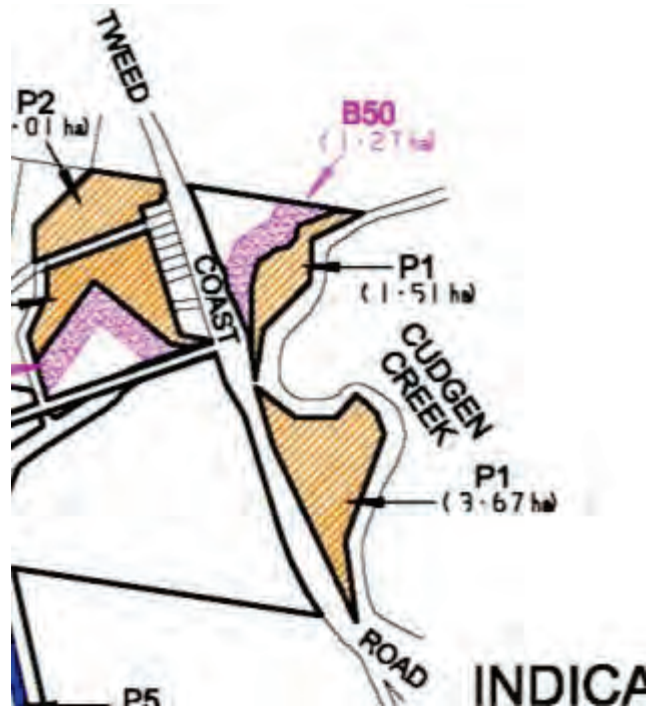
Practical Ecology Review

- Costs comparable to Tweed Byron Bushland Audit
- \$1700/ha/year (weed maintenance)
- \$22000/ha/yr (establishment and threatened species works)

Earlier discussions between Council and the applicant were unable to reach a resolution on the issue of costs associated with land dedication. This has also been difficult to date as Council requires more detail within the submitted management plans to understand the extent of works required.

Discussions with the DP&I have indicated that Officers within DP&I are of the opinion that this matter can be resolved between the applicant and Council at later stages of development as in their opinion development of bulk earthworks, Precinct 1 and Precinct 5 do not trigger any significant areas of dedication.

Council staff do not concur with this view as the current PPR will at least trigger dedication of those environmental lands surrounding Precinct 1 (3.67ha) as shown below.



This issue is further discussed in detail throughout this report and forms a crucial matter for Council to resolve. If the costs associated with the ongoing maintenance cannot be funded by the development itself (for example by way of a special environmental levy) Council may decide not to accept the dedication of this land and leave the long term maintenance a responsibility of the land owner.

COUNCIL OFFICERS' ASSESSMENT:

The application has been reviewed by Council's technical staff. The following report is a compilation of the assessments which have been derived from various divisions of Council.

The main issues relate to ecological matters as follows:

- Dedication and Long-Term Management of Environmental Lands;
- Ecological Buffers and Clearing of Native Vegetation;
- Conflicting Rehabilitation and Revegetation Objectives;
- Koala Management and Dogs;
- Bushfire Management;
- Management Plan Implementation;
- East-West Wildlife Corridor;
- Wallum Frog Habitat Compensation;
- Monitoring and Evaluation;
- Further Protection of Heathland; and

- Management Plan Updates.

These key issues are summarised below under “Ecological Summary” however all ecological matters are discussed in detail at the end of this report.

Ecological Summary

The following comments are confined to ecological and land-use planning issues related to the management of natural resources and should be read in conjunction with Council's previous comments on the Stage 1 Project Application contained in the Council report of 24 January 2012. In the previous report a large number of recommendations were made, the object of which was to facilitate tangible improvements in the development and to provide clear direction to assist the Department of Planning and Infrastructure in their role as the Consent Authority.

Although it was observed that there were many positive aspects of the approach to environmental management of the development, Council's previous report highlighted a number of substantive issues which it sought to resolve prior to the approval of the development. These issues included:

- Proposed arrangements for land dedication and the long term management of environmental open space;
- The use of areas formally set aside as ecological buffers;
- Clearing of existing native vegetation;
- Conflicting and overlapping rehabilitation and revegetation objectives;
- Management of the local koala population especially measures to prevent koalas from coming into contact with dogs and motor vehicles;
- Bushfire management;
- Deficiencies in clearly defining management actions within the required environmental management plans;
- Water quality concerns in the receiving environment of Cudgen Creek;
- The provision of wildlife corridors in the west of the site;
- Plans to create wallum frog habitat as compensation for habitat lost without sufficient technical support; and
- Requirements for a Flora and Fauna Monitoring and Evaluation Plan including the provision of baseline data.

In many cases Council considered that the relevant Director General's Requirements and Concept Plan Conditions had not been adequately addressed.

There have been a number of improvements made to the proposed development in the current Preferred Project Report (PPR) however most of the substantive issues previously identified in the Council report of 24 January 2012 remain to be adequately addressed. Due to the complexities surrounding these issues and the fact that many of them relate directly to specific Director General's Requirements (DGRs) and Concept Plan Conditions, it is considered that the following issues should be resolved prior to approval of the development.

A summary of these more substantive issues is presented directly below with further details at the end of this report. Subject to their resolution, a number of consent conditions are recommended in the attachment Draft Conditions.

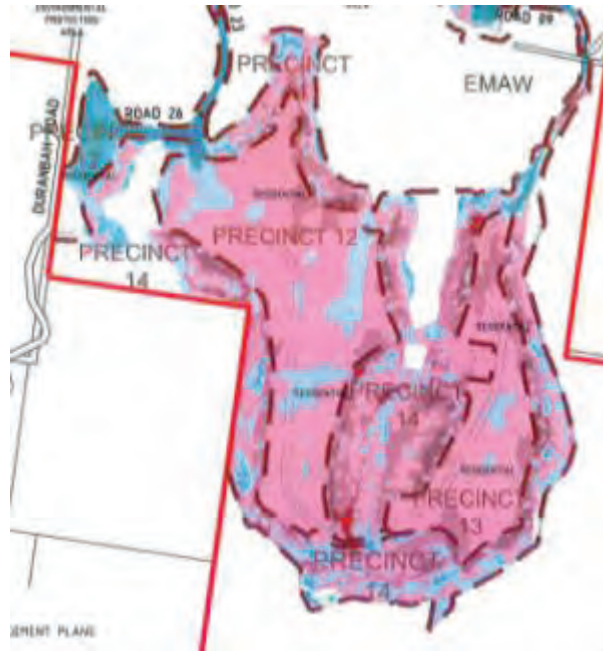
Dedication and Long-Term Management of Environmental Lands

The proponent foreshadows the dedication to Council of some 200 ha of environmental lands and associated Ecological Buffers. Due to the large scale of the development, uncertainties around timing and viability of future stages and possible changes in ownership Council took the view that it was in the public interest to ensure that any dedications are more closely linked to specific stages of the development and that the terms and conditions of a Voluntary Planning Agreement (VPA) would need to be agreed prior to approval of the development consistent with DGR 4.2. Although numerous discussions have taken place based on the Council's previous recommendations, agreement has not been reached, at least in part because resourcing arrangements for the long term management cannot be properly determined until the management plans have been finalised.

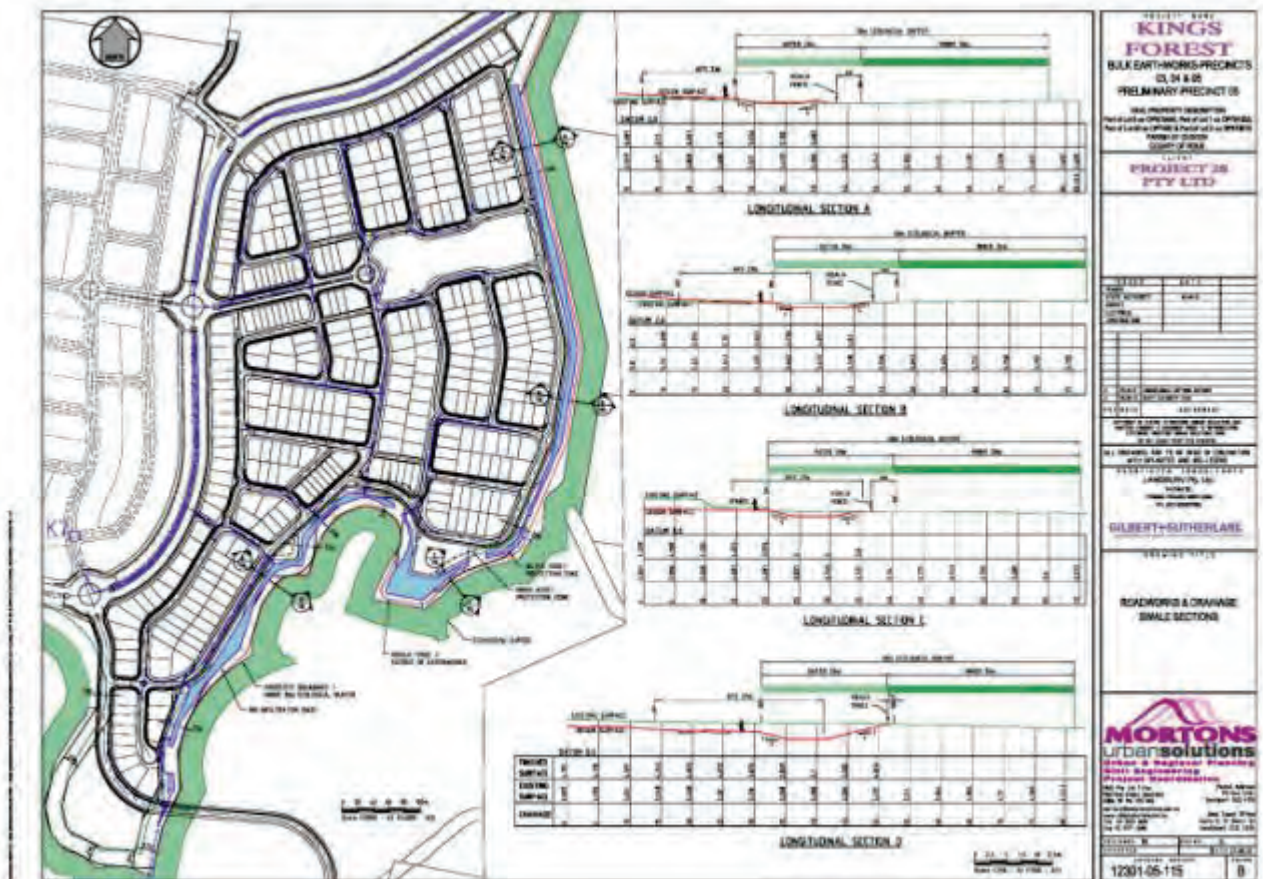
The proponent seeks to implement the approved management plans for a yet to be determined period while construction is occurring, however the costs and responsibility for ongoing (i.e. long-term) management remain to be addressed. Because of: (1) the size of the development; (2) its location in an environmentally sensitive location; (3) the large number and complexity of environmental issues to be managed (evidenced by numerous management plans covering many species and issues); and (4) ongoing pressures placed on the natural environment from large-scale urban development (e.g. weeds, feral animals, bushfire, dumping, encroachment, road mortality, water quality etc.), it is expected that the ongoing long-term management costs will represent a significant and perpetual burden on Council resources beyond any funds that can be generated from a larger rate base. Numerous discussions have been held on this issue including the canvassing of various funding mechanisms such as the generation of funds from the developer and/or the use of a special rate such as occurs at Koala Beach. As noted previously the costs of long term management cannot be properly determined until the management plans have been finalised. It is recommended that Council should only accept environmental lands for dedication if suitable arrangements are made to ensure that costs of for their long term management are covered by the proponent or the development itself.

Ecological Buffers and Clearing of Native Vegetation

In the initial project application the proponent sought to make extensive use of the ecological buffer for uses Council considered inconsistent with Part 6 of State Environmental Planning Policy (SEPP) (Major Projects) which explicitly seeks to restrict development and retain native vegetation in these areas. Although the current proposal has largely removed roads from the ecological buffers Council retains particular concerns in relation to: (1) the proposed clearing of some 23 ha of existing native vegetation within the ecological buffers and; (2) the use of the outer ecological buffer as an inner bushfire asset protection zone in a few locations and (3) the use of the inner 30m ecological buffer for the proposed golf course.



Precinct 12, 13, 14 - Earthworks within ecological buffer to accommodate the golf course



Precinct 5 swales (blue areas) within outer buffer area.

Conflicting Rehabilitation and Revegetation Objectives

Council previously noted that the proponent plans to re-establish heathland, plant koala food trees and create habitat for acid frogs over many of the same areas. As heathland is not regarded as koala habitat and does not contain koala food trees this is considered inappropriate. Similarly, planting of koala food trees in acid frog habitat would only be appropriate around the margins as their optimal habitat is away from the tree canopy. The

current proposal continues to propose considerable spatial overlap in areas identified for restoration of heathland, wallum frog and koala habitat that are considered inconsistent with DGR 9.4 which specifically requires management strategies for individual species or communities to avoid such conflicts.

Koala Management and Dogs

The Concept Plan was approved on the basis of a proposed Koala Plan of Management (KPoM) (Carrick 2009) that would see koalas roaming across the urban landscape inevitably bringing them into contact with dogs and cars.

In response to vigorous objections by Council and others, the Koala Plan of Management was revised in the Stage 1 Project Application with the objective of maintaining a complete separation of koalas and their habitat from these threats by the use of a series of underpasses, grids and fencing. Council welcomed this change in approach but observed that the plans submitted did not effectively seal off the development areas (where dogs would be permitted) from koala habitat.

Due to the findings of the Tweed Coast Koala Habitat Study (2011) that the local koala population was in serious trouble, Council officers took the view that dogs should be banned from the site unless effective measures were put in place to prevent them from coming into contact with koalas. However on debating the issue, Council resolved that a partial ban on dogs should be implemented in conjunction with other recommendations made in the Council report including effectively sealing off the development areas by fencing on both sides of any roads that traverse environmental areas and providing sufficient fauna underpasses to allow the unimpeded movement by wildlife including koalas across the roads.

The previous Council resolution of January 2012 stated:

"RESOLVED that Council:

- 1. Endorses this report to form the basis of a submission to the NSW Department of Planning and Infrastructure in respect to the Stage 1 Project Application for Kings Forest, **with the removal** of the recommendation within the report stating "That the Koala Plan of Management be reviewed to ensure: (1) implementation of a complete ban on dogs within the site; and (2) provision is made to enable additional patrols and compliance by Council Rangers to police the ban".*
- 2. Advises the Department of Planning of its concerns as identified in the Koala Plan of Management to ensure of the continued healthy existence of koalas and consideration of the threat of residents dogs to the development.*
- 3. All dogs must be enclosed in fully fenced and self-closing gated yards.*
- 4. Provision is made to enable additional patrols and compliance by Council Rangers to police the restrictions by a sinking fund provided by the developer, and a differential rate paid by future owners (who own a dog) at the Kings Forest site/development, in perpetuity.*
- 5. The Department of Planning sources a list of dogs that are historically known to be aggressive, predatory by nature and/or have a propensity to dig or tunnel and/or have a propensity to develop a "pack mentality" and that those 5 of 123 breeds form a list of banned dogs by way of a s88B instrument at Kings Forest.*

6. *The Department of Planning gives serious consideration to the fact that an application has been made to list the Tweed Coastal Koala population as “endangered” and that the Tweed Shire Council Draft Comprehensive Koala PoM is due to be placed before the Tweed Coast Koala Advisory Group shortly, and the Australian Federal Parliament Senate Report on Koalas, is also due for release shortly.*
7. *Regardless of claim at s9.10 of the Kings Forest Stage 1 Project Application Koala Plan of Management all pools and surrounding fencing must be designed in such a way that should any Koala accidentally fall into any pool, provisions are there for the Koala to remove itself by way of steps, ropes and the like, as it is a known fact that Koala’s do fall from trees into swimming pools.”*

Despite this, the current Preferred Project Report has not adopted Council’s suggestions with the consequence that any roaming dogs will be free to access areas of koala habitat by utilising grids to get across roads. From an ecological point of view this outcome remains unacceptable. To address this issue it is recommended that the proposed grids are replaced with temporary dog-proof lockable gates and that a condition is imposed to ensure that adequate fencing and underpasses consistent with Council’s previous recommendation) are constructed prior to development of future stages that traverse environmental areas.

In its previous comments Council also recommended that the KPoM should explicitly address the threat to koalas from bushfire, the provision of sufficient areas for koala food tree planting without compromising other management objectives (e.g. heathland and wallum frog restoration) and improved connectivity to the west by a new “southern” east-west corridor (see below). Despite many improvements in the revised KPoM these and a number of other issues have not been adequately addressed (see below for details).

Bushfire Management

Council previously noted that the Bushfire Risk Management Plan (BRMP) focused on protecting human life and property and did not consider vulnerable ecological assets such as the koala or other threatened species. This is despite recommendations in various management plans and the findings of the Tweed Coast Koala Habitat Study 2011 which suggests that uncontrolled wildfire is largely responsible for declines in the koala population over the last decade and that the exclusion of fire from certain threatened species habitat is an intended management strategy at the Kings Forest site. Council reiterates that inadequate consideration has been given to this and other relevant plans. DGR 2.5 requires that the long-term management of bushfire in open space and conservation areas is adequately addressed.

Management Plan Implementation

Substantial improvements have been made to the Management Plans within the current Preferred Project Report with the inclusion of a Summary and Implementation table for each plan. Council officers previously provided extensive feedback and examples of the level of detail considered appropriate for these tables, however these suggestions have not been adopted in their entirety resulting in their forming broad summaries rather than detailing all aspects of management. In order for the plans to be able to be resourced and implemented, more detail is required in most cases with regard to timing and frequency of actions, how each action meets the objectives of the Plan, resources required, costs, performance criteria against which each action is to be measured and outputs to ensure that the Plan meets its aims. Given the number and complexity of issues to be managed, it is considered essential that the implementation schedules provide a clear itemisation of actions (including those detailed in other management plans).

It is Council's view that the proponent should be responsible for the works involved in the establishment period (recommended previously by Council as consisting of a period of 5 years, or until 90% of lots are sold, or until completion criteria have been met, whichever is longer) and maintain the works until such time as suitable arrangements have been agreed with respect to land dedication and resources for long-term management under Council control.

East-West Wildlife Corridor

The proponent continues to reject the need for both east-west corridors conditioned in the Concept Plan approval. In response to the current Preferred Project Report, Council maintains that with: (1) the proposed changes in the Koala Plan of Management which seeks to exclude koalas from urban areas; (2) the likely need to find additional areas to plant koala food trees; and (3) the opportunity to augment koala movement to the south west towards the small outlier koala population and the Pacific Hwy underpass in the vicinity of Eviron Road, it is considered that corridor options should be resolved prior to determination of the Project Application as originally anticipated in the Concept Plan approval.

Wallum Frog Habitat Compensation

The proponent is required to compensate for the loss of threatened acid frog habitat on the site and proposes the creation of "melon holes" to intercept the water table in suitable areas in order to retain water for sufficient periods to enable the breeding cycle of the frogs to be completed. It is considered that this proposal is largely experimental and it is not clear if the very specific conditions required by these frogs can be re-created at the Kings Forest site to a standard that will provide for the long-term persistence of the species on the site, especially given conflicting restoration objectives for some areas (koala habitat and heathland etc.) and major changes to the land surface, drainage and groundwater relations that will occur with the bulk earthworks. It is considered that the experimental nature of the proposal should be recognised and that contingency plans are required to be in place in the event that the proposed plans perform poorly.

Monitoring and Evaluation

It was a condition of the Concept Plan that a draft outline of an annual Flora and Fauna Monitoring Report (FFMR) which collated and synthesised all monitoring and reporting requirements contained in the various management plans within 12 months of the Concept Plan approval. A report has been included in the current Preferred Project Report but it fails to adequately address all requirements of Concept Plan Condition B2. Most notably the Flora and Fauna Monitoring Report lacks any baseline data, adequate direction or summary of survey and monitoring effort and any detail on proposed monitoring of potential impacts of development on the Cudgen Nature Reserve. It is also noted that the performance criteria in the Flora and Fauna Monitoring Report do not relate to those that are outlined in the management plans and are not clearly linked to stated management objectives. It is considered in the interests of both the proponent and the consent authority that there is consistency and care in preparation of meaningful performance criteria.

Further Protection of Heathland

It was a condition of the Concept Plan that areas of heathland within ecological buffers be exempt from clearing, subject to full restoration and afforded long-term protection (eg. in the form of land-use zoning). Although the current proposal has attempted to minimise removal of heathland from those areas so directed, the Preferred Project Report continues to propose removal of some 19ha of heathland from within ecological buffer areas and contains no formal mechanism for the long-term protection of retained and rehabilitated areas apart from the intended dedication to Council. This approach remains inconsistent with Concept Plan Condition B3.

Management Plan Updates

The proponent seeks an amendment to Concept Plan Condition C2 such that updates to Management Plans associated with future works are delayed until Construction Certificate stage rather than the earlier Project Application stage. For reasons of transparency, accountability, the ability of future management plans to be formally assessed on their merits for adequacy of management intentions and to allow for the imposition of any required conditions, Council considers that the retention of Condition C2 in its current form is appropriate.

Flooding

The PPR contains an updated flood assessment report to incorporate modified subdivision layout and addresses concerns raised with the EA report, including:

- Revised tail water assumptions for an "unmaintained" channel in Blacks Creek. The EA report proposed a regular clearing regime for Blacks Creek to ensure ideal hydraulic conditions, however this was opposed by multiple agencies, including Council in submissions. The flood assessment has been revised to assume current day hydraulic conditions in this unmaintained channel.
- Addressing potential impacts of high frequency events (5 year and 10 year ARI floods) on adjoining land due to filling of the western portion of the estate as proposed in the bulk earthworks proposal.

The flood assessment is based on Council's Coastal Creeks Flood Model, modified to increase resolution and include enhanced survey of the site. This model has been used to assess regional impacts in a Cudgen Creek flood, as well as internal flooding from within the Kings Forest catchment.

The model assumes that each internal catchment will provide facilities to limit stormwater runoff to pre-development levels prior to discharge to the main flowpaths. For the western catchments, it relies on inundation of the sports fields to a depth of 1m, and discharge to the new lake.

The model has been used iteratively to determine appropriate fill levels in the bulk earthworks design and major road drainage structures for the civil design to limit impacts and provide the required level of protection to residential land and evacuation routes. Flood impact mapping confirms that there are no significant flood level impacts (>20mm) external to the site using the refined flood model.

The flood assessment appears to be thorough and valid, and flooding has therefore been addressed satisfactorily.

An issue raised with the EA report relates to the requirement from the Development Code for information relating to fill and finished floor levels requirements on flood prone lots to be provided on the Plans of Development. The note in the EA report incorrectly stated that there were no flood prone lots in Precinct 5, however Council's submission confirmed that the lots were affected by PMF. Rather than provide the design flood levels in the PPR Plans of Development, the note has been removed. While fill and floor levels should all easily comply in Precinct 5, it is questionable whether Development Code has been complied with.

Stormwater Management

Stormwater management plans for the estate are limited to those areas where approval for urban development is sought, that is, Precincts 1 and 5, and the associated road works, where permanent stormwater management measures are required. While bulk earthworks approval is being sought across the entire site, stormwater management for this construction phase is focused on erosion and sediment control and stabilisation, which is discussed elsewhere in this report.

The development adopts water quality parameters consistent with Water Sensitive Urban Design (WSUD) Technical Guidelines for South East Queensland (Healthy Waterways), which requires permanent stormwater quality controls measures for new development that reduces pollutant loading from that new development by:

- 80% for total suspended solids
- 60% for total phosphorus
- 45% for total nitrogen
- 90% for gross pollutants

These water quality objectives are consistent with draft updates of the Tweed Urban Stormwater Quality Management Plan and Development Design Specification D7 - Stormwater Quality, which are currently being finalised. These objectives reflect current best practice WSUD. It is important to note that residual pollutants loads, which cannot be practically removed from the urban stormwater drain will discharge to the receiving waterways, being Blacks Creek and Cudgen Creek. It also needs to be recognised that there are currently pollutant loads entering these waterways from the undeveloped rural catchment. Issues relating to residual pollutant loads and the assessment of the environmental condition of the receiving waterways will be addressed elsewhere in this report.

Various stormwater quality measures will be implemented across the subject precincts, with the aim of demonstrated compliance with the above water quality objectives, minimising future maintenance to Council who will inherit the facilities, minimising flood risks to urban land and infrastructure in major events, and promoting infiltration and recharge to the groundwater table. Council staff and the applicant's consultants have been actively workshopping the stormwater management approach since lodgement of the EA report.

Unfortunately despite the numerous stormwater management plans submitted in the appendices, the PPR provides limited commentary on the overall design or operation of the stormwater network for Precinct 5, however it is understood to consist of the following components:

- Rainwater re-use tanks to each allotment to BASIX and Council requirements, including consideration of communal tanks for multi-dwelling sites;
- Bio-retention basins and swales, which are generally dry, vegetated areas, which contain and infiltrate stormwater during events into the underlying sandy soil and recharge the groundwater table, designed in accordance with D7 and WSUD Technical Design Guidelines;
- Vegetated filter strips to handle sheet flow from roadways and other runoff sources, prior to entering the biofiltration areas;
- Gross pollutant traps on the main urban catchments to provide additional removal of gross pollutants and coarse sediments; and
- Litter racks and sediment forebays at piped drainage outlets to contain gross pollutants and coarse sediments prior to entering biofiltration areas.

The treatment train has been modelled using MUSIC software, and demonstrates compliance with the water quality objectives, achieving better discharge quality than the modelled existing "base case". That is, residual loads not removed by the treatment train are less than existing, particularly for suspended solids.

A major swale is to be provided around the eastern perimeter of Precinct 5. This is to receive almost all of the runoff from Precinct 5, and is understood to contain all runoff up to the 100 year ARI storm. The swale will be fitted with weirs at suitable locations to provide a controlled discharge of major storm events into the adjoining environmental land, in order to protect the urban areas from inundation. Overflow events would be very rare and therefore not impact significantly on the environmental land. Note that any plantings in the swale need to comply with WSUD Technical Design Guidelines, but must also be compatible with their location within the bushfire APZ, with APZ requirements taking precedence if necessary. Should the Planning Assessment Commission want to approve this application Council has recommended a condition of consent.

So that the infiltration capacity of the perimeter swale is not compromised by the bulk earthworks phase, it is proposed to grass the swale after it is formed, so that while the contributing catchments are disturbed, runoff will be filtered and infiltrated into the substrate. The swale will then be finally embellished with plantings once construction has proceeded to a suitable stage. This needs consent conditions and bonding in favour of Council so that these works can be completed appropriately.

Kings Forest Parkway is to be provided with swale/biofiltration drainage for conveyance and water quality purposes. When the Parkway is in its ultimate four-lane configuration, this swale will be located in a central median. For the initial stage prior to duplication, the swale will be located on the northern/western side of the Parkway, and consent conditions will need to be applied to ensure adequate access for maintenance. A GPT may also be installed on the northern section of the Parkway to provide additional gross pollutant and coarse sediment removal.

Any surcharge flow from the Parkway drainage system discharges to the Precinct 5 perimeter swale/biofiltration system. Other roads within Precinct 5 will have conventional pit and pipe drainage, discharging to the perimeter swale. The piped system is now without the drowned outlets and low flow system proposed in the EA report.

A potential issue with the proposed biofiltration approach is the construction of subsoil drainage and the introduction of graded filter media. While this may be suitable for the Parkway system, it is unlikely to be supported for the perimeter sale around Precinct 5 as it involves significant works in the buffer zone and may have groundwater impacts. In previous discussions with the consultants it was suggested that the perimeter swale should rely on the existing substrate for infiltration, subject to confirmation of suitable soil properties. This has not been provided with the PPR.

Precinct 1 is less than 5 hectares in area, and therefore in accordance with D7, the proposed stormwater treatment measure is the installation of proprietary treatment devices to remove gross pollutants, sediments and entrained nutrients prior to discharge to Cudgen Creek. Alternatives to reduce the extent of hardstand, particularly for the truck turn around area should be explored. This could allow room to introduce WSUD treatment measures, which may also be cheaper and easier to construct than large proprietary treatment devices.

An issue raised by an objector to the EA report was the adequacy of transverse drainage under the new Kings Forest Parkway - Tweed Coast Road intersection. While the applicant's consultants have not provided commentary of the revised design, the PPR design drawings show the extension of twin culverts under the roundabout to the existing outlet to Cudgen Creek. As there are no significant changes in the upstream catchment due to the development, this should be adequate, subject to appropriate detailed design with the civil works construction certificate.

Blacks Creek

Blacks Creek provides the central west-east drainage function for the estate and other land within the catchment. It discharges to Cudgen Creek, downstream of Cudgen Lake. The EA report proposed a maintenance regime to provide enhanced drainage function, including weed spraying and snag removal, however this conflicted with the environmental values of the waterway.

The Drainage Maintenance Management Plan (Section 14, Appendix 10) has removed weed and snag removal as a maintenance item, and has limited "mechanical drainage maintenance" to around 10 year frequency to ensure it does not become completely blocked. Associated drainage and flooding assessments have been modified in the PPR to reflect the amended drainage maintenance regime, with adjusted tailwater conditions.

Ultimate tenure of the drain has not been clarified in the PPR, however it is assumed it will be dedicated at least in part to Council.

Bulk Earthworks from an Engineering Perspective

The application seeks approval for bulk earthworks across the entire estate. A number of key concerns were raised with the bulk earthworks design in the EA report:

- Limiting the extent of disturbed area for cut/fill operations at any time to limit dust and sediment transportation issues - the PPR includes a Bulk Earthworks Management Plan (BEMP, Section 6) and an Erosion and Sediment Control Plan (ESCP, Section 13) as part of the Construction Management Plan (Appendix 10). Council has previously imposed such limits via consent conditions on Tweed Coast developments.

The BEMP includes Sequencing Diagrams which detail total disturbed areas during each sequence. According to the consultant these areas have been determined to ensure cut/fill balance in as many areas as possible, and in some larger areas larger machinery can be used more efficiently so that stabilisation can follow more immediately.

The sequencing shown is still too coarse to ensure that impacts of exposed areas of bulk earthworks can be appropriately managed. For example, Sequence 1 is over 46 hectares in area, and includes all of Precincts 1 and 5 and major road works. Further sub-staging is required so that smaller areas are cleared, exposed, worked and stabilised in an orderly and timely manner. Should the Planning Assessment Commission want to approve this application Council have recommended a condition of consent to impose a smaller exposed area.

- Traffic impact assessment on Duranbah Road due to the proposed importation of up to 320,000m³ of fill via truck movements for the western stages (6-11) of the development - the PPR confirms the extent of fill required for importation, and provides a Haulage Management Plan (HMP) as part of the Construction Management Plan (Section 6, Appendix 10). The consultant predicts that the actual volume of imported material may be less than estimated, depending on compaction factors etc, however a number of other limits likely to be imposed on the bulk earthworks operations (exclusion of buffer areas, staging of sports fields etc.) risk larger volumes being required.

The HMP nominates a likely source of fill as Pottsville Quarry. After accessing the Pacific Highway, haulage trucks would turn onto Tweed Valley Way at Melaleuca Station, turn onto Cudgen Road, then follow Duranbah Road to the site. The HMP assumes that as a number of heavy vehicles already use this route (e.g. sugar cane haulage) the route should be structurally adequate, but propose pavement testing prior to commencing the operation.

The HMP envisages 8 truck movements per day, for 200 days/year, for 4 years, without truck-trailer combinations. The route has been reviewed by the developer's traffic consultant, who concludes that it is suitable.

There are currently no load limits on this part of Cudgen Road or Duranbah Road. The route passes Duranbah School, which has a 40km/h school zone speed limit.

The HMP proposes additional truck warning signage, and imposes time and day limits on truck movements, and a 60km/h speed limiting on drivers. Non-compliant drivers will not be loaded. This approach is not supported by Council as it is unenforceable - the posted speed limit is 80km/h and police have no power to enforce conditions of consent for breaches.

As such, the haulage route needs to be assessed for suitability based on the prevailing speed environment as recommended by the applicants own report. Appropriate conditions are recommended.

The alternative is that haulage trucks access the site via Kings Forest Parkway, through completed stages of the development, or alternate means of fill importation, such as hydraulic placement be considered.

Overall, it is considered that subject to appropriate consent conditions, the bulk earthworks for Kings Forest can be adequately managed from an engineering perspective.

Council's Environmental Health Officer has reviewed the proposed haulage route from an amenity perspective and has provided that:

"The Kings Forest Stage 1 Project Application Environmental Noise Impact Report dated August 2012 prepared by CRG Acoustical Consultants does not address impacts on the locally affected community along the proposed haulage route by way of noise and dust. Alternative routes or blended route options are also to be considered due to the duration of the activity with each construction certificate application that includes the importation of fill activities.

Currently there are a minimum 14 residents, a primary school and large rural tourism development within 50m of the centre line of the proposed sealed haul route along Cudgen and Durambah Roads. The additional truck movements during the construction stages have the potential to have a significant impact on the adjoining land activities and any future land activities. Appropriate conditions have been recommended to mitigate these impacts."

Road Works and Traffic

The subject application includes civil works to construct:

- The entrance road to Precinct 1 off Tweed Coast Road;
- The amended entrance road to Old Bogangar Road off Tweed Coast Road;
- The entrance road to the site (Kings Forest Parkway) and associated intersection works with Tweed Coast Road;
- Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western precincts;
- Part construction of two proposed roads through SEPP14 areas to access the southern precincts; and
- Internal roadwork's to accommodate Precinct 5.

When assessing the EA report, the major concern raised by Council in relation to the road works was the configuration of the intersection of Kings Forest Parkway, the Precinct 1 development, and Tweed Coast Road. Council identified a number of incorrect assumptions that were relied upon for the EA report traffic impact assessment and the subsequent civil design of the road infrastructure. According to the PPR, these issues have now been addressed, and revised reports and design plans have been provided.

Intersection Kings Forest Parkway and Tweed Coast Road

Council's adopted Level of Service (LOS) requirements for intersections on all legs is "C" (on a scale of A-F) and this particularly applies to greenfield sites. The Traffic Impact Assessment (Addendum Report, Appendix 15) considers that a T-intersection of Kings Forest Parkway and Tweed Coast Road with channelisation and auxiliary lanes is an appropriate treatment until 2018 when the intersection will require a two lane roundabout or traffic signals. However, the SIDRA analysis on page 28 of the report indicates that Level of Service "E" will be experienced for drivers turning right from Kings Forest Parkway on to Tweed Coast Road in 2013, which is unacceptable and would be expected to result in a crash history at the intersection. The Level of Service expected for this movement in 2018 is "F". The report nominates in 2018 (based on increasing background traffic) that either a two lane roundabout or signals should be installed. However, LOS for vehicles exiting Kings Forest Parkway is still predicted to be "D" with the signal option.

Clearly the proposed T-intersection treatment does not meet Council's requirements, and an alternative treatment is required to be provided conjunction with Stage 1. The engineering plans provided in Appendix 2 show the provision of a 2 lane roundabout that is compatible with a future four-laning of Tweed Coast Road, with interim pavement marking to delineate a single-lane configuration. This seems to be the most practical, efficient and cost effective means of constructing the intersection, and addresses the traffic deficiencies identified in the T-intersection proposal.

Consent conditions requiring this roundabout in Stage 1 are recommended.

Precinct 1 and Old Bogangar Road Accesses

The Precinct 1 development has changed significantly in the PPR. It is now specified as a "rural supplies" development, with a "shop" definition being applied for the purposes of traffic generation and car parking. It is now a single building with floor space of approximately 2,000m², and extensive carparking accessed from a single driveway off Tweed Coast Road. While technically a driveway access, it represents an important intersection in close proximity to the Kings Forest Parkway entrance and the service road to residents off Tweed Coast Road. The PPR, however, does not discuss traffic impacts of Precinct 1 as it considers that this analysis was provided as part of the previous consultant's report.

The original Traffic Impact Assessment (Addendum Report, Appendix 15) addresses the matters raised with the EA report in relation to the Precinct 1 access as follows:

Intersection spacing

Council's Original Issue: The report does not address having three intersections within 220 metres on a major distributor road being Tweed Coast Road. Such spacing makes traffic movements complex and in this case unworkable as a required left turn acceleration lane from Kings Forest Parkway northbound conflicts with the proposed relocated Old Bogangar Road/Depot Road intersection. The Tweed Road Development Strategy specifies intersections on distributor roads should be 500 metres apart. AUSTRROADS indicates a range of 350m to 500m.

Consultant's Response - The intersection layout design will be modified so that the Depot Rd Intersection is aligned with the commercial site access (to form a four way junction). The separation between the KFP intersection and proposed commercial centre intersection is considered to be satisfactory, noting that the commercial centre access is a private access and not a public road intersection. The Austroads guidelines mentioned do not apply in such situations.

In response Council officers do consider the Precinct 1 access/egress to be an intersection, given the traffic environment, and should be considered as such in road network design and assessment. Safe pedestrian access across Tweed Coast Road needs to be included in the design.

Access to Precinct 1 must be considered as an intersection in accordance with traffic comments relating to Kings Forest Parkway – Tweed Coast Road intersection and proximity to other intersections. Refer to request for intersection redesign above.

The engineering plans submitted do not show the realignment of the accesses to Old Bogangar Road and Depot Road and Precinct 1 to create a four way junction as required under the traffic report. Instead it retains the staggered intersection arrangement proposed in the EA report. This would mean one intersection into Precinct 1, one intersection into Old Bogangar Road and one intersection into Kings Forest all within very close proximity to one another. This design creates conflicts between queued vehicles entering Precinct 1 and vehicles turning right into Old Bogangar Road, and residents of Old Bogangar Road will be unable to turn right (southbound) on to Tweed Coast Road. This configuration significantly reduces the current level of service to these existing dwellings.

The solution is a roundabout at Kings Forest Parkway with a separate realigned four-way intersection at the Precinct 1 entry which would align with the entry to Old Bogangar Road. Detailed design of the intersection would be required with the construction certificate, including how pedestrians will access Precinct 1 from Kings Forest Parkway. Consent conditions are recommended in this regard.

It is noted that the Precinct 1 design incorporates a service lane for heavy vehicles at the rear of the building, and a significant hard stand turn around area in the eastern portion of the site. It is considered that site design can be optimised to minimise this hard stand area, which will have benefits for stormwater quality control. This can be investigated further with a future construction certificate application for the Precinct 1 development.

Bus Routes

Kings Forest Parkway is the main public bus route, being the main distributor road through the estate. An issue is raised that the carriageway width for the initial two lanes of the Parkway is only 7.5m wide in places, due to kerb extrusions, which does not comply with Council's minimum cross section width for bus routes of 9.0m. This can be conditioned.

At the EA report the applicant also did not provide a bus route internal to Precinct 5, relying on residents walking to Kings Forest Parkway to access bus stops. This did not meet Council's public transport access requirements, and now the plans have been modified to provide a 9m wide bus route through the precinct, such that all lots are generally within 400m maximum walking distance.

The applicant was also requested to nominate bus stop locations on the plan of development, which has not occurred. This is important as retrofitting shelters once residents have moved in becomes more difficult and meets resistance. This can be conditioned.

Concept Plan Proposed Road Cross Sections for a bus route

The Road Hierarchy plan No. 6 prepared by RPS dated 21 August 2012 shows a 7.5m bus route. A pavement width of 7.5m for a bus route is not supported as previously advised by Council.

It is recommended that the road cross section showing a 7.5m wide pavement for a bus route is amended to show a 9m wide pavement width.

Car Parking

Section 5.4 of the Kings Forest Code states that:

"An on-street parking plan is required with the first development application for subdivision to demonstrate the availability of on-street car parking for each nominated lot type at the rates specified in Table 5.4.1. The requirement and acceptance of designated on street car parking may be varied by a Design Review Panel Pre-Approval Certificate."

In accordance with table 5.4.1 the proposed development would need to accommodate 363.75 on street car parking spaces within precinct 5.

Proposed Dwelling Type	Number	Onsite Parking Spaces per dwelling	Onsite Parking Spaces Total
Mews	0	0.25	0
Townhouses	20	0	0
Terraces	37	1	37
Plexes	55	0.25	13.75
Zero Lot Dwelling	192	1	192
Traditional Detached Dwelling	121	1	121
TOTAL	425	N/A	363.75

Precinct 5 proposes approximately 575 spaces and thus complies with the Development Code.

The car parking plan details a street width of 7.5m with car parking detailed on each side. A standard vehicle width for a car is designated at 1.86m (RTA turning templates) and the standard width for a Medium to Heavy Rigid Vehicle (MRV or HRV) including a garbage truck is 2.5m.

If the street has vehicles parked either side a clear width of 3.8m can be provided on the road carriageway. This gap is wide enough for a MRV or HRV to pass through, but not wide enough for two vehicles to pass. In this regard some streets should probably have restricted parking to ensure buses and garbage trucks can at all times navigate the streets despite cars parking on the street.

Future Stages

Significant traffic generation will result from the development of further precincts post Stage 1, with the ultimate site consisting of 4,503 dwellings, 2 schools, sports fields and commercial facilities. The report estimates that the daily trips generated from the development at ultimate will be 23,852. As Tweed Coast Road is the only substantial access to the development this will result in a major impact at this intersection. It is considered that any future development proposals are required to submit a Traffic Impact Analysis and assessment. In particular the TIA is to consider:

- Pedestrian and cyclist movements between precincts, and the proposed developments, and
- Impact on the intersection of Kings Forest Parkway and the Tweed Coast Road.

This is in accordance with Condition C6 of the Concept Plan approval, which requires traffic assessment with each development application for subdivision.

The construction of the two roads through the east-west fauna corridor must address safe fauna crossing. Based on the various reports it appears that during the bulk earthworks operations sought under this application this will be managed via on site environmental monitoring and operating procedures to limit speed and possible interaction with fauna. As such, no specific infrastructure is required on these roads as part of the bulk earthworks approval, unless otherwise specified by fauna experts. However once the southern precincts are developed and these roads are used by private motorists, additional controls to protect fauna are required. The specified measures are a 40km/h speed limit on these roads, however signage alone cannot be relied upon to achieve such speeds, and significant infrastructure will need to be designed into the roads to achieve such a speed environment. The alternative is to fence these roads and provide fauna underpasses, which is recommended by Council's Ecologist.

The adequacy of these roads as high level evacuation routes for flooding will need to be investigated as part of future applications for the Southern Precincts, but is not critical for this application.

Erosion and Sediment Control

As soon as is practicable after completion of earthworks the disturbed areas will be reseeded, and on steeper slopes and cuttings hydromulching and/or mulching will be required. The Erosion and Sediment Control Plan (Section 13, Appendix 10) specifies a period of 20 days from final land shaping to permanent rehabilitation. Sediment ponds and other measures such as surface diversion drains, contour drains, and sediment fencing will be installed, with exact number, size and location to be determined at the detailed design stage. Stockpiles will be stabilised. Biofiltration basins will be utilised as temporary sediment basins during the bulk earthworks phase.

Acoustic Fencing

The landscaping plans identify the replacement and extension of acoustic walls along Tweed Coast Road. This will be located on public land, but will facilitate a private development, and as such, Council should not accept this asset as a maintenance liability, unless a suitable funding mechanism is provided by the developer.

This has not been addressed in the PPR, however consent conditions have been recommended.

Acoustic fencing along Kings Forest Parkway adjacent to Precinct 5 is located on private property boundaries, and the PPR confirms that these fences will be privately maintained. In order to provide traffic and pedestrian access to the Precinct, a number of breaks are required in the fence, however the Environmental Noise Impact Report (Appendix 16) details the barrier returns necessary at these points to maintain appropriate noise protect, thus not limiting access connectivity to the development.

Pedestrian and Cycleway Network

The PPR shows a Shared User Path (SUP) along Kings Forest Parkway as the main cycleway link through the Estate. This is then intended to connect to the existing SUP on Tweed Coast Road at the Cudgen Creek bridge, around 800m to the south of the estate entrance. Note that this is not shown on the engineering plans, but is shown schematically on the Open Space Network Plan (Appendix 5, Plan 5). A condition should be applied requiring the cycleway link's construction as part of Stage 1.

A SUP is also proposed around the eastern perimeter of Precinct 5, providing an alternate loop off Kings Forest Parkway. Despite requests with the EA report, no linkage through Precinct 5 to the central park has been provided. A condition of consent requiring this additional link will also be recommended.

Water and Sewer Infrastructure

Sewer and Water Report

The strategy document is a part of a Part 3A Project application rather than a separate submission to Council for approval by the Manager Water. This may mean that any alteration to the strategy, either at Council's request or the developer's request will require a 75W amendment application. Previous large developments had submitted the strategy for approval independently of the individual subdivision applications allowing more flexibility if circumstances of change.

Alternatively, if the Minister's approval is framed in such a way as to not specifically endorse the Sewer and Water Report, but require Water Supply and Sewerage to be provided in accordance with a Strategy approved by Council, this issue could be avoided.

In regards sewer flow estimates, Council previously raised an issue that the flow estimates were excessive. The revised PPR now indicates that the flow estimates are satisfactory.

The basic sewer strategy for the internal servicing of the Kings Forest Development appears sound although nominated trunk conveyancing sizes may be larger than necessary given the difference in population and calculation methods and parameters in the revised strategy document. Sizing should be confirmed prior to Construction Certificate. Appropriate conditions have been recommended in this regard. The staging of the external sewer works should also be outlined in the strategy regardless of who is responsible for the construction.

The basic water strategy has provided a trunk and distribution network analysis. This does not preclude the need for a full network analysis of the reticulation for each subdivision. If not provided at this stage, it will be required prior to the Construction Certificate stage for each subdivision/precinct. Appropriate conditions have been recommended in this regard.

Sewer Reticulation

The indicative sewer reticulation layout is generally satisfactory but there are no sizes specified for the sewers in the layout. As long sections have not been provided, it can only be assumed that grading constraints have been met. As the full design has not been carried out to date this may have implications for the location of sewer pump stations and subdivision layout. Full sewer design detail will be required prior to issue of a Construction Certificate as per the recommended conditions and if changes to the subdivision layout are required future modifications may be necessary to the consent.

The sewer reticulation plan for Kings Forest Parkway shows sewer rising main (SRM) and 450 water main apparently in close proximity. Separation between SRMs and water mains in accordance with Water Services Australia (WSA) standards is required.

Existing 225 SRM in Tweed Coast Road doesn't appear to be located on the drawings. It is a requirement of the Sewerage Strategy for this area that the 225 be connected into the new SPS4023 Kings Forest Regional Pump Station and for that pump station to pump through the existing main for the initial stages.

In summary, the drawings submitted are considered indicative and will be subject to change before a Construction Certificate can be approved.

SPS's are to be in accordance with the Design Specification D12 and TSC standard drawings. Where larger pump stations are required the design shall be carried out in consultation with Tweed Shire Council.

Separate lots as shown for each pump station are required. As detailed designs of the ultimate pump station for each site shown in the drawings have not been provided, it is not possible to determine whether the size of lots shown are adequate for pump stations

designed in accordance with Council's Design Specifications and Standard Drawings and practices. Accordingly, the size of lots required may differ to those shown in the proposed plans of subdivision. If the correct size of lot has to be determined at this approval, further designs showing ultimate development of each pump station including control buildings, wet wells, valve pits, generator, access roads and vehicle turning areas will need to be provided.

A particular issue in relation to the lot indicated for the regional sewer pump station (adjoining Precinct1) is that it is located within the asset protection zone (APZ) and APZ buffer area. The applicant is to demonstrate that having a regional pump station with a control building within an APZ is capable of achieving compliance with the Planning for Bushfire Protection Guidelines and all TSC and WSA standards.

Water Reticulation

The water reticulation layout has not provided size information, has some errors within its notes page and shows a 450mm diameter main to Precinct 1 which may be oversized. As noted above, prior to Construction Certificate stage, Council will require the submission of a water network model study to confirm the size of mains required throughout the Precincts as the study referenced in the strategy is for trunk and major distribution mains only.

As such the water layout plans are considered indicative only and are subject to change before a Construction Certificate can be approved.

Council's 600 diameter trunk water main within Lot 76 DP755701 & Lot 272 DP755701 is not shown in full across the project site. Council requires an easement 5m wide over the existing 600 diameter water main. The bulk earthworks drawings indicate that there may be some cut and some fill over portions of this trunk water main. Detailed drawings showing the extent of earthworks in the vicinity of the trunk main in Lot 272 have been provided, however the main is not shown in the south western part of Lot 76. The earthworks drawings indicate that there may be some effect on this main in one or two locations. This main should be located on the drawings and the extent of any affect on the main should be determined. A management plan for works in proximity to the trunk main is required prior to bulk earthworks construction certificate.

Subdivision Plan

As discussed above, the Subdivision Plan shows separate lots for the Regional Sewer Pump Station and the two internal sewer pump stations shown in the Sewer Layout Plans. There is not enough detail provided in the layout plans to determine whether the lots are of adequate size to fit the pump well, valve pit, access road with vehicle turning area, control building and generator if required. Accordingly, the subdivision plan can only be regarded as indicative until full details of the required lots are determined.

Council requires an easement 5m wide over its existing 600 dia water main through existing lots Lot 76 DP755701 & Lot 272 DP755701

Integrated Water Cycle Management: Rainwater Tank sizes

The amendments proposed to the Kings Forest Development Code Section 2.2 Complying Development has the effect of mandating the minimum size of rainwater tanks as nominated in Appendix C of the Code as requested by Council previously. Council is satisfied with this amendment.

Open Space - General

Condition C15 of the Concept Plan Approval (MP06_0318) requires:

"All future applications for each stage of development are to demonstrate the provision of an adequate area of active and passive open space areas. A detailed Open Space Network Plan is to be provided demonstrating open space provision in accordance with Council's minimum requirements."

Under the PPR, the population for Stage 1 of the development is now estimated at 1020 people, based on 425 dwellings in Precinct 5 x 2.4 persons per dwelling. There are no dwellings in Precinct 1. According to DCP-A5 Subdivision Manual the population generates a formal requirement for local open space of:

- Structured open space (sports fields): 1020 persons x 17m² = 17,340m² / 1.76ha; and
- Casual local open space (parks): 1020 persons x 11.3m² = 11,526m² / 1.115ha.

The proposed open space to be dedicated is:

- Structured open space = nil (Refer to comments on sports field dedication below); and
- Casual open space = 15,004m² / 1.5ha.

On this basis, the amount of casual open space proposed for Precinct 5 is at an acceptable level while the provision of sports fields still needs resolution. The Open Space Network Plan in the PPR lacks detail on the hierarchy of local, neighbourhood or district parks, and how this relates to casual open space in Precinct 5. These issues are discussed in more detail below.

While the issues relating to public open space can be resolved with later development applications for future residential precincts, various consent conditions are recommended for inclusion in the Concept Plan (MP06_0318, approved August 2010), which is being modified under this application.

Structured Open Space (Sports Fields)

In the EA report, the applicant proposed to split the location of sports fields into two separate areas. This was opposed and the PPR now reconsolidates the sports fields into a single site, located in the western portion of the estate (Stage 9), adjacent to residential land, a school site, and environmental land.

Staging

The developer proposes to dedicate sports fields in 4ha amounts, with the first 4ha to be dedicated once 1,000 dwellings have been erected. This represents a population of 2,400 people.

Given that Precinct 5 has 425 dwellings, a trigger of 1,000 dwellings for sports field dedication means they will not be available to the community until more precincts are developed. The timing for erection of the additional 575 dwellings is not specified. Under the developer's proposal, until the 1000 dwellings are erected, the developer will be in debit for the provision of sports fields.

The unspecified time lag involved in this approach is of concern. It is more appropriate that sports field land be dedicated and embellished earlier than the 1000 dwellings proposed. It is therefore recommended that 4 ha be dedicated once the next residential precinct is approved for construction. Accordingly, the recommended triggers for dedication and embellishment of the sports fields are:

- The initial 4ha be dedicated once 500 residential lots are approved for development; and
- Subsequent dedication in 4ha amounts to occur each time 1,000 residential lots are approved for development. That is, at 1500 lots, then 2500 lots, then 3500 lots.

Conditions are recommended to be added to Part C of the Concept Plan to implement this staging. They cannot be applied to the Stage 1 approval as these future works are outside the scope of the subject application.

In order for the first stage sports field to be adequately serviced, the developer will need to extend a sealed access road (rural cross section is adequate with swale drainage), water, sewerage, electricity and telecommunications to the site. This is not currently reflected in the staging/sequencing of works in the PPR, and will require consent conditions be applied to the Concept Plan so that they are addressed in future applications.

Master Plan

The proposed sports field facility is substantial and requires preparation of a master plan prior to the first 4 ha being dedicated and embellished to ensure orderly and efficient staged implementation of the facility. As the sports fields are located adjacent to both residential and environmental land, any boundary constraints need to be addressed and the facility designed accordingly. This needs to include matters such as erection of field lighting, and proximity to drainage areas and fill batters, so that appropriate buffers can be provided around marked playing surfaces.

The provision of a master plan requires a new consent condition to be applied to the Concept Plan.

Depot Road Sports Fields

The Kings Forest development adjoins Council's Depot Road sports fields, which are under construction. This site is currently accessed via Depot Road, which is a gravel formation (note this is incorrectly labelled Pine Ridge Road on the engineering plans). As the Kings Forest Parkway alignment conflicts with the Depot Road alignment, the applicant proposes to construct an alternate access between the new Parkway and the south-eastern corner of the sportsfield site. When this was previously discussed with the applicant they were required to demonstrate that this access point would be compatible with the arrangement of the Depot Road facility, and that access across the eastern boundary would be unlikely due to vegetation constraints. This has not been addressed in the PPR. Alternately the applicant will construct an intersection at Secret Lane, and this could be used to maintain access to the current formation along the Depot Road reserve. A condition of consent is required for the Stage 1 DA to ensure that access to Depot Road sport fields is maintained throughout the development.

The Depot Road facility will need access to water, sewerage and electricity once it becomes operational. The Stage 1 works provide connection to water and sewer at the junction of Roads 4 and 5 off Kings Forest Parkway. It should be reasonably straight forward for Council to connect from these points once the road reserve is created, and capacity should not be an issue.

Casual Open Space and Landscaping

Streetscaping

A very high degree of landscape plantings are proposed in streetscape areas. Such plantings require intensive maintenance which is expensive for Council. The proposed areas include the Kings Forest Parkway, areas adjoining roundabouts, median strips and various other locations in the road reserves within Precinct 5. The Kings Forest Parkway is described as providing a 'feature boulevard arrival experience', and the Landscape Concept Plan indicates mounding, turf, shrubs and tree planting is to be used to create a 'landscape entry feature along Tweed Coast Road'. It also indicates an increased level of landscaping at the intersection of Kings Forest Parkway and Road 7 (the entry to Precinct 5). These areas are road reserve and the primary benefit of the landscaping is in marketing of the development. Further, the Acoustic Fencing Visual Impact Statement (Appendix 13) proposes extensive tree and garden bed planting as a landscape buffer along both Tweed Coast Road and the Kings Forest Parkway. The high maintenance requirement of these plantings is beyond the maintenance budgets of Council.

This high maintenance will be required for the lifetime of this residential area, or until a major redesign is undertaken. This is an unspecified period which could be 20 years or more. This matter has been raised previously. The Developer proposes to address this by maintaining streetscapes for 5 years or until 80% of Precinct 5 is built out. While this extended establishment period is welcomed, this does not address the long term liability to Council that the cost of maintaining these areas beyond this initial period presents.

This matter needs to be addressed at detailed design stage, with landscaping plans submitted to Council for review against increased maintenance requirements. Items to be addressed in the landscape plans include:

- Large trees and landscape plantings are shown in the median strip and widened roadside verge of Kings Forest Parkway. Roundabouts and land adjacent to roundabouts also contain a high degree of plantings. Matters such as function of stormwater management systems, interaction with underground services, safety buffers for maintenance staff (avoiding the need and cost to close traffic lanes for regular vegetation maintenance), size and location of proposed trees, tree maintenance requirements and the number and location of garden beds proposed will need to be negotiated.
- Other streets within Precinct 5 show median strip plantings and garden beds in the roadside verge area. Such plantings require a high degree of maintenance and are not supported.
- There is a higher level of tree planting proposed in the median strip and roadside verge in the koala crossing area on Kings Forest Parkway. It is not clear from the landscape concept plan whether this is due to the needs of the koala crossing or the entry statement. Trees planted in the road reserve represent increased maintenance requirements and safety risks. It is not clear from the landscape concept plan how the Koala Crossing will operate, and hence what maintenance requirements the fauna crossing will create.

Should the developer want to provide landscaping in excess of Council's requirements, then appropriate funding mechanisms need to be executed prior to issue of the construction certificate. Appropriate consent conditions shall be recommended in this regard.

Any proposal for permanent estate signage on public land and/or public owned assets are not supported, unless funds for their removal after a set period of time (e.g. 5 years to coincide with the increased maintenance period) is paid as a bond to Council.

Precinct 5 Park

The Open Space Network Plan under the revised Concept Plan does not provide any information on how the park in Precinct 5 will relate to other parks in future precincts in a hierarchy of local, neighbourhood or district parks.

This matter has been raised by Council previously, but has not been responded to. The Concept Plan does not make provision for a larger central or district park where a higher level of embellishment with additional facilities may be provided. These could include a larger playground, entertainment areas, barbeques, public toilets or other services. The landscape design for the main park in Precinct 5 has thus been assessed as a local park. Before any submissions for future stages of the Kings Forest Development can be considered, the Open Space Concept Plan must give due consideration to the need for such a district park in the Open Space Hierarchy.

This matter can be addressed by recommended consent conditions to be applied to the Concept Plan approval.

The park must be designed to meet requirements such as the safety guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). As this is a greenfield site the park will need to comply with safety requirements for playgrounds, such as distances from roads, without using mitigation measures such as signage or mounding. Other design considerations such as location of trees and shade structures for playgrounds will need to be addressed.

This matter can be addressed by recommended consent conditions to be applied to the Stage 1 approval.

Lot 316

Lot 316 is an irregular shaped allotment in the north eastern corner of Precinct 5. It is shown as "Public Reserve" in the submitted subdivision plans. Its size and shape do not make it attractive as a conventional park, however it provides many benefits as a cycleway connection, landforming transition area, and a buffer between the housing and natural vegetation.

While landscaping plans detail provision of biofiltration drainage in this allotment, the engineering plans do not show any significant drainage in this location, as the drainage swale commences further south within land labelled as "Drainage Reserve".

Use and embellishment of this land should be considered in the Open Space Network Plan and detailed landscaping plans.

Agricultural Buffers

SEPP (Major Development) 2005 Schedule 3 Part 6 states that Consent must not be granted to development on land within an agricultural buffer unless the consent authority:

- (a) Has considered the potential impact of the proposed development on agricultural activities on land adjoining the buffer and of those agricultural activities on future occupiers of land within the buffer, and
- (b) Has consulted the Department of Primary Industries.

Precinct 1 (on the eastern side of Tweed Coast Road) is located within the agricultural buffer of the Kings Forest Land Zoning Map under the provisions of SEPP (MD) 2005 and therefore needs to be addressed as part of the Stage 1 application.

An Agricultural Buffer Zone Assessment Report has been prepared by Gilbert and Sutherland dated July 2012.

The stated scope of the report is to assess the potential for conflict between the Stage 1 development and agricultural enterprises on adjoining land and to recommend appropriate separation distances and buffer elements where required.

Three roller doors are incorporated into the design of the structure in conflict with the Report. However it is considered this may be acceptable should the management of the site ensure the access is for service delivery only and do not form the purpose of a permanent opening during operational hours. This can be conditioned accordingly and forms part of Council's recommended conditions.

In consideration of the limitations of any proposed development that would be placed upon the adjoining rural land to the north of Precinct 1 due to the proximity of the established residences along Old Bogangar Rd the assessment appears satisfactory for the Stage 1 development.

Acid Sulfate Soils (ASS) & Groundwater

The ASS and Groundwater reports have been referred to the Office of Water for assessment.

Condition C11 of the Concept Plan Approval (MP06_0318) states:

"In order to ensure the protection of groundwater quality and the water quality of surrounding surface waters, a detailed acid sulphate soils (ASS) assessment and, if required, ASS Management Plan (ASSMP) addressing groundwater and acid sulphate soils prepared by a suitably qualified person must be submitted prior to issue of construction certificates for future precinct earthworks. The assessment must be carried out in accordance with the ASSMAC Guidelines (1988) and must include the following, as a minimum:

- (1) A plan as described above, showing the locations of all monitoring and test points (boreholes, test pits, wells/groundwater sampling, soils sampling, surface water sampling, monosulphides sampling etc);*
- (2) Plots of water level and quality with time;*
- (3) Spatial and depth distribution of ASS soils, corrected to include TAA plus oxidisable sulphur, and using the ASSMAC recommended action level (>18 mols H⁺/t) for the site;*
- (4) Typical treatment levels/distribution of AASS and PASS soils on site (where investigated), to current/correct standards; and,*
- (5) A detailed ASSMP with actions for determining ASS conditions ahead of excavation, handling of groundwater levels and quality, detailed management procedures for surface waters and flood routing, interaction (short and long term) of the groundwater with surface water in order to prevent the formation of monosulfides, materials evaluation and handling, materials balance, stockpile treatment, validation testing, monitoring systems with trigger levels, contingency actions, protection for structural elements, evaluation of off-site impacts etc."*

An Acid Sulfate Soil Assessment Kings Forest Stage 1 Project Application Kings Forest Report has been prepared by Gilbert and Sutherland dated July 2012.

The following matters are highlighted:

- (i) The Report states it is informed by a soil survey and assessment undertaken in 1998 with soil sampling and analysis conducted between 1998 and 2007. Some comment has been provided as to whether it conforms with the ASSMAC Guidelines. Justification is required where nonconformity exists.

It is noted a reduced sampling intensity was adopted. The minimum number of sampling holes per hectare nominated in Table 4.1 of ASSMAC is 2 holes/ha where the area of site is > 4 ha and in consideration of hot spot identification. The subject site area shall include any area of disturbance of soil and potential groundwater movements due to disturbance.

- (ii) The Report states that the encountering of ASS on the site is of low probability. However the majority of the site is classified as Class 2 or 3 as per the ASS Planning Maps published by NSW Department of Planning. Any works at ground surface (Class 2) or within one metre of ground surface (Class 3) is required to consider the likely presence of ASS. Due to the extensive earthworks of cut depths generally up to 3m (proposed dam site up to 8m) it is likely that ASS will be disturbed.
- (iii) The Report does not adequately address ASS and groundwater impacts and with particular reference to the excavation of the lake system.
- (iv) The Report states the report and associated ASSMP addresses the specific DGR's and concept plan approval conditions as they relate to ASS. This conflicts with a statement on page 15 of the report "As these borehole locations would be impacted by the proposed Stage 1 works, future testing of these materials is proposed in order to meet the ASSMAC requirements and the Concept approval conditions" so too "As further investigations are required prior to the approval of construction certificates, monosulfides would be specifically targeted during investigations of proposed works in the vicinity of existing drains and surface water channels". It is noted an ASSMP is submitted. The ASSMP shall be informed by an adequate assessment.

The Report does not satisfy Condition C11. However compliance with the condition is required prior to CC. Appropriate conditions are recommended.

Contaminated Lands

The DGR's (Section 6.1 Hazard Management and Mitigation) required the applicant to:

"Identify any contamination on site and appropriate mitigation measures in accordance with the provisions of SEPP 55 - Remediation of Land."

In addition the Concept Plan Approval MP06_0318 (Schedule 3 Statement of Commitments) included at 5.4 Contamination:

"Project 28 will undertake Stage 2 contamination investigations to accompany future project applications for areas of known potential contamination, including lands previously used for sugar cane and banana plantations and as a cattle dip site. Where required, Remediation Action Plan(s) (RAP) will be prepared in accordance with NSW State government requirements."

A Contamination Assessment and Summary Report, Kings Forest Stage 1 prepared by Gilbert & Sutherland dated April 2011 was submitted.

The Report brought together the results of a number of prior investigations and identified a variety of potentially contaminating activities on and adjacent to (through exposure pathways) the site including the former Bogangar Landfill, sugar cane and small cropping, banana plantations, existing fuel storage, former nursery, former orchard, former cattle tick dip site and historical sand mining activities.

The Report does not provide comment as to the adequacies of these investigations to conform to current accepted and recognised guideline methodology as approved or made under the provisions of Sec 105 of the Contaminated Land Management Act 1997.

The Report also provided details of further investigations undertaken based on the findings of the preliminary investigations to support this Stage 1 project application. The Report states that it fulfils the requirements of a Stage 2 Detailed Investigation for this Stage 1 project application.

Prior comments raised concerns for the adequacies of the in-field investigations to conform to the guidelines as approved or made under the provisions of Sec 105 of the Contaminated Land Management Act 1997. Some of the identified sites are applicable to the Stage 1 project application. As the methodology for soil sampling is questioned, so to is the fulfilment of the Statement of Commitments at 5.4 of the Concept Plan Approval MP06_0318. The soil sample results for the above ground fuel storage indicate actual soil contamination. The Report states "TPH concentrations displayed within shallow samples extracted directly below the diesel AST (which is still in use at the time of this assessment) indicate that over a period of continual use diesel fuel has been spilt onto the soil surface and penetrated it to a depth at least 0.3BGS. The presence of TPH fractions exceeding the HIL at this location could readily be remediated and therefore do not present a constraint to the proposed project application." The extent of contamination has not been delineated. No groundwater investigations have been undertaken. The requirements of a Stage 2 Detailed Investigation have not been fulfilled. A RAP has not been submitted with the project application.

It is noted at Sec 3.5.1 of the Preferred Project Report, the applicant has advised that the fuel tank is located outside the extent of earthworks proposed under this application this advice conflicts with the civil engineering plan labelled Bulk Earthworks Sequencing Diagram Sequence 9 Detail Sheet Drawing Number 12301-ALL-050B Mortons Urban Solutions.

Therefore the Statement of Commitment at 5.4 is not considered satisfied.

Radiation Survey

A preliminary radiation investigation was undertaken. It was stated that the target depth for the subsurface soil survey for each borehole was 2mBGS "to account for residential dwelling footing depths and possible excavation of materials for the installation of services and/or swimming pools". The assessment does not appear to have taken into account the cut depth of earthworks in reforming the land and final finish levels.

The radiation survey varies to locally accepted practise. Newly created subdivisions within the locality where sand mining has been previously undertaken have undertaken survey methodology at surface grid patterns of 10m x 10m and subsurface surveys at 50m x 50m grids with depth monitoring to 4m or to groundwater. Investigation trigger criteria is set at 0.2 μ Gy.h⁻¹ at surface and 0.35 μ Gy.h⁻¹ for subsurface.

Where exceedences have been detected remediation criteria on residential allotments are set at surface at 0.2 μ Gy.h⁻¹ and to 1m depth and 0.35 μ Gy.h⁻¹ to full depth (to groundwater) or 4m whichever is lesser. The alternative is an 88B restriction over the affected allotments. Roads and reserves are required to be remediated to a depth of 2m to a level of 0.2 μ Gy.h⁻¹.

The radiation survey is not consistent with previous applications for subdivisions.

Within the applicant's response, to DP&I comments provided 4 Oct 2012, dated 10 Oct 2012 it is stated that a commitment is made to engaging a site auditor. Neither the Revised Statement of Commitments for the Concept Plan Approval MP06_0218 dated October 2012 at 5.4 nor Revised Statement of Commitments for the Kings Forest Stage 1 Subdivision and Bulk Earthworks MP 08_0194 dated October 2012 commits to the engagement of a site auditor.

In consideration of the above concerns Council recommends a condition for a Site Auditor to be appointed to review the investigation and recommendations to ensure that public health and the environment are protected through proper management of contaminated land, particularly during changes in land use. Appropriate conditions are recommended.

Amenity

An Environmental Noise Impact Report has been prepared by CRG Acoustical Consultants dated 24 August 2012. Appropriate guiding documents have been referenced.

Rural Supplies - Precinct 1

To protect the amenity of the Old Bogangar Road residents a noise impact management plan required.

Traffic Noise Impacts

In regards to Kings Forest Parkway and Precinct 5 acoustic barriers are recommended along Kings Forest Parkway within the Precinct 5 residential area to a height of 2m for the majority of the site and 2.1m at the southern end adjacent proposed lots 59-61. Further acoustic building shell assessments are recommended for any second and subsequent floors of dwellings fronting Kings Forest Parkway within Precinct 5. An acoustic barrier is also recommended to those residences abutting Old Bogangar Road.

Conditions are recommended to reflect the recommendations of the Report.

Affordable Housing

The Affordable Housing Study recommended that subsidised housing for rent be provided for people with low and moderate incomes (below \$57,750). Locations in Precincts 5 (the first stage) and 10 were identified. The amended Statement of Commitments now proposes that any subsidised housing be subject to a successful NRAS application, and also transfers the affordable housing to Precinct 7. This would mean that there would be no affordable housing included in the first stage (Precinct 5), and any provision at all would be dependent on future Commonwealth funding, which may not eventuate.

Council would prefer that some affordable housing be retained in the first stage, and that it not be dependent entirely on Commonwealth funding.

Community Facilities

The Preferred Project Report does not give recognition to the provision of community facilities for Kings Forest that is set out in Council's Contribution Plan No. 19. It is not clear whether the multi-purpose community centre proposed in CP 19, including meeting rooms, youth centre, health centre and possibly a library, is intended to be located in the Town Centre or in Precinct 3 Community Facilities Area, which may be a school site.

Provision for many other social services, such as police, ambulance, emergency services, other health services, disability and ageing support services, a base for meals on wheels, and children's services remain undetermined. Kings Forest implies a massive increase in demand for various human services, while existing services are generally over-stretched and unable to meet today's demand adequately.

The Concept Plan should have a Statement of Commitment that specifically addresses CP 19 and Community Facilities at Kings Forest.

Precinct 1 Rural Supplies Development

The applicant is requesting that the NSW DP&I approve 2,036m² of floor space for rural supplies development. The application is now for one building with access, parking and landscaping arrangements within Precinct 1. Council objects to the DP&I approving the footprint of the proposed building without knowing the true nature of the development and whether car parking is adequate on this site.

Adequacy of Plans of Development (PoD)

The Kings Forest Development Code state that a PoD must contain:

- (1) *A Plan of Development must be submitted with all future development applications for subdivision on the site and include the following information where applicable.*
 - a) *location and width of Asset Protection Zones; and*
 - b) *Level of construction required for dwellings/buildings adjacent to Asset Protection Zones in accordance with Planning for Bushfire Protection 2006 and Australian Standard 3959 – 1999 – Construction of Building in Bushfire Prone Areas; and*
 - c) *type of development permissible or intended for each lot, for example, zero lot housing, plex housing; and Kings Forest Development Code PART B 130*
 - d) *fill and finished floor levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document); and*
 - e) *all necessary easements and Section 88B instruments; and*
 - f) *the type of development nominated on each lot which may be undertaken as Complying development and proposed number of bedrooms; and*
 - g) *the location of development lots and the maximum number of dwellings and bedrooms intended in the future development of the development lot; and*
 - h) *setbacks for all buildings and structures, including garages; and*
 - i) *zero lot line locations if relevant; and*
 - j) *for plex, mews and development lots, the maximum number of dwellings per lot bedrooms per dwelling; and*
 - k) *the location of preferred vehicular street access and driveway locations for Zero-lot, Terrace, Soho, Shop Top, Plex and Mews Dwelling lots; and*
 - l) *the location of private open space for each lot; and*
 - m) *the type of fencing to be provided to roads and other public land frontages; and*
 - n) *the lots on which 3 storey building height is permissible other than those which may be determined on merit by DRP; and*
 - o) *the location of public open space; and*
 - p) *the location of specific landscaping to meet the design guidelines for each precinct; and*
 - q) *gateways or entry statements; and*

The initial comments on the Design Guidelines stated that:

"The controls are very generic and do not establish a specific character for Precinct 5. The guidelines could be adapted to any subdivision in Tweed Shire which does not seem to be the intent within the Code as a revised Design Guideline is required for every development application for subdivision. The Design Guidelines should be reviewed and make specific reference to allotments within Precinct 5. It should identify where the view line corridors are and what special features are exhibited within Precinct 5 that should be integral to design (for example the park)."

The controls are still quite generic however the establishment of the Design Review Panel has now been established and should ensure a quality design outcome within the Kings Forest Development Code framework.

Development Code

The application includes amendments to the Development Code, which was approved as part of the Concept Plan for Kings Forest. The PPR report describes these amendments as "housekeeping", to update the referenced plans, and fix anomalies and inconsistencies that the developer has encountered with Cobaki, which has essentially the same development code. The following amendments are proposed:

- Figure 1.2.1 – Kings Forest Concept Plan - This Figure has been replaced with the amended Concept Plan. No objection from Council.
- Part A, Section 2.2 – Complying Development - This Section of the Code does not make reference to the requirement to provide rainwater tanks. A new Control 5 in Section 2.2 has therefore been included requiring rainwater harvesting to be provided in accordance with Appendix C as per the minimum lot size specified in the Code. Note 6: The requirements in Control (5) above may include any rainwater storage required to comply with State Environmental Planning Policy (Building Sustainability Index:BASIX) 2004.

The amendments proposed to the Kings Forest Development Code Section 2.2 Complying Development has the effect of mandating the minimum size of rainwater tanks as nominated in Appendix C of the Code as requested by Council previously. Council is satisfied with this amendment.

- Figure 5.1.1 – Kings Forest Precinct Areas- This Figure has been replaced with the amended Precinct Plan. No objection from Council.
- Figure 5.4.1 – Street Network Plan - This Figure has been replaced with the amended Street Network Plan. No objection from Council provided the road widths accommodate a bus (9m) as discussed in this report.
- Table 5.4.1 The term "frontage" is not defined. The controls and table have therefore been amended to call up "effective lot width" as defined in Appendix A of the Code. The heading Minimum Frontage Corner Allotments has also been changed to read "Minimum Effective Lot Width". No objection from Council.
- Section 5.4, Control 8 - Control 8 has been amended to replace the word "frontage" with "effective lot width". No objection from Council.
- Section 5.4, Control 10 - Control 10 has been amended by adding the words "or public footway".

As terrace dwellings will rely on the rear lane for vehicular access so as to minimise impact on the primary frontage, it is generally not acceptable for the secondary frontage to be a public footpath. This request appears based on a specific case in the Cobaki Development. It is not considered necessary for Precinct 5, and this amendment is not supported.

- Figure 5.4.2 - Shows the street networks sections for Kings Forest. Council (at Page 58) of its submission has raised issues concerning an inconsistency between the cross sections in the Code and those in the Application Plans. The sections in the Application Plans are correct and therefore it is proposed to make minor amendments to the Code by replacing Figure 5.4.2 with the correct Figure. (Now Figure 5.4.1 in the amended Kings Forest Development Code at Appendix 24.

No objection from Council provided the road widths accommodate a bus (9m) as discussed in this report.

- Section 5.6, Control 1. A review of the matters to be included in a Precinct Plan results in the following changes:
- Section 5.6, Control 1(a) – delete need for APZ to be shown on Plan of Development (POD). This is not supported as potential purchasers should be alerted to any constraints on the site.
- Section 5.6, Control 1(d) – delete the word “fill” as the POD does not need to contain this information as the land will be filled to the design flood level at the subdivision stage.

5.6 Control (1) d): fill and finished floor levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council’s Development Control Plan – Section A3 – Flood Liable Land (or any replacement document); and

As filling will be undertaken as part of the bulk earthworks approval, which requires all residential lot to be filled above the design flood level, it is appropriate to remove the fill limits from the Plans of Development, but retain the floor level as proposed. This amendment is agreed.

- Section 5.6, Control 1(e) – delete as this is an onerous and unnecessary requirement. All necessary easements will be shown on the final Plan of Subdivision when actual service locations are known based on Works As Executed Plans.

5.6 Control (1) e): ~~all necessary easements and Section 88B instruments;~~ and

Easements and title restrictions are essential information to prospective purchasers and building designers and should be shown on the Plan of Development. There is no justification for this deletion, and this amendment is not supported.

- Section 5.6, Control 1(j) – the words “dwellings per lot” have been changed to read “bedrooms per dwelling” as this is a more relevant consideration for the purposes of determining contributions, etc. at the subdivision stage.

5.5 Control (2) states:

(2) Mark on a *plan of development* the number of bedrooms per *dwelling* and per lot.

The applicant has not proposed to change this control but is has bearing on proposed change 5.6 as detailed below:

5.6 Control (1) j): for plex, mews and development lots, the maximum number of ~~dwelling~~ per lot bedrooms per dwelling; and

For the purpose of calculating developer contributions, the number of dwellings and the number of bedrooms are both relevant. There is no justification for this deletion and this amendment is not supported

Both 5.5 Control (2) and 5.6 Control (1)(j) should read:

the maximum number of dwellings per lot **and** bedrooms per dwelling;

REVIEW OF ECOLOGICAL MATTERS AND RELEVANT MANAGEMENT PLANS

The following comments form the detailed ecological matters for the proposed development.

Precinct 1

Council's Previous Comments

Council's previous comments regarding development of Precinct 1 within the Stage 1 Project Application related to the following Director General's Requirements (DGR).

- General Requirement 6 - Matters of National Environmental Significance
- DGR 2.8 - Landscaping in accordance with Council guidelines

Council raised concerns in its comments on the previous PPR regarding removal of Littoral Rainforest from within the ecological buffer area adjacent to Precinct 1. The following recommendations were made in relation to Precinct 1.

- *Council considers the proposed removal of Littoral Rainforest inappropriate and recommends Environmental Assessment and associated Management Plans are revised to ensure the retention and management of the Littoral Rainforest community in the vicinity of Precinct 1*
- ***That the species used for landscaping be revised to reflect appropriate locally native species where possible. Acceptable species should be negotiated with Council staff.***

Please note items in **bold** indicate recommendations of relevance to development currently proposed within Precinct 1.

Comments on Revised PPR

It is noted that the proposal has been modified such that there are no earthworks, clearing or other development now proposed for the Precinct 1 ecological buffer. The extent of currently proposed vegetation removal from within Precinct 1 consists of 10 trees: *Lophostemon confertus* (n=2), *Persoonia stradbrokeensis* (n=2), *Endiandra sieberi* (n=2), *Melaleuca quinquenervia* (n=4) that are located outside of the ecological buffer. This direct impact has been identified in detail in the Precinct 1 Littoral Rainforest Assessment at Appendix 1 of the Precinct 1 & 5 Threatened Species Management Plan (TSMP).

Although this assessment considers that the vegetation in this area does not conform to the Environment Protection and Biodiversity Conservation Act (EPBC) criteria for identification as Littoral Rainforest Endangered Ecological Community (EEC) for the purposes of the EPBC Act, an assessment against the relevant significant impact criteria is also provided within the response to a request for information by the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) at Appendix 30.

Nevertheless, the PPR proposes to undertake restoration and revegetation of the ecological buffer to the Littoral Rainforest, which is supported and commended. The intended extent of these works however is unclear due to inconsistency between the relevant management plans in the PPR and the advice provided at Appendix 30 in the proponent's response to DSEWPC's request for further information in relation to Littoral Rainforest. The Threatened Species Management Plans and Buffer Management Plans commit to rehabilitation of the inner 30m of this buffer, or an area of 0.33ha, and the management of the outer 20m for Asset Protection Zones (APZ) purposes whilst the JWA response to the DSEWPC request for further information at Appendix 30 also states that restoration works will increase the Littoral Rainforest area by 1.5ha. Figure 4 of this document and the Landscape Plan at Appendix 8 suggest diagrammatically that the entire 50m ecological buffer will be revegetated. The Vegetation Management Plan (VMP) does not specify the location of revegetation works, nor the amount of Littoral Rainforest to be created.

The Bushfire Risk Management Plan has demonstrated the ability to provide the required 21m APZ outside of the ecological buffer area, thus Council considers that the revegetation/regeneration of the entire 50m ecological buffer area to be appropriate in this area in order to provide adequate protection to this community.

Koala Exclusion Fencing

Given the above, it would be appropriate to re-site koala exclusion fencing at the outer edge of the ecological buffer rather than between the inner 30m and outer 20m within the buffer in order to maximise the area available for utilisation by fauna between Precinct 1 and Cudgen Creek.

Restoration Works

A species list for within the Precinct 1 ecological buffer has been provided, and the majority of species proposed for use are readily available from local nurseries, however several (6-7) are likely to be only available in some years and may need to be ordered in advance to ensure a diverse suite of species are used at this location.

One species *Canthium coprosmoides* (now *Cyclophyllum coprosmoides*) is not a native of this area and in its place Coast Canthium *Cyclophyllum longipetalum* should be used, however this species is difficult to propagate and only rarely available and an alternative should be identified. Another species from the list *Melicope vitiflora* (Northern Evodia [sic]) is listed as *Endangered* under the TSC Act and should not be planted on site due to provenance and other issues. A suggested alternative is *Melicope elleryana*. No indication is provided of the species composition or numbers of each species that will be used to replicate the adjoining vegetation community.

It is noted that statements made in the Buffer Management Plan (BMP) regarding what will occur in this area contradict each other.

“...The inner 30m buffer zone to the EPZ [Environmental Protection Zone] adjacent to Precinct 1 will be **revegetated with Littoral Rainforest species**. Approximately 0.33ha will be revegetated within the 30m buffer. A combination of weed control and **Koala and Acid frog habitat enhancement will be implemented** in accordance with relevant management plans...” whilst the species list, Table 1, indicates that Littoral Rainforest species will be planted and no Koala feed tree species are listed. These two approaches are mutually exclusive and the reference to koala or acid frog habitat creation in this area should be removed.

Landscaping

The Landscape Concept plan for Precinct 1 at Appendix 8 of the PPR includes 10 plant species which have been identified in Council's previous comments as inappropriate for use in landscaping due to their being introduced or non-local species. Council recommends that the species used for landscaping reflect appropriate locally-native species.

It is noted that the proponent's response to DSEWPC's request for further information at Appendix 30 refers to a Littoral Rainforest Restoration Plan. This plan could not be located.

Precinct 5

Council's Previous Comments

Council's previous ecological comments on the Stage 1 Project Application related to the following Concept Plan Conditions and Director General's requirements (See Table 1 for details).

- **Concept Plan Condition C20 - Development within ecological buffers to be consistent with SEPP (Major Projects) 2005.**
- **DGR 2.8 - Landscaping in accordance with Council's guidelines**
- **DGR 6.3 - Bushfire Management Plan and Asset Protection Zones**

Council raised concerns regarding Precinct 5 generally relating to the treatment of ecological buffers between environmental protection lands and the eastern boundary of Precinct 5. In the previous Stage 1 Project Application, extensive use of the ecological buffer for roads, stormwater treatment devices, (APZs) and the like was proposed, which Council considered inappropriate and inadequately justified. The following recommendations were made in relation to the Buffer Management Plan Precincts 1 & 5 and the Landscape Plans at Appendix 7 & 8 of the PPR.

- ***That the Buffer Management Plans and other associated plans are revised consistent with Clause 7 of Part 6 of Schedule 3 of SEPP (Major Projects) to ensure that:***
 - (1) ***No clearing of existing native vegetation occurs in the Ecological Buffers;***
 - (2) ***No earthworks or infrastructure development occurs within the inner 30 m of the Ecological Buffers;***
 - (3) ***The Inner Protection Areas for APZs are not contained within the ecological buffer;***
 - (4) ***Any APZ Outer Protection Areas located within the Ecological Buffers are designed to maximise their ecological function consistent with RFS guidelines;***
 - (5) ***The functionality of APZs is not compromised by overlapping habitat restoration;***
 - (6) ***Koala food trees are not planted the same areas used to restore heathland;***
 - (7) ***The koala fencing should be contained within the 20m outer ecological buffer and encompass all planted koala food trees;***
 - (8) ***Further detail is provided to document offsets required under the Concept Plan and their implementation within buffer areas adjacent environmental protection zones ensuring there are no spatial conflicts;***

- (9) *The proposed road within the ecological buffer on the eastern side of Precinct 5 is moved outside of the ecological buffer;*
- (10) *Any drainage swales be confined to the 20m outer ecological buffer and be designed so that they can be maintained without compromising the ecological integrity of adjacent habitat and;*
- (11) *The design of the proposed golf course maintains a minimum of 30m inner ecological buffer which should be densely revegetated.*
- *That the species used for landscaping be revised to reflect appropriate locally native species where possible. Acceptable species should be negotiated with Council staff.*
- *That the Bushfire Risk Management Plan and associated plans (Vegetation, Threatened Species, Buffer and Koala Management Plans) are revised to ensure that:*
 - (1) *Ecological assets are appropriately managed to minimise damage from bushfire;*
 - (2) *The Inner Protection Areas for APZs are not contained within the ecological buffer; and*
 - (3) *Any APZ Outer Protection Areas located within the Ecological Buffers are designed to maximise their ecological function consistent with RFS guidelines.*

Please note the recommendations listed in **bold** are relevant to the proposed development of Precinct 5.

Comments on Revised Preferred Project Report

Clearing in Ecological Buffers

Comparison of Bulk Earthworks plans (Fig 9 of the BMP Precincts 1 & 5) with Proposed Compensatory Habitat (Figures 10E,F,I,J) indicates a number of areas where bulk earthworks will remove existing regenerating heath in areas that are proposed to be revegetated with heath at the completion of earthworks. It is proposed to remove 1.8ha (an increase of 0.53ha from the previous application) of regenerating high conservation value native vegetation communities, comprising heathland (locally rare) and swamp sclerophyll forest (endangered ecological community) within the outer 20m of the ecological buffer to Precinct 5. It is considered that these regenerating communities should be afforded protection throughout the ecological buffers in the first instance, thus earthworks and removal of this vegetation is considered inappropriate and counter-productive and will result in a net loss of a locally rare vegetation community. Additionally, Council remains concerned about the ability to successfully accomplish revegetation in these areas given the level of disturbance and the top-soil management cautions outlined by the proponent.

Use of Outer Buffer Areas

With the exception of the road to the southern precincts (see below), it is noted that no infrastructure or earthworks is currently proposed within the inner 30m of ecological buffers. It is apparent however from the drawings in the revised plans that earthworks are still proposed in almost all areas covered by the outer 20m of the ecological buffer (see Fig 9 of the BMP Precincts 1 & 5). The current application also continues to propose utilising the majority of the outer 20m of the ecological buffer in this area for permanent stormwater treatment swales (see Figure 7 of BMP Precincts 1 & 5 and Precinct 5 Swale Section drawings at Appendix 23). As raised in Council's comments on the previous application, whilst the ecological buffer could be expected to accommodate these devices in some instances where it has been demonstrated that no other option is available, Council retains concern that this approach appears to have been adopted as the rule, rather than the exception, despite the Department of Planning's statement in the Director General's Report on the previous Concept Plan that "...in **certain instances**, some roads and outer asset protection zones **may be acceptable** within the ecological buffer..." The Department's comment continued by saying that, "...further assessment of ecological constraints within and adjacent to the buffers will need to inform any proposed development within these areas," however no further assessment of ecological constraints in these areas or assessment of alternative siting for stormwater swales is provided in the BMPs accompanying the current application.

Clause 7(2) of the SEPP (Major Projects) Amendment states that one of the objectives of the ecological buffers is to help ensure that development minimises impact on the ecological and hydrological functions of the buffers (see p15-24 of the BMP Precincts 1 & 5). The siting of the proposed stormwater management areas (bio-infiltration and vegetated swales) within the ecological buffer therefore is somewhat contradictory to this objective. The current proposal sees these devices constructed within and along the entire length of the very buffer these devices should be protecting, requiring significant disturbance and loss of the abovementioned regenerating vegetation within the buffer to achieve this. Whilst it is noted that this proposal has been modified and represents an improvement on the previous application, there remains a danger that the extensive use of this sort of infrastructure in the outer ecological buffer will prevail as the rule rather than the exception in other stages of the development, contrary to the intent of the SEPP (Major Projects) Amendment.

Conflicting Management of Outer Buffer Areas

The Bushfire Risk Management Plan and Buffer Management Plans appear to contain differing and contradictory intent with regard to the treatment of vegetated swales as currently proposed within the 20m outer ecological buffer areas adjacent to Precinct 5. The BRMP refers to these areas as "grassed swales" in its assessment of bushfire risk and the functioning of these areas for APZ requirements, whilst the intended treatment of these areas with regard to revegetation is stated (not until p15-25 in the BMP's discussion of compliance with statutory requirements) as: "*The swale will be vegetated in the same way as the adjacent 30m inner buffer zone such as to be visually indistinguishable.*" With the exception of a direction (Vegetation Management Plan p24-13) regarding spacing of canopy trees in APZ areas and a general indicative plant palette for vegetated swales there is no detail contained in the Buffer Management Plans or the Vegetation Management Plans to direct the revegetation works within the swale areas in order to achieve this. In such instances Council remains concerned regarding the practicality of maintaining these areas for APZ purposes whilst also accomplishing regeneration plantings.

It was noted in Council's previous comments that the Department of Planning, in the Director General's Report on the proposed Concept Plan, stated that consideration may be given to locating "outer asset protection zones" within the ecological buffer. The revised BRMP specifies APZs with widths of 10, 21 and 27 as applying to various properties at the eastern and southern boundaries of Precinct 5, consisting entirely of Inner Protection Areas, which the proponent seeks to locate within the outer 20m of the ecological buffer. This approach is incompatible with the intent to revegetate these areas with heath or forest, thus Council retains concern regarding the compatibility of APZ management and the ability of ecological buffers to perform their intended function and recommends that further information or review of plans for consistency is required regarding the proposed management of Precinct 5 buffers. These issues have implications for the long term management and functioning of ecological buffers.

It is noted that the proposed road on the eastern side of Precinct 5 has been largely removed from the ecological buffer, with a 686m² road encroachment into the outer 20m buffer on the western side now proposed. This is considered an acceptable interpretation of the SEPP (Major Projects) Amendment.

Location of Fauna Exclusion Fencing

This issue has been addressed insofar as it relates to the eastern boundary of Precinct 5. It may not be appropriate however, in all locations, to site koala fencing on the boundary between the outer and inner buffers. The ultimate location of fencing should aim to maximise the area of buffer available for use by fauna, and encompass all planted koala food trees as well as any other areas subject to revegetation within the buffer that are not required to be maintained for drainage swale or APZ purposes. Detailed plans will be required regarding fencing location at more advanced planning stages for other precincts.

Consideration also needs to be given also to provision of a maintenance zone on either side of the koala exclusion fence.

As discussed elsewhere the grid proposed to allow vehicular access to the southern and western parts of the site should be replaced with temporary locked gates until such time fauna fences and underpasses are constructed through the environmental areas.

Landscaping Species Selection

This recommendation has not been addressed. The revised landscape plans at Appendices 7 and 8 remain largely unchanged, and include over 14 plant species which have been identified in Council's previous comments as being inappropriate for use in landscaping due to their being introduced, non-local or not suited to their proposed purpose. Council recommends that the species used for landscaping reflect appropriate locally native species. *Syzygium moorei* and *Syzygium hodgkinsoniae* are threatened species that have not been recorded on the Kings Forest site, thus it is not considered appropriate to include these species in landscaping or revegetation works. Council is able to provide assistance with species selection.

Bushfire Risk Management

The majority of Council's concerns regarding bushfire issues have been addressed within the most recent version of the Bushfire Risk Management Plan. One outstanding issue relates to the provision of APZs. The BRMP states in its introduction that "*Correspondence received from NSW Rural Fire Service indicates that the lots affected by Asset Protection Zones are not required to be encumbered with a Section 88B instrument under the NSW Conveyancing Act 1919; a meeting between the developers representative and DOPI officers on the 19 July 2012 supported the NSW Rural Fire Service position, therefore, implementation of Section 88B instruments for lots affected by Asset Protection Zones are not required.*"

It is not clear how the requirement for an APZ setback on the affected Lots (south-east corner of Precinct 5) will be notified to any prospective owner without encumbrance on the title. These lots are some of those requiring the greatest width of APZ within Precinct 5 and consequently the most at risk from bush fire. Management requirements that ensure ongoing compliance with the requirements of Planning for Bushfire Protection (PBP) 2006 need to be communicated to prospective owners. Elsewhere in the Shire a s88B instrument has been imposed on title to ensure the management of lots is in compliance with the RFS approval and/or PBP 2006. Council retains the view that this should apply to any Lots encumbered by an APZ at Kings Forest.

This issue is directly tied to the proposed use of three lots for units, which would not be approved if a setback is required for bushfire hazard protection purposes. The proposed use of these lots is not consistent with PBP 2006.

Fire Trails

In relation to fire trails, the plan states "*...fire trails would not be required for the south/eastern and southern elevations of the precinct due to the short distances between the three lots (621-623) are connected by the grassed swale area and relatively short lot boundaries which will allow access to the bushland interface in these areas.*"

The absence of a fire trail behind Lots 621-623 is considered acceptable due to the short distance between road access on either side of these lots, the potential for roll-out of fire hoses in this area and the provision of a defensible space in the form of a navigable APZ at the rear of the properties where they face a potential bushfire threat.

Overlap of Compensatory Habitat

The overlap of koala food tree plantings, heath regeneration and the creation of acid frog habitat as proposed within the inner ecological buffers is not supported. This is discussed elsewhere (see comments on offsets and compensatory habitat below).

Other issues relating to the management of ecological buffers in general and across the site are discussed in comments relating to the Buffer Management Plans.

Bulk earthworks

Council's Previous Comments

Council's previous ecological comments on the Stage 1 Project Application related to the following Concept Plan Condition (See Table 1 for details):

- **Concept Plan Condition C20 - Development within ecological buffers to be consistent with SEPP (Major Projects) 2005**

Council raised concerns regarding the extent of earthworks proposed within ecological buffers being contradictory to the intent of provision of buffers across the site (see p133 of the previous Council report). The removal of regenerating, high-conservation value vegetation communities from within areas supposed to be providing protection to environmental lands, are proposed to be utilised as offsets and that are to be revegetated at a later stage is considered inappropriate and counter-productive. Council provided the following recommendations:

- ***That the Buffer Management Plans and other associated plans are revised consistent with Clause 7 of Part 6 of Schedule 3 of SEPP (Major Projects) to ensure that:***
 - (1) No clearing of existing native vegetation occurs in the Ecological Buffers;***
 - (2) No earthworks or infrastructure development occurs within the inner 30 m of the Ecological Buffers; and***
 - (11) The design of the proposed golf course maintains a minimum of 30m inner ecological buffer which should be densely revegetated.***

Comments on Revised Preferred Project Report

The extent of amendments to the Buffer Management Plan Precincts 2-4 & 6-11 are limited to two points which have been amended in Section 16.6.4 to support compliance with Clause 7(2) of the SEPP (Major Projects):

- "- *Earthworks within the golf course 50m buffer will be removed where heath is to be naturally regenerated.*
- *It is considered that the proposed development within ecological buffers, limited to the completion of bulk earthworks for the Golf Course and bulk earthworks within the outer 20m of some ecological buffers to provide flood immunity and construct approved roads, is a practicable solution."*

As per the current application, proposed bulk earthworks within the ecological buffer adjacent to Precincts 2-4 & 6-14 will result in the removal of a total of 21.15ha of native vegetation communities (see Table 1 of Buffer Management Plan Precincts 2-4 & 6-14) consisting of the following:

- 0.34ha of Freshwater Wetland (EEC),
- 17.56ha of heathland & shrubland (locally rare)
- 3.13ha of Swamp Sclerophyll Forest (EEC) and
- 0.1ha of open forest

It is noted that this represents a reduction of 7.44ha from the previous proposal, however it is difficult to comment on whether the proposed encroachment of bulk earthworks upon buffer areas is justified as the current application provides no detail regarding intended development within and adjacent to these buffer areas. The current PPR states that "*In general, earthworks are limited to the outer 20m of the ecological buffer...*" This statement is inconsistent with the statement at p16-9 which indicates that earthworks are to be excluded from the entire inner 30m of the ecological buffer for these precincts. In either case however, it remains that inadequate justification is provided for removal of any regenerating vegetation in ecological buffer areas. In the absence of detailed information to demonstrate the necessity of these works, it is considered that a more appropriate approach would be to exclude earthworks completely from inner and outer buffer areas until a more detailed stage of planning.

With regard to the proposed golf course in the south of the site, Council previously expressed concern regarding the potential use of the entire 50m ecological buffer for fairways, greens, bunkers and the like when the intention of these buffer areas is primarily to protect areas adjacent to environmentally sensitive Cudgen Nature Reserve and Environmental Protection areas and to retain their intrinsic ecological value. Council recommended that the design of the proposed golf course maintains a minimum of 30m inner ecological buffer which should be densely revegetated.

It is noted that the proposed layout of the golf course remains unchanged from the previous application. The current BMP states that "*Earthworks within the golf course 50m buffer will be removed where heath is to be naturally regenerated*" however when compared with the previous proposal, the current version shows no reduction in the areas mapped as being impacted by bulk earthworks and continues to depict earthworks within the entire width of ecological buffers subsequent to their use for golf course development (see Fig 6, BMP Precincts 2-4 & 6-14). Whilst the above intent is supported, it is unclear which areas this statement relates to, if any, as the relevant maps (Figs 10C, F, G) indicate no areas where heath is to be naturally regenerated within the 50m ecological buffers adjacent to Precincts 12-14.

Additionally, it is considered that the proposed approach to the treatment of golf course buffers will create long-term management conflict between golf course management and proposed acid frog compensatory habitat areas. Again, earthworks should be excluded from areas currently supporting regenerating vegetation as well as those areas proposed to be revegetated in the future.

The removal of vegetation within the golf course ecological buffer areas remains inadequately justified and thus it is considered that the proposal remains inconsistent with Clause 7(2) and (3)a-d of the SEPP (Major Projects) Amendment.

Management Plans - General issues

1. Implementation Tables

Council's Previous Comments

Council's previous comments on the Stage 1 Project Application related to the following Director General's Requirement (See Table 1 for details):

- **DGR 9.4 - Updates to be provided to management plans providing timelines for implementation.**

In its review of the previous Project Application, Council recognised the need for management plans to provide an implementation and summary schedule which detailed all actions, relevant timeframes, associated resources for the implementation of that plan. This would assist personnel implementing the plans determine the resources and timeframes required, measures for assessing the success of each action as well as clarifying management action overlaps between plans. To this end, Council made the following recommendations and entered into discussions with the proponent regarding the layout and content of such schedules, providing an example which would meet the requirements of Council:

- ***That all Management Plans should be revised to include a detailed implementation schedule which should itemise all recommended actions required (including those detailed in other management plans) to ensure that the relevant Plan meets its aims. The schedule should show how each action meets the objectives of the Plan, timing, frequency and responsibilities for action, resources required, costs, performance criteria, and outputs.***
- ***That an implementation schedule should be included in a revised KPOM. This schedule should itemise all recommended actions required (including those detailed in other management plans) to ensure that the KPOM meets its aim. The schedule should show how each action meets the objectives of the KPOM, timing, frequency and responsibilities for action, resources required, costs, performance criteria, and outputs.***

These recommendations remain relevant to the revised PPR and are discussed below.

Comments on Revised Preferred Project Report

It is noted that an implementation schedule has been provided at the beginning of all current management plans. The PPR states that these tables are those agreed to during consultations with TSC and DoPI, however it is Council's understanding that no final design was agreed to between all parties, and the current tables differ from the example of the preferred table provided by Council in that they do not provide all parameters requested by Council, are lacking the detail required for implementation of all listed actions including adequate references to the location of the relevant sections of each plan, maps and detailed drawings to guide the actions. The schedules in the current PPR generally provide a summary rather than an itemisation of actions, when it was intended that these tables be a reference point for any person tasked with implementing the plan to be able to see, at a glance, every action to be done in order to meet the objectives of the plan, the timing, frequency and resources required for carrying out of these actions, the performance criteria against which each action is to be measured and references to the location of further information regarding each action.

The current approach to the implementation tables creates the potential for important detail to be lost or missed, as discussed in examples below.

Buffer Management Plans

The implementation table in the Buffer Management Plan Precinct 1 & 5 specifies one action being the erection of temporary fencing "*along truncated inner buffer zone*" however there is no reference given to a map which identifies the location of the intended fencing, nor is the relevant section of the plan identified where this information can be located. The BMP also proposes maintenance visits at various intervals of fortnightly, bi-monthly and six-monthly depending on the year, and these should be included in the table, associated with their specific maintenance actions. Monitoring and performance criteria sections within the implementation table of this plan also do not correspond entirely with those contained in the plan and require revision to provide an adequate level of detail.

Koala Plan of Management

Similar issues are associated with the implementation schedule in the current Koala Plan of Management. Purposes listed in the table generally do not specifically relate to the Objectives outlined in Section 7.1.2 of the Plan, nor do the Performance Measures in the implementation table relate specifically to the "Criteria for judging success" in Section 7.10 Performance Criteria, however there is inconsistency between these tables both in defining management actions and defining performance criteria.

Timing of Management Actions

In order for these tables to guide resourcing and implementation, more detail is required in most cases within the "Timing and Frequency" column. For example, the Implementation Table within the KPoM provides no timing or required frequency of the application of actions relating to long-term community education, awareness and involvement, management of koala habitat, bushfire management or maintenance of infrastructure. The action KPoM-10 specifies that the condition of fencing is to be regularly inspected and maintained, however no indication of the required frequency or timing of this inspection and maintenance is provided. Additional references to the location of relevant detail for each of these actions are also required.

2. Offsets and Compensatory Habitat

Council's Previous Comments

Council's previous comments on the Stage 1 Project Application related to the following Concept Plan Conditions and Director General's requirements (See Table 1 for details):

- **Concept Plan Condition C2 - Management Plans**
- **Concept Plan Condition C20 - Development within ecological buffers to be consistent with SEPP (Major Projects) 2005**
- **DGR 9.4 - Provision of updates to Management Plans to ensure management strategies do not conflict**
- **DGR 9.5 - Provision of updates to Koala Plan of Management to ensure adequate offsets**
- **DGR 9.12 - Provision of updates to Threatened Species Management Plans to ensure best practice habitat management and safeguarding of populations**

Council provided lengthy comment and discussion on the issue of the provision of habitat offsets and the location of compensatory habitat as proposed in the Stage 1 Project Application. Concerns were raised with regard to the proponent's plans to re-establish heathland, undertake koala food tree plantings and create habitat for acid frogs over many of the same areas. The following recommendations were made:

- ***That further review of the management plans is conducted to ensure there are no inconsistencies in the implementation of the plans of management as required by DGR 9.4 and Concept Plan Condition C2.***
- ***That a review of all offset and habitat compensation arrangements is undertaken prior to approval of the project application. This is ensure that all offsets are clearly documented, that there is no spatial duplication of offsets for ecologically unrelated impacts, and that management and contractual arrangements for any off-site compensation, should it be required, is in place.***
- ***That the mapping of areas for acid frog habitat is reviewed to ensure that it does not impinge on areas suitable for the planting of koala feed trees or dry heathland.***
- ***That koala food trees are not planted the same areas used to restore heathland.***
- ***That further detail is provided to document offsets required under the Concept Plan and their implementation within buffer areas adjacent environmental protection zones ensuring there are no spatial conflicts.***

These recommendations are relevant to the revised PPR and are discussed below.

Comments on Revised Preferred Project Report

Compensatory Habitat Conflicts

The current proposal continues to propose considerable spatial overlap (within ecological buffers and elsewhere within environmental protection areas) between these three uses, and whilst the extent of overlap was not quantified in documents previously reviewed by Council, the most recent PPR specifies the area subject to overlap of Koala food tree planting, heathland and Wallum Sedge Frog compensatory habitat at 40.24ha, with all areas of Wallum Sedge Frog compensatory habitat (39.30ha) and an additional 25.03ha of heathland revegetation/regeneration to also be subject to Koala food tree planting (see Buffer Management Plans).

Further assessment of the compatibility of koala food tree planting, acid frog habitat and heathland rehabilitation has been provided within the current application in the form of a "Compensatory Habitat Assessment" (Appendix 4 of the KPOM and Appendix 3 of Appendix 30). Council does not consider that this assessment adequately justifies the proposal for extensive spatial overlap between these separate offsetting requirements for a number of reasons. The area used in this assessment is a small (2.8ha), highly disturbed patch of depauperate vegetation where natural processes have been influenced by a long history of severe disturbance (grazing, slashing, drainage). Whilst it may be true that koala food trees and heath species occur together on the site, these areas (particularly the one identified above) do not constitute ideal models upon which to base the design of compensatory habitat. Indeed, the proponent's own response to DSEWPAC request for further information states that habitat on the Kings Forest site "*is not representative of optimal habitat.*"

The same assessment includes a review of habitat requirements for suitable acid frog breeding sites (see Appendix 27) which states a preference for "*permanent to ephemeral, freshwater wetlands with emergent vegetation, most notably sedges, reeds or ferns...*" and that adjoining woodland or forest habitats are utilised after significant rainfall events and constitute non-breeding habitats. Although the Wallum Sedge Frog and Wallum Froglet have been recorded from the area referred to above, the areas mapped across the site as 'wallum sedge frog habitat' (Fig 5, Appendix 27; Appendix 30) are comprised mostly of *regenerating wet/dry coastal heathland to shrubland* (Community 3(d)) with only patchy occurrences of Swamp Sclerophyll Forest. Although Swamp Sclerophyll Forests form mosaics with heathlands and freshwater wetlands on the coastal sand plains, the absence of trees is one of the defining characteristics of the latter two communities. This would appear to be at odds with the proponent's stated intent for compensatory koala habitat plantings within environmental protection areas and ecological buffers across the site (see p7-27, KPoM; p23, Appendix 30) which is to "*create additional Koala habitat areas representative of Swamp Sclerophyll Forest.*"

Council has repeatedly stated, and maintains the concern that although Swamp Sclerophyll Forest and heath species occur together in some areas of the site, this habitat is not representative of optimal Wallum Sedge Frog breeding habitat (a point which is also acknowledged at Appendix 27). Whilst there may be some scope for planting of Koala food trees at the margins of fabricated acid frog habitat in some locations, the complete overlap of the two compensatory habitat types (see p7-28 of the KPoM) is considered inappropriate and limits the potential of each to serve its intended purpose.

There is also still some 25ha of overlap proposed between areas of koala food tree plantings and regeneration/revegetation of heathland (see Figs 10 & 10A-L, BMP Precincts 1 & 5).

Creation/embellishment of compensatory habitats on the site should be modelled on mature and ideal examples of the relevant native vegetation communities and not highly disturbed, marginal habitat as is currently found in many areas throughout the site. Council maintains that while there may be some scope for overlap between acid frog habitat and wet heathland, it is considered that the proposed use of the same areas for the creation of Swamp Sclerophyll Forest, heathland and/or wallum sedge frog compensatory habitat to be largely conflicting and incompatible.

Documentation of Offsets

Council recommended previously that a review of all offset and habitat compensation arrangements was undertaken to ensure that all offsets are clearly documented, that there is no spatial duplication of offsets for ecologically unrelated impacts, and that appropriate investigation of any off-site compensation requirements and associated management and contractual arrangements could be determined.

No explicit detail has been provided in the current application that sets out the commitments required under the Concept Plan for offsetting the loss of various vegetation/habitat types.

For example, substantial discussion and various detailed analyses of areas of heathland to be lost/rehabilitated/revegetated within ecological buffers is provided in the various Buffer Management Plans. The plans detail that heathland rehabilitation/revegetation works are to cover 52.34ha with the intent of compensating for a loss of 19.21ha, resulting in a net gain of 33.13ha of heathland within ecological buffers. Council noted previously, as detailed in the Director General's report on the Concept Plan (in relation to heathland communities) that proposed revegetation measures in Environmental Protection zones and within the ecological buffers were intended to address an overall loss of some 59ha of heathland across the entire site. It is impossible to ascertain however, from the information provided in the current application, how much heathland is proposed to be lost or rehabilitated *outside* of ecological buffers and thus whether the proposed heathland rehabilitation *within* ecological buffers represents an adequate offset for the loss of heathland across the site as a whole.

Council remains concerned that in addition to the immediate loss of habitat and individuals, there is a real potential for a long-term decrease in the population of acid frogs on the site. Although it is stated in the Response to DSEWPC's information request at Appendix 30 and relevant management plans, that 39.30ha of Wallum Sedge Frog compensatory habitat will be created, this area includes an undefined (up to 16.45ha) amount of retained habitat. This potentially implies the creation of a minimum of 22.85ha of new habitat, and thus a resulting potential net **loss** of up to 8.63ha of Wallum Sedge Frog habitat. This outcome is not considered acceptable.

In regard to koala food tree planting, whilst the proposal to plant some 10,000 koala food trees on the site, as discussed elsewhere, the areas designated for these plantings also overlap one or more other compensatory habitat intents. Should koala food tree establishment fail in these areas and other uses prevail, the remaining area where koala food tree planting is proposed outside of any overlapping uses amounts only to 6.19ha (see Buffer Management Plans). This would be considered an inadequate outcome.

Although it is recognised that individual details relating to proposed offsets for loss of significant heathland, acid frog and koala habitat are provided within various management plans and appendices, it appears to be implied that these will also account for proposed losses of the EECs Swamp Sclerophyll Forest and Freshwater Wetland detailed in the Buffer Management Plans, as well as other threatened species habitats. There is no summary of commitments to offset these specific habitat losses provided within Threatened Species Management Plans or elsewhere in the PPR. Therefore it remains difficult to determine the adequacy of all proposed offsets as the plan does not explicitly state the areas of threatened species habitat to be removed, nor are maps of same provided.

It would aid implementation and administration of management plans (as well as assessment of spatial conflicts) if the loss of each significant habitat type and threatened species habitat and corresponding **offset requirements** were summarised and explicitly detailed against the **proposed offsets** being committed to by the proponent. The area of each vegetation/habitat type to be created or restored (both within buffers and elsewhere within environmental protection areas) would then ideally be referenced to detailed mapping demonstrating the precise proposed location of same, again including details of habitat restoration across the site, not just for ecological buffers.

3. Commencement and Duration

Council's Previous Comments

Council's previous comments on the Stage 1 Project Application related to the following Director General's requirement (See Table 1 for details):

- **DGR 2.5 - Outline the long term management and maintenance of open space areas**

Council previously recommended that all management plans were to explicitly indicate their commencement and duration and provided the following recommendations intended to guide the assessment of plan completion as well as provide certainty as to the condition of lands to be handed over to Council upon completion:

- **That conditions be imposed to ensure the proponent assumes responsibility for the implementation of the environmental management plans arising from this project application (including any necessary revisions) for a period of 5 years, or until 90% of lots are sold, or until completion criteria have been met, whichever is longer. After this time Council will assume management responsibility for the dedicated areas.**
- **That all Management Plans to explicitly indicate their commencement and duration. All Plans should commence on approval of the Project Application and continue to be implemented by the proponent for a period of 5 years or until 90% of lots are sold, or until completion criteria have been met, whichever is longer.**

Comments on Revised Preferred Project Report

These recommendations have not been addressed in the most recent PPR. The timeframes specified within the various management plans contain inconsistencies, with some commencement and duration timeframes remaining implied rather than specified.

The first action in the Buffer Management Plans and Koala Plan of Management has an associated timing of "Prior to site work commencing," whilst the earliest timing associated with an action in the implementation tables of the **Threatened Species Management Plans** is "once project is approved." The KPOM still states that revegetation of koala habitat "shall generally commence within 180 days of commencement of any works." As raised by Council previously, given the long lead time for trees to grow and be useful to koalas, coupled with the fact that potential disruption to the koala population will occur on commencement of works, it is considered that this timeframe should be amended to ensure that these revegetation and rehabilitation works will also commence on approval of Stage 1. There is an opportunity to make significant progress within the initial stages of development, and given the lag time associated with habitat restoration works, it would be appropriate for all plans to commence upon project approval.

There continues to be inconsistent and inexplicit definition of the duration over which the plans are to be implemented, however with Buffer Management Plans' maintenance and monitoring schedules implying 5 years' duration whilst elsewhere the plan states that completion occurs upon the meeting of performance criteria. Similarly, the Threatened Species Management Plans do not explicitly state their duration, however the monitoring associated with these plans is proposed to continue for 5 years or until vegetation is self-sustaining, whichever is earliest, while the KPoM commits to monitoring for only 5 years. Monitoring is an integral part of any KPoM made under SEPP 44 (Koala Habitat Protection) and should continue while ever the plan is in force.

It is important to note that the objectives of the plans require an initial establishment period followed by ongoing management. For example, during the initial establishment period the physical environment will need to be manipulated to ensure suitable habitat conditions (eg acid frog habitat, wet & dry heathland, Freshwater Wetland, Swamp Sclerophyll Forest), vegetation will need to be planted, mulched, protected from grazing and physical damage, watered and kept free of weeds. In existing or disturbed habitat extensive primary weed control will be necessary. There will also be a number of specific measures implemented to protect and manage threatened species including installation of fauna fencing, underpasses and grids, lighting, signage and the like.

Once these initial works have been successfully completed an ongoing management and maintenance regime will be needed to keep the areas free of weeds, pest species, rubbish, disturbance, ensure that all hard infrastructure is properly maintained, to monitor and make appropriate ecological interventions to ensure that the objectives of the plans are met. All plans should define explicitly the duration throughout which their actions and monitoring programs will be carried out, and these should be consistent between plans.

It is Council's view that the proponent should be responsible for the works involved in the establishment period and maintain the works until such time as suitable arrangements have been agreed with respect to land dedication and resources for long-term management under Council control. These arrangements are the subject of a VPA which, as discussed elsewhere, has yet to be determined.

4. Performance Criteria

Council's Previous Comments

Council's previous comments on the Stage 1 Project Application related to the following Concept Plan Conditions and Director General's requirements (See Table 1 for details):

- **DGR 9.4 - Updates to management plans to include measurable performance criteria**
- **Concept Plan Condition B2 - Flora and Fauna Monitoring Report**

Council's review indicated a lack of measurable performance criteria as being a common issue within the majority of management plans. The purpose of specifying performance criteria is to provide a mechanism for measuring the success or otherwise of the management plan in order to gauge progress and guide adaptive management and corrective actions to ensure they are effective at achieving the Plan's aims and objectives. To this end, Council provided the following recommendation:

- **Performance criteria for all environmental Management Plans are revised in consultation with Department of Planning, Office of Environment and Heritage, and Tweed Shire Council to ensure they are specific, measurable, achievable, relevant and timely.**

Comments on Revised Preferred Project Report

As raised previously, performance criteria within management plans must correspond directly to the stated management strategies, however little revision of performance criteria has taken place since the previous application. Comments on the performance criteria as they relate to various management plans are provided below.

Buffer Management Plans

The Buffer Management Plans contain specific management actions for protective measures, weed control, heath regeneration and revegetation, koala habitat compensatory plantings, acid frog compensatory habitat, pest management and adaptive management however both plans provide only performance criteria to measure success and establishment of plantings and efficacy of weed control measures. Performance criteria need to be measurable and specific. Some of the listed performance criteria are simply parameters to be measured such as "growth rates" and "Foliage Projective Cover", and have no associated acceptable ranges or target levels, thus are not able to serve their purpose. The Buffer Management Plans and Weed/Vegetation Management Plans share similar performance criteria which are further discussed below. These plans must be reviewed for consistency.

Threatened Species Management Plans

The performance criteria listed at Table 2 of the Threatened Species Management Plans (TSMP) continue to include criteria that are non-specific, non-measurable and do not contain the required detail for assessing the success of the Threatened Species Management Plan actions. By example, for the action relating to the propagation and planting of threatened flora species, the relevant performance criterion is "*successful propagation and establishment of cuttings/seedlings of threatened flora*," however no target number of propagules or overall target population size is provided to enable the assessor to determine whether this action has been successful. This comment is relevant to a number of performance criteria in this table. The major mitigation measure for threatened species is the retention, rehabilitation and creation of threatened species habitat. The current performance criteria do not specify the extent of habitat to be retained / rehabilitated / created and thus the success of this measure is not able to be readily assessed. Species composition targets for revegetation areas are mentioned, however they are not provided in the plan nor is there any indication of where to find these targets. Performance criteria that relate to the persistence or increase in abundance or population size for threatened fauna species are appropriate and supported, however these need to be supported by a suitable monitoring strategy that will allow the adequate measurement of these parameters.

Performance criteria for creation of acid frog compensatory habitat are contained in Appendix 2 of the TSMP, and are a direct replication of those contained in Ecosense (2005) which were developed for the Tugun Bypass compensatory habitat ponds. In general these criteria are inadequate and will not effectively assess the success of compensatory habitat establishment as they are not tailored to the site, do not have the maintenance of acid frog populations as their focus nor are they supported by an adequate monitoring program.

Performance criteria for the management actions TSMP 10, 11, 12, 13 & 14 have not been adequately established.

Koala Plan of Management

Performance criteria provided in the KPoM are generally considered acceptable, however some require detail to ensure they are measurable. For example, the criterion "*Plantings are completed in designated areas...*" requires a reference to a map, detail of the area to be planted and an associated timeframe within which areas are required to be planted to achieve this criterion.

Vegetation Management Plan

The vegetation management plan currently provides a list of six performance criteria upon which to measure completion of the plan:

- Foliage Projective Cover (FPC) (%) assessed using eye estimates or photo points (i.e. FPC of native vegetation increasing after each monitoring visit);
- Species composition targets will be based on accepted benchmarks for the specific vegetation communities on the Kings Forest site;
- Noxious and environmental weeds are to be eradicated;
- Infrastructure functional and well-maintained in a state suitable for hand over to Tweed Shire Council;
- Natural recruitment of native seedlings throughout planting areas; and
- Plantings providing variable habitats for native fauna species.

Whilst these contain broad descriptions of what is to be measured during monitoring, with the exception of the criterion relating to weeds, there are no measures or targets to be met in order to determine adequate performance based on these criteria.

The performance criterion relating to photo monitoring as it is currently stated is unlikely to provide information that will "determine the extent of native plant species and the levels of biodiversity" within vegetation communities, rather they will indicate the extent of growth and success or failure of plantings within the cameras view. This data will come from the transect and quadrat (plot) data records and mapping of the extent, composition and density of plantings or regeneration.

If "accepted benchmarks" are to be used as a target for rehabilitation of vegetation communities at Kings Forest, these need to be identified and the relevant target measures detailed in the plan.

Whilst it is highly unlikely that environmental and noxious weeds will be eradicated, this is a measurable and commendable goal. Weeds will realistically require on-going management and control and in the case of noxious weeds, the prescribed control measure under the Noxious Weeds Act need to be adhered to.

Natural recruitment of native seedlings, if to be used as a meaningful performance criterion, needs to have a recording parameter that includes one or more of measures such as: % recruitment, species count, composition etc.

It is unclear how it will be determined that plantings will provide variable habitats for native fauna species. Generation of habitat needs to be assessed in line with conditions required by locally-occurring species. These may include roost and forage provision, development of structural complexity, development of ground layer vegetation, canopy closure, colonisation of species recorded during monitoring. These parameters require defining in order to be used as meaningful performance measures.

The plan states that "*When it is determined that all performance criteria have been met, completion will have occurred.*" Precise and measurable performance criteria must be provided for each action in the plan to enable this assessment to be made.

Weed Management Plans

A number of performance criteria listed within the Weed Management Plans require revision in order to be considered adequate. For Foliage Projective Cover (%) to be successful as a measure of change in weed cover a benchmark standard should be adopted (such as Walker & Hopkins 1990) to guide field data collection. The "accepted benchmarks" for vegetation communities at Kings Forest must be specified and relate to existing vegetation communities within surrounding conservation estates as per Concept Plan Condition B2. As noted above, it is highly unlikely that environmental and noxious weeds will be "eradicated" rather they will require on-going management and control and in the case of Noxious weeds the prescribed control measures under the Noxious Weeds Act need to be adhered to. Natural recruitment of native seedlings also requires recording parameters, such as % cover, species count, numbers and composition etc.

The only currently measurable performance criteria listed is that weed FPC will be reduced by 50% at the end of the first year to 10% at the end of the second year, 5% by third year and 1% by maintenance. Council considers this an acceptable criterion, however it appears in conflict with the commitment to weed eradication stated earlier. Precise and measurable performance criteria must be provided for each action in the plan.

Feral Animal Management Plan

A small set of performance measures are provided in the Feral Animal Management Plan, however the majority of these do not contain relevant measures, locations or timeframes, nor do they represent a focus on reducing/controlling populations of feral animal species on the site. These need to be revised to be able to measure the plan's success in meeting its objectives.

A number of management plans continue to include objectives, targets and performance criteria that relate to actions associated with other management plans. This approach reduces the clarity and consistency of the plans and their ability to be efficiently implemented and assessed. All performance criteria formulated within each management plan must be consistent with and flow on into the associated Implementation Schedules for that plan as well as to the Flora and Fauna Monitoring Report.

Comments specific to management plans

Koala Plan of Management

Council's Previous Comments

Council's previous comments on the Koala Plan of Management (KPoM) within the Stage 1 Project Application related to the following Director General's Requirements (see Table 1 for details):

- **DGR 5.5 - Demonstrate safe passage of wildlife**
- **DGR 9.5 - Update of KPoM to provide adequate offsets for impact of development**
- **DGR 9.6 - Update of KPoM with contemporary knowledge/literature, role of additional habitat and additional koala management measures**
- **DGR 9.7 - Limitations regarding dogs**
- **DGR 9.8 - Additional koala management measures**
- **DGR 9.9 - Koala reporting procedures, community education measures**

Council provided extensive feedback and discussion relating to various issues regarding koala management on the site along with the following recommendations:

- **That the Environmental Assessment be revised to specifically outline the suite of measures proposed to maintain safe passage of wildlife through habitat areas consistent with DGR 5.5.**
- **That the KPOM is reviewed to ensure:**
 - (1) **Implementation of a complete ban on dogs within the site; and**
 - (2) **Provision is made to enable additional patrols and compliance by Council Rangers to police the ban.**
- **That should the recommendation to ban dogs from the site (see above) be considered unacceptable, the Project Application (including the KPOM) is reviewed to ensure that any roads though the environmental areas of the site include:**
 - (1) **Fencing on both sides of a design that will prevent the crossing by dogs and koalas; and**
 - (2) **Fauna underpasses are installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across the roads.**
- **That the revised KPOM be reviewed consistent with DGR 5.5 and 9.8 to address:**
 - (1) **Additional fencing to seal off Precinct 5;**
 - (2) **Timing of fencings which should occur as soon as possible after approval;**
 - (3) **Installation of gates to prevent public access to undeveloped parts of the site;**
 - (4) **Design and modification of fencing adjacent to Tweed Coast Road;**

- (5) Design of traffic calming measures to prevent motor vehicle speeds in excess of 40kph through environmental areas;
 - (6) The design of lighting to improve visibility in any areas where koalas and other wildlife are able to cross roads; and
 - (7) The design of signage to ensure that motorists are aware of the possibility of encountering koalas and other fauna on roads through environmental areas.
- That the KPOM is revised to accurately reflect contemporary literature on:
 - (1) Koala management and planning practices in the Tweed Shire;
 - (2) Koala feed trees in northern NSW; and
 - (3) Threats to the local koala populations from bushfire.
 - That the KPOM be reviewed to ensure that offsets are not used to account for impacts that can be avoided or mitigated and that residual impacts are explicitly identified and used to inform the proposed offset strategy.
 - That the KPOM be reviewed to include a baseline monitoring report prior to approval of the current project application in accordance with DGR 9.6 and Concept Plan Condition B2.
 - That the KPOM be reviewed to include an outline of an Annual Koala Monitoring Report prior to approval of the current project application in accordance with DGR 9.6 and Concept Plan Condition B2. This outline should provide a comprehensive list of all ecological monitoring parameters and management actions (including those detailed in other management plans) necessary to meet the aim of the KPOM together with information on how they are to be measured, how often, by whom, measurable performance criteria, and resources (technical and financial) necessary to carry out the actions themselves and the associated monitoring and reporting.
 - That the KPOM is reviewed to ensure that:
 - (1) Sufficient areas can be located for koala food tree planting without compromising other management objectives in the Ecological Buffers or the integrity of existing vegetation communities;
 - (2) The list of potential koala feed trees is expanded to include scribbly gum (*Eucalyptus racemosa*) which should be used only in vegetation communities containing this species;
 - (3) The KPOM acknowledges and provides sufficient habitat compensation for residual impacts arising from impediments to movement of koalas throughout the site;
 - (4) It includes a comprehensive summary of all management actions including those detailed in other Plans, necessary meet the objectives of the KPOM; and
 - (5) Revegetation and rehabilitation works will commence on approval of Stage 1.
 - That the revised KPOM and where relevant the Site Management Plan be reviewed consistent with DGR 9.9 to:
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- (1) Make Friends of Koala the immediate contact point regarding advice on the management of any injured or dead animals found on or near the site;**
- (2) Ensure that Tweed Shire Council, Friends of Koala and EPA (previously DECCW; North East Branch) are forwarded any observation/incident reports together with information of actions taken and any immediate outcomes as soon as practical after the observation/incident;**
- (3) Ensure a 40kph speed limit where roads traverse the environmental protection areas during construction phases;**
- (4) Provide further detail on proposed educational signage; and**
- (5) Provide further detail and liaison on the scope, membership and resourcing of the proposed residents association.**

On consideration of the recommendations above, Council, at its meeting of 24 January 2012 endorsed the recommendations of the Council officers with the following amendment which related to the recommended ban on dogs across the site. It was resolved that Council:

1. Endorses this report to form the basis of a submission to the NSW Department of Planning and Infrastructure in respect to the Stage 1 Project Application for Kings Forest, with the removal of the recommendation within the report stating "*That the Koala Plan of Management be reviewed to ensure: (1) implementation of a complete ban on dogs within the site; and (2) provision is made to enable additional patrols and compliance by Council Rangers to police the ban*".
2. Advises the Department of Planning of its concerns as identified in the Koala Plan of Management to ensure of the continued healthy existence of koalas and consideration of the threat of residents dogs to the development
3. All dogs must be enclosed in fully fenced and self-closing gated yards.
4. Provision is made to enable additional patrols and compliance by Council Rangers to police the restrictions by a sinking fund provided by the developer, and a differential rate paid by future owners (who own a dog) at the Kings Forest site/development, in perpetuity.
5. The Department of Planning sources a list of dogs that are historically known to be aggressive, predatory by nature and/or have a propensity to dig or tunnel and/or have a propensity to develop a "pack mentality" and that those breeds form a list of banned dogs by way of a s88B instrument at Kings Forest.
6. The Department of Planning gives serious consideration to the fact that an application has been made to list the Tweed Coastal Koala population as "endangered" and that the Tweed Shire Council Draft Comprehensive Koala PoM is due to be placed before the Tweed Coast Koala Advisory Group shortly, and the Australian Federal Parliament Senate Report on Koalas, is also due for release shortly.
7. Regardless of claim at s9.10 of the Kings Forest Stage 1 Project Application Koala Plan of Management all pools and surrounding fencing must be designed in such a way that should any Koala accidentally fall into any pool, provisions are there for the Koala to remove itself by way of steps, ropes and the like, as it is a known fact that Koala's do fall from trees into swimming pools.

Comments on Revised Preferred Project Report

Whilst amendments have been made to the KPoM in the revised PPR, the majority of the above recommendations have not been adequately addressed. Comment is provided below.

Dogs

The issue of whether or not dogs should be allowed within the development remains contentious. The KPoM explicitly recognised the threat dogs pose to koalas and seeks to prevent dogs and koalas from encountering each other through the use of fauna fencing, grids and community education. In response to this Council officers made a number of suggestions to improve the design of the development but noted that whilst the proposed grids would be likely to prevent koalas from entering the development zone, they would not prevent dogs from entering areas of koala habitat.

Due to the precarious nature of the Tweed Coast koala population (see Tweed Coast Koala Habitat Study; Phillips et al. 2011) a complete ban on dogs was recommended with a further recommendation for fencing and underpasses to be installed where roads cross koala habitat should a ban on dogs be considered unacceptable (see Council's previous recommendations above). On debating the issue Council resolved in favour of a partial ban on dogs coupled with additional fencing and underpasses to prevent dogs from accessing environmental areas. While a number of significant improvements have now been incorporated in the revised KPoM Council's recommendation to fence along the roads through the central SEPP 14 wetland area has not been adopted. The revised KPoM currently proposes that:

"The location and design of Koala fencing combined with the use of grids and traffic calming devices through the central Environmental Protection Zones (i.e. SEPP 14 wetlands), rather than constructing fences on both sides of the roadways, will allow for unimpeded Koala movements into other Environmental Protection zones, the golf course area and adjacent vegetated properties. Fencing to exclude Koalas from the residential areas of Precincts 12 and 13 (that is, containing the golf course area, being Precinct 14), and additional required underpasses and/or grids, shall be the subject of a future Project Application or Development Application."

This means that roaming dogs will still be able to enter areas of koala habitat in the southern portions of the site, an outcome that is not considered acceptable.

To address this issue the grids proposed to access the western and southern precincts should be replaced with temporary locked dog-proof gates until such time as fauna fencing and underpasses are constructed in accordance with Council's previous recommendation.

Aims and Objectives

As previously raised by Council, the objectives of any KPoM should reflect that of SEPP 44, with its aim and focus on ensuring a viable free-living koala population, rather than simply minimizing impacts. The revised plan does not address this issue. Given the precarious state of the Tweed Coast koala population identified in the Tweed Coast Koala Habitat Study 2011, and to be consistent with SEPP 44 the proposed KPoM should explicitly commit to increasing the koala population rather than simply avoiding "significant impacts". No mention of the aim of SEPP 44 is made in the initial sections of the plan, nor is there any explicit aim or objective of this plan to assist population recovery on the Tweed Coast.

The objective *"To ensure that the movement of Koalas is not impeded through the site or the locality"* that was present in the previous version of the plan has been removed. This is considered to be a key objective and its removal is inappropriate.

As identified previously, there are inconsistencies between the objectives stated at the beginning of the plan and those that attempt to summarise performance criteria at Section 7.10 Performance Criteria. These should be reviewed for clarity.

Fencing, Underpasses and Associated Infrastructure

As noted above, Council previously identified a number of issues in relation to proposed koala exclusion fencing, particularly that the proposed design did not achieve the "sealing off" of Precinct 5. The current proposal has been amended with the intent of completely enclosing Precinct 1 and Precincts 2, 3, 4 and 5, with fencing options for future stages to be investigated at a later stage.

For fauna exclusion fencing to effectively restrict access to residential areas and associated roads, a complete exclusion zone must be created including where roads cross environmental areas. The provision of underpasses is required where fenced roads are to intersect existing or intended fauna movement corridors.

It is unclear what is proposed in relation to the interaction of fauna exclusion fencing with existing fencing at the intersection of Tweed Coast Rd and the proposed Kings Forest Parkway. Existing fencing along Tweed Coast Road will require modification/removal and integrating with new fencing in order to create a complete exclusion zone. There is no indication of the location of existing fencing on any of the construction plans. Detailed drawings of how the sealing off of this portion of the development is to be achieved should be given in the plan (or referred to a detailed construction/engineering drawing at another location). The interaction of proposed and existing fencing with the proposed acoustic fencing in this location is also unclear. It may be appropriate to consider routing fauna exclusion fencing around the western boundaries of the existing lots to then join up to existing fencing on the western side of Tweed Coast Road north of existing lots.

The indicative fauna underpass design at Figure 12 of the KPoM shows the fauna underpass opening on the road side of the koala fencing. This drawing requires amendment to ensure underpass openings are located outside of the road reserve. There is also no acknowledgement of the existing fauna underpass near the intersection of Tweed Coast Road and Depot Road. It is likely that entrance and intersection works on Tweed Coast will require modification and/or upgrading of this underpass in order to ensure its functionality. The KPoM needs to demonstrate how this will be achieved.

It is noted that the timing of erection of fencing, construction of underpasses and grids has been amended in the most recent KPoM to occur immediately after the completion of bulk earthworks. This is acceptable.

The plan specifies that during the construction phase, vehicle traffic through the site will be restricted to daylight hours at 50km/h in general and 40km/h through environmental protection areas and monitored by the on-site environmental officer. This is considered acceptable.

Whilst broad mention is made regarding the use of fencing within the western and southern precincts, the KPoM defers providing detail regarding these measures to a later stage. In the absence of a ban on dogs, it would be appropriate to provide conceptual-level detail with regard the intent to utilise exclusion fencing and underpasses within the western precincts and enclosing the residential areas of Precincts 12 and 13 at this stage in order to demonstrate that the desired outcomes are able to be achieved in these Precincts and to provide commitment to a whole-site approach to mitigation of threats. Council has concern particularly within the southern precincts that the "aesthetically appropriate" fencing foreshadowed in the KPoM for Precincts 12 and 13 may create conflict with its functionality.

Other Impact Amelioration Issues

- The section relating to mitigation measures implies that mitigation of impacts only relates to “core koala habitat”. This is incorrect as measures should apply across the site.
- The previous Council review identified that the plan acknowledged the need to actively manage bushfire to protect koalas from this threat; however it provided no guidance regarding this issue. The plan continues to defer to the Bushfire Risk Management Plan which in turn makes no provision for any measures to protect koala habitat from bushfire other than describing discussions with the National Parks and Wildlife Service (NPWS) regarding the management of fire within Cudgen Nature Reserve. Indeed, the BRMP states that the KPoM "identifies strategies for the protection of koalas from bushfire", which is largely incorrect, as stated above. The plan now mentions potential low intensity burning in order to reduce fuel loads without providing any direction as to where and under what circumstances this may be appropriate. This approach may not be appropriate given the recommendations of the Tweed Coast Koala Habitat Study to completely exclude fire from currently occupied areas of koala habitat.
- The plan specifies koala feed tree species are to comprise >35% of plantings, and specifies particular spacings without justification. Koala habitat revegetation works (composition and planting densities thereof) should be informed by naturally occurring vegetation communities that comprise high quality potential koala habitat in the local area. KPoM should specify the species to be used in planting of koala habitat. The majority of species listed at Appendix 3 Koala food trees are not suitable for use on the site.
- Retention of habitat is included in the set of amelioration measures. It is not an amelioration measure in itself. Amelioration of impacts involves measures such as fencing and dog control and habitat management to mitigate the direct and indirect impacts of the development. Retention of habitat could not be considered as amelioration unless there was a prior approval to remove the same vegetation.
- Similarly, transfer to public ownership is not an amelioration measure. Indeed, unless the development meets the costs of managing any land transferred to public ownership it represents a cost burden on the wider community.
- With the exception of koala fencing aimed at separating dogs and koalas, no management measures pertaining to the protection of koalas and their habitat from the Feral Animal Management Plan (FAMP) or Weed Management Plan (WMP) are summarised in the KPoM.
- The plan still requires detail on the scope and resourcing of the proposed residents' association, and needs to indicate that representatives of the listed stakeholder organisations form part of the association's membership.

Context and Background Information

Council raised in its previous comments a number of areas where current literature and knowledge had not been adequately incorporated into the plan. It is noted that the plan now addresses current knowledge regarding koala feed trees and that the threat to koala populations from bushfire is now acknowledged. The plan however still fails to acknowledge or summarise current koala management and planning practices in the Tweed Shire. There remains no acknowledgement of the existence of numerous site-specific KPOMs (Koala Beach and others); routine conditioning of koala recovery actions applied to development applications due to the listing of the koala as Vulnerable under the *Threatened Species Conservation Act 1995*; the existence of the Tweed Coast Koala Advisory Group; the imminent preparation of a comprehensive Koala Plan of Management for the Tweed Coast; Council and grant funded projects to rehabilitate and reconnect koala habitat; extensive community concern about koala conservation and; the important role of wildlife and koala welfare groups such as Tweed Valley Wildlife Carers and Friends of the Koala. Acknowledgement of these issues is crucial to ensure that the management of koalas at Kings Forest complements the management approach adopted for the broader koala population of the Tweed Coast.

A number of other issues relating to the provision of relevant supporting information remain to be addressed in the plan:

- Relevant Concept Plan Conditions should be identified within the plan:

B1 - KPOM Review (covered by DGRs);

B4 – East-West Wildlife Corridor;

B2 – Flora and Fauna Monitoring Report;

C8 – Traffic and Wildlife Protection Measures; and

C20 – Development within Buffers.

Also, DGR 9.4 and additional Concept Plan Conditions (B2, B4, B2, C8, C20) not included in DGR compliance table within the KPOM (Appendix 1).

- There remains no specific identification of the role of the *Threatened Species Conservation Act 1995* in local planning as it pertains to koala management.
- The plan should state the aim of SEPP 44 and meanings of *core* and *potential* koala habitat. It should also explain the differences between comprehensive and individual plans under SEPP 44 and the triggers for them.
- There should be a recommendation or objective in the plan acknowledging the need to integrate the revised KPOM and the Comprehensive KPOM currently being prepared for the Tweed Coast.
- The core koala habitat map has been removed from the plan. In the current plan, the map referred to at Section 7.8.3 Retention of Existing Core Koala Habitat (Figure 6) is a map showing Primary and Secondary koala habitat, and not areas of core koala habitat. It appears that in this plan, *Primary Koala Habitat* is incorrectly equated with *core koala habitat*. These are two separate concepts, as one relates to vegetation composition and the other reflects the location of resident populations. This modification means that apart from the broad modelling of Phillips et al. (2011) (Figure 4), which is not at a scale appropriate for informing property-scale planning, the plan does not identify the current location of core koala habitat. This is a key requirement of any KPOM.

- It is noted that the list of koala feed trees has been amended as per Council's previous recommendation, and now replicates that of the NSW Koala Recovery Plan (Appendix 3). This is acceptable, but the relevant species occurring on the Tweed Coast should be highlighted. The role of Grey Gum *E. propinqua* as determined by Phillips et al. (2011) and the influence of soil nutrient status has been misinterpreted in the plan.
- The findings of the Tweed Coast Koala Habitat Study 2011 are reported in relation to the overall impact of fire on the Tweed Coast koala population, however the plan does not specifically relate this information to the current or historical situation on the Kings Forest site.
- The plan misinterprets data on road strike, and should more correctly say that up to one third of koala deaths may be due to road strike.
- The original Matters for Consideration for the KPOM approved under the Concept Plan (see Table 1 of Carrick (Aug 2009)) required "*Identification of linkages of "core koala habitat" to other areas of habitat and movement of koalas between areas of habitat.*" Council recommended that the plan's approach to this matter be revised. This section has been reworked and linkages that are proposed to be retained are now identified in Fig 8, however this section does not provide discussion regarding their current or expected level of use by koalas, nor their relationship with existing core koala habitat or source populations.
- Estimates of the increase in carrying capacity are not correct. The Tweed Coast Koala Habitat Study 2011 estimates a density of 0.14 (+/- 0.12) koalas/ha while previous estimates for Kings Forest were reported as 0.18 (+/- 0.04) koalas/ha. These estimates are nowhere near the upper range of 2 quoted in the revised KPOM.
- The section relating to threatening processes is still general, as previously identified, and does not identify the current impact or likely increase of each of the threatening processes with specific regard to Kings Forest.

Offsets and Consideration of Residual Impact

Council considers that the KPOM in the revised PPR fails to appropriately respond to the reality that the persistence of the Koala population within Kings Forest and surrounds is of vital importance to the long-term viability of the Tweed Coast Koala population. It follows that any KPOM prepared for the area should adopt a pro-active approach that recognises a requirement to actively contribute to the recovery of the population rather than merely mitigating impact.

As identified in Council's previous comments residual impacts to the koala population that will arise as a result of the development, and not just the loss of koala food trees, need to be offset to ensure the long-term viability of the Koala population and should be documented consistent with DGR 9.5.

Whilst it is stated that 71.12ha of the site will be subject to koala food tree planting, and Council is supportive of these works, as discussed elsewhere, the KPOM continues to propose considerable overlaps between koala food tree planting and compensatory wallum frog habitat and/or heathland restoration. It is considered that these overlapping uses detract from the overall provision of onsite offsets for koalas.

With the exception of food tree planting, there has been little attempt to identify opportunities for active contributions to population recovery in the area. For example, whilst the KPoM acknowledges the importance of retaining and improving habitat linkages, it remains that the proposed development will create impediments to Koala movement across the site despite (and in some cases, because of) mitigation measures proposed in the revised KPoM (eg fencing, grids, speed restrictions and underpasses). As currently submitted, the plan does not provide any increased potential for linkages and Koala movement; those linkages identified at Figure 8 of the KPoM already exist and provide unmitigated access and movement options for the Koala population. As discussed elsewhere, a commitment to creation of a meaningful east-west linkage adjacent to the site would be an appropriate addition to the plan and contribute to addressing these concerns, as would the provision of greater detail as it relates to the implementation of mitigation measures.

The KPoM dismisses the risk of koalas accidentally entering the exclusion zone and thus proposes no measures to address this issue should it occur.

Baseline Survey and Monitoring

The plan specifies that a baseline report must be done "at the commencement of works" and "as a condition of consent." It is considered for this and other baseline survey work that baseline data collection must be done as a matter of priority in order to account for the time required to gather sufficient data and the requirement to incorporate seasonality into survey design. Ideally baseline koala survey work will be incorporated into the overall baseline survey design for the site and these works should be completed well in advance of commencement of works. The methods for baseline koala monitoring are referred to the Flora and Fauna Monitoring Report, however the detail provided with koala survey methodology in the FFMR is inadequate to derive baseline data as specified in the KPoM.

Annual Koala Monitoring Report

Council's previous comments have not been addressed in regard to the provision of an Annual Koala Monitoring Report (AKMR), with Section 7.11.4 remaining fundamentally unchanged.

An extensive suite of ecological parameters are proposed to be included in the monitoring report. While these are admirable, their inclusion in any koala monitoring program will require further thought and demonstration of the methodology by which they will be measured, how often and by whom, and the resources required to do so.

The majority of broad parameters given at point 1 are quite onerous, and there is no associated methodology provided in the plan that would provide an indication that the monitoring program is able to address these requirements. For example, reproductive output, dispersal patterns of juveniles, immigration to the site, parentage analysis are features of population ecology that would require lengthy capture, genetic analysis and radio-tracking programs to be developed and implemented, at high cost. No justification is provided for the requirement to gather these data, and Council considers that for the most part, this level of detail is unnecessary. An annual monitoring program should be limited to benign monitoring techniques that are able to be carried out without the introduction of additional stressors to the population, and that which will provide meaningful detection of changes in population parameters for assessment of the efficacy of actions implemented through the plan.

Most of the remaining content of this Section simply repeats the requirements of Concept Plan Condition B2. These are predominantly general in nature and provide no detail on the precise monitoring parameters proposed to be used to measure success or otherwise of the plan. No detail is provided on how ecological parameters are proposed to be measured, how frequently, using what methodologies, survey design or by whom monitoring is proposed to be done.

No specific methodologies are given for the monitoring and reporting of koala injuries and mortalities, measurement of the efficacy of the actions outlined at point 8, nor are any performance criteria provided in this section for the measurement of success of this plan.

The timing and frequency of monitoring of koala food tree plantings is stated as occurring "*until self-sustaining i.e. 3-5 years.*" The plan should explicitly state the requirement for maintenance of these plantings, not just monitoring, whilst the 3-5 year time period is in conflict with maintenance periods specified in other plans and the commitment to the implementation of the plan's actions until suitable arrangements are made for Council to take on this role.

Threatened Species Management Plans

Council's previous comments on the Stage 1 Project Application related to the following Director General's Requirement:

- **DGR 9.12 - Update to Threatened Species Management Plans with further detail on Wallum Frog species habitat measures**

Council raised concern that the approach to acid frog habitat creation was largely experimental and provided the following recommendations:

- **That further specialist review is undertaken to examine the technical feasibility of the proponents plans to re-establish acid frog habitat on the site.**
- **Should the review above indicate that the proposal is feasible, a comprehensive acid frog management plan is prepared by the proponent in consultation with Department of Planning, independent expert(s), OEH and Tweed Shire Council prior to the determination of the Project Application. Such a Plan should specify contingencies in the event that the proposed plans perform poorly.**

The revised PPR's response to the above recommendations is discussed below along with additional comments on the Threatened Species Management Plans.

Comments on Revised Preferred Project Report

Feasibility of Acid Frog Habitat Creation

Council remains concerned that the approach to creation of acid frog habitat is largely experimental, and that it remains unclear that the optimal conditions required for refuge and breeding habitat for the acid frogs, Wallum Froglet *Crinia tinnula* and Wallum Sedge Frog *Litoria olongburensis* are able to be fabricated in the areas so identified.

The proposal to create high-quality compensatory "Core Acid frog habitat" relies heavily on the recommendations of Ecosense (2005) for compensatory ponds constructed in association the Tugun Bypass, which were also highly experimental in nature. Whilst reference is made to the success of these ponds as reported by Pacific Alliance (2010) in relation to pH, conductivity and hydroperiod, it is also noted that one of the ponds required draining in order to control *Gambusia*. The current proposal also states that numbers of the target frog species recorded during monitoring of the Tugun compensatory ponds were low and variable, with no indication that would suggest that successful breeding or population establishment has taken place within any of the four ponds. No prognosis of long-term viability of acid frog populations in these ponds is given (nor is any detail provided in Pacific Alliance 2010).

Similarly, no detail is provided regarding utilisation of the Tugun ponds by cane toads or mosquitoes, and there remains no evidence provided in the current proposal that describes the effectiveness of the proposed dense plantings of sedges in deterring use of the ponds by cane toads, nor are there any interim measures proposed that will deter use of the ponds by cane toads whilst marginal plantings are being established. There remains a risk that the ponds will provide breeding habitat for mosquitoes, a consideration that has not been adequately addressed. The plan also does not adequately identify the threat posed by the introduction of Mosquito Fish *Gambusia holbrooki* to the site and the significance of this predation threat to the acid frog species. Whilst the plan states that ponds are to be reduced in capacity and hydroperiod if fish are detected, however no detail is given regarding the mechanism for achieving this or the trigger for taking this action.

The report by Pacific Alliance (2010) contains a section outlining 'learnings' from the bypass project. A key learning is identified therein as: *"The frog ponds constructed as part of compensatory requirements would have benefited from being constructed at a lower depth in the profile so as to intercept the fluctuating groundwater for longer periods, potentially completely drought-proofing them. This would also assist in the retention of macrophytes."* Although a depth of 60cm is specified for melon hole creation at Kings Forest, no detail is provided regarding the depth of the water table in areas of compensatory habitat and whether the likely required depth will be consistent throughout the site. It is also recognised by Pacific Alliance (2010) that the EIS and its recommendations were prepared during drought, whilst the subsequent 2-year monitoring period fell within a time of above average rainfall, and as such some monitoring results are skewed. It is possible that perceived successes of compensatory ponds have been influenced by erratic climatic conditions and that the ultimate success of the project was unable to be determined during the relatively short monitoring period.

Given the experimental nature of the proposed habitat offset creation, Council retains concern that the proposal in Appendix 2 does not contain the necessary detail to assess the success or otherwise of compensatory habitat creation and that adequate planning has gone into design of monitoring, specification of performance criteria and contingency planning. There is no evidence that the current proposal has benefited from or been customised based on any insights gained or recognised limitations during monitoring and reporting associated with the Tugun project or any similar projects. The proposed contingency measures are replicated from those outlined in Ecosense (2005), with no indication as to their relevance or efficacy at the Kings Forest site.

Threatened Flora

All works conducted in the vicinity of a threatened species, particularly those that propose to damage this species (cut or take seed included) is required under the NSW National Parks and Wildlife Act to be undertaken by practitioners holding a current s132C licence. This should be specified in the plan.

One of the management actions for the Stinking Cryptocarya is that “...a buffer of suitable fast growing rainforest species...must be planted...” It is considered that these species need not be fast growing and if any planting is undertaken the species should be those likely to occur in the specific habitat where they are planted. Fast growing species are not only resource hungry (moisture, light and nutrients) but may overshadow the *Cryptocarya* in time. Consideration to canopy height must be made, as it is noted that the species list provided as examples for the proposed buffer planting may not be appropriate.

One of the actions in the Implementation Table relates to the requirement to limit spray drift in the vicinity of threatened flora. Spray drift is to be avoided at all costs in the vicinity of threatened species and as a general rule for all use of sprays across the entire site, and the plan should identify this as an action.

Threatened Fauna

With the exception of the Wallum Sedge Frog and the Koala, no quantification of the loss or likely impact of development on threatened species habitat is provided in the Threatened Species Management Plan. Consequently, it is not possible directly relate proposed management actions to likely impacts or assess the adequacy. As discussed elsewhere, the identification of impacts, actual and likely, direct and indirect, and their proposed amelioration measures and/or offsets should be explicitly detailed within the plans in order to ensure they are able to meet their ultimate objective, which should be the safeguarding of populations against the impacts of development on the site.

With the exception of acid frogs, the Threatened Species Management Plan takes a broad and non-specific approach to the management of threatened species on the site that list few real management actions. A key action for a number of threatened species is the control of feral animals in areas of known habitat, however neither the Threatened Species Management Plan nor the Feral Animal Management Plan provide any indication of which areas are to be subject to this control for each of the species to which this management action applies. Similarly, the installation of fauna exclusion fencing (as proposed in the KPoM) in order to exclude disturbance from areas of foraging habitat (Black-necked Stork and Bush Stone-curlew) is a key management action for a number of threatened species, however these areas of foraging habitat are not identified in the plan.

The plan also specifies that particular threatened fauna species are to be considered in the development of any programs using pesticides and herbicides and fire management plans, however no further detail regarding what actions should be included in these programs are provided. The management actions for the Grass Owl suggest that “*fire should be excluded from areas of potential habitat*” yet no information is provided regarding what this species habitat requirements are, nor is any map included of where fire should be excluded from.

Whilst a large amount of effort has gone into compensatory habitat planning for the koala and acid frog species, with the exception of the Grey-headed Flying Fox, no habitat enhancement or other meaningful management actions are proposed to specifically contribute to offsetting impacts on other threatened species and habitat.

For example, there is no action detailed that provides improved or increased habitat for the Coastal Planigale to survive or information as to what this habitat consists of, despite its loss being listed as a threat within the plan. Council suggests that it may be appropriate to avoid baiting for rodents with "single-dose" rodenticides. No mention is made of retaining large standing dead trees for roost and nest building under the Management Actions heading for the Osprey despite this being a key priority recovery action identified by the Office of Environment and Heritage (OEH). No habitat or foraging requirements are provided for the two species of microbat discussed in the plan. The plan states that "*...it is expected that these impacts would be relatively low as some species of micro-bat are known to adapt to urban...*" These are general observations about "some" microbats and are not targeted comments relating to the two threatened species that will be impacted by the development.

Hollow-bearing Trees are a key habitat resource for a large number of threatened and non-threatened fauna species, and while the loss of HBTs is raised as a potential impact, the proposed loss is not quantified. There is thus no assessment of appropriate offsets for this loss and no detail regarding mitigation measures to be implemented, other than a passing mention of nest box installation (without guidance as to type, number or location).

This lack of direction and detailed relevant threatened species results in an inability to effectively:

- 1) Direct management actions to the appropriate areas,
- 2) Estimate the likely effort, resources and costs associated with implementing threatened species management actions, and
- 3) Determine the success of threatened species management actions.

Adaptive Management

As required by DGR 9.4 and Concept Plan Condition C2, the threatened species management plan requires a mechanism by which the plan can be updated to provide for adaptive management responses to monitoring results where necessary.

Buffer Management Plans

The majority of Council's concerns relating to buffer management are detailed within other sections of this report (see comments on offsets & compensatory habitat), however a number of outstanding or additional issues are discussed below.

Heath Regeneration and Revegetation

The proposal to 'rip' sites as a technique to encourage heathland restoration is not considered as "natural revegetation" and its use is not supported by any documentation, scientific review or literature. No supporting information is provided detailing its use or outlining established best practice application for restoration of this community and it is considered to be an experimental approach. It is considered that this activity may instead damage the habitat being restored by allowing access to the site by heavy machinery and encouraging inappropriate species recruitment including weed species.

Koala Food Tree Plantings

The plan refers to replacement of plantings that fail without specifying an intended/target success rate. This should be specified in the plan.

Monitoring

Although the plan specifies the intended use of transects and quadrats as monitoring tools, no locations have been established for the positioning of transects within the restoration and planting areas for any management zones. Ten transects in one zone is likely to be excessive, whilst 10 transects across the whole site is insufficient. The proposed quadrat size of 1m² is too small to provide meaningful data; if quadrats are to be used they need to be larger e.g. 20-25m². As mentioned elsewhere (see comments on Vegetation Management Plans), natural recruitment of native species along transects and within quadrats has not been included as a "*Specific measurable feature...*"

In addition to composition, monitoring should also record the extent and % cover or density of establishing native vegetation and weed cover to ensure meaningful data is collected.

Vegetation Management Plans

Council's Previous Comments

Council's previous comments regarding Vegetation Management Plans within the Stage 1 Project Application related to the following Concept Plan Conditions and Director General's requirements (See Table 1 for details):

- **DGR 9.10 - Update to Vegetation Management Plans**

The major issue raised previously by Council related to the defining of work units across the site in order to direct management effort. The following recommendation was provided:

- **That the work units and associated management actions in the Vegetation Management Plans are revised to include all areas for which works are proposed.**

Whilst the above condition has been largely addressed, Council remains concerned about the ability of the plan to adequately direct management actions in its current form. These concerns are discussed below.

Comments on Revised Preferred Project Report

Re-use of Topsoil to Promote Natural Regeneration

Council has concern regarding the likelihood of success of the proposal to re-use topsoil to promote natural regeneration as proposed in the Vegetation Management Plans. Data sources quoted for translocation of seed for restoration of bushland relate to Western Australian research for re-establishment of eucalypt forests (Jarrah) on ex-mine sites and all date to the mid 1990's. No references are cited for work undertaken on the east coast for heathland community restoration works. PacificLink Alliance (2010) report only limited success with a similar technique trialled in conjunction with the Tugun Bypass Project.

Soil Seedbank Translocation

Suggestions of undertaking an ecological burn to stimulate regeneration of heath after the soil has been translocated are ill-founded as there is unlikely to be sufficient fuel at the soil relocation sites to carry a fire. Burning has however been undertaken within sites where soil is to be translocated from prior to its removal to encourage seed drop and germination. Soil must then be moved to the relocation site without being stored. Smoke water may provide an option but this technique is also experimental. The issuing of permits by the NSW Rural Fire Service (RFS) to undertake a fire for ecological purposes is not supported and does not comply with their Environmental Assessment procedures required to license a burn. At present, burn permits are only issued for hazard reduction.

No suggestions are made for adaptive management should the soil seedbank translocation technique fail to produce an adequate restoration outcome.

Work Area Locations, Proposed Measures and Comments

As noted previously, the proposal to 'rip' sites to encourage heathland restoration as proposed by the Vegetation Management Plan Precincts 1 & 5 for Work Areas 2, 13 & 15 is not supported by any documentation, scientific review of this activity or literature supporting its use or outlining established best practice application for restoration of this community and is again considered to be experimental. This activity may instead damage the habitat being restored by allowing access to the site by heavy machinery and encourage inappropriate species recruitment including weed species, and is not supported.

Heath Regeneration/Revegetation

The plan states that "...*revegetation with wet vs. dry heath vegetation will be determined by topography...*" This approach will not necessarily ensure the success of the restoration efforts; heath displays intricate soil-related patterns in species composition (Keith 2004) and planting according to topography is unlikely to assign species to their preferred locality. Success of the plantation effort to achieve species composition targets needs to be ensured by adopting best practice as determined through scientific and field based research. Topography on its own provides no basis for planting site decision making.

Planting Methods

No mention is made of the frequency of watering of planted trees and no survival percentage is detailed for the plantings. No schedule is provided for monitoring of native recruitment, maintenance of enhancement plantings and control of weeds

The list of plant species to be used for heathland restoration is extensive, however eight of the listed species are not endemic to Tweed Shire and their use is not supported. Only 15 of the 102 species listed are readily available from nurseries or easily propagated. Half of all listed species are only available in some years and will need to be ordered/grown in advance (when seed can be sourced) and one third are difficult to propagate and only available on rare occasions and even ordering ahead from nurseries is unlikely to secure their availability. Planting using the species that are available and able to be propagated is likely to produce a species-poor (depauperate) vegetation community; however no alternative approach has been proposed to overcome this issue. Consideration should be given to setting up an on-site nursery to assist in the collection and propagation of endemic native seed for revegetation on the site.

As discussed elsewhere, the issue is further complicated by the proposal to plant eucalypts (koala food trees) in some areas. Eucalypts are likely to shade out heath species resulting in an even more depauperate and species-poor restoration outcome.

Monitoring Requirements

In relation to the transects that are proposed for vegetation monitoring, the occurrence of native plant species **recruitment** along each transect and within each quadrat should be recorded along with either a count of the number of individuals, or an estimate of the percentage cover and identification to species level where possible. Areas of native vegetation, weed and bare ground cover should also be recorded as % cover. Percentage cover is a better determinant of species establishment than time since planting. It is also preferable that the baseline data collection and follow-up monitoring is undertaken by the same individual or team for consistency of data capture and interpretation. It is unclear how this will be achieved as there is no proforma included in the plan that adequately demonstrates the intended level of data collection.

The plan should state that fixed photo points should be taken at the same angle with the same camera, lens, aperture setting and at approximately the same time of day. Photos alone are unlikely to play a meaningful role in determining if a site has achieved its growth target for handover. Photos should be available as separate digital images and not just embedded in a report.

Weed Management Plans

Council's Previous Comments

Council's previous comments on the Stage 1 Project Application noted that except for a few instances there was no indication of the timing or frequency of works to be completed.

Comments on Revised Preferred Project Report

The revised Weed Management Plans in the PPR provide indicative timing details within the Implementation and Summary Tables that are generally adequate. Council provides the following additional comments.

Responsibility for Actions of the Plan

Responsibility for baseline data collection, location and marking of all native species and identification of 'fertile' weed species for removal from the site has been assigned to the Site Manager. This person should have appropriate qualifications to undertake these tasks.

Primary Weeding

The approach to primary weeding would be improved if the weeds for removal were identified rather than identifying native veg for retention, as the likelihood of off-target damage is greater with the proposed approach. Works will be undertaken by qualified bush regenerators who will be familiar with weed species. Anything not identified as a weed is to be retained. Broad scale spraying, as proposed, is not a preferred activity due to likely off-target damage; extreme care needs to be taken during such works. Best practice methods need to be employed for each of the tasks listed in the plan, with the specification for personnel to hold a scientific licence for undertaking of works adjacent to threatened species.

Aims and Objectives

The plan states that "*As land zoned 2(c) Urban Expansion on the site is to be developed, control of any weeds in these areas is the responsibility of landowners, or where they occur on public land, the responsibility of Tweed Shire Council.*" It should be noted that all lands the subject of this plan are owned by the developer and the responsibility for weed control, particularly declared noxious weeds, is on the landowner (Project 28 Pty Ltd.) until such time as it is sold or vested in Council.

Work Area and Location Tables

It should be noted that bush regenerators working adjacent to threatened species require a current s132c licence from NSW NPWS (this should also be noted in the Threatened Species Management Plans).

Treatment of pine wildings in both SEPP areas (7 & 9) needs to comply with SEPP constraints, while weed control using hand held machinery is acceptable, however tracked or wheeled machinery are likely to cause damage in these areas and it is recommended that pine trees taller than 3m be drilled and injected and left standing as is proposed for Camphor laurel at the same location.

Species Specific Weed Control Techniques

Lemon-scented Tea-tree *Leptospermum petersonii* has been listed as a weed species for removal, however it is a naturally occurring species in the area and it is likely that this species has been confused with Coastal Tea-tree *Leptospermum laevigatum* which is a non-local native species. Although the plan refers to noxious weeds, there is no indication of which of the species occurring on site are noxious although seven have been nominated and consequently have legislative responsibilities for their management. No control techniques have been proposed for the declared noxious weed Chinese Elm *Celtis sinensis*.

Feral Animal Management Plan

Council's Previous Comments

Council's previous comments on the Feral Animal Management Plan within the Stage 1 Project Application related to the following Director General's Requirement (see Table 1 for details):

- **DGR 9.11 - Provide update to Feral Animal Management Plan**

Council previously provided extensive comment and feedback in relation to the Feral Animal Management Plan contained within the Stage 1 Project Application. The following recommendations were made:

- **That the Feral Animal Management Plan is revised to ensure that:**
 - (1) The aim of the Plan is expanded to include ecological communities, the built and human environments;**
 - (2) Appropriate acknowledgement is given to changes in the landscape that will arise from the development and the need for ongoing management of feral species;**
 - (3) Contemporary literature and regulations of relevance are included in the Plan;**
 - (4) Rabbits, Indian Mynas and Mosquito fish are included as priority species for action;**
 - (5) Rabbits and Ferrets (and Stoats) are not to be kept on the estate;**
 - (6) A clear strategy for the management for each feral species of concern including management objectives for each species, actions for each phase of the development (pre-construction, construction and operational phases), specific control strategies for any Threatened species, clearly defined management zones, timing/seasonality, preferred management options (eradication, containment etc) and responsibilities for action;**
 - (7) The monitoring and evaluation framework is measurable and comprehensive, is able to effectively inform the management response and can be evaluated against the stated objectives;**
 - (8) Efforts are made to build solid and ongoing working relationships with key stakeholders, in particular adjoining landholders and relevant staff from organisations such as the NSW LHPA, NSW NPWS and Tweed Shire Council;**
 - (9) Future drafts of the Plan should be developed in consultation with these parties; and**

(10) The implementation table is updated to reflect all actions, timings and responsibilities necessary to meet the stated objectives.

Please note items in **bold** indicate issues relevant to the revised PPR and are discussed below.

Comments on Revised Preferred Project Report

It is noted that a large amount of additional information has been provided in the current update, particularly with regard to background information, current literature review and the provision of discussion regarding appropriate control methods for various pest species. In general however, the plan still lacks detail with regard to providing a clear and comprehensive feral animal management strategy for the site. Specific details are discussed briefly below.

Plan Aims and Objectives

The current aim of the FAMP is limited to a statement about aiming to minimise the impact feral animals may have on native fauna, with a primary focus on threatened species. To be meaningful, the scope of aim/s in the Kings Forest FAMP need to be broadened to include impacts on other native fauna and flora, as well as on the social and built environment.

Whilst the stated objectives are indeed a key requirement of the plan, the objectives included in the FAMP are not specific statements that provide a framework of strategies that will achieve the aim of the plan, rather they are more a list of tasks that need to be undertaken during plan development. The plan requires revision to provide clearly defined and measureable management objectives that state what will be achieved where, by when and by whom and that are specific to each feral animal species and the specific threat they pose to native species within the site and surrounds. Objectives should provide for sustained, adaptive and effective control of the feral animal species and/or its impacts, and be based on current and relevant information.

Identification of Impacts

It is considered one of the key requirements of the FAMP is that it identifies and acknowledges the effect each phase of the Stage 1 development is likely to have on the distribution and abundance of pest species on the site, i.e. pre-construction, during earthworks and construction and during operation.

The current plan relies heavily on (undated) database records for feral animals on the site, unsupported by any on-ground work which ideally would have been carried out in order to determine the distribution and abundance of all target feral animal species on the site prior to development of the plan. Whilst the plan identifies a likely increase in cat and dog occurrence within surrounding lands as a result of the development, there is no quantification of the extent or magnitude of this likely impact or that of other feral species identified by the plan.

Target Species

The list of identified target species is appropriate. Council officers have received reports of the presence of feral pigs on the Kings Forest site. This species should be considered in the management plan. The Plan states that rabbits, ferrets and other mustelids will not be permitted to be kept on the site. This approach is considered appropriate, however needs to be supported by an appropriate restriction on title (Section 88B instrument). The enforcement of this instrument has the potential to place an additional burden on Council, thus the mechanism for the regulation of such an instrument on the site should be addressed in the plan.

Management Strategies

The plan's detailing of management strategies is currently limited to discussion regarding appropriate control options. The majority of these are recommended to be implemented upon detection of the pest species, a statement that provides little guidance regarding timing and extent of management effort to be applied. There is no clear strategy outlined in the plan for any of the target species that directs clear and specific actions to be undertaken on the site. At a minimum, the plan's management strategy should include:

- A clear and encompassing goal or aim, followed by objectives stating what will be done by when to achieve the aim and how progress will be measured.
- Clearly defined land management units/zones based on boundaries which define the habitat utilised by the feral animal/native plant or animal, or which relate to a particular management action.
- The management options selected for each area that will most effectively and efficiently meet the management objectives. The options could include: eradication, containment, sustained management, targeted management, one-off action, a combination of actions, data gathering, or taking no action.
- A clear management strategy that defines the actions that will be undertaken, who will do what, when, how and where, and how much this will cost. It should describe how the selected pest management options and techniques will be integrated and implemented to achieve the management objectives.
- The FAMP should provide a clear strategy for the management for each feral species of concern during each phase of each Stage of the development. This includes:
 - Prior to the initiation of development works. Where possible, control works to minimise the types and abundance of feral animals currently at the site should be undertaken prior to development commencing.
 - During the construction phase. This phase will create considerable disturbance at the site. Consideration needs to be given to how this will influence the suite of feral animals utilising the site, and what measures will be put in place to manage these. For example, the construction of temporary settling ponds will provide new breeding areas for Cane Toads and this may lead to a dramatic increase in the population size of this species at this site and in the surrounding areas. Cane Toad exclusion fencing should be installed as a matter of course in these situations.
 - During the operational phase. Feral animals in built-up areas have significant social, economic, and environmental impacts. Built-up areas present a special set of challenges and problems in the management of feral animals and inevitably require a significant commitment in terms of resourcing. It is therefore important that feral animal management is given due consideration for this phase of the development.
- Clear performance criteria for each management strategy that specify what is to be assessed and the required level of performance that needs to be achieved within a specified timeframe. These must be linked to a specific management strategy.
- All management actions should align with current NSW Department of Primary Industries Model Codes of Practice and Standard Operating Procedures for the control of the species.

Monitoring

The plan's approach to monitoring of feral animal species is based on opportunistic observation and establishment of an undefined program of sand-trap monitoring. This is not considered adequate to gather data on current populations, nor to measure the success of any management actions in reducing/controlling feral animals on the site. As a minimum, the plan should establish a monitoring framework that consists of three components:

- Operational monitoring to measure the efficiency of the program (what was done when and at what cost).
- Performance monitoring to measure the effectiveness of the program (were the objectives of the plan achieved and if not why not).
- Clear and prescriptive recommendations for future management.
- A clear provision to identify adaptive management opportunities and for these to be able to be applied to both management strategies and monitoring should the objectives of the plan not be met.

This will require that the plan be revised to include a detailed monitoring program that is tailored to the collection of data on each target species in order to determine changes in distribution and/or abundance. Council considers, at least during the initial stages of the plan, where impacts are likely to be at their greatest, that the provision of 4-monthly monitoring reports is appropriate, in line with the proposed monitoring frequency alluded to in the plan.

Stakeholder Involvement

Council remains concerned that **DGR 9.11 Provide an update to the Feral Animal Management Plan which includes details on collaboration with adjoining land owners and incorporates measures which include shooting and baiting** has still not been met. There is no information in the plan that demonstrates that consultation or advice has been sought from any of the relevant stakeholders or adjoining landholders in the preparation of the plan, or any provision in the plan that this will occur. It is considered that collaboration with these stakeholders is key to the development of an effective plan for a development of the size and nature of that which is proposed. At the time of writing, the proponent has not contacted Council to discuss feral animal management on the site.

Implementation Table

The plan's implementation table should provide a clear and easy to understand summary of all the above

Mosquito Control

With the exception of provisions for dense plantings within created acid frog habitat aimed at reducing the suitability of these structures for mosquito breeding, the revised PPR contains no explicit management plan or provisions for mosquito control at the site.

In the recent years several major developments have been proposed throughout Australia that incorporates a number of different water sensitive urban design (WSUD) structures in an effort to improve the quality of storm water discharge. Incorrect design and maintenance of these structures can result in the creation of temporary freshwater pools which can be highly productive for freshwater vector mosquito *Culex annulirostris*. As such, where these WSUD structures are to be incorporated, then the nuisance and potential health risk must be considered. The proposed development, as part of its water management strategy and compensatory habitat creation will create a number of potential breeding sites for mosquitoes including golf course water features, bio-infiltration swales, bioretention basins, sediment ponds and melon holes associated with acid frog compensatory habitat.

Council considers that mosquito control at the developed site will present a substantial, complex and ongoing management issue which should be recognised, investigated and provided for at this stage of planning. Within compensatory habitat areas, management must be done sensitively and informed by appropriate monitoring regime which incorporates monitoring for larvae throughout the duration of each mosquito breeding season, which runs from October until the end of April. Melon holes should be sampled weekly, with samples containing more than 1 larva per dip activating the need for treatment within the relevant hole. Data should be collated and passed on to TSC quarterly. Suitable treatment for mosquitoes within threatened frog habitat is *Bacillus thuringiensis*. Follow-up sampling needs to occur 24 hours after treatment to establish effectiveness of treatment, with a weekly sampling regime continuing after treatment.

Council considers that a Mosquito Management Plan should be developed to guide management of the above issues, and for this plan to be consistent with Section A6 Biting Midge and Mosquito Controls of the Tweed DCP 2008.

Water Management

Council's Previous Comments

Council's comments regarding water management within the Stage 1 Project Application related to the following Director General's requirements (see Table 1 for details):

- **DGR 5.6 - Maintain existing fish passage**
- **DGR 7.1 - Integrated Water Cycle Management to be based on Water Sensitive Urban Design principles**
- **DGR 7.3 - Provide Stormwater Management Plan including stormwater treatment train, MUSIC modelling and monitoring**
- **DGR 7.4 - Address impacts on surface and groundwater hydrology**
- **DGR 7.7 - Provide an overall water management plan**

Council provided the following recommendations to assist in revision of the plans:

- **That the Environmental Assessment is revised to include a clear statement of policy and intent with respect to fish passage, along with accurate details of how this will be achieved in reality. Importantly, the impact of structures proposed in addition to road crossings, for example floodgates or causeways should also be addressed, including the location, maintenance, modification or installation of such structures on Blacks Creek.**

- That the impact of stormwater on Cudgen Creek, particularly Nitrogen export, be investigated more thoroughly consistent with DGR 7.1 which explicitly requires impacts to be assessed on the “surrounding environment”. The IWCMP modelling is an indication of the proposals capacity to meet requirements of the Tweed Shire Council’s Urban Stormwater Quality Management Plan, but it has not been demonstrated that the development will have no impact on water quality and aquatic habitat values in receiving environments.
- That a thorough independent review of the groundwater hydrology impacts of the proposed development, with particular reference to possible ecological and catchment management implications, is conducted prior to approval of Stage 1. In addition to reviewing impacts on the surrounding natural environment, such a review should specifically address any uncertainties regarding the technical feasibility of the proponent’s plans for habitat rehabilitation of groundwater-dependent or groundwater-sensitive vegetation communities or threatened species.
- That further information be provided demonstrating that the range of measures proposed to manage golf course nutrient leaching will be effective in eliminating increased nutrient export to adjacent natural areas.
- That the Overall Water Management Plan is revised to include specific long term water quality monitoring in the Environmental Protection zones, Ecological Buffers, and in the receiving environment along Blacks Creek and Cudgen Creek including Cudgen Lake.

Comments on Revised Preferred Project Report

The majority of Council's previously raised concerns have been addressed in the revised PPR, however Council notes some outstanding issues regarding the potential impact on the development adjacent waterways and aquatic environment. The following comments relate to Section 4 - Summary of Management Plans, Section 9 - Groundwater Management Plan, Section 10 - Integrated Water Cycle Management Plan and Section 11 - Overall Water Management Plan of the revised PPR.

Interim Water Quality Criteria/Water Quality Discharge Criteria

The water management plans prepared for the development set targets for the quality of water that will be released from the development to the receiving environment, during construction and operational phases.

There is an important difference between discharge criteria that waters within operational areas (sediment basins, swales, wetlands etc) must meet before release, and the water quality objectives that are set and monitored to protect aquatic ecosystems in the receiving environment.

Table 4.2.2 of Section 4, Summary of Environmental Management Plans, sets out proposed 'interim water quality criteria' for water discharged from the site. These criteria are based upon the results of water quality monitoring undertaken by TSC in the estuarine reaches of Cudgen Creek, and are set to ensure that water discharged from the development does not degrade water quality in Cudgen Creek. It is noted that there has not been any investigation of existing water quality in Blacks Creek.

The interim water quality criteria proposed as construction/operations phase discharge criteria are generally appropriate, and it is considered that due to dilution and dispersion, the water quality objectives which are set for receiving waters, should be maintained. The exceptions are aluminium, suspended solids and nitrogen.

Aluminium

The proposed discharge criteria for aluminium (table 4.2.2) is:

- <0.9 mg/L. (900 ug/L)

ANZECC 2000 Water Quality Guidelines (table 3.4.1) prescribes a water quality protection criteria for aluminium (in freshwater) ranging from:

- 0.027 mg/L to 0.15 mg/L (27 - 150 ug/L)

Given the high potential toxicity of aluminium in the aquatic environment, and the risk that aluminium can enter the aquatic environment in runoff from areas of disturbed acid sulphate soil, it is considered that the interim water quality criteria and discharge criteria for aluminium be revised downward to reflect the ANZECC 2000 guideline of 0.15 mg/L.

It is noted that in table 10.2.4.4 (section 10.2 - Environmental Condition of Cudgen and Blacks Creek) a different water quality criteria for aluminium of <0.3 mg/L is proposed. This applies to the receiving environment as opposed to the discharge waters, but is still not in accord with ANZECC 2000 Guidelines.

Suspended Solids

The proposed interim water quality criteria/discharge criteria for suspended solids in Table 4.2.2 (Background water quality monitoring) is <10 mg/L.

The proposed interim water quality criteria/discharge criteria for suspended solids in Table 4.3.20 (Surface water quality) is <30 mg/L.

Table 10.2.4.4 (interim water quality criteria for Cudgen Creek) nominates a suspend solids water quality criteria of <25 mg/L.

Table 4.3.38 (Freshwater ecology) and Table 4.3.39 (Waterways and wetlands management) include a performance criteria stating that, *"Water may be discharged from the site that exhibits a suspended solids concentration greater than 50mg/L, providing the concentration in the discharge is 10% less than the concentration exhibited in the receiving water."*

There are many additional references and cross references to inconsistent maximum concentrations of suspended solids that can be discharged from the development in tables within the water related management plans. Given the critical importance of managing suspended solids discharge (see further comment) it is necessary to confirm a clear and consistent water quality criteria for discharge of water from the site, through the construction and operational phase. It is considered that the concentration of <25 mg/L suspended solids is appropriate. This is based on the results of water quality monitoring in Cudgen Creek, specifically, the maximum recorded concentrations from Councils monitoring program, i.e. those periods which corresponds with heavy rain.

Water Quality Objectives for the Receiving Environment

As noted in issue 1, interim water quality criteria have been set for waters within the developments operational waterways, and for water discharged from the development.

These water quality criteria should not be used to monitor and assess the condition of the receiving environment, i.e., Blacks Creek and Cudgen Creek.

TSC has adopted water quality criteria for Cudgen Creek and these are set out in the Tweed Coast Estuaries Management Plan 2004 - 2008. This management plan is however currently being reviewed, and it is likely that a recommendation of the review will be for the existing water quality objectives to be made more stringent so that they are in accordance with both the NSW Office of Environment and Heritage Water Quality Objectives set for the Tweed Catchment, and the ANZECC 2000 guidelines.

Surface water monitoring locations have been nominated for the development site. These are identified as SW1 - SW7, and are located from the estuary of Cudgen Creek into the most upstream reaches of constructed channels.

It is not appropriate for the interim water quality criteria / discharge criteria set for construction and operational phases of the developments water treatment infrastructure to be used to monitor and report on the environmental condition of receiving waterways.

Kings Forest surface water quality monitoring sites SW1 - SW7 represent the receiving environment and as such require protection of aquatic ecosystem values. Water quality should be monitored and reported on in accordance with NSW Water Quality Objectives. These are available on the OEH website at:

http://www.environment.nsw.gov.au/ieo/Tweed/report-03.htm#P307_25850

Staging of Construction to Minimise Extent of Exposed Areas - Minimisation of Potential for Sediment Pollution

A critical issue for the environmental condition of Blacks and Cudgen Creek over the duration of the construction of the Kings Forest Development will be containment of sediment. Due to the scale of the project, both in spatial and temporal terms, there is a significant risk that high sediment loads will be discharged to the creeks, and this could occur several times per year for as much as a decade. Developments are known to present a higher risk of high sediment discharge events and subsequent environmental harm during the construction phase. Ecosystems can recover from occasional and severe disturbance, however disturbance with increased frequency and sustained duration can overwhelm ecosystem resilience and lead to a loss of aquatic ecosystem processes and key habitats.

These issues are acknowledged in Section 10.2.4 of the Integrated Water Cycle Management Plan prepared by Gilbert and Sullivan where it is stated that:

"Large areas of the Kings Forest development will remain exposed and unstabilised during the bulk earthworks and building/construction phases. This poses a threat to the aquatic ecosystem values of the site. However, protection of the Cudgen Creek ecosystem and connected estuarine and marine environments against the potential impacts of turbidity could be achieved through the implementation and maintenance of effective erosion and sediment controls, as defined in the sites Erosion and Sediment Control Plan."

A key principle in reducing the risk of sediment pollution from a development site is to minimise the area of soil disturbed and exposed to erosion. This is articulated in the key NSW reference document on erosion and sediment control, 'Soils and Construction' by Landcom 2004.

Bushfire Risk Management Plan

Council's Previous Comments

Council previously provided comment on the Stage 1 Project Application relating to the following Director General's Requirements (see Table 1 for details):

- **DGR 2.5 - Outline long-term management of open space and conservation areas including bushfire management**
- **DGR 6.3 - Preparation of Bushfire assessment and management plan**

Council's previous comments noted that the Bushfire Risk Management Plan did not address the issue of managing the risk to vulnerable ecological assets such as Threatened Species, Environmental Protection Areas, and particularly the koala. In this regard, Council made the following recommendation:

- **That the Bushfire Risk Management Plan and associated plans (Vegetation, Threatened Species, Buffer and Koala Management Plans) are revised to ensure that ecological assets are appropriately managed to minimise damage from bushfire.**

Comment on Revised Preferred Project Report

The majority of Council's comments in relation to the Bushfire Risk Management Plan in the PPR relate directly to provision of APZs and are discussed elsewhere in this report (see comments on Precinct 5). The BRMP continues to focus primarily on the protection of the development rather than also considering the substantial risk to ecological assets on the site and surrounds. It is considered that the above recommendation has not been adequately addressed.

For example, and as noted elsewhere, the BRMP makes no provision for any measures to protect koala habitat from bushfire other than describing discussions with NPWS regarding the management of fire within Cudgen Nature Reserve. Indeed, the BRMP states that the KPoM "*identifies strategies for the protection of koalas from bushfire*", which is not reflected in the KPoM. Similarly, the Threatened Species Management Plans make reference to the exclusion of fire from various threatened species' habitats, as well as a potential requirement to burn other areas, however provide no further direction regarding these measures, no mapping of these fire-sensitive areas or intended/potential burning areas is provided, and none of this detail flows into the BRMP. Council considers that the requirements of DGR 2.5 and 6.3 have not been adequately met and that this issue requires resolution prior to determination of the Project Application.

Concept Plan Condition C2 - Updates to management plans

Council's Previous Comments

Council provided comment on the Stage 1 Project Application relating to the following Concept Plan Condition (see Table 1 for details):

- **Concept Plan Condition C2 - Updates to management plans**

Concept Plan Condition C2 states that "*All future applications are to include stage-specific management plan updates...*" The Stage 1 Project Application proposed an amendment to Concept Plan Condition C2 that would delay the provision of updated management plans to Construction Certificate stage rather than Project Application stage. Council considered that Council made the following recommendation in this regard:

- ***That Concept Plan Condition C2 relating to the updating of management plans with future project applications be retained.***

Comments on Revised Preferred Project Report

The proponent has argued in the revised PPR that the proposed amendment would provide greater flexibility and certainty in terms of determining what applications require updates to Management Plans and when those updates are required, however Council still considers that maintaining the current condition is appropriate for the following reasons:

- The Management Plans are integral to the mitigation of impacts from the proposed development and should therefore be considered in each case at the earliest possible stage. Failure to include relevant updates at the Project Application stage would result in considerable lack of transparency and outcomes contrary to the Concept Plan and the Project Application. For example, radical but welcome, changes were made to the Koala Plan of Management approved under the Concept Plan within the current Project Application but delaying the presentation of such new approach until construction certificate stage would lack transparency and perpetuate “incorrect” assumptions by Agencies and the public of the likely outcomes. In the case of the Koala Plan of Management this would have almost certainly influenced the approach taken by Council in preparing and implementing a Comprehensive Koala Plan of Management for areas surrounding Kings Forest on the Tweed Coast.
- There is no reason why amendments cannot be made to ensure the Management Plans remain relevant should conditions change.
- There are also major lags in the time it will take to compensate for impacts of the development. For example trees planted for koalas are likely to take 5-10 years to be self-sustaining and reach a useful size for koalas. Heathlands may take a similar time to establish. To minimise such lags, this work should commence on approval. It is also noted that many areas proposed for habitat rehabilitation that are not dependent on bulk earthworks.
- Similar time-lag considerations apply to weed and feral animal control, where it is appropriate to commence related actions on approval of the Project Application rather than at construction stage.
- Provision of the Management Plans on approval of the Project Applications allow for adequate time to determine adequacy and to assess any remedial actions against data that has been collected during baseline survey and monitoring. This monitoring information is considered essential to inform any changes to the Management Plans that may be necessary.
- A number of the approaches to ecological management of the site are experimental, with limited certainty associated with their outcomes. Also, the bulk earthworks at Kings Forest will result in removal of considerable habitat and precipitate major changes to the land surface, drainage and groundwater relations and it is not clear that all of the mitigation measures proposed will be successful. It is considered essential that an open and transparent process is adopted that allows for adaptive management over time.
- There is no formal opportunity for merit assessment or the imposition of conditions at construction certificate stage. In circumstances such as at Kings Forest where there are considerable uncertainties regarding management it is considered inappropriate to limit the ability of the consent authority to impose additional conditions should they be necessary. This is reinforced by the observation made in this submission that considerable work is necessary to ensure the provisions of the Management Plans are adequate and will provide the anticipated outcomes.

Flora and Fauna Monitoring Report

Council's Previous Comments

Council's previous ecological comments on the Stage 1 Project Application related to the following Concept Plan Condition (See Table 1 for details):

- **Concept Plan Condition B2 - Collate and synthesise all monitoring requirements of management plans**

The previous PPR did not include an Annual Flora and Fauna Monitoring Report as required by Concept Plan Condition B2. Council's previous comments recommended that this be prepared prior to approval of the Project Application as follows:

- **That an Annual Flora and Fauna Monitoring Report be prepared in accordance with Concept Plan Condition B2 prior to the approval of the Project Application.**
- **That a detailed environmental monitoring program be prepared in consultation with NSW Office of Environment and Heritage (OEH) to ensure that any impacts of the development on Cudgen Nature Reserve are minimised.**

Comments on Revised Preferred Project Report

A draft outline of a Flora and Fauna Monitoring Report (FFMR) has been included in the Preferred Project Report at Section 5 of Appendix 10. Council is concerned however, that the FFMR does not contain much of the necessary information or level of detail that would be required to direct monitoring effort in such a way that will enable the measurement of the efficacy or otherwise of all actions in the Management Plans. Council considers the FFMR to be lacking in many areas, but most significantly a number of those issues identified as requirements for inclusion in the FFMR within Concept Plan Condition B2, for the reasons outlined below.

Condition B2 of Concept Plan Approval stated that the aim of the FFMR is to **collate and synthesise all monitoring and reporting requirements**, and also that it shall **set out the proposed timeframe and duration for ongoing monitoring with reference to locations within Kings Forest and stages of development**. Council considers that these issues have not been addressed adequately for the following reasons:

Timeframe and Duration

The plan states as its aim "*...describe monitoring strategies to be completed at the Kings Forest site during Stage 1 development (Construction and Operation) within Precincts 1 & 5 and bulk earthworks areas.*" Whilst the majority of monitoring programs are assigned a frequency (eg quarterly, annually, six-monthly) according to various stages of development ("*prior to clearing and construction*", "*during clearing and construction*" and "*during operation*"), the duration of monitoring commitments is inconsistent throughout the plan. A five-year timeframe is implied for some programs, the meeting of completion criteria is stated in others whilst others provide no indication of proposed duration. The duration of the monitoring program must be defined clearly in the first instance, be consistent throughout the plan and relate directly to the duration of the various management plans upon which it is based.

Location

The plan does not explicitly outline the areas within which monitoring activities are to take place. Various non-specific locations are given within the plan for example, Section 5.1.3 implies that the monitoring program applies to ..."*flora and fauna (particularly threatened species) within and adjacent to the proposed Kings Forest development area,*" Section 5.2.1 Monitoring of Flora states that it applies to "*retained vegetation, regeneration and revegetation areas,*" and various threatened fauna monitoring programs give "*selected populations*" as their only direction, however none of these areas are outlined on maps provided in the plan, nor are any area estimates given for the required coverage of survey effort. This approach results in uncertainty regarding the scope and distribution of required monitoring effort across the site which in turn creates difficulty in obtaining an overview of the plan's monitoring commitments and estimating the likely cost of the plan's implementation. The area to which the plan applies must be defined in order to assign monitoring locations therein.

The following specific issues are required to be included in the draft outline Flora and Fauna Monitoring Report as per Concept Plan Condition B2 but have also not been adequately addressed.

1. Aims, Objectives and Methodology for Monitoring and Reporting

Monitoring programs for various species and groups of species generally state a broad "purpose" of "...*determine population trends and responses to threatening processes.*" While this is considered to reflect the overarching purpose of the plan, a number of more specific objectives (which are particular to those plans) are explicitly described in the various management plans and should be replicated here. For example, early-stage monitoring of revegetation works in buffer areas would require a focus on monitoring survival of plantings, whilst monitoring in adjacent retained vegetation would have as one of its key objectives the detection of negative influences on the persistence of vegetation.

A key overarching objective of the monitoring program is that of informing the requirement for adaptive management actions and adaptation of monitoring methodologies, which should be explicitly stated in the FFMR. Monitoring programs, particularly those focused on threatened species provide a unique opportunity to contribute to scientific knowledge base with the collection of robust data through sound survey design which has the ability to inform threatened species management practices in general. Given the spatial and temporal scale of the development, Council also considers that this should be a key objective of the Kings Forest monitoring program.

2. Baseline Monitoring Data Focusing on Existing Populations of Threatened Species, including Wallum Frog Species and Koalas

No baseline data is included in the FFMR. The plan states that previous survey work on the site is to form much of the baseline data, however other than providing a list of the threatened species and EECs recorded from the site, no attempt is made to summarise current knowledge regarding abundance, distribution or population size of any of these species within the site and surrounds.

Whilst some data from previous surveys may be able to inform baseline knowledge, much of this data will have limited relevance to current conditions on the site and will require updating. There is also no discussion provided in the plan relating to issues associated with differing methodologies between previous surveys and those proposed in the FFMP, the implications of which are that results of surveys with different methodologies and survey effort are highly limited in their comparability. A detailed review of previous survey work, (including methodologies, survey effort and resulting data) that is proposed to inform the baseline dataset for the site needs to be undertaken to enable an assessment of its suitability for the purpose and to identify knowledge gaps and modifications to baseline survey and monitoring design.

The various monitoring programs go on to detail methodologies that relate to baseline survey (as well as ongoing monitoring), which creates uncertainty with regard to which baseline requirements will be fulfilled by previous knowledge and which are to be addressed during pre-clearing survey work.

Whilst the timing of baseline data collection is consistently stated as "*prior to clearing and construction*," which is broadly appropriate, no indication of seasonal requirements for any threatened species surveys is given. An informative baseline survey cannot be performed as a one-off, short-term event as the detectability of a number of threatened species will vary with season and climatic conditions, thus these must be the factors which determine actual on-ground survey timing, and not construction schedules.

If the plan is to be successful in monitoring changes in abundance and/or distribution of populations of threatened species across the site, any baseline survey must be carefully designed in order to obtain meaningful data upon which to base future monitoring effort and measure changes in the parameters being measured.

3. Performance Criteria against which the Effectiveness of the Various Separate Management Plans Required as Part of this Approval Dealing with Koalas, Threatened Species, Buffers, Weeds, Vegetation and Feral Animals can be Measured

Each monitoring program states its performance criteria as the acquisition of baseline and post clearing and construction data. Reference is made to the VMPs, TSMPs and KPoM for performance criteria, or in the case of feral animal and weed monitoring, no performance criteria are given at all. All performance criteria must be included in the FFMP and must relate to the objectives and actions of the relevant management plans.

4. Relevant benchmark reference vegetation communities are to be nominated from within surrounding conservation estates

No reference vegetation communities have been nominated within the FFMP or the relevant VMPs.

5. Monitoring and reporting of fauna usage within the Environmental Protection zones, Ecological Buffers and the golf course

As implied above, there is no direction within the FFMR with regard to the distribution of baseline or ongoing annual fauna survey effort across the site or the intended effort to be applied within Environmental Protection Zones, Ecological Buffers and the golf course. Presumably a focus on those areas retained/restored/created for threatened species habitat is intended (though not specified), however firstly the monitoring program must define these areas, secondly, establish the current distribution and abundance of target species across each of these areas, and thereafter focus ongoing survey effort on detecting any change in fauna usage.

Council also considers that the detail contained in the FFMR with regard to survey effort is both unclear and inadequate to determine distribution and/or abundance of the target species with certainty and to direct an adequate and repeatable annual monitoring program. For example, spotlighting is specified as a technique to be utilised in koala, grey-headed flying fox, bird, ground-dwelling bird, wetland bird and feral animal monitoring programs, however there is no location information, number of survey areas, area/length of track to be surveyed, or number of survey nights per survey period specified for any of the programs, nor recognition that these criteria are likely to differ for differing target fauna groups.

6. Monitoring and reporting of koala injury and mortality

No mention is made within the FFMR of the mechanism for obtaining and recording reports of koala injury and mortality.

7. Specific monitoring to measure any impact of the development on the adjacent Cudgen Nature Reserve and adaptive management procedures to ensure impacts are minimised. The Monitoring Reports are to be provided to the Department of Planning, DECCW, Tweed Shire Council and Industry and Investment - Fisheries

There is no detail within the FFMR that suggests that the monitoring strategy has been designed with the intent of measuring impact on the Cudgen Nature Reserve nor is it indicated that discussions with OEH have taken place with regard to survey design and requirements for the Nature Reserve.

The FFMR requires updating and revision to include the detail required to direct meaningful and species-appropriate survey work across clearly defined work areas within and adjacent to the site. This would be expected to be supported by mapping of proposed survey locations and focus areas for each species/species group. Consideration must be given to the seasonality and detectability of highly cryptic and challenging target species and species groups that are the subject of the various management plans. It is considered that varying survey approaches and programs will be required for each species group which should be designed with ongoing monitoring and replicability in mind as well as the ability to report on performance criteria.

East-West Wildlife Corridor

Council's Previous Comments

Council's previous comments on the issue of east-west corridor provision in the Stage 1 Project Application related to the following Concept Plan Condition (See Table 1 for details):

- **Concept Plan Condition B4 - An east-west corridor must be established**

Council's previous comments related to the proponent's rejection of the need to provide for corridor establishment and the following recommendation was provided:

- **That further options are explored with DoP, OEH, Tweed Shire Council, appropriate experts and the proponent to implement one or more east-west wildlife corridors generally in accordance with Concept Plan Condition B4 prior to the determination of Stage 1.**

Comments on Revised Preferred Project Report

Concept Plan Condition B4 required the establishment of an east-west wildlife corridor of between 50 and 100m wide in order to provide for habitat and movement of fauna across the site. This condition referred to a potential east-west corridor in the north-west of the site that had been identified in the KPoM of Carrick (2009), and requires the investigation of the practicality and detail associated with establishment of a potential additional east-west corridor sited along the southern boundary of the site, and for this detail to be submitted prior to the determination of Stage 1.

The KPoM at Appendix 10 and the East-west Corridor Assessment at Appendix 21 of the revised PPR provide discussion on the issue. Whilst the KPoM acknowledges the importance of retaining and improving habitat linkages as a way of providing a better long-term future for koalas in the locality, it remains that the proposed development will create impediments to the free movement of koalas across the site despite (and in some cases because of) mitigation measures proposed in the KPoM (fencing, grids, speed restrictions and underpasses). As identified in Council's previous comments, these residual impacts need to be offset to ensure the long-term viability of the koala population as proposed in the revised KPoM.

Although linkages to be retained and/or enhanced are identified in Fig 8 of the KPoM, these linkages already exist and currently provide unmitigated access and movement options for the local koala population across the site. The plan does not currently provide any increased potential for linkages and koala (or other fauna) movement across the site at a landscape scale. The need for establishing an additional east-west corridor along the southern boundary of the site is further discounted in the KPoM on the basis of established patterns of movement on the Kings Forest site. This approach is contrary to the recognised requirement to facilitate the ongoing viability of koala and other threatened species population in the Kings Forest area, rather than maintain the *status quo*.

The East-west Corridor Assessment concludes that a northern corridor is not considered appropriate and would be ineffective at achieving connectivity between Kings Forest and the Cudgen Road fauna overpass, and that a modification to the Concept Plan condition will be sought by the proponent to this effect. The assessment considers that a more suitable outcome would be the extension of the existing east-west corridor in the direction of the Eviron Road underpass, which would require revegetation works around the decommissioned Turner's sand quarry lake and adjacent properties.

Notwithstanding the apparent inconsistency between these two documents, Council generally agrees that establishment of a northern corridor as previously identified has limited benefit due to prevailing surrounding landuses and limited opportunity for connectivity across the Pacific Highway at this location, however a number of issues raised in previous Council comments remain applicable, including:

- The likely need to identify additional areas suitable for planting of koala food trees due to overlapping and incompatible plans to plant koala food trees in areas to be regenerated as heathland or Wallum Sedge Frog compensatory habitat (discussed elsewhere), and
- The unique opportunity to augment fauna habitat connectivity to the south west of the site through the rural matrix of Duranbah across the Pacific Hwy underpass in the vicinity of Eviron Road. This would also complement existing measures under Council's Koala Connections Project to re-establish koala habitat from the west of Cudgen Nature Reserve to connect the small outlier population identified in the Tweed Coast Koala Habitat Study 2011 and facilitate movement to the same Pacific Hwy underpass near Eviron Road.

Council considers that finalising commitments for provision and establishment of the corridor in this location is a matter of priority in order to secure additional connectivity through and beyond the southern and western boundaries of the site, and is appropriate and necessary in order to partially contribute to offsetting the impacts of development. Accordingly, it is recommended that the Project Application including any relevant management plans should be revised to include a fully revegetated east-west wildlife corridor of minimum width 50m along the southern boundary of the site adjacent to Precinct 10 and extending to the north of the site between the existing native vegetation separating Precinct 9 and 10 from Precinct 11. The corridor shall be designed to maximise fauna use (especially koalas), continuity with existing vegetation and should consider restoration works on surrounding properties. A detailed Management Plan should also be prepared to include the precise location, restoration methodology, schedule and timing of works to be undertaken, maintenance and monitoring schedule, completion criteria and a mechanism for long-term protection of the corridor.

Long-term management of environmental lands

Council's Previous Comments

Council's previous comments regarding the long term management of environmental lands related to the following relevant Director General's Recommendations (see Table 1 for details).

- **General Recommendation 7 - Draft statement of commitments**
- **DGR 4.2 - Provide likely scope of any planning agreements**
- **DGR 2.4 - Staging and release of lots in an orderly manner**
- **DGR 2.5 - Long-term management and maintenance of open space**

Council raised concern regarding the significant ongoing management costs of lands that the proponent intends to dedicate to Council and that there had been no agreement regarding the terms and principles of the VPA which had been proposed to guide dedication and management commitments. Council made the following recommendations in this regard.

- **That the draft Statement of Commitments and/or conditions of approval be revised to ensure that:**
 - (1) **Any Voluntary Planning Agreement is finalised prior to determination of the Project Application; and**
 - (2) **The proponent assumes responsibility for the implementation of the environmental Management Plans arising from this Project Application (including any necessary revisions) for a period of 5 years, or until 90% of lots are sold, or until completion criteria have been met, whichever is longer.**
- **The Staging Plan for dedication of environmental lands to Tweed Shire Council should be reviewed and appropriately conditioned on the basis of the following principles:**
 - (1) **Dedication should occur as soon as practical after subdivision;**

- (2) The extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages;
 - (3) Environmental buffers directly adjacent to a proposed stage should be dedicated with the approval of that stage; and
 - (4) Buffers to adjacent stages to be dedicated with the approval of those stages.
- That all environmental management plans be revised to ensure they can be independently costed for a 5 year period under the proponent's management and thereafter on an annual maintenance schedule under the control of Council.
 - That the scope and intent of the above recommendations including the outcomes of discussions on an appropriate funding mechanism are to be embodied in a Voluntary Planning Agreement together with any other relevant matters (e.g. see p19 of EA) which is to be finalised prior to approval of Stage 1 of the development.

Comments on Revised Preferred Planning Report

Drafting of Voluntary Planning Agreement

No draft Voluntary Planning Agreement (VPA) is contained within the PPR, nor has Council agreed to any terms or received a draft of the VPA alluded to in the *Letter of Offer* at Appendix 27 of the PPR. Additionally, Council has not agreed to all the matters outlined in the *Letter of Offer* with regard to the terms of the proposed VPA.

Terms of VPA

It is noted that the staging plan within the *Letter of Offer* for lands to be dedicated to Council has been amended to state that dedication will occur "prior to the sealing of the Plan of Subdivision in respect of the last sub-stage of subdivision within that Precinct." This may be appropriate, however the substantive issue for Council relates to the resolution of suitable arrangements for long-term management rather than ownership (see below). It is noted that the staging of lands east of Tweed Coast Road and Drainage Reserve and Environmental Open Space adjacent to Precinct 5 are now proposed to be dedicated at relevant stages. As raised in previous Council comments, it would be appropriate also to dedicate the Environmental Protection areas south of Precinct 5 and extending west to the westerly southern access road to southern precincts (an area of 49.66ha) to coincide with subdivision of Precinct 5 rather than with the Golf Course as is currently proposed in the *Letter of Offer* at Appendix 27.

Funding of Long-Term Management

Council considers that **DGR 2.5 *Outline the long-term management and maintenance of any areas of open space or conservation including ownership and control, management and maintenance funding, public access, revegetation and rehabilitation works and bushfire management***, with regards to the source of funding for long-term management, has still not been adequately addressed. As raised in Council's previous comments, the provision of works within areas proposed to be dedicated to Council such as ongoing management and monitoring of rehabilitation areas, weed control, pest animal control and infrastructure maintenance will represent an increased, significant and ongoing cost burden on Council resources, that cannot be met solely through the increased rate base generated by the proposed development.

Council has suggested a number of mechanisms through which the long-term management costs could be met, one of which is the establishment of a sinking fund based on a capital contribution from the developer which would use the interest to fund the works. An environmental levy is another mechanism that could also be employed to fund such works.

Council considers that resolution of this issue prior to determination of the project application is necessary in order to ensure that ongoing management of Environment Protection and buffer areas is economically achievable, does not impose an unreasonable burden on existing ratepayers, and is thus able to produce and maintain the intended conservation and offset outcomes of these areas in the long-term. It is recommended that Council should only accept environmental lands for dedication if suitable arrangements are made to ensure that costs of for their long term management are covered by the proponent or the development itself.

Costing of Management Plans

The ability of Council to estimate the likely extent of the ongoing annual cost of maintenance remains compromised by the lack of the necessary level of detail associated with the proposed management regimes to enable cost estimates to be independently generated. Council has previously and repeatedly requested that this level of detail be provided. It is considered essential that this issue is resolved in order to enable the scope of any VPA to be outlined in a meaningful way.

Council considers that each plan should both outline/estimate the annual resources required for the implementation of each plan during the establishment period (nominally 5 years under the management of the proponent), and maintenance period, and also contain the relevant information which forms the basis of such a costing. At a minimum, and by example, this further detail would include:

For threatened species and feral animal management plans:

- Identification of target area within which each management action for each threatened and feral animal species and is to take place
- Extent and timing of each feral animal management task
- Identification of any ongoing maintenance issues for each management action
- Extent of infrastructure to be maintained (length of koala fencing, cane toad fencing, etc)

For each vegetation / weed management area:

- Area of each vegetation community to be rehabilitated/created

- Mapping and associated area estimates of each level of restoration works (i.e. weed control only, assisted regeneration, revegetation etc)
- Mapping and area estimates of the severity and extent of weed infestation

For each target species within the Flora and Fauna Monitoring Report:

- Identification and mapping of management units/areas to which monitoring survey effort is to be applied
- Distribution of survey effort within each management area (including identification of permanent survey locations)
- The annual survey effort required to complete each target species' monitoring program

As discussed elsewhere (see comments on implementation tables), although implementation tables have been appended to each management plan, and partially achieve their intended purpose, the key detail requested previously by Council of resourcing and costing for each action has not been included, whilst timing details remain unclear for many actions.

Further Protection of Heathland

Council's Previous Comments

Council provided comment on the Stage 1 Project Application relating to the following Concept Plan Condition (see Table 1 for details).

- **Concept Plan Condition B3 - Further protection of heathland**

Council made the following recommendation.

- **The Environmental Assessment and related Management Plans should be revised to include:**
 - (1) A long-term protection mechanism such as Environmental Protection zoning for all heathland to be restored and;**
 - (2) Specific provisions to manage weeds (and other issues) in areas denoted as "Heath to be Naturally Regenerated".

Comments on Revised Preferred Project Report

It is considered that weed issues in (2) above are adequately addressed within the relevant Weed Management Plans, however item (1) in bold above remains relevant to the current PPR. The current PPR states that areas of heath to be retained or rehabilitated within Environmental Protection Zones or Ecological Buffer areas will be dedicated to Council or OEH, suggesting that this action will provide effective protection in itself. No commitment to securing a long-term protection mechanism such as land-use zoning is made, and the terms of land dedication to Council are yet to be resolved. Thus it is considered that the PPR fails to adequately address, and is contrary to Concept Plan Condition B3.

OPTIONS:

That Council:

1. Endorses this report and the attachment "Draft Conditions" and forwards it to the NSW Department of Planning and Infrastructure as Council's formal submission on the Preferred Project Report for Stage 1 Project Application and second Concept Plan Amendment; or
2. Modifies this report and forwards it to the NSW Department of Planning and Infrastructure as Council's formal submission on the Preferred Project Report for Stage 1 Project Application and second Concept Plan Amendment.

Council officers recommend Option 1.

CONCLUSION:

Tweed Shire Council is reliant on Kings Forest to ensure future population growth is catered for. Furthermore, Tweed Shire Council has relied upon developer contributions (from urban land release areas such as Kings Forest) to ensure that future infrastructure needs are met. It is therefore crucial that planning for Kings Forest be done effectively.

The current Stage 1 Application sets up many of the design principles and maintenance regimes that will be relied upon for the remainder of the entire release area. The issues raised in this report need to be discussed with the applicant, the NSW Department of Planning and Infrastructure and other relevant state government agencies to ensure all parties can move forward cooperatively.

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
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Council report of 24 January 2012 in regards to the original Environmental Assessment for Kings Forest (ECM 60005686)
 - Attachment 2. Draft Conditions for the Department of Planning and Infrastructure in regards to the preferred project report (ECM 60015411)
 - Attachment 3. Kings Forest and Cobaki Land Dedication Report June 2012 (ECM 60005687)
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15 [PR-CM] Tweed Development Control Plan - Section B11 Seaside City

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B11 Pt1



Civic Leadership

SUMMARY OF REPORT:

In May 2012 Council received correspondence from Planit Consulting on behalf of Richtech Pty Ltd (the proponent) in relation to Seaside City, comprising:

- A request to amend Tweed Development Control Plan 2008 Section B11 – Seaside City (Seaside City DCP); and
- A development application seeking approval for 33 existing allotments to be re-subdivided to create a total of 50 residential allotments.

This report relates to the requested Seaside City DCP amendments. The Development Application is subject to a separate process and will be reported the Council at a later date.

In accordance with Council's previous resolution of 26 June 2012, an independent town planning consultant has been engaged to assess the requested amendments. This report outlines the results of that assessment and describes the resultant DCP amendments proposed.

The majority of the requested amendments are supported, with the exception to the removal of the 'minimum density' provisions. In this regard, the report recommends retaining the minimum density provisions in order to provide:

- Greater assurance that the highest and best use of the land will be achieved;
- A minimum population yield that is sufficient to support a sustainable community, focussed around a walkable, mixed-use village centre as per the Vision and Aims of the Seaside City DCP; and
- Improved ability for infrastructure planning and coordination.

The amendments sought by the proponent would likely reduce future population yields, through a combination of increased areas of low density housing (Coastal Dwellings) and the associated reduction in other medium density accommodation areas. However, by retaining the minimum density levels within the Coastal Multiple Dwellings, Village Centre Fringe and Village Centre areas, the reduction in future population is not considered to substantially affect the integrity of the Seaside City DCP.

A draft Seaside City DCP has been prepared in accordance with the above findings detailed in this report and is recommended for formal public exhibition.

RECOMMENDATION:

That:

- 1. The draft *Tweed Development Control Plan Section B11 – Seaside City* be placed on public exhibition in accordance with Clause 18 of the Environmental Planning and Assessment Regulation 2000 for a minimum period of 28 days; and**
- 2. Following public exhibition, a further report addressing all submissions is to be prepared for consideration by Council.**

REPORT:

Background

Seaside City has a long history dating back to the 1920s when the subdivision was originally created. More recently it has become the subject of a revitalisation development, by way of three primary development consents, being DA05/0775, DA05/0793 and DA05/1464, which all approved the carrying out of works for the purposes of land clearing, earthworks, construction of roads and other services in preparation of the further development of the existing lots.

Concurrent to the consideration of the above development applications, a site specific DCP and site specific Section 94 Plan were created in relation to the Seaside City Development (Section B11 to the Tweed Shire Development Control Plan and Section 94 Plan No. 28). Additionally, Council entered into a Voluntary Planning Agreement with Richtech to enable Richtech to recoup infrastructure costs from those properties within the estate not owned by Richtech.

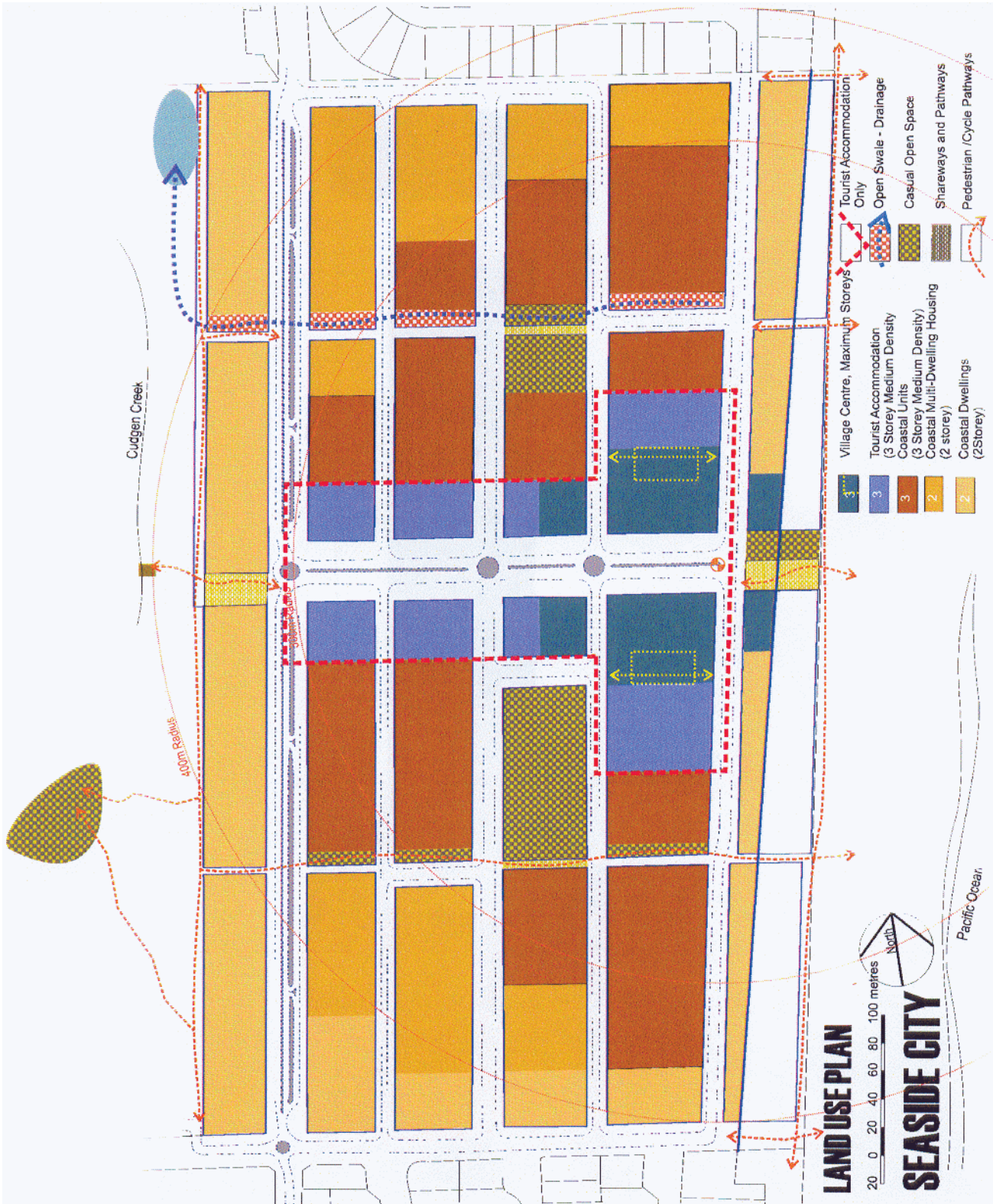
Situated between the Salt and Casuarina developments, the subject site is predominately zoned 2(e) Residential Tourist pursuant to the Tweed Local Environmental Plan 2000 (TLEP 2000). Environmental Protection zones frame the estate to the east and west, specifically 7(l) Environmental Protection (Habitat) bordering on the banks of the nearby Cudgen Creek to the west, and 7(f) Environmental Protection (Coastal Lands) bordering the sand dunes to the east.

The Seaside City DCP establishes a vision as 'a casual coastal community with a comfortable and welcoming atmosphere and a vibrant and attractive village centre'. The existing Land Use Plan is displayed in Figure 1 and includes a combination of housing and land use types including:

- 2 storey coastal dwellings
- 2 storey coastal multi dwelling housing
- 3 storey coastal units
- 3 storey tourist accommodation (medium density tourist accommodation only)
- 3 storey village centre

The higher density tourist and village centre areas are focused along the central movement spine of 'Ocean Avenue' with densities tapering out towards the peripheries of the site.

FIGURE 1 – SEASIDE CITY LAND USE PLAN



Requested Amendments

A full copy of the proponents' request can be found as Attachment 1 of this report, however can be surmised as follows:

1. Removal of the mandatory tourist accommodation component within the central core area;
2. Removal of 'minimum density' designations from all accommodation areas within the DCP;
3. Increasing the extent of low density housing areas by re-nominating areas to the 'Coastal Housing' designation in accord with the DCP;
4. Modifying the type of medium density product adjacent to the village core (lands within Richtech ownership only) so as to facilitate 'Courtyard Housing';
5. Concurrent with the DCP amendment outlined above, will be a need to review and amend the Seaside S.94 Plan and potentially the VPA;
6. Include control for Dual Occupancy development in the precinct, stating 'Dual Occupancy Lot Size 700m² dual frontage allotments minimum'; and
7. General housekeeping and clarifying the relationship of controls to Section A1 of the Tweed DCP 2008.

The proponent has stated that the request is driven by economic factors, marketing advices and that the densities and development types discussed within are considered unrealistic and unachievable within the short to medium term (upwards of 10 years).

A further subsequent amendment was discussed between the proponent, Council's project planner and Council's engaged planner during a project update meeting. The additional amendment seeks to remove the 'Coastal Units' designation from the proponents land within the amended Land use Plan, replacing it with additional areas of 'Coastal Multi-Dwelling'.

The findings in relation to the abovementioned amendments are discussed within the following section.

Assessment

A copy of the formal advice provided to Council from the engaged independent planning consultant can be found within Attachment 2 of this report, however the key discussion points are detailed as follows.

1. *Removal of the mandatory tourist accommodation component within the central core area*

This requested is supported. Both the NSW Department of Planning and Infrastructure (DP&I), by way of the Standard Instrument Order 2006 and Council, by way of Section A1 of the Tweed DCP 2008 and the draft Tweed LEP 2012, have sought to move away from strictly segregating and regulating the use of residential and tourist accommodation. In this regard, the better practice is considered to embody flexibility, allowing uses to evolve, however matching that with the highest order construction and design standards, as well as management plans to ensure different uses (permanent and tourist) can coexist.

Further, whilst Council does not currently have a direct tourism strategy providing a detailed needs analysis and guidance on the number of units/ facilities required, significant development within Salt and Casuarina include considerable tourist development, in a variety of scales. In light of the quantity of tourist accommodation within the immediate vicinity, it is questionable whether additional tourist development would be feasible at Seaside City, and therefore its provision should not be mandated. This point is particularly prevalent in the current economic market.

The proponents' submission states that they do not wish to delete tourist development from the DCP; rather they are seeking to remove the requirement that it is 'compulsory' in the village centre and fringe areas. This request is consistent with the above commentary.

2. *Removal of 'minimum density' designations from all accommodation areas within the DCP.*
3. *Increasing the extent of low density housing areas by re-nominating areas to the 'Coastal Housing' designation in accord with the DCP.*

The two abovementioned requests are strongly linked and as such have been discussed in a mutual fashion. The amendments requested have the potential to reduce dwelling/population yields in two ways. Firstly, the revised land use plan suggests a greater area designated for low density housing, generally in the form of single dwellings. Secondly, the application requests that the minimum density provisions be removed for all other land use categories. Council's planning consultant has provided an analysis of the potential yields with a variety of scenarios, surmised as per Table 1:

Scenario	Dwellings	Population
Current 'probable' yields - <i>Maintain the existing Seaside City DCP provisions</i>	1,001	1,796
Potential worst case yields - <i>Amend the land use plan to include additional Coastal Housing and removing the minimum density requirements from all areas</i>	219	567
Potential likely yields - <i>Amend the land use plan to include additional Coastal Housing and retain the minimum density requirements</i>	601	1,384

Table 1 – Potential Yield Comparison

A key part of the vision for Seaside City is the creation of a vibrant and attractive village centre, including 1,000 – 1,500m² of retail uses providing for impulse and service retail (e.g. general store, newsagent, restaurant / café including al fresco dining, hairdresser, etc) uses that directly activate the public realm. The Seaside City DCP vision is directly consistent with the wider Tweed Coast Strategy (Section B9 of the Tweed DCP 2008), which details a hierarchy of commercial / retail centres along the coast and, specifically for Seaside City, the establishment of a neighbourhood centre.

Despite the complexities of establishing the economic feasibility, general planning practice indicates that a population of 500 – 800 people within its service catchment would be necessary. Further, based on local field experience, Council's consultant is of the view that a catchment in excess of 800-1,000 people is necessary to provide genuine sustainability.

As indicated above, the current Seaside City DCP is likely to yield in the order of 1,700 people, indicating that a neighbourhood centre is realistically sustainable. In relation to the requested amendments, the worst case scenario outlined above could seriously challenge this feasibility, and therefore Council's vision for the Tweed Coast, as it has a potential to reduce the yield to as few as 500 people.

Maintaining the minimum densities, but allowing the increased area for low density development, as shown in the potential likely scenario in Table 3 (above), would provide for a population of around 1,400 -1,500 people, depending on demand for dual occupancy in the low density areas. This yield would not seriously challenge the feasibility of the neighbourhood centre and is considered to provide an appropriate balance between ensuring the highest and best use of the land and more short-term market considerations. The recommended approach has been conveyed to the proponent, whom has not raised any significant objection to the modified approach embodied within the draft Seaside City DCP detailed as Attachment 3.

The retention of the minimum density provisions within the Seaside City DCP is a key component of the future development form. In this regard it is highly desirable to achieve an appropriate balance between facilitating short-term economic stimulus and housing variety and the longer-term considerations of ensuring the highest and best use of the land, creating sustainable communities and coordinating infrastructure provision. Whilst the draft Seaside City DCP is considered to achieve this balance, removing the density control completely could significantly jeopardise the integrity and vision contained therein.

4. *Modifying the type of medium density product adjacent to the village core (lands within Richtech ownership only) so as to facilitate 'Courtyard Housing'.*

This requested is supported. The subject area for Courtyard Housing is currently designated for Coastal Units, with a minimum density requirement of 1 unit per 160m². The Courtyard Housing concept submitted by the proponent, shows 20 units on a site of 5,000m², which would equate to a density of 1 unit per 250m², significantly less than the current density requirement. However, the requested land use plan amendments alter this area to Coastal Multi-Dwellings (1 unit per 220m²).

Population forecasts have been calculated on the basis of this change, and it is apparent that development of courtyard housing will not substantially affect the population yields. Council's planning consultant has recommended that provisions be included in the Seaside City DCP indicating that this form of housing, or similar forms, would be considered favourably in the low density Coastal Housing areas.

The exploration and provision of Courtyard Housing is considered to possess significant benefits for Seaside City, but also for the Tweed Shire in general. This form of housing type is largely void from Tweed Shire, however provides sound levels of density, with reduced bulk and scale to traditional medium density forms, such as residential flat buildings. Particularly within a coastal context, this typology provides a desirable method of integrating low density housing (dwellings and dual occupancy) with medium density housing (residential flat buildings). Courtyard housing is considered to assist the creation of a village atmosphere within Seaside City and provide greater housing variety.

5. *Concurrent with the DCP amendment outlined above, will be a need to review and amend the Seaside S.94 Plan and potentially the VPA.*

Developer contributions at Seaside City are managed under Section 94 Plan No. 28 – Seaside City, in association with the Seaside City Planning Agreement, between Council and Richtec Pty Ltd. Council's consultant has reviewed both documents in light of the amendments supported and concluded that no changes are necessary. This recommendation has been communicated to the proponent, whom raised no objection.

6. *Include control for Dual Occupancy development in the precinct, stating 'Dual Occupancy Lot Size 700m² dual frontage allotments minimum'.*

This requested is supported. In effect, this request seeks to clarify the site specific Seaside City DCPs relationship with shirewide Section A1 – Residential and Tourist Development Code of the Tweed DCP 2008. Specifically, concern has been raised as to the disconnection between the site requirements established within Section A1 and the site specific place-making and density provisions of the Seaside City. The amendment of the Seaside City DCP to clarify the minimum site requirements for dual occupancy development is considered to facilitate a more user-friendly document and improve achieving the stated vision and aims.

7. General housekeeping and clarifying the relationship of controls to Section A1 of the Tweed DCP 2008.

This requested is supported. A number of minor amendments have been undertaken in order to ensure the applicable controls are clear and concise, as well as clarify their relationship with Section A1 – Residential and Tourist Development Code of the Tweed DCP 2008.

OPTIONS:

That Council:

1. Determines this matter in accordance with the recommendations of this report and proceeds to public exhibition of the draft DCP Section B11 – Seaside City; or
2. Refuses the applicant's request and retain the current version of DCP Section B11 – Seaside City; or
3. Defers a resolution on the Draft DCP and seek clarification of any issues arising.

The Council officers recommend Option 1.

CONCLUSION:

The proponent has cited financial pressures and the depressed housing market as the main reasons for the requested amendments. The suggestion is that neither tourist developments nor medium density developments are viable development forms in the short to medium term (upwards to 10 years).

Council needs to balance these current financial pressures with the need to achieve a future overall development of Seaside City that is consistent with the Tweed Coast Strategy, the zoning of the site, and the visions and objectives of the Seaside City DCP.

This report concludes that amendments to the Seaside City DCP are warranted as follows:

- The proponents' amended land use plan be accepted, resulting in an increased component of low density/single dwelling lots across the site;
- The proponents' request to remove the mandatory tourist accommodation development provisions be accepted, subject to additional provisions that require any mixed residential/tourist development be designed and constructed to achieve the 'highest' relevant standards, being Building Code of Australia (BCA) compliance with tourist criteria and car parking requirements for residential development. Management plans addressing potential use conflicts should also be required for such development;
- Modifying the type of medium density product adjacent to the village core (lands within Richtech ownership only) so as to facilitate 'Courtyard Housing';

- Include control for Dual Occupancy development in the precinct, stating 'Dual Occupancy Lot Size 700m² dual frontage allotments minimum'; and
- General housekeeping and clarifying the relationship of controls to Section A1 of the Tweed DCP 2008.

The abovementioned amendments have been drafted in the form of the draft Seaside City DCP, contained as Attachment 3. It is recommended that this document be publicly exhibited for a minimum period of 28 days, enabling the community to inspect and provide comment.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Nil

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
- 1.5.3.1.1 Tweed LEP is maintained in accordance with statutory requirements and to reflect local planning studies and emerging planning proposals

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1: Development Control Plan amendment request (ECM 59926487)

Attachment 2: Independent planning consultants' advice to Council (ECM 59926489)

Attachment 3: Draft Seaside City Development Control Plan (ECM 59968158)

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16 [PR-CM] PP10/0007 - Mooball Residential Development

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0007 Pt 2



Civic Leadership

SUMMARY OF REPORT:

Council's Planning Reforms Unit is in receipt of a Planning Proposal (PP) application to facilitate a change in zoning 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) to enable the orderly expansion of the Mooball village.

The subject site contains Nos. 5861 and 5867 Tweed Valley Way, Mooball, both of which were identified within the Tweed Urban Release Strategy 2009 as a potential future urban release area.

The site has an area of approximately 78.6 hectares, and is located directly to the south of the existing Mooball township. The site currently accommodates two existing dwellings and a number of sheds, for agricultural purposes.

The PP and this report conclude that there is sufficient justification and merit to pursue the proposed rezoning by requesting a Gateway Determination from NSW Department of Planning and Infrastructure (DP&I). Receipt of a Gateway Determination would enable the formal public exhibition of the PP, allowing the community and state agencies the opportunity to inspect the documentation and provide comment.

There are two important and outstanding issues that require a resolution prior to the PP commencing public exhibition. These matters should not prevent the referral to the DP&I as are capable of being managed through the provision of suitable planning agreement, they are:

- The provision of adequate waste water servicing; and
- Further and more detailed testing for Aboriginal Cultural Heritage by way of physical (borehole) examination within predetermined areas of the site.

The use of planning agreements is now prevalent amongst developers and councils in NSW as it provides a mutually convenient and secure mechanism for protecting the interests of the parties and provided much needed certainty about prospective development proposal that would otherwise exist. Tweed Council is now using planning agreements to achieve the orderly development of the Shire and is presently engaged in preparing one for similar purposes in association with the planning proposal for the Pottsville employment lands.

The report concludes that there is sufficient information to proceed with the planning proposal to the Gateway Determination and based on the sensitive environmental and heritage matters that the delegation for plan making functions not be sought. It is

recommended that the Minister administering the *Environmental Planning and Assessment Act 1979* retain his plan making functions in this instance.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0007 over Lot B in DP 419641, Lot 2 in DP 534493 and Lot 7 in DP 593200 be referred to the NSW Department of Planning and Infrastructure requesting a Gateway Determination under Section 56(1) of the Environmental Planning and Assessment Act 1979;**
- 2. The Minister for Planning and Infrastructure be advised that a delegation of the Plan Making functions is not being sought in this instance; and**
- 3. The Landowner/Proponent be advised that a Planning Agreement detailing the requirements for test pits and soil testing, in accordance with the Aboriginal Advisory Committees recommendation of 1 June 2012, being undertaken prior to any future development application over the land, and addressing the requirements for a standalone private waste water management system and associated licensing, is required in association with Planning Proposal PP10/0007, and confirmation of their participation in such an agreement and their funding thereof is to be provided prior to Recommendation 2 above taking effect.**

REPORT:

Council's Planning Reform Unit (PRU) has received a request to prepare a Planning Proposal (PP) for three properties immediately adjoining the existing Mooball village. The subject site encompasses Lot B in DP 419641, Lot 2 in DP 534493 and Lot 7 in DP 593200, located at 5861 and 5867 Tweed Valley Way, Mooball. The location of the site is illustrated in Figure 1 below.

The proposal seeks to rezone the currently rural lands to an extension of the urban village of Mooball, with a view to providing a range of lot sizes and housing type, as well as conserving areas for environmental protection and public recreation.

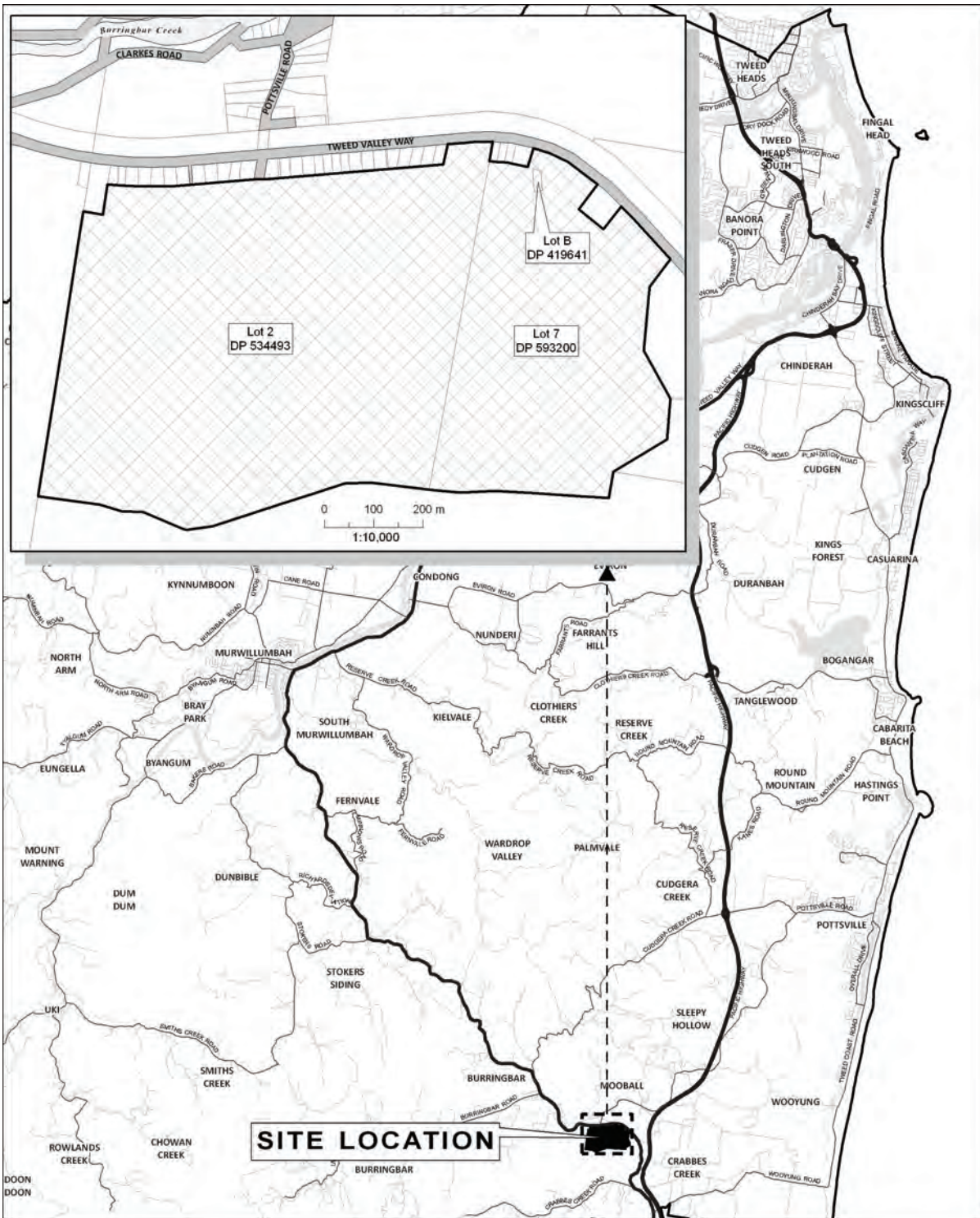
The site is well known to Council has been the subject of several prior resolutions in relation to the lands identification for rezoning. These include:

- 21 April 2009 - Council resolved that priority should be given to a rezoning of the land for urban purposes, in accordance with the Tweed Urban and Employment Lands Strategy.
- 20 July 2010 - Council endorsed the Planning Reform Unit's Work Program 2011-14 which identified Mooball planning proposal and a corresponding DCP for the site.
- 19 April 2011 - Council endorsed an updated 2012-15 Work Program which maintained the priority status of the Mooball proposal.

The site has an area of approximately 78.6 hectares, and is located directly to the south of the existing Mooball township. The site currently accommodates two existing dwellings and a number of sheds, and has been historically used for agricultural purposes; however the site is not classified as 'prime agricultural land'.

The site is located in Mooball, with access afforded from both the east and west along Tweed Valley Way. Interchanges with the Pacific Highway are situated approximately 8 minutes from the site (for southbound traffic, via Tweed Valley Way) or 12 minutes from the site (for northbound traffic, via Pottsville Road and Cudgera Creek Road). Within the immediate area is the village of Mooball, which contains a small number of residential properties and retail businesses. The village's residential properties front directly onto Tweed Valley Way, separating the site from this direct frontage. The majority of these properties are single storey, with a few two-storey residences. Pottsville Road intersects with Tweed Valley Way, which also has several residential properties situated adjacent to Pottsville Road.

FIGURE 1 – SITE LOCALITY PLAN



Locality Plan

Planning Proposal PP10/0007 -- Lot B DP 419641, Lot 2 DP 534493 and Lot 7 DP 593200
Tweed Valley Way, Mooball

Details of Planning Proposal

The majority of the site is identified within Council's adopted Tweed Urban and Employment Land Release Strategy 2009 (the TUELR Strategy) as being 'potential urban area'. Whilst the TUELR Strategy identifies the subject site, it is the role of the PP to investigate the site's attributes and identify the highest and best planning framework.

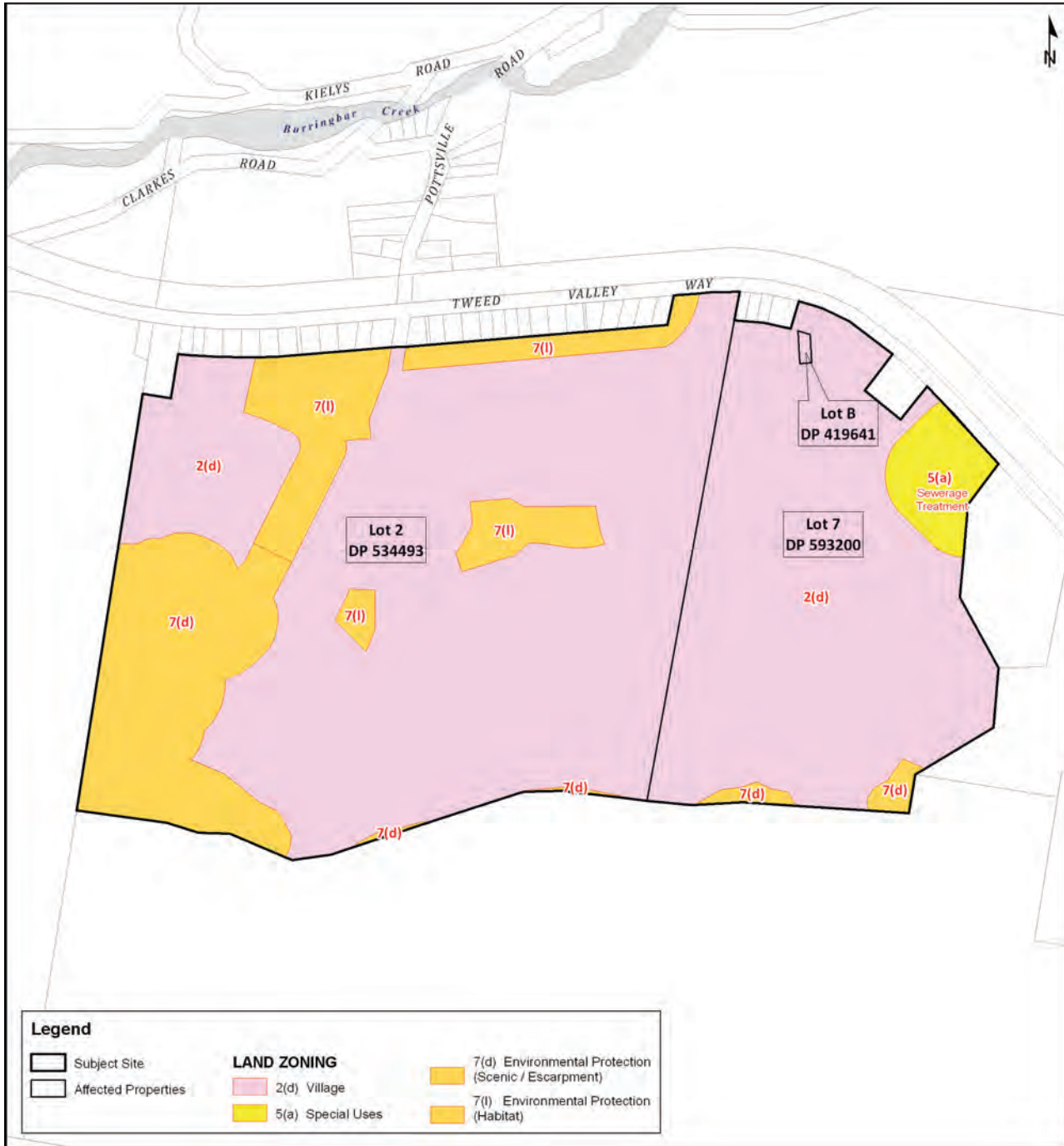
The site is not identified within the Far North Coast Regional Strategy (FNCRS) proposed urban release areas, however, may be considered under the sustainability criteria of the FNCRS as the site is west of the Pacific Highway and is identified within the local TUELR Strategy. Assessment against the sustainability criteria is detailed within the PP in Attachment 1.

A constraint mapping analysis has been undertaken to establish a planning framework that includes a balance and variety of built and natural environment. The specific constraints of the site are detailed within the PP document, included as Attachment 1 of this report.

In response to the existing Mooball village and constraints present, the majority of the subject site is proposed to be zoned 2(d) Village, allowing the provision of residential development and a full range of services and facilities traditionally associated with a rural village. Similarly, the proposal does not propose to alter the building height controls, to ensure that development is of a scale that makes a positive contribution to the character of the village.

Areas of the site that are considered to possess environmental quality, including significant vegetation and future corridors, pockets of vegetation within elevated portions of the site and existing creeks are proposed to be zoned Environmental Protection (7(d) and 7(l)). Finally, the location of the proposed sewerage treatment plant is proposed to be zoned 5(a) Special Uses to reflect the infrastructure purpose. The proposed zonings for the subject site are displayed in Figure 2.

FIGURE 2 – PROPOSED ZONING UNDER TWEED LEP 2000



The PP does not seek to alter the minimum lot size controls for dwelling houses applicable to the desired zones within the Tweed LEP 2000 (being 450m² within the Village zone and 40ha within the Environmental Protection zones). However, as Council's draft Tweed LEP 2012 is currently undergoing public exhibition, the PP provides recommendations for translation into the draft LEP based on the Standard Instrument Order 2006 (LEP template). Likewise, the discussion regarding minimum lot sizes within the PP is to be utilised within future Development Control Plan (DCP) provisions for the site.

The minimum lot size provisions within the PP are staggered into five categories, which have been applied across the site, in accordance with its qualities. A brief discussion of each of the minimum lot sizes being pursued as follows:

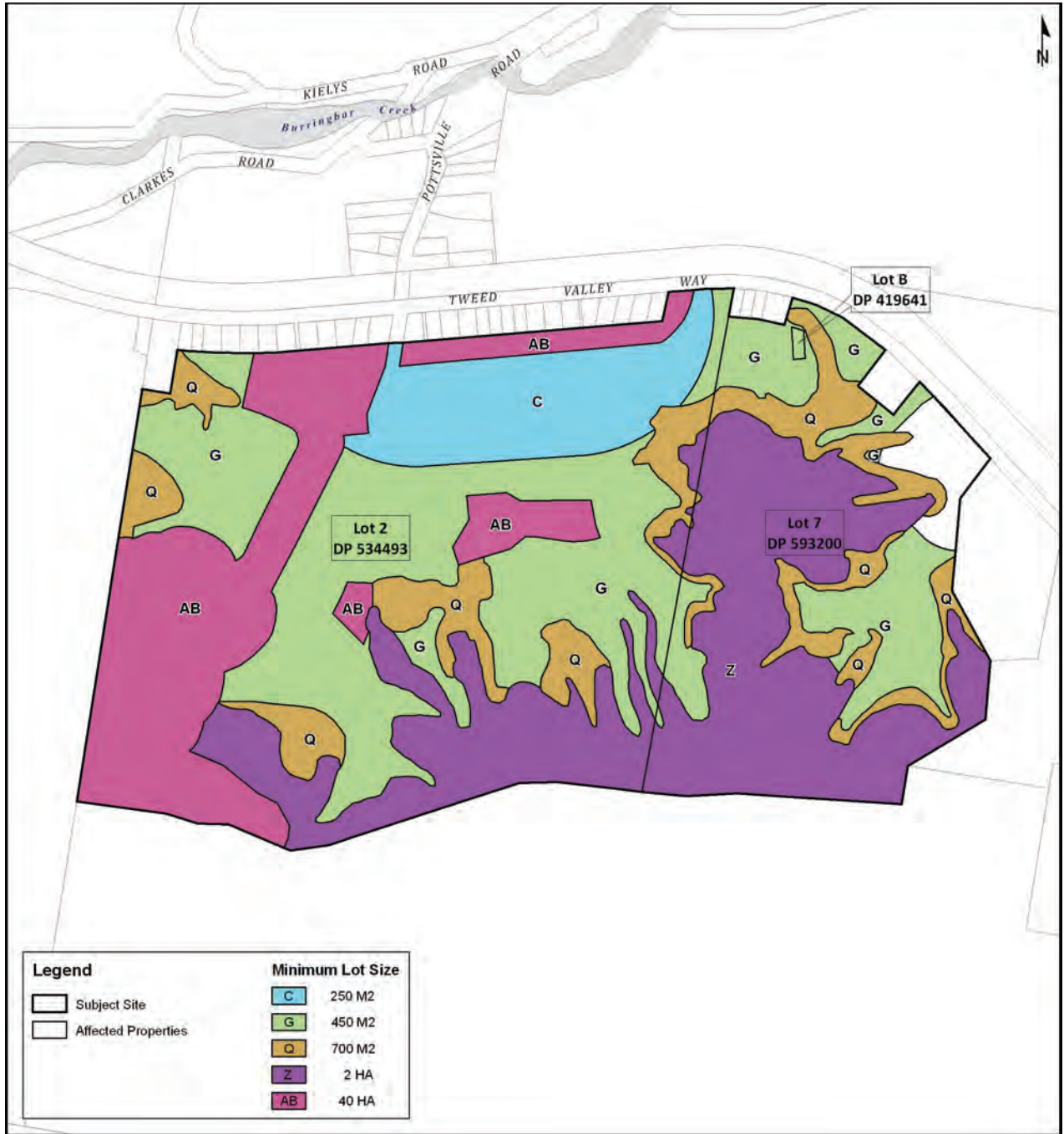
1. **Minimum Lot Size 40ha** – Land identified for Environmental Protection purposes has retained a 40ha minimum lot size, as is currently enforced within both the Tweed LEP 2000 and the draft Tweed LEP 2012.
2. **Minimum Lot Size 2ha** – A significant portion of the elevated land within subject site contains slopes greater than 18 degrees (32.49%). This land is contiguous and highly constrained, accordingly traditional 'urban' lot sizes are not considered appropriate. In order to reflect the need for larger lot development, a minimum lot size of 2ha is proposed.
3. **Minimum Lot Size 700m²** – Where land is between 12 – 18 degrees, or greater than 18 degrees but not in a contiguous form, a minimum lot size of 700m² has been proposed. By allowing a larger 'urban' lot, the built form can more appropriately respond to the slope through building siting and construction type. The increased minimum lot size also assists in reducing impacts at the property interface. The 700m² lot size reflects contemporary subdivision planning and testing undertaken by the PRU within other urban release areas and the review of Council's DCP – Section A1 – Residential and Tourist Development Code.
4. **Minimum Lot Size 450m²** – Land subject to less than 12 degrees slope, but outside of a 200m radius of the existing Mooball village centre is proposed to retain the minimum lot size controls consistent within the village zone, being 450m².
5. **Minimum Lot Size 250m²** – Land within 200m walking distance of existing non-residential uses in Mooball and identified as less than 6 degrees in slope has been mapped to enable a minimum lot size of 250m². This minimum lot size is 200m² less than the current Tweed LEP 2000 provisions for dwelling houses in the 2(d) Village zone and approximately 500m² – 750m² less than existing Mooball lot sizes. The reduced minimum lot size supports a more compact urban form (resulting from increased densities) in this area, supports a walkable community, the use of public transport services, and the efficient delivery of infrastructure. The additional variety of lot sizes will further encourage diversity in housing type and size, assisting with housing affordability. It is proposed that the future DCP provisions for the site will provide further detailed guidance regarding urban design, subdivision and integration with the existing Mooball character to appropriately facilitate this form of development.

Table 1 provides details of the area of land affected by each of the minimum lot sizes being pursued. In addition, the application of the minimum lot size controls is graphically detailed in Figure 3.

Minimum lot size designation	Area (ha)
250m ²	6.75
450m ²	24.71
700m ²	9.59
2 ha	21.64
40 ha	14.52

Table 1 Resulting areas from minimum lot size designations

FIGURE 3 – PROPOSED MINIMUM LOT SIZES



Stand alone Private Waste Water Management

The Council's waste water treatment plant currently under construction on Pottsville-Mooball Road does not have a surplus capacity to accommodate the proposed development and is not amenable to an upgrade of a capacity the new development will necessitate. In response to this the proponent is committed to providing a stand-alone private wastewater disposal utility scheme and to obtain a licence under the Water Industry Competition Act 2006 (WIC Act) administered by the Independent Pricing and Regulatory Tribunal (IPART). The provision of a stand-alone private reticulated system will enable the orderly and economic development of urban land and is an alternative to utilising the more traditional approach of relying on councils and water authorities for the provisions of essential infrastructure. This is an initiative of the NSW State Government.

Obtaining a licence under the WIC Act is anticipated to be a lengthy and costly process. Accordingly the proponent has requested that the PP advance ahead of obtaining a licence, enabling the certainty of the rezoning prior to committing significant resources to a lengthy process. This request has been made with the understanding that Council will require the WIC Act licence be obtained prior to any development application being lodged for the site.

In order to formalise this arrangement, both Council's technical officers and the proponent have indicated a willingness to enter into a Planning Agreement to ensure the provision of appropriate sewerage infrastructure in a timely manner. It is anticipated that this Planning Agreement will be drafted and placed on public exhibition with the PP.

Aboriginal Cultural Heritage

The PP application included an Aboriginal Cultural Heritage (ACH) report which concludes that:

- No Aboriginal Objects or Places were identified within the Project Area;
- No areas were identified that were considered reasonably likely to contain Potential Archaeological Deposits (PADs);
- Consultation with the Tweed Byron Local Aboriginal Land Council (TBALC) identified no places of cultural (spiritual) significance; and
- No items of historic heritage significance were identified within the Project Area.

The ACH report does not recommend that test pits are necessary at this stage and includes documentation from the Tweed Byron Local Aboriginal Land Council (TBALC) supporting with the reports' findings.

The PP was reported to the Aboriginal Advisory Committee (AAC) meeting of 1 June 2012. The AAC resolved:

'That test pits are dug and soil tested for Aboriginal artefacts on one particular campsite in the Mooball Residential Rezoning Area. Findings from the test pit would then indicate whether cultural monitors are needed on site for the full excavation.'

Discussions with the proponent have indicated a desire not to undertake such an assessment until rezoning has occurred. The AAC resolution has been reviewed by Council's planning consultant whom, after reviewing the applicable legislative framework; has recommended that the timing of these works be prior to construction with appropriate provisions incorporated in construction management documentation to ensure Aboriginal items of significance are not harmed.

In light of the above, it is considered appropriate that formal testing not be required prior to the progressing the PP further, however that the testing should be undertaken prior to a future development application being lodged.

This process allows the PP to be processed in a timely manner and the proposed zoning to be obtained prior to undertaking further study. This approach also ensures that appropriate investigations occur and that any future subdivision layout adequately responds to any findings of significance, as is considered best practice.

The PP and the abovementioned recommendation was presented the AAC meeting agenda of 7 December 2012. The minutes of this meeting will be separately presented to Council.

Plan Making Provisions

As detailed within a separate agenda item of this Council meeting, a number of recent changes to the NSW Department of Planning and Infrastructures' (DP&I) plan-making provisions have been made. In accordance with those amendments, Council is required to nominate to the DP&I if Council seeks the delegation powers available to them in order to make the PP. The PP comprises a number of complex elements, including:

- Subject site is located outside of the established Town and Village Growth Boundary for urban growth established within the DP&I's Far North Coast Regional Strategy;
- Servicing by way of a future, private, stand-alone sewerage system; and
- Proposes to rezone portions of Rural land to Environmental Protection, an outcome the DP&I have recently been opposed to.

In light of the above, it is considered appropriate to request plan-making delegations remain with the DP&I as the PP is not considered a minor amendment.

Adjoining Mooball Planning Proposal

A separate planning proposal (PP12/0002) has been submitted for the adjoining land to the west of the subject site. This PP is the subject of a separate report and agenda item of this Council meeting. Whilst together these proposals seek the urban expansion of the Mooball Village and are being considered in a holistic manner, each proposal has separate constraints and are proposed to proceed as separate PPs.

Future Development Control Plan

Following Council's resolution of 20 July 2010, a DCP for Mooball has been included within the PRUs work program. An initial project scoping process and review of applicable background studies has occurred to date. It is anticipated that further Council reporting and public consultation will occur within the first half of 2013.

OPTIONS:

That Council:

1. Determines this matter in accordance with the recommendation of this report; or
2. Defers a recommendation pending clarification of any issues arising; or
3. Rejects the planning proposal or any aspect of it and provide reason for the decision.

Council officers recommend Option 1.

CONCLUSION:

The population within Tweed Shire Council is expected to grow to approximately 120,000 people by 2031 (Tweed Urban Land Release Strategy, 2009) resulting in a demand for approximately 1,350 ha of urban land. The majority of the subject site is identified within the Tweed Urban and Employment Land Release Strategy 2009 (the TUELR Strategy) as being 'potential urban area' (designated as Area 9). The rezoning sought through this Planning Proposal (PP) will assist in meeting this demand for urban land.

The now superseded Tweed Strategic Plan 2004-2024 identified Mooball as being a high priority for possible expansion. Further, the Community Strategic Plan 2011-2021 recognises this desire, however seeks to 'establish planning controls that balance the need for urban growth against the protection of agriculture, village character and the environment' (Objective 3.3.1). The investigations and findings of this PP (and future Development Control Plan provisions) are considered to establish this balance; however this needs to be validated through a formal public exhibition process.

In light of the above, it is recommended that the PP be forwarded to the NSW Department of Planning and Infrastructure, seeking a Gateway Determination to allow appropriate public consultation.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

It is anticipated that the PP will be supported by the development of Development Control Plan. This is included in the current PRU workplan and is anticipated to be undertaken in house.

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: Planning Proposal v1 - Gateway Determination - Mooball Residential Development (ECM 59910813)

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**17 [PR-CM] PP12/0002 - Mooball Residential Development at Lot 2 DP 828280
No. 5993 Tweed Valley Way, Mooball**

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP12/0002 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council's Planning Reforms Unit (PRU) is in receipt of a Planning Proposal (PP) application to facilitate a change in zoning for a portion of Lot 2 DP 828280, being 5993 Tweed Valley Way, Mooball from 1(a) Rural, to 2(d) Village.

The subject site was identified within the Tweed Urban and Employment Release Strategy 2009 (TUELRs) as a potential future urban release area and is to the west of an adjacent to property, which is currently the subject of planning proposal. The site has an area of about 60 hectares with the proposed rezoning covering about 5 hectares, consistent with the TUELRs.

The report highlights that only a high level strategic investigation has been undertaken at this stage, consistent with the statutory process, and whilst concluding that the site is suitable for further investigation by way of planning proposal there are two important issues that can only be effectively managed by a Planning Agreement.

The Planning Reform Unit Coordinator has assessed current resource commitments under the Unit's work program and advises that there is sufficient capacity to proceed with preparing a planning proposal with the assistance of an external service provider, which will be subject to a Cost Agreement with the Landowner.

The two important issues to be resolved by way of Planning Agreement are:

- The provision of an adequate standalone private waste water management system; and
- Clarification of Aboriginal Cultural Heritage and where determined necessary a physical (borehole) examination within predetermined areas of the site.

RECOMMENDATION:

That:

- 1. A planning proposal be prepared for PP12/0002 – Mooball Residential Development, Lot 2 DP 828280 No. 5993 Tweed Valley Way, Mooball, subject to the prior execution of a Costs and Expenses Agreement with the Landowner and/or Proponent; and**

2. **The Landowner/Proponent be advised that a Planning Agreement detailing the requirements for a standalone private waste water management system and associated licensing and, if deemed appropriate, detailing the requirements for any Aboriginal Cultural Heritage investigation, including physical examination by way of test pits and/or soil testing, deemed to be necessary by Council's Heritage Consultant for the project; and**
3. **Following completion, Planning Proposal PP12/0002 – Mooball Residential Development, Lot 2 DP 828280, 5993 Tweed Valley Way, Mooball be referred to the NSW Department of Planning and Infrastructure requesting a Gateway Determination under Section 56(1) of the Environmental Planning and Assessment Act 1979; and**
4. **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 to prepare a planning proposal has been received by Council's Planning Reforms Unit (PRU) to facilitate a change in zoning for a portion of Lot 2 DP 828280, being No. 5993 Tweed Valley Way, Mooball from 1(a) Rural, to 2(d) Village. A complete copy of the request can be found under Attachment 1 of this report.

The subject site is located directly adjacent to the southern perimeter of the existing Mooball village on Tweed Valley Way and covers a total area of 60.31ha. The land area subject to rezoning includes an area of 5.077 hectares. Currently accommodating a single dwelling, a packing shed and machinery shed, the site has historically been used for agricultural purposes, including cattle grazing and banana cultivation. The site is not classified as 'prime agricultural land'.

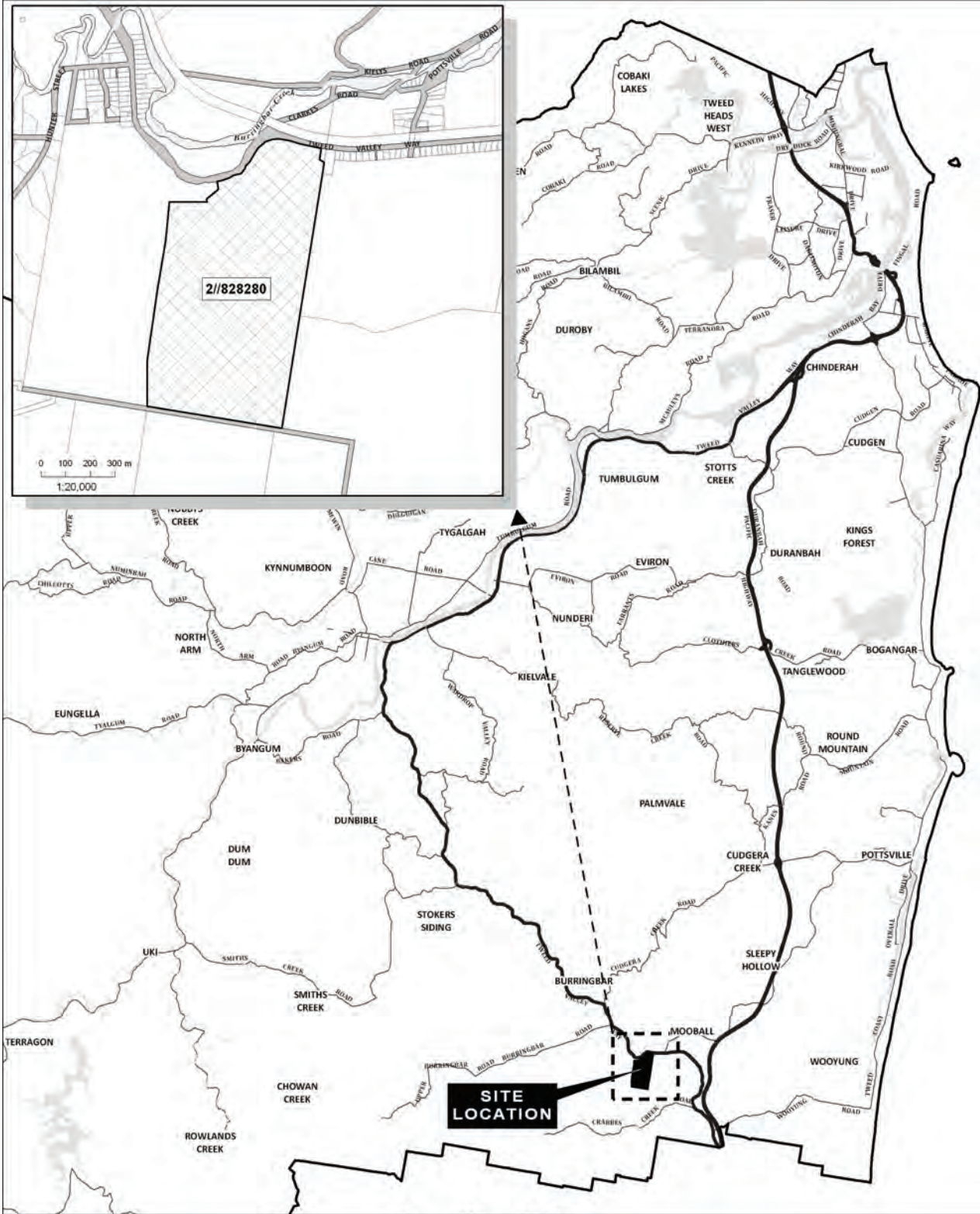
The site comprises of a gently undulating landscape that rises generally from north to south up to a steep ridgeline which exists along the southern boundary of the site. The site has significant visual connections to the surrounding landscape setting with local rural views across agricultural land and expansive district views from the main ridgelines of the site. The surrounding land uses comprise the village to the northeast and agricultural properties to the east, west and south.

The subject site is identified within Figures 1 and 2.

A brief summary of the relevant background information relating to the site is provided below:

- The Tweed Shire Urban Land Release Strategy 2009 identified the site as a 'release area' for 'short term' residential development, adopted in April 2009.
- The Burringbar Scoping Study (2005), undertaken by GHD, was commissioned by Tweed Shire Council and identifies a portion of the site as being suitable for future development due to it being 'relatively unconstrained in relation to bushfire, slope and flood and representing a natural continuation of the Mooball Township'.
- Council investigations within the preparation of the adjoining land (PP10/0007), detailed within a separate item of this Council agenda, acknowledges the previous studies supporting the expansion of Mooball, however recognises the existing servicing constraints and specifically seeks to maintain the 'Tweed Valley' character associated with these villages in any future urban release.
- Preliminary investigations of the site's opportunities and constraints have concluded that portions of the subject site are relatively free of constraints and this land can be developed for village purposes.
- This analysis has also shown that there are steeper sections of the site and vegetated areas that should not be developed. These areas have been preserved and enhanced within the preparation of the PP and future Development Control Plan (DCP) provisions in order to improve the visual and environmental qualities of the site and scenic area in which Mooball is situated.
- The construction of a privately funded on-site Sewerage Treatment Plant (STP) as part of the adjoining land parcels gained in principle support from Tweed Shire Council at a Council meeting held Tuesday 16 November 2010. The subject site is proposed to be serviced by this same STP.

FIGURE 1 – LOCALITY PLAN



Locality Plan

Lot 2 DP 828280
5993 Tweed Valley Way, Mooball

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Cadastre: 28 November, 2012.
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Boundaries shown should be considered approximate only.



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FIGURE 2 – SUBJECT PORTION OF THE SITE PROPOSED TO BE REZONED

A desktop strategic (planning) analysis indicates that the expansion of the urban release area by incorporating the subject site is logical and represents a coordinated response to the consolidation and rationalisation of the planning framework for the release area and the wider Mooball village. Pursuing an integrated framework would assist in revitalising the Mooball village, which has suffered economic decline since firstly the closure of the Casino-Murwillumbah rail line and secondly, the Pacific Highway diversion in 2002.

Whether the technical and policy aspects of the proposal likewise support the proposal is unclear at this stage and will be investigated in detail prior to any public exhibition.

Given that the proposal provides a direct benefit through the provision of a diverse range of housing, additional support for existing and future village uses by increasing economic investment and population within the immediate vicinity, it is concluded that the request should proceed into a PP.

Stand alone Private Waste Water Management

As discussed within a separate item of this Council agenda (relating to PP10/0007 - Mooball Residential Development), Council's waste water treatment plant currently under construction on Pottsville-Mooball Road does not have a surplus capacity to accommodate the proposed development and is not amenable to an upgrade of a capacity the new development will necessitate. In response to this the proponent proposes to integrate with the proposed infrastructure layout of the land directly east of the subject site, which has committed to providing a stand-alone private wastewater disposal utility scheme and to obtain a licence under the Water Industry Competition Act 2006 (WIC Act). The provision of a stand-alone private reticulated system for the release area will enable the orderly and economic development of urban land and is an alternative to utilising the more traditional approach of relying on councils and water authorities for the provisions of essential infrastructure. This is an initiative of the NSW State Government.

Obtaining a licence under the WIC Act is anticipated to be a lengthy and costly process. Accordingly it is proposed that the PP advance ahead of obtaining a licence, enabling the certainty of the rezoning prior to committing significant resources to a lengthy process. This approach is with the understanding that Council will require the WIC Act licence be obtained prior to any development application being lodged for the site.

In order to formalise this arrangement, both Council's technical officers and the proponent have indicated a willingness to enter into a Planning Agreement to ensure the provision of appropriate sewerage infrastructure in a timely manner. It is anticipated that this Planning Agreement will be drafted and placed on public exhibition with the PP.

Aboriginal Cultural Heritage

The PP application included an Aboriginal Cultural Heritage (ACH) report which concludes that:

- *There were no Aboriginal archaeological sites identified as a result of the field inspection. No areas with a high or moderate potential to contain scientifically significant Aboriginal cultural material were identified during the site inspection;*
- *There is a broad ridgeline running through the western side of the Project Area that has been identified by a Tweed Byron LALC Officer as a potential Aboriginal campsite;*
- *The Tweed Byron LALC Officer is of the opinion that archaeological test excavations are warranted in this area, as it has the potential to contain culturally significant subsurface deposits of Aboriginal Objects; and*

- *It is noted that it is quite likely that at least a background scatter of stone tools will be located within this area, however, it is the consultants considered opinion that, on the evidence available, the archaeological potential of this area does not reach the threshold for seeking an Aboriginal Heritage Impact Permit or undertaking archaeological test excavations. This is demonstrated by the synthesis of regional assessments and past land use analysis undertaken. This position is consistent with the analysis against the Due Diligence Code.*

The PP was reported to the Aboriginal Advisory Committee (AAC) meeting of 3 August 2012. The AAC resolved that:

1. *The Aboriginal Advisory Committee acknowledges that Council needs to meet with Tweed Byron Local Aboriginal Land Council and Everick (Tim Robins) to discuss some of the matters rising from the Tweed Valley Way, Mooball proposal.*
2. *The Aboriginal Advisory Committee be satisfied that Aboriginal Cultural Heritage will not be impacted by this or future development.*
3. *Council makes a long term commitment to protect undiscovered relics that could come to the fore with any future ground disturbance.*

On balance, the desktop review undertaken to date indicates that formal testing not be required prior to the progressing the PP further, however that the testing should be undertaken prior to a future development application being lodged.

This process allows the PP to be processed in a timely manner and the proposed zoning to be obtained prior to undertaking further study. This approach also ensures that appropriate investigations occur and that any future subdivision layout adequately responds to any findings of significance, as is considered best practice.

Despite the above, further investigations and/or peer review may be required as more detailed analysis is undertaken throughout the preparation of the PP.

The PP and the abovementioned recommendation was presented the AAC meeting agenda of 7 December 2012. The minutes of this meeting will be separately presented to Council.

Plan Making Provisions

As detailed within a separate agenda item of this Council meeting, a number of recent changes to the NSW Department of Planning and Infrastructures' (DP&I) plan-making provisions have been made. In accordance with those amendments, Council is required to nominate to the DP&I if Council seeks the delegation powers available to them in order to make the PP. The PP comprises a number of complex elements, including:

- Subject site is located outside of the established Town and Village Growth Boundary for urban growth established within the DP&Is Far North Coast Regional Strategy; and
- Servicing by way of a future, private, stand-alone sewerage system.

In light of the above, it is considered appropriate to request plan-making delegations remain with the DP&I as the PP is not considered a minor amendment.

OPTIONS:

That Council:

1. Proceeds with the planning proposal in accordance with the recommendation of this report; or
2. Defers a recommendation pending clarification of any issues arising; or
3. Holds the planning proposal request in abeyance until the next review of the PRU work program.

Council officers recommend Option 1.

CONCLUSION:

Council has established a fees and charges framework that enables the Planning Reform Unit (PRU) to utilise external consultancies in the preparation and assessment of planning proposals, at the proponent's cost. This framework has been utilised on several occasions to date with positive results, including the adjoining PP10/0007. It is recommended that this framework be utilised in order to progress the assessment and preparation of a planning proposal (PP), concurrent to the adjoining PP, allowing a holistic approach.

In this instance, the PP discussed above is considered to be 'strategically important', for two primary reasons. Firstly there is a need to support the economic vitality of the Mooball village through an appropriate planning framework, and secondly, provide a co-ordinated planning approach to the Mooball release area and the wider Mooball village through the preparation of the subject PPs and a locality based Development Control Plan process.

For the reasons discussed above it is concluded that this PP should be pursued within the PRU 2012/2013 work program.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Undertaking the planning proposal detailed in this report will be managed through a series of funding agreements and memorandum of understandings, which will ensure that there will be negligible financial impact on Council.

From a resourcing perspective it is likely that these additional projects will keep the Planning Reform Unit's resources at fully committed for a period of at least 6 months.

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: Request to prepare a Planning Proposal (PP12/0002) (ECM 59971419)
Request to prepare a Planning Proposal (PP12/0002) Appendix A (ECM 59971421)
Request to prepare a Planning Proposal (PP12/0002) Appendix B (ECM 59971423)
Request to prepare a Planning Proposal (PP12/0002) Appendix C (ECM 59971424)
Request to prepare a Planning Proposal (PP12/0002) Appendix D (ECM 59971430)
Request to prepare a Planning Proposal (PP12/0002) Appendix E (ECM 59971432)
Request to prepare a Planning Proposal (PP12/0002) Appendix F (ECM 59971436)
Request to prepare a Planning Proposal (PP12/0002) Appendix G (ECM 59971449)
Request to prepare a Planning Proposal (PP12/0002) Appendix H (ECM 59971452)
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REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

18 [CNR-CM] Kingscliff Foreshore Management Update

SUBMITTED BY: Natural Resource Management



Caring for the Environment

SUMMARY OF REPORT:

This report presents an update of activities related to the management of Kingscliff foreshore.

During and following severe erosion in the 2009 to 2011 period, Kingscliff foreshore has received much attention from the media, communities and governments.

The NSW Government has recommended to Council a new Coastal Zone Management Plan (CZMP) be prepared for Kingscliff. Among other considerations the CZMP is to re-examine all options for foreshore management including a planned retreat option and is to specifically consider structural groynes as a defence works option.

In response to the severe erosion and the need to prepare a CZMP, Council has initiated a range of actions, some of which are complete and others are underway. These actions are described in the report.

RECOMMENDATION:

That the Kingscliff Foreshore Management update be received and noted.

REPORT:

Background

The *Tweed Shire Coastline Management Plan* (CMP2005) was prepared by Council in accordance with the requirements of the *NSW Coastline Management Manual* (NSW Government, 1991) and adopted by Council in June 2005. The plan identifies Kingscliff foreshore and beach as being at risk from hazards associated with the natural coastal processes of storm erosion, long-term recession (landward movement) and wave inundation.

CMP2005 includes a parcel of proposed actions to reduce risk and enhance both foreshore amenity and foreshore environment. The actions include beach rebuilding with sand (beach nourishment), seawall construction, stormwater management, dune plantings, and fencing. In 2008 the Plan was modified to reduce the extent of protection by seawalls with greater reliance to be placed upon beach nourishment.

Since adoption of CMP2005 a number of important events for Kingscliff foreshore have taken place. These are:

1. Severe and re-occurring erosion most likely resulting from a cyclical change in the short/medium term climate pattern (from El Niño to extreme La Niña conditions - 2009 to 2012). Such change can cause a shift in dominant swell and sand transport directions.
2. Installation of temporary and permanent emergency defence works by Council in response to the severe erosion at a cost of over \$2M.
3. Revisions to the *NSW Coastal Protection Act 1979 No. 13* that now call for Councils to prepare Coastal Zone Management Plans (CZMP) in accordance with new guidelines. For Tweed Shire this involves revising and updating CMP2005.
4. Interest in the severe foreshore erosion by the NSW Government and its "Coastal Panel". The Panel has recommended to the Minister for the Environment that Tweed Shire Council prepare a CZMP that re-examines options for foreshore management at Kingscliff including planned retreat and a groyne field.

Current Situation

The Kingscliff foreshore (where public assets were at risk) has been stabilised (erosion temporarily stopped) by installing emergency foreshore defence works of rock, concrete and geotextile bag seawalls.

The strong La Niña climatic conditions have abated and natural transport of significant volumes of sand from south of Sutherland Point onto Kingscliff Beach over the past six to nine months (more southerly swell) has added to the foreshore stability.

In response to the severe erosion and the requirements of the *NSW Coastal Protection Act 1979 No. 13* a number of foreshore management planning activities are currently being undertaken by Council including:

- Completing an EIS for removing sand from the bed of the Tweed River downstream of Barney's Point Bridge and delivering it via pipe to Kingscliff Beach. This may potentially secure an extensive source of marine sand for beach nourishment purposes when required, as well as meeting some of the objectives of the Tweed River Management Plan that proposes dredging at this location.
- Undertaking the component investigations and reporting necessary to complete the CZMP for Kingscliff and Tweed Shire. These include:
 - In collaboration with Byron Shire Council, updating and re-assessing coastal hazards introducing new knowledge of the shorter-term climatic influences (El Niño Southern Oscillation - ENSO - the oscillation between El Niño and La Niña conditions), predicted effects of sea level rise in shaping the foreshore and new assessment techniques for wave and sand movements.
 - Examining structural measures for protecting the foreshore, including various seawalls of different sizes, materials, and alignment. Also assessing use of groynes as a defence structure as specifically requested by the NSW Government's Coastal Panel.
 - This approach, whilst consistent with the CMP2005, is inconsistent with the previously adopted position of Council re rely on sand nourishment only. Since the recent erosion event there has been a significant shift in community and officer views over the merits of a terminal wall.
 - Assessing financial and social costs / benefits of foreshore management options.
 - Preparing of a foreshore management options report that will summarise the features of a range of management options, comparing these features across considerations of cost, social aspects, environmental, physical, amenity, and longer-term implications.
 - Reviewing the CMP2005 and formulating the preparation of the new CZMP for the Tweed Shire coastline.

OPTIONS:

That this report be received and noted.

CONCLUSION:

Further reports will be provided to Council as studies are finalised in early to mid 2013.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

Tweed Shire Coastline Management Plan 2005.

b. Budget/Long Term Financial Plan:

Components of this project are funded through the Seven Year Plan however there is a significant shortfall in the order of \$6-\$8million.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.4 Manage the Tweed coastline to ensure a balance between utilisation and conservation
 - 4.4.1 Recognise and accommodate natural processes and climate change
 - 4.4.1.2 Identify and manage coastal areas with erosion vulnerability
 - 4.4.1.2.1 Kingscliff foreshore protection

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

19 [CNR-CM] Review of Water Quality in the Tweed Estuary, 2007-2011

SUBMITTED BY: Natural Resource Management



Caring for the Environment

SUMMARY OF REPORT:

The purpose of this report is to:

- Familiarise Councillors with the condition of water quality in the Tweed River and how it is affected by catchment land use, discharge of pollutants and the interaction of biological and climatic factors.
- Outline the broad management objectives required to protect and enhance water quality and ecosystem health in the Tweed River.
- Make recommendations relating to the adoption of water quality objectives for management of the river.
- Make the results of the water quality review available to the community.

RECOMMENDATION:

That Council:

- 1. Receives and notes the report, 'Review of Water Quality in the Tweed Estuary 2007-2011' and make it available to the community.**
- 2. Adopts water quality objectives set by the NSW Government Office of Environment and Heritage for the Tweed Catchment.**

REPORT:

INTRODUCTION

Council implements a comprehensive water quality monitoring program that includes collection and analysis of water samples from most of the major waterways of the Tweed Shire.

Individual monitoring programs are undertaken in:

- The Tweed River Estuary, from Jack Evans Boat Harbour to Murwillumbah, including the Rous River, Cobaki and Terranora Broadwaters and their tributaries.
- The Tweed Coast estuaries including Cudgen, Cudgera and Mooball Creeks.
- The freshwater catchment of the Tweed River, including the main arms and tributaries of the Tweed and Oxley Rivers.
- The potable water supply system, from Clarrie Hall Dam to multiple locations throughout the Shire's reticulated network.

Water quality sampling and analysis is undertaken by Council staff from the Water Unit's Tweed Laboratory.

Water quality monitoring is undertaken for three primary purposes:

- To assess the environmental health and recreational suitability of Tweed waterways.
- To comply with conditions of waste water treatment plant effluent discharge licences.
- To monitoring quality of the drinking water supply.

This report presents an analysis of water quality data collected in the Tweed River estuary between 2007 and 2011. Data has been reviewed by the consulting firm, ABER (Aquatic Biogeochemical and Ecological Research) Pty Ltd. The five year time span over which data has been collected allows for consideration of seasonal variation within the water quality data set.

The purpose of this report is to:

- Familiarise Councillors with the condition of water quality in the Tweed River and how it is affected by catchment land use, discharge of pollutants and the interaction of biological and climatic factors.
- Outline broad management recommendations to protect and enhance water quality and ecosystem health in the Tweed River.
- Make recommendations relating to the adoption of water quality objectives for management of the river.
- Make the results of the water quality review available to the community.

TWEED RIVER ESTUARY WATER QUALITY MONITORING PROGRAM

Council collects water quality data from a total of 29 sites from within the main arm of the Tweed River and the Cobaki and Terranora Broadwater systems. The annual cost of sample collection and analysis is approximately \$125,000.

The location of the sampling sites are as shown in the two figures below. Figure 1 shows the Tweed River from Jack Evans Boat Harbour to Murwillumbah, and figure 2, Terranora Creek and the broad waters.



Figure 1. Water quality monitoring sites in the Tweed and Rous Rivers.

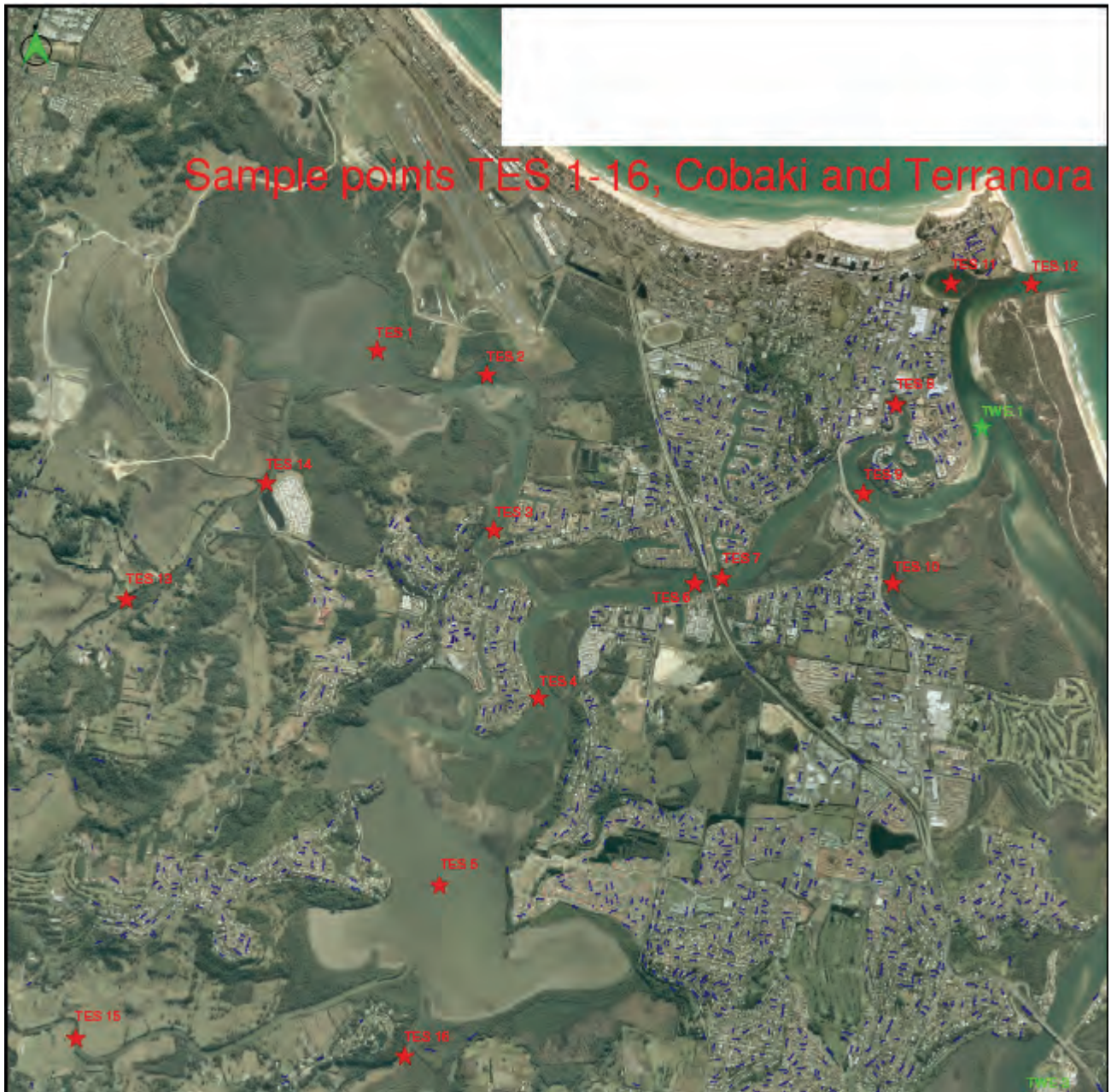


Figure 2. Water quality monitoring sites in the Cobaki and Terranora Broadwaters and creeks.

The following water quality parameters are sampled monthly at each of the monitoring points:

- True and Apparent Colour
- Biochemical Oxygen Demand
- Chlorophyll 'a'
- Dissolved Oxygen
- pH
- Salinity
- Water Clarity
- Suspended Solids
- Temperature
- Phosphorus
- Nitrogen

The monitoring program generates a very large amount of data, and when combined with inter-annual and seasonal variability in rainfall and river flow, requires significant skill and experience to statistically analyse and interpret.

Data collected by Council over the period 2007 - 2011 was analysed by the specialist consulting firm ABER Pty Ltd and the final report is included as an attachment.

An important measure of the suitability of water quality is to compare it to relevant standards, in this case, water quality guidelines developed by ANZECC 2000 for maintenance of aquatic life in 'slightly disturbed ecosystems'. These are national guidelines and correspond with water quality objectives set for the Tweed River by NSW Government Office of Environment and Heritage.

Observations included in the ABER report refer to water quality compliance with or exceedence of these objectives. The ABER report also describes the biological processes that occur within the estuary, explaining why certain water quality measures 'fail' and summarising the overall health of various reaches of the estuary, under various wet or dry season scenarios.

TWEED ESTUARY WATER QUALITY AND ECOLOGICAL HEALTH

At times and in various locations, the Tweed Estuary exhibits signs of poor water quality and ecological health, including:

- High nutrients
- Phytoplankton blooms
- Poor water clarity
- Low levels of dissolved oxygen

It must be stressed that these issues are not constant across all parts of the estuary and their occurrence is not static over time. It is also worth noting that some periods of poor compliance relate to natural phenomena, for example floods, where even pristine waterways would "fail" some targets for ambient water quality.

Despite this natural variability, there are significant periods when key water quality objectives are not met in the Tweed River, and there is a clear link between water quality problems and impacts of land use and pollutant discharge within the catchment.

A summary of water quality problems, their causes, implications, and broad management responses are outlined individually below.

High Nutrients

Concentrations of the nutrients nitrogen and phosphorus drive the growth of aquatic plants. In estuaries, plants can be broadly categorised into those which are beneficial (eg. sea grass and benthic micro-algae*) and those which cause water quality problems (eg. phytoplankton and algae blooms*).

(*See definition of terms in next sub-section)

Historical and ongoing development of the Tweed River catchment has resulted in an increase in the amount of nutrients entering the estuary. Nutrients are derived from catchment runoff (eroded soil, cattle manure, agricultural fertilisers, urban stormwater, etc.) and the discharge of treated effluent from Council's waste water treatment plants.

Excess levels of nutrients, particularly nitrogen, causes increased phytoplankton growth, the impact of which is explained in the next sub-section.

A summary of the nutrient concentrations in the Tweed estuary is as follows:

- In the Tweed and Rous, nitrogen and phosphorus concentrations exceed ANZECC water quality guidelines for more than 50% of the time in the middle and upper estuary (Chinderah to Murwillumbah).
- Nutrient concentrations are generally acceptable in the lower estuary due to the high rate of tidal flushing.
- Nitrogen exceeds ANZECC guidelines for more than 75% of the time in the tributaries of Cobaki and Terranora Broadwaters (Duroby, Bilambil, Piggabeen and Cobaki Creeks) and approximately 50% of the time in the Broadwaters.
- Nitrogen concentrations remain elevated in the mid Tweed estuary due to inputs of treated effluent from the Murwillumbah and Kingscliff waste water treatment plants.
- Concentrations of nutrients peak during high flow events when diffuse catchment runoff is at its highest.
- The release of effluent (from the Banora Point waste water treatment plant) to Terranora Creek has no impact on nitrogen concentrations in this location due to tidal flushing and the uptake of nutrients by benthic micro-algae.

Phytoplankton Blooms

Phytoplankton are free floating single celled plants. Phytoplankton blooms in response to increased nutrient concentrations in waterways. In estuaries, nitrogen is the most important nutrient. The turbid greenish appearance of the mid reaches of the Tweed estuary is caused by high concentrations of phytoplankton combined with suspended particles of fine silt.

Phytoplankton blooms have a number of negative impacts, including:

- Reducing water clarity

- Consuming dissolved oxygen when they die and are decomposed. This leads to depressed dissolved oxygen concentrations in waterways, and decreases the amount of beneficial life that an estuary can support

A summary of the phytoplankton bloom status in the Tweed estuary is as follows:

- There are moderately severe phytoplankton blooms in the middle and upper estuary of the Tweed, including the Rous.
- There are moderately severe phytoplankton blooms in Terranora Broadwater and the estuarine parts of Duroby, Bilambil, Piggabeen and Cobaki Creeks.

Poor Water Clarity

Water clarity is essential for the healthy functioning of the estuarine ecosystem. Water clarity is affected by the total amount of material suspended in the water column (total suspended solids), which includes a combination of silt, fine particles of dead organic matter and phytoplankton blooms.

High levels of total suspended solids decrease the amount of light available at the bottom of the river where benthic micro-algae and sea grass are found. Benthic micro-algae are a group of beneficial plants that live on and within the sediments. These plants take up and process nutrients and reduce the potential for phytoplankton blooms. Their ability to process and lock up nutrients is constrained in low light conditions because they cannot use sunlight to grow. The same applies to seagrass beds, which are essential habitat for juvenile fish.

A summary of the water clarity status of the Tweed estuary is as follows:

- Total suspended solids levels are at their highest in high flow conditions when flood flows transport large volumes of eroded soil and silt from the catchment into the estuary.
- During low flow, silt deposited in the estuary following floods is resuspended by tidal currents, causing poor water clarity in the middle and upper Tweed Estuary and broadwaters.
- In low flow conditions, water clarity in the lower Tweed Estuary and Terranora Creek is excellent, however longer water residence times and high nutrient levels promote phytoplankton blooms in the middle and upper Tweed and broadwaters.

Low Levels of Dissolved Oxygen

Levels of dissolved oxygen within the waters of an estuary are a primary control over the abundance and range of aquatic life that can be supported. Levels of dissolved oxygen can plunge dramatically and cause fish kills, and/or remain moderately depressed over long periods.

Fish kills are most often caused by inputs of runoff from acid sulphate soils or deoxygenated flood waters from the flood plain (as per historical fish kills in the Tweed and more recently in the Richmond). Long term dissolved oxygen depletion is caused by the bacterial decomposition of organic matter (dead phytoplankton) in the sediments, which consumes dissolved oxygen from the water column.

A summary of the dissolved oxygen status of the Tweed estuary is as follows:

- Dissolved oxygen levels in the lower Tweed Estuary and Terranora Creek are generally good due to tidal flushing.
- During low to medium flow, levels of dissolved oxygen in the middle and upper Tweed Estuary do not meet ANZECC guidelines for more than 50% of the time.
- Lowest levels of dissolved oxygen are observed in the middle estuary following the input of flood waters.

SUMMARY OF ESTUARY CONDITIO

Measuring water quality throughout the estuary and analysing the interaction of climatic, physical and biological processes that affect it provides a strong basis for interpreting the overall condition of the estuary.

Water quality in the mid to upper Tweed Estuary and within the Cobaki and Terranora Broadwaters and their tributaries did not comply with ANZECC guidelines for the maintenance of aquatic ecosystems for a significant amount of the time during which sampling was undertaken. It is expected that estuaries will exceed water quality targets due to natural phenomena, for example floods, however it is considered that the extent to which water quality targets have been exceeded in the Tweed reflects a genuine problem. Poor water quality observed in the middle to upper reaches of the estuary and broadwaters means that the ability of the estuary to support a diverse and abundant array of aquatic life is restricted to the lower reaches where water quality is better.

Estuary ecosystem health is dependent on both water quality and the condition of riparian vegetation. While water quality is at times poor in the broadwaters and mid reaches of the river, these areas also provide some of the rivers most extensive and valuable mangrove wetlands. The fact that habitat is in good condition offsets to some degree, the detrimental impact of poor water quality on overall ecosystem health. Unfortunately in parts of the upper estuary, both riparian condition and water quality is poor.

ESTUARY MANAGEMENT RECOMMENDATIONS

The most important actions to improve water quality throughout the Tweed River are those which reduce levels of nutrients and eroded soil entering waterways.

Strategies to achieve this include:

- Restricting cattle access to waterways and decreasing direct fouling of streams with manure.
- Revegetating riparian areas to reduce creek bank erosion, filter contaminants from runoff, shade waterways and increase extent and connectivity of riparian habitat.
- Retrofitting urban stormwater water quality improvement devices into existing urban areas.
- Modifying agricultural practice to decrease loss of top soil and fertiliser.
- Modifying flood plain drainage to decrease the release of Acid Sulphate Soil runoff.
- Achieving best practice outcomes in stormwater quality treatment in new development areas, in particular, ensuring strict compliance with erosion and sediment controls during sub-division and dwelling construction phases.
- Reducing nutrient concentrations in effluent released from Councils waste water treatment plants and reusing as much treated effluent as possible.

UPDATING WATER QUALITY OBJECTIVES FOR THE TWEED ESTUARY

For the past twelve years Council has used a set of water quality objectives set for the Tweed River in a document called the Tweed River and Catchment Interim Water Quality Management Plan. This was prepared for Council by the consulting firm WBM Oceanics in October 2000.

The water quality objectives set in this document are less stringent than water quality guidelines proposed for the protection of aquatic ecosystems in slightly disturbed ecosystems by ANZECC 2000, and water quality objectives set for the Tweed Catchment by the NSW Government Office of Environment and Heritage.

The table below shows the water quality objectives adopted by Council in 2000, and the water quality objectives set for the Tweed Catchment by the NSW Government Office of Environment and Heritage.

Parameter	Unit	Existing Council Objective	Tweed Adopted	Recommended Objective as per NSW Office Environment and Heritage
pH	pH units	7 - 9		7.0 - 8.5
Dissolved oxygen	mg/L	>6		80 - 100% saturation
Suspended solids	mg/L	<10		<10
Total phosphorous	mg/L	< 0.05		0.03
Total nitrogen	mg/L	< 0.5		0.3
Chlorophyll a	ug/L	<10		<4
Faecal coliforms* Enterococci*	No. / 100 ml	<14		

* Counts of faecal coliforms and enterococci are indicators of bacterial contamination of a waterway and are more relevant to the recreational safety than ecosystem health.

ANZECC 2000 guidelines for faecal coliforms and enterococci for primary contact recreation are as follows:

Faecal coliforms: Median over bathing season of < 150 faecal coliforms per 100 mL, with 4 out of 5 samples < 600/100 mL (minimum of 5 samples taken at regular intervals not exceeding one month).

Enterococci: Median over bathing season of < 35 enterococci per 100 mL (maximum number in any one sample: 60-100 organisms/100 mL).

It is recommended that Council officially adopt more stringent water quality objectives and come into accord with national and state policy. It has also been determined through the most recent analysis of water quality in the Tweed Estuary that these quality objectives are a more appropriate target for the protection of aquatic ecosystem values. Data collected through the study shows that there is a clear relationship between nitrogen levels, the growth of algae, and the levels of dissolved oxygen maintained within the estuary. When nitrogen concentrations are at or less than 0.3 mg/L, dissolved oxygen is maintained at approximately 80% saturation, which is the key indicator for the ability of the estuary to sustain diverse and abundant aquatic life.

CONCLUSION

The Tweed Estuary is a dynamic environment, with water quality changing hourly, daily and seasonally in response to sunlight, tides and freshwater flows. There are distinct zones within the estuary that exhibit different water quality due to a combination of natural conditions and input of pollutants.

There are clear signs that due to historical development of the catchment and the ongoing input of nutrients and sediments from land use and waste water treatment plants, that water quality has not meet nationally and state recommended targets for significant proportions of the period 2007 - 2011.

Despite water quality problems, the Tweed Estuary sustains large areas of high value aquatic habitat and ecological communities, and supports a large range of important recreational activities.

Due to the influence of climate and the highly dynamic nature of estuaries, monitoring must be ongoing to allow long term detection and interpretation of trends in condition.

The information contained with the ABER report, Review of Water Quality in the Tweed Estuary 2007 - 2011, provides an excellent analysis of the climatic and biological processes controlling water quality in the river, and should be received and noted by Council and made available to the community.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.1 Protect the environment and natural beauty of the Tweed
- 4.1.2 Protect, regulate and maintain natural assets (the coastline, coastal and inland waterways, biodiversity, bushland and scenic landscapes) for current and future generations
- 4.1.2.7 Water quality monitoring and ecosystem health assessment
- 4.1.2.7.1 Water quality monitoring program in Tweed River, coastal estuaries and upper catchment

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Final Report "Review of Water Quality in the Tweed Estuary 2007-2011" dated 30 March 2012 prepared by ABER Pty Ltd (ECM 58637797)

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20 [CNR-CM] River Health Grants Program

SUBMITTED BY: Community and Cultural Services



Caring for the Environment

SUMMARY OF REPORT:

This report provides Council with details of proposed investments in river and riparian management, through implementation of the River Health Grants Program.

The goal of this project is to improve the quality of Tweed waterways by subsidising works on private properties, for example by revegetation, weed control and provision of off stream water for cattle. The source of funding for this program is the Water Unit mandatory dividend for water and sewerage.

RECOMMENDATION:

That Council approves the following River Health Grant:

Property Owner	Locality	Stream frontage (m)	Objective of works	Council contribution
Hickel and Geraghty	Doon Doon	60	Stabilise landslip by replanting.	\$1,500

REPORT:

Since June 2006 Council has worked with riparian landowners to initiate projects which protect and improve water quality and stream bank condition. The goal of this program is to enhance the environmental condition of Tweed waterways, improve the water quality of raw water extracted for treatment at Bray Park.

The River Health Grants Program has been successful in attracting a diverse range of landholders, from traditional farmers to rural lifestyle property owners and has made an immediate improvement in the riparian conditions of treated areas.

In each case of funding, an agreement with land holders will be signed that details Council's contribution to the project and the commitments and responsibilities of the land holder. Each grant is based on the agreement that the landholder will contribute significantly to the project, in most cases by undertaking agreed works, with materials supplied by Council.

There is only one project included in this report - Ronald Hickel and Emma Geraghty in the headwaters of Doon Doon Creek. The landowners have participated in a previous River Health Grant to fence off Doon Doon Creek and other minor streams on their property in 2007. In addition to the natural regeneration that has occurred within the fenced off areas, the landowners have planted many trees and controlled weeds across a large area of their property. The current project proposal is to supply 250 trees, tree guards, stakes, fertiliser and mulch rings to stabilise a gully landslip. The landowners have already undertaken the necessary earthworks and have agreed to plant and maintain the trees.

It is proposed to support the landholders as detailed below.

Property Owner	Locality	Stream frontage (m)	Objective of works	Council contribution
Hickel and Geraghty	Doon Doon	60	Stabilise landslip by replanting.	\$1,500

CONCLUSION:

The project nominated for approval in this round of river health grant agreements all include significant in-kind contributions from the property owners. Projects will achieve the aims of the River Health Grants Scheme, and are in accord with the Water Supply Catchment Stream Bank Protection Policy.

COUNCIL IMPLICATIONS:

a. Policy:

Water Supply Catchment Stream Bank Protection Version 1.2.

b. Budget/Long Term Financial Plan:

Funded through River Health Grants program

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.1 Protect the environment and natural beauty of the Tweed
- 4.1.2 Protect, regulate and maintain natural assets (the coastline, coastal and inland waterways, biodiversity, bushland and scenic landscapes) for current and future generations
- 4.1.2.5 Revegetate riparian zones
- 4.1.2.5.1 River health grants on private land

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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21 [CNR-CM] Biodiversity Grant Program

SUBMITTED BY: Natural Resource Management



Caring for the Environment

SUMMARY OF REPORT:

On 27 January 2009 Council unanimously approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire.

The purpose of this report is to seek Council's approval to fund five private landowners, as listed in this report, in accordance with the provisions of the Biodiversity Grant Program.

RECOMMENDATION:

That Council approves the proposed Biodiversity Grants to assist private landowners to undertake the projects listed in the table contained within the report.

REPORT:

On 27 January 2009 Council approved the implementation of a Biodiversity Grant Program to assist private landowners, community groups and researchers to undertake projects that contribute to maintaining and improving biodiversity values within Tweed Shire. This initiative represents an important component of Council's Biodiversity Program.

The Biodiversity Grant Program supports projects that contribute to the following ecological priorities within Tweed Shire:

- Rehabilitation of degraded habitats
- Restoration of previously cleared areas
- Threatened species recovery
- Management of threatening processes
- Monitoring and research

Applications under the program can be made throughout the year and are assessed using the following criteria:

- Ecological benefits (e.g. ecological status, multiple ecological priorities, contribution to State and regional biodiversity targets etc)
- Value for money (including in kind contributions, external funding)
- Technical capability and applicant track record
- Site security (preference will be given secure sites e.g. conservation covenants, Environmental Protection zones etc)
- Ongoing maintenance requirements
- Spread of projects across ecological priorities and the Shire (including projects funded from other sources)

The purpose of this report is to seek Council's approval to fund the five private landowners visited since the November 2012 Council meeting as listed below, in accordance with the provisions of the Biodiversity Grant Program.

The proposed grants involve the provision of services by professional bushland regenerators to assist landholders to more effectively manage environmental weeds, protect native vegetation and improve wildlife habitat.

Name	Area	Estimate (\$)	Description
Church	Nobbies Creek	1,500	Site Action Plan
Couchy Creek Co-op	Numinbah	2,160	Ecological restoration of riparian area
Harries	Nunderi	4,850	Site Action Plan plus ecological restoration work and planting of 50 koala food trees
Johnson	Crabbes Creek	1,500	Site Action Plan
Spragg	Hopkins Creek	1,500	Site Action Plan
	Total	\$11,510	

OPTIONS:

1. That Council approves the proposed Biodiversity Grants to assist private landowners to undertake the projects listed in the table contained within the report.
2. That Council does not approve the proposed Biodiversity Grants to assist private landowners to undertake the projects listed in the table contained within the report.

CONCLUSION:

This program is consistent with the adopted Tweed Vegetation Management Strategy 2004 and the Council resolution of 27 January 2009 which established the Biodiversity Grant Program.

COUNCIL IMPLICATIONS:**a. Policy:**

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

\$11, 510 from existing Biodiversity Program budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.2 Conserve native flora and fauna and their habitats
- 4.2.1 Promote the protection of native vegetation and wildlife habitat of high conservation value, social or cultural significance in Tweed Shire

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

22 [CNR-CM] Variation to Contract EC2011-049 Management of Stotts Creek Landfill Facility

SUBMITTED BY: Waste Management



Supporting Community Life

SUMMARY OF REPORT:

Contract EC2011-049 is held by Solo Resource Recovery to manage the Stotts Creek Resource Recovery Centre. The works include managing the landfill operations, managing the recycling stations, environmental controls, scavenging recyclables materials, running the tip shop and other ancillary activities. The Contract is due to expire on 1 December 2013. Solo Resource Recovery also processes and markets greenwaste under an expiring contract (EC2012-031). Council officers approached Solo Resource Recovery to seek a variation in the Contract to materially change the way wastes are handled on the site (bulking up wastes ready to transport to an alternative site instead of landfilling) and add the processing of green wastes into the schedule of works. Solo Resource Recovery has provided a price variation to undertake the works which is summarised in Confidential Attachment A.

The price variation is considered reasonable and in accordance with previous tender pricing and will allow Council to amend operations at Stotts Creek Resource Recovery Centre in line with a broader waste management strategy.

RECOMMENDATION:

That:

- 1. Council accepts the price variation of \$1,454,200 (incl. GST) for landfill works and \$60.50 (incl. GST) per tonne of greenwaste from Solo Resource Recovery to undertake the modified works under *EC2011-049 Management of Stotts Creek Landfill Facility* materially changing the way wastes are handled and adding the processing of greenwaste into the schedule of works.**
- 2. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act 1993, because it contains:**
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

REPORT:

Contract EC2011-049 is held by Solo Resource Recovery to manage the Stotts Creek Resource Recovery Centre. The works include managing the landfill operations, managing the recycling stations, environmental controls, scavenging recyclable materials, running the tip shop and other ancillary activities. The Contract is due to expire on 1 December 2013.

Council officers approached Solo Resource Recovery to seek a variation in the Contract to materially change the way wastes are handled on the site and add the processing of green wastes into the schedule of works. Council will be considering another business item at the December meeting that considers transporting and disposing of wastes at an alternative landfill facility. In order to undertake that task, the waste must be handled and bulked up into a large bin or truck trailer ready for transport. Council officers have approached Solo Resource Recovery to handle the wastes ready for transport instead of landfilling the wastes at Stotts Creek Resource Recovery Centre. There will be some residual landfilling still to occur at Stotts Creek, such as contaminated waste and asbestos, and Solo will still be responsible for all the environmental controls on the site. Scavenging material for resale and recycling will still occur prior to transport. All of Council's kerbside collected recyclables will still go to the Chinderah Materials Recovery Facility (recycling plant) as per normal.

Solo Resource Recovery has agreed to conduct the handling and bulking of wastes for the length of the Contract (until 1 December 2013) and have submitted a price variation which is detailed in Confidential Attachment A.

In regards to the variation to conduct greenwaste processing, Solo Resource Recovery already conducts these works under an expiring contract (EC2012-031). Council officers approached Solo Resource Recovery seeking a variation to Contract EC2011-049 to include these works in the schedule of works. This would effectively roll the greenwaste processing works into the landfill management Contract, making it more efficient for Council officers to manage the contractor.

Solo Resource Recovery has agreed to continue to conduct the works under Contract EC2011-049 for the length of that Contract (until 1 December 2013) and has provided a price variation to undertake the works which is summarised in Confidential Attachment A.

The price variation is considered reasonable and in accordance with previous tender pricing and will allow Council to amend operations at Stotts Creek Resource Recovery Centre in line with a broader waste management strategy.

All works will be advertised in an open tender process in early to mid 2013 with a view to awarding a new contract to commence 1 December 2013 for all landfill operations and ancillary works.

OPTIONS:

1. Council can accept the price variation from Solo Resource Recovery that will allow business continuity and alignment with a broader waste management strategy.

2. Council can reject the price variation and continue handling wastes in the current way (landfilling) and readvertise the greenwaste processing contract. This will not allow Council to continue with the broader waste management strategy of disposing of wastes at an alternative location and will most likely result in the exhaustion of landfill airspace at Stotts Creek Resource Recovery Centre prior to approval and construction of Eviron Road (Quirks Quarry) landfill.

CONCLUSION:

The price variation submitted by Solo Resource Recovery is deemed reasonable and competitive. Accepting the variation will allow Council to continue with a broader waste management strategy of interim transportation of waste to an alternative facility while approvals and construction of Eviron Road (Quirks Quarry) landfill continue.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Funded through Waste Management budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.3 Provide well serviced neighbourhoods
- 2.3.4 Provision of high quality, best practice, solid waste disposal with energy recovery, and improving resource recovery practices and infrastructure which meets health and environmental requirements and projected demand
- 2.3.4.1 Provide waste and recycling collection mechanisms to improve resource recovery
- 2.3.4.1.5 Manage operational and closed waste disposal facilities and recycling assets

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment A. Variation to Contract Report (ECM 59963985)

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23 [CNR-CM] Tender RFT632 Provision for Transport and Disposal of Construction and Demolition Waste and/or Mixed Putrescible Waste

SUBMITTED BY: Waste Management



Supporting Community Life

SUMMARY OF REPORT:

Council, along with five other Northern Rivers Councils, advertised for suitably experienced persons to provide submission on their capability, methodology, environmental credentials and price to transport and dispose of wastes. This process followed a regional waste disposal strategy which outlined interim options for disposal of wastes that cannot be recycled or recovered. Additionally, due to delays in the approval process for the Eviron Road (Quirks Quarry) landfill, Council needs to identify an alternative disposal option as the existing Stotts Creek Resource Recovery Centre is nearing capacity.

Three tender submissions were received, and each Northern Rivers Council has evaluated the submission separately as the tender documents were designed to be separable if no economies of scale were evident for a whole of region approach.

Council's tender evaluation panel has assessed the tenders and recommends that the works to transport Council's wastes to the preferred tenderer based on advanced methodology which would result in fewer truck movements, and a schedule of rates providing a clear economic advantage over the other tenderers.

RECOMMENDATION:

That:

- 1. Council awards *Tender RFT632 Provision for Transport and Disposal of Construction and Demolition Waste and/or Mixed Putrescible Waste* to Veolia Environmental Services trading as Ti Tree Bioenergy Pty Ltd for the prices listed in Schedule 2D of the tender submission.**
- 2. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act 1993, because it contains:**
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.**

REPORT:

Approximately 40,000 tonnes each year of residual waste is landfilled at Council's Stotts Creek Resource Recovery Centre. This is the residual waste collected from households through the weekly kerbside collection service, and waste generated commercially, that cannot currently be recovered, reused or recycled. This represents approximately 45% of the waste stream with 55% recovered through recycling and greenwaste.

Council's long term waste management strategy as outlined in the current Delivery Program is underpinned by four themes:

1. Continued implementation of new recycling initiatives and enhancement of existing recycling programs to maximise diversion of resources from landfill.
2. Investigation of alternative collection methods and treatment options that would enhance resource recovery.
3. Development of a new landfill at Council owned land on Eviron Road (Quirks Quarry).
4. Participation in regional collaboration on waste management to drive efficiencies.

In the delivery of these themes Council has reduced waste to landfill from approximately 60,000 tonnes per annum to approximately 40,000 tonnes per annum over the last three years. This reduction has significantly extended the life of the Stotts Creek landfill facility.

In regards to theme 3, Council has an application currently under assessment with NSW Department of Planning to develop quarry and landfill infrastructure that would provide a 25-35 year resource. This application is the culmination of five years of environmental investigations, community consultation, planning justification, and negotiations with the many government agencies. Significant delay in the State Government planning determination process has now meant that Councils current landfill at Stotts Creek Resource Recovery Centre is nearing capacity. The NSW Department of Planning advises that an approval for the Quirks Quarry Landfill has been granted, however the capacity at Stotts Creek Resource Recovery Centre is likely to be exhausted before construction of the Quirks Quarry landfill and associated environmental controls and infrastructure could be completed.

Concurrently with Council's own environmental investigations and planning process into a new landfill, the seven Northern Rivers Councils (through NOROC) have recently finalised a study into regional waste disposal options. This study, produced by an independent civil and environmental consultancy, concluded that for the short term there are clear environmental and economic benefits for Tweed, Byron, Ballina and Lismore Councils to transport and dispose of waste to large privately run landfills in South East Queensland. The South East Queensland landfills, which are located near Ipswich, are well run, fully engineered landfills, licensed and scrutinised by the Queensland environmental regulator. The environmental benefits are due to the gas capture, location and strict controls in place which outweigh the emissions from transportation. The cost benefit is due to the gate price at these landfills which is significantly lower than Northern NSW Councils. The low gate price is in part due to the absence of a State Government imposed Waste Levy.

There is a very real possibility that Council will not have sufficient capacity to landfill the community's waste locally for the time between Stotts Creek landfill reaching capacity and Quirks Quarry landfill construction. An independent study by the seven Northern Rivers Councils indicates there is an option to transport waste to South East Queensland while maintaining environmental credibility and reducing costs.

To this end, the six of the Northern Rivers Councils went to market, via a Ballina Shire Council request for tender, to seek prices and methodology to transport and dispose of each Council's waste.

The following tenders were received:

1. Solo Resource Recovery
2. Remondis Australia Pty Ltd
3. Veolia Environment Services Pty Ltd

Council's tender evaluation panel has assessed each of the tender submissions and provides a recommendation to award the works to the preferred tenderer. The details of the tender submissions and the tender evaluation plan are detailed in confidential Attachment A.

OPTIONS:

1. Council can award the works to Veolia Environmental Services trading as Ti Tree Bioenergy Pty Ltd to transport and dispose of wastes for an interim period (of up to three years) to enable reasonable time to secure the approval and undertake construction of the Eviron Road (Quirks Quarry) landfill.
2. Council can choose not to award the works to Veolia Environmental Services. This will most likely lead to Council exhausting the available airspace at Stotts Creek Resource Recovery Centre prior to the construction of Eviron Road (Quirks Quarry) Landfill.

CONCLUSION:

The interim transport and disposal of wastes to South East Queensland by Veolia Environmental Services provides an environmentally and economically sound option for the responsible management of wastes. By awarding these works, time will be available for Council to responsibly construct the Eviron Road (Quirks Quarry) Landfill and associated environmental controls.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Funded through Waste Management budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.3 Provide well serviced neighbourhoods
- 2.3.4 Provision of high quality, best practice, solid waste disposal with energy recovery, and improving resource recovery practices and infrastructure which meets health and environmental requirements and projected demand
 - 2.3.4.1 Provide waste and recycling collection mechanisms to improve resource recovery
 - 2.3.4.1.5 Manage operational and closed waste disposal facilities and recycling assets

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Tender Evaluation Plan (ECM 59746703)

24 [CNR-CM] Youth Week 2013

SUBMITTED BY: Community and Cultural Services



Supporting Community Life

SUMMARY OF REPORT:

Council's Community and Cultural Services Unit has received a grant offer of \$1845 from Office of Communities NSW for Youth Week 2013 which is to be held from Friday 5 April to Sunday 14 April 2013.

RECOMMENDATION:

That Council:

- 1. Accepts the grant of \$1,845 from Office of Communities NSW for Youth Week 2013.**
- 2. Completes the relevant documentation and votes the expenditure.**

REPORT:

Council's Community and Cultural Services Unit has received a grant offer of \$1,845 from Office of Communities NSW for Youth Week 2013 which is to be held from Friday 5 April to Sunday 14 April 2013. The funding from Office of Communities NSW will be used towards the cost of staging activities and events for young people during Youth Week. Youth Week celebrations are organised with representatives of the Youth Network Interagency and young people.

A copy of the letter of offer is reproduced for Council's information.



Mr Mike Rayner
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

GOVT GRANT - GENERAL AGREEMENTS

TWEED SHIRE COUNCIL
FILE No: <u>YOUTH MATTERS</u>
DOC. No:
RECD: 15 OCT 2012
FORWARDED TO: <u>JOE-NAM. O</u>
<input type="checkbox"/> COPY <input checked="" type="checkbox"/> IMAGE

Dear Mr Rayner

Youth Week 2013 - Friday 5 April to Sunday 14 April 2013

I am writing to invite your Council to participate in Youth Week 2013 and to offer funding on a dollar for dollar basis up to **\$1845.00** as a contribution towards the cost of staging local Youth Week activities and events. The level of funding available is based on the number of young people in your local government area at the time of the 2011 Census.

Youth Week celebrates young people and their contribution to their local communities. It is now the largest annual youth participation event in Australia. In 2012, Councils in NSW supported more than 850 Youth Week activities and events. More than 83,000 young people participated in these activities and events.

To receive Youth Week funding, please:

1. Read and sign the attached Funding Agreement
2. Complete the attached form providing contact details of the relevant Council Officer.
3. Return the signed agreement and contact form by **Friday, 2 November 2012 to:**

Amanda Scott
NSW Youth Week Coordinator
Office of Communities
PO Box K403
Haymarket NSW 1240
youthweek@youthweek.nsw.gov.au or
Fax: (02) 9995 0428

Please contact Amanda if you have any questions about funding for Youth Week 2013 by phone on (02) 9995 0535 or by email at: youthweek@youthweek.nsw.gov.au.

Yours sincerely

Tony Wiseheart
Manager, Youth Strategy and Participation
Office of Communities

Encl: Funding Agreement 2013 Youth Week in NSW



FUNDING AGREEMENT

2013 YOUTH WEEK in NSW

5 April – 14 April 2013

The NSW Government has made up to \$1845.00 (ex GST) available to Tweed Shire Council as a contribution toward the cost of Youth Week 2013 activities and events.

The grant is made available on condition that:

1. Council matches the NSW Government grant on a dollar-for-dollar basis.
2. Council's Youth Week initiatives:
 - are coordinated by a committee of young people, and that in establishing the committee, Council consult widely with organisations involving young people, such as: schools, TAFE colleges, universities, youth organisations, training and employment agencies, religious and ethnic organisations and other relevant community groups
 - provide young people aged 12 – 25 with an opportunity to express their views and act on issues that impact on their lives at a local level
 - raise the issues and concerns of young people, and develop strategies to address them
 - increase the community's awareness of young people and the issues which are important to them
 - highlight young people's contributions to the community
3. Young people are involved in the planning, co-ordination and implementation of local Youth Week programs and activities
4. Particular effort is made to include young people who may be disadvantaged in the community. These young people may include young Aboriginal and young Torres Strait Islander people, young people with disabilities, young parents, young people who are geographically isolated, young people from culturally and linguistically diverse backgrounds, young people disadvantaged by their socio-economic circumstances, gay, lesbian, bisexual and transgender young people, young people who have left school early or are at risk of leaving school early, young women, young offenders
5. All activities take place during Youth Week 2013 (from Friday 5 April to Sunday 14 April 2013).
6. The Youth Week grant is **not** used for:
 - events or activities on which the funds have already been spent (e.g. retrospective funding, budget deficits)
 - contributions to Council's or an organisation's general operating expenses
 - arrangements or commitments which are incompatible or inconsistent with the aim of Youth Week

1. Any unexpended funds remaining from allocations for Youth Week are returned to the Office of Communities by **Friday 24 May 2013**.
2. Neither the State of NSW nor any of its employees, contractors or representatives will be responsible or liable for any loss, damage or claim suffered or made by any person which arises out of, or is in connection with, any Youth Week activities which are organised, coordinated or funded by the funding recipient.
3. Applications for funding are received by **2 November 2012**.
4. Council uploads its planned activities to the Youth Week in NSW website: www.youthweek.nsw.gov.au by **22 February 2013**. A unique username and password details will be distributed in January 2013.
5. Council provides the NSW Youth Week Coordinator with a report on its 2013 Youth Week program which includes the completed Youth Week Evaluation and the signed Acquittal by **Friday 24 May 2013**.

TIMELINE:

Funding Agreement due – **2 November 2012**

Upload Youth Week activities to www.youthweek.nsw.gov.au by – **22 February 2013**

Evaluation and Acquittal due – **24 May 2013**

PLEASE SEND COMPLETED FUNDING AGREEMENT TO:

NSW Youth Week Coordinator

Office of Communities

PO Box K403

HAYMARKET NSW 1240

OR FAX (02) 99950428

OR Email youthweek@youthweek.nsw.gov.au

SIGNATURE	NAME
POSITION: General Manager	DATE

OPTIONS:

1. Accept the offer of funding from NSW Office of Communities for Youth Week 2013.
2. Not accept the offer of funding from NSW Office of Communities for Youth Week 2013.

CONCLUSION:

It is recommended Council accepts the funding and votes the expenditure.

COUNCIL IMPLICATIONS:

a. Policy:

Youth Policy Version 1.0.

b. Budget/Long Term Financial Plan:

The existing budget contains an allocation of \$4,264 to complement the grant funding.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.6 Provide social, economic and cultural initiatives which enhance access, equity and community well-being
- 2.1.6.2 Enhance the well-being of young people
- 2.1.6.2.1 Provide youth programs and forums and support community groups with Youth Week celebrations

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

25 [CNR-CM] Access and Inclusion Consultation Issues Papers

SUBMITTED BY: Community and Cultural Services



Supporting Community Life

SUMMARY OF REPORT:

Community consultation to update the Disability Issues Paper and inform development of an Access and Inclusion Policy and Action Plan occurred between November 2011 and March 2012. This report submits three Issues Papers that report the results of the community consultation and seeks approval to release the Issues Papers to the community.

RECOMMENDATION:

That Council approves the three Issues Papers, (1) Consultation Summary, (2) Infrastructure and Community Access and (3) Locations, for public release.

REPORT:

The Community Strategic Plan (CSP) 2011-2021 includes an Operational Plan activity at 2.1.1.1.3 to:

"Update People with Disabilities Issues Paper to inform development of Disability Access Policy".

To update the Issues Paper community consultation was conducted between November 2011 and March 2012 to provide the community with the opportunity to make access and inclusion issues known to Council. Over 260 people across Tweed Shire participated in the community consultation and the information has been summarised in three separate documents. Issues Paper 1 - Consultation Summary (Attachment 1) refers to the range of methods used to engage the community and the legislative framework. Issues Paper 2 - Infrastructure and Community Access (Attachment 2) refers to barriers to participation in community life. Issues Paper 3 - Locations (Attachment 3) summarises findings by location.

This report seeks approval to report the findings of the community consultation to the community. The next step is the development of the Access and Inclusion Policy Statement and Action Plan. The results of the community consultation will be used as a basis for consulting within Council to establish priorities, function-specific responsibilities and budget allocations to improve access.

Next steps in preparation of the Access and Inclusion Plan and Policy are to engage with key Council staff in all units to collaboratively develop a suite of practical actions to be implemented across Council improve access across the Shire.

OPTIONS:

1. Release the three issues papers 1 - Consultation Summary; 2 - Infrastructure and Community Access; 3 - Locations; to the public.
2. Not release the three issues papers.

CONCLUSION:

That the Disability Issues Papers are approved for release to the public.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Development of an Access and Inclusion Action Plan, lodged with Australian Human Rights Commission supports Council in the event of claims of discrimination under the Disability Discrimination Act 1993.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.1 Work closely with government and community organisations to improve services to children and families, youth, elderly, Indigenous people, disadvantaged and minority groups and to build stronger and more cohesive communities
- 2.1.1.1 Improve services to people with a disability
- 2.1.1.1.3 Update People with Disabilities Issues Paper to inform development of Disability Access Policy

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Issues Paper 1 - Consultancy Summary (ECM 59064381)
 - Attachment 2. Issues Paper 2 - Infrastructure and Community Access (ECM 59064387)
 - Attachment 3. Issues Paper 3 - Locations (ECM 59064390)
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26 [CNR-CM] Acceptance of 2013 Arts NSW Funding for Young People

SUBMITTED BY: Community and Cultural Services



Supporting Community Life

SUMMARY OF REPORT:

A grant from Arts NSW through the 2013 Arts Funding Program for Young People has been approved for the Tweed River Art Gallery. The grant funding of \$4,800 will subsidise transport costs for approximately 665 school students from 11 public schools of the region to visit the Tweed River Art Gallery between 1 February and 12 April 2013.

RECOMMENDATION:

That Council accepts the grant funds offer from Arts NSW totalling \$4,800 and votes the expenditure.

REPORT:

The Tweed River Art Gallery through Tweed Shire Council applied through Arts NSW for 2013 Project Funding – Young People. This project will provide subsidised bus transport for 11 disadvantaged and isolated schools in the Far North Coast region to visit the Gallery where they will view current exhibitions and participate in structured education activities. These activities will focus on five exhibitions including two Gallery initiative exhibitions, *It's all about the light: works by Margaret Olley from public collections* and *Sea Gardens: Ken Done*.

This project addresses key areas identified in the Tweed River Art Gallery's Business Plan covering education, audience development and public programs. This project reinforces the Gallery's aim to foster community involvement in arts and cultural programs, providing accessible and affordable visual arts programs to schools encouraging them to utilise the Gallery as a learning environment with relevant content in exhibitions and resources within their curriculum needs.

The total number of school students to visit the Tweed River Art Gallery during school hours for the financial year 2011/2012 was 1,909. This grant funding will see approximately 665 students visit the Gallery during an 11 week program from 1 February – 12 April 2013.

OPTIONS:

1. Council accepts the grant funds and votes the expenditure
2. Council does not accept the grant funding

CONCLUSION:

That Council accepts the NSW State Government's 2013 Arts Funding Grant for Young People for \$4,800 towards travel subsidies.

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:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.3 Provide opportunities for residents to enjoy access to the arts, festivals, sporting activities, recreation, community and cultural facilities
- 2.1.3.4 Provide accessible visual arts programs
- 2.1.3.4.3 Develop and maintain Education/Audience Development programs for the enhancement of the Tweed River Art Gallery's role in the community

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Letter from The Hon. George Souris MP approving \$4,800 grant funding from Arts NSW (ECM 58633523).
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27 [CNR-CM] Proposed Lease of Council Land - Lundberg Drive, South Murwillumbah

SUBMITTED BY: Community and Natural Resources



Civic Leadership

SUMMARY OF REPORT:

This report was previously considered at the meeting of 15 November 2012 where it was resolved:

"That this item be deferred to be discussed in a Workshop."

A workshop was subsequently conducted on 29 November and the report is now resubmitted for Council's consideration.

At its meeting held on 15 May 2012 Council resolved to support the establishment of a motorcycle (dirt) track at the Murwillumbah landfill site at Lundberg Drive, South Murwillumbah.

It was also resolved to enter into discussions with the Tweed Valley Junior Development Motorcycle Club ("the Club") regarding a long term agreement for their land use of the landfill site and financial arrangements.

Discussions have been held and a valuation has been obtained to determine the market rental for the use of the land.

The Club have engaged consultants to prepare the Development Application for their activities and are also seeking funding to assist in the cost of the application.

To facilitate the making of applications for funding, the Club require confirmation of tenure for their activities on site.

It is recommended that Council resolve to enter into a lease with the Club, subject to them obtaining development consent and the necessary funding to establish the infrastructure for their activities on site.

RECOMMENDATION:

That :

- 1. Council approves entering into a lease over part Lot 1 DP 232745 and part Lot 2 DP 1139059 with the Tweed Valley Junior Motorcycle Club for a term of five years for a commencing rental of \$250 per annum to be increased by CPI on the anniversary of the commencement date and subject to development consent and funding appropriate for the establishment and management of the Club's activities; and**
- 2. All necessary documentation be executed under the Common Seal of Council.**

REPORT:

This report was previously considered at the meeting of 15 November 2012 where it was resolved:

"That this item be deferred to be discussed in a Workshop."

A workshop was subsequently conducted on 29 November and the report is now resubmitted for Council's consideration.

At its meeting held on 15 May 2012 Council resolved to support the establishment of a motorcycle (dirt) track at the Murwillumbah landfill site at Lundberg Drive, South Murwillumbah. The report provides the background history of this matter and it is attached to this report.

The landfill site to be leased is all part of Lot 1 DP 232745 and part Lot 2 DP 1139059. The area proposed to be leased to the Club is shown outlined below:



The area to be leased is approximately 5 hectares.

It was also resolved to enter into discussions with the Tweed Valley Junior Development Motorcycle Club ("the Club") regarding a long term agreement for their land use and financial arrangements.

Preliminary discussions have been held with the Club and a valuation has been obtained to determine the market rental for the use of the land.

The valuer has determined that the site, being a landfill site is contaminated and would attract limited uses and has applied a 'rate of return' against the value of the land, as well as referring to other motor cross sites which are generally operating from Council land.

The rental on a commercial basis has been determined as \$1,200 per annum on the rate of return basis. However, the valuer notes that the other sites leased for similar purposes are leased for nominal rentals of between \$1 per annum and \$250 per annum plus GST and outgoings.

As recognition of the start up costs and the proportionately high cost of ongoing maintenance of the facility/watering of the track to reduce dust and potential costs for monitoring dust and noise, it is recommended that Council seek \$250 per annum for the first year, with annual CPI increases.

The valuation is attached to this report for ease of reference.

The Club has engaged consultants to prepare the Development Application for its activities and is in the process of obtaining funding to assist in the cost of the application.

To facilitate the making of applications for funding, the Club requires confirmation of tenure for its activities on site.

It is recommended that Council resolve to enter into lease with the Club for a term of five years, subject to them obtaining development consent and the necessary funding to establish and maintain the infrastructure for its activities on site.

OPTIONS:

1. To approve a lease to the Club for a nominal rental to assist in the establishment of the facility in Murwillumbah, or
2. To approve a lease to the Club for a commercial rental in the amount of \$1,200 per annum.

CONCLUSION:

As Council is assisting the Club to provide a facility that is not available within the Tweed local government area, a lease with a nominal rental will assist in the establishment and ongoing operation of such a facility on land that would otherwise be unused or underutilised.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The terms of the Lease will provide some relief for Council in terms of its ongoing responsibility to manage the land. This is a direct benefit to Council. The proposed rent for the five years is nominal and it is proposed if the venture is successful to alter the financial terms of the lease in future years to ensure that Council receives the appropriate benefit.

c. Legal:

As per the comments made in the report.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
- 1.3.1.16 Provision of property and legal services for internal clients
- 1.3.1.16.3 Provide Leasing and Licensing services to clients

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Report to Council dated 15 May 2012 (ECM 50138502) and Resolution of Council dated 15 May 2012 (ECM 50529653)
 - Attachment 2. Valuation by Valuers Australia dated 12 October 2011 (ECM 58538050)
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REPORTS FROM THE DIRECTOR ENGINEERING AND OPERATIONS

28 [EO-CM] Classification of Land as Operational - Lot 467 in DP1144944 at Terranora

SUBMITTED BY: Design



Civic Leadership

SUMMARY OF REPORT:

Lot 467 in DP1144944 at Terranora is to be transferred to Council as Sewer Pump Station as per the plan of subdivision of Lot 401 in DP 1035061.

It is necessary to classify the parcels of land as operational pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 30 October 2012 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as operational. No submissions were received.

RECOMMENDATION:

That:-

1. Council approves the transfer to Council of Lot 467 in DP 1144944 at Terranora.
2. Lot 467 in DP 1144944 at Terranora be classified as "Operational" pursuant to Section 31 of the Local Government Act, 1993; and
3. All necessary documentation be executed under the Common Seal of Council.

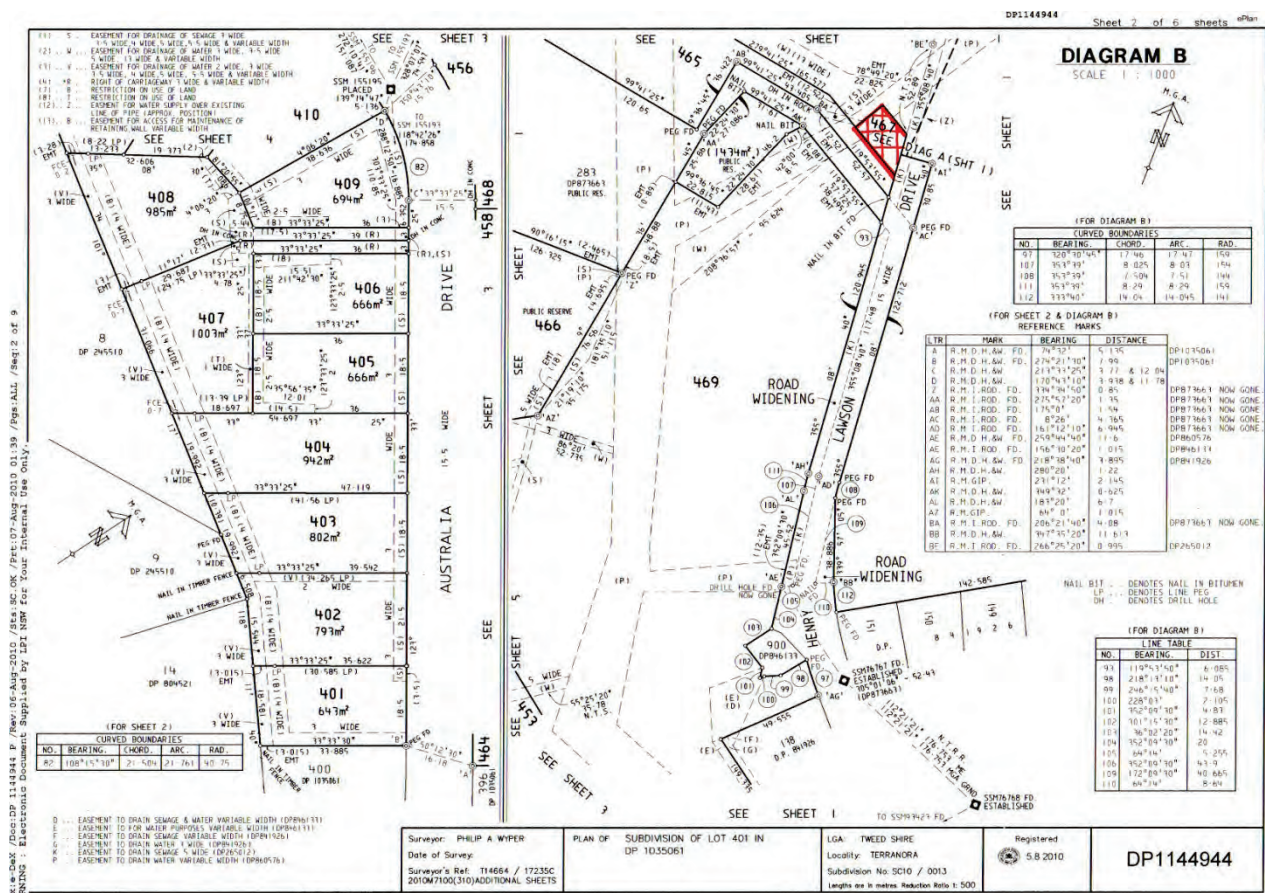
REPORT:

Lot 467 in DP1144944 at Terranora is to be transferred to Council as Sewer Pump Station as per the plan of subdivision of Lot 401 in DP 1035061.

It is necessary to classify the parcels of land as operational pursuant to the provisions of the Local Government Act, 1993.

A notice was published in the Tweed Link on 30 October 2012 allowing a period of 28 days for any member of the public to provide a written submission to the proposed classification of this land as operational. No submissions were received.

Copy of Plan of Subdivision of Lot 401 in DP 1035061 - being DP1144944 showing Lot 467.



OPTIONS:

Not applicable.

CONCLUSION:

In accordance with the provision of the Local Government Act 1993 it is necessary to classify Lot 467 in DP 1144944 as Operational Land.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
- 1.3.1.16 Provision of property and legal services for internal clients
- 1.3.1.16.6 Maintain Council's Land Ownership register

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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29 [EO-CM] Council Policy Update - Naming of Streets and Roads

SUBMITTED BY: Design



Civic Leadership

SUMMARY OF REPORT:

A review has been completed of Council's Policy on Naming of Streets and Roads to ensure compliance with the guidelines as set down by the Geographical Names Board, and legislative requirements of the *Roads Act, 1993*, and *Roads (General) Regulation, 2000*.

A copy of the Draft Policy is required under Section 160 of the Local Government Act, 1993 to be placed on public exhibition for a period of no less than 28 days to allow members of the public to view the document. The public notice must specify a period of 42 days after the date the draft policy is placed on exhibition during which submissions may be made to Council.

Pursuant to Section 160 of the Local Government Act, 1993 it is recommended that Council place the amended draft policy on Naming of Streets and Roads on public exhibition for a period of 28 days allowing 42 days for the public to make any written submissions to Council.

RECOMMENDATION:

That Council approves the placing of the amended draft Council Policy Naming of Streets and Roads on public exhibition for a period of 28 days allowing a period of 42 days from the date of exhibition to receive written submissions from the public.

REPORT:

A review has been completed of Council's Policy on Naming of Streets and Roads to ensure compliance with the guidelines as set down by the Geographical Names Board, and legislative requirements of the *Roads Act, 1993*, and *Roads (General) Regulation, 2000*.

A copy of the Draft Policy is required under Section 160 of the Local Government Act, 1993 to be placed on public exhibition for a period of no less than 28 days to allow members of the public to view the document. The public notice must specify a period of 42 days after the date the draft policy is placed on exhibition during which submissions may be made to Council.

Amendments made to the original Policy, Version 1.1, adopted 13 November 2007, include the addition of an Objective and Scope of Policy as well as Road Type descriptions as noted in the Guidelines set down by the Geographical Names Board as shown below:

"Objective

The Objective of this policy is to provide a concise and informative guideline on the naming of streets and roads within the Tweed Shire area. This Policy should be read in conjunction with Council Procedure on Naming of Streets and Roads Version 1.

Scope of Policy

Council's road naming policy is derived directly from the guidelines as set down by the Geographical Names Board.

This policy applies to the naming and renaming of roads that currently exist within the Tweed Shire as well as to roads dedicated to Tweed Shire Council in plans of subdivision.

Legislation

Section 162 of the Roads Act 1993 prescribes that a roads authority may name and number all public roads for which it is the roads authority. As defined under the Act a roads authority means a person or body that is, by or under this Act, declared to be a roads authority and, in relation to a particular public road, means the roads authority for that road.

The Roads (General) Regulation 2000 sets out under Part 2, Division 2, the procedure required to be taken by a roads authority in the naming or renaming of a public road. These procedures include notice to be given of a proposed name, making submissions and notice to be given of a new name to the relevant authorities.

The guidelines set down by the Geographical Names Board have been updated to include the varying road suffix options which can be used including their description for best use. These have been included in the draft policy and are as follows:

Road Type

Proposals for road names should include an appropriate road suffix. Road type suffixes are grouped into three categories, Culs-de-sac, Open ended and Either. Road types in the singular or plural forms e.g. GARDEN or VIEWS etc, to those included in these lists are strongly discouraged except in presently existing cases. Road types should not be abbreviated when being proposed, advertised and gazetted. It is acceptable to use Road Type Codes on mail, road signs and maps.

Culs-de-sac

The types of Cul-de-sac and a description are as follows.

Road Type	Code	Description
BRAE	BRAE	A roadway running along a hill area
CLOSE	CL	A short enclosed roadway
COURT	CT	A short enclosed roadway
COURTYARD	CTYD	An enclosed area
COVE	COVE	A short enclosed roadway
CUL-DE-SAC	CSAC	A Street or road with only one entrance and exit
END	END	A roadway that has a definite finishing point
GREEN	GRN	A roadway often leading to a grassed public recreation area
GROVE	GR	A roadway which features a group of trees standing together
LOOKOUT	LKT	A roadway leading to or having a view of fine natural scenery
MEWS	MEWS	A roadway having houses grouped around the end
NOOK	NOOK	A short, secluded roadway with limited frontage indicating privacy
PLACE	PL	A short sometimes narrow enclosed roadway
PLAZA	PLAZA	A roadway enclosing the four sides of an area forming a market place or open space
POCKET	PKT	A short roadway leading to an intimate village environment
POINT	PNT	A roadway leading to a focal point or river frontage
PORT	PORT	A small roadway abutting a harbour, inlet, marina etc. in a coastal area
REST	REST	A short roadway with limited residential frontage creating a quiet secluded environment
RETREAT	RTT	A roadway forming a place of seclusion
SHUNT	SHUN	A short, dead-end track used in State Forests only
TARN	TARN	A roadway surrounding or leading to a lake or some other water feature
TOP	TOP	A roadway constructed at the highest part of an area
TOR	TOR	A roadway along a rocky height or hillside

Open Ended Streets

The type of open ended street and a description are as follows.

Road Type	Code	Description
APPROACH	APP	A roadway leading to an area of open community interest i.e. public open space, commercial area, beach etc.
ARCADE	ARC	A passage having an arched roof, or any covered passageway, especially one with shops along the sides
ARTERIAL	ARTL	A major roadway within a city, generally of high capacity and providing connectivity between collector roads and limited access freeways
ARTERY	ARTU	A major roadway within a city, generally of high capacity and providing connectivity between collector roads and limited access freeways
AVENUE	AV	A broad roadway usually planted on each side with trees
BANAN	BA	Aboriginal word meaning "street" or "path"
BEND	BEND	A roadway containing a bend
BOULEVARD	BVD	A wide roadway, well paved, usually ornamented with trees and grass plots
BRACE	BR	A small roadway, which connects other roads or a major road to another feature
BREAK	BRK	Vehicular access on a formed or unformed surface, which was originally prepared as a firebreak
BYPASS	BYPA	An alternative roadway constructed to enable through traffic to avoid congested areas or other obstructions to movement
CENTRE	CTR	A roadway which runs into or around a group of buildings forming the central point of an area of activity i.e. commercial, community, public open space etc
CIRCLE	CIR	A roadway, which forms a circle or part of a circle
CIRCUIT	CCT	A roadway enclosing an area
CIRCUS	CRCS	A circular open place when many roadways come together
CONCOURSE	CON	A roadway which runs around a central area e.g. public open space or commercial area
CRESCENT	CR	A crescent thoroughfare allowing traffic without many cross streets
DRIVE	DR	A wide thoroughfare allowing a steady flow of traffic without many cross streets
EDGE	EDGE	A roadway constructed along the edge of a cliff or ridge
ENTRANCE	ENT	A roadway connecting other roads
Road Type	Code	Description
ESPLANADE	ESP	A level roadway, often along the seaside or a river
EXPRESSWAY	EXP	An express, multi-lane highway, with limited or controlled access
FAIRWAY	FAWY	A short open roadway between other roadways

<i>FOLLOW</i>	<i>FOLW</i>	<i>A roadway meandering through wooded or undulating country</i>
<i>FORMATION</i>	<i>FORM</i>	<i>A formed surface, once a timber railway which now provides vehicular access</i>
<i>FREEWAY</i>	<i>FWY</i>	<i>An express, multi-lane highway, with limited or controlled access</i>
<i>GATE</i>	<i>GTE</i>	<i>A roadway leading into an estate, main entrance to a focal point, public open space</i>
<i>GRANGE</i>	<i>GRA</i>	<i>A roadway leading to a country estate or focal point, public open space</i>
<i>HIGHROAD</i>	<i>HIRD</i>	<i>A main road; a highway</i>
<i>HIGHWAY</i>	<i>HWY</i>	<i>A main road or thoroughfare, a main route</i>
<i>INTERCHANGE</i>	<i>INTG</i>	<i>A highway or freeway junction designed so that traffic streams do not intersect</i>
<i>JUNCTION</i>	<i>JNC</i>	<i>A roadway making a transition from a major to a minor road in an estate. A through road leading from one minor road to another as a link</i>
<i>LINE</i>	<i>LINE</i>	<i>A generally long and straight road</i>
<i>LINK</i>	<i>LINK</i>	<i>A roadway which links similar land uses i.e. pockets of residential, other roadway, etc</i>
<i>LOOP</i>	<i>LOOP</i>	<i>A roadway that diverges from and rejoins the main thoroughfare</i>
<i>MALL</i>	<i>MALL</i>	<i>A sheltered walk, promenade or shopping precinct</i>
<i>MEANDER</i>	<i>MNDR</i>	<i>A sinuous winding roadway, wandering at random through an area or subdivision</i>
<i>MOTORWAY</i>	<i>MTWY</i>	<i>A highway, usually between cities designed to carry large traffic volumes. Predominantly dual carriageway, with three or more lanes in each direction and grade-separated access</i>
<i>PARADE</i>	<i>PDE</i>	<i>A public promenade or roadway which has good pedestrian facilities along the side</i>
<i>PARKWAY</i>	<i>PWY</i>	<i>A roadway through parklands or an open grass land area</i>
<i>PASS</i>	<i>PASS</i>	<i>A roadway connecting major thoroughfares or running through hills</i>
<i>PATH</i>	<i>PATH</i>	<i>A roadway usually used for pedestrian traffic</i>
<i>PATHWAY</i>	<i>PWAY</i>	<i>A narrow roadway of any length meandering through an estate</i>
<i>PROMENADE</i>	<i>PROM</i>	<i>A roadway like an avenue with plenty of facilities for the public to take a leisurely walk, a public place for walking</i>
<i>QUADRANT</i>	<i>QDRT</i>	<i>A loop road forming a circular path or a curved deviation from another road</i>
Road Type	Code	Description
<i>QUAYS</i>	<i>QYS</i>	<i>A roadway leading to a landing place alongside or projecting into water</i>
<i>RAMBLE</i>	<i>RMBL</i>	<i>A roadway that meanders from place to place</i>
<i>RIDGE</i>	<i>RDGE</i>	<i>A roadway along the top of a hill</i>

ROAD	RD	<i>A place where one may ride, an open way or public passage for vehicles, persons and animals, a roadway forming a means of communication between one place and another</i>
ROTARY	RTY	<i>An intersection of two or more carriageways at a common level where all traffic travels around a central island</i>
ROUTE	RTE	<i>A roadway allowing steady traffic flow with limited cross streets</i>
ROW	ROW	<i>A roadway with a line of professional buildings on either side</i>
RUE	RUE	<i>French for street or road</i>
STREET	ST	<i>A public roadway in a town, city or urban area, especially a paved thoroughfare with footpaths and buildings along one or both sides</i>
SUBWAY	SBWY	<i>An underground passage or tunnel that pedestrians or vehicles can use for crossing under a road, railway, river etc.</i>
TERRACE	TCE	<i>A roadway usually with houses on either side raised above the road level</i>
THOROUGHFARE	THFR	<i>A main road or public highway</i>
TOLLWAY	TLWY	<i>A road on which a toll authority collects a fee for use</i>
TRACK	TRK	<i>A roadway with a single carriageway. A roadway through a natural bush land region. The interpretation for both Track and Trail is limited to roadways, whereas in many areas (e.g. Tasmania) these are more often associated with walking rather than vehicular movement</i>
TRAIL	TRL	<i>See track</i>
TURN	TURN	<i>A roadway containing a sharp bend or turn</i>
UNDERPASS	UPAS	<i>A passage having an arched roof, or any covered passageway, especially one with shops along the sides</i>
VIADUCT	VIAD	<i>A roadway which crosses a bridge consisting of several small spans</i>
WALK	WALK	<i>A thoroughfare with restricted vehicle access used mainly by pedestrians</i>
WALKWAY	WLKWY	<i>A roadway on which traffic travels at a slow pace</i>
WAY	WAY	<i>An access way between two streets</i>
WYND	WYND	<i>A short narrow roadway or ally</i>

Either culs-de-sac or open ended streets

When these types are used for a cul-de-sac it is essential that a "No Through Road" sign also be erected.

The types and descriptions are as follows.

Road Type	Code	Description
ACCESS	ACCS	<i>A minor road built specially to give access to a house, motorway etc.</i>
ALLEY	ALLY	<i>A usually narrow roadway for people or vehicles in cities and towns. A minor roadway through the centre of city blocks or squares</i>
ALLEYWAY	ALWY	<i>A narrow street or passageway between or behind city buildings</i>
AMBLE	AMBL	<i>A public road with pavements and buildings at the side or sides, especially in a town</i>
BOARDWALK	BWLK	<i>A promenade or path, especially of wooden planks, for pedestrians and sometimes vehicles, along or overlooking a beach or waterfront</i>
BROW	BROW	<i>A roadway that runs along or over the top of a hill</i>
BYWAY	BYWY	<i>A little travelled side road, usually in the country, not regularly used by people or traffic</i>
CAUSEWAY	CSWY	<i>A road raised above water, marshland or sand</i>
CHASE	CH	<i>A roadway leading down to a valley</i>
COPSE	CPS	<i>A roadway running through or to a public open space or woodland area</i>
CORNER	CNR	<i>A roadway containing a sharp bend or corners</i>
CREST	CRST	<i>A roadway running along the top or summit of a hill</i>
CROSS	CRSS	<i>A roadway forming a "T" or cross</i>
CUTTING	CUTT	<i>A road through a narrow excavation made through high ground</i>
DALE	DALE	<i>A roadway situated between hills</i>
DIP	DIP	<i>Short roadway through a steep valley or gully</i>
DRIVEWAY	DVWY	<i>A private road that connects a house/s, or garage/s, or other buildings with the street</i>
ELBOW	ELB	<i>A roadway containing a sharp bend or turn</i>
FOOTWAY	FTWY	<i>A walkway or path for pedestrians</i>
FRONTAGE	FRTG	<i>A roadway passage a point of interest or significance with lots fronting only one side e.g. public open space, coastline etc.</i>
GAP	GAP	<i>A roadway that traverses a passage or a pass through a ridge or hill</i>
GARDENS	GDNS	<i>A roadway with special plantings of trees, flowers etc. and often leading to a place for public enjoyment</i>
GLADE	GLDE	<i>A roadway usually in a valley of trees</i>
GLEN	GLEN	<i>A roadway usually in a valley of trees</i>
HEIGHTS	HTS	<i>A roadway traversing high ground</i>
HILL	HILL	<i>A roadway going up a natural rise</i>
LANE	LANE	<i>A narrow way between walls, buildings, etc. a narrow country or city roadway</i>
LANEWAY	LNWY	<i>A narrow street or alley running between or behind urban buildings, especially houses or stores</i>
OUTLOOK	OTLK	<i>A roadway leading to an area which affords a view across surrounding areas</i>
PASSAGE	PSGE	<i>A narrow street</i>
PIAZZA	PIAZ	<i>A public square or paved open space, without grass or planting, often in front of shops or significant buildings</i>

<i>RISE</i>	<i>RISE</i>	<i>A roadway going to a higher place or position</i>
<i>SERVICEWAY</i>	<i>SVWY</i>	<i>A narrow lane or access way to provide service or access to adjacent properties</i>
<i>SPUR</i>	<i>SPUR</i>	<i>A minor roadway running off at less than 45 degrees</i>
<i>SQUARE</i>	<i>SQ</i>	<i>A roadway bounding the four sides of an area to be used as open space or a group of buildings</i>
<i>VALE</i>	<i>VALE</i>	<i>A roadway along low ground between hills</i>
<i>VIEW</i>	<i>VIEW</i>	<i>A roadway commanding a wide panoramic view across surrounding areas</i>
<i>VISTA</i>	<i>VISTA</i>	<i>A road with a view or outlook</i>
<i>WHARF</i>	<i>WHRF</i>	<i>A roadway running alongside a water feature creating a wharf-like impression.</i>

OPTIONS:

Pursuant to Section 160 of the Local Government Act 1993, Council may either;

- (a) Place the draft policy on public exhibition with amendments, or
- (b) Place the draft policy on public exhibition without amendment,

CONCLUSION:

Pursuant to Section 160 of the Local Government Act, 1993 it is recommended that Council place the amended draft policy on Naming of Streets and Roads on public exhibition for a period of 28 days allowing 42 days for the public to make any written submissions to Council.

COUNCIL IMPLICATIONS:

a. Policy:

Naming of Streets and Roads Version 1.1 - adopted 13 November 2007.

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
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
- 1.3.1.16 Provision of property and legal services for internal clients
- 1.3.1.16.5 Undertake road naming

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Draft Policy - Naming of Streets and Roads (ECM 11961560).
Attachment 2 Current Policy - Naming of Streets and Roads (ECM 59611728).
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30 [EO-CM] Review of Council Policy - Road Closures and Private Purchase

SUBMITTED BY: Design



Civic Leadership

SUMMARY OF REPORT:

A review has been completed of the local Policy on Road Closures and Private Purchase with amendments being made to the original version.

The Draft Policy was placed on public exhibition for a period of no less than 28 days as prescribed under Section 160 of the Local Government Act 1993.

No submissions regarding the draft local policy were received during this period.

Road closures are not solely dealt with by Council because the final determination is made by the Lands Department who are constantly changing directives and procedures which require regular review.

Pursuant to Section 161(1)(b) of the Local Government Act 1993 it is recommended that Council adopt the draft local Policy, Road Closures and Private Purchase, without amendment.

RECOMMENDATION:

That Council adopts the draft local Policy, Road Closures and Private Purchase without amendment in accordance with Section 161(1)(b) of the Local Government Act 1993.

REPORT:

A review has been completed of the local Policy on Road Closures and Private Purchase with amendments being made to the original version.

The Draft Policy was placed on public exhibition for a period of no less than 28 days as prescribed under Section 160 of the Local Government Act 1993.

No submissions regarding the draft local policy were received during this period.

The amendments made to the original policy include the addition of an Objective and Scope of Policy as well as Definitions of Common Terms used throughout the draft policy as shown below;

"OBJECTIVE

The objectives of this policy are to:

- *Provide guidelines on assessing road closure applications for public roads within the Tweed Shire*
- *Ensure that road reserves are managed such that community access and use of these road reserves is preserved.*

SCOPE OF POLICY

This policy applies to road closure applications for public roads made under the provisions of the Roads Act 1993.

This policy does not apply to road closure actions under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act 1993 wherein roads are closed and granted as compensation for acquisition.

DEFINITIONS

- **Road closure** - *In this policy context refers to the change in the land title of land currently designated as "public road" (as distinct from the exclusion of vehicles from a public road under the Traffic Act). Closure may be full or partial width. Public roads are closed under the provisions of the Roads Act 1993.*
- **Public Road** - *roads that are vested in fee simple in the Council of the relevant Local Government area. Council is the roads authority for public roads even if the roads were constructed and dedicated by Authorities such as Department of Housing, Public Works Department, Forestry Commission and National Parks and Wildlife Services. Freeways which are vested in the NSW Government Transport and Maritime Services are excepted.*
- **Classified Roads** - *The proclaimed regional networks, which are vested in Council, requires Council and NSW Government Transport and Maritime Services approval for closure.*

- **Crown Public Roads** - Roads vested in the Crown with the Department of Lands being the statutory body granting approval for closures. Applications for the closure of Crown Public Roads are to be lodged directly with the Department of Lands. The Department will notify Council of any application and may uphold any valid objection by Council to its closure. Should a valid objection by Council be upheld by the Department of Lands Council will apply to transfer the road to Council's care and control.
- **Temporary Roads** - May be closed provided that the action will not isolate another road or property."

During the period of writing of the current Policy on Road Closures and Private Purchase and the update of the proposed draft policy, several amendments have been made to the procedures for assessing applications. Amendments (shown in italics) as follow have been made to the procedural notes:

PROCEDURAL NOTES FOR CLOSURE OF PUBLIC ROADS

- *"Applications for the closure of a public road may only be received from the owners of land which adjoins the road. Applications should be lodged with Council on the form available from Council Offices or Council's website.*
- *Applications for the closure of a Crown public road must be made directly through the Department of Primary Industries, Grafton.*
- This policy does not apply to road closure actions under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act 1993 wherein roads are closed and granted as compensation for acquisition.
- Application fees are set out in Council's current Schedule of Fees and Charges. All costs are to be borne by the applicant unless the road closure is associated with some form of previously agreed compensation.
- Fees received for applications which do not proceed to closure are non-refundable.
- Where a road separates different owners, the entitlement to purchase closed road is usually split between opposite owners on a negotiated basis.
- *Written agreement to the closure of a road by a sole land owner, which separates 2 or more parcels of land, must be obtained from the relevant land owners by the applicant and accompany the application.*
- *Upon closure and purchase of the road reserve the newly created parcel must be consolidated with adjacent land parcels to enhance the useability of the land.*
- Where newly created parcels of closed road result in existing title becoming land locked or infer an extra building entitlement by virtue of Tweed LEP 2000, Council will request consolidation or the registration of restrictions on title to rectify these anomalies.

- In all cases the public may object in writing to any road closures with final determination by the Department of Lands in consultation with Council.
- *Council, when assessing a road closure application, will consider the existing and future requirements of the road reserve. The uses of the road reserve may include access to public or private land, provide access for infrastructure provision, vegetation or wildlife corridors.*
- *The obligation of retaining unconstructed roads involves administration and management of the land. As these roads can be generally fenced into existing landholdings, the maintenance and weed control of these roads is to be undertaken by the land occupier with no impost on Council.*
- *It should be realised that many of these road reserves were created as a means of legal access only for land parcels with no consideration to the natural landscape. This means that the future use of these road reserves may be limited. Any new development areas are required to provide suitable access networks for the public.*

The compensation payable by an applicant for road closure parcels had previously been completed at the end of the application assessment after final determination by the Lands Department. Unfortunately due to an excess of applications now being assessed by the Lands Department this process is taking between three (3) and five (5) years to complete. During this time property prices may fluctuate considerably and as such to enable an equitable outcome for the applicant it has been considered that obtaining a valuation at the point of resolution of Council, approving an application, would be preferable. As such the compensation clause of the draft policy has been amended to include this information, as below:

COMPENSATION

Compensation from the closure of a constructed public road or classified road is payable to Council and can only be used for acquiring land for public road or carrying out works on public roads.

"Compensation for the closure of a constructed public road or classified road will be at the market value as assessed by a registered Valuer as determined at the commencement of a road closure application."

A final aspect of the Policy includes the "Roads not eligible for closure". Two new points have been added to this section as follows:

- *"Roads capable of providing physical access to other roads, public and private properties, public and Crown reserves, public utility installations, railways and the like. In the case of access to private properties closure will be considered if a suitable alternate road is dedicated as public road or if a right of carriageway is created over an existing road/track or new road/track to be created.*
- *Road reserves that have the potential to provide corridors for future Council water, sewer or stormwater infrastructure."*

Finally the current policy did not contain any provision for review and subsequent update. A clause has been added to the end of the document to reflect this which will prompt a review enabling the inclusion or deletion of any clauses deemed necessary. As this process is not dealt with solely by Council and has the final determination made by the Lands Department there are constantly changing directives and procedures that require regular review.

OPTIONS:

Pursuant to Section 161 of the Local Government Act 1993, Council may either:

- (a) amend the draft policy, or
- (b) adopt the draft policy without amendment, or
- (c) not adopt the draft policy, except where the adoption of criteria is mandatory.

CONCLUSION:

Pursuant to Section 161(1)(b) of the Local Government Act 1993 it is recommended that Council adopt the draft local policy, Road Closures and Private Purchase, without amendment.

COUNCIL IMPLICATIONS:

a. Policy:

Road Closures and Private Purchase Version 1.1.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
 - 1.2.1.5 Council Policies are compliant with legislation and guidelines
 - 1.2.1.5.1 Council policies reviewed, reported to Council and placed on public exhibition as required

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Copy of Road Closures and Private Purchase Policy, Version 1.1 adopted 13/11/2007 (ECM 58528428).
 2. Copy of Draft Road Closures and Private Purchase Policy showing amendments highlighted in red (ECM 58528455).
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31 [EO-CM] Bruce Chick Conservation Park

SUBMITTED BY: Recreation Services



Supporting Community Life

SUMMARY OF REPORT:

Bruce Chick Conservation Park is located on Tweed Valley Way north of Tumbulgum at Stott's Island. The park includes the Stott's Island Environment Centre which is a large structure built as a Bicentenary project in 1988. The building contains toilets, interpretation/information boards containing information about Stott's Island and Bruce Chick and picnic tables.

The facilities at the site have presented a number of management challenges over the years including the site evolving into a popular stay over destination for travellers. The building and other structures within the park have reached the end of their useful life span and require either significant refurbishment or demolition.

In order to determine the most appropriate use of this area into the future, infrastructure requirements and management framework, it is proposed to undertake a management plan process as outlined in this report.

RECOMMENDATION:

That Council proceeds with the development of a Management Plan for the Bruce Chick Conservation Park including community and stakeholder consultation as outlined in this report.

REPORT:

Bruce Chick Conservation Park is located on Tweed Valley Way north of Tumbulgum at Stott's Island (figure 1). The park includes the Stott's Island Environment Centre which is a large structure built as a bicentenary project in 1988. The building contains interpretation/information boards displaying information about Stott's Island and Bruce Chick, toilets and picnic tables (figure 3).

In 2000 the NSW National Parks and Wildlife Service in consultation with Tweed Shire Council updated the interpretation information in the shelter and constructed new information boards.

Stott's Island is a nature reserve managed by the NSW National Parks and Wildlife Service. Due to the fragile nature of the nature reserve as one of the least disturbed areas of vegetation in the lower Tweed Valley floodplain, public access to the island is prohibited

The vision of Bruce Chick was to offer visitors a taste of Stott's Island, and to provide a vegetative buffer to Stott's Island from the highway.

Management Issues

Infrastructure:

The large shelter has been the target of regular vandalism with evidence of drug use and anti-social behaviour. A number of elements of the building have reached their useful lifespan and so consideration as to the buildings future is required (figure 2).

A bridge connecting the car park and shelter to a northern section of the park over a drain is completely dilapidated including the footings and support post which has rendered the bridge unrepairable and requiring demolition (figure 4).

Northern Section of Bruce Chick Conservation Park:

The heavily planted northern section of the Bruce Chick Conservation Park is separated from the interpretation centre area by a drain over which the bridge referred to above provided access. No maintenance has been undertaken in this area for many years due to restricted access across the bridge and changes to workplace health and safety regulations which have placed restrictions on the range of plant that can be driven along the Tweed Valley Way. The result of this is that smaller machines that used to traverse along the highway and into this area can no longer gain access.

The deterioration of the foot bridge has prohibited foot traffic from accessing this section of the park. Regaining access to this section of the park will require reconstruction of the footbridge at a significant cost and consideration to the maintenance levels that can be provided.

Toilets

Council's Building and Environmental Health Unit provided the following comments on the toilets at the site.

The toilets within the facility have presented a number of challenges over the life of the facility. A wet compost toilet system was originally installed in about 2000. The system soon failed to function adequately due to contamination from foreign matter, general garbage waste and chemical additives (RV / caravan chemical toilet waste). The wet compost system was decommissioned and the primary collection chamber utilised as a pump out system. The pedestal is located directly above the primary collection chamber and it is an open drop to the deposited material. All liquid and solid waste is retained in the collection well and removed by a licensed liquid waste carrier at regular intervals. The integrity of the collection well is unknown and it is considered that it may have become compromised and leaching of sewage into ground waters may be occurring. No evidence of leaching has been established however anecdotal reports indicate the volume of liquid waste collected appears to be less than the expected volume generated by activity at the site.

It has been established that Compost Toilet systems at roadside rest stop facilities are problematic and fail due to the variable behaviour of persons who use the facilities. Evidence from other facilities such as at Sleepy Hollow servicing the Pacific Highway show how the compost toilet collection wells are used as dump points for all manner of foreign matter and chemical contaminants (soiled clothing, drink containers, food scraps, condoms, general waste). Once the compost toilets malfunction foul odour and unhygienic conditions result in travellers using surrounding bushland for ablution and urination rather than the toilet. There is evidence of campers using the bushland areas at Stott's rather than the existing toilet (toilet paper and faeces behind bushes and trees).

The constraints for toilets at the site include;

- Proximity to the Tweed River,
- High ground water table,
- Low permeability acid sulfate soils,
- Lack of any available land considered as suitable for use as an effluent land application area (when assessed under NSW Regulations and Australian Standards),
- Flooding events,

Due to the current state of the existing toilet system it is considered that the site should be either; decommissioned until it can be established that groundwater and river contamination is not occurring or require the toilets to be connected to the reticulated sewer system at Tumbulgum. Should it be decided that the site shall be redeveloped for more intensive use the only option for toilet facilities is connection to the sewerage system at Tumbulgum.

Access and Carpark:

The park access track and car park are constantly washed out through rain and floods leaving large pot holes which require regular maintenance (figure 5). The increasing volume of campers, recreational vehicles and caravans exacerbates these problems, particularly as they attempt to turn around in a constricted area. Vegetation in the area has suffered in the past by vehicles encroaching into regeneration areas, some of which have been bollarded off to restrict access.

Overnight stays:

The volume and length of stay of overnight campers has been steadily increasing. The park features in publications identifying free overnight camp sites and the popularity has also spread through word of mouth. On a number of occasions it appears individuals have used the site as temporary accommodation and there has been incidents of people sleeping under the shelter.

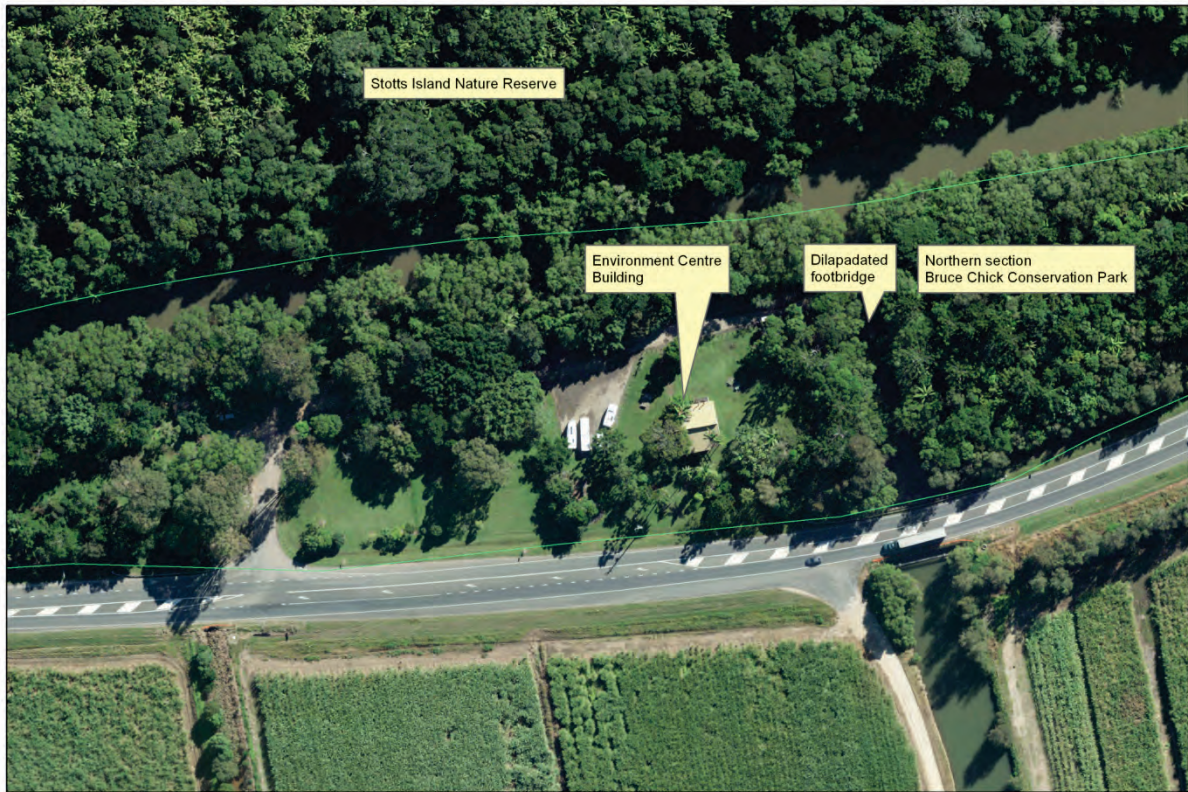
Proposal

In order to determine the preferred use for this area, management framework and infrastructure requirements it is proposed to undertake a management plan process as detailed in table 1. The initial stages of this process will identify constraints and opportunities at the park including legislative, environmental, financial and social. This stage will also include community and stakeholder consultation and will inform the development of the potential options for Council's consideration and determination.

Upon determining a preferred option the management plan will identify aims and objectives, management framework, infrastructure requirements, financial implications, priorities and an implementation plan

ACTIVITY	TIMEFRAME
Phase 1	
Constraints mapping	Feb-April 2013
Community and Stakeholder Consultation	Feb-June 2013
Options Development	April-June 2013
Council decision on preferred option	July 2013
Phase 2	
Develop draft management plan including <ul style="list-style-type: none">➤ Aims➤ Objectives➤ Management Framework➤ Legislative Framework➤ Site masterplan➤ Implementation Plan	July- Oct 2013
Phase 3	
➤ Review of draft by Council	Oct 2013
➤ Exhibition of draft	Nov-Dec 2013
➤ Adoption of Plan	Jan 2014

Table 1: Proposed Management Plan process and timeframe



Bruce Chick Conservation Park
Tweed Valley Way

November 2012

Figure 1: Aerial photo of Bruce Chick Conservation Park



Figure 2: The Interpretation shelter on Bruce Chick Conservation Park



Figure 3: Interpretation boards located in the interpretation shelter

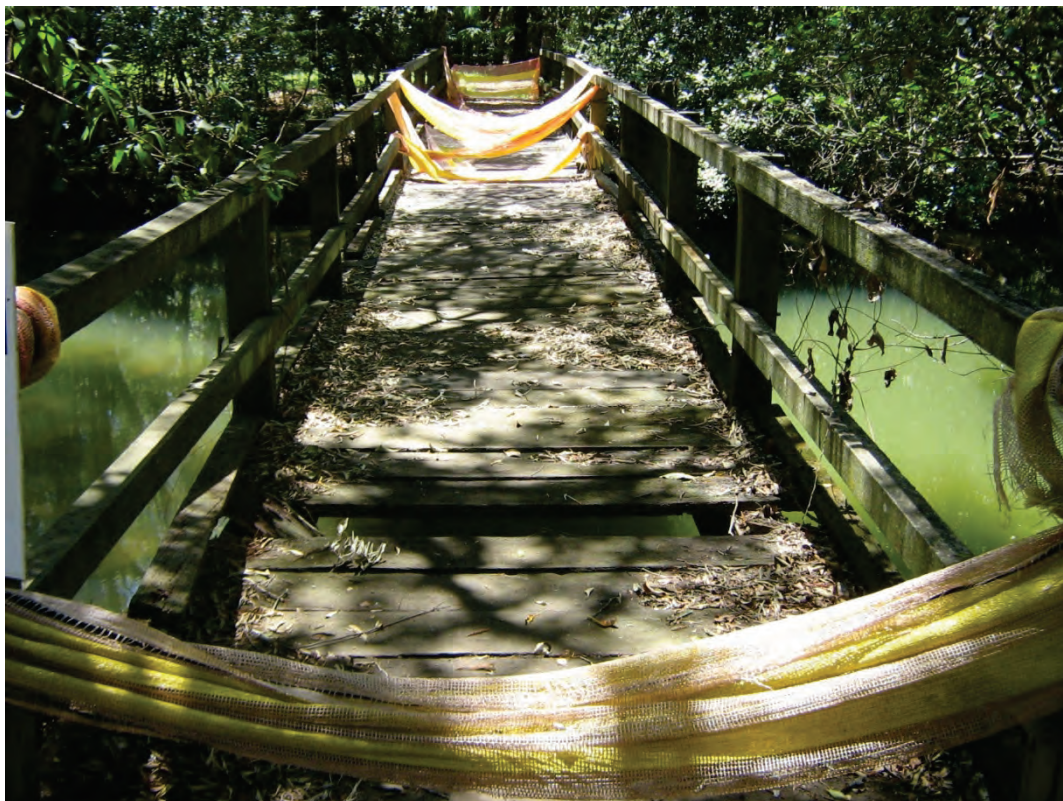


Figure 4: Dilapidated foot bridge to northern section of the park



Figure 5: Potholed access road

OPTIONS:

1. Receive and note the report and proposed actions.
2. Determine that no action will be taken.
3. Consider an alternative course of action.

CONCLUSION:

The Bruce Chick Conservation Park and Stott's Island Environment Centre were developed 24 years ago with the intention of providing information and interpretation about Stott's Island Nature Reserve and to rehabilitate the area to offer visitors a sample of vegetation growing on Stott's Island.

Over the years some of these goals have been realised, but the infrastructure is at the end of its life cycle and the use of the park has evolved in unintended directions. This presents an opportune time to review the current and preferred use of the site and plan accordingly.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

No implications at the planning phase.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.3 Provide well serviced neighbourhoods
- 2.3.6 Provide conveniently placed and well equipped parks, sporting, recreational, cultural and community facilities

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

32 [EO-CM] EC2012-231 for the Supply of One (1) 27,500Kg GVM Heavy Commercial Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane

SUBMITTED BY: Works



Civic Leadership

SUMMARY OF REPORT:

Council advertised tender EC2012-231 on 8 September 2012 for the Supply of One (1) 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane Unit for Council operations, with a closing date of 3 October 2012.

The tender was advertised in the following media groups:

**Sydney Morning Herald
Brisbane Courier Mail
Gold Coast Bulletin
Tweed Link
Councils Web Site**

This report outlines the tenders received.

The recommendation has been formulated based on the Selection Criteria which is contained in Confidential Attachment 1.

RECOMMENDATION:

That in relation to EC2012-231 for the Supply of One (1) 27,500Kg GVM Heavy Commercial Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane:

- 1. The tender from K&J Trucks - Option No1, for the Supply of One (1) Scania P320 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis, and Build and Supply of One (1) Ekebol Tilt-Tray Slide Back and HMF 1420 K4 Crane, be accepted to the value of \$364,211 exclusive of GST.**

2. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act, 1983, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenders if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness, by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest.**

REPORT:

Background

Council Tender EC2012-231 used the open tender process to invite responses for the Supply of One (1) 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane Unit for Council operations.

This unit is a multi-purpose vehicle used for movement and delivery of small plant and equipment and materials such as pipes and pre-cast components to worksites. Items for transportation can be loaded and unloaded by use of the crane, or by winching plant items up the tilt-tray body.

The following assessment criteria was used in the Tender and Equipment evaluation process:

1. **NPV** – Capital Outlay, Whole of Life costing
2. **Operational evaluation Chassis** – Safety, design strength and build quality of chassis for application intended, emissions and environmental considerations, fuel economy factors, operational ability, innovation, product support, equipment warranty and training
3. **Operational Evaluation Body and Crane** - Design strength and build quality of similar units in operation, manufacturer's experience in build type (number of units built per annum and to date) proximity of build facility to Council (ease of project management and warranty repair work) body and crane warranty
4. **Maintenance evaluation** – Ease and speed of regular preventative maintenance, maintenance intervals, service and parts accessibility on machine, technician's safety when servicing, strength and quality of high wearing parts, parts availability from supplier, breakables and innovation in engineering
5. **Operator evaluation** – Ergonomics in cab and controls, safety, suitability for application intended, seating comfort - back and lumbar support, access/egress, visual search and daily maintenance checks

Responses and Evaluations

A total of Thirteen (13) responses were received for tender EC2012-231 Supply of One (1) 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane Unit for Council operations.

On completion of operational evaluation stage, Two (2) Tenders were deemed non-compliant against Council's specification requirements on driver safety. A further One (1) tender scored low in first two stages of weighting criteria, therefore not progressing to short listing stage of an operator and maintenance evaluation.

Tender Evaluation

The tender and product evaluation was conducted by Council's Evaluation Panel consisting of the Plant and Materials Coordinator, Maintenance Technician, Fabrication Supervisor and Two Experienced Equipment Operators. A copy of the Tender Evaluation Report is included in **ATTACHMENT 1** which is **CONFIDENTIAL** in accordance with Section 10A(2)(d)(l) of the Local Government Act, 1993, because it contains commercial information in relation to the tenders, the disclosure of which would be likely to prejudice the commercial position of the tenderers if it was provided. The information identifies the tenderers in relation to the tender price and the evaluation of the products offered by each tenderer. If disclosed, the information would be likely to prejudice the commercial position of the tenderer in terms of market competitiveness by giving their competitors an advantage. Accordingly, disclosure of the information is not in the public interest. Recommendations appear below for the Tender.

The following weighting table shows the tenderers and their equipment, against each of the assessment criteria.

One (1) 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane Unit

Tenderer
K&J Trucks Coffs Harbour (4)
Southside Truck Centre (2)
Iveco Trucks Australia (2)
Brown and Hurley
VCV Brisbane (3)
Murwillumbah Truck Centre

CONCLUSION:

After product analysis, product evaluation and criteria weighting, it is recommended that:

- **Option No1 - K&J Trucks Coffs Harbour be nominated for EC2012-231 for the supply of One (1) 27,500Kg 8X4 Truck Chassis - Scania P320 Unit and the build and supply of One Ekebol Body Tilt Tray Slide Back and HMF 1420 K4 Crane to Tweed Shire Council.**

Details of Tenderer's relative competitiveness are shown in the Evaluation Report **CONFIDENTIAL ATTACHMENT 1** which was endorsed by the Evaluation Committee.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.3

b. Budget/Long Term Financial Plan:

Funds Available in the 2012/2013 Fleet Budget

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. EC2012-231 Supply of One (1) 27,500Kg GVM Heavy Commercial 8X4 Truck Chassis and Build and Supply of One (1) Tilt-Tray Slide Back and Crane Unit for Council operations (ECM 59061170).

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33 [EO-CM] Contract Update EC2011-012 Kirkwood Road Project Quarterly Update

SUBMITTED BY: Contracts

FILE REFERENCE: EC2011-012



Supporting Community Life

SUMMARY OF REPORT:

Tweed Shire Council (TSC) is now 10 months into the Kirkwood Road Project and works are proceeding well with the dry weather spell presently being experienced the contract completion date is now 9 July 2013.

At the time of writing this report the bulk earthworks on the Eastern roundabout have been completed including all surcharge material required to induce settlement of the roundabout fill area.

The Project is now concentrating on the entry ramp and exit ramps construction, with works well under way.

The western borrow pit has supplied all fill requirements for the eastern interchange. The Contractor has maintained sealed haul roads to minimise dust to nearby residents throughout the haulage process. Unfortunately due to the very dry conditions, the control of dust has been a challenge during the works due to high and variable winds.

Kirkwood Road east of the interchange is nearing completion with the final layer of pavement being placed by the contractor, kerb and channel works along Kirkwood Road and the new Cemetery entrance. The Contractor is planning to asphalt sections of Kirkwood Road up to Sunshine Avenue prior to December.

RECOMMENDATION:

That Council:-

- 1. Approves the known variations to the contract contained in the confidential Attachment.**
- 2. Notes the estimated value of expected variations to the contract contained in the confidential attachment.**
- 3. Endorses the General Manager to approve variations above the existing revised contract value to the maximum value of \$150,00.**
- 4. ATTACHMENT A is CONFIDENTIAL in accordance with Section 10A(2)(d)**
 - (d) commercial information of a confidential nature that would, if disclosed:**
 - (i) prejudice the commercial position of the person who supplied it, or**
 - (ii) confer a commercial advantage on a competitor of the council, or**
 - (iii) reveal a trade secret.**

REPORT:

Construction Update

Tweed Shire Council (TSC) is now 10 months into the Kirkwood Road Project and works are proceeding well with the dry weather spell presently being experienced the contract completion date is now 9 July 2013.

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Kirkwood Road east of the interchange is nearing completion with the final layer of pavement being placed by the contractor, kerb and channel works along Kirkwood Road and the new Cemetery entrance. The Contractor is planning to asphalt sections of Kirkwood Road up to Sunshine Avenue prior to December.

Soft Soil Areas

The soft soil area is now in the period of settlement, with ongoing geotechnical monitoring being undertaken to monitor the settlement rate of fill and measuring the strength gain of the soft soil profile below. Prediction for surcharge removal is still an unknown with continuing reviews being undertaken on when the surcharge can most likely be removed. This process is still considered a financial risk to the project as well as a risk to the project completion

Concrete Pavements

Roads & Maritime Services NSW (RMS) has requested that the project construct a concrete (instead of Asphalt) pavement tie-in to the Pacific Highway South Bound Entry Ramp. This revised design is being developed by RMS and will be forwarded to the Contractor for inclusion into the project. RMS has been notified of their responsibility for any extra over costs that may be incurred due to the revised pavement design.

Innovation

On top of the previous reported recycled noise panels, Council, RMS and the Contractor have reclaimed a significant number of noise wall panels that were not incorporated in to a previous Pacific Highway project. This reclaimed sound wall will be reused along the 6 metre high sound wall sections for the Exit Ramp. This innovation will possibly present some additional savings to the project. These savings are yet to be fully assessed and realised through the contract but are expected to be minor.

Environmental

Environmental conditions at the project are consistently being monitored by the Contractor and Council staff. Outcomes are consistently meeting industry standard, however there have been a number of complaints received during these months due to the dry conditions. These complaints have been various during the project and relate to dust and vibration. Noise complaints have been consistent due to the removal of the noise wall that is located

on the exit ramp. The removal of this noise wall has been longer than expected due to unknown difficulties with access agreement to the private property and resolving design issues related to the noise wall and retaining wall design. The Contractor and Council staff are attempting to mitigate this issue by accelerating the construction time for the erection of the new design wall.

Aboriginal Employment and Cultural Heritage Monitoring

Cultural Heritage monitoring has been undertaken throughout the clearing and removal of top soil from site as previously reported. The identification of possible Cultural significant artefacts has been confirmed and consequently the Tweed Byron Aboriginal Land Council has initiated a process of registering a small area at the very top of the western ridge line with the Office of Environment and Heritage. Cultural Monitoring is still required to be engaged once the western borrow area is ready for top soil to be re-spread. Aboriginal employment is ongoing on the project with the Contractor employing one (1) Aboriginal employee on the project. This ongoing employment is a condition of the Contractors obligations under the contract subject to the Contractor finding suitable applicants.

Revegetation Offset Management Strategy Project Avondale Park Update

Planning

The compensatory restoration works are underway at the Avondale Park offset site. The Habitat Restoration Plan, which will guide the restoration works over the five year maintenance period, has been drafted and is being finalised with the latest planting design.

Site Activities

The site soil required treatment prior to planting as it was found to be compacted, acidic and deficient in nitrogen, calcium, potassium, phosphorus and biological activity. This was a result of past drainage and filling works and the presence of acid sulfate soils at the site. Two different treatment regimes were applied to the soil. The eastern portion of the site is being treated by SoiLife to build soil microbe activity using no cultivation, mulch and application of soil conditioners (containing live microbes). The western portion was treated by ripping and application of chemical fertilizers. Background samples of soil microbes has been taken and analysed by the Soil Foodweb Institute at Southern Cross University. Additional samples will be taken over the course of the project to compare the success of the different soil treatment regimes in building soil microbe activity and improving nutrient deficiencies. Wood chip mulch was sourced from Kirkwood Road clearing and logs stored at Depot Road. It was delivered to site and spread over the planting cells. The Stage 1 planting comprising 6000 tube stock was completed last Wednesday (14 November). Stage 2 planting will see a further 2800 plants planted at Avondale Park in March 2013. In addition, 1200 plants will be planted adjacent to the Kirkwood Road off-ramp roundabout (on the eastern side of the highway) once construction is completed. Some of the tube stock being planted was propagated from seed sourced from vegetation cleared for Kirkwood Road construction.

Quality

Quality of the workmanship on site is consistent with the specifications presented for the project. The Contractor is presenting works as required for inspection and is generally ensuring that the quality of the project is not being compromised.

OPTIONS:

Not applicable.

CONCLUSION:

Not applicable.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Policy.

"Lower Tweed and Pacific Highway Traffic Master Plan 2006"

b. Budget/Long Term Financial Plan:

Budget summary of the estimated cost of the Kirkwood Road Project is presented below.

Project Budget was estimated in December 2010 as \$16.9 million with \$10 million being contributed by Council and up to \$7 million being contributed by the RMS.

Present total budget expenditure to date is \$6.9 Million at the time of writing this report with an anticipated contract value increasing to \$13.61 Million. This increase in the contract value is nearing the limits of the previously reported overall budget forecast.

c. Legal:

No legal advice has been received.

d. Communication/Engagement:

Council officers have completed the second of 4 community engagement meetings recently during the life of the project. The purpose of these meetings is to give adjacent land owners an update on the construction status, future works activity and to answer any questions regarding the project.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.4 An integrated transport system that services local and regional needs
- 2.4.1 Provide a safe and efficient network of arterial roads connecting neighbourhoods to town centres, employment, shopping, health, commercial and education facilities
- 2.4.1.2 Provision of arterial roads as planned in Tweed Roads Contribution Plan
- 2.4.1.2.2 Completion of Kirkwood Rd east interchange

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Contract EC2011-012 Variations to the Project Register (ECM 59922239).

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34 [EO-CM] Proposed Audit of Safety and Accessibility of Infrastructure Adjacent to Local Schools

SUBMITTED BY: Planning and Infrastructure



Supporting Community Life

SUMMARY OF REPORT:

At the 15 November meeting, Council resolved in regard to:

"Audit of Safety and Accessibility of Infrastructure Adjacent to Local Schools:

RESOLVED that Council officers prepare a report with respect to the state of repair of existing roads, footpaths and pedestrian crossing which service local schools, upon the criteria of safety and equality of access within designated school zones. The report to be presented to Council prior to the commencement of the 2013 NSW School Year."

The cost of the audit is estimated at \$74,000. This activity is not currently provided in Council's 2012/13 budget. The audit proposed, being conducted by Council can only deal with issues within Council's own control and would be a significant cost impost on ratepayers. Many and perhaps most of the safety/access issues in the vicinity of schools are not caused primarily by Council, but are caused by other stakeholders. It may therefore be more effective and more equitable to ratepayers to defer the audit proposed in the 15 November Council Resolution and seek the Local Traffic Committee's (RMS, Police, local State members and Council representatives) advice on how to best address safety and equal access issues in the vicinity of schools. Particularly as the Local Traffic Committee consisting of NSW Road and Maritime Services (RMS), Police, local members of the NSW Parliament and Council representatives, can pursue a more whole of government approach to this issue.

RECOMMENDATION:

That:

- 1. Council defer the audit proposed in the Council Resolution of 15 November 2012 and seek the Local Traffic Committee's (RMS, Police, local members of the NSW Parliament and Council representatives) advice on how to best address safety and equal access issues in the vicinity of schools.**
- 2. Further action on the audit be deferred until Council has authorised necessary expenditure pending receipt of advice referred to above.**

REPORT:

1. Background

At the 15 November meeting, Council resolved in regard to:

"Audit of Safety and Accessibility of Infrastructure Adjacent to Local Schools:

RESOLVED that Council officers prepare a report with respect to the state of repair of existing roads, footpaths and pedestrian crossing which service local schools, upon the criteria of safety and equality of access within designated school zones. The report to be presented to Council prior to the commencement of the 2013 NSW School Year."

It has been identified from a desktop investigation that within Tweed Shire there are:

- 42 Schools (primary and secondary)
- 21.3km road within associated school zones
- 11.5km footpath within associated school zones
- 10 school crossings and 12 pedestrian crossings within school zones
- 306 school zone signs

2. Context

The Council resolution requires condition rating of Council assets in the school zones and assessment based on safety and equality of access criteria. Being a Council only initiative, it is presumed that the assessment will only include assets and activities on Council controlled land i.e. in the road reserve. This will limit the effectiveness of the process as it will of necessity cease at the school gate/entrance onto the road reserve. Issues of safety and particularly "equality of access" are generally a result of interaction between assets and activities both on the road reserve and within the school site.

The issue of responsibility is also unclear. In the development application/approval process, Schools and especially NSW Government Schools, resist providing infrastructure improvements external to the school site that would be considered necessary for any other developer. Private schools are more cooperative in this regard and generally pay the developer contributions required for developments that place demand on Council's trunk infrastructure (eg. Section 94 TRCP contributions for arterial roads and Section 64 water/sewerage headworks contributions). Due to its statutory power, the NSW Department of Education, refuses to pay any developer contributions and shifts these costs onto local ratepayers. Parking is also a vexed issue as there is rarely enough provided on site for staff and student parking, and insignificant provision is made by schools for parents in private vehicles dropping off and picking up students each morning and afternoon. The incidence of parents using private vehicles for pupil drop off and pick up is increasing. The following is an extract from the "NSW Schools Physical Activity and Nutrition Survey (SPANS) 2010" based on data collected from 8,100 NSW school students in years K to 10 from 101 schools in the government, catholic and independent sectors in Term 1 of 2010.

"Car travel

Overall, the proportion of students being driven to school decreased across year groups. More than half of Years K and 2 students (54%) were driven to school, while 45% of Year 4 students and approximately a third (34.9%) of Year 6 students were driven to school. Among secondary school students, less than one-fifth were driven to school (16%), with slightly more girls being driven than boys. The average car journey to school took less than 10 minutes."

The vicinity of schools during morning drop off and afternoon pick up of pupils often becomes quite congested, chaotic and inherently unsafe due to the large number of private vehicle, bus, cycle and pedestrian movements accessing the school environs in these limited time windows. It is also often accompanied by illegal behaviour of drivers of private vehicles in stopping/parking in neighbouring driveways and other prohibited areas to drop off/pick up pupils. Most of these safety related behavioural issues can only be addressed by a comprehensive team approach by the schools and their parent stakeholders.

3. Council's Role

Council is responsible for assets within the road reserve including roads, footpaths, pedestrian crossings, signs and markings. These assets are maintained in accordance with the asset management plans adopted for all Council assets. Schools and the general public regularly initiate Customer Works Requests (CWR) for maintenance/repair works in the vicinity of schools and these are attended to in accordance with normal procedures. Council's signage gang regularly inspect and maintain signage and road markings in the vicinity of schools.

Specific road safety issues are often raised by school authorities or parent bodies and referred to the Local Traffic Committee (LTC) for consideration. The LTC is composed of RMS (formerly RTA), Police and Council representatives and the local NSW State Member of Parliament or his representative. The LTC will consider these issues, may conduct its own investigations and may make recommendations to Council for action or may give advice to school authorities. The actions can relate to parking restrictions, road geometry, pedestrian crossing location, redefining road geometry, signage, and the like. However only RMS can make decisions on speed limits and zones.

Council also acts as agent for RMS in delivering specific NSW Government initiated and funded programs including the establishment of school speed limit zones, installing associated flashing lights, installation of school crossing signs and markings etc.

4. Scope for Audit Proposed by Council's 15 November Resolution

The following has been identified as the scope of the Council resolution:

Physical condition rating:

- Inspect and rate physical condition and defects of roads and footpaths within each school zone as defined by the "School Zone" speed restriction zone, in accordance with standard asset management procedures.
- Report on any deficiencies/defects

Safety assessment

- **Stage 1 - Review of existing infrastructure and conditions**
 - Review Physical Condition rating
 - Review speed zoning
 - Determine speed compliance on adjacent roads
 - Assess signage/linemarking in accordance with appropriate guidelines
 - Assess intersections
 - Assess streetlighting if applicable
 - Review school pedestrian/cyclist access desire lines
 - Assess bus zones in consideration of expected users and separation from other traffic

- Review areas for parent parking and compliance
- **Stage 2 - Operational Assessment**
 - Observe school in morning and afternoon drop off and pick up periods
 - Determine adequacy of infrastructure as described in Stage 1
 - Survey school stakeholders' needs
- **Stage 3 - Compile report**
 - Recommend corrective actions
 - Cost estimates
 - Determine appropriate funding and relevant responsible body

Equal access assessment

- Develop brief for consultants in the "equal access" area
- Obtain quotations in accordance with Council's Procurement Policy
- Engage consultants
- It is envisaged the consultants will perform the following tasks for each of the 42 school sites in Tweed Shire:
 - Visit each school site, assess the road and footpath access to each designated school and school car park entrance/gate.
 - Take notes and photographs etc of above
 - Interview stakeholder(s) from each school.
 - From above, assess each school's "equality of access" against appropriate standards
 - Identify deficiencies and required upgrades to meet appropriate standards
 - Compile report and recommendations

5. Estimated Costs and Budget

Estimated costs to conduct the audit are as follows:

Physical condition rating

An assessment of these assets to record defects and pavement condition would take approximately 2 weeks for 2 staff and a vehicle

Subtotal \$16,500

Safety assessment

Stage 1:

1 person (RSO) x one hour per school (42) + 1 vehicle

Speed surveys including traffic control

Stage 2:

2 persons (RSO and Traffic Engineer) x 42 schools + 1 vehicle

Survey instrument development and distribution

Stage 3:

16hours labour

Subtotal \$22,500

Equal access assessment

Subject to confirmation from audit consultant

Subtotal say \$35,000

Total Estimated Cost: \$74,000

At present there is no item in the 2012/13 budget for this activity. Allocation of a budget for the audit could be considered in Council's December 2012 Quarterly Budget Review, expected to be considered by Council in February 2013. A special budget allocation could be considered earlier if the matter is considered sufficiently urgent.

6. Time to Complete

It will not be possible to conduct the audit as outlined in this report in the timeframe required by the Council resolution being "*prior to the commencement of the 2013 NSW School Year*".

The physical condition rating can be conducted in house and could be finalised within a month of commencement.

The safety audit is dependent on successful recruitment of a Road Safety Officer as this position is currently vacant. Applications for the position have closed, and it is hoped the position would be filled by the end of January 2013. Therefore the safety plan of the audit could be completed by April 2013.

Due to resource constraints, it is advised that the equal access audit could not be conducted in house, and that this type of audit is best conducted by recognised expert consultants in the field. It is unlikely therefore that this part of the audit would be completed until mid 2013, given the time required for preparing a brief, obtaining quotations and selecting a consultant in accordance with Council's Procurement Policy plus the time needed to complete the field work, assessment and report.

7. Schedule of Tweed Shire Schools

School Name	Roads	Road Segment Numbers	Segment length (m)	Footpath length (m)	School X-ings	Ped X-ings
Batikavia	Kyogle Road	190	400			
Uki Primary	Kyogle Rd	280 290	420	188		1
	Rowlands Creek Rd	10 20	220	80		
Tyalgum Primary	Coolman St	30	160			
	Carraboi Tce	10 20	125			
	Tyalgum Ck Rd	10	103			
Chillingham Primary	Numinbah Rd	230 240	455	455	1	
	Zara Rd	10	149			
	Beantree Rd	10	30			
Dungay Primary	Tomewin Rd	80 90	500			
	Jack Williams Pl	10	29			
Condong Primary	Mcleod St	40	268	145	1	

School Name	Roads	Road Segment Numbers	Segment length (m)	Footpath length (m)	School X-ings	Ped X-ings
Crystal Creek Primary	Numinbah Rd	140 150 160	534			
	Crooks Valley Rd	10	270			
Tumbulgum Primary	Fawcett St	10 20	208			
	Bawden St	10 20	253			
	Irving St	20 30	70			
Terranora Primary	Terranora Rd	120 130	450	450	1	
	Henry Lawson Dr.	10	110			
	Shamara Rd	10	78			
	Carrington Ct	20	45			
Mur/Bah Primary,	Condong St	20 30 40	320	320		
	Riverview St	10	350	350		1
	Eyles Ave	20 30	150			
	Eyles LA	20	50			
	Prince St	20 30	256	256		
Murb/Bah High,	Nullum St	70	287	287		
	Kyogle Rd	500	158	158		
	Riverview St	10	335	335		1
	High school la	10	213	213		
	Fulford La	10	75			
Mt Saint Patricks,	Murwillumbah St	30	278	159		1
	Mooball St	30 40	483	250		
	Queensland Rd	10 20 30	429	350		1
	Nullum St	10	61			
	Nullum La	40	60			
	Bent St	10	47			
	Warterloo St	10 20	166			
	Ewing St	50	133			
	Rouse St	10 20	191			
Sathya Sai Schools	Nullum St	20	192	192	1	
	Nullum La	30	230			
Mur/Bah East Primary	George St	10	215			
	Charles St	30	118	118	1	

School Name	Roads	Road Segment Numbers	Segment length (m)	Footpath length (m)	School X-ings	Ped X-ings
Greenhills Primary	Tweed Valley Way	9200	355	355		
	River St	40	177	177		
Tweed Valley College	Hall Dr	10	178	97		
Krishna School	Tyalgum Rd	90 100	300			
Wollumbin High	Nth Arm Rd	30 40	490	265		
	Castlefield Dr	10	58	58		
	Sapphire Pl	10	88			
Crabbes Ck Primary	Crabbes Ck Rd	10 15	350			
	Bluegum Ct	10	50			
Stokers Siding Primary	Stokers Rd	80 90	320			
Burringbar Primary	Burringbar Rd	10 20	410	150		
Kingscliff Primary	Sutherland St	10 20	450	427		
	Palmers La	10	40			
	Moss St	20	25	25		
	Orient St	10 20	340	340	yes	
	Omar St	10	20	20		
St Anthonys Primary	Pearl St	10	251	251	yes	
Kingscliff High	Oxford St	10	170	170		
St Josephs Primary	Greville St	10	104	104		
	Wardrop St	10 20 30	107	107		
	Wardrop La	20	150			
Banora Pt Primary	Pioneer Pde	30 40	365	365		1
	Westray Ave	10	71		1	
	Johnson St	10	27	27		
Centaur School and Banora Point High	Eucalyptus Dr	10	252	252		1
	Leisure Dr	70	504	504		
	Covent Gardens way	20	254	254	1	
Caldera Colledge	Corporation Ct	20	275	275		

School Name	Roads	Road Segment Numbers	Segment length (m)	Footpath length (m)	School X-ings	Ped X-ings
St Anthony's Primary,	Greenway Dr	40 50	354	354		1
St Joseph's College	Doyle Dr	10	75	75		
Bilambil Primary	Bilambil Rd	100	402	207		
Carool Primary	Carool Rd	50 60	379			
Duranbah Primary	Duranbah Rd	20 30	320			
Cudgen Primary	Collier St	10	200			
Bogangar Primary	Tweed Coast Rd	230	415	415		
	Towners Ave	30	86			
Pottsville Primary	Tweed Coast Rd	150 160	460	460		1
	Cudgera Ave	10	135	135		
	Elfran Ave	10	55			
Fingal Primary	Main Rd	10	129			
	Letitia Rd	10	157			
	Queen St	20	38			
	Prince St	10	157	50	1	
Tweed High and south	Heffron St	20 30	347	347	1	
Tweed Primary	Currawong Pl.	10	47			
	Seymour St	10	47			
	Oxley St	10	56	56		
Lakeside Christian college	Acacia St.	10	308	127		
Lindsfarne School	Mahers La	50	370	209	1	
Lindsfarne Primary	Sunshine Ave	20 30	370			
Tweed Primary	Stuart St	10	200	200		1
St Josephs	Frances St	50	158	158		1
	Enid St	10	178	178		1
Totals			21,298	11,500	10	12

OPTIONS:

- 1(a) Council consider allocating an estimated \$74,000 in the December 2012 Quarterly Budget Review for preparation of a report with respect to the state of repair of existing roads, footpaths and pedestrian crossings which service local schools, upon the criteria of safety and equality of access within designated school zones.
- (b) The above project (expected to require 5 months for completion), be commenced upon Council authorising the above expenditure.

2. Subject to a formal budget allocation, conduct the proposed audit in accordance with an alternative scope.

- 3(a). Defer the audit proposed in the 15 November Council Resolution and seek the Local Traffic Committee's (RMS, Police, local members of the NSW Parliament and Council representatives) advice on how to best address safety and equal access issues in the vicinity of schools.
- (b) Further action on the audit be deferred until Council has authorised necessary expenditure pending receipt of advice referred to in 3 (a).

4. Defer the audit proposed in the 15 November Council Resolution and request the NSW Government to conduct a comprehensive audit of road safety and equal access issues in the vicinity of schools (the adjacent road reserves) within Tweed Shire and within the school grounds. Such an audit to include consultation with all stakeholders (School principals and staff, parent representatives, RMS, NSW Dept of Education, bus companies, Council, all abilities groups etc).

CONCLUSION:

Council could consider allocating an estimated \$74,000 in the December 2012 Quarterly Budget Review for preparation of a report with respect to the state of repair of existing roads, footpaths and pedestrian crossings which service local schools, upon the criteria of safety and equality of access within designated school zones. However such an audit, conducted by Council can only deal with issues within Council's own control and would be a significant cost impost on ratepayers. Many and perhaps most of the safety/access issues in the vicinity of schools are not caused primarily by Council, but are caused by other stakeholders. It may therefore be more effective and more equitable to ratepayers to adopt Option 3 and seek the advice of the Local Traffic Committee on this matter. Particularly as the Local Traffic Committee consisting of RMS, Police, local members of the NSW Parliament and Council representatives can pursue a more whole of government approach to this issue.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Policy
Local Traffic Committee Guidelines

b. Budget/Long Term Financial Plan:

Estimated cost of \$74,000 for project, not currently allocated in the 2012/13 Council budget.

c. Legal:

Safety issues around schools are the legal responsibility of a number of stakeholders.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.4 An integrated transport system that services local and regional needs
- 2.4.3 Ensure local streets, footpaths and cycleways are provided, interconnected and maintained

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

35 [EO-CM] Section 94 Developer Contributions, Concessions for Small Business

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

At the Council meeting 25 October 2012, it was resolved that Council:

- "1. Brings forward a report identifying the number of small businesses that were approved in the last 12 months and the income generated to Tweed Shire Council for the Section 94 contributions. The report to indicate what implications would be to the Council budget if these charges were reduced by 50%. This report to be presented to Council at the December meeting.*
- 2. Determines at the December 2012 meeting if to discount the Section 94 charges for small business applicants by 50% for a period of twelve (12) months beginning from 1 January 2013 to 31 December 2013.*
- 3. Consults with the combined Chambers of Commerce and other industry groups before the report is tabled at the December meeting."*

The major portion of developer contributions paid by businesses is for arterial road network improvements required to service development. These contributions are designated in Contributions Plan No.4 - Tweed Road Contribution Plan (TRCP).

The TRCP already contains a number of existing concessions to businesses:

The first is a general concession of 40% deduction for all commercial job creating development. This general concession excludes:

- coastal development between Kingscliff and Bogangar (Sector 7): Casuarina, Kings Forest, Salt, the 'Tourist Property' (Lot 490 DP 47021), developments in Bilambil Heights and Cobaki.
- detached housing and unit development.

The second business concession is a total exclusion from TRCP obligations for "Eligible Business Enterprises" (EBE), which are small businesses (less than 1,000 m² in area), establishing in rented premises.

It is open to Council to vary these concessions, however any increase in concessions will have a commensurate negative impact on the funds available for arterial road network improvements required to service urban growth and development. In the medium term, decreasing developer contributions for business developments will reduce the availability of funds and delay commencement of the upgrading of the section of Kennedy Drive between Rose Street and Gray Street.

RECOMMENDATION:

That Council consider the options in this report.

REPORT:

1. Notice of Motion

At the Council meeting 25 October 2012, it was resolved that Council:

- "1. Brings forward a report identifying the number of small businesses that were approved in the last 12 months and the income generated to Tweed Shire Council for the Section 94 contributions. The report to indicate what implications would be to the Council budget if these charges were reduced by 50%. This report to be presented to Council at the December meeting.
2. Determines at the December 2012 meeting if to discount the Section 94 charges for small business applicants by 50% for a period of twelve (12) months beginning from 1 January 2013 to 31 December 2013.
3. Consults with the combined Chambers of Commerce and other industry groups before the report is tabled at the December meeting."

2. Background

Council has the following approved Section 94 Contribution Plans:

Contribution Plan No.	Description
01	Banora Point West/Tweed Heads South Open Space Contribution
02	Western Drainage Scheme
03	DCP3 Community Facilities
04	Tweed Road Contribution Plan
05	Local Open Space
06	Street Tree Planting in Residential Areas
07	West Kingscliff
10	Cobaki Lakes Public Open Space and Community Facilities
11	Tweed Shire Library Facilities
12	Bus Shelters
13	Eviron Cemetery
14	Rural Road Upgrading, Mebbin Springs Subdivision
15	Developer Contributions for Community Facilities
16	Emergency Facilities (Surf Lifesaving)
18	Council Administration Offices and Technical Support Facilities
19	Casuarina Beach/Kings Forest
20	Public Open Space at Seabreeze Estate
21	Terranora Village Estate
22	Cycleways
23	Offsite Parking
25	Salt Open Space and Associated Car Parking
26	Shirewide Regional Open Space
27	Tweed Heads Master Plan - Local Open Space/Streetscaping
28	Seaside City

The plans that apply to business development (apart from dwellings, tourist facilities and subdivisions) are CP4 - Tweed Road Contribution Plan (TRCP) and CP 18 - Council Administration Offices and Technical Support Facilities. The TRCP contributions are the major cost component, CP18 contributions are generally the minor component of the total contributions liability for business Development Applications.

2.1 TRCP Contributions

The contribution rates for the TRCP vary depending on the sector where development takes place:

CP No. 4 TRCP Contributions			
TRCP Sector	Contribution Rate per Trip (\$)	Trips per ET	Contribution Rate per ET (\$) (residential lot or dwelling)
S94-04 (Tweed Heads)	822	6.5	5,343
S94-04 (Tweed South)	1,329	6.5	8,639
S94-04 (Cobaki)	1,389	6.5	9,029
S94-04 (Bilambil Hts)	2,860	6.5	18,590
S94-04 (Terranora)	2,005	6.5	13,033
S94-04 (Kingscliff)	1,146	6.5	7,449
S94-04 (Duranbah/Cab)	1,155	6.5	7,508
S94-04 (LCA Casuarina)	169	6.5	1,099
S94-04 (Pottsville)	1,295	6.5	8,418
S94-04 (Murwillumbah)	1,328	6.5	8,632
S94-04 (Rural-Inner East)	1,822	6.5	11,843
S94-04 (Burringbar)	1,263	6.5	8,210
S94-04 (Rural-Inner North)	2,953	6.5	19,195
S94-04 (Rural-Inner West)	2,258	6.5	14,677
S94-04 (Rural Other)	2,555	6.5	16,608

The trip generation rates, which are multiplied by the above contribution rates to determine the total amount of TRCP contribution are shown in the table below. The multipliers for business are based on typical estimates of trip generation for each type of business.

CP No.4 TRCP Table 3.6.1A - Trip Generation Rates by Land Use			
No	Land Use	Daily Trip Rate	Unit Per
RESIDENTIAL AND TOURIST			
1	Dwelling house	6.5	Household
2	Multi Dwelling housing	3.9	Unit
2.1 Housing for older people or people with disabilities (SEPP 5)			
a.	Residential care facility	2	Occupant
b.	Hostel	2	Occupant
c.	Self contained dwelling with onsite community facilities	2.5	Dwelling
d.	Self contained dwelling. No onsite community facilities	3	Dwelling
21	Motels	5	100 m2 GLA
35	Tourist Resort	2.48 plus 12	Room or Unit 100m2 GLA of

CP No.4 TRCP Table 3.6.1A - Trip Generation Rates by Land Use			
			restaurant
COMMERCIAL-RETAIL*			
6	Service station	200	Pump
8	Shop/General Store <, 100m2	2.8 (A)	A = m2 GLA
9	Shopping Centre 100m2 < SC < 6,000m2	200 + 0.8 (A)	A = m2 GLA
10	Shopping Centre 6,000m2 < SC < 10,000m2	500 + 0.75 (A)	A = m2 GLA
11	Shopping Centre >= 10,000m2	3200 + 0.48 (A)	A = m2 GLA
12	Retail Garden centre not included in Shopping Centre	40	100 m2 retail area
13	Hardware not included in shopping centre	80	100 m2 GLA
20	Retail Tyre Outlets	10	100 m2 GLA
22	Pub / Tavern / Hotel	110	100 m2 GLA
23	Refreshment Room (eg Restaurant)	60	100 m2 GLA
23.1	Fast food outlet with associated drive through capability	200	100m2GLA
24	Retail Market	20	100 m2 GLA
31	Licensed Clubs	100	100 m2 GLA
32	Motor Showrooms	5	100 m2 GLA
BULKY GOODS*			
14	Mixed Retail Showroom Bulky and Non Bulky goods)	40	100 m2 GLA
15	Bulky Goods Retailing (eg Furniture Showroom)	10	100 m2 GLA
COMMERCIAL – OFFICE*			
16	Commercial Premises (Offices / Professional Centre)	16	100 m2 GLA
17	Commercial Premises (Major Offices including government)	12	100 m2 GLA
COMMERCIAL-BUSINESS PREMISES*			
18	Medical Centres & Dentists(greater than 3 consulting rooms)	50	100 m2 GLA
19	Professional Consulting Rooms	50 - 150	100 m2 GLA
LIGHT INDUSTRY*			
28	Light Industry	5	100 m2 GLA
34	Mixed Industrial Park	7.0	100 m2 GLA
WAREHOUSE OR DISTRIBUTION CENTRE*			
29	Warehouses	4	100 m2 GLA
MISCELLANEOUS			
3	Child Care Centre	3.7	Enrolment
4	Education Establishment (Primary School)	1.4	Enrolment
5	Education Establishment (High School)	1.4	Enrolment
7	Education Facility (TAFE College/University)_	1.8	Enrolment

CP No.4 TRCP Table 3.6.1A - Trip Generation Rates by Land Use			
25	Recreation Facility - Squash	40	Court
26	Recreation Facility - Tennis	40	Court
27	Recreation Facility - Gymnasium	50	100 m2 GLA
30	Hospitality Facilities	50	100 m2 GLA
33	General Heavy Industry	1.5	100 m2 GLA

Further complicating the calculation for business contributions are "Modification Factors". These are factors that decrease the contributions payable on the basis that there are shared trips (single trips for a number of different purposes), therefore the contribution liability should be decreased to allow for this. The standard "Modification Factors" are shown in Table 3.6.1B below.

Table 3.6.1B - Modification Factors for Specific Land Uses	
Category of Land Use	Contribution Modification
Child Minding Facilities	0.60
Primary School	0.75
High School	0.80
Suburban Service Station	0.10
Local Shops to 100 m2	0.15
100 m2 < Shop < 6,000 m2	0.15 to 0.55 at 6,000 m2(1)
6,000 m2 < Shop < 10,000 m2	0.55 to 0.60 at 10,000 m2(2)
Shops >= 10,000 m2	0.6
Fast food outlet with drive through facility	0.65

2.2 CP18 - Council Administration Offices and Technical Support Facilities Contributions

These contributions are for expansion of Council administration offices and works depots to cater for the additional demands for Council services and administration caused by development and population growth.

CP. No.18 Council Administration Offices and Technical Support Facilities – Contribution Rates		Indexed Rate 1/7/2012 Version 2.2.2*
Residential and Tourist		
Per person	1	\$755.26
Per Lot/ET	2.4	\$1,812.62
Detached dwelling	2.4	\$1,812.62
1 bedroom unit	1.3	\$981.84
2 bedroom unit	1.7	\$1,283.94
3 bedroom unit	2.1	\$1,586.05
4+ bedroom unit	2.4	\$1,812.62
Commercial	Per	
Small industrial lot or unit	Lot or Unit	\$392.77

Small commercial or retail lot or unit	Lot or Unit	\$392.77
Larger commercial, retail or industrial per 300m2 floor area	300m2 floor area	\$272.41

3. Contributions Paid by Small Business

The total Section 94 developer contributions paid over past years from 2003/4 until 2011/12 is shown in the following table. For the year 2011/12, the amount contributed by business developments is also shown

Year	Annual Section 94 Receipts - All Development Categories	Business DAs Only
2003/4	5,912,299	
2004/5	7,953,242	
2005/6	2,502,892	
2006/7	10,476,279	
2007/8	3,961,955	
2008/9	2,966,656	
2009/10	2,961,491	
2010/11	1,419,176	
2011/12	2,221,223	804,285

There is no agreed definition of "small business". A list of the developer contributions for businesses in the year 2011/12 is shown in the confidential attachment. A subjective assessment of this list could put the contributions for "small business" in 2011/12 at \$105,381. The majority of this \$105,381 would be for TRCP contributions.

4. Existing Concessions

The TRCP contains a number of existing concessions to businesses:

The first is a general concession of 40% deduction for all commercial job creating development. This general concession excludes:

- coastal development between Kingscliff and Bogangar (Sector 7): Casuarina, Kings Forest, Salt, the 'Tourist Property' (Lot 490 DP 47021), developments in Bilambil Heights and Cobaki.
- detached housing and unit development.

The text for this concession on page 14 of the TRCP is as follows:

"A) Concessions:

A concession is offered to all commercial job creating developments (not including detached housing and unit developments), across the Shire except in the following areas:

- i) coastal development between Kingscliff and Bogangar (Sector 7): Casuarina, Kings Forest, Salt, and the 'Tourist Property' (Lot 490 DP 47021); and*
- ii) developments in Bilambil Heights and Cobaki.*

The concession is not available for developments exploiting 'existing use rights' as defined in Clause 3.6.1, and nor can Local Area Contributions be discounted by the concession.

The offer by Council stands at forty percent (40%) and Council may review the concession on an annual basis at 1st July each year. "

Council has not annually reviewed the 40% concession as referred to above and this concession is understood to have remained unchanged since 1997.

The second business concession is an exclusion from TRCP obligations for "Eligible Business Enterprises" (EBE). On 5 September 2001, Council resolved:

"RESOLVED *that Eligible Business Enterprises be excluded from the need to make TRCCP payments. Eligible Business Enterprises are defined as retail, commercial and light industrial, change of use, activities to be established in rented premises with a gross floor area of less than 1,000m2. Professional chambers are included in the definition. Final determination of the eligibility of a business into this category will be at the discretion of the Director Development Services."*

The EBE concession was directed at small businesses (less than 1,000 m2 in area), establishing in rented premises. Prior to this concession there had been a number of businesses establishing in factory units (previously occupied by a former business tenant) who had been required to pay substantial TRCP contributions due to the new use generating significantly more traffic than the previous business. The council of the day considered this unfair to the business tenant as the TRCP payment would mostly benefit the landlord as the DA runs with the land and is not transferable to the business. It was also considered a disincentive to growing or re-establishing businesses that needed to relocate to larger or alternate premises.

5. Notice of Motion

The first part of the 15 November 2012 Council Resolution is:

"1. Brings forward a report identifying the number of small businesses that were approved in the last 12 months and the income generated to Tweed Shire Council for the Section 94 contributions. The report to indicate what implications would be to the Council budget if these charges were reduced by 50%. This report to be presented to Council at the December meeting."

The following information is provided for the year 2011/12, based on information detailed in the confidential attachment to this report:

Section 94 Contributions 2011/12	
Number of businesses making S94 Contributions	18
Estimated number of small businesses making S94 Contributions (depending of definition of "small business")	11
Total S94 contributions from businesses	\$804,285
Estimated total S94 contributions from "small businesses" (depending of definition of "small business")	\$105,381

It would be difficult to come up with an accepted and workable definition for "small business" that would be rigorous enough to be used in the development assessment process to determine eligibility for Section 94 contribution concessions. Therefore it is not proposed in this report to explore further the implications of reducing Section 94 charges for small businesses by 50%.

One practical option to implement the intent of the 15 November 2012 Council resolution may be to increase the current 40% TRCP concession for "commercial job creating developments" to 50%. As an example, it is estimated this action would have reduced the \$804,285 contributions by businesses in 2011/12 to \$670,000 an aggregate reduction of around \$134,000. An issue with this approach is that it also benefits large businesses. For example a major expansion of retail capacity in the Tweed Heads South locality would generate considerable additional traffic that would need the additional road capacity to be generated by the Kirkwood Road project, but, with an increase in TRCP concessions they would pay even less than the 60% (100% - 40%) road network upgrade costs now required.

The main implications to Council's budget of such an action would be to reduce the flow of funds to arterial road construction projects that are required to service the growth in traffic generated by urban growth and development. Currently all accumulated funds in the TRCP have been allocated to the Kirkwood Road Interchange Project (Eastern Section) estimated to cost around \$17M which is jointly funded by Council and NSW Road and Maritime Services (RMS). The next priority project is Kennedy Drive west of the freeway between Rose Street and Gray Street. Any reduction in TRCP receipts will reduce funds for and therefore delay this project.

Regarding the second and third parts of the Council resolution of 15 November 2012:

- "2. Determines at the December 2012 meeting if to discount the Section 94 charges for small business applicants by 50% for a period of twelve (12) months beginning from 1 January 2013 to 31 December 2013.*
- 3. Consults with the combined Chambers of Commerce and other industry groups before the report is tabled at the December meeting."*

Part 2 is a matter for Council to determine at this meeting.

Regarding Part 3, at this stage no formal consultation has taken place at a Council organisation level with the Chambers of Commerce or other industry groups.

OPTIONS:

1. Make changes to Section 94 business concessions.
2. Do not make changes to Section 94 business concessions.
3. A decision on this report be deferred until the outcome of the "Planning White Paper".

CONCLUSION:

The TRCP section on concessions for business developments implies that Council will review these concessions annually. It is open to Council to vary these concessions, however any increase in concessions will have a commensurate negative impact on the funds available for the arterial road network improvements required to service urban growth and development. In the medium term, increasing developer contributions for business developments will decrease the availability of funds and delay commencement of the upgrading of the section of Kennedy Drive between Rose Street and Gray Street.

COUNCIL IMPLICATIONS:

a. Policy:

Developer Contributions policy as contained in Section 94 Plans.

b. Budget/Long Term Financial Plan:

See Report.

c. Legal:

Provisions of the Environmental Planning and Assessment Act 1979 and associated regulations regarding developer contributions.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.3 Financial requirements and the community's capacity to pay will be taken into account when meeting the community's desired levels of service
- 1.2.3.3 Developer Contribution (s94) Plans
- 1.2.3.3.1 Review and administer Developer Contribution (s94) Plans

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. S94 Contributions for Businesses (ECM 59961846).

REPORTS FROM THE DIRECTOR TECHNOLOGY AND CORPORATE SERVICES

36 [TCS-CM] Local Government Act Taskforce

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

Following the release of the Destination 2036 Action Plan, the Minister for Local Government, the Hon Don Page MP has appointed members to the Local Government Acts (LGA) Taskforce to review the Local Government Act 1993 and the City of Sydney Act 1988.

The Taskforce members are - Mr John Turner (Chair), Mrs Gabrielle Kibble AO, Dr Ian Tiley and Mr Stephen Blackadder and the Taskforce commenced its work in September 2012 and is expected to report to the Minister by September 2013.

As an initial phase of their investigations the Taskforce have released a Preliminary Ideas Paper which is the first of several opportunities for Council to participate, identifying areas warranting review, with the initial submission to be submitted by 21 December 2012.

The Local Government Act 1993 comprises the following Chapters:

- Chapter 1 – Preliminary
- Chapter 2 – What are the purposes of this Act?
- Chapter 3 – What is a council's charter?
- Chapter 4 – How can the community influence what a council does?
- Chapter 5 – What are a council's functions?
- Chapter 6 – What are the service functions of councils?
- Chapter 7 – What are the regulatory functions of councils?
- Chapter 8 – What ancillary functions does a council have?
- Chapter 9 – How are councils established?
- Chapter 10 – How are people elected to civic office?
- Chapter 11 – How are councils staffed?
- Chapter 12 – How do councils operate?
- Chapter 13 – How are councils made accountable for their actions?
- Chapter 14 – Honesty and disclosure of interests
- Chapter 15 – How are councils financed?
- Chapter 16 – Offences
- Chapter 17 – Enforcement
- Chapter 18 – Miscellaneous

This report highlights the extent of Council's submission.

RECOMMENDATION:

That Council submits the Local Government Act Taskforce report tabled at Council's meeting of 13 December 2012 in response to the Local Government Act Taskforce's Preliminary Ideas Paper.

REPORT:

In August 2011, over 350 representatives from every council in the State gathered in Dubbo to begin the process of creating a strong and viable local government sector that will allow the sector to meet the needs and expectations of communities of the future. This was the initiation of Destination 2036. The Destination 2036 Action Plan recognises a key initiative is to 'Ensure the Local Government Act supports strong Local Government' (Initiative 3).

The key outcome from this forum was the development of an Action Plan which is designed to support more detailed consideration of the ideas and suggestions which were developed at the Dubbo forum.



As illustrated by the previous diagram, the work of implementing the Destination 2036 Action Plan is to be undertaken by three main groups:

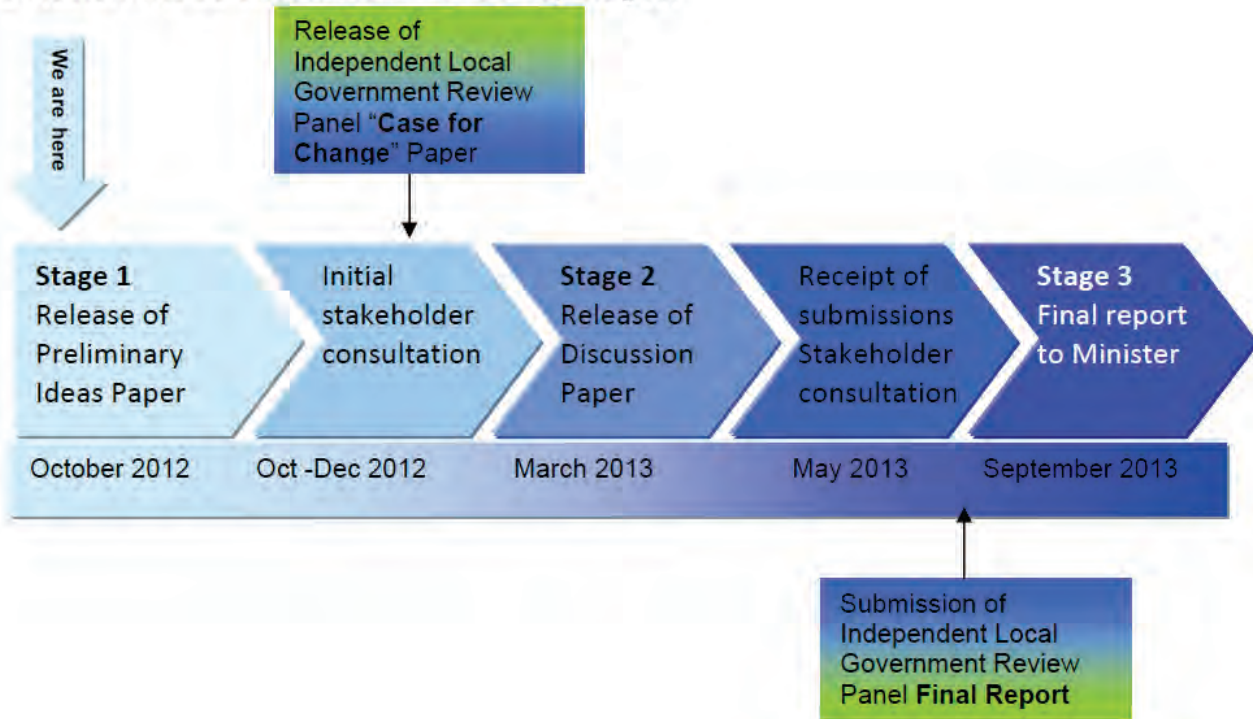
Destination 2036 Implementation Steering Committee – The ISC comprises the Presidents of the Local Government Association of NSW, the Shires Association of NSW, Local Government Managers Australia (NSW) and the Chief Executive of the Division of Local Government, Department of Premier and Cabinet (DLG) as Chair. It has been established to develop and oversee the Action Plan. Its role is to ensure actions for which it is responsible are delivered in collaboration with interested groups;

Independent Local Government Review Panel – The Minister for Local Government has appointed three members to the ILGRP – Professor Graham Sansom (Chair); Ms Jude Munro AO and Mr Glenn Inglis. The ILGRP is looking at ways to strengthen the effectiveness of local government in NSW. The Panel will review the governance, structural arrangements and boundaries of local government in NSW. The final recommendations will be presented to the Minister in July 2013; and

Local Government Acts Taskforce. – The Minister for Local Government has appointed a four member LGA Taskforce to oversee the rewriting of the *Local Government Act 1993* and the *City of Sydney Act 1988*. The Taskforce members are - Mr John Turner (Chair), Mrs Gabrielle Kibble AO, Dr Ian Tiley and Mr Stephen Blackadder and has commenced its work in September 2012 and is expected to report to the Minister by September 2013.

This report highlights the pathway of the Local Government Acts Taskforce and the methods that will be undertaken in the review of the Local Government Act.

The Review will be undertaken in three key stages:



As an initial phase of their investigations the Taskforce have released a Preliminary Ideas Paper which is the first of several opportunities for council to participate in the review, identifying areas warranting review, with initial submissions on this Preliminary Ideas Paper to be submitted by 21 December 2012.

As part of this initial review by the Taskforce has conducted a series of workshops. Council took the opportunity to be involved in this workshop process, with the Mayor and six staff members attending separate sessions at Lismore on 15 November 2012. During these sessions, members of the Taskforce indicated that the review of the Local Government Act would result in a complete rewrite of the Act.

Summary of Submission

Within this submission and given that the Local Government Act will be rewritten, Council could highlight the following areas warranting review:

- Constitutional Recognition
- Council Charter - if retained - needs to be compatible with Integrated Planning and Reporting requirements

- Section 10A(2) provisions conflict with the Public Interest Test and general provisions of Government Information (Public Access) Act GIPAA. There needs to be compatibility between these legislation requirements.
- Section 55 - review of Tendering requirements including threshold amount for tenders - \$150,000 is impractical and too low in a majority of cases. The threshold needs to be increased to an amount in the order of \$500,000 and be reported to Council as the GST Exclusive value (which is the true cost to Council). Alternatively thresholds could vary depending on the size and budget of a Council or Group Categorisation. For example Groups 1-3 the threshold could be \$1 million. Groups 4-6 the threshold could be \$500,000 and others \$200,000.
- Section 60 requires approval from the Office of Water for various water and wastewater works undertaken by Council. Given the maturity of many councils water businesses and the significant delays in the Department dealing with applications this approval has little relevance. It is recommended that the section be removed completely.
- Section 64 refers to relevant sections of the Water Management Act 2000 for developer related works. This process and reference is cumbersome. The relevant clauses need to be included within the Local Government Act.
- Chapter 7 Part 1- Sections 68 to 123B Approvals - need to be consistent with other legislation, to ensure there are no gaps in or duplication of approvals required.
- Section 160 - there exists an anomaly of advertising for 28 days (public exhibition) and seeking submissions for 42 days.
- The advertising requirements in general need to be overhauled. Rather than the current requirement to advertise in a Sydney metropolitan paper, it would be beneficial to be either a 'major metropolitan paper' or even more generic such as 'largest distribution newspaper within 100km radius of the council area. Rural councils that don't get serviced by any metropolitan paper at all would also benefit from this, particularly in this day and age of technology developments as not all councils and communities are focussed on media emanating from Metropolitan areas.
- Section 226 - Role of Mayor - requires revision. It is noted that the *Case for Change* released by the NSW Independent Local Government Review Panel discusses options for a greater role of the Mayor. This is supported but in the context of appropriate checks and balances and mirroring other tiers of Government (ie. in the same manner that the Premier and Prime Minister is elected as opposed to a Presidential popularly elected Mayor).
- Likewise the Minister should have the Power (similar to the Governor General) to dismiss a Council but as an Act enhancement include the power to dismiss only the Mayor and/or individual Councillor.
- In addition greater Mayoral terms are supported with the appropriate balance in place. For example the Mayor could be elected from among its peers for the duration of the Council term, but like the Premier and Prime Minister could be challenged for the position by a majority of Councillors. Leadership challenges could be at any time or perhaps restricted to once per calendar or financial year.

- Having such measures in place would ensure that a Mayor is not elected who does not have the support of the majority, would avoid costly presidential style mayoral campaigns favouring those candidates with the funds necessary to run a public campaign, and would provide a mechanism for a Mayor who has been elected by their peers to be replaced should they lose the confidence and support of the majority.
- The community understands the system that is in place at a State and Federal level. A Mayor with additional power, without checks and balances in place becomes more like a president that is foreign to Australia's other forms of Government which were derived from the Westminster system and in place in Australia as early as 1855.
- Section 230 - period of Mayoral term - requires revision, particularly the length of the term (refer also comment Section 226).
- Section 232 - role of Councillor - requires revision with particular reference to the Integrated Planning and Reporting Framework process and the implications of the NSW Planning Review. This section could also be amended to provide for the dismissal of an individual Councillor rather than the entire Council. Appropriate triggers should be in place.
- Chapter 11 - How are councils staffed? Sections 348 - 350 of the Act currently sees that where a position that just sits within a certain grade band changes slightly in duties and moves into the next grade band, automatically requires the position be re advertised. This exposes Council to possible redundancies when the current incumbent could amply fulfil the role but is unsuccessful. This could be amended to provide a percentage threshold of change to the Position Description that does not require the position to be re advertised and that in excess of this percentage threshold then requires the position to be advertised.
- Section 360 Code of Meeting Practice - The sections of the Code need to reflect current business and meeting practices, including the use of technology. Specifically the requirement to produce hard copy business papers should be replaced with "business papers should be publicly available in a printed form from Council's website". Other considerations to review include the length of time to speak to a motion and other measures to improve the efficiency of Council meetings.
- Section 482(2) - End of Term Report - *must be presented to the final meeting of an outgoing council* - conflicts with 'electoral material' and the 40 day caretaker period - publication of the end of term report was not possible. Review of this provision should be undertaken to have the outgoing council sign off on the report as at 30 June in the year of the election.
- Chapter 14 - Conduct Generally - appointment of Conduct Reviewers. The appointment by Council of the Conduct Reviewers could be seen as not being totally transparent and accountable. This appointment process should be undertaken by an independent body, preferably the DLG.
- Declaration of Interest provisions - Highlighting the onus is on the individual to make a declaration and the sanctions that can proceed should such declarations not be made.

- Review Pensioner Rebates requirements - review rebate and subsidy payable. The amounts to be written off as Pension Rebates have not been reviewed for a period of time and require closer scrutiny. The subsidy provided by the State Government should also be subject to review to ensure that there is an equitable cost to all councils for rebates provided to Pensioners. Currently those councils with a greater number of pensioners, typically those on the coastal strip with other pressures such as coastal erosion subsidise a greater total burden of the 45% rebate funded by local government.
- Review numbers of elected members - This could be reviewed on a population base, or Council categorisation, with a minimum prescribed population to councillor ration being determined. There should also be an upper limit on the number of councillors.
- Review to streamline relationships and the need between rating and ability to levy special rates and charges.
- Review to streamline ability to provide notice, give Orders and impose penalties for Offenses, non compliance etc. At present these processes are cumbersome, not responsive and therefore generally ineffective.
- Referencing to the Regulations are generally inadequate.
- Council's Function as a Local Water Utility is not well provided for by the Local Government Act and a review from this perspective with consideration of the Water Management Act and the Environment Planning and Assessment Act would assist in allowing this function to be delivered effectively.

Current items to be referenced in/by other Acts

- Chapter 6 - Part 2A - Environmental Upgrade - Move to Environmental Planning and Assessment Act.
- Chapter 7 - Functions - Certain aspects of s68 could be moved to the Environmental Planning and Assessment Act.
- Chapter 10 - Elections - Move to State Electoral Act.
- Chapter 16 - Offences Law Enforcement - Move to Powers and Responsibilities Act.

Other considerations

- Expectations of the community are changing and there is an ever pressing requirement to deliver better services with fewer inputs - value for money and service level standards.
- Council will need to be innovative in the way that it provides service delivery, with a leaner bureaucratic framework and better service delivery skills.
- Greater autonomy in decision making.
- Regulations not required, could be replaced with Guidelines that provide Council with greater autonomy in decision making.

OPTIONS:

1. The Report be adopted as proposed and the submission be provided in response to the Local Government Act Taskforce's Preliminary Ideas Paper.
2. Council can review and add or amend pertinent aspects to the submission.

CONCLUSION:

Council commends the consultation that is occurring with respect to Destination 2036 and this report informs Council's submission to the Local Government Act Taskforce's Preliminary Ideas Paper.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.
Local Government Act

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 1.2.1.5 Council Policies are compliant with legislation and guidelines

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Division of Local Government Circular 12-32 - Modernisation of Local Government Legislation (ECM 55456884)

Attachment 2. NSW Government - Local Government Acts Taskforce - Preliminary Ideas Paper - October 2012 (ECM 57371441)

37 [TCS-CM] Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors Policy Version 1.7

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

In accordance with Section 252 of the Local Government Act 1993, Council is required each year (by 30 November) to adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities for the Mayor and Councillors in relation to discharging the functions of civic office.

Council at its meeting of 25 October 2012 resolved to place on public exhibition for 28 days the Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors Policy, Version 1.7. The public exhibition process commenced on Wednesday 7 November and concluded on Wednesday 5 December 2012.

At the time of preparing this report, no submissions had been received.

During the public exhibition process, an enhancement has been identified in regard to:

"2.2.4 Travel outside local government area including interstate travel

Travel by Air:

Flight to be booked to be cheapest available within reasonable time frame of desired flight time (ensuring booking allows time to get to the scheduled meeting/appointment/training course/conference/seminar/workshop) on one of the following carriers: Qantas, Virgin, Jetstar, REX. Alternate carriers can be booked at discretion provided it provides better value than the airlines listed above."

Instead of:

"All flights should be the lowest available fare."

RECOMMENDATION:

That Council, in accordance with Section 252 of the Local Government Act 1993, adopts Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors Policy Version 1.7, with the enhancement to:

"2.2.4 Travel outside local government area including interstate travel

Travel by Air:

Flight to be booked to be cheapest available within reasonable time frame of desired flight time (ensuring booking allows time to get to the scheduled meeting/appointment/training course/conference/ seminar/ workshop) on one of the following carriers: Qantas, Virgin, Jetstar, REX. Alternate carriers can be booked at discretion provided it provides better value than the airlines listed above."

REPORT:



Policy

**Councillors - Payment of Expenses and
Provision of Facilities for Mayor and
Councillors**

Version 1.7

Adopted by Council at its meeting on xxxxx

Minute No: xxx

Division:	Technology and Corporate Services
Section:	Corporate Governance
File Reference:	N/A
Historical Reference:	Version 1.6 adopted 13 December 2011 Version 1.5 adopted 16 November 2010

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Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors

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Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors

Part 1 - INTRODUCTION

1.1 Purpose

The purpose of the policy is to ensure that there is accountability and transparency in the reimbursement of expenses incurred or to be incurred by Councillors. The policy also ensures that the facilities provided to assist Councillors to carry out their civic duties are reasonable.

The terminology of Councillor contained in this policy also applies to an Administrator/s of Council, where applicable and with any legislative modification.

1.2 Objectives and coverage of the Policy

In accordance with Section 439 of the Local Government Act 1993, Councillors must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under this Act or any other Act.

Furthermore, it is to ensure that the Councillors would not be financially or otherwise disadvantaged in undertaking their civic responsibilities.

1.3 Legislative Compliance

The Local Government Act 1993 has statutory requirements which describe what fees, expenses and facilities may be paid or provided to Councillors.

Information on the pertinent sections applicable to this policy is contained in the Division of Local Government's Circular 06-57 - Guidelines for the Payment of Expenses and the Provision of Facilities to Mayors and Councillors *and* Circular 09-36 Release of Revised Councillor Expenses and Facilities Guidelines.

1.4 Making and Adoption of the Policy

Section 252 of the Local Government Act 1993 - Payment of expenses and provision of facilities

- (1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.
- (2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.
- (3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.
- (4) A council may from time to time amend a policy under this section.

- (5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

Section 253 of the Local Government Act 1993 - Requirements before policy concerning expenses and facilities can be adopted or amended

- (1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.
- (2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.
- (3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.
- (4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:
 - (a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and
 - (b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and
 - (c) a copy of the notice given under subsection (1).
- (5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

1.5 Division of Local Government Guidelines for payment of expenses and provisions of facilities

Section 252(5) of the Local Government 1993 states the Council expenses policy must comply with these guidelines issued under Section 23A of the Act. The most recent guidelines were released in October 2009, with the most recent findings from the review by the Division of Local Government on 21 September 2011, Circular 11-27.

1.6 Model Code of Conduct

This policy is consistent with the Model Code of Conduct for Local Councils in NSW in particular with the use of Council resources.

1.7 Division of Local Government Circulars to Councils

Circular 05/08 Legal assistance for Councillors and Council employees
Circular 02/34 Unauthorised use of Council resources
Circular 09/36 Release of Revised Councillors Expenses and Facilities Guidelines
Circular 11/27 Findings from Review of Council Expenses and Facilities Policies

1.8 ICAC publications

No Excuse for Misuse, preventing the misuse of Council resources.

1.9 Definitions

Civic duties are defined as:

- Council and Committee Meetings;
- Community Meetings approved by the Mayor or General Manager;
- Meetings with the staff approved by the General Manager; and
- Conferences, seminars, training courses, formal and social functions where representing Council, approved by the Council, Mayor or General Manager;
- Meeting and corresponding with constituents in the course of discharging duties as Mayor and Councillor.

Part 2 - PAYMENT OF EXPENSES

2.1 General Provisions

2.1.1 Mayor and Councillors Annual Remuneration

The Annual Remuneration for Mayor and Councillors, adopted by Council do not fall within the scope of this policy

2.1.2 No general expenses allowance

No annual, monthly or daily general expense allowance shall be payable.

2.1.3 Monetary limits for all expenses

Monetary limits applying to this policy include

- Telecommunications

Councillors will be provided with a mobile telephone or smart phone with email to assist in undertaking civic duties.

Council will meet the cost of providing the mobile telephone; maintenance, monthly service and access fees, and call charges from this mobile or landline, up to a maximum of \$400 per month for the Mayor and \$200 per month for other Councillors made in the conduct of their civic duties.

- Internet

Council will meet the cost towards Internet charges involved in the conduct of the Mayor and Councillors civic duties, up to a maximum of \$90.00 per month.

- iPad/Mobile Device

Council will supply an iPad or mobile device with Wi-Fi and 3G connectivity with a 1Gb data plan.

- Multi-Function Device

Councillors may elect to the provision of a multi-function device (MFD). Council will meet the cost of maintenance and rental charges for one (1) home facsimile line, together with paper.

- Care related expenses

Councillors are entitled to the reimbursement of carer expenses, including childcare expenses and care of the elderly, disabled and/or sick immediate family members of Councillors that were necessary to enable Councillors to undertake their civic duties.

The reimbursement of expenses will be subject of a separate application by the affected Councillor in each instance, for the determination by the Mayor and General Manager.

Child/dependent care expenses are not to be reimbursed if the care is provided by a relative who ordinarily resides with the Councillor. A 'relative' is defined as a spouse, de-facto partner, parent, son, daughter, brother, sister or grandparent.

Childcare will only be provided to children of the Councillor up to and including the age of 16 years.

The maximum entitlement for such expenses is \$2,000 per annum.

- Other Related (away from home/office) Expenses

Incidental expenses incurred in attending related Council business, approved conferences, seminars, training and educational courses:

Facsimile	to and from Council Office or residence only
Internet Charges	maximum daily limit \$5.00
Laundry and Dry Cleaning	maximum daily limit \$10.00
Newspapers	maximum daily limit \$2.00
Taxi Fares	from transport destination to accommodation and/or conference venue
Parking Fees	include airport parking when plane travel is being used

Any other costs incurred by a Councillor in addition to the daily limits, are the responsibility of the individual Councillor.

When overnight accommodation is required, Councillors are to use their mobile telephones and not the hotel/motel room telephone. Special circumstances will be permitted, when mobile telephone reception does not allow the use of a mobile telephone.

- Meal Allowances

The daily limit for meals (including refreshments) when attending approved conferences, seminars, training and education courses will be in accordance with Australian Taxation Office allowance Guidelines.

2.1.4 Private benefit

Councillors should not obtain private benefit from the provision of equipment and facilities, nor from travel bonuses such as 'frequent flyer' schemes or any other such loyalty programs while on council business. However it is acknowledged that incidental use of council equipment and facilities may occur from time to time. Such incidental private use is not subject to a compensatory payment to council.

Where more substantial private use does occur the Act provides that a payment may be made to cover the level of that private use (refer s252 (2)).

An example of more substantial private use requiring a payment being made would include, if the monthly data of 1Gb for the 3G data provision of council issued iPads or the monthly monetary limits of telephones (\$400 Mayor, \$200 Councillor) and/or internet usage of \$90 are exceeded.

2.1.5 No use of council resources for political purposes

Councillors are not to use facilities, equipment and services to produce election material or for any other political purposes.

2.1.6 Gifts and benefits given to be of token value

In circumstances where it is appropriate for councillors to give a gift or benefit (for example on a council business related trip or when receiving visitors), these gifts and benefits should be of token value and in accordance with Council's Code of Conduct (clause 8.1).

2.1.7 Approval and dispute resolution processes

This policy sets out in various areas the approval arrangements for all expenses. In particular, the attendance at seminars and conferences, training and educational courses, dinners and other non – council functions.

Should a dispute arise about the provision of expenses and facilities, or when an expense claim is not approved by the Mayor **and General Manager or nominee for Councillors, or the Deputy Mayor and General Manager or nominee for the Mayor**, then the disputed decision should be reviewed by the Chair of the Audit Committee, with a report to the full council meeting.

2.1.8 Reimbursement and reconciliation of expenses

Reimbursement of expenses shall only be made upon the production of appropriate receipts and tax invoices and the completion of the required claim forms.

Reimbursement of claimable expenses are authorised and approved in the following manner:

- Mayor by the Deputy Mayor and Public Officer;

- Councillors by the Mayor and Public Officer.

All expenses being reimbursed must be in accordance with the provisions of this policy.

A Councillor seeking reimbursement of expenses must lodge a claim within three months of the expense being incurred.

2.1.9 Payment in advance

This policy does not provide for cash payments being advanced to Councillors in anticipation of expenses being incurred in the conduct of their civic duties.

2.2 **Specific Expenses for Councillors (including limits)**

2.2.1 Attendance at seminars and conferences

Attendance at conferences and seminars by Councillors must be authorised in advance by a Council Resolution. An exception may occur in an emergency, then such attendance must be authorised by the Mayor and General Manager.

The exception will only apply to short term (1 day) events and be organised within the local region.

Council will be responsible for the following expenses to be incurred by a Councillor in attending an approved conference or seminar:

- Registration Expenses

Including official luncheons, dinners and tours relevant to the conference, seminar or training course.

- Travel Expenses - Local or Outside Local Government area

As detailed within this Policy.

- Accommodation Expenses

Accommodation for attendance at approved conferences, seminars and training courses will only be authorised on the following basis:

- o venue where the conference, seminar and training course is being conducted;
- o where venue is unavailable, then the alternative venue is up to a standard of four star NRMA rating;
- o night before and after depending on the event and travel circumstance, such approval must be obtained in advance from the General Manager;
- o Council to make the relevant accommodation booking.

- Meals and Other Incidental Expenses

Outlined in the establishment of monetary limits and standard provisions contained in this Policy.

2.2.2 Attendance at training and educational courses

Attendance at training and educational courses by Councillors must be authorised in advance by a Council Resolution. An exception may occur in an emergency, then such attendance must be authorised by the Mayor and General Manager.

The exception will only apply to short term (1 day) events and be organised within the local region and facilitated by the Local Government and Shires Association, Independent Commission against Corruption or Division of Local Government.

Council will be responsible for the following expenses to be incurred by a Councillor in attending an approved training or educational courses.

- Registration Expenses

Including official luncheons, dinners and tours relevant to the training or educational course.

- Travel Expenses - Local or Outside Local Government area

As detailed within this Policy.

- Accommodation Expenses

As detailed within this policy under attendance at seminars and conferences.

- Meals and Other Incidental Expenses

Outlined in the establishment of monetary limits and standards provisions contained in this policy.

2.2.3 Local travel arrangements and expenses

Councillors will be entitled to be reimbursed for travel from their home whilst undertaking civic duties at the rate per kilometre as set out in the State Award, Local Government (State) Award.

Where a Councillor must use a form of transport other than own vehicle for travel within the local government area, then such approval must be obtained in advance from the Mayor or General Manager.

2.2.4 Travel outside local government area including interstate travel

Councillors must obtain approval from Council for all travel outside of the Local Government Area, including interstate travel.

Councillors will be entitled to travel to official engagements at Council's expense by the most practical method, i.e. aircraft, train, bus, council vehicle or private vehicle.

Travel by Air

- Flight to be booked to be cheapest available within reasonable time frame of desired flight time (ensuring booking allows time to get to the scheduled meeting/appointment/training course/conference/seminar/workshop) on one of the following carriers: Qantas, Virgin, Jetstar, REX. Alternate carriers can be booked at discretion provided it provides better value than the airlines listed above.
- The address to be used when booking a flight is: c/- Tweed Shire Council, Tumbulgum Road or PO Box 816 Murwillumbah.
- Third party booking agents are not to be used
- Carbon offset payment is not to be selected
- Seat allocation is not to be selected
- Personal Frequent Flyer membership is not to be utilised as it constitutes a gift or benefit under the Code of Conduct.
- Travel and Baggage insurance will be considered on an as needs basis.
- Carry-on luggage is preferred and checked-in luggage will be considered on an as needs basis.

Travel by Car:

A Councillor who travels in his/her own vehicle will be reimbursed at the appropriate per kilometre rate or airfare whichever is the lower.

2.2.5 Legal expenses and obligations

Legal expenses for a Councillor may be either paid or reimbursed by the Council only if the matter is authorised by the Local Government Act 1993 either expressly or because it is supplemental or incidental to or consequential upon the exercise of its functions.

Council may therefore indemnify or reimburse the reasonable expenses of:

- a Councillor defending an action arising from the performance in good faith of a function under the Local Government Act (Section 731); or
- a Councillor defending an action in defamation provided the statements complained of were made in good faith in the course of exercising a function under the Act;

- A Councillor for proceedings before the Local Government Pecuniary Interest and Disciplinary Tribunal or investigative body and where the finding is not substantially unfavourable to the Councillor; or
- In the case of a conduct complaint made against a Councillor, legal costs will only be made available where a matter has been referred by a General Manager to a conduct reviewer/conduct review committee to make formal enquiries into that matter in accordance with the procedures in Council's Code of Conduct.

Council will not indemnify or reimburse the legal expenses of a Councillor arising merely from something that a Councillor has initiated or done or did not involve the performance of their role as a Councillor during his or her term in office.

Council will not meet the costs of an action in defamation taken by a Councillor as a plaintiff in any circumstances.

Council will not meet the costs of a Councillor seeking advice in respect of possible defamation or in seeking a non-litigious remedy for possible defamation.

2.2.6 Insurance expenses and obligations

Councillors are to receive the benefit of insurance cover for:

- Personal Injury

Whilst on Council business, covering bodily injury caused by accidental, violent, external and visible means up to a sub-limit for death and capital limits as specified in the Councillors and Officers Liability Insurance Policy. Also covering permanent disablement, temporary total disability and temporary partial disability.

- Professional Indemnity

For matters arising out of Councillors' performance of civic duties or exercise of their functions as Councillors provided the performance or exercise of the relevant civic duty or function in the opinion of Council is bona fide and/or proper and is carried out in good faith, as required under Section 731 of the Local Government Act.

- Public Liability

For matters arising out of Councillors' performance of civic duties or exercise of their functions as Councillors, being carried out in good faith.

2.2.7 Attendance at dinners and other non-council functions

Consideration may be given to meeting the cost of Councillors attendance at dinners and other non-Council functions which provide briefings to Councillors from key members of the community, politicians and business.

Approval to meet expenses will only be given when the function is relevant to Council's interest and attendance at the function is open to all Councillors.

No payment will be reimbursed for any component of a ticket to support attendance by councillors at political fund raising functions.

An additional payment to a registered charity may be acceptable as part of the cost of the function.

Councillors seeking reimbursement for this type of expense must have it approved by Council and not the General Manager.

2.2.8 Spouse and partner expenses

Council will not normally reimburse the expenses of spouses, partners and accompanying persons for attendance at any Council function.

Council may reimburse expenses of spouse, partners and accompanying persons in certain and special circumstances at any official Council function, with prior approval being sought from the Mayor and General Manager.

Accommodation (shared basis) will be met by Council, provided that there are no additional costs incurred by Council.

Mayor and Councillors must make separate arrangements for the payment of expenses incurred by a spouse or partner.

2.2.9 Councillors Contributing into Superannuation

In accordance with the Australian Taxation Office Interpretative Decision of 2007/205, provides that Council may enter into an arrangement with a Councillor under which the Councillor agrees to forego all or part of their annual fee in exchange for the Council making contributions to a complying superannuation fund on their behalf.

2.3 Additional Mayoral Expenses

Additional expenses provided:-

2.3.1 Provision of a dedicated motor vehicle

A motor vehicle bearing no markings or identification will be provided for the sole use of the Mayor.

The motor vehicle is and shall remain the property of Council and shall be surrendered to Council by the Mayor in the event that the person is no longer the Mayor.

The Mayor is to be given unrestricted use of such vehicle including private use, with the Council servicing and maintaining such vehicle, paying registration and insurance (including full comprehensive cover) and providing fuel. Private use means that the Mayor and his/her spouse or other licensed driver (provided the Mayor or Mayor's spouse is in the car) or any other Council employee are allowed to drive the vehicle.

The type of vehicle that will be provided is to be at a standard in accordance with Council's Motor Vehicle Lease Policy, and sets a standard for energy efficiency.

The vehicle is to be replaced at the most economically beneficial time as determined by the Works Manager.

2.3.2 Provision of Credit Card

Provision of a Mastercard with a limit of \$5,000.

Part 3 - PROVISION OF FACILITIES

3.1 General Provisions

3.1.1 Provision of facilities generally

Council will make provision for, or provide facilities and equipment to each Councillor to ensure that they can undertake their civic duties in an appropriate manner. The facilities and equipment are detailed below.

3.1.2 Computer Facilities

Councillors will be provided with computer facilities (options include computer, iPads or mobile device, MFD, and data) to assist in undertaking civic duties. Councillors will have the option to utilise their own equipment such as PC, mobile phone, broadband, printer, modem/router, and will be reimbursed for council business use following the submission of an expense claim in accordance with the monetary limits of all expenses.

3.1.3 Postage of Official Councillor Correspondence

Councillors will be reimbursed for official postage, provided expenses can be verified and where it is impractical to use the Council's own mail system.

Applications for reimbursement of postage expenses must contain verification information and be authorised by the Deputy Mayor and Public Officer for the Mayor, and Mayor and Public Officer for Councillors.

3.1.4 Stationery

Provision of personalised Councillor letterhead and envelopes exclusively for Council related business.

3.1.5 Business cards

Provision of 250 business cards (replacement on request)

3.1.6 Christmas cards

Maximum of 100 per year

3.1.7 Name badges

Councillors to be provided with a name badge

3.1.8 Filing cabinet

Councillors to be provided with a home filing cabinet if required.

Filing cabinet is to be returned if the person ceases to be a Councillor

3.1.9 Meetings meals and refreshments

Provision of meals and refreshments associated with Council, committee and working party meetings where appropriate

3.1.10 Meeting rooms/ Councillor Room

Provision of meeting room facilities, including telephone, computer network facilities and access to a photocopier in the Administration Centre for the purpose of Council, committee and working party meetings and for meeting with constituents.

3.1.11 Secretarial support

Provision of secretarial support, as necessary for Councillors to undertake their civic duties.

3.2 Additional Mayoral Equipment and Facilities

3.2.1 Other equipment, facilities and services

Other equipment, facilities and services that are to be provided by Council for the use of the Mayor are as follows:

- An experienced person suitably qualified to provide secretarial support to the Mayor.
- Mayoral letterhead, envelopes and stationery generally
- Where appropriate assistance with the organisation of functions, meetings and briefings to which the Mayor is invited to attend.
- A furnished office will be provided at the Council Administration Office, to enable the Mayor to undertake the civic duties appropriate to that position.
- Limited refreshments will be provided in the Mayoral Office for entertainment purposes.
- An allotted parking space will be provided at the Council Administration Offices for the parking of the Mayoral vehicle.

PART 4 - OTHER MATTERS

4.1 Acquisition and returning of facilities and equipment by Councillors

Councillors are to return to Council, where appropriately practicable, after the completion of their term of office or entering extended leave of absence or at the cessation of their civic duties all facilities and equipment that have been allocated by Council.

Should a Councillor desire to keep any equipment allocated by Council, then this policy enables the Councillor to make application to the General Manager to purchase any such equipment. The General Manager will determine an agreed fair market price or written down value for the item of equipment.

4.2 Status of the Policy

The provisions of the Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors shall remain valid until revoked or amended by Council

OPTIONS:

Not Applicable.

CONCLUSION:

That Council, in accordance with Section 252 of the Local Government Act 1993, adopts Councillors - Payment of Expenses and Provision of Facilities for Mayor and Councillors Policy Version 1.7, with the enhancement to:

"2.2.4 *Travel outside local government area including interstate travel*

Travel by Air:

Flight to be booked to be cheapest available within reasonable time frame of desired flight time (ensuring booking allows time to get to the scheduled meeting/appointment/training course/conference/ seminar/ workshop) on one of the following carriers: Qantas, Virgin, Jetstar, REX. Alternate carriers can be booked at discretion provided it provides better value than the airlines listed above."

COUNCIL IMPLICATIONS:

a. Policy:

Councillors-Payment of Expenses and Provision of Facilities for Mayor and Councillors Version 1.6 to be replaced with Version 1.7.

b. Budget/Long Term Financial Plan:

Due allowance is made in the Annual Budget for expenditure incurred in relation to this Policy.

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
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
 - 1.2.1.5 Council Policies are compliant with legislation and guidelines
 - 1.2.1.5.1 Council policies reviewed, reported to Council and placed on public exhibition as required

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

38 [TCS-CM] Legal Services Register as at 30 September 2012

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

The Legal Services Report as at 30 September 2012 monitors the status on legal instructions, for current or recently completed matters which have been issued to panel legal providers. The report includes payments to the various legal providers, but also payments for barristers and consultants where applicable.

The total amount paid for legal instructions for the quarter 1 July to 30 September 2012 is \$101,486.40.

The legal instructions that principally relate to the September quarter expenditure are:

- 576 Cudgen Road - Class 4 action - institute Court Order to remove building works and unauthorised use. \$3,334
- Voluntary Planning Agreement - "Altitude Aspire" Area E. \$17,422
- DA11/0257 Class 1 Appeal - Appeal by objector, Kingscliff Police Station. \$24,613
- Appeal against costs order on parking infringement notice. \$8,697
- Provide advice on earthworks undertaken without an approved Construction Certificate. \$30,322
- Hacienda and Homestead Caravan Parks - provide advice on proposed action. \$5,100

In some of the above matters, expenses have also been incurred in previous financial years information is included in the attached register.

RECOMMENDATION:

That Council receives and notes the Legal Services Register as at 30 September 2012.

REPORT:

Expenditure incurred on legal instructions for the period 1 July to 30 September 2012 is as follows:

Category 1 Planning, Environmental and Local Government Law	Category 2 Commercial/Property Law	District/Local Court
\$84,930	\$0	\$16,556

A summary of payments to each of the Legal Service Providers including barristers and consultants where applicable, for current or recently completed matters is as follows:

Legal Service Provider Category 1 Planning, Environmental, Local Government Law	Year to Date	Current Period 1 July to 30 September 2012
HWL Ebsworth Lawyers	\$ 30,105	\$ 30,105
Lindsay Taylor Lawyers	\$ 18,474	\$ 18,474
Maddocks Lawyers	\$ 32,211	\$ 32,211
Marsdens Law Group	\$ 806	\$ 806
Sparke Helmore Lawyers	\$ 3,334	\$ 3,334
Stacks – The Law Firm	Nil	Nil
Wilshire Webb Staunton Beattie	Nil	Nil

Legal Service Provider Category 2 Commercial/Property Law	Year to Date	Current Period 1 July to 30 September 2012
HWL Ebsworth Lawyers	Nil	Nil
Lindsay Taylor Lawyers	Nil	Nil
Maddocks Lawyers	Nil	Nil
Marsdens Law Group	Nil	Nil
Stacks – The Law Firm	Nil	Nil
Wilshire Webb Staunton Beattie	Nil	Nil

Legal Service Provider District/Local Court	Year to Date	Current Period 1 July to 30 September 2012
Stacks – The Law Firm	\$ 16,556	\$ 16,556

LEGAL SERVICES REGISTER as at 30 September 2012

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
HWL Ebsworth	1	Class 4 Appeal – DA08/0966 Refusal to determine Development Application and other issues impacting upon on-site sewerage management system at 49 Upper Crystal Creek Road Crystal Creek. File DA08/0966.	Defend the matter in the Land and Environment Court.	09/10 \$48,763 10/11 \$24,185 11/12 \$24,381 12/13 \$1,174 \$98,503	In Progress – Land and Environment directions hearing held on 4 December 2009. Case heard on 4 February 2010. Case dismissed, costs awarded, Appeal dismissed by Supreme Court. Payment of \$7,106.53 for security of costs received. Matter of recovering further costs in progress.
Lindsay Taylor	1	Voluntary planning agreement - Altitude Aspire (Area E). File DA07/0701.	Provide appropriate advice.	12/13 \$17,422	In Progress - updated draft received from Solicitors for Altitude Aspire and a final draft prepared by Council's service provider forwarded on 27 September 2012 which is being reviewed.
Marsdens	1	Class 4 Appeal – 7 Year Special Rate Variation. File Budget/Management Plan.	Defend the matter in the Land and Environment Court	07/08 \$24,446 08/09 \$280,956 09/10 \$79,879 10/11 \$58,658 11/12 \$49,181 \$493,120	In Progress – Land and Environment judgement handed down 30 December 2008, applicants claim was unsuccessful, part costs claim awarded, Court of Appeal case heard on 5 February 2010. Applicant was unsuccessful, part costs awarded. Costs of LEC and Court of Appeal have been assessed. Application for Special Leave to Appeal refused by High Court on 12 August 2011 with costs. Recovery of costs currently being pursued.

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
Sparke Helmore	1	Class 4 Action - Institute Court Order to remove building works and unauthorised use, 576 Cudgen Road, Cudgen.	Commence action in the Land and Environment Court.	11/12 \$142,400 12/13 \$3,334 \$145,734	In Progress - Court order case heard on 30 November and 1 December 2011. Judgement handed down on 9 December 2011 in favour of council. Respondent to pay council costs. Action reported to council to enforce judgement. Orders heard on 20 April 2012. Council to file and serve any evidence. Notice of Motion listed for hearing 24 May 2012. Judgement handed down 24 May 2012 in favour of Council, including costs. Recovery of costs being investigated.
Stacks	District /Local Court	Statement of Claim - DA04/1028- 207 Farrants Hill Road - building encroachment. File DA04/1028.	Defend the matter in the District Court of NSW.	07/08 \$7,594 08/09 \$34,534 09/10 \$2,242 10/11 \$14,936 11/12 \$2,567 \$61,873	In Progress - Case has been struck out in the District Court. Costs awarded to defendants, matter of costs now to be pursued internally by council. Deed of Agreement entered into for recovery of costs. Caveat lodged against property.

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
Stacks	1	Appeal to Supreme Court of Appeal – M W Allen (Lizzio Subdivision – Condong). File GS4/95/73.	Represent Council in the Supreme Court and engage counsel where appropriate.	08/09 \$29,609 09/10 \$26,100 10/11 \$3,296 11/12 \$9,166 \$68,171	In Progress – second appeal in the Supreme Court heard 16 October 2009, Judge reserved his decision. Judge upheld the appeal, costs awarded to Council. Council instructions to pursue matter of costs and associated expenses. Judgement handed down on 10 February 2012. Case to be reviewed by an independent legal provider.
Stacks	District / Local Court	Provide advice on proposed action on activities at Hacienda and Homestead Caravan Parks, Chinderah Bay Road.	Provide appropriate advice.	11/12 \$1,320 12/13 \$5,100 \$6,420	In Progress - Detailed advice provided. Letters sent to owners of caravan parks. Council is considering its position in regard to further action.
Stacks	District / Local Court	Appeal in Local Court against infringement notice not to comply with notice to register animal.	Defend the matter in Local Court.	12/13 \$1,850	In Progress - hearing adjourned to 7 November 2012.
HWL Ebsworth	1	Class 1 Appeal - appeal by objector - dissatisfied with the determination of a consent authority - Kingscliff Police Station. File DA11/0257.	Defend the matter in the Land and Environment Court.	11/12 \$17,171 12/13 \$24,613 \$41,784	Completed - Judgement declared on 28 July 2012 that the development consent is invalid. Council ordered to pay agreed costs of \$15,000.
HWL Ebsworth	1	Provide advice on dwelling entitlements pertaining to undersize lots concerning operation of Clause 57 of Tweed LEP 2000.	Provide appropriate advice.	12/13 \$4,318	Completed - detailed advice provided.
Lindsay Taylor	1	Class 1 Appeal - refusal of Optus Tower, 37 Boxhill Road, Limpinwood. File DA10/0295.	Defend the matter in the Land and Environment Court.	11/12 \$63,694 12/13 \$1,052 \$64,746	Completed - Hearing part heard 22-23 March 2012. Adjourned to 8 May 2012. Judgement handed down 16 July 2012. Court dismissed the appeal by Optus.
Maddocks	1	General advice and	Provide general	12/13	Completed -

Service Provider	Cat.	Description of Matter	General Instructions	Costs to Date	Comments
		information.	advice and information.	\$1,889	Advice provided to Council.
Maddocks	1	Provide advice on earthworks undertaken without an approved construction certificate. File K99/1124.	Detailed advices sent with compliance options.	12/13 \$30,322	Completed - Detailed advices provided outlining various compliance options.
Marsdens	1	Class 1 Appeal - appeal against refusal of DA10/0516, 57 Jabiru Drive, Cobaki Lakes. File DA10/0516.	Defend the matter in the Land and Environment Court.	12/13 \$806	Completed - notice of discontinuance executed on 3 August 2012.
Stacks	District / Local Court	Appeal against dangerous dog declaration in Local Court.	Defend the matter in Local Court.	12/13 \$909	Completed - appeal dismissed. Cost of \$330 awarded in Council favour.
Stacks	District / Local Court	Appeal to District Court seeking costs order for parking infringement notice.	Defend the matter in District Court.	12/13 \$8,697	Completed - appeal was partly successful. Applicant was entitled to disbursements incurred during the course of the appeal which amounted to \$412.10. Council had to pay the costs of its own Barrister.

OPTIONS:

Not Applicable.

CONCLUSION:

Legal expenses for the quarter related primarily to actions instigated in previous periods.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.
Tender AC2009/073 Provision of Legal Services.

b. Budget/Long Term Financial Plan:

As reported with legal expenses allowed for in appropriate areas of Council's budget.

c. Legal:

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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39 [TCS-CM] Complaint Analysis Report 1 July to 30 September 2012

SUBMITTED BY: Corporate Governance



Civic Leadership

SUMMARY OF REPORT:

Council's current Complaints Handling Policy is designed to ensure that complaints are appropriately managed and resolved in a timely and equitable manner.

A complaint analysis report is to be reported to Council detailed by type and outcomes/actions on a quarterly basis, without personal identifying particulars of complainants or associated persons or properties.

RECOMMENDATION:

That Council receives and notes the Complaint Analysis Report 1 July to 30 September 2012.

REPORT:

Council's current Complaints Handling Policy is designed to ensure that complaints are appropriately managed and resolved in a timely and equitable manner.

A complaint is an expression of dissatisfaction, made in respect to a Council Officers role in the provision of service delivery or lack of service delivery that has allegedly affected an individual, group or body of stakeholders whether justified or not. It is not a request for service, (customer work request), or information or an explanation of a policy or procedure, or objections to a development application before Council determination.

A complaint can progress from Council's lack of action following the lodgement of a customer request for service or a request for information.

A complaint analysis report is to be reported to Council detailed by type and outcomes/actions on a quarterly basis, without personal identifying particulars of complainants or associated persons or properties.

For the period 1 July to 30 September 2012, there were 18 matters received which accord with the terms of the Complaints Handling Policy.

There are two items that have not been completely actioned due to the nature of the complaint requiring detailed investigations, which are currently in progress.

The complaints principally refer to the:

- Failure of Council Officers to comply with Council's Customer Service Charter in not responding to items within fourteen (14) days in accordance with the Correspondence - Response to Policy.
- Respondents being dissatisfied with the actions of Council officers in handling their original request for service.
- Respondents being dissatisfied that issues have not been dealt with by Council Officers.
- Complainants being dissatisfied by decisions made by Council.

The type of complaint has been categorised in accordance with categories used by the Division of Local Government. This methodology will assist in monitoring the effectiveness of Council's handling of complaints and improving service delivery.

Information on the 14 complaints follows:

Complaint Type	Ref	Details of Complaint	Comments
Customer Service Service Standards, Administration	1.	1. Council rates (14 different items) - 11 items concerned at the increase in rates, considerably more than the advertised 7.9%, other 3 items pertain to rating administration	Detailed responses sent providing information to the complainants on the impact of their property revaluations in comparison to the remainder of the Shire and the resultant increase in rates. Responses sent regarding rating administration issues
		2. Tweed Link article on wakeboarding school was not balanced and unbiased.	A clarification story ran in the Tweed Link - issue 772.
		3. Sunshine Avenue Tweed Heads South - stormwater run-off total lack of communication since the original issue was raised regarding a recently approved development application.	Apology sent advising that the property was inspected during May no evidence of any particular earthworks was observed that require development consent and no breach to planning regulations has occurred.
		4. Kennedy Drive Tweed Heads West tree lopping received no correspondence or return call on this matter.	Response sent advising that the applicant is responsible for the disposal of the lopped trees, to comply with TPO approval.
		5. Glengarrie Road Glengarrie - have not heard of any further action on a request for a load of course gravel for residents to spread along Glengarrie Road after initial mix up.	Council to supply load of gravel and Works Unit staff to contact complainant.

Complaint Type	Ref	Details of Complaint	Comments
		<p>6. Sewerage Reticulation System complaint regarding a letter that was placed in letterbox which was considered to be extremely offensive.</p>	<p>The complaint is currently under investigation.</p>
		<p>7. Swimming Centres (3 different items) complaints lodged pertaining accessibility of lap pool, issues with learn to swim classes and aqua aerobic classes.</p>	<p>Responses sent to each of the complainants advising issues investigated, with implementation of measures to manage the complaint or refund of fees approved.</p>
<p>Enforcement and Regulatory Powers Building/Noise</p>	2.	<p>1. Vulcan Street Kingscliff - concerned that there has been a complete lack of process from beginning of the building application, large impact upon property from the extensions physically and financially.</p>	<p>Response sent advising that an independent review of the file and approval process revealed that a satisfactory assessment of the building application had been undertaken resulting in a favourable determination of the application.</p>
<p>Roads, Parks and Water</p>	3.	<p>1. Coolah Court Banora Point-African Tulip Tree which is messy and poisonous - second formal complaint regarding Council's non action to remove the tree over the past 12 months.</p>	<p>Tree was inspected during July 2012 and letter was sent advising that the tree is healthy and does not meet the criteria for its removal. Complainants requested that the decision be reviewed. Inspection was carried out with complainants with verbal advice being provided.</p>
		<p>2. Kingscliff Swimming Centre (2 complaints) concerned at the downgrading of facilities at the centre principally in regard to the toddler pool and request its reinstatement.</p>	<p>Detailed responses sent advising of the reasons for the removal of the toddler pool, filtration plant requirements and general maintenance, which is impacted by available funding.</p>

Complaint Type	Ref	Details of Complaint	Comments
	3.	Mt Burrell Road - rapidly approaching impassable and seems council has no interest in repairing the road.	Response sent advising when maintenance works of the unsealed sections are scheduled and that maintenance to the road will continue commensurate with the level of funding and resources allocated.
	4.	Tweed Valley Way - South Murwillumbah - donated land to be turned into a park, nothing has been done at this stage.	Response sent advising that planning approval for the landscaping and car parking has been obtained and works are scheduled to commence before Christmas 2012.
	5.	Wommin Bay Road - advising of the terrible street conditions of roads and streets in Tweed Shire - in particular in front of Cudgen Leagues Club Council should stop filling and fix roads properly.	Response sent advising of council's maintenance treatment standards. Further that the section of Wommin Bay Road in front of Cudgen Leagues Club is scheduled for reconstruction in the 2012/2013 Infrastructure Program.
	6.	Botany Crescent and Keith Crompton Drive Tweed Heads- no action on the kerbing and guttering matters raised.	Matter has been discussed with Council officers, kerbing and guttering inspected and that minor repairs are scheduled in the maintenance program as funding and resources permit.
	7.	Park Avenue and Brisbane Street Murwillumbah - Park avenue if uneven and full of potholes and Brisbane street is in a disgraceful state.	Detailed response sent advising that neither Park Avenue nor Brisbane Street are listed for upgrade works in 2012/2013 Infrastructure program, however routine maintenance works will be carried out.

Complaint Type	Ref	Details of Complaint	Comments
	8.	Lalina Avenue Tweed Heads West- reduction of width of street causing parking and safety issues - increased rates- advised rangers will issue infringement notices if vehicles are parked on the grass verge.	Detailed response sent providing information on engineering, rating and parking issues raised in the complaint, in particular kerbside and parking management suggestions.
	9.	Ashlar Place Banora Point - formal complaint pertaining to removal of small bushes on the medium strip- advised council not to remove bushes but were removed.	Complaint is currently under investigation by Works and Recreation Services Units.
	10	Glenys Street Water Supply Booster Pump ongoing noise complaint from sound of electric pumps.	Response sent acknowledging the problem, advising that a specialist consultant will be engaged, and interim measures are in the process of being installed.

OPTIONS:

Not Applicable.

CONCLUSION:

It is recommended that Council receives and notes the Complaints Analysis Report for the period 1 July to 30 September 2012.

COUNCIL IMPLICATIONS:

a. Policy:

Complaints Handling Policy Version 1.3.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.2 Improve decision making by engaging stakeholders and taking into account community input
- 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
- 1.2.1.6 Access to information

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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40 [TCS-CM] Monthly Investment and Section 94 Developer Contributions Report for the Period Ending 30 November 2012

SUBMITTED BY: Financial Services



Civic Leadership

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

There is a requirement by Council's investment consultant to allow at least five (5) working days following the end of the month to provide the statistics for this report. Due to this time constraint and the Council requirement to receive reports ten (10) days prior to the Council meeting, there will be an addendum report provided to Council for consideration at its meeting on 13 December 2012.

RECOMMENDATION:

Refer to addendum report.

REPORT:

As per summary.

OPTIONS:

Not Applicable.

CONCLUSION:

Not Applicable.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Local Government (General) Regulations 2005 - Section 212 - Reports on council investments

"(1) The responsible accounting officer of a council:

(a) must provide the council with a written report (setting out details of all money that the council has invested under section 625 of the Act) to be presented:

(i) if only one ordinary meeting of the council is held in a month, at that meeting, or

(ii) if more than one such meeting is held in a month, at whichever of those meetings the council by resolution determines, and

(b) must include in the report a certificate as to whether or not the investment has been made in accordance with the Act, the regulations and the council's investment policies.

(2) The report must be made up to the last day of the month immediately preceding the meeting."

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.3 Delivering the objectives of this plan
- 1.3.1 Council's organisation will be resourced to provide the essential services and support functions to deliver the objectives of this Plan
- 1.3.1.35 Council funds are invested in accordance with legislation requirements and Council Policy
- 1.3.1.35.1 Council funds are invested to provide maximum returns whilst having due regard to risk

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

41 [SUBCOM] Reports from Subcommittees and/or Working Groups

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Minutes of the Tweed River Regional Museum Advisory Committee Meeting held Tuesday 20 November 2012 (ECM 60055893).

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42 [SUB-LTC] Minutes of the Local Traffic Committee Meeting held Thursday 22 November 2012

VENUE:

Mt Warning Meeting Room

TIME:

Commencing at 10.00am

PRESENT:

Committee Members: Cr Barry Longland, Ms Liz Smith, Roads and Maritime Services of NSW, Mr Col Brooks on behalf of Mr Thomas George MP, Member for Lismore; Mr Rod Bates on behalf of Mr Geoff Provest MP, Member for Tweed.

Informal: Mr Ray Clark (Chairman), Mr Leon McLean, Mr Paul Brouwer, Ms Sandra Zietlow (Minutes Secretary).

APOLOGIES:

Danny Rose; Mr Thomas George MP, Member for Lismore; Snr Constable Ray Wilson, NSW Police; Mr Geoff Provest MP, Member for Tweed.

CONFIRMATION OF MINUTES OF PREVIOUS MEETING

[LTC] Confirmation of Previous LTC Minutes Meeting held 18 October 2012

RESOLVED that the Minutes of the Local Traffic Committee Meeting held 18 October 2012 be adopted as a true and accurate record of proceedings of that meeting.

SCHEDULE OF OUTSTANDING RESOLUTIONS

[LTC] Schedule of Outstanding Resolutions - 22 November 2012

From Meeting held 18 October 2012

The Chairperson advised that this item be moved to Section A of the Agenda

1. [LTC] Murwillumbah Primary School - Parking (B5)

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 5758792; Schools - Murwillumbah Primary; Traffic - Committee; Traffic - General; Traffic - Parking Zones; Traffic - School Zones; Parking - Infringement Notices; Eyles Avenue; Condong Street; Prince Street; Riverview Street

SUMMARY OF REPORT:

Request received in relation to the difficulty with parking in and around the Murwillumbah Primary School, particularly for people with large families and young babies.

It has also been reported that:

"buses park in a car park zone in Eyles Avenue in front of the "No Parking" zone. In the morning it is a Bus Zone but not in the afternoon. Two buses can fit in this zone so you can imagine how many cars would be the equivalent. This week in our school newsletter parents were warned by the bus companies not to park in their Bus Zones because it is dangerous and fines are heavy. I also think having buses through Eyles St is very congested and dangerous. What about disabled car parking for that matter?"

A plan of the existing parking and bus zones associated with the school was submitted to the meeting.

COMMITTEE ADVICE:

That:

1. Council officers initiate further consultation with the school principal, P & C and bus operators regarding traffic movements around Murwillumbah Primary School.
2. Murwillumbah Primary School be placed on the list of Outstanding Resolutions.

From Meeting held 21 June 2012:

The Committee was advised that bus operators have discussed this matter and in principle support removal of bus zones in Condong Street if the school frontage of Eyles Avenue, can be entirely dedicated to bus parking during bus drop off and pick up times. Council officers will need to verify the street width in this area.

Current Status: That Item 4 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 23 August 2012 remain on the list of Outstanding Resolutions.

(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 19 April 2012 (Item B5).

-
2. [LTC] Cooley Street, Bogangar (B6)

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 46772205; Traffic - Committee; Parking - Illegal; Directional Signs; Pedestrian Safety; Driveways; Traffic - Parking Zones; Traffic - Safety; Traffic - School Zones

SUMMARY OF REPORT:

Request received in relation to parking congestion and infringements in Cooley Street, Bogangar.

I am writing in regard to the continual congestion and blatant disregard for the road rules and safety of both children and adults in Cooley Street, Bogangar on school days. The Bogangar Primary School has a "walk-through" gate access at the end of Cooley Street but due to the fact that many residents with children at the school would have to traverse the Coast Road to the roundabout at Sandalwood Rd and then return Coast Road to access the school parking bays, a large majority has decided that Cooley Street is a much better option for the drop off and pick up of their children.

....There appears to be a large majority that insists on parking in the cul-de-sac section of the street and leaving the vehicle to either pick up or drop off their child, which action poses a considerable safety and illegal parking situation. I have also witnessed vehicles parking across all driveways in the street blocking access and exit to the occupiers of the properties. As there is a large majority of parents driving large 4WD vehicles I feel this is also a considerable safety issue, as Cooley Street is a narrow street and the capacity of these vehicles to turn at the cul-de-sac is nearly impossible thus presenting a situation where the 4WD must reverse towards the entrance/exit gate of the school, at which time many children are entering or exiting."

Council officers have visited the site on similar occasions and reported that there is no significant issue in regard to parking associated with the school.

COMMITTEE ADVICE:

That:

1. Parking issues associated at Bogangar School on Cooley Street continue to be monitored and the school be consulted on the issue of pedestrian access.
2. This item be listed on Outstanding Resolutions.

Current Status: That Item 5 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 23 August 2012 remain on the list of Outstanding Resolutions.

(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 19 April 2012 (Item B6).

3. [LTC] Pioneer Parade, Banora Point (B1)

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 55902624; Traffic - Committee; Pedestrian Safety; Signs - Traffic Issues; Traffic - Speed Zones; Pioneer Parade; Short Street; View Street; Kittiwake Street; Banora Boulevard

SUMMARY OF REPORT:

Request received for the installation of speed reducing devices on Pioneer Parade.

"The opening of Short Street with a four-way intersection recently has created a "race-way" for speeding vehicles along Pioneer Parade between Short Street and Kittewake Street. It is currently 5.22am and I have witnessed eighteen vehicles in the past twelve minutes, driving at excessive speeds along Pioneer Parade in both directions. Some of these vehicles have turned into and out of View Street, also at excess speeds.

There are a number of elderly people who regularly use the road for walking and to gain access to the Banora Point shopping centre using the pedestrian stairs off Banora Boulevard.

We have a New South Wales public primary school located on Pioneer Parade. The children attending New South Wales primary schools are between five and twelve years of age. There are many parents and carers who walk their young families to and from school along Pioneer Parade.

We have no footpath on Pioneer Parade between Short Street and Kittewake Street, to walk our children safely to school so do our best to negotiate the safest route possible along grass across driveways and on and off the road. I have concerns about the increased traffic use of Pioneer Parade and in particular the excessive speed that the vehicles are currently travelling on this stretch of road.

Please help keep our kids safe and install physical speed reducing devices on Pioneer Parade to avoid a serious injury or death of a child due to speeding vehicles on a residential road. We do not have signage currently erected indicating traffic speeds on Pioneer Parade. Once this is in place, I do not believe that this alone would be enough to slow down the traffic.

I appeal to you personally and as a collective group of parties with an interest in this stretch of road to please ensure the safety of our pedestrians and specifically our young school community."

COMMITTEE ADVICE:

That speed and vehicle counts be conducted on Pioneer Parade to determine any changes in traffic conditions and this item be placed on the Schedule of Outstanding Resolutions for further consideration.

Current Status: That Item B1 from Local Traffic Committee meeting held 18 October 2012 remain on the list of Outstanding Resolutions.

(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 18 October 2012 (Item B1).

4. [LTC] Pottsville Road

ORIGIN:
Planning & Infrastructure

FILE NO: ECM 56883966; Traffic - Committee; Traffic - Speed Zones; Pottsville Road

SUMMARY OF REPORT:

Council is requesting a review of the 100km/h speed limit on Pottsville Road due to the high incidence of speed related type crashes.

In the five year period July 2006 to June 2011 there were 31 recorded crashes with 27 of those crashes "off path on curve".

The 85th percentile speeds and Average Daily Traffic are as follows:

	Date	85 th Percentile Speeds	Date	ADT
POTTSVILLE ROAD - MOOBALL END	5/02/2008 3/07/2002	80 85	5/02/2008	847
POTTSVILLE ROAD - NORTH of TREATMENT PLANT	7/04/2011	85	7/04/2011	850
POTTSVILLE ROAD - NORTH of TWEED VALLEY WAY	7/04/2011 24/03/2010 5/02/2008	82 85 80	7/04/2011 24/03/2010 5/02/2008 25/05/2005 28/08/2002	852 930 847 1077 841
POTTSVILLE ROAD - OFF CUDGERA CREEK ROAD	15/02/2012 31/03/2010	76 77	15/02/2012 31/03/2010 25/05/2005 5/09/2002	1093 1335 3390 2596

COMMITTEE ADVICE:

That the speed limit on Pottsville Road be referred to Roads & Maritime Services (RMS) for review in consideration of the speed related crash history on this road and be placed on the Schedule of Outstanding Resolutions.

Current Status: That Item B2 from Local Traffic Committee meeting held 18 October 2012 remain on the list of Outstanding Resolutions.

(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 18 October 2012 (Item B2).

BUSINESS ARISING

Nil.

A. FORMAL ITEMS SECTION

DELEGATIONS FOR REGULATORY DEVICES

A1 [LTC] Wharf Street, Tweed Heads - Bus Parking

ORIGIN:

Planning & Infrastructure

FILE NO: ECM59254277; Traffic - Committee; Bus Services - Stops; Parking - Zones; Pollution - Noise; Pty - 12503

SUMMARY OF REPORT:

Request received for the parking of buses with engines idling outside the Tweed Central Motel on Wharf Street, Tweed Heads.

"Both Pam and myself have been running this motel (formerly The Fairlight) for coming up to 4 months now and throughout all this time we have had a major issue with Surfside bus company over this problem which can start as early as 4.30 in the morning, till midnight 7 days a week. As the council has such strict rulings in place over noise pollution and public liability and safety issues we feel this is a problem that needs to be dealt with. As you can see by attached photo we can have anywhere up to 2 to 3 buses in a line idling. I have approached Surfside bus company who understands our predicament and seemingly has tried to do his best to fix this problem. As he has explained to me he has over 650 drivers working from at least 2 depots doing these routes.As we are in a business where sleep is of the utmost we are fighting against the elements to meet our guests standards.the positioning of the bus stop is jeopardising the safety of bus patrons and pedestrians alike. The buses drop their patrons off on the driveways of businesses with medium density traffic conditions. I have witnessed numerous near accidents where cars wanting to get into the shops have cut across the council strip to avoid waiting for the bus to leave the entry to the car park almost collecting pedestrians walking from opposite directions and bus patrons themselves.Wharf Street is generally a very busy street and I could guarantee a catastrophe of some sort will happen in a matter of time. There are other places to put the bus stop which will ensure public safety and ensure that our business will not be affected by this unnecessary act..... We are trying to improve our quality of clientele and are not getting anywhere with buses constantly idling at the front of the motel. We really hope that someone can see the logic in what we are saying and do something about it. If you would like more pictures this can be arranged I can take up to 50 a day."

The existing bus zone straddles the driveway entrance to the Tweed Central Motel and the shopping centre at 83 Wharf Street Tweed Heads which is not desirable. Relocating to the north would not have a major impact on customers and would improve the amenity of the complainant.

COMMITTEE ADVICE:

The Bus Zone adjacent to the Tweed Central Motel on Wharf Street Tweed Heads be relocated to the south adjacent to Hungry Jacks subject to consultation with Surfside Buslines.

RECOMMENDATION TO COUNCIL:

The Bus Zone adjacent to the Tweed Central Motel on Wharf Street Tweed Heads be relocated to the south adjacent to Hungry Jacks subject to consultation with Surfside Buslines.

*FOR VOTE - Ms Liz Smith, Cr Barry Longland, Mr Rod Bates
PRESENT. DID NOT VOTE - Mr Col Brooks*

A2 [LTC] Wharf Street, Tweed Heads - Off Road Parking Area

ORIGIN:

Planning & Infrastructure

FILE NO: Traffic Committee; Traffic - Parking Zones; Wharf Street, Tweed Heads; Disability/Accessibility Matters; ECM 58966318

SUMMARY OF REPORT:

The off road parking area in Wharf Street, Tweed Heads adjacent to the Dolphins Hotel is signposted as two hour limited. There is currently a proliferation of signage and maintenance has become an issue.

It is proposed to remove the individual signs and replace them with an area two hour limit sign on the entrance. This would also mean that the disabled spaces would not be marked with a sign, only having a pavement stencil.

COMMITTEE ADVICE:

That the off road car park adjacent to the Dolphins Hotel in Wharf Street Tweed Heads be sign posted as a 2 hour area parking subject to compliance with RMS Traffic Signs database.

RECOMMENDATION TO COUNCIL:

That the off road car park adjacent to the Dolphins Hotel in Wharf Street Tweed Heads be sign posted as a 2 hour area parking subject to compliance with RMS Traffic Signs database

*FOR VOTE - Ms Liz Smith, Cr Barry Longland, Mr Rod Bates
PRESENT. DID NOT VOTE - Mr Col Brooks*

A3 [LTC] Murwillumbah Primary School - Parking (B5)

ORIGIN:

Planning & Infrastructure

FILE NO: ECM 5758792; Schools - Murwillumbah Primary; Traffic - Committee; Traffic - General; Traffic - Parking Zones; Traffic - School Zones; Parking - Infringement Notices; Eyles Avenue; Condong Street; Prince Street; Riverview Street

SUMMARY OF REPORT:

Request received in relation to the difficulty with parking in and around the Murwillumbah Primary School, particularly for people with large families and young babies.

It has also been reported that:

"buses park in a car park zone in Eyles Avenue in front of the "No Parking" zone. In the morning it is a Bus Zone but not in the afternoon. Two buses can fit in this zone so you can imagine how many cars would be the equivalent. This week in our school newsletter parents were warned by the bus companies not to park in their Bus Zones because it is dangerous and fines are heavy. I also think having buses through Eyles St is very congested and dangerous. What about disabled car parking for that matter?"

A plan of the existing parking and bus zones associated with the school was submitted to the meeting.

COMMITTEE ADVICE:

That:

1. Council officers initiate further consultation with the school principal, P & C and bus operators regarding traffic movements around Murwillumbah Primary School.
2. Murwillumbah Primary School be placed on the list of Outstanding Resolutions.

From Meeting held 21 June 2012:

The Committee was advised that bus operators have discussed this matter and in principle support removal of bus zones in Condong Street if the school frontage of Eyles Avenue, can be entirely dedicated to bus parking during bus drop off and pick up times. Council officers will need to verify the street width in this area.

Current Status: That Item 4 Schedule of Outstanding Resolutions from Local Traffic Committee meeting held 23 August 2012 remain on the list of Outstanding Resolutions.

(This item was originally listed as an Outstanding Resolution at the Local Traffic Committee Meeting held 19 April 2012 (Item B5).

RECOMMENDATION TO COUNCIL:

THAT the bus zone on Eyles Avenue adjacent to the Murwillumbah Primary School be changed to operate only on the afternoon of school days from 2.30 to 4pm.

FOR VOTE - Ms Liz Smith, Cr Barry Longland, Mr Col Brooks
PRESENT. DID NOT VOTE - Mr Rod Bates

B. INFORMAL ITEMS SECTION

GENERAL TRAFFIC ADVICE

B1 [LTC] Kay Street, South Murwillumbah

ORIGIN:

Planning & Infrastructure

FILE NO: Disability/Accessibility Matters; Traffic - Committee; Traffic - Pedestrian
Crossings; Pedestrian Safety; ECM 58241904

SUMMARY OF REPORT:

Request received for the installation of a pedestrian crossing or island close to 5 Kay Street, South Murwillumbah.

"Synergy Group, a part of Challenge Tweed Incorporated, is an Australian Disability Enterprise that has been operating since 1979. We provide 51 adults with disabilities supported employment opportunities and training in a pro-active working environment.

We are located at 5 Kay Street in Murwillumbah and have several supported employees (people with disabilities) that have to walk to the bus stop located on the other side of Tweed Valley Way opposite the Matilda Petrol Station on their way to and from work. There have been several incidents where supported employees have nearly been hit by cars over the past couple of months trying to cross to the opposite side and we were wondering how we would go about getting either a pedestrian crossing or island put in the middle of the road for them to cross safely? Would we need to get a petition signed by people in the community? Any tips on how to go about this would be greatly appreciated."

COMMITTEE ADVICE:

That subject to availability of funding a pedestrian refuge be installed on Tweed Valley Way north of Buchanan Street to access the Bus Shelter/Stop.

RECOMMENDATION TO COUNCIL:

That subject to availability of funding a pedestrian refuge be installed on Tweed Valley Way north of Buchanan Street to access the Bus Shelter/Stop.

B2 [LTC] 2013 Meeting Schedule

ORIGIN:
Planning & Infrastructure

FILE NO: Traffic - Committee

SUMMARY OF REPORT:

The following tentative dates are proposed for Local Traffic Committee meetings in 2013 (Thursday):

17 January (if Agenda items require a meeting to be held)
7 February
7 March
4 April
16 May
13 June
11 July
8 August
5 September
3 October
7 November
5 December

As Committee members would be aware, Local Traffic Committee meetings will commence at 10.00am and end at approximately 12.00 noon, depending on the extent of the Agenda.

COMMITTEE ADVICE:

That the following meeting schedule be endorsed for Local Traffic Committee meetings in 2013:

17 January (if Agenda items require a meeting to be held)
7 February
7 March
4 April
16 May
13 June
11 July
8 August
5 September
3 October
7 November
5 December

NEXT MEETING:

The next meeting of the Local Traffic Committee will be held 20 December 2012 in the Mt Warning Meeting Room commencing at 9.00am.

There being no further business the Meeting terminated at 11.30am.

EXECUTIVE MANAGEMENT TEAM COMMENTS:

Executive Management Team Comments:

A1. Wharf Street Tweed Heads, Bush Parking

Nil.

A2. Wharf Street, Tweed Heads, Off Road Parking Area

Nil.

A3. Murwillumbah Primary School - Parking (B5)

Nil.

EXECUTIVE MANAGEMENT TEAM RECOMMENDATIONS:

A1. Wharf Street Tweed Heads, Bush Parking

The Bus Zone adjacent to the Tweed Central Motel on Wharf Street Tweed Heads be relocated to the south adjacent to Hungry Jacks subject to consultation with Surfside Buslines.

A2. Wharf Street, Tweed Heads, Off Road Parking Area

That the off road car park adjacent to the Dolphins Hotel in Wharf Street Tweed Heads be sign posted as a 2 hour area parking subject to compliance with RMS Traffic Signs database.

A3. Murwillumbah Primary School - Parking (B5)

That the bus zone on Eyles Avenue adjacent to the Murwillumbah Primary School be changed to operate only on the afternoon of school days from 2.30 to 4pm.

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ORDERS OF THE DAY



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2.1	Council will be underpinned by good governance and transparency in its decision making processes
1.2.2.1	Priority decision making
1.2.2.1.1	Council decisions will be in accordance with the Community Strategic Plan

43 [NOR-Cr W Polglase] Environmental Planning and Assessment Amendment Bill 2012 Development Control Plan Reform

NOTICE OF RESCISSION:

Councillors W Polglase, P Youngblutt and C Byrne move that Council resolution at Minute Number 716, Item a45 [URG-Cr K Milne] Environmental Planning and Assessment Amendment Bill 2012 Development Control Plan Reform, from Council Meeting held 15 November 2012, being:

"that Council:

1. *Recognises the importance of Council's Development Control Plans (DCPs) which are the fine-grained planning regulations that set out important planning controls to protect the amenity and character of local areas.*
2. *Notes with genuine concern that the Government's proposed Environmental Planning and Assessment Amendment Bill 2012 will make a number of changes which will greatly reduce the capacity of DCPs to protect local amenity and character including:*
 - (a) *Proposed changes will prevent councils from considering the cumulative impact of developments.*
 - (b) *Proposed changes so that maximum entitlements under DCPs such as the height and size of buildings will become "as of right entitlements" rather than the maximum allowable.*
 - (c) *Providing developers with a "get out of jail free card" if they don't want to comply with DCPs if the DCP is thought to "unreasonably restrict development";*
3. *Notes that this proposed change comes in the middle of a State-wide review of planning in NSW and pre-empts the outcome of this process.*

4. *Expresses its concern that these proposed laws are in breach of this government's "Contract with NSW" where the current Premier promised that his government would 'return planning powers to the community' and 'give communities a say again in the shape of their community'.*
5. *Calls on the Government to not proceed with those aspects of the Environmental Planning and Assessment Amendment Bill 2012 that limit and restrict Development Control Plans.*
6. *Asks the Mayor to urgently write to the Minister for Planning, local State representatives and planning spokespeople for the Labor Party, the Greens, The Shooters and Fishers Party, and the Christian Democrats seeking their support to prevent these aspects of the Bill becoming law."*

be rescinded.

44 [NOR-Cr C Byrne] Council Endorsed Site for the Tweed Byron Police Local Area Command Centre

NOTICE OF RESCISSION:

Councillors C Byrne, P Youngblutt and W Polglase move that Council resolution at Minute Number 714 Item 45 [NOM-Cr C Byrne] Council Endorsed Site for the Tweed Byron Police Local Area Command Centre, from Council meeting held on 15 November 2012 being:

"that Council writes to the NSW Police, UGL Limited, NSW Police Association, Minister for Police and Emergency Services, Mr Michael Gallacher, Minister for Planning, Mr Brad Hazzard, Minister for Local Government, Mr Don Page, Member for Lismore, Mr Thomas George and Member for Tweed, Mr Geoff Provest, nominating the site known as Lot 6 DP 727425 located at the corner of Tweed Coast Road and Cudgen Road, Cudgen to be a preferred site for the Tweed Byron Police Local Area Command Centre."

which was lost, be rescinded.

45 [NOM-Cr C Byrne] Tweed Byron Local Area Police Command Centre

NOTICE OF MOTION:

Following from the JRPP referring the current DA for a local area command centre on Marine Parade Kingscliff to the Minister for Planning and Infrastructure for final determination.

Councillor C Byrne moves that Council writes to the NSW Police, Minister for Police and Emergency Services, Mr Michael Gallacher, Minister for Planning and Infrastructure, Mr Brad Hazzard, Minister for Local Government, Mr Don Page and Member for Tweed Mr Geoff Provest with the recommendation that:

1. Part of the site known as Lot 6 DP727425 located at the corner of Tweed Coast Road and Cudgen Road be considered for the Tweed Byron Police Local Area Command Centre, or in the alternative
2. Part or all of the site known as Lot 11 DP 83659 be considered as the site for the Tweed Byron Police Local Area Command Centre.

Both properties were considered for this development at an Extraordinary Council Meeting held Monday 19 December 2011.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Report from Extraordinary Council Meeting held 19 December 2011 (ECM 43516620).

46 [NOM-Cr M Armstrong] Policing in Tweed Heads and Banora Point

NOTICE OF MOTION:

Councillor M Armstrong moves that Council:

1. Notes that the centres of Tweed Heads, Banora Point, Terranora, and immediate surrounds, a population of approximately 44,000, is currently provided Police services from the long established Recreation Street site in Tweed Heads which includes a 24/7 General Duties function including a station officer in charge, counter staff and patrol car crews.
 2. Supports the continuation of such Police services in Tweed Heads and calls on the local State Member of Parliament to express his support for Council's position.
-

47 [NOM-Cr K Milne] Bay Street East Road Reserve

NOTICE OF MOTION:

Councillor K Milne moves that Council declines all proposals in regard to selling the Bay St east road reserve, and advises the current proponent and the relevant NSW government department.

48 [NOM-Cr K Milne] Draft Local Environment Plan Exhibition

NOTICE OF MOTION:

Councillor K Milne moves that Council extends the presentations for the consultation process for the Draft Local Environment Plan to include Tweed Heads.

49 [NOM-Cr K Milne] Planning Reforms Agenda

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report:

1. Detailing the current planning reforms agenda and options for reprioritising the planning reforms agenda to include:
 - a) a Sustainability policy for Council
 - b) a Sustainability Development Control Plan for new developments
 - c) a National Iconic Landscapes Development Control Plan
-

50 [NOM-Cr K Milne] Ecologically Sustainable Economic Development

NOTICE OF MOTION:

Councillor K Milne moves that Council:

1. Prioritises ecologically sustainable development in the delivery of Council's economic development.
 2. Brings forward a report on developing an economic strategy for the Shire with a primary objective of achieving leading best practice in ecologically sustainable development, cultural development and protection of agricultural lands.
-

51 [NOM-Cr K Milne] Ecological Sustainability Review and Priority Implementation

NOTICE OF MOTION:

Councillor K Milne moves that Council brings forward a report with regard to engaging a specialised officer or consultant, qualified in ecologically sustainable development, planning and management, to be responsible for reviewing and implementing ecological sustainability across all Council divisions, as an urgent and high priority.

52 [NOM-Cr G Bagnall] Council's Sustainability Purchasing Power

NOTICE OF MOTION:

Councillor G Bagnall moves that Council brings forward a report on:

1. Options for improving sustainability outcomes and preference for local suppliers in regard to Council's procurement policies, tender processes and selection criteria.
 2. The legislative obstacles that impact on Council's ability to improve sustainability outcomes through the above measures, including suggested recommendations that might address these issues.
-

53 [NOM-Cr K Milne] Tweed Coast Koala Plan of Management

NOTICE OF MOTION:

Councillor K Milne moves that Council finalises the draft Tweed Coast Koala Plan of Management as a matter of urgent and high priority and present the draft to the following Council meeting for public exhibition.

54 [NOM-Cr G Bagnall] Stotts Island

NOTICE OF MOTION:

Councillor G Bagnall moves that Council brings forward a report on the potential to improve the facilities at Stott's Island as an environmental educational and tourist resource including increasing the potential for use by recreational vehicles.

55 [NOM-Cr G Bagnall] Composting Toilets

NOTICE OF MOTION:

Councillor G Bagnall moves that Council brings forward a report on the potential of allowing composting toilets in the urban environment and for including this option in Council's Water Management policies.

CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE GENERAL MANAGER IN COMMITTEE

1 [GM-CM] Murwillumbah Cattle Saleyards

REASON FOR CONFIDENTIALITY:

The report provides the reasoning for the acceptance of a tender for the disposal of the Murwillumbah Cattle Saleyards.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.



Strengthening the Economy

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

2 [PR-CM] EQ2012-197 Tweed Rural Lands Strategy - Tender Procurement - Appointment of Preferred Service Provider

REASON FOR CONFIDENTIALITY:

The subject of the report is the tender procurement of a service provider to prepare a Rural Lands Strategy. The procurement process is still under consideration and negotiations with the preferred tenderer(s) is subject to the resolution of the Council acting on the recommendations of this report. No Tenderer has been advised of the outcome of the procurement process at this time and disclosure of the information in this report may prejudice negotiations and/or alter a commercial advantage.

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: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.



Strengthening the Economy

3 [PR-CM] Dwelling Entitlements

REASON FOR CONFIDENTIALITY:

The report contains legal advice that impacts on Council's development and planning decisions.

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: -

- (e) information that would, if disclosed, prejudice the maintenance of law.



Civic Leadership

4 [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.



Caring for the Environment

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