



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

Councillors: M Armstrong (Deputy Mayor)
G Bagnall
C Byrne
K Milne
W Polglase
P Youngblutt

Planning Agenda

**Ordinary Council Meeting
Thursday 25 October 2012**

held at Murwillumbah Cultural and Civic Centre
commencing at 6.00pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

Items for Consideration of Council:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the September 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, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.

Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

6 [PR-CM] Compliance Issues - Unauthorised Works in Outdoor Dining Footpath Blister Area at Nos. 60 - 62 Murwillumbah Street, Murwillumbah, Courthouse Hotel

SUBMITTED BY: Development Assessment

FILE NUMBER: DA05/0720



Civic Leadership

SUMMARY OF REPORT:

This report has been prepared to seek Council's direction in taking action in respect of the installation of unauthorised weather protection curtains on the outdoor footpath dining area of the Courthouse Hotel Murwillumbah.

Development consent (DA05/0720) for the outdoor footpath dining area and traffic blister was granted by Council on 27 October 2006. Council has since granted approval to various Section 96 amendments to this consent.

Council has also granted a Footpath Trading approval to the owners of the Hotel to operate outdoor dining in the approved area.

Following a complaint received from a member of the public in mid 2012, Council's Environmental Health Unit officers investigated the site and observed a series of unauthorised weather protection curtains on the outdoor footpath dining area. The officers have requested the owners of the Hotel on a number of occasions to remove these structures.

The officers have also advised the owners that any application under Section 138 of the Roads Act to seek approval of the structures would not be supported for the following grounds:

- The shade screen restricts sight-lines for both motorists and pedestrians, and is therefore considered a public safety risk;
- The shade screen restricts CCTV coverage, and is therefore considered a security and public safety risk; and
- The fixtures do not enhance streetscape appeal, and the excessive shading creates a tunnelling effect along the section of footpath in front of the Hotel.

The owners have advised that they wish to retain the current structures, in a possibly modified form, to enable the coverings to be temporarily retracted in periods of good weather.

The officers still consider that such a modified form would still be unacceptable, and not supported in any future application.

It is therefore recommended that Council take firmer enforcement action in respect of the unauthorised structures by providing a final warning and time period for the removal of the structures, or otherwise be the subject of Penalty Infringement Notices, or face further legal action.

This matter has also been brought to Council as a number of businesses in the Murwillumbah Shopping Centre Precinct are seeking to erect similar weather protection structures in association with their footpath dining areas, and to highlight the need for a more comprehensive policy framework for development with Council's footpath and road reserve areas.

Tweed Shire Council has a statutory responsibility in relation to compliance enforcement. These responsibilities are clearly articulated in the Act. Failure to undertake the necessary compliance in any situation may lead to Council having its powers mitigated by other authorities.

RECOMMENDATION:

That Council, in respect of the unauthorised weather protection structures installed in association with the outdoor footpath dining and road blister area of the Courthouse Hotel, located on the premises Nos. 60-62 Murwillumbah Street, Murwillumbah:

- A. Endorse that the General Manager write to the owners of the premises requiring them to remove the unauthorised structures within a period of 14 days, or otherwise be issued with Penalty Infringement Notices on a daily basis until they are removed ; and**
- B. Supports that the officers bring back a further report to Council on a suggested policy framework for developments within the footpaths and road reserves of the business centres within the Tweed Shire.**

REPORT:

Previous Development and Footpath Trading Approvals

Development consent (DA05/0720) for an outdoor footpath dining area and traffic blister was granted by Council on 27 October 2006 in conjunction with the operations of the Courthouse Hotel, Murwillumbah Street Murwillumbah. Council has since granted approval to various Section 96 amendments to this consent.

A copy of the approved plans of the most recent amended application for this footpath and blister area is provided in Attachment 1 of this report.

Council has also granted a Footpath Trading approval to the owners of the Hotel to operate outdoor dining in the approved area.

Complaint and Council Officer Compliance Action

Following a complaint received from a member of the public in mid 2012, Council's Environmental Health Unit officers investigated the site and observed a series of unauthorised weather protection curtains on the outdoor footpath dining area. The officers have requested the owners of the Hotel on a number of occasions to remove these structures.

Photographs of the unauthorised structures taken by the officers are provided in Attachment 2 of this report.

The officers have also advised the owners that any application under Section 138 of the Roads Act to seek approval of the structures would not be supported for the following grounds:

- The shade screen restricts sight-lines for both motorists and pedestrians, and is therefore considered a public safety risk;
- The shade screen restricts CCTV coverage, and is therefore considered a security and public safety risk; and
- The fixtures do not enhance streetscape appeal, and the excessive shading creates a tunnelling effect along the section of footpath in front of the Hotel.

The structures also contravene the terms of the Footpath Dining Licence Agreement (A09/0003), dated 7 February 2011, part of which states that:

"the licensee must not erect any structures or improvements on the licensed area, including but not limited to: marquees, awnings or other similar structures; or structures fixed in a permanent nature to the footway, without obtaining the prior written approval of the licensor".

Clause 14 and 14(d) of the Footpath Dining Licence Agreement also states:

"Notwithstanding anything herein contained to the contrary the Licensor may determine this Agreement at any time and without prior notice if any of the following events occur:

.....(d) *If the Licensee has erected any structures or improvements in or modified the Licensed Area without obtaining prior written approval of the Licensor, including, but not limited to:*

- *Marquees, awnings or other similar structures; or*
- *Structures fixed in a permanent nature by the footway*
- *Paint or coat fixtures or fittings placed by the Licensor*

Note: Windbreaks are considered to be permanent fixtures under Council's 'Footpath Trading Policy'.

The owners have advised that they wish to retain the current structures, in a possibly modified form, to enable the coverings to be temporarily retracted in periods of good weather.

The officers still consider that such a modified form would still be unacceptable, and would not be supported in any future application.

Recommended Further Enforcement Action

It is therefore recommended that Council take firmer enforcement action in respect of the unauthorised structures by providing a final warning and time period for the removal of the structures, or otherwise be the subject of Penalty Infringement Notices, or further legal action.

Broader Policy Implications

This matter has also been brought to Council as a number of businesses in the Murwillumbah Shopping Centre Precinct are seeking to erect similar weather protection structures in association with their footpath dining areas, and to highlight the need for a more comprehensive policy framework for development with Council's footpath and road reserve areas.

OPTIONS:

1. Council endorses the recommended enforcement action to seek removal of the unauthorised weather protection structures; or
2. Council does not endorse the officers' recommendation and determines an alternative action.

CONCLUSION:

Council's Footpath Trading Policy clearly discourages those structures within outdoor dining areas which are likely to impede the safety and impact upon the visual amenity of the footpath areas within existing business centres. Direction is being sought from Council to provide both an interim policy position on development with Council road reserves and footpath, and to endorse a comprehensive review of Council policy actions in these areas.

COUNCIL IMPLICATIONS:

a. Policy:

This compliance issue has highlighted the need for a comprehensive policy review of the planning and road safety aspects of uses and structures within the footpath and road reserve areas of Council's business centres.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Costs could be incurred by Council should there be the need to take legal action to address the non-compliance.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website 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).

Attachment 1. Copy of approved plans of development consent (DA05/0720) for the outdoor footpath dining area and traffic blister granted by Council on 27 October 2006. (ECM 57218174)

Attachment 2. Photographs of unauthorised weather protection structures. (ECM 57218185)

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7 [PR-CM] Draft Development Control Plan (DCP) Section A1 - Residential and Tourist Development Code

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/A1



Supporting Community Life

SUMMARY OF REPORT:

The "*Tweed Development Control Plan Section A1 - Residential and Tourist Code Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts*" was first adopted by Council on 23 April 2008. A review of this document has been ongoing over the last 24 months.

Low scale residential development is the most common form of development within the Tweed Shire, and has the potential to significantly impact on the character of its various areas of settlement. In order to ensure that amendments to the house development code result in the forms of housing that are appropriate to the character of the Tweed and meet the expectations of the Tweed community, extensive consultation has been undertaken. This involved the preparation of six discussion papers which explained emerging issues with housing and offered a range of options for amending the DCP Section A1.

The feedback received through this consultation process has informed the preparation of the draft revised *Development Control Plan Section A1 - Residential and Tourist Code - Part A - Dwelling Houses, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development*.

This report provides a summary of the consultation to date, key changes to the structure and content of the draft DCP Section A1 and seeks Council's endorsement to place the draft DCP Section A1 Parts A and B on public exhibition in accordance with Sections 18 and 19 of the Environmental Planning and Assessment Regulation 2000.

RECOMMENDATION:

That Council endorse:

- 1. The draft *Tweed Development Control Plan Section A1 - Residential and Tourist Code Part A – Single Dwellings, Dual Occupancy, Secondary Dwellings, Alterations and Additions and Ancillary Development and Part B – Town Houses and Row Houses* be placed on public exhibition for a minimum period of 28 days; and**
- 2. Following public exhibition a further report addressing all submissions is to be submitted to Council.**

REPORT:

Background

Consultation to inform the review of *Tweed Development Control Section A1 – Residential and Tourist Development Code Part A – Single Dwellings, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts* (DCP A1 Part A) has been ongoing over the last 24 months. Initially an industry and community breakfast forum was held in September 2010. An issues paper was distributed at the forum highlighting some of the emerging issues and sought industry and community feedback on the current single dwelling controls on 'what is working and what is not', how new dwellings relate to the sites opportunities and constraints and how they present in the streetscape.

There is a direct relationship between dwelling design, how it responds to the site and context, and how that in turn contributes to neighbourhood and locality character. The design of housing and ancillary development, being the most common form of development within the Tweed has the potential to significantly impact the character of the Tweed.

An ongoing consultative approach has been used to seek community input and inform the review and draft amendments of DCP A1 Part A. Based on feedback received from the initial breakfast meeting of September 2010 and further in house analysis of the issues, a range of discussion papers were prepared. These discussion papers sought to engage the community and industry on how they wanted housing in the Tweed to look and to find out what the community perceived to be the issues with housing. Consultation on the discussion papers was undertaken in two stages.

The first stage consultation occurred from 12 September 2011 through to 15 October 2011 on the following discussion papers:

- Designing in Context;
- Sloping Sites – Managing Cut and Fill;
- Landscaping, Deep Soil Planting Zones and Outdoor Areas; and
- Small Lot Housing.

The second stage of consultation occurred from 14 May through to 12 June 2012 on the full suite of 6 discussion papers, which also included:

Building Envelopes; and
Ancillary Structures

The discussion papers addressed specific issues identified for review in the DCP and provided a summary of:

The objectives and controls.

What they seek to achieve.

How is the housing market meeting or responding to these objectives and controls?

Is the finished housing outcome meeting the objectives?

Is the finished housing outcome meeting the owner and neighbour expectations?

Is the finished housing outcome integrating with the site and the neighbourhood?

Options for amendment.

Based on consultation feedback, a working draft DCP A1 Part A was workshopped with internal staff (29 August 2012) and at an Industry Breakfast (19 September 2012) to further refine the draft amendments.

During this period Council resolved, on 18 January 2011, that:

“Council brings forward a report on the implications on developing a policy that small lot housing should only be approved only where they back onto green spaces.”

A discussion paper on small lot housing outlining a range of issues and options was included with the DCP A1 Part A consultation information including proximity to open space. Small lot housing is a form of low scale residential housing appropriately captured in Part A of the DCP. It provides an alternative and contributes to the diversity of housing choice. As such small lot housing has been included within the wider DCP A1 review and the implications discussed within this report.

The DCP A1 has been in place for four years. Best practice review of the effectiveness of a DCP is desirable every five years to ensure the currency of a DCP. The review of the Code was endorsed in the Planning Reforms work program of 2012/13 and the project is listed within the current operational plan.

Consultation

In order to engage to community and industry the consultation included a public forum on the “Your Say Tweed” website during both consultation periods. The website included discussion forums and a survey form for each of the discussion papers. A total of 299 discussion papers were downloaded, the most frequently downloaded being *Designing in Context* (89 downloads). The number of completed surveys varied for each of the discussion papers, ranging from 41 for *Designing in Context* to 5 for *Building Envelopes* and *Ancillary Structures*. A total of 20 written submissions were also received in response to the public consultation.

A full summary paper on the surveys and written submissions is included in Attachment 1.

Whilst comments and opinions on character and specific controls varied, the community and industry feedback can broadly be summarised as follows:

- Greater flexibility through performance based controls rather than highly prescriptive controls is supported.
- Designing to suit the climate and context is strongly supported.
- Greater emphasis on site analysis to support more flexible controls is supported.
- Generally the community and industry support allowing individual character of housing whilst still considering and respecting the locality and neighbourhood character.
- Consideration of character is equally important in established and new development areas.
- Designing to suit slope and maintaining the natural topographic character of the Tweed is strongly supported. Feedback indicated that significant cut and fill when creating new housing estates is not supported.
- Linking structural design controls to slope was strongly supported.
- Strong support that private landscaping contributes to the character of the Tweed and is an important part of the overall development of a site.
- Mixed opinions about whether formalised and outdoor rooms are part of and could replace the traditional rear yard landscaping.

- A greater diversity of housing types and affordability levels, including small lot housing, is strongly supported, however there was mixed feedback about how compatible small lot housing is with the Tweed housing character and where these forms of housing should be located.
- Correlation between the DCP A1 and the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code SEPP) is strongly supported.

Draft DCP A1 Part A

The community and industry feedback on the discussion papers has informed the planning and design directions and the drafting of the amendments to the draft DCP A1 Part A, provided in Attachment 2.

To aid the understanding of the amendments, additions and amendments to the draft DCP have been included as red text. It is proposed that the draft DCP A1 Part A be exhibited in this manner.

The DCP A1 Part A review has resulted in a range of amendments. A summary of the key amendments includes:

Performance based controls

Feedback on the discussion papers supports greater flexibility of the controls. A performance based plan, rather than a prescriptive plan, allows for more innovative responses to the unique characteristics of individual locations and sites. The draft DCP A1 has been amended to remove reference to mandatory controls and structure the use of the DCP as follows:

- A hierarchy of best practice “planning and design principles”, a range of “objectives” to achieve desired outcomes, and “controls”.
- The controls provide guidance and possible solutions. Application of the DCP provides flexibility that should the controls not be achievable, or there is a better design solution, the application must demonstrate that the alternative solution meets the “objectives” and the “planning and design principles”. This must be evidenced through a detailed site analysis.

The success of a performance based plan is heavily reliant on an understanding of the site and its context through preparation of a site analysis and demonstration of how the housing selected or designed responds to the site analysis. As such a site analysis will be required for all development.

Incorporation of granny flat (secondary dwelling) and dual occupancy controls within Part A

DCP A1 Part A applies to single dwellings, alterations and additions to dwelling houses and ancillary development. Dual occupancy and granny flat development is currently controlled through Part B. The controls applying to single dwellings, dual occupancy and granny flats contain extensive duplication within Parts A and B. In addition single dwelling, dual occupancy and granny flat development are largely of a similar low residential scale.

Dual occupancy and granny flat development has been removed from Part B and included within draft DCP A1 Part A in order to consider similar forms of development together. The provisions for granny flats have been amended consistent with the exhibited draft Local

Environmental Plan (LEP) 2010 allowing 20% of the total floor space of both the main dwelling and the granny flat or 60sqm, whichever is the greater.

Part B and C apply to medium and higher forms of density and are proposed to be reviewed at a later stage. No other amendments have been made to Part B. Given the removal of dual occupancy and granny flat controls from Part B, it is proposed that Parts A and B will both be exhibited. The update Part B is provided in Attachment 3.

Correlation with the Code SEPP

The introduction of the Code SEPP in 2008 and subsequent expansion to apply to urban and rural housing introduced controls that are inconsistent with some of the current DCP A1 controls. Consistency between the DCP A1 and Code SEPP, particularly in regard to lot size and frontage categorisations, will improve the usability of working between both the DCP A1 and the Code SEPP. The draft DCP A1 Part A has removed controls which are inconsistent with what may be undertaken as either exempt or complying development. Under the Code SEPP

Controls for building height, setbacks, and landscaping and site coverage have been converted to a table format based on the lot size and frontage categorisations correlating with the Code SEPP.

Lot sizes from 200m²

The Tweed demographics forecast that lone person households are expected to make up one third of all housing within the next 20 years. Good locality planning provides a range of housing types, tenures and sizes in order to ensure a diverse and sustainable community. A range of housing types and sizes allows students, young couples, families and the elderly the opportunity to remain and be housed within their community.

Allowing greater diversity of housing and encouraging housing affordability is strongly supported through the consultation feedback. However, there are mixed opinions about how compatible small lot housing is with the Tweed housing character and where these forms of housing should be located.

Locality planning follows planning principles whereby small lot housing forms are suitably located with walkable access to shops, services, transport nodes and recreational areas. This planning approach seeks to reduce the reliance on vehicles, the demand for vehicle parking and improve the efficiency of transport, infrastructure and services. Locality planning does not imply that small lot housing should immediately adjoin these facilities, but should be within a walkable distance.

In addition to location, small lot housing raises a number of dwelling amenity design issues which have been included in the Planning and Design Principles within draft DCP A1 Part A. These include greater design attention to garaging, orientation, privacy, sun light and ventilation.

The application of small lot housing will generally be through detailed assessment as part of locality plans.

Consistent with the provisions of the Code SEPP, the draft DCP A1 Part A has been amended to allow for development on lot sizes from 200m².

Cut and fill

The availability of flat and flood free land in the Tweed is rapidly diminishing and new residential land development is more frequently occurring on sloping land.

Recent trends, permitted under the provisions of DCP Section A5 – Subdivision Manual, are characterised by re-contouring of land to remove the slope and create allotments that will, when combined with existing DCP A1 cut and fill provisions on a 10 degree slope, facilitate single slab on ground construction. Effectively sloping sites are being modified to make “flat” sites. Whilst a degree of re-contouring is necessary, the compounding effects of the DCP Sections A5 and A1 are significantly altering the Tweed’s topographical character and giving rise to allotment interface issues including visually intrusive inter-allotment retaining walls, overlooking, overshadowing and drainage impacts.

For the topographical character of the Tweed to be maintained, as strongly supported through the consultation, housing construction methods will need to evolve and be more responsive to the needs of sloping sites. The notion that houses should respond to the slope rather than the slope being extensively modified to accommodate houses received widespread support.

Draft DCP A1 Part A seeks to provide flexibility to allow greater cut and fill within the building footprint, allowing design innovation for houses on steeply sloping sites, whilst minimising the amount of cut and fill pushed to the allotment boundaries and therefore minimising the need for, and the size of, inter-allotment retaining walls. The draft DCP A1 Part A links construction types to slope to encourage the level changes to be taken up within the building footprint rather than at the allotment edges where the interface issues are occurring.

It is important to note that DCP A1 is limited in application to the construction of a dwelling, after subdivision and bulk earthworks have occurred. The visual impacts on the Tweed are also occurring through bulk earthworks carried out under the DCP Section A5. As there is a direct relationship between these sections of the Tweed DCP and it is recommended that a review of DCP Section A5 should also be undertaken to more fully address the cumulative impact of subdivision and individual construction earthworks.

Landscaping / deep soil zones / site coverage

The draft DCP A1 Part A has consolidated and simplified landscaping, deep soil zones and impermeable surface areas. The draft DCP A1 Part A retains the requirements for landscaping and a deep soil zone, however, provides greater flexibility to locate these areas with best solar access or in response to site conditions.

The draft DCP A1 Part A replaces the impermeable surface area controls with a site coverage requirement, which is also consistent with the Code SEPP.

Ancillary development

Carpports, fences and swimming pools are frequently the subject of development application variation requests. The draft DCP A1 Part A has been amended to:

- Permit double carpports, consistent with what is permitted under the Code SEPP, and allow them forward of the building line, subject to conditions;
- Permit swimming pools in front and side yards, subject to conditions; and
- Has revised the fence controls consistent with the Code SEPP and to respond to allowing swimming pools in the front and side yards.

Definitions

The draft DCP A1 Part A has been amended to remove definitions inconsistent with the Standard Instrument (Local Environmental Plans) Order 2006 (SI LEP) and the Code SEPP. This will ensure the DCP A1 definitions will not need to be amended following making of the Tweed Shire LEP under the SI LEP (anticipated early/mid 2013). Given that the Draft Tweed LEP 2010 has been publicly exhibited, development assessment already gives consideration to the definitions of the SI LEP.

Fact sheets

In order to assist future home builders understand and make more informed decisions about site planning and house selection or design a suite of fact sheets has been prepared, covering the topics of:

- Understanding the Planning process
- Understanding Your Site
- Designing for Tweed's Climate
- Working With Sloping Sites
- Planning Your Internal Spaces
- Building Materials
- Landscaping
- Small Lot Housing

It is proposed that the fact sheets be exhibited with the draft DCP A1 Part A.

DCP Section A1 Part B Town Houses and Row Houses

No changes or amendments have been made to DCP Section A1 Part B other than the removal of the dual occupancy and granny flat provisions. Notwithstanding, the DCP A1 Part B has effectively been amended and as such it is proposed that the revised Part B be placed on public exhibition along with the Draft DCP A1 Part A.

Public exhibition

The draft DCP A1 Part A has been prepared such that additions and amendments are included in red text. This does not comprehensively represent all changes to the DCP as the structure has been amended and some text deleted; however, the use of black and red text is used to assist the general understanding of what has changed from the current DCP Section A1 Part A.

The exhibition is to be supported by a range of fact sheets and the summary of submissions received on the discussion papers.

It is proposed the draft DCP A1 Part A and Part B be publicly exhibited for a minimum 28 days in accordance with Section 18 of the Environmental Planning and Assessment Regulations 2000.

OPTIONS:

1. Council endorse the public exhibition of the draft DCP A1 Part A and Part B; or
2. Council determines that the draft DCP A1 Part A be deferred for further consideration prior to public exhibition.

CONCLUSION:

The review of the *Development Control Section A1 – Residential and Tourist Development Code Part A – Single Dwellings, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools, Tennis Courts* has been undertaken with extensive and ongoing community and industry consultation to ensure amendments are in line with community opinion and expectations on housing.

The draft DCP A1 Part A incorporates structure changes that introduce greater flexibility through a performance based rather than prescriptive based development control plan. In association with this change the draft DCP A1 places a strengthened requirement on the submission of a site analysis plan.

Amendments to the controls are in response to ensuring the DCP correlates with the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Code SEPP) and the feedback from community and industry in response to the suite of discussion papers.

It is recommended that the draft DCP A1 Parts A and B be publicly exhibited for a minimum 28 days and a report on the draft DCP A1 be submitted to Council following completion of the public exhibition period and assessment of submissions.

COUNCIL IMPLICATIONS:

a. Policy:

The proposed changes to the Draft DCP A1 should bring a closer correlation with the expectations of the community and the development/building industry in terms of future, small scale residential developments.

b. Budget/Long Term Financial Plan:

The review of DCP A1 is included in the current financial year budget.

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Supporting Community Life
- 2.2 Improve opportunities for housing choice
- 2.2.1.1 Investigate appropriate building typologies and construction methods that foster environmentally sensitive site design and good urban design practice.
- 2.2.1.1.1 Investigate and conduct review of Tweed Development Control Plan 2008 – Section A1

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 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).*

- Attachment 1 Development Control Plan (DCP) A1 Consultation Summary and Nexus to draft DCP Amendments, September 2012 (ECM 57316108)
 - Attachment 2 Draft Development Control Section A1 – Residential and Tourist Development Code Part A – Single Dwellings, Alterations and Additions, Dual Occupancy, Secondary Dwellings and Ancillary Development (ECM 57551949)
 - Attachment 3 Draft Development Control Section A1 – Residential and Tourist Development Code Part B – Town Houses and Row Houses (ECM 57317116)
-

- 8 [PR-CM] Tweed Development Control Plan 2008 - Section B24 and DA09/0701 for a 300 Lot Residential Subdivision (Department of Planning Application MP09_0166) at Lot 40, 43 DP 254416; Lot 2 DP 778727; Lot 1 DP 781687; Lot 1 DP 781697; Lot 1 DP 304649; Lot

SUBMITTED BY: Planning Reforms

FILE REFERENCE: DA09/0701 Pt5



Civic Leadership

SUMMARY OF REPORT:

In December 2011, Council endorsed Section B24 of the Tweed Development Control Plan 2008, Area E Urban Release Development Code (the Code). The Code was prepared to address the anticipated staged development growth of Area E, being the subdivision of greenfield land, future residential development and the creation of a village centre, coupling regulatory and urban design controls within the broader strategic visioning component.

The Code preparation process involved extensive stakeholder engagement including landowner workshops, a number of Council reports, workshops and a formal public exhibition process of 30 days.

Within the preparation and assessment of a longstanding Part 3A Development Application, known as Altitude Aspire, the landowners, Newland Pty Ltd, have identified controls regarding cut and fill on individual lots, which they claim will significantly impact the viability of their proposal.

Post a series of workshops being conducted with Newland, a request has been made to formally amend the Code. In summary, the request states that:

- Existing controls (particularly Development Control 1 of Section 4.2 – Cut & Fill) provide an absolute constraint on the ability of landowners to establish functional dwelling houses on lots of greater than 10% gradient;
- Suggested redrafted controls and additional controls;
- Support for a 'stand-alone', 'user friendly' document, consolidating all relevant controls within the Code;
- Re-affirm that if the Code is not amended Newland will not be able to proceed with feasible development of their holdings within Area E (approximately 60% of the release area). Adoption of acceptable amendments by Council would provide adequate comfort to enable Newland to proceed with a revised Preferred Project Report for Altitude Aspire.

Council's assessing officers have reviewed the information provided, along with the extensive modelling and testing undertaken to formulate Council's policy documents concluding that the amendment sought is not warranted at this time.

Whilst the specific request is not supported, opportunities to improve the Code through a Practice Note and further policy maintenance review post public exhibition of Section A1 of the Tweed Development Control Plan 2008 have been identified and supported.

RECOMMENDATION:

That Council, in respect of Section B24 of the Tweed Development Control Plan 2008, Area E Urban Release Development Code:

- 1. Endorses the Practice Note provided within Attachment 3; and**
- 2. Reviews the cut and fill controls within Section B24 of the Tweed Development Control Plan 2008 applicable to residential development within the upcoming Policy Maintenance under the adopted Planning Reform Unit Work Program; and**
- 3. Informs the applicant that should they still wish to pursue a review of Section B24 of the Tweed Development Control Plan 2008 that any review would be subject to Council's established Fees and Charges and potentially a costs and expenses agreement for the planning and design assessment to be undertaken externally.**

REPORT:

Background

At its meeting of 13 December 2011, Council endorsed Section B24 of the Tweed Development Control Plan 2008, Area E Urban Release Development Code (the Code). This occurred after extensive community consultation, and was prepared having regard to the principles of ecologically, socially and economically sustainable development. The Code was prepared by Council's Planning Reform Unit (PRU) in order to advance the strategic planning framework and provide the necessary planning guidelines to regulate the development of the Area E Urban Release Area.

Area E has been recognised in recent decades by both Tweed Shire Council and the NSW Department of Planning and Infrastructure (DP&I) as an important strategic site for urban land release and housing supply catering for a potential additional residential population of about 4,000 people.

The Code preparation process involved extensive stakeholder engagement including landowner workshops, a number of Council reports, workshops and a formal public exhibition process of 30 days.

The Code is structured to address the anticipated staged development growth of Area E, being:

1. Subdivision;
2. The creation of a village centre; and
3. Residential development on individual allotments.

The Code seeks to embody regulatory and urban design controls within the broader strategic visioning component, assisting the interrelationships between the site and phases of its development. This format is more holistic than most DCP formats where the controls and developments of individual sites are often looked at in isolation or a vacuum of other competing factors. It recognises the importance of the interrelationship between subdivision design (including roads, bulk earthworks, infrastructure provision), to individual lots and dwellings, as well as the immediate area and locality.

Part 3A Update

DP&I is currently considering, as the consent authority, a community title subdivision within the eastern portion of Area E, under the savings provisions of Part 3A of the Environmental Planning and Assessment Act 1979. This subdivision is commonly referred to as 'Altitude Aspire'.

The application was initially lodged with the DP&I in February 2011. Following the initial review of the application by both Council and the DP&I the applicant has been revising the project to rectify areas of concerns.

In May 2012 Council staff received a Draft version of the Preferred Project Report (PPR - the amended application) and Council staff have been liaising with both DP&I and the applicant in regard to this project.

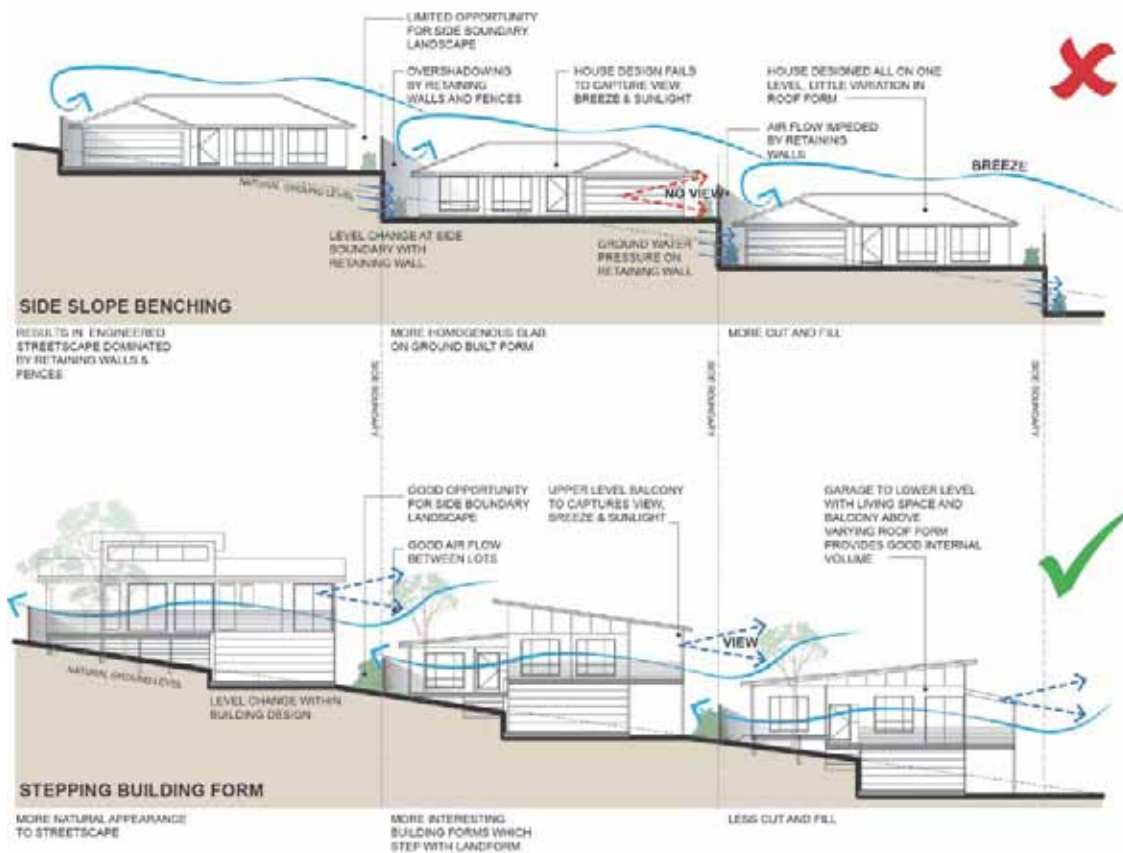
The Draft PPR seeks approval for a 272 lot community title subdivision with a single community association land parcel to accommodate a community recreational facility. The proposed subdivision includes the following key elements:

- Construction of Broadwater Parkway within part of the Altitude Aspire site (from the Stage 7 entry roundabout to the eastern boundary of the site);
- Landforming of the site to achieve a balance of earthworks;
- Construction and dedication of all proposed roads within Altitude Aspire;
- Construction of stormwater drainage infrastructure within the proposed roads, lots and drainage reserves, including the central drainage corridor which is to be dedicated as a drainage reserve;
- Construction of water and sewer reticulation to each proposed lot;
- Construction of underground power and telephone services to each lot, including pit and pipe infrastructure in accordance with NBN Co's Guidelines; and
- Construction of a temporary intersection with Fraser Drive, including dedication of the alignment as a temporary public road under Section 9 of the Roads Act, 1983;
- Dedication and embellishment of the proposed casual open space lots.

In addition the Draft PPR requests a Voluntary Planning Agreement between TSC and the applicant to set up a lawful mechanism for contributions to be levied at Altitude Aspire. The contents of this Voluntary Planning Agreement are still being drafted by the parties and their legal representatives. It is envisaged that when the applicant formally lodged the Preferred Project report with DP&I a Draft Voluntary Planning Agreement could be placed on exhibition concurrently.

Following is a plan submitted with the Draft PPR from May 2012 (however this plan is now outdated as the applicants have been reviewing the plan since May 2012).

In July 2012 Council staff wrote to the DP&I and identified issues with the Draft PPR. Primarily Council staff were concerned that the application was still failing to have adequate regard for the slope of the subject land. The below diagram demonstrates both the inappropriate housing type and the preferred housing type on sloping sites.



The applicant has now indicated that upon review the bulk earthworks to occur at the time of subdivision appear capable of satisfying the numerical requirements of Tweed DCP Section A5 Subdivision Manual, however, the full earthworks plans are yet to be received.

If compliance at the time of subdivision can occur then the applicant need only then ensure that all future dwellings can comply with the development controls relating to cut and fill to ensure a stepping building form as demonstrated above. The current controls to regulate this are contained within Tweed DCP Section B24 Part 4 Residential, Section 4.2 Cut and Fill which state:

1. *All natural ground levels are to be maintained except where land reforming is necessary to allow the building and approved buildings or structures in which case excavation is limited to the width of the building footprint rather than the width of the site.*
2. *On sloping sites excavations must not be made for a contiguous slab on ground construction if the lot has a slope of greater than 6 degrees or 10%. Design on sloping sites should reference sloping design principles and the sloping sites matrix included within this plan.*
3. *Level change is to be taken up within building design, rather than at property boundaries.*

4. *All proposed site works including cut, fill, benching and retaining walls to be accurately represented and documented as part of a development application submission by way of a site works plans and sections.*
5. *All excavation, cut and fill is to comply with the provisions of the Tweed DCP Section A1 – Residential & Tourist Development Code. Cut allowances may be increased to a full level (2.7m) where design relates to the slope in terms of stepping slabs, drop edge beams, post and beam construction and is within the building envelope.*
6. *Where cuts exceed 1.0m they should be retained and backfilled to the wall of the dwelling with the retaining wall designed and constructed to the specification of a certified structural engineer. In addition any cut and fill outside of building envelope would be controlled by the +/-1.0m control.*
7. *Site cut and fill within building envelope should be obscured from view by way of ladding, screening and or landscaping.*
8. *Where possible, the use of the stone found on the site should be incorporated into the retaining walls, although it is understood that this stone would not be suitable for structural elements of retaining walls.*

These controls present a concern to the applicant and form the reason for this report.

The applicant has indicated that the official Preferred Project Report will not be lodged with DP&I until the issues relating to cut and fill are resolved.

There is a level of urgency with this project as the NSW Government repealed Part 3A last year and gave proponents until 1 October 2013 to lodge their detailed plans (known as environmental assessments) for public exhibition. If no environmental assessment was lodged by this date, the application was to be removed from the Part 3A system.

The NSW Government made a decision to bring forward this 'sunset' date by 10 months to 30 November 2012. This means that applicants are required to lodge their environmental assessment by this date. While the Director-General can extend the deadline on a case by case basis, this will be done sparingly. Accordingly the applicant will need to continually liaise with DP&I in regards to the proposed official PPR.

DCP Amendment Request

As discussed above, within the preparation and assessment of development application materials of Altitude Aspire, the landowners, Newland Pty Ltd, have identified controls regarding cut and fill on individual lots post subdivision, which significantly impact the viability of their proposal. In this regard, a series of workshops have recently been held with the landowner and relevant Council staff to provide clarification, distil key issues and identify potential resolutions. As a result of this process, a request has been made by the landowner to amend the Code. A full copy of the request is provided as Attachment 1, however can be summarised as follows:

- Existing controls (particularly Development Control 1 of Section 4.2 – Cut & Fill) provide an absolute constraint on the ability of landowners to establish functional dwelling houses on lots of greater than 10% gradient;
- Suggested redrafted controls and additional controls;
- Support for a 'stand-alone', 'user friendly' document, consolidating all relevant controls within the Code;

- Reaffirm that if the Code is not amended Newland will not be able to proceed with feasible development of their holdings within Area E (approximately 60% of the release area). Adoption of acceptable amendments by Council would provide adequate comfort to enable Newland to proceed with a revised Preferred Project Report for Altitude Aspire.

Development Control 1 of Section 4.2 – Cut and Fill reads as follows:

All natural ground levels are to be maintained except where land reforming is necessary to allow the building and approved buildings or structures in which case excavation is limited to the width of the building footprint rather than the width of the site.

After attending several workshops with the landowners and reviewing the request for amendment, two primary issues can be distilled; firstly the clarity of controls within the Code and secondly, the validity of controls imposed. These two matters are discussed as follows:

Clarity of Controls

The Code was prepared in accordance within the NSW Environmental Planning and Assessment Act 1979 framework, which provides strategic direction, development standards and controls to the site via greater than 35 applicable documents and sections of the Tweed DCP. The Code details its relationship to these documents within Section 1.5 and Figure 1.2. Figure 1.2 of the Code is displayed below.

Figure 1 – Relationship of the Code to the wider planning framework

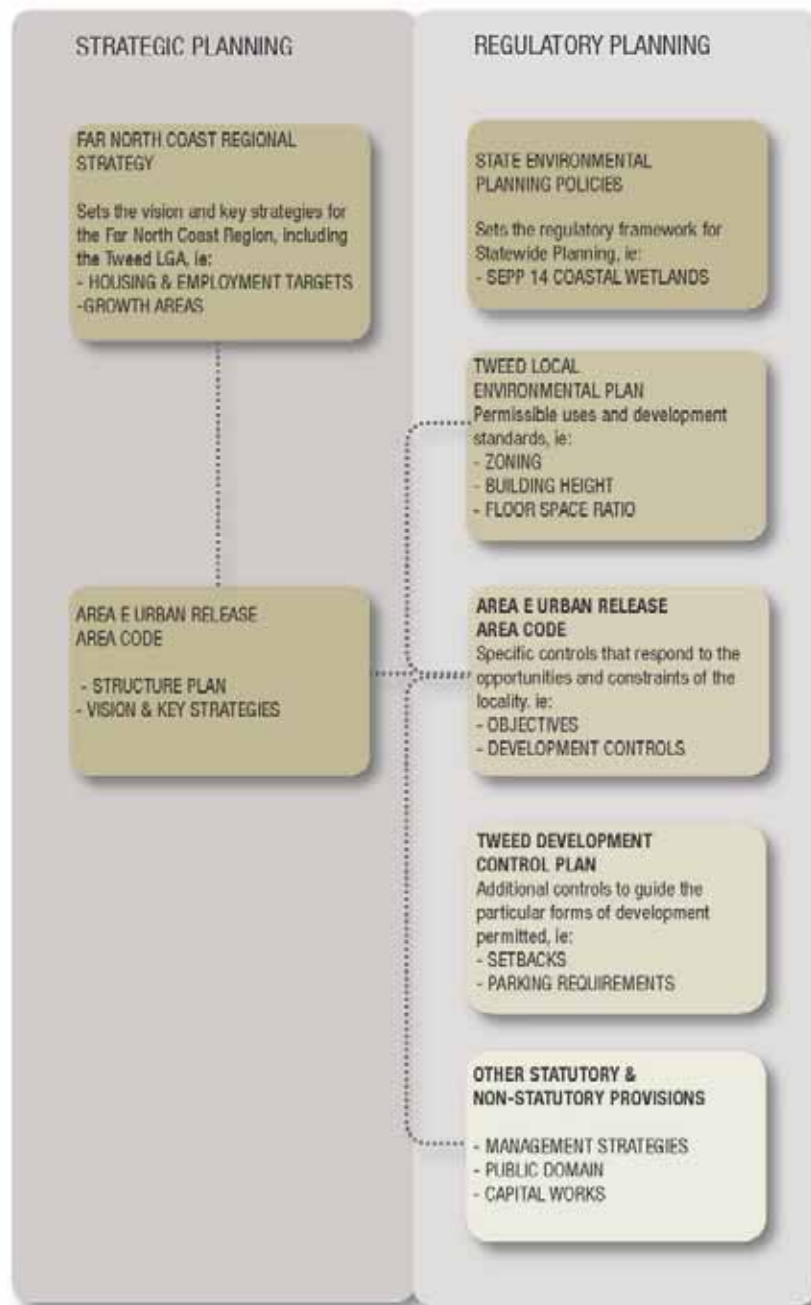


Figure 1.2 Urban Release Area Development Code relationship with other documents and policy
 This Code combines both elements of the planning process so that the regulatory component has a strong strategic focus, justification and relevance. The above illustrates the relationship between the Urban Release Development Code and the various implementation mechanisms.

Having regard to the wider NSW planning framework, it is necessary to read and apply the provisions of the Code in conjunction with other applicable documents. Specific to the foremost concerned 'Development Control 1', are the provisions of State Environmental Planning Policy – Exempt and Complying Development Code (SEPP E&C). The provisions of the SEPP E&C prevail in the event of an inconsistency with the Code. In relation to earthworks, the SEPP E&C provides as follows:

Exempt development **Subdivision 15 Earthworks and retaining walls**

"2.30 Development standards

The standards specified for that development are that the development must:

- a) be for domestic purposes only, and*
- b) be located at least 900mm from each lot boundary, and*
- c) if a retaining wall:*
- d) be not higher than 600mm (including the height of any batters) above ground level (existing), and*
- e) if it is on a sloping site and stepped to accommodate the fall in the land—be not higher than 800mm above ground level (existing) at each step, and*
- f) have adequate drainage lines behind it, and*
- g) not require cut or fill more than 600mm below or above ground level (existing), and*
- h) not redirect the flow of surface water onto an adjoining property, and*
- i) cause surface water to be disposed of without causing a nuisance to adjoining owners, and*
- j) be located at least 1m from any registered easement, sewer main or water main, and*
- k) if the fill is more than 150mm deep—not occupy more than 50% of the landscaped area, and*
- l) if the fill is imported to the site—only contain natural materials and must be free of building and other demolition waste, and*
- m) if it is carried out, constructed or installed in a heritage conservation area or a draft heritage conservation area—be located in the rear yard, and*
- n) be located at least 50m from a waterbody (natural). In light of the above, whilst referred Development Control 1 of the Code restricts earthworks to the footprint of the building and approved structures, the SEPP E&C enables cut and/or fill outside those parameters up to 600mm."*

It is acknowledged that replicating the provisions of the SEPP E&C within the Code would consolidate applicable cut and fill controls applicable to the site, however this is not essential, nor generally common practice (to duplicate controls). The provisions of the SEPP E&C enable earthworks to facilitate normal ancillary functions of a dwelling house, such as landscaping, outdoor drying areas, outdoor recreation spaces and access stairs etc.

After reviewing Development Control 1, it has been identified that the terms 'approved structures' and 'building footprint' would better benefit from clarification.

The term 'approved structures' is not formally defined within the Code, however is considered to include the following:

- Decks;
- Pergolas;
- Gazebo's;
- External shade structures;
- BBQ areas;
- Garden sheds;
- Swimming pools;
- Access steps; and
- clothes drying areas.

Likewise, the term 'building footprint' is not formally defined within the Code. A preferred definition of building footprint is as follows:

Building Footprint: is the area of the building to the extent of the edge of the roof line.

In light of the abovementioned matters, a 'Practice Note' has been prepared (Attachment 3) to supplement the Code. The practice note does not form part of the Code, however provides the necessary clarity of the identified development control for applicants and assessing officers. Within any future housekeeping amendment the definitions within the Practice Note will be embedded formally.

The implementation of this Practice Note is considered to resolve any ambiguity with Development Control 1. The primary issue however relates to the level of works the development control provides.

Validity of Controls Imposed

As mentioned previously, Newland has advised that Section 4.2 Cut and Fill, Development Control 1 of the Code is an absolute constraint on the ability of landowners to establish functional dwelling houses on lots of greater than 10% gradient. This component of the request directly seeks to amend the development controls imposed, as opposed to an issue of clarity.

Newland contends that this control precludes any facilities ancillary to a dwelling house (eg. swimming pool, clothesline area, outdoor living area, driveways, etc.) and any effective landscaping or terracing of side boundaries to provide for outdoor drying areas, outdoor recreation spaces and access stairs from the front to the rear yard and a second ingress/egress to the dwelling house.

Newland also advises that particularly on lots greater than 30%, the effect of Development Control 1 will be alienation of the side boundary setback area from any functional use. This will have significant implications for efficient and convenient dwelling design, particularly in relation to laundry access and maintenance of the setback areas.

Finally, Newland states that lawns, gardens and useable areas on gradients of greater than 20% are very difficult to mow or maintain and stormwater runoff velocities can result in erosion and scouring. The inability to landscape and retain allotments in this prestige

residential development will alienate potential buyers anticipating both to add value to their investment and being able to use the whole of their property.

Council's Development Assessment, Strategic Planning and Urban Design staff have reviewed the information provided, along with the extensive modelling and testing undertaken to formulate firstly the controls contained with the Code, but also within the draft Tweed Development Control Plan Part A – Section A1 (draft DCP A1). After reviewing the information submitted, it is the view of Council officers that the amendment sought is not warranted.

To date feedback has not been obtained from the landowner as to whether an alternate to the amendment requested is acceptable. Should the landowner be willing to pursue an amendment other than that submitted, Council officers however have concluded that a middle ground, similar to the draft A1 requirements, could potentially be supported. The cut and fill controls of the draft DCP A1 are contained within Attachment 4.

Whilst the draft DCP A1 controls may be suitable within the context of Area E, these controls have predominately been discussed in industry specific workshops, as opposed to the wider public arena through a formal public exhibition. It is considered desirable to enable this scrutiny to occur to ensure a robust suite of controls. Once those controls are established, their relationship with site specific sections of the Tweed DCP can be rationalised to avoid duplication, ambiguity and inadvertent conflict in controls.

Timing & Resources

The preparation of a DCP amendment involves a number of steps, including but not limited to:

1. Council resolution to prepare the DCP amendment;
2. Further research of amendments sought;
3. Recommendations made and drafting of controls (where appropriate);
4. Council reporting and resolution to publically exhibit;
5. Public exhibition for a period of not less than 28 days;
6. Review of submissions received;
7. Any necessary amendments made
8. Council reporting on the public exhibition process, suggested amendments resulting from submissions and a Council resolution to adopt the amendments proposed.

In light of the above, a likely timeframe for amending the Code would be February 2013 at the earliest. Resources for an amendment to the Code are not currently available within the adopted Planning Reform Unit (PRU) Work Program, as identified within Attachment 2. The PRU have established a process to accept a project outside of the adopted work program, subject to the necessary investigations and assessment being undertaken external of the PRU and the costs of such being borne by the applicant through a Costs and Expenses agreement. Whilst this process is available, it would still absorb some resources and slow existing projects.

The PRU work program includes an allocation of resources for policy maintenance and housekeeping. This project is anticipated to commence in the first quarter of 2013 and provides an opportunity to refine controls for clarity, or remove controls that are no longer valid. Whilst the scope of this project does not enable a holistic review of the Tweed DCP, the requested amendments would be investigated within this process if not embarked on separately.

OPTIONS:

1. Endorse the Practice Note provided under Attachment 3; and

Review the cut and fill controls within the Code applicable to residential development within Council's Policy Maintenance and Housekeeping project; and
Inform the applicant that should they still wish to pursue a review of the Code that any review would be subject to Council's established Fees & Charges and potentially a costs and expenses agreement for the planning and design assessment to be undertaken externally; or

2. Endorse the public exhibition of Tweed Development Control Plan 2008 – Section B24 with development controls to the effect of those contained within Attachment 4; or
3. Review the Code in accordance with the submitted request, subject to the execution of a costs and expenses agreement; or
4. Review the Code in accordance with the submitted request.

Option 1 is considered the best way forward to provide a level of clarity for the applicant and to allow the Code to be reviewed and amended following the exhibition of the draft DCP A1 and within the Policy Maintenance as programmed within the PRU Work program.

CONCLUSION:

The Area E Urban Release Development Code was prepared taking account of the many valuable and relevant elements of the earlier Local Environmental Study, LEP amendment, extensive landowner consultation, as well as seeking to take the current best practice urban planning and community input. The existing prescribed controls are considered to better reflect the sensitivities and qualities of the site than those proposed by the primary landowner within Area E, subject to clarifying the definitions discussed in this report.

Planning Reform staff have identified that post the public exhibition of Section A1 of the Tweed Development Control Plan, a housekeeping amendment will be undertaken to rationalise the provisions of Section A1 and B24, potentially increasing the level of site modification permitted within the Area E Urban Release Area. The preferred time to undertake this review is within the first quarter of 2013, in accordance with the Planning Reform Units' Council endorsed Work Program.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Nil

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 1.5.2.2 Planning Controls updated regularly

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1: Request for an amendment to Section B24 of the Tweed Development Control Plan made by Newland Pty Ltd (ECM 57610543)
 - Attachment 2: Planning Reform Unit Work Program adopted 15 May 2012. (ECM 57610545)
 - Attachment 3: Practice Note for Section B24 of the Tweed Development Control Plan 2008. (ECM 57610548)
 - Attachment 4: Cut and Fill controls with the draft Section A1 of the Tweed Development Control Plan 2008. (ECM 57610554)
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9 [PR-CM] Planning Proposal PP11/0004 Draft Local Environmental Plan Amendment No. 96 Tweed City Shopping Centre

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP11/0004



Civic Leadership

SUMMARY OF REPORT:

In 2011, Tweed Shire Council (Council) received a request to prepare a Planning Proposal from Urbis Pty Ltd on behalf of DEXUS Property Group (“DEXUS”), the manager of the Tweed City Shopping Centre. The Tweed City Shopping Centre is the key destination that forms part of Tweed Heads South, the region’s major district retail centre as recognised within Council’s Retail Strategy.

In December 2011, Council resolved to prepare a Planning Proposal (PP) to facilitate the requested changes in zoning, specifically from 2(b) Medium Density Residential, 3(c) Commerce and Trade and 6(b) Private Recreation zones to 3(b) General Business. The proposed amendments are sought to enable the orderly expansion of the existing Tweed City Shopping Centre.

On 29 May 2012, the PP was referred to the Minister for a ‘Gateway Determination’, which was received with the Minister’s conditions on 6 July 2012. In accordance with the conditions of the Gateway Determination, the PP was formally advertised from 1 August to 17 August 2012. During the public exhibition period five submissions were received.

The PP has since been amended to incorporate the submissions received, where appropriate, and possesses sufficient justification to be supported.

In light of the above, it is recommended that the PP, as amended, be referred to the Minister for Planning to be made.

RECOMMENDATION:

That Planning Proposal PP11/0004 (Local Environmental Plan Amendment No. 96) for Lots 22 DP 23659; No. 24 Kirkwood Road; Lot 21 DP 23659; No. 26 Kirkwood Road; Lot 20 DP 23659; No. 28 Kirkwood Road; Lot 19 DP 23659; No. 30 Kirkwood Road; Lot 6 DP 1119624; No. 38 Minjungbal Drive; Lot 13 DP 23659; No. 42 Kirkwood Road; Lot 12 DP 23659; No. 44 Kirkwood Road; Lot 11 DP 23659; No. 46 Kirkwood Road; Lot 2 DP 804871; No. 48-50 Kirkwood Road; Lot 8 DP 23659; No. 52 Kirkwood Road; Lot 7 DP 23659; No. 54 Kirkwood Road; Lot 6 DP 23659; No. 56 Kirkwood Road; Lot 1 DP 781517; No. 58 Minjungbal Drive; Lot 2 DP 781518; No. 60 Minjungbal Drive; Lot 1 DP 524806; No. 62 Minjungbal Drive; Lot 2 DP 524806; No. 64 Minjungbal Drive, Tweed Heads South, be referred to the Minister under Section 59 of the Environmental Planning and Assessment Act 1979, for the plan to be made.

REPORT:

Council resolved at its meeting of 13 December 2011 to prepare a planning proposal (PP) for the Tweed City Shopping Centre site, subject to the prior execution of a Costs and Expenses Agreement. A Costs and Expenses Agreement has since been executed and a PP prepared to change the land-use zones within the subject site from 2(b) Medium Density, 3(c) Commerce and Trade and 6(b) Private Recreation to 3(b) General Business. A full copy of the PP is provided as Attachment 1 of this report.

On 29 May 2012, the PP was referred to the Minister under section 56 of the Environmental Planning and Assessment Act, 1979 (the Act) for a 'Gateway Determination', which was received with the Minister's conditions on 6 July 2012. A copy of the Gateway Determination is provided in Attachment 3.

In accordance with the gateway determination, the PP was placed on public exhibition.

Public Exhibition

The PP was publicly exhibited from 1 August to 17 August 2012. During the exhibition period five submissions were received. A full copy of the submissions received and applicable comments can be found in Attachment 2, however, in summary the issues raised include:

1. Requests that the Planning Proposal:
 - Consider likely impacts on threatened species and key habitats within the area
 - Retain bushfire hazard protection zones on the site and not encroach into the National Park Estate Land, or the land containing the remnant Sclerophyll Forest/Woodland to the south-east of the site.
 - Ensure the management strategies outlined within the Aboriginal Cultural Heritage Due Diligence Assessment Report prepared by Everick Heritage Consultants Pty Ltd (March 2010) be considered as part of any future development on the land.
 - Ensure any future expansion of the shopping centre should be supported by a demand model that examines the traffic implications on the wider road network surrounding the site.
2. Noise concerns to adjoining residential development;
3. Safety concerns to adjoining residential development;
4. Buffers to adjoining residential development;
5. Location of and access to services (power and telephone cables, including easements for power and water also present);
6. Visual amenity; and
7. A request from the landowners of Lots 6 and 7 in DP23659 (56 and 54 Kirkwood Road, Tweed Heads South respectively), to be included within the Planning Proposal.

Issues 1 – 6 are considered to be satisfied for the provisions of advancing the PP. It is acknowledged that further detailed design and response will be required within any future development application on the subject site. This will involve compliance with Council's adopted controls as well as a merits based assessment at the development application stage.

Issue 7 is discussed further below.

54 & 56 Kirkwood Road

The Gateway Determination from the Department of Planning and Infrastructure (DP&I), encouraged Council to consider the inclusion of two adjoining lots, being, 54 and 56 Kirkwood Road, within the PP. The inclusion of these lots was considered to meet the objectives of the Planning Proposal and to 'enable the orderly expansion of the existing Tweed City Shopping Centre'.

Council has since been in receipt of a submission from the landowner requesting the inclusion of 54 and 56 Kirkwood Road within the PP. The submission included an assessment of the lots' inclusion against all relevant State Environmental Planning Policies, relevant section 117 Directions and the Tweed Local Environmental Plan 2000. The assessment concludes inclusion would be consistent with the abovementioned planning framework.

The inclusion of the two additional lots consolidates the Tweed Heads South commercial core by rezoning two residential lots (which if the inclusion of the two lots were not to take place, would result in two isolated residential lots surrounded by the shopping centre and Kirkwood Road) to 3(b) General Business.

A consistent zoning of the land south east of the Minjungbal Drive/Kirkwood Road intersection will also help to facilitate a consolidated development footprint in accordance with section 8.1.5 of the Draft Tweed City Centre Development Control Plan. It would also reduce potential amenity conflicts between isolated residential land and expanding commercial development.

The two sites are considered relatively free of environmental constraint and would create an integrated commercial core within the Tweed Heads South area. Accordingly, it is recommended these two lots be included within the Planning Proposal.

Council owned land

The proposal does not include any Council owned land.

Consistency with any regional strategy, instrument or direction

The planning proposal has been assessed against:

- The Far North Coast Regional Strategy (FNCRS) as provided in Table 6 of the attached planning proposal Version 3.
- The FNCRS Sustainability Criteria as provided in Table 5 of the attached planning proposal Version 3.
- Relevant State Environmental Planning Policies (SEPPs) as provided in Table 7 of the attached planning proposal Version 3.
- The ministerial Section 117 Directions as provided in Table 8 of the attached planning proposal Version 3.

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

Relationship to Draft Tweed Local Environmental Plan 2010

Council has previously exhibited a draft Tweed Local Environmental Plan (draft SI LEP), prepared within the Standard Instrument Order 2006 template. The draft SI LEP is still

being progressed and is expected to be re-advertised within the next 6 months. For the purposes of any re-exhibition of the draft SI LEP prior to the PP being made, it is intended that the zonings proposed within the PP are adopted. This approach would remove confusion between the documents and provide a consolidated intent for the study area.

OPTIONS:

1. Council approves the Planning Proposal as detailed within Attachment 1; or
2. Council approves the Planning Proposal as previously exhibited (not including 54 & 56 Kirkwood Road, Tweed Heads South); or
3. Council rejects the Planning Proposal.

CONCLUSION:

The planning proposal has been publicly exhibited consistent with the requirements of the Gateway Determination.

The incorporation of Lots 6 and 7 in DP23659 (56 and 54 Kirkwood Road, Tweed Heads South respectively), further assists with the rationalisation of urban zonings in this area and provides a logical planning outcome.

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

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

Whilst detailed design issues for the future redevelopment of the site will need to be undertaken, sufficient information has been provided in order to satisfy the needs of the Planning Proposal, facilitating the zone change required to enable future expansion of the shopping centre.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1: Planning Proposal Tweed City Shopping Centre Version 3 (ECM 57561507)
 - Attachment 2: Public submissions review (ECM 57561509)
 - Attachment 3: Department of Planning and Infrastructure Gateway Determination (ECM 57561510)
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10 [PR-CM] Tweed Development Control Plan Section B15 - Seabreeze Estate, Pottsville

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GT1/DCP/B15



Civic Leadership

SUMMARY OF REPORT:

At its meeting of 19 October 2010, Council resolved to amend the Tweed Local Environmental Plan 2000 (TLEP 2000) to enable the use of a number of properties immediately north of the 'Seabreeze Estate' for urban purposes. Within the referred amendment, the preparation of a Development Control Plan (DCP) was required prior to the development of the subject site to address a number of matters. The most significant of these matters is the proponent's proposal to remove the currently identified future school site from the DCP.

To facilitate this process, the landowner requested a DCP amendment to Section B15 of the Tweed DCP, as it relates to the Seabreeze Estate (Seabreeze DCP). On 17 July 2012, Council resolved to publicly exhibit the Draft Seabreeze DCP.

The draft Seabreeze DCP was formally exhibited from 1 August 2012 – 5 September 2012, and included a Community Conversation, held at the Pottsville Community Hall on 28 August 2012.

During the exhibition period 43 submissions were received, predominately relating to the provision of school infrastructure within the Seabreeze Estate. A summary of those submissions and responses is provided within this report.

Within this exhibition period, written advice was received from NSW Department of Education and Communities which clearly stated that the Department does not require a school site in the Seabreeze Estate.

The draft Seabreeze DCP, having been widely consulted on, prepared having regard to ecologically sustainable development principles and the expressed views of the NSW Department of Education and Communities, is now considered suitable, and recommended, for adoption, including that amendment to remove the currently identified future school site from the DCP.

RECOMMENDATION:

That Council:

- 1. Receives and notes the amendments to the publicly exhibited Draft Development Control Plan Section B15 – Seabreeze Estate, arising from the review of public consultation submissions;**
- 2. Endorses the Development Control Plan Section B15 – Seabreeze Estate, as amended, and provided as an attachment to this report;**
- 3. Endorses the public notice of the adoption of the Development Control Plan in accordance with Clause 21(2) of the Environmental Planning and Assessment Regulation 2000, satisfying the provision of Clauses 53E(5) and 53E(6) of the Tweed Local Environmental Plan 2000 – Specific Provisions for Seabreeze Estate – Stage 2; and**
- 4. Requests a copy of Development Control Plan Section B15 – Seabreeze Estate be forwarded to the Director-General of the NSW Department of Planning and Infrastructure in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000; and**
- 5. Endorses a review of the education infrastructure strategies and controls contained within Tweed Development Control Plan – Section B21 – Pottsville Locality Based Development Code within the next available housekeeping amendment.**

REPORT:

On 17 July 2012, Council resolved to publicly exhibit a draft Development Control Plan Section B15 – Seabreeze Estate (draft Seabreeze DCP). A copy of the Council report from 17 July 2012 is provided in Attachment 1 of this report.

The overarching intention of the draft Seabreeze DCP is to satisfy the provisions of Clause 53E(5) of the Tweed Local Environmental Plan 2000, enabling the urban use of land referred to as 'Seabreeze Estate Stage 2'. Specific to the site, the draft Seabreeze DCP seeks to:

- Manage the distribution and availability of reticulated wastewater in light of capacity constraints within the existing network;
- Remove the currently identified potential future school site in light of discussions with the landowner and NSW Department of Education and Communities;
- Reinforce the need for a 50m riparian buffer to Cudgera Creek, consistent with the Tweed Coast Estuaries Management Plan and previous Local Environmental Studies;
- Provide guidelines for high quality urban design built form, open space and public domain areas within Seabreeze Estate; and
- Improve the usability of the DCP through general housekeeping revision.

The draft Seabreeze DCP was formally exhibited from 1 August 2012 – 5 September 2012. During the exhibition period 43 submissions were received, predominately relating to the identified potential future school site within the Seabreeze Estate. Consultation also included a Community Conversation, held at the Pottsville Community Hall on 28 August 2012. This was attended by approximately 84 community members, Councillors and the Federal Member for Richmond, Justine Elliot.

School Infrastructure

As detailed within the 17 July 2012 Council Meeting, the request to remove the 'Potential Future School Site' designation was made as a result of a variety of factors, namely:

- Discussions with Department of Education and Communities (DEC) staff over the past 12 months have identified that there is currently insufficient demand to warrant a high school within the Pottsville locality, however demand may be present for a kindergarten and/or primary school;
- The provision of a new School in Pottsville is still contingent on enrolment projections at the current school at Pottsville being achieved and the Dunloe Park development progressing;
- Informal discussions with DEC staff indicate that whilst a potential school has long been earmarked for the subject site, it does not appear that the demand for such infrastructure will arise in the immediate to mid-term.

During the public exhibition period, formal comments from DEC regarding the potential school site were received by Council. A copy of the comments received is provided within Figure 1.

FIGURE 1 – Advice received from NSW Department of Education & Communities



Joshua Townsend
Planning Reform Unit
Planning and Regulation
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

SEABREEZE EST DEV.
O.C.P. - B15

TWEED SHIRE COUNCIL	
FILE No:	GT1/DPC/B15 #1
DOC. No:	55901585
REC'D:	- 5 SEP 2012
ASSIGNED TO:	JOHNSON, J
HARD COPY	<input checked="" type="checkbox"/>
IMAGE	<input type="checkbox"/>

DGS12/1564
Your ref: Draft Seabreeze DPC
GT1/DPC/b15

Dear Joshua

**Tweed Development Control Plan 2008, Section B15
Seabreeze Estate Pottsville, Amendment No 1.**

I write in response Tweed Shire Council's resolve to prepare and exhibit an amendment to Section B15 of the Tweed Development Control Plan, relating to the Seabreeze Estate, Pottsville (Draft Seabreeze DPC) and your email of 31 July 2012, inviting the Department of Education and Communities to comment on the planning proposal which is currently on Public Exhibition.

~ 54142476

The Department acknowledges that the developers proponent, Daryl Anderson Consulting, submitted a request to Tweed Shire Council in March 2012 requesting a Development Control Plan amendment to Section B15 (Seabreeze Estate). The DPC amendment seeks to remove the longstanding designation of the land as a school site to enable development of the land for approximately 160 residential lots.

The Department provided advice to Daryl Anderson Consulting Pty Ltd on the 4 October 2011 of its interest in identifying a primary school site in the Seabreeze Estate (Section B15). The Department also advised that it did not require a site for a secondary school.

In February 2012, the Department became aware of the proposal to develop a non government primary school in Charles Street Pottsville. It is understood there is a development application, currently before Tweed Shire Council for the 420 student Catholic school.

The Department undertook a high level needs analysis for the proposed amendment. This analysis indicates that public student enrolment demand generated by the B15 Seabreeze DPC amendment can be accommodated in existing government and proposed non government education facilities in the Pottsville area and therefore does not require a school site in the Seabreeze estate.

The Department's Regional Asset Planner will continue to monitor education needs in the Pottsville area and in consultation with Tweed Shire Council, continue to explore as a priority the identification of a future primary school site in the Dunloe Park Release Area.

Thank you for the opportunity to comment on the planning proposal. The Department requests that the Council continues to inform the Department of any significant changes to

the plans, new land rezoning and any new significant residential subdivisions in the area. Significant changes and/or new developments may warrant further analysis and investigations for essential education infrastructure.

As stated above, DEC have advised that a school site within the Seabreeze Estate is not required, rather, that options within the Dunloe Park residential development are to be explored to facilitate further public school facilities.

In light of the views of the state education provider, the specific retention of the site solely for school purposes is considered unwarranted and restrictive on the landowner.

The removal of the school site designation does not preclude a school being developed on the subject site in a legal sense as this is a permissible landuse under the existing 2(a) Low Density Residential zone. However, in a practical sense this is likely to be the net result as the landowner has expressed an intention to erect residential lots in its place.

Consideration of a future school site through consultation with the DEC and the wider community will be undertaken throughout the future planning processes anticipated at Dunloe Park. Alternatively, DEC or any other school provider are able to pursue school infrastructure on other land within the Pottsville locality, as schools are a permissible land use in all zones within the Tweed Local Environmental Plan 2000 except zones 1(b) Agricultural Protection, 4(a) Industrial, 6(a) Open Space and the Environmental Protection/National Parks zones.

Policy Housekeeping

Tweed Development Control Plan - Section B21 - Pottsville Locality Based Development Code (the Code) was adopted in April 2010. The Code, after considering population demographics, growth rates and the opportunities for further residential development within the locality, concluded there would be demand for an additional primary school and establishment of a local high school within the Pottsville locality. The Code undertook a desktop analysis of a number of potential sites and ultimately concluded identification of a school site within Seabreeze Estate or within the Dunloe Park Release Area should be explored as suitable priority locations.

The investigations undertaken within this draft Seabreeze DCP process supersede those investigations of the Code. Within Stage 2 of the Seabreeze Estate, Section B15 prevails to the extent of any inconsistency with the Code, nonetheless it is considered better planning practice that the two policy documents are consistent in light of the revised vision and circumstances for the site. It is recommended that the Code, as it relates to education facilities and the Seabreeze site be reviewed within the next housekeeping review and amendment/s under the Planning Reforms work program of policy maintenance.

Public Submissions

During the exhibition period 43 submissions were received, predominately relating to the identified potential future school site. Table 1 provides a summary of the submissions received, along with relevant planning comments.

Table 1 – Public Submissions Summary

Comments received	No. of Submissions	Planning comment
<i>School Infrastructure</i>	41	
<p><i>Issues:</i></p> <p>The 2011 census data also shows Pottsville has 1448 children under 9 and 1214 children 9 -19 years old. This would appear to meet the stated criteria of 1000 – 1200 required to necessitate a High school as quoted by the NSW Minister for Education in his letter to us in May this year. This is, of course, only one of the criteria but it is certainly indicative of the current and future need in the Pottsville area.</p> <p>There are 7 kindergarten classes at Pottsville primary, this data alone is enough to warrant a high school. The 2011 census data for the Pottsville area shows the population has gone from 3298 to 5735 in the last 5 years. The development of the Seabreeze estate has been a major contributor to this population increase.</p> <p>The letter from the DEC also states that the need for a high school at Pottsville will be reviewed periodically. This indicates the potential for the future requirement of this site. The residential development identified as Area E in Banora and that in Seaside City will also increase capacity in existing schools contributing to the future need of a school site in Pottsville.</p> <p>Of the three potential High school sites identified in the Pottsville Locality Based Development Code (2010) the Seabreeze site was identified as the most advantageous in terms of access and location. With the many problems associated with developing the Dunloe Park residential area it would seem inappropriate to rely on this for the future High school site. The possible location in the Pottsville Employment lands was also found to be inappropriate in the 2010 Development Code.</p> <p>It is strongly felt in the community that the masterplan for the Seabreeze development promised many things including neighbourhood shops, a childcare centre and a school. These are factors which greatly contribute to the liveability of a residential area and contributed to the decision to buy into this development for many. The removal of the high school sporting fields, which seem to be currently identified as part of the Open Space strategy requirements for the existing stage of this development is a further consideration. The neighbourhood shops did not eventuate and now to have the potential for a school effectively removed is a further erosion of advertised future services. Many families have moved to the area with the view that the planning for the high school in the Seabreeze Estate would go ahead. Diminishing the probability of a high school in this suburb may well be the force that drives me and my family, and many others like us, from this area. It will be the death knell for the suburb. Granted, it</p>		<p>As identified within Pottsville Locality Based Development Code, the currently designated Potential School Site possesses a number of qualities that, from a community planning perspective, make it an advantageous site for school infrastructure. Additionally, best practice planning seeks to co-locate a mixture of land uses to facilitate vibrant community life. The provision of community facilities, such as schools is highly desirable where sufficient population is present to sustain them.</p> <p>As indicated within the Community consultation, the landowner remains open to the site being utilised for school purposes, however, to-date no school providers have made a firm commitment to purchase the site. The landowners have expressed that after 12 years of the site being earmarked, their commercial needs require them to move forward with the development of the site.</p> <p>Council's Planning Reform Unit acknowledges the public view that additional school facilities are desirable for Pottsville in light of its population and demographics. However, DEC, the state education provider, does not currently see a role for the earmarked site within the Seabreeze Estate within its wider school facilities network. In this regard, Council is not a school provider, accordingly it is considered appropriate to follow the advice received from a school provider, being DEC.</p> <p>The removal of the potential school site designation from the Seabreeze DCP does not preclude the construction of school facilities within the Pottsville locality. In this regard, DEC have indicated a desire to pursue a site within the</p>

Comments received	No. of Submissions	Planning comment
<p>will be a slow and painful demise, but it will change this region fundamentally.</p> <p>Council is charged with building the foundations of communities. Without appropriate allocation of land resources, all the other elements that aggregate to form healthy and sustainable communities come unstuck.</p> <p>Council should not allow this site to be sold off as residential lots without an alternative high school site in place</p> <p>I realise that families need housing and land to build on but it would be much more responsible to invite more families to the area once our ever increasing problem of High School overcrowding was immediately addressed.</p> <p>Currently the nearest high school is at least 40 minutes by bus and is quickly reaching capacity. Beyond Kingscliff, the only other alternative is to send children to Tweed Heads or Murwillumbah, which would be at least a 2 hour round trip. This is simply not an acceptable option.</p> <p>It is clear there is no suitable alternative site to that allocated in the Seabreeze estate, and should that preferred site be rezoned it would clearly set to unravel the fabric of the otherwise robust and vibrant community that exists in Pottsville.</p> <p><i>Suggested Outcomes:</i> The removal of this potential high school site before an equally suitable, alternative site is identified and acquired in the Pottsville area does not serve the public interest. It is inconsistent with two of the aims of the current and draft DCP, namely: "Ensure that necessary services and community facilities infrastructure are available in an orderly and economic manner" and to "facilitate cost-effective residential development of a high standard of amenity, convenience, safety and environmental sustainability".</p> <p>The application to amend the DCP should be rejected</p> <p>We therefore ask that the current amendment does not include the removal of the potential high school site and that all future applications for residential development within 'Stage 2' of the Seabreeze site continue to be required to be bound on this point by the provision of a high school site at Seabreeze.</p> <p>The site should remain designated as a site suitable for a school for the next five years.</p> <p>As suggested at the community meeting held in Pottsville this past Tuesday, any decision should be deferred until:</p> <ol style="list-style-type: none"> 1. The community (or representative of same) can discuss the decision of the Department of Education & Training (DET) with their 		<p>future Dunloe Park development, in addition, schools are permitted land uses throughout the majority of zones under the Tweed Local Environmental Plan.</p> <p>Accordingly, it is not considered a necessity to earmark an alternative site 'in-trade' for the Seabreeze site until such time that DEC or an alternative school provider are willing to formally commit to a site, process or project. The process of Council earmarking an alternative site without an education provider commitment would likely inflate community expectation, without providing certainty to the construction of a school on any site.</p> <p>In light of the above, no amendment to the draft Seabreeze DCP is recommended, enabling the earmarked site to be developed for purposes other than a school.</p>

Comments received	No. of Submissions	Planning comment
<p>representative, who to date have been conspicuous by their absence</p> <p>2. An expression of interest be placed by the landowners/developers for any private entity who may be interested in using the site for said purpose – a high school</p> <p>3. If the landowners/ developers are SO supportive of having a high school within the community, why is there a time limit on holding the land? The allocated 6 hectares is but a small part of a much larger development area.</p>		
Buffers		
<p>Commend the proposed increase in buffer from existing cane fields.</p> <p>Support the requirement of the 50m riparian buffer zones</p>	1	Comments noted, no further action required.
Sewer allocation	1	
<p>Stage 8 of the Seabreeze Estate is essentially complete and Council is therefore requested to delete this stage from Map 6.1 and make consequential amendments to Section B15.2.8 to adjust the ET allocations to Stages 15 – 17.</p> <p>The Draft Plan allocates a minimum of 10ET to the town centre. Given that the town centre site has an area of 2305m² and assuming 1000m² of shop GFA equates to 2 – 3 ET based on the rates in Council's Fees & Charges. Council is requested to amend this Section to allocate 3 ET to the town centre.</p>		<p>Within the draft Seabreeze DCP, a total of 200 Equivalent Tenement (ET) was identified as available to the land identified in Map 6.1 and that a minimum of 10 ET was to be allocated to the identified 'Town Centre'.</p> <p>Post receipt of this submission, Planning Reforms officers have met with the proponent on this matter, clarifying the methodology behind the stated 10ET.</p> <p>Further investigations have concluded that a minimum of 7ET is desirable in order to enable the creation of a vibrant activity hub for Seabreeze residents.</p> <p>The proponent has supported the revision of the stated Town Centre sewer allocation to 7ETs and the draft Seabreeze DCP has been amended accordingly.</p>

Comments received	No. of Submissions	Planning comment
Key corner site land use	1	
<p>Council is requested to amend Maps 6A and 7A by deleting the 'potential open space location' and 'key corner site' etc. and inserting 'potential child care centre site'.</p>		<p>Post receipt of this submission, Planning Reform officers have met with the proponent on this matter, clarifying the desire for the key corner site to possess a landmark, whether that be by way of open space, architecturally designed multi-dwelling housing, or other means (such as architecturally designed child care facilities).</p> <p>Planning Reform officers propose to amend the Draft Seabreeze DCP as it relates to the key corner site at the juncture of Tom Merchant Drive and Seabreeze Boulevard to read as follows:</p> <p><i>Investigate the provision of higher order land use and design excellence through the subdivision pattern and built form to reflect and reinforce the landmark location of the corner.</i></p> <p>The proponent supports the revision of key corner site controls. The draft Seabreeze DCP has been amended accordingly.</p>

OPTIONS:

1. Council approves the proponent's request and amend the draft Seabreeze DCP as detailed within Attachment 2, or
2. Council rejects the proponent's request to amend the DCP thereby retaining the existing Section B15 of the Tweed Development Control Plan.

Based on the written advice from the NSW Department of Education and Communities (DEC), the Council officers have recommended Option 1.

CONCLUSION:

A key component of the draft Seabreeze DCP is the requested removal of an earmarked potential school site to enable the development of that land for residential purposes.

The provision of an additional school for the Pottsville locality has long been discussed amongst the community, developers, Council and education providers. Since 2000, the subject land within Seabreeze Estate has been identified for a potential school site. When considering the previous land size allocation and surrounding infrastructure provision, the most likely use was for a high school. However, more recent population and demographic trends, as well as other factors in the way educational needs can be accommodated, have led Department of Education and Communities (DEC) to conclude that a high school is not required for the foreseeable future. Further to this advice, through the public exhibition process of the draft Seabreeze DCP, DEC has formally advised that a school site within the Seabreeze Estate is not required.

In light of the views of the state education provider, the specific retention of the site solely for school purposes is considered unwarranted and overly restrictive.

The removal of the potential school site designation from the Seabreeze DCP does not preclude the construction of school facilities within the Pottsville locality. DEC have indicated a desire to pursue a site within the future Dunloe Park development. In addition, schools are permitted land uses throughout the majority of zones within the Tweed Local Environmental Plan 2000.

Accordingly, it is not considered a necessity to earmark an alternative site 'in-trade' for the Seabreeze site until such time that DEC or an alternative school provider are willing to formally commit to a site, process or project. The process of Council earmarking an alternative site without an education provider commitment would likely inflate community expectation, without providing certainty to the construction of a school on any site.

COUNCIL IMPLICATIONS:

a. Policy:

Council is being requested to amend Section B15 - Seabreeze Estate, Pottsville of the Tweed Development Control Plan 2008.

b. Budget/Long Term Financial Plan:

Nil

c. Legal:

Not Applicable.

d. Communication/Engagement:

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

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
- 1.5.2 Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development
- 1.5.2.2 Planning Controls updated regularly

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1 Council Meeting Report of 17 July 2012. (ECM 57502994)
 - Attachment 2 Tweed Development Control Plan – Section B15 – Seabreeze Estate, Pottsville. (ECM 57503009)
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11 [PR-CM] Draft Tweed Local Environmental Plan 2012

SUBMITTED BY: Planning Reforms

FILE REFERENCE: GTI/LEP/2012



Civic Leadership

SUMMARY OF REPORT:

The State Government's Standard Instrument (Local Environmental Plans) Order 2006 (SI template) requires all NSW local environmental plans (LEPs) be converted to the SI template format.

This report provides a summary of the background to the Tweed Shire wide LEP conversion process, the first exhibition which took place in January to April 2010, the methodology of converting the current plan into the new SI template and the guiding principles of drafting the revised Tweed LEP 2012. It also contains a summary of submissions received during the previous public exhibition, subsequent consultation, key themes identified throughout the drafting stage and recommendations for proceeding.

Since the 2010 public exhibition the State government have amended the SI template and provided additional directions for the preparation of SI template LEPs. The implications of these changes are discussed within the report.

The State Government has recently given strong direction to NSW councils to complete their SI template LEPs in the first quarter of 2013 so that the new 'Planning Act' currently under consideration can be effectively implemented in June 2013.

The NSW Department of Planning and Infrastructure has also published a media release on 20 September 2012 stating that it "*will not endorse the use of the E2 and E3 environmental zones on land that is clearly rural in council local environmental plans (LEPs) on the Far North Coast.*" This is in response to a number of councils seeking to expand the application of the E2 and E3 zones through the SI template LEP preparation.

The draft Tweed LEP 2012 has been prepared for public re-exhibition based on a conversion of the current Tweed LEP 2000, consistent with the State government directions and with Council's local planning strategies and policies.

The draft Tweed Development Control Plan (DCP) Section A16 *Trees and Vegetation Preservation Code* has been drafted to be placed on exhibition concurrently with the draft Tweed LEP 2012. This Section of the DCP aims to protect the biodiversity, amenity and cultural values of the Tweed Shire through the preservation of trees and vegetation. As discussed in the report, this Section is linked with several clauses of the draft LEP; it is therefore recommended to exhibit the two documents together.

RECOMMENDATION:

That Council endorses:

- 1. The draft Tweed Local Environmental Plan 2012 be placed on public exhibition for a minimum period of 28 days;**
- 2. The supplementary draft Tweed Development Control Plan (DCP) Section A16 *Trees and Vegetation Preservation Code* be placed on public exhibition concurrently with the draft Tweed Local Environmental Plan 2012; and**
- 3. Following public exhibition a further report addressing all submissions is to be submitted to Council.**

REPORT:

1. PURPOSE OF THE LEP REVIEW

In March 2006, the legislation governing land-use planning in New South Wales changed and with this change came a new framework for local environmental plans - the Standard Instrument. The change aims to simplify the planning system for residents, businesses and councils by significantly reducing the overall number of LEPs and by introducing a consistent approach to land use planning controls across NSW. It stipulates that all NSW local governments must revise their LEPs consistent with the standard format.

Council has prepared the draft Tweed LEP 2012, as provided in Attachment 1, using the Standard Instrument template, under the legislative requirements of the NSW Environmental Planning and Assessment Act, 1979, supported by Practice Notes and guidelines published by the NSW Department of Planning & Infrastructure (DP&I).

The Draft LEP is being prepared under the legislative provisions in force prior to the amendments which came into effect on 1 July 2009. As such, there is a requirement to exhibit the draft LEP for a minimum of 28 days.

2. FIRST EXHIBITION IN 2010

The first exhibition of the draft LEP took place in 2010 (draft Tweed LEP 2010). Council undertook extensive public consultation, with the LEP on public exhibition initially for a period of 65 days from 27 January 2010 until 31 March 2010. Council extended the exhibition for an additional 30 days until 30 April 2010 after receiving community requests for further time to respond to the documents on exhibition. This represents a total of 95 days, far longer than the minimum 28 days required by legislation.

2.1 Submissions

The draft Tweed LEP 2010 was exhibited concurrently with a draft LEP for the Tweed City Centre. A total number of 411 public submissions were received with about 55 relating specifically to the Tweed City Centre LEP. The draft LEP 2010 issues raised were wide ranging but largely targeted toward key themes, including:

- Minimum lot size provisions for rural dwellings;
- Concerns about the reduction of about 5,500 hectares of environmental zoning resulting from the implementation of the Tweed Vegetation Management Strategy 2004 (TVMS), which owing to the changes in the legislative scheme was incomplete;
- The accuracy of the Council's bushland and vegetation mapping;
- Height of buildings; and
- Floor space ratio.

A submissions assessment table, in Attachment 2 provides a summary of the submissions review process. Each submission was given a unique identifier (a number). Submissions were then grouped into eight themes, being: LEP preparation process, the exhibition, general issues, environmental protection, zoning, development standards, LEP clauses and matters outside the scope of this planning process. A planning response and recommended outcome have been provided for each theme and each group of submissions allocated under a theme.

Of the total number of 411 submissions, nine were from State Agencies. No submissions were received from local or state members.

2.2 Provisions for environmental protection in the draft LEP 2010

It was intended initially to incorporate where appropriate any existing LEPs that had been commenced. Notably, this included Draft LEP Amendment No. 21, the purpose of which was to implement the Council's Tweed Vegetation Management (TVMS) Strategy 2004, adopted by Council on 17 April 2007, and completed over a ten year period.

A few difficulties with implementing the TVMS were identified as the TVMS had been developed for realisation within a planning framework that was outmoded by the new instrument and a number of key regulatory or protection recommendations could not be adapted to suit.

This issue was not unique to the Tweed, as councils across NSW commenced the task of preparing their new LEPs, the incompatibilities of the SI template to adequately address many of the complex regional and rural issues arose. Many councils, especially Tweed, found it very difficult to maintain an equivalent level of environmental protection, general regulation and regional identity that their existing LEPs provided. This was driven in part by the diversity of the Shire's natural and urban environments and the limited number of suitable zones within the SI template instrument.

Between 2007 and 2009 several meetings between Council and Department of Planning and Infrastructure (DP&I) senior staff were attended in a bid to resolve the key issues. This was followed by a further resolution of the Council in January 2009 to exhibit the Draft LEP.

The draft LEP 2010 was publicly exhibited from 27 January to 30 April 2010. During the exhibition, some sections of the community expressed concerns regarding the way the TVMS was proposed to be implemented. Following the exhibition, Council officers have been investigating alternative strategies, as a variation to the original TVMS implementation recommendations, to bring about a similar level of environmental protection through the Draft LEP. Whilst a draft Environmental Strategy has been prepared by Officers based on TVMS and the previous adopted position of Council and the SI Template there remains a substantial community engagement process to be undertaken to articulate the Strategy and allow a full understanding of its implications.

In the absence of an adopted, revised environmental strategy with recommendations for the zoning in the draft Tweed LEP 2012 and given the increasing State Government pressure on Council to complete the LEP the first quarter of 2013, the draft Tweed LEP 2012 has been revised to translate the environmental zones of the TLEP 2000 as directly as possible into the SI LEP format. Further review of environmental zoning will be undertaken following completion of a revised environmental strategy.

3. THE DRAFT TWEED LEP 2012

3.1 Content

The written instrument is based on the Standard Instrument template which sets out “mandatory” and “optional” clauses, and also allows Council to include “local” clauses to incorporate relevant area specific provisions from the previous plan (being LEP 2000) and local strategies where they are not inconsistent with the “mandatory” clauses. The written instrument is colour coded to indicate which clauses form part of the Standard Instrument template and therefore cannot be changed or removed (**black text**), and those that have been added by Council and may be changed or removed (**red text**).

It is noted that during the exhibition Council will only be able to address submissions on the draft Tweed LEP 2012 related to the text that is coloured red in the written instrument, as these are the only components of the draft Plan that Council has the ability to adjust or modify.

The table below outlines the mandatory structure of the draft Tweed LEP 2012.

Table 1 Structure of the draft Tweed LEP 2012

Part 1	Preliminary
Part 2	Permitted or prohibited development
	Land Use Table
Part 3	Exempt and complying development
Part 4	Principal development standards
Part 5	Miscellaneous provisions
Part 6	Urban release areas
Part 7	Additional local provisions
	Schedule 1 Additional permitted use
	Schedule 2 Exempt development
	Schedule 3 Complying development
	Schedule 4 Classification and reclassification of public land
	Schedule 5 Environmental heritage
	Dictionary

The draft Tweed LEP 2012 mapping is significantly different to the current Tweed LEP 2000 mapping which contains a land zoning map, business centres map, height of building map and designated roads map.

This report provides the written instrument as an attachment. The mapping is still being converted into the mapping format and requirements of the SI template and, subject to the resolution of Council, will be publicly exhibited together with the written LEP instrument and supporting documentation. As discussed in other sections, the LEP has been prepared essentially as a translation of the current Tweed LEP.

The new mapping has been prepared consistent with the DP&I mapping guidelines and requirements. Under these guidelines 32 map “tiles” have been prepared for the Shire in a variety of scales to accommodate the information required. Each of the “tiles” comprises various sets of maps or map overlays that relate to a clause or clauses within the draft LEP written document rather than one single map. In total, the draft Tweed LEP 2012 contains 16 map overlays as outlined below:

Table 2 List of draft Tweed LEP 2012 map layers.

Map Name	Associated LEP Clause	Map Code
Land application	1.3 Land to which plan applies	LAP
Land zoning	2.2 Zoning of land to which plan applies	LZN
Height of buildings	4.3 Height of buildings	HOB
Floor space ratio	4.4 Floor space ratio	FSR
Lot size	Clauses 4.1 – 4.2	LSZ
Biodiversity	7.8 Terrestrial biodiversity	BIO
Additional permitted uses	Schedule 1	APU
Acid sulfate soils	7.1 Acid sulfate soils	ASS
Flood planning	7.6 Flood planning, 7.7 Floodplain risk management	FLD
Heritage	Schedule 5	HER
Land reservation acquisition	5.1 Relevant acquisition authority	LRA
Urban release areas	Part 6	URA
Drinking water catchment	7.10 Drinking water catchment	DWC
Steep land	7.9 Steep land	STL
Existing and future water storage facilities	7.12 Existing and future water storage facilities	WSF
Coastal risk planning	7.16 Coastal risk planning	CRP

3.2 Guiding principles for drafting the LEP

The methodology of drafting the draft Tweed LEP 2012 has been based on two guiding principles:

- i. The “best fit” conversion.
- ii. Local context based only on Council adopted strategies, plans and policies.

The “best fit” principle aims to convert the Tweed LEP 2000 - zones, clauses, schedules and maps - into the SI template with no, or minimum variations. The application of this principle resulted in the following:

- There are 26 zones in the draft Tweed LEP 2012. Each of them has been chosen from a list of 34 standard zones (provided under the Standard Template) to replace the Tweed LEP 2000 zones. For example, the R2 Low Density Residential zone replaces the Tweed LEP 2000 2(a) Low Density Residential zone. Attachment 3 to this report provides a zone comparison table explaining the rationale for zone conversions.
- Zone objectives and land uses in the draft Tweed LEP 2012 have been tailored to provide a “best fit” translation of relevant Tweed LEP 2000 zones. It is also noted, that certain zone objectives and land uses have been mandated under the SI template therefore there are some minor variations in land use tables.
- There are three types of clauses provided in the SI template: ‘mandatory’, ‘optional’ and ‘local’. Mandatory clauses must be used and cannot be changed. Optional clauses are discretionary and can therefore be used depending on their relevance to the local government area. Local clauses are those inserted by Council to address local matters.

The local clauses and land uses of the draft Tweed LEP 2012 have been derived from a number of Council adopted strategies, plans and policies, including:

- (1) Certain sections of Tweed Development Control Plan (DCP) 2008, in particular:
 - Section A1 – Residential and Tourist Development Code. This Section defines development standards, such as height of buildings, floor space ratio and minimum lot size for certain types of development.
 - Section B20 – Uki Village. This Section provides site-specific development standards for Uki village.
 - Section B21 – Pottsville Locality Based Development Code. As above, this Section defines site specific development standards.
 - Section B23 – Hastings Point Locality Based Development Code. As above, this Section defines site specific development standards.
 - Section B25 – Coastal Hazards. This section provides the basis for the LEP Clause 7.16 Coastal Risk Planning. It seeks to address climate change and provides additional development controls along the coastal areas.
- (2) Tweed Local Environmental Plan 2000 – local clauses from Tweed LEP 2000 have been converted into the draft Tweed LEP 2012 where not inconsistent with objectives of the mandatory clauses of the SI template.
- (3) Community Based Heritage Study. The Tweed Community Based Heritage Study (CBHS) was commissioned to investigate and record items of heritage significance within the Tweed Shire and to develop policies and procedures for the management of these items for both Council and local residents. Whilst based on the Tweed Local Environmental Plan (LEP) 2000, the CBHS provided information and recommendations for the draft Tweed LEP 2012. Council adopted the CBHS including the list of recommended heritage items and conservation areas at the meeting of 21 August 2012 and resolved to amend the LEP to include those items and areas within the heritage schedule. Heritage items and conservation areas are listed in Schedule 5 of the draft LEP and marked on the LEP Heritage Mapping layer.

- (4) Tweed Community Strategic Plan. The 2011/2021 Tweed Community Strategic Plan (CSP) identifies the community's priorities and directions for the Tweed for the next 10 years. It identifies themes and broad objectives, to deliver strategies and objectives in response to key issues arising for the Tweed in the coming decade. The CSP defines the draft Tweed LEP as an effective statutory framework to meet the needs of the Tweed community.
- (5) Tweed Vegetation Management Strategy 2004. Council's current framework for environmental protection is based on the Tweed Vegetation Management Strategy 2004, a document which aims to promote ecologically sustainable management practices and to encourage the protection of biological diversity in the Tweed. The original Strategy had been developed for implementation into a planning framework that has become outmoded by the Standard Instrument. Considerable work has been undertaken to prepare a draft Revised Strategy however given the time constraints and significant stakeholder engagement required to allow a full and comprehensive understanding of the changes it is not proposed to use these at this time. Notwithstanding this a package of supplementary clauses and overlay maps has been introduced into the LEP to achieve an environmental outcome as closely aligned with Council policy as is possible.

3.3 Exceptions from the guiding principles

There are instances where a "best fit" approach could not be applied for various reasons:

- (1) The SI Template does not provide a directly compatible zone for certain Tweed LEP 2000 zones. In such instances, land has been zoned to reflect the existing development or use of the land. An example is the 3(d) Waterfront Enterprise zone in Chinderah, which has been zoned both B4 Mixed Use or IN1 General Industrial depending on current development and use of the land. It is to be noted that development of dwelling houses is permitted with consent under the current LEP 3(d) Waterfront Enterprise zone, but will be prohibited under the new B4 and IN1 zones.
- (2) The SI LEP provides a directly compatible zone but certain areas have been zoned to better reflect the existing development or use (~393 sites). The majority of sites within this category are currently zoned 2(c) Urban Expansion or 1(a) Rural. The current Tweed LEP 2000, provides a broad range of permissible land uses within these two zones; however, the corresponding zones in the draft LEP 2012 (R1 and RU2 respectively) are more restrictive, therefore the standard translation in these cases could not be applied. As a result, certain sites zoned 2(c) have been rezoned RE1, RE2, R2, B1 or B4 in accordance with the existing use of land. Generally where land zoned for urban expansion has already been developed, these sites have been zoned accordingly, for example low density residential uses are now zoned R2 Low Density Residential to reflect the actual use of the land. A few sites zoned 1(a) have likewise been zoned RE1, RE2 or RU5.

- (3) Ongoing improvements to Council's cadastral database have resulted in a shift of a large number of property boundaries to reflect the actual ground location on Council's mapping. This has resulted in a change to the location of zone boundaries as they appear on Council's mapping, but does not mean that the registered boundaries of a property has changed. In addition, where small insignificant parcels of land were zoned the same as an adjoining landuse; the zone boundary was also adjusted consistent with the property boundary
- (4) 5(a) Special Uses under the Tweed LEP 2000 does not have an equivalent zone and a range of minor infrastructure sites, including schools, community facilities and car parks must now be included in a range of alternative zones in accordance NSW Department of Planning & Infrastructure guidelines (Practice Note 10-001 *Zoning for Infrastructure in LEPs*). Major infrastructure sites like cemeteries or waste water treatment plants are to remain zoned SP2 Infrastructure. Extensive consultation with Council's Water Unit resulted in a decision to zone Clarrie Hall Dam site and a part of the Tweed River up the Bray Park Weir as SP2 Special Infrastructure.
- (5) 2(e) Residential Tourist and 2(c) Urban Expansion do not have an equivalent zone in the SI Template and a number of sites are zoned in accordance with the landuse identified in approved masterplans prepared for these sites. Certain areas in Kingscliff subject to the *Seaside City* Masterplan have been zoned in this way (~41 sites).
- (6) The standard conversion of zones could not be applied for certain privately owned areas zoned 6(a) Open Space in the LEP 2000. Under the provisions of the LEP 2000, privately owned land zoned 6(a) is identified for acquisition, however *owners can* still develop the land in accordance with the land use table and other relevant provisions of the LEP 2000. The SI template however, requires that each land zoned for public recreation (the SI replaces zone 6(a) Open Space with the RE1 Public Recreation zone) must be mapped on the Land Acquisition Map and no development consent can be granted until such land is acquired by Council. As a result, certain privately owned land zoned 6(a) in the LEP 2000 has been zoned with the most suitable adjoining zone. Seven (7) allotments have been zoned (partially or entirely) under this exception. It is noted that certain privately owned allotments adjoining Tweed River in South Murwillumbah are subject to a voluntary acquisition plan and as such have been left zoned RE1 Public Recreation.

3.4 Internal consultation

The draft Tweed LEP 2012 has been prepared by Council's Planning Reforms Unit with extensive consultation and assistance of the following Council units:

- Recreation Services Unit – in regards to areas zoned for public open space;
- Planning and Infrastructure Unit – stormwater management aspects, flood planning and floodplain risk management clauses;
- Water Unit – in regards to zoning of certain infrastructure sites, existing and future water storage facilities clause and map and water catchment;
- Natural Resources Management Unit. The NRM Unit provided data for the biodiversity map and the steep land map;

- Legal Services officers from the Design Unit – zoning of certain allotments which boundaries are defined by the Medium High Water Mark level, Schedule 4 of the LEP (Classification and Reclassification of Public Land); and
- Development Assessment Unit – provided valuable comments on various matters throughout the entire LEP drafting process.

3.5 External consultation

The draft Tweed LEP 2012 has been prepared in line with Practice Notes, Guidelines and Section 117(2) Directions prepared and published by the Department of Planning & Infrastructure.

Given the complexity of the conversion, there were a number of issues that required specific collaboration and zoning resolution with the DP&I regional office as follows:

- Zoning of the Kings Forest site (discussed in part 4.5 of this Report),
- Existing and future water storage facilities clause 7.12 and associated map,
- Drinking water catchment clause 7.10
- Council infrastructure development clause 7.3.

It is noted that the draft LEP written document has been widely consulted with the DP&I in August and September 2012.

Clause 5.1 of the LEP (Relevant acquisition authority) and the associated map have been consulted with NSW Roads and Maritime Services.

In 2011 Council engaged consulting company GHD to assist with the conversion zones and clauses of the LEP 2000 into the SI template and to review and incorporate the State policy and legislative changes since the draft LEP 2010 public exhibition.

4. KEY THEMES

4.1 Environmental protection

Environmental protection provisions in the draft Tweed LEP 2012 are formed by a complementary package of clauses and zones. As discussed, it was initially intended to implement the TVMS, however as previously highlighted there remains a significant community and landowner consultation phase to allow due consideration and endorsement of a revised environmental strategy by Council.

As outlined below, the environmental protection provisions in the draft Tweed LEP 2012 have been based on the TVMS 2004, Coastal Hazard DCP, Tree Preservation DCP and the Tweed LEP 2000. Overall, all clauses reflect existing Council practice and provide a framework for the Council and the community to understand how development may fit within the natural environment.

The draft Tweed LEP 2012 utilises a set of three environmental zones: E1 National Parks and Nature Reserves, E2 Environmental Conservation and E3 Environmental Management. The zone comparison table attached to this report (Attachment 3) provides an explanation of how the existing Tweed LEP 2000 zones were translated. In certain zones, particular land

uses have been restricted or development standards are used to achieve environmental outcomes.

Overview of clauses focused on environmental protection:

Clause 7.8 Biodiversity

This clause aims to maintain biodiversity by protecting native fauna and flora, ecological processes necessary for their continued existence and to encourage the conservation and recovery of native fauna and flora and their habitats. This clause is based on Clause 28 of the Tweed LEP 2000 and on the Tweed Vegetation Management Strategy 2004. It applies to areas shown on the LEP Biodiversity Map.

Clause 7.9 Steep Land

The steep land clause aims to identify and protect soils on steep land in the rural areas of Tweed Shire, protect the rural character whilst continuing to enable rural land to be used for agriculture, forestry and natural resource utilization. This clause is based on Clause 26 of the Tweed LEP 2000 and on the Tweed Vegetation Management Strategy 2004. It applies to areas shown on the LEP Steep Land Map.

Clause 5.9 Preservation of trees or vegetation

Clause 5.9 of the draft Tweed LEP 2012 aims to preserve the landscape qualities of the Shire, including biodiversity values, through the preservation of trees and other vegetation. This clause provides a linkage between the LEP and a Tree Preservation Development Control Plan (DCP) which has been prepared by Natural Resources Management Unit and is recommended to be placed on exhibition concurrently with the draft Tweed LEP 2012.

Clause 7.10 Drinking water catchment

A drinking water catchment is an area of land where rainfall collects in rivers, streams, flows into reservoirs, or seeps into the soil to become groundwater which then becomes drinking water for the community. Some land uses and activities within drinking water catchments may impact on the quality of this water. The drinking water catchment has been identified and shown on the 'Drinking Water Catchment' map of the draft Tweed LEP 2012. Clause 7.10 of the draft LEP 2012 outlines how drinking water catchments are to be protected from the impacts of development.

Clause 7.14 Stormwater management

The stormwater management clause (7.14) outlines how development is to be designed to minimise impacts on water quality.

Clause 7.11 Earthworks and drainage

Under the Tweed LEP 2000 consent is required in all zones for *any other buildings, works, places or land uses not included* elsewhere in the land use table. Unless it was of a minor nature earthworks and drainage were considered as a form of *works*, thus requiring consent in all zones. The SI template does not permit such land uses in a similar manner. Instead, earthworks and drainage are proposed to be regulated under the local clause 7.1.

Clause 7.1 Acid Sulfate Soils

When acid sulfate soil (ASS) is disturbed, it can kill vegetation, acidify groundwater and water bodies, kill fish and other aquatic organisms and cause concrete and steel structures to fail. Acid sulfate soils have different classifications which require different management solutions during excavation, depending on the depth of excavation and the type of soils. Land that may be affected by acid sulfate soils is shown on the 'Acid Sulfate Soils' maps and the management methods are outlined in Clause 7.1 of the draft Tweed LEP 2012.

Clause 7.16 Coastal risk planning

Clause 7.16 Coastal risk planning is based on Council's Development Control Plan Section B25 – Coastal Hazards. It seeks to address climate change and provides additional development controls along the coastal areas.

Tweed DCP Section A16 Trees and Vegetation Preservation Code

The Trees and Vegetation Preservation Code aims to protect the biodiversity, amenity and cultural values of the Tweed Shire through the preservation of trees and vegetation. It also provides a process for identifying, listing and preserving trees of ecological, heritage, aesthetic and cultural significance.

This Section of the DCP should be read in conjunction with Tweed LEP 2012, in particular with:

- Clause 5.9 Preservation of trees or vegetation
- Clause 5.9AA Trees or vegetation not prescribed by development control plan
- Clause 5.10 Heritage conservation
- Clause 5.11 Bushfire hazard reduction
- Clause 7.8 Biodiversity

It is noted that in case of any inconsistencies between this Section and the Tweed LEP 2012, provisions of the Tweed LEP 2012 shall prevail.

Other environmental planning instruments and strategies

There are a number of SEPPs applicable to Tweed, with which the draft LEP 2012 must be consistent, including: SEPP 14 - Coastal Wetlands, SEPP 26 - Littoral Rainforests, SEPP 44 - Koala Habitat Protection, SEPP 71 - Coastal Protection.

The preparation of the draft Tweed LEP 2012 is also required to be consistent with provisions of the Far North Coast Regional Strategy (FNCRS). Consistency with the FNCRS is addressed under part 5 of the Section 117 Directions assessment, in Attachment 4 to this report.

Recent State Government advice on the E2 and E3 zones

On 20 September 2012 the DP&I published a media release on the application of the E2 and E3 environmental zones on the North Coast. The media release states the Department's "*will not endorse the use of the E2 and E3 environmental zones on land that is clearly rural in council local environmental plans (LEPs) on the Far North Coast.*" This is in response to a number of councils seeking to expand the application of the E2 and E3 zones through the SI template LEP preparation.

The draft Tweed LEP 2012 does not seek to apply any additional environmental zones. The draft LEP 2012 has translated current environmental zones to the corresponding SI template E1, E2 or E3 zone. It is therefore considered that the draft LEP is consistent with the Department's new environmental approach.

The draft Tweed LEP 2012 mapping is to be referred to the DP&I as soon as ready to confirm this approach to the zoning translation, rather than application of new environmental areas is acceptable.

4.2 Minimum lot size for rural land

The current minimum lot size standards for rural land have been transferred unchanged to the draft Tweed LEP 2012. Minimum lot size for rural land was one of the most frequently raised concerns during the exhibition in 2010, with submissions seeking to both allow subdivision of rural lands and to prohibit such subdivision. The current provisions, which generally allow one dwelling house per 40 hectares of rural land, or in certain areas one dwelling per 10 hectares are considered to be out of step with the actual rural subdivision sizes and initially were applied as a temporary measure, subject to further rural land assessment. Notwithstanding, any changes to these provisions should be based on a comprehensive rural land strategy, which Council has commenced and anticipates to be finalised within the next 12 months. It is expected that the strategy will, based on land capability and a range of agricultural and needs assessment, provide a framework and recommendations for future amendments to the rural zones and development standards in the stage 2 review of the LEP.

4.3 Local inclusions

The local inclusions of the draft Tweed LEP 2012 have been broadly discussed under part **3.2 Guiding principles**. In summary, local inclusions have been derived from a number of Council adopted strategies, plans and policies, including:

- Sections of the Tweed Development Control Plan 2008;
- Tweed Local Environmental Plan 2000;
- Community Based Heritage Study 2012;
- 2011-2021 Tweed Community Strategic Plan; and
- Tweed Vegetation Management Strategy 2004.

4.4 Development standards

The draft Tweed LEP 2012 includes new definitions for building height and floor space ratio as required by the SI template. Whilst height was previously controlled by storeys, it is now a development standard with a maximum height prescribed in metres. Height of building

controls, which are defined on the Height of Building Map of the LEP, are based on relevant sections of the Tweed DCP. It is noted that the draft Tweed LEP 2012 must be read in conjunction with Section A1 of the Tweed DCP when considering residential or mixed use buildings in any zones where these developments types are permissible.

The floor space ratio development standard has been applied to the majority of land within the Shire zoned as residential, commercial or industrial. Council's floor space ratio requirements included in the Tweed DCP 2008 have been translated for residential sites and best practice guidelines have been used for other zones within shire.

4.5 Major development sites

Two major development sites, Bilambil Heights "The Rise" and Kings Forest are managed by the DP&I through the Major Development State Environmental Planning Policy (SEPP) 2005. For these two sites the provisions of the Major Development SEPP override the provisions of the Tweed LEP (both the existing LEP 2000 and the draft LEP 2012). The SEPP provisions regarding these two sites vary slightly: while the SEPP clearly states that for "The Rise" site the local LEP does not apply, the Kings Forest site is subject to both the Tweed LEP and the SEPP, however, in case of any inconsistency, the provisions of the SEPP will prevail.

To avoid inconsistent or duplicated provisions, it is recommended the Kings Forest site be unzoned with no minimum lot size standards applied. "The Rise" site is (temporarily) excluded from the draft LEP. This recommendation has been discussed with, and supported by, the DP&I.

Once fully developed, these two sites will be removed from the Major Development SEPP and will become subject to all provisions of the Tweed LEP.

4.6 Zoning for infrastructure (including Clarrie Hall Dam and potential Byrill Creek Dam sites)

Most infrastructure zoned land was previously subject to the 5(a) Special Uses zone coloured yellow on the zoning map. Under the SI template the application of the SP2 Infrastructure zone does not directly correlated with the 5(a) Special Uses zone and consistent with the DP&I directions, much of the infrastructure land is proposed to be zoned to match the adjacent zone. For example a school next to an R2 Low Density Residential zone will be zoned R2 Low Density Residential.

When applying zoning for the infrastructure sites, Council was required to consider whether the infrastructure type is permitted in a prescribed zone within the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). In most instances the Infrastructure SEPP permits the existing infrastructure type and therefore the land is to be zoned to match the adjacent land use zone. Only infrastructure land that is highly unlikely to be used for a different purpose in the future has been zoned SP2 Infrastructure. For example, cemeteries and sewage treatment plants have been zoned SP2 Infrastructure.

In addition, Clarrie Hall Dam and Tweed River at Bray Park Weir have been zoned SP2 Infrastructure. The current clause 52 of the LEP 2000 which identifies existing and potential sites for water storage facilities has been carried over into the draft Tweed LEP 2012 as a local clause.

4.7 Zoning of waterways

Under the current Tweed LEP 2000 water bodies are generally unzoned (or zoned with one of the environmental zones). The Standard Instrument requires that all waterways (and all unzoned lands in general) be zoned and provides a range of three water-based zones. All waterway zones have been used in the draft Tweed LEP 2012, using the following methodology, based on relevant State guidelines:

The W1 Natural Waterways zone has been applied to natural waterways that should be protected for their ecological and scenic values. A limited number of low impact uses that do not have an adverse effect on the natural value of the waterway are permitted in this zone.

The W2 Recreational Waterways zone is an open zone which allows for water-based recreation, boating and water transport, and development associated with fishing industries, such as natural water-based aquaculture and recreational fishing. Terranora and Cobaki Broadwater and the lower parts of the Tweed River and the Terranora Creek have been zoned W2.

The W3 Working Waterways zone is intended for waterways that are primarily used for commercial shipping, ports, water-based transport, maritime industries and development associated with commercial fishing industries. Tweed River at Tweed City Centre has been zoned with this zone.

4.8 Heritage

In 2011 Council exhibited the draft Community Based Heritage Study (CBHS). This study provides a range of heritage management guidelines and recommendations relating to European Heritage. The CBHS recommended the listing of an additional four heritage conservation areas and 124 heritage items.

In August 2012 Council resolved to endorse the CBHS and to prepare an amendment to the LEP to list the recommended heritage items and conservation areas within the Heritage Schedule of the Tweed LEP.

Given the draft LEP 2012 has been finalised at a similar time and the imminence of the exhibition, the heritage listing recommendations of the CBHS have been incorporated into the draft Tweed LEP 2012. Schedule 5 Environmental Heritage has been updated to include the heritage items and conservation areas resolved by Council in the CBHS.

The making of the Tweed LEP under the SI template will repeal the Far North Coast Regional Environmental Plan (FNCREP). The FNCREP also contains a list of heritage items, generally of regional significance. Items not currently listed in the LEP or the CBHS have also been included in the draft Tweed LEP 2012 Schedule 5 to ensure their ongoing protection.

4.9 Council owned land

As the draft Tweed LEP 2012 is a shire-wide document, with the exception of Tweed City Centre, which is subject to a separate LEP, and "The Rise" site which is subject to the Major Development SEPP 2005, it captures Council owned land. A statement on Council owned land has been prepared which outlines changes to the zoning and discusses any financial implications, consistent with the requirements of the *LEPS and Council Land Best Practice Guideline, 1997* and will be placed on exhibition.

4.10 Tweed City Centre LEP

Tweed Shire Council in collaboration with the Department of Planning's City Centre Taskforce has prepared a separate LEP for Tweed City Centre, which is also supported by a new Development Control Plan and Vision Document. These Plans were considered and adopted at Council's December 2011 meeting.

The Draft LEP has been forwarded to the NSW DP&I for the Plan to be made. The Plans will not formally take effect under the Environmental Planning and Assessment Act 1979 until published on the NSW legislation website.

The draft LEP 2012 excludes the land subject to the Tweed City Centre LEP.

5. IMPLICATIONS OF THE DRAFT TWEED LEP 2012

Mandatory clause 1.8 of the LEP Standard Instrument states that all local environmental plans and deemed environmental planning instruments (EPIs) applying to the land to which this plan applies are repealed. As such, the current Tweed LEP 2000 and the North Coast Regional Environmental Plan 1988 (a deemed EPI) will cease to apply to Tweed LGA upon making of the Tweed LEP 2012.

Mandatory clause 1.9 of SI template provides that the following State Environmental Planning Policies will cease to apply to Tweed LGA upon making of the Tweed LEP 2012:

- *State Environmental Planning Policy No 1—Development Standards,*
- *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (clauses 6 and 10 and Parts 3 and 4),*
- *State Environmental Planning Policy No 60—Exempt and Complying Development.*

Section A10 – Exempt and Complying Development of the Tweed Development Control Plan will become redundant after making of the Tweed LEP 2012. Exempt and complying development will be dealt with under relevant State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 and Schedules 2 and 3 of the LEP. A separate report will be submitted to Council with recommendation to remove Section A10 from the DCP following making of the Tweed LEP 2012.

It is noted that the introduction of the LEP under the SI Template will provide a consistent format for all LEPs in NSW. It will enable DP&I to update mandatory and optional provisions

(clauses, definitions, zone objectives, mandatory land uses) consistently and simultaneously in all LEPs.

Compulsory clause 5.9(8) of the draft Tweed LEP 2012 (*Preservation of Trees or Vegetation*) allows for clearing of native vegetation in certain zones (being zones other than E2, E3 and R5 Large Lot Residential), when authorised under certain provisions of the Native Vegetation Act 2003:

- Clearing authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, or
- Clearing that is otherwise permitted under Division 2 or 3 of Part 3 of the Native Vegetation Act 2003 (clearing for routine agriculture management activities is permitted under this exemption).

To mitigate the impact this clause may have on areas of high conservation status (but zoned other than E2, E3 and R5) it is recommended that a revised environmental strategy be prepared with specific recommendations regarding appropriate zoning of such areas.

6. PUBLIC EXHIBITION

The revisions to the draft Tweed LEP 2012 update the LEP consistent with legislative changes and State government policy directions and incorporate suitable amendments arising from submissions received since the previous public exhibition in 2010.

The changes to the draft LEP 2012 are considered sufficiently significant to warrant re-exhibition of the draft plan. It is proposed that the draft Tweed LEP 2012 be publicly exhibited for a minimum 28 day period. This is to be extended to accommodate the holiday December / January period should this occur over Christmas.

A communication plan for the draft Tweed LEP 2012 has been prepared to guide the public exhibition process. During the exhibition period Council officers will carry out a number of public information sessions, similar to the first exhibition, as outlined in the Communication Plan.

Once the exhibition of the draft Tweed LEP 2012 is finished, a further report detailing all submissions, will be submitted to Council. As the post-exhibition period is scheduled to take place in early 2013, the draft LEP will be renamed Tweed LEP 2013 for finalisation.

Following Council's endorsement of the final draft LEP the plan is submitted to the DP&I for making. It is noted that the DP&I may recommend that the Minister for Planning and Infrastructure make changes before making the LEP. These changes may be either minor wording changes to ensure that the draft LEP is legally correct or more significant changes relating to the content of the draft LEP.

It is also important to note that the Department are currently undertaking a review of the Environmental Planning and Assessment Act, 1979 and the method of preparing and exhibiting LEPs as well as other strategic policy may change as a result.

OPTIONS:

1. That the draft LEP 2012 be publicly exhibited for a minimum 28 days; or
2. That the draft LEP 2012 report be deferred pending further information and/or Council workshop.

CONCLUSION:

The draft Tweed LEP 2012 has been drafted in accordance with the provisions of *Environmental Planning and Assessment Act 1979* and relevant guidelines published by the Department of Planning & Infrastructure, with localised context derived from Council's adopted strategies and plans. The methodology for review of the LEP, all key themes and the implications of the endorsement of the LEP have been addressed in detail within earlier sections of this report.

Given the tight deadlines imposed by the Department of Planning & Infrastructure, and the fact that this is the second public exhibition of the LEP, it is recommended the plan be exhibited for a minimum 28 days.

COUNCIL IMPLICATIONS:

a. Policy:

The translation of the draft LEP 2012 into the SI template format will standardise the provisions of the LEP consistent with the DP&I requirements.

b. Budget/Long Term Financial Plan:

Public exhibition of the draft Tweed LEP 2012 is included in the current Planning Reform budget. There are no long term financial implications arising from this plan.

c. Legal:

Yes, legal advice has been received in relation to certain privately owned allotments adjoining the Tweed River in Chinderah and Condong where boundaries have been determined by the Mean High Water Mark.

d. Communication/Engagement:

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

Inform - We will keep you informed.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1.5 Manage and plan for a balance between population growth, urban development and environmental protection.
 - 1.5.1 Council supports strategic decisions of previous councils and the NSW Government for the Tweed Shire population increase in accordance with the Far North Coast Regional Strategy.
 - 1.5.4 The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1 Draft Tweed LEP 2012 – Written Instrument (ECM 57647030)

Attachment 2 Submissions Assessment Table (ECM 57647046)

Attachment 3 Zone Comparison Table (ECM 57647057)

Attachment 4 Section 117 Directions Assessment (ECM 57647066)

Attachment 5 Draft Tweed Development Control Plan (DCP) Section A16 Trees and Vegetation Preservation Code (ECM 57699288)

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12 [PR-CM] Development Application DA03/0476.02 for an Amendment to Development Consent DA03/0476 for the Establishment of an Art Gallery/Coffee Shop to include a Refreshment Room & Extend Trading Hours on Saturdays including the Option of Live Music at Lot

SUBMITTED BY: Development Assessment

FILE NUMBER: DA03/0476 Pt4



Civic Leadership

SUMMARY OF REPORT:

This matter was previously reported to the Council Meetings of 17 July 2012 and 21 August 2012.

The officers' reports identified concerns in relation to the car parking issues relating to the use of the site, structures within the road reserve, trading hours, live music and signage.

On 21 August Council resolved as follows:

“Council defers Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 to provide the applicant with the opportunity to submit further details in response to Council’s current compliance concerns, and that the officers submit a further report to Council’s October meeting.”

A meeting has since been held with the applicant’s planning consultant to discuss issues such as acoustic requirements, engineering details for the existing structures within the road reserve and other outstanding compliance matters.

No detail has yet been provided on the acceptance of the proposed car parking option put forward by Council’s Engineering and Operations Division at the August Council Meeting. The applicant has advised that they are still waiting on confirmation from Telstra on matters in relation to the relocation of the existing Telstra pit where the car parking is proposed within the road reserve. The applicant has engaged the services of an engineer with respect to the existing structures within the road reserve. No further detail has been provided in this regard to date. The applicant has also obtained a quote for the construction of the proposed parking option (without the relocation of the Telstra pit).

In addition, the applicant has stated that they have ceased using the outdoor dining area (currently required for car parking) and they have ceased live music performances on Sundays. In addition, one existing sign has been removed.

This addendum report has therefore been prepared to seek further direction from the Councillors on how to proceed with the matter. Options include: deferring the matter for further investigation or to reconsider the Council officer’s previous recommendation for the refusal of the Section 96 amended application DA03/0476.02.

RECOMMENDATION:

That:

- A. Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 for the establishment of an art gallery/coffee shop to include a refreshment room and extend trading hours on Saturdays including the option of live music at Lot 2 DP 575934 No. 17 Bambery Street, Fingal Head be refused for the following reasons:**
- 1. The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.**
 - 2. The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained.**
 - 3. The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed.**
 - 4. The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours.**
 - 5. The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on site car parking purposes.**
- B. The applicant is formally advised in writing that:**
- The three approved car spaces are to be reinstated on site;**
 - The use of live music on a Sunday is to cease;**
 - The development must comply with existing approved trading hours;**
 - A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;**
 - A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.**

REPORT:

Applicant: Ms A McKay
Owner: Mr Richard B Steenson
Location: Lot 2 DP 575934; No. 17 Bambery Street, Fingal Head
Zoning: 2(a) Low Density Residential
Cost: Not Applicable

BACKGROUND:

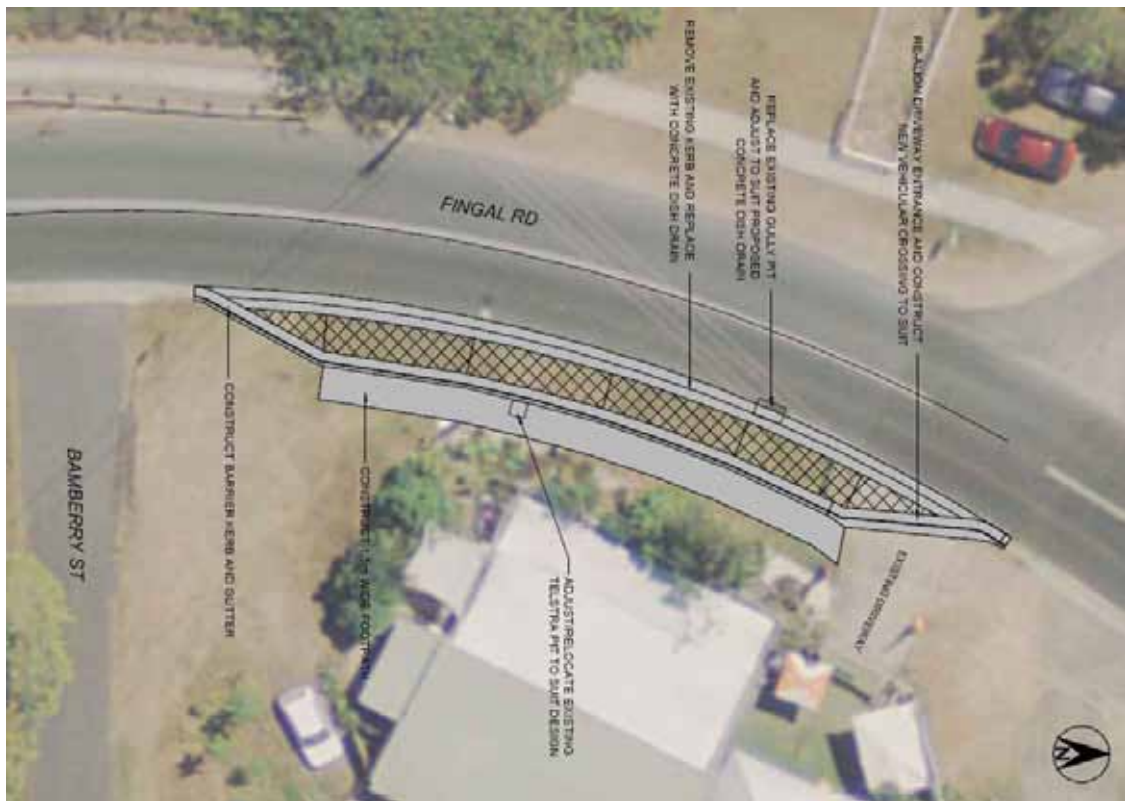
As noted in the previous reports on this matter to Council's meeting of 17 July 2012 and 21 August 2012 (please refer to a copy of these reports in Attachment 1 and Attachment 2), the Section 96 application seeks the following:

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

In accordance with the Council's resolution of the July meeting, a workshop was held on Tuesday 31 July 2012 to discuss this matter further, between the Councillors, Council's staff and the applicant. Issues raised at the workshop related to: staff parking; customer parking; structures within the road reserve; trading hours; and live music.

Further to the Councillors Workshop, Council's Engineering and Operations Division considered a series of options for providing car spaces for the current restaurant use on adjoining and adjacent public areas. Council's preferred option was that the spaces be provided in the road reserve adjoining the frontage of the subject site along Fingal Road, as shown in Figure 1 below.

Figure 1: Possible location for customer parking



The above option was forwarded to the applicant for consideration as a way forward to resolve the parking compliance issues, with the applicant being required to commit to the payment of the construction of these spaces and associated road works.

The applicant's response to the above option made it evident that an acceptable alternative to the current car parking issue affecting the operation of the current restaurant use was yet to be resolved.

Given the need to address a number of more immediate compliance issues, further direction from Council was sought on a preferred way forward at the August 2012 Council Meeting. The two options put forward to Council were:

OPTION 1

That the application be refused for the following reasons:

1. *The proposed modification is not considered to be consistent with the provisions of Clause 8(1)(c) of Tweed Local Environmental Plan 2000, in that the deletion of onsite parking provisions would have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*
2. *The proposed modification is not considered to be in accordance with the provisions of Council's Development Control Plan Section A2 – Site Access and Parking Code, in that onsite parking provisions are not being maintained.*
3. *The proposed modifications are considered not to be in the public interest, with regard to the precedent the proposal would set if parking requirements were removed.*
4. *The proposed modification to extend trading hours is not supported, given the non-compliance with existing approved trading hours.*

5. *The proposed modification to use the approved parking area for alternate uses is not supported, in that the area is required for on site car parking purposes.*

It was also recommended that the applicant be formally advised in writing that:

- *The three approved car spaces are to be reinstated on site;*
- *The use of live music on a Sunday is to cease;*
- *The development must comply with existing approved trading hours;*
- *A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;*
- *A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.*

OR

OPTION 2

This matter be deferred to provide the applicant with the opportunity to submit further details in response to Council's current compliance concerns, and that the officers submit a further report to Council's October meeting.

The Council meeting of 21 August 2012 resolved that:

"Council defers Development Application DA03/0476.02 for an amendment to Development Consent DA03/0476 to provide the applicant with the opportunity to submit further details in response to Council's current compliance concerns, and that the officers submit a further report to Council's October meeting."

UPDATE OF ACTIONS SINCE COUNCIL MEETING OF 21 AUGUST 2012:

A meeting was held on 30 August 2012 with the applicant's planning consultant, whereby Council staff were advised that: an acoustic engineer had been contacted with regard to the preparation of an acoustic report; a quote was being obtained for the construction of the proposed parking option in the road reserve at the front of the premises; and that Telstra had been contacted regarding the re-location of the Telstra pit in the road reserve.

The following issues were raised during and after the meeting:

- In terms of the acoustic report, it was clarified that an acoustic report would need to be submitted for Council staff to consider live music being extended to Sundays. The acoustic report needed to address such matters as: the type (acoustic or amplified playing); location of any performance; maximum numbers attending the performance; and an assessment of the associated environmental impact. It was also confirmed that live music also included recorded material;
- Further details to be submitted to Council included a request to amend Condition 23 (live music) and the need to identify the location within the site for live music performances (which is currently not covered by the outdoor dining licence agreement);
- With regard to engineering details for the proposed parking option, potential sight line issues were discussed. Council's Traffic Engineer has since advised that there is not likely to be an issue with sight lines from Bamberry Street in relation to the proposed parking option. However, there may be a continuing issue with sight lines in relation to the existing fence line and surrounding vegetation;

- Specifications for the engineering details required in respect of the existing structures within the road reserve were provided by Council staff. The structures will be dealt with separately under a Section 138 application.
- An additional Section 138 application would also be required for the proposed parking option within the road reserve (assuming that option is agreed upon);
- It was confirmed that no further traffic assessment would be required with regard to the proposed parking option – the details provided by Council’s Engineering and Operations Division are considered to be sufficient;
- Condition 3 of the consent requires a separate development application for signage. If signage is proposed under the current Section 96 application, Condition 3 will need to be modified/deleted;
- Condition 5 (customer seating) will need to be modified/deleted if the existing parking areas are proposed to be used for customer seating associated with the refreshment room; and
- Condition 10 (carparking requirements) will also require modification if the proposed parking option is adopted.

The applicant’s planning consultant was also advised on 18 September 2012 of additional bathroom facilities that may be required in accordance with the Building Code of Australia (BCA), if the applicant wished to increase the area of customer dining area. It was at this point that Council staff requested an estimated timeframe for the lodgement of all outstanding information in relation to the Section 96 and compliance matters.

The applicant’s planning consultant noted on 18 September 2012 that they could not provide advice on when the details would be submitted as they had a...*‘number of outstanding items. In particular these include advice from Telstra concerning the re-location of the Telstra pit to accommodate the proposed parking and advice from the Building Inspectors on how the structures within the road reserve will be dealt with in terms of the BCA.’*

Council’s Building Unit provided the applicant’s planning consultant with information relating to the structures’ BCA compliance and the BCA requirements for toilet facilities relating to restaurants on 20 September 2012.

The applicant’s planning consultant was again requested on 3 October 2012 to provide an estimated timeframe for the lodgement of all outstanding information, so that the details could be assessed and reported to the October Council meeting, in accordance to the resolution of the August Council meeting.

The applicant formally replied on 5 October 2012, advising the following:

"In response to the email...dated 3 October 2012 re submitting further details in response to the Council resolution dated 21 August 2012.

Following that decision by Council I have

- *Requested from Telstra their costs and requirements for the re-location of the Telstra pit. This was requested on 28 August 2012 and to date no response has been received.*
- *Engaged an engineer to advise me in respect of the structures in the road reserve, and the proposed parking area (including any necessary survey work).*

- Sought and obtained a quote for the construction of the parking area (without the re-location of the Telstra pit).
- Ceased using for outdoor dining the area required by my development consent for parking.
- Ceased live music performance on Sundays.

You will appreciate that I have been actively engaged in undertaking the necessary work to respond to Council. However, as might be expected by the nature of the issues, it is taking a little time to collect all of the necessary information. The timing of the response from Telstra is also out of my control.

I will keep you informed as to progress on outstanding issues."

In addition to the above, the applicant also advised on 5 October 2012 that an existing (unauthorised) sign at the front of the site has been removed.

The previous Council reports have highlighted that in addition to the application being recommended for refusal (based on the information on file at the time), several compliance matters remained outstanding. These were in relation to:

- The three approved car spaces being reinstated on site;
- The use of live music on a Sunday ceasing;
- The development complying with existing approved trading hours;
- A Section 138 application must be submitted to Council for approval within 60 days of the date of the written notification in relation to all structures within the road reserve;
- A development application must be submitted within 60 days of the date of the written notification in relation to all signage associated with the development.

It is noted that whilst the applicant has requested further time to collate all necessary information, some of the outstanding compliance matters have been addressed to some degree. That is:

- The use of live music on a Sunday appears to have ceased (see Figure 2 below);
- The development appears to now be complying with existing approved trading hours (see Figure 2 below); and
- One of the unauthorised signs has been removed (see Figure 3 below).



Figure 2: Trading Hours



Figure 3: Signage removed

However, the issue of car parking remains outstanding, with the three approved car parking spaces still being occupied by table and chairs (see Figure 4 below).



Figure 4: Customer seating in approved parking area

With regard to the customer seating, the applicant has erected a sign advising customers that the area is not for dining...*'unless you walked or cycled here'*, as shown in Figure 5 below. This information is incorrect. Condition 5 states:

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



Figure 5: Signage for customer seating

As such dining of any sort in the approved parking area is not permitted, whether customers arrive by car, bike or by foot.

Figure 5 above also shows a sign that advises customers that beverages can be consumed in the designated parking area. Council officers are of the opinion that seating for beverages is a form of dining, which is prohibited. In any case, Condition 5 clearly states that seating for the “refreshment room” is not permitted. The existing café is defined as a refreshment room. Therefore, the area should not be used for customer seating and the required three car parking spaces should be reinstated on the subject site until such time that an alternative car parking arrangement is approved.

In terms of staff parking, it does not appear that vehicles are being parked across the road anymore. However, the designated staff parking at the rear of the site does not appear to be used either. Rather, it seems that staff vehicles are being parked in the road reserve to the south of the premises, as shown in Figure 6 below.



Figure 6: Vehicle Parking

In addition, Council is yet to be advised by the applicant as to whether the proposed parking option is accepted.

Whilst it is acknowledged that the applicant appears to be slowly working towards the finalisation of the outstanding matters, it should be noted that the non-compliant parking issue was raised in June 2011 with a subsequent Section 96 application being lodged in June 2012, and little progress being made to date. Without any further information to base an assessment upon, the previous reasons for refusal remain outstanding.

Further direction from Council is sought on a preferred way forward.

OPTIONS:

1. That Council supports the officer's recommendation for refusal from 17 July 2012 meeting; or
2. That Council supports deferral of the matter, to provide the applicant with further opportunity to submit further details in response to Council's current compliance concerns, and that the officers submit a further report to Council's November meeting.

CONCLUSION:

As highlighted in the officers' report to 17 July 2012 Council Meeting and 21 August 2012 Council Meeting, whilst the substantial community public support for the continuing restaurant operations is acknowledged, there are a number of unresolved compliance issues such as the provision of appropriate parking facilities, hours of operation and unauthorised structures which necessitate a preferred course of action from Council.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy - Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

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

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Copy of the original report to the 17 July 2012 Council meeting (ECM 57563553)

Attachment 2. Copy of the update report to the 21 August 2012 Council meeting (ECM 57563564)

13 [PR-CM] Development Application DA11/0527 for an attached dual occupancy at Lot 21 DP 1124438; No. 27 Charles Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0527 Pt 1



Civic Leadership

SUMMARY OF REPORT:

Council has received a request for a Section 82A Review of Determination (RoD) for the refusal of a development application for the construction of an attached dual occupancy at Lot 21 DP 1124438, No. 27 Charles Street, Tweed Heads.

A RoD application can only be lodged and determined within six months of the original determination date, unless a Class 1 Appeal has been lodged with the NSW Land and Environment Court within six months of the date of determination. The RoD had to be determined by 19 October 2012 unless an appeal was lodged. The applicant has lodged an appeal and Council can determine the RoD. The Environmental Planning and Assessment Act requires Council to determine RoD applications where Council determined the original application. The application could not have been determined under delegated authority.

The development application proposed the construction of dual buildings that would be constructed in a mirror reverse layout. Level 1 would comprise two double garages and pedestrian entries for each dwelling; Level 2 would comprise two (2) secondary bedrooms per dwelling, laundries and bathrooms with direct access to the rear of the building; and Level 3 would comprise the master bedrooms, kitchen and living areas with balconies oriented to the east. Both dwellings would be serviced by internal lifts and stairs.

A report recommending refusal of DA11/0527 was submitted to Council's meeting of 17 April 2012 as it was considered that the proposal comprised a number of non-compliances with Clause 16 of the Tweed Local Environmental Plan (TLEP) in relation to building height. It was considered that the development proposed the construction of a three (3) storey building in a two (2) storey height limit zone. A State Environmental Planning Policy (SEPP) No. 1 Objection was submitted to Council however, the objection reiterated that the development proposed two habitable levels, constructed on top of a basement garage.

It was considered that the proposed development constituted a prominent three (3) storey building in a two (2) storey height limit zone. Further, it was considered that the SEPP No. 1 Objection had failed to address this variation and that, should the development proposal be approved, it would be detrimental to the character of the surrounding area and set an undesirable precedent for similar development in the locality.

Further, the development proposed a Floor Space Ratio (FSR) of 0:80:1 as opposed to the required 0:55:1 (where attached dwellings cover more than 50% of the site). This variation to the FSR controls heightened Council's concerns in relation to the overall bulk and scale of the proposed building, in relation to the capacity of the site.

Council resolved to refuse the development application at its meeting of Tuesday 17 April 2012 for the following reasons:

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

A request for a Section 82A RoD was received by Council on 9 August 2012. In its request for a RoD the proponent has provided some amendments to the proposed development including: amended detail of levels at the front of the site; relocation of driveway crossover and driveway design; amended access stairs to basement; and amended front fence and retaining wall to screen basement entry. Additional detail has also been provided to assist Council's review of the calculation of the number of storeys in the building.

Following an assessment of the additional information against the relevant heads of consideration, it is considered that the non-compliances with Clause 16 of the TLEP remain, as do variations to the FSR controls. However, as detailed further within this report, since the determination of the original development application, the gazettal of the Draft Tweed City Centre LEP 2012 is considered to be imminent. This document establishes a height limit of 9m in this location as well as a FSR of 0:8:1, to which the development would be consistent.

It is considered unfortunate that the proponent has failed to address the concerns in relation to the impact of a three storey building on streetscape character. However it is considered that the proposal would be consistent with the objectives of the imminent Draft Tweed City Centre LEP 2012, which sets the overarching vision for development in the Tweed City area. On this basis approval of the proposal is recommended including a number of conditions of consent.

Please see the table below that summarises the consistency of the proposal with the relevant policy documentation:

Policy document	Control	Complies
Tweed LEP 2000	2 storey height limit	No – 3 storeys
DCP 2008 Section A1	9m height limit from finished ground level	Yes – building would be 9m from finished ground level
	FSR 0:55:1	No – FSR of 0:70:1
	Cut and fill	No – variation to retaining wall height & cut & fill controls
	Basement – no more than 1m above ground level	No – extends by approximately 2.3m above ground level
	Habitable room on ground level	No – car parking only
	Garages – garage doors 50% of building elevation	No – 80% building elevation
	Streetscape character, external living areas and sunlight access	Variations – concerns about scale, lack of integration with open space, opportunity for improved solar gain
	Front door facing the street	No – lack of front door at front elevation
DCP 2008 Section B2 (Tweed Heads)	2 storey maximum height limit although no specific controls	No – 3 storeys

Draft Tweed City Centre LEP 2012	9m height limit above existing ground level	Yes – approximately 7m at front of site and 2.6m at rear, from existing ground level
	FSR 0:80:1	Yes – FSR of 0:70:1
Draft Tweed City Centre DCP	2 storey maximum height limit although no specific controls	No – 3 storeys

RECOMMENDATION:

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

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:
 - DA 1.02 Revision 1 (Site Plan);
 - DA 2.01 Revision 1 (Level 1 Floor Plan);
 - DA 2.02 Revision 1 (Level 2 Floor Plan);
 - DA 2.03 (Level 3 Floor Plan);
 - DA 2.04 (Roof Plan);
 - DA 3.02 Revision 1 (East Elevation, West Elevation);
 - DA 4.01 Revision 1 (Section A-A, Section D-D);
 - DA 4.02 Revision 1 (Section C-C, Section B-B);
 - DA 6.01 (Impervious area, DSZ & Landscape Concept Plan);
 - DA 3.01 Revision 1 (North Elevation, South Elevation).

All prepared by Pat Twohill Designs and dated 24 July 2012, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

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

[GEN0135]

4. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

5. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then application shall be made to Council's Community and Natural Resources Division for approval of such works.

[GEN0155]

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

[GEN0265]

7. The Deep Soil Zone (DSZ) identified on approved plans shall not incorporate any hard impervious surfaces, unless otherwise approved by the General Manager or his delegate.

[GEN0285]

8. All minor elements (such as air conditioning units, aerials, satellite dishes and the like) are to comply with the controls contained within Section A1 of the Tweed Development Control Plan 2008, 'Minor Elements'.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. 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:

1.3 Trips @ \$822 per Trips **\$1069**

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

S94 Plan No. 4

Sector1_4

(b) Open Space (Casual):	
0.75 ET @ \$526 per ET	\$395
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	
(c) Open Space (Structured):	
0.75 ET @ \$602 per ET	\$452
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
0.75 ET @ \$816 per ET	\$612
(\$792 base rate + \$24 indexation)	
S94 Plan No. 11	
(e) Bus Shelters:	
0.75 ET @ \$62 per ET	\$47
(\$60 base rate + \$2 indexation)	
S94 Plan No. 12	
(f) Eviron Cemetery:	
0.75 ET @ \$121 per ET	\$91
(\$101 base rate + \$20 indexation)	
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - North)	
0.75 ET @ \$1352 per ET	\$1014
(\$1305.6 base rate + \$46.4 indexation)	
S94 Plan No. 15	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
0.75 ET @ \$1812.62 per ET	\$1359.47
(\$1759.9 base rate + \$52.72 indexation)	
S94 Plan No. 18	
(i) Cycleways:	
0.75 ET @ \$460 per ET	\$345
(\$447 base rate + \$13 indexation)	
S94 Plan No. 22	

- (j) **Regional Open Space (Casual)**
0.75 ET @ \$1064 per ET \$798
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
0.75 ET @ \$3730 per ET \$2798
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

[PCC0215]

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

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

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

Water DSP4: 1 ET @ \$12150 per ET \$12150
Sewer Banora: 1 ET @ \$5838 per ET \$5838

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

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

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

[PCC0265]

11. 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]

12. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted to and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate. The plan of landscaping shall provide details of landscaping at the front of the lot and shall demonstrate planting that reduces the dominance of the garage doors, accentuates legibility between the two dwellings and shall include tree species and shrubs of varying heights and colours. The plan is also to include details of proposed retaining walls and fences, particularly at the front of the lot, and will incorporate areas of landscaping to soften the appearance of the proposed garage doors. Further, the plan is to demonstrate details of the interface between the subject site and the public domain (road reserve) and is to include existing and finished ground levels linked to Australian Height Datum. The development shall be carried out in accordance with the submitted and approved details and shall thereafter be retained as such.

[PCC0585]

13. 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]

14. 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:

- Provision of a vehicular access in accordance with Section A2 - Site Access and Parking Code of Council's consolidated Tweed Development Control Plan and Council's 'Driveway Access to Property - Part 1' Design Specification June 2004.

The access shall provide the required 2m x 2m 'sight triangle' envelope.

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

- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

15. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

16. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

17. 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) Specific Requirements to be detailed within the Construction Certificate application include:
 - o Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.
 - o Runoff from the driveway must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized accordingly to Council's Development Design Specification D7 - *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.
 - o Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCC1105]

18. Disposal of stormwater by means of infiltration devices shall be carried out in accordance with Section D7.9 of Tweed Shire Councils Development Design and Construction Specification - Stormwater Quality.

[PCC1125]

19. 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]

20. 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]

21. A single dwelling or group of up to three attached or detached dwellings, having a Building Code classification of 1a, must be connected by means of a single water service pipe each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCC1305]

22. Stormwater management measures and devices shall be provided in general accordance with Cozens Regan Williams Prove Drawing No. Sk.2 (Issue A, dated 09/11), except where varied by these conditions of consent. Engineering details of the stormwater management system shall be submitted with a Section 68 Stormwater Application for Council approval prior to the issue of a Construction Certificate.

[PCCNS01]

23. For developments containing less than four attached or detached dwellings having a Building Code classification of 1a, each premises must be connected by means of a separate water service pipe, each of which is connected to an individual Council water meter to allow individual metering. Application for the meters shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.

[PCCNS02]

24. Prior to the issue of a Construction Certificate the proponent shall submit a detailed plan (including but not limited to colour elevations and a coloured 3 dimensional street view) that includes a material and colour scheme for the dual occupancy development to be approved by the General Manager or his delegate. This plan may include, but not be limited to, the use of materials that are complimentary to the surrounding landscape (i.e. timber, stone, metal) and colours that provide visual depth to the development. The development shall be carried out in accordance with the submitted and approved details and shall thereafter be retained as such.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

25. 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]

26. 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
 - (i) 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]

27. 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]

28. Residential building work:

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

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

[PCW0235]

29. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) persons employed at the site. Each toilet provided must be:

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

30. 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]

31. Prior to start of works the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

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

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

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

[PCW0985]

33. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

35. 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]

36. 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]

37. 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]

38. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

39. 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]

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

[DUR0415]

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

[DUR0815]

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

Please note timber retaining walls are not permitted.

[DUR0835]

43. 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]

44. 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 Occupation Certificate.

[DUR0995]

45. 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]

46. 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]

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

[DUR1875]

48. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

49. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

50. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

51. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

52. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

53. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

54. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2545]

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

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

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

[DUR2555]

57. **The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.**

[DUR2625]

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

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

61. **Prior to the issue of an occupation certificate,**

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

[POC0235]

62. **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]

63. 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]

64. Submission to the Principal Certifying Authority, Certification for the stability of any retaining structures in excess of 1.2m erected on the site by a suitably qualified structural engineer.

[POC0815]

65. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

66. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

67. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

68. 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]

USE

69. 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]

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

[USE0175]

Section 79BA of the 'Environmental Planning and Assessment Act 1979'

71. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

72. In recognition that the dual occupancy may be connected to a gas supply, the following requirements are to be complied with:

- a) Reticulated or bottled gas is to be installed and maintained in accordance with Australian Standard AS/NZS 1596:2008: 'The storage and handling of LP gas' and the requirements of relevant authorities. Metal piping is to be used.
 - b) All fixed gas cylinders are kept clear of all flammable materials to a distance of 10 metres and be shielded on the hazard side of the installation.
 - c) Gas cylinders kept close to the building shall have release valves directed away from the building. Connections to and from gas cylinders are to be metal.
 - d) Polymer sheathed flexible gas supply lines to gas meters adjacent to building are not to be used.
73. New construction shall comply with Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
74. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

REPORT:

Applicant: Mr K Kozak and Mrs M Kozak
Owner: Mr Krzysztof Kozak & Mrs Maria Kozak
Location: Lot 21 DP 1124438; No. 27 Charles Street TWEED HEADS
Zoning: 2(b) Medium Density Residential
Cost: \$500,000.00

Background:

At the Council meeting of 17 April 2012, Councillors resolved to refuse a development application for the construction of an attached three-storey dual occupancy development at 27 Charles Street, Tweed Heads.

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

The site is currently vacant, with site levels reflecting the retained benching evident from a dwelling house that previously existed on the site. The site is trapezoidal in shape with a frontage to Charles Street to the east of approximately 16m. The site has a width of 16m and an average length of 27m, creating a total site area of 452m². The property comprises a steep slope from the RL 37m AHD at the Charles Street frontage, to RL 43m AHD to the rear. Vehicular access to the site would be directly from Charles Street.

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

The proposed development has been consistently presented to Council as a two (2) storey building with, according to the proponent, Level 1 comprising 'basement' parking. This issue was explored in detail within the previous Council report. A SEPP No. 1 Objection was requested and was later submitted to Council on a 'without prejudice basis'. Within the SEPP No. 1 Objection the applicant maintained that the proposed development constitutes a two storey building as the two habitable levels are constructed above a basement garage.

Within the previous report to Council, Council Officers considered that the parking areas could not be defined as a basement and that the proposed buildings constituted three storeys. Council's interpretation of finished floor level, storey and basement has not altered and Council remains of the opinion that the development proposes a three storey building.

The proponent has submitted an updated SEPP No. 1 Objection that reiterates that the development comprises a two storey building. In Council's opinion the SEPP No. 1 Objection does provide adequate justification for the proposed variation to the development standard given the proposed new height limit of 9m from existing ground level.

The proponent has also included a number of minor changes to the proposal such as: amended details of levels at front of site; relocation of driveway crossover and driveway design to the garage; amended pedestrian access stairs to basement level; relocation of the main pedestrian entry to the sides of the building; amended front fence and retaining wall to screen basement entry and maintain the general profile of the existing ground level. It is noted that the general floor plan layout, number of units and car parking spaces and overall height of the development has not changed.

The Council officers are of the opinion that such modifications do not lessen the overall scale of the development and remain concerned about the impact of the proposal on the character of the locality. However, of key importance in the determination of this Section 82A RoD is the imminent gazettal of the Draft Tweed City Centre LEP 2012 which will establish a maximum height limit of 9m in the Razorback Precinct measured from existing ground level to the top of the building. The building is currently 7m above existing ground level at the front of the site and 2.6m at the rear.

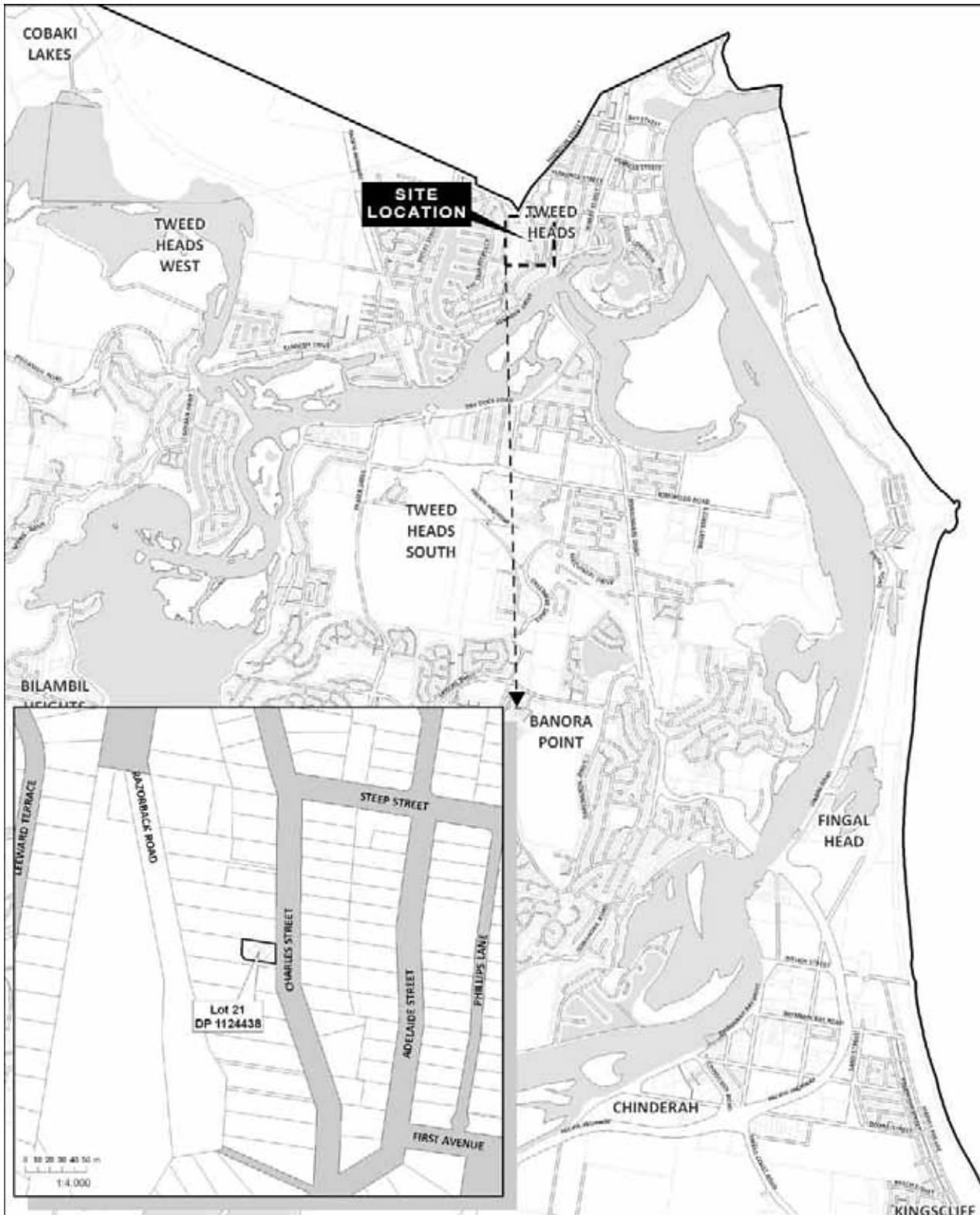
The current Development Control Plan (DCP) for Tweed Heads (Section B2) and the Draft Tweed City Centre DCP (Section B2) advise that the development controls anticipate minimal changes to the predominantly two storey character of the Ridgeline and Razorback Precinct. However, there are no specific controls within either of these documents that ensure that a two storey height limit is retained, both of which default to either Section A1 of the DCP (which sets a maximum building height of 9m above finished ground level) or the LEP. Given the inconsistency between the DCP documents and the Draft Tweed City Centre LEP 2012 that is soon to be gazetted, it is usual for the provisions contained within the latter to prevail.

It is acknowledged that there are examples of buildings that comprise three storey elements in the Razorback Precinct, however none have been brought to Council's attention that replicate this scenario of a relatively constrained, up-sloping site. Within this report it is advised that there is no doubting that the proposed building will impact significantly on streetscape character and set a precedent for similar developments in the future.

It is considered unfortunate that the building has not been stepped back into the site so as to reduce the overall bulk and dominance of the proposal. However, as detailed further within this report, it may now be difficult to substantiate a refusal of the proposal on these grounds, given the impending Draft Tweed City Centre LEP 2012 will establish a minimum height limit of 9m from existing ground level.

The Section 82A RoD was advertised for a period of two weeks, during which three submissions were lodged against the proposal.

SITE DIAGRAM:



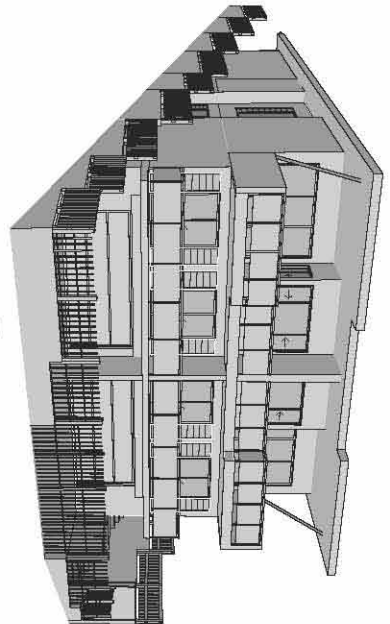
Locality Plan
 Lot 21 DP 1124438
 No. 27 Charles Street, Tweed Heads

Disclaimer: This is a preliminary plan to assist in the understanding of the site. It is not intended to be used as a basis for any legal proceedings or to be used as a basis for any other purpose. The Council is not responsible for any errors or omissions in this plan. The Council is not responsible for any damage or loss arising from the use of this plan. The Council is not responsible for any damage or loss arising from the use of this plan. The Council is not responsible for any damage or loss arising from the use of this plan.

Cadastral: 02 April 2012
 © Land and Property Management Authority (LPMA) & Tweed Shire Council.
 Boundaries shown should be considered approximate only.

0 0.5 1 Km
 1:40,000 A4 Printout
 GDA
 Map Projection: National Trigonomic Base
 Horizontal Datum: GDA 1984
 Vertical Datum: Mean Sea Level
 Contour Interval: 1m
 Date: 02/04/2012

Civic and Cultural Centre
 1 Bannister Road
 Murrumbidgee NSW 2486
 PO Box 815
 Murrumbidgee NSW 2486
 T (02) 6670 2000 F (02) 6670 2020
 T (02) 6670 2429
 W www.tweedshire.nsw.gov.au
 E info@tweedshire.nsw.gov.au



FRONT 3D



SITE LOCATION PLAN

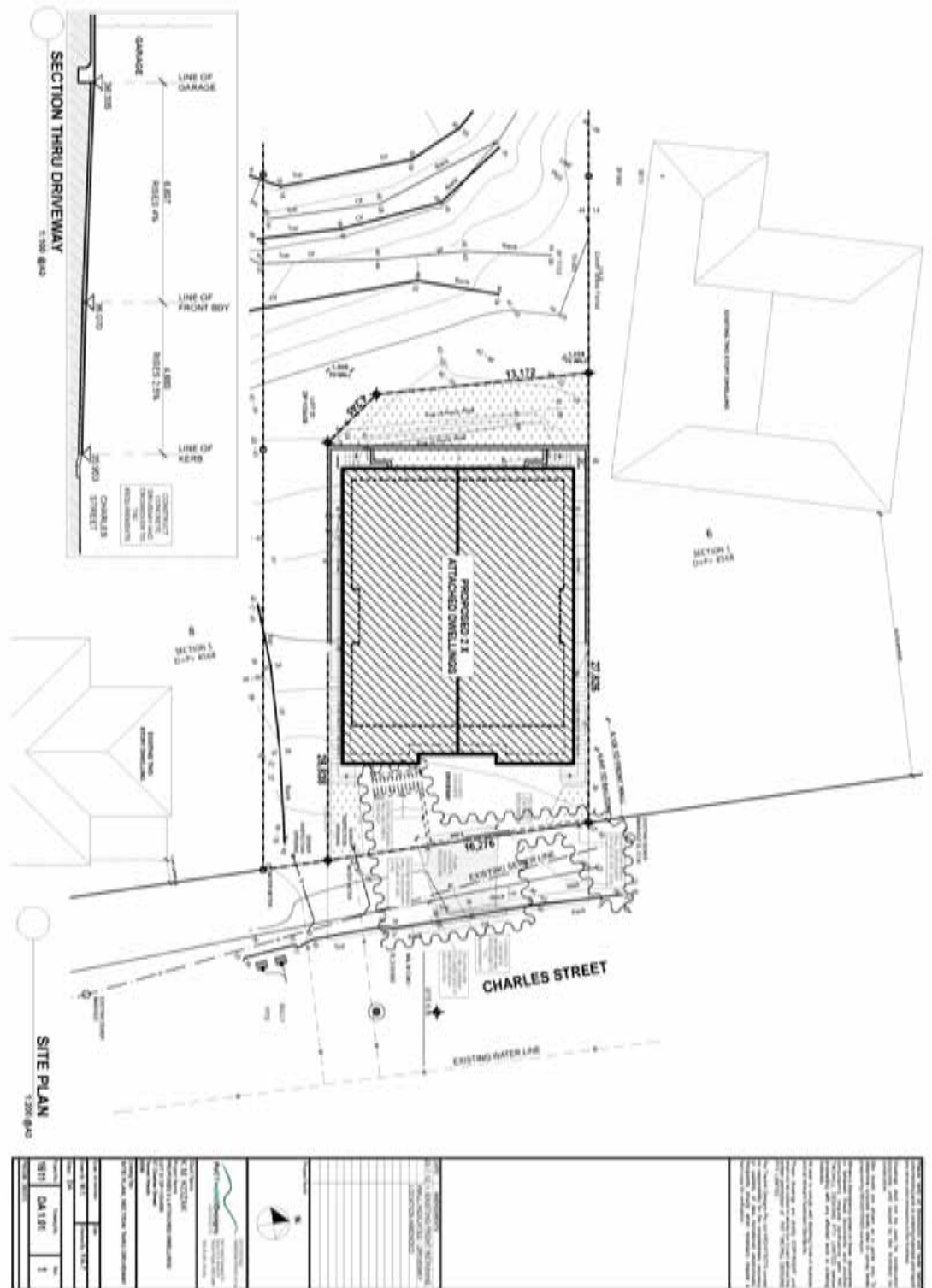
DEVELOPMENT APPLICATION

PROPOSED 2 X ATTACHED DWELLINGS
LOT 21 DP 1124438
27 Charles Street Tweed Heads NSW


DRAWING INDEX	DRAWING NAME
DA1.00	COVER SHEET - SITE LOCATION PLAN
DA1.01 (1)	SITE PLAN - SECTION THROUGH DRIVEWAY
DA1.02 (1)	SERVICES SURVEY PLAN
DA1.03	SITE ANALYSIS PLAN
DA2.01 (1)	LEVEL 1 FLOOR PLAN
DA2.02 (1)	LEVEL 2 FLOOR PLAN
DA2.03	LEVEL 3 FLOOR PLAN
DA2.04	ROOF PLAN
DA3.01 (1)	ELEVATIONS
DA3.02 (1)	ELEVATIONS
DA4.01 (1)	SECTIONS
DA4.02 (1)	SECTIONS
DA5.01	SHADOW DIAGRAM PLAN
DA6.01	IMPERVIOUS AREAS ZPLAN/LANDSCAPING CONCEPT PLAN



(07) 5536 9020
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 Pat Twohill Designs Pt
 Site 5/133 West St
 Tweed Heads, NSW 2456
 ABN 99 480 308 092



SERVICES SURVEY PLAN
1:500 (part)



THE COUNCIL OF THE CITY OF SYDNEY
1000-1100
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SURVEY NO.	SERVICES SURVEY PLAN	DATE	18/11/12	SCALE	1:500
SURVEYOR	M & K KOZAK	CLIENT	CITY OF SYDNEY	PROJECT NO.	18933-0
CHECKED BY		DRAWN BY		DATE	18/11/12
APPROVED BY		DATE			
SCALE	1:500	DATE	18/11/12		
DATE	18/11/12				

SITE ANALYSIS



OPPORTUNITIES

- MAINTAIN & ENHANCE CHARACTER STREETSCAPE
- MAINTAIN SOLAR ACCESS TO ADJACENT PROPERTIES
- IMPROVE ENVIRONMENTAL QUALITY OF STORM WATER RUNOFF
- IMPROVE LANDSCAPING TO STREET FRONTAGE
- CAPTURE VIEWS TO THE RIVER AND COASTLINE
- INCREASE URBAN DENSITY
- RECYCLE WATER IN AN URBAN SITUATION
- CAPTURE COOLING BREEZES FROM ELEVATED SITE
- MAINTAIN SCENIC BACKGROUND



CONSTRAINTS

- BUSHFIRE PRONE
- SITE AND VEHICLE ACCESS
- SLOPING TOPOGRAPHY
- BUILDING SETBACKS
- 2B ZONE

NOTES: THIS SITE ANALYSIS REPORT IS FOR INFORMATION ONLY. IT IS NOT A CONTRACT. THE CLIENT IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THE CONSULTANT. THE CONSULTANT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED AND DOES NOT EXTEND TO ANY OTHER MATTER. THE CONSULTANT'S LIABILITY IS LIMITED TO THE SERVICES PROVIDED AND DOES NOT EXTEND TO ANY OTHER MATTER.

DATE: 20/10/2012

SCALE: 1:1000

PROJECT: 1611 DA 1.03

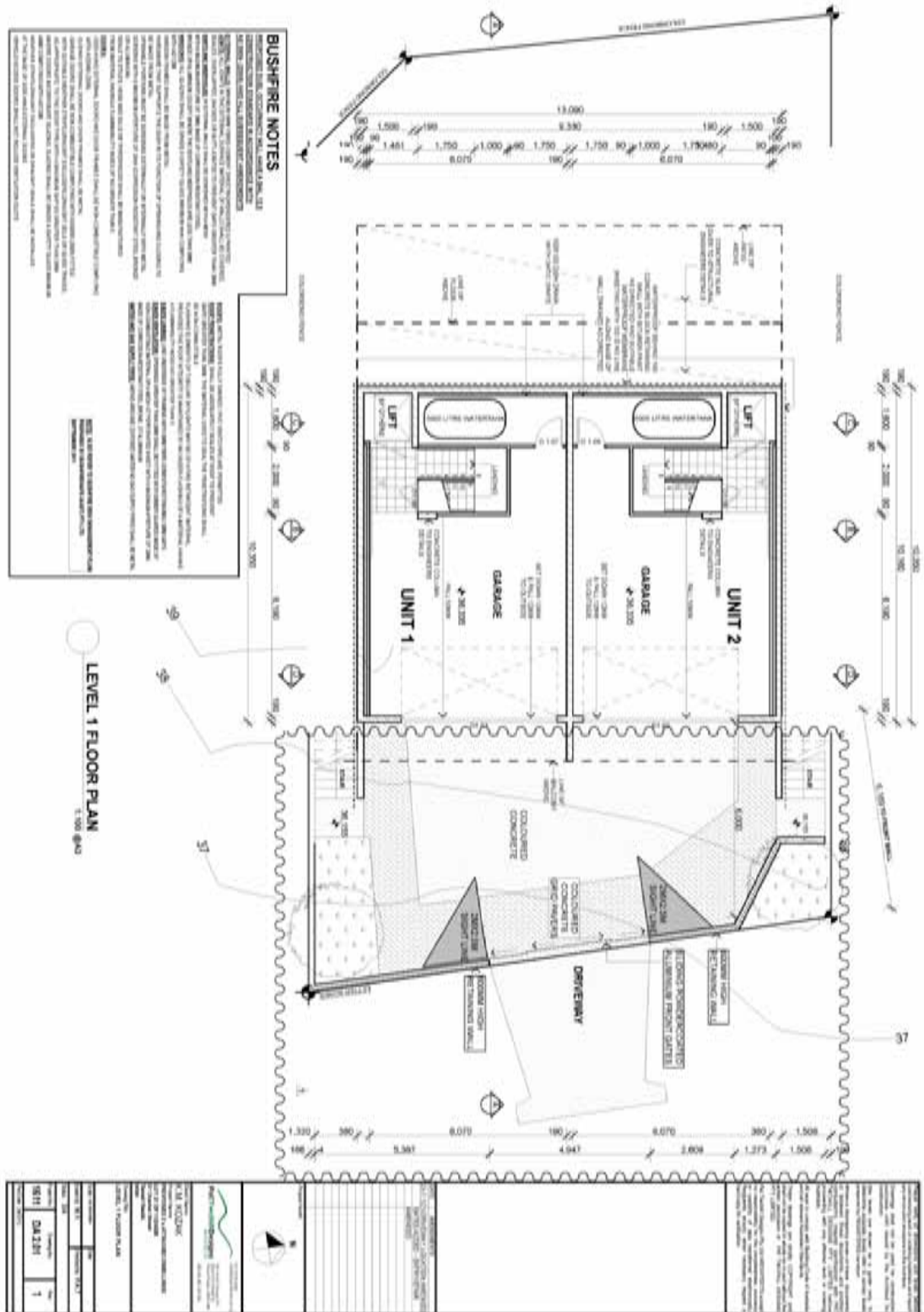
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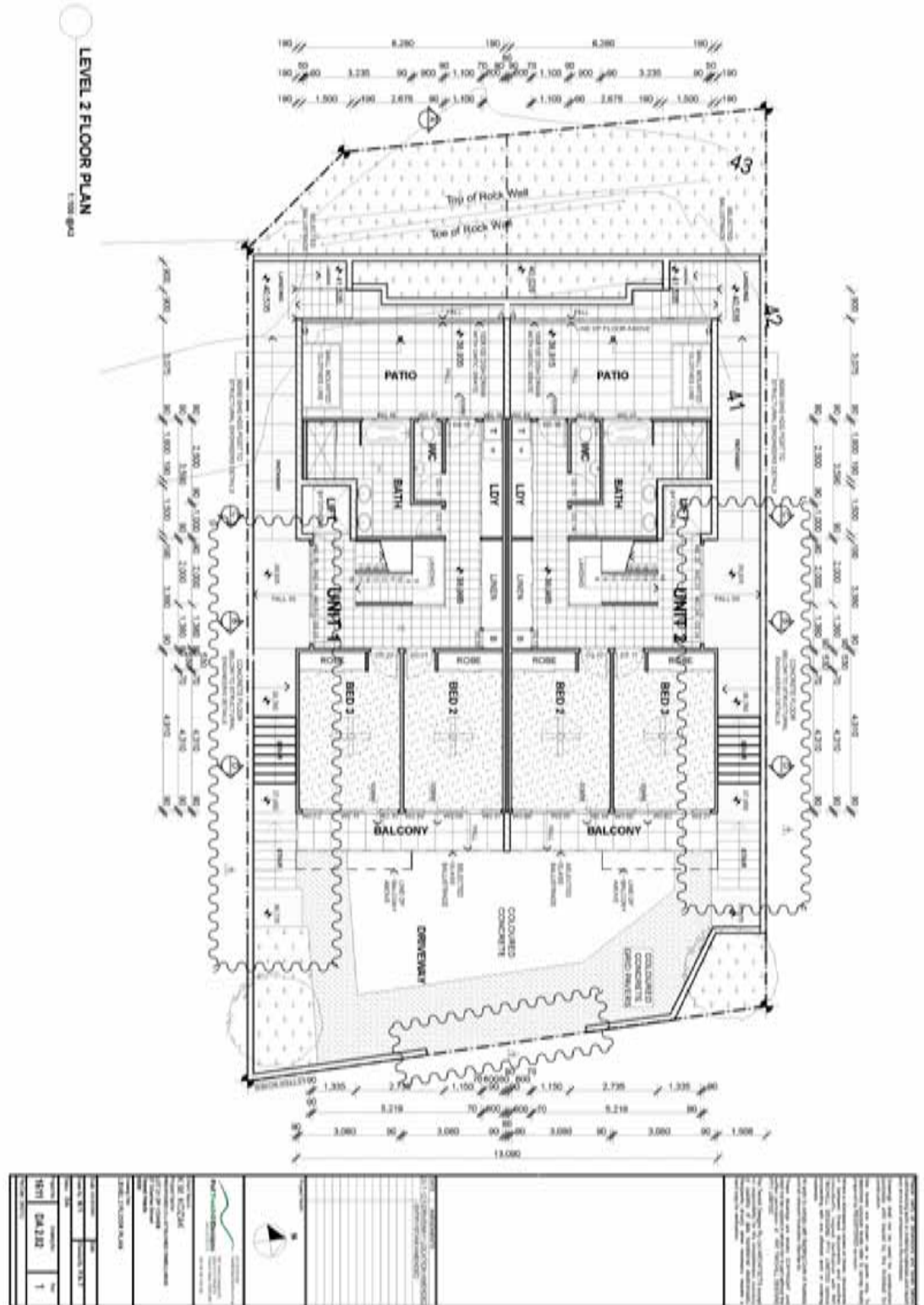
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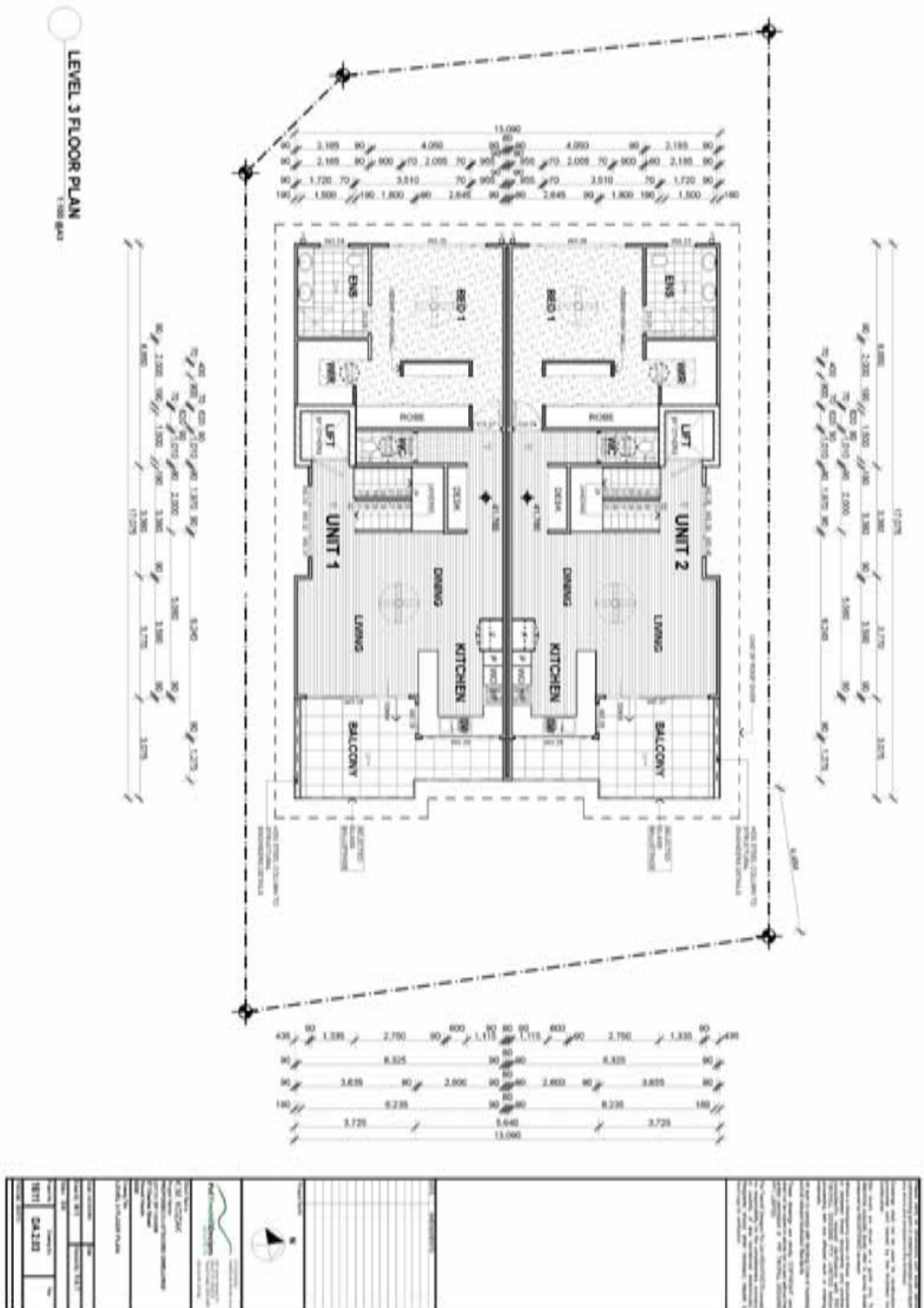
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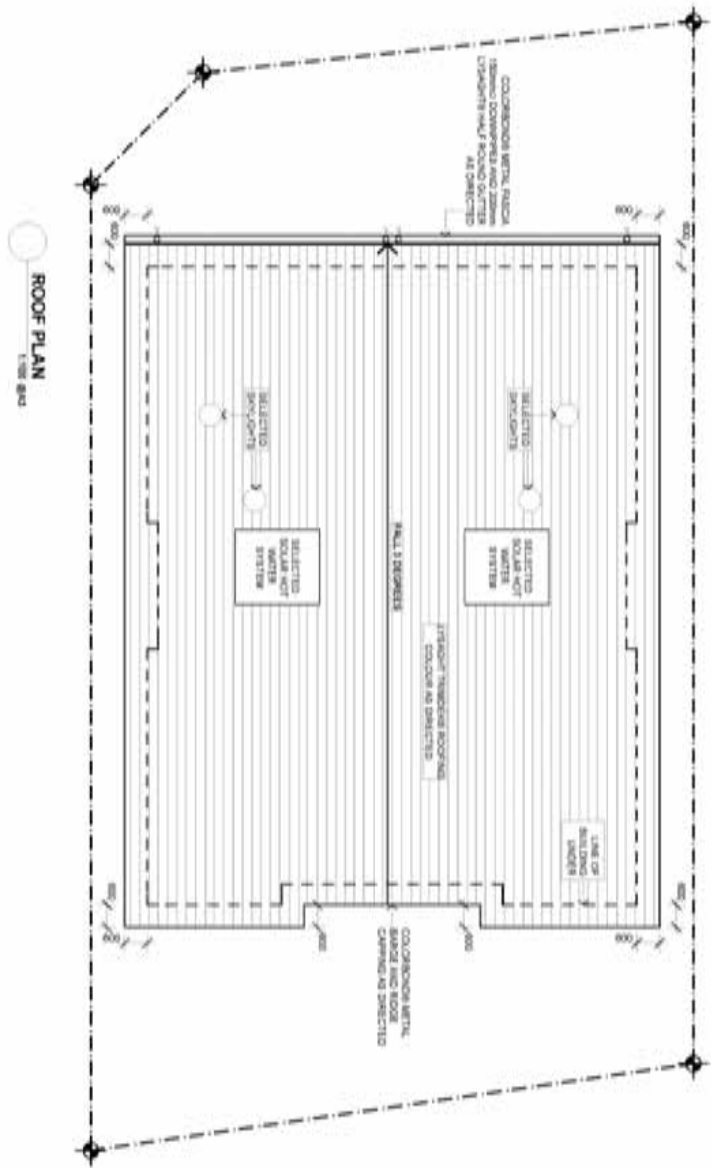
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DATE: 20/10/2012



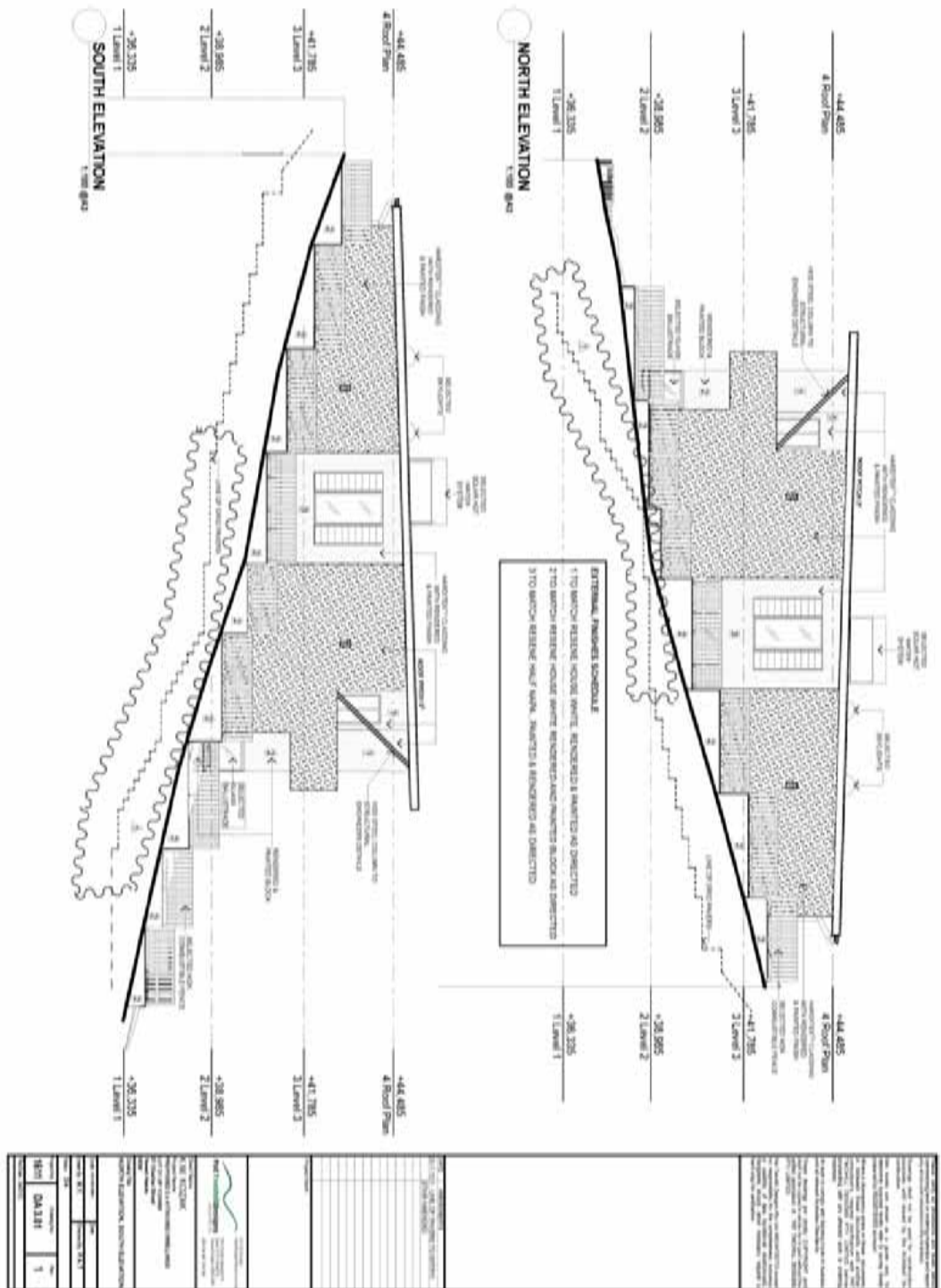


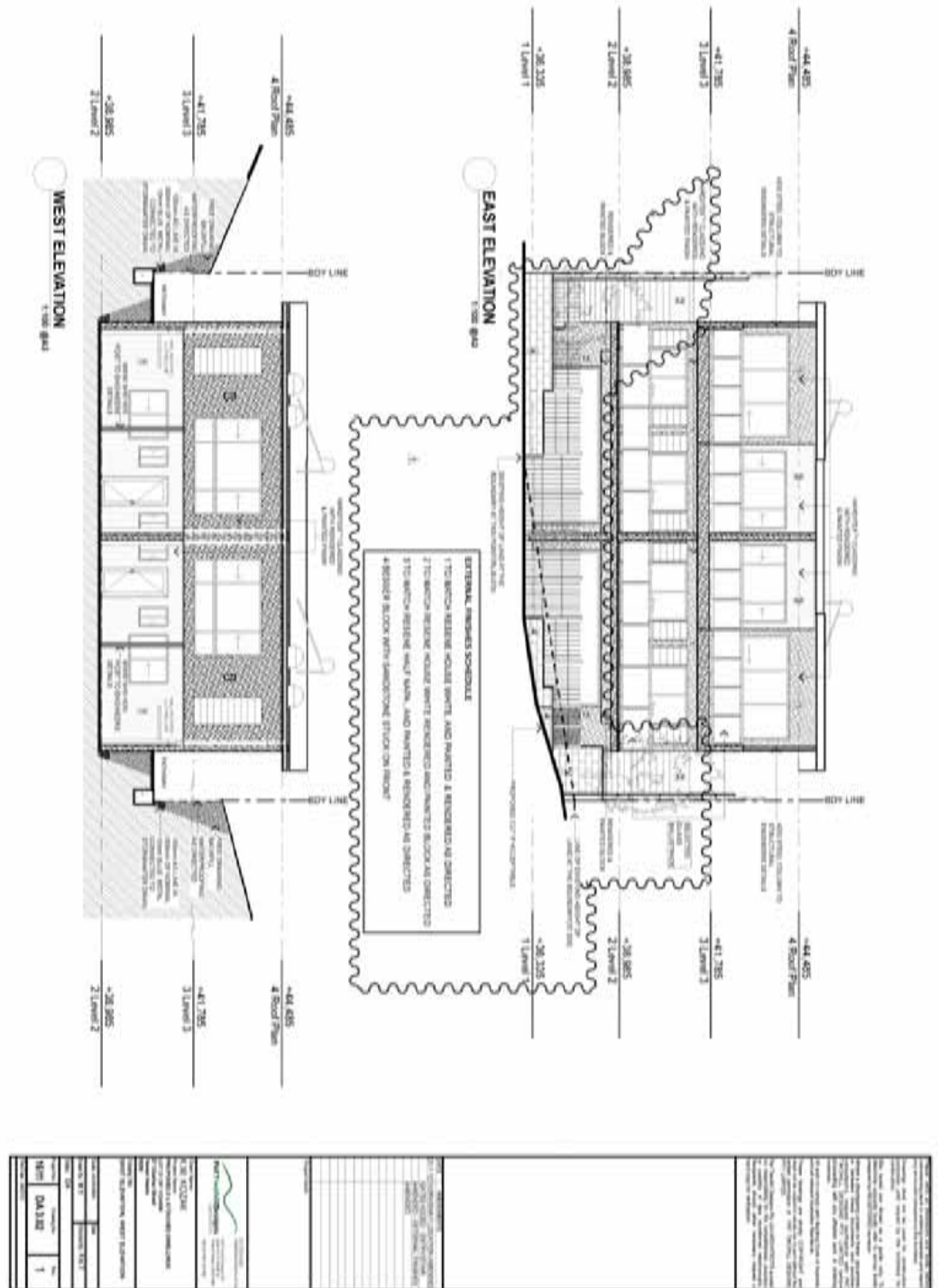


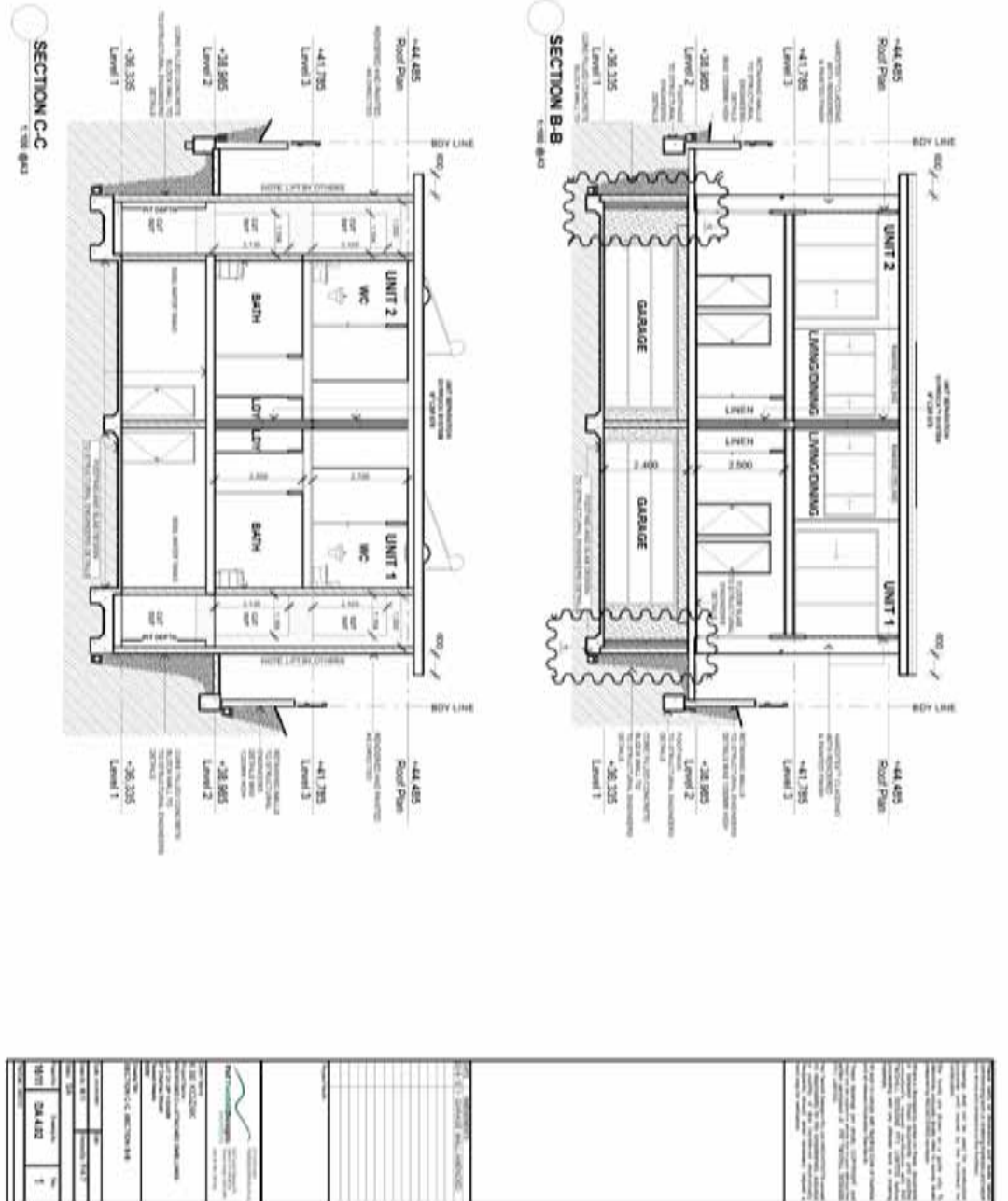


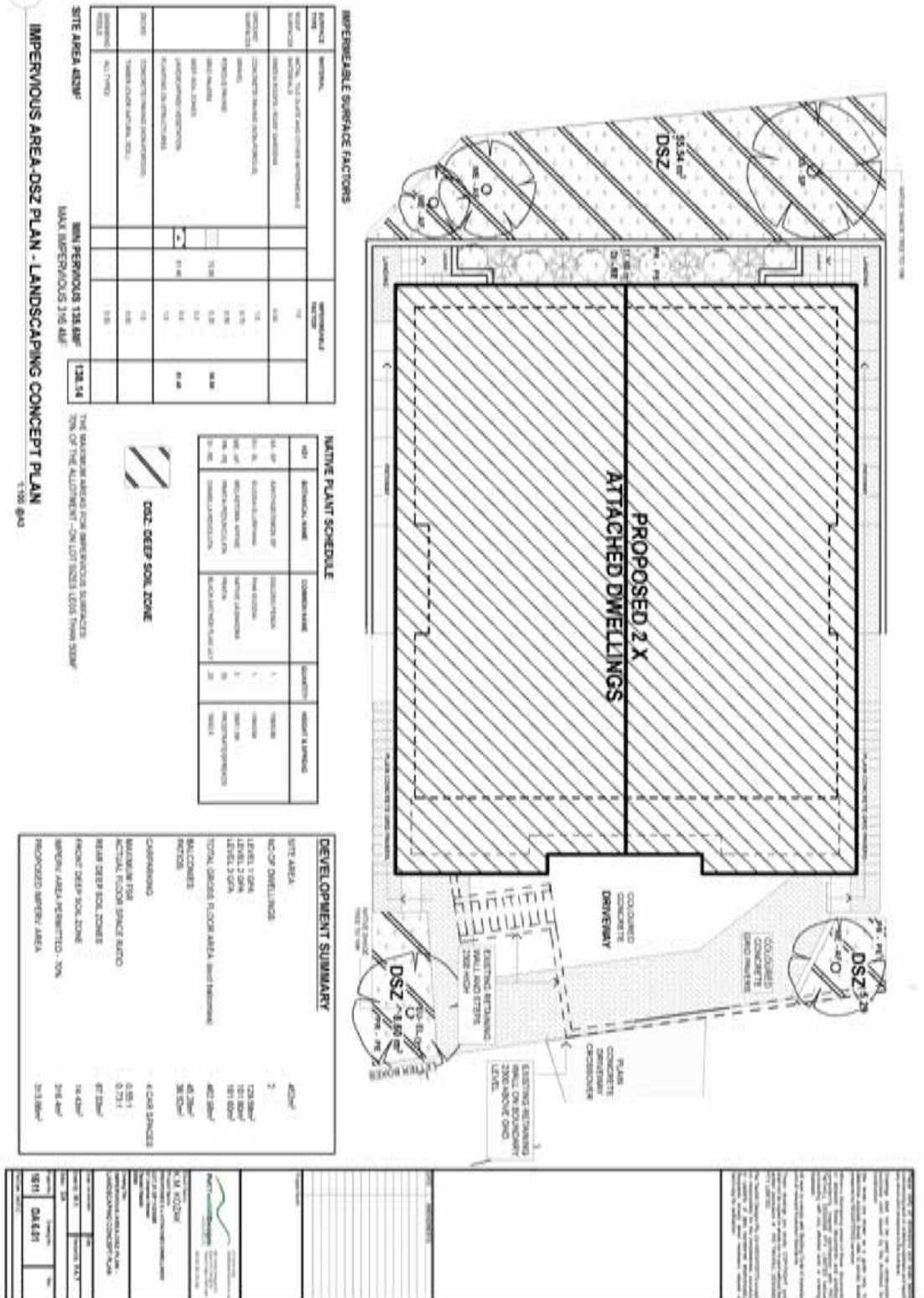
ROOF PLAN
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<p>Author: [Name] Date: [Date] Scale: 1:500 Drawing No: [Number]</p>			<p>Project Name: [Name] Client: [Name] Location: [Address]</p>	<p>Drawn by: [Name] Checked by: [Name] Approved by: [Name]</p>
<p>Notes:</p>				
<p>1. [Text]</p> <p>2. [Text]</p> <p>3. [Text]</p>				
<p>4. [Text]</p>				
<p>5. [Text]</p>				









IMPERMEABLE SURFACE FACTORS

REFERENCE	PERCENTAGE	PERMEABLE SURFACE
ROADWAY	10	ASPHALT
DRIVEWAY	10	ASPHALT
CONCRETE	10	CONCRETE
PAVING	10	PAVING
ROOF	10	ROOF
WATER	10	WATER
LANDSCAPING	10	LANDSCAPING
GRASS	10	GRASS
SOIL	10	SOIL
PLANT	10	PLANT
ROCK	10	ROCK
WOOD	10	WOOD
OTHER	10	OTHER
TOTAL	100	TOTAL

NATIVE PLANT SCHEDULE

ID#	SCIENTIFIC NAME	COMMON NAME	QUANTITY	HEIGHT & SPACING
1	ADONIS VITIFOLIA	ADONIS	1	1.5m
2	ADONIS VITIFOLIA	ADONIS	1	1.5m
3	ADONIS VITIFOLIA	ADONIS	1	1.5m
4	ADONIS VITIFOLIA	ADONIS	1	1.5m
5	ADONIS VITIFOLIA	ADONIS	1	1.5m
6	ADONIS VITIFOLIA	ADONIS	1	1.5m
7	ADONIS VITIFOLIA	ADONIS	1	1.5m
8	ADONIS VITIFOLIA	ADONIS	1	1.5m
9	ADONIS VITIFOLIA	ADONIS	1	1.5m
10	ADONIS VITIFOLIA	ADONIS	1	1.5m

DSZ DEEP SOIL ZONE

IMPERIOUS AREA-DSZ PLAN - LANDSCAPING CONCEPT PLAN

1:100 @A

THE MAXIMUM ALLOWED FOR IMPERIOUS SURFACES 75% OF THE ALLOWMENT - ON LOT SIZES LESS THAN 500M²

DEVELOPMENT SUMMARY

SITE AREA	420M ²
NO OF DWELLINGS	2
FLOOR 1 GFA	170.0M ²
FLOOR 2 GFA	187.0M ²
TOTAL GROSS FLOOR AREA (incl driveway)	357.0M ²
WATER	4.0M ³
PAVING	1.0M ³
GRASS	1.0M ³
ROCK	1.0M ³
WOOD	1.0M ³
OTHER	1.0M ³
TOTAL	10.0M ³

Professional seal and signature area for the architect or engineer. Includes fields for name, registration number, and date.

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

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

A principle aim of the Plan is to ensure:

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

The proposed development is of a relatively minor nature and scale and is not likely to impact on the character of the Tweed as a whole. The proposed dwellings are of a contemporary design that provide an interesting variety of materials and, in general, would not be incompatible with the surrounds or the area's environmental and residential amenity qualities.

However, when viewed from the street, the development comprises a three storey development in an area restricted to a height limit of two storeys.

Within the previous assessment of the proposal it was considered that the development did not comply with the current TLEP and that the SEPP No. 1 Objection had failed to take into consideration the resultant visual impact that the proposal would have on the character and amenity of the surrounding area. Furthermore, it was considered that should the development have been approved, it would have set an undesirable precedent for similar development in the future.

It is important to note that, since the determination of the application, the gazettal of the Draft Tweed City Centre LEP 2012 has become imminent and, by virtue of the introduction of a 9m height restriction from existing ground level, as opposed to two storeys, the proposed development would be consistent with the height provisions.

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

Clause 5 - Ecologically Sustainable Development

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

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

Clause 8 – Consent Considerations

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

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

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

As previously detailed, the development comprises a three storey building in a zone that is currently limited to a height limit of two storeys. It is considered that the information submitted as part of the Section 82A RoD fails to demonstrate why a relaxation in the two storey height should be allowed in this instance or the detrimental impact that the proposal would have on the character and amenity of the immediate locality, which, in general, is characterised by one and two storey dwellings.

However, as detailed further within this report, the gazettal of the Draft Tweed City Centre LEP 2012 is nearing completion, in which the zone is restricted to a maximum height limit of 9m from existing ground level, as opposed to two storeys from finished ground level. The proposed building would be 9m in height from finished ground level (please note the previous Council report incorrectly stated 9.5m in height) and approximately 7m from existing ground level at the front of the site, and 2.6m at the rear. Therefore the Tweed City Centre LEP 2012 is a material consideration with this regard, as detailed further within this report.

Clause 11 – Zone Objectives

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

Primary objectives:

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

Secondary objectives:

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

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

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

The previous assessment of the proposal advised that whilst the proposal meets the requirement for the provision of medium density housing it was considered, by reason of the dominant three storey building height, that the proposal would fail to result in a good urban design outcome and would not be in keeping with surrounding streetscape character.

As detailed previously within this report however, the gazettal of the Draft Tweed City Centre LEP 2012 is imminent and within this document the proposed development would be consistent with the height provisions. Whilst it may be argued that the proposed development may be detrimental to the character of the area and, by virtue of its height and bulk would not achieve a good urban design outcome, the proposal would be consistent with the Draft Tweed City Centre LEP 2012 controls.

Clause 15 - Essential Services

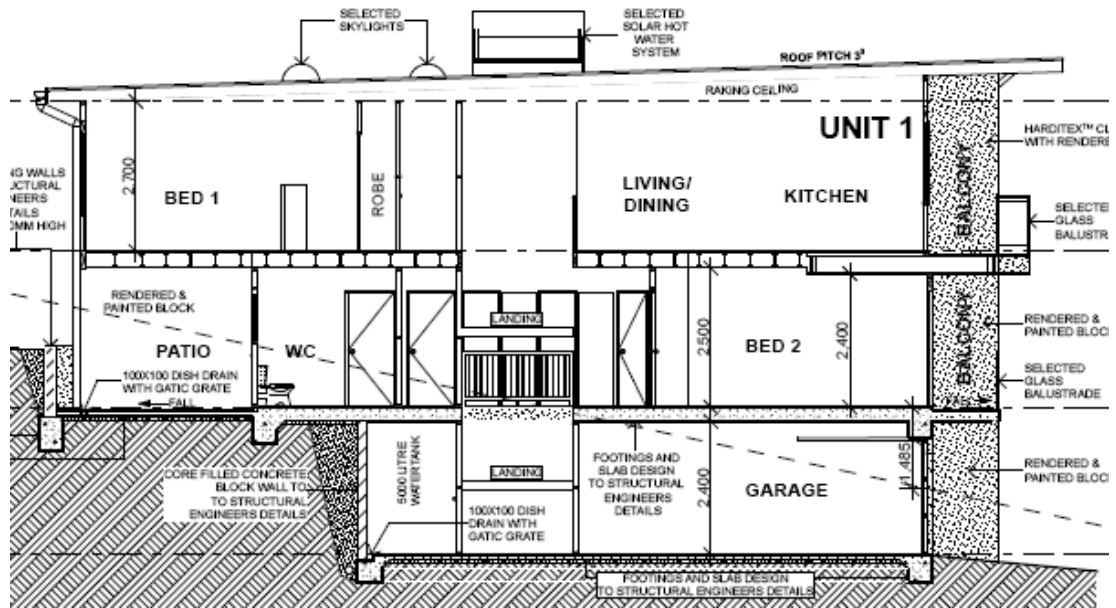
The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community's health.

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

Clause 16 - Height of Building

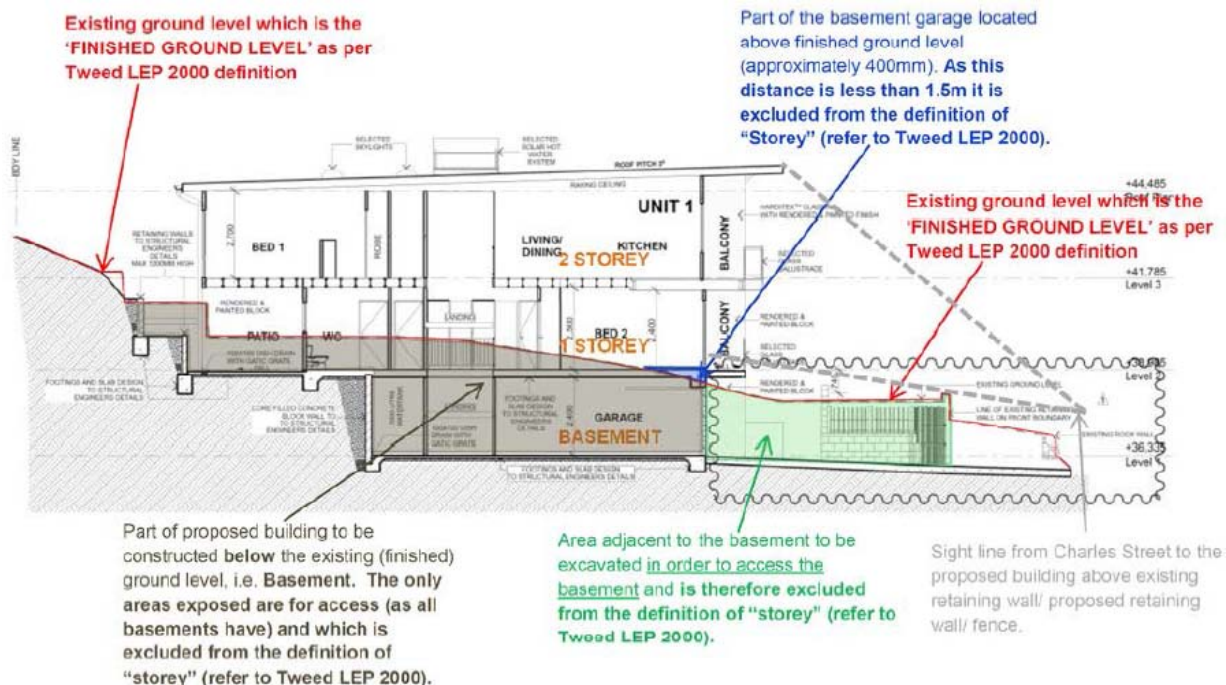
Clause 16 aims to ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land. Clause 16 of the TLEP provides a two-storey height restriction over the subject site.

The proponent has consistently maintained that the building is two storey and therefore consistent with Clause 16. The previous report submitted to Council provided a detailed examination of the definition of 'finished ground level' and 'storey' and advised that the development proposed a three storey building.



Original section of proposed dual occupancy development

As detailed within the original assessment of the proposal, the proponent advised that the proposed development constituted two storeys as the parking area is defined as a 'basement' and therefore excluded from the definition of finished ground level (i.e. *The natural ground level of the land that was the level of the land at the appointed day, or the level of the land after such earthworks (excluding any basement excavations) as are consented to by the consent authority, whichever is the lower*).

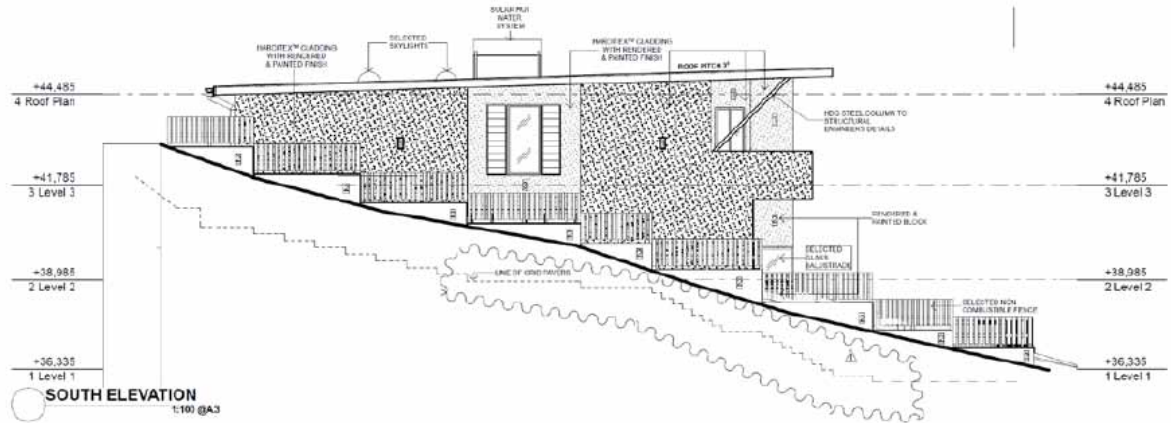


Section of proposed development as submitted within the Section 82A RoD

Within the Section 82A RoD the proponent considers that as the 'basement will be almost entirely below the existing ground surface' that the 'proposed building is properly assessed as two storeys in height in accordance with the provisions of Tweed TLEP 2000'.

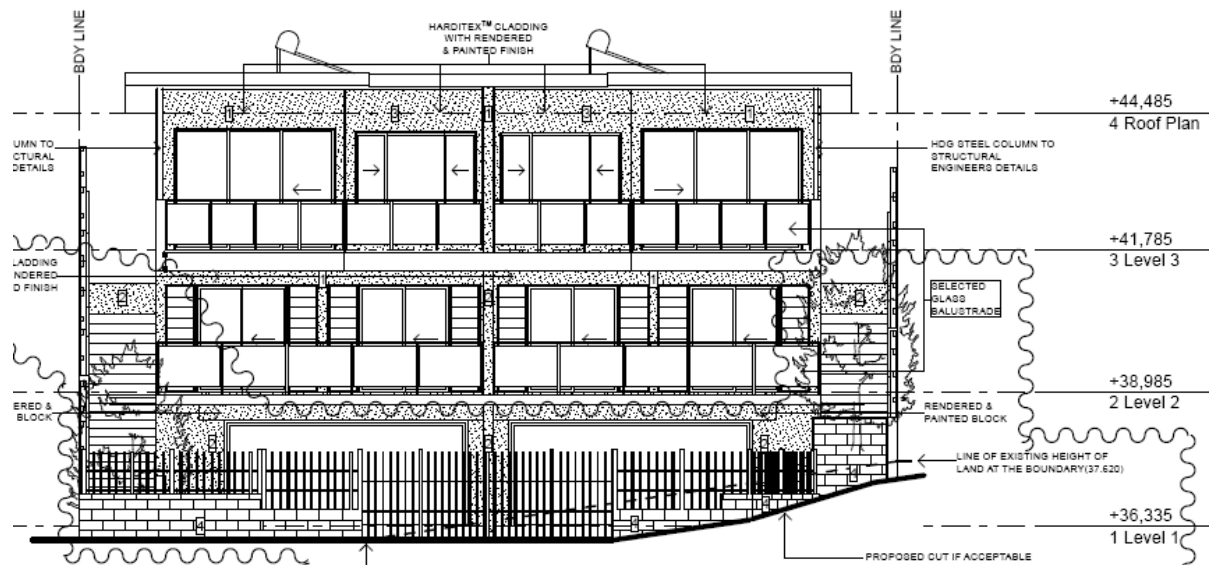
It is considered that the proponent's definition of the 'finished ground level' remains flawed. Council reiterates that the proposed parking area is not a 'basement' and as such the space between the finished ground level (i.e. the level of the land after such earthworks) and the floor immediately above is in excess of 1.5m in height. Council reiterates that the garage constitutes an additional storey and the proposed building is therefore a three storey building.

The proponent has provided an amended south elevation of the proposal as shown below:



Amended south elevation

A front fence has been provided to a similar height as the existing retaining wall to which the proponent advises would 'assist with reducing the apparent height of the building and provide screening of the basement entry'. However, it is considered that this does little to mitigate the overall scale of the building, which would present itself as a three storey building, particularly when viewed from Charles Street as illustrated below:



Amended front (east) elevation in plan form



○ FRONT 3D

Amended 3D perspective of proposed dual occupancy development

Council's Urban Designer has reviewed the proposal and advised that '*Despite conjecture as to whether the building is a three storey building, or a two storey building with basement, in its present form it will present three clear storeys to the street elevation*'. Further, to achieve the buildings 'basement car park' a significant proportion of the site will need to be excavated including most of the front yard from side to side boundary which will exacerbate the presentation of the three storeys to the street and therefore resultant building envelope, bulk, scale and mass impacts.

Council remains of the opinion that development proposes a three storey building and that the SEPP No. 1 Objection submitted 'without prejudice' remains flawed in its interpretation of the TLEP 2000.

The revised SEPP No. 1 Objection states 'the development is of a height and scale that is in context with the surrounding development', as the building comprises two storeys. Council does not concur with this statement and considers that the Razorback Precinct, particularly on the steeper, east facing slopes, is characterised by single and two storey detached buildings. Whilst there are examples of elements of three storey buildings in the locality, such buildings are stepped down the slope of the site and present as single or two storey buildings at the street frontage.

The approval of this development would set a precedence for a dramatic shift in the nature of development in the locality, particularly on the steeper, up-sloping sites.



Existing vacant site viewed from Charles Street with retained benching stepping up the site

The proposed building would be 9m in height above finished ground level, with the garages excavated into the hillside so that the rear of the structure would be below the existing level of the land.

It is of great importance to note that Council policy is in a transition stage whereby the Draft Tweed City Centre LEP 2012 is close to gazettal. This document would allow for a building that would be 9m above existing ground level (therefore an additional 2m in height at the front of the building facing Charles Street, and an additional 6m in height at the rear). Therefore, as the 9m height limit may be taken from existing ground level, this would result in a building that would be considerably higher than the proposed development currently before Council.

Council's Planning Reforms Unit have advised that it is likely that the Height of Buildings Map for the Tweed City Centre will be adopted and this sets a dramatic precedent for a change in character in this locality.

As detailed above, Council considers that the development constitutes a three storey building. However, whilst the proposal would be inconsistent with the current TLEP 2000, the imminent gazettal of the Draft Tweed City Centre 2012 Plan is a material consideration with this regard.

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

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

Other Specific Clauses

Clause 39A – Bushfire Protection

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

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

Clause 54 – Tree Protection Order

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

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

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

The previous report to Council advised that the proposal raised concerns in relation to several design principles of the North Coast: Design Guidelines that apply to all future coastal development, as follows:

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

The revised details within the Section 82A RoD have not altered this position and it is considered that, by virtue of the subsequent bulk and height of the proposed three (3) storey building, the development would not respond to the density and scale of the majority of surrounding development and would adversely impact on the visual amenity of the area. As detailed further within this report, the development also proposes a significant variation to the maximum allowable FSR under the current LEP 2010 regime which exemplifies Council's concerns in relation to the overall scale of the proposed building in relation to the capacity of the site.

Whilst it is appreciated that the development has taken the topography of the site into consideration, it is considered that by further stepping the building back and eliminating the three storey element, particularly at the street frontage, would ensure that the building responded to the scale of surrounding development. It is considered unfortunate that the proponent has not put forward an amended design with this regard as it would have gone some way to retaining the existing single and two storey character and reducing the dominance and impact of the building.

However, the proposed development would be consistent with the requirements as set out in the Draft Tweed City Centre LEP 2012 for building height and FSR calculation within the Razorback Precinct. As this document is nearing gazettal this is a key factor in the determination of this application.

Clause 43: Residential development

As a dual occupancy development, the proposed density is considered to be a reasonable response to the land use character of the area. However, within the development comprises a significant variation to the maximum allowable FSR control under the current TLEP 2000, which, by reason of the resultant height and bulk, would negatively impact on the character and visual amenity of the surrounding area, which predominantly consists of two-storey, low density residential development.

This position has not altered however, the Draft Tweed City Centre LEP 2012 increases the FSR to a ratio of 0.8, to which the development is consistent. It would therefore be difficult for Council to retain its position with this regard, given the impending Draft document increases the FSR for such developments in the Razorback Precinct.

SEPP No. 1 - Development Standards

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

A detailed assessment of the original SEPP No. 1 Objection to vary the number of storeys permitted on the site was carried out within the original report to Council. Both the original and revised SEPP No. 1 Objection submitted as part of the Section 82A RoD reiterate the proponent's position that the development constitutes a two storey building.

It is considered that the amendments as included in the Section 82A RoD have not altered Council's previous assessment with this regard and Council is of the opinion that the building does in fact constitute three storeys. Under the current TLEP provisions, the proposed three storey would be contrary to the objective of Clause 16 and would, if approved set a harmful precedent for similar development in the locality. It is considered that, on the basis of the proponent's SEPP No. 1 Objection, the proposed three storey building would not be justified.

However, the revised SEPP No. 1 Objection does not take into consideration the imminent Draft Tweed City Centre LEP 2012 which is a material consideration in this regard. It is considered likely that this document will be adopted in the immediate future and, as detailed previously within this report, the document establishes a maximum height restriction of 9m as opposed to a maximum of two storeys. With this regard the proposed development would no longer be requesting a variation to the development standard and a SEPP No. 1 Objection would no longer be required.

Council is entering a period of policy change and therefore there is a requirement to balance the objectives of the current TLEP 2000 with the new objectives of the impending Draft Tweed City Centre LEP 2012. There may be a wish to retain the existing two storey character of the locality, to ensure that new development is responsive to the sloping topography and to reduce the overall visual impact of development along the ridgeline.

However, it is important to note that in the near future the proponent may wish to lodge a development application for a dual occupancy development located at 9m above the existing ground level, which would be consistent with the Draft Tweed City Centre LEP 2012. This may not result in a straightforward approval of such a proposal however it is a material consideration with this regard.

SEPP No. 71 – Coastal Protection

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

The proposed three (3) storey height and resultant bulk and scale of the proposed development is still considered to be out of character with surrounding development, which is predominantly characterised by one or two storey buildings. As previously detailed within the original assessment, the proponent has argued that the sloping site leaves no opportunity for reducing the overall scale of the development however it is considered that this does not adequately justify a building of this scale and proportion. Under the current TLEP 2000 controls, this is heightened by the proposed significant variation to the maximum allowable FSR controls.

Whilst the overall scale and bulk of the proposal is considered to be out of character with the surrounding built form, the imminent establishment of a maximum height limit of 9m above existing ground level is of importance in the determination of this application. Further, as advised by Council's Urban Designer, the building does provide a level of articulation to somewhat reduce the overall visual bulk and mass of the attached dual occupancy.

SEPP (Building Sustainability Index: BASIX) 2004

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

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

As detailed within this report the Tweed City Centre LEP 2012 has been adopted by Council and is awaiting gazettal by the Minister for Planning. In the Draft TLEP 2010 the site is located within the R3 – Medium Density Residential Zone. Within the R3 zone an Attached Dwelling is permitted with consent. The subject site is located within a zone with a height restriction of 9m.

However, Clause 4.3 (Height of Buildings) advises that development proposals should ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity and to limit the impact of the height of a building on the existing natural and built environment.

It is acknowledged that 9m is the maximum height limit within this zone and that a development proposal should consider surrounding urban character. The proposed building would be approximately 7m in height above existing ground level at the front of the site and 2.6m above existing ground level at the rear. The proposal therefore would, in principle, be consistent with this control.

Within the previous report to Council it was advised that as the Draft TLEP 2010 had not yet been adopted, that this document was not a material planning consideration. However since the determination of the application, the gazettal of this document and the Draft Tweed City Centre LEP 2012 are considered by Council staff to be imminent.

The Draft Tweed Heads DCP, which comes into force on gazettal of the Tweed City Centre LEP 2012, advises that, in relation to Ridgeline and Razorback Precinct:

'Development in the precinct is predominantly single detached dwellings stepping up the escarpment to take advantage of easterly views. The development controls anticipate minimal changes to the precinct with a two storey height limit for the majority of the precinct and some medium density buildings on the flatter areas east of Adelaide Street.'

Whilst the document advises that there would be 'minimal changes to the precinct', the controls default to Section A1 of the current DCP which stipulates a maximum building height of 9m. There appears to be a significant anomaly between the two draft documents with this regard.

It is acknowledged that the proposed building would significantly alter the character of the locality. The question is whether the existing two storey character should be preserved or whether a movement toward contemporary buildings of significantly greater scale is to be encouraged. However, as the Draft Tweed Heads DCP document states *'if there is any inconsistency between this Plan and the Tweed Local Environmental Plan, the LEP will prevail'*. On this basis it may be difficult to defend the refusal of the proposal, given the overarching policy document will establish a maximum building height of 9m from existing ground level in this locality.

For clarity, please refer to the table below that summarises the consistency of the proposal with the relevant policy documentation in relation to building height:

Policy document	Complies
Tweed LEP 2000	No (maximum 2 storey)
Draft Tweed City Centre LEP 2012	Yes (9m above existing ground level)
Section B2 DCP (Tweed Heads)	No (maximum 2 storey although no specific controls)
DCP 2008 Section A1	Yes (9m between finished ground level to highest point of building)
Draft Tweed City Centre DCP	No (maximum 2 storey although no specific controls)

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The previous report to Council acknowledged that, in general, the proposed development would be compliant with the controls detailed within the A1 Code. In some cases minor variations were considered to be justified, as detailed below:

Public views and vistas

Given the land slopes steeply from west to east it was considered unlikely that the proposal would impact on any public views from public places or obscure view corridors down the street.

Deep soil zones (DSZs)

The control specifies that DSZs are to be provided at the front and rear of the property. Although the opportunity for front DSZs is limited, the proposal generally complies with this control.

Rear DSZs are to have a minimum width of 8m or 30% of the average width of the site, whichever is the greater, and a minimum depth of 18% of the average length of the site up to 8m but not less than 5.5m. The rear DSZ has a width of 16m, with the DSZ encompassing the entire width of the site, which complies with the control. The rear DSZ has a depth ranging from 4.9m tapering to 1m which, given the constrained nature of the site is generally considered to be acceptable.

Above ground external living spaces, balconies and terraces

The development comprises a balcony to the front of the building with a depth of 3m which complies with the control (minimum depth 2.5m). The balconies for each dwelling are located adjacent to the main living areas and, whilst relatively small for dwellings of this size, are considered to be sufficient for outdoor recreation.

Questions were raised about the useability of the patios located on Level 2, given they would gain little sunlight, located at the rear of the building and adjacent to bathroom and utility areas.

Landscaping

The control requires development to provide useful outdoor spaces for liveability by coordinating the design of external living areas, deep soil areas and other landscaped areas with the design of the dwelling.

The development does not provide any internal access to the area of private open space at the rear of the dwellings. Concerns were raised about the useability of the area of private open space at the rear of the dwellings as well as the lack of integration between the external living areas and deep soil areas.

The control requires the provision of a landscaped front garden. Minimal area has been provided for landscaping in the front setback however given the constrained nature of the site this variation was considered justified.

Front, side and rear setbacks

The proposal was considered to accord with the front and side setback provisions. The front setback measures approximately 6m which is considered to be consistent with surrounding residential character. The control requires rear setbacks to measure 5m or the deep soil zone, whichever is the greater. The rear setback ranges from approximately 1m to 4.5m to the rear building line, or 5.5m to the edge of the patio. Given the constraints of the site it was considered that this variation was justified.

Carparking

The development proposes a double garage with the potential for an additional parking space in the driveway area which accords with the provisions of Section A2 of the DCP.

Building footprint

The proposed building would have daylight access from three sides of the building and therefore complies with the control.

Building separation

Given the proposed dual occupancy development is attached, a number of these controls were not specifically relevant to the proposal. However, it was considered that as living areas and bedrooms were located on upper floors, that adequate privacy and separation distances were achieved. Further, given adequate side separation distances had been provided, that it was unlikely that the proposal would impact on the residential amenity of adjoining properties.

Ceiling height

The proposal would be consistent with the Building Code of Australia requirements for ceiling heights (2.4m).

Sunlight access

Dwellings on allotments with side boundaries facing north, a minimum side setback of 4m should be required. The development proposes a side setback of 1.5m at the northern boundary. Given the constrained nature of the site it was considered that this variation was justified. However, it was considered that setting one of the units back from the other may have increased the north easterly light, as would the provision of internal light wells.

Visual privacy

The development proposes two balconies on the upper floor, both of which would be oriented toward Charles Street. As with all upper level balconies or terraces, there is the potential for overlooking towards neighbouring properties. In this instance, given the property to the northern boundary consists of front garden and to the south boundary, a right of way, it was considered that loss of privacy was unlikely to be a material consideration. Further, minimal windows are proposed to the side elevations.

Acoustic privacy

Details pertaining to air conditioners and the like have not been received. A condition could be applied to any consent to ensure such equipment does not exceed the background noise level by more than 5dB(A).

View sharing

It was considered that, in general, the proposal has been designed to minimise the impact to view corridors across the site.

Natural ventilation

All rooms would have operable windows provided to habitable rooms to allow cross-ventilation.

Fences and walls (front, side and rear)

It was generally considered that fencing would be in keeping with the appearance and design of the dwelling and would be consistent with the applicable controls. Please note that the height of retaining walls has been modified since the previous application details, as detailed below.

Roofs, dormers and skylights

The development proposes a contemporary roof form which provides articulation whilst minimising the impact at the site to the rear (in terms of view sharing and the like). Two skylights are proposed at the rear of the building and were considered unlikely to reduce the structural integrity of the building.

Elevations visible from the public domain

It was considered that the building clearly addresses the street with design elements such as garage doors, balconies, patio doors and the like clearly identifiable from the street, with the exception of front doors. It was considered that garages, whilst significant in scale, dominating the front elevation of the building, were integrated with the building design, being setback from the building line.

Minor elements

The application proposes clothes hoists, letter boxes and the like. A condition could be applied to any development consent ensuring that all minor elements are in accordance with the minor element controls.

Energy efficiency and water conservation

The application details include a BASIX certificate.

Waste management

The application details that any excess material would be appropriately removed from the site.

However, the following variations to the DCP controls are not considered to be justified and concerns remain about the impact of the proposal with this regard:

Streetscape character, external living areas and sunlight access

Section A1 advises that '*Dual occupancy housing is to be compatible with residential streetscape character*'. As previously detailed, the overall height and

scale of the proposal, coupled with the dominance of the double garages on the ground floor, is considered to be inconsistent with surrounding development and detrimental to surrounding streetscape character. Please note the photograph below that illustrates the dominant single and two storey, low density character of the Razorback Precinct.



Razorback Precinct viewed from Steep Street

The DCP also specifies that each dwelling is to be designed so that the access way to the front door is clearly identifiable from the street. Separate pedestrian access is not provided at the front of each dwelling.

Further, Section A1 stipulates that *'Each dwelling must provide a ground level with at least one habitable room, which must have an adjacent external living area located on ground... A ground level comprising solely carparking is not acceptable'*. The ground floor of the proposal consists solely of carparking. In some respects, given the topography and constrained nature of the site a variation of this control may be justified.

Council considers that a reduction to the height of the development, by stepping the building back into the site, would reduce the scale of the building so that it would be more in keeping with surrounding development.

Further, the internal reconfiguration of floor space (for example: reducing or removing Level 1 patio and setting services to the rear of the building; reconfiguring service, landing areas and lifts; reducing bedroom size on Level 2; providing light wells to staircases; reducing roof over Level 2 balconies and so on) may provide greater opportunity for integration between the internal and external living areas (open space at the rear), improve solar gain and overall unit amenity.

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

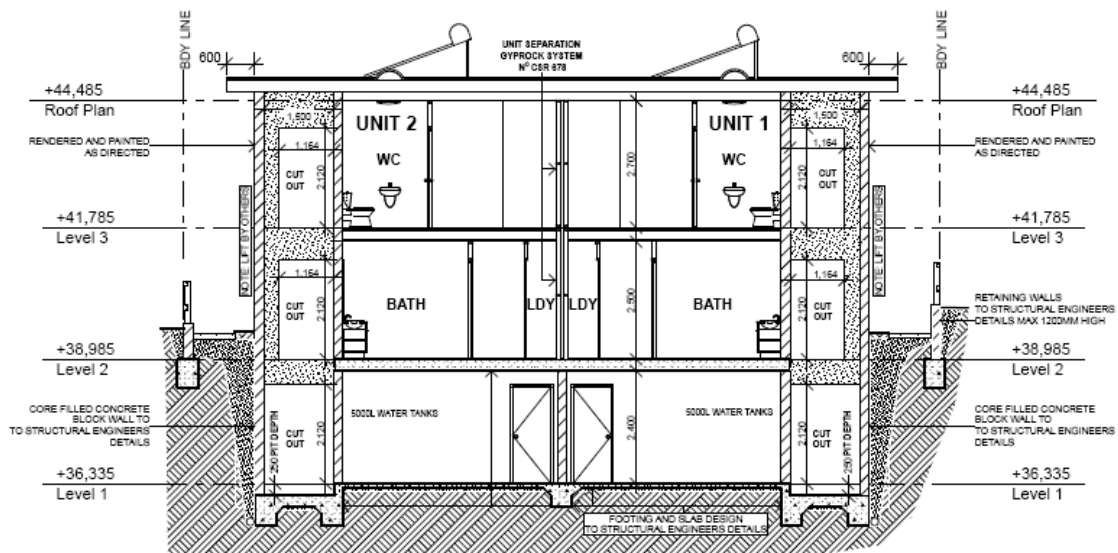
Such adjustment to the proposal, even if three storey elements remained, would reduce the bulk of the building and soften the impact of the development on the street scene, consistent with the intentions of the Draft Tweed City Centre DCP.

Cut and fill

The DCP requires that alternatives to slab on ground construction are to be encouraged where it is obvious that due to the gradient and characteristics of the site, major excavation or filling would be inappropriate. It also advises that dwellings must not be designed to be contiguous slab on ground type if the building site has a slope of greater than 10%.

The site has a slope of approximately 26% and whilst the step in slab design is acknowledged, it is considered that an additional step would be a preferable solution with this regard as the DCP encourages pole or pier construction or multiple slabs that would minimise the extent of cut and fill.

Further, the DCP requires retaining walls to be a maximum of 1.2m in height; for cut areas to be setback from the boundaries by at least 900mm; and fill areas to be setback by a minimum of 1.5m. Within the original application details, the proponent advised, that due to the limited size of the site the development would provide 1.2m high retaining walls within 900mm of the side boundaries, with higher retaining being accommodated in the stepped building footprint, as shown in the following plan:

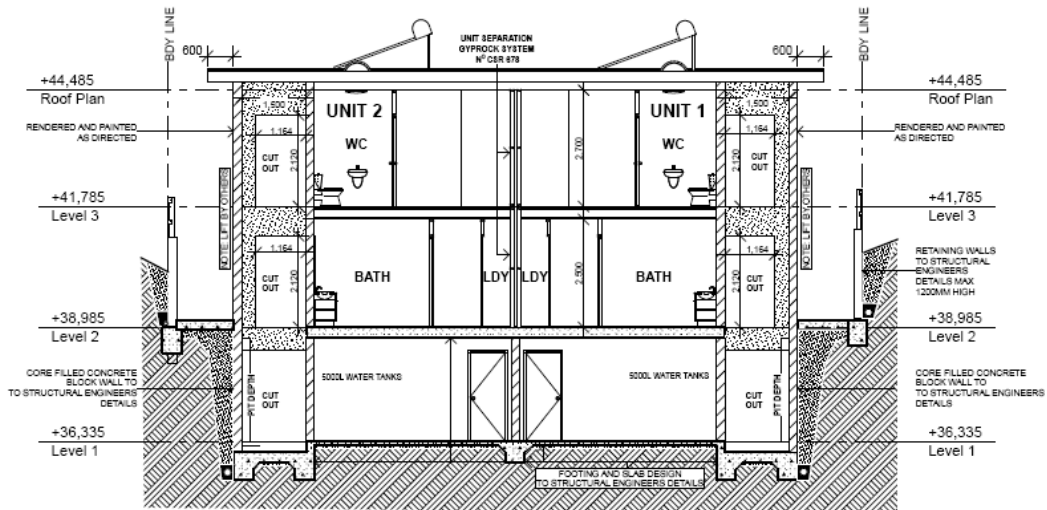


SECTION C-C
1:100 @A3

Original Section C-C through the building showing minimal retaining walls at the side boundaries

Council's Development Engineer previously advised that excavation to the site was generally minimal with the majority of excavation being contained within the building footprint. Within the previous assessment it was considered that this variation to the DCP controls was justified, given the constraints of the site in relation to size and topography,

The amended details appear to increase the height of retaining walls at the side boundaries with proposed retaining walls ranging from 1.2m to 2.0m, with 0.9m high fencing above as shown in the diagram below:



SECTION C-C
1:100 @A3

Revised section C-C through the building showing significant retaining walls at the side boundaries

The height of the retaining walls (2m) at this section of the building, coupled with the fencing on top, represents a substantial variation to the cut and fill requirements. The proponent has not provided additional justification for these variations, modified to take consideration of topography on the adjoining properties, to the DCP controls in relation to cut and fill. However, within the original application details, the proponent advised that the design of the development balances the need to minimise building bulk, provide view sharing and reduce external retaining.

It is acknowledged that the overall bulk of the building has been reduced by back filling into the site, however there is no escaping that the scale of the building would be considerable in comparison to surrounding development. However, it is of considerable importance to note that the Draft Tweed City Centre LEP 2012 establishes a maximum height limit of 9m above existing ground level. To comply with the cut and fill requirements would result in the building being constructed above the existing ground level, which would result in significantly greater concerns in relation to bulk and scale and detrimental impact to streetscape character, as well as a negative impact on surrounding residential amenity in terms of overlooking, loss of views and the like.

The balance needs to be made between the objectives of the DCP, in ensuring that development responds to the slope of the site, with the impending Draft

Tweed City Centre LEP 2012 that establishes a building height limit of 9m above existing ground level.

Basement carparking

The proponent maintains that the development comprises two storeys over a basement garage. However, the applicant has not provided any consideration in regard to the control that sets out standards for basement carparking (i.e. *basement carparking cannot extend more than 1m above ground level where it faces a public street or public space*).

The carparking area clearly extends more than 1m above ground level where it faces Charles Street (by approximately 2.3m) and the development would therefore not satisfy the requirements of this control.

Garages

The DCP seeks to ensure that garages do not dominate the street and requires garage doors to comprise less than 50% of the building elevation. The proposed double garages constitute 80% of the building elevation and therefore the ground floor of the building is dominated by an enclosed and blank frontage, with habitable rooms located on the upper floors.

Drawings illustrating how the mandatory controls in relation to the dominance of garages have been submitted, indicating that, given the steeply sloping and constrained nature of the site, setting the garages behind the front of the building line is not achievable. The proponent has advised that alternative options were considered for the garage entries, but none were considered feasible and that, as a design solution, garage entries were designed to present as a 'base' to the building with a contemporary door to improve presentation.

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

Floor Space Ratio

An additional variation is requested in relation to FSR. The proponent advises that the FRS is 0:73:1. The required FSR is 0:55:1 for attached dual dwellings that cover more than 50% of the site.

Within the previous assessment of the proposal the FSR of the building was calculated to be 0:80:1 (based on a floor area of 364m²). This equated to a variation of an additional 116m² of floor space to that specified in the DCP. Revised calculations of the floor area (excluding balconies, lifts and measured from the internal face of external walls) indicate a floor area of approximately 318m². As the site area measures 452m² the FSR is calculated to be 0:70:1.

Within the previous application details, the proponent stated that as the development accords with key controls relating to building setback, impervious

area, deep soil zones and provides a high standard architectural design, that the proposed variation to the FSR was justified.

Given the constrained nature (both in size and topography) of the site, a minor variation to the mandatory controls is in some respect considered justified. The variation to the current FSR controls (0:55:1), combined with the overall height, scale and bulk of the building, are not considered to be minor and would have a significant impact on the character of the Razorback precinct. The limited area for deep soil zones and external living areas; the dominance of the driveway and reduced landscaping in the front setback; the proximity of the building to the boundaries of the site as well as the overall height of the building signifies that the overall scale of the development exceeds the capacity of the site.

However, it is important to note that whilst the proposal does not comply with the current FSR controls for the locality, the proposal would accord with the Draft Tweed City Centre LEP 2012 document which will establish a FSR of 0:80:1. At a time of policy transition, a balanced assessment in relation to the protection of the character and appearance of the locality, combined with the need to encourage medium density forms of development is therefore required.

A2-Site Access and Parking Code

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

The proposal therefore complies with Section A2 of the DCP.

B2-Tweed Heads

The current Tweed Heads DCP advises that the Razorback Precinct is comprised of single and double storey detached dwelling-houses with the majority of the precinct being zoned for medium density housing. The precinct objectives are as follows:

- *Facilitate the development of the area north of First Avenue as a predominantly medium density residential area, and the area south of First Avenue as a low density residential area;*
- *Retain the Razorback Hill medium density zone as an attractive residential area, with buildings that respect the slope of the land and allow for the retention of views available from adjoining land;*
- *Encourage development to take advantage of available views and climatic effects;*
- *Ensure that development on visually prominent sites is relatively unobtrusive;*
- *Preserve the traditional leafy character of the precinct.*

Further, B2.7.3 advises that west of Adelaide Street, *'buildings should step down the slope of the land, such that they are no more than 2 storeys at any one point'*.

There are concerns that the proposed development would be inconsistent with the objectives of the precinct, particularly in relation to the provision of buildings that respect the slope of the land and in ensuring that development is relatively unobtrusive.

It is considered that the proposal does not respect the existing scale of built development and the proponent has not provided additional detail in this regard (such as photo-montages of the impact of the proposed building on the landscape).

Section B2 of the DCP discusses the need to preserve the low density character of the Razorback Precinct. However, as detailed at length within this report, the impending gazettal of both the Draft Tweed City Centre LEP 2012 (that establishes a maximum height limit of 9m) and the Draft Tweed Heads DCP (that has no specific controls in relation to building height and defaults to the LEP) is of material consideration with this regard.

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

Clause 92(a) Government Coastal Policy

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

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

Not applicable to the proposed development.

Tweed Shire Coastline Management Plan 2005

Not applicable to the proposed development.

Tweed Coast Estuaries Management Plan 2004

Not applicable to the proposed development.

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

Not applicable to the proposed development.

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

Context and Setting

Whilst the contemporary design and appearance of the buildings may not necessarily be in keeping with surrounding development, it is considered that they would provide a modern contrast and, by reason of the architectural detailing, would contribute to visual amenity and design interest within the locality (such as glazing, balconies, use of contrasting materials and the like).

However, the impact of the height and scale of the proposed development, coupled with the dominance of the double garages would impact on the visual amenity and character of the Razorback Precinct.

However, Council's Urban Designer has advised that, despite the three storey presentation to the street, the building design does provide a level of articulation to somewhat reduce the overall visual bulk and mass of the building as follows:

- the first level slightly cantilevering over the garage level which will have the visual result of recessing the garage doors resulting in a deep shadow being cast across them;
- the upper levels consist of glass balustrade and a pattern of sliding doors and windows providing physical and visual connections between the living space and the balcony areas and 'layering' to the elevation
- a single pitching roof supported by an expressed strut on either side of the attached building provides further articulation;
- a strong blade wall protrusion physically and visually separates the two attached units;
- the balconies provides an extra element of elevation depth further articulating the facade.

It is considered that the choice of material finishes and colours could be more reflective of the local landscape character and varied to assist in breaking down the overall bulk of the building. It is noted that the predominant built form character of Charles Street includes a mix of timber framed buildings with lightweight cladding including weatherboard, FC sheeting, colourbond cladding with timber detailing. The development proposes painted render. Council's Urban Designer has advised that the ground level could remain predominantly painted render with upper floors being varied to include weatherboard.

Combined with more material variation, colour could provide a stronger relationship with existing landscape character. Colours that are complimentary with the natural landscape (i.e. timber, stone, metal) may visually provide the elevation with more depth than the proposed white and beige. Council's Urban Designer has advised that a darker garage level will assist in 'nestling' it into the site and draw the eye to the upper two levels which cantilever out and beyond this lower level.

Should Council be minded to approve the proposal, there may be opportunities to soften the development through appropriate use of materials (such as a contrast of timbers, glazing and rendered sections with a variety of natural paint colours, as opposed to large expanses of painted render).

Further, the opportunity exists for further integration of landscape elements and landscape treatment to the front corners of the site. At present it is proposed that the front of the lot be excavated almost from boundary to boundary, with the front boundary delineated by a part masonry and vertical (steel) fence. It is considered that if part of the existing ground level were maintained (not excavated) and landscaped, the visual impact of the double attached garage doors would be lessened. Conditions of the consent to ensure appropriate boundary treatment and landscaping (street trees where possible with shrubs or varying heights and colours) could be applied with this regard.

Access, Transport and Traffic

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

Cumulative Impacts

The previous report to Council advised that the approval of this development application would set a undesirable precedent for similar development within the locality and within the Shire as a whole and that the purpose of the LEP and other relevant planning policy is to ensure development would be consistent with the surrounding built form and provide liveable and sustainable development that would make a positive contribution to surrounding residential and visual amenity.

As previously detailed, whilst there may be examples of other buildings that comprise three storey elements in the vicinity of the site, it is considered that, under current policy, the proposed three storey building, coupled with the overall scale and bulk of the building, would be inconsistent with the overwhelming majority of built form in the locality and would set an precedent for similar development in the future.

However, the impending Draft Tweed City Centre LEP 2012 is of key importance in the determination of this application as the proposal would, in general terms, be consistent with the height limit for the zone.

(c) Suitability of the site for the development

Topography

The development does take consideration of the topography of the site and, given the steeply sloping nature of the site, Council appreciates that strict compliance with Clause 16 of the TLEP 2000 as well as the mandatory controls in relation to FSR may present difficulties in relation to building design and financial viability of the proposal.

Despite compliance with the impending policy documents, it is considered that there may be possibility to further step the building back into the site (by reducing the footprint of Level 1 and 2; and internal reconfiguration for example) to reduce the overall height and bulk of the building.

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

Notification of the original application generated two submissions, the main concerns of which related to the impact of the construction phase to surrounding properties (No. 44 and No. 46 Charles Street); increased traffic congestion from Steep Street to Adelaide Street and in relation to overlooking from the front balcony back towards the living area of No. 29 Charles Street. In this regard the following response was put forward:

Site stability

Council's Development Engineer has reviewed the proposed development and has provided no objection in relation to slope stability. Providing the retaining walls are certified by a suitably qualified Structural Engineer no further consideration with this regard was required.

Traffic congestion

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

Overlooking

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

Three submissions have been received in relation to the current Section 82A RoD before Council. The main concerns relate to: the impact of construction on surrounding residents (considered above); traffic congestion (also considered above); the height of the proposed building and the impact this may have on the development potential of the lot at the rear of the site. One submission was received from a neighbouring property in relation to the overall size and bulk of the development being too large for the 450m block.

Loss of views and privacy

Concerns have been raised from the owner of the property at the rear of the subject site who considers the height of the proposal may impede the future development potential (in relation to views and privacy) of the site (Lot 22 in DP 1124438).

Whilst Council concurs that a two storey building would be more suitable on this sloping site, the impending Draft Tweed City Centre LEP 2012 establishes a height limit of 9m above existing ground level. This may have a greater impact on views at the rear of the subject site.

The development is generally consistent with the provisions of A1 in relation to rear setbacks and the like.

Size and bulk

This report has considered the issue of the scale of the building and whether it is appropriate on the subject site or appropriate in this locality. This presents intrinsic difficulties in the determination of this proposal, given the proposal would be consistent with the impending policy document.

(e) Public interest

It is considered that the proposed dual occupancy development would not impact on the public or community interests. However, as detailed, there are inherent difficulties in balancing the current policy criteria of retaining a two storey character for this locality against the impending policy documents, to which the development would be consistent.

OPTIONS:

1. Approve this Section 82A RoD with conditions of consent in relation to appropriate materials and landscaping; or
2. Refuse this Section 82A RoD in accordance with the previous recommendation for refusal.

CONCLUSION:

As detailed within this report the proponent has consistently attempted to present the development as a two storey building that would be in keeping with surrounding development. The SEPP No. 1 Objection submitted as part of this Section 82A RoD continues to provide this argument and, in Council's opinion, fails to adequately justify the variation to the development standard with this regard.

However, Council is undergoing a period of change with the gazettal of the Draft Tweed City Centre LEP 2012 and Tweed LEP 2010 expected in the near future. Since the application was originally determined this has become a material consideration and critical in the determination of the current Section 82A RoD currently before Council.

COUNCIL IMPLICATIONS:

a. Policy:

Refer issues to Council's Planning Reforms Unit for consideration to clarify controls between planning documents for the Tweed City Centre Local Environmental Plan 2012, the Tweed City Centre Development Control Plan and the Tweed Development Control Plan Section A1.

b. Budget/Long Term Financial Plan:

If an appeal is pursued by the applicant legal costs will be incurred. The applicant was required to exercise available appeal rights to enable Council to consider the Section 82A Review of Determination application.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website 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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14 [PR-CM] Development Application DA12/0215 for a Change of Use to Daytime Respite Care Centre with Associated Signage, Car Parking and Landscaping at Lot 23 DP 8100 No. 9 Boyd Street, Tweed Heads

SUBMITTED BY: Development Assessment

FILE NUMBER: DA12/0215 Pt1



Civic Leadership

SUMMARY OF REPORT:

Council at its meeting of 25 September 2012 resolved as follows:

"RESOLVED that this item be deferred for a Workshop."

In accordance with this resolution a Workshop was held on 18 October 2012.

A full copy of the original report to Council's meeting of 25 September 2012 is reproduced below.

Original report to Council's meeting of 25 September 2012

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION:

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

GENERAL

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

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

except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0015]

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

[GEN0065]

4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
5. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.
[GEN0135]
6. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.
[GEN0245]
7. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.
[GEN0265]
8. The approved signage and symbol are not illuminated and do not include moving graphics or signage elements that flash, flicker or are animated in any way.
[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

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

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

[PCC0065]

10. Section 94 Contributions

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

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

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

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

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

(a) Tweed Road Contribution Plan:

2.86 Trips @ \$822 per Trips \$2351

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

S94 Plan No. 4

Sector1_4

[PCC0215]

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

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

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

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

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

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

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

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

[PCC0265]

12. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

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

- Incorporating the two mature fig trees at the front of the site, and
- Indicating consistency with approved Site Plan (Plan No. 1417D Amendment 1 Sheet 1, as amended in red, prepared by Parameter Designs and dated 8 August 2012).

[PCC0585]

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

[PCC0735]

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

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

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

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

[PCC0895]

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

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

[PCC1155]

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

[PCC1195]

18. Prior to the issue of a construction certificate, plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be provided to Council for assessment and approval, accompanied by a completed Application for Approval of Food Premise Fitout and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate.

- a. Floor plan
- b. Layout of kitchen showing all equipment including separate hand basin
- c. All internal finish details including floors, wall, ceiling and lighting
- d. Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

19. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

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

- (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and

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

[PCW0215]

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

[PCW0225]

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

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

[PCW0255]

23. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0665]

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

[PCW0835]

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

[PCW0985]

26. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

DURING CONSTRUCTION

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

[DUR0005]

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

[DUR0015]

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

[DUR0085]

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

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

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

[DUR0215]

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

[DUR0375]

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

- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.**
- (b) The chute shall be located in a position approved by the Principal Certifying Authority.**
- (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.**

[DUR0385]

- 34. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.**

[DUR0395]

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

[DUR0405]

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

[DUR0415]

- 37. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001.**

The proponent shall also observe the guidelines set down under the Department of Environment and Climate Change publication, "A Renovators Guide to the Dangers of Lead" and the Workcover Guidelines on working with asbestos.

[DUR0645]

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

[DUR0995]

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

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

[DUR1005]

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

[DUR1015]

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

[DUR1025]

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

[DUR1045]

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

[DUR1075]

44. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicant's responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

45. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

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

[DUR1685]

47. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.
- [DUR1695]
48. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.
- [DUR1705]
49. Pursuant to the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
- [DUR1725]
50. A concrete footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.
- Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.
- [DUR1735]
51. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
52. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.
- [DUR1885]
53. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
- [DUR1925]
54. The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.
- [DUR2015]

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

[DUR2185]

56. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling;
- (d) completion of work and prior to occupation of the building.

[DUR2485]

57. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

[DUR2495]

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

[DUR2545]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

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

[POC0005]

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

[POC0205]

61. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0225]

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

[POC0255]

63. All landscaping work is to be completed in accordance with the approved plan prior to any use or occupation of the building.
[POC0475]
64. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.
[POC0515]
65. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.
[POC0525]
66. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.
[POC0615]
67. The proprietor of the food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations by completing the "Notify a Food Business" form under the NAFSIS Heading on the following website www.foodnotify.nsw.gov.au or alternatively by contacting the NSW Food Authority on 1300650124.
[POC0625]
68. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.
[POC0745]
69. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.
[POC1045]
70. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.
[POC1055]
71. Prior to occupation of the development, Council must undertake a final inspection of the works and be satisfied that all conditions of consent have been complied with.
[POCNS01]
72. Prior to the issue of an occupation certificate the swimming pool located over No. 7 and No. 9 Boyd Street is to be removed and the metal clad enclosure attached to the building at No. 7 Boyd Street which encroaches over the side boundary is to be removed. After the removal of this attachment the southern elevation of this building is to be restored to its previous form and should comply with the BCA in respect of weatherproof requirements and boundary setbacks.
[POCNS02]

USE

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

[USE0125]

74. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

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

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

[USE0185]

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

[USE0225]

77. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer.

[USE0245]

78. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

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

[USENS01]

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

[USENS02]

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

[USENS03]

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

[USENS04]

REPORT:

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

Background:

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

History

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

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

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

The Subject Site

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

The Proposed Development

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

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

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

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

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

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

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

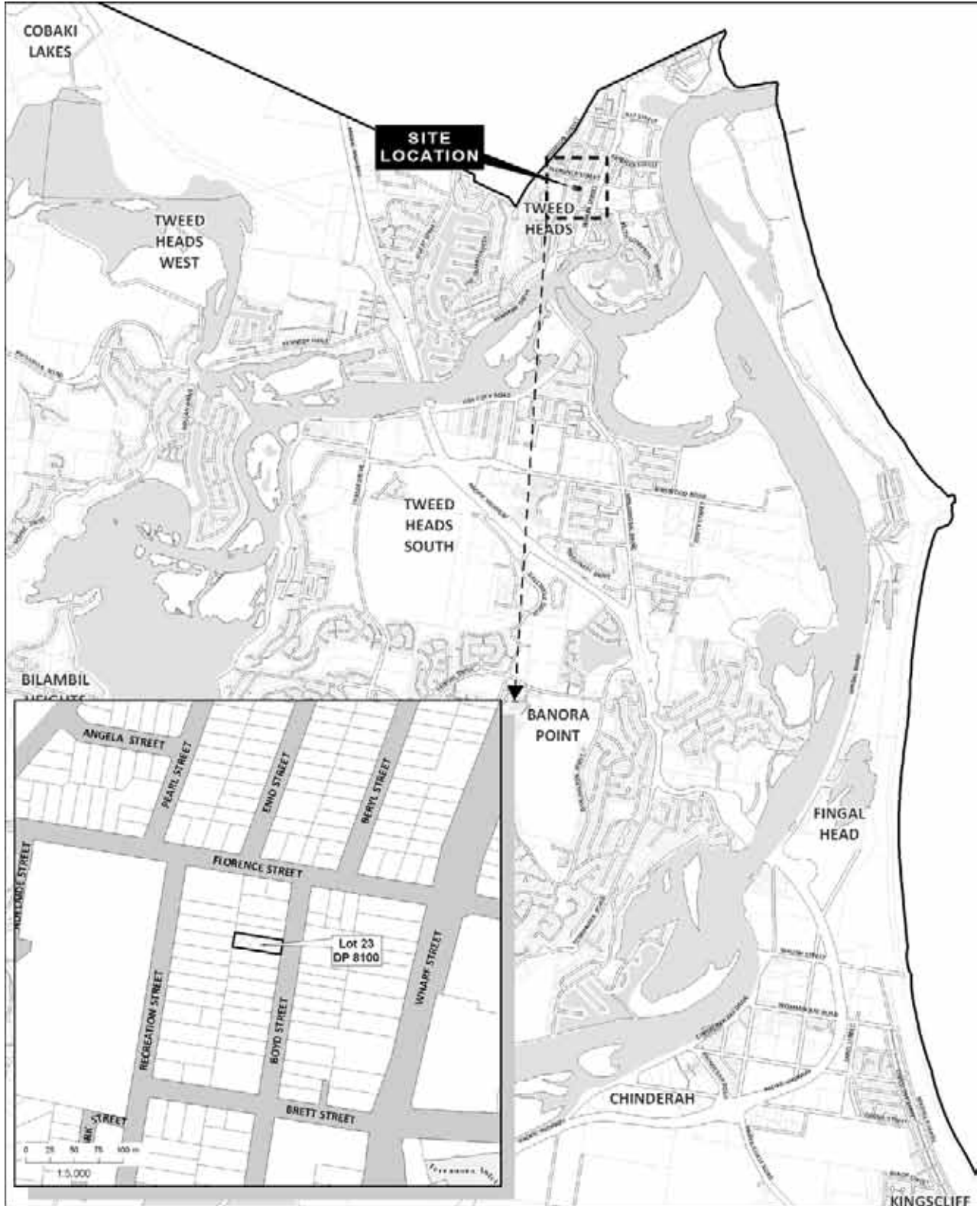
The applicant states that the area is *experiencing great housing stress which contributes to the homeless population* and that *the facility would bring human comfort to those without a home* with the provision of essential services.

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

Summary

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

SITE DIAGRAM:



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

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty regarding its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including interest) or consequential damage and costs which may be incurred as a result of data being inaccurate, incomplete and for any reason. This information is supplied for the general guidance and is not to be relied upon for any specific purpose. It should not be used for any purpose for which it was not intended. The information contained on this document is valid for 12 days only from the date of supply.

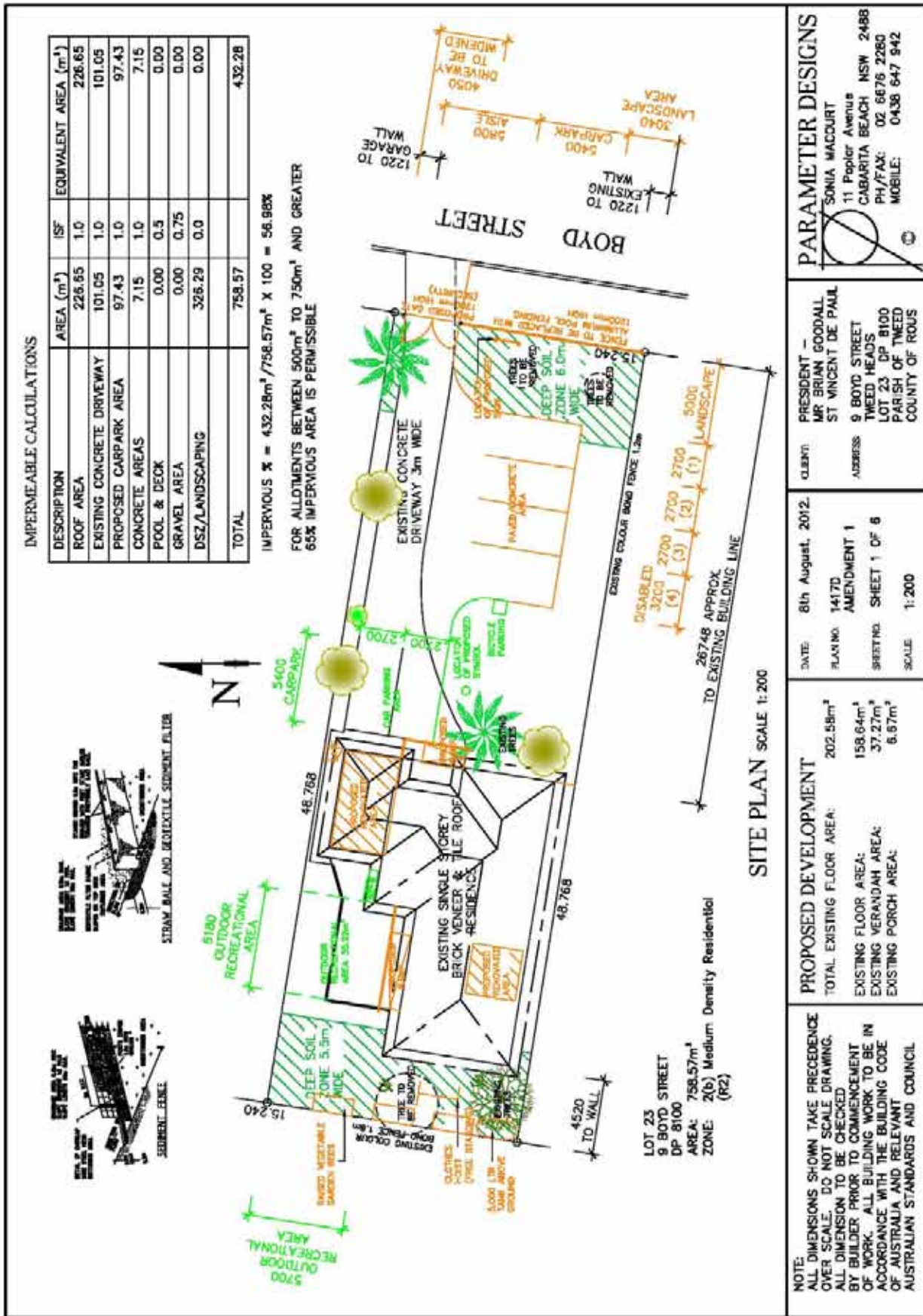
L283197: 17 September 2012
 Land and Property Management Authority (L283197)
 Tweed Shire Council
 Boundaries shown should be considered approximate only.

0 25 50 75 100 m
 1:5,000
 A4 PAPER
 899 002 - 899 001000

Civil and Cultural Centre
 1 Turbulence Road
 MURUMBidgee NSW 2488
 PO Box 816
 Murumbidgee NSW 2484
 T (02) 4870 2000 / 1300 262 872
 F (02) 5512 2827
 W www.tweedshire.nsw.gov.au
 E council@tweedshire.nsw.gov.au

TWEED
 SHIRE COUNCIL

DEVELOPMENT PLANS:



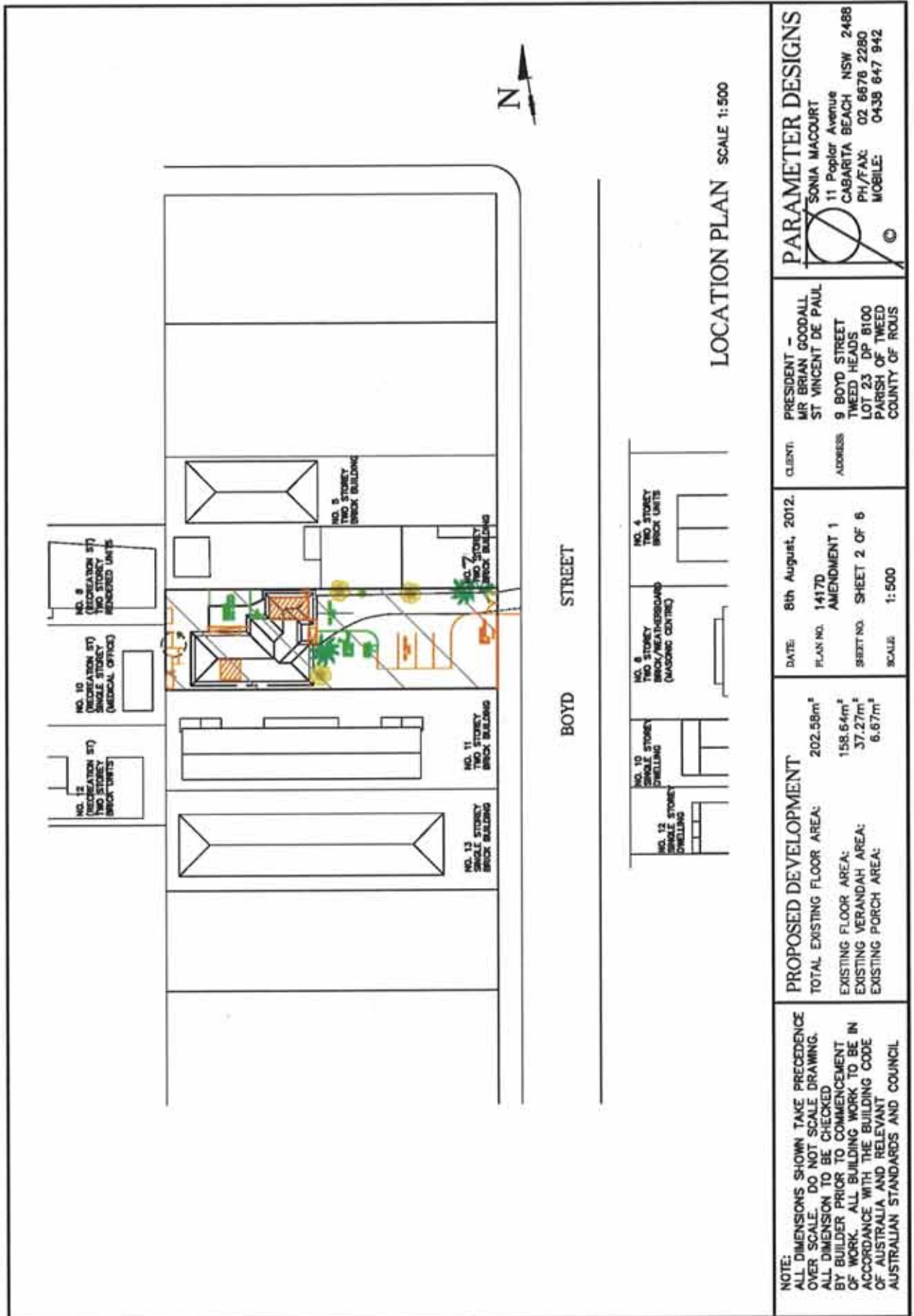
NOTE:
 ALL DIMENSIONS SHOWN TAKE PRECEDENCE OVER SCALE. DO NOT SCALE DRAWING. ALL DIMENSION TO BE CHECKED BY BUILDER PRIOR TO COMMENCEMENT OF WORK. ALL BUILDING WORK TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND RELEVANT AUSTRALIAN STANDARDS AND COUNCIL

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

DATE: 8th August, 2012.
 PLAN NO: 1417D
 AMENDMENT 1
 SHEET NO: SHEET 1 OF 6
 SCALE: 1:200

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

ADDRESS: 9 BOYD STREET
 TWEED HEADS
 PARISH OF TWEED
 COUNTY OF ROUS



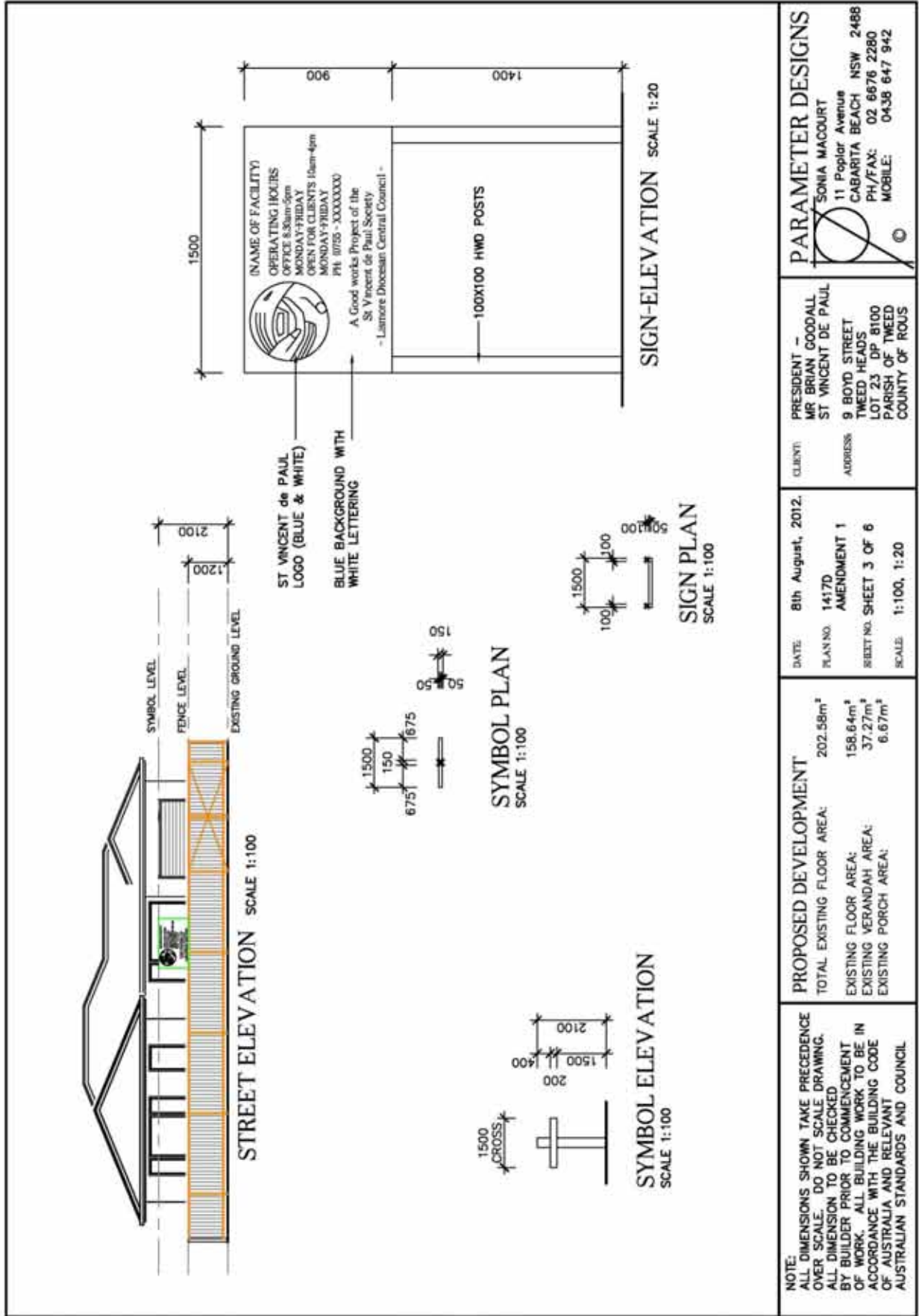
PARAMETER DESIGNS
 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2488
 PH/FAX: 02 6678 2280
 MOBILE: 0439 647 942

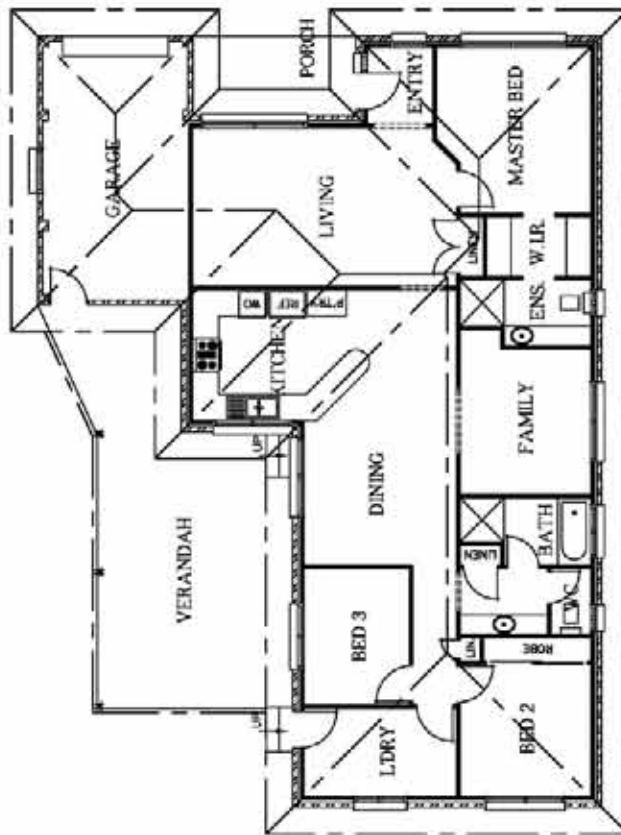
CLIENT:
 PRESIDENT - MR BRIAN GOODALL
 ST VINCENT DE PAUL
ADDRESS:
 9 BOYD STREET
 TWEED HEADS
 LOT 23 DP 8100
 PARISH OF TWEED
 COUNTY OF ROUS

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

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

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





EXISTING FLOOR PLAN SCALE 1:100

GFA/FSR CALCULATIONS

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

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

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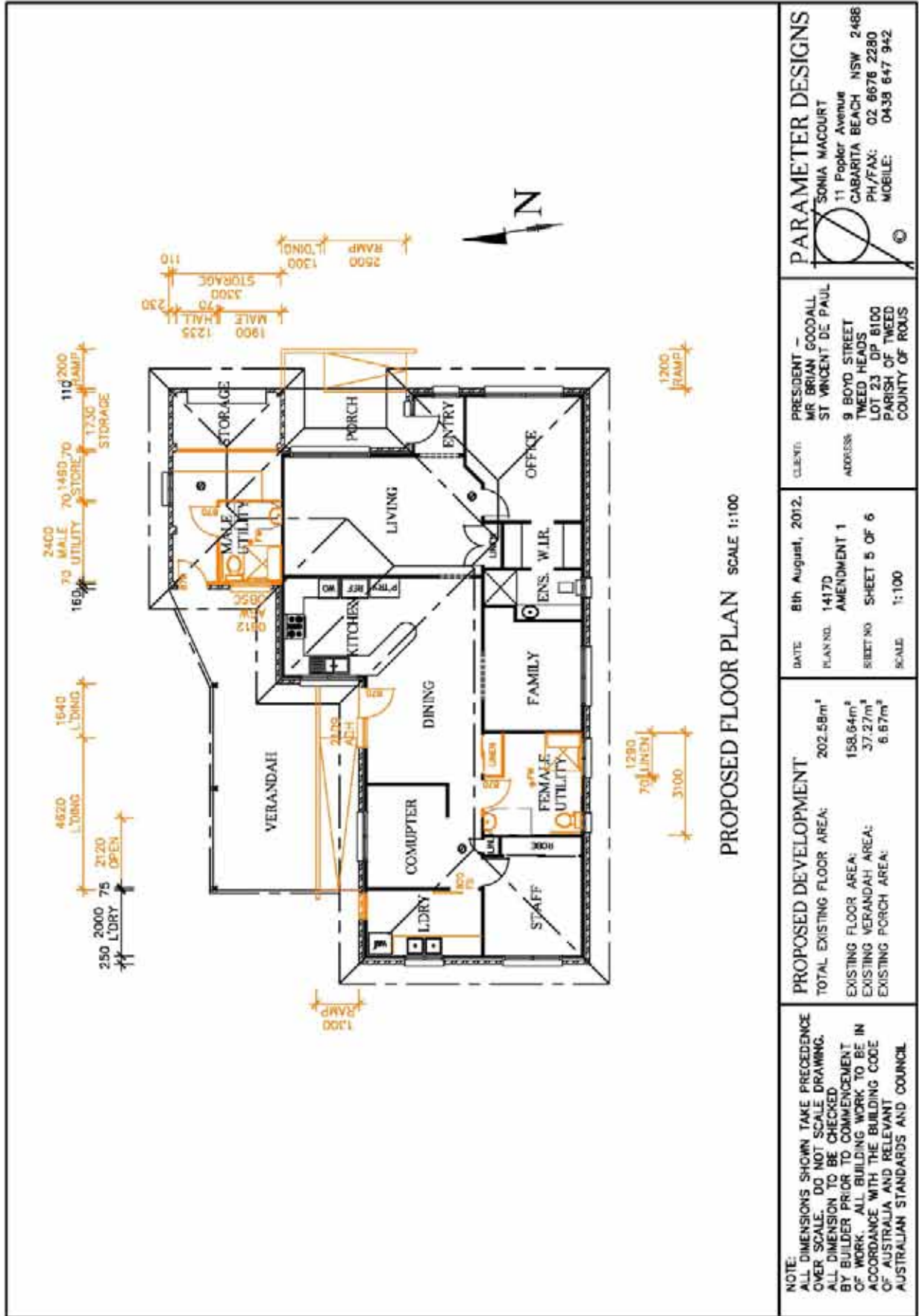
PROPOSED DEVELOPMENT
 TOTAL EXISTING FLOOR AREA: 202.58m²
 EXISTING FLOOR AREA: 158.64m²
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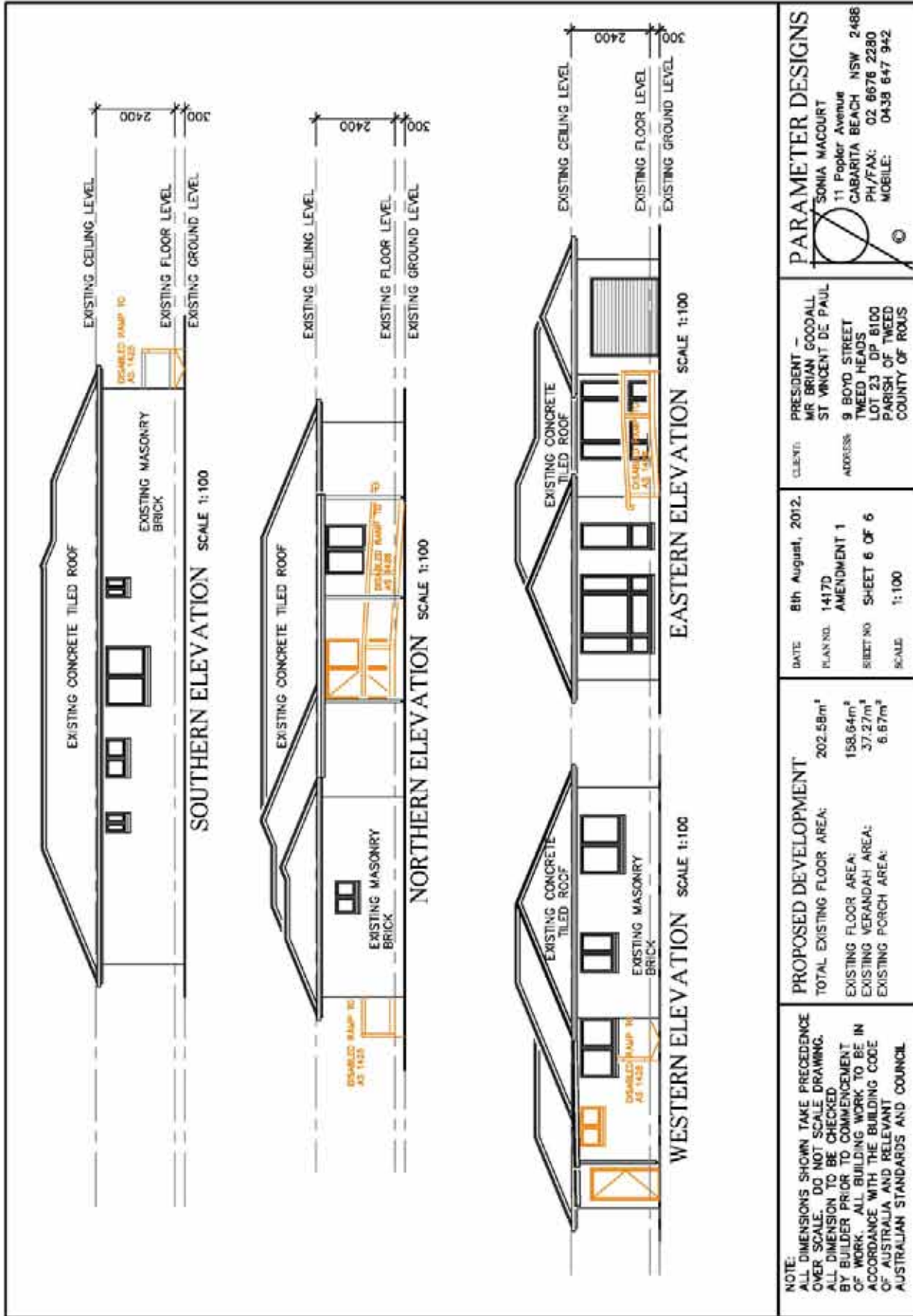
DATE: 8th August, 2012.
 PLAN NO: 1417D
 AMENDMENT 1
 SHEET NO: SHEET 4 OF 6
 SCALE: 1:100

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

PARAMETER DESIGNS

 SONIA MACCOURT
 11 Poplar Avenue
 CABARITA BEACH NSW 2486
 PH/FAX: 02 6676 2280
 MOBILE: 0438 647 942





<p>PROPOSED DEVELOPMENT TOTAL EXISTING FLOOR AREA: 202.58m² EXISTING FLOOR AREA: 158.64m² EXISTING VERANDAH AREA: 37.27m² EXISTING PORCH AREA: 6.67m²</p>	<p>CLIENT: PRESIDENT - MR BRIAN GOODALL ST VINCENT DE PAUL TWEED HEADS PARISH OF TWEED COUNTY OF ROUS</p> <p>ADDRESS: 9 BOYD STREET TWEED HEADS LOT 23 DP B100 PARISH OF TWEED COUNTY OF ROUS</p>	<p>DATE: 8th August, 2012. PLAN NO: 1417D AMENDMENT 1</p> <p>SHEET NO: SHEET 6 OF 6 SCALE: 1:100</p>	<p>PARAMETER DESIGNS SONIA MACCOURT 11 Poplar Avenue CABARITA BEACH NSW 2486 PH/FAX: 02 6676 2280 MOBILE: 0438 647 942</p>
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Considerations Under Section 79c Of The Environmental Planning And Assessment Act 1979:

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

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

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

Clause 5 - Ecologically Sustainable Development

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

Clause 8 – Consent Considerations

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

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

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

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

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

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

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

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

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

Clause 11 - Zone objectives

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

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

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

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

Clause 15 - Essential Services

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

Clause 16 - Height of Building

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

Clause 17 - Social Impact Assessment

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

Clause 35 - Acid Sulfate Soils

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

Specific Clauses

Clause 34 - Flooding

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

Clause 47 – Advertising Signs

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

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

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

Clause 54 – Tree Preservation Order

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

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

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

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 32B: Coastal Lands

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

SEPP No. 64 – Advertising and Signage

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

SEPP No 71 – Coastal Protection

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

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

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

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

Definition:

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

Permissibility:

3 Permitted with consent

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

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

Tweed Development Control Plan

A2-Site Access and Parking Code

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

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

A3-Development of Flood Liable Land

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

A4-Advertising Signs Code

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

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

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

A11-Public Notification of Development Proposals

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

B2-Tweed Heads

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

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

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

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

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

Tweed Heads Master Plan

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

Tweed City Centre Draft Development Control Plan 2011

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

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

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

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

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

Clause 92(a) Government Coastal Policy

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

Clause 92(b) Applications for demolition

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

Clause 93 Fire Safety Considerations

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

Clause 94 Buildings to be upgraded

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

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

Tweed Shire Coastline Management Plan 2005

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

Tweed Coast Estuaries Management Plan 2004

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

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

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

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

Security Services

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

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

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

Context and Setting

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

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

Traffic

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

Stormwater Quality Management

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

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

Flora and Fauna

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

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

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

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

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

Waste

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

(c) Suitability of the site for the development

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

Surrounding Land Uses/Development

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

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

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

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

Access

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

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

Food Construction

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

Contamination

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

Hours of Operation

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

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

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

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

Public:

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

The applicant has addressed the submissions as follows:

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

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

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

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

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

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

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

Public Authority:

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

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

(e) Public interest

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

OPTIONS:

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

CONCLUSION:

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

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Boyd Street Day Respite Centre Draft Management Plan Revision A 13 August 2012 (ECM 57597817)

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15 [PR-CM] Development Application DA11/0456 for Additions to Existing Manufactured Home Estate Including 32 New Manufactured Home Sites, Recreation Area, Visitor Parking and Extension of Internal Road and Revegetation Work at Lot 193 DP 1014329 No. 34 Mona

SUBMITTED BY: Development Assessment

FILE NUMBER: DA11/0456 Pt4



Civic Leadership

SUMMARY OF REPORT:

Council at its meeting of 21 August 2012 resolved as follows:

"RESOLVED that:

1. *This item be deferred until the next formal Council meeting.*
2. *The General Manager arranges a site inspection for all Councillors prior to the formal meeting at point 1.*
3. *A workshop follows the site inspection."*

In accordance with this resolution, a site inspection for Councillors was held on 16 October, 2012 and a Councillors Workshop was held on 18 October 2012.

A full copy of the original report to Council's meeting of 21 August 2012 is reproduced below.

Original Council report to Council's meeting of 21 August 2012

Council is in receipt of a development application for an extension to an existing manufactured home estate on Lot 193 DP1014329 No. 34 Monarch Drive, Kingscliff.

The extension is for 32 new manufactured home sites located on the northern side of the existing lake. The proposal includes construction of an internal road, recreation area, additional car parking, an acoustic fence located adjacent to Tweed Coast Road and revegetation/compensatory habitat.

The main issues raised during the assessment of the application include the following:

- Flooding impacts;
- Ecological issues;
- Noise impact from Tweed Coast Road on proposed manufactured homes;
- Amenity;
- Retaining walls; and
- Fill.

This application has been submitted for Council consideration in light of the substantial community response (130 submissions) to the public exhibition of this development application. The Division of Local Government has provided written confirmation that the subject proposal does not fall within the category of "controversial development application" under Local Government (General) Amendment (Caretaker Period Restrictions) Regulation 2012, and therefore the Council is in a valid position to determine this matter at this meeting.

The Council officers have conducted a thorough assessment of the relevant legislation and planning merits of this proposal and consider that the application is suitable for approval, subject to conditions of consent.

RECOMMENDATION:

That Development Application DA11/0456 for additions to existing manufactured home estate including 32 new manufactured home sites, recreation area, visitor parking and extension of internal road and revegetation work at Lot 193 DP 1014329 No. 34 Monarch Drive, Kingscliff be approved subject to the following conditions:

GENERAL

- The development shall be completed in accordance with the Statement of Environmental Effects dated September 2011 prepared by Jim Glazebrook & Associates Pty Ltd (and additional correspondence), and plans listed in the table below, except where varied by the conditions of this consent.**

Title	Date	Author	Drawing / Issue Number
Master Plan	23/07/2012	Zoran Architecture	MCU - 101 F2
Perimeter Reference Plan	23/07/2012	Zoran Architecture	MCU - 101 F2
Part Site plan 1	23/07/2012	Zoran Architecture	MCU-201 F1
Part Site plan 4	23/07/2012	Zoran Architecture	MCU - 204 F1
Part DCP - 1	23/07/2012	Zoran Architecture	MCU - 301 F1
Part DCP - 4	23/07/2012	Zoran Architecture	MCU-304 F1
External Work 1	23/07/2012	Zoran Architecture	MCU-401 F1
External Work 4	23/07/2012	Zoran Architecture	MCU-404 F1
Partial Site Plan (Fence Plan)	23/07/2012	Zoran Architecture	FEN01 F2
Partial Site Plan (Fence Plan)	23/07/2012	Zoran Architecture	FEN02 F2
Partial Site Plan (Fence Plan)	23/07/2012	Zoran Architecture	FEN03 F2
Landscape Plan		Deborah Carlile & Paul Mjatelski Pty Ltd	LSK01H
Landscape Plan		Deborah Carlile & Paul Mjatelski Pty Ltd	LSK04A
Landscape Plan		Deborah Carlile & Paul Mjatelski Pty Ltd	LSK02C
Landscape Plan		Deborah Carlile & Paul Mjatelski Pty Ltd	LSK03A

[GEN0005]

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

[GEN0045]

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

[GEN0115]

4. 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]

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

[GEN0265]

6. Development of the proposed dwelling sites shall be carried out in accordance with the noise attenuation measures recommended in the report of Craig Hill Acoustics (ref: *Noise Level Impact Assessment - revision 3*, Craig Hill Acoustics 24 February 2012) and design drawings Zoran Architecture drawings MCU-101 F2; MCU-102 F2; MCU-201 F2; MCU-204 F2; MCU-301 F2; MCU-304 F2; MCU-401 F2; MCU-404 F2; FEN01 F2; FEN02 F2; and FEN03 F2 dated 23-07-2012.

Future construction and installation of the proposed manufactured homes shall also be carried out in accordance with the noise attenuation measures recommended in the report of Craig Hill Acoustics (ref: *Noise Level Impact Assessment - revision 3*, Craig Hill Acoustics 24 February 2012) except: a) "the Rw values given in Table 4.6 are the minimum values that are to be used; b) "windows rated at 30Rw or higher to be installed in all bedroom windows facing the track, on the adjoining property to the north, known as Lot 1 DP 227034.

[GENNS01]

7. Satisfactory compensation, generally as illustrated by Landscape Plan LSK04A by Zoran Architecture version A1.8.12 (minor amendment), must be provided for loss of habitat of high ecological value, evidenced by a Habitat Restoration Plan prepared in accordance with Council's draft *Guideline for the preparation and implementation of Habitat Restoration Plans*. The Habitat Restoration Plan must include, but not be limited to:

- a schedule and timing of on-ground works to be undertaken
- a signed contract or other evidence of commitment by the consent holder to fund the proposed habitat restoration works for a minimum period of five years and that the works will be completed by qualified and experienced ecological restoration. personnel.
- evidence as to how the agreed offset sites will be protected from future development.

[GENNS01]

8. A maximum of two bedrooms are permitted in each manufactured home.

[GENNS02]

9. Prior to the operation of the expanded manufactured home site, prior approval must be given by Council under section 68 of the Local Government Act.

[GENNS03]

10. Prior to the installation of any building or structure, prior approval must be given by Council under section 68 of the Local Government Act.

[GENNS03]

11. A manufactured home and associated structure must not be installed on a single dwelling site if the floor plan area of the manufactured home (together with that of any associated structure or other building or structure on the site) is more than two-thirds of the area of the site.

[GENNS04]

12. The manufactured home estate shall be designed, constructed and maintained in accordance with the requirements of Division 3 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

[GENNS05]

13. The proposed dwellings are to comply with the definition of a manufactured home. A manufactured home is a self-contained dwelling (that is, a dwelling that includes at least one (1) kitchen, bathroom, bedroom and living area that also includes toilet and laundry facilities), being a dwelling:

- a. that comprises one or more sections that are each constructed, and assembled, away from the manufactured home estate and transported to the estate for installation on the estate; and
- b. that is not capable of being registered under the Traffic Act 1909, and includes any associated structures that form part of the dwelling.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

14. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

15. 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:

124.8 Trips @ \$1146 per Trips \$143021

(\$1137 base rate + \$9 indexation)

S94 Plan No. 4

Sector6_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

\\$Con_{TRCP - Heavy} heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist. average haulage distance of product on Shire roads
(trip one way)**

\\$Unit the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

(b) West Kingscliff - Drainage:

1.725 HA @ \$56641 per HA \$97705.73

(\$5664.1 base rate + \$50976.9 indexation)

DCP Section B4

S94 Plan No. 7

(c) West Kingscliff - Open Space:

22.6656 ET @ \$2906 per ET \$65866

(\$1849 base rate + \$1057 indexation)

DCP Section B4

S94 Plan No. 7

(d) Shirewide Library Facilities:

22.6656 ET @ \$816 per ET \$18495

(\$792 base rate + \$24 indexation)

S94 Plan No. 11

- (e) **Bus Shelters:**
22.6656 ET @ \$62 per ET \$1405
(\$60 base rate + \$2 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
22.6656 ET @ \$121 per ET \$2743
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
22.6656 ET @ \$1352 per ET \$30644
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
22.6656 ET @ \$1812.62 per ET \$41084.12
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18
- (i) **Cycleways:**
22.6656 ET @ \$460 per ET \$10426
(\$447 base rate + \$13 indexation)
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
22.6656 ET @ \$1064 per ET \$24116
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
22.6656 ET @ \$3730 per ET \$84543
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

[PCC0215/PSC0175]

16. 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.

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.

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads
(trip one way)

$\text{\$Unit}$ the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

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

Water DSP5: 19.2 ET @ \$12150 per ET \$233,280

Sewer Kingscliff: 24 ET @ \$5838 per ET \$140,112

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

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

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

[PCC0265/PSC0165]

- 18. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the (public infrastructure - insert / delete as applicable) 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]

- 19. 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]

- 20. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for the approval of the General Manager or his delegate.**

Detail of the proposed haul route is also to be submitted to Council for approval. Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No. 4 will be required prior to the issue of a Construction Certificate.

[PCC0465]

- 21. 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]

- 22. Notwithstanding any other condition of this consent separate construction certificates for bulk earthworks and civil works may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for civil works where it can be demonstrated all works are compatible.**

[PCC0495]

23. **Site filling and associated drainage is to be designed to address drainage on the site as well as existing stormwater flows onto or through the site, and minimising the impact of filling on local drainage. Detailed engineering plans of fill levels, perimeter and transverse drainage shall be submitted for Council approval by the Principle Certifying Authority.**

[PCC0675]

24. **Design detail shall be provided to address the flood compatibility of the development, including the following specific matters:**

- a) **Design flood level of RL 3.2m AHD**
- b) **Minimum habitable floor level for the dwellings of RL 3.7m AHD**
- c) **All dwelling sites shall be filled to a minimum of the design flood level**
- d) **Culverts shall be provided under the filled access road in general accordance with the approved plans, in order to convey flood waters for a range of flood intensities through the site without creating significant adverse impact on the locality.**
- e) **Acoustic treatment of the flood culverts under the filled access road must be designed to ensure that the inlet capacity of the culverts is maximised, so as to not create significant adverse impact on local flood behaviour. Clear, unobstructed flow widths to adjacent structures or fill batters must be provided and maintained around acoustic treatments such as lapped fences, to provide net equivalency to the culvert width at the inlet. The acoustic treatment must be certified as meeting acceptable acoustic and flood impact criteria by suitably qualified and experienced acoustic and hydraulic consultants.**
- f) **All dwelling sites created by the development must be serviced by a high level evacuation route, as defined by Council's Development Control Plan Section A3 - Development of Flood Liable Land. The construction certificate application must provide a plan of the identified route, including surveyed levels by a registered surveyor at appropriate intervals and critical locations along the route demonstrating compliance. If compliance cannot be demonstrated, the applicant shall undertake upgrades of Council roads and/or stormwater drainage so as to achieve a compliant high level evacuation route. These works may require separate approval(s), which must be obtained from Council prior to issue of a Construction Certificate for the development.**

[PCC0705]

25. **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]

26. **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]

27. 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.
 - (d) Specific Requirements to be detailed within the Construction Certificate application include:
 - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

28. A construction certificate application for works that involve any of the following:
- connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control works
- will not be approved until prior separate approval to do so has been granted by Council under Section 68 of the Local Government Act.
- a) Applications for these works must be submitted on Council's standard Section 68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

- b) Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under Section 68 of the Local Government Act will then NOT be required.

[PCC1145]

29. 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]

30. 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]

31. Submit to Council, for approval, a preliminary soil testing (acid sulfate soil) report, and acid sulfate soil management plan where the results of the preliminary soil testing indicates the presence of acid sulfate soils. All works shall comply with the approved plan.

[PCCNS01]

32. Prior to the issue of a Construction Certificate the applicant shall submit design detail for the retaining structures to be erected on the site in accordance with AS 4678. A registered qualified structural engineer and a registered qualified geotechnical engineer shall provide the following details prior to approval;

- (a) Design detail for the retaining structures is to be supported by certification of adequacy of design from a qualified structural engineer.
- (b) A registered geotechnical engineer shall also provide a certification of adequacy to support the design of the proposed manufactured block concrete retaining walls, cantilevered footings and soil anchors based on the subsurface conditions of the lake, exported fill material, AS3798, AS4678 and any other geotechnical requirements.

[PCCNS02]

33. Prior to issue of a Construction Certificate, a certification of adequacy is to be provided by a suitably qualified person to state the proposed retaining structure is capable of being submerged long term within the existing lake to support the proposed road, fill material and manufactured homes. Supporting evidence

(including test results) from the manufacturer is to be provided with the certification.

[PCCNS03]

34. A Traffic management plan is to be provided prior to the issue of a Construction Certificate to address the following;

- Number of trucks proposed to enter and leave the site for both the filling and building works.
- Source of fill material
- Haul route for proposed fill material to the development site
- Construction time frame for both filling and building works
- Traffic control plan prepared by an RTA accredited person in accordance with AS1742 and RTA publication "Traffic at Work Sites" latest version.

[PCCNS04]

35. A detailed plan of landscaping containing no noxious or environmental weed species and with species selection guided by Council's native species planting guide at the following link: <http://www.tweed.nsw.gov.au/NativePlantGuide> is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCCNS05]

36. Prior to issue of the construction certificate, the applicant is to submit a Habitat Restoration Plan in accordance with Council's draft *Guideline for the preparation and implementation of Habitat Restoration Plans* detailing environmental enhancement works across the site. The Habitat Restoration Plan must be approved to the satisfaction of Council's General Manager or his delegate prior to commencement of works.

[PCCNS05]

37. Prior to issue of the Construction Certificate, a Construction Environmental Management Plan must be prepared and approved by the General Manager or his delegate to detail mitigation measures for wader birds and other aquatic or terrestrial flora and fauna species known or predicted to occur on or adjacent to the site. The plan must include, but not be limited to, the following matters:

- a. Environmental safeguards (silt curtains, booms etc.) are to be utilised during retaining wall construction to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to commencing, during and after works.
- b. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless surrounded by sediment control measures.
- c. All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

38. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

39. 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]

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

[PCW0245]

41. 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]

42. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate.

[PCW0375]

43. Dilapidation reports detailing the current general condition including the structural condition of the adjoining buildings/sites, infrastructure and roads are to be prepared and certified by a suitably qualified and experienced structural engineer. The reports are to be submitted to Council prior to commencement of ANY works on the site.

The dilapidation reports shall take into consideration the findings of the original reports and provide to Council the written acceptance of the adjoining/adjacent owners confirming agreement that no damages have occurred/repairs carried out are acceptable.

[PCW0775]

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

[PCW0835]

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

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

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

[PCW0985]

46. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

47. Prior to commencement of works plans to be submitted and approved by Council, showing that passing bays will be provided along the access road in accordance with clause 21 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 - width of roads.

[PCWNS01]

48. Commencement of works in accordance with the Schedule of Works within the approved Habitat Restoration Plan must be demonstrated prior to clearing of the Swamp Oak Floodplain Forest, Banksia Woodland or freshwater wetland vegetation within the development site.

[PCWNS02]

DURING CONSTRUCTION

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

[DUR0005]

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

Monday to Friday from 7.00am to 5.00pm

No work to be carried out on Saturday, Sundays or Public Holidays

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

[DUR0205]

51. 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]

52. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

53. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Council's General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Council's General Manager or his delegate prior to installation and shall include a water sampling outlet.

[DUR0235]

54. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.

[DUR0255]

55. 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]

56. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

57. 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]

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

[DUR0415]

59. No filling is to be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically.

No filling of any description is to be deposited, or remain deposited, within adjacent properties.

[DUR0765]

60. 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]

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

[DUR0815]

62. 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]

63. 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]

64. 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]

65. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.
- [DUR1015]
66. 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]
67. A concrete footpath with a minimum width of 1m is to be provided along the full length of the proposed road and along the northern boundary as per plan titled Master Plan, sheet MCU-101 Issue F2, prepared by Zoran Architecture dated 23/07/2012.
- [DUR1735]
68. 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]
69. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1875]
70. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation Certificate.
- [DUR1955]
71. 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]
72. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blow from the site.
- [DUR2185]
73. 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]

74. 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]

75. 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. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

76. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;**
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**
- (c) external drainage prior to backfilling.**
- (d) completion of work and prior to occupation of the building.**

[DUR2485]

77. Plumbing

- (a) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**
- (b) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.**

[DUR2495]

78. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

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

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

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

[DUR2555]

80. Vegetation clearing at all locations shall be limited to the minimum necessary for the developments to proceed, and all works sites, stockpile areas, storage facilities and vehicle parking and maintenance areas shall be located on already disturbed land, avoiding any necessity for the clearing of native vegetation for these activities. The applicant is to demonstrate that the trees being retained on the site and on any adjacent land have been protected in accordance with Australian Standard *AS 4970-2009 Protection of trees on development sites*.

[DURNS01]

81. All erosion and sedimentation controls shall be maintained in accordance with the report of Baclon Pty Ltd (ref: Engineering Impact Assessment Proposed Lakeside Villa Development dated 5 September 2011) or to a different standard as required by the General Manager or his delegate, throughout the period of construction and any environment restoration works.

[DURNS01]

82. Each dwelling site must be numbered or identified and its site boundaries clearly delineated, and the site identification must be conspicuous.

[DURNS02]

83. Internal access road(s) to be speed limited to 15kmh and signed accordingly.

[DURNS03]

84. The provision of one additional car parking space for the disabled is required. The layout and construction standards to be in accordance with Tweed Shire Council Development Control Plan, Part A2 - Site Access and Parking Code.

[DURNS04]

85. The following geotechnical requirements are to be addressed during construction;

(a) Level 1 geotechnical testing

ALL 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.

(b) Grid settlement plates

A series of geotechnical grid settlement plates are to be installed across the site and monitored during filling and for a period after the filling has been completed to measure any settlement which will occur as a result of the proposed development, as recommended in the geotechnical report prepared by Shaw Urquhart titled Geotechnical assessment in response to Tweed Shire Council letter dated 6 December 2011" prepared by Shaw Urquhart dated 27 March 2012.

The period of time for geotechnical monitoring after filling is complete is to be nominated by the geotechnical engineer.

A certificate from a registered Geotechnical Engineer certifying that settlement has terminated and the development will not be comprised by any further settlement is to be provided to the Principle Certifying Authority after completion.

(c) Filling works

All filling works shall be in accordance with the geotechnical report titled "Geotechnical assessment in response to Tweed Shire Council letter dated 6 December 2011" prepared by Shaw Urquhart dated 27 March 2012."

[DURNS05]

86. The retaining structures are to be designed, inspected and certified by a qualified structural engineer experienced in structures.

[DURNS05]

87. All access roads must be adequately lit between sunset and sunrise.

[DURNS05]

88. Any such electrical circuit must be installed in accordance with the requirements of AS/NZS 3000:2000, *Electrical Installations* (known as the Australian/New Zealand Wiring Rules).

[DURNS05]

89. A common trench may be used for the installation of services in accordance with guidelines provided in AMCORD;

[DURNS05]

90. Fire hydrants shall be designed, installed and commissioned in accordance with AS2419.1 - 2005 Fire Hydrant Installations"

[DURNS05]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

91. 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]

92. Prior to the issue of an Occupation 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 civil works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act as set out in Councils 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 Occupation 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.

[POC0165]

93. 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]

94. 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]

95. 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]

96. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate.

[POC0855]

97. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

98. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices.

[POC0985]

99. Prior to the occupation or use of any building a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

100. An Occupation Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[POCNS01]

101. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the Occupation Certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

102. Upon completion of all works on the site and prior to the issue of an Occupation (including interim) / Subdivision Certificate, a final Dilapidation Report is to be prepared and certified by a suitably qualified and experienced structural engineer detailing the current general condition including the structural condition of the adjoining buildings / sites, infrastructure and roads.

The dilapidation report shall take into consideration the findings of the original report and provide to Council the written acceptance of the adjoining / adjacent owners confirming agreement that no damages have occurred / repairs carried out are acceptable.

[POC0825]

103. Easements to drain water benefitting Council shall be created over the flood culverts and the connecting flow paths between Tweed Coast Road and Noble Lake.

[POCNS01]

104. The existing easement for a sewer rising main 3m wide (created under DP 836315) located in the north west corner which is no longer in use is to be extinguished. Documentary evidence for the extinguishment of the easement is required prior to issue of the Occupation Certificate.

[POCNS02]

105. A qualified engineer shall provide engineering certification for the retaining structures prior to the issue of an Occupation Certificate.

[POCNS03]

106. Certification by a qualified engineer that the civil and road works have been constructed under their supervision in accordance with the approved engineering plans and specifications prior to the issue of an Occupation Certificate.

[POCNS04]

107. Geotechnical engineering certification is to be provided for the proposed development to certify that settlement has terminated and the development will not be comprised by any further settlement. The settlement plate information is to be provided with the geotechnical certification to validate settlement has stopped prior to the issue of an Occupation Certificate.

[POCNS05]

108. Primary weeding and/or planting and establishment must be completed in accordance with the Schedule of Works within the approved Habitat Restoration Plan prior to issue of any Occupation Certificate for the site.

[POCNS05]

USE

109. 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]

110. Except as may be expressly provided in a licence approval under the Protection of the Environment Operations Act 1997 (POEO) Act, the licence holder must comply with section 120 of the POEO Act 1997 prohibiting the pollution of waters.

[USE0155]

111. The $L_{Aeq, 15 \text{ min}}$ noise level emitted from the premises shall not exceed the background noise level (L_{Aeq}) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0165]

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

[USE0225]

113. Timber decks over the existing lake shall be constructed of hardwood and shall not be treated with oils, paints, detergents or other chemicals.

[USENS01]

114. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the Occupation Certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the Occupation Certificate.

- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

115. 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.

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 carriage way 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.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

GENERAL TERMS OF APPROVAL FOR WORK REQUIRING A CONTROLLED ACTIVITY APPROVAL UNDER THE WATER MANAGEMENT ACT 2000

Number	Condition
Plans, standards and guidelines	
1	These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA11/0456 and provided by Council: (i) Site plan, map and/or surveys (ii) Structural design and specifications (iii) Vegetation Management Plan (iv) Works Schedule (v) Erosion and Sediment Control Plan (vi) Soil and Water Management Plan (vii) Rehabilitation Plan Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the lake identified.
3	The consent holder must prepare or commission the preparation of: (i) Vegetation Management Plan (ii) Works Schedule (iii) Erosion and Sediment Control Plan (iv) Soil and Water Management Plan
4	All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx (i) Vegetation Management Plans (ii) Outlet structures
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.

Rehabilitation and maintenance	
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7	N/A
Reporting requirements	
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.
Security deposits	
9	N/A
Access-ways	
10	N/A
11	N/A
Bridge, causeway, culverts, and crossing	
12	The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the lake or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.
13	N/A
Disposal	
14	N/A
Drainage and Stormwater	
15	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
16	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.
Erosion control	
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.

Excavation	
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
19	N/A
Maintaining river	
20	The consent holder must ensure that (i) river diversion, realignment or alteration does not result from any controlled activity work and (ii) bank control or protection works maintain the existing river hydraulic and geomorphic functions, and (iii) bed control structures do not result in river degradation other than in accordance with a plan approved by the NSW Office of Water.
21	N/A
River bed and bank protection	
22	N/A
23	N/A
Plans, standards and guidelines	
24	N/A
25	N/A
26	N/A
27	N/A
END OF CONDITIONS	

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

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

- 1. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.**

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

- 2. An emergency and evacuation plan is to be prepared for the whole estate that complies with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.**

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

- 3. Dwellings 1, 2 and 27 to 30 shall comply with section 5 (BAL 12.5) Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection.**
- 4. Dwelling 31 shall comply with section 6 (BAL 19) Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection.**
- 5. Dwelling 32 shall comply with section 7 (BAL 29) Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection.**

Landscaping

- 6. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**

REPORT:

Applicant: Baclon Pty Ltd
Owner: Baclon Pty Ltd Trading as Noble Lakeside Australia
Location: Lot 193 DP 1014329 No. 34 Monarch Drive, Kingscliff
Zoning: 1(a) Rural
Cost: \$9,633,000

BACKGROUND:

The subject site is zoned Rural 1(a) pursuant to the Tweed Local Environmental Plan 2000 (TLEP 2000).

A summary of relevant consents is provided below:

- 12 April 1996 - Development consent issued for the erection of manufactured homes estate.
- 7 March 1989 - Development consent for an artificial waterbody was issued (87/430 Noble Caravan park Resort, comprising 396 caravan sites in six cluster locations, associated facilities and artificial lakes). This consent was granted by the Minister.
- The existing artificial lake was formed to provide fill for building platforms at the Q100 flood level. The caravan park component of the 1989 Consent was never constructed.
- March 1992 - a development application was lodged to fill certain land east of the property (DA92/353) which was at the time, in the same ownership. The additional eastern filling was to alter certain existing drainage channels on the land and to construct new perimeter drainage channels to the east. The proposal was a designated development. The eastern drains would drain independently of the property. Consent was granted by the Minister to this application in March 1993. Condition 10 of this consent required surrender of the 1987 Consent and provided a "retrospective recognition of an existing lake (Noble Lake)" and a Lake Management Plan to regulate future water quality in Noble Lake.
- 7 January 1993 - The 1989 Consent for the caravan sites and lake was surrendered, which extinguished any right to use the property for any purpose or any buildings or caravans.
- 12 April 1996 - Development consent for a manufactured home estate (95/442) was approved, providing for 234 sites in 7 stages, including an administration centre, community facilities and managers residence. The consent related to the whole land and the area around the perimeter of the lake was proposed to become 'open space for recreation' for the proposed manufactured home estate development. Landscaping was proposed around the shore of the lake.
- 10 December 1999 – Development Consent (No. K99/1447) was granted for a twenty additional sites at the existing manufactured home estate. This resulted in a total of 254 home sites.

- A s96 application to amend Development Consent 95/442 was received to create an additional home site to allow the erection of a manufactured home. The application was refused and subsequently appealed by the applicant in the Land and Environment Court. In 10 January 2005, the Court dismissed the appeal and the refusal was upheld. The Court found that resident's amenity would be adversely affected by the proposed dwelling as the character of the entrance to the estate would be fundamentally and seriously changed by the proposed dwelling. The loss of open space and views beyond the entrance were important and integral elements of the entry vista.
- November 2009 – Council received a Joint Regional Planning Panel (JRPP)/development application (DA09/0727). The proposal sought approval for the addition of 45 new manufactured home sites on the northern side of the on-site lake/artificial waterbody. Each new home is proposed to be constructed off-site and transported and installed on the property. Each manufactured home will contain two bedrooms and a study or media room as well as a garage. The proposal also comprises a single storey community recreation hall with a gross floor area of 90m², including associated swimming pool, facilities and outdoor terrace overlooking the lake. The application was recommended for deferred commencement approval by Council officers, however, the JRPP refused the application for the following reasons:
 1. *In accordance with Section 79(c) (1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is considered to have a detrimental impact on the natural and built environment and detrimental social and economic impacts in the locality as the development will result in:*
 - *Loss of visual amenity for existing residents in the development because of loss of vegetation and change of view to urban environment;*
 - *Loss of amenity for existing residents due to loss of access to the nature walk;*
 - *Loss of amenity for existing residents due to increased noise from the proposed residences affecting the open space on the southern side of the lake;*
 - *Loss of visual amenity to adjoining properties due to the impact of the proposed fill, retaining walls and noise attenuation fencing;*
 - *The proposed community building will have a setback of only 20m to Tweed Coast Road and is therefore out of keeping with adjoining properties and other developments;*
 - *The impact of retaining walls. Council's design specifications specify that the maximum height of retaining walls & batters is 2.4m. The application is not in accordance with Council's specifications due to the excessive fill and height of retaining walls;*
 - *There is insufficient information to demonstrate that the development will not have a negative impact on flooding affecting neighbouring properties; and*
 - *The noise level impact assessment indicates noise from the adjacent trotting track will exceed background noise levels by 10dBa.*

2. Pursuant to Section 79C(1)(C) of the Environmental Planning and Assessment Act 1979 the site is not considered suitable for the proposed development for the following reasons:
- The proposed development will have a negative impact on the natural environment as the site is of ecological significance as part of a regional wildlife corridor and in providing habitat for wading birds and other wetland species, a number of which are listed as threatened on the Schedules of the Threatened Species Conservation Act 1995 and all existing vegetation is proposed to be removed.
 - A geotechnical report addressing the potential impacts of the development has not been provided. It is uncertain if the site is suitable for the development.
 - The design of the internal road as a combined road and walkway will adversely affect the safety and amenity of all residents.
 - The development requires excessive fill and alteration to the natural landform and the proposed cantilevered buildings overshadowing the lake which demonstrates that the proposal is an overdevelopment of the site.

Council was served notice of a Class 1 Appeal against the JRPP determination (proceedings number 10857 of 2010 in the NSW Land and Environment Court).

The JRPP was an intervener in this case.

LAND AND ENVIRONMENT COURT - OUTCOME

The hearing commenced on-site on 1 March 2010 and was listed to run for two days.

During the course of the first day, it became apparent that the hearing would most likely need to be extended for another three to four days given the complexity of various matters.

The proceedings were however, discontinued at the end of the first day.

This means that the Court made no decision in respect of the development application and the JRRP refusal still stands.

SITE AND SURROUNDS

The site is described as Lot 193 DP1014329 and is located at 34 Monarch Drive, Kingscliff. It has an area of approximately 21.9 hectares and includes a large artificial lake on the northern portion of the site.

The site is relatively flat, with the land adjacent to the northern boundary at approximately RL 1.7m AHD with the site sloping down towards the lake to approximately RL 0.70m AHD.

The allotment is currently improved with 254 existing manufactured homes, an existing community building, internal roads, services and a recreational hall.

Vegetation on site include slash pines, lawn and common garden species, mid open forest (located on the northern bank of the western section of the lake), low open woodland (around the northern bank) and aquatic vegetation around the banks of the lake.

Land to the north of the site is zoned 1 (a) Rural (containing dwelling house and horse stables and training track) and 5(a) Sewerage Treatment/Turf under TLEP 2000 and contained Council's former sewerage treatment plant. This site is currently being remediated as Council's sewerage treatment plant has been relocated to another nearby site in Chinderah. Land to the east of the site is zoned 5(a) Drainage and comprises of a drainage corridor. Further east, beyond the drain is residential land zoned 2(c). Land to the south of the site is comprised of rural land zoned 1(a) and 7(l) Environment Protection. Land to the west of the site is also zoned Rural 1(a) and 1(b2). The western boundary of the site adjoins Tweed Coast Road.

Overall, the surrounding character of the area as viewed from Tweed Coast Road is dominated by the pines on the boundary of the existing manufactured homes estate and rural land surrounding Tweed Coast Road. The character of the area around Monarch Drive is low density residential.

PROPOSAL

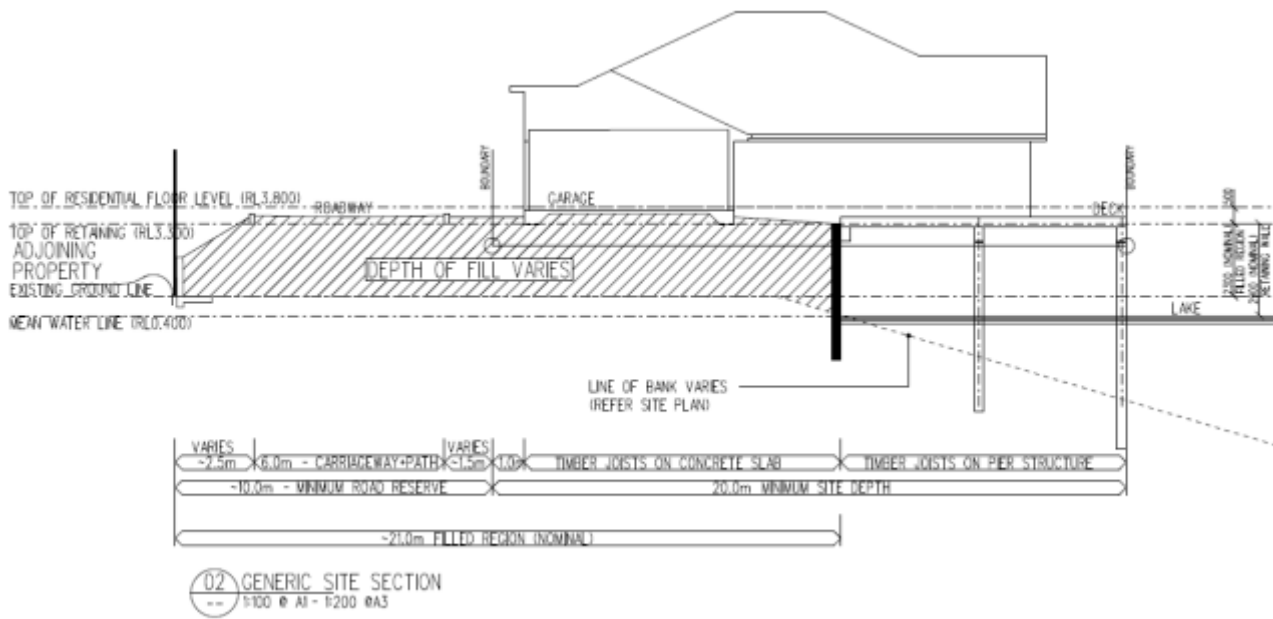
The proposal seeks the addition of 32 new manufactured home sites located on the northern side of the on-site lake/artificial waterbody. Each new home is proposed to be constructed off-site and transported and installed on the property. Each manufactured home will contain two bedrooms and a study or media room as well as a garage.

The proposal also comprises an internal road from Monarch Drive, recreation area, additional car parking, and emergency access point from Tweed Coast Road, an acoustic fence located adjacent to Tweed Coast Road and revegetation/compensatory habitat.

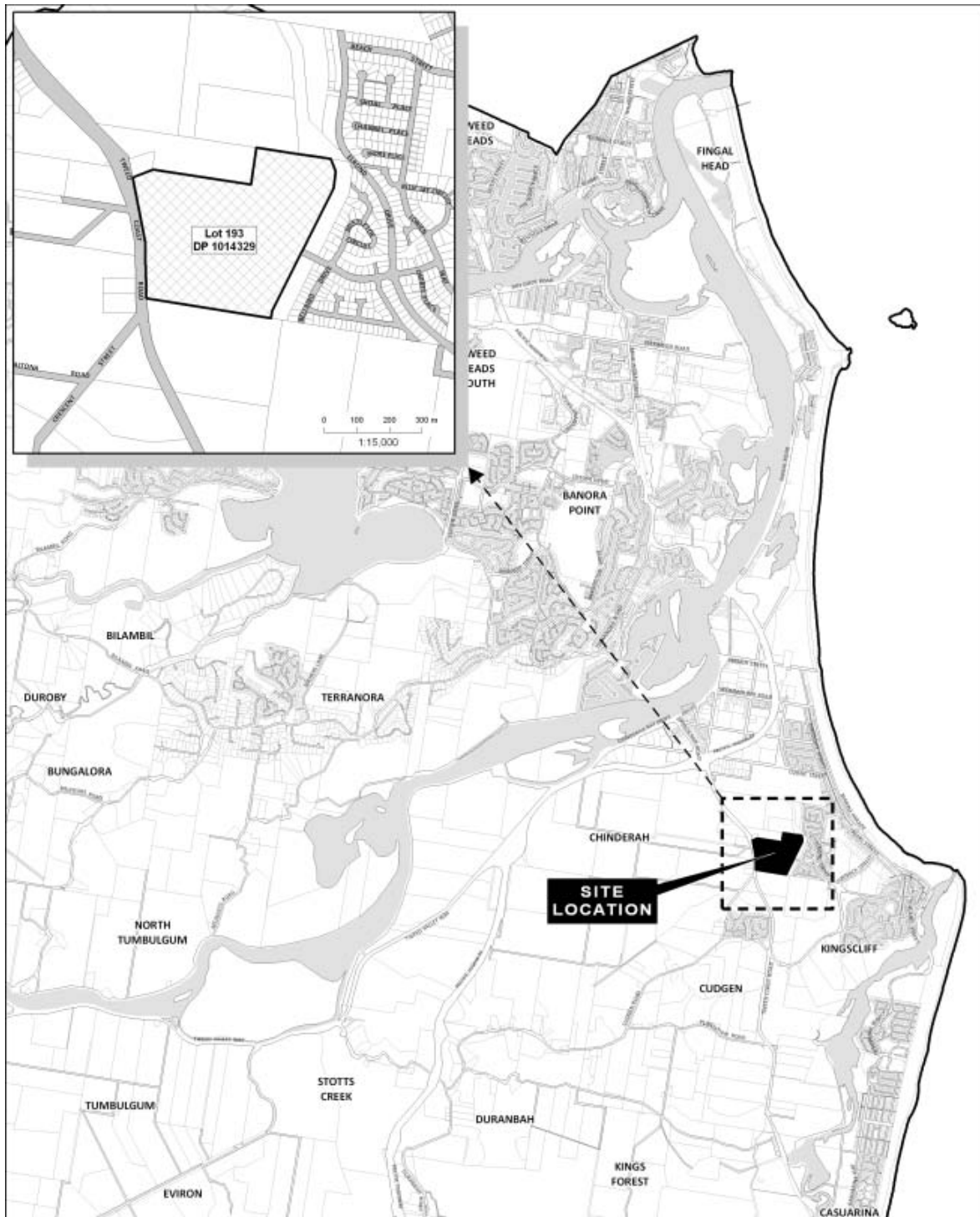
The proposed additional dwellings will use this access and continue through the existing internal road network, from Les Noble Drive along the north-west boundary and the northern perimeter of the lake.

The proposal includes filling and retaining walls around the north and western boundary of the lake to support the internal access road and to achieve a flat surface for dwelling platforms. Fill height ranges from approximately 2m to approximately 3m.

Each of the 32 manufactured dwellings will be partially cantilevered over the existing lake and in part supported by fill material, retaining walls and pier structures. The fill is required for dwellings to achieve Council's design flood level of 3.2m AHD and minimum habitable floor level of 3.7m AHD. The fill is to be supported by retaining walls 2.9m in height above the water line (with approximately 1.4m of retaining wall remaining below the water line), with the pier foundations located in the lake itself. Reference is made to the diagram below which details a generic section from the proposed retaining wall on adjoining northern property boundary to the piers located within the lake and the level of fill proposed.

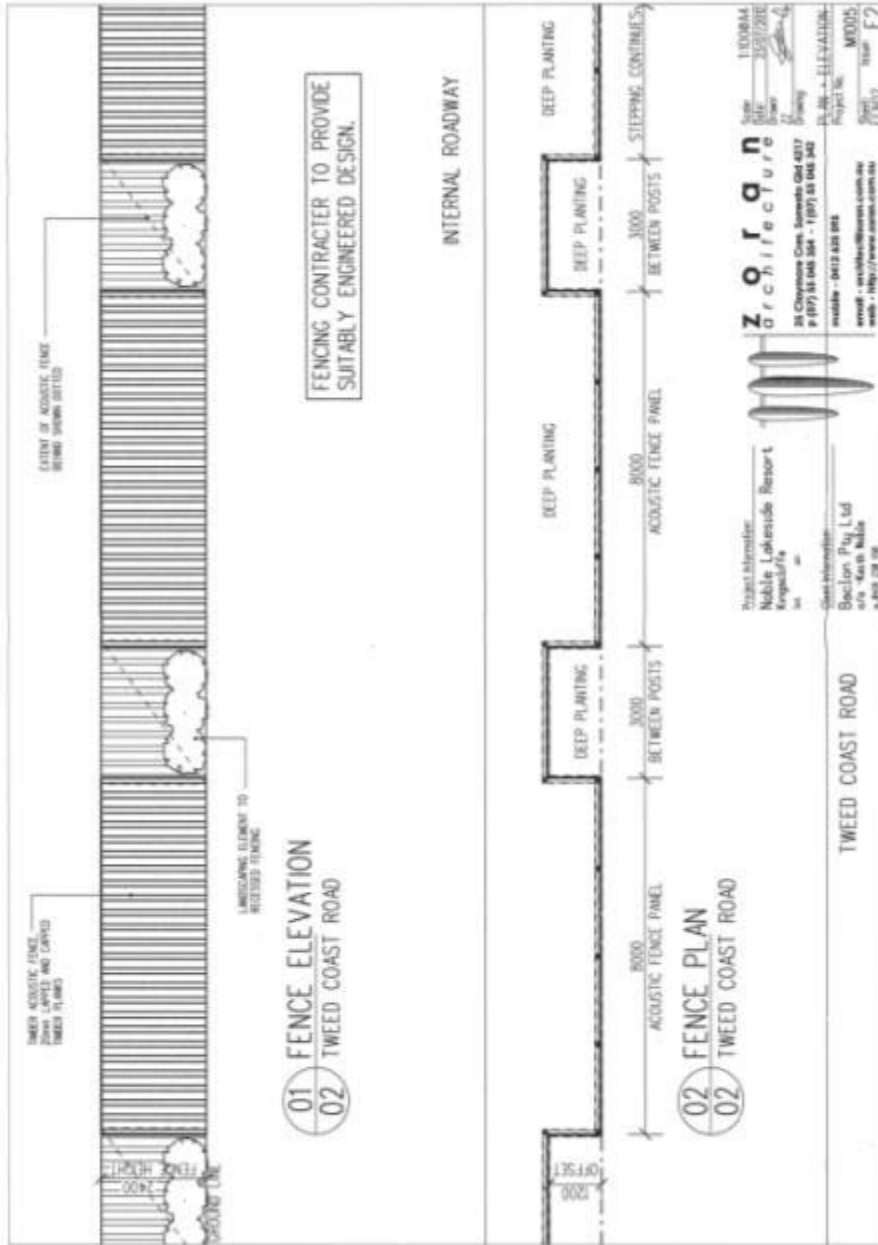


SITE DIAGRAM:



Locality Plan
 Lot 193 DP1014329
 No. 34 Monarch Drive, Kingscliff

<p><small>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, whether in relation to, or arising from, 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 public use and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a 'dig before you dig' enquiry must be made for calling 8100. The information contained on this document remains valid for 11 days only from the date of supply.</small></p>	<p><small>Cadastral: 10 August, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</small></p>	<p><small>0 0.5 1 1.5 km 1:60,000 A4 Portrait © 2012 GDA Map Information: National Triangulation Network Geoidetic Datum of Australia 1984 Map of Australia, 7.5m 50'</small></p>	<p><small>Civic and Cultural Centre 3 Tumbulgum Road Murwillumbah NSW 2454 PO Box 816 Murwillumbah NSW 2454 T (02) 6670 2400 1300 250 872 F (02) 6670 2420 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</small></p>	 <p>TWEED SHIRE COUNCIL</p>
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PERMISSIBILITY AND EXISTING USE RIGHTS

The subject site is zoned 1(a) Rural and under the current TLEP 2000, manufactured home estates are prohibited in the 1(a) zone.

On 12 April 1996, development consent for a manufactured home estate (95/442) was approved (under the previous LEP), providing for 234 sites in 7 stages. As such, the proposal to construct an additional 32 manufactured homes on the site relies on existing use rights.

An assessment of the existing use rights was undertaken pursuant to the previous development application for 45 manufactured homes sites (DA09/0727). Council accepted the applicants Barrister's findings (Mr Patrick Larkin, applicants Barrister), with the proposal to extend the manufactured homes estate considered permissible (through existing use rights) and assessment of the proposal is limited to those matters under section 79C, excluding those relating to the provisions of any environmental planning instrument or any development control plan. That is, the clauses of any environmental planning instrument any clauses of any development control plan also have no force.

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

Not applicable due to existing use rights, refer advice above.

State Environmental Planning Policies

Not applicable due to existing use rights, refer advice above.

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

Not applicable due to existing use rights, refer advice above.

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

Tweed Development Control Plan

Not applicable due to existing use rights, refer advice above.

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

Clause 92(a) Government Coastal Policy

It is considered that the proposal will be consistent with the Coastal Policy, subject to conditions in relation to flora and fauna, erosion and sediment control and flooding impacts.

Clause 92(b) Applications for demolition

No demolition is proposed.

Clause 93 Fire Safety Considerations

Not applicable, no change of use proposed within an existing building.

Clause 94 Buildings to be upgraded

Not applicable, all proposed buildings are new buildings.

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

Tweed Shire Coastline Management Plan 2005

The site is not covered by the policy.

Tweed Coast Estuaries Management Plan 2004

The site is not covered by the policy.

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

The site is not covered by the policy.

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

Context and Setting

Despite the loss of vegetation proposed, the proposed additional manufactured homes are in keeping with the character of the existing manufactured home estate.

Whilst the character of the manufactured homes is in contrast to the adjoining rural land to the north and west of the site, the boundary between the adjoining rural site and the manufactured home site runs perpendicular to Tweed Coast Road and will not be visually prominent.

Access, Transport and Traffic

Access to the development is from Monarch Drive. Monarch Drive is a 10m wide urban collector road with kerb and gutter. An internal private road network servicing the estate connects with Monarch Drive. Access to the additional proposed manufactured dwellings is located off the internal road system (Les Knoble Drive). An addition to the internal road system is proposed to service the additional dwellings and is located along the western and northern boundaries of the lake.

The new road is proposed to have a 6m pavement width within a 10m road reserve for the allocation of services.

The *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (The Regulations) is applicable for road design. The Regulations defines the proposed internal road as a major access road (as it services more than 30 dwelling sites). The Regulations require that major access roads are required to be two-way access with a paved width of 6m. The application complies with this requirement.

The applicant has proposed an emergency access road at the western boundary of the site, which is also proposed as a temporary access to facilitate construction.

Designated Roads

Tweed Coast Road is listed as a designated road within Council's TLEP 2000. Clause 24 of the TLEP 2000 requires moveable dwelling parks to have a minimum setback of 50m to designated roads. The proposed manufactured home sites will have a setback of 50m to Tweed Coast Road, even though the setback requirements in Clause 24 are not strictly applicable given existing use rights.

The intent of the setback requirements is to ensure protection of visual amenity and adequate traffic safety and efficiency along designated roads.

No engineering issues are raised in relation to impacts on the efficiency of Tweed Coast Road, or the temporary access proposed during construction.

In terms of visual impacts, the applicant has advised that the frontage of the site will be landscaped and fenced and will be suitably screened, limiting visual prominence from Tweed Coast Road. In addition, the proposed acoustic fence has been suitably designed to reduce visual impact on road users of Tweed Coast Road.

The proposed setback is considered acceptable.

Bus routes/Shelters

It is noted that the next public transport service is via a bus stop 200m from the entrance of the site. This is considered to be an adequate outcome.

Pedestrians/Footpaths/Cycleway

No footpaths, cycleways or internal pedestrian walkways have been documented within the application. It is proposed that pedestrian use the low-speed internal access roads.

Traffic Generation/Assessment

An engineering report has been submitted with the application prepared by Opus and dated 5 September 2011.

In accordance with the traffic generation rates from Tweed Shire Council's Section 94 Plan No. 4 Tweed Road Contribution Plan Version 5.1 Table 7.1, the daily trip rate used from the Tweed Road Contribution Plan is 3.9 vehicles. The additional 32 manufactured dwellings will create an additional 124.8 vehicle trips per day. It is not considered the additional dwellings will affect the surrounding traffic network.

Construction Traffic

Construction traffic to the site will be approximately 48 trucks per day for a period of 7 weeks. This is based on 29,500m³ of imported fill material with a truck and trailer capacity of 20m³ also including a 20% bulking factor on the fill material. 1800 vehicle trips/truck movements (accounting for two way traffic movements, including the empty truck returning to the fill source) will occur every day to the estate to fill the site. This equates to six truck deliveries every hour, eight hours a day (7am to 5pm), five days a week for 7 weeks. This will create temporary amenity and noise issues for the existing residents in the manufactured home estate.

It is recommended that conditions are imposed to limit the impacts on the residents during construction. Construction vehicles will only access the site from a temporary point on Tweed Coast Road, further reducing the impacts on existing residential amenity.

Conditions are recommended to ensure a suitable and approved fill source is utilised.

Parking/Manoeuvring

The Regulations provide visitor car parking rates for manufactured homes estates as follows:

	No. of Dwellings	Space required	Total space required	Total space provided
Manufactured Homes	312	1 per home	32	32
Visitor/Disabled Parking	32	Minimum 8 required	8	16
Total`			40	48

The proposal complies with the Regulations.

Flora and Fauna

Council's Natural Resource Management (NRM) Unit have assessed the proposal and recommended appropriate conditions.

Ecological Values

The site is of ecological significance as part of a regional wildlife corridor and in providing habitat for wading birds and other wetland species, a number of which are listed as threatened on the Schedules of the *Threatened Species Conservation Act 1995*. Vegetation communities include Banksia woodland with regenerating littoral rainforest understorey, Swamp Oak woodland (partly cleared), some saline wetlands including mangroves at the northern extent of the site, as well as freshwater wetlands.

A vegetation community conforming in most aspects to the Scientific Committee determination for the Endangered Ecological Community (EEC) *Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner bioregions* is present and has been checked on site in terms of the suite of existing species, position on the floodplain and saline nature of surrounding waters and groundwater. However, the soil type is generally sandy and thus a determination that the EEC is present on the site is open to challenge. The applicant has agreed that terrestrial vegetation is significant and offered acceptable compensation.

The presence of vegetation communities conforming to the Scientific Committee determination for the EEC *Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions* is considered likely, however, is not certain due to the following statement within the Scientific Committee determination: "Artificial wetlands created on previously **dry** land specifically for purposes such as sewerage treatment, stormwater management and farm production, are not regarded as part of this community, although they may provide habitat for threatened species". It is not certain where water bodies are created on formerly **wet** land as applies in this case, whether the EEC determination may be applied.

Rehabilitation and Restoration

Approximately 220 native trees are proposed for removal over an area of around 5000m² to facilitate the development, as well as areas of terrestrial regeneration and wetland areas along the lake shore containing reeds and sedges. Whilst the loss is likely to have short-term impacts on local fauna foraging and possibly roosting use, compensation and restoration is proposed as follows:

- A total of 1250 native trees and shrubs area to be replanted in currently grassed areas totalling some 5000m²;
- Some 400m² of freshwater wetlands is proposed to be established through excavation and planting just beyond the current lake shore; and
- A billabong area will be retained and restored in the north-east corner. This area is particularly important as it connects with a bushland area being restored by Council to the north, and with scattered trees and groundcovers along the Kingscliff Drainage Canal to the south.

Overall it is considered that compensatory habitat is adequate to offset the loss in the longer term and this aspect has been conditioned.

Impact Assessment

Having regard to the ecological values and assessment it is considered that the proposal is unlikely to result in a significant impact on threatened species, populations or ecological communities.

The retention of important areas, removal of exotic species and the compensation offered and conditioned hereunder will allow continued use of the site as part of a wildlife corridor and in particular of wading species.

Fill and Retaining Walls

Council's Engineers have assessed the proposal and recommended appropriate conditions.

Retaining Walls

It is understood that the wall will be a free standing cantilevered structure, independent of the proposed dwellings, and that the dwellings will not be in contact with the wall. Minor settlements or rotation of the wall, should they occur, will have no effect on the integrity of the dwellings. The dwellings will be supported on piles and on the fill platform behind the wall. The wall will therefore be supported on piles and the fill platform behind the wall. The wall therefore is subject to surcharge loads from the dwellings and these will need to be taken in account in the local stability and structural design of the wall.

Settlement

The settlement due to filling and structural loads is estimated at a maximum of 63 to 73mm. The settlements in the sand are expected to occur rapidly and be completed within a few weeks following construction. The clay settlements are due to compression of the over consolidated clay and may take longer to complete.

Long term creep consolidation will occur but is expected to be relatively uniform across the site.

The retaining walls, piles and fill platform will all experience settlement from the deeper loose and firm soils.

It is recommended that a grid of settlement plates be installed across the site and monitored during filling and for a period thereafter to measure the actual settlements which occur due to the development. The period of time is to be nominated by the geotechnical engineer.

Settlement due to the filling and structural loads is estimated to be between 29mm and 63mm with between 16mm and 44mm of this occurring in the loose sand layers. Settlement in the loose sand layers is expected to occur during construction and be largely completed with a few weeks of completion of construction.

Long term settlements due to the site filling after construction is completed are therefore expected to be in the order of 20mm with 5mm to 10mm differential settlement between the piled section and the filled section.

Allowable Bearing Capacity

The report states that 'assuming the wall footing will be founded at 0.5m depth and allowing for buoyancy effects due to the shallow water table, the foundation in its current condition is assessed to have an allowable bearing capacity of 100kPa. This is insufficient as it is understood that the wall design requires the foundation to have an allowable bearing capacity of 200kPa.

The report recommends three options to gain sufficient bearing capacity of 200kPa:

- The 0.5m of medium dense sand below the wall footings can be densified using vibration compaction techniques;
- The wall footing can be supported on short piers extending through the medium dense sand and into the dense sand 0.5m below; or
- The wall can be founded at a greater depth. This however would require significant dewatering to facilitate construction.

The current foundation soils along the wall alignment are assessed to have an allowable bearing capacity of 100kPa. If the rock block retaining wall is founded at 0.5m depth, to achieve the design allowable bearing pressure of 200kPa will require the soil profile in the upper 0.5m below the footing to be compacted to a dense condition. Alternatively the footing can be supported on short piers extending into the dense sand approximately 0.5m below the footing level.

Global Stability

The global stability of the proposed retaining wall has been assessed using the computer program SLOPE/W. A number of conservative assumptions have been made to simplify the assessment including:

- Any contribution of the piles to improving the global stability of the lake edge has been ignored;
- Any contribution of the tie-backs in reinforcing the wall backfill has been ignored; and
- The fill has been assumed at RL 3.8m with a 10kPa surcharge for buildings and traffic loading.

The slope stability analysis indicate that a factor of safety of about 1.5 against a non-circular type slope stability failure requires a footing width extending 2.25m behind the toe of the wall. The factor of safety for conventional circular slip surface is estimated to be about 1.9. This is considered adequate. Therefore to achieve adequate factors of safety for global stability, the rock block retaining wall will need to be founded on a footing which extends 2.25m behind the toe of the wall.

Flooding and Impact of Fill and Acoustic Fence

Council's Planning and Infrastructure Engineers have assessed the proposal and recommended appropriate conditions.

According to the acoustic fence design, the fence runs along the property boundary but has been realigned to run over the large culverts provided through the access road in the north western corner of the site. This generally overcomes the hydraulic concerns, however still allows noise penetration through the culverts themselves.

To address this issue, the plans show landscaped earth mounds around the culvert inlets. The acoustic consultant supports this measure but requires the mounds to be significantly larger than has been proposed by the architect. The acoustic consultant has also nominated alternate treatments, being lapped fence sections or rubber inserts in the culverts. The applicant stated that they prefer the fencing alternative.

The problem for assessment is that there is little detail of the treatment options, and there is no hydraulic assessment of the alternatives. The mounding option is not preferred as it requires significant maintenance and would be difficult to secure in perpetuity. The use of rubber inserts would need hydraulic verification, and is prone to failure by blockage. The fencing option can be considered provided this left adequate openings. Overall the applicant has failed to provide the integrated design approach to solving this problem that was clearly required at the meeting of 13 July 2012.

Additional detail of the lapped fence option has been provided, however, this does not clearly show the extent of openings available to water flow. However, this is considered a viable approach, subject to further detail and certification by relevant experts with the construction certificate application.

Socio Economic Impacts

The Statement of Environmental Effects (SEE) included a socio-economic impact assessment (prepared by Jim Glazebrook and Associates Pty Ltd, September 2011). It identifies that the proposal would provide employment for the construction and housing industry and an additional stock of housing to accommodate population growth in the older age group. It also recognises that there would be an incremental increase in demand for services and facilities, most of which the proponent would contribute towards through section 94 contributions.

The proposal is considered to create a positive socio-economic impact.

(c) Suitability of the site for the development

Surrounding Landuses/Development

As identified above, the proposal adjoins rural land. It is proposed to treat the interface between the manufactured homes and the rural land with landscaping, retaining walls and fencing. Potential noise impacts from the adjoining trotting track will be mitigated through acoustic treatment in the dwellings.

Topography

The site is relatively flat and slopes down to the existing lake. The area to be filled has an average existing surface level of RL 0.70m AHD at the shoreline of the lake and varies to approximately RL 1.06 to 1.94m AHD at the northern boundary.

Availability of Services

Council's reticulated potable water supply is available to the area and has adequate capacity to allow for the proposed additional manufactured homes. Recommended conditions of consent require the provision of service in accordance with Council's Standards. Telecommunication and electricity services are provided to the site.

It is necessary for the applicant to obtain a section 68 approval to construct and to operate a sewage ejection system.

It is proposed that a condition requiring a 68 approval also include the requirement to demonstrate that the total sewage ejection system from both the existing and proposed development will operate satisfactorily.

Existing Title Restrictions

The land is burdened by the following restrictions:

- 3m wide easement for rising main located in the north west corner;
- 1m and 3.75m easement for electricity purposes;
- Right of carriageway with variable widths;
- Restriction to user - direct vehicle access to Chinderah Road is prohibited other than occasional access for the purpose of moving manufactured homes.

Council's water and sewer systems engineer has advised previously under DA09/0727, that the easement for the rising main in the north-west corner is no longer required due to construction of the new sewerage treatment plant. A condition is imposed recommending that this be relinquished. No other modifications to the title are required.

Acid Sulfate Soils (ASS)

The site is listed as class 3 on the Council's ASS Planning maps, which is relevant to works below 1 metre below the natural surface.

The applicant acknowledges that the proposed development may expose acid sulfate soils through the excavation of retaining wall footings. The applicant has also acknowledged that a preliminary investigation is required but has not carried out that investigation.

Given that the applicant has acknowledged that ASS may be present, a condition is recommended to ensure that soils investigation/testing be completed and that an Acid Sulfate Soils Management Plan is submitted for approval prior to issue of a Construction Certificate.

Contaminated land

Pursuant to DA09/0727 the applicant was requested to provide information regarding decommissioning of the Old Cudgen Dip Site. An email was provided from the Division of Primary Industries which confirms that the site has been remediated and is 'suitable for standard residential use'. There should therefore be no impact on the subject site. Also the NSW Department of Primary Industries (DPI) website advises that the dips site is listed as 'Remediated'. In addition to this the property owner (Keith Noble) provided an undated statutory declaration to the effect that the site has not been subject to contaminating activities since 1963 (year which ownership took effect).

Council's Environmental Health Officers advised that no further information or action is required in regards to the dip sites.

Noise Assessment

The applicant had submitted a *Noise Level Impact Assessment – revision 1* (ref: Craig Hill Acoustics 30 June 2009). The assessment considered noise impacts on the proposed manufactured home sites from both road traffic and the adjacent trotting track. The assessment report also gave information in relation to 'modelled' traffic noise increases over a 10 year time frame.

Appropriate conditions are recommended to ensure the development shall be carried out in accordance with the noise attenuation measures recommended in the report of Craig Hill Acoustics.

The proposed design of the acoustic fence is considered acceptable.

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

The development application was notified and advertised for a period of 30 days from Wednesday 12 October 2011 to Friday 11 November 2011. A total of approximately 130 submissions were received. The main issues raised by the submitters are the same issues raised for the previous application DA09/0727. The table below includes the issue raised, the applicant's response and Council's response subject to DA09/0727 and an additional response relating to this proposal.

Issue	Applicants Response	Council Officer Comment DA09/0727	Council Officer Comment DA11/0456
<p>Area north of the lake was advertised as a nature walk and many residents purchased for this reason.</p>	<p><i>"It is always open for an owner to alter a development in response to changing circumstances. In this case it was the relocation of the Sewerage Treatment Works. As long as a development complies with relevant legislation and potential impacts can be satisfactorily managed, then there is no planning reason to restrict a development on this basis. The proposed development meets the criteria of complying with legislation and satisfactorily managing impacts."</i></p>	<p>The internal layout of the proposal was not part of an approved masterplan or concept plan.</p> <p>The Act allows for modifications, additions or extensions to existing use.</p>	<p>Council's comment to this issue remains unchanged.</p>
<p>Loss of walking trail through natural area. Loss of health benefits associated with the nature trail.</p> <p>Amenity values associated with the lake and surrounds will be lost.</p>	<p><i>"The informal walkway north of the lake will be replaced by a pathway constructed as part of the new road. Therefore there will be no loss of exercise area and a continual link around the lake will be retained. Landscaping adjacent to the dwellings and along the northern boundary will result in a pleasant streetscape. There is ample open space on the site."</i></p>	<p>It is acknowledged that the 'nature trail' is highly valued and utilised by the residents and provides amenity values to the site.</p> <p>Notwithstanding, the loss of the nature trail and associated amenity is considered acceptable in this case given:</p> <ul style="list-style-type: none"> - the proposal complies with legislative open space / community facilities requirements. - Areas for walking are available around the southern side of the lake. - Areas for walking are also available in the surrounding locality. - The proposal includes additional provision of community facilities. - The amenity of the estate will continue to be of a high standard given the remaining open 	<p>Council's comment to this issue remains unchanged, other than the proposal to update the existing communities facilities building, is not part of this application, and will be addressed through a future application to Council.</p>

Issue	Applicants Response	Council Officer Comment DA09/0727	Council Officer Comment DA11/0456
		<p>space and lake areas proposed to be maintained on the site.</p> <ul style="list-style-type: none"> - Only private, not public open space areas are affected. 	
Over-development of the site.	<p><i>"The MHE Regulation requires that 10% of the site must be set aside for recreational or other communal activities. The proposal substantially exceeds this requirement. It therefore seems implausible to argue that the proposal is an overdevelopment of the site. Furthermore, Tweed DCP 2008 Section B4 – West Kingscliff indicates that special residential development (eg. MHE estates) generally have a density of 24 dwellings per hectare. This proposal would result in a density of 14.3 hectare, well within this standard."</i></p>	Council officers agree with the applicant's comments on this matter.	<p>Council's comment to this issue remains unchanged.</p> <p>In addition, the proposal seeks approval for a reduced number of sites being 32 sites with the application no longer seeking approval for a community building.</p>
The development is prohibited.	<p><i>"The development is permissible with consent. Refer to legal advice."</i></p>	The proposal has existing use rights. Council officers accept the legal advice provided in this regard.	Council's comment to this issue remains unchanged.
The proposal is contrary to section 96 of the EP&A Act.	<p><i>"This is not relevant. The application is not for modification of the consent."</i></p>	Section 96 of the Act is not relevant to this proposal.	Council's comment to this issue remains unchanged.

Issue	Applicants Response	Council Officer Comment DA09/0727	Council Officer Comment DA11/0456
Flooding and drainage impacts on adjacent and surrounding land.	<i>“These impacts can be satisfactorily managed. Refer to Engineering Impact Assessment in SEE and attached letter from Opus.”</i>	Conditions are recommended to ensure that impact of filling is minimised. Traverse drainage (to accommodate 100 year flood levels) are required to be provided at all locations where the fill obstructs flow paths. Easements benefiting upstream land shall be created over such flow paths and structures. Detailed engineering plans of fill levels, perimeter and transverse drainage shall be submitted for council approval.	Council’s comment to this issue remains unchanged.
Impacts on water quality.	<i>“These impacts can be satisfactorily managed. Refer to Engineering Impact Assessment in SEE and attached letter from Opus.”</i>	Several conditions are recommended to ensure management of erosion and sediment control and waste and potential pollutants.	Council’s comment to this issue remains unchanged.
Effect on flora and fauna.	<i>“Refer to Flora & Fauna Assessment and additional information provided by James Warren & Associates (attached). This issue is satisfactorily addressed.”</i>	It is recommended that deferred commencement conditions require compensatory habitat planting. Refer to Schedule A of the recommendation.	The proposal is considered to satisfy effects on flora and fauna, through proposed compensation areas.
Noise impact on residents during construction.	<i>“As with any construction work that could potentially create noise impacts, it is expected that conditions of consent would limit construction hours and require maximum noise limits for construction machinery / vehicles.”</i>	Conditions are recommended to reduce impacts from construction, through limited hours and noise levels.	Council’s comment to this issue remains unchanged.

Issue	Applicants Response	Council Officer Comment DA09/0727	Council Officer Comment DA11/0456
<p>Require buffer of 50m between 1(a) zoned rural land and urban land.</p> <p>Impact of noise on livestock from construction and residents. Impact on rural amenity.</p>	<p><i>"This is a unique situation where existing use rights apply. There are no planning controls applying to the site which require a specific buffer. Therefore, the development must be assessed on merits. As potential impacts can be satisfactorily managed, no increase in setbacks is seen as justified."</i></p>	<p>The conflict between rural and urban land uses can be addressed through provision of level distances, landscaping and acoustic treatment of dwellings.</p> <p>The impact of noise on livestock from the development is considered to be negligible given the traffic noise levels already coming from Tweed Coast Road.</p>	<p>Council's comment to this issue remains unchanged.</p>
<p>Visual impacts on views across the lake.</p>	<p><i>"It is acknowledged that the outlook across the lake would alter. However this is not expected to be detrimental. The distance between the existing dwellings on the site and the proposed new dwellings varies from 130m to 200m (approximately). The proposed dwellings are low set, well designed and of high quality finishes. The visual impact would be acceptable."</i></p>	<p>The comments made by the applicant are accepted.</p> <p>Impacts on views are reduced given the distance between the existing residents and the proposed dwellings. Further, it is noted that the lake is privately owned and not part of a foreshore or waterbody adjoined by public open space.</p>	<p>Council's comment to this issue remains unchanged.</p> <p>In addition, the proposal seeks approval for a reduced number of sites being 32 sites with the application no longer seeking approval for a community building.</p>

Issue	Applicants Response	Council Officer Comment DA09/0727	Council Officer Comment DA11/0456
<p>Increase in traffic within Noble Park and surrounding streets.</p> <p>Concern with one way in and one way out.</p>	<p><i>“Concern is raised regarding potential noise increase from additional vehicles within the estate and associated traffic / pedestrian conflicts, as well as potential impacts on surrounding streets. The design of roads within Noble Lakeside Park results in such low traffic speed environment that there would be negligible impact on amenity. There are no upright kerbs so pedestrians can easily move off the road when vehicles approach. The Engineering Impact Assessment in the SEE demonstrates that the traffic increase will not impact on the functional capacity of the surrounding streets.”</i></p>	<p>The width of the proposed road complies with the requirements of the Regulations for the number of dwellings it services.</p> <p>Council's standards do not apply to the internal road layout. The applicant has identified that emergency access will be provided in the north-eastern corner around the lake to the south.</p>	<p>Council's comment to this issue remains unchanged.</p>
<p>Concerns with the consultation process.</p>	<p>The applicant advised that plans of the proposed development were made available in the site office for residents to view. Residents were advised that if the majority supported the proposal and it was approved, funds would be available to upgrade existing facilities in the park. However, for this to occur, the applicant advised that the rentals must be upheld at market value to ensure costs of maintaining the facilities are met.</p>	<p>The application was notified and advertised in accordance with the requirements under the Environmental Planning and Assessment Act.</p>	<p>Council's comment to this issue remains unchanged.</p>

Agency Submissions

Office of Water

The application is integrated development due to proposed works within close proximity of a waterway.

The Office of Water provided a 'Stop the Clock' letter requesting further information on the stormwater treatments associated with the proposed development to be upgraded to include a bio-retention system to address the risk to the water quality of Noble Lake.

The Office of Water reviewed response information provided by the applicant and has provided General Terms of Approval (refer to recommended conditions).

Rural Fire Service

The proposal is located in a bushfire prone area and the Rural Fire Service has assessed the proposal and provided conditions.

(e) Public interest

There are no other matters of public interest considered applicable.

LOCAL GOVERNMENT (MANUFACTURED HOME ESTATES, CARAVAN PARKS, CAMPING GROUNDS AND MOVEABLE DWELLINGS) REGULATION 2005 (LGMHER)

Clause 6 of the Regulation requires that the estate comply with Division 3 of the Regulation and Council is not to issue a Section 68 approval where compliance does not exist. The applicant states that the proposal complies with the requirements of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. A suitable condition will be applied requiring a Section 68 approval to be obtained prior to installation of any structures and compliance with the Regulations.

OPTIONS:

1. Approve the application subject to recommended conditions; or
2. Refuse the application and provide reasons for refusal.

The Council officers recommend Option 1

CONCLUSION:

Council has received a development application for 32 additional manufactured homes at the existing estate at Lot 193 DP1014329, situated at No. 34 Monarch Drive, Kingscliff. The main issues associated with the proposal are potential for impacts from amenity, noise, flooding, fill and on-site vegetation. Conditions are recommended to mitigate potential impacts on the natural and built environments.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Finance Plan:

Not Applicable.

c. Legal:

If the applicant is not satisfied with the determination a right of appeal exists in the NSW Land and Environment Court.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

16 [PR-CM] Northern Joint Regional Planning Panel - Review of Council Appointed Panel Members

SUBMITTED BY: Development Assessment



Civic Leadership

SUMMARY OF REPORT:

The purpose of this report is to seek Council's endorsement to conduct an expression of interest process as the basis for Council to determine its Northern Joint Regional Planning Panel representatives for a new 3 year period, commencing from 1 January 2013. This action is necessary as the period of appointment of the current Council endorsed Panel members, as extended, expires on 31 December 2012.

New legislation and operational procedures for Joint Regional Planning Panels (JRPPs) were introduced by the previous NSW State Government in 2009. The primary function of the JRPPs is to assess regional significant developments, as defined under the Act. Additional roles relating to the assessment of larger rezoning processes have also been created. Various regional administrative areas were established across the State, including a Northern Region encompassing a group of council areas ranging from the mid North Coast to the Far North Coast. The Northern Joint Regional Planning Panel was established through separate expressions of interest and appointments of both the State Government and each Council in the Northern Region. For the assessment of each Development Application, the Panel comprises of 3 State and 2 Council appointed members.

Following a previous expression of interest process, Council, at an Extraordinary Meeting on 30 June 2009, resolved to appoint 2 local representatives for the Northern Joint Regional Planning Panel for a 3 year period, Ned Wales and Robert Quirk Jnr, and an alternate member, Steven Grimes. Given the impending Local Government Elections in September 2012, Council sought the approval of the NSW Department of Planning and Infrastructure to extend the appointment of the 3 Local Panel members for a further six month period, to provide an opportunity for the new Council to determine its local representatives beyond the expiry date of 31 December 2012.

In the period between June 2009 and October 2012, there have been a total of 15 JRPP applications lodged in the Tweed Shire, 13 of which have been determined, and 2 yet to be determined.

Also within this period, the State Government has reviewed its legislation and operating procedures for JRPPs.

The current State Government has recently outlined through the Green Paper on a Review of the NSW Planning Act of their intentions to maintain JRPPs in any new Planning Act.

It is therefore considered timely that the new Council review its appointed Northern JRPP members.

RECOMMENDATION

That:

- 1. Council endorses that an expressions of interest process be conducted for Council representation on the Northern Joint Regional Planning Panel; and**
- 2. A further report be submitted to Council on the results of the expressions of interest process, with a view to endorsing 2 Council Panel members, and an alternate Panel member for a 3 year period, commencing from 1 January 2013.**

REPORT:

Background

Origins of Joint Regional Planning Panels (JRPPs)

New legislation and operational procedures for Joint Regional Planning Panels (JRPPs) were introduced by the previous NSW State Government in 2009. The primary function of the JRPPs is to assess regional significant developments, as defined under the Act. Additional roles relating to the assessment of larger rezoning processes have also been created. Various regional administrative areas were established across the State, including a Northern Region encompassing a group of council areas ranging from the Mid North Coast to the Far North Coast. The Northern Joint Regional Planning Panel was established through separate expressions of interest and appointments of both the State Government and each Council in the Northern Region. For the assessment of each Development Application, the Panel comprises of 3 State and 2 Council appointed members.

Following a previous expression of interest process (Refer to Attachment 1 for an advertisement in the Tweed Link dated 26 May 2009), Council, at an Extraordinary Meeting on 30 June 2009, resolved to appoint two local representatives for the Northern Joint Regional Planning Panel for a 3 year period, Ned Wales and Robert Quirk Jnr, and an alternate member, Steven Grimes.

Given the impending Local Government Elections in mid 2012, Council sought the approval of the NSW Department of Planning and Infrastructure to extend the appointment of the 3 Local Panel members for a further six month period, to provide an opportunity for the new Council to determine its local representatives beyond the expiry date of 31 December 2012.

In the period between June 2009 and October 2012, there have been a total of 15 JRPP development applications lodged in the Tweed Shire, 13 of which have been determined, and 2 yet to be determined. (Refer to Attachment 2 for a list and brief description of these applications, as taken from the JRPP development register).

Changes to JRPP Legislation and Operational Procedures

As part of a broader legislative reform by the current State Government, the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (the Repeal Act) commenced on 1 October 2011. New classes of regional development were also set out in Schedule 4A, of the *Environmental Planning and Assessment Act 1979* (the Act). This schedule replaces the former classes of regional development set out in Part 3 of State Environmental Planning Policy (Major Development) 2005 (MD SEPP).

Savings and transitional provisions are set out in Schedule 6A clause 15 of the Repeal Act.

A new State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of regional panels in determining applications for regional development.

These functions have been transferred from Part 3 of the MD SEPP, which has been repealed.

The Repeal Act also makes changes to the way the chairpersons of regional panels are appointed.

Updated Development Thresholds for JRPPs to Determine

From 1 October 2011, the regional panels have determined the following updated classes of regional development:

- Development with a Capital Investment Value (CIV) over \$20 million
- Development with a CIV over \$5 million which is:
 - ✓ Council related
 - ✓ Lodged by or on behalf of the Crown (State of NSW)
 - ✓ Private infrastructure and community facilities or
 - ✓ Eco-tourist facilities
- Extractive industries, waste facilities and marinas that are designated development
- Certain coastal subdivisions
- Development with a CIV between \$10 million and \$20 million which are referred to the regional panel by the applicant after 120 days
- Crown development applications (with a CIV under \$5 million) referred to the regional panel by the applicant or local council after 70 days from lodgement as undetermined, including where recommended conditions are in dispute.

Refer to Attachment 3 of this report which contains a more detailed extract on the development types as outlined in Schedule 4A of the Act.

Relevant Legislation for Membership of the JRPPs

Attachment 4 of this report contains an extract from Schedule 4 of the Act which outlines the legislative requirements for State and Local appointed Panel members.

The legislation basically requires that councils need to appoint 2 Panel Members (with an alternate), at least one of whom has expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

There is also a maximum term of appointment of 3 years, before re-nomination of the Panel Members is required.

The latest Operating Procedures for JRPPs produced by the NSW Department of Planning and Infrastructure (See Attachment 6) provides further details on these appointments:

"Selection of council members

Each council identifies how their members are selected. In selecting members,, councils should have regard to the conflict of duties that would be created for a person nominated to the Regional Panel if they were in any way responsible for or involved in the assessment and recommendation of a matter to be determined by the panel.

Councils are not restricted to nominating people being from the council's local area. They can appoint, terminate, and reappoint, members at anytime, and can determine the duration of each appointment. Generally, so as to ensure the greatest continuity for the regional panels, councils should consider appointing members for the maximum term of three years provided for under the EP&A Act. However, councils should reconsider if the nominations to the regional panels are appropriate within 12 months following a council election.

Following a change to its nominees, council is to forward the new member's personal details to the secretariat as soon as possible and this must be a minimum of 14 days before any meeting at which they will act as a panel member.

If a council fails to nominate one or more council members, a regional panel may still exercise its functions in relation to the area of the council concerned."

Proposed Expressions of Interest Process

It is considered that the Expressions of Interest (Eol) process conducted for the current Tweed Council appointed members of the Northern Regional Planning Panel provided an appropriate mechanism for Council to attract people with relevant experience and qualifications for the assessment of JRPP development applications. It is proposed to conduct a similar process through an advertisement in the Tweed Link newspaper to seek Eol for a new 3 year term, commencing from 1 January 2013.

OPTIONS:

1. Council endorses the recommended Expressions of Interest process for Council representation on the Northern Regional Planning Panel for a 3 year period, commencing from 1 January 2013; or
2. Council re-appoints the current Council representatives on the Northern Regional Planning Panel for a 3 year period, commencing from 1 January 2013.

CONCLUSION:

The period of appointment of the current Council representatives on the Northern Regional Planning Panel expires on 31 December 2012. It is considered that an Expressions of Interest (Eol) process is an appropriate mechanism for Council to attract people with relevant experience and qualifications for the assessment of JRPP development applications for a further 3 year period, commencing from 1 January, 2013.

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Council is required to pay for certain costs of the Local Panel members, and the administration of JRPP Meetings. Costs incurred are as follows:

2009/2010	\$4,250
2010/2011	\$14,400
2011/2012	\$1,900

These costs are allowed within the operational budget.

c. Legal:

The NSW Planning and Environmental Assessment Act 1979 outlines a series of legislative requirements for the assessment of regionally significant developments, and the operation of Joint Regional Planning Panels.

d. Communication/Engagement:

It is proposed to place an advertisement of an Expressions of Interest process for Council representatives on the Northern Regional Planning Panel for a 3 year period, commencing from 1 January 2013.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1 Copy of advertisement of an Expressions of Interest process for Council representatives on the Northern Regional Planning Panel in the Tweed Link 26 May 2009. (ECM 57499842)
- Attachment 2 List and brief description of Tweed Shire Council JRPP development applications 2009-2012, as extracted from the JRPP web site development register. (ECM 57500870)
- Attachment 3 Extract from Schedule 4A of the Environmental Planning and Assessment Act 1979. (ECM 57500873)
- Attachment 4 Extract from Schedule 4 of the Environmental Planning and Assessment Act 1979. (ECM 57500885)
- Attachment 5 Fact Sheet on What are the functions and roles of Joint Regional Planning Panels (Regional Panels)? (ECM 57500886)
- Attachment 6 Copy of correspondence from the Minister for Planning and Infrastructure dated 25 September 2012 and revised Operating Procedures for Joint Regional Planning Panels (ECM 57711994)
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