Agenda

Planning Committee Meeting
Thursday 5 May 2016

held at Harvard Meeting Room,
Tweed Heads Administration Building,
Brett Street, Tweed Heads
commencing at 5.00pm
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C
79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent
authority is to take into consideration such of the following matters as are of relevance
to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and
(ii) any proposed instrument that is or has been the subject of public
consultation under this Act and that has been notified to the consent
authority (unless the Director-General has notified the consent authority that
the making of the proposed instrument has been deferred indefinitely or has
not been approved), and
(iii) any development control plan, and
(iiiia) any planning agreement that has been entered into under section 93F, or
any draft planning agreement that a developer has offered to enter into
under section 93F, and
(iv) the regulations (to the extent that they prescribe matters for the purposes of
this paragraph), and
(v) any coastal zone management plan (within the meaning of the Coastal
Protection Act 1979),

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 in 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.

Note: See section 75P (2) (a) for circumstances in which determination of
development application to be generally consistent with approved concept plan for a
project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the
development on biodiversity values if:

(a) the development is to be carried out on biodiversity certified land (within the
meaning of Part 7AA of the Threatened Species Conservation Act 1995 ), or

(b) a biobanking statement has been issued in respect of the development

(2) Compliance with non-discretionary development standards-development other than
complying development If an environmental planning instrument or a regulation
contains non-discretionary development standards and development, not being
complying development, the subject of a development application complies with those
standards, the consent authority:
(a) is not entitled to take those standards into further consideration in determining the development application, and
(b) must not refuse the application on the ground that the development does not comply with those standards, and
(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

(4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.

(5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) Definitions In this section:

(a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
(b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.
## Items for Consideration of Council:

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REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1  [PR-PC] Development Application DA14/0892 for a Staged Development for a Dwelling House and Related Works, the First Stage for which Development Consent is sought to Define a Dwelling House Pad Site. Concept Approval is also sought for a Second Stage Dwelling, Access and Tree Removal at Lot 1 DP 408972 Wooyung Road, Wooyung

SUBMITTED BY: Development Assessment and Compliance

Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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<td>1</td>
<td>Civic Leadership</td>
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<tr>
<td>1.2</td>
<td>Improve decision making by engaging stakeholders and taking into account community input</td>
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<td>1.2.1</td>
<td>Council will be underpinned by good governance and transparency in its decision making process</td>
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SUMMARY OF REPORT:

Council is in receipt of a formal staged development application in accordance with Section 83B of the Environmental Planning & Assessment Act 1979 – Staged Development Applications. This section of the Act allows applicants to set out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications.

In this instance the applicant seeks approval for the concept of a house by defining a dwelling house pad site (by constructing a fence), nominating a building envelope within the pad, and nominating an asset protection zone. No other physical works are proposed as part of this application.

A future application would be submitted (Stage 2) for the second part of the development which would include the construction of the dwelling within the already nominated building envelope, upgrading the existing access track to the proposed house site, removal of tree vegetation within the building APZ, and the implementation of offsets pursuant to BioBanking legislation.

It is anticipated that this future application would require the removal of 8 native trees within the access road footprint, 18 native trees within the mounded land application area and 53 native trees within the building footprint.

Based on the information provided the following extent of clearing of EEC’s within the Dwelling Envelope only has been estimated at:
• Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregion 300m²
• Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion central to the site approximately 1528m²
• Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast Sydney Basin and South East Corner Bioregions north-western corner – 200m²

Therefore Council needs to consider the combined cumulative impact of the concept of both Stage 1 and Stage 2 of the proposed house development. This is a requirement of Clause 8 of the Tweed LEP 2000 and consent may only be granted if the consent authority is satisfied that the development would not have an unacceptable cumulative impact.

The proposed location for the concept of the house is within Lot 1 in DP 408972 which is the property located in the south eastern corner of Tweed Shire on the southern side of Wooyung Road, Wooyung, adjacent to the coastal dune and an unformed Crown road that extends along the coastal dune from Wooyung Road to New Brighton Beach in Byron Shire.

The subject site is one lot of two lots owned by Wooyung Developments which collectively have a valid development consent for a tourist resort (D88/0640.01) containing an artificial lake, a nine hole golf course, 300 accommodation units (500 bed) and other facilities. The lapsing of DA88/0640 was challenged in the Land and Environment Court in 2006 which confirmed that DA88/0640 is in fact a valid Development Consent.

Within the Statement of Environmental Effects for D88/0640, the subject lot was identified within the “Dunal and Watercourse Precinct” for environmental conservation and restoration and this is reflected in the consent conditions.

The applicant has acknowledged the resort approval and quoted Section 80A of the Environmental Planning and Assessment Act 1979 which states that:

**80A Imposition of conditions**

(1) **Conditions - generally**

A condition of development consent may be imposed if:

(a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or

(b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or

The applicant has further requested that Council utilise Section 80A(1)(b) when processing this application and provide for the modification of D88/0640 to allow the development as anticipated by this application.

The site is known to support Endangered and Threatened Ecological Communities and Threatened Species listed under the Threatened Species Conservation Act and Environment Protection Biodiversity Conservation Act. In addition the subject site occurs within a Regional Habitat Corridor – Coastal (with the focal species being the blossom bat/long-eared bat) and is traversed by Billinudgel Creek to the west. With reference to the
gazetted SEPP 26 Littoral Rainforest mapping one unit of littoral rainforest (for the purposes of the SEPP 26) occurs on site. An additional unit of SEPP 26 Littoral Rainforest occurs on the adjacent site to the south. The 100 m buffers from those mapped littoral rainforest as applied under SEPP 26 extend over the subject site.

The applicant was requested to provide either a BioBanking Agreement (as indicated in the proposal) or complete an ecological assessment and 7-part test of significance to identify significant local ecological values/processes and consider potential direct and indirect impacts resulting from the proposed ultimate (Stage 1 and 2) development having particular regard for:

- Threatened species and their habitats, endangered and threatened ecological communities
- Values associated with Billinudgel Creek

The applicant indicated a reliance on BioBanking to be assessed at the future Stage 2 development stage.

Given that the site supports high ecologically significant values, and Stage 1 seeks conceptual approval for future establishment of a dwelling, it is considered that relevant information to determine direct and indirect and cumulative impact on the sites ecology and biodiversity values based on the ‘ultimate development’ (Stages 1 & 2) should be provided at the Stage 1 phase of the development.

In the absence of:

- Detailed development design; and
- Rigorous ecological assessment information (including 7-part test of significance); or
- BioBanking Agreement under the Biodiversity Banking and Offsets Scheme

It is considered that Council staff are unable to accurately and comprehensively assess the potential cumulative impacts that may result from the ultimate development, and therefore cannot be confident that obligations under Section 79C and Section 5A of the Environmental Planning & Assessment Act 1979 can be met.

Having regard to the environmental constraints of the site, the objectives of the zone, the proposed environmental zoning of the land, and the historical approval over the land for environmental conservation and restoration, the proposed application is recommended for refusal.

The site is also known to support two Aboriginal sites (a midden and a shell scatter). The proposal has not demonstrated how Clause 45 of the Tweed LEP 2000 has been satisfied in regards to adequately reporting on the two known Aboriginal sites within the subject site as the NSW Office of Environment & Heritage requested additional information within the cultural heritage report which has not been provided.
RECOMMENDATION:

That:

A. ATTACHMENTS 1 & 2 are CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains:

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

B. Development Application DA14/0892 for a staged development for a dwelling house and related works, the first stage for which Development Consent is sought to define a dwelling house pad site, and also for which concept approval is sought for a second stage dwelling, access and tree removal at Lot 1 DP 408972; Wooyung Road, Wooyung be refused for the following reasons:

1. The applicant has failed to provide sufficient development design and associated ecological survey and assessment information to enable comprehensive analysis and evaluation of potential cumulative impacts that may result from the ultimate development (Stage 1 and 2). As such:

   a) Significant uncertainty remains as to the extent and level of cumulative impact on threatened species, their habitats and Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act 1995 and/or Environment Protection and Biodiversity Conservation Act 1999; therefore

   b) Section 5A of the EP&A Act has not been satisfied

2. The proposal is inconsistent with the likely outcome of the North Coast E Zone Review for this site where it is expected that the subject site be designated an E2 Environmental Conservation zoning.

3. The proposal has not clearly demonstrated how the objectives of the 1(a) Rural Zone and 7(a) Environmental Protection (Wetlands and Littoral Rainforest) Zones designated under the Tweed Local Environmental Plan 2000 have been met.

4. The proposal has not demonstrated how Clause 8 of the Tweed LEP 2000 has been satisfied in regards to cumulative impact.

5. The proposal has not demonstrated how Clause 45 of the Tweed LEP 2000 has been satisfied in regards to adequately reporting on the two known Aboriginal sites within the subject site. The NSW Office of Environment & Heritage requested additional information within the cultural heritage report which has not been provided.

6. The likely environmental impacts and effect on the long term functional value of a recognised Regional Wildlife Corridor at a local scale has not been comprehensively considered.
7. The proposal fails to adequately demonstrate how the SEPP 26 Littoral Rainforest is to be protected and managed based on the ultimate development (Stage 1 and 2) in accordance with Clause 25 of the Tweed LEP 2000.

8. The proposal fails to articulate how the design of the development sensitively responds to the sites ecological features to be confident that the development is suitable for the site.

9. The application is inconsistent with the existing approved development consent over the site (D88/0640).

10. The proposal has not provided sufficient information to be confident that the development complies with State Environmental Planning Policy 71 – Coastal Protection, particularly in relation to preservation of coastal vegetation and maintenance of wildlife corridors.

11. The proposed development is not considered to be in the public interest given the impacts of the proposal on the existing sensitive environment.
REPORT:

Applicant: Planners North
Owner: Wooyung Properties Pty Ltd
Location: Lot 1 DP 408972; Wooyung Road, Wooyung
Zoning: Part 1(a) Rural and Part 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: $4,000

Background:

The subject application has been lodged over Lot 1 DP408972 at Wooyung Road, Wooyung which comprises 3.11 hectares, zoned part 1(a) Rural and part 7(a) Wetlands and Littoral Rainforest under Tweed LEP 2000. The subject site is owned by Wooyung Developments Pty Ltd who also owns an adjoining block being Lot 1 DP 779817. The adjoining block does not form part of this application but the two blocks combined have a joint development history for a tourist development as detailed below.

The subject site has an extensive development background including:

- Sandmining
- D88/0640 – development consent granted for a tourist resort incorporating 500 bedrooms with lake and facilities
- Part 3A Major Project Application (not supported by State Government)
- DA09/0341 – 3 storey house (refused by Council)
- Planning Proposal (PP13/0004) for 25 homes (not supported by Council, did not proceed)

The following background summarises this long development history:

The site has previously been subject to heavy mineral sand mining and Department of Primary Industry records indicate that a Heavy Mineral Sandmining Concentration Plant was in operation on the subject lot from 1961 to at least the late 1970’s. A borrow pit located on the adjoining Lot 1 DP 779817 was within Class 2 acid sulphate soil risk area and the use of this soil on the subject site was possible. Since the cessation of sand mining, vegetation has been allowed to grow and grazing has occurred on the adjacent Lot 1 DP 779817.

The two lots owned by Wooyung developments collectively have valid development consent for a tourist resort (D88/0640.01) containing an artificial lake, a nine hole golf course, accommodation units and other facilities. The lapsing of DA88/0640 was challenged in the Land and Environment Court in 2006 which confirmed that DA88/0640 is in fact a valid Development Consent (see the below approved site master plan).
Within the Statement of Environmental Effects for D88/0640, the subject lot where the proposed house is intended to be located was identified within the “Dunal and Watercourse Precinct” for environmental conservation and restoration and this is reflected in the consent conditions. Figure 2 below specifically says avoid all but essential development in this precinct.
Figure 2: Shows the subject site within the Dunal & Watercourse Precinct in which it states to avoid all but essential development in this precinct.

Figure 3: Shows the subject site within the area nominated for buffer planting and existing vegetation to be retained and embellished as required.
For the purposes of describing the structural concept illustrated in Exhibit 4.1, the site is separated into four precincts:

**Dunal Precinct**

The dunal precinct is to be rehabilitated and no development to be located within its boundaries. This precinct should be strictly limited to dunal restoration, pedestrian and emergency/maintenance vehicle access.

**Billinudgel Creek Precinct**

This precinct contains Billinudgel Creek and the significant freshwater wetlands of the site. The site concept provides that this precinct be preserved and embellished with buffers and the like. Tourism development should not occur in this precinct save for restoration in unvegetated components and access facilities and soft recreational uses.

Conditions arising from the previous development consent which relate to the proposed house site are listed below:

4. Landscaping of the site to be carried out in accordance with the submitted plans to the satisfaction of Council's Chief Town Planner. A detailed landscaping plan for internal amenity landscaping work, ie. about the built up core area of the site, to be submitted as part of the Building Application and to be approved by Council's Chief Town Planner prior to release of approved building plans.

7. The Wooyung Beach dunal system and generally all land seaward of the 100 year erosion impact line (as identified in the Coastal Erosion Report Tweed Shire prepared by the Public Works Department) to be protected and managed in accordance with the strategy outlined in Section 4 of the report comprising the Statement of Environmental Effects accompanying the development application. In particular, attention to be given to the following matters -

i. All pedestrian access to the beach to be confined to one access only. Such to be generally in the location shown on drawing number 5.3A prepared by Anderson Street Architects. The applicant to consult with Council's Engineering Department and to submit specific plans to be approved by the Shire Engineer for the proposed boardwalk structure prior to the release of approved building plans.
29. Consolidation of all separate parcels of land into one lot and under one title prior to any use or occupation of the development pursuant to this approval.

In 2009 the applicant lodged an application (DA09/0341) for a proposed three storey house on the subject allotment. The application was refused in July 2011 for the following reasons:

1. The proposed development is not suitable for the environmentally sensitive nature of the site;

2. The proposed development is likely to cause environmental harm to surrounding sensitive ecological communities and threatened species, potentially a significant impact to threatened species or ecological communities and interruption to a regional wildlife corridor. Offset for loss of Littoral Rainforest is not available on-site.

3. The proposed development conflicts with the Government Coastal Policy and in particular the North Coast Design Guidelines for Isolated Coastal Dwellings.

4. The proposed development does not comply with State Environmental Planning Policy 71 – Coastal Protection, particularly in relation to visual amenity and preservation of coastal vegetation;
5. The proposed development does not comply with Clause 32B and Clause 36C of the SEPP North Coast Regional Environmental Plan, particularly in relation to meeting the objectives of the NSW Coastal Policy, the Coastline Management Manual and the North Coast Design Guidelines and through clearing and fragmentation in a conservation area of state and regional significance.

6. The proposed development does not comply with the Tweed Local Environmental Plan 2000 Clauses 4 and 5 in that the development is not considered to represent ecologically sustainable development; Clauses 8 and 11 in that the development is not consistent with zone objectives; Clause 25 as the development has insufficient regard for adjacent 7(a) zoned land and a plan of management has not been provided; Clause 31 because insufficient buffer is provided to the headwaters of Billinudgel Creek; Clause 35 in that an acid sulfate soil management plan has not been prepared; Clause 36 in that the development proposed is considered inappropriate for the level of risk from coastal erosion and Clause 39A in that the development does not meet the requirements of Planning for Bushfire Protection guidelines.

In 2010 the applicant made a Part 3A Major Project application to the Department of Planning proposing 24 larger dwellings on the subject lot and the adjacent larger lot in two rows of 12, one along the frontal dune and one in the westward edge of the property. The NSW Department of Planning responded that they were not willing to support any proposal for residential development until an appropriate rezoning had occurred. The Department also recognised the significant constraints upon the site and stated that the dunal area was the most ecologically important and environmentally sensitive part of the site, being an ESASS (an environmentally sensitive area of state significance).

On 9 September 2013 Council received a request from Wooyung Properties to prepare a Planning Proposal (PP13/0004) for development on Lot 1 DP 779817 and Lot 1 DP 408972 Wooyung Road, Wooyung. The request sought to amend the Tweed Local Environmental Plan 2014 to enable a 25 lot residential development and community title subdivision in exchange for surrendering the 500 unit tourist development previously approved under Development Consent D88/0640 granted in 1988.

The location of house sites proposed, aligned along elevated land on the eastern boundary adjoining the coastal dune system, and the western portion of the site, and would have required the clearing of endangered or critically endangered ecological communities (see below image).
Peer review of the strategic merit of the request by Parsons Brinkerhoff (PB) concluded that the proposal lacked strategic merit; however, to allow a fuller consideration of the proposal on a site-by-site basis, a detailed ecological impact assessment was undertaken by PB, which reinforced concerns about the impact on sensitive coastal vegetation communities.
On 2 October 2014 Council resolved as follows:

1. The request to prepare a planning proposal PP13/0004 Wooyung Properties - Lot 1 DP 779817 and Lot 2 DP 408972 Wooyung Road, Wooyung, not proceed;

2. The proponent be encouraged to pursue a concept more in keeping with the constraints affecting the site.

The site:

The property is located in the south eastern corner of Tweed Shire on the southern side of Wooyung Road Wooyung, adjacent to the coastal dune and an unformed Crown road that extends along the coastal dune from Wooyung Road to New Brighton Beach in Byron Shire. A rough bush track exists through the allotment and runs roughly north-south outside of the designated road reserve.

The area within the lot that is proposed for the house site is zoned entirely 1(a) Rural. Although the proposed access works as part of Stag 2 may encroach on that part of the site zoned 7(a) Environmental Protection.

Surrounding land uses are agricultural, low density rural development and environmental conservation, with the beach to the east (the distance between the house site and the low bank of the frontal dune is stated in the application as 100m) and Wooyung Caravan Park to the north-west.

The lot is irregularly shaped with it widest dimension to the north along Wooyung Road (some 105m) and its narrowest to the south adjoining Lot 1 DP 779817 (20m). Average dimensions are about 350m length x 70m width. The proposed house site is located adjacent and between two 100m buffers to SEPP 26 mapped Littoral Rainforest, bordered to the east by a crown road reserve adjoining the coast, to the west by Billinudgel Creek and to the north and south by the buffers.

Two major landform units are present, being: a low active Holocene dune formation fronting the coast and containing rapidly-drained sands, and a backdune swamp and narrow low-lying alluvial inter-barrier floodplain containing poorly drained clays, silts, sands and gravel with surface organic matter at the western edge of the lot.

Site elevations range from approximately 1m to 6m AHD.

Billinudgel Creek enters the site’s south-western boundary from the nearby Billinudgel Nature Reserve to the south and continues through the site across and along the western boundary, emptying into Mooball Creek which enters the ocean at Pottsville. Although arising in agricultural land, the creek disperses and spreads as it flows through Billinudgel Nature Reserve wetlands, before passing through the site. Water quality in Billinudgel Creek is expected to be high, water is fresh rather than saline, and somewhat acidic (due to the nature of surrounding soils).

The site is situated between Billinudgel Nature Reserve which adjoins Lot 1 DP 779817 to the south, and Wooyung Nature Reserve some 100m to the north on the other side of Wooyung Road. The entire site is mapped as a fauna corridor of regional significance which extends north and south along the coastline.
The site is located adjacent to a crown road which runs along the foreshore of Wooyung Beach and backs onto Billinudgel Creek at the rear.

The site is known to support the following ecological values:

- **Endangered and Threatened Ecological Communities listed under the Threatened Species Conservation Act and Environment Protection Biodiversity Conservation Act:**
  - Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion
  - Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast Sydney Basin and South East Corner Bioregions
  - Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregion. This community qualifies as a Threatened Ecological Community (Critically Endangered) being Littoral Rainforest and Coastal Vine Thickets of Eastern Australia

- **Threatened Species listed under the Threatened Species Conservation Act and Environment Protection Biodiversity Conservation Act**
  - Species recorded (NSW Bio-net) within a 2 km Buffer and regarded as having moderate-high likelihood of occurrence on site include:
    - 9 Fauna species listed as Vulnerable
    - 1 Flora species listed as Endangered
    - 1 flora species listed as Vulnerable
  - Additional species either previously recorded onsite or adjacent to the site (not listed on Bio-net) and/or with high-moderate likelihood of occurrence based on habitat values include:
    - 2 Endangered flora and fauna species
    - 11 Vulnerable fauna species
    - 1 Vulnerable flora species

The subject site occurs within a Regional Habitat Corridor – Coastal (Focal species Blossom Bat/Long-eared Bat).

The site is also known to support two Aboriginal sites (a midden and a shell scatter).

**Proposal:**

As part of the original Statement of Environmental Effects the applicant described the proposed development as follows:

**Stage 1**

Development Consent is sought to define the “dwelling house pad site” as illustrated in Plan 3.1, as well as specifying a future dwelling house building envelope and Asset Protection Zone. Approval is sought for the pad area to be fenced and understorey vegetation cleared within the fenced area but no consent is sought for any tree vegetation removal.

The plan shows a building envelope area of approximately 52m x 52m = 2703m²
The plan shows a building house pad area of approximately 20m x 20m = 400m²

Description of Concept Approval

In the second stage Development Consent will be sought for the erection of a dwelling house within the dwelling envelope shown in Plan 3.1; the upgrading of the existing track to the dwelling house site to meet appropriate bushfire access standards; the removal of vegetation within the building pad site and for the implementation of conservation management offsets pursuant to the BioBanking legislation.

Applicant’s Statement of Commitments:

1. The future dwelling house is to be located within the house site pad and building envelope depicted in Plan 3.1.
2. Access and associated easements, designed to meet the requirements of the NSW Rural Fire Service, will be provided to the pad site.
3. The future dwelling house will be provided with APZ’s in accordance with the requirements of the NSW Rural Fire Service and built to BAL40 standard.
4. If required, underground electricity and communications will be provided to the dwelling house site.
5. On-site effluent disposal will be in accordance with Section 5 in the report by Land and Fire Assessments (Appendix E).
6. Waste management practices shall minimise waste and maximise reuse and recycling.
7. Future Development Applications will ensure that adequate water supply is available for domestic (20,000L) and fire fighting use (20,000L).
8. A minimum of two car parking spaces and appropriate visitor car parking spaces shall be provided for the dwelling house.
9. The dwelling house shall be of colours and materials which echo the characteristics of the locality and are sensitive to the surrounding natural environment.
10. The height of any dwelling erected within the dwelling envelope shall not exceed 9m.
11. The dwelling house shall be supplied with mosquito screening and adopt all contemporary measures for mosquito management.
12. The future dwelling house shall be “energy smart” in its design and the second stage application shall be accompanied by a NatHERS Certificate.
13. The application for the erection of a dwelling on the site will be accompanied by a comprehensive vegetation management plan to ensure the long term enhancement of the existing vegetation communities on the site.

Applicants Statistical Description of Proposal

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<th>Percentage (%)</th>
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<td>Building Envelope Area</td>
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Council’s initial assessment of this proposal revealed that there was no detail of the proposed fencing for the proposed pad site. Therefore on 6 January 2015 the applicant
indicated that the preferred fencing material will be the blue colour range prefabricated fence wire with 11 Line wires, 90cm fence height, 15cm picket spacing.

On 5 March 2015 Council Officers wrote to the applicant detailing 12 matters requiring clarification and or amendment. Most importantly Council wanted either a:

**Bio-Banking Statement/Ecological Assessment**

The applicant is requested to provide a Bio-Banking Statement issued by the Office of Environment and Heritage in accordance with the Threatened Species Conservation (Biodiversity) Regulation 2008 as established under Part 7A of the Threatened Species Conservation Act 1995. The Bio-banking Statement should apply to Stage 1 and Stage 2 of the proposed development (described in Statement of Environmental Effects (SEE) titled Staged Development Application Dwelling House Lot 1 DP 408972 Wooyung Road Wooyung prepared by Planners North dated December 2014). Information requested in Items 2-7 should be used to inform the preparation of a Bio-banking Statement

OR

The applicant is requested to undertake a comprehensive ecological assessment. Survey effort and Assessment of Significance (7-part test) (if required) should be completed in accordance with the Threatened Biodiversity Survey and Assessment: Guidelines for Development and Activities (DEC 2004).

Information requested in Items 2-7 should be used to inform the preparation and compilation of the ecological assessment. The assessment shall take into consideration the ‘ultimate development’ (Stages 1 and 2).

In addition to those elements ordinarily detailed in an Ecological Assessment the applicant is specifically requested to undertake:

1. A targeted survey for the state and federally listed threatened Acronychia littoralis (Scented Acronychia) across the subject site. Identification of specimens must be verified by the NSW or QLD Herbarium. The location of each sample sent to the herbarium or those positively identified as Acronychia littoralis by the applicant’s ecologist should be shown on an appropriately scaled plan overlaid with the proposed development layout and engineering detail.
2. An assessment of those vegetation communities on site should be undertaken having regard for those matters prescribed under the EPBC Act and associated listing advice.

In response on 18 May 2015 the applicant amended their application as follows:

A. The proposal for understorey clearing as been described at Section 3.2 of the Statement of Environmental Effects is to be deleted. No understorey clearing is now proposed with Development Application 14/0892.

B. OEH in Its comments raised a concern in relation to the potential for the utilisation of a RFS 10/50 clearing entitlement. This application has been premised on the basis of minimising clearing and the proponent has no intention to rely upon the 10/50 rule. Further, OEH seemed confused about the status of our BioBanking proposal. To put
both these matters beyond doubt the application is amended to insert two additional Commitments at Section 3.4 as follows:

14. **With the lodgement of the Development Application for the future dwelling house, the applicant shall concurrently submit a Voluntary Planning Agreement to waive any entitlements pursuant to the Rural Fire Service 10/50 Code of Practice.**

   Council Note: Land affected by SEPP 26 or within 100m of NSW Coastline or Estuaries may not have any 10/50 entitlement subject to the 10/50 Code Review of September 2015 so this commitment may not achieve any practice outcome.

15. **With the lodgement of the Development Application for the future dwelling house, the Applicant shall concurrently submit BioBanking Certification with respect to all vegetation removal.**

In response to the request for the BioBanking statement or comprehensive ecological assessment for both Stage 1 and Stage 2 of the Development the applicant submitted a 7 Part test completed by Mr Peter Parker which concludes that the first stage Development Application will not have a significant effect on threatened species or endangered ecological communities.

As this 7 Part test relates only to Stage 1 of the development this forms part of the reasons for refusal of the application.
SITE DIAGRAM:
ZONING PLAN WITH APPLICANTS HOUSE PAD OVERLAY

Note the applicant’s house pad is shown much closer to the northern SEPP 26 buffer in this image. Council’s GIS program has been used to plot the house pad site against the applicants plan. This is considered an accurate representation of the applicants plan and the SEPP 26 buffer alignment.
AERIAL IMAGE WITH APPLICANTS HOUSE PAD OVERLAY

Note the applicant’s house pad is shown much closer to the northern SEPP 26 buffer in this image. Council’s GIS program has been used to plot the house pad site against the applicants plan. This is considered an accurate representation of the applicants plan and the SEPP 26 buffer alignment.
PRELIMINARY INDICATIVE EARTHWORTH CROSSOVER DETAILS
Consideration of the applicant's additional information in response to Council's request for additional information

On 5 March 2015 Council Officer's wrote to the applicant and requested clarification/additional information. The relevant matters are addressed below with an assessment of the information provided:

**Item 1 - Bio-Banking Statement/Ecological Assessment**

The applicant was requested to provide a Bio-Banking Statement issued by the Office of Environment and Heritage in accordance with the Threatened Species Conservation (Biodiversity) Regulation 2008 as established under Part 7A of the Threatened Species Conservation Act 1995. The Bio-banking Statement should apply to Stage 1 and Stage 2 of the proposed development (described in Statement of Environmental Effects (SEE) titled Staged Development Application Dwelling House Lot 1 DP 408972 Wooyung Road Wooyung prepared by Planners North dated December 2014). Information requested in Items 2-7 should be used to inform the preparation of a Bio-banking Statement

OR

The applicant was requested to undertake a comprehensive ecological assessment. Survey effort and Assessment of Significance (7-part test) (if required) should be completed in accordance with the Threatened Biodiversity Survey and Assessment: Guidelines for Development and Activities (DEC 2004).

**Item 1 Applicants Response Bio-Banking Statement/Ecological Assessment**

A 7 Part Test prepared by Peter Parker concludes that the first stage of development will not have a significant effect on threatened species or endangered ecological communities.

**Item 1 Council Assessment Bio-Banking Statement/Ecological Assessment**

A BioBanking Statement has not been provided. The applicant elected to complete a supplementary ecological assessment.

The report being Supplementary Assessment (SEA) For Lot 1 DP 408972 Wooyung Road Wooyung dated 04 May 2015 prepared by Peter Parker Environmental Consultants comprises a 7-part test only rather than involving:

- Identification of the sites ecological values occurring within the study area,
- Comprehensive assessment of local ecological processes
- Rigorous analysis of the likely impacts and
- Evaluation of potential avoidance or mitigation measures.

A fundamental shortcoming of the assessment of significance was to evaluate the likely effects of Stage 1 only rather than consider the potential direct and indirect cumulative ecological impacts as result of the ultimate development (Stages 1 and 2).
A summary and evaluation of key components of the report are provided below:

<table>
<thead>
<tr>
<th>SEA Component</th>
<th>Summarised Points</th>
<th>Ecology Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary</strong></td>
<td></td>
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<tr>
<td></td>
<td>• The proposed fence (Stage 1) is to be aligned around a future building site</td>
<td>• Similar to the previous report (BioBanking Assessment 2014) the areal extent of 0.76 ha (pp. 4 and 6) has been estimated to capture the building site and associated asset protection zone. This figure is inconsistent with that identified in the SEE and calculation based on the proposed layout (Figure 1 of the report shows the Site and APZ (0.27ha) encompassing a Building Footprint (20 m x 20 m). It is unclear whether the footprint of the access road has been included within the calculation</td>
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<td></td>
<td>• The building site and APZ is 0.76 ha</td>
<td>• There appears to be inconsistency between the SEE and the SEA in terms of the positioning of the proposed fence. The SEE indicates that the proposal involves ‘erection of a fence around the 'Dwelling House Pad Site’ the dwelling pad site being 400m² (20m x 20m). Contrary to the description above the SEA indicates that the fence is to be aligned around the APZ perimeter in Figure 1. The latter being a broader area enclosed by proposed fencing</td>
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<td></td>
<td>• The site is primarily located within a Coast Cypress Pine Vegetation Community</td>
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<td>• The fence will be constructed through littoral rainforest at its eastern side</td>
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<td>• The fence will be constructed by hand and access is to be provided along an unformed road</td>
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<td></td>
<td>• No trees are to be removed, impact on shrubs and ground covers is minimal</td>
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<td></td>
<td>• Concluded that the proposal would not have a significant effect on threatened species or endangered ecological communities</td>
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<td></td>
<td>• Figure 1 shows the proposed new dwelling location, APZ and fence location around APZ perimeter</td>
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<tr>
<td><strong>Introduction</strong></td>
<td>• Indicates new residence, wastewater management and APZ located within 0.76ha of primarily Coast Cypress Pine <em>Callitris columellaris</em></td>
<td>• As indicated reference to 0.76 ha is inconsistent with calculations made based on the layout plan.</td>
</tr>
<tr>
<td><strong>Fencing</strong></td>
<td>• Fencing specification are provided (Appendix 1): o Waratah Stocksafe-T Longlife 122.5 cm high 50 mm x 100mm low tensile wire fencing are provided</td>
<td>• Thorough and detailed consideration has not been given to impacts on those threatened fauna species likely to use the site (create an impediment to fauna movement and restrict access to available potential foraging areas i.e. Bush Stone Curlew) or threatened flora species (i.e. <em>Acronychia littoralis</em>) that may occur along the alignment of the proposed fence.</td>
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<td></td>
<td>• The fence is to be constructed by hand to meander around existing trees, Limb removal may be required</td>
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<td>• Brief consideration was given to the barrier effect created by the fence restricting movement of large fauna species such as macropods (<em>Wallabia bicolor</em>). This was considered a minor issue given the relatively small area of the site to be fenced.</td>
<td>•</td>
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<tr>
<td>SEA Report Component</td>
<td>Summarised Points</td>
<td>Ecology Comment</td>
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<tr>
<td><strong>Statutory Considerations</strong></td>
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<tr>
<td><strong>2.1 Koala habitat and SEPP 44</strong></td>
<td>• SEPP 44 assessment was undertaken. It was determined that whilst the subject site exceeded an area of 1 ha Potential Koala Habitat for the purposes of the SEPP was not present onsite as:</td>
<td>• It is accepted that Potential Koala Habitat for the purposes of the SEPP 44 does not occur within the study area</td>
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<td>o Vegetation likely to be impacted does not comprise greater than 15% preferred koala feed trees (Schedule 2 of the SEPP) of the total number of trees in the upper or lower strata of the tree component</td>
<td>• The applicant however failed to address the TCCKPoM</td>
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<td>o No evidence of Koala using the site was recorded and no preferred Koala feed trees are to be removed.</td>
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<td><strong>2.2 s5A of the EP&amp;A Act</strong></td>
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<td><strong>Section 5A (a) Flora</strong></td>
<td>• No threatened plant species were recorded (no reference has been given to Acronychia littoralis known to occur on the subject site)</td>
<td>• The applicant was requested to undertake a targeted survey for the state and federally listed threatened Acronychia littoralis (Scented Acronychia) across the subject site. Identification of specimens were to be verified by the NSW or QLD Herbarium. The location of each sample was to be sent to the herbarium or those positively identified as Acronychia littoralis by the applicant’s ecologist were to be shown on an appropriately scaled plan overlaid with the proposed development layout and engineering detail.</td>
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<tr>
<td></td>
<td>• Therefore concluded that this factor is satisfied</td>
<td>• No evidence of such survey has been provided. The lifecycle, viability and extent of the local population of A. littoralis has therefore not been evaluated</td>
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<td></td>
<td>• Impacts of fencing considered negligible as roosting, foraging or breeding habitat will (not) be removed</td>
<td>• NRM cannot be confident that stems of the threatened species do not occur within the study area</td>
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<td>• Therefore concluded that this factor is satisfied</td>
<td>• NRM cannot be confident that this factor could be satisfied</td>
</tr>
<tr>
<td><strong>Section 5A (a) Fauna</strong></td>
<td>• A number of vulnerable species are known from the study area (these species were not listed)</td>
<td>• Contemporary survey in accordance with the DEC 2004 Guidelines has not been undertaken</td>
</tr>
<tr>
<td></td>
<td>• Impacts of fencing considered negligible as roosting, foraging or breeding habitat will (not) be removed</td>
<td>• A list of previously recorded threatened fauna species has not been provided in either submitted EA reports</td>
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<td></td>
<td>• Therefore concluded that this factor is satisfied</td>
<td>• In considering the lack of ecological assessment undertaken by the applicant with respect to the subject proposal (Stages 1 and 2) Council cannot be confident that this factor could be satisfied</td>
</tr>
<tr>
<td>SEA Report Component</td>
<td>Summarised Points</td>
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<tr>
<td>s.5A (b)</td>
<td>No endangered populations on site</td>
<td>• Agree</td>
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</tbody>
</table>
| s.5A (c)             | • No critically endangered communities occur onsite  
• The fence will be constructed in littoral rainforest and coastal cypress pine recognised as Endangered Ecological Communities  
• Hand construction techniques and weaving the fence around trees.  
• Therefore concluded that this factor is satisfied | • Agree that no critically endangered communities occur on the subject site  
• There has been no evaluation/estimate of the local extent of each endangered ecological community or the degree to which each community would be modified based on the Stage 1 and 2 of the proposal  
• The assessment has not considered the life-cycles of species that make up the community nor considered any impact on ecosystem function  
• Council cannot be confident that this factor could be satisfied |
| s.5A (d) (i)         | • No trees or vegetation are to be removed therefore in the context of threatened species habitat the area proposed to be impacted is negligible | • The applicant estimated that 0.76ha is to be disturbed to facilitate development of Stages 1 and 2. Whilst confusion over the areal extent has been raised, the type of habitat and the degree to which habitats for specific species likely to be disturbed/modified have not been evaluated nor adequately considered as part of the SEA  
• The condition of the habitats has not been provided  
• An assessment of the quality of similar habitats within the locality has not been undertaken  
• An assessment of the role of the habitat to be affected in sustaining habitat connectivity in the locality has not been provided  
• The degree of habitat modification has not been provided |
| s.5A (d) (ii)        | The proposal will not result in habitat fragmentation | • The effect of Stage 1 and Stage 2 posing a barrier/impediment to fauna movement and flora dispersal at a local scale has not been adequately contemplated. |
| s.5A (d) (iii)       | The proposal is of little consequence to the long term survival of the species, population or ecological community in the locality as no significant habitat will be removed | • An assessment of the ecological integrity of the habitat to be affected in respect to tenure, security of that and other habitat within the local area, has not been adequately considered  
• Based on the points above Council cannot be confident that this combined factor could be satisfied |
| s.5A (e)             | The site does not contain critical habitat under Part 3 of the TSC Act | • Agree |
| s.5A (f)             | A number of recovery plans/threat abatement plans apply to some extent to the site  
Minimal disturbance to flora and fauna habitats is consistent with recovery plan actions | • Relevant recovery plans and threat abatement plans (TAP) have not been listed. The following would be considered applicable:  
o Recovery Plan for the Bush Stone-curlew *Burhinus grallarius*  
o Mitchell’s Rainforest Snail *Thersites mitchelliae* Recovery Plan  
o Koala Recovery Plan (*Phascolarctos cinereus*)  
o National Recovery Plan for the wallum sedge-frog and other wallum-dependent species (*Crinia tinnula*) |
### SEA Report Component

#### Component

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Draft National Recovery Plan for the Grey-headed Flying fox</strong> (<em>Pteropus poliocephalus</em>).</td>
<td>o Based on Stage 1 and 2 of the development a number of key threatening processes may be considered relevant to the proposal including:</td>
</tr>
<tr>
<td><strong>Bitou Bush and Boneseed TAP</strong>.</td>
<td>• Aggressive exclusion of birds from woodland and forest habitat by Abundant Noisy Miners (<em>Manorina melenocephalata</em>).</td>
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<td>• Clearing of native vegetation.</td>
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<td>• Competition and grazing by the feral European Rabbit (<em>Oryctolagus cuniculus</em>).</td>
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<td>• High frequency fire resulting in the disruption of lifecycle processes in plants and animals and loss of vegetation structure and composition.</td>
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<td>• Invasion and establishment of exotic vines and scramblers.</td>
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<td>• Invasion and establishment of the cane toad (<em>Bufo marinus</em>).</td>
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<td>• Invasion, establishment and spread of Lantana.</td>
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<td>• Invasion of native plant communities by Bitou Bush (<em>Chrysanthemoides monilifera</em>).</td>
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<td>• Loss ad degradation of native plant and animal habitat by invasion of escaped garden plants including aquatic plants.</td>
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<td>• Predation of native animals by the feral cat.</td>
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<td><strong>s.5A (g)</strong></td>
<td>o Determined that none of the 36 gazetted key threatened processes are listed are likely to increase as a result of the proposal.</td>
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</table>

### Item 2 – Engineering/Earthworks Plan

Council required a plan showing grades, levels and extent of the earthworks line for the length of the proposed access driveway (and associated passing bays) taken from the centreline of Wooyung Road to and within the ‘Dwelling Envelope’ (as described and shown in the SEE). This should be produced on a site plan (for example 1:250), with cross and longitudinal sections provided at a common scale. This plan should depict the available site distance at the intersection. The driveway and passing bay detail should be transferred/overlaid to the detailed tree survey as requested in 3 below.

### Item 2 Applicants Response Engineering/Earthworks Plans

A plan was produced and forms part of the plans included in this Council Report.

### Item 2 Council Assessment Engineering/Earthworks Plans

The applicant submitted preliminary engineering plans and survey detail titled *Wooyung Road Earthworks Lot 1 DP408972 Rev. A Sheets 0001-0006 prepared by WGM Consulting* detailing the following:

- 3 passing bays are proposed (20m x 2m) along the alignment of the driveway access.
- Driveway access is typically 4m in width with 1:3 batter. Cut and fill is required to achieve adequate/consistent driveway access grades.
• Indicative finished levels at the house pad site were unclear and maximum level of fill could be 2.5 m. Spot levels were not provided and it was difficult to determine exactly how much fill could be proposed as part of any Stage 2 application.
• Indicative finished levels for land application area are estimated at 4.0m and maximum level of fill could be 2.0m. Spot levels were not provided and it was difficult to determine exactly how much fill could be proposed as part of any Stage 2 application.
• Indicative Estimated earthworks volumes are calculated at cut 132m³ and fill 626 m³
• Site distances were shown on Sheet 0006. The Applicant has provided an engineering detail for the proposed access and advised that available site distance along Wooyung Road to the west is 180m and to the east 110m. Given the speed environment in both directions the available site distances are considered satisfactory. The proposed access satisfies Council's minimum standard.
• During a site inspection conducted on the 05 June 2015 it was confirmed that the locations of trees (>300mm girth (dbh) or 3 m in height) shown on the plans was generally accurate. Based on the survey, the following number of trees (that meet tree survey criteria) likely to be removed to facilitate the construction of the driveway access road, building pad and land application area (in accordance with the plans) include:
  o 8 native trees within the access road footprint
  o 18 native trees within the mounded land application area
  o 53 native trees within the building footprint

Item 3 – Detailed Tree Survey

Council required a detailed tree survey to evaluate the extent of vegetation removal that would be required to facilitate the proposed development and that may be considered acceptable (without consent) post development under relevant legislation

Item 3 Applicants Response Detailed Tree Survey

A survey of trees was shown on the engineering plans shown in this Council Report. The tree survey information is not as voluminous as has been requested by Council as the proponent has committed to a BioBanking Certification pathway in the second stage. No works is proposed as Stage 1 which is the Stage for which development consent is being sought.

Item 3 Council Assessment Detailed Tree Survey

The following components of the information request where satisfactorily addressed:

• Locations of vegetation that meet the girth/height criteria was generally provided for the following areas:
  o Earthworks footprint and ten (10) m from the extent of earthworks to facilitate construction of the proposed driveway access
  o Proposed Building footprint (fill-pad) and those trees within the APZ zone

The following components however have not been addressed:

• Whist the trees have been identified on the plans that meet the criteria a tree schedule detailing the particulars of each tree have not been provided in order to
consider impact of earthworks on the tree protection zone/structural root zone of trees proximate to any earthworks
• The vegetation captured within the vegetation clearing entitlements area under 10/50 Code of Practice has not been identified.
• An assessment on the condition of vegetation that would likely be impacted as a result of APZ.
• Reference or consideration of the Native Vegetation Act provisions has not been given
• The line of vegetation has not been shown to identify understorey/sub canopy extent where the tree criteria is not met

Given the scarcity of supporting information provided in respect to the following elements of the proposal:
• Construction/installation of future built form and civil infrastructure,
• Required asset protection zones
• Further potential bushfire hazard reduction works.

Whilst it is noted that the applicant has committed to entering into a Voluntary Planning Agreement to waive any entitlements pursuant to the Rural Fire Service 10/50 Code of Practice it is considered that 10/50 may not apply to the site due to the SEPP 26 provisions.

The assessment of potential cumulative impacts as a result of the ultimate development should be evaluated at the initial development application stage. As such in the absence of a BioBanking Agreement assessment Council Officers are of the opinion that the applicant has failed to demonstrate how obligations under 79C of EP&A Act are to be satisfied.

Item 4 – Consideration of Previous Approval D88/0640

The land proposed for the house has the benefit of a previous development approval (Resort Development - D88/0640). That approval showed the subject land area was to be utilised for conservation purposes. The proposed house application fails to demonstrate the relationship between the subject house application and the previously issued consent. The applicant was required to demonstrate how Council is lawfully able to issue development consent over a piece of land that has a different purpose under a different development consent without a concurrent S96 over D88/0640 to rectify this matter or D88/0640 being surrendered.

Item 4 – Applicants Response Consideration of Previous Approval D88/0640

The applicant indicated that the dwelling house will be able to operate in association with Development Approval D88/0640 providing a permanent residential dwelling in association with that development. The applicant has quoted Section 80A of the Environmental Planning and Assessment Act 1979 which states that:

80A Imposition of conditions

(1) Conditions—generally

A condition of development consent may be imposed if:
(a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or

(b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or

The applicant has further requested that Council utilise Section 80A(1)(b) when processing this application and provide for the modification of D88/0640 to allow the development as anticipated by this application.

Item 4 - Council Assessment Consideration of Previous Approval D88/0640

Whilst Council Officers agree that Section 80A(1)(b) can be used to require the modification of another consent the subject application has not been substantiated with sufficient information on the nature in which D88/0640 could or should be modified.

DA88/0640 is a significant application that would represent a significant change to the Wooyung locality if ever developed in accordance with the consent. It would also appear that the conditions imposed surrounding environmental protection were fundamental to the applications acceptability in the first instance.

Any modification of D88/0640 should not be undertaken without serious review and consideration of all relevant factors.

DA14/0892 should not be approved on the basis that D88/0640 will be modified to accommodate a house when D88/0640 may not be capable of being modified in a manner to support the proposed house.

The current application does not submit sufficient information to enable Council to properly consider amending D88/0640 under Section 80A1(b) to allow a house in an area which was previously nominated within the “Dunal and Watercourse Precinct” for environmental conservation and restoration as this area specifically said to avoid all but essential development in this precinct.

Any approval of DA14/0892 would be in direct contrast to DA88/0640 and accordingly DA14/0892 should not be approved until such time as DA88/0640 has been assessed on its merits for a modification.

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 aims of the plan are:

(a) to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is “the management of growth so that the unique natural and developed
character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”.

(b) to provide a legal basis for the making of a development control plan that contains more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:

(i) that some or all development should be restricted to certain land within a zone,
(ii) that specific development requirements should apply to certain land in a zone or to a certain type of development,
(iii) that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and

(c) to give effect to and provide reference to the following strategies and policies adopted by the Council:
Tweed Shire 2000+ Strategy
Pottsville Village Strategy, and

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

The ultimate proposed development is considered to create an unacceptable adverse impact on the natural environment contravening paragraph a) and d) of clause 4.

Clause 5 - Ecologically Sustainable Development

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

With the limited information provided the applicant has failed to demonstrate how the ultimate proposal would be regarded as ecologically sustainable development that appropriately responds to the sites natural resources.

Clause 8 – Consent considerations

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

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

In this instance, the subject allotment is zoned partly 1(a) Rural and partly 7(a) Environmental Wetlands and Littoral Rainforest. The primary objective of the Rural zone is:
• to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development (and)
• to protect rural character and amenity

The primary objective of the 7(a) zone is:

- to identify, protect and conserve significant wetlands and littoral rainforests (and)
- to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.

The nomination of the house pad is proposed within that part of the land zoned 1(a).

The future house construction and future access track works and future tree removal works would appear to be capable of all occurring within land zoned 1(a) rural. However concerns are expressed of possible edge effects associated with the driveway access and its potential impact on the adjoining 7(a) zoned land which would be part of any Stage 2 application.

The applicant has stated that a house is consistent with the objectives of the 1(a) zone. However the applicant has not demonstrated how the proposed house in this location is consistent with the zone objectives. The site is a sensitive coastal location bordered between two SEPP 26 Littoral Rainforest buffer areas, a coastal dunal area and a Billinudgel Creek. The ultimate use of the land for a dwelling purpose (after construction impacts) has edge effects of mown lawns, swimming pools, garden sheds, children’s play equipment etc. and this application has failed to demonstrate how all of the site’s sensitive ecological matters can be effectively managed taking into account all the normal house activities.

With the limited information provided the applicant has failed to demonstrate how the ultimate proposal would be regarded as ecologically sustainable development that appropriately responds to the site’s natural resources.

The applicant has not proposed any short or long term protection/management of littoral rainforests as part of the proposal.

With the limited information provided by the applicant it remains unclear whether the proposal promotes and is consistent with the relevant primary objectives of the zone.

The proposed application is considered to be inconsistent with the primary objective of the zones, in that the application is not considered to represent ecologically sustainable development due to its large footprint in a highly sensitive ecological environment. It is also questionable whether the rural character and amenity can be preserved.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed concept plan does not comply with objectives that call for the monitoring of development in inappropriate locations.
As such, the proposal is considered to contribute to an unacceptable cumulative impact if approved as the development of this site in the manner proposed is considered development of highly constrained and sensitive land that is not considered suitable.

The proposal is not considered to have satisfied the provisions of Clause 8 which must be satisfied before the consent authority can issue development consent.

Clause 11 – Zone objectives

The disparity with the primary zone objectives has been discussed above. The secondary objectives of the respective zones are listed below.

Secondary objective 1(a) Rural zone

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

Secondary objective 7(a) Environmental Protection zone

- to protect the scenic values of wetlands and littoral rainforests.
- to allow other development that is compatible with the primary function of the zone.

The proposed development is not considered to be consistent with the primary or secondary zone objectives of either zone as the subject site is highly sensitive and as demonstrated by this report is not suited for development purposes.

Clause 15 - Essential Services

The proposed building pad site is within close proximity to underground communications lines, and overhead electricity.

Council’s sewer mains and reticulated water supply do not extend to this property.

The application is supported by an On Site Sewerage Management Land Capability Assessment prepared by Land and Fire Assessments Pty Ltd (April 2014). The site is constrained by a watercourse (Billinudgel Creek) located approximately 25m from the proposed On-Site Sewage Management System. To minimise potential environmental impacts an advanced secondary treatment system with disinfection is proposed comprising of a Wisconsin Mound. The report states that the installation of the treatment system above the 1:100 year flood level and the installation of the land application area above the 1:20 year flood level are achievable. The report has been prepared by a suitably experienced and qualified consultant and adequately addresses the minimum requirements of AS/NZS 1547:2012 - On-site Domestic Wastewater
Management. The proposal as a concept is considered adequate for a three bedroom dwelling and a further detailed assessment will be undertaken in the event a development application is submitted for the construction of a dwelling. The approved land application area will require the removal of vegetation which has been addressed elsewhere in this report.

The security and safety of potable water can be adequately managed through the application of a standard condition for any future development application if an approval was granted which would require a roof catchment water supply source for domestic purposes with a first flush device. The minimum storage tank capacity would need to reflect the dry seasonal periods experienced in the locality and shall be in addition to any firefighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be 15,000L per bedroom with a minimum 20,000L to be provided.

Clause 16 - Height of Building

The site is identified on Council's Building Heights Map as being affected by a three (3) storey height limit. The subject application proposes a fence which would comply with the statutory height limit.

Clause 17 - Social Impact Assessment

The proposal does not require a social impact assessment.

Clause 25 Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

(1) **Objective**

- to ensure that wetlands and littoral rainforest and preserved and protected in the environmental and economic interest of the area of Tweed.

(2) **Unless it is exempt development, a person must not clear vegetation from, drain, excavate or fill land within Zone 7 (a) except with development consent.**

(3) **Consent must not be granted to the carrying out of development on land within Zone 7(a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:**

(a) the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and

(b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
(c) a plan of management showing how any adverse effects arising from the development are to be mitigated, and

(d) the likely effects of the development on the water table, and

(e) the effect on the wetland or littoral rainforest of any proposed clearing, draining, excavation or filling.

The applicant has stated that as the proposed house is with that part of the site zoned 1(a) and the land zoned 7(a) will not be impacted by the proposal.

The above clause specifically calls up the need for an assessment of land adjacent to land zoned 7(a). The proposed driveway access is immediately adjoining the land zoned 7(a) and 8 native trees are proposed to be removed in this location.

In the absence of information relating to the sites ecological values, an assessment of significance and consideration of appropriate management measures, (i.e. plan of management for SEPP 26 Littoral Rainforest) the applicant has failed to demonstrate how the proposal may proceed without unacceptable adverse impact on the natural environment. Therefore this clause has not been satisfied

Clause 31- Development Adjoining Waterways

This clause applies to development adjoining waterbodies and requires Council to consider setbacks and buffers amongst other things.

Billinudgel Creek traverses the site originating from within the Billinudgel Nature Reserve and is described as natural and tannin-stained, typical of ‘wallum’ country, mapped by Fisheries as ‘Key Fish Habitat’.

With reference to the Coastal Zone Management Plan for Tweed Coast Estuaries 2013 the tributary is not depicted on the Mooball Creek Estuary Catchment plan. Notwithstanding the tributary has been previously recognised as supporting high ecological values and would be expected to be afforded an adequate buffer of dimensions determined necessary to maintain/improve biodiversity values and ecological processes.

The proposed dwelling pad is approximately 30m from the top bank of Billinudgel Creek. It is estimated that the dwelling envelope however is situated approximately 10m from the top of high bank. The applicant has indicated commitment to rehabilitate the area between the top bank and Dwelling Envelope.

Further information requested by Council in relation to ecological values associated with Billinudgel Creek was not provided in the information response.

With the limited information Council are not confident that adequate setbacks/protection mechanisms have been proposed to meet the objectives of
the Clause by protecting and enhancing Billinudgel Creek and its associated riparian values.

Clause 34 - Flooding

The subject "Stage 1" DA seeks approval for a dwelling house pad site on the subject land. The site is flood liable with a design flood level (1% AEP) of RL 3.3m AHD, and a probable maximum flood (PMF) level of RL 5.8m AHD.

No detail of the proposed dwelling is provided, as this will be the subject of a separate "Stage 2" DA.

The proposal does not involve subdivision, and therefore requirements for flood free house pads and access under DCP Sections A3 and A5 do not apply. There is no provision in DCP A3 that prohibits location of a single dwelling in the floodplain under either Section A3.6 Coastal Villages (which includes Wooyung) or Section A3.10 Rural Areas. This is subject to compliance with minimum habitable floor levels, flood compatible materials, and emergency response provisions (refer Clause A3.2.6b).

The application states that the nominated dwelling site is partially below the design flood level (however the contour shown on Figure 2.2 depicts the 3.4m contour, not 3.3m DFL). This requires either filling or a raised construction to meet the minimum habitable floor level of RL 3.8m AHD. Either approach is permissible under DCP A3, and can be detailed in the Stage 2 DA.

As the dwelling is in a non-urban zone, it is required to provide "adequate PMF refuge" in accordance with DCP-A3. This will require a second storey with a minimum floor level of RL 5.8m AHD. The applicant does not address this requirement in the application, and instead relies on other land within the subject parcel that is above PMF level. This approach is not considered to provide "adequate PMF refuge" as this high land is isolated, separated from the dwelling site, and likely to be heavily vegetated.

Subject to the above requirements for the Stage 2 DA, no objection is raised on flooding grounds to the proposed dwelling house pad.

Clause 35 - Acid Sulfate Soils

The application is supported by a Tier 1 Contaminated Site Investigation & Preliminary Acid Sulfate Soil Assessment prepared by Land and Fire Assessment Pty Ltd (November 2014). The site is identified as being Class 2 Acid Sulfate Soils. Testing results for BH1-4 indicates (BH4 representing house pad and similar soil profiles to other BH1-3) the site is not constrained by acid sulfate soils. Both bore hole locations were within the Class 5 areas at an AHD of between 4.5m to 5m. No soil samples were taken within the Class 2 area at a lower AHD or within the dwelling envelope which is approximately 3.5m AHD. Whilst acid sulfate soils are typically associate with land below 1m AHD there still exists a level of uncertainty relating to the proposed dwelling envelope. However if acid sulfate soils were encountered within the proposed building envelope it is anticipated that they could be adequately mitigated during construction of any
future dwelling and could be managed through the application of conditions if necessary.

**Clause 36 – Coastal erosion outside zone 7(f)**

This clause aims to protect land that may be subject to coastal erosion (but not within Zone 7 (f)) from inappropriate development and to consider potential impacts of climate change.

The 1944 aerial photograph shows the area entirely devoid of vegetation and is likely showing the earliest sandmining activity in the area or the result of a storm event. The results of geotechnical investigation indicate that the site is comprised largely of unconsolidated sand.

![Figure 6: Aerial 1944.](image)

Figure 1 below illustrates the current hazard lines applying with reference to the site. It can be seen that the 2100 are east of the proposed pad site and therefore coastal erosion is not considered a matter of concern in this instance.
Clause 39: Remediation of contaminated land

This clause aims to ensure that contaminated land is adequately remediated prior to development occurring. The site has previously been subject to heavy mineral sand mining, apparently from 1935 to 1978. Department of Primary Industry records indicate that a Heavy Mineral Sandmining Concentration Plant was in operation on the subject lot (covering the north-east corner of the proposed house site location and beyond) from 1961 to at least the late 1970’s.

The potential for radiological contamination to be present on site as a result of the former sand mining activities is considered to be significant. ARPANSA (2005) lists monazite wastes from mineral sand processing as a major contributor of radioactive wastes. Poor practices at the time are known to have included burial of radioactive tailings. The 1962 aerial photograph indicates two shapes near the proposed house site which could equate to tailings dams.

The application is supported by a Tier 1 Contaminated Site Investigation & Preliminary Acid Sulfate Soil Assessment prepared by Land and Fire Assessment Pty Ltd (November 2014). The report generally relies on representative samples from a previously proposed dwelling envelope including limited further sampling within the proposed building envelope. The site has historically been used for sand mining activities. The limited sampling undertaken within the proposed building envelope is not considered adequate to detect hot spot contamination as
found in other parts of the property during previous investigations. The applicant was requested to engage a suitably qualified and experienced consultant to undertake further detailed site investigation within the building envelope in accordance with the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites 1997 and the NSW EPA Sampling Design Guidelines 1995.

The amended report states that the weight of evidence confirms that adequate sampling has been undertaken and is representative of the proposed dwelling envelope. Sampling has been undertaken over 2000m² including an area within the proposed dwelling footprint. The report states that no further soil sampling and analysis is required. The report states that the dwelling site is suited to the proposed use and has been prepared/signed by a suitably qualified and experienced consultant (experience and qualifications provided as part of the report). This is considered adequate relating to potential organochlorine and heavy metal contamination.

In regards to radiation no further radiation investigations have been undertaken over the proposed dwelling site. It is acknowledged that a large amount of sampling in close proximity to the dwelling envelope has occurred for the previously considered DA09/0341 and it appears no surface or near surface radiation levels exceeded the action criteria of 0.7µGy/hr set by NSW Health. Whilst previous investigations have been comprehensive across the subject property there remains a level of uncertainty relating to hot spot contamination from previous sand mining activities. As a precautionary measure it is determined that conditions should be applied to any future development consent for the construction of a dwelling that requires further investigation during earthworks.

Clause 39A Bushfire protection

The objectives of this clause are to *minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets*; to consider risk to life, the demand created on emergency services and the environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction; and to *have regard to the provisions of the document entitled Planning for Bushfire Protection*.

The subject site is located within a bushfire prone area and was referred to the NSW Rural Fire Service. The Rural Fire Service General Terms of Approval (GTA) required asset protection zones as follows:

- North for a distance of 13 metres as an inner protection area and 7 metres as an outer protection area;
- East for a distance of 8 metres as an inner protection area;
- South for a distance of 12 metres as an inner protection area; and
- West for a distance of 15 metres as an inner protection area and 8 metres as an outer protection area.

The applicant identified those trees to be removed within the Building Envelope for construction purposes however failed to assess and quantify the extent of vegetation removal/ habitat disturbance to establish APZ’s.
The applicant did not undertake satisfactory evaluation of the sites ecological values and potential impact as a result of APZ establishment and maintenance or future hazard reduction measures.

Council has taken into account the potential environmental and visual impacts of the clearing of vegetation for bushfire hazard reduction (Clause 39A(2)(e) to achieve the Clause objective and due to a lack of information cannot be confident that the proposal would not result in unacceptable environmental impacts.

Clause 45: Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites.

This clause states that:

The consent authority must take into consideration the likely effect of the proposed development on the heritage significance of a heritage item, heritage conservation area, archaeological site or potential archaeological site, and on its setting, when determining an application for consent to carry out development on land in its vicinity.

The proposed development is in the vicinity of two Aboriginal sites (a midden and a shell scatter shown as M1 and SS1 on diagram below) as identified by Everick Heritage Consultants in the applicants Cultural Heritage Assessment report submitted as part of the additional information.

![Figure 8: Cultural Heritage Image – Council Note: Incorrect House location shown on this plan](image-url)
The application was referred to the NSW Office of Environment & Heritage and the Aboriginal Advisory Committee.

The Aboriginal Advisory Committee resolved at their meeting of the 5 February 2016 (endorsed at Council on 17/03/2016) as follows:

That in light of the site constraints of the Wooyung development site at Lot 1 DP 408972 Wooyung Road, Wooyung, the Aboriginal Advisory Committee has no objection to the location of the proposed house site.

However, The NSW Office of Environment & Heritage advised that:

1. The Aboriginal cultural heritage assessment provided in support of the proposal should be updated to address the following:
   a. whether consultation with the registered Aboriginal parties has occurred for the further investigation to be done within Stage 5;
   b. concerns raised by some of the Aboriginal stakeholders regarding the potential impact to intangible Aboriginal cultural heritage by the proposed development; and
   c. whether the previous mining has removed all evidence of past occupation by Aboriginal people in the area of the proposed development for the single dwelling or whether it has merely disturbed and relocated Aboriginal objects.

The applicant was advised of this request on 11 December 2015 yet no additional reports were provided. And accordingly these matters have not been satisfied to OEH’s satisfaction therefore not satisfying Clause 45.

Clause 54 Tree Preservation Order

The subject site is affected by Tree Preservation Order 2004. The extent of vegetation removal for the entire concept development under the TPO 2004 is unclear. Based on the information provided sufficient ecological assessment has not been completed

Vegetation removal required by the entire proposal would impact significantly on protected vegetation.

Clause 57 Protection of Existing Dwelling Entitlement

The subject site has a dwelling entitlement protected under Clause 57 of Tweed LEP 2000 by virtue of the provisions of Clause 16 of IDO No. 2.

Despite the site having a dwelling entitlement the entitlement only gives the applicant the right to lodge an application which needs to be assessed on its merits.

On the merits of this application the subject application is recommended for refusal.
State Environmental Planning Policies

SEPP 26 – Littoral Rainforests

This policy applies to land within the SEPP 26 area and also land within 100m of the designated SEPP 26 area (excluding residential land and land dedicated for conservation purposes). The policy generally applies to the control of vegetation removal from non-residential zoned land and the retention of land in its natural state.

The proposed dwelling is to be positioned between the two buffer zones to SEPP 26 Littoral Rainforest (Units 12 and 13A) however the proposed access road upgrade, establishment of sight lines along Wooyung Road and potential application of bushfire provisions would likely require works within the SEPP 26 buffer.

Activities/works necessary to facilitate development in Stage 2 would invoke Clause 7(2) of SEPP 26 and require Manager/Director’s concurrence. As such the application was forwarded to the Department of Planning and Environment.

As a concurrence agency the Department reviewed the application and made a determination that concurrence is not required for the future dwelling as it was premature to consider the access road having regard to the SEPP 26 given that the access road is to service a development associated with a subsequent stage.

The Department went on to say it would be unusual for the Department to decline concurrence to access for an approved development unless there were strong
reasons from an environmental viewpoint that such access should not occur at that location. The Department advised that from their perspective it was not possible at this time to make that judgement.

However, based on the contents of this report it is considered that the subject site is not suitable for the proposed development and that access for the proposed development should not be granted by way of concurrence through the SEPP 26 land.

Furthermore, it should be noted that SEPP 26 is under review and the mapped land for SEPP 26 in this area is likely to be expanded (see comments below under Draft Plans).

**SEPP 44 – Koala Protection**

The SEPP does not specifically apply however the Tweed Coast Comprehensive Koala Plan of Management 2015 does apply.

The applicant neglected to recognise and address the provisions of the TCCKPoM

- The site occurs within the Wooyung KAP.
- A narrow section of Swamp Sclerophyll as identified on Dwg. LFA14006-EVA1A in the Bushfire Assessment report (to be relied on for site based vegetation mapping at this stage) is regarded as core habitat (Secondary Class A and within a KAP) for the purposes of the TCCKPoM. This vegetation type occurs across the north-western boundary of the Dwelling Envelope.

In the absence of more refined vegetation mapping and development design detail it is difficult to determine whether the application would trigger offset requirements under the TCCKPoM.

**SEPP 71 – Coastal Protection**

The subject site is located within the coastal zone. The proposed development is not significant coastal development, the concurrence from the Minister or Director General is not required.

This application needs to meet the aims of the policy as follows:

(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and

(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and

(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and

(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and

(e) to ensure that the visual amenity of the coast is protected, and
(f) to protect and preserve beach environments and beach amenity, and
(g) to protect and preserve native coastal vegetation, and
(h) to protect and preserve the marine environment of New South Wales, and
(i) to protect and preserve rock platforms, and
(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and
(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
(l) to encourage a strategic approach to coastal management.

In addition the Clause 8 Matters as follows must be addressed:

(a) the aims of this Policy set out in clause 2,
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,
(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,
(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats
(i) existing wildlife corridors and the impact of development on these corridors,
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,
(m) likely impacts of development on the water quality of coastal waterbodies,
(n) the conservation and preservation of items of heritage, archaeological or historic significance,
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,
(p) only in cases in which a development application in relation to proposed development is determined:
(i) the cumulative impacts of the proposed development on the environment, and
(ii) measures to ensure that water and energy usage by the proposed development is efficient.

The clearing of recognised Endangered Ecological Communities likely to support threatened flora and fauna for the ultimate proposed development would conflict with the intent of these provisions.

In addition the site occurs within a Regional Habitat Corridor – Coastal (Focal species Blossom Bat/Long-eared Bat).

The ultimate development would likely pose an impediment to fauna movement. Given the limited information provided it is difficult to determine what fauna species may be disrupted and the magnitude/scale of any barrier effect on those species as a result of the proposed development. Council cannot be confident that the proposed development would not have a significant impact on the function of the wildlife corridor.

Given the lack of information relating to the sites ecological values and detailed design of the proposed dwelling Council cannot be confident that the proposal meets the aims of the policy.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which appears consistent with the required energy target.

SEPP North Coast Regional Environmental Plan

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.

(a) Council is required to consider the NSW Coastal Policy 1997 when assessing applications for development to which the policy applies.

This policy has a strong integrating philosophy based on the principles of ecologically sustainable development (ESD). The definition of the coastal zone includes a 1km strip along the coastline (1km landward of the open coast high water mark), 3 nautical miles seaward and all coastal rivers, lakes, lagoons, estuaries and islands. The definition also includes land within 1km of coastal rivers, lakes, lagoons, estuaries and islands.

The 1997 Coastal Policy is essentially focused on recognising the need to reconcile the rapid population growth currently being experienced in coastal areas with the need to conserve what remains of valuable ecosystems: conservation of biological diversity and ecological integrity.

The policy promotes the reservation from development of critical habitat. This is done by focusing on provisions in the Threatened Species Conservation Act. One
of the key actions promoted by the policy is for SEPP 14 Coastal Wetlands and SEPP 26 Littoral Rainforests to be rigorously enforced and extended where appropriate in recognition that what remains of these valuable ecosystems needs to be fully protected from inappropriate development.

In areas covered by the coastal zone, the policy applies to all new developments and publicly owned land.

As such the proposal for the new dwelling house within 100m of the coastline is captured within the guidelines of this policy. The siting of the new dwelling house jeopardises threatened vegetation defined as Littoral Rainforest EEC and is not consistent with this policy.

(b) Council is also required to consider the Coastline Management Manual
(c) A consideration of the North Coast: Design Guidelines is required

These matters are considered under the section relating to regulations, where the development is shown to be inconsistent.

(d) Public access to the foreshore must not be impeded.

This proposal does not restrict access to any public foreshore area, although it is noted that walking access is currently used along the rough track to access the beach through the private land.

(e&f) Council is required to consider whether the development would result in overshadowing of beaches or adjacent open space.

This application does not result in overshadowing of any beaches or adjacent open space.

The proposal is not considered to be consistent with Clause 32B as it impacts negatively upon sensitive vegetation located on the subject site and is clearly not within the guidelines of the NSW Coastal Policy 1997.

Clause 36C: Conservation areas of state & regional significance

The site is identified as been identified as an ‘environmental area of state significance’ by the Department Planning and is between two Nature Reserves, with the vegetation on the site forming a habitat linkage between the two. The area would be subject to significant future clearing for the development to proceed.

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

Coastal Management Reforms

As part of the NSW state government coastal reforms program a Coastal Management State Environmental Planning Policy (CM SEPP) will form part of the broader land-use planning framework in NSW. One of the aims of the proposed CM SEPP will be to maintain and enhance the relevant provisions that currently apply in the three key State Environmental Planning Policies which relate specifically to coastal matters. These SEPPs are to be repealed being:
- State Environmental Planning Policy No 14 – Coastal Wetlands (SEPP 14) (published 1985)
- State Environmental Planning Policy No 26 – Littoral Rainforests (SEPP 26) (published 1988)
- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71) (published 2002)

**Coastal Wetlands**

Early stage pre-exhibition mapping of Coastal Wetlands (to form part of the CM SEPP) has been prepared by the Department of Planning and Environment (DoP&E). TSC has had the opportunity to review this mapping and provide feedback. It is noted that the line-work of existing gazetted SEPP 14 Coastal Wetlands has been modified whilst additional areas recognised as Coastal Wetland have been included across the Tweed Shire. Based on preliminary review Council has prepared more detailed mapping of Coastal Wetlands which has been forwarded to the DoP&E for consideration as part of the pre-exhibition consultative process.

Of relevance to the subject site a Coastal Wetland has been mapped by the DoP&E extending over a small area within the south-western corner that forms part of a broader tract of vegetation to the south-west of the site. Based on Draft 2004 SEPP 14 Coastal Wetland criteria and Tweed Shire vegetation mapping 2009, Council identified a broader area (to that identified by the DoP&E) of vegetation representative of Coastal Wetland occurring along the western boundary of the subject site. This unit of vegetation is identified as Broad-leaved Paperbark Closed Forest to Woodland VT – 401.

**Littoral Rainforest**

Early stage pre-exhibition mapping of Littoral Rainforest has been prepared by the DoP&E. However the mapping exercise carried out on Littoral Rainforest by the DoP&E did not involve modification or the addition of areas to that currently gazetted and mapped under the existing SEPP 26. Council’s review of this mapping will be completed during the upcoming public exhibition period of the CM SEPP and involve air photo-interpretation and where possible field verification of areas representative of littoral rainforest.

In respect to the subject site, it is anticipated that Councils Vegetation Types 2009 mapping layer will be used as a preliminary base map to identify those areas to be investigated as part of the mapping exercise. When reference is given to the 2009 mapping the entire subject site (Lot 1) is mapped supporting Littoral Rainforest – Vegetation Code 101. It is therefore highly likely that Council will propose an amendment to the existing mapping to capture a larger area of the site as Littoral Rainforest for the purposes of the future CM SEPP.

**Future LEP Zoning – E Zone Review**

DP&E issued s117 directions (2/3/1016) to require Far North Coast Councils to adopt the Northern Councils E zone Review Final Recommendations when introducing or altering an environmental zones, environmental overlay maps
and/or associated LEP clauses. Subsequently, Council is to move forward with review and drafting of the LEP in accordance with the E zone review and Council’s adopted approach to environmental protection. It is expected that the preparation of the LEP will be undertaken concurrently with the CM SEPP review and adopt those values i.e. Littoral Rainforest and Coastal Wetlands recognised under the future CM SEPP.

Based on the E zone review criteria and consideration of ecological values currently mapped onsite it would be reasonably expected that the majority of the subject site be designated an E2 Environmental Conservation zoning for the following reasons:

- Vegetation forms part of an Over-cleared Mitchell Landscape – Byron Tweed Alluvial Flats and Byron Tweed Coastal Barriers
- SEPP 26 Littoral Rainforest occurs onsite – the area of littoral rainforest to be recognised under the CM SEPP may be expanded as discussed above
- Littoral Rainforest is recognised as an Endangered Ecological Community under the Threatened Species Conservation Act 1995
- The site is likely to support Key Threatened Species Habitat
- Under the future CM SEPP Coastal Wetland a marginal area of Coastal Wetland may be identified to occur across the site.

These reforms give significant weight to the ecological assessment that has been demonstrated in this report which inform the reasons for refusal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Any future dwelling would need to be assessed against this DCP.

A2 – Car Parking

Any future dwelling would need to be assessed against this DCP.

A3 Flooding

Any future dwelling would need to be assessed against this DCP.

A6-Biting midge and mosquito control

Biting midge and mosquito nuisance has not been considered. Councils mapping indicates presence of nuisance species along sections of the creek downstream from the site. The nuisance value and potential health impacts arising from locating a residence adjacent a wetland has not been addressed.
B25- Coastal Hazards

The house site is westward of the 2100 hazard lines and therefore the DCP does not specifically apply.

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

The subject site is located within an area that is affected by the following plans of management:

- Tweed Shire Coastline Management Plan 2005
- Coastal Zone Management Plan for Tweed Coast Estuaries 2013

With reference to the Coastal Zone Management Plan for Tweed Coast Estuaries 2013 the tributary is not depicted on the Mooball Creek Estuary Catchment plan. Notwithstanding the tributary has been previously recognised as supporting high ecological values and would be expected to be afforded an adequate buffer of dimensions determined necessary to maintain/improve biodiversity values and ecological processes.

The proposed dwelling pad is approximately 30m from the top bank of Billinudgel Creek. It is estimated that the dwelling envelope however is situated approximately 10m from the top of high bank. The applicant has indicated commitment to rehabilitate the area between the top bank and Dwelling Envelope.

(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

Loss of EEC and Potential Direct Impact on Threatened Flora and Fauna

The site has been recognised as supporting three endangered ecological communities known to include and/or offer habitat for a suite of listed flora and fauna species. The ultimate development (Stage 1 and 2) will involve removal of Endangered Ecological Communities (EEC’s) and has the potential to have an impact (direct and/or indirect) on listed species. Clearing of native vegetation is listed as a Key Threatening Process under the Threatened Species Conservation Act.

Based on the information provided the following extent of clearing of EEC’s within the Dwelling Envelope only has been estimated at:

- Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregion 300m²
- Coastal Cypress Pine Forest in the New South Wales North Coast Bioregion central to the site approximately 1528m²
- Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast Sydney Basin and South East Corner Bioregions north-western corner – 200m²
Additional clearing is required to facilitate access. Furthermore were additional bushfire provisions to be applied post development there is the potential for a significant area (4500-5000m² (estimate only)) of Littoral Rainforest to be disturbed extending within the SEPP 26 buffer.

It is noted that Littoral Rainforest is classified as Critically Endangered at a national level (Environment Protection and Biodiversity Conservation Act 1999).

The applicant has neglected to undertake a comprehensive ecological assessment nor conducted requisite 7 part test/s on threatened communities, species known or likely to occur or utilise habitat onsite based on the ultimate proposal.

The primary issues associated with the clearing of vegetation on the site to facilitate the proposed development are:

- Disruption to a wildlife corridor of regional significance
- Increased fragmentation/edge effects of a critically endangered and already restricted ecological community
- Loss of a locally restricted EEC being Coastal Cypress Pine with only an estimated 29 ha remaining in the shire (based on 2001 imagery)
- Loss of potential habitat and foraging resources for threatened fauna
- Potential loss and impact on the viability of a significant population of the Endangered Acronychia littoralis.

Fragmentation/Edge Effects

- Habitat occurring onsite has been recognised as providing a critical link between core areas of protected habitat to the north (Wooyung Nature Reserve) and south (Billinudgel Nature Reserve) of the site and as such has been incorporated into a wildlife corridor of regional significance.
- The remaining littoral rainforest on site forms part of one of the largest remnant units of this community in the Tweed. Due to the size of the patch and high level of connectivity with other types of vegetation (forming part of a broader and diverse tract of habitat) the long term viability and resilience may be regarded as high relative to those more isolated and small patches remaining along the Tweed Coast.
- Notwithstanding, the section of habitat on the subject site within and adjacent to the proposed dwelling occurs within a ‘pinch point’ of the corridor. The littoral rainforest component of the corridor in this area is significantly restricted to the east (Pacific Ocean and associated dunal landscape) and to the west (Billinudgel Creek/partly formed access trail). Due to the narrow width of the corridor vulnerability to edge of effects is increased that would likely be exacerbated following further vegetation removal and other direct/indirect habitat disturbances (fencing, noise, lighting, increased human activity). Furthermore, opportunities to expand and consolidate the corridor to limit those edge effects currently experienced (particularly in this location of the proposed dwelling) would be removed.
Any further narrowing/restriction of the corridor at the ‘pinch point’ may compromise the functional integrity of the broader corridor and stall or arrest ecological processes. Non generalist species reliant on the structural and florist elements offered by littoral rainforest for foraging and breeding may in particularly be adversely affected.

Other Potential Direct/Indirect Impact on Ecological Values

- Alterations to the physiochemical properties of overland flow through erosion, stormwater inflows (swimming pools/roof/hard stand)
- Increased likelihood of invasive/exotic species proliferation (garden escapees) in the surrounding habitat particularly for coloniser species immediately after earthworks.
- Indirect impacts on fauna movement and breeding behaviour from increased noise levels, lighting spill and fencing
- Shading of littoral rainforest from any future dwelling and the impact of lighting on turtle nesting behaviour and other marine dependent species (shorebirds)
- Longer term sediment and erosion control issues associated with the proposed access road and pruning of Littoral Rainforest to accommodate larger vehicles particularly during the construction phase

Clarification of the 10/50 Vegetation Clearing Code of Practice

A review of the current 10/50 Vegetation Clearing Code of Practice for NSW Ver. 2.0 dated 04 September 2015 indicates that the site is within a vegetation clearing entitlement area and yet the 10/50 Code may not apply due to:

- Occurrence of SEPP 26 Littoral Rainforest onsite; and
- 100m from NSW coastline or estuary

It would appear that technically if the vegetation falls outside the boundaries of these features (which may be the case on this site) clearing may still lawfully be undertaken under the Code to the extent that it remains outside the excluded areas and is undertaken in accordance with the Code. Notwithstanding, new provisions have been introduced enabling the overriding of the Code as prescribed under s7.8 titled ‘Protection of vegetation to which a legal obligation exists to preserve that vegetation by agreement or otherwise’ which includes (but is not limited to) a section stating that clearing under the Code cannot be inconsistent with the following:

- Any condition of development consent or approval under the EP&A Act that identifies and requires the retention and management of vegetation for conservation purposes.

(c) Suitability of the site for the development

For the reasons outlined throughout this report the subject site is not considered suitable for the proposed development.
Any submissions made in accordance with the Act or Regulations

Council received one objection to the proposed development which stated as follows:

- The house pad and dwelling site, although situated outside the 1988 mapping of the Littoral Rainforest SEPP 26 areas are within the Buffer areas of the SEPP 26 Littoral Rainforest mapped on this site since 1995 in Council documents supplying the Amendment 21 of Tweed LEP 2000, under which, this entire lot was designated for environmental protection.

- The house pad and dwelling site appears to be situated covering almost entirely the advanced stand of Coastal Cypress on this lot and this EEC is federally listed under the EPBC Act as critically endangered and needs to be federally notified. Therefore the DA appears to wrongly state that no threatened species will be impacted as more than 700 trees have been tagged on the site, with a significant number of these being Coastal Cypress.

- The potential impact of the residential dwelling has been made significantly worse by the introduction of the new 10/50 Vegetation Clearing Code which will allow clearing within designated EEC's and hugely increase the potential edge effects of this development in the high conservation areas on the site which have federal protection.

- Please be aware that under Amendment 21 of the Tweed LEP 2000 all of this site was listed as high conservation significant vegetation and placed under environmental protection. This was also protected under the Tweed LEP 2014 Draft but, as you know, all environmental zones have been deferred in the current LEP process and as such Amendment 21 needs to be given consideration in its place.

- The photo provided in the DA from 1944, prior to sandmining in this area, shows the blow-out, or coastal incursion that was existing at this time in exactly this area of the site and shows the coastal processes which can act in this area and should be considered by Council at this time.

- The regular flooding of the existing access track to this site will require significant raising of this road (photos available). The DA makes mention of the "necessary width" for two way traffic and access of bushfire apparatus although no width is specified but as already stated, more that 700 trees/shrubs have been tagged for necessary removal.

- Council requirements for distance from a waterway for on-site sewerage systems and redistribution do not appear to be able to be met at this site.

- The lagoon area at the southern part of this lot on Billinudgel creek has been identified as a highly significant site for Aboriginal people in the
Southern Cross University Honours Thesis by Stella Wheildon and supervised by Dr Ian Fox and that should have been included in the Archaeological Assessment.

- The Notice of Request to modify the existing DA on this lot DA 88 / 0640 to allow a residential site on this block to be consistent with the exiting tourist facility approval though a modification of conditions is difficult to justify. The approved access to the beach for the 300-unit tourist resort would appear to go directly through the proposed residential house site and is the ONLY approved beach access for the previously approved very large tourist site. The residential dwelling site would necessarily have a conflict in usage and conflict of interest for the future users of the Resort wanting access to the beach.

- The existing Approval 88 /0640 also requires this lot to be joined and made into one with the neighbouring Lot in order to enact the Approval under Condition 29. This would render the dwelling site to be in an inappropriate position as the Lot would now contain many more appropriate sites, outside of impact zones of EEC and SEPP 26 areas to locate a house site into and Council would necessarily have to give consideration to this.

The application is recommended for refusal and accordingly no further response is required to these issues.

(e) Public interest

The application as proposed is not considered to be in the public interest. The application fails to adequately consider the cumulative impact of Stage 1 and Stage 2 of the proposed concept of the development being sought. The application fails to present an environmental management plan for this lot or the adjoining lot that would give Council or the general public any comfort or understanding of how such an environmentally sensitive location could be developed without severely impacting the environment.

OPTIONS:

1. Refuse the application in accordance with the recommendation.

2. Request additional information from the applicant in regards to Aboriginal Cultural Heritage, a formal Biodiversity Offsetting Scheme and a formal S96 Application to D88/0640.

3. Grant in-principle support for the application and recommended conditions of approval be brought back to a future meeting.

Council Officer's recommend Option 1.

CONCLUSION:

The nature of the staged application and the extent of information provided with Stage 1 is considered inadequate for Council to accurately and comprehensively assess the potential
cumulative impacts that may result from the ultimate development and therefore Council cannot be confident that obligations under Section 79C and Section 5A of the Environmental Planning & Assessment Act 1979 can be met.

Having regard to the environmental constraints of the site, the objectives of the zone, the future potential environmental zoning of the land, and the historical approval over the land for environmental conservation and restoration, the proposed application is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not Applicable

c. Legal:

Yes, preliminary legal advice has been attached.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. HWL Legal Advice in regards to DA09/0341 and its relationship to DA88/0640 (ECM 4035270)

(Confidential) Attachment 1. HWL Legal Advice DA14/0892 (ECM 4035271)
2. [PR-PC] Development Application DA15/0716 for the Demolition of Existing Dwelling and Construction of Residential Flat Building at Lot 5 DP 1104481 No. 4 Hungerford Lane Kingscliff

SUBMITTED BY: Development Assessment and Compliance

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**Civic Leadership**

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

1. Civic Leadership
2. Improve decision making by engaging stakeholders and taking into account community input
3. Council will be underpinned by good governance and transparency in its decision making process

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**SUMMARY OF REPORT:**

This report was submitted to the Planning Committee meeting held 3 March 2016, in which the applicant originally sought Council consent to construct a partial three storey Residential Flat Building containing 4 Units at 4 Hungerford Lane, Kingscliff. The Residential Flat Building consists of one level of ground level car parking (cut into the site) and two levels of 3 bedroom apartments totalling four apartments. Council as a result of this Planning Committee meeting resolved as follows:

"**RESOLVED** the applicant be requested to amend their plans to provide for a design that is compliant with Council's planning controls, provides for a reduced visual impact for the neighbours and from the coastal creek reserve, including but not limited to, a design that steps across the site and down the slope."

In response to the resolution, the applicant submitted amended plans which include:

- The roof over the front and rear portions of the building being separated to create visual differentiation of the building. This has also assisted in the building to step down the site, following the contours of the land in accordance with the resolution of the Council;
- A reduction in ceiling height of the units to 2600mm resulting in lowering the roof by 300mm;
- A reduction in balcony length by 300mm which has assisted the applicant to comply with the maximum height requirement of the building, complying with the 9m maximum height requirement and further reduced visual impact on adjoining neighbours;
- Lowering the roof over the balcony on Unit 4 to 2400mm to enable the height of the building to comply with the 9m maximum height requirement;
- Removing the roof between the two wings and recessing balcony between the two wings, which has created additional articulation along the rear elevation and significantly reduced the perceived bulk of the building when viewed from Moss Street and the Cudgen Creek reserve;
• Introduced a range of building materials along the side elevations, to break up the perceived bulk of the building and to create more defined elevations;
• Introduction of more windows and shading elements to side elevations, to break up the perceived bulk of the structure and to create more defined elevations, with specific attention towards the rear of the building.

As a result of the modifications to the plan of development, the maximum height limit of 9m is achieved. The amendments to the rear setback have also improved the views and vistas available to the adjoining neighbours with an improvement of 10 degrees for 2 Hungerford Drive and 6 degrees for 6 Hungerford Drive providing further improvement to that which could be lodged with compliant setback distances. Furthermore, the changes in architectural design have reduced the visual dominance of the development and provided articulation with the amended plan showing the development stepping down toward the rear of the allotment as evident with the articulated roofline shown above. It can also be seen that the amendments have reduced the building’s rear setback to be setback further than the original proposal, improving views of adjacent properties and perceived bulk when viewing from Cudgen Creek Reserve (as demonstrated overleaf as ‘perspectives 4’).

The application is recommended for approval subject to conditions. The applicant has reviewed a copy of draft conditions of consent and advised that the conditions are accepted.

Please note that this is an updated report from that submitted to the Planning Committee meeting held 3 March 2016, and it contains the latest amended plans and images and a revised planning assessment.
RECOMMENDATION:

That Development Application DA15/0716 for the demolition of an existing dwelling and construction of a residential flat building consisting of four units at Lot 5 DP 1104481 No. 4 Hungerford Lane, Kingscliff be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans as listed in the table below, except where varied by the conditions of this consent.

<table>
<thead>
<tr>
<th>Title</th>
<th>Prepared by</th>
<th>Dated</th>
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</thead>
<tbody>
<tr>
<td>Site Plan (DA001/3)</td>
<td>Refresh Design</td>
<td>22/03/16</td>
</tr>
<tr>
<td>Floor Plans 1 (DA003/3)</td>
<td>Refresh Design</td>
<td>22/03/16</td>
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<tr>
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<td>22/03/16</td>
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<tr>
<td>Elevations (DA005/3)</td>
<td>Refresh Design</td>
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<tr>
<td>Sections (DA006/3)</td>
<td>Refresh Design</td>
<td>22/03/16</td>
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</tbody>
</table>

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

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.

4. Sewer manholes are present on this site. Manholes are not to be covered with soil or other material. Should adjustments be required to the sewer manhole, then applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. 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.

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

6. Geotechnical investigations and assessment of the subject site shall be in accordance with the recommendations and requirements as specified in the report by Geotechniques Foundation Engineering dated 20 October 2014, except where varied by the conditions of this consent. In addition a slope stability geotechnical report shall be completed on site prior to issue of a Construction Certificate approval and provide recommendations for construction. All individual house sites are subject to further geotechnical testing at time of building approval.
7. 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 or drainage works (including connection of a private stormwater drain to a public stormwater drain or installation of erosion and sediment control works).

There is an existing rock retaining wall located in Moss Street road reserve. As part of the S68 application a qualified structural engineer shall provide detailed design and corresponding certificate of approval that the existing retaining wall will not be impacted as part of the proposed drainage works. Any damage to the existing retaining wall shall be fixed at full cost by the developer.

8. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve. 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.

9. A concrete footpath shall be provided on the entire frontage of the site in Hungerford Lane. Design of the footpath shall be submitted as part of a S138 application to Council.

10. No access shall be permitted to Moss Street from the rear of the property.

11. Where easements in favour of Council are provided through private property no structures or part thereof may encroach into the easement. This includes (but is not limited to) awnings or eaves on the multi-level building and fences / retaining walls.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

12. Prior to issue of Construction Certificate the applicant is to submit to Council's General Manager or his delegate a list of the finished building materials and colours (including colour product photo images) for approval.

13. 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.

14. 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.
15. 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 and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

16. 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. The proposed works must conform to the requirements identified in Council’s Sewers - Work in Proximity Policy.

17. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

18. 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”.

19. Medium density/integrated developments, excluding developments containing less than four attached or detached dwellings and having a Building Code classification of 1a, will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements. 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.

20. If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

The arrangements and costs associated with any adjustment to
telecommunications infrastructure shall be borne in full by the applicant/developer.

21. In respect to slab on ground structures (garage to existing premises) erected prior to July 1995, where chemical treatment of the soil may have been carried out as a barrier to termites, a pre-demolition under-slab soil contamination investigation is to be carried out in accordance with Councils guideline for pre-demolition testing. A report, including the details of the laboratory analysis and site remediation action plan, is to be submitted to Council for consideration and approval prior to the commencement of demolition work.

22. Prior to issue of construction certificate, full design details of any proposed front fence and external building screening (including boundary fencing if proposed) is to be submitted to Council for approval.

23. Prior to issue of construction certificate, a detailed plan clearly showing internal building storage (within the subject units) is to be submitted to Council for approval.

24. Section 94 Contributions

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

Prior to issue of the Construction Certificate, all Section 94 Contributions must have been paid in full and the Certifying Authority must have 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:
   9.1 Trips @ $1195 per Trips $10,875
   ($1,137 base rate + $58 indexation)
   S94 Plan No. 4
   Sector6_4

(b) Open Space (Casual):
   2.5 ET @ $552 per ET $1,380
   ($502 base rate + $50 indexation)
   S94 Plan No. 5
<table>
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<th>Description</th>
<th>Rate</th>
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<tr>
<td>(c) Open Space (Structured):</td>
<td>2.5 ET @ $632 per ET ($575 base rate + $57 indexation)</td>
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<td>S94 Plan No. 5</td>
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<td>(d) Shirewide Library Facilities:</td>
<td>2.5 ET @ $851 per ET ($792 base rate + $59 indexation)</td>
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<td>(e) Bus Shelters:</td>
<td>2.5 ET @ $66 per ET ($60 base rate + $6 indexation)</td>
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<td>(f) Eviron Cemetery:</td>
<td>2.5 ET @ $124 per ET ($101 base rate + $23 indexation)</td>
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<td>S94 Plan No. 13</td>
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<td>(g) Community Facilities (Tweed Coast - North)</td>
<td>2.5 ET @ $1411 per ET ($1,305.60 base rate + $105.40 indexation)</td>
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<td>(h) Extensions to Council Administration Offices &amp;</td>
<td>2.5 ET @ $1888.66 per ET ($1,759.90 base rate + $128.76 indexation)</td>
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<td>Technical Support Facilities</td>
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<td>(i) Cycleways:</td>
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<td>(j) Regional Open Space (Casual)</td>
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<td>(k) Regional Open Space (Structured):</td>
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[POC0395]
25. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council prior to the issue of Construction Certificate to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Council advises that to obtain a Certificate of Compliance for water and/or sewer works, Council will require payment of Developer Charges in accordance with Section 64 of the Local Government Act, 1993, which applies Section 306 of the Water Management Act, 2000.

**Water:** 2.2 ETs @ $13,128 $28,881.60
**Sewer:** 3 ETs @ $6,307 $18,921.00

PRIOR TO COMMENCEMENT OF WORK

26. 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.

27. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing.

28. 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.

29. 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.

30. 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.

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

   (a) a standard flushing toilet connected to a public sewer, or
   (b) if that is not practicable, an accredited sewage management facility approved by the council.
32. 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.

33. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land or is likely to effect the integrity of the adjoining land, the person causing the excavation to be made must comply with the following:

(a) The person must, at the person's own expense:

   (i) preserve and protect the building / property from damage; and

   (ii) if necessary, underpin and support the building in an approved manner.

(b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

34. 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 the approved 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.
35. 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]

36. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges prior to commencing any building works.

DURING CONSTRUCTION

37. 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]

38. 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]

39. 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]

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

[DUR0245]
41. 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).

42. 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.

43. 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.

44. 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 Work Health and Safety Regulation 2011.

45. If the work involved in the erection or demolition of a building:

   (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

   (b) building involves the enclosure of a public place,

   a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

   Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

   Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

   Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Council's road reserve.

46. 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, Work Health and Safety Regulation 2011.

   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.
47. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

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

49. 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.

50. 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.

51. 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 Council's General Manager or his delegate.

52. 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.

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

54. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary in accordance with Council's Development Control Plan Section A15 - Waste Minimisation and Management.

55. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal by a waste transporter licensed by the NSW Department of Environment and Climate Change.
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 Plumbing Code of Australia and AS/NZS 3500.  

[DUR2495]

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

[DUR2505]

59. 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]

60. 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]

61. 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:

* 45°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]
62. The Applicant shall submit the bulk water meter ‘Application for Water Service Connection’ to Council’s Water Unit to facilitate a property service water connection for the Lot, from the existing water main in Hungerford Lane. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

63. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall be located, installed and operated so as not to be heard in a habitable room of a residence during restricted hours or where it would create offensive noise as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

64. 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).

65. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.

The street number is to be on a white reflective background professionally painted in black numbers 75-100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

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

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.
USE

68. 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.

69. 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.

70. 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.

71. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

72. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

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

74. Swimming pool pumps, air conditioning units, heat pump water systems and the like shall not be operated if it can be heard in a habitable room of a residence during restricted hours or at other times should the noise from the article be deemed to be offensive as defined within the NSW Protection of the Environment Operations (Noise Control) Regulation 2008.
REPORT:

Applicant: Bplanned Pty Ltd
Owner: Mr Christopher J Fairon
Location: Lot 5 DP 1104481 No. 4 Hungerford Lane, Kingscliff
Zoning: R3 - Medium Density Residential
Cost: $1,200,000

Background:

The site has historically contained a small, single story dwelling as shown below:

Hungerford Lane is an area undergoing transition from traditional ‘surf shack’ type development to more upscale residential flat buildings provided for by the R3 Medium Density zoning.

The site is surrounded by existing higher density development (as can also be seen in the figure above) as follows:

North: 1 Hungerford Lane. Two storey dual occupancy development currently under construction, approved under DA14/0763. The owner has expressed view loss concerns.

South: The Moss Street Road Reserve is located immediately to the south of the site and forms the rear boundary.

East: 6 Hungerford Lane. 3 storey residential flat building approved in 1992 under 0024/92B. Some occupiers of these units have raised view loss and privacy concerns.

West: 2 Hungerford Lane. Multi dwelling Housing comprising 5 dwellings in a part 2 and part 3 storey configuration, approved under DA04/1288. Note that this application contained a
height variation similar to the subject application and is a similar 2/3 storey configuration down the slope. Some occupiers of these units have raised view loss and privacy concerns.

Above: Subject site and adjacent lot usage

Front Elevation of proposed development (from Hungerford Lane).
Rear Elevation of proposed development (from Moss Street though in reality there is significant vegetation within Council’s Road Reserve in this location which would screen the development).
SITE DIAGRAM:
DEVELOPMENT/ELEVATION PLANS:
Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

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

Tweed Local Environmental Plan 2014

Clause 1.2 – Aims of the Plan

The proposed residential flat building is considered to be consistent with the aims of the plan by providing housing on an appropriately zoned allotment in close proximity to the Kingscliff Town Centre.

Clause 2.3 – Zone objectives and Land use table

A residential flat building is permissible with consent in the R3 zone. The proposed development is considered to satisfy the objectives of the zone as it provides for medium density housing and contributes to the provision of a variety of housing types within the area.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

No subdivision is sought at this stage though it is envisaged that future strata subdivision may occur.

Clause 4.3 - Height of Buildings

The objectives of this clause are as follows:

(a) to establish the maximum height for which a building can be designed,
(b) to ensure that building height relates to the land’s capability to provide and maintain an appropriate urban character and level of amenity,
(c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
(d) to encourage greater population density in less car-dependant urban areas,
(e) to enable a transition in building heights between urban areas comprised of different characteristics,
(f) to limit the impact of the height of a building on the existing natural and built environment,
(g) to prevent gross overshadowing impacts on the natural and built environment.

This clause also provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The building height map prescribes a maximum building height of 9m for this site.

The proposed building as originally submitted had a maximum height of 9.9m (towards the southwest of the site where it steps down the hill and becomes 3 storeys). In response to objections based on the building height variation, the applicant reduced the height of the building by 300mm to have a maximum height of 9.6m above natural ground level in the same location. As a result of Council’s
resolution at its Planning Committee meeting held 3 March 2016, the applicant made the following major amendments:

1. Reduced the building height so that it does not exceed the maximum height of 9m;
2. Reduced the visual impact of the building upon adjoining land owners; and
3. Amended the building design so that it steps down the slope of the hill to further reduce visual impact from such areas as Cudgen Creek Reserve.

Further amendments include:

1. The roof over the front and rear portions of the buildings have been separated to create visual differentiation of the building. This has also assisted in helping to make the building appear to step down the site, following the contours of the land in accordance with the Council resolution;
2. Reduced ceiling height of the units to 2600mm resulting in lowering the roof by 300mm;
3. Reduced balcony length by 300mm to assist in complying with the maximum height of the building (9m);
4. Lowered the roof over the balcony on Unit 4 to 2400mm to enable the height of the building to comply with the 9m maximum height;
5. Removed the roof between the two wings and recessing balcony between the two wings, which has created additional articulation along the rear elevation and significantly reduced the perceived bulk of the building when viewed from Moss Street and the Cudgen Creek reserve;
6. Introduced a range of building materials along the side elevations, to break up the perceived bulk of the building and to create more defined elevations; and
7. Introduced more windows and shading elements to side elevations, to break up the perceived bulk of the structure and to create more defined elevations, with specific attention towards the rear of the building.

It is considered that these amendments to the siting and design of the building appropriately address Council’s resolution of 3 March 2016. It is also considered that the proposed development complies with the objectives of Clause 4.3.

Clause 4.4 – Floor Space Ratio

The floor space map provides a maximum floor space ratio (FSR) for the site of 2:1. The proposed building has a total floor area of 686.982m² on a site area of 674.6m². As such, the corresponding FSR is 1.02:1 which is below the desired maximum.
Clause 4.6 - Exception to development standards

The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

In accordance with the provisions of Clause 4.6(3) development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 also provides that development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

As a result of the amendments to the proposed development, the applicant no longer seeks a variation to the 9m height limit prescribed by the building heights mapping under LEP 2014. It is therefore considered that Clause 4.6 is no longer applicable.

Clause 5.5 – Development within the Coastal Zone

The proposed development is not seen to conflict with the matters for consideration in relation to the coastal zone prescribed by Clause 5.5 because:
o The proposed development does not contravene ecologically sustainable development provisions.
o The proposed development does not contravene the NSW Coastal Policy, nor will it impact adversely on the quality of the nearby coastal environment (noting that the development is physically separated by residential development and a road from Cudgen Creek).
o The proposed development will not impact upon access to the foreshore.
o The proposed development will not result in overshadowing of the coastal foreshore.
o The proposed development will not impact on coastal amenity being removed from the immediate coastal environment.
o Subject to conditions, the development will not impact on flora or fauna.
o Subject to conditions, the development will not impact upon water quality or quantity in Cudgen Creek.

Clause 5.9 – Preservation of Trees or Vegetation

Vegetation removal is not required to facilitate the proposed development.

Clause 5.11 - Bush fire hazard reduction

The site is not located on bushfire prone land.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being located upon Class 5 ASS. Council’s Environmental Health Officer has not raised any concerns in this regard.

Clause 7.2 - Earthworks

Earthworks are required to facilitate the proposed car park area within the building footprint. Clause 7.2 requires that consent is required for earthworks. It also requires that the impact of earthworks on the environment be considered. In this instance, standard conditions have been applied with regard to excavation, filling and retaining walls. Subject to these conditions and compliance with the submitted Geotechnical Report, adverse environmental impacts are not anticipated.

Clause 7.3 – Flood Planning

The site is not flood prone.

Clause 7.4 - Floodplain risk management

The site is not on the flood plain.

Clause 7.5 - Coastal risk planning

The site is not identified on the coastal risk planning map.
Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

It is noted that the application has been reviewed by Council’s Engineering Unit with respect to stormwater, which raised no concerns. The following detail is noted:

“The lawful point of discharge is the kerb of Hungerford Lane and Moss Street road reserves. A Stormwater Management Plan indicates that stormwater will be discharged from the site into an existing gully pit located in Moss Street. Conditions have been applied that a section S68 application shall be submitted for the proposed connection providing detailed engineering design. This method is consistent with what is accepted for similar developments across the shire. In relation to permeable area, it is considered that this has been maximised as much as possible given the constraints of the site. Subject to conditions, it is not considered that the proposed development would result in adverse stormwater impacts”.

Clause 7.8 – Airspace operations

The site is not in proximity to the airport and the development will not penetrate the limitations or operations surface.

Clause 7.9 - Development in areas subject to aircraft noise

The site is not affected by aircraft noise.

Clause 7.10 - Essential Services

Services are connected at the site.

Other Specific Clauses

There are no other specific clauses.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

The applicant no longer seeks to vary any planning provision relevant to the proposal. It is therefore considered the proposed development does not compromise the intent, specific provisions, or seek to utilise any objection to a development standard of State Environmental Planning Policy No 1.
SEPP No. 65 - Design Quality of Residential Flat Development

SEPP 65 provides the following:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(a) the advice (if any) obtained from the design review panel, and
(b) the design quality of the development when evaluated in accordance with the design quality principles, and
(c) the Apartment Design Guide.

The applicant supplied a SEPP 65 Schedule 1 assessment and a response to the Apartment Design Guide. It is noted there is no relevant Design Review Panel.

In relation to the Design Principles, the proposal has been found to be generally sufficient. The proposed building is generally in keeping with the surrounding character, built form and scale. The density is appropriate having regard to the zone objectives. Excellent amenity has been provided for future residents with large floor space and balconies with views. Reverse amenity has been provided through improved articulation of the roofline for users of adjacent lands viewing the location from such areas as the Cudgen Creek Reserve.

In relation to the Apartment Design Guide, the application is found to be generally sufficient notwithstanding the following:

- The deep soil zone meets the required criteria however is located over Council’s sewer easement at the rear of the property and thus is not truly functional for deep soil planting. This variation has been accepted under DCP Section A1 based on the constraints of the site. The same justification is considered reasonable under SEPP 65.
- The separation distances are less than those prescribed (6m for habitable rooms and balconies and 3m for non-habitable rooms). The development provides 3.8m to the RFB to the north/east and 4.5m to the RFB to the south-west. In support, the applicant provides the following:

  “Although the separation distances are less than those outlined in the design criteria, due to the constraints imposed by the size and dimension of the subject site, along with the side boundary setbacks of adjoining development, it is not practicable to achieve the maximum separation distances between habitable rooms. To minimise potential adverse impacts associated with separation distance, appropriate measures have been incorporated into the design of the building. These include orientation of the apartments to the front and rear of the site and use of fixed external privacy screening to windows on the side elevations. Through implementation of such measures, the proposed development is able to maintain a high level of residential amenity and privacy for residents, and restrict the potential for overlooking into habitable rooms of adjoining development.”
The private recreation areas of all dwellings within the proposed
development have been oriented to the rear of the site, and have a
combination of solid walls to the southern elevation and partially open
walls to the northern elevation of the balconies to further restrict
potential overlooking to habitable rooms and private recreation areas
of adjoining development, whilst still allowing access to breezes, and
good solar access”.

This is considered reasonable.

- Storage areas are required to be provided to 10m$^3$ for 3 bedroom units, with
  50% provided within the subject units. The submitted plans show dedicated
  storage spaces within the garage area with around 8.9m$^3$ of storage area
  per unit. Dedicated storage areas are not shown on the DA plans for the
  units themselves though generous robe spaces are provided. With the
  inclusion of the robes, it would appear that the 10m$^3$ per unit is met for each
  unit, however at present the plans do not demonstrate that the 50% storage
  provision within the unit has been provided.
- The apartment mix is not varied, with 4 x 3 bedroom units provided. The
  high number of bedrooms does provide for variation for residents with the
  second/third bedroom able to be used as a spare/study etc. The applicant
  advises that the configuration will meet market demand.

In relation to storage, given it is highly likely that the proposal can comply, a
condition has been applied requiring the submission of a plan prior to issue of
construction certificate.

In relation to the wider principles of SEPP 65, the proposed development is
considered appropriate.

**SEPP No 71 – Coastal Protection**

SEPP 71 applies as the site is located in the coastal zone, though it is not in
proximity to the coastal foreshore (and not within a sensitive coastal location).

(a) The aims of this Policy set out in Clause 2:

The proposed development is considered to be consistent with the aims of
the policy as set out in clause 2.

(b) Existing public access to and along the coastal foreshore for pedestrians or
persons with a disability should be retained and, where possible, public
access to and along the coastal foreshore for pedestrians or persons with a
disability should be improved.

The proposed development will not alter or restrict the public’s access to the
foreshore reserve areas located adjacent to the Pacific Ocean.

(c) Opportunities to provide new public access to and along the coastal foreshore
for pedestrians or persons with a disability.
The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like, nor are there any physical opportunities to do so given the spatial separation between the site and foreshore reserve.

(d) **The suitability of the development given its type, location and design and its relationship with the surrounding area.**

Whilst the proposed development is sited and designed in general accord with the relevant Council controls, there are variations sought to the controls to the maximum mapped height limit and residential development code which are addressed in detail below. Subject to conditions, the proposed development is considered to be suitable for the site.

(e) **any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.**

The proposal is not considered to result in any detrimental impact on the public foreshore, given its spatial separation.

(f) **the scenic qualities of the New South Wales coast, and means to protect and improve these qualities**

The proposal is unlikely to impact upon the scenic quality of the NSW coast, with the development being spatially separated from the beach and ocean. The proposal is consistent with the built environment of the Kingscliff area and the general desire for future built development in the locality.

(g) **measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats;**

The proposal will not have an adverse impact upon threatened species. The subject site has been developed over time for urban purposes and contains minimal vegetation or native habitat.

(h) **measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.**

The proposal is unlikely to have an adverse impact upon marine environments or habitats.

(i) **existing wildlife corridors and the impact of development on these corridors,**

The proposal will not have an adverse impact upon wildlife corridors or the like.

(j) **the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;**
The subject site is not located within an area affected by Coastal Erosion (WBM Coastline Hazard Definition Study), and is inland of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities;

Not applicable.

(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;

The subject site is not identified as a cultural place or similar.

(m) likely impacts of development on the water quality of coastal waterbodies,

The proposal is unlikely to adversely impact upon the water quality of nearby waterways. Appropriate erosion and sediment controls will be put in place to ensure no sediment impacts on the surrounding area.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

The subject site is not identified as land containing items of heritage, archaeological or historical significance.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;

Not applicable.

(p) only in cases in which a development application in relation to proposed development is determined:

(i) the cumulative impacts of the proposed development on the environment; and

No cumulative impacts are likely as a result of the proposed development.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

A BASIX certificate has been prepared as part of this application which demonstrates the proposal would be acceptable having regard to the above.
The proposal is considered to be consistent with the matters for consideration within clause 8. The proposal will have no impact on access to and along the foreshore and will not result in overshadowing of the foreshore. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

**SEPP (Building Sustainability Index: BASIX) 2004**

The proposed development comprises ‘dwellings’ and accordingly the proposal is a “BASIX affected development”. A BASIX certificate has been obtained and was lodged with the subject application.

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

There are no draft EPIs which require consideration.

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

*Tweed Development Control Plan*

*A1-Residential and Tourist Development Code*

A detailed Development Control Plan Section A1 assessment is available on file. The proposed development originally contained a number of variations to this section of Council’s DCP. Revised plans were submitted which reduced some of the variations however the following are still sought:

- Design Control 2 - Site Configuration - Deep Soil Zones - Control c.
- Design Control 2 - Site Configuration - Deep Soil Zones - Control e.
- Design Control 2 - Site Configuration - Topography, Cut and Fill: Control h. and m.
- Design Control 3 - Setbacks - Front Setbacks (Building Lines): Control h.
- Design Control 3 - Setbacks - Side Setbacks: Control b.
- Design Control 3 - Setbacks - Rear Setbacks: Control a.
- Design Control 4 - Car parking and Access: Control d. and h.
- Design Control 5 - Building Footprint and Attics, Orientation and Separation - Building Separation: Control h.

In relation to Design Control 2 - Site Configuration - Deep Soil Zones – Controls c and e, based on the length and width of the site, the following is required for the rear deep soil zone:

Minimum width – 8m
Minimum depth – 6.4m

Notwithstanding the location of the proposed rear DSZ over the sewer easement, the revised plans (which increased the building setback) are considered to be generally acceptable with regard to the rear DSZ, with the entire rear setback generally available.
In relation to this variation, the applicant has submitted a detailed request for a variation as per below:

"2.1 Section A1 - Part C - Design Control 2 - Site Configuration - Deep Soil Zones: Control c

Control c. states:

c. Rear Deep Soil Zones 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 length of the site up to 8m but not less than 4m. Greater than 8m may be provided if desirable.

Objectives

- To ensure that land retains its ability to permeate water.
- To ensure that each building lot has a deep soil zone of adequate area and dimension.
- To retain and enhance fauna and flora corridors throughout suburban areas.
- To provide space for mature tree growth and vegetation.
- To retain existing mature vegetation.

Response:

We have identified several factors which warrant the reduction in the rear deep soil zone. These are as follows:

- The sewer easement running through the site significantly reduces the available land for deep planting along rear boundary setback. With that said, there is still sufficient room to establish large landscaping trees within this area. An amended landscaping plan will be provided subsequent to submission of this response.

- The subject site has provided a rear deep soil zone generally in accordance with that provided at the adjoining development at 2 Hungerford Lane.

- The subject site backs on to a large Council owned reserve which is characterised by a very steep embankment which drops down towards Moss Street. A significant amount of mature vegetation exists within this reserve (refer to Figure 1). Given the slope of the site, it is likely that this area will be retained as a landscaping corridor. As such, this area will provide an excellent opportunity to achieve Council's objective to retain and enhance fauna and flora corridors.
2.2 Section A1 - Part C - Design Control 2 - Site Configuration - Deep Soil Zones: Control e

Control e. states:

- Front Deep Soil Zones are to be the width of the site boundary minus the driveway width and the pathway width by the front setback depth.

Objectives

- To ensure that land retains its ability to permeate water.
- To ensure that each building lot has a deep soil zone of adequate area and dimension.
- To retain and enhance fauna and flora corridors throughout suburban areas.
- To provide space for mature tree growth and vegetation.
- To retain existing mature vegetation.

Response

Given the requirement for visitor carparking associated with the proposed development and the constraints facing the site, the proposed visitor carpark will be provided at the front of the proposed development. As such, the deep soil zone of the proposed development will be kept to the northern corner of the site.

As per the Landscaping concept plan by Mark Baldock, the proposed development will be provided with appropriate landscaping along the front boundary with a medium sized feature tree provided, being a Tristaniopsis Laurina, and a large garden bed provided in front of the proposed building. These landscape areas are all capable of containing deep planting, and the landscaping choses [sic] will be sufficient to break up the built form and reduce the perceived bulk of the proposed building when viewed from Hungerford Lane.

Furthermore, the Landscaping Concept Plan has provided permeable pavers will to the driveway and visitor car parking areas to ensure that land retains its ability permeate water in accordance with the objectives of this provision."

It is considered that the above justification is appropriate with regard to the objectives of the rear deep soil zone control. The reality is that the sewer easement severely restricts the ability of the site to have a compliant rear DSZ without entirely compromising development overall. It is noted that development
on adjoining lots to the south do not maintain a compliant rear DSZ (as per current controls) and compared to these properties the proposed development would represent an improvement in this regard. The properties to the north show a greater rear DSZ with approximately 5.8-6.3m of area available. Notwithstanding the existence of the sewer easement, the proposed development would exhibit a rear DSZ/rear setback more commensurate with these properties. Overall, no objection is considered to be raised to the proposal with regard to the rear DSZ, the applicant is considered to have appropriately addressed the objectives of the control in the revised submission.

In relation to **Design Control 2 - Site Configuration - Topography, Cut and Fill: Control h. and m**, it is relevant that the building utilises suspended floors to minimise earthworks. There is up to 1.4m of cut proposed as shown below:

It is permitted to have excavation in excess of 1m within the confines of the building footprint to allow for basement parking. As such, there is no objection to the proposed 1.47m cut within the partial basement.

The applicant proposes two variations to this control in relation to the setbacks of retaining walls to the side boundaries. The development incorporates retaining...
walls on the western side boundary and within 310mm of the northern boundary. Each wall forms part of the building.

The following is provided within the applicant's variation report with respect to retaining walls:

“Control h. states:

h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.

Control m. states:

m. The top of any battered cut (or retaining wall) and the toe of any battered fill (or retaining wall) is not to be closer than 900mm to any property boundary, where the overall height at any point exceeds 500mm.

The proposed building has been designed so as to minimise the amount of excavation required to facilitate the proposed development to the full extent possible. With that said, a small amount of excavation will be required along the side boundaries to facilitate the proposed access and car parking area associated with the proposed Residential Flat Building.

It has been determined that the small amount of earthworks required will not have any adverse impacts on the adjoining developments. It has been identified that a retaining wall exists along the side boundary shared with 2 Hungerford Lane, Kingscliff which has been provided to facilitate the access driveway with this development. The proposed earthworks will be of a similar proportion to those which have been undertaken on this adjoining site. Furthermore, the proposed earthworks along the north east boundary will be minimal and have no negative impacts on the adjoining units on this site. The proposed earthworks have appropriately responded to the topography of the site to ensure that the building is of an appropriate height. All required retaining walls will be appropriately designed at the necessary time”

Council’s Development Assessment Engineer has not objected to the proposed walls and it is considered that the proposed variation to the wall setbacks is appropriate in this instance and generally commensurate with development on adjoining lots. The variation is still considered to meet the intent of the objectives of this control.

In relation to Design Control 3 - Setbacks - Front Setbacks (Building Lines): Control h, the application seeks a variation in that it proposes the visitor parking space within the front setback at ground level. The relevant control provides that at grade parking must be located a minimum of 6m behind the front elevation of the building or to the rear of the site.

The applicant provides the following:

“Given the dimensions of the subject site, the maximum amount of car parking spaces have been provided at the ground floor level. As such, we have been required to provide one visitor car parking space within the front
boundary setback. Whilst this does meet the abovementioned control, we feel that the proposed arrangement will be appropriate.

As per the Landscape Concept Plan by Mark Baldock, the proposed development has been provided with ample landscaping treatments along the frontage of the site. The proposed landscaping will be sufficient to ensure that the proposed development has a balance between hard built form features and soft landscaping treatments. The proposed landscaping will break up the form of the building to promote an attractive streetscape along Hungerford Lane. Furthermore, it is proposed that a suitably designed front boundary fence will be provided to ensure that the view to the proposed car parking space will be minimised to the full extent possible when viewed from Hungerford Lane. *Note that the applicant was requested to provide details of front fencing however opted to have submission of this detail applied as a condition instead.*

Finally, we have assessed that the majority of developments along Hungerford Lane have been provided with car parking within the front boundary. As such, it is our assessment that the proposed development will be in keeping with the prevailing built form within the immediate vicinity of the subject site, and will therefore have no negative impact on the streetscape character which is currently present in the area”

Planning assessment concurs with the above. The proposed visitor’s space will be consistent with others in the vicinity and is necessary due to the constraints of the site. The design merits of the front façade will ensure that the proposal still achieves the objectives of this control.

**Design Control 3 - Setbacks - Side Setbacks:** Control b provides that a residential flat building can have side setbacks of a minimum of 1.5m.

The application varies this for the basement/garage level and has screening devices at the upper levels protruding into this area.

The applicant has addressed this as follows:

"1. Partial built to boundary wall along the western boundary;
   a. The wall will have a total length of approximately 4.4m;
   b. The wall will have an overall height of approximately 2.7m;
   c. The wall will have an overall height of between approximately 1.5m and 1.8m from the natural ground level.

2. A wall at garage level adjacent to car parking space 8 has been set back 1m from the western boundary:
   a. The wall will have a total length of approximately 7.8m;
   b. The wall will have an overall height of between approximately 2.4m and 2.6m.

3. The screening devices and awnings along the site elevations at the ground and upper levels will protrude into the side boundary setbacks."
The applicant provides the following justification for the side setback encroachments:

“We have identified several factors which warrant the reduction in the side boundary setback which are specific to the garage level walls. These are as follows:

The proposed built to boundary wall will be positioned adjacent to the driveway area associated with the development at 2 Hungerford Lane, Kingscliff (refer to Figure 4).

Furthermore, the wall adjacent to car parking space 8 will be positioned next to a blank wall forming part of the entrance to Unit 5/2 Hungerford Lane, Kingscliff. As such, we have determined that the proposed walls within the side boundary setback will have no negative impacts with respect to overshadowing of habitable rooms or spaces.

The proposed walls at the basement level have been provided to mitigate any negative impacts associated with vehicle movements from the basement level car parking area. As such, although the walls will protrude into the side boundary setback, these will ultimately work to enhance residential amenity by minimising potential nuisance caused by noise and light impacts from vehicle movements within the proposed ground level car parking area.
It is proposed that these walls will be constructed of high quality, low maintenance building materials to minimise the visual impact of the structure on the adjoining landowners.

We have identified several factors which warrant the reduction in the side boundary setback which are specific to the screening devices and awnings along the side elevations at the ground and upper levels. These are as follows:

It is proposed that the screening and awning structures along the side elevations will be constructed of lightweight building materials. It has been determined that there building elements will not contribute to the bulk of the building and therefore do not create any negative impacts with respect to overshadowing of adjoining units. The screening devices within the side boundary setback have been provided to ensure that the proposed development will not result in any overlooking to habitable rooms and recreation areas. The proposed development has been designed to ensure that a high level of privacy will be created”.

The setback encroachments are considered reasonable for the reasons listed above.

In relation to Design Control 3 - Setbacks - Rear Setbacks: Control a, an 8m rear setback, or the deep soil zone whichever is the greater is required. The application seeks to vary the rear deep soil zone to a minimum width of 6m. This is the greatest distance available for the rear setback and as such the proposal does not comply.

In support of the variation, the applicant provides:

**Response:**

The proposed development has achieved the following rear boundary setbacks (refer to Figure 5):

- Garage Level - approximately 7m at the shortest point to the south east corner;
- Units 1 & 3 -
  - To balcony - 6m;
  - To wall
    - Between approximately 8.9m & 10.8m;
- Units 2 & 4 -
  - To balcony:
    - South-west boundary - 6.7m to balcony;
    - Southern boundary - 6m.
  - To Wall:
    - Between approximately 7.4m and 10.7m.
We have identified several factors which warrant the reduction in the rear boundary setback. These are as follows:

- It is firstly important to consider that the rear boundary adjoins a large Council reserve which is above Moss Street. This reserve area is very steep and forms a near vertical drop towards the Moss Street 'frontage' (refer to Figure 6). It is also important to consider that this area contains a significant amount of vegetation. As such, the proposed rear boundary setback will have no negative impacts on the streetscape amenity from Moss Street, as it will not be visible.

- The component of the building projecting into the rear boundary setback will be open balconies (refer to Figure 7). As such, the rear elevation does not present bulky structure when viewed from the south. The main wall along the rear portion of the building has achieved a suitable rear boundary setback generally in accordance with the requirements of the control.
It has been determined that the adjoining unit at 5/No. 2 Hungerford Lane has provided an open balcony within the rear boundary setback. This balcony has achieved a rear boundary setback of approximately 5m (refer to Figures 8 & 9). Given the proposed development has achieved a minimum rear setback of 6m to the proposed balconies, the proposed development is assessed to be in accordance with the rear boundary setbacks prevailing within area. The proposed development will be of a form which is commensurate to that on the adjoining dwelling."

Based on the information supplied above, it is considered that the rear setback variation is appropriate. The rear setback will be commensurate with those on adjoining lots.

In relation to Design Control 4 - Car parking and Access: Control d. and h, the controls provide that car parking cannot be located within the front setback and at grade parking cannot occur within 12m of the primary street frontage.

For reasons identified above under Front Setbacks, the proposed location of one visitors space within the front setback zone is considered to be appropriate and this variation is considered to be worthy of support.

In relation to Design Control 5 - Building Footprint and Attics, Orientation and Separation - Building Separation: Control h, 3m separation is required between walls containing primary windows/doors of sleeping rooms (at ground level only) to shared driveways, carports and garages.

It has been identified that bedrooms 2 & 3 will be positioned alongside the proposed driveway area of the proposed building, as well as the existing driveway providing access to the units on the adjoining site at 2 Hungerford Lane, Kingscliff. The windows of these bedrooms have been provided with appropriate screening devices to ensure that there will be no nuisance to future residents of the units from vehicle movements accessing the adjoining development. These windows have been positioned away from the adjoining site and will therefore ensure the privacy of future residents.
This variation is considered to be acceptable.

Overall, it is considered that the development responds well to the highly constrained site and the nature of existing development in the locality. The proposed floor space is well below the maximum prescribed by both DCP Section A1 and LEP 2014 and the development is thus not considered to be an overdevelopment of the site on this basis. Whilst the proposed development exhibits a number of minor variations to DCP A1, overall the objectives of the policy are considered to be maintained and the development is considered worthy of support.

A2-Site Access and Parking Code

Development Control Plan A2 – Site access and parking code requires that the following parking is to be provided:

<table>
<thead>
<tr>
<th>Use</th>
<th>No.</th>
<th>Rate</th>
<th>Total to be provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 bedroom dwellings</td>
<td>4 Units</td>
<td>2 spaces for 3 or more bedroom units. In addition visitor parking at 1 per 4 units.</td>
<td>8 car parks for units and 1 visitor car park.</td>
</tr>
</tbody>
</table>

The proposal provides 8 basement car parks and 1 visitor car park on ground level and as such, sufficient parking is provided.

It is noted that the applicant seeks a relaxation to Council’s maximum permitted driveway grade which has been accepted by Council’s Engineers. The proposed access and parking arrangements are considered appropriate.

A3-Development of Flood Liable Land

The site is not flood prone.

A11-Public Notification of Development Proposals

In accordance with Section A11, The development application was notified for a period of 14 days, from Wednesday 9 September 2015 to Wednesday 23 September 2015.

During this period a total of five submissions (objections) were received.

A further submission (objection) was received by Council in relation to the amended plans.

The matters raised within are addressed under ‘Public Submissions’ below.
**A15-Waste Minimisation and Management**

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development. A standard condition will be applied requiring that all waste shall be collected, stored and disposed of in accordance with this section of the DCP. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this Section of the DCP.

**B9-Tweed Coast Strategy**

The proposed development does not contravene the Tweed Coast Strategy, being located within a designated medium density residential zone, outside of immediate proximity to the coastal environment.

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

Clause 92(1) (a)(ii) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

Appropriate conditions with regard to demolition of the existing dwelling on site have been applied.

Clause 93 Fire Safety Considerations

Council's Building Services Unit has assessed the proposed development and has provided appropriate conditions in relation to fire safety.

Clause 94 Buildings to be upgraded

There are no building upgrade works proposed. Clause 94 is not relevant to the proposed development.

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

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire’s 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.
The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

**Tweed Coast Estuaries Management Plan 2004**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located close to Cudgen Creek however subject to conditions of consent will not impact on the coastal environment or water quality. It is considered that the proposal complies with the Tweed Coast Estuaries Management Plan.

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

The site is not located in proximity to either the Cobaki or Terranora Broadwater and as such this Plan is not considered relevant 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**

**View Sharing/View Loss**

A number of submissions raised concerns in relation to view loss which are addressed in detail under public submissions further in this report.

To address the concerns raised in public submissions, the applicant submitted a detailed view corridor analysis which is based on the principles of view sharing set down by Roseth SC in Tenacity Consulting v Warringah Council (2004) NSWLEC 140. This case set down the following 4 assessment criteria:

**Assessment Criteria 1:** An assessment of the value of views to be affected by reference to their nature, extent and completeness.

**Assessment Criteria 2:** A consideration of how views are obtained and what part of the property the views are obtained from.

**Assessment Criteria 3:** A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible minor, moderate, severe or devastating.

**Assessment Criteria 4:** An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result.

The submitted view analysis assesses the likely impacts on views from the following sites:

- 1 Hungerford Lane
- Unit 3/2 Hungerford Lane
o Unit 5/2 Hungerford Lane
o Upper level units at 2 Hungerford Lane
o Number 6 Hungerford Lane (various units).

In relation to **1 Hungerford Lane**, the site currently has substantial ocean views over the subject site as per below:

![Figure 2: Photograph illustrating existing dwelling on No. 1 Hungerford Lane.](image)

In relation to assessment criteria 1, the existing view is not complete, having been obscured already by three storey development at 2 and 6 Hungerford Lane. The existing view is only provided by virtue of the undeveloped nature of the subject site.

In relation to Criteria 2, review of the plans for the approved dual occupancy currently under construction on 1 Hungerford Lane indicates that the views would be available in the absence of development of 4 Hungerford Lane from the upper level kitchen, lounge, dining and deck spaces. There could be a view also from the angled Bedroom 1 window.
In relation to Criteria 3, it is considered (as identified in the view analysis) that the view loss impacts to 1 Hungerford Lane could be classified as severe, noting that the existing view is only available because of the undeveloped nature of the subject site.

In relation to Criteria 4, the building has been designed as 2 storeys fronting the street, increasing to 3 storeys as it approaches the rear of the site. The majority of the building complies with the 9m height limit with the exception of the south western corner. It is considered that any building on the subject site with a height exceeding the existing single storey dwelling would dramatically decrease views currently available from 1 Hungerford Lane. Thus though the view loss impacts can be seen to be severe (using the terminology as prescribed by Tenacity) the view loss itself is not considered unreasonable given the location of the site and the prescribed medium density zoning, complete with a 9m height limit. A building built to the height limit at the street frontage would impact more substantially on available views than the subject development.

The applicant contends that the building will be commensurate in scale with those buildings either side and planning assessment concurs with this viewpoint.

With regard to impacts from various units at 2 Hungerford Lane, the following is provided:

> “2 Hungerford Lane contains a residential flat building of 5 units. This development itself contained a variation to the building height controls applicable at the time.”

Concerns were raised by the owner of Unit 3 which is a ground level unit toward the western boundary. The submitted view analysis identified that this unit does not currently receive ocean views by virtue of its ground level location and dense planting at the rear of the site. There is considered to be no impact on views for this unit as a result of the proposed development.

In relation to Unit 5/2 Hungerford Lane, the submitted view analysis provided that views are available from both levels of the unit. In relation to Criteria 1, at the lower level, there is a restricted ocean view to the east through a small clearing in existing vegetation within the adjoining Moss Street road reserve. Additionally,
there is dense screening vegetation along the boundary which restricts further views, similar to adjoining Unit 3 in this location. The current view from the lower level terrace is shown below:

This view is not complete and is only available due to a gap in the vegetation within the road reserve. This view could disappear at any time as the vegetation matures.

At the upper level, there is an unrestricted view to the ocean and Cudgen Creek as per below:
In relation to Criteria 2, at the lower level, the views are obtained from the main living area and terrace. At the upper level, the view is obtained from the balcony.

The view analysis determines that the view loss from the lower level is likely to be negligible. It does not appear that the proposed building will impact on ocean views obtained from the lower level of the building.

It is noted that the open terrace (at ground level) will be in proximity to the proposed building. In this location there is no floor space at ground level however the elevations demonstrate the existence of the supporting wall for the upper level units in this location, 1.5m off the boundary. At a higher level, there are small windows to the Unit 2 and Unit 4 outdoor living areas as shown below which the applicant proposes to screen (and seeks application of a condition in this regard). It is not considered that this is unreasonable given the higher density sought for the site under the zoning controls. Privacy screening could also be erected at ground level by the owner of Unit 3.

In relation to the upper level, the view analysis identifies a reduction on the view corridor from around 134 degrees to 107 degrees (previously 104 degrees prior to Council recommendation), noting that a compliant setback would further restrict views to 97 degrees and that the single dwelling house currently on the lot contributes to the expansive views currently afforded to the unit. Accordingly, the view analysis attaches a minor view loss impact to the upper level of Unit 5.
Table 1. View corridor comparison

In relation to Criteria 4, the proposed variation to the rear setback does impact on the views afforded to Unit 5. The applicant posed that the constraints of the site are such that further reducing the rear setback impacts on the ability of the proposal to provide car parking and further setting of the building into the site impacts on the available driveway grades. The applicant further notes that the rear setback is consistent with that achieved by the development at 2 Hungerford Lane.

The applicant provides the following with respect to the upper level balcony:

“With respect to the upper level balcony, the views afforded from this area are quite extensive and offer a significant view corridor between the east and south encompassing views towards the Pacific Ocean and Cudgen..."
Creek. It is assessed that from a standing position, these views increase towards the south west. It has been determined that whilst the proposed building will have some degree of impact on the views available from the upper level balcony, these are considered to be negligible given these areas will still have a substantial view corridor to the significant landscape features, i.e. greater than 90 degrees. The views towards the Pacific Ocean and Cudgen Creek will still be available to the site. Finally, despite the proposed development seeking variations with respect to building height and rear boundary setbacks, the scale and form of the building is considered to be in accordance with the built form in the area, and these areas of non-compliances are not likely to cause an unreasonable level of view loss.”

Planning assessment agrees with this viewpoint and with the additional reduction of the balcony area marginally increasing the rear setback, the views of adjoining neighbours are improved to what could exist in compliance with the DCP 2008.

**Upper Level Units/2 Hungerford Lane**

In relation to the above units at 2 Hungerford Lane, the building design affords expansive, unrestricted views to the upper level living spaces and balconies.

The views comprise outlooks to the Pacific Ocean and Cudgen Creek:

![View from Unit 1 Balcony](image-url)
In relation to Criteria 1, these views are from the extensive upper level balconies associated with the upper level units.

In relation to Criteria 2, the views are obtained from the primary recreation areas associated with these units and will be obtained from a sitting or standing position.

In relation to Criteria 3, the applicant provides that:

“It has been determined that the proposed development will result in a degree of view loss from the upper level balcony. Figure 24 below provides a visual representation of the views which will be available from these areas as a result of the proposed development. These are likely to be in excess of 90 degrees. It is worth noting that this would be from a seated position from an outdoor setting positioned on the balcony; when standing on edge of the balcony, views towards the south west are likely to increase. It is assessed that the upper level balcony will still achieve extensive and unrestricted views towards the Pacific Ocean and Cudgen Creek, and as such, the level
of view loss resulting from the proposed development is considered to be negligible/minor.”

The relevant figures are shown below:

**Figure 23:** Current view corridor from upper level units of No. 2 Hungerford Lane.

**Figure 24:** Proposed view corridor from upper level units of No. 2 Hungerford Lane.

Planning assessment concurs with the applicant’s position. Considerable views will remain for both upper level units notwithstanding the building height and rear setback variation. Potential for overlooking of the upper level balcony areas will be mitigated by the balcony walls for the proposed development and external screening on the proposed side facing minor windows to this area. Whilst a greater rear setback would have minimised impacts on view loss for the upper level balconies, in particular that of Unit 1, it is considered that substantial views remain available to this Unit.

**6 Hungerford Lane**

Both levels of units at 6 Hungerford Lane have balconies which overlook expansive ocean and Cudgen Creek views. In relation to Assessment Criteria 1, these views are from the rear balconies and are between north east and south west as per the following:
In relation to Criteria 2, these areas would be the principle recreation spaces associated with these units and would be obtained from a seated or standing position.

In relation to Criteria 3, the submitted view analysis demonstrates that the existing view of around 164 degrees would be reduced as a result of the proposed development to 148 degrees:

The resulting impact is considered to be minor.

In relation to Criteria 4, because of the orientation of the subject site, it is considered that a compliant development would not result in a considerable change in impact to views available from the balconies of 6 Hungerford Lane. The 6.1m rear setback of the subject development preserves much of the existing view corridor for 6 Hungerford Lane along Cudgen Creek. The building does not impact at all on existing ocean views from 6 Hungerford Lane.

Overall, in an area set aside for medium density housing, it is considered that impacts to existing views as a result of development are unavoidable in some
respects. In this instance, substantial views remain available to most surrounding properties. The extent of view loss has been quantified by the applicant and reviewed by Council planning staff. It is further noted that recent legal opinion clarifies that Tenacity does not provide that anyone has a proprietary right to retain all or part of the views enjoyed (or capable of enjoyment) from their land.

Specifically, as provided by Lindsay Taylor Lawyers (dated 19 November 2015, general commentary in ‘Focus’ newsletter):

“A ‘planning principle’ is not binding law. It is described by the Court as a statement of a desirable outcome from a chain of reasoning aimed at reaching a planning decision, or a list of appropriate matters to be considered in making a planning decision. Although a planning principle is not binding on a decision maker, the Court will try to apply the principle consistently in appeals before it, unless it is inconsistent with the council’s applicable controls. If a planning principle is observed by the Council when assessing a development, the planning decision is more likely to be sound in the eyes of the Court.

In other words, if an application is made to a council for development which has the potential to impact on neighbouring views, then it is desirable that the council assess the impact on views in accordance with the 4 step process set out in Tenacity, including determining whether the impact is negligible, minor, moderate, severe or devastating.

However, Tenacity does not provide that anyone has a proprietary right to retain all or part of the views enjoyed (or capable of enjoyment) from their land. The Court specifically acknowledges that entire loss of a view in some cases (although a devastating impact) could be reasonable in the circumstances. Also the case is merely concerned with the planning decision, and does not deal with whether a landowner can enforce any right to a view against another landowner.

No ownership of a View

That issue was dealt with by the High Court in Victoria Park Racing & Recreation Grounds Co Ltd v Taylor [1937] HCA 45, which remains good law today. The High Court held that a property owner does not own the views (spectacles) from his or her land. Justice Dixon stated: “I find difficulty in attaching any precise meaning to the phrase ‘property in a spectacle’. A “spectacle” cannot be “owned” in any ordinary sense of that word.”

This position has been reinforced in several subsequent decisions of the Court and, as a legal principle, remains relatively unchanged. In Robson v Leischke [2008] NSWLEC 152, His Honour, Preston CJ, summarised the limited powers available to an aggrieved landowner when, at paragraph [86] of his judgment, he stated:

…a defendant may erect a building or other structure such as a fence, or plant a tree on his or her land which interferes with the neighbour’s enjoyment of their land. The building, structure or tree may…spoil the neighbour’s view …yet such interferences are not actionable as a nuisance.”
It is thus considered that planning staff have appropriately addressed the 4 principles as prescribed by Tenacity and that the resultant assessment demonstrates that the development should not be refused on the basis of impact on the views available from (and continuing to be available from) adjoining properties.

**Geotechnical/Earthworks/Landforming**

A geotechnical report is provided by Geotechniques Foundation Engineering. The report indicates that the site is classified as “P” in accordance with AS2870 – 2011 with reactivity of an “S” site. The recommendation of the geotechnical report is that the foundations for the proposed dwelling are piered to rock and designed with due consideration of the sites characteristics. Further, the geotechnical report specifically does not address slope stability of the site. Given the steep nature of the site it is recommended that a slope stability geotechnical report be provided prior to issue of a construction certificate. Appropriate conditions have been applied.

**Access**

Access is proposed off Hungerford Lane and grades down into a basement car park. The gradients of the proposal do not meet the required 6m length of 5% grade as stipulated in AS2890.1 section 3.3 a). A letter of relaxation has been submitted from Westra Partners Consulting Structural and Civil Engineers with the following justification:

- The site achieves approximately 100mm from lip of kerb to driveway level at the property boundary line convey stormwater flow within the kerb & channel and street verge,
- There is no pedestrian footpath between the road and property boundary. This minimises the potential risk of collision/accident between pedestrian & vehicle by reducing the likelihood of pedestrian interaction,
- Hungerford lane is a one way street. This minimises the potential risk of collision between vehicles entering & exiting the site by the nature of a one-way street,
- The proposed driveway has incorporated 2.0m long transition areas to allow maximum changes in grade in accordance with AS2890.1 section 2.5.3 d).

In addition to the above the adjacent building has a driveway which also does not meet the required 6m length of 5% grade (view adjacent driveway in photograph below).

Council’s Traffic Engineer has accepted the proposed variation and standard conditions have been applied.

No access is to be permitted to Moss Street from the rear of the property due to safety concerns.
A footpath will be required to be provided along the Hungerford Lane property frontage.

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

**Surrounding Land uses/Development**

Notwithstanding the matters raised in submissions, the proposed development is considered to be consistent with the desired and emerging medium density character of the area prescribed by the R3 zoning.

**Site Orientation**

The site has expansive views to the south east and south west. The building orientation has maximised access to these views and ensured view sharing between adjoining properties as much as possible.

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

During the initial notification period, a total of six submissions (objections) were received.

As a result of the resolution by Council on the 3 March 2016, amended plans were received from the applicant on 29 March 2016. The revised designs dated 22 March 2016 were provided to previous objectors. A further submission (objection) was received by Council in relation to the amended plans dated 17 April 2016 and the additional items not previously addressed are raised below.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Assessment Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>The amendment makes no provision for an actual physical step down of the building on the site … the removal of the small portion of roof between the 2 wings of the upper storey units makes minimal difference to perceived bulk of the building.</td>
<td>The amended plans dated 22 March 2016 articulate the roof line, reduce the overall height and reduce the depth of the balcony. This results in a ‘step down’ of the building providing a better siting which conforms with the surrounding landforms as can be seen below.</td>
</tr>
<tr>
<td>Removing the roofed wing area does in fact reduce the bulk of the structure and improve articulation in conforming with the surrounding locality.</td>
<td></td>
</tr>
</tbody>
</table>
The rear setbacks continue to not comply with the minimum requirements. As such the proposed development continues to significantly negatively impact on the privacy of adjoining dwellings and does not allow for private outdoor relaxation.

The revised design dated 22 March 2016 further restricts the rear building line to be sited behind the existing structures at 2 and 6 Hungerford Lane as can be seen below.

The site is constrained and whilst there are variations to Council’s adopted controls, the merits of the proposed development are considered to be sound.

The matters raised in original submissions are addressed below with relevant assessment comments provided.

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>The area has a 2 storey height limit with buildings not to exceed 9m. The applicant’s proposal is 3 storey and in excess of 9m.</td>
<td>The site has a 9m height limit under LEP 2014. The applicant’s proposal no longer exceeds the height limit at the rear south western corner. The amended plans of development are compliant with the height restriction. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The floor space is too high and the proposal is an overdevelopment of the site.</td>
<td>The floor space is actually approximately half of what is permitted by LEP 2014 for this site within the Medium Density residential zone. The development is not considered to be an overdevelopment on this basis. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>Future buildings on the low side should step up from Moss Street using the grade of the land within the 2 storey height limit.</td>
<td>The land has a 9m height limit with which the development is consistent. The location of the sewer easement limits the ability of the development to further nestle into the site whilst still achieving appropriate driveway grades. This issue does not warrant refusal of</td>
</tr>
<tr>
<td>Issue</td>
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<tr>
<td>The development will limit our views and our ocean breeze and subsequently devalue our property.</td>
<td>A detailed view sharing assessment has been undertaken above. In relation to 1 Hungerford Lane (from which this point was raised), there will be substantial loss of views however this is considered to be reasonable given the view has only historically been available based on the undeveloped nature of the subject site. The area is zoned for medium density development with a 9m height limit. These factors should be considered when developing in the area. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The property has unobscured water views and does not warrant the proposed height and width.</td>
<td>The proposed bulk and scale of the development is considered to be sufficient. In dealing with the constraints of the site but still providing for a reasonable yield, it is considered that the proposed design is appropriate, articulated and maximises the development capacity of the site as much as possible without significant environmental impacts. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The development proposed is above the maximum height. This will cause overshadowing, loss of aesthetics and loss of amenity to adjoining dwellings</td>
<td>The applicant has submitted amendments to the proposal plan which are complaint with the maximum height for the area. Submission of overshadowing plans demonstrates that any potential proposed impacts of overshadowing are negligible with respect to adjoining properties. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The building is too large and forms a solid block. It is not sympathetic to the contour of the hill. When looking at the hill-scape of Hungerford Lane from the rear or the building (e.g. from the Cudgen Creek area) the proposed building will form a solid block. The building should be tiered down the hill as has been achieved with the units at 2 Hungerford Lane.</td>
<td>The constraints of the site (slope, sewer easement and constrained size and shape) mean that further setting of the building into the hillside is not possible without resultant impacts and further non-compliance with Council’s controls. When viewing the site from Cudgen Creek, it is considered that the proposed development would be in keeping with surrounding development, particularly with regard to building height. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The proposed building separation between 4 Hungerford Lane and 2</td>
<td>The proposed building separation is consistent with Council’s controls with</td>
</tr>
<tr>
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<tr>
<td>Hungerford Lane is not sufficient. It will negatively impact on building amenity for adjoining dwellings, including shadowing, extensive loss of view and acoustic privacy.</td>
<td>the exception of minor encroachments at the upper levels for screening to the side boundaries. Overshadowing and view loss impacts have been addressed above. In relation to acoustic privacy, it is evident that every side facing window will have a fixed external privacy screen. In fact, the dwellings have been oriented to the front and rear of the allotment rather than to the side boundaries to minimise overlooking, visual and acoustic privacy impacts. It is considered that screening devices are an appropriate response. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The design does not take into account the sole private outdoor spaces of adjoining dwellings. The POS of adjoining dwellings will become entirely non-existent with the planned concept.</td>
<td>It is not considered that the proposed development would sterilise the use of any POS on adjoining sites. The subject outdoor living areas are all oriented to the rear of the allotments to maximise access to views and solar access. Screening to the minor openings in the balcony walls will serve to mitigate impacts to 2 Hungerford Lane. With regard to 6 Hungerford Lane, the rear balcony tapers in as it approaches the relevant side boundary. The widest and most useable part is located centrally within the balcony floor plate and oriented toward the rear. It is considered that impacts on the existing balconies at 6 Hungerford Lane will be no more severe than those usually achieved in similar situations where view sharing is sought. This issue does not warrant refusal of the application.</td>
</tr>
<tr>
<td>There will be a significant loss of natural sunlight to the units in 2 Hungerford Lane, especially mid-winter sunlight to their principal private open spaces and to the windows of indoor spaces. Morning sunlight to 2 Hungerford Lane will disappear.</td>
<td>In relation to overshadowing impacts, the submitted plans demonstrate negligible impact in this regard. All principle private open spaces for development for either adjoining lot are located toward the rear of the site to maximise view access. Whilst the development will represent a significant change to the status quo for both 2 and 6 Hungerford Lane, review of the submitted plans does indicate that at 9am mid-winter, there will be shadow cast on the east facing elevation of the development at 2 Hungerford Lane. This</td>
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<td>shadow is gone by 12pm. The shadow diagrams demonstrate that a compliant development would also result in the same impacts and that the shadow is lengthened by the existing development at 6 Hungerford Lane which will shadow 4 Hungerford Lane in the same way. The external living areas of 2 Hungerford Lane are entirely free from shadow from the subject building from 12 onwards in midwinter. The orientation of the lots in an east/west fashion unfortunately means that it is very difficult to avoid shadow in a medium density area. This issue does not warrant refusal of the application.</td>
<td>A detailed view analysis was undertaken by the applicant and reviewed by planning staff. It is not accepted that view loss is a reason for refusal of the application.</td>
</tr>
<tr>
<td>The proposed design and height of the development will completely obstruct views to the east for residents of 2 Hungerford Lane. The design will result in a reduction of views by well over 50%. The views for numbers 6 and 1 Hungerford Lane will also be significantly affected.</td>
<td>Standard conditions have been applied in relation to impacts from ancillary building features such as these. This is considered sufficient to regulate impacts. Notably the bin store is within the partial basement and access to the units is centrally obtained. This matter does not warrant refusal of the application.</td>
</tr>
<tr>
<td>The proposed car park entrance, residence entrances, waste disposal bin, bedroom and living area locations of the units on the western side will significantly impact on noise to units on the eastern side of 2 Hungerford Lane. It appears that no provision has been made for a wall between the 2 properties to block out noise.</td>
<td>Review of the amended plans indicates that the proposed building is actually generally in line with the building lines of surrounding development:</td>
</tr>
<tr>
<td>The southern building line should be inside the projection of the two existing dwellings at 2 and 6 Hungerford Lane and the entire building moved closer to Hungerford Lane itself affording all residents equal views and sunlight.</td>
<td></td>
</tr>
<tr>
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</tr>
<tr>
<td>This issue does not warrant refusal of the application.</td>
<td>Review of the assessment report indicates that the building at 2 Hungerford Lane was actually approved with a height variation with a maximum height of 10.5m. The subject building has a maximum height of 9m. This issue does not warrant refusal of the application.</td>
</tr>
</tbody>
</table>

*Note that copies of the above submissions were forwarded to the applicant for review and comment. Upon review, the applicant modified to proposed development plans to reduce the height of the building by 300mm, pull it back from the sewer easement and provide additional information and justification in relation to view loss and overshadowing impacts. The revised plans were made available to the public and the following further submission was received in relation to that amendment:*

**Submission 6 (combined response to amended plans) dated 31 December 2015:**

- The alterations are so small that they have made little or no impact to the original development concept and therefore to the issues raised previously.
- The amended proposal continues to be above the building height. The building does not provide a stepped design at the rear of the site and forms a three storey solid bulk design. It will impact negatively on streetscape character from Moss Street, Cudgen Headland and Cudgen Creek. It continues to negatively impact on adjoining properties.
- The developer’s photo representation is inaccurate. It appears this photo is taken at the Moss Street frontage of numbers 10 and 12 Hungerford Lane, not 4 Hungerford Lane.
- The precedents cited of 6 and 1 Hungerford Lane are inaccurate. Number 1 (currently under construction) is well within height limits and considerable consultation has occurred between neighbours. The streetscape has been taken into account and the building is of a scale and bulk which is appropriate.
There will be impacts on residential character and amenity for adjoining dwellings and loss of private outdoor space.

Rear setbacks continue to not comply which impacts on privacy of adjoining dwellings and does not allow for private outdoor recreation.

We believe the loss of view from current private outdoor spaces will be considerably greater than indicated in the developer's response. The minor amendments have made little impact to the original plans and the loss of view continues to be significant and unreasonable.

The line at which the view analysis of Unit 1 / 2 Hungerford Lane is not a reality. Unit 1 is an upper unit on the eastern side of 2 Hungerford Lane. The view corridors presented were drawn from the very southern tip of the balcony. As can be seen in Figures 23 and 24 in the developer's view corridor analysis, this part of the balcony is not a private outdoor space for Unit 1 (or for Unit 2). This portion of the balcony is in full view and in full sun, wind and rain, has no roofing, walls or screening (as a consideration to adjoining dwellings view corridors). It is not possible to utilise this area as a private outdoor space or recreation area. Furthermore, in respect to the privacy of the lower units the southern portion of the balconies on the upper level are rarely used as an outdoor living space.

We also note that the current owner of 4 Hungerford Lane was in fact the person responsible for the design and build of 2 Hungerford Lane, so should be well aware of the balcony configuration of 2 Hungerford Lane and the impact of the proposed development. A similar design for 4 Hungerford Lane would be much more in keeping with the residential character and amenity consideration of neighbouring dwellings.

Unit 1 will have no POS whatsoever under the proposed development.

We disagree that the level of noise and privacy is minimal. The side boundary setbacks which continue to not comply will impact on adjoining dwellings.

The proposed development will mean that there will be 20 bedrooms adjacent to each other across the neighbouring properties.

Planning Comment in relation to Submission 6

Planning staff met with a number of objectors on site to ascertain an appreciation of the above purported impacts on properties at 1, 2 and 6 Hungerford Lane.

The discussion on site centred on view loss and amenity and as such, this report has focused on those matters. In relation to the further matters raised by submitters, the foregoing assessment is considered to appropriately respond. The site is constrained and whilst there are a number of variations to Council’s adopted controls, the merits of the proposed development are considered to be sound.

(e) Public interest

Subject to the recommended conditions of consent, and informed by the above assessment in relation to the principles of view sharing, it is considered that the proposed development, which is in line with Council’s desired intent for the subject area is in the public interest.
OPTIONS:

1. Approve the application, subject to conditions of consent.

2. Refuse the application with reasons.

Council officers recommend Option 1.

CONCLUSION:

Overall, with the subsequent adoption of Council’s resolution on the 3 March 2016 to amend the plans of development, the proposed development is considered to be appropriate for the site and locality, and suitable for approval with conditions.

COUNCIL IMPLICATIONS:

a. Policy:
Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:
Not Applicable

c. Legal:
Not Applicable.

d. Communication/Engagement:
Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Shadow diagrams ‘Sun Study’ Compliant Development and Proposed Development, DA0009 3 and DA010 3 within ‘Revised Plans (22032016) and Perspective Plan from Cudgen Creek Reserve’ (ECM 4031081)
Civic Leadership

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

<table>
<thead>
<tr>
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<th>Civic Leadership</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Improve decision making by engaging stakeholders and taking into account community input</td>
</tr>
<tr>
<td>1.2.1</td>
<td>Council will be underpinned by good governance and transparency in its decision making process</td>
</tr>
</tbody>
</table>

**SUMMARY OF REPORT:**

**Updated information**

At the Planning Committee Meeting held on Thursday 7 April 2016, Council resolved that the above development application be granted in-principle support and a report be brought back to a future Planning Committee meeting with recommended conditions of consent for Council to determine. The Council resolution was as follows:

RESOLVED that Council give in-principle support for the application and recommend conditions of consent to the following Planning Committee Meeting.

The Motion was Carried

FOR VOTE - Cr B Longland, Cr W Polglase, Cr P Youngblutt
AGAINST VOTE - Cr G Bagnall
ABSENT. DID NOT VOTE - Cr K Milne, Cr C Byrne

The recommended conditions of consent are identified as Option 2 in the “Options” section of this report.

**Previous Report**

The subject site is located at No. 24 Fawcett Street in Tumbulgum, described as Lot 33 Section 1 on DP1223. The site is currently occupied by a two storey detached dwelling.

The site has a frontage of approximately 10m to Fawcett Street.

The subject site is located within the Tumbulgum Heritage Conservation Area relating to Tweed Local Environmental Plan 2014.

An aerial photograph below illustrates the location of the subject site.
The applicant seeks Council consent to extend an existing two storey deck within the front building line to within 200mm off the front boundary. The application was called up for Council determination by Councillors Polglase and Youngblutt.

One submission was received from an adjoining neighbour objecting to the development primarily on the basis of view loss and amenity. The development seeks variations in relation to Development Control Plan Section A1 – Residential Development Code (Part A).

The recommendation is for refusal.

RECOMMENDATION:

That Development Application DA16/0007 for a deck within front building line at Lot 33 Section 1 DP 1223 No. 24 Fawcett Street, Tumbulgum be refused for the following reasons:

1. The proposed development is not considered in the public interest as it would create an undesirable precedent for other structures in the front setback impacting the streetscape.

2. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(iii) - the provisions of any Development Control Plan in that the development is inconsistent with the Tweed Development Control Plan 2008 Section A1 - Residential Development Code in respect of the following:

   a. The proposal does not satisfy Preliminaries Control 2 (3.1 Streetscape) in that the building setback is not compatible with other buildings and sites along the street;

   b. The proposal does not satisfy Preliminaries Control 1 (3.2 View Sharing) in that the proposal has not minimised the impact on views from surrounding
properties; and

c. The proposal does not satisfy Part A Control 2 (3.1 Setbacks) in that the proposal is not consistent with the front setback distance of neighbouring buildings;

d. The proposal does not satisfy Part A Control 3 (3.1 Setbacks) in that the proposal intrudes into the front setback with an area exceeding 25%;

e. The proposal does not satisfy Part A Control 13 (3.1 Setbacks) in that the proposal intrudes further than 1500mm into the side setbacks; and

f. The proposal does not satisfy Part A Control 2 (4.5 Visual and Acoustic Privacy) in that the proposal will impact privacy and overlooking.
REPORT:

Applicant: Mr D Hallifax and Mrs DA Hallifax  
Owner: Mr David Hallifax & Mrs Dorothy A Hallifax  
Location: Lot 33 Section 1 DP 1223 No. 24 Fawcett Street, Tumbulgum  
Zoning: RU5 - Village  
Cost: $8,000

The Proposal:

On 7 January 2016 Council received DA16/0007 which sought approval for a deck within the front building line.

Specifically the proposal seeks to demolish the existing deck and construct a new deck and roof which will extend from 1.5m to 2.4m from the dwelling for a distance of 7.2m. It will not extend further than the existing decks roofline towards the front. The proposed deck is on the second storey and will have sections of the deck located 200mm from the front boundary.

The applicants Statement of Environmental Effects states that:

"The new deck measures 1.5m to 2.4m and 7.2m wide. It is set back approximately 200mm from the front boundary. The roof will be 1.5m to 2.4m from the wall of the building. It will not be extended more that the existing decks roof line towards the front.

The roof height and pitch on the new roof has been modified so that the views from the adjoining dwelling will be unobstructed. In addition the deck will extend forward by a small 0.6m for only half the length of the proposed new deck, still keeping the total structure within the existing front roof line.

The supporting posts will be on the same line as the existing deck to minimise the impact at ground level."

Below are the existing and proposed floor plans which demonstrate the extent of works proposed:
Council Assessment and Site Background:

The subject site is of a generally rectangular shape which is bound to the north by Fawcett and Village zoned land to the south, east and west. The lot has primary road frontage to Fawcett Street of 10.06m and comprises a total land area of 392m².

The site is relatively flat and is improved by the existing dwelling and typical landscaping for a residential allotment.

The following is Council's recorded history of the subject site:

The dwelling predates 1947, and the aerial photo below shows that existed in 1962.
An application to raise the dwelling was approved 31/08/1976 via Building Approval 471/76.

**DA14/0546**

Council previously received an application for a deck extension on the subject site. The plan below shows the extent of the original proposed development.

![Original Application - DA14/0546](image)

The application was notified to surrounding neighbours due to the variation to the front line setback. During this period there was one submission received which related to view sharing:

“When we were doing the renovations to our house at 22 Fawcett Street (DA08/0618), Tumbulgum, we were not allowed to extend our verandah to the building line of the property. We were not allowed to block the view of 20 Fawcett Street, Tumbulgum or put a roof over the front verandah to protect us and the construction of the verandah as this would block is view of the river.”

Based on an assessment undertaken and information provided by Council’s Urban Designer and Heritage Advisor the applicant was sent an information request on 22 October 2014 as follows:

“The extension of the front deck to within 200 mm of the front property boundary cannot be supported by Council in its present form. The design is not in keeping with the objectives of Section A1 of Council's Development Control Plan, the Heritage Conservation Guidelines for Tumbulgum and the impact on views from adjoining properties would set an unwarranted precedent for the area. Council's urban design architect has advised that:

1. Consideration could be given to extending the deck to the east and west maintaining the existing deck's northern alignment (i.e. not tapered from).

2. The proposed building materials for the deck are not in keeping with the existing design character of the Tumbulgum Heritage "conservation area" in that:
“The material of the proposed roof, being insulated structural roof panels is not in keeping with the overall building materials of the existing dwelling or that generally of the Tumbulgum conservation area. The predominate materials within the locality include timber posts, decks, balustrades, fascias and lightweight cladding materials including weatherboard and FC sheeting with metal sheet roofing. The composite structural insulated roof panel would need to be replaced with a more traditional timber framed and detailed roof design. The proposed pool type railing balustrade is also considered an inappropriate material within the conservation area.”

The information request was sent to the applicant and a meeting was held between Council Officers and the owner to discuss the points raised. As a result of the meeting held the applicant withdrew the application on 19 May 2015 to address the issues outlined. The latest application has been submitted to address those issues.
DEVELOPMENT/ELEVATION PLANS:
PROPOSED NEW UPPER DECK TO EXISTING RESIDENCE

N° 24 FAWCETT ST. TUMBLINGUM NSW
Lot 33 Sec 1 DP 1223

Brian Kruger Chartered Architect ret. FRAIA ret.
37 Strafe Drive Robina Queensland 4226

Scale: 1:50
Date: Nov 2015

Front Elevation

EXISTING ROOF

Remove roof of existing deck & reinstate eaves gutter.

New corrugated iron roof and exposed rafter timber panel.

Railings as original.
Existing roof over existing deck shown with broken lines.

New corrugated iron roof supported by timber panels.

Floor level.

Ground level.

1:50 Comparison sketch of existing roof and new.

Proposed new upper deck at 24 Fawcett Street Tumbulgum NSW for D & D Hallifax

Brian Kruger
Architect PRAIA PET
37 Strathie Dr. Robina &
Tel. 07 5575 6098

DG No. 5
Set of 5.
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 2014

Clause 1.2 – Aims of the Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows:

(1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

(2) The particular aims of this Plan are as follows:

(a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council’s adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,

(b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,

(c) to promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,

(d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,

(e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,

(f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,

(g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,

(h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,
(i) to conserve or enhance areas of defined high ecological value,

(j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature and is therefore permissible in the subject zone.

Clause 2.3 – Zone objectives and Land use table

The objectives of the RU5 Village zone are:

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To ensure that new development responds to and respects the character of a rural village.

In this zone, the dwellings are permissible with consent. Furthermore, the proposed development is considered to be consistent with the objectives of the zone, by virtue of providing for the housing needs of the community in a village environment.

Clause 4.1 to 4.2A - Principal Development Standards (Subdivision)

Not applicable as no subdivision is proposed.

Clause 4.3 - Height of Buildings

The objectives of this clause includes provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the proposed development site is identified as having a maximum building height of 13.6m (Control N2), as identified on the building height map.

The proposed development has a maximum height of approximately 5.2m, thus complying with this development control.

As such, the proposed development is considered acceptable and the proposal does not contravene the provisions of this Clause.

Clause 4.4 – Floor Space Ratio

The proposed development is for a deck which does not result in additional floor space ratio.
Clause 4.6 - Exception to development standards

No exceptions to development standards are proposed.

Clause 5.4 - Controls relating to miscellaneous permissible uses

Not applicable as no miscellaneous permissible uses are proposed.

Clause 5.5 – Development within the Coastal Zone

This clause of the LEP states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
   
   (i) maintaining existing public access and, where possible, improving that access, and
   
   (ii) identifying opportunities for new public access, and

The subject site does not impact on the provision of any public access to coastal lands nor is it considered to represent an opportunity for a new public access given there is no through link from the site to public open space.

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

   (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
   
   (ii) the location, and
   
   (iii) the bulk, scale, size and overall built form design of any building or work involved, and

The proposed development is permissible on the subject site however it is considered that the design of the development is not appropriate in relation to the setback from the front boundary. As such the proposal is not considered to be acceptable at this location.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

   (i) any significant overshadowing of the coastal foreshore, and
   
   (ii) any loss of views from a public place to the coastal foreshore,
The proposed development is not considered to impact on any of the above, by virtue of its location, away from the coastal foreshore. As such, the proposal will not result in any detrimental impact on the amenity of the coastal foreshore.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

The proposed development is not considered to compromise the scenic qualities of the coast as it represents and acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast.

(e) how biodiversity and ecosystems, including:

(i) native coastal vegetation and existing wildlife corridors, and

(ii) rock platforms, and

(iii) water quality of coastal waterbodies, and

(iv) native fauna and native flora, and their habitats, can be conserved, and

The proposed development is to be undertaken on a site which is currently developed for residential purposes and is located within an established developed area. It is therefore considered that the proposal will have a minimal impact on the local biodiversity or ecosystems.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

The proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment given the sites zoning and the permissibility of the development at this location.

This clause goes on to further state:

(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:

(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and

As outlined elsewhere in this report, the proposal will not impede or diminish the right of access of the public either to or along the public foreshore.

(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar
body of water, or a rock platform, and

The proposed development does not propose a non-reticulated sewerage system as Council's sewerage infrastructure is available to the site.

(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

The proposal is considered acceptable in this regard.

(d) the proposed development will not:

(i) be significantly affected by coastal hazards, or

(ii) have a significant impact on coastal hazards, or

(iii) increase the risk of coastal hazards in relation to any other land.

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above.

Clause 5.9 – Preservation of Trees or Vegetation

No trees are proposed to be removed as a result of this application. This clause is not applicable.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:

(a) to conserve the environmental heritage of Tweed,

(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

(c) to conserve archaeological sites,

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

The subject site is located within the Tumbulgum Heritage Conservation Area.
As the proposed development is within the Heritage Conservation Area then approval is required. In order to assess the appropriateness of the proposal, information is required with the application to justify the application against the relevant objectives as outlined above. This clause was not addressed within the Statement of Environmental Effects. However, due to the recommendation for refusal on a number of design issues this was not requested.

**Clause 5.11 - Bush fire hazard reduction**

The subject site is not identified as being bushfire prone land.

**Clause 7.1 – Acid Sulfate Soils**

This site is mapped as being affected by Class 3 Acid Sulfate Soils. Standard conditions of consent can be imposed if the application is approved.

**Clause 7.2 - Earthworks**

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

There are no earthworks are proposed that require development consent from Council.

**Clause 7.3 – Flood Planning**

The objective of this clause are as follows:

(a) to minimise the flood risk to life and property associated with the use of land,

(b) to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate
change,
(c) to avoid significant adverse impacts on flood behaviour and the environment.

The site is mapped as being affected by Q100 with an adopted minimum floor level of 4.4m.

The proposed development involves the construction of a deck which is not habitable which will not increase the severity of flooding. Therefore the proposed complies with this clause.

Clause 7.4 - Floodplain risk management

The proposed development is for additions to an existing dwelling and does not require a floodplain risk management plan. This clause is considered not applicable.

Clause 7.5 - Coastal risk planning

The site is not identified on the Coastal Risk Planning Map.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

This clause outlines that consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

It is considered that there will be no impact upon stormwater as a result of the proposed deck.

Clause 7.8 – Airspace operations

The development will not penetrate the Limitation or Operations Surface.

Clause 7.9 - Development in areas subject to aircraft noise

The subject site is not within the 2031 Aircraft Noise Exposure Forecast Zone.
Clause 7.10 - Essential Services

The subject site is located within an established residential area with all requisite essential services considered to be available. These include water and sewer reticulation, stormwater drainage, electricity and adequate vehicular access. Where required, appropriate conditions of consent would be applied to ensure that development is undertaken in accordance with Council requirements. The proposal does not negatively impact upon the provisions of this Clause.

State Environmental Planning Policies

SEPP No 71 – Coastal Protection

The subject site is within the coastal zone (as per the NSW Government Coastal Policy 1997) and as a result is subject to the provisions of State Environmental Planning Policy No.71.

Council is required to consider the matters under Clause 8. It is considered the proposed development does not compromise the intent or specific provisions of State Environmental Planning Policy No. 71 – Coastal Protection.

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

Nil Applicable.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The applicant has requested variations to a number of setback controls. However, there are a number of controls which have not been addressed adequately.

DCP Section A1 – Preliminaries - 3.1. Streetscape

C2. Site design, building setbacks and the location and height of level changes are to consider and be compatible with other buildings and sites along the street, particularly those that are older and more established.

The proposed development is setback 200mm from the front boundary. The applicant states the following:

"As mentioned the proposed additions generally maintain the existing setbacks and building line and it is unlikely that the proposal would detract from the streetscape. The roof line will be the same as the existing and the design and materials used are in keeping with the houses on the Tumbulgum heritage block.

As such it is unlikely the proposal would compromise the streetscape of Fawcett Street."
As depicted on the photo below, the street has an average setback of 3.74m from the front boundary. The existing deck is currently setback between 200mm and 3m from the front boundary. It is considered that the proposal, which seeks to extend the deck to be between 200mm and 1m from the front boundary will alter the existing setback pattern and will have negative cumulative impacts on the adjoining neighbours. The proposal will not be in compatible with other buildings and sites along the street. It is considered that the proposed development does not generally maintain the existing setbacks and building line.

DCP Section A1 – Preliminaries - 3.2. View Sharing

C1. Building siting and height is, as far as it is practical, to be designed to minimise the impact on views from surrounding properties, and follow the Planning Principles (refer note) of view sharing between properties.

The applicant has provided the following assessment in relation to view sharing.

*The site has some views down the street to the river and the deck extension has taken advantage of that. The new deck has also considered views from the neighbouring property.*

*The existing roof has been modified so that views from the neighbouring dwelling, particularly its front deck are maintained. The submitted plans show an elevation of the existing roofed deck and the proposed roofed deck demonstrating an improvement.*

*The deck extension also maintains the existing building line and therefore views down the street will not be compromised.*

It is considered that the applicant has not taken into consideration view sharing in accordance with the Planning Principles outlined on the Law Link website. *Tenacity Consulting v Warringah Council*, is now accepted as setting out the benchmarks against which all future view sharing cases will be tested.

The judgment in *Tenacity Consulting v Warringah* sets down four steps that should be undertaken to reach a decision whether a view impact is reasonable.
The **first step** requires the assessment of views that the proposal will affect. In the judgment it is considered water views are valued more highly than land views. In this instance the view corridor is down to the Tweed River. It is therefore considered that this view to the water has a higher value.

The **second step** is to consider how reasonable it is to expect to retain the views. The judgement outlines that the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In this instance the view is a front boundary setback which is over the allowable setback and is considered unreasonable. The adjoining neighbours have a reasonable claim that a view across a front boundary should be maintained and should not be impacted upon due to a variation to the standard to being 200mm from the front setback. The adjoining neighbours should not reasonably expect to lose a view across a front setback.

The **third step** is to assess the extent of the impact. The judgement outlines that this should be done for the whole of the property, not just for the view that is affected. In this instance the views to the north south and east of the adjoining property are not impacted as each of these elevations remain unchanged and are of a residential nature.

The view corridor in question is from the sites to the east of the subject site looking to the west towards the Tweed River.

The existing deck extends approximately 1.8m out from the house for a distance of 3.8m (approximately 6.84m²). The setbacks are as follows:

- 3.1m from the eastern boundary;
- 2.8m from the western boundary; and
- between 200mm and 1100mm from the front boundary based on the drawings provided.

The deck is proposed to be extended to between 1.5m to 2.4m from the house for a distance of 7.2m (approximately 14m²). The proposed setbacks are as follows:

- 1.4m from the eastern boundary
- 1.1m from the western boundary
- between 200mm and 900mm from the front boundary based on the drawings provided.

A roof is to be placed over the decked area extending out to 2.4m as indicated on the plans. This roof will be in line with the existing roof, however it will be extended to within 1.1m of the boundary on the eastern side thereby creating an impact on the existing view corridor of the adjoining allotment. It should also be noted that the adjoining neighbour has provided a submission in relation to loss of views.

The figure below shows the area of concern in relation to a view loss. The area which extends out to the road boundary past the existing deck and the location.
Area of concern

The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. As the proposed deck is located within the front setback to within 200mm of the boundary and closer to the side boundaries than allowed, it is considered that the proposal is unreasonable in terms of view loss. Maintaining the existing setbacks along Fawcett Street will enable a view corridor across front boundaries to the Tweed River. Allowing a precedent to be set may encourage further non-compliant designs along Fawcett Street and create an unreasonable impact upon the streetscape of the area.

*View from western portion of deck*
The applicant has requested a number of variations in relation to the setback controls. The following variations are noted:

**Variation to Control 3.1 – Setbacks, Control C2**

*C2.* In established areas and on infill sites dwelling houses are to be consistent with the front setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings within 40 metres or a variation justified under a streetscape analysis. This setback may be varied up to 1 metre where justified through a streetscape analysis.

**Council Officer Assessment**

A variation is sought with respect to the front setback and articulation zone. The applicant has provided the following justification:

*The minimum front setback is 200mm. The site is within an established locality so the front setback is determined by taking the average setback of the neighbouring buildings. In this regard the neighbouring buildings are setback at zero and 2.4m. The average and minimum setback permitted is therefore 1.2m. This setback can also be varied up to 1m where justified through a streetscape analysis. So there is potential to have a minimum setback of 200mm.*

*The component of Fawcett Street west of Bawden Street has a number of properties with front setbacks less than the minimum of which have a zero setback. It is therefore considered that the proposed setback distance is consistent with this.*

An analysis of the streetscape setbacks has been undertaken within 40m of the site along Fawcett Street to Bawden Street to the east as well as the northern side of Fawcett Street. It is considered that the average setback is 2.4m from the front boundary.

The existing deck is currently setback between 200mm and 3m from the front boundary. It is considered that the proposal, which seeks to extend the deck to be...
between 200mm and 1m from the front boundary will alter the existing setback pattern and will have negative cumulative impacts on the adjoining neighbours.

The proposal will not be in compatible with other buildings and sites along the street. It is considered that the proposed development does not generally maintain the existing setbacks and building line. It is considered that the proposed variation should not be supported in this instance.

Variation to Control 3.1 – Setbacks, Control C3

C3. An articulation zone may permit some elements of a buildings front facade to intrude within the front setback to a maximum of 1.5 metres and not exceeding 25% of the frontage width.

Council Officer Assessment

A variation is sought with respect to the front setback and articulation zone. The applicant has provided the following justification:

In addition the front setback control allows an articulation zone to permit some open elements such as a deck to intrude within the front setback to a maximum of 1.5m and not exceeding 25% of the frontage width. The proposed deck extension satisfies this front setback encroachment distance but exceeds more than 25% of the frontage of the site.

The principle for front setbacks is to respond to topographic or sloping conditions, frame the street and include articulation to a buildings front elevation. It is considered that the proposed development is not consistent with the streetscape and the variation should not be supported in this instance.

Variation to Control 3.1 - Setbacks, Control 13

C13. A two storey dwelling, or the second storey component of building, is to be setback a minimum of 1.5m from the side boundary line to the wall of the building. Guttering, eaves, hoods and other similar structures may be constructed within the side setback but not closer than 900mm from the boundary.
Council Officer Assessment

The proposed development includes a variation to the control for the eastern setback to 1.1m and the western to 1.4m. The applicant has provided the following justification:

_The minimum side setback allowed for a storey structure is 1.5m and the proposed setbacks from each side boundary is less than that at 1.1m (eastern) and 1.4m (western). But these setbacks are no less than those to the existing two storey dwelling so are considered satisfactory._

The side setback will be consistent with the existing building onsite. It is however considered that as a result of the deck being located within the side setback a number of other privacy and screening issues are raised as outlined below.

It is considered that the proposed development will create a negative cumulative impact and the request for a variation should not be accepted in this instance.

Variation to Control 4.5 – Visual and Acoustic Privacy, Control 2

_C2. Decks, verandahs, terraces, balconies and other external living areas within 4 metres from a side or rear boundary may require a privacy screen unless it can be demonstrated that there will be negligible overlooking and/or privacy impacts, as demonstrated on a site analysis._

The applicant has not requested a variation or provided justification for this control. The proposed deck is located within 4m from a side boundary on the eastern and western side. The western boundary overlooks a commercial premise and as such is not considered an impact. The proposed extension on the eastern side is located 1.1m from the boundary and it is common for Council to request privacy screening for the length of the deck to ensure minimal overlooking. In this instance, if it were requested to be screened to maintain privacy between the properties, there would be a significant reduction in the view across a front boundary to the Tweed River from the adjoining neighbour. It is therefore considered that the proposed development should not be supported in this instance.

A2-Site Access and Parking Code

The proposed deck extension will not alter the existing parking arrangements on the site and as such the proposed development will not impact this Section of the DCP.

A3-Development of Flood Liable Land

The proposed deck extension is located on the first level and will not impact flooding within the locality. It is considered that this DCP has been complied with.
A11-Public Notification of Development Proposals

In accordance with Section A11, the development application was notified for a period of 14 days, from Friday 15 January 2016 to Friday 29 January 2016.

During this period, one submission (objection) was received.

The matters raised within are addressed under ‘Public Submissions' below.

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

Clause 92(1)(a)(ii) Government Coastal Policy

The subject site is nominated as Coastal Land and therefore this clause applies. The proposal is not inconsistent with the Coastal Policy as previously detailed within this report as it comprises a residential development on an appropriately zoned site. The development will not restrict access to any foreshore areas is considered acceptable in this regard.

Clause 92(1)(b) Applications for demolition

Not applicable as no demolition is proposed.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire’s 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not identified as being within this area.

Tweed Coast Estuaries Management Plan 2004

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is not located in close proximity to any of these creeks and as such this management plan does not apply to the subject application.

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

As the subject site is not located in proximity to either the Cobaki or Terranora Broadwater to which this plan relates, this Plan is not considered relevant to the proposed development.
(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality

Context and Setting

The proposed development is considered to impact upon the residential amenity of the occupants of adjoining properties in relation to loss of views and privacy issues. The proposal is considered unreasonable, given the site is impacts upon the existing streetscape and creating unacceptable cumulative impacts.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The proposed development is residential in nature and is within a residential locality. In this instance it is considered that the site is suitable for this type of development however due to impacts on the surrounding neighbours and the streetscape the proposed development is recommended for refusal.

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

The proposed development was notified to adjoining properties for a period of 14 days. During this time one submission was received.

The issues raised are outlined below:

<table>
<thead>
<tr>
<th>Submission</th>
<th>Council Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>When we were doing our renovations to our house we were not allowed to extend our verandah to the building line of the property. We were not allowed to block the view along Fawcett Street, Tumbulgum or put a roof over the front verandah to protect us from the sun as the construction of the verandah would block the view of the river.</td>
<td>As outlined within the report it is considered that there will be a precedent set within the area that Council Officers do not support. The cumulative impact upon the streetscape of the locality is not supported and as such, the proposed development is recommended for refusal in this instance.</td>
</tr>
<tr>
<td>If 24 Fawcett Street builds to the building line we will lose our river view. The photos that they have submitted is not a true likeness of the view we would have from the verandah. If you take a look at the plan submitted by 24 Fawcett Street (attached), it will show that the extension will only give us a very minimal view of the river. We would have to stand in the very far corner lean over the railing to have a view.</td>
<td>As outlined within the report on view loss it is considered that the proposed development should be refused in this instance.</td>
</tr>
<tr>
<td>If the verandah should go ahead, they will install a privacy screen to the verandah which will completely block our view of the river. (If you have 24 Fawcett Street drop the present privacy screen you will see how much of the view we already lose.)</td>
<td>As outlined within the report on view loss it is considered that the proposed development should be refused in this instance.</td>
</tr>
<tr>
<td>If the extension should go ahead we will lose in the sale price of our house as we will no</td>
<td>This objection does not relate to planning principles and as such is not considered to</td>
</tr>
</tbody>
</table>
Submission | Council Comment
---|---
*longer have view of the river, which is a very good selling point when we go to sell the house.* | warrant refusal in this instance.

(e) Public interest

The proposed development is not considered in the public interest as it would create an undesirable precedent for other noncompliant structures within the building line setback.

OPTIONS:

Council officers recommend option 1.

1. Refuse the application in accordance with the recommended reasons for refusal.

   OR

2. Approves the application in accordance with the following:

   GENERAL

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

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

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

   4. The eastern elevation of the deck shall remain an open structure above the railing and shall not be fitted with either temporary or permanent screening.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

6. 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.

7. 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.

8. 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.

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

(a) a standard flushing toilet connected to a public sewer, or

(b) if that is not practicable, an accredited sewage management facility approved by the council

10. 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.

11. 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 the approved 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.  

**DURING CONSTRUCTION**

12. 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.

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

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

15. 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.

16. 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.

17. 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 Work Health and Safety Regulation 2011.

18. 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.
19. 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]

20. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains. [DUR1945]

21. 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 blown from the site. [DUR2185]

22. 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

23. 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]

24. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein). [POC0355]

USE

25. The building is to be used for single dwelling purposes only. [USE0505]

CONCLUSION:

The proposed development is considered not suitable for the site and is recommended for refusal.

COUNCIL IMPLICATIONS:

a. Policy:
Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:
Not Applicable.
c. Legal:
The applicant may appeal any determination of Council in the NSW Land and Environment Court.

d. Communication/Engagement:
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:
Nil.
4 [PR-PC] Development Application DA16/0076 for a 2 Lot Subdivision, Demolition Works, Alterations to Existing Kingscliff Beach Holiday Park (Reduction in Sites from 176 to 61) at Part Lot 2 DP 1122062 Marine Parade, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1 Civic Leadership
1.2 Improve decision making by engaging stakeholders and taking into account community input
1.2.1 Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

Council is in receipt of an application which relates to the Kingscliff Beach Holiday Park. These works include the reduction in the number of overall sites from 176 to 61 and the contraction of the overall area of the holiday park from 3.31ha to 1.992ha.

The proposal includes the removal of all movable dwellings and removable structures from the site as well as demolition of the existing site office, amenities blocks, concrete slabs and road pavement material. A new access is to be provided to the site as part of this application.

The Kingscliff Beach Holiday Park is currently located on a strip of public reserve land which borders the coastal foreshore and the urban zoned area in Kingscliff. The land parcel consists of a number of uses, including caravan parks at two locations, public park and environmentally protected land. As part of this application it is also proposed to subdivide off the portion of revised Kingscliff Beach Holiday Park (1.992ha) from the public foreshore lot.

The application includes a nominated integrated referral to the NSW Rural Fire Service (RFS) under Section 100B of the Rural Fires Act as the application includes tourist accommodation and subdivision on an allotment identified as being bushfire prone. A response has been received from the RFS providing General Terms of Approval for the proposal. The application was also referred to the Aboriginal Advisory Committee (AAC) for comment, who have recommended a condition to be applied concerning on site monitors in the event of approval.

The subject application has been reviewed by Council’s Environmental Health, Building, Development Engineering and Water Unit and by officers within the Natural Resource Management Unit with respect to coastal hazards and landscaping/vegetation removal.

The application has been reported for determination at a full Council Meeting as the application relates to a caravan park, located on land for which Council is the Trust Manager.
37 public submissions have been received with respect to the proposal through the public exhibition period which have been detailed elsewhere in this report. The proposed development is recommended for conditional approval.

RECOMMENDATION:

That Development Application DA16/0076 for a 2 lot subdivision, demolition works, alterations to existing Kingscliff Beach Holiday Park (reduction in sites from 176 to 61) at Part Lot 2 DP 1122062 Marine Parade, Kingscliff be approved subject to the following conditions:

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos:
   - Site Demolition and Earthworks Plan Sheet 1 of 2 (Drawing No. MDP5-4-SK04, Issue D), prepared by Tweed Shire Council Design Unit and dated 21 December 2015;
   - Site Demolition and Earthworks Plan Sheet 2 of 2 (Drawing No. MDP5-4-SK05, Issue C), prepared by Tweed Shire Council Design Unit and dated 21 December 2015;
   - Proposed Site Plan (Drawing No. MDP5-4-SK06, Issue E), prepared by Tweed Shire Council Design Unit and dated 15 March 2016;
   - Site Details Sheet 1 of 2 (Drawing No. MDP5-4-SK07, Issue D), prepared by Tweed Shire Council Design Unit and dated 21 December 2015;
   - Site Details Sheet 2 of 2 (Drawing No. MDP5-4-SK08, Issue C), prepared by Tweed Shire Council Design Unit and dated 21 December 2015;
   - Proposed Site Services (Drawing No. MDP5-4-SK010, Issue E), prepared by Tweed Shire Council Design Unit and dated 15 March 2016, and:
   - Plan of Subdivision of Lot 2 DP 1122062, prepared by Colin John Lutton and dated 8 November 2015,

   except where varied by the conditions of this consent.

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

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

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.

5. Sewer manholes are present on this site. These manholes are not to be covered with soil or other material.
Should adjustments be required to the sewer manholes, then applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. 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.

6. Any business or premises proposing to discharge wastewater containing pollutants differing from domestic sewage must submit a Liquid Trade Waste Application Form to Council. The application is to be approved by the General Manager or his delegate prior to any discharge to the sewerage system. A Liquid Trade Waste Application fee will be applicable in accordance with Council's adopted Fees and Charges.

7. Prior to demolition work commencing a sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm by 300mm shall be erected in a prominent visible location on the site. The sign shall remain in place until all asbestos has been removed from the site.

8. Prior to the commencement of construction of the new structure or use of the site a ‘clearance inspection’ shall be conducted for the site and a ‘clearance certificate’ issued by a licensed asbestos assessor or competent person which states that the site ‘does not pose a risk to health and safety from exposure to asbestos’ in accordance with Clause 474 of the Work Health and Safety Regulation 2011. A copy of this certificate shall be forwarded to the Principal Certifying Authority and Council within 7 days of completion of the 'clearance inspection'.

9. The caravan park shall be constructed and operated in accordance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

10. Prior to the commencement of operation of the park a modified/updated Local Government Act 1993 Section 68 approval to operate the caravan park shall be obtained from Council.

11. The total number of sites shall not exceed 61, being 52 short term sites and 9 camp sites.

12. Road widths, entry forecourt, numbers of visitor and disabled parking, street lighting, numbers of shower/toilet/laundry facilities, fire hose reels and fire hydrants shall comply with the provisions of Part 3 Subdivision 3 - 6 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

13. This consent does not amend or modify the current Sec 68 Approval issued under the provisions of the Local Government Act 1993. A further approval of the General Manager or delegate shall be required to be obtained and shall include but not be limited to the provisions of Part 3 of the Local Government
( Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

14. The importation or export of waste (including fill or soil) to or from the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the Office of Environment and Heritage “Waste Classification Guidelines”. The only fill material that may be received at the development is virgin excavated natural material or waste-derived fill material the subject of a resource recovery exemption (and documented accordingly).

15. ‘Resident parking’ shall be provided ‘on-site’ for each approved site as per Clause 96 of the Regulation.

16. Permanent stormwater quality treatment shall be provided in accordance with Councils Development Design Specification D7 - Stormwater Quality prior to discharge to the public realm, unless agreed otherwise with Council. Bio-retention facilities shall comply with “Water By Design” guidelines (being a program of the South East Queensland Healthy Waterways Partnership).


18. A representative of the Tweed Byron Local Aboriginal Land Council shall be present on site to monitor ground disturbance initially and over the course of the project.

19. The removal of vegetation shall be limited to those trees and vegetation identified as ‘Existing trees to be removed’ on Existing Trees - Retention and Removal Plan Dwg. No. 616-06 to 07 Issue A dated 18 December 2015 prepared by Plummer & Smith. All other vegetation shown on the plan shall be retained and afforded adequate protection unless otherwise approved for removal or pruning by Council’s General Manager or delegate.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

20. The Construction Certificate Application for Subdivision Works shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the proposed development, prepared in accordance with Section D7.07 of Council's Development Design Specification D7 - Stormwater Quality. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Proposed treatment measures other than "deemed to comply" measures as specified in Council’s Development Design Specification D7, must be supported by engineering calculations, including MUSIC modelling, to confirm that acceptable capacity and efficiency is achieved.
An Operational Manual for all stormwater quality control devices must be provided as part of the SWMP. This manual must be updated as required during the Defects Liability (“On-Maintenance”) Period for the device and the final version of the manual must be handed over to Council at the formal commissioning of the device, at the completion of the Defects Liability Period (“Off Maintenance”).

21. Prior to the issue of a Construction Certificate for Subdivision Works, a Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works associated with the Construction Certificate for Subdivision 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 Certificate is issued.

22. 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 (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

23. Any filling of proposed Lot 1 is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system. The development must at no time result in additional ponding occurring within neighbouring properties.

24. Prior to the issue of a Construction Certificate for subdivision works, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

(b) Detailed engineering plans and specifications, prepared in accordance with Development Design Specification D13 - particularly Section D13.09. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by Council:

- earthworks
- roadworks
(c) construction of new vehicular access
   - stormwater drainage

(d) installation of proposed bio retention basin
   - water supply works

(e) adjustment to water service connection, as applicable to service the development.
   - sewerage works

(f) adjustment to reticulated sewer, as applicable to service the development.
   - 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.

[25] 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. Works are to include, but not limited to:

   - The decommissioning and removal of sewer gravity main M/3 to M/4, inclusive of manhole M/4 and the capping of that line at manhole M/3.
   - All redundant internal water and sewer lines shall be decommissioned and removed.
   - Sewer connection to Lot 2 (parklands)

[26] Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Council's adopted fees and charges.

[27] In accordance with Section 68 of the Local Government Act, 1993 any premises proposing to discharge wastewater into Council's sewerage system other than domestic sewage, shall submit to Council a completed Liquid Trade Waste Application for a Liquid Trade Waste Services Agreement. The Application is to be approved by the General Manager or his delegate PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.
28. Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire Council's Policy - Discharge of Liquid Trade Waste to Council's Sewerage System. Submission of detailed hydraulic plans and specifications indicating the size, type and location of pre-treatment devices and full details of drainage installations in accordance with AS 3500 shall be submitted to Council for approval along with a Liquid Trade Waste Application Form and all required information required therein.

29. If the development is likely to disturb or impact upon water or sewer infrastructure (eg: extending, relocating or lowering of pipeline), written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first. Applications for these works must be submitted on Council's standard Section 68 Application to Alter Councils Water or Sewer Infrastructure application form accompanied by the required attachments and the prescribed fee. The arrangements and costs associated with any adjustment to water and wastewater infrastructure shall be borne in full by the applicant/developer.

30. A detailed plan of landscaping shall be submitted and approved by Council's General Manager or delegate prior to the issue of a Construction Certificate or commencement of works whichever occurs first. The detailed plan of landscaping shall:
   a. Be based on the Landscape Concept Plan (LCP) Kingscliff Beach Holiday Park Dwg 616-01 to 616-08 Issue A dated 18 December 2015 prepared by Plummer & Smith
   b. Reflect a coastal theme
   c. Incorporate existing native vegetation
   d. Meet the following plant selection criteria:
      i. A minimum of 80% locally occurring Australian native species and maximum of 20% non-locally occurring Australian native species to apply to all trees;
      ii. A minimum of 80% locally occurring Australian native species and maximum of 20% Australian native or exotic species to apply to other plants (shrubs, ground cover and similar); and
      iii. No noxious or environmental weed species
   e. Include tree protection measures as detailed on LCP Dwg. 616-09
   f. Show locations of tree protection fencing to be installed around trees to be retained in accordance with Australian Standard AS4970-2009 Protection of trees on development sites

31. The caravan park (lot 1) will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements. 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.
PRIOR TO COMMENCEMENT OF WORK

32. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and advise the Principal Certifying Authority 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]

33. An application is to be made to Council to disconnect the existing building from Council's sewerage system, prior to any demolition work commencing. [PCW0045]

34. 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]

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

   (a) a standard flushing toilet connected to a public sewer, or
   (b) if that is not practicable, an accredited sewage management facility approved by the council [PCW0245]

36. 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]

37. Subdivision work in accordance with a development consent must not be commenced until:

   (a) a Construction Certificate for the subdivision work has been issued in accordance with Council's Development Construction Specification C101 by:
       (i) the Consent Authority, or
       (ii) an Accredited Certifier, and

   (b) the person having the benefit of the development consent:
       (i) has appointed a Principal Certifying Authority,
       (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.
The Certifying Engineer shall be a Professional Engineer (Civil) with National Engineering Register (NER) or a Registered Surveyor. Documentary evidence is to be provided to Council demonstrating currency of the above accreditation, and

(iii) has notified the Consent Authority and the Council (if the Council is not the Consent Authority) of the appointment,

(iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the subdivision work.

38. 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 for the subdivision works.

39. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area, where required to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the development.

40. 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.

41. The Applicant must obtain all relevant licences and permits from State Agencies prior to commencement of works.

DURING CONSTRUCTION

42. All proposed works are to be carried out in accordance with the conditions of development consent, any approved Management Plans, approved Construction Certificate, drawings and specifications.

43. All works shall comply with AS2601-2001 Demolition of Structures and the Work Health and Safety Regulation 2011.
44. 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.

45. 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.
   \( L_{A_{eq}, 15 \text{ min}} \) 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.
   \( L_{A_{eq}, 15 \text{ min}} \) 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.

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

47. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

48. Prior to demolition of the structure is commenced all asbestos material shall be identified and removed from the site by an asbestos removalist who is licensed to carry out the work by WorkCover NSW. All asbestos waste shall be disposed at a facility that is licensed to receive asbestos waste (all receipts related to disposal must be kept on site and provided to a Council Authorised Officer upon request).

49. 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, Work Health and Safety Regulation 2011.
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.

50. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake the works.

51. Filling of the site shall be carried out in accordance with AS 3798 (current version) to an inspection regime and testing in accordance with Table 8.1.

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

53. 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.

54. 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.

55. 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.

56. 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.

57. The proponent must not undertake any work within the public road reserve without giving Council’s Engineering Division 48 hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

58. 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 ]

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

Roadworks
(a) Pre-construction commencement erosion and sedimentation control measures
(b) Steel Inspection - Pre-pour of driveway access
(c) Final Practical Inspection - On Maintenance
(d) Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage (as applicable)
(a) Excavation
(b) Bedding
(c) Laying/jointing
(d) Manholes/pits
(e) Backfilling
(f) Permanent erosion and sedimentation control measures
(g) Drainage channels
(h) Final Practical Inspection - On Maintenance
(i) Off Maintenance

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines
(a) Earthworks and filter media
(b) Structural components
(c) Operational establishment
(d) Mechanical/electrical
(e) Commissioning - On Maintenance
(f) Off Maintenance

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

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

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[ DUR1895 ]
60. Where existing kerb or footpath is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb or footpath must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]

61. Where existing kerb or footpath is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb or footpath must be sawcut on each side of the work to enable a neat and tidy joint to be constructed. [DUR1905]

62. 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]

63. 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]

64. 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]

65. 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 Plumbing Code of Australia and AS/NZS 3500. [DUR2495]

66. 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]
67. 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.

68. 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:-

* 45ºC for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
* 50ºC 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.

69. A Liquid Trade Waste Services Agreement will be issued and a Liquid Trade Waste Approval Number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement

70. The Applicant shall submit the appropriate ‘Application for Water Service Connection’ to Council’s Water Unit to facilitate a property service water connection for proposed Lot 1, from the existing water main in Marine Parade. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

71. The Applicant shall submit the appropriate ‘Application for Water Service Connection’ to Council’s Water Unit to facilitate a property service water connection for proposed Lot 2, from the existing water main in Marine Parade. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

72. The Applicant shall submit the appropriate ‘Application for Water Service Connection’ to Council’s Water Unit to facilitate a property service water connection for proposed Lot 1, from the existing water main in Marine Parade. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

73. The Applicant shall submit the appropriate ‘Application for Water Service Connection’ to Council’s Water Unit to facilitate a property service water connection for proposed Lot 2, from the existing water main in Marine Parade. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

PRIOR TO OCCUPATION OR USE OF THE CARAVAN PARK

74. A satisfactory final inspection, where applicable, is to be carried out by Council prior to occupation or use commencing.
75. Prior to the occupation or use of any structure, where applicable, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

76. Following completion of earthworks and prior to use or occupation of the caravan park a surface radiation survey shall be completed. All surface radiation levels shall be below the adopted remedial action level of 0.7uGy/hr. Should the remedial action level be exceeded a remediation action plan shall be submitted for approval prior to commencement of these works. A copy of the final radiation survey shall be provided to the Building Certifier and Council's Environmental Health Officer upon request.

77. Prior to the use or occupation of the caravan park, the applicant is to submit certification of adequacy of design from a suitably qualified structural/civil engineer with respect to the internal road upgrade and earthworks proposed as part of this application to the satisfaction of Council’s General Manager or delegate.

USE

78. 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.

79. 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.

80. The disposal of all wash water, oil, grease or other pollutants from the business shall be disposed of to the satisfaction of Council's General Manager or his delegate as outlined in the Liquid Trade Waste Services Agreement and General Conditions of Approval.

81. Caravans and tents shall not be placed closer than 2 metres to the boundary of the caravan park.

82. All wastes shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management and to the satisfaction of the General Manager or his delegate.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

83. Prior to issue of a Subdivision Certificate, all works/actions/inspections etc required by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.
84. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

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

85. Prior to the issue of a Subdivision Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works associated with the Construction Certificate for Subdivision Works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the plan of subdivision is registered.

It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

86. At the completion of the earthworks/filling and prior to the issue of the Subdivision Certificate, a certificate of compliance shall be submitted to Council by the Developer's Certifying Engineer verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, “Guidelines on Earthworks for Commercial and Residential Developments” and is suitable for its intended use.

The submission shall include copies of all undertaken test results.

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


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

(a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
(b) the plans accurately reflect the Work as Executed.
Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

89. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent deemed to be relevant to the two lot subdivision have been complied with.

90. 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.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway or Easement shall make provision for maintenance of the Right Of Carriageway or 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 (as applicable).

Any Section 88B Instrument creating Restrictions As To User, Rights Of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Way to be revoked, varied or modified only with the consent of Council.

91. Submit to Council's Property Officer for approval an appropriate plan indicating the street/road address number to both proposed and existing lots. In accordance with clause 60 of the Surveying and Spatial Information Regulation 2012 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the new Deposited Plan.

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

93. Prior to registration of the Plan of Subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

(a) original Plan of Subdivision prepared by a registered surveyor and 2 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

(b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.
Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

94. In conjunction with the application for a Subdivision Certificate, the applicant must also apply to Council (OR PCA if applicable) for a Compliance Certificate for Subdivision Works, as applicable. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

(a) Roadworks  
(b) Water Reticulation  
(c) Sewerage Reticulation  
(d) Drainage  
(e) Bulk Earthworks

Note:

1. All Compliance Certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Certifying Engineer, certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the Construction Certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

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

95. The six (6) months Defects Liability Period for the subdivision works commences upon the registration of the Plan of Subdivision.

96. A formal asset handover of all water quality control devices is to be implemented at the completion of the maintenance period ("Off Maintenance"), whereby all relevant stakeholders will inspect the device and be issued with a current operational manual for the device.

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

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification. All costs associated with the CCTV inspection and repairs shall be borne by the applicants.
98. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

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

99. All landscaping shall be completed in accordance with the approved detailed landscape plan prior to the issue of subdivision certificate or occupation certificate whichever occurs first.

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

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by Colin John Lutton, titled "Plan of Subdivision of Lot 2 DP 1122062" and dated 4 November 2015.
REPORT:

Applicant: Tweed Coast Holiday Parks Reserve Trust
Owner: Land and Property Management Authority (Crown Lands)
Location: Part Lot 2 DP 1122062; Marine Parade Kingscliff
Zoning: R3 - Medium Density Residential, RE1 - Public Recreation, 6(a) Open Space, 7(f) Environmental Protection (Coastal Lands)
Cost: $3,630,000

Background:

The subject application relates to alterations to the existing Kingscliff Beach Holiday Park. These works result in a reduction of the total number of operational sites from 176 to 61 and to provide additional site facilities. There is a reduction in size of the existing caravan park from 3.31ha to 1.992ha proposed as part of this application. This reduction of the Caravan park would enable the development of a public park proposed under Ptv15/0021 (also referred to this Planning Committee meeting for determination).

The proposed 1.992ha holiday park is to be subdivided from the existing foreshore allotment (Lot 2 DP 1122062) to create two lots, with proposed Lot 1 having an area of 1.992 hectares and comprising the proposed Kingscliff Beach Holiday Park with the remainder of the site becoming residue Lot 2.

Other elements of the proposed amendments to the Caravan Park are summarised below:

The Park currently supports 176 sites as follows:
- 170 Short Term (ST) residence sites which rely on the communal amenities, and
- 6 camp sites which rely on communal amenities.

Once complete the Park will have a total of 61 sites in the following configuration:
- 17 cabin/cabins sites;
- 23 tourist sites;
- 12 ensuite sites; and
- 9 camp sites.

The original submitted application also stated that there was to be a Managers residence site, however the applicant has now clarified that this is not the case, stating “The Managers Residence is not required to be located on a caravan park site”

Works on site include the removal of all movable dwellings and removable structures from the site, the demolition of the existing site office, existing amenities blocks, concrete slabs and road pavement material. Furthermore a new access and egress at the northern end adjacent to the Kingscliff Beach Bowls Club is proposed as part of this application.

It is noted that consent is not required for the placement of moveable dwellings on a caravan park site under the provisions of SEPP 21, detailed elsewhere in this report.

Site

The Kingscliff Beach Holiday Park is located on a strip of public reserve land which borders the coastal foreshore and the urban zoned area in Kingscliff. The land parcel has an approximate area of 51.7 hectares and consists of a number of uses, including caravan park at two locations, public park and environmentally protected land.
Kingscliff Beach Holiday Park currently covers an area of approximately 3.31 hectares within this land parcel and is located on land zoned RE1 Public Recreation. The holiday park is generally located between Kingscliff Beach Bowls Club to the north and Cudgen Headland Surf Club to the south. The caravan park is accessed from Marine Parade, however as part of this application, this is to be relocated, with site access/egress provided to the north of the holiday park, adjacent to the Kingscliff Beach Bowls Club.

The area of the holiday park is to be reduced as part of this application to approximately 1.992ha. It is advised that this will make available approximately 7500m2 for public open space as part of the Central Park proposal, which is concurrently referred to Planning Committee for determination by elected Council (Under Ptv15/0021).

Existing structures on site include amenities and laundry blocks as well as BBQ shelters and a site office which are to be removed/demolished as part of this application. It is noted that there are a number of cabins/safari tents located on the site which are also to be removed.

The land upon which the caravan park is located is owned by the Crown (Land and Property Management Authority) however is Council administered through the Tweed Coast Holiday Parks Reserve Trust.

History

The subject land parcel demonstrates an extensive development history due to its size, consisting of the public reserve bordering the beach for the extent of urban zoned land in Kingscliff. The majority of these applications relate to parkland upgrades and foreshore protection works.

Under DA13/0745 (as amended), consent was granted for alterations to the existing Kingscliff North Holiday Park including reconfiguration of sites, demolition work and associated earthworks as well as consent for the overall use of the site as a caravan park. Kingscliff North Holiday Park is located approximately 1.6km from the subject site.

At this location, a Ptv application (Ref. Ptv15/0021) has also been recently submitted for foreshore protection works and central park development, adjacent to the Kingscliff Beach Holiday Park. This application has been referred to the elected Council for determination, concurrent with this application, with a recommendation for a PTV approval. The development works proposed as part of the PTV application are outlined below;
Whilst a search of Council records demonstrates no consent for the establishment of the caravan park the submitted application states that Kingscliff Beach Holiday Park has been operating since 1966 and the development would therefore predate planning controls.

Of relevance to this application, Council has issued a Section 68 Local Government Act Approval to Operate and endorsed the Community Map for a total of 176 sites, the most recent approval being dated 14 June 2013, which expires on 14 June 2016. A copy of this has been submitted with this application.
SITE DIAGRAM:
DEVELOPMENT/ELEVATION PLANS:
Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

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

**Tweed Local Environmental Plan 2014**
Under the Tweed Local Environmental Plan 2014, Lot 2 DP 1122062 displays land zoned both RE1 Public Recreation (74.8% of total site area) and R3 Medium Density Residential (0.2% of total site area).

The caravan park and all works are located entirely within land zoned RE1, therefore only the proposed subdivision requires consideration against the R3 zoned land, with no physical works proposed on this land. The R3 zoned land objectives are not compromised through the subdivision proposed as part of this application and the application is supported in this regard. The following assessment concerns the land zoned RE1 over which development works are to be undertaken.

**Part 1 Preliminary**

**Clause 1.2 – Aims of the Plan**

The aims of this plan as set out under Section 1.2 of this plan are as follows:

1. This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.

2. The particular aims of this Plan are as follows:

   (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council’s adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,

   (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,

   (c) to promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,

   (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,

   (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,

   (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,

   (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,
(h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,

(i) to conserve or enhance areas of defined high ecological value,

(j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.

The proposed development is considered to be generally in accordance with the aims of this plan having regard to its nature, permissible at this location.

Clause 1.4 – Definitions

Under this Plan, the proposed development would be a ‘caravan park’ defined as follows:

‘means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.’

This is permitted with consent in the RE1 zone.

Part 2 Permitted or prohibited development

Clause 2.1 – Land use zones

The proposed development area is zoned as RE1 Public Recreation under the provisions of this plan.

Clause 2.3 – Zone objectives and Land use table

This document zones the development area as RE1 Public Recreation. The objectives of this zone are:

• To enable land to be used for public open space or recreational purposes.
• To provide a range of recreational settings and activities and compatible land uses.
• To protect and enhance the natural environment for recreational purposes.

The subject development is considered to be consistent with the objectives of the zone through the provision of a caravan park which enables the land to be used for recreational purposes.

Clause 2.6 – Subdivision

This clause states that land to which this Plan applies may be subdivided, but only with development consent. As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

Clause 2.7 – Demolition requires development consent

This clause states that the demolition of a building or work may be carried out only with development consent, unless another EPI allows it without consent. The submitted application advises that demolition of the existing site office, existing amenities blocks, concrete slabs and road pavement material is proposed as part of this application.
As this application has been submitted in order to obtain development consent, the proposal is considered to be in accordance with this clause.

**Part 4 Principal development standards**

*Clause 4.1 – Minimum subdivision lot size*

The objectives of this clause are:

(a) to ensure minimum lot sizes are appropriate for the zones to which they apply and for the land uses permitted in those zones,
(b) to minimise unplanned rural residential development.

This clause applies to a subdivision of any land shown on the Lot Size Map. The proposed development is not mapped as having a minimum lot size under the Tweed LEP 2014 and as such this clause does not apply to the proposed development.

*Clause 4.3 - Height of Buildings*

The objectives of this clause include provisions to establish the maximum height for which a building can be designed and ensure that building height relates to the land’s capability to provide and maintain an appropriate urban character and level of amenity.

This clause states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. In this instance the subject development area is identified as having a maximum building height of 10m (Control K).

It is noted that the subject application does not propose any buildings on site and therefore consideration of the application under this clause is not required.

Any future buildings imported to the site would be limited to single storey development under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.

**Part 5 Miscellaneous provisions**

*Clause 5.5 – Development within the Coastal Zone*

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following:

(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
   (i) maintaining existing public access and, where possible, improving that access, and
   (ii) identifying opportunities for new public access, and

The subject application does not propose any amendments to existing public access to or along the coastal foreshore.

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:
(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
(ii) the location, and
(iii) the bulk, scale, size and overall built form design of any building or work involved, and

The proposed development is permissible on the subject site and meets the prescribed development requirements as outlined throughout this report. As such the proposal is considered to be acceptable at this location.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:
   (i) any significant overshadowing of the coastal foreshore, and
   (ii) any loss of views from a public place to the coastal foreshore,

The proposed development results in a reduction of sites and overall contraction of this caravan park, the demolition of the existing site office, existing amenities blocks, concrete slabs and road pavement material and the removal of any moveable dwellings currently on site.

The proposed development does not in itself provide for the location of any cabin structures on the site which would result in the overshadowing of coastal foreshore or a loss of views from a public place as identified above. As detailed elsewhere in this report, this is permissible without consent under the provisions of SEPP 21- Caravan Parks. In relation to a loss of views, it is considered that views from adjacent public land to the south would not be compromised as a result of this application.

The subject application is considered to be acceptable having regard to the above considerations.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land. Beyond this, the subject development is not considered to generate any specific opportunities to protect the visual amenity and scenic qualities of the coast due to its nature and scale.

(e) how biodiversity and ecosystems, including:
   (i) native coastal vegetation and existing wildlife corridors, and
   (ii) rock platforms, and
   (iii) water quality of coastal waterbodies, and
   (iv) native fauna and native flora, and their habitats, can be conserved, and

The proposal is to be undertaken on a site which has been previously developed as a caravan park, and whilst a number of trees are to be removed as part of this application, it is considered that these mainly provide amenity landscaping to the existing caravan park rather than a significant ecological value as outlined above. It is considered that the proposal will have a minimal impact on the local biodiversity or ecosystems in this regard.
(f) the cumulative impacts of the proposed development and other
development on the coastal catchment.

The proposed development is not considered to result in an unacceptable
cumulative impact on the coastal catchment given the sites zoning and the
permissibility of the development at this location.

This clause goes on to further state:

(3) Development consent must not be granted to development on land that is
wholly or partly within the coastal zone unless the consent authority is
satisfied that:

(a) the proposed development will not impede or diminish, where
practicable, the physical, land-based right of access of the public to or
along the coastal foreshore, and

As outlined elsewhere in this report, the proposal will not impede or diminish the
right of access of the public either to or along the public foreshore.

(b) if effluent from the development is disposed of by a non-reticulated
system, it will not have a negative effect on the water quality of the
sea, or any beach, estuary, coastal lake, coastal creek or other similar
body of water, or a rock platform, and

The subject site would maintain connection to Councils reticulation sewer system.

(c) the proposed development will not discharge untreated stormwater into
the sea, or any beach, estuary, coastal lake, coastal creek or other similar
body of water, or a rock platform, and

The proposed development will result in stormwater infrastructure, which
currently discharges to ocean, being upgraded by provision of a bio-retention
basin within the holiday park. It is further noted that another bio-retention basin is
proposed to the park area to the south of the area (proposed under Ptv15/0021).
Further detail is provided with respect to stormwater under clause 7.6
assessment in this report with the upgrade being supported.

Having regard to the above, it is considered that the subject application would be
in accordance with the above controls, with no untreated stormwater being
discharged to the sea, beach or the like.

(d) the proposed development will not:

(i) be significantly affected by coastal hazards, or

(ii) have a significant impact on coastal hazards, or

(iii) increase the risk of coastal hazards in relation to any other land.

The proposed development is considered to be acceptable having regard to
coastal hazards. Specific comment with respect to coastal hazards has been
provided by Council’s natural Resource Management Unit elsewhere in this
report.

Having regard to the above assessment the proposal is considered to be
acceptable with respect to the provisions of this clause.
Clause 5.9 – Preservation of Trees or Vegetation

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. With respect to this, it is noted that the proposed development site has been previously cleared of significant vegetation, with only landscaping species considered to be remaining. Council’s Natural Resource Management Unit have reviewed the proposal with respect to impacts on vegetation, with no issues raised. The proposal is therefore considered acceptable having regard to the provisions of this clause.

Clause 5.10 - Heritage Conservation

The objectives of this clause are as follows:
(a) to conserve the environmental heritage of Tweed,
(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
(c) to conserve archaeological sites,
(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

An Aboriginal Cultural Heritage Assessment has been submitted as part of this application. This was referred to the Aboriginal Advisory Committee (AAC) meeting on 4 March 2016 for comments with respect to heritage conversation.

The minutes of this meeting, (adopted at the 21 April Council Meeting) provided the following with respect to this proposal;

“That in relation to the Kingscliff Beach Holiday Park, the Aboriginal Advisory Committee recommends that:
1. due to the updated Due Diligence Report findings indicating that the site has not been sand mined but quarried to a level of the dune, there is a requirement for Aboriginal site monitors be on site for the removal of existing services and roads, ground works prior to the installation of new services and footings at the Kingscliff Beach Holiday Park.
2. recommendation 1 above be incorporated into the consent conditions for the Development Application.”

Having regard to the above it is considered appropriate that a condition be applied to any consent requiring that site monitors be present on site. Subject to this being applied, the proposal would be considered to be acceptable under the provisions of this clause.

Clause 5.11 - Bush fire hazard reduction

The subject allotment is mapped as bushfire prone land and is therefore nominated integrated under s100B of the Rural Fires Act 1997 as both tourist accommodation and as a subdivision development. As such the application was referred to NSW Rural Fire Service (RFS) who have provided a bushfire safety authority and condition of consent to include in any approval.

Having regard to the comments received from NSW RFS, the proposal is considered to be in accordance with the objective of the clause and is acceptable in this instance.
Clause 7.1 – Acid Sulfate Soils

The Acid Sulfate Soil (ASS) Planning Map on Council's GIS mapping system indicates that the holiday park development area is located on Class 5 Land. The development lot as a whole is identified as being 90% Class 5, 0.2% Class 1 (adjacent to Cudgen Creek) and approximately 10% not mapped as having acid sulfate soils. The application was reviewed by Council’s Environmental Health Unit who has advised the following:

“The site is class 5 on the ASS Planning Maps. The Statement of Environmental Effects, Daryl Anderson Consulting, December 2015 (SEE) indicates that minor cut and fill is required and an ASSMP is not required. The scope of works is likely to be relatively minor, except perhaps placement of sewer and water. The degree of historical site disturbance/development is noted and it is not considered necessary that an ASSMP be implemented in this case.”

Having regard to this advice, the proposed development is considered to be acceptable having regard to Acid Sulfate Soils.

Clause 7.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Minor earthworks only would be required to facilitate the proposal, mainly relating to the provision of creating new sites and the bio-retention basin,

The subject application has been reviewed by Council’s Development Engineering Unit who have provided the following information with respect to earthworks.

“The submission included the Geotechnical Report (prepared by Soils Surveys) which formed part of the Kingscliff Foreshore Protection Project. The objectives of the investigation were to assess the subsurface conditions at the site.

- This information in the report is effectively supporting information only as this development only involves minor earthworks to create new sites, managers residence and bio-retention infiltration basin. The cut and fill will be obtained on site with no fill material proposed to be imported.
- There is nothing in the report that prevents this DA from being endorsed.

Standard sediment and erosion control measures will be applicable during construction.”

Subject to the recommended conditions being applied to any consent, the proposal is considered to be acceptable having regard to the provisions of this clause.
Clause 7.3 – Flood Planning

The objectives of this clause are as follows:

(a) to minimise the flood risk to life and property associated with the use of land,
(b) to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate change,
(c) to avoid significant adverse impacts on flood behaviour and the environment.

From review of Council’s electronic mapping it is noted that the public reserve allotment to which this application relates (Lot 2 DP 1122062) is partially flood prone, the actual area where development works are proposed is not located within any identified flood mapping area.

Therefore, from a flood perspective the proposal is considered to pose minimal concerns, as all physical development works are located outside mapped flooding areas.

Clause 7.5 - Coastal risk planning

The objectives of this clause are as follows:

(a) to avoid significant adverse impacts from coastal hazards,
(b) to ensure uses of land identified as coastal risk are compatible with the risks presented by coastal hazards,
(c) to enable the evacuation of land identified as coastal risk in an emergency,
(d) to avoid development that increases the severity of coastal hazards.

The proposed development area is located on land which is identified as “Coastal risk” on the Coastal Risk Planning Map. The subject application has been reviewed by Council’s Natural Resource Management Unit with respect to coastal hazards, with no objections being raised with respect to the provisions of this clause. It is noted that this application will result in less caravan park sites being located within this area (reduction from 176 to 61) and foreshore protection works are to be located adjacent to the caravan park which would mitigate impacts from coastal processes. The subject application is considered to be consistent with the above provisions.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters. This clause goes on to further state that consent must not be granted unless the consent authority is satisfied that the development:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and
(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and
(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

The subject application was referred to Council's Development Engineering Unit who has reviewed the proposal with respect to stormwater management and provided comment in this regard. Of particular relevance are the below comments:

"Existing stormwater situation
The lawful point of discharge for the site is the Pacific Ocean and the site drains towards the coast. The existing drainage system for Kingscliff is relatively poor and undersized. It is noted that the site has problems with nuisance stormwater runoff which discharges as overland flow through the caravan park and appears to be contributing to the erosion of the dune and beach areas in front of the park.

Proposed stormwater mitigation
Two bio-retention basins are proposed to mitigate the existing nuisance stormwater situation (one within the Holiday Park and the second within the proposed Central Park which forms part of the Part V application). These basins will provide a large attenuation/infiltration area, as well as, water quality treatment.

The basins will provide infiltration and water quality treatment for a two year storm event. Council’s requirements for new subdivisions specify a five year storm event, although due to the poor existing drainage infrastructure in Kingscliff and the proposed basins draining external areas to the park this is considered acceptable."

Proposed Stormwater Management

Having regard to the advice above, the proposed development is considered to be generally acceptable with respect to stormwater management and would not contravene the objectives of this clause or result in any unacceptable impacts with respect to the considerations at (a)-(c) of this clause subject to the application of appropriate conditions of consent.
Clause 7.10 - Essential services

This clause states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,

The subject application has been reviewed by Council's Water Unit and Development Engineering Unit with respect to water supply, with no concerns raised in this regard subject to the application of appropriate conditions of approval.

(b) the supply of electricity,

Electricity services are currently provided to the site. Proposal is acceptable in this regard.

(c) the disposal and management of sewage,

The disposal and management of sewage has also been reviewed by Council’s Water and Development Engineering Units with it being determined that this can be adequately serviced through infrastructure available to the area. Proposal is acceptable in this regard.

(d) stormwater drainage or on-site conservation,

Stormwater management has been reviewed by Council’s Development Engineering Unit with the proposal for a bio-retention basin (See Clause 7.6 assessment above) being considered to be acceptable with respect to stormwater drainage.

(e) suitable road access.

The application has been reviewed by Council’s Development Engineering Unit with respect to the proposed access arrangements for the Kingscliff Beach Holiday Park site. No issues are raised with respect to this, with it being noted that a S138 application would be required as a condition of consent. Application is acceptable with respect to road access.

With respect to the above assessment against the provisions of this clause, it is considered that the proposed development would be acceptable from the perspective of essential services available to the site.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed Local Environmental Plan 2014.

Tweed Local Environmental Plan 2000

A minor portion of Lot 2 DP 1122062 is mapped as being on land to which the Tweed Local Environmental Plan (TLEP) 2000 relates. This constitutes a portion of 6(a) Open Space zoned land (15.3% of total site area) and 7(f) Environmental Protection (Coastal Lands) (9.7% of the total site area).
Only subdivision is proposed over these lands and it is noted that there are no physical works proposed on any land within the TLEP 2000 area. Of relevance to this application is clause 21A which relates to subdivision in Zone 7(f).

**Clause 21A – Subdivision in Zone 7(f)**

The objectives of this clause are:

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

This clause goes on to further state that consent may be granted to the subdivision of land within Zone 7 (f) only if:

(a) the area of each allotment created is at least 40 hectares, or
(b) the consent authority is satisfied that the allotment will be used for a purpose, other than for an agricultural or a residential purpose, for which consent could be granted.

In this instance the subject application proposes a two lot subdivision of existing Lot 2 DP 1122062, which is identified as having an area of approximately 51.7ha on Council records. Proposed Lot 1, which is to contain the updated Kingscliff Beach Holiday Park has a stated area of 1.992ha, therefore the residual allotment would achieve the 40 ha minimum lot size identified above. In any event, the use of this land would not be inconsistent with (b) above as, through this application, no other uses are proposed on this land, including with respect to agricultural or residential purposes. Therefore it is considered that the proposed subdivision component of this application is consistent with this clause and would not contravene the provisions of the Tweed Local Environmental Plan 2000.

**State Environmental Planning Policies**

**State Environmental Planning Policy (SEPP) No. 21 - Caravan Parks**

The subject development relates to the development of a caravan park and as such the provisions of this SEPP are applicable to the assessment of this application. *The aim of this Policy is to encourage:*

(a) the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and

(b) the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and

(c) the provision of community facilities for land so used, and

(d) the protection of the environment of, and in the vicinity of, land so used.

The subject application is not considered to contravene the above objectives of this SEPP.
Under this SEPP a ‘caravan park’ means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

Part 8, subclause 4A of this SEPP outlines that ‘nothing in this Policy or any other environmental planning instrument requires separate development consent to be obtained for the installation or placement of a moveable dwelling on land on which development for the purposes of a caravan park is being lawfully carried out.’

With respect to this it is noted that the subject application relates to the reconfiguration of (and a reduction in overall number) of existing sites within the caravan park. The future placement of moveable dwellings on the site does not require development consent.

Part 10 of the SEPP outlines six matters to be considered by Councils as follows:

10 Matters to be considered by Councils

A Council may grant a development consent required by this Policy only after it has considered the following:

(a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,

It is considered that the land is suitable for use as a caravan park given the caravan park has been long established and operational at this location and would be in accordance with the land zoning.

(b) whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,

It is noted that this application reduces the number of sites within Kingscliff Beach Holiday Park from that currently lawfully operating. In this regard, the subject application is not considered to have a significant impact on tourist accommodation in the locality. Furthermore, no sites are to be utilised for long term residence.

(c) whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,

The proposed development does not include provision of long-term sites and in this regard is not considered to impact on the provision of low-cost housing in Kingscliff, as the caravan park does not provide an alternative to low-cost housing in the absence of long-term sites.

(d) whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,

The park is considered to provide adequate community facilities and services. Conditions of consent would require the provision of amenities where requires, while local facilities in Kingscliff are readily accessible from the site through pedestrian access.

(e) any relevant guidelines issued by the Director, and
There are no specific guidelines by the Director General of Planning.

(f) the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.

The proposal will be conditioned to comply with the requirements of the current Caravan Parks Regulations, as assessed by Council’s Environmental Health Unit.

The proposed application is considered to be consistent with the aims of SEPP 21 subject to the application of appropriate conditions of consent.

**State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land**

The objectives of SEPP No. 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.

SEPP No. 55 requires a consent authority to consider whether land is contaminated and if contaminated, that it would be satisfied that the land is suitable, in its contaminated state (or will be suitable after remediation). Further, it advises that if the land is contaminated and requires remediation, that the consent authority is satisfied that the land will be remediated before the land is used for that purpose. In particular it is noted that this SEPP states that a consent authority must not consent to the carrying out of any development on land unless:

(a) it has considered whether the land is contaminated, and  
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and  
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The subject application has been reviewed by Council’s Environmental Health Unit who has provided the following advice with respect to contamination:

“The general Tweed coastal zone and fore dunes has historically been subject to sandmining activities. It is unclear whether the development site has been subject to active sand mining.

A Kingscliff Beach Holiday Park Radiation Survey report August Tweed Shire Council 2011 has been submitted. The Report needs to be signed by a responsible officer and their position identified.

The report reviews aerial photography from 1944, 1962, 1966, 1970, 1976, 1986, 1991, 1995 & 2001. There is no evidence that the site was actively sand mined, however sand mining is evident to the north along Wommin Bay and south of Cudgen Creek. Regardless, a surface radiation survey was conducted and readings ranged between 0.06uSv/hr to 0.28uSv/hr (‘which is typical of normal background levels’).

The Radiation Information Series #12, Cleanup and Disposal of Radiation Residues from Commercial Operations Involving Mineral Sands Department of Health Radiation Branch, July 1984 indicates a remedial action level of 0.7uGy/hr where ‘occupancies by the same individuals occur regularly on a day to day basis’. RSIS 12 indicates background to be 0.1uGy/hr.
As the measured surface radiation levels are below the 0.7uGy/hr remediation level, the report indicates that ‘there would be little environmental or health hazard associated with the potential redevelopment of the site’.

Given that surface radiation surveys only detect radioactive materials to a depth of 250 – 300mm in depth, it is considered prudent that a further surface radiation survey be undertaken after earthworks are completed and prior to issue of an occupation certificate – condition to be applied.

SEPP 55 notes – The land is not (Typo: It was subsequently clarified that subdivision is proposed) to be subdivided and a change of use is not proposed, so Clauses 6 & 7(2) are not applicable. Council is granting a consent, triggering Clause 7(1) – It is not likely that the land was subject to sand mining. Further, the surface radiation survey does not indicate radiation levels to exceed remediation action levels. Therefore Clause 7(1)(a) has been satisfied.”

Having regard to the advice provided, the subject application is considered to be acceptable with respect to contaminated land subject to the application of appropriate conditions of consent.

State Environmental Planning Policy (SEPP) No. 71 – Coastal Protection

The subject development site is within the coastal zone at this location and as a result is subject to the provisions of State Environmental Planning Policy No.71. Council is required to consider the matters under Clause 8 and the following comments are made for Council’s consideration.

Clause 8 – Matters for consideration

(a) the aims of this Policy set out in clause 2,

The proposal is generally in accordance with the aims of this policy.

(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,

The subject application does not in itself impact upon any public access way to the coastal foreshore. However it is noted that under PTV15/0021 (also referred to Council for determination, new beach access would be provided to the south of the caravan park as part of the ‘Central park’ development.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

As outlined above, it is not considered that this application offers any opportunities to provide new public access to the foreshore. PTV15/0021 does provide a bicycle pathway along the foreshore which would achieve the above requirements in immediate proximity to the development site.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The proposal is considered suitable, having regard to its permissibility in this area.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

The proposal is not considered to result in any detrimental impact on the coastal foreshore as outlined above. In this regard the application results in a reconfiguration of sites within this caravan park and the demolition of a number of existing structures. The development does not in itself provide for the location of any cabin structures on the site which would result in the overshadowing of coastal foreshore or a loss of views from a public place as identified above. As detailed elsewhere in this report, this is permissible without consent under the provisions of SEPP 21- Caravan Parks. In relation to a loss of views, it is considered that views from adjacent public land to the south would not be compromised as a result of this application.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

This proposal is not considered to have any negative impact on the scenic qualities of the NSW coast.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

The proposal is not considered to impact negatively animals or their habitats. The subject development site is currently developed as a caravan park and whilst some vegetation on the site is to be removed, it is considered that the scale of this will not impact on measures as identified above.

(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats

The proposal is not considered to have an adverse impact upon marine environments or habitats.

(i) existing wildlife corridors and the impact of development on these corridors,

The proposed development is not considered to impact negatively on wildlife corridors given it is to be undertaken on a site previously cleared of significant vegetation.

(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

The proposed development is not considered to have any significant impact of development on coastal processes and coastal hazards. In this regard Council’s Natural Resource Management Unit has reviewed the application and advised that the proposal was in accordance with Tweed Development Control Plan B25 which relates to coastal erosion.

(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,

The proposal is not considered to cause any conflict between land-based and water-based activities.
(l) measures to protect the cultural places, values, customs, beliefs and
traditional knowledge of Aboriginals,

The subject development is not considered to impact on any traditional Aboriginal
cultural values subject to the application of an appropriate condition of consent
relating to site monitors, as discussed elsewhere in this report.

(m) likely impacts of development on the water quality of coastal water bodies,

The subject application is not considered to have any significant impact upon the
water quality of coastal waterbodies.

(o) only in cases in which a council prepares a draft local environmental plan
that applies to land to which this Policy applies, the means to encourage
compact towns and cities,

Not applicable to the subject application.

(p) only in cases in which a development application in relation to proposed
development is determined:

(i) the cumulative impacts of the proposed development on the
environment, and

This development is not considered to have a negative cumulative impact on the
environment.

(ii) measures to ensure that water and energy usage by the proposed
development is efficient.

Not applicable to the subject application. The subject application does not
provide for the development of any buildings on the site which would be subject
to the above controls.

Clause 18 of the SEPP requires a master plan for residential/rural residential land
to be developed in certain instances. As the site does not relate to any of these
zonings, the proposal is acceptable with respect to this clause.

Conclusion
It is considered the proposed development does not compromise the intent or
specific provisions of State Environmental Planning Policy No. 71 – Coastal
Protection.

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

There are no draft Environmental Planning Instruments applicable to the
proposed development.

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

Tweed Development Control Plan
Section A2– Site Access and Parking Code

DCP A2 provides for the consideration of on-site access and vehicle and bicycle
parking, to ensure that sufficient facilities are provided and the road network is not
compromised, whilst ensuring consistency with ESD principles.

Access
Kingscliff Beach Holiday Park is currently accessed from Marine Parade via a two-
way driveway crossover with a width of approximately 9m, located t the south end
of the holiday park (adjacent to the community centre). As this area is to be developed as part of the Central Park/Foreshore Protection Works, an alternative access to the north of the holiday park is proposed, adjacent to the Kingscliff Bowls Club.

This has been reviewed by Council's Development Engineering Unit who have advised the following:

“Vehicular access is currently provided off Marine Parade via an existing driveway access approx 60m north of Seaview Street.

Access to the redeveloped park is proposed adjacent to the Kingscliff Bowls club on future Lot 1 (Caravan Park land)

...the Kingscliff Bowls Club maintains legal rights to use the existing access which is within the subject site, by way of an existing license. As advised above, Council's (Property Officer) has confirmed that this license will simply be carried over to any new title as a result of a subdivision.”

As outlined above, there is no requirement for a S88B easement to be provided over the subject land to enable access for the Bowls Club. There is an existing license which protects this access. The proposed access is considered to be acceptable to the holiday park subject to the detailed design being addressed through a S138 application. This requirement would be applied as a condition in the event of any consent issued.

Parking

With respect to on-site parking, it is noted that under control ‘B3 Caravan Park and Camping Ground’ in the Accommodation Group parking is to be provided ‘As per Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000.’ Clauses 96-98 of this Regulation relates to the provision of resident, visitor and visitor parking for persons with a disability.
It is noted that these parking requirements have been provided on site and are considered to be compliant with that required.

The application has been reviewed by Council's Environmental Health Unit with respect to the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2000. In this regard a recommended condition of consent has been provided which requires the caravan park to be in accordance with the above referenced clause as follows:

“Road widths, entry forecourt, numbers of visitor and disabled parking, street lighting, numbers of shower/toilet/laundry facilities, fire hose reels and fire hydrants shall comply with the provisions of Part 3 Subdivision 3 – 6 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005.”

Subject to approval of this application, this condition would be applied to the consent and would ensure that parking is provided in accordance with this clause. Having regard to this the submitted application is considered to be in accordance with the parking provisions for the caravan park generally as referred to in this section of the DCP.

Section A5 – Subdivision Manual
Tweed Development Control Plan A5 -Subdivision Manual aims to:

- Present Council's strategic plan objectives for the development of subdivisions.
- Achieve the highest quality and ‘best practice’ of subdivision development in the Shire
- Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development.
- Provide guidelines and development standards for the development of subdivisions.

This DCP contains Council’s guidelines for the preparation of applications for subdivision and aims to facilitate Council’s assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). The subject application has been referred to Council's Development Engineer who has reviewed the subject application and indicated that the proposal would be generally acceptable subject to appropriate conditions being applied to any consent. The proposal is considered to be acceptable in this regard and would be compliant with the provisions of Section A5 of the DCP.

Section A15-Waste Minimisation and Management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

The applicant has provided a Demolition Management Plan which includes details relating to the demolition phase as well as a Waste Management Plan which
details demolition, construction and ongoing operational phase of the proposed development.

Council’s Environmental Health Unit have reviewed the application with respect to waste management and advised that the following condition should be applied;

“The importation or export of waste (including fill or soil) to or from the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the Office of Environment and Heritage “Waste Classification Guidelines”. The only fill material that may be received at the development is virgin excavated natural material or waste-derived fill material the subject of a resource recovery exemption (and documented accordingly).”

Furthermore, the following condition would be applied in relation to waste management on the site;

“All wastes shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section A15 - Waste Minimisation and Management and to the satisfaction of the General Manager or his delegate.”

This is considered appropriate and the above conditions requiring adequate waste management arrangements are to be attached to any consent in the event of approval. As such, the proposal is considered to be acceptable having regard to waste management and the provisions of this section of the DCP.

Section B4 – West Kingscliff

The proposed development is located on land contained within the area covered by this Plan. The aim of this plan are as follows:

• to set out objectives for the development of West Kingscliff;
• to provide detailed guidance to those wishing to develop within the West Kingscliff area and to indicate Council’s policies with respect to that development;
• to provide guidelines for determination of the merits of developments within West Kingscliff as required by Section 90(1)(a) of the Environmental Planning and Assessment Act, 1979.

The proposal is considered to generally comply with the objectives of this plan, by virtue of representing a permissible development form on appropriately zoned land.

Section B9 – Tweed Coast Strategy

DCP B9 relates to the northern end of the Tweed Coast. The Plan sets objectives for future development concentrating on public services and design principals. The Vision Statement for this district identified at Clause B9.3.2 is:

To manage growth so that the unique natural and developed character of the Tweed Coast is retained, and its economic vitality, tourism potential, ecological integrity and cultural fabric are enhanced.

The site is indicated as being in an area identified as Protected Lands for Environmental and Coastal Significance under the provisions of this DCP (Map 2-Structure Plan). Under this map, the subject area is also identified as being in close proximity to a neighbourhood centre.
Policy Principles are identified at Clause B9.3.3, with characteristics to be considered including the following which are of particular relevance to this application:

**Public Open Space:** Coastal open space is one of the prime attractions of the Tweed Coast. It provides important amenity and recreational value for both residents and tourists. All coastal foreshore land is to be available for public use wherever possible and the district’s beaches are to remain highly accessible to the public. Dedicated public open space areas are to be provided adjacent to the coastal foreshore. New developments will facilitate public access to all foreshore areas where access is desirable and environmentally sustainable.

**Business and Tourism:** Major tourist developments will be encouraged to locate in the South Kingscliff locality. Other businesses will generally locate in designated town centres where mixed land use developments will be encouraged. The establishment of a regionally focussed business park adjacent to the Pacific Highway at the northern end of Kingscliff will be promoted.

The subject application is not considered to contravene the above principles as the subject application does not impact on existing public open space provision. In fact the reduced Kingscliff Beach Holiday Park area facilitates the development of ‘Central Park’ open space to the south. Whilst the caravan park is not located within the South Kingscliff locality, it is noted that the caravan park has been previously established at this location. The proposed development is considered to be consistent with the policy principles of the DCP.

**Section B25-Coastal Hazards**

The aims of this DCP are:

- **To provide guidelines for the development of the land having regard to minimising the coastal hazards risks (a function of likelihood and consequence) to development on land in proximity to the Tweed Coast.**

- **To establish if the proposed development or activity is appropriate to be carried out, and the conditions of development consent that should be applied if it is to be carried out, having regard to the coastal hazard lines established in the Tweed Coastline Hazard Definition Study 2001 (as amended).**

- **To minimise the risk to life and property from coastal hazards associated with development and building on land that is in proximity to the Tweed Coast.**

- **To maintain public access to public land on the Tweed Coast.**

This DCP applies to all land located seaward of the 2100 Hazard Line. Under Council’s GIS mapping the subject holiday park site is entirely within the 2100 hazard area, with much of the site being within the Immediate Hazard Line and the 2050 hazard area.

It is noted that the subject application reduces the number of sites within the holiday park from 176 to 61, thus reducing the sites subject to coastal hazard. Furthermore, it is proposed for foreshore protection works to occur adjacent to the caravan park site under PTV15/0021.
The application has been reviewed by Council’s Natural Resource Management (NRM) Unit who have advised the following:

“The redevelopment of the Kingscliff Beach Holiday Park is in accordance with Sections 3.1.7 and 3.2.7 of the Tweed Development Control Plan B25 – Coastal Erosion in that the development reduces the number for sites and is for the purpose of temporary accommodation only.”

Having regard to this advice it is considered that the proposed development is acceptable having regard to the Coastal Hazards Development Control Plan.

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

Clause 92(a) Government Coastal Policy

The proposed development 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. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its permissible nature on a site identified for development works.

Clause 92(b) Applications for demolition

The subject application has been reviewed by Councils Building Unit who have provided recommended conditions of consent with respect to demolition work to be undertaken on the site. No objections are raised with respect to this component of the proposed development.

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

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire’s 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide,
maintain and replace infrastructure.

The proposed development is not considered to impact negatively upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand.

The subject site is located within the Kingscliff–South Kingscliff Area identified under the Plan at Clause 3.1.4. The subject site is identified as being a Holiday Park within this plan, with the adjacent area being identified for a ‘Seawall Extension (500m long)’. The plan does identify that ‘Proposed park upgrade to include redesigned stormwater that ensures no concentrated flow to beach’

Improved stormwater infrastructure is proposed as part of this application, as detailed elsewhere in this report. With respect to this, it is considered that the requirements of the Coastline Management Plan are being achieved. It is considered that the proposal is consistent with the objectives of the Management Plan.

**Tweed Coast Estuaries Management Plan 2004**

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site to which this application relates is located adjacent to Cudgen Creek, however it is noted that all proposed development works are located approximately 500m from Cudgen Creek. As such, the proposal is not considered to impact on the provisions of this management plan, however appropriate conditions of consent, particularly with respect to erosion and sediment control, have been applied to ensure that the proposal meets the aims and objectives of the Plan.

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

The subject site is not located within an area that is affected by the Coastal Zone Management Plan for Cobaki and Terranora Broadwater.

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

**Context and Setting**

The proposed development is considered to be appropriate with the context and setting of the site as well as the general appearance of the area. In this regard, it is noted that the site is currently operational as a caravan park.

Whilst a number of public submissions raise concerns regarding the future development of the caravan park (as outlined elsewhere in this report), it is considered that the subject application remains in accordance with the established caravan park setting at this location. The proposal is assessed as being acceptable in this regard.

**Access, Transport and Traffic**

As outlined elsewhere in this report, the subject caravan park site is to provide a new access point to Marine Parade, located to the north of the Holiday park,
adjacent to the Bowls Club access. As the subject application in actuality reduces the number of approved sites from 176 to 61 it is not considered that there would be an intensification of traffic to the site or the area generally as part of this application.

Furthermore, adequate visitor parking is to be provided to service the subject development under the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, and 12 provided. The subject application is considered to be acceptable in this regard.

Flora and Fauna

The subject application includes provision to remove existing vegetation from the caravan park site to the extent of approximately 35 trees, dispersed throughout the site. 16 existing trees, located mainly to the roadside boundary are to be retained.

The subject application has been reviewed by Council’s natural Resource Management Unit with respect to this who have raised no concerns with respect to the proposal and have provided recommended conditions to be applied to any consent.

The proposed development is considered acceptable in this regard subject to appropriate conditions of consent being provided which require detailed landscaping to be provided.

Local Government (Manufactured Homes estates, Caravan Parks and Camping Grounds and Moveable Dwellings) Regulations 2005.

The subject application has been reviewed by Council’s Environmental Health Unit with respect to the above Regulations, which relate to caravan park development. In this regard it is noted that no objections are raised with respect to the proposal and recommended conditions of consent have been provided.

(c) Suitability of the site for the development

As outlined elsewhere in this report, the subject application relates to the Kingscliff Beach Holiday Park which has been previously established at this location. The site is considered to be suitable for this purpose as outlined elsewhere in this assessment report, having consideration to both the existing and future planning framework for the site. As such, it is considered that the subject site is generally suitable for this development.

Availability of Utilities and Services

The subject site is serviced by Council’s water and sewerage reticulation system, located within Tweed Coast Road. The application has been reviewed by Council’s Water Unit and Development Engineering Unit with no issues raised in relation to water supply or sewerage. As such the proposal is considered to be acceptable in this regard.

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

The subject application was exhibited for a period of 14 days between 17 February and 2 March 2016. During this time 37 submissions were received, the content of which is detailed below.

The content of these submissions were also forwarded to the applicant who has provided a response (where applicable) which is also outlined in the table below:
22 of the submissions raise identical issues with respect to the proposal. Given the no. of these received, the submission is reproduced below:

There is a number of inaccuracies with the document as follows:

• Currently there is only 164 sites, as advertised above the document says there is 176.
• The 176 sites was previous erosion/van park changes and therefore the land mass has changed since that occurrence.
• The advertised dates of availability of documentation and location has not occurred as per documentation. E.g. as at 23/2/2016 the public display at the old Ray White Office was still not in operation for display.
• The Sign which is to announce and show the plan is on a piece of A4 copy paper 210x297mm on a post at the entrance of park lower then eye level and completely in an inappropriate visual site.
• The sign as said on a sheet of copy paper is so difficult to read to even know what exactly it is trying to present.
• Current site plan at office indicate a different number of sites numbers again differing from the development application (from 176 to 178).
• Letter of notification to current long term casual was received by post 23.d Feb. 2016 though dated 9/2/2016 and stated hand delivered by park management which was not the case as said it was

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<tr>
<th>Issue Raised</th>
<th>Assessment</th>
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<tr>
<td>Applicant response</td>
<td>The Approval to Operate issued 14 June 2013 indicates that there are 176 approved sites at Kingscliff Beach Holiday Park. In its current configuration there are 165 operational sites following the 2011 coastal erosion event.</td>
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<td>received by Australia Post. The proposed plan &quot;legend&quot; does not match the plan exhibited. E.g. cabins x 12 shows 9/ Tents x 9 shows 4/ caravan w/o ensuites x 29 shows 24/ with en suites 12 shows 4.</td>
<td>It is not clear what the issue is. It is understood that all Application Plans were publicly exhibited as was the Statement of Environmental Effects (SEE) and all Annexures.</td>
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<td>For a proper acceptance of a development plan it should be presented to the community, an actual plan which exhibits exactly what the result will be as this proposal does have major economic and social ramifications towards the community of Kingscliff.</td>
<td>The proposed Site Plan SK06, Issue D does not contain a legend of intended site uses. The Site Detail Plan SK07, Issue D does contain a legend showing the intended use of each site. The numbers for each use in the legend are consistent with the various site types on the Plan (SK07).</td>
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<td>I strongly object to the current process of this application.</td>
<td>The SEE and Annexures clearly document, in text and plans, what is proposed in terms of the redevelopment of Kingscliff Beach Holiday Park.</td>
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<td>In relation to social and economic impacts. In accordance with the requirements of Tweed Development Control Plan 2008. Section A13 a Socio-Economic Impact Statement accompanies the (DA) and SEE. Tweed Coast Holiday Parks Reserve Trust has undertaken extensive market research and financial analysis in relation to the redevelopment proposal. In November 2010, the landowner (Crown Lands Division) and the TCHPRT approved a Business Plan for alterations to the Kingscliff Beach Holiday Park. The redevelopment proposal simply seeks to implement the approved Business Plan.</td>
<td>Key outcomes of the market research</td>
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Issue Raised | Assessment
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and financial analysis are summarised as follows:

- Existing park infrastructure is at the end of its economic life.
- A number of "park vans" are old and unsightly.
- There are no long term sites in the existing or proposed Kingscliff Beach Holiday Park. There are 57 long term casual "park vans" in the existing park, however their occupancy rates and annual rental fees are relatively low.
- Financial analysis reveals that income generated by contemporary holiday cabins on well designed sites will generate higher occupancy rates and greater income from the redeveloped Holiday Park.
- Significant public benefits will result from a reduction in the size of the Holiday Park and creation of a new embellished public park adjacent to the town centre and directly linking Marine Parade with the beach.
- The redevelopment proposal and creation of the proposed new public reserve have been the subject of extensive community consultation over many years. There is widespread community support for the proposal, as reflected in the fact that only 8 objections have been received from Kingscliff residents.

Council officer assessment

The applicant’s justification with respect to the no. of sites is accepted. There is Approval to Operate 176 sites.
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<td>as per the Section 68 approval. With respect to the public exhibition of the Development Application, it is noted that Council records demonstrate that there were site notices erected at the site on 11 February. For the purpose of the Development Application, all information is available on Council’s website, as advised in the exhibition material. The site notice erected is consistent with how Development Applications are publicly exhibited. A search of the application on Council’s DA Tracker does not demonstrate 178 sites stated. If additional time was required by any persons wishing to make a submission but not afforded time to do so, Council would, subject to a request in writing outlining why a submission could not be made within the 14 day period, grant an extension of time in one-off instances. No such requests were received in this instance. It is not considered that there are any substantive planning matters raised through the above submissions which would warrant the refusal of this application. One submission was received which raised all the issues reproduced in the Pro-forma letters above, however also raised the following: As a Tweed Council ratepayer, can the council also please make public the commercial business case to justify the level of investment that will be borne by the rate payers; • A reduction of over 50% in the number of paying park sites. • The loss of income over the construction period. • The subsequent reduction of holiday makers to the commercial districts at Applicant response The applicant has not addressed this matter specifically, however elsewhere it is stated that matters such as this are ‘commercial in confidence.’ Council officer assessment The matters raised are not considered to constitute planning matters which would warrant refusal of the application on planning grounds.</td>
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<td>Issue Raised</td>
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| Kingscliff and surrounds. • The increased costs to maintain the increased park land and equipment. | Council officer assessment
The matter raised is not considered to be a substantive planning matter which would warrant refusal of the application. |
| Submitted application states; "as tourism is a major contributor to the local economy, the proposed development is likely to positively contribute to & support the local community". However, reduction from 164 sites to a total of 61 hireable sites (including cabins) cannot positively contribute to socio-economic considerations of the community. | Council officer assessment
It is not clear exactly what element of the proposal is being objected to in this submission, however it may relate to overdevelopment of the area. In this regard it is noted that the application does not provide for any structures on the site which would infer this. This submission does not raise any matters which warrant refusal of the application. |
| Submission Text                                                              | Council officer assessment
Re development of our beautiful town if you want to be would be if you could be go to surfers or Noosa why spoil paradise that is why people love Kingscliff it is paradise and the park is the diamond in the centre of the crown the poor shop owners should close their door at the same time. | |
| Economic Impact on Locality                                                 | Applicants response                                                                                   |
| A number of submissions received                                              | This submission has not been directly addressed, however economic matters are addressed above with the applicant citing market research and the approval of the Business Plan for the site. |
| Submission no. 1                                                             | Council officer assessment
My concern for this development is the effect it will have on the local community. At the moment the income generated from the caravan park is a lot higher than I think the shop owners realise. Even if we are there for a weekend we would easily spend $100.00 at places like The Mullet, the bakery and Woolworths. The fact that the park will be closed for a considerable time and then the van park will be reduced by 2/3 will have a great impact on the money invested into the area. In relation to the 57 permanent sites, they must pay rent all year round, so even if the van park is virtually empty about $6200 per van is |
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<td>still be paid to the trust.</td>
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<td>Submission no. 2</td>
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<tr>
<td>I object to the re-development in the current form that has been presented. I understand</td>
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<tr>
<td>council wants to update the facilities in the park, and fair enough. However to reduce</td>
<td></td>
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<tr>
<td>the park by 2/3, I feel is unwarranted.</td>
<td></td>
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<tr>
<td>Kingscliff already has adequate parklands, to provide for families for many years to come,</td>
<td></td>
</tr>
<tr>
<td>by all means develop those. We as a community need the tourists all year round, to close</td>
<td></td>
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<tr>
<td>the park for 2 years will be a disaster for many business's.</td>
<td></td>
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<tr>
<td>Submission no. 3</td>
<td></td>
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<tr>
<td>I'm a local business owner, and am concerned about the development. I am all for moving</td>
<td></td>
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<tr>
<td>forward and modernising, however I don't believe getting rid of 115 sites is the way to go.</td>
<td></td>
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<tr>
<td>We rely on these permanent site's, people who come down every couple of weeks and spend a</td>
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<tr>
<td>considerable amount of money in my shop and at the cafes. Day trippers-the people who will</td>
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<td>benefit from these changes, may eat lunch at the establishments but don't come away and</td>
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<tr>
<td>spend BIG money here. Its these permanents who add to the feel of our small town at holiday</td>
<td></td>
</tr>
<tr>
<td>time and public holidays. They support local business. Kingscliff is a area which is growing</td>
<td></td>
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<tr>
<td>voted in with the top sea change town, with more and more people wanting to come and visit,</td>
<td></td>
</tr>
<tr>
<td>I just don't understand how you can justify getting rid of that amount of sites?</td>
<td></td>
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<tr>
<td>Surely putting so much money in to preserving the beach front and the holiday park you</td>
<td></td>
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<tr>
<td>would want to maximised revenue by keeping more sites?? I live across from the newly</td>
<td></td>
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<tr>
<td>renovated north Kingscliff holiday park, and the cabins there are very steep</td>
<td></td>
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<td>Issue Raised</td>
<td>Assessment</td>
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<tr>
<td>there is usually ALWAYS vacancies, is this what will happen to our lovely big caravan park in the heart of Kingscliff?? We have kilometres of park land in Kingscliff and a great Pirate park near the creek a short stroll from the caravan park. I personally think the park needs a facelift but not down-size. I really hope you all think about the work that needs to be done, am worried Kingscliff will suffer in the long term by the proposed actions.</td>
<td></td>
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<tr>
<th>Submissions from Current Long Term Occupants</th>
<th>Council officer assessment</th>
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<tr>
<td>A number of the submissions received are from persons who visit the caravan park presently and are objecting to the reduction in size of the park. These submissions raise issues including the economic impact on the town and the need for the park to be amended (stated that there is ample room elsewhere for a park). Other specific issues include; The reduction of caravan parks will have an impact on affordable family holidays. Research is cited which demonstrates the benefits of camping/caravan parks, and camping holidays. Information relating to the growth of Recreation Vehicle sales in Australia is provided, with this being inferred that there is adequate demand for the caravan park in its current state. A number of submissions also indicate the financial loss to Tweed Shire Council Holiday Park Trust through the proposed development decreasing the number of sites available.</td>
<td>Applicants response</td>
</tr>
<tr>
<td>Objections raised with respect to lack of detail concerning future cabins, managers residence, amenities etc.</td>
<td>Applicants response</td>
</tr>
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Development Consent is not required to install relocatable structures in an
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<th>Issue Raised</th>
<th>Assessment</th>
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<tr>
<td>Planning Committee:  Thursday 5 May 2016</td>
<td>approved caravan park. All proposed structures will be single storey and of contemporary design. Visual impacts are unlikely to be significant given that the size of the Holiday Park will be reduced and the height of the structures will be similar to the existing structures. The structures will also be similar to those installed at the completed redeveloped Kingscliff North Holiday Park.</td>
</tr>
<tr>
<td>Council officer assessment</td>
<td></td>
</tr>
<tr>
<td>Objection to Construction of Seawall</td>
<td>Any future moveable dwelling structures placed on the site would occur outside of this development approval. Therefore it is not possible to refuse this application based on potential impacts associated with same.</td>
</tr>
<tr>
<td>Applicants Response</td>
<td></td>
</tr>
<tr>
<td>Objection to Construction of Seawall</td>
<td>The proposed permanent seawall does not form part of DA 16/0076 for redevelopment of the Kingscliff Beach Holiday Park. It is the subject of Part 5 Assessment No. 15/0021 prepared by Council. The design and siting of the proposed seawall results from extensive and lengthy studies, investigations and consultations. It is intended to address coastal erosion and loss of foreshore land whilst minimising alienation of existing beach areas.</td>
</tr>
<tr>
<td>Council officer assessment</td>
<td>Seawall construction is not proposed as part of this development application and therefore does not form part of the assessment of this application.</td>
</tr>
<tr>
<td>Relocation of Holiday Park Entry/Exit</td>
<td>The relocation of the Holiday Park entry/exit, to be shared with the existing Bowls Club entry, is an unacceptable road access location for the redevelopment of the Holiday Park</td>
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</table>
| Council officer assessment                        | Tweed Shire Council Development Engineering Unit have reviewed the relocated holiday park entrance/exit and raised no issue with respect to same from a technical perspective. No
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<tr>
<td>based on the following:</td>
<td>concerns are raised with respect to the relocated holiday park entrance, as outlined in the remainder of this development assessment. Proposal is acceptable in this regard.</td>
</tr>
<tr>
<td>a) The proposed Development Application worsens the existing pedestrian, cyclist and car interaction by increasing the vehicular movements at this location. This will result in an unacceptable safety risk for pedestrians and cyclists at this location, especially given the Bowls Club entry road is a popular pedestrian and cyclist access to the beach;</td>
<td></td>
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<tr>
<td>b) The proposed Holiday Park entry/exit location does not comply with Tweed LEP 2014 Clause 5.5 (2)(a)(i) that requires development in the Coastal Zone to improve public access; and</td>
<td></td>
</tr>
<tr>
<td>c) The proposed relocation of the Holiday Park entry/exit location does not comply with the Tweed Shire Development Control Plan 2008, Section A5 - Subdivision Manual, Criteria 5.4.10 (Movement Network) as the Holiday Park access road is not resulting in a grid type movement network (i.e. four way intersection) that would facilitate improved walking and cycling use and safety along the eastern side of Marine Parade in front of the Holiday Park.</td>
<td></td>
</tr>
<tr>
<td>To remove the existing pedestrian and cycle safety risk at the Kingscliff Bowls Club entry access road, and not worsen the public safety risk in this location, Council must not approve the current concept design and request the Applicant to redesign the Kingscliff Beach Holiday Park based on the following concepts:</td>
<td></td>
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<tr>
<td>• The redeveloped Holiday Park entry/exit should be located opposite Turnock Street to provide a four way intersection; and</td>
<td></td>
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<td>• A dedicated pedestrian and cycle path should be</td>
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<td>Issue Raised</td>
<td>Assessment</td>
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<tr>
<td>provided between the existing Bowls Club and the redeveloped Holiday Park.</td>
<td>Council officer assessment</td>
</tr>
<tr>
<td>This new path should link with the proposed pedestrian and cycle path on the</td>
<td>In assessing the subject application, it is not considered relevant to consider the provision of</td>
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<tr>
<td>redeveloped Holiday Park.</td>
<td>further beach accesses away from the development location. In this manner it is noted that no beach</td>
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<td></td>
<td>access are proposed as part of this application. The proposal does not warrant refusal based on</td>
</tr>
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<td></td>
<td>the issues raised in this submission.</td>
</tr>
<tr>
<td>Beach Access</td>
<td>Applicants Response</td>
</tr>
<tr>
<td>No beach access is provided at the existing Bowls Club and Holiday Park</td>
<td>A cycleway/walkway is proposed immediately landward of the seawall to facilitate safe and</td>
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<td>boundary.</td>
<td>appropriate beach access at strategic locations.</td>
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<td></td>
<td>In summary, as indicated in the SEE, Kingscliff Beach Holiday Park redevelopment is not</td>
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<td>inconsistent with Clause 5.5 of Tweed Local Environmental Plan 2014, the NSW Coastal Policy and</td>
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<td></td>
<td>State Environmental Planning Policy No.71 - Coastal Protection.</td>
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<td></td>
<td>Council officer assessment</td>
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<td></td>
<td>Although not proposed as part of this application, it is noted that under Ptv15/0021 (referred to</td>
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<td></td>
<td>elsewhere in this report) there is provision of a cycleway adjacent to the caravan park site.</td>
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<tr>
<td></td>
<td>In any event, the lack of provision of a cycleway is not considered to raise substantive planning</td>
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<td>grounds for the refusal of a development application.</td>
</tr>
<tr>
<td>Pedestrian/Bicycle Path Connection</td>
<td>Applicants Response</td>
</tr>
<tr>
<td>No pedestrian and cycle path connection is proposed in the Development</td>
<td>A cycleway/walkway is proposed immediately landward of the seawall to facilitate safe and</td>
</tr>
<tr>
<td>Application to the north of the redeveloped Holiday Park.</td>
<td>appropriate beach access at strategic locations.</td>
</tr>
<tr>
<td></td>
<td>In summary, as indicated in the SEE, Kingscliff Beach Holiday Park redevelopment is not</td>
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<td></td>
<td>inconsistent with Clause 5.5 of Tweed Local Environmental Plan 2014, the NSW Coastal Policy and</td>
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<td>grounds for the refusal of a development application.</td>
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<tr>
<td></td>
<td>concerning reconfiguration of a caravan park.</td>
</tr>
<tr>
<td>Submission of Support</td>
<td>Noted.</td>
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</table>

I think this plan is fantastic. The middle of town is now too busy for caravans driving through and blocking the one way street at peak times. This park is much needed and allows the space to be used by all, not just a privileged few who deter locals from heading into town during peak times. I know I will now spend a lot more money in Kingscliff, rather than Tweed Heads and Robina.

Having regard to the issues raised above, the response provided by the applicant and the Council officer assessment of the submissions it is considered that the subject application does not warrant refusal based on the submissions received through the public exhibition of this application.

**Public Authority Submissions**

**NSW Rural Fire Service**

The subject application was integrated under the Rural Fires Act 1997, being a tourist development application. As such the application was referred to New South Wales Rural Fire Service. General Terms of Approval for the proposal have been provided by the Rural Fire Service. These will be included as conditions of consent in the event of approval of the application.

(e) **Public interest**

Given the nature of the proposed development, relating to an established caravan park on an appropriately zoned site which is in accordance with the applicable planning framework as outlined in this report, it is considered that the proposal would be unlikely to impact negatively on the public interest.

**OPTIONS:**

That Council:

1. Approves the development application subject to recommended conditions of consent; or

2. Refuses the development application for specified reasons.

Council officers recommend Option 1.

**CONCLUSION:**

The above assessment is considered to demonstrate that the proposal is generally acceptable with respect to the appropriate legislative considerations. As such, it is
recommended that this development application be approved subject to appropriate conditions of consent.

COUNCIL IMPLICATIONS:

a. Policy:
Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:
The proposed works would need to be budgeted for by Council.

c. Legal:
If the applicant is dissatisfied with the decision, they may elect to have the matter determined in the Land & Environment Court.

d. Communication/Engagement:
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:
Nil.

SUBMITTED BY: Development Assessment and Compliance

Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1 Civic Leadership
1.2 Improve decision making by engaging stakeholders and taking into account community input
1.2.1 Council will be underpinned by good governance and transparency in its decision making process

SUMMARY OF REPORT:

Council’s Engineering Division has made application for approval under Part V of the Environmental Planning and Assessment Act, 1979, to undertake the considerable redevelopment of the Kingscliff Foreshore over the above land.

The overall project is known as the Kingscliff Foreshore Revitalisation Project and has received substantial Federal Government funding.

The overall project is a three-stage $21.2 million project being undertaken by Council to protect and enhance facilities along the Kingscliff CBD coastline. A concurrent Development Application (DA16/0076) is also being assessed for the Kingscliff Beach Holiday Park redevelopment (which must occur prior to the construction of the proposed park associated with the subject application).

The elements of the overall project subject to the Part V application are:

- **Foreshore protection works comprising a concrete seawall and rock revetment seawall** between the Cudgen Headland Surf Life Saving Club (CHSLSC) and the Kingscliff Beach Bowls Club (KBBC);
- Development of a **foreshore park** on land currently used as a caravan park and camping ground between the proposed seawall, the CHSLSC, Kingscliff Amenities Hall, Marine Parade and a point approximately 150m north of the existing Kingscliff Beach Holiday Park (KBHP);
- Establishment of a **combined pedestrian/cycleway** immediately landward of the foreshore protection works between the CHSLSC and KBBC.
RECOMMENDATION:

That:

A. Following assessment of the Review of Environmental Factors for the foreshore protection works and central park development it is determined that the activity is not likely to have a significant impact on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats.

B. PTV15/0021 application for foreshore protection works and central park development at Lot 169 DP 755701 & Part Lot 2 DP 1122062 & Road 3340 Marine Parade, Kingscliff be approved subject to the following conditions:

1. The development shall be completed in general accordance with the Review of Environmental Factors - Foreshore protection works and central park development, Kingscliff Rev. 2.0 dated February 2016 prepared by the TSC Design Unit and associated plans.

2. Prior to commencement of work all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the General Manager or his delegate. Erosion and sedimentation control devices shall be installed in accordance with the publication, "Managing Urban Stormwater - Soil and Construction", prepared by the NSW Department of Housing. All erosion and sedimentation controls shall be maintained throughout the period of construction.

3. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

4. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.
5. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.
\[L_{Aeq, 15 \text{ min}}\] 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.

6. Written notice shall be given to any affected residences at least two weeks prior to any works commencing.

7. All imported fill material shall be from an approved source. Prior to commencement of construction, details of the source of the fill, description of the material, and evidence that the material is free of contaminants, must be produced.

8. 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.

9. Excavations shall be supervised by a knowledgably person capable of identifying visual acid sulfate soil indicators.

10. In the event that visual inspections identify actual or potential acid sulfate soils all works shall cease until a site specific acid sulfate soils management plan is approved by Council's General Manager or Delegate.

11. In the event that acid sulfate soils are excavated they shall be immediately placed within a bunded area and immediate notification shall be provided to Council's Environmental Scientist.

12. All works shall be undertaken in accordance with the approved vibration and noise management plan.

13. Earthworks and excavated material shall be monitored by a suitably qualified person for radiation levels. Where radiation levels exceed 0.7uGy/hr within the proposed central park development or 1.0uGy/hr within the proposed foreshore protection works all works shall cease and a radiation management plan would be submitted to the satisfaction of Council's Environmental Health Officer. All works shall comply with the
Plan. Upon the completion of earthworks a radiation surface validation statement shall be provided to Council to the satisfaction of the General Manager or his delegate which provides details of the radiation monitoring undertaken on the site and which confirms that final surface radiation levels are suitable for the intended land uses.

14. No soil, sand, gravel, clay or other material shall be removed or relocated from the work site, where the radiation level of that material exceeds 0.7μGy/hr, without prior approval from Tweed Shire Council's General Manager.

15. Prior to the commencement of works a dewatering management plan shall be submitted to Council’s General Manager or delegate for approval.

16. All works shall be undertaken in accordance with the approved dewatering management plan.

17. 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.

18. A representative of the Tweed Byron Local Aboriginal Land Council shall be present on site to monitor ground disturbance during excavations beyond 2.6m associated with foreshore protection works, with evaluation for the need for ongoing monitoring to be determined based on the level of disturbance encountered.
REPORT:

**Applicant:** Tweed Shire Council  
**Owner:** Land and Property Management Authority  
**Location:** Lot 169 DP 755701 & Part Lot 2 DP 1122062 & Road 3340 Marine Parade, Kingscliff  
**Zoning:** RE1 - Public Recreation, B4 Mixed Use (Road Reserve)  
**Cost:** $13,000,000

**Background:**

The submitted REF provides the following background and justification for the proposed activity:

**Kingscliff Foreshore Master Plan 2007 – 2027**

This Plan covers coastal land at Kingscliff between Cudgen Creek and Wommin Bay Road. Adopted by Tweed Shire Council in July 2007, the Plan establishes upgrade projects to be implemented over 20 years that would protect the main commercial centre of the town, upgrade park land and holiday parks as well as preserve the beach and foreshore. The Master Plan is supported by a range of detailed site investigations and analysis, community consultation and urban design.

The Plan comprises three main sub projects - the Kingscliff Beach Holiday Park renewal, the central park development and the Kingscliff - Dreamtime Beach Coastal Zone Management Plan; the latter is outlined further below. The Kingscliff Beach Holiday Park renewal does not form part of the proposal and is subject to separate consent.

Another project under the Master Plan, amongst others, of relevance to the proposal includes the Marine Parade one-way street project. This project was implemented between May 2012 and April 2013 and involved converting Marine Parade from a two-way street to a one way street with a single path of travel, north to south between Turnock Street and Seaview Street. The project provided for an additional 41 vehicle parking spaces within the "Main Street" of Kingscliff, as well as additional spaces on Sundays when not used as a loading bay.

**Kingscliff - Dreamtime Beach Coastal Zone Management Plan**

Coastline hazard definition and management has been performed on behalf of Tweed Shire Council in accordance with relevant NSW Government legislation, guidelines and manuals since approximately 1999. Initially, this work as it related to Kingscliff was progressed on a shire wide basis and included the entire Tweed Coast and its townships. Following
significant coastal erosion in Kingscliff between 2009 and 2012 including public asset
destruction and relocation, the requirements related to coastline management in light of
predicted coastal hazards and sea level rise were revised. These amended requirements
have NSW state wide application. However, in a local context they have specifically
modified coastline management strategies for Kingscliff Beach and Dreamtime Beach.

The history of coastal hazard management in Kingscliff is summarised in various documents
prepared on behalf of Tweed Shire Council, the most recent being the Kingscliff Coastal
Risk Management study. The REF advises that the current approach is a short-term
management strategy that would be more adaptive and responsive and allow for a degree of
flexibility in the short term (until 2050). This approach would allow a revision of coastal
protection measures to be adopted in the longer term (post 2050).

The recommended approach is for the Kingscliff foreshore to be managed on a precinct
basis, including the Cudgen Headland Surf Life Saving Club to Kingscliff Beach Bowling
Club Precinct.

The objective for this precinct is to provide a hardened foreshore that protects assets of high
amenity value. It has been noted by Tweed Shire Council that limited beach amenity would
occur within the precinct during and after erosion events. That is, the beach would be
eroded during storm events, limiting beach access. However, foreshore access would be
promoted through the provision of walkways along and behind the foreshore protection
works i.e. the proposed central park development and pedestrian/cycle footpath linking the
CHSLSC and KBBC.

The strategy commits to the following actions, amongst others, between 2015 and 2020:

- Undertake all necessary investigations, and gain appropriate consents for
  undertaking works within the coastal management strategy.
- Rebuild the existing rock wall between SLSC and Bowls Club reusing existing
  rock material with addition of rock in accordance with design specifications. This
  may be undertaken in two stages
  - Stage 1 Kingscliff Beach Holiday Park (approx. 250m long); and Stage 2
    Central Park (approx. 150m long). Stage 2 would include additional
    community amenity facilities, such as beach access, viewing platforms and
    tie into the open space area developed behind.
- Establish pedestrian walkway along the foreshore behind the existing wall crest
  between the SLSC and Bowls Club.
- Construct Central Park and amenities associated with the Kingscliff Foreshore
  Master Plan.

The recommendations of the study have been adopted by Tweed Shire Council and will
inform the comprehensive Kingscliff - Dreamtime Beach Coastal Zone Management Plan,
which is expected to be drafted by the end of 2015.

Historical foreshore protection works

Between 2011 and 2013 a series of storm surges and subsequent erosion events resulted in
the loss of large tracts of foreshore area within the Kingscliff locality. The immediate risk this
presented to the loss of infrastructure and assets behind the foreshore promoted TSC to
perform emergency revetment works between the northern training wall of Cudgen Creek
and the KBBC. These projects, considered under Part 5 of the EP&A Act 1979 included:
• A rock revetment wall between the northern training wall of Cudgen Creek and the Cudgen Headland SLSC
• A piled concrete seawall in front of the Cudgen Headland SLSC
• A combined sandbag and rock revetment wall between the Cudgen Headland SLSC and the KBBC to protect the existing KBHP (included within the subject site of the current proposal).

Considerable community consultation has occurred over a lengthy period in relation to the overall project which is detailed within the accompanying Review of Environmental Factors.
SITE DIAGRAM:
DEVELOPMENT/ELEVATION PLANS:
Council’s Engineering Division has made application for approval under Part V of the Environmental Planning and Assessment Act, 1979, to undertake the considerable redevelopment of the Kingscliff Foreshore over the above land.

The project is known as the Kingscliff Foreshore Revitalisation Project and has received substantial Federal Government funding.

The overall project is a three-stage $21.2 million project being undertaken by Council to protect and enhance facilities along the Kingscliff CBD coastline. A concurrent development application is also being assessed for the major caravan park redevelopment (which must occur prior to the construction of the proposed park associated with the subject application).

The subject proposal involves:

- **Foreshore protection works comprising a concrete seawall and rock revetment seawall** between the Cudgen Headland Surf Life Saving Club (CHSLSC) and the Kingscliff Beach Bowls Club (KBBC);
- Development of a **foreshore park** on land currently used as a caravan park and camping ground between the proposed seawall, the CHSLSC, Kingscliff Amenities Hall, Marine Parade and a point approximately 150m north of the existing Kingscliff Beach Holiday Park (KBHP);
- Establishment of a **combined pedestrian/cycleway** immediately landward of the foreshore protection works between the CHSLSC and KBBC.

Further detail is provided on each aspect of the proposed development below:

**Foreshore protection works**

The purpose of these works is to protect the existing foreshore alignment from flooding and erosion, including the range of infrastructure and other built assets located behind it. The foreshore protection works include two options, as outlined below. Approval is sought for both options.

Option A is the preferred option and would provide complete replacement of the existing temporary foreshore protection works within the subject site as well as the longest extent of piled concrete seawall. However the applicant advises that the basis for presenting two
options for foreshore protection works is funding. In the event Tweed Shire Council is unsuccessful in obtaining grant funding toward the cost of Option A, Option B would be implemented and fully funded by Council. Further, the implementation of Option B allows future embellishment into a design consistent with Option A in the future, should this be desired.

It is understood at the time of finalisation of this assessment that funding has been made available for the full extent of Option A.

Both options would achieve a reduced level (RL) at the crest of the seawall of 5.0 metres Australian Height Datum (m AHD).

**Option A – Construction of a new seawall comprising piled concrete seawall and rock revetment seawall (refer to Plan MDP5-SK1A)**

- Demolition of temporary revetment works including sand bags and rocks
- Construction of ~140m of piled seawall immediately adjacent the proposed central park development, providing public access to Kingscliff Beach (universal access to the beach would be maintained at existing access points north and south of the subject site)
- Construction of ~260m of rock revetment seawall between the piled seawall and the existing rock revetment located east of the KBBC.

![Figure 3: Option A - Full extent of concrete seawall](image.png)
Option B – Construction of a new piled concrete seawall and embellishment of an existing rock revetment seawall (refer to Plan MDP5-SK1B)

- Demolition of temporary revetment works including sand bags
- Construction of ~30m of piled seawall adjacent the proposed central park development, providing public access to the beach
- Construction of ~370m of rock revetment seawall surrounding the proposed piled seawall, between the CHSLSC and the KBBC, embellishing the rock component of the existing temporary revetment works.

Figure 2: Option B
Central park development

The proposed central park would comprise the establishment of the following features:

- Vegetated swale for stormwater drainage
- Enhancement of ground treatment surrounding the existing War Memorial Cenotaph
- Decking
- Block walls
- Barbeque shelter areas
- Earth mounds
- Universal access amenities facilities
- Recreation facilities catering to sport activities
- Stage
- Signage and information displays
- Subsurface essential infrastructure including sewer, water and electricity
- Vegetation planting.
Detailed design has not been submitted at this stage however would be consistent with the following plan:

Pedestrian / cycle pathway

The purpose of the pathway would be to promote existing public access to and along the coastal foreshore. The pathway comprises a series of 3m wide concrete slabs stretching the entire length of the proposed foreshore protection works, including guard rails and signage as required. Excavation of soil to a depth of around 150mm is required, for a strip 3m wide and approximately 400m long. Formwork, steel mesh and concrete will be used to create the pathway.

Project exclusions

The applicant advises that the proposal does not include the following elements which have been the subject of community consultation within the Kingscliff locality over recent years:

- Two lot subdivision to create a redeveloped Kingscliff Beach Holiday Park
- Redevelopment of the Kingscliff Beach Holiday Park
- Redevelopment of the Kingscliff Amenities Hall
- Demolition of the existing above ground holiday park infrastructure within the footprint of the proposed foreshore park.

These elements would be the subject of separate consideration pursuant to the Environmental Planning and Assessment Act, as statutorily required.
Associated Development Proposals

DA16/0076 - 2 Lot subdivision, demolition, alterations to Kingscliff Beach Holiday Park
Kingscliff (currently being assessed by Council’s Development Assessment Unit)

Reduction of the existing Holiday Park from 176 sites to approximately 60 sites to involve the following:

- Contracting the park to the north and subdivision
- Modifying the seaward edge of the park to provide for a seawall to provide a buffer to coastal erosion
- Provide for new management facilities, cabins, en-suite sites and camp sites
- Provide a central amenities building and recreational facilities
- Upgrade of the existing road access network and installation of essential services to suit the proposed arrangement of sites
- Undertake landscaping
- Construction of stormwater infrastructure as detailed in Stormwater Management Plan – Kingscliff Beach Holiday Park Upgrade dated December 2015 prepared by TSC
- Demolition of the existing facilities on the proposed central park

The subject proposal would require temporary access roads, turnaround areas as well as stockpile and lay down locations adjacent the foreshore protection works alignment, entirely within the subject site, during construction. These requirements would be established at suitable locations away from drainage lines and significant vegetation closer to construction commencing, pursuant to a Construction Environmental Management Plan (CEMP) for the project.

Construction would require the importation of various materials including around 30,700 tonnes of rock, around 940m³ of concrete, secant and injected piles and equipment including dump trucks with trailers, excavators, piling rig, loaders, concrete trucks, concrete pump truck and rock crushe. It is proposed that these materials and equipment would be transported to the subject site via the local road network.

The overall development is located over two land parcels (Council controlled Crown Land) and Council’s road reserve as follows:
Impacts:

The REF contains a detailed assessment of potential environmental impacts, their likelihood and mitigation measures.

There is potential for adverse impacts (noise/vibration/dust/amenity/traffic) during construction. Construction is anticipated to take 20 months (worst case scenario) and will commence early 2017.

The following detailed impact assessment has been provided by various internal Council staff members:

**NRM Impact Assessment**

The following potential impacts are anticipated from the construction and operation of the proposed development.

**Intertidal/Foreshore Habitat**

- Loss of sandy substrate providing habitat for benthic invertebrates and shorebirds
- Loss of approximately 3254m² (combination of more established vegetation and that considered temporary due to the dynamic nature of the fore-dune) of groundcover dune vegetation
- Erosion and water quality impacts associated with stormwater runoff
- Exacerbation of down-drift erosion and scour at the northern terminal end of the final revetment structure. Potential for the further loss of northern fore-dune vegetation
- Impact of temporary stockpiling and construction vehicle movements on benthic invertebrates seaward or to the north and south of the proposed works area
- Potential to cause unnecessary disturbance to fore-dune vegetation during the construction phase to the north of the site
- Potential to disrupt nesting of the threatened Green Turtle and foraging behaviour of Little Tern and Pied Oystercatcher during the construction phase

**Terrestrial Habitat**

- Loss and/or disturbance of remnant and significantly sized/mature planted vegetation remaining interspersed across the site to accommodate the proposed Central Park and construct the foreshore protection structure
- Potential to cause unnecessary disturbance to fore-dune vegetation during the construction phase to the north of the site
- Loss of semi-mature Common Blossom Bat and Grey-headed Flying-fox resource tree/s
- Potential for impact on Bush stone-curlew behaviour and survival during the construction phase

**Landscape Amenity and Access**

- Impact on landscape amenity through the hard armouring of the fore-dune area and loss of existing significant tree specimens to facilitate the development
• Intermittent restriction on public beach access between the high water mark and toe of the foreshore protection structure for the length of the structure

Appropriate mitigation measures are provided in the REF in relation to the above. NRM have advised that support for the proposal is offered where:

• Works are undertaken in accordance with the project Review of Environmental Factors; and
• Management actions specified in Section 6.2 of the REF are implemented and incorporated into a site based Construction Environmental Management Plan

NRM also recommends the following:

• The ‘rolling’ rehabilitation program be included as a priority action under the CZMP generally consistent with the KCRMS
• A detailed stormwater management plan be submitted and approved prior to commencement of works
• Consistent with the NSW Coastal Panel 2016 and KCRMS 2015 recommendations, further consideration should be given to a beach nourishment program during preparation of the CZMP.

Acid Sulfate Soils

ASS investigations were performed on behalf of Tweed Shire Council adjacent to the subject site in 2008 (Soil Surveys, 2008). ASS was recorded at 6.5m below the existing ground level (BGL), and was associated with a dense indurated sand layer beyond ~-2.5m AHD. Above this level soil comprising loose, fine to medium grained sand was recorded.

The investigations within the subject site in 2008 also recorded indurated sand beyond -2.5m AHD or 6.5m BGL, with very loose to loose material becoming medium beach sand above.

Construction activities which could encounter ASS include excavation for the rock revetment seawall. However, the proposed construction method technique includes excavators to reach the design level of the rock toe of the revetment. This method would not allow excavation beyond the top of the indurated sand layer. Excavators would be unable to penetrate the hard sand layer. While the design level is stated as -3.3mAHD, it is highly unlikely that excavation depths would surpass -2.5m AHD. Accordingly, the resultant likelihood of encountering ASS during construction is considered unlikely.

In the unlikely event that visual ASS indicators are observed contingencies will be put in place including the bunding of stockpiles and development off a site specific acid sulfate soil management plan.

PTVNS Excavations shall be supervised by a knowledgably person capable of identifying visual acid sulfate soil indicators.

PTVNS In the event that visual inspections identify actual or potential acid sulfate soils all works shall cease until a site specific acid sulfate soils management plan is approved by Council’s General Manager or Delegate.
PTVNS In the event that acid sulfate soils are excavated they shall be immediately placed within a bunded area and immediate notification shall be provided to Council’s Environmental Scientist.

Air Quality

Potential air quality impacts can be managed through the provision of Standard Part V conditions. It is proposed to implement standard dust control measures during construction works including but not limited to the following;

- Covered truck loads.
- Weather monitoring and site response.
- Wetting of exposed stockpiles.
- Stabilisation of exposed final surfaces.
- Vehicles and machinery switched off when not required

Amenity

Work will be undertaken during standard construction of hours of 7am to 6pm Monday to Saturday, with no work on Sundays and Public Holidays. However, during construction of the foreshore works working hours could be extended outside these times to reflect favourable weather and tidal conditions.

The REF proposes noise mitigation measures that will be incorporated onto a noise and vibration management plan for the construction phase of the project. Conditions will apply to ensure the management plan is submitted to the Environmental Health Unit for review prior to the commencement of works.

PTVNS Prior to the commencement of works a noise and vibration management plan shall be submitted to Council’s General Manager or delegate for approval.

PTVNS All works shall be undertaken in accordance with the approved vibration and noise management plan.

Contaminated Land

The proposal is supported by a Preliminary Contaminated Land Due Diligence Assessment (Appendix D) and does not identify any potentially contaminating activities.

A review of historical aerial photographs dated 1962 (Run 6) indicates that Kingscliff was subject to sand mining activities.

As a precautionary it is proposed to undertake post and during radiation monitoring. Radiation levels would be measured using a hand held SE International Radiation Alert Monitor 4 radiation detector. In the event that radiation levels are found to exceed the NSW Health Action Level Criteria (0.7 μGy h-1), the project manager and Tweed Shire Councils Environmental Scientists will be informed immediately to determine a course of action dependant on exceedance level of stated action criteria levels. No soil material that exceeds 0.7 μGy h-1 will be removed from site.

PTVNS Earthworks and excavated material shall be monitored by a suitably qualified person for radiation levels. Where radiation levels exceed 0.7μGy/hr within the
proposed central park development or 1.0uGy/hr within the proposed foreshore protection works all works shall cease and a radiation management plan would be submitted to the satisfaction of Council’s Environmental Health Officer. All works shall comply with the Plan. Upon the completion of earthworks a radiation surface validation statement shall be provided to Council to the satisfaction of the General Manager or his delegate which provides details of the radiation monitoring undertaken on the site and which confirms that final surface radiation levels are suitable for the intended land uses.

PTVNS No soil, sand, gravel, clay or other material shall be removed or relocated from the work site, where the radiation level of that material exceeds 0.7uGy/hr, without prior approval from Tweed Shire Council’s General Manager.

Dewatering

Groundwater is anticipated to be encountered during construction and it is proposed to prepare and submit a Dewatering Management Plan for approval prior to the commencement of construction works. Conditions will be applied.

PTVNS Prior to the commencement of works a dewatering management plan shall be submitted to Council’s General Manager or delegate for approval.

PTVNS All works shall be undertaken in accordance with the approved dewatering management plan.

Vegetation Clearing

The disturbance footprint covers an area of approximately 1.62ha comprising:

- 3254m² of regenerating groundcover dune vegetation
- 841m² of mixed native and introduced plant communities
- 12115m² combined intertidal beach zone, temporary revetment works and other hand stand areas, maintained grass and planted amenity trees. This includes:
  - 2x Araucaria heterophylla
  - 1x Banksia integrifolia
  - 5 X Cocos nucifera

The proposal promotes the retention of significant mature specimens (exotic and local species) and where required to be removed to facilitate the development, specimens shall be transplanted to an appropriate receiving site where possible.

Aboriginal Cultural Heritage

The application was supported by a Due Diligence assessment. The applicant advises that the site occurs within close proximity to landscape features that could indicate the presence of Aboriginal objects and a portion of the site occurs within a confirmed story place pursuant to Council’s draft Shire-wide Aboriginal Cultural Heritage Management Plan mapping.

The applicant contends that under the NPW Regulation, 2009 the site is considered to comprise disturbed land and thus the potential of encountering Aboriginal objects during construction is low. This is deemed the ‘disturbed land defence’.
A representative from NSW OEH contacted Council during the assessment process and advised that the NPWS Act only applies to tangible items. The disturbed land defence thus only applies to tangible items. A story place is an intangible item. It was recommended that consultation occur with the Aboriginal Advisory Committee on the intangible story place.

The REF advises that a recent meeting of the Tweed Shire Aboriginal Advisory Committee considered an updated Due Diligence assessment for the project and advises that the AAC resolved to require the project to engage Aboriginal cultural heritage site monitors to perform monitoring during the removal of services and roads and during the installation of new infrastructure.

The application was again discussed with the AAC on 1 April 2016 and the above resolution was considered to remain satisfactory as follows:

**RECOMMENDATION** that in relation to the PtV15/0021 Kingscliff Foreshore Revitalisation Works the Aboriginal Advisory Committee confirms its recommendation of 4 December 2015 'that the:

1. AAC notes the proposed Kingscliff foreshore protection works and central park development project and endorses the recommended Aboriginal cultural heritage management approach, including the engagement of a cultural monitor during excavations beyond 2.6m associated with construction of the seawalls, with evaluation for the need for ongoing monitoring to be determined based on the level of disturbance encountered.

2. Tweed Byron Local Aboriginal Land Council to be engaged for Aboriginal cultural heritage induction training.'

At the time of preparing this report, these minutes have not been formally been adopted by Council, however it is noted that the advice provided is consistent with that provided to the proponent at the 4 December 2015 meeting. A condition would be applied requiring that the above be implemented.

**European Heritage**

The site includes the Kingscliff War Memorial Cenotaph and Kingscliff Amenities Building, both listed as local heritage items in the Tweed Local Environmental Plan 2014.

The REF includes a Statement of Heritage Impact which concludes that the proposal is likely to have a minor or inconsequential impact on the significance of both items.

**Landscape Plan**

Concept plan *Dwg. MDP5-SK3A Issue A* depicts landscape elements across the Central Park site. Whilst it is acknowledged that the plan is conceptual, more detail would be expected (similar to that submitted with DA16/0076 – this plan does not extend over the Central Park area) given the intent and purpose of the precinct.

A requirement for a detailed landscape plan (DLP) to be prepared and approved prior to commencement of works onsite has been prescribed in the REF (Table 6.2). Vegetation management measures to protect existing mature vegetation are to be incorporated into the DLP in accordance with *AS4970-2009*. 
This is considered appropriate.

Stormwater Management

The application material did not include information on stormwater management within the Central Park area. However, a preliminary report was provided with the associated DA16/0076 application that makes reference to the subject site including details of the stormwater management strategy across the broader Holiday Park site. The preliminary SMP is summarised below:

- 2 bio-retention basins to be constructed one within the Holiday Park and a second within the proposed Central Park along the eastern and southern edges
- Provide for attenuation (storage area during major rainfall events) and water-quality treatment
- Basins to utilise existing sandy soils and be planted with local indigenous species
- Base level of 3.2 m (0.6 m deep) by 3.2 m wide, 250 m long designed to limit overland flow discharge to greater than a 2 year ARI event.
- 5 x overflow pipes are to be installed at the basin capacity RL during construction of the Foreshore Protection Works set at 4 m AHD.
- The installation of the proposed bio-retention/detention basin would be expected to improve current overland flow conditions that have been recognised as contributing to coastal erosion (due to unconstrained overland flow (even during minor rainfall events)) by reducing the duration of overland flow and flow velocity.

A condition of approval has been applied for a detailed stormwater management plan to be prepared and approved prior to commencement of works onsite. The plan should integrate and be based on the strategy proposed in DA16/0076 (subject to satisfaction of Council’s stormwater engineers).

PTVNS A detailed stormwater management plan be submitted and approved prior to commencement of works

External Referrals

NSW Coastal Panel

Given that the Kingscliff – Dreamtime Beach Coastal Zone Management Plan has yet to be certified and gazetted by the NSW Minister for the Environment, the NSW Coastal Panel was required to be notified under Section 129 of SEPP (Infrastructure) 2007. Subsequently the proposal was referred to the NSW Coastal Panel with comments provided on the 05 February 2016. In summary, the considerations are largely related to structural engineering of the foreshore revetment and sand nourishment. NRM have also provided recommendations for further investigation through the CZMP process to address the impact of down-drift erosion, as this is likely to have an impact on both marine and terrestrial ecology. Notwithstanding it is considered appropriate to give approval to the current project with the CZMP process to be finalised independently in the future.

Public Exhibition

The subject application was not publically advertised as this was not deemed necessary for a Part V application, consistent with Council’s standard process.
Notwithstanding, a number of submissions were received in relation to the concurrent DA16/0076 which was publically exhibited.

A review of these submissions has been undertaken and many raise concerns with the sea wall, subject to the current Part V application.

A summary of these issues is provided below. A copy of the matters raised was sent to the applicant (Council’s Design Unit) for the consideration of the proponents of this project (Council’s Recreation Services Unit and Natural Resource Management Unit, concurrently).

Council’s Design Unit advised that Tweed Coast Holiday Parks is the applicant for the DA. Council’s Natural Resource Management Unit and Recreation Services Unit is the applicant for the foreshore protection works and central park redevelopment respectively.

While the holiday park redevelopment is related to the foreshore protection works and park redevelopment in terms of location, community consultation strategies employed by Council to communicate them and potentially construction delivery, it is argued that the projects are separate in terms of underlying objectives and justification; hence the reason each project is being considered under separate statutory approval pathways. The proposed foreshore protection works and central park development have been informed by the recommendations of the Kingscliff – Dreamtime Beach Coastal Risk Management Strategy, amongst various coastal hazard studies performed on behalf of Tweed Shire Council over the past decade.

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<tr>
<th>Issue raised in submissions for DA16/0076</th>
<th>Response</th>
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<tr>
<td>There will be increased costs to maintain the increased parkland and equipment. How much of this cost will be borne by rate payers?</td>
<td>The Tweed Coast Holiday Parks return a dividend to Council which is applied to the maintenance of the coastal parks and foreshores, thereby reducing the reliance on rates. The business plan for the new holiday park anticipates an increase in profits, therefore an increase in dividend to Council for the maintenance of the Central Park.</td>
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<td>There is already ample parkland either side of the bowls club and surf club that does not get used to its full capacity. Is the central park concept necessary?</td>
<td>The proposed central park development is a major component of the Kingscliff Foreshore Master Plan adopted by Tweed Shire Council (TSC) at its meeting of the 10 July 2007. TSC further resolved to endorse the concept layout of the central park development and progress with detailed design at its meeting of the 21 June 2011. These matters aside, in recognition of the coastal erosion hazard present at Kingscliff Beach, development of a central park in this location would:  * Allow improved public management</td>
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<td>of the land during predicted coastal inundation events</td>
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<td>• Improve and maintain public access to and along the coastal foreshore, including during times of coastal erosion when beach access is restricted</td>
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<td>• Overall, provide an additional 100m of unencumbered beach access (currently unavailable due to the holiday park) and also a cycleway and stair access to another 400m of beach where currently no public access exists</td>
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<td>• Increase sight lines and vistas from the Kingscliff CBD to the Pacific Ocean</td>
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<td>• Provide additional pedestrian and cyclist access between the Kingscliff CBD and Kingscliff foreshore and beach zone.</td>
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The construction of the permanent seawall in front of the proposed redeveloped Kingscliff Beach Holiday Park encroaches too far east towards the ocean which will result in the following:

- A loss of natural beach area resulting in an unacceptable impact on the natural scenic quality of the beach;
- A loss of natural beach that is not compatible with the land-based and water-based coastal activities that the public visit Kingscliff to enjoy; and
- A significant impact on the natural scenic quality and visual amenity of the Coastal Zone and beach foreshore due to the scale, size and overall built form of the proposed seawall design.

At its meeting of the 16 July 2015, TSC resolved to:

- Adopt the recommendations of the Kingscliff Coastal Risk Management Study as the preferred option for management of coastal risk hazard for the Kingscliff Beach foreshore.
- Develop the comprehensive Kingscliff – Dreamtime Beach Coastal Zone Management Plan in accordance with this adopted strategy.

A flexible approach is recommended under the adopted strategy providing a terminal protection option in the short term until 2050, followed by reconsideration of coastal risk management options including planned retreat post 2050. In short, TSC adopted the construction of a seawall as the preferred method of foreshore protection in this location.

It is recognised that the proposed seawall could result in the loss of the
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<td>natural beach during coastal erosion events. As a result, the draft Kingscliff – Dreamtime Beach Coastal Zone Management Plan includes measures to reinstate the beach zone through sand nourishment campaigns. The concerns regarding the impact of the seawalls on scenic quality and visual amenity are considered to be overcome by the range of predicted positive impacts the seawalls will provide including the protection of assets and maintenance of a coastal foreshore adjacent the Kingscliff CBD.</td>
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<tr>
<td>The current concept design and location of the permanent seawall and the redeveloped Holiday Park behind the new seawall does not comply with the Tweed Local Environmental Plan (LEP) 2014, Clause 5.5 (2)(b), (c) and (d), and Clause 5.5 (3)(a).</td>
<td>Environmental impact assessment of the proposed foreshore protection works has been prepared in accordance with the State Environmental Planning Policy (Infrastructure) 2007 and Part 5 of the NSW Environmental Planning and Assessment Act 1979. Consequently, the proposal is not required to specifically address the Tweed LEP 2014. In any case a key objective of the project is the maintenance of public access to and along the foreshore, particularly during times of predicted coastal erosion which prevent public access to the beach zone. As such, the proposal is considered to satisfy the relevant subclauses of clause 5.5 of the LEP. The proposed redevelopment of the holiday park does not form part of the project and is being considered separately under Part 4 of the EP&amp;A Act 1979.</td>
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<td>The proposed redeveloped Holiday Park also does not comply with the overall objective of allowing development within the Coastal Zone, which is 'to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development'. Also the proposed redeveloped Holiday Park does not comply with the principles in the</td>
<td>The proposed redevelopment of the holiday park does not form part of the project and is being considered separately under Part 4 of the EP&amp;A Act 1979. It is recommended that the proposed foreshore protection works and central park development would: • Maintain opportunities for universal access to and along the coastal</td>
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<td>Issue raised in submissions for DA16/0076</td>
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<td>NSW Coastal Policy, in particular the proposal (by the new seawall encroaching too far into the natural beach) does not:</td>
<td>foreshore, including during times when coastal erosion events prevent public access to the beach</td>
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<tr>
<td>• Maximise opportunities for pedestrian access to and along the coastal foreshore/beach;</td>
<td>• Improve amenity and scenic quality through the provision of public open space</td>
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<td>• Protect amenity and scenic quality;</td>
<td>• Manage the beach environment and its associated amenity, in light of coastal hazard risks to Kingscliff Beach</td>
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<tr>
<td>• Protect beach environments and beach amenity; and</td>
<td>• In terms of the proposed seawalls, be designed to an acceptable size and scale to combat coastal processes which threaten maintenance of the coastal foreshore.</td>
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<td>• Provide a new seawall that has an appropriate bulk, size and scale due to worsening the protection of the natural Coastal Zone, and not improving the natural scenic quality of the surrounding beach area.</td>
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Given that Kingscliff Beach and the foreshore are Crown Land, it must at all costs be given priority for the public to utilise and enjoy for natural beach and coastal activities rather than utilised for the protection of a commercially run Holiday Park. The redeveloped Holiday Park and new seaway concept design must be revised to maximise the width of useable natural beach in front of the redeveloped Holiday Park. The redesign should adopt the following concepts:

- The toe of the new seawall should not extend past the existing rocks in front of the existing Kingscliff Beach Holiday Park. The width required for the protection structure should be accommodated within the redeveloped Holiday Park (i.e. maximise the Crown Land publicly accessible beach front and minimise the commercial use of Coastal Zone Crown Land behind the new sea wall).

As noted above, the proposed redevelopment of the holiday park does not form part of the project and is being considered separately under Part 4 of the EP&A Act 1979. It is nevertheless noted that the existing and proposed redeveloped holiday park occurs on land forming Crown Land reserve no R1001014 for the purpose of a caravan park. Reserve no R1001014 forms part of Crown Land reserve no R1001008.

In relation to concerns regarding the location of the proposed seawall between the existing bowls club and surf club:

- The design has been developed to address the range of coastal processes and associated hazards including sea level rise, the probability and severity of storm events, wave run up and velocity, amongst other considerations
- The shifting of the proposed seawall further landward would have the effect of misalignment with existing protections structures to the north and south of the proposal.
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<td>wall);</td>
<td>and as such could undermine those structures</td>
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<tr>
<td>• The coastal foreshore protection of the redeveloped Holiday Park should adopt a more natural coastal foreshore form (i.e. re-establish the original coastal foreshore sand dune, similar to the north of the Kingscliff Bowls Club) and be planted with low to moderate height coastal native species; and</td>
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<tr>
<td>• The voids in the new smaller seawall should be planted with low height native coastal species.</td>
<td>• The scale and magnitude of predicted coastal hazard events rules out the possibility of a natural sand dune foreshore system, and associated native vegetation planting, in order to meet the objective of the proposed foreshore protection works i.e. protection of assets and maintenance of public access.</td>
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</table>

The redevelopment of the Holiday Park represents 'a once in a life time opportunity' for Council to improve the Coastal Zone within this part of Kingscliff and return more of the Coastal Zone Crown Land for the wider public to enjoy, including present and future generations.

The proposed redevelopment of the holiday park does not form part of the project and is being considered separately under Part 4 of the EP&A Act 1979.

However, it is noted that the redevelopment of the central park area will improve public access to the coastal foreshore.

Legislative Framework

The foreshore management works and park are considered to be development permitted without consent pursuant to Divisions 12 (Parks and other public reserves) and 25 (Waterway or foreshore management activities) of the State Environmental Planning Policy (Infrastructure) 2007.

The amenities block is permitted as development without consent under Clause 65 of the SEPP.

Under Clause 5(2) (Notes) of the State Environmental Planning Policy (Infrastructure) 2007 "Development That Does Not Require Consent" under Part IV of the EP&A Act 1979 and is not a project to which Part 3A of the EP&A Act applies or exempt development, will be subject to the environmental assessment and approval requirements of Part V of the EP&A Act". Subsequently, the submitted REF has been assessed under Part V of the EP&A Act with Tweed Shire Council's Development Assessment Unit being the consent authority.

It is noted that the proposal triggers the requirement for a Part 7 permit under the Fisheries Management Act 1994 and a groundwater licence under the Water Act 1912.
Subsequently the proposal has been assessed under Part 5 of the EP&A Act, with Tweed Shire Council's Development Assessment Unit being the consent authority.

In undertaking the Part 5 assessment, Council must take into account a range of matters prescribed in Clause 228(2) of the Environmental Planning & Assessment Regulation 2000 in its decision to proceed with an ‘activity’ which does not require development consent.

The matters raised under Clause 228(2) are addressed below.

Rating of Impact (for inclusion in Table below): 1 = Beneficial/Nil 2 = Minor 3 = Significant

<table>
<thead>
<tr>
<th>Factors taken into consideration</th>
<th>Rating of Impact</th>
<th>Comments (if applicable)</th>
</tr>
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<tbody>
<tr>
<td>a) Any environmental impact on a community</td>
<td>1</td>
<td>The proposal is not considered to result in any environmental impact on a community due to its location in an area which does not display any significant community.</td>
</tr>
<tr>
<td>b) Any transformation of a locality</td>
<td>1</td>
<td>The proposed development does not result in any transformation of a locality given the nature and scale of the development.</td>
</tr>
<tr>
<td>c) Any environmental impact on the ecosystems of the locality</td>
<td>1</td>
<td>The proposed development would not result in impacts upon the ecosystems of the locality given its scale and overall positive environmental benefit associated with the completed proposal.</td>
</tr>
<tr>
<td>d) Any reduction of the aesthetic, recreational, scientific, or other environmental quality or value of a locality</td>
<td>1</td>
<td>The proposed development is not considered to result in any significant reduction of the aesthetic, recreational, scientific, or other environmental quality or value of a locality. There may be some short term negative impacts associated with the construction stage. However, in the long term, there are considered to be positive impacts.</td>
</tr>
<tr>
<td>e) Any effect on the locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations</td>
<td>1</td>
<td>The proposed development is not considered to have any effect in this regard as identified above under the impacts section of this report.</td>
</tr>
<tr>
<td>f) Any impact on the habitat of protected fauna (within the meaning of the National Parks and Wildlife Act 1974)</td>
<td>1</td>
<td>The proposed development is not considered to have any impacts on the habitat of protected fauna. As outlined elsewhere in this report, works are to be undertaken on either previously developed land or where there is no protected fauna located (as assessed within the REF).</td>
</tr>
<tr>
<td>g) Any endangering of any species of animal,</td>
<td>1</td>
<td>The proposal is not considered to result in any endangering of species in proximity to the</td>
</tr>
<tr>
<td>Factors taken into consideration</td>
<td>Rating of Impact</td>
<td>Comments (if applicable)</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>plant or other form of life, whether living on land, in water or in the air</td>
<td>proposed development. Provisions have been made in the event that any threatened fauna species are identified within the proposal footprint.</td>
<td></td>
</tr>
<tr>
<td>h) Any long term effects on the environment</td>
<td>1</td>
<td>The proposal is not considered to result in any long term effects on the environment. The development will result in the loss of minimal vegetation.</td>
</tr>
<tr>
<td>i) Any degradation of the quality of the environment</td>
<td>1</td>
<td>Minimal impact on the environment is envisioned given the scale of the development. As such the proposal is not considered to constitute a degradation of the quality of the environment.</td>
</tr>
<tr>
<td>j) Any risk to the safety of the environment</td>
<td>1</td>
<td>There are some minor risks to the safety of the environment associated with the construction phase. A range of risk management measures would be used, including adherence to TSC Safe Operating Procedures.</td>
</tr>
<tr>
<td>k) Any reduction in the range of beneficial uses of the environment</td>
<td>1</td>
<td>The proposed development is not considered to reduce the range of beneficial uses to the environment and infact will increase the range of beneficial uses by providing additional revetment along the ocean and a new public recreation space.</td>
</tr>
<tr>
<td>l) Any pollution of the environment</td>
<td>1</td>
<td>Construction management measures (i.e. erosion and sediment control, noise and vibration, air quality management, hazard management and waste management) would ensure the risk of pollution to the environment is minimised during construction. Following construction, the proposed works are not considered to result in any additional pollution within the environment.</td>
</tr>
<tr>
<td>m) Any environmental problems associated with the disposal of waste</td>
<td>1</td>
<td>Environmental safeguards/mitigation measures have been provided with respect to waste minimisation and management. These include provisions to manage waste materials in accordance with the Tweed Shire Council waste management field guide and by ensuring waste material is removed from the site and disposed of in appropriate bins or Council's waste recovery facility.</td>
</tr>
<tr>
<td>n) Any increase demands on resources (natural or otherwise) that are, or are likely to become in</td>
<td>1</td>
<td>The proposed development will require the revetment material to be imported to the site, however this is not considered to be a resource which is in short supply.</td>
</tr>
<tr>
<td>Factors taken into consideration</td>
<td>Rating of Impact</td>
<td>Comments (if applicable)</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>short supply</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o) Any cumulative environmental effect with other existing or likely future activities</td>
<td>1</td>
<td>The proposal is not likely to result in a significant negative cumulative environmental effect with other existing or likely future activities.</td>
</tr>
<tr>
<td>p) Any impact on coastal processes and coastal hazards, including those under projected climate change conditions</td>
<td>1</td>
<td>The proposed works are not likely to impact negatively on coastal processes or hazards, having regard to the overall purpose of the application to deal with beach erosion by stabilising the shoreline.</td>
</tr>
</tbody>
</table>

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A ACT)**

Section 111(2) prescribes that a determining authority shall consider the effect of an activity on:

- **a. any conservation agreement entered into under the National Parks and Wildlife Act 1974 and applying to the whole or part of the land to which the activity relates;**
- **b. any plan of management adopted under that Act for the conservation area to which the agreement relates;**
- **c. any joint management agreement entered into under the Threatened Species Conservation Act 1995.**
- **d. any biobanking agreement entered into under Part 7A of the Threatened Species Conservation Act 1995 that applies to the whole or part of the land to which the activity relates.**

A conservation agreement or plan of management (*National Parks and Wildlife Act 1974*) does not apply to the land on which the activity would be undertaken. There is no joint management agreement pursuant to the *Threatened Species Conservation Act 1995*. Furthermore no biobanking agreement applies to the development area in question.

Section 111(3) prescribes that a determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on.

There is no designated wilderness area, pursuant to the Wilderness Act 1987, in the locality of the proposed seawall and park development.

Section 111(4) prescribes that a determining authority must consider the effect of an activity on:

- **a. critical habitat; and**

  The proposed activity is not considered to constitute any effect on a critical habitat.

- **b. in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats; and**
This development is not considered to have any effect on threatened species, populations, ecological communities and their habitats.

c. any other protected fauna or protected native plants within the meaning of the National Parks and Wildlife Act 1974.

This matter has been considered in detail and discussed above. No significant impact is expected to arise having regard to the nature of the development.

Having regard to the foregoing matters contained in Clause 228 of the Environmental Planning and Assessment Regulations 2000, it is considered that the proposal will have only a minor environmental impact. It is agreed that a formal Environmental Impact Statement is not required.

OPTIONS:

1. Approve the Review of Environmental Factors as per the recommendation; or
2. Determine that an Environmental Impact Statement and/or Species Impact Statement is required.

Planning officers recommend Option 1.

CONCLUSION:

Subject to the recommended conditions of approval, it is considered that the submitted Review of Environmental Factors considers all relevant matters and the proposed activity is suitable for approval. It is considered that the Clause 228 matters are satisfied and an Environmental Impact Statement or Species Impact Statement is not required.

COUNCIL IMPLICATIONS:

a. Policy:
Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:
Not Applicable

c. Legal:
Not Applicable.

d. Communication/Engagement:
Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
6  [PR-PC] Application DA15/0532.01 for an Amendment to Development Consent DA15/0532 for Use of Part of Tavern Floor Area as a Retail Shop at Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah

SUBMITTED BY:  Development Assessment and Compliance

**Civic Leadership**

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

1  Civic Leadership
1.2  Improve decision making by engaging stakeholders and taking into account community input
1.2.1  Council will be underpinned by good governance and transparency in its decision making process

**SUMMARY OF REPORT:**

Council is in receipt of a Section 96 application for proposed change of use of part of the existing tavern floor to a retail shop at the corner of Commercial Road and Proudfoots Lane in Murwillumbah.

There is no proposed change to the approved footprint of the development. The applicant is seeking to modify the proposed development as follows:

- The modification of Condition 6, which sets out the timeframe for the submission of a separate development application for a number of matters;
- The deletion of Condition 7, which relates to surfacing and line marking of the rear car park area;
- The deletion of Condition 8, which requires the parking area to be open to the public at all times;
- The deletion of Condition 10, which relates to the occupation of the building; and
- The modification of Condition 14 in terms of the approved hours of operation.

The application did not require public notification.

Having undertaken a thorough assessment against all relevant statutory requirements, the proposal is recommended for conditional approval, noting that not all of the proposed modifications have been supported.

This application is being reported to Council for determination given the extent of the proposed variation of conditions, and their implications for the Murwillumbah Main Street Heritage Conservation Area.

**RECOMMENDATION:**

That DA15/0532.01 for an amendment to Development Consent DA15/0532 for use of part of tavern floor area as a retail shop at Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah be approved and the consent be amended as follows:
1. Delete Condition No. 6 and replace it with Condition No. 6A which reads as follows:

6A. A development application must be submitted to Council for approval on or before 11 September 2016 along with payment of the appropriate fee for signage, the replacement of an awning along the building frontage and the existing doors/gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.

2. Delete Condition No. 7 and replace it with Condition No. 7A which reads as follows:

7A. The developer shall construct the parking area at the rear of the site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council on or before 11 June 2016 and prior to any construction of the car park commencing for determination by the General Manager or his delegate.

The car park design shall identify and consider any and all rights of carriageway/restrictions as to user which burden the subject Lot to provide rear vehicular access to any adjoining Lot. Access must be maintained at all times through the subject site to any allotment to which it lawfully exists by way of these instruments.

The parking area must be constructed as per the approved plan on or before 11 September 2016.

3. Delete Condition No. 14 and replace it with Condition No. 14A which reads as follows:

14A. Hours of operation of the business are restricted to the following hours:

* 7.00am to 9.00pm - Mondays to Saturdays
* 7.00am to 7.00pm – Sundays and Public Holidays
* All deliveries and pickups relating to the business are to occur within the approved hours
REPORT:

Applicant: Maddison Bea Pty Ltd
Owner: Maddison Bea Pty Ltd
Location: Lot 2 Section 10 DP 2087 No. 9 Commercial Road, Murwillumbah
Zoning: B3 – Commercial Core

Background:

The subject site is located on the corner of Commercial Road and Proudfoots Lane, Murwillumbah. The total area of the site is 1138m². The site contains the existing Australian Hotel building and a partly sealed / gravel (but not line marked) car park area at the rear.

Council granted approval on 11 September 2015 for the change of use of part of the existing hotel to allow part of tavern floor to be used as a retail shop. The approved shop, having a total area of approximately 58m² is being used as a homeware shop, and has been fitted out.

The site is within the Murwillumbah Main Street Heritage Conservation Area. The development consent requires any proposed signage, awnings and security doors/gates to be addressed under a separate development application, addressing the heritage conservation provisions.

PROPOSED DEVELOPMENT:

The proposed modifications to Development Consent DA15/0532, as submitted by the applicant include:

- The modification of Condition 6, which sets out the timeframe for the submission of a separate development application for a number of matters;
- The deletion of Condition 7, which relates to surfacing and line marking of the rear car park area;
- The deletion of Condition 8, which requires the parking area to be open to the public at all times;
- The deletion of Condition 10, which relates to the occupation of the building; and
- The modification of Condition 14 in terms of the approved hours of operation.

Condition 6 – Separate Development Application

During the assessment of the original application, it became apparent that the determination of the proposed development would be delayed by the additional information required by Council in terms of a number of issues (i.e. awning, signage and security doors / gates).

Council required a detailed assessment of these matters, particularly in relation to how they addressed the Murwillumbah Main Street Heritage Conservation Area provisions. In the knowledge that the applicants had indicated their intention to open the shop to the public as soon as possible (i.e. the premises was already occupied), Council officers acted on the advice of the applicants to proceed with the determination of the shop use and require the other outstanding heritage matters to be addressed by way of a separate application.
As such, Condition 6 was applied as follows:

6. **Within 6 months of the date of this consent, the applicant must submit a development application to Council for approval and pay the appropriate fee for signage, the replacement of an awning along the building frontage and the existing metal gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.**

The applicant’s submission notes the following:

“Consent condition 6 in regards to the security doors referred to as metal gates, these security doors were discussed with council in February 2014.

The council agreed the security doors were exempt development and were fitted late February 2014 therefore should be removed as a condition on the DA Consent DA15/0532

The matter of signage and awning will be addressed with a separate DA. We request the timing of this to be deferred for a further six months”.

**Comment**

An assessment of the Exempt and Complying SEPP is provided later in this report, detailing Council’s position that the proposed security doors are not exempt development. As such, the applicant’s request to modify Condition 6 in terms of the security doors / gates is **not supported**. Development consent is required for the doors/gates and such application will need to be submitted to Council as per the provisions of Condition 6.

The applicant’s request for a further six months’ time to enable them to lodge a separate development application is supported. The original application was approved on 11 September 2015, with Condition 6 requiring the submission of a separate development application for the doors, signage and awning by 11 March 2016. This time frame has already been surpassed, with no application submitted to Council.

The S96 application was lodged with Council on 15 March 2016. An additional six months from this date pushes the lodgement date for a new application to September 2016. The alternative to accepting the applicant’s request is to undertake compliance action now, given that the original six month time frame has gone by. However, it is considered reasonable to extend the timeframe for the lodgement of the separate development application to 11 September 2016. It is considered appropriate to detail the exact date for such timeframes, so as to provide clarity to all parties.

The following amendment to Condition 6 is recommended (changes shown in bold):

6A. **A development application must be submitted to Council for approval on or before 11 September 2016 along with payment of the appropriate fee for signage, the replacement of an awning along the building frontage and the existing doors / gates on the building facade. This application must consider the location of the site within the Murwillumbah Main Street Heritage Conservation Area and provide an assessment of the proposed works against the relevant Clauses in Tweed Local Environmental Plan 2014 and Development Control Plan B22 - Murwillumbah Town Centre.**
Conditions 7 and 8 – Rear Car Park

A car parking assessment was undertaken during the assessment of the original application, whereby it was identified that an existing parking credit existed from the previous use (hotel). No additional car parking provisions were required in relation to DA15/0532.

However, the state of the rear partly sealed/gravel car parking area (see Figures 1 and 2 above) was such that it was considered appropriate to require the area to be resurfaced and line marked. Condition 7 was applied as follows:

7. The developer shall construct the parking area at the rear of the site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council within 90 days of the date of this consent and prior to any construction of the car park commencing for determination by the General Manager or his delegate.

The car park design shall identify and consider any and all rights of carriageway/restrictions as to user which burden the subject Lot to provide rear vehicular access to any adjoining Lot. Access must be maintained at all times through the subject site to any allotment to which it lawfully exists by way of these instruments.

The parking area must be constructed as per the approved plan within 6 months of the date of this consent.

In light of the parking area being available to customers of the proposed shop, Condition 8 was applied as follows:

8. The parking area shall be open to the public at all times.

With regard to Conditions 7 and 8, the applicant’s submission notes the following:

“The T4/1442 already has planning permission for Tavern, shops and offices doc 000065

The previous use of the site was a timber hotel that occupied the whole site from Wharf street lot1 section 10 2087 to Proudfoot lane along Commercial rd., lot 2 section 10 2087

Figures 1 and 2: Photo & aerial imagery of rear car parking area
This building or hotel had parking allocation for a larger hotel and 28 accommodation rooms without a car park at the rear.

Therefore started with 28 rooms and in excess of 400 patrons with a total area of around 1000m², should be more than sufficient parking allocations or credits to accommodate T4/1442.

Also:
A. Being within the parking concession area.
DCP-A2-Murwillumbah. CBD Parking Concession Area
B. Being a lessor use, therefore a reduction in parking.
AS Standard 2890
Pub/Hotel = 1 per 15m² area changed to 150m² = 10 DA15/0532
Shop = 1 per 40m² area changed to 150m² = 4 DA15/0532
A reduction of 60%

C. Exercising parking credits applied to the site.
Site Credits – DCP-A2

Site parking credits are available when there is a proposed change of use or redevelopment of a site. The credit is deemed to be consistent with that approved and provided under the previous approvals for that site.

Older sites that may not have a development consent history in relation to parking provisions are deemed to have parking credits based on the expected parking that would have been provided for that land use under this Code unless deemed to be contrary to the aims and principles of the section.

D. Cash contribution was given to the council in lieu of parking requirements for the whole site as stated in the T4/1442
E. The T4/1442 site drawing 1390 2a shows a car park for 7 spaces, Unfortunately this was directly over two easements and there for, could not be accepted by council so, the cash contribution was offered, on the 23rd day of February 1983, and was accepted by council on the 16th day of March 1983, for the whole area of the site called Australian Hotel site, covered by T4/1442. Document numbers 000082, 000083

Based on that assessment the site has adequate parking requirements, credits to cater for DA15/0532

The above object raises some important issues that Councillor’s should have considered when determining the Development Application.

From a planning perspective the proposed development:

- Is permissible with consent in the B3 Commercial Core Zone;
- Continues to satisfy the applicable zone objectives;
- Complies with the required parking provisions;

Where the required number of customer car parking spaces cannot be met and Council’s Section 94 Contribution Plan No. 23 – Offsite Parking applies to the unsupplied facilities or spaces.
Unless stated otherwise, the provisions of the current version of the following standards are adopted:

Standards Association of Australia:
AS 2890.01: “Car Parking Facilities”

Given this information Condition 7 and 8 should be removed”.

Comment

The applicant’s submission is not supported. The previous use of the tavern was taken into consideration when assessing parking requirements in the original assessment. The credits available to the site outweigh the parking requirements applicable to the retail use of the shop. As such, no additional parking requirements were applied to the consent for DA15/0532.

Condition 7 relates to the upgrade of the existing car parking area at the rear of the tavern. The carpark (in association with the Tavern component) was conditioned as part of the T4/1442 approval. T4/1442 required 7 car spaces and the payment of $30,000 in car parking contributions. No additional parking spaces were required as part of the change of use proposal under DA15/0532.

Given that no additional car parking spaces are provided under DA15/0532, the applicant’s submission with regard to credits and parking concessions is considered to be invalid.

The applicant’s statement that car parking contributions have been paid in lieu of parking requirements for the whole site is considered to be incorrect. Council’s records indicate that an offer of $10,000 was made to Council in relation to the use of the shops associated with T4/1442. The old consent appeared to be staged, with the Tavern being constructed at a later date than the shops, once a liquor licence was issued. This allowed the use of the tavern site for the purposes of parking until the tavern was under construction. Whilst Council did accept the payment of $10,000 this was only in relation to the shops and offices associated with T4/1442.

The subject application relates to the change of use of part of the Tavern, which was not associated with the $10,000 cash payment. Such payment was not in lieu of the requirement for seven car spaces at the rear of the tavern. The parking contribution was in addition to the requirements for 7 spaces at the rear of the tavern. Therefore, it is considered that the car parking requirements of Condition 7 of DA15/0532 remain valid.

The existing Rights of Carriageway (to provide access to the rear of adjoining commercial tenancies) have been recognised and are referenced within the wording of Condition 7. The applicant is simply required to provide Council with a layout of proposed parking at the rear of the site. The easements must be taken into consideration and it may be that the resulting car park design is in a completely different configuration, with possibly less spaces than that required by T4/1442. Once an acceptable car parking design has been approved by Council, the applicant is required to provide a compliant car park surface (i.e. bitumen) to the existing partly sealed / gravel area and line mark the approved spaces, as per the requirements of Council’s specifications.

It should be noted that Council has informally provided the applicant with an extension of time to provide Council with a car park layout. Condition 7 requires the plan to be submitted within 90 days of the consent (11 December 2015) and the approved works to be undertaken within six months of the consent (11 March 2016). Council’s letter dated 8 February 2016 provided the applicant with an extension of 90 days for the submission of the car parking plan (to avoid compliance action being taken), noting that the works would also have to be undertaken by this time. Council’s letter also highlighted that an alternative
would be to seek an amendment to the timeframes by way of a S96 application. It should be noted that rather than seek an extension of time for the lodgement of such plan and the undertaking of works, the applicant has requested that Condition 7 be deleted. Such request is not supported.

Given that the original and extended timeframe for lodgement of the car parking plan has been surpassed, without any documentation being submitted by the applicant, Council is within their rights to commence compliance action. An alternative is to extend the timeframe further, in an effort to regularise the rear parking area.

If the recommended amendments to Condition 6 are accepted, in terms of achieving an outcome for an existing non-compliance, it is considered reasonable extend the timeframe for the lodgement of the car parking plan to 11 June 2016 (9 months, as opposed to 90 days) and works to be undertaken by 11 September 2016 (12 months). This is considered to be a very generous extension for the applicant, providing more than enough time to produce an acceptable car parking plan for approval and to undertake such works. The nine months’ timeframe is considered appropriate, given that this matter would not be determined by Council’s Planning Committee until 5 May, leaving one month for the applicant to prepare an acceptable plan for lodgement to Council. To avoid confusion in terms of lodgements dates associated with the original consent and this S96 application, it is considered appropriate to detail the exact date for such timeframes, so as to provide clarity to all parties.

The following amendment to Condition 7 is recommended (changes shown in bold):

7A. The developer shall construct the parking area at the rear of the site including parking for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to Tweed Shire Council on or before 11 June 2016 and prior to any construction of the car park commencing for determination by the General Manager or his delegate.

The car park design shall identify and consider any and all rights of carriageway/restrictions as to user which burden the subject Lot to provide rear vehicular access to any adjoining Lot. Access must be maintained at all times through the subject site to any allotment to which it lawfully exists by way of these instruments.

The parking area must be constructed as per the approved plan on or before 11 September 2016.

With regard to Condition 8 (car park being open to the public), the applicant’s request for deletion of this condition is not supported. No justification has been provided to demonstrate why such an amendment should be favourably considered by Council. The use of the rear parking area has always been associated with the use of the Tavern. Although the proposed change of use of part of the Tavern to a shop does not trigger any additional parking requirements (as detailed above), the change of use does not remove the use of the parking area for customers.

As such Condition 8 is considered to be appropriate and it is recommended that there be no deletion of Condition 8.
Condition 10 – Occupation of Shop

Consistent with any other change of use application, the proposed development was forwarded to Council’s Building Unit for comment during the original assessment. Along with appropriate Building Code of Australia requirements, a standard condition (Condition 10) was applied requiring an occupation certificate to be issued, as follows:

10. 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).

The applicant has noted the following:

“Consent condition 10 does not apply to the DA15/0532”.

Comment

The applicant has not provided any justification for the proposed deletion of Condition 10. The condition is considered to be appropriate and consistent with any other similar change of use application, which requires an occupation certificate to be issued prior to the commencement of the new use. The applicant’s request for deletion is not supported.

As such Condition 10 is considered to be appropriate and it is recommended that there be no deletion of Condition 10.

Condition 14 – Hours of Operation

Based on information provided within the applicant’s original Statement of Environmental Effects, the following approved trading hours was applied to the consent:

14. Hours of operation of the business are restricted to the following hours:
   * 9.00am to 5.00pm - Mondays to Fridays
   * 9.00am to 12.00pm - Saturdays
   * No operations are to be carried out on Sundays or Public Holidays
   * All deliveries and pickups relating to the business are to occur within the approved hours

The applicant submitted the following in relation to Condition 14:

“Consent condition 14 is requested to be changed to 7am to 9pm Monday through to Saturday and 7am to 7pm Sunday including public holidays”.

Comment

Council’s Environmental Health Unit has reviewed the proposed amendments to the approved hours of operation, with no objections. As such, the following amendments to Condition 14 are recommended for approval (changes shown in bold):

14A. Hours of operation of the business are restricted to the following hours:
   * 7.00am to 9.00pm - Mondays to Saturdays
   * 7.00am to 7.00pm – Sundays and Public Holidays
   * All deliveries and pickups relating to the business are to occur within the approved hours
APPROVED PLAN:
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 2014_

Clause 1.2 – Aims of the Plan

The proposed amendments are generally considered to be consistent with the aims of the Plan.

Clause 2.3 – Zone objectives and Land use table

The proposed amendments are considered to be consistent with the B3 zone objectives. Commercial premises are permitted uses within the B3 zone.

Clause 4.3 - Height of Buildings

The proposed amendments do not propose any change to the height of the existing building.

Clause 4.4 – Floor Space Ratio

The proposed amendments do not propose any change to the footprint of the Shop. As such, Floor Space Ratio provisions are not applicable.

Clause 5.10 - Heritage Conservation

As noted above, the subject site is located within the Murwillumbah Main Street Heritage Conservation Area. Whilst the internal fitout of the shop does not trigger this Clause, the proposed signage, awning and security gates on the external façade of the building requires assessment against Clause 5.10. As noted previously, the applicant will be addressing these issues under separate development application (as required by existing Condition 6).

Clause 7.3 – Flood Planning

Flood planning matters were addressed during the original assessment. The proposed modifications do not relate to flooding matters.

State Environmental Planning Policies

_SEPP No. 64 – Advertising and Signage_

As noted previously, signage for the shop will be proposed under separate development application. The requirements of SEPP 64 will be addressed at such time.
As noted above, the applicant is requesting an amendment to Condition 6 with regard to the security doors / gates, stating that the fitting of these doors was exempt development, not requiring consent.

The provisions of the Codes SEPP state (emphasis added):

An external alteration to, or the repair or replacement of, an existing shop front or awning, or the construction of a new awning, on a building that is used for any purpose other than for the purpose of a dwelling house is development specified for this code if it is not carried out in a heritage conservation area or a draft heritage conservation area.

The draft LEP 2012 incorporated heritage conservation area provisions, including the Murwillumbah Main Street Conservation Area. The draft LEP 2012 was exhibited from 14 November 2012 to 18 January 2013. As such, the applicant would have been unable to utilise the exempt provisions of the Codes SEPP in February 2014.

Therefore, the fitting of the security doors on the external façade of the existing building requires development consent. The provisions of Condition 6 remain applicable.

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

There are no draft EPI’s applicable to the proposed development.

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

Tweed Development Control Plan

A2 - Site Access and Parking Code

The original assessment determined that no additional car parking spaces for the proposed change of use were required, given the existing site credit. Car park surface upgrade and line marking was conditioned (Condition 7). The proposed deletion of Condition 7 is not supported. An extension of the timeframe for submission of the car park layout and works has been recommended.

A4 – Advertising Signs Code

As noted previously, it was considered appropriate (as part of the original assessment) to require signage as part of a separate development application (Condition 6), which adequately addresses all signage requirements and heritage provisions. The proposed amendments request an extension of time for the lodgement of such application. This component of the S96 application is supported.

B22 – Murwillumbah Town Centre

Issues raised with the development (in terms of DCP B22) were addressed in the original assessment. The provisions of DCP B22 will need to be addressed when the separate application for signage, awning and security doors is submitted to Council.
(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(1)(a)(ii) Government Coastal Policy

The Coastal Policy does not apply to the subject site.

Clause 92(1)(b) Applications for demolition

No demolition is being proposed as part of this S96 application.

Clause 93 Fire Safety Considerations

Clause 93 Fire Safety considerations were addressed during the original assessment, with appropriate conditions of consent applied.

Clause 94 Buildings to be upgraded

Clause 94 Building Upgrading considerations were addressed during the original assessment, with appropriate conditions of consent applied.

(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 located on land to which this plan applies.

Tweed Coast Estuaries Management Plan 2004

The site is not located on land to which this plan applies.

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

The site is not located on land to which this plan applies.

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

The assessment of the original application did not identify any specific impacts as a result of the proposed change of use, subject to conditions of consent. The proposed modifications that are being supported (extension of timeframes and hours of operation) are not considered to result in impact upon the surrounding locality.

(c) Suitability of the site for the development

The original assessment considered that the subject site was suitable for the proposed change of use of part of a tavern to a retail shop. The proposed modifications being supported are not considered to change the suitability of the site for the proposed development.
(d) **Any submissions made in accordance with the Act or Regulations**

The proposed amendments did not require public notification. Nil submissions were received.

(e) **Public interest**

The proposed modifications to Development Consent DA15/0532 which are being supported are considered to be acceptable in terms of public interest. The proposed modifications are not considered to result in a significant negative impact upon the surrounding area, subject to the recommended conditions of consent.

**CONSIDERATIONS UNDER SECTION 96 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

“(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require and

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

**Likely Environmental Impact**

An extensive assessment has been undertaken with regard to the proposed modifications to the approved change of use development, as noted in the assessment above.

In conclusion, the proposed amendments that have been supported are not considered to result in any significant environmental impact.

**Substantially the Same Development**

The proposed modifications result in essentially the same development as originally approved, with the proposed amendments considered unlikely to result in any significant changes to the external appearance of the originally approved development. There are no new uses proposed and no additional parcels of land. As such, the proposed modifications are considered to be substantially the same development as that originally approved.

**Consideration of Submissions**

The application did not require public notification.

**OPTIONS:**

1. Approve the proposed modifications, subject to the recommended conditions of consent; or
2. Refuse the proposed modifications and undertake compliance action; or
3. Approve the proposed modifications as proposed by the applicant.

Council officers recommend Option 1.

CONCLUSION:

This assessment has had regard for all of the matters raised by the applicant, and has taken into consideration what conditions of consent Council has applied to other commercial activities. As a result, the proposed modifications which are being supported are considered to be acceptable and it is considered that the proposal warrants approval, subject to the recommended amendments to Development Consent DA15/0532.

COUNCIL IMPLICATIONS:

a. Policy:
   Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:
   Not Applicable.

c. Legal:
   Not Applicable.

d. Communication/Engagement:
   Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
7 [PR-PC] Planning Proposal PP15/0004 Water Extraction and Bottling Facility on Land Zoned RU2 Rural Landscape

SUBMITTED BY: Strategic Planning and Urban Design

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Civic Leadership

**LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:**

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<thead>
<tr>
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<th>Civic Leadership</th>
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<tr>
<td>1.5</td>
<td>Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land</td>
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<tr>
<td>1.5.2</td>
<td>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</td>
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**SUMMARY OF REPORT:**

Planning Proposal PP15/0004 originated from a request by the Mount Warning Springwater Company who sought to make permissible with consent on their land the expansion of their current water-bottling facility.

The request brought to light an anomalous shire-wide change that occurred to the permissibility of water extraction and bottling facilities on rural lands, arising from the making of *Tweed Local Environmental Plan 2014* (LEP). This was discussed in the earlier 10 December 2015 and 18 February 2016 Planning Committee reports, particularly they clarified this land-use became prohibited as a consequence of the Department of Planning and Environment changing the land-use definitions as part of the standardised LEP template, and that had the effect of no longer capturing the ‘water extraction and bottling facility’ land-use.

The planning proposal has since itself been amended to reinstate this land-use as permissible with consent, albeit with its land-application being on more limited terms.

In its initial version, the planning proposal sought to permit water extraction and bottling on land zoned RU1 Primary Production and RU2 Rural Landscape. Following the initial public exhibition (7 October – 4 November 2015) and subsequent Council resolution of 10 December 2015, which did not support the proposal on those terms, it has been redrafted to exclude the RU1 Primary Production zoned land.

This revised planning proposal, which applies to water extraction and bottling facilities on land zoned RU2 Rural Landscape, was re-exhibited from 16 March to 20 April 2016. Ten submissions were received from the public during this period.

This report provides a summary of the public submissions received, further amendments deemed appropriate, and recommends that the draft LEP, as amended, be approved and referred to the Minister for Planning to be made.

---
RECOMMENDATION:

That:

1. The public submission summary and Officer’s response is noted.

2. Planning Proposal PP15/0004 for water extraction and bottling facilities, being Tweed Local Environmental Plan 2014 Amendment No 16, is approved as amended.

3. Planning Proposal PP15/0004 be referred to the Minister for NSW Planning & Environment with a request that the Plan be made under s.59 of the Environmental Planning and Assessment Act 1979, at the earliest time.
REPORT:

1. Background

The purpose of this planning proposal is to reinstate the permissibility of water extraction and associated bottling or processing of extracted water on rural land.

As earlier reported to Council on 10 December 2015 and 18 February 2016, this land-use was historically permissible as a rural industry land-use and did not give rise to widespread public concern, nor has there been at any time a proliferation or unmanageable demand for this industry, or any widespread matters of non-compliance. Anecdotal evidence shows that there has been only isolated occurrence of community concern linked with specific sites/operations. This is in part highlighted in the public submissions received.

Review of provisions of the Tweed Local Environmental Plan 2014 (LEP) indicates that extraction of water for commercial purposes is currently prohibited by default as the set of definitions provided under the Standard Instrument template does not recognise water extraction and bottling facility as a standalone land use. This resulted in the need for Mount Warning Springwater to make a planning request of Council for a planning proposal to amend the LEP to facilitate the expansion of their local business. Initially, Council staff expected that a site specific amendment might be the more expedient response however, it soon became apparent there were other landowners in a similar situation and that to progress an indeterminate number of individual proposals would be inefficient and unnecessarily costly. The scope of the planning proposal was consequently broadened and sought to revert the current LEP prohibition to the earlier condition under the former LEP 2000 by enabling this land-use with development consent. This was intended to apply to the RU1 Primary Production and RU2 Rural Landscape zones.

Consultation with the NSW Department of Planning & Environment (DPE) indicated their preference for water extraction and bottling facilities to be a sub-category of the broader ‘light industry’ definition, opposed to standing alone as a new definition.

The initial version of the planning proposal was exhibited from 7 October to 4 November 2015 but the application of the proposal did not receive the wider support of Council, as there was concern for the State or regionally significant farmland and land mapped as biophysically strategic agricultural lands.

Following further consideration and debate the proposal’s application was scaled back and a revised proposal was referred to the NSW Department of Planning & Environment (DPE) for review. The re-exhibited proposal now excludes the RU1 Primary Production zoned land, as supported by Council at its meeting held 18 February 2016, and which endorsed the this draft enabling clause:

Use of land zoned RU2 Rural Landscape for water extraction & bottling facilities

(1) This clause applies to any land zoned RU2 Rural Landscape.

(2) Development for the purposes of water extraction and bottling facilities is permitted with development consent.
(3) For the purposes of this clause, water extraction and bottling facility is a light industry involving the extraction of groundwater and the handling, treating, production, processing, storage, packing and wholesale removal of groundwater for commercial purposes.

(4) Despite subclause (2), development consent must not be granted to development for the purposes of water extraction and bottling unless the consent authority is satisfied that the development of the land:

i. Will not have a significant or irreversible adverse impact on natural water systems, and

ii. Productive farmland capability will not be significantly eroded or sterilised from use in the future, whether in isolation or by aggregation of lands.

In their revised Gateway determination, the DPE requested that the planning proposal be re-exhibited for a minimum of 28 days. In accordance with the Gateway Determination the planning proposal was exhibited from 16 March to 20 April 2016. Information was available on the Council website and in hard copy at the Murwillumbah and Tweed Heads Administration Offices. As this was the second exhibition, further consultation with State agencies was not required.

2. Public exhibition

In response to the public exhibition, 10 submissions were received: eight submissions, made by residents of the Urliup Road locality, and principally objected to the planning proposal. These submissions expressed concerns about the impact of water extraction on supply of groundwater for the natural environment, local residents and farmers. Many references were made to a water extraction facility established off Urliup Road, which is currently seeking Council approval to expand their operation.

The remaining two submissions supported the proposal but requested further clarification of certain provisions. All issues raised in the submissions are summarised and responded to in the table below.

Representation has been received by Mr Thomas George, State Member for Lismore, supporting Mount Warning Spring Water.

Table 1: Issues raised in submissions received during the public exhibition stage (left column) and planning response (right column)

<table>
<thead>
<tr>
<th>Issue:</th>
<th>Planning response:</th>
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<tbody>
<tr>
<td>Issue 1: The statement included in Council Report that water extraction ‘had once before existed without any apparent issue’ is incorrect. Water extraction at Urliup Road and Chillingham Road are examples of development that caused concerns among the local residents about heavy traffic on local roads operating outside of approved hours and</td>
<td>Planning response: We acknowledge that there has been isolated rather than widespread concern in the Shire in response to some operations, with the water extraction facility at Urliup Road attracting much of the community’s attention, and that the earlier statement within the Council report warrants this clarification. It is also noted in relation to</td>
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<td>reduced water level in Bilambil Creek. Some submissions indicate that the creek stopped running during summer 2015.</td>
<td>that particular site, which again has attracted much commentary and attention in the public submissions received, that it has been operating for many years and that issues with its operation have been consistently raised. We note also that in response to recent concerns and the operator’s desire to expand the operation that a s96 application has been lodge with Council and the issues specific to that operation are best to be addressed through that process and targeted to that development and its ultimate operating improvement. The matter raised in relation to, among others, traffic movement and impact are presently being assessed by Council. This planning proposal does not impact the s96 approval process for this site, in that it does not provide the permissibility for the use, which can continue irrespective of the LEP amendment being sought. It is worth noting however that the amendment to the LEP being sought will introduce new matters for consideration to ensure that water extraction will not negatively impact on the local environment. This is a higher standard for obtaining consent than currently exists.</td>
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</table>

Issue 2: Both surface and groundwater resources have suffered from unsustainable consumption or extraction and over allocation of resources with ongoing and worsening environmental consequences including land degradation, decreased water quality and declining biodiversity. Unsustainable use of groundwater will lead to long-term problems for both communities and ecosystems which rely upon this important resource. Ground water is not renewable resource, it is finite and aquifers can become depleted when extraction rates exceed replenishment. Ground water and surface water are often |

Planning response: According to the Groundwater in the Australia report (by National Centre for Groundwater Research and Training, 2014), management of groundwater is based on determination of a ‘sustainable yield’, which is defined in the National Water Initiative as the level of water extraction from a particular system that, if exceeded, would compromise key environmental assets, or ecosystem functions and the productive base of the resource. The rural parts of the Tweed are located within the Tweed River Alluvium groundwater management unit, and are generally characterised by high |
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<td>connected. They are part of the one hydrologic cycle.</td>
<td>levels of groundwater development for irrigation, town supply and some industrial purposes (source: Climate change impact on groundwater resources in Australia, 2011). According to the Office of Water, a water access licence can be suspended or cancelled if there is a breach of the licence conditions or other non-compliance. The monitoring and licensing of water extraction is a matter for the Office of Water, not Council. Recommendation: No action required</td>
</tr>
<tr>
<td>Issue 3: There is no positive benefit of water extraction for residents, local economy, tourists or visitors. This land use does not contribute to the ‘branding and marketing of the region’, as stated in the report. There is a negative impact in terms of safety, amenity, character, sense of place.</td>
<td>Planning response: The statement about the role of water extraction in branding and marketing the region was related with bottled water sourced locally and sold regionally, or nationally. Examples of such business exist in the Tweed and adjoining councils. This section of the planning proposal will be modified to state that ‘branding and marketing of the region’ comment refers to bottled water, not to bulk haulage of extracted water. Mount Warning Springwater is an example of a rural industry that contributes to the local economy by providing several job opportunities. It also involves partnership with the local Aboriginal community, as well as marketing the Tweed region more generally. It is widely recognised and documented that a major source of the Tweed economy occurs through tourism. This has flow-on effects across the Tweed and benefits the region in many ways. This information provides a broader context for evaluating the importance of such local industries against all other issues arising, it is not designed nor intended as a means of justifying the development in isolation of those other issues. Recommendation: Planning proposal to be modified as outlined above.</td>
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<td><strong>Issue:</strong></td>
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<td>Issue 4: Water extraction is a ‘light industry’ and as such does not have a place in land zoned RU2. Questions why the amended version of the planning proposal excludes RU1 zoning but still applies to RU2?</td>
<td>Planning response: Water extraction was a permissible use in rural zones until the Tweed LEP 2014 was made. This land use is currently prohibited because the standardised template of land use definitions does not recognise water extraction as a standalone land use, it did not arise as a result of a considered and intentional act. The RU1 Primary Production zone has been excluded because of concerns that this land use may compete with agricultural activities on prime agricultural land in the Tweed Shire. Whilst it may prevent water bottling facilities, it will not prevent the extraction of water for use in farming. Recommendation: No action required</td>
</tr>
<tr>
<td>Issue 5: Questions the legitimacy of extracting a public resource such as groundwater for private gain: To what depth is the land owned? How deep can a bore be sunk for personal use and commercial use? How many bores are permitted? Water belongs to the community and should not be for sale.</td>
<td>Planning response: Extraction of groundwater for private gains is regulated by water sharing plans. These plans set the rules for how water is allocated for the next 10 years, to ensure a decade of security for the environment and water users. This not only ensures that water is specifically provided for the environment through a legally binding plan, but also allows licence holders, such as farmers or water bottling industries who require fairly large volumes of water, to plan their business activities. The depth and number of bores are specified through the licensing process managed by the Office of Water. Ultimately, whether it is appropriate for the State’s resources to be accessed for private/commercial purposes is a matter for the State Government. Recommendation: No action required</td>
</tr>
<tr>
<td>Issue 6: Council, at great expense, provides clean water to all residents. As such, there is no need to harvest non-renewable groundwater. Bottled water creates enormous amount of land fill.</td>
<td>Extraction and bottling of groundwater for private gain is regulated by water sharing plans. These plans set the rules for how water is allocated for the next 10 years, to ensure a decade of security for the environment and water users. These rules allow for certain amount of water to be harvested and used commercially.</td>
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<td>Issue:</td>
<td>Planning response:</td>
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<td>See also the comment provided above. Recommendation: No action required</td>
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**Issue 7:** This planning proposal opens the gate to more DAs seeking water extraction which may bring the social/economic change to the rural sector.

This planning proposal seeks to reinstate the permissibility of water extraction in rural land. Until April 2014, when the new LEP was made, water extraction was permissible on all rural land. According to the Office of Water, a water access licence can be suspended or cancelled if there is a breach of the licence conditions or other non-compliance. Recommendation: No action required

**Issue 8:** States and territories apply environmental, resource and water management policies to manage groundwater. Is such an environmental, resource and water management policy in place in Tweed Shire area?

The NSW Office of Water should be monitoring environmental effects of their decisions. Bilambil Creek is home to threatened species such as the platypus.

Several questions should be answered before extraction of water can be authorised: how far does the underground water table extend? How deep is the water table? How and where is this water table being supplied from? What is the estimated time that this water supply can maintain the amount of water being extracted daily before it runs dry? Why are the surrounding hills (in Urliup area) no longer seeping and the gullies are dry? Water harvesting should not be allowed in such small valley without consideration to local farmers and people who rely on this water.

The NSW Department of Primary Industries – Water has prepared a Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources. The objectives of this plan are to:

- (a) protect, preserve, maintain and enhance the important high priority groundwater-dependent ecosystems of these groundwater sources,
- (b) protect, preserve, maintain and enhance the Aboriginal, cultural and heritage values of these groundwater sources,
- (c) protect basic landholder rights,
- (d) manage these groundwater sources to ensure equitable sharing between users,
- (e) provide opportunities for enhanced market based trading of access licences and water allocations within environmental and system constraints,
- (f) provide water allocation account management rules which allow sufficient flexibility in water use,
- (g) contribute to the maintenance of water quality,
- (h) provide recognition of the connectivity between surface water and groundwater,
- (i) adaptively manage these groundwater sources, and
- (j) contribute to the “environmental and other public benefit outcomes” identified under the “Water Access
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<td><strong>Planning Committee: Thursday 5 May 2016</strong></td>
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<tr>
<td>Issue 9: Climate change may increase the demand for water hence provide a challenge in achieving environmentally sustainable levels of usage. Increasing pressure on water resources from climate change, population growth and increasing urbanisation means that Australia needs to diversify water sources to meet demand. Has this been considered by Council?</td>
<td>Council is proactively supporting sustainable forms of water supply, such as rainwater tanks through numerous initiatives, projects and planning guidelines. Also, matters of future water security continue to be investigated by Council, as evidenced by planning investigation such as the possibility of a new dam at Byrrill Creek and the raising of the levy wall at Clarrie Hall dam. Recommendation: No action required</td>
</tr>
<tr>
<td>Issue 10: Remove additional matters for consideration as they will act as administrative duplication to an assessment by the Office of Water.</td>
<td>Comment noted. Additional matters for consideration have been included in response to concerns from the community that extraction of water may negatively impact on natural environment and should be properly assessed at the development assessment stage. They provide a local assessment framework. Recommendation: No action required</td>
</tr>
<tr>
<td>Issue 11: Definition of water extraction and bottling facility is worded to be cumulative and therefore reads that the facility must include all of the stated elements.</td>
<td>The Interpretation Act (NSW) guides the interpretation legislation, and for clarity a minor amendment has been proposed to reduce the incidence of the provision being misinterpreted. Recommendation: Amend the draft LEP clause to ensure that the definition of water extraction and bottling facility is not worded to be cumulative.</td>
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<td>Issue 12: The planning proposal does not consider a scenario where an existing rural holding is separated by a land or waterway with zoning which does not permit water extraction and bottling facility.</td>
<td>Comment noted. Recommendation: An amendment to the exhibited provision is proposed to address this situation, but only in respect of limited development, e.g. pipes, not an innominate class of ‘ancillary development’.</td>
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3. **Additional subclause to the proposed Water Extraction and Bottling Facilities clause**

A submission was made by DAC Consulting on behalf of a rural landowner. This submission identified a scenario where a rural holding zoned RU2 Rural Landscape and fragmented by land zoned with a different zoning may not be granted consent to develop a water extraction and bottling facility. To illustrate this scenario, a zoning map of Mount Warning Springwater site is provided below as an example:

![Image: Illustration of the Mount Warning Springwater site.](image)

In case of the Mount Warning Springwater site illustrated above, the proposed location for the upgraded water bottling facility is bounded by waterway reserves, where water extraction and bottling facilities will continue to be a prohibited use. Meanwhile, the existing bore is located in the northern part of their rural holding. Should Mount Warning Springwater decide to rely on the existing bore, it will be necessary to convey extracted water to the bottling facility across the waterway reserve.

The scenario described above is likely to be a common issue due to topography of the Shire and proximity of waterways to local roads on land zoned RU2 Rural Landscape. To overcome this ambiguity, it is proposed to update the draft LEP clause by inserting an additional subclause as provided below:

**Use of land zoned RU2 Rural Landscape for water extraction & bottling facilities**

(1) This clause applies to any land zoned RU2 Rural Landscape.
(2) Development for the purposes of water extraction and bottling facilities is permitted with development consent.

(3) For the purposes of this clause, water extraction and bottling facility is a light industry involving the extraction of groundwater and the handling, treating, production, processing, storage, packing and or wholesale removal of groundwater for commercial purposes.

(4) Despite subclause(2), development consent must not be granted to development for the purposes of water extraction and bottling unless the consent authority is satisfied that the development of the land:

i. Will not have a significant or irreversible adverse impact on natural water systems, and

ii. Productive farmland capability will not be significantly eroded or sterilised from use in the future, whether in isolation or by aggregation of lands.

(5) Despite subclause (1), or any other provision of this Plan, development consent may be granted on any land for the associated conveyance of extracted water to a water bottling facility by pipe or other like method of transportation, but does not include canals, dosing facilities, reservoirs or storage facility, or other like infrastructure.

The proposed additional subclause will be subject to further consultation with DPE. It is considered that this amendment should be considered as of a minor nature. The updated clause also includes a minor modification made to the definition of the 'water extraction and bottling facility' land use ('packaging and wholesale removal' has been replaced with 'packaging or wholesale removal').

OPTIONS:

1. Proceed with the planning proposal (draft LEP), as amended, and with the recommendations provided within this report, or

2. Resolve not to proceed with the draft LEP amendment. In this event it is recommend that reasons for not doing so be provided. This would assist any consideration by the Department of Planning and Environment should the Landowner seek an administrative review.

CONCLUSION:

Council officers prepared a planning proposal seeking amendment to Tweed LEP 2014 to recognise extraction of water as a land use and enable appropriate assessment of development applications for that purpose. Whilst there are concerns among the local community that extraction of water may negatively impact on the environment and supply of water for domestic purposes, it is considered that this risk can be adequately mitigated through the dual approval process: water licence from the NSW Office of Water and DA consent in accordance with the additional proposed LEP clause, as discussed in this report.
COUNCIL IMPLICATIONS:

a. Policy:
The proposed LEP amendment is consistent with the broader policy under the Tweed Community Strategic Plan regarding support and diversification for rural land land-use, and is not considered to be inconsistent with those policies targeting the protection of the natural environment.

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.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
Civic Leadership

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

SUMMARY OF REPORT:

A report was submitted to the 3 March 2016 Planning Committee Meeting, seeking Council endorsement to proceed with the preparation of a planning proposal to permit a dwelling-house on the above property. Following Council endorsement at this meeting, the proposal subsequently received a Gateway Determination on 16 March 2016, and was publically exhibited in accordance with the Minister’s conditions of approval.

Public exhibition occurred between 23 March and 8 April, 2016 whereas State government agency referrals closed on 11 April, in accordance with the Gateway condition. Two public submissions were received as well as a reply from the NSW Rural Fire Service; a summary of the submission issues and planning response are provided as an attachment this report. There are no planning matters considered warranting of an amendment or cessation of this planning proposal.

This report recommends that the Tweed Local Environmental Plan 2014 be amended as proposed, to enable the landowner to seek approval and use of the property for a dwelling-house.

RECOMMENDATION:

That Council endorses:

1. Planning Proposal PP16/0001 relating to Lot 8 DP 12676 at Eviron Road, Eviron for the purposes of dwelling-house, being Tweed Local Environmental Plan 2014 Amendment No 22, as publicly exhibited; and

2. Planning Proposal PP16/0001 be referred to the Minister for NSW Planning & Environment with a request that the Plan be made under s.59 of the Environmental Planning and Assessment Act 1979.
REPORT:

A report was submitted to the 3 March 2016 Planning Committee Meeting, seeking Council endorsement to proceed with the preparation of a planning proposal to permit a dwelling-house on the above property. A copy of this report is provided in Attachment 2.

Following Council endorsement at this meeting, the proposal subsequently received a Gateway Determination on 16 March 2016, and was publically exhibited in accordance with the Minister’s conditions of approval.

The essence of proposal is to permit the lawful use of a ‘dwelling-house’, subject to prior approval being obtained, by way of prescribing that use within Schedule 1 ‘Additional Permitted Uses’ of the Tweed Local Environmental Plan 2014 (LEP), on Lot 8 DP 12676 at Eviron Road, Eviron.

The allotment was created by plan of subdivision in 1923, which appears to have been endorsed by a Shire Registrar. It is one of several lots of comparative size that have the hallmarks of an early rural-residential style subdivision, a development pattern that has since emerged with neighbouring lots in the area supporting dwelling houses. It would appear that owing to a change in planning law, under Interim Development Order No.2 of 1966, this allotment has been deprived of a dwelling entitlement by virtue of that change, rather than by the original subdivision or a later landowner. However, as noted in the public submission review, provided as Attachment 1, a neighbouring landowner has raised a contrary view about the alleged purpose and intention for the creation and use of this property.

An evaluation of the planning request included identification and assessment of constraints affecting the property, as detailed in the March report, and while there are several, none have been identified as likely to prevent its use for a dwelling house. They will nonetheless be subject to much closer scrutiny at the future time of assessment for a dwelling-house, should this amendment proceed.

Public Exhibition Review

Public exhibition occurred between 23 March and 8 April, with State government agency referrals closing on 11 April, in accordance with the Gateway condition. The proposed LEP amendment, as exhibited, excludes that part of the land zoned and mapped as RU1 Primary Production / Regionally Significant Farmland.

Two public submissions were received and a summary of the issues raised are addressed in report provided as Attachment 1 ‘Summary of submissions received in response to the public exhibition’. In addition, the NSW Rural Fire Service provided a reply stating that:

The Service has reviewed the plans and documents received for the proposal and subsequently raise no concerns or issues in relation to bush fire.

As the submission summary clearly shows there are no matters arising in a planning sense that are considered warranting of an amendment or cessation of the planning proposal. The use of the land for a dwelling-house is considered an orderly, compatible and economic use of the land, consistent with the Objectives of the planning legislation.
Fig. 1 Aerial photo of the subject site
OPTIONS:

1. Proceed with the recommendations provided within this report and forward a planning proposal to the NSW Department of Planning and Environment to be made.

2. Defer consideration of this report and seek clarification of any outstanding matters.

3. Resolve not to proceed with the planning proposal and associate LEP amendment. In this event it is recommended that reasons for not doing so be provided. This would assist any consideration by the Department of Planning and Environment should the Landowner seek an administrative review.

Council Officers recommend Option 1.

CONCLUSION:

This report has highlighted a unique, but not isolated, situation where a change in planning law has had what is arguably an unintended consequence by depriving this property of its dwelling entitlement.

Not all changes in planning laws can be said to operate negatively by later preventing development that was otherwise permitted, as circumstances, demand, and expectation for land use can change significantly over such long periods of time. The subject subdivision was approved in 1923 and is seemingly an exception, as evidence by the long established use of the neighbouring lands for rural (small lot) residential use, which is a key characteristic of the immediate locality.

Both this and the March report highlighted several constraints on the use and development of the land, and following further evaluation, and reply from the NSW Rural Fire Service, none are considered prohibitive of a dwelling-house use as proposed. Any future use would however be subject to a separate and more detailed / specific assessment against an actual dwelling-house proposal. This assessment would need to have regard to some of those issues raised by way of public submission from the adjoining landowners.

It is recommended that the planning proposal be referred to the NSW Department of Planning and Environment to be made.

COUNCIL IMPLICATIONS:

a. Policy:
The proposal is consistent with Council’s policy on sustainable and economic use of rural land.

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.
UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Summary of submissions received in response to the public exhibition (ECM 4030232)

Attachment 2. Planning Committee Report 3 March 2016 (ECM 4030233)
9  [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

SUBMITTED BY:  Director

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**Civic Leadership**

**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

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**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

That Council notes the April 2016 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.
REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Application has been supported where a variation in standards under SEPP1 has occurred.

<table>
<thead>
<tr>
<th>DA No.</th>
<th>DA15/0711</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of Development:</td>
<td>additions and alterations to an existing dwelling to create an attached dual occupancy</td>
</tr>
<tr>
<td>Property Address:</td>
<td>Lot 337 DP 755740 No. 19 Queen Street, Fingal Head</td>
</tr>
<tr>
<td>Date Granted:</td>
<td>20/4/2016</td>
</tr>
<tr>
<td>Development Standard to be Varied:</td>
<td>Clause 4.6 for the variation of height of building</td>
</tr>
<tr>
<td>Zoning:</td>
<td>R2 Low Density Residential</td>
</tr>
<tr>
<td>Justification:</td>
<td>The proposed development includes a roof deck with a height limit of 14.12m RL. The existing ground level within the envelope of the proposed roof deck (as detailed on the submitted plans) ranges from 3.89m RL to 4.00m RL. Accordingly the height of the development from the existing ground level at the highest point is approximately 10.23m. The site is mapped on the Height of Buildings Map associated with Clause 4.3 as having a maximum height limit of 9.0m. Accordingly, the proposed development seeks a variation of in excess of 1.0m.</td>
</tr>
</tbody>
</table>

| Authority: | Tweed Shire Council under assumed concurrence |

<table>
<thead>
<tr>
<th>DA No.</th>
<th>DA15/0776</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of Development:</td>
<td>mixed use development incorporating 40 dual use units (residential and tourist accommodation) including an ancillary communal area with swimming pool and gym, ground level commercial premises (retail, restaurant/café and office use) and vehicular parking over the basement and ground levels, two lot stratum subdivision and 40 lot strata subdivision</td>
</tr>
<tr>
<td>Property Address:</td>
<td>Lots 54 and 55 DP 1145386 &amp; ROAD 2307; Cylinders Drive; Road 2238; Ocean Avenue Kingscliff</td>
</tr>
<tr>
<td>Date Granted:</td>
<td>13/4/2016</td>
</tr>
<tr>
<td>Development Standard to be Varied:</td>
<td>Clause 4.6 for the variation of height of building</td>
</tr>
<tr>
<td>Zoning:</td>
<td>R3 Medium Density Residential, B4 Mixed Use</td>
</tr>
</tbody>
</table>
### Justification:
Building Height variation does not compromise objectives of height controls. Enables higher residential density on appropriately zoned land. No impact on surrounding property. Floor Space Ratio variation is considered to enable appropriate building scale on an important site. No impact on surrounding property.

### Extent:
- Building Height variation: 9.23%
- Floor Space Ratio variation: 7.4%

### Authority:
Tweed Shire Council under assumed concurrence

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**COUNCIL IMPLICATIONS:**

**a. Policy:**
Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**
Not Applicable

**c. Legal:**
Not Applicable.

**d. Communication/Engagement:**
Not Applicable.

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**UNDER SEPARATE COVER/FURTHER INFORMATION:**
Nil.