



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

Councillors: P Youngblutt (Deputy Mayor)
D Holdom
K Milne
W Polglase
K Skinner
J van Lieshout

Agenda

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 15 May 2012

held at Murwillumbah Cultural and Civic Centre
commencing at 10.30am

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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8	[PR-CM] Development Application DA11/0607 for a Dwelling House at Lot 1 DP 1059093; No. 1 Gray Street, Tweed Heads West	11
9	[PR-CM] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising Two (2) New Diesel Refuelling Points, Expansion of Truck Refuelling Canopy, New Truck Parking Area (36 New Bays) and the Replacement of Existing Truck	35
10	[PR-CM] Planning Proposal PP10/0003 for Lot 332 DP 1158142, Part Lot 326 and 315 DP 1158142 Silkpod Avenue, West Murwillumbah (known as Riva Vue)	45
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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

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7 [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 April 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.	DA11/0304
Description of Development:	Seniors living - seventy seven (77) units (JRPP)
Property Address:	Lots 113-116 DP 237806 Nos. 6-12 Powell Street, Tweed Heads
Date Granted:	30/4/2012
Development Standard to be Varied:	Clause 16 - Heights of Buildings
Zoning:	2(b) Medium Density Residential
Justification:	7 storey building within a 6 storey height restricted area.
Extent:	Building exceeding height limit by 1 storey.
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.
Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.4 Strengthen coordination among Commonwealth and State Governments, their agencies and other service providers and Statutory Authorities to avoid duplication, synchronise service delivery and seek economies of scale
- 1.4.1 Council will perform its functions as required by law and form effective partnerships with State and Commonwealth governments and their agencies to advance the welfare of the Tweed community

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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8 [PR-CM] Development Application DA11/0607 for a Dwelling House at Lot 1 DP 1059093; No. 1 Gray Street, Tweed Heads West

SUBMITTED BY: Building and Environmental Health

FILE REFERENCE: DA11/0607 Pt1



Civic Leadership

SUMMARY OF REPORT:

An application has been received by Council for the construction of a new single storey dwelling house within the 30-35 ANEF Contour for Gold Coast Airport.

The proposal does not meet the requirements of Clause 32(4) of the Tweed Local Environmental Plan (TLEP) 2000 in terms of the aircraft noise attenuation measures of AS2021-2000. The non-compliance relates specifically to the degree of attenuation of some of the windows and doors of the proposed new dwelling.

The applicant has submitted a written objection pursuant to Clause 6 of State Environmental Planning Policy No 1 – Development Standards, stating that compliance with the abovementioned Clause 32 (4) of the Tweed Local Environmental Plan (TLEP) 2000 of the requirement is unreasonable in this instance predominantly on financial grounds as supported by a report and design recommendation by a qualified acoustics engineer.

Following a detailed technical assessment and consultation with the Gold Coast Airport, it is the officers' view that the applicant has provided reasonable grounds for Council to support a SEPP1 variation, and the construction of the proposed dwelling house in accordance with the practical recommendations of their acoustic expert, given that there are already a number of existing residential dwelling houses and residential units that would be equally affected by aircraft noise that are within the 30-35 ANEF contour in the immediate vicinity of the site which were in existence prior to the introduction of the LEP and are unlikely to have been constructed with adequate aircraft noise attenuation.

It is therefore recommended that Council support the current development application subject to conditions.

RECOMMENDATION:

That:

A. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains commercial information of a confidential nature that would, if disclosed:-

(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

B. Council assumes the concurrence of the Director-General of the Department of Planning and Infrastructure for the approval of the State Environmental Planning Policy No. 1 (SEPP1) objection to vary the prohibition for the construction of a dwelling house within the 25 or higher ANEF which does not meet the construction requirements of Australian Standard AS 2021-1994 (Acoustics-Aircraft noise intrusion-building siting and construction).

C. Development Application DA11/0607 for a dwelling house at Lot 1 DP 1059093 Gray Street, Tweed Heads West be approved subject to the following conditions:

GENERAL

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

[GEN0015]

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

[GEN0115]

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

[GEN0135]

4. 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 the road reserve or footpath. 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]

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

[GEN0300]]

6. The dwelling house is to be constructed to Bushfire Attack Level (BAL) 12.5 in accordance with Australian Standard AS 3959-2009.

[GENNS01]

7. The development shall be carried out in accordance with the provisions of the Aircraft Noise Report for Lot 1 DP 1059093 No 1 Gray Street Tweed Heads prepared by Craig Hill Acoustics Reference No: igreyst111011/1 and dated Tuesday 11 October 2011.

[GENNS02]

8. If window systems to be used are not openable or are required to remain closed in order to satisfy the requirements of the Aircraft Noise Report for Lot 1 DP 1059093 No 1 Gray Street Tweed Heads prepared by Craig Hill Acoustics Reference No: igreyst111011/1 and dated Tuesday 11 October 2011, then a system of mechanical ventilation complying with the relevant

provisions of the Building Code of Australia shall be installed to service all habitable areas of the dwelling.

[GENNS03]

9. The ceiling of the proposed dwelling is to be constructed with 2x13mm Soundchek™ in accordance with the manufacturer's specifications.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. Prior to the issue of a Construction Certificate details for the footings and floor slab designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

11. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under S68 of the Local Government Act.

- a) Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC1145]

12. Prior to the issue of a Construction Certificate bracing and tie-down details designed by a structural engineer are to be submitted to and approved by the Principal Certifying Authority.

[PCCNS01]

13. Prior to the issue of a Construction Certificate roof stormwater drainage details are to be submitted to and approved by the Principal Certifying Authority.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

14. 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]

15. 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]

16. 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]

17. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

- 18. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 19. 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]

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

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

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

[PCW0985]

- 21. 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]

22. Prior to the commencement of works, the applicant is to indicate their compliance with the provisions of the Aircraft Noise Report for Lot 1 DP 1059093 No 1 Gray Street Tweed Heads prepared by Craig Hill Acoustics Reference No: igreyst111011/1 and dated Tuesday 11 October 2011 by providing to the Principal Certifying Authority appropriate details on the building components and systems intended to be used in the construction of the dwelling house with the corresponding RW ratings. Such details shall also reference the window and door systems to be installed with the corresponding RW ratings.

[PCWNS01]

23. Prior to the commencement of sewer drainage works an Application to Alter Councils Water or Sewer Infrastructure is to be submitted to Council.

For further information please contact Mr Peter Pennycuick Strategic & Asset Engineer on (02) 6670 2638

[PCWNS03]

DURING CONSTRUCTION

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

[DUR0005]

25. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

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

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ 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]

27. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of buildings with direct line of sight to the proposed building.

[DUR0245]

28. 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]

29. 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]

30. 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]

31. 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]

32. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

33. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, Development Control Plan Part A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

34. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

35. 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]

36. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above 3.1 metres AHD. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

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

[DUR1945]

38. 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]

39. 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]

40. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

41. 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]

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

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

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

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

43. 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]

44. Prior to the issue of an occupation certificate,
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

45. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.

[POC0435]

46. 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]

USE

47. 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]

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

[USE0175]

49. The building is to be used for single dwelling purposes only.

[USE0505]

- D. A notation be placed on any Section 149(5) for the lot advising that an Aircraft Noise report has been prepared by Craig Hill Acoustics Reference No. igreyst111011/1 dated Tuesday 1 October 2011 recommending insulation requirements for the construction of the dwelling house on the lot.

REPORT:

Applicant: Integrity New Homes
Owner: Mr Harold Croston & Mrs Carole Croston
Location: Lot 1 DP 1059093; No. 1 Gray Street, Tweed Heads West
Zoning: 2(a) Low Density Residential
Cost: \$245,000

BACKGROUND:

An application has been lodged with Council for the construction of a new single storey dwelling house within the 30-35 ANEF contour for Gold Coast Airport.

The proposal does not meet the requirements of Clause 32(4) of the Tweed Local Environmental Plan (TLEP) 2000, in terms of aircraft noise attenuation.

The applicant has submitted a written objection pursuant to Clause 6 of State Environmental Planning Policy No 1 – Development Standards, that compliance with the abovementioned Clause 32 (4) of the Tweed Local Environmental Plan (TLEP) 2000 of the requirement is unreasonable.

The objectives of Clause 32 of the LEP are to prevent certain noise sensitive developments from locating in proximity to Gold Coast Airport and related flight paths and to minimise noise impact from the operation of Coolangatta Airport on development in its vicinity.

Within the immediate area there are already an existing number of noise sensitive developments (residential dwelling houses and residential units) that are in the immediate vicinity of the site which are unlikely to have the same level of noise attenuation provided in their construction as is to be provided in the proposed dwelling house.

With this in mind it is considered that the approval of the proposed dwelling would not create an undesirable precedent given that the proposal will incorporate acoustic attenuation as recommended in the Aircraft Noise Report submitted as part of the application.

SITE DIAGRAM:

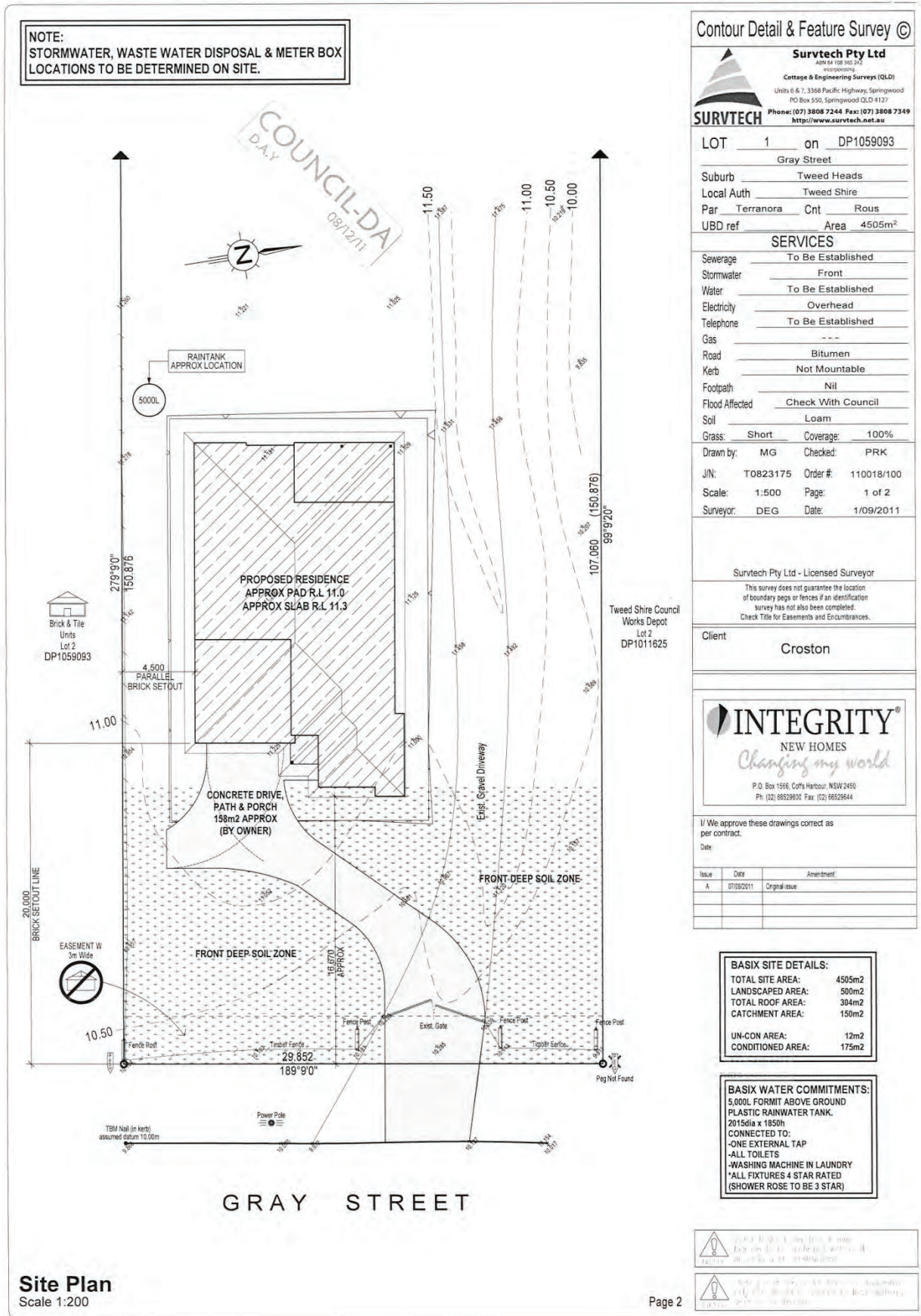


Locality Plan

Lot 1 DP 1059093
No. 1 Gray Street, Tweed Heads West

<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 in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs (which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and 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 811. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 01 February, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km 1:40,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1984 Vertical Datum: Mean Sea Level</p>	<p>Civic and Cultural Centre 3 Tambulgun Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	<p>TWEED SHIRE COUNCIL</p>
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DEVELOPMENT PLANS:



INTEGRITY
NEW HOMES
Changing my world

HEAD OFFICE: PO BOX 1666,
COFFS HARBOUR NSW 2450
PHONE NO. (02) 66 529 600
FAX NO. (02) 66 529 644

CLIENT SIGNATURES CONFIRM THESE PLANS ARE APPROVED AS A REPRESENTATION OF WHAT IS TO BE BUILT. ITEMS NOT INCLUDED IN THESE PLANS & ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

I/WE APPROVE THESE PLANS

SIGNATURE _____ DATE _____
SIGNATURE _____ DATE _____

Job Address:
Lot 1 Gray Street,
Tweed Heads West, NSW 2486

Client:
Croston

Drawn: RJB
Date: 8/12/2011
Job Number: 110018
Type: Custom
Scale: 1:100
Page: 4 / 6
Amendment: n/a

BUILDING DESIGNERS AUSTRALIA

NOTE: THESE PLANS ARE COPYRIGHT TO INTEGRITY P PTY LTD AND MAY NOT BE USED WITHOUT PERMISSION

GLAZING COMMITMENTS:
IMPROVED ALUMINIUM, SINGLE CLEAR

THERMAL COMFORT COMMITMENTS:
-R 1.0 SARKING TO ROOF
-R 2.5 BATTS TO CEILING
-R 1.0 SIGALATION TO EXT. WALLS
-R 1.5 BATTS TO EXT. WALLS

NOTE: THESE DRAWINGS ARE A PICTORIAL INDICATION ONLY. SOME VARIATION MAY OCCUR ON SITE.

Front Elevation - East
Scale 1:100

Right Elevation - North
Scale 1:100

(AJ) = ARTICULATION JOINT

COUNCIL-DA
D.A.Y. 08/12/11

INTEGRITY
NEW HOMES
Changing my world

HEAD OFFICE: PO BOX 1666,
COFFS HARBOUR NSW, 2450
PHONE NO. (02) 66 529 600
FAX NO. (02) 66 529 644

CLIENT SIGNATURES CONFIRM THESE PLANS ARE APPROVED AS A REPRESENTATION OF WHAT IS TO BE BUILT. ITEMS NOT INCLUDED IN THESE PLANS & ATTACHED SPECIFICATIONS ARE DEEMED NOT TO BE INCLUDED IN CONTRACT.

I/WE APPROVE THESE PLANS

SIGNATURE _____ DATE _____
SIGNATURE _____ DATE _____

Job Address:
Lot 1 Gray Street,
Tweed Heads West, NSW 2486

Client:
Crosston

Drawn: RJB
Date: 8/12/2011
Job Number: 110018
Type: Custom
Scale: 1:100
Page: 5 / 6
Amendment: n/a

GLAZING COMMITMENTS: IMPROVED ALUMINIUM, SINGLE CLEAR

THERMAL COMFORT COMMITMENTS:
-R 1.0 SARKING TO ROOF
-R 2.5 BATTS TO CEILING
-R 1.0 SISALATION TO EXT. WALLS
-R 1.5 BATTS TO EXT. WALLS

NOTE: THESE DRAWINGS ARE A PICTORIAL INDICATION ONLY. SOME VARIATION MAY OCCUR ON SITE.

(AJ) = ARTICULATION JOINT

COUNCIL-DA
D.A.Y. 08/12/11

Rear Elevation - West
Scale 1:100

Left Elevation - South
Scale 1:100

bdac
BUILDING DESIGNERS
AUSTRALIA

NOTE: THESE PLANS ARE COPYRIGHT TO INTEGRITY PTY LTD AND MAY NOT BE USED WITHOUT PERMISSION

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

The proposed development is considered to be consistent with the aims of the Tweed Local Environmental Plan.

Clause 5 - Ecologically Sustainable Development

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8 - Zone objectives

The development is consistent with the zone objectives.

Clause 15 - Essential Services

The site has access to all essential services.

Clause 16 - Height of Building

The proposed dwelling house is single storey in height and is within an area having a three storey height provision.

Clause 17 - Social Impact Assessment

The proposed development is not considered likely to generate any adverse social or economic impacts. Given the residential character and minor nature of the proposed development a Social Impact Assessment is not considered necessary.

Clause 35 - Acid Sulfate Soils

The site is in a Class 2 ASS area. The site has been filled and therefore it is unlikely that the proposed development will disturb any acid sulfate materials.

Other Specific Clauses

Clause 39A-Bushfire Protection - The site is identified as being in a bushfire prone area. The proposed dwelling house was assessed in accordance with the Planning for Bushfire Protection document 2006 and Australian Standard AS 3959-2009 and appropriate conditions were accordingly added to the consent.

Clause 34 Flooding- The site is affected by the PMF however Council's mapping contours indicate that the site is above the minimum design floor level of RL 3.1m AHD.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The proposed development will not impact on agricultural activities.

Clause 15: Wetlands or Fishery Habitats

The proposed development will not impact on wetlands or fishery habitats.

SEPP No. 1 - Development Standards

Council has received an application for the construction of a single storey dwelling house within the 30-35 ANEF contour for Coolangatta Airport.

The proposal does not meet the requirements of Clause 32(4) of the Tweed Local Environmental Plan (TLEP) 2000.

Clause 32(4): Aircraft Noise

- (4) The consent authority must not grant consent to the erection of a dwelling house within the 25 or higher ANEF contour unless it imposes a condition on the consent that the building is to meet the building construction requirements of Australian Standard AS 2021-1994 (*Acoustics—Aircraft noise intrusion—Building siting and construction*).

The applicant has submitted a written objection pursuant to Clause 6 of State Environmental Planning Policy No 1 – Development Standards, that compliance with the abovementioned Clause 32 (4) of the Tweed Local Environmental Plan (TLEP) 2000 of the requirement is unreasonable.

Furthermore Council is in receipt of a legal opinion from its Solicitors which substantiates that the abovementioned clause is a development standard.

The applicant's objection is as follows:

*"We the applicant lodge an objection to Tweed Local Environmental Plan 2000 Clause **32 Aircraft noise** subclause (4) "The consent authority must not grant consent to the erection of a dwelling house within the 25 or higher ANEF contour unless it imposes a condition on the consent that the building is to meet the building construction requirements of Australian Standard AS 2021-1994 (*Acoustics—Aircraft noise intrusion—Building siting and construction*)" under the provisions of State Environmental Planning Policy No.1 (SEPP 1) due to the following;*

I refer to the Acoustic Report generated by Craig Hill Acoustics and in particular page 4 point 1.0 Executive Summary. It has stated initial requirements "Required to Comply under AS 2021-2000";

Roof/Ceiling: 53-63 RW (in selected areas)

Windows: 45-53 RW (in selected areas)

Walls: 49-64Rw (in selected areas)

Door: 45 RW (in selected areas)

*which is followed by the statement that "As compliance is **not possible** using normal construction methods the following is recommended as a **practical** upper level of acoustic insulation:*

Roof/Ceiling: 54 RW (2/10mm soundcheck on resilient mounts/battens/insulation) CSR 852

*Windows: Bedrooms 42 RW (secondary/double glazed)
Living Areas 38 RW 10.38 laminated glass in test frames
Wet Areas 30 RW 6.38 laminated glass in test frames*

Walls: Brick Veneer construction 60 RW (CSR 924)

Door: 33 RW (42mm solid core seals all sides)

We respectfully request that Council allow Integrity New Homes to build this home according to the practical suggestions of this report.

The area surrounding this proposed development has several precedences both existing and currently under construction that seem to be using minimal if at all insulation. May I direct your attention to the council depot next door in which staff members work 11 hour days from a site shed with no insulation. Also currently under construction is a school hall at Lakeside Christian College where school children are in attendance 6 hours a day with minimal insulation. There is also a caravan park with mobile homes which would have minimal insulation allowed to operate in this flight path.

The acoustic Engineer that carried out the report has stated that under Workplace Health & Safety Regulations you are allowed to be exposed to decibel levels similar to the ones experienced when a plane is landing, for 8 hours in any 24 hour period. With only 30-40 flights per day landing at Gold Coast, and each flights acoustic noise value only affecting my land for 30 seconds at a time, that equates to approx. 20 minutes of exposure in a 24 hour period, far below the 8 hours deemed acceptable.

Under AS 2021-2000 it seems it is not possible to meet the noise criteria if enforcing the highest levels for residences, therefore, we are requesting to be able to build according to recommendations proposed by the acoustic professional to meet the practical upper level of acoustic insulation. This

land is shown as low density residential on Council records which must mean council are supporting the construction of residences and therefore, may need to be flexible to make that construction level practical in order to ensure it is possible.

Given the above information we hope we come to a mutually beneficial agreement to allow this development to be built in a manner that can practically address the acoustic needs."

This objection has been assessed by Councils Senior Environmental Health Officer who has supported the objection and has provided the following response:

"It is evident from the Aircraft Noise Report that the level of noise attenuation that is required in order to satisfy the provisions of AS 2021 and therefore the provisions of Clause 32 (4) of council's LEP is such that it may prohibit the construction of the proposed dwelling house and hence the applicants lodgement of the SEPP1 objection.

The acoustic consultant has detailed construction components for the proposed dwelling house that do not meet the maximum required sound attenuation (RW) requirements as required for the site under the provisions of AS2021 advising instead that as compliance is not possible using normal construction methods practical upper level acoustic insulation for the construction components of the dwelling house have been recommended.

If council accepts the construction component recommendations as contained within the Aircraft Noise Report it will not be in a position to impose a condition on any consent issued for the construction of the dwelling house in accordance with the requirements of Clause 32 (4) of the LEP.

A site inspection carried out of the location together with consideration of aerial photography of the site and surrounding development has revealed that there are a large number of existing residential dwelling houses and residential units within the 30-35 ANEF contour in the vicinity.

Under the circumstances it is not unreasonable that the applicant has requested that council allow the construction of the proposed dwelling house in accordance with the practical recommendations of the Aircraft Noise Report given that there are already a number of existing residential dwelling houses and residential units that would be equally affected by aircraft noise that are within the 30-35 ANEF contour in the immediate vicinity of the site. A number of these residential dwelling houses appear on historical aerial photography taken for the area indicating that they were in existence prior to the introduction of the LEP and therefore are unlikely to have been constructed with adequate aircraft noise attenuation.

The objectives of Clause 32 of the LEP are to prevent certain noise sensitive developments from locating in proximity to Coolangatta Airport and its flight paths and to minimise the noise impact from the operation of Coolangatta Airport on development in its vicinity.

In this situation there are already an existing number of noise sensitive developments (residential dwelling houses and residential units) that are in the immediate vicinity of the site which are unlikely to have the same level of noise attenuation provided in their construction as is to be provided in the proposed dwelling house and it may therefore be argued that the construction of the proposed dwelling house will not result in a further noise sensitive development being located in proximity to the airport nor will it lead to any increase in noise impact from the airport on development in the vicinity of the airport.

In addition as there are already a number of existing dwelling houses in the immediate vicinity of the site which are unlikely to have adequate aircraft noise attenuating construction, there is no apparent precedent to be set by allowing the proposed dwelling house to be constructed on the site if it is to incorporate the proposed practical upper level of acoustic insulation as is recommended in the Aircraft Noise Report."

To further substantiate this objection the builder/applicant has submitted comparative costings for this project. For the standard dwelling with no acoustic upgrades, the cost is \$226,934 and \$271,518 for compliance with Craig Hill Acoustics Report dated 11 October 2011.

Therefore this represents an additional \$44,584 above the standard costing which equates to almost 20% additional cost to the owner which is considered to be quite an economic burden.

Additionally the builder/applicant has been unable to obtain from a window manufacturer costings for windows which would satisfy the requirements of Australian Standard AS2021-2000 (Acoustics - Aircraft Noise Intrusion - Building Siting and Construction).

Furthermore the acoustic report by Craig Hill Acoustics dated 11 October 2011 was referred to and critically reviewed by the Gold Coast Airport (GCAPL's) independent acoustic engineers. The response received is as follows:

- *"Windows - the report specifies secondary double glazing, but does not provide details of the requirements for this glazing. A window having Rw 42 is poor secondary double glazing. Given that the house is new, and thus some flexibility exists in the design of windows, it is considered that Rw closer to 47/48 should be achieved (realistically meaning a few dB quieter inside).*

This would be achieved with 6.38mm laminated/100mm air gap/10.38mm laminated. The general rule is that the mass of double glazing panes should be separated by 30% or more to reduce the likelihood of coincident frequencies - using two 6.38mm panes is not advisable. A price conscious alternative would be 8mm float/100mm air gap/6.38mm laminated. VLam HUSH by Viridian might give slightly better results in lieu of ordinary laminated glass.

- *Ceiling - 2x13mm Soundchek could be substituted for 2x10mm Soundchek for little additional cost.*
- *Eaves will need to be treated with at least the same mass/area as the ceiling."*

In view of the above it is recommended that a condition of development consent be included to require the ceiling be upgraded to 2x13mm of Soundchek which would add minimal cost to the building project.

SEPP No 71 – Coastal Protection

The subject site falls within the coastal protection zone as identified under SEPP 71 and referral to the Department of Natural Resources is not considered necessary as the proposal generally satisfies the aims of the policy.

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

Tweed Development Control Plan

The proposed development generally satisfies the objectives and controls of Tweed Development Control Plan Section A1 - Part A.

A2-Site Access and Parking Code

The subject development allows for vehicular parking of 2 cars in a double garage under the same roof line as the proposed residence as well as additional spaces within the existing driveway in a stacked arrangement for visitor parking. Given the nature of the development and the size of the subject parcel the proposal is considered to satisfy the provisions of DCP.

A3-Development of Flood Liable Land

The site is affected by the PMF however Council's mapping contours indicate that the site is above the minimum design floor level of RL 3.1m AHD.

A11-Public Notification of Development Proposals

The proposal did not require notification.

A13-Socio-Economic Impact Assessment

The proposed development is not considered likely to generate any adverse social or economic impacts. Given the residential character and minor nature of the proposed development a Social Impact Assessment is not considered necessary.

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

Clause 92 (a) Government Coastal Policy

The site is in a coastal zone and is considered unlikely that the nature and scale of the development will have any detrimental effects in this location.

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

This policy does not apply to the subject site.

Tweed Shire Coastline Management Plan 2005

This policy does not apply to the subject site.

Tweed Coast Estuaries Management Plan 2004

This policy does not apply to the subject site.

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

This policy does not apply to the subject site.

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

Context and Setting

The site is encompassed by both residential dwelling houses and residential units and is considered to be suitable for the site.

Access, Transport and Traffic

Proposed access to the site will be via Gray Street.

Flora and Fauna

It is envisaged that there will be no significant impacts to flora and fauna.

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

Surrounding Landuses/Development

The proposal will not significantly impact on the existing surrounding development and land use.

Flora and Fauna

It is envisaged that there will be no significant impacts to flora and fauna.

Topography

The site is generally level and is considered suitable for the proposed development.

Site Orientation

The dwelling house has been orientated to maximise north-east solar access to the alfresco and living areas. Furthermore the development proposes large side boundary setbacks with no privacy issues being envisaged.

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

There have been no submissions made in relation to this application.

(e) Public interest

There are no adverse public interest issues anticipated should this application be approved.

OPTIONS:

1. Approve the application with conditions; or
2. Refuse the application.

CONCLUSION:

Based on a detailed assessment of relevant environmental impact issues, it is recommended that Council supports the applicant's SEPP 1 objection and permits the construction of the proposed dwelling house on Lot 1 DP 1059093 No. 1 Gray Street, Tweed Heads subject to conditions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

Approval of this application is considered to be unlikely to undermine the enforcement of Council's policies in this matter.

Each application is considered on its merits and the variations from Tweed LEP 2000 have been considered and are regarded as being worthy of approval due to the particular circumstances of the site.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Refusal of the application may expose Council to challenge in the Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- 1. **Confidential Attachment-** Letter from Council's Solicitors dated 30 March 2012 (ECM No. 49888851).
 - 2. Craig Hill Acoustics report - Lot 1 Gray Street, Tweed Heads - 11 October 2011 (ECM No. 49888863).
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9 [PR-CM] Development Application DA10/0737 for Alterations to Existing Highway Service Centre Comprising Two (2) New Diesel Refuelling Points, Expansion of Truck Refuelling Canopy, New Truck Parking Area (36 New Bays) and the Replacement of Existing Truck

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0737 Pt1



Caring for the Environment

SUMMARY OF REPORT:

Council received a combined development application and LEP amendment for an extension to the existing highway service centre at Chinderah, which is prohibited on the subject site on 12 November 2010. Council requested further information on issues such as; flooding, stormwater, access, parking, noise and ecology on 18 February 2011. To-date (442 days has elapsed) Council has not received any information which addresses any of Council's identified issues. As such, due to insufficient information and the time elapsed and the competing demand on resources, Council's Planning Reforms Unit has deferred this project from the works program. The proposal is prohibited and therefore recommended for refusal.

The following is a timeline of correspondence between Council and the applicant.

1. 18 February 2011, Council requests further information.
2. 15 March 2011, the applicant wrote to Council acknowledging receipt of Council letter dated 18 February 2011, stating that a detailed response would be provided as soon as possible.
3. 3 June 2011, Council wrote to the applicant advising that the information requested on the 18 February 2011 had not been received and that information be submitted for assessment within 21 days of the date of the letter or the application will be assessed on the information currently provided.
4. 8 June 2011, the applicant wrote to Council in relation to Council's letter dated 3 June 2011, requesting that Council defer from making a decision until such time as the necessary studies are completed and lodged.
5. 21 March 2012, Council wrote to the applicant advising that due to insufficient information and given the time elapsed Council's Planning Reforms Unit had deferred the project from the works program. Council also advised that in light of the deferral, the proposal is prohibited and Council requested the applicant to withdraw the application and make further future arrangements with the Planning Reforms Unit for the processing of the LEP amendment. Council also advised the applicant should a

withdrawal of the application not be made within 14 days from 21 March 2012, the application would be recommended for refusal.

RECOMMENDATION:

That:

- 1. Council not proceed with the Local Environmental Plan amendment and advise the applicant of Council's decision.**

- 2. Development Application DA10/0737 for alterations to existing highway service centre comprising of two (2) new diesel refuelling points, expansion of truck refuelling canopy, new truck parking area (36 new bays) and the replacement of existing truck parking area with additional car parking spaces and dedicated bus drop-off area (application includes LEP Amendment) at Lot 1 DP 1127741 and Lot 2 DP 1010771; No. 1 Ozone Street, Chinderah be refused for the following reason:**
 - 1. The proposed development is defined as a Service Station and is prohibited on the subject site.**

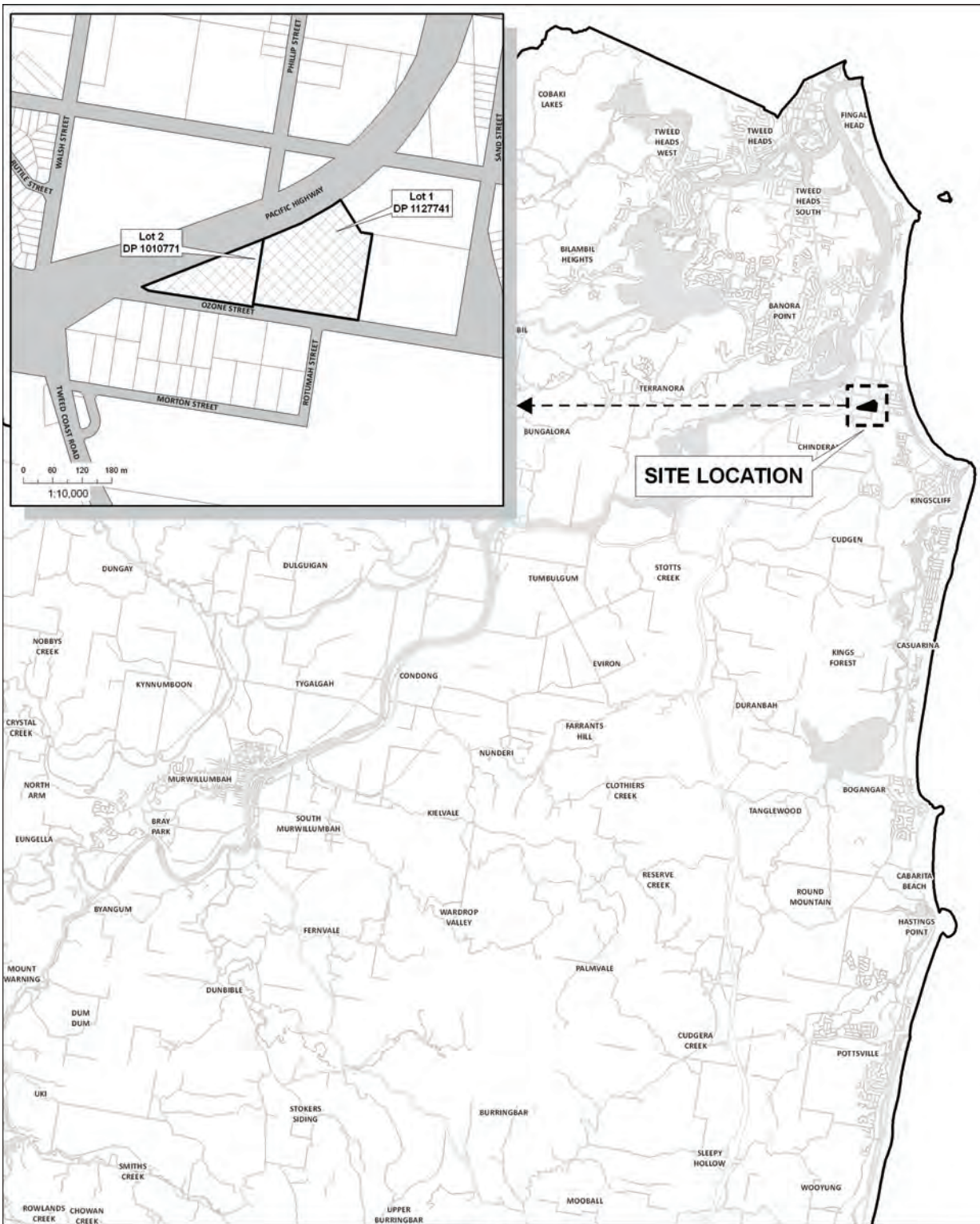
REPORT:

Applicant: BP Australia Pty Ltd
Owner: BP Australia Limited
Location: Lot 1 DP 1127741 & Lot 2 DP 1010771; No. 1 Ozone Street, Chinderah
Zoning: 1(a) Rural, 7(a) Environmental Protection (Wetlands & Littoral Rainforests), Uncoloured Land,
Cost: \$4,500,000

BACKGROUND:

Council received the subject development application on 12 November 2010. Council requested further information on issues such as; flooding, stormwater, access, parking, noise and ecology on 18 February 2011. Council wrote to the applicant on 3 June 2011 asking for the information requested to be provided within 21 days from the date of the subject letter as the application will be determined on the information currently provided. The applicant responded on 8 June 2011, stating that they were undertaking relevant actions to respond to Council's request for further information. Council wrote to the applicant on 21 March 2012, advising that the information provided to-date is not sufficient for a proper assessment of the proposed LEP amendment and given the time that elapsed the Planning Reforms Unit has deferred the proposal from the works program. The development is prohibited and Council requested the withdrawal of the application. Council advised the applicant that should the application not be withdrawn within 14 days of the date of the letter dated 21 March 2012, the application will be recommended for refusal. The applicant wrote to Council on 29 March 2012, requesting that Council reconsider its position with respect to deferring the LEP amendment and determination of the development application.

SITE DIAGRAM:

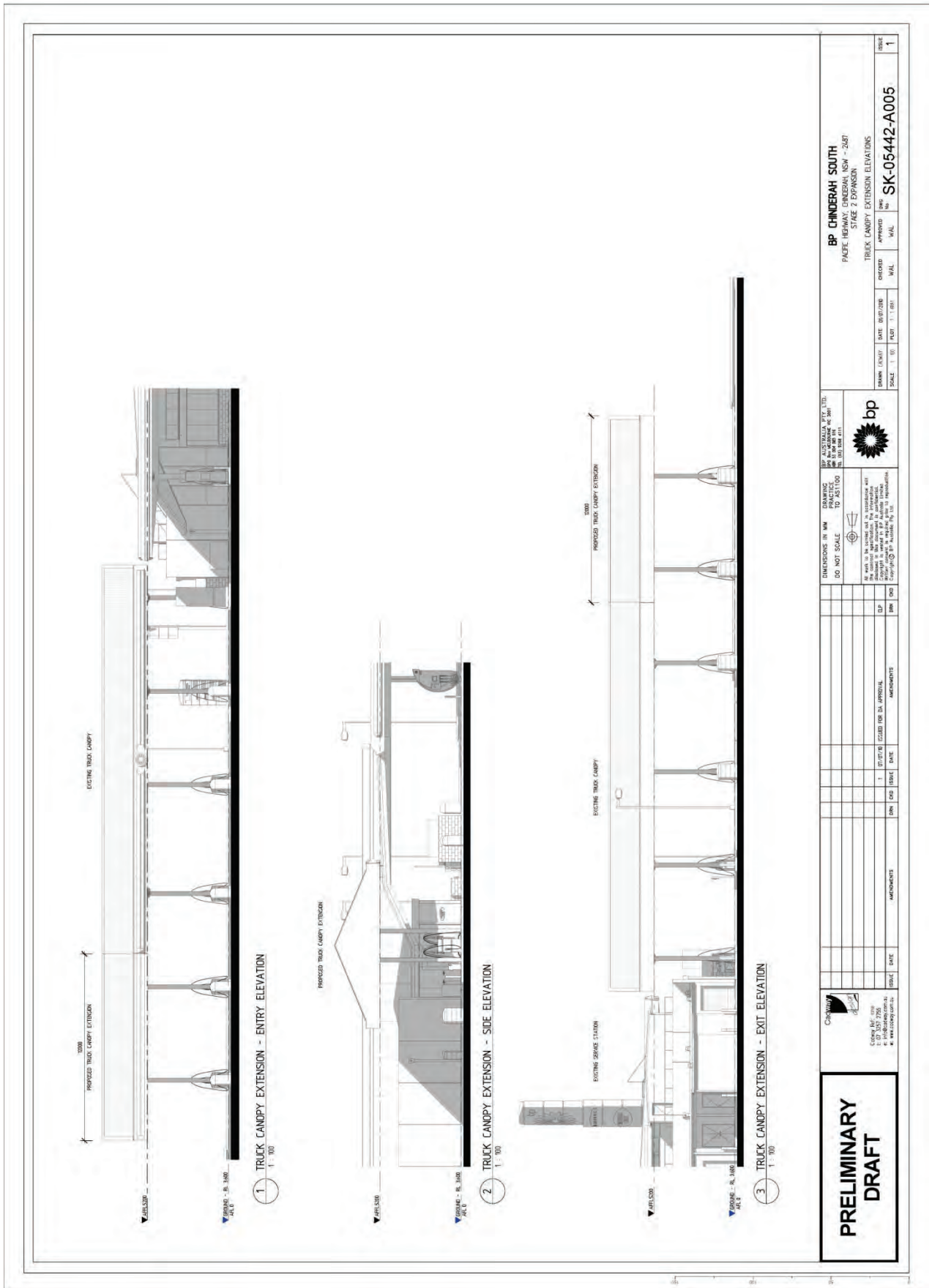


Locality Plan

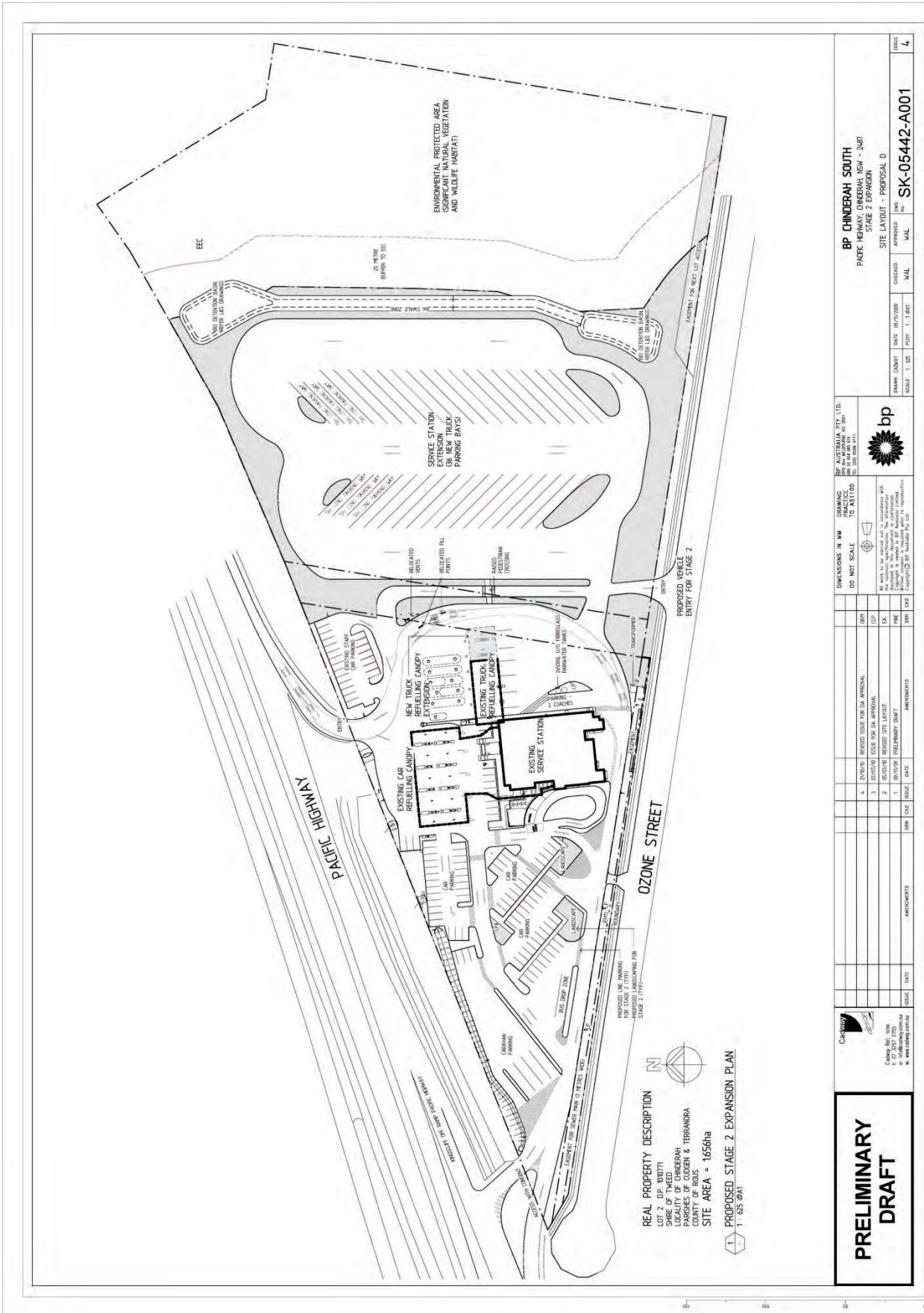
Lot 1 DP 1127741 and Lot 2 DP 1010771;
No. 1 Ozone Street, Chinderah

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DEVELOPMENT/ELEVATION PLANS :







CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

State Environmental Planning Policies

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

The subject site has multiple zones being: Zone E2 Environmental Conservation and Zone RU2 Rural Landscape. The proposed development (Highway Service Centre) is prohibited within both zones.

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

Tweed Development Control Plan

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

Clause 92(a) Government Coastal Policy

The site is located within the Government Coastal Policy area; however, the proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by the policy.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by the policy.

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

The site is not covered by the policy.

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

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

Council has identified issues in relation to; flooding, stormwater, access, parking, noise and ecology. To-date the applicant has not provided a response to Council's requests for further information relating to these issues.

(c) Suitability of the site for the development

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

Council has identified issues in relation to; flooding, stormwater, access, parking, noise and ecology. To date the applicant has not provided a response to Council's requests for further information relating to these issues.

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

Nil.

(e) Public interest

The proposed development has insufficient information to adequately assess the proposed LEP amendment and development application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000.

As insufficient information has been provided by the applicant, Council is unable to determine the likely impacts on the natural or built environments and the social and economical impact to the locality. As such, Council is unable to determine the impacts the proposal may have on the public's interest.

OPTIONS:

1. Refuse the development application and LEP amendment.
2. Proceed with the development application and LEP amendment and wait for additional information relating to the issues identified.

CONCLUSION:

Council requested further information on 18 February 2011 (442 days has elapsed) on issues in relation to; flooding, stormwater, access, parking, noise and ecology. To-date the applicant has not provided a response to Council's requests for further information relating to these issues. As sufficient information has not been provided by the applicant, Council is unable to determine the likely impacts on the natural or built environments and the social and economical impact to the locality. Council's Planning Reforms Unit has deferred the project from the works program. The development is prohibited and Council requested the withdrawal of the application. The proposed development is prohibited in accordance with the Tweed Local Environmental Plan 2000 and the development is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Finance Plan:

Not Applicable.

c. Legal:

There is not a right of Appeal available in the NSW Land and Environment Court, as the LEP determinations are not appealable on merit grounds and the proposal is prohibited.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

- 10 [PR-CM] Planning Proposal PP10/0003 for Lot 332 DP 1158142, Part Lot 326 and 315 DP 1158142 Silkpod Avenue, West Murwillumbah (known as Riva Vue)

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0003 Pt 4



Civic Leadership

SUMMARY OF REPORT:

At the Council meeting of 13 December 2011 Council resolved to publicly exhibit the Planning Proposal PP10/0003 for Lot 332 DP1158142, and Part Lots 315 and 326 DP 1158142, Silkpod Avenue, Murwillumbah, known as Riva Vue Estate.

The Planning Proposal seeks the rezoning of the site from the current majority 1(b2) Agricultural Protection and part 2(c) Urban Expansion to a low density residential land use, 2(a) Low Density Residential under the Tweed LEP 2000.

This report provides an overview of the public exhibition process, an assessment of submissions received and seeks the resolution of Council to refer the Planning Proposal to the Department of Planning and Infrastructure (DP&I) to have the LEP amendment made to facilitate low density residential use of the land.

RECOMMENDATION:

That the proposed rezoning of site, Lot 332 DP 1158142 and part Lots 315 and 326 DP 1158142, Silkpod Avenue, Murwillumbah, known as Riva Vue, proceed as exhibited and as outlined in the Planning Proposal PP10/0003 Version 3 - Final, in Attachment 1 to this report and that the Planning Proposal be referred to the Department of Planning and Infrastructure to be made through amendment to the Tweed LEP 2000.

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 Department of Planning and Infrastructure (DP&I) to have the LEP amendment made.

Background

The request for the Proposal in respect of the subject site, as shown in the location map following, was received in May 2010. Council considered a report on the Proposal on 20 July 2010, at which time it was resolved that the Proposal for a low density residential use be supported in principle and that it be reported to the DP&I for a Gateway Determination.

The Gateway Determination was granted on 25 August 2010 and the time frame for completion extended for a further nine months (to 1 June 2012) on 4 August 2011.

At the Council meeting of 13 December 2011 Council resolved:

1. *The Planning Proposal be publicly exhibited in accordance with the Ministerial Direction under the Gateway Determination Following receipt of all outstanding final studies, and*
2. *Following completion of the public exhibition, a report on the exhibition process, assessment of submissions, final planning proposal documentation and all supporting reports be reported back to Council for a decision on whether to endorse the planning proposal and to have the LEP amendment made.*

Overview of the Planning Proposal

The proposal seeks to rezone the site through amendment to the Tweed LEP 2000, from the current majority 1(b2) Agricultural Protection and part 2(c) Urban Expansion to a low density residential land use, 2(a) Low Density Residential enabling an extension of the Riva Vue Estate, which proposes to provide approximately 80-90 new dwellings.

It is also noted that Council has formally exhibited the draft LEP 2010, consistent with the requirements and format of the Standard LEP Template. Under this draft LEP, this proposal would translate to the comparative draft R2 Low Density Residential zone.

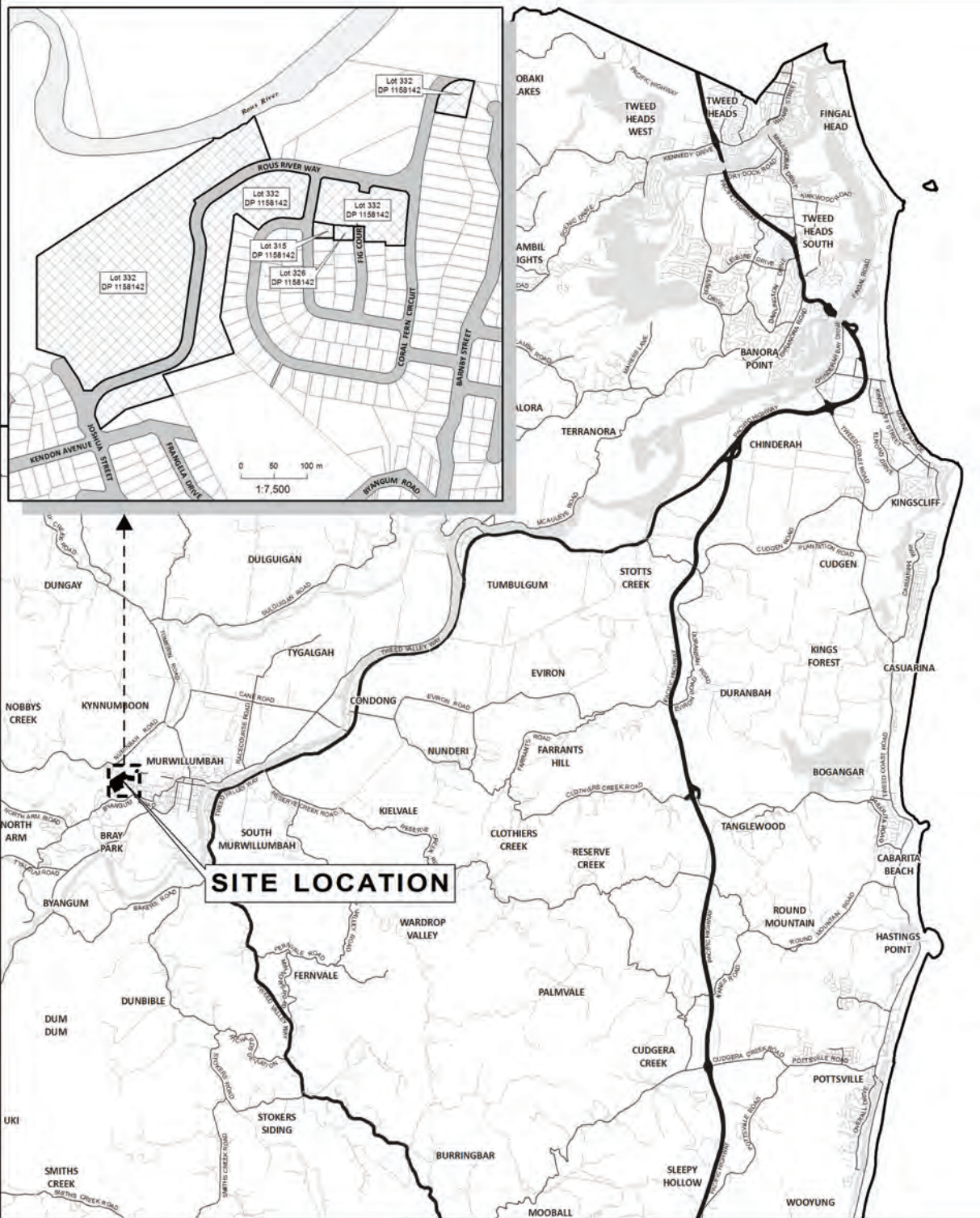
The proposal also acknowledges the characteristics and constraints on the site and seeks to provide concept guidance for:

- A buffer to the prime agricultural cane production land to the north of the Rous River to ensure the continued viability of this agricultural use and to minimise any potential impacts of the agricultural activities on the future residential development;
- A buffer to the prime agricultural cane production land to the west of the site to minimise any potential impacts of the agricultural activities on the future residential development;
- A riparian buffer to the Rous River to ensure protection and enhancement of this riparian zone;

- Appropriate drainage reserves; and,
- Enhanced pedestrian and cycleway access to the Rous River foreshore integrated with the above buffer and drainage reserves.

The requirements for these areas are captured, and the locations appropriately defined, during the detailed subdivision development application stage through the requirements of the Tweed Development Control Plan (DCP) Part A5 – Subdivision Manual and therefore it is not necessary at this stage to specifically zone those areas. A future housekeeping LEP amendment is seen to be the better practice for imposing an environmental or infrastructure zoning once the precise location and use is determined by the grant of an approval. In the meantime it is proposed to zone the entire site 2(a) low density residential.

SITE DIAGRAM



Locality Plan

Planning Proposal PP10/0003 - - Lot 315, Lot 326 and Lot 332 DP 1158142
 Rous River Way, Murwillumbah

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Cadastral: 19 October, 2011
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 Boundaries shown should be considered approximate only.

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 1:120,000 @ A4 Portrait
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Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 1984
 Grid: Map Grid of Australia, Zone 58

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Consultation

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

- Flood impact assessment
- Geotechnical assessment
- Preliminary contaminated land assessment
- Rural land assessment
- Flora and fauna assessment
- Odour assessment
- Aboriginal cultural heritage due diligence assessment
- Conceptual site stormwater management plan

Copies of the studies and exhibition material are provided on CD under separate cover to this report.

The public exhibition was held between Wednesday 21 March 2012 and 27 April 2012 for 37 days, allowing for the Easter public holiday period and the exhibition material was made available at the Tweed Heads and Murwillumbah Administration Offices and on Council's website.

Direct notification of the public exhibition was sent out to 79 adjoining and surrounding residents as well as the Murwillumbah Residents and Ratepayers Association.

Council staff attended the Murwillumbah Residents and Ratepayers Association meeting, at their request, on 16 April 2012. A brief overview of the Proposal was provided and attendees were given the opportunity to ask questions and seek clarification on any concerns.

Submissions

Four submissions were received in response to the public exhibition. Three submissions were received from State agencies and one from the community.

A submission was received from the Murwillumbah Residents and Ratepayers Association, summarised as follows:

Submission summary:

The submission notes that the lower section of the site was recently inundated in the minor flooding. Building houses in this area raises issues with flooding and hazard control. Concerned for altering the flood plain through filling of the site and the impacts this may have on surrounding residents and cane land. Consider the flood plain is not a suitable area for residential zoning.

The road system will need to be enhanced if increased traffic is to be generated. The submission questions what is happening with the road connections to the estate and when more traffic builds up on the bridge in town.

Landscaping of the riverbank will add value to the area, as demonstrated in the previous stage. The submission compliments the developers on the excellent parkland provided in the previous stage, which is enjoyed by the community.

Comment:

The Flood Impact Assessment, prepared by Yeats (February 2012) modelled four separate scenarios for the site both in isolation and combined with the filling of the adjacent Lot 22 DP 1080322 (remaining parcel of rural land) as a cumulative scenario. Scenarios included:

1. Existing conditions as modelled in the Tweed Valley Flood Study 2009
2. Earthworks associated with the development of Riva Vue stages 1-3
3. Earthworks, including filling approximately 2.4ha, associated with the development of Riva Vue stages 1-4
4. Earthworks associated with the extension of Rous River Way to the intersection of Cane/Queensland Road, incorporating approximately 3.3 ha of the currently agriculture protection zoned land, Lot 22 on DP1080322, above the Q100 flood level to simulate future development over this adjoining lot, though this is not part of this proposal
5. Cumulative scenario incorporating 2, 3 and 4 above.

The flood study has been reviewed by Council's engineering staff and their advice was that "the modelling scenarios confirm that when assessed on an individual basis, and on the basis of its incremental contribution to the potential cumulative development scenario in the area, the proposed fill development will have negligible adverse impacts on flood behaviour in the locality. As such no objections are raised regarding the planning proposal to rezone the subject land from agricultural to residential."

Initial inter departmental review of the Proposal determined that no traffic study was required as the proposal is for a modest expansion of the surrounding residential uses and there is adequate capacity within the surrounding road system to meet the additional predicted traffic demand.

As part of the earlier stage of the Rive Vue Estate development the Rous River Way was constructed, linking Joshua Street with Coral Fern Circuit.

The Tweed Road Contributions Plan (TRCP) identifies a road link to West End Street from the Rous River Way and a road link from Coral Fern Circuit through to Cane Road, which is intended to take the traffic pressure off the Tweed River bridge at Wollumbin Street, Murwillumbah. Whilst contributions are being collected under this contributions plan, the works are not likely to be programmed within the short or medium timeframe given the required funds to be accrued to undertake this work. Development under this proposal will be required to make TRCP contributions towards these roadways.

State Agency submissions

The Proposal was referred to the Rural Fire Service (RFS), the Department of Primary Industries (DPI) and the Office of Environment and Heritage (OEH) for their review and submission.

Department of Primary Industries

Submission was received from DPI covering the divisions of Fisheries and Agriculture, summarised as follows.

Submission summary:

With regard to Fisheries, the DPI supports the 50 metre riparian buffer to the Rous River and suggests Council should ensure the buffer is maintained as an ecological buffer in perpetuity. The buffer should also be subject to an approved management plan which should include, but not be limited to, revegetation strategies and maintenance strategies.

Comment:

The 50 metre riparian buffer is to be provided through the requirements of the Development Control Plan (DCP) Part A5 – Subdivision Manual at the development application (DA) stage. It is anticipated that this land will then be dedicated to Council following establishment of the revegetated buffer, consistent with subdivision conditions of consent. Ongoing maintenance of the buffer will then be the responsibility of Council.

Submission summary:

With regard to Agriculture, the DPI acknowledges the site acts as a buffer to the sugar cane properties to the north and west. DPI notes that the Living and Working in Rural Areas Handbook provides guidance that the minimum buffer to cane land is 300 metres. DPI suggests that rezoning of this land should be part of a strategic plan.

Comment:

The Living and Working in Rural Areas Handbook provides a guideline for appropriate buffers. The 50 metre buffer, which includes a minimum 30 metre biological buffer, together with the Rous River, results in a minimum distance of 125m between the cane farmland and future residential development. This is broadly consistent with the requirements of the Council's Development Control Plan (DCP) Part A5 – Subdivision Manual Attachment E – Recommended Buffers, which requires a minimum of 150m and a 30 metre biological buffer where there is likely to be spraying, and is the prevailing buffer requirement. The buffer is already established through the completion of the Rous River Way.

The subject site is an isolated area of approximately 10 hectares of rural land surrounded by the river to the north, a small isolated parcel of rural land to the west, urban development to the east, south and more widely to the west.

The site is not included within the Far North Coast Regional Strategy (FNCRS) town and village growth area. However, the site does adjoin the identified town and village growth

area. The site is not included in the Tweed Urban and Employment Land Release Strategy (TUELRS) 2009 as it was seen to be a logical and coordinated extension of the adjoining Riva Vue residential development currently under construction (Development Consent No. 05/0308). This combined with the relatively small land area and the ability to rely on the State Government's Site Suitability Criteria (for land west of the Pacific Highway) warranted its exclusion from the TUELRS 2009.

Rural Fire Service

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:

Comments of the RFS are noted for consideration at the DA stage.

Office of Environment and Heritage

Submission was received from OEH covering the divisions of Fisheries and Agriculture, summarised as follows.

Submission summary:

OEH is generally supportive of the proposal. OEH raised a number of matters for further consideration prior to finalising the proposal, including:

- 1. The riparian buffer be zoned for environmental protection rather than residential*
- 2. The impact on local flooding from the proposal on adjacent rural land appears to be minimal; however, there is the potential for this to be exacerbated by the connection of Rous River Way and filling of the adjoining lot. Recommends this aspect be adequately addressed.*
- 3. Whilst limits for odour appear to be within guidelines OEH recommends the inclusion of a vegetated buffer between the plant and future residential. Notice of the proximity of the plant should also be included on s149 certificates.*
- 4. Land to be rehabilitated as an offset for clearing of native vegetation should be identified.*
- 5. Measures to link remnant vegetation in the park adjacent Byangum Road with the riparian buffer should be considered.*
- 6. Council should ensure the appropriate Aboriginal cultural heritage consultation is undertaken prior to the proposal being finalised.*
- 7. OEH notes that acids sulphate soils, water quality issues appear to be adequately addressed at subdivision stage and that there is no obvious soil contamination.*

Comment:

The exact location and extent of the riparian buffer is to be further defined at DA stage and it is considered that Council's Development Control Plan (DCP) Part A5 – Subdivision Manual Part 4.7 and the Tweed LEP 2000 Clause 31 provide the appropriate controls to ensure this buffer is provided at subdivision stage.

The Flood Impact Assessment by Yeats and Council engineering assessment of the potential impacts of flooding are discussed above.

Similarly the Odour Assessment by Pae Holmes finds that the plant is likely to comply with the relevant odour criteria to the northern boundary of the subject site. It also notes that there are existing houses in closer proximity to the proposed residential. The findings of the assessment are considered adequate and that odour is not a constraint on the proposal proceeding.

Vegetation offsets and linkages are appropriately addressed through a Riparian Vegetation Management Plan prepared at the DA stage.

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 this time, however, makes appropriate recommendation to proceed with caution and comply with legal requirements should material be revealed during the future development of the site.

State Member submissions

The State electorate is Lismore and the current Member of Parliament is Mr Thomas George, MP. No representation has been received from Mr George.

Following assessment of submissions, it is considered that no amendment to the proposal or the exhibited zoning of the site is required.

Council owned land

The Proposal does not include any Council owned land.

Consistency with any regional strategy, instrument or direction

The Proposal has been assessed against:

- the Far North Coast Regional Strategy (FNCRS) required Sustainability Criteria, as provided in Table 3 of the attached Planning Proposal version 3 – Final;
- the aims and actions of the FNCRS, as provided in Table 4 of the attached Planning Proposal version 3 – Final;
- relevant State Environmental Planning Policies (SEPPs), as provided in Table 5 of the attached Planning Proposal version 3 – Final; and
- the Ministerial s117 Directions as provided in Table 6 of the attached Planning Proposal version 3 – Final;

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:

The Planning Proposal, PP10/0003, seeks rezoning of the site from the rural land zoning to a low density residential zone. The site is a rural parcel bounded by the Rous River to the north and predominantly by urban land uses to the east, south and west.

The subject site is isolated and fragmented from the wider, more contiguous rural land and its long term viability for rural uses is limited. The site adjoins the established Murwillumbah residential area and the FNCRS urban footprint boundary. Rezoning of the site to urban land uses represents a logical infill expansion of the West Murwillumbah residential area.

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 as proposed.

Submissions received in response to the public exhibition do not raise any significant issues additional to those that have been assessed.

The Proposal, whilst not identified within the Tweed Urban and Employment Land Release Strategy (TUELRS) 2009 or the FNCRS as a growth area, has been assessed against the FNCRS required Sustainability Criteria and found broadly consistent. In addition, the Proposal has been assessed against the applicable SEPPs and 117 Ministerial Directions and also found broadly consistent.

The proposal is not found to place undue pressure on State or local infrastructure and services.

Rezoning of the subject site will result in low density residential development of a similar character to the established Riva Vue Estate and is consistent with the low scale character of the West Murwillumbah locality.

As part of the future development, the proposal will provide: a buffer to the prime agricultural cane production land to the north of the Rous River (to ensure the continued viability of this agricultural use and to minimise any potential impacts of the agricultural activities on the future residential development); a buffer to the prime agricultural cane production land to the west of the site; a riparian buffer to the Rous River to ensure protection and enhancement of this riparian zone; appropriate drainage reserves; and, enhanced pedestrian and cycleway access to the Rous River foreshore integrated with the above buffer and drainage reserves.

Therefore, it is recommended that the proposed rezoning of site proceed as exhibited and as outlined in the Planning Proposal PP10/0003 for Lot 332 DP 1158142 and part Lots 315 and 326 DP 1158142, Silkpod Avenue, Murwillumbah, known as Riva Vue - V3 Final, in Attachment 1 to this report and that the Proposal be referred to the DP&I to be made through amendment to the Tweed LEP 2000.

Given the relatively small scale of the development and the conventional low density residential housing typology sought a site specific development control plan and or area specific controls are not warranted; the Tweed Development Control Plan 2008, in particular Section A1 – Residential and Tourist Development Code, is more than adequate for managing the future development of the site.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy not applicable.

b. Budget/Long Term Financial Plan:

There are no impacts on Council's forward budget estimates.

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:

- 1. A CD containing the Planning Proposal PP10/0003 for Lot 332 DP 1158142 and part Lots 315 and 326 DP 1158142, Silkpod Avenue, Murwillumbah, known as Riva Vue - V3 including:
 - * Stormwater Conceptual Management Plan November 2011 (ECM No. 49806256)
 - * Flood Study February 2012 (ECM No. 49806259)
 - * ACH Due Diligence March 2011 (ECM No. 49806257)
 - * Geotechnical Assessment Cover Letter July 2011 (ECM No. 49806261)
 - * Flora Fauna Assessment May 2011 (ECM No. 49806260)
 - * Geotechnical Assessment July 2011 (ECM No. 49806262)
 - * Contamination Report June 2011 (ECM No. 49806258)
 - * Indicative Layout for Rezoning Purposes only March 2012 (ECM No. 49806263)
 - * Odour Assessment September 2011 (ECM No. 49806264)
 - * Riva Vue V3 Final Planning Proposal May2012 (ECM No. 49806265)
 - * Rural Land Study November 2011 V2 Superseded Concept Plan (ECM No. 49806266)

11 [PR-CM] Planning Reform Work Program

SUBMITTED BY: Planning Reforms



SUMMARY OF REPORT:

This report seeks Council's endorsement of the Planning Reforms work program 2012/2015.

This report was preceded by a Councillor Workshop relating to the revision of the works program held on 10 April 2012.

The report acknowledges the competing resource commitments and limitations that were raised at the April workshop and arising from Council's commitment to improving strategic land-use planning for the Tweed as well as the need to allocate resourcing for shorter-term development through planning proposals originating from the private sector.

The works program is an essential project management tool. It assists staff in providing more accurate estimates of the Council's planning resource capability in their advice to the development industry, who require greater certainty and confidence on which their preparation of commercial scheduling and planning for future projects and forecasts can be based.

It also provides an insight into the current direction in the Shire's strategic land-use planning and the key projects on which it is comprised, in a format that can be readily understood by the broader community.

The report concludes that it is essential to maintain a balanced work program to assist with the ongoing resource allocation to key strategic projects and for providing greater certainty in the timing and allocation of resources for accepting private planning proposals and delivering important strategic projects.

RECOMMENDATION:

That Council endorses the Planning Reforms - Work Program 2012/2015 identified as Tables 2-4 in this report.

REPORT:

As part of the on-going project management of Council's strategic land-use planning resources the Planning Reforms Unit works program is reviewed annually and where

appropriate revised to reflect and 'match' resource-to-commitment. The work program was first adopted by Council on 16 June 2009, readopted on 20 July 2010, with a mid-term status update reported in October 2009, and last adopted on 19 April 2011.

Preceding this report a Councillor's workshop was held on 10 April 2012 to enable Council officers to provide an up-date on the work program and how project commitment targets were being met as well as providing an overview of current funding allocations and shortfalls for existing and future projects.

Councillors' highlighted among others the need to maintain the currency of the existing body of land-use planning policies; to direct further attention to the employment and business needs of the Shire; to follow through with current planning proposals and their associated strategic (DCP) policies, and to ensure that projects commenced but deferred (e.g. South Murwillumbah DCP) are finalised when circumstances first permit.

The need to encourage and assist the effective participation of local communities in strategic projects and to have regard to the principles of ecologically sustainable development, in pursuance of s 7 (Purpose) of the *Local Government Act 1993*, were also raised in discussion.

In preparing the 2012-2015 works program the direction provided by Councillors at the workshop in conjunction with the Tweed Shire Council Delivery Program 2011/2015 and Operational Plan 2011/2012 were taken into account.

The salient limitations for acting on a range of projects and or acting on those within certain timeframes are guided by three key elements:

1. The direction the Council seeks to take with any given project or subject matter;
2. The availability of financial resourcing; and,
3. The availability of human resources to either undertake a project or project control external consultancies.

There are several projects identified within this report that have previously been identified as important strategic projects and which the Council has indicated should be pursued. There are however one or more of the limitations mentioned above operating to impact on the progression of all projects simultaneously or within the same time horizon and consequently the works schedules have been developed using available knowledge and indicators to determine the base project priorities from where further refinement or reprioritisation of projects can be made by Council.

The works program is premised on a presumption that any additional projects introduced by the Council will result in the deferral of another project of the same kind off the work schedule to a later date (reprioritisation) rather than displacing the allocated resources to current projects. The exception to that presumption being the allocation of additional resources commensurate with those required to accommodate the new project.

These projects are individually identified and discussed in the report, below.

Further, this report recommends as part of the works prioritisation the allocation and redistribution of funds available within the Planning Reform Unit budget to maximise opportunities for completing the identified key projects.

State Government Funding - Up-date

As discussed in the report to the 19 April 2011 Council Meeting, an application under the NSW Government's Planning Reform (Round 7) Projects Funding was made for several proposed projects. This funding opportunity was part of the State's \$2.9 million funding package aimed at assisting the delivery of new comprehensive LEPs to deliver planning policy to help create well-designed and vibrant communities around public transport, and to review and update greenfield land release sequencing and policy, over a 2-year period.

At about the same time an application under the State Government's Planning Acceleration Fund was also made and it was under this application that Council received conditional funding for two projects totalling \$153,000, consisting of:

1. Draft LEP 2010 – Extension Officer, referred to as “Planner” in the amount of \$28,000; and,
2. A “Rural Land Strategy & Agricultural Land Protection Guidelines” (deferred) in the amount of \$125,000.

The earlier report also highlighted the purpose of the acceleration fund as targeting key areas for expediting the completion of standard instrument LEPs across the State and consequently the funding criteria was very narrow. The report went on to say about the agreement that:

"The terms of grant funding under the Acceleration Fund are quite restrictive and access to the recoupment of funds ceases in June 2012. Based on the current Agreement provided by the Department the timeframes allowed for completion for both projects is unreasonable."

Whilst Council staff attempted to negotiate with the Department for more favourable terms none were accepted. This means that the conditional funding for the Rural Land Strategy, which was only ever to become accessible on the completion of the Shire-wide LEP, will not arise.

At the Councillor workshop of 8 December 2011 the following comments were provided as part of a power point presentation:

1. *Despite the DDG's acknowledgement of a 12-18 month timeframe for completing the Strategy the project particulars in the Agreement allocate about 9½ months.*
 - *This commences in November 2011 – about 5 months prior to time when access to the funding is likely to occur, i.e. it assumes an unrealistic commencement in the past and condenses the timeframe for completion to about 4 months.*
 - *The Agreement is not responsive to the time lag in the negotiation and execution of the project and of the advices provided by Council staff generally.*
 - *The amended Agreement has not been executed at this time.*

Summary

- *Based on the resourcing capability of the Planning Reform Unit and the current work program commitments the completion of the Draft LEP for an exhibition prior to April is very unlikely.*
- *The Acceleration Funding should not be relied on for funding a Rural Land Strategy.*
- *A rural strategy may require reprioritisation.*

Progressing the Rural Land Strategy will therefore require Council to make a funding commitment for the entire project. This is discussed further below in relation to the "Rural Lands Strategy."

In addition to the earlier applications for funding discussed above a more recent application was made under the Australian Government's, Nation Building, Liveable Cities Program. The application was premised on a "Tweed Liveable Cities Strategy" aimed, among other things, at improving the productivity of the Tweed through the identification of industry and workforce opportunities, spatially based population planning for improving access to jobs and social services, and sought a 50% contribution from Government in the amount of \$75,000.

Notice was received on 13 April 2012 that the application was unsuccessful. A copy of the application is attached to this report for reference.

There are no other funding opportunities available at the time of writing.

The Work Program Generally

The revised works program has taken into account four key project constraining and opportunity factors:

- i. Total PRU staff resources;
- ii. Committed resource allocation;
- iii. Existing funding & commitments; and,
- iv. Potential future funding.

Based on those four elements and the feedback from the 10 April Councillors' workshop the Tables below provide a proposed work program for the period 2012-2015.

It should be noted that as with all works programs it is in a constant state of change as projects both come in and go out and it needs to be sufficiently flexible to allow for projects that are not completed within the projected timeframe and rollover into successive program schedules.

Nonetheless, the work program has proven to be a useful resource guide for managing the body of work capable of production by the Planning Reform Unit. It is open to being amended by Council resolution at any time and is not designed or used for deflecting important strategic projects away from consideration as they arise. The practice to-date is that any new important strategic project is reported to Council for consideration and is supported with an estimate of the resource capabilities at that point in time and where appropriate new projects are assimilated into to the work program.

The program is based on the same format previously used and utilises a traffic light system to indicate the proposed human resourcing status of projects and operational functions.

Referring to Table 1 below the indicators may be summarised as:

Green light: a project requiring a significant resource allocation. These are projects typically prepared in-house or where the project is outsourced but the complexity and size of the project requires a significant contribution to both project control and preparation/assessment of related studies and the like.

Yellow light: a project that requires a moderate allocation of resources. This could be a comparatively simple project or one that has a long lead in or lead out time that is predominately administrative. It is also used to indicate the level of resourcing ordinarily required to project control projects that are outsourced to consultancies.

Red light: a project that is yet to start or is nearing completion where the major work component is yet to start or is completed. It generally relates to projects that are completed but for certain administrative process requirements or that otherwise have a relatively low resource impact.

Black light: projects that have been brought to attention through various media, e.g. proponents of development, Council's delivery and operational plans, community advocacy for key projects and or topics, and the Council, but that are not proposed to be commenced within the specific work program period. These projects are listed to firstly maintain an awareness of them and also because it provides a more seamless and transparent transition of the proposed work stream between the work program schedules (years).





Rating Schedule		
Current Projects (Resourced)		1
Current Projects (moderate resources)		0.25
Project Pending / finalising (minor resources)		0.1
Not proceeding at this stage / Future Project		0

Table 1 - Work Program Project Resources Rating

Certain projects names are followed by an abbreviated comment, they are:

- (STF) Subject to Funding Allocation.
- (STR) Subject to Council Resolution.

Work Program Schedules 2012/2015

The following schedules have been prepared taking into account the considerations and factors discussed above. Several projects are identified as requiring a funding allocation before they can be commenced.

Following presentation of the Schedules a table is provided showing the estimated cost of certain projects and how they can be accommodated with a reallocation and distribution of current funding within the Planning Reform budget.

Planning Proposals (PPs)	CSP Code	Strategic Plans	CSP Code	General Tasks	CSP Code
Total 9.8	Total 12.1	Total 4.9			
PP10-0003 Riva Vue	1.5.3.1	Housing Adaptability DCP	2.2.2.1	Briefing notes, workshops & presentations or similar	2.1.2.2
DLEP 95 - 106 Dry Dock	1.5.3.1	LGMS (STF)	3.3.1.1	Public / Industry / Govt Consultation	2.1.2.2
PP10-0005 Hundred Hills	1.5.3.1	Seabreeze DCP	1.5.2.2	General Corro, GIS & s149 support	
DLEP 85 Pottsville Employment	1.5.3.1	CBHS	2.1.2.3	Student / University Programs assistance	
PP10-0002 Marana Street	1.5.3.1	DCP A1	2.2.1.1	Strategic Responses (internal & external) (NOMs)	
PP10-0001 Boyds Bay	1.5.3.1	FNCRS Review	3.4.1.1	Part 9A Review / comments	
CBHS LEP	2.1.2.3	Rural Lands Strategy (STF)	3.2.1.2	Grant & Funding Applications	
DLEP 2010	1.1.1.2	Urban Design Charter	2.6.1.1	NSW Housing Monitor / SEPP Compliance GIS	3.4.1.1
DLEP 2009	1.1.1.2	Scenic Landscape Review (STF)	4.4.2.1	Interdivisional assistance	
PP10-0007 Mooball	1.5.3.1	ACHMP	2.1.2.3	Meetings / Committees / workshops / Seminars	2.1.2.2
Tweed City Shopping Centre	1.5.3.1	Tyalgum Locality Plan	2.3.7.1		
Twin Towns Services Club	1.5.3.1	Rural Villages Locality Plan	2.3.7.1		
Parked - stalled		Work Program Items		Total ALL Task	26.8
DA10/0797 s72J BP Chinderah	1.5.3.1	Policy Maintenance	1.5.2.2		
		Rural Tourism DCP	1.5.2.2		
		Kingscliff Locality Plan (STF)	2.3.7.1		
		Heritage DCP (STF)	1.5.2.2		
		Chinderah Locality Plan	2.3.7.1		
Facilitating Planning Proposal		Facilitating DCP (From PPs)			
Hastings Point LDCP	2.3.7.1	Pottsville Employment Land	1.5.2.2		
Pottsville LDCP	2.3.7.1	Marana Street	1.5.2.2		
Cabarita LDCP	2.3.7.1	Seabreeze (Stage 2)	1.5.2.2		
Review Caba Village Controls	2.3.7.1	Industry & Business Park	1.5.2.2		
Planning Proposal / Project (notified)		Mooball	1.5.2.2		
Fingal Mariculture (STR)	1.5.3.1	Scenic Protection (STF)	4.4.2.1		
		Other			
		Urban Settlement Principles	1.5.2.2		
		Murwillumbah DCP (South)	2.3.7.1		

Total Resource Allocation 2012/2013
98.7%

Resource Commitment by Project Area

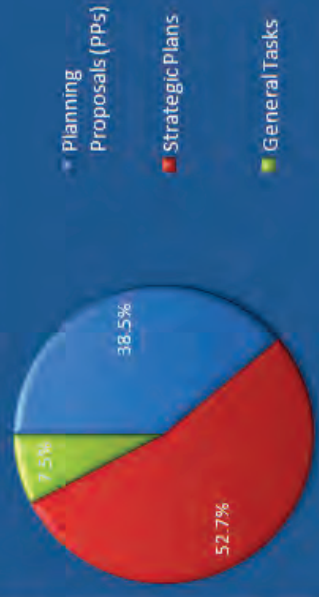


Table 2 - 2012/2013 Works Schedule

Funding: Allocation & Redistribution

There are several key projects in each of the work program schedules that require a funding allocation prior to their commencement. This is seen to be unavoidable despite a concerted effort over the last 3 years to undertake more of the strategic projects in-house. In some cases it is necessary or desirable to outsource projects because of the technical areas of discipline requiring specialist input or the nature of the project otherwise dictates.

For the most part, particularly with respect to locality based plans, DCPs and housing codes, the main work component is prepared in-house with lesser reliance being placed on specialist consultancies as required. This reduces the overall budget cost and is reflected in the estimated cost of several projects appearing in Figures below.

The following tables are provided to show how a redistribution of the Planning Reform current budget can fund several key projects. It is also aimed at assisting Councillors with their consideration of any funding allocation requests in respect of the Council's Financial Management Plan for the period 2013/14 and later.

Figure 2 below identifies the budgetary items within the current Planning Reform Unit budget from where a reallocation of funds can be redirected to fund several new projects.

Project	Cost Estimate	Funding Period
Rural Lands Study	\$125,000	2012/2013
Local Growth Mngt Strategy	\$85,000	2012/2013
Total	\$210,000	
Kingscliff Locality Plan	\$25,000	2013/2014
Heritage DCP	\$20,000	2013/2014
Scenic Protection DCP	\$60,000	2013/2014
Scenic Landscape Review		
Tweed Economic Profile	\$50,000	2013/2014
Total	\$155,000	
Affordable Housing Strategy	\$70,000+	2014/2015
Total	\$70,000	

Figure 1 - Estimate of Project Funding Requirements

Funding Source	Existing Funding	Redistribution Amount
LGMS	\$21,304	\$21,304
Tweed City Centre LEP	\$16,011	\$16,011
LEP Review	\$172,812	\$172,812
Rural Villages Locality Plan	\$50,000	\$25,000
Locality Plans; Mooball	\$50,000	\$25,000
	Total	\$260,127

Figure 2 - Current Planning Reform Budget Items

Works Program Project		Funding Allocation
Rural Lands Study		\$125,000
Local Growth Mngt Strategy		\$85,000
Kingscliff Locality Plan		\$25,000
Heritage DCP		\$20,000
Total		\$255,000
Remainder		\$5,127

Figure 3 - Projects Funded Through Budget Redistribtion

In summary, what these figures show is one way in which the current budget funding could be redistributed to fund 4 new projects, including the larger two Shire-wide strategies.

A reallocation of funds will not impact on the delivery of other projects. The amount allocated (see Figure 2) to the locality plans was based on the previous practice of out sourcing that body of work, whereas they are now substantially, if not totally, prepared in-house. This may result in a further surplus in the 2013/14 period, which would be sufficient to fund a Tweed Economic Profile. Likewise there is no impact on the Tweed City Centres LEP as it is fundamentally complete with procedural administrative functions largely remaining. The LEP review and LGMS funding, also shown in Figure 2, were allocated for the kind of projects now sought.

The remaining 3 projects (see Figure 1 and 3) not funded under the above redistribution will require an estimated funding allocation of \$170,000 between 2013/15.

Key Projects Proposed

Local Growth Management Strategy (LGMS) 2012/2013

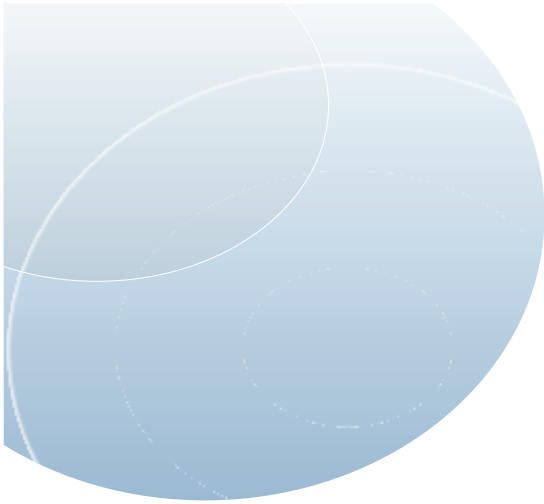
As part of the State Government's planning reforms steps were taken to provide greater guidance to local councils on the projected future demand for services, housing and conservation within each of the local government areas. This was achieved through the implementation of the Far North Coast Regional Strategy (2006) for this region. This was followed in April 2007 with Department's *Settlement Planning Guidelines* which were developed to assist councils in preparing local growth management strategies to achieve the planning outcomes and actions of the Strategy.

In summary, the Regional Strategy requires Council to prepare a LGMS prior to preparing a local environmental plan to zone land for residential, rural residential, commercial and industrial uses. To-date Council has been able to progress several rezoning amendments on the basis of it current strategic land-use policy viz the *Tweed Urban and Employment Land Strategy 2009* with the Department's approval under the transitional arrangement. This is not likely to be sustained in the long-term.

The LGMS is greater than the sum of its parts and will provide a holistic approach to managing, forecasting and guiding both the growth and conservation of the Tweed. It brings together the myriad of strategic policies; corporate, planning, infrastructure, social, economic, environmental, into a single legible strategy. The Department's Guidelines state the content of an LGMS as including:

- A vision which considers the regional context and influence and the role of the local government area in the region.
- A commitment to achieving the principles of sustainable development¹ and a statement of how the strategy addresses this.
- A summary of any community consultation and any significant changes made to the strategy as a result of the consultation.
- Information addressing the principles in section 3, including:
 - the application of the regional environmental constraints mapping and the suitability of the land identified in the local strategy;
 - the desired local character, design and form of settlements covered in the strategy; and
 - the existing services and infrastructure network and future needs.
- A land supply and demand audit for land uses covered by the strategy and a demographic profile and population projections summary to support future land requirements.
- A land release program documenting the following information:
 - location –map(s) and documentation identifying all land covered in the strategy and its proposed land uses. It is expected that councils will submit both electronic and hard copy maps with the local growth management strategy when seeking approval. Electronic format should be consistent with the digital requirements for the standard instrument for LEPs;
 - yield – the amount of land to be released for each type of land use (residential, rural residential, commercial, industrial or tourism) and the justification for the amount identified in the strategy. In the case of residential land, the expected lot yields and proposed densities, how they have been derived and an indication of how the strategy aims to achieve the dwelling targets and housing mix identified in the regional strategies; and
 - timing – expected staging and timing of land releases both across the local government area and within precincts where appropriate, over the life of the strategy.
- A servicing and infrastructure program summary for the supply of utilities and social facilities needed over the life of the strategy. If the provision of any of the facilities or services is the responsibility of another agency council should consult with the relevant service provider(s) to determine expected timing of the necessary infrastructure.
- A commitment to a nominated review period.

This may be graphically represented as:



Rural Land Study 2012/2013

The Rural Land Strategy (RLS) has been on the Council's and communities radar for many years with earlier attempts to implement an RLS not gaining the approval of the Department of Planning and Infrastructure in 2005.

The purpose of an RLS is to establish principles for the land-use management of rural lands according to its capability to support agricultural and rural industries, conservation, tourism and rural housing. This kind of study is also seen by landowners as means to achieving variations in the minimum subdivisional lot sizes for additional housing entitlement, which is frequently cited as being the sole means of income for retiring farmers.

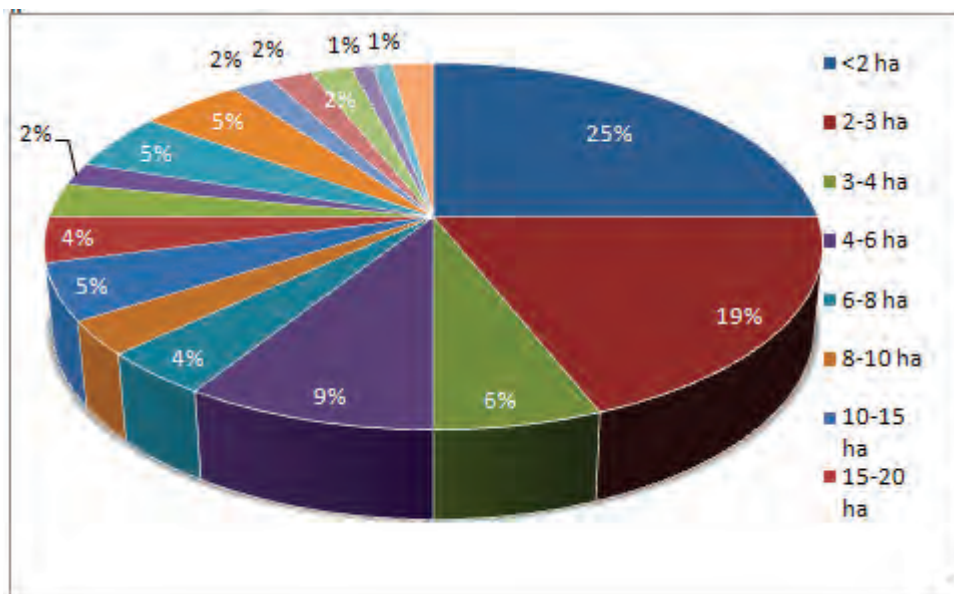
Whether an RLS is required in the short term is questionable. Clearly, from the level of community representation at the rural lands workshop held with the Councillors in April 2010 the preparation of an RLS is expected however, in light of the other strategic policies being developed the question is more apt to be one of when rather than if.

As part of the broader Tweed planning locality plans are being prepared for the rural villages and a draft sustainable agriculture policy is in preparation. The locality plans are likely to identify the main areas suitable for additional urban / housing owing to their proximity and relationship to the existing urban villages and the physical infrastructure required to sustainably support housing and urban industry. The sustainable agriculture strategy is likely to identify those areas suitable for agriculture and rural industries and may recommend alternative farming and land use practices that are seen to be more contemporary and able to deliver greater economic and environmental benefit.

In addition, the general perception that Tweed's rural lands are predominantly very large lots with no housing opportunities seems to be misplaced. In preparing the current Draft Tweed LEP (standard instrument) an analysis of the rural zoned land (RU2) showed that:

- Approximately 71% of all lots in rural areas have dwellings houses.
- 25% of all rural allotments are smaller than 2 hectares. Aerial image analysis indicated that these allotments are not being farmed.
- The average area of a lot zoned RU2 Rural Landscape is 12 hectares, however 50% of all lots are smaller than 4 hectares.
- Only 15% of all allotments meet the current minimum lot size standard (40 hectares for land zoned RU2 Rural Landscape).
- The average area of an undersized lot (smaller than 40 hectares) is 7.3 ha.

This is represented in the following graph:



The table below summarizes the land use pattern for rural lands grouped by area in hectares.

size	dwellings	farms	vacant
<2 ha	55%	less than 1%	44%
2-3 ha	88%	6%	12%
3-4 ha	84%	9%	15%
4-6 ha	82%	11%	16%
6-8 ha	76%	14%	21%

size	dwelling	farms	vacant
8-10 ha	70%	9%	26%
10-15 ha	70%	24%	24%
15-20 ha	61%	22%	31%
20-25 ha	62%	27%	37%
25-30 ha	65%	26%	34%
30-40 ha	66%	22%	28%
40-50 ha	67%	25%	23%
50-60 ha	71%	28%	20%
60-70 ha	73%	25%	27%
70-80 ha	76%	21%	18%
80-90 ha	67%	23%	23%
90-100 ha	65%	27%	25%
<100 ha	67%	26%	26%
average	71%	12%	26%

Key characteristics of rural land in the Tweed seem to indicate:

- Apart from traditional farming, there are two apparent directions in the occupied use of rural lands: rural amenity occupancy and small farm occupancy.
- The 'small farm landscape' is more prevalent than generally recognised.
- Land is highly fragmented into a wide range of lot sizes.
- Due to short commuting distance to major urban/employment areas, farming becomes no longer viable as a sole enterprise; land value is higher than agriculture can pay.
- Location and landscape create opportunities for niche products and strong local markets.
- Decline of population on traditional commercial farms and, as a consequence, loss of young people from farming and rural areas.

In summary, despite the high number of comparatively small lots (compared with the minimum lot size requirement) and the comparative high number of dwellings an RLS remains to be an important strategic policy for the Tweed and the timing of it relative to other policies will always be one where it will align with some related strategies and not others. In that context the question of timing might relate to the point in time where the RLS can be properly informed or underpinned by one related strategy and implemented to support another.

Referring to the locality plans and draft sustainable agriculture strategy mentioned above the current timing is seen to be right, striking a balance between incorporating the work and community knowledge presently collected in the agricultural strategy and being in a position to be informed by and to feed into the village locality plans.

Kingscliff Locality Plan 2013/2014

Tweed Council committed to preparing locality based plans for the Tweed's villages in the Tweed 2000+ Strategic Plan, Tweed 4/24 Strategic Plan and more recently through the Community Strategic Plan; Delivery Program 2011/2015 and Operational Plan 2011/2012.

Coastal locality based plans have been prepared for Pottsville, Hastings Point, Cabarita and Tweed Heads/Tweed Heads South, with master-planning leading the development of Casuarina, Salt and Kings Forest.

Kingscliff is the largest of the Tweed's coastal villages and has likewise be the subject of intense development pressure and change particularly during the period 2001-2009. The area is a significant tourist destination both for day-trippers, short and long stay tourists. The areas is characterised by medium density living, educational and retail premises and many areas of environmentally and ecologically sensitive areas.

During the busy periods of development the local community has been very active in highlighting its concerns about the impact on the environment and large uncharacteristic scale of development and Council has had to manage a proportionally high number of litigious development issues arising in the Kingscliff area.

With the demand for greater housing and commercial premises in the light of the issues previously raised by the community a locality plan for Kingscliff is seen to be the priority on the coast.

Scenic Landscape Review & Scenic Protection DCP 2013/2014

A discussion on the importance and status of the Tweed Shire Scenic Landscape Evaluation 1995 was provided in the Council report of 15 February 2011. In summary, the report highlighted the value of the document and the need for its currency to be updated and the recommendations implemented, which would include the preparation of a related development control plan. At present, the document is only implemented formally through the subdivision section of the Tweed Development Control Plan 2008 (TDCP), although it was used to great effect in preparing Section B24 Area E Urban Release Development Code of the TDCP.

These two projects are interrelated and will largely overlap in their preparation. It is highly likely that they will be prepared by the one consultancy and consequently the funding allocation is shown combined.

Fingal Mariculture Planning Proposal

It is understood that Council has been approached and a workshop held in relation to a concept proposal for a mariculture development at Fingal Head.

The works program has allocated resources within the 2012/2013 schedule to undertake the preparation of a planning proposal, subject to a resolution in support of the proposal.

The landowner / proponent will be required to submit a planning proposal request in accordance with the Council's and the Department of Planning and Infrastructure's guidelines, pay the appropriate fee and enter into a cost and expenses agreement in advance of a resolution being sought.

Heritage DCP

Council is presently undertaking a significant body of work in the area of European and Aboriginal heritage planning. These current Plans will require implementation both through the Tweed LEP, supporting DCPs and user guides. It is essential for the effective implementation of the Plans so as to not burden home owners, developers and Council staff that clear policies are developed.

The proposed works program and budget allocations allow for these important policies.

Balancing Public - Private Interests

The work program is limited by several factors as mentioned above. Ultimately there will always be a limit on capacity and correspondingly on the body of work commitments.

Tweed Council is currently performing very well and making good progress with its new strategic planning within the confines of its current strategic planning resources. The current and previous works programs sought to strike a balance between planning proposals originating on demand from the private sector and broader community driven strategic planning policy. This works program continues that balance.

What is noticeably different and should be read cautiously is that earlier work program schedules indicated a pie graph displaying higher proportions of resource allocation to planning proposals, many of which originated from the development industry. This resource distribution is still evident however as many of the planning proposals are coming to an end the resources are being progressively reallocated to the facilitating "strategic plans", e.g. DCPs, which have arisen as consequence of those proposals.

Benefits v Impacts with the Proposed Work Program

The benefit of this works program over earlier ones is a shift in emphasis toward greater maintenance of the Council's current strategic planning policies, an area that has been lagging other areas of policy development, and which has previously been documented. Combined with the inclusion of several significant areas of new policy; LGMS, Rural Lands Strategy and European and Aboriginal Heritage planning, Tweed's planning is transitioning from a reactive and outdated one to one that is proactive and current and that will enable a better understanding of the strengths, weaknesses and opportunities presenting the future growth and conservation management of the Tweed.

A robust and informed planning policy framework has positive impacts not only the ability to provide certainty to the development industry but it should also initiate and drive more economically sustainable outcomes for the Tweed. This can occur through achievement of the best use of land in key delivery areas including; supply of lower cost and diverse housing, employment generating development, and a reduction on development pressure and release of further large Greenfield development, as well as, protection of agricultural and environmentally sensitive land and species populations.

As stated in the April 2011 report, and to assist in minimising those impacts discussed above and consistent with the work program strategy first presented to Council in 2009, the number of privately proposed planning proposals on the work program was progressively

increased in the short term tapering off by 2013/2014 to enable a greater percentage of the Council's resources to be allocated on strategic policy maintenance and preparation.

OPTIONS:

- A. That the works program presented in Tables 2-4 within this report be adopted and that the proposed budget allocation and redistribution for funding of projects be approved.
- B. That any amendments to the works program and or budget allocation be identified and the report deferred to allow amendments to be made and reported on.

CONCLUSION:

As discussed in this report there are limitations on the capacity of Council's strategic planning resources with a corresponding need to ensure that the work program is reflective of, not necessarily constrained, by its ability to undertake key priority projects.

By 'priority' this reports relies on the underlying premise that all of the strategic policies identified are to varying degrees a priority of the Council, but acknowledging that when the projects are juxtaposed there will typically be those that have some sort of 'edge' or 'advantage' over another, which places them ahead, generating in effect a queue headed by the those projects better representing or referred to as the 'priority' projects.

The proposed work program 2012/2015 has been designed in the light of the need to match the resources with the projects that are likely to yield the most benefit. These projects comprise two distinctive types; those generated by the Council and those generated externally. Both have their place and are equally relevant to the management and growth of the Tweed. The work program aims to balance the resource allocation to accommodate the priority elements arising from both areas. This has resulted with fairly balanced number of commercially driven planning proposals and strategic land-use policies.

This resource allocation is seen to be justified on the basis that without greater stimulus and investment in the private sector through housing and employment generating development any number of adverse impacts will potentially materialise. They may include upward pressure on the cost of housing, missed opportunities for employment, and a furthering of the social economic divide, which for many Tweed families will mean that they will need to relocate elsewhere or their children will have limited opportunity to work and live in the Tweed and within established family and community networks.

At the same time, the strategic planning projects selected for inclusion in the work program are those seen to provide the most benefit in assisting and playing their role in ensuring a better and more secure future for the present and future residents of the Tweed and the protection of its environment.

Although some Council projects are subject to funding, as shown in Figures 1-3 above, the proposed work program is reflective of the Planning Reforms Unit resource capacity, the need for a balanced approach to managing public/private projects, and the views expressed at the Councillor workshop of April 2012.

The proposed work program is suitable for adoption.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Vision, Mission and Values Statements Version 1.3.

This report seeks a clear direction and prioritisation of Council's strategic planning program.

b. Budget/Long Term Financial Plan:

Forward budget estimates may arise from Council's endorsement of the Planning Reforms work program as key strategic projects are taken up.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
 - 1.5.2.2 Planning Controls updated regularly
- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.2 Preserve Indigenous and Non-Indigenous cultural places and values
 - 2.1.2.1 Pro-active awareness and advice to the community and Councillors on impacts of new developments on Indigenous cultural places and values
 - 2.1.2.2 Pro-active awareness and advice to the community and Councillors on impacts of any new strategic plans or policies on Indigenous cultural places and values
 - 2.1.2.3 Conserve non-Indigenous heritage and values
- 2.3 Provide well serviced neighbourhoods
 - 2.3.7 Preserve the character and heritage and enhance the amenity of existing towns and villages
 - 2.3.7.1 Prepare Locality Plans for all Tweed Villages
- 3 Strengthening the Economy
 - 3.2 Retain prime agricultural land, farm viability, manage rural subdivision and associated landscape impacts
 - 3.2.1 Foster a viable farming community
 - 3.2.1.2 Preparation and implementation of a Rural Lands Strategy
- 3 Strengthening the Economy

- 3.3 Maintain and enhance the Tweed lifestyle and environmental qualities as an attraction to business and tourism
- 3.3.1 Establish planning controls that balance the need for urban growth against the protection of agriculture, village character and the environment
- 3.3.1.1 Local Growth Management Plan

- 3 Strengthening the Economy
- 3.4 Provide land and infrastructure to underpin economic development and employment
- 3.4.4.1 Retail Centres Policy

- 4 Caring for the Environment
- 4.4 Manage the Tweed coastline to ensure a balance between utilisation and conservation
- 4.4.2 Protect and enhance the aesthetic qualities of the coastal zone
- 4.4.2.1 Development of zoning and planning controls which protect and enhance the aesthetic qualities of the coastal zone

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Copy of funding application to Australian Government; Liveable Cities Program (Nation Building) and Department response (ECM 49936842).
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12 [PR-CM] NSW Department of Planning and Infrastructure - Draft Policy Statement - Plan Making and Delegations - Call for Submissions

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/LEP/2012



Civic Leadership

SUMMARY OF REPORT:

The Department of Planning and Infrastructure (DP&I) has called for submissions on the public exhibition of the “Draft policy statement – Plan-making and Delegations”. This report presents a response to this draft policy and seeks Council endorsement of the issues raised within this report and as forwarded to the Department as a draft submission.

The changes proposed, under Part 3 of the *Environmental Planning and Assessment Act, 1979* and the kind of proposals likely to be included are identified in the report.

At the same time as these changes are being proposed, the NSW Government is undertaking a review of the planning system in NSW which will set out the framework for making plans and taking decisions about development, as well as defining the roles for everyone in the planning system, from the Minister to individual council officers. The relationship of this draft Policy Statement to the broader review currently under way is not addressed in the Draft Policy Statement.

Given the 4 May 2012 deadline for submissions, which predates the 15 May Council Meeting, the Department of Planning and Infrastructure agreed to accept an 'indicative submission' on the Draft Policy on the proviso that a Council resolution in respect of it will follow. The issues raised in the submission are discussed in this report, which concludes that they are suitable for endorsement.

RECOMMENDATION:

That the issues highlighted in this report which form the basis of the submission forwarded to the Department of Planning and Infrastructure in response to the Draft policy statement – Plan-making and Delegations - be endorsed as Tweed Shire Council's response.

REPORT:

Request for submissions

The DP&I has invited public comment on a draft policy statement that proposes to give local councils more plan-making powers and improve delivery of local environment plans (LEPs).

Deadline for submissions

The deadline for submissions was 4 May 2012, with documents viewable on the Department's website under "On exhibition", at: <http://www.planning.nsw.gov.au/Development/Onexhibition/tabid/205/ctl/View/mid/1081/ID/76/language/en-AU/Default.aspx>

Indicative submission to DP&I

Due to the deadline for submissions closing prior to the Council meeting of 15 May 2012, the DP&I agreed to receiving an 'indicative submission' by the deadline on the proviso that a Council resolution in respect of the submission would follow.

ISSUES RAISED BY THE SUBMISSION RESPONSE

This report details the matters addressed in the submission.

Type of LEPs to be delegated to local government

The type of LEPs proposed to be routinely delegated to councils to prepare and make following a Gateway determination include:

- Spot rezonings consistent with an endorsed strategy or surrounding zones or in accordance with broader Government policy;
- Reclassifications of land supported by an open space study;
- Heritage LEPs supported by an endorsed study;
- Section 73A matters (amending references to documents/agencies, minor errors and anomalies), and
- Mapping alterations/corrections that do not alter strategy endorsed development standards.

Intent of proposed changes

The proposed changes, under Part 3 of the *Environmental Planning and Assessment Act, 1979* (the Act), outlined in the Draft Policy Statement are intended to improve delivery of LEPs through:

- Delegation of certain powers to councils to increase local government involvement in the plan making process,

- Allowing for independent reviews of some decisions at key stages of the plan making process, and
- Bringing greater transparency and accountability to the planning system.

Issue 1: Likely changes in plan making procedures

The potential impact of delegations as proposed will impact a range of Council's Divisional work areas.

Application

With delegation of certain plan-making powers to Council the following summary of changes to procedures could be expected:

1. The Department would generally play no further role in the LEP following the issuing of a Gateway Determination.
2. Council would liaise directly with the Parliamentary Counsel's Office to finalise drafting of the plan.
3. The Department would continue to monitor the progress of an LEP to ensure it is prepared in a timely manner, and would assist Council if requested.
4. Council would be issued with a *Written Authorisation to Exercise Delegation* for individual plans under the Gateway process.
5. Council will be required to submit quarterly reports on progress using a template to be provided by the DP&I.
6. The Gateway may also delegate other minor plans to Council to make if considered appropriate as part of its review.
7. A pre-Gateway review could be requested by a proponent, before a planning proposal is forwarded for a Gateway Determination, by the relevant Joint Regional Planning Panel (JRPP), if Council were to decide not to send a planning proposal to the Department, or where Council failed to make a decision on the proponent's request within 60 days.
8. Proposed reviews of Council decisions would need to first pass a strict eligibility assessment by the Department of Planning and Infrastructure.
9. In some cases the Minister may request the Planning Assessment Commission (PAC) to conduct such a review rather than a regional panel.
10. Post Gateway reviews may be requested by Council or the proponent after a Gateway Determination, but must be received by the Department for the review within 40 days of the Determination being issued, and before public exhibition has commenced.

11. An independent review would need appropriate information before it can commence.
12. Additional information may also be sought later by the Department, the JRPP or the PAC to complete the review.
13. A fee would be required to cover administrative assessment costs.

A response to the key issues is provided in a format that addresses:

1. The issue, comprising the proposed change;
2. Application of the issue, in an operational sense; and
3. Response, whether it is seen to be positive, negative or needing clarification.

Response

While the policy statement and associated exhibition material is extremely brief, the potential impact of changes proposed in the draft Policy has been addressed below, with flowcharts illustrating the proposed revised processes for making a local environmental plan, Pre-Gateway Review and Post-Gateway Review presented in Attachments 1, 2 and 3 respectively below.

Issue 2: Enhanced role of local government

Enhanced role of local government by returning planning powers back to local communities.

Application

A range of plan making responsibilities and delegations previously administered by the Department of Planning and Infrastructure (DP&I) will be transferred to councils consistent with the types of LEPs to be delegated.

An enhanced role for Council in the preparing and making of plans will bring with it additional demands for resourcing to implement additional responsibilities and accountabilities.

Implementation of this draft Policy will assist in reversing diminished landuse decision-making powers experienced by Council who has sought to meet the ever increasing demands of its local community.

The ability of Council to reinforce its role and responsibilities to its local communities through an enhanced ability to make landuse planning decisions is seen as a strong foundation for supporting a policy of this kind.

An enhanced role for Council in the preparation and making of plans is reinforced throughout its Community Strategic Plan 2011/2021 and Mission Statement which says:

“Working with community and partners, provide leadership in facilitating and delivering services that manage growth sustainably, create opportunity and enhance the value of our civic and natural assets for this and future generations.”

Response

Transfer of these delegations is seen as a positive initiative although it is noted that there may be a short-term resourcing impact during a transitioning to the new process.

Issue 3: Diminished role of the Department

A substantially diminished role of the Department post-Gateway, on those proposals warranting a delegation of functions in the opinion of the Director-General.

Application

It is proposed that the DP&I will play no further role once the LEP Plan making functions are delegated to Council.

The submission acknowledges the support of the Regional Office up to this point, and point out that a diminished role of the Department will imply a transfer of operations to Council, which could be expected to produce an equivalent increase in the servicing requirements of Council. This would generally arise within the Planning Reform Unit in their administration of planning proposals.

A function that councils will acquire through delegation is the requirement to consult with and provide legal drafting instructions to Parliamentary Counsel; a process that ordinarily occurs through the Department of Planning and Infrastructures legal branch. There is no apparent advantage in shifting the drafting of instructions from the Department's specialist legal officers to local councils. This is pertinent under the current procedure, as distinct to the pre 2009 amendments, which requires that the 'LEP' be drafted once the planning proposal is finalized. The Department's *guide to preparing local environmental plans* (July 2009) states at [4.11]:

4.11 Legal drafting of the LEP

The LEP is the legal instrument which gives effect to the planning proposal. The drafting of the LEP is undertaken by Parliamentary Counsel upon receipt of instructions from the Department. The Department will issue instructions to Parliamentary Counsel after receiving the finalized planning proposal from the RPA.

The Department of Planning will consult the RPA on the terms of the LEP to ensure it is consistent with the objectives and outcomes and the explanation of provisions set out in parts 1 (the statement of objectives or intended outcomes) and 2 (the explanation of provisions) of the planning proposal. As mentioned earlier, it is important that these 2 elements of the planning proposal are clearly expressed from the outset. Communications between the Parliamentary Counsel and the Department of Planning and the RPA are subject to legal professional privilege and must be maintained in the strictest confidence.

Parliamentary Counsel will produce a draft instrument (the LEP) and an opinion that the draft instrument can be legally made. By this stage, any maps required to accompany the LEP must be prepared strictly in accordance with the *Standard technical requirements for LEP maps (Department of Planning 2009)*.

In addition the on-going role of the Department in managing and administering the application of regional plans and strategies and s 177 Ministerial Directions is considered important and would be better retained and managed at a regional level.

Response

The full extent to which the Department will withdraw from the process remains uncertain and it is questionable whether the overall process would benefit if they were to remove themselves from it. The better practice would seemingly be for greater autonomy within the Regional Office to maintain a role in assessing matters relevant to State and regional planning policy without the need for referral and secondary assessments occurring in their main Sydney Office. This would arguably strengthen and streamline the current process, which has been working effectively since the Part 3 amendments took effect in June 2009. The Regional Office staff are very aware of the planning issues facing the north coast councils and are well placed to coordinate regional issues with consistency through the local councils.

Councils are better placed in working collaboratively with their regional offices and the planning processes would no doubt benefit from a strengthening of that relationship within the plan making reforms.

Transfer of delegations contingent on the Regional Offices retaining a role is seen as a positive initiative.

Issue 4: Timing and transitional arrangements

There is minimal advice on support for implementation and transitional arrangements.

Application

An assessment of the full impact of this policy on transitional arrangements cannot be completed at this time as no advice has been presented addressing how the transitional period will be supported by the Department, both financially and procedurally.

Council will need to have arrangements in place prior to the transfer of delegations. The ability of Council to reprioritise its commitments to ensure that all necessary procedures are ready and a smooth transition occurs will depend upon the availability of supporting documentation from the Department and Council staff.

While no direct mention is made to the relationship of this policy to the broader NSW planning system review currently under way, it is assumed that changes proposed in this policy have been derived from interim findings of the Review, as such it is expected that this policy will not cause duplication of effort by the Department or Council; however there is no discussion of this matter in the policy or supporting documentation placed on exhibition.

Response

Integration with other initiatives of the Department and Government to ensure minimal disruption to service delivery by Council should be considered when deciding if the changes proposed in this policy should be implemented now or as part of the new planning system review also underway at this time.

Issue 5: Where no adopted study or strategy exists

There is minimal advice on how assessments will proceed where a strategy or study has not been completed by a council, and there is the risk of confusion in distinguishing between what constitutes an “endorsed” study, “adopted” study, and “strategy”.

Application

While the draft policy suggests that power to make plans will be routinely delegated to Council in relation to reclassification of land, heritage LEPs and spot rezonings, where certain adopted/endorsed studies/strategies exists, no advice is provided on how plans will be made where such adopted/endorsed studies/strategies have not been prepared by a council, or where there is a draft study in progress.

It is assumed that once a Gateway determination has been made that a planning proposal can proceed as made and that councils will be notified and advised that plan making powers are to be delegated. However, there is no mention of how the process will proceed where the plans and strategies listed above have not been completed by a council.

Response

Clarification on the meaning and distinction of “endorsed” study, “adopted” study, and “strategy” is required.

Issue 6: Delegations - Mapping alterations/corrections that do not alter strategy endorsed development standards

Potential impact of delegating powers to make plans associated with mapping alterations/corrections that do not alter strategy endorsed development standards.

Application

The draft Policy proposes to delegate to Council power to make plans associated with mapping alterations/corrections that do not alter strategy endorsed development standards.

Housekeeping of the Tweed LEP 2000 is undertaken through the Planning Reform Unit and it is often a protracted process. While the amendments themselves may be small and their impact sometimes negligible, the resources required will typically be the same regardless of their complexity. Ordinarily, minor corrections and anomalies are undertaken as part of a housekeeping amendment rather than managing them individually. To do otherwise places an unwarranted demand on Council resources.

Mapping issues such as minor road realignments or boundary adjustments which typically take 6-8 months to process could be completed quicker with a delegation of functions.

Response

Transfer of delegations is seen as a positive initiative which will remove what has at times been seen as an additional step in the plan making process, especially for those less complex small-scale, low-impact proposals. It is unlikely to result in a move away from the more traditional housekeeping approach, except in more pressing circumstances.

The Tweed LEP has had four 'housekeeping' amendments in the twelve years since it came into force, with other minor amendments also being made during this time. The majority of amendments to the LEP have been spot rezoning for development purposes.

Issue 7: Delegations - Section 73A matters (amending references to documents/agencies, minor errors and anomalies)

Potential impact of delegating powers to make plans associated with Section 73A of the *Environmental Planning and Assessment Act 1979* "Expedited amendments of environmental planning instruments".

Application

Section 73A of the Act refers generally to matters such as correction of obvious errors such as a misdescription, inconsistent numbering, wrong cross-referencing, missing words, or removal of unnecessary words in the LEP, matters of a generally minor nature, or that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment of adjoining land.

Council has undertaken very few corrections to its LEP under this section. The potential impact of referring delegations to Council will be minimal for such plans.

Response

Transfer of these delegations is seen as a positive initiative.

Issue 8: Delegations - Reclassifications of land consistent with a strategy/supported by an adopted open space study

Potential impact of delegating powers to make plans associated with reclassification of land that is consistent with a strategy/supported by an Open Space study.

Application

The *Local Government Act 1993* allows for the reclassification of land that has been dedicated under Section 94 of the *Environmental Planning and Assessment Act 1979*, where the Council is satisfied that the land is unsuitable for the provision, extension or augmentation of public amenities and public services.

Land that cannot be reclassified in this way, but is still considered surplus to the Council's needs, can be reclassified through the making of an LEP.

Demand for reclassification of land, while not a regular occurrence, does and will continue to occur.

At this time Council does not have an 'Open Space study' upon which to facilitate delegations regarding the reclassification of land requiring the making of an LEP. Under these circumstances the procedure for making plans arising from a need to reclassify land is not clearly spelt out in the draft policy.

Response

Advice is sought on how or if delegation of powers relating to the reclassification of land will occur where a council does not have an adopted Open Space study.

Issue 9: Delegations - Heritage LEPs supported by an endorsed study

Potential impact of delegating powers to make plans associated with requests to make heritage LEPs.

Application

The draft policy proposes to delegate to councils power to make plans associated with heritage items or places where the proposed LEP is supported by an Office of Environment and Heritage endorsed study.

Council has recently completed public exhibition of its "*Draft Community Based Heritage Study and Management Plan 2011*". Following review of submissions a report will be presented to Council seeking endorsement of the Plan.

It is expected that in accordance with the requirements of this delegation, that endorsement by the Office of Environment and Heritage will also be sought.

While Council has not received many requests for protection of heritage items or places under provisions of the LEP or an amendment to it, since the recent exhibition of the draft heritage study, enquiries relating to heritage have escalated and potential for requests for amendment to the LEP to address heritage matters could likewise be expected to escalate.

Response

The ability of Council to manage requests to make plans associated with heritage matters will be substantially improved once the *Draft Community Based Heritage Study and Management Plan 2011* is endorsed by Council and the Office of Environment and Heritage.

Transfer of these delegations is seen as a positive initiative.

Issue 10: Delegations - Spot rezonings consistent with an endorsed strategy or surrounding zones or in accordance with broader Government policy

Potential impact of delegating powers to make plans associated with Spot rezonings consistent with an endorsed strategy or surrounding zones or in accordance with broader Government policy.

Application

The draft policy proposes to delegate to councils power to make plans associated with spot rezonings consistent with an endorsed strategy or surrounding zones or in accordance with broader Government policy.

Of the range of delegations to be routinely devolved to Council under this draft policy, this delegation is expected to have the most significant immediate and ongoing impact.

The preparation of planning proposals for spot rezoning of land is managed by Council's Planning Reform Unit who is currently working on thirteen planning proposals, some of which have been outsourced in an attempt to service the significant demand for LEP zoning amendments.

Delegation of certain Plan making functions would have the potential for a more streamlined and expedient process in most cases. This may reduce the impact on Council resources over time, however as discussed above there is an important role for the Department's Regional Office in the assessment of the broader State and regional planning policy and in assisting councils with legal drafting instructions.

Response

A transfer of delegations is generally seen as a positive initiative.

Issue 11: Ability to review without consideration of local strategies

There is minimal clarity on the role, weight or status of local plans and strategies in relation to requests seeking a review of a decision or in relation to the assessment of proposals.

Application

The policy uses the conjunctive term "or" in defining the documents against which a proposal can be assessed and determined, without any explanation of the desirability of, or need for local strategic planning support of such rezoning requests. To state that a proposal needs to be "consistent with an endorsed strategy or surrounding zones or in accordance with broader Government policy" suggests the possibility that local or even regional considerations could be circumvented in the process, that is, a form of forum or 'policy' shopping.

Likewise, the default position of "consistent with surrounding zones" fails to take into account the potential complexities of a particular proposal and the ability of site specific considerations to override the more rudimentary consideration of surrounding zones. The consideration of surrounding zones in a vacuum or upon selective policy is likely to lead to protracted argument about the suitability of otherwise marginal proposals that will ultimately lead to loss of resource expenditure and in worst case scenario the actual pursuance of marginal proposals.

By way of example, where a proposal may be consistent with a surrounding zone, but not an "endorsed study", or consistent with broader Government policy but not a local strategy, no explanation has been provided as to how such inconsistencies will be managed.

Should a council refuse to accept a request to make a planning proposal based on inconsistency with an endorsed local strategy, it would appear possible for a review to be sought based solely on consistency with “broader Government policy” thereby circumventing consideration of any local strategy or policy.

Regional plans and strategies such as the Far North Coast Regional Strategy are seen as critical guiding documents upon which Council has relied to support local plan-making decisions, and is concerned about the potential for requests for reviews to be approved based solely upon consistency with any broader Government policy, and without consideration of local strategies.

Given the broad overarching often ‘one-size-fits-all’ nature of State plans and policies, and the inability of such broad scale documents to fully acknowledge local community needs and expectations, it represents a dubious ability of councils to genuinely and wholly accept the delegations as proposed, knowing that at any time a review could be requested, and accepted, based solely upon consistency with another but poorly-related high level plan or policy.

If this is correct, safeguards should be provided to prevent a proponent being able to circumvent a local strategy by reliance on a regional plan, or circumvent the latter by relying on a State plan, or bypassing any plan based solely on an existing zoning pattern. This approach would seem to be placing too much reliance on the consistency within the current higher order policy framework to deliver the right outcome at a local level.

Response

Clarification is required of how any inconsistency with an endorsed strategy or surrounding zones or broader Government policy will be assessed and the relative weighting of each in the determination of the proposal or the ability to request a review where Council refuses to accept a request to make a plan.

Clarification of the review rights of proponents and/or councils and triggers that would initiate a review of a proposal also needs to be sought.

Greater certainty should be provided to ensure that where a local strategy is consistent with either a regional or state plan it prevails, and where no local strategy exists the regional plan applies.

Advice is requested defining exactly what safeguards will be provided to prevent a proponent from circumventing a local strategy by reliance on a regional plan, or circumventing the latter by relying on a State plan.

Issue 12: Independent review triggers – refusal to accept a request

Minimal clarity on whether a review can be called where a council refuses to ‘accept’ a request to make a planning proposal.

Application

The second component of the policy involves the formalisation of the existing practice of seeking independent reviews for some zoning proposals.

While the provision for independent reviews as a means of enforcing efficiencies and facilitating greater transparency and accountability to the planning system is an understandable requirement, the triggers by which such reviews are activated requires further enunciation.

Council is in receipt of a significant number of requests to prepare planning proposals at various stages of preparation and ranging in complexity from small scale residential subdivisions to large employment generating sites with significant site constraints; however, not all requests can be accepted, some being refused due to lack of compliance with Council and/or regional plans and strategies, or have not been included in Council's endorsed strategic planning works program due to resources constraints.

The draft policy does not seemingly appear to recognise the diverse range of reasons why a council may decide to not proceed with preparing a planning proposal at a given point in time and therefore to not send it for a Gateway determination.

The draft Policy appears to imply that Council has accepted the proposal, undertaken a preliminary assessment and decided on technical grounds that the proposal should not proceed, and would not be sent to the Gateway for a determination. The proponent would seemingly then be in a position to request a review by the Department after meeting certain 'eligibility requirements'; however, the draft Policy is silent on whether refusal to accept a planning proposal would constitute grounds for a review.

The draft Policy appears to fail to recognise that due to its pre-existing commitments and priorities Council is not in a position to accept every request to prepare a planning proposal and/or proceed at a time convenient only to the proponent.

Should this interpretation be correct, that a review could be commenced due to refusal by a council to accept a request irrespective of the reasons for doing so, this would raise issues relating to how a council, who had refused to accept a proposal would then be required to commence the preparation and possible making of such plans, that is, if a council declined to make a plan owing to lack of resources what point would there be in the JRPP, PAC or Director-General directing that the council make the plan.

Response

Council is not in a position to receipt or make a decision on all requests within the random timeframes which may result from the unpredictability of when requests may be made. Notice is not always given in advance. Sometimes notice is given and pre-evaluation advice is provided by Council about the unlikelihood of a proposal being progressed at that time and for specific justified reason, which is often ignored.

Therefore, should an objective of the policy be to impose the preparation of additional planning proposals on councils who would otherwise not be in a position to accept them, or have considered them otherwise inappropriate or unacceptable, than a countervailing resource offset strategy should be implemented by the Department to assist councils affected.

It also raises the question whether the amendments to the Act would bring about more litigious matters and avenues for the proponent to seek forms or redress through the Courts.

If this were the case it would follow that a potential financial impact may arise for councils under the proposed amendment.

Issue 13: Response deadlines

Proposed assessment response deadlines are not reflective of the varying complexity and diversity of planning proposals.

Application

The ability of the proponent to be able to ask for a regional panel review where Council has not made a decision after 60 days of receiving the proponent's request is considered unrealistic and in many cases unachievable.

On large and complex proposals the need for interdisciplinary assessment prior to council resolving to prepare a planning proposal is essential, this is particularly relevant where there is likely to be a very real impediment to a development occurring. Failing to properly assess the potential impact and implications for a development frequently leads duplication of effort and reduced capacity to service other important strategic projects.

Apart from those planning proposals which are not accepted by Council, to suggest that a council should be able to complete preliminary investigations, which may require circulation within the organisation and sometimes externally, and report on them within a fixed 60 day time limitation fails to acknowledge the diversity and potential impact of many proposals, and the resource and reporting limitations of local government generally.

While additional time might be perceived as being too long and delaying projects that might otherwise bring much needed jobs or housing to an area there is a very real likelihood that where an inadequate amount of time has been provided for the pre-assessment of complex proposals there will be a higher rate of requests being deferred or denied. This will invariably bring about far greater delay and disincentive for proponents of larger proposals in bringing them forward, that is, in some cases the additional time spent up-front will bring about important strategic outcomes within a shorter time horizon.

Response

Further advice on alternatives to a mandatory 60 day time limitation is sought, and it is suggested that like those for the advertising of LEPs it should be based on the perceived complexity of the proposal.

Issue 14: Resourcing implications

De-evolution of delegations as proposed will increase resourcing demands upon Council and reduce ability to service other important projects.

Application

The delegation of plan making functions will not necessarily increase the process and assessment of preparing the LEP amendment (planning proposal) itself, this is a detailed and thorough procedure. It will however increase the administrative impact resulting from the Department's intention to counter balance the delegation with complex reporting

processes. The time saved in not making referrals to the Department under the current system may for the most part be lost with the time taken in the new reporting process.

Response

While several of the delegations proposed are relatively minor in their impact upon a council's resources, the cumulative impact of these delegations, in particular the reporting processes, is likely to be quite significant.

Issue 15: Other related government initiatives

There is no demonstrated or apparent linkage of this draft Policy with the broader NSW planning system review currently underway.

Application

The current review of the planning system in NSW being carried out by the Government through joint chairs Tim Moore and Ron Dyer aimed at creating a new planning system that meets today's needs and priorities is widely accepted as being over due and needed.

Apart from setting out the framework for making plans and taking decisions about development, it is understood that the roles for everyone in the planning system, from the Minister to individual council officers will also be defined.

With a Green Paper with recommendations for this new planning system due for release in early May 2012, representing a comprehensive system-wide, State-wide review, which in part will define the roles for those in the planning system, it is not clear how the changes proposed under the Draft Policy Statement Plan-making and delegations, will be impacted by this more holistic review being undertaken concurrently by Moore and Dyer; and raises concerns about possible duplication of effort by Council and the Department and the ability to relate the draft policy to the a more holistic outcomes anticipated in the Green Paper.

Response

Clarification of the specific intent of this draft policy as it relates to, and is integrated with, the more far-reaching changes expected to emanate from the Green Paper is being sought.

OPTIONS:

1. Endorse the issues raised in this report.
2. Defer a resolution on this report to allow time for issues raised by the Councillors to be assessed and further reported on.

CONCLUSION:

The amendments to Part 3 (Plan Making) of the Act in June 2009 provided an improvement on the previous system and brought with it greater clarity in the roles of participants and certainty in the process and procedures.

The proposal to delegate plan making functions for certain LEP amendments seemingly provides as many advantages as it does challenges. In light of the current review of the NSW planning system and the generally effective plan making provisions currently in force it is likely that the better practice would be to retain the current system with the addition that the Regional, rather than Head Office, of the Department provide the supervisory role and determinations in respect of the Gateway process.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The acceptance and/or mandatory devolution of delegations as proposed under this draft Policy has the potential to increase the demand on council resources.

c. Legal:

There is a risk that the proposed amendments may increase the litigious nature of LEP amendments.

d. Communication/Engagement:

Not applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Proposed process to make a delegated LEP (ECM No. 49944202).
 2. Process for making a Pre-Gateway Review (ECM 49944202).
 3. Process for making a Post-Gateway Review (ECM 49944202).
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