



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland (Mayor)

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

Agenda

Planning and Regulation Reports **Ordinary Council Meeting** **Thursday 15 November 2012**

held at Murwillumbah Cultural and Civic Centre
commencing at 6.00pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

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REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

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

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

MATTERS FOR CONSIDERATION

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

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

SUBMITTED BY: Director



Civic Leadership

SUMMARY OF REPORT:

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

RECOMMENDATION:

That Council notes the October 2012 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

REPORT:

On 14 November 2008 the Department of Planning issued Planning Circular PS 08-014 relating to reporting on variations to development standards under State Environmental Planning Policy No. 1 (SEPP1).

In accordance with that Planning Circular, the following Development Applications have been supported/refused where a variation in standards under SEPP1 has occurred.

DA No.	DA12/0418
Description of Development:	Dwelling, attached double garage and 1.5m high front fence
Property Address:	Lot 43 DP 1031933 No. 35 She-Oak Lane, Casuarina
Date Granted:	4/10/2012
Development Standard to be Varied:	Clause 32B(4)(b) - overshadowing
Zoning:	2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)
Justification:	An objection has been lodged under SEPP No. 1 to vary the development standard provided by Clause 32B (4) of the NCREP 1988, which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7pm mid summer. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east only in mid summer. Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation and a cycle way. The shadow will not impact on areas used for formal recreational activities. It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration and in the most part intercept the dwelling shadows. The beach is over 100m from the rear of the property. Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt and Casuarina subdivision that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance the request is supported.
Extent:	The development overshadows the adjoining coastal reserve (being Lot 83 in DP1031933 and Lot 500 in DP 1095235) before 3pm mid winter and before 6.30pm midsummer as stipulated by the Regional Environmental Plan. The reserves are so large that the areas of encroachment are relatively small and accordingly a SEPP1 is considered justified.
Authority:	Tweed Shire Council under assumed concurrence

COUNCIL IMPLICATIONS:

a. Policy:

Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

No-Legal advice has not been received.

Attachment of Legal Advice-Not Applicable.

d. Communication/Engagement:

Not Applicable.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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7 [PR-CM] Development Application DA11/0230 for a Seven Lot Subdivision at Lot 2 DP 626198; No. 178 Byangum Road, Murwillumbah

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA11/0230 Pt2



Civic Leadership

SUMMARY OF REPORT:

Council is in receipt of an application for a seven lot subdivision at the above address.

The application was originally lodged as an eight lot subdivision and was recommended for refusal by Council officers at the June Council Meeting due to concerns with stormwater drainage, geotechnical stability and flora and fauna which were not considered to be adequately addressed in the application. It was resolved at this Council meeting that:

'this item be deferred to allow the proponent meet with Council staff to discuss possible alternative plans for this site and that a report be brought back to the July Council Meeting.'

Subsequent to this Council meeting the applicant has met with Council officers and submitted revised information which has addressed Council officers concerns with respect to the proposed development, and includes the deletion of one of the allotments.

This land is located within a 1.322ha allotment, which is zoned 2(a) Low Density Residential. The proposed development is defined as a 'subdivision' which is allowable with consent in this zone.

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

RECOMMENDATION:

That Development Application DA11/0230 for a seven lot subdivision at Lot 2 DP 626198; No. 178 Byangum Road, Murwillumbah be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans;**
 - **Plan of Proposed Subdivision of Lot 2 in DP 626198 being No. 178 Byangum Road at Murwillumbah, Drawing No. 2821PR7A/1 prepared by N.C. White and Associates, dated 10 September 2012; and**
 - **Drawing No. Sk 15 Rev A prepared by Cozen Regan Williams Prove, dated 22 August 2012;**

except where varied by the conditions of this consent.

[GEN0005]

2. Any proposed future dwelling or ancillary structure must be the subject of a separate development consent where statutorily required and does not form part of this consent.

[GEN0035]

3. The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.

[GEN0125]

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

[GEN0135]

5. Sewer manholes are present on this site. These manholes are not to be covered with soil or other material.

Should adjustments be required to the sewer manhole, then this shall be detailed within the Construction Certificate application for approval of such works.

[GEN0155]

6. The approved subdivision shall not result in any clearing of native vegetation without prior approval where required from the relevant authority.

[GEN0290]

7. The subdivision sh

all be developed in three (3) Stages as detailed in the Statement of Environmental Effects.

Stage 1 shall include:

- The creation of Lots 6 and 7;
- Lot 6 will be independently accessed and serviced from Byangum Road;
- Lot 7 will be independently accessed and serviced from Tombonda Road; and
- The proposed stormwater drainage line through Lot 7 is intended to be constructed as part of Stage 1 (including the appropriate easement) but connection of the stormwater line to the existing system in Tombonda Road would not occur until Stage 3.

Stage 2 shall include:

- The creation of Lot 1; and
- This lot incorporates the existing dwelling house and it is proposed that the existing access driveway, water supply, sewer connection, power and telephone services would be retained. Any necessary changes to access or servicing would occur with Stage 3.

Stage 3 shall include:

- The creation of Lots 2, 3, 4 and 5; and

- This includes the construction of the reciprocal right of carriageway and all necessary permanent services.

All conditions applicable to each stage of development must be addressed to the satisfaction of Council, prior to the release of the Subdivision Certificate for that stage of the development. This may require the creation of easements that will have to be released in later stages.

[GENNS01]

8. Geotechnical investigations and assessment of the subject site shall be undertaken in accordance with the recommendations and requirements as specified in the Geotechnical Stability Assessment, prepared by Geotechnical Investigations Pty Ltd, dated 17 July 2012 and the supplementary letter (from Geotechnical Investigations Pty Ltd, dated 16 October 2012), except where varied by the conditions of this consent.

All individual house sites are subject to further geotechnical testing at time of building approval.

[GENNS02]

9. The developments stormwater drainage network shall be generally in accordance with Sk 15 Rev A prepared by Cozen Regan Williams Prove, dated 22 August 2012, except where varied by the conditions of this consent, including:
 - The referenced drainage line 11 (including the proposed detention basin and level spreaders) within Lot 8 is not supported by Council.
 - Referenced Lot 8 should reference Lot 5.

[GENNS03]

10. Compensatory planting and restoration works must be undertaken in accordance with an approved Habitat Restoration Plan.

[GENNS04]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. Prior to the issue of a Construction Certificate, a Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0275]

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

[PCC0285]

13. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17⁰ (1:3.27) or steeper, such slopes shall be densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

14. All earthworks shall be graded at a minimum of 1% so that the site it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with the Construction Certificate application for Council approval.

[PCC0485]

15. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

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

[PCC0935]

17. Prior to the issue of a Construction Certificate for civil 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 (4) 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, unless approved otherwise by Council:

- Earthworks
 - Roadworks/Furnishings
- (c) Byangum Road shall be upgraded to provide barrier kerb and gutter along the developments frontage, on an alignment approved by Council,
- (d) Proposed Lots 1 to 4 shall be serviced by an appropriately sign posted, shared battleaxe access providing a minimum concrete pavement of 4.5m off Byangum Road. An overtaking bay shall be provided just prior to access onto Byangum Road within the subject allotment,
- (e) Proposed Lot 5 shall be serviced by a battleaxe access providing a minimum concrete pavement of 3.0m off Byangum Road,
- (f) Proposed Lot 6 shall be serviced by a standard concrete driveway off Byangum Road,
- (g) Tombonda Road road reserve shall be upgraded to provide a standard road verge and driveway access to proposed Lot 7,
- Stormwater Drainage
- (h) Unless it is confirmed that a formed overland flow path capable of conveying the associated Q100 flow from Inlet [3/1] to [7/1] exists or will be provided within the existing stormwater easement, the inlet and pipe drainage network from Inlet [3/1] to Inlet [7/1] shall be upgraded to capture and convey (underground) the associated Q100 flow,
- (i) Downstream drainage networks in Tombonda Road are to be upgraded, as required to ensure the proposed development does not cause non compliant surcharging, with respect to Council's Design Specifications,
- (j) Stormwater discharge from proposed Lot 5 must be via controlled sheet flow and be distributed via level spreaders over an area as wide and as even as possible, across its southern boundary,
- (k) The proposed Tombonda Road kerbside Inlets ([8/10], [9/10] and [10/10]) are only required to capture their respective Q5 runoff, however the associated pipework must convey the captured Q100 flow from the developments inter allotment drainage network from inlet [7/10] to existing Inlet [1/7] in Tombonda Road.
- Water Supply Works
- (l) Proposed Lots 1, 2, 3, 4, 5 and 6 shall be serviced from the 150mm dia main in Byangum Road,
- (m) Proposed Lot 7 shall be serviced from the 100mm dia main in Tombonda Road,
- (n) All water services are to be individually identified and laid in conduits within the appropriately sized easements (as applicable), awaiting future connection,
- (o) The polylines in the vicinity of the proposed retaining walls are to be installed in appropriate conduit.
- Sewerage Works

- (p) Proposed Lots 5 and 6 may be serviced by individual house pump station and associated pressure system.
- (q) All pressure mains shall be located in road reserve. The Developer shall provide a Boundary Kit for connection for each lot to be serviced by the pressure sewer within each associated lot, in accordance with Council's standard specifications and drawings. The location of connection or the pressure main to sewerage shall be determined in consultation with Council during preparation of the engineering design plans so as to minimise the length of rising main so as to reduce any potential odour and septicity issues.
- 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.

[PCC0985]

18. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.

[PCC1105]

19. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

20. The peak stormwater flow rate that may be discharged from proposed Lot 5, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or

below ground storage. OSD devices including Discharge Control Pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook", unless approved otherwise by Council.

Note: Permissible Site Discharge (PSD) and Site Storage Requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the Construction Certificate application.

[PCC1165]

21. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of any permanent Stormwater Quality Control Devices, prior to the issue of a Construction Certificate.

[PCC1195]

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

[PCC1235]

23. A construction management plan shall be submitted to Council for the written approval of the General Manager or his delegate prior to issue of a construction certificate. The report shall address as a minimum construction noise, hours of construction, dust suppression and sediment control. All work shall comply with the approved Plan.

[PCCNS01]

24. Unless an appropriate easement can be established over the existing stormwater infrastructure located between Lots 86 and 87 DP253421, proposed Lot 5 cannot utilise this pipeline as a legal point of stormwater discharge.

[PCCNS02]

25. Only those lots which are demonstrated to the satisfaction of the Director of Community and Natural Resources not to be serviceable by conventional gravity sewers may be served by a pressure sewer system.

[PCCNS03]

PRIOR TO COMMENCEMENT OF WORK

26. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

27. 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.

[PCW0015]

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

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

29. Any imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to the issue of the Subdivision Certificate if the required amount of fill exceeds 500m³.

[PCW0375]

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

[PCW0745]

31. Civil work in accordance with a development consent must not be commenced until:

- (a) a Construction Certificate for the civil 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) 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 NPER registration.

[PCW0815]

- 32. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

- 33. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

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

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

[PCW0985]

- 34. Prior to issue of the construction certificate, the applicant is to submit a Habitat Restoration Plan detailing environmental enhancement works across the site. The Habitat Restoration Plan must be approved to the satisfaction of Council's General Manager or delegate prior to commencement of works. The plan is to include the management of native vegetation within the development site. The Plan must also address the treatment, function, maintenance and management of the following:
 - a) Gradual removal of Camphor Laurel in accordance with the relevant management plan under the Noxious Weeds Act 1993 at an average rate of 10% per annum. Removal of all Camphor Laurel saplings to 3m in height.
 - b) Compensatory planting of all local native species removed at a 2:1 (gained:loss) basis.

[PCWNS01]

- 35. Arrangements for the management of construction waste, ongoing waste management during site occupation and garbage collection arrangements shall be submitted to Council's General Manager or his delegate for written approval prior to the commencement of works.

[PCWNS02]

36. A detailed plan of landscaping containing no noxious or environmental weed species and with a minimum 80% of total plant numbers comprised of local native species is to be submitted and approved by Council's General Manager or his delegate prior to the commencement of works.

[PCWNS03]

DURING CONSTRUCTION

37. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

38. Construction and/or demolition site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

39. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

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

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

40. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR0405]

41. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".

A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 and is suitable for the intended residential development shall be submitted to the Principal Certifying Authority upon completion.

[DUR0795]

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

[DUR0815]

43. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council General Manager or his delegate.

[DUR0985]

44. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.

[DUR0995]

45. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution
- dust during filling operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

46. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

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

[DUR1875]

48. Tweed Shire Council shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, Appendix D. Inspection fees are based on the rates contained in Council's current Fees and Charges:-

Roadworks/Driveways

- (a) Pre-construction commencement erosion and sedimentation control measures
- (b) Completion of earthworks
- (c) Excavation of subgrade
- (d) Pavement - sub-base
- (e) Pavement - pre kerb

- (f) Driveways - formwork/reinforcement
- (g) Final Practical Inspection - On Maintenance
- (h) Off Maintenance inspection

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 above-mentioned inspections shall be invoiced upon completion of all applicable civil works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate' associated with the Subdivision Certificate.

[DUR1895]

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

[DUR1905]

50. All retaining walls in excess of 1.2 metres in height or retaining walls and structures that are approved to be constructed over Council's sewer main, must be certified by a Qualified Structural Engineer verifying the structural integrity of the structures after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of a Subdivision Certificate.

[DUR1955]

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

[DUR2015]

52. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

The Inter allotment drainage network from inlet [4/10] to [8/10] including associated inlets must be sized to capture and convey underground the ARI 100 year event.

[DUR2285]

53. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils Development Design and Construction Specifications.

[DUR2355]

54. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

55. The site shall not be dewatered, unless written approval to carry out dewatering operations is received from the Tweed Shire Council General Manager or his delegate.

[DUR2425]

56. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

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

[DUR2445]

58. No portion of any structure may be erected within any easement for public infrastructure over the subject site unless it is designed and sited outside of the zone of influence of any public infrastructure, complies with Council's "Sewers - Work in Proximity" policy and is approved by Council.

[DURNS01]

59. An adequate Tree Protection Zone shall be provided around the threatened tree species recorded on site and vegetation that is to be retained. This Tree Protection Zone shall generally be provided by preserving an area around the tree with a radius of at least 1.25 x the average canopy radius from the trunk, or 0.5 x the tree height. Tree Protection Zones:

- a. Shall be adequately fenced, marked and sign posted before, during and after construction.
- b. All trenches, footings and major earth movement shall avoid Tree Protection Zones.

- c. **Materials and soils shall not be stockpiled within Tree Protection Zones.**
 - d. **Machinery shall avoid Tree Protection Zones during all operations.**
60. **All operations must comply with the fauna and flora protection measures as outlined in the Ecological Assessment Report established by James Warren & Associates, as amended by any conditions/requirements imposed. In the event that any threatened species, populations, ecological communities or their habitats not addressed in the report are discovered during operations appropriate Plans of Management for those species must be formulated to the satisfaction of the General Manager or delegate. No further site clearing will take place until the Plan(s) of Management is/are approved.**
61. **A spotter-catcher will be on site during all vegetation clearing processes. Should any threatened species or other native fauna be found within the vegetation to be cleared, they must be collected and released into adjoining unaffected suitable habitat.**

[DURNS02]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

62. **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.**

[PSC0005]

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

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Stage 1

Water DSP2:	2 ET @ \$12150 per ET	\$24300
Sewer Murwillumbah:	2 ET @ \$5838 per ET	\$11676

Stage 2

Water DSP2:	1 ET @ \$12150 per ET	\$12150
Sewer Murwillumbah:	1 ET @ \$5838 per ET	\$5838

Stage 3

Water DSP2:	3 ET @ \$12150 per ET	\$36450
Sewer Murwillumbah:	3 ET @ \$5838 per ET	\$17514

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

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

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

[PSC0165]

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

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

Stage 1

(a) Tweed Road Contribution Plan:

13 Trips @ \$1328 per Trips	\$17264
(\$1317 base rate + \$11 indexation)	
S94 Plan No. 4	
Sector9_4	

(b) Open Space (Casual):

2 ET @ \$526 per ET	\$1052
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	

(c) Open Space (Structured):

2 ET @ \$602 per ET	\$1204
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	

(d) Shirewide Library Facilities:

2 ET @ \$816 per ET	\$1632
(\$792 base rate + \$24 indexation)	
S94 Plan No. 11	

- (e) **Bus Shelters:**
2 ET @ \$62 per ET \$124
(\$60 base rate + \$2 indexation)
S94 Plan No. 12
- (f) **Eviron Cemetery:**
2 ET @ \$121 per ET \$242
(\$101 base rate + \$20 indexation)
S94 Plan No. 13
- (g) **Community Facilities (Tweed Coast - North)**
2 ET @ \$1352 per ET \$2704
(\$1305.6 base rate + \$46.4 indexation)
S94 Plan No. 15
- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
2 ET @ \$1812.62 per ET \$3625.24
(\$1759.9 base rate + \$52.72 indexation)
S94 Plan No. 18
- (i) **Cycleways:**
2 ET @ \$460 per ET \$920
(\$447 base rate + \$13 indexation)
S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
2 ET @ \$1064 per ET \$2128
(\$1031 base rate + \$33 indexation)
S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
2 ET @ \$3730 per ET \$7460
(\$3619 base rate + \$111 indexation)
S94 Plan No. 26

Stage 2

- (a) **Tweed Road Contribution Plan:**
6.5 Trips @ \$1328 per Trips \$8632
(\$1317 base rate + \$11 indexation)
S94 Plan No. 4
Sector9_4

(b) Open Space (Casual):	
1 ET @ \$526 per ET	\$526
(\$502 base rate + \$24 indexation)	
S94 Plan No. 5	
(c) Open Space (Structured):	
1 ET @ \$602 per ET	\$602
(\$575 base rate + \$27 indexation)	
S94 Plan No. 5	
(d) Shirewide Library Facilities:	
1 ET @ \$816 per ET	\$816
(\$792 base rate + \$24 indexation)	
S94 Plan No. 11	
(e) Bus Shelters:	
1 ET @ \$62 per ET	\$62
(\$60 base rate + \$2 indexation)	
S94 Plan No. 12	
(f) Eviron Cemetery:	
1 ET @ \$121 per ET	\$121
(\$101 base rate + \$20 indexation)	
S94 Plan No. 13	
(g) Community Facilities (Tweed Coast - North)	
1 ET @ \$1352 per ET	\$1352
(\$1305.6 base rate + \$46.4 indexation)	
S94 Plan No. 15	
(h) Extensions to Council Administration Offices & Technical Support Facilities	
1 ET @ \$1812.62 per ET	\$1812.62
(\$1759.9 base rate + \$52.72 indexation)	
S94 Plan No. 18	
(i) Cycleways:	
1 ET @ \$460 per ET	\$460
(\$447 base rate + \$13 indexation)	
S94 Plan No. 22	
(j) Regional Open Space (Casual)	
1 ET @ \$1064 per ET	\$1064
(\$1031 base rate + \$33 indexation)	

S94 Plan No. 26

(k) Regional Open Space (Structured):

1 ET @ \$3730 per ET \$3730

(\$3619 base rate + \$111 indexation)

S94 Plan No. 26

Stage 3

(a) Tweed Road Contribution Plan:

19.5 Trips @ \$1328 per Trips \$25896

(\$1317 base rate + \$11 indexation)

S94 Plan No. 4

Sector9_4

(b) Open Space (Casual):

3 ET @ \$526 per ET \$1578

(\$502 base rate + \$24 indexation)

S94 Plan No. 5

(c) Open Space (Structured):

3 ET @ \$602 per ET \$1806

(\$575 base rate + \$27 indexation)

S94 Plan No. 5

(d) Shirewide Library Facilities:

3 ET @ \$816 per ET \$2448

(\$792 base rate + \$24 indexation)

S94 Plan No. 11

(e) Bus Shelters:

3 ET @ \$62 per ET \$186

(\$60 base rate + \$2 indexation)

S94 Plan No. 12

(f) Eviron Cemetery:

3 ET @ \$121 per ET \$363

(\$101 base rate + \$20 indexation)

S94 Plan No. 13

(g) Community Facilities (Tweed Coast - North)

3 ET @ \$1352 per ET \$4056

(\$1305.6 base rate + \$46.4 indexation)

S94 Plan No. 15

- (h) **Extensions to Council Administration Offices
& Technical Support Facilities**
 3 ET @ \$1812.62 per ET \$5437.86
 (\$1759.9 base rate + \$52.72 indexation)
 S94 Plan No. 18
- (i) **Cycleways:**
 3 ET @ \$460 per ET \$1380
 (\$447 base rate + \$13 indexation)
 S94 Plan No. 22
- (j) **Regional Open Space (Casual)**
 3 ET @ \$1064 per ET \$3192
 (\$1031 base rate + \$33 indexation)
 S94 Plan No. 26
- (k) **Regional Open Space (Structured):**
 3 ET @ \$3730 per ET \$11190
 (\$3619 base rate + \$111 indexation)
 S94 Plan No. 26

[PSC0175]

65. **Prior to the issue of a Subdivision Certificate a Defect Liability Bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.**

The bond shall be based on 5% of the value of the works (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.

[PSC0215]

66. **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.

[PSC0395]

67. **All approved landscaping requirements must be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. Landscaping must be maintained at all times to the satisfaction of the General Manager or delegate.**

[PSC0485]

68. 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.

[PSC0725]

69. 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.

[PSC0735]

70. All retaining walls in excess of 1.2m are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the applicable Subdivision Certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the plan of subdivision.

- (a) An easement for support is to be created over the footprint of the above retaining wall(s) or batters, benefiting the higher lot. The terms of this easement shall include:
 - The owner of the lot burdened shall not interfere with the retaining wall or, batter or the support it offers or use it in a way which may detract from the stability or support provided and
 - The owner of the lot benefited, may at any time the stability of the retaining wall is threatened, enter upon the easement and carry out any repairs required to restore the stability and support provided.
- (b) A Restriction On Use is to be created on the lower lot title adjacent to the retaining wall footprint, restricting excavation (greater than 0.3m in vertical height) within the area burdened by the restriction. The width of the area and excavation restrictions within the area shall be determined by the retaining wall designer and shall be no less than the height of the wall, and
- (c) A Restriction On Use is to be created on the higher lot adjacent to the retaining wall footprint, restricting placement of structures or filling (greater than 0.3m in vertical height) within the area burdened. The restrictions shall be determined by the wall designer, with a width no less than the height of the wall.

- (d) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

[PSC0785]

71. 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.

[PSC0825]

72. 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) Right of Carriageway over the shared concrete battleaxe driveway servicing proposed Lots 1 to 4.
- (c) Positive Covenant over the subject land for the installation and maintenance of single property pump stations.
- (d) A Restriction On Use on all benefited lots requiring the owners to manage and maintain the installed Oil and Grit separators and pay Council fees.
- (e) A Restriction On Use requiring a designated Visitor Car Parking space to be provided on proposed Lots 1 to 5.
- (f) A Restriction On Use requiring that stormwater runoff from all future hardstand areas (including all roofwater) associated with proposed Lot 6 must discharge into the piped drainage network traversing the site.
- (g) A Restriction On Use preventing any hardstand area being constructed over the existing embankment along the southern boundary of proposed Lot 5 or within 5m of the property boundary (whichever is the greater) to provide adequate protection of the batter and to accommodate required stormwater detention and level spreaders away from the southern batter (unless supported otherwise by a Geotechnical Report and accepted by Council).
- (h) Individual water house connection lines associated with the battleaxe allotments are to be located within appropriately sized easements, of adequate width such that the lines can be accessed by required machinery, if required.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating a Right Of Carriageway or Easement shall make provision for maintenance of the Right Of Carriageway or Easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis (as applicable).

Any Section 88B Instrument creating Restrictions As To User, Rights Of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Way to be revoked, varied or modified only with the consent of Council.

[PSC0835]

73. **Submit to Council's property officer an appropriate plan indicating the address numbers to the new lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' address number displayed.**

[PSC0845]

74. **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.**

[PSC0855]

75. **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.

[PSC0885]

76. **Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council OR an accredited certifier for the following:-**

- (a) **Compliance Certificate - Roads / Driveways**
- (b) **Compliance Certificate - Water Reticulation**
- (c) **Compliance Certificate - Sewerage Reticulation**
- (d) **Compliance Certificate - Drainage**

Note:

- 1. **All Compliance Certificate applications 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".**

[PSC0915]

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

[PSC0925]

78. Prior to the issue of a Subdivision Certificate and also prior to the end of Defects Liability Period, a CCTV inspection of any stormwater pipes and gravity sewerage systems installed and to be dedicated to Council including joints and junctions will be required to demonstrate that the standard of the infrastructure is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

79. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation (including household connections) shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications and the Construction Certificate approval.

Fire Hydrants spacing, sizing and pressures shall comply with Council's DCP - Section A5 - Subdivision Manual, associated Development Design and Construction Specifications and AS2419.1-2005.

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.

[PSC1115]

80. Prior to the issue of the Subdivision Certificate, for each lot serviced by the pressure sewer system, a capital contribution of \$14,800 shall be paid by the Developer to Council for the installation of individual pressure sewer pump stations at a suitable location within each lot at the time of construction of the dwelling on that lot.

[PSC1135]

81. A Positive Covenant in relation to each lot to be sewered by a pressure sewer system shall be created pursuant to Section 88B of the Conveyancing Act to provide Tweed Shire Council with rights to construct, install and maintain the pressure sewerage infrastructure in accordance with the following terms:

TERMS OF PUBLIC POSITIVE COVENANT

1. Pressure sewerage reticulation infrastructure is to be constructed within the land referred to herein and such infrastructure will comprise a pump station, valve pit, control panel and associated pipelines excluding gravity house connections and plumbing.
2. Such infrastructure is to be supplied by Tweed Shire Council at commencement of construction of a dwelling on the land referred to herein.
3. All costs in relation to the installation of the pressure sewer reticulation infrastructure within the land referred to herein will be borne by Tweed Shire Council.

4. The control panel for the pumping station is to be wired into the household switchboard by a registered electrician and all electricity to operate the control panel and pump station shall be supplied from the household switchboard. All costs in relation to the running of the pressure sewerage reticulation are to be borne by the registered proprietor.
5. The pressure sewer infrastructure will at all times remain the property of Tweed Shire Council to be inspected, serviced, repaired and maintained in good working order only by Tweed Shire Council.
6. Tweed Shire Council shall have the right to enter upon the land referred to herein with or without equipment, at all reasonable times to inspect, construct, repair, service and maintain in good working order all pressure sewerage reticulation infrastructure in or upon the said land pursuant to "Power of Entry" provisions under sections 191 and 191A of the NSW Local Government Act, 1993. This right to enter is restricted to the land in which the pressure sewerage infrastructure is placed for the time being and includes any points of egress or ingress to or from the said land.
7. The registered proprietor of the land referred to herein shall not construct any type of development, including external buildings, swimming pools or permanent structures which may interfere with the sewerage reticulation infrastructure, or impede access to any part of the sewerage reticulation infrastructure for the purposes of repair, maintenance and service.
8. If at any time it becomes necessary to relocate any part of the sewerage reticulation infrastructure for the purposes of construction of external buildings, swimming pools or building extensions and/or modifications Tweed Shire Council will not object to the relocation of the existing sewer pump station or associated pipeline providing that the registered proprietor makes the necessary application to Tweed Shire Council as the consent authority to modify the existing sewerage reticulation infrastructure and upon the registered proprietor obtaining development consent to do so. The registered proprietor will bear all costs in relation to the application and the re-location which is to be carried out by Tweed Shire Council.
9. The registered proprietor shall be responsible for notifying Tweed Shire Council when maintenance, repair, relocation or service is necessary on the sewerage reticulation infrastructure.
10. Should any part of the sewerage reticulation infrastructure be damaged by the registered proprietor or by any person who is a servant, workman, tenant, invitee, employee, or agent of the registered proprietor Tweed Shire Council will repair the damage at the cost of the registered proprietor.
11. The registered proprietor shall indemnify Tweed Shire Council and any adjoining landowners against any damage and injury to their land, property or person arising from the failure of any component of the sewerage reticulation infrastructure due to the negligent use or misuse of the sewerage reticulation system by the registered proprietor or any person who is a servant, workman, tenant, invitee, employee or agent of the registered proprietor.

12. Tweed Shire Council shall indemnify the registered proprietor against all damage and injury to property and person (including any damage to the land referred to herein and any land adjacent to the land referred to herein) arising from the failure of any component of the sewerage reticulation infrastructure and its construction, inspection, repair, service and maintenance and or in entering upon and occupying the subject property for such purposes.
13. Any reference to Tweed Shire Council, excepting as consent authority, means its employees, agents, contractors, servants.
- [PSC1145]
82. 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 all allotments has been completed.
- [PSC1165]
83. 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.
- [PSC1165]
84. 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
- 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.
- [PSC1185]
85. Prior to the issue of a Subdivision Certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 68 of the Local Government Act 1993.
- [PSCNS01]
86. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the General Manager or his delegate.
- [PSCNS02]
87. Prior to the issue of a Subdivision Certificate, the existing easement to drain water 3 wide (DP 626198) traversing the subject allotment shall be released and a new 3 wide easement created, benefiting the appropriate allotments and Tweed Shire Council.
- [PSCNS03]

- 88. Habitat restoration works must be completed to a level specified in the approved Habitat Restoration Plan prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Habitat Restoration Plan shall not be removed without separate Council approval.**

[PSCNS04]

REPORT:

Applicant: Byangum Holdings Pty Ltd
Owner: Byangum Holdings Pty Ltd
Location: Lot 2 DP 626198; No. 178 Byangum Road, Murwillumbah
Zoning: 2(a) Low Density Residential
Cost: \$320,000

Background:

Site History

Council records indicate two previous applications on this site, both related to the existing dwelling:

- 0232/93B- Building Application (Historic) - shade structure. Approved 11 March 1993; and
- 1250/87B- Building Application (Historic) – swimming pool. Approved 10 December 1987.

The Subject Site

The subject site covers a total area of 1.322ha and is irregular in shape with frontage to Byangum Road and Tombonda Road. The topography on the site is undulating, with ground levels varying from 40m AHD to 20m AHD. The site is surrounded by low density residential development, with exception of the road frontage as described above.

At present there is a single storey dwelling house to the north of the site and a shed located adjacent to the southern site boundary, with the remainder of the site comprising of slashed grassland or regenerating rainforest vegetation species. Council's Natural Resource Management Unit has noted that two threatened flora species were recorded on site in the form of two Coolamon and a Fine-leaved Tuckeroo.

The Proposed Development

As originally submitted, the application proposed an eight lot subdivision, configured as follows:

Lot Number	Area	Access Arrangements
Lot 1	2282m ² (contains an existing dwelling house) (2090m ² excluding axe handle)	Battleaxe frontage to Byangum Road – access via reciprocal right of carriageway
Lot 2	1154m ² (776m ² excluding handle)	As above
Lot 3	1197m ² (896m ² excluding handle)	As above
Lot 4	1211m ² (840m ² excluding handle)	As above
Lot 5	1255m ² (864m ² excluding handle)	As above
Lot 6	727m ²	Frontage to and access from Byangum Road
Lot 7	756m ²	Frontage to and access from Tombonda Road
Lot 8	4688m ² (4475m ² excluding handle)	Battleaxe frontage to Byangum Road 6.37m wide

In response to request for further information the applicant has amended the application with the result that proposed Lot 5 and Lot 8 identified above have been combined to create a new Lot 5 with a total area of 5598m². The composition of the amended allotments is outlined below:

LOT No	TOTAL AREA	LOT AREA EX ACCESS
LOT 1	2326m ²	2090m ²
LOT 2	1212m ²	776 m ²
LOT 3	1261m ²	896 m ²
LOT 4	1389m ²	840 m ²
LOT 5	5598m ²	5339m ²
LOT 6	727m ²	727 m ²
LOT 7	756m ²	756 m ²

It is proposed to carry out the development in 3 Stages, as follows:

Stage 1 - Lots 6 and 7

- Lot 6 will be independently accessed and serviced from Byangum Road.
- Lot 7 will be independently accessed and serviced from Tombonda Road.
 - o The proposed stormwater drainage line through Lot 7 is intended to be constructed as part of Stage 1 (including the appropriate easement) but connection of the stormwater line to the existing system in Tombonda Road would not occur until Stage 3.

Stage 2 - Lot 1

- This lot incorporates the existing dwelling house and it is proposed that the existing access driveway, water supply, sewer connection, power and telephone services would be retained. Any necessary changes to access, servicing, etc. would occur with Stage 3.

Stage 3 – Lots 2, 3, 4 and 5

- This includes the construction of the reciprocal right of carriageway and all necessary permanent services.

Development Constraints

A number of development constraints were identified through the assessment of the subject application as originally submitted.

Stormwater Drainage

At present stormwater drainage from the site is conveyed from an existing piped drainage network traversing through the existing allotment and neighbouring Lot 1 DP 626198 and Lot 87 DP 253421. There is no formal easement over the existing piped infrastructure traversing through Lot 87 DP 253421.

The applicant had initially requested that Council acquire easements over adjacent land (Lots 82, 86 and 87 DP 253421) as attempts to negotiate between the applicant and subject landowners has been unsuccessful. This request was reviewed by Councils Executive Management Team and it was determined that the applicant be advised that '*Council's preferred and most equitable course action in relation to stormwater (at subject property) would be for the owner to purchase the adjoining property, create the necessary drainage infrastructure and easements and then resell the property with the encumbrances.*'

Subsequent to this, it was indicated that the applicant intended to seek Council's support for the resuming of any necessary easements. However, following an extension of time provided to resolve this issue, no further progress was demonstrated by the applicant and it was considered appropriate to progress the application to a full Council meeting with a recommendation for refusal.

Subsequent to the June 2012 Council Meeting, the applicant has met with Council officers and submitted revised information with respect to this application, including the reduction in the number of total allotments proposed. A revised Stormwater Management Plan has been submitted and this information has been reviewed by Councils Development Engineering Section and is determined to provide adequate stormwater drainage to the proposed development, subject to appropriate conditions of consent. The proposal as revised is considered acceptable in this regard. Due to the technical nature of stormwater drainage on the site, much of the proposed design detail has not been submitted at this stage. However, where applicable the applicant has agreed to the inclusion of conditions of consent which require the development to be in accordance with Council policy. In particular, the applicant is required to:

- Demonstrate that the existing stormwater infrastructure which traverses the west of the development site and existing Lot 1 DP 626198 and Lot 94 DP 253421 can convey stormwater to a 1 in 100 year flood (Q100) standard, or upgrade this infrastructure to capture and convey a Q100 flow;
- Upgrade downstream drainage networks in Tombonda Road as required to ensure the development does not cause non-compliant surcharging;
- Discharge stormwater from proposed Lot 5 via controlled sheet flow and distribute via level spreaders over a wide and even area; and
- Ensure the Tombonda Road pipework can convey Q100 stormwater from the development.

Geotechnical Stability

As originally submitted, the applicant provided a broad scale Geotechnical Engineering Assessment. It was noted that this assessment did not include an assessment of the stability of the site or individual sites. Submissions received through public notification raised concerns with respect to geotechnical stability arising from the proposed development.

The applicant's response to these concerns was that the Geotechnical Report does not identify significant instability issues. This was not accepted by Councils Development Engineering Section as a satisfactory response to the public concerns and the application was not supported in this regard.

Subsequent to the June Council Meeting, the applicant submitted a Geotechnical Stability Assessment assessing the slope stability and potential risks at the subject site. The revised information has been reviewed by Council officers who have indicated that subject to appropriate conditions of consent, the proposal is considered acceptable in this regard.

Flora and fauna

This application was referred to Council's Natural Resource Management Unit having regard to the vegetation removal associated with the proposal. Comments received raised concern with regard to the potential for the development to impact upon two threatened species as listed under the Threatened Species Conservation Act 1995.

Specifically, two of the three recorded threatened flora species would be significantly impacted upon by the proposed subdivision works, likely resulting in the demise of these trees. A mature Coolamon (*Syzygium moorei*) located within proposed Lot 2 would be affected by driveway construction works and a mature Fine-leaved Tuckeroo (*Lepiderema pulchella*) is located in an easement adjacent to proposed Lot 4 within which sewer and drainage pipes are proposed.

The applicant has subsequently submitted revised information, requesting that a condition be attached to any consent requiring these trees to be retained. Furthermore, Councils Natural Resource Management (NRM) Unit has indicated that the proposal is deemed acceptable subject to recommended conditions with respect to the provision of a Tree Protection Zone to the threatened species and the preparation of a Habitat Restoration Plan.

The flora and fauna constraints are therefore considered to be adequately addressed and the application is supported in this regard.

Public Submissions

The proposed development was notified for a period of 14 days from 22 June 2011 to 6 July 2011, and attracted three submissions.

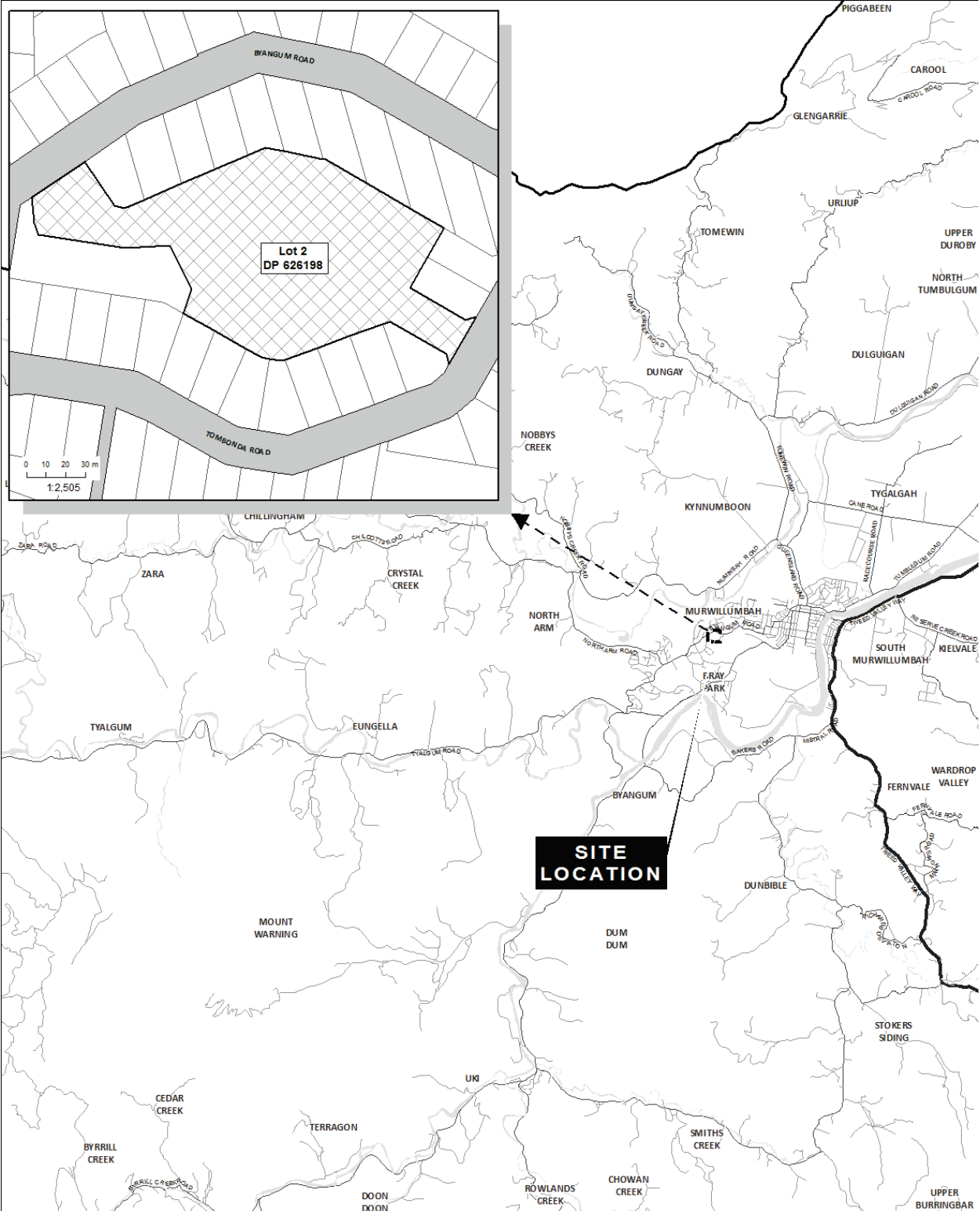
Stormwater runoff and/or geotechnical stability was raised by all three submissions, whilst individually, the submissions raised issues with the existing underground storage tank, the existing shed on site, the siting and location of future dwellings and the provision of excess fill associated with the proposal.

Upon receipt of modified information the objectors were advised that this was available on Council's website through the 'DA Tracker' system, and were requested to provide any comment. No further comments have been received with respect to the proposal.

Summary

Having regard to revised development layout and the additional information received from the applicant with respect to stormwater drainage, geotechnical stability and flora and fauna, the proposed seven lot subdivision is considered to be generally acceptable having regard to the relevant statutory controls. It is therefore recommended that the proposed development be approved.

SITE DIAGRAM:

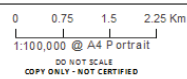


Locality Plan

Lot 2 DP 626198
No. 178 Byangum Road, Murwillumbah

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Cadastral: 30 October, 2012
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Boundaries shown should be considered approximate only.



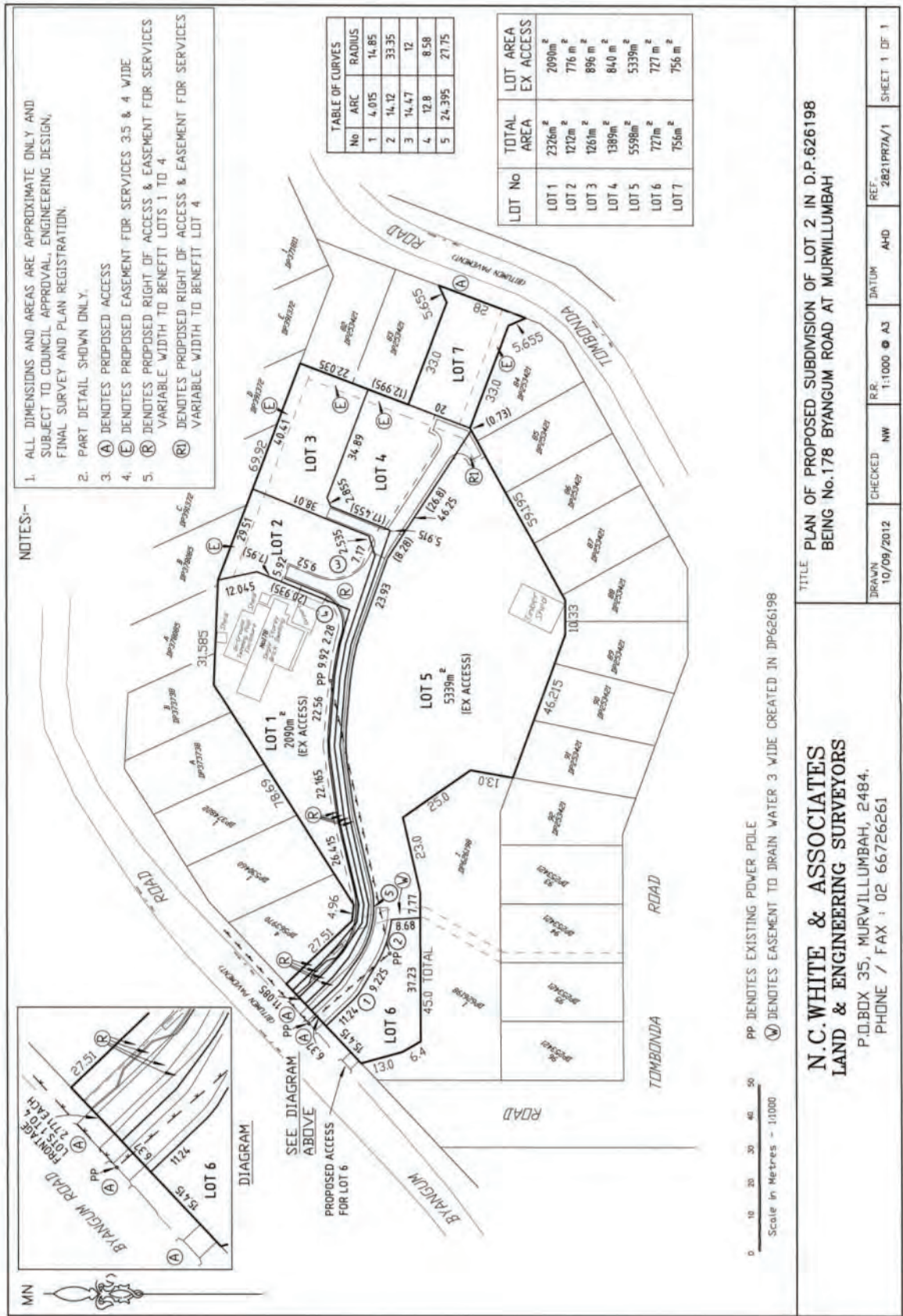
Map Projection: Universal Transverse Mercator
Horizontal Datum: Geodetic Datum of Australia 1994
Grid: Map Grid of Australia, Zone 56

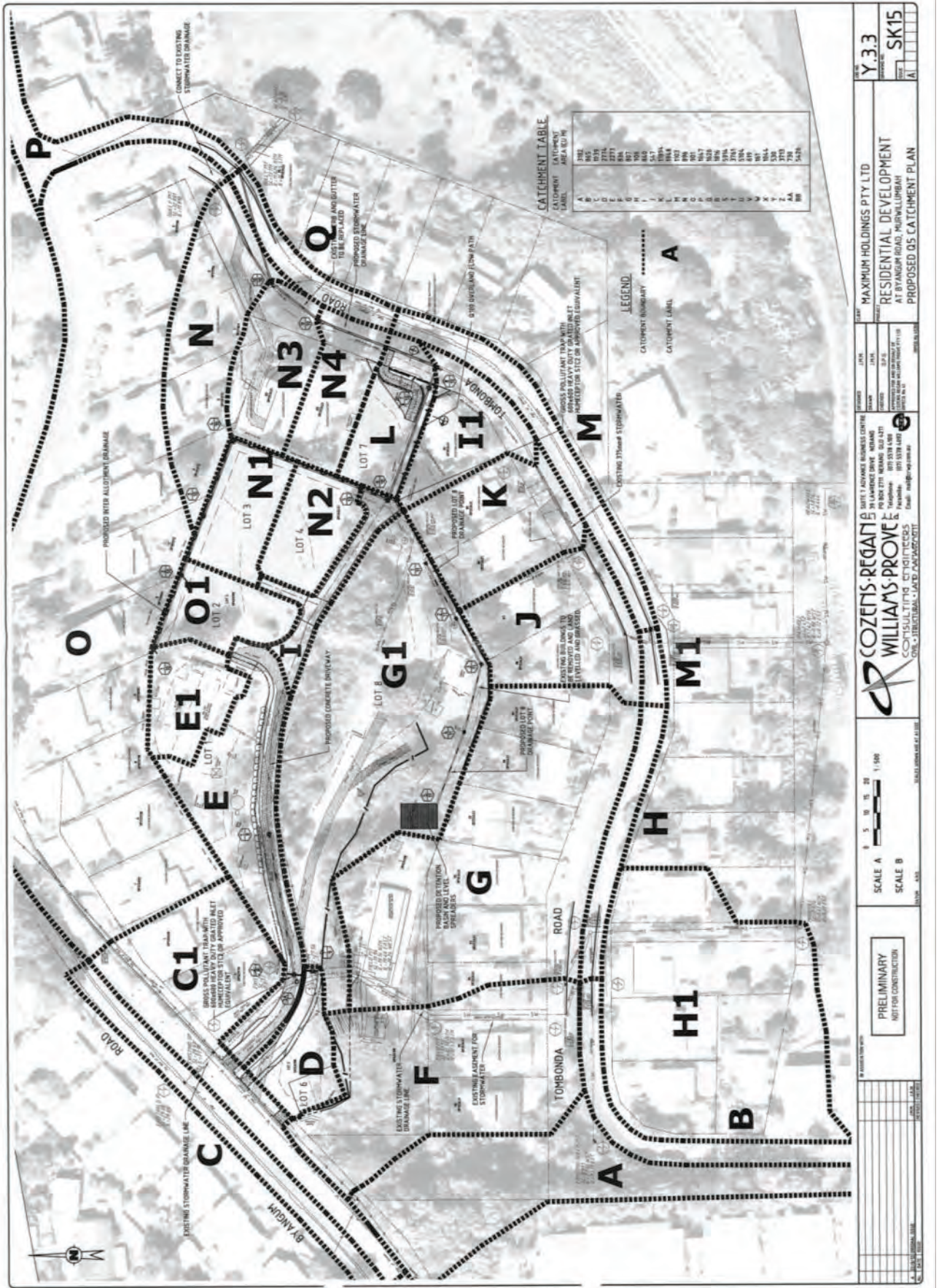
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DEVELOPMENT/ELEVATION PLANS:





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 (TLEP 2000)

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *"the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced"*. Clause 4 further aims to provide a legal basis for the making of a Development Control Plan (DCP) to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The application as previously submitted was recommended for refusal as it was not considered to comply with this clause, with it being determined that insufficient information had been provided to enable determination as to whether the development is likely to have a significant impact on threatened species, populations or ecological communities.

Subsequently, revised information has been provided, with Council's Natural Resource Management (NRM) Unit advising that the proposed development is acceptable subject to appropriate conditions of consent.

The subject development application as amended is considered to be suitably in keeping with the above aims of the plan, and is not considered likely to result in a significant impact on threatened species, populations or the like.

Clause 5 - Ecologically Sustainable Development

Clause 5 aims to promote development that is consistent with the four principles of ecologically sustainable development, being the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms.

The application as submitted was recommended for refusal as insufficient information had been provided to enable determination that the proposal would avoid serious or irreversible damage to the environment.

As outlined above, revised information has been provided by the applicant, with the NRM Unit now advising that the proposed development is acceptable subject to appropriate conditions of consent.

As such, it is considered that the proposed development is consistent with the provisions of this clause.

Clause 8 - Zone objectives

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

- (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*

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

The assessment of this application as originally submitted determined that adequate information had not been provided to demonstrate that the proposal would not have an unacceptable cumulative impact on the community or locality.

As outlined elsewhere in this report, revised information has been provided and the original application modified to a stage where Council officers are in a position to support the application subject to appropriate conditions of consent. As such, the proposal is now considered to satisfy the above criteria and is acceptable having regard to this clause.

Clause 11 - Zone objectives

The subject site is located within the 2(a) Low Density Residential zone. The primary objective of this zone is 'to provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.'

Secondary objectives of this zone are:

To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.

To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.

It is considered that the subdivision proposal, which would facilitate the low density development of the site as per the 450m² minimum site size is in accordance with the zone objectives.

Clause 15 - Essential Services

The objectives of this Clause are to ensure that development does not occur without adequate measures to protect the environment and the community's health and to ensure that development occurs in a coordinated and efficient manner.

This Clause goes on to further state that Consent must not be granted to the carrying out of development on any land unless:

- (a) A water supply and facilities for the removal or disposal of sewage and drainage are available for that land, or
- (b) Arrangements satisfactory to the consent authority have been made for the provision of that supply and those facilities.

Under the original assessment of this application, it was considered that satisfactory arrangements had been made with respect to the removal or disposal of drainage from the subject site. As indicated elsewhere in this report, revised information has been submitted with respect to the proposal, which addressed these concerns.

Consequently, the proposed development is considered to be acceptable having regard to this clause, subject to appropriate conditions of consent.

Clause 17 - Social Impact Assessment

The scale of this development proposal does not necessitate a social impact assessment.

Clause 19 – Subdivision (General)

This clause allows subdivision to take place on the subject land with development consent. The proposal is considered to be in accordance with this clause.

Clause 35 - Acid Sulfate Soils

The subject site demonstrates Class 5 Acid Sulfate Soils in accordance with this Clause. The application was reviewed by Council's Environmental Health Section who has indicated that the proposal is acceptable in this regard.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan (NCREP) states that Council shall not grant consent to the development for residential purposes unless:

- (a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land;
- (b) it is satisfied that the proposed road widths are not excessive for the function of the road;
- (c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met;
- (d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles; and
- (e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.

The original assessment of this application by Council officers determined that whilst the proposed development was considered to be generally in accordance with the above provisions, it was not possible to determine that Council are satisfied that the density of the (future) dwellings have been maximised without adversely affecting the environmental features of the land, given that insufficient ecological information had been provided in this regard.

Subsequent to this report, Council has received additional information with respect to the ecological impacts of the proposal, with the result that Council's NRM unit has advised that the proposal is acceptable subject to appropriate conditions of consent. As such it is now considered that the proposal is in accordance with the provisions of this clause.

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

The Draft Tweed Shire Local Environmental Plan applies to this site. The draft zone is R2: Low Density Residential. The proposed subdivision is ancillary development to the established residential use on the site and is permitted with

consent as 'Multi dwelling housing'. The proposal is therefore not in contravention of the Draft LEP.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. R2 land currently zoned 2(a) is identified as Lot Size code G, which requires 450m². The proposal is generally acceptable when assessed against the Draft LEP.

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

Tweed Development Control Plan

A5 - Subdivision Manual

Tweed Development Control Plan A5 -Subdivision Manual aims to:

- Present Council's strategic plan objectives for the development of subdivisions.
- Achieve the highest quality and 'best practice' of subdivision development in the Shire
- Implement the policies and provisions of the NSW State Government in terms of seeking to achieve quality of subdivision planning and development.
- Provide guidelines and development standards for the development of subdivisions.

The subject application has been referred to Council's Development Engineer who has reviewed the subject application against the provisions of DCP A5.

The application as originally submitted did not adequately address all of the DCP A5 criteria, in particular with respect to section A5.4.5 Environmental Constraints, which contains provisions for land with risk of land slip or subsidence and section A5.4.7 Stormwater Runoff, Drainage, Waterways and Flooding, with respect to stormwater drainage. As a result, this application was recommended to be refused due to non-compliance with this DCP.

Revised information submitted has been assessed against the provisions of this DCP, with Council's Development Engineering Unit indicating that the proposed development would be acceptable subject to appropriate conditions of consent.

The proposed development is considered to satisfy the criteria set out in DCP A5 - Subdivision Manual and as such it is considered to be in accordance with the appropriate planning and sustainable development of the area to approve this application.

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

Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

Clause 92(b) Applications for demolition

No demolition is proposed as part of this application.

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

Tweed Shire Coastline Management Plan 2005

The subject site is not located within an area that is affected by the Tweed Shire Coastline Management Plan 2005.

Tweed Coast Estuaries Management Plan 2004

The proposed development is not within Cudgen, Cudgera or Mooball Creeks. This Plan is therefore not applicable to the application.

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

As the subject site is not located within the Cobaki or Terranora Broadwater (within the Tweed Estuary), this Plan is not considered relevant to the proposed development.

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

Flora and Fauna

This application was referred to Council's NRM Unit having regard to the vegetation removal associated with the proposal. Numerous regenerating rainforest species were recorded and include Red Kamala (*Mallotus philipensis*), Guioa (*Guioa semiglauca*), Umbrella Cheese Tree (*Clochidion sumatranum*) and Foambark (*Jagera pseudorhus*). Several trees considered suitable habitat or food source for Koalas were also recorded including Tallowwood (*Eucalyptus microcorys*), Brushbox (*Lophostemon confertus*), Pink Bloodwood (*Corymbia intermedia*) and Northern Grey Ironbark (*Eucalyptus siderophloia*).

Furthermore, two threatened flora species were recorded, as listed below.

Species	Scientific Name	No. present on site
Coolamon, Durobby	<i>Syzygium moorei</i>	2
Fine-leaved Tuckeroo	<i>Lepiderema pulchella</i>	1

Comments originally received have raised concern with regard to the potential for the development to impact upon the above threatened species as listed under the Threatened Species Conservation Act 1995. Two of the three recorded threatened flora species would have been significantly impacted upon by the proposed subdivision works, likely resulting in the demise of these trees.

A request for further information to enable proper assessment of the application from an ecological perspective was requested of the applicant, however the information received was deemed insufficient and furthermore the applicant failed to demonstrate that the development would not impact directly or indirectly on the threatened species. As such, the application was recommended for refusal at the June 2012 Council Meeting.

The applicant has subsequently submitted an amended application to address key issues raised. From an ecological perspective the amended application is considered acceptable subject to appropriate conditions of consent, including

provision of a Habitat Restoration Plan. The proposed development is therefore considered to be acceptable having regard to the flora and fauna on the site.

(c) Suitability of the site for the development

Topography

The topography on the site is undulating, with ground levels varying from 40m AHD at the highest point to 20m AHD at the lowest. Furthermore, the site is surrounded by low density residential development, with the exception of approximately 30m road frontage to Byangum Road and 25m frontage to Tombonda Road.

As a result, the development potential of the site is restricted as any change to existing geotechnical levels or stormwater drainage may have an impact on the surrounding properties. The application as originally submitted was not considered to demonstrate that there would be no adverse negative impacts on surrounding properties, and as such was not supported by Council officers.

Revised information has been submitted which addresses the geotechnical stability and stormwater drainage issues in this regard and as such the revised proposal is considered to be generally acceptable.

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

The subject application was notified for a period of 14 days from Wednesday 22 June 2011 to Wednesday 6 July 2011. During this time three submissions were received with respect to the proposal. Please see a detailed synopsis of the submissions below:

Submission No. 1: Owner of 13 Tombonda Road (Lot 88 DP253421)

This submission states that the above property currently receives stormwater run-off from the subject development site and in this regard requests protective measures from the proposal regarding stormwater.

The submission also states that proposed Lot 8 was subject to land slip previously and raises concerns that the removal of vegetation will result in further geotechnical stability issues.

There is an existing shed is on the submitter's site boundary. It is stated that removal of this shed will pose a geotechnical threat to her property as the site slopes steeply at this location.

Finally the submission queries what is to happen to an underground fuel and storage tank adjacent to the shed, if it is to be removed and if it holds any contaminants.

Applicants Response

The applicant has provided a response stating that water run-off will continue to be discharged via the existing drainage lines through an adjacent lot.

It is further stated that the applicant has provided a geotechnical report which identifies potential impact mitigation measures. It is indicated that these measures would be formalised through the 'Construction Certificate' application.

The existing shed is not to be removed as part of this application. The applicant refers to a site contamination assessment submitted as part of the application in relation to the removal of the underground fuel tank which indicates that

remediation is not required. Further details with respect to this are to accompany the 'Construction Certificate' application.

Updated Council Response

Through the assessment of the original application, it was considered that the applicant had adequately addressed the above concerns with the exception of stormwater drainage.

Subsequent to this meeting the applicant has submitted revised further information and agreed for aspects of the proposal to be conditioned by Council. Of particular relevance to the above property is the condition of consent requiring that the applicant '*discharge stormwater from proposed Lot 5 via controlled sheet flow and be distributed via level spreaders over a wide and even area*', as proposed lot 5 adjoins the objectors property.

Council officers are now satisfied that the proposed development is acceptable having regard to the main concerns relating to the original assessment on the application, including stormwater drainage.

This revised information was placed on Councils website under the 'DA Tracker' tool, with the objector made aware of this and requested to provide any comment with respect to the amended information. No further comment has been received with respect to the proposal.

Submission No. 2: Owner of 9 Tombonda Road (Lot 86 DP253421)

This submission provides some general information relating to the development history in the area and some geotechnical stability issues affecting the above property. Three grounds of objection to the proposed development have been provided. These are:

Stormwater

The objector has concerns that the proposed development works will impact upon the volumes of stormwater which currently flow through his land and has concerns regarding the legal status, capacity and maintenance of this drainage system.

Subsurface drainage

The objector is concerned that subsurface drainage, which has previously been identified as a contributing factor to instability has not been addressed by the Development Application.

Excess fill

The objection states that the surcharge of fill on the slope above the objectors' property exacerbates the problems.

Applicants Response

The applicant has provided a response stating that water run-off will continue to be discharged via the existing drainage lines through an adjacent lot.

It is further stated that the applicant has provided a geotechnical report which does not identify significant instability issues.

Updated Council Response

Council has received revised information with respect to this proposal, including the removal of one allotment, which was to adjoin the above objectors property.

As outlined elsewhere in this report, Council officers are now satisfied that the proposed development is acceptable having regard to the main concerns raised above, including stormwater drainage and geotechnical stability.

As with 13 Tombonda Road, particular relevance to the above property is the condition of consent requiring that the applicant '*discharge stormwater from proposed Lot 5 via controlled sheet flow and be distributed via level spreaders over a wide and even area*', as proposed lot 5 adjoins the objectors property.

This revised information was placed on Councils website under the 'DA Tracker' tool, with the above objector made aware of this and requested to provide any comment with respect to the amended information. No further comment has been received with respect to the proposal.

Submission No. 3: Owners of 180 Byangum Road (Lot 1 DP626198)

This submission raises objections to the proposed development, in particular proposed Lot 6 & 8.

Lot 6 - It is stated that a 900mm side setback would impose a restriction to the pedestrian access of the objectors' property.

Lot 8 - It is requested that any building situated on this lot is situated as far from the objectors lot as possible and be limited to a single storey development. It is noted that the objectors are concerned that their solar hot water system be impacted by future development in this area.

It is noted generally that anecdotal evidence suggests that these lots may not be suitable for housing due to large amounts of sawdust and woodchips dumped as fill on these areas.

Applicants Response

The applicant has indicated that a 900mm future dwelling setback is the minimum required under current standards. Furthermore, it is asserted that the objectors enjoy no lawful pedestrian access over the subject development site to their property.

With respect to a future dwelling on proposed Lot 8, it is stated that any dwelling will be required to comply with DCP A1 with respect to siting.

The applicant has indicated that the Geotechnical report does not identify sawdust issues as raised in the submission.

Council Response

The issues raised in this submission were considered to be adequately addressed by the applicant previously and the matters raised above did not form part of the recommended refusal reasons at the June Council meeting. These matters remain satisfied from a Council officer perspective.

(e) Public interest

The proposed development, as amended, is not considered to be in conflict with the general public interest in the locality. The proposed development reflects the provisions of the relevant legislative and Council development standards and is considered to be generally in the public interest, having regard to the zoning and intended use of the land.

OPTIONS:

1. That Council approves the development application with conditions; or
2. That Council refuses the development application, providing reasons for the refusal.

The Council officers recommend Option 1.

CONCLUSION:

The proposed seven lot subdivision is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.

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.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
