

**Mayor:** Cr B Longland (Mayor)

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



**TWEED**  
SHIRE COUNCIL

# Agenda

## Planning and Regulation Reports

### **Ordinary Council Meeting**

### **Tuesday 20 March 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.

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**Items for Consideration of Council:**

<b>ITEM</b>	<b>PRECIS</b>	<b>PAGE</b>
	<b>REPORTS FROM THE DIRECTOR PLANNING AND REGULATION</b>	<b>5</b>
11	[PR-CM] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards	7
12	[PR-CM] Development Application DA11/0444 for a 68 Lot Subdivision (Including 1 Open Space Lot) at Lot 29 DP 1027531 & Lot 30 DP 1027531 Casuarina Way, Casuarina	11
13	[PR-CM] Composting Toilets	63
14	[PR-CM] Calls for Expressions of Interest to Operate Markets - Kingscliff, Pottsville, Knox Park Murwillumbah and Tweed Heads Recreation Ground	69
15	[PR-CM] Release of Restriction on Use - Seaside City Kingscliff	73
16	[PR-CM] Development Application DA11/0443 for a General Store at Lot 7 DP 790073; No. 440 Kyogle Road, Murwillumbah	77
17	[PR-CM] Development Application DA10/0671 to Relocate an Existing Dwelling and Construct a Child Care Centre at Lot 2 DP 1122541, No. 26 Coronation Avenue, Pottsville	97
18	[PR-CM] Development Application DA10/0411 for a Boundary Adjustment at Lot 11 DP 1054638 & Lot 12 DP 1054638; No. 51 Palmers Road, Terragon	115
19	[PR-CM] Results of the Department of Planning Local Development Performance Monitoring Report 2010/11	137

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

**ORIGIN:**

**Director Planning and Regulation**

**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 February 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.

<b>DA No.</b>	DA11/0487
<b>Description of Development:</b>	two storey dwelling with basement garage, gatehouse and inground concrete swimming pool
<b>Property Address:</b>	Lot 51 DP 1031933 No. 51 She-Oak Lane, Casuarina
<b>Date Granted:</b>	28/2/2012
<b>Development Standard to be Varied:</b>	Clause 32(B)(4)(b) - Overshadowing
<b>Zoning:</b>	2(e) Residential Tourist
<b>Justification:</b>	A SEPP 1 application has been submitted in relation to the subject property due to overshadowing of the waterfront opens pace. Shadow diagrams submitted indicate that the shadow cast will be minimal and will be similar to shadows presently cast by existing properties within the vicinity. It is therefore considered that the standard is unreasonable and unnecessary in this particular circumstance and it is recommended that the SEPP 1 objection be supported.
<b>Extent:</b>	Clause 32B of the NCREP requires that Council must consider an objection under SEPP1 for any shadow cast into the waterfront open space before 7pm midsummer daylight saving time.  The shadow will be cast into the waterfront open space will be consistent with other development along the Tweed Coast. The extent of the shadow cannot be expressed in terms of a percentage of the development standard. It is recommended that the SEPP1 objection be supported.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

<b>DA No.</b>	DA11/0526
<b>Description of Development:</b>	extensions to existing storage facility and reconfiguration of existing depot for truck storage and landscaping supplies
<b>Property Address:</b>	Lot 2 DP 863736 No. 942 Cudgera Creek Road, Cudgera Creek
<b>Date Granted:</b>	23/2/2012
<b>Development Standard to be Varied:</b>	Clause 24 - Set backs to designated roads
<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	Development setback at 22.4m instead of 30m from Cudgera Creek Road.
<b>Extent:</b>	7.6m short of the minimum 30m requirement as per Clause 24. This is a 25.33% variation to the development standard.
<b>Authority:</b>	Tweed Shire Council under assumed concurrence



<b>DA No.</b>	DA11/0212
<b>Description of Development:</b>	Detached garage
<b>Property Address:</b>	Lot 10 DP 9563 No. 132 Chinderah Road, Chinderah
<b>Date Granted:</b>	8/2/2012
<b>Development Standard to be Varied:</b>	Clause 24 - Set backs to designated roads
<b>Zoning:</b>	1(a) Rural
<b>Justification:</b>	Application is for a garage located 13 metres from Chinderah Road, being a designated road. A 30 metre setback is required. The request has been made to vary the standard as neighbouring dwelling to the subject property are only setback approximately 6 metres from the front property boundary. The garage will be set back 7 metres behind the established Building line in this area of Chinderah Road. Councils Director Of Planning has no objections to the vibration and to the application being approved under delegate authority.
<b>Extent:</b>	Application is for a garage located 13 metres from Chinderah Road, being a designated 17m encroachment into the required 30 metre setback, equating to approximately 56%
<b>Authority:</b>	Tweed Shire Council under assumed concurrence

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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**12 [PR-CM] Development Application DA11/0444 for a 68 Lot Subdivision (Including 1 Open Space Lot) at Lot 29 DP 1027531 & Lot 30 DP 1027531 Casuarina Way, Casuarina**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0444 Pt2**

**SUMMARY OF REPORT:**

The proposed development is to undertake a sixty eight (68) lot torrens title subdivision (which includes 1 open space lot) at Casuarina Way, Casuarina.

A State Environmental Planning Policy No. 1 (SEPP 1) objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) Environmental Protection (Coastal Lands) zone.

The SEPP 1 objection relates to a small portion of the site adjacent to the eastern boundary which is zoned 7(f) Environmental Protection (Coastal Lands). The 7(f) zoned land represents approximately 8.85% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size requirement of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed lots 1 to 18.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard in accordance with the Department of Planning directive. In addition, Council officers do not have the delegation to determine subdivisions involving 50 lots or more.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for approval.

**RECOMMENDATION:**

**That Development Application DA11/0444 for a 68 lot subdivision (including 1 open space lot) at Lot 29 DP 1027531 & Lot 30 DP 1027531; Casuarina Way, Casuarina be approved subject to the following conditions:**

**GENERAL**

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

- Plan No 208477-04 (Rev H) – Proposed Subdivision, prepared by RPS and dated 14 February 2012;
- Plan No 208477-08 (Rev H) – Parking Analysis Proposed, prepared by RPS and dated 14 February 2012
- Plan No 208477-09 (Rev E) – Building Envelope, prepared by RPS and dated 14 February 2012,

except where varied by the conditions of this consent.

[GEN0005]

2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

4. All construction works shall comply with Part 6.2 Recommended Acoustic Treatments for Onsite Construction Activities of the Traffic Engineering Assessment CRG, 31 August 2011.

[GEN0135]

5. All construction works shall comply with Part 6.2 Recommended Acoustic Treatments for Onsite Construction Activities of the Traffic Engineering Assessment CRG, 31 August 2011.

[GENNS01]

6. No residential, associated buildings or structures are permitted on land zoned 7(f) Environmental Protection (Coastal Lands).

[GENNS02]

7. The developer is to undertake care and maintenance operations on all streetscapes and casual open space for a minimum of 12 months after the Subdivision is registered with the Land Titles Office. This is the establishment period for new plantings. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.

[GENNS03]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

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

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

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

[PCC0275]

9. 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]

10. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be detailed on the application for a Construction Certificate.

[PCC0485]

11. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

12. The proponent shall submit plans and specifications with an application for construction certificate for the following civil works and any associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils Development Design and Construction specifications.

#### Urban Road

- (a) Construction of an urban bitumen sealed road formation (Proposed Road 1) to a pavement width of 10.8m and with upright kerb and guttering.
- (b) Construction of an urban bitumen sealed road formation (Proposed Road 2) to a pavement width of 6m with upright kerb and guttering.

#### Driveways

- (c) The driveways as detailed on the "Proposed Parking Provision" plan prepared by RPS, dated 14 February 2012 are to be constructed at the subdivision stage to accommodate the proposed car parking on Road 1. The driveways are to be designed and constructed in accordance with Council's standards for driveways. The driveway details are to be shown on the Construction Certificate.

#### Pedestrian Refuge

- (d) A pedestrian refuge or similar alternative is to be constructed on Casuarina Way for the purpose of crossing to the proposed park. The pedestrian refuge is to be placed in a suitable location to not create conflict with the existing bus layback areas on Casuarina Way.

### **Right of Carriageway**

- (e) The proposed right of carriageway is to be constructed to 150mm thick, 4.5m wide reinforced concrete over a compacted roadbase material. The easement / right of carriageway shall be 1m wider than the pavement and any associated batters, catch drains or service corridors.

### **Reticulation**

- (f) The proposed water main in Road 3 is to be constructed as a standard cul-de-sac loop as per Council's standard drawings for water reticulation.

[PCC0875]

13. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
  - roadworks/furnishings
  - stormwater drainage
  - water supply works
  - sewerage works
  - landscaping works
  - sedimentation and erosion management plans
  - location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

14. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall detail stormwater management for the occupational or use stage of the development in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 - Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

15. 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]

16. Prior to the issue of a construction certificate a construction management plan (which addresses as a minimum sediment control, water quality monitoring, construction noise management, dust control) shall be submitted to the satisfaction of the General Manager or his delegate. All work shall comply with that approved plan.

[PCCNS01]

#### **PRIOR TO COMMENCEMENT OF WORK**

17. 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]

18. Civil work in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Construction Specification C101 by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority,
    - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) accredited in accordance with Tweed Shire Council DCP Part A5 – Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
      - C4: Accredited Certifier – Stormwater management facilities construction compliance

**C6: Accredited Certifier – Subdivision road and drainage construction compliance**

The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to approval and issue of any Construction Certificate, and

- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
  - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

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

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

[PCW0985]

20. Prior to the commencement of work, a detailed landscape plan prepared by a qualified landscape architect must be submitted for all areas of casual open space, structured open space and streetscapes to be dedicated to Council. Such a plan must be approved by the Manager, Recreation Services, Tweed Shire Council and include embellishments such as listed in Councils Subdivision Manual (Section A5 of the Tweed Development Control Plan) and Development Design Specification (D14) and related Standard Drawings and include grassing, landscaping, seating, and shade cover. The plans must provide slope information and indicate all underground services.

[PCWNS01]

**DURING CONSTRUCTION**

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

[DUR0005]



22. **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]

23. **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]

24. **Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".**

**The earthworks shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.**

[DUR0795]

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

[DUR0815]

26. **No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.**

[DUR0985]

27. **The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.**

[DUR0995]

**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. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.**

[DUR1795]

**30. Before the commencement of the relevant stages of road construction, pavement design detail including reports from a Registered NATA Consultant shall be submitted to Council for approval and demonstrating.**

- (a) That the pavement has been designed in accordance with Tweed Shire Councils Development Design Specification, D2.**
- (b) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils Construction Specifications, C242-C245, C247, C248 and C255.**
- (c) That site fill areas have been compacted to the specified standard.**
- (d) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.**

[DUR1805]

**31. During the relevant stages of road construction, tests shall be undertaken by a Registered NATA Geotechnical firm. A report including copies of test results shall be submitted to the PCA prior to the placement of the wearing surface demonstrating:**

- (a) That the pavement layers have been compacted in accordance with Councils Development Design and Construction Specifications.**
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.**

[DUR1825]

**32. 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.**

[DUR1875]

33. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

**Roadworks**

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb
- (f) Pavement - pre seal
- (g) Pathways, footways, bikeways - formwork/reinforcement
- (h) Final inspections - on maintenance
- (i) Off Maintenance inspection

**Water Reticulation, Sewer Reticulation, Drainage**

- (a) Excavation
- (b) Bedding
- (c) Laying/jointing
- (d) Manholes/pits
- (e) Backfilling
- (f) Permanent erosion and sedimentation control measures
- (g) Drainage channels
- (h) Final inspection - on maintenance
- (i) Off maintenance

**Sewer Pump Station**

- (a) Excavation
- (b) Formwork/reinforcement
- (c) Hydraulics
- (d) Mechanical/electrical
- (e) Commissioning - on maintenance
- (f) Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

34. 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]

35. The applicant shall obtain the written approval of Council to the proposed road/street names and be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

Application for road naming shall be made on Councils Property Service Form and be accompanied by the prescribed fees as tabled in Councils current Revenue Policy - "Fees and Charges".

The application shall also be supported by sufficient detail to demonstrate compliance with Councils Road Naming Policy.

[DUR2035]

36. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction/demolition.

[DUR2185]

37. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

38. 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]

39. 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]

40. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l.

[DUR2435]

#### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

41. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

42. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that

the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

A Subdivision Certificate shall NOT be issued unless the Certifying Authority is satisfied provisions pursuant to Section 109J of the EP&A Act, 1979 have been complied with and the Certifying Authority has sighted Council's contributions sheet and Certificate of Compliance signed by an authorised officer of Council.

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

Water DSP6:	64.6 ET @ \$11571 per ET	\$747,486.60
South Kingscliff Water Levy:	64.6 ET @ 269 per ET	\$17,377
Sewer Kingscliff:	65 ET @ \$5560 per ET	\$361,400

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

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

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

[PSC0165]

**43. Section 94 Contributions**

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorized officer of Council.

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

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

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

**a. Tweed Road Contribution Plan:**

422.5 Trips @ \$1145 per Trips \$483,763

(\$1145 base rate + \$0 indexation)

S94 Plan No. 4

<b>Sector7_4</b>	
<b>LCA4 - Casuarina:</b>	<b>\$70,980</b>
422.5 trips at \$168 per trip	
(\$168 base rate + \$0 indexation)	
<b>b. Shirewide Library Facilities:</b>	
65 ET @ \$792 per ET	<b>\$51,480</b>
(\$792 base rate + \$0 indexation)	
S94 Plan No. 11	
<b>c. Bus Shelters:</b>	
65 ET @ \$60 per ET	<b>\$3,900</b>
(\$60 base rate + \$0 indexation)	
S94 Plan No. 12	
<b>d. Eviron Cemetery:</b>	
65 ET @ \$120 per ET	<b>\$7,800</b>
(\$101 base rate + \$19 indexation)	
S94 Plan No. 13	
<b>e. Extensions to Council Administration Offices &amp; Technical Support Facilities</b>	
65 ET @ \$1772.82 per ET	<b>\$115,233.3</b>
(\$1759.9 base rate + \$12.92 indexation)	
S94 Plan No. 18	
<b>f. Casuarina Beach/Kings Forest Community Facilities:</b>	
65 ET @ \$2153 per ET	<b>\$139,945</b>
(\$2153 base rate + \$0 indexation)	
S94 Plan No. 19	
<b>g. Casuarina Beach/Kings Forest Open Space:</b>	
65 ET @ \$1231 per ET	<b>\$80,015</b>
(\$717 base rate + \$514 indexation)	
S94 Plan No. 19	
<b>h. Cycleways:</b>	
65 ET @ \$451 per ET	<b>\$29,315</b>

**(\$447 base rate + \$4 indexation)**

**S94 Plan No. 22**

**i. Regional Open Space (Casual)**

**65 ET @ \$1042 per ET \$67,730**

**(\$1031 base rate + \$11 indexation)**

**S94 Plan No. 26**

**j. Regional Open Space (Structured):**

**65 ET @ \$3656 per ET \$237,640**

**(\$3619 base rate + \$37 indexation)**

**S94 Plan No. 26**

[PSC0175]

- 44. Proposed lot 999 shall be dedicated as open space and suitably embellished at no cost to Council in accordance with the approved landscaping plan.**

[PSC0195]

- 45. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

**The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.**

[PSC0215]

- 46. Prior to the issue of a Subdivision Certificate, a performance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.**

**Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.**

[PSC0225]

- 47. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.**

[PSC0725]

- 48. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council's**

**Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.**

**The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:**

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;**
- (b) the plans accurately reflect the Work as Executed.**

**Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.**

[PSC0735]

- 49. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.**

[PSC0825]

- 50. The creation of easements for services, rights of carriageway and restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:**

- (a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.**
- (b) Right of carriageway.**
- (c) Proposed allotments 42 to 44 are prohibited from gaining access onto Casuarina Way. These allotments are to gain access only from the right of carriageway.**
- (d) Roof water from dwellings or structures must be discharged to an infiltration pit sized to accommodate the 3 month average recurrence interval storm.**
- (e) Any infiltration pit created on a lot burdened shall be approved by the certifying authority that certifies any construction certificate for any dwelling constructed on a lot burdened and any application to the certifying authority for a construction certificate in respect of a dwelling shall be accompanied by a design for the proposed infiltration pit.**
- (f) A restriction to user to show the 7(f) environmental zoning for proposed allotments 1 to 18. No building is permitted in the 7(f) zoning.**

**Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.**

**Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision**



enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

51. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

52. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

53. Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-

- (a) Compliance Certificate - Roads
- (b) Compliance Certificate - Water Reticulation
- (c) Compliance Certificate - Sewerage Reticulation
- (d) Compliance Certificate - Sewerage Pump Station
- (e) Compliance Certificate - Drainage

Note:

- 1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
- 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[PSC0915]

54. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.
-

[PSC0925]

55. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of any stormwater pipes and sewerage system installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

56. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

[PSC1115]

57. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed.

[PSC1165]

58. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and

- (b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

Should any electrical supply authority infrastructure (sub-stations, switching stations, cabling etc) be required to be located on Council land (existing or future), then Council is to be included in all negotiations. Appropriate easements are to be created over all such infrastructure, whether on Council lands or private lands.

Compensatory measures may be pursued by the General Manager or his delegate for any significant effect on Public Reserves or Drainage Reserves.

[PSC1185]

59. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the Developer is required (at the Developer's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services.

[PSC1205]

60. Prior to the issue of a subdivision certificate a post earthwork surface radiation survey shall be completed by a suitably qualified person and submitted to the satisfaction of the General Manager or his delegate. Should radiation levels exceed background radiation levels, further detailed investigation and validation (including depth investigations) shall be submitted to the satisfaction of the General Manager or his delegate as required.
61. Prior to the issue of a subdivision certificate a 1.8m high acoustic fence shall be provided along the boundary with the Tweed Coast Road, to the satisfaction of the General Manager or his delegate, in accordance with the recommendations of the Traffic Engineering Assessment CRG, 31 August 2011. A validation statement confirming placement and adequacy of the fence shall be provided from a suitably qualified person.

[PSCNS01]

62. Prior to the issue of a subdivision certificate the sales centre on proposed Lot 37 shall be removed from the site.

[PSCNS02]

63. Prior to the release of a Subdivision Certificate, casual open space is to be embellished consistent with the approved detailed landscape plans.

[PSCNS03]

64. Prior to issue of a Subdivision Certificate, Work as Executed Plans (WAX) must be submitted for all landscaped casual open space. These must show all underground services, irrigation systems and the location of concrete paths, structures, other park infrastructure and garden bed outlines.

The plans are to be certified by a registered surveyor or consulting engineer.

Two categories of WAX plans are to be provided:

- (a) The original approved plan with any variation to this indicated.
- (b) Plan showing only the actual as constructed information,

The plans are to be submitted in the following formats:

- (a) 2 paper copies of the same scale and format as the approved plan.
- (b) A PDF version on CD or an approved medium.

An electronic copy in DWG or DXF format on CD or an approved medium

[PSCNS04]

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

1. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bushfire Protection 2006'.

**REPORT:**

**Applicant:** Brookfield Multiplex Developments Australia Pty Ltd  
**Owner:** Multiplex Casuarina 29 Pty Ltd  
**Location:** Lot 29 DP 1027531 & Lot 30 DP 1027531 Casuarina Way, Casuarina  
**Zoning:** 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)  
**Cost:** \$6,300,109

**BACKGROUND:**

Land and Environment Court Consent for Kings Beach

In December 1998, the NSW Land and Environment Court granted consent to 'Stage 1 Kings Beach Approval'. This consent was for a Development Plan and a 14 lot master plan development for the purpose of residential, tourist and commercial development.

The Consent allowed for some stormwater and road works but generally did not permit any works to be undertaken on the site until further development consent were obtained for each precinct.

The Consent required the future development of the management lots (1 – 7) to be subject to future development applications, with the consent providing population estimates for each of the management lots. The subject subdivision application is located within Lot 2 of the approved Kings Beach Approval, which has an identified population yield of 620.

Department of Planning Approval – Cotton Beach

In February 2006, the NSW Department of Planning granted consent to a development known as 'Cotton Beach'. This staged consent was for the construction and strata subdivision of a 3 storey residential flat building consisting of 129 dwellings, café/restaurant, basement car parking for 224 vehicles, construction and dedication of 144 public car parking spaces, roads, pathways and parks.

The approval incorporated Lots 29, 30 & 31 DP 1027531, part Lot 54 DP 1030322 and existing road reserve.

The approval granted consent for Stage 1 only, noting that subsequent development for Lots 29, 30 & 31 DP 1027531, part Lot 54 DP 1030322 and the operation of first use for the café/restaurant would require separate development applications.

Stage 1 essentially incorporated: the 129 unit development on Lot 31; construction and landscaping of pathways within Lot 30; construction of roads, parks, bus stop facilities and public car parking (144); and stratum subdivision of the dwelling unit building.

The approved plans indicate a form of medium density development over Lots 29 and 30 (subject site), however no approval was granted in this regard.

**SITE DESCRIPTION:**

The subject site is part of the master planned development known as Casuarina Beach. The site is described as Lot 29 and Lot 30 DP 1027531, Casuarina Way, Casuarina.

The site is relatively flat, has been previously cleared for sand mining purposes and is predominantly grassland at present. Lot 29 is 1.485ha and Lot 30 is 3.975ha, resulting in a total site area of 5.46ha.

A sales centre is located in the south western corner of Lot 30, on the corner of Casuarina Way and Sterculia Court. The applicant has noted that while the sales centre will require removal at some point prior to the finalisation of the subdivision, it does not form part of this application and future works to the building will be the subject of a separate application.

Low density residential dwellings are located to the north of the subject site. A mixture of low and high density residential development is located to the south. To the west, beyond Tweed Coast Road is the Cudgen Nature Reserve and to the east is the coastal foreshore, which includes a strip of cycleways / pathways.

Lots 29 and 30 are surrounded by the following road network:

**Casuarina Way** – is an 11m wide urban collector road within a 20m wide road reserve and is located between Lot 29 and Lot 30. A 2m wide concrete footpath is on the eastern side and a 1.2m wide footpath is located on the western side. Approximately 21 constructed parallel car parking spaces are located on either side of Casuarina Way. 2 bus stops are located on the road, one in each direction. The road is relatively new and the pavement is in good condition.

Casuarina Way also functions as a bus route.

**Dryandras Court** – is a 7.8m wide (pavement width) urban local road within a 24.3m wide road reserve located to the north of Lot 30. A 2m wide footpath is on the northern side of the road adjacent to 30 ninety degree car parking spaces. A 1.8m footpath is located on the southern side adjacent to 33 ninety degree car parking spaces.

**Sterculia Court** – is a 8.3m wide (pavement width) urban local road within a 22.3m wide road reserve located to the south of Lot 30. A 2m wide footpath is on the northern side adjacent to 30 ninety degree car parking spaces. A 2m wide footpath is located on the southern side adjacent to 31 ninety degree car parking spaces.

All of the above mentioned roads have flat vertical and horizontal alignment. The roads are relatively new and the pavement is in good condition.

#### **PROPOSAL:**

Council is in receipt of a development application for a residential subdivision of Lots 29 and 30 DP 1027531. The proposed subdivision layout incorporates 67 residential allotments, a landscaped open space allotment (local park) and two new internal access streets and associated landscaping.

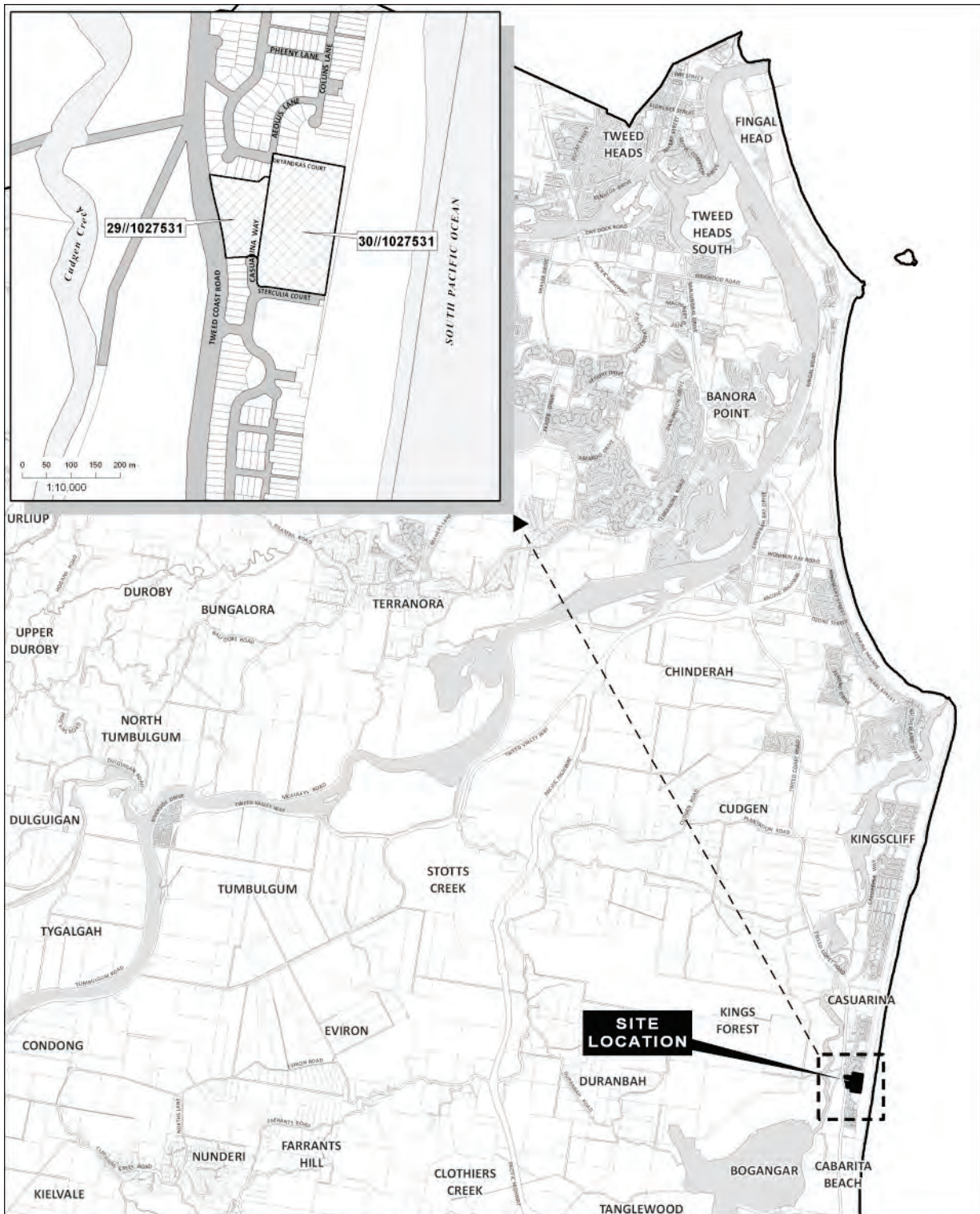
The proposed subdivision is configured in a standard grid pattern, to enable regular shaped allotments. The size of the lots range from 450m<sup>2</sup> to 950m<sup>2</sup>, with the larger lots predominantly located adjacent to the coastal foreshore to the east. These lots include a 20m building setback from the rear (eastern) boundary, which incorporates land zoned 7(f) Environmental Protection.

The proposed open space area is a 2505m<sup>2</sup> local park, located along the western boundary between Casuarina Way and Tweed Coast Road. The park incorporates a recreational open space area, covered picnic table, drinking fountain and park benches.

Access to proposed Lots 1 to 36 will be via a local access street (Road 1) with an 18m road reserve, which will connect Sterculia Court in the south to Dryandras Court in the north. Lots 42 to 44 are proposed to gain access off proposed Road 1 via a right of way, due to the existing bus route obstructing direct access from Casuarina Way for these three (3) allotments. Lots 37 to 41, Lots 45 to 54 and Lots 66 to 67 will be accessed from Casuarina Way. Lots 55 to 65 will be accessed by way of a cul-de-sac with 14m wide road reserve (Road 2) from Casuarina Way.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

**SITE DIAGRAM:**



**Locality Plan**

Lot 29 DP 1027531 & Lot 30 DP 1027531  
Casuarina Way, Casuarina

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty as to the accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a 'Call before You Dig' enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 29 February, 2012  
© Land and Property Management Authority (LPMA) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.



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



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Date: 20/03/2012 10:29:29 AM

**SUBDIVISION PLANS:**



Note:  
All dimensions and areas are approximate only, and are subject to survey and Council approval.  
Dimensions have been rounded to the nearest 0.1 metres.  
Areas have been rounded down to the nearest SqM.  
The boundaries shown on this plan should not be used for final detailed engineers design.

<b>REVISION</b> A: 08/03/12 Amend (typo) B: 09/03/12 Amend (typo) C: 10/03/12 Amend (Lot 43 Address) D: 08/03/12 Amend (Lot 43 Driveway to north side) E: 14/02/12 Amend (Road 1/Block)		Level Datum Origin Date: 14 FEB 2012 Comp By: WW/CWC DWG Name: 208477-04 PRO Local Authority: TWEED SHIRE Locality: CASUARINA BEACH Job Reference: 208477	CLIENT <b>BROOKFIELD MULTIPLEX</b> PROPOSED SUBDIVISION OVER LOT 30 ON DP 1027531 Building Envelope	PROJECT <b>CASUARINA WAY</b> <b>CASUARINA BEACH</b> Plan Ref: 208477 - 09 Rev: E	<p>                     RPS                      100 Ann Street                      PO Box 5228                      Portsville QLD 4208                      Ph +61 7 3201 8800                      F +61 7 3201 8833                      www.rps.com.au                 </p>
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**Note**  
 All dimensions and areas are approximate only, and are subject to survey and Council approval. Dimensions have been rounded to the nearest 0.1 metres.  
 Areas have been rounded down to the nearest 0.1m<sup>2</sup>.  
 The boundaries shown on this plan should not be used for final detailed engineering design.

**Statistics**

Total Site Area	4,736.14 m <sup>2</sup>
Total Area of Open Space	2505.00 m <sup>2</sup>
Total No. of Allotments	67
Area of New Road	5885.00 m <sup>2</sup>
Total Length of New Road	333.00 m

**Legend**

- Site Boundary
- - - Original Parcel Boundary
- Indicative Footpath Location
- Green Park
- FVZ Zone
- Proposed Right of Access

**REVISION**

A. Added West Lot Layout
B. 1888 Show Original Parcel Boundaries
C. 1888 Adjust Casuarina Way Boundary
D. 2807 Amend Lots 18-28 and 31-34, 35-38
E. 2809 Amend 12/22 Amended Layout
F. 2809 Amend 12/22 Amended Layout
G. 2809 Amend 12/22 Amended Layout
H. 2809 Amend 12/22 Amended Layout

Level Datum	Date	14 FEB 2012
Origin	Comp By	J.S / WNW
	DWG Name	208477-04 Pro
	Local Authority	TWEED SHIRE
Scale	Locality	CASUARINA BEACH
1 : 500	Sheet	A1
	Job Reference	208477

**CLIENT**

**BROOKFIELD MULTIPLEX**

PROPOSED SUBDIVISION  
 OVER LOTS 29 & 30 ON DP 1027531

**PROJECT**

**CASUARINA WAY**  
**CASUARINA BEACH**

Plan Ref: 208477 - 04 Rev: H



1888 Casuarina Beach Pty Ltd  
 1888-1889 St. Johns  
 PO Box 1000  
 Casuarina NSW 2485  
 08 9397 8888  
 08 9397 8889



**Legend**

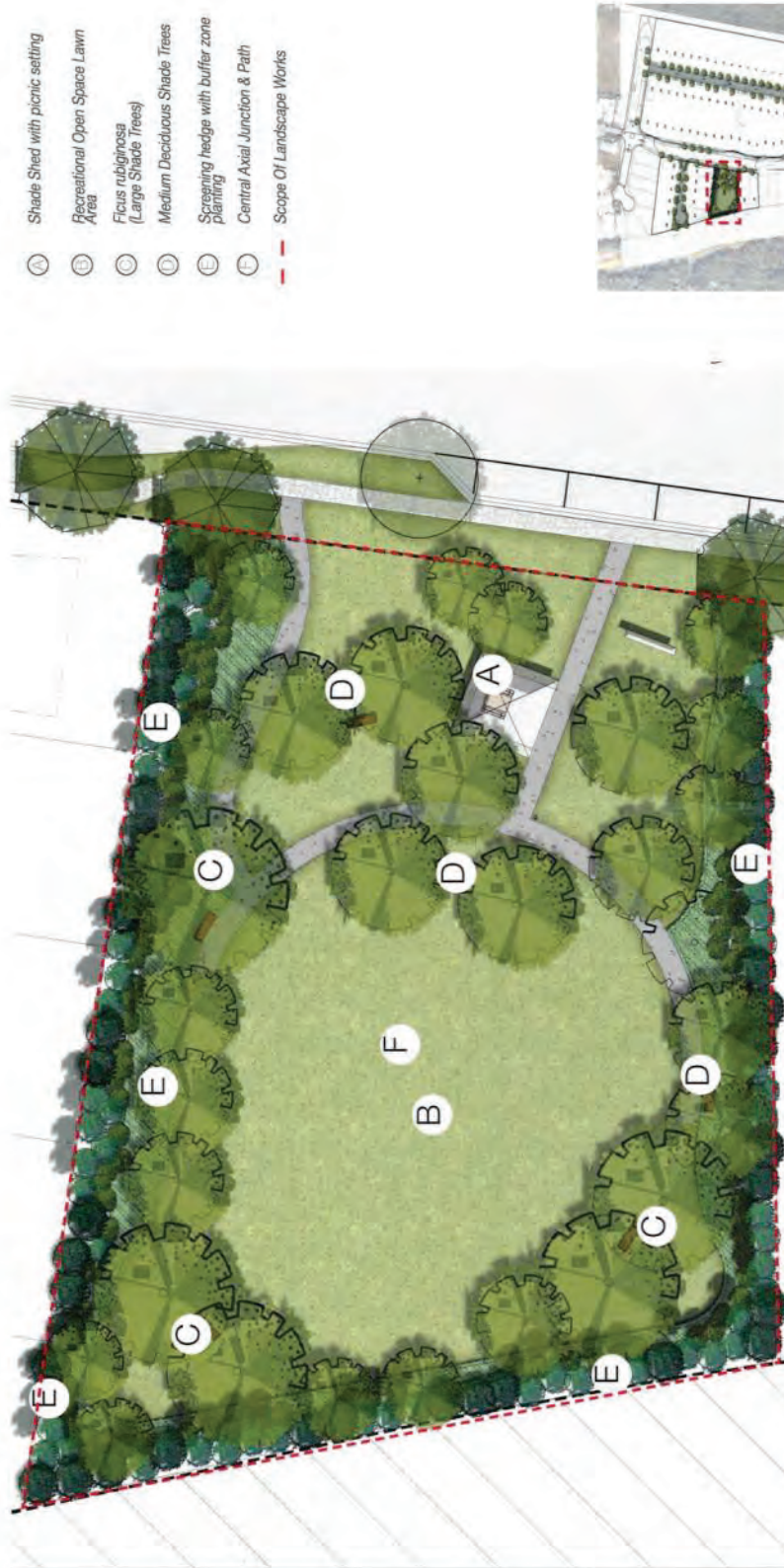
- Site Boundary
- Original Parcel Boundary
- 30** No. of retained on-street parking space
- Proposed on-street parking space
- On-site parking space (1 per dwelling)
- Driveway location
- Traffic calming - cobblestone pavement banding to engineer's design

Note: All dimensions and areas are approximate only, and are subject to survey and Council approval. Dimensions have been rounded to the nearest 0.1 metres. Areas have been rounded down to the nearest SqM. The boundaries shown on this plan should not be used for final detailed engineering design.

**Proposed Parking Provision**

110 parking spaces retained  
 44 parking spaces proposed  
 154 parking spaces in total

<b>REVISION</b> A. 168 Show original parcel boundaries B. 168 Addl. Casuarina Way boundary C. Amend Lot 30-35 and 41-44, 38-39 D. 168/17/12 Amend road E. 168/17/15 Amend road F. 168/17/12 Amend Lot 30 divided to corridor G. 168/20/12 Amend Road 1 Road		Level Datum Origin Scale Sheet 1 : 500 A1	Date 14 FEB 2012 Comp By WW/CWC DWG Name 208477-04 PRO Local Authority TWEED SHIRE Locality CASUARINA BEACH Job Reference 208477	CLIENT <b>BROOKFIELD MULTIPLEX</b> PROPOSED SUBDIVISION OVER LOT 30 ON DP 1027531 PARKING ANALYSIS - PROPOSED	PROJECT <b>CASUARINA WAY                  CASUARINA BEACH</b> Plan Ref 208477 - 08 Rev H	<p><small>RPS                  100 River Street                  PO Box 1000                  Tweed Heads NSW 2486                  Tel: 07 9525 9999                  Fax: 07 9525 9833                  www.rps.com.au</small></p>
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- Ⓐ Shade Shed with picnic setting
- Ⓑ Recreational Open Space Lawn Area
- Ⓒ Ficus rubiginosa (Large Shade Trees)
- Ⓓ Medium Deciduous Shade Trees
- Ⓔ Screening hedge with buffer zone planting
- Ⓕ Central Axial Junction & Path
- Ⓖ Scope Of Landscape Works



KEY PLAN



Scale 1:250 @ A3  
 Drawing Number 003  
 Client Brookfield Residential Properties  
 Site Image Job Number SS11-2948  
 Date 22/12/2011



Local Park

SITE IMAGE CASUARINA WAY, CASUARINA

Sydney Local | 1/3-5 Hagar Street, Surry Hills NSW 2050 Australia | T +61 2 9589 2899 | F +61 2 9589 2877 | www.siteimage.com.au | Site Image (NSW) Pty Ltd ABN 41 801 262 380 | Johnstone St, Brisbane QLD 4000 Australia | T +61 7 3254 4000 | F +61 7 3254 4001 | www.siteimage.com.au | The Future of Landscaping. It's All About The Site.

- Legend**
-  Proposed Street Trees
  -  Proposed New Roads
  -  Coastal Zone Building Setback
  -  Existing Residential Development
  -  Tweed Coast Road Reserve
  -  Scope Of Landscape Works
  -  Existing Coastal Boardwalk
  -  Proposed Access Road Planting to Lot 29
  -  Local Park and Proposed Access Road Planting
  -  Proposed Local Street Planting to Lot 30



Scale: 1:1000 @ A3  
 Drawing Number: 002  
 Issue: C  
 Date: 12/12/2011

Client: Brookfield Residential Properties  
 Site Image Job Number: SS11-2049

SITE IMAGE CASUARINA WAY, CASUARINA

LANDSCAPE ARCHITECTURE (PT) LTD

Sydney Level 1, 3-5 Bapst Street, Surry Hills NSW 2010 Australia | T +61 2 9559 2868 | F +61 2 9559 3977 | www.siteimage.com.au | Site Image (NSW) Pty Ltd ABN 44 801 262 3300

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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

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*. Clause 4 further aims to provide a legal basis for the making of a Development Control Plan (DCP) to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The subject development application is considered suitably in keeping with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties or the shire as a whole.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP 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 subject site is an existing infill site and therefore the proposed development is considered to be in keeping with the ESD principles.

Clause 8 - Zone objectives

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

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

In this instance, the subject site is part zoned 2(e) Residential Tourism, the primary objectives of which are outlined below.

The proposed subdivision is considered consistent with the primary objective of the zone as it will be for residential use.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed subdivision generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact in the community due to the established residential nature of the local area.

#### Clause 11 - Zone objectives

The site is part zoned 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands).

#### **2(e) Residential Tourist Zone**

Primary objective

- *To encourage the provision of family-oriented tourist accommodation and related facilities and services in association with residential development including a variety of forms of low and medium density housing and associated tourist facilities such as hotels, motels, refreshment rooms, holiday cabins, camping grounds, caravan parks and compatible commercial services which will provide short-term accommodation and day tourist facilities.*

Secondary objective

- *To permit other development which has an association with a residential/tourist environment and is unlikely to adversely affect the residential amenity or place demands on services beyond the level reasonably required for residential use.*

The proposed development for a sixty eight (68) lot subdivision of two residential development lots within the Casuarina Beach Estate is considered to be consistent with the objectives of the 2(e) zone.

#### **7(f) Environmental Protection**

Primary objectives

- *To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.*

Secondary objective

- *To allow for other development that is compatible with the primary function of the zone.*

The proposed subdivision is considered to be appropriate in the 7(f) zone as the majority of the proposed residential lots (73%) are wholly within the land zoned 2(e) Residential Tourist. Only 18 of the 67 residential allotments incorporate a portion of 7(f) Environmental Protection zoned land (in the eastern most portion of each).

Any future residential dwelling / structure will be required to be situated entirely within the 2(e) zone and no buildings or associated structures will be permitted in the 7(f) zone. The approved use of all allotments will be residential, which is consistent with the surrounding land uses.

#### Clause 15 - Essential Services

The proposal can be adequately serviced by way of existing water and sewer mains within the locality, subject to compliance with the provisions of Tweed DCP Section A5 and conditions of consent.

The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

#### Clause 16 - Height of Building

A 3 storey height limit applies to the site. No buildings are proposed as part of this application.

The proposal is considered to be consistent with the provisions of Clause 16 of TLEP 2000.

#### Clause 17 - Social Impact Assessment

Having regard to the provisions of DCP Section A13, a detailed social impact assessment is not required.

#### Clause 21A

Clause 21A requires a minimum 40 hectares for land zoned 7(f) Environmental Protection. The proposed development incorporates a 20m wide strip of land zoned 7(f) along the eastern boundary of the site. The area in question does not meet the 40 hectare requirement and as such, the applicant has lodged a SEPP 1 Objection with the application, specifically seeking variance to the minimum lot size development standard for the 7(f) zone. Further assessment in terms of the SEPP 1 Objection is detailed later in this report.

#### Clause 22 – Development near Designated Roads

The intent of Clause 22 is to protect and improve the capacity, efficiency and safety of designated as well as to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed and to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

Tweed Coast Road is identified as a Council Designated Road on Council's mapping system and this clause is applicable to the site.

In terms of the impact of the proposal on Tweed Coast Road, the proposed lots are not directly fronting Tweed Coast Road. Council's Development Engineer has assessed the proposed development in terms of traffic generation and is satisfied that proposal will not create a poor level of service on the surrounding road network.

The proposed subdivision is sensitive to traffic noise, with allotments on the western side of Casuarina Way potentially being impacted by noise from traffic travelling along Tweed Coast Road. Noise mitigation measures have been recommended, as detailed later in this report.

The proposal does not detract from the scenic values of the locality as it is of a similar character to surrounding subdivision adjoining the designated roads.

Overall, the proposed development is considered to comply with the provisions of Clause 22.

#### Clause 27 - Development in Zone 7(f) Environmental Protection (Coastal Lands)

The objective of Clause 27 is to protect land that may be susceptible to coastal erosion processes from inappropriate development.

It is considered that the proposed sixty eight (68) lot Torrens title subdivision will not impact on the behaviour of the sea, beach or dune, landscape or scenic quality of the locality, and any native vegetation.

Although the 2100 Coastal Hazard line is located within Lot 30 (approx 6m from the eastern property boundary), it is within the 20m wide 7(f) zone. No development is allowed within the 7(f) zone, therefore no earthworks or vegetation removal will take place that could influence coastal erosion processes. As such, the proposed development is considered to satisfy the provisions of Clause 27.

#### Clause 35 - Acid Sulfate Soils

The subject site is identified as possessing Class 4 Acid Sulfate Soils. Council's Environmental Health Unit has advised that the scope of works is relatively minor and bulk earthworks and major site disturbances have been completed previously (and was the subject of an ASSMP under the original consent). Major soil disturbances were also completed historically during sand mining activities. No further assessment is required in this regard. It is considered that the proposal complies with the requirements of Clause 35 of the TLEP 2000.

#### Clause 39 - Contaminated Lands

The site is existing residential land and is part of the greater Casuarina Beach Estate. Council Environmental Health Unit has advised that in accordance with a Council Resolution of 21 November 2001, no further testing for contamination was necessary. Further details are provided in this regard later in this report. It is considered the proposal complies with the requirements of Clause 39 of the TLEP 2000.

#### Clause 39A - Bushfire Protection

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act a permit is required for subdivisions on land subject to bushfire hazard.

The NSW Rural Fire Services has given their general terms of approval for the development and appropriate conditions of consent have been imposed.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 29A: Natural areas and water catchment

Clause 29A relates to the clearing of natural vegetation in environmental protection areas. The proposed development does not propose any vegetation removal within the 7(f) zone.

##### 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 hazard areas



The proposal is for subdivision of existing residential allotments within the Casuarina Beach Estate. All foreshore rehabilitation and beach access points have been undertaken/established as part of the parent subdivision. The proposal has no direct implications or relevance in this regard.

As noted above, the 2100 Coastal Hazard line is located within Lot 30 (approx 6m from the eastern property boundary). No development is allowed within the 7(f) zone, therefore no earthworks or vegetation removal will take place that could influence coastal erosion processes. The applicant has noted that: the proposal will not result in the disturbance of any foreshore areas; the site is separate from the foreshore by the existing pedestrian / cycleway; all earthworks will be restricted to the subject site; and no structures will be built in the 7(f) zone.

It is considered the proposed subdivision is in accord with the Coastline Management Manual and the existing subdivision patterns within the area. Therefore, the proposal is compliant with Clause 33.

#### 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.

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised (in terms of low density residential development) without adversely affecting the environmental features of the land.

#### SEPP No. 1 - Development Standards

As discussed, a SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 21A (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 7(f) zone.

The 7(f) zoned land represents approximately 8.85% of the site and the remainder of the site is zoned 2(e) Residential Tourist which has a minimum lot size of 450m<sup>2</sup>. It is proposed as part of the subdivision to include the 7(f) zoned land within proposed Lots 1 to 18.

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.

#### **In support of the proposed variation, the applicant has provided the following:**

*'The 7(f) zoning in this location aims to protect the visual amenity of the coastal foreshore, as well as restrict development in locations susceptible to coastal processes.*

*Development is restricted within the 7(f) zoning and there will be no structures built in this area as a result of the proposal. A 20m setback from the coastal foreshore will be retained, which will ensure that any structures are situated such that the impacts from coastal processes are minimised. Appropriate landscaping in this area will ensure that the visual amenity of the coastal foreshore is protected'.*

**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.

The applicant has adopted the fourth option which states:

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

In this regard, the applicant notes the following:

*'The current area of 7(f) land is already far less than the minimum lot size and therefore it is unreasonable (impossible) to comply with the standard. (Note that it is recognised that the State government and not Council that was responsible for approving previous developments which resulted in this scenario). Council have approved many other developments within the Casuarina area which has resulted in further fragmentation of the 7(f) zone.'*

**Comment:**

Council does not agree with the applicant in that the development standard has been virtually abandoned. In this instance, Council is of the opinion that the first option (being the objectives of the standard are achieved notwithstanding non-compliance with the standard) is the most appropriate.

The objectives of Clause 21A are:

- *to protect the ecological or scenic values of coastal lands.*
- *to protect land that may be susceptible to coastal erosion processes from inappropriate development.*

It is considered that the objectives of Clause 21A will be maintained by the proposed development, despite the minimum 40ha requirement not being met. As noted elsewhere in this report, there is no development proposed within the 7(f) zone and conditions of consent will prohibit any structures within the zone.

Therefore, it is Council's opinion that the objectives of the standard (particularly relating to the protection of the ecological values of the land) are achieved, notwithstanding non-compliance with the standard. Land susceptible to coastal erosion processes will be protected from inappropriate development, by way of restrictions of use applied to each new allotment.

Despite not agreeing with the applicant's option for demonstrating that the objection is well founded, it is considered that strict compliance with the minimum lot size of 40ha for the 7(f) zone is unreasonable and unnecessary in this instance.

**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 and Assessment Act 1979*; and**

The objectives 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 applicant has noted the following:

*'The granting of development consent for the proposal would be consistent with the aim of SEPP 1 in providing flexibility in the application of planning controls. Compliance with the minimum lot size is unreasonable as outlined above.'*

**Comment:**

The proposal provides for a 68 lot Torrens title subdivision in an existing subdivision that incorporates a development with access to utility services and is within close proximity to community facilities. The subject allotment has been identified for development since the creation of the Casuarina Beach Estate.

The SEPP1 Objection is considered to warrant support in that flexibility in planning controls is achieved and approval of the development would not hinder the attainment of the above 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 Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f). As such, the proposed non-compliance with clause 21A of the Tweed LEP 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 particular case, as only a minor portion of the site (8.85%) is zoned 7(f) Environmental Protection (Coastal Lands) and the proposed subdivision will have no impact upon that particular zone. That is, the area of land zoned 7(f) will remain unchanged, with all new development required to be located entirely within the 2(e) zoned land.

The streetscape and amenity of the locality will remain relatively the same, noting that the subject site is infill development within a well established residential precinct of Casuarina Beach estate.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with clause 21A of the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent as it is localised. As such, the granting of this application is unlikely to impact upon public benefit.

**Conclusion**

Given that the three principles set by Chief Justice Preston have been met, strict compliance with the development standard under clause 21A is considered

unreasonable and unnecessary in this instance. As such, the SEPP1 Objection warrants support.

In addition, the Director-General's Concurrence has been granted to vary the 40 hectare minimum lot size development standard subject to no residential, associated buildings or structures permitted on land zoned 7(f).

The Department of Planning advised that concurrence was granted in this instance for the following reasons:

- *The majority of the proposed residential lots are within the land zoned 2(e) Residential Tourist. Only the eastern strip of land in proposed Lots 1 to 18 consists of 7(f) Environmental Protection;*
- *Any residential dwellings proposed on Lots 1 to 18 will be situated entirely on land zoned 2(e). No buildings or other structures are permitted on the land zoned 7(f);*
- *The proposed uses of the lots will be for residential purposes, which is consistent with the surrounding land uses.*

#### SEPP No. 55 - Remediation of Land

The land has been sand mined in the past and areas of radiation have been discovered in the Casuarina Beach area. In relation to this development, Council's Environmental Health Unit are satisfied that on the basis of the information submitted to Council, that further investigation is not required for radioactive material.

#### SEPP No 71 – Coastal Protection

Clause 8 of the SEPP identifies matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development will be considered compatible with existing and approved development for the locality upon completion of the proposed subdivision works.

Clause 18(2) requires a master plan if subdivision of land is proposed within the sensitive coastal zone or the subdivision of residential land into more than 25 lots, unless the Minister has waived the need for a master plan. The applicant has provided correspondence from the Department of Planning (dated 24 August 2011) identifying that the master plan requirement can be waived.

#### SEPP (State and Regional Development) 2011

The proposed development was initially lodged as a Joint Regional Planning Panel (JRPP) application, due to the number of proposed allotments in a SEPP 71 Coastal Zone (between 25 and 100 lots), triggering the need for the application to be determined by the JRPP.

The State and Regional Development SEPP refers to regional development as that described in Schedule 4A to the Act.

Schedule 4A of the Environmental Planning & Assessment Act 1979 relates to development for which regional panels may be authorised to exercise consent authority functions of councils. Clause 9 of Schedule 4A refers to coastal subdivision. Clause 9(b) notes that the threshold for subdivisions in the coastal zone is now 100 lots.

On 6 October 2011, the JRPP confirmed in writing that the proposed development is no longer a class of regional development and the application can be determined by Council without further reference to the Panel.

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

Draft Tweed LEP 2010

Under the Draft LEP 2010, the subject site is zoned R1 – General Residential and E2 Environmental Protection. The proposed development is considered to be consistent with the objectives of both zones.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the R1 land currently zoned 2(e) is identified as Lot Size code G, which requires 450m<sup>2</sup>; the E2 land currently zoned 7(f) is identified as Lot Size code AB2, which requires 40ha.

Clause 4.6 of the Draft LEP 2010 relates to exceptions to development standards, to allow a degree of flexibility. The proposed subdivision is consistent with clause 4.6 in that: the applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection); Council is satisfied that the written request adequately addresses all matters; the proposal will be in the public interest; and concurrence has been granted.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant was requested to demonstrate that awkward or corner shaped allotments would be able to comply with the relevant Site and Building Design controls contained within Section A1 to enable a future dwelling house to be erected. The applicant has provided a plan indicating the building envelope (10m x 15m) on such allotments with compliant setback and DSZ provisions for DCP A1. The applicant also notes that the lots...*'have been designed such that a 2-storey house could be accommodated on all allotments'*.

A2-Site Access and Parking Code

In terms of public car parking, Council's Development Engineer has provided the following comments:

*"145 existing car parking spaces are located surrounding the proposed subdivision.*

*Proposed car parking is as follows:*

- *Sterculia Court*                      *30 car parks still located on southern side  
(no changes proposed)  
19 car parks are proposed on northern side  
(with 12 spaces removed from northern side)*
- *Dryandras Court*                      *30 car parks still located on northern side  
(no changes proposed)  
23 car parks are proposed on southern side*

*(with 10 spaces removed from southern side*

- *Casuarina Way 15 car parking spaces are proposed*

*(6 spaces removed from Casuarina Way)*

*Please note the 'proposed parking provision' plan prepared by RPS dated 14 February 2012 removes a total of 28 existing car parks from Casuarina Way, Sterculia Court and Dryandras Way. Proposed Road 1 provides an additional 33 car parks due to the increase in pavement width (10.8m), allowing for vehicles to park on either side with a 6m through traffic width.*

*Further information was requested from the application to amend the intersection radius from 6m to 10m to be in accordance with Council's development design standards. These details have been amended, although the increase in the intersection radius has resulted in a loss of 4 additional spaces.*

*It is also noted that 4 parking spaces on the proposed parking provision plan are located too close to the intersection with Road 1 and adjoining roads Dryandras Court and Sterculia Court to be included as viable on street car parks, resulting in Road 1 providing a total of 33 car parks.*

*Overall an additional 5 car parks have been created within the subdivision layout design as compared with the existing carparking. To make this viable, the driveways as detailed within the proposed parking provision plan are to be constructed at the subdivision stage. This requirement has been included as a condition of consent.*

*The subdivision driveways as detailed on the "Proposed Parking Provision" plan prepared by RPS, dated 14 February 2012 are required to be constructed at the subdivision stage, to accommodate the proposed car parking spaces on Road 1. These details are to be shown on the application for the Construction Certificate."*

Previous approvals for the Cotton Beach development (approved by the Department of Planning) required 144 spaces to be provided as public car parking. 145 on-street public car spaces were provided by the developer along Sterculia Court, Dryandras Court and Casuarina Way. The proposed development results in a loss of 28 of these spaces. However, the applicant has incorporated 33 on-street public car parking spaces along Road 1 (between Sterculia Court and Dryandras Court), resulting in a surplus of 5 spaces. Therefore, there is no net loss of public car parking provisions.

#### A5-Subdivision Manual

The proposed subdivision has been assessed against section A5 and is generally compliant. Relevant sections of A5 are addressed in more detail below.

#### A5.4.5 Environmental Constraints

A5 also requires that site constraints are identified including contaminated land, landslip, bushfire threatened species, ecological communities, coastal lands, significant vegetation, landscape character, acid sulfate soils, heritage or cultural items.

These matters have been addressed in this report and it is considered that applicable constraints can be effectively managed or the design has responded limit impacts.

#### A5.4.6 Landforming

Council's Development Engineer provided the following comments with regard to the proposed earthworks for the development:

*"The engineering development report prepared by Cardno MBK, dated July 2004 describes engineering details not consistent with this development application for a 69 lot residential subdivision. The engineering report was lodged for DA04/1270 (Cotton beach apartments, plus road and parking infrastructure), as DA04/1270 was lodged over allotments Lot 29 & 30 DP1027531, which are the subject allotments of this application.*

*The engineering report provides details on earthworks and other engineering infrastructure which is inconsistent with this DA. The land is already formed with relatively new road infrastructure; although the report does provide the following information in relation to earthworks and imported fill material;*

*"Insufficient fill is available from within Lots 29, 30 and 31 to achieve the required recontouring. It is therefore proposed to import fill to achieve the required outcome. Fill will, of course, take place in such a way as to maintain existing levels at the boundaries of the lots, and to ensure that existing lots to north and south are not adversely affected.*

*It is anticipated that between 20,000 and 30,000m<sup>3</sup> of external fill will be required to achieve the levels shown on Figure 1, although this amount will not be finalised until basement levels are also finalised during architectural detail. This fill will be sourced from local sand quarries, so as to ensure that exiting site infiltration characteristics are not compromised."*

*A 'Development Application Report' prepared by AT&L dated August 2011 has also been submitted. The report is basic and generic, not providing any information in relation to earthworks.*

*Filling and earthworks for the subdivision mainly occurred during the bulk earthworks phase for the entire Casuarina subdivision. Although as detailed above in the Cardno engineering report, other earthworks have occurred since the original bulk earthworks for the entire Casuarina development site.*

*It is noted that DA04/1270 (Cotton Beach apartments) does not contain any conditions in relation to Level 1 geotechnical certification. Therefore Level 1 geotechnical certification for the earthworks completed for the Cotton Beach development will need to be provided prior to the issue of the consent.*

*No geotechnical report has been lodged with the application. The previously developed stages of Casuarina have been sand. The area was previously sand mined in the 1960s and 1970s resulting in radioactive sand material."*

#### A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding

Council's Planning & Infrastructure Engineer provided the following comment on stormwater for the proposed development:

*"Appendix D of the SEE contains a Civil Design Statement and Plans. A Stormwater Management Plan is provided in this report.*

*The majority of the site grades to the frontal swale to the east, including existing road drainage. A small portion of Lot 29 drains to a box culvert that discharges to twin culverts under Tweed Cast Road to Cudgen Creek to the west. Treatment devices are located within the road cul de sacs. All of these systems and the grading of the site were established in previous approvals.*

*The stormwater management plan seeks to discharge to these existing systems. A new treatment device would be installed to treat the road catchment of Lot 29 draining west. To ensure capacity downstream the applicant has advocated on site detention (OSD) to 200L/s/ha, and also water sensitive urban design (WSUD) citing previous approvals that required 3 month roofwater infiltration. It is the second of these approaches that is considered most applicable to the site, and has worked effectively across the rest of the Casuarina development. This requirement is already applied to the subject land via 88B restrictions to user, created at the time of subdivision, and needs to be maintained for all new lots. DRAINS modelling should be refined in the construction certificate to reflect roof water infiltration on each residential allotment rather than OSD.*

*Appendix D also contains the original Engineering Report by Cardno MBK (2004) for the original Stage 1 works, however this does not consider the subject works in any detail."*

Subsequent to the comments above, Council's Development Engineer concluded the following:

*"As the majority of stormwater infrastructure is already in place, there are no significant issues with stormwater management for the proposed development, subject to preservation of the requirement for each allotment to provide on-site roof water infiltration.*

*The existing Restrictions on Title over this site relating to stormwater infiltration requirements are to be reiterated on the 88B instrument for this subdivision."*

#### A5.4.8 Urban Structure

The Subdivision Manual seeks to ensure neighbourhood design is walkable, connected and includes an interconnected street network. It is also considered that a network of well distributed parks should be provided, as well as neighbourhood centres that act as a community focus and surrounded by higher density.

The configuration of the proposed subdivision results in each allotment being within a walkable distance to the foreshore and the proposed local park. Although no formal access is proposed to the foreshore, access would be via the existing access points at the end of Sterculia and Dryandras Courts. As such, the urban structure is considered suitable.

#### A5.4.10 Movement Network

This section of the Subdivision Manual seeks to ensure adequate street network and intersection design.

##### *Proposed Intersections*

##### *Intersections 1 & 2*



The intersection of Road 1 / Sterculia Court and Road 2 / Dryandras Court are proposed as standard 3 way intersections.

*Intersection No. 3*

The intersection of Road 2 and Casuarina Way is a standard three way intersections with Casuarina Way as the main through road.

*Proposed Road Layout*

The proposed road layout comprises of roads identified in the table below.

Road Number	Description	pavement width	verge width	road reserve width	footpath / cycleway	Cross fall
Road 1  Links between Dryandras Court and Sterculia Court	Provides access to proposed Lots 1 to 36.  267m in length	10.8m (6m through traffic and 2.4m wide parking lane either side of road).	3.6m	18m	1.2m on both sides of road	3%
Road 2	Provides access to proposed Lots 55 – 65 and park	6m	4m	14m	1.2m on both sides of road	3%

Council's Development Engineer has provided the following comment in this regard:

*"A request for further information was provided to the applicant on the 19 October 2011 advising the applicant to amend Road 1 by either widening the road pavement width or amending the layout to allow for adequate parking due to the loss of parking created by proposed Road 1. (See comments in Section 7.2 – Proposed car parking).*

*Proposed Road 1 is considered acceptable as a 10.8m pavement width has been proposed (Council's standards require a 6 to 7.5m wide pavement width for a local access street). A area of 2.4m each side of the road has been designated for parking, with a 6m through traffic area not obstructed by parked vehicles. Footpaths are provided each side to facilitate access to the foreshore located at Sterculia Court and Dryandras Court.*

*The original application proposed a third road in the subdivision layout. This road has been removed due to non conformity with Council's standards. A cul-de-sac has been added to Road 2 with a 6m wide pavement width. The road layout complies with Council's development design specifications."*

*Pedestrians / Footpaths / Cycleways*

Both proposed Road 1 and Road 2 have 1.2m wide concrete footpaths on either side as shown on the amended engineering plans prepared by AT& L, dated 17 January 2012.

*Bus routes / Shelters*

Council's Development Engineer has noted that Casuarina Way has been designed as a bus route and that all proposed lots within the subdivision are located within 400m of the two existing bus shelters situated on Casuarina Way. The following comment was provided:

*"A designated bus shelter located on the eastern side of Casuarina Way is adjacent to proposed allotments 42 to 44. These allotments have access via a right of carriageway from Road 1, so the existing bus shelter and layback is not compromised. A 88B is required to reference the proposed right of carriageway and to prohibit proposed allotments 42 to 44 using Casuarina Way."*

A5.4.11 Open Space Network

The proposed subdivision initially incorporated a local park which had an area of 2005m<sup>2</sup>. This was based on the area requirements using a population based formula (1.13ha per 1000 persons) in Table A5-8.

However, during the assessment process, it was pointed out to the applicant that they need to also take into account the minimum area requirements for local parks under Table A5-8.2.1. The minimum area is 0.25ha (2500m<sup>2</sup>), with the park to be located in a position such that 95% of the residents are located within a 400m walking distance.

The applicant was able to suitably revise the proposed layout, by way of removing the proposed road to the south of the park, losing one allotment and re-orienting Lots 66 and 67 to face Casuarina Way. The revised layout results in the local park having an area of 2505m<sup>2</sup>, which meets the requirements of DCP A5.

Council's Recreation Services Unit (RSU) provided the following comment on the revised subdivision layout:

*"The key issue of the size of the casual open space to be provided has been resolved. The park size of 2,505m<sup>2</sup> now meets the minimum required size of 2,500m<sup>2</sup>. Whilst the park still does not meet the criteria for 2 road frontages and is not a sufficient size to allow play equipment, RSU must accept the commercial and space restrictions that force this compromise.*

*Accordingly, the park size and location is accepted.*

*The drawings will require amendment prior to issue of construction certificate. Specific amendments include:*

- *Street trees are shown on the property side of the footpath rather than road side. TSC standard drawings recommend the road side.*
- *Plantings in the park should have some amendments, including:*
  - *Ficus rubricosa: Please review this species. Our concern is the potential size of the canopy long term and the impact of roots on fences and adjoining properties. These are far too close to the boundary in the current plan.*

- *Also note Dwg 101 'Landscape Plan (park)' indicates 5 Ficus specimens while the plant schedule (Dwg 008) states there are 4. Please check and confirm all plants lists are accurate.*
- *Ensure trees and shrubs are a sufficient distance from the boundary so specimens do not overhang adjoining private property lines. A number of tuckeroos appear to be around 4 metres from the boundary, which is too close. Also shrubs are shown as close as 1metre from the boundary line. We suggest keep all shrub plantings a minimum of 2 metres from the boundary.*
- *These points all refer to the same issue – ensure plants do not overhang the boundary or impact on fences or adjoining properties.*
- *Ensure garden plantings are 500 to 1000mm back from any concrete path to ensure plants do not spread onto the path when mature.*

*A more detailed drawing for the streetscape will be required.*

*Please note all street lighting must be reviewed and approved by the appropriate certifying authority. Indicating them on the landscape plan is very useful and appreciated, however endorsement of the landscape plan does not mean approval of the street light locations.*

*Dwg 007 (landscape details) indicates decomposed granite is proposed although I cannot see where on the landscape plan. Please do not use this."*

#### A5.4.12 Lot Layout

##### *Table A5-9.4 – Land in Zone 2 (e) Residential Tourist*

The proposal complies with the minimum lot size for dwelling houses of 450m<sup>2</sup>. Lot sizes are in the order of 450 – 950m<sup>2</sup>.

All lots comply with the required minimum frontage width of 9 metres except for proposed Lots 42, 43 and 44, which are battleaxe shape. Battle axe blocks would not generally be accepted in this development. However, given that the existing bus route on Casuarina Way blocks access to the three allotments, the proposed battle axe configuration is considered to be acceptable.

The layout proposes access through a Right of Way over Lot 43 to allow access to Lot 42. Generally, Council would only accept the one allotment coming off the battle axe handle. However, an exception was made in this instance, given the applicant's willingness to change the overall layout to meet the minimum park area, which ultimately resulted in the loss on an allotment. The only other way to provide access (without a complete redesign of the lot configuration) would be to include a third battle axe allotment. The proposed development, having only 2 battle axe blocks is considered to be more appropriate.

#### A11-Public Notification of Development Proposals

The proposed development was notified for a period of 14 days from 28 September 2011 to 13 October 2011, during which twenty nine (29) submissions were received. Issues raised by the submissions are addressed later in this report.

### B5-Casuarina Beach

Section B5 of the DCP provides broader planning guidelines and controls for the roll-out of subdivision across Casuarina Beach. Many of the provisions within Section B5 have been implemented in previous subdivision stages and through the Master Plan.

The DCP notes the total population yield from the development of the Management Lots (which are Lots 1- 7 on the court approved Development Plan). The subject site is located within Lot 2 of the original Development Plan, having a total population of 620.

Given that the staged Cotton Beach approval incorporated medium density development on the subject site, the applicant was asked to provide an overall assessment of Lot 2, to determine whether or not the proposed development satisfies the population yield estimate for the locality. The applicant provided the following response:

*"Due to the quality of mapping associated with the development plan, it is difficult to determine exactly which land forms part of the original Lot 2. However it appears that the subject site as well as the Cotton Beach development to the south fall within Lot 2. Cotton Beach comprises 18 x 1 bed apartments, 59 x 2 bed apartments, 37 x 3 bed apartments and 15 x 4 bed apartments (total of 289 bedrooms). Based on 2006 census data, the average persons per bedroom in Tweed Heads was 1.1. This equates to a population of approximately 318 within the Cotton Beach development. Based on an average household size of 2.4 (2006 census data for Tweed Heads) the proposed 67-lot subdivision would result in an additional 161 persons. The total population for Cotton Beach and the proposed subdivision is estimated at approximately 479, which is 141 lower than the original predicted population.*

*The lower population yield is a result of the development within Lot 2 being at a lower density than originally envisaged as part of the master plan. Since preparation of the master plan, there have been changes in demand in the local area, and in particular Casuarina. Growth in the region has slowed and housing demand is now for affordable, lower density single dwellings rather than medium to high density attached dwellings and apartments. The proposed subdivision caters for this demand and provides a range of lot sizes to suit a range of affordabilities. The subject land has been vacant for some time and forms one of the last undeveloped portions of land in the immediate locality. The development of this land is desirable in terms of improving the amenity of the area for existing residents. Other major developments in the area, including Kings Forest, will also assist in catering for future population growth in the LGA.*

*On this basis, it is considered that the proposed population yield associated with the development is appropriate. The proposed development caters for the demand in the area and provides a mix of lot sizes to cater for a range of affordabilities."*

The applicant's assessment of the proposed yield is considered to be acceptable. The proposal is generally consistent with the 1998 Court Consent and the Master Plan and does not contravene provisions within B5.

B9-Tweed Coast Strategy

Section B9 provides a broad overview of major strategic planning issues relevant to the Tweed Coast generally.

The DCP has a requirement for 300 car spaces per kilometre of ocean foreshore for public use, providing beach access for future developments in the area such as Kings Forest etc. This requirement was applied to the staged Cotton Beach approval (which incorporated the subject site). Therefore, no additional public car parking is required for the current application. The Cotton Beach approval required 144 public car spaces, which were constructed along Casuarina Way, Sterculia Court and Dryandras Court. The proposed Road 1 results in the loss of car spaces along Sterculia and Dryandras Courts. However, the applicant has proposed additional public car spaces along Road 1, resulting in a net gain of public parking for the locality.

The proposal is generally consistent with B9 and does not contravene the intended urban structure, centres hierarchy or design principles relating to the Tweed Coast.

**(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 existing structure on proposed Lot 37 will need to be removed in the future. A condition of consent has been applied in this regard.

Clause 93 Fire Safety Considerations

No buildings are proposed.

Clause 94 Buildings to be upgraded

No buildings are proposed.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. This management plan is applicable to the proposed development. Appropriate conditions of consent have been applied to ensure that the proposal will comply with the provisions of the management plan.

Tweed Coast Estuaries Management Plan 2004

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

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

This Plan relates to the Cobaki and Terranora Broadwater's and is therefore not applicable to the proposed development.

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

Context and Setting

The proposal is considered compatible with the existing density and character of surrounding Casuarina Beach development and coastal communities.

Access, Transport and Traffic

Council's Development Engineer noted the following, with regard to traffic generation:

*"No traffic report has been lodged with the application.*

*The traffic generation rates used in the below table are sourced from the RTA Guide to Generating Developments (2002) which is preferable for trip generation rates.*

<i>Dwelling type</i>	<i>Number of dwellings</i>	<i>Daily trip rate per dwelling</i>	<i>Estimate Daily Trips (vpd)</i>
<i>Single dwelling</i>	<i>68</i>	<i>9</i>	<i>612</i>

*The development will create an additional 612 vehicle trips per day into the surrounding traffic network. This will impact on the surrounding roads, although will not create a poor level of service on the surrounding traffic network."*

Noise Impact

Council's Environmental Health Unit provided the following comment with regard to potential noise impact as a result of traffic noise from the adjoining Tweed Coast Road:

*"A Traffic Engineering Assessment CRG, 31 August 2011 has been submitted which considers potential impacts on future dwellings from existing Tweed Coast Road traffic noise and potential impacts from construction activities.*

*With respect to construction noise Part 6.2 makes a list of recommendations to ameliorate construction noise and Part 5.1.10 of the Statement of Environmental Effects, RPS Australia East, 31 August 2011 states that these measures be taken into account in preparing a Construction Management Plan prior to the commencement of works – condition to be applied.*

*With respect road traffic noise the report recommends that an acoustic barrier with a maximum height of 1.8m is provided along The Tweed Coast Road frontage. Despite this barrier the report identifies that internal noise levels for first floor construction on lots 59 - 62 and 67 - 68 may not comply and additional noise assessment may be required once building plans are finalised. It is appropriate that appropriate 88B notations be placed on the subject allotments.*

*No objection to the report recommendations is raised, subject to conditions."*

### Contamination

Council's Environmental Health Unit has provided the following comments with regard to potential contamination issues:

*"The site has been subject to historical sand mining and radioactive residues have been detected along the Tweed Coast generally and within the northern precinct of the Casuarina Beach Subdivision.*

*Part 4.2 of the SEE states:*

*'Due to previous sand mining activities in the area, radioactive materials have been previously identified in the Casuarina Beach area. A Pre Development Surface Radiation Survey of the site has been undertaken by Cardno and is provided at Appendix H. The report concludes that the levels recorded do not exceed the Remedial Action Level for any type of occupancy criteria specified by the NSW Department of Health, or the generally accepted action level criteria adopted by Tweed Shire Council.*

*Although the site is considered suitable for the proposed use further detailed site radiation investigations may be required following any earthworks or excavations'.*

*Discussion - the following points are noted:*

*Major bulk earthworks have been completed historically for creation of the Casuarina Beach subdivision (including major earthworks and relocation of bulk materials from east to west on the site to create the Tweed Coast Road – the surface radiation survey submitted with this application is indicative that this work did not uncover any material above background). Major excavations were undertaken for the 'Cotton Beach' development immediately adjacent to the site, which did not uncover any materials of concern.*

*The subject area is remote from where radioactive materials were detected in the northern precinct and no materials above background levels have been detected in the subject location. This position is well documented - refer to file GS4/96/135 Pt25 A & B ECM doc 18488932 Report on Engineering & Environmental Matters, Cardno, Appendix E Radiation Report North Precinct 17 August 2001). Part 3.0 – "It has been established from former sand mining employees who worked on the site that waste deposits were isolated to the southern portion of the Northern Precinct, which was the location of the dry separation mill". Part 5.2 – "A comprehensive surface assessment .... was conducted .... No levels above background were recorded in the Southern and Central Precincts".*

*Refer ECM doc. 39268211 and Cardno Correspondence dated 14 August 2001 which indicates that after surface radiation monitoring over the entire Casuarina Beach site 'There is no radiation contamination in the South and Central precincts'. With respect to the possibility of materials at depth it is further noted that depth monitoring dated 13 November 2001 to a depth of 4.5m (51 boreholes) was completed and no materials above background levels were detected (ECM doc. 39268211).*

*Importantly, reference is made to Council's resolution of 21 November 2001 which was made following consideration of data supplied (refer above*

examples) to Council regarding radiation investigations in the subdivision. That data indicated that the relevant area is unlikely to be contaminated by radioactive materials, and hence Council resolved not to 'require any further testing of sites' for radioactive materials.

Most recently, a surface radiation survey has been completed of the development area by Cardno dated 4 August 2011 and no surface radiation levels above background (0.2uSv/hr) were identified. The information has been discussed with Mr Rod Barry of Cardno who is the author of the 4 August 2011 information. Rod confirmed that radioactive material is unlikely in the southern precinct (based on historical investigations and information) and that a post earthwork surface survey would be appropriate to cover any remote possibility of materials being disturbed during placement of services etc – this is a conservative approach given Council's resolution of 21 November 2001 and should any material be identified by a post earthwork survey under the current application, then further investigation would be undertaken."

#### Flora and Fauna

The proposed development incorporated fauna and flora report. Having reviewed the report, Council's Ecologist provided the following comments:

*"Both lots (the 'site') are considered highly disturbed due to previous vegetation clearing and earthworks. As a result of previous disturbances, the site is best defined as open grassland, with some scattered immature native trees. The site is regularly slashed to control weed growth. Council's GIS mapping system identifies the vegetation of the site as Highly Modified/Disturbed.*

*Vegetation clearing is unlikely to significantly impact upon habitats due to the disturbed nature of the site. Four (4) species of native flora proposed for removal, with the remainder of the identified species being exotic. Native species will be incorporated into the landscaping of the open space area and streetscaping thus contributing to an increase in habitat value.*

*The species selected for landscaping within the open space allotment is deficient of native species. Several hybrid species have been selected; these are to be replaced with local native species as per Council's general landscaping condition of 80% local native and 20% non-native. In addition, streetscaping incorporating *Cupaniopsis laurina* is proposed. It is believed that this species has been incorrectly referred to and clarification regarding the specific species is required."*

All proposed landscaping is to be located within the existing / proposed road reserves, which will ultimately be under control of Council's Recreational Services Unit. As a result of additional information required by the Recreation Services Unit, the proposed landscaping plans were revised and plant species amended appropriately. The proposed development is supported by the Recreation Services Unit, subject to conditions of consent.

#### Water Supply

Council's reticulated potable water supply is available to the area. Recommended conditions of consent shall require the provision of service in accordance with Council's standards.



The original subdivision design required amendment as it created two dead end mains albeit with cul-de-sac loops. The proposed Drawing DAC040 showed three new dead end mains including one on each side of Road 03 and shows no cul-de-sac loops. It also shows a reticulation main on both sides of Road 01. Council's Water Unit required that...*'a main only on one side of the streets and services crossing the road to the other side and rather than providing cul-de-sac loops, the opportunity to link the mains in Road 02 and Road 03 along Tweed Coast Road was noted to the applicant. This was the preferred outcome of Council as it removes dead end flushing requirements'*.

The subdivision layout was amended, deleting one of three roads, with Road 2 containing a cul-de-sac. The water reticulation detail shows a main located up each side of the road to provide service to the proposed allotments located either side of the road.

Council's Senior Water & Sewer Engineer provided the following comment:

*"Sewer – The proposed revision resolves the issue in relation to connection through an established property over which Council does not have an easement.*

*Water – The revised layout removes the opportunity to provide a link main between two cul-de-sacs as I had requested. Accordingly, the water main in Road 03 should revert to Council's normal standard of a single main on one footpath with a cul-de-sac loop arranged in accordance with standard drawing SD 301 "Water Reticulation Layout Cul-de-Sacs."*

*Drawing DAC040 (Issue D) shows new dead end mains, one on each side of Road 03 and shows no cul-de-sac loop. It also shows a reticulation main on both sides of road 01.*

*Normal design would have only one reticulation main on one side of a suburban street with water services crossing the street to provide services to the other side.*

*It is required that there be a main only on one side of the streets and services crossing the road to the other side as shown in SD 302 "Property Services Layout DN 50 or Smaller". SD 320 "Property Service Connections to Mains" is also relevant to this development.*

*Given that the through road of greater significance and that it already exists, the additional main on the eastern side of Casuarina Way may be acceptable in this instance.*

*Whilst the detail can be sorted out at Construction Certificate stage, the difference in the preliminary designs to that which we would normally approve should be noted to avoid any implication that the non-standard layout has been approved."*

#### Effluent Disposal

Council's piped effluent disposal infrastructure is available within the area. Recommended conditions of consent shall require the applicant to provide a service in accordance with Council's standards.

Please note the following comments from Council's Senior Water & Sewer Engineer:

*"The drawings however do show on DAC010, DAC011 and DAC012 an indicative sewer layout. A small problem presents itself on DAC010 in that the connection to the existing sewerage system to the south is within private property over which Council has no easement and the existing sewer stops just inside the southern boundary. This particular connection would require a sewer to be built across the lot to the northern boundary and the layout plan indicates that two new manholes would also be constructed within that property. This property (Lot 28 DP 1027531) has a house with landscaping on it. To use this connection, the proponent would have to provide owners consent and obtain an easement over the sewer in that property. Council does not use its powers of entry under the Local Government Act to facilitate access for a developer in such circumstances."*

The sewer design was amended in resubmitted engineering plans titled 'Service co-ordination plan' prepared by AT & L dated 17 January 2012. The sewer connection for Road 2 to the north of the subdivision is now proposing to connect into an existing sewer on Lot 6 DP 1083567 which has an easement for sewer for connection.

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

The property is fully serviced by all necessary infrastructure (water, sewer, stormwater, electricity and telecommunications), and has easy access to main roads. The site and surrounding properties are zoned for residential development. It is therefore considered that the site is suitable for the proposed development

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

The application was notified and advertised from Wednesday 28 September 2011 to Thursday 13 October 2011.

During this time, twenty nine (29) submissions were received objecting to the proposal. Issues raised in the submissions are outlined in the table below, including an officer response to the issues.

Objection	Response
Concern over lack of streetscaping along Sterculia Court, to enhance street appeal and deliver some privacy for the already established community (Cotton Beach)	Although little opportunity exists for street plantings, given that Sterculia Court is already constructed and incorporates mainly public carparking, the applicant has amended the plans to include street plantings within the road reserve where possible. These plantings will require final approval from Council's Recreation Services Unit prior to the commencement of works.
Concern over the proposed development (houses, town houses or apartment blocks) and how many stories.	The proposed development is for low density residential development (houses). No dwellings are proposed in this application. All new dwellings will be subject to future applications. The subject site has a three storey height limit, and any future development application would need to comply with the provisions of Council's DCP A1 – Residential Development.

Objection	Response
The development needs to have the same look and feel as the rest of Casuarina.	Although it is acknowledged that the configuration of the proposed development is somewhat different to other areas of Casuarina, it is considered to be an efficient and logical lot layout. The regular shaped blocks will provide future residents with ample opportunity to build compliant dwellings, as opposed to irregular shaped blocks resulting in variations to Council's DCP A1.
The proposal doesn't incorporate enough green spaces, trees (especially along Casuarina Way). Only native and preferably locally native trees should be planted	In terms of open space, the proposal meets the minimum area for the local park proposed along Casuarina Way. The landscaping design has been amended to incorporate additional street trees, of which the species must be in accordance with Council's requirements.
No walkways that cut to the beach	Access to the beach is already available via Sterculia and Dryandras Courts – it is not considered necessary to provide additional beach access points through the development, which would likely impact negatively on the existing 7(f) zone.
The streets are very straight, non-creative and encourage speeding	The proposed subdivision layout incorporates traffic calming devices and pavement treatment. The applicant also notes that the on-street public car parking along Casuarina Way and the new Road 1 will also assist in deterring speeding.
Street layout and tightly clustered blocks (many only 500sqm) is in contrast to the overall design of the entire Casuarina development. Lots are too small.	The street layout (grid pattern) is considered to be an acceptable/standard lot layout for residential subdivisions. Other precincts within Casuarina generally have cul-de-sacs which can result in irregular shaped lots. Regular shaped blocks are considered to be more acceptable in terms of ensuring a future dwelling can be designed to comply with all of Council's residential controls.
Masterplan Waiver is an insult	As noted by the applicant, it appears that the submitter has misinterpreted the difference between a master plan between SEPP71 (which is the case in this instance) and the Casuarina Beach Master Plan which is a different document. The waiver is a statutory requirement for subdivision proposals greater than 25 lots in sensitive coastal areas.
Is car parking and open space compliant?	Public car parking provisions are compliant, with 5 additional car parks proposed. A revised layout has resulted in a compliant proposal in terms of open space requirements.

Objection	Response
The house blocks along the beachfront will have no direct access to the boardwalk.	Individual access to the boardwalk may present security issues. Access points to the boardwalk / foreshore area should be limited in order to prevent unnecessary damage to the 7(f) zone.
The numerous small blocks and lack of beach access will cause car parking issues and will funnel foot traffic to Sterculia Court and Dryandras Court.	The size of the allotments are compliant with Council's requirements. Previous approvals have set the beach access points. Additional access points are not considered necessary. Sterculia and Dryandras Courts were designed to funnel pedestrian and vehicular traffic to limited access points to the foreshore. Residents within the proposal are within walking distance to the foreshore and should not impact on the public car parking provisions.

Department of Planning

As noted above, the Director-General's concurrence has been granted to vary the 40 hectare minimum lot size development standard, subject to no residential, associated buildings or structures permitted on land zoned 7(f).

NSW Rural Fire Services

The subject land is identified as being within a bushfire hazard area. As per the provisions of the Rural Fires Act 1997 and pursuant to Section 100B of the Act, the proposed subdivision was referred to the NSW RFS as Integrated development. The NSW RFS has granted a bushfire safety authority, subject to conditions of consent which have been applied.

**(e) Public interest**

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is therefore considered to be in the interest of the general public.

**OPTIONS:**

1. Approve the development application with conditions.
2. Refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the option to appeal the matter in the NSW Land and Environment Court, should they be dissatisfied with Council's resolution.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development is 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 therefore considered the site suitable for the development and warrants approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**13 [PR-CM] Composting Toilets**

**ORIGIN:**

**Building and Environmental Health**

**SUMMARY OF REPORT:**

At its meeting of 24 January 2012, Council resolved to support the following Notice of Motion put forward by Councillor Milne:

*"That Council brings forward a report on whether encouraging composting toilets would be appropriate for this Shire in the rural or urban environment, and if so, ways to encourage this and include in Council policies."*

This report provides relevant advice on the practice of composting toilets and their regulatory requirements.

Based on the practical experience of Council officers who have regularly dealt with composting toilet issues in recent years, it is concluded that encouraging the use of such system would be difficult to sustain, and that personal choice should be the determining factor for the installation these types of installations, rather than any mandatory Council policy.

**RECOMMENDATION:**

**That the report on Composting Toilets be received and noted.**

## REPORT:

Waterless composting toilets, also known as humus closets or biological toilets are waterless systems which rely on the principals of composting by micro-organisms to decompose human waste, paper and other materials into matter known as humus.

Systems are either continuous or batch type. Continuous systems contain a single chamber; whilst batch systems contain several bins with rotation occurring after each bin is filled. In both systems the required chamber or bins are installed below the floor and therefore may require a purpose built structure to house the unit.

As composting toilets are waterless it should be noted that that they do not treat wastewater from other sources such as hand basins, showers, laundries and kitchen sinks. The grey water from these fixtures therefore needs to be managed separately and requires an alternative type of system which obviously makes installation costs a key consideration if proposing these types of systems.

Currently the market has a number of waterless composting toilet systems available however the principals for each are basically the same. To explain the basic principal of these systems, excreta (both urine and faeces) is deposited directly down a chute through an opening to a sealed and vented chamber beneath the pedestal. As there is a direct connection to the chamber, i.e. no flushing system or water seal, it is necessary that a lid be in place to control fly breeding when the closet is not in use. The deposited material is usually detained on a graded base or screen which allows excess moisture to pass through and be collected below. Extra organic matter such as straw, wood shavings, paper or lawn clippings are added to create and improve the composting environment. Micro-organisms decompose the material, with around three quarters of it being converted to carbon dioxide and water vapour. Air drawn through the pile removes these gases and assists the micro-organisms which gradually break down the material into humus. As the base of the waste converts to compost or humus this material is removed through a separate hatch or doorway in the chamber and is typically buried on site. The minimum recommended depth of burial and soil cover is 100mm.

The time taken for the breakdown of these materials varies and is dependent on moisture, air and temperature. Too much moisture can result in odour production and therefore a mechanism may need to be installed to evaporate excess moisture. A ventilation pipe must also be installed and excess moisture may need to be drained to a treatment system or land application area. Some commercially available systems may also incorporate a urine diversion system which can be plumbed separately into the household drainage system or other approved disposal system

Waterless composting toilets fall into the category of an on-site sewage management system (OSSMS). In New South Wales there is legislation and guidelines that stipulate that an OSSMS must be designed, operated and maintained in a manner that will:

- Prevent public health risk;
- Prevent environmental damage (particularly to land, soil, groundwater and surface waters);
- Protects community amenity (e.g. nuisances such as bad odours); and
- Work well into the future.



All commercially available systems must be accredited by NSW Health and are subject to conditions of accreditation which apply to each installation and covers installation, commissioning, maintenance and on-going management.

Also contained in the legislation is a requirement for Councils to manage the cumulative impact of sewage pollution in their local government area, which includes approving the installation and operation of OSSMS's and the ongoing auditing of these systems.

In 1998 the New South Wales Government made some amendments to the Local Government Act making it an obligation for Councils to better supervise the operation and installation of OSSMS's and to ensure that property owners take greater responsibility for maintaining their system. These changes require that once a system has been installed on a property the owner of that property must apply to Council for an approval to operate the system. This requirement for an approval to operate also applies for existing systems where a property with an existing on-site sewage management system is sold to new owner/s or the approval to operate has expired. In these cases the owner must apply to Council for an approval to operate. This approval allows Council to maintain a register of systems throughout the shire together with details of the owners of those systems and the approval ensures that property owners are aware of their responsibility to efficiently operate and maintain their system in accordance with the conditions of approval.

A check of Councils records identifies that there are approximately 4900 OSSMS's systems currently registered and that a low percentage of these include waterless composting systems. As indicated above the Local Government Act gives Council the responsibility to monitor all systems to ensure that they meet standards. Any waterless composting toilet installed, irrespective of the system being located in an area having reticulated sewer available, would need to be registered and therefore would fall into Councils auditing regime. Composting systems require individual approval, require an approval to operate and require an annual fee to enable resourcing for Council undertake these functions.

Typically the maintenance of a waterless composting system is the responsibility of the owner or occupier and is not normally subject to a maintenance contract. **The owner or occupier must therefore be committed to the principles of composting.** Maintenance requirements vary among waterless composting toilets, and the maintenance requirements are usually specified in the operational manual required to be supplied with the system. The manual would normally cover all the aspects of efficient humus production and would include information such as:

- How to control of excessive moisture production in the waterless composting toilet vessel
- Procedures to ensure that the deposited material is spread evenly over the base of the waterless composting toilet,
- Cleaning procedures (e.g. minimal use of water and disinfectants on pedestal)
- Procedures for removal and disposal of compost
- Procedures to eliminate the production of odours
- Procedures to ensure that material does not block the base of the chute.

### Service Requirements

Service requirements are mainly those recommended by the manufacturer and the replacement of defective parts such as fans or heating elements if they are fitted.

## Compost Management

Composted humus should be removed by the occupier or a contractor for management only after the minimum composting period has elapsed. Composted humus should be removed only through the access door (where provided) or from the humus storage tray, and it may be applied only to land within the boundaries of the premises unless the written approval of the local council has been obtained for an alternative method.

The composted humus from the humus closet must not be applied to land directly in an area used for the production of root crops for human consumption. The compost should be buried under clean friable soil in a level area not subject to erosion or inundation, and at a minimum depth of 100mm below finished ground level.

After 3 months' maturation below ground level **or** maturation in a separate lidded compost bin providing aeration and without further addition, the composted humus may be used in the garden, but not for the production of crops that are consumed raw.

## Advantages of Waterless Composting Toilets

- Conserves water
- Can handle a shock loading
- Can be installed in adverse site conditions
- Reduces solids carryover to the land application system
- Recycles nutrients

## Disadvantages

- High capital costs
- Some energy consumption if fan and/or heater installed
- Handling of waste is required
- Does not function well in cold temperatures
- Grey water has to be managed separately
- Moderate to high maintenance required
- Aesthetically unappealing to some people
- May require a purpose-built structure to house unit
- Requires a persistent commitment to composting principles
- Additional Council approvals required
- Annual fee for management and auditing of the OSSMS required

Given the above, waterless composting toilets are a viable option in unsewered areas, particularly where reticulated water is not available or water supply is restricted. Furthermore these types of systems can be used for difficult sites including smaller allotments where difficulties may be encountered in trying to obtain the required suitable area needed for a land application and disposal of liquid effluent.

While composting systems are permissible in both sewerred and unsewerred areas, the owner or occupier must be committed to the ongoing maintenance of the system to ensure its satisfactory operation and reduce the possibility of odours and the generation of complaints particularly in built up areas. Owners should also maintain service records including the date of the last time humus material was removed from the composting chamber. Problems that may arise in sewerred areas would be small allotment sizes for the installation and or disposal of humus and the possibility of odours affecting neighbouring properties due to the limited site areas and setbacks. In an area where reticulated sewer is available the additional time required to ensure the satisfactory operation, particularly given today's busy lifestyles, means that personal choice will usually be for a system requiring the minimum amount of work. In addition to the time needed maintain these systems there are associated costs for the upkeep of such systems including the recommended annual servicing of commercially available systems and therefore unless site conditions require the installation of a waterless composting toilet it is considered that encouraging the use of such system would be difficult to sustain and that personal choice should be the determining factor for the installation these types of installations, rather than introducing and mandatory Council policy.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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**14 [PR-CM] Calls for Expressions of Interest to Operate Markets - Kingscliff, Pottsville, Knox Park Murwillumbah and Tweed Heads Recreation Ground**

**ORIGIN:**

**Building & Environmental Health Unit**

**SUMMARY OF REPORT:**

The current approvals to conduct the markets at Kingscliff, Tweed Heads Recreation Ground, Knox Park Murwillumbah and Pottsville expire on 30 June 2012.

Council has previously called for expressions of interest from the community to determine the most suitable operator. Given the impending expiry date it is appropriate that expressions of interest now be sought, should Council wish for the market operation to continue.

A separate report will also be put to the Tweed Coast Reserve Trust on this matter.

**RECOMMENDATION:**

**That Council, subject to endorsement by the Tweed Coast Reserve Trust, calls for expressions of interest from any person or group who wishes to be considered as a candidate to operate the Kingscliff, Tweed Heads Recreation Ground, Knox Park Murwillumbah and Pottsville markets from 1 July 2012 for a period of three years.**

## **REPORT:**

A report will be also be submitted to the Tweed Coast Reserve Trust regarding this matter.

The current approvals to conduct the markets at Kingscliff, Tweed Heads Recreation Ground, Knox Park Murwillumbah and Pottsville expire on 30 June 2012.

In 2009 when the existing approvals were due to expire, Council called for expressions of interest from the community to determine the most suitable operator. Should Council wish for the market operation to continue it is appropriate that expressions of interest now be called.

Traditionally approvals have been granted for a 3 year period.

The following options in relation to renewal of market approvals have been identified:

### **Issue No Further Approval for any Markets**

#### *Officers Comment*

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

### **Council to Operate and Administer the Markets**

#### *Officers Comment*

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

### **Call for Expressions of Interest to Operate the Markets**

#### *Officers Comment*

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

## **Approve the Existing Operators with a New Approval**

### *Officers Comment*

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

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

### **General**

The existing managers pay to Council between 15% to 25% of total income from stall fees. In calling for expressions of interest a successful applicant may be willing to pay to Council a higher percentage or make an additional regular donation to a charitable group such as the local surf club. A charitable group may actually seek to manage the markets, receiving the resulting income.

The criteria on which expressions of interest are likely to be assessed are:

- Suitable experience in market operations or management of like community activities
- Demonstrated business operation skills
- Willingness to comply with Council policies (particularly regarding restrictions over the sale of food)
- Financial return to Council
- Possible benefits to community based organisations
- Submissions which provide details of proposed improvements to Market operation

### Conclusion

It is appropriate that Council call for expressions of interest to operate the markets prior to determining the successful operators, rather than simply renewing with the existing managers. This will permit the most advantageous submission and resulting improvements to be identified. The outcome of this process will be reported to Council for determination.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

### **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**15 [PR-CM] Release of Restriction on Use - Seaside City Kingscliff**

**ORIGIN:**

**Design**

**FILE NO: DA08/0755 Pt8**

**SUMMARY OF REPORT:**

The developer of Seaside City has requested the release of a Restriction on Use of Land relating to a requirement for noise attenuation measures to be incorporated into all dwelling house designs to be constructed on the burdened parcels.

An acoustic report was submitted to, and approved by Council officers who are satisfied that the Restriction is no longer required and recommends that the Restriction on Use be removed from the burdened parcels.

Tweed Shire Council is empowered to vary release or modify the subject Restriction and it is recommended that Council approve its release and resolve to execute all necessary documentation under the Common Seal of Council to enable the Restriction to be removed from the affected parcels.

**RECOMMENDATION:**

**That:**

- 1. Council approves the release of Restriction on Use seventhly created in DP 1162588 burdening Lots 301-326, 328-337, 339 and 412 in DP 1162588 and Lots 138-143, 145-151, 153-160 and 162-169 in DP1145386; and**
- 2. All necessary documentation be executed under the Common Seal of Council.**

## REPORT:

The developer of Seaside City has requested the release of a Restriction on Use of Land relating to a requirement for noise attenuation measures to be incorporated into all dwelling house designs to be constructed on the burdened parcels.

An additional acoustic report was submitted to, and approved by Council officers who are satisfied that the Restriction is no longer required and recommends that the Restriction on Use be removed from the burdened parcels.

An acoustic assessment was prepared for the development in August 2007 which indicated that road traffic noise levels would have an unacceptable impact on dwellings located along Casuarina Way. As a consequence a restriction to user was registered on the title requiring noise attenuation measures to be incorporated into all dwelling to be constructed on the burdened parcels.

Additional acoustic monitoring was subsequently undertaken during the period 13 July to 22 July 2011 and an independent acoustic assessment submitted to Council titled 'Seaside City Development, Kingscliff Acoustic Traffic Noise Assessment' prepared by Renzo Tonin and Assoc and dated 7 December 2011.

The new site monitoring results indicated that:

1. Noise levels at the worst affected building facades of the Seaside City development along Casuarina Way, Kingscliff comply with the nominated external traffic noise criteria as determined in accordance with the ECRTN (Environmental Criteria for Road Traffic Noise).
2. With respect to internal noise, the Assessment indicates that construction forms provided in Appendix B ('Standard Construction' – eg. clad timber frame, brick veneer, double brick) will achieve the minimum recommended acoustic ratings for building elements to meet the internal noise criteria as determined in accordance with the ECRTN and AS2107:2000.

The Acoustic assessment recommendations were discussed with the author, Rebecca Corbett of Renzo Tonin and Assoc wherein she advised that on site monitoring and reporting indicate that 'standard forms' of construction will achieve complying internal noise levels.

It now appears that the actual noise levels recorded on site are less than those projected in the original August 2007 assessment.

The parcels burdened by the Restriction are located on either side of Casuarina Way within the Seaside City development, and are hatched below:



Tweed Shire Council is empowered to vary release or modify the subject Restriction and it is recommended that Council approve its release and resolve to execute all necessary documentation under the Common Seal of Council to enable the Restriction to be removed from the affected parcels.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council was empowered to vary, release and modify the Restriction on Use seventhly created in DP 1162588 and DP 1145386.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Acoustic Traffic Noise Assessment dated 7 December 2011 (ECM 47315282)

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**16 [PR-CM] Development Application DA11/0443 for a General Store at Lot 7 DP 790073; No. 440 Kyogle Road, Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA11/0443 Pt1**

**SUMMARY OF REPORT:**

The subject application proposes a general store.

The application has been reported to Council following a call up request from Councillor Youngblutt.

The proposal consists of a 3m by 5m shed with maximum height of 3.1m and access via single tilter door. The shed will include a simple internal fitout comprising display tables.

The proposed shed and associated car parking are to be located within the southernmost corner of the development site on an existing cleared portion adjacent to the existing site driveway. The shed is to be setback 3m from the Kyogle Road frontage.

The subject site adjoins Kyogle Road, Murwillumbah, and is within a 100km/hour speed zone.

It is considered that the proposal will create a minimal impact upon the immediate locality, and is therefore recommended for approval, subject to various conditions.

**RECOMMENDATION:**

**That Development Application DA11/0443 for a general store at Lot 7 DP 790073; No. 440 Kyogle Road, Murwillumbah be approved subject to the following conditions:**

**GENERAL**

**1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 1 of 2 and 2 of 2 prepared by Planit Consulting and dated August 2011, except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. Any wastewater shall be collected and disposed to the satisfaction of the General Manger or his delegate. Wastewater shall not be permitted to enter or discharge to any watercourse or stormwater.
5. A permanent water supply shall be provided with convenient access to hand washing facilities to the satisfaction of the General Manager or his delegate. Hand washing facilities shall be provided with antibacterial hand wash and single use clean hand towels at all times.

[GENNS01]

#### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. The developer shall provide (One) 1 parking spaces including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

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

[PCC0065]

#### **7. Section 94 Contributions**

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

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

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

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

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

**(a) Tweed Road Contribution Plan:**

**25.2 Trips @ \$1317 per Trips \$33,188**

**(\$1317 base rate + \$0 indexation)**

**S94 Plan No. 4**

**Sector9\_4**

**(b) Extensions to Council Administration Offices  
& Technical Support Facilities**

**0.2167 ET @ \$1772.82 per ET \$384.17**

**(\$1759.9 base rate + \$12.92 indexation)**

**S94 Plan No. 18**

[PCC0215/PSC0175]

8. 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]

9. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

10. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

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

(a) Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet, including the following specific work:

(i) Bitumen sealing of the existing accesses from the road carriageway to the property boundary as per Tweed Shire Councils road works standard S.D.017.

(b) Demonstrate that delivery vehicles are able to enter and exit in a forward direction.

(c) A basic right (BAR) turn treatment is required to service the 100kmh speed limit as per Figure 7.5 of Austroads - Guide to Road Design – Part 4A: Unsignalised and Signalised Intersections. The right hand turn treatment is required to have a shoulder and is to be sealed.

- (d) A basic left (BAL) turn treatment is required to service the 100kmh speed limit as per Figure 8.2 of Austroads - Guide to Road Design – Part 4A: Unsignalised and Signalised Intersections. The left hand turn treatment is required to have a shoulder and is to be sealed.

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

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

[PCC0895]

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

[PCC1195]

#### **PRIOR TO COMMENCEMENT OF WORK**

13. 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]

14. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a principal certifying authority for the building work, and
  - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (c) the principal certifying authority has, no later than 2 days before the building work commences:



- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

17. 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]

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

[PCW0985]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

[DUR0015]

21. 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]

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. 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]

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

[DUR0815]

25. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

26. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate.

[DUR0995]

27. 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]

28. 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]
29. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.  
[DUR1605]
30. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.  
[DUR1795]
31. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.  
[DUR1845]
32. 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 Council's Development Design and Construction Specifications prior to any use or occupation of the buildings.  
[DUR1875]
33. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Council's Engineering and Operations Division to arrange a suitable inspection.  
[DUR1925]
34. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials.  
[DUR2205]
35. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.  
[DUR2625]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

36. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.  
[POC0005]

37. 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]

38. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

39. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) or alternatively by contacting the NSW Food Authority on 1300650124.

[POC0625]

40. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

41. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

42. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act.

[POCNS01]

43. 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]

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

- \* 8.00am to 11.00am and 2.30pm to 5.30pm - Mondays to Saturdays
- \* 8.00am to 5.30pm Public Holidays
- \* No operations are to be carried out on Sundays

[USE0185]

45. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and any other requirements of Councils Environmental health Officer included in this approval to the satisfaction of the General Manager or his delegate.

[USE0835]

46. The premises shall be maintained in a clean and tidy manner.

[USE0965]

47. The premise shall be utilised for the sale of whole fruit and vegetables only to the satisfaction of the General Manager or his delegate. Food processing, or handling of potentially hazardous food, is not permitted.
48. The storage of food is not permitted unless the structure is made vermin proof to the satisfaction of the General Manager or his delegate.

[USENS01]

**REPORT:**

**Applicant:** Dr I Kettle and Ms M Stephens  
**Owner:** Mr Ian H Kettle & Ms Michele E Stephens  
**Location:** Lot 7 DP 790073; No. 440 Kyogle Road, Murwillumbah  
**Zoning:** 2(c) Urban Expansion  
**Cost:** \$18,000

**BACKGROUND:**

The subject application has been lodged following compliance action. In August 2011 Council's Compliance Officer advised on of the owners of the site to cease selling produce (that was grown on the site) from the back of a truck as the selling of produce constituted a "roadside stall" which needed development approval (if the produce is grown on site).

Accordingly the applicant has lodged the subject application for the construction of a general store (not a roadside stall as advised during the compliance matter as the produce is not grown on site) and associated car parking for the sale of locally grown produce.

The proposal consists of a 3m by 5m shed with maximum height of 3.1m and access via single tilter door. The shed will include a simple internal fitout comprising display tables.

The proposed shed and associated car parking are to be located within the southernmost corner of the development site on an existing cleared portion adjacent to the existing site driveway. The shed is to be setback 3m from the Kyogle Road frontage.

The proposed general store is to have limited operating hours and will be operated by a single person. The store will be serviced by 'family staffing' and generally by the occupant of the site.

The proposed hours of operation are split over the day for a short period in the morning and a short period in the afternoon, proposed hours are as follows:

**Non Holiday Period**

Mon – Sat - 8.00am – 11.00am & 2.30 – 5.30pm

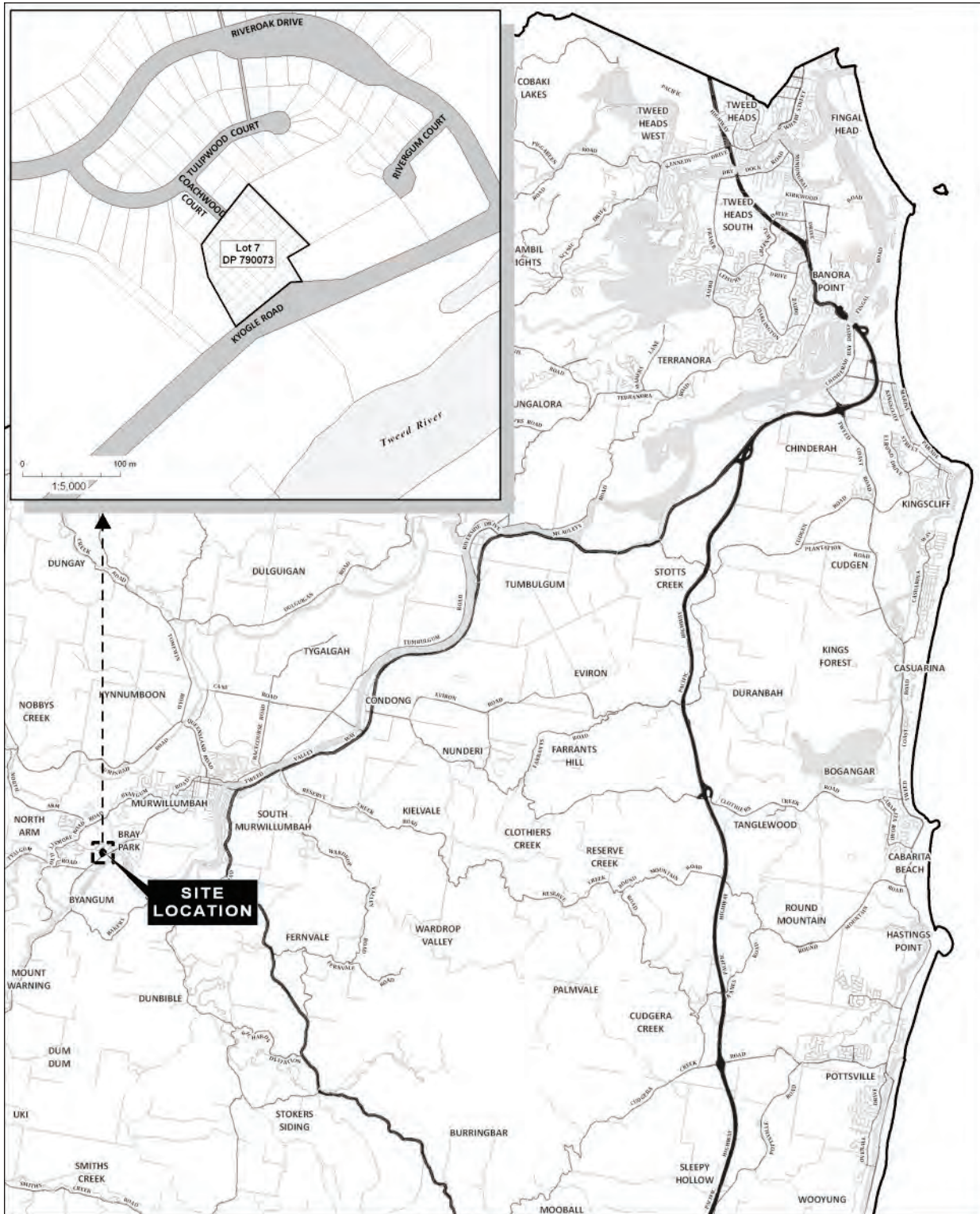
Sun - Closed

**Holiday Periods**

Mon – Sun - 8.00am – 5.30pm

One pole sign is proposed as part of the application. The sign will have an advertising area of 2m<sup>2</sup> with 1m by 1m panels on each side. The sign will have a maximum height of 2.5m above ground.

**SITE DIAGRAM:**



**Locality Plan**

Lot 7 DP 790073  
No. 440 Kyogle Road, Murwillumbah

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 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 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 1100. The information contained on this document remains valid for 30 days only from the date of supply.

Cadastre: 29 February, 2012  
© Land and Property Management Authority (LPMA) & Tweed Shire Council.  
Boundaries shown should be considered approximate only.

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1:120,000 @ A4 Portrait  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED  
Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidetic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484  
PO Box 816  
Murwillumbah NSW 2484  
T | (02) 5670 2400 | 1300 292 872  
F | (02) 5670 2429  
W | www.tweed.nsw.gov.au  
E | planning@tweed.nsw.gov.au

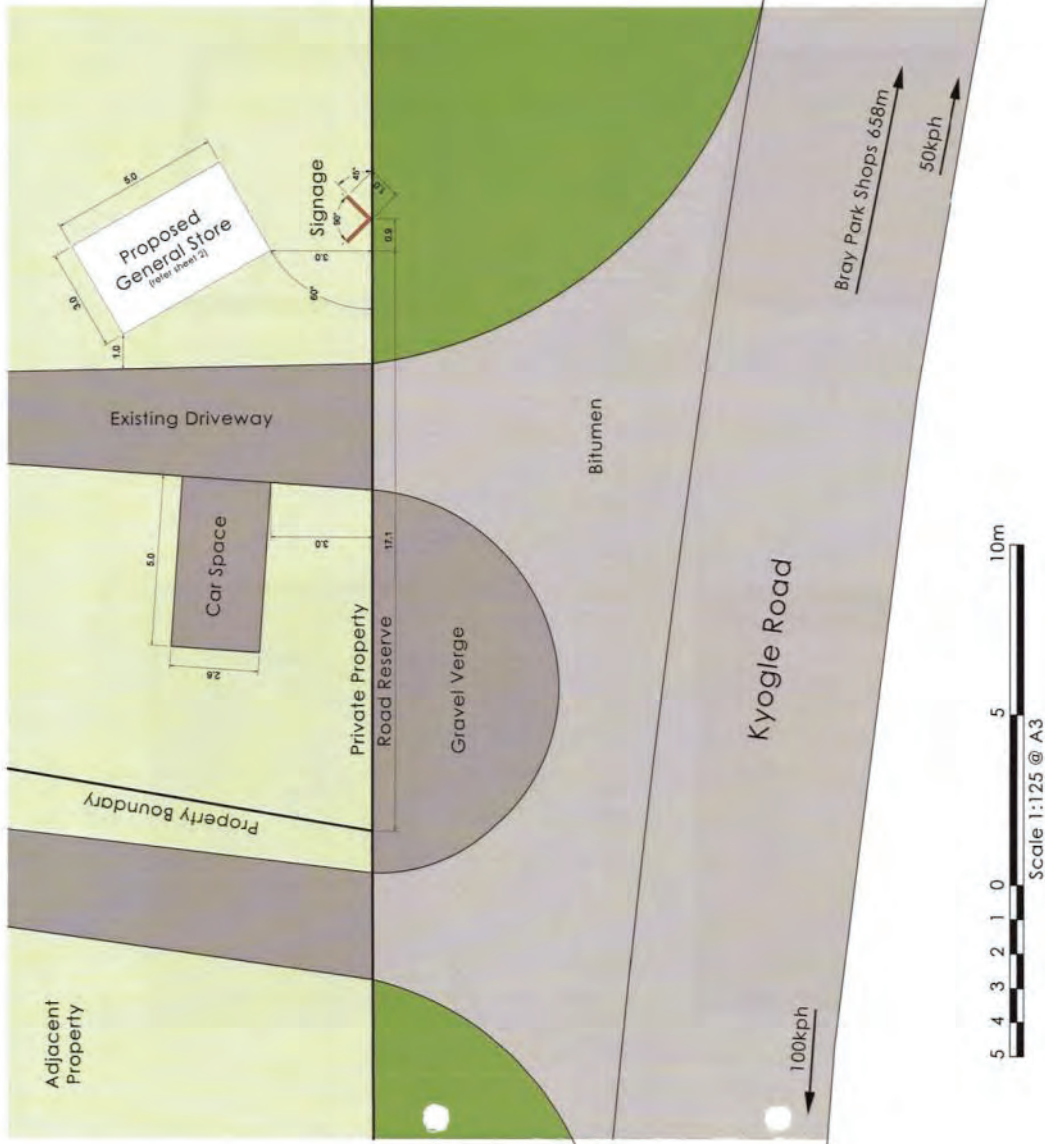


Map File: Z:\SERVICES\STANDARD\TWEED\FILES\BAYDUMAPS\10131313 - LocalityPlan1013\_148.pdf

Author: Beth Bailey - Planning Services Unit

Date Printed: 20/03/2012 10:51:53 AM

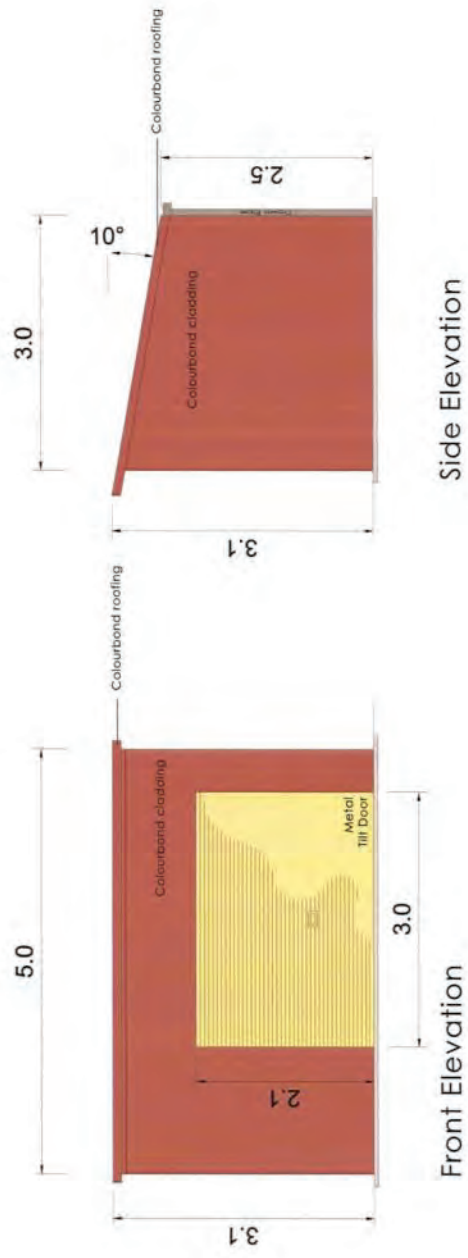
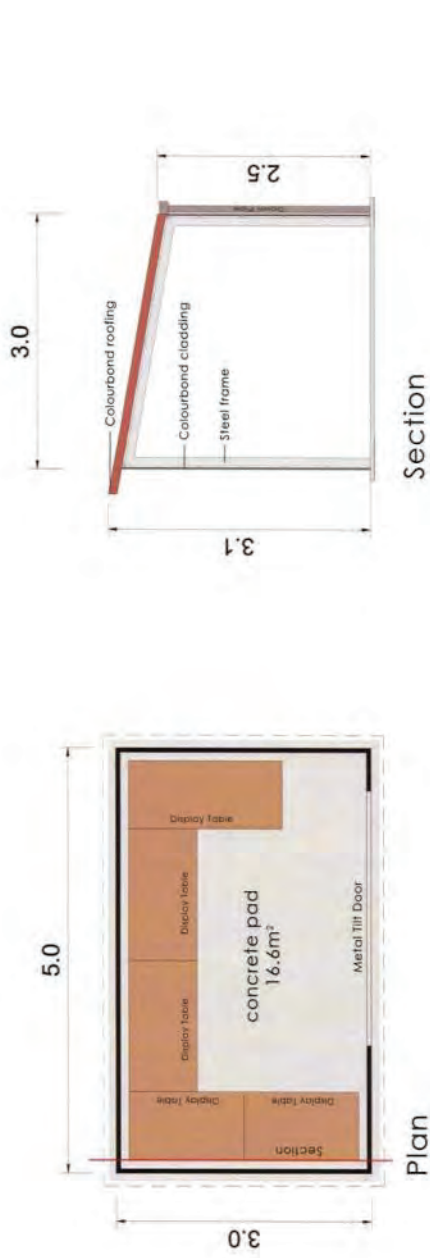
DEVELOPMENT PLANS:



Scale: 1:125 Date: AUGUST 2011

440 KYOGLE ROAD - SITE PLAN  
MURWILLUMBAH NSW





440 KYOGLE ROAD - Indicative General Store  
 MURWILLUMBAH NSW

Scale: 1:50 Date: AUGUST 2011

2 of 2

PLANT CONSULTING  
 10/11-12/13 Coal Street  
 Murwillumbah NSW 2471  
 PO Box 256 Murwillumbah NSW 2471  
 www.plantconsulting.com.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 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is “the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

The subject development application is considered to be consistent with the above, as it is not considered likely to result in a reduction of residential amenity for nearby residential properties.

Clause 5 - Ecologically Sustainable Development

The TLEP 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*.

Broadly, the subject proposal is considered consistent with the above criteria, as the addition of a small general store to the existing residential allotment is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Consent Consideration

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 (c) Urban Expansion, the primary objective of which is to *identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

The proposed general store is considered consistent with the primary objective of the zone. The proposed development is for a general store to be located on a residential piece of land. The land will continue to have a dwelling on it and as such increases the utilisation of the allotment.

#### Clause 11 - Zone Objectives

The subject site is located within the 2 (c) Urban Expansion zone. Within the 2(c) zoned land a 'General Store' as defined in the Tweed LEP is allowed only with consent. The primary objective of that zone and consistency of the proposal with that objective has been outlined above.

The secondary objective encourages non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents. The proposal provides for a commercial development which will create employment.

It is submitted that the proposal, being a form of residential and commercial development complies with the relevant zone objectives.

#### Clause 15 - Essential Services

The proposed development has services available to the site. The general store would be required to provide a permanent water supply which has been conditioned.

#### Clause 16 - Height of Building

The proposed development has a height of 3.1m which is below the 3 storey height limit. It therefore complies with this clause.

#### Clause 17 - Social Impact Assessment

The internal proposed development does not generate a significant social or economic impact. As such, a socio-economic impact statement is not necessary in this case.

#### Clause 22 - Designated Roads

The subject site has direct frontage to Kyogle Road which is mapped as a designated road. The proposed development is seen as the type of development has been conditioned to provide adequate stopping and turning bays as the proposed road has a speed limit of 100km/h.

#### Clause 34 - Flooding

The site is classified as flood prone land by Council's Design Flood mapping and therefore this clause applies. The proposed development seeks consent to construct a small simple shed and car parking space. The structures proposed are not a type of development that would create any greater flood risk to the site or its surrounds. Therefore the proposal is deemed compliant with all aspects of this clause.

#### Clause 35 - Acid Sulfate Soils

The subject site contains Class 5 Acid Sulfate Soils. However, no works involve excavation or disturbance of soils. As such, this Clause is satisfied.

Clause 39 - Remediation of Land

The site has been used for residential purposes since its subdivision. No uses have been undertaken on the site that would introduce potential contamination issues. The proposed development is deemed fully compliant with this clause.

Clause 39A - Bushfire Protection

The proposal is for a small general store and is not a use or structure which is vulnerable to bushfire attack nor is it one listed as a special fire protection purpose under S100B of the Rural Fire Act 1997. A Bushfire Risk Assessment is not required to support the proposal.

Clause 47 - Advertising Signs

An advertising sign is proposed. The sign will have an advertising area of 2m<sup>2</sup> with 1m by 1m panels on each side. The sign will have a maximum height of 2.5m above ground. The proposal is considered to comply with the requirements of Clause 47 of TLEP 2000.

Clause 54 - Tree Preservation Order

The site is mapped as subject to Tree Protection Order 1990. The proposal does not require the removal of any vegetation. The proposal is considered compliant with Clause 54.

**State Environmental Planning Policies**

**SEPP (North Coast Regional Environmental Plan) 1988**

It is considered the proposed development is consistent with the provisions relating to development contained within the North Coast REP.

SEPP No. 64 – Advertising and Signage

Clause 8 of the SEPP requires that signage satisfy the criteria within Schedule 1 of the SEPP. It is considered that the size of the sign and the location of the sign meet the criteria outlined within Schedule 1 of the SEPP. As such the proposal is considered to comply with the SEPP.

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

Council has exhibited the Draft Tweed Local Environmental Plan 2010. Under the draft plan the site is zoned R1 General Residential. The proposed development is considered to best be described as 'neighbourhood shop' in accord with the draft Tweed Local Environmental Plan 2010. The use of 'neighbourhood shop' is allowable subject to consent in the R1 General Residential zone. It is considered the draft instrument raises no issue as to the proposal permissibility.

**(a) (iii) Development Control Plan (DCP)**Tweed Development Control PlanA2-Site Access and Parking Code

Under Council's DCP Section A2, the following parking facilities are required

Proposal	Parking Rate	Unit	Required Spaces	Supplied Spaces
General Store	Staff – 0.5/100m <sup>2</sup> GFA	16.6m <sup>2</sup>	0.083	1
	Customer – 3.5 / 100m <sup>2</sup> of retail GFA		0.581	
	<b>Total</b>		<b>1</b>	<b>1</b>

The proposal is to provide one car parking space on site, which complies with Council's DCP Section A2.

Site access is proposed to be off the existing driveway. Kyogle Road is a Designated Road and has a 100km/hour speed limit on the property boundary. Council's Traffic Engineer has provided the following:

*"A Basic Right Turn treatment, designed for a 100km/h speed limited road, is required on Kyogle Road for south/west bound vehicles consisting of a widened shoulder to allow through vehicles, having slowed, to pass to the left of the turning vehicles.*

*The shoulder of the road adjacent north/ east of the driveway to the development is to be widened, to Council's standards, to 3m for a 20m length.*

*The applicant will need to lodge a s138 application."*

It is considered that these conditions are appropriate to ensure the safety of the road users and will enable safe ingress and egress to the site.

A3-Development of Flood Liable Land

Part of the subject site is affected by the Q100 flood and PMF levels. The affected part of the flooding is isolated to the corner of the property where it is proposed to erect the structure. The type of structure is such that it would not create any greater flood risk to the site or surrounds.

A4-Advertising Signs Code

An advertising sign is proposed. The sign will have an advertising area of 2m<sup>2</sup> with 1m by 1m panels on each side. The sign will have a maximum height of 2.5m above ground. The proposal is considered to comply with the requirements of this section of the DCP.

A11-Public Notification of Development Proposals

The proposed development was notified to surrounding neighbours for a period of 14 days from 23 September 2011 to 10 October 2011. There were no submissions as a result of this application.

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

Clause 92(a) Government Coastal Policy

The subject allotment is not within the Government Coastal Policy area. As such it is not applicable.

Clause 92(b) Applications for demolition

Not applicable. There is no demolition proposed.

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

The proposal is not affected by this Act.

**Tweed Shire Coastline Management Plan 2005**

The proposal is not affected by this policy.

**Tweed Coast Estuaries Management Plan 2004**

The proposal is not affected by this policy.

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

The proposal is not affected by this policy.

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

Context and Setting

Agricultural sheds and single dwelling houses make up the developed landscape and a general store is considered to be small in nature and will have the appearance of an agricultural shed and as such will not look out of character with the area.

Access, Transport and Traffic

Carter Rytenskiid Group completed a traffic report at the existing driveway on the 25 August 2011. The traffic report entails that the existing road side stall is generating up to 5 vehicle trips during the afternoon peak period. The traffic count indicated only one right turn movement in the entire survey period. The traffic report indicates that no additional turning lane treatments are warranted at the access intersection. The statement of environmental effects indicates that access is proposed to be a left turn in, left turn out only.

Since the traffic report was written the speed zone in front of the general store has increased in traffic speed from a 50kmh zone to 100kmh. The 50kmh zone is now located north-east of the proposed general store. It was determined that protected turning into the general store is required in a 100kmh zone.

Council's Traffic Engineer has provided the following comments:

*"A Basic Right Turn treatment, designed for a 100km/h speed limited road, is required on Kyogle Road for south/west bound vehicles consisting of a widened shoulder to allow through vehicles, having slowed, to pass to the left of the turning vehicles.*

*The shoulder of the road adjacent north/ east of the driveway to the development is to be widened, to Council's standards, to 3m for a 20m length.*

*The applicant will need to lodge a s138 application."*

It is considered that these conditions are appropriate to ensure the safety of the road users and will enable safe ingress and egress to the site.

#### Other Matters for Assessment

The proposed development is subject to Tweed Shire Council Section 94 Contributions. In particular, Plan No. 4 - Tweed Road Contribution Plan and Plan No. 18 - Council Administration Offices & Technical Support Facilities.

There are no water and sewer infrastructure charges applicable. The Development increase a total of 15m<sup>2</sup> Gross Floor Area and is charged at the rate for 'General Store' at 2.8(GLA) which creates a total of 42 Trips required. The proposal is given a 40% discount for Employment Generating Development and as such a total of 25.2 trips have been charged.

Plan No. 18 has been charged at the rate for a small commercial unit which equates to 0.2167 ET.

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

##### Surrounding Landuses/Development

The subject site is located on a residential piece of land which is surrounded by agricultural sheds and single dwelling houses. It is a semi agricultural/residential type development which makes up the landscape of the area. A small general store is considered to integrate with these uses. The proposed general store and associated signage is small in size and will scale with the surrounding area.

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

The proposed development was notified to surrounding neighbours for a period of 14 days from 23 September 2011 to 10 October 2011. There were no submissions as a result of this application.

#### **(e) Public interest**

Due to the minor nature of the development it is considered that there will be no impact upon the public as a result of this development. No further assessment is required.

#### **OPTIONS:**

1. Grant development consent, subject to conditions.
2. Refuse the development application with reasons.

Option 1 has been recommended by the Council officers.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicants have a right of appeal in the NSW Land and Environment Court if they are dissatisfied with the determination.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development incorporates a minor general store with no variations to the planning policies. Having assessed the merits of the application the proposal is considered suitable for conditional approval as recommended.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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- 17        **[PR-CM] Development Application DA10/0671 to Relocate an Existing Dwelling and Construct a Child Care Centre at Lot 2 DP 1122541, No. 26 Coronation Avenue, Pottsville**

**ORIGIN:**

**Development Assessment**

**FILE NO:    DA10/0671 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the erection of a child care centre on the subject site. As part of the application a total of 44 students and 4 staff are proposed to utilise the centre.

Additional information was required for a full assessment and was sent on 8 February 2011, which has not been responded to. The information related to contamination and noise issues.

The application has been requested by Councillor Kevin Skinner to have the application determined by a full Council. It is recommended that the application be refused for the reasons outlined in this report.

**RECOMMENDATION:**

**That Development Application DA10/0671 to relocate an existing dwelling and construct a child care centre at Lot 2 DP 1122541, No. 26 Coronation Avenue, Pottsville be refused for the following reasons:**

- 1.    The proposed Child Care Centre is unacceptable in the location due to noise impacts.**
  
- 2.    The proposal is contrary to State Environmental Planning Policy No. 55 (SEPP 55) as an assessment of contaminated lands has not been undertaken by the applicant.**

**REPORT:**

**Applicant:** Arkup Pty Ltd  
**Owner:** Arkup Pty Ltd  
**Location:** Lot 2 DP 1122541, No. 26 Coronation Avenue Pottsville  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$327,000

**BACKGROUND:**

Council is in receipt of a development application that seeks to remove the existing dwelling and carport located on site and construct a childcare centre. The proposed facility is for a maximum of 44 children, 4 staff members and 13 car parking spaces that would operate Monday to Friday from 7am to 6pm except public holidays.

A request for additional information was made on 12 November 2010 which was responded to on 7 December. Additional information was required for a full assessment and was sent on 8 February 2011, which has not been responded to. The requested information included the following:

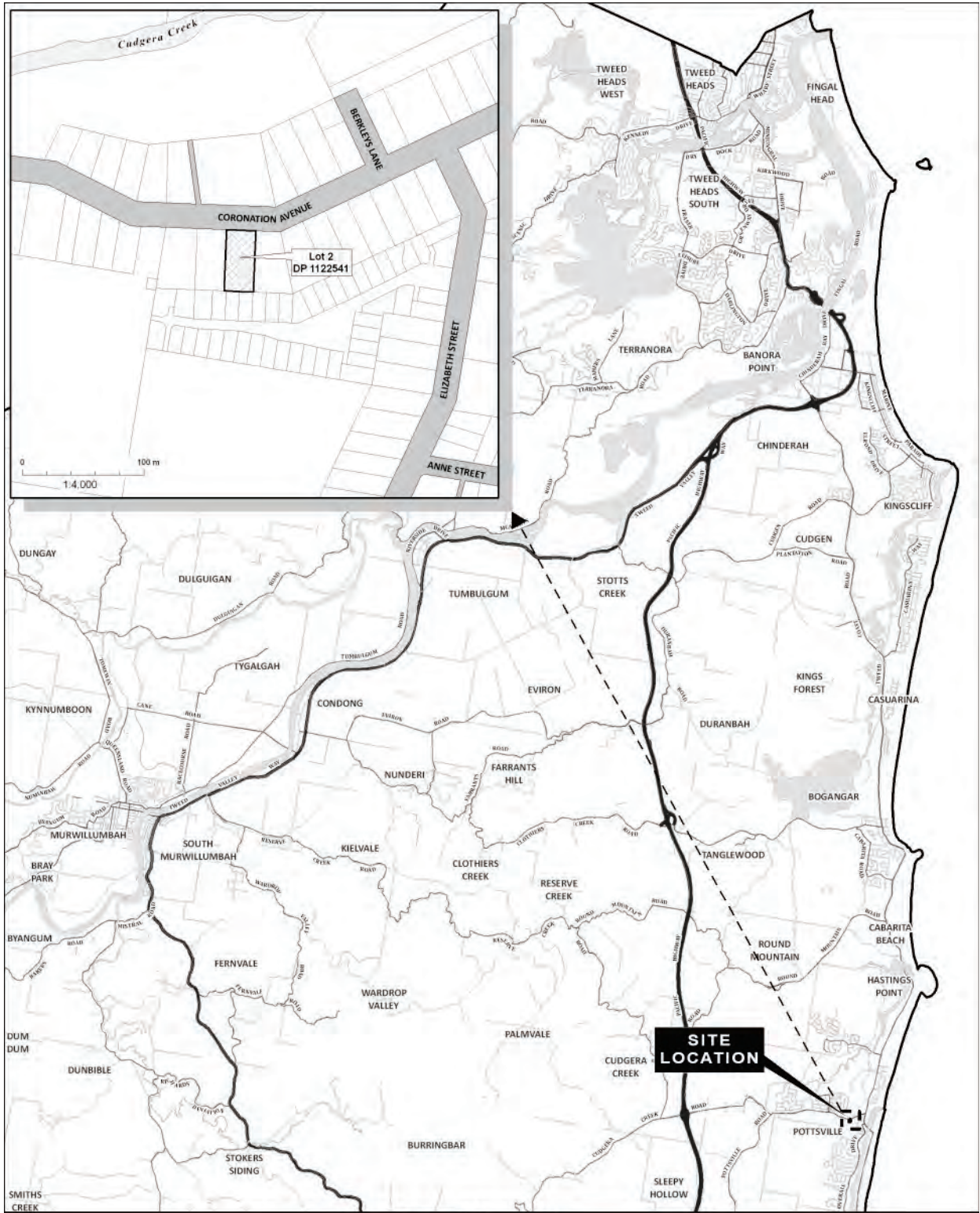
- Preparation of a land contamination assessment from the historical use of lead based paints on the site; and
- The preparation of a noise impact assessment relating to the operational noise including traffic and proposed noise mitigation measures.

The application was publicly notified from the 18 October 2010 to 1 November 2010. Eleven public submissions and one petition were received. Issues raised in the submissions included:

- incompatible land-use,
- traffic volume and impact upon Coronation Avenue,
- vehicle and pedestrian safety,
- loss of amenity,
- impact upon the development potential of neighbouring land, and
- noise impact.

The issues raised in public submission are akin to the same issues raised in the preliminary examination of the proposal and later reflected in the requests for information. The potential impact arising from the issues raised warranted further investigation. In failing to provide the requested information and in satisfying Council that the development as proposed is suitable for the proposed site, no option exists but for the application to fail at determination. Accordingly, the development proposal is recommended for refusal.

**SITE DIAGRAM:**



**Locality Plan**

Lot 2 DP 1122541  
No. 26 Coronation Avenue, Pottsville

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Cadastre: 29 February, 2012  
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Boundaries shown should be considered approximate only.

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1:110,000 @ A4 Portrait  
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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 2004  
Grid: Map Grid of Australia, Zone 56

Civic and Cultural Centre  
3 Tumbulgum Road  
Murwillumbah NSW 2484

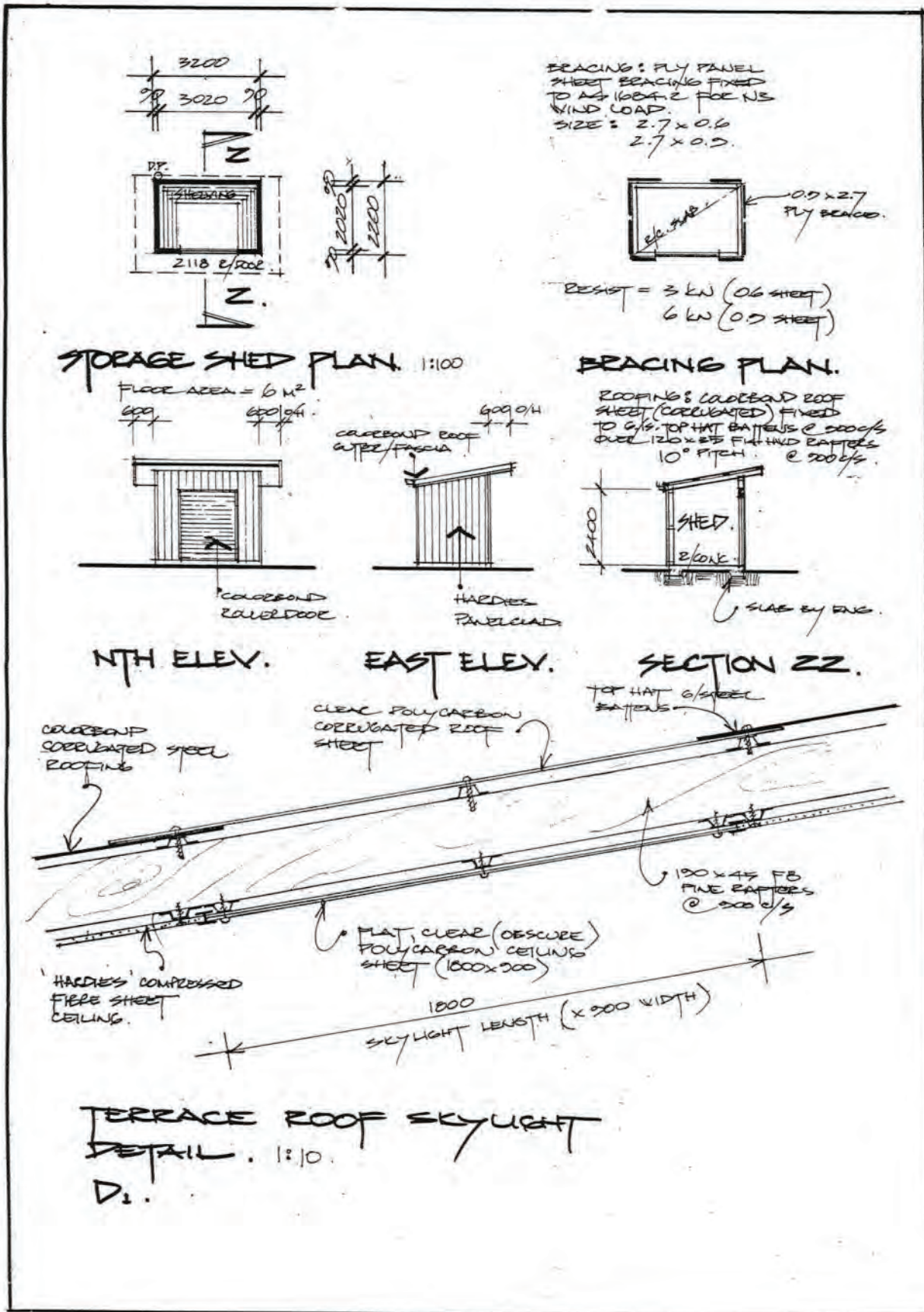
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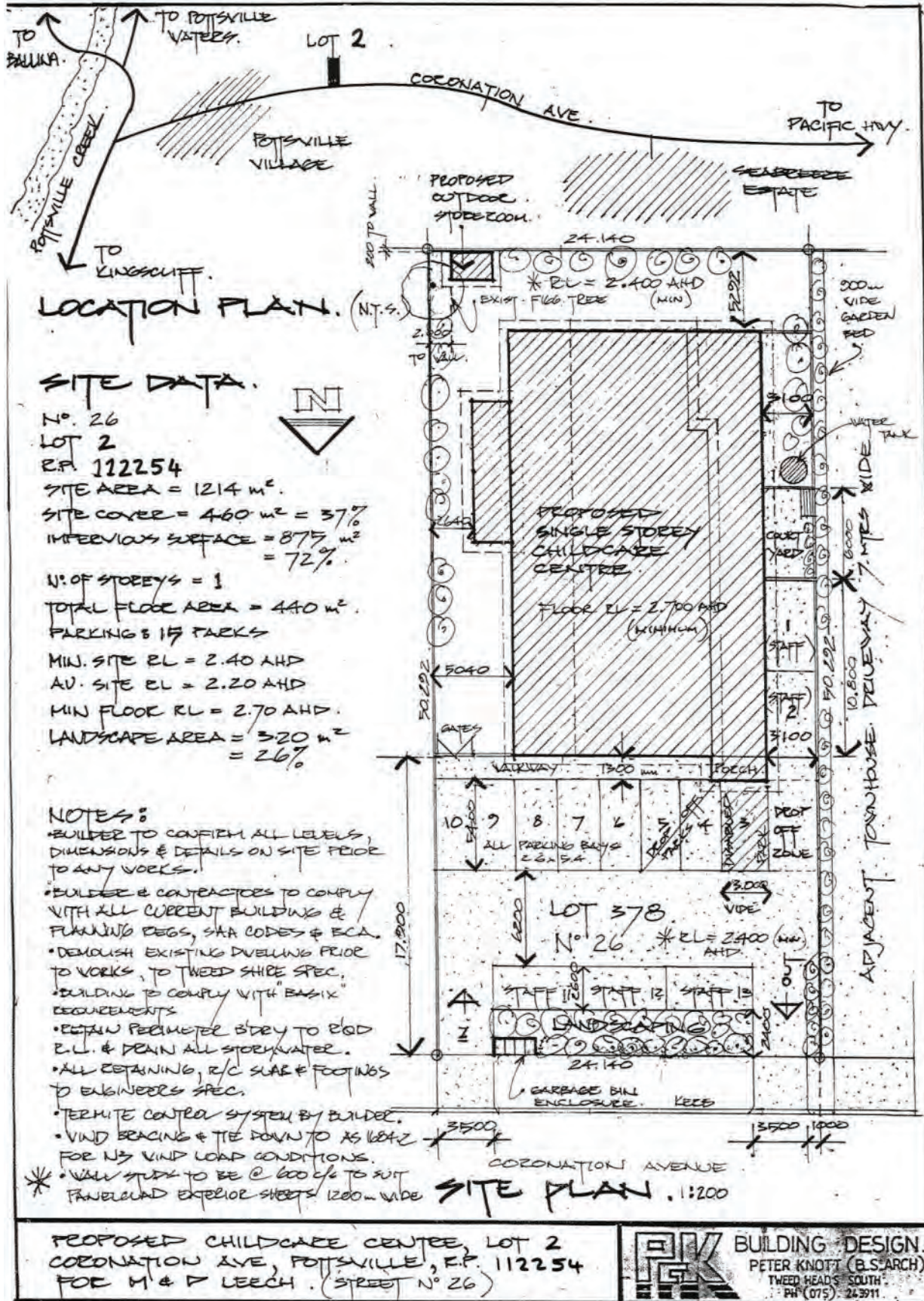
T | (02) 6670 2400 | 1300 292 872  
F | (02) 6670 2429  
W | [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

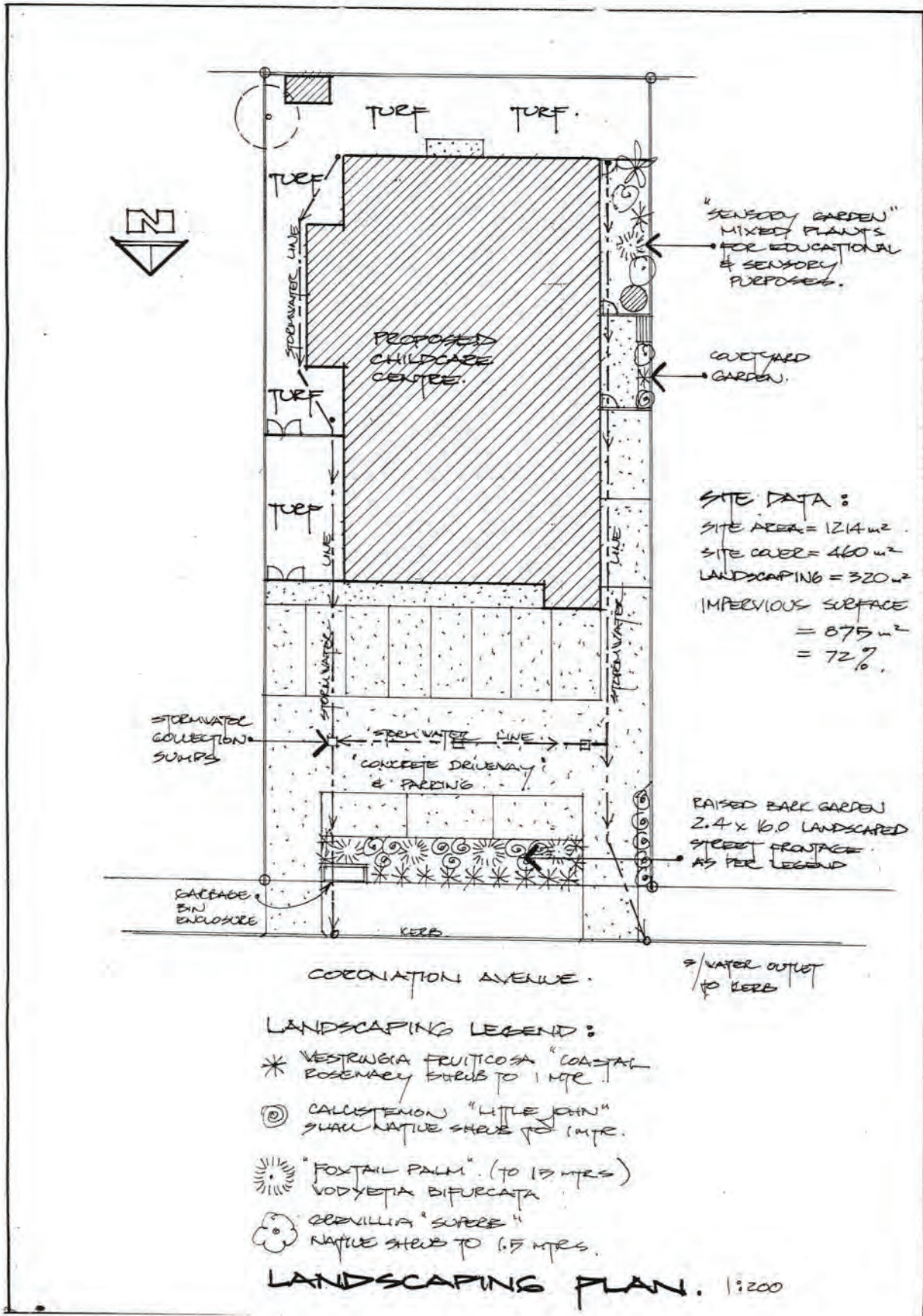
E | [planning\\_eforms@tweed.nsw.gov.au](mailto:planning_eforms@tweed.nsw.gov.au)

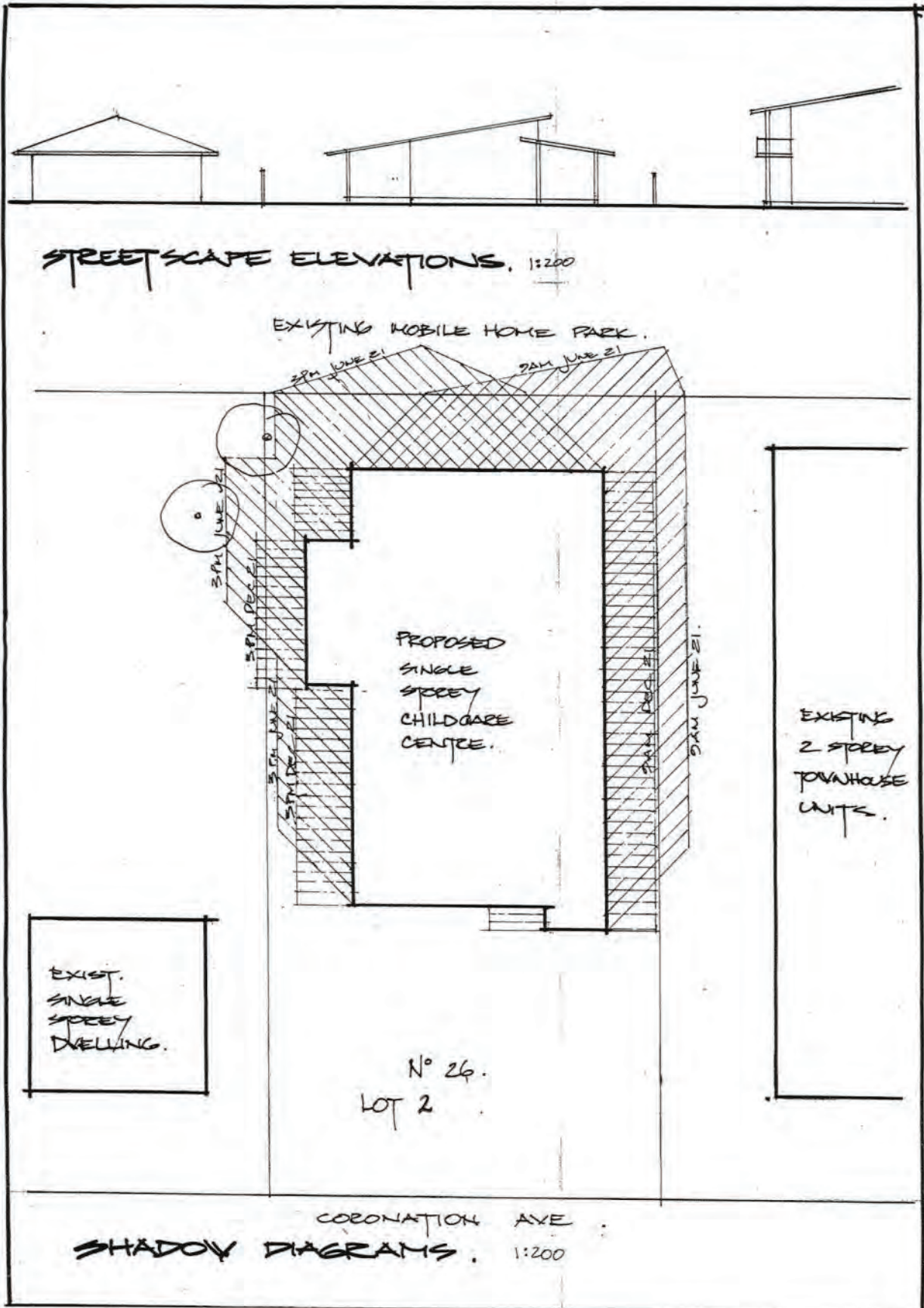


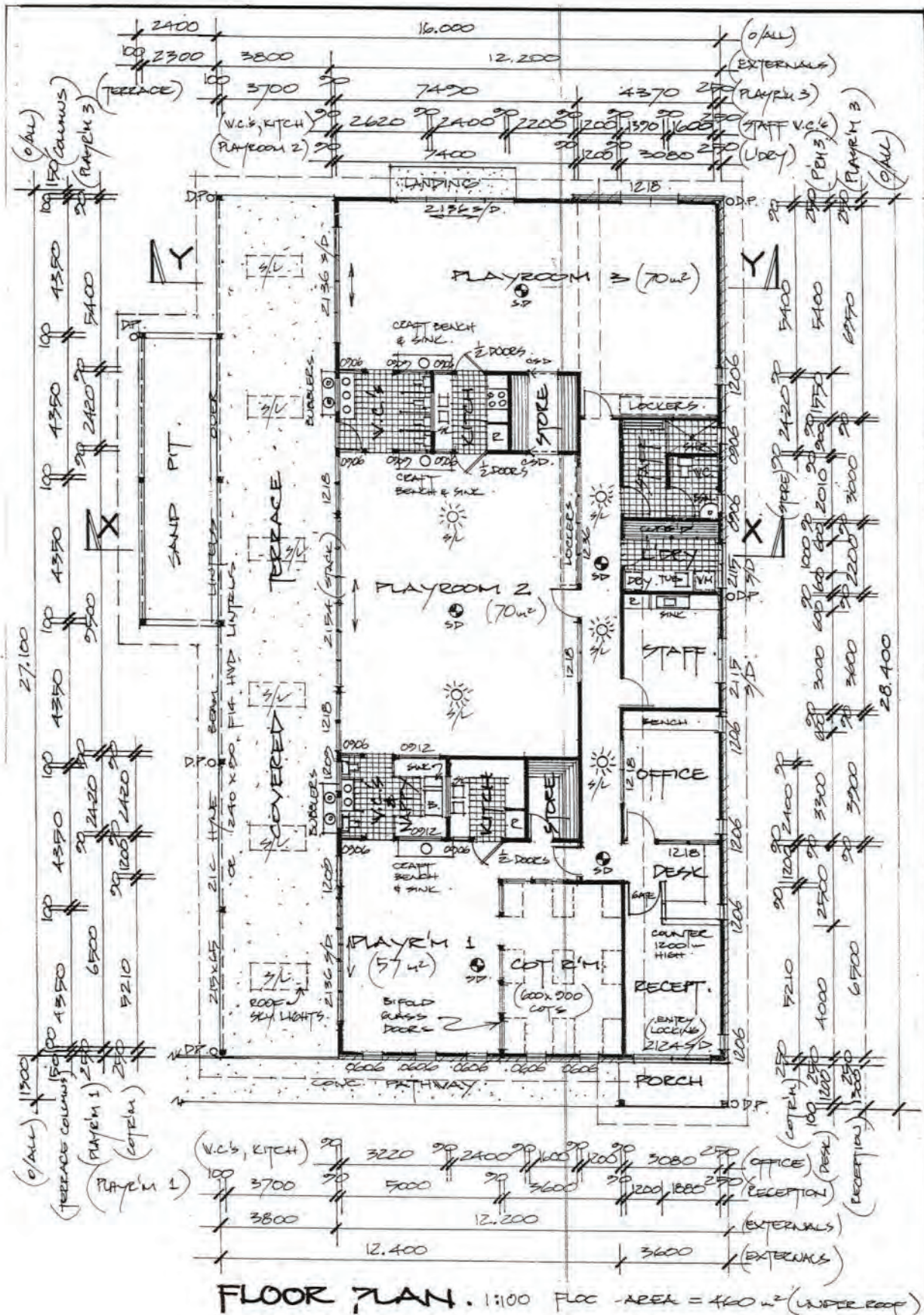
DEVELOPMENT PLANS:



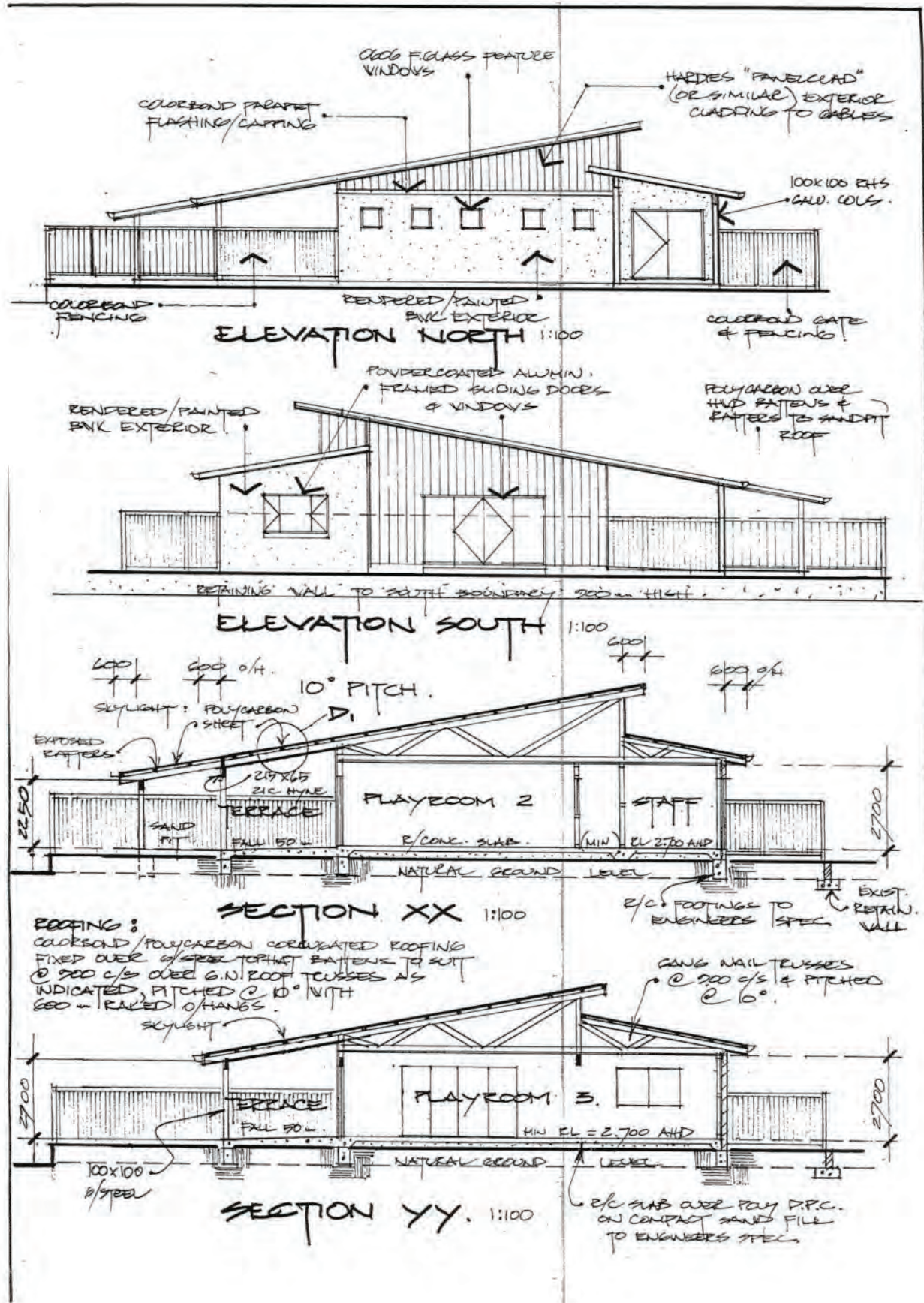


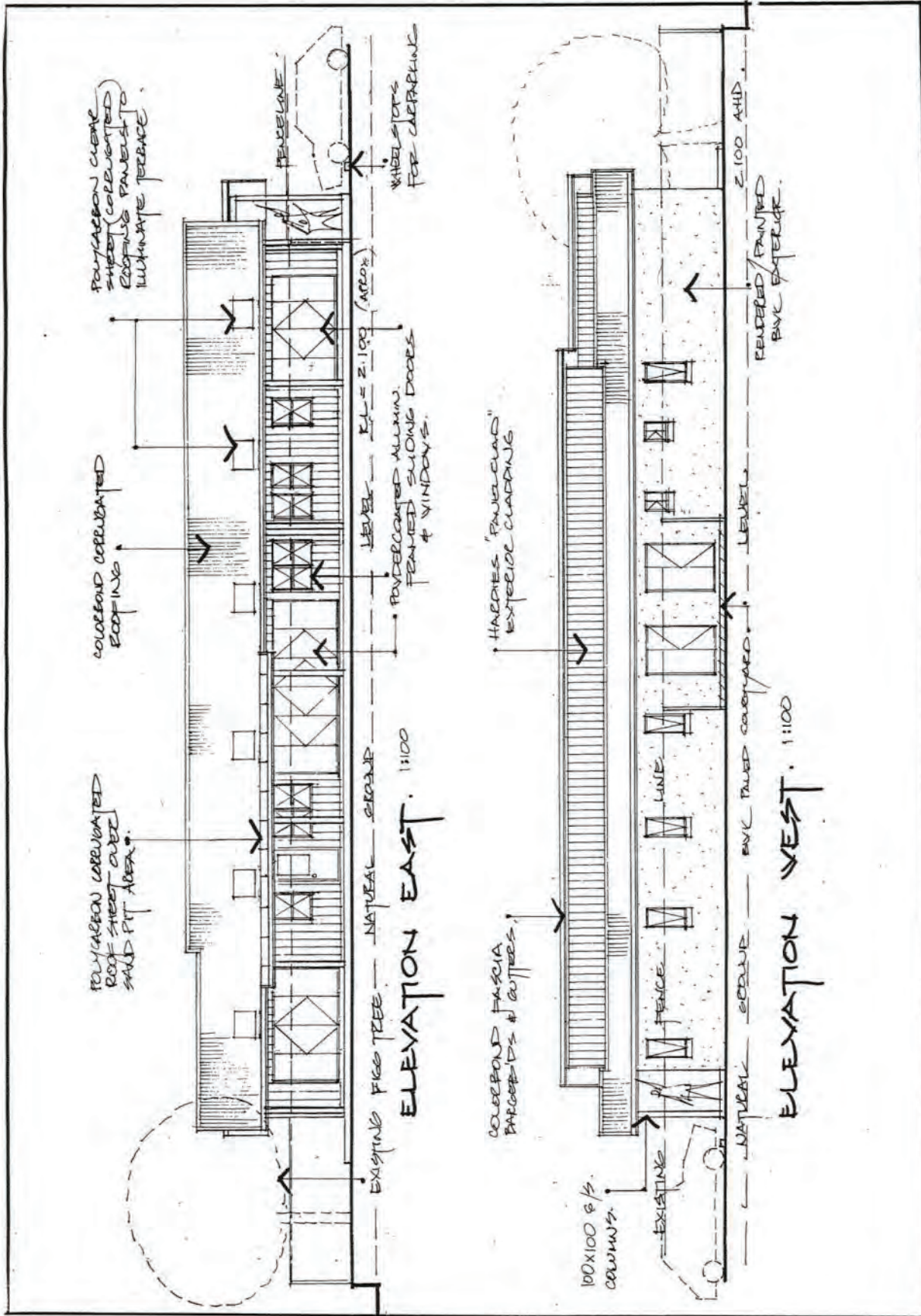












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**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

**Tweed Local Environmental Plan 2000 (TLEP 2000)**

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *"the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced"*. Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

It is considered that the subject development application is not suitable considering the noise impacts will have a negative impact on residential amenity qualities, particularly given its location within the Pottsville area.

Clause 5 - Ecologically Sustainable Development

The TLEP 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*.

Broadly, the subject proposal is considered consistent with the above criteria, as the development is not likely to have significant ramifications for ecologically sustainable development.

Clause 8 - Consent Considerations

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire. The proposal is of a scale and design which is not in keeping with existing development in the locality being a predominantly residential location. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

Clause 11 - Zone Objectives

The subject site is located within the 2 (a) Low Density Residential zone. Within the 2(a) zoned land the use as a Child Care Centre as defined within the Tweed LEP is allowed only with consent. The primary objective of that zone is *to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity*.

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

It is submitted that the proposal, being a form of residential and commercial development complies with the relevant zone objectives.

#### Clause 15 - Essential Services

The subject site is currently serviced by way of existing stormwater management, electricity, sewer and water connections.

#### Clause 16 - Height of Building

The subject site possesses a statutory height limit of two (2) storeys. The proposal incorporates a single storey child care centre. Therefore the proposed height is in accordance with the provisions of Clause 16 of the Tweed LEP.

#### Clause 17 - Social Impact Assessment

A social impact assessment was not submitted with the application. However a checklist of the Social and Economic Impacts have been provided which concluded that the child care centre would have a positive impact.

#### Clause 34 - Flooding

The site is mapped as being affected by PMF and has a small section of the site affected by the Q100. The design flood level at 2.6m AHD. The applicant intends to fill the entire site to minimise flood liability. The proposal is non-habitable and therefore no minimum floor level is required but the application proposes to achieve a minimum floor level of RL 2.825. As such the proposal complies with the clause.

#### Clause 35 - Acid Sulfate Soils

The site is mapped as being affected by Class 3 Acid Sulfate Soils. The proposed development does not include any works beyond 1 metre below ground surface. Therefore Clause 35 is considered satisfied.

#### Other Specific Clauses

There are no other specific clauses applicable to the subject proposal.

#### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

#### Clause 32B: Coastal Lands

Clause 32B applies to land within the region to which the NSW Coastal Policy 1997 applies and requires:

- (2) *In determining an application for consent to carry out development on such land, the council must take into account:*
  - (a) *the NSW Coastal Policy 1997,*
  - (b) *the Coastline Management Manual, and*
  - (c) *the North Coast: Design Guidelines.*
- (3) *The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- (4) *The council must not consent to the carrying out of development:*
  - (a) *on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*

- (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

The proposed development is considered to be generally consistent with the provisions of the NSW Coastal Policy 1997, the Coastline Management Manual, and the North Coast: Design Guidelines. The proposed subdivision is not likely to impede access to the foreshore or result in any overshadowing impacts on beaches or adjacent open space.

#### **SEPP No 55 - Remediation of Lands**

Under the provisions of SEPP 55, Council cannot approve a development without considering contaminated lands. Contaminated land consideration cannot be undertaken without the provision of the information requested and therefore the application is recommended for refusal.

#### **SEPP No 71 - Coastal Protection**

The subject land does not have frontage to the coastal foreshore reserve and therefore will not restrict public access to the foreshore. The development is consistent with the zone objectives of TLEP 2000, however a number of issues have been raised in regards to the requirements of relevant Council DCP. Broadly, it is therefore considered that the proposal satisfies the matters for consideration under SEPP 71.

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

The Draft Tweed Local Environmental Plan 2010 zones the land R3 - Medium Density Residential. Within the R3 - Medium Density zone a Child Care Centre is permitted with consent. As such the proposal is considered to be consistent with the Draft LEP.

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

##### **Tweed Development Control Plan**

##### **A2-Site Access and Parking Code**

The applicant will provide 13 car parking spaces (5 for staff and 8 for customers) which is adequate for up to 48 children. The proposal is intended to cater for 44 children, therefore the number of car spaces is compliant with TSC DCP A2 and is considered adequate.

No formal provision has been made for delivery / service vehicle parking (1 SRV space required per A2), with the S.E.E. stating that such a vehicle would “*only ever be in attendance for short timeframes*” and would use the manoeuvring (driveway) area in front of the building. This approach is considered acceptable as there is adequate driveway width for motorists to go around a short term ‘double-parked’ vehicle. Precedents of accepting this arrangement have been approved for similar developments in the past (*Eng. Note: eg D93/0314 per DA10/0666*).

The manoeuvring area is however very tight and will need to be verified by SRV turning path movements superimposed on the Site Plan, as part of the construction certificate submission.

### A3-Development of Flood Liable Land

The site is considered flood liable and is subject to inundation to the Design Flood Level of RL 2.6m AHD (Q100 year event).

Site filling will be undertaken to raise the ground level above the Design Flood Level, and the proposed floor level will be RL 2.825m AHD.

Ian Dinham has provided the following comments:

*"The application proposes the demolition of the existing dwelling and construction of a child care facility on land partially affected by the 1 in 100 year ARI design flood.*

#### **Flooding**

*The design flood level for the site is RL 2.6m AHD and it is proposed to fill to this level.*

*The proposal is non-habitable and therefore no minimum floor level is required but the application proposes to achieve a minimum floor level of RL 2.825 as discussed at the DAP meeting."*

It is therefore considered that the proposed development complies with this section of the Development Control Plan.

### A7-Child Care Centres

The proposal is generally consistent with DCP A7, though concerns were raised by nearby residents (through submissions) in terms of amenity impacts from the proposed increase in children. Refer to discussion below in this regard.

### B21-Pottsville Locality Based Development Code

This Code is part of a strategic framework for guiding the future development of the Pottsville locality. The Code provides more detailed provisions to expand upon the Tweed Local Environmental Plan (TLEP) and Tweed DCP for development within the Pottsville locality that will:

- Contribute to the growth and character of the Pottsville village centre and surrounding areas,
- Protect and enhance the public domain, and
- Provide for future retail and employment centres as the population increases to meet the needs of the Pottsville locality area.

A number of issues have been raised in relation to a number of items that are dealt with in the Pottsville Locality Based Development Code including contributing to the character of the area. The potential impact arising from the issues raised warranted further investigation. In failing to provide the requested information and in satisfying Council that the development as proposed is suitable for the proposed site, no option exists but for the application to fail at determination. Accordingly, the development proposal is recommended for refusal.

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

##### Clause 92(a) Government Coastal Policy

The subject application does not restrict access or change the coastal foreshore.

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

Context and Setting

The proposed development site cannot be determined as suitable information has not been provided to undertake a full assessment. A number of submissions were received in relation to the context and setting of the development which have been addressed below.

Access, Transport and Traffic

The site currently gains access via a wide vehicle entry (layback) at the eastern frontage, which is shared with the adjoining property. Driveways to both properties are sparsely gravelled.

Proposed site access will be via separate ingress and egress driveways at the eastern and western ends (respectively) of the site frontage.

The applicant provided further information (to the S.E.E.) that included a traffic generation assessment by TTM Group, which concluded that an extra 123 trips per day would be generated by this proposed development. This is deemed to have only a minor impact on, and can be easily accommodated by, the existing road network.

This is considered to be a reasonable assessment and is supported by Council's Planning and Infrastructure Unit.

The applicant will provide 13 car parking spaces (5 for staff and 8 for customers) which is adequate for up to 48 children. The proposal is intended to cater for 44 children, therefore the number of car spaces is compliant with TSC DCP A2 and is considered adequate.

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

Surrounding Landuses/Development

A site inspection undertaken revealed the site to be adjacent to residential land uses. The proposed activity is anticipated to have potential noise impacts upon adjacent land uses and a noise impact assessment was requested to be prepared by a suitably qualified acoustic consultant. An acoustic report was not received and as such refusal of the proposal is recommended.

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

The proposed development was notified for a period of 14 days from Monday 18 October 2010 to Monday 1 November 2010. From the notification period there were eleven (11) submissions against the proposal and one (1) petition with 149 expressions of support received within the specified time frame that strongly opposed the development. The main concerns raised in the submissions against the proposal are as follows:

- **Site Selection:** The presence of the child care centre being located in a residential area which would have an adverse affect on the safety of residents and children in the surrounding area, as well as causing parking problems to residents.
- **Noise:** Noise from children at play is highly variable. There is also minimal existing background noise in the area at the moment. Residents in the area

would experience the full impact of any noise from activities at the proposed development at 26 Coronation Avenue.

- **Traffic:** Coronation Avenue is the main link-road to the Pacific Highway. There is already a high volume of traffic along that road. A 44 place Child Care Centre will create an increase in on road traffic which will then create more on road traffic noise.
- **Parking:** There is not enough parking in Coronation Avenue now for the many people who want to use the business area. Our resident population continues to increase in Pottsville.
- **Existing Fig Tree:** According to the proposed plan the existing fig tree is to stay. It should be removed.
- **Heat/Glare from Colourbond Roofing:** Concerned about the impact from the amount of heat the proposed roof would generate in the surrounding area.
- **Lighting issues:** Residents of Elizabeth Grove believe the lighting may cause problems with light into bedrooms.

The proposal is considered acceptable from a traffic and car parking perspective as per the engineering comments. However, the applicant has provided insufficient information to address outstanding impacts such as noise amenity and contaminated lands.

Under the provisions of SEPP 55, Council cannot approve a development without considering contaminated lands. Contaminated land consideration cannot be undertaken without the provision of the information requested and therefore the application is recommended for refusal.

The proposal is also anticipated to have significant noise impacts on surrounding land uses. The application is also recommended for refusal without the provision of a Noise Impact Assessment.

**(e) Public interest**

The proposal is not anticipated to contravene the public interest, though this has not been confirmed as amenity impacts in relation to noise and contaminated lands in relation to the historical use of lead based paints have not been assessed in their entirety.

**OPTIONS:**

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

The Council officers have recommended Option 1.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should Council resolve to refuse the application the applicant may lodge an appeal with the NSW Land & Environment Court.



**POLICY IMPLICATIONS:**

The proposed development has been entirely assessed on its merits and for that reason the development does not generate a policy implication for Council.

**CONCLUSION:**

The applicant has not provided Council with written advice as to how they wish to proceed with the application. An email was forwarded to the applicant on 29 July 2011 further seeking the outstanding information with no response. Refusal of the subject application does not limit the ability of the applicants to apply for a child care centre on the site in the future. The refusal simply seeks to deal with matters which remain unresolved.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**18 [PR-CM] Development Application DA10/0411 for a Boundary Adjustment at Lot 11 DP 1054638 & Lot 12 DP 1054638; No. 51 Palmers Road, Terragon**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA10/0411 Pt1**

**SUMMARY OF REPORT:**

The proposed development is to undertake a boundary adjustment between two allotments to create two realigned lots incorporating an existing dwelling and sheds into one lot and leaving a larger lot vacant.

A SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) Rural zone. The SEPP 1 objection relates to proposed Lot 51 which has a total area of 16.28ha, wholly within the 1(a) Rural zone.

The application was referred to the NSW Department of Planning requesting the Director-General's Concurrence. Concurrence was granted to vary the 40 hectare minimum lot size development standard because the subject lot is already undersize and no additional dwelling entitlements will be created by the application.

The purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent variation of the applicable development standard.

After consideration of applicable environmental planning instruments, the Tweed Development Control Plan and various policies, the proposal is recommended for deferred commencement approval.

**RECOMMENDATION:**

**That Development Application DA10/0411 for a boundary adjustment at Lot 11 DP 1054638 & Lot 12 DP 1054638; No. 51 Palmers Road, Terragon be approved subject to the following conditions:**

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.**

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

### **SCHEDULE "A"**

**Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.**

- A. Council shall be supplied with evidence of registration of the Plan of Subdivision associated with Development Consent DA09/0034 with the Land and Property Management Authority (formerly the Lands Titles Office).

### **SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

#### **GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Titled "Plan of Proposed Subdivision – Boundary Alteration Between Lot 11 & 12 DP 1054638 Palmers Road, Terragon", Revision C prepared by Brown and Hann and dated 10.02.10, except where varied by the conditions of this consent.  
[GEN0005]
2. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.  
[GEN0125]
3. The applicant is advised that boundary adjustment associated with DA10/0411 will have the effect of extinguishing the existing dwelling entitlement on existing Lot 12/proposed Lot 51 and the existing dwelling shall have to rely on existing use rights within proposed Lot 51.  
[GENNS01]
4. No clearing of protected or threatened vegetation shall be undertaken on the site.  
[GENNS02]

#### **DURING CONSTRUCTION**

5. 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]

## **USE**

6. **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]

## **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

7. **A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.**

[PSC0825]

8. **The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act.**

**Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.**

**Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.**

[PSC0835]

9. **Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.**

**The following information must accompany an application:**

- (a) **original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.**
- (b) **all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.**

**Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.**

[PSC0885]

10. **Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence deemed by Council to be a safety risk is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.**

[PSC0945]

11. Prior to the issue of a Subdivision Certificate, an approved access servicing proposed Lot 50 shall be bitumen sealed from the existing bitumen edge of Palmers Road to the property boundary, in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual and Council's "Driveway Access To Property – Part 1 – Design Specification".

[PSCNS01]

12. Prior to the issue of Subdivision Certificate the applicant shall lodge an application to operate the existing OSMS facility on proposed Lot 51 under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with approval.

[PSCNS02]

13. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided. Details of the intended method of water storage are to be submitted to Council's Development Assessment Unit for approval, prior to the issue of Subdivision Certificate.

[PSCNS03]

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

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 51, to a distance of 50 metres or to the property boundary shall be maintained 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, electricity and gas are to comply with the following requirements of Section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
  - A hardened ground surface for truck access is to be supplied up to and within 4m of the water source.
  - A 65mm metal Storz outlet with a gate or ball valve shall be provided.
  - In recognition that no reticulated water supply exists, a 20 000 litre water supply shall be provided for fire fighting purposes.
3. Property access roads shall comply with section 4.1.3(2) of 'Planning for Bush Fire Protection 2006'.
4. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

**REPORT:**

**Applicant:** Brown and Haan T/AS Landsurv Pty Ltd  
**Owner:** Hewittville Pty Ltd  
**Location:** Lot 11 DP 1054638 & Lot 12 DP 1054638; No. 51 Palmers Road, Terragon  
**Zoning:** 1(a) Rural  
**Cost:** N/A

**BACKGROUND:**

The subdivision history of the site is complex and summarised below:

DA02/0949 was granted consent in 2002. This consent approved a minor boundary adjustment between Lots 1 and 2 DP 260422 to create Lots 11 and 12 DP 1054638. This plan has been registered and reflects the existing lot layout.

DA09/0034 was granted consent by Council on 25 June 2009. This consent approved the transfer of approximately 5.529ha from Lot 11 DP1054638 into Lot 3 DP 260422. Two new lots were created, being Lot 31 (total area of 59.53ha) and Lot 32 (total area of 7.82ha). To date, the plan of subdivision has not been registered with the Lands Titles Office. It is noted that Council has issued a subdivision certificate.

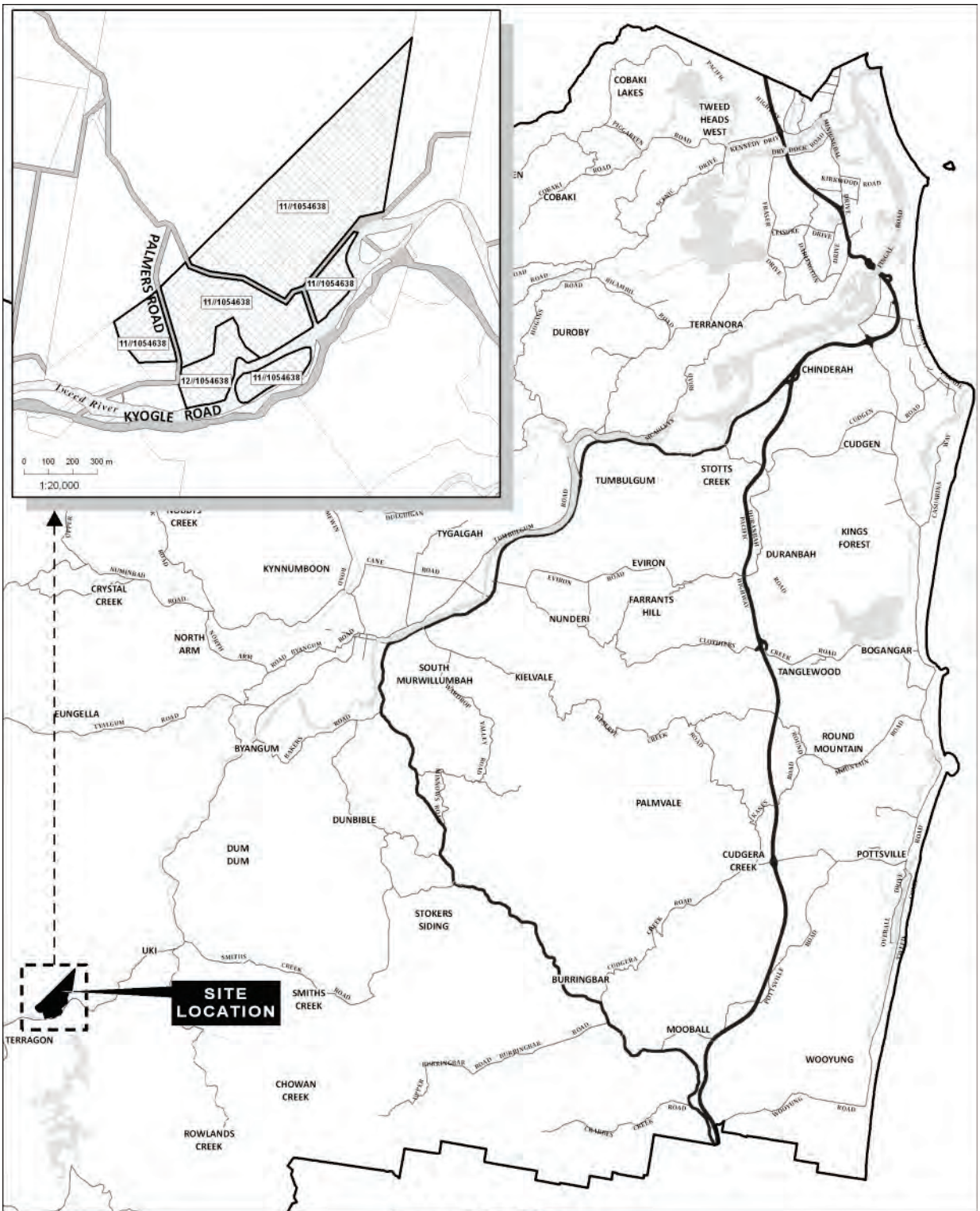
The subject application (DA10/0411) has been lodged over Lots 11 and 12 in DP 1054638. This application seeks to incorporate an existing dwelling house (DA07/1744) into Lot 12 by increasing the size of Lot 12 by 10.77ha to 16.28ha. This Lot is proposed to become Lot 51. Existing Lot 11 (proposed Lot 50) will have an area of 48.76ha (assuming the earlier DA09/0034 is registered).

The subdivision of Lot 11 to create proposed Lot 50 relies on the boundary adjustment approved under DA09/0034. Council has been repeatedly assured by the applicant that the registration of the lots created by DA09/0034 is imminent and as such it is recommended that conditional consent now be granted to the application, by way of deferred commencement consent.

Existing Lot 12 currently possesses a dwelling entitlement by virtue of being created by a Council approved subdivision (minor boundary adjustment) in 2002 (DA02/0949). The purpose of this application is to incorporate an existing dwelling house from Lot 11 into Lot 12 (proposed Lot 51) , which will then have to rely on continuing use rights as the dwelling entitlement will be extinguished by the realigned boundary.

Lot 11 currently enjoys and will maintain a dwelling entitlement by remaining over the minimum lot size. It is anticipated that a future application for a dwelling on this Lot would be lodged.

**SITE DIAGRAM:**



**Locality Plan**

Lot 11 DP 1054638 & Lot 12 DP 1054638  
No. 51 Palmers Road, Terragon

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Cadastral: 29 February, 2012.  
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Boundaries shown should be considered approximate only.

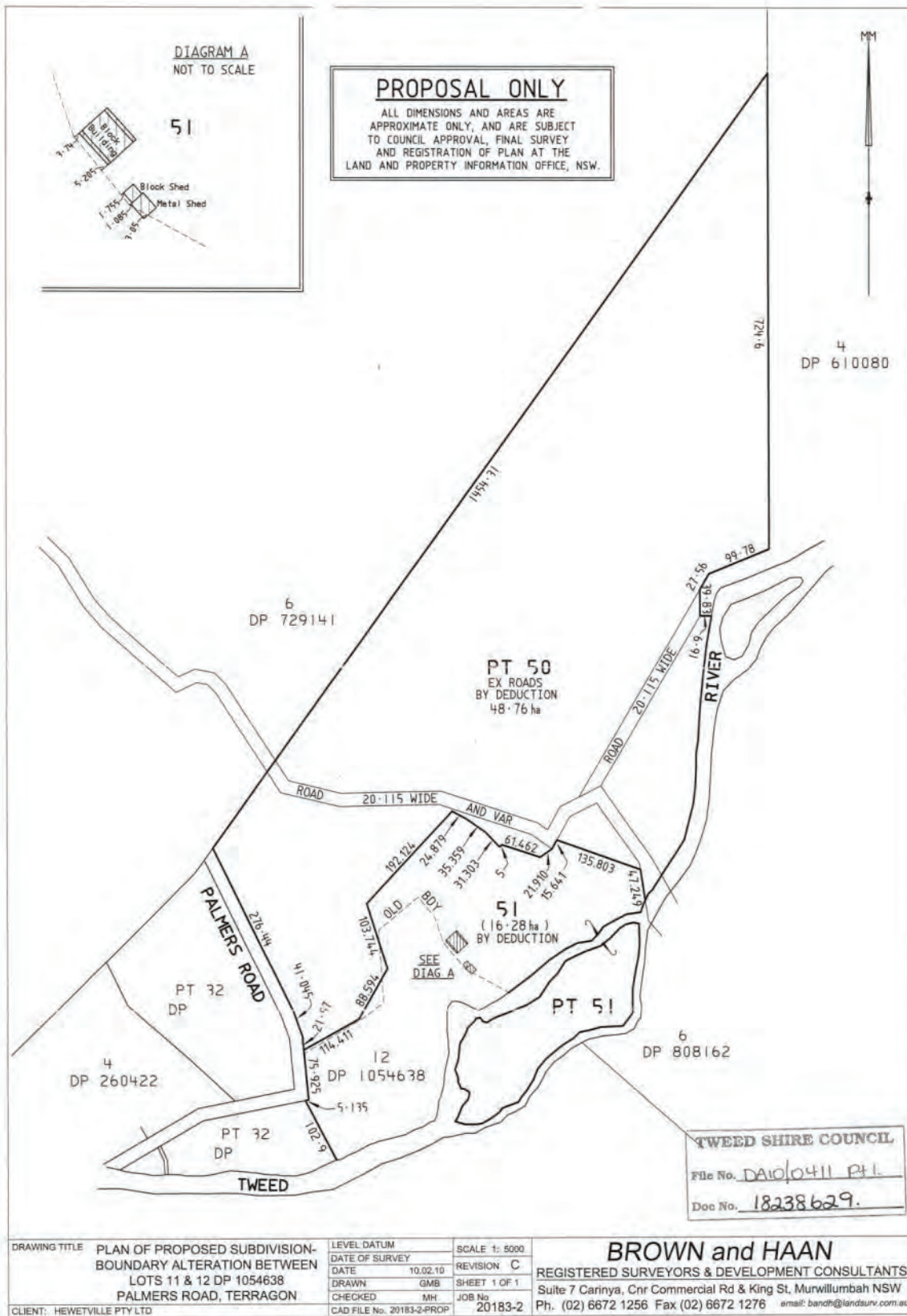


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**DEVELOPMENT PLANS:**



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

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

**Tweed Local Environmental Plan 2000**

Clause 4 - Aims of the Plan

The proposed development is considered to be consistent with the aims of the TLEP 2000.

Clause 5 - Ecologically Sustainable Development

The subject development application is considered consistent with the four principles of ESD, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms* as it maintains the status quo and increases the size of an undersized allotment whilst maintaining compliance with the standard for the larger existing Lot.

Clause 8 – Consent Considerations

The consent authority may grant consent to development only if:

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

The subject proposal is consistent with the primary objective of the zone, with subdivision being permissible within the 1(a) Rural zone. The proposal is considered to be consistent with the aims and objectives of the TLEP 2000 as it maintains rural use of the site. The subject proposal is not considered to result in any unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its minor nature. Approval of this application (though minor) is not considered to set a precedent for further like applications as each would be assessed on its merits and likely require its own SEPP 1 objection.

The proposal is considered to be consistent with Clause 8.

Clause 11 – Zone Objectives

Under the Tweed LEP 2000, the subject land is zoned 1(a) Rural, within which subdivision/boundary adjustment is permissible with development consent.

The objectives of the 1(a) Rural zone are to:

Primary Objective

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

Secondary Objective

- 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 proposed boundary adjustment is permissible with the primary objective in that it maintains rural use of the site and does not unnecessarily fragment the site.

#### Clause 15 - Essential Services

Council's reticulated potable water supply and reticulated sewer are not available in the area. Tank water for domestic use and a static provision for fire fighting will be made available.

On site effluent treatment is proposed. Council's Environmental Health Officer has reviewed the proposed arrangement (and existing OSSM system) and raised no objections, subject to conditions.

#### Clause 16 - Height of Building

A three storey height limit applies in the locality however no building works are proposed as part of this application and Clause 16 is not relevant.

#### Clause 17 - Social Impact Assessment

The proposed development is not anticipated to generate significant social impacts, being rural/residential in nature and of a small scale.

#### Clause 19 – Subdivision

This clause outlines that a person must not subdivide land without consent. Consent is therefore sought for the subject application.

#### Clause 20 – Subdivision in zones 1(a), 1(b), 7(a), 7(d) and 7(l)

This clause aims to prevent the potential for fragmentation of ownership of rural land that would adversely affect the continuance or aggregation of sustainable agricultural units or generate pressure to allow isolated residential development and provide public amenities and services in an uncoordinated and unsustainable manner. It also aims to protect the ecological and scenic values of the land and protect the quality of water supply.

Clause 20 specifies that consent may only be granted to subdivision in the 1(a) zone if the allotment to be created is at least 40ha.

In this instance, part of the land (Lot 12, proposed Lot 51) within the 1(a) zone has an existing area of 5.51ha which is not proposed to be further fragmented and will actually be increased in size by 10.77ha to 16.28ha. A SEPP 1 Objection was submitted and concurrence sought (and received) from the Department of Planning in this regard (discussed in detail below).

Lot 11 (proposed Lot 50) will remain above the 40ha standard at 48.76ha, remaining consistent with the objectives of Clause 20.

Further, the proposal not considered to adversely affect the continuance of agricultural use of the subject sites or surrounding properties or generate unfavourable pressure for development. The proposal is not considered to detract from the ecological or scenic values of the land and is considered to accord with Clause 20.

#### Clause 31 – Development Adjoining Waterbodies

The site adjoins the Tweed River. No works are required to facilitate the boundary adjustment and it is not considered that the subject proposal will have any impacts on the water quality of the Tweed River. This clause enables the consent authority to require the rehabilitation of land adjoining the waterbed, however due to the minor nature of this proposal, such action has not been deemed necessary (no intensification of use is proposed and no additional lots are created) – an approach which has been confirmed by Council's Natural Resources Unit.

#### Clause 34 – Flooding

The subject site adjoins the Tweed River and is identified as 'could be' flood prone. Council's Development Assessment Engineer has raised no concerns in this regard due to the nature of the development.

#### Clause 35 - Acid Sulfate Soils

The site is not affected by Acid Sulfate Soils.

#### Clause 39 – Remediation of contaminated land

Existing Lot 12 contains a cattle dip site and the history of the site includes commercial nursery operations which classifies the site as 'potentially contaminated', thus making Clause 39 relevant. Clause 39 calls up the provisions of SEPP 55. Council's Environmental Health Officer has reviewed the proposed development with respect to contaminated land and the SEPP provisions and returned no objections. It is subsequently considered that Clause 39 is satisfied.

#### Clause 39A – Bushfire Protection

The subject site is partially bushfire prone and the application was referred to the Rural Fire Service as Integrated Development. After consultation, the RFS issued a bushfire safety authority with conditions.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 12: Impact on agricultural activities

This Clause specifies that Council shall not grant 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 proposed development will not impact adversely upon adjoining rural properties nor cause a loss of prime crop or pastureland, though it is noted that a portion of the site located along the Tweed River is identified as 'regionally significant farmland'. The proposed development does not further fragment or alienate this land and the proposed development does not contravene Clause 12.

Clause 15: Rivers, streams and wetlands

The subject site is bounded by the Tweed River, however no works are required to facilitate the proposed boundary adjustment. No further consideration in this regard is required and the boundary adjustment is not considered to have any impacts on the River in terms of water quality, water flows or habitat loss.

The proposal is consistent with Clause 15.

Clause 29A: Natural areas and water catchment

No vegetation clearing is proposed, nor is the proposed development located in any of the prescribed zones (protection, scenic protection or escarpment preservation). The proposed boundary adjustment has no implications in terms of the water catchment of the Tweed River.

The proposal is consistent with Clause 29.

Clause 81: Development adjacent to the ocean or a waterway

The boundary adjustment will not affect foreshore access nor negate the provisions of any foreshore management plan, being located within an established rural area on the outskirts of Uki village. No buildings are proposed to be erected and no impacts on amenity of the area are foreseeable as a result of this development.

The proposal is consistent with the applicable provisions of SEPP (North Coast Regional Environmental Plan) 1988.

**SEPP No. 1 - Development Standards**

SEPP 1 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

A SEPP 1 Objection was submitted to Clause 20 of the Tweed Local Environmental Plan, as land within the 1(a) Rural zone falls short of the minimum lot size as follows:

- Proposed Lot 12 will have an area of 16.28ha, 23.2ha short of the minimum lot size).

The applicant has supplied the following justification for the SEPP 1 Objection (italicised):

*“The aims of the zone are essentially to minimise fragmentation of rural lands, which could lead to demands for extension of services and reduction in production potential.*”

*The proposal is not inconsistent with the aims and objectives. Existing Lot 11 accommodates a nursery, cricket oval and dwelling all on the eastern side of Palmers Road, while existing Lot 12 is unutilised. Hence no resultant detriment will occur.*

*The development standard to be varied is unreasonable in this circumstance where the larger lot of 64.11ha is to be reduced by 15.35ha to still comply with the standard at 48.76ha while the non-complying lot expands to 16.28ha from 5.51ha. As well as our clients wishes to rectify the present predicament of a structure encroaching the boundary the adjustment proposed is for the purposes of including the cricket oval, dwelling and nursery into proposed Lot 51 to enable the future sale of proposed Lot 50 and is rational annexure to subdivide.*

*The present utilisation of proposed Lot 50 while not in the category of agricultural or natural resource productivity is still preserved to enable such in the future, the use is also ecologically compatible. Small proposed Lot 51 cannot be identified as having development potential at this time but with the added 10.77ha could have possibilities such as horticulture or eco-tourism.*

*Lot 11 has an approved dwelling and the general land use will not change to adversely affect the rural character and amenity.*

*The proposal does not conflict with the pattern of holdings in the general locality. In fact it is similar to its underlying parcel pattern, being simply a technically minor boundary adjustment, though not categorised as such in Schedule 1 'Meanings of Terms' in Tweed LEP 2000".*

In the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston articulated the SEPP 1 test as follows:

1. *The applicant must satisfy the consent authority that "the objection is well founded" and compliance with the development standard is unreasonable and unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979; and*
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.*

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

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

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Though not stated by the applicant, the subject SEPP 1 Objection seems to rest upon point one above, in that the objectives of the 1(a) zone are achieved notwithstanding the undersized allotment.

The objection is considered to be well founded, as proposed Lot 12 is already well below the required 40ha minimum lot size and land use commensurate with the zone objectives will continue to occur.

In addition to being satisfied that the SEPP 1 Objection is well founded, the consent authority must also 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.

The aims of the policy are as follows:

*"This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act".*

Sections 5(a) (i) and (ii) are as follows:

- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

With respect to Sections 5(a) (i) and (ii) the proposed boundary adjustment is not considered to hinder the proper management, development and conservation of any resources, in particular the subject rural land and rural/residential development surrounding the subject site. Negligible impact upon resources and the social and economic welfare of the community is anticipated to result from approval of the application.

Further, non compliance with the development standard is not considered to raise any matters of significance for State or regional environmental planning. As no additional dwelling potential will be created by the proposed subdivision, no public benefit would be gained by maintaining the standard in this instance.

The proposed boundary adjustment is considered to be consistent with the aims of SEPP 1.

Based on the above, support of the subject SEPP 1 Objection is considered appropriate in this instance.

#### SEPP No. 55 - Remediation of Land

The provisions of this SEPP relate to the promotion of remediation of contaminated land where required to reduce the risk of harm to human health or the environment.

Council's Environmental Health Officer has reviewed the application with regard to contamination, noting that the site contains a dip site and was also once used for commercial nursery operations and must therefore be considered potentially contaminated. Notwithstanding, there are no development works proposed, nor does the application propose a change of use. As such, no further consideration of the matter is required at this stage.

#### SEPP (Rural Lands) 2008

This SEPP aims to facilitate the orderly and economic use and development of rural lands for rural and related purposes and reduce land use conflicts through utilising Rural Planning Principles and Rural Subdivision Principles. It also aims to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land.

Clause 10(3) specifies the following matters to be considered in determining development applications for rural subdivisions or rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development;*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

In this instance, the proposed subdivision is considered to be consistent with the surrounding agricultural land use, which comprises predominantly pasture land. The proposal is not considered to impact upon any such uses, nor will it prejudice the ability for the subject site to continue to be used for rural/agricultural purposes commensurate with the zone objectives. The proposal is consistent with Clause 10(3)(a).



The preferred land uses in the 1(a) Rural zone are considered to be agriculture and forestry (both allowed without consent in the zone). The subject proposal is not considered to have a significant impact on either such land use given the application essentially maintains the status quo and does not propose any intensification or change of use on rural lands. The proposal is consistent with Clause 10(3)(b).

Given the proposal is for a boundary adjustment only, it is not considered to be incompatible with the land uses mentioned in (a) or (b) above. The proposal is not considered to reduce the agricultural viability of the subject site or surrounding properties. The proposal is consistent with Clause 10(3)(c).

Adjoining sites exhibit the same zoning as the subject site and the proposed development is considered to be compatible with adjoining land uses. Clause 10(3)(d) is considered satisfied.

Negligible conflict or incompatibility between surrounding land uses (which mirror the current land uses of the subject sites) is foreseeable. Clause 10(3)(e) is considered satisfied.

The proposed boundary adjustment has no further ramifications for SEPP (Rural Lands) 2008 and is considered to be consistent with the Policy in its entirety.

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

The subject sites is zoned RU2 – Rural Landscape under the draft Tweed Local Environmental Plan 2010, with a corresponding minimum lot size of 40ha. The proposed boundary adjustment, inclusive of the SEPP 1 Objection would remain permissible under the draft LEP 2010.

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

The subject site is identified as ‘could be’ flood prone. However, no new habitable development is proposed by this application. No further consideration with regard to flooding impacts is required.

A5-Subdivision Manual

The proposed boundary adjustment generally complies with the requirements of Section A5 of the DCP. With regard to the relevant provisions regulating lot size, the status quo is maintained, with one allotment exceeding the 40ha minimum lot size and one allotment remaining undersized, though an increase of approximately 10ha is incorporated.

With regard to physical constraints on the site, it is noted that parts of the site area identified as ‘possibly’ flood prone (river flats), though each allotment is predominantly out of the flood plain with all dwelling sites/structures clearly outside such area. Council’s Development Assessment Engineer has raised no concerns in this regard.

The site is bushfire prone and a Bushfire Hazard Assessment was submitted (prepared by Bushfire Safe Australia) and reviewed by the New South Wales Rural Fire Service under the integrated development provisions of the Act. The Rural Fire Service issued a bushfire safety authority under Section 100B of the Rural Fires Act and the recommended conditions have been applied.

A statement from an ecologist was requested to ensure that IPA requirements did not result in significant vegetation removal as riparian vegetation is located within the site along the Tweed River. Such a statement was supplied (though prepared by BCA Check Bushfire Consultants) which nevertheless confirms that all riparian vegetation is located approximately 70m from the existing dwelling (which requires a 50m IPA). The statement also confirms that no vegetation removal within the IPA area is required, with only trimming/removal of touching and/or dead vegetation required. The appropriate IPA conditions have been applied.

With regard to rural watercourses and drainage, being a rural environment, stormwater discharge will remain as is, with Council's Development Assessment engineer noting no need at this stage to make any amendments to the existing method of stormwater management at the site.

The existing road network is adequate for servicing the new subdivision according to Council's Development Assessment Engineer.

Negligible impacts on the existing rural movement network are envisaged as a result of approval of this application.

In addition to the above, DCP A5 contains provisions relating to sites adjoining waterbodies, riparian areas and riparian vegetation, with which the application is consistent. The DCP also enables Council to require rehabilitation of a 50m riparian buffer along the Tweed River and the dedication of this buffer to Council. Advice from Council's Natural Resources Unit was sought in this regard as the proposal is a boundary *adjustment* only, and does not intensify land use or create any additional allotments. Such actions were considered to not be required in this instance for the above reasons and the minor nature of the proposal.

Subject to conditions, the proposed boundary adjustment is considered to generally accord with DCP A5.

#### A11-Public Notification of Development Proposals

Public exhibition was not required by DCP A11. No submissions were received.

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

##### Clause 92(a) Government Coastal Policy

The site is not covered by the Government Coastal Policy.

##### Clause 92(b) Applications for demolition

No demolition is proposed in the application.

##### Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

##### Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

The land is not covered by any coastal zone management plan.

##### Tweed Shire Coastline Management Plan 2005

The land is not covered by this plan.

**Tweed Coast Estuaries Management Plan 2004**

The land is not covered by this plan.

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

The land is not covered by this 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**

**Context and Setting**

Negligible impact is envisaged upon the locality as a result of approval of this application. No additional lots or dwelling entitlements are created. The land use will remain rural.

**Access**

Negligible impact envisaged on the local road network as a result of approval of this application. No extra demand is created.

Council's Development Assessment Engineer has noted that:

*"Palmer's Road provides a 2 way, bitumen sealed road connecting to Kyogle Road.*

*Access to the existing dwelling (currently on Lot 11) is serviced via a driveway through Lot 12 (although Council's GIS indicates that a ROC is not established over this access. The proposed boundary adjustment will rid the need for such a ROC to be created.*

*The existing access (which will service proposed Lot 51) is adequately sealed, with no upgrade required.*

*The Applicant has advised that a gated, all weather access is provided to service proposed Lot 50. As the state of this access is unknown and not shown on recent aerial photography, it shall be imposed that an access (approved by Council) is provided for proposed Lot 50 and is bitumen sealed from the edge of the existing bitumen seal of Palmer's Road to the property boundary."*

No further access considerations are required.

**Stormwater**

Stormwater management will remain as per the existing situation. The proposed boundary adjustment raises no need to make any amendments to stormwater management.

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

**Surrounding Landuses/Development**

The boundary adjustment maintains consistency with surrounding landuses (predominantly cattle grazing/open pastureland).

**Flora and Fauna**

There are no threatened or protected flora or fauna species recorded on the site. No vegetation removal is required to facilitate the boundary adjustment.

Negligible impacts on flora or fauna are envisaged as a result of this application.

#### On Site Sewage Management

The application has been assessed by Council's On Site Sewage Management Officer who has supplied the following comments:

*"It is considered proposed Lot 50 has sufficient area and suitable locations for on-site sewage management of domestic wastewater when assessed in accordance with AS1547/2000.*

*It is considered proposed Lot 51 has sufficient area and suitable locations for on-site sewage management of domestic wastewater when assessed in accordance with AS1547/2000. The existing OSMS servicing the existing dwelling and amenities building should be inspected and approval to operate issued prior to the issue of a subdivision certificate".*

The following condition has been recommended and applied:

Prior to the issue of Subdivision Certificate the applicant shall lodge an application to operate the existing OSMS facility on proposed Lot 51 under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with approval.

#### Contaminated Land

Council's Environmental health Officer has supplied the following comments with regard to contaminated land, noting that both lots would be considered potentially contaminated:

- *"Aerial photographs indicate that both lots have been subject to commercial nursery and farming operations – refer to submission.*
- *Stevenson's cattle dip site also exists within the boundary of Lot 11, although it is about 320m from the existing dwelling.*
- *The submission states that a concrete block building (formerly an office building associated with former ostrich farm) was formerly converted to a dwelling – refer DA03/1744.*
- *An above ground fuel storage tank exists on site about 100m from the dwelling.*

*The proposed boundary adjustment will have the effect that the existing dwelling and structures will effectively change to be within the boundaries of proposed Lot 51. It appears that proposed Lot 50 will not contain a habitable dwelling. The boundary change will increase the setback of the existing structures to the boundary and therefore reduce the likelihood of amenity disputes and potential impacts in the case of a failed on site system (one existing shed currently encroaches the boundary line).*

*It is noted that there are no development works required or proposed and there is no proposed change of use. Therefore, whilst the land parcels may be considered potentially contaminated, there is no trigger for further consideration of contaminated land".*

Contaminated land matters would be further addressed were consent sought in the future for a dwelling house on proposed Lot 50.

### Bushfire

The NSW Rural Fire Service were referred a copy of the application as 'integrated development'. A Bushfire Safety Authority under Section 100B of the Rural Fires Act was issued, with the following conditions:

1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on proposed Lot 51, to a distance of 50 metres or to the property boundary shall be maintained 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, electricity and gas are to comply with the following requirements of Section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
  - A hardened ground surface for truck access is to be supplied up to and within 4m of the water source.
  - A 65mm metal Storz outlet with a gate or ball valve shall be provided.
  - In recognition that no reticulated water supply exists, a 20 000 litre water supply shall be provided for fire fighting purposes.
3. Property access roads shall comply with section 4.1.3(2) of 'Planning for Bush Fire Protection 2006'.
4. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

Such conditions have been applied. It is noted that condition relating to the inner protection area (IPA) has been reviewed in terms of any required vegetation clearing. The vegetation within the nominated IPA consists mainly of managed grassland and annual weeds and nil clearing of vegetation (with the exception of minor trimming/pruning of overhanging and touching branches etc) would be required to facilitate the IPA.

### Regionally Significant Non Contiguous Farmland

A portion of the site adjoining the Tweed River is identified as regionally significant non contiguous farmland. Industry and Investment NSW (Primary Industries Division) have advised previously that specific advice will not be provided for individual DA's on regionally significant farmland, unless the application is for intensive agriculture. Instead, I&I NSW provide recommended land use planning guidelines.

Relevant guidelines have been reviewed with the conclusion drawn that no adverse impact upon the significant farmland will occur as a result of the application.

### Concurrence

Concurrence was required from the Director General, Department of Planning as one of the lots to be created is less than 90% of the required standard. Concurrence was issued by the Department on 23 September 2010, for the following reasons (excerpt from letter dated 23 September 2010):

- As Lot 12 presently has an entitlement to seek approval for a dwelling and a dwelling exists on Lot 11, no additional dwelling entitlements will be created by the proposed subdivision.
- Considering the status quo will be maintained, the proposal raises no issues of State or regional significance.

#### Dwelling Entitlement

As noted above, no additional dwelling potential is created by the subject application. It is noted however that existing Lot 11 was created as part of a Council approved subdivision in 1992, thus the property enjoyed a dwelling entitlement. While a dwelling has since been approved and constructed on this lot, the proposed subdivision will result in the dwelling entitlement being extinguished and the dwelling house having to rely on existing use rights for any future development. The applicant has been made aware of this issue and an appropriate advisory condition has been included.

#### Deferred Commencement

A deferred commencement condition has been applied to the effect that Council must be provided with evidence of registration of the boundary adjustment approved by DA09/0034. Until such evidence is received to satisfy Schedule A of the consent, the consent cannot be activated and Schedule B conditions will not become operable.

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

No public submissions were received.

The Rural Fire Service submitted conditions with regard to the integrated referral which have been applied.

#### **(e) Public interest**

The proposed boundary adjustment is minor and maintains the rural land use of both sites. No adverse impacts are envisaged as a result of approval of the application, nor the potential future construction of a dwelling on proposed Lot 50 (subject to future consent).

The proposed SEPP 1 Objection is considered reasonable in this instance based on the subject lot being already undersize and increased by the proposed boundary adjustment, as well as no additional dwelling potential being created. The proposed development generally complies with all relevant matters for Council's consideration, being considered suitable for the subject site and without significant environmental impacts.

The proposed development is therefore considered to be in the public interest.

#### **OPTIONS:**

1. Approve the application in accordance with the recommended conditions for approval.
2. Refuse the application for specified reasons.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If dissatisfied with the decision, the applicant has the ability to appeal.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed boundary adjustment is minor and detailed assessment has been undertaken of all relevant issues, with the conclusion drawn that negligible environmental impacts are envisaged as a result of approval of this application.

The boundary adjustment is considered to be suitable for the subject site and will not reduce agricultural use of the site or the subject locality.

Approval in accordance with the recommended conditions is therefore recommended.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**19 [PR-CM] Results of the Department of Planning Local Development Performance Monitoring Report 2010/11**

**ORIGIN:**

**Director Planning and Regulation**

**SUMMARY OF REPORT:**

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning and Infrastructure report, "Local Development Performance Monitoring 2010/11", which was released through a media announcement of the Minister for Planning and Infrastructure, the Hon, Brad Hazzard MP on 18 February 2012.

The Department of Planning and Infrastructure commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 5 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

The release of the LDMP traditionally creates a focus on the "Gross Mean" determination result for DAs, for which at face value, Tweed Council has been identified as on the State's worst performing councils, with the second worst determination time of 133 days.

Council's Gross Mean result is an uncharacteristic spike in an otherwise, consistent trend of improved performance in recent years: 2008/09 (110 days), 2009/10 (98 days), and for the first half of 2011/12 (under 100 days).

As the Department's report acknowledges, the 2010/11 spike is directly attributable to Council's efforts to clean out a small number of long-standing, problematic DAs (between 3 to 10 years old), which had previously reached a stalemate, predominantly as a result of various legal and administrative obstacles. When those applications (23 out of 843 determined) are taken out of the overall equation, Council's adjusted Gross Mean Days performance is closer to the recent norm of around 100 days.

On a more positive note, Council's 2010/11 Net Mean and Net Median DA determination results compare more favourably to the State-wide and comparable sized councils (Group 5), and are a more realistic measure of Council's performance, as distinct from the Gross Mean Determination benchmark, which includes delays incurred by applicants and government agencies in responding to Council's requests for additional information and input to the DA process.

Regardless of the 2010/11 LDMP results, Council is still very committed to a program of continuous review of the efficiency of its development and building approvals systems. Following a de-brief and closer examination of the 2010/11 results, Council's Planning and Regulation Management Team are currently considering a series of strategies for improved performance to be implemented prior to the commencement of the 2012/13 LDMP period, including a more detailed statistical reporting system to better track both the overall, and individual officer progress and performance on DAs; the capacity for issuing only one, consolidated Request for Information (RFI) per DA; and the alert and elevation of more problematic DAs to a senior management forum to better problem-solve and seek a more timely determination of these DAs. The emerging new NSW Planning Act is also likely to influence any new operational procedures implemented by Council.

**RECOMMENDATION:**

**That the Results of the Department of Planning and Infrastructure's Local Development Performance Monitoring Report 2010/11 be received and noted.**

## REPORT:

The purpose of this report is to provide Council with a summary of the results from the recently published Department of Planning and Infrastructure (DP&I) report, "Local Development Performance Monitoring 2010/11", which was released through a media announcement of the Minister for Planning and Infrastructure, the Hon, Brad Hazzard MP on 18 February 2012.

Copies of the LDMP report are provided as an attachment to this report. The report can also be viewed on-line through the DP&I's web site [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

The DP&I commenced this form of reporting for all NSW Councils for the 2005/06 financial year, with subsequent reports over the last 5 years. The reports provide a range of comparative benchmark statistics, including the total number, estimated construction value, determination times of various approvals processes, including development applications, Section 96 modifications, complying development certificates and construction certificates. Other statistics include the number of Section 82 reviews (DAs that have been refused and reconsidered by Council), the breakdown of Council and delegated officer determinations, and appeals in the Land and Environment Court.

In terms of interpreting the report, there are a number of key definitions which underpin the collection of application processing times:

Gross determination time – full length of the development assessment process, from lodgement to determination.

Net Time – the gross time minus referral and/or stop-the-clock time.

Mean determination time – the mean or average of a set of data values, which is the sum of all of the data values divided by the number of data values (ie. for DAs, the total number of days taken, divided by the number of DAs determined)

Median determination time – the median of a set of date values is the middle value of the data set when it has been ordered.

Referral time – the time taken by State agencies to either grant concurrence consent (some DAs require council and agency consent), or to provide advice to council on a development proposal. It should be noted that a number of Councils, such as the Tweed Shire, currently do not have the technical capacity in its IT systems to record the referral time statistics, but arrangements are currently being organised to rectify this recording mechanism.

Stop the clock – the time taken by applicants to respond to requests by councils or agencies for further information on a DA.

### DLG Group Averages

Many data tables in the DOP report refer to NSW Division of Local Government (DLG) groups. All 152 councils are grouped into one of 11 council types or groups based on population, size, location and development. Grouping councils according to similar socio-economic characteristics allows comparison between councils' results and the performance of like councils.

The DLG groupings are based on the Australian Classification of Local Governments (ACLG) classification of local government areas as adapted by the NSW DLG for NSW Local Government Councils Comparative Information publication.

The source data tables show the DLG code for each council and the average result for each of the 11 DLG groups. These tables allow anyone to see how a council's data compares to the average for the relevant DLG group.

The grouping for 2010-11 was based on population figures released from the Australian Bureau of Statistics as at 30 June 2010.

Tweed Shire Council is classified in DLG Group 5, which also consists of the major regional councils of Coffs Harbour, Lake Macquarie, Port Macquarie-Hastings, Shoalhaven and Wollongong.

### Summary of Results for Tweed Council

In terms of determination times for DAs and Section 96 Applications, Council's results, as compared to the State and Group 5 (comparably sized) Councils were:

#### Development Applications

	<b>MEAN GROSS</b>	<b>MEAN NET</b>	<b>MEDIAN GROSS</b>	<b>MEDIAN NET</b>
<b>Tweed Shire Council</b>	133	54	45	36
<b>All NSW Councils</b>	68	45	44	31
<b>DLG Statistical Division 5</b>	74	39	43	28

#### Section 96 Applications

Tweed Shire Council's Gross Mean Determination for Section 96 Applications was 151 days, as compared to the NSW (52) and Group 5 Councils (52) day result. Similar to the Development Applications, Council cleaned out a number of longstanding Section 96 applications in this period, which distorted the 2010/11 result, from Council's more recent norm of approximately 100 days.

#### Analysis of Results

The release of the LDMP traditionally creates a focus on the "Gross Mean" determination result for DAs, for which at face value, Tweed Council has been identified as on the State's worst performing councils, with the second worst determination time of 133 days.

This Gross Mean result is an uncharacteristic spike in an otherwise, consistent trend of improved performance in recent years: 2008/09 (110 days), 2009/10 (98 days), and for the first half of 2011/12 (under 100 days).

As the Department's report acknowledges, the 2010/11 spike is directly attributable to Council's efforts to clean out a small number of longstanding, problematic DAs (between 3 to 10 years old), which had previously reached a stalemate, predominantly as a result of various legal and administrative obstacles. When those applications (23 out of 843 determined) are taken out of the overall equation, Council's adjusted Gross Mean Days performance is closer to the recent norm of around 100 days.

A good example of how applications can reach a stalemate is the currently undetermined DA for a subdivision to facilitate a new police station on the property at the corner of Cudgen and Tweed Coast Roads, Cudgen. The DA required Council to gain the concurrence of the NSW Minister for Planning. The Minister refused to grant concurrence, and given that it is a Crown DA, Council is unable to refuse the DA. The only way of finalising the DA is for the applicant to withdraw the DA. Council officers have requested this to be done on a number of occasions, but the applicant is not prepared to do so. Therefore, whilst the number of "clock" days measuring Council's assessment is 21, the Gross Determination measure is now over 600 days, and will continue to blow out whilst the applicant continues to keep the DA alive.

On a more positive note, Council's 2010/11 Net Mean and Net Median DA determination results compare more favourably to the State-wide and comparable sized councils (Group 5), and are a more realistic measure of Council's performance, as distinct from the Gross Mean Determination benchmark, which includes delays incurred by applicants and government agencies in responding to Council's requests for additional information and input to the DA process.

### **Emerging Planning System Influences**

This breakdown of the results reflects the general culture of Council's approach to development assessment in recent years, whereby a greater emphasis has been placed on negotiating and working with DA applicants to achieve an acceptable outcome for both parties, and thereby minimise the costly approach of outright refusals, and subsequent LEC action. Council's professional staff also provide a considerable amount of unpaid technical advice, both pre-DA and during applications, as part of their commitment to good customer service.

In the 2010/11 period Council staff were preparing their processes for a more stringent set of legislative levers applied to DA determination times through draft regulations advanced by the former NSW State Government. These regulations specified more restrictive timeframes for requiring additional information and determining DAs. However, these legislative changes never eventuated, and NSW Councils now await the results of the current State Government's Planning Review, which will hopefully produce a less complex, new Planning Act as the basis for more efficient strategic and development assessment processes.

### **Recent Trend of Declining Local Development and Construction Activity**

Consistent with the broader national and state trend of a downturn in the residential property market, the following table shows a corresponding decline in applications received and determined by Tweed Shire Council:

MONITORING PERIOD	DAs RECEIVED	DAs DETERMINED
2006/07	1,420	1,399
2007/08	1,623	1,340
2008/09	777	1041
2009/10	878	815
2010/11	719	843

### Other Contributing Factors to Council's Overall Performance

Despite the downturn in local application activity, another important factor to consider in TSC's overall performance is the high proportion of Part 3A redevelopment assessment processes in 2010/11, such as Cobaki, Kings Forest, Lot 490 Kingscliff and Lot 156 Creek Street Hastings Point, that Council staff and the elected Councillors were required to contribute to, which significantly impacts on Council's general assessment capacity and resources.

The 2010/11 results also contained a number of JRPP development applications, including the highly complex, initial residential subdivision DAs for the Cobaki redevelopment site. Despite the fact that these DAs were lodged by Council just before the Christmas/New Year 2010/1 period, and involved an extended period of community consultation and involvement by the JRPP, the final determination for approval was achieved in May 2011.

### More Detailed Breakdown of LDMP Report Statistics

The following statistics have been drawn from the LDMP report as they apply to the Tweed LGA, and with a State-wide and Group 5 average comparison, where available.

Table 2-13: Volume and Value of TSC DAs and S96

Number of DAs determined	Total estimated value of DAs determined	Total estimated value of DAs approved	Number of S96 determined
843 (NB. There appears to be a discrepancy with the DP&I's total of 816 – to be further investigated with the Department)	\$179.8M	\$165.3M	192

Table 2-15: Volume and Value of TSC Complying Development Certificates

Number determined	Total estimated value	% determined by Council	% determined by private certifiers
161	\$10.1M	43	57

Tables 3-31 and 3-32: Mean Gross and Mean Net DA determination times (days) for all councils by value

	<\$100k	\$100-\$500k	<\$1M	\$1M-\$5M	\$5M-\$20M	>\$20M
<b>Tweed Mean Gross</b>	145	92	126	356	584	178
<b>Tweed Mean Net</b>	54	49	52	115	215	56
<b>NSW Mean Gross</b>	58	72	65	162	229	253
<b>NSW Mean Net</b>						
<b>DLG Division 5 Mean Gross</b>	67	72	71	206	265	398
<b>DLG Division 5 Mean Net</b>	36	39	38	74	94	102

Table 3-33: Mean gross DA determination (days) by type

	<b>Residential alterations and additions</b>	<b>Single new dwelling</b>	<b>Commercial Retail Office</b>
Tweed	119	81	135
DLG Division 5	55	61	87

Table 7-5: Construction and occupation certificates issues for all councils

	<b>Construction Certificates</b>	<b>Occupation Certificates</b>
Tweed	705	820
DLG Division 5	1,154	590

#### Other Miscellaneous Facts

- In terms of Table 6-6 Legal Appeals Tweed Council had a relatively limited amount of Land and Environment Court appeal activity, with 3 Class 1 appeals (1 upheld) and no Class 4 matters.
- Tweed Council's mean determination time for Complying Development Certificate was 7 days, compared to the Group 5 (9 days) and NSW (14 days) results, as shown in Table 3.38.

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Comparison of Tweed's Performance in the Context of Other North Coast Councils

- Tweed Council's total determination of 843 DAs and total value of DAs of \$179.8M are the highest of councils in the North Coast Region: Ballina (632 and \$111.1M), Byron (537 and \$93.2M), Kyogle (124 and \$10.2M.), Lismore (494 and \$55.4M), and Richmond Valley (320 and \$57.3M.);
- Tweed Council's total determination of construction certificates and occupation certificates are also the highest of other councils in the North Coast Region, as shown in the table below:

<b>COUNCIL</b>	<b>CONSTRUCTION CERTIFICATES DETERMINED</b>	<b>OCCUPATION CERTIFICATES DETERMINED</b>
Ballina	537	324
Byron	317	433
Kyogle	59	48
Lismore	399	336
Richmond Valley	286	273
Tweed	705	820

**Council's Actions to Improve its Development Assessment Performance**

Over the last several years, the Planning and Regulation and Technology and Corporate Services Divisions have been working together on a program of improvements to the efficiency of the full range of development and building approvals processes, with an initial emphasis on development applications (DAs). These actions are in response to the recommendations of an audit conducted by consultant Gary Poole in 2007/08, as well as Tweed Council's performance in DA processing, when measured against the annual performance monitoring reporting of the NSW Department of Planning for all NSW councils.

The internal Development Assessment Review Working Group (DARWG) has been coordinating an extensive program of process improvements, with an initial priority given to the "front-end" elements of DA lodgements, in recognition of the fact that many of the delays experienced have been attributed to deficient DAs being accepted, and then creating the need to make a number of requests to the applicant to submit additional information. The Group has been responsible for implementing a series of major enhancements to the web site information for potential DA applicants, including new mapping and checklists which provide a clearer guide to the full range of information required to lodge DAs in both hard copy and electronic formats. Council introduced the new requirement for the submission of a CD (documents in electronic format) with all DAs on 1 July, 2009.

E Planning has been a key strategy for enhancing the efficiency of Council's building and development approvals systems, as it strives to be a leader throughout the region. The introduction of the DA Tracker and Property Enquiry services on Council's web site has proven to be extremely popular and successful means for the local consulting industry and the wider community to gain comprehensive, on-line information relating to property development potential and access to the documents and progress of DAs lodged with Council.



The ultimate goal of Council's e planning is to achieve end-to-end electronic lodgement processes, and further enhanced e planning information tools by 2013/14. However, it is important to recognise that this can only be achieved through a major cultural change to both internal Councils practices, as well as the external participants in e planning processes. Council has therefore adopted a gradual, staged approach to this change in practices, inclusive of local industry and the general public.

In the shorter term, the DARWG is focusing its shorter term efforts to a major upgrade of its Proclaim property and information management system, which will provide the platform and capacity for the introduction of comprehensive electronic lodgement systems. As an interim measure, DARWG is also initiating ways of reducing the reliance on the quantity of hard copy documents for DA lodgements, through the following:

#### External Actions

- Offering local consulting firms a free pre-lodgement check of electronic DA documents via email.
- Ceased requiring hard copies of DA documentation for referral to external agencies.
- The installation of larger monitors in Council's 3 libraries to provide members of the public with an enhanced opportunity to view DA documentation and other e planning information on Council's web site.

#### Internal

- Introduction of larger screens and document editing programs for all assessment staff – promoting a culture of greater reliance on electronic assessment of DAs, rather than hard copies.

Another key priority has been Council's participation in the NSW State Government's EHC Pilot Program project. The project had its origins in 2008 through the Federal Government's Housing Affordability Fund. It is jointly managed by the NSW Department of Planning and Infrastructure and Shires Association of NSW, and 11 NSW Councils, including Tweed Shire Council, and a number of private certifiers were originally chosen from selection process to develop and pilot a shared, state-wide, web based platform for complying development applications under the NSW General Housing Code SEPP.

The NSW Minister for Planning launched the pilot project in mid October 2011.

Tweed Council staff are working closely with its local consulting industry to facilitate the lodgement of complying development certificates through the new EHC web site.

The EHC Program has provided Council with substantial funding and the up-skilling of its staff and the local consulting industry, as a necessary transition and learning experience for our ultimate goal of providing end-to-end electronic building and development assessment processes.

## Concluding Appraisal of Tweed Council's Performance

As highlighted in the 2010/11 LDMP report, Tweed Council recorded an uncharacteristic spike of 133 Gross Mean Determination days in an otherwise, consistently solid trend of performance in recent years: 2008/09 (110 days), 2009/10 (98 days), and for the first half of 2011/12 (100 days), which mainly attributable to the clean-out of a small number of long-standing, problematic DAs.

On a more positive note, Council's 2010/11 Net Mean and Net Median DA determination results compare more favourably to the State-wide and comparable sized councils (Group 5), and are a more realistic measure of Council's performance, as distinct from the Gross Mean Determination benchmark, which includes delays incurred by applicants and government agencies in responding to Council's requests for additional information and input to the DA process.

It should also be noted that Tweed Council was also required to allocate significant assessment staff resources to a series of Part 3A Major Projects' applications such as Cobaki and Kings Forest, involving some of the largest developments in the State.

Regardless of the 2010/11 LDMP results, Council is still very committed to a program of continuous review of the efficiency of its development and building approvals systems. Following a de-brief and closer examination of the 2010/11 results, Council's Planning and Regulation Management Team are currently considering a series of strategies for improved performance to be implemented prior to the commencement of the 2012/13 LDMP period, including a more detailed statistical reporting system to better track both the overall, and individual officer progress and performance on DAs; the capacity for issuing only one, consolidated Request for Information (RFI) per DA; and the alert and elevation of more problematic DAs to a senior management forum to better problem-solve and seek a more timely determination of these DAs. The emerging new NSW Planning Act is also likely to influence any new operational procedures implemented by Council.

### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

### POLICY IMPLICATIONS:

Nil.

### UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

1. Copy of Department of Planning and Infrastructure report, "Local Development Performance Monitoring 2010/11", released on 18 February 2012 (ECM 46564241)
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