

TITLE: [PR-PC] Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for Extensions to an Existing Caravan Park to Accommodate a Total of 107 Movable Dwelling Sites at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point

SUBMITTED BY: Development Assessment and Compliance

Validms



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:

The applicant is seeking development consent for an additional ten sites within an existing caravan park. The application advised that these ten sites would be long term manufactured homes identical to those existing on site.

The site is subject to three valid consents for the purposes of a caravan park with a total of 97 approved sites. The land the subject of the additional 10 sites within the existing caravan park was acquired by the land owner and consolidated with the existing site. This land, approximately 4,400m² was the subject of Planning Proposal (PP13/0002) and subsequently gazetted in 2015, rezoning this 4,400m² parcel from 7(a) Environmental Protection (Wetlands and Littoral Rainforest) under Tweed Local Environmental Plan (TLEP) 2000 to RE2 – Private Recreation under TLEP 2014.

The caravan park currently contains 97 sites that accommodate manufactured homes. The most recent Section 68 Certificate issued by Tweed Shire Council on 2 September 2016 concurs with these approvals.

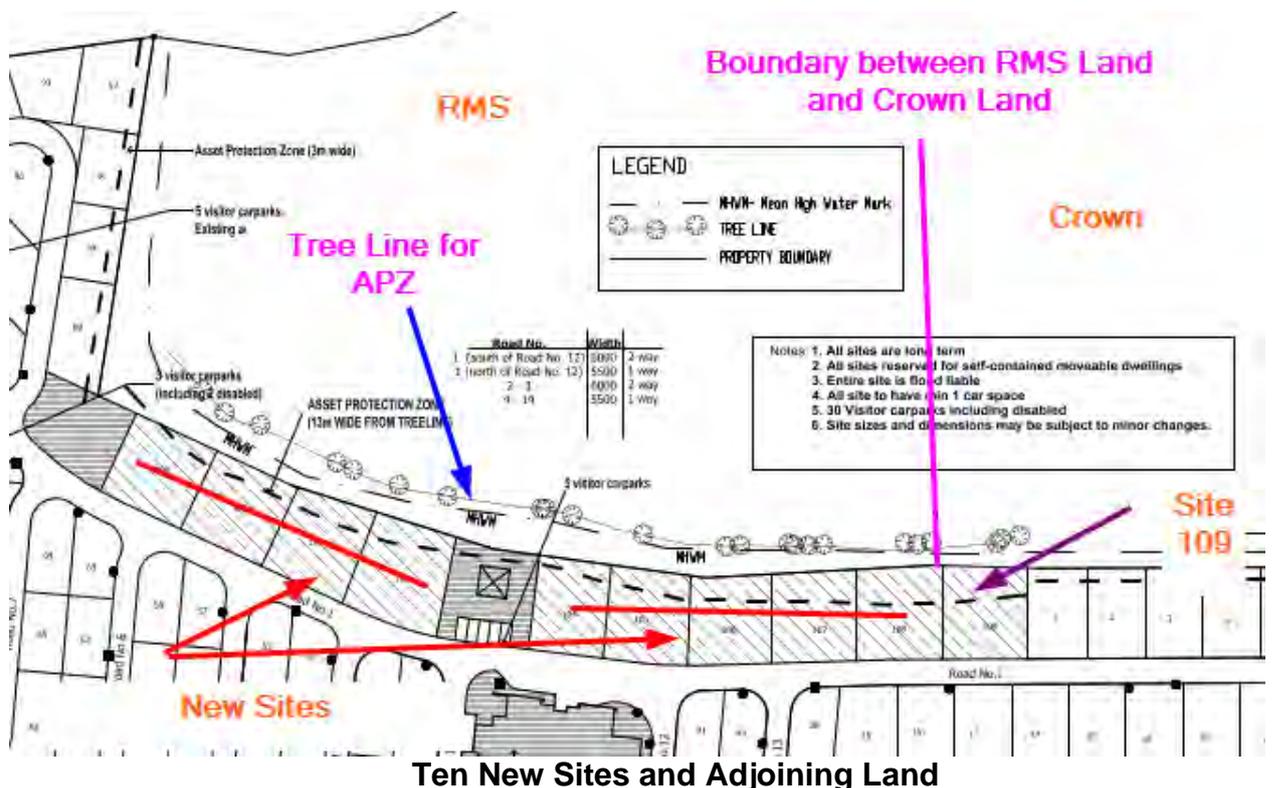
This application has been delayed for an extended period due to two issues:

- 1) Legal Advice sought by Council in regards to a recent Land and Environment Court judgement involving a proposed caravan park; and
- 2) Planning for Bushfire Protection Provisions - The subject site and surrounding land to the west in different ownership is mapped as being bushfire prone. The proposed additional sites rely on a portion of this adjoining land by way of a license (Attachment 2) for Asset Protection Zones (APZ). In conjunction with these APZs the construction level of any habitable buildings on this land must be to BAL29, the highest construction standard for bushfire protection. Caravans cannot meet even the lowest construction standard for Bushfire Protection. Manufactured Housing can be built to meet all levels of construction standard (Community Resilience – Holiday Parks – Fast Facts 1/08 NSW RFS)

Recent legal advice received by Council indicates that the current development, as existing, may not be consistent with the definition of a caravan park due to the presence of manufactured homes on all of the approved sites, rather than containing a mix of caravans and manufactured homes as defined within the standard instrument. Whilst Council has previously granted consent for the use of the site as a caravan park with the knowledge that the park is completely occupied by manufactured homes, a recent Land and Environment Court judgement determined that a development approved for the purposes of a caravan park must actually contain caravans to be characterised as a caravan park, consistent with the definition. This was further confirmed with legal advice received by Council (Confidential Attachment 3).

In regards to planning for bushfire protection provisions the issues are:

- A bushfire safety authority was sought for the additional habitable buildings proposed onsite given the site is mapped as bushfire prone. The RFS have issued a bushfire safety authority for these sites that requires a portion of the nominated APZ to be on the adjoining land (Attachment 1). This land is owned by the Roads and Maritime Service (RMS). The RMS will not provide an agreement in perpetuity that this land can be maintained for an APZ. A license will be provided that does not ensure secure tenure of this APZ land. Further, proposed site 109 adjoins Crown land. No arrangement for an APZ on this land has been provided and will not be forthcoming from this Government Authority. The RFS have accepted this arrangement. Council has traditionally not accepted APZs on adjoining land, particularly if security of tenure cannot be provided.
- The Bushfire safety authority for the additional ten sites requires any buildings constructed on these 10 additional sites to be constructed to BAL29 standard. As mentioned, while manufactured homes can be constructed to this standard, caravans cannot meet these stringent controls.



Therefore, as a result of the legal advice, it is considered that despite existing development consents and Section 68 approvals for long term sites within a caravan park that does not contain caravans, any future approvals must be consistent with this legal advice and ensure a proportion of the site does contain caravans to meet the characterisation issue.

If Council was to approve the additional ten sites, a percentage of these sites should be for the purposes of caravans. Given the BAL29 construction requirements for any habitable building upon these sites, it is unlikely that these sites could accommodate caravans and meet the Planning for Bushfire Protection provisions. Notwithstanding, given the sites rely upon an unsecured portion of adjoining land for an APZ to complement this BAL29 construction level, the future of this nominated APZ is not secure and if withdrawn, require the habitable buildings to be removed from the relevant sites. This is not considered an acceptable scenario for development consent and as a result the application cannot be supported as proposed.

The application was notified for a 14 day period from 13 to 28 January 2016. During this time, 52 submissions were received. These submissions objected to the accessibility status of a public walkway adjoining the site. This amendment to the development consent no longer forms part of the application. No objections were raised to the additional sites.

Council has the option of granting development approval to the development despite these issues. The approval of the additional sites to facilitate additional manufactured homes would appear to be contrary to Council's legal advice. The approval of these sites for caravans would also not seem feasible given the BAL29 construction levels and lack of tenure for the adjoining APZ land.

It is therefore recommended that the application be refused.

RECOMMENDATION:

That:

1. **ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-**
 - (g) **advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
2. **Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for extensions to allow an additional 10 sites to an existing caravan park at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point be refused for the following reasons:**
 1. **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 definition of a caravan park as provided by the Tweed Local Environment Plan 2014.**
 2. **The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, particularly Section (b) - any environmental planning instrument. The proposal is not considered to be suitable for the**

land as satisfactory protection from bushfire cannot be provided within the subject site.

REPORT:

Applicant: Palm Lake Works Pty Ltd
Owner: Walter Elliott Holdings Pty Ltd
Location: Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point
Zoning: RE2 – Private Recreation
Cost: Not Specified

Background:

The subject site has had an extensive development history. A number of S96 Applications to modify the original approvals have already been considered by Council in order to rectify historical non-compliance issues.

Three separate original development consents make up the Caravan Park use approved over the site, with each original consent building on the prior approval. These original development consents include:

- Permit Number PN1074 was granted approval on 14 November 1967 for a “caravan park and holiday units”;
- Development Consent No. T4/2794 was granted approval on 17 March 1986 for the “extensions to an existing caravan park to accommodate thirty six (36) movable dwelling sites); and
- Development Consent No. D94/0015 was granted approval on 24 June 1994 for the “additions to existing Caravan Park”. The plans show five additional caravan sites within the park.

The result of these development applications was a caravan park that comprised a total of **180 sites** with a mix of long and short term sites. This was established in the NSW Land & Environment Court *Blackington Pty Limited v Tweed Shire Council* (a s.68 Appeal).

The requirement of three S96 applications is a consequence of three separate approvals for the existing park.

There have been several amendments to the three consents that make up the development of this site. The amendments incorporated changes to the functionality of the caravan park and have gradually reduced the number of sites within the facility. The relevant development history in regards to the reduced site numbers is outlined below for each of the development consents.

PN1074

- | | |
|------------------|--|
| PN1074 | Originally approved for the establishment of a caravan park and holiday units 14 November 1967 |
| PN1074.04 | Amendment to reduce 180 caravan sites to 148 sites approved at Council Meeting held 15 December 2009 |
| PN1074.05 | Amendment to reduce 148 caravan sites to 141 sites approved under delegation on 11 March 2013 |
| PN1074.06 | Amendment to reduce 141 caravan sites to 114 sites approved under |

delegation on 26 July 2013

PN1074.07 Amendment to reduce 114 caravan sites to 112 sites approved under delegation on 13 February 2014.

PN1074.08 Amendment to reduce 112 caravan sites to 97 approved under delegation on 9 December 2014

T4/2794

T4/2794 Originally approved extensions to an existing caravan park to accommodate thirty six (36) movable dwelling sites on 17 March 1986

T4/2794.01 Amendment to reduce 180 caravan sites to 148 sites approved at Council Meeting held 15 December 2009

T4/2794.02 Amendment to reduce 148 caravan sites to 141 sites approved under delegation on 11 March 2013

T4/2794.03 Amendment to reduce 141 caravan sites to 114 sites approved under delegation on 26 July 2013

T4/2794.04 Amendment to reduce 114 caravan sites to 112 sites approved under delegation on 13 February 2014

T4/2794.05 Amendment to reduce 112 caravan sites to 97 approved under delegation on 9 December 2014

D94/0015

D94/0015 Originally approved additions to the existing caravan park (5 sites) on 24 June 1994

D94/0015.01 Amendment to formalise unauthorised changes/uses to the park that have occurred over the past refused at Council Meeting 2 June 2004

D94/0015.02 was withdrawn on 10 April 2008

D94/0015.04 Amendment to reduce 180 caravan sites to 148 sites approved at Council Meeting held 15 December 2009

D94/0015.05 Amendment to reduce 148 caravan sites to 141 sites approved under delegation on 11 March 2013

D94/0015.06 Amendment to reduce 141 caravan sites to 114 sites approved under delegation on 26 July 2013

D94/0015.07 Amendment to reduce 114 caravan sites to 112 sites approved under delegation on 13 February 2014

D94/0015.08 Amendment to reduce 112 caravan sites to 97 approved under delegation on 9 December 2014

The subject land within the existing caravan park was acquired by the land owner and consolidated with the existing site. This land, approximately 4,400m² was the subject of Planning Proposal 13/002 and subsequently gazetted in 2015, rezoning the parcel from 7(a) Environmental Protection (Wetlands and Littoral Rainforest) under TLEP 2000 to RE2 – Private Recreation under TLEP 2014.

It is this land that is the subject of this modification.

Proposal

It is proposed to increase the number of long term residential sites upon the subject caravan park with an additional 10 sites within the parcel of recently rezoned land. These sites are proposed to be occupied by manufactured homes, similar to those occupying the remainder of the site. These manufactured homes are either single or double storey dwellings with ancillary garages, pergolas etc.

The original modification of the three development consents requested an increase to the number of long term sites from 97 to 110 through the introduction of 13 additional long term sites. Due to Planning for Bushfire Protection (PBP) issues, the proposed site configuration has been altered, and the application is now for an increase in the number of sites from 97 to 107 sites.

It should be noted that the applicant when questioned about the type of habitable structures going onsite, despite the Section 96 report stating that the sites will be for identical homes, stated that approval is being sought for sites rather than buildings in accordance with the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005. The applicant has also advised that they would accept a condition requiring two of the sites to be for caravans.

This amendment to the approved layout of the approved caravan park requires the amending of certain conditions within the subject consents.

The following conditions require amendment:

- Condition 1AAAA- amend the approved layout plan- this condition would require amendment if the Section 96 is supported to reflect the amended layout
- Condition 9- this condition stated that no part of the 7(a) - Environmental Protection land can be used for the approved caravan park. As the 7(a) - Environmental Protection land within the subject site is now zoned RE2- Private Recreation, this condition can be deleted in conjunction with any approval granted.
- Condition 13AA- this condition relates to permissible structures and has a reference to the current approved site plan. This condition will require amendment to reflect the approved layout plan, if this modification is supported; and
- Condition 15A – This condition stated that no works were to proceed upon the unnamed road reserve until a new development consent had been issued. The removal of this condition would correspond with approval of this modification.

It is noted that the original application requested the removal of Condition 14 of the three concurrent development consents. This condition was as follows:

14. *Provision must be made for traversable public pedestrian access to and along the foreshore of the Tweed River adjacent the full length of Lot 5 DP 828639 and Lot 382 DP 755740 being the land the subject of this development. A public benefit covenant (benefitting Tweed Shire Council) shall be imposed on the land to accommodate the public pedestrian access prior to installation of any structures on the land.*

The removal of this condition was not supported for reasons outlined in a latter section of the report and has been removed from the application.

The Site

The site is an existing caravan park on Barneys Pont Road identified as Palm Lake Resort. While the site is approved as a caravan park, the site consists of substantial manufactured homes and associated community facilities within a gated estate. The site is directly adjacent to the Tweed River on the eastern boundary and Wetlands to the west. The Pacific Highway is located to the south of the site, elevated as the entry to Barneys Point Bridge.

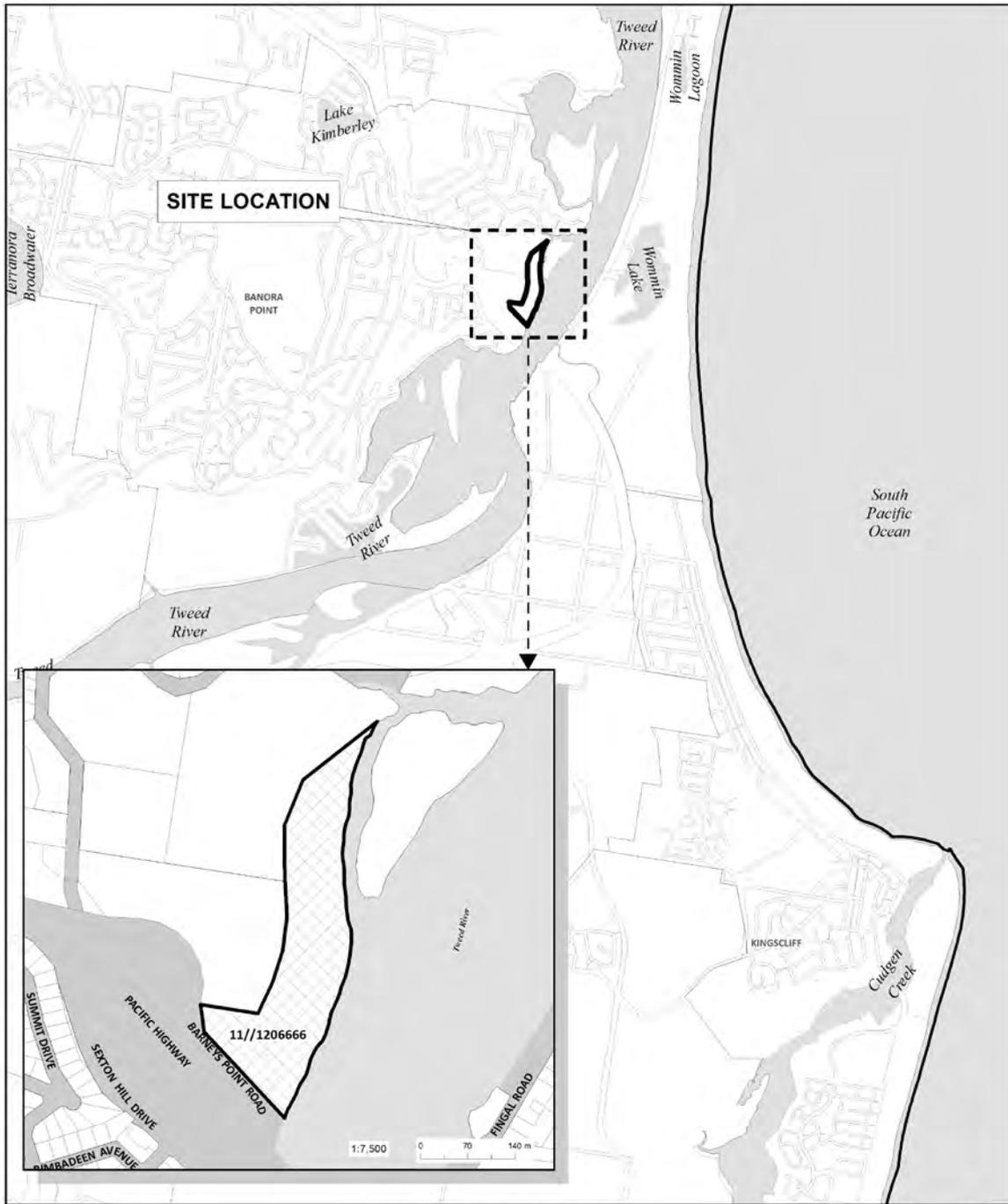
The entire caravan park is zoned RE2 – Private Recreation pursuant to TLEP 2014. Caravan Parks are permissible with development consent within this zone.

The land to the west is a Deferred Matter under TLEP 2014 and as such the applicable zoning is 7(a) - Environmental Protection under TLEP 2000. This land is partially owned by the Roads and Maritime Authority and partially by the Land and Property Management Authority (Crown).

This land to the west (Lot 7010 DP1069421) was the subject of a recent unauthorised removal of vegetation on this land by the applicant. This matter has been dealt with independent of this application.

The site is mapped as being bushfire prone and subject to flooding.

SITE DIAGRAM:



LOCALITY PLAN

Lot 11 DP 1206666
No. 2 Barneys Point Road, Banora Point

0 0.4 0.8 Km
1:35,000

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GDA   Cadastral: 30 June, 2010
ID Dept. of Lands & Tweed Shire Council
Coordinate System - MGA Zone 56
Datum - GDA 94

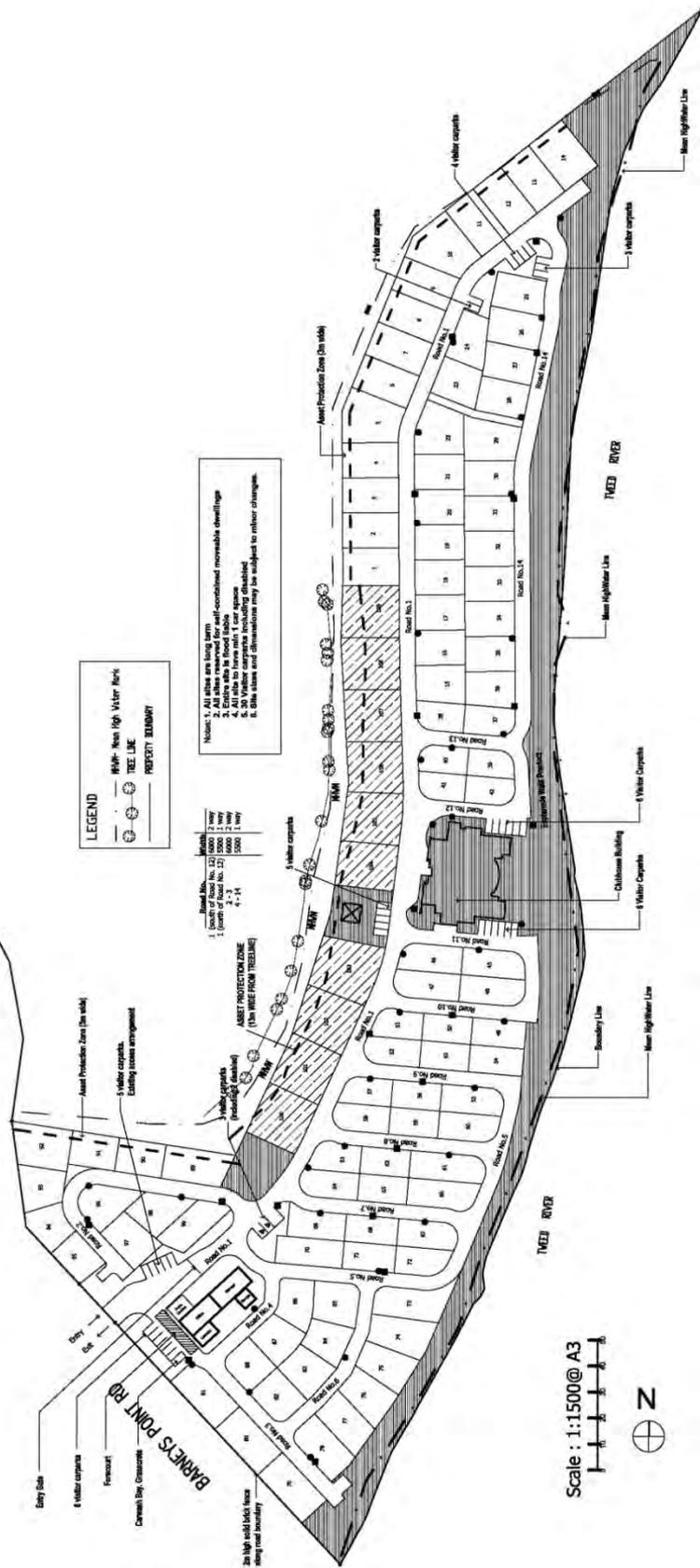
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DEVELOPMENT PLAN:

EXISTING 97
 PROPOSED 10
 TOTAL LONG TERM SITES : 107



LEGEND

- MWP: Mean High Water Mark
- TEE LINE
- PROPERTY BOUNDARY

Notes:

- All sites are long term
- All sites reserved for self-contained movable dwellings
- 30 Visitor carports (including disabled)
- All sites to have a minimum 1 car space
- 30 Visitor carports (including disabled)
- Site sizes and dimensions may be subject to minor changes.

Lot Area Summary:

| Lot No. | Lot Area (sqm) |
|---------|----------------|
| 1-3 | 15000 |
| 4-7 | 10000 |
| 8-11 | 5000 |

- Total Site Area 4.281 ha
- Total area of Community Amenities - 1.012ha (23.6%)
- Fenced Area - 26ha
- Existing Fire (near Main) (loc.3)
- Existing Fire (near Main) (loc.10)

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 Website: www.PalmLakeResort.com.au

| | | | | | | | |
|------------------------------|--|---|--|-------------------------|--|----------------|--|
| DRAWING REFERENCE No. | | DRAWING TITLE | | DEVELOPMENT NAME | | DRAWN | |
| M1202 - D7 | | SITE PLAN | | TWEED RIVER | | MR | |
| REV | | COMMENTS | | DATE | | DRWN | |
| A | | AMENDED SITE PLAN | | 01/02/14 | | MR | |
| B | | AMENDED SITE PLAN | | 14/06/14 | | EJ | |
| C | | AMENDED SITE PLAN | | 20/11/14 | | SC | |
| D | | AMENDED SITE PLAN | | 14/11/14 | | SC | |
| PROJECT NORTH | | ADDRESS | | SHEET No. | | 01 / 01 | |
| | | LOT: LOT 10, DP1 1900561 & LOT 1, DP1 192599 | | PROJECT NORTH | | | |
| | | STREET 2, BARNES POINT ROAD | | STATE | | NSW | |
| | | SUBURB BANORA POINT | | F CODE | | Z486 | |

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Considerations under Section 96 and 79C of the Environmental Planning and Assessment Act 1979

S96 of the Act specifies that:

"(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*

Comment: The use of the consolidated portion of land for the purposes of additional sites is likely to have minimal environmental impact, given the land is devoid of vegetation and has existing access from Barneys Point Road to an internal private road network. The three original approvals for the subject site provided for a total of 180 sites within the subject property, less this small portion that was consolidated following a land swap discussed previously.

The application is requesting an additional 10 sites that would result in 107 sites overall for long term moveable dwellings. This remains significantly less than the number of sites approved by the original consent. The sites are not adjoining the Tweed River and while they do adjoin SEPP 14 Wetlands, a previous assessment in conjunction with the Planning Proposal has concluded that the use of this land for the purposes of a caravan park would have minimal environmental impact on these lands.

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The applicant advises that the proposed modification is considered to result in substantially the same development on the basis that:

- *The development remains a caravan park;*
- *The extent and general form of the development remains the same as that approved;*
- *The proposed amendments do not raise any environmental issues which have not already been investigated with the previous assessment of the proposal;*
- *The changes to the layout of the allotments are minor and result in essentially the same development as originally approved and previously modified.*

The original approval for a caravan park approved 180 sites. This amendment will result in 110 sites. Therefore the development will remain of a lesser scale and intensity than the original consent. The park will be operating at 60% of the original capacity, notwithstanding that site areas are larger and all the sites are proposed for the purpose of long term manufactured homes.

It is considered that since the original proposal was approved in 1967 there has been a change in the general composition of caravan parks in terms of types and sizes of sites. The size of caravan sites located within a caravan park has increased over the years to

provide a more appropriate size of site to cater for larger structures more akin to modern caravan parks. This has resulted in a reconfiguration of the allotment sizes for an improved management of the caravan sites.

In general it is considered that the proposal is substantially the same development, despite Council not supporting the modification for reasons not relating to these provisions.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: The three S96 Applications were advertised for a 14 day period from 13 January 2016. During this time 52 submissions were received. The 52 submissions received, all from residents of the caravan park, raised objection to an existing consent condition that required public access to be provided along the Tweed River interface. As mentioned, the original application requested that Condition 14 referring to this public access be deleted. This was actually what the modification was originally requesting, consistent with the submissions. However, public access to the foreshore was a trade off during the land exchange process that enabled the applicant to acquire the closed road reserve that is now consolidated into the subject land and is the portion of land that the applicant seeks to place the additional 10 sites. This public access to the foreshore was viewed as a positive outcome for the wider community in return for the road being closed and the land sold by the public authority. Therefore, Council would not support the removal of this condition given the history of the applications.

Following consultation with the applicants the request for the deletion of this Condition was removed from the application.

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*
- (4) *The modification of development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified."*

Accordingly the following report addresses these heads of consideration.

To determine if the S96 Applications are of minimal environmental impact and substantially the same development, a 79C (1) Assessment has been undertaken in the first instance:

79C (1) Assessment - Environmental Planning and Assessment Act 1979

The matters of relevance are addressed as follows:

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

Tweed Local Environmental Plan 2014

General Permissibility

The subject site is zoned RE2 - Private Recreation. Caravan Parks are permissible with consent in the RE2 zone.

A **caravan park** means *land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.* The site currently contains 97 manufactured homes that fall under the definition of a moveable dwelling pursuant to his definition. The site also contains associated community facilities. No caravans are located upon the site in its current state.

Council has previously received advice that the occupation of the site with 100% manufactured homes was not an impediment to the support of previous modifications for the purpose of a caravan park.

However more recent legal advice has provided a contrary conclusion in regards to the characterisation of a development approved for the purposes of a caravan park that does not contain any caravans. This will be expanded within a later stage of this report.

Other clauses applicable to the proposed development are as follows:

Clause 2.3 – Zone objectives

The objectives of the RE2 zone are:

- *To enable land to be used for private 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 the site as approved will not be impacted by the proposed development. The development as a caravan park will continue to permit long term residential accommodation to be provided onsite as permitted within a caravan park.

The portion of land the subject of this modification proposes to include 10 additional sites adjacent to sensitive lands. The small addition to the caravan park is unlikely to have any impact on this adjoining land.

The proposal is not considered contrary to the zone objectives.

Clause 5.9 - Preservation of trees or vegetation

The site is devoid of vegetation therefore no removal of vegetation will be required. It is further noted that the adjoining Lot 7010 DP 1069421, while being required for the purposes of an Asset Protection Zone (APZ) will not be impacted in regards to the removal of any vegetation due to an existing cleared strip of land being maintained on this Lot. Council's Natural Resource Management Unit has no objection to the proposal in regards to vegetation.

Clause 7.1 - Acid sulfate soils

The subject site is mapped as a Class 2 Acid Sulfate Soils area. The applicant has provided a satisfactory report to address the potential of exposing acid sulfate soils on the subject land as a result of the proposed development. Council's Environmental Health Unit have assessed this report and determined that as that any works will not penetrate past existing fill levels, Council's ASS Minor works plan to address potential ASS is satisfactory. An appropriate condition could be applied in the event of an approval.

Clause 7.3 - Flood planning

The site is flood affected. Council's Roads and Stormwater Unit have provided the following advice in regards to the subject additional sites within the existing caravan park.

The subject site has a design flood level of RL 2.8m AHD already stipulated under the three existing consents PN 1074, T4/2794 and D94/0015 over this site. There is a high level evacuation road route available from the development to elevated land above the Probable Maximum Flood (PMF) RL 6.4m AHD.

The proposal relates to an additional 13 (now 10) long term sites on top of the existing 97 approved sites.

Flooding controls already exist under the current consents with high level evacuation routes available.

It is concluded that Council can support the application based on existing flooding controls applicable to the site.

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 adjoining properties, native bushland and receiving waters. The land is surrounded to the east and west by sensitive receivers, being the 7(a) Environmental Protection zoned land to the west and the Tweed River to the east. The site has existing stormwater management systems on site. While little detail was provided on the provision of stormwater disposal for the additional sites, Council's Flooding Engineer is confident that there is little risk in regards to stormwater if the ten additional sites were approved. Appropriate conditions could be included if the application was supported.

7.10 Essential Services

The site has existing adequate vehicle access and connections to electricity and the supply of water.

In regards to the sewer arrangements, a Sewer demand analysis was undertaken to assess the ability of the Banora Point Pump Station to cater for the existing and increased demand as a result of the additional sites within the park. Council's Water Unit is satisfied that the pump station can cater for the anticipated sewer demand, subject to certain conditions of consent. These will be incorporated into any approval granted.

Tweed Local Environmental Plan 2000

The land to the west of the site remains under the provision of the TLEP 2000, being a deferred matter as identified by the Department of Planning. This land is under the ownership of the Roads and Marine Authority (RMS) and the Crown.

The land is zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforest). No works will occur within the adjoining land however an APZ for the 10 additional sites will be provided upon the RMS land. The application documentation did not identify the adjoining RMS land (Lot 23 DP 1211517) despite the modification being reliant upon this land for the APZ, albeit being provided in the form of a license.

Caravan Parks are not permissible with 7(a) Land. Some doubt is raised regarding the ability of the development to utilise adjoining land for the purposes of an APZ, if the use that requires this APZ is prohibited.

Clause 25 Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on Adjacent Land.

(1) *Objective*

- *to ensure that wetlands and littoral rainforests are preserved and protected in the environmental and economic interests of the area of Tweed.*

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

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

- (a) *the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and*
- (b) *the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
- (c) *a plan of management showing how any adverse effects arising from the development can be mitigated, and*
- (d) *the likely effects of the development on the water table, and*
- (e) *the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.*

Comment: No works other than the maintenance of an existing mown strip of land on the adjoining 7(a) Environmental Protection land will be required to facilitate this development. The land the subject of the application is void of vegetation and has been previously filled. This land was a closed road reserve prior to being acquired by the landowner. The proposed additional ten sites would require appropriate infrastructure measures to ensure the adjoining wetlands were not impacted by stormwater water or the like. No services are provided to the site via the adjoining 7(a) land.

An Ecological Report prepared by a suitably qualified consultant was provided with the application documentation. This report concluded that the development would not have any impact on the adjoining Endangered Ecological Community (EEC) or threatened flora and fauna species. The report did however propose a number of recommendations to reduce secondary impacts resulting from this additional development.

These include:

- Weed Control on the western boundary to prevent further weed incursion.
- Rubbish removal within the immediate area of adjoining native vegetation
- Appropriate sediment control
- Minimising artificial lighting.

These conditions would be included within any conditional approval.

Given the site already contains a caravan park and the additional ten sites are only a 10% increase in the existing development, no impact on the adjoining 7(a) land is anticipated. Any approval granted could be conditioned appropriately. Council's Natural Resource Management Unit have reviewed the application having regard to the circumstances of the case, coupled with the mitigation measures, raised no objection to the development.

State Environmental Planning Policies

State Environmental Planning Policy No. 14 - Coastal Wetlands

The adjoining land to the west is SEPP 14 Wetland and is a deferred matter under TLEP 2014. This adjoining land therefore reverts to the 7(a) Environmental Protection zoning under TLEP 2000. During the rezoning process while some concern was raised in regards to the rezoning of the subject parcel from 7(a) to RE2, it was ultimately determined that the land was more appropriately zoned as private recreation rather than environmental protection, given the characteristics of the site (ie devoid of vegetation and previously used for the purposes of a road). Concern was raised during the Planning Proposal to the impact on the adjoining land with commentary provided that the additional land would be more suitable for non-habitable purposes due to the adjoining Wetlands and bushfire hazard. It was also acknowledged that further assessment of the potential impacts would occur during any subsequent development assessment.

The impacts of the development in regards to the subject EEC have been discussed above. Mitigation measures have been proposed by an Ecological Report submitted with the application to protect these adjoining lands. Councils

NRM Unit has reviewed the proposal and raises no objection to the development. Conditions would however be applied by this Unit in conjunction with the recommendations of the submitted Ecological report to protect this adjoining sensitive receiver if any approval was granted.

State Environmental Planning Policy No. 21 - Caravan Parks

The aims and objectives of the policy are as follows:

- (1) *The aim of this Policy is to encourage:*
 - (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
 - (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
 - (c) *the provision of community facilities for land so used, and*
 - (d) *the protection of the environment of, and in the vicinity of, land so used.*

- (2) *The strategies by which that aim is to be achieved are:*
 - (a) *(Repealed)*
 - (b) *by requiring that development consent be obtained from the local Council for development for the purposes of caravan parks, and*
 - (c) *by providing that development consent may be granted that will authorise the use of sites for short-term stays (whether or not by tourists) or for long-term residential purposes, or for both, and*
 - (d) *by requiring that development consent be obtained from the local Council for the subdivision of land for lease purposes under section 289K of the Local Government Act 1919.*

A caravan park means *land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.*

The proposed development is an amendment to an existing approved caravan park. It is considered that the amended site layout is not consistent with the objectives as the additional sites are compromised by the Planning for Bushfires Protection provisions. As a consequence the proposal is potentially contrary to the objectives relating to social and economic welfare of the community. Council must consider the implications of the additional sites and the ability of the development to provide a satisfactory protection against bushfire for any approved habitable buildings. It is considered that due to the APZ not being entirely provided on the subject site and the lack of any or secure tenure over this land, this level of satisfaction has not been achieved.

The permissibility of the proposal additional sites for the purposes of manufactured homes only rather than manufactured homes and caravans is also potentially in conflict with the aims of the policy. Support for this modification should not be given if Council is not confident that the development is not for the purposes of a caravan park, consistent with the definition.

Clause 8 – Development Consents required for Caravan Parks

- (1) *Development Consent for the purposes of a caravan park may be carried out only with development consent of Council.*

Comment: The site has three existing development consents for a caravan park. This Section 96 is an amendment to those existing consents.

- (2) *Before granting development consent to the use of land for the purposes of a caravan park, a Council must determine:*
- (a) *the number of sites (if any) within that land that the Council considers are suitable for long-term residence, within the meaning of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993, and*
 - (b) *the number of sites (if any) within that land that the Council considers are not suitable for long-term residence, but are suitable for short-term residence, within the meaning of that Regulation.*

Comment: The application seeks an amendment of the approved number of sites from 97 to 107.

Clause 9 Subdivision of caravan parks for lease purposes

- (1) *Land may be subdivided for lease purposes under section 289K of the Local Government Act 1919, but only with the development consent of the Council.*
- (2) *A Council must not grant such a development consent unless the Council is satisfied that each of the lots intended to be created for lease purposes by the proposed subdivision meets the requirements of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993 for a site to be used for long-term residence.*

Comment: No lease is proposed as part of this application.

Clause 10 Matters to be considered by Council's

A Council may grant a development consent required by this Policy only after it has considered the following:

- (a) *whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,*
- (b) *whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,*
- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,*
- (d) *whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality*

- (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,
- (e) any relevant guidelines issued by the Director, and
 - (f) the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.

Comments: In regards to the matters for consideration listed by Clause 10 above, the following responses are provided:

- (a) The site is not suitable for long term residence due to the Planning for Bushfire Protection matters discussed elsewhere in this report.
- (b) The Tweed Coast currently has adequate provision for tourist accommodation.

Council has received applications and issued development consents to convert tourist accommodation into residential accommodation or dual use accommodation (prior to the gazettal of TELP 2014), indicating a potential oversupply of tourist accommodation. The style of tourist accommodation is also changing with short term accommodation being the subject of a planning proposal and NSW State government inquiry due to private tourist accommodation options such as AirBnB.

- (c) The subject application does not seek approval for the ultimate built form of the subject site. The subject application only seeks approval for a reconfigured caravan park layout. Furthermore, there is no definition to define low cost housing.

A more familiar term is affordable housing.

The Act defines affordable housing as *“housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.”*

SEPP (Affordable Rental Housing) 2009 encourages new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

The proposed modification has not been lodged under this SEPP. This application seeks to reconfigure a previously approved caravan park.

- (d) Adequate services are available in the caravan park.
- (e) All applicable legislation has been considered.
- (f) An assessment against the regulations has been undertaken and the proposed caravan park layout is therefore considered capable of accommodating a compliant built form.

State Environmental Planning Policy No. 36 – Manufactured Home Estate

The existing development has been approved as a caravan park and remains permissible within the RE2 zone. If this application is not supported, a new DA for the entire site could potentially be submitted for a manufactured home estate under the provision of SEPP 36, given that this Policy permits manufactured

homes on any land on which development for the purposes of a caravan park may be carried out. However, this application would be required to satisfy the provision of Schedule 2 of the SEPP that excludes certain lands.

Notwithstanding that this may overcome the characterisation issue, the bushfire provisions would still remain outstanding if the APZs were to be required on adjoining lands.

If the applicant wished to pursue development in this manner, it would be outside the scope of a Section 96 application.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

The portion of land the subject of the modification does not contain any vegetation. The application was accompanied by an ecological report. This report advised that the entire site did not contain any koala food trees and was not a potential koala habitat.

The site is located within the Tweed Heads Koala Management area pursuant to the provisions of the Tweed Comprehensive Koala Plan of Management. The application is considered a minor development application as a Caravan Park approval exists over the site. It is concluded that the proposal will not have any impacts on Koalas.

State Environmental Planning Policy No. 55 Remediation of Land

As the land the subject of the additional sites was previously road reserve, an assessment was undertaken on behalf of the applicant pursuant to the provisions of this SEPP. Council's Environmental Health Unit have concluded that the site is suitable for the proposed use.

State Environmental Planning Policy No. 71 - Coastal Protection

The subject site is located on coastal land and therefore this Policy applies. The proposed modification seeks to increase the number of spaces from 97 to 107.

- (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,*

Comment: The proposed amendments do not raise any environmental issues which have not already been investigated with the planning proposal for the rezoning of the land. The additional sites within a cleared area of the site that was previously a road reserve will have a minimal impact on social and economic factors within the locality.

- (c) *The suitability of the site for the development,*

Comment: The area of the land the subject of the 10 additional sites is suitable in regards to coastal protection.

- (d) *Any submissions made in accordance with this Act or the regulations,*

Comment: The application is not integrated development in accordance with S91 of the *Environmental Planning and Assessment Act 1979*, although the S96 application has been referred to the NSW RFS pursuant to S100B Bush fire safety authorities of the Rural Fires Act 1997, as the site is identified as being bush fire prone.

The NSW RFS have provided an updated bush fire safety authority under Section 100B of the Rural Fires Act 1997.

This bushfire safety authority has been granted despite a portion of the APZ being located on adjoining land and a lack of tenure being provided for the APZ on this land.

(e) *The public interest.*

Comment: The proposed modifications are not considered to be in the public interest due to the ability of the site to provide adequate APZs within the subject land with a secure tenure.

North Coast REP

The Plan resets regional planning priorities to align with NSW Government priorities and provides guidance and direction for local planning decisions. It sets in place strategic, line-of-sight land use planning objectives for the region as a whole as well as for and each local government area, and will guide the NSW Government's planning priorities and decisions to 2036.

The use of land within an existing approved caravan park for 10 additional sites not considered to be contrary to the priorities and goals of the REP.

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

Draft State Environmental Planning Policy (Coastal Management) 2016

The subject site is within the coastal use area map. The site is not located within the Coastal environment area map, nor the hazard or wetland map.

Clause 12- (1) Development consent must not be granted to development on land wholly or partly identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to the adjacent coastal wetland or littoral rainforest if the development is on land within the catchment of the coastal wetland or littoral rainforest.*

Comment: The site is bordered to the west by a (7a) Environmental Protection (wetlands and Littoral rainforest) zone that contains Wetlands. The site is approved as a caravan park. The subject parcel of land was assessed for suitability for the current zoning during the Planning Proposal assessment of

2013 that rezoned the subject parcel from 7(a) to RE2. The use of this rezoned land for the purposes of an additional ten sites can be appropriately managed through conditions to ensure the development does not adversely impact the sensitive receiver. Stormwater will not be diverted to the property and no disturbance of the land will be necessary to accommodate these dwellings.

Clause 15 - Development on land within the coastal use area

Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:

- (a) *is satisfied that the proposed development:*
- (i) *if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
 - (ii) *minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
 - (iii) *will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
 - (iv) *will not adversely impact on Aboriginal cultural heritage and places, and*
 - (v) *will not adversely impact on use of the surf zone, and*
- (b) *has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

Comment: Given the location of the development within a recreation zone spatially separated from the coastal foreshores, it is considered that the development for the purposes of 10 additional spaces within an existing caravan park will not change any public access, overshadow the foreshore, adversely impact public amenity or impact places of Aboriginal heritage.

The proposal is considered consistent with the objectives and provisions of this draft SEPP.

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

A2 - Site Access and Parking Code

Parking will need to be in accordance with the Regulations for Caravan Parks this will be enforced through the licensing provisions.

A3 - Development of Flood Liable Land

The site has been filled in excess of the design flood level. Council's Flooding Engineering Unit provided comment both on this Section 96 and the planning proposal that enabled the subject land to be rezoned to RE2 land. The proposed development is supported by this Unit. The comments are provided elsewhere within this report.

A11 - Public Notification of Development Proposals

The three S96 Applications were advertised for a 14 day period from 13 January 2016 in accordance with this DCP. During this time 52 submissions were received. The outcomes of this advertising period have been detailed previously.

Assessment

The application has a number of issues preventing support of the application:

1. Legal Advice to Tweed Shire Council (Attachment 1 - Confidential) – Tweed Shire Council became aware of Court case *TMT Devco Pty Ltd v Cessnock City Council (2016) NSW LEC 1161*. This case involved characterisation issues associated with the occupation of caravan parks with manufactured homes. Council sought legal advice in regards to the judgement of this case specifically in regards to the subject application, given the development has been approved as a caravan park but no caravans are actually present on any of the sites and all contain manufactured homes.

This would indicate as the site does not contain a mix of caravans and manufactured homes, the development cannot be characterised as a caravan park and should be characterised as a manufactured home estate. Manufactured Homes are an innominate use with the RE2 zone and therefore prohibited. The applicant does have the ability to lodge a new development application for the entire caravan park site under the provisions of SEPP 36 Manufactured Homes Estate. Any application would have to address Schedule 2 of the SEPP that excludes certain lands within the Tweed.

The legal advice provided that Council should determine what the ten additional sites would be used for and consider how many sites should contain caravans in order that the development meets the caravan park definition. While the application has stated that three spaces could be provided for caravans, this may not satisfy the characterisation issue, given the number of manufactured homes onsite relative to the proposed number of caravan sites.

It is considered that given the site contains 97 manufactured homes, any additional sites should be for caravans (i.e. 10), having regards to this recent Court Judgement and legal advice received by Council. This would result in the site having a caravan to manufactured home ratio of approximately 1:9. While this ratio may not be acceptable for any new caravan park to meet the characterisation test, given all existing sites are the subject of previous approvals, Council would likely accept this ratio in the circumstances.

However, the ability of the development to accommodate caravans on these new sites is compromised by the construction standard required for any habitable structures on these sites. Caravans cannot meet any BAL construction levels, including the most stringent BAL29. Accordingly, the additional sites cannot accommodate caravans. To meet this ratio of caravans to manufactured homes, caravans would have to be located elsewhere onsite where BAL29 construction levels have not been imposed. These sites contain substantial long term manufactured homes on long term leases. Therefore this is considered unlikely.

Despite the applicant stating that council is only approving sites rather than structures, this modification must have regard to the ability of the sites to accommodate habitable building and the permissibility of the proposal pursuant to TLEP 2014.

2. The site is mapped as being bushfire prone. The original approval was issued prior to the implementation of the Planning for Bushfire Protection provisions and no Bushfire Safety Authority was issued by the RFS. However, previous modifications have included General Terms of Approval for some of the existing sites (96-99) in regards to Planning for Bushfire Protection pursuant to Clause 100B of the Rural Fires Act 1997. These sites along the western boundary provide APZs completely within the subject site.

The current Section 96 was referred to the Rural Fire Service. Negotiations were undertaken with the applicant and the RFS in regards to the provision of APZs and construction standards for the original proposal for 13 new sites. Following the supply of additional information, the RFS issued General Terms of Approval for the additional ten sites subject to conditions in accordance with Clause 55(1) of the Environmental Planning and Assessment Act Regulations 2000. These conditions included construction standards of BAL29 for any habitable structures upon the additional 10 sites pursuant to Australian Standard 3959-2009.

The General Terms of Approval also require all habitable structures upon sites 100-108 to be located 13m from the 'Tree Vegetation Line' upon the land to the west of the subject site in the ownership of the RMS (incorrectly identified as Lot 4 DP 828639, but actually Lot 23 DP1211517 due to the recent consolidation of this portion of land).

The General Terms of Approval also requires site 109 to locate any habitable structure 13m from the western property boundary. This is due to the fact that this proposed site adjoins Crown land and this Government Authority will not provide any tenure to use the subject land for the required APZs.

This land adjoining sites 100-108 required for an APZ is RMS land. This Government authority has provided a licence to Palm Lake for the ongoing maintenance of this land for the purposes of an APZ. As the RMS will not provide a restriction on title or similar that secures the adjoining APZ land in perpetuity, this APZ is not considered secure and could be withdrawn at any time. The status of any habitable dwellings on these lots then becomes an issue if the GTA's cannot be complied with.

The applicant recognises that the need for an APZ on adjoin land. This reliance on adjoining land that is not in the same ownership or the subject of a secure tenure agreement in perpetuity is not satisfactory and not traditionally accepted by Council.

The applicant has advised that a condition of consent could be imposed to overcome the lack of secure APZ as follows. *'The caravans or relocatable homes on the site shall remain in the ownership of the landowner and the removal of the license would subsequently end the lease.'*

It is noted that caravans are unlikely to comply with BAL29 construction levels required in conjunction with these GTA's.

It is further noted that the application does not identify the adjoining RMS on the application form and no owners consent has been provided.

OPTIONS:

1. Refuse the development due to the reasons provided.
2. Give in-principle support for the development, and a report be brought back to the July Planning Committee meeting with appropriate conditions included.

CONCLUSION:

The application is considered to have two major flaws that are interrelated. The proposal is unsatisfactory in regards to Planning for Bushfire Protection provisions under the Rural Fires Act 1997. While the development has provided a satisfactory APZ for the ten additional sites, this APZ relies on adjoining RMS land. Council has not traditionally accepted APZs on adjoining lands and considering the tenure for such is not secure, this arrangement is not supported.

Notwithstanding, if Council was to accept this unsecure tenure arrangement, the characterisation of the site, if it was to contain all manufactured homes, would not meet the definition of a caravan park, as indicated in the legal advice to Council. If the subject land was not bushfire prone, Council could condition an approval requiring all these sites to contain caravans to ensure consistency with the definition of a caravan park. However, the construction standard required upon these sites would not allow for caravans to be installed. Therefore this would be an unachievable condition.

While the characterisation issue is a relatively recent matter, constraints relating to bushfire protection have been raised since the commencement of the planning proposal. This planning proposal, despite rezoning the land, identified that the additional portion would likely only be suitable for recreation purposes or in conjunction with a site reconfiguration, due to the bushfire constraints.

These constraints remain relevant to the land and despite this knowledge, the landowner remains committed to installing ten additional sites on this consolidated parcel.

These additional sites cannot be supported as currently proposed and Option 1, refusal is recommended.

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:

Attachment 1. Bushfire Safety Authority (ECM 4536111)

Attachment 2. License with RMS (ECM 4536112)

(Confidential) Attachment 3. Legal advice (ECM 4536113)
