



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 July 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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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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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 June 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.	DA10/0704
Description of Development:	35 lot subdivision (32 industrial lots)
Property Address:	Lot 2 DP1139059, Lot 1 DP232745, Lot 17 DP712954, Lot 228 DP1122768 & Lot 10 DP1071301 No. 10 Lundberg Drive, No. 92 Wardrop Valley Road, Quarry Road and Wardrop Valley Road, South Murwillumbah
Date Granted:	28/6/2012
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	7(l) Environmental Protection (Habitat)
Justification:	Variation to clause 20(2)(a) land zoned 7(l) area of at least 40 Hectares. The existing lot is already less than 40ha, with the proposed lot remaining less than 40ha. In addition, the area zoned 7(l) is less than 40ha (approximately 9ha).
Extent:	Development standard is 40ha with the proposed allotments size being approximately 9ha.
Authority:	Director General of the Department of Planning and Infrastructure

DA No.	DA12/0125
Description of Development:	Two storey dwelling and in-ground swimming pool
Property Address:	Lot 46 DP 1027531 No. 7 Beason Court, Casuarina
Date Granted:	28/6/2012
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)
Justification:	Council has received an application to construct a single residence on the subject property. The property is beach front land in an approved residential subdivision. A SEPP No. 1 variation is sought to Clause 32B of the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space. The proposed two storey dwelling will cast a shadow on the adjacent waterfront open space during the nominated times in the development standard. The Shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impacts on the coastal dune vegetation and do not reach the beach.
Extent:	The Shadow encroachment cast by the development into the foreshore is considered only minor and will have minimal impact on the public's enjoyment of the foreshore land. The shadows cast only impact approximately 12.5 metres into the coastal dune vegetation and do not reach the beach, which is approximately 125m from the rear property boundary.
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] Aboriginal Cultural Heritage Management Plan update and Memorandum of Understanding

SUBMITTED BY: Planning Reforms

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



Supporting Community Life

SUMMARY OF REPORT:

This report has two purposes; to provide an update on the progress being made with the Draft Aboriginal Cultural Heritage Management Plan (ACHMP) and, to seek Council's endorsement of a Memorandum of Understanding (MOU) and the signatories to it.

Following grant funding approval from the NSW Heritage Office Local Government Heritage Planning in June 2011 Converge Heritage + Community Pty Ltd (Converge) were appointed as Council's Consultant in December 2011, following an extensive tender process.

Critical to the success of the ACHMP is open and meaningful consultation and information sharing with the Aboriginal community, both through the Aboriginal Advisory Committee (AAC) the wider Aboriginal community and also the public generally.

Fundamental to this process and for ensuring the proper guardianship and management rights of the information in a culturally acceptable manner is the necessity for an MOU detailing the roles and responsibilities and custodianship of the main parties involved in preparing the Plan and providing the information and for clarifying those who are empowered to speak about country.

To date Council and Converge have been consulting with the AAC. The AAC, as the representative body for the Aboriginal Community, provide the signatory role to the MOU however, the project will require wider consultation with other Aboriginal groups, as acknowledged in the preamble to the MOU. Tweed Council, represented by the Mayor and the General Manager are recommended, along with the Group General Manager representing Converge.

The report seeks Council's endorsement of the MOU and a commitment to abide by its protocols, particularly with regard to communication generally, parameters for sharing of information, protection of sensitive information and keeping places.

RECOMMENDATION:

That:

- 1. The Memorandum of Understanding between Tweed Shire Council, the Tweed Shire Aboriginal Advisory Committee and Converge Heritage + Community Pty Ltd guiding the preparation of the Tweed Shire Aboriginal Cultural Heritage Management Plan is endorsed by Council.**
- 2. The Mayor and General Manager be authorised to sign the Memorandum of Understanding on behalf of Council.**

REPORT:

Background

As part of the updating of the Community Based Heritage Study (CBHS), recommenced in March 2011, and a Notice of Motion by Council (20 July 2010), it was highlighted that an Aboriginal Cultural Heritage Management Plan (ACHMP) was required to complement the CBHS, which is focussed on the built and natural European heritage of the Tweed.

In February 2011 a grant application was lodged through the NSW Heritage Office Local Government Heritage Planning Study Projects funding. In June 2011 Council was notified that this application was successful, receiving a funding offer up to \$50,000.

At the Council Meeting of 19 July 2011 Council resolved:

- "1. The report on the Grant to Undertake the Aboriginal Cultural Heritage Study be received and noted; and*
- 2. Council endorses the acceptance of the successful NSW Heritage Office grant to undertake the preparation of an Aboriginal Cultural Heritage Management Plan for the Tweed and votes the expenditure."*

Council has matched the grant funding on this project.

In August 2011, Council undertook a formal tender process seeking a qualified consultant to assist with the preparation of the ACHMP. Converge Heritage + Community Pty Ltd (Converge) were engaged in December 2011 and commenced the project in January 2012.

The ACHMP broadly aims to provide a planning framework to support:

- The Aboriginal community's sense of identity – of its beginnings, its present and its future;
- A thematic history which will assist the Elders to educate and pass on knowledge to both the Aboriginal and non-Aboriginal community;
- A sense of ownership and cultural awareness within the Aboriginal community.
- Heritage tourism strategies; and
- Management strategies, processes and procedures for the consideration and assessment of development for the Aboriginal community, Council staff and the wider community.

The preparation of the ACHMP is undertaken consistent with the NSW Office of Environment and Heritage (OEH) guidelines, as follows:

- *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*
- *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*
- *Operational Policy: Protecting Aboriginal Cultural Heritage*
- *Guide to Determining and Issuing Aboriginal Heritage Impact Permits*
- *Protecting Aboriginal Objects and Places*

The success of the ACHMP is critically dependent on consultation with the Aboriginal community, both through the Aboriginal Advisory Committee (AAC) and the wider Aboriginal community, to ensure acceptance of the project, its aims and outcomes and to ensure that as the management plan is developed, information is shared and/or revealed in a culturally appropriate manner and with the community's and Council's agreement.

To date Council and Converge have been consulting with the AAC. The AAC, as the representative body for the Aboriginal Community, provide the signatory role to the MOU, however, the project will require wider consultation with other Aboriginal groups, as acknowledged in the preamble to the MOU, which is provided as an attachment to this report.

Aboriginal Cultural Heritage Management Plan aims and outcomes

The ACHMP aims to specifically:

1. Develop an effective working relationship with the local Aboriginal community groups and Local Aboriginal Land Council.
2. Identify and assess the significance of known, and any potential, Aboriginal cultural heritage which may be located within the Tweed Shire area and potentially impacted by future development.
3. Develop strategies to manage Aboriginal sites and places and to assist in developing a protocol for ongoing Aboriginal community liaison.
4. Ensure the input of the Aboriginal community is sought and recorded as part of this process to ensure appropriate outcomes for all groups are reached.
5. Provide the Aboriginal community and wider Tweed Shire community with a historical record of the Aboriginal people of the Shire.
6. Develop sound management guidelines and policies to assist in minimising any possible impact on Aboriginal cultural heritage and implement those policies as part of the planning and development assessment processes.
7. Provide clarity and understanding for Aboriginal people, residents, Council staff and proponents of development seeking to:
 - a) Determine the presence of Aboriginal heritage;
 - b) Submit a development application;
 - c) Understand the legislative requirements and processes which must be complied with; and
 - d) Understand what results may be expected from the process.
8. To develop Aboriginal cultural heritage identification, appropriate and acceptable to the Aboriginal community for inclusion in the Heritage Schedule of the Tweed LEP.

The ACHMP is a five stage project encompassing the following key outcomes:

1. Consultation with the Aboriginal community and development of a MOU between the Council, the Consultants and the AAC, as representatives of the Tweed's Aboriginal community groups.

2. Documentary research and culturally appropriate mapping of known sites and places, including destroyed and damaged sites.
3. A thematic history of Aboriginal culture in the Tweed. A thematic history is not developed chronologically; rather it is based on historic themes. The themes are still to be determined in consultation with the Aboriginal community.
4. Landform and predictive modeling for Aboriginal sites and places. This component of the project will develop predictive mapping based on a sound methodology including assessment of landscape elements and Aboriginal community input.
5. Recommendations for land use planning and Aboriginal cultural heritage management.

Aboriginal Cultural Heritage Management Plan Memorandum of Understanding

The MOU is a significant first step in the project as it seeks to clarify the roles and responsibilities of the parties; outline communication protocols, such as who may speak for Country, ensure protection of sensitive cultural information and keeping places; and outline the above broad project objectives.

Converge have been working closely with the AAC, as Council's representative body of the Aboriginal community. In turn the AAC members have been disseminating information to the wider Aboriginal community and representing their views into the process.

Council staff are encouraged by the in principle support for the project shown by the Aboriginal community and their willingness to work with Council staff to achieve the outcomes of the project, particularly with regard to increasing the recognition and the need for better management of Aboriginal cultural heritage.

The Tweed Byron Local Aboriginal Land Council (TBLALC) is proactively consulting with the local Aboriginal community and recently published an article on the project in their newsletter of April 2012.

The AAC members attended a half day work shop on the project which had a specific focus on the development of the MOU on 14 March 2012. This is a recurring item on the AAC monthly agenda that promotes ongoing consultation and liaison on the project.

A draft MOU was tabled at the AAC on 4 May 2012 for the review of the representatives and the community. Feedback on the draft MOU was provided at the following AAC meeting of 1 June 2012.

At the June AAC meeting, the MOU was accepted in principle with the following knowledge and considerations:

- *The group was advised that Council would be required to continue its process of internal review, information sharing and endorsement of the MOU document which may include reporting to Councillors and Council Executive.*
- *That Converge would touch base with members who were both on leave at the time of the meeting to ensure that any questions or considerations they may have were considered prior to the next AAC meeting in July. Converge have subsequently undertaken the follow up meetings and feel that there is support to present the MOU in its current form to Council in readiness for the AAC representatives to sign at an agreeable time.*

- *That a semi-formal meeting to recognise the signing of the MOU, once finalised, could take place at a convenient date and time with the three signatory groups was well received by all.*
- *The MOU will be further discussed with a view to gain final endorsement at the July 13 AAC meeting.*

It is noted that the MOU nominates an Aboriginal community nominee for assisting with the project. The AAC are still working through their decision on the nominee(s) for the MOU. The nominee(s) will be detailed prior to the final signing of the MOU.

The MOU, provided in Attachment 1, represents a commitment by Tweed Council, the AAC, as the representative body of the local Aboriginal Community, and Converge to work collaboratively and in accordance with the requirements agreed in the MOU. The document is to be signed by all three parties to the agreement. As such it is an important step that Council endorses the MOU and abides by its protocols, particularly with regard to communication generally, parameters for sharing of information, protection of sensitive information and keeping places.

It should also be noted that the MOU is not a contract and is not legally binding but rather a statement of the parties commitments to each other.

Next steps

Signing of the MOU is a significant milestone in the project and will allow the extensive engagement, research and modelling of stages 2-5 of the project to proceed and without which will severely jeopardise the project aims being attained.

OPTIONS:

1. That the Memorandum of Understanding between Tweed Shire Council, the Tweed Shire Aboriginal Advisory Committee and Converge Heritage + Community be endorsed by Council and that Council staff make suitable arrangement for signing of the MOU. This will enable the effective progression of delivering ACHMP and the attainment of its core objectives; or
2. That Council does not endorse signing of the Memorandum of Understanding between Tweed Shire Council, the Tweed Shire Aboriginal Advisory Committee and Converge Heritage + Community. This would severely limit the ability of, if not prevent, the Council staff and Converge to complete the ACHMP and would significantly compromise the relationship between Tweed Council and the Aboriginal community.

CONCLUSION:

The development of the MOU and acceptance of the MOU by the Aboriginal community through the AAC is a significant milestone in the success of the ACHMP.

The MOU represents a commitment by the Council, the AAC, as the representative body of the local Aboriginal Community, and Converge to work collaboratively and in accordance with the requirements agreed in the MOU. As such it is an important step that Council endorses the MOU and abides by its protocols, particularly with regard to communication generally, parameters for sharing of information, protection of sensitive information and keeping places.

The MOU provided as Attachment 1 to this report comprises the MOU to be signed by the parties and may be subject to minor variation. It is suitable for endorsement.

COUNCIL IMPLICATIONS:

a. Policy:

Aboriginal Statement Version 1.3.

b. Budget/Long Term Financial Plan:

The project is jointly funded by the NSW Heritage Branch and Council. The NSW Heritage Branch funding requires completion of the project by May 2013.

c. Legal:

The MOU is not intended to be, construed, or used as, a contract, deed or other legal instrument binding on the parties at law. It is a formal statement of the parties' intentions and commitments to each other in respect of the project.

d. Communication/Engagement:

Empower - We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993.

Involve/Collaborate - We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.1 Foster strong, cohesive, cooperative, healthy and safe communities
- 2.1.2 Preserve Indigenous and Non-Indigenous cultural places and values
- 2.1.2.2 Pro-active awareness and advice to the community and Councillors on impacts of any new strategic plans or policies on Indigenous cultural places and values

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Aboriginal Cultural Heritage Management Plan Memorandum of Understanding (ECM 52581476)
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10 [PR-CM] Tweed Development Control Plan 2008 - Section B15 Seabreeze Estate Pottsville, Amendment No. 1

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B15 Pt1



Civic Leadership

SUMMARY OF REPORT:

At its meeting of 19 October 2010, Council resolved to amend the Tweed Local Environmental Plan 2000 (TLEP 2000) to enable the use of a number of properties immediately north of the 'Seabreeze Estate' for urban purposes. A Development Control Plan (DCP) is required prior to the development of the subject site to address the following matters:

- Manage the distribution and availability of reticulated wastewater in light of capacity constraints within the existing network;
- Analyse the existing DCP designation for a potential future school; and
- Reinforce the need for a 50m riparian buffer to Cudgera Creek, as per the Tweed Coast Estuaries Management Plan.

The wastewater and riparian buffer matters are straight forward and present no major issues for the drafting and implementation of the DCP.

In terms of the existing DCP designation for a future school site, the NSW Department of Education and Training (DET) have recently provided verbal advice that the site will not be required, and have undertaken to provide a written confirmation of this advice.

Concurrently, the current owners of the site Metricon have advised Council that, given the DET's lack of interest in purchasing the site, they are urgently seeking for Council to proceed with the amended DCP process, to provide them greater certainty and to advance a development application for the residential subdivision of the designated school site.

Given the time elapsed since the original school concept, this is considered to be a reasonable request.

It is therefore recommended that Council endorse the preparation and public exhibition of an amendment to Section B15 - Seabreeze Estate, Pottsville of the Tweed Development Control Plan 2008, including the removal of the identification of the current school site within the northern, undeveloped portion of the Seabreeze Estate.

RECOMMENDATION:

That:

1. **The preparation of an amendment to Section B15 – Seabreeze Estate, Pottsville of the Tweed Development Control Plan 2008 to remove the identification of the school site within Seabreeze Estate be endorsed;**
2. **The amended Tweed Development Control Plan Section B15 – Seabreeze Estate, Pottsville be publicly exhibited for a minimum period of 30 days, in accordance with section 74E of the *Environmental Planning Assessment Act 1979* be endorsed; and**
3. **Following public exhibition of Draft Tweed Development Control Plan, Section B15 – Seabreeze Estate, Pottsville, a further report is submitted to Council on the public consultation.**

REPORT:

At its meeting of 19 October 2010, Council resolved to amend the Tweed Local Environmental Plan 2000 (LEP 2000) to enable the use of a number of properties immediately north of the 'Seabreeze Estate' for urban purposes. The subject land is identified in Figure 1 below.

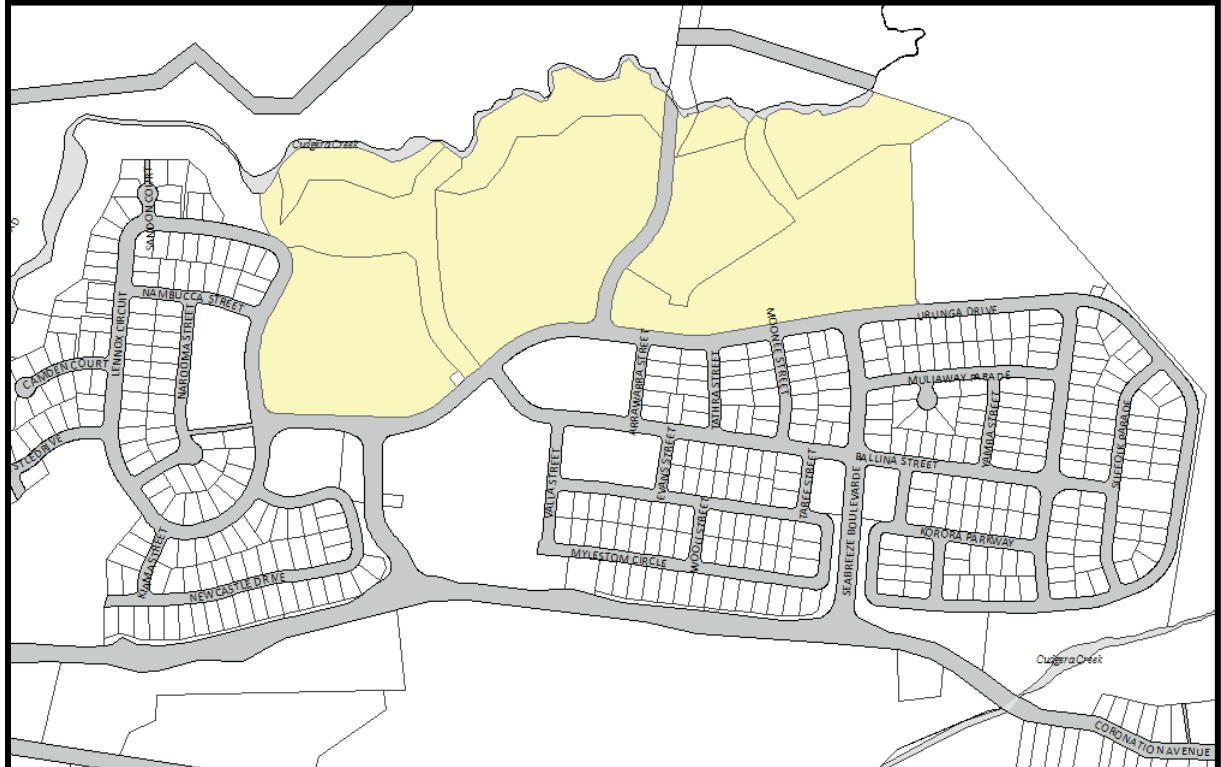


Figure 1 – LEP Amendment Area

As part of the LEP amendment, Clause 53E, requires preparation of a Development Control Plan (DCP) to address a range of matters, prior to the development of the subject land. An amendment to the current DCP Section B15 – Seabreeze Estate, satisfies this clause and would enable the DCP to be amended to address the following outstanding matters:

1. Manage the distribution and availability of reticulated wastewater in light of capacity constraints within the existing network;
2. Analyse the existing DCP designation for a potential future school; and
3. Reinforce the need for a 50m riparian buffer to Cudgera Creek, as per the Tweed Coast Estuaries Management Plan

The landowner has prepared and submitted a DCP amendment request, which is currently being reviewed by Council staff. The DCP amendment will adequately address points 1 and 3 above and seeks the removal of the identified school site to enable other residential land uses of this site. The requested DCP amendment has not yet been comprehensively drafted and will occur upon receipt of a Council resolution on this matter.

History

Prior to consolidation of all Tweed Development Control Plans into one Development Control Plan in 2008, the Seabreeze Estate Development Control Plan was titled Development Control Plan No. 38 – Seabreeze Estate Pottsville, which came into force on 1 January 2000. Within this document an indicative Structure Plan (titled Map 7 and displayed in Figure 2) identified a 'Potential School Site'. This DCP carried over into the consolidated DCP as DCP Section B15 – Seabreeze Estate.

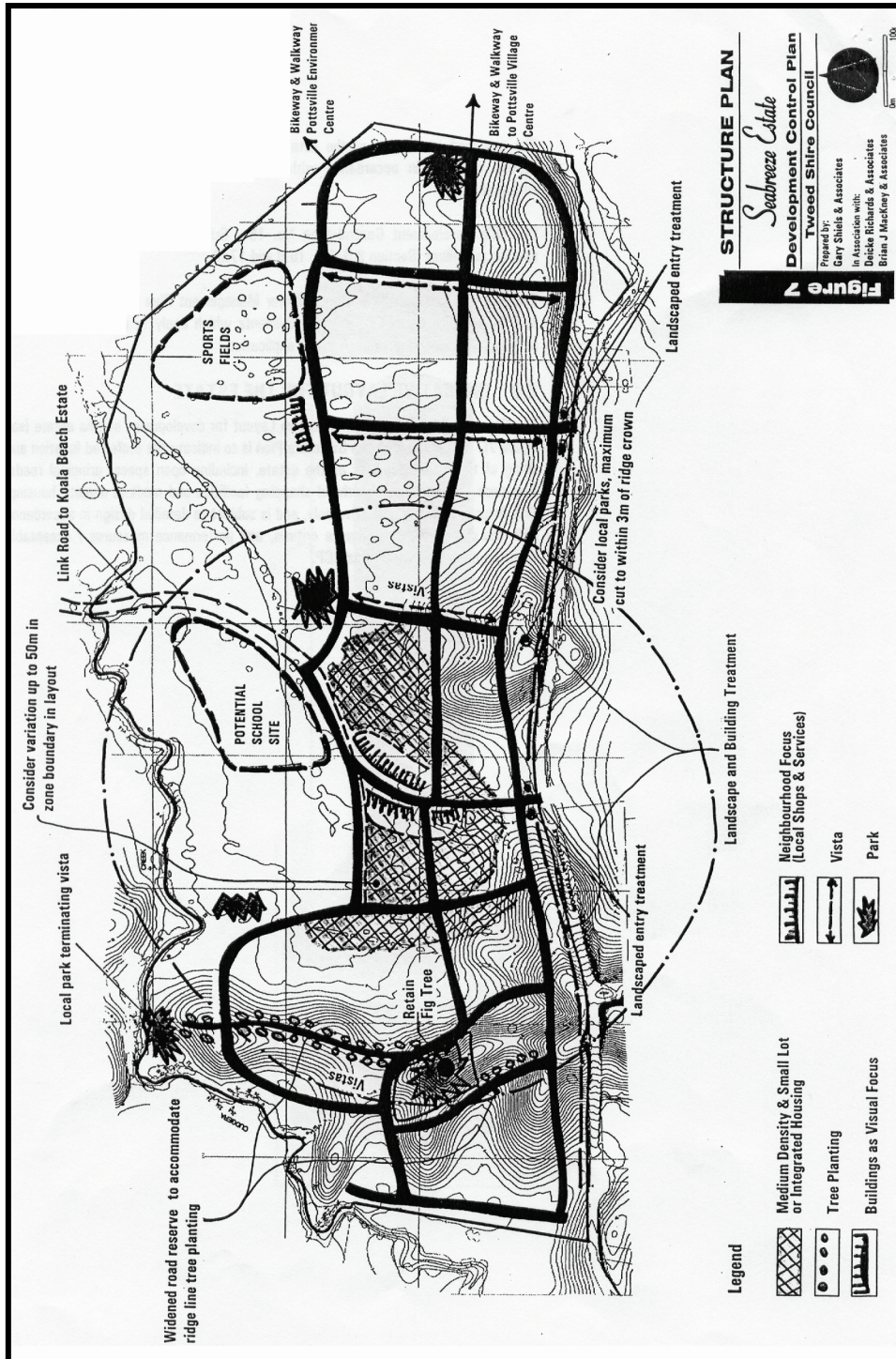


Figure 2 – DCP 38 – Indicative Structure Plan

The subdivision and associated works was approved by Tweed Shire Council and development consent issued on 7 September 2000 (Development Application K99/1837). Within the approved masterplan, an area of 6 hectares was identified for a 'Possible School Site'. The possible school site was located in keeping with the indicative provisions of DCP 38.

In June 2008, Council endorsed a Whole of Shire Cultural and Community Facilities Plan (CFP). The CFP made a number of recommendations, of which the following are relevant to the subject site and the wider Pottsville locality:

- The use of a 40% threshold in the provision of community facilities in the Tweed local government area (LGA) in order to ensure that the highest level of social cohesion and development of social capital are achieved in all localities across the region, i.e. Whilst youth centres should be provided at a rate of 1 per 20,000 people, once a population of 8,000 is achieved, a youth facility should be provided.
- An estimated 3 year lead time for the development of primary schools and 5 years for high school provision.
- An additional high school is required within the coastal catchment.
- 2 additional preschools are required within the coastal catchment.

Section B21 - Pottsville Locality Based Development Code (the Code) was adopted in April 2010. The Code sought to embody the CFP's findings and after considering population demographics, growth rates and the opportunities for further residential development within the locality concluded there would be demand for additional primary school and establishment of a local high school within in Pottsville. The Code undertook a desktop analysis of a number of potential sites, including the subject site and identified that:

- The site, identified in DCP Section B15 – Seabreeze Estate, is logically placed; neighbouring playing fields in both Seabreeze Estate and Koala Beach as well as the Seabreeze-Koala Beach link road, allowing an effective cross utilisation of existing infrastructure;
- The identified site is still largely in a 'greenfield' state, allowing appropriate opportunities to achieve a high quality, use specific outcome; and
- There is also opportunity for the development of a child care centre, integrated with a 'neighbourhood shop' site adjoining, to consolidate community uses.

The Code ultimately concluded identification of a school site within Seabreeze Estate or within the Dunloe Park Release Area should be explored as the priority and suitable locations.

The Local Environmental Study undertaken to facilitate the LEP amendment (completed in 2010) indicated that the land could cater for a school.

School Site Demand

Discussions with Department of Education and Training (DET) staff over the past 12 months have identified that there is currently insufficient demand to warrant a High School within the Pottsville locality, however demand may be present for a Kindergarten and/or Primary School. Consistent with these findings, DET formally requested the landowner identify a 3 hectare school site in any amendment to the DCP.

With regards to the actual acquisition process, DET provided the landowner with the following information:

“The Department is not in the position to purchase the site this financial year, and possibly the following as funding allocations have been locked in.

The provision of a new School in Pottsville is still contingent on enrolment projections at the current school at Pottsville being achieved and the Dunloe Park Development progressing.

The site acquisition will generally occur in the financial year prior to the planning of the school. Developers can gift the land to the Department as part of their State Infrastructure Contribution and claim the credit to hasten the acquisition of land by the Department.”

In light of the above advice, the landowner finalised the DCP amendment request, without identifying a designated school site. Within the submitted DCP amendment request, the applicant specifically states:

“...please note that we have not had final advice from the Department of Education in relation to acquisition of a proposed school site in Stage 15 and therefore we have retained the residential designation. Exhibition of the amended draft Development Control Plan will provide the Department with an opportunity to finally determine if they want a site and if so, a commitment to acquire the site promptly.”

A copy of the requested DCP amendment has referred to DET officers for formal comment; however comments are not anticipated to be received until August. Informal discussions with DET staff indicate that that local demographic trends, enrolment projections and timing of future urban release areas within Pottsville (specifically Dunloe Park) continue to be monitored. DET is also monitoring the progress of a separate Catholic primary school application currently before Council in Charles Street, Pottsville. This proposal is to cater for 420 students from Kindergarten to Grade 6.

Based on current trends and potential school facilities in Pottsville village centre the demand for an additional state primary school in Pottsville is likely to be delayed for the foreseeable future.

Whilst a potential school has long been earmarked for the subject site, it does not appear that the demand for such infrastructure will arise in the immediate to short-term. The release of Dunloe Park is likely to be the threshold for DET in requiring any additional state school, as opposed to residual growth remaining in the undeveloped urban areas within the Pottsville locality. The Dunloe Park urban release area is not anticipated to provide actual population growth within the next five years. This is the basis of the DET not prioritising the need for acquisition of land for a primary school site at this time and represents a significant time delay to the landowners of the subject site should a 3 hectare parcel be retained as a possible school site. This should nonetheless be weighed against the proponent's commitment to providing a school site in the original masterplan for the Seabreeze Estate upon which development consent was granted.

The removal of the school site designation does not preclude a school being developed on the subject site in a legal sense as this is a permissible landuse under the existing 2(a) Low Density Residential zone. However, in a practical sense this is likely to be the net result as the landowner has expressed an intention to erect 141 single dwelling lots and 9 multi-dwelling housing' lots resulting in 18 dwellings in its place

In light of the above and to provide a fair opportunity for the proponent to test their proposed amendment it is recommended that the Draft DCP amendment be prepared and publicly exhibited as this will give DET and the wider public an opportunity to provide formal comment on the amendment, prior to Council having to make a final decision on whether the amendment is appropriate in the circumstances.

From a strategic planning perspective, the land use shift from a school to residential uses does reduce the potential for the integration of vibrant community uses within the Seabreeze Estate, which the masterplan and subsequent DCP foreshadowed. Whilst the Seabreeze Estate is still to develop its 'Town Centre', which is to include retailing activities appropriate to the day-to-day needs of the precinct's residents, the remainder of the estate has been largely developed as intended for residential and open space purposes, as well as an aged care development.

OPTIONS:

1. Act on the proponent's request to amend the DCP by removing the school site designation and thereby permit additional residential landuses, or
2. Reject the proponent's request to amend the DCP thereby retaining the school site designation, or

The officers recommend Option 1.

CONCLUSION:

The DCP amendment seeks to remove the identification of a potential school site to enable the development of that land for residential purposes.

The provision of an additional school for the Pottsville locality has long been discussed amongst the community, developers, Council and education providers. Since 2000, the subject land within Seabreeze Estate has been identified for a potential school site. When considering the previous land size allocation and surrounding infrastructure provision, the most likely use was for a high school. However, more recent population and demographic trends, as well as other factors in the way educational needs can be accommodated have led DET to conclude that a high school is not required for the foreseeable future and subsequently indicated a preference to retain a reduced footprint for a primary school. This is now in doubt with DET most recently indicating that an alternative site in the future may be more appropriate to meet their and the community's needs.

DET have not currently prioritised acquisition of land within the Pottsville locality for a school site and have indicated that the Seabreeze site is not required. Written confirmation from the DET is yet to be received.

Given the uncertainty and timeframes involved for the required population growth thresholds it is considered appropriate to prepare and publicly exhibit an amendment to the Tweed Development Control Plan 2008 Section B15 – Seabreeze Estate, Pottsville. This will involve the removal of the school site designation for public exhibition purposes to allow for community comment on the proponent's request.

It is concluded that the best means for testing the appropriateness of the proposal, and to allow time for DET to consider and formally respond on the issue, is to proceed with a Draft DCP to public exhibition.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 1.5.1 Sustainable management of the population in accordance with strategic decisions of previous councils, the NSW and Commonwealth Governments and the Far North Coast Regional Strategy, including provision of amenities, infrastructure and services
 - 1.5.1.1 Preferred population or environmental carrying capacity of the Tweed
 - 1.5.1.1.1 Council planning documents are prepared in accordance with the State Plan and North Coast Regional Strategy

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

11 [PR-CM] PP10/0001 Boyds Bay Garden World Planning Proposal - Lot 10 DP 1084319 Banksia Street - Referral to Department of Planning and Infrastructure to Have the Plan Made

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0001 Pt4



Civic Leadership



Strengthening the Economy

SUMMARY OF REPORT:

This report provides an overview of the public exhibition process, an assessment of submissions received and seeks the resolution of Council to refer the attached Planning Proposal to the Department of Planning and Infrastructure (DP&I) to have the Draft Amendment to the Tweed Local Environmental Plan (TLEP) made.

At the Council meeting of 20 September 2011 Council resolved to publicly exhibit Planning Proposal PP10/0001 for Lot 10 DP 1084319, Banksia Street, Tweed Heads West, commonly known as the Boyds Bay Garden World site.

The original Planning Proposal as presented to the Gateway for determination was for a rezoning of the site from the current 1(a) Rural zone to 3(c) Commerce and Trade under the TLEP 2000 to facilitate a mixed use employment generating development comprised predominantly of business park styled development.

Prior to public exhibition, the proponents requested a variation to the agreed landuse composition from predominantly Business Park, trade and industrial, to one predominantly of bulky goods retail, which was endorsed by Council at its meeting of 17 April 2012.

Public exhibition occurred during the period 23 May 2012 to 22 June 2012 and concluded with four submissions received. These consisted of one in support, and three raising concern, largely about a perceived uncertainty regarding the ultimate mix of land-uses. The report addresses the issues raised through the public exhibition and strategies for managing future land-use ahead of concluding that the Draft LEP Amendment is suitable to be made.

RECOMMENDATION:

That Council endorse:

- 1. Planning Proposal PP10/0001, Lot 10 DP 1084319 Banksia Street, Tweed Heads West, commonly known as the Boyds Bay Garden World site, for rezoning from 1(a) Rural to 3(c) Commerce and Trade, as provided as in Attachment 1 to this report be referred to the Department of Planning and Infrastructure to be made in accordance with section 59 of the Environmental Planning and Assessment Act 1979; and**

2. **A site-specific Development Control Plan be prepared for the site consistent with the requirements of Draft Tweed Local Environmental Plan 2000 (Amendment No.93), Clause 53G.**

REPORT:

Purpose of the report

This report provides advice on the public exhibition of Planning Proposal PP10/0001 Boyds Bay Garden World site, Lot 10 DP 1084319, Banksia Street, Tweed Heads West and seeks Council's endorsement to refer the Proposal to the Department of Planning and Infrastructure (DP&I) to have the LEP amendment made.

Background

Council received a Gateway Determination Notice dated 6 September 2010, which specified a one year completion timeframe from that date for the LEP amendment to be made. Subsequent extensions have been granted with the current deadline for making of the Plan now being 13 December 2012.

This Planning Proposal has been reported to Council on a number of occasions, with the latest report of 17 April 2012 endorsing an amendment to draft clause 53G under TLEP 2000 for a variation of the composition of landuses on the site from a development comprising predominantly business park style development, to one which is predominantly bulky goods retail.

Due to the extent of constraints affecting the site, its proximity and alignment to the Gold Coast Airport runway, the Pacific Highway Tugun Bypass, and potential other local road network related issues, a range of studies were prepared in addition to those mandated by the Gateway Determination, and detailed consultation with Gold Coast Airport Limited (GCAL), and Roads and Maritime Services (RMS) undertaken prior to exhibition.

The draft Planning Proposal was placed on public exhibition during the period 23 May 2012 to 22 June 2012, during which time four submissions were received. These are addressed in a further section of this report.

Overview of the Planning Proposal

The Planning Proposal supports a request by the proponents for a rezoning of the site from 1(a) Rural to 3(c) Commerce and Trade under TLEP 2000, or B7 Business Park under draft TLEP 2012.

The final Planning Proposal can be viewed in Attachment 1 to this report; but can be summarised as seeking to provide flexibility to develop contemporary employment generating opportunities within a business park style development consisting of a mix of landuses not previously available under Council's planning provisions.

Need for a Development Control Plan

While rezoning of the site will facilitate outcomes of the Planning Proposal, detailed provisions regarding appropriate landuse composition, development standards, and planning controls will be defined in a site-specific Development Control Plan (DCP) to be prepared for the site.

LOCALITY PLAN



Locality Plan

Planning Proposal PP_2010_TWEED_001_00 -- Lot 10 DP 1084319
Parkes Drive, Tweed Heads West

Figure 1

<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 damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dial before you dig" enquiry must be made by calling 1108. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 26 August, 2011 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 Km 1:50,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	<p>Civic and Cultural Centre 3 Tumbulgum Road Murrumbidgee NSW 2484 PO Box 816 Murrumbidgee NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 3429 W www.tweed.nsw.gov.au E planningreforms@tweed.nsw.gov.au</p>	
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Filename: 215336\Fig\LOCALITY PLAN - 2010\ATTACHMENTS\B03 Bay Garden W01\Figure 1 - Locality Plan.mxd
Author: [Redacted] - Planning Information Unit
Date Printed: 26 August, 2011

Public Exhibition and Consultation

In accordance with the resolution of Council on 20 September 2011 and the requirements of the Gateway Determination dated 6 September 2010, Planning Proposal PP10/0001 Boyds Bay Garden World site was publicly exhibited during the period 23 May 2012 to 22 June 2012, along with the following additional information and supporting documentation:

- Public Exhibition Notice;
- Gateway Determination;
- Revised concept plans;
- Council Report of 20 September 2011;
- Draft LEP Amendment 93;
- Transport Assessment Report;
- Gold Coast Airport Impact Operational Study;
- Odour Dispersion Modelling;
- Stage 1 Preliminary Site Investigation – Site Contamination;
- Preliminary (Due Diligence) Cultural Heritage Assessment;
- Aircraft Noise Impact Assessment; and
- Economic Impact Assessment.

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

The public exhibition material was made available at the Tweed Heads and Murwillumbah Civic and Cultural Centres and on Council's website, with two notifications presented in the Tweed Link on 22 May and 5 June 2012.

Direct notification of the public exhibition was sent to the seven adjoining landowners.

Submissions

Four submissions were received in response to the public exhibition. One submission was received from a private individual, and one each from Roads and Maritime Services, Gold Coast Airport Limited, and DEXUS Property Management Group. Each submission is summarised and a response presented below.

Roads and Maritime Services

Summary of submission

The submission refers to previous correspondence dated 27 April 2012 (Copy attached to submission) which references the revised traffic study prepared by Bitzios Consulting based upon the revised landuse composition of the site being predominantly bulky goods retail.

The letter provides support for the proposal conditional upon a number of road and pedestrian improvement works being constructed during the development of the site.

Response

Support of the proposal conditional upon the undertaking of road and pedestrian improvement works as prescribed in the letter of 27 April 2012 is acknowledged.

Details of these road and pedestrian improvement works will be included in the DCP to be endorsed by Council prior to the making of this plan by the DP&I.

Gold Coast Airport Limited

Summary of submission

The Gold Coast Airport Limited (GAL) submission refers to previous correspondence dated 14 July 2011 which advised that GCAL's position concerning development of the site remains unchanged since its even earlier letter of 18 November 2009 and its submission to the then draft Employment Lands Strategy in 2008.

The submission notes the substantial changes which have occurred to the original proposal commented upon in earlier stages of the planning process, and the general lack of detail and fresh analysis of the currently exhibited proposal. Approval of the new Master Plan for the airport and potential impact of revised ANEF contours on the site which may be somewhat more severely impacted by aircraft noise.

Devotion of the majority of the site's floor space to bulky goods retail and office activities will impose requirements for enhanced insulation against aircraft noise. It also raises concerns about "Public Safety Zones" affecting land near the end of airport runways which should not attract large concentrations of people, and has suggested that the type of development proposed should be discouraged from such locations.

The submission concludes with a suite of matters for consideration when preparing the associated DCP, which includes itemising the issues of relevance under the Airports Act and Protection of Airspace Regulations, noise attenuation requirements and requests that Council adopt the contents of the GCAL letter of 14 July 2011 and the aircraft noise acoustic review by Wilkinson Murray dated 12 July 2011, which address matters such as height limits, public safety, lighting restrictions, emissions, turbulence and aircraft noise.

Response

While a number of matters have been raised which will require detailed assessment at the development application stage, no matters have been raised in the GCAL submission which would prevent the rezoning of the site to 3(c) Commerce and Trade.

Notwithstanding the desire to minimise concentrations of people near the end of the airport runway, and absence of any formal Public Safety Zone under New South Wales legislation, any activities or development which attracts large concentrations of people should be addressed at the development application (DA) stage and through requirements of the DCP and is not seen as an impediment to the rezoning.

Matters raised in the GCAL letter of 14 July 2011 and the Wilkinson Murray report of 12 July 2011 will be considered during preparation of the DCP.

Community

Summary of submission

Two submissions were received, one supporting the proposal on the basis of a need for "new economic activity", while the second raised a number of matters specific to the strategic intent and final composition of the site, and seeks clarification from the proponent prior to advancing the matter.

Concerns were raised about the lack of certainty about the end landuse(s) of the Planning Proposal which if not fully considered could adversely impact economic viability of the Shire's existing centres, and lack of evidence/economic analysis to support the proposal based on an assumption that the site will be developed predominantly retail based activities.

It was requested that the Planning Proposal be amended by removing shops as a nominated permissible use, and the zone objectives be strengthened to provide greater certainty as to the retail role of the site and its relationship with the surrounding retail hierarchy.

These points are expounded further noting that the development, being a “retail shopping destination” implies that the development will be characterised by predominantly retail uses and not a business park as proposed or intended by the future B7 zone, and suggests clearer objectives about the retail role of the site.

It was further claimed that the introduction of shops as a permissible use specifically for the Boyds Bay site will have the effect of removing the requirement for consistency with the provisions of clause 8(2) of the TLEP 2000 and that adequate provisions exist within the 3(c) Commerce and Trade zone, and it is recommended that the removal of clause 53(G)(4), which makes shops permissible with consent, from draft LEP Amendment 93.

Response

The Planning Proposal as presented to, and the Gateway Determination received from, the DP&I refers, in its most general terms, to a rezoning from Rural 1(a) to 3(c) Commerce and Trade.

At this stage in the planning process it is to be expected that only very broad conceptual development outcomes can be anticipated as was presented in the original planning proposal, which was composed predominantly of ‘business park’ style development, comprising principally of business, commerce, industry, trade, and retail.

Subsequent to the receipt of the Gateway Determination the proponent, in response to more detailed market investigations has sought an amendment to the composition of the landuses on the site seeking to develop the site predominantly as a bulky goods retail style development, yet with other landuses supporting the development of the site to assist in creating more of a destination.

When first identified for inclusion in the Tweed Urban and Employment Land Release Strategy 2009 (TUELRS), the site was envisaged as being part of a much larger employment generating envelope known as Site 2- Airport Precinct, which included land to the west and north. Since then, this adjoining land has been withdrawn from the TUELRS, leaving the Boyds Bay Garden World site, an area of just over five hectares, now isolated yet still suitable for development.

This relative isolation, small area, and other limitations imposed by the adjoining road network, including the Tugun Bypass, adjoining West Tweed Waste Water Treatment Plant, absolute controls imposed by its proximity and alignment to the Gold Coast Airport runway, and landuse mix and design controls to be imposed by the DCP, present this site as a unique location but with a need for a coordinated approach to maximise its development potential.

This proposal is for a rezoning to 3(c) Commerce and Trade zone under the current LEP and is intended to translate to the B7 Business Park zoning under the Draft TLEP 2012 (Standard Instrument LEP). This latter zoning when in force will facilitate employment generating development which is both contemporary and, flexible, and that can adapt to meet market demand and community expectations.

While the original studies were prepared for development dominated by business park style development, additional investigations were completed to the satisfaction of RMS showing that development of the site with a focus on bulky goods retail could be achieved without adversely affecting traffic generation rates, conditional upon certain road improvement works being undertaken. Likewise, limitations imposed under Federal legislation related to proximity to Gold Coast Airport runway will remain regardless of whether the site is developed for industrial, commercial, or retail uses, and as such will be addressed in detail at the DA stage through standards and controls embedded in the site-specific DCP.

Concept plans have been exhibited showing an indicative layout for the site, which can only be used as an indicator of potential ultimate development of the site. It will only be at the development application stage that a detailed assessment of any proposal can be undertaken. The proponent has now presented a concept for development of the site dominated by bulky goods retail (19,416m²), some business park development (6,584m²), and shops as an additional permitted with consent use, thereby providing flexibility in development outcome as intended and discussed above.

Regarding the request to have shops removed as an additional permissible with consent use, shops are conditional permissible within the current 3(c) Commerce and Trade zone should they satisfy the requirements of clause 8(2) of TLEP 2000.

Clause 8(2) requires the consent authority to be satisfied that:

- the development is necessary for any one of the following reasons:
 - it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
 - it meets an identified urgent community need,
 - it comprises a major employment generator, and
- there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and
- the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and
- the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

Under draft TLEP 2012, in the equivalent B7 Business Park zone, shops will similarly be permissible with consent albeit without the need to comply with the additional provisions of clause 8(2).

The intent of both the 3(c) Commerce and Trade zone, and clause 8(2) of TLEP 2000, and the objectives of the proposed B7 Business Park zone under draft TLEP 2012 is that shops be permissible with consent, the assessment of which would occur at the development application stage through guidance provided by the site-specific DCP.

This proposal is for a bulky goods retailing venture which, based on the concept plans provided estimates a maximum gross floor area of about 19,416m², and business park development of about 6,584m², leaving limited land for any additional landuses. The clear focus of this proposal is for bulky goods retail development with some business park and retail development to a scale substantially subordinate to the predominant landuse.

Consistent with the more flexible approach to employment generating land development, and given the scale of bulky goods retail on the site, and the intent of the site as a stand alone destination, a component of small scale retail development could form part of an overall development of the site.

Certainty about the final development outcome for the site will rely heavily upon the DCP to be prepared prior to the making of the plan by the DP&I. Matters relating to the final composition of landuses on the site, traffic generation limitations, and airport operational requirements will be embedded in the DCP for the site.

In response to the submission, an additional aim has been added to draft Amendment 93 addressing the need to retain the retail primacy of Tweed Heads South.

In summary, concerns raised in the submission are well presented and it is agreed that further clarification of the intended final landuses would have assisted in allaying concerns about the potential of this site to compete with established retail centres in the Tweed. However, the revised proposal for the site is for a bulky goods retail and business park style development with some shops to be permitted on a limited scale, all of which will be controlled by the site-specific DCP to be endorsed by Council.

The proponent's response to this submission can be viewed in Attachment 2 which clarifies the intended potential future landuses of the site, the intended character being mixed commercial and bulky goods retail consistent with other business park developments, and the subordinate role of retail development on the site.

Post Exhibition Amendments to Draft Amendment 93

In response to the review of the submissions and to ensure that issues raised are better represented, the following additional wording has been added to the aims of Draft Tweed LEP 2000 (Amendment 93):

1. Additional Aim added reading "Retain the primacy of the retail centre of Tweed Heads South, and
2. Additional Aim added reading "Ensure that proximity to Gold Coast Airport and traffic related matters are addressed.

Council owned land

The Proposal does not include any Council owned land.

OPTIONS:

That:

1. Council adopt the recommendation to refer the Planning Proposal to the Department of Planning and Infrastructure to make the plan, and proceed to preparing a Development Control Plan; or
2. Council decides not to proceed with the Planning Proposal, and provide reasons for doing so.

The Council officers recommend Option 1.

CONCLUSION:

Planning Proposal, PP10/0001, Boyds Bay Garden World site, seeks rezoning of the site from 1(a) Rural to 3(c) Commerce and Trade under TLEP 2000, B7 Business Park under Draft TLEP 2012.

The site presents a range of unique constraints relating to its relative isolation and proximity to the West Tweed Waste Water Treatment Plant, Gold Coast Airport and the Tugun Bypass.

While the original proposal was for development dominated by business park style development, the planning proposal and revised concept plans as placed on public exhibition was for a development dominated by bulky goods retail with a component of business park style development and retail.

While the majority of studies were prepared for the original business park development, further traffic investigations were undertaken to ensure that the traffic generating impact of the revised planning proposal did not alter the impacts simulated for the original proposal. The RMS submission supports the revised proposal.

Of the four submissions received, one was supportive, and the remainder raised issues to be addressed in the site-specific DCP, and included the strategic context of the site and the potential for development to compete with existing retail centres in the Tweed, traffic generation impacts, and development standards as relating to airport operations were considered relevant to be considered in more detail in the DCP.

Rezoning of the site will provide opportunity for the creation of further employment generating opportunities in the Tweed.

It is concluded that Planning Proposal PP10/0001 Lot 10 DP 1084319, Banksia Street, Tweed Heads West, commonly known as the Boyds Bay Garden World site, as exhibited, and identified in Attachment 1 with minor amendments, is suitable to be referred to the DP&I for the Plan to be made.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

This report responds to the submission made in response to the public exhibition of Planning Proposal PP10/0001. Further community consultation will be undertaken as part of the future DCP process for this site.

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
- 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. Planning Proposal (ECM 52914235)
 - 2. Proponent's response to DEXUS submission (ECM 52914239)
 - 3. Draft Tweed LEP Amendment 93 - clause 53G Boyds Bay Business Park (ECM 52914240)
 - 4. Gateway Determination (ECM 52914253)
 - 5. Revised concept plans (ECM 52915256)
 - 6. Traffic Assessment Reports (ECM 52915259)
 - 7. Gold Coast Airport Impact Operational Study (ECM 52915283)
 - 8. Odour Report (ECM 52915296)
 - 9. Site Contamination Report (ECM 52915299)
 - 10. Cultural Heritage Assessment (ECM 52915339)
 - 11. Aircraft Noise Impact Assessment (ECM 52916419)
 - 12. Economic Impact Assessment (ECM 52917442)
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12 [PR-CM] Development Application DA03/0476.02 for an Amendment to Development Consent DA03/0476 for the Establishment of an Art Gallery/Coffee Shop to Include a Refreshment Room & Extend Trading Hours on Saturdays Including the Option of Live Music at Lot2 DP 575934; No. 17 Bambery Street, Fingal Head

SUBMITTED BY: Development Assessment

FILE NUMBER: DA03/0476 Pt4



Civic Leadership

SUMMARY OF REPORT:

Approval was granted in October 2003 for an art gallery/coffee shop to include a refreshment room and extend trading hours to 11.30pm on Saturdays including the option of live music.

Along with an outdoor dining area within the road reserve, the approval required three car spaces to be provided on site.

Following a complaint, the applicant was asked to re-instate the three spaces for the purposes of parking, as required under the conditions of development consent.

The applicant subsequently has lodged this application, proposing to delete all parking requirements from the subject site, as well as extending trading hours on Friday nights to 9.00pm and Sunday nights to 8.00pm.

Council staff have undertaken a thorough assessment of the proposed modifications against the provisions of Council's parking policy and do not support the removal of parking requirements from the development site.

Given the substantial amount of public submissions on this development application, Council's Director Planning and Regulation considered that it was appropriate to refer the matter to Council for determination.

This report highlights the issues raised by the proposed development and provides reasons for refusal of the proposed modifications.

RECOMMENDATION:

That:

- A. Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934; No. 17 Bambery Street, Fingal Head be refused for the following reasons:**

1. The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would 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.
 2. The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained.
 3. The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed.
 4. The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours.
 5. The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on site car parking purposes.
- B. The applicant is formally advised in writing that:**
- The three approved car spaces are to be reinstated on site;
 - The use of live music on a Sunday is to cease;
 - The development must comply with existing approved trading hours;
 - A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;
 - A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.

REPORT:

Applicant: Ms A McKay
Owner: Mr Richard B Steenson
Location: Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head
Zoning: 2(a) Low Density Residential

BACKGROUND:

The subject site is located on Fingal Road, adjacent to the intersection with Bambery Street, overlooking the Tweed River to the west and adjacent reserve. The following is a summary of the history of the development of the site.

Existing Use

- 8 September 1993 – Council acknowledged that the marine showroom (Fingal Head Marine) had existing use rights.

D93/487

- Approved 25 March 1994 for the “*conversion of an existing commercial vacant building to two (2) separate occupancies being **retail plant nursery, arts and craft shop and an office** for business development advice*”.
- The application noted that there was provision for three car spaces on site.
- Council’s Development Assessment Panel (DAP) minutes acknowledge that the provision of on-site parking is limited and not in accordance with Development Control Plan (DCP) 2, however it also notes the existing use situation.
- A condition of consent (Condition 14) required “*the provision of **three (3) on site car spaces** to be suitably located and marked out to the satisfaction of Council’s Director of Development Services*”.

D93/487.01

- Proposed amendments to engineering conditions and proposed change of use to ‘Shop 1’ from Business Consultancy to a Real Estate office.
- The assessment noted no objection to the change of use – no change to parking requirements.
- Approved 8 July 1994 for the “*conversion of an existing commercial vacant building to two (2) separate occupancies being **retail plant nursery, arts and craft shop and a Real Estate office** for business development advice*”.
- A condition of consent (Condition 14) remained the same, requiring “*the provision of three (3) on site car spaces to be suitably located and marked out to the satisfaction of Council’s Director of Development Services*”.

K99/96

- This application proposed to locate the three car spaces at the rear of the existing dwelling, accessed off Bambery Street. This design was not supported and the applicant was requested to provide the three spaces on the existing concrete slab accessed off Fingal Road. The applicant was also requested to provide turning areas to allow vehicles to turn and leave in a forward direction.

- Approved 11 May 1999 for the “**addition of a staircase to an existing dwelling and amenities to a commercial building**”.

K00/0303

- The applicant proposed a change of use to ‘Shop 1’ for a tea and coffee shop to allow for serving beverages and cakes. The proposal also requests an extension of art gallery opening hours. Also included provision of an outdoor eating area containing five tables and 20 seats within the road reserve – consent not required for this component.
- The DAP report notes the conversion of 21m² of office area to a kitchen for the provision of tea and coffee. No indoor seating proposed – only outdoor seating in road reserve, which did not trigger parking requirements.
- The DAP report acknowledged that three car spaces exist on site for the commercial building, which has existing use rights. The report concludes that no additional parking is required.
- The report also notes the following:

“On street parking in front of the site will not be able to be provided due to the width of the road and the location of the site. However, the site is in close proximity to the Fingal boat ramp which has ample car parking. It is noted that Council’s Engineering Services Division has raised no objections to the application in this regard.”
- A Deferred Commencement approval was issued on 28 April 2000 for the purposes of a “**coffee shop and extension of art gallery opening hours**”.
- The approved plan indicates the three car spaces (as approved under K99/96). **No specific conditions were applied with regard to car parking.**
- Condition 5 states that ‘no customer seating for the coffee shop is to be provided within the boundaries of the subject land’.
- The deferred commencement condition stated that ‘the toilet facilities approved by way of development consent K99/96 are to be installed and operational to the satisfaction of the Director Environment and Community Services’. Council records do **not** show that the deferred commencement conditions were met.

K00/0303.01

- The applicant proposed an amendment to the operating hours of the gallery in July 2002. The applicant was trying to change the nature of the coffee shop to a refreshment room, which was a change of use. The applicant was request to withdraw the application and submit a new Development Application. The Section 96 was withdrawn in August 2002.

DA03/0476

- Fresh application for use of a refreshment room (as opposed to the approved coffee shop) and art gallery. The application also requested an extension to trading hours to 11.30pm on Saturdays with live music on Saturdays to 10.30pm.

- The DAP report notes the following:
 - *DCP 2 does not generate the need for on-site parking to be provided for alfresco dining. The existing development operates under a footpath dining agreement with Council. All of the existing seating is located on the road reserve and is therefore regulated by the footpath dining agreement.*
 - *The existing development and the proposed refreshment room with extended hours will utilise the same area of land regulated by the footpath dining agreement, and therefore the proposed development does not generate any on-site car parking requirements.*
 - *The existing consent for the site requires the provision of three (3) on-site car parking spaces accessed by a driveway from Fingal Road. These exist on the site however casual seating has been placed over these spaces. Conditions of consent would be imposed ensuring that these three car parking spaces are provided.*
- A Deferred Commencement approval was issued on 27 October 2003 for the establishment of an “**art gallery/coffee shop to include a refreshment room & extend trading hours to 11.30pm on Saturdays including the option of live music**”. The consent was limited to a 12 month period from when it becomes operational.
- Condition 10 required ‘*the provision of **three off street car parking spaces** as identified on the approved plan for Development Consent K2000/303. The layout and construction standards to be in accordance with DCP2*’.
- Condition 5 states that ‘*no customer seating for the coffee shop shall be provided within the boundaries of the subject land*’.
- The deferred commencement condition stated that ‘*the applicant shall demonstrate compliance with all of the conditions of consent contained in K2000/303. This shall include providing proof of payment for monetary contributions and a written submission demonstrating compliance with other conditions. **The site shall be provided with the on-site car parking as identified on the approved plan***’. Council records do show that the deferred commencement conditions were met and the **consent was operation from 1 November 2004**.

DA03/0476.01

- Proposed amendment to remove Condition 2, which limited the consent to a period of 12 months only.
- Prior to the assessment being determined, Council staff met with the applicant to resolve outstanding matters such as:
 - The post and rail fence running parallel with Fingal Road is to be removed and reinstated on the agreed outdoor dining lease alignment;
 - Vegetation outside the correctly aligned fence alignment had to be removed to improve sight lines for motorists exiting Bambery Street; and
 - Car parking requirements were not being kept clear for use as customer car parking.
- All of the above issues were resolved prior to approval being issued.

- It was also noted that the description of the development consent had erroneously noted the proposed trading hours as opposed to the approved hours. The amended consent revised the description appropriately.
- Approved 9 May 2006 for the “**establishment of an *art gallery/coffee shop to include a refreshment room & extend trading hours on Saturdays including the option of live music***”.
- No changes to parking requirement – 3 on site spaces.

PROPOSAL:

Following a complaint being lodged in June 2011 against the Sheoak Shack business not operating in accordance with its development consent (in terms of car parking provisions), Council initiated an investigation into the non-compliance.

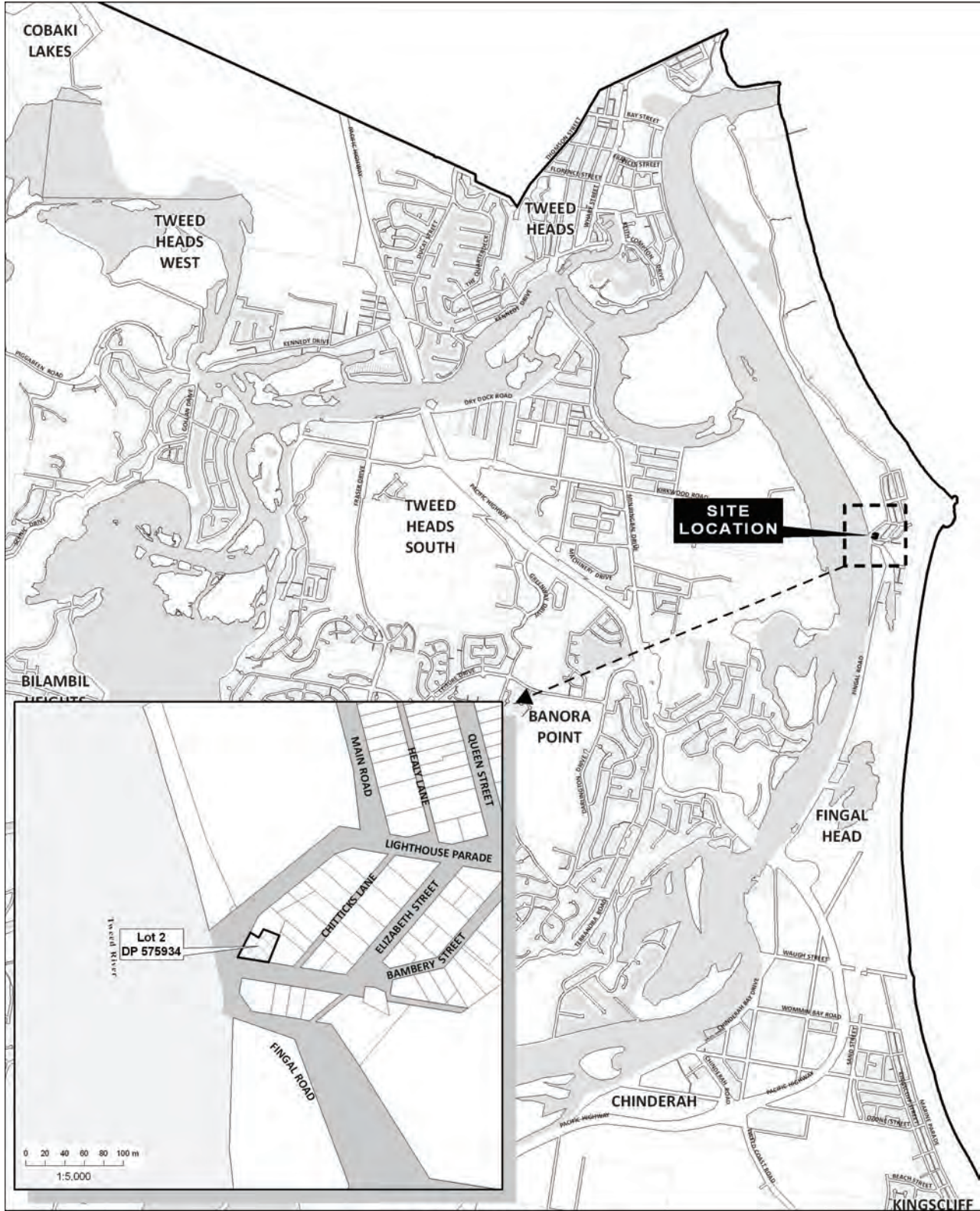
A site inspection on 17 August 2011 concluded that the required three car spaces were not being utilised in accordance with the approved plans for the business. The business owner was requested on 21 September 2011 to reinstate the three approved car spaces, as there no other options considered to be available for onsite parking.

Following several meetings with various Council staff and requests for extension of time, the business owner lodged this Section 96 application on 9 March 2012 to modify the approved development. The application seeks the following:

- The deletion of the requirement for the provision of three on-site parking spaces (Condition 10);
- To use the parking area as an informal area for such uses as reception area, separated seating area for dog owners and smokers, dancing area, staff amenities, and community events such as exhibition openings also during inclement weather conditions; and
- Amend the trading hours of the business to 9.00pm on Friday and 8.00pm on Sunday (Condition 22).

Included with the application was 1000 letters of support from...*‘concerned customers, staff and artists’*.

SITE DIAGRAM:



Locality Plan

Lot 2 DP 575934
No. 17 Bambery Street, Fingal Head

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 damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 10 days only from the date of supply.

Cadastre: 04 July 2012
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Boundaries shown should be considered approximate only.

0 0.5 1 Km
1:40,000 @ A4 Portrait
DO NOT SCALE
COPY ONLY - NOT CERTIFIED
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 2011
Grid: Map Grid of Australia, Zone 56
GDA

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



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

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 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.*

As noted below, the proposed modifications are considered to be consistent with the primary objective of the 2(a) zone.

Other relevant clauses of the TLEP 2000 have been taken into consideration.

The proposed deletion of parking provisions is considered to have an unacceptable cumulative impact on the locality or the community as a whole. As such, the proposal is not considered to meet the provisions of Clause 8(1)(c) of the TLEP 2000.

Clause 11 – Zone Objectives

The subject land is zoned 2(a) Low Density Residential under the Tweed Local Environmental Plan 2000.

The objectives of the zone are:

- *To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*
- *To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objectives of the zone.*

The existing use of the site and proposed continuing use of the site are non residential uses. In assessing the original application, Council was satisfied that the proposed development would not detract from the primary objective of the zone being a predominantly low density residential environment, subject to conditions of consent.

The change in hours of operation relates to Friday night trading to 9.00pm and Sunday night trading to 8.00pm. The proposed modification to trading hours is not considered to be a significant impact to the residential environment and is not considered to undermine the objective of the zone.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

With regard to **car parking requirements**, the applicant has noted the following:

“The requirement for the provision of 3 on-site parking spaces exceeds the requirements of the Tweed DCP Section A2 – Car Parking Code (DCP) for the use of the property.

The approved consent for the property requires all dining to be accommodated on the adjoining road reserve, which has been undertaken by means of successive licences from Council for an area of 44m² in front of the gallery. The latest licence was granted on 7 November 2011.

The DCP requires a footpath dining area to be considered in accordance with council’s Footpath Dining Policy which makes no provision for parking.

The DCP requirements for an art gallery are 2 customer car parking spaces per 100m² of display area, and 0.5 space per staff.

As the approved art gallery display area totals 50m² it requires 1 parking space. In respect of staff parking the proprietor of the gallery lives in the existing dwelling on the site and therefore it is considered that the required parking is met by the parking associated with that dwelling.

Consequently, the total parking requirement for the current use of the Shack is 1 space and not 3 spaces as required by development consent DA03/0476.”

Comment

The subject site has three uses on it, these being: residence, gallery and refreshment room. In addition to standard residential requirements, the subject site must incorporate the following parking provisions:

	Bicycle	Service Vehicle	Staff	Customers
Gallery	2	1	*	1
Cafe		**	4*	***
Total	2	1	4	1

* As the owner resides on site, one (1) additional staff spaces is not required

** Service vehicle requirements for the Café can be combined with the Gallery

*** Customer parking is not required for footpath dining

Although it is acknowledged that the footpath dining component of the business associated with the refreshment room does not trigger any parking requirements, the kitchen associated with the refreshment room generates the need for one car space per staff at peak operating time.

The applicant has not provided sufficient information to date with regard to staff numbers. However, Council staff has estimated that the café would utilise five staff at peak operating times. This generates a need for four staff spaces for the refreshment room (allowing for the owner of the business being a staff member and not requiring a car space as they reside on the subject site).

In addition to the staff and customer spaces, the development requires parking provisions for service vehicles. Council's Traffic Engineer requested further information with regard to service vehicles for the existing development. The applicant provided the following comment:

"Appendix 1 to the Town Planning Assessment sets out the planning history of the subject property. This highlights the existing use rights emanating from the original marine showroom on property, which have formed the basis for subsequent development approvals. None of those approvals have required provision for service vehicle parking, including the approval for the establishment of an art gallery/coffee shop (DA03/0476). This did not include any requirement for service vehicles, nor did the approved plan include any such arrangements. Moreover, the relevant DAP notes do not include any discussion in respect of this parking.

Notwithstanding the lack of any requirement the following additional comments are made:

- The nature of the activities at the Gallery do not require delivery in a vehicle other than a car*
- For the reasons outlined in the Town Planning Assessment to use of the approved 3 parking spaces on the site are not considered to be safe and are therefore inappropriate for use for deliveries to the gallery."*

In terms of never requiring a service vehicle before under previous assessments, the applicant has essentially requested a re-assessment of parking requirements applicable to the proposed development. As such, all aspects of applicable parking, including service vehicles and bicycle parking, has been undertaken.

In response to the applicant's submission, Council's Traffic Engineer notes the following:

"Service delivery by smaller vehicles is reasonable; however, this still needs to be catered for on site. Although there are no parking requirements to the Outdoor Dining area it is not unreasonable to assume that these activities require deliveries for consumables."

As such, the development requires a total of two bicycle spaces and six car spaces (4 staff + 1 customer + 1 service). This figure is obviously well in excess of the single space being calculated by the applicant, largely as a result of Council incorporating staff requirements for the café. Although it is recognised that there are staff parking opportunities at the rear of the existing dwelling, the applicant has not delineated the number of spaces available, despite being requested to do so at a pre-lodgement meeting.

It should also be noted that staff have been observed by various Council staff on several occasions parking in the reserve across the road, which suggests that the available parking at the rear of the site is unlikely to be used by staff. In any case, even if the staff parking can be accommodated on site, the applicant must still provide two off-street spaces within the subject site in relation to customer parking and service vehicle.

In terms of **potential impact**, the applicant has noted the following:

“The required car parking arrangements are considered to be inappropriate because of the potential impact on traffic safety and the safety and amenity of patrons, including exhaust fumes being blown onto diners as well as into the kitchen.

Figure 1 details the parking arrangements required by DA03/0476, which include:

- *a vehicular access on the inside bend of Fingal Road, which has a ‘no right turn’ restriction at Bamerry Street*
- *a turning area on the road reserve to allow vehicles to leave the parking area in a forward gear, and*
- *parking spaces and turning area alongside the dining area, servery and kitchen.*

As a consequence the proprietor has concerns that:

- *access is difficult being located on the inside of a bend, with limited sight distances from inside of the corner*
- *manoeuvring on-site is unsafe because of the conflict with pedestrians entering the Shack.*
- *manoeuvring on-site is unsafe because of the proximity of car parks to tables etc*
- *manoeuvring on-site is unsafe because of inadequate turning space to allow vehicles to leave the Shack in a forward gear*
- *the proximity of vehicles to dining area/kitchen is a health hazard*

Originally the gallery had on-site parking and for a number of years this area was reserved for parking for the gallery patrons as required but nobody parked there because it was safer to park across the road. As patronage grew this empty area gradually became an area for exhibition openings, dog owners and smoking. It is also used as an alternative on windy days. More lately this area has been used for dining.

The issues concerning the provisions of parking at the property has been addressed by Council over many years. Appendix 1 sets out the planning history of the property. The relevant elements of that history are as follows.

In September 1993 Council acknowledged “that the marine showroom on the subject land has “existing use rights” under the provisions of Part IV Division 2 of the Environmental Planning and Assessment Act 1979.”

When assessing DA93/487 for the conversion of an existing commercial vacant building to two (2) separate occupancies (a retail plant nursery, arts and craft shop and an office for business development advice), the Development Assessment Panel on 16 March 1994 noted that “the most contentious aspect of this proposal relates to the location of the subject site and less than desirable traffic conditions existing and the potential for the proposed use to exacerbate the situation.”

The Panel notes state that, "on balance the Engineer has recommended certain upgrading requirements which should improve the traffic situation both on site and in respect to general flows along Fingal Road." These recommendations were included as conditions in the consent.

The submitted plans included 3 parking spaces.

In respect of concerns raised in submissions the DAP notes make the following comments:

"Provision for onsite off-street parking is limited and not in accordance with the normal requirements of Development Control Plan No. 2 – Parking Controls. However this is an existing use situation and as outlined in the Engineers comments, subject to adherence to conditions of consent regarding formalising of access arrangements and flow through conditions the on-site situation in relation to car parking provision should be improved."

At a later date when assessing K2000/303 for a coffee shop and extension of art gallery opening hours the Panel Notes dated 28 April 2000 state that the,

"proposed change of use does not require any additional on-site parking.

Parking is limited on site and would not meet Council's current requirements if the proposal was for a new building. As the commercial component of the building has existing use rights no additional parking is required.

On street parking in front of the site will not be able to be provided due to the width of the road and the location of the site. However, the site is in close proximity to the Fingal boat ramp which has ample car parking. It is noted that Council's Engineering Services Division has raised no objections to the application in this regard."

The clear inference to be drawn from this is not only that Council have known of the problems of providing on-site parking but also been aware of the availability of parking at the boat ramp."

Comment

The applicant has raised the issue of potential impact on traffic safety and amenity of patrons. Whilst it is acknowledged that the site is located on the inside of a bend, sight distances can be achieved to safely enter and exit the site in a forward manner.

In terms of manoeuvrability on site, Council staff has acknowledged in pre-lodgement discussions with the applicant that the approved car parking layout is undesirable given its proximity to table and chairs. However, measures could be put in place to reduce any potential impact. Bollards could be utilised to ensure that vehicles do not enter the dining area. The area of tables and chairs could be reduced to increase the separation between the dining and carparking. The entrance to the café could be relocated to encourage customers to enter the site through the middle of the dining area.

With regard to manoeuvring on site, Council's Traffic Engineer has noted the following:

“It is the responsibility of the applicant to ensure that vehicle parking movements associated with the development are able to be carried out safely. This requirement would include provisions for vehicles to enter and leave the property in a forward direction and clearly defined separation of parking areas and pedestrian/customer facilities.”

In terms of proximity of vehicles to the dining area/kitchen, it should be noted that the Sheoak Shack is very similar in nature to outdoor dining experiences across the Shire. The images below in Figure 1 provide examples in Kingscliff where outdoor dining customers are located directly adjacent to cars being parked and driven along Marine Parade.



Figure 1: Existing footpath dining along Marine Parade, Kingscliff

The applicant's argument that no-one has parked in the approved parking area for a number of years is not supported as being a valid argument for not providing such spaces. Customers are unlikely to park their vehicles on the subject site when various structures inhibit the use of the car spaces. The following images (in Figure 2 below) indicate the structures that have been in place, which are considered to discourage customers from parking on site.



Figure 2: Existing structures at entrance of Sheoak Shack

With regard to **existing parking facilities**, the applicant has noted the following:

“There is ample supply of parking in area around the Shack. The council have built a 70 space car park only 40 metres away, dedicated for recreational boat users. This car park is empty at night, at the same time that Sheoak Shack is at its busiest. In particular there is a row of 9 car spaces fronting Fingal Road which are too small for car-and-boat trailer parking following the construction of the bike track.

This parking area could easily accommodate the one parking space which is proposed not to be provided at the Shack, without causing any adverse impacts on current usage.

The DCP provides specific opportunities for relaxation of parking standards, which cannot be applied to the Shack as it is not included

- *in the area covered by CP 23, or*
- *the specific areas nominated for concessions by Section 2.4.8.*

Whilst not explicitly stated the reasons for these parking concessions include the desire to

1. *foster development in town and village centres*
2. *foster economic development*

Fingal Head has no easily definable village centre or location where the community can congregate. Over the years the Shack has been operating it has come to fill an important niche. In particular it has brought the people of Fingal together. Since the gallery first started 12 years ago the community have used this as a meeting place.

The gallery has a strong focus on supporting the Indigenous and non Indigenous locals with their art and music. It provides an important outlet for artists and is the longest running private art gallery in the Tweed.

The area identified in the Tweed LEP 2000 for commercial development in Fingal Head is inappropriate, as witnessed by the lack of any commercial development there since the land was first zoned approximately 30 years ago. The Shack is the only viable and available location for a café/gallery, as proven by 12 years of successful trading without complaint.

Motor vehicles are not the sole means of transport to the Shack: a combination of local residents and visitors (particularly to Council's caravan park) are choosing to walk and cycle to the premises.

Therefore although the specific concessions of the DCP cannot be applied to the Shack it is considered that the concession as proposed in this application fits with the overall intention of the DCP. Hence the proposal to include a dedicated bicycle parking area.

The existing commercial use of this property in this residentially zoned area is not causing any problems and only adds to the social, cultural and economic well-being of the area."

Comment

With regard to the existing parking facilities raised by the applicant, it should be noted that the boat ramp car park is in fact located a minimum of 80m walking distance from the café (as opposed to 40m noted by the applicant). Council does not consider the boat ramp to be an acceptable solution for parking associated with the Sheoak Shack. In Council's experience, the general public are generally unlikely to want to walk a distance of 80m to their destination. It should be noted that customers dining at the licensed premises in the evening would be required to walk over 80m in a poorly lit area, with no designated pedestrian crossing facility.

Although not stated by the applicant, the majority of Sheoak Shack customers and some staff regularly park in the reserve across the road (adjacent to the Tweed River), as shown the aerial photo in Figure 3 below.

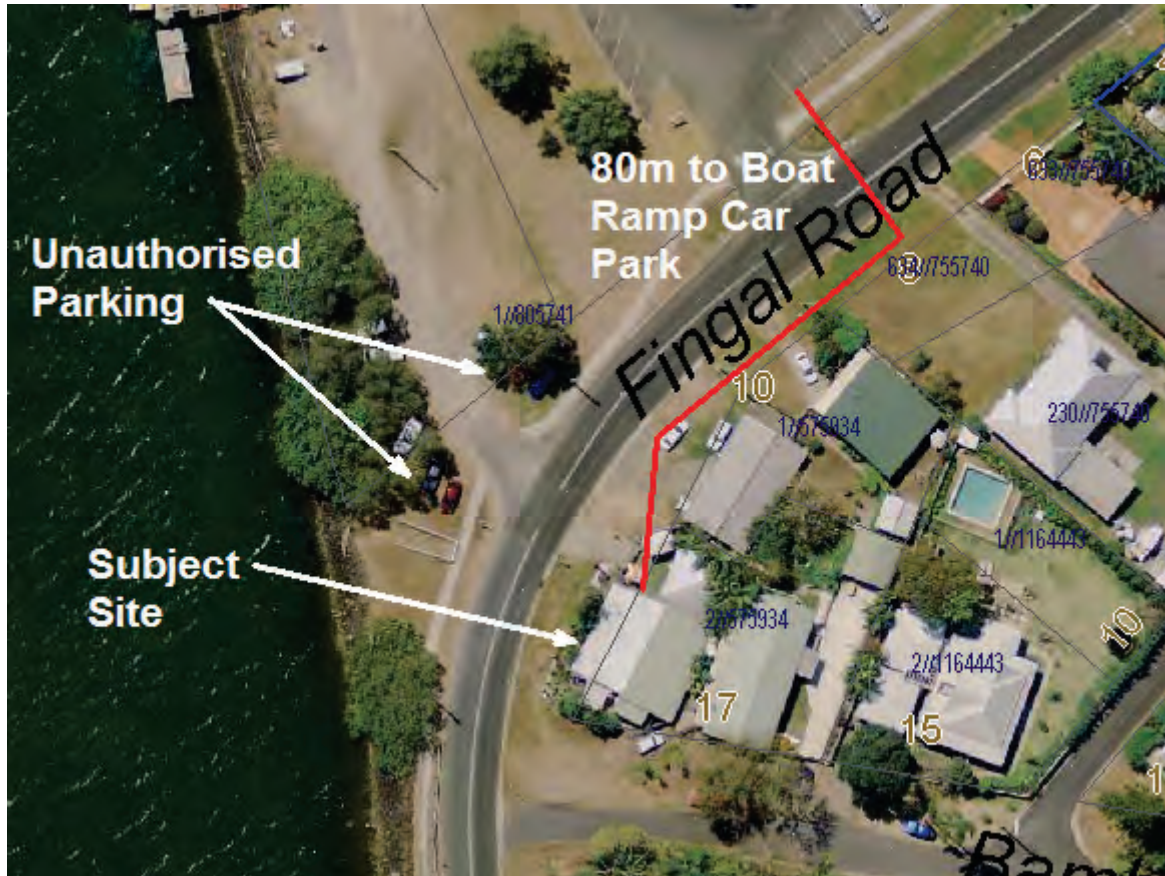


Figure 3: Aerial Photo indicating location of parking across from the subject site

The issue of the Sheoak Shack being a meeting place for the Fingal (and surrounding) community is not disputed. The issue is the disregard for compliance with the conditions of consent in relation to this development. The proprietor has consistently chosen not to provide car spaces on site. Rather, the proprietor has filled this area with tables and chairs and utilised the area for unlawful purposes without consent.

Whilst it is acknowledged that parking for outdoor dining areas can generally be absorbed by surrounding on street parking, it is not considered acceptable for this development to simply supply no customer parking on site. Council has consistently required development to provide off street parking, as per the provisions of DCP A2. Those applications that cannot do so, without the support of a detailed traffic report to accompany any variation to DCP A2, are generally not supported.

It is noted that the nearby Fingal General Store (D93/0499) was required to provide off street parking. There are many other instances where developments are required to provide off street parking provisions. To ignore the provisions of DCP A2 is to set an unacceptable precedent.

As noted above, customers and staff regularly use the reserve directly across from the business, as there are no longer any off street parking spaces being provided and the existing boat ramp car park is seemingly too far for people to walk. It is considered unreasonable to allow one business to profit from the unauthorised use of the community foreshore and again sets an unacceptable precedent.

The use of the reserve across the road from the subject site is not considered to be safe in its current form. Council's Traffic Engineer notes the following in this regard:

"There is however a significant risk to pedestrians crossing Fingal Road, particularly at night, to access the (unauthorised) parking area."

Previous pre-lodgement meetings have been held with the applicant and Council staff to determine if any acceptable parking alternatives are available.

The area to the south of the outdoor dining (adjacent to the Bambery Street intersection) was taken into consideration. However, this area was ruled out as a potential car parking area for several reasons:

- A single access point off Bambery Street would be required (set back from the intersection);
- There would need to be provision for cars to turn around. This was unlikely be achieved on such a slope without the need for a retaining wall (on the road reserve);
- There would also be a need to accommodate the loss of street parking along Bambery Street; and
- Any proposal in this area would need to address how customers would access the parking area, as they could not turn right into Bambery Street. This area would be unlikely to be used by patrons (due to the existing no right turn into Bambery Street).

Taking all of the above into consideration, the proposed deletion of the onsite parking requirements is considered to be contrary to the provisions of DCP A2 and is not supported. Given that there does not appear to be any other opportunity to provide parking elsewhere on the site, the previously approved car parking spaces should be reinstated and used as such in perpetuity.

A4-Advertising Signs Code

The original assessment of this application did not incorporate any proposed signage. The following standard signage condition was applied as Condition 3:

3. *Advertising structures/signs to be the subject of a separate development application, where statutorily required.*

Council records indicate that no application has been submitted in relation to proposed signage. Figure 4 below demonstrates that unauthorised signage has been erected for the development, within the road reserve.



Figure 4: Existing signage

A11-Public Notification of Development Proposals

The proposed modifications were advertised for a period of 14 days. Further details are provided later in this report.

- (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**

Access, Transport and Traffic

The issues raised under the DCP A2 assessment clearly indicate that the proposed modifications will result in an unacceptable precedent and as such, the proposed deletion of parking provisions is not supported.

Trading Hours

As noted above, the applicant has requested an extension of trading hours on Fridays and Sundays. Condition 22 of the development consent notes the following:

22. *Hours of operation are limited to the hours 8.30am - 5.00pm Monday to Sunday inclusive, except Saturdays where trading hours are 8.30am - 10.30pm. In addition the art gallery is permitted to be open until 9.30pm on ten nights of every calendar year.*

The applicant has provided the following justification for the proposed extension of trading hours:

“The community expectations for refreshment rooms are extended trading hours at weekends. The consent only allows this on Saturday evening. Therefore a modification to condition 22 is requested to provide for trading until 9.00pm on Friday and 8.00pm on Sunday. This would allow the Shack to extend to the local community similar hours to those enjoyed by other village and town centres in the Shire, without community members having to leave Fingal Head and to cater for visitors to this recognised major recreational area. The extended trading hours would not require any additional facilities at the Shack.

There have been no adverse impacts of the extended trading on Saturday and therefore the proposed modification is considered to be reasonable.”

Council’s Environmental Health Unit has assessed the proposed modification of Condition 22 and has provided the following comments:

“The application requests that the permissible trading hours be modified to 9.00pm on Friday nights and 8.00pm on Sunday nights.

The matter has been discussed with Grant Seddon, Licensing Sergeant, Tweed Heads Police. Sergeant Seddon advised that the current Liquor License permits trading up until midnight 7 days, except Sunday which is restricted to 10.00pm. Therefore the trading hour restrictions are created under Condition 22 of the development consent. Sergeant Seddon also advised that is familiar with the premise and has not received any notifications regarding the premise in his capacity as Licensing Sergeant. He did not raise any objection to the proposed amendment to permissible hours.

No complaints about the premise were identified in Dataworks, except one historical notification from one individual about several matters, including permissible trading hours.

It is noted that as the premise has a liquor license, the Office of Gaming and Racing is responsible for any noise or amenity notifications. Having regard for the above information and the fact that the Licensing Sergeant has not raised any concerns about the modified hours, no objection is raised by the Environment and Health Unit.

Further, it is noted that condition 23 will remain unchanged, which restricts the playing of live or amplified music to Saturday nights before 9.30pm.”

Although the extended trading hours are not being opposed by Council's Environmental Health Unit, the issue of live music is of concern. Condition 23, as shown below, clearly states that live music is only permitted on Saturday nights.

23. *Outdoor amplified music may only be played on Saturday night. This may only occur up until 9.30pm and speakers shall be directed away from residential premises. The playing of amplified or live music must cease upon request by any Council or Police officer.*

Despite this, the proprietor currently disregards Condition 23 by way of allowing live music to be played on a Saturday and Sunday. As shown in Figure 5 below, the website for the business clearly notes that live music is on Saturdays and Sundays, with a listing of upcoming gigs for June and July. It is also noted that the current trading hours for Sundays is 6.00pm (rather than 5.00pm as required by Condition 22). As such, the proposed extension of trading hours is not supported.



Figure 5: Opening hours and live music information from Sheoak Shack website

Noise

As noted above, Condition 23 stipulates that live music can only occur on Saturdays. Although Council has not received any recent official complaints regarding noise, the current situation is not compliant and may result in unnecessary noise impact, particularly given the low density residential zoning of the surrounding locality.

During the original assessment, it was noted that Council's Environmental Health Unit advised that the proposed amplified music could be directed away from the residential premises and that through conditions of consent (Condition 23) the impact of the proposed live music would be minimal. The live music was been assessed as being reasonable for **Saturday nights only** with time limited to 10.30pm.

The applicant should immediately cease any live music on a Sunday. Council's Environmental Health Unit has verbally advised that they would be unlikely to support a future application for live music on a Sunday, particularly without a full acoustic report supporting the application.

Use

The proposed use of the existing car parking area is of concern. As a result of the original application only proposing dining within the road reserve, the following condition was applied:

5. *No customer seating for the refreshment room shall be provided within the boundaries of the subject land.*

The applicant was advised at a pre-lodgement meeting that any on site seating (i.e. seating where the three car spaces should be) will trigger car parking requirements in addition to the 3 spaces currently required by the development.

During the assessment of this application, the applicant was requested to indicate the proposed use of the parking area, so that Council could determine if any additional parking was generated, which would thereby exacerbate the existing parking non-compliance.

The applicant responded by way of the following:

“The parking area is proposed to be used as an informal area for the kind of uses listed in the Statement of Environmental Effects. This descriptive list I suggest is self explanatory: the area will essentially be devoted to seating, with some open areas for dogs. In a similar manner this area will provide relaxation and a smoking area for staff, i.e. ‘staff amenities’. There are no additional structures in this area, As the layout will be flexible to allow the area to be adapted to daily requirements I do not consider it is realistic to provide a layout plan. The use of the area could be controlled by a condition attached to any amended development consent.”

The applicant’s response is not considered to be acceptable. As is the case with a multi use area, the use generating the highest level of parking should be taken as the use for the purposes of calculating parking provisions. If the area is to be seating for dining purposes (which the applicant has acknowledged is currently the case as is shown in Figure 6 below), then applicable parking provisions apply at a rate of 1 space per 7m² of dining area for a refreshment room.



Figure 6: Seating located within the approved car parking area

The carparking area (where seating is currently located) is estimated at approximately 20m². Therefore an additional three car spaces are required for customer parking. This raises the carparking provisions to 1 service vehicle, 4 staff and 4 customer spaces, equating to a total of nine spaces.

This is obviously well beyond the 1 customer car space calculated by the applicant. The provision of the 4 customer spaces, 4 staff spaces and 1 service vehicle space must be provided on site, as per the requirements of DCP A2.

If such parking provisions are unachievable, this suggests an overdevelopment of the site. The deletion of any on site car parking provisions from this development is opposed. The off street parking spaces should be reinstated, rather than being used as additional dining area (or any other traffic generating use).

If Council was in support of the proposed use of the parking area, Condition 5 of the development consent would need to be deleted.

Structures within the Road Reserve

The outdoor dining area is surrounded by various structures providing shade, fencing, signage etc, as shown in Figure 7 below. At a pre-lodgement meeting, the applicant was requested to provide structural certification all of the structures within the road reserve. The documentation provided by the applicant was not considered to be adequate.



Figure 7: Examples of structures within the road reserve

During the assessment of this application, it was noted that Council's Footpath Trading policy requires development consent for all permanent structures in association with a footpath trading area. The applicant was requested to provide any previous written approval from Council for structures that are currently in place on the road reserve.

The applicant provided the following comment:

“The use of the road reserve for out-door dining has been the subject of separate approvals process. A series of footpath dining licences have been granted by Council, the most recent on 7 November 2011 (ref S68/FT000007).

The structures within the road reserve were erected following the grant of the first licence. Having spoken to Council at the time I was under the belief that as these structures were lashed together on all sides and are removed during winter to allow more sunshine they are not permanent structures and therefore did not require approval. However, I understood that an approval was required for the fencing fronting the dining area for which approval was sought when I faxed to Council details of the fencing on 28 August 2000. These details were approved by Council. The structures within the road reserve have subsequently been maintained and replaced as necessary.

Following the original licence for the use of the road reserve for out-doors dining my premises have been visited and inspected by Council officers on a number of occasions. But until Sept. 2011 there have been no comment on the structures in the reserve. In a letter dated 21 September 2011, Council required require engineering details of all of the structures in the road reserve (with the exception of the front fence), for consideration by Council's Coordinator Planning & Infrastructure Unit. An engineers report was submitted to Council in response to this request in November. To date there has been no response to this material and therefore I am unable to respond further to the request for any written approval for these structures."

In response to the applicant's submission, Council's Traffic Engineer noted the following:

"It is noted that the applicant was unable to provide any evidence of prior approval of the structures placed within the road reserve. A separate s138 application should be submitted for all structures contained within the road reserve. The application is to include a report on the existing structure's integrity, by a suitably qualified and experienced structural/civil engineer or other appropriately qualified person."

(c) Suitability of the site for the development

Whilst the existing approved development is considered to be suitable for the site, the proposed modifications are not considered to result in a suitable development, in terms of acceptable parking provisions. The use of the parking area as additional dining area generates even more parking requirements. If these are unable to be provided on site, the proposal is clearly an overdevelopment and as such, not suitable for the subject site.

The proposed trading hours are considered to be suitable, subject to live music only on Saturdays, as required by Condition 23 of the development consent.

(e) Public interest

Whilst the proposal has received overwhelming support from the local community, there is a public expectation that Council upholds the provisions of the relevant Council policies and controls. Having undertaken a thorough assessment of the development, particularly in terms of car parking requirements, the proposed modifications are not considered to be in the public interest.

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

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

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require and*

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

Likely Environmental Impact

As noted above under Section 79c considerations, Council's Development Assessment Unit and Traffic Engineer have undertaken a detailed assessment of the proposed modifications. The proposal is not supported, given its likely environmental impact with particular regard to car parking.

Substantially the Same Development

An assessment needs to be undertaken in terms of whether the proposed development is "substantially the same" as the originally approved development, pursuant to the provisions of the Environmental Planning and Assessment Act.

The proposed modifications seek to remove the need to provide on-site car parking, which has the effect of freeing up an area for other purposes/uses, such as additional dining area, which in itself generates additional parking requirements.

Therefore, the proposed modifications are not considered to meet the provisions of being substantially the same development as originally approved and as such, the proposed modifications are recommended for refusal.

Notification/Submissions

The proposed development was advertised for a period of 14 days, during which 213 submissions were received, many of which were in the form of a pro forma letter. Of those submissions, only three were objections to the proposed modifications. The issues raised by the objections are noted below.

ISSUE	RESPONSE
The business is in breach of current council laws by allowing unleashed dogs to roam freely around tables and eat off the floor. The kitchen area is in breach of several health regs e.g. the area is not enclosed with screens as requested.	Regarding the food related matters, Council's Environmental Health Unit has advised that there is an insect screen in place across the kitchen servery and screen doors on all doorways, as required by Condition 7 of the development consent. They have also advised that the proprietor has also been made aware of the regulations regarding dogs in an outdoor dining area.
Other developments within the Fingal area have been required to provide off street parking at considerable expense. The proposed development should be required to do the same. Consistency by the Council should prevail.	Council officers recognise that other developments have consistently been required to provide off-street parking at their expense. The proposed modifications are not supported in this regard.
The Development Application states that this establishment must provide three off street car spaces and as such should be enforced. As to the argument that "it would be impossible to run the café with the parking so close to the kitchen and dining area" then this should have been identified long ago and the owner should not have incorporated dining and customer seating in close proximity to the parking area.	As noted within the body of this report, it is considered that there are solutions to improving the parking area in proximity to the outdoor dining area.
The points put forward that manoeuvring on site is unsafe because of the proximity of car parks and tables can be resolved by removing the tables from the "designated car parking spaces" and put up safety rails or barrier to stop pedestrian access to the area.	As above

ISSUE	RESPONSE
The owner has admitted that the proximity of cars to the food preparation area and dining area is a health hazard. The owner should be made to correct this issue by possibly erecting a separate partition/wall that will stop any potential health issues.	The existing development consent requires the development to operate in accordance with the requirements of the Food Act. Council's Environmental Health officers ensure compliance with this condition of consent.
The submission notes the comments by the Fingal Head Community Association re: there being "over 100 available parking spaces around the Sheoak Shack that are never full." The submission states that this is totally misleading as there are numerous times especially on fine weather weekends when the parking is at a premium in the boat harbour area.	Council officers do not consider that parking in the boat ramp is acceptable. The proposal to delete onsite parking for the Sheoak Shack is opposed.
On one hand the owner of the business wants to reduce the parking, yet they also want to extend the trading hours and increase patron numbers.	This issue has been addressed within the body of the report. The use of the approved parking area as additional dining is not supported, as it will only add to the parking issues.
The extended trading hours should also be looked at to ensure that any modifications to the original approvals are strictly adhered to.	This issue has been addressed within the body of the report. Live music on Sundays is not supported.

It should be noted that many of the submissions to Council in support of the proposal have asked Council not to enforce the "parking changes" on the Sheoak Shack. It should be clarified that Council is not trying to make any "changes". Rather, simply enforce the conditions of development consent. The applicant has always been aware of the requirement for three car spaces on site and has simply chosen to ignore such requirement.

OPTIONS:

1. Refuse the proposed modifications; require the originally approved three car spaces to be reinstated on site; require the use of live music on a Sunday to cease; require the development to comply with existing approved trading hours; require the submission of a Section 138 application to be submitted for approval; and require the submission of a development application for all signage associated with the development, or
2. Approve the proposed modifications as proposed by the applicant, in principle and bring back a further report to Council with suitable modified conditions.

CONCLUSION:

Despite the overwhelming support for the development, the proposed deletion of car parking requirements is not considered to be acceptable. The support of this application would set an unacceptable precedent in terms of off street parking provisions.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination by Council they have an opportunity to appeal to the NSW Land and Environment Court. Should Council defend such an appeal costs would be incurred.

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.

13 [PR-CM] Development Application DA12/0098 for a Free Range Poultry Farm (Maximum 4,500 Birds) Including 8 Moveable Sheds at Lot 1 DP 881996 No. 576 Cudgen Road, Cudgen

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0098 Pt1



Civic Leadership

SUMMARY OF REPORT:

Following compliance matters at the subject site Council received a Development Application (on 16 March 2012) seeking approval for a free range poultry farm (for egg production) utilising a maximum of 10,000 birds and five portable sheds within a fenced run area of approximately 35,000m², at No. 576 Cudgen Road, Cudgen.

The compliance matters have been resolved as a separate matter and accordingly the subject development application has been assessed independently of the compliance matters and on its merits having regard to 79C of the Environmental Planning and Assessment Act 1979 (as amended).

The proposal is best defined as an 'animal establishment' in accordance with the Tweed Local Environmental Plan 2000 (TLEP 2000) which states:

animal establishment a building or place used for any one or more of the purposes of intensive animal husbandry, or the boarding, training or the keeping of animals, birds, fish, crustaceans, insects or the like, generally requiring the importation of feed from outside the land on which the establishment is conducted.

An animal establishment is a permissible land use (with consent) in the 1(b1) Agricultural Protection Zone.

The application was advertised and notified for a period of 14 days and during this time Council received 13 letters opposed to the proposed development. The objections raised valid issues in regards to odour, noise, dust, flies, disease, sediment and soil erosion, visual amenity, poor management practises, site access, and water quality.

Having reviewed the objections and undertaken an initial assessment of the application Council wrote to the applicant on 9 May 2012 raising serious concerns with the level of information provided within the application and the capacity of the application to satisfy the numerous setback guidelines for poultry farms. The letter requested that the applicant withdraw the application given the unsuitability of the site for the proposed activity.

The applicant verbally responded to Council and advised that he would be providing a written response to Council's letter and that he wanted a determination.

On 15 June 2012 Council staff met with the applicant to further explain Council's letter of 9 May 2012 and the applicant handed staff a one page letter of response which incorporated a request to amend his Development Application. The changes to the development application are as follows:

- The reduction of the number of birds from 10,000 down to 4,500 birds.
- An increase from 5 movable sheds to 8 movable sheds;
- Relocation of the fenced run area to increase setbacks to neighbouring properties;
- Revised site access from the existing driveway associated with the existing dwelling;
- Sole operator proposed;
- Surface water management of free range area will comprise of the utilisation of an existing 1m high silt barrier; and
- Proposed vegetative buffers to improve visual amenity.

Council staff has re-considered the amended application and have accordingly produced this assessment report. Having regard to 79C of the Environmental Planning and Assessment Act 1979 the proposal is not considered suitable for the subject site as the proposed facility is too close to dwellings having regard to the best practice guidelines for such facilities. Therefore the subject development application is recommended for refusal.

RECOMMENDATION:

That amended Development Application DA12/0098 for a free range poultry farm (maximum 4,500 birds) including 8 moveable sheds at Lot 1 DP 881996 No. 576 Cudgen Road, Cudgen be refused for the following reasons:

- 1. The activity as proposed cannot be accommodated within the subject allotment (specifically having regard to buffers/separation distances) in accordance with accepted industry and regulatory guidelines, that being the, Environmental Guidelines for the Australian Egg Industry (2008), Model Code of Practise for the Welfare of Animals 4th Ed (2002) and the Living and Working in Rural Areas Handbook (2007).**
- 2. The proposed development does not satisfy the provisions of the Tweed Local Environmental Plan 2000 specifically in regard to:**
 - (a) Clause 4: Aims of the plan as the application does not have adequate regard for the environmental and residential amenity qualities of the area.**
 - (b) Clause 8(1): Consent Considerations- Council is not satisfied that the development adequately satisfies the primary objective of the zone or will not have an unacceptable cumulative impact on the community, locality or catchment arising from the proposed operation of the development.**
- 3. The existing driveway access (which is proposed as the only access for the operation of the poultry farm) is not considered adequate for the operation.**

4. The application as amended (15 June 2012) satisfies the definitional criteria of “Designated Development” under the Environmental Planning & Assessment Act 1979 as set out in the Schedule 3 of the Environmental Planning and Assessment Regulation 2000 – Clause 21 Livestock Intensive Industries, as there is an approved dwelling within 150m of the fenced free range area. However, the application has not been lodged as Designated Development.
5. Insufficient information has been supplied in regards to;
 - (a) community amenity and health;
 - (b) environmental impacts;
 - (c) animal welfare; and
 - (d) internal site managementto enable a proper assessment of the application.
6. The application is not considered to be in the public interest.

REPORT:

Applicant: Mr G Temessi
Owner: Mr Dean Sikiric
Location: Lot 1 DP 881996; No. 576 Cudgen Road, Cudgen
Zoning: 1(b1) Agricultural Protection
Cost: \$15,000

BACKGROUND:

The Subject Site & Surrounds

The subject site is known as No. 576 Cudgen Road, Cudgen being identified as Lot 1 DP 881996 and is located on the southern side of Cudgen Road, Cudgen being roughly equidistant from Collier Street to the northwest and Plantation Road to the south.

The site is 10.09ha in size and is irregular in shape as it surrounds 572 Cudgen Road, Cudgen (Lot 1 in DP 613261) which currently accommodates an auto electrician's business.

The site is undulating with a natural depression in the mid eastern section of the site which displays a modified drainage system that incorporates a natural waterbody (dam). The highest elevation of the site is approximately RL 30m AHD in the south western corner of the site.

The subject site currently accommodates a dwelling house in the north eastern corner of the site, a dam in the mid eastern section of the site and is currently vacant in all other regards (as the sheds and chickens associated with the compliance matter were removed from the site by 8 June 2012).

Excluding the existing auto electricians business at 572 Cudgen Road the area is dominated by dwellings and small crops or hobby land. Cudgen residential village is located 500m to the north east of the site. It should be noted that 572 Cudgen Road has a house design situated in the south western corner of the site which was approved on 21 October 2011 by way of Development Application DA11/0246. If constructed this house would be within approximately 100m of the fenced free range area.

The nearest dwelling not associated with the poultry farm is located 120m away from the proposed fenced free range area.

Site History

Lot 1 in DP 881996 was registered on 7 December 1998 and was formed as a result of a seven lot subdivision (Council Reference S94/144) which was a plan of subdivision comprising the following allotments: Lot 2 in DP 615133; Lot 3 in DP 615133; Lot 2 in DP593990; and Lot 2 in DP 613261.

The area that comprises Lot 1 in DP881996 today was predominantly contained within Lot 2 in DP 613216.

The following applications, consents and approvals relate to the land which is now known as Lot 1 in DP 881996:

- Development Application D89/733 and development consent dated 27 November 1989 which sought consent for the erection of a rural workers dwelling. The nature of the agriculture that was undertaken to warrant the workers dwelling included 8 acres of beans, 2 acres of avocados, and 5 acres of mangoes.

- Building Application 1261/89B and approval thereof dated 1 December 1989, for a mobile home to be used as a rural workers dwelling. This Building Application directly related to the Development Application D89/733 for the rural workers dwelling.
- Building Application 0984/95B and approval dated 1 September 1995, for alterations to an existing dwelling. This application sought approval for the addition of a rumpus room, verandah, and carport to an existing dwelling. From the plans this is an addition to the previously approved rural workers dwelling as approved by D89/733 and 0984/95B. An approval was subsequently issued on 1 September 1995.

As detailed above Lot 1 in DP 881996 was predominantly created from Lot 2 in DP 613261. Prior to the subdivision in 1998 that created Lot 1 in DP 881996 the subject land was accommodated predominantly within Lot 2 in DP 613261. Prior to 1998, Lot 2 in DP 613261 accommodated a dwelling and the above mentioned rural workers dwelling.

The subdivision in 1998 excised the existing dwelling off the subject land, and accordingly that dwelling is now located within Lot 2 in DP881996. Therefore the current Lot 1 DP 881996 only has approval for the rural workers dwelling and the subsequent alterations approved to this structure.

Lot 1 in DP881996 has a dwelling entitlement by virtue of its size (10.09ha) in a 1(b1) Agricultural Protection zone.

The Proposed Development

The Development Application (as lodged on 16 March 2012) sought approval for a free range poultry farm (for egg production) utilising a maximum of 10,000 birds and five portable sheds within a fenced run area of approximately 35,000m², at 576 Cudgen Road, Cudgen.

The following paragraphs have been extracted from the applicant's Statement of Environmental Effects to detail the development as proposed:

"The development application is for no more than a total at any one time of 10,000 (ten thousand) layer birds. Laying of eggs and roosting to take place in five (5) portable sheds.

No male birds will be kept at any time.

No hatchery or rearing activities will take place at the above site.

No further processing of eggs will take place at the above site.

No further processing of eggs will take place on site. Only the collection and packing into trays for transport to a grading floor. Packing will take place at the existing dwelling on site.

As a requirement of the NSW Egg Food Safety Scheme, the production of eggs for human consumption will be regulated and subject to annual inspection by the NSW Food Authority.

Water efficient drinkers will be used. The system is designed to eliminate any occurrence of "wet litter". Wet litter is the greatest cause of odour in poultry systems.

The birds will feed, once a day, by hand into troughs in the sheds. The use of hand feeding prevents both machine noise from mechanical feeders and bird noise, as birds are able to access feed at all times, rather than only during the operation of a mechanical feeder.

The feed will be removed by hand from the storage bin, placed in 20 litre buckets, and poured into the troughs daily.

The proposed business will operate 24 hours per day, 7 days per week.

The maximum number of staff at any time will be two (2). It is anticipated that the business will be owner-operated.

No on farm sales will occur. Biosecurity requirements will limit the access of visitors to the free range area and sheds.

It is anticipated that feed deliveries will take place once a month, via small delivery vehicle. The vehicle will be a light 5 tonne truck or the owner's current vehicle, a 4WD utility.

Sheds will be open sided with mesh for air circulation. No mechanical ventilation will take place.

The sheds will be constructed of recycled materials and wire mesh and are designed to be portable, in order to minimise nutrient loading of run areas and provide vegetation rotation in order to maintain an even ground cover of the range area, year round. Sheds will be designed to minimise storm water entry by way of a raised floor that sits upon the beams used to slide the sheds from one location to another. The open sides, covered in mesh will provide a screen against wild bird entry into the sheds, in accordance with Biosecurity Guidelines. The solid floor will contain all manure generated while birds are roosting and will be removed upon de-stocking every 65 weeks.

Due to the portable nature of the sheds, it is believed that no building certificate is required.

Similar egg production enterprises are currently operating in both the Byron Bay and Lismore areas, utilising portable sheds and permanent free range access.

A vermin/predator proof fence will surround the proposed run area to prevent access by wild dogs, foxes, rabbits and ground birds, such as scrub turkeys and effectively prevent birds from exiting the property. All feed will be stored in sealed bins, to prevent access by rodents and other vermin, prior to feeding. Feeding and access to drinking water will take place inside the sheds to discourage access by wild birds.

A significant vegetation infiltration area will be maintained in order to prevent storm water runoff exiting the property.

Live bird deliveries will take place approximately once every six (6) months, in conjunction with destocking. To limit bird noise, trained handlers will conduct the de-stocking after dark.

Only one shed will be stocked and de-stocked at a time, due to the need to have production constant throughout the year.

Sheds will be cleaned upon de-stocking. Each shed will be de-stocked each 65 weeks. Litter will be gathered via the use of a bucket on a "Dingo" and placed immediately on a small tipper truck of a 5 tonne capacity. The load will be covered and removed from site upon completion of the cleaning of the shed. Consideration will be given prior to commencement of shed cleaning to wind speed and direction. No cleaning will take place if there is any wind present or expected on the proposed day, in accordance with the Environmental Guidelines for the Egg Industry. The wind speed is to be less than 10 knots before any work will commence.

No hazardous materials will be stored on site. All veterinary treatments to birds will be completed prior to the birds arriving on site.

Stormwater will be collected from shed roofs by guttering diverting into rainwater tanks. The slope of the land will allow for diversion of groundwater to the range area, and utilised by the vegetation planted, including the 1000 plus trees for permanent fodder.

A vegetation filtration system will be maintained outside the range area, in order to prevent any stormwater leaving the property. A containment dam located at the Eastern boundary of the property will prevent any storm water resulting from a rain event exiting the property."

On 15 June 2012 Council staff met with the applicant to further explain Council's letter of 9 May 2012 and the applicant handed staff a one page letter of response which incorporated a request to amend his Development Application.

"With regards to my development application (DA 21/0098) and to your response letter dated 9/5/2012, I would like to notify council of several amendments to my original proposal and hope that these changes may enable my application to be looked at more favourably.

The first of these changes is the most significant, the reduction of the number of birds to be kept. Following the guidelines set out in the SCARM REPORT (4th Edition), the recommended number of birds per hectare is 1,500. I would like to amend my original application to represent a stocking number of 4,500 birds. As the site proposed is approximately 3.5 H/A, this number is well within the SCARM guidelines.

The next of my changes relates to the free-range area. The fence line is to be positioned to provide the appropriate buffer zone to the approved house at 572 Cudgen Road and all neighbouring proprietors (Please note that existing fences on property do not represent the free-range area, a new site map has been provided). Perimeter fencing will be constructed from wire-mesh, at a height of approximately 1.8 meters.

Another amendment is site access. Site access is to be gained from existing driveway to the residence at 576 Cudgen Road. The reduced size of the proposal negates the need for truck turning circles, staff parking etc. This will be a one man operation, with all transport activities conducted via a small van and trailer.

With regards to ground water management (surface run-off), it is proposed that the mobile sheds be positioned to take advantage of an existing silt barrier (approximately 1 meter high) that runs the length of the free range area. The barrier allows for surface water to be slowed and sediment deposited behind the barrier, allowing it to be redistributed as topsoil.

It is also proposed that vegetative buffers are placed in strategic areas to provide an aesthetically pleasing operation.

To aid in the management of the vegetation in the free-range area, mobile sheds are to be used to allow for rotation of stocking areas. This, combined with the seeding of stocking areas with grained food, should allow for constant regeneration of ground cover. (Detailed drawings of sheds will be made available to council).

I believe my application to be in the best interest of the local community, as my aim is to help the local area to become more self sufficient in regards to food supply, surely the council can work with me to help achieve this goal. The Tweed Shire's Sustainable Agriculture Strategy (Page 23) mentions the benefits of local food production. As my proposal seems to be in line with Council policy, I am looking forward to a favourable outcome to my Development Application."

In summary the changes to the development application are as follows:

- The reduction of the number of birds from 10,000 down to 4,500 birds;
- An increase from 5 movable sheds to 8 movable sheds;
- Relocation of the fenced run area to increase setbacks to neighbouring properties;
- Revised site access from the existing driveway associated with the existing dwelling;
- Sole operator proposed;
- Surface water management of free range area will comprise of the utilisation of an existing 1m high silt barrier; and
- Proposed vegetative buffers to improve visual amenity.

Applicable Guidelines for a Poultry Farm

The following extract from the Local Government Air Quality Toolkit clearly defines a typical egg production setup:

"Free-range accommodation represents about 5% of eggs produced in NSW. The average flock size is much smaller than in the other systems, typically being only 1,000 to 2,000 birds. However, a few free-range farms in NSW have flock sizes ranging from 5,000 to 20,000 birds. Free-range systems consist of a weatherproof shed where hens can roost, lay, drink and eat. Adjoining the shed is an open-aired outdoor range. The sheds protect the birds from the elements and predators while the free-range area allows them access to open space and vegetation. Free-range egg production is considerably more expensive than the alternatives because of the greater land area needed, increased labour requirements, higher feed consumption and small economies of scale. Mortality rates can be considerably higher."

Such facilities need to be assessed against a range of best practice guidelines that aim to educate readers on the requirements for certain facilities. Following is a brief description of the applicable guidelines:

- *Environmental Guidelines for the Australian Egg Industry, Australian Egg Corp Ltd, Commonwealth Department of Agriculture, Fisheries and Forestry, June 2008.*

This Guideline provides for Best Management Practice within the industry to ensure both the economic and environmental sustainability of the Australian egg industry. The sectors of the industry covered by the guidelines include hatcheries, pullet rearing facilities, egg production facilities (cage, free range and barn), grading floors and egg product manufacturing. Regulators can use the guidelines to ensure egg production, egg grading and egg product manufacturing facilities are developed, designed and managed to minimise the risk and severity of adverse environmental impacts.

- *Model Code of Practice for the Welfare of Animal - Domestic Poultry, 4th Edition SCARM Report, Primary Industries Ministerial Council, 2002*

This Code is intended as a set of guidelines which provides detailed minimum standards for assisting people in understanding the standard of care required to meet their obligations under the laws that operate in Australia's States and Territories.

- *Living and Working in Rural Areas, NSW Department of Primary Industries, 2007*

This document represents a handbook for the management of land use conflicts.

The ability to adequately achieve the recommended buffers and separation distances is considered to be a critical factor in determining any application of this nature. Such buffers would ensure best management practices and would alleviate current community concerns raised to date with regards to odour, noise, dust, flies, disease, sediment and soil erosion, visual amenity, poor management practises, and water quality.

The following table and map provides an overview of the permissible buffers and separation distances sourced from the above documents.

TABLE 1 - Buffers and Features

Feature	Criteria		
	Environmental Guidelines for the Aust. Egg Industry	Model CoP for Welfare of Animals	Living and Working in Rural Areas,
Minimum Distance to Watercourse	100m		100m
Flood Level	Above 1 in 100 year		
Maximum Free Range Stocking Density - shed	30kg/m ²	30kg/m ² ¹	
Maximum Free Range Stocking Density - range		1500 birds/ha	
Minimum Distance to Residential Zone	500m		1000m
Minimum Distance to Neighbouring Dwelling with same land use zone (including "as of right" dwelling)	250m		500m
Minimum Distance from Egg Facility to property boundary	100m		100m
Minimum Distance from Egg Facility to public road carrying >50vehicles/day	100m		100m

¹ Maximum stocking densities may only be used if there are cooling systems and ventilation fans in place to ensure temperature control during extreme conditions.

AERIAL IMAGE - BUFFERS

Lot 1 DP 881996
No.576 Cudgen Road,
Cudgen

2009 Aerial Photography

-  Property Boundary 100m Buffer
-  Residential Zones 500m Buffer
-  Natural Waterbody 100m Buffer
-  Existing & Future Residences 250m Buffer
-  Road Reserve 100m Buffer



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CREATED: 08 May 2012
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]
 PROJECT NO: [Number]
 SHEET NO: [Number]
 SCALE: [Scale]
 COPYRIGHT: NOT CERTIFIED
 CONSULTANTS: [List]

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The above map shows the recommended buffers and separation distances which have been applied to an aerial photograph of the site. Based on this information the development as proposed cannot be achieved on the site as the recommended buffers consume the entire site.

The subject site is therefore considered unsuitable for a poultry farm and accordingly the application cannot be supported by Council staff.

This opinion was expressed to the applicant in Council's letter of 9 May 2012.

Whilst the applicant submitted comment that the fence line for the free range area will be repositioned "to provide the appropriate buffer zone to the approved house at 572 Cudgen Road and all neighbouring proprietors" the accompanying plan does not reflect the Council specified buffers. It is noted that the applicant has not nominated his "appropriate buffer" distance.

The further information submitted by the applicant does not, address the concerns raised, provide alternative solutions, refute the reference documents sourced, validate submitted variations from the stated buffers/separation distances nor provide alternative reference documents.

Council Officers had discussions with officers of the NSW Office of Environment and Heritage and NSW Department of Primary Industries - Agriculture to confirm that the documents sourced are applicable.

It is considered that the applicant has therefore not adequately addressed the concerns raised within Council correspondence dated 9 May 2012. Therefore the buffer issues remain unsatisfied and form part of the reason that the application is recommended for refusal.

Designated Development

In accordance with Schedule 3 of the Environmental Planning and Assessment Regulation 2000 a poultry farm may constitute Designated Development in accordance with Clause 21 (4) of Schedule 3 as follows:





21(4) Poultry farms for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds and emus), whether as meat birds, layers or breeders and whether as free range or shedded birds:

- (a) *that accommodate more than 250,000 birds, or*
- (b) *that are located:*
 - (i) within 100 metres of a natural waterbody or wetland, or
 - (ii) *within a drinking water catchment, or*
 - (iii) *within 500 metres of another poultry farm, or*
 - (iv) within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

The underlined text represents the sequence of the clauses that relate to the original application (16 March 2012). The below image shows this criteria mapped based on the applicant's submitted fencing plan.

AERIAL IMAGE - DESIGNATED DEVELOPMENT ORIGINAL PLAN

Lot 1 DP 881996
No.576 Cudgen Road,
Cudgen
2009 Aerial Photography

-  Residential Zones 500m Buffer
-  Natural Waterbody 100m Buffer
-  Existing & Approved Residences 150m Buffer
-  Proposed Fence Line - DA120088



TWEED SHIRE COUNCIL
 57 The Esplanade, Tweed Heads NSW 2486
 Phone: 07 9525 2484 Fax: 07 9525 2484
 Email: info@tweedshire.nsw.gov.au

Project: DP 881996
 Date: 08 May 2012
 Scale: 1:1000
 Drawing: 01 - SITE PLAN
 Author: [Name]
 Checked: [Name]
 Approved: [Name]

NOT FOR CONSTRUCTION
 This drawing is for information only and is not to be used for construction purposes. It is subject to change without notice. The information contained herein is for general information only and does not constitute an offer of any financial product or service. The information contained herein is for general information only and does not constitute an offer of any financial product or service. The information contained herein is for general information only and does not constitute an offer of any financial product or service.

The above diagram shows that

- The fenced free range area is clear of the 100m buffer to the waterway;
- The fenced free range area is clear of the 500m buffer to residentially zoned land; and
- The fenced free range area is clear of the 150m to the existing house at 542 Cudgen Road





However the fenced free range activities are not clear of the 150m buffer to the approved house at 572 Cudgen Road.

Accordingly the application as originally submitted would have been considered statutorily invalid as it was not lodged as Designated Development.

The below image shows these criteria mapped, based on the applicant's amended fencing plan (as lodged on 15 June 2012):

AERIAL IMAGE - DESIGNATED DEVELOPMENT AMENDED PLAN

Lot 1 DP 881996
No. 576 Cudgen Road,
Cudgen
2009 Aerial Photography

-  Residential Zones 500m Buffer
-  Natural Waterbody 100m Buffer
-  Existing & Approved Residences 150m Buffer
-  Proposed Fence Line - DA120098



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TWEED
 SHIRE COUNCIL
 11.000
 03.07.2012
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CHANGES: 03 July 2012
 O Land and Property
 A Designated Development Amended Plan
 & Tweed Shire Council
 The information on this drawing is considered approximate only.

0 20 40 60 80 100M
 1:1,000
 03.07.2012
 GDA

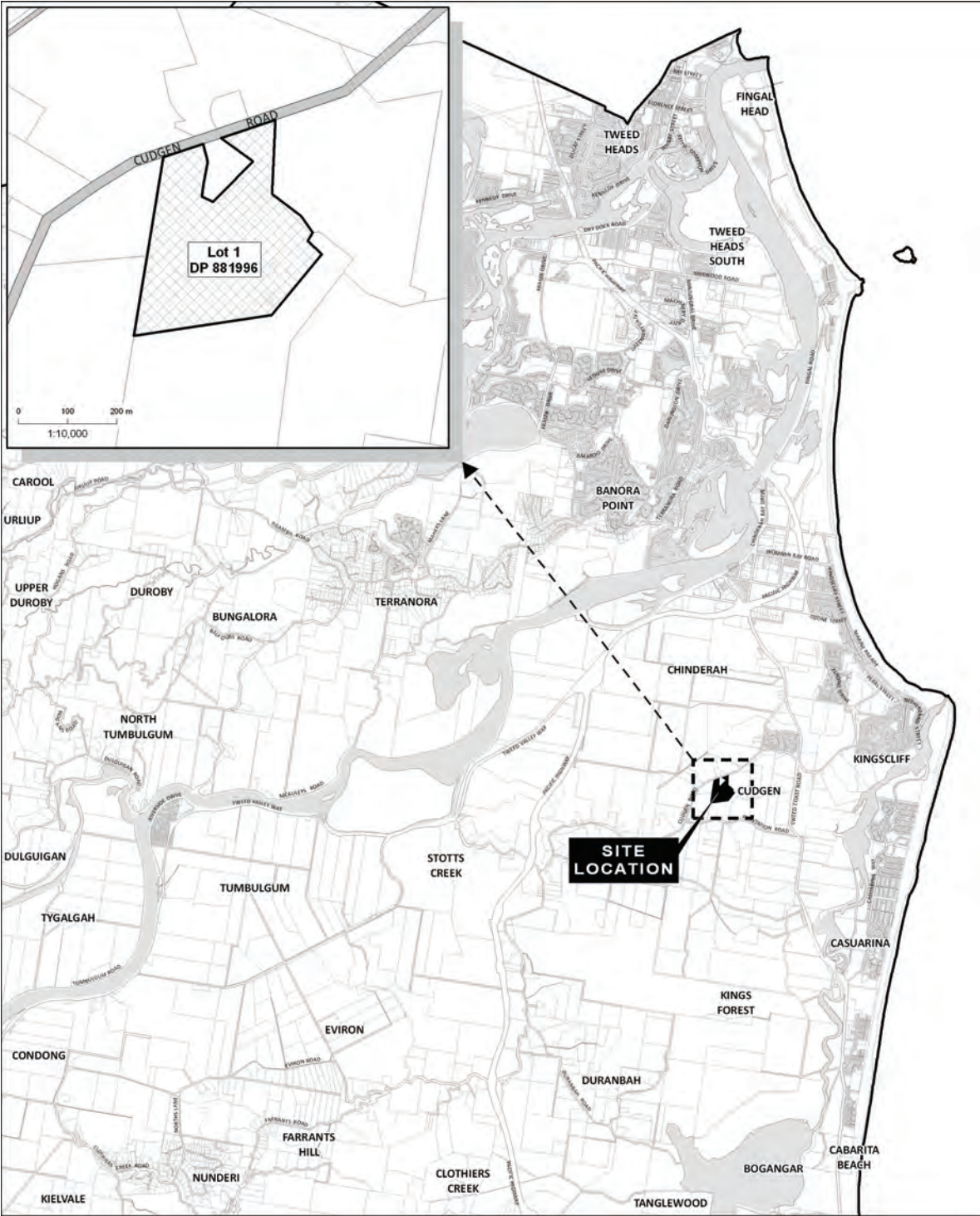
Declaration: While every care is taken to ensure the accuracy of this data, Tweed Shire Council does not warrant, represent or guarantee the accuracy or reliability of the information or data shown on this drawing. The user of this drawing is responsible for the accuracy of the information and data shown on this drawing. The user of this drawing is responsible for the accuracy of the information and data shown on this drawing. The user of this drawing is responsible for the accuracy of the information and data shown on this drawing.

As per the original application, the amended application shows the fenced free range activities are not clear of the 150m buffer to the approved house at 572 Cudgen Road.

Accordingly the application as amended is statutorily invalid as it was not lodged as Designated Development.

Council acknowledges that the fenced area could be moved outside of the designated buffer areas, however, this would not negate Council's other concerns as identified in this report.

SITE DIAGRAM:



Locality Plan
 DA12/0098 - Lot 1 DP 881996
 No. 576 Cudgen Road, Cudgen

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 damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 03 July, 2012
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 Boundaries shown should be considered approximate only.

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 1:75,000 @ A4 Portrait
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 Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidetic Datum of Australia 2004
 GDA
 110: Map (part of Australia, Zone 50)
 Author: @Pathfinder / Planning Software (jms)

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Date Plan 8, 5 Feb 2012

AERIAL IMAGE:



SOURCE: Aerial imagery taken October 2009 by Fugro Spatial Pty Ltd

Aerial photography can be purchased online from Fugro Spatial Pty Ltd. at: <http://www2.fugroworld.com/>

Aerial Photo - taken October 2009
 DA12/0098 - Lot 1 DP 881996
 No. 576 Cudgen Road, Cudgen

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Cadastral: 03 July, 2012
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 Boundaries shown should be considered approximate only.

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Map Projection: Universal Transverse Mercator
 Horizontal Datum: Geoidic Datum of Australia 1994
 Grid: Map Grid of Australia, Zone 56

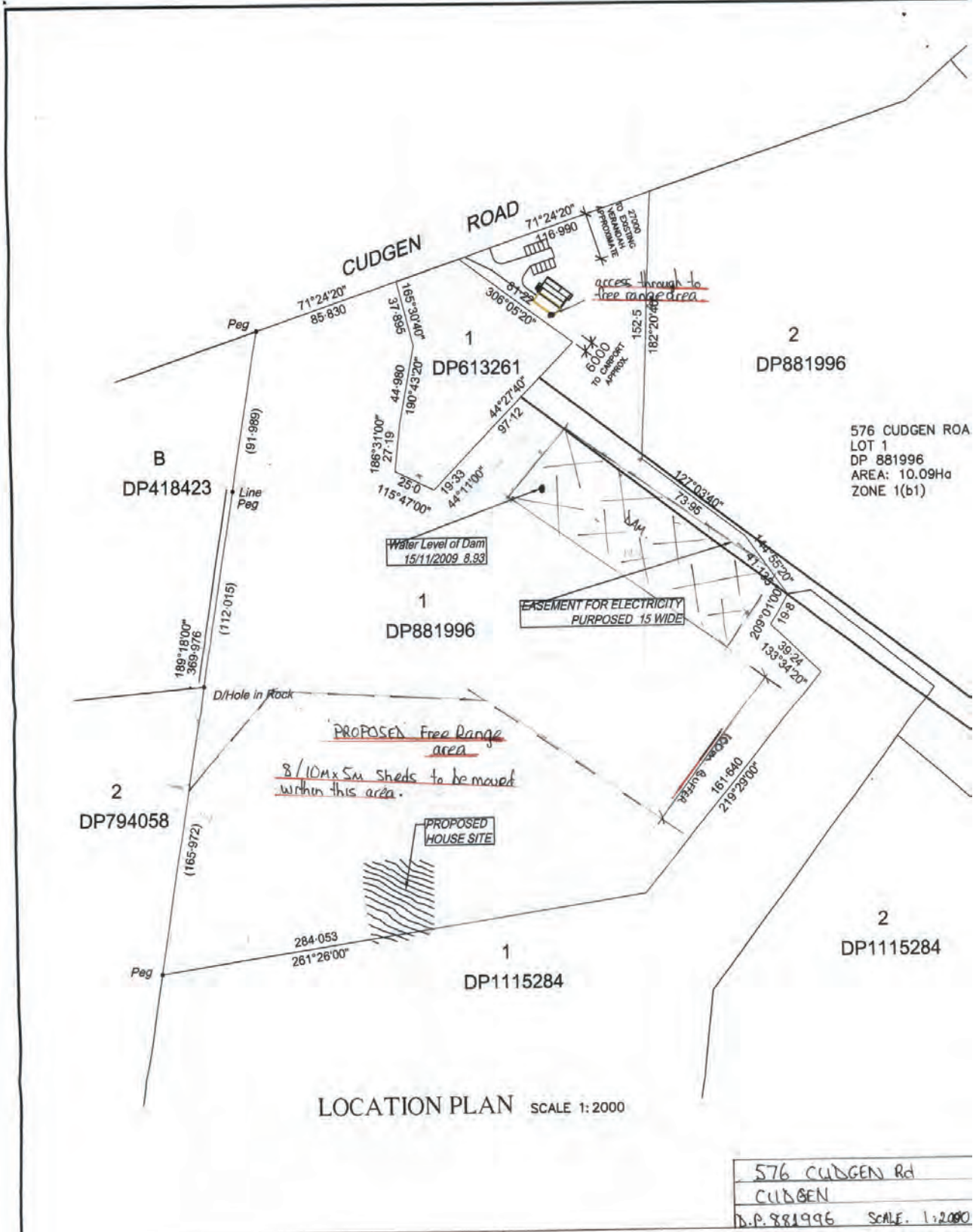
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AMENDED DEVELOPMENT PLANS (15 JUNE 2012):



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 2 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan.

The vision of the plan is “the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

One of the aims of the plan is:

- (d) to encourage sustainable economic development of the area of Tweed compatible with the area’s environmental and residential amenity qualities.

The proposed development would negatively affect the residential amenity qualities for adjoining neighbours as the development is located too close to neighbouring dwellings.

Clause 5 - Ecologically Sustainable Development

The TLEP 2000 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

The proposed development has not demonstrated that a poultry farm could be operated at the subject site without adversely affecting the environment and accordingly non compliance with these provisions forms one of the recommended reasons for refusal.

Clause 8 – Consent Considerations and Clause 11 Zone Objectives

This clause specifies that the consent authority may grant consent to development only if:

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

The subject site is located in the 1(b1) Agricultural Protection zone which has the following objectives:

Primary objective

- *to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.*

Secondary objective

- *to allow other development that is compatible with agricultural activities.*

The proposed development seeks approval for an animal establishment. This land use whilst permissible with consent must still satisfy the primary objective of the zone.

The subject site and surrounding properties have a dominant form of dwellings (residential), small crops (agriculture), hobby land (agriculture) and the one auto electrician's business. The approved dwellings have been determined to be compatible with that dominant agricultural form (as per the secondary objective).

Therefore to determine the suitability of any new use such as an animal establishment it must be reviewed having regard to its suitability with the existing form, which is residential and agricultural.

This report details that the proposed animal establishment is not consistent with the existing dominant form and that the sites use as a poultry farm would have a negative impact on the residential amenity of the existing and proposed properties in the immediate vicinity.

Consideration has been given to other aims and objectives of the plan that are relevant to the development elsewhere in this report.

The potential cumulative impact of other such non compatible uses would further impact on the residential amenity of the existing and proposed properties in the immediate vicinity. Additionally the environmental impact of this development and other potential future developments of this nature could have an unacceptable cumulative impact on the environment specifically having regard to water quality and pollution.

Accordingly non compliance with this clause forms part of the reasons for recommending refusal of the subject application.

Clause 15 - Essential Services

This clause of the TLEP 2000 requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. Having regard to the proposed development, on a site which currently has an approved dwelling, it is considered that adequate services are available to the proposed sheds.

Clause 16 - Height of Building

Clause 16 of the TLEP 2000 requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys. The proposed dwelling complies with this criterion at a maximum height of approximately 2.7m from finished ground level.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 22 – Development Near Designated Roads and Clause 24 Setbacks

The proposed development adjoins Cudgen Road which is a Council Designated Road and accordingly Clause 22 applies.

The amended application alters the proposed access to the site so that the development is only accessible from the existing driveway that's servicing the existing dwelling.

This access would need to be redesigned to accommodate small/large truck access.

Access to this site would be achievable in accordance with Clause 22 however inadequate information has been provided in this regard.

In regards to setbacks the proposed structure whilst movable would always be greater than 30m from the street boundary and accordingly Clause 23 could be satisfied.

Clause 35 - Acid Sulfate Soils

The subject site exhibits Class 5 ASS with respect to this clause.

The site could be adequately managed to avoid ASS.

Clause 47 – Advertising Signs

The proposed development does not contain any details of future signage.

State Environmental Planning Policies (SEPP)

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The subject site is listed on Council's GIS Enlighten system as being partially within an area which is identified as being State Significant Farmland.

Approval of an animal establishment on this site would preclude agricultural pursuits while the animal establishment was in operation.

Clause 15: Wetlands or Fishery Habitats

Clause 15 of the North Coast Regional Environmental Plan (NCREP) is applicable to any application to carry out development adjoining a river or stream or within the drainage catchment of a river or stream.

The subject site accommodates a waterbody (in the north eastern part of the site) which forms part of a natural waterbody, which included a lake or lagoon either naturally formed or artificially modified by the observation of the path of the watercourse that traverses across the subject site west to east and enters the dam located on the eastern boundary of the site and flows thereafter through a series of dams and ponds to the east into Cudgen Creek.

The cadastral and topographical map series for the immediate area of the site as displayed on the Department of Lands Spatial Information Exchange - Six Viewer clearly denotes the path of the waterway by way of a blue line commencing in the west within 542 Cudgen Road and progressing through the subject lands on an easterly path where it enters the dam on the site where after it flows to the south east through a series of dams and ponds eventually flowing into Cudgen Creek.

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

The subject site is proposed to be zoned RU1- Primary Production under the Draft TLEP 2010. The objectives for this zone include provisions to encourage sustainable primary industry production, to encourage diversity in primary industry enterprises, to minimise fragmentation, and to minimise conflict between land uses within this zone and land uses within adjoining zones.

The proposed development would be defined as an animal boarding or training establishment. Whilst this land use would be permissible with consent in this zone the subject site is considered unsuitable for the proposed facility given the number of houses within close proximity to the site. Therefore given the potential land use conflicts the proposed development has been recommended for refusal and is not considered to satisfy the provisions of the Draft LEP.

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

Tweed Development Control Plan

Section A2 – Site Access and Parking Code

There are no specific provisions for an animal establishment. The applicant would need to demonstrate that adequate on site car parking is available to accommodate all required vehicles.

Council's Development Engineer has reviewed the amended proposal and stated that:

"The applicant may utilise the existing driveway as an entry point for the free range poultry farm, however it is required to be upgraded for small/large truck access.

During an onsite meeting with the applicant it was identified that there were ongoing issues with the owner of Lot 1 DP613261, apparently he encroached onto Lot 1 DP881996 with earthworks cut. This will potentially restrict access through to the rear of the site at the proposed chicken area.

Council cannot accept the proposed driveway access due to current access constraints."

Additional information would be required to address these matters.

Section A11-Public Notification of Development Proposals

This Development Application was notified for a period of 14 days, during this period 13 objections were received. These are discussed in detail later in this report.

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

Clause 92(a) Government Coastal Policy

The subject site is governed by the requirements of Clause 92(a) Government Coastal Policy. The development does not pose a threat to coastal processes.

Clause 92(b) Applications for demolition

The Development Application does not contain any provisions for demolition on the site.

Clause 93 Fire Safety Considerations

The subject application was referred to Council's Building Section, who provided recommended conditions with respect to the proposed movable sheds. Suitable conditions could be drafted were the application to be approved.

Clause 94 Buildings to be upgraded

Not applicable. The proposal does not include the upgrade of any buildings.

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

Tweed Shire Coastline Management Plan 2005

Not applicable.

Tweed Coast Estuaries Management Plan 2004

Not applicable.

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

Not applicable.

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

On 9 May 2012 Council wrote to the applicant and advised that as a result of the non complying buffers (that could not be satisfied on the site) the application should be withdrawn. In that same letter Council stated that:

"There are additional problems with the application which are detailed below for your information purposes only.

Satisfying these additional matters would not alter the primary issue as appropriate buffers cannot be achieved on the subject site.

Therefore Council is not requesting additional information as this would only cost you time and money which in Council's opinion would not change the ultimate outcome of the assessment.

The application lacks in site design detail and information within the following areas:

- *Perimeter Fencing Requirements*
- *Surface and Groundwater Management - protection, sediment and erosion control*
- *Soil Management*
- *Landscaping and Vegetation Management*
- *Lighting and Alarm systems*
- *Shed Design*
- *Pest Control*
- *Dead Bird Management*
- *Waste Egg Management*

- *Feed Storage Areas*
- *Egg Storage Areas*
- *Solid and Liquid waste management*
- *Chemical Storage Areas*
- *Drinking water source and security, storage and treatment*
- *Employee Requirements*
- *Range Rotation*
- *Land Contamination*
- *Community Consultation and Liaison*
- *Food Authority Licence Provision*
- *On-site activities - Farm Management Plan*

Despite this the applicant wanted the opportunity to respond to Council's issues.

Council staff has now reviewed the applicants additional information (one page of text and an associated plan) and makes the following comments:

Further information submitted fails to address the concerns raised.

Concerns raised are required to be addressed at the development application stage to ensure an appropriate development can be designed, accommodated and operated so as to minimise adverse impact on public health, community amenity, the environment and, animal welfare, that is that an appropriate standard of care to the animals is considered and not compromised.

The proposed operation of the activity has the potential to generate water pollution, air pollution/odour nuisance and noise pollution under the provisions of the Protection of the Environment Operations Act 1979 therefore it is considered essential that an adequate assessment of the design and operation of the activity can be undertaken at the application stage. Reference documents sourced provide guidance to minimise potential impacts identified.

The Environmental Guidelines for the Australian Egg Industry (2008) identifies potential site impacts of egg production being:

Community Amenity and Health

The potential for nuisance depends upon a range of factors, including:

- The location of the enterprise in relation to sensitive sites.
- The adequacy of separation and buffer distances.
- Design features of the enterprise.
- The on-going management of the enterprise; and
- Communication between those operating the enterprise and neighbours.

The management of sheds and the application of manure and spent litter to land must be carefully managed to avoid any potential human health impacts.

The application does not achieve best industry practice for consideration of surrounding sensitive land uses and separation and buffer distances. The application does not provide design features of the enterprise and inadequate information is provided to assess the on-going management practices. Information submitted does not provide details of the location/management of feed storage, manure storage, litter storage, drinking water nor dead birds.

The Guidelines state that buffer distances for egg industry facilities include sheds, manure storages and litter storages.

Surface Water and Groundwater:

Nutrients exported in surface water from waste storage sites and areas where organic by-products are spread may cause eutrophication in water bodies with the potential to promote the growth of algae. High nitrate levels in water are also toxic to fish, birds, wildlife, stock and humans. Elevated organic matter levels in water reduce oxygenation affecting fish and other aquatic life. Nutrients and salts can leach through the soil and contaminate groundwater.

Good siting, design and management are therefore critical in protecting water resources. Secondary protection is provided through measures that slow the movement of runoff and eroded soil.

Limited information has been provided to adequately determine if proposed stocking rates are adequate to ensure adequate vegetation coverage of range areas are sustainable during operations. Whilst it is acknowledged that the most impact upon vegetation is within a distance from the sheds the sheds are only proposed to be rotated within the 3.5 ha range area. No "resting" of range areas is proposed and the limited range area available will exclude the option of further expansion. The previous unapproved operations where bird numbers are less than proposed display extensive range areas of denuded vegetation.

Accordingly the potential impact on the environment coupled with insufficient information form reasons for refusal of this application.

(c) Suitability of the site for the development

As detailed within this report the recommended buffers and separation distances for an operation of this nature cannot be achieved on the site as the recommended buffers consume the entire site. The subject site is considered unsuitable for a poultry farm and accordingly the application has been recommended for refusal.

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

The application was not considered Integrated Development and therefore not referred to public agencies for comment.

The application was advertised and notified to adjoining owners for a two-week period from 4 to 20 April 2012. Following the exhibition period Council received 13 submissions opposed to the proposed development.

Some of the objections were extremely detailed and critically reviewed the applicant's submitted material and highlighted areas of contradiction and the overall lack of detail within the application.

The following points summarise the main issues raised by the objectors:

- The applicant's information is misleading (e.g. aerial images out of date, details not provided for when or where samples were taken from etc).
- The calculators used in the applicants assessment relate to calculating separation distances for meat broiler sheds (boilers are young birds reared from chicks for about 20 weeks) which would produce a very different noise level.
- The wind directions quoted in the applicants DA are not accurate and do not reflect the yearly figures.
- The applicants stocking rates are incorrect. For an area of 35,000m² the maximum number of birds should be 5250 not 10,000.
- The development should be lodged as Designated Development.
- There is insufficient information in the DA.
- The site is inappropriate for the proposed enterprise in regards to noise, smell, foul airborne dust and effluent runoff affecting the neighbouring residences and the water course.
- The proposed sheds would be an eyesore on the existing rural landscape.
- The facility will produce an unacceptable noise and smell for adjoining residences which are within 500m of the facility.
- The Cudgen village is within 1000m of the site.
- The facility will attract vermin to the area and affect nearby residences.
- Such a farm would affect my quality of life. We want to enjoy the benefits of living in a quiet rural area that was predominantly fruit and vegetable farming. The noise from the facility when it was operating without consent was unacceptable with only 3000-4000 birds.
- When the facility was operating without consent we experienced a bad smell from the thousands of chickens. Very often we were unable to have our doors or windows open because of the smell. This was more evident after rain. We were unable to entertain friends due to the smell. And this was with only 3000-4000 chickens not with the proposed 10,000.
- The facility will produce animal waste pollution and affect existing waterways in the area.
- Intensive animal farming is inconsistent with the Cudgen plateau prime agricultural land use zoning and small lot activity objectives.
- The applicants Statement of Environmental Effects says that the site can accommodate year round vegetation but with just 2000 birds and very favourable growing conditions the site was void of vegetation and nude from the chickens grazing the site.
- The proposed development is within 100m of a watercourse which flows into other properties.

- The applicant has demonstrated a long term disregard for compliance with planning requirements, council planning staff directions, or court orders. This non compliant behaviour is a clear indication that there will be future non compliances.

These issues raised by the 13 objectors contribute to the unfavourable recommendation of the subject application.

(e) Public interest

The concerns raised within the submissions with respect to loss of residential amenity are considered valid and contribute to the reasons for refusal. The proposed animal establish is not considered to be a suitable land use as the buffer/setback requirements for poultry farms cannot be achieved on this site. Therefore it is in the public interest for this application to be refused.

OPTIONS:

1. Refuse this application in accordance with the recommendation for refusal; or
2. That Council grant in-principle support for the proposal, and that officers bring back a further report to Council with possible conditions of development consent.

CONCLUSION:

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the proposed development is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the best practice documents pertaining to poultry farms.

Having regard to the assessment of the development against the applicable planning instruments and the objections received following notification, the proposal is not considered suitable and therefore the subject development is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Should the applicant be dissatisfied with the determination by Council they have an opportunity to appeal to the NSW Land and Environment Court. Should Council defend such an appeal costs would be incurred.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION

Nil.

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14 [PR-CM] Development Application DA10/0516 for a Telecommunications Facility at Lot 17 DP 1157351 No. 57 Elkhorn Road, Cobaki Lakes

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0516 Pt2



Civic Leadership

SUMMARY OF REPORT:

Council has received a request for a Section 82A Review of Determination for the refusal of a development application for the construction of a telecommunication facility at Lot 17 DP 1157351, No 57 Jabiru Drive, Cobaki Lakes.

The development application proposed:

- One 30m high monopole with a triangular headframe (with space allowed on the headframe for an additional nine future panel antennas if required);
- Three panel antennas (2.63m x 0.3m x 0.115m) at 30 metres in standard factory colour;
- One Telstra equipment shelter (measuring 3.28m x 2.28m x 2.995m) within the proposed Telstra compound (measuring 6m x 10m);
- Telstra compound including security fence 2.4m in height with double access gates;
- Construction and operational access will be via an existing track at the western end of Jabiru Drive, and a proposed Telstra track serving the facility (29m in length).

A report recommending refusal of DA10/0516 was submitted to Council as it was considered that the proposal would create a range of adverse environmental impacts, particularly in relation to the impact on threatened species, including the koala.

Council resolved to refuse the development application at its meeting of 21 June 2011.

A request for a Section 82A Review of Determination was received by Council on 7 June 2012. In its request for a Review of Determination the proponent has provided a Fauna Assessment to address the substantive ecological issues that led to the recommendation to refuse the development application.

The Review of Determination has been referred to Council's Natural Resource Management (NRM) Unit who have advised that the findings of the Fauna Assessment adequately clarify the uncertainties originally raised in Council's assessment of the development proposal. Whilst a number of minor concerns remain it is considered that these issues can be appropriately conditioned.

Following an assessment of the additional information against the relevant heads of consideration, it is therefore recommended that the application be approved.

Councillors are also advised that a Class 1 Appeal was lodged with Council on 22 June 2012 against the refusal of the development application. Should Councillors adopt the

recommendations made and approve the proposal, it is understood that the Class 1 Appeal shall be withdrawn. The call over hearing has been set down for 23 July 2012.

It is advised that Council will need to consider the options of this report which includes defending an appeal should the application be refused, or the applicant continues with the appeal to dispute the conditions.

Please note that the subject site was originally known as No. 55 Jabiru Drive in Lot 15 and Lot 17 DP 1157351. However a new application to amalgamate these lots has since been approved by the Land and Property Management Authority (LPMA). The subject site is now legally known as Lot 17 DP 1157351, No. 57 Elkhorn Road, Cobaki Lakes. For clarity, access to the site remains from Jabiru Drive over a registered easement for right of carriageway. The proponent has included a copy of this easement for reference with the original application details.

RECOMMENDATION:

That Development Application DA10/0516 for a telecommunications facility at Lot 17 DP 1157351; No. 57 Elkhorn Road, Cobaki Lakes be approved subject to the following conditions:

GENERAL

1. **The development shall be completed in accordance with the Revised Statement of Environmental Effects and Plan Nos Q109462 S1 Index (Locality Plan & Site Access); Q109462 S1-1 Index (Site Layout) and Q109462 S3 Index prepared by Telstra and dated 13 December 2010, except where varied by the conditions of this consent.**

[GEN0005]
2. **The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.**

[GEN0115]
3. **Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.**

[GEN0135]
4. **The approved development shall not result in any clearing of native vegetation without prior approval from the relevant authority.**

[GEN0290]
5. **Pruning or removal of vegetation to establish and maintain a 10m inner protection zone around the facility to meet bushfire safety standards or to provide access to the site must be carried out to the minimum extent necessary.**

[GENNS01]
6. **The mobile phone tower may not exceed a maximum height of 135.36m AHD at the location given including any attached antenna, aerials or other appurtenances.**
7. **The tower is to be lit with a low intensity red obstacle light in accordance with the Manual of Standards for Part 139 of the Civil Aviation Safety Regulations (refer MOS Part 139-Aerodromes, Chapter 9, Section 9.4 <http://www.casa.gov.au/wcmswr/assets/main/rules/1998casr/139/139mfull.pdf>).**

8. If the obstacle light is rendered unserviceable for any reason the proponent (Telstra) must ensure the light is repaired *within 24* hours maximum for the continued safe operation of aircraft within the vicinity.
 9. A separate application must be submitted to Gold Coast Airport for any equipment or crane planned to be used in the installation of the mobile phone tower that exceeds the maximum height of the OLS at 82.42m AHD.
 10. Proponent is to notify Gold Coast Airport 48 hours prior to commencing works.
 11. The proponent must notify Gold Coast Airport upon completion of the communications tower.
 12. Finished height must be provided to Gold Coast Airport upon completion (in AHD), so that it can update its plans and other records for the Airport and its surrounds.
- [GENNS02]
13. Any construction certificate issued for this development must include details for the construction of the access track extension.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

14. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate.
- [PCC0945]
15. A construction certificate application for works that involve any of the following:
 - connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control workswill not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.
 - a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.
 - b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

16. Erosion and Sediment Control shall be provided in accordance with the following:
 - (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

17. Prior to the issue of a Construction Certificate, a Construction and Environmental Management Plan, generally in accordance with Appendix F of the Revised Statement of Environmental Effects dated May 2012, must be submitted and approved in writing by the General Manager or delegate officer. Works shall be carried out in accordance with the approved details.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

18. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

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

[PCW0245]

21. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

22. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

DURING CONSTRUCTION

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0245]

26. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

27. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

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

[DUR0415]

29. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution**
- dust during filling operations and also from construction vehicles**
- material removed from the site by wind**

[DUR1005]

30. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

31. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR2015]

33. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

34. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

35. During construction the applicant must ensure that no damage or detrimental effect is caused to the shared driveway (within the Right of Carriageway) by construction vehicles.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

36. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

37. Prior to this issue of an Occupation Certificate the Principal Certifying Authority shall be provided with certification from a practising structural engineer which states that the completed telecommunications tower will be structurally adequate for its intended use in this location.

[POCNS01]

USE

38. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

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

[USE0175]

40. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

41. All commercial/industrial/residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

CONDITIONS OF APPROVAL IN RELATION TO SECTION 79BA OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

- 1. At the commencement of building works and in perpetuity the entire leased area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.**
- 2. The equipment shelter shall comply with section 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'.**

REPORT:

Applicant: Telstra Corporation Limited
Owner: Mr Raymond W Staff
Location: Lot 17 DP 1157351; No. 57 Elkhorn Road, Cobaki Lakes
Zoning: 1(a) Rural
Cost: \$230,000

BACKGROUND:

At the Council meeting of 21 June 2011, Councillors resolved to refuse a development application for the construction of a telecommunication facility at Lot 17 DP 1157351, No. 57 Jabiru Drive, Cobaki Lakes. The telecommunication facility proposal involved:

- One 30m high monopole with a triangular headframe (with space allowed on the headframe for an additional nine future panel antennas if required);
- Three panel antennas (2.63m x 0.3m x 0.115m) at 30 metres in standard factory colour;
- One Telstra equipment shelter (measuring 3.28m x 2.28m x 2.995m) within the proposed Telstra compound (measuring 6m x 10m);
- Telstra compound including security fence 2.4m in height with double access gates;
- Associated works such as foundations, running underground fibre and power routes;
- Construction and operational access will be via an existing track at the western end of Jabiru Drive, and a proposed Telstra track serving the facility (approximately 29 metres to the site).

Within the submitted details the applicant, Telstra, stated that the telecommunication tower is required to provide for 'NextG' mobile phone and wireless broadband coverage to the new development of Cobaki Lakes and would extend into Piggabeen. Telstra advised that the proposal would provide high quality mobile telecommunications services into the area and would form an integral part of the overall Telstra network.

As previously detailed within the original assessment of the proposal, the subject site is located approximately 400m to the north west of Jabiru Drive on an elevated rural property. The subdivision pattern in this vicinity comprises of a mixture of small and large rural holdings used for both agricultural practices and residential occupation. The closest dwelling to the vicinity is approximately 500m to the south east on Jabiru Drive.

The proposed location for the telecommunication facility is located on a large rural lot with a total site area of approximately 36 hectares. The lot is heavily vegetated with native species. Access to the proposed site would be achieved firstly via the existing driveway and secondly by a proposed access track. The revised details indicate that the proposal involves the use of a small area of the site (60m² compound and approximately 123m² of new access track) which correlates to a small percentage of the site overall.

Within the original submission, the proponent advised that the proposed site was preferred as opposed to other locations in the surrounding area for the following reasons:

- The landowner is willing to agree to commercial terms with Telstra;

- The location provides for sufficient height to achieve Radio Frequency (RF) objectives of the proposal;
- The Rural 1(a) zoning of the site was considered suitable;
- The size of the lot and scale of the works the current land use of the site will not be greatly impeded;
- There is adequate site access for construction and maintenance purposes;
- The site is located away from sensitive land uses;
- The site does not contain any known items of environmental or cultural heritage significance nor is identified as being located within a conservation area.

Following an assessment of the development application against the relevant policy framework, it was considered that the proposed communication facility would enhance the telecommunications services in the surrounding locality.

The development application was assessed under Division 21 of the State Environmental Planning Policy (SEPP) (Infrastructure) 2007 and the Guidelines referred to in Clause 115(3) of the SEPP found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010* (Guideline). As detailed further within this report, the Guideline sets out four Principles in relation to visual impact, co-location, health standards and the minimisation of disturbance and risk. It was considered that the development application was consistent with Principles 1 through 3 as the location and design of the proposal was such that it would not impact on the visual amenity of the locality and would also be consistent with the requirements of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) with regard to Radio Frequency Electromagnetic Energy guidelines and human health.

However, the development application was referred to Council's Ecologist who advised that the proponent had failed to demonstrate the application's consistency with the requirements of Principle 4 of the Guidelines, in relation to the minimisation of disturbance and risk. It was considered that, although the tower was proposed within an area that requires little clearing, the surrounding area is of high conservation significance, particularly for koalas and arboreal marsupials and bats.

On the basis of the submitted information it was considered that the development would introduce disturbance to the site in a number of ways: during the construction phase; on-going noise; disturbance and lighting associated with the operation of the site; electromagnetic energy (EME) that may have the potential to impact significantly on surrounding threatened species; as well as the potential for a cumulative impact on the environment, which may have broader implications on fauna. It was advised that there was limited information to adequately assess such impacts on threatened species.

A report recommending refusal of the development application was submitted to the Council meeting on 21 June 2011. At that meeting, Council determined to refuse the development application for the following reasons:

1. The proposed development is not considered to meet the requirements of s79C of the Environmental Planning and Assessment Act 1979 as it is likely to result in unacceptable environmental impact and the site is deemed unsuitable.

2. The development is considered likely to impact on flora and fauna, particularly to threatened species, within this area of environmental significance and conservation value. On the basis the proposal is inconsistent with clause 4 of the TLEP, which seeks to determine whether the ecological integrity of the Tweed Shire will be retained.
3. The development is considered likely to impact on flora and fauna, particularly to threatened species, within this area of environmental significance and conservation value. On this basis the proposal is inconsistent with clause 5 of the TLEP, which seeks to ensure ecologically sustainable development.
4. On the basis of the lack of submitted information to indicate otherwise, the proposal is inconsistent with clause 54 of the TLEP which seeks to enable the protection of vegetation for reasons of amenity or ecology.
5. The subject site contains known Koala habitat and on the basis of short-term high level and long-term ongoing disturbance associated with the development (including construction phase, site operation and maintenance, noise and vibration, lighting and the impact of electromagnetic energy), the proposal is considered to be inconsistent with the aims and objectives of the State Environmental Planning Policy 44 - Koala Habitat, which seeks to ensure the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline.
6. The proposed development is likely to result in disturbance impacts that are considered unacceptable for a site that is known to contain vulnerable species sensitive to disturbance and at threat from development in other parts of Tweed Shire. On this basis it is considered that the proposed development does not satisfy the provisions of Principle 4 of the NSW Telecommunications Facilities Guideline Including Broadband or the provisions of Clause 15 of the SEPP (Infrastructure) 2007 that requires such development to minimise disturbance to flora and fauna.

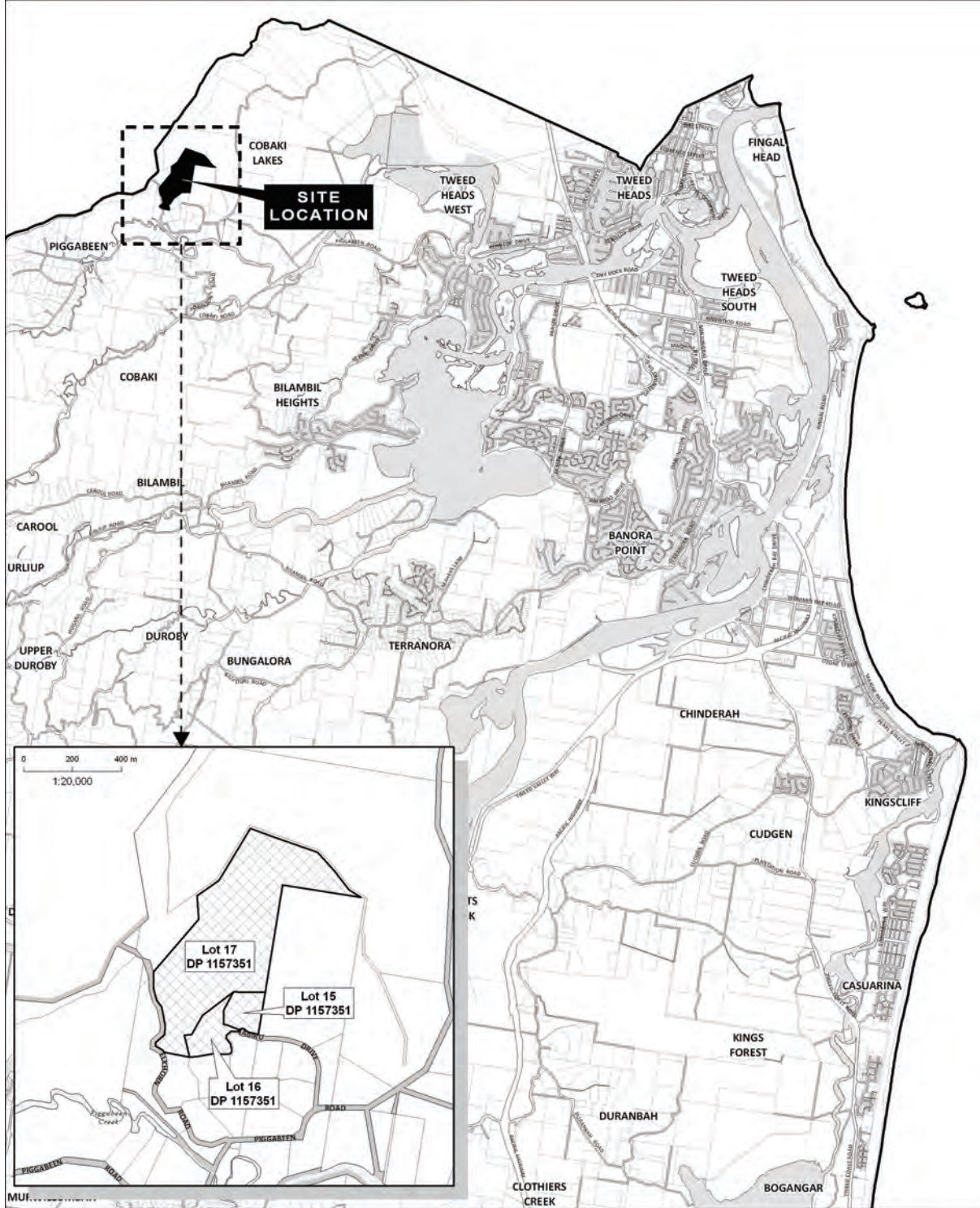
On 7 June 2012 Council received a request for a Section 82A Review of Determination for the refusal of the development application. Within this Review of Determination the proponent provided additional information in relation to the substantive ecological issues that led to the recommendation to refuse the development application as well as revised data in relation to EME.

The Review of Determination was advertised for a period of fourteen (14) days from Wednesday 27 June 2012 to Wednesday 11 July 2012. The Review of Determination is being reported to Council prior to the close of the advertising period and, at the time of writing, no submissions have been received. However, four submissions were received under the original development application, all of which were objections. The most common issues raised within these submissions were regarding: health and safety concerns from EME generated from the facility; depreciation of property value; the proposed access route; and improper community consultation. An assessment of the issues raised has been provided in the body of this report. Should additional submissions be received during the advertising period for the Review of Determination, the issues raised will be assessed by Council officers and Council advised of these submissions and assessment prior to determination at the Council meeting.

The Review of Determination has been referred to Council's NRM Unit who have advised that this new information is supported by Biolink Ecological Consultants, the same consultants responsible for the *Tweed Coast Koala Habitat Study* (Biolink, 2011) and the literature review on impacts of EME on fauna (Phillips *et al.*, 2009) used to inform decision making for a similar proposed telecommunications tower at Koala Beach. On the basis of Biolink findings, it is now considered that the uncertainties originally raised in Council's assessment of the development proposal have been clarified, as detailed further within this report.

There are however concerns, in relation to the provision of a 10m inner protection zone for bushfire purposes and likely vegetation removal as well as detail required in relation to construction and environmental management. However Council's NRM Unit has advised that these can be dealt with by way of appropriate conditions should the proposal be granted development consent.

SITE DIAGRAM:



Locality Plan
 Lots 15 - 17 DP 1157351
 No. 57 Elkhorn Road, Cobaki Lakes

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any 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.</small></p>	<p><small>Cadastral: 04 July, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 1 2 Km 1:75,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p> <p><small>GDA Map Projection: Universal Transverse Mercator Map Control Datum: Geodetic Datum of Australia 1984 644 Map Grid of Australia, Zone 56</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2454 PO Box 516 Murwillumbah NSW 2464 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>	
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CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

Clause 4 - Aims of the Plan

The main objective of Clause 4 is:

“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”

The subject proposal seeks consent for the erection of a telecommunications facility comprising of a 30m high monopole and ancillary infrastructure. In terms of the economic vitality the proposal will facilitate improved technological availability for the locality.

With regard to ecological integrity, the site is located on vacant, rural land that is surrounded by an area of high conservation significance with a high biodiversity value. The site itself consists of mature trees approximately 15m to 20m in height.

Some clearing of vegetation is proposed, particularly with regard to the creation of a 10m inner protection zone for bush fire purposes. Other disturbance factors such as the construction phase, ongoing operation of the site (air conditioning units), a flashing red light and so on also have the potential to impact significantly on fauna species. However, the submitted details have addressed Council's concerns with this regard and it is considered that the proposal would not have such a detrimental impact on the ecological integrity of the Shire so as to warrant refusal.

Clause 5 - Ecologically Sustainable Development

The objective of the LEP is to promote development that is consistent with the four principles of ecological sustainable development as follows:

- a) not creating irreversible environmental damage;
- b) the environment is maintained for the benefit of future generations;
- c) the biological diversity and ecological integrity is retained and a fundamental consideration;
- d) the environmental qualities of the locality are retained.

The subject site and surrounding locality is recognised for its high conservation and biodiversity value. Council's NRM Unit has advised that the new information adequately clarifies previous concerns in relation to ecological disturbance.

Therefore on the basis of the submitted information it is considered that the proposal would be consistent with the objective of this clause.

Clause 8 – Consent Considerations

The subject land is zoned 1(a) Rural and the proposed telecommunication facility is permissible with consent within this zone.

The primary objective of the 1(a) zone is to enable the ecologically sustainable development of land that is suitable primarily for agricultural and natural resource utilisation purposes and associated development and to protect rural character and amenity. One of the secondary objectives of the zone is to allow for development that is not suitable in or near urban areas.

In general it is considered that the proposal is consistent with the primary and secondary objectives of the zone as it would aid the technological advancement of this rural area while not compromising the rural character and amenity of the area to such an extent to warrant refusal of the proposal.

The other aims and objectives of this plan that are relevant have been considered and addressed within this report.

Clause 11 – Zone Objectives

Primary objectives

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- *to protect rural character and amenity.*

Secondary objectives

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism.*
- *to provide for development that is not suitable in or near urban areas.*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

The proposal is defined by the TLEP 2000 as a Telecommunication Infrastructure (Facility). The proposal is considered permissible with development consent. It is acknowledged that the development would aid technological advancement in this rural locality whilst protecting the character and visual amenity of the locality. It is also considered that the proposal would not be suitable within an urban setting due to the visual impact of the monopole and perceived health impacts in close proximity to an urban population.

Clause 15 - Essential Services

As detailed within the previous report to Council, Telstra was initially proposing to connect the proposed facility to the nearest fibre pit and existing Country Energy power pole located approximately 18m away from the proposed facility. However, the proponent has advised that a fibre route pit is no longer required to be connected and this element has been removed from the plans.

Council's Development Engineer requested clarification with regard to the electricity easement encumbering the site, covering the overhead power lines. The proponent has advised that the proposed compound is to be located 10m from the existing power line and that the proposed site is not within an existing easement. Confirmation has been received from the proponent that consent will be granted from Country Energy should the development application be approved.

Council's Development Engineer advised within the previous assessment that as it appears Country Energy have no objections regarding the structure in close proximity to their own infrastructure, Council is therefore no longer concerned as a 'third party'.

When the facility is operational the site will be unmanned and therefore utility services such as telephone, water and sewerage would not be required.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three storey height limit. The proposed equipment shelter is single storey, with the associated tower being approximately 30m in height (please note: as per definition pursuant to Tweed LEP 2000, the monopole structure cannot be measured by storeys as there is no space between two floors).

Given the presence of vegetation of comparable height it is considered that the proposed development is consistent with this clause.

Clause 17 - Social Impact Assessment

Section A13 of the Tweed Shire Development Control Plan (DCP) identifies the types of developments that require a social impact assessment. The proposed telecommunication tower is not identified as an item requiring social impact assessment.

However the original development application received a number of submissions from the community objecting to the proposal, particularly with regard to the proposed location. The issues raised in the submissions are addressed later in this report.

Clause 35 - Acid Sulfate Soils (ASS)

The subject site is mapped as containing Class 5 ASS. The proposed monopole tower is unlikely to lower the water table as the site and location of the facility is elevated. Council's Environmental Health Officers reviewed the original application in relation to ASS and raised no objection. No further investigation is required in relation to ASS.

Other Specific Clauses

Clause 33 Obstacles to Aircraft

The objective of the clause is to ensure that development in the vicinity of Coolangatta and Murwillumbah Airports and en route flight paths does not increase the risk of obstacles to aircraft.

The original development application was referred to the relevant aviation agencies:

- Planning Consultant for the Gold Coast Airport Pty Ltd (GCAPL)
- Gold Coast Airport Pty Ltd
- Civil Aviation Safety Authority (CASA)
- AirServices Australia (AirServices)
- Aviation and Airports Division, Department of Infrastructure and Transport.

The Department of Infrastructure and Transport approved the proposal subject to a number of conditions as detailed below:

- The mobile phone tower does not exceed a maximum height of 135.36m AHD including the attached antenna, aerials or other appurtenances;
- The tower is to be lit with a low intensity red obstacle light in accordance with the Manual of Standards for Part 139 of the Civil Aviation Safety Regulations;
- If the obstacle light is rendered unserviceable for any reason the proponent (Telstra) must ensure the light is repaired within 24 hours maximum for the continued safe operation of aircraft within the vicinity;
- A separate application must be submitted to GCA for any equipment or crane planned to be used in the installation of the mobile phone tower that exceeds the maximum height of the OLS at 82.42m AHD;
- Proponent is to notify GCA 48 hours prior to commencing work;
- Proponent must notify GCA upon completion of the communications tower;
- Finished height must be provided to GCA upon completion (in AHD), so that it can update its plans and other records for the Airport and its surrounds.

The Review of Determination has been referred to Gold Coast Airport Pty Ltd (GCAPL) who has advised that, since the application was originally determined, there have been no changes in the Civil Aviation Authority's requirements. However, GCAPL have advised that the original Department of Infrastructure and Transport approval expires on 19 January 2013. Should works have not commenced by this date, a new application to the Department of Infrastructure and Transport would be required.

As previously detailed within the original assessment, the required low intensity red obstacle light has the potential to impact on surrounding residential amenity. The proponent was requested to provide further information in relation to the effect of the low intensity red obstacle light on surrounding neighbours as well as consultation with the surrounding community on the adjoining ridgeline including Skyline Drive, Benson Street, Stott Street and Caffery Close.

In response the proponent stated that *'community consultation has not been done as it has been deemed to be ineffective. The consultation will have no impact on whether or not the light is put in as it is required under the Airports (Protection of Airspace) Regulations 1996 and it has already been stated the light is low intensity and will point towards the sky, not towards any dwellings. Furthermore, we will do everything in our power to ensure that any neighbouring properties are not adversely affected by the low impact light'*.

However, the original assessment of the proposal considered that, as the facility is located approximately 80m AHD and given the nature of surrounding topography, that the proposal would be unlikely to result in a detrimental impact on residential amenity from nearby properties located at a lower level (at approximately 30m – 0m AHD) in terms of distraction or glare from the light source. It was considered that the areas where the red obstacle light may be most prevalent would be from properties located at a height of 70m to 80m AHD. Such areas are located approximately 3.4km from the subject site on the adjacent ridgeline, in the vicinity of Piggabeen Road, Skyline Street, Benson Street and Stott Street.

On the basis of: the distance from potentially affected dwellings from the proposed facility; the nature of topography in the locality; and presence of vegetation of similar height surrounding the development, it is considered that the obstacle lighting will not impact on nearby residential amenity or the character of the area to such a detrimental extent to warrant refusal of the application. The obstacle light is a Federal requirement and characteristic of development of this nature.

Clause 34 – Flooding

A small portion of the south of the subject site is flood prone land, being affected by the Probable Maximum Flood inundation level. The proposal is considered to be consistent with the clause as: the proposed structure is located on a hill which is above the flood level; the telecommunication facility will assist emergency services by providing telecommunications to the locality; and the configuration of the structure and ancillary works is unlikely to increase the risk of flood for residential development.

Further, the proponent has advised that 'the proposal is not expected to have a noticeable affect on ground levels or water flows and mitigation measures have been implemented to ensure runoff and erosion is reduced.

Clause 39A Bushfire Protection

The subject site is identified as being prone to bushfire.

The proposed development is not considered to create a significant adverse bushfire risk to warrant conditions or refusal.

The original application was referred to the NSW Rural Fire Service (RFS) for comment, pursuant to s79BA Environmental Planning and Assessment Act 1979. The NSW RFS have advised that conditions in relation to the creation and retention of a 10m asset protection zone (APZ) to be provided around the tower, buildings and associated infrastructure (in this case the equipment shelter) as well as the equipment shelter to comply with s8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas'.

The NRM Unit have recommended a condition to be applied to any consent to ensure that vegetation clearance to establish and maintain a 10m protection zone around the facility or to provide access to the site must be carried out to the minimum extent necessary.

Clause 40 – Heritage provisions objectives

One of the objectives of the clause is to conserve the environmental heritage of the area of Tweed. The subject site has been identified as being '*Locations with a higher probability for containing sites of Cultural Significance*' within the Cobaki and Terranora Broadwater Aboriginal Cultural Heritage Management Plan, August 2006. Further, Council has been notified that the area is a 'cultural pathway' because of the ridge line and the likelihood that it would have been used as a path or track.

On this basis the proponent was requested to provide information with this regard and have stated that: *the Tweed Byron Aboriginal Land Council has been consulted through the course of the Aboriginal Assessment of the above property due to the likelihood that the proposed site is part of an Aboriginal Cultural Pathway.*

A site inspection was undertaken for the original assessment with the proponent and Cyril Scott, Cultural Officer and Tweed Byron LALC on 13 October 2010 and a letter has since been received by Council confirming that '*the site may or may not be located in a culture pathway*' but '*due to recorded sites around this proposed area*' a recommendation has been made that a Tweed Byron Site Officer is to be on site when any stripping of grass or soil is carried out.

Should the proposed application be approved by Council, standard conditions of consent with regard to the protection of items of archaeological and cultural heritage shall be applied.

Clause 54 Tree Preservation Order

The subject site is affected by the Tree Preservation Order 2004 that states: *No trees shall be disturbed or removed from any lot burdened without the prior written approval of the Tweed Shire Council.*

The proponent has advised that a small amount of vegetation will be required to be removed for the establishment of the facility however this is anticipated to be low lying grass and scrub. Further clarification with this regard has been requested and an Ecological Assessment Report submitted to Council within the original documentation that advised that the majority of the subject site has been cleared of native vegetation with only minor clearing of regrowth required for the construction of the proposed track to the compound (approximately 29m).

As previously detailed within the original assessment, the subject site is also affected by the Tree Preservation Order 2011 (Koala Habitat Study Area). The Ecological Assessment Report submitted with the original application advised that the vegetation communities present on the subject site are tall open/closed Sclerophyll forest (*E. pilularis* / *E. microcorys* / *E. siderophloia*) and low closed grassland with scattered regrowth, containing numerous koala feed trees.

The Fauna Assessment undertaken by Biolink Ecological Consultants advises that the development as proposed will not remove habitat or fracture the existing vegetation corridor that passes through the site. The report identifies that there is a presence of varying species on the site and that the proposal does not involve the removal of significant vegetation. It is proposed that some minor trimming may be required to bring larger vehicles into the site and that a qualified spotter and arborist can undertake this work to further minimise any impact to flora or fauna.

Provided adequate conditions are applied to the consent in relation to vegetation clearance and the submission of a Construction and Environmental Management Plan, it is considered that the proposal would be unlikely to result in the loss of significant native trees so as to warrant refusal of the proposal.

State Environmental Planning Policies (SEPP)

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

The clause advises that Council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

Due to the topography of the site and as it is heavily vegetated, it is considered that the development would be unlikely to cause a loss of prime crop or pasture land.

SEPP No. 44 - Koala Habitat Protection

The aims of the SEPP are to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

The previous ecological assessment stated that koala food tree species listed under Schedule 2 of SEPP 14 – Koala Habitat Protection (i.e. Tallowwood and Forest Red Gum) occur sporadically throughout the surrounding forested areas and one (1) species of threatened fauna, the koala, was recorded on the site. It was considered that, on this basis, the site was very likely to be regarded as Potential Koala Habitat and that, given the recent and historical records of koalas in the immediate vicinity, the site must be considered as containing core koala habitat and thus requiring the preparation of a Koala Plan of Management. This has not been undertaken.

The proponent has provided a Fauna Assessment, undertaken by Biolink Ecological Consultants, that advises that whilst potential koala habitat occurs on the site, the actual activity levels were well below that normally used to indicate a resident koala population. The Assessment advises that the site does not constitute core koala habitat and therefore, preparation of an individual koala plan of management is not required for the purposes of SEPP 44.

Further, the Assessment advises that the development is unlikely to '*result in an increase in any of the threatening processes currently acting upon koala populations on the Tweed Coast*' and '*the proposed development will not reduce the utility of the site for use by koala populations*'.

Council's NRM Unit has advised that the proposal would be unlikely to significantly impact on the koala. It is therefore considered that the proposal is now consistent with the aims of the SEPP.

SEPP No 71 – Coastal Protection

The site lies just outside of the coastal zone and therefore consideration with this regard are not required. However, Council's Ecologist previously advised that the development may have the potential for a cumulative impact on the environment, which may have broader implications on fauna within SEPP 71 designated land.

As detailed within this report, the revised Fauna Assessment provides further information to assess the likely ecological impacts of the development. Council's NRM Unit consider that the proposal is now unlikely to impact significantly on ecological matters to warrant refusal of the proposal.

SEPP (Infrastructure) 2007

As detailed within the previous report for the proposed development, one of the aims of this Policy is to provide greater flexibility in the location of infrastructure and service facilities. The proposed development is classified under Division 21 as development that requires consent from Council. The SEPP stipulates:

115 Development permitted with consent

- (1) *Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.*
- (2) *(Repealed)*
- (3) *Before determining a development application for development to which this clause applies, **the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.***

Therefore the proponent originally applied for consent to construct the telecommunications tower and provided details relating to site selection, design, construction and operating principles have been provided with the development application documentation.

The proposal is inconsistent with item 2(g) of Clause 116A of the SEPP as the 30m structure will penetrate the Obstacle Limitation Surface Plan of the Gold Coast Airport and is located within 30m of the airport. As previously detailed the development application was referred to Gold Coast Airport Pty Ltd (GCAPL) and the then Department of Infrastructure and Transport approved the proposal subject to a number of conditions.

The Guidelines referred to in Clause 115(3) of the SEPP are found within the *NSW Telecommunications Facilities Guideline Including Broadband July 2010* (Guideline). Section 2 of the Guideline is specific to site selection, design, construction and operation principles for telecommunications facilities and **requires development carried out under Clause 115 of the SEPP to be consistent with the principles set out in the Guideline** in order to follow best practice, as follows:

NSW Telecommunications Facilities Guideline Including Broadband

Principle 1: A telecommunications facility is to be designed and sited to minimise visual impact.

Principle 2: Telecommunications facilities should be co-located wherever practical.

Principle 3: Health standards for exposure to radio emissions will be met.

Principle 4: Minimise disturbance and risk, and maximise compliance.

Principle 1 (Visual Impact)

- (e) *A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.*
- (g) *A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.*

The location, design and height of the proposed tower is identical to that previously assessed by Council. Within the previous assessment of Principle 1 of the Guidelines, it was considered that, in general, the facility has been located and designed as far as practically possible to respond appropriately to rural landscape setting.

Such development will undoubtedly impact on the visual amenity of the locality however, given the nature of surrounding vegetation and topography, it is considered that the facility will not impact on the visual amenity to such an extent so as to warrant refusal of the proposal.

Principle 2 (Co-location)

- (e) *If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.*

Note: Co-location is 'not practicable' where there is no existing tower or other suitable telecommunications facility that can provide equivalent site technical specifications including meeting requirements for coverage objectives, radio traffic capacity demands and sufficient call quality.

The Telecommunications Act and Code of Practice encourage co-location of facilities, thus it is very likely that should a tower be approved in the location proposed in the application, at least two other telecommunications providers would co-locate. The application states that whilst three antenna will be initially installed, there is room for an additional nine antenna and at least three carriers could be expected to occupy the site. Each additional provider would require their own small building and additions to the tower, such that there would be regular disturbance over an extended period as well as ongoing disturbance for maintenance purposes. The co-location of facilities generally does not require development consent.

Whilst the potential for co-location may satisfy the general provisions of the Act, there are significant concerns about the broader implications that further development and disturbance may have on fauna and flora in the vicinity.

As the submitted Fauna Assessment advises that the proposal would unlikely impact significantly on ecological matters, nor result in the clearance of significant vegetation, it would be unreasonable for Council to refuse the application on the basis of potential future impact of co-location.

Principle 3 (Health Standards)

- (a) *A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to radiofrequency emissions comply with Radiation Protection Standard.*

- (b) *An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.*

As noted within this report, an EME report has been submitted detailing the estimated maximum cumulative EME levels produced by the proposal. Council's Environmental Health Unit was satisfied that the original proposal was well within emissions standards. Revised EME data has been submitted with the Review of Determination documentation. Council's Environmental Health Unit has advised that there are no concerns with this regard. Therefore, the proposed development is considered to be consistent with Principle 3 of the Guidelines.

Principle 4 (Minimise disturbance)

- (k) *Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.*

As previously detailed within this report, the submitted Fauna Assessment carried out by Biolink Ecological Consultants advises that the proposal does not involve any removal of significant vegetation and that the development would be unlikely to 'result in an increase in any of the threatening processes currently acting upon koala populations on the Tweed Coast'. It is further advised that the proponent is 'willing to increase the environmental controls during construction to ensure that minimal impacts are imposed on the local fauna'.

Further, in relation to micro-chiropteran bats, the Fauna Assessment analysed the temporal pattern of use finding that although all of the species observed potentially roost in tree hollows (as found near the subject site), their use of the site was not consistent with roosting which would typically see a peak in activity immediately following sunset (when they would be leaving tree hollows). Instead, the pattern of usage suggested that a small number of animals were arriving at the site much later in the night, probably as a result of more general foraging activity. Council's NRM Unit have advised that while Biolink Ecological Consultants acknowledge that EME has the potential to impact on micro-chiropteran bats, they conclude that any impacts that do occur will not be significant, as the bats that use the site are not resident there.

The proponent is willing to compile a detailed construction management plan that could be developed with the input of council to ensure satisfactory standards are met.

Council's NRM Unit is satisfied that such measures are adequate and that, on the basis of the revised information, the proposal is unlikely to significantly impact on ecological matters to warrant refusal of the proposal.

SEPP (Rural Lands) 2008

One of the aims of this Policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It is considered that the proposed development is consistent with the aims of this Policy in that it will improve the telecommunication network in the locality.

Telecommunications Act 1997

As detailed within the previous assessment, Part 1 of Schedule 3 of the Telecommunications Act authorises a carrier to enter on land and exercise any of the following powers:

- Inspect the land
- Install a facility
- Maintain a facility

A Carrier's power to install a facility is contingent upon:

- a) The Carrier being authorised to do so by a Facility Installation Permit, or
- b) The facility being a low-impact facility (as defined by the *Telecommunications (Low Impact Facilities) Determination 1997* (as amended), or
- c) The facility being temporary and used for a defence organisation for defence purposes, or
- d) If other conditions are satisfied in relation to the facility concerned.

The proponent (Telstra) does not hold a Facility Installation Permit and the proposed development is not a temporary facility for use by a defence organisation or for defence purposes. Further, as the proposal involves the installation of a 30m monopole it does not constitute a low-impact facility under the *Telecommunications (Low-Impact Facilities) Determination 1997* (as amended).

On this basis the proponent is not empowered to undertake the proposed works without approval under NSW legislation and therefore must obtain development consent from Tweed Shire Council.

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

The Draft Tweed Local Environmental Plan 2010 has recently been on exhibition. In this Draft the site is nominated within the E2 Environmental Conservation Zone. The objectives of the zone are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The proposed development is defined as a 'telecommunications facility' which is classified as prohibited development under the provisions of the E2 Zone within the Draft LEP.

The proponent advises that numerous sites were selected as potential candidate sites within the Cobaki Lakes area and that the subject site was selected on the basis of radio frequency suitability, land use, property and planning factors.

However, the site's high conservation value has been recognised within the Draft LEP which, as it currently stands, would prohibit the development in this location. However, it is acknowledged that this does not constitute a material consideration in the determination of the development application as the document has yet to be formerly gazetted.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Access is via the existing access track off Jabiru Drive and subsequently to the proposed built access track to the site compound (measuring approximately 29m). The proponent has advised that:

- three (3) additional vehicle movements per day during construction are anticipated;
- construction would be completed within approximately five (5) weeks;
- there would be a 'minor increase' in traffic volume on the surrounding roads during construction however such impacts would be 'very minor and short term in duration';
- road closures will not be required;
- mobile phone base stations are of low maintenance, unmanned and remotely operated therefore the proposed facility will not require parking facilities.

Clarification with regard to site access, precise location of track and turning facilities were requested by Council's Development Engineer within the previous assessment of the proposal. Further clarification was received with this regard and Council's Development Engineer has raised no further objection.

The Review of Determination does not propose any modifications to the access arrangements.

A3-Development of Flood Liable Land

As previously detailed a small section of the southern portion of the site is flood prone land. However, the access and location of the telecommunications facility is not prone to flooding and therefore no further consideration or conditions are required with this regard.

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

Not applicable to the proposed Review of Determination.

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

The subject site lies just outside of the coastal zone and is located approximately 5.5km from the coast. Therefore considerations of the Tweed Shire Coastline Management Plan are not required. As detailed within this report, the submitted Fauna Assessment advises that the development would be unlikely to impact on matters of ecological importance.

It is therefore considered unlikely that the proposal would result in a cumulative impact on the environment or the values that make the Tweed coastline important in a local, regional or national sense to such an extent to warrant refusal of the proposal.

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

Given the elevated position of the development and minimal excavation work or vegetation clearance, it is considered that the proposed telecommunication tower is considered unlikely to impact on the ecological biodiversity of the Cobaki Broadwater.

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

Visual amenity

As previously detailed within the original report, the proposed monopole is 30m in height and located on the top of an existing hill. Some level of screening is afforded to the development from existing mature tree species that are located on the hill top which the proponent advises are approximately 20m – 25m in height.

The proponents have advised that there would be 'minimal potential visual impact' as a result of the proposed development, however it is expected that any impact will be ameliorated by the following measures incorporated into the design of the facility':

- A monopole structure rather than a lattice tower (slim-line form and reduced bulk);
- The facility will be set back from surrounding road frontages and residential dwellings;
- Further amelioration measures (painting the monopole) are available however standard galvanised finish considered most suitable so neutral colour will blend in with sky (equipment shelter to be painted eucalyptus green);
- When viewed from certain directions (particularly from the east) the visible volume of the structure will be significantly reduced due to the presence of surrounding vegetation;
- No additional parabolic antennas or overhead electricity cables are required.

As advised by the proponent, 'the proposed facility is designed with the objective of minimising potential visual impact as far as possible, whilst at the same time achieving the required RF coverage objectives. Therefore a certain level of visual impact will arise from a result of the proposed development.



Figure 1: Site of proposed facility (shown in red) to the northwest at approximately 90m – 100m AHD and low-lying nature of surrounding topography. Proposed monopole will be particularly prominent from adjacent ridgeline to the south-east (approximately 60m – 80m AHD).

The proposed monopole will extend approximately 4-5m above the existing tree canopy and so will be visible within the immediate locality. However, views of the top part of the site will, in general, be limited to distant views, as the topography of the area will limit visibility from nearby residential properties. The hilltop location rises steeply from Jabiru Drive, as illustrated in Figure 1, and therefore may limit the top of the tower being directly visible from the closest residential properties.

It is considered that the existing tree canopy as well as the topography of the site and surrounding area will reduce the overall prominence and visual impact of the proposal so as not to warrant refusal of the proposed development. This is detailed further within this report.

Access, Transport and Traffic

Access is proposed from the existing Jabiru Drive and from an access track to be constructed measuring approximately 29m in length. The original development application was referred to Council's Development Engineer who advised that proposed access arrangements were satisfactory. No alterations to the access arrangements have been proposed.

It is considered that, once the construction phase is complete, the development would be unlikely to generate any significant volumes of traffic within the locality.

Flora and Fauna

The majority of the site is mapped under the Tweed Vegetation Management Strategy 2004 as being 'Sclerophyll Open Forests on Substrate Bedrock' with sections being 'substantially cleared of native vegetation' and 'not assessed'. The Cobaki Lakes area contains a diverse range of habitats from lowland wetlands and floodplains to elevated ridges above 100m AHD, with a corresponding high diversity of vegetation communities.

The National Parks and Wildlife Service Wildlife Atlas database contains 583 records of forty-one threatened flora species and 1178 records of fifty-four threatened fauna species, as well as one Endangered Population within a ten kilometre radius of the subject site.

The locality includes numerous mapped wildlife corridors, which have particular importance in linking lowland with elevated areas. Significant habitat removal has occurred under previous development consents over the Cobaki Lakes major development site, which lies immediately to the north of the subject site and has impacted part of the McPherson range corridor and links.

Remaining habitat areas are considered critical to sustaining wildlife populations as illustrated in Figure 2 below:

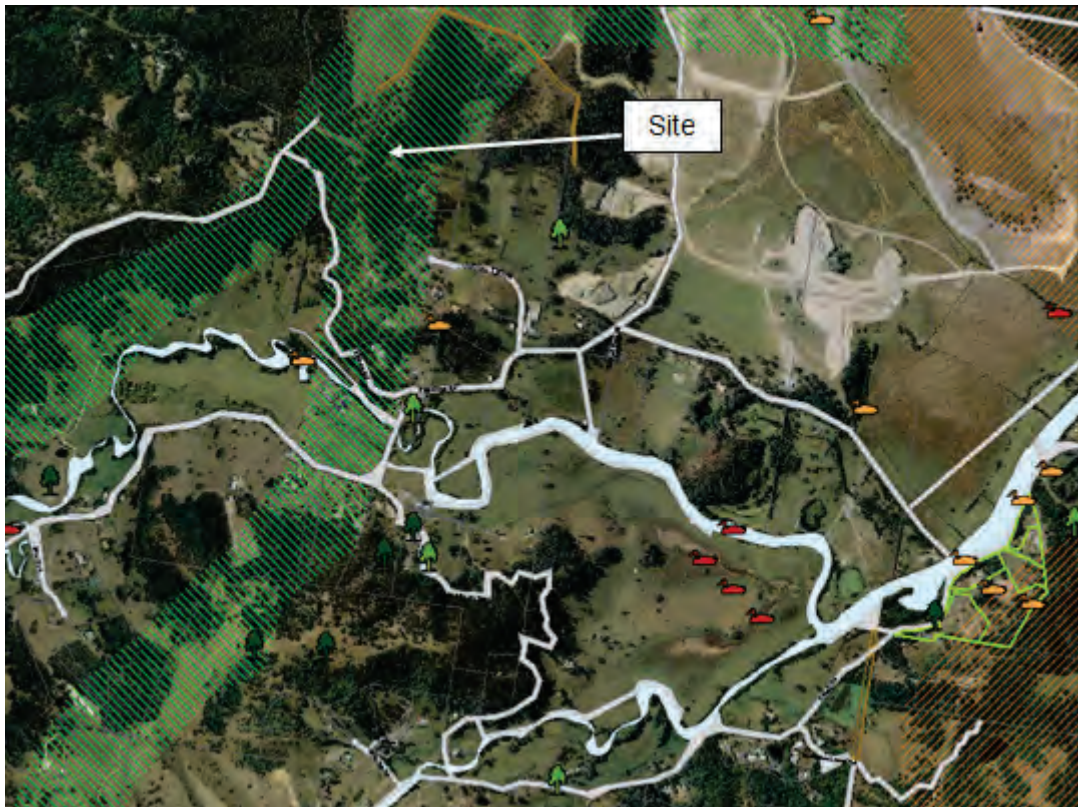


Figure 2: The proposed site is centrally located within a mapped sub-regional wildlife corridor and surrounded by numerous records of threatened species represented as tree and duck symbols here (red and dark green being Endangered and orange and light green being Vulnerable).

The previous ecological assessment undertaken for the proposed development recorded one threatened fauna species and considered 15 additional threatened fauna species, whilst recognising that the survey was limited by both time (one day and 3.5 hours night) and by season (Autumn, when little flowering or fruiting was occurring). The assessment detailed a female koala within 60m to the south-west of the site and koala scats on the edge of the subject site. A number of protected arboreal mammals dependent on hollows (possums) were also recorded, along with four species of amphibians (one exotic); four species of reptile; four species of mammals (one exotic) and twenty-five species of birds.

It was on this basis that Council's Ecologist advised that it was likely that a more detailed on-ground targeted fauna survey would result in numerous additional species, including threatened species. A particular concern with the previous assessment was in the lack of echo-location signal analysis to reveal the presence of microchiropteran bat species likely to use the site and potentially most directly affected by EME due to its potential for reduction in prey (insect) populations and their smaller body size.

Although it was recognised that the proposal would not involve much land clearing, concerns were raised that such species may be vulnerable to EME. This view was informed by a literature review undertaken for another proposed tower on the Tweed Coast (Phillips *et al.*, 2009).

Another substantive concern related to possible impacts on the koala. At the time the development application was originally assessed, Council had just been made aware of the dramatic decline in the Tweed Coast koala population through *Tweed Coast Koala Habitat Study* (Biolink, 2011) which stated that:

"Population Viability Analysis carried out by Phillips et al. 2007 has determined that as little as a 2 – 3% increase in the naturally occurring mortality rate (as a function of total population size) due to incidental factors such as road mortality, dog attack or the stressors associated with disturbance generally, is sufficient to precipitate decline."

This information suggested that in the absence of further information great caution should be applied to the management of this iconic species.

Other contributing issues of ecological concern included:

- The location of the proposal in an area of high biodiversity value;
- Uncertainties regarding the need for further minor clearing to reduce bushfire risks on the basis of advice provided by the Rural Fire Services;
- Possible future escalation of the development due to co-location of telecommunication facilities for other providers;
- Impacts from flashing air safety lights;
- Possible construction impacts; and
- Ongoing minor impacts from air conditioner noise and maintenance works.

As previously detailed, in its request for a RoD, the proponent provides further information to address the substantive ecological issues that led to the recommendation to refuse the development application. This new information is supported by Biolink Ecological Consultants, the same consultants responsible for the *Tweed Coast Koala Habitat Study* (Biolink, 2011) and the literature review on impacts on EME on fauna (Philips *et al.*, 2009) used to inform decision making for a similar proposed telecommunication tower at Koala Beach.

The Fauna Assessment concludes that:

"Cumulative survey effort suggests that although a range of fauna species utilise the site, it received limited or marginal use by the threatened fauna targeted by this work. Whilst some impact on lower-order prey communities such as insects and / or avoidance behaviour by micro-chiropterans may result from increases in EME in the area surrounding the proposed facility, we consider any such impact to be insignificant for purposes of Sec. 5A of the Environmental Planning and Assessment Act 1979."

Council's NRM Unit consider that this new information adequately clarifies the uncertainties originally raised in Council's assessment of the development proposal, providing conditions are applied to any development consent in relation to vegetation clearance and the submission of a Construction and Environmental Management Plan.

Noise

Some level of noise will be generated during the construction phase for the proposed monopole. During the operation phase of the monopole noise associated with use of air conditioning plants servicing the equipment shelter will be generated, which may impact on fauna within the vicinity of the subject site.

The air conditioning units may operate during the night and contribute to background noise levels. The original development application was referred to Council's Environmental Health Unit who advised that, given the location of the site and negligible operational noise, any noise impacts may be controlled via suitable conditions of consent.

Lighting

The application does not make mention of any security lighting to be used at the facility. A condition shall be applied to any development approval in relation to security lighting.

Contamination

The development application has been referred to Council's Environmental Health Department who have advised that analysis of previous land uses through aerial photography did not reveal any potentially contaminating activities and therefore contamination is not considered a constrain for the proposed development.

Radiofrequency (RF) and Electromagnetic Energy (EME)

The original development application raised concerns from surrounding residents in relation to exposure to RF and EME. The proponent was requested to address such concerns and advised as follows:

"The further a base station is built from the residents it is designed to provide coverage for, the base station will need to operate at a higher power which would actually increase exposure (albeit these levels are still very low and below the standard). In most circumstances the best location to build base stations in order to minimise emissions is closest to where those services are required.

Therefore, the best way to reduce emissions is to build base stations in the most technically effective locations for network coverage [...] there is no science-based reason to set up exclusion zones for mobile phone base stations around land uses such as schools and residential areas."

The original development application was referred to Council's Environmental Health Unit with this regard who advised the following:

"The 2002 Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) Radiation Protection Standard 'Maximum Exposure Levels to Radiofrequency Fields -3 kHz to 300 GHz' sets public and occupational limits of exposure to EME fields.

The Australian Communications and Media Authority (ACMA – formerly Australian Communications Authority) has the regulatory responsibility to mandate exposure limits for continuous exposure to the general public in order to protect the health and safety of persons exposed to RF EME from radiocommunication transmitters.

In order to fill this regulatory responsibility, ACMA adopted the ARPANSA limits into the Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2003 and the licence conditions for radiocommunications transmitters. All licensees of transmitter installations (like mobile phone base stations) are required to comply with the public exposure limits in the ARPANSA Standard. ACMA has adopted a precautionary approach to the regulation of EME emissions, ensuring that emission limits on communication transmitters are stringent and lower than those levels that have been found to cause adverse health effects.

A Summary of Estimated RF EME Levels around the Proposed Mobile Phone Base Station at 5 Jabiru Dr, Cobaki (NSA Site No 2486009) dated 19/2/10 has been provided. The report appears to have been prepared in accordance with the ACMA requirements. The report indicates that the maximum EME level at 1.5m above ground level is estimated to be 0.24% of the ARPANSA public exposure limits. The report demonstrates that the predicted emissions produced by the proposed facility are well within these standards."

On this basis Council's Environmental Health Unit advised that no further considerations were required with regard to RF and EME and its impact on human populations. Revised data in relation to EME has been provided with the Review of Determination which indicates that the maximum EME level at 1.5m above ground level is estimated to be 0.58% of the ARPANSA public exposure limits. Council's Environmental Health Unit have advised that the proposal remains consistent with the ACMA requirements.

Within the original assessment of the proposal, there were concerns in relation to the impact of EME on fauna populations based primarily on a literature review undertaken for a proposed tower on the Tweed Coast (Phillips *et al.*, 2009). As previously detailed within this report however, the proponent has provided further information to address the substantive ecological issues that led to the recommendation to refuse the development application, particularly in relation to the impact of EME on fauna populations.

Acid Sulfate Soils (ASS)

The site has been assessed as being Class 5 ASS. Council's Environmental Health Unit has determined that the subject application does not require an ASS Management Plan.

Aircraft Impacts

As previously detailed within this report the application has been referred to the Department of Infrastructure and Transport who have approved the application subject to a number of conditions of consent. Providing the development is carried out in accordance with the relevant conditions it is considered that the proposal will not interfere with the safety, efficiency or regularity of existing or future air transport operations.

(c) Suitability of the site for the development

The site is located in a rural area where the nearest residential dwelling is approximately 430m to the southeast of the proposed facility. Surrounding land uses comprise rural-residential lots, agricultural land (grazing) and cleared land subject to the Cobaki residential subdivision.

The site of the proposed facility is heavily vegetated (predominantly mature trees measuring 10m – 15m in height) and it is considered that the existing vegetation, to a certain extent, will provide a visual screen to the subject proposal, particularly coupled with the elevated nature of the hill top that will limit views to the monopole from the immediate vicinity.

The elevated nature of the subject site affords the desired level of coverage to the proposed telecommunication tower and will therefore improve telecommunications service for the locality. For these reasons the site is, in general, considered to be suitable for the proposal.

Tweed Shire Scenic Landscape Evaluation

A review of the development application against Catherine Brower's Tweed Shire Scenic Landscape Evaluation report (1995) has been undertaken to: identify and analyse the scenic landscape of the Tweed Shire to determine its aesthetic and cultural heritage values; identify ways of protecting view corridors of high value; and to provide methods for the management of the scenic value of the Tweed Shire.

The subject site is located within the McPherson Ranges on the edge of the Cobaki locality. The evaluation report identifies the Cobaki area, within the district of Terranora, as having a Medium scenic quality.

In terms of scenic management, the report identifies Cobaki as a scenic district due to its naturalness in proximity to Tweed Heads/Coolangatta; isolated paddocks in the hinterland; and the natural setting of the broadwater. The document sets the following parameters of development:

- Housing could occur out of sight up side valleys as clusters or villages (not rural residential);
- **Maintain naturalness of backdrop hills;**
- Restrict waterside development to preserve naturalness.

The proposed telecommunication facility will be visible from within the locality given it will protrude above the existing vegetation canopy. Therefore it is arguable that the proposal will undoubtedly impact on the 'naturalness of backdrop hills' with the introduction of a modern, man-made structure on the ridge line.

As previously detailed the nature of surrounding vegetation and topography is such that the proposed monopole will not be particularly prominent within the immediate locality. When viewed from the south-east toward the McPherson Ranges the scene comprises relatively flat and cleared farmland with phone lines, electricity cables and the like clearly visible. The recently approved subdivision at Cobaki for a residential development of 10,000 dwellings is also acknowledged; this will dramatically alter the existing verdant and rural landscape character within the vicinity of the subject site.

Whilst the proposed monopole will be visible within the surrounding locality as well as from the adjacent ridge line (approximately 3.4km to the south east of the subject site), it is considered that the perceived impact to landscape character on this area of the Tweed Shire is not in itself, a reason for refusal, given the difficulty in prioritising the maintenance of 'naturalness' with the requirement for improved telecommunication services.

Flora and Fauna

The Cobaki Lakes area has very high biodiversity values and is essential for wildlife corridor connections. Large areas of conservation land free of anthropogenic impacts and connected with other similar areas are more and more important to remain so in the face of loss of habitat from ongoing coastal development. The site has been shown to be of importance to threatened species.

As previously detailed, whilst some level of disturbance impact is likely to be generated during the construction phase, during ongoing maintenance provisions and from impacts of EME, the Fauna Assessment undertaken by Biolink Ecological Consultants advises that the impact on surrounding land is expected to be minimal and insignificant to local populations and that the development, as proposed, will not remove habitat or fracture the existing vegetation corridor that passes through the site.

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

As previously detailed the submission period for the current Review of Determination is from Wednesday 27 June 2012 to Wednesday 11 July 2012. At the time of writing no submissions have been received although one local resident has verbally supported the proposal on the basis of improved mobile reception in the area.

However, a total of four submissions were received as a result of the original notification period, all of which were objections. The major issues with the proposed development were as follows:

Objection	Response
<p>Health and Safety:</p> <ul style="list-style-type: none"> • Such towers are seen as health risks, especially to young children; • Evidence to the contrary of the WHO (documented causes of cancer clusters near mobile phone towers; longevity studies yet to be completed; other countries have exclusion zones); • Lack of knowledge of long-term effects of EME on people (links to brain tumours and cancer). 	<p>Radiofrequency Electro Magnetic Energy (RF-EME) from the operation of the Base Station have been assessed and a report provided dated 19 December 2010 and updated version dated 29 September 2011. The report indicates that the maximum EME level at 1.5m above ground level is estimated to be 0.58% of the Australian Radiation and Nuclear Safety Agency (ARPANSA) public exposure limits. The report demonstrates that the predicted emissions produced by the proposal are within these standards. Council's Environmental Health Unit has advised that no further consideration with regard to RF-EME is required.</p>
<p>Depreciation of Property Value:</p> <ul style="list-style-type: none"> • Will decrease property values in the area greatly due to perceived health issues and visual impact. 	<p>The proponent has advised that there is <i>no evidence to show that mobile phone installations have negative impacts on property values [...]. Land that is close to local amenities [and subsequently] has good mobile coverage is likely to be more desirable than an area with poor coverage.</i></p> <p>A perceived devaluation of property prices is not a material planning consideration under section 79C of the Environmental Planning and Assessment Act 1979.</p>
<p>Access Track:</p> <ul style="list-style-type: none"> • Impact on the private road that is currently used and maintained by 4 residents only; • Heavy machinery to be used would damage private track; • With exception of land owner, all other landowners are refusing permission for the private driveway to be used; • Access track very steep and designed for residential vehicles only; 	<p>The proponent has advised that the road leading from Jabiru Drive to the subject site is a registered easement for right of carriageway and included a copy of this easement for reference with the original application details. This easement allows 'full and free right for every person who is at any time entitled to an estate or interest in possession of the land in question'.</p> <p>The easement states that owners of the lot shall maintain the carriageway and keep it in good repair and condition. It has been advised that Telstra agree to repair any damage that may occur during construction and that in relation to safety, the easement is</p>

Objection	Response
<ul style="list-style-type: none"> • Residents not prepared to be financially disadvantaged as a result of commercial vehicles degrading the track; • Health and safety of other track users due to heavy commercial vehicles. 	<p>a carriageway for vehicle access and road and safety rules will still apply.</p>
<p>Community consultation:</p> <ul style="list-style-type: none"> • The applicants have failed to carry out effective community consultation; • Such an objection is unethical; • No evidence of surrounding land owners (Lots 9 and 10 Jabiru Drive) being consulted; • Consultation that was carried out was selective, exclusive and incomplete; • Applicants stated that alternative sites not suitable as they would be likely to face opposition from the community however effective and comprehensive consultation would have revealed this. 	<p>In response to the submissions the proponent has stated: <i>we note that inconsistency between Council's Policy on Pre-DA consultation and the intent of the recently gazetted NSW SEPP Infrastructure Amendment (Telecommunication Facilities) 2010 and NSW Telecommunication Facilities Guideline including Broadband. [...] Provisions for mandated Pre-application consultation are not included [within the SEPP Infrastructure]. Council's resolution to mandate pre-application consultation and its decision to refuse to accept a [DA] is inconsistent with the [EP and AA 1979]. Council's policy is discriminatory [and...] given the location of the proposed facility and character of the area it is considered that Telstra have gone beyond what is required in terms of pre-DA consultation.</i></p> <p>Telstra have completed the following pre-DA consultation:</p> <ul style="list-style-type: none"> • Newspaper advertisements in the Tweed Link, Tweed Sun and the Tweed Daily News on 8/13 July and 15/20 July 2010; • Letter box drops & door knocks (7 July 2010) to surrounding homes/businesses (vacant rural lots, vacant houses, wholesale nursery, golf club, residential properties) that could be affected; • Community meeting was not held as it was <i>considered excessive given the rural context of the area and the location of the facility</i>'. <p>Whilst a community meeting is not a statutory requirement as set out in the EP & A Act 1979, the <i>NSW Telecommunication Facilities Guideline including Broadband</i> requires that a carrier should <i>have regard to Council's views on consultation</i>. Whilst it is unfortunate that a community meeting was not carried out the proponent has undergone letter drops and advertised the proposal in two (2)</p>

Objection	Response
	<p>concurrent publications which is considered to be acceptable in this instance.</p> <p>The Review of Determination has been notified to surrounding properties and advertised in the Tweed Link.</p>
<p>Air Safety:</p> <ul style="list-style-type: none"> • Proposal penetrates the Obstacle Limitation Surface (OLS) by 52.78m; • Disregard for safety of air operators and passengers as well as surrounding communities. 	<p>The original development application was referred to the relevant authorities for comment in regards to the potential conflict with flight activities. As previously detailed within this report the relevant bodies have approved the application subject to a number of conditions of consent.</p>
<p>Lack of time to dispute:</p> <ul style="list-style-type: none"> • Timeframe allocated to comment was not sufficient to allow the wider community the ability to gain a knowledge and understanding. 	<p>The timeframe for the notification period for the development was conducted in accordance with the Environmental Planning and Assessment Act 1979.</p>

(e) Public interest

The submissions received for the original development application have been considered within the body of this report. Council currently has no specific policies in relation to telecommunication tower developments. The proposal is a permissible form of development in the 1(a) zone and therefore can be assessed by Council.

The concerns in regard to health risks are acknowledged and have been considered within the body of this report. Current research indicates that the potential for health implications from EME levels is minimal. In this instance Council relies on the relevant standards from ARPANSA and other authorities. Council's Environmental Health Unit have advised that the submitted information and reporting on the potential health risks of the monopole are consistent with Australian standards. The proposed development is consistent with all relevant guidelines and is proposed to be conducted in accordance with outlined Australian standards. The proposed telecommunication facility will provide for improved telecommunications service for the locality and newly approved residential subdivision at Cobaki.

Further, the additional information that has been provided with the RoD has clarified Council's original concerns in relation to perceived ecological issues and it is considered that the proposed development will not impact on the ecological integrity of the subject site nor surrounding locality to such an extent to warrant refusal.

It is therefore considered that the development will not impact on matters relating to the public interest in relation to ensuring that the environmental quality and biological diversity is maintained for future generations.

OPTIONS:

1. Adopt the recommendations made and approve the development application subject to a number of conditions of consent and request that the applicant withdraw the Class 1 Appeal; or
2. Refuse the development application and actively defend the appeal.

CONCLUSION:

In general it is considered that the proposed telecommunication facility will enhance telecommunications services in the locality, with particular regard to the recently approved residential subdivision at Cobaki. The location and design of the proposal is considered suitable without any significant adverse impacts on the natural and built environments in terms of: significant vegetation clearance; visual impact; or health impacts to human populations, so as to warrant refusal of the proposal.

Further, as set out within this report, Council's concerns in relation to the impact of the proposal on the ecological integrity of the subject site and surrounding locality have been alleviated. For this reason the proposal is now recommended for approval.

REFERENCES

Biolink Pty Ltd Ecological Consultants (2011) *Tweed Coast Koala Habitat Study – Report to Tweed Shire Council*, January 2011.

Phillips, S., Leopold_Woodridge, K., and Hopkins, M. (2009) *Impacts of electromagnetic energy (EME) on non-human biological organisms: a review*. Report to Optus – Daly International Pty. Ltd. Biolink Ecological Consultants, Murwillumbah NSW.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

A Class 1 Appeal has been lodged with the NSW Land and Environment Court. Costs will be incurred as a result of the Appeal.

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. Council report of 21 June 2011 (ECM 52872649)
-

- 15 **[PR-CM] Development Application DA10/0642 for a Three Storey Mixed Use Tourist and Residential Development Comprising 24 Accommodation Units Including 3 x 3 Bedroom Tourist/Residential Units, 3 x 3 Bedroom Residential Units, 12 x 2 Bedroom Tourist/Residential units and 6 x 2 bedroom residential units at Lots 1-3 Section 1 DP 29748, Lot 4 Section 1 DP 31209 Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach**

SUBMITTED BY: Development Assessment

FILE NUMBER: DA10/0642 Pt2



Civic Leadership

SUMMARY OF REPORT:

The Department of Planning and Infrastructure (DP&I) received a major project application under Part 3A of the Environmental Planning and Assessment Act in 2009 for a mixed use tourist and residential accommodation at Cabarita Beach. Various development options were considered by the applicant for redevelopment of the site including the renovation of the existing caravan park use, construction of detached dwellings on the existing freehold lots within the site, a residential flat building development and a three storey tourist accommodation development. The proposed mixed use development was considered to be the 'highest and best use of the site' by the applicant.

A report considered at the Council meeting of 19 October 2010 discussed matters with regard to the officers' overall assessment of the proposal (Environmental Assessment). It was acknowledged that the mixed residential/tourist development was generally consistent with the current 2(e) Residential Tourist zoning applying to the site, and with Council's broader strategic plans. The officers identified a number of significant issues to be considered by DP&I in their assessment and subsequent determination of the proposal. A submission to that effect was forwarded to DP&I on 22 October 2010.

Council now has an opportunity to review its submission following receipt of the Preferred Project Report from DP&I on 31 May 2012.

The concept of the proposal is generally supported subject to the issues being addressed as identified in this report.

RECOMMENDATION:

That Council endorses this report and submits it to the NSW Department of Planning and Infrastructure as the formal response to the Preferred Project Report (PPR) for a three storey mixed use tourist and residential development comprising 24 accommodation units including 3 x 3 bedroom tourist/residential units, 3 x 3 bedroom residential units, 12 x 2 bedroom tourist/residential units and 6 x 2 bedroom residential units at Lots 1-3 Section 1 DP 29748, Lot 4 Section 1 DP 31209 Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach.

REPORT:

Applicant: Darryl Anderson Consulting Pty Ltd
Owner: Mr Kenneth C Hansen & Mrs Marie J Hansen
Location: Lots 1-3 Section 1 DP 29748, Lot 4 Section 1 DP 31209, Nos. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach
Zoning: 2(e) Residential Tourist
Cost: Not Applicable

BACKGROUND:

Council received a request for provision of details of key issues and assessment requirements for MP09_0016 on 8 May 2009 for the original three storey proposal for the site comprising 23 units for mixed residential and tourist accommodation. The application took into account comment provided to the applicant by Council at the Development Assessment Panel meeting of 12 December 2008.

The proposal was referred internally at that stage and Council's comments (issues and assessment requirements) on the project application were provided to DP&I in correspondence dated 21 May 2009.

Council received the Environmental Assessment (EA) for the mixed use tourist and residential accommodation proposal for comment on 27 August 2010. Unit numbers were increased by one to a total of 24. The proposal was referred internally and Council's comments were forwarded to DP&I on 22 October 2010 (refer Attachment 1) following consideration of the review at the Council meeting of 18 October 2010.

THE PROPOSAL

Council received a request to review the Preferred Project Report (PPR) for the mixed use tourist and residential accommodation on 31 May 2012. The PPR seeks to address matters raised during public exhibition of the EA inclusive of those matters raised by Council.

The PPR was referred internally in order for the document to be reviewed against Council's previous submission (refer Attachment 1).

As such, the relevant Council officers have assessed the PPR and provided comment. Council now has an urban designer who has been able to provide additional comment with regard to the proposal.

The most significant concerns have been highlighted by the development assessment engineers. Several important matters with regard to basement design and parking should be addressed by the applicant with the supply of amended, complying plans prior to determination of the application.

Comment has been assembled into the following table:

ISSUE	COMMENT
General Planning:	
Residential/Tourist Use	<p>The development provides for a total of 24 units, 15 of which can now be utilised as either residential or tourist accommodation. This is an increase of 11 units (from six as proposed in the Environmental Assessment) that have a dual residential/tourist use. The tourist accommodation component is in association with residential development but does not meet the primary objective of the zone unless it is utilised <u>exclusively</u> for tourist accommodation purposes in perpetuity of the proposed land use.</p> <p>As such, Council does not support proposed Units 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 20, 21, 22, 23 and 24 for dual residential/tourist use and requests that a Section 88b restriction be placed upon the title to denote exclusive use for tourist accommodation.</p>
Environmental Health:	
Local Government Act	<p>The following condition was recommended in Council's previous comments dated 22 October 2010:</p> <p><i>Prior to commencement of the closure of the park an approved plan of management shall be implemented addressing the diminishment of the caravan park over the period of closure to ensure all occupants have access to reasonable and adequate community facilities and services as required under the Local Government Act and its relevant Regulation. A copy of the plan shall be provided to Tweed Shire Council prior to its implementation.</i></p> <p>The applicant's response within the PPR is insufficient. The Statement of Commitments does not include the above matters or consideration for any assistance to long term residents needing to relocate nor the obstacles they will face in relocating within the local area due to low availability of alternative long term sites with the Tweed Shire.</p>
Dewatering	<p>Dewatering is not foreseen however potential does exist therefore a condition is recommended.</p>
Road Traffic Noise Impact	<p>An acoustic assessment has been undertaken. Conditions are recommended.</p>
Building:	
Building Code of Australia / BASIX	<p>No change to previous comments and conditions.</p>

ISSUE	COMMENT
Ecology:	
Site Vegetation (subject site)	<p>A site visit was undertaken which has determined that few native species occur on the site and the larger <i>Banksia integrifolia</i> are on residential allotments to the east that should remain unaffected by the development. The proposal does not include removal of any vegetation outside the property boundaries.</p>
Landscaping	<p>Species proposed for landscaping do not comprise 90% local native species as stated by the applicant (cultivated varieties are not local species) and include known environmental weed species (Agave, Raphiolepis, Gazania sp). Given the site location adjacent to a significant coastal nature reserve, landscape species should all be selected from Council's recently released Native Species Plant List and Planting Guide suited to the site. The applicant should commit to removal of environmental weed species present, including Cocos palms.</p>
Koala Habitat	<p>A site visit has confirmed that no Primary Koala habitat is present within the site or the adjacent Asset Protection Zone (APZ) to Cudgen Nature Reserve (CNR). Koala Habitat mapping has been revised since the original proposal was submitted, with a new coastal habitat assessment and mapping which confirms this view.</p>
Asset Protection Zone	<p>The applicant and the Office of Environmental Heritage (OEH) have confirmed that maintenance of a 20m APZ at the southern edge of and within CNR is the responsibility of the State government department under their Fire Management Plan and thus 20m is available for use off site as a maintained APZ. This could be construed as an exceptional circumstance that reduces the width of APZ required within the site.</p> <p>Clumps of vegetation exist within this APZ. Should any thinning be required, mature <i>Banksia integrifolia</i> trees should be retained and species not local to that environment (such as Umbrella tree or Silky Oak) with lesser conservation value should be chosen for removal. Such work would need to be undertaken by OEH rather than the applicant and therefore this matter does not require consent conditioning.</p> <p>Subsequently, it appears that a 28m APZ to residential development and a 45m APZ to tourist development (special fire protection purpose) is available without the need for vegetation removal within CNR and that 10m of the existing mown area is available for restoration in accordance with the intent of the current revision of the Fire Management Plan for CNR.</p>
Engineering:	
Water Supply & Effluent Disposal	<p>The position of the existing sewer and sewer junction is not suitable for the proposed building. Accordingly an application to Council is required for the disconnection and termination of the existing sewer and installation of a sewer junction in a suitable location.</p> <p>The driveway appears to be located over the top of a Council sewer manhole. Depending upon the type of the existing manhole top and lid, the top will need to be replaced with a suitable Class D lid as it is in a traffic area.</p>

ISSUE	COMMENT
<p>Stormwater Management</p>	<p>As stated in previous comment, the development is required to maximise use of collected roof waters for uses such as toilet flushing, cold water taps to washing machines and external uses.</p> <p>Please be advised that Council has since adopted its Rainwater Tanks in Urban Areas Policy (September 2011) which encourages the provision of substantial rainwater tanks connected to a significant portion of roof. In the case of unit and commercial developments, 80 to 90 percent of the roof area is required to be connected. This water should be used for gardens, car washing, toilet flushing and laundry cold water.</p> <p>The PPR makes no specific comment in this regard but does include a BASIX certificate showing a rainwater tank of 22500L capacity connected to a 300m² roof area. However, this water is to be used for the purposed of garden irrigation and car washing only.</p> <p>Whilst this satisfies the BASIX criterion, it falls short of Council's adopted policy. Council would like to encourage the proponent to consider further measures to improve this facet of the project.</p> <p>The applicant has lodged an addendum to the Stormwater Management Plan in the PPR. In this plan it is now proposed to mitigate discharge from the site via on site detention (OSD). A storage tank of 11.4m³ is proposed, to limit post development site discharge to pre-development rates, considering a range of storm intensities. No supporting calculations have been proposed.</p> <p>Imposition of the 200 l/s/ha maximum discharge rate (as required by Council's Development Design Specification D5 – Stormwater Drainage Design) will significantly increase the size of the OSD storage required for the Q100 storm, to over 100m³. This is consistent with conditions imposed on a separate Major Project application (MP06_0179) for a mixed use supermarket development in Cabarita.</p> <p>Given the sandy nature of the soil and opportunities for infiltration and water sensitive urban design within this site, there appear to be ample opportunities to reduce the storage requirements and manage site runoff effectively. This can be addressed in more detail with the construction certificate process.</p>
<p>Bus Stops</p>	<p>The two required bus stops can be accommodated via payment of an appropriate contribution. Council's recommended condition has been amended accordingly.</p>
<p>Parking</p>	<p>The PPR proposes a total of nine residential units (Units 1, 2, 3, 9, 10, 11, 17, 18 and 19) with the remaining 15 units for dual residential/tourist accommodation. The basement layout in the PPR includes six visitor bays, 41 car parks (inclusive of eight sets of tandem car parks) and one car wash bay.</p> <p>As the dual residential/tourist units can be utilised for either purpose, the most demanding parking requirement at either Item A4 or Item B6 of Council's Development Control Plan (DCP) Section A2 should be</p>

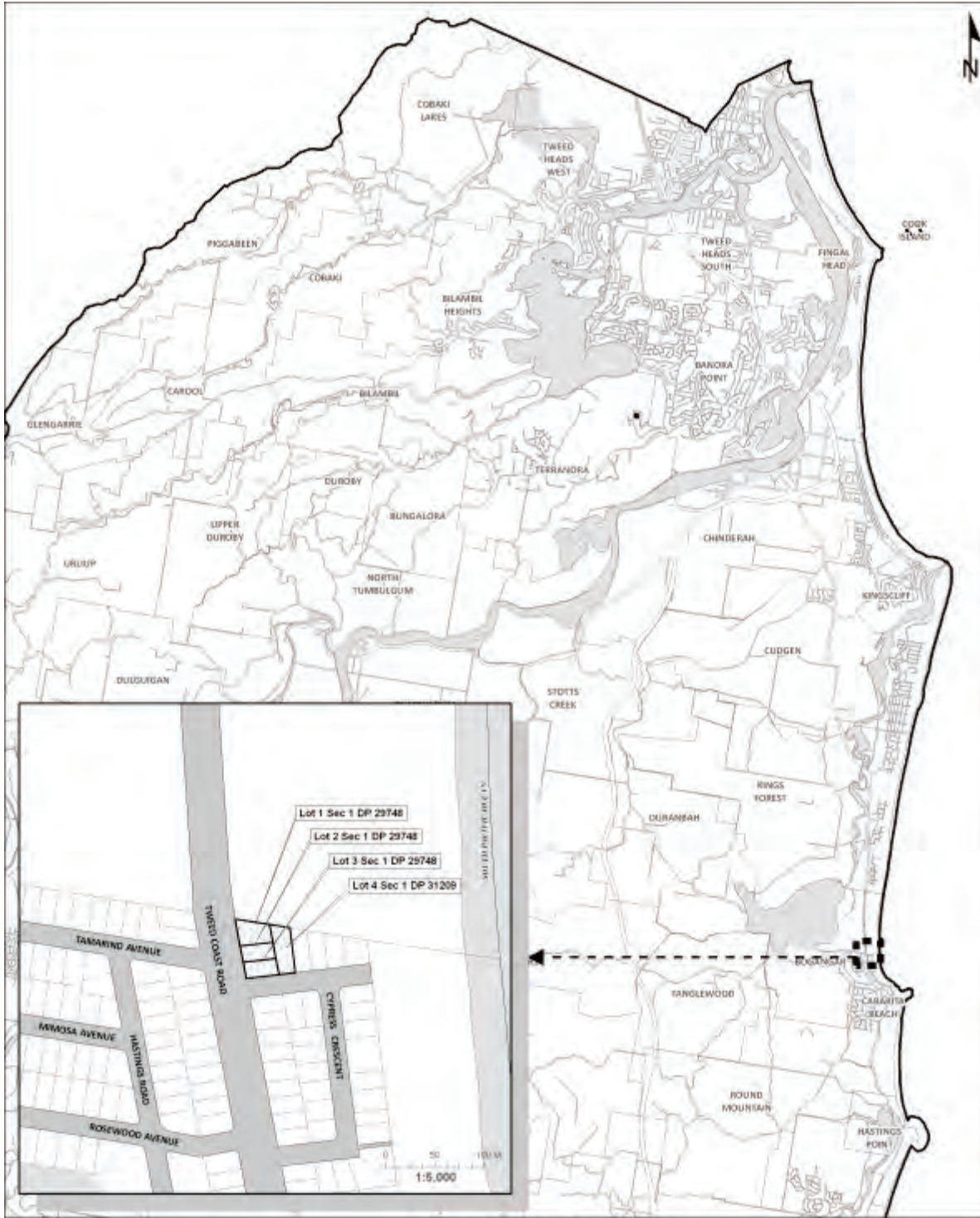
ISSUE	COMMENT																																											
	<p>adopted. As such, the following car parks are required:</p> <table border="1" data-bbox="472 293 1401 1149"> <thead> <tr> <th data-bbox="472 293 759 331">Proposal</th> <th data-bbox="759 293 1110 331">Parking rate</th> <th data-bbox="1110 293 1401 331">Required Spaces</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="472 331 1401 369" style="text-align: center;">Residential Component</td> </tr> <tr> <td data-bbox="472 369 759 477">2 bedroom Units (2, 3, 10, 11, 18 & 19)</td> <td data-bbox="759 369 1110 477">1.5 parks per 2 bedroom unit</td> <td data-bbox="1110 369 1401 477">9</td> </tr> <tr> <td data-bbox="472 477 759 546">3 bedroom Units (1, 9 & 17)</td> <td data-bbox="759 477 1110 546">2 parks per 3 bedroom unit</td> <td data-bbox="1110 477 1401 546">6</td> </tr> <tr> <td data-bbox="472 546 759 584">Visitors</td> <td data-bbox="759 546 1110 584">1 park per 4 units</td> <td data-bbox="1110 546 1401 584">2.25</td> </tr> <tr> <td data-bbox="472 584 759 622">Bicycle</td> <td data-bbox="759 584 1110 622">2 spaces per unit</td> <td data-bbox="1110 584 1401 622">18</td> </tr> <tr> <td data-bbox="472 622 759 692">Public Transport, Bus Stop Seating</td> <td data-bbox="759 622 1110 692">1 facility per 15 units</td> <td data-bbox="1110 622 1401 692">1</td> </tr> <tr> <td colspan="3" data-bbox="472 692 1401 730" style="text-align: center;">Dual Use Residential/Tourist Units</td> </tr> <tr> <td data-bbox="472 730 759 869">2 bedroom Units (4, 5, 6, 7, 12, 13, 14, 15, 20, 21, 22 & 23)</td> <td data-bbox="759 730 1110 869">1.5 parks per 2 bedroom unit</td> <td data-bbox="1110 730 1401 869">18</td> </tr> <tr> <td data-bbox="472 869 759 938">3 bedroom Units (8, 16 & 24)</td> <td data-bbox="759 869 1110 938">2 parks per 3 bedroom unit</td> <td data-bbox="1110 869 1401 938">6</td> </tr> <tr> <td data-bbox="472 938 759 976">Visitors</td> <td data-bbox="759 938 1110 976">1 park per 4 units</td> <td data-bbox="1110 938 1401 976">3.75</td> </tr> <tr> <td data-bbox="472 976 759 1014">Bicycle</td> <td data-bbox="759 976 1110 1014">2 spaces per unit</td> <td data-bbox="1110 976 1401 1014">30</td> </tr> <tr> <td data-bbox="472 1014 759 1084">Public Transport, Bus Stop Seating</td> <td data-bbox="759 1014 1110 1084">1 facility per 15 units</td> <td data-bbox="1110 1014 1401 1084">1</td> </tr> <tr> <td data-bbox="472 1084 759 1122">Deliveries</td> <td data-bbox="759 1084 1110 1122" rowspan="2">Refer comments below</td> <td data-bbox="1110 1084 1401 1122" rowspan="2">Refer comments below</td> </tr> <tr> <td data-bbox="472 1122 759 1149">Staff</td> </tr> </tbody> </table> <p data-bbox="472 1227 1407 1323">The development has a tourist accommodation component. As such, staff and delivery car spaces (as per DCP A2 requirements for Tourist facilities) are required and should be enforced.</p> <p data-bbox="472 1361 1407 1563">The provision for a Heavy Rigid Vehicle (HRV) space (as per DCP A2) is unwarranted. The complex will most likely be managed off site with minor deliveries such as linen and mini-bar goods. With 15 dual use units proposed, at least one delivery space of a size to service a Small Rigid Vehicle (SRV) is warranted. This has not been provided for in the revised car parking layout.</p> <p data-bbox="472 1601 1407 1697">On occasion, staff associated with the management of the tourist component of the development will be required to visit the site. As such, at least one nominated staff parking space should be provided.</p> <p data-bbox="472 1736 1407 1870">Each of the proposed eight sets of tandem car parks (car parks 20-35) must be allocated to individual units. Ideally, tandem car parks should be allocated to three bedroom units, as two car parks are required per unit.</p> <p data-bbox="472 1908 1407 2072">Accordingly, the following six units (1, 8, 9, 16, 17 & 24) must each be allocated a set of tandem car parks. Two sets of tandem car parks must therefore be allocated to two of the two bedroom units despite the requirement for 1.5 car parks per unit. As there are 18 two bedroom units, the residue of 16 two bedroom units requires a total of 24 single</p>	Proposal	Parking rate	Required Spaces	Residential Component			2 bedroom Units (2, 3, 10, 11, 18 & 19)	1.5 parks per 2 bedroom unit	9	3 bedroom Units (1, 9 & 17)	2 parks per 3 bedroom unit	6	Visitors	1 park per 4 units	2.25	Bicycle	2 spaces per unit	18	Public Transport, Bus Stop Seating	1 facility per 15 units	1	Dual Use Residential/Tourist Units			2 bedroom Units (4, 5, 6, 7, 12, 13, 14, 15, 20, 21, 22 & 23)	1.5 parks per 2 bedroom unit	18	3 bedroom Units (8, 16 & 24)	2 parks per 3 bedroom unit	6	Visitors	1 park per 4 units	3.75	Bicycle	2 spaces per unit	30	Public Transport, Bus Stop Seating	1 facility per 15 units	1	Deliveries	Refer comments below	Refer comments below	Staff
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ISSUE	COMMENT
<p>Outstanding Parking Matters</p>	<p>basement car parks.</p> <p>A total of 41 basement car parks are proposed. Assuming that outstanding issues regarding design of a compliant basement arrangement can be resolved, one car park remains (following unit allocation) that may be utilised as a staff space.</p> <p>The basement arrangement needs to address the SRV shortfall space and the nominated dimensions. There may be opportunity for the proposed car wash bay to be used as a dual use in conjunction with the delivery space, although appropriate dimensions will be required.</p> <p>The proposed six visitor bays located in the basement before the security gate are considered acceptable.</p> <p>It is unclear as to whether vehicles utilising the proposed car wash bay will be able to enter and exit safely due to the fact that the bay is located on the declining (1:12) driveway entrance. This will need to be addressed satisfactorily and appropriate conditions imposed.</p> <p>The car wash bay should be constructed of pervious material and drain to landscape areas. If this is not achievable in the current plan, significant changes may need to be made to the proposal in order for it to be accommodated. For example:</p> <ul style="list-style-type: none"> • a roof may be required over the car wash bay to prevent rain water entering into Council's sewer system and such a roof may not be permissible in its current location • the applicant would also be required to enter into a "Trade Waste Agreement" with Council with standard conditions imposed. <p>With regard to engineering matters, it is recommended that the development not be endorsed until the following matters are satisfactorily addressed:</p> <ol style="list-style-type: none"> 1. The PPR submitted Basement Plan (Dwg No: 7'11 / Dwg: DA4 dated 24 April 2012) does not comply with minimum dimensions specified in AS/NZS 2890.1:2004. Accordingly: <ol style="list-style-type: none"> a. Visitor Park (VP1) needs to provide a minimum width of 3400mm if the partition separating the visitor parking space and the store space is a physical barrier (i.e. solid wall or wire mesh). As such the intended partition material needs to also be confirmed. b. Car Park (No 1) needs to provide a minimum depth of 5200mm. This car park currently scales off around 5100mm. c. Car Parks (Nos 7 and 8) need to provide a minimum depth of 5200mm at their shallowest point. Both car parks currently scale off at 5000mm and 5100mm respectively. d. Car Park (No 13 - disabled) - the applicant needs to confirm that minimum, clear dimensions are provided for this car parking space in accordance with disabled car parking

ISSUE	COMMENT
	<p>requirements of AS/NZS 2890.1:2004. A depth of 3810mm to the proposed exit path is insufficient.</p> <p>e. Tandem Car Parks (Nos 20 to 35) - each pair of tandem car parks needs to provide a combined minimum depth of 10400mm in order to provide an individual depth of 5200mm.</p> <p>2. The development needs to provide a minimum of one staff and one delivery car space (capable of servicing an SRV vehicle). Council's DCP A2 states that the minimum dimension of an SRV space is 6385mm wide, with a minimum height clearance of 2500mm. There may be opportunity for the proposed car wash bay to be utilised for dual purposes in association with the delivery space. In this case, appropriate dimensions will be required.</p> <p>3. Turning templates are required confirming that all vehicles utilising the car wash bay/delivery space can exit the site in a forward direction.</p>
Planning Reform:	
<p>Urban Design</p> <p>Context</p> <p>Site Planning and Orientation</p> <p>Building Form, Mass and Scale</p>	<p>Key design comments following review of the PPR are as follows:</p> <p>The desired future character of the locality is to retain the essence of a small coastal village. As such, new buildings should reflect the scale of a smaller coastal settlement rather than a larger urban settlement. This development site is of particular importance in establishing the built form character of the Cabarita Village centre as it is the first property encountered when travelling south. In many ways this gateway site is what will establish a lasting impression of the village.</p> <p>The application of 'desired future character' criteria to a new, larger scale residential development would call for greater consideration of breaking down bulk and form as well as carefully detailing the building to give it a greater residential scale appropriate to a small coastal village.</p> <p>The building in its current form, despite its pattern of balconies and recessed sections of the floor plate, still presents as a large continuous building form. The continuous roof form and limited material palette does not achieve the coastal village design objectives.</p> <p>Although each of the units is oriented north to north east, there is limited opportunity for cross ventilation with the majority of the units having a single aspect. The long and narrow configuration of many of the units results in limited natural sunlight access across the floor plate, particularly around wet area locations which rely solely on artificial lighting and mechanical ventilation.</p> <p>The proposal presents as a considerable scale, mass and bulk. This is largely due to the repetition of the same stacked floor plan and the uninterrupted building elevation extending from Tweed Coast Road into Cypress Crescent. This results in a continuous, long and unbroken elevation of almost 80m in length. The design includes a series of steps and recesses in the building footprint with decorative external</p>

ISSUE	COMMENT
<p>Building Materials</p>	<p>screens around circulation and core areas which serve to articulate the long elevation to some extent but it does not appropriately reduce the overall visual bulk and scale.</p> <p>Similarly, there is little variation within the roof line in terms of change in height, pitch and form. This may have served to reduce visual bulk and assist in breaking down the continuous building form.</p> <p>Physically separating the building into separate pavilions would assist in breaking down overall bulk and increasing compatibility with a small coastal village context. This introduces further opportunity for landscaped courtyards and/or links between buildings and provision of alternate access from private outdoor areas to the street rather than around the perimeter of the site.</p> <p>The building presents as large expanses of concrete in the form of projecting and expressed floor slabs, spandrels and blade walls, offset by glass sliding doors to verandahs, windows and balustrades. The aluminum screen with landscape motif appears as an unintegrated element of the overall design. The concrete-heavy material palette is more appropriate in a dense urban context rather than a small coastal village on the edge of a coastal heath bushland reserve and an ocean beach.</p> <p>Deeper balconies and solar shutters to the western elevation would serve to improve internal comfort of west facing units as well as the overall building articulation.</p> <p>The proposed colours of the building (purple and blue tones) do not complement a coastal village context.</p>

SITE DIAGRAM:



Locality Plan

Lots 1-3 Section 1 DP 29748 and Lot 4 Section 1 DP 31209
 No's. 2-6 Tweed Coast Road and No. 10 Cypress Crescent, Cabarita Beach

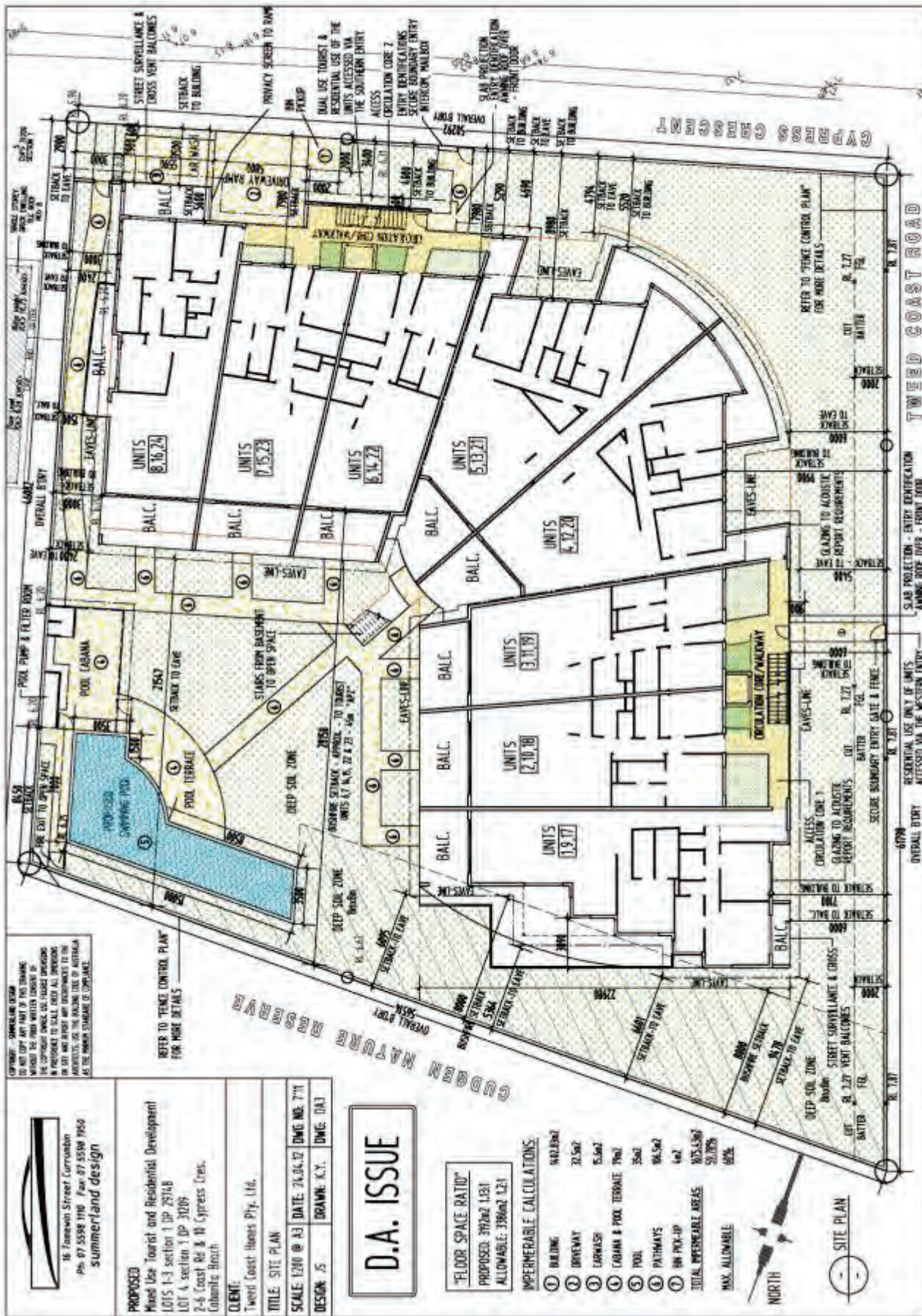
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Created: 09 October 2010
 Dept of Lands & Tweed Shire Council
 Coordinate System - MGA Zone 58
 Datum - GDA 94

Scale: 1:100,000
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City and Cultural Centre
 3 Tunbridge Road
 Murwillumbah NSW 2484
 PO Box 818
 Murwillumbah NSW 2484
 T (02) 6678 2480 / 1300 200 872
 F (02) 6678 2429
 W www.tweed.shire.nsw.gov.au
 E info@tweed.shire.nsw.gov.au





REFER TO "FENCE CONTROL PLAN" FOR MORE DETAILS

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PROPOSED
 Mixed Use Tourist and Residential Development
 LOTS 1-3 section 1 DP 29148
 LOT 1 section 1 DP 31209
 2-6 Coast Rd & 10 Cypress Cres,
 Calanthe Beach

CLIENT:
 Tweed Coast Homes Pty. Ltd.

TITLE: SITE PLAN

SCALE: 1:200 @ A3 **DATE:** 24.04.12 **DWG NO.:** 711

DESIGN: JS **DRAWN:** K.Y. **DWG.:** DAJ

D.A. ISSUE

"FLOOR SPACE RATIO"
 PROPOSED: 376m² L1R1
 ALLOWABLE: 376m² L2L1

IMPERMEABLE CALCULATIONS:

1	BUILDING	14,000m ²
2	DRIVEWAY	20,500
3	CARWASH	15,000
4	CARWASH & POOL TERRACE	700
5	POOL	500
6	PATHWAYS	10,500
7	BM PICK-UP	400
TOTAL IMPERMEABLE AREAS:		61,100
MAX. ALLOWABLE:		60%





 <p>16 Townsw Street Currumbin Ph 07 5598 1110 Fax 07 5598 1950 Summerland design</p>	<p>PROPOSED Mixed Use Tourist and Residential Development LOTS 1-3 section 1 DP 293148 LOT 4 section 1 DP 31209 2-6 Coast Rd & 10 Cypress Cres. Currumbin Beach</p>
	<p>CLIENT: Tweed Coast Homes Pty. Ltd.</p>
<p>TITLE: BASEMENT PLAN</p>	<p>SCALE: 1:200 @ A3 DATE: 24.04.12 DWG NO: 711</p>
<p>DESIGN: JS DRAWN: K.Y. DWG: DAA</p>	<p>D.A. ISSUE</p>

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BASEMENT PLAN
TOTAL BASMENT AREA: 3422.42
PARKING PROVIDED: 41 + 6 VP
PARKING REQUIRED: 38 + 6 VP



16 Tanswell Street Gurrumbidgee
 Ph: 07 5588 1110 Fax: 07 5588 1950
summerland design

PROPOSED
 Mixed Use Tourist and Residential Development
 LOTS 1-3 section 1 DP 29148
 LOT A section 1 DP 31209
 2-6 Coast Rd & 18 Cypress Cres,
 Gurrumbidgee

CLIENT:
 Tweed Coast Homes Pty. Ltd.

TITLE: GROUND FLOOR PLAN
SCALE: 1:200 @ A3 **DATE:** 24.04.12 **DWG NO:** 711
DESIGN: JS **DRAWN:** K.Y. **DWG. DTS:**

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GROUND FLOOR PLAN
 TOTAL BUILDING AREA 1854.00 sqm



 <p>16 Townswan Street Currumbin Ph: 07 5598 1110 Fax: 07 5598 1849 summerland design</p>	
<p>PROPOSED Mixed Use Tourist and Residential Development LOTS 1-3 section 1 DP 25748 LOT 4 section 1 DP 31029 2-A Coast Rd & 10 Cypress Cres. Currumbin Beach</p>	
<p>CLIENT: Tweed Coast Homes Pty. Ltd.</p>	
<p>TITLE: FIRST FLOOR PLAN</p>	
<p>SCALE: A210 @ A3 DATE: 14.04.12 DWG NO.: 7/11</p>	
<p>DESIGN: JS DRAWN: K.Y. DWG: DMG</p>	

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FIRST FLOOR PLAN



16 Tansworth Street Carrubrod
 Ph: 07 5598 1119 Fax: 07 5598 1950
 summerland design

PROPOSED
 Mixed Use Tourist and Residential Development
 LOT 5 1-3 section 1 DP 29148
 LOT 4 section 1 DP 31209
 2-6 Coast Rd & 10 Cypress Cres.
 Cullinville Beach

CLIENT:
 Twoed Coast Homes Pty. Ltd.

TITLE: SECOND FLOOR PLAN


SCALE: 1:200 @ A3 | **DATE:** 7/10/12 | **DWG NO.:** 7/11
DESIGN: JS | **DRAWN:** K.Y. | **DWG. DATE:**

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SECOND FLOOR PLAN



16 Tuxedo Street Carrsville
Ph: 07 5598 1100 Fax: 07 5598 1852
summerland design

PROPOSED
Mixed Use Tourist and Residential Development
LOTS 1-3 section 1 DP 29743
LOT 4 section 1 DP 30289
2-A Coast Rd & 10 Cypress Cres.
Cabarita Beach

CLIENT:
Tweed Coast Homes Pty. Ltd.

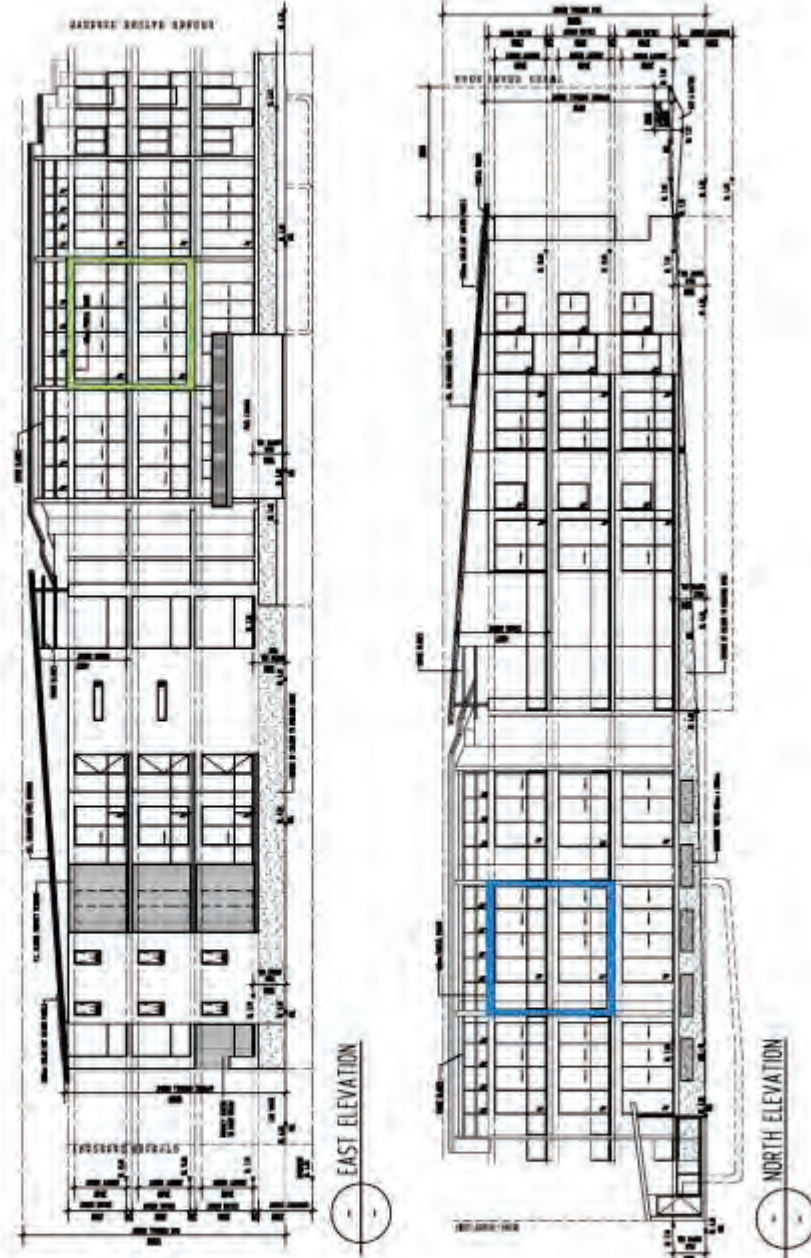
TITLE: ELEVATIONS

SCALE: E200 @ A3 **DATE:** 24.04.12 **DMG NO:** 7111

DESIGN: JS **DRAWN:** K.Y. **DMG:** DAS

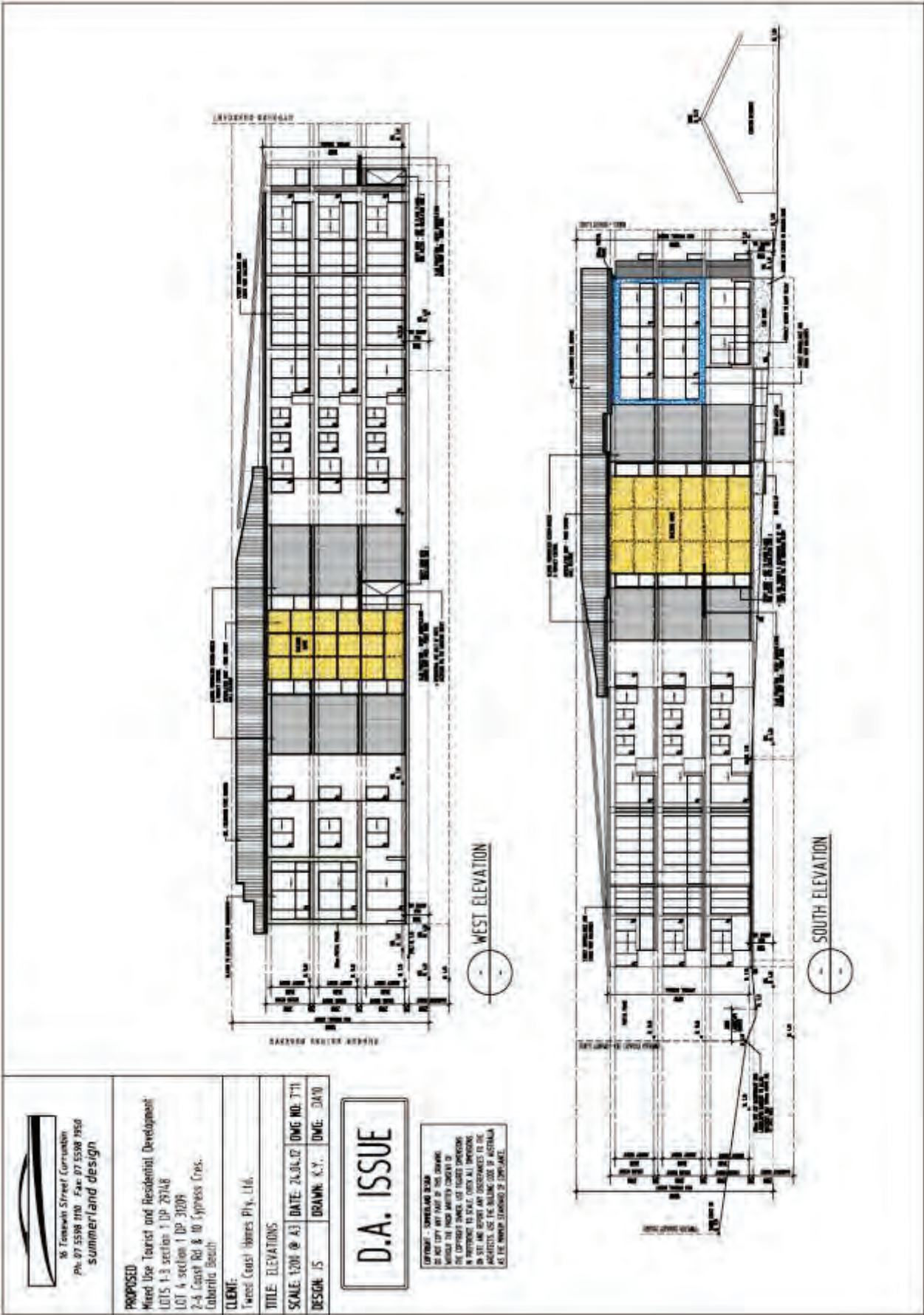
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EAST ELEVATION

NORTH ELEVATION



86 Temewah Street Carrumbulla
 Ph: 07 5538 1100 Fax: 07 5538 1950
 summerland design

PROPOSED
 Mixed Use Tourist and Residential Development
 LOTS 1-3 section 1 DP 29148
 LOT 4 section 1 DP 31009
 2-4 Coast Rd & 10 Cypress Cris.
 Tabarilla Beach

CLIENT:
 Tweed Coast Homes Pty. Ltd.

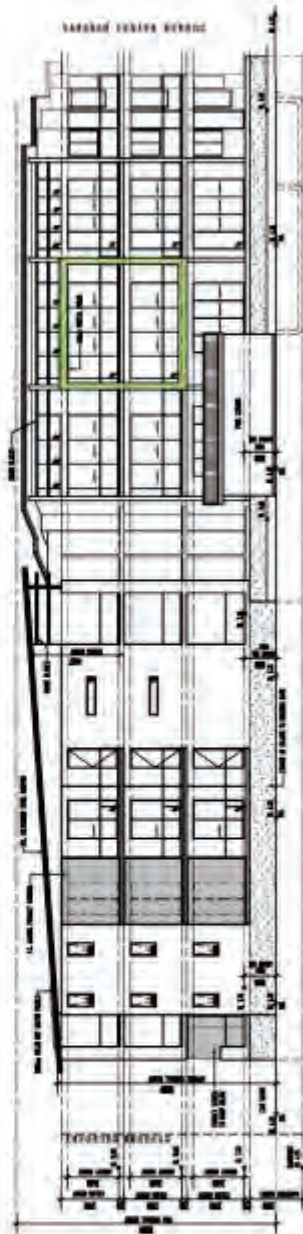
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SCALE: 1/20 @ A3 **DATE: 24.04.07** **DMG NO: 771**
DESIGN: JS **DRAWN: K.V.** **DMG: DA/0**

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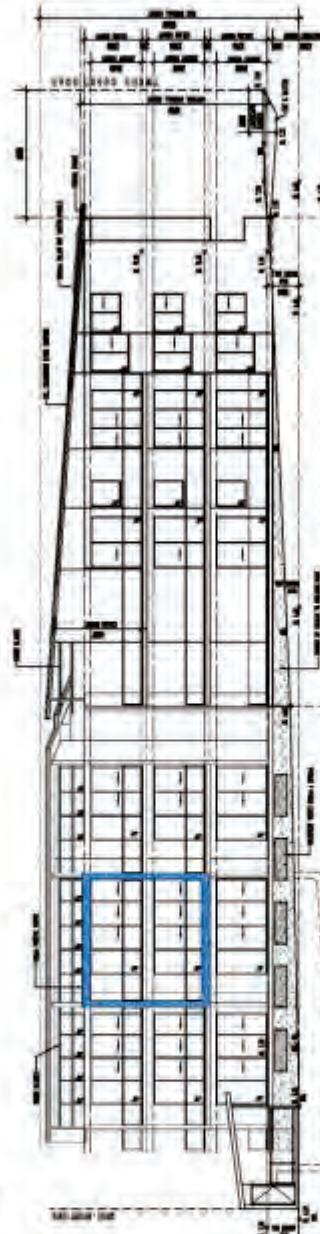
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SCHEDULE OF FINISH, MATERIALS & COLOURS

MAIN WALLS	ROUNDER FINISHED MASONRY	COLOUR DELUX - LUCENT WHITE 314
EAST WING	COLOUR FEATURE - FC ARTICULATED CLADDING ON MASONRY	TAUBMANS MARNER K23 - FASCIA & BUTTER COLOURBOND DEEP OCEAN
WEST WING	COLOUR FEATURE - FC ARTICULATED CLADDING ON MASONRY	TAUBMANS SAIG 216 - FASCIA & BUTTER COLOURBOND COTTAGE GREEN
ROOF	P.C. ALUMINIUM - COLOURBOND ROOF SHEETING	COLOURBOND SURFMIST
ALUMINIUM PRIVACY SCREENS	P.C. ALUMINIUM PRIVACY SCREENS	DELUX LUCENT WHITE 314
THE BASE (BASEMENT OUT OF GROUND)	EAST WING & NORTH SECTION FACING GARDENS BELOW THE FEATURE NORTH PORTAL MARNER & THE WEST WING & THE EAST SECTION FACING THE GARDENS BELOW THE GREEN PORTALS	TAUBMANS SAIG 216



EAST ELEVATION



NORTH ELEVATION



16 Townswan Street Corvallis
Ph: 07 5588 1110 Fax: 07 5588 1958
summerland design

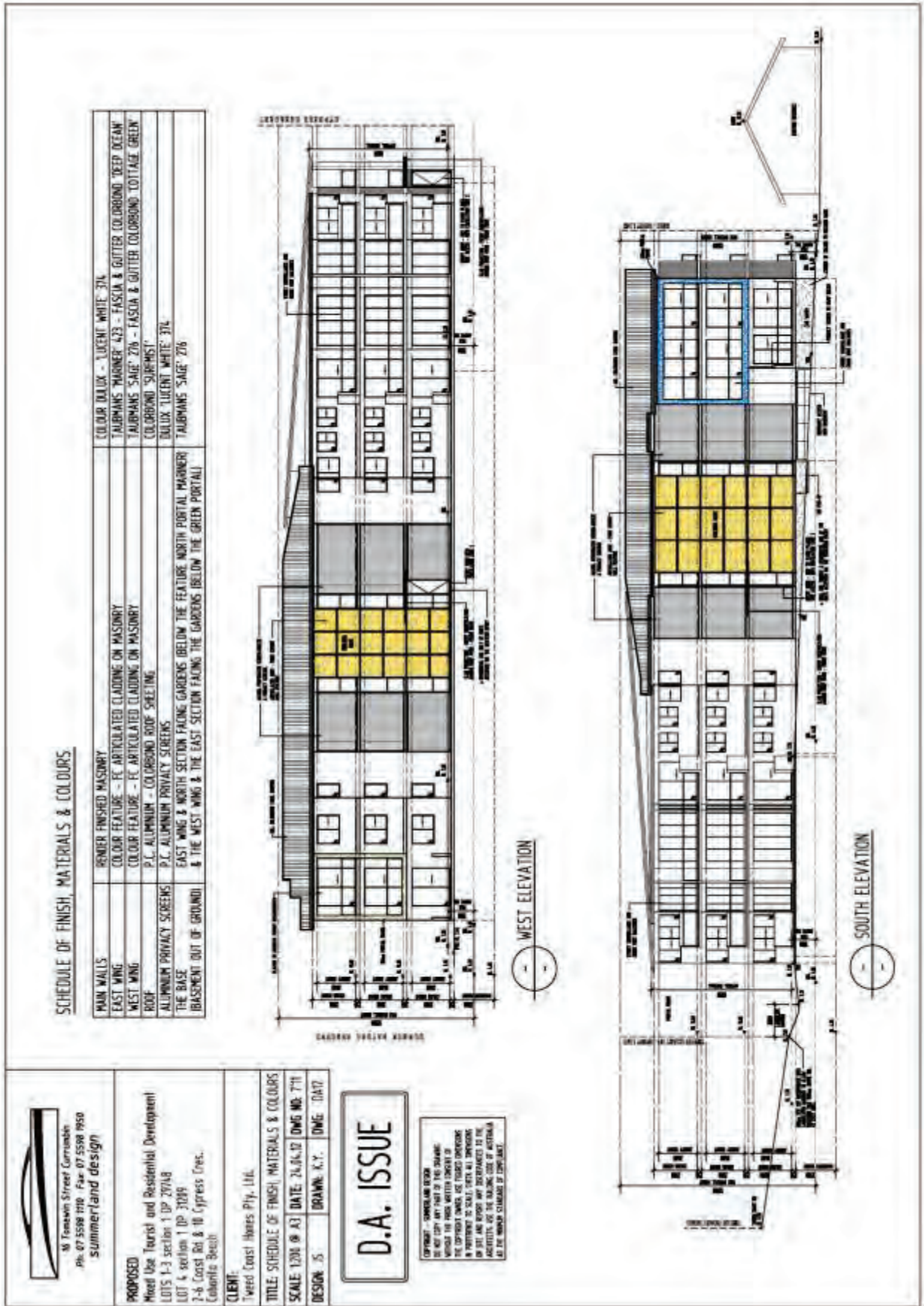
PROPOSED
Mixed Use Tourist and Residential Development
LOTS 1-3 section 1 DP 29748
LOT 4 section 1 DP 30189
2-8 Coast Rd & 10 Cypress Cres.
Corvallis Beach

CLIENT:
Twisted Coast Homes Pty. Ltd.

TITLE: SCHEDULE OF FINISH, MATERIALS & COLOURS
SCALE: 1:200 @ A3 **DATE:** 24.06.12 **DWG NO:** 711
DESIGN: JS **DRAWN:** K.V. **DATE:** DAH

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PROPOSED
 Mixed Use Tourist and Residential Development
 LOTS 1-3 section 1 DP 29748
 LOT 4 section 1 DP 31039
 2-8 Coast Rd & 10 Cypress Cres.
 Coleridge Beach

CLIENT:
 Tweed Coast Homes Pty. Ltd.

TITLE: SCHEDULE OF FINISH, MATERIALS & COLOURS

SCALE: 1:200 @ A3 **DATE:** 24.06.12 **DWG NO:** 711

DESIGN: JS **DRAWN:** K.Y. **DWG:** DAD7

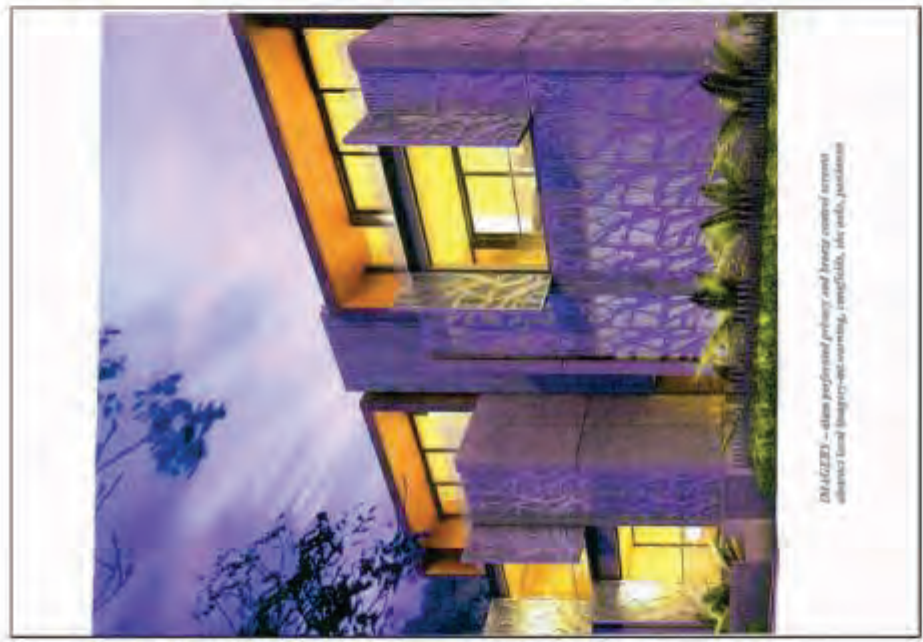
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 <p>16 Townsley Street Cornwall Ph: 07 5598 1199 Fax: 07 5598 1952 summerland design</p>	
<p>PROPOSED Mixed Use Transit and Residential Development LOTS 1-3 section 1 DP 25748 LOT 4 section 1 DP 30289 2-8 Coast Rd & 10 Cypress Cres. Gabarrilla Beach</p>	
<p>CLIENT: Tweed Coast Homes Pty. Ltd.</p>	
<p>TITLE: SCHEDULE OF FINISH, MATERIALS & COLOURS</p>	
<p>SCALE: E300 @ A3</p>	<p>DATE: 24.06.12</p>
<p>DESIGN: JS</p>	<p>DRAWN: K.Y. DWG: DATE</p>

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*DELICATE - often performed privacy and linear external screens
abstract form (longer) - evening, twilight, day, night, transition*

— ALUMINIUM PRIVACY SCREENS
P.C. ALUMINIUM PRIVACY SCREENS
DARK LUCENT WHITE 314

LANDSCAPE PLANS:

landscape intent notes

This Landscape Concept package outlines landscape proposals for the proposed mixed use tourist and residential development at Cypress Crescent, Cabarita Beach.

Lots 1-3 section 1 DP 29748
Lot 4 section 1 DP 31209
2-6 Toward Coast Road & 10 Cypress Crescent
Cabarita Beach, NSW

The proposal will include new landscape finishes and elements associated with building works. Landscape opportunities include:

- create new landscape areas that build on the existing coastal character of the area;
- creating common areas that are linked to private unit areas and allow for a variety of passive recreation experiences;
- creating landscape areas that capitalise on existing outlooks and views;
- creating areas of high amenity for residents and visitors;
- create landscaped areas that improve general amenity and provide privacy to private balcony areas.

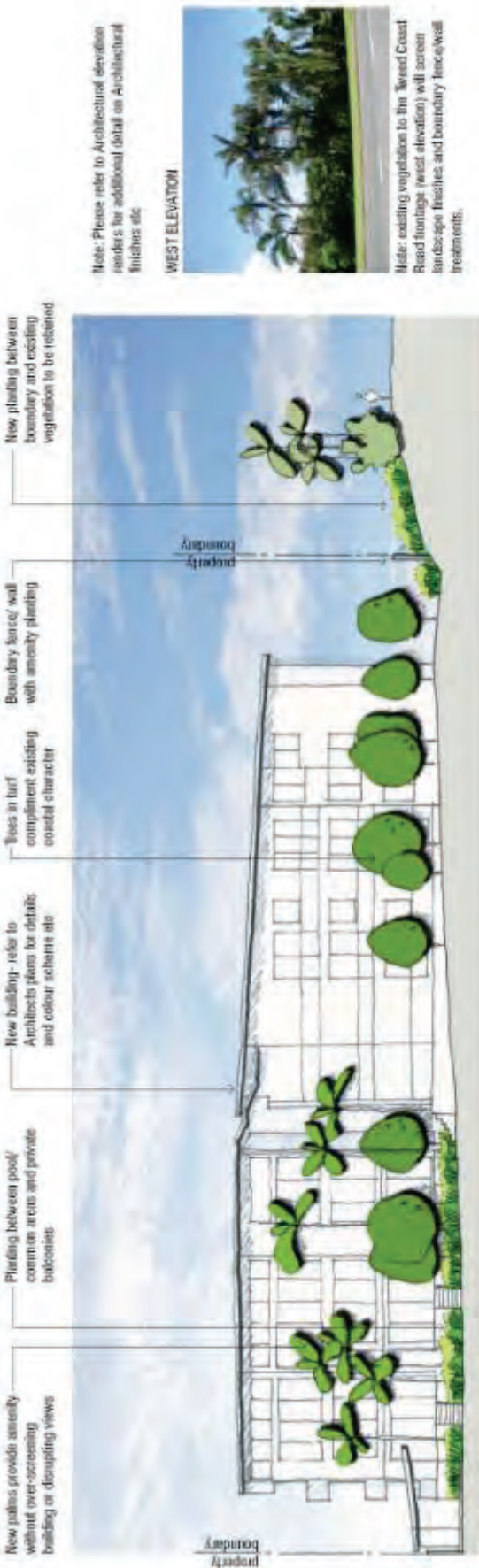
Refer to the following pages for additional detail on the landscape areas



cypress crescent, cabarita mixed use tourist and residential development landscape concept

040 5168 1001 010 27 04 12





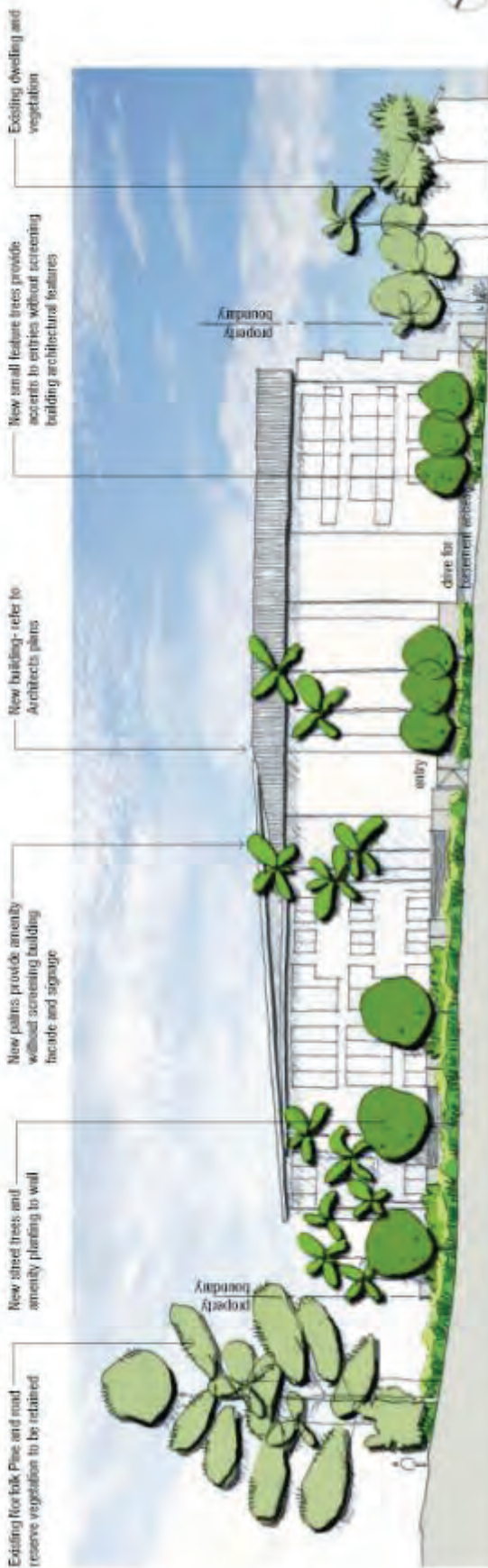
Note: Please refer to Architectural elevation renders for additional detail on Architectural finishes etc.

WEST ELEVATION



Note: existing vegetation to the West Coast Road frontage (west elevation) will screen landscape features and boundary fence/wall treatments.

SECTION A / NORTH ELEVATION 1:200 @ A3



SOUTH ELEVATION 1:200 @ A3

cypress crescent, cabarita- mixed use tourist and residential development
 landscape concept
 ref: 21/03/1003 date: 27/04/11

verge

URBAN LANDSCAPE ARCHITECTURE

100/10/00000000

100/10/00000000

100/10/00000000

100/10/00000000

plant palette

BOTANICAL NAME	COMMON NAME	HEIGHT	SPREAD	USE	NOTES
TREES					
<i>ACHYROPSOLISAELE cuneinervis</i>	Bergamot Palm	10-4	5	GENERAL	Native, preferred for a number of uses to provide a shady, white limbing screening
<i>BAKESIA laevis</i>	Garik Daniels	5-8	6+	FEATLIFE	Native, small spreading tree - attractive foliage and flower spikes
<i>BAKESIA arenaria</i>	Coastal Banksia	10	5	GENERAL	Native, common to area
<i>COLEAUCOCCUS areolatus</i>	Turkeroak	10	5	GENERAL	Native, attractive, bark and seed cones foliage
<i>ELAEOCARPUS coveata</i>	Hardwooding	10-4	5+	GENERAL	Native, tall, upright, flowers, tree attracting fauna
<i>MYALEXIA guineensis</i>	Pigeonbeak	10-4	5+	GENERAL	Native, palm-like
<i>MELICOTE ciliolata</i>	Link Doughwood	10-4	5+	FEATLIFE	Native, flowering tree
<i>INDRAJALIS leucoides</i>	Pandanus	10-4	5+	GENERAL	Native, large, and thick salt-tolerant
<i>ALBIZIA odora</i>	White Parrotia	5 to 10	5	FEATLIFE	Flowering feature tree for pool common areas
<i>STROPHILATUS spaldii</i>	Firewheel Tree	10-4	5+	FEATLIFE	Native, flowering tree
SHRUBS & FEATURE PLANTS					
<i>AGAVE attenuata</i>	Agave	1	1	FEATLIFE	Contrasting foliage amongst groundcovers
<i>ACACIA acuminata</i>	Native Quail	2	1.5	FEATLIFE/TREE	Native, tall, upright, spreading plant with feature qualities
<i>ALSTIMANTHUS albus</i>	Malaya Berry	1	2	GENERAL	Native, good looking shrub
<i>BAKESIA sp</i>	Banksia	5 to 10	5+	GENERAL	Native, possible use as a flowering feature
<i>CHORAZIA rugosa</i>	Palm Lily	2+	2+	FEATLIFE	Native, feature plant
<i>DORNBURGIA corymb</i>	Stem Lily	2+	2+	FEATLIFE	Native, strong feature plant with large, red flower spikes
<i>FRAXEA myrsina</i>	Red Bay	4	2	FEATLIFE	Shrub and root to be used feature, stem only viable
<i>MYALEXIA imbricata</i>	Fraser Juniper Myrtle	2	2	GENERAL	Native, small flowering shrub
<i>MYRSINEAE sp</i>	Myrsine	2	2	GREEN	Screen and hedging plant
<i>PHILODENDRON Xanthi</i>	Xanthi	1	1	GENERAL	Evergreen shrub with strong foliage, tropical areas, mass planting
<i>RAPELLOIDES rubra</i>	Red Palm	3.5	2	FEATLIFE	Flowering shrub for feature, mass, drought and shade
<i>SCYTHIA sp</i>	Lily Bell	1	1	SUN/SHADE	Native, mass plant, bedding
<i>WESTRALIA sp</i>	Coastal Rosemary	2	2	GENERAL	Native, 10-15cm, foliage and colour contrast
<i>XANTHOXIPHYA robusta</i>	Grass tree	2	2	FEATLIFE	Native, screen plant, foliage feature
<i>XANTHOXIPHYA microcarpa</i>	Grass tree	1	1	FEATLIFE	Native, accent plant, foliage feature
GROUNDCOVERS					
<i>BAKESIA laetevirens</i>	Yellow Canella			FEATLIFE	Native, small groundcover shrub with attractive flowers
<i>CHORAZIA rugosa</i>	Choraz			GENERAL	Native, flowering feature for colour contrast
<i>CHORAZIA rugosa</i>	Scage			GENERAL	Native, general purpose and aesthetic
<i>CHORAZIA rugosa</i>	Pink Face			FEATLIFE	Native, tall, feature
<i>CHORAZIA rugosa</i>	Swamp Lily			FEATLIFE	Native, elegant, feature, good form with broad leaves, to 1 metre, large white flowers; feature amongst groundcover
<i>DANIELIA sp</i>	Flax Lily			GENERAL	Native, fern-like, fine, bushy plant, bush with striking leaves and blue flowers
<i>DORNBURGIA corymb</i>	Stem Lily			GENERAL/SHADE	Native, fern-like, bushy plant, bush with striking leaves and blue flowers
<i>FRAXEA myrsina</i>	Red Bay			GENERAL	Native, general purpose and weed areas
<i>GAUCHEA nigra</i>	Amossy Club Rush			FEATLIFE/GENERAL	Flowering low groundcover, sturdy bush for contrast
<i>GAUCHEA nigra</i>	Gazania			GENERAL	Native, daisy and groundcover, suitable for mass and flowers
<i>HEPACOSTEMMA rubra</i>	Native Sunspotted			GENERAL	Native, daisy-like groundcover for general use
<i>LEUCOPHYA argentea</i>	Garik Fronds			GENERAL	Native, bushy, leafy groundcover for general use
<i>LOMBARDIA sp</i>	Stem Lily			GENERAL	Native, bushy, leafy groundcover for general use
<i>POA bulbosa</i>	Stem Lily			GENERAL	Native, fine, leafy grass, covering grey green lawn
<i>SOAVALIA acutata</i>	Tim Flower			GENERAL	Native, small flowering groundcover
<i>WOLLA laevis</i>	Native Millet			GENERAL	Native, purple flowers, upright, groundcover; many shaded areas
<i>WOLLA laevis</i>	Native Millet			GENERAL	Native, purple flowers, upright, groundcover; many shaded areas
<i>ZEPHYRUS maculata</i>	Rocky Couch			FEATLIFE	Native, bushy, upright groundcover
VINES & CLIMBERS					
<i>DIPILOPSYLLIA laevis</i>	Ontario Popcorn			GENERAL	Native, flowering climber, often pruned for good bushy climber
<i>DIPILOPSYLLIA laevis</i>	Western Vine			GENERAL	Native, flowering, tree-like vine, often pruned to be bushy climber; can be used as screen

Note plant species have been selected for their environmental compatibility qualities and to ensure compliance with Tweed Shire Council's requirement that 90% of the plants be species native to the Tweed. Tweed Shire Councils recently released Native Species Plant List and Planting Guide were used in establishing the above palette and will be further reviewed during detailed design phase

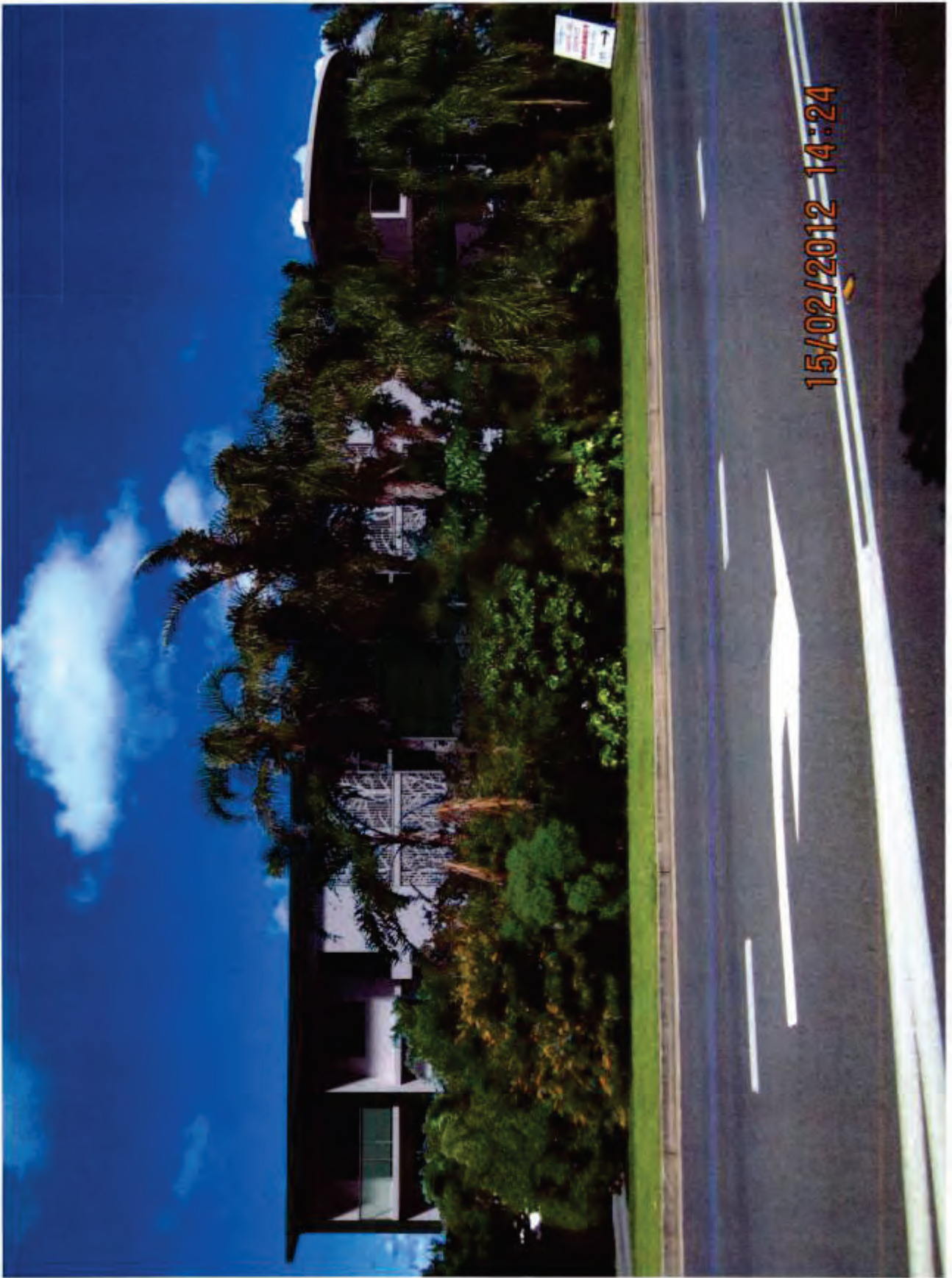
cypress crescent, cabarita- mixed use tourist and residential development

landscape concept dhs 3163-LDM 01/12/12 (04.12)



MONTAGE PHOTOS:









OPTIONS:

1. Endorse this report and forward it to the NSW Department of Planning and Infrastructure as Council's formal submission on the Preferred Project Report; or
2. Modify this report and forward it to the NSW Department of Planning and Infrastructure as Council's formal submission on the Preferred Project Report.

CONCLUSION:

Council has an opportunity to review its original submission to the NSW Department of Planning and Infrastructure on the proposed Major Project for a mixed residential and tourist development at Cabarita Beach.

Relevant Council officers have reviewed the PPR prepared by the applicant and forwarded to Council by the DP&I. These comments have been assembled into the report as a revised submission.

The purpose of this report is to seek Council endorsement of the issues raised in the review of the PPR so that they may be forwarded to DP&I.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION

1. Council submission to the Department of Planning and Infrastructure: MP09_0016 Environmental Assessment (ECM 52818318)
 2. Recommended amended conditions of consent (ECM 52828724)
-

16 [PR-CM] Development Application DA11/0628 for Alterations and Additions to Detached Dual Occupancy at Lot 3 Section 6 DP 17606 No. 14 Marine Parade, Kingscliff

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0628 Pt1



Civic Leadership

SUMMARY OF REPORT:

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the Department of Planning, officers have resolved to report this application to full Council.

The SEPP No. 1 variation relates to Clause 16 of the Tweed Local Environmental Plan 2000 (TLEP 2000) which prescribes a two-storey height limit for the site. Although the design of the proposal has regard for the steep topography and 'steps up' the site, a portion of the proposal represents a three-storey building height. The degree of horizontal variation is 18.42%. The degree of total floor area variation is minor at 7.61%.

The existing dual occupancy was approved by Council on 4 April 2003 following assessment of DA02/2052 which involved the construction of a second dwelling with frontage to Hungerford Lane. The existing dwelling facing Marine Parade (subject of this proposal) has been located on the site for approximately 70 years.

The applicant seeks consent to undertake alterations and additions to an existing dwelling within a detached dual occupancy. Some demolition works are required to facilitate additions. The alterations and additions improve the functionality of the dwelling. The development includes retention of three bedrooms and modification to the existing lower and upper floor plans with the creation of an additional level for the purposes of master bedroom, ensuite and deck. Due to the steep slope of the land, a minor portion of the additional level constitutes three storeys.

The application requires concurrence pursuant to SEPP No. 1. However, Council has an instrument of assumed concurrence for this purpose and it was therefore not necessary to refer the application to the Department of Planning and Infrastructure (DP&I) for concurrence purposes.

The proposal was required to be placed on public exhibition. Four objections were received during the exhibition period. Matters raised within the submissions have been addressed by the applicant and considered in the assessment of the proposal.

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

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 16 of the Tweed Local Environmental Plan 2000 regarding building height be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed.**
- 2. Development Application DA11/0628 for alterations and additions to detached dual occupancy at Lot 3 Section 6 DP 17606 No. 14 Marine Parade, Kingscliff be approved subject to the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and:**
 - Plan No. WD01 Issue H (Site Plan) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD02 Issue J (Ground Floor Plan) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD03 Issue J (Level 1 Floor Plan) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD04 Issue I (Upper Level Floor Plan) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD05 Issue J (Elevations: North West & South East) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD06 Issue J (Elevations: North East & South West) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD07 Issue J (Section A & B) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD11 Issue B (Coloured Elevations: North West & South East) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**
 - Plan No. WD12 Issue B (Coloured Elevations: North East & South West) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012**

- Plan No. WD13 Issue C (Ground Floor Demolition Plan) as amended in red, Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 16 August 2010
- Plan No. WD14 Issue C (Level 1 Demolition Plan) as amended in red, Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 16 August 2010
- Plan No. WD16 Issue A (Sections C & D) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 30 March 2012.

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

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

[GEN0300]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

6. A detailed plan of landscaping in accordance with the amended statement of landscaping intent (provided to Council 4 April 2012) is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

7. Prior to issue of a Construction Certificate, the applicant is required to submit a Demolition Work Plan that encompasses all demolition activities, to the satisfaction of Council's General Manager or his delegate.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

8. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

9. The erection of a building in accordance with a development consent must not be commenced until:

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

11. Residential building work:

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- in the name and licence number of the principal contractor, and
 - the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- the name of the owner-builder, and
 - if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

[PCW0245]

- 13. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:**
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0255]

14. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required. These measures are to be in accordance with any erosion and sedimentation control plan and adequately maintained throughout the duration of the development.

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

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

[PCW0985]

15. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

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

[PCW1065]

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

[PCW1170]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0245]

22. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

23. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

24. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

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

[DUR0415]

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

Please note timber retaining walls are not permitted.

[DUR0835]

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

[DUR0905]

28. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

29. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

30. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1945]

32. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.

[DUR2185]

33. All stormwater from roofed and paved areas are to be connected directly into road drainage pits where available, kerb and gutter drainage canal or inter allotment drainage line where provided.

All drainage systems shall comply with AS 3500.

[DUR2305]

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

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

[DUR2485]

35. Plumbing

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

[DUR2495]

- 36. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**

[DUR2535]

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

[DUR2545]

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

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

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

[DUR2555]

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

[DUR2565]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 40. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).**

[POC0205]

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

[POC0435]

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

[POC0475]

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

[POC1045]

USE

44. The nominated rear deep soil zones (as shown on Plan No. WD10 Issue F (Impervious calculation) Project No. P504 prepared by Glen Petersen Architect Pty Ltd and dated 28 March 2012 accompanying the application) are to be retained in perpetuity exclusively for the purposes of the growth of vegetation and mature trees.

[USENS01]

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

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

REPORT:

Applicant: Ms S Eady
Owner: Ms Sandra J Eady
Location: Lot 3 Section 6 DP 17606 No. 14 Marine Parade, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$250,000

BACKGROUND:

Council is in receipt of a development application for additions and alterations to a detached dual occupancy on a parcel of land zoned 2(b) Medium Density Residential. The proposed additions and alterations reconfigure the floor area of one of the dwellings and create an additional level, a portion of which is identified as a three-storey building height.

History

The existing dwelling with frontage to Marine Parade has been located upon the subject site since 1939. The second dwelling with frontage to Hungerford Lane was constructed in 2003 in accordance with development consent DA02/2052. A 65m² timber deck (and stairs) to the rear of the existing dwelling facing Marine Parade was constructed sometime after 1997 in accordance with building application 1511/97B.

The Subject Site

The subject site at 670.3m² is regular and rectangular in shape with an approximate 13.4m frontage to both Hungerford Lane and Marine Parade. The site is steep, falling from south west to north east over a distance of approximately 50m. The steepest portion of the site is the eastern half with a gradient of approximately 35 degrees. A 3m wide sewer easement and 0.75m high rock wall cut across the middle of the site. Landscaping consists of native and exotic species primarily located between the dwellings.

Vehicular access to the site is obtained via Hungerford Lane for the second dwelling and via Marine Parade for the primary dwelling. Council's records do not indicate the site is affected by any title restrictions.

The site is situated within an established medium density residential area characterised by tiered single and multi-dwelling houses on steep sites that take advantage of ocean views. Two-storey dwellings adjoin the site at 12 and 16 Marine Parade with vehicular access from Hungerford Lane. A beachfront reserve (zoned 6a) is located to the north east along Marine Parade which provides a substantial area for public recreation and associated car parking.

The built character of the area is typical of an area under transition with a mix of old and new architectural styles and building construction. Development north west of the subject site from 20 Marine Parade onward is permitted to be three-storey in height.

The Proposed Development

The alterations and additions are proposed to only one of the two detached dwellings located on the site. The proposal includes:

- The addition of an upper level

- The extension of the existing residence to the rear
- Two new deck areas (privacy screen to south east deck)
- Internal refurbishment of the existing residence
- Demolition works in order to facilitate the proposed extensions (removal of walls and roof areas)
- Retention of existing garage with provision of new driveway and crossover
- Retention of existing fencing, side stairs and timber decking to rear of dwelling
- Additional landscaping.

Three-Storey Component of Proposal

The meaning of 'storey' is defined in Schedule 1 of the TLEP 2000 as follows:

<i>storey</i>	means:
	(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 of the 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.
	A storey which exceeds 5 metres for commercial 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.

Accordingly, the starting point of the three-storey component of this proposal is clarified by determining the floor area extending to the rear of the ground level that exceeds 1.5m in height. In this case, the retaining wall (highlighted below in yellow), a distance of 6.8m from the front boundary alignment, provides that reference. A vertical line is then drawn up through level 1 and the upper level on the section elevation (red line).

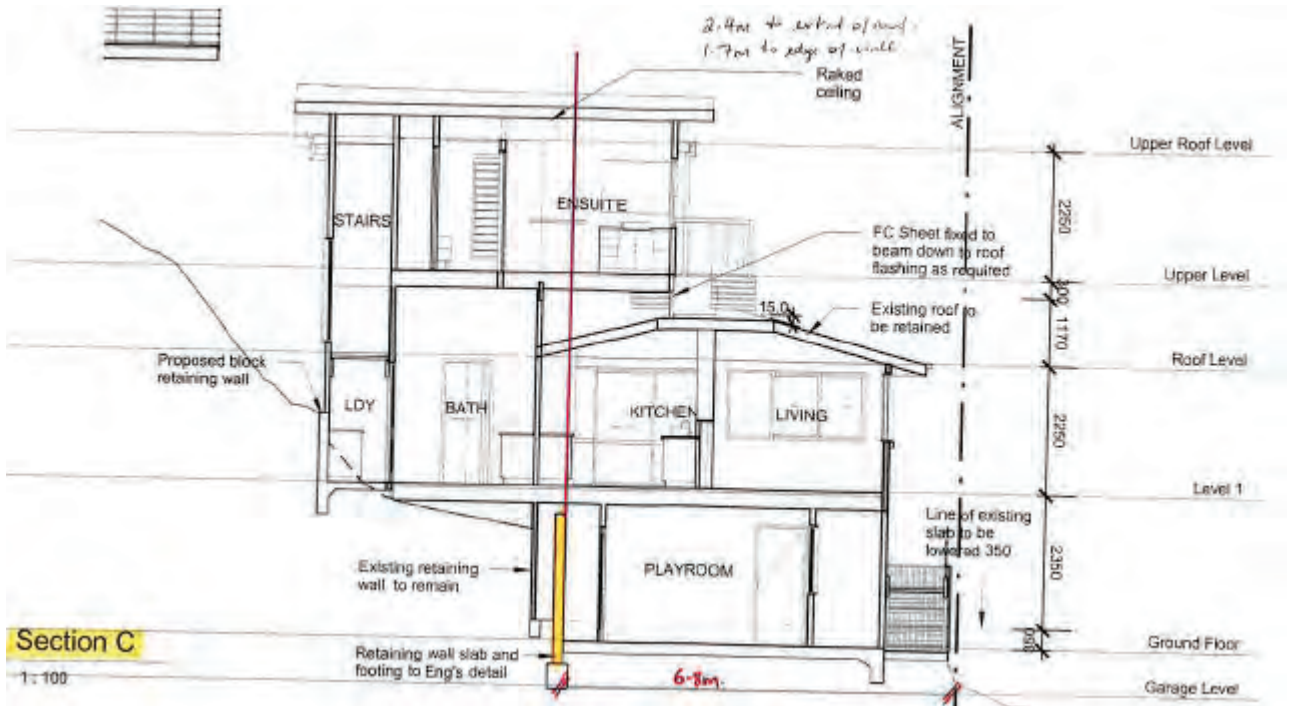


Figure 1: Section C (south east elevation)

It is possible to calculate that the roof on the upper level extends approximately 2.4m from that reference point and that the edge of the wall extends approximately 1.7m. The definition for storey includes the space between the floor of a deck and the roof immediately above it.

Applying the same method to the north west elevation, it is possible to calculate that the roof on the upper level extends approximately 1.7m from that reference point and that the edge of the wall extends approximately 1.1m.

The visual impact of the three-storey component of the development is demonstrated in Figure 3 below. The area between the blue lines (2.1m wide) appears as three-storey and represents an 18.42% section of the 11.4m wide building.



Figure 3

By translating this method to the upper level floor plan, it is possible to calculate the percentage of overall floor area that is defined as three-storey. A horizontal line is drawn through the floor plan parallel to, and a distance of 6.8m from the front boundary alignment representing the vertical line in Figure 1. Enclosed floor areas and roofed decking are included (highlighted in yellow) as shown in Figure 4 below.

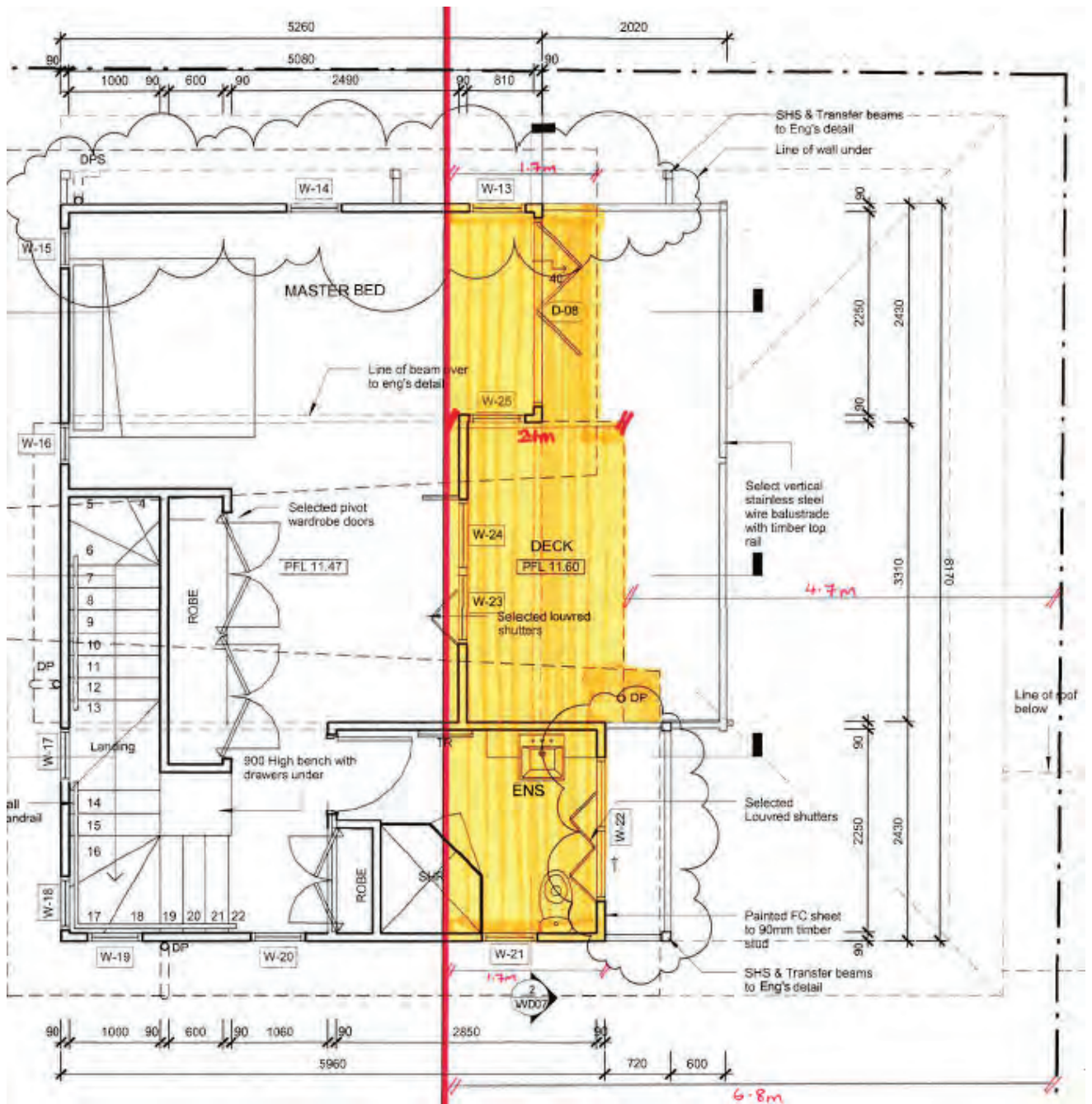


Figure 4

The total floor area representing a three-storey component on the upper level is 15.45m². The area includes 4.13m² each of ensuite and master bedroom/roofed decking and 7.19m² of roofed decking. It represents 7.61% of the total floor area of the dwelling (203m²) and 27.58% of the upper floor area of 56m² including decking.

The Gross Floor Area (GFA) of the upper level three-storey component is 11.44m² which represents 7.42% of the overall GFA of the dwelling (154m²).

Summary

The proposal does not represent an increase in density on the site. The alterations and additions to the older dwelling on the site facilitate a timely, contemporary upgrade to that structure and improve the functionality of the residential space. The inclusion of an

additional storey creates a portion that is identified as three-storey. However, at no point does the building exceed the 9m building height limit for the site.

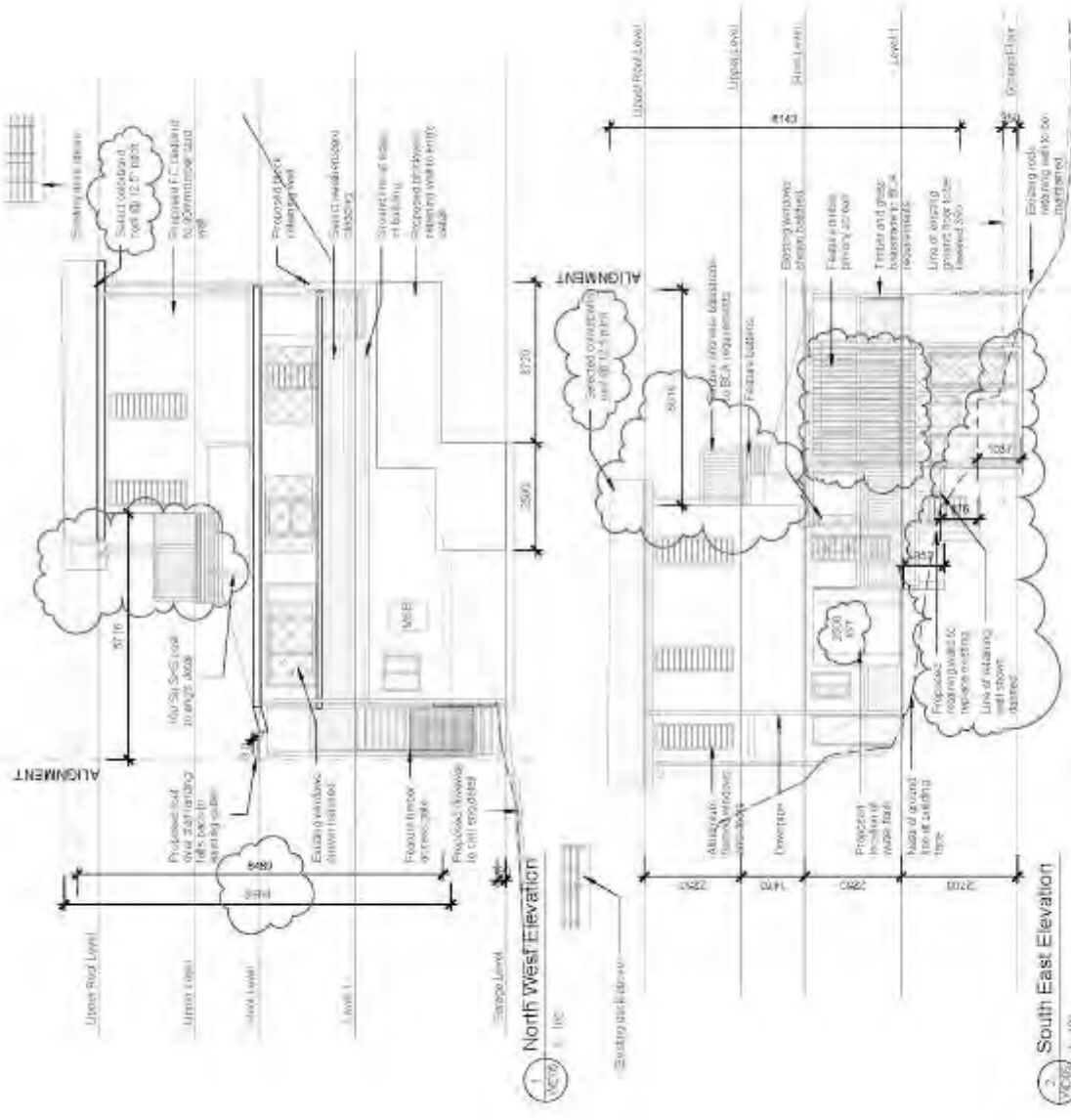
Visual impact of the proposal has been minimised through sensitive design and the continuing residential use does not conflict with adjoining land uses. With few options available on the topographically constrained site to increase the floor area of the existing dwelling, the minor variation to the two-storey building height control is considered reasonable. As such, the proposal is recommended for approval, subject to conditions.

SITE DIAGRAM:



Locality Plan
 Lot 3 Section 6 DP 17606
 No.14 Marine Parade, Kingscliff

<p><small>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 damage) and costs (which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Eid before you Dig" enquiry must be made by calling 1310. The information contained on this document remains valid for 30 days only from the date of supply.</small></p>	<p><small>Cadastre: 04 June, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 1 2 Km 1:75,000 @ A4 Portrait DO NOT SCALE COPY ONLY - NOT CERTIFIED</small></p> <p><small>GDA Map Projection: Universal Transverse Mercator Horizontal Datum: Geocentric Datum of Australia 1984 Vertical Datum: Mean Sea Level</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>	 <p>TWEED SHIRE COUNCIL</p>
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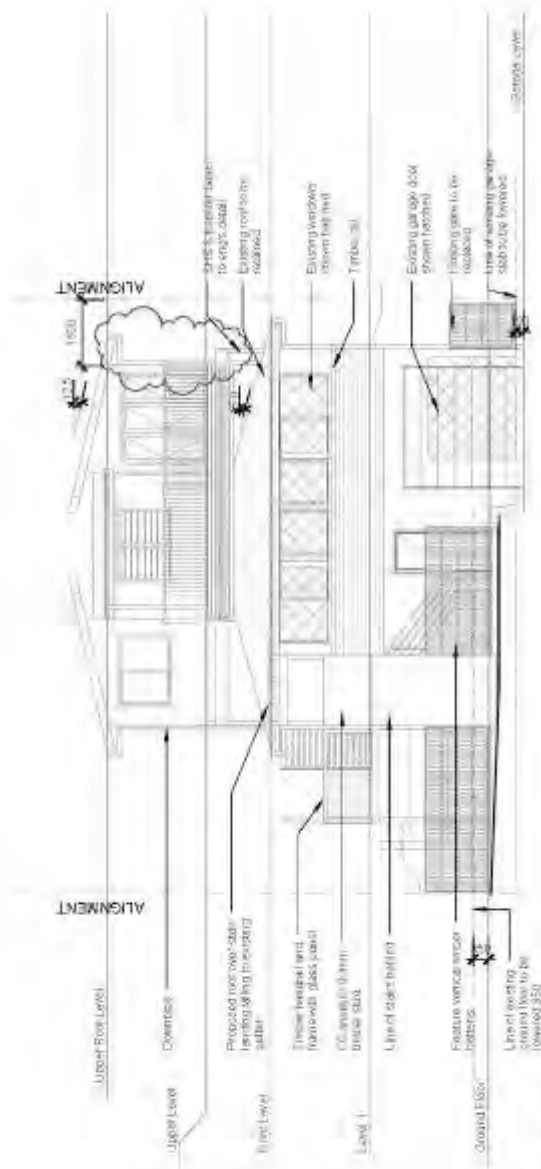


AMENDMENT
 DATE: 14/07/2012
 BY: 3031/12
 PROJECT: HOUSE REFURBISHMENT
 CLIENT: SANDRA EADY
 DRAWN BY: Elevations
 SHEET: 1
 SCALE: 1:100
 DRAWN: RN
 CHECKED: GP
 PROJECT: W006
 SHEET: J

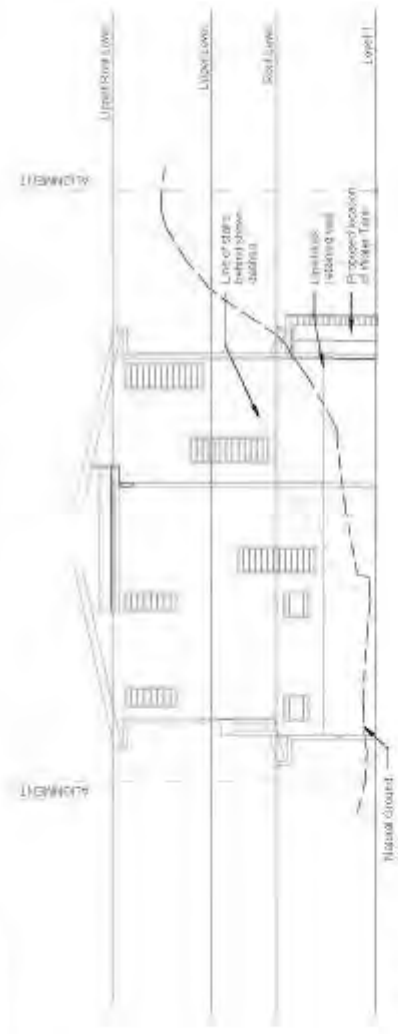
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HOUSE REFURBISHMENT
 144 MARINE PARADE
 KINGSCLIFF
 SANDRA EADY
 Elevations

I, THE CLIENT, HEREBY AUTHORISE THE ARCHITECT TO PREPARE AND SUBMIT TO THE LOCAL GOVERNMENT FOR CONSIDERATION AND APPROVAL THE ARCHITECTURAL DRAWINGS AND SPECIFICATIONS FOR THE WORK DESCRIBED IN THESE DOCUMENTS. I AGREE TO BE BOUND BY THE CONDITIONS OF THE CONTRACT AND TO ACCEPT THE ARCHITECT'S RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE WORK DESCRIBED IN THESE DOCUMENTS. I AGREE TO BE BOUND BY THE ARCHITECT'S PROFESSIONAL OPINION AND TO ACCEPT THE ARCHITECT'S RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE WORK DESCRIBED IN THESE DOCUMENTS.



2 North East Elevation
1:100



1 South West elevation
1:100

AMENDMENT
 OF PART
 OF THE RESOURCE MANAGEMENT ACT 1991
 IN RELATION TO THE
 PROPOSED
 HOUSE REPAIR/REBUILT
 14A MARINE PARADE
 KINGSCLIFF
 SHEET
 SANDRA EADY
 Elevations

SUBMITTED FOR APPROVAL BY THE
 CITY OF ADELAIDE
 ON 11/07/2012
 PROJECT NO. 14A MARINE PARADE
 SHEET NO. 1 OF 1
 DRAWN BY: S.EADY
 CHECKED BY: S.EADY
 DATE: 11/07/2012
 SCALE: 1:100

PROJECT NO. 14A MARINE PARADE
 SHEET NO. 1 OF 1
 DRAWN BY: S.EADY
 CHECKED BY: S.EADY
 DATE: 11/07/2012
 SCALE: 1:100

HOUSE REPAIR/REBUILT
 SANDRA EADY
 Elevations

I, THE CONSULTANT, HEREBY DECLARE THAT I AM A REGISTERED ARCHITECT UNDER THE ARCHITECTS ACT 1993 AND I AM A MEMBER OF THE ARCHITECTS BOARD OF SOUTH AUSTRALIA. I HAVE PREPARED THIS DOCUMENT IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS OF THE ARCHITECTS BOARD OF SOUTH AUSTRALIA. I HAVE PREPARED THIS DOCUMENT IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS OF THE ARCHITECTS BOARD OF SOUTH AUSTRALIA. I HAVE PREPARED THIS DOCUMENT IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS OF THE ARCHITECTS BOARD OF SOUTH AUSTRALIA.

AMENDMENT
 OF PART
 OF THE RESOURCE MANAGEMENT ACT 1991
 IN RELATION TO THE
 PROPOSED
 HOUSE REPAIR/REBUILT
 14A MARINE PARADE
 KINGSCLIFF
 SHEET
 SANDRA EADY
 Elevations

SUBMITTED FOR APPROVAL BY THE
 CITY OF ADELAIDE
 ON 11/07/2012
 PROJECT NO. 14A MARINE PARADE
 SHEET NO. 1 OF 1
 DRAWN BY: S.EADY
 CHECKED BY: S.EADY
 DATE: 11/07/2012
 SCALE: 1:100



Checked: **RG** Date: **8/11**
 Drawn: **GP** Scale: **1:100**
 Project: **WD11** Rev: **8**
 Client: **WD11**

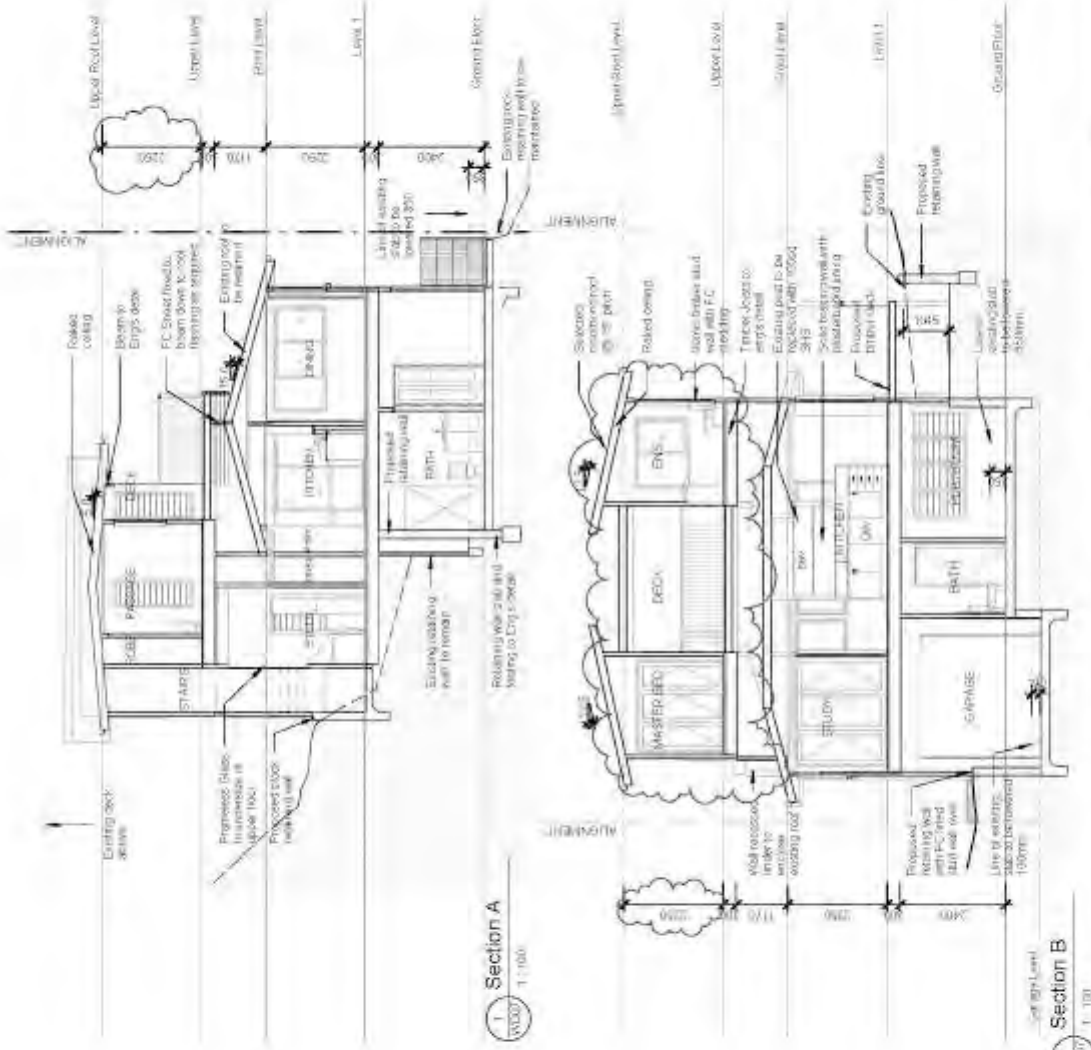
GPA
 GPM ARCHITECTURE
 144 MARINE PARADE
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 NSW 1585
 PH: 02 9339 4127
 FAX: 02 9339 4128
 EMAIL: gpa@gparchitect.com.au
 WWW: www.gparchitect.com.au
 JAN 1992 TO JULY 2012

Project: **HOUSE REFURISHMENT**
 Location: **144 MARINE PARADE KINGSCLIFF**
 Client: **SANDRA EADY**
 Drawing Title: **Colored Elevations**

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Date: **11/08/11** By: **WD11**
 Planning/Client Review: **RS** 30.03.12
AMENDMENT





1 Section A
1:100

2 Section B
1:100

NO:	AMENDMENT	BY:	DATE:
1	PROPOSED CHANGES	RL	30/11/12

I, THE ARCHITECT, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS DOCUMENT IS THE WORK OF MY FIRM AND THAT I AM A REGISTERED ARCHITECT WITH THE ARCHITECTS BOARD OF NEW ZEALAND. I AM NOT PROVIDING ANY PROFESSIONAL SERVICES TO YOU UNDER THIS CONTRACT. YOU ARE ADVISED THAT THE ARCHITECT'S LIABILITY IS LIMITED TO THE ARCHITECT'S OBLIGATIONS UNDER THIS CONTRACT AND THAT YOU SHOULD CONSULT YOUR SOLICITOR FOR FURTHER INFORMATION. ANY LIABILITY OF THE ARCHITECT WILL BE LIMITED TO THE AMOUNT OF THE FEE PAID FOR THIS CONTRACT.

Project: HOUSE REFURBISHMENT
 Location: 14A MARINE PARADE KINGSCLIFF
 Client: SANDRA EADY
 Section: Section A & B

GPA
 GROUP PRACTICE ARCHITECTS
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Project No: P504
 Drawing No: WD07
 Scale: 1:100
 Date: 30/11/12
 Author: RL
 Checker: RN



3D View 1



3D View 2



3D View 3

MODE	AMENDMENT	OF	DATE
1	PS04	1	30/03/12
AMENDMENT			



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Project:
**HOUSE
 REFURBISHMENT**

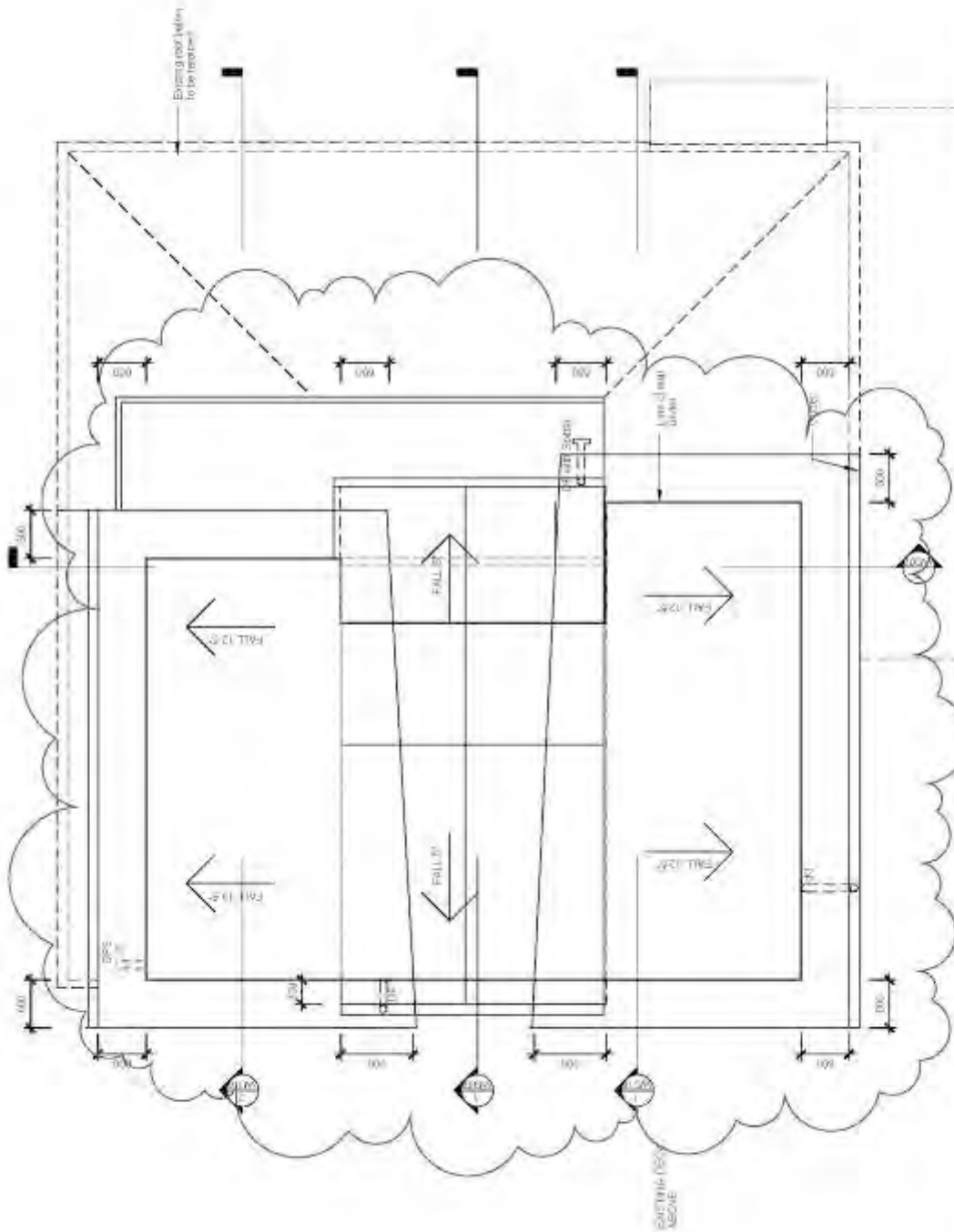
Client:
SANDRA EADY

Location:
**14A MARINE PARADE
 KINGSLIFF**

Client's Title:
3D VIEWS

GPA
 GROUP PRACTICE ARCHITECT PTY LTD
 14/1500 MARINE PARADE
 14/1500 MARINE PARADE
 PT 100 3024 4026
 WA 6150 4110
 WA 08 9438 4110
 WA 08 9438 4110

PS04
 Project Number: PS04
 Drawing Number: WD06
 Drawing Title: J



AMENDMENT

NO: _____ DATE: _____

BY: _____

I, THE ARCHITECT, HEREBY CERTIFY THAT I AM A REGISTERED ARCHITECT IN THE UNITED KINGDOM AND THAT I AM A MEMBER OF THE ARCHITECTS REGISTRATION BOARD (ARB) AND AM REGISTERED AS AN ARCHITECT.

THE ARCHITECT'S WORK IS SUBJECT TO THE ARCHITECTS ACT 1997 AND THE ARCHITECTS REGULATIONS 2002.

THE ARCHITECT'S WORK IS SUBJECT TO THE ARCHITECTS ACT 1997 AND THE ARCHITECTS REGULATIONS 2002.

Project: **HOUSE REFURBISHMENT**

Location: **14A MARINE PARADE KINGSCLIFF**

Client: **SANDRA EADY**

Drawing Title: **Roof Plan**

GPA

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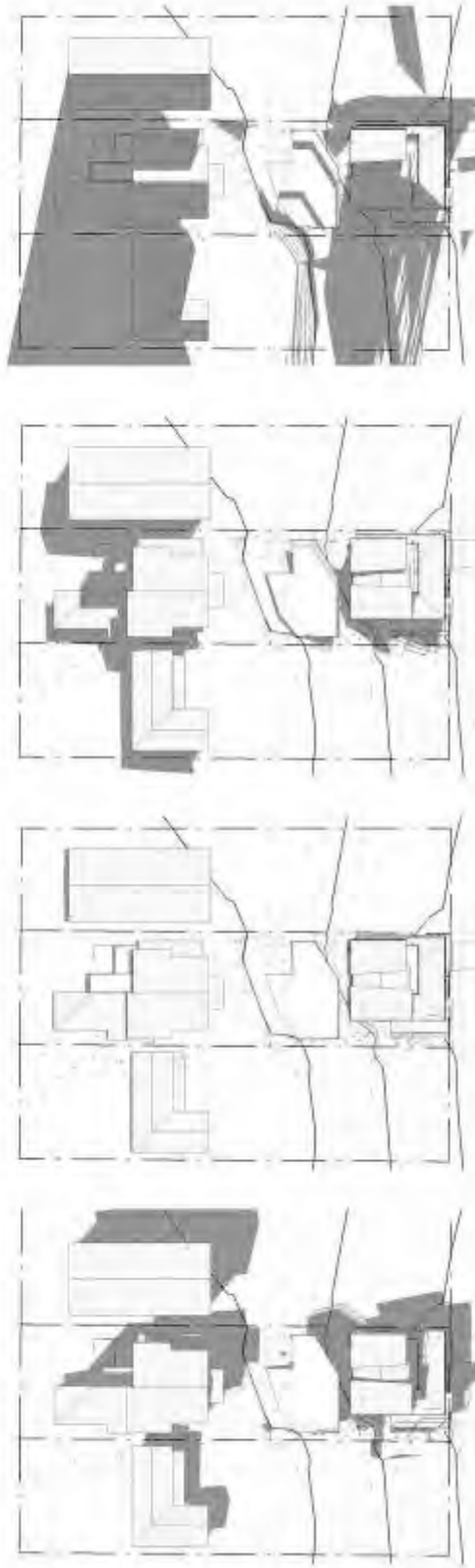
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Project No: **PS04**

Client: **WDOB**

Architect: **RN**

Drawn: **H**



1 SUMMER 9AM
WD14 1:500

2 SUMMER 12PM
WD14 1:500

3 SUMMER 3PM
WD14 1:500

4 SUMMER 6.30PM
WD14 1:500

DATE	AMENDMENT	BY	DATE
A	PRELIMINARY	RS	20/10/10
B	PROPOSED	RS	30/03/12



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Project:
HOUSE REFURBISHMENT

Client:
SANDRA EADY

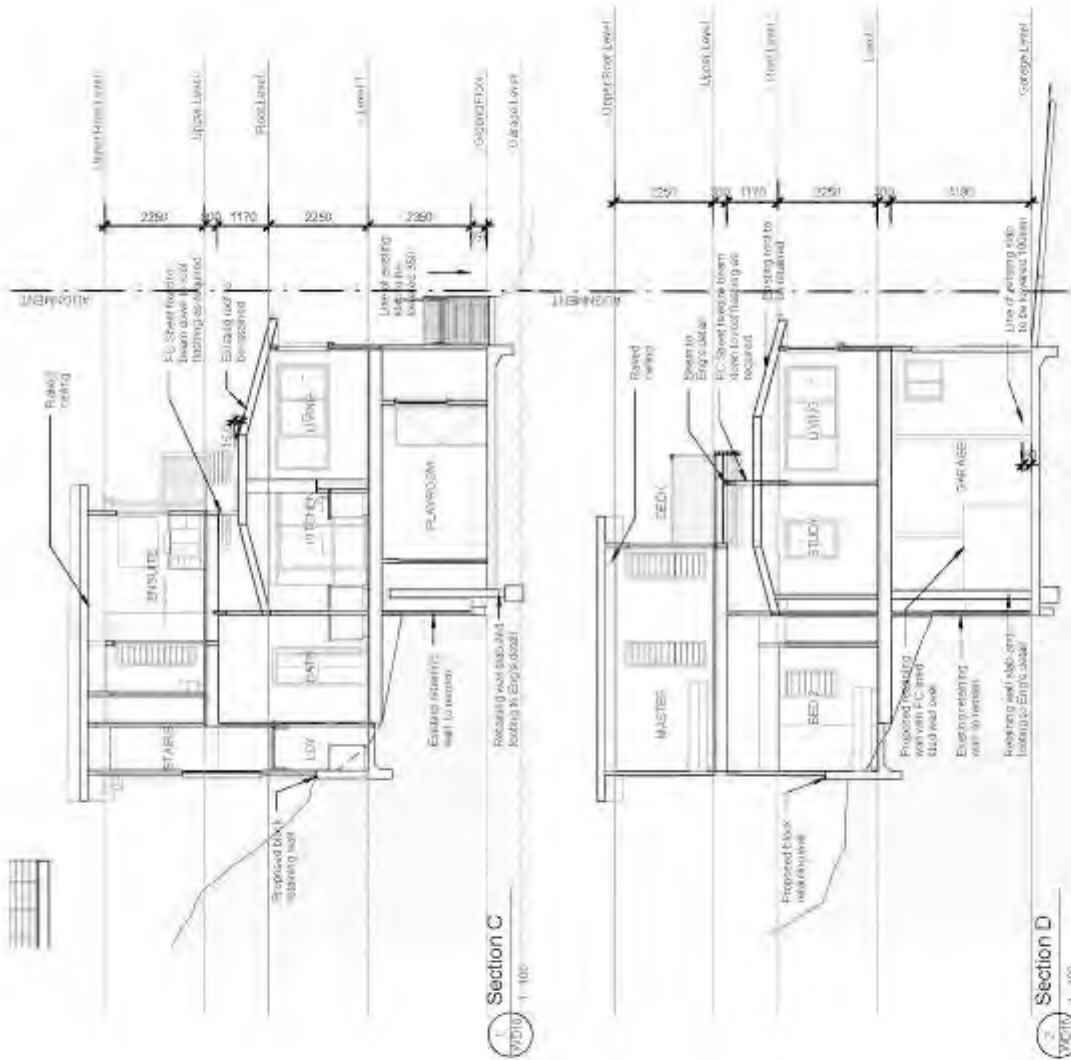
Location:
14A MARINE PARADE
KINGSCLIFF

Drawing Title:
Shadow Diagrams - Summer

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AVA+
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Project Number: PS04
Drawing Number: WD14
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Title: RM
Sheet: B



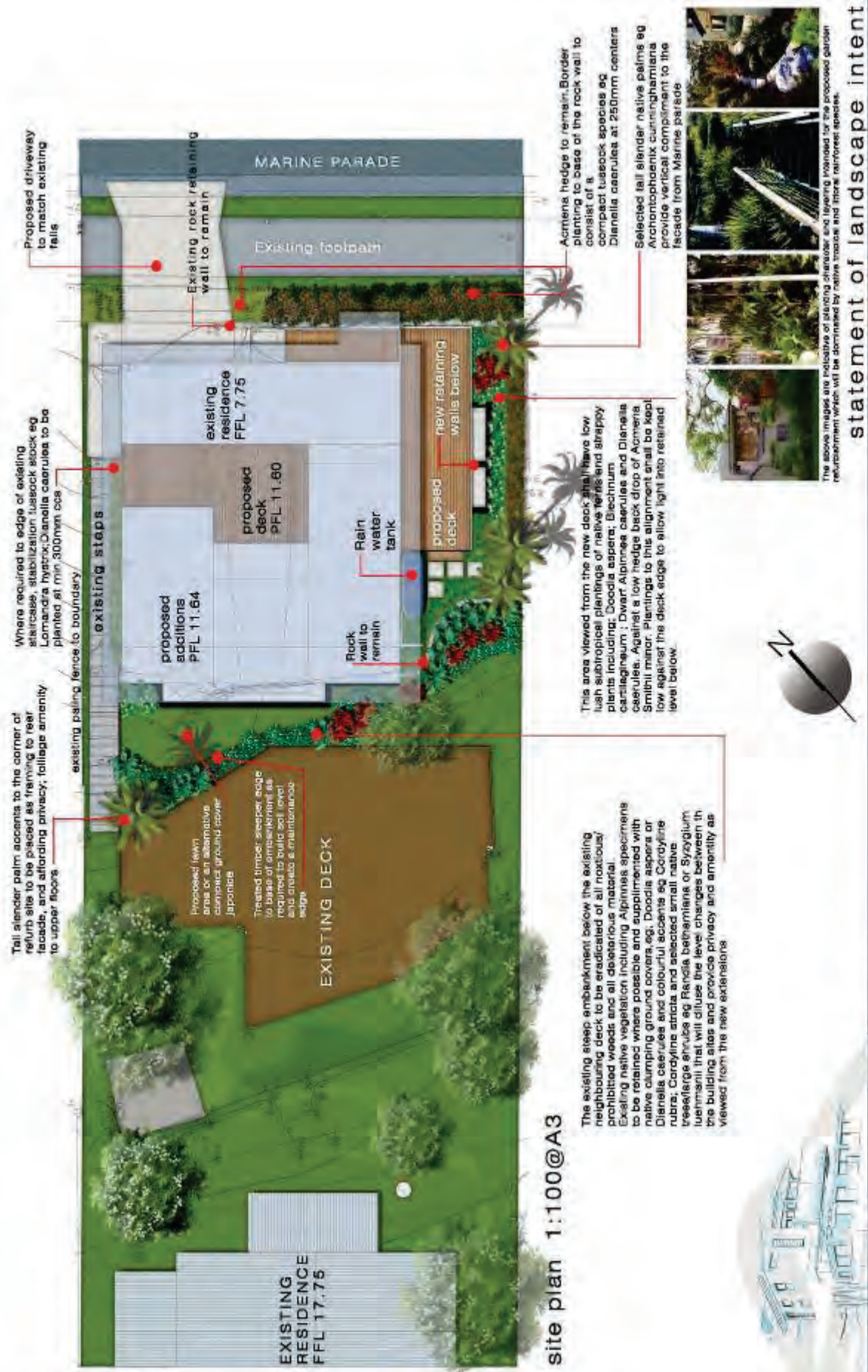
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 Checked: GP
 Scale: 1:100
 Date: 11/07/12
 Project: RM
 Drawing: WD16
 Sheet: P304
 Title: A

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Project: HOUSE
 Location: 14A MARINE PARADE
 Kingscliff
 Client: SANDRA EADY
 Section: Sections C & D

I, THE CONSULTANT, HEREBY DECLARE THAT I AM A REGISTERED ARCHITECT WITH THE ARCHITECTS BOARD OF AUSTRALIA AND THAT I AM A MEMBER OF THE ARCHITECTS BOARD OF AUSTRALIA. I AM NOT PROVIDING ARCHITECTURAL SERVICES TO ANY OTHER CLIENTS AT THE SAME TIME AS I AM PROVIDING ARCHITECTURAL SERVICES TO YOU. I AM NOT PROVIDING ARCHITECTURAL SERVICES TO ANY OTHER CLIENTS AT THE SAME TIME AS I AM PROVIDING ARCHITECTURAL SERVICES TO YOU.

DATE	DESCRIPTION	BY	CHECKED
11/07/12	PROPOSED AMENDMENT	GP	GP



site plan 1:100@A3



The above images are indicative of planting structure and layering intended for the proposed garden refurbishment which will be determined by native tree and shrub rainforest species.

statement of landscape intent



Network of 100+ Features (1000+ sqm) (Scale: 1:100@A3)
 Plan 1: 100@A3 (Scale: 1:100@A3)
 Project: 100@A3 (Scale: 1:100@A3)
 Project: 100@A3 (Scale: 1:100@A3)

PROPOSED HOUSE REFURBISHMENT
14 A MARINE PARADE KINGSCLIFF
 For Sandra Eady

Date: February 2011 Scale: as shown Design: SB Drawn: SB

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 – Consent Considerations

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

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

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

The proposed alterations and additions to the detached dual occupancy are considered consistent with the primary objective of the zone, in that the development provides for the upgrading of one of the dwellings and results in quality development.

Other relevant clauses of the TLEP 2000 have been considered elsewhere in this report and it is considered that the proposed alterations generally comply with the aims and objectives of each.

The proposal is not considered to contribute to an unacceptable cumulative impact in the community due to the minor degree of variation to development standards and the established, medium density, residential nature of the subject site.

Clause 11 – Zone Objectives

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

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

It is submitted that the proposal is a form of residential development within an established residential area that is suitable in scale, form and purpose. The proposal does not increase the density of the site. The density of the site is in line with zoning objectives and the alterations/additions are not considered to have an adverse effect on the character and amenity of the area.

Clause 15 - Essential Services

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

Clause 16 - Height of Building

Clause 16 aims to ensure that the height and scale of development is appropriate with regard to location, surrounding development and environmental characteristics of the land. The subject site is affected by a two-storey building height limitation. In accordance with the definition of 'storey' as per Schedule 1 of the TLEP 2000, the proposal represents a partial three-storey development.

The dwelling is generally two storeys in height. A portion of the upper floor area situated in the centre of the building when viewed on side elevation constitutes a three-storey building height.

The applicant seeks consent to vary the development standard by way of a SEPP No. 1 objection, discussed later in this report.

Clause 17 - Social Impact Assessment

Given the minor nature of the proposal a Social Impact Assessment is not considered necessary.

Clause 35 - Acid Sulfate Soils

The site is located within Class 5 Acid Sulfate Soils (ASS) which is considered to be low risk. Adverse impacts associated with ASS are not anticipated.

Other Specific Clauses

Clause 39 – Remediation of Contaminated Land

Please refer to a detailed discussion of contaminated land uses under the heading SEPP 55 – Remediation of Land.

Clause 39A – Bushfire Protection

The subject site was identified as being located within a bushfire prone area in accordance with updated 2012 bushfire mapping and as such was referred to the New South Wales Rural Fire Service (NSW RFS) for comments and conditions on 23 May 2012.

A response from the service was received 5 June 2012. Relevant conditions have been recommended by the NSW RFS for inclusion in the development consent.

Clause 54 – Tree Preservation Order

Clause 54 of the TLEP 2000 provides for the protection of vegetation for reasons of amenity or ecology by way of a Tree Preservation Order. The subject site is covered by the 2011 Tree Preservation Order (TPO) (Koala Habitat Study Area) which impacts upon the removal of Koala feed tree species. Removal of such vegetation on the site must be approved by way of development consent.

Existing landscaping on site comprises of native and exotic species but does not include Koala feed trees. The proposal does not include the removal of vegetation. Rather, it is intended to supplement existing landscaping with the inclusion of local native plantings in accordance with a statement of landscaping intent supplied as part of the application documentation.

No further issues have been identified and this Clause is deemed to be satisfied.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

Clause 33: Coastal Lands

Clause 33 refers to development on coastal lands and requires the consent authority to take into account provisions of the Coastline Management Manual, whilst also requiring that disturbed foreshore areas be rehabilitated and that access points across foredune areas be confined to specific points. The proposal has no direct implications or relevance in this regard.

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

There is no change to the existing dwelling arrangement on site. Alterations and additions will be undertaken to modify roof and internal floor configurations of one dwelling. Therefore the proposed development is consistent with this clause.

SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the two-storey building height development standard as contained within the Tweed LEP 2000 Clause 16.

In the case of the proposed development, a floor area equivalent to 15.45m² has been identified as constituting a three-storey building height. The corresponding area on side elevations represents 18.42% of the overall length of the building.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

The applicant has raised the following arguments in support of the variation sought:

- The locality is characterised by a variety of building types, heights and designs, all of which have been influenced by the extreme topography of the area
- Positioning the extension forward as proposed limits the amount of cut and fill and results in only a minor three-storey element consistent with other developments in the locality
- The proposed three-storey element has no impact on view sharing and is compliant with Council's physical height limits under Tweed Development Control Plan (DCP) 2008
- The proposed three-storey area is centrally contained and setback from the front building elevation
- The proposal steps up the slope and adopts urban design principles such as are promoted within Section 1 of the Tweed DCP 2008
- There are a significant number of existing buildings within the locality that incorporate a three-storey form and a physical height exceeding 9m. As such the proposal will not be inconsistent with the current character of the area.

The applicant concludes that strict compliance with the development standard under Clause 16 is considered unreasonable and unnecessary in this instance.

Assessment of the applicant's submission:

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

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

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Clause 16 of the TLEP 2000 is achieved despite the variation to the development standard pertaining to building height. The objectives of Clause 16 provide for the control of height and scale of development in relation to its location, surrounding development and environmental characteristics of the land.

The proposal creates the addition of an upper floor level that does not exceed a 9m building height. Part of the upper floor level technically constitutes a third storey due to topographical constraints that restrict options to excavate to the rear of the dwelling.

It is clear that the design of surrounding development incorporates similar measures in order to deal with restrictive topography and maintain a reasonable height and scale.

The proposal maintains a medium density use of the site, retains existing residential elements and does not increase the density of the dual occupancy. The refurbished dwelling has greater compliance with energy efficient controls, mature vegetation is retained and additional local native landscaping is proposed.

The proposal is of a high quality with a better overall design outcome improving the streetscape and amenity of both the site and locality without compromising the intent of the building height development standard contained within Clause 16.

The applicant's submission in relation to being well founded is supported.

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

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and the protection, provision and co-ordination of communication and utility services.

The proposal allows the existing dwelling, not originally constructed to current energy efficient standards to be replaced by a modern, energy efficient development of the same type. This is consistent with the general character of the medium density locality.

It is not considered that the granting of this application would hinder the attainment of such objectives.

3. It is also important to consider:

- a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
- b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 16 of the TLEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this case as it would result in the retention of outdated housing stock that could not cater for the size and lifestyle needs of a modern family. The streetscape and amenity of the locality will be enhanced by the modern, energy efficient design which in turn may lead to a resource-related wider public benefit.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the TLEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the granting of this application is unlikely to impact upon public benefit.

Having regard to the minor extent of the variation sought and in light of the comments raised by the applicant and outlined above, it is considered that a departure from the development standard requiring a building height comprised of two storeys is acceptable in this instance.

It is recommended that Council assume the Director-General's concurrence.

SEPP No. 55 - Remediation of Land

Information was requested of the applicant in relation to management of potentially hazardous materials during demolition, and potential land contamination.

The applicant stated that material containing asbestos is likely to be encountered and removed during the initial demolition phase. The applicant stated that such material will be removed and disposed of in accordance with legislative requirements, and requested that a condition requiring preparation of a demolition work plan prior to issue of a Construction Certificate be imposed. The requested process is considered to be appropriate, and an appropriate condition has been recommended.

The correspondence included a preliminary investigation relating to potential contaminated land. The preliminary investigation stated that there is no information to indicate that any previous land uses correspond with any potentially contaminating activities as outlined in the document 'Guidelines for the Assessment and Management of Contaminated Sites'. It was stated that the land has been used for residential purposes since 1939, and a statutory declaration from a relative of the landowner was included.

The statutory declaration stated that there were no chemicals applied to the soil prior to pouring of concrete slabs. It was noted that holes were drilled into timber posts, and oil was poured into the holes for termite control. Such a control method is no longer considered to be appropriate, however was widely used in the past. The practice is unlikely to have resulted in contamination of soil.

There are no cattle tick dip sites in the vicinity of the property and no change to the current land use is proposed. As such, adverse impacts associated with contaminated land are not anticipated and there is no requirement for further investigation of contaminated land.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details 16 matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality. It will not restrict public access to the foreshore.

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

The shire-wide Draft Tweed Shire Local Environmental Plan 2010 was exhibited in 2010. The draft zone for the subject site is R3: Medium Density Residential. The proposed additions/alterations to the detached dual occupancy is a 'child' form of 'Residential' development (detached dual occupancy) which is permissible in the relevant zone under Item 3 through its omission as a form of prohibited development in Item 4. There is a proposed 9m height limit on development in this proposed zone. There is no minimum lot size, but a desired Floor Space Ratio of 2:1. The proposed development complies with the draft controls.

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

Tweed Development Control Plan (Adopted 22 April 2008)

A1-Residential and Tourist Development Code

Part B - Dual Occupancy Housing, Granny Flats, Town Houses and Row Houses

The applicant has requested four variations to development controls contained within this DCP as submitted in the amended variation report supplied 4 April 2012.

1. Design Control 2 – Site Configuration – Deep Soil Zones - Control c.
2. Design Control 2 – Site Configuration – Above Ground External Living Spaces, Balconies and Terraces - Control a.
3. Design Control 2 – Site Configuration – Topography, Cut and Fill - Controls f. and g.
4. Design Control 10 – Floor Space Ratio – Control a.

The variations are considered minor and have been supported.

This assessment takes into consideration the age of the dual occupancy (2003) and the fact that existing and proposed elements may not strictly meet DCP A1 requirements. Assessment takes into account the overall site and impermeable area, gross floor area and floor space ratio which involve the second dwelling but will otherwise focus exclusively on alterations/additions to the dwelling with Marine Parade frontage.

The applicable design controls are addressed as follows:

Building Types

Suitable Locations for Dual Occupancy Housing

The site is 670.3m² and is regular and rectangular in shape. The area of the subject site meets the current minimum criteria of 450m² required to suitably locate dual occupancy housing in accordance with this DCP.

Due to the steep nature of the site, the dwelling facing Marine Parade is unable to provide a ground level external living area but does provide a small outside area to the southern side. Decking on the second and third levels forms the majority of external living area with the addition of an existing 65m² outdoor decking area up the slope to the rear approved in 1997 which will remain.

Public Domain Amenity

Streetscape

There has never historically been a front deep soil zone (DSZ) within the Marine Parade setback. As such, landscaping in accordance with this plan is not possible. Stairs to the existing dwelling were built to the front boundary many years ago. The single garage (1.2m setback) is to be retained.

The facade from the public domain visually adds an upper level to the rear. From the side elevations, it is predominantly two-storey. Overall, the design is compatible with the existing historic dwelling and the character of the locality.

Of issue here is the appropriate nature of a part third storey in an area with a two-storey height restriction. Due to the topography of the allotment, additions to the dwelling provide a significantly recessed upper level, separated from the two-storey dwelling through retention of the existing roof structure. It is important to define the three-storey component in accordance with the TLEP 2000 definition.

Existing fencing remains for side and rear boundaries.

Public Views and Vistas

The dwelling addition does not appear to obscure views from the rear dwelling or have a significant impact upon views from the adjoining dwellings above it which are accessed from Hungerford Lane.

Given the degree of existing vegetation on neighbouring allotments and the general conformity of the proposed development to the natural ground level and the 9m building height limit, impact upon public views and vistas is minimal.

The development will not unreasonably obscure public view corridors along Marine Parade.

Site Configuration

Deep Soil Zones (DSZ)

A front DSZ is provided in association with the second dwelling on the Hungerford Lane frontage as historically, there is no area available for a front DSZ on the Marine Parade frontage.

The existing rear DSZ area currently consists of steep slope, rock walls and decking. There is an area between the dwellings in the middle of the site that could be considered a rear DSZ for both dwellings.

At 8m x 7.3m, it falls short of the criteria of 9.05m length (18% x 50.29m) but the overall area available is comparable with the 72.4m² required. An additional 12m² DSZ has been provided adjacent to the dwelling on the southern boundary.

The allotment also has access to substantial public open space areas across Marine Parade. Given the above, the following variation is accepted.

Design Control 2 – Site Configuration – Deep Soil Zones - Control c:

- c. Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site whichever is the greater and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.

Impermeable Site Area

The maximum area for impervious surfaces for the site is 65% or 435.7m². The calculations for the proposal show the site has an impermeable area of 303m² which is consistent with the design control at 44.9%. A rainwater tank with a capacity of 2500 litres has been included on the plans.

External Living Areas

Two above ground, decked external living areas are proposed: a 15m² deck on the south east elevation of level 1 and a 14m² deck on the north west elevation of the upper level. The upper level external living area is associated exclusively with the master bedroom and is considered a minor balcony.

The level 1 external living area is associated with the living and dining area of the dwelling. It extends to approximately 1.556m from the side boundary. Amended plans indicate a 3m long, full height feature timber privacy screen along the portion of the deck that corresponds with access from the dining/living area of the level 1. This is considered acceptable and complies with screening controls.

Above Ground External Living Spaces, Balconies and Terraces

The external living area to the south east elevation is above ground. It measures 6.81m in length x 2.2m in width resulting in an area of 15m². The deck does not satisfy Control a. as its depth is less than 2.5m. The variation is however supported as there is enough space for a table and chairs and it would be undesirable for the deck to extend any further towards the adjacent boundary.

Design Control 2 – Site Configuration – Above Ground External Living Spaces, Balconies and Terraces - Control a:

- a. Above ground external living areas are to have a minimum depth of 2.5m and a minimum area of 10 sq.m.

The secondary balcony on the upper level associated with the master bedroom is located a minimum distance of 4.71m from the front boundary and a minimum of 1.5m from side boundaries satisfying controls. Privacy screening is not considered necessary on the north western end as the deck area will be utilised in association with a bedroom.

Landscaping

The proposal attempts to retain existing landscaping elements and add local native species to complement the alterations. The lot does not adjoin bushland and physical connection is made by way of stairs to the upper level. A 1m wide pathway with steps is located along the north western side boundary in order to gain access to the rear, elevated, mainly decked portion of the site. Locations for proposed plantings are appropriate.

Topography, Cut and Fill

The location of the existing dwelling and steep topography have been determining factors in locating additions to the rear and above the dwelling.

According to Section A and Section B (Drawing No. WD07), proposed retaining walls appear to be greater than 1.2m in height with excavations exceeding 1m. The amended variation report clarifies that part of the proposal results in a combined (existing and proposed) cut greater than 1m with retaining walls greater than 1.2m.

Additional excavations have been required under the building to provide the enlarged garage, new bathroom and playroom. These excavations will not be visible and are located wholly within the building footprint. As such, the following variations to controls are considered acceptable.

Design Control 2 – Site Configuration – Topography, Cut and Fill - Controls f. and g.:

- f. The maximum level of cut is 1m and fill is 1m except for areas under control j.
- g. Retaining walls maximum 1.2m.

Setbacks

Front Setbacks (Building lines)

The existing, historic front setback, at 1.246m will not change as a result of this proposal.

Side Setbacks

Side setbacks to the existing dwelling will not change. The side setback to the upper level are a minimum of 1.5m on the north west elevation and 3.8m on the south east elevation which are acceptable.

Amended plans indicate an open area adjacent to the driveway in both directions to cater for 2m x 2m site triangles. Any fencing within proximity maintains a 60% openness ratio and maintains site lines.

Rear Setbacks

Existing rear setbacks are maintained allowing for location of the rear deck and deep soil zones.

Car Parking and Access

Carparking Generally

The single garage arrangement for the dwelling was accepted upon approval of DA02/2052 for the creation of the dual occupancy on the site. The current arrangement will continue. Although not in accordance with DCP A2 requirements for parking, it is an historic configuration with little opportunity for the creation of a second parking space.

The garage remains in historic alignment with the front elevation of the dwelling with garage door width less than 50% of the front elevation.

Building Footprint and Attics, Orientation and Separation

Building Orientation

The dwelling is oriented to, and addresses the street. Pedestrian entry is clearly visible and accessible. Ancillary room windows are oriented to the side boundaries. Living areas face the ocean (front boundary) and employ passive solar design principles.

Building Separation

All building separation controls are met.

Height

Building Height

The maximum overall building height permitted is 9m. The applicant proposes a maximum building height of 8.984m.

The maximum wall plate height permitted is 8.5m. The applicant proposes a height of 8.489m.

Ceiling Height

Existing floor to ceiling height of 2.25m is retained on level 1. The ground floor will have a 2.4m ceiling height which is acceptable. In order to achieve a reduction in building height, the upper level ceiling height has been reduced to match that on level 1 (2.25m). The building unit have raised no objection to this as it is in accordance with requirements.

Building Amenity

Sunlight Access

There are no issues with regard to sunlight access or overshadowing. Shadow diagrams have been supplied by the applicant and indicate minimal impact upon the south eastern boundary of 16 Marine Parade. This property gains full solar access from its north eastern and north western boundaries.

Visual Privacy

As discussed previously, the balcony with views to the north and north east associated with the main bedroom does not require screening. The deck associated with living areas on level 1 has been suitably screened. As such, there are no further visual privacy issues.

Acoustic Privacy

There are no acoustic privacy issues.

View Sharing

The footprint of the proposed development will not result in an unreasonable reduction in any views enjoyed by nearby residents. The small 'three-storey' element within the design maintains height controls, is setback a minimum of 4.7m from the front boundary and is not a significant factor with regard to view sharing. No variation has been identified in this assessment and the impact is considered to be minimised.

Natural Ventilation

There are no issues regarding natural ventilation. The proposal incorporates windows, decks and openings on all elevations which will enable cross-ventilation of breezes.

External Building Elements

Side and rear fences

The existing side and rear fencing is proposed to be retained.

Front fences

The proposed timber battens to the stairs will function as a 1.5m high fence. There is an openness ratio in the fencing and so it cannot be termed as 'paling' and does not obstruct driveway sight lines. The fencing is appropriate for the development and consistent with the character of the building.

Roofs, Dormers and Skylights

The skillion 'butterfly' roof design is of simple design and similar pitch to the existing roof below. No skylights are proposed.

Amended plans reduced the roof pitch for the upper level from 15 to 12.5 which assists in maintaining a lower building profile. Roof colour is a subdued grey.

Elevations Visible from the Public Domain

Amended plans have illustrated compliance with building height and side setbacks. Pitch of roof has been decreased. Given the topographical constraints of the site, additions to this example of outdated housing stock would be impossible without taking advantage of the higher ground level to the rear of the existing dwelling. It is considered that the visual impact of the development has been satisfactorily minimised and that variations to development controls have been substantially reduced by the provision of amended plans. Elevations visible from the public domain have been improved and are consistent with the desired street character of the locality.

Building Performance

Energy Efficiency

The applicant has submitted a BASIX certificate which meets the minimum energy targets. A new rainwater tank is shown on the site plan.

Waste Management

A demolition work plan will be required to be provided by the applicant prior to the issue of construction certificate.

Floor Space Ratio

The maximum floor space ratio (FSR) for detached dual occupancy housing is 0.45:1.

The report for DA02/2052 (detached dual occupancy) states that the overall GFA for both dwellings was approximately 315m². However, the calculation included decked areas for the second dwelling. The approved construction certificate plans for the second dwelling give a total floor area for both levels of 240.93m² including decks. Calculation from the figures provided and a physical check with scale rule indicates an overall GFA of 210.4m².

Existing plans were provided for the older dwelling with the current application. Calculation from the plan gives an overall GFA of 80.1m² excluding garage and storage areas on the lower level. Therefore, a more accurate calculation of overall existing GFA for the site is 290.5m². This gives an FSR of 0.43:1 which complied with the maximum FSR for the site in 2003 (0.5:1).

New calculations for the proposed dwelling alterations and additions give a GFA of 154m². This excludes garage and decks. The GFA increases approximately 73.9m². Therefore the total GFA for the site increases to 364.4m².

With a site area of 670.3m², the FSR is 0.5436:1 which exceeds the maximum FSR allowable for detached dwellings by 0.0936 or approximately 50m². This is mostly due to the modest area of the site and the two-storey building height control.

This resultant FSR is a variation to the following development control:

Design Control 10 – Floor Space Ratio – Control a.:

- a. The maximum FSR for Dual Occupancy housing is:
 - 0.55:1 for attached dwellings except where the dwellings do not cover more than 50% of the site area in which case the max. is 0.65:1.
 - 0.45 for detached dwellings.

Although the proposal makes a minor increase to the overall FSR of the site, the proposal maintains a consistent residential character to surrounding sites and the two dwellings remain clearly differentiated due to the topography of the allotment. In addition, density on the allotment has not been increased as it still supports a detached dual occupancy. As such, the variation to Control a. is supported.

A2-Site Access and Parking Code

As discussed previously the proposal does not alter the existing historic parking arrangements for the dwelling. There is no increase in density on the site and an increase in the number of parking spaces is not able to be achieved. This scenario is consistent with parking arrangements for other older dwellings within the shire and is considered acceptable.

A11-Public Notification of Development Proposals

The development proposal was advertised in accordance with this section. The proposal was placed on exhibition for 14 days from 18 January to 2 February 2012. Four submissions were received as a result of this process and are discussed in detail later in this report.

B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

The proposal includes demolition in order to facilitate additions to the dwelling. A Demolition Works Plan is to be provided by the applicant in accordance with a recommended condition of consent.

Clause 94 Buildings to be upgraded

Clause 94 is considered satisfied as the proposed alterations and additions generally comply with the Building Code of Australia.

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

The subject site is not located within an area that is affected by this management plan.

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by this management plan.

Tweed Coast Estuaries Management Plan 2004

The subject site is not located within an area that is affected by this management plan.

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

The subject site is not located within an area that is affected by this management plan.

(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

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The suitability of the site has been demonstrated throughout the assessment of the proposal including the assessment of minimal environmental impact and general consistency with environmental planning instruments and the DCP.

The proposed development does not generate any additional Section 94 or Section 64 contribution charges.

(c) Suitability of the site for the development

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

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

Public:

The proposal was advertised in accordance with DCP A11 – Public Notification of Development Proposals for a period of 14 days from Wednesday 9 June to Wednesday 24 June 2010. During this time, four submissions were received.

The submissions raised issues pertaining primarily to the scale of original lodged plans. Subsequently, the applicant addressed matters raised by amending plans to eliminate variations and reasonably reduce the bulk and scale of the proposal.

Significant issues raised include:

- Scale of the additions inconsistent with streetscape
- Excessive height
- Creates a precedence for three-storey development
- Unsatisfactory side setback to north west boundary
- Confusion regarding use of playroom on ground level
- Privacy issues with regard to adjoining properties
- Impact of roof configuration with regard to glare
- Demolition approval waiver
- The proposal should take into account view lines of adjacent properties
- The building should be redesigned

- Critical dimensions are omitted to substantiate compliance
- Lack of deep soil zones
- Unreasonable loss of amenity / public views
- Overshadowing
- Lack of landscaping
- Too many variations to controls are sought
- Overdevelopment of the site

The applicant has addressed the submissions as follows:

Issue	Response
<p>Three-storey building height</p>	<p>The proposal has been amended to reduce the three-storey component and is now fully compliant with Council's 9m maximum height and 8.5m wall plate height. The development presents a compliant physical height. Physical height is a more appropriate means of determining bulk and scale.</p> <p>The extent of the three-storey element is minor and a result of topographic conditions of the area. It is centrally located along the north east/south west axis. Minor three-storey elements are a regular feature along Kingscliff Hill. The proposal provides a high quality architectural design and provides compliance with the physical height limits.</p> <p>The upper floor addition has been designed so that there is access to the existing roof of the dwelling for maintenance (300mm to allow the removal of roofing iron when it needs replacing). The issue of overall height of the extensions has been uppermost in the minds of the owners as the height of the building impinges on the residence at 14B Marine Parade. All attempts have been made to reduce the building height.</p> <p>The proposal has submitted accurate full 3D images of the proposal. These images show its relation to surrounding land and the deck above as a clear point of reference. With regards to precedent, the proposal as amended is consistent to other SEPP No.1 objections consented to by Council within the locality.</p> <p>One of the submissions requests a floor plan of the 'third level'. The proposal includes a minor three-storey element only. A 'third level' cannot be shown as it does not exist.</p> <p>The proposal does not include a full third storey. Further, the proposal seeks to reference other recent 'complying' developments located on Kingscliff Hill. One of the submissions specifically references 13 Moss Street which includes a partial third storey element. The SEPP No.1 objection for 13 Moss Street was approved by Council as part of DA06/0705.14. The submission effectively provides support that technical third storey elements cannot be easily discerned when included as part of a high quality architectural design.</p>
<p>Side setback to north western boundary</p>	<p>The upper level has been amended to fully comply with the current setback requirements to wall and eave. Drafting errors have been amended.</p>

<p>Use of playroom on ground level</p>	<p>The present configuration of the ground floor is largely unchanged. It currently has a separate bathroom, front door and outdoor area. It is used as an area to store beach equipment (surf ski, chairs, toys), as a beach shower after swimming, a playroom for kids when it is wet and undercover area for wet towels and togs. The proposed renovations make no change to the likelihood that the function of this area might change to something that contravenes residential use.</p>
<p>Privacy issues/views: adjoining property to north west (window on level 1 and upper floor deck) and south east (level 1 deck)</p>	<p>The renovation will not change the existing window area on the north west elevation. It does change the distribution so that the windows towards the front of the property are increased in area and the side window area will be decreased. The window being referenced within the objection is W03 as marked on the plans. This window is not the primary window of the living room.</p> <p>The deck area will overlook the yard however the upper deck area is located off a bedroom and is not an 'external living area' as defined within Section A1 of the TDCP 2008. The upper deck is design in compliance with the relevant design controls. As demonstrated by the photographs submitted within this submission, the neighbouring residence significantly overlooks the property at 14 Marine Parade. Assertion that the development will significantly impact on the neighbouring properties amenity is unfounded.</p> <p>The additional living area on the south east side of the house now includes a privacy screen in accordance with Council's design controls.</p> <p>The renovation will replace an existing window on the south east elevation with doors at the front section of the wall and will remove a side door at the back section of the wall. Overall this does not significantly change the current arrangement. The additional living area on the south east side of the house now includes a privacy screen in accordance with Council's design controls.</p> <p>On the proposed upper level, windows are designed to be minimal and to provide ventilation and natural light rather than views.</p> <p>Any new building on adjacent properties will be set back approximately 6m from the front boundary which results in a reduction of window/external living areas that will overlook any neighbouring area.</p>

<p>Impact of roof configuration with regard to glare and heat load to adjoining properties</p>	<p>Given the relative elevation of the proposed structure and the existing neighbouring residence, one would have to substantiate this claim with better data. From observation, by early afternoon the sun does not reach the roof area of concern to create any reflection.</p> <p>The proposed colour of the building and roof is included in the plans submitted to council; it is a dark grey shade to reduce reflection. The issue of reflection is of much more concern to the dual residence above the proposed building (14B Marine Parade) and the design of the renovations has focused on minimising such impacts. The proposal will not impact the locality due to glare or reflectivity.</p> <p>The roof of the upper level has been designed to minimise the impact of reflectivity and height through splitting the roof into three elements. The darker roofing colour is designed to minimise reflectivity. The pitch of the two side elements is designed to give an aesthetic continuity to the proposed additions while at the same time enabling effective space for a solar hot water system.</p> <p>Amended plans lower the roof pitch to 12.5 degrees.</p>
<p>Demolition approval waiver</p>	<p>A demolition plan is to be provided prior to commencement of work.</p> <p><i>NB: a condition has been applied that requires a demolition work plan prior to issue of construction certificate.</i></p>
<p>View lines of adjacent properties</p>	<p>There are no issues with view lines from neighbouring properties. Due to the different elevation between the existing residences there are no line of sight issues. Height and setback have been amended.</p>
<p>Redesign</p>	<p>This is provided in the current plans.</p>
<p>Omission of critical dimensions and lack of deep soil zones</p>	<p>Where dimensions are not specifically provided the plans are drawn to an accurate scale to allow these to be measured. Review of the information requested within the submission indicates a clear lack of understanding of the proposal.</p> <p>The permeable area and Floor Space Ratio calculations are given in the DA. Although the property at 14 Marine Parade does not have a contiguous deep soil zone of 8m x 8m, it does provide an overall deep soil zone area of approximately 70.4m² including one contiguous area of approximately 8m x 7m dimension.</p> <p>The provision of deep soil zones are impeded by the existing development on the site. The deep soil zones provided are in accordance with Council established thinking on deep soil zone within existing developed allotments. An additional 12m² of deep soil zone has been nominated on the amended plans.</p>

<p>Loss of amenity and public views including visibility of the headland and vegetation</p>	<p>Existing dwellings are located at both the lower and upper levels of the subject site and at Nos. 2 and 6 Marine Parade.</p> <p>There seems to be a contradictory element in the submission. On the one hand the property owner claims they wish to undertake future development of their block (which might be compromised by the proposal) but on the other hand objects to any interruption of the "littoral rainforest" on the headland. Any development of the adjoining property would require tree removal.</p>
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Council's assessment of amended plans provided by the applicant supports the applicant's comments with regard to the submissions. Remaining issues of overshadowing, lack of landscaping, degree of variations sought and overdevelopment of the site have been assessed in the body of this report. The applicant will be required to provide a landscaping plan to support the statement of landscaping intent as a condition of consent.

As such, it is considered that issues raised within the four submissions have been resolved satisfactorily.

Public Authority:

This application was not identified as integrated development. However, the subject site was identified as being bushfire prone prior to finalisation of assessment as a result of recently updated bushfire mapping. As such, the application was referred promptly to the NSW RFS for assessment. Conditions were recommended regarding maintenance of an Asset Protection Zone and the provision of water to the proposed development.

(e) Public interest

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

OPTIONS:

1. State Environmental Planning Policy No. 1 objection to Clause 16 of the Tweed Local Environmental Plan 2000 regarding building height be supported and the concurrence of the Director-General of the Department of Planning and Infrastructure be assumed; or
2. Refuse the development application with reasons.

CONCLUSION:

The proposed alterations and additions to the detached dual occupancy are generally consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered that the site is suitable for the development.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term 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.

17 [PR-CM] Review of Environmental Factors PTV12/0005 for Arkinstall Park Redevelopment (3 Stages) at Lot 1 DP 780163 Sullivan Street, Lot 296 DP 755740, Lot 1 DP 588267 Cunningham Street, Hourigan Street, Oxley Street, Robert Street and Cunningham Street,

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

This application has been prepared by Tweed Shire Council's Design Unit for the redevelopment of Arkinstall Park to improve the recreation facilities at the site, in line with an aim to provide regional standard sporting facilities at this location. At present on site there are tennis, netball and soccer facilities as well as grassed open space.

The proposal has been divided into three stages to allow flexibility to the development which is subject to funding. These are:

- Stage 1: Upgrade of tennis facilities, construction of first stage of internal access road and additional tennis parking.
- Stage 2: Upgrade of netball facilities, extension of internal access road east to Oxley Street road reserve, provision of additional netball parking and construction of Cunningham Street playground.
- Stage 3: Extend internal access road south to connect with Kirkwood Road and provide additional football parking.

The proponent has requested flexibility to undertake this staging in reverse as depending on the start date, it is hoped to undertake all works to have a minimal impact on the ongoing use of the site.

The proposal involves works on both 6(a) Open Space zoned land and unzoned road reserve. The application has been assessed under Part 5 of the Environmental Planning and Assessment Act as determined by Division 12 (Parks and other public reserves) and Division 17 (Roads and Traffic) of the SEPP (Infrastructure) 2007. Tweed Shire Council is the determining authority under Section 110A of the Environmental Planning and Assessment Act 1979. Section 111 of the Act states that the determining authority shall examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

The proposed development is not considered to have a significant impact upon the environment including critical habitat or threatened species, populations or ecological communities, or their habitats. Accordingly, an Environmental Impact Statement or a Species Impact Statement is not required.

RECOMMENDATION:

That:

- A. Following assessment of the Review of Environmental Factors for the Arkinstall Park Redevelopment it is determined that the activity is not likely to have a significant impact on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats.
- B. PTV12/0005 application for the Arkinstall Park redevelopment (3 stages) at Lot 1 DP 780163 Sullivan Street, Lot 296 DP 755740, Lot 1 DP 588267 Cunningham Street, Hourigan Street, Oxley Street, Robert Street and Cunningham Street, Tweed Heads South be approved subject to the following conditions:

1. The development shall be completed in general accordance with the Review of Environmental Factors and the Addendum to Review of Environmental Factors prepared by Tweed Shire Council dated May 2012 and June 2012 respectively, except where varied by these conditions.

[PTV0010]

2. Prior to commencement of work all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the General Manager or his delegate. Erosion and sedimentation control devices shall be designed and installed in accordance with Council's Design Specification D7 - *Stormwater Quality* and Council's Construction Specification C211 - *Control Of Erosion and Sedimentation*.

All erosion and sedimentation controls shall be maintained throughout the period of construction.

[PTV0020]

3. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[PTV0030]

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

Monday to Friday from 7.00am to 6.00pm

Saturday 8am to 1pm

No work to be carried out on Sundays or Public Holidays

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

[PTV0050]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[PTV0060]

- 6. Should any stage propose the construction or modification of a food preparation area (for the retail of food) a detailed food premise fit out plan shall be submitted for approval of the General Manager or his delegate prior to commencement of construction. All works shall comply with the approved fit out plan.**
 - 7. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -**
 - Noise, water or air pollution**
 - dust during filling operations and also from construction vehicles**
 - material removed from the site by wind**
- [DUR1005]
- 8. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.**
- [DUR1025]
- 9. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.**
- [DUR2185]
- 10. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.**
- [DUR2425]
- 11. Should dewatering be required, these works shall not be carried out until a dewatering management plan has been submitted and approved to the satisfaction of the General Manager or his delegate. All work shall comply with that approved plan.**
 - 12. Should excavation greater than 1.5m below ground level be required these works shall not be carried out until an acid sulphate soil management plan has been submitted and approved to the satisfaction of the General Manager or his delegate. All works shall comply with the approved plan.**
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[DURNS01]

13. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

14. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0835]

16. Any car parking lighting and playing field lighting shall not spill beyond the boundary of the site. Lighting shall comply with AS 4282-1997 Control of the obtrusive effects of outdoor lighting.

[USENS01]

17. A Habitat Restoration Plan must be prepared for the vegetation offset sites nominated as Swamp Sclerophyll Forest EEC offset at Avondale Park Tweed Heads prior to the removal of native vegetation from the site. Such plan must be prepared in accordance with Council's *draft Habitat Restoration Guidelines* and submitted to Council's Development Assessment Unit for approval. Such plan must describe how restoration works will be funded for a minimum 5 year period whilst restoration is undertaken and how the site will be managed thereafter.

18. Vegetation clearing is limited to works outlined on Pages 83-85 of the Review of Environmental factors and as listed in Appendix L: register of trees subject to disturbance (as amended June 2012). All trees to be retained must be protected in accordance with Australian Standard for the protection of Trees on development sites.

19. A registered Spotter-catcher must be present on site during all works that involve the clearing of native vegetation so as to minimise impacts to native fauna.

20. Hollow-bearing trees to be removed shall be inspected for the presence of animals by a suitably qualified person, prior to their removal. Where animals are found, works in the vicinity will cease until animals leave, or are captured for later release on another site. Nocturnal animals shall be released at dusk. Injured fauna shall be transferred to the care of a Northern Rivers Wildlife Carers recommended veterinarian.

21. A Compensatory Fauna Nest-Box Plan must be submitted to Council's Natural Resources Unit for approval within six months of the date of this approval. All reasonable opportunities to re-use hollows removed from trees on the site must be taken.

- 22. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the works (as applicable).**
- 23. A Traffic Control Plan, prepared by an RTA accredited person, in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be endorsed by Council prior to commencement of works (as applicable).**
- 24. The development must provide a minimum of 12 disabled car parking spaces in accordance with Tweed Shire Council's Development Control Plan Part A2 - Site Access and Parking Code, (unless accepted otherwise by Council).**

REPORT:

Applicant: Tweed Shire Council
Owner: Tweed Shire Council
Location: Lot 1 DP 780163 Sullivan Street, Lot 296 DP 755740 Cunningham Street, Hourigan Street, Oxley Street, Robert Street, Tweed Heads South
Zoning: 6(a) Open Space
Cost: \$7,750,000

BACKGROUND:

This site has been designated for development as a regional sporting centre in both the Tweed Shire Open Space Infrastructure Policy (2002) and the subsequent Tweed Shire Regional Sports and Recreation Facility Plan (RS RFP) (2006).

These policies prompted the undertaking of a feasibility study and subsequently a master plan for guiding the development of the site as a regional sporting facility. The final masterplan was endorsed by the Sports Advisory Committee in September 2007.

The proposal would improve the recreational facilities at the site, in line with the aim of providing regional standard sporting facilities, consistent with the Arkinstall Park Masterplan.

The proposed development is to be undertaken in three stages as outlined below.

Stage 1- Upgrade of tennis facilities, construction of first stage of internal access road and additional tennis parking

Upgrade of existing tennis facilities

- Provision of eight additional tennis courts, including:
 - A single court including four 'hot shot' junior courts;
 - A show court;
 - Six module tennis courts;
- Repairs/ upgrades to existing courts;
- Minor renovations to existing clubhouse being limited to cosmetic works such as tiling and painting. No expansion of amenities or canteen facilities is proposed.

Construction of first stage of internal access road

- The Cunningham Street entrance is proposed to be relocated approximately 30m west of its existing alignment to accommodate additional tennis courts and on-site parking to service tennis courts and proposed playground. The arrangement of the tennis courts and internal access road alignment has been designed to accommodate the required tennis facilities whilst minimizing the disturbance of the adjoining Swamp Sclerophyll Forest occurring on the north-west of the site.

On-site and Cunningham Street parking

- On-site parking associated with Stage 1 includes:
 - 39 parking spaces west of tennis courts attached to the reconstructed internal access road at the Cunningham Street end;
 - 41 parking spaces along Cunningham Street, 10 to the east of the access road and 31 to the west;

- 23 parking spaces south of the tennis courts attached to the proposed internal access road at Hourigan Street reserve intersection; and
- Approximately 30 overflow parking spaces provided on the grassed area south of the tennis courts.
- A roundabout is proposed at the end of the first stage of the internal access road to facilitate traffic utilising the southern car parks to turn around and egress from the site.
- Minor streetscape landscaping.

Pedestrian access

- Provide connecting footpaths throughout tennis facility.

Upgrade onsite stormwater drainage

- Surface flow drainage from the reconstructed internal access road will be directed over flush kerbing into a grassed infiltration swale and infiltration basins which have been strategically located at low points. Overflow from the proposed infiltration basin at the intersection of Robert Street/Hourigan Street intersection will be directed into an existing stormwater pipe which directs water south beneath the playing fields and releases at an existing outlet into the drainage line which runs along the southern boundary of the site, eventually draining into the Tweed River at Ukerebagh Passage.

Street lighting

- Provide lighting along internal access road to minimise the threat to personal and asset security.
- Subject to budgetary constraints, these lights are proposed to be solar-powered low (5) rating street lamps to minimise light pollution and power consumption whilst providing adequate light for personal safety and asset protection.

Stage 2: Upgrade of netball facilities, extension of internal access road east to Oxley Street road reserve, provision of additional netball parking and construction of Cunningham Street playground.

Upgrade of existing netball facilities

- Upgrade existing netball courts by converting three grass courts to asphalt.

Extend internal access road east to Oxley Street road reserve

- Internal access road constructed along southern boundary of Lot 296 on DP755740 extending from Stage 1 roundabout east to Oxley Street road reserve;
- Provide additional parking to service netball facilities including:
 - 13 angle (45°) parking spaces south of netball courts; and
 - 25 overflow parking spaces on the grassed area south of the netball courts.
- Minor streetscape landscaping.

Pedestrian access

- Provide footpaths connecting with Stage 1 pathways and Oxley Street road reserve.

Upgrade onsite stormwater drainage

- Surface flow drainage from the reconstructed internal access road will be directed over flush kerbing into a grassed infiltration swale and infiltration basins which have been strategically located at low points.

Street lighting

- Provide lighting along internal access road to minimise the threat to personal and asset security.
- Subject to budgetary constraints, these lights are proposed to be solar-powered low (5) rating street lamps to minimise light pollution and power consumption whilst providing adequate light for personal safety and asset protection

Cunningham Street Playground

- Construct playground facility on Lot 1 DP 588267.
- Existing swamp Sclerophyll vegetation to be retained and protected.
- Pedestrian pathways to connect with Cunningham Street and tennis facility pathways.

Stage 3: Extension of internal access road south to connect with Kirkwood Road and provision of additional football parking.

Extend internal access road south to Kirkwood Road

- Internal access road constructed within Oxley Street road reserve extending from Stage 2 extent south to Kirkwood Road road reserve;
- Provide additional parking to service football facilities including:
 - 54 parking spaces east of football fields (within Oxley Street road reserve).
- Minor streetscape landscaping.

Pedestrian access

- Provide footpaths connecting with Stage 2 pathways and proposed Kirkwood Road footpath.

Upgrade onsite stormwater drainage

- Surface flow drainage from the reconstructed internal access road will be directed over flush kerbing into a grassed infiltration swale and infiltration basins which have been strategically located at low points.
- Construct stormwater pipe and outlets to direct overflow from infiltration basins at southern end of Oxley Street into the existing drainage line bordering the southern boundary of the site.

Street lighting

- Provide lighting along internal access road to minimise the threat to personal and asset security.
- Subject to budgetary constraints, these lights are proposed to be solar-powered low (5) rating street lamps to minimise light pollution and power consumption whilst providing adequate light for personal safety and asset protection.

The applicant has requested that the sequencing of the staging be reversed, to be more amenable to the existing site users (i.e. netball, soccer and tennis clubs) in that disruption from construction works would be minimised. Council's Development Engineer supports the reversing of the staging and has conditioned the approval appropriately.

The subject works are to be undertaken by Tweed Shire Council and specialist contractors as follows;

Tweed Shire Council	Specialist contractors
<ul style="list-style-type: none"> • internal access road and car parking • drainage swale and infiltration basins • footpaths • stormwater pipes and outlets 	<ul style="list-style-type: none"> • tennis and netball courts • lighting

The development is expected to have an environmental impact through earthworks and vegetation clearing works to be undertaken. Construction machinery expected to be used includes excavators, graders, rollers and haulage trucks.

Earthworks

Earthworks associated with the proposed internal access road and footpath would be minor and limited to minor surface grading for preparing the road base and to establish the required levels for stormwater drainage into the swales and infiltration basins. Lighting footings would be screw-piled to minimise potential disturbance of Acid Sulfate Soils. The modification of the existing stormwater pipe at the southern end of Robert Street and the new stormwater pipe proposed at the southern end of Oxley Street would require trenching to a depth of 1m below ground level.

Vegetation clearing

The proposed works have been designed to minimise the extent of vegetation clearing; however, still necessitates the clearing of 0.394ha of native vegetation equating to 54 trees of mixed native and exotic amenity plantings. The 0.394ha of native vegetation community is Swamp Sclerophyll Forest on Coastal Floodplains (SSF) which is listed as an Endangered Ecological Community (EEC) under the *Threatened Species Conservation Act 1994* (TSC Act).

Compensatory offsets for the clearing of the Swamp Sclerophyll Forest EEC is proposed in the form of re-creating the EEC community at a nearby site, as an extension to the current restoration works being undertaken at Avondale Park, on the eastern side of Greenway Drive, Tweed Heads South. The area proposed to be restored is approximately 7900m² which achieves a 2:1 (gain:loss) ratio.

The proposed works also require the removal of three small hollows (<5cm diameter) and one medium hollow (5-10cm diameter), with the potential loss of an additional two small hollows and an additional medium hollow. This would result in a reduction in nest/roost habitat in the locality and would likely result in increased competition for these resources. To mitigate this impact, lost hollows are proposed to be replaced with nest boxes at a ratio of 2:1 onsite and/or in nearby vegetation where there is minimal risk of future clearing.

Works on the proposal is due to start at the end of October 2012 and is estimated to take approximately 6 months to complete.



CONSIDERATIONS UNDER PART V OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

The proposed activity constitutes an assessment under Part 5 of the Environmental Planning and Assessment Act. Section 111 of the Act states that the determining authority must take into account a range of matters prescribed in Clause 228(2) of the Environmental Planning & Assessment Regulation 2000, in its decision to proceed with an 'activity' which does not require development consent. The matters raised under Clause 228(2) are addressed below.

Rating of Impact (for inclusion in Table below): 1 = Beneficial/Nil 2 = Minor 3 = Significant

Factors taken into consideration	Rating of Impact	Comments (if applicable)
a) Any environmental impact on a community	2	The proposal is considered to result in a minor impact on a community in the short term through disruption associated with construction and in the long term through its contribution to the accumulative loss of native bushland in the locality.
b) Any transformation of a locality	1	The Arkinstall Park redevelopment is considered to provide a beneficial long term impact to the locality as the proposed upgrades will improve recreational facilities within the locality.
c) Any environmental impact on the ecosystems of the locality	2	The proposed development would result in minor impacts upon the ecosystems on the site through the accumulative loss of native bushland in the area and through disruption associated with construction.
d) Any reduction of the aesthetic, recreational, scientific, or other environmental quality or value of a locality	2	Some short term negative impacts associated with construction are anticipated in this regard. However, in the long term, there is considered to be a negligible impact as landscaping associated with the proposal would reduce any visual impact. Recreational values of the site will be improved through improved tennis and netball facilities as well as improved access and parking.

Factors taken into consideration	Rating of Impact	Comments (if applicable)
e) Any effect on the locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations	1	<p>An Aboriginal Cultural Heritage Due Diligence Assessment has been submitted as part of this Part 5 application. This states that two Cultural Heritage Assessments have been undertaken on the subject site, in 2005 and 2010. No objects or areas of specific cultural heritage significance were identified within Arkinstall Park;</p> <p>As such the proposal is unlikely to impact on any locality, place or building having aesthetic, anthropological, archaeological, architectural, or historic value.</p>
f) Any impact on the habitat of protected fauna (within the meaning of the National Parks and Wildlife Act 1974)	2	<p>Impacts are expected to protected (i.e. non-threatened native) fauna due to the loss of habitat in the area. Few species are considered to rely on the site for the whole or any part of their life-cycle and most are mobile species which use the site more for forage than roosting or nesting. Nonetheless, amelioration is proposed in the form of habitat restoration which will benefit all relevant species, a nest-box program, and use of a spotter-catcher during site works to relocate any captured fauna to suitable bushland.</p>
g) Any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air	2	<p>The clearing of Swamp Sclerophyll Forest would reduce the extent of the Endangered Ecological Community (EEC) in the medium term, however offset compensation will assist in maintaining this community in the long term. The proposal is unlikely to result in the extinction or endangering of any species.</p>
h) Any long term effects on the environment	1	<p>The loss of vegetation will not be replaced on site thus may be considered to cause long term impacts on the environment, however, the proposal will result in a greatly improved environmental outcome for a large contiguous native area which will is presently mown and will become bushland. On balance, overall impacts are considered to be negligible due to the compensatory off-set plan associated with the development on the site. Permanent measures to prevent erosion and improve water quality and road verges will result in long-term improvements.</p>

Factors taken into consideration	Rating of Impact	Comments (if applicable)
i) Any degradation of the quality of the environment	2	<p>There is likely to be some minor short term impacts on the environment associated with the construction phase. Construction mitigation measures are proposed to minimise these impacts and prevent the further degradation of the quality of the environment at the site and these aspects have been conditioned.</p> <p>Following completion of works and provision of environmental compensation measures, it is considered that the overall quality of environment in the locality will not be degraded by virtue of this development.</p>
j) Any risk to the safety of the environment	2	<p>There are some minor risks to the safety of the environment associated with the construction phase. A range of risk management measures would be used, including adherence to TSC Safe Operating Procedures.</p>
k) Any reduction in the range of beneficial uses of the environment	1	<p>The proposed development is not considered to reduce the range of beneficial uses to the environment. Whilst the proposal does consist of the removal of vegetated areas currently on the site, it is considered that elements of the proposal such as the installation of stormwater quality control devices and pedestrian cycleway would result in a beneficial use of the environment.</p> <p>The pedestrian cycleway proposed as an element of this proposal would increase pedestrian access in the locality and improve amenity and recreational values of the site.</p>
l) Any pollution of the environment	1	<p>Construction management measures (i.e. erosion and sediment control, dust management and waste management) would ensure the risk of pollution to the environment is minimised during construction.</p> <p>Following construction, the Arkinstall Park Redevelopment Project is not considered to result in any additional pollution within the environment.</p>

Factors taken into consideration	Rating of Impact	Comments (if applicable)
m) Any environmental problems associated with the disposal of waste	1	Disposal of waste as a result of the activity is not expected to result in any environmental problems. There will be some excess spoil, general site rubbish and construction material created as a result of the activity. Where material cannot be reused or recycled, waste material would be transported to a Council landfill site. No contaminating activities are known from the site.
n) Any increase demands on resources (natural or otherwise) that are, or are likely to become in short supply	1	The proposed development is to source fill from cut associated with the western section of the proposal where possible. Some additional material is to be imported to the site, however these are not considered to be in short supply and will be sourced locally.
o) Any cumulative environmental effect with other existing or likely future activities	1	The proposal is not likely to result in a significant negative cumulative environmental effect with other existing or likely future activities. Overall, the proposed development is considered to be acceptable having regard to the provision of compensatory habitats elsewhere in the locality.
p) Any impact on coastal processes and coastal hazards, including those under projected climate change conditions	1	The proposal is not likely to impact negatively on coastal processes or hazards, having regard to its location outside the coastal hazard zone.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A ACT)

Section 111(2) - A determining authority shall consider the effect of an activity on:

- a. any conservation agreement entered into under the National Parks and Wildlife Act 1974 and applying to the whole or part of the land to which the activity relates;*
- b. any plan of management adopted under that Act for the conservation area to which the agreement relates;*
- c. any joint management agreement entered into under the Threatened Species Conservation Act 1995.*
- d. any biobanking agreement entered into under Part 7A of the Threatened Species Conservation Act 1995 that applies to the whole or part of the land to which the activity relates.*

A conservation agreement or plan of management (*National Parks and Wildlife Act 1974*) does not apply to the land on which the activity would be undertaken. There is no joint management agreement pursuant to the *Threatened Species Conservation Act 1995*. Furthermore no biobanking agreement applies to the site.

Section 111(3) - A determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on.

There is no designated wilderness area, pursuant to the Wilderness Act 1987, in the locality of the proposed Arkinstall Park redevelopment.

Section 111(4) - A determining authority must consider the effect of an activity on:

a. critical habitat; and

A review of NSW National Parks and Wildlife Service critical habitat declarations register did not identify any critical habitat and occurring within the locality of the proposed activity area.

b. in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats; and

Consideration of the Assessment of Significance 7-part test has been provided for threatened species, populations or ecological communities and their habitats. The outcome of which is that a Species Impact Statement is not required. Amelioration is also proposed in the form of habitat restoration which will benefit all relevant species, a nest-box program, and use of a spotter-catcher during site works.

c. any other protected fauna or protected native plants within the meaning of the National Parks and Wildlife Act 1974.

This matter has been considered in detail and discussed above. No significant impact is expected to arise with the protection and rehabilitation of offset sites.

GENERAL COMMENTS

The application was placed on public exhibition for a period of 14 days from Wednesday 23 May 2012 to Wednesday 6 June 2012. During this time, one submission was received. A late submission has also been received with respect to the proposal.

An assessment of the submissions received is provided below:

- **Increased traffic in area**

The submission states that although happy with the proposed development, there are some concerns regarding increased traffic in the area.

The submission specifically notes that there is a traffic risk with respect to cars cornering from Lloyd St to Oxley St too fast and requests that some form of traffic calming be put in place at this location. The submission also goes on to state that local children who walk to school across Arkinstall Park at present may be at risk from increased traffic and questions whether there is a crossing for them to use.

Applicant's response

"The proposal does not impact on the current intersection. The traffic report submitted with the planning application demonstrated that there was more than adequate capacity on existing local street network to accommodate this proposal - refer "Traffic Report - Arkinstall Park Upgrade" Section 4 Traffic Generation. This small impact will even reduce further once the internal road is connected to Kirkwood Road. Connection to Kirkwood Road will reduce traffic flow on the local street network adjacent Arkinstall Park.

The proposal incorporates a number of cycleway/pedestrian linkages within the development, which maintains connectivity. The northern section of Oxley Street will remain unformed adjacent the primary school. Speed control devices such as speed bumps / raised pedestrian crossings together with advisory signage will be installed along the proposed internal road link. These devices will assist in reducing vehicular speeds along this link and allowing pedestrian flow. Details are provided in the planning application refer "Traffic Report - Arkinstall Park Upgrade" Section 6 and associated preliminary engineering drawings."

Council Assessment

Council's Development Assessment Engineer has raised no objection to the proposed road layout, noting that Oxley Street is not proposed to be constructed as a through route to the north, as this would create an opportunity for traffic to travel immediately north to LLOYD Street or Heffron Street, increasing intersection capacity.

- **Upgrade/widening of Cunningham Street, open drain, fencing and potholes**

The submission states that Cunningham Street needs to be wider and aligned with the curb and guttering at Sullivan Street end and the two drainage grates keep subsiding and require attention. In addition, the open drain at Hourigan Street is in need of a headwall and grating etc. The submission also notes that the baseball diamond chain link fence is in a state of disrepair, and that Sullivan Street requires resurfacing.

Applicant's response

"Cunningham Street has two distinct road reserve widths, 30m wide adjacent the netball courts and 20m wide adjacent the Recreation Park. The current proposal involves widening of Cunningham Street within the existing road reserve. It will provide parking adjacent to the Recreation Park similar to the region near the netball courts. It is acknowledged that the transition between new and existing isn't perfect due to the reduced road reserve width. During the detailed design phase we can further investigate pushing the car parking into the park to improve the transition between existing and proposed without any additional vegetation removal.

The submission relates to remediation works at existing inlet structure where local drainage is currently piped towards the Tweed River via Dry Dock Road. During the detailed design phase we can further investigate remediation options on this issue.

Baseball is no longer played at Arkinstall Park. We can investigate repairing or removing the fence.

The proposal has insignificant impact on the current and future use of Sullivan Street. Resurfacing of Sullivan Street can be accommodated under council's annual works program."

The subject application has been reviewed by Councils Development Engineering Section, Environmental Health Section and Natural Resource Management Unit with no objections raised in respect to the proposal. Applicable conditions have been applied.

The proposed Arkinstall Park Redevelopment is considered to be in the public interest. The development is considered not to adversely impact on the natural or built environments of the locality.

OPTIONS:

1. Approve the Review of Environmental Factors as per the recommendation; or
2. Determine that an Environmental Impact Statement and/or Species Impact Statement is required.

CONCLUSION:

The proposed activity is not considered likely to significantly affect the environment including critical habitat or threatened species, populations or ecological communities, or their habitats.

This redevelopment will improve the recreational infrastructure of the area as highlighted in the Arkinstall Park Masterplan and other policy documentation. The proposed development is considered to be in the public's interest.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

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.

18 [PR-CM] Unauthorised Activity - Poultry Farm at Lot 1 DP881996 No. 576
Cudgen Road, Cudgen

SUBMITTED BY: Development Assessment



Caring for the Environment

SUMMARY OF REPORT:

Contempt of court proceedings were held in the NSW Land and Environment Court before Justice Sheahan on 24 May 2012 for the failure of the property owner to comply with orders of the Court handed down by Justice Sheahan on 9 December 2011.

The property owner was found guilty of contempt of court and a penalty handed down as part of the judgment. The judgment is provided at Attachment 1.

RECOMMENDATION:

That:

1. **ATTACHMENT 2 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
2. **Council pursues recovery of costs in relation to this matter in accordance with the advice prepared by Sparke Helmore Lawyers dated 13 June 2012.**

REPORT:

Council resolved on 24 January 2012 as follows:

"That Council engages its Solicitors to enforce compliance with the NSW Land and Environment Court Orders dated 9 December 2011 for the premises known as No. 576 Cudgen Road, Cudgen (Lot 1 DP881996)."

The proceedings were heard on 24 May 2012 with Justice Sheahan finding the property owner guilty of and convicted of contempt of court of orders 4 and 5 of the judgment of 9 December 2011.

Orders 4 and 5 required the removal of the chickens and sheds from the property.

The chickens were required to be removed by 1 January 2012 and the sheds were required to be removed by 20 January 2012.

The chickens were removed by 23 May 2012 and the Court as part of the contempt judgment gave the owner until 3 June 2012 to remove the sheds.

The orders have now been complied with.

The owner was fined \$18,000 plus \$2,000 per week until the orders were complied with. The weekly fine was suspended until 3 June 2012.

Council were awarded costs incurred from 1 January 2012 on an indemnity basis. This means that for the contempt proceedings Council is entitled to recover its costs in full from the land owner.

Council was successful in the initial proceedings to stop the unauthorised activity and removal of buildings and was awarded costs. These costs are assessed on a party-party basis and are generally 75-80% of the actual costs.

Council costs are approximately \$120,000. Costs up to the end of December 2012 were approximately \$80,000 and approximately \$40,000 from 1 January 2012. Council's recoverable costs are estimated at around \$100,000.

Further details regarding the recovery of costs is provided in confidential Attachment 2.

OPTIONS:

1. Pursue recovery of costs; or
2. Not pursue the recovery of costs.

Option 1 is recommended.

CONCLUSION:

Costs were awarded to Council for both proceedings and recovery of these costs should be pursued.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Council will incur further costs pursuing the awarded costs however it is recommended that the costs are vigorously pursued given the magnitude of the costs and the contemptuous nature of the proceedings.

c. Legal:

Yes, legal advice has been attached.

Yes, legal advice has been received.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.1 Protect the environment and natural beauty of the Tweed
- 4.1.2 Protect, regulate and maintain natural assets (the coastline, coastal and inland waterways, biodiversity, bushland and scenic landscapes) for current and future generations
- 4.1.2.2 Review compliance issues
- 4.1.2.2.1 Provide effective response to compliance issues

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Contempt of Court Judgment dated 24 May 2012 (ECM 52439184)
 2. **Confidential Attachment** Recovery of Legal Costs letter from Sparke Helmore dated 13 June 2012 (ECM 52439186)
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