

Councillors: Michael Armstrong
Gary Bagnall
Carolyn Byrne
Barry Longland
Katie Milne
Warren Polglase
Phil Youngblutt



TWEED
SHIRE COUNCIL

Agenda

Ordinary Council Meeting Tuesday 25 September 2012

held at Murwillumbah Cultural and Civic Centre
commencing at 7.00pm

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.

Items for Consideration of Council:

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the August 2012 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA12/0132
Description of Development:	Use of an existing shed as a roadside stall and associated signage
Property Address:	Lot 2 DP 739630 No. 4 Raven Place, Clothiers Creek
Date Granted:	23/8/2012
Development Standard to be Varied:	Clause 24 Set backs to designated roads
Zoning:	1(a) Rural
Justification:	Proposal consists of a 71% variation of the development standard. Is considered acceptable as variation does not impact on surrounding area.
Extent:	71%
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0048
Description of Development:	Dwelling house
Property Address:	Lot 25 DP 1145386 Cylinders Drive, Kingscliff
Date Granted:	9/8/2012
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist
Justification:	The proposed dwelling is two storeys in height and the rear of the property adjoins waterfront open space. As a result of an interim variation to the reporting requirement by the Director General of Department of Planning and Infrastructure dated 16 July 2012 Ref:12/06319 the proposal may be determined by Council under delegated authority.
Extent:	The proposal is two storeys in height and will result in minor overshadowing of the waterfront open space before 7pm mid summer (daylight saving time). The resultant overshadowing will be similar to other shadows cast along the Kingscliff and Casuarina coastline.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA11/0582
Description of Development:	Staged redevelopment of Tweed Heads Bowling Club (4 stages) including formalising detached car park, construct new multi level car park, alterations and additions to existing club and construct seniors living development comprising 91 self-contained units (JRPP)
Property Address:	Lot 12 DP 803451 22-38 Florence Street, Lot 61 DP 237806, Lot 1 DP 549328, Lot 2 DP 549328 and Lot 64 DP 237806 No. 58-64 Wharf Street, Tweed Heads
Date Granted:	28/08/2012
Development Standard to be Varied:	Clause 16 - Heights of Buildings
Zoning:	6(b) Recreation
Justification:	4 storey building within 3 storey height limit
Extent:	One component of the development exceeds the building height limit by one storey
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0067
Description of Development:	Three (3) lot subdivision
Property Address:	Lot 8 DP 635706 No. 149 Carramar Drive, Tweed Heads West
Date Granted:	23/8/2012
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	2(a) Low Density Residential, 7(d) Environmental Protection (Scenic/Escarpment)
Justification:	Variation to development standard of minimum allotment size of 40ha in 7(d) zone is existing and is not able to be increased. The proposed subdivision retains the existing area of 0.657 ha (6570m ²) zoned 7(d) within proposed allotment 3 which also contains approximately 3252.5m ² of land zoned 2(a).
Extent:	The 7(d) zone has a minimum allotment size of 40 hectares (40,000m ²). The existing area of 7(d) zoned land within the subject site (Lot 8 DP 635706) is 0.657 hectares (6570m ²). The existing variation to the development standard is 83.575% and will remain unaltered following the proposed subdivision.
Authority:	Director General of the Department of Planning and Infrastructure

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.

6 [PR-CM] EC 2012-195 Provision of Security Services

SUBMITTED BY: Regulatory Services Unit



Civic Leadership

SUMMARY OF REPORT:

Tenders were called to engage the services of a qualified and experienced security firm for the provision of the diverse security requirements of the Tweed Shire Council. These services include nightly security patrols, alarm monitoring and alarm response, cash in transit, staff escorts, static guards, advice on effective security arrangements and installation/maintenance of detectors and associated items.

Following the closure of the tender period, eight tenders were received and evaluated utilising the criteria and weighting system as outlined in the report.

On the basis of this assessment, it is recommended that the tender be awarded to the firm Tweed Coast Protective Services.

RECOMMENDATION:

That:

1. **ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(c) and (d) 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.
 - (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.

2. **In relation to EC2012-195 - Provision of Security Services the tender be awarded to Tweed Coast Protective Services for a contract period of 3 years.**

REPORT:

The current contract for the provision of Council's security services is due to expire. Accordingly, tender EC 2012-195 - Provision of Security Services was called to engage the services of a qualified and experienced security firm for the provision of the diverse security requirements of the Tweed Shire Council, for a period of three years. The requirements of Council's security services include:

- Physical security patrols consisting of at least four patrols per night for 28 premises utilising a patrol verification system to provide confirmation of patrols.
- The monitoring of alarms for 44 premises utilising a central alarm monitoring station with a minimum grade two rating in accordance with Australian Standards AS2201.2.
- Response to all alarm activations with a maximum call out response time of 30 minutes.
- Cash in Transit which requires an escort to ensure the secure transfer of monies associated with eight Council premises.
- The provision of static armed guard for meetings associated with Council as required.
- The escort of staff from libraries when closing outside of normal working hours.
- The locking up of 12 public amenity buildings throughout the Shire.
- Associated reports:
 - Monthly report on anomalies or incidents whilst implementing patrols;
 - Monthly report associated with the patrol verification system; and
 - Quarterly report on the performance of and maintenance of all equipment associated with the provision of the service.
- A two year guarantee of all detectors and alarms supplied by the contractor.
- Flexibility of service and contractor control.
- Suitably qualified and licensed employees

Eight tenders were received from the following applicants:

- Tweed Coast Protective Services: 8/43 Corporation Court, South Tweed Heads NSW;
- BSMS Security: 2/12 Channel Road, Mayfield West NSW;
- Border Security Services: 44 Ern Harley Drive, Burleigh Heads QLD;
- Southern Cross Protection: 28/ 26-32 Pirrama Road, Pyrmont NSW;
- Nitestar Security Services: 6/28 Greg Chappell Drive, West Burleigh QLD;
- Chris Tech: 13 Murraba Crescent, Tweed Heads NSW;
- SNP Security: 3 Gumtree Drive, Goonellabah NSW; and
- BSM Security: 3374 Pacific Highway, Springwood QLD.

The following criteria and weightings were utilised as the basis for the comparative evaluation of the tender:

- Comparison of tendered schedule rates received - 60%
- Level of appropriate resources - 10%
- Contractors team and experience - 10%
- Demonstrated capability to perform the services as specified - 10%
- General performance history - 5% and
- Relevant experience with contracts of a similar nature - 5%

These tender applications were assessed by a tender panel in accordance with Council's tendering protocol and consisted of three panel members being Regulatory Services Coordinator, Engineer Administration Supervisor and Manager of Corporate Governance. The assessment of the submissions and a summary of their application, cost effectiveness and ability to fulfil Council's security requirements is provided as a confidential attachment to this report.

On the basis of this assessment, the Panel determined that the firm Tweed Coast Protective Services was the preferred tenderer.

OPTIONS:

Not applicable.

CONCLUSION:

It is recommended that the firm Tweed Coast Protective Services be appointed as the preferred tenderer.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Version 1.3.

b. Budget/Long Term Financial Plan:

Annual expenditure for the servicing of this contract is allowed within the budget.

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:

(Confidential) Attachment 1. Confidential Attachment Tender Submissions (ECM
56297036)

7 [PR-CM] Leda Cobaki Development Site - Compliance Issues - Unauthorised Subdivision Works

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0853 Pt 11 and DA3880/80 Pt6



Civic Leadership

SUMMARY OF REPORT:

This report has been prepared to provide Council with an initial briefing on a series of unauthorised subdivision works that have occurred on the Leda development site at Cobaki. As part of Council's recent assessment of a number of proposed modifications to the initial subdivision development applications approved by the Northern Joint Regional Planning Panel in May 2011 (DA10/0801 and DA10/0800) and related Construction Certificates (CCs), the officers have identified a series of major earthworks and road construction being carried out by the proponents in both the northern and southern part of the site without the required Construction Certificate approval. There are also incidences of non-compliance with the previous development consents of both Council and the NSW Department of Planning and Infrastructure.

The two main areas of concerns are located in the Northern Hillside and "Missing Link" (intersection of the proposed Cobaki Parkway South and Sandy Road) precincts. In the Northern Hillside its has been identified that there have been significant earthworks commenced (in some areas up to 10 metres of fill, and 16 metres of cut in depth variation) outside of any CC approval, as well as substantial areas of earthworks being undertaken outside of previous development approvals. The "Missing Link" precinct contains the commencement of substantial lengths of roadway without prior CC approval, affecting some environmentally sensitive parts of the site.

The Council officers have taken action in seeking the cessation of these works, and have engaged one of Council's legal providers to commence initial investigation of the incidents of non-compliance and communications with Leda, in order to determine a suitable process of enforcement. The full details of the extent of the unauthorised works are still being sought from Leda.

Given the complexity and scale of the compliance and enforcement issues for these incidents, it is proposed to organise Council's legal firm to provide the Councillors with a detailed briefing on the legal options available for Council to consider in terms of both the rectification processes for moving forward with the development and possible penalties to be sought to be imposed upon Leda. It is then proposed to submit a further report to Council's October Meeting to seek formal endorsement of preferred enforcement actions.

Tweed Shire Council has a statutory responsibility in relation to compliance enforcement. These responsibilities are clearly articulated in the Act. Failure to undertake the necessary

compliance in any situation may lead to Council having its powers mitigated by other authorities.

RECOMMENDATION

That Council, in respect of the compliance and enforcement issues relating to Leda's development site at Cobaki that are identified in this report:

- 1. Receives and notes this report; and**
- 2. Supports an invitation to Council's legal representative, Maddocks Solicitors, to provide a briefing to the Councillors on the legal options available to address these issues, which will inform a further report to Council's October meeting.**

REPORT:**The Leda Cobaki Development Site**

The site is known as Cobaki Estate and is comprised of 17 allotments. It has a total area of 593.5ha.

The site is situated approximately 6km west of Tweed Heads. It is within close proximity to the Queensland border and the Gold Coast International Airport, situated a short distance to the north-east.

Existing on-site vegetation includes dry sclerophyll forest, rainforest, woodland, heathland, mangrove forest, grassland and rushland/sedgeland and saltmarsh.

Topography on the site varies significantly including relatively steep slopes and ridges to the north and west and low lying flood planes in the centre of the site. The topography of the site could best be described as a 'basin'.

Residential development is located to the north of the site in Queensland, but physically separated from the site by topography and a linear corridor of existing bushland.

Land to the west and southwest of the site is predominately rural in character and includes adjoining bushland as well as Cobaki Creek. The area east of the site is characterised by remnant bushland and Cobaki Broadwater.

History of Development and Construction ApprovalsCouncil Approved Development Consents

Several development consents were granted by Council over the subject site between 1993 and 2002 for bulk earthworks and residential subdivision.

A summary of existing consents is outlined in the table below. The majority of the bulk earthwork consents have commenced and works have been undertaken.

Consent No.	Description	Date of Consent
D92/315	Boyd Street Extensions	5 January 1993
D94/438	Bulk Earthworks	27 January 1995
S94/194	730 Lot Urban Subdivision Parcels 1 to 5 and 13 Englobo Parcels (The Entrance, The Sand Ridge)	19 September 1995
D96/271	Bridge over Cobaki Creek	8 April 1997
S97/54	430 lot residential subdivision – parcel 7 to 10 (The Knoll, Piggabeen)	21 October 1997
K99/1124	560 Lot Urban Subdivision (The Foothills, The Plateau, Valley East, Valley West, East Ridge)	21 July 2000
1162/2001DA	8 Management Lots and Bulk Earthworks (town centre)	8 October 2002

Figure 1 below identifies extent of development consents.

Cobaki Lakes Estate, Tweed Heads ■ Part 3A Concept Plan | December 2008

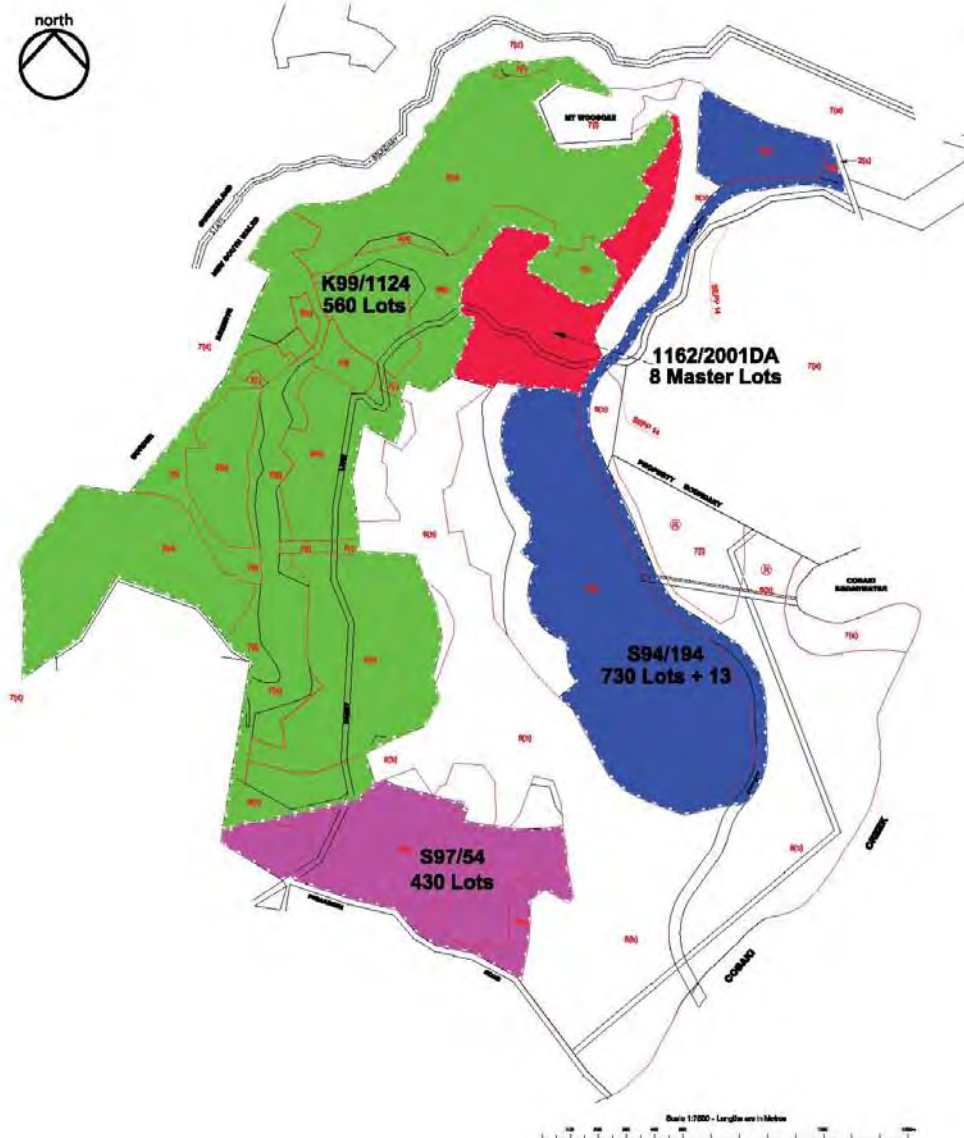


Figure 6 – Existing Subdivision and Development Consents

Council Approved Construction Certificates

A number of Construction Certificates (CCs) have also been issued for bulk earthworks and other civil engineering works including construction of Cobaki Parkway. Figure 7 below identified the location of the CCs on the site.

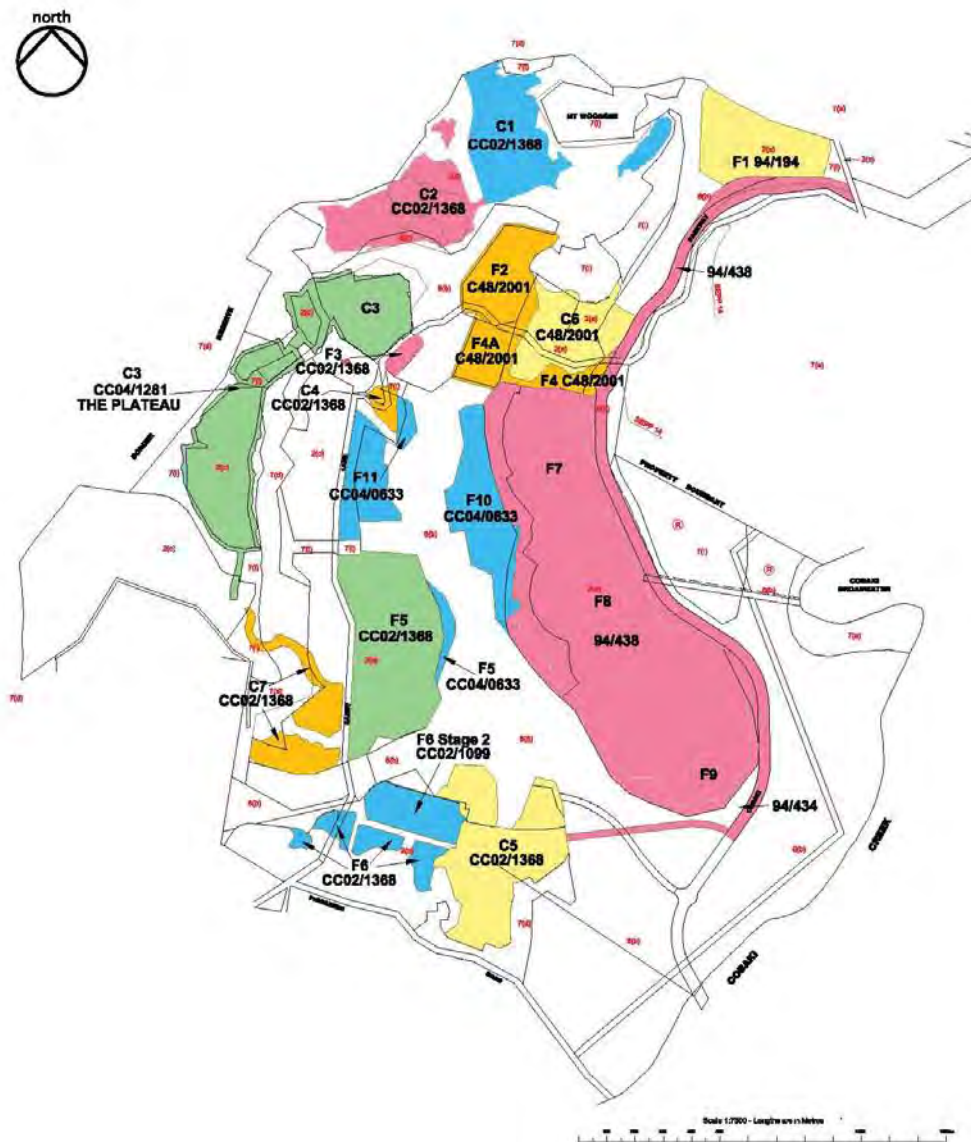


Figure 7 –Existing Earthworks Approvals¹

1 C1-C7 = Cut phasing; F1-F9 = Fill phasing

Part 3A Concept Plan Approval – NSW Minister for Planning

The Minister for Planning issued a Concept Approval under Part 3A of the Act for the site on 6 December 2010. The approval was for the following:

- Residential development for approximately 5,500 dwellings
- Town Centre and neighbourhood centre for future retail and commercial uses
- Community facilities and school sites
- Open space
- Wildlife corridors
- Protection and rehabilitation of environmentally sensitive land
- Road corridors and utility services infrastructure
- Water management areas
- Roads and pedestrian and bicycle network

The Minister stipulated that approval to carry out the project, other than the central open space and Precinct 5, be subject to Part 4 or 5 of the Act, as relevant.

Schedule 2 of the Concept Approval contains modifications to the concept plan and requirements for future applications.

In determining the Concept Plan, despite strong concerns raised by Council, the Minister agreed to retaining the earlier Council development consents concurrently with the Concept Plan, rather than following the more conventional practice of seeking the surrender of these consents from the site owner. This decision has added a very complex layer of assessment for future applications on the site.

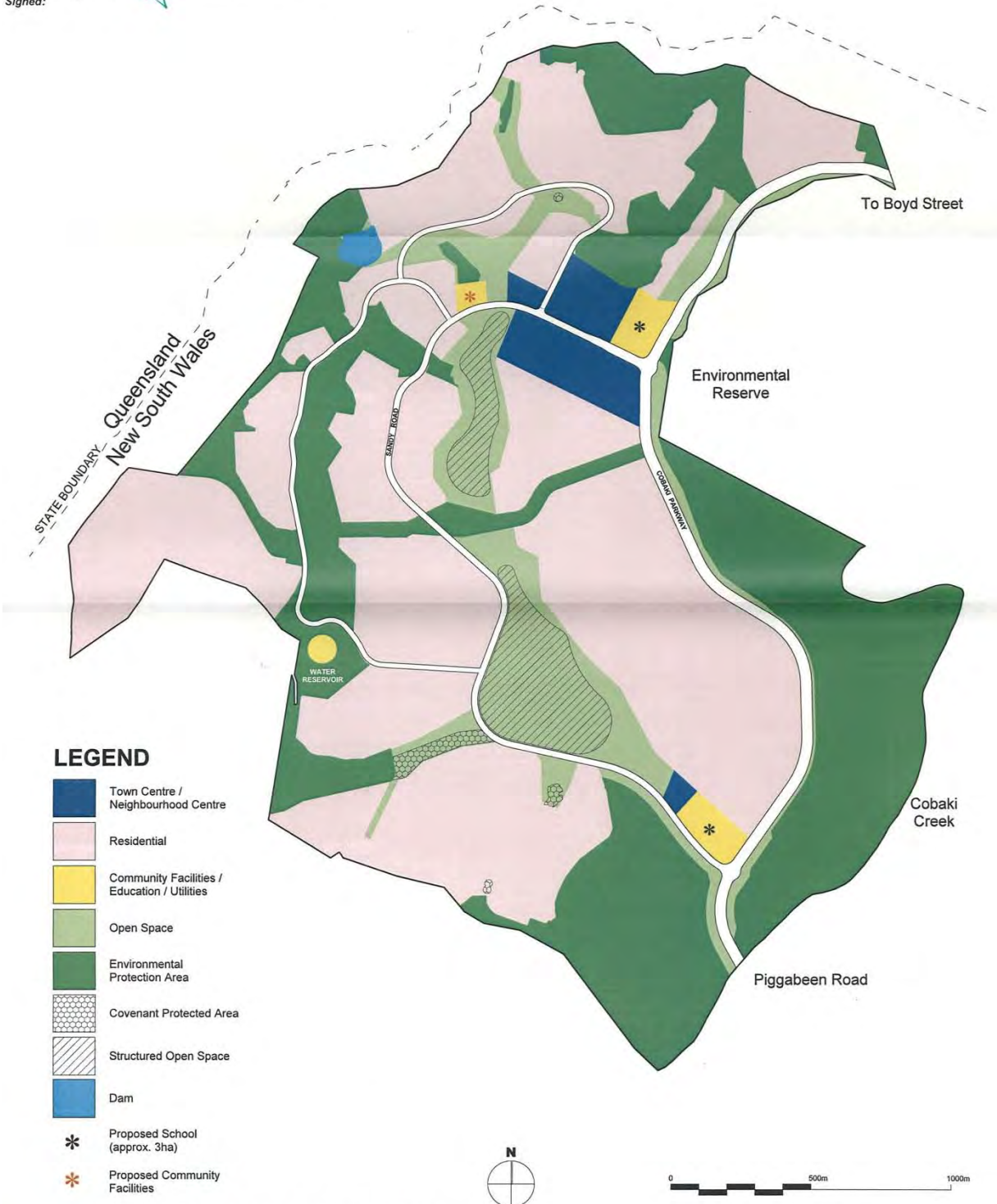
To assist in this process, a condition of approval was included by the Minister, and subsequent JRPP consents, that the proponent was required to provide a detailed reconciliation of relevant conditions of the Council consents prior to advancing the first stages of the Cobaki development. Despite repeated requests, Council is still awaiting this information from the proponents.

APPROVED CONCEPT PLAN



Major Project Number: 06_0316 approved on 6 December 2010 by the Minister for Planning, in accordance with the Environmental Planning & Assessment Act 1979, subject to conditions of approval.
Signed:

Concept Plan



LEGEND

- Town Centre / Neighbourhood Centre
- Residential
- Community Facilities / Education / Utilities
- Open Space
- Environmental Protection Area
- Covenant Protected Area
- Structured Open Space
- Dam
- Proposed School (approx. 3ha)
- Proposed Community Facilities



Concept Plan for LEDA MANORSTEAD PTY LTD

of COBAKI, NSW

Scale: 1:12000 @ A3

LED006 / SK 01.01

Thursday, 23 September 2010

Issue RR



Part 3A - Project Application Approval

The Deputy Director–General Development Assessment and Systems Performance issued a Project Approval on 28 February 2011 at the Cobaki site for the following:

- Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);
- Staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater treatment area;
- Road forming works and culverts crossing the central open space;
- Road forming works across saltmarsh areas, including culverts and trunk sewer and water services (Lot 804);
- Revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and
- Establishment of freshwater wetland and fauna corridors (Lot 803).

Northern Joint Regional Planning Panel – Development Consents – New Subdivision Precincts 1, 2 and 6

The Northern Joint Regional Planning Panel granted approval to two of the first major residential subdivision development applications in the northern and central parts of the Cobaki site on 30 May 2011:

DA10/0800 - Precincts 1 and 2 - 476 lots

DA10/0801 - Precinct 6 - 441 lots

Post JRPP Consent Applications

Leda has since submitted Construction Certificates relating to the development consents for Precincts 1, 2 and 6, as well as the Major Projects consent for the Central Open Space Corridor.

Concurrently, Leda has also submitted Section 96 Modification Applications in respect of DA10/0800 and DA10/0801.

Unauthorised Works

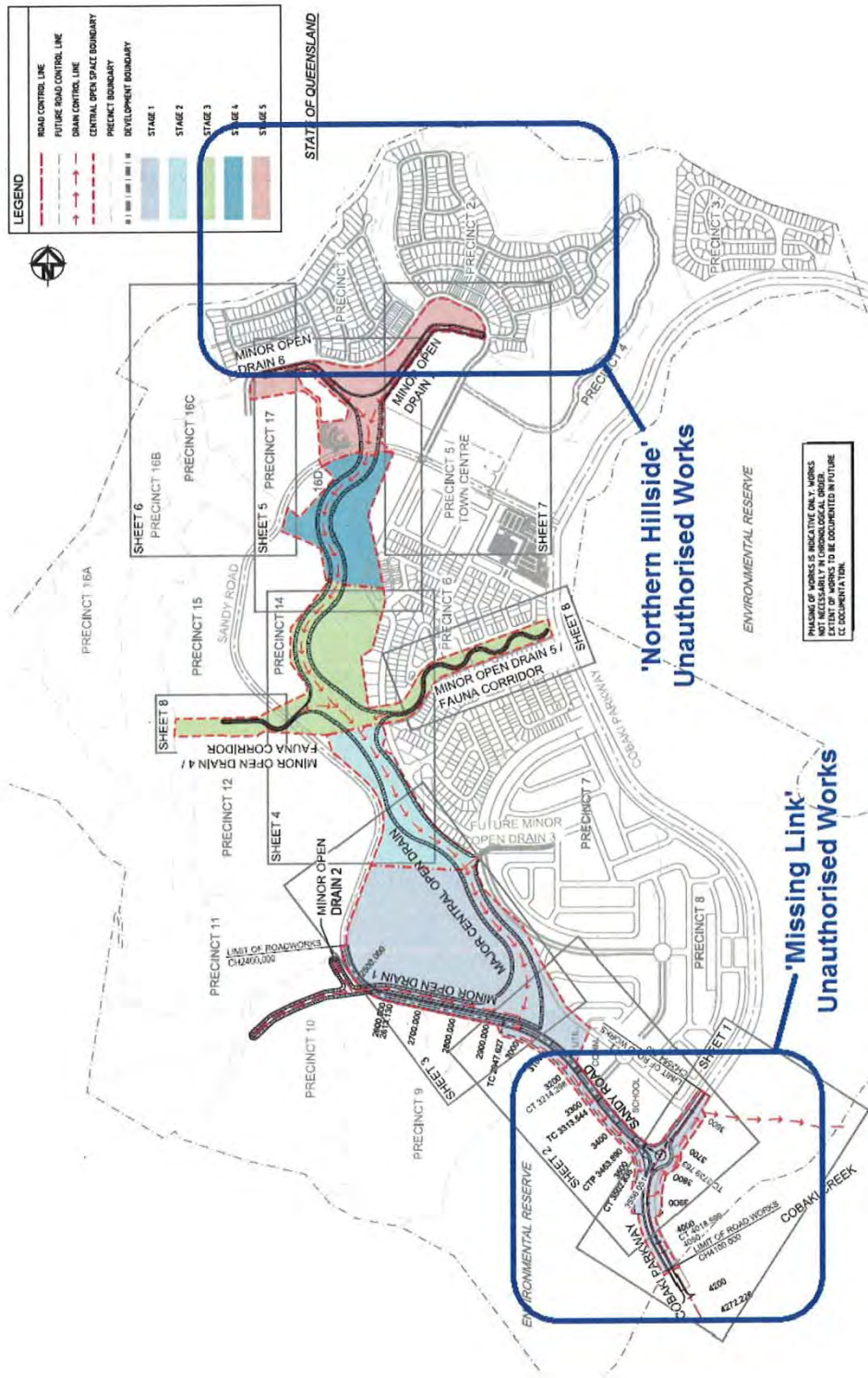
In the process of reviewing old approvals in comparison against the current Section 96 Applications for the JRPP consents, as well as the Construction Certificate for the Central Open Space Corridor, Council officers have become aware of some major incidences of unauthorised works and non-compliance with previous Council and Department of Planning consents.

Evidence has been obtained which shows that Leda have undertaken Bulk Earthworks over various parts of the Cobaki development site (refer to Figure 2 below) which are not in accordance with the applicable Development Consent and without an approved Construction Certificate.

These areas are referred to as:

1. The Northern Hillside (now known as Precinct 1 & 2);
2. The Missing Link (being the portion of Cobaki Parkway and Sandy Road associated with the Central Open Space Project Application MP08/0200).

FIGURE 2 – LOCALITY PLAN



The works undertaken have significant implications, as Section 109f(1A) of the Environmental Planning and Assessment Act 1979 (the Act) provides that “A construction certificate has no effect if it is issued after the building work or **subdivision work to which it related is physically commenced on the land** to which the relevant development consent applies.”

Northern Hillside

The area of Cobaki Estate known as Northern Hillside, approved under development consent K99/1124 (granted in July 2000) and subsequent modifications, gives approval for a 560 lot residential subdivision over Lot 46, Lot 200, Lot 201, Lot 202, Lot 205, Lot 199 and Lot 228 DP 755740; Lot 2 DP 566529; Lot 199 and Lot 305 DP 755740; Lot 1 DP 823679. Refer to Figure 3 below.

Two Construction Certificates have been issued under this consent (CC03/1368 and CC04/1281) with CC02/1386 approving two Cut Areas in the vicinity of the area in question.

In 2009, as part of a Construction Certificate assessment at the time, Council's Development Engineer questioned Leda with regard to the extent of major earthworks that had been undertaken in the Northern Hillside area, and whether it was in accordance with the then current consent (being K99/1124.05 which was approved in March 2009) and the applicable Construction Certificates CC03/1368. No satisfactory response was provided by Leda at the time, and Council officers were then asked to divert their focus on the assessment of the emerging Part 3A Concept Plan and Project Application for the Cobaki site, and it was the understanding of the officers at the time that Part 3A approvals would supersede the previous Council consents. As pointed out earlier in the report, this did not eventuate in the Part 3A approval granted by the State Government.

It should be noted that in September 2010 modified consent K99/1124.06 was endorsed, but this modification had no implications on earthworks undertaken to date. Site inspections undertaken by Council staff in September 2009 confirmed that bulk earthworks operations for the Northern Hillside had ceased.

The issue of non-compliance of the Northern Hillside earthworks has arisen again more recently in the Council officers' assessment of the Construction Certificate for the Central Open Space Corridor.

FIGURE 3 – AERIAL PHOTO OF ‘NORTHERN HILLSIDE’ UNAUTHORISED WORKS (NEARMAP.COM)



Following a request through Council's solicitors, Leda has provided survey plans which clearly show (when measured against the previous Development Application and Construction Certificate plans), the following areas of major earthworks variance in the Northern Hillside:

With respect to the Northern Hillside - Development Consent K99/1124.05:

- Approved Drawing No. DA02 approves earthworks (cut and fill) over approximately 37 hectares (scaled).
- Approximately 1.8 hectares of earthworks have occurred outside of that approved by Drawing No. DA02. Refer the areas outlined in blue in Attachment 1 – Page 4/4 and Attachment 2 – Page 3/3.
- Approximately 2.4 hectares of over excavation (over-cut) have occurred, with depths exceeding 3 metres noted in some areas, as outlined in yellow in Attachment 1.
- Approximately 6 hectares of over filling have occurred, with depths exceeding 4 metres noted in some areas, as outlined in green in Attachment 1.

With respect to the Northern Hillside - approved Construction Certificate CC02/1368:

- Out of the approximate 37 hectares of earthworks approved by Drawing No. DA02 under K99/1124.05, Construction Certificate CC02/1368 approves the following size Cut Areas over the Northern Hillside:
 - Cut Area C1 - approximately 4.9 hectares (scaled).
 - Cut Area C2 - approximately 3.3 hectares (scaled).
- Earthworks have occurred over the majority of the Northern Hillside as noted by the red (cut) and green (fill) contours (of Attachment 2), with extensive earthworks having been undertaken outside of the 2 approved Cut Areas C1 and C2 (as outlined in red on Attachment 2):
 - Cuts of depths up to 16 metres (over an area of approximately 2.5 hectares) have occurred outside of any approved Construction Certificate, as noted on Attachment 2 – Page 3/3.
 - Filling of the site of depths up to 10 metres have occurred outside of any approved Construction Certificate, as noted on Attachment 2 – Page 3/3.

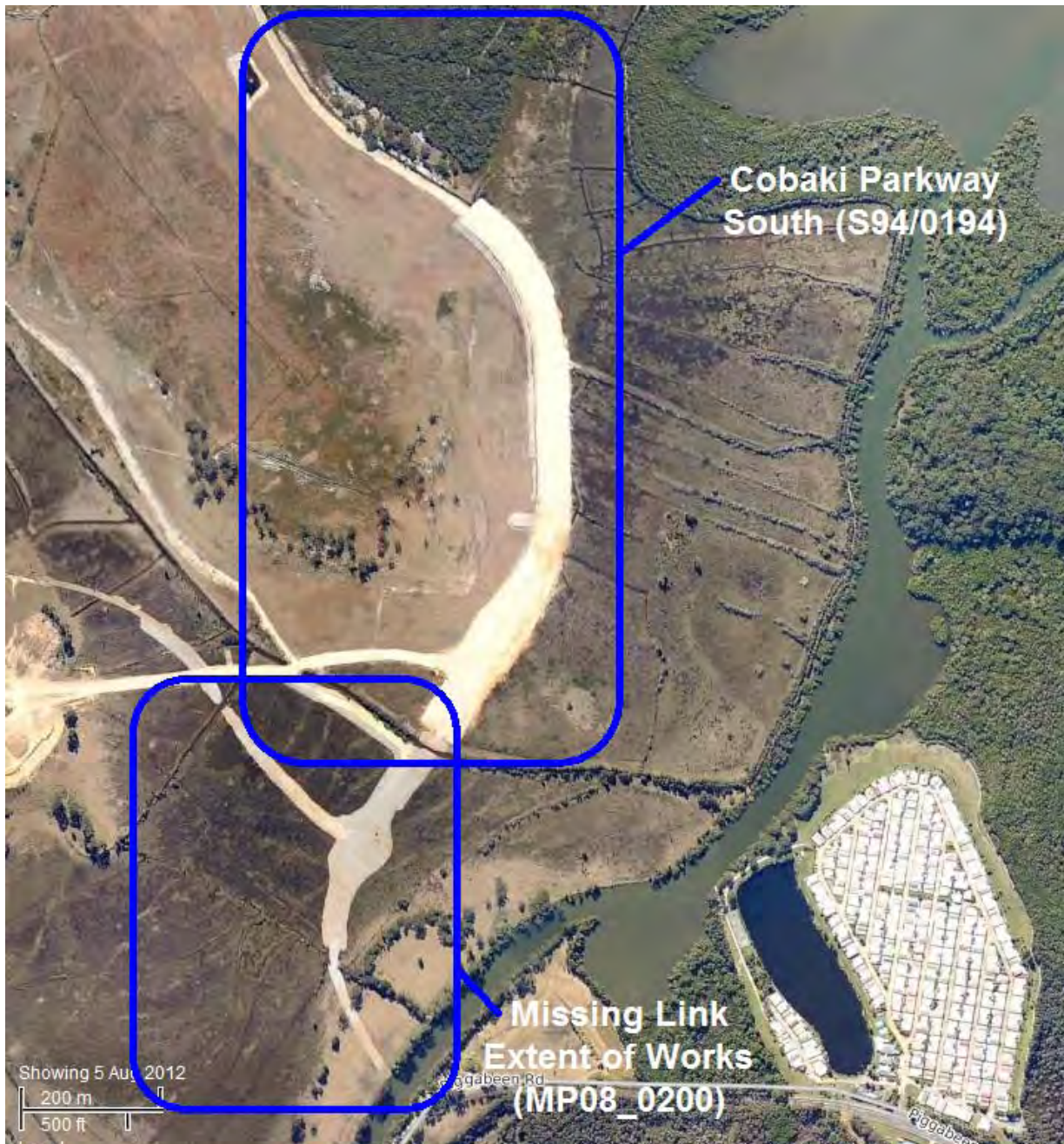
Missing Link – Cobaki Parkway South

The Bulk Earthworks for Cobaki Parkway north of Dunn's Drain was approved under development consent S94/0194 (granted September 1995) and subsequent modifications (with the most recent being S94/0194.09 approved in December 2011), giving approval for an urban subdivision creating 763 lots at Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740; 73 Sandy Lane; Lot 1 DP 570076; Piggabeen Road, Lot 2 DP 566529; Lot 1 DP 562222; Lot 1 DP 570077; Lot 1 DP 823679.

The Bulk Earthworks for Cobaki Parkway north of Dunn's Drain have been approved and have commenced under Construction Certificates CC08/0800 and CC10/0717 respectively.

The portion of Cobaki Parkway south of Dunn's Drain to Cobaki Creek and approx 1200m of Sandy Road, known as the Missing Link is encapsulated by the Central Open Space Project Application MP08/0200 (DA10/0853). Refer to Figure 4 below.

FIGURE 4 – AERIAL PHOTO OF ‘MISSING LINK’ UNAUTHORISED WORKS (NEARMAP.COM)



To date no Construction Certificates have been issued under MP08/0200 (DA10/0853).

In June 2012, concurrent to the Northern Hillside compliance issues, Council officers received a request from Leda's engineering consultant to endorse "a gravel access track" to be "constructed along the Cobaki Parkway alignment to enable suitable access of vehicles & drilling rigs to the Missing Link area to undertake" required, "further geotechnical investigations".

Council's Development Engineer gave permission (with conditions) for the construction of a very basic, gravel access track within the allocated Cobaki Parkway Road Reserve and within the Salt Marsh area of the Cobaki Estate in order for investigatory geotechnical works to be undertaken, on the written understanding that the requested access track would not exceed 6m in width.

In early July, Council's Development Engineer visited the Cobaki site and identified (as shown in Figure 5) that the works:

- had commenced to the approximate location of the future Cobaki Parkway / Sandy Road roundabout;
- had significantly exceeded that agreed by Council, appearing to be works incorporating the extension of the Cobaki Parkway as opposed to a benign access track for geotechnical testing purposes; and
- had not complied with the conditions specified by Council, such as installation of appropriate erosion and sediment control and 48 hours notice as to when works were intended to commence.

FIGURE 5 – BLUE HIGHLIGHT INDICATES WORKS IDENTIFIED ON SITE ON 3 JULY 2012



Council received an unsatisfactory explanation and justification from Leda for the extent of works undertaken, and, given the scale of the unauthorised works undertaken, the officers sought an immediate cessation of works, and advised Leda that it would seek legal advice on how best to deal with the matter.

An initial meeting was held between the legal representatives of both Leda and Council on 24 August to initiate the most appropriate response to both the Northern Hillside and Missing Link non-compliance issues. It was agreed at that meeting that Leda would provide more detailed information on the works carried out in the Northern Hillside, to inform a future meeting, and subsequent briefing of the Tweed Councillors.

A further meeting between Leda representatives and Council officers occurred in the days that followed, including a site visit held on 30 August. It was identified at the site visit that, despite written requests from Council to cease these works, Leda had undertaken works to extend the “access track” to Cobaki Creek in “Missing Link” part of the site, involving further earthworks, removal of vegetation and initial construction of a further roadway of approximate scale of 400 metres in length and 20 metres in width. This was another incidence of major non-compliance which has yet to be satisfactorily explained by Leda.

Photo 1 – Dunns Drain (Taken 30 August 2012)



Photo 2 – The “Access Track” constructed along Cobaki Parkway – Looking south from Dunns Drain (Taken 30 August 2012)



Photo 3 – The “Access Track” constructed along Cobaki Parkway – Looking north towards Dunns Drain (Taken 30 August 2012)



Photo 4 – The “Access Track” constructed along Sandy Road – looking towards Cobaki Parkway (Taken 30 August 2012)



Photo 5 – The “Access Track” crossing through the EEC area (Taken 30 August 2012)



Photo 6 – The “Access Track” crossing through the EEC area (Taken 30 August 2012)



Options for Rectification and Enforcement of Unauthorised Works

Rectification Options - Updated Approvals

Leda and its solicitors have acknowledged the non-compliance of its subdivision works for the Northern Hillside and Missing Link parts of the Cobaki site, and have sought to discuss the various options for rectification in order to put in place the necessary approvals to advance the first stages of construction. It has been difficult to date to determine an appropriate process for rectification, given the major gaps in information provided by Leda.

Leda's legal representatives have put forward a proposal of lodging a number of Section 96 applications to modify relevant previous development consents, as a means of establishing a legitimate platform for Council to recommence the assessment of the various Construction Certificates in the areas affected by the unauthorised works. Council's solicitors are still considering whether this is a legally feasible option.

Possible Enforcement Actions

Whilst Council officers and its solicitors have been willing to date to engage in these discussions in a conciliatory manner, the officers are also very mindful of the scale and extent of the unauthorised works and the yet to be determined impacts on the environmental and cultural heritage of the site and its adjoining environs, and whether or not this should result in Council pursuing penalties and/or punitive action against Leda.

In terms of the northern area, there has been potential environmental damage as a result of works having been undertaken prior to the issue of a Construction Certificate. Development Consent K99/1124 incorporates a number of conditions relating to environmental controls, including ameliorative measures to mitigate impacts on threatened species, as documented by the Species Impact Statement (Peter Parker, August 1999).

It is unclear at this point if any or all of the environmental conditions of consent have been complied with prior to any of the bulk earthworks in the northern area taking place. In order to determine the extent of non-compliance with the environmental conditions of consent, it

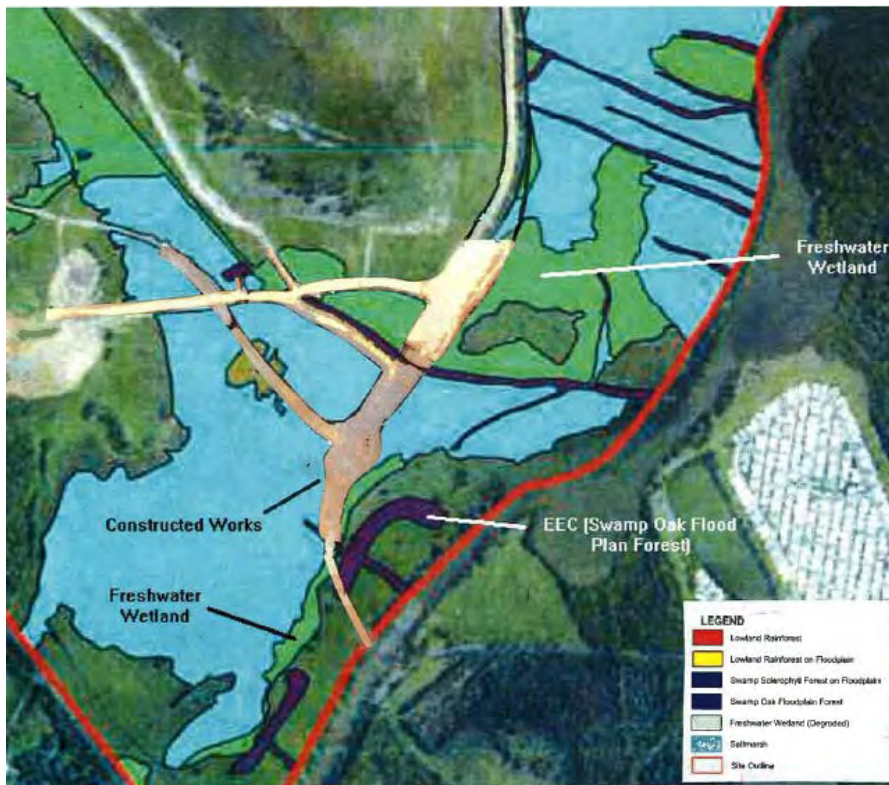
would be necessary to engage the services of a suitably qualified consultant to undertake a full audit of the consent against the extent of works on the subject site.

It should be noted at this point that the proponent was requested on 23 February 2012 (as part of a Section 96 application assessment for Precinct 1 and 2) to undertake a detailed reconciliation between all conditions in existing relevant consents including K99/1124. The reconciliation of the consent conditions is a requirement of the Concept Approval, requiring the proponent to include a detailed description of how each of the existing consents relate to the application. Such an analysis would identify if all of the appropriate environmental management works had been undertaken prior to and during any bulk earthworks taking place. To date, the proponent has not provided a response to the request for the detailed reconciliation.

With regard to the southern area, concern is raised in relation to potential environmental damage as a result of works having been undertaken prior to the issue of a Construction Certificate. The Project Approval for the Central Open Space Corridor requires seven Environmental Management Plans to be approved by either Council or the Department of Planning and Infrastructure (DP&I) prior to the issue of a Construction Certificate. To date only two of the seven management plans (Acid Sulfate Soils Management Plan and the Groundwater Management Plan) have been approved. In addition, two other management plans are required to be approved prior to any works commencing with regard to the Central Open Space corridor. Neither of these has been approved yet.

Of concern is an area of Freshwater Wetlands and an Endangered Ecological Community (EEC) that the unauthorised works have gone through (see Figure 6 below), without the appropriate environmental management approvals and mitigation measures in place. With regard to the Freshwater Wetland area, the Project Approval has a specific condition (Condition 38) which states that...*"No works shall be undertaken within the central open space area that may impact upon (or contribute to an impact upon) the freshwater wetlands and associated Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and the DECCW (now known as OEH) that offsets the project's impacts on biodiversity."*

FIGURE 6 – LOCATION OF FRESHWATER WETLANDS AND EEC



As the DP&I are the consent authority for the Project Approval, they have been advised of the unauthorised works in the southern area of the subject site, and the Department has written to Leda also identifying concerns with the non compliance issues addressed in this report.

The DP&I had previously advised on 10 September 2010 that an agreement between the proponent and Office of Environment and Heritage has not yet been finalised. Therefore, Condition 38 of the Project Approval has not been satisfied.

In terms of possible of enforcement actions, there are options open to Council to consider through the following legal avenues in the NSW Land and Environment Court:

- (a) *Issue an order(s) pursuant to Section 121B of the EP&A Act requiring Leda to “do such things as are specified in the order to restore premises to the condition in which they were [in] ... before work was unlawfully carried out;*
- (b) *Commence civil proceedings within Class 4 of the Land and Environment Court’s jurisdiction to ‘remedy or restrain’ the breaches of the Act by Leda. Such proceedings may involve seeking a declaration that Leda restore the site to its original condition before the works were unlawfully carried out;*
- (c) *Commence criminal proceedings within Class 5 against Leda for the offences Leda has committed under the EP&A Act (although Council may be out of time for such an action in relation to some of the works), as well as possible offences under the Protection of the Environment Operations Act 1997 (POEO Act) and the Native Vegetation Act 2003 (Native Vegetation Act) or issue Penalty Notices for any such offences.”*

Given the complexity and potential cost implications for Council relating to any legal actions, it is considered prudent that the Tweed Councillors be provided with a detailed briefing of the information received to date on the extent of the unauthorised works, as well as the various legal options for rectification and enforcement.

It is therefore recommended that Council endorse that Council’s legal firm Maddocks be invited to provide the Councillors with a detailed briefing on these matters. It is then proposed to submit a further report to Council’s October Meeting to seek formal endorsement of any preferred actions.

OPTIONS:

1. Council endorses an invitation to Council’s legal representative, Maddocks Solicitors, to provide the Councillors with a briefing on the legal options available to address these issues, which will inform a further report to Council’s October Meeting; or
2. Council does not endorse the officers’ recommendation and determines an alternative action.

CONCLUSION:

The apparent extent of unauthorised subdivision works carried out by Leda on the Cobaki site are substantial, and the complexity of these issues warrant a detailed briefing of the Tweed Councillors by Council’s solicitors.

Tweed Shire Council has a statutory responsibility in relation to compliance enforcement. These responsibilities are clearly articulated in the Act. Failure to undertake the necessary

compliance in any situation may lead to Council having its powers mitigated by other authorities.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Areas of major earthworks variance in the Northern Hillside Part 1 (ECM 56350338)

Attachment 2. Areas of major earthworks variance in the Northern Hillside Part 2 (ECM 56350341)

8 [PR-CM] Development Application DA12/0215 for a Change of Use to Daytime Respite Care Centre with Associated Signage, Car Parking and Landscaping at Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0215 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a Development Application to establish the subject site as a daytime respite care centre. The proposal includes some demolition and alterations to an existing dwelling in order to facilitate the change of use.

The existing floor plan is to be modified to allow for functional operational areas and office space. Car parking, landscaping and business identification signage is included in the application. The proposal provides:

- Operation of a daytime respite care centre from an existing dwelling to cater predominantly for the support needs of homeless people or people at risk of homelessness, including youths over 16 years of age;
- A safe meeting place, access to advice and the ability to socialise;
- Supervision/operation of the facility by two full-time trained staff with a team of trained volunteers to assist paid staff;
- Availability of meals, storage, laundry and bathroom facilities with access to computer, internet and telephone;
- Operation hours - Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access) with Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access)

The facility is to be operated by a not-for-profit organisation and monitored by a Diocesan Advisory Board. It will be exclusively operated to assist physical, social and cultural development and welfare of homeless persons or persons at risk of homelessness.

The applicant states that the area is *experiencing great housing stress which contributes to the homeless population* and that *the facility would bring human comfort to those without a home* with the provision of essential services.

The proposed use responds to a recognised demand for such a facility within the Tweed Shire.

The Director of Planning and Regulation requires the development application to be reported to Council due to the sensitive nature of the proposal and with regard to Council's additional role as advocate for such facilities. Strong objections received during the exhibition period maintained that the proposal would result in a negative impact upon the community.

The proposal is best defined as 'respite care centre' in accordance with the Tweed Local Environmental Plan 2000 (TLEP 2000) and is permissible with consent in the 2(b) Medium Residential Zone.

The existing parcel of land was created in 1915. The existing dwelling was approved by Council on 23 July 1987 following assessment of D87/0282.

The proposal was required to be placed on public exhibition. 10 objections were received during the exhibition period with one letter of support received as a late submission. Matters raised within the submissions have been considered in the assessment of the proposal and addressed and/or resolved by the applicant.

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

RECOMMENDATION:

That Development Application DA12/0215 for a change of use to daytime respite care centre with associated signage, car parking and landscaping at Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and:

- **Plan No. 1417D Amendment 1 Sheet 1 (Site Plan) as amended in red, prepared by Parameter Designs and dated 8 August 2012**
- **Plan No. 1417D Amendment 1 Sheet 3 (Street Elevation; Sign Plan; Sign Elevation; Symbol Plan; Symbol Elevation) prepared by Parameter Designs and dated 8 August 2012**
- **Plan No. 1417D Amendment 1 Sheet 5 (Proposed Floor Plan) prepared by Parameter Designs and dated 8 August 2012**
- **Plan No. 1417D Amendment 1 Sheet 6 (Elevations) prepared by Parameter Designs and dated 8 August 2012**

except where varied by the conditions of this consent.

[GEN0005]

2. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.

[GEN0015]

3. Additional advertising structures/signs to be the subject of a separate development application (where statutorily required).

[GEN0065]

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

[GEN0115]

5. 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]

6. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0245]

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

[GEN0265]

8. The approved signage and symbol are not illuminated and do not include moving graphics or signage elements that flash, flicker or are animated in any way.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The developer shall provide six (6) parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The disabled car park shall be designed in accordance with Australian Standard AS2890.6.

The developer shall provide two (2) bicycle parks in accordance with Australian Standard AS2890.3.

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]

10. 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, Tumbulgun Road, Murwillumbah and Brett Street, Tweed Heads.

(a) Tweed Road Contribution Plan:

2.86 Trips @ \$822 per Trips \$2351

(\$815 base rate + \$7 indexation)

S94 Plan No. 4

Sector1_4

[PCC0215]

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

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

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

Water DSP4: 0.2 ET @ \$12150 per ET \$2430

Sewer Banora: 1 ET @ \$5838 per ET \$5838

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

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

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

[PCC0265]

12. 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]

13. A detailed plan of landscaping generally in accordance with amended Landscaping Concept Plan Issue B (prepared by Bizscapes and dated May 2012) shall be submitted to Council and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate:

- Incorporating the two mature fig trees at the front of the site, and

- Indicating consistency with approved Site Plan (Plan No. 1417D Amendment 1 Sheet 1, as amended in red, prepared by Parameter Designs and dated 8 August 2012).

[PCC0585]

14. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

[PCC0735]

15. 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) Provision for widening the existing access "splay" in accordance with Section A2 - Site Access and Parking Code of Council's consolidated Tweed Development Control Plan and Council's Driveway Access to Property - Part 1 Design Specification June 2004.
- (b) Provision for a concrete footpath 1.2 metres wide and 100 millimetres thick to be constructed on a compacted base along the entire frontage of the site in accordance with Council's Development Design and Construction Specifications and Standard Drawing SD013.

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

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

[PCC0895]

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

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

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

erosion and sediment control works, prior to the issue of a construction certificate.

[PCC1195]

18. Prior to the issue of a construction certificate, plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout 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 kitchen showing all equipment including separate hand basin
 - c. All internal finish details including floors, wall, ceiling and lighting
 - d. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

19. 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]

20. 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]

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

[PCW0225]

22. 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]

23. 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 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]

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

[PCW0835]

25. 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.

[PCW0985]

26. 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

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

[DUR0005]

28. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

29. The provision of 6 off street car parking spaces and 2 bicycle spaces including parking for the disabled where applicable. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DUR0085]

30. 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]

31. 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]

32. 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]

33. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.

- (b) The chute shall be located in a position approved by the Principal Certifying Authority.
- (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

34. 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]

35. 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]

36. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

37. 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]

38. 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]

39. 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]

40. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

41. 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]

42. Landscaping of the site shall be carried out in accordance with the approved landscaping plan.

[DUR1045]

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

[DUR1075]

44. 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]

45. 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]

46. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

47. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

48. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]

49. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.

[DUR1725]

50. 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 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]

51. 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]

52. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.

[DUR1885]

53. 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]

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

[DUR2015]

55. 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]

56. 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]

57. 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]

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

[DUR2545]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

60. **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]

61. **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]

62. **A satisfactory final inspection of the building is to be carried out by Council prior to occupation or use commencing.**

[POC0255]

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

[POC0475]

64. **Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.**

[POC0515]

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

[POC0525]

66. **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]

67. **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]

68. 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]

69. 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]

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

[POC1055]

71. Prior to occupation of the development, Council must undertake a final inspection of the works and be satisfied that all conditions of consent have been complied with.

[POCNS01]

72. Prior to the issue of an occupation certificate the swimming pool located over No. 7 and No. 9 Boyd Street is to be removed and the metal clad enclosure attached to the building at No. 7 Boyd Street which encroaches over the side boundary is to be removed. After the removal of this attachment the southern elevation of this building is to be restored to its previous form and should comply with the BCA in respect of weatherproof requirements and boundary setbacks.

[POCNS02]

USE

73. 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]

74. 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]

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

- * Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access)
- * Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access).

[USE0185]

76. 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]

77. 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]

78. 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]

79. No residential accommodation shall be provided to clients at the premise.

[USENS01]

80. The outdoor recreation area shall be screened by fencing with a minimum height of 1.8m and associated landscaping to the satisfaction of the General Manager or his delegate.

[USENS02]

81. Activities at the premise shall be supervised by suitably qualified staff at all times.

[USENS03]

82. The two mature fig trees at the front of the property are to be retained and suitably maintained as part of the overall landscaping management of the site.

[USENS04]

REPORT:

Applicant: Wakefield Planning
Owner: Mr Milton J Crompton & Mrs Marilyn J Crompton
Location: Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$56,000

Background:

Council is in receipt of a development application for a change of use to a daytime respite care centre with associated signage, car parking and landscaping on a parcel of land zoned 2(b) Medium Density Residential. The proposed change of use reconfigures parking arrangements, landscaping and the floor area of the existing dwelling in order to create a suitable, secure facility to deliver daytime respite services to homeless people in need within the Shire.

History

The subject site was created by way of Council approved subdivision on 6 May 1915. The current three bedroom brick veneer dwelling and single garage on the site was constructed following approval in 1987. Aerial imagery from 1976 indicates that the site contained a previous dwelling located at the front of the site within close proximity of the Boyd Street road reserve.

The adjacent premise at 7 Boyd Street is a Butcher shop. The current owners have utilised 7 and 9 Boyd Street as one property. The swimming pool, shade sail and metal clad 'smoke house' enclosure associated with the Butcher shop encroach over the shared boundary. The current owner is in the process of removing the encroachments in order to meet the terms of agreement of property transfer.

A condition of development consent is recommended prior to occupation to ensure that these structures are removed and that the southern elevation of the Butcher shop is to be restored to comply with the Building Code of Australia in respect of weatherproof requirements and boundary setbacks.

The Subject Site

The subject site is a generally flat, predominantly grassed and regular, rectangular shaped allotment with a total area of 760m², depth of 48.768m and 15.24m frontage to Boyd Street. It is improved by an existing three bedroom, three bathroom dwelling and single garage (set to the rear of the site) with basic landscaping and 3m wide concrete driveway. Brick pillar and white picket fencing defines the front boundary. Side and rear boundaries are fenced in colorbond with a minimum height of 1.2m and maximum height of 1.8m.

The Proposed Development

The applicant seeks consent for a change of use from a residential dwelling to a daytime respite care centre. The proposal includes:

- Operation of a daytime respite care centre from an existing dwelling to cater predominantly for the support needs of homeless people or people at risk of homelessness, including youths over 16 years of age;
- Provision of a safe meeting place, access to advice and the ability to socialise;

- Supervision/operation of the facility by two full-time trained staff with a team of trained volunteers to assist paid staff;
- Availability of meals, storage, laundry and bathroom facilities with access to computer, internet and telephone;
- Operation hours - Mondays to Fridays: 9am to 5pm (staff access); 10am to 4pm (client access) with Weekends and Public Holidays: 9:30am to 2:30pm (staff access); 10am to 2pm (client access);
- Minor works such as repainting, refurbishment, provision of an outdoor seating area and improved bathroom facilities;
- Associated business identification signage and 'symbol' (cross);
- Associated landscaping and removal of non-native vegetation; and
- Provision of on-site car parking.

Modifications to the dwelling to facilitate the change of use include:

- Use of the main bedroom and adjoining en-suite as a staff office/bathroom facility;
- Use of second bedroom as an office for the trained volunteer(s);
- Use of third bedroom for client use (computer, internet, telephone etc.);
- Use of the main bathroom for female clients;
- Third bathroom connected to the garage to be enlarged and made suitable for male clients;
- Remainder of garage modified for client storage;
- Upgrading of kitchen to meet food code requirements;
- Upgrading of laundry;
- Six car spaces to be located on the front portion of the allotment; and
- Upgrading of fencing.

No residential accommodation is to be provided and no earthworks are proposed. Facilities are to be accessible to people with disabilities. Conditions of development consent regulate the provision of these facilities in accordance with relevant legislation and will be further monitored at construction certificate stage.

The facility is to be operated by a not-for-profit organisation and monitored by a Diocesan Advisory Board. It will be exclusively operated to assist physical, social and cultural development and welfare of homeless persons or persons at risk of homelessness.

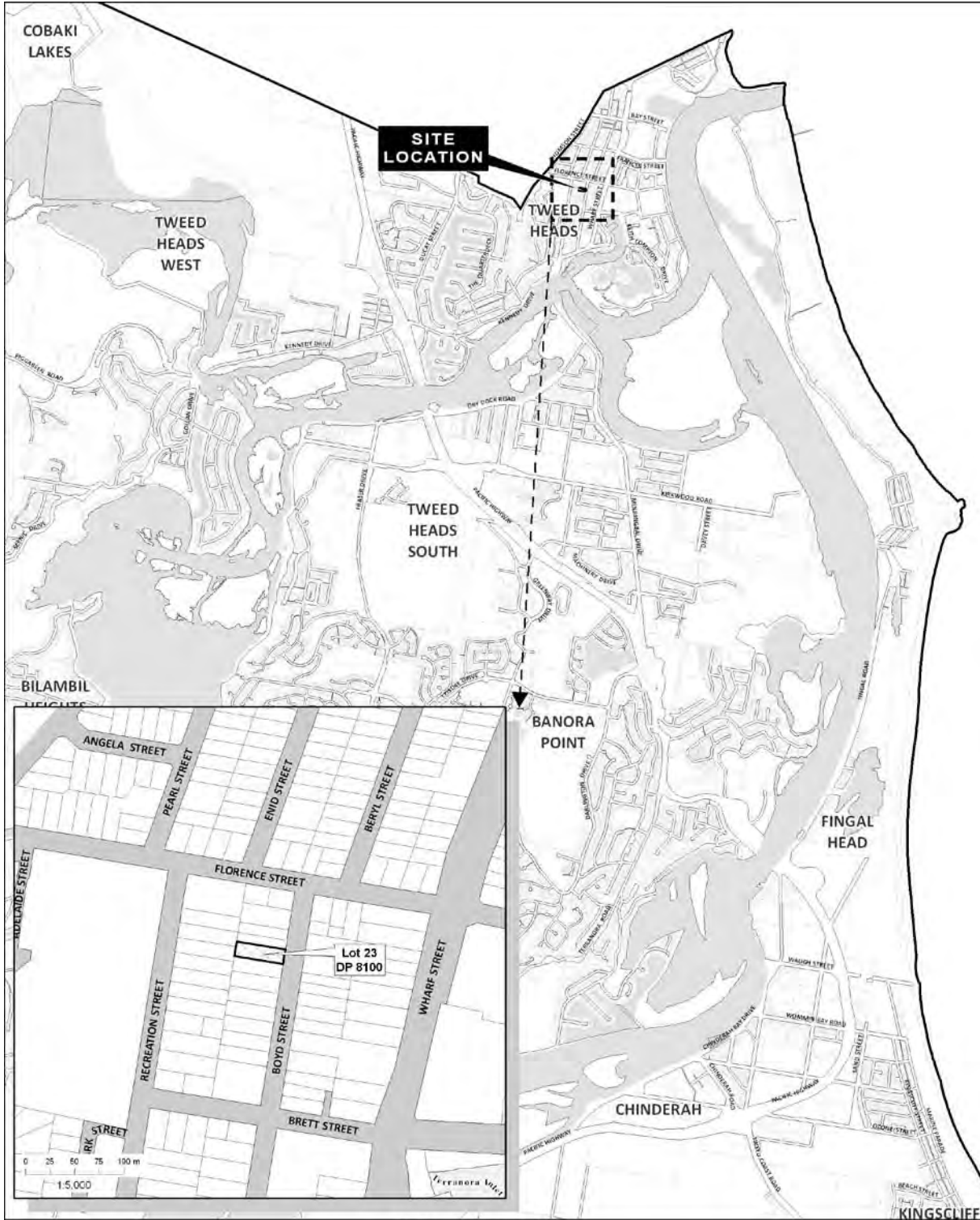
The applicant states that the area is *experiencing great housing stress which contributes to the homeless population* and that *the facility would bring human comfort to those without a home* with the provision of essential services.

Pre-lodgement consultation was undertaken by the applicant with residents within the vicinity of the proposal. The consultation consisted of doorknocking over a two day period with correspondence left with residents for further contact. Application documentation included an appraisal of the pre-lodgement consultation. Similar issues were raised following public notification of the proposal during assessment.

Summary

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding residential and commercial development, amenity issues and an assessment against relevant clauses of the TLEP 2000, the proposed change of use to a daytime respite care centre with associated signage, car parking and landscaping is, on balance, considered suitable for the location and therefore the proposed development is recommended for approval.

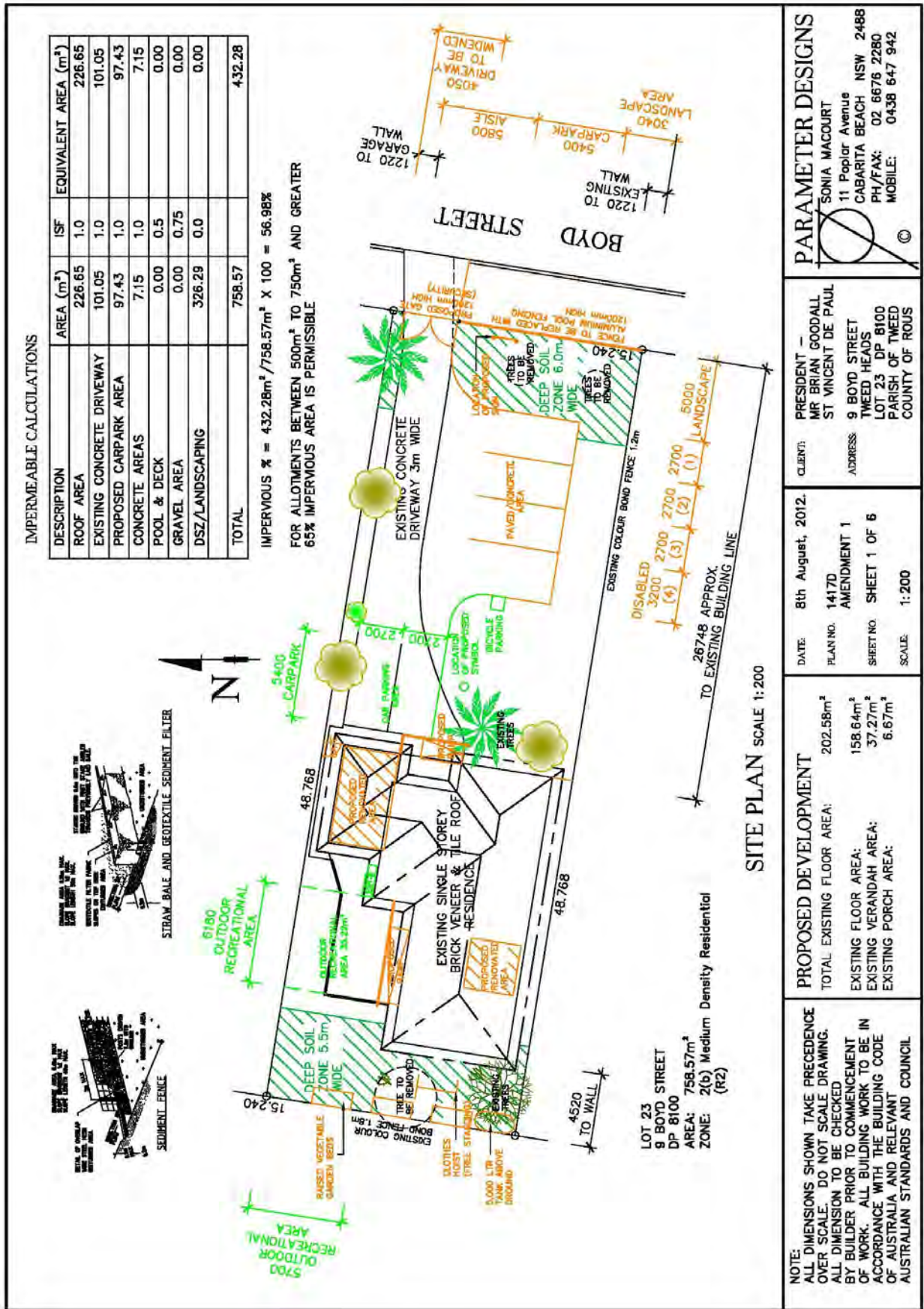
SITE DIAGRAM:

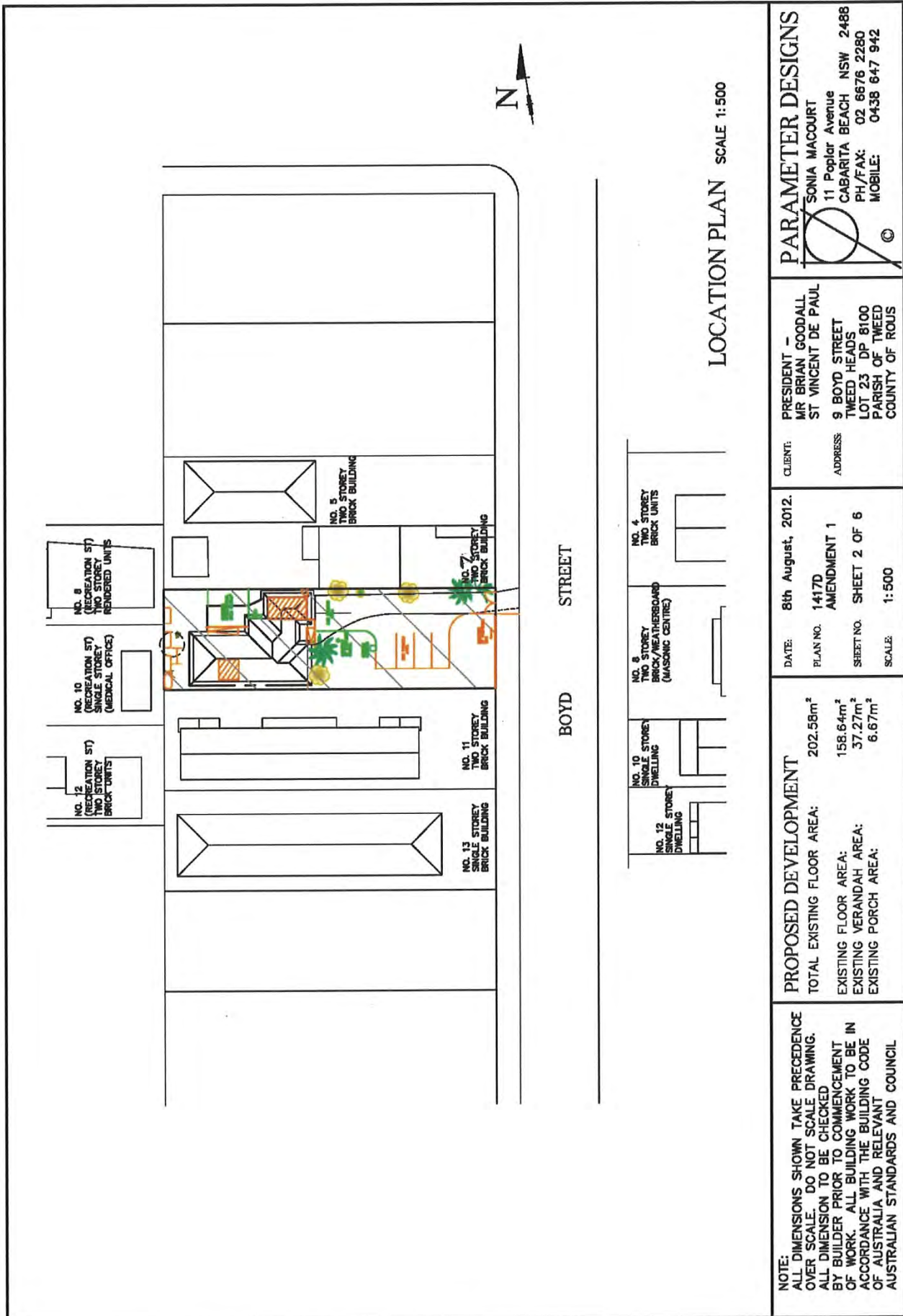


Locality Plan
 Lot 23 DP 8100
 No. 9 Boyd Street, Tweed Heads

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation liability to employees) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general reference and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a "Call before You Dig" enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 17 September, 2012. © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>1:40,000 A4 Portrait COPY ONLY - NOT CERTIFIED</p>	<p>Civic and Cultural Centre 3 Tunbulgum Road Murwillumbah NSW 2484 PO Box 819 Murwillumbah NSW 2484 T (02) 6670 2400 1 800 292 972 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	
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DEVELOPMENT PLANS:





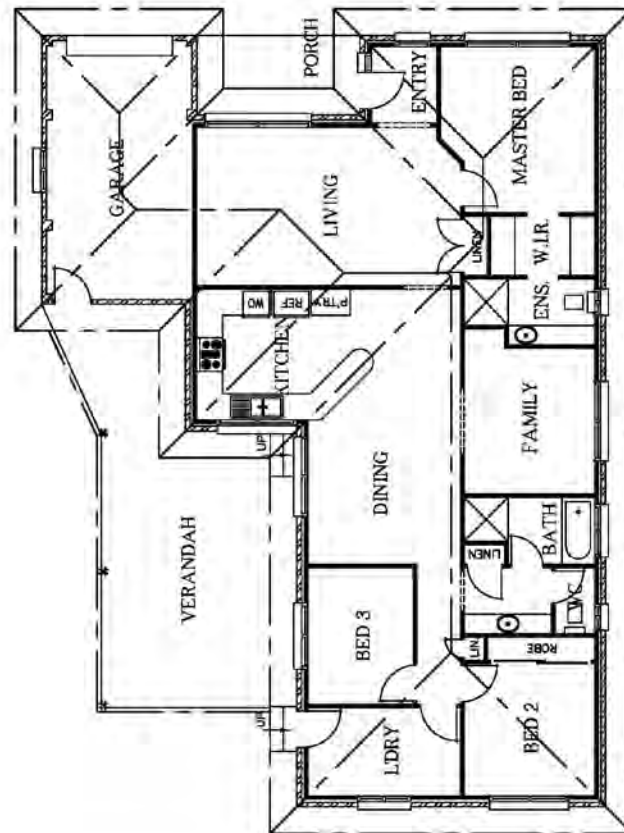
NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

PROPOSED DEVELOPMENT
 TOTAL EXISTING FLOOR AREA: 202.58m²
 EXISTING FLOOR AREA: 158.64m²
 EXISTING VERANDAH AREA: 37.27m²
 EXISTING PORCH AREA: 6.67m²

DATE: 8th August, 2012.
PLAN NO. 1417D
AMENDMENT 1
SHEET NO. SHEET 2 OF 6
SCALE: 1:500

CLIENT: PRESIDENT - MIR BRIAN GOODALL
 ST VINCENT DE PAUL
ADDRESS: 9 BOYD STREET
 TWEED HEADS
 LOT 23 DP 8100
 PARISH OF TWEED
 COUNTY OF ROUS

PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
 PH/FAX: 02 6676 2280
 MOBILE: 0438 647 942



EXISTING FLOOR PLAN SCALE 1:100

GFA/FSR CALCULATIONS

DESCRIPTION	AREA (m ²)	EQUIVALENT AREA (m ²)
EXISTING FLOOR AREA	124.91	124.91
PROPOSED FLOOR AREA	13.46	13.46
TOTAL SITE AREA	758.87	138.37

FLOOR SPACE RATIO % = $138.37\text{m}^2 / 758.87\text{m}^2 \times 100 = 18.23\%$
 FLOOR SPACE RATIO 0.18:1 IS THEREFORE ACCEPTABLE

NOTE:
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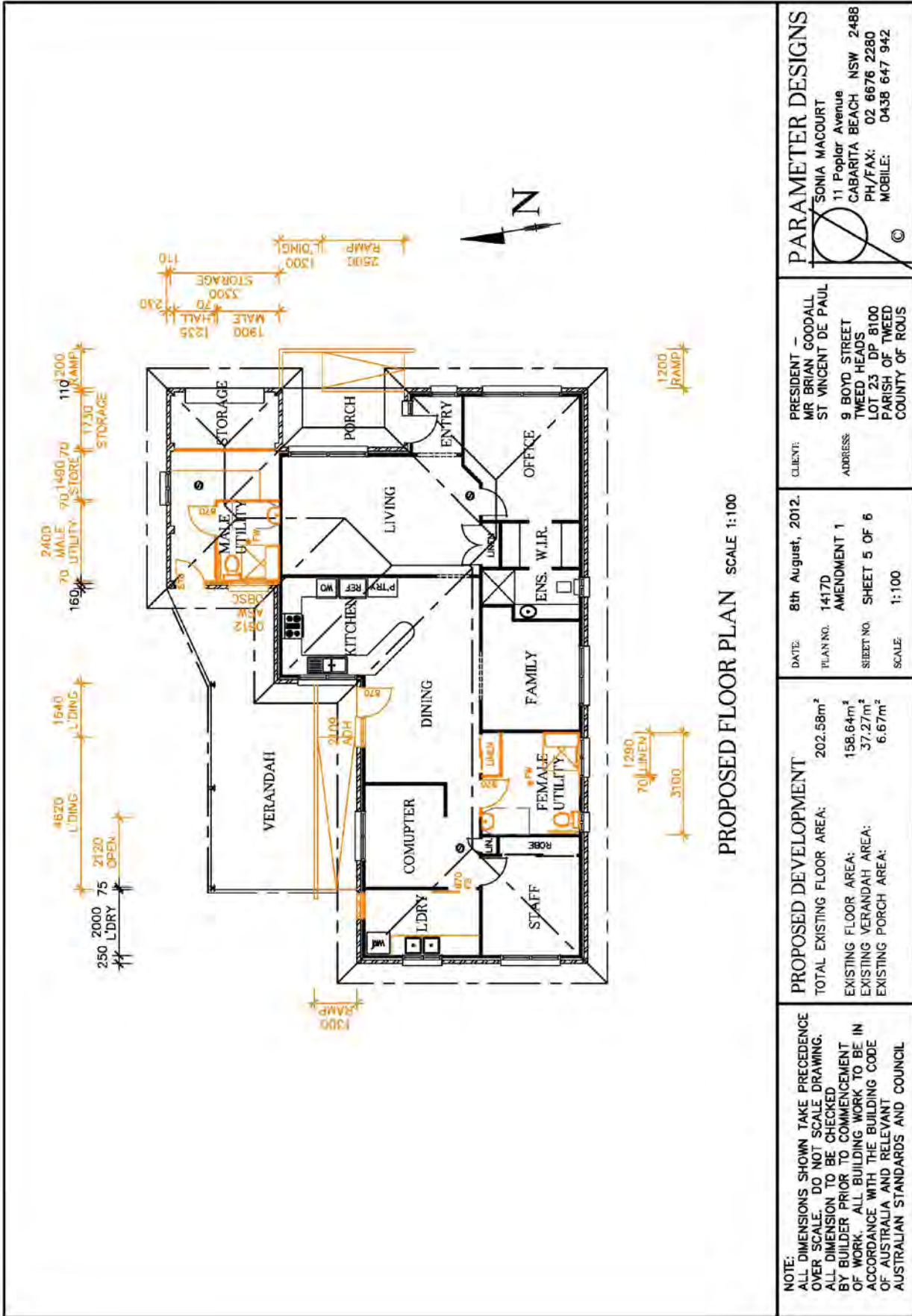
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 EXISTING PORCH AREA: 6.67m²

DATE: 8th August, 2012.
 PLAN NO. 1417D
 AMENDMENT 1
 SHEET NO. SHEET 4 OF 6
 SCALE: 1:100

CLIENT:
 PRESIDENT - MR BRIAN GOODALL
 ST VINCENT DE PAUL
 ADDRESS:
 9 BOYD STREET
 TWEED HEADS
 LOT 23 DP 8100
 PARISH OF TWEED
 COUNTY OF ROUS

PARAMETER DESIGNS

 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
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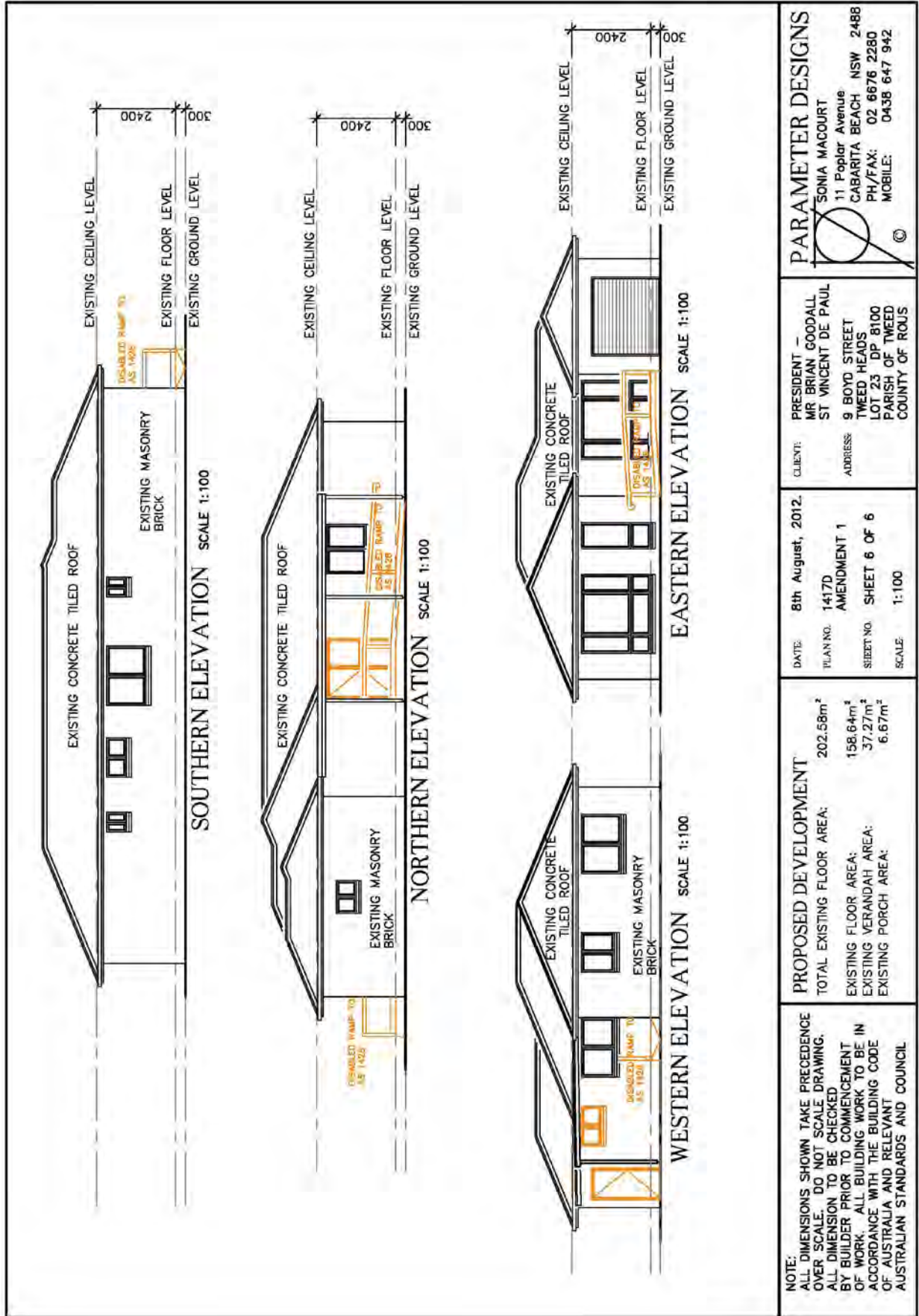
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PROPOSED DEVELOPMENT
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 EXISTING FLOOR AREA: 158.64m²
 EXISTING VERANDAH AREA: 37.27m²
 EXISTING PORCH AREA: 6.67m²

DATE: 8th August, 2012.
 PLAN NO. 1417D
 AMENDMENT 1
 SHEET NO. SHEET 5 OF 6
 SCALE: 1:100

CLIENT: PRESIDENT - MR BRIAN GOODALL
 MR VINCENT DE PAUL
 ADDRESS: 9 BOYD STREET
 TWEED HEADS
 LOT 23 DP 8100
 PARISH OF TWEED
 COUNTY OF ROUS

PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
 PH/FAX: 02 6676 2280
 MOBILE: 0438 647 942



<p>PARAMETER DESIGNS SONIA MACOURT 11 Poplar Avenue CABARITA BEACH NSW 2488 PH/FAX: 02 6676 2280 MOBILE: 0438 647 942</p>	<p>CLIENT: PRESIDENT - MR BRIAN GOODALL ST VINCENT DE PAUL</p> <p>ADDRESS: 9 BOYD STREET TWEED HEADS LOT 23 DP 8100 PARISH OF TWEED COUNTY OF ROUS</p>	<p>DATE: 8th August, 2012.</p> <p>PLAN NO: 1417D AMENDMENT 1</p> <p>SHEET NO: SHEET 6 OF 6</p> <p>SCALE: 1:100</p>	<p>PROPOSED DEVELOPMENT</p> <p>TOTAL EXISTING FLOOR AREA: 202.58m²</p> <p>EXISTING FLOOR AREA: 158.64m²</p> <p>EXISTING VERANDAH AREA: 37.27m²</p> <p>EXISTING PORCH AREA: 6.67m²</p>
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Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP 2000). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

Clause 8 – Consent Considerations

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

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

In this instance, the subject site is zoned 2(b) Medium Density Residential, the primary objective of which is to provide for and encourage development for the purpose of medium density housing that achieves good urban design outcomes.

The definition of the proposal in accordance with Schedule 1 of the TLEP 2000 is *respite care centre*:

"land used for the provision of respite care for aged persons or people who are physically, mentally or socially disadvantaged."

A *respite care centre* is permissible with consent in the 2(b) zone.

The proposed change of use to daytime respite care centre with associated signage, car parking and landscaping is considered consistent with the primary objective of the zone, in that the development provides for the upgrading of the dwelling internally to suit the proposed use and results in quality development that does not reduce the possibility for a future increase in density on the site.

Other relevant clauses of the TLEP 2000 have been considered elsewhere in this report and it is considered that the proposed change of use to daytime respite care centre with associated signage, car parking and landscaping generally complies with the aims and objectives of each.

The proposal is not considered to contribute to an unacceptable cumulative impact in the community due to the discrete, low-scale proposed operations and professional management of the site within an established, medium density, residential locality.

Clause 11 - Zone objectives

The subject site is located within the 2(b) Medium Density Residential zone. The primary objective of that zone and consistency of the proposal with that objective has been outlined above.

Secondary objectives allow for non-residential development that supports the residential use of the locality and tourist accommodation that is compatible with the character of the surrounding locality. The under-utilisation of land for residential purposes is discouraged.

It is submitted that the proposal is a form of non-residential development within an established residential area that is suitable in scale, form and purpose. Services provided by the respite daytime care centre will approximate those of a residential use (eg. meals, washing, mail collection, recreation, use of bathroom facilities etc.).

The proposal does not increase the existing density of the site and the alterations to facilitate the change of use are not considered to have an adverse effect on the residential character and amenity of the area.

Clause 15 - Essential Services

The site is situated within an established residential area. All essential services are available to the site.

Clause 16 - Height of Building

The subject site has a six storey height limit. The single storey building height will not be altered as a result of this proposal.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not trigger the provision of a social impact assessment as specified in Development Control Plan Section A13 – Socio-economic Impact Assessment. However, it is anticipated that the proposal will have a significant positive social impact on the identified client groups and a major social benefit for the wider Tweed in assisting to address issues of homelessness.

Clause 35 - Acid Sulfate Soils

The subject site is classified as having Class 2 Acid Sulfate Soils. In this regard, all disturbances below ground surface require assessment. The applicant has stated that the volume of materials required to be disturbed is minor. As such, all works are to comply with an Acid Sulfate Management Plan for Minor Works which is to be supplied upon condition of consent.

Specific Clauses

Clause 34 - Flooding

The subject site is not identified as being flood prone. However, the site is situated in an area that is subject to Probable Maximum Flood (PMF) levels. Provision for refuge from maximum flood levels is not a requirement for non-residential development and existing measures to contain flood waters will not be impacted by the proposal.

Clause 47 – Advertising Signs

The objective of the advertising sign provisions is to ensure that outdoor advertising:

- (a) Conveys advertisers' messages and images while complementing and conforming to both the building on which it is displayed and the character of the locality, and
- (b) Does not adversely affect the locality in terms of appearance, size, illumination or overshadowing or in any other way, and
- (c) Does not lead to visual clutter through the proliferation of signs, and
- (d) Does not detract from the rural character or scenic qualities of the area of Tweed.

The proposed business identification signage (and symbol) meets the required objectives of this clause. The signage clearly conveys information about the facility. It is within required height restrictions and will not adversely affect the residential amenity of the locality.

Clause 54 – Tree Preservation Order

Tree Preservation Order (TPO) 2011 affects the site. The application proposes removal of two mature fig trees at the front of the site and a banana tree to the rear. Recommended condition of consent 82 requires retention of the two mature fig trees.

TPO 2011 came into effect on 22 February 2011 in order to preserve Koala habitat. The total site is covered by the part of the TPO that preserves the four specified Koala Food tree species (swamp mahogany, forest red gum, tallowwood and grey gum).

The subdivision does not propose the removal of such vegetation and as such, the proposal is consistent with Clause 54.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

SEPP No. 64 – Advertising and Signage

The business identification sign is not located within a sensitive environment and is compatible with the low-key character of the existing residential locality. It is of a high quality design and finish and provides effective communication with regard to the facility. Furthermore, it will not impact upon road safety insofar as it does not visually obstruct access to the subject site or impact upon Boyd Street road users.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

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

The Draft Tweed City Centre Local Environmental Plan 2011 was exhibited from 14 September to 14 October 2011. The draft zone for the subject site is R3: Medium Density Residential. The proposed change of use to a daytime respite care centre with associated signage, car parking and landscaping is best defined as *respite daytime care centre* which is permissible in the relevant zone under Item 3.

There is a proposed 34m height limit on development in this proposed zone. There is no minimum lot size, but a desired Floor Space Ratio of 3.25:1. The proposed development does not interfere with future development that may take advantage of the draft LEP's desired increase in density for the site.

Definition:

Respite day care centre means a building or a place that is used for the care of seniors or people who have a disability and that does not provide overnight accommodation for people other than those related to the owner or operator of the centre.

Permissibility:

3 Permitted with consent

Attached dwellings; Boarding houses; Child care centre; Community facilities; Group homes; **Home industries; Kiosks;** Multi dwelling housing; Neighbourhood shops; Places of public worship; Respite day care centres; Roads; Seniors housing; **Any other development not specified in item 2 or 4**

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

Tweed Development Control Plan

A2-Site Access and Parking Code

DCP A2 does not provide parking rates for respite centres. The most suitable rate is that of 'office' which specifies a rate of 1 parking space per 40m² (staff parking inclusive of customer parking). The existing dwelling has an area of approximately 130m² (excluding the garage area) which generates a requirement for 3.25 (4) spaces. The proposal provides six spaces inclusive of disabled parking requirements. A condition of development consent regulates the provision of disabled access/parking in accordance with Australian Standards.

A minimum of two bicycle parking spaces are to be supplied to the site.

A3-Development of Flood Liable Land

As previously indicated in this report, the subject site is not identified as being flood prone. However, the site is situated in an area that is subject to Probable Maximum Flood (PMF) levels. Provision for refuge from maximum flood levels is not a requirement for non-residential development and existing measures to contain flood waters will not be impacted by the proposal.

A4-Advertising Signs Code

A single, non-illuminated business identification sign is proposed, setback a minimum of 600mm from the front boundary, with a total height of 2.1m inclusive of support posts and an advertising area of 900mm height by 1500mm width.

The visual impact of the sign is minimised. It is well within the provisions for a pole sign as defined by this code. It identifies the premises and gives particulars with regard to the services provided at the premises. It also includes after hours contact information.

A wooden symbol (cross) is also proposed forward of the dwelling with a height of 2.1m and width of 1500mm. The symbol is not captured by the advertising signs code but is nonetheless a structure that communicates the humanitarian intent of the facility to the public. As such, it complements the intended use of the site and is considered appropriate in context. The symbol does not interfere with access to the facility or vehicle access arrangements.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section of the DCP. The proposal was placed on exhibition for 14 days from 20 June to 4 July 2012. 11 submissions were received as a result of this process (inclusive of one late submission) and are discussed in detail later in this report.

B2-Tweed Heads

The proposed daytime respite care centre located within the Western Precinct (one of three High Density Residential Precincts) the objectives of which are:

- To develop the precincts primarily as high density residential areas which respect existing residential amenity;
- Provide additional choice in housing accommodation to cater for an increasing variety of household types;
- Facilitate an increased residential population in proximity to the sub regional centre of Tweed Heads to maximise economic and social benefits;
- Promote the efficient use of residential land; and
- Develop a streetscape that reflects the climate, topography and lifestyle of the locality.

The western precinct is the largest of the three precincts and allows for a range of building heights from 50m AHD in the north, 12 storeys in the centre, down to six storeys in the south. The precinct contains many older style buildings and Boyd Street in particular contains a number of specialist medical services.

An assessment of the proposal against the provisions of DCP B2 reveals that it is in compliance with the relevant development controls in relation to building envelope, resultant shadow, view corridors, design guidelines and open space and that it promotes the efficient use of residential land.

The proposed change of use to daytime respite care centre is not inconsistent with the objectives of this DCP or the overall vision for Tweed Heads.

Tweed Heads Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads. The subject site is located just beyond the boundary of the Town Centre study area and as such, this plan does not apply to the subject proposal.

Tweed City Centre Draft Development Control Plan 2011

The subject site is located within the land to which this draft DCP applies in Tweed Heads within the Boat Harbour Precinct. Provisions within this plan supplement those within the draft Tweed City Centre LEP, addressed elsewhere in this report.

This plan repeals Section B2 of the Tweed Shire DCP (as addressed above) and does not apply to any development lodged but not finally determined before the commencement of the plan.

The desired character of the Boat Harbour Precinct is for a built form that promotes a maritime theme and provides pedestrian access along the waterfront and to water based activities. Desired character does not specifically address development on sites further removed from the waterfront area but encourages mixed business uses.

The draft DCP caters well for mixed use developments and new commercial developments. Infill commercial developments such as the subject proposal, utilising existing residential structures are unlikely to reach the expectations of draft controls.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

The proposal includes some demolition in order to facilitate alterations to the dwelling to facilitate the change of use. A condition of development consent requires demolition work to conform to the provisions of Australian Standards for such work.

Clause 93 Fire Safety Considerations

Council's assessment of the proposal has taken into account fire safety issues with recommended conditions of consent catering for any required provisions in this respect to enable the change of use.

Clause 94 Buildings to be upgraded

Clause 94 is considered satisfied as the proposed alterations to facilitate the change of use generally comply with the Building Code of Australia.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown land. The Tweed Shire Coastline Management Plan 2005 is not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

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

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

This plan relates to the Cobaki and Terranora Broadwater and is therefore not applicable to the proposed development.

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

Security Services

The application was forwarded to Council's Community and Natural Resources Unit for comment as part of the assessment process. Comments returned discussed a number of matters not relating to planning but did highlight the need for the operators of the facility to engage security services to patrol the premises and the adjacent street outside of operating hours.

The application was referred to Tweed Police as part of the assessment process to enable awareness of the facility and alert them to any future security measures that may need to be undertaken by the applicant should the need arise.

In addition, the applicant has supplied a comprehensive management plan (refer Attachment 1) that addresses matters with regard to security. This management plan enables authorities to be engaged to deal with violent, antisocial and medically unstable behaviour beyond the property boundary so that surrounding properties and the general public are not impacted upon.

Context and Setting

The scale, nature and design of the proposed development will not adversely impact upon the surrounding residential and non-residential uses within the locality.

The proposed development represents utilisation of a residential site that has reached its economic potential and awaits increase in density in the foreseeable future. It is a reasonable progression of expectations for a non-residential development within the local medium density residential area.

Traffic

The proposed use is not likely to impact upon the existing road network given the small scale of development.

Stormwater Quality Management

Water sensitive urban design is to be considered as part of the integrated design. Where possible, the use of grassed swale drainage is to be used in preference over pipe or hard lined channels and infiltration methods such as bio-retention are to be used over proprietary devices.

The proposal intends to use landscaping throughout the property to treat any pollutants discharged off the existing/proposed hardstand areas. Ultimately stormwater discharges into the existing kerb of Boyd Street.

Flora and Fauna

Removal of the two mature fig trees at the front of the property is not supported as the vegetation, despite the need for regular trimming, contributes substantially to the existing residential amenity of the Boyd Street streetscape.

It is understood that adjoining residents raised issues with regard to impact upon driveway visibility. However, following assessment of site distances to driveways on the subject site and adjoining properties, the vegetation was not seen to contribute to any obstruction of visibility over the road reserve area to Boyd Street.

The two mature fig trees soften the appearance of the proposed hardstand car parking areas at the front of the site, integrate the site with adjoining residential uses and provide a suitable backdrop to the proposed business identification signage.

A landscaping plan has been supplied that includes 90% local native species. However, the plan does not include retention of the figs nor does it conform to the current amended site plan.

A condition of development consent will require the applicant to provide a consistent landscaping plan denoting retention of the figs and incorporating them into local native landscaping of the site.

Waste

A Waste Management Plan has been provided that satisfactorily addresses all aspects of waste arrangements: demolition, construction and operation.

(c) Suitability of the site for the development

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan. The proposal, as amended, is generally consistent with the residential character of the locality.

Surrounding Land Uses/Development

The site is in close proximity to the southern end of the Tweed Heads town centre. Immediately adjoining the property to the south is the driveway of a two storey residential flat building and to the north, a two storey commercial premises (butcher).

The butcher shop is built to the southern boundary line with its wall extending as deep as the setback of the dwelling on the subject site. The rear yard of the butcher shop is an open grassed area that has been used in association with the dwelling, the subject of this proposal.

Immediately behind the site are two properties: a two storey residential flat building at 8 Recreation Street and a single storey historic residence converted for use as a surgery. The surgery has a generous rear setback from the adjoining boundary with the subject site and the rear wall of the residential flat building has no openings (windows or doors) overlooking the rear yard of the subject site.

Opposite the site in Boyd Street is a two storey place of worship (Masonic Centre) located between an older two story residential flat building to the north and an original single, well landscaped dwelling to the south.

Access

Existing bus routes are located nearby in Florence Street and Wharf Street. For staff and clients accessing the facility by vehicle, the existing concrete driveway is proposed to be widened to facilitate turning movements and provide an even splay each side.

A footpath is located adjacent to the site (both sides) but not on the frontage of the site. A footpath is required to be extended on the frontage of the site in order to continue existing pedestrian access from 7 Boyd Street to 11 Boyd Street.

Food Construction

The proposal includes the provision of light meals and refreshments with the kitchen area meeting 'food code' requirements. A condition of development consent requires details of compliance with such requirements prior to the issue of a construction certificate.

Contamination

A review of records indicates that the subject land was not impacted by the former Coolangatta Railway lands. A review of historical aerial photography indicates that the general location was utilised for residential purposes from as early as 1966. Council records for the property do not indicate the site to be potentially contaminated.

Hours of Operation

The applicant proposed general hours of operation that did not differentiate operational requirements from client access requirements.

As such, the following hours of operation are recommended for approval both to differentiate staff occupation and client occupation and to regulate use with regard for adjacent residential uses:

- 9am to 5pm Mondays to Fridays (staff);
- 10am to 4pm Mondays to Fridays (clients);
- 9:30am to 2:30pm Saturdays, Sundays and Public Holidays (staff); and
- 10am to 2pm Saturdays, Sundays and Public Holidays (clients).

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

Public:

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 20 June to Wednesday 4 July 2012. During this time, a total of 11 submissions were received, inclusive of one late submission.

The applicant has addressed the submissions as follows:

Issue	Applicant Response
It is expected that there would now be more than 282 homeless in the area since the 2006 census	We would note that as a result of recent programs and initiatives, homeless numbers are anticipated to have been relatively stable since 2006, although 2011 census data is not available at the detailed level. As outlined, a facility does exist in the border area which would cater to homeless people from the Queensland side.
Homeless in nearby areas to the north could be expected to use the proposed centre	It is not anticipated that usage would be made of the proposed centre by Queensland residents.
Up to 80 attend the Salvation Army centre in Byron Bay	In terms of numbers of attendees, the Byron Bay centre (not operated by St Vincent de Paul) also attracts itinerant workers, alternative lifestylers and the like as well as the genuinely homeless. We submit the overall numbers for the Tweed facility would therefore be significantly lower. We would further note, that notwithstanding the number of attendees at the Byron Bay centre, there are negligible issues associated with the operation.
Locality affected by people sleeping in cars, parks and private gardens and loitering outside the centre in the morning	This has been addressed elsewhere in the submission. In particular, the draft management plan proposed specifically addresses the loitering issue. There is no evidence based on other facilities of people loitering on the premises outside operating hours.
Trespassers onto private property to hide alcohol	As noted elsewhere within this submission, St Vincent de Paul has not experienced significant out of hours issues with its other developments. As noted, the management plan provides for the circulation of a 24 hour phone number to adjoining residents who can call if they have any concerns which would be immediately addressed. A phone contact number would also be provided on the proposed site sign.
Where will people under the influence of drugs and/or alcohol go if they are asked to leave?	
Unsociable behaviour	
Property values will be affected	The issue of property values and land use change was discussed previously with a former chair of the NSW Valuer's Association. He indicated that it was rare for uses to genuinely affect property values, unless there were substantial and ongoing amenity issues (eg. industrial development adjacent to residential development). Instead, his advice was that the effect of land use change may reduce the pool of buyers prepared to pay a given price for the property but not reduce the price overall. Individual approaches to adjoining non-residential land uses varies considerably, with many having no issues with this.
Hours of operation are unacceptable for a residential area	Unlike many other facilities, this facility does not have a residential component and therefore has restricted opening hours. We submit that the requested opening hours are compatible with the residential environment particularly given the low level of amenity impact likely to be caused by the proposed development.

Issue	Applicant Response
Impact upon residential amenity	<p>We submit that the fears and concerns expressed by a number of nearby residents are in fact greater than warranted by the nature of the proposal. The proposal is not a commercial development. In this regard, it takes no money from clients but instead provides a voluntary service to assist homeless people. As outlined in the SEE, benefit is seen in providing these services within a low-key 'homelike' environment.</p> <p>We note that the proposal includes a car park. However, it also includes substantial landscaping which would reduce the visual impact of this car park. The relocation of the proposed outdoor area to the rear / side of the property would also assist to retain a residential ambience. In the overall context of Boyd Street which contains a mix of commercial and residential development, it is submitted that the proposal is not out of character.</p>
Security and out of hours issues – property and elderly residents	<p>This issue was addressed in our application. We note the implementation of a management plan, and the lack of substantive problems at the other 37 facilities operated by St Vincent de Paul in NSW. We do not accept that homeless people pose any greater security risk to residents than other people within the community.</p> <p>A report prepared by Dr Catherine Robinson of UTS <i>Rough living: surviving violence and homelessness</i> found that despite common perceptions of homeless people as drug addicts and criminals, people experiencing homelessness are far more likely to be victims of crime (including violence) rather than perpetrators.</p> <p>The proposed Boyd Street facility seeks to provide a range of services to help clients break the "cycle of homelessness". In this regard, it operates not as a "drop in centre" per se, but rather as a facility that provides a comprehensive approach to the range of issues faced by homeless people so as to assist them into the conventional housing market. This is consistent with the NSW policy reforms "Going home, Staying home". Dr Robinson is on the panel of experts associated with this policy.</p>
Problems with other centres	<p>We note concerns have been expressed regarding Angela House which was a residential facility, and another development that was a soup kitchen. We submit that the proposed development is different in character from both these other developments and being run on a fully professional basis, would not experience similar issues. In particular, the intent of the facility is not primarily the service of meals, nor is sleeping accommodation provided.</p>
Traffic increase with commercial deliveries	<p>There would be a possible minor increase in traffic associated with the proposal. In practice, very few homeless people have cars and the number of traffic movements associated with staff / volunteers would not be inconsistent with a typical large dwelling.</p> <p>Overall, traffic generation would be less than multiple unit developments in the vicinity. It is acknowledged that pedestrian traffic would increase. However, the number of movements per hour would be small, based on the anticipated number of clients. The premises would not have commercial deliveries as the light meals being served would be quite consistent with the food quantities of a normal household.</p>

Issue	Applicant Response
Waste Disposal	Waste disposal during operation would be consistent with waste generation of a normal dwelling. Waste disposal would occur through the normal garbage service.
Proposal conflicts with primary objective of residential zoning	This issue was addressed in the SEE. We note that the traffic, pedestrian, noise and waste generation issues associated with high-density residential development would be substantially in excess of the proposed development. As previously indicated, the site would be potentially available for high-density residential development in the future.
Outdoor recreation area will increase noise and result in smoking impact	It is noted that the proposed outdoor area has been relocated to adjoin the commercial premises at 7 Boyd Street. In this regard, it is not expected that the facility would generate significant noise nor is likely to affect the amenity of nearby residents in particular those at 11 Boyd Street. As previously outlined, car movements would be quite consistent with what might be expected from a multi-unit residential development, noting that no night-time movements would occur.
Centres in Byron Bay and Wagga Wagga are in Commercial areas – properties are available in the vicinity in Commercial zones	We note a number of submissions have made reference to the proposal being within a residential zoning with this being considered inappropriate. We would note that the residential zone is not exclusively for residential development but permits a wide range of uses. In this respect, the proposed use is permissible within the zone and would be a permissible use in the draft LEP.
Alteration of adjoining fencing to the southern property	Additional screening had been proposed to address issues raised by adjoining residents at 11 Boyd Street. With the proposed relocation of the outdoor area, no change to the side fencing with No. 11 would occur.

An extract from the late submission in support of proposal states:

"We very much agree to the use of the place as a respite. There should be more housing for our homeless people. The house will not affect our building. These people who object should think of the poor people sleeping out in the cold when they get into their warm beds."

Council's assessment of amended plans provided by the applicant supports the applicant's comments with regard to the submissions. Any remaining issues have been assessed in the body of this report. The applicant will be required to provide a landscaping plan that is consistent with the approved amended site plan as a condition of consent.

As such, it is considered that issues raised within the 10 submissions objecting to the proposal have generally been resolved satisfactorily. Imposed conditions of development consent will allow Council to regulate operation of the facility should complaints be made in this regard.

Public Authority:

The application was not identified as integrated development but was referred to Tweed Police for comment as the application has a connection with efficient policing of the area.

Comment from Tweed Police indicated that there were no issues raised in regard to the proposal.

(e) Public interest

The proposed development, generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan, is considered to be in accordance with public interest, with no significant impacts anticipated for surrounding residential uses and the local community in general.

OPTIONS:

1. Approve the development application in accordance with the officer's recommendation;
or
2. Refuse the development application with reasons.

CONCLUSION:

The proposed change of use to daytime respite care centre with associated signage, car parking and landscaping is generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered that the site is suitable for the development.

COUNCIL IMPLICATIONS:

a. 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:

Attachment 1. Boyd Street Day Respite Centre Draft Management Plan Revision A 13 August 2012 (ECM 56332370)

**9 [PR-CM] Planning Proposal for Lots 1 and 6 DP 9042 and Lot 14 DP 733411
Dry Dock Road, Tweed Heads South**

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/LEP/2000/35



Civic Leadership

SUMMARY OF REPORT:

At the Council meeting of 19 October 2010 Council endorsed the referral of the draft Local Environmental Plan (LEP) Amendment No. 35 to the Department of Planning and Infrastructure (DP&I) for directions to publicly exhibit the Plan for Lots 1 and 6 DP 9042 and Lot 14 DP 733411 Dry Dock Road, Tweed Heads South.

The Planning Proposal seeks the rezoning of the site from the current 2(a) Low Density Residential zone to 6(b) Recreation zone under the Tweed LEP. The purpose of the rezoning is to enable the expansion of the Tweed Billabong Holiday Park located adjacent to the subject site.

This report provides an overview of the public exhibition process, an assessment of submissions received and seeks the resolution of Council to refer the LEP amendment planning proposal to the DP&I for the Minister to make the LEP amendment to facilitate the expansion of the existing tourist and visitor development.

RECOMMENDATION:

That Council endorses that Draft Tweed Local Environmental Plan 2000, Amendment No. 35 relating to the rezoning of lands from the existing zoned 2(a) Low Density Residential to 6(b) Recreation over Lots 1 and 6 DP 9042 and Lot 14 DP 733411 Dry Dock Road, Tweed Heads South be referred to the Director-General of the Department of Planning and Infrastructure to be made.

REPORT:

Purpose of the report

To report on the public exhibition of the Planning Proposal ("the Proposal") and seek Council's resolution to refer the Proposal to the DP&I to have the Tweed LEP amendment made.

Background

Council received a request to prepare a planning proposal from Darryl Anderson Consulting Pty Ltd to rezone the site from its current 2(a) Low Density Residential zoning to 6(b) Recreation under Tweed LEP 2000. This will facilitate the expansion of the existing Tweed Billabong Holiday Park.

Initially submitted as a rezoning application, Council has been working with the proponent to resolve a series of site constraint and zoning issues. Initially seeking an amendment to Schedule 1 within the LEP to facilitate a development that is otherwise prohibited by the land-use zoning table, the Applicant in recent times has agreed with the advice of Council's staff to change the land-use zoning itself. This is largely driven by the changes being implemented under the Standard Instrument (Local Environmental Plans) Order 2006 legislation, which is moving away from permitting otherwise prohibited development by way of a schedule.

Council resolution

Council resolved on 19 October 2010 that:

1. *Council endorses the referral of the draft Local Environmental Plan Amendment No. 35 to the Department of Planning for a Section 65 Certificate to publicly exhibit the draft Plan, and*
2. *The Department of Planning be requested to rollover draft Local Environmental Plan Amendment No. 35 into a 'planning proposal' for the purposes of Part 3, Division 4 of the Environmental Planning and Assessment Act, 1979.*

Overview of the Planning Proposal

The proposal seeks to rezone the site through amendment to the Tweed LEP 2000 from the current 2(a) Low Density Residential to 6(b) Recreation. The purpose of this process is to rezone the subject site with a zone which permits development of a motel with consent. This will facilitate the extension of the adjoining Tweed Billabong Holiday Park.

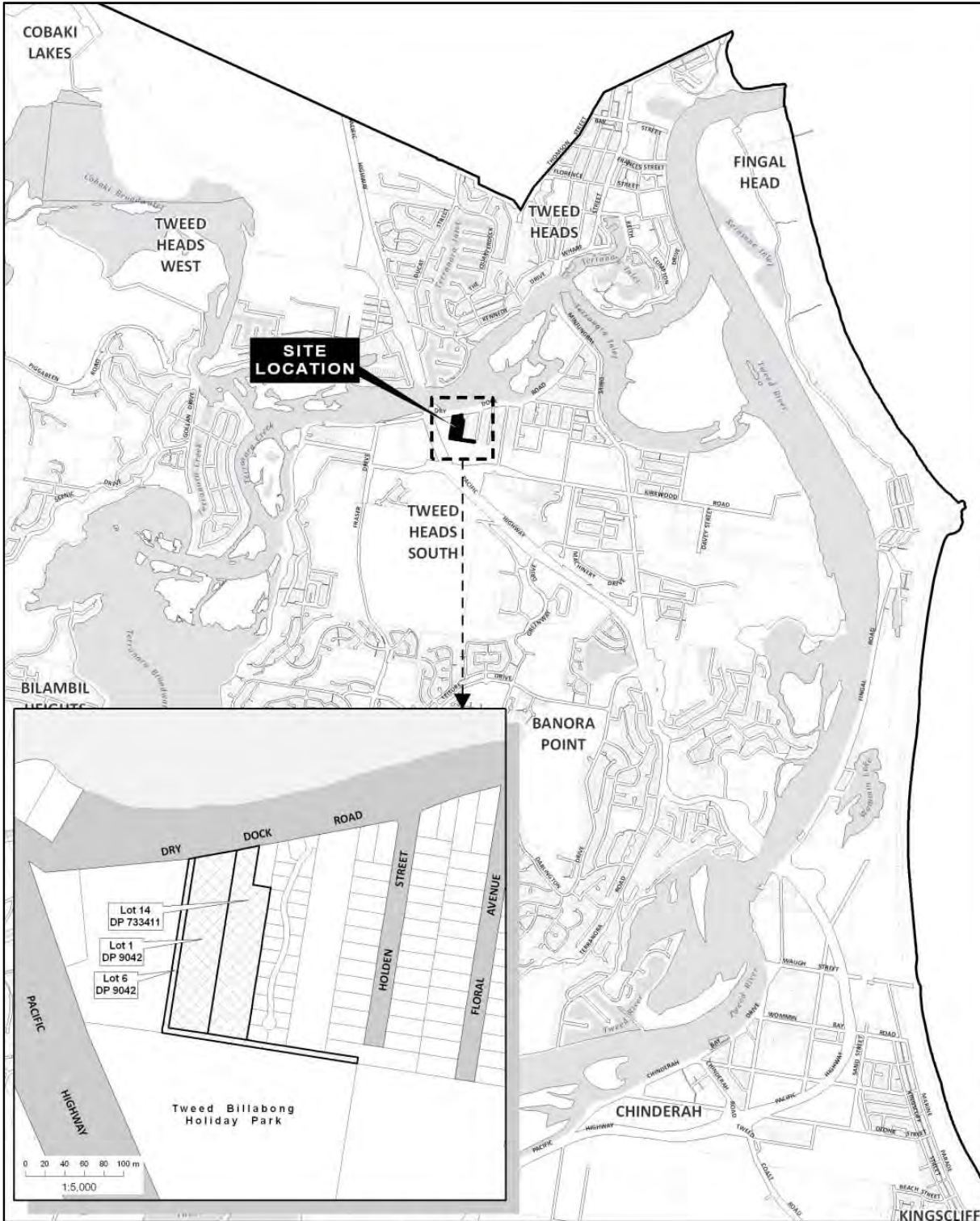
It is also noted that Council has formally exhibited the draft LEP 2010, consistent with the requirements and format of the Standard Instrument (Local Environmental Plans) Order 2006 'template' LEP. Under this new draft LEP, this proposal would translate to the comparative draft RE2 Private Recreation zoning, where motels are also permitted.

The site is currently developed with a single dwelling house and a detached shed with scattered trees around the dwelling. The remainder of the site has been previously cleared and is sparsely vegetated supporting only mixed grass coverage.

The proposal also acknowledges the characteristics and constraints on the site and seeks to provide concept guidance for:

- Development near Gold Coast Airport – the site is located roughly 2.5 km from the Gold Coast Airport. Approximately 60% of the site's area (10,000 m²) is within 25-30 ANEF (Australian Noise Exposure Forecast) contours. In an ANEF greater than 25, permanent residential land uses (such as dwelling houses) are classified as being “unacceptable” under Australian Standard AS2021-2000. However, the development of a motel (which is the purpose of this Planning Proposal) within ANEF 25-30 is classified as “conditional” (subject to sound-proofing measures).
- Flooding – The site is located in an area subject to flood inundation, having a design flood planning level of (1 in 100 year flood level plus free board) 2.6 metres AHD and will require filling for any habitable development. Council's design specification both permit and regulate the filling of land for development.
- Bushfire Protection - The western edge of the subject site is mapped as bushfire prone land (Vegetation Category 2). The proponent's preliminary bushfire risk assessment indicated that development of the site and site management is readily achievable. The proposed development will be assessed against Council's bushfire protection requirements at the development assessment stage.

SITE DIAGRAM



Locality Plan

LEP 2000 Amendment No.35 -- Lot 6 DP 9042, Lot 14 DP 733411 and Lot 1 DP 9042
 Dry Dock Road, Tweed Heads South

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Cadastral: 13 September, 2012
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 Boundaries shown should be considered approximate only.



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Consultation

Subject to the resolution of Council and the Ministerial Directions the Proposal was publicly exhibited along with the required statutory information (all relevant Council reports and exhibition details) and all relevant supporting studies, which included:

1. Council Report 30 September 2010
2. Local Environmental Study - October 2008
3. Preliminary Site Contamination Assessment - September 2010
4. Bushfire Threat Assessment Report - October 2007
5. Flooding Assessment Report - May 2007
6. Traffic Impact Assessment - March 2006
7. Concept Stormwater Management Plan
8. Acoustic Report

Copies of the studies and exhibition material are provided under separate cover to this report. The public exhibition was held from **Wednesday 18 July 2012 to Friday 17 August 2012** at the following locations:

- Murwillumbah Civic and Cultural Centre from 8:30 am to 4:15 pm weekdays;
- Tweed Civic Centre from 8:30 am to 4:15 pm weekdays; and
- On Council's website www.tweed.nsw.gov.au and through the link "On Exhibition".

Direct notification of the public exhibition was sent out to 31 adjoining and surrounding residents and business owners.

Submissions

Six (6) submissions were received in response to the public exhibition. Three (3) submissions were received from the community, two (2) from State agencies and one (1) from the Gold Coast Airport.

Summary of submissions received from the community:

Traffic

Residents from Holden Street expressed concerns about traffic resulting from access to the caravan park site through Holden Street.

Comment: Currently, access to the Tweed Billabong Holiday Park is through Holden Street. After the extension, the only access for vehicular and pedestrian traffic will be via Dry Dock Road. The Holden Street connection will be unavailable for traffic, but will be kept as an emergency exit in case of flooding.

Adjoining landowners raised concerns about the implications that filling of the subject site might have on the neighbourhood.

Comment: The Flooding Assessment Report prepared by Cardno (in May 2007) concludes that future development would have minimal effect on flooding in the area. It is to be noted that the site is currently zoned for low density residential dwellings and any residential development (currently permitted on the land) would result in a similar level of earthworks.

In addition to the issues discussed above, one (1) submission expressed concerns about *devaluation of properties adjoining the site, potential increase in crime and objection to the height of proposed fence.*

Comment: The height of the proposed fence will be discussed at the Development Application (DA) stage and adjoining land owners will have an opportunity through the public exhibition of a future DA to assess the proposal and make a submission.

This Planning Proposal aims to facilitate the extension of an already operating tourist and visitor park; 'Tweed Billabong Holiday Park', which directly adjoins the subject site.

The existing facility appears to be very well managed and maintained and anecdotal evidence suggests that it is of high standard and very popular with tourists visiting the Tweed. There is no information or evidence that suggests crime in the local area would increase as result of the extension to this development.

Given the commercial imperative of ensuring that any further development will not impact on the commercial viability of the existing and future tourist development it is more probable than not that any future development would be of a high standard and would contribute to the amenity of both this site and the area generally. On that basis it is unlikely that there would be any substantial change in the value of neighbouring properties in any direction, either as a consequence of the development or indirectly through increased 'crime'.

Submission from the Gold Coast Airport

Submission summary: Planning Proposal suggests that dwelling houses are prohibited within 25 or higher ANEF zone. In the Gold Coast Airport 2031 ANEF published in the airport's Master Plan, permanent residential land uses are classified as "unacceptable" but not prohibited.

Comment: The Planning Proposal has been amended to use the terminology as in the Gold Coast Airport Master Plan.

Also, the submission suggested certain amendment to the Planning Proposal to:

- *precisely specify that its intention is to facilitate the development of a motel,*
- *adequately address requirements of Section 117 Direction 3.5,*
- *include provision to ensure that development meets AS2021 regarding interior noise levels.*

Comment: The Planning Proposal has been amended as suggested above.

State Agency submissions

Rural Fire Service (RFS)

Submission was received from the RFS, summarised as follows:

Submission summary:

The RFS has no objection to the PP proceeding, however, provides advice in relation to the future development on the site. Recommendations are made regarding compliance with Planning for Bushfire Protection 2006 and the provision of contiguous and single form asset protections zones.

Comment: The information received from the RFS is notable at the rezoning state only and will be taken into consideration with the assessment of any future DA.

Office of Environment and Heritage

Submission summary:

The Planning Proposal should consider impacts from the proposed rezoning on threatened species in the locality, as well as biodiversity values on land adjoining the site.

Comment: The site has been largely cleared of any native vegetation, and it is unlikely that the impact of this development would exceed those that would result from development that would be permissible on the site under the existing 2(a) Low Density Residential Zone.

The bushfire asset protection zone area should be zoned with an appropriate zone to ensure that future expansion of the holiday park can proceed without necessitating the removal of vegetation on adjoining land.

Comment: The issue of appropriately wide asset protection zone (APZ) will be dealt with during the development assessment stage. Preliminary review indicates that development of the site is achievable however and assessment under the *Planning for Bushfire* guidelines and any ameliorative or mitigating response will depend on the actual development proposed. Therefore, this matter is better suited an assessment at the DA stage.

Council should ensure the appropriate Aboriginal cultural heritage consultation is undertaken prior to the proposal being finalised.

An Aboriginal Cultural Heritage Due Diligence Assessment was prepared and exhibited with this Proposal. This report finds no further Aboriginal cultural heritage assessment is required at the strategic planning level. Any future development of the site must nonetheless comply with the relevant legislative requirements in the event that any items are exposed during works.

It is recommended that Council prepare a detailed evacuation planning strategy for Tweed Heads South.

Comment: A need to develop an evacuation strategy for the locality is recommended in Tweed Valley Floodplain Risk Management Study and Plan which was exhibited in July and August 2012. This will need to be further considered as part of and tailored to respond to and future development of the land.

State Member submissions

No submission has been received from the NSW Member for Tweed and Parliamentary Secretary for Police and Emergency Services, Mr Geoff Provest MP.

Council owned land

The Planning Proposal does not include any Council owned land.

Consistency with any regional strategy, instrument or direction

The Proposal has been assessed against:

- the aims and actions of the Far North Coast Regional Strategy, as provided in Part 3, Section B1 of the attached Planning Proposal;
- relevant State Environmental Planning Policies (SEPPs), as provided in Part 3, Section B3 of the attached Planning Proposal; and
- the Ministerial s117 Directions as provided in Part 3, Section B4 of the attached Planning Proposal.

The Proposal is found to be broadly consistent with the above strategies, policies and directions. Where there is inconsistency, this is discussed in the assessment and in all instances has been found to be a minor inconsistency or variation which does not pose a constraint to the rezoning of the land proceeding.

CONCLUSION:

With an overall area of 16,729m², the site is located within urbanised area of Tweed Heads South, adjoins the existing caravan park (Tweed Billabong Holiday Park) located immediately to the south and residential development located to the east. The land to the west is bordered by a tidal drain that extends for the length of the site. The land to the west is vegetated with Coastal Forest Red Gum (as defined in the Tweed Vegetation Management Strategy 2004).

The site is currently developed with a single dwelling house, a detached shed and scattered trees around the dwelling. The remainder of the site has been previously cleared and now supports mixed grass coverage.

The site is located approximately 2.5km from the Gold Coast Airport. Approximately 60% of the site's area (10,000m²) is within 25-30 ANEF (Australian Noise Exposure Forecast) contours as shown on Figure 3. The contours are the official, recently adopted forecasts of future noise exposure patterns around Gold Coast Airport. The 25-30 ANEF contours exclude the development of dwelling houses but allow for the development of a motel.

A number of supporting studies have been undertaken to assess the potential impacts of the proposed development. All studies have confirmed that the impacts of the proposed development as assessed pose no significant constraints and may be managed to enable future development of the site for an extension to the existing tourist and visitor development.

The issues raised by way of public submission have been assessed and the issues taken into consideration but, for the most part it is noted that many relate to a development application level of assessment, when the type and extend of development is known, and those issues will be referred to the Development Assessment Unit for reference. No further amendment to the planning proposal is warranted.

In light of the matters raised above, it is recommended that the proposed rezoning of site proceed as exhibited and as outlined in the Planning Proposal for Lots 1 and 6 DP 9042 and Lot 14 DP 733411 Dry Dock Road, Tweed Heads South and that it be referred to the DP&I to be made.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.3 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1. Planning Proposal June 2012 (ECM 56295979)
 - Attachment 2. Local Environmental Study October 2008 (ECM 56295993)
 - Attachment 3. Preliminary Site Contamination Assessment - September 2010 (ECM 56295996)
 - Attachment 4. Bushfire Threat Assessment Report- October 2007 (ECM 56296000)
 - Attachment 5. Flooding Assessment Report 2007 (ECM 56296001)
 - Attachment 6. Traffic Impact Assessment - March 2006 (ECM 56296002)
 - Attachment 7. Concept Stormwater Management Plan (ECM 56296003)
 - Attachment 8. Acoustic Report (ECM 56296009)
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