

**TITLE:** [PR-CM] Development Application DA18/0133 for a 72 lot Subdivision (Seabreeze Estate Stages 18A and 18B) at Lot 1747 DP 1215252; Seabreeze Boulevard Pottsville

**SUBMITTED BY:** Development Assessment and Compliance

mhm



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

- 2 Making decisions with you
- 2.1 Built Environment
- 2.1.2 Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:** **Provider**

#### SUMMARY OF REPORT:

Council has received a development application for a 72 lot residential subdivision of Lot 1747 DP 1215252 being the 'Potential School Site' pursuant to Section B15 Seabreeze Estate, Pottsville. The subdivision proposes 69 residential allotments, 2 public reserves and 1 drainage reserve.

The application was notified for a period of 30 days from Wednesday 14 March 2018 to Friday 13 April 2018. Council received 27 submissions with 22 objecting to the proposal and 5 in support of the proposal.

The application was referred to the Department of Education (now referred to as *School Infrastructure NSW*) for comment, the Department advised that there was not sufficient demand for another government primary or secondary school and that the Department does not wish to acquire the subject site for a school. However, the Department is interested in acquiring a site in the Dunloe Park Estate through a Voluntary Planning Agreement. The advice from the Department states;

*"In relation to existing facilities, it is noted that a construction project is underway at Pottsville Beach Public School to deliver permanent accommodation to meet long-term enrolment demand. Secondary students from Pottsville are zoned to Kingscliff High School which has 17 surplus teaching spaces in 2018.*

*The Department of Education has been working toward the completion of an overarching strategy for educational facilities within the Tweed. This includes a detailed review of demographic forecasts and existing assets. Although the strategy has not been completed, our work to date supports previous advice that the department does not wish to acquire the school site identified through Council's Development Control Plan.*

*Our discussions with the proponent for Dunloe Park Estate have indicated that a school site will be identified which will be acquired through the Voluntary Planning Agreement provisions as part of the rezoning process.”*

Council officers were contacted by non-government educational provider stating that they offered to purchase the site based on a value provided by an independent land valuer based as a school site. The landowners did not accept the offer as they are seeking a value based on a residential development potential.

The application is integrated development under the Rural Fires Act 1997 and the Water Management Act 2000. The NSW Rural Fire Service and Water NSW have provided general terms of approval.

The NSW Planning and Environment advised that as a waiver under SEPP 71 was provided under a previous Development Application DA15/0422 on 2 June 2015 for a 65 lot subdivision on the same site, the Department will not be issuing another waiver.

The application was referred internally with the following units requesting further information; Water Unit, Development Engineering Unit, Natural Resource Management Unit and Recreational Services Unit. The request for further information has not been issued to the applicant, as the application is not consistent with Council's Development Control Plan which identifies the site as a potential school site and is recommended for refusal.

#### **RECOMMENDATION:**

**That Development Application DA18/0133 for a 72 lot subdivision (Seabreeze Estate Stages 18A and 18B) at Lot 1747 DP 1215252; Seabreeze Boulevard Pottsville be refused for the following reasons:**

- 1. The proposal is not consistent with Section B15 of Council's Development Control Plan, which identifies the site as a potential school site; and**
- 2. The proposal is not consistent with Section B21 of Council's Development Control Plan, which identifies the site as a potential school site**

**REPORT:**

**Applicant:** Newland Developers Pty Ltd  
**Owner:** Altitude Lifestyle Pty Ltd  
**Location:** Lot 1747 DP 1215252; Seabreeze Boulevard POTTSVILLE  
**Zoning:** R2 - Low Density Residential  
**Cost:** \$2,400,000

**Background:**DA15/0422

Council has previously received and determined a development application for a 65 lot residential subdivision on this site. The development application referenced DA15/0422, was refused at Council's Planning Committee meeting on 1 October 2015.

The applicant lodged a Class One Appeal, which was dismissed by the court on 24 January 2017.

Council Meeting dated 14 February 2013

It is noted that Council resolved the following at the Council Meeting dated 14 February 2013:

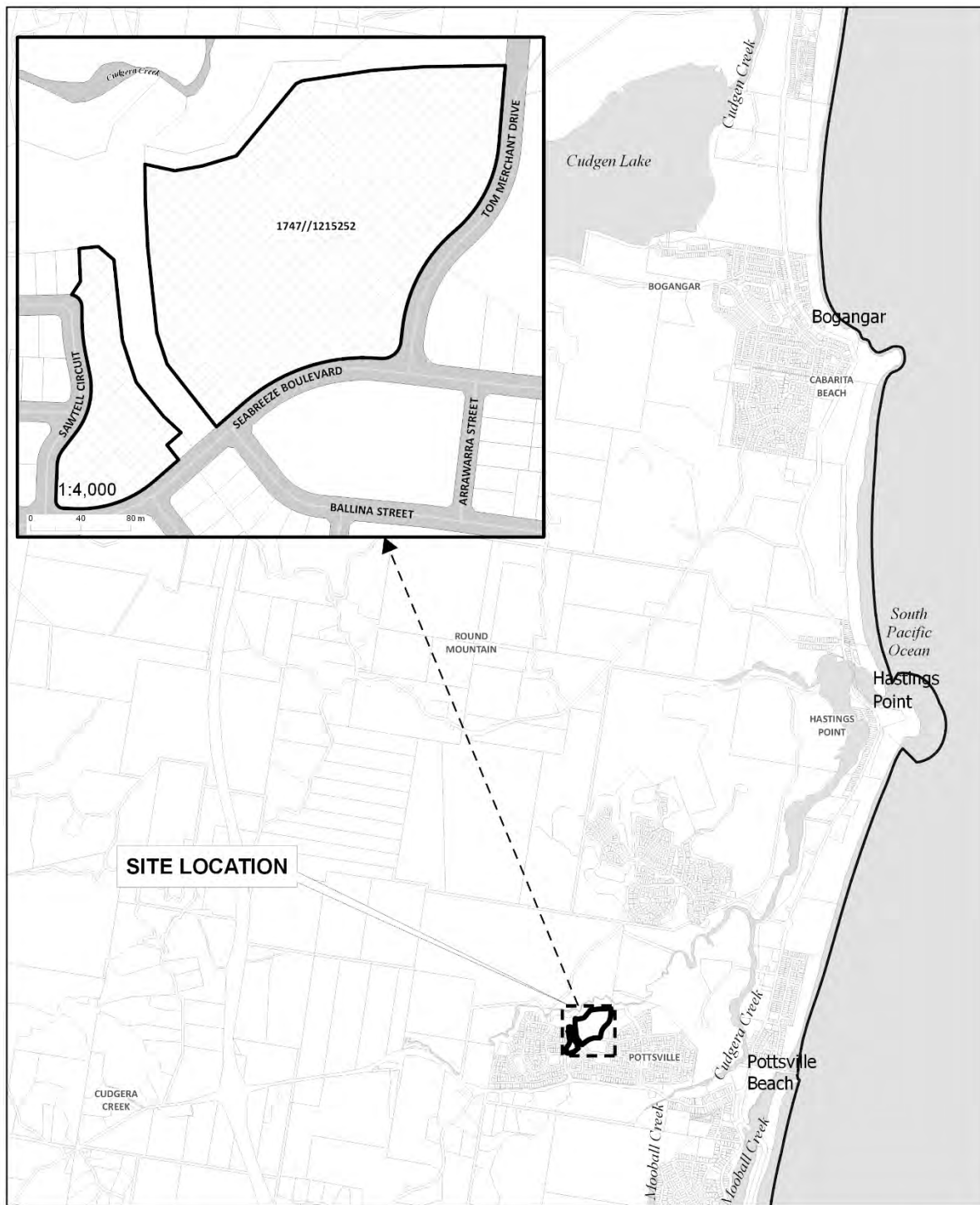
1. *Receives and notes the further advice received from NSW Department of Education and Communities that the site is not required for departmental education purposes at this time; and*
2. *Receives the proponent's request to amend the Development Control Plan thereby retaining the existing Section B15 of the Tweed Development Control Plan; and*
3. *Reviews the education infrastructure strategies and controls contained within Tweed Development Control Plan, Section B21 Pottsville Locality Based Development Code and this be undertaken as part of the Planning Reform Unit's general maintenance program endorsed in its Work Program 2012-2015, and*
4. *Notes the earmarking of the 'Potential Future School Site' in the existing Section B15 to be reviewed, if requested, no earlier than 2018.*

DA18/0133 (The Current Application)

The application was referred internally with the following units requesting further information; Water Unit, Development Engineering Unit, Natural Resource Management Unit and Recreational Services Unit. The request for further information has not been issued to the applicant, as the application is not consistent with Council's Development Control Plan which identifies the site as a potential school site and is recommended for refusal.

The application was notified for a period of 30 days from Wednesday 14 March 2018 to Friday 13 April 2018. Council received 27 submissions with 22 objecting to the proposal and 5 in support of the proposal.

The proposed subdivision is recommended for refusal, as it has been previously demonstrated that there is a population demand for a school within the locality and an alternative school site has not been formalised.

**SITE DIAGRAM:****Site Plan**

1747 DP 1215252  
Seabreeze Boulevard POTTSVILLE

0 0.5 1 Km  
1:40,000



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Coordinate System - MGA Zone 56  
Datum - GDA 94

Cadastre: 18/07/2018  
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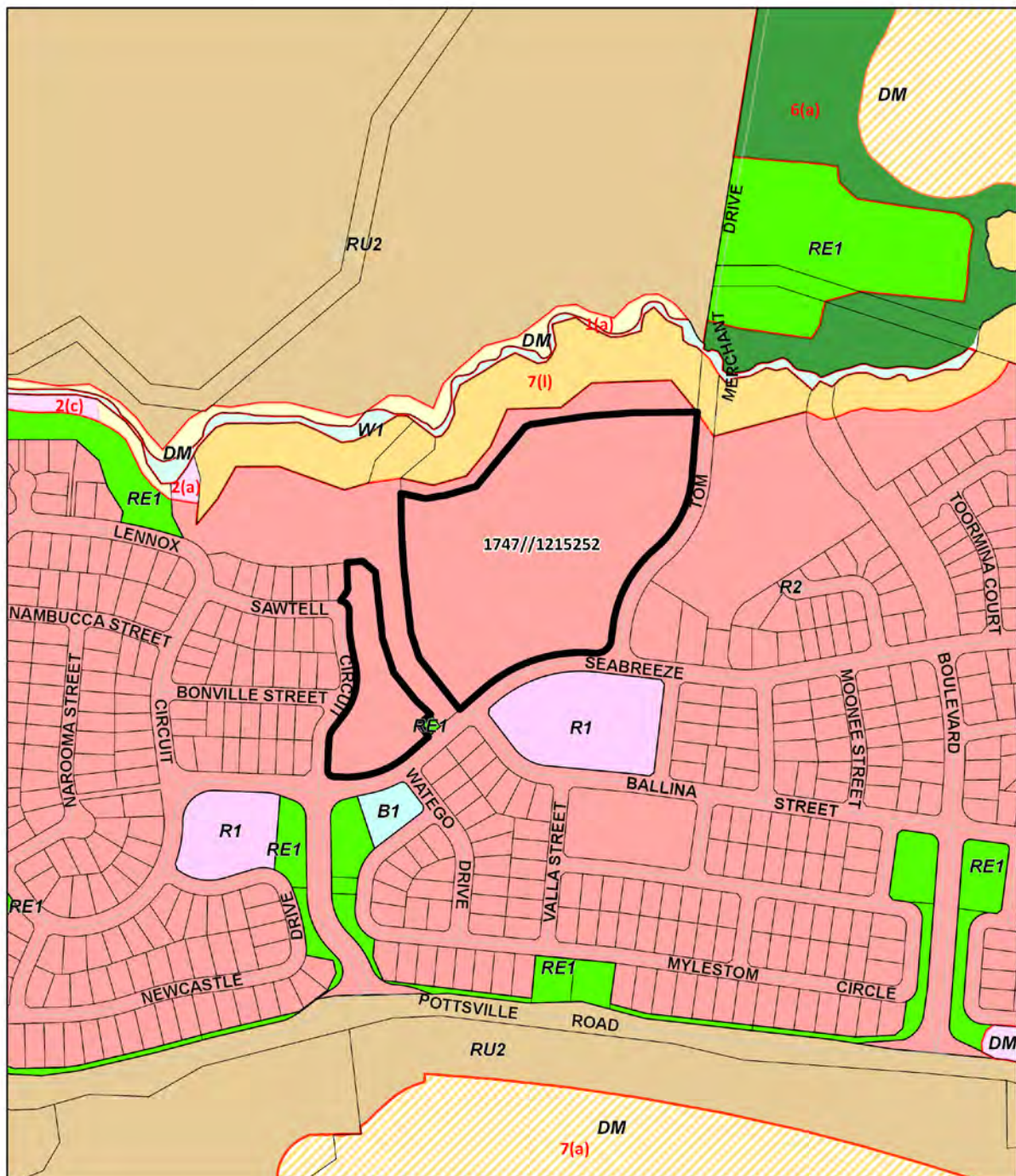
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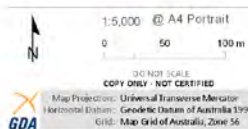
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Date Printed: 01 August, 2018

**ZONING MAP:**

Subject Land Tweed Local Environmental Plan 2014

- Subject Land
- B1 Neighbourhood Centre
- R1 General Residential
- R2 Low Density Residential
- RE1 Public Recreation



### Site Plan - Local Environmental Plan

1747 DP 1215252  
Seabreeze Boulevard POTTSVILLE

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**AERIAL PHOTOGRAPHY:**

1:5,000 @ A4 Portrait  
0 50 100 m

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

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**Aerial Photography April 2018**

1747 DP 1215252  
Seabreeze Boulevard POTTSVILLE

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Author: S Scott - GIS

Data Printed: 01 August 2018



**DEVELOPMENT/ELEVATION PLANS:**



**Considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979:**

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

**Tweed Local Environmental Plan 2014**

Clause 1.2 – Aims of the Plan

Insufficient information has been provided to enable determination that the development complies with the aims of the plan.

Clause 2.3 – Zone objectives and Land use table

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed subdivision is permissible with consent and is considered consistent with the zone objectives as it will provide housing needs for the community.

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

A minimum lot size requirement of 450m<sup>2</sup> is required for the subject site and development. The proposed subdivision complies with the minimum lot size requirement.

Clause 4.3 - Height of Buildings

A nine metre building height applies to the subject site. No buildings are proposed as part of this application.

Clause 5.5 – Development within the Coastal Zone

The site is located 1.5km from the coastal foreshore and does not have frontage to the foreshore, as such the proposal is considered not to be in conflict with the clause. The following comments are made in response to the considerations within the clause:

- (2) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*
  - (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
    - (i) *maintaining existing public access and, where possible, improving that access, and*
    - (ii) *identifying opportunities for new public access, and*

The proposal will not alter the existing public access to and along the coastal foreshore, as the site does not have frontage to the foreshore. No opportunity exists to provide new public access to the foreshore.



- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
  - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
  - (ii) *the location, and*
  - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The development is suitable for the locality and is compatible with the character of the area.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
  - (i) *any significant overshadowing of the coastal foreshore, and*
  - (ii) *any loss of views from a public place to the coastal foreshore, and*

The proposal will not create any detrimental impact on the amenity of the coastal foreshore, particularly in the form of overshadowing or loss of views from a public place.

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

The scenic qualities of the NSW coast will remain unchanged.

- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*
  - (iii) *water quality of coastal waterbodies, and*
  - (iv) *native fauna and native flora, and their habitats, can be conserved, and*

The proposal will not impact on biodiversity and ecosystems.

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

The proposal will not create a cumulative impact on the coastal catchment. No significant adverse impacts on the environment are expected.

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
  - (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

The proposed development will not impede the physical, land-based right of access of the public to or along the coastal foreshore due to the large separation of 1.5km between the proposal and the coastal foreshore.

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

The proposal is to be connected to Council's reticulated sewerage system.

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

The proposal is to be connected to Council's reticulated stormwater system.

- (d) *the proposed development will not:*
  - (i) *be significantly affected by coastal hazards, or*
  - (ii) *have a significant impact on coastal hazards, or*
  - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development will not be significantly affected by coastal hazard or significant impact on coastal hazards or increase the risk of coastal hazards in relation to any other land due to the large separation of 1.5km between the proposal and the coastal foreshore.

#### Clause 5.10 - Heritage Conservation

The site is not identified as being an area of heritage significance or heritage conservation.

#### Clause 5.11 - Bush fire hazard reduction

Bushfire hazard reduction is not proposed in conjunction with this application. The application is integrated development with the NSW Rural Fire Service as the proposal is for the subdivision of land for residential purpose that is bushfire prone. The Department provided general terms of approval dated 12 April 2018.

#### Clause 7.1 – Acid Sulfate Soils

The site is identified as having class 3 Acid Sulphate Soils, with works relating to the installation of services might be located greater than 1 metre below the natural ground level. The application provided an Acid Sulfate Soil Management Plan, which was reviewed by Council's Environmental Health officer. Appropriate conditions have been recommended if the application were to be supported.

#### Clause 7.2 - Earthworks

The proposed earthworks are minor and considered not to have a detrimental impact on the site and neighbouring property. The proposal is considered consistent with the clause.

#### Clause 7.3 – Flood Planning

The site is identified as being affected by flooding with small portions of the site affected by the Q100 requiring a flood level of 3.1m AHD and minimum floor level of 3.6m AHD. However, the majority of the site is not affected by the Q100 but large portions of the site are affected by the Probable Maximum Flood level.

It is noted that previous approval DA13/0577 required the area subject to this application to be filled to a level of 3.1m AHD, therefore this development application would also be required to be filled to the designed flood level of 3.1m AHD. Flooding is considered not to be a constraint for the proposal due to the above, however, a suitable condition would be recommended to ensure that the site is filled to 3.1m AHD, should the application be approved.

#### Clause 7.4 - Floodplain risk management

Council officers have requested further information with regards high level flood evacuation route.

#### Clause 7.5 - Coastal risk planning

The site is not land identified as Coastal Risk.

#### Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land. Council officers have requested further information with regards to stormwater quality.

#### Clause 7.10 - Essential Services

Reticulated water, sewer, power and telephone services will be provided to the site to create the proposed lots. Council's Water and Wastewater Engineer requires further information in relation to water and sewer infrastructure in order to finalise their assessment.

### **North Coast Regional Plan 2036 (NCRP)**

The site is identified under the plan as an urban growth area. The proposal is considered to be consistent with the plan.

### **State Environmental Planning Policies**

#### SEPP No. 14 - Coastal Wetlands

An area mapped as SEPP 14 wetland is located approximately 300m to the north and approximately 330m to the south of the subject site. The proposed subdivision is therefore not considered to raise any implications in respect of SEPP 14.

The policy was repealed on 2 April 2018.

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

The aim of SEPP 55 is to provide a State wide planning approach to the remediation of contaminated land and to require that remediation works meet certain standards and conditions.



Council's Environmental Health Officer has reviewed the application and advised that the application includes correspondence from Gilbert & Sutherland, Dated 5 August 2013 that concludes *"following extensive prior investigation the proposed subdivision area would be free from contamination. In accordance with Clause 7 of the SEPP 55 – Remediation of Land, the site is suitable for the proposed uses"*.

It is considered the prior investigations and current statements provided have been prepared by a suitably qualified and experienced consultant and no further considerations are required. On this basis no further consideration is required in respect to contaminated land.

### SEPP No 71 – Coastal Protection

This Policy aims to, amongst other things, protect and manage the natural, cultural, recreational and economic attributes of the NSW coast; protect and improve existing public access to and along the coast; to protect and preserve Aboriginal cultural heritage; to ensure visual amenity of the coast is protected; to protect beach environments and beach amenity as well as coastal vegetation and the marine environment; to manage the coastal zone in accordance with the principles of ecologically sustainable development; to ensure the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area; and encourages a strategic approach to coastal management.

The site is located within a 'sensitive coastal location' due to the location being within 100m of the mapped high water mark of Cudgera Creek. As the subdivision of land is located within a residential zone a Master Plan or waiver is required by Clause 18(1) of the SEPP. The Department of Planning and Environment waived the need for a Master Plan.

The proposed development will not alter the existing public access arrangements to the coastal foreshore or along Cudgera Creek. The proposed development would be unlikely to have any adverse impact on the amenity of the coastal foreshore in respect of overshadowing or loss of views as the site is located approximately 1.5km from the coastal foreshore.

The site has been previously cleared of substantial vegetation and has been highly disturbed. It is therefore considered that the proposal would be unlikely to impact on Threatened Species, wildlife corridors or habitats. Further, the site does not comprise any marine vegetation. Conditions will be applied to any Development Consent in relation to sediment and erosion controls to ensure no impact to water quality. As the site has been previously cleared and filled it is unlikely that the proposal would impact on matters relating to the conservation and preservation of items of heritage or archaeological significance. It is generally considered that the proposal is in accordance with the provisions of the SEPP.

The policy was repealed on 2 April 2018.

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

### State Environmental Planning Policy (Coastal Management) 2018

At the time of lodgement (21 February 2018), the Coastal Management SEPP 2018 was in draft form and commenced 3 April 2018.

## **SEPP (Coastal Management) 2018**

The subject site is mapped as being within the Coastal Environment Area and Coastal Use Area.

The objectives of each clause are as follows:

### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

### **14 Development on land within the coastal use area**

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
    - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) *Aboriginal cultural heritage, practices and places,*
- (v) *cultural and built environment heritage, and*
- (b) *is satisfied that:*
  - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

The proposal is considered to be consistent with the objectives of each clause.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

Council's Development Engineer assessed the proposal and has requested further information in order to determine the application in relation to the following items:

- 1) Lots 1815 & 1816 to be amalgamated – prohibited location of driveway  
Proposed Lot 1815 does not comply with AS 2890.1 – Off street car parking (prohibited locations of access driveways) and is to be combined with proposed Lot 1816 to ensure a compliant driveway can be constructed.
- 2) Driveway compliance (Lot 1856)  
Demonstrate that proposed Lot 1856 can provide a driveway that complies with AS2890.1 – Off street car parking (prohibited locations of access driveways).
- 3) Driveway compliance (vehicular access)  
Demonstrate that vehicular access can be provided in accordance with Tweed Shire Council's standard drawing SD017 Driveway access to properties fronting roads with kerb and gutter for proposed allotments 1815, 1816, 1817, 1818, 1854, 1855, 1856 & 1857. The detail is to include a gradient transition of 12.5% from the 2.5% gradient across the road reserve.
- 4) Lot layout amendments – 3m x 3m truncations  
The plans are to be amended to provide 3m x 3m truncations on proposed Lots 1818, 1853 and 1854 for sight distance requirements as specified in DCP A5 – Subdivision Manual.
- 5) Cul-de-sac cross section  
The Road 4 cul-de-sac cross sectional details as detailed in the engineering report does not reflect the width of the road or cul-de-sac as per the road layout plan and is to be amended for clarity.



Council's Traffic Engineer raised no concerns regarding the proposal, from a traffic generation and sightline perspective.

### A3-Development of Flood Liable Land

The site is identified as being affected by flooding with a design flood level of 3.1m AHD and the Probable Maximum Flood level.

It is noted that previous approval DA13/0577 required the area subject to this application to be filled to a level of 3.1m AHD, therefore this development application would also be required to be filled to the designed flood level of 3.1m AHD. Flooding is considered not to be a constraint for the proposal due to the above, however, a suitable condition would be recommended to ensure that the site is filled to 3.1m AHD, should the application be approved.

All residential allotments shall be provided with a high level flood evacuation route in accordance with A3. The submitted plans are limited to the subject site only and do not verify that a high level evacuation route is provided. Therefore additional information is required.

### A5-Subdivision Manual

Council's Development Engineer assessed the proposal and has requested further information in order to determine the application in relation to the following items:

#### Geotechnical advice

The Morrison geotechnical report estimates up to and excess of 100mm of settlement will occur for future houses one year after completion of the dwelling. It is considered unreasonable to expect future home owners to require house foundations to be designed for such excessive settlements on a new green field subdivision site.

Further geotechnical advice and recommendations are to be provided on how to significantly reduce the settlement and ensure future home owners are not burdened with the responsibility of additional costs for dwelling and foundation construction due to such settlements.

#### Retaining wall detail

- a) Survey detail is to be provided to show the exact location and height of the existing rock retaining walls located along the northern and eastern boundaries of the subject land Lot 1747 DP 1215252. DCP A5 Subdivision Manual requires all retaining walls and batters to be located on land belonging to the lot owner.
- b) Geotechnical and structural certification from suitably qualified engineer/s for the existing retaining walls is required.
- c) Provide evidence of any approvals for the retaining walls.

### A11-Public Notification of Development Proposals

The application was notified for a period of 30 days from Wednesday 14 March 2018 to Friday 13 April 2018. Council received 27 submissions with 22 objecting to the proposal and 5 in support of the proposal.

#### A13-Socio-Economic Impact Assessment

The threshold trigger for the preparation of a Social Impact Assessment (SIA) report for a subdivision (under the guidelines of Section A13 of the Tweed DCP 2008) is 50 lots. The proposed subdivision comprises 72 residential lots and accordingly a SIA has been prepared by the applicant. The SIA considers that the proposal would be consistent with Section B 15 - Seabreeze Estate and would result in a positive social and economic outcome.

It is considered that the proposal is not consistent with the provisions of Section B 15 - Seabreeze Estate, as the subject site is identified as a future school site. The proposal would be likely to create an adverse social impact due to the inconsistency of Section B 15 – Seabreeze Estate and the number of submissions received objecting to the proposal.

#### A15-Waste Minimisation and Management

A Waste Management Plan has been provided with the submitted details. It is considered that the proposal does not raise any specific concerns in respect to waste management. Council's Waste unit advised that the submitted WMP is suitable for the proposal.

#### B15-Seabreeze Estate, Pottsville

The subject site is Lot 1147 DP 115395 is identified as the 'Potential School Site' pursuant to Section B15 Seabreeze Estate. The proposal seeks to create 72 lots within the subject site and therefore is inconsistent with Section B15 of Council's Development Control Plan.

The Structure Plan shows the indicative layout for development of the estate (Map 7A as shown below) and indicates the preferred location and siting of major elements of the estate such as the potential school site. The proposal is not consistent with the Structure Plan.



**Map 7A - Structure Plan Stage 2 blue is potential school site.**

### B21-Pottsville Locality Based Development Code

The proposal is considered to be inconsistent with the code, as the code identifies the subject site within the Seabreeze Estate as one of three potential school sites. Development control requirements are provided within Section 3.5 should Council receive an application over these identified sites which do not include the provision of a school facility. Any development application is to detail, to the satisfaction of Council, the circumstances as to why a school cannot or should not be provided on the site, with respect to, but not limited to, the following criteria:

- Building and Urban Design
- Siting of the school
- Recreation Areas
- Parking and servicing
- Traffic and pedestrians
- Noise generation
- Landscaping

The application has not provided detail with respect to the above mentioned criteria. Therefore the proposal is considered to be inconsistent with Section B21.

**(a) (iia) Any planning agreement or any draft planning agreement under section 7.4**

A planning agreement does not apply to the site.

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

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

The subject site is designated as Coastal Land and therefore this clause applies. As previously detailed within this report the proposal will result in any overshadowing or restriction of public access to the coastal foreshore. The development is considered consistent with the clause.



Clause 92(1)(b) Applications for demolition

There is no demolition proposed.

Clause 93 Fire Safety Considerations

Clause 93 is not applicable to the proposed subdivision.

Clause 94 Buildings to be upgraded

Clause 94 is not applicable to the proposed subdivision.

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

**Tweed Shire Coastline Management Plan 2005**

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The subject site is not located on the coastal foreshore and is not affected by coastal hazards. As such the proposed subdivision does not negate the objectives of the plan.

**Tweed Coast Estuaries Management Plan 2004**

The subject land is located in close proximity to the Cudgera Creek however the proposal is unlikely to impact on matters relating to habitat or biodiversity values of the waterway given it does not propose any clearing of vegetation or earthworks in the immediate vicinity of the creek system. Conditions will be applied to the Development Consent in respect of sediment and erosion control, if the application was to be approved.

**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 Terranorra Broadwater (within the Tweed Estuary), this Plan is therefore not considered relevant to the proposed development.

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

Context and Setting

The proposed subdivision will provide a predominantly low density residential environment that consists primarily of detached dwellings, which is consistent with the existing context and setting of the existing built development within the Seabreeze Estate as well as the broader Pottsville locality. However, due to the site being a potential school site the proposal is considered to create a likely social impact on the locality.

Access, Transport and Traffic

The existing traffic network has the capacity to cater for the increase in traffic as a result of the subject subdivision.

### Flora and Fauna

The site is clear of vegetation except for the existing White Fig Tree which is located in the north eastern corner of the site. The proposed public reserve lot 1872 is to be designed around the White Fig Tree and dedicated to Council. Council's Natural Resource Management Unit raised no objections to the proposal in relation to vegetation removal, however Council officers have requested further information in relation to an arboriculture health assessment of the White Fig Tree.

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

### Surrounding Landuses/Development

The subject land is located within the Seabreeze Estate, a low density residential subdivision that comprises primarily detached dwellings. Due to the site being a potential school site the site is considered not to be suitable for the proposed residential subdivision.

### Topography

The site is relatively level due to previous approvals requiring earthworks. Concerns are raised in regards to settlement and the structural integrity of the existing retaining wall. Further information is required in relation to these matters.

### Tweed Coast Comprehensive Koala Plan of Management

The subject site is within the Southern Tweed Coast Koala Management Area. The site is not within a Koala Plan of Management Precinct and is not identified as containing Preferred Koala Habitat. The site is devoid of any vegetation (apart from the White Fig Tree within the public reserve) and no clearing will be required. Council's Natural Resource Management Unit did not raise any concerns with regard to the proposal and the Tweed Coast Comprehensive Koala Plan of Management. No further assessment under this Plan is considered necessary.

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

### NSW Rural Fire Service

The application required an integrated referral to the Rural Fire Service due to its siting within a bushfire protection area. A response from the RFS has been received issuing a bushfire safety authority for the subject proposal.

### Department of Primary Industries – Water

The application required an integrated referral to WaterNSW, for de-watering. The department has provided a response issuing General Terms of Approval.

### Department of Education and Communities

The application was referred to the Department of Education (now referred to as School Infrastructure NSW) for comment. The Department on 21 March 2018, advised that there was not sufficient demand for another government primary or

secondary school and that the Department does not wish to acquire the subject site for a school. However, the Department is interested in acquiring a site in the Dunloe Park Estate through a Voluntary Planning Agreement.

#### Department of Planning & Environment

The NSW Planning and Environment advised that as a waiver under SEPP 71 was provided under a previous Development Application DA15/0422 on 2 June 2015 for a 65 lot subdivision on the same site, the Department will not be issuing another waiver for this application.

#### Public Submissions Comment

The application was notified for a period of 30 days from Wednesday 14 March 2018 to Friday 13 April 2018. Council received 27 submissions in relation to the proposal, of which 22 were against with five in support of the proposal. The main issue raised in the submissions was a strong objection to the development of the potential school site for anything other than a school.

#### **(e) Public interest**

The proposal is considered not to be in the public interest.

#### **OPTIONS:**

1. Refuse the development application, subject to reasons for refusal: or
2. Support the development application in principle and request a further report and conditions to be reported to Council for determination.

Council Officers recommend Option 1.

#### **CONCLUSION:**

Taking into consideration that the proposal is inconsistent with both the Section B15 and B21 of Council's Development Control Plans and Council's resolution; no new information has been provided by the applicant to demonstrate that the use of the site should be reviewed; the number of submissions received by Council objecting to the proposal; and issues raised by units within Council, it is considered appropriate that the application be refused on the information provided to date.

#### **COUNCIL IMPLICATIONS:**

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

Corporate Policy Not Applicable

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

Not applicable

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

The applicant may lodge an appeal in the Land and Environment Court in respect of Council's determination.

##### **d. Communication/Engagement:**

**Consult-**We will listen to you, consider your ideas and concerns and keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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