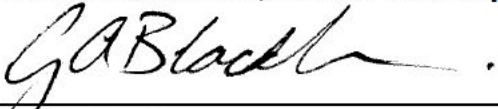


**JOINT REGIONAL PLANNING PANEL
(Northern Region)**

JRPP No	JRPP Reference Number
DA Number	259/12
Local Government Area	Coffs Harbour City Council
Proposed Development	Group Home
Street Address	[REDACTED]
Applicant/Owner	Adele Dundas Inc / North Wish Pty Ltd, c/ Geoff Smyth Consulting
Number of Submissions	Sixty three
Recommendation	Refusal
Report by	Gilbert Blackburn, Senior Development Planner 
Report date	4 July 2012

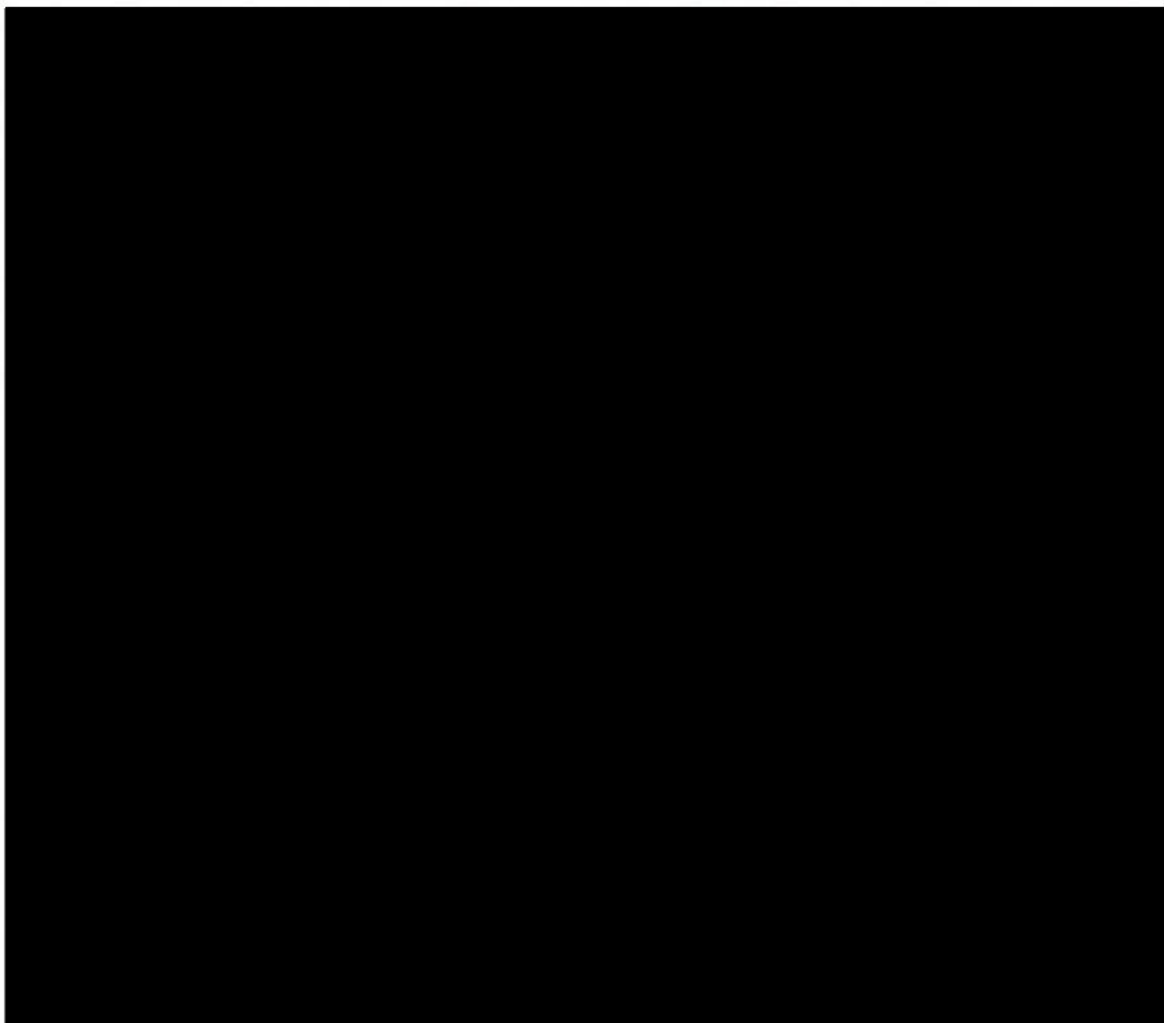
DEVELOPMENT APPLICATION 259/12 – Group Home – [REDACTED]


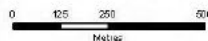
Purpose of this Report:

This report provides an assessment of Development Application 259/12 for a group home at [REDACTED].

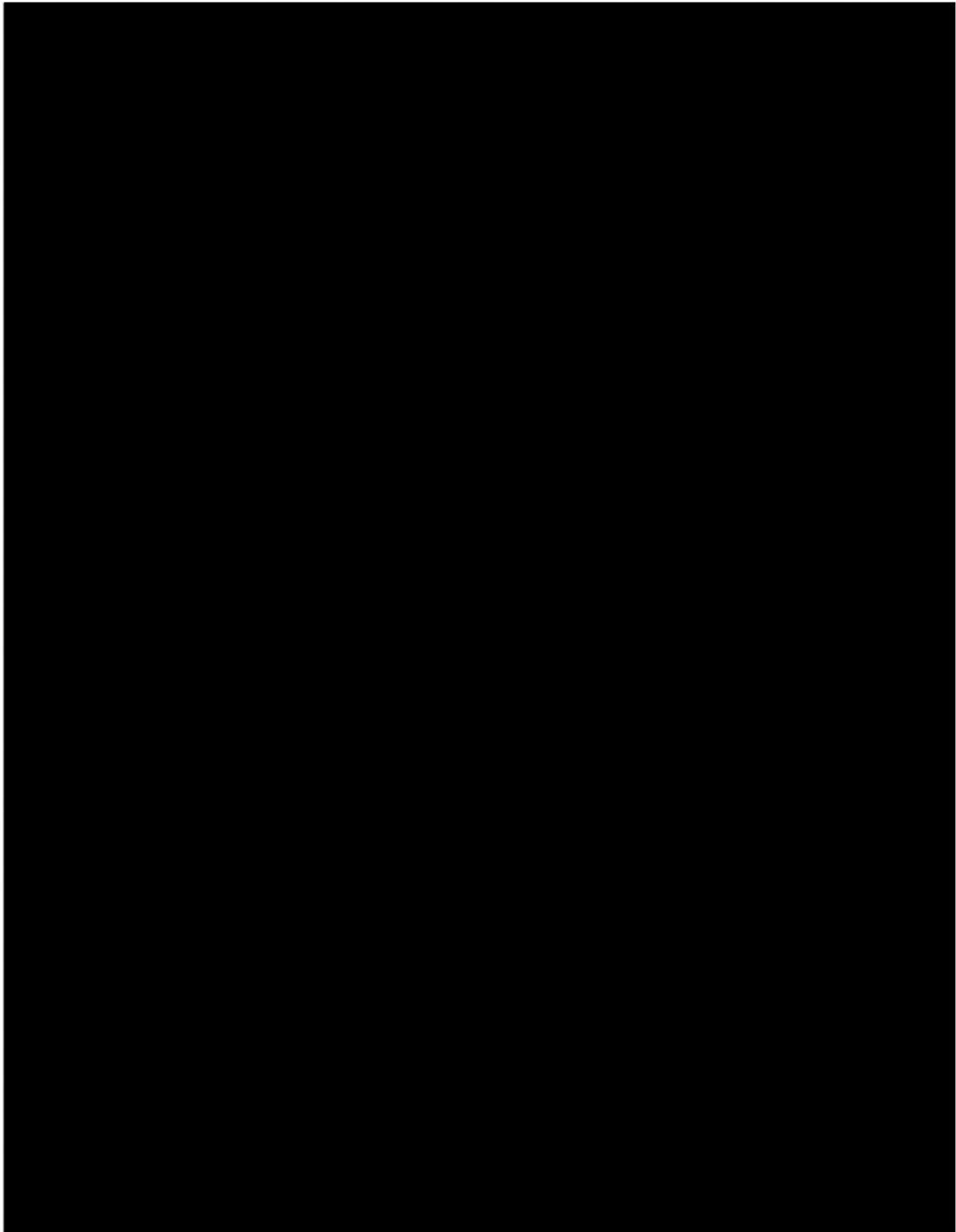
As the proposed development is for private infrastructure (group home) with a capital investment value of more than \$5 million, determination of the application is to be made by the NSW Joint Regional Planning Panel. A quantity surveyor's report has been provided which demonstrates a capital investment value of more than \$5 million for the proposed development.

Aerial Photograph of [REDACTED] at 1:15000 scale



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Aerial Photograph of [REDACTED] at 1:25000 scale

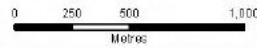


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Lot 13 DP 1161416

2009 Air Photo

Coffs Harbour Council
GIS Section - Kishohn
July 2012



GRID NTH



SCALE @ 1:25000

Coordinate System: GDA 1994 MGA Zone 58
Projection: Transverse Mercator
Datum: GDA 1994

The Site and Locality

The site is [REDACTED]. It is located approximately 1.8 kilometres north of the [REDACTED] and approximately [REDACTED]. The site is one land parcel with an area of 95.41 hectares.

The site is bound by [REDACTED]. Approximately half of the site is vegetated with the remaining half of the site being cleared land. The site falls from the highest points of the site (that [REDACTED]). There are a number of dams on the property. The property includes an existing dwelling house and existing sheds.

Access to the site is from [REDACTED] has a six metre wide sealed surface; the rest is unsealed with a 3.5 metre wide carriageway. Approximately 1.8 kilometres from the intersection with [REDACTED].

The locality consists of properties similar in topography with similar amounts of existing native vegetation. Dwellings in the area tend to be located near [REDACTED] although a number of larger properties have dwellings that are located away from [REDACTED]. There are approximately eighteen separate land parcels within one kilometre of the development site.

The Proposal

The proposed development is described as a transitional group home and ancillary dwellings and facilities. The development will be used for residential rehabilitation programs for men recovering from drug and alcohol problems. It will provide short term accommodation for persons participating in registered programs of the group home operator for periods of between three to six months. Descriptions of the operation state the following.

“The aim is to create a rehabilitation environment that is detached from the clients' former environment which also provides an opportunity to attain better social, living and essential work skills. As part of this aim, the property will be managed as an agricultural holding by those persons in the recovery process.”

The operation will have twelve full time equivalent staff in attendance. The development consists of a number of separate building precincts described as a;

- Group Home Precinct
- Staff Accommodation Precinct
- Chapel Precinct

The Group Home Precinct consists of the following;

- Accommodation building of two storeys with twenty bedrooms (ten bedrooms per floor), separate communal lounge areas and laundries. Each bedroom contains two beds, wardrobes, a bathroom and facilities. The accommodation building is approximately 900 m² in area.
- Administration building of two storeys containing computer room, group meeting room, three interview rooms, lounge, smaller meeting room, store, laundry and toilet facilities at lower ground level with dining room, lounge, conference room, kitchen, reception, offices and administration area. The administration building is approximately 1270 m² in area.

- An exercise pavilion of two storeys including gymnasium type facilities, including weights and program rooms, pools and shower and change rooms. The exercise pavilion is approximately 625 m² in area.
- Covered communal gathering area, nine car parking spaces, loading/unloading area.
- Existing single storey dwelling house to be utilised for visitor accommodation and administration of the farm operation.

The

The

The development application originally proposed a Recreation Precinct but this component of the development has been withdrawn as it was located over a crown road and could not be considered without the consent of the crown.

Consultation:

The application has been through two periods of community consultation. For the community consultation period from 20 January 2012 to 2 February 2012, ten submissions were received. For the community consultation period from 29 March 2012 to 20 April 2012, fifty-three submissions were received.

The application was referred to the NSW Rural Fire Service as an integrated development referral requesting general terms of approval. The Service has provided general terms of approval subject to a number of conditions. The application was also referred to the NSW Department of Primary Industries - Office of Water and the NSW Police Service.

The content of government department responses is considered in the Section 79C evaluation as appended to this report. These government departments have not raised any objections to the proposed development.

During the assessment period of the application Council obtained legal advice on the permissibility of the proposed development. The advice was that the development as proposed was not permissible. Council then wrote to the applicant advising that the proposed development is not considered permissible and requested the applicant's intentions with respect to the development application. The applicant responded with two separate "legal opinions" that the development as proposed is permissible. These advices were provided to Council's legal advisor. The response was that their assessment on permissibility of the development was not changed by the legal advices of the applicant. This issue of permissibility is addressed in detail in the Issues section of this report.

Statutory Requirements:

- **Section 79C Evaluation:**

Section 79C of the Environmental Planning and Assessment 1979, specifies the matters which a consent authority must consider when determining a development application. The consideration of matters is limited in so far as they must be of relevance to the particular application being examined.

The section 79C evaluation is appended to this report and provides a detailed assessment of the application.

- **Relevant Statutory Instruments:**

The following environmental planning instruments are relevant to assessment of this application.

- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Building Sustainability Index: Basix) 2004*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy No 55 - Remediation of Land*
- *State Environmental Planning Policy - North Coast Regional Environmental Plan*
- *State Environmental Planning Policy (Rural Lands) 2008*
- *Mid North Coast Regional Strategy*
- *Coffs Harbour City Local Environmental Plan (LEP) 2000*

Each of these statutory instruments is considered in detail in the Section 79C assessment appended to this report.

The following development control plans are also relevant for assessment of the application.

1. *Rural Lands Development Control Plan*
2. *Waste Management Development Control Plan*
3. *Access and Mobility Development Control Plan*
4. *Notification Development Control Plan*
5. *Off Street Car Parking Development Control Plan*
6. *Nana Glen-Bucca Development Control Plan*

A full assessment of each of these plans is considered in the Section 79C assessment appended to this report.

Issues:

The issues provided in this section of the report are a combination of matters which are considered to be core to statutory considerations in assessment of the application and also those concerns that have been raised a number of times in public submissions. It does not address all issues raised in submissions. A list of all matters raised in submissions is provided in a separate appendix to this report.

- **Permissibility**

Permissibility is a statutory matter. If a development is not permissible it cannot be approved. For assessment on permissibility, it is necessary to divide the components of the development proposal up because of the manner in which the development application has been made. The group home precinct of the development will be considered first followed by ancillary or incidental development.

Group Home Precinct

Both *Coffs Harbour Local Environmental Plan 2000* and *State Environmental Planning Policy (Affordable Rental Housing) 2009* contain provisions relating permissibility of the proposed development. In this case the provisions in the state environmental planning policy must be considered over the provisions contained in the local environmental plan because of the hierarchy of a state policy over a local environmental plan and because of provisions within the state policy itself. The state policy adopts the definitions contained within the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*.

The relevant definition is;

Group Home (Transitional) or Transitional Group Home means a dwelling:

- (a) *that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) *that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.*

To be permissible the proposed use and development must meet a permissible use for the zone. If not, it is a prohibited use and cannot be approved.

Examination of the proposed use and its permissibility is a process known as characterisation. It requires consideration of what is proposed in the development application as a matter of fact. It is then necessary to analyse those facts to determine the actual purpose and what is actually being carried out and to then determine the appropriate designation of that purpose.

The plans provided with the application show the group home precinct of the development to comprise two separate buildings; the 'accommodation building' and the 'administration building'. The accommodation building shows twenty separate 'twin bedrooms', each comprising two bedrooms, wardrobes, toilet and shower, plus common lounge and laundry facilities.

The administration building includes a kitchen / dining area, laundry facilities, and also computer rooms and meeting areas. The development application states that a full time staff member is required for provision of meals to the residents.

The definition requires that the development constitutes a dwelling (or single household). Single household is not defined but is referable to a dwelling. Dwelling is defined in *Coffs Harbour City Local Environmental Plan 2000* as;

'dwelling' means a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile, whether or not used temporarily for display purposes.

The definition requires the rooms of the group home to be capable of being used as a separate domicile. This means they need their own kitchen/dining facilities; which the detached and separate accommodation building does not include. Cooking and dining can only occur in the separate 'administration building' where the kitchen and dining room is located. A full time staff member is to be used for provisions of meals to the residents.

It is considered that the proposed 'group home precinct' component does not constitute a dwelling as required by the group home definition under *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

The development is considered more appropriately characterised as a Boarding House which is a use defined under *Coffs Harbour City Local Environmental Plan 2000*. *State Environmental Planning Policy (Affordable Rental Housing) 2009* includes a definition for boarding house but this policy has no affect on the permissibility of a boarding house for this site.

'Boarding House' means a building or place:

- (a) at which accommodation, meals and laundry facilities are provided to the residents of the building or place, and
- (b) which is not licensed to sell liquor within the meaning of the *Liquor Act 1982*, and
- (c) which is not a motel, but does not include a bed and breakfast establishment.

In the context of the development application plans and the description of the use in the application, the layout and use of the 'group home precinct' are such that accommodation is provided, meals are provided, and communal laundry facilities are provided, as required by the boarding house definition (Part (a)). Parts (b) and (c) of the definition are not relevant. There is no requirement under the boarding house definition for the "building or place" to form or constitute a dwelling. It is considered that the proposed development meets this definition of boarding house.

Under *Coffs Harbour City Local Environmental Plan 2000*, boarding houses are prohibited in the Rural 1A Agriculture Zone.

Ancillary and Incidental Uses

The application is made on the basis that the accommodation parts of the development (within the main group home precinct building) are the dominant use, and that all other components of the development are permissible as ancillary or incidental components to this main use.

This means that, for this development, the following components are argued to be ancillary or incidental;

- The two separate staff accommodation dwellings
- The administration wing
- The existing dwelling to be retained as visitor accommodation.
- The chapel building
- The exercise pavilion

The concept of ancillary or incidental development is a legitimate permissibility argument but whether or not a particular part of a development is ancillary (or not) is a question of scale and degree.

Where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used.

The consideration of ancillary parts of a development is particularly important where, under a normal assessment of permissibility, the 'ancillary components' would be a prohibited use.

The separate staff accommodation dwellings and existing dwelling to be retained would be prohibited as 'multi unit housing' (not permissible in the zone). The administration wing would be prohibited as an 'office premises' (not permissible in the zone). The chapel building could be permissible in the zone as a 'place of worship'. The exercise pavilion could be permissible as a 'recreation facility'.

If any of the proposed ancillary parts are not ancillary but are independent, then those parts should be considered separately as independent uses in their own right.

Separate staff accommodation dwellings

The staff accommodation dwellings will be erected some distance from the group home accommodation. These parts of the development are not considered subservient to, or dependent upon, the primary purpose but independent uses in their own right given their remoteness from the group home accommodation, their size and their scale.

Uses in the administration building

The two storey administration building comprises a substantial amount of administration floor space and includes three individual offices, a large open-form office, a meeting room, a waiting area, a tea room and a conference area. This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use its own right given the size and scale of this administration area. It is difficult to conceive that the administration areas proposed in this section of the building are directly required by the residential use but rather intended for an independent purpose.

Existing dwelling house to be retained as visitor accommodation

This part of the development is located a short distance from the group home accommodation. As it is existing it is limited in its size. An argument that this part is ancillary is stronger but this argument has not been successfully made.

Chapel

This building is substantial in size, is remote from the group home accommodation and will comprise a number of features, such as a court, furniture store, utility room, water feature and sacristy (vestment room). This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use its own right given its size, scale and remoteness.

Exercise pavilion and curtilage

This is a large building comprising a plunge pool, a lap pool, a weights room, a gym store, a steam room, communal change room, toilets, showers, communal gathering space and car parking. This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use its own right given the size and scale of this building.

Summary on Permissibility

The proposed development is not considered to constitute a transitional group home in that the residential component does not form or constitute a dwelling as required by the definition of 'transitional group home' (as defined under the Standard Instrument - Principal Local Environmental Plan). Notwithstanding this, even if the main use can be appropriately characterised as a group home, it is not considered that the other components of the development proposal are ancillary or incidental to the primary, 'dominant' use. The proposed use is not permissible and, therefore, cannot be approved.

- **Isolation of the site by flooding**

Access to the site is via an existing bridge over Bucca Bucca Creek. This access will be inundated from time to time during flood events. Many submissions have expressed concern about the isolation that residents and staff of the proposed group home will be subject to during times of flood.

Flood events on [REDACTED] occur regularly. Council recently completed the [REDACTED] Flood Study that indicates the access road and bridge to the property would be impassable in a 20% ARI (Average Recurrence Interval or 5 year) flood event. Periods of isolation could be for two days or possibly longer depending on the rainfall and flood event. From the recently completed flood study the estimated 1% ARI (100 year) flood level is 80.5m AHD for the site in the vicinity of the access road and existing buildings. All proposed buildings will be located well above areas of flood inundation so residents and staff will not be subject to any immediate danger during flood events. As a flood management strategy, there is opportunity for individuals to "wait out" any flood event. This would require the provision of sufficient supplies for maximum flood events to be kept at the development site. These measures should form part of a Flood Management Strategy.

Flooding should be further addressed by planning and operational procedures to ensure safe and efficient operation. If the proposal was to proceed a detailed and comprehensive 'Flood Management Plan' for the development would be required in accordance with the SES Floodsafe toolkit for business. Flooding does not make the site unsuitable for the proposed development.

- **Traffic impacts to road users in the area**

A number of submissions have raised concern about the safety of road users that utilise roads in the area of the proposed development. They have raised both impact on road users of [REDACTED] and also users of [REDACTED]. This requires consideration of existing capacity of roads in the area and the additional traffic that the proposed development will generate.

The proposed development has been estimated as generating an additional forty daily traffic movements which is similar to the traffic generation of four dwellings. Submissions made on the application have questioned these figures. The average daily traffic volume on [REDACTED] (near the [REDACTED] intersection April 2010) is 1770 vehicles per day. A forty vehicle per day increase in traffic volumes represents an increase of 2.3% which is likely to have a negligible impact on traffic movements along [REDACTED].

The intersection of [REDACTED] and [REDACTED] has been considered in terms of its traffic function, in particular the sight distance at the intersection. It is considered that there is sufficient sight distance for adequate function of the intersection.

- **Standard of access to the site**

The existing road surface of [REDACTED] is mostly unsealed. It is not satisfactory in its current condition. The additional traffic generated by the proposed development warrants some upgrading.

The [REDACTED] access to the site also includes a crossing of [REDACTED]. The documentation provided with the development application included an engineering assessment of the adequacy of the creek crossing. The existing bridge is considered acceptable for the proposed development in its current condition.

There is some possibility that the bridge and road surface will get damaged during construction. Dilapidation reports of the road and bridge should be provided both before construction and after construction to ensure that damage that occurs during construction is rectified by the developer.

- **Safety impacts to the area from additional crime and lack of security**

A social impact assessment has been submitted with the application. The assessment considers this issue.

It concludes that, while concerns about safety and security are real, they are generally not supported by evidence that these impacts will occur and that many of these concerns are based on perception. It makes reference to a number of operational practices proposed to address these concerns including installation of CCTV throughout the development, full time supervision of residents by staff, regular drug testing of residents, a caretaker to monitor all visitors and a selection criteria for residents.

- **Compatibility with the rural area**

The proposed development is a use that is not typical for a rural area and the buildings will be large compared to many typical rural dwellings and out buildings. Notwithstanding this, the majority of the property will remain undeveloped and in a form similar to that of a typical rural property. The site is large at 95.41 hectares and this means that there is significant separation between the development and surrounding dwellings of the area. The separation distances of the property from nearby dwellings also means that amenity and visual impacts will also be very limited. Given these characteristics of the site and the locality, it is considered that the proposed development is not unsuitable with the rural area and that it can co-exist with the rural area.

- **Crown land on the property**

The site includes a Crown road reserve. The Crown reserve is not constructed in any way; it is a paper road. Use of the Crown road for any part of this development cannot occur without the consent of the Crown. The recreation precinct of this development was located over the Crown reserve. This component of the development has now been withdrawn from the application. Some submissions have also raised that the existence of the Crown reserve is a security risk based on a statement that anyone has an entitlement to access this reserve. As the Crown reserve is located within the subject property, access to the Crown reserve would require any individual to cross over the subject land. It cannot, therefore, occur without trespass. Existence of the Crown reserve does not pose a security risk to the development.

- **Flora and fauna impacts**

A flora and fauna habitat assessment report was provided with the application. It identifies the key values and constraints of the site. It lists threatened species that were recorded on site or that have potential, or are likely, to occur on the site based on available habitat. It does not form an assessment of those matters under Section 5A of the *Environmental Planning and Assessment Act*. This is a required statutory assessment to determine the environmental impact of a proposed development under Section 79C of the *Environmental Planning and Assessment Act*.

As a result there is insufficient detail provided with the application to enable Council to determine whether or not there will be a significant impact on threatened species, communities and/or populations.

Impact on platypus has been raised in a submission. The submission states that they live in Bucca Bucca Creek. The platypus is not threatened fauna so does not need to be considered under an assessment of matters under Section 5A of the Environmental Planning and Assessment Act. Notwithstanding, all buildings of the proposed development are some distance from Bucca Bucca Creek. Impact on platypus is considered extremely unlikely.

With respect to flora and fauna impacts, the development application could not be approved without further assessment being provided.

- **Social impacts**

A social impact assessment has been submitted with the application.

The assessment concludes that there will be a positive impact on those who participate in the residential therapeutic programs. Submissions provided in support of the proposal (from the Mid North Coast Area Health Service and the Mid North Coast Local Health District) also provide some evidence of community need for the proposed development.

The social Impact statement also provides the following comments in conclusion:

“The negative impacts of this development have been identified by residents living in the surrounding area. From the submissions received it is evident that this development is believed to have a negative impact on the ‘sense of place’ that residents have to the area. Residents fear that this will be lost.

The sense of place is that of a rural area and residents ‘connection’ being due to their work on the land, or because of general lifestyle reasons. The rural characteristic is quiet, peaceful and safe and residents fear that this development is in conflict with these characteristics and therefore their sense of place will be lost. The factors that lead to this loss can be either real or perceived.

The issues raised by residents have been considered and addressed. The concerns regarding safety are not supported as there has been no evidence to suggest otherwise from the operation of Adele’s other programs. The concerns however are real for the residents and should not be discounted. Therefore, careful consideration has been provided in the application and any perceived impacts are clearly responded to in reply to public submissions. The Adele facility does not change the land use of the area. It is contained on one site and operates in a self sufficient manner. On that basis, the actual social impact on the broader community is minimal.”

- **Isolation of the site from Police services and other emergency services**

There is no evidence that the staff or residents of the proposed development will have a need to access police or other emergency services that is greater than any other members of the community.

In addition, the social impact assessment submitted with the application makes reference to a number of proposed operational practices related to on-site security. These include installation of CCTV throughout the development, full time supervision of residents by staff, a caretaker to monitor all visitors and a selection criteria of residents.

- **Impact on agriculture**

A very small portion of the site is mapped under the NSW Department of Planning's Mid North Coast Farmland Mapping Project. The area is only that part of the site that adjoins Bucca Bucca Creek.

Only areas of the site that will be physically occupied by buildings of the development will be prevented from use for ongoing agriculture. The use by its nature will not affect other parts of the site for agriculture. Similarly for other properties in the area the development is unlikely to have any affect.

- **Noise and amenity impacts**

The proposed development is unlikely to produce any noise impacts greater than those typical of a large dwelling or agricultural pursuits in the area.

The recreation precinct, which was a component of the development that residents of the area expressed concern about with respect to noise, has been withdrawn from the application. The proposed development is considered acceptable with respect to noise impacts.

Other amenity impacts are unlikely due to the large size of the property and the separation of the proposed development from nearby dwellings. Some impact from additional traffic on [REDACTED] may occur but this would be mitigated to a degree by upgrading works to [REDACTED].

- **Visual amenity and lighting impacts**

While the development is significant in size and scale, the development site is approximately 1.8 kilometres from [REDACTED]. The site is also 95.41 hectares in area and the separation between the proposed buildings and other dwellings in the area is significant. An assessment of sight lines from the proposed development to nearby dwellings has been provided with the application. Few dwellings will have a direct line of site to proposed buildings of the development. As a result it is considered unlikely that visual impact from the proposed development will be unacceptable.

Plans of anticipated light spill have been provided with the application. The group home building is generally oriented to the north where the site [REDACTED] [REDACTED]). Building openings and windows are generally oriented in this direction and lighting will therefore 'spill' in this direction. Some lighting of roadways and parking areas is proposed with small bollards. Unacceptable impact, as a result of lighting to the development, is considered unlikely.

- **Success of rehabilitation programs**

Some submissions have provided opinion that the rehabilitation programs, proposed by the group home operator, provide little benefit to participants. This is a matter that is outside the assessment of a development application. The consent authority must confine itself to statutory matters required to be considered; generally those matters specified under Section 79C of the *Environmental Planning and Assessment Act*.

- **Integrated development assessment process**

Submissions made on the application have expressed a view that, as the development site contains a watercourse and the proposed chapel is within 40 metres of the watercourse, then the integrated development provisions of the *Environmental Planning and Assessment Act* should be followed.

Whether or not the integrated development assessment process is followed is a matter at the discretion of the applicant. It depends on whether the development application is submitted as integrated development. This application was submitted as integrated development for the purposes of the *Rural Fires Act*. It was not submitted as integrated development for the purposes of the *Water Management Act*. As a result the integrated development process was followed with the Rural Fire Service but not with the NSW Department of Primary Industries - Office of Water.

Notwithstanding, the application was referred to the NSW Department of Primary Industries - Office of Water for their comments on the application. They raised no objection to the proposed development as the watercourse is a 'low order' watercourse and does not run for many times of the year. No adverse environmental impact is anticipated for this component of the development.

- **Impact on Property Values**

A number of submissions state that approval of the proposal will decrease land and property values in the area and suggest that this is grounds for refusal of the application.

While decline in property values is often raised as an issue of concern with development proposals, the generally accepted assessment position is that property values should not be assessed in isolation of other potential impacts that may result from the development (such as amenity impacts). The determining authority is required to consider likely impact of a proposed development and not perceived impacts which may be a component in determining a property's value. Subsequently, the issue of property values should only be considered in conjunction with other issues of the proposal.

- **The Assessment Process**

A number of submissions have expressed a view that the correct assessment process has not been followed, that the application was not notified correctly, that insufficient documentation has been provided, that further government departments should be requested to provide comment and that a quantity surveyors assessment of capital investment value should have been provided. A consent authority's obligation, in the assessment of development applications, is specified in the *Environmental Planning and Assessment Act* and the *Environmental Planning and Assessment Regulation*.

There are no specific notification requirements for a development of this type under the Act or Regulations. There are notification requirements specified in Council's Notification Development Control Plan. The application was notified in accordance with the requirements of this plan. In response to community concern that there was insufficient public notification, the application was re-notified, an additional period for submissions was given and an additional copy of the application was provided for viewing at the Nana Glen General Store.

The documentation required to be submitted with a development application is specified in the Environmental Planning and Assessment Act and the Environmental Planning and Assessment Regulation. Some public submissions expressed a view that a social impact assessment is required to be submitted. While there is no statutory requirement for submission of a social impact assessment, one has been provided. The content of the assessment has been considered in the evaluation of the application. There is no statutory requirement for submission of a cultural heritage assessment. It is considered that there will be no adverse impact on cultural heritage.

In addition to the requests for comment on the application that has been made to NSW Rural Fire Service, NSW Police, NSW Department of Primary Industries - Office of Water, it is submitted that comment should be obtained from NSW Agriculture. There is no statutory requirement for consultation with this government department. All relevant documents that inform on the issue of impact on agriculture have been considered. The development is unlikely to result in an adverse impact on agriculture.

While there is no statutory requirement for a detailed assessment on capital investment value of a development to be submitted, a quantity surveyor's report has been provided. This report demonstrates a capital investment value for the development of more than \$5 million.

Recommendation:

1. **That Development Application 259/12 for a Group Home at [REDACTED] [REDACTED] be refused on the following grounds.**
 - a. **The proposed development is a prohibited use in the 1A Rural Agriculture zone under *Coffs Harbour City Local Environmental Plan 2000*.**
 - b. **Insufficient detail has been provided to enable assessment of the matters under Section 5A of the *Environmental Planning and Assessment Act* and the proposed development may result in an unacceptable impact on the environment.**
2. **That people who made a submission on the application be advised of this decision.**

**Section 79C Evaluation
Development Application 259/12**

a. the provisions of,

i. any environmental planning instrument, and

- **State Environmental Planning Policy (Affordable Rental Housing) 2009**

4 Interpretation--general

(2) A word or expression used in this Policy (other than Schedule 1 or 2) has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the Standard Instrument (Local Environmental Plans) Amendment Order 2011) unless it is otherwise defined in this Policy.

8 Relationship with other environmental planning instruments

If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

42 Definitions

In this Division:

"group home" means a permanent group home or a transitional group home.

"prescribed zone" means:

- (a) any of the following land use zones or a land use zone that is equivalent to any of those zones:
 - (i) Zone R1 General Residential,
 - (ii) Zone R2 Low Density Residential,
 - (iii) Zone R3 Medium Density Residential,
 - (iv) Zone R4 High Density Residential,
 - (v) Zone B4 Mixed Use,
 - (vi) Zone SP1 Special Activities,
 - (vii) Zone SP2 Infrastructure, and
- (b) any other zone in which development for the purpose of dwellings, dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.

43 Development in prescribed zones

- (1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:
 - (a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or
 - (b) with consent in any other case.

(2) *Division 1 of Part 2 of State Environmental Planning Policy (Infrastructure) 2007 applies in respect of development carried out by or on behalf of a public authority under subclause (1) and, in the application of that Division, any reference in that Division to that Policy is taken to be a reference to this clause.*

Comment

The combined effect of clause 4(2), 8, 42 and 43 of this state policy is to make group homes permissible regardless of any other provision within an environmental planning instrument. As it is a provision within a state environmental planning policy it also has the effect of overriding any provisions within any other environmental planning instrument if they currently make reference to group homes as this would constitute an inconsistency. Pursuant to clause 8 this policy will prevail to the extent of the inconsistency.

By the zoning of this site under the City of Coffs Harbour Local Environmental Plan 2000 a group home is permissible in the zone with consent. Regardless of this provision the appropriate environmental planning instrument to apply is this state policy to determine permissibility.

Pursuant to clause 4 the definition for Group Home is taken from the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*. *Group Home under this is defined as:*

Group Home (Transitional) or Transitional Group Home means a dwelling:

- (a) *that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*
- (b) *that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people.*

To be permissible the proposed use and development must meet a permissible use for the zone. If not, it is a prohibited use and cannot be approved.

Examination of the proposed use and its permissibility is a process known as characterisation. It requires consideration of what is proposed through the development application as a matter of fact. It is then necessary to analyse those facts to determine the actual purpose and what is actually being carried out and then determine the appropriate designation of that purpose.

The plans provided with the application show the group home precinct of the development in two separate buildings; the 'accommodation building' and the 'administration building'. The accommodation building shows twenty separate 'twin bedrooms', each comprising two bedrooms, wardrobes, toilet and shower.

The administration building includes a kitchen / dining area, laundry facilities, and also computer rooms, meeting areas etc. Also relevant is a statement provided in the application to the effect that a full time staff member is required for provisions of meals to the residents.

The definition requires that the development form a dwelling (or single household). Single household is not defined but is referable to a dwelling. Dwelling is defined in the Local Environmental Plan as;

'dwelling' means a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile, whether or not used temporarily for display purposes.

The definition requires the room or rooms to be capable of being used as a separate domicile. This means they need their own kitchens or dining facilities; which the accommodation building does not include. Cooking and dining can only occur in the separate 'administration building' where the dining room is also located. A full time staff member is to be used for provisions of meals to the residents.

It is considered that the proposed 'group home precinct' component does not constitute a dwelling as required by the definition under State Environmental Planning Policy (Affordable Rental Housing) 2009.

The development is considered more appropriately characterised as a Boarding House which is a use defined under *Coffs Harbour City Local Environmental Plan 2000*. *State Environmental Planning Policy (Affordable Rental Housing) 2009* includes a definition for boarding house but this policy has no affect on the permissibility of a boarding house for this site.

46 Determination of development applications

(1) *A consent authority must not:*

- (a) *refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or*
- (b) *impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.*

(2) *This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.*

Comment

As has been demonstrated, the proposed development in its current format is not a permissible use for this site. This clause requires assessment of the community need for the group home before a refusal of consent can occur. The applicant has provided their view that there is a clear need for the development. This is further supported by the social impact assessment that was submitted with the application.

The application is also provided with support by staff of the NSW Department of Health which indicate the need for the group home. This assessment satisfies the requirements under this provision.

- ***State Environmental Planning Policy (Building Sustainability Index: Basix) 2004***

Under this state policy a basix certificate is required for all new development that is a basix affected development within the meaning of the *Environmental Planning and Assessment Regulation*. This means any building that is a dwelling or a number of dwellings but does not include a hotel or motel.

The main building component is considered not to be a dwelling so basix does not apply. Basix does apply to the other, separate staff accommodation buildings which are considered dwellings. A basix certificate has been submitted for these components of the proposal. The proposed development can meet the requirements of this state policy.

- ***State Environmental Planning Policy (State and Regional Development) 2011***

Pursuant to clause 20 and 21 of this state policy determination of development applications that is of a class or description included in *Schedule 4A of the Environmental Planning and Assessment Act* is made by a Joint Regional Planning Panel.

The proposed development fits the description under Schedule 4A of “*development that has a capital investment value of more than \$5 million for...a group home...*”.

A quantity surveyors report has been provided. This demonstrates that the capital investment value for the development is more than \$5 million.

- ***State Environmental Planning Policy No 55--Remediation Of Land***

Clause 7 of this state policy specifies that the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. There is no evidence of any potential contamination of the land. There are no further requirements of this state policy.

- ***State Environmental Planning Policy - North Coast Regional Environmental Plan***

The North Coast Regional Environmental Plan is a deemed State Environmental Planning Policy. Not all provisions of the plan now apply as matters to be considered in assessment of a development application. The proposal is considered to be consistent with the aims and objectives of the Plan. There are no remaining provisions of the Plan that are of relevance to the development.

- ***State Environmental Planning Policy (Rural Lands) 2008***

Part 3 of this state policy contains provisions that must be considered for an application for subdivision of land or erection of a dwelling. As the proposed development is either a group home or a boarding house, these provisions do not apply.

Part 4 - *state significant agricultural land* - contains provisions relating to land that is declared state significant agricultural land. There is no land at this point in time that is considered state significant for the purposes of this policy.

There are no other matters of the policy that require consideration.

- ***Mid North Coast Regional Strategy***

The Mid North Coast Regional Strategy provides regional parameters for future strategic planning and complements and informs other relevant State planning instruments. There are no specific controls that require consideration with respect to the proposed development.

- **Coffs Harbour City Local Environmental Plan (LEP) 2000**

Permissibility

The site is zoned Rural 1A Agriculture under *Coffs Harbour City Local Environmental Plan 2000*. The comment provided here is related to the comments on permissibility under *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Both the state policy and the local environmental plan contain provisions that relate to permissibility for a group home. Due to the hierarchy of a state policy over a local environmental plan, the state policy is the appropriate planning instrument to consider **for the permissibility of a group home**. For all other proposed uses the Local Environmental Plan must be considered.

The proposed development is not considered to constitute a transitional group home in that the residential component does not form or constitute a dwelling as required by the definition of 'transitional group home' as defined under the *Standard Instrument - Principal Local Environmental Plan*.

The development is considered appropriately characterised as a Boarding House which is a use defined under the Local Environmental Plan;

'Boarding House' means a building or place:

- (a) at which accommodation, meals and laundry facilities are provided to the residents of the building or place, and
- (b) which is not licensed to sell liquor within the meaning of the Liquor Act 1982, and
- (c) which is not a motel, but does not include a bed and breakfast establishment.

In the context of the development application plans and the description of the use in the application, the layout and use of the 'group home precinct' are such that accommodation is provided, meals are provided, and communal laundry facilities are provided, as required by the boarding house definition (Part (a)). Parts (b) and (c) of the definition are not relevant. There is no requirement under the boarding house definition for the "building or place" to form or constitute a dwelling. It is considered that the proposed development meets this definition of boarding house.

Under Coffs Harbour City Local Environmental Plan 2000, boarding houses are prohibited in the Rural 1A Agriculture Zone.

Ancillary and incidental uses

The application is made on the basis that the accommodation parts of the development (within the main group home precinct building) are the dominant use, and that all other components of the development are permissible as ancillary or incidental components to this main use.

This means that, for this development, the following components are argued to be ancillary or incidental;

- The two separate staff accommodation dwellings
- The administration wing
- The existing dwelling to be retained as visitor accommodation
- The chapel building
- The exercise pavilion

The concept of ancillary or incidental development is a legitimate permissibility argument but whether or not a particular part of a development is ancillary (or not) is a question of scale and degree.

Where a part of the premises is used for a purpose which is subordinate to the purpose which inspires the use of another part, it is legitimate to disregard the former and to treat the dominant purpose as that for which the whole is being used.

The consideration of ancillary parts of a development is particularly important where, under a normal assessment of permissibility, the 'ancillary components' would be a prohibited use.

The separate staff accommodation dwellings and existing dwelling to be retained would be prohibited as 'multi unit housing' (not permissible in the zone). The administration wing would be prohibited as an 'office premises' (not permissible in the zone). The chapel building could be permissible in the zone as a 'place of worship'. The exercise pavilion could be permissible as a 'recreation facility'.

If any of the proposed ancillary parts are not ancillary but are independent, then those parts should be considered separately as independent uses in their own right

Separate staff accommodation dwellings

The staff accommodation dwellings will be erected some distance from the group home accommodation. These parts of the development are not considered subservient to, or dependent upon, the primary purpose but independent uses in their own right given their remoteness from the group home accommodation, their size and their scale.

Uses in the administration building

The two storey administration building comprises a substantial amount of administration floor space and includes three individual offices, a large open-form office, a meeting room, a waiting area, a tea room and a conference area. This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use its own right given the size and scale of this administration area. It is difficult to conceive that the administration areas proposed in this section of the building are directly required by the residential use but rather intended for an independent purpose.

Existing dwelling house to be retained as visitor accommodation

This part of the development is located a short distance from the group home accommodation. As it is existing it is limited in its size. An argument that this part is ancillary is stronger but this argument has not been successfully made.

Chapel

This building is substantial in size, is remote from the group home accommodation and will comprise a number of features, such as a court, furniture store, utility room, water feature and sacristy (vestment room). This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use its own right given its size, scale and remoteness.

Exercise pavilion and curtilage

This is a large building comprising a plunge pool, a lap pool, a weights room, a gym store, a steam room, communal change room, toilets, showers, communal gathering space and car parking. This part of the development is not considered subservient to, or dependent upon, the primary purpose but an independent use in its own right given the size and scale of this building.

Summary on Permissibility

The proposed development is not considered to constitute a transitional group home in that the residential component does not form or constitute a dwelling as required by the definition of 'transitional group home' (as defined under the Standard Instrument - Principal Local Environmental Plan). Notwithstanding this, even if the main use can be appropriately characterised as a group home, it is not considered that the other components of the development proposal are ancillary or incidental to the primary, 'dominant' use. The proposed use is not permissible and, therefore, cannot be approved.

Clause 12 Koala Habitat

This clause prevents Council from approving any development unless it is in accordance with a Koala Plan of Management.

Council's adopted Koala Plan of Management is relevant to consideration of this clause.

The site contains land which is mapped as Secondary Koala Habitat in accordance with this plan.

The proposed development is not within the area mapped as Koala Habitat and will not remove any native vegetation.

Clause 13 Landform Modification

The proposed development will not have the effect of significantly adversely affecting the natural environment, through either the filling proposed by the development or the excavation proposed by the development.

Appropriate conditions of approval can be applied, requiring implementation of typical sediment and erosion control provisions, in the event that the application is approved.

Clause 14 Services

This clause requires the consent authority to be satisfied that a water supply and facilities for the disposal of sewage are available on the land for the proposed development

The application proposes on-site waste water treatment. The proposed arrangement is acceptable. Water tanks are proposed for water supply. This is acceptable. There are no further matters to consider under this provision.

Clause 21 Heritage - Archaeological areas

The Coffs Harbour and District Local Aboriginal Land Council received notification of this development proposal. No submission from this department was received. The site is not one of any known archaeological item.

Clause 23 Environmental Hazards - Potential acid sulfate soils

The site has no mapped area showing any likelihood of potential acid sulfate soils. There are no further matters to consider.

Clause 23A Development on Flood Prone Land

In accordance with this clause the site is considered to contain some "flood prone land". In accordance with sub-clause 4, the consent must be satisfied that the proposed development will not:

- (a) *will not adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*

The proposed development does not provide any changes to the site that will affect flood behaviour to the area.

- (b) *will not significantly alter flow distributions and velocities to the detriment of other properties or the environment of the floodplain, and*

The proposed development does not provide any changes to the site that will not alter flow distributions and velocities to the area.

- (c) *will enable safe occupation of the flood prone land, and*

Access to the site is via a constructed bridge over Bucca Bucca Creek. This access will be inundated from time to time during flood events. Many submissions have expressed concern about the isolation that residents and staff of the proposed group home will be subject to during times of flood.

Flood events on [REDACTED] occur regularly. Council recently completed the [REDACTED] Flood Study that indicate the access road and bridge to the property would be impassable in a 20% ARI (Average Recurrence Interval or 5 year) flood event. Periods of isolation could be for two days or possibly longer depending on the rainfall and flood event. From the recently completed flood study the estimated 1% ARI (100 year) flood level is 80.5m AHD for the site in the vicinity of the access road and existing buildings. All proposed buildings will be located well above areas of flood inundation so residents and staff will not be subject to any immediate danger during flood events. As a flood management strategy, there is opportunity for individuals to "wait out" any flood event. This would require the provision of sufficient supplies for maximum flood events to be kept at the development site. These measures should form part of a Flood Management Strategy.

Flooding should be further addressed by planning and operational procedures to ensure safe and efficient operation. If the proposal was to proceed a detailed and comprehensive 'Flood Management Plan' for the development would be required in accordance with the SES Floodsafe toolkit for business.

- (d) *will not significantly detrimentally affect the floodplain environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the river bank or watercourse, and*

The proposed development does not affect the floodplain environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the river bank or watercourse.

- (e) *will not be likely to result in unsustainable social and economic costs to the flood affected community or general community, as a consequence of flooding, and*

The proposed development will not be likely to result in unsustainable social and economic costs to the flood affected community or general community, as a consequence of flooding

- (f) *is compatible with the flow conveyance function of the floodway, and*

The proposed development does not provide any changes that will effect the flow conveyance function of the floodway.

- (g) *is compatible with the flood hazard within the floodway.*

The proposed development is considered compatible with the flood hazard within the floodway

ii. The provisions of any draft environmental planning instrument

There are no draft environmental planning instruments that apply to the site or proposed development.

iii. any Development Control Plan

• Rural Lands Development Control Plan

The proposed development generally complies with the provisions of this plan. The application included a site analysis and statement of environmental effects. The development proposes acceptable onsite wastewater management. Water supply will be via water tanks and this is acceptable.

The buildings are designed for the specific group home use and sited in locations that will not detract from the rural character given the size of the land of 95.41 hectares. Stormwater management is acceptable. On site parking is acceptable.

• Waste Management Development Control Plan

The proposed development is not of a type anticipated by this development control plan. Notwithstanding, the proposed arrangement for waste management for this development is for private collection of waste within the development and then private transfer of waste to an approved waste management facility. Waste collection bins are proposed in relevant parts of the proposed development. The proposed development meets the objectives of this plan and is considered acceptable with respect to waste management.

• Access and Mobility Development Control Plan

The plan specifies the requirements for equitable access to new developments. As a new development all buildings must also comply with the Building Code of Australia and the Disability (Access to Premises - Buildings) Standards 2010. The proposed development will comply with the objectives of this plan.

- **Notification Development Control Plan**

This development control plan specifies the notification requirements for development applications. The application was notified in accordance with the requirements of this plan. There are no further matters to consider under this plan.

- **Off Street Car Parking Development Control Plan**

This development control plan does not specify a car parking rate for a development of the type proposed by this application. Nine car parking spaces are proposed near the group home precinct buildings. Car parking spaces are also proposed at the other precincts of the development. The development has significant private road areas along which car parking can occur. The property is 95.41 hectares in area. Car parking is not an issue for this development.

- **Nana Glen-Bucca Development Control Plan**

There are no specific development controls of this plan that relate to the proposed development.

The application included a site analysis and a statement of environmental effects. The development meets with the requirements under Basix. Acceptable on-site effluent disposal is proposed for the development. The development will not create any additional water rights.

The proposed development will not result in any conflicting elements as specified under the buffer distances of this plan. Notwithstanding, there is significant separation between properties and Bucca Bucca Creek as a vegetated buffer provides further buffers from the proposed use to nearby uses.

The proposal is considered to be consistent with the vision of the Plan.

iv. the regulations (to the extent that may prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

Clause 92 of the Environmental Planning and Assessment Regulations 2000 requires that the NSW Coastal Policy 1997, be considered in the determination of development applications. As the subject site is not located within the coastal zone, the provisions of the Policy do not apply.

b. the likely impacts of that development, including environmental impacts, on both the natural and built environments, and social and economic impacts in the locality,

Traffic impacts to road users in the area

The proposed development has been estimated as generating an additional forty daily traffic movements which is similar to the traffic generation of four dwellings. Submissions made on the application have questioned these figures. The average daily traffic volume on [REDACTED] (April 2010) is 1770 vehicles per day. A forty vehicle per day increase in traffic volumes represents an increase of 2.3% which is likely to have a negligible impact on traffic movements along [REDACTED]

The intersection of [REDACTED] has been considered in terms of its traffic function, in particular the sight distance at the intersection. It is considered that there is sufficient sight distance for adequate function of the intersection.

The existing road surface of [REDACTED] is mostly unsealed. It is not satisfactory in its current condition. Some upgrading of the road is required to make the traffic impacts on this road acceptable.

Safety impacts to the area from additional crime and lack of security

A social impact assessment has been submitted with the application. The assessment considers this issue.

It concludes that, while concerns about safety and security are real, they are generally not supported by evidence that these impacts will occur and that many of these concerns are based on perception. It makes reference to a number of operational practices proposed to address these concerns including installation of CCTV throughout the development, full time supervision of residents by staff, regular drug testing of residents, a caretaker to monitor all visitors and a selection criteria of residents.

Flora and fauna impacts

A flora and fauna habitat assessment report was provided with the application. It identifies the key values and constraints of the site. It lists threatened species that were recorded on site or that have potential, or are likely, to occur on the site based on available habitat. It does not form an assessment of those matters under Section 5A of the *Environmental Planning and Assessment Act*. This is a required statutory assessment to determine the environmental impact of a proposed development under Section 79C of the *Environmental Planning and Assessment Act*.

As a result there is insufficient detail provided with the application to enable Council to determine whether or not there will be a significant impact on threatened species, communities and/or populations. In particular there has been insufficient detail to consider the matters specified under Section 5A of the *Environmental Planning and Assessment Act* as they relate to the following species.

- Koala
- Squirrel Glider
- Common Planigale
- Spotted-tailed Quoll
- Little Lorikeet
- Glossy Black Cockatoo
- Square-tailed Kite
- Threatened Rainforest Doves
- Powerful, Sooty and Masked Owl
- Micropteran Bats
- Orara Boronia
- Slender Screw Fern
- Slender Marsdenia
- Rusty Plum
- Milky Silkpod

- Moonee Quassia
- Rainforest Cassia
- Tylophora Woollsii
- Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions

Impact on platypus has been raised in a submission. The submission states that they live in Bucca Bucca Creek. The platypus is not threatened fauna so does not need to be considered under an assessment of matters under Section 5A of the Environmental Planning and Assessment Act. Notwithstanding, all buildings of the proposed development are some distance from Bucca Bucca Creek. Impact on the platypus is considered extremely unlikely.

With respect to flora a fauna impacts, the development application could not be approved without further assessment being provided.

Watercourse impacts

The proposed chapel of the development adjoins a watercourse. The watercourse is a minor watercourse; water does not flow through the channel all year round.

The NSW Department of Primary Industries - Office of Water was requested to provide comment on this issue. They raised no objection to the proposed development. They advised that they consider the works (proposed near the watercourse) to be of a minor nature and that they should not adversely impact on the watercourse subject to implementation of appropriate sediment and erosion controls.

Social impacts

A social impact assessment has been submitted with the application.

The assessment concludes that there will be a positive impact on those who participate in the residential therapeutic programs. Submissions provided in support of the proposal (from the Mid North Coast Area Health Service and the Mid North Coast Local Health District) also provide some evidence of community need for the proposed development.

The social Impact statement also provides the following comments in conclusion:

“The negative impacts of this development have been identified by residents living in the surrounding area. From the submissions received it is evident that this development is believed to have a negative impact on the ‘sense of place’ that residents have to the area. Residents fear that this will be lost.

The sense of place is that of a rural area and residents ‘connection’ being due to their work on the land, or because of general lifestyle reasons. The rural characteristic is quiet, peaceful and safe and residents fear that this development is in conflict with these characteristics and therefore their sense of place will be lost. The factors that lead to this loss can be either real or perceived.

The issues raised by residents have been considered and addressed. The concerns regarding safety are not supported as there has been no evidence to suggest otherwise from the operation of Adele’s other programs. The concerns however are real for the residents and should not be discounted. Therefore, careful consideration has been provided in the application and any perceived impacts are clearly responded to in reply to public submissions. The Adele facility does not change the land use of the area. It is contained on one site and operates in a self sufficient manner. On that basis, the actual social impact on the broader community is minimal.”

Impact on agriculture

A very small portion of the site is mapped under the NSW Department of Planning's Mid North Coast Farmland Mapping Project. The area is only that part of the site that adjoins Bucca Bucca Creek.

Only areas of the site that will be physically occupied by buildings of the development will be prevented from use for ongoing agriculture. The use by its nature will not affect other parts of the site for agriculture. Similarly for other properties in the area the development is unlikely to have any affect.

Noise and amenity impacts

The proposed development is unlikely to produce any noise impacts greater than those typical of a large dwelling or agricultural pursuits in the area.

The recreation precinct, which was a component of the development that residents of the area expressed concern about with respect to noise, has been withdrawn from the application. The proposed development is considered acceptable with respect to noise impacts.

Other amenity impacts are unlikely due to the large size of the property and the separation of the proposed development from nearby dwellings. Some impact from additional traffic on [REDACTED] may occur but this would be mitigated to a degree by upgrading works to [REDACTED]

Visual amenity and lighting impacts

While the development is significant in size and scale, the development site is approximately [REDACTED]. The site is also 95.41 hectares in area and the separation between the proposed buildings and other dwellings in the area is significant. An assessment of sight lines from the proposed development to nearby dwellings has been provided with the application. Few dwellings will have a direct line of site to proposed buildings of the development. As a result it is considered unlikely that visual impact from the proposed development will be unacceptable.

Plans of anticipated light spill have been provided with the application. The group home building is generally oriented to the north where the site [REDACTED]. Building openings and windows are generally oriented in this direction and lighting will therefore 'spill' in this direction. Some lighting of roadways and parking areas is proposed with small bollards. Unacceptable impact, as a result of lighting to the development, is considered unlikely.

Impact on Property Values:

A number of submissions state that approval of the proposal will decrease land and property values in the area and suggest that this is grounds for refusal of the application.

While decline in property values is often raised as an issue of concern with development proposals, the generally accepted assessment position is that property values should not be assessed in isolation of other potential impacts that may result from the development (such as amenity impacts). The determining authority is required to consider likely impact of a proposed development and not perceived impacts which may be a component in determining a property's value. Subsequently, the issue of property values should only be considered in conjunction with other issues of the proposal.

c. *the suitability of the site for the development,*

Compatibility with the rural area

The proposed development is a use that is not typical for a rural area and the buildings will be large compared to many typical rural dwellings and out buildings. Notwithstanding this, the majority of the property will remain undeveloped and in a form similar to that of a typical rural property. The site is large at 95.41 hectares and this means that there is significant separation between the development and surrounding dwellings of the area. The separation distances of the property from nearby dwellings also means that amenity and visual impacts will also be very limited. Given these characteristics of the site and the locality, it is considered that the proposed development is not unsuitable with the rural area and that it can co-exist with the rural area.

Flooding

Access to the site is via an existing bridge over Bucca Bucca Creek. This access will be inundated from time to time during flood events. Many submissions have expressed concern about the isolation that residents and staff of the proposed group home will be subject to during times of flood.

Flood events on [REDACTED] occur regularly. Council recently completed the [REDACTED] Flood Study that indicates the access road and bridge to the property would be impassable in a 20% ARI (Average Recurrence Interval or 5 year) flood event. Periods of isolation could be for two days or possibly longer depending on the rainfall and flood event. From the recently completed flood study the estimated 1% ARI (100 year) flood level is 80.5m AHD for the site in the vicinity of the access road and existing buildings. All proposed buildings will be located well above areas of flood inundation so residents and staff will not be subject to any immediate danger during flood events. As a flood management strategy, there is opportunity for individuals to "wait out" any flood event. This would require the provision of sufficient supplies for maximum flood events to be kept at the development site. These measures should form part of a Flood Management Strategy.

Flooding should be further addressed by planning and operational procedures to ensure safe and efficient operation. If the proposal was to proceed a detailed and comprehensive 'Flood Management Plan' for the development would be required in accordance with the SES Floodsafe toolkit for business. Flood management plans are a typical requirement for any sites that have some affectation from flooding. The need for flood management plan does not mean that the site is not suitable for the proposed development.

Access to the site

The existing road surface of [REDACTED] is mostly unsealed. It is not satisfactory in its current condition. The additional traffic generated by the proposed development warrants some upgrading if the development was to proceed. It is recommended that [REDACTED] be upgraded in the following way:

- Provide sufficient carriageway width to accommodate two way traffic;
- Provide a four metre bitumen seal on [REDACTED] from the existing seal at the [REDACTED] intersection to the existing seal approximately 0.8km further to the north and from the end of the existing seal to the [REDACTED]
- Ease the vertical curve at the steep section leading to the [REDACTED] bridge crossing.

- Provide stabilised table drains as necessary.
- Remove sufficient exotic vegetation from the road reserve on the [REDACTED] to reduce shading and improve visibility for motorists travelling north into this section of road.
- Provide notice on the [REDACTED] setting a 20 tonne load limit.
- Provide a graveled turnaround area on the northern side of the [REDACTED].
- Where it is impractical due to adverse site constraints to widen the carriageway to accommodate two way traffic, passing bays can be provided within sight distance of one and the other but with no greater than 50m spacing.

The [REDACTED] access to the site also includes a crossing of [REDACTED]. The documentation provided with the development application included an engineering assessment of the adequacy of the creek crossing. The existing bridge is considered acceptable for the proposed development in its current condition.

There is some possibility that the bridge and road surface will get damaged during construction. Dilapidation reports of the road and bridge should be provided both before construction and after construction to ensure that damage that occurs during construction is rectified by the developer.

Isolation of the site from Police services and other emergency services

There is no evidence that the staff or residents of the proposed development will have a need to access police or other emergency services that is greater than any other members of the community.

In addition, the social impact assessment submitted with the application makes reference to a number of proposed operational practices related to on-site security. These include installation of CCTV throughout the development, full time supervision of residents by staff, a caretaker to monitor all visitors and a selection criteria of residents.

Power supply to the area

One submission suggests that the area may not be suitable for the proposed development as the area is often subject to power “black outs”. If the development was to proceed this could be adequately addressed by the operator providing an alternative emergency power supply that is regularly maintained so that it is available if grid power supply not available at any time.

d. any submissions made in accordance with this Act or the regulations,

Public submissions

The application has been through two periods of community consultation. For the community consultation period from 20 January 2012 to 2 February 2012, ten submission were received. For the community consultation period from 29 March 2012 to 20 April 2012, fifty-three submissions were received. There has been some “double up” of submissions, for example, some submissions were provided to Andrew Fraser MP and then forwarded to Council.

A summary of issues raised in submissions is appended to this report. The matters raised in submissions are dealt with in this report based on the subject matter of the concern raised. Where a submission states that certain planning documents have not been considered, these are dealt with in the relevant sections of the s79C Evaluation. Matters that are not relevant to assessment of a development application have not been considered but the matters noted. It would not be lawful if a matter, not required to be considered, effected a determinative decision of a consent authority. The following matters are not addressed elsewhere in this report.

Determination by the NSW Joint Regional Planning Panel

Some submissions have stated that a decision on the application by the Joint Regional Planning Panel is not a decision by those who represent the community interest.

While the panel does not form “elected” representation this is the consent process that has been established for certain developments under the Environmental Planning and Assessment Act (and planning instruments under that Act). The Panel is still required to consider the public interest in its determination.

Fire

Some submissions have expressed concern that residents of the development will not be safe in the event of fire. This issue is partly addressed in the response from the NSW Rural Fire Service (see below). In addition, all new buildings must comply with all requirements of the Building Code of Australia which has stringent building construction standards that relate to the safety of occupants in the event of fire.

Response from NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service as an integrated development referral requesting general terms of approval. The Service has provided general terms of approval subject to a number of conditions. This response indicates that the development may proceed subject to compliance with these conditions.

Most conditions correspond with predetermined requirements for development in bushfire prone areas as specified in Planning for Bushfire Protection 2006. If the development was to proceed it must comply with all these conditions. The applicant has indicated that these conditions are acceptable and can be complied with.

Response from the NSW Police Service

The application was referred to the NSW Police Service. They did not express any specific concerns with the proposal but provided the following general comments;

- The developer should ensure that light levels are appropriate for users of the development
- that consideration should be given to utilising alarms in staff residences and administration areas
- that safes or lockable receptacles should be provided for residents in twin share rooms for personal belongings
- that a key register should be developed
- that a suitable safe should be installed in the administration area
- that door locks to be to Australian Standards
- that signage be provided to delineate staff areas from resident areas.

If the development was to proceed, then these matters could be incorporated into conditions of development consent.

Response from NSW Department of Primary Industries - Office of Water

The application was referred to the NSW Department of Primary Industries - Office of Water for comment on the Chapel component of the development given its location near a watercourse. They advised that they consider the works (proposed near the watercourse) to be of a minor nature and that they should not adversely impact on the watercourse subject to implementation of appropriate sediment and erosion controls.

e. *the public interest:*

Consideration of this matter requires an evaluation of the benefits that will be obtained from the development proposal in contrast to actual impacts of the proposed development.

As addressed elsewhere in this report, amenity impact that may result from the proposed development are considered acceptable, the development is considered suitable in its location given the features of the site and location relevant to other rural development in the area. The development is not considered incompatible but can coexist with the area. The proposed development is not considered contrary to the public interest. The application has been notified in accordance with Council's controls and evaluated in accordance with statutory requirements.

Summary of Issues Raised in Submissions on Development Application 259/12

- The proposed development is not a permissible development in the zone as it is not a “household environment” nor a “single household”.
- Group home definition does not allow drug and alcohol treatment.
- Isolation of the site by flooding.
- Unacceptable traffic impact to road users of [REDACTED].
- Speed limit on [REDACTED] is currently 100km/hr.
- [REDACTED] is not of a sufficient standard.
- Adverse impact on public safety.
- Community impact by bringing people with drug and alcohol problems to the area.
- Development will result in an increase in antisocial activity to the area.
- Development will bring additional crime to the area.
- Development will result in an increase in “break ins” to the area.
- No security provided at the development.
- Size and scale of the development is incompatible with the character of this area.
- Inappropriate use for the area.
- Not an appropriate location for the development as black outs regularly occur in the area.
- Contrary to the Crown Lands Act – requires consent.
- Public access to crown land creates security risk for the development
- Reference to potential bat habitat in the flora and fauna report and recommendation in the report for a targeted bat survey means that fauna surveys should be undertaken prior to determination.
- The flora and fauna assessment does not sufficiently demonstrate how/why the development will not have an adverse impact on koalas.
- Regional wildlife corridor for the Sherwood Nature Reserve has not been sufficiently considered.
- No Section 5A assessment.
- The development will impact on Platypus which live in [REDACTED].
- Negative social impact from the proposed development.
- Adverse impact on mental wellbeing of surrounding land owners.
- Police and emergency services are thirty minutes away from proposed development.
- Adverse impact on agriculture.
- Adverse impacts from noise.
- Adverse impacts on privacy.
- Adverse impacts from noise and dust during construction.

- Adverse impact from lighting.
- Adverse impact on visual amenity.
- Concern about the likelihood of success for the proposed development.
- Validity of drug rehabilitation programs questioned.
- Opinion that rehabilitation of the kind proposed by this development is not effective.
- Development is integrated development and must follow this process.
- Adverse impact on property values.
- Need for a social impact assessment.
- NSW Department of Agriculture should be consulted.
- Development application was not notified for a sufficient period of time.
- Proper documentation not submitted with application.
- No cultural heritage survey undertaken.
- Not in accordance with principles of ecologically sustainable development.
- Lack of services for the development including; potable water, sewerage, rubbish collection, communications, power supply and water management.
- Development does not comply with provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
- Development is not consistent with *State Environmental Planning Policy (Rural Lands) 2008*.
- Development is not consistent with the *North Coast Regional Environmental Plan*.
- Development is contrary to the *Nana Glen/Bucca Development Control Plan*.
- Vulnerable clients may not understand dangers that an isolated rural property holds; snakes, spiders, goannas etc and may risk their own safety and staff safety.
- Inference that application will be approved from the Adele website.
- Letters of support incorrectly state that the site is remote.
- Determination by the NSW Joint Regional Planning Panel is not a decision by those who represent the community interest.
- Danger to residents in the event of fire.