



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 17 April 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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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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7 [PR-CM] Sale of Goods and Services at Public Markets on Council Controlled Land

SUBMITTED BY: Building and Environmental Health



Supporting Community Life



Strengthening the Economy

SUMMARY OF REPORT:

In considering whether to approve the continued operation of markets on Council controlled land from 1 July 2012 for a period of three years it was resolved at the Reserves Trust meeting of 20 March 2012 that the Reserves Trust:

- 1. Offers an extension of time to the current market operators to operate the Kingscliff and Pottsville markets for a three month period.*
- 2. Brings forward a report on the possibility of prioritising locally produced goods and services, arts and crafts and organics.*

This report has been prepared in response for consideration of the Trust and Council.

Council does not directly operate or control the day to day market management and operation, but rather issues approvals to third party groups to perform this function. Market operators are required to conduct the markets in accordance with the relevant approval and the approved market management plan. That adopted plan is required to be prepared in accordance with Council's Market Management Plan Guidelines.

It is proposed that the Market Management Plan Guidelines be amended to include a specific requirement that priority be given to stall holders who sell locally produced goods and services, arts and crafts and organics. This requirement will then be specified in the approved market management plans and included as a condition on the relevant approval.

Background information is provided in this report about general market operation and restrictions which are applied over their operation.

It is further recommended that Council approves the calling of expressions of interest from persons wishing to operate the Kingscliff, Pottsville, Recreation Street Tweed Heads and Knox Park Murwillumbah markets from 1 July 2012 for a three year period.

RECOMMENDATION:

That Council:

- 1. Approves amendment to the Market Management Plan Guidelines to include a specific requirement that priority be given by market operators for participation by stall holders who sell locally produced goods and services, arts and crafts and organics.**
- 2. Offers an extension of time to the current market operators for a further three month period, if necessary.**
- 3. Approves the calling of expressions of interest from persons wishing to operate the Kingscliff, Pottsville, Recreation Street Tweed Heads and Knox Park Murwillumbah markets from 1 July 2012 for a three year period.**

REPORT:

In considering whether to approve the continued operation of markets at Pottsville, Kingscliff, Tweed Heads and Murwillumbah on Council controlled land from 1 July 2012 for a period of three years it was resolved at the meeting of 20 March 2012 that the Reserves Trust:

1. *Offers an extension of time to the current market operators to operate the Kingscliff and Pottsville markets for a three month period.*
2. *Brings forward a report on the possibility of prioritising locally produced goods and services, arts and crafts and organics.*

Council does not directly operate or control the day to day market management and operation, but rather issues approvals to third party groups to perform this function. Restrictions exist under Council Policy Vending of Food on Public Reserves which are imposed on the approved market operator under the relevant approvals. There are strict limitations imposed over the maximum number of food vans or businesses which sell 'conventional food and drink'. Market operators are also required to conduct the markets in accordance with the relevant approval and the approved market management plan. That plan is developed by the market operator and is required to be prepared in accordance with Council's Market Management Plan Guidelines.

In reviewing this matter advice has been sought from the current market approval holders for Pottsville, Kingscliff, Tweed Heads and Knox Park Murwillumbah. Each operator advised that they rarely have reason to reject a stall holder (except for non complying food vans or stall holders who may have previously been disruptive). Pottsville advised that they currently give priority to stall holders selling local produce and goods.

In response to the Reserves Trust resolution and to ensure that priority is given to the respective stall holders it is proposed that the Market Management Plan Guidelines be amended to include a specific requirement that priority be given to stall holders who sell locally produced goods and services, arts and crafts and organics. This requirement will then be specified in the approved market management plans and included as a condition on the relevant approval.

Additional Background Information Regarding Market Approvals and Operation

Restrictions regarding the sale of food have historically been established under Council Policy Vending of Food on Public Reserves Version 1.1. This Policy states:

Vending of Food on Public Reserves

Objective

To control the vending of food on public reserves, streets and roads to maintain the highest levels of public health, safety and convenience of persons using public reserves, streets and roads and to cause minimum financial impact to nearby retail outlets.

Policy

Approval will not be given for the vending of food on Public Reserves, Streets and Roads within the Tweed Council area except in the following circumstances:

1. Where a specific one-off event has been approved by Council then the organising body may apply for approval for the vending of food. Such approval will be subject to the vendors complying with Council's "Code for the Vending of Food at Markets and One-Day Events".
2. **Where Council approval has been granted for the conducting of a Market or similar on a regular basis on a reserve only "home made" or "home grown" produce may be sold, provided "home made" products are correctly pre-packaged and labelled and their sale complies with the "Code for the Vending of Food at Markets and One Day Events".**
3. **Where Council approval has been granted for the conducting of market or similar, on a regular basis on a reserve, then approval may be given for the sale of drinks provided there are no nearby retail outlets that may be affected and the sale of drinks complies with the requirements of the "Code for the Vending of Food at Markets and One Day Events".**

Restriction 2 above was intended to allow only the sale of food which is home made or home grown, which effectively excluded more 'commercial' types of food which may be sold from a 'food van' or food business (allowing traditional market products such as jams, preserves, cakes etc). In the past decade several reports were requested by Council about this matter, and Council subsequently permitted the operation of a limited number of food vans which sell 'conventional food and drink' at each of the four markets (four at Kingscliff, Recreation Street Tweed Heads and Knox Park Murwillumbah, and two at Pottsville). This was probably an acknowledgement that market patrons would like to buy a drink or food item in hot conditions and that sale of food often forms a major part of other market operations in the region.

Restriction 3 of the Policy was important in that it demonstrates Council's intention not to impact 'nearby retail outlets' when approving markets. However this requirement was superseded somewhat by Council resolutions to permit the operation of a limited number of food vans or businesses at each market over recent years.

In issuing previous approvals to operate the markets Council has imposed restrictions/conditions on the operators thus:

- No food shall be sold unless such food vendors comply with the NSW Food Authority's Food Handling Guidelines for Temporary Events, any other Council Policy and the NSW Food Act (2003). All food business operators shall maintain current notification with NSW Food Authority and be subject to Council's inspection program and any adopted fee. **Four (4) only approved food vans which sell conventional food and drink are permissible.** All such vendors should be registered with Council.
- The sale of goods shall be in accordance with the definition of "Market" contained in the Tweed Local Environmental Plan 2000.

- The markets are to be conducted in accordance with the approved **Plans of Management**. Updated/amended Plans of Management shall be submitted to Council if required in writing by Council. The location of the market within Council's reserve shall not be modified without the prior written consent of Council.

Importantly, the Market Management Plan Guidelines provided by Council to potential operators includes the following requirements:

The management plan shall ensure the markets are conducted so as:

- To **promote tourism and local goods/produce within Tweed Shire.**
- To **not impact adversely on existing established commercial outlets.**
- To protect local residential amenity.
- To **ensure all markets are conducted in accordance with current legislation and adopted Council policy (particularly regarding restrictions over the sale of food).**
- To minimise traffic conflict.
- To minimise impact on the environment.
- To ensure that appropriate public liability insurances are maintained by market operators.
- **Facilitate day to day operation of markets independently of Council.**

Tweed Local Environmental Plan 2000 (TLEP 2000) defines a market thus:

*Market a temporary outlet **for the sale of local crafts and goods, a large proportion of which are not available through normal commercial outlets:***

(a) which operates on one day of a week only, and

(b) which does not require the erection of permanent structures.

Council does not directly operate or control the day to day market management and operation, but rather issues approvals to third party groups to perform this function.

It can be seen from the information above that Council has historically imposed restrictions over the sale of food and produce which were intended to promote the sale of local produce and food, as well as 'cause minimum financial impact to nearby retail outlets'. These requirements are imposed via conditions on the approval document and requirements for the operators to address these matters in their adopted approved management plans.

Three of the four current approval holders are community based charitable groups. Once Council has issued an approval Council does not have involvement (other than perhaps as a regulator eg food hygiene or noise complaint) in day to day operations for liability reasons.

Strict enforcement of the above requirements would involve officers attending markets on weekends and performing a strict review of all food, produce and craft on sale. Determining the origin of all food, goods, produce or craft would be difficult and resulting regulatory action potentially time consuming and costly.

It is clear that the nature of public markets have changed over time. At one time they were a relatively small community based gathering where people did have the opportunity to sell smaller items of produce, crafts and brick-a-brac. Markets are now more commercial in nature with regular market stall holders attending multiple markets within several local government areas and selling their wares.

Whilst markets will and do include stall holders selling 'local' craft and food, there will also be marketeers who sell more 'commercial' items which are not produced locally. Ultimately markets are commercially driven to some degree in terms of the types of products offered for sale.

It is apparent from discussions with the current operators that they rarely have reason to reject a stall holder (except for non complying food vans or stall holders who may have previously been disruptive). Pottsville advised that they currently give priority to stall holders selling local produce and goods.

OPTIONS:

The following comments have been provided in previous reports to Council.

Issue No Further Approval for any Markets

Officers Comment

The markets are an attraction to visitors and residents and provide income sources to the operators and numerous stall holders involved.

Council to Operate and Administer the Markets

Officers Comment

It is most likely that additional staffing resources would be necessary to achieve internal management of markets. It is unlikely that income would totally fund this staffing. This is not necessarily a function which Council is seeking to perform and it can be performed adequately by private or community based service organisations.

Call for Expressions of Interest to Operate the Markets

Officers Comment

By opening up market management to competition (through calling expressions of interest), improvements in operation may be achieved as well as increased income to Council through competitive submissions. It is also possible that 'worthy' community organisations could successfully operate the markets, leading to income for those organisations. Three of the markets are currently operated by the Lions Club of

Kingscliff, Pottsville Beach Neighbourhood Centre and the Police and Community Youth Clubs NSW.

Approve the Existing Operators with a New Approval

Officers Comment

The existing market managers of the Kingscliff, Pottsville, Knox Park Murwillumbah and Tweed Heads Recreation Ground Markets may seek to have their existing approvals to operate the Markets extended. However, it is appropriate that Council seek, through public expressions of interest, the most appropriate person or group to manage the Markets, rather than simply continuing to renew approvals with the existing managers. It may well be that following this process the existing managers are the successful applicants.

This type of competitive process may result in improvements in terms of payments to Council for use of the respective areas for markets, and also ensuring that the best possible management practices are adopted.

Council could adopt a much more active regulatory approach to markets, however this would have budgetary implications in terms of paying wages for staff to work weekends and perhaps any associated legal costs.

CONCLUSION:

In response to the Reserves Trust resolution and to ensure that priority is given to the respective stall holders it is proposed that the Market Management Plan Guidelines be amended to include a specific requirement that priority be given to stall holders who sell locally produced goods and services, arts and crafts and organics. This requirement will then be specified in the approved market management plans and included as a condition on the relevant approval.

Further, it is recommended that the Council approve the calling of expressions of interest from interested parties to conduct the markets for a three year period.

COUNCIL IMPLICATIONS:

a. Policy:

Vending of Food on Public Reserves Version 1.1

b. Budget/Long Term Financial Plan:

Council could adopt a much more active regulatory approach to markets, however this would have budgetary implications in terms of paying wages for staff to work weekends and perhaps any associated legal costs and is not recommended.

c. Legal:

Time and resources may be required if Council were to adopt a more active regulatory role.

d. Communication/Engagement:

Council has traditionally advertised for expressions of interest from any interested party who wishes to be considered to operate the markets. This is considered an open yet competitive process which identifies the most suitable market operator.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
 - 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
 - 2.1.6 Provide social, economic and cultural initiatives which enhance access, equity and community well-being

- 3 Strengthening the Economy
 - 3.1 Expand employment, tourism and education opportunities
 - 3.1.6 Support creative practitioners and entrepreneurs to access professional and business development opportunities, to enhance their contribution to the creative economy
 - 3.1.6.1 Creative economy

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

8 [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 March 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.	DA10/0411
Description of Development:	Boundary adjustment
Property Address:	Lot 11 DP 1054638 & Lot 12 DP 1054638 No. 51 Palmers Road, Terragon
Date Granted:	22/3/2012
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	<p>Application seeks to create a lot within the 1(a) zone of 16.28ha which is below the required 40ha minimum lot size. The variation is greater than 10% (approximately 60% variation).</p> <p>Justification is that the non complying lot increases in size from 5.51 to 16.28ha while the larger lot is reduced from 64.44 to 48.76ha which remains above the 40ha standard.</p> <p>No additional dwelling entitlements are created by the proposal with the smaller lot at present having an entitlement and an approved dwelling (the entitlement will be extinguished as a result of this application however existing use rights will remain for the dwelling).</p>
Extent:	Approx 60% variation from prescribed maximum (16.28ha in 40ha zone)
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA11/0444
Description of Development:	68 lot subdivision (including 1 open space lot)
Property Address:	Lot 29 DP 1027531 & Lot 30 DP 1027531 Casuarina Way, Casuarina
Date Granted:	22/3/2012
Development Standard to be Varied:	Clause 21A(2)(a) - Minimum lot size 40ha
Zoning:	2(e) Residential Tourist
Justification:	SEPP 1 Objection to the minimum 40ha requirement for land zoned 7(f) Environmental Protection. The eastern portion of the site incorporates a 20m wide strip of land zoned 7(f), which is approx 0.3518ha. No structure will be permitted in the 7(f) zone. Objectives of the standard will still be achieved. Concurrence has been granted.
Extent:	Minimum 40ha is required in 7(f) zone. Approx 0.3518ha is proposed, which is only 0.0088% of the minimum lot size.
Authority:	Director General of the Department of Planning

DA No.	DA11/0619
Description of Development:	Two (2) storey dwelling and tennis court
Property Address:	Lot 166 DP 1099179 No. 54 North Point Avenue, Kingscliff
Date Granted:	2/3/2012
Development Standard to be Varied:	Clause 16 of TLEP and Clause 32B of NCREP
Zoning:	2(e) Residential Tourist
Justification:	<p>Council has received an application to construct a new two storey dwelling & tennis court on the subject property. The property is subject to Clause 34b of the North Coast Regional Plan.</p> <p>The shadow diagram submitted shows that the dwelling casts a shadow on the foreshore at the nominated times of 3pm mid winter and 6.30 pm midsummer. The dwelling is not very large compared to existing beach front dwellings in the street subsequently the shadow cast by the dwelling is has less of an impact on the foreshore that existing approved dwellings.</p> <p>Due to the minor nature of the shadow encroachment into the foreshore area and the minimal impact the shadow will have on the forshore area approval is recommended.</p>
Extent:	The shadow cast by the dwelling encroaches in to the foreshore by approximately 15-20m at 6.30pm mid summer.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0030
Description of Development:	Two (2) storey dwelling and in-ground concrete swimming pool in 2 stages
Property Address:	Lot 39 DP 1027531 No. 7 Bozier Court CASUARINA NSW 2487
Date Granted:	26/3/2012
Development Standard to be Varied:	Clause 16 of TLEP and Clause 32B of NCREP
Zoning:	2(e) Residential Tourist, 7(f) Environmental Protection (Coastal Lands)
Justification:	<p>Council has received an application to construct a new two storey dwelling on the subject property. The property is a beach front property in Casuarina and casts a shadow in the foreshore area and is subject to Clause 34b of the North Coast Regional Plan.</p> <p>The shadow diagram submitted shows that the dwelling casts a shadow on the foreshore at the nominated times of 3pm mid winter and 6.30 pm midsummer.</p> <p>The dwelling is predominately single storey with only a second storey master Bedroom located above the family room at the rear of the dwelling. Because of the small scale of the development the submitted shadow diagram shows only a minor encroachment of shadow into the foreshore land at the rear of the property.</p> <p>Notwithstanding this a large two storey dwelling (DA04/01623) exists on the property immediately to the south, No 8 Bozier Court.</p> <p>Because of the size of the dwelling on No 8 Bozier Court, the shadow cast by this dwelling into the fore shore will over shadow any shadow cast by the proposed dwelling on No 7 Bozier Court into the foreshore and approval is recommended.</p>

Extent:	The shadow cast by the dwelling at 6.30pm only extends approximately 4- 5 metres into the 7f zone.
Authority:	Tweed Shire Council under assumed concurrence

DA No.	DA12/0039
Description of Development:	Dwelling and swimming pool
Property Address:	Lot 356 DP 1087716 No. 29 Cylinders Drive, Kingscliff
Date Granted:	21/3/2012
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(f) Tourism
Justification:	Council has received an application to construct a new two storey dwelling on the subject property. The property is a beach front property in Casuarina and casts a shadow in the foreshore area and therefore subject to Clause 34b of the North Coast Regional Plan.
Extent:	From the shadow plans provided the shadow cast by the dwelling will extend approximately 12 metres into the foreshore at 6.30pm mid summer.
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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9 [PR-CM] Tweed Heads State Emergency Service (SES)

SUBMITTED BY: Building and Environmental Health



Supporting Community Life

SUMMARY OF REPORT:

Investigations have been completed to address the requirements of the Crown Lands Division in seeking the long-term tenure for the State Emergency Service (SES) Tweed Heads Unit. This report provides the results of the investigation and community consultation process and provides recommendations for the future accommodation of the SES.

RECOMMENDATION:

That Council:

- 1. Advises the Crown Lands Division, Department of Primary Industries - Catchment and Lands that a diligent investigation of Council-owned land has revealed no suitable alternative sites exist for the accommodation of the State Emergency Service (SES) Tweed Heads Unit;**
- 2. Advises the Crown Lands Division, Department of Primary Industries - Catchment and Lands of the results of the public consultation process that revealed that the majority of the community sought no alternatives/offsets for the loss of land for public recreation and open space;**
- 3. Commits to conducting further consultation with the Banora Point community to investigate the improvement of local public recreation facilities at Darlington Green and Darlington Drive Parklands; and**
- 4. Requests the Crown Lands Division, Department of Primary Industries - Catchment and Lands to progress the previous request to obtain long term tenure of the State Emergency Service (SES) at Lot 682 DP 41192 Pioneer Parade, Banora Point and seeking in-principle support to extend the current facilities.**

REPORT:

Lot 682 DP 41192 Pioneer Parade, Banora Point, is crown land for the purpose of public recreation and under the management of the Banora Point (R89237) Reserve Trust as notified by Government Gazette on 12 July 1974. The affairs of the Trustee are managed by Tweed Shire Council. The use of the site is shared between the State Emergency Service (SES) Tweed Heads Unit and Tweed Unlimited Arts (TUA). Both the SES and TUA have occupied the site for over 30 years.

The SES Tweed Heads Unit and Richmond Tweed Regional SES have identified an operational need to expand the Unit's existing facilities incorporating a Shire-wide operations/control centre and storage facilities. Under the provisions of the *State Emergency Service Act 1989*, Section 17 requires a council of a local government area to provide (free of charge) suitable training facilities and storage and office accommodation for the SES.

At Council meeting of 15 June 2010, Council resolved to endorse the permanent location of the SES Tweed Heads Unit at Lot 682 DP 41192 Pioneer Parade, Banora Point and to request the (then) Land and Property Management Authority (LPMA) to create an additional purpose for Crown Reserve 89237 for emergency service facilities to ensure the long term tenure of the SES facility.

Following further discussions with LPMA, now Crown Lands Division, Department of Primary Industries - Catchment and Lands, Council resolved the following:

"That Council:

- 1. Seeks a short term licence over Reserve 89237 for the purpose of Site Investigation for a term of 12 months.***
- 2. Undertakes a diligent investigation to determine whether there are suitable sites on Council-owned land in the Shire that might be utilised for SES purposes.***
- 3. Pursues public consultation to show either:***
 - (i) That there is a surplus of open space in the Terranora locality and Reserve 89237 that is not required for public recreation; or***
 - (ii) That Reserve 89237 is required for public recreation but alternatives/offsets proposed by Council for the loss of public recreation space are acceptable to the community; or***
 - (iii) That no alternatives/offsets are sought by the community for the loss of land for public recreation and open space; or***
 - (iv) That the community will not accept alternatives/offsets offered by Council for the loss of open space and alternative sites for the SES facility will be pursued."***

See **Attachment 1** for a copy of the report.

The above items have now been addressed.

Item 1

A licence has been entered into and shall expire on 31 May 2012.

Item 2

A diligent investigation has been undertaken. Following discussions with the SES to identify the criteria for suitable site selection a search of Council-owned land within the Tweed Heads area was undertaken. The criteria for a site included a minimum allotment size of 5000m², flood-free, compatible zoning and land use activities, and maximum flood-free access to flood affected areas of Tweed Heads and the surrounding areas. The investigation revealed one potentially suitable site. (See **Attachment 2**)

Lot 10 DP719752 is a 6158m² allotment of community land currently forming the southern triangular portion of Ducat Street Park adjoining the Pacific Highway corridor to the west. The adjoining parcel to the east, is zoned 2(a) Low Density Residential, and is in private ownership utilised for commercial activities, being the car wash facilities. It provides good access to the Shire's main network corridor via the Kennedy Drive on and off ramps. The site is zoned 6(a) Open Space and the Plan of Management for the site does not preclude the siting of emergency service facilities.

Flood modelling of the area revealed however that access to the site would be impacted therefore further discussions with the SES Tweed Local Controller were conducted. It was revealed that the Kennedy Drive underpass at the roundabouts was significantly flood impacted (2-3m) during the 2005 flood event therefore precluding the site from being deemed suitable.

Item 3

To assist in fulfilling the requirements of Item 3 a month long community consultation process was developed and a community survey conducted to gather public opinion. The survey, information supporting the survey and the operations of the SES was disseminated through Council's website, at the Shire libraries of Murwillumbah, Tweed Heads and Kingscliff, at Council offices of Murwillumbah and Tweed Heads and through the Tweed LINK. A copy of the survey and supporting information is as attached (See **Attachment 3**).

An open day was conducted at the SES Tweed Heads Unit on Sunday 26 February 2012 between 10am and 2pm. Invitations to the Open Day were also specifically forwarded to surrounding residents and the Banora Point & Districts Residents Association. Shopping centre information stands were setup and supported by Council and SES staff, also on Sunday 26 February, at Banora Point Shopping Centre between 11:30am to 12:30pm and Flame Tree Park at 12:45pm to 1:30pm. Information stands were again setup on Wednesday 7 March 2012 at Tweed Mall between 10am and 12pm and Club Banora between 12:15pm and 1:30pm.

It was considered a further community meeting be held with residents potentially directly affected by the operations of the SES at the site. This was undertaken on Thursday 29 March 2012 commencing at 7pm and was attended by over 35 local residents representing over 17 of the 46 households invited.

The Survey

174 were completed. The survey results are attached. (See **Attachment 4**) 79.9% of the responses resided permanently in the postcode of 2486, that being north to Cobaki, west to Carool, east to Banora Point and south to Terranora.

97.1% of the respondents felt they understood the role of the SES with 82.8% indicating they were aware the land the SES were currently located on was land set aside for public recreation. 69.2% supported the SES in staying at the current location forming the view that the site was convenient and central for the operations of the SES, flood-free with good access to major road networks. 29.1% did not support the SES remaining on the site most of the opinion the site was too small, an unsuitable use for a residential area, held concerns for vehicular congestion along Pioneer Parade, and that the site should remain as a site for public recreation.

When asked if the site should be enhanced to provide public recreational facilities, should the SES be allowed to remain, 61.5% believed it was not necessary with 24.7% supporting the idea, 13.8% remained unsure. However 42.5% believed it necessary for other similar sites to be provided with better facilities, 36.2% did not and 21.3% remaining unsure.

51.7% of the responses believed Banora Point public open spaces were adequate for recreational purposes, 31.6% did not, with 16.7% unsure.

The survey also had provision for further comment from respondents. Comments received included:

- Recommending alternative site locations and amalgamation of emergency service organisations
- Objecting to any tree removal on the site
- Inadequate street parking during SES response operations to an emergency event
- Speeding vehicles and community safety
- Inadequate information provided with the survey
- Site considered too small and has no room for future expansion
- Traffic congestion is also an issue caused by the activities of the Tweed Unlimited Arts on open days and weekends.
- Provide a second access point

The Community Meeting

Those residents that were identified as being potentially directly impacted on by the operations of the SES on the site were invited to the community meeting. More than 35 residents attended the meeting, representing 17 of the 46 households identified.

The majority of the attendees held concerns for the operations of the SES on-site and reflected the concerns raised through the survey.

- Operations unsuitable for a residential area
- Access & traffic congestion along Pioneer Parade during emergency events
- Loss of local open space with no other available open space within the vicinity

- Loss of on-site vegetation due to any further expansion
- Security and traffic safety

Some residents indicated support for the on-going operations of the SES stating they tolerated the short-term inconvenience because of the valuable work the SES were doing for the community.

Other Responses

Council has received a petition signed by occupants of 10 of the local residences, 8 of which were represented at the Community Meeting. The petition did not support the presence of the SES at the site raising concerns for loss of local open space and traffic congestion.

The Banora Point & Districts Residents Association Inc. has also submitted an unsigned letter from the Secretary advising of the concerns expressed by their members due to the unsuitability of the site for SES operations within a residential area and traffic congestion along Pioneer Parade during emergency events thereby urging the Council to find a more suitable location elsewhere. The Association also raised concerns for the community consultation process by way of the questionnaire stating that they felt the questions "are very subjective and the public could be misled by their meaning".

The Tweed Unlimited Arts have however supported the continuing occupation of the SES on the site. The Arts community have highlighted their good working relationship with the Tweed Heads SES Unit and the co-operative relationship they have during emergency events. During such an event the Arts group offer their facilities for SES use. They have expressed their belief that the presence of the SES also provides security for the site and its facilities.

Potential Actions and Site Design Considerations

Prior to the community consultation process neither Council staff nor the SES members of the Tweed Heads Unit were aware of the strong concerns raised by the local community, Council not having held any records reflecting the matters raised. However the SES has been working to alleviate concerns raised regarding its operations.

1. Street congestion during an emergency event can be alleviated with the relocation of "out-of-area" assistance during significant events, such as the Australia Day Flood event, to a pre-arranged marshalling area that would accommodate larger vehicles and additional personal. The SES has already commenced negotiations with a number of potential land owners.
2. Street congestion and noise impacts from sand-bagging operations will also be undertaken off-site with the implementation of mobile temporary operations in strategic locations where residents in need of sand bags can obtain sand bags locally to protect their properties.
3. On-site design consideration with the extension of the existing facilities to incorporate the provision of more on-site parking for both the SES and TUA and improving current parking areas.

4. Traffic along Pioneer Parade will also be decreased with the reintroduction of a second access to the site off Kiora Street.

Local Open Space

Lochlomond Drive Drainage Reserve is a Tweed Shire Council Park located 280m to the west of the subject site. Public infrastructure at the site lists park seating. From the subject site the Park is accessible via Kiora Street and Birnam Avenue. (See **Attachment 5**)

Banora Green Darlington Drive and adjoining Darlington Drive Parks are directly north of Lochlomond Drive Drainage Reserve across from Darlington Drive. Public infrastructure at the site lists public toilets/showers, football posts and basketball hoops, park seating and bubblers. (See **Attachment 5**)

The Parks incorporate wetland areas and bird habitat, rainforest pockets, large flat playing areas and easy access.

Potential for any further enhancement of the site would need to be investigated.

Alternatives

Only one alternative exist to the current proposal to seek long term tenure for the SES. This would be to further investigate the purchase of a new site.

As a guide preliminary enquiries with the Lismore City Council revealed that construction costs for a similar facility recently completed for the SES with a comparable membership would cost approximately \$1.7 in 2012. The cost of purchase of land would be in addition to this figure and would need to meet the criteria set by the SES.

Conclusion

In developing the strategic direction for the Tweed Shire SES facilities extensive consultation was undertaken with the local and regional units of the SES. The SES strongly supports the current location for the Tweed Heads Unit.

Following consultation with the Tweed Shire community and more specifically the local community surrounding the current facilities it is evident whilst the majority of the community supports the current location there remains some strong opposition locally.

It is considered that improved on-site car-parking and provision of a second vehicular access to the site will alleviate traffic congestion and safety issues along Pioneer Parade, in addition to the SES's intention to better manage emergency events to ensure response operations are located off-site.

Further consideration can also be given at the design stage, for any future development, to ensure the site does not provide local traffic the ability for vehicular access through the site.

In addition the majority of the community considered that public recreation alternatives exist within the local area and therefore no alternative/offsets have been sought however a significantly minority have indicated the need for better facilities. Therefore further consultation with the community could be undertaken to further explore their needs.

OPTIONS:

1. Advise the Crown Lands Division that Council has completed the requested investigations and community consultation and Council now seeks to progress the previous request to obtain long term tenure of the SES at its current location seeking in-principle support to the request to also extend the current facilities.
2. Seek an interim licence for the SES Tweed Heads Unit to occupy the land whilst Council investigates and relocates the SES Tweed Heads Unit.

CONCLUSION:

A thorough investigation of the issues raised by Crown Lands Division has been undertaken. Full community support for the existing arrangements has not been forthcoming. However it is considered with the SES addressing operational needs for significant events in view of local community concerns and the addition of further design modifications to be incorporated into any further development proposal for the site many of the issues raised can be alleviated.

Currently only \$70 000 is allocated to the future development of the site.

In view of the financial implications and the ability to alleviate local concerns the preferred option is Option 1.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.
State Emergency Services Act 1989.

b. Budget/Long Term Financial Plan:

Option 1 - \$0.5M.
Option 2 - \$1.1M - \$2.5M.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.4 Provide education and advocacy to promote and support the efforts of the police, emergency services and community groups to improve the safety of neighbourhoods and roads

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Council Report of 17 May 2011(ECM 48481035).
 2. Aerial Photograph (ECM 48481051).
 3. Survey and Supporting Information (ECM 48481052).
 4. Survey Results (ECM 48481053).
 5. Local Community Land Photographs (ECM 48481054).
-

10 [PR-CM] Planning Proposal PP11/0004 Draft Local Environmental Plan Amendment No. 96 Tweed City Shopping Centre

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP11/0004 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council at its meeting of 13 December 2011 resolved to proceed with a planning proposal for Tweed City Shopping Centre, with the conditional requirement for a prior execution of a costs and expenses agreement which has since been satisfied.

A contract for services was also entered into with Council's consultant, Parsons Brinkerhoff Australia, to assist in preparing a planning proposal, which is well underway.

Since then the proponent has purchased an additional adjoining property and wishes to include it within the planning proposal.

This report concludes that incorporation of the new property acquisition will further assist in the zoning rationalisation of the local area and lead to a more coordinated re-development of the area.

RECOMMENDATION:

That Council endorse Lot 5 in DP 830973, No. 24A Kirkwood Road, Tweed Heads South, to be incorporated into the current planning proposal PP11/0004, Draft Tweed Local Environmental Plan 2000 Amendment No. 96, subject to the prior written landowners consent of that property being provided.

REPORT:

Council at its meeting of 13 December 2011 resolved to proceed with a planning proposal for Tweed City Shopping Centre. The conditional requirement for a prior execution of a costs and expenses agreement was satisfied with execution occurring on 12 December 2011.

A contract for services with Parsons Brinkerhoff Australia was entered into on 20 February 2012 for professional services to assist in the preparation of the planning proposal, which is now well underway.

The proponent subsequently advised on 19 March 2012 that they had acquired a further property (refer illustration below), also zoned 2(b) Medium Density Residential and requests a reclassification to enable the rezoning to 3(b) General Business zones consistent with and to enable the coordinated expansion of the shopping centre.

The 'new' property, being Lot 5 in DP 830793 is a battle-axe property with a frontage of about 4.3m to Kirkwood Road, located on the north-eastern corner of the shopping centre site. The property supports a single-dwelling house with access off an adjoining private driveway, which also services the adjoining medium-density residential developments.



Figure 1 – Aerial photograph showing Lot 5 in DP 830793

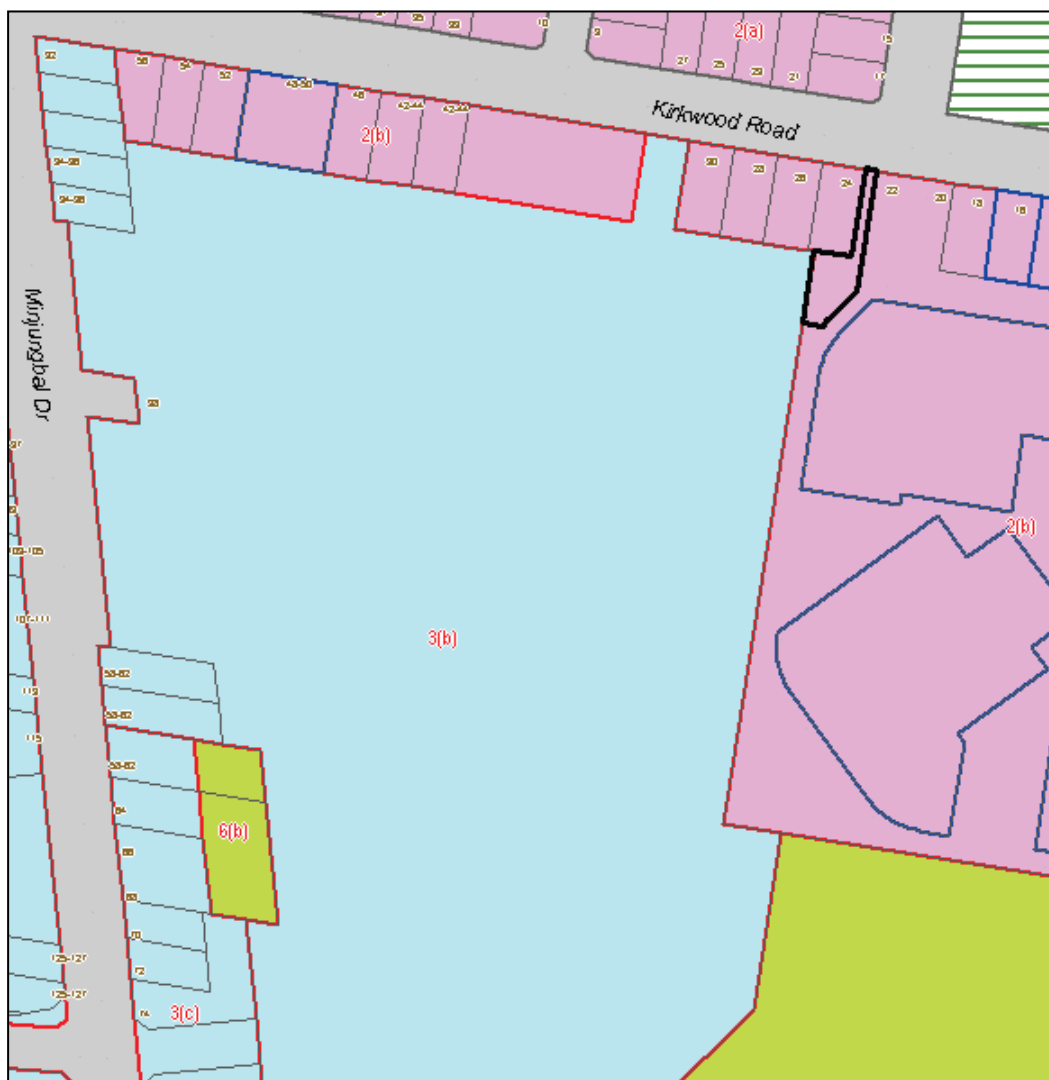
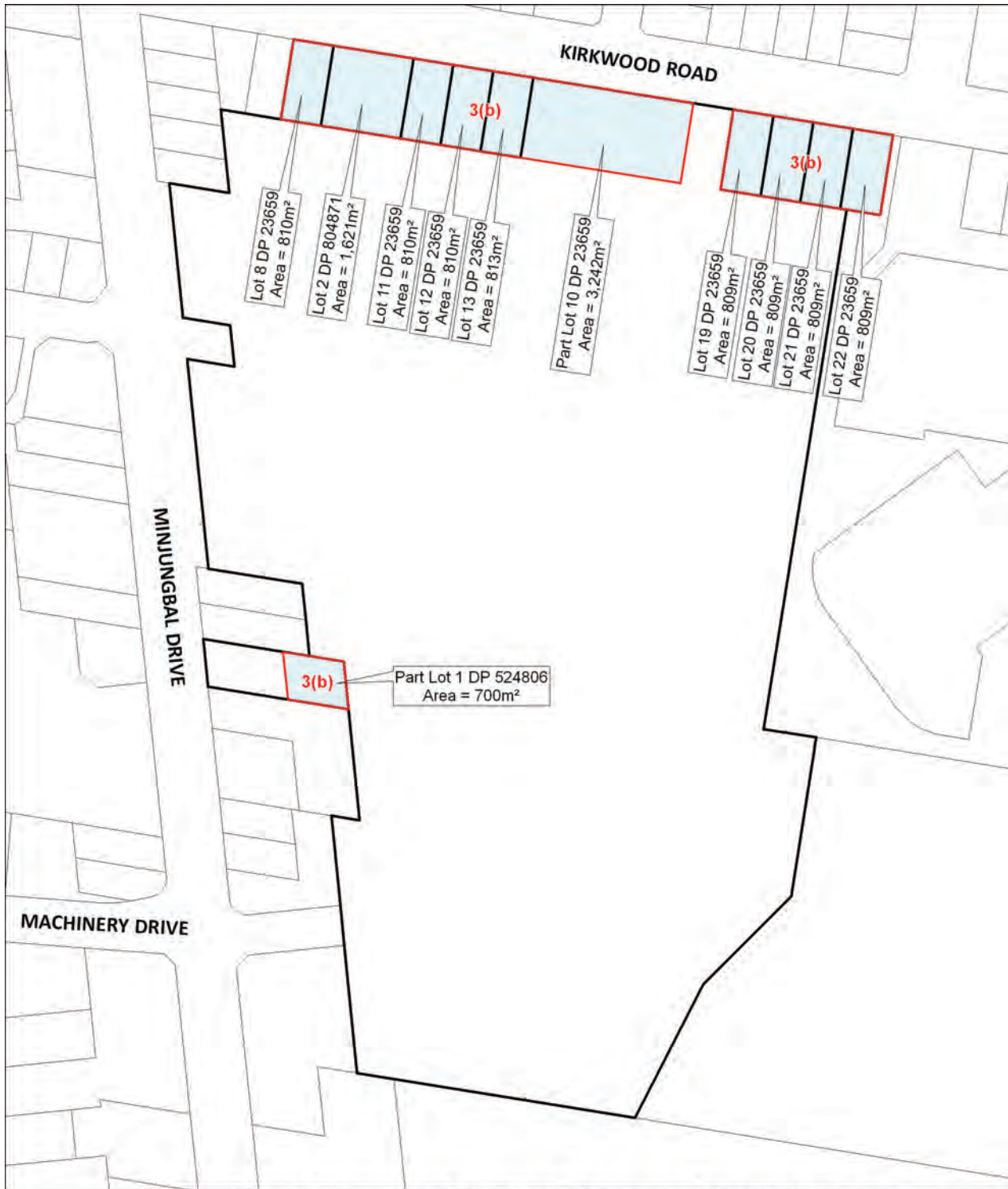


Figure 2 – location and zoning of Lot 5 in DP 830973.



Tweed Local Environmental Plan 2000 - PROPOSED AMENDMENT Figure 5

Planning Proposal PP11/0004 --- Stage 1 - Tweed City Shopping Centre

No.24-52 Kirkwood Road, Tweed Heads South (Lots 11-13 DP 23659, Lot 2 DP 804871, Lot 8 DP 23659, Lots 19-22 DP 23659)

No.38 Minjungbal Drive, Tweed Heads South (Lot 6 DP 1119624) and No.62 Minjungbal Drive, Tweed Heads South (Lot 1 DP 524806)



Affected Properties



3(b) General Business

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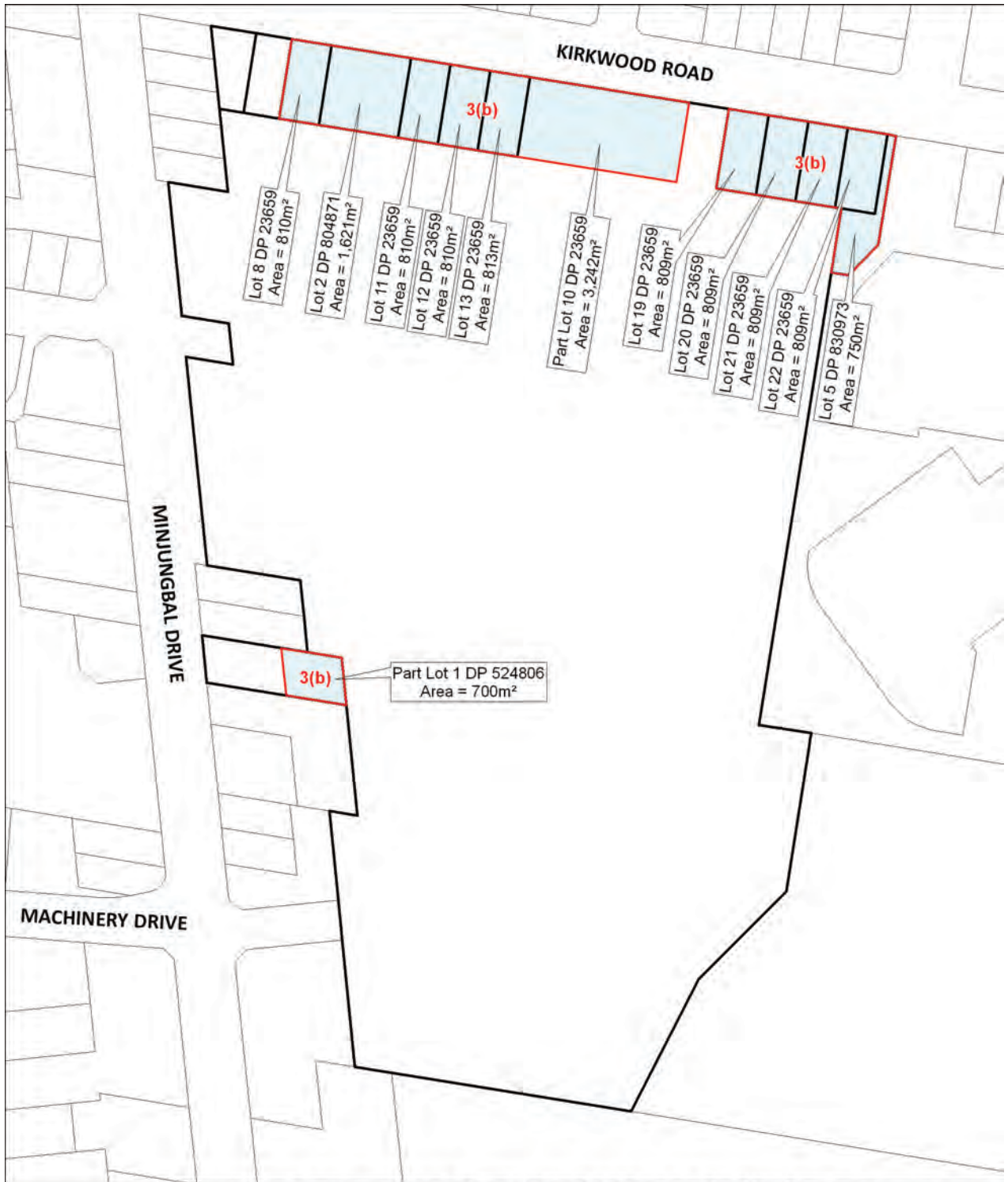
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 Horizontal Datum: Geocentric Datum of Australia 1994
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Figure 3 – Properties already in the planning proposal to be rezoned 3(b) General Business.



Tweed Local Environmental Plan 2000 - PROPOSED AMENDMENT Figure 5

Planning Proposal PP11/0004 -- Stage 1 - Tweed City Shopping Centre
 No.24-52 Kirkwood Road, Tweed Heads South (Lots 11-13 DP 23659, Lot 2 DP 804871, Lot 8 DP 23659, Lots 19-22 DP 23659)
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Affected Properties 3(b) General Business

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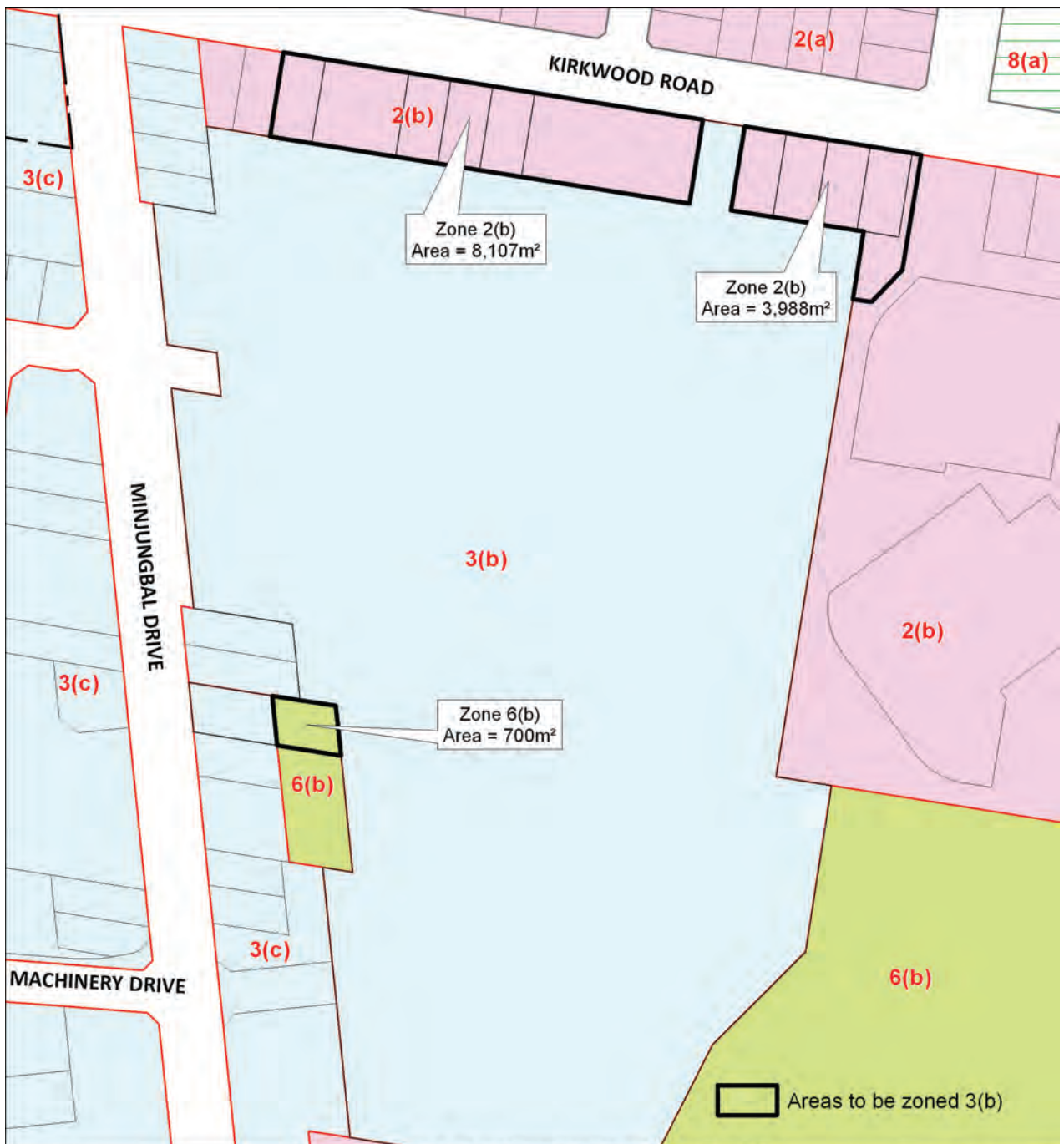
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Figure 4 – Amended plan showing all properties to be rezoned under the amended planning proposal.



Tweed Local Environmental Plan 2000 **Figure 3**
 Planning Proposal PP11/0004 -- Stage 1 - Tweed City Shopping Centre

No.24-52 Kirkwood Road, Tweed Heads South (Lots 11-13 DP 23659, Lot 2 DP 804871, Lot 8 DP 23659, Lots 19-22 DP 23659)
 No.38 Minjungbal Drive, Tweed Heads South (Lot 6 DP 1119624) and No.62 Minjungbal Drive, Tweed Heads South (Lot 1 DP 524806)

ZONING	RESIDENTIAL	BUSINESS	INDUSTRIAL	ENVIRONMENTAL PROTECTION	NATIONAL PARKS & NATURE RESERVES
RURAL	2(a) Low Density Residential	3(a) Sub-Regional Business	4(a) Industrial	7(a) Environmental Protection (Wetlands and Littoral Rainforest)	8(a) National Parks and Nature Reserves
1(a) Rural	2(b) Medium Density Residential	3(b) General Business	SPECIAL USES	7(d) Environmental Protection (Scenic / Escarpment)	DEFER
1(c) Rural living	2(f) Tourism	3(c) Commerce & Trade	5(a) Special Uses	7(f) Environmental Protection (Coastal Lands)	defer
1(b1) Agricultural Protection	2(c) Urban Expansion	3(d) Waterfront Enterprise	OPEN SPACE	7(i) Environmental Protection (Habitat)	
1(b2) Agricultural Protection	2(d) Village	3(e) Special Tourist (Jack Evans Boat Harbour)	6(a) Open Space		
	2(e) Residential Tourist		6(b) Recreation		

ADDITIONAL CONTROLS			
Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads)	Clause 41 (Heritage Conservation Area) Clause 52 (Existing and Future Dam Areas)	Clause 52 (Minimum Lot Sizes) Clause 52 (Stormwater and Fill)	Clause 53 (Schedule 3 Item) Clause 52 (Pottsville)

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TWEED SHIRE COUNCIL

Figure 5 – Current LEP 2000 zoning map showing all properties in the planning proposal.

OPTIONS:

- A. Proceed with the planning proposal as it currently stands, not recommended.
- B. Include Lot 5 in DP 830973 in the planning proposal as it further rationalises the zoning in the area and will assist in with the redevelopment expansion of the shopping centre and is recommended.

CONCLUSION:

The incorporation of Lot 5 in DP 830973 further assists with the rationalisation of urban zonings in this area and provides a logical planning outcome.

Redevelopment and expansion of the existing shopping centre will increase access to a broader range of services, employment opportunities, and will further reinforce the area as the Tweed's principal commercial retail precinct.

In the long-term the expansion of the centre will likely lead to a reduction in car travel as Tweed resident's will be able to more readily service their retail needs from within the Shire, avoiding the need to travel further afield to places like Robina Town Centre, Pacifica Fair and the like. This is considered to be a sound sustainable, social and environmental outcome.

COUNCIL IMPLICATIONS:

- a. Policy:**
Corporate Policy Not Applicable
- b. Budget/Long Term Financial Plan:**
Not Applicable
- c. Legal:**
Not Applicable.
- d. Communication/Engagement:**
Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 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:

Nil

11 [PR-CM] Planning Proposal PP10/0001 - Lot 10 DP 1084319 "Boyds Bay Garden World Site", Tweed Heads West

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0001 Pt3



Civic Leadership



Strengthening the Economy

SUMMARY OF REPORT:

This report seeks Council endorsement for an amendment to draft clause 53G under Tweed LEP 2000 as reported to Council on 20 September 2011.

The proponent for the planning proposal has requested that Council allow a gross floor space area of bulky goods retail development considerably higher (19,416m²) than that endorsed at the September Council meeting (a maximum of 10,00m²), arguing that employment generating development based around trade and industry is not a viable use for the site.

In September 2011 Council resolved to include a new clause 53G in the Tweed LEP 2000 which made specific provision limiting the gross floor area (GFA) of bulky goods retail development to 10,000 square metres.

Due to the relatively isolated location of the site, physical limitations to development, relative small size and controls to be imposed under a development control plan to be developed for the site, it is proposed that Council support an amendment to draft clause 53G which provides greater flexibility in determining the landuse composition of the site.

This report supports the proponent's request for providing a more contemporary commercial retail development aimed at providing more of a retail shopping destination, attracting both new business opportunities and customers into the Tweed.

By way of update to Council's resolution, also of September 2011, to place the planning proposal on public exhibition conditional upon receipt of Roads and Maritime Services (Formerly Roads and Traffic Authority) concurrence with the proposal and potential traffic impacts; Council is advised that due to the change in concept plan for the site and subsequent changes in trip generation rates from the site, the concurrence of RMS has not been received.

While it is anticipated that traffic matters will be resolved in the near future, should the matter remain unresolved a separate report will be presented to Council and the referral of the planning proposal to the Minister's 'Gateway Determination' system will be deferred.

RECOMMENDATION:

That Council in respect of Planning Proposal PP10/0001 – Lot 10 DP 1084319 “Boyds Bay Garden World site” Tweed Heads West approves an amendment to Draft Clause 53G in Tweed Local Environmental Plan 2000 (TLEP 2000) Amendment No. 93, as provided as Attachment 2 to this report.

REPORT:

This report seeks to amend the provisions of draft clause 53G under the Tweed LEP 2000 Amendment No.93 - 'Boyds Bay Business Park' in order to provide greater flexibility in the composition of landuses permissible on the site, and provide an update on traffic related matters.

On 20 September 2012 Council resolved that:

- "1. Council endorses the public exhibition of Planning Proposal (PP10/0001) for a change of land-use zone classification from 1(a) Rural to 3(c) Commerce and Trade and the inclusion of a new Clause 53G, at Lot 10 DP 1084319 Parkes Drive Tweed Heads West in accordance with point No.2 of this recommendation, subject to Council officers receiving prior advice from the NSW Roads and Traffic Authority and Council's Heritage Consultant in support of the Draft LEP Amendment described in this report;*
- 2. Draft Tweed Local Environmental Plan 2000 – Amendment No. 93 – Boyds Bay Garden World Site, (Planning Proposal PP10/0001) for a change of land use zone classification from 1(a) Rural to 3(c) Commerce and Trade and the inclusion of the revised Clause 53G at Lot 10 DP 1084319 Parkes Drive Tweed Heads West be publicly exhibited for a minimum period of 28 days, in accordance with the Gateway Determination dated 6 September 2010 and clause 57 of the Environmental Planning and Assessment Act 1979; and,*
- 3. Following public exhibition any public submission received in respect of the Draft Amendment No.93 is to be reported to Council along with any proposed amendments."*

Traffic matters outstanding

While matters relating to the requirements of Council's Heritage Consultant have been adequately addressed, the proponent, at the time of writing this report, had not received endorsement of the proposal and associated traffic simulation study from Roads and Maritime Services (RMS), formerly the RTA.

Delays in finalising the traffic impact study have resulted from a request from the proponent, received on 7 March 2012 to vary the landuse composition from a broad mix of light industrial, commerce and bulky goods retail, to one which is predominantly bulky goods retail. The change in concept landuse is reflected in the changes to the trip generation rates presented in Figure 1 below. This data is being reviewed, along with other documentation, by the RMS.

Traffic generation rates for various landuses vary significantly, with retail generating substantially more traffic movements than commercial or industrial landuses. The change in landuse composition and therefore traffic generation rates needs to be fully addressed to ensure that appropriate road and intersection improvements are capable of handling the increased traffic flows. This is particularly important in this location due to its proximity to the Tugun Bypass, Kennedy Dive, and other potential development sites.

Council has previously endorsed the Draft LEP Amendment No. 93 being placed on public exhibition conditional upon receiving prior advice from the RMS in support of the concept

and its likely demand however, at this stage the traffic impact modelling is still being worked through and is yet to be finalised and signed off by the Traffic Authority (RMS).

Figure 1: Extract from revised traffic generation rates for the proposed landuse composition on the site.

Land Use	Gross Floor Area (GFA) m ²	Agreed Traffic Generation Rate /100m ² GFA	Traffic Generation (trips /hr)	Total Trips (trips/hr)
Initial Land Use Composition				
Business Park	26,700	1.1	293.7	763 trips/hr
Bulk Goods	13,480	3.48	469	
Revised Land Use Composition				
Business Park	6,584	1.1	72.4	748 trips/hr
Bulk Goods	19,416	3.48	675.7	

Need for amendment of site specific LEP clause 53G

The proponent is seeking support for development of the site with a substantially increased component of bulky goods retail and therefore moving away from reliance on the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS) for their strategic land-use justification, because it is more concerned and focused on a predominate land-use type being industry and commerce, not commercial retail.

A copy of the proponent’s amended request is provided as Attachment 1.

The kind of development now proposed is likened to the established Ferry Road Markets at Southport. Given its size of about 51,000 square metres and its location the site is targeted and designed as more of a ‘destination’ providing a range of uses that is likely to include cafes or restaurants associated with useable public open space. Whilst this is not currently depicted with any certainty in their concept plan discussion with the proponent has been on the understanding that a detailed site master-plan will need to be prepared for the DCP. It is generally accepted that the role of the current concept plan is test the upper threshold limits of development capability rather than providing a schematic concept of what will actually occur and be approved through the DCP and development application stage.

While the TUELRS acknowledges the need for diversification of landuses and employment opportunities in the delivery of employment land which could include industrial, business park and commercial/professional services styled developments, retail development, as mentioned above, was not, as stated in the Strategy, to the predominant land-use.

Notwithstanding the apparent inconsistency with Council’s Strategy, the Planning Proposal submitted to the Department of Planning and Infrastructure received a Gateway Determination supportive of a rezoning to 3(c) Commerce and Trade zone under the Tweed LEP 2000, in which the primary objective is:

“to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.”

In 2009, the TUELRS presented outcomes predicated upon the very best information at the time; however, Council is now privy to more detailed economic demand analysis provided by the proponent which suggests that the Tweed is currently experiencing an undersupply of bulky goods retail floor space which is anticipated to increase over the next 10 years.

While the site remains suitable for employment generating purposes, it is proposed that the composition of landuses possible on the site be varied to better reflect current market responsive economic drivers. It will also provide for new employment opportunities.

Apart from any specific reference to this site, the ability to be flexible in the composition of landuses on employment generating lands is seen as an important component of future strategic planning of the Tweed. The creation of a B7 Business Park zoning (under the Standard Instrument template), an improved translation to the current 3(c) Commerce and Trade zone is a format currently not available in the Tweed, but one which is seen as important for creating more employment generating opportunities and contemporary employment generating destinations.

Draft clause 53G ‘Boyds Bay Business Park’ was developed to provide Council with both certainty about the composition of development on the site, compatibility with adjoining and other employment generating developments in the Tweed, yet permit greater flexibility to meet prevailing market demands and trends.

While the proposed composition of the site has now changed significantly, the employment generating potential of the site has been retained if not improved, and given the small scale of the site in comparison to the established centres of Tweed Heads and Tweed Heads South the proposed use of the site will not likely to be significant or widespread. This can be further controlled through appropriate provisions in the DCP.

The Key Change Sought by the Proponent

Draft clause 53G as previously reported to Council made specific reference in one of the provisions to limit the gross floor area (GFA) of bulky goods retail development to 10,000m², with the additional requirement that the minimum area of any individual premises not being less than 2500m².

The proponent’s have since advised that their further economic and market evaluation of the site to sustain development of retail operations of the scale proposed in the Draft clause 53G would not be economically viable nor would the resultant development suit the current business demands. A request was made to increase the floor space of the commercial retail component to about 20,000m².

Figure 1 above shows a comparison between the floor space demands already resolved on by Council, and forming the basis of the current proposal, and those now sought as an amendment to the proposal.

In summary, the table shows that the collective floor area of all uses fundamentally the same. The substantial difference lies in the allocation of the space so that the bulky goods

component increases from 13,480 to 19,416m² GFA and the business park component reduces from 26,700 to 6,584m² GFA. Looking at the total GFA difference between the two concepts it can be seen that current proposal has a GFA of 40,180m² whereas the amended concept has 26,000m², which is an overall decrease of 14,180m². This is not necessarily observable in the concept plans, most likely because the GFA or 'floor space' has been redistributed from more of a two-storey development to predominantly single-storey. This is not an ideal situation because it limits available land for landscaping, parks and the like, and the applicant will need to show a more balanced approach in preparing a site masterplan for the DCP.

The requested amendment represents a significant shift from a development dominated by a range of land-uses comprising commerce, industry and trade to a development dominated by commercial retail (bulky goods) and office space. This will result in a different building configuration also, as highlighted in the concept plans shown in Figure 2 and Figure 3 below.

Figure 2: Original concept plan based around development of a mixed use dominated by business park land-uses with an ancillary or subservient commercial retail element.



Figure 3: Revised concept plan based around development dominated by commercial retail (bulky goods) with ancillary office space.



In line with the general intention of providing greater flexibility in the planning and development of employment lands within the Shire and specifically in relation to this site and the particular locational constraints affecting the site it is proposed to modify draft clause 53G by removing sub-clause 6 which refers to maximum permissible floor spaces and insert into sub-clause 5 Development Control Plan provisions which require this matter to be dealt with in detail at the Development Control Plan and later the development application stage.

The inclusion of a site specific DCP and concept masterplan in clause 53G provides Council with the opportunity to be flexible in developing a plan for the site which is responsive to market indicators and provides detail relating to a range of considerations which will include the landuse mix.

It is proposed that draft clause 53G be amended by:

1. Amending the aims, and
2. Amending of objectives as they relates to consistency with the TUELRS, and
3. Insert a new subclause making 'shops' permissible in the zone, and
4. Insert requirements for the composition of landuses to be defined under the DCP, and
5. Remove sub-clause 6 as it relates to limitation on retail development.

A copy of the draft Clause as part of the Draft Tweed Local Environmental Plan 2000 (Amendment No 93) is provided as Attachment 2.

OPTIONS:

Options for consideration include:

- a) Endorse the proposed amendments;
- b) Maintain the current draft clause; or
- c) Resolve on an alternative to (a) and (b) above.

CONCLUSION:

The proponent has requested a variation in the proportion of the site covered by bulky goods retail development, presenting draft concept plans showing a gross floor area of about 20,000m².

While an increase in commercial retail (bulky goods) floor space is not entirely consistent with the general focus of the TUELRS the proponents request does not seem unreasonable nor totally out of step with the strategic development of key sites within the Tweed. This is supported in part for this site by it being relatively isolated, having a comparatively small site area for this kind of business park and because appropriate design considerations can be incorporated into the site specific DCP.

This report recommends that Draft clause 53G "Boyd's Bay Business Park" in the Draft Tweed LEP 2000 Amendment 93 be amended to provide greater flexibility in the establishment of an appropriate land-use mix that takes into consideration the particular characteristics of the site.

Endorsing the recommendation is an acknowledgment that the proposal is not consistent with and is therefore not fully supported by the Tweed Urban and Employment Lands Strategy. It will also recognise that in prevailing economic conditions and changes in demand for services that the proposed development, as modified, is acceptable.

COUNCIL IMPLICATIONS:

a. Policy:

While this amendment is not wholly consistent with the TUELRs the recommendation of this report stems from a more detailed site specific investigation.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.1 Ensure actions taken and decisions reached are based on the principles of sustainability
 - 1.1.1 Establish sustainability as a basis of shire planning and Council's own business operations
 - 1.1.1.2 Advancement of the Council wide and Tweed City Centre Draft Local Environmental Plans (LEPs)
 - 1.1.1.2.1 Prepare Draft LEPs in accordance with the sustainability objectives of the Environmental Planning and Assessment Act 1979 and other relevant legislation
- 3 Strengthening the Economy
 - 3.4 Provide land and infrastructure to underpin economic development and employment
 - 3.4.1.1 Supply of employment lands

UNDER SEPARATE COVER/FURTHER INFORMATION:

- 1. Applicant's submission for variation to land use composition (ECM 48439303).
 - 2. Draft Tweed Local Environmental Plan 2000 (Amendment No 93) (ECM 48439314).
-

12 [PR-CM] Response to a Notice of Motion - Sustainability Development Control Plan

SUBMITTED BY: Planning Reforms



Civic Leadership



Caring for the Environment

SUMMARY OF REPORT:

This report responds to a Notice of Motion brought forward by Councillor Milne that was endorsed by Council at its meeting of 11 October 2011 regarding the development of a Sustainability Development Control Plan for medium to large subdivisions utilising a sustainability assessment tool for subdivisions.

This report also considers the value of a sustainability assessment tool and concludes that there is presently no universal sustainability assessment tool available suitable to the Tweed context. Those tools that have been reviewed have been specifically tailored to suit the conditions within the limited areas of application for which they have been designed.

Developing a tool for the Tweed, while likely to have its benefits in the assessment of subdivisions, would likely be resource intensive and costly, and there are no examples indicating a notable benefit over using traditional controls through a Development Control Plan (DCP) from an assessment perspective.

This report recommends that whilst there are no existing tools appropriate for adoption, the Green Building Council's Community tool, which is still under development, could be more universally used by subdivision developers seeking green star accreditation. Further, there is opportunity when resources become available, to further build upon existing sustainability and urban design principles into Tweed Development Control Plan, Section A5 – Subdivision.

RECOMMENDATION:

That:

- 1. The report to a Notice of Motion - Sustainability Development Control Plan be received and noted.**
- 2. Council supports a review of Development Control Plan (DCP) A5 – Subdivision Manual, be undertaken, as soon as resources permit and to build upon existing sustainability and urban design principles.**

REPORT:

Council at its Meeting of Tuesday 18 October 2011 endorsed a notion of motion brought by Councillor Milne which stated:

"RESOLVED that Council brings forward a report on developing a Sustainability Development Control Plan for medium to large subdivisions utilising a sustainability assessment tool for subdivisions."

This report has been prepared in response to that notice of motion.

Existing Sustainability Tools

There is significant research on rating tools and policy advice currently available with regards to sustainability and the development of communities or more specifically urban release subdivision areas.

As part of the Green Building Councils Communities Green Star Rating Tool initiative, Aurecom Pty Ltd were commissioned to undertake a review of existing assessment and rating tools and assess them against a set of evaluation criteria. The purpose of this review was to determine if the GBCA could utilise an existing tool or suite of tools, or whether it was necessary to create a new rating tool. As part of that research, over 60 existing rating tools were interrogated against a number of principles including: enhanced liveability, economic prosperity, environmental responsibility, design excellence and leadership and governance.

The outcome of this research was that due to the varying contexts and specific set of criteria and indicators specifically developed for each of the 60 organisations, there was no one suitable existing tool (nationally and internationally) that appropriately considers all of the issues within the Green Star National Framework.

As part of the preparation of this Council report, three rating tools were reviewed for relevance or potential adaption for Tweeds context. These tools included:

- Landcoms Precinx Tool;
- Green Building Council's Communities Rating Tool, and
- VicUrbans Sustainable Communities Rating Tool.

Landcoms – Precinx

Released for internal (Landcom) use in 2009, Precinx is a mathematical diagnostic tool that aims to assist developers plan and design sustainable communities by modelling key environmental, economic and social indicators. It comprises six interdependent modules including:

- Onsite energy
- Embodied CO2
- Potable water
- Stormwater
- Housing diversity
- Transport.

These are then fed into four key performance indicators:

- Greenhouse gases (tonnes CO₂/year)
- Potable water (kL H₂O/year)
- Total affordability (\$/week)
- Vehicle hours travelled (hours/week)

Discussions with Landcom have indicated that Precinx is more of a design tool rather than an assessment tool. The tool has been designed to allow the user to test sustainability performance or outcomes by varying or calibrating inputs. The data sets which have been developed for Precinx relate specifically to the Sydney conditions in terms of climatic and infrastructure data.

Despite requests to procure the tool to test within the Tweed context, these requests have been denied due to the incompatibility of the data and mathematical modelling as it specifically applies to the Sydney condition. Notwithstanding this Landcom have extended an invitation for a Tweed Council delegation to visit Landcom offices in Sydney to get a first hand account of how the system operates followed by a site inspection of some of Landcoms more recent subdivision estates.

Despite the tool being calibrated to the Sydney condition, a further interrogation of the tool may reveal that a common set of indicators or sustainable design principles could be derived from the parameter indicators and adapted to the Tweed condition.

Green Building Council – Communities

Set for release mid 2012, Green Star Communities will be a voluntary rating tool which purports to provide best practice benchmarks and third-party verification of the sustainability of community and precinct-wide developments. As such it will largely be aimed at developers and designers seeking to verify sustainability and green credentials of subdivision and community development sites.

The GBC ratings tool will assess in six categories: Liveability; Economic Prosperity; Environmental Responsibility; Design Excellence and Leadership; Governance; and Innovation. Within each category a number of criteria are allocated points. To gain points for a credit, a project team must complete documentation requirements that demonstrate they have met the aims of the credit. The points assigned to each credit are tallied and translated into an overall single Green Star rating.

Without being able to view or operate the final green star communities rating tool, it is difficult to determine its relevance or adaptability for the Tweed context. As such it is recommended that upon the release of the tool, Council further interrogate its content.

If the GBC Communities rating tool becomes as well recognised in the industry as the other existing GBC Green Star Tools, it will be a valuable inclusion as part of a developer's subdivision application to Council or other consent authorities. The inclusion of a green star rating and supporting documentation of the proposed developments performance set against green star rating criteria would in many ways justify or verify compliance with best practice sustainability and design criteria.

Vic Urban Sustainable Communities Rating Tool

The VicUrban Sustainable Communities Rating Tool is an initiative from the 2004 VicUrban Sustainability Charter. As with most other state wide documents the overall aims and intent is broad. It sets out to establish a framework for the design and delivery process to assist with the creation of sustainable residential and mixed use communities. It also provides developers of new communities with a common design assessment framework based on the following five interrelated objectives:

- Community well being
- Housing affordability
- Commercial success
- Urban Design excellence
- Environmental Leadership

The VicUrban Sustainable Community Rating is a voluntary self-assessment framework comprising objectives and assessment tools for the development of new communities primarily at the project planning stage. The framework's performance measures aim to identify best practice for the development of new communities at different stages of a developments evolution.

During the early planning stage, as opportunities, constraints and vision for a community are established; developers can use the assessment tool to create a *Community Goal Setting Report*. The *Community Goal Setting Report* or *vision report* then provides the basis against which the development is monitored during the following design development and delivery stages. This establishes a 360 degree review process to ensure the original visionary and strategic objectives are translated and embedded throughout the design process (*source: www.sustainablecommunityrating.com*).

Whilst this sustainable communities rating tool is aimed primarily at the designing stages, the comprehensive framework of design principles, objectives and measurable targets could potentially be adopted or reviewed within the context of reforming DCP A5 – Subdivision Manual. This is particularly the case in terms establishing the more qualitative and community based elements of subdivision design to be considered along side of engineering and infrastructure centric objectives.

Relevance of a Subdivision Ratings Tool for Tweed Council

Many of the existing subdivision or community assessment rating tools have been developed for a specific scale (state-wide rather than localised) or for a specific location or climatic condition. The disjunct between scales, climatic and contextual locations means that many of the existing assessment tools are generally broad in intent and ineffectual by location. As such there is currently no one subdivision design or assessment tool in existence that is readily translatable to the Tweed condition.

The actual use of the subdivision ratings tools also needs to be considered in terms of Councils primary role in developing policy and assessing subdivision development applications. Most of the ratings tools are aimed at being initiated during the early phases of a development process. As such many of the existing ratings tools are aimed more at developers and designers as a design rather than as an assessment tool.

Given the complexity of most ratings tools, the development of one which is specific to the Tweed would give rise to a number of ongoing resource and maintenance considerations in terms of set up costs and data input of each new subdivision application. Further, in addition to potentially managing an assessment tool, Council would still need to process and provide a full merit assessment of any application against the existing planning framework. In this regard the assessment tool would only serve to supplement that process.

Most existing tools operate on an input of data which is then translated into a rating via a mathematic model based on qualitative and quantitative parameters. The very nature of this framework is therefore best suited as a design tool, where different components can be inputted and calibrated until a desired outcome is achieved. The relevance of a ratings tool for assessment where time and resource intensive data would need to be inputted by the consent authority to ensure parity, to determine star measure of a projects success or failure would somewhat undermine the original intent of embedding good design early in the process.

Notwithstanding the above there is one clear outcome that can be drawn from the review of subdivision ratings tools; that Council can more closely review the indicators and parameters used by the existing assessment tools, and translate these into key design principles which could be included within a future review of DCP A5 – Subdivision Manual.

CONCLUSION:

The notion that sustainability should integrate every aspect of Council's public service is embedded within the adopted Community Strategic Plan. As such, there is an underlying responsibility that appropriate principles of sustainable development are also strengthened and embedded within our strategic planning framework to meet a range of civic leadership and caring for the environment objectives and performance targets.

It is felt that the integration of contemporary best practice sustainability and urban design principles into the existing strategic planning framework will be far more effective than developing a stand alone Sustainability Development Control Plan / Assessment Tool for medium to large subdivisions. A stand alone sustainability document would ultimately be ancillary to existing documents and at times overlap or duplicate information currently contained within existing planning documents. This would in turn necessitate the need to then revise all other existing documents to remove the duplications and overlaps which would be a resource intensive process.

Reforms to the existing DCP A5 – Subdivision Manual to build upon existing sustainability and urban design principles will be one way to facilitate this sustainability outcome. The reforms could look at establishing a core set of contemporary best practice sustainability and urban design principles and establish an underlying methodology of undertaking a subdivision development within the Tweed. There is opportunity for any review of DCP A5 – Subdivision Manual to be a collaborative effort between the Divisions of Engineering and Operations and Planning and Regulations, when resources become available.

COUNCIL IMPLICATIONS:

a. Policy:

- Review Development Control Plan A5 – Subdivisions within the short term
- Review Tweed Urban and Employment Lands Release Strategy as part of the 5 year review cycle
- Initiate Local Growth Management Strategy.
- Submission to the Department of Planning with regards to the review of the Far North Coast Regional Strategy in the short term.

b. Budget/Long Term Financial Plan:

- Review budget requirements to review DCP A5 – Subdivision Manual with Planning Reforms and Engineering Services 2012/2013 budget
- Review budget requirements to initiate Tweed Local Growth Strategy.

c. Legal:

Not Applicable.

d. Communication/Engagement:

- Interdivisional consultation with regards to A5 – Subdivision Manual with broader industry and community consultation as part of the reforms process.

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
 - 1.1.1.5 Assessment of new developments, subdivisions and building works (Development Engineering unit)
 - 1.1.1.5.1 Assessment in accordance with the sustainability objectives of the Environmental Planning and Assessment Act 1979, Local Government Act 1993 and other relevant legislation
- 4 Caring for the Environment
 - 4.1 Protect the environment and natural beauty of the Tweed
 - 4.1.3 Manage and regulate the natural and built environments

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

13 [PR-CM] Response to a Notice of Motion - Policy Obstacles and Opportunities for Roadside Stalls

SUBMITTED BY: Planning Reforms



Civic Leadership

SUMMARY OF REPORT:

This report responds to a Notice of Motion brought forward by Councillor Milne that was endorsed by Council at its meeting of 24 January 2012 regarding obstacles to, and options for encouraging the roadside sale of fruit and vegetables, within Council's land-use policy framework.

This matter was first reported to the Executive Management Team Meeting of 7 March 2012 where the recommended actions detailed in the report were approved.

This report recommends a number of actions aimed at improving the public awareness of roadside stalls and the development (approvals) process. It also recommends that no immediate policy be adopted in relation to changes concerning the expansion of the use of roadside stalls in additional zones. This will be further looked at in the drafting of the Standard Instrument LEP, which incorporates a new model definition and broadening of land where roadside stalls would be permitted.

RECOMMENDATION:

That Council:

- 1. Endorses the recommended actions within this report relating to roadside stalls comprising of:**
 - a) The short-term response for encouraging roadside stalls is to provide an information sheet that clearly sets out where they are permissible and the requirements for obtaining an approval,**
 - b) To foster greater knowledge and use of roadside stalls by establishing a tourist road map accessible through the Council's web site. This would comprise:**
 - A shire map pin pointing the location of the roadside stalls**
 - A drop-down box that would list the key produce sold**

- **A series of tourist drive maps based on the location of roadside stalls with interactive features such as a photograph of the stall, background about the owners and the history of the farming activity and a full list of the produce available from the stall.**

- c) In response to the growing demand and relevance of urban agriculture, identifies a policy approach in the Planning Reform's work program for formal consideration.**

- d) Provides specific actions and recommendations for increasing the awareness and general access to local produce as part of the Sustainable Agriculture Strategy currently being prepared.**

REPORT:

Councillor Milne's Notice of Motion - Endorsed by Council at its meeting of 24 January 2012,

"RESOLVED that a report be brought forward on:

1. *Potential obstacles in the current policies applying to road side fruit and vegetables stalls, and*
2. *Appropriate recommendations to improve these policies with the aim of encouraging such activities."*

The Tweed LEP 2000 defines the term as:

roadside stall

a building or place not exceeding 20m² in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.

There are probably four limbs to this definition that are noteworthy, the first three being:

- a. must be co-located on the property where the produce is grown;
- b. it relates to private property, that is, not the roadside-reserve as that is typically owned by Council and would breach point 'a';
- c. is restricted to an allowable area or space not exceeding 20m²; this has been interpreted to include the stall area where produce is exposed / sold and not including the carparking, turning areas, driveway or the like.

It is these features above that operate to limit the encouragement or 'take-up' of roadside stalls generally. With a possible exception to point 'c' these features operate as a prohibition whereby a failure to comply with any one of them (a+b) results with the proposed use falling outside of the term and thus prohibited.

The exception to point 'c' may exist as it arguably operates as a development standard by virtue of it fixing a requirement or "standard". If that construction is correct, a roadside stall could be larger than 20m² if supported by a SEPP 1 objection and 'a'+ 'b' are satisfied.

The further important limb is 'd':

- d. primary products need to be produced on the land.

A general interpretation of the LEP as a whole alludes to a conclusion that "primary products" are the result of "agriculture".

The Tweed LEP 2000 defines the term as:

agriculture

includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry or bees, and the growing of fruit, vegetables

and the like. It does not include forestry, or the use of an animal establishment or a retail plant nursery

If, accepting the general interpretation as correct, primary products are the result of “agriculture,” as that definition indicates it is, then there would be no practicality in permitting a roadside stall unless agriculture is also permitted.

The opportunity which presents itself on the face of this relationship between the terms would be to permit roadside stalls in zones where agriculture is allowed however, as touched briefly below there are likely to be sound reasons why that has not occurred previously.

The table below shows the zones where roadside stalls are currently permitted.

Tweed LEP 2000		
Zone	Permissibility Roadside stall	Note
1(a) Rural	✓	
1(b) Agricultural Protection	✓	
1(c) Rural Living	✓	
2(a) Low Density Residential	✗	
2(b) Medium Density Residential	✗	
2(c) Urban Expansion	!	cl 8(2) Pre-requisite
2(d) Village	✓	
2(e) Residential Tourist	✗	
2(f) Tourism	✗	
3(a) Sub-regional Business	✗	
3(b) General Business	✗	
3(c) Commerce and Trade	✗	
3(d) Waterfront Enterprise	✗	
3(e) Special Tourist (Jack Evans Boatharbour)	✗	
4(a) Industrial	✗	
5(a) Special Uses	✗	
6(a) Open Space	✗	
6(b) Recreation	✗	
7(a) Env Protection (Wetlands and Littoral Rainforests)	✗	
7(d) Env Protection (Scenic/Escarpment)	✓	
7(f) Env Protection (Coastal Lands)	✗	
7(l) Env Protection (Habitat)	✗	
8(a) National Parks and Nature Reserves	✗	

There are several zones where agriculture is permitted but roadside stalls are not. Those zones; 5(a), 6(a), 6(b), 7(a), 7(f) and 7(l) are neither ordinarily associated with agricultural activities nor are the primary objectives for each zone designed to encourage agriculture as the predominant (primary purpose) use.

Whether permitting roadside stalls within those zones is broadly acceptable or not is unclear and further research would be required. However, based on a preliminary review of where these lands are generally located, and their apparent current usage comprising; infrastructure, environmental protection and open space, it would seem very unlikely that permitting roadside stalls in these zones would result in a noticeable increase in the number of roadside stalls or result in greater access to local produce. If this view is incorrect and roadside stalls would lead to an increase then it is also probable that pressure would be put on the primary objective compromising the purpose of the zone, for example agricultural pursuit could lead to encroachment into / abutting sensitive environmental lands, may lead to further land clearing, a reduction in quality active open space or the like.

Rather than extending the use of the term into other zones with the risk of potentially affecting the primary purpose the better practice may be seen as to permit roadside stalls on land where the produce is not actually grown but, where the zoning permits agriculture anyway.

One of the issues that has been encountered in reviewing material for this report is that farmers who do not have access to a primary road consider that a low passing trade would make the cost of securing a DA approval, set-up and ongoing maintenance, not viable. Allowing a producer in that context to operate a roadside stall from an adjoining property with better access to a main road or to a greater extent access to a further property with that access would likely improve the viability of roadside stalls for producers.

This would require a significant change to the current definition and this can only occur through an amending LEP, which is very unlikely to occur in the current policy climate because the NSW Government's Standard *Instrument (local environmental plans) Order 2006* provides a mandatory definition for roadside stall that is in very similar terms; further ensuring the remoteness of a possible amendment as that would require a change in the legislation itself and would be characterised by a significant shift in the State's roadside stalls policy. This would have implications for all NSW councils.

However, the new definition does go some way to embodying the changes discussed above and will improve the desirability for some producers.

The DLEP defines the term as:

roadside stall

means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

Note. See clause 5.4 for controls relating to the gross floor area of roadside stalls. Roadside stalls are a type of **retail premises**—see the definition of that term in this Dictionary.

Clause 5.4, as referenced in the note to the definition says:

5.4 Controls relating to miscellaneous permissible uses [compulsory]

- (8) **Roadside stalls** If development for the purposes of a roadside stall is permitted under this Plan, the gross floor area must not exceed 30 square metres.

This new definition will make three noticeable changes:

- i. It permits the stall to be located on an “adjacent property,”
- ii. The gross floor area will increase from 20m² to 30m²; and,
- iii. The sale of “hand crafted goods” is also permitted.

Summarising the salient issues it can be seen that there are several policy limitations or obstacles:

- i. The definition of roadside stall is inclusive to those lands where produce is grown;
- ii. Roadside stalls are not universally permitted on land where agriculture is permitted and this seems to correlate with the primary objectives of those zones;
- iii. Broadening the permissibility of roadside stalls under the LEP would require further research and an amendment. It would however be inconsistent with the approach currently being pursued through the standard instrument LEP and would not likely be supported.
- iv. There would be no benefit in permitting roadside stalls on land where agriculture is also not permitted under the current LEP definition.
- v. Expanding into less traditional areas of urban agriculture requires a significant amount of research and policy development.
- vi. Other options for increasing access to local produce may exist beyond that provided by roadside stalls and this is discussed in greater detail below.

The following **recommended actions** stem from the assessment of the current policy framework above:

- a) The short-term response for encouraging roadside stalls is to provide an information sheet that clearly sets out where they are permissible and the requirements for obtaining an approval,
- b) To foster greater knowledge and use of roadside stalls by establishing a tourist road map accessible through the Council’s web site. This would comprise:
 - A shire map pin pointing the location of the roadside stalls
 - A drop-down box that would list the key produce sold
 - A series of tourist drive maps based on the location of roadside stalls with interactive features such as a photograph of the stall, background about the owners and the history of the farming activity and a full list of the produce available from the stall.
- c) In response to the growing demand and relevance of urban agriculture a policy approach is to be identified in the Planning Reform’s work program for formal consideration by Council.
- d) That the Sustainable Agriculture Strategy being prepared by the Natural Resource Management Unit be directed to provide specific actions and

recommendations for increasing the awareness and general access to local produce.

OPTIONS:

Nil.

CONCLUSION:

There is no central way of improving the attractiveness of roadside stalls for primary producers or making local produce more widely available and accessible to the community.

The main areas where agriculture is most commonly found is within the rural and agricultural zoned areas of the Shire, which represent about 97,487.72ha (63.96%), comprising the Rural 1(a) & 1(c); Agricultural 1(b1) & (1b2).

Roadside stalls are therefore permissible on the majority of zoned land within the Shire.

Although the analysis shows that over 60% of the Shire is designated for rural and agricultural use in practice many of these properties, more so the rural zoned ones, have been urbanised, with rural lifestyle seekers taking advantage of the relatively small size of many of these blocks and building houses.

Preliminary assessment indicates that many of those are not producing fruit and vegetables above a domestic level, those that are seem to be in the minority. Nevertheless, unlike the urban zones and their myriad competing use for land supply, the rural and agricultural zoned lands are largely unfettered in their ability to farm and sell their produce by way of roadside stall.

The greatest obstacle that seems to present itself in the rural and agricultural zones is not so much the LEP restrictions, although it is acknowledged in this report that it is a contributing factor, or the need to obtain development approval but rather:

1. Genuine cases where access off the public road is not achievable or uneconomical, and
2. Where the position or location of the access is seen to be too remote from the public road to take advantage of passing trade.

There are key areas that can be improved on to alleviate those issues, including; improved access to information for primary producers on the process for gaining approval for a roadside stall, implementing the standard order LEP with its new definition, and providing useful information through a web portal to the broader community on where roadside stalls are located and what produce is available for sale.

This latter recommendation would be a useful tourism tool for encouraging day trippers to the Tweed to follow a roadmap of stalls maximising the enjoyment of their visit and contributing to the local produce economy.

This report recommends key actions for achieving the above.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No budget allocation exists for any policy development in this area.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

14 [PR-CM] Development Application DA11/0499.01 for an Amendment to Development Consent DA11/0499 for a Medical Centre Including Specialist Consultation (eg Speech Pathology), Pharmacy, Kiosk and Administration Facilities at Lot 5 DP 1113248; No. 33-35 Corp

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0499



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a S96(1A) Modification seeking approval to vary two conditions of consent that were imposed on DA11/0499 which approved a GP Super Clinic in Corporation Circuit, Tweed Heads South.

The first condition that the applicant has requested a variation to is Condition 16(a) which applied the S94 No. 4 Tweed Road Contribution

DA11/0499 approved 2 March 2012 requires the payment of \$419,559. This is based on 318.33 daily trips (as determined by the applicant's traffic report and Council S94 Plan No. 4) times the current TRCP rate of \$1318 (Version 6).

The applicant originally requested that the rate applied (\$1318) be reduced to \$656 which they claimed was the rate applicable as at the time of lodgement of the DA on 17 October 2011. This would have equated to a contribution of \$208,824. However the rate of \$656 was not the correct rate for the Tweed Heads South Sector and therefore this figure was never accurate and should never have been used as an estimate by the applicant.

The applicant was made aware of this matter and has since acknowledged the error and requested that the current S96 request the Tweed Road Contribution be reduced to \$936 (Version 5.2) which was the applicable rate at the time the DA was lodged (17 October 2011). This would have equated to a contribution of \$297,956.

S94 Plan No, 4 Tweed Road Contribution Plan Version 6 was adopted by Council on 24 January 2012 and became effective on 1 February 2012. At that time all previous versions of the plan (including Version 5.2) was repealed. Accordingly Council cannot lawfully apply the contribution rates as contained in Version 5.2 as this document no longer legally exists. This is demonstrated by Clause 94 B of the Environmental Planning & Assessment Act 1979 which states that

94B Section 94 or 94A conditions subject to contributions plan

- (1) *A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).*

This is not the first time that applicants have been subject to amended contribution plans. This occurs every new financial year, whenever the plans are updated, and as a result of the need for fees to be recalculated after 12 months from the original date of calculation. The developers of "The Point" at Hastings Point were affected by a similar amendment to the Tweed Road Contribution Plan and had to find additional funds to cater for the amendment.

The levying of contributions needs to occur lawfully and consistently to ensure all developers are treated equally. The only way for this to occur is for applications to be levied against the lawfully applicable contribution plan. In this instance the only lawful plan is S94 Plan No. 4 Tweed Road Contribution Plan Version 6 which results in the application being levied \$419,559 as nominated in DA11/0499.

The only lawful mechanism to assist the applicant is if Council resolved to fund the TRCP difference (\$121,603) as a result of adopting S94 Plan No. 4 TRCP Version 6 effective 1 February. However, this could set a precedent for other developers to apply for similar financial assistance.

The second condition that the applicant has requested a variation to is Condition 18 which requires a bond to rectify any non compliance with the conditions of this consent. The applicant has claimed that the bond would apply for the total cost of works and is unreasonable. The 1% is calculated on the cost of the public infrastructure constructed for the development not the private works. In other words no bond is required for works such as private buildings, private access ways, private sewer and water reticulation or private stormwater drainage. Council has consistently applied this condition on this basis for many years. Accordingly the bond would be relatively small given the minor public works proposed.

Council Officers have reviewed these requests and concluded that both conditions have been applied in accordance with standard Council processes and policies and accordingly the S96(1A) is recommended for only partial approval to clarify the interpretation of Condition 18 only. It is recommended that condition 16 remain unchanged.

The application has been called up to Council for consideration by Councillor Warren Polglase.

RECOMMENDATION:

That Development Application DA11/0499.01 for an amendment to Development Consent DA11/0499 for a medical centre including specialist consultation (eg speech pathology), pharmacy, kiosk and administration facilities at Lot 5 DP 1113248; No. 33-35 Corporation Circuit, Tweed Heads South be amended by:

- 1. Deleting Condition No. 18 and replacing it with Condition No. 18A which reads as follows:**

18A Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the public infrastructure constructed for the development (not less than \$1000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Occupation Certificate is issued.

[PCC0275]

2. No amendment is recommended to Condition No. 16 as:

- 1. Section 94B of the Environmental Planning & Assessment Act 1979 states that the Consent Authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).**
- 2. Condition 16(a) has been applied in accordance with adopted S94 Plan No. 4 Tweed Road Contribution Plan (Version 6) and the plan does not permit variations.**
- 3. The proposed amendment to condition 16(a) is contrary to the general public interest.**

REPORT:

Applicant: Ausjendia Pty Ltd
Owner: Ausjendia Pty Ltd
Location: Lot 5 DP 1113248; No. 33-35 Corporation Circuit, Tweed Heads South
Zoning: 3(c) Commerce & Trade
Cost: \$4.1 Million

BACKGROUND:

DA11/0499 sought approval for a GP Super Clinic. The application was determined under staff delegation in March 2012. Following is an extract from the Delegated Assessment Report detailing the application:

"The application seeks consent for a GP Super Clinic.

The facility comprises a single storey building with at grade parking provided all around the structure.

The proposed uses within the clinic include the general practice clinic, dietician, psychology, speech pathology, dental, radiology, pathology, pharmacy, kiosk as well as administration and staff facilities.

The design incorporates a drop off area (at the front of the building) with a covered awning over the top and internal gates within the parking area to segregate the customer parking from staff parking.

The clinic is not an emergency centre rather it is a primary care facility operated by GP's in association with allied health professionals.

The operating hours will be 7.30am – 9pm Monday to Friday and 8.00am to 5.00pm on weekends.

The revised traffic report indicates that actual staff numbers will reach a maximum of 40. This includes student GP's that will work from the facility (which is a requirement of the federal funding as detailed below).

The application has been granted \$7M in federal funding specific to this site, use and building configuration."

The key issues for the application were carparking and site suitability in relation access to public transport. Despite a numerical non compliance with DCP Section A2 the application was supported on the basis of a revised traffic report received on 21 December 2012 which gave consideration to the operation of the facility in regards to student GP's and cross utilisation within the clinic.

Council has now received a S96(1A) application requesting to modify two conditions of the approved application.

1. Condition No. 16(a) which requires payment of a Tweed Road Contribution as follows:

Tweed Road Contribution Plan:
318.33 Trips @ \$1318 per Trips \$419,559

(\$1318 base rate + \$0 indexation)

S94 Plan No. 4

Sector2_4

The applicant is requesting that the rate applied be reduced to reflect the rates at the time of lodgement of the DA (17 October 2011) rather than the rates as applicable at the time of determination (2 March 2012). Council endorsed an amendment to the Tweed Road Contribution Plan 24 January 2012 which increased the applicable rates (effective 1 February 2012).

The applicant has stated that:

"In summary, unforeseen delays in determination of the application have resulted in the proposal being caught by the new contribution rates which were not budgeted for by the applicants on the basis of the indications that the application would be approved prior to the new rates coming into force.

In addition, the ability of Ausjendia Pty Ltd to fund the additional costs is extremely limited because of the Federal Funding requirements for the project. These include the fact that the Federal Government has a caveat over the land which would not allow mortgage of the property to borrow additional funds. In the event that the development does not proceed because of the additional contributions, there will be significant adverse social and economic impacts in the locality because opportunities for an integrated GP Super Clinic would be lost together with the resulting benefits of training opportunities and a bulk billing facility containing key health care professionals in one complex. In the current economic climate the loss of employment opportunities during the construction and operational phase would be significant."

2. Condition No. 18 which states:

18. **Prior** to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision/Occupation Certificate is issued.

[PCC0275]

The applicant has stated that "based on an estimated cost of \$5 million the bond required by this condition equates to \$50,000".

The applicant is requesting this be reduced to \$1000 due to the applicant's financial constraints and Council's opportunity to apply other powers to enforce and remedy and conditions of consent.

Following is a **chronology of events** in association with DA11/0499, the Amended Tweed Road Contributions Plan and the current S96 (1A) Application

8 July 2011

The applicant attended Council's Development Assessment Panel meeting (pre lodgement meeting) to discuss the proposed GP Super Clinic. The minutes of this meeting were reasonably generic however two critical comments were made regarding parking:

"Carparking would need to comply with Tweed Shire Development Control Plan – Section A2 - Site Access & Car Parking Code. The proponents provided a preliminary carparking demand schedule which shows a requirement for 90 carparks. This is generally acceptable. Any departures from standard carparking rates in A2 will need to be justified in the application as would an application for a 20% ESD discount given the sites limited access to public transport."

"A future application should be accompanied by a traffic report that addresses traffic generation from the site and any likely impacts on the operation of the Corporation Circuit/Greenway Drive intersection."

17 October 2011

DA11/0499 lodged with Council for consideration. The application was required to be reviewed by eight Council Officers as follows:

- Town Planner
- Building Surveyor
- Environmental Health Officer
- Waste Management Officer
- Development Engineer
- Traffic Engineer
- Strategic and Assets Engineer (Water & Sewer)
- Social Planner

9 November 2011

The DA was publically exhibited for two weeks.

9 November 2011

The applicant was requested to provide additional information in regards to waste management.

10 November 2011

The applicant provided the waste management details as requested on the 9 November 2011.

11 November 2011

One objection to the development was received based on traffic, access and parking grounds.

15 November 2011

Council resolved to exhibit Draft Section 94 Plan No. 4 – Tweed Road Contribution Plan (TRCP) Version 6. In this report it stated that

Changes to contribution rates are summarised as follows:

Sector	Locality	Total Trip End Contribution inc Admin		Household Contribution (6.5 trip ends) inc Admin	
		Version 5.2	Draft Version 6	Version 5.2	Draft Version 6
		Indexed Rate	Base Rate	Indexed Rate	Base Rate
1	Tweed Heads	\$656	\$815	\$4,264	\$5,299
2	Tweed Heads South	\$936	\$1,318	\$6,084	\$8,567
3	Cobaki	\$999	\$1,377	\$6,494	\$8,952
4	Bilambil Heights	\$1,829	\$2,836	\$11,889	\$18,432
5	Terranora	\$1,527	\$1,988	\$9,926	\$12,924
	LAC1: 'Area E'	\$2,081	Deleted	\$13,527	Deleted
6	Kingscliff	\$861	\$1,137	\$5,597	\$7,387
7	Duranbah/Cabarita	\$955	\$1,145	\$6,208	\$7,440
	LAC2: Kings Forest Development	\$1,351	Deleted	\$8,782	Deleted
	LAC4: Casuarina	\$1,114	\$1,313	\$7,241	\$8,531
8	Pottsville	\$1,125	\$1,284	\$7,313	\$8,345
	LAC3: Koala Beach/Seabreeze	\$1,216	\$1,352	\$7,904	\$8,791
9	Murwillumbah	\$1,166	\$1,317	\$7,579	\$8,562
10	Rural - Inner East	\$1,601	\$1,807	\$10,407	\$11,745
11	Burringbar	\$1,124	\$1,252	\$7,306	\$8,139
12a	Rural - Inner North	\$2,358	\$2,928	\$15,327	\$19,035
12b	Rural - Inner West	\$2,062	\$2,239	\$13,403	\$14,556
13	Rural - Outer	\$2,366	\$2,534	\$15,379	\$16,470

The proposed development site is within Sector 2 at Tweed Heads South where the contribution rates were proposed to be amended from \$936 per trip end to \$1318 per trip end.

16 November 2011 The applicant was requested to provide additional information in regards to:

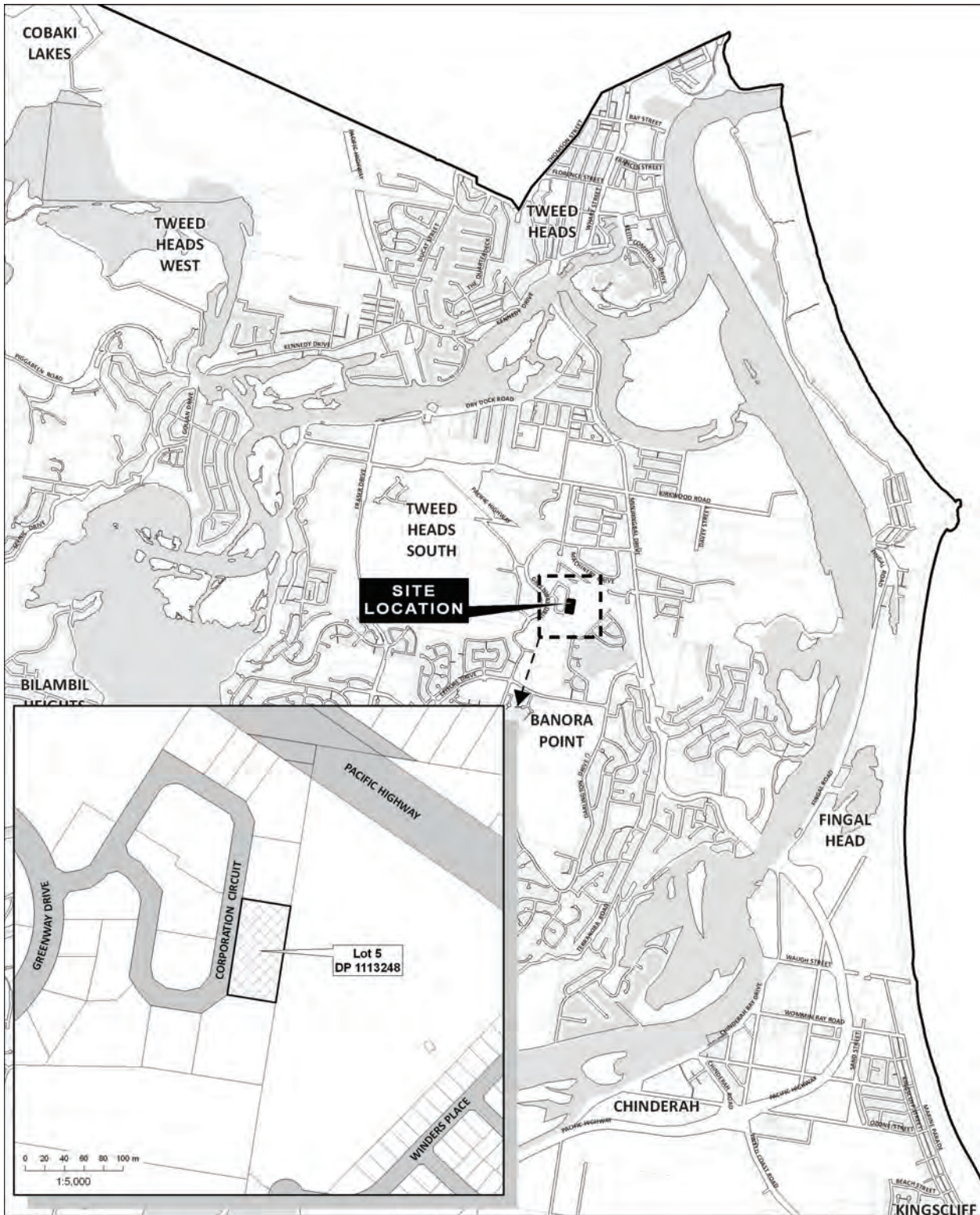
- Site suitability (having regard to the site's proximity to public transport).
- Revised plans demonstrating compliant driveway widths.
- Revised traffic report acknowledging the actual parking requirements in accordance with Tweed DCP Section A2 and justifying the departures based on predicted traffic movements.

22 November 2011 Council staff met with applicant to discuss Council's additional information request dated 16 November 2011.

23 November 2011 Draft S94 Plan No. 4 - Tweed Road Contribution Plan placed on public exhibition from 23 November 2011 – 15 December 2011. The Draft proposed to increase the contribution rate from \$936.00 per trip to \$1318 per trip.

- 21 December 2011 The applicant provided a response to Council's request for additional information dated 16 November 2011 which included a revised traffic report for re-consideration.
- 16 January 2012 The applicant requested a status update on the DA and requested to review a set of draft conditions. In this regard Council staff prepared a response on 16/1/2012 which provided a status update on the assessment (which anticipated final engineering comments within 3 weeks) and advised that draft conditions cannot be provided to any applicant before determination.
- 24 January 2012 In regards to Draft Section 94 Plan No.4 Tweed Road Contributions Plan Council resolved as follows
- "RESOLVED that Council:*
- 1. Approves Draft S94 Plan No 4 – Tweed Road Contribution Plan Version 6 as exhibited to repeal and replace the existing version in accordance with Clause 31 of the Environmental Planning & Assessment Regulations 2000;*
 - 2. Gives Public Notice in the Tweed Link of Council's decision specifying that the amended Version 6 of the Plan (CP4) comes into effect on the date of the notice."*
- 30 January 2012 The applicant asked whether there were any comments back on the amended traffic report.
- 1 February 2012 S94 Plan No. 4 Tweed Road Contribution Plan Version 6 came into force.
- 8 February 2012 Council staff prepared a response to the applicant's e-mail of 30 January 2012 which stated engineering comments would be finalised within days and that final assessment should follow quickly.
- 8 February 2012 Engineering comments were finalised.
- 22 February 2012 Tweed Road Contribution figures were calculated by Council's Town Planner and Traffic Engineer.
- 29 February 2012 Delegated Assessment Report was finalised with all conditions of consent drafted.
- 2 March 2012 Delegated Assessment Report signed and official consent finalised and posted to the applicant.
- 21 March 2012 Current S96 (1A) lodged

SITE DIAGRAM:



Locality Plan

Lot 5 DP 1113248

No. 33-35 Corporation Circuit, Tweed Heads South

<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 discursive only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before you Dig' enquiry must be made by calling 8100. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p> <input type="checkbox"/> Cadastre: 02 April, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only. </p>	<p>0 0.5 1 Km</p> <p>1:40,000 @ A4 Postrail</p> <p>DON'T SCALE COPY ONLY - NOT CERTIFIED</p> <p> Map Projection: Universal Transverse Mercator Horizontal Datum: Geoidetic Datum of Australia 1984 Vert: Map Grid of Australia, Zone 56 </p>	<p> Civic and Cultural Centre 3 Tumbulgan 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 planningreform@tweed.nsw.gov.au </p>	<p>TWEED SHIRE COUNCIL</p>
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CONSIDERATIONS UNDER SECTION 79C AND 96 (1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

S96 of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is of minimal environmental impact, is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard to these criteria the proposed amendments are considered capable of consideration within the S96 framework. The amendments are considered of minimal impact and will result in substantially the same development to that approved.

The proposed application did not require public notification (as S96(1A)'s do not require public exhibition in accordance with Tweed DCP Section A11) and accordingly no submissions were received that required consideration.

Having regard to the applicant's submission the following assessment of the two proposed variations is undertaken.

Proposed Amendment 1 – Condition 16(a) Tweed Road Contribution Plan

The applicant in their S96(1A) documentation have not challenged Council's methodology for calculation of the applicable trips associated with the proposed development.

Accordingly it is assumed that all parties agree that the proposed development will trigger **318.33 daily trips**. This was based on the applicant's traffic report and Council's S94 Plan No. 4 rates.

The applicant has therefore requested that the development be charged at \$656 per daily trips which they claim was the rate applicable as at the time of lodgement of the DA (17 October 2011).

This is incorrect as the rate applicable at 17 October 2011 was \$936 per daily trips.

The applicant was made aware of this error and accordingly provided in writing that

“Further to our meeting last Friday I confirm that the correct TRCP rate in October 2011 is for Tweed Heads South which is \$936.00 per trip rather than \$656.00 per trip as referred to in the proposed amended Condition 16(a)A. therefore the correct amended contribution should be \$ 297,956.00 rather than \$ 208,824.00.

I trust that this now clarifies the matter.”

The applicant is therefore requesting that condition 16(a) be amended from

- \$419,559 (318.33 daily trips x \$1318 the current TRCP rate) down to
- \$297,956 (318.33 daily trips x \$936 the TRCP rate as at 17 October 2011)

This represents a difference of \$121,603.

The applicant has claimed that unforeseen delays in determination have resulted in the proposal being caught by the new contribution rates.

However, as can be seen from the chronology provided above, the application was assessed and determined in a normal timely manner. The applicant was required to provide additional and revised information particularly addressing traffic generation. Upon receipt of this information (21 December 2011) the application was assessed as quickly as possible given the Christmas period.

The applicant's request for Council to apply the S94 rates as at the time of lodgement of the DA is not considered lawful.

S94 Plan No, 4 Tweed Road Contribution Plan Version 6 was adopted by Council on 24 January 2012 and became effective on 1 February 2012. At that time all previous versions of the plan (including Version 5.2) were repealed. Accordingly Council cannot lawfully apply the contribution rates as contained in Version 5.2 as this document no longer legally exists.

This is demonstrated by Clause 94 B of the Environmental Planning & Assessment Act 1979 which states that

94B Section 94 or 94A conditions subject to contributions plan

(1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

This is not the first time that applicants have been subject to amended contribution plans. This occurs every new financial year, whenever the plans are updated, and as a result of the need for fees to be recalculated after 12 months from the original date of calculation. The developers of "The Point" at Hastings Point were affected by a similar amendment to the Tweed Road Contribution Plan and had to find additional funds to cater for the amendment.

The levying of contributions needs to occur lawfully and consistently to ensure all developers are treated equally. The only way for this to occur is for applications to be levied against the lawfully applicable contribution plan. In this instance the only lawful plan is S94 Plan No. 4 Tweed Road Contribution Plan Version 6 which results in the application being levied \$419,559 as nominated in DA11/0499.

The only lawful mechanism to assist the applicant is if Council resolved to fund the TRCP difference (\$121,603) as a result of adopting S94 Plan No. 4 TRCP Version 6 effective 1 February. However, this could set a precedent for other developers to apply for similar financial assistance.

Were Council of the view to provide financial support to the project this would need to be addressed separately and would not affect the applicable charge under S94 Plan No. 4.

In addition to the above arguments presented by the applicant, Ausjendia Pty Ltd who are responsible for the project have submitted the following justification for the reduced S94 No. 4 payment:

"19 March 2012

Submission from Ausjendia Pty Ltd in relation to Road Contributions and Compliance Bond Required by Development Consent No. 11/0499 – Proposed GP Super Clinic at Corporation Circuit, Tweed Heads South

In July 2011, Ausjendia Pty Ltd (The Directors, Dr. Diane Blanckensee, Dr. Austin Sterne & Dr. Jennifer Soden are local Tweed Residents who have practiced medicine in the area for a combined total of more than 50 years) was the successful applicant for the Tweed Heads GP Super Clinic (to be known as Tweed Health for Everyone Super Clinic - THE Super Clinic) grant which provided federal government funds to build a GP super clinic in 33-35 Corporation Circuit, South Tweed Heads.

The GP Super Clinics National Program Guide 2010 states the following in regards to how a GP Super clinic should function:

1. Provide its patients with well integrated multidisciplinary patient centred care;
2. Be responsive to local community needs and priorities, including the needs of Aboriginal and Torres Strait Islander peoples and older Australians in Residential Aged Care Facilities and community based settings;
3. Provide accessible, culturally appropriate and affordable care to its patients;
4. Provide support for preventive care;
5. Demonstrate efficient and effective use of Information Management and Information Technology (IM/IT);
6. Provide a working environment and conditions which attracts and retains its workforce;
7. Is a centre of high quality best practice care;
8. Post establishment, operates with a viable, sustainable and efficient business model;
9. Support the future primary care workforce; and
10. Integrate with local programs and initiatives.

Ausjendia Pty Ltd requests that the road contribution of \$419,559 be reduced to the original budgeted amount of \$208,824 for the following reasons:

1. The **chronology** submitted by DA Consulting shows that the delays within council in determination of the DA have resulted in the development being caught by the new contribution rates.
2. The **budget** for the THE Super Clinic is inflexible. The Department of Health & Ageing (DOHA) federal government funds will not be increased to account for this increased contribution amount, nor is Ausjendia Pty Ltd able to apply for a mortgage because the contract with DOHA does not allow this. There is a caveat over the property, held by DOHA. Personal funds from Ausjendia Pty Ltd have already been committed and expended in the budget.
3. The THE Super Clinic represents a significant **public benefit** to the whole of the Tweed region in terms of public health provision. Added to this is **employment** of significant numbers of people in areas such as pharmacy, radiology, dentistry, nursing, reception and administration as well as GPs and Allied health professionals such as physios, speech therapy, psychology, dietetics etc. **Education & training** of future health professionals (doctors, nurses, allied

health, pharmacy and dentistry) is a major focus of the THE Super Clinic as evidenced by the large area set out for this in the submitted plans.

Any reduction in available funds for the building will mean that a service or training area will need to be omitted.

4. The **current economic climate** is difficult and we are aware that this is key development in the provision of local employment for the building industry. Council might note that to date we have used almost all local consultants for design and planning of the THE Super Clinic and it is our intention that the builder will be drawn from a pool of local building contractors. We do not want this significant development (total spend of > 6.5 million excluding land) put at risk of failure.
5. The **timeline** for the federal funding is also tight and there are obvious political reasons for this. We have contracted to have the THE Super Clinic open before May 2013. We have already had minor delay due to the DA process. There has been one Super Clinic that has lost funding due to delay and we are very anxious that this does not occur in the THE Super Clinic - not least because of personal guarantees on the part of the three directors and the threat of full repayment to DOHA in the case of non-performance.
6. **Community support** for an interest in THE Super Clinic is enormous. In tendering for the THE GP Super Clinic, the directors of Ausjendia gathered more than 100 letters of support from such people as local community associations, service associations, schools, church groups, universities, businesses groups, public health and medical and allied health practices who all recognise the importance of this new concept that we have been fortunate to be able to create in the Tweed area. The financial burden of the extra \$200,000 + imposed by the new charges is risking the viability of THE Super Clinic and would severely disappoint many members of our local community.

In conclusion, for the above reasons, Council if requested to reduce the road contributions to \$208,824 (sic – as discussed above this difference is \$121,603) and reduce the bond required under Condition 18 of the Development Consent to \$1,000.00."

The above submission does not change the lawful application of S94 Plan No. 4 and accordingly the proposed amendment is not recommended.

Proposed Amendment 2 – Condition 18 Compliance Bond

The applicant had assumed that the required 1% Compliance Bond was based on the total cost of the development.

Council's Coordinator Development Engineering has advised that the 1% is calculated on the cost of the public infrastructure constructed for the development not the private works. In other words no bond is required for works such as private buildings, private access ways, private sewer and water reticulation or private stormwater drainage. Council has consistently applied this condition on this basis for many years. Accordingly the bond would be relatively small given the minor public works proposed.

To clarify the situation it is recommended that Condition 18 be amended to read as follows:

18A Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the public infrastructure constructed for the development (not less than \$1000).

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Occupation Certificate is issued.

[PCC0275]

OPTIONS:

1. Partially approve the S96(1A) as recommended to modify Condition 18 only and refuse any amendment to condition 16(a).
2. Partially approve the S96(1A) as recommended to modify Condition 18 only and Council resolve to fund the TRCP difference (\$121,603) as a result of S94 Plan No. 4 TRCP Version 6 effective 1 February.
3. Refuse the application.

CONCLUSION:

The applicant has requested two variations to a recently approved development. The first variation to the applicable Tweed Road Contribution is not considered lawful and is accordingly not supported. However the second amendment is considered reasonable to clarify some ambiguous wording within Condition 18. Accordingly the application is recommended for a partial approval.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Finance Plan:

Reducing the applicable Tweed Road Contribution is not considered lawful and could also affect the budget for S94 Plan No.4.

The only lawful mechanism to assist the applicant is if Council resolved to fund the TRCP difference (\$121,603) as a result of adopting S94 Plan No. 4 TRCP Version 6 effective 1 February. However, this could set a precedent for other developers to apply for similar financial assistance.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- 1. Delegated Assessment Report DA11/0499 (ECM 48519850).
 - 2. Development Consent DA11/0499 (ECM 48519851).
 - 3. 24 January 2012 Council Report - Amendment to Section 94 Plan No. 4 - Tweed Road Contribution Plan (ECM 48527165).
-

15 [PR-CM] Development Application DA11/0527 for an Attached Dual Occupancy at Lot 21 DP 1124438; No. 27 Charles Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0527



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of a Development Application for the construction of an attached dual occupancy development on the above mentioned site. The site is currently vacant, with site levels reflecting the retained benching evident from a dwelling house that previously existed on the site. The proposed dual buildings would be constructed in a mirror reverse layout and would comprise a lift and two (2) double garages. Level 1 would comprise garages and pedestrian entries for each dwelling; Level 2 would comprise two (2) secondary bedrooms per dwelling, laundries and bathrooms with direct access to the rear of the building; and Level 3 would comprise the master bedrooms, kitchen and living areas with balconies oriented to the east.

The proposed development comprises non-compliances with Clause 16 of the Tweed Local Environmental Plan (LEP) in relation to building height. The applicants propose that the development comprises two (2) storeys however, Council Officers are of the opinion that the proposed development incorporates elements of a three (3) storey building. A SEPP 1 objection has since been submitted to Council however the objection reiterates that the development proposes two habitable levels, constructed on top of a basement garage.

One (1) submission was received and one (1) late submission with concerns relating to: land stability and impact of construction on adjoining properties (44 and 46 Charles Street); traffic congestion and overlooking from proposed balcony. The issues raised in these submissions are not considered to warrant refusal of the application.

The proposed development is considered to constitute a prominent three (3) storey building in a two (2) storey height limit zone. Further, it is considered that the SEPP 1 objection has failed to address this variation and that, should the development proposal be approved, it would be detrimental to the character of the surrounding area and set an undesirable precedent for similar development in the locality.

Further, the development proposes a Floor Space Ratio (FSR) of 0:80:1 as opposed to 0:65:1, as detailed further within this report. This variation to the FSR controls heightens Council's concerns in relation to the overall bulk and scale of the proposed building, in relation to the capacity of the site.

The following report addresses the issues and reasons for recommending refusal of the proposed development.

RECOMMENDATION:

That Development Application DA11/0527 for an attached dual occupancy at Lot 21 DP 1124438; No. 27 Charles Street, Tweed Heads be refused for the following reasons:

- 1. The proposed development comprises a three (3) storey building in a zone with a two (2) storey height restriction. The proposed development does not comply with Clause 16 of the Tweed Local Environmental Plan 2000.**
- 2. The proposed development, by reason of its three (3) storey height, is considered to be inconsistent with the majority of surrounding development in the locality, which consists predominantly of one (1) and two (2) storey buildings. The development application has failed to justify the proposed variation to the applicable development standard in relation to building height. Therefore the proposed three (3) storey building is not consistent with the aims of the State Environmental Planning Policy No. 1 (Development Standards) and the SEPP 1 Objection to vary the development standard is not well founded or justified in this instance.**
- 3. The proposed development, by reason of its height, scale and bulk, would be inconsistent with the character and appearance of surrounding residential development, that predominantly consists of one (1) and two (2) storey residential development and, if approved, would set a harmful precedent for similar development in the locality. The proposed development would therefore be contrary to the objectives of Clause 4, Clause 8, Clause 11 and Clause 16 of the Tweed Local Environmental Plan 2000; Clause 32B and Clause 43 of the North Coast Regional Environmental Plan and the aims and objectives of the State Environmental Planning Policy (SEPP) 71.**
- 4. The proposed development comprises variations to the Tweed Shire Council Development Control Plan (DCP) Section A1, Part B (Residential and Tourist Code) in relation to the impact of the scale and height of the proposed building on streetscape amenity, dominance of garages, sunlight access, basement garage provisions, lack of integration of internal and external outdoor space and in relation to floor space ratio for attached dual occupancy development. The proposal therefore fails to adequately comply with the Tweed Development Control Plan Section A1 Part B.**
- 5. The Tweed Development Control Plan 2008 requires a Floor Space Ratio of 0:55:1 for an attached dual occupancy development where the dwellings cover more than 50% of the site. The development proposes a Floor Space Ratio of 0.80:1 which does not comply with the requirements of the Tweed Development Control Plan 2008.**

REPORT:

Applicant: Mrs M Kozak and Mr K Kozak
Owner: Mr Krzysztof Kozak & Mrs Maria Kozak
Location: Lot 21 DP 1124438; No. 27 Charles Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$500000

BACKGROUND:

Council is in receipt of a development application that seeks consent for the construction of an attached three-storey dual occupancy development at 27 Charles Street, Tweed Heads.

Each of the dwellings run lengthways through the site with an easterly orientation. Access is from Charles Street by way of two (2) double garages. Level 1 would comprise garage parking for two (2) vehicles per dwelling and pedestrian access to the two levels of living above. Level two comprises two (2) bedrooms oriented to the front of the buildings with separate bathroom/toilet and laundry with patio to the rear; Level three comprises an open plan kitchen / living and dining area with access to covered balconies at the front of the building and master bedroom located to the rear.

The subject site is trapezoidal in shape with a frontage to Charles Street to the east of approximately 16m. The site has a width of 16m and an average length of 27m, creating a total site area of 452m². The property comprises a steep slope from the RL 37m AHD at the Charles Street frontage, to RL 43m AHD to the rear. Vehicular access to the site would be directly from Charles Street.

The property to the rear of the site (No 27A Charles Street) is currently vacant, rectangular in shape and accessed to the south of the site via a narrow, one-way right of access. The adjoining properties to the north and south of the subject site are two storey single dwellings.

The proposed development has been presented to Council as a two (2) storey building with, according to the proponent, Level 1 comprising 'basement' parking. This issue is explored in further detail within this report however Council Officers consider that the parking areas cannot be defined as a basement as the proposed buildings clearly represent three (3) storeys from the street frontage in a zone restricted to two (2) storeys.

On this basis a SEPP 1 Objection has been submitted to Council. Within the SEPP 1 Objection, the proponent has advised that the proposed development does in fact constitute a two (2) storey building – as the two habitable levels are constructed above a basement garage. Council Officers stipulate that the building is in fact three (3) storeys for the reasons addressed further within this report.

The proposed development was advertised for a period of two (2) weeks, during which two submissions (one late) were lodged against the application.

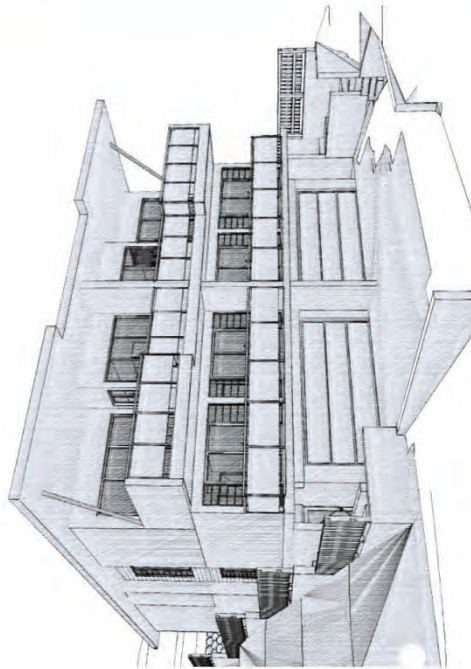
DEVELOPMENT/ELEVATION PLANS:

DEVELOPMENT APPLICATION	
PROPOSED 2 x ATTACHED DWELLINGS LOT 21 DP 1124438 27 Charles Street Tweed Heads NSW	
DRAWING INDEX	
DRAWING NO.	DRAWING NAME
DA 1.00	COVER SHEET - SITE LOCATION PLAN
DA 1.01	SITE PLAN - SECTION THRU DRIVEWAY
DA 1.02	SERVICES SURVEY PLAN
DA 1.03	SITE ANALYSIS PLAN
DA 2.01	LEVEL 1 FLOOR PLAN
DA 2.02	LEVEL 2 FLOOR PLAN
DA 2.03	LEVEL 3 FLOOR PLAN
DA 2.04	ROOF PLAN
DA 3.01	ELEVATIONS
DA 3.02	ELEVATIONS
DA 4.01	SECTIONS
DA 4.02	SECTIONS
DA 5.01	SHADOW DIAGRAM PLAN
DA 6.01	IMPERVIOUS AREA-DSZ PLAN-LANDSCAPING CONCEPT PLAN
DA 7.01	GARAGE DESIGN LAYOUT RATIONALE

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 Tweed Heads, NSW 2485
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SITE LOCATION PLAN



3D PERSPECTIVE

Please note: All dimensions and levels shown are based on the information provided in the site plan and report. Drawings shall not be used for construction purposes until issued by the Architect for construction.

Site levels are shown as a guide only. To ensure accuracy, a detailed site survey must be prepared by a REGISTERED SURVEYOR.

Where a discrepancy arises on these documents, the CONTRACTOR shall refer to the original documents. The CONTRACTOR shall be responsible for any discrepancies with any attached work or ordering.

All work to comply with Building Code of Australia and all relevant Australian Standards.

The CONTRACTOR shall ensure that the proposed work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Trenching, Piling and Foundations, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Earth Retention, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Retaining Walls, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Driveways, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Paving, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Landscaping, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

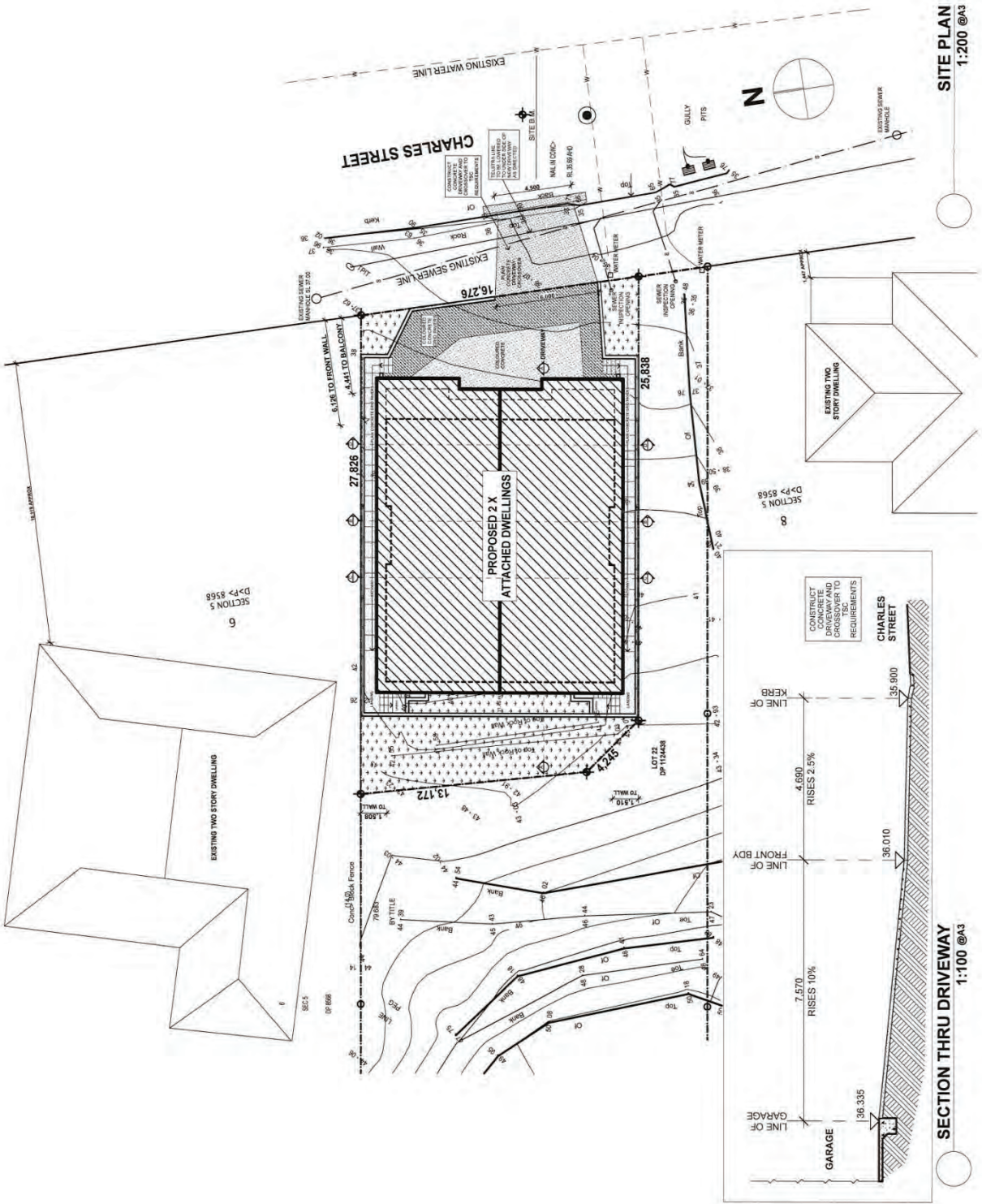
For Fencing, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

For Other Work, the CONTRACTOR shall ensure that the work is carried out in accordance with the relevant Australian Standards and any other applicable laws and regulations.

DATE: _____ AMENDMENTS: _____

P&T TWOHILLDESIGN
 221 BIRKENHEAD ROAD
 BIRKENHEAD QLD 4071
 PH: 07 3850 1111
 WWW.P&TDESIGN.COM.AU

Client Name: **K.M. KOZAK**
 Proposed Attached Dwellings
 LOT 21 DP 114488
 1611 DA 1.01
 Project No: _____
 Drawing No: _____
 Scale: 1:200 @A3
 Date: _____
 Drawn By: M.V.C.
 Checked By: P.A.T.
 Title: **SITE PLAN, SECTION THRU DRIVEWAY**



SITE PLAN
1:200 @A3

SECTION THRU DRIVEWAY
1:100 @A3

These drawings are the property of the Architect and are not to be used for any other project without the written consent of the Architect. The Architect is not responsible for any errors or omissions in these drawings or for any consequences arising from their use. The Architect is not responsible for any errors or omissions in these drawings or for any consequences arising from their use. The Architect is not responsible for any errors or omissions in these drawings or for any consequences arising from their use.

DATE: _____ AMENDMENTS: _____

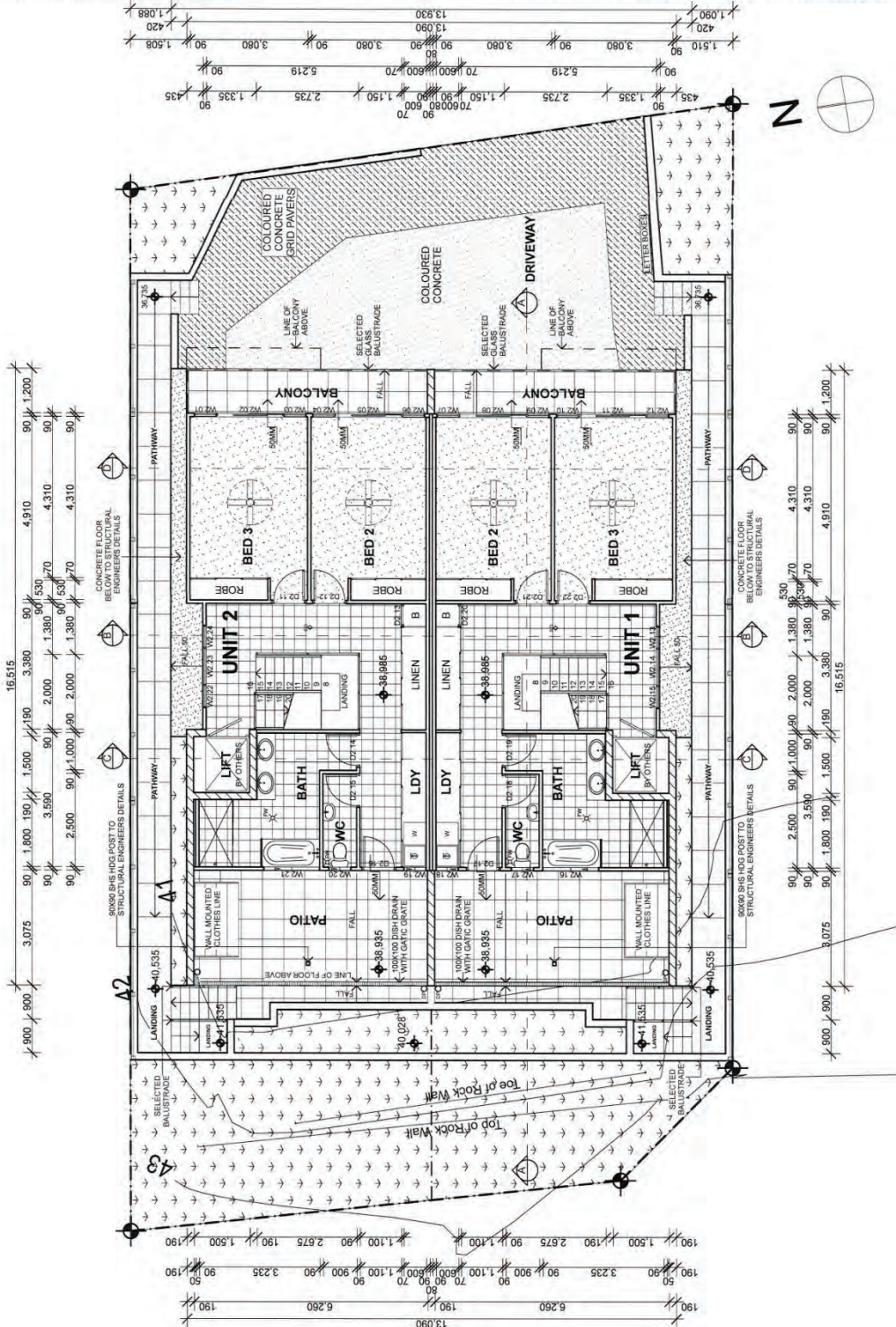
Project Name: **UNITED DWELLINGS**
 27 Clarence Street
 NEWCASTLE
 NSW

Project No: _____
 Drawing No: **DA 2.02**
 Scale: AS SHOWN
 Drawn By: **DR**
 Checked By: **PAT**

Project: **LEVEL 2 FLOOR PLAN**

Scale: AS SHOWN
 Drawn By: **DR**
 Checked By: **PAT**

Project No: _____
 Drawing No: **DA 2.02**
 Scale: AS SHOWN
 Drawn By: **DR**
 Checked By: **PAT**



LEVEL 2 FLOOR PLAN
1:100 @A3

PLEASE NOTE: All dimensions and levels shown on this drawing are based on the information provided to the architect by the contractor. The contractor is responsible for verifying the accuracy of all dimensions and levels. The architect is not responsible for any errors or omissions in this drawing.

Drawings shall not be used for construction purposes until issued by the Architect for construction.

Site levels are shown as a guide only. To determine the actual levels, a survey shall be conducted to establish the actual levels. The architect is not responsible for any errors or omissions in this drawing.

When a discrepancy arises on these documents, the drawings shall prevail over the specifications. The contractor shall be responsible for resolving any discrepancies with the architect.

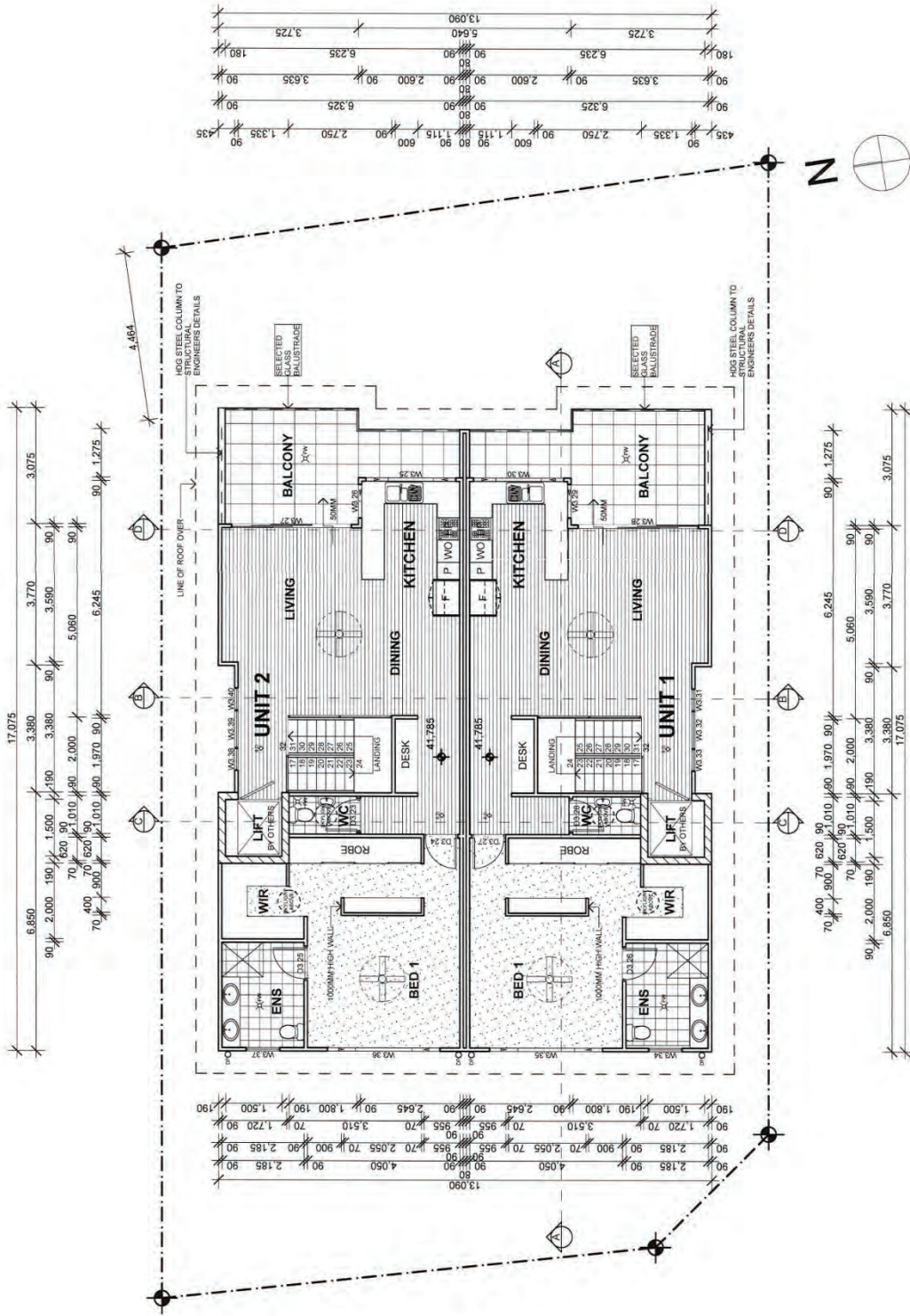
These drawings are solely the property of the architect and shall not be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing.

Project Name: **ATTACHED DWELLINGS**
 Project No: **LOT 21 DP 114401**
 Drawing No: **1611**
 Drawing Title: **LEVEL 3 FLOOR PLAN**

DATE: _____ AMENDMENTS: _____

Project: **K M KOZAK**
 Architect: **PORT FORTLAND DESIGNERS**
 10/100 Maitland Street, Port of Spain, Port of Spain, Trinidad and Tobago

Scale: as shown
 Drawn by: **W.V.**
 Checked by: **PAT**
 Date: **DA**
 Drawing No.: **1611**
 Drawing Title: **DA 2.03**
 Scale: **1:100 @A3**

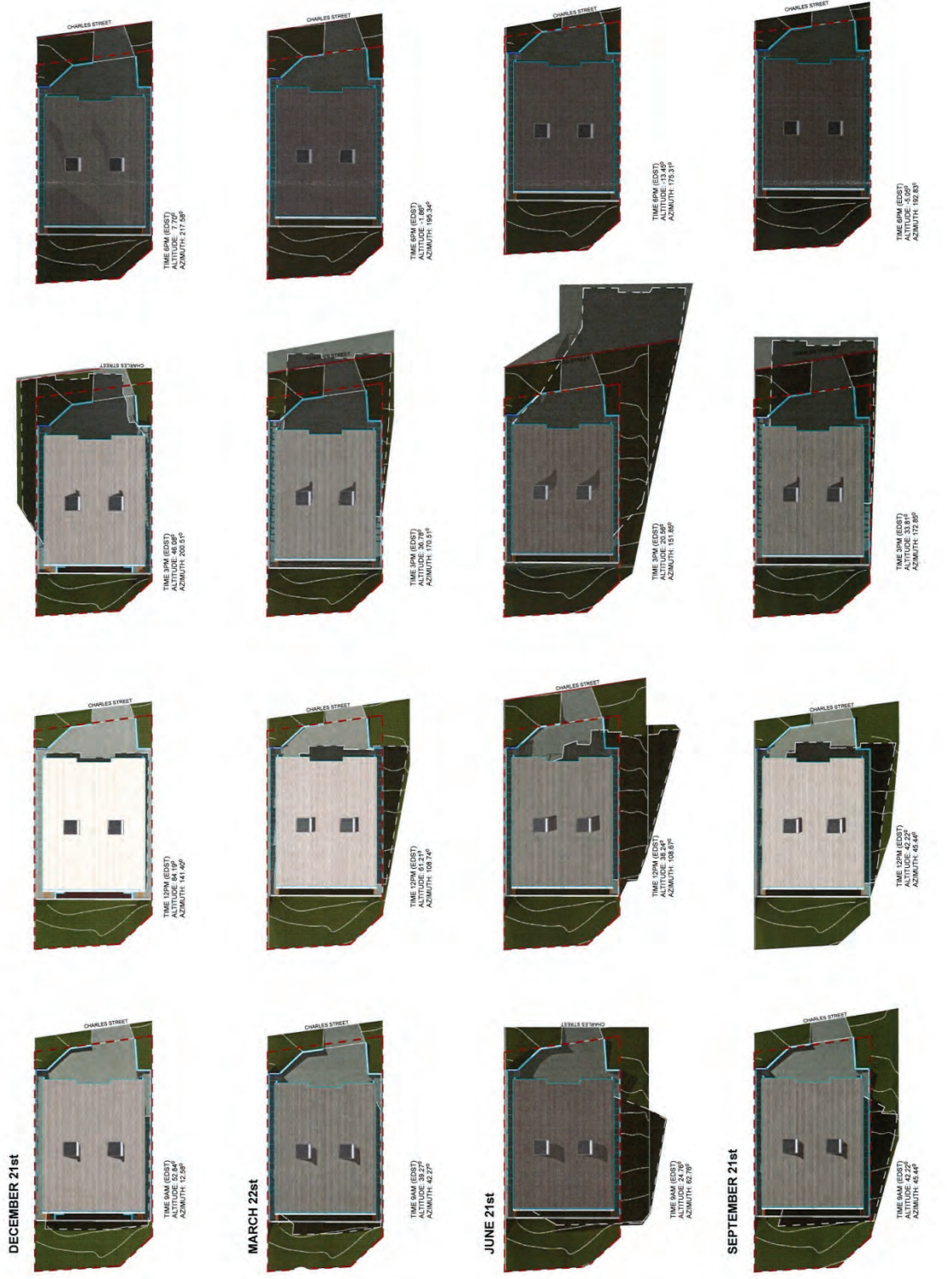


LEVEL 3 FLOOR PLAN
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Please refer to the information and notes below. Drawings shall not be used for construction or any other purpose without the written report prepared by REGIS EARTH SERVICES. Site levels are shown as a guide only. To ensure a discrepancy arises on these documents, the client shall be notified in writing by REGIS EARTH SERVICES. All works to comply with Building Code of Australia. All works shall be in accordance with the Australian Standards. For these drawings, the ARCHITECTS accept no liability for the accuracy of the information or data presented electronically. It is the responsibility of the client to provide any necessary support or third party for verification.

DATE **AMENDMENTS**

Client Name: K.M. KOZAK
Project Name: PROPOSED 2 ATTACHED DWELLINGS
Lot: LOT 21 DP 124488
Address: 1611 DA 5.01
Project No.: 1611
Drawing No.: DA 5.01
Scale: 1:100
Drawn by: P.A.Y.
Checked by: P.A.Y.
Project No.: 1611
Drawing No.: DA 5.01
Scale: 1:100
Drawn by: P.A.Y.
Checked by: P.A.Y.



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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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

The proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The proposed dwellings are of a contemporary design that provide an interesting variety of materials and, in general, would not be incompatible with the surrounds or the area's environmental and residential amenity qualities. However, when viewed from the street, the development comprises a three (3) storey development in an area restricted to a height limit of two (2) storeys.

On this basis it is considered that the development does not comply with the LEP and that the SEPP 1 Objection has failed to take into consideration the resultant visual impact that the proposal would have on the character and amenity of the surrounding area nor that, should the development be approved, it would set an undesirable precedent for similar development in the future.

This clause also requires that development complies with the zone objectives. This is addressed below.

Clause 5 - Ecologically Sustainable Development

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

It is considered that the scale and nature of the proposed dual occupancy development is minor and, as the site has already been substantially cleared of vegetation, would not conflict with principles of ESD.

Clause 8 – Consent Considerations

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

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

It is considered that the development would be consistent with the primary objectives of the 2(b) Medium Density Zone. The subject site is located in an established residential area and it is generally considered that the proposed dual occupancy development would not have an unacceptable impact on the area of Tweed as a whole.

However, the development comprises a three (3) storey building in a zone limited to a height limit of two (2) storeys. As detailed further within this report, it is considered that the application details has failed to demonstrate why a relaxation in the two (2) storey height should be allowed in this instance or the detrimental impact that the proposal would have on the character and amenity of the immediate locality, which is, in general, characterised by one and two storey buildings. It is therefore considered that the development is inconsistent with the clause.

Clause 11 – Zone Objectives

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

Primary objectives:

To provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary objectives:

To allow for non-residential development which supports the residential use of the locality.

To allow for tourist accommodation that is compatible with the character of the surrounding locality.

To discourage the under-utilisation of land for residential purposes, particularly close to the tweed Heads sub-regional centre.

Whilst the proposal meets the requirement for the provision of medium density housing it is considered, by reason of the dominant three (3) storey building height, that the proposal would fail to result in a good urban design outcome and would not be in keeping with surrounding streetscape character.

Whilst medium density development is encouraged in the zone, this should not be a cost to the visual amenity and character of the surrounding area.

Clause 15 - Essential Services

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

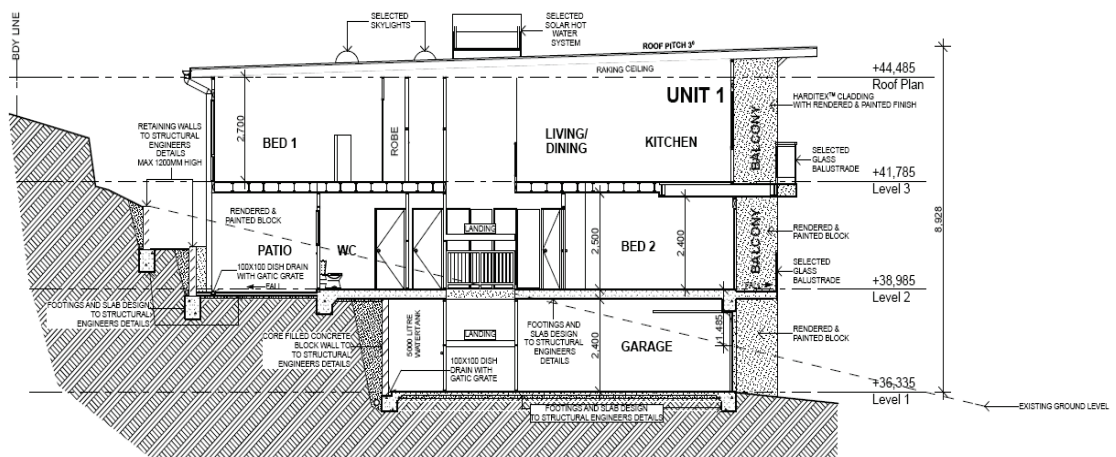
The subject site has existing access to essential services. The dwellings will be connected to Council sewer and water. Accordingly, the proposal is consistent with the provisions of this clause.

Clause 16 - Height of Building

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

The proponent considers that the development proposes two (2) habitable levels, constructed on top of a basement garage and therefore complies with Clause 16 of the TLEP. However, Council is of the opinion that the proposed development incorporates two three (3) storey buildings as detailed further within this report.

Firstly, the proponent advises that the 'finished ground level' of the site is RL 37.5m AHD, with the floor immediately above that point being RL 38.985m AHD and that, on this basis, the garage does not exceed 1.5m in height and is therefore not defined as a storey, as illustrated in the following diagram:



Section of proposed dual occupancy development indicating proponents version of existing and finished ground level

However, it is considered that the 'finished ground level' is in fact RL 36.335m AHD, in accordance with the following definition contained within the TLEP:

Finished ground level, in relation to land, means the following (and, if more than one of the following paragraphs applies in relation to the land, whichever is the highest):

- (a) *The natural ground level of the land that was the level of the land at the appointed day, or the level of the land after such earthworks (excluding any basement excavations) as are consented to by the consent authority, whichever is the lower,*

There have been no earthworks 'consented to' which are lower than the level of the land as it was on the appointed day and the proposed parking area is not considered to be defined as a 'basement', as detailed further within this report. Therefore this exclusion does not apply.

- (b) *The level of the land approved by the consent authority as the finished ground level of the land prior to the commencement of Tweed Local Environmental Plan 2000 (Amendment No 46),*

No earthworks have been consented to by the consent authority prior to the appointed day and therefore point (b) does not apply.

- (c) *If the land is within an area identified by the Council as flood liable land, the level of the land after filling the land in accordance with the consent authority to the adopted design flood level under Section A3.*

The land is not flood prone and therefore point (c) does not apply.

On this basis the finished ground level is considered to be RL 36.335m AHD (i.e. the *level of the land after such earthworks (excluding any basement excavations) as are consent to*) and not the 'existing' ground level of RL 37.5m AHD. This results in the space between the finished ground level and the floor immediately above being approximately RL 2.4m AHD.

The TLEP defines a 'storey' as:

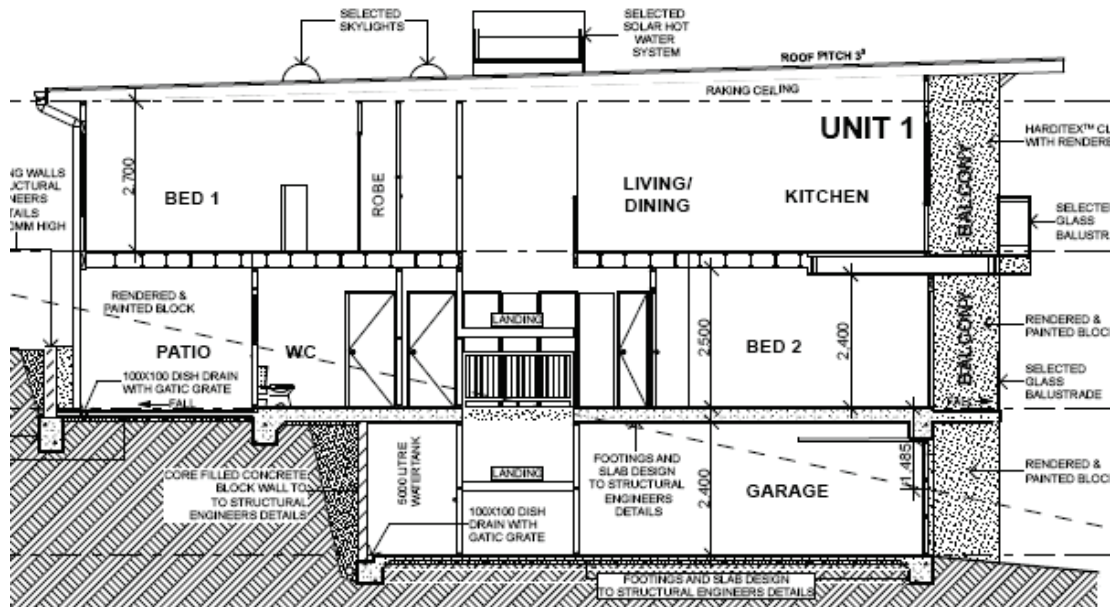
- (a) *The space between two floors, or*
- (b) *The space between a floor and any ceiling or roof immediately above it, or*
- (c) *Foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top floor immediately above them exceeds 1.5 metres in height.*

A storey which exceeds 4.5 metres for residential buildings is counted as two storeys.

For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.

As the space between the finished ground level and the floor immediately above is in excess of 1.5 metres in height, it is considered that the garage parking area constitutes an additional storey.

Further, as detailed in the diagram below, three (3) storeys of the building are intersected by the same vertical line and therefore, the building is considered to constitute three storeys.



Section of proposed dual occupancy development

The applicants consider that the proposed development constitutes two (2) storeys, by virtue of Point (a) (as detailed above), that excludes basement excavations in the definition of finished ground level.

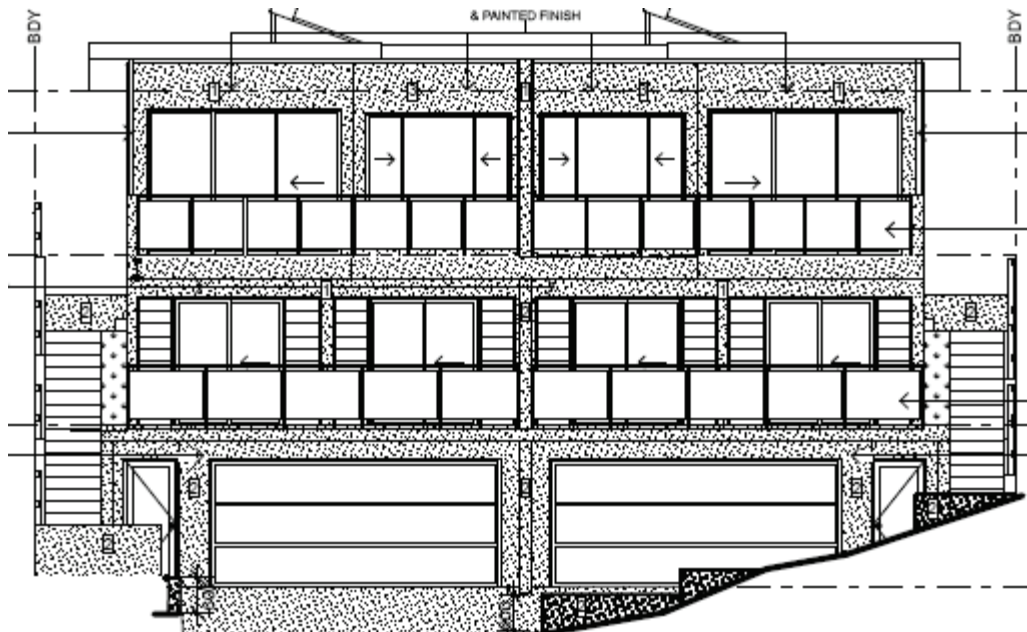
The proponent advises that the parking area is a basement as *it would be excavated into the hillside such that the rear of the structure would be completely below the level of the land and the front of the structure would be at its highest point no more than 1.485m above the level of the land as it is today*. The applicants have further advised that the parking areas would be a *storey of a building partly underground*, and is therefore consistent with the Macquarie Dictionary definition of a basement.

However, Council is of the opinion that the development does not comprise a basement parking area. This is primarily because the parking areas shown on the subject plans are clearly exposed to the street (at a similar level to the street) and the elevation can then be viewed as a distinct three (3) storey building (with garages and a Level 1 and Level 2 protruding beyond the wall of the parking area below).

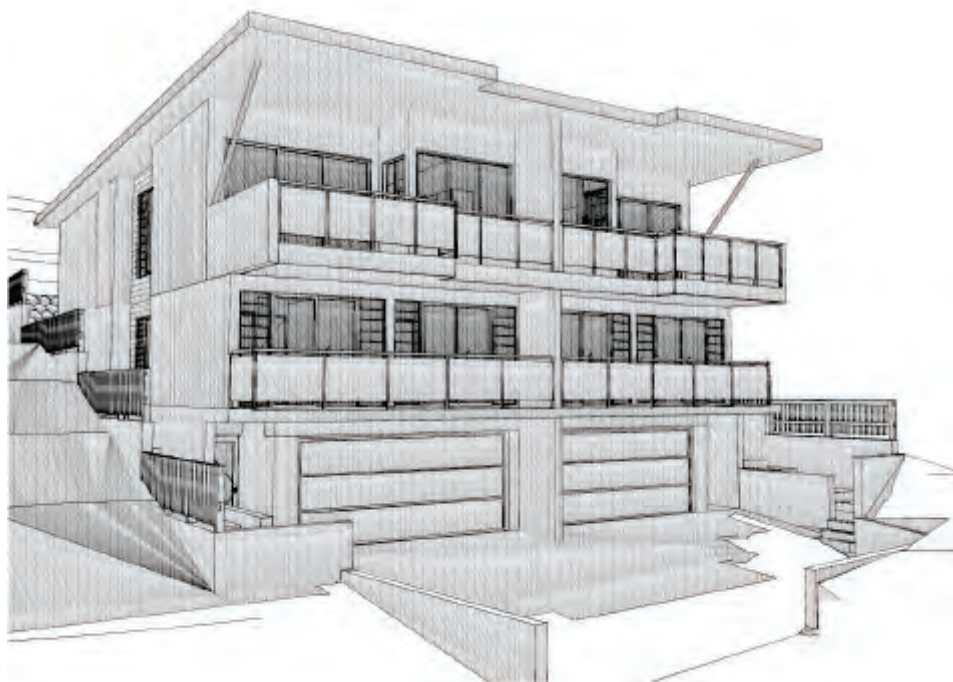
Council acknowledges that the proponent has utilised the standard definition of a basement from the Macquarie Dictionary definition, however this definition is not written in a planning sense and fails to acknowledge case law from the NSW Land and Environment Court, as further detailed within this report.

Of note at this point is a NSW Court of Appeal decision (Port Stephens Council v Chan Industrial Pty Limited & Anor [2005] NSWCA 232 dated 19 July 2005) clarifies Council's concerns in relation to building height and how this is measured. The Judgement advises that the 'clear object of the height control in the zones to which it applies is [...] to control issues of privacy and overshadowing [...] as well as visual bulk of the completed building'.

In relation to 'finished ground level', the Judgement advises that this should be 'construed as a reference to the finished ground level which abuts the completed building at any point along its external walls'. On this basis the proposed building, in Council's opinion, represents a three (3) storey building as the garages would be accessed from street level, as shown in the following diagrams:



Front (east) elevation in plan form



3D perspective of proposed dual occupancy development

Council is therefore of the opinion that the development proposes a three (3) storey building. On this basis a SEPP 1 Objection to vary the development standard in relation to building height has been requested.

The SEPP 1 Objection however reiterates the applicants position in relation to the definition of finished ground level and basement and that the proposed development does constitute a two (2) storey building (i.e. two habitable floors that are constructed on top of a basement).

It is considered that the proponent has not adequately justified the variation to the development standard or expressed to Council that a complying development cannot be achieved on the site. Further, should the proposed development be approved it would be out of character with the majority of surrounding single and two storey built development and would set a harmful precedent for similar three storey development in the locality.

On this basis a recommendation of refusal for the proposed development is put forward.

Clause 17 - Social Impact Assessment

Clause 17 of the TLEP requires a social impact assessment for development types likely to have a significant social impact in the locality. The criteria for a socio-economic assessment to be provided is 50 units for multi dwelling housing. Therefore, the applicant has not provided an assessment in this regard.

Clause 35 - Acid Sulfate Soils

Clause 35 of the TLEP provides for the management of acid sulfate soils. The land has been identified as having Class 5 acid sulfate soils. Council's Environmental Health Services has reviewed the proposal and has provided no objections with this regard.

Other Specific Clauses

Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and therefore this clause applies. The development application was referred to the NSW RFS who have advised that they were not in a position to properly assess the application due to the lack of supporting evidence that clearly demonstrates the vegetation to the south would perform as a managed vegetation structure in the event of a bush fire.

The applicants were requested to provide such detail to Council. The RFS have since provided recommended conditions in relation to the maintenance of asset protection zones, connection of gas, design and construction and landscaping to be in accordance with the *Planning for Bush Fire Protection 2006* document.

Clause 54 – Tree Protection Order

The site is subject to Council's 2011 Tree Preservation Order (Koala Habitat mapping) and on this basis this clause applies. The site has been substantially cleared of vegetation and will not result in the loss of any known koala feed trees and does not form part of a broader area of vegetation. It is considered that the proposal would be unlikely to impact on Koala habitat.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

Clause 32B of the NCREP is applicable to this proposal as the subject land falls under the jurisdiction of the NSW Coastal Policy. The Policy specifically seeks to identify, protect and promote the aesthetic qualities of both natural and built environments. Further, the Policy states that in assessing development application proposals:

- (a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.
- (b) Council is also required to consider the Coastline Management Manual
- (c) A consideration of the North Coast: Design Guidelines is required
- (d) Public access to the foreshore must not be impeded.
- (e) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

The proposal is considered not to be inconsistent with Clause 32B (a), (b) (d) and (e) as it is deemed unlikely that it will impede public foreshore access to the beach or result in significant overshadowing of adjacent public open space.

However, consideration of the proposal raises concerns in relation to several design principles of the North Coast: Design Guidelines that apply to all future coastal development, as follows:

- *Ensure development responds sensitively to the density and scale of the existing settlement;*
- *Ensure planning and development respond to the local topography and climate;*
- *In multi-dwelling development, provide a street entry for each dwelling, avoid battle-axe, villa-style development and design appropriately to topography, climate and aspect;*
- *Reinforce original subdivision patterns and streetscapes that characterise the settlement, maintain consistent setbacks from front and rear of lots in low density areas and continuous street and awning edges along core streets/perimeters of major blocks.*

It is considered that, by virtue of the subsequent bulk and height of the proposed three (3) storey building, the development would not respond to the density and scale of the majority of surrounding development and would adversely impact on the visual amenity of the area. As detailed further within this report, the development also proposes a significant variation to the maximum allowable Floor Space Ratio. This exemplifies Council's concerns in relation to the overall scale of the proposed building in relation to the capacity of the site.

Whilst it is appreciated that the development has taken the topography of the site into consideration, it is considered that by further stepping the building back and eliminating the three (3) storey element, particularly at the street frontage, would ensure that the building responded to the scale of surrounding development.

It is considered that the proposed development, in its current form, does not reinforce existing streetscape character and would set a harmful precedent for similar development within the locality.

Clause 43: Residential development

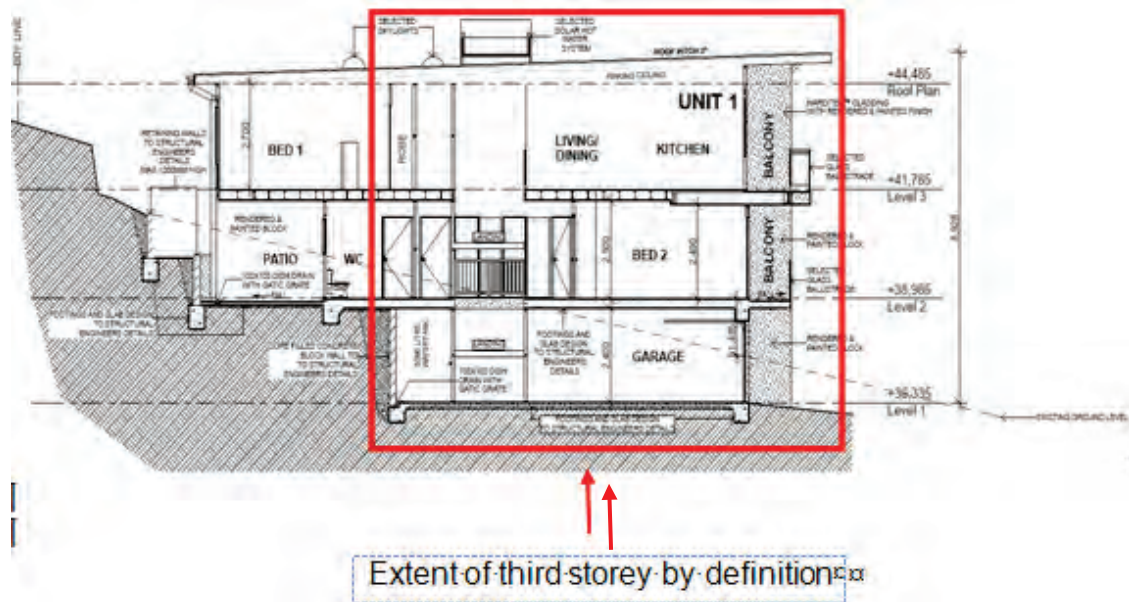
As a dual occupancy development, the proposed density is considered to be a reasonable response to the land use character of the area. However, the development would be regarded as a three (3) storey building from the street that proposes a significant variation to the maximum allowable FSR control, which, by reason of the resultant height and bulk, would negatively impact on the character and visual amenity of the surrounding area, which predominantly consists of two-storey, low density residential development.

The proposal is therefore considered to be inconsistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 1 - Development Standards

SEPP No. 1 enables Council to assume the Director's concurrence to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The area of non-compliance is shown diagrammatically below:



As discussed previously the applicant has submitted a SEPP No. 1 Objection to vary the number of storeys permitted on the site. Whilst it is evident that the proponent disagrees with Council's position with regard to the number of proposed storeys in the building, the applicant's justification for the variation is summarised as follows:

Applicant's submission:

Are the objectives of the standard achieved notwithstanding non-compliance with the standard?

The proposed development proposes two habitable levels, constructed on top of a basement garage. (We consider the garage to be a basement since it is to be excavated into the hillside such that the rear of the structure will be completely below the level of the land and the front elevation of the structure will be at its highest point no more than 1.485m above the level of the land as it is today, which is the finished ground level of the site).

Accordingly, the proposed building will provide only two habitable floors that are above the existing level of the land. On this basis we submit that the development is of a height and scale that is appropriate to its location.

Two storey buildings are located on the properties either side of the subject site. A three storey building is located opposite the site (No. 29 Charles Street) [...]. On this basis we submit that the development is of a height and scale that is in context with the surrounding development.

The subject site contains steeply sloping land [and it] is therefore necessary to cut the driveway into the existing levels to access the proposed basement garage. On this basis we submit that the development is of a height and scale that is in context with the environmental characteristics of the land.

Is the granting of consent consistent with the aims of SEPP 1?

Compliance with the development standard would preclude the development of this site for the purpose of a dual occupancy development as encouraged by the 2(b) Medium Density zoning.

The proposed buildings is set on the high side of the street and due to the steeply sloping nature of the site the driveway to the basement garage must be excavated to allow access. The resultant impact on the amenity of the streetscape is that the garage doors will be visible, even though they will be no more than 1.5m above the existing ground level and technically do not comprise an additional storey as access to basement areas is excluded from the definition of 'Storey'.

[On this basis ...] strict compliance with Council Officers' interpretation of the development standard would hinder attainment of the EP&A Act's object to promote orderly and economic use [...].

Are clause 8 matters (in SEPP 1) satisfied (i.e. does the noncompliance raises matters of State or Regional planning significance and is there public benefit of maintaining the controls)?

It is submitted that strict adherence to Council Officer's interpretation of the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *Basement garage protrudes more than 1.485m above the existing ground level (which as previously discussed is also the defined 'Finished Ground Level') and therefore does not constitute a storey;*
- *As it is necessary to gain vehicular and pedestrian access to the basement the driveway and pedestrian access adjacent to the basement is to be excavated;*
- *We submit that this is normal practice that is consistent with the exclusion in the definition of storey;*
- *The proposed development is consistent with the anticipated development of this site and the immediate area and is not considered to be significant, nor inconsistent with the objectives of Clause 16 of the TLEP.*

Conclusion

It is considered that upholding of the Objection would be consistent with the aims of the SEPP No 1 in that strict compliance with Council Officers' interpretation of the development standard would unreasonably preclude the appropriate development of the site in accordance with the medium density development controls.

Notwithstanding that the proposal will present as three levels to the street, this is considered to be of no consequence since appropriate landscaping is provided at the front corners of the site and the building will present as only two storeys to the side boundaries and only one storey to the rear. The

maximum height of the building is only 1m – 2m above the ground level at the rear of the site.

We conclude that upholding the Objection is considered to be in the public interest and consistent with the objects of the Act.

Assessment of the Applicant's Submission

The NSW Land and Environment Court has established a new test to determine the appropriateness of a SEPP 1 application. The Chief Justice stated that:

1. *The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
 1. *whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 2. *the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The Chief Justice then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard;***

Clause 16 of the TLEP 2000 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land.

The majority of surrounding development consists of one or two storey residential buildings with the exception of No. 46 Charles Street (opposite the subject site) that consists of elements of a three (3) storey building. This particular Development Application for a proposed three (3) storey residence (K99/1599) was approved by Council providing that the top point of the roof did not exceed 4.5 metres above the level of the footpath at the kerb, at the mid-point of the allotment so as to reduce the overall building height and bulk of the building. The garage parking area is considered to form a 'basement'

in this instance, as it is located below street level and therefore has a reduced visual impact from the street.

Notwithstanding the development at No. 46 Charles Street, it is considered that the majority of surrounding development within the immediate vicinity constitutes one (1) or two (2) storey buildings. Where there are other examples of three (3) storey elements within surrounding development (the proponent has put forward No. 68 and No. 72 Charles Street), such buildings are stepped down the slope of the site and present as single or two storey buildings at the street frontage. Council is of the opinion that the overwhelming character of residential development in the locality is that of one or two storey buildings.

The proposed development, with two (2) double garages at street level and two habitable levels atop, would clearly be viewed as a three (3) storey building (approximately 9m in height) from the street. Further, it is considered that no amount of landscaping would reduce the overall height, bulk or scale of the proposed building. The proposal would therefore be inconsistent with the majority of surrounding development and, if approved, would set a harmful precedent for similar three (3) storey development in the future.

It is therefore considered that the proposal would be inconsistent with the height and scale of surrounding development and would contravene the objective of Clause 16 of the TLEP.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

The objective and purpose of the standard is relevant to the proposed dual occupancy development, which seeks to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land and to ensure that every Development Application is assessed against the objectives of this clause to ensure a consistent and transparent approach in decision making.

The proponent has put forward that, due to the steeply sloping nature of the site located on the high (western) side of Charles Street, compliance with the standard would not be feasible and would prohibit any dual occupancy development on the site. However, Council is of the opinion that a complying design may be achieved by stepping elements of the building back into the site. An alternate complying design has not been provided to Council with this regard.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The underlying objective of the standard is to ensure that the height and scale of development is appropriate to surrounding development. The proponent has put forward that compliance with the standard would preclude the development of this site for the purpose of a dual occupancy development and that compliance would be unreasonable, given the medium density zoning and the physical capabilities of the site.

Should the development be approved, it would set a harmful precedent for three (3) storey development within the locality. As previously detailed, Council is of the opinion that the area is characterised by one and two storey residential buildings. On this basis it is considered that compliance with the standard is reasonable and necessary in this instance.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

As previously detailed there are some examples of buildings with elements of three (3) storeys within the locality however, such buildings are generally stepped down into the slope of the site and present as one or two storeys from the street. Council is of the opinion that the majority of surrounding development consists of one and two storey buildings.

As the development presents itself as a three (3) storey building at the street frontage it would have a harmful impact on neighbourhood character, by reason of its bulk and scale, and would set a harmful precedent for similar development in the locality.

The proponent has also provided to Council an example of a Development Application (DA07/0411) for a three (3) storey building at 18 Tweed Coast Road, Hastings Point that was approved by Council in a zone within a two (2) storey height limit zone. The assessment of the proposed development failed to identify a breach of the definition of storey in this instance. This scenario however is slightly different to the current proposal as the location of the breach at Hastings Point was in the middle of the allotment and not adjoining the primary frontage.

A search of Council's records has indicated that this appears to be an isolated incident and should not be used as grounds for precedence.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The subject site is located within a residential zone that has a height restriction of two (2) storeys to ensure development is responsive to the steeply sloping topography and to reduce bulk and scale of new development. It is considered that the land zoning in relation to building height is reasonable in this instance.

Where the grounds of objection are of a general nature and would be applicable to many sites in the locality, approval of the objection may create an adverse planning precedent. Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area.

With this regard, approval of the proposed development would set a precedent for three (3) storey buildings in a zone restricted to a (2) storey height limit. The public benefit of maintaining the planning controls in this regard relates to the preservation of the general neighbourhood character, maintaining views from public vantage points as well as from private dwelling houses, ensuring development is responsive to site topography and reducing the overall visual impact of development along the ridgeline.

Having regard for the applicants SEPP 1 justification and the Courts assessment criteria, the proposed SEPP 1 is considered unreasonable in these circumstances. Therefore it is recommended that the SEPP1 objection is not supported and concurrence to the variation to the number of storeys not assumed in this instance.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered, in general, to satisfy the matters for consideration in that the development proposes a dual occupancy development within an established residential zone.

However, it is considered that the proposed three (3) storey height and resultant bulk and scale, would not be appropriate in its location, which is predominantly characterised by one or two storey buildings. Whilst the proponent has argued that the sloping site leaves no opportunity for reducing the overall scale of the development, it is considered that this does not adequately justify a building of this scale and proportion. Once again this is heightened by the proposed significant variation to the maximum allowable Floor Space Ratio controls, as detailed further within this report.

It is therefore considered that the proposal would be inappropriate in design and in its relationship with the surrounding area. The proposal would therefore be inconsistent with the aims of the policy.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates were submitted demonstrating that the proposal meets the required targets.

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

The Tweed Local Environmental Plan 2010 is yet to be formally gazetted by Council. However in this Draft LEP the site is located within the R3 – Medium Density Residential Zone. Within the R3 zone an Attached Dwelling is permitted with consent.

The subject site is located within a zone with a height restriction of 9 metres. The subject building measures approximately 9.5m in height. However, Clause 4.3 (Height of Buildings) states that development proposal should ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity and to limit the impact of the height of a building on the existing natural and built environment. With this regard it is considered that the proposed three (3) storey building would be detrimental to neighbourhood character and the surrounding built environment.

However, as the Draft LEP has not yet been adopted this document is not, at the time of writing, a material planning consideration.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

In general the proposed development is compliant with the controls detailed within the A1 Code in relation to building setbacks, building separation and provision of deep soil zones. Variations to a number of controls are put forward, as detailed below:

Streetscape character, external living areas and sunlight access.

However, the overall height and scale of the proposal, coupled with the dominance of the double garages on the ground floor, is considered to be inconsistent with surrounding development and detrimental to the streetscape character and appearance.

It is considered that reducing the height of the building, by stepping the building back into the site would ensure compliance with the two (2) storey height limit. Further, the internal reconfiguration (for example: reducing or removing Level 1 patio and setting services to the rear of the building; reconfiguring service, landing areas and lifts; reducing bedroom size on Level 2; providing light wells to staircases; reducing roof over Level 2 balconies and so on) may provide greater opportunity for integration between the internal and external living areas, improve solar gain and overall unit amenity.

There may also be opportunity to step back one unit from the other to reduce the dominance of the proposed double garages and improve solar gain from the north east.

Basement carparking

The proponent advises that the development comprises two storeys over a basement garage however there has been no consideration for the control that sets out standards for basement carparking (i.e. *basement carparking cannot extend more than 1m above ground level where it faces a public street or public space*).

The carparking area clearly extends more than 1m above ground level where it faces Charles Street and the development would therefore not satisfy the requirements of this control in relation to basement carparking.

Garages

The ground floor comprises two double garages only and is therefore dominated by an enclosed and blank frontage, with habitable rooms located on the upper floors. Drawings illustrating how the mandatory controls in relation to the dominance of garages have been submitted, indicating that, given the steeply sloping and constrained nature of the site, setting the garages behind the front of the building line is not achievable. The proponent advises that alternative options were considered for the garage entries, but none were considered feasible and that, as a design solution, garage entries were designed to present as a 'base' to the building with a contemporary door to improve presentation.

In general this variation is considered to be justified, given the sloping nature of the site, however it is considered that the dominance of the garages, coupled with the two upper floors immediately above, increase the bulk and scale of the proposed development.

Cut and fill

A variation in regard to cut and fill has been requested. The proposal would provide 1.2m high retaining walls within 900mm of the side boundaries. Given that excavation to the site is generally minimal with the existing land formation generally being contained within the building footprint, it is generally considered that this variation is justified in this instance.

The proponent advises that the design of the development balances the need to minimise building bulk, provide view sharing and reduce external retaining. Whilst the overall bulk of the building has been reduced by back filling into the site, the scale and height of the building when viewed from the street would be considerable.

Floor Space Ratio

An additional variation is requested in relation to Floor Space Ratio (The proponent advises that the FRS is 0:73:1 as opposed to 0:55:1 for an attached dual occupancy).

Council's calculations show the floor area of the building (excluding balconies and garages) to be approximately 364m². As the site area measures 452m² the FSR

is calculated to be 0:80:1. This equates to a variation of an additional 116m² of floor space to that specified in the DCP.

The proponent has stated that as the development accords with key controls relating to building setback, impervious area, deep soil zones and provides a high standard architectural design, that this variation is justified. Given the constrained nature (both in size and topography) of the site, a minor variation to the mandatory controls is in some respect considered justified.

However, the development proposes a variation of approximately 116m² of floor area which is significant, particularly given the large balcony areas and double garages in addition to this. This considerable variation to FSR highlights Council's concerns in relation to the overall bulk and scale of the building. The limited area for deep soil zones and external living areas; the dominance of the driveway and reduced landscaping in the front setback; the proximity of the building to the boundaries of the site as well as the overall height of the building signifies that the overall scale of the development exceeds the capacity of the site.

A2-Site Access and Parking Code

Section A2 of the DCP requires a total of two (2) parking spaces per unit plus provision for driveway parking of another vehicle. The proposed development provides a double garage for each unit as well as an additional parking space per unit, located on the driveway.

The proposal therefore complies with Section A2 of the DCP.

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

Clause 92(a) Government Coastal Policy

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The proposal does not pose a threat to coastal processes.

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

Not applicable to the proposed development.

Tweed Shire Coastline Management Plan 2005

Not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the proposed development.

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

Not applicable to the proposed development.

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

Context and Setting

Whilst the contemporary design and appearance of the buildings may not necessarily be in keeping with surrounding development, it is considered that they would provide a modern contrast and contribute to visual amenity and design interest within the locality.

However, as previously detailed within this report, the height and scale of the proposed development, coupled with the dominance of the double garages, would be detrimental to the visual amenity and character of the surrounding area.

Access, Transport and Traffic

As previously detailed within this report adequate parking and access is provided for the proposed dual occupancy development, with the proposed access way being 6m in width which complies.

Cumulative Impacts

The approval of this development application, in Council's opinion, would set a undesirable precedent for similar development within the locality and within the Shire as a whole. The purpose of the LEP and other relevant planning policy is to ensure development is consistent with the surrounding built form and provides liveable and sustainable development and makes a positive contribution to surrounding residential and visual amenity.

As previously detailed, whilst there may be examples of other buildings that comprise three (3) storey elements in the vicinity of the site, Council is of the opinion that the proposal, which clearly would read as a three (3) storey building from Charles Street, and, coupled with the overall scale and bulk of the building, would be inconsistent with the overwhelming majority of built form in the locality and would set an undesirable precedent for similar development in the future.

(c) Suitability of the site for the development

Topography

The development does take consideration of the topography of the site and, given the steeply sloping nature of the site, Council appreciates that strict compliance with Clause 16 of the LEP as well as the mandatory controls in relation to Floor Space Ratio may present difficulties in relation to building design and financial viability of the proposal. However, it is considered that there may be possibility to further step the building back into the site (by reducing the footprint of Level 1 and 2; and internal reconfiguration for example) to ensure that the two (2) storey control is adhered to and the overall height and bulk of the building, particularly when viewed from the street, is reduced.

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

Two (2) submissions were made in response to the notification process. The main concerns related to the impact of the construction phase to surrounding properties (No. 44 and No. 46 Charles Street); increased traffic congestion from Steep Street to Adelaide Street and in relation to overlooking from the front balcony back towards the living area of No. 29 Charles Street.

Site stability

Council's Development Engineer has reviewed the proposed development and has provided no objection in relation to slope stability. Excavation of the site is minimal and generally the existing landform would be contained within the building footprint. Providing the retaining walls are certified by a suitably qualified Structural Engineer no further consideration with this regard was required.

Traffic congestion

The development proposes adequate onsite carparking to accommodate the proposed dual occupancy development, in compliance with the requirements of Section A2 of the DCP.

Overlooking

The proposed upper floor balcony (Level 2) would be set back from the neighbouring property (No. 29 Charles Street) by approximately 8m and separated by a right of carriageway. This would therefore limit the potential for overlooking, noise or disturbance to the adjacent property. Further, the proposed balconies predominantly overlook Charles Street itself and the front garden aspect and side living room of the neighbouring property (No. 29 Charles Street). It is not considered that overlooking would cause an unacceptable impact to the residential amenity of the occupants of the adjacent property so as to warrant refusal or redesign of the proposed development.

(e) Public interest

It is considered that the proposed dual occupancy development would not impact on the public or community interests. However, as detailed, the three (3) storey height of the proposed development would, if approved, set a harmful precedent for similar, undesirable development in the future.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal.

2. Grant in-principle support for the proposal, and that the officers bring back a further report to Council with possible conditions of development consent.

CONCLUSION:

As detailed within this report it is considered that the proponent has not justified the SEPP 1 Objection for a variation to the development standard in relation to building height. Council is of the opinion that the development proposes a building of three (3) storeys and that, by reason of its height, bulk and scale, would be inconsistent with surrounding built development and would have a detrimental impact on the character and appearance of the surrounding area. Council is also of the opinion that a compliant design may also be achieved without precluding a dual occupancy development on the site and that the proponent has failed to demonstrate that a compliant two storey building could not be achieved in this instance.

Should the development be approved, it would set an undesirable precedent for further, unjustified variations to the applicable development standard in relation to building height.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

The proposed development could potentially set an unwarranted precedent for the variation to building height limits contained in the relevant planning policy documents, without sufficient justification with this regard.

b. Budget/Long Term Finance Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

16 [PR-CM] Review of Local Government Engagement with the NSW Rural Fire Service

SUBMITTED BY: Building and Environmental Health



Supporting Community Life

SUMMARY OF REPORT:

The Local Government and Shires Association of NSW has developed a discussion paper in response to the ongoing concerns expressed by councils in relation to their engagement with the NSW Rural Fire Service (RFS).

The discussion paper outlines the past and present engagement of Local Government with the RFS and proposes options for the future:-

- Option 1 – Retract Local Governments operational involvement with the RFS.
- Option 1A – Merging the two fire services (*RFS and Fire and Rescue NSW*).
- Option 2 – Retaining current arrangements with process improvements.
- Option 3 – Local Government recovering bushfire responsibilities.
- Option 4 – Maintain status quo.

This report highlights the LGSA issues and options as outlined within the Paper.

RECOMMENDATION:

That Council advises the Local Government and Shires Association of NSW of its support for Option 1 – Retract Local Governments operational involvement with the Rural Fire Service.

REPORT:

The Local Government and Shires Association (LGSA) of NSW have developed a discussion paper in response to the ongoing concerns expressed by councils in relation to their engagement with the NSW Rural Fire Service (RFS).

The discussion paper outlines the past and present engagement of Local Government with the RFS and proposes options for the future.

All councils engaged with the RFS are requested to:

- comment on their current engagements with the RFS.
- identify issues/problems commonly arising.
- highlight any current arrangements that are considered effective; and
- comment on the range of options presented in the discussion paper and/or present alternative options.

The discussion paper was circulated to Councillors on 3 April 2012.

The following are extracts from the LGSA discussion paper:

"Local Government plays an important role in the provision of fire services throughout NSW.

NSW councils hold a variety of often conflicting views about the operational structure of the NSW Rural Fire Service (RFS). Many councils are dissatisfied with the current situation.

Throughout the evolution and growth of the RFS, arrangements were progressively implemented between the RFS and councils. However, the existing arrangements are proving to be problematic, complex and inequitable. Increasingly councils are expressing growing frustration with their relationship with the RFS."

"Snapshot of the RFS

Under the Rural Fires Act (NSW) 1997 and the Rural Fires Regulation (NSW) 1997, the RFS was formed as a single state level/managed agency.

The RFS structure comprises of:

- *The RFS head office split into the following directorates:*

*Executive Services;
Operational Services;
Regional Services;
Infrastructure Services; and
Membership and Strategic Services;*

- *4 regional offices;*
- *49 district offices;*
- *126 RFS districts; and*
- *2039 RFS brigades.*

During 2010/11, the RFS received \$257 million in funding, attended 18,830 incidents, used 70,448 volunteers, and employed 920 staff with employee expenses totalling \$93,327,000 (salaries, leave, superannuation, payroll tax, etc).

Councils and volunteers have raised concerns about the RFS's escalating staff numbers and associated costs particularly within the RFS middle management and at the RFS head office. Over the five years from 2006/07 to 2010/11, RFS staff numbers increased from 685 to 920, a 34.3% increase, and employee expenses increased from \$59,950,000 to \$93,377,000, a 55.7% increase."

LGSA ISSUES

The following issues have been highlighted by the LGSA in the discussion paper:

Local Government engagement with NSW Rural Fire Service

Facilities

"Issues: Councils have expressed frustration that there is no set standard for facilities. On the one hand, the RFS can impose on councils to build a facility to their choice with no effective consultation, rational or standard to back up the RFS decision. On the other hand, in areas of NSW which are limited in resources, the lack of a minimum standard is beneficial."

Equipment

"Issue: As councils technically own the equipment but have no control over its management/use, many councils had issues with equipment insurance, especially when the equipment is damaged when used for fire fighting outside of council's district or used for non bushfire fighting activities."

"Issues: Councils have expressed frustration with the process for determining the level of equipment and vehicles in their district. The purchase of equipment and vehicles is decided through the district budgeting process which councils are consulted on. However, in some regions the consultation process has been described as tokenistic as council's requests/opinions are overridden by the RFS."

It is the Associations view that the RFS should take over the ownership, management, and maintenance of all RFS equipment and facilities, with the NSW Government purchasing the facilities and equipment in a once up reimbursement payment to councils. The NSW Government already owns land, facilities and equipment across NSW through other agencies and has established systems for financial and administrative management. Expanding this model to the RFS will remove duplication and complications between the NSW Government and Local Government."

Bush Fire Management Committee (BFMC)

"Issue: If Local Government fully retracts its engagements with the RFS, there may be implications for the future role and structure of BFMCs."

Operational support

"Issue: Councils have concerns regarding the interpretation by the RFS of 'council managed lands' which prevents them from getting reimbursement when assisting to fight fires on private land. However, this interpretation varies between NSW regions."

Financial arrangements

"Issues:

- *Process of determining the RFS budget allocations – The process of determining the RFS contributions is split into stages and between district and state budget requirements. Firstly, the council provides the RFS (in conjunction with District RFS) with a 'bid' for activities and equipment in their area (district budget). Secondly the RFS provides the council an estimate of probable expenditure for the RFS annual contribution (consisting of estimated district budget and estimated state budget). The RFS then advises council of the actual contribution which is invoiced by the Ministry for Policy and Emergency Services as part of the ESL. Reimbursements for maintenance, some state and volunteers services/program , and others are included in the final actual contribution.*
- *Timing of advice for actual contributions – Councils finalise their budgets in March/April for the following financial year. Included in councils' budgets is an estimate of the contributions to the RFS (provided by the RFS in around February). However, councils are not advised of their actual contribution until midway through the next financial year (often in around December). In previous years, actual contribution increased significantly and unexpectedly from estimated contribution causing budgetary problems for councils and, in some areas, forced a reduction of other community services to cover the increase in RFS contributions (the problem of the timing of actual contribution advice is caused by the timing of the State budget which is outside of the RFS's control).*
- *Circular funding arrangements – Often the assistance provided by councils to the RFS is reimbursed (e.g. maintenance, building fire control centres, etc). However, as councils then pay 11.7% of the reimbursement in the following year into the RFS District budget, the funding for an item can take a circular flow between council and the RFS accounts over a number of years. Additionally, councils are required to carry the debt on behalf of the RFS while waiting for reimbursements. In some cases councils needed to obtain loans and had to pay interest charges without reimbursement from the RFS. These arrangements are cumbersome and cause considerable confusion.*
- *Inadequate advice – Councils often express frustration with the lack of advice from the RFS regarding funding and expenditure allocations (e.g. new equipment not included in the original probable estimate).*
- *Accounting errors – In previous years, the final actual contribution advice from the RFS to councils was fraught with accounting errors (either with state-wide accounting errors and/or district accounting errors)."*

Grants

"Issue: Councils are required to be the sponsor for RFS grants provided to private properties and, as such, are delegated the liability."

Planning controls and development applications in bushfire prone areas

"Issues: The Associations have raised concerns with the RFS and the Department of Planning and Infrastructure about the above changes as the new practice could

undermine best practice where councils and private certifiers lack the required expertise in assessing applications in bushfire prone areas. In response, the RFS has committed to providing further training to councils and develop an assessment tool.

Councils have advised of the need to update/amend the 'Planning for Bush Fire Protection' (Blue Book).

Part of the requirements for development in bushfire prone areas is the establishment of an Asset Protection Zone (APZ). While it is the responsibility of the property owner to maintain the APZ, compliance and who is responsible for compliance activity remains an issue."

Local Liaison Committee

"Issues: Concerns have been raised regarding the representation, communication and purpose of the Local Liaison Committees for councils and volunteers. It has been reported that the RFS often dominate these meetings with excessive focus dedicated to RFS plans and actions which is external to council and volunteer involvement and dilutes the purpose for local representation, coordination and consultation."

Council bushfire responsibilities as land managers

"Issues: Councils have conveyed concerns regarding the provision of training to use the RFS BRIMS system, the useability of the BRIMS program, and the level of administration required to enter data into BRIMS."

LGSA OPTIONS

The following options have been put forward by the LGSA:

"Options for Future Local Government Engagement with the RFS

It should be first noted that opting to retract Local Government's operational involvement with the RFS would not relieve councils of the obligation to fund the RFS through the Emergency Services Levy (ESL)...

It is important to recognise that, even with Local Government retracting its involvement with the RFS agency, councils will continue to support and encourage their local RFS volunteers. It is essential that volunteers are not negatively affected by any proposed changes. However, it appears that volunteers and communities would benefit from a centralised state agency managing and consistently delivering the full range of RFS activities, rather than from the current disjointed roles and responsibilities for each organisation and area. However, there is considerable debate around this topic.

The crux of this discussion paper is to look at the range of engagements with the RFS; what works, what does not work, what should be retained and what should be passed to the RFS. Under Option 1, Local Government will need to identify what areas of engagement with the RFS to retract from and what areas to retain (whether for legislative or continuity reasons).

As the RFS evolves there appears to be an increase in the demands on councils' resources with greater complexity to the arrangements. It is envisaged that in future years the state/RFS imposed requirements will become increasingly burdensome.

Option 1 – Retract Local Governments operational involvement with the RFS

Under option 1, the RFS would centrally take over all budget, administration, assets and project management of the RFS units, rather than having councils partly providing these functions on behalf of the RFS. Additionally, this would remove the hidden costs and burdens outside of the ESL imposed onto councils with these functions. It is often viewed that the NSW Government should restructure the RFS to be a state-wide fully managed agency similar to other state government departments.

The ownership of council owned RFS assets and infrastructure could be transferred to the RFS. This may involve the NSW Government paying a one up payment to councils or councils donating the facilities and assets to the RFS with the proviso that the land is not to be sold by the NSW Government but reverted back to council if the land is no longer used for bushfire services.

The NSW Government already owns land, facilities and equipment across NSW through other agencies and has established systems for financial and administrative management. Expanding this model to the RFS will remove duplication and complications between the NSW Government and Local Government.

Under option 1, councils would still be able to provide supplementary voluntary support (e.g. funding, equipment, services) to their local RFS units without the current pressure and heavy-handed requirements of the NSW Government and RFS head office.

Removing the requirements imposed by the RFS on councils to deliver services on their behalf would allow councils to focus on the delivery of core functions.

However, as part of removing councils' involvement in the RFS the following could occur:

- *Councils may lose their input into the development of the local RFS budgets and the levels of services provided in their communities.*
- *If equipment and facilities were transferred to the RFS and the NSW Government did not reimburse councils for their proportions of the ownership of the asset or the value of land, councils would experience financial loss. However, the financial burden to maintain and replace equipment and facilities would be removed in the future.*
- *There is concern that volunteerism could be affected by removing the partly localised management of the RFS units and centralising the service with the NSW Government. Historically, volunteers enjoyed the community aspect of RFS and increasingly the RFS volunteer associations are voicing frustration with the increasing role of the RFS head office (please see the Rural Fire Service Association and the Volunteer Fire Fighters Association websites).*
- *A comprehensive change management program would be needed to assist councils, RFS, volunteers and the community with the new arrangements.*

Option 1A – Merging the two fire services

The question of whether the two fire services (RFS and Fire and Rescue NSW) should be merged is frequently raised. It is argued that a merger could provide economies of scale, operational and administrative efficiencies and better coordination of resources. There is a sound basis for these arguments.

Under this scenario, it is likely that council engagement with the enlarged fire service would be limited to that currently experienced with Fire and Rescue NSW.

However, in funding terms the merging of the two fire services is largely irrelevant to councils. Potential cost savings may be reflected in reductions in the ESL, but this is not guaranteed. Also, it would not resolve the funding issues. It also raises questions of how Local Government would be involved in bushfire management.

Option 2 – Retaining current arrangements with process improvements

Option 2 aims to enhance the status quo of the current arrangements with the RFS. Part of option 2 is the need to develop clear targets for improvement in the current arrangements that are causing concerns for councils.

Councils often remark that the current relationship between the RFS and councils is reminiscent of a 'master and servant' relationship with the RFS dictating to councils. Through option 2 a 'Partnership' culture would need to be developed between the RFS and Local Government in order to enhance interaction, understanding, communication, consultation, and process improvements benefiting both organisations, volunteers, and the community...

Option 3 – Local Government recovering bushfire responsibilities

Historically, councils had a large involvement in the delivery of bushfire services in NSW. The NSW Government has progressively transferred the delivery of many of these services to the expanding RFS which has created a 'half pregnant' approach to roles and responsibilities for bushfire management in NSW.

If councils recovered the range of bushfire responsibilities from the RFS, councils would have a greater control of the local expenditure and level of services delivered within their areas.

As part of recovering bushfire responsibilities the following impacts for councils, volunteers, and community would need consideration:

- *Council would have greater liability for bushfire mitigation and response activities.*
- *The loss of cost benefits from state wide purchasing power.*
- *Councils would need to increase their resources, capacity, and the expertise of council staff.*
- *Risks to the consistency of RFS volunteer training across NSW.*
- *Maintaining standardised bushfire fighting equipment and systems across RFS.*
- *The coordination resources in large scale or inter-state emergencies.*

- *The development of a change management program to assist in the adjustment for councils, RFS, volunteers, and the communities.*

Option 4 – Maintain status quo

Option 4 would retain the current arrangements with the RFS and the Associations would not advocate amendments to the current arrangements."

COUNCIL ARRANGEMENTS

Most of the issues and frustrations raised by the LGSA in the discussion paper are relevant to Tweed Shire Council. As stated, the existing arrangements are proving to be problematic, complex and inequitable.

Facilities, Equipment, Bush Fire Management Committee, Operational support

- There are ten (10) established RFS Units within the Shire: Uki, Kunghur, Tyalgum, Crabbes Creek, Cudgen, Tweed Coast, Burringbar, Chillingham, Bilambil and Murwillumbah; with the Rural Fire Control and Training Centre located also at Murwillumbah. Council annually audits these facilities and carries out maintenance as required. Cleaning services are also provided to the Control and Training Centre.

The recorded total value of the building assets within Tweed Shire is \$858 000 with the ownership of the various land parcels being spread across private (1), State (3) and Council (2-Community land and 5-Operational land).

- Equipment is vested in Council with registers being maintained by the RFS and provided to Council as agreed under the provision of the Service Level Agreement.
- Council plays an active role on the Bush Fire Management Committee with both staff and Councillor members attending. It is perceived that Council will continue to play a role in risk management planning both as a land manager and community leader in whatever format that would be proposed.
- Operational Support during a bushfire emergency incident is provided to the RFS on a needs basis. Council officers raise no issues to the provision of the resources nor any concerns for the reimbursement process for the services provided.

Financial Arrangements

The financial arrangements as outlined within the LGSA issues reflects the issues that Council faces. Council will recall the increase in RFS contributions of \$65,863 for the 2011/12 budget was advised in November 2011 requiring a significant change in the December Budget Review.

Further to this, councils are not consulted by the State when new equipment policies are introduced. This is frustrating when the policies are implemented resulting in significant increases to the previously "agreed" expenditure.

Council provides financial services to the RFS under the provisions of the Service Level Agreement.

Planning controls, bushfire land managers

Council Planning and Regulation staff undertakes a range of complex assessments when processing development applications. The RFS provided much welcomed training to Council planning staff in November 2011 on request. Communication and service levels have greatly improved with the establishment of the Contact Centre at the RFS Coffs Harbour office. However there is a recognised need for the *Planning for Bush Fire Protection* to be reviewed.

The issue of development compliance with RFS conditions of consent continues to be a concern. Resources prohibit Council staff not actively pursuing compliance reacting on a complaint basis only. It is considered this is a concern reflected across any condition of consent that has been imposed by another authority where it falls upon Council to regulate.

OPTIONS:

- Option 1 – Retract Local Governments operational involvement with the RFS.
- Option 1A – Merging the two fire services (*RFS and Fire and Rescue NSW*).
- Option 2 – Retaining current arrangements with process improvements.
- Option 3 – Local Government recovering bushfire responsibilities.
- Option 4 – Maintain status quo.

CONCLUSION:

Due to the current arrangements that has the RFS service responsibilities split between Local and State Governments, it is recommended that a more transparent and efficient system be implemented through the proposed Option 1 – Retract Local Governments operational involvement with the RFS.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.
RFS Service Level Agreement.

b. Budget/Long Term Financial Plan:

2011/12 RFS contribution is \$200,863.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.4 Provide education and advocacy to promote and support the efforts of the police, emergency services and community groups to improve the safety of neighbourhoods and roads

2.1.4.4 Provide support and participate in emergency management arrangements

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. A copy of the breakdown of the estimates for 2012/2013 (ECM 48533451).
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CONFIDENTIAL ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

- 1 **[PR-CM] New Kingscliff Police Station Development Application
(DA11/0257) Third Party LEC Appeal**

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

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