Agenda

Planning Committee Meeting
Thursday 5 November 2015

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm
ENVIROMENTAL 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 DA14/0384 for a 21 Lot Subdivision - Staged Development at Lot 1 DP 1077697 No. 768-770 Casuarina Way, Casuarina

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA14/0384 Pt2

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:

At Tweed Shire Council Planning Committee meeting held Thursday 7 May 2015, it was resolved to grant “Deferred Commencement” consent in relation to the above application. This outlined that the consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A" which advised of the following:

A. This consent shall not take effect until the applicant has consulted with the owners of Lots 2 and 3 DP 1077697 and has submitted plans and information to the satisfaction of the Director Planning and Regulation to indicate a revised driveway design and construction for these properties. All costs associated with the design and construction of these works shall be borne by the proponent of this development.

Information has now been submitted on behalf of the applicant in order to satisfy the deferred commencement requirements.

A revised driveway design has been submitted with respect to Lot 2 DP 1077697, which has been assessed as appropriate by Council’s Roads and Stormwater Unit. Consultation has occurred with the owners of this allotment, with a copy of emails between the parties provided to Council.

The driveway to Lot 3 DP 1077697 is to remain in its current position. Council's Roads and Stormwater Unit has raised no objection to this. Information has been submitted which indicates that consultation has also been undertaken with the owner of this allotment.
Further details with respect to the driveway design and consultation undertaken is provided in this report.

This is referred to the elected Council to determine whether the submitted information satisfies the above and if the consent can now be deemed operational.

RECOMMENDATION:

That Development Application DA14/0384 for a 21 lot subdivision - staged development at Lot 1 DP 1077697 No. 768-770 Casuarina Way, Casuarina be deemed to be operational pursuant to Section 100(4) of the Environmental Planning and Assessment Regulation, 2000 and the applicant be advised in writing that the deferred matters have been satisfied and the consent is now operational.
REPORT:

Applicant: Dakota Properties Pty Ltd
Owner: Dakota Properties Pty Ltd
Location: Lot 1 DP 1077697 No. 768-770 Casuarina Way, Casuarina
Zoning: R1 - General Residential 7(f) Environmental Protection (Coastal Lands)
Cost: $400,000

Background:

The above development application was lodged with Council on 16 June 2014 and was subject to a number of further information requests and design revisions as the assessment progressed. This finally resulted in a 21 lot subdivision over three stages at the above location incorporating an extension to the existing Casuarina Way road to provide vehicular access to the development and a dedicated stormwater 'Bio-Basin' allotment.

The site currently contains the Casuarina Health Retreat Building and associated recreation (tennis court, swimming pool) and storage structures.

As part of the assessment, the application was placed on exhibition by way of advertisement on two occasions, given design changes made by the applicant between the originally submitted application and the final proposal. During these two exhibition periods a total of 17 public submissions and petitions with a total of 87 signatories were received with respect to the proposal.

The original application was called up for determination by Councillors Longland and Armstrong while a SEPP No. 1 Objection also necessitated referral to Council for determination.

Council officers recommended that the application be approved subject to the provision of recommended conditions of consent. At Tweed Shire Council Planning Committee meeting held Thursday 7 May 2015, it was resolved to grant “Deferred Commencement” consent on this application, with the following matter to be satisfied prior to the consent becoming operative:

_This consent shall not take effect until the applicant has consulted with the owners of Lots 2 and 3 DP 1077697 and has submitted plans and information to the satisfaction of the Director Planning and Regulation to indicate a revised driveway design and construction for these properties. All costs associated with the design and construction of these works shall be borne by the proponent of this development._

On Wednesday 30 September 2015, the applicant’s agent submitted information in order to satisfy the above consisting of detail relating to correspondence between the owners of Lots 2 and 3 DP 1077697 and preliminary design information for the driveways to these properties.

Driveway: Lot 2 DP 1077697

The submitted information provides for an amended design to the driveway to this allotment, relocating it south and being accessed by the proposed subdivision road. The driveway design has been reviewed by Council’s Roads and Stormwater Unit who has advised that “The proposed relocation of the driveway for Lot 2 is supported in principle subject to
detailed design.” From this it is considered that the information submitted is to the satisfaction of the Director Planning and Regulation.

The applicant has also provided email correspondence relating to consultation with the owners of this allotment. This correspondence confirms that consultation has occurred as required by the deferred commencement condition. Specifically, the following has been advised with respect to consultation with the owners of Lot 2 DP 1077697:

“We have also liaised with the owners of Lot 2 and whilst this has been a more difficult process due to their long held objection to the proposal, we have been able to put forward a solution in respect of location that they agree with. Those elements where some disagreement remains relate to the extent of works that they are requesting also be undertaken in addition to the relocation of the driveway as called for by the condition.

Perhaps the easiest way to reference these discussions is by way of the attached email trail. The essence of this is that both parties have agreed to the location and cost of an agreed new driveway location. They have also agreed to removing the existing driveway (both in the road reserve and within the private property) and replacing with turf. These elements, along with the stated offers below to replace their fence (where the current gate is) and relocate landscaping, is from our perspective, sufficient to satisfy the condition which only asks for a revised driveway design construction. This condition also asks for all costs to be borne by the proponent and this also agreed.

As can be seen in the attached email trail, there are elements to which the owners of Lot 2 are seeking for the proponent to also add and pay for. These include raising the height of the existing fence (which would result in a need to completely rebuild the fence) and provision of electrical connections to the gate at the new location (the current gate is not electrified). The proponent considers these elements to be outside of the scope of the Council condition.”

The owners of this allotment were contacted independently by Council officers with respect to this consultation and have advised that “We have spoken with Adam Smith from Planit consultants but are yet to have a confirmed agreement.”

Review of the submitted email correspondence between these parties appears to indicate that the area on which agreement is yet to be achieved does not relate specifically to driveway design but rather to ancillary works such as associated fencing, which would appear to be outside of the remit of this condition. In any event, it is considered that the proponent has complied with the requirements of this condition, which stipulated that the applicant consult with the owners and submit plans to the satisfaction of the Director Planning and Regulation for revised driveway design.

Driveway: Lot 3 DP 1077697

The applicant has advised the following with respect to consultation with the owner of Lot 3 above;

“We have liaised with the owners of Lot 3 and specifically met with Mrs. Anna Mangos on both Tuesday the 15th and Tuesday the 22nd September on site at her premises. We have also spoken to her husband. Mr. Alex Mangos. Anna was provided with a construction plan and had the condition imposed by Council explained to her. Anna
and her partner advised that they would need to think about it. Subsequent to this initial meeting I attended site again on the 22" September at which time Ms. Mangos advised that they would prefer to have the current driveway remain in the current location due to concerns about being located closer to the intersection and equally concerns about the extreme angle that would eventuate should the driveway be located further away. I advised her that should any damage occur to their driveway through construction that all damage would be made good at the cost of the proponents.”

Council officer have contacted the owner of this allotment by both email and phone, with no email response having been received at time of this report being prepared. A telephone conversation with the owners husband has indicated that consultation has occurred consistent with the applicants comments above.

The proposal to maintain the driveway in its current location has been reviewed by Council’s Roads and Stormwater Unit who has advised that “There are no objections to the driveway for Lot 3 remaining in its current location.”

It is considered that the information submitted is to the satisfaction of the Director Planning and Regulation and that consultation has occurred with the owner of this allotment as required by the deferred commencement condition.

Having regard to the above it is considered that the requisite information has been submitted to Council and that consultation with the relevant neighbouring landowners has taken place. It is therefore recommended that this consent be deemed to be operational.
PLANS:
OPTIONS:

1. That Development Application DA14/0384 for a 21 lot subdivision - staged development at Lot 1 DP 1077697; No. 768-770 Casuarina Way CASUARINA be deemed to be operational pursuant to Section 100(4) of the Environmental Planning and Assessment Regulation, 2000.

2. Provide further clarification as to the information required to be submitted by the applicant in order to satisfy the provisions of the deferred commencement condition contained within Schedule “A” on this deferred commencement approval.

Council Officers recommend Option 1.

CONCLUSION:

Having regard to the above it is considered that the applicant has consulted with the owners of Lots 2 & 3 DP 1077697 and has submitted plans and particulars to the satisfaction of Tweed Shire Council’s Director Planning and Regulation with respect to driveways to these allotments. Council officers are satisfied that the condition contained in Schedule “A” of this consent has been satisfied and the consent should be deemed to be operational.

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.
2 [PR-PC] Development Application DA15/0742 for Conversion of Boathouse to a Combined Boathouse and Dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff

SUBMITTED BY: Development Assessment and Compliance

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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

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SUMMARY OF REPORT:

Consent is sought for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff.

The site is located on the foreshore of Cudgen Creek, to the west of Snapper Avenue within the Salt residential precinct. The site is land locked as it does not front any legal road. The site is currently accessed via Tweed Shire Council community land identified as Lot 221 DP 1069887, from Point Break Circuit. The application has requested vehicle access over this community land.

The boathouse and adjoining amenities including BBQ area, covered picnic tables and jetty were approved in conjunction with DA05/0028 in August 2005. This 2005 approval facilitated the construction of the boathouse with room for boat storage, office and amenities. Boats stored onsite are non-motorised and are used in conjunction with a hiring business operating from the site.

It is proposed to undertake alterations to the existing boathouse to convert the building from a boat house to a combined boat house and dwelling. It is proposed to erect a 1.2m high fence along the southern and eastern boundary of the site, delineating the lot from the adjoining public amenities and provide a garage onsite for vehicles.

The site is zoned 2(f) Tourism. Dwellings are prohibited in the 2(f) Tourist zoning pursuant to the provisions of Tweed Local Environment Plan 2000, unless the dwelling is for the purposes of a caretaker.

The site is burdened by a Section 88B Title restriction, providing Tweed Shire Council with a public footway to a boat ramp into Cudgen Creek, partially located upon the subject site. Tweed Shire Council holds the Crown Licence for this boat ramp.
The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is stated that the conversion will enable the resident to monitor the site at all times and prevent damage to the property that has occurred in the past. Little information is provided in regards to justifying a caretaker to manage the intended commercial component of the site, namely the hiring of non-motorised water craft.

The use of the site for a permanent dwelling, albeit for a caretaker, has not been satisfactorily justified and is not supported. The use of the building for residential purposes will have adverse impacts upon the accessibility of the boat ramp on site. The use of the adjoining community land for regular permanent vehicle access is not supported for safety reasons.

The application was notified to adjoining owners for a 14 day period. During this time 29 submissions were received, all objecting to the proposed use for reasons associated with public safety and amenity. Many of the reasons for objecting to the proposal are considered valid.

The subject application was called up to Council for determination. Given the level of public interest in this Development Application, it was also considered appropriate for this matter to be reported to Council.

It is recommended that the application be refused.

RECOMMENDATION:

That Development Application DA15/0742 for conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff be refused for the following reasons:

1. The application fails to satisfy the principal aim of the Tweed Local Environmental Plan 2000 (Clause 4) which is to ensure “The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.” The proposed development fails to adequately consider the sites' importance in regard to public amenity and foreshore access and would result in a development which does not respond to the existing character of the area.

2. The development as proposed is not considered to have adequate regard for the Ecologically Sustainable Development provisions as outlined in Clause 5 the Tweed Local Environmental Plan 2000.

3. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with the objectives of the Tweed Local Environmental Plan 2000.
4. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(i) - any environmental planning instrument. The proposal is not considered to be consistent with State Environmental Planning Policy No. 71 - Coastal Protection.

5. The development as proposed does not satisfy Clause 8(1) of the Tweed Local Environmental Plan 2000 as the development does not satisfy the 2(f) Tourism zone objectives, and is considered to have an unacceptable impact in regards to public amenity and safety matters.

6. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(v) - any coastal zone management plan namely the Tweed Coast Estuaries Management Plan 2012, given the adverse impact upon public access to the Cudgen Creek foreshore.

7. The development as proposed does not satisfy Clause 39A of the Tweed Local Environmental Plan 2000 in regards to bushfire protection. The development as proposed does not provide sufficient Asset Protection Zones upon the subject land to satisfy the Planning for Bushfire Protection Guidelines 2006.

8. The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (a)(e) - the public and has failed to adequately address the concerns raised in the public submissions received following public notification of the proposal.
REPORT:

Applicant: Consolidated Properties
Owner: Lindstro Pty Ltd
Location: Lot 602 DP 1098619 Point Break Circuit, Kingscliff
Zoning: 2(f) Tourism
Cost: $75,000

Background:

Consent is sought for the conversion of a boathouse to a combined boathouse and dwelling at Lot 602 DP 1098619 Point Break Circuit, Kingscliff.

It is proposed to undertake alterations to the existing boathouse to provide a habitable space and seek approval for part of the boathouse as a dwelling. The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse with the provision of a caretaker onsite due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is claimed that the conversion will enable the resident to monitor the site at all times and prevent damage to the property that has occurred in the past.

The site is located on the frontage to Cudgen Creek surrounded by community land adjoining Snapper Avenue, Kingscliff. The site is accessed from Point Break Circuit over Tweed Shire Council community land identified as Lot 221 DP 1069887. The application has requested vehicle access over the subject community land for the resident and visitor vehicles. Separate consent from the prescribed authority, Tweed Shire Council has not been sought, nor granted to permit vehicle access over this community land.

The subject site is shown below:
The approved Salt Master plan identifies the subject site as being the location of a boathouse. Condition 5 of the 2002 Salt development consent required the submission of a separate application for the development of this boathouse, jetty and boat ramp. The boathouse and adjoining amenities including BBQ area, covered picnic tables and jetty were approved in conjunction with DA05/0028 in August 2005. This 2005 approval facilitated the construction of the boathouse with room for boat storage, office and amenities. Boats stored onsite are restricted to non-motorised craft and are used in conjunction with a hiring business operating from the site.

It is noted that the boathouse building itself is in private ownership upon private land, however the boat ramp is under Council's Licence with the Crown Number LI379377 as of 20 March 2014. This licence includes the adjoining jetty.

The site is burdened by a Section 88B instrument benefitting Tweed Shire Council for the purposes of a footway from adjoining public land to the boat ramp upon the subject site. This footway is located on the southern side of the existing building and incudes the southern deck area. This footway will be impacted by the construction of a 1.2m high fence along the southern and eastern boundary, severely restricting access to this easement and the adjoining boat ramp. Council's Legal Services Unit has advised that no consultation or application has been received to vary the current Section 88B instrument.

The land at the rear of the site containing the walkway to the carpark adjoining Point Break Circuit is community land. No other land access is available to the site and as this community land has no associated Plan of Management, any change to the use of the land would be subject to a lengthy public consultation process prior to approval.

The fundamental issue with regard to the subject application relates to the impacts of the building conversion upon the locality in terms of public amenity and safety. The documentation submitted in support of the application does not sufficiently justify the need for a caretaker onsite. The impacts of having a permanent caretaker onsite adjoining a recreational space is not considered conducive to the use of the locality, nor is the regular use of the public footpath considered to be acceptable for vehicle access to the site. The potential land use conflicts associated with the proposed conversion is considered to sufficiently outweigh the perceived need for a caretaker onsite.

The development application was notified for a period of 14 days, from Wednesday 16 September 2015 to Wednesday 30 September 2015. During this period 29 submissions were received raising objection to the proposal. A further objection was received after the closing date. The matters raised in all submissions are addressed later in this report.

The subject application was called up to Council for determination. Given the level of public interest in this Development Application, it was also considered appropriate for this matter to be reported to Council.

It is recommended that the application be refused.
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 2000**

*Clause 4 - Aims of the Plan*

The proposed development is considered to be inconsistent with the aims of the TLEP 2000 being in conflict with the local planning policies for the subject site and surrounding locality.

The proposed development fails to adequately consider the sites' importance in regard to public amenity and foreshore access and would result in a development which does not respond to the existing character of the area.

*Clause 5 - Ecologically Sustainable Development*

The subject development application is considered inconsistent with the four principles of ESD, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms as it has the potential to result in land use conflicts in the immediate vicinity of the subject site.

*Clause 8 - Consent Considerations*

The consent authority may grant consent to development only if:

a) it is satisfied that the development is consistent with the primary objectives of the zone within which it is located, and

b) it has considered those aims and objectives of this plan that are relevant to the development, and

c) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

In this instance, the site located is within a 2(f) tourism zone. Vehicle access to the site is located within a RE1 Public Recreation zone pursuant to TLEP 2014. The zone objectives are discussed in detail below but for the purposes of Clause 8 it is considered that the development is inconsistent with the primary objective of the 2(f) zone as the residential use proposed is not considered justified for the purposes of tourist development.

The proposal is considered to be inconsistent with the aims and objectives of the TLEP 2000 as it will not maintain the existing use of the land being a facility associated with recreation for the residential and tourist community of the Salt precinct. The subject proposal is considered to result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole due to its impact upon residents and visitors to the site.

The proposal is considered to be inconsistent with Clause 8.
Clause 11 - Zone Objectives and permissibility

It is proposed to undertake alterations to the existing boathouse to provide a habitable space and seek approval for part of the boathouse as a dwelling. The site is zoned 2(f) Tourism. Dwellings are prohibited in the 2(f) Tourist zoning pursuant to the provisions of Tweed Local Environment Plan 2000, unless the dwelling is for the purposes of a caretaker.

The Statement of Environmental Effects indicates that the primary reason for this proposed conversion is the need to ensure protection of the boathouse due to increase instances of vandalism and damage to the structure in the evenings and during parties being held within the adjoining reserve area and shelter. It is stated that the conversion will enable the resident to monitor the site at all times and prevent damage to the property that has occurred in the past. Little information is provided to justify the need for a caretaker to manage the intended commercial component of the site, namely the hiring of non-motorised water craft.

The objectives of the 2(f) Tourism zone are as follows:

Primary objectives

• to encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.

• to ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.

Secondary objective

• to permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.

The existing boathouse was a result of a condition of the original Salt DA02/1422 development consent. Condition 5 of this consent required a separate development application for the erection of the boatshed, jetty or viewing platform. The boat shed was subsequently approved in accordance with DA05/0028 for a boathouse and amenities.

The development in its current form is considered to be consistent with the objectives of the zone being an ancillary development for the tourist uses in the locality. Insufficient justification has been forthcoming regarding the need for a caretaker’s residence in conjunction with the commercial hire business.

The proposed conversion is not considered to be consistent with these objectives as it will result in a landuse that conflicts with the ancillary uses of the locality associated with the tourist zone. The public enjoyment of the adjoining community land will be adversely affected by a permanent resident within the boat house in regards to access to the boat ramp and enjoyment of the adjoining public facilities.
Clause 15 - Essential Services

The site is located in an established urban area and has connection to all required infrastructure.

Clause 16 - Height of Building

The site is located within a two storey area consistent with Clause 53B of the Tweed LEP. The proposal does not seek to increase the height of the single storey structure.

Clause 17 - Social Impact Assessment

The application is not required to provide a Social Impact Assessment.

Clause 19 – Subdivision

No subdivision proposed.

Clause 31 – Development Adjoining Water bodies

The development does adjoin the Cudgen Creek waterbody. The objectives of this clause are as follows:

• to protect and enhance scenic quality, water quality, aquatic ecosystems, bio-diversity and wildlife habitat and corridors.
• to provide adequate public access to waterways.
• to minimise the impact on development from known biting midge and mosquito breeding areas.

The 2004 - 2008 Tweed Coast Estuaries Management Plan (TCEMP) included the provision of Canoe Launching facilities along Cudgen Creek. The original proposal was required in response to this action and was to be restricted to non-motorised craft.

This proposal was deemed to improve public access to the foreshore through the provision of a boat ramp that visitors could utilise.

If a caretaker’s residence was to be approved as part of this boat house, the original intent of the building and adjoining ramp may be compromised as a means of gaining access to Cudgen Creek. While the boathouse is on private land, a condition of the 2005 consent provides that public access to the boat ramp is not to be hindered or restricted. This condition was confirmed with the imposition of a Section 88B instrument over the land maintaining a public footway over the subject lot. This footway will be severely restricted by the erection of a 1.2m high fence on the southern and eastern boundary.

It is also considered that the presence of permanent residents may intimidate visitors to an extent that the use of the boat ramp is not freely undertaken as is the intent. Accordingly this use of the boathouse as a residence is considered contrary to the objectives of this Clause.
Clause 35 - Acid Sulfate Soils (ASS)

The site is classified on Council’s database as Class 3 ASS, and works beyond 1m below the natural ground surface or that will lower the water-table below 1m would trigger the need for an acid sulfate soil assessment and management plan.

Minor earthworks are proposed to create additional footings for an expanded deck, fence and concrete footings to the proposed enlarged driveway.

ASS will not be disturbed during the construction as proposed, and no further information or consideration is required.

Clause 39A – Bushfire Protection

The subject parcel is located within a deemed bushfire protection area. A bushfire risk assessment was provided by the applicant. This assessment has made the following conclusions:

- Building being upgraded on the North, west and east to BAL 40
- Building upgraded on the southern boundary to BAL 29
- A 7m separation between the existing building and the adjoining rainforest vegetation be maintained as defendable space

A 79C assessment has confirmed that a BAL of 40 would require an APZ of between 6-9m in width. The building is located 4m from the northern boundary and while this area is clear of vegetation, the maintenance of a 7m wide APZ as nominated by the bushfire risk assessment submitted with the application is outside the property boundary. The land to the north is Council owned land. Council will not support APZs on this land.

The application is not considered acceptable in this regard.

Despite the above assessment, if Council was to support the proposal, including the provision of an APZ on Council land, the application would be forwarded to the Rural Fire Service for consideration due to the BAL 40 requirements.

Clause 53 – Development of Specific Sites

The site is subject to the provisions of this Clause. Specifically the parent lot of the subject site (Portion 312, Kings Beach, South Kingscliff) was one of three parcels covering the entire Salt precinct. These parcels are listed in Schedule 3, with additional development permitted with development consent as follows:

“Development for the purpose of dwelling houses and a hotel, motel or tourist resort (or any combination of them).”

Notwithstanding of this Clause, the application has stated that the dwelling will be for the purposes of a caretaker, which is permissible in the zone. The use for the purposes of a dwelling either as a caretaker or residence is not supported for various reasons outlined elsewhere in this report.
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 not considered to be generally in accordance with the aims of this plan having regard to its nature and permissibility at this location.

The proposal is considered to be inconsistent with the aims as it will not maintain the existing use of the land being a facility associated with recreation for the residential and tourist community of the Salt precinct.

Clause 2.3 – Zone objectives and Land use table

The RE1 zone (Green) adjoins the subject site as follows:

The objectives of the RE1 Public Recreation 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 use of an existing footpath upon community land for the purposes of a sole permanent vehicle access for a dwelling is not considered consistent with these objectives as this use will clearly conflict with the intended use as public open space for passive recreation.

The permissibility of the use of the adjoining community land for the purposes of a permanent vehicle access for the subject building is unclear. However, any such use would be the subject of a process by Council as the land owner to alter the parameters regarding the community use of this land. It is likely that this process will result in significant community objection, resulting in Council as the land owner not supporting the use of the land for permanent vehicle access.

The subject RE1 land is the only means of land access to this land locked site.
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:

2. (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 proposal will adversely impact existing public access to Cudgen Creek over the existing boat ramp through the erection of a fence along the southern and eastern boundaries of the site. The use of the building for permanent residency and expansion of an existing deck will also have an adverse impact on the perceived public accessibility to the boat ramp, in that visitors may be intimidated by the occupancy of the boathouse rather than its use as a hire facility only.

   (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 will result in a visual change to the existing natural scenic quality. The construction of a deck and fence is considered to be detrimental to the existing public recreation space given the existing and intended uses of the surrounding public land and adjoining boat ramp.

   (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 will not result in any overshadowing. However, the 1.2m high fence will impact upon the views from the adjoining public amenities, contrary to this Clause.

   (d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and
The proposed development will compromise the scenic qualities of the immediate locality through the construction of a fence on the southern and eastern property boundaries.

(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

No vegetation will be removed however the permanent use of the boathouse for residential purposes for up to 5 people does have the potential to increase pollution risks of this sensitive coastal location.

(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.

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

The proposal will impede and diminish the right of access of the public to the existing boat ramp and adjoining 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 has an existing connection to reticulated sewer. The existing connection will be satisfactory for the proposed conversion.

(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
No change to the existing stormwater disposal is proposed in conjunction with this application.

(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 conversion will not be affected by coastal hazards.

In summary, the proposed development is considered contrary to the provisions of this Clause as it will have an adverse impact upon existing access opportunities to the Cudgen Creek foreshore and will be detrimental to the visual amenity of the locality.

Clause 5.9 – Preservation of Trees or Vegetation

No vegetation will be disturbed in conjunction with the conversion. However, the application requires the creation of a 7m wide APZ that will encroach Council land to the north, resulting in revegetation in the APZ being severely restricted. Council does not support the use of community land for this APZ, nor the management of natural vegetation areas for private APZ’s.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 15: Wetlands or Fishery Habitats

The application is not considered consistent with this Clause for the following reasons:

- The permanent use of the building for the purposes of a residence for up to 5 persons on the foreshore of Cudgen Creek within the buffer of a nominated will increase the potential for pollution from this building into the adjoining creek.
- The proposed works ancillary to the conversion of the boathouse to a caretakers dwelling and boathouse will adversely impact the public access to the boat ramp on the foreshore of Cudgen Creek. These works include the construction of a deck on the northern side of the building and 1.2m high fence along the southern and eastern boundaries adjacent to the existing public facilities and jetty.

Clause 32B: Coastal Lands

As will be detailed elsewhere in this report, the development will impede existing public access to the foreshore, namely the boat ramp adjoining the subject site.
Clause 81: Development adjacent to the ocean or a waterway

The subject building is within 100m of the Cudgen Creek waterway. This proposal is considered contrary to this Clause as the use of the building for a caretakers residence is contrary to sub-Clause (a) referring to sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development. The conversion and associated fence and deck will be in conflict with this Clause making the existing boat ramp difficult to access and potentially deter visitors to the site that are not aware of the land tenure of the site and adjoining foreshore.

SEPP No. 14 - Coastal Wetlands

As mentioned previously the conversion of the building for permanent residential accommodation, albeit a caretaker will increase the potential for pollution of the adjoining wetland.

SEPP No. 55 - Remediation of Land

The original application for the boathouse stated that DA02/1422 thoroughly dealt with soil contamination issues. This was accepted in conjunction with this application. The current application has been assessed by Council’s Environmental Health Unit against the provisions of SEPP 55. The following response was provided:

"The property was previously subject to sand-mining operations. As there has been no state-wide systematic approach to regulating NORM wastes in Northern NSW, development applications relating to areas subject to previous sand-mining activity have been approved with conditions requiring further investigation, remediation and validation (to demonstrate suitability for the proposed occupation and/or activity)."

A suitable condition would be applied if the proposed development being recommended for approval.

SEPP No. 71 – Coastal Protection

The site is located within the coastal zone. The site is directly adjoining Cudgen Creek and is identified as a sensitive coastal location.

An assessment of the proposed development against the provisions of Clause 8 of this Policy is provided below:

(a) the aims of this Policy set out in clause 2,

The proposal is not considered 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 proposal will adversely impact on public access along the Cudgen Creek foreshore, given the existing situation of a public boat ramp partially located upon the subject lot and the proposed erection of a fence on the southern and eastern property boundaries, severely hindering access to this boat ramp.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

No new opportunities for public access to the foreshore will be created by this development and the existing access will be hampered through the erection of a fence along the southern boundary, contrary to this Clause.

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

The proposal is not considered suitable, having regard to its impact upon this location.

(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 proposed development will not result in any overshadowing as the existing structure will not change. However, the 1.2m high fence will impact upon the views from the adjoining public amenities, contrary to this Clause.

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

The proposed development will compromise the scenic qualities of the immediate locality through the construction of a fence on the southern and eastern property boundaries.

(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,

Given the limited works required for the conversion it is considered that the proposal would not impact negatively any animals or 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.

The proposal will have negligible impact upon marine environments or habitats, due to the lack of disturbance of existing vegetation onsite.

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

There are no wildlife corridors impacted by the proposed development.
(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 on coastal processes and coastal hazards due to location and scale.

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

The proposed permanent residential use of the boat house has the potential to cause 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.

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

The subject application does have some potential to increase the risk of pollution of Cudgen Creek due to the proximity of the building to Cudgen Creek which is proposed to become a permanent place of residence for a caretaker.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items.

(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 considered to potentially have a negative cumulative impact on the environment.

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

The proposed development application will not compromise water and energy efficiency.
In summary, the proposed development is considered contrary to the provisions of this Clause as it will have an adverse impact upon existing access opportunities to the Cudgen Creek foreshore and will be detrimental to the visual amenity of the locality.

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

A BASIX certificate has been prepared and submitted with the subject application.

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

There are no draft Planning Instruments applicable to the subject site.

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

*Tweed Development Control Plan*

*A1-Residential and Tourist Development Code*

A brief assessment of the proposal in regard to this DCP is provided below, being the conversion of an existing building currently used for a boat house for the purposes of a caretakers dwelling

<table>
<thead>
<tr>
<th>Control</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Controls</strong></td>
<td></td>
</tr>
<tr>
<td>Scale and Character of the Dwelling in regards to surrounding dwellings</td>
<td>The building itself is considered of a smaller scale than surrounding dwellings</td>
</tr>
<tr>
<td><strong>Site Design</strong></td>
<td></td>
</tr>
<tr>
<td>Earthworks</td>
<td>Minor earthworks proposed for the construction of the proposed deck and fence</td>
</tr>
<tr>
<td><strong>Landscaping</strong></td>
<td></td>
</tr>
<tr>
<td>35% of the site shall be landscaped</td>
<td>The site will retain 46% of the land area for landscaping</td>
</tr>
<tr>
<td>Setbacks</td>
<td>Given the proposed development will not change the existing footprint, no assessment of building lines and setbacks is considered relevant</td>
</tr>
<tr>
<td>Building Height – Maximum 9m</td>
<td>The internal works to convert the building to a caretakers dwelling will not increase the height of the building. The existing height of 7m remains compliant with this maximum.</td>
</tr>
<tr>
<td>Site Coverage – Maximum of 50% for the subject lot size.</td>
<td>Site coverage of 46% is compliant with this control</td>
</tr>
<tr>
<td>Control</td>
<td>Comment</td>
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</tr>
<tr>
<td><strong>Building Design</strong></td>
<td></td>
</tr>
<tr>
<td>Passive Design</td>
<td>Due to the adaptation of the building from a boat house to a caretakers dwelling, the passive design of the building is considered relatively poor. Windows will be restricted to highlight louvres along the southern boundary and two doors along the western frontage. The eastern elevation will contain louvers and the northern elevation will have a doorway onto a deck, however such will be separated from the living area by the proposed internal garage. Residential amenity for the proposal in regards to access to natural sunlight and ventilation is considered poor.</td>
</tr>
<tr>
<td><strong>Solar Access and Natural Ventilation</strong></td>
<td></td>
</tr>
<tr>
<td>Private Open space requirements and access to natural light</td>
<td>The proposal will have access to private open space on the northern side of the building; however such will be accessed through the proposed garage. Open space areas adjoining the boat ramp and on the southern side of the building are not considered private, given the proximity to the public open space areas. External Living areas will have access to sunlight.</td>
</tr>
<tr>
<td><strong>Building Form</strong></td>
<td></td>
</tr>
<tr>
<td>Height, Scale, Roof form</td>
<td>No changes to existing- no objections</td>
</tr>
<tr>
<td>Visual and Acoustic Privacy- Decks within 4m of a side boundary require screening</td>
<td>The proposal is unique in that the existing deck on the southern elevation is existing and will not be bordered by any dwellings. The southern boundary is shared however with the community facilities featuring sheltered picnic tables and BBQs. A 1.2m high fence is proposed along this southern boundary. The new deck on the northern boundary will have good amenity externally due to its separation from adjoining dwellings, however does not really serve the residence in an appropriate manner being indirectly accessed across the boat storage area.</td>
</tr>
<tr>
<td>Roofs, doormers, attics and skylights</td>
<td>No change to the roof is proposed, Skylights are proposed due to the lack of windows external to the building</td>
</tr>
<tr>
<td>Control</td>
<td>Comment</td>
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</tr>
<tr>
<td>Garages, driveways and carparking</td>
<td>The application proposes an internal garage and a tandem space in the driveway. This is compliant with the provisions. The access to these two spaces is however a major issue. This will be discussed in a latter section of this report.</td>
</tr>
<tr>
<td>Waste Management</td>
<td>Any approval would require an amendment to the existing waste services provided for the commercial component of the business. Any consent granted would require waste management during construction works. The existing amenities have an existing reticulated sewer connection</td>
</tr>
<tr>
<td>Fences and Walls</td>
<td>The proposal is unique in that the proposed fence will inhibit access to an existing boat ramp onsite that is required to remain available for public use, pursuant to DA05/0028 and 88B instrument. The fence is 1.2m high and does have a 60% openness ratio; however, the erection of this fence will significantly impact the nature of the public facilities in the immediate locality. This will be discussed in a separate section of this report.</td>
</tr>
</tbody>
</table>

**A2-Site Access and Parking Code**

The proposal does make provision for sufficient vehicles onsite, being a single garage and one tandem space. The access to the site is however an issue that will be discussed in a latter section of this report.

**A3-Development of Flood Liable Land**

The site is flood prone and is within a 1 in 100 year affected area. The DCP nominates a design flood level of 2.6m AHD and as such a 500mm freeboard has been provided to show habitable areas at 3.1m AHD.

**A6-Biting Midge and Mosquito Control**

The lot is immediately adjacent to Cudgen Creek which is identified as a mosquito and midge breeding area. Outdoor areas will be affected by these species. Any positive determination would require additional information regarding how the caretakers dwelling would be afforded some level of protection from these insects, given the openness of the internal area, garage openings and external open space areas.
A9-Energy Smart Homes Policy

A BASIX certificate has been submitted with the application.

A11-Public Notification of Development Proposals

The development application was notified for a period of 14 days, from Wednesday 16 September 2015 to Wednesday 30 September 2015. During this period 29 submissions were received raising objection to the proposal. A further objection was received after the closing date. A petition was also submitted objecting to the proposal containing 24 names. It is noted that many of the names on the petition also submitted an individual submission objecting to the proposal.

The reasons for objection are summarised in the table provided below.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The use of the footpath as a vehicle access for a permanent resident at the boathouse is unsafe for the public. The footway is neither designed nor suitable for ongoing regular vehicle access.</td>
<td>This is considered a valid reason for objection and is concurred with. The use of the footpath for ongoing vehicle traffic will conflict with its intended use as a footpath for all members of the public including children, cyclists and the elderly.</td>
</tr>
<tr>
<td>The public will feel intimidated when using the boat ramp if the building becomes a place of residence. The existing public amenity will be reduced if this building was to be used as a residence.</td>
<td>This is considered a valid reason for objection and is concurred with. While the building itself is privately owned, the land is burdened by an 88B instrument permitting public footway access to the boat ramp over the subject land. Council has a Crown Land License for this boat ramp.</td>
</tr>
<tr>
<td>A community asset should not be used for private purposes</td>
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</tr>
<tr>
<td>The primary justification for the use of the building as a permanent residency appears to be vandalism. However, many of the objections have stated that there has been no evidence of vandalism over the years.</td>
<td>Council’s Recreation Services Unit has advised that the public facilities in the vicinity have been subject to minimal and infrequent vandalism over the last few years. This would confirm the statements by these submissions that vandalism is not a problem in the area.</td>
</tr>
<tr>
<td>The surrounding dwellings offer sufficient passive surveillance to prevent vandalism from occurring on this public space.</td>
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<tr>
<td>Other methods to reduce vandalism should be used such as CCTV or security lighting</td>
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<tr>
<td>Issue</td>
<td>Comment</td>
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<tr>
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</tr>
<tr>
<td>The plans submitted with the DA indicate a motorised vessel will be</td>
<td>The original approval for the boathouse permitted the hiring of non-motorised craft only and no use of the boat ramp by motorised craft, with the exception of retrieval and rescue craft. This included all personal craft. This condition will be maintained.</td>
</tr>
<tr>
<td>stored onsite.</td>
<td></td>
</tr>
<tr>
<td>The boathouse has been used recently for overnight accommodation by</td>
<td>This is a compliance matter as no accommodation is permitted with the current approval.</td>
</tr>
<tr>
<td>groups resulting in excess noise and fires in garbage bins.</td>
<td></td>
</tr>
<tr>
<td>The use of the waterfront building as a private residence will</td>
<td>This reason for concern is concurred with and is considered a valid reason for refusal.</td>
</tr>
<tr>
<td>adversely impact the ability of the public to move freely about the</td>
<td></td>
</tr>
<tr>
<td>public facilities including boat ramp.</td>
<td></td>
</tr>
<tr>
<td>The current zoning does not permit residential usage. The use is</td>
<td>The 2(f) zoning does permit a caretakers residence. The need for a caretaker onsite is, however, not considered justified in the circumstances.</td>
</tr>
<tr>
<td>inconsistent with the 2(f) zoning.</td>
<td></td>
</tr>
<tr>
<td>No evidence is provided within the SEE that the commercial usage will</td>
<td>The boat storage area will be reduced from over 100m² to 50m² to accommodate the residential component and vehicle. It is recognised that the ongoing use of the building for the hiring of water craft would be compromised by this use as income from the building will be assured through the residential component rather than rent for a commercial business.</td>
</tr>
<tr>
<td>continue and the area for storage will be substantially reduced to</td>
<td></td>
</tr>
<tr>
<td>accommodate the residential component.</td>
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</tr>
<tr>
<td>The erection of the fence will hinder the use of the boat ramp and</td>
<td>The erection of a fence on the southern and eastern boundaries is not supported and will significantly impact upon the public’s accessibility to the boat ramp and surrounding public space.</td>
</tr>
<tr>
<td>reduce the area available for public recreation.</td>
<td></td>
</tr>
<tr>
<td>The boathouse was never intended to be used as a residence and is</td>
<td>A caretaker’s residence is permissible within the zone if justified. However, the use is not considered justified nor suitable for the subject site in this instance.</td>
</tr>
<tr>
<td>contrary to the original development.</td>
<td></td>
</tr>
<tr>
<td>Approval of this residential building will open the door for future</td>
<td>Approval is not recommended. However, any further expansion if this application was approved would be the subject of a further merit assessment.</td>
</tr>
<tr>
<td>applications to increase the floor area and height.</td>
<td></td>
</tr>
<tr>
<td>The conversion of the building for residential purposes will have an</td>
<td>No evidence is provided to support this. This is not a matter for the 79C assessment.</td>
</tr>
<tr>
<td>adverse impact on surrounding property values.</td>
<td></td>
</tr>
<tr>
<td>Issue</td>
<td>Comment</td>
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<tr>
<td>----------------------------------------------------------------------</td>
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</tr>
<tr>
<td>If the building is only to be used for a caretaker, why are there bunks included within the plan and why is a fence being proposed.</td>
<td>It is concurred that bunk beds are not necessary for such a use, nor is the erection of fencing.</td>
</tr>
<tr>
<td>The removal of bollards on a regular basis for vehicle access will compromise security of the public space and likely provide opportunities for other vehicles to access the community land.</td>
<td>This issue is considered a valid concern. The use of the footpath for regular vehicle access is not supported.</td>
</tr>
<tr>
<td>The separation distance between the building and vegetation to the north is only 5m not 7m, as stated in the application.</td>
<td>It is concurred that the APZ required for the building is not completely contained within the subject lot. Council land will be required to partially accommodate the necessary APZ. The use of council land is not supported for this purpose. This objection is considered valid.</td>
</tr>
<tr>
<td>The site is flood prone and is not suitable for residential accommodation</td>
<td>The floor level of the building can be raised to a sufficient height to provide flood free habitable areas.</td>
</tr>
</tbody>
</table>

A16-Preservation of Trees or Vegetation

The development will not require the removal of any vegetation. It is however proposed to maintain an asset protection zone beyond the site boundary to the north within Council land, preventing any further regeneration of native vegetation. This is not supported.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its impact upon the immediate locality in regards to public amenity, safety and access to the foreshore.

Clause 92(1)(b) Applications for demolition

Minor internal demolition is proposed to facilitate the internal changes to the building. This will only occur in the instance of a positive determination.

Clause 93 Fire Safety Considerations

The proposed building will be required to comply with the Building Code of Australia.
Clause 94 Buildings to be upgraded

The building will require upgrading for bushfire protection and building Class 1a if granted development consent, which is not recommended.

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

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular (extracts of these objects):

(a) to protect, enhance, maintain and restore the environment of the coastal region, its associated ecosystems, ecological processes and biological diversity, and its water quality, and

(b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development, and

(c) to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment,

(d) to promote public pedestrian access to the coastal region and recognise the public’s right to access

The proposal is not considered to be consistent with the objects of this Act for the following reasons:

- The use of the boathouse for residential purposes will not enhance the environment of the coastal region in anyway and may be detrimental to the associated ecosystems that have been restored since the development of the Salt precinct;
- The orderly development that has occurred since the approval of the Salt precinct will not be enhanced by the approval of this conversion. The use of the building for a permanent residence, albeit for the purposes of a caretaker, is not considered sustainable having regard to the sensitivity of the immediate foreshore and surrounding vegetation;
- The social benefits associated with the public land and associated amenities provided in the immediate vicinity of the boathouse and the boat ramp upon the subject land will be compromised by the use of this building as a permanent residence; and
- Public access to the foreshore will be significantly compromised by the construction of a fence on the southern and eastern boundaries of this lot immediately adjoining the land identified as being a public footway for access to the boat ramp. The use of the adjoining footpath for vehicles on a regular basis for the residence will result in safety issues for any members of the public wishing to access Cudgen Creek.
Tweed Shire Coastline Management Plan 2005

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. This document primarily pertains to matters surrounding the entrance to Cudgen Creek and the requirement that management of the Creek in accordance with the adopted Estuary Plan. An assessment of the proposal against the provision of the estuary management plan is provided below.

Tweed Coast Estuaries Management Plan 2012

This document states that:

Public access to estuarine foreshore areas is highly valued by the community. One of the aims of the NSW Coastal Policy is to ensure the provision of public access to foreshores where feasible and environmentally sustainable. Whilst providing and maintaining access to public lands in coastal environments is important, access and use must be balanced by protection of the environment and the maintenance of public safety.

TSC recognises that:

- Access to and sympathetic use of publicly owned coastal lands is desirable where it does not conflict with environmental management objectives;
- Uncontrolled public access has the potential to irreparably damage fragile coastal environments; and
- Human safety is a prime consideration when planning access.

The existing recreation area provides managed public access points to Cudgen Creek. These access points are the boat ramp on the land the subject of this application, the adjoining jetty and sandy beach to the south of the existing jetty.

This application has the potential to adversely impact public access to the boat ramp, despite the approval for the boat ramp requiring public access to be maintained and a Section 88B instrument.

The use of the adjoining building for a full time caretaker will not be conducive to maintaining the unrestricted access to the boat ramp. Visitors will likely feel intimidated by persons occupying the building on a permanent basis and may not be aware of the public access status of the boat ramp. This accessibility will be exacerbated by the erection of a fence on the southern and eastern property boundaries making access to the ramp difficult, particularly if non-motorised craft are being manoeuvred to this ramp.

This situation has the potential to put increased pressure on other areas of the foreshore if access to the boat ramp is not freely available to all, increasing the potential for vegetation damage and bank erosion in the vicinity of the public spaces.
This is not considered to be consistent with the aims of this plan in regards to the control of public access, maintenance and protection of riparian vegetation and control of bank erosion in estuaries.

**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**

It is proposed to undertake alterations and additions to the existing boathouse located immediately adjacent to Cudgen Creek for the purposes of a residence within the existing boathouse. The subject land is privately owned however is surrounded and land locked by surrounding parcels owned by Tweed Shire Council. The subject land is burdened by a right of footway over the subject lot for public access to the boat ramp partially contained within the subject site, providing access for non-motorised water craft to Cudgen Creek.

The current status of the commercial boat hire operation is unknown however public submissions and site visits have indicated that this boat hire business is not regularly or currently operating from the site.

Tweed Shire Council holds the Crown Licence over the timber wharf and ramp for public access to Cudgen Creek. The Licence number is LI379377 and expires 23 April 2024. The Diagram 1 below shows the Licence area (Site 2).

Council's Natural Resource Management Unit (NRM) has indicated that any development which impedes or deters public access to this public facility (boat ramp) is not supported. It is considered that given the proposal includes the erection of a fence on the southern and eastern property boundaries adjacent to the nominated public footway (See Diagram 2 below), access to the boat ramp will be impeded. Hence, the proposal is not supported by Councils NRM Unit.
Access, Transport and Traffic

The application includes the provision of two car parking spaces for the proposed development located within a garage and behind the driveway access to the garage. Access to these spaces can only occur over community land identified as Lot 221 DP 1069887.

Councils Legal Services Unit has advised that the adjoining community land does not have an applicable Plan of Management. As a consequence, any use of this land in addition to the existing uses for passive recreation ie a footpath and public open space would require approval by Tweed Shire Council following a comprehensive public consultation process. This process would apply to the use of the land for permanent and vehicle access for the boat house. Council’s Legal Services Unit have advised that given the level of public objection to the proposal, approval for the use of the land for regular vehicle access is considered unlikely based on the information provided to date and public response to the application. Similarly, this Unit also provided advice in regards to the public footway located upon the subject site for access to the boat ramp.

“The Right of Footway benefits Council as an authority, for the benefit of the public. Council is also granted the right to consent to the variation, release or modification of this Right of Footway. This right is to be considered separately to Council’s obligations and considerations of the DA as a consent authority.

No application for the variation or modification of the Right of Footway was received prior to the lodgement of the DA.”

The application effectively seeks a modification to the right of footway through the erection of a fence on the southern and eastern boundaries. The fencing will significantly hinder members of the public from accessing the boat ramp via the public footway. This is not supported by Council as a landowner, nor supported having regard to the provisions of Clause 79C of the Environmental Planning and Assessment Act 1979.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The public facilities (boat ramp, viewing deck and shelter shed) are located approximately 10 metres from the proposed residence, while the boat ramp adjoins the private land on its western boundary. All these facilities are available to the public 24 hours per day.

Councils Open Space Officer has advised that it is Councils experience that park furniture adjacent to private residences increases the disturbance such residents experience from late night or noisy use. The proximity of the proposed residence with the public facilities is not considered appropriate and has the potential to result in adverse amenity issues for the occupants of this boat house.
Council further advised that sufficient passive surveillance of the public facilities occurs from the adjoining properties located approximately 30m away. Therefore, justification for the conversion for the purposes of surveillance is not considered valid.

Flora and Fauna

No direct or indirect impacts to significant ecological values resulting from the conversion of the boathouse to a residential dwelling are anticipated based on consideration of the development application materials. No vegetation is proposed to be removed and all construction and operational activities are to occur within the existing footprint.

The bushfire assessment report prepared by Planit Consulting (August 2015) states that all requirements of Planning for Bushfire Protection 2006 can be met without removal of vegetation and through upgrading the building construction standard to BAL 40. The separation distance of 7m is an issue based on desktop assessment and noting that the existing building is 4.7m from the property boundary at its closest point in the NE corner (O-Rourke – Salt Boathouse Site Plan June 2015; DWG No. DA-01). Maintaining the separation distance as required by the bushfire risk assessment is therefore dependant on the agreement of the adjoining landholder (Council) to maintain this area free of vegetation. Based on the tree species present as documented in Appendix C – Bushfire Impact Assessment Plan, this will require significant ongoing vegetation management.

Council does not support the use of the adjoining land for the purposes of this Asset Protection Zone.

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

The application was publicly notified between Wednesday 16 September 2015 and Wednesday 30 September 2015. The outcomes of this public notification period are outlined in a previous section of this report.

(e) Public interest

The proposed development is not considered to be appropriate outcome for the site, nor is it considered to be in the public interest.

OPTIONS:

1. Refuse the application for specified reasons; or

2. Approve the application in principle, subject to Tweed Shire Council approval for access over community land and favourable support from the Rural Fire Service, and a further report be brought back to Council with recommended conditions of approval.

Council Officers recommend Option 1.
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 has a right of appeal in the Land and Environment Court in respect of any determination made by Council.

d. Communication/Engagement:
   Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
Planning Committee: Thursday 5 November 2015

3 [PR-PC] Development Application DA15/0443 for a 2 Lot Subdivision at Lot 2 DP 528642 No. 221 Terranora Road, Banora Point

SUBMITTED BY: Development Assessment and Compliance

FILE REFERENCE: DA15/0443 Pt1

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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

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SUMMARY OF REPORT:

Consent is sought for the subdivision of a single lot into 2 lots.

The parcel of land (Lot 2, DP 528642) is 26.36ha in area, known as No. 221 Terranora Road, Banora Point. The parent Lot has a 20m wide battle-axe street frontage to this road. The subject lot has an average width of 462m and depth of 534m.

The site comprises a combination of zonings pursuant to the Tweed Local Environmental Plan (TLEP) 2014 and the Tweed Local Environmental Plan (TLEP) 2000, due to a portion of the land being subject to deferred matters as prescribed by the Department of Planning and Environment (DP&E).

The zonings applicable to the site are as follows:

TLEP 2014 – Part R5 - Large Lot Residential and Part RU2 - Rural Landscape.

TLEP 2000 – Part 1(a) Rural, Part 1(c) Rural Living and Part 7(d) Environmental Protection (Scenic Escarpment).

Proposed Lot A is 23.9ha, has an existing dwelling and contains R5 - Large Lot Residential, RU2- Rural Landscape, 1(a) - Rural, 1(c) Rural Living and 7(d) Environmental Protection (Scenic Escarpment) land. The R5 zoned portion will be 4000m², while the overall lot size will meet the provisions of Clause 4.1B being a split lot containing multiple zones. The land does not have access to reticulated sewer. The application includes a request pursuant to Clause 4.6 of the TLEP 2014 facilitating exceptions to development standards.

Proposed Lot B is 20 317m², vacant and is zoned R5- Large Lot Residential, in its entirety. R5 has a minimum Lot size of 1ha, unless the Lot can comply with the provisions of Clause 4.2A of the TLEP 2014. The proposed Lot B can comply with the provisions of this Clause being 2.0317ha. The lot will have a satisfactory onsite sewerage system as required by this Clause.
The TLEP 2000 zones have a minimum Lot size of 1ha for the 1(c) land and 40ha for the 1(a) and 7(d) land. The parent parcel is 26ha, therefore these minimum lot sizes are not achievable. These partial zonings will however remain in a single Lot as a result of the subdivision. As the minimum lot sizes are not achieved, a SEPP 1 variation has been sought from the DP&E.

A SEPP 1 objection accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) Rural and 7(d) Environmental Protection (Scenic Escarpment) zone. The objection is also in respect of Clause 21 of the TLEP 2000, specifically seeking variance to the 1ha minimum lot size development standard for the 1(c) Rural Living zone. The SEPP 1 objection relates to proposed Lot A which has a total area of 23.91 hectares, split over the 1(a) Rural, 7(d) Environmental Protection and 1(c) Rural Living zones.

The application was referred to the Department of Planning and Infrastructure for consideration. Concurrence was granted in respect to the variation of the 40 hectare and 1 hectare development standards contained in clause 20(2)(a) and 21(2) of the Tweed LEP 2000 to permit the creation of proposed Lot A by letter dated 23 September 2015. The DP&E granted a concurrence for the proposed subdivision on the 23 September 2015.

The site is also within a sensitive coastal location as is identified by SEPP 71. Accordingly, a variation to the making of a master plan was requested by the applicant to the DP&E. This waiver was granted on 25 June 2015.

The parent Lot is located at the rear of a row of smaller R5 lots fronting Terranora Road and slopes down towards its southern boundary that is shared with an unformed section of Old Ferry Road and the Tweed River.

This application does not propose any dwelling upon Lot B. The dwelling upon Lot A will not change as a result of this proposal.

Access will be shared over the existing battle-axe style handle. Proposed Lot A, containing the larger proportion of the parent parcel is characterised by extensive stands of well-established vegetation. This vegetation is identified as primarily camphor laurel dominated forest. This vegetation will not be impacted in any way by the proposed subdivision.

This development application is being reported to Council due to the Department of Planning’s Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with this advice by the DP&E officers have resolved to report this application to full Council. The development standard is varied by approximately 40% in the case of Proposed Lot A.

The development application is also being reported to Council due to the requested variation to the development standards within Clause 4.2A of the TLEP 2014, being the subdivision of R5 zoned land below the 1ha minimum. This Clause does provide the opportunity for Lots within the R5 zone to be created that are less than this minimum size, subject to certain provisions. Proposed Lot A is consistent with the nominated provisions, with the exception of the requirement for reticulated sewer being available to the Lot and the R5 portion of the land being less than the nominated 1ha for unsewered land. The application has requested a variation to this standard as provided by Clause 4.6 of the TLEP 2014.
RECOMMENDATION:

That Development Application DA15/0443 for a 2 lot subdivision at Lot 2 DP 528642; No. 221 Terranora Road, Banora Point 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 TERRANORARD_SUBPLN (Revision 2), prepared by PLANIT CONSULTING and dated 2/2015, except where varied by the conditions of this consent.
   [GEN0005]
2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.
   [GEN0045]
3. The development is to be carried out in accordance with Council's Development Design and Construction Specifications.
   [GEN0265]
4. The approved subdivision/development shall not result in any clearing of native vegetation without prior approval from the relevant authority.
   [GEN0290]
5. This development consent does not include demolition of the existing structures on the subject site. A separate approval will need to be obtained for this purpose, as statutorily required.
   [GEN0305]
6. Any future dwelling on Lot B shall be located in accordance with the Preliminary Site Investigation Proposed Dwelling for Lot 2 DP 528642, 221 Terranora Road, Terranora prepared by HMC Environmental Consulting dated November 2014 (Report: HMC2014.139 CL) and Addendum for Preliminary Site Investigation - DA15/0443 - Proposed Dwelling - Lot 2 DP 528642, 221 Terranora Road, Terranora prepared by HMC Environmental Consulting Pty Ltd dated 1 July 2015. Proposed changes to this location may require an additional contaminated land investigation of the subject site to the satisfaction of Council's General Manager or delegate.
   [GEN0801]
7. The installation of an on-site sewage system to service a dwelling on Lot B shall be as described in the On-Site Sewage Management Design Report (HMC2014.139) dated June 2015 or to the satisfaction of the General Manager or Delegate.
   [GEN0802]
   [GEN0803]
9. This development consent does not include earthworks on the site, other than trenching for services.
   [GEN0804]
10. Any works undertaken onsite shall be undertaken in accordance with the provisions of Tweed Shire Council DCP Section A6 - Biting Midge and Mosquito Controls.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Prior to the issue of a Civil Construction Certificate for each stage of the project, a Construction Management Plan shall be submitted to and approved by the Principle Certifying Authority. A copy of the approved plan shall be submitted to Council. The Plan shall address, but not be limited to, the following matters where relevant:

   a) Hours of work;
   b) Contact details of site manager;
   c) Traffic and pedestrian management;
   d) Noise and vibration management;
   e) Construction waste management;
   f) Erosion and sediment control; and,
   g) Flora and fauna management.

Where construction work is to be undertaken in stages, the Proponent may, subject to agreement with the Principle Certifying Authority, stage the submission of the Construction Management Plan consistent with the staging of activities relating to that work. The Proponent shall submit a copy of the approved plan to Council.

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

13. A Traffic Control Plan in accordance with AS1742 and the latest version of the NSW Government Roads and Maritime Services (RMS) publication "Traffic Control at Work Sites" shall be prepared by an RMS accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate for Subdivision Works. Safe public access shall be provided at all times.

14. 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) four copies of 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:

- earthworks
- roadworks/furnishings
- stormwater drainage
- water supply works
- A new water service connection shall be provided for the new Lot (Lot B).
- The Construction Certificate shall detail the location of the new water service and existing water service. New water connections shall be installed by Tweed Shire Council on live mains. The arrangements and costs associated with any adjustment / installation to water infrastructure shall be borne in full by the applicant/developer. The engineering plans shall demonstrate that the existing water service is fully contained within proposed Lot A.
- sewerage works
- landscaping works
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations

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.

PRIOR TO COMMENCEMENT OF WORK

15. 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.

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

17. Prior to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

(a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
(c) WorkCover Regulations 2000

18. 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.
19. 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.

20. All imported fill material (trench backfilling) shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

21. 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 Councils Development Construction Specification C101 by:
   (i) the consent authority, or
   (ii) an accredited certifier, and
(b) the person having the benefit of the development consent:
   (i) has appointed a principal certifying authority,
   (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) to certify the compliance of the completed works. The SWAC must be accredited in accordance with Tweed Shire Council DCP Part A5 - Subdivision Manual, Appendix C with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
      C4: Accredited Certifier - Stormwater management facilities construction compliance
      C6: Accredited Certifier - Subdivision road and drainage construction compliance
      The SWAC shall provide documentary evidence to Council demonstrating current accreditation with the Building Professionals Board prior to commencement of works, and
   (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
(iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

Note: For subdivisions creating 5 new allotments or less, OR the value of new public infrastructure is less than $30,000, then the SWAC may be substituted for an Institute of Engineers Australia Chartered Professional Engineer (Civil College) with National Professional Engineers Register (NPER) registration.

22. 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.

23. 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.

24. An Approval to Install a Waste Treatment Device shall be obtained prior to the commencement of the installation of the facility.

25. Any alteration to the existing on-site sewage management facilities must be approved to the satisfaction of the General Manager or his delegate.

DURING CONSTRUCTION

26. 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.

27. 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
28. 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.
\[ L_{\text{Aeq, 15 min}} \text{ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.} \]
B. Long term period - the duration.
\[ L_{\text{Aeq, 15 min}} \text{ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.} \]

29. 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.

30. All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing in accordance with Table 8.1. Notwithstanding earthworks and filling, the frequency of field density tests for trenches shall be undertaken in accordance with Table 8.1 of AS 3798 (current version).

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

32. 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.

33. 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.

34. 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.
35. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

36. 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.

37. 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:

Water Reticulation, Sewer Reticulation, Drainage

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

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

39. The works are to be completed in accordance with Tweed Shire Councils Development Control Plan, Part A5 - Subdivision Manual and Design & Construction Specifications, including variations to the approved drawings as may be required due to insufficient detail shown on the drawings or to ensure that Council policy and/or good engineering practices are achieved.
40. 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.

41. 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.

42. 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 B, from the existing water main in Terranora Road. The connection shall be undertaken by Tweed Shire Council, with all applicable costs and application fees paid by the Applicant.

43. Dust and Erosion Management
   (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's are to be topsoiled and seeded immediately to protect them from water and wind erosion.
   (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
   (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to Council on request.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE
44. 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.

45. 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 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 Councils contributions sheet and Certificate of Compliance signed by an authorised officer of Council.
   Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

   Water DSP3: 1.2 ET @ $13128 per ET $15,753.60
These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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

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

46. Section 94 Contributions

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

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

6.5 Trips @ $2091 per Trips $13,592
($1,988 base rate + $103 indexation)
S94 Plan No. 4
Sector5_4

b. Open Space (Casual):

1 ET @ $552 per ET $552
($502 base rate + $50 indexation)
S94 Plan No. 5

c. Open Space (Structured):

1 ET @ $632 per ET $632
($575 base rate + $57 indexation)
S94 Plan No. 5

d. Shirewide Library Facilities:
1 ET @ $851 per ET
($792 base rate + $59 indexation)
S94 Plan No. 11

Bus Shelters:
1 ET @ $66 per ET $66
($60 base rate + $6 indexation)
S94 Plan No. 12

Eviron Cemetery:
1 ET @ $124 per ET $124
($101 base rate + $23 indexation)
S94 Plan No. 13

Community Facilities (Tweed Coast - North)
1 ET @ $1411 per ET $1,411
($1,305.60 base rate + $105.40 indexation)
S94 Plan No. 15

Extensions to Council Administration Offices & Technical Support Facilities
1 ET @ $1888.66 per ET $1,888.66
($1,759.90 base rate + $128.76 indexation)
S94 Plan No. 18

Cycleways:
1 ET @ $480 per ET $480
($447 base rate + $33 indexation)
S94 Plan No. 22

Regional Open Space (Casual)
1 ET @ $1108 per ET $1,108
($1,031 base rate + $77 indexation)
S94 Plan No. 26

Regional Open Space (Structured):
1 ET @ $3890 per ET $3,890
($3,619 base rate + $271 indexation)
S94 Plan No. 26

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 (public infrastructure insert /delete as applicable) 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.

48. Prior to the issue of a subdivision certificate, a certificate of compliance shall be submitted to Council by the Developers Subdivision Works Accredited Certifier (SWAC) or equivalent, 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 residential purposes. The submission shall include copies of all undertaken test results.

49. 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.

50. Prior to the issue of a Subdivision Certificate, Work as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council’s Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans. The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

(a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;

(b) the plans accurately reflect the Work as Executed.

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

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

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

(a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.
(b) Positive Covenant over the subject land (as applicable) to ensure that the required provisions of the “Planning for Bushfire Protection 2006 Guidelines and the General Terms of Approval of the Consent as imposed under Section 100B of the Rural Fires Act 1997 are enforced in perpetuity.

(c) A Restriction As To User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principle Certifying Authority.

(d) Provide a Right of Carriageway over the existing driveway for access for proposed Lots A and B as depicted in Appendix A of the Statement of Environmental effects.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

53. 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.

54. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.
   The following information must accompany an application:
   
   (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.

   (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

   Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.
55. 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. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:

(a) Roads
(b) Water Reticulation
(c) Sewerage Reticulation
(d) Sewerage Pump Station
(e) Drainage
(f) Bulk Earthworks
(g) Retaining Walls

Note:

1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

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

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

57. Prior to issuing a Subdivision Certificate, reticulated water supply reticulation shall be provided to the lot 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.

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

59. Electricity
(a) The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity (residential and rural residential) has been provided adjacent to the front boundary of each allotment; and
(b) The reticulation includes the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

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

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

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

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 Planit Consulting, numbered TERRANORARD_SUBPLAN (Revision 2), dated February 2015.

2. At the issue of subdivision certificate and in perpetuity the property around the existing dwelling, as indicated below, shall be maintained an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of ‘Planning for Bushfire Protection 2006’ and the NSW Rural Fire Service’s document ‘Standards for Asset Protection Zones’:

- North to the proposed property boundary;
- East and southeast for a distance of 28 metres; and
- West and southwest for a distance of 24 metres.

3. A 20,000L fire fighting water supply, complying with the requirements of 4.1.3 of ‘Planning for Bush Fire Protection 2006’ is to be provided to the existing dwelling

4. Any new or upgrading of existing electricity and/or gas services is to comply with 4.1.3 of ‘Planning for Bush Fire Protection’.

5. Property Access roads shall comply with section 4.1.3(2) of ‘Planning for Bush Fire Protection’ except no alternate access is required in this instance.

6. The existing building on proposed Lot A is to be upgraded to improve ember protection. This is to be achieved by enclosing all openings or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any subfloor areas, openable windows,
vents, weepholes and eaves. External doors are to be fitted within draft excluders.

7. General Advice

This approval is for the subdivision of the land only. Any further development application for class 1, 2 and 3 buildings as identified by the ‘Building Code of Australia’ must be subject to separate application under section 79BA of the EP and A Act and address the requirements of ‘Planning for Bush Fire Protection 2006’.
REPORT:

Applicant: Ricker Pastoral Company Pty Ltd  
Owner: Ricker Pastoral Company Pty Ltd  
Location: Lot 2 DP 528642; No. 221 Terranora Road BANORA POINT  
Zoning: R5 - Large Lot Residential RU2 - Rural Landscape 1(a) Rural 7(d) Environmental Protection (Scenic/Escarpment) 1(c) Rural Living  
Cost: $0

Background:

Consent is sought for the subdivision of a single lot into 2 lots.

The parcel of land (Lot 2, DP 528642) is 26.36ha in area, known as No. 221 Terranora Road, Banora Point has a 20m wide battle-axe street frontage to this road. The subject lot has an average width of 462m and depth of 534m.

The site comprises a combination of zonings pursuant to the Tweed Local Environmental Plan (TLEP) 2014 and the Tweed Local Environmental Plan (TLEP) 2000, due to a portion of the land being subject to deferred matters as prescribed by the Department of Planning and Environment (DP&E).

The zonings applicable to the site are as follows;

TLEP 2014 –Part R5 - Large Lot Residential and Part RU2 - Rural Landscape  
TLEP 2000 – Part 1(a) Rural, Part 1(c) Rural Living and Part 7(d) Environmental Protection (Scenic Escarpment)

Proposed Lot A is 23.9ha, contains an existing dwelling and contains R5, RU2, 1(a), 1(c) and 7(d), zoned land. The R5 zoned portion will be 4000m², while the overall lot size will meet the provisions of Clause 4.1B being a split lot containing multiple zones. The land does not have access to reticulated sewer. R5 zones have a minimum Lot size of 1ha, unless the Lot can comply with the provisions of Clause 4.2A of the TLEP 2014. The proposed Lot A can comply with the provisions of this Clause, with the exception of the requirement for reticulated sewer given that the R5 portion of the land is below the 1ha minimum. The application therefore includes a request pursuant to Clause 4.6 of the TLEP 2014 that facilitates exceptions to development standards for the R5 component of Lot A.

Proposed Lot B is 20 317m², vacant and zoned R5- Large Lot residential in its entirety. This Lot size is compliant with the development standards prescribed by Clause 4.2A of TLEP 2014.
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 2000**

**Clause 4 - Aims of the Plan**

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

**Clause 5 - Ecologically Sustainable Development**

The subject development application is considered consistent with the four principles of ESD, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms* as it rationalises an existing random subdivision plan.

**Clause 8 - Consent Considerations**

The consent authority may grant consent to development only if:

a) it is satisfied that the development is consistent with the primary objectives of the zone within which it is located, and

b) it has considered those aims and objectives of this plan that are relevant to the development, and

C) it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.

In this instance, the site covers three zones under the TLEP 2000, being the 1(a) Rural zone, the 1(c) Rural Living zone and the 7(d) Environmental Protection (Scenic Escarpment) zone. The zone objectives are discussed in detail below but for the purposes of Clause 8 it is considered that the development is consistent with the primary objective of each relevant zone in that the proposal will not prejudice the scenic value of the site and maintain the rural character of the subject land while facilitating sufficient land to be utilised for residential purposes.

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

The proposal is considered to be consistent with Clause 8.
Clause 11 - Zone Objectives

As per the image below, the site exhibits multiple zonings under the Tweed Local Environmental Plan (LEP) 2000:

1(a) Rural
1(c) Rural Living
7(d) Environmental Protection

The proposed subdivision would create two lots, one with 1(a)/1(c)/7(d)/RU2 and R5 (TLEP 2014) zonings and one with R5 (TLEP 2014) zoning. In each zone, subdivision is permissible with consent, subject to meeting the minimum lot size controls.

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

Primary Objective

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

Secondary Objective

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

The proposed development is consistent with the zone objectives in that it maintains rural use of the site and does not unnecessarily fragment land. The land to be subdivided from the remnant larger parcel will be all R5 land while the remainder of the lot will retain the various split zonings over the site. No further fragmentation of the TLEP 2000 land will occur as a result of this proposal.
The 1(c) zone has the following objectives:

**Primary**
- To enable rural residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.
- To provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.

**Secondary**
- To enable other development that is compatible with rural residential development.

The development is considered to be consistent with the zone objectives by virtue of enabling rural/residential development on a suitably sized and compliant allotment. The larger lot containing the TLEP 2000 zoned land contains an existing dwelling already serviced by onsite sewer and potable water.

The 7(d) zone has the following objectives:

**Primary**
- To protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.

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

The development is considered to be consistent with the zone objectives by virtue of protecting the scenic escarpment by not fragmenting the 7(d) zone and providing adequate area upon the vacant lot for a dwelling and onsite sewer. This dwelling location is not within the 7(d) zone and no buildings are proposed or required within this zone. All existing vegetation will be retained within this zone.

**Clause 15 - Essential Services**

Council's reticulated potable water supply will be available to both lots, given the existing dwelling is connected and a second connection can be provided. Both Lots are not connected to reticulated sewer and will be required to maintain the existing OSSM and provide a second OSSM for any future dwelling upon Lot B.

Council’s Environmental Health Officer and Water Engineer has reviewed the proposed arrangement (and existing OSSM system) and raised no objections, subject to conditions.
Clause 16 - Height of Building

A three storey height limit applies in the locality however no building works are proposed as part of this application.

Clause 17 - Social Impact Assessment

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

Clause 19 – Subdivision

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

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

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

Clause 20 specifies that consent may only be granted to subdivision in the 1(a) or 7(d) zone if the allotment to be created is at least 40ha.

A SEPP 1 objection thus accompanies the application. The objection is in respect of the planning standard identified within Clause 20 (2)(a) of the Tweed Local Environmental Plan 2000, specifically seeking variance to the 40 hectare minimum lot size development standard for the 1(a) Rural and 7(d) Environmental Protection zone. The SEPP 1 objection relates to proposed Lot A which has a total area of 23.91ha, split over the 1(a) Rural, 7(d) and 1(c) Rural Living zones, in addition to RU2 and R5 zones under the TLEP 2014.

Concurrence from the DP&E was sought for the subdivision, which is discussed in the SEPP 1 Objection section of this report. The Department issued concurrence on the basis that there is no public benefit to maintaining the standard in this case.

Clause 21

The SEPP 1 objection is also in respect of Clause 21 of the TLEP 2000, specifically seeking variance to the 1ha minimum lot size development standard for the 1(c) Rural Living zone. The SEPP 1 objection relates to proposed Lot A which has a total area of 23.91 hectares, split over the 1(a) Rural, 7(d) Environmental Protection and 1(c) Rural Living zones. It is noted that the 1(c) portion of the land is 336m² and will not be fragmented as a result of this proposal.

Clause 35 - Acid Sulfate Soils

The site is affected by part Class 2 and part Class 5 (majority of the site) ASS. The Class 2 soils are not located in proximity to the potential dwelling site for proposed Lot B and there are no further concerns in this regard.
Clause 39A – Bushfire Protection

The subject parcel is located within a deemed bushfire protection area. A bushfire risk assessment was provided by the applicant and a bushfire safety authority provided by the rural fire service by letter dated 13 July 2015. The conditions of this bushfire safety authority will be included within any consent granted.

**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 permissibility at this location.
Clause 2.3 – Zone objectives and Land use table

The TLEP 2014 zones the subject site R5 - Large Lot Residential and RU2 - Rural Landscape.

The objectives of the R5 zone are;

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural and scenic character of the zone.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

The proposal is consistent with the objectives of the R5 zone through the provision of large lots which are capable of accommodating a dwelling house, whilst retaining and not significantly impacting the environmentally sensitive and scenic areas of the site. The site has historically been zoned for large lot residential and its subdivision will not impact upon the orderly development of urban areas to the east and north in the future.

The proposal is consistent with the above objectives, by virtue of creating residential allotments which would provide for residential housing in a rural setting, consistent with the surrounding locality.

The objectives of the RU2 zone are;

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
• To provide for a range of compatible land uses, including extensive agriculture.
• To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.

The applicant has provided information with respect to the proposed development being in compliance with the above objectives, outlined below:

Proposed Lot A will retain all of the rural zoned land as well as remaining R5 zoned land. The proposal will not reduce or impact on the values of land zoned RU2.

The proposal is consistent with the above objectives, by virtue of creating residential allotments which would maintain the existing rural character of the land while maintaining the natural resource base.

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

The objectives of Clause 4.1 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.

Proposed Lot A is 23.9ha, has an existing dwelling and contains R5, RU2, 1(a), 1(c) and 7(d) zoned land. The R5 zoned portion will be 4000m². The overall lot size will meet the provisions of Clause 4.1B being a split lot containing multiple zones however will retain all of the RU2 land and rural land zoned pursuant to TLEP2000.

The site is within Area A as identified by this Clause. Clause 4.2A provides opportunities for lots to be smaller than the minimum lot size nominated within the R5- Large Lot residential zones if the consent authority is satisfied that;

(a) the lot size would not jeopardise the semi-rural character and environmental values of the area, and

(b) there is, or will be, in place for the subdivision a sewerage system for the treatment and disposal of sewage to ensure there will be no harm to human health or the natural environment

Proposed Lot B is 20 317m², vacant and is zoned R5- Large Lot Residential. This lot is compliant with the minimum 1ha (10 000m²) Lot size for this zoning.

Proposed Lot A is a split lot, containing 6 435m² of R5 land. This is less than the 1ha minimum, however more than the 4000m² concessions pursuant to Clause 4.2A (2) required under the provisions of this Clause, requiring reticulated sewer and water. This lot will not have access to reticulated sewer, however given the site is 23.91ha in total, sufficient area is available onsite for the OSSM system. Council has accepted this method of disposal. Both lots will be connected to reticulated water and are therefore complaint in this regard.
It is therefore considered that proposed Lot A can comply with the provisions of this Clause for the following reasons;

- Existing large residential lots to the north are of similar size in regards to the R5 areas,
- The environmental value of the areas will not be compromised as both lots will have sufficient areas for a dwelling without the removal of vegetation.
- The application has proposed a suitable onsite sewage management system for any future dwelling in a location that does not jeopardise the existing environment.

A request for a variation to this development standard has been provided in accordance with Clause 4.6.

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.

The parent lot has a nominated building height pursuant to the TLEP 2014 of 9m. No buildings are proposed in conjunction with this application. Any future dwelling upon Lot A would be the subject of such restrictions during a separate assessment process.

Clause 4.4 – Floor Space Ratio

The portion of the land parcel the subject to the provisions of TLEP 2015 has a floor space ratio of 0.55:1. The proposal does not include any building works. The existing dwelling located upon proposed Lot A will not exceed the nominated FSR, given the Lot size of 23.91ha. Any future application for residential development upon proposed Lot B will be subject to a separate merit assessment.

Clause 4.6 - Exception to development standards

The proposal requests a variation to the development standards within Clause 4.2A of the TLEP 2014, being the subdivision of R5 zoned land below the 1ha minimum. This Clause does provide the opportunity for Lots within the R5 zone to be created that are less than this minimum size, subject to certain provisions. Proposed Lot B is consistent with the nominated provisions, being larger than 1ha in area.

However, proposed Lot A while being 23.01ha in area, contains 6 435m² of R5 land, contrary to the minimum site area of 1ha for R5 lots without reticulated sewer.

The application has requested a variation to this standard as provided by Clause 4.6 of the TLEP 2014.
The objectives and provisions of this Clause are as follows, including comments in respect of the subject application;

(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.

Having regard to the justification provided by the application and the circumstances of the case, it is considered that the application of this Clause is appropriate and will maintain the objectives associated with minimum Lot sizes for subdivision, despite the variation.

(2) 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. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The proposed exception to the development standard is not expressly excluded from this variation.

(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:

The applicant has provided a written request to vary the development standard.
The reasons provided within this formal request have been incorporated into discussions within this report supporting the variation.

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

The minimum lot size is applied to ensure satisfactory area is available onsite to support onsite sewerage disposal. The reduced area of 0.4ha is provided if reticulated sewer is available to the proposed Lot. The circumstance of the proposed Lot A are such that the size of the Lot is 23.91ha, with 6435m² being zoned R5. As a result the site will have more than sufficient area for the disposal of sewer onsite. The disposal of sewer onsite is supported by Council’s Environmental Health Unit.

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

It is considered that the proposed variation is justified on environmental planning grounds as the provision of a R5 portion of land will have no adverse environmental impacts given the site area available for an OSSM. It is noted that the existing dwelling will be located upon the proposed Lot A and the existing OSSM is adequate to cater for this dwelling. No change to the existing residential dwelling is proposed or required.

It is further noted that Council’s Water Unit rejected a request for a sewer pipeline to service proposed Lot B. This decision was partially based on the ability of the site to provide an onsite service as is proposed by this application.
(4) 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

The applicants submission has adequately addressed the matters in subclause 3 as explained above.

(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

The proposal is considered to be in the public interest as it will provide increased opportunities for housing in the locality while not detrimentally impacting upon the environmental or the objectives of the Plan in any way.

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

While a SEPP 1 variation has been obtained for the variation to the development standards identified within TLEP 2000, Council has assumed concurrence for this variation.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Council has given due consideration to these matters and considers that there is no public benefit in maintaining the development standard and will not have any significant impact upon state or regional environmental planning.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

The proposal will not result in two lots that contain less than the minimum area of R5 land.

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

The circumstances of this case are that proposed Lot A will create an area of R5 land that is more than a 10% variation to the minimum lot size.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).

A copy of these records will be kept as required
(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

Not applicable

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

Not applicable

(c) Clause 5.4.

Not applicable

Clause 5.4 - Controls relating to miscellaneous permissible uses

The proposal does not propose any issues that are listed within this Clause.

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:

2. (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 proposal is spatially separated from the coastal zone. The lot does border an unformed portion of Old Ferry Road which separates the property from the Tweed River. However, no change to any existing access will result from this proposal.

(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 will result in minimal visual change to the existing natural scenic quality. The consequence of the subdivision is potentially another residential dwelling located a greater distance from the Tweed River than the existing dwelling, within an existing R5 zone. As such the proposal is considered to be acceptable at this location and is appropriate with respect to the above criteria.

(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 subdivision will not result in any overshadowing or loss of views from a public place to the coastal foreshore due to topography and spatial separation.

(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.

(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

All portions of the site zoned for environmental protection will be retained within proposed Lot A. No works are required within the 7(d) land. 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

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 is to provide onsite sewer for both Lots. This is spatially separated from the Tweed River and the proposed system is considered suitable. The existing system for the dwelling upon Lot A will be maintained and is not considered to be a threat to the Tweed River.

   (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

No new dwellings or hardstand areas will be constructed as a result of the proposal. Standard conditions will be required for the construction phase of the subdivision, of which will involve minimal works. Further assessment of
stormwater will be required for any future application for a dwelling upon proposed Lot B.

(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 subdivision development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, scale, and physical separation of development works from any area affected by coastal hazards.

Clause 5.9 – Preservation of Trees or Vegetation

No vegetation will be disturbed in conjunction with the creation of this subdivision.

Clause 5.10 - Heritage Conservation

Site is identified as being of significance in respect to Aboriginal Cultural heritage. The areas of significance onsite will however remain undisturbed as a result of this application. These areas will also not be fragmented by the proposed subdivision, given the areas outside the R5 zone will be retained within proposed Lot A. Councils Community Development officer was consulted about the proposal and concluded that the proposal was satisfactory and no conditions of consent were necessary.

Clause 5.11 - Bush fire hazard reduction

This clause outlines that 'Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.'

No such work is proposed in accordance with this Clause.

Clause 7.1 – Acid Sulfate Soils

The site is affected by part Class 2 and part Class 5 (majority of the site) ASS. The Class 2 soils are not located in proximity to the potential dwelling site for proposed Lot B and there are no further concerns in this regard.

Clause 7.2 - Earthworks

No earthworks are required for the proposed development

Clause 7.3 – Flood Planning

The lower portion of the site is subject to flooding. This portion of the site will, however, remain as existing for the purposes of the proposed subdivision.

Clause 7.4 - Floodplain risk management

Not applicable to this application.
Clause 7.5 - Coastal risk planning

The subject site is not identified as being within a coastal risk area on Council’s Coastal Risk Planning Map on land to which this LEP relates.

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 state that consent must not be granted to development 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.

Stormwater management of the existing proposal will not change as a result of this subdivision. Any future application for a dwelling upon proposed Lot B will be subject of a separate application.

Stormwater management during construction will be managed with a condition of development consent to protect the environment from sediment and erosion.

Clause 7.8 – Airspace operations

Not applicable to the subject site.

Clause 7.9 - Development in areas subject to aircraft noise

Not applicable to the subject site.

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,

There is an existing water main in the existing road reserve. The engineering report within the SEE does not provide details of a new water connection, however this can be conditioned and provided as part of the construction certificate application. A condition of consent to include that both properties are to be serviced by a water connection will be incorporated into any consent granted.

(b) the supply of electricity,

Electricity services are currently provided to the area via Essential Energy infrastructure. Recommended conditions of consent shall require the applicant to provide services in accordance with the standards of the supply authority.
(c) the disposal and management of sewage,
An On-Site Sewage Management Design Report for Lot 2 DP 528642, 221 Terranora Road, Terranora prepared by HMC Environmental Consulting Pty Ltd dated June 2015 (Report No: HMC2014.139 OSSM) has been submitted. The report describes suitable on-site sewage management options for an existing dwelling on proposed Lot A and a future dwelling on proposed Lot B.

(d) stormwater drainage or on-site conservation,
Stormwater management has been specifically addressed under Clause 7.6 of the Tweed LEP 2014 above and is considered satisfactory, given the existing dwellings management of runoff will remain as existing and no additional dwellings are proposed. The proposal is considered to be acceptable with respect to stormwater drainage subject to the application of relevant conditions of consent.
A Restriction as to User requiring that all roofwater from houses, buildings or structures shall be discharged to an approved infiltration pit located on the subject property will also be a condition of any consent granted.

(e) suitable road access.
The applicant proposes to utilise the existing access driveway for the existing lot and new development lot. The applicant proposes to provide a right of way (ROW) so the driveway is shared between the properties for access. A condition that will require the provision of a Right of Way over proposed Lots A and B will be included within any positive determination.

Other Specific Clauses
No other Clauses are applicable to the subject application.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

The North Coast Regional Environmental Plan remains applicable for the portions of the site subject to the provisions of TLEP 2000.

Clause 12: Impact on agricultural activities
Council’s constraints mapping identifies the land as unsuitable for agriculture, despite the zoning and land area. No adverse impact to agricultural production.

Clause 15: Wetlands or Fishery Habitats
The subdivision will provide the opportunity for an additional residential allotment within the locality. This additional lot is spatially separated from the Tweed River and through the imposition of environmental management measures to minimise the potential for sediment and erosion overland will ensure the protection of any downstream sensitive lands such as wetlands or fishery habitats. No disturbance of land adjoining the Tweed River will be required to facilitate this subdivision.
Clause 18: Extractive industry

Not applicable

Clause 18A - Mineral sands mining

Not applicable

Clause 29A: Natural areas and water catchment

The subdivision will not require any removal of vegetation for the creation of the two Lots nor for the establishment of a future dwelling upon proposed Lot B. Lot A has an existing dwelling. Standard conditions of consent for environmental protection works during the subdivision process will ensure the catchment and natural areas surrounding will not be impacted by the proposal.

Clause 32B: Coastal Lands

The site is partially located within a sensitive coastal location. An assessment of the application in regards to the impact of the application in regards to its proximity to the coast and the Tweed River have ben outlined within other sections of this report. It is concluded that the 2 lot subdivision can proceed without any adverse impact upon the sensitive coastal area adjoining the Tweed River.

Clause 33: Coastal hazard areas

Not applicable

Clause 36: Heritage items, generally

The site has been identified as potentially containing items of Aboriginal heritage. However, as discussed in a different section of this report. Council’s Cultural Heritage officer considers the potential for any disturbance of relics is negligible given the location of the subdivision works and the potential future dwelling site. No conditions of consent were requested.

Clause 36A: Heritage items of state & regional significance

Not applicable

Clause 36C: Conservation areas of state & regional significance

Not applicable

Clause 36D: Advertising heritage applications

Not applicable
Clause 43: Residential development

The subdivision will result in a density consistent with the surrounding R5 large lot residential density. The larger lot is appropriate considering the deferred zoning matters applicable to the land.

Clause 47: Principles for Commercial and Industrial Development

Not applicable

Clause 51: Directors concurrence for tall buildings

Not applicable

Clause 66: Adequacy of community and welfare services

The locality is considered to have sufficient community and welfare services to cater for the small increase in density.

Clause 75: Tourism development

Not applicable

Clause 76: Natural tourism areas

Not applicable

Clause 81: Development adjacent to the ocean or a waterway

The subdivision will not impact upon any existing public access to the Tweed River foreshore. The development will not result in buildings that overshadow the River

Clause 82: Sporting fields or specialised recreation facilities

Not applicable

SEPP No. 1 - Development Standards

Concurrence has been granted by the DP&E for the variation to the minimum lot sizes for the subject land as specified in Clause 20 of the TLEP 2000 for the 1(a) Rural, and 7(d) Environmental Protection (Scenic Escarpment) zones being 40ha and in Clause 21 for the 1(c) Rural Living zone being 1ha. This will enable the subdivision of Lot 2 DP 528642 into two lots as specified in the application.

Concurrence was granted for the following reasons:

1. The development will not result in inappropriate fragmentation of rural land; and
2. There is no public benefit in maintaining the 40ha and 1ha minimum lot size development standards for the proposed development.

The confirmation of concurrence was received on the 23 September 2015.
The five principles in assessing SEPP No. 1 objections are discussed below;

1. **The objectives of the standard are achieved not withstanding noncompliance with the standard.**

   The objectives of Clause 20 of the TLEP 2000 are the prevention of fragmentation of ownership of rural land. The land subject to the provisions of the TLEP 2000 will not be altered, nor reduced in area as a result of the subject proposal. Accordingly, the objectives of the Clause will be maintained.

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

   The standard is imposed to protect the areas of scenic and rural character. The retention of the existing areas subject to the provisions of the TLEP 2000 in their current formation and land area will ensure these areas are not prejudiced in anyway by the proposal.

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

   The site as existing does not achieve the minimum lot size requirements. The excising of a portion of the land for large lot residential purposes is consistent with the zoning for this portion of the land. This excising will not prejudice the area of the lot the subject of the TLEP 2000 provisions.

4. **The development standard has been virtually abandoned or destroyed by the Councils own actions in granting consent departing from the standard and hence compliance with the standard is unnecessary and unreasonable.**

   Council has not abandoned the standard, however the variation is justified due to the existing size of the land and the combination of different zonings that are the subject of the TLEP 2000 and TLEP 2014.

5. **The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel should not have been included in the zone.**

   Upholding the development standard would prevent the excising of the proposed Lot B from the parent lot and would not assist in providing an additional large Lot for residential purposes. The proposal is consistent with the residential character of the area which comprises a mix of larger residential sized blocks.

**SEPP No. 44 - Koala Habitat Protection**

The application has included an assessment of the proposal against the provisions of this SEPP.

The land does not contain any trees identified within Schedule 2 of the SEPP therefore is not considered potential koala habitat. Councils mapping also indicates only a small portion of the land as being identified as secondary B habitat for koalas in the south eastern corner of the Lot.
Given the proposed works onsite and the distance of any future dwelling from the secondary habitat, no impact upon koalas is considered likely. This is further supported by the retention of all vegetation onsite, despite the need for significant Asset protection zones.

Council’s Natural Resource Management Unit was consulted about this application. Verbal advice was received confirming that the development would not have any adverse impact upon the Tweed Koala population and no further assessment considered necessary.

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

Councils Environmental Health Unit (EHU) has undertaken an assessment of the information provided to address this SEPP.

It is noted that the application provided an addendum to the original report identifying a dwelling site for proposed Lot B for the purposes of contaminated land investigations. As a result of this report, it was concluded that contamination was not a constraint at this dwelling site.

Appropriate condition of consent will ensure any future dwelling is constrained to the area the subject of the preliminary investigation via an 88B Instrument.

**SEPP No 71 – Coastal Protection**

The site is located within the coastal zone. A portion of the site adjoins the Tweed River and is identified as a sensitive coastal location. The application has been granted a waiver for the preparation of a master plan in accordance with Clause 18 of this SEPP by the DP& E by letter dated 25 June 2015.

An assessment of the proposed development against the provisions of Clause 8 of this Policy is provided below;

(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 proposal will not impact on public access along Old Ferry Road to the south.

(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,

Old Ferry Road is an unformed roadway located between the site and the Tweed River. This roadway provides access to the foreshore and will not be impacted by this development.

(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 proposed development is not considered to have any detrimental impact on, or result in, any overshadowing of the coastal foreshore due to the spatial separation. Furthermore, the proposal does not result in the loss of any views from a public place to the coastal foreshore. The proposal is acceptable having regard to this control.

(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. The current status of the land will not change as a result of this proposal, other than a future dwelling, the subject of a separate approval on the northern side of the site upon proposed Lot B that will not have direct access to the Tweed River

(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,

Given the limited works required for the subdivision, existing buildings onsite and the future location of an additional dwelling, it is considered that the proposal would not impact negatively any animals or 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

The proposal will not have an adverse impact upon marine environments or habitats, due to the lack of disturbance of existing vegetation onsite and the spatial separation of the new lot from the Tweed River.

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

There are no wildlife corridors impacted by the proposed development.

(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 due to location and scale.

(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. This matter has been discussed in further detail 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, due the retention of established extensive vegetation on proposed Lot A.

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

It is not considered that the proposal impacts upon the conservation or preservation of any of the above items. This issue has been discussed in more detail elsewhere in this report

(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.

The proposed development application will not compromise water and energy efficiency.

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

There are no draft Planning Instruments applicable to the subject site.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The application nominates a dwelling site within proposed Lot 1. The size of this lot is sufficient to ensure that DCP A1 controls will be able to be met for the future construction of a dwelling on the allotment.

A3-Development of Flood Liable Land

The subject site is identified as partially flood prone. Council’s Engineer has reviewed the application in this regard and raised no objections. No further
consideration with regard to flooding impacts is required and DCP A3 is considered to be satisfied.

A5-Subdivision Manual

The proposed subdivision generally complies with the requirements of Section A5 of the DCP. The proposal is considered an infill subdivision and is considered acceptable in regards to bushfire protection, visual amenity, aboriginal and cultural heritage and acid sulphate soils.

The natural landform will be maintained and all vegetation onsite will be preserved. The proposal will not result in any new roads and will utilise an existing right of way that is sufficient in width to cater for the additional Lot.

Proposed Lot B meets the minimum standard as specified by the TLEP 2014. While a variation to TLEP 2000 is required for Lot A, the overall lot size, being 23.91ha is sufficient to cater for the needs of the existing dwelling. Both lots have satisfactorily demonstrated adequate areas onsite for the disposal of effluent and Asset protection zones. Both Lots will enable dwellings to have excellent access to natural light and prevailing breezes.

A6-Biting Midge and Mosquito Control

Councils Pest Management Unit was consulted about this proposal due to the presence of mosquito breeding areas and biting midges in the locality.

It was recommended that any consent granted be conditioned to ensure that all construction works onsite be undertaken in accordance with the provisions of DCP A6 – Biting Midge and Mosquito Controls.

A11-Public Notification of Development Proposals

Public exhibition was not required by DCP A11. No submissions were received.

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

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

The proposed site is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. 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(1)(b) Applications for demolition

No demolition is proposed in the application.
Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

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

**Tweed Shire Coastline Management Plan 2005**

The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure. While the site does adjoin the Tweed River, no direct impact is likely on the River itself as a result of the development, given the proposed land area of proposed Lot A that adjoins the River and the retention of all vegetation onsite.

**Tweed Coast Estuaries Management Plan 2004**

The subject development will not contravene any strategies of this Plan for the following reasons;

- The lot is separated from the Tweed River by an unformed section of Old Ferry Road, therefore does not have the potential to exacerbate any current bank erosion issues in this area.
- All existing vegetation onsite will be retained to protect the steeply sloping site from erosion issues.
- Any minor works onsite will be clear of the identified location of Class 2 Acid Sulphate soils.
- The proposal has provided satisfactory responses to the treatment of effluent onsite and stormwater. Conditions will also be applied to protect the Tweed River from any potential harm.
- The proposal will have no impacts either directly or indirectly on aquatic environments.

**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 creation of an additional Lot, 20 3167.7m$^2$ in area at the rear of a series of similar sized R5 – Large Lot residential is considered an appropriate development
in the locality. The residue Lot will be 23.91ha in area and retain the existing
dwelling and all established vegetation onsite. The existing battle-axe style
access consisting of a 3m wide, 130m long driveway will be utilised for both lots
and services such as electricity and water. An OSSM system will be required
onsite.

Access, Transport and Traffic

The proposed access being a 3m wide, 130m long driveway is considered
adequate to cater for the additional Lot that will be created. The small increase in
traffic generated by the additional lot can be accommodated by the existing local
road network.

Flora and Fauna

Council's 2009 vegetation mapping identify the land as highly modified/disturbed
land. All future works will be limited to the cleared areas in the northern portion of
the site and will not require vegetation removal. The retention of vegetation will not
be impacted by the imposition of Asset Protection Zones for the existing or
proposed dwelling upon Lot B.

Contribution Charges

Contribution charges are applicable for the creation of one additional allotment.
Sewer charges will not be applicable as both sites will be serviced by OSSM
systems.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The development would remain consistent with the large lot residential nature of
the Terranora locality to the north and north west. The residue lot will also be
consistent with lots to the west of the subject site that are constrained due to
vegetation and slope.

Onsite Sewer and Water Supply

Conditions have been applied regarding water and sewer supply. Reticulated
water and OSSM systems will be utilised for the existing and additional Lot site.

Topography

The site features steep sections south of the existing dwelling location towards
Tweed River. This portion of the land will remain undisturbed as result of the
subdivision works and future housing.

Concurrence

Concurrence was required from the Director General, Department of Planning as
one of the lots to be created is less than 90% of the required standard.
Concurrence was issued by the Department on 23 September 2015, as detailed
elsewhere in this report.
(d) Any submissions made in accordance with the Act or Regulations

No public submissions were received.

The Rural Fire Service submitted conditions with regard to the integrated referral which have been applied.

These conditions include water and utilities upgrades for firefighting and the maintenance of an Asset protection zone around the existing and proposed dwellings. The existing dwelling will also require upgrading for the purposes of ember protection and the property access must be in accordance with Section 4.1.3(2) of ‘Planning for Bushfire Protection 2006’ except no alternative access is required in this instance.

(e) Public interest

The proposed development represents a reasonable and well considered development which will maintain the existing subdivision pattern and enable the construction of a future dwelling house within a suitably sized allotment. While the proposal will result in variations to the applicable development standard under the TLEP 2000, the proposal is considered acceptable given the circumstances surrounding the deferred zoning matters and the inability of the subject site to accommodate agriculture.

As such, the proposed SEPP 1 Objection is considered reasonable in this instance and the application has adequately demonstrated that the proposal raises no matters of significance for State or Regional Planning. Concurrence has been granted by the Director-General for the creation of the undersized allotment as it was considered that there was no public benefit in maintaining the development standard in this instance.

In a similar vein, the variation to Clause 4.2A of TLEP 2014 regarding the minimum lot size for R5 land that does not have reticulated sewer, the intent of sub-clause 4.2A(1)(b) will be maintained as proposed Lot A is a split zone lot and does contain more than sufficient area for the use of an OSSM system, being 23.91ha in total.

The proposed development generally complies with all relevant matters for Council’s consideration, being considered suitable for the subject site and without significant environmental impacts.

The proposed development is therefore considered to be in the public interest.

OPTIONS:

1. Approve the application with conditions of approval in accordance with the recommendation of approval; or

2. Refuse the application.

Council officers recommend Option 1.

CONCLUSION:

The proposed subdivision has been the subject of detailed assessment with regard to Council’s policies and those prescribed by the State Government, inclusive of the SEPP 1 Objection, to which concurrence has been granted by the Department of Planning and
Infrastructure. It is considered that the proposal represents a reasonable and well considered development which will maintain the current subdivision pattern and enable the construction of a future dwelling house within a suitably sized allotment. Negligible environmental impacts are envisaged as a result of approval of this application.

The development is considered to be suitable for the subject site and will not reduce agricultural use of the site or the subject locality.

Approval in accordance with the recommended conditions is therefore recommended.

COUNCIL IMPLICATIONS:

a. **Policy:**
Corporate Policy Not Applicable.

b. **Budget/Long Term Financial Plan:**
Not Applicable.

c. **Legal:**
Not Applicable.

d. **Communication/Engagement:**
Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
SUMMARY OF REPORT:

This report provides an update on the planning proposal and seeks Council's endorsement of recommendations to:

1. Place the Planning Proposal on public exhibition.

2. Publicly exhibit the draft Planning Agreement concurrent with the planning proposal once agreement between Council and the landowners is achieved;

3. Include maximum dwelling height limitations on each allotment in the planning proposal.

The Department of Planning and Environment has taken an active role in this Planning Proposal, firstly accepting the Proponent’s pre-Gateway Determination Review, which recommended the planning proposal as suitable for a Gateway determination, and more recently because the Proponent sought to have the Council replaced with an alternate ‘Relevant Planning Authority’.

This latter request resulted in a joint meeting on 12 August 2015 of senior Council officers, the proponent, and the Department’s Executive Director, Regions and General Manager, North Coast. It was agreed between the parties that a revised indicative timeframe be prepared, which concluded with a deadline of March 2016 being presented back to the Department, along with a reconfirmation for the need for a planning agreement.

While the extent of physical and infrastructure constraints affecting the site are significant, Council staff have provided the proponent with advice which will be included in a planning agreement ensuring that the installation, maintenance and management of this infrastructure occurs at the appropriate time and with minimal risk to any person who may take ownership of the land prior to all essential infrastructure being constructed.
The report identifies the other key non-essential infrastructure issues likely to present with a future development of the land and concludes that Council’s adopted residential housing code (Tweed DCP Section A1) combined with individual lot height requirements (measured in metres AHD) is adequate to guide that future development of the land.

It is also advised that the four adjoining allotments which are also zoned RU1 Primary Production are to be rezoned to address this zoning anomaly through a separate ‘house-keeping’ LEP Amendment (No.20), and not as part of this planning proposal.

RECOMMENDATION:

That Council endorse:

1. Planning Proposal PP12/0001 420-434 Terranora Road, Terranora be placed on public exhibition for a period of not less than 28 days concurrent with the planning agreement;

2. The Draft Planning Agreement be placed on public exhibition concurrent with the Planning Proposal once agreement between Council and the Landowners is achieved;

3. That maximum dwelling height limitations as detailed in Table 1 of this report be included in the Planning Proposal prior to public exhibition; and

4. It is noted that the rezoning of the adjoining properties being: Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597, which are separately owned, is now scheduled to occur within a ‘house-keeping’ LEP and not as part of this planning proposal.
REPORT:

This report provides an update and recommends that the planning proposal be placed on public exhibition concurrently with a Planning Agreement for the site, and that maximum height limits be included in the planning proposal. The report also proposes that any rezoning of the adjoining properties occur as part of separate housekeeping LEP amendment, as it cannot occur at the cost of the landowner’s to this planning proposal.

Planning Proposal PP12/0001 420-434 Terranora Road has been reported to Council on prior occasions and the Department of Planning and Environment has taken an active role with its oversight of the process, particularly timeframes. This first occurred when the Department accepted the Proponent’s pre-Gateway Determination Review of 26 August 2013, and which ultimately led to the Joint Regional Planning Panel (JRPP) recommending the planning proposal as suitable for a Gateway determination, and more recently because the Proponent has sought to have the Council removed as the consent authority and replaced with an alternate ‘Relevant Planning Authority’ (RPA).

This latter request resulted in a joint meeting on 12 August 2015 of senior Council officers, the proponent, and the Department’s Executive Director, Regions, and General Manager, Northern Region to discuss a timely process for the completion of the planning proposal.

It is noteworthy at this juncture that the JRPP in its Pre-Gateway Review dated 18 July 2013 (via the published synopsis) to the Department recommended that:

"The regional panel agrees with the department’s assessment that the proposal has overall strategic merit.

However, the regional panel considers that in its current form, the planning proposal does not adequately address site specific issues such as access, drainage, water, sewerage and site design. The panel also has concerns over the implementation and ongoing maintenance of shared infrastructure and services.

Therefore, as part of the Gateway determination, the regional panel recommends that the proponent be required to undertake further studies to address the site specific issues identified above. Additionally, the proponent should be requested to provide a strategy outlining details of a legally enforceable mechanism to implement those solutions.

The panel also recommends that Council consider progressing a separate planning proposal for the rezoning of the four adjoining developed lots."

In addition to the published report the JRPP raised concern with Council staff during their pre-Gateway interview that the number of existing lots may be too great to adequately accommodate the site constraints and scenic amenity. Whilst this concern was not expressed via a specific condition in the Determination Notice, the issue of a site master-plan and reduced lot configuration was again raised by the Department’s Executive Director, Regions at the August meeting, who sought advice on when that would be occurring. It was clearly expressed by the Proponent at that meeting that a reduction in lot yield was unacceptable, and that the work undertaken to-date was on the basis of the existing lot pattern.
Council staff has been pursuing the Planning Proposal in accordance with the conditions of the Gateway approval, and on the basis of the seven existing allotments per the proponent’s request. However the process has not been aided by the absence of clarity in the Gateway Determination in relation to the lot configuration and number, nor in the apparent misunderstanding about of the ability of a consent authority to address many of the significant infrastructure issues post rezoning, as evidenced in the Department’s Planning Officer report of 24 May 2015, which states:

"The issues raised by Council regarding servicing is a matter that can, where appropriate, be addressed through the rezoning process. Furthermore the matters regarding access, stormwater management, visual impact and contamination could be reviewed further as part of the post gateway requirements or as a matter for review at a DA stage."
Figure 1: Locality Plan
Figure 2: Aerial image showing context of site, adjoining and nearby lots
The later JRPP assessment and advice better understood the limitation and the need for those matters to be addressed in advance, but as evidenced in the comments from the Department staff at the August meeting there is a prevailing misunderstanding about this process that seemingly leading them to the conclusion that the Council has not been prudent or efficient in the processing of this planning proposal.

It is the fact that the lots are already created and in existence, and not requiring a further subdivision application approval, which gives rise to the additional need to consider those matters that would ordinarily arise at the development application stage. Nevertheless, the Department’s assessment is consistent with the JRPP in that they consider the rezoning to have strategic merit and represents a logical infill development. Council staff generally agrees with this proposition.

Correspondence from the Department dated 4 September 2015 acknowledged Council’s concern to ensure satisfactory arrangements are in place to provide the necessary infrastructure, and the value of a planning agreement as appropriate to enable finalisation of the planning proposal.

An indicative timeframe for completion of the planning proposal has now been agreed with the proponent, setting an indicative deadline of March 2016. At this stage the Department has indicated that Council will remain as the RPA for the planning process, but only if there is satisfactory performance with progression of the proposal within the agreed timeframe.

A Gateway Determination dated 14 October 2013 required that additional information be included in the planning proposal prior to its public exhibition, which must be for a period of at least 14 days, this information included:

- Stormwater drainage, water and sewer servicing;
- Implementation and ongoing maintenance, and
- Site design and driveway access.

Site constraints

The site presents significant and somewhat unique constraints. Those constraints present significant challenges to the development of the land, particularly in regard to sewer, water, land stability, and driveway access.

A review of Council’s records indicates that no dwelling entitlement exists for any of the allotments, and the subdivision of this rural land was approved many years ago by the former Government Department of Land and Property Information, as was then permissible, and not as a result of a subdivision consent granted by the council.

The creation of these existing residential sized rural allotments by methods other than a subdivision application means that their suitability for residential dwelling purposes has not been assessed, and the opportunity for this to occur post rezoning of the land does not arise. This means that the planning proposal cannot be confined to the ordinary higher level strategic planning considerations, but must also consider in greater detail matters that would have ordinarily arisen with a subsequent subdivision application pertaining to essential infrastructure, safe traffic access, and geotechnical suitability.
The key constraints affecting the land, in the context of its current subdivision pattern and ultimate use for residential dwelling purposes are:

1. Retaining wall on northern boundary that needs to be demolished and reconstructed;
2. Uncontrolled fill material that must be removed and re-compacted;
3. Wastewater disposal (temporary and permanent) that must be constructed through private property;
4. Shared private access;
5. Stormwater that must be coordinated through the site, and
6. Establishment of a framework for the ongoing maintenance of these services.

The Proponent has worked with the Council advice provided to produce detailed engineering designs that are now considered generally accepted as demonstrating that essential services, retaining wall, driveway and easements can be adequately accommodated within the site. The ultimate and precise nature of the design for each of those elements will need to be further assessed and approved as part of a development application, which will be required for those works to be undertaken and which are essential for and prior to the further development of the individual lots for dwelling houses. Those matters, including the requirement for a development application, are part of the Landowner’s rezoning commitments and are to be addressed within the Planning Agreement.

Notwithstanding that those services can be provided, and a building envelope of 10m x 15m consistent with Council’s guideline is achievable, the extent to which they require land dedication for each purpose impacts on the ability of each lot to accommodate a flexible building envelope that would better allow for a subdivision / housing pattern more consistent with the areas prevailing character.

It is noteworthy that the adjoining properties have direct vehicular access to Terranora Road and an average size that is 27% larger at 1027m$^2$ than the average size of those in the subdivision the subject of the rezoning at 853m$^2$, and which will be serviced by a single dual access point driveway.

The need to cater to the constraints and essential services discussed above means that the resulting building envelopes will be both compressed and lead to a more homogenous subdivision character for these properties. This will limit the ability to provide for deep setbacks and mature vegetation, which is evidently a key character of this locality. It also means that the ability for generous building separation to accommodate and maintain scenic views is compromised, and will require a considered approach at the design and development application stage.

Those matters are further discussed below, and the staff’s view is that Council’s existing housing code in combination with the proposed building heights are suitably equipped for guiding an appropriate design outcome.

**Retaining wall**

Documentation received from the proponent and Council staff field investigations have revealed that the existing retaining wall on the northern boundary is not fully contained
within the property, has visual signs of a structural failure in the central section and has no past or present geotechnical or other engineering certification.

Council's Engineer advised that the retaining will need to be demolished and reconstructed, fully contained within the property, and situated such that there is sufficient width at the base of the wall to allow for maintenance access. Depending on the ultimate design it may also require an easement over the adjoining land. Details relating to the demolition, relocation, and reconstruction of the retaining wall will be addressed in the planning agreement currently being negotiated with the Landowners through their planning consultant.

**Sewer**

The site is currently not serviced with a wastewater disposal system; however, it is proposed to construct a temporary sewer main into Winchelsea Way which will require access through private property.

Provision must be made for this temporary wastewater disposal system to be decommissioned and for a permanent gravity system to be connected into the system to be constructed once development in the adjacent Area E is itself sufficiently constructed. Details of the implementation, decommissioning of the temporary system, and connection into Area E are to be addressed in the planning agreement.

**Site design and driveway access**

Driveway access will require construction of a concrete driveway servicing all seven allotments, located within the existing allotments and consist of two access points to Terranora Road. Implementation and ongoing maintenance of the driveway and other infrastructure will be secured through a planning agreement. A retaining wall will be required above the access lane.

The existing subdivision pattern in combination with the infrastructure constraints will largely dictate site design at the ground plane, and based on the detailed engineering plans submitted it is evident that each allotment can readily achieve a minimum building envelope of 10m x 15m as referenced in the Council's subdivision manual.

Critical to the vertical site design will be the ultimate design of the dwellings. This cannot be properly understood at this stage, and Council's existing housing code, in combination with the proposed building height for each allotment, is suitably detailed to provide guidance on an appropriate building design.

**Scenic impact**

The site has remained underdeveloped and forms part of a prevailing significant visual character. This has been recognised by many at various times when the development of this site has been proposed or debated. In response the proponent prepared a Visual Impact Assessment (August 2014). Council staff considered that it did not adequately address the likely visual impact of development and therefore undertook their own building analysis to ascertain whether Council's current housing code would adequately guide development of these allotments in regard to preserving a reasonable level of views, and minimising visual impact.
It was concluded that Council’s adopted residential housing code (Tweed DCP Section A1) combined with individual lot height requirements, as measured in metres AHD from survey accurate site levels, is sufficient to guide future residential development, without the need for a site specific DCP. In particular it was noted that the development of the land with any building or significant vegetation would impact on the existing visual character / views, and that the existing subdivision pattern would present challenges for maintaining such a high level of passive visual amenity.

Staff considered that there would be a significant reduction in the short views owing to potentially limited building separation (relative to the areas generous standard) and the height relationship between the Terranora Road and the site. Limiting the future height of buildings on a lot by lot basis upon a defined 8m height measured vertically from top to bottom (metres AHD) should significantly preserve the long views from Terranora Road. The generous depth of the lots, notwithstanding their fall and infrastructure land needs, could still maintain a generous level of vegetation that would reduce the impact looking from the north, northwest back toward the site, and without impacting on the view amenity to the coast from the new buildings.

Permitting a fixed height would encourage any larger buildings to be designed down the existing slope, maintaining those long views, whilst allowing a dwelling design in keeping with the characteristic with the lifestyle expectations in this part of the Tweed. It is also generally recognised that allowing greater flexibility and the ability to build a more expensive home, particularly on sites with those constraints, requires an individual bespoke response typically undertaken by an architect. This typically results with a better and contributory design response, limiting impacts on visual character, whilst enhancing and contributing to the lifestyle character of the Terranora area.

**Building height**

As discussed in the preceding section, the scenic character and amenity of the land is significant, and arguably the long views to the Terranora Broadwater and beyond to the Gold Coast and Pacific Ocean, are of regional significance.

Ensuring that any visual impact arising from the future development of the land is kept within reasonable limits, in context with the existing subdivision pattern and opportunity that will arise in association with a rezoning, building height will have a significant role. It requires a consideration of the view corridors from many vantage points and which affect different stakeholders, including; passing traffic, adjoining property owners on the south-eastern side of Terranora Road on the upslope, those properties that will ultimately be erected in Area E, and which themselves will form part of the future visual character, and those myriad vantage areas on the lower coastal areas looking back toward this site.

In order to understand the potential impact on view fields from Terranora Road, the relationship between the eye level of motorists and the potential height of dwellings a nominal driver eye height of 1.05 metres for cars has been used (Source: AustRoads – Rural Road Design). As such, the assumption has been made that any building at or exceeding 1.05 metres above Terranora Road will impact any views experienced from the road.

To calibrate this motorists eye level along this stretch of Terranora Road, height data illustrating levels and spot heights has been taken from the engineering diagrams provided
by the proponent. In addition, Council’s surveyors have undertaken field validation of existing survey data by establishing a spot height in each allotment.

The location of each spot was determined as being central to a typical building envelope within each of the allotments (on an east-west alignment), and one third of the lots length from the northern boundary. Table 1 below shows the relationship between spot heights and Terranora Road.

Given the sensitivity of views to height of buildings, and consistent with Council’s approach to limiting building height in Hastings Point, an assessment of the relationship between slope, building height and view levels as experienced at Terranora Road was undertaken. As part of that process, Council’s Urban Designer undertook a site 3d modelling exercise which demonstrated a two storey dwelling could be achieved over each allotment within the 8m height limit. The built form of these dwellings modelled as part of that exercise principally included a single storey presentation to Terranora Road with understory development opportunity as the sites drop away to the north. Further the modelling indicated that by projecting 8m above individual allotment spot level results in built form which would be more harmonious with the undulation of topography which has its highest levels to the east and west and dips towards the middle. It is this middle dip of landform and future built form that there is potential for long views from Terranora Road to be retained. As an outcome of this 3D modelling exercise, an AHD height level for construction of dwellings on each allotment has been established as seen in Table 1.

The proponent, in their Visual Impact Assessment has proposed that building heights with an AHD of 129 should apply to allotments 2 to 6 (on the eastern section of the property), and 130.85 for the western two allotments.

This approach does not adequately take account of the natural lay of the land and the way in which the property ‘dips’ in the centre where the gully line exists. Such an approach would potentially generate dwellings with roof heights that would unnecessarily penetrate the view field above the 1.05 metres above Terranora Road.

While the proponent has proposed that dwellings will present as split level with a single storey addressing the service lane, which is agreed, the height of dwellings is a critical factor in determining the overall visual impact of development. As such, it is proposed that a building height 8 metres above the spot heights stipulated in Table 1, as an AHD for each allotment, be applied.

<table>
<thead>
<tr>
<th>Proposed maximum building height and height above Terranora Road</th>
<th>(All levels shown in metres AHD, except where otherwise stated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allotment (DP28597)</td>
<td>8 (West) 7 6 5 4 3 2 (East)</td>
</tr>
<tr>
<td>Spots height</td>
<td>124.3 123 121.3 119.3 118.9 119.4 119.9</td>
</tr>
<tr>
<td>Proposed maximum height of building (+8 metres)</td>
<td>132.3 131 129.3 127.3 126.9 127.4 127.9</td>
</tr>
<tr>
<td>Terranora Road</td>
<td>127.9 127.6 127.3 127.1 127.3 127.5 127.7</td>
</tr>
</tbody>
</table>
### Table 1: Proposed maximum building height and estimated height above Terranora Road

<table>
<thead>
<tr>
<th>Proposed height above Terranora Road (metres)</th>
<th>4.4</th>
<th>3.4</th>
<th>2.0</th>
<th>0.2</th>
<th>0.4</th>
<th>0.1</th>
<th>0.2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proponent’s maximum height of building</td>
<td>130.85</td>
<td>130.85</td>
<td>129</td>
<td>129</td>
<td>129</td>
<td>129</td>
<td>129</td>
</tr>
<tr>
<td>Variation from proponent’s proposed height (metres)</td>
<td>+1.45</td>
<td>+0.15</td>
<td>+0.3</td>
<td>-1.7</td>
<td>-2.1</td>
<td>-1.6</td>
<td>-1.1</td>
</tr>
</tbody>
</table>

### Staged development proposal

The proponent has requested that consideration be given to the possibility of staging development to assist with cash flow implementing the project.

While no details have been provided as to how staging will occur, Council staff are not opposed to the concept of staging; however, all infrastructure relevant to the stage of development must be constructed to the satisfaction of Council prior to construction of associated dwellings. Importantly, the ultimate result of development of all seven allotments must be the holistic integrated provision of services and infrastructure, and their on-going maintenance; some essential infrastructure must be constructed in its entirety with the first development application. Current and proposed zoning can be seen in Figures 3 and 4.

This matter is currently under negotiation with the proponent who has been advised that due to the potential for conflict to occur where an allotment is sold prior to construction of infrastructure as listed above, that it may be necessary for the planning agreement to stipulate that allotments cannot be sold until such time as the relevant infrastructure is constructed. This matter is to be finalised prior to public exhibition of the draft planning agreement.
Figure 3: Current zoning under Tweed LEP 2014
Figure 4: Proposed zoning under Tweed LEP 2014
Planning agreement

Advice has been prepared and forwarded to the proponent identifying the scope of intent for a planning agreement.

The planning agreement will be prepared by the proponent’s lawyer and reviewed by Council officers and Council’s legal service provider if necessary.

Public exhibition

A planning proposal and planning agreement are being prepared consistent with the requirements of the Gateway Determination and letter from the Department of Planning and Environment (DPE) dated 4 September 2015.

In accordance with the Gateway Determination of 14 October 2013, the planning proposal must be placed on public exhibition for a period of at least 14 days; while, under clause 93G of the Environmental Planning and Assessment Act 1979, the planning agreement must be on public exhibition for a period not less than 28 days.

It is proposed that both documents be placed on public exhibition for a period of not less than 28 days.

Adjoining properties

While the current planning proposal seeks a rezoning of seven allotments under common or joint ownership, four additional adjoining allotments, as seen in Figure 2, also require consideration, as noted in the JRPP report of 18 July 2013.

While it is not proposed to include these allotments in this planning proposal, the DPE has advised that they should be addressed through a separate planning proposal; it is therefore proposed that rezoning of these allotments be facilitated through a separate ‘house-keeping’ planning proposal. One is currently being prepared as Amendment No. 20 which is being presented to Council under separate cover.

In the meantime it is noted that Council resolved at its meeting of 19 September 2013 that:

Consultation with the landowners of the four adjoining developed properties, Lot 1 DP 28597, Lots 9, 10 and 11 DP 28597 commence regarding their inclusion within a revised planning proposal post receipt of the initial Gateway Determination for Lots 2-8 DP 28597, and a further report be prepared for Council’s consideration detailing the specifics of the consultation and recommendations for proceeding with the rezoning of those properties.

Council’s resolution will be actioned and this will occur under the house-keeping planning proposal, Amendment No.20.

OPTIONS:

1. The Planning Proposal and draft Planning Agreement be publically exhibited concurrently for a period of not less than 28 days once agreement is achieved on the draft Planning Agreement.
2. Defer consideration of the report pending clarification or further information.

CONCLUSION:

Historical subdivision of this property occurred through a process which did not provide dwelling entitlement. Further, there is no evidence that a level of assessment to ascertain the suitability of the subdivision for residential purposes was undertaken and how critical infrastructure requirements would be provided.

Notwithstanding this, it is arguably quite evident from on one viewpoint by reference to the lot size and subdivision pattern that there must have been an intention when they were created that they would be used for a residential purpose, as has been the case with the other adjoining lots. From an opposing point of view it could readily be contended that registering a plan of subdivision in such a way as to bypass the Council’s assessment of suitability and approval for the subdivision throws open a question of whether it is actually acceptable for residential purposes given the likelihood of it providing a different character to that which currently exists in this locality.

Adopting the first of these views, it would follow that the subject subdivision, in combination with a reasonable expectation of development, must therefore form part of the character despite them currently being free of any built improvements. Whereas, it would follow from the alternate view that the issue of character should be a key determinant as to whether all of the existing lots should be rezoned to permit a dwelling; and whether this would lead to a re-configuration and reduction in the number of lots, as was seemingly suggested or expected by the JRPP and the DPE’s Executive Director.

This report has highlighted the key infrastructure constraints associated with the land and its ultimate development based on 7 lots, providing a means for those matters to be addressed and works constructed through an appropriate use of a planning agreement.

In addition, the desire to limit the impact on the regionally scenic long views from this area of Terranora Road is seen to be paramount and the reports discusses the proposal to limit the overall building height of each allotment. The proposed height limits when combined with existing strategic housing policies (DCP A1) are considered suitable for guiding an appropriate design outcome for these allotments at the development application stage. The critical factor, as discussed within the report, is ensuring that the essential services and the like are constructed in advance of any dwelling house development occurring and preferably prior to the sale of individual lots. These are also matters to be addressed by the planning agreement.

At the outset of reviewing the Proponent’s planning request, Council staff were concerned by the number of lots relative to the site constraints and the potential impact on the scenic amenity. This view seemed to be echoed by the JRPP in their pre-Gateway consultation and continued to resonate in the meeting of August 2015 with DPE staff, as discussed earlier in this report.

The Proponent would not be moved on a consideration of the need for a lot reconfiguration and reduction in lots, which Council staff considered would reduce the infrastructure requirements and lessen the impact on the scenic character. The planning assessment was therefore undertaken on the basis of all seven lots being capable and suitable for residential purposes, and have since concluded that each lot, through an integrated servicing plan, is capable of being serviced to a residential standard.
The question of suitability may be a vexed issue depending on a subjective and individual view of the likely or perceived impact on existing local character and scenic amenity. As discussed above it is the staff’s view that these allotments have an apparent intention to be used for residential purposes and therefore the existing subdivision pattern, and the expectation of a reasonable level of development already forms part of any consideration of the local character, and view field despite there currently being no built structures. That is, it would arguably lead to a distorted reality of this lands ultimate role or function within this peri-urban locality to advance a different view in that they are ‘rural’ lands based solely on their current zoning.

The subject land has not been identified for acquisition for public open space, serve no agricultural purpose, and the subdivision has existed for many years without challenge.

Taking those factors into account and having regard to issues management practices discussed within this report, the rezoning of the land is considered to be strategically justified, and further development of the lots for residential purposes will be suitably guided by the proposed building heights and Council’s housing code.

COUNCIL IMPLICATIONS:

a. Policy:
Corporation Policy Not Applicable

b. Budget/Long Term Financial Plan:
The costs associated with progressing the planning proposal will be borne by the proponent in accordance with their Cost Agreement.

c. Legal:
There are no legal matters arising, except in association with the drafting of the Planning Agreement.

d. Communication/Engagement:
Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:
Nil.
5  [PR-PC] Planning Proposal PP15/0006 River Retreat Caravan Park

SUBMITTED BY:  Strategic Planning and Urban Design

FILE REFERENCE:  PP15/0006

Civic Leadership

Strengthening the Economy

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

3  Strengthening the Economy
3.1  Expand employment, tourism and education opportunities
3.1.4  Market the Tweed as a destination for business and tourism

SUMMARY OF REPORT:

This Report explains the intent of and provides justification for a site specific amendment to Tweed Local Environmental Plan 2014 to allow camping ground as a land use on land leased by River Retreat Caravan Park, located at Philp Parade, Tweed Heads South. The subject land, being part of Lot 1 DP 100121 is currently zoned R2 Low Density Residential and camping ground is a prohibited land use.

Despite this prohibition, River Retreat Caravan Park has been using the site for ten (10) tourist camp sites outside its approval to operate, seemingly for many years.

Following compliance investigations and consultation with the owner of the River Retreat Caravan Park, a site specific amendment to allow use of the subject land for camping ground appears to be the preferred course of action. As outlined in this Report, and in the attached Planning Proposal, the desired non-permanent land use is consistent with strategic approach towards planning and management of land located within the flight paths of Gold Coast Airport, which seeks to prevent noise sensitive development, such as residential accommodation.

The site is located within the flood prone area where any expansion of development involving permanent accommodation is generally not supported. Appropriateness of development of a camping ground within the flood prone land raises concern with increasing the number of people potentially at risk during adverse weather events, and it is acknowledged that circumstance occasionally arise were a properly regulated increase can be supported. In this instance, and owing to the unique circumstances, there is the ability to support a limited proposal providing agreement can be achieved between the Council and the Proponent on the fixed number of sites and the form of accommodation permitted, for example recreational camper vans and camper trailers.
In the meantime, and owing to the discovery of a continuing unlawful use of this land for camping ground purposes, which raises a statutory obligation on Council staff to remedy the apparent breach of the *Environmental Planning and Assessment Act 1979*, appropriate compliance action has commenced. Council staff cannot of their volition stay the compliance action until a later date, such as to permit the planning proposal process to proceed, and consequently this can only result with the discontinuance of the use of the land for camping ground purposes, notwithstanding the use has been occurring unabated for several years, and the peak summer holiday period will shortly commence.

To defer or cease compliance action would substantially increase Council’s risk liability in the event of damage to property or life as a consequence of its constructive knowledge of the unlawful use of the land. This does not prevent Council from resolving to instruct staff to take that alternate course of action, and to accept that higher risk of liability. An Option has been included within the report to assist Council with an appropriate resolution should it resolve to defer compliance action and limit some risk, while the Proponent seeks the necessary approvals.

**RECOMMENDATION:**

That Council endorse:

1. A planning proposal pursuant to s.55 of the *Environmental Planning and Assessment Act 1979*, seeking to facilitate use of Part Lot 1 DP 100121 for “camping ground” associated with River Retreat Caravan Park be prepared and submitted for a Gateway Determination, as administered by the NSW Department of Planning & Environment;

2. The Minister for Planning or their Delegate be advised that Tweed Council is not seeking plan making delegations for the planning proposal;

3. The Minister for Planning or their Delegate be advised that the minimum exhibition period for this Planning Proposal should be 14 days;

4. On receipt of the Minister's Gateway Determination Notice to proceed any ‘conditional’ requirements of the Minister and any other study or work required by Council for the purpose of making a proper determination of the lands suitability are to be completed, and included within the public exhibition material;

5. That the planning proposal be publicly exhibited in accordance with the Gateway Determination; and

6. Following public exhibition of the Planning Proposal a report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).

7. Council officers will work with the Proponent to secure a legally enforceable agreement that will have the effect of limiting both the number of sites and type of camping accommodation to RCV’s (Recreational Camper Vans) and Camper trailers.
REPORT:

1. Background

This Planning Proposal has been prepared in association with compliance action undertaken by Council in response to a complaint regarding the unauthorised use of land by River Retreat Caravan Park in Philp Parade, Tweed Heads South.

The compliance matter relates to an apparent breach of the *Environmental Planning and Assessment Act 1979* arising from the use of the land as a camping ground without the required statutory permissibility and approval. Council staff are required to remedy the breach and will continue with compliance action, unless instructed otherwise by the Council.

The subject land is part of Lot 1 DP 100121. Whilst this is a residential property zoned R2 Low Density Residential and owned by a local family, it is currently leased by River Retreat Caravan Park, adjoining to the east, south and west (refer to *Figure 1* below). The land is not developed and is utilised as an area for overflow of campervans and tents during peak holiday seasons. As such, the intended outcome of this Planning Proposal is to retain the current form of land use on the subject site and to formalise the use of the overflow camping area.
2. The Planning Proposal

To facilitate the best planning outcome, this Planning Proposal document, prepared by the Strategic Planning and Urban Design Unit, recommends the following amendments to the LEP 2014:

- Additional entry to Schedule 1 Additional Permitted Uses to enable a “camping ground” land use to be permitted with development consent on the subject site, and
- Amendment to the map pursuant to Clause 2.5 (Additional Permitted Land Uses Map) to identify the subject site, in accordance with the proposed Additional Permitted Uses map shown at Part 4 Mapping.

Camping grounds are often described as an affordable alternative to hotel or motel accommodation, particularly among family groups. This mode of accommodation has shown an increasing trend of popularity, both with family groups, but also with larger tourist groups of tourists. Under the Tweed Community Strategic Plan 2013/2023, caravan parks, being part of tourism sector, are described as one of the major industries contributing to the
local economy. In the 2013/2014 financial the number of visitors to the Tweed grew to 1.4 million (both international and domestic). Tourism and hospitality are important contributors to the local economy with the total tourism and hospitality sales in Tweed Shire in 2013/2014 reaching $555.5m and the total value added was $278.1m (source: Tweed community profile).

The following matters were considered in the preparation of the Planning Proposal:

2.1 Consistency with the strategic planning framework

Tweed Shire is subject to the *Far North Coast Regional Strategy (FNCRS) 2006-2031*. This Planning Proposal is consistent with the vision statement provided under the FNCRS (*A healthy, prosperous and sustainable future for the diverse communities of the Far North Coast Region*) and with the following provisions:

Part 8  *Settlement and Housing*

- Caravan parks and manufactured home estates, where there is any potential for permanent accommodation to occur, should be located generally in urban areas.

Part 9  *Economic Development and Employment Growth*

- Local environmental plans will ensure that appropriate land is available to provide for a range of tourism experiences and forms of tourist accommodation, including ecotourism and the support of ‘bed and breakfast’ enterprises within residential and rural areas.

- Local environmental plans will locate large scale tourism development in prime tourism development areas unless other proposed locations are consistent with an approved Local Growth Management Strategy.

- In planning for tourism needs, councils will have regard to the North Coast Regional Tourism Plan 2004–2007 (or latest version) and Northern Rivers Regional Tourism Plan 2003–2006 (or latest version).

Mapping  *Town and Village Growth Boundaries Sheet 1 - Tweed*

- The subject site is located within the Town and Village Growth Boundaries which identify the land required to meet the region’s urban housing and employment needs until 2031, Whilst there is no permanent occupation of the site proposed the site will contribute to the tourism sector and employment targets for the region.

*Part 6 Natural Hazards* of the FNCRS provides that local environmental plans will zone areas subject to high hazard to reflect the capabilities of the land. Whilst this Planning Proposal seeks to allow use of land identified as flood prone for a *camping ground*, it will not result in permanent accommodation or any forms of habitable structures on the site.

2.2 Aircraft Noise and OLS

The request to prepare a planning proposal for the site is consistent with strategic approach towards planning and management of land located within the flight paths of Gold Coast
Airport, and subject to the Australian Noise Exposure Forecast (ANEF). The subject site is located within the 25-30 Australian Noise Exposure Forecast (ANEF) zone, where permanent residential accommodation is considered an unacceptable use of land. The use of the subject land for a camping ground, is consistent with S117 Ministerial Direction 3.5 Development Near Licensed Aerodromes. Also associated with the Gold Coast Airport is the Obstacle Limitation Surface (OLS) which places a height restriction on development within a flight path. This proposal will not impact on the OLS.

2.3 Cultural heritage

The site is not located within an area of known or predictive Aboriginal cultural heritage. The use of the subject site for a camping ground will not result in any development involving earthworks, therefore Council officers consider that further, detailed assessment of potential cultural heritage is not required.

2.4 Flooding

The land is subject to the Flood Planning Area. Ministerial Directions provided under s117 of the EP&A Act 1979 requires consideration of the flood risk at the rezoning stage, particularly in relation to the consistency with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.

The Floodplain Development Manual 2005 has been progressively implemented into Tweed’s strategic planning framework through Section A3 Development Control Plan (DCP) 2008 Development of Flood Liable Land. According to this section of the DCP, existing caravan parks cannot expand to include moveable dwelling sites, unless there is a permanent high level road evacuation route to high land external to the site available, or high land internal to the site can be accessed by the additional sites via road and/or pedestrian routes. This DCP further provides that expansion of caravan park amenities and other non-habitable facilities permitted without consideration of PMF.

Council’s Road and Stormwater Unit advised that any expansion of the River Retreat Caravan Park, including additional campervan and tent sites should be considered as inconsistent with the DCP A3 and is not supported, so long as the number of sites and the type of accommodation is undefined, except by the LEP definition.

Notwithstanding, on balance, the proposal does not seek any permanent structure or occupation of the site and therefore, does not increase the exposure of persons to risk in a flood event, given the site is surrounded on three sides by the established River Retreat Caravan Park. Instead the planning proposal seeks to formalise the overflow camping use of the site in association with the current River Retreat Caravan Park.

From a town planning perspective it is considered that this is a minor and justified variation under the S117 Ministerial Directions. Notwithstanding, it is agreed that if the site was to be evaluated for the unrestricted category of ‘camping ground’ that a risk assessment must both be prepared and unequivocally support that use. Those reports typically cost in the vicinity of $10,000 and it would be open the proponent to agree to preparing a risk assessment. In the alternative, it is the agreed opinion of Council staff that the unique circumstance of this proposal, in the absence of a proper risk management assessment, that the camping overflow area is supportable but only if the maximum number of sites is agreed between the Council and the Proponent, that the type of accommodation is restricted
to recreational camper vans and camper trailers, and is contained in a legally enforceable agreement.

OPTIONS:

1. Proceed with this Planning Proposal as per the report recommendations, or

2. Proceed with this Planning Proposal and defer compliance action by including the following as a resolution of Council:

   8. Compliance action in relation to the alleged unlawful use of the land for camping ground purposes be ceased whilst the Proponent caravan and camping ground operator makes a genuine attempt to remedy the circumstances calling into effect that compliance action by obtaining all necessary statutory approvals, and only if the caravan and camping ground operator agrees in writing to:

      a. limit the number of camping ground sites to six (6);
      b. restricts the use of these sites to times of over-flow demand;
      c. permits only recreational camper vehicle (motorhome), caravan and camper trailer accommodation on these sites;
      d. provides a copy of an appropriate flood warning and evacuation plan to the occupants of these sites at the time of arrival check-in, and
      e. undertakes to not carry-out any works in association with the use of the land for camping ground purposes prior to and without all necessary approvals being obtained.

   Or

3. Not support the Planning Proposal and notify the Department of Planning and Environment, and the Proponent, in accordance with the planning legislation.

CONCLUSION:

The River Retreat Caravan Park is currently using the subject parcel of land for camping and camper vans outside of the approval to operate. This report recommends the preparation of a Planning Proposal to formalise the “camping ground” use of the subject land adjoining River Retreat Caravan Park and recommends this be referred for a Gateway Determination and public exhibition.

This Report notes that compliance action against the use of the subject site, which is outside of the Caravan Park’s current approval to operate, is already in progress and that a determination and expeditious completion of this matter, whether supported or otherwise, is therefore paramount.

The report acknowledges that whilst expansion of the caravan parks is generally not supported under the provisions of the DCP A3 Development of Flood Liable Land due to its flooding constraints, the proposal does not seek any permanent structure or occupation of the site and risk mitigation measures can be implemented that would enable a level of support for the development. These would include a cap on the number of available sites and a restriction on the form of accommodation.
COUNCIL IMPLICATIONS:

a. Policy:
It is Council’s general policy to avoid the escalation of threat of damage to property or life in new development. This proposal, whilst not totality inconsistent with Council’s flooding policy, does nonetheless seek to legitimise an unlawful use of the site for tourism purposes, and therefore increases the number of potential visitors onto flood liable land. Whether the proposed use is acceptable depends on the individual circumstances, perceived risk, and mitigating measures. In this instance, the apparent risk can be adequately managed through a mitigation strategy that will seek to be a legally binding perpetual agreement that limits the number of available sites and the type of accommodation permitted. This is not a precedence of general policy application to proposals beyond that addressed within this report and should not be read or construed in that way. The circumstances are unique to this site.

b. Budget/Long Term Financial Plan:
No implications to Council budget identified at this stage.

c. Legal:
Not Applicable.

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

UNDER SEPARATE COVER/FURTHER INFORMATION:
Attachment 1. Planning Proposal (ECM 3832360)
6 [PR-PC] Combined Development Application and Planning Proposal for Expansion of the BP Highway Service Centre at Chinderah (southbound lane)

SUBMITTED BY: Strategic Planning and Urban Design

FILE REFERENCE: PP15/0001 Pt 1

**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

1.5.1 Sustainable management of the population in accordance with strategic decisions of previous councils, the NSW and Commonwealth Governments and the Far North Coast Regional Strategy, including provision of amenities, infrastructure and services

**SUMMARY OF REPORT:**

This report provides a summary of public consultation undertaken with regard to the combined Development Application DA10/0737 and Planning Proposal PP15/0001 for expansion and redevelopment of BP highway service centre located at Pacific Motorway/Chinderah Road/Ozone Street intersection in Chinderah. Whilst this report has been prepared for a Planning Committee Meeting in September, it has been expanded to summarise further consultation, including a post-exhibition workshop during which those members of the community who lodged submissions were given an opportunity to discuss their concerns with the Councillors.

In summary, the need for expansion and redevelopment of the highway service centre relates to traffic safety on the southbound carriageway. The proposed expansion of the centre is designed to free-up movement by allowing construction of a new designated truck park and modification of the refuelling area, along with a new area for caravan parking, which will permit greater traffic separation and generally better flow within the site.

Two key issues identified during the public exhibition and the post-exhibition consultation relate to an appropriate offset to compensate loss of vegetation resulting from the expansion of the highway service centre onto adjoining land and concerns about increasing traffic noise, particularly compression braking of trucks.

Should Council resolve to support the planning proposal, it will be referred to the Department of Planning & Environment for the Local Environmental Plan to be made. Following the making of the plan, a separate report addressing the DA component and including relevant feedback from the public exhibition, will be prepared for Council's consideration and determination.
RECOMMENDATION:

That Planning Proposal PP15/0001 (version 3), for Lot 1 DP 1127741 and Lot 2 DP 1010771, being Tweed Local Environmental Plan 2014 Amendment No. 12, be forwarded to NSW Planning and Environment requesting the making of the plan under s.59 of the Environmental Planning and Assessment Act 1979.
REPORT:

1. Introduction

The planning proposal affects Lot 2 DP 1010771, being the site of the existing highway service centre located at the southbound lane of the Pacific Motorway in Chinderah and Lot 1 DP 1127741, being an undeveloped lot adjoining this service centre to the east. The total area of these two lots is approximately 5.7 hectares.

Lot 1 DP 1127741 is vegetated with Broad-leaved Paperbark/Swamp She-oak Closed Forest and the Endangered Ecological Community (EEC) Swamp Sclerophyll Floodplain Forest. This EEC comprises 1.32 hectares (or approximately 33%) of the total 4.041ha of this lot. The site is sloping to the south and east, with an open drainage channel running generally along the eastern boundary.

The site is located at the intersection of Pacific Highway, Tweed Coast Road, Chinderah Road and Ozone Street. Access to the site is via an off-ramp from the Pacific Highway, and Ozone Street from the south.

The planning proposal seeks to facilitate the expansion and redevelopment by the following amendments to the Tweed LEP 2014:

- Amendment of the land zoning map applying to Lot 2 DP 1010771 and that part of Lot 1 DP 1127741 that is within the proposed development footprint from RU2 Rural Landscape to the IN1 General Industrial zone, in accordance with the

*Fig 1. Location of the BP highway service centre.*
proposed Land Zoning map shown at Part 4 Mapping of the Version 3 Planning Proposal (attachment 1 to this Report);

- Amendment to the map pursuant to Clause 2.5 (Additional Permitted Land Uses Map) to identify the location of the highway service centre as item number 11, in accordance with the proposed Additional Permitted Uses map shown at Part 4 Mapping;

- Amendment to the Lot Size map for Lot 2 DP 1010771 and that part of Lot 1 DP 1127741 proposed to be zoned IN1, as shown at Part 4 Mapping; and

- Inclusion of an additional item in Schedule 1, permitting development of a highway service centre with consent on Lot 2 DP 1010771 and that part of Lot 1 DP 1127741 proposed to be zoned IN1.

Fig 2. Proposed zoning of the site.
2. Offset requirement

As part of the DA component of the joint application, Council requested that the proponent prepare a draft offsets proposal specifying additional work to compensate the loss of vegetation. The offset proposal will be finalised and approved as part of the development consent, which cannot be issued until the LEP amendment is made. The offset proposal is being prepared by the proponent on the basis of the draft offset framework prepared by Council’s NRM Unit and forwarded to the applicant on 4 September 2015. In summary, this framework includes the following, additional work to be carried out as part of the expansion and redevelopment of the highway service centre in Chinderah:

- Offsite offset koala habitat on an area of 5.25 ha, established and maintained as per Koala Plan of Management (KPOM) offset provisions;
- 456 preferred koala food trees planted and maintained offsite as per KPOM offset provisions; and
- Installation, monitoring and maintenance of nest boxes in retained trees on site to replace tree hollows at minimum 1:1 ratio. Nest box installation and management plan to be reviewed and approved by Council.

It is also noted that as an alternative to this approach, it is open to the proponent to make a separate application to NSW Department of the Office of Environment and Heritage (OEH) for a biobanking agreement, as a means for managing vegetation offsets.

3. Public exhibition

3.1 Timeframes and conditions imposed by the Gateway determination

In March 2015, the proposal was referred to the Department of Planning & Environment (DPE) for a Gateway determination, and a Determination Notice to proceed was issued on 30 March 2015. In the Gateway Determination request, Council sought to zone land outside of the development footprint with an E2 Environmental Conservation zone. This approach was not supported by the DPE at the Gateway Stage, and removal of any references to the E2 zone was conditioned in the Gateway Determination.

Other conditions of the Gateway Determination required public exhibition for a minimum of 28 days and included requirements to consult with the NSW Rural Fire Service, Roads and Maritime Services, Local Aboriginal Land Council and the OEH. The Gateway also requested preparation of an updated Hydraulic Investigation and Cultural Heritage assessment to comply with current provisions of the LEP 2014.

In accordance with s.56 and s.57 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), the DPE Gateway Determination, and the resolution of Council, this planning proposal and the accompanying development application DA10/0737 were publicly exhibited from Wednesday 24 June to Friday 24 July 2015 at the Murwillumbah Civic Centre, Tweed Heads Civic Centre and on Council’s website.

Direct mail notification was sent to adjoining landowners and the planning proposal was advertised in the Tweed Link on 23 June 2015.
The Proposal was a Priority 3 on the Strategic Planning and Urban Design (SP&UD) adopted Work-plan 2014-15, and has been elevated to Priority 2 on the latest 2015-16 Work-plan adopted at the Council Meeting of 6 August 2015. This level of priority draws sufficient resourcing to expedite conclusion of the proposal now that it has reached the significant milestone of post public exhibition. The resourcing of the project is consistent with the transition period required to shift the Unit's resource allocation from a first-in-time work program to the current priority based work plan.

3.2 Submissions received in response to the public exhibition

Council received seven submissions, which have been evaluated as follows:

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<thead>
<tr>
<th>Submission from:</th>
<th>Local resident</th>
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<tbody>
<tr>
<td><strong>Summary of issues:</strong></td>
<td>1. Objection to the proposed development on the basis of concerns that it will cause increased truck traffic and exhaust/compression braking noise.</td>
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<td>2. Points out that while the Pacific Motorway was being constructed, the residents of the area were promised a sound barrier on the western side of the Wommin Bay Road which has not been created.</td>
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| Planning response: | Response to 1: This planning proposal is accompanied by the traffic noise (Noise Assessment, 2012) which concludes that whilst the traffic noise from the highway service centre will increase, it will still be within acceptable norms. Further acoustic testing may be deemed appropriate as part of the development application assessment and in response to concerns raised, but is not required with the planning proposal. |
| | Response to 2: Development of an acoustic barrier related with noise generated by the Pacific Motorway is outside the scope of the planning proposal which is limited to zoning of the subject site to permit the highway service centre. Further, staff clarified with Roads and Maritime Services (RMS) on 13 October the following points: |
| | a. Any noise associated with the existing highway is a matter for RMS, and any complaints about noise are to be directed to RMS, whom, if appropriate, will undertake noise assessment. If required RMS will address noise abatement measures, which may be barriers or improvements to the affected dwelling; and |
| | b. Noise arising in association with a new development that requires noise abatement measures is a cost burden to that developer. |
| | In either scenario, and there may be a blending of the two, the approval of any noise abatement devices will need to be approved |
and coordinated by RMS. Part of that process would occur as part of the development application assessment process undertaken by Council.

As part of this planning proposal process, the issue raised by way of public submissions will be forward to the relevant staff for further review as part of the development application, and which may include referral for comments to the Roads and Maritime Services (RMS) or the Local Traffic Committee.

**Recommendation:**
No changes to the planning proposal. Comment related to a sound barrier at the Wommin Bay Road will be referred to DA Unit for further investigation/follow-up.

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<tr>
<th>Submission from:</th>
<th>Local residents:</th>
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| **Summary of issues:** | 1. Objection to the proposed development as the subject site was previously deemed unsuitable for such use in 1996 due to potential impacts on flora and fauna habitat and loss of native vegetation.  
2. Request to incorporate previous correspondence with Council as part of the objection. |

| Planning response: | Response to 1: While referring to previous documents or correspondence conveying Council’s approach towards development on the subject site, consideration must be made to the vegetation clearing carried out in 2002, which highly disturbed the ecological status of the land. Notwithstanding, the site is still considered to be of high ecological value due to the presence of an Endangered Ecological Community and threatened flora and fauna species and their habitat both on the site and in the surrounds. The proposed development seeks to protect as much of the EEC as possible, whilst facilitating a safer use of the highway service centre. Any loss of EEC is to be offset and parts of the site outside of the development footprint are subject to a vegetation rehabilitation plan which will be imposed through conditions of development consent.  
Response to 2: Previous correspondence between Council and the adjoining landowner, related to this combined application, occurred prior to the public exhibition. |

| Recommendation: | No changes to the planning proposal. |

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<tr>
<th>State agency:</th>
<th>Office of Environment and Heritage (OEH)</th>
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</table>
| **Summary:** | 1. Aboriginal Cultural Heritage: it is recommended that prior to finalising the Planning Proposal a program of test excavation be carried out within the project area to determine whether Aboriginal objects are present.  
2. If the outcome of the E-zones review is to deny the ability to rezone areas of the site for environment protection purposes, OEH recommends that another suitable zone should be |
3. The preparation of a detailed Ecological Assessment is required to enable adequate assessment of the biodiversity impact and offset proposal. OEH recommends BioBanking or offset in accordance with OEH Principles for the use of biodiversity offsets in NSW.

4. Vegetation communities should be mapped on site, particularly in relation to the EEC. The extent of the area containing the EEC Swamp Sclerophyll Floodplain Forest should be verified on ground by a suitably qualified person. Any land containing EEC Swamp Sclerophyll Floodplain Forest should be zoned E2.

5. OEH is unable to provide comments in relation to the presence of Acid Sulphate Soils on the subject site as adequate study has not been provided.

Response to 1: A Due Diligence Assessment prepared by Ian Fox & Associates in April 2015 has been undertaken. Part of the process included consultation with the Aboriginal Community through the Tweed Aboriginal Advisory Committee (AAC). The AAC in considering the proposal have supported the recommendations of the Due Diligence to have a sites officer present during an works involving ground disturbance and applying the normal stop work procedure should any object or relic be found. The site is not identified as having any known or predictive Aboriginal cultural heritage on the draft ACH mapping.

Response to 2: In their Gateway determination request, Council sought support to zone land outside of the development footprint with an E2 Environmental Conservation zone. This approach was not supported by the DPE at the Gateway Stage, and removal of any references to the E2 zone was conditioned in the Gateway determination. Council is committed to apply an appropriate zone of this site consistently with the outcomes of the E-zone review.

Response to 3: Structure and content of offset revegetation plans are considered to be a development assessment, rather than strategic planning considerations. In this combined DA and planning proposal application, this matter will be evaluated and responded to as part of the DA assessment and approval process.

Response to 4: Several site inspections were carried out for the purpose of vegetation assessment and the final version of development layout, placed on public exhibition, reflects the acceptable footprint of development in context of the EEC present on the subject site. Any loss of significant vegetation will be compensated through the offset revegetation plan. As advised under response to point 3 above, in this combined DA and planning proposal application, details of the offset revegetation plan will be evaluated and responded to as part of the DA assessment and approval process.
### Response to 5: Recent consultation between Council and DPE concluded that appropriate methods of dealing with acid sulphate soils at the construction stage are development assessment consideration. This matter is being evaluated as part of the DA component of the joint application and appropriate management methods will be imposed through conditions of consent.

**Recommendation:** No changes to the planning proposal.

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<tr>
<th>State agency:</th>
<th>NSW Rural Fire Service (RFS)</th>
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<tr>
<td><strong>Summary:</strong></td>
<td>No objection to the planning proposal. Provides advice with respect to the development application regarding provision and maintenance of asset protection zones.</td>
</tr>
<tr>
<td><strong>Planning response:</strong></td>
<td>Submission noted, comments related to the DA component of the joint application will be evaluated and responded to as part of the DA assessment and process.</td>
</tr>
<tr>
<td><strong>Recommendation:</strong></td>
<td>No changes to the planning proposal.</td>
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<tr>
<th>Submission from:</th>
<th>NSW Transport Roads &amp; Maritime Services</th>
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<tr>
<td><strong>Summary:</strong></td>
<td>Support the proposed development as it may reduce the likelihood of queuing vehicles. Further investigation is suggested in regards to additional signage and line marking from the site to the highway off ramp, which is suggested in the traffic report.</td>
</tr>
<tr>
<td><strong>Planning response:</strong></td>
<td>Submission noted, comments related to signage and line marking will be evaluated and responded to as part of the DA assessment process.</td>
</tr>
<tr>
<td><strong>Recommendation:</strong></td>
<td>No changes to the planning proposal, detailed comments to be addressed at the DA stage.</td>
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<tr>
<th>Submission from:</th>
<th>Darryl Anderson Consulting on behalf of local residents</th>
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2. Construction Phase impacts: studies accompanying the DA and PP do not adequately address construction phase impacts and proposed mitigation measures.  
3. Vegetation clearing history provided in the ecological reports is inaccurate and understates the value of the existing vegetation. The proponent should be required to provide an amended 7 Part Test Report and substantial additional offset planting in the locality.  
4. Proposal inconsistent with previous Council position towards |
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<tr>
<td>5. Land used for an easement for access to the adjoining Lot 167 DP 755701 should be removed from offset calculations.</td>
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<td>6. Traffic impact not properly assessed as it suggests that the proposed development will not increase traffic travelling to or from the site.</td>
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<tr>
<td>7. Noise impacts does not address current and predicted traffic volumes on the Pacific Highway and does not address additional noise from the increased heavy vehicles likely to use the redeveloped highway service centre. Also, there are new residences developed closer to the subject site, not addressed in the study.</td>
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**Planning response:**

Response to point 1: Studies referred to in submission as outdated were prepared in relation to an earlier development proposal, lodged with Council in 2010 and evaluated between 2010 and 2012. Subsequent consultation between Council and the proponent resulted in overall reduction of the proposed development (fewer parking spaces for heavy trucks, smaller development footprint). Whilst some of the studies, including Cultural Heritage Assessment and Hydraulic Investigation, have been updated in accordance with conditions of the Gateway Determination, studies assessing traffic and noise impact remained unchanged.

Response to point 2: Impacts of the development at the construction phase are outside the scope of the planning proposal and will be addressed as part of the DA assessment.

Response to points 3 and 4: While referring to previous documents or correspondence, consideration must be made to the vegetation clearing carried out in 2002, which highly disturbed the ecological status of the subject site. Notwithstanding that, parts of the site are still considered to be of high ecological value due to the presence of an Endangered Ecological Community and the presence of threatened flora and fauna species and their habitat both on the site and in the surrounds.

From a planning proposal perspective, this development can continue on the basis of the offset vegetation rehabilitation plan, which will be imposed as one of the conditions of consent.

Response to point 5: Offset revegetation plan is currently being prepared and will be considered as part of the DA determination. Location of the easement in context of the offset plan will be considered as part of the DA component of this combined application.

Response to point 6: During the public exhibition, the proposal, and associated traffic study were referred to the NSW Roads & Maritime which have raised no apparent concern with the level of assessment of traffic implications, and have presently supported...
the proposed development on the information available.

Response to point 7: Analysis of noise sources in section 5.3 of the Noise Impact Assessment are based on the assumption that future demand is expected to be generated as a result of both additional motorway traffic and the proposed development expansion (p.13 of the study). Further analysis of noise sources in section 5.3 takes into account the increase in noise as a result of the proposed expansion. The study was reviewed by Council and referred to state agencies, including RMS and no objections were made in relation to the content or proposed methodology or findings.

The new residence at the southern end of Phillip St has not been considered in the noise impact assessment as it is located further from the nearest dwelling located at this street, considered and assessed in the Noise Impact Assessment.

**Recommendation:** No changes to the planning proposal. Location of the easement to be considered while preparing the offset revegetation plan, which will be considered as part of the DA determination.

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<tr>
<th>Submission from:</th>
<th>Henry Davis York Lawyers on behalf of local residents</th>
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<tr>
<td><strong>Summary:</strong></td>
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<tr>
<td>2.</td>
<td>Noise impact assessment is based on assumption that the development would not generate additional truck movements into and out of the facility. Also, it does not consider the NSW Road Noise Policy and the impact of the Proposal on sleep disturbance. Measurement of noise to the closest receptors is not accurate as there are other receptors located at Phillip Street which are located in similar proximity, if not closer to the proposed expansion site.</td>
</tr>
<tr>
<td>3.</td>
<td>Ecological Assessment: Lot 1 DP 1127741 contains an easement over its south-east section providing access to adjoining property. This portion of the site must be excluded from the offset/revegetation arrangements. Also, further seven part test is required as the outcomes of such test included in the Ecological Assessment of June 2012 have been questioned under the peer review by Cumberland Ecology. Further, the proposal had been amended but this has not lead to re-evaluation of impacts on traffic, noise etc. All studies accompanying the joint application should be amended and re-exhibited. In assessment of the ecological values of the site, references to regrowth vegetation are inaccurate as some of that vegetation is remnant and of higher ecological</td>
</tr>
<tr>
<td>Planning Committee: Thursday 5 November 2015</td>
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4. Further review of communication between the adjoining landowner (Stirling family) and Council is being undertaken to determine whether Council’s conduct may indicate pre-judgement or apprehended bias.

5. Considers that if Council continues to progress this joint application based on the current documents, adjoining landowners may commence Class 4 proceedings seeking orders to invalidate Council’s decision.

**Planning response:**

Response to point 1: The joint development application was lodged with Council in 2010 and evaluated between 2010 and 2012. Subsequent consultation with the proponent resulted in overall reduction of the proposed development (fewer parking spaces for heavy trucks, smaller development footprint). Council officers did not request an update to all relevant studies as the amendments to the development layout largely relate to reconfiguration of parking lots and are considered to be of minor nature. Notwithstanding that, some studies, such as Cultural Heritage Assessment and Hydraulic Investigation were updated to comply with current heritage provisions and flood planning maps of the Tweed LEP 2014.

Response to point 2: Analysis of noise sources in section 5.3 of the Noise Impact Assessment are based on assumption that future demand is expected to be generated as a result of both additional motorway traffic and the proposed development expansion (p. 13 of the study). Further analysis of noise sources in section 5.3 takes into account increase in noise as a result of the proposed expansion. The study was reviewed by Council and referred to state agencies, including NSW Roads and Maritime Services and no objections were made in relation to the content or proposed methodology.

Response to point 3: Offset revegetation plan is currently being prepared and will be considered as part of the DA determination. Location of the easement in context of the offset plan will be considered as part of the DA component of this combined application.

Comments related with the 'part seven test' will be evaluated and responded to as part of the DA assessment and approval process. As discussed above, re-evaluation of other studies is not considered necessary as the agreed development footprint, consistent with Option 3 of the Cumberland Ecology’s paper results in reconfiguration of parking lots which is a minor change to the overall development. The site is considered to be of high ecological value due to the presence of an Endangered Ecological Community and the presence of threatened flora and fauna species and their habitat both on the site and in the surrounds. From the Planning Proposal perspective, this development can continue on the basis of the offset vegetation rehabilitation plan,
which will be imposed through the development assessment stage.

4. Noted

5. Noted. Council’s Corporate Governance has been advised of this.

**Recommendation:** No changes to the planning proposal. Location of the easement to be considered while preparing the offset revegetation plan, which will be considered as part of the DA determination.

### 3.3 Post-exhibition consultation

At the Council Meeting of 17 September 2015, Council resolved to defer this Planning Proposal for a workshop and invite representatives from the local resident’s submissions. In order to give effect to this resolution, a workshop was held on Thursday, 1 October, during which residents had an opportunity to present and discuss their objections directly with the Councillors. Issues discussed during the workshop were largely focused on matters raised in submissions and included the following:

<table>
<thead>
<tr>
<th>Issue 1: Expanded highway service centre will lead to an increase in compression braking of heavy vehicles. This could be mitigated by an acoustic barrier erected not only in immediate neighbourhood of the highway service centre, but also further to the north, in Wommin Bay Rd area, where heavy vehicles willing to use the highway service centre commence compression braking.</th>
<th>Planning comment: This issue, also raised in one of the submissions, will be referred to the Development Assessment Unit for further investigation at the DA stage. This investigation may include referral for comments to the RMS and the Local Traffic Committee.</th>
</tr>
</thead>
</table>
| Issue 2: Adjoining land: history of development proposals, current status and suitability for accommodating offsite offset vegetation. | Planning comment: Issues related with adjoining land have been addressed in this report only to the extent of their relevance to the planning proposal. In response to landowner’s suggestion that BP should acquire their land in order to accommodate offsite offset vegetation, the following needs to be considered:  
  - the adjoining land, that is Lot 167 DP 755701 is currently zoned 7(a) Environmental Protection (Wetlands & Littoral Rainforests) and 1(a) Rural. Under the draft LEP 2012, the land was proposed to be zoned entirely with the E2 Environmental Conservation zone.  
  - The subject land is entirely covered with Coastal Brush Box Open Forest to Woodland, and Broad-leaved Paperbark / Swamp She-oak Closed Forest to Woodland.  
  - One of the expected outcomes of any |
offsite offset is the *net benefit* to the environment. This outcome will not be achieved by accommodating offsite offset on land that is already predominantly zoned for environmental protection. Therefore the proposal to accommodate offsite offset on this land is not supported.

### OPTIONS:

1. Proceed with the planning proposal, in accordance with the recommendations within this report, and forward a request to NSW Department of Planning and Environment for the making of the proposed planning instrument.

2. Council not proceed with the planning proposal and that the Applicant and the NSW Department of Planning and Environment are notified, as required by the planning legislation.

Council staff recommend proceeding with Option (1).

### CONCLUSION:

The planning proposal was publicly exhibited for the required timeframe. Seven submissions were received in response with the key issues being the extent of development footprint in context of the EEC present on the site, preparation of the offset revegetation plan and objections to the development made by adjoining landowner.

This report has evaluated submissions related to the planning proposal component only as this component relates to the suitability of the site for the change of zoning and additional permitted use. The matters specific to the development application will be discussed in a separate report to Council.

Should Council resolve to support the planning proposal, it will be referred to the Department of Planning & Environment for the Local Environmental Plan to be made. Following the making of the plan, a separate report addressing the DA component and including relevant feedback from the public exhibition, will be prepared for Council’s consideration and determination.

It is recommended that the Proposal be referred to the Department of Planning and Environment requesting the plan be made.

### COUNCIL IMPLICATIONS:

a. **Policy:**
   Corporate Policy Not Applicable

b. **Budget/Long Term Financial Plan:**
   Not applicable
c. Legal:
Submission made by Henry Davis York Lawyers on behalf of adjoining landowners suggests that their clients may commence Class 4 proceedings seeking orders to invalidate Council’s decision. Any such litigation would be confined to a procedural review of the process and not a merit assessment, the kind of which only occurs with a review on a DA. Council staff are satisfied that all legislated and best practice procedures have been implemented, and Council provided with all the relevant facts and evidence to support their determination.

Council’s Corporate Governance Unit has been notified.

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. Planning Proposal PP15/0001 Version 3 Final (ECM 3830050)
7  [PR-PC] Housekeeping and Minor Policy Amendment LEP

SUBMITTED BY:  Strategic Planning and Urban Design

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:

The purpose of this report is to explain the intent for and provide the details and justification for the preparation of the Planning Proposal for Housekeeping and Minor Policy Amendments to the Tweed Local Environmental Plan (LEP) 2014.

This Planning Proposal is a result of the ongoing review of the Tweed LEP 2014, over 18 months since the plan became operational. Given that a number of anomalies have been identified in the Tweed LEP 2014, it was deemed appropriate that a Housekeeping LEP would be prepared. The amendments have been grouped together in one Planning Proposal in order to rationalise the number of amendments to Council's principle planning instrument, and improve cost / resource efficiency.

This Planning Proposal considers both owner initiated changes and Council initiated changes. In summary, there are 19 amendments ranging from minor mapping changes to the introduction of a new clause to facilitate boundary adjustments of undersized lots with consent. Mapping amendments contained within the “housekeeping” part of this Planning Proposal predominantly aim to rectify errors and mapping anomalies that were made during the preparation of the draft LEP 2014.

RECOMMENDATION:

That Council endorse:

1. The Planning Proposal for Housekeeping and Minor Policy Amendments to the Tweed Local Environmental Plan 2014 be prepared and submitted to the NSW Department of Planning and Environment for a Gateway Determination, in accordance with s56 of the Environmental Planning and Assessment Act;

2. The Minister for Planning and Environment or his Delegate be advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal;
3. The Minister for Planning and Environment or his Delegate be advised that Council is seeking a public exhibition for a period of not less than 28 days;

4. On receipt of the Minister’s Gateway Determination Notice to proceed, any ‘conditional’ requirements of the Minister and any other study or work are to be completed, and included within the public exhibition material;

5. Following receipt of the Gateway Determination the planning proposal be publicly exhibited in accordance with the Gateway Determination and a further report is to be submitted to Council detailing the content of submissions received and any proposed amendment(s).
**REPORT:**

1. **Background**

Planning framework at the local government level plays a critical role in achieving the economic, cultural, social and environmental priorities of the Tweed Shire. Within this framework, the principal statutory tool for implementing the local planning strategies and achieving the local government's aims and objectives is Tweed Local Environmental Plan (LEP) 2014.

This Planning Proposal is a result of the ongoing review of the Tweed LEP 2014, following 18 months of the plan being operational. Given that a number of anomalies have been identified in the Tweed LEP 2014, a Housekeeping LEP is the most efficient method of correcting these anomalies. The amendments have been grouped together in one Planning Proposal in order to minimise cost and resourcing, as well as to minimise the actual number of processes required to bring about those amendments to Council's principle planning instrument.

This report sets out 19 proposed amendments, divided into a *Housekeeping amendments* group, which includes mapping anomalies and minor corrections to Schedule 5 Environmental Heritage of the LEP, and a *Minor policy amendment* group, which includes proposed amendments to the clauses and additional clauses of the LEP:

2. **Housekeeping amendments**

As part of the housekeeping component, this Planning Proposal seeks amendments to 16 sites (items) as follows:

**Item 1**

<table>
<thead>
<tr>
<th>Lots affected:</th>
<th>Conversion of former zone 3(c) to B1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lot 7 DP 701483</td>
<td>Neighbourhood Centre does not correlate with the uses on site and there is no strategic justification to modify the hierarchy of the centre. Existing development and use of the land (motel, service station, liquor store), correlate more closely with B2 Local Centre zone.</td>
</tr>
<tr>
<td>Lot 3 DP 1105863</td>
<td></td>
</tr>
<tr>
<td>Lot 2 DP 1105863</td>
<td></td>
</tr>
<tr>
<td>Lot 1 DP 1105863</td>
<td></td>
</tr>
<tr>
<td>Lot 1 DP 546904</td>
<td></td>
</tr>
<tr>
<td>Lot 2 DP 546904</td>
<td></td>
</tr>
</tbody>
</table>
Proposed amendment:  
- Rezone B2 Local Centre.  
- Other LEP development standards unchanged

**Item 2**  
**Certain land at Tweed Valley Way, Burringbar**  
Lots affected: part of Lot 2 DP 617184  
![Tweed LEP 2000: Land zoning map](image1) ![Tweed LEP 2014: Land zoning map](image2)

**Description of issue:**  
Mapping anomaly. Part of Lot 2 DP 617184 was incorrectly translated from 2(d) Village under LEP 2000 to RU2 Rural Landscape zone under LEP 2014.

**Proposed amendment:**  
- Rezone Part 2//617184 to RU5 Village where incorrectly zoned RU2.  
- Amend development standard maps: Floor Space Ratio (FSR) of 2:1, Lot Size (LSZ) of 450 m² and Height of Building (HOB) of 13.6m to apply standard controls for the RU5 zone.

**Item 3**  
**Part of Lot 2 DP 505210 at Smiths Creek Road, Stokers Siding**  
![Tweed LEP 2000: Land zoning map](image3) ![Tweed LEP 2014: Land zoning map](image4)

**Description of issue:**  
Mapping anomaly. Part of Lot 2 DP 505210 was incorrectly rezoned from 2(d) Village under the LEP 2000 to RU2 Rural Landscape zone under LEP 2014.

**Proposed amendment:**  
- Rezone to RU5 Village where incorrectly zoned RU2
Item 4
Zoning of a former agricultural drain (waterway reserve) adjoining Lot 2 DP 792808

Tweed LEP 2014: Land zoning map
Aerial imagery of the subject area

Description of issue:
Zone W1 Natural Waterways was incorrectly applied over land used as an agricultural drain in the past.

Proposed amendment:
- Rezone to RU1 Primary Production
- Amend development standards: HOB (10m), LSZ (40 ha) consistent with the RU1 zone surrounding.

Item 5
Zoning of a former agricultural drain (waterway reserve) adjoining Lot 4 DP 876455

Tweed LEP 2014: Land zoning map
Aerial imagery of the subject area

Description of issue:
Zone W1 Natural Waterways was incorrectly applied over land used as a drain in the past.

Proposed amendment:
- Rezone to RU1 Primary Production
- Amend development standards: HOB (10m), LSZ (40 ha) consistent with the RU1 zone surrounding.
### Item 6

**Zoning of existing agricultural drain adjoining Lot 4 DP 876455**

<table>
<thead>
<tr>
<th>Description of issue:</th>
<th>W1 Natural Waterways zone was applied to an agricultural drain. This is inconsistent with the methodology of applying this zone for natural waterways only.</th>
</tr>
</thead>
</table>
| Proposed amendment:   | • Rezone to RU1 Primary Production  
• Amend development standards: HOB (10m), LSZ (40 ha) consistent with the RU1 zone surrounding |

### Item 7

**Overlay Maps for Part Lot 1 DP 1126739, at Pottsville Road**

<table>
<thead>
<tr>
<th>Description of issue:</th>
<th>That part of Lot 1 DP 1126739 has been deferred from the LEP but overlay maps and development standard maps have not been updated consistent with the deferral.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed amendment:</td>
<td>• Amend the development standard and overlay maps to correlate with that part of the land which is deferred.</td>
</tr>
</tbody>
</table>
### Item 8

**Development standard maps for Lot 118 DP 572524, Ozone St., Kingscliff**

[Diagram showing land zoning and height of building for Lot 118 DP 572524, Ozone St., Kingscliff]

**Description of issue:**

Land is zoned RU2 Rural Landscape but no development standard mapping is applied which is inconsistent with the translation approach.

**Proposed amendment:**

- Apply development standards for RU2 zone, being: LSZ (40 ha), HOB (10m).

### Item 9

**Use of Council land at Altona Road, Lot 20 DP 1082482**

[Diagram showing land zoning for Altona Road]

**Description of issue:**

Although zoned SP2 and developed with a sewage treatment plant and community meeting/education centre, the western portion of the land has historically permitted and been used for cattle grazing under the LEP 2000, consistent with surrounding land uses. Since the implementation of the LEP 2014 cattle grazing has become a prohibited use. Council is of the view that this land use should be reinstated through an appropriate amendment.

**Proposed amendment:**

- Amend Schedule 1 to allow “extensive agriculture” as a permitted use on this site with development consent.

### Item 10

**Use of Council land at Smiths Creek Road, Smiths Creek (Lot 2 DP 550508)**

[Diagram showing land zoning for Smiths Creek]

**Description of issue:**

Under the land use table of the LEP 2000, the use of this land was not limited to infrastructure only, but also included ‘any use compatible with adjacent uses and with uses allowed in adjacent zones’ and Council was considering development of an outdoor recreation facility (mountain bike club) on the site. Implementation of the Standard Instrument LEP 2014 limited the permissibility of land uses on the site.
### Proposed amendment:
- Amend Schedule 1 to permit “Recreation Facility (Outdoor)” with development consent.

### Item 11
Dwelling houses at 418 and 436-440 Terranora Rd, zoned RU1 Primary Production

![Tweed LEP 2014: Land zoning map](image)

**Description of issue:**
A separate Planning Proposal seeks to rezone lots 420-434 Terranora Road to a residential zone. Adjoining land at 418 and 436-440 is already developed with single dwellings and rezoning to R2 will ensure a consistent outcome for the locality. Rezoning has been recommended by the Joint Regional Planning Panel on 18 July 2013.

**Proposed amendment:**
- Rezone R2 Low Density Residential
- Amend development standard maps: LSZ (450 m²), HOB (10 m) and FSR (0.8) consistent with R2 zone.

### Item 12
Missing height of building control for Lot 357 DP 1162588 located at Seaside Drive, Kingscliff

![Tweed LEP 2014: Land zoning map](image)

**Description of issue:**
Mapping anomaly - Subject site is missing the height of building control. This is inconsistent with the translation approach.

**Proposed amendment:**
- Amend Height of Building Map to apply 9 metres, in accordance with Tweed DCP Section B11 and surrounding properties.
Item 13

Zoning of Lot 3 DP 877860 in Kielvale

The owners of Lot 3 DP 877860 requested that the RU5 Village zoning applicable to part of their land be amended to RU2 Rural Landscape. This request has been supported by petitions from the local residents of Kielvale, received by Council during the public exhibition of the Tweed LEP 2014.

The site was zoned for village expansion under LEP 2000, however, this land is currently farmed and the owners wish for this to remain as farmland. Council resolved on 16 May 2013 to consider an appropriate zone for the site through a planning proposal.

Proposed amendment:
- Apply the RU2 Rural Landscape zone
- Amend development standard maps: HOB (10m) and LSZ (40 ha).

Item 14

Remains of the Condong Sugar Mill Rail Line – inconsistency between listing in Schedule 5 and the mapping.

This heritage item, comprises of two lots being Lot 21 DP 255029 and Lot 17 DP 255029 as mapped in the LEP 2014, but only Lot 17 DP 255029 is listed under Schedule 5 Item 15. The Schedule 5 listing needs to be consistent with the mapping.

Proposed amendment: Amend Schedule 5 to include Lot 21 DP 255029 as part of Item 15.
Item 15

National Australia Bank – inconsistency between listing in Schedule 5 and the mapping.

<table>
<thead>
<tr>
<th>Description of issue:</th>
<th>This heritage Item (NAB Bank site) is described under Schedule 5 item 67 as 38 Murwillumbah St, being Lot 1 DP 772600. The correct description to be consistent with the mapping and house address should be 36-42 Murwillumbah St.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed amendment:</td>
<td>Amend Schedule 5 to update the address to 36-42 Murwillumbah Street for Item 67.</td>
</tr>
</tbody>
</table>

Item 16

War Memorial Cenotaph – Typographical error in DP description.

<table>
<thead>
<tr>
<th>Description of issue:</th>
<th>This heritage item 80 (War Memorial Cenotaph site) is described in Schedule 5 item 80 as located on Part Lot 1 DP 863854. There is a typographical error with the DP. The correct description should be Lot 1 DP 863851.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed amendment:</td>
<td>Amend Schedule 5 item 80 to Lot 1 DP 863851.</td>
</tr>
</tbody>
</table>

3. Minor policy amendments

Item 17 Boundary adjustments between lots in certain rural and residential zones

Boundary adjustments are a minor form of development involving relatively small changes to lot boundaries that do not create any additional lots or dwellings. Boundary adjustments result in positive planning outcomes by creating more logical lot boundaries that are better aligned with the inherent constraints or ownership of land.
Previously, most boundary adjustments were exempt development under the Tweed Exempt and Complying DCP. However, introduction of the Codes SEPP as the only Exempt and Complying controls applying following repeal of the Exempt and Complying DCP upon gazettal of the LEP 2014 have made the application of the exempt provisions for boundary adjustments very restrictive.

This Planning Proposal aims to introduce an additional clause to Part 4 Principal Development Standards. The proposed, draft wording of this clause is provided below for further consultation with State agencies, local community and other stakeholders.

4.2C Boundary adjustments of land in certain rural and residential zones [local]

(1) The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size and the objectives of the relevant zone can be achieved.

(2) This clause applies to land in the following zones:
(a) Zone RU1 Primary Production, and
(b) Zone RU2 Rural Landscape, and
(c) Zone R5 Large Lot Residential.

(3) Despite Clause 4.1, development consent may be granted to subdivide land by way of a boundary adjustment between adjoining allotments where one or more resultant lots do not meet the minimum lot size shown on the Lot Size Map in relation to that land, if the consent authority is satisfied that:
(a) the subdivision will not create additional lots or the opportunity for additional dwellings, and
(b) the number of dwellings or opportunities for dwellings on each lot after subdivision must be the same as before the subdivision, and
(c) the potential for land use conflict will not be increased as a result of the subdivision, and
(d) the agricultural viability of the land will not be adversely affected as a result of the subdivision.

(4) Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following:
(a) the existing uses and approved uses of other land in the vicinity of the subdivision,
(b) whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,
(c) whether or not the subdivision is likely to be incompatible with a use referred to in paragraph (a) or (b),
(d) whether or not the subdivision is likely to be incompatible with a use on land in any adjoining zone,
(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d),
(f) whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,
(g) whether or not the subdivision is likely to have an adverse impact on the environmental values or agricultural viability of the land.

(5) This clause does not apply:
(a) in relation to the subdivision of individual lots in a strata plan or community
Table 3. Proposed new clause to Part 4 Principal Development Standards

Item 18 Amendments to clause 7.9 Development in areas subject to aircraft noise

Minor amendment is sought to clause 7.9 Development in areas subject to aircraft noise to recognise Australian Standard 2021-2015 (Acoustics – Aircraft noise intrusion – Building siting and construction) and update the reference in to the superseded AS 2021-2000, referred to in the LEP 2014.

Item 19 Flood planning maps

The proposed amendment to the Flood Planning Map emerges from identified inconsistencies with the NSW Floodplain Development Manual.

During the preparation of the Standard Instrument LEP for Tweed Shire, many discussions occurred between Council and the State Government regarding how the standard LEP template addresses floodplain management and Council’s specific flood risks. One of the outcomes of these discussions was the "exceptional circumstances" (EC) status, granted from State agencies in order to consider floods greater than the design flood level for floodplain development. As part of the EC discussions, Council was requested to amend the LEP maps to properly reflect the "flood planning area" referred to in the flood clauses and definitions, being the 100 year ARI flood plus 0.5m freeboard. In the LEP drafts to date, only the 100 year ARI flood has been shown, being a direct output of recent flood studies and relevant to Tweed planning documents. It was agreed that this was practical in the Lower Tweed area, and the flood maps for the Tweed City Centre LEP have been updated accordingly.

This amendment aims to implement Recommendation No 36 endorsed by Council at their meeting of 16 May 2013 (review of submissions made to draft LEP), which stated as follows:

Recommendation/Action:

36  No amendment to the DLEP at this stage. The revised flood modelling and amendment to the Flood Planning Map to be undertaken through a separate LEP amendment process.

As part of pursuing this item, Council will consult the Department of Planning & Environment to seek an alternative approach, which is to remove the Flood Planning Maps from the LEP. Under this approach, development within the flood prone areas will still be subject to (amended) clauses 7.6 Flood planning and 7.7 Floodplain risk management, but the flood mapping will be external to the LEP, enabling them to be updated as required without the need to prepare an LEP amendment.

4. Consistency with the strategic planning framework

Consistency with the strategic planning framework, Ministerial Direction provided under s117 of the Environmental Planning & Assessment Act 1979 and State Environmental Planning Policy is discussed in the Planning Proposal V1 document attached to this report.
In many cases, the relationship with the strategic planning framework is difficult to measure as the majority of the housekeeping amendments are of administrative nature.

OPTIONS:

1. Proceed with the Planning Proposal as per the report recommendations, or
2. Not support the Planning Proposal, in which case the private originating planning request will be notified to the Department of Planning and Environment, and the Proponent, in accordance with the planning legislation.
3. Resolve to proceed with the Planning Proposal with an amended list of items, to be detailed within Council’s resolution.

CONCLUSION:

Tweed LEP 2014 was adopted by Council on 31 May 2013 and was made on 4 April 2014. Since its implementation, a number of anomalies have been identified by Council officers and the planning proposal intends to correct these. The corrections to the written instrument are intended to provide clarification of the intent of certain clauses, particularly by regulating boundary adjustments in certain rural and residential zones. With regard to mapping corrections, this Planning Proposal seeks to:

- correct a number of mapping anomalies occurred during the conversion of the LEP 2000 mapping suite into the LEP 2014 template,
- correct description of certain heritage sites in the heritage register included under Schedule 5 of the LEP,
- give effect to previous Council resolutions seeking to apply appropriate zone and development standards to certain sites,
- allow additional uses on certain infrastructure site in line with their permissibility status under the LEP 2000.

COUNCIL IMPLICATIONS:

a. Policy:
The Planning Proposal will have the effect of improving the certain aspects of Council’s land-use policy, such as updating the subdivision provisions to replace those that are widely accepted throughout the State as overly prohibitive, as well as updating zoning maps to better reflect appropriate uses or status of the land. For example, there has long been a sustained community demand for walking and cycling tracks, which can be accommodated in part by the permitting additional recreation uses on Council’s land at Smiths Creek Road, Smiths Creek.

b. Budget/Long Term Financial Plan:
The Planning Proposal can be accommodated within current budget allocations.

c. Legal:
Not Applicable.
d. Communication/Engagement:
Consult - We will listen to you, consider your ideas and concerns and keep you informed.
Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:
Attachment 1. Planning Proposal (ECM 3832362)
SUMMARY OF REPORT:

In August 2015 Council’s Strategic Planning and Urban Design Unit received a request to amend Section B11 of the Tweed Development Control Plan 2008 (Tweed DCP), as it relates to Seaside City (Seaside City DCP). The purpose of this report is to advise Council of the nature of that request and provide planning framework recommendations accordingly.

The review seeks to facilitate a small-lot housing subdivision and stems from Council's prior consideration and determination regarding development application; DA15/0079, DA15/0080, DA15/0081 and DA15/0082, all of which sought a subdivision format that was seen to be inconsistent with the Seaside City DCP, and which Council has resolved to amend to enable the proposed developments.

Owing to practicality and equity, a review of the Seaside City DCP to facilitate these DAs’ cannot occur for those properties in isolation of all others. A wider review was therefore undertaken and 4 options became apparent, these are:

1. Repeal the Seaside DCP in its entirety;

2. Retain the Seaside DCP, and reduce the area of application to a single block (Cylinders Drive South-East block), or

3. Retain the Seaside DCP, remove all minimum density provisions and defer the assessment of small lot housing to the Council's Housing Code under Section A1 of the Tweed DCP.

4. A hybrid of the 3 options above.

Each option possesses a level of merit and Council staff recommend the hybrid of the three options. This consists of removing duplicate or superseded controls, and consolidation of the remaining provisions into the existing Housing Code, as additional site specific controls.
Applying Option 4 will simplify the planning provisions, remove ambiguities that currently arise between these two sections of the Tweed DCP, will enable a more flexible market-demand based approach to the provision of medium density residential accommodation, which should be better placed to meet changing demographic needs.

This report seeks endorsement of the recommended approach prior to amendments being drafted and publicly exhibited.

In relation to the four development applications, staff noted that Council raised no substantive issue with the proposed developments, above that of the DCP inconsistency, and as such it is recommended that their determination therefore be delegated to the General Manager. This will minimise any further delay once the amended DCP takes effect, which will occur by public notification the week following the Council Meeting at which the DCP is adopted.

RECOMMENDATION:

That Council endorse:

1. The Tweed Development Control Plan Section A1 be revised to include Additional Site Specific Controls – Seaside City as per Table 1 of this report and be placed on public exhibition in accordance with Clause 18 of the Environmental Planning and Assessment Regulation 2000 for a minimum period of 28 days; and

2. A post public exhibition report detailing public submissions and any proposed further amendments be prepared for a future Planning Committee meeting.

3. DA15/0079, DA15/0080, DA15/0081 and DA15/0082 all be determined under the Delegation of the General Manager after public exhibition of the DCP has occurred and Council has resolved to adopt the relevant section of the revised DCP.
REPORT:

Council’s Strategic Planning and Urban Design Unit received a request to amend Section B11 of the Tweed Development Control Plan 2008, as it relates to Seaside City (Seaside City DCP). The review seeks to facilitate a small-lot housing subdivision and stems from Council’s previous resolutions relating to DA15/0079 – DA15/0082.

Owing to practicality and equity, a review of the Seaside City DCP to facilitate these DAs’ cannot occur for those properties in isolation of all others. A wider review was therefore undertaken and 4 options became apparent, these are:

1. Repeal the Seaside DCP in its entirety;
2. Retain the Seaside DCP, and reduce the area of application to a single block (Cylinders Drive South-East block), or
3. Retain the Seaside DCP, remove all minimum density provisions and defer the assessment of small lot housing to the Council’s Housing Code under Section A1 of the Tweed DCP.
4. A hybrid of the 3 options above.

The hybrid of the options 1-3, consisting of the removal of duplicate or superseded controls, and consolidation of the remaining provisions into the existing Housing Code, as additional site specific controls, is considered to be the best option.

Seaside City DCP – History and Review

Site specific development controls were originally adopted for Seaside City in October 2006. The core aims of the Seaside City DCP are to:

- Identify a structure for Seaside City that provides opportunities in creating a vibrant and individual community that reflects its’ subtropical climate and Far North Coast cultural context;
- Reflect the significance of this coastal site, particularly in terms of environmental planning and management and urban and landscape design;
- Recognise that tourism is the main economic driver within the village while ensuring the quality of life of the permanent community is not compromised;
- Provide clear policies and guidance for the future development and management of the subject land.

Since adoption of the Seaside City DCP, the area has progressively developed, particularly within the past 3 – 5 years as the site infrastructure requirements had been established. At present, the majority of lots within the estate have applications before Council, approvals in place, or have been developed. Figure 1 displays the development status of lots within Seaside City.
To assess the submitted options, a review of the Seaside City DCP provisions was undertaken, along with a brief audit of current and past development applications. A detailed summary and analysis of the provisions of the Seaside City DCP can be found under Attachment 2, however, in broad terms, the Seaside City DCP development controls are detailed in three parts, being Subdivision/Site Preparation, Urban Structure & Form, and finally, Building Controls Accommodation Area. The provisions of each part are discussed below.
Subdivision/Site Preparation

Subdivision/Site Preparation prescribes environmental and hazard management provisions (i.e. bushfire, riparian and dune management etc.) as well as infrastructure management provisions (i.e. drainage, roads, open space etc.) In this regard, the various management plans and the like have been developed and actioned and Council has accepted land dedication of the environmental, infrastructure and open space reserves desired. Accordingly, the subdivision/site preparation provisions are not considered to directly influence current or future Development Applications and are no longer required.

Urban Structure & Form

Urban Structure & Form prescribes the layout of Seaside City (i.e. locations for Coastal Housing, Coastal Multi-Dwelling, Village Centre etc.) as well as detailed design-based provisions for the village centre and areas outside the village centre. The structural layout of Seaside City has been embodied within the Tweed LEP 2014 through the selective use of zones, maximum height of buildings, floor space ratio and minimum lot size. Accordingly, the relevant DCP controls are considered to have limited value into the future.

The village centre specific design provisions largely reflect best-practice urban design for a coastal, urban village. In this regard, similar controls and have been included within DCP sections relevant to Pottsville and Area E. To-date however, no shire-wide controls are present to guide the building design and style of the village street accordingly retention of these provisions is considered critical.

The majority of the design provisions applicable outside of the village centre are replicated elsewhere within Council’s planning framework, particularly Sections A1 and A2 of the Tweed DCP. Specific provisions to Seaside City include ‘Building Design’, ‘Roof and Walls’ and ‘Setbacks (Option #3)’ controls. These provisions are considered to directly inform the desired and prevailing character of Seaside City and as such should be retained.

Building Controls Accommodation Area

Building Controls Accommodation Area prescribes maximum site coverage, building height and floor space ratio as well as minimum landscape area and density provisions for each Accommodation area. Further, setback provisions are specified for the South East Cylinders Drive block. As discussed earlier, the prescribed building height and floor space ratio requirements are now embedded within the Tweed LEP 2014. In addition, site coverage and landscape controls similar to those prescribed are also included within the Housing Code; Section A1 of the Tweed DCP. Accordingly these provisions are not considered to warrant specific retention as they would otherwise normally apply.

In relation to the South East Cylinders Drive controls, despite approximately only five properties yet to be assessed, these provisions have been identified by the proponent and through internal consultation as the primary controls in need to retention given the significant constraints present.

The final provision relates to the minimum density criteria, being 1 unit/dwelling per 220m² site area within the Coastal Multi Dwelling Housing area and 1 per 125m² within the Village Centre fringe area. All three options submitted by the proponent seek the removal of these controls.
The minimum density provisions have previously been reviewed by the SP&UD Unit within a previous request to amend the Seaside DCP, reported to Council in December 2012. This request sought to remove the minimum density provisions, however post investigations, it was resolved to reduce the area subject to the density provisions as opposed to endorsing their removal entirely. Within the 2012 review a wide range of contributing factors were considered, however primary focus involved achieving a sustainable population catchment to economically facilitate the Village Centre of Seaside City, as well as giving rise to the principles of the Tweed Coast Strategy, expressed through Section B9 of the Tweed DCP.

To-date three development applications have been determined where the minimum density provisions are applicable. All three determinations have obtained the minimum density, accordingly the Seaside DCP has been consistently upheld in this regard. Applications yet to be determined have sought variation to the density provisions. These applications detail the variation is justified as the building typologies sought possess higher occupancy rates, theoretically resulting in a similar total population, therefore not substantially altering the economic viability of the Village Centre. Further, development applications have since been lodged for the primary Village Centre lots, affording an increased confidence that commercial floorspace will be provided and is economically feasible.

The sites affected by the minimum density provision are zoned R3 Medium Density Residential (R3 zone) under the Tweed LEP 2014. The objectives of the R3 zone include reference to a ‘medium density residential environment’ however neither Council, nor the NSW Department of Planning & Environment formally define the parameters of ‘medium density’.

The Tweed Urban and Employment Land Release Strategy 2009, specifically Table 4-3 Tweed Councils Density Ratios by Dwelling Type and LEP Zone, does provide guidance however on the density anticipated by LEP zone. The findings of Table 4-3 equate to a range of 1 dwelling per 151 – 200m² site area for the R3 zone. Accordingly, the Seaside DCP prescribed minimum rate of 1 per 220m² largely reflects the density traditionally anticipated for a medium density area, whereas the minimum rate of 1 per 125m² is higher than traditionally anticipated.

Whilst the 1 per 220m² provision is considered to align with what is considered ‘medium density’, the stipulation that it forms the minimum density as opposed to a density target has been an assessment issue for current development applications. In this regard, to afford a wider range of outcomes and building typology options, prescribed density provisions could be altered as follows:

1. The desired density of residential accommodation on land zoned R3 Medium Density Residential is greater than 1 dwelling per 200m² site area.

2. Residential accommodation on land zoned R3 Medium Density Residential must achieve a minimum density of 1 per 360m² site area unless significant site constraints (other than land tenure) direct otherwise.

3. The minimum 450m² site area provisions for Dual Occupancy and Secondary Dwellings do not apply to land zoned R3 Medium Density Residential within Seaside City.

The three controls above provide a density target that is in keeping with medium density within the Tweed Shire, a minimum density limit to facilitate the objectives of the zone and
increased flexibility for low-impact building types to further encourage density within the Seaside City setting.

**Summary**

As discussed above, the Council officer review of the Seaside DCP has identified that many of the controls have served their purpose, or have been replicated elsewhere within Council’s planning framework, therefore and are no longer specifically required. Despite Seaside City being predominately advanced in its development cycle however, a number of controls are considered necessary to guide remaining development and ensure the vision and character of Seaside City is obtained.

In light of the above, Options 1 and 2 of the request, being to repeal all or a significant portion of the Seaside DCP are not supported. Whilst Option 3 is a viable option subject to some amendment, when considering the overall development cycle of Seaside City, retaining the Seaside DCP has limited longevity. Accordingly, Council officers recommend the provisions of the Seaside DCP inform the development of the Kingscliff Locality Plan and advocate the creation of ‘Additional Site Specific Controls’ within Section A1 of the Tweed Development Control Plan 2008. Table 1 identifies the specific actions in this regard.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Document</th>
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<tbody>
<tr>
<td>1. Introduction</td>
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<tr>
<td>1.1 The Vision &amp; Principles</td>
<td>Kingscliff Locality Plan</td>
</tr>
<tr>
<td>1.2 Aims of the Section</td>
<td>Kingscliff Locality Plan and/or Section A1 – Additional site-specific provisions</td>
</tr>
<tr>
<td>2. Administration</td>
<td></td>
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<tr>
<td>2.1 Land to which this section applies</td>
<td>Section A1 – Additional site-specific provisions</td>
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<td>4. Urban Structure &amp; Form</td>
<td></td>
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<tr>
<td>4.1.2 – 4.1.4 Village Centre Design</td>
<td>Section A1 – Part C or Additional site-specific provisions</td>
</tr>
<tr>
<td>4.1.5 Building Style &amp; Design for Area Outside of Village Centre Provisions relating to Building Design, Roof, Walls and Setbacks</td>
<td>Section A1 – Additional site-specific provisions. Note. Setbacks Option 3 will require drafting amendment to only apply to lots with a frontage width of greater than 18m.</td>
</tr>
<tr>
<td>5. Building Controls Accommodation Area</td>
<td></td>
</tr>
<tr>
<td>5.1 Coastal Housing (Design themes only)</td>
<td>Section A1 – Additional site-specific provisions</td>
</tr>
<tr>
<td>5.2 Cylinders Drive South-East</td>
<td>Specific Requirements - Section A1 – Additional site-specific provisions</td>
</tr>
<tr>
<td>5.3 Coastal Multi-Unit (Design Themes only)</td>
<td>Section A1 – Additional site-specific provisions</td>
</tr>
<tr>
<td>5.4 Village Centre Fringe (Footprint only)</td>
<td>Section A1 – Additional site-specific provisions (augment the design themes of 5.3 to be applicable)</td>
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<td>Clause</td>
<td>Document</td>
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<tr>
<td>New Controls for Coastal Multi-Unit and Village Centre Fringe:</td>
<td>Section A1 – Additional site-specific provisions</td>
</tr>
<tr>
<td>1. The desired density of residential accommodation on land zoned R3 Medium Density Residential is greater than 1 dwelling per 200m² site area.</td>
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Table 1 – Specific Clauses to include within Section A1 - Additional Site Specific Controls

Should Council adopt the site specific provisions within Section A1 post public exhibition, the Seaside DCP would be repealed. The suggested approach is considered the most effective method of conveying the controls, simplifying their application and reducing the layers of DCP assessment to suit the remaining application. The officer recommendation as detailed above has been forwarded to the proponent of the request, whom have advised that they are satisfied to proceed to public exhibition on this basis.

Timing of Applications Currently Under Assessment

On the 4 June 2015 Council resolved in regards to DA15/0079, DA15/0080, DA15/0081 and DA15/0082 that:

1. The submitted development applications for small lot housing are supported in principle, subject to the satisfaction of technical matters raised by Council staff in the information requests relevant to each application.

2. The proponent does not have to provide detailed dwelling house plans attached to each lot as a formal part of the subject applications.

If the DCP amendment proceeds as recommended in this report the proposed subdivision applications more closely reflect the proposed density provisions of one dwelling per 360m² and could be favourably considered and determined under staff delegation. However it is recommended that such determination is not made until the DCP is exhibited and Council has resolved to adopt the DCP.
OPTIONS:

1. Resolve to publically exhibit the Additional Site Specific Controls – Seaside City as detailed within Table 1 within Section A1 of the Tweed Development Control Plan 2008 for a period no less than 28 days.

2. Defer the matter for a workshop.

3. Reject the proponents request and retain the current Section B11 Seaside City of the Tweed Development Control Plan 2008 in its current form.

Council staff recommend Option 1.

CONCLUSION:

A request to amend Section B11 Seaside City of the Tweed DCP has been submitted to facilitate a small-lot housing subdivision and development, as depicted in Development Applications DA15/0079 – DA15/0082. Despite the origins of the request, the amendment options detailed have impacts upon all properties within Seaside City, particularly the Coastal Multi-Dwelling and Village Centre Fringe precincts.

A review of submitted options has identified that whilst each possesses varying levels of merit, a hybrid of the options which involves augmenting Section A1 of the Tweed DCP by way of additional site specific controls is preferred. This approach is considered to enable appropriate guidance to the remaining development of Seaside City, assist in achieving the desired character and removes duplication/inconsistency of controls across various sections of the Tweed DCP. Council officers preferred approach has been forwarded to the proponent who has indicated they are satisfied to proceed to public exhibition on that basis.

In light of the above, it is considered appropriate to advance the draft provisions to public exhibition, allowing input from the wider community.

COUNCIL IMPLICATIONS:

a. Policy:
It is recommended that the Tweed Development Control Plan be amended as identified in this report.

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:

<table>
<thead>
<tr>
<th>Attachment 1.</th>
<th>Seaside City Amendment Request (ECM 3830415)</th>
</tr>
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<tbody>
<tr>
<td>Attachment 2.</td>
<td>Council Officers Review of Section B11 - Seaside City of the Tweed Development Control Plan 2008 (ECM 3830417)</td>
</tr>
</tbody>
</table>
9 [PR-PC] Unauthorised Works at Lot 39 DP 755754 No. 790 Kyogle Road, Byangum

SUBMITTED BY: Development Assessment and Compliance

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Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4 Caring for the Environment
4.1 Protect the environment and natural beauty of the Tweed
4.1.3 Manage and regulate the natural and built environments

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SUMMARY OF REPORT:

A number of complaints have been received from the same complainant over recent years for issues related to land known as Lot 39 DP 755754 No. 790 Kyogle Road, Byangum. A more recent complaint alleges unauthorised earthworks, removal of vegetation/trees, use of the ‘community land’ off Kyogle Road as a driveway and river crossing, an alleged second dwelling within 40m of the Tweed River and alteration of the Tweed River bank. Council officers have investigated these matters and concluded that the works had been undertaken in a manner conducive to the ecological values of the site, and did not warrant further compliance action.

RECOMMENDATION:

That Council, in respect of recent complaints regarding alleged unauthorised works and activity on the premises, known as Lot 39 DP 755754 No. 790 Kyogle Road, Byangum, does not take any further compliance action.
REPORT:

Background:

In recent years, a number of complaints have been raised in respect to a range of alleged unauthorised works and activity relating to land described as Lot 39 DP 755754 No. 790 Kyogle Road, Byangum.

A more recent complaint has alleged the following unauthorised works:

1. Earthworks
2. Removal of vegetation/trees
3. “Use of the ‘community land’ off Kyogle Road as a driveway and river crossing”
4. An alleged second dwelling within 40m of the Tweed River
5. Alteration of the Tweed River bank.
SITE DIAGRAM:
Assessment:

1. **Earthworks**

   **Landowner response:**

   “I prepared sites for 4 concrete water tanks, one above ground 3 below ground. Slightly widened existing farm track adjacent to tank site for delivery twin steer crane truck to back in.”
Tanks are mentioned in the State Environmental Planning Policy) Exempt and Complying Development Codes) 2008. Farm tracks are considered as RAMAs [Routine Agricultural Management Activities] in the State legislation and Ancillary to Agriculture in your current LEP and as such are not 'development works ' and thus not requiring any approval in our situation.

In the Exempt and Complying Development Codes legislation there are no restrictions on cut and fill on underground tanks as when complete the ground level is restored. Re the acid sulphate zone 5, an officer for the State Environment and Planning Dept. zoomed right in on our house with a high resolution satellite viewer and looked right at where the tanks are and said that exact spot does not trigger any of the restrictions of proximity to zones 1,2,3,4 and water bodies etc. and was in his professional opinion exempt. And as stated above, farm tracks are considered as RAMAs [Routine Agricultural Management Activities ] in the State legislation and are Ancillary to Agriculture in your current LEP and as such are not "development works ' and thus not requiring any approval in our situation . The cut and fill on farm tracks recommended by the Dept. of Primary Industries is way outside of allowable cut and fill of complying development as farm tracks are not development and basically unregulated away from sensitive areas . This document is dated 2015.”
There will be no erosion because the whole area has been mulched. Apart from the actual tank sites which now, due to the stop work order, are still to be completed, the minor cut and fill from widening the track has been heavily mulched and planted and a large silt trap is below. There is no danger of any sediment run off, and now the mulching and planting is done, it just looks so minor and normal.”

Assessment:

A site inspection by two Council officers observed earthworks at three specific sites which created area for water tanks. The fourth tank was above ground beside the dwelling and is exempt under clause 2.64 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The bank along the existing track had been excavated to a limited extent to allow the three water tanks to be essentially buried so as to have a minimal visual impact and limit any erosion by reinstating the natural ground level.
Existing roadway where an area for two water tanks was created. The tanks will be backfilled so as to be largely underground.

In relation to Rainwater Tanks (below ground), the three tanks qualify for exemption under clause 2.66 of the State Environmental Planning Policy (Exempt and Complying Development Code) 2008 with one exception – clause 2.66(b) requires that any tank is not constructed or installed on land that is identified as Class 1-5 on the Acid Sulfate Map. Although lying within the Class 5 area, this particular site is elevated more than 20 metres above the river level. It is therefore exempt as it is well above the 5m Height Datum and atypical of the normal low lying soils affected by acid sulfates. In summary, the earthworks associated with the water tanks are exempt.

In any event, the works would be exempt under the Native Vegetation Act 2003 as a RAMA (Routine Agricultural Management Activity) where ‘tanks’ are listed as exempt rural infrastructure.
In regard to any possible erosion/sedimentation issues, there is a large benched garden directly below the disturbed area. Any sediment would be contained within the immediate area. The site is considered to be secure in terms of sediment and erosion control.

The area directly below the disturbed roadway is a large, flat bench with an established garden. No sediment could escape past this bench to the river.

2. Removal of vegetation/trees

Landowner response:

“A hand full of tall thin gumtrees were coppiced, [now re-sprouting], that were in danger of falling on house, cars etc. around Christmas time. Also about 10 Camphor Laurels have been lopped at various spots below [or outside] the ‘Deferred Matter’ zoning [previously scenic escarpment].
Assessment:

The only portion of the property where vegetation clearing is precluded is the western third of the property currently zoned DM (Deferred Matter) adjacent to Hatton’s Bluff reserve. The removal of the tall trees is not viewed as unreasonable with the storm season approaching and their proximity to the dwelling.

There have been pockets of Camphor Laurel trees removed further up the property, but only to allow replacement trees to be planted. The openings allow water and light to penetrate the canopy so the landowner can plant a range of fruit trees, as well as other native species. Camphor Laurels are listed as ‘noxious’ and any landowner is considered to be acting responsibly if selectively removing Camphors without disturbing the soil and creating erosion.

Examples of fruit trees and other plantings re-established over recent months.
In addition, the landowner uses any felled Camphor Laurels for ‘Bio Char’ processing as a soil additive and a carbon store. He also employs the ‘Hugekulture Bed’ method to allow progressive decomposition so the decaying timber nutrients stay in situ.

3. “Use of the ‘community land’ off Kyogle Road as a driveway and river crossing”

Landowner response:

“Yes we most certainly do still use the Gazetted Road /river crossing occasionally - thus maintaining our existing usage rights”.

Assessment:

The landowner’s principal means of access is now along the western side of the Tweed River along Solomons Road now that the access roadway has been upgraded. However, the landowner continues to have lawful access from Kyogle Road across the river if he chooses as the public road reserve does link Kyogle Road to the water’s edge. In practice however, he rarely uses this river access.

4. An alleged second dwelling within 40 m of the Tweed River

Landowner response:

“No-one lives in the shed. The shed is a day use agricultural shed, garage, workshop, storage, machinery shed, office, etc. and is not suitable for permanent occupation and is not the principal or sole residence of any persons. On some occasions (a few long weekends) etc. someone may camp there in their mobile home, etc. but they have a legal principal place of residence elsewhere.”

Assessment:

Random site inspections on two separate occasions have confirmed the shed is uninhabited. Its construction is very rustic with no kitchen, bathroom, power, plumbing, floor or wall/ceiling lining. It appears to be used for processing garden produce, storage and general use.

This is an unwired, unplumbed, unlined rural shed.
5. Alteration of the Tweed River bank.

Landowner response:

“No works what-so ever near the river in several years.”

Assessment:

There are no earthworks or disturbance in proximity to the river edge. The works associated with the water tanks are 115m away up the hill. The only works undertaken near the Tweed River have been re-vegetation plantings to help rehabilitate the area. Over 120 trees/shrubs (mostly Natives) have been established over the last 6 months.
OPTIONS:

That Council:

1. Take no further action.

2. Issue a Penalty Infringement Notice ($1500), or further enforcement action.

Option 1 is recommended by the officers, as there are insufficient, defendable grounds to take any punitive action.

CONCLUSION:

A number of complaints have been received from the same complainant over recent years for issues related to land known as Lot 39 DP 755754 No. 790 Kyogle Road, Byangum. A more recent complaint alleges unauthorised earthworks, removal of vegetation/trees, use of
the 'community land' off Kyogle Road as a driveway and river crossing, an alleged second
dwelling within 40m of the Tweed River and alteration of the Tweed River bank. Council
officers have investigated these matters and concluded that the works had been undertaken
in a manner conducive to the ecological values of the site, and did not warrant further
compliance action.

COUNCIL IMPLICATIONS:

a. Policy:
Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:
No financial resources are required unless further prosecution is required.

c. Legal:
Not Applicable.

d. Communication/Engagement:
Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
10  [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

SUBMITTED BY:  Director

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

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 there are no variations for the month of October 2015 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.
REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, no Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

COUNCIL IMPLICATIONS:

a. Policy:
   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.