

Addendum Report

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- a7 [PR-PC] Class 1 Appeal - Development Application DA13/0383 for Redevelopment of 'Jenners Corner' Site Incorporating a Boat Showroom, Boating Facility, Two Cafes and Caretakers Residence at Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah

**SUBMITTED BY:** Development Assessment and Compliance

**FILE REFERENCE:** DA13/0383 Pt2

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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|-------|--|
| 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:

At the Planning Committee meeting held on 4 September 2014, Council refused Development Application DA13/0383 for a boat showroom, boat storage yard, cafe, restaurant and caretakers residence at Chinderah Bay Drive, Chinderah.

Council has been served notice of a Class 1 Appeal against Council's determination in the NSW Land and Environment Court.

The applicant seeks the following Orders from the Court:

1. The appeal be allowed.
  2. Development consent be granted for the redevelopment of 'Jenners Corner' site incorporating a Boat Showroom, Boating Facility; two cafés; and Caretakers Residence at Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah
  3. Any other order the Court deems fit.
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A telephone directions hearing has been set down for Monday 24 November 2014 at 10.30am and it is requested that Council's position on the Appeal be determined to enable engagement of solicitors and consultants.

**RECOMMENDATION:**

**That Council's solicitors be engaged to negotiate consent orders or a Section 34 Agreement subject to suitable consent conditions agreed to by the General Manager or Delegate for Development Application DA13/0383 for the redevelopment of 'Jenners Corner' site incorporating a boat showroom, boating facility, two cafes and caretakers residence at Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah.**

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**REPORT:**

**Applicant:** MacKay Ellis Group  
**Owner:** MacKay Ellis Group Pty Ltd  
**Location:** Lot 1 DP 119054, Lot 1 DP 341470, Lot A DP 373769 No. 120 Chinderah Bay Drive, Chinderah; Lot 1 DP 382677, Lot C DP 373769 No. 122 Chinderah Bay Drive, Chinderah; Lot 1 DP 415533 No. 126 Chinderah Bay Drive, Chinderah; Lot 2 DP 415533 No. 128 Chinderah Bay Drive, Chinderah; Lot 3 DP 415533 No. 130 Chinderah Bay Drive, Chinderah  
**Zoning:** 3(d) Waterfront Enterprise (Tweed LEP 2000)  
**Cost:** \$500,000

**Background:**

The site is commonly identified as Jenner's Corner, Chinderah which is located at Nos. 120, 122 and 126-130 Chinderah Bay Drive, Chinderah. The site has frontage to Chinderah Bay Drive, Wommin Bay Road and the Walsh Street Road Reserve (road not currently formed). The site is irregular in shape and provides a total area of 8935.5m<sup>2</sup>. The site contains an existing café takeaway shop and existing dwelling house. The proposal includes four distinct land uses including: Boat Showroom; Boat Storage Facility; café/restaurant and café; and Caretakers Residence.

The application has previously been reported to Council three times recommending approval. The original proposal sought approval for 94 covered boat storage bays, this was later reduced to 79 covered boat storage bays due to the riparian buffer zone to the adjacent creek requested by Council.

The application was recommended for conditional approval through a report to 4 September 2014 Planning Committee meeting, however, Council resolved to refuse the application 1 May 2014 for the following reasons:

- "1. Pursuant to Section 79C (1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant with Environmental Planning Instruments.

*The proposed development does not satisfy the provisions contained within:*

*The Environmental Planning & Assessment Act 1979, section 5(a) Objects of the Act:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
- (iii) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (iv) ecologically sustainable development,*

*Tweed Shire Local Environment Plan 2000:*

- Clause 4: Aims of this plan*

- *Clause 5: Ecologically sustainable development*
  - *Clause 8(1): Consent Considerations*
2. *The development does not satisfy Section 79C Section (1)(a)(ii) of the Environmental Planning and Assessment Act - the provisions of any Draft Environmental Planning Instruments in that boat storage is prohibited within the B4 Mixed Use Business zone.*
  3. *The development does not satisfy Section 79C of the Environmental Planning and Assessment Act, Section (1)(a)(ii) - the provisions of any Draft Environmental Planning Instruments in that boat storage does not satisfy the objectives of the B4 Mixed Use Business zone, and the development precludes public transport by the nature of the use requiring private vehicles.*
  4. *Pursuant to Section 79C (1)(b) of the Environmental Planning & Assessment Act 1979, the proposed development is not considered to be compliant due to impacts on the natural and built environments, and social and economic impacts in the locality, including the additional burden placed on associated public infrastructure required to service the development, the potential to indirectly exacerbate riverbank erosion, impact on marine ecology, and exceed the environmental carrying capacity of the River.*
  5. *Pursuant to the section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the development due to the impact of the predominant and extensive storage use proposed in this prime central business area, and given that land with industrial zoning is located in close proximity.*
  6. *Pursuant to the section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the development is not considered to be in the public interest."*

#### **OPTIONS:**

1. Engage Council's solicitors to negotiate consent orders or a Section 34 Agreement for DA13/0383.
2. Defend the appeal and engage Council's solicitors and suitable consultants.

Option 1 is recommended.

#### **CONCLUSION:**

It is recommended that Council work towards a negotiated outcome.

#### **COUNCIL IMPLICATIONS:**

##### **a. Policy:**

Corporate Policy Not Applicable

##### **b. Budget/Long Term Financial Plan:**

Council will incur expenses as a result of the Appeal. As Council staff recommended approval for the application, it will also be necessary to engage consultants to be expert witnesses on behalf of Council if Council resolves to defend the appeal.

##### **c. Legal:**

Not Applicable.

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**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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