



Tweed Shire Council

Planning Committee Agenda

28 September 2005

Dear

NOTICE IS GIVEN that a Meeting of the **Planning Committee** will be held at the Council Chamber, Murwillumbah Civic and Cultural Centre on Wednesday 5 October 2005, commencing at **5.30pm**.

Submitted,

A handwritten signature in black ink, appearing to read 'J Griffin'.

Dr J Griffin
General Manager

AGENDA

1. Confirmation of Minutes of the Planning Committee Meeting held XXX
2. Apologies
3. Disclosure of Interest
4. Items to be Moved from Ordinary to Confidential - Confidential to Ordinary
5. Access - Planning Matters
6. Reports through the General Manager
 - a. Reports from the Director Planning & Development
 - b. Reports from the Director Governance & Corporate Services
 - c. Reports from the Director Engineering & Operations
 - d. Reports from the Director Environment & Community Services
7. Confidential Matters - (exclude Press and Public)

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ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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CONFIRMATION OF MINUTES

Minutes of the Meeting of the Planning Committee held 7 September 2005

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Minutes of the Meeting of the Planning Committee held 7 September 2005 (DW 1271238)
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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

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

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

MATTERS FOR CONSIDERATION

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

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- 1 [PD] Development Application DA05/0840 for a grazing of cattle and associated works at Lot 76 DP 755701, Lot 272 DP 755701, Lot 323 DP 755701, Lot 326 DP 755701, Duranbah Road, Kings Forest

ORIGIN:

Development Assessment

FILE NO: DA05/0840

SUMMARY OF REPORT:

A development application has been received for grazing of 45 head of cattle over the abovementioned lots which is commonly referred to as the Cudgen Paddock and forms part of the area known as Kings Forest. A Class 1 application has been lodged with the Land and Environment Court for a deemed refusal.

RECOMMENDATION:

That: -

1. **Council defends the appeal on the basis that the Department of Environment and Conservation join Council in the appeal and provide expert advice in relation to its statements about the impact on threatened species if the development was approved.**
2. **Council reconsiders its position regarding this matter if the Department of Environment and Conservation do not support Council as set out above and has not advised Council of its support by 30 October 2005.**

REPORT:

Applicant: Project 28 Pty Ltd

Owner: Project 28 Pty Ltd

Location: Lot 76 DP 755701, Lot 272 DP 755701, Lot 323 DP 755701, Lot 326 DP 755701 Duranbah Road, Kings Forest

Zoning: 2(c) Urban Expansion, 6(b) Recreation & 7(a) Environmental Protection (Wetlands and Rainforest)

Cost: \$7,000

BACKGROUND:

Existing and or continuing use rights for grazing and forestry have been claimed for the majority of Kings Forest however the Cudgen Paddock land does not enjoy existing or continuing use rights for grazing. Grazing was abandoned on the subject site approximately five years ago.

The owners intend to graze 450 head of cattle in the areas of Kings Forest that enjoy continuing use rights.

Accordingly cattle grazing which is defined as agriculture under the Tweed LEP requires development consent from Council in the 2(c) and 6(b) zones. Grazing is not proposed within the part of the site zoned 7(a) for environmental protection purposes.

Key Issues

Zoning Provisions

The 2(c) zone permits agriculture subject to satisfying the provisions of clause 8(2) of the LEP. Agriculture is permitted in the 6(b) zone subject to consent. Consent can only be granted in the 2(c) zone for agriculture if the applicant as demonstrated to the satisfaction of consent authority that -

- (a) the development is necessary for any one of the following reasons:
 - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
 - (ii) it meets an identified urgent community need,
 - (iii) it comprises a major employment generator, and
- (b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and
- (c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and

- (d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.

Council and the applicant have sought a barrister's opinion regarding the provisions of the clause 8(2) relating to the proposal. Issues requiring clarification include the necessity of the development at this site and consistency with the aims of the LEP and one of the objectives for each. At the time of writing this report the legal advice had not been received.

Draft LEP

Council resolved in March 1998 to prepare a draft LEP (Amendment No.20) for the Kings Forest site. The resolution is as follows-

"That Council: -

1. *Prepare a draft Local Environmental Plan for the part of the land subject of Tweed Local Environmental Plan 1987, Amendment No. 3 west of Cudgen Creek.*
2. *The aim of the plan is to: -*
 - a. *amend the provisions of Tweed Local Environmental Plan 1987, Amendment No. 3 as they relate to the subject land to reflect changes and standards over the last decade for urban design and environmental protection;*
 - b. *ensure that uses planned for the subject land do not compromise the agricultural use of the land adjacent to zoned 1(b) Agricultural Protection and 1(a) Rural land;*
 - c. *investigate the rezoning of land currently zoned 1(c) Rural Residential for more intensive urban/residential purposes;*
 - d. *clarify uncertainties created by provisions of Tweed Local Environmental Plan, Amendment No. 3 (which deferred until the preparation of a DCP, the detailed mapping of land inappropriate for development because of its value for nature conservation) by zoning for environmental protection all land which: -*
 - i. *supports predominantly native vegetation and is part of a parcel 5 hectare in size or larger regardless of whether the parcel consists in part of land outside the area subject to the draft amendment;*
 - ii. *supports predominantly native vegetation and is adjacent to Cudgen Creek;*

- iii. otherwise comes within the scope of Clause 14 and 29 of the North Coast Regional Environmental Plan.*
- 3. *Notifies the Secretary of the Department of Urban Affairs and Planning under the provisions of Section 54 of the Environmental Planning and Assessment Act 1979 and informs the Secretary that in the opinion of the Council an LES is required.*
- 4. *Informs the principal land owner, Narui Gold Coast Pty Ltd of Council's decision and invites the Company to: -*
 - a. *contribute to the preparation of the LES:*
 - b. *inform Council if the owner wishes to include in the proposed LEP amendment lands acquired by them since the gazettal of Tweed LEP Amendment No. 3".*

The draft LEP was exhibited (4 April to 11 May 2001) and the proposed zoning of the subject land is 2(c) and 7(a). The grazing areas are proposed only on the land proposed to be zoned 2(c).

The draft LEP formed part of the subject matter for the Department of Local Government Enquiry undertaken by Mr Bulford. Following the Inquiry it was agreed by the current landowners and Council that a review of the draft LEP be undertaken. This review is currently nearing completion.

Court Orders

Council commenced proceedings against the previous owners in the Land and Environment Court for unauthorised planting and cultivation of Tea Trees and Orders were issued on 3 February 2004 stating that there are no continuing use rights for planting and cultivation of Tea Trees in the Cudgen Paddock. A second set of Orders were issued requiring the current owners to remediate the tea tree area provided the ownership dispute was resolved in their favour and there were no other legal impediments to the remediation works or the discretionary matters relating to the former owners were decided by the Court whichever occurs first.

Council's solicitors advise that neither the Court Orders nor the ownership dispute prevent Council from dealing with the development application.

Threatened Species

An 8 part test of significance has been submitted with the application. The test finds that threatened species exist within the proposed grazing areas however provided the mitigation measures are undertaken (eg. Fencing) the development is unlikely to have a significant impact on threatened species.

To determine if the development is likely to have a significant impact on threatened species a flora and fauna expert would need to be engaged to review the report submitted with the application.

Department of Environment and Conservation

The DEC have lodged a submission objecting to the proposal. The DEC have placed an Interim Protection Order over lots 76, 272 and 326. The IPO is current until 1 December 2005. The IPO prevents development or disturbance of the land other than watering, emergency maintenance of the existing water main and installation of 6 piezometers.

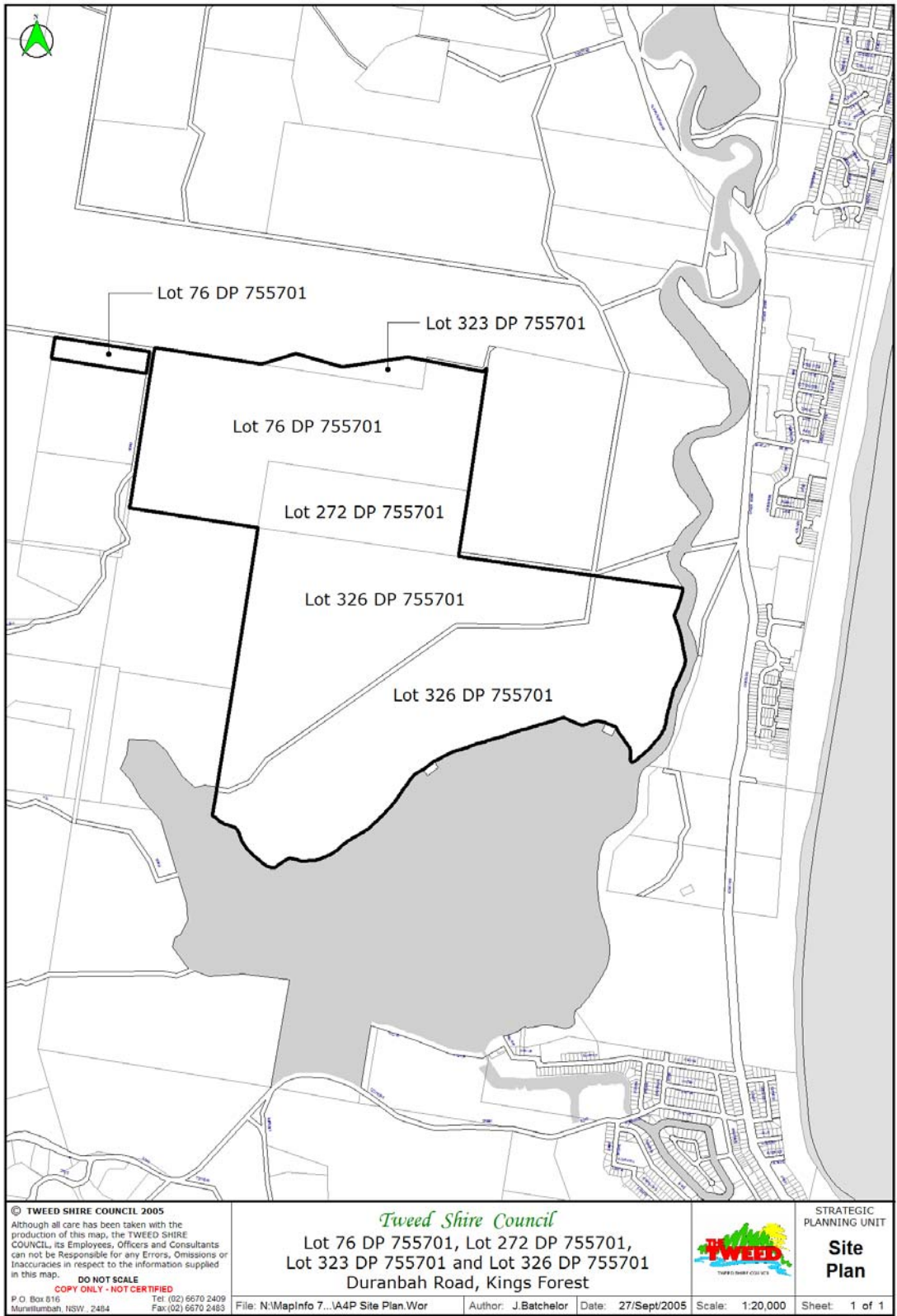
Approval of the application is not prevented from being issued due to the IPO.

The DEC contend that the development is likely to have a significant impact on threatened species and should not be approved.

A copy of the DEC submission is attached.

A letter has been sent to the DEC requesting that they join Council in the appeal and provide support to defend the appeal. A response had not been received at the time of writing this report.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

Zoning-See above comments regarding zoning provisions.

Clause 8(2)-The applicant's arguments regarding the clause 8(2) matters are as follows-

"a) The development is necessary for any one of the following reasons:

- i) It needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development.*

As reflected in the planning history at Section 1.3, the majority of the Cudgen Paddock has been identified for urban purposes since 1987 and zoned to permit urban development since 1989. Prior to September 2003 when Project 28 Pty Ltd purchased the Kings Forest property, it was owned by several different owners who, for various reasons, did not proceed with urban development.

Subsequently, under the terms of a lease dated 23 June 2000, part of the Cudgen Paddock was to be used for the cultivation of lemon myrtle trees. In February 2004 the Land and Environment Court held that there are no continuing use rights under Section 109 of the Environmental Planning and Assessment Act for the planting and cultivation of tea trees (ie. Lemon Myrtle trees). The lease is the subject of current litigation between the lessee and Project 28 Pty Ltd.

Clearly, the nature and function of the development necessitates that it be carried out on the subject land. The Cudgen Paddock is one of the few areas within Kings Forest where existing/continuing use rights for grazing do not apply and given that it involves low capital investment and is an interim land use pending development of the site for urban purposes, it is submitted that it is consistent with the requirements of this subclause.

- b) There is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity.*

With the exception of the Cudgen Paddock and the relatively small areas in the north eastern part of Kings Forest, the remainder of the property has existing and/or continuing use rights for grazing and forestry and is used for those purposes. There is therefore no other appropriate site within the land owned by Project 28 Pty Ltd on which to carry out this interim grazing use.

- c) *The development will be generally consistent with the scale and character of existing and future lawful development in the immediate area.*

The locality is generally rural in character and the land to the north and west is used for grazing and forestry. Given the interim nature of the use and as only temporary improvements area required (eg. Fencing, drinking troughs, etc) it is submitted that the development is consistent with this subclause.

- d) *The development would be consistent with the aims of this plan and at least one of the objectives of the zone within which it is proposed to be located.*

Clauses 4(a) and 4(d) of the Tweed Local Environmental Plan 2000 provide that the plan aims to give effect to the Tweed 2000+ Strategic Plan and to encourage sustainable economic development. The Tweed 2000+ Strategic Plan includes Kings Forest as an urban release area and the use of the land as proposed on an interim basis is an economic land use which does not alienate the land from future urban development in accordance with the aims of the 2(c) zone.

For these reasons it is considered that the proposal is consistent with the aims of the plan, the primary objective of the 2(c) zone and the secondary objective of the 6(b) zone and it is therefore submitted that this subclause is also satisfied.

In summary, having regard to the above matters it is submitted that the development is consistent with the requirements of Clause 8(2) and therefore Council may grant consent in respect of the application."

Clause 25 of the LEP applies which requires Council to consider the impact of development on land zoned 7(a). Whilst the grazing areas are not located within the 7(a) areas expert opinion is required to ascertain the impact of the proposal on the adjacent 7(a) areas.

Clause 52 requires the DEC to be notified of proposed development. See previous comments regarding DEC.

North Coast Regional Environmental Plan 1988

Clause 15 of the REP requires consideration of matters relating to wetlands or fishery habitat. The items listed mainly relate to fishery habitat protection and whilst the DEC state that the mitigation measures are insufficient the Department of Primary Industries which includes the former NSW Fisheries Department states that the proposal raises no obvious issues or implications for aquatic habitat protection. This issues would be required to be considered further by a flora and fauna expert.

State Environmental Planning Policies

Part of the subject land contain SEPP-14 Wetlands however the proposal does not include works within the Wetlands areas. The provisions of the SEPP are not triggered.

The clause 8 matters of SEPP-71 Coastal Protection are applicable. The relevant matters relate to ecological issues which a flora and fauna expert will need to consider.

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

Council is required to consider draft LEP's when dealing with development applications. Judicial review has found that determinative weight is only given to a draft LEP if the making of the plan is certain and imminent. Finalisation of draft LEP No.20 is neither certain or imminent given the review documentation has not been finalised at this point in time. The development is proposed on the areas exhibited for 2(c) and is not proposed on the areas exhibited for 7(a) Environmental Protection.

(a) (iii) Development Control Plans (DCPs)

N/A

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

Part of the site is located within the Coastal zone. The proposal does not contravene the provisions of the Coastal Policy.

(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

The key impact relates to threatened species. The proponents have proposed the following mitigation measures.

- *"Two rather than three grazing paddocks to be established - on the eastern and western halves of the site (refer Fig. 5).*

- *Reduced grazing to be undertaken in the western paddock. This area is known for habitat for threatened frogs (southwest) and Grass Owls (northwest).*
- *A maximum of 45 cattle to be grazed on the site: 30 in the eastern Paddock and 15 in the western paddock. This is based on effective grazing rates of 1 cow per 1 hectare on good pasture. Cudgen Paddock is considered marginal grazing land, therefore the ideal grazing rate has been halved. This figure is reduced again in the western paddock to minimise impacts on threatened fauna.*
- *Fencing to be erected around the perimeter of the Paddock and between the eastern and western paddock areas. All drains and waterbodies are to be fenced. Internal and external (where applicable) fencing to be installed so as to prevent impacts on waterbodies during construction (ie. star pickets and electric fence) and allow movement of Koalas (ie. greater than 250mm clearance).*
- *The corridor proposed on existing constraints maps to be maintained down the centre of the Paddock (refer Fig. 5).*
- *Effective erosion controls to be employed during fencing operations, if required, to prevent sedimentation of drains.*
- *The fence lines are to be constructed at least 5m from drains or waterbodies.*
- *Watering points to be installed at regular intervals to discourage use of the drains by cattle. Watering points should be located away from areas where frogs have been recorded.*
- *Water level in the dam, drains and wetlands should be monitored so as to determine the impacts of the use of water for cattle watering. If levels become low, water should be imported for cattle use.*
- *Pasture improvement to be limited to broadcast of pasture seed. No clearing or slashing of native vegetation."*

The DEC argue that the measures proposed are not sufficient and the development will have a significant impact on threatened species. Expert opinion will be required to be obtained to determine this matter.

There are no other significant adverse impacts.

(c) Suitability of the site for the development

If the threatened species and Clause 8(2) issues are resolved the site would be suitable for the proposal on a temporary basis.

DIPNR have provided their terms and conditions for a licence under the Water Act.

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

The application was advertised and 9 submissions were received objecting to the proposal. The submissions are primarily focussed on the ecological values of the site and the impact on threatened species. The issues raised include –

- Reinstatement of the IPO over the entire eastern part of Kings Forest should occur
- Proposed amelioration measures won't protect habitat from damage by cattle
- A species impact statement should be required
- Fragmentation of habitat
- Pre-emptive of the Draft LEP process
- Ecological value of the regenerating heath land
- Uneconomical proposal

NSW Department of Primary Industries

The DPI have made the following comments -

"Fisheries Issues

The proposal as submitted appears to raise no obvious issues or implications for aquatic habitat protection.

Agricultural Issues

It is highly unusual and irregular for this Department to offer comment on a development application involving the grazing of cattle as such land use typically does not require consent and therefore no referral occurs or comment offered.

In this special case, where cattle grazing requires consent, the proposal has been reviewed and the following comments are provided.

- i) *The subject land has been mapped as class 5 agricultural land by NSW Agriculture as part of the agricultural land mapping of Tweed shire (1998); Class 5 land is land generally unsuitable for agriculture or at best suited only to light grazing.*
- ii) *The Soil Landscape Map and Report for Murwillumbah - Tweed Map sheet (Morand, 1996) has identified the subject land as being part of the Pottsville Soil Landscape; this landscape is considered generally not suitable for cultivation or grazing.*
- iii) *The cost of pasture improvement to sustain grazing pressure in this situation is likely to be uneconomical and the likelihood of being able to establish a productive pasture over the longer term highly questionable.*
- iv) *No details were apparent in the documentation with regard to all weather access to the site, cattle yard and loading ramp facilities*

and management of stock movement between the two proposed paddocks.

While a site inspection has not been undertaken prior to preparing this reply, the available information suggests that cattle grazing of the subject areas is at best expected to be limited to light grazing, opportunistic (subject to seasonal conditions) and not particularly profitable given the low carrying capacity expected relative to the potential costs to establish a productive pasture that may or may not be sustained due to site conditions".

(e) Public interest

It is in the public interest for Council to defend the Appeal with the assistance and support of the DEC given the unresolved nature of the ecological issues associated with the site.

OPTIONS:

1. Approve the application subject to appropriate conditions.
2. Defend the appeal with the assistance of the DEC.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Costs will be incurred as a result of the Appeal.

POLICY IMPLICATIONS:

The Appeal may have an effect on the Draft LEP.

CONCLUSION:

The key issue for the determination of the application relates to threatened species which will be resolved by the Court through evidence from relevant experts.

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. [Department of Environment and Conservation submission to the application \(DW 1252822\)](#)
-

2 [PD] DA04/0631 for the Demolition of Existing Structures & Erection of a 12 Storey Mixed Used Development Comprising Administration, Meeting & Function Rooms & 30 Residential Units at Lots 13, 14, 15 & 16 DP 224382, No. 11-17 Frances Street Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA04/0631 Pt2

SUMMARY OF REPORT:

Council is in receipt of an application for a mixed-use development at the corner of Frances & Enid Street, Tweed Heads. The application seeks consent for demolition of the existing buildings on the site and the construction of a twelve storey mixed use building comprising ground floor administration, meeting, and function rooms in association with the nearby Roman Catholic Church and 30 two and three bedroom units with basement and at grade car parking providing on site parking for 60 vehicles.

The land is zoned 2(b) Medium density residential under Tweed Local environmental Plan 2000 and is identified under Development Control Plan No.18 Tweed Heads as a high-density residential precinct.

The application incorporates minor encroachments into the building envelope, will impact on some ocean and scenic views and has raised privacy concerns for some adjoining residences.

Additionally, whilst the building height of 43m AHD complies with the nominated 50m AHD height limit for the site, the application seeks a variation to the number of permissible stories in accordance with the Tweed Heads Master Plan. The Master Plan stipulates that any building on this site should be limited in height to 10 stories. The subject application was lodged prior to the adoption of the Master Plan and was designed with 12 stories in accordance with the maximum height limit of 50m AHD.

Despite these issues the application is considered to warrant a recommendation for approval on the architectural merits of the building in addition to the high-density nature of the area.

The application attracted ten individual objections focusing on traffic implications, loss of privacy, loss of views and general loss of residential amenity. These issues are fully addressed in the following report.

This application is only one of several applications that Council is either currently considering or has recently determined in this area. The subject area is going through a change in character as more of the smaller cottages are being replaced with high-rise development in accordance with the precinct objectives for this area.

Given the proximity of recent applications to one another, this application has considered the cumulative impact of these applications, on adjoining residences, throughout the assessment process.

RECOMMENDATION:

That: -

- 1. Council utilises its assumed concurrence for Clause 51 – Tall Buildings of the North Coast Regional Environmental Plan in accordance with its delegation.**
- 2. Council supports the application and refers it to the Director Planning & Development to negotiate a contribution of \$2,000 per unit under a voluntary agreement for public infrastructure identified in the Tweed Heads Master Plan.**
- 3. Approval for DA04/0631 for the demolition of existing structures and erection of a 12 storey mixed used development comprising administration, meeting and function rooms and 30 residential units at Lots 13, 14, 15 & 16 DP 224382, No. 11-17 Frances Street Tweed Heads be issued by the Director Planning & Development under Delegation in accordance with the following conditions:**

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No's:**
 - 2002/DA/11 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/12 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/13 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/14 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/15 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/16 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/20 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/21 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**
 - 2002/DA/22 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;**

- 2002/DA/23 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;
- 2002/DA/23a prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;
- 2002/DA/23b prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;
- 2002/DA/23c prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;
- 2002/DA/24 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;
- 2002/DA/25 prepared by Pat Twohill Designs Pty Ltd and dated Feb 2004;

except where varied by these conditions.

[GEN0010]

2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
[GEN0030]
3. The development is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual and Council's adopted Development Design & Construction Specifications.
[GEN0040]
4. Advertising structures/signs to be the subject of a separate development application, where statutorily required.
[GEN0070]
5. No retaining walls or similar structures are to be constructed over Council's sewer main.
[GEN0090]
6. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0120]
7. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and

- (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

8. All excavation works shall comply with the Acid Sulfate Soil Management Plan for Lot 13-16 DP 224382 Cnr Frances & Enid Streets, Tweed Heads NSW prepared by Blueland Engineers dated 14 March 2005 (Ref No: 203064 V2).

[GENNS01]

9. The garbage collection point is to be built to the satisfaction of Council's Waste Management Co-ordinator and in accordance with the faxed Pat Twohill Plan dated 10 December 2004.

[GENNS02]

10. Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (ie Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity.

[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. A detailed plan of landscaping is to be submitted and approved by Council's Director, Planning and Environment prior to the issue of a Construction Certificate. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[PCC0010]

12. Any carparking floodlighting shall not spill beyond the boundaries of the site. A plan of the lighting shall be approved by the Director Planning and Environment PRIOR to the issue of a Construction Certificate.

[PCC0030]

13. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times.

[PCC0040]

14. Section 94 Contributions

- (i) Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

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

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

a.	Open Space (Structured): S94 Plan No. 5	\$12,179
b.	Open Space (Casual): S94 Plan No. 5	\$2,602
c.	Shirewide Library Facilities: S94 Plan No. 11	\$10,749
d.	Bus Shelters: S94 Plan No. 12	\$376
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$2,176
f.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$3,252
g.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$24,129
h.	Cycleways S94 Plan No. 22	\$5,492
i.	Regional Open Space (Structured) S94 Plan No. 26	\$18,364
j.	Regional Open Space (Casual) S94 Plan No. 26	\$3,436

[PCC0050/PSC0005]

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

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Water DSP4: 14.229 ET @ \$4230	\$60,189
Sewer Banora: 20.7932 ET @ \$2634	\$54,769

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

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

[PCC0070/PSC0004]

16. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters shall be obtained wholly within the subject land.

[PCC0090]

17. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

18. The Engineering Plans shall include details of settling ponds and the method of discharging the return water from the site. The design shall comply with the requirements of *"Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development", Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC0220]

19. Permanent Stormwater Quality Treatment

- (a) Permanent stormwater quality treatment shall comply with *"Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

(d) Specific requirements:

- (i) Runoff from all driveway and carparking hardstand areas (ground level and undercover basement) shall be treated to remove oil and sediment pollutants prior to discharge to the public realm. Treatment devices must be sized in accordance with Section D7.12 of Councils adopted Development Design and Construction Specification D& - Stormwater Quality, with full engineering details, including maintenance schedules, to be provided with s68 Stormwater Application for approval prior to the issue of a construction certificate.**
- (ii) The dedicated car wash bay(s) must be graded to direct contaminated runoff to grassed filter areas and pervious landscaping to maximize pollutant removal and filtration. Car wash runoff must not be discharged to the public stormwater system.**
- (iii) Surcharge flows from the rainwater storage / reuse tanks shall not be discharged to Councils drain west of the site. This surcharge pipe must be redirected to the Frances Street / Enid Street drainage system.**

[PCC0230]

20. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain**
- installation of stormwater quality control devices**
- erosion and sediment control works**

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

[PCC0240]

21. A detailed site contamination report is to be provided which is prepared in strict accordance with the provisions of the NSW EPA's Contaminated Site "Guidelines for Consultants Reporting on Contaminated Sites" November 1997 and Council Contaminated Land Policy.

Note:-

1. It is a requirement of these Guidelines that all contamination reports include a clear statement from the consultant as to the suitability or otherwise of the subject site for the proposed use, together with a statement detailing all limitations and constraints that are applicable in relation to the use of the site.
2. Any contamination report that does not provide and follow the recommended report sections and information requirements as specified within the Guidelines will be returned on the basis of insufficient information provided.
3. Other relevant or applicable EPA Guidelines are to be used as appropriate.

[PCC0270]

22. Any premises proposing to discharge into Councils sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Councils Manager Water and concurrence received from the Department of Land and Water Conservation, if required, PRIOR to the issuing of a Construction Certificate to discharge to Councils sewerage system.

[PCC0280]

23. Pursuant to Section 68 of the Local Government Act, 1993 to ensure there is no unacceptable discharge to Councils sewerage system an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed to details approved prior to the issuing of a Construction Certificate. The development will be required to meet discharge standards in accordance with Councils Trade Waste Policy.

[PCC0290]

24. Erosion and Sediment Control During the Construction Phase of Development

- (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan "*Tweed Shire Council Aus-Spec D7 - Stormwater Quality*" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.

- (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

25. The basement car parking is to be protected against the inflow of water from Francis Street for storm events up to the ARI 100 year storm event. The basement pump out system must be designed and installed in accordance with section 9 of AS/NZS 3500.3.2 (Stormwater Drainage - Acceptable Solutions).

[PCCNS01]

26. Upgrading of the intersection of Francis and Enid Street is required as a result of this development. Works associated with the development include the realignment of the kerb return, pavement construction, relocation of the pedestrian crossing and splinter island, signage, relocation of utilities/drainage and footpath construction.

Council requires a contribution of \$18,345.00 prior to the issue of a construction certificate towards the works which shall be undertaken by Council as full intersection construction.

[PCCNS01]

27. Upgrading of the pedestrian crossing lighting to flood lights at the intersection of Francis and Enid Street is required as a result of this development.

Council requires a contribution of \$6,000 prior to the issue of a construction certificate towards the works which shall be undertaken by Council.

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

28. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore recommended that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0010]

29. Work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the work has been issued by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the work.

[PCW0020]

30. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council, or
 - (c) if that is not practicable, any other sewage management facility approved by the council.

[PCW0060]

31. Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0070]

32. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:

- i. The person must, at the person's own expense:
 - a. preserve and protect the building from damage; and
 - b. if necessary, underpin and support the building in an approved manner.
- ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0080]

33. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0090]

34. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW0180]

35. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.

[PCW0190]

36. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW0210]

37. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced.

[PCW0220]

38. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.

[PCW0230]

39. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority. In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

Please note that this sign is to remain in position for the duration of the project.

[PCW0280]

40. Prior to commencement of any demolition works, drainage is to be disconnected from Council's Sewerage reticulation at the building's connection point. This work is to be carried out by Council staff at developers cost as per Council's current Fees and Charges.

[PCW0300]

DURING CONSTRUCTION

41. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).

[DUR0010]

42. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.

[DUR0020]

43. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR0040]

44. The provision of 60 off street car parking spaces, with the 11 residential visitor spaces to be signposted and depicted on any subsequent strata application as common property areas. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

45. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. [DUR0060]
46. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- a. A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - b. The chute shall be located in a position approved by the Principal Certifying Authority.
 - c. A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust. [DUR0070]
47. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction. [DUR0080]
48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste". The proposed storage area shall be located so as not to restrict the sight lines of existing vehicles as detailed in AS2890. [DUR0090]
49. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0130]
50. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Occupation Certificate. [DUR0150]
51. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority. [DUR0160]
52. The principal certifying authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the principal certifying authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0170]

53. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied.

[DUR0200]

54. a. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- b. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0210]

55. If the work involved in the erection or demolition of a building:

- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- b. building involves the enclosure of a public place,

a hoarding or fence in accordance with approval issued under S138 of the Roads Act must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

[DUR0220]

56. Provision to be made for the designation of a durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0240]

57. All fire service connections are to be compatible with those of the NSW Fire Brigade.

[DUR0250]

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

- (i) Compliance Certificate - Water Reticulation
- (ii) Compliance Certificate - Sewerage Reticulation
- (iii) Compliance Certificate - Drainage

Note:

1. Where Council is requested to issue compliance certificates, applications for such certificates must be accompanied by documentary evidence from the Developers Supervising Consulting Engineer certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Council's adopted Development Design and Construction Specifications and good Engineering Practice.

2. Where Council is requested to issue the construction certificate all compliance certificates and a Occupation Certificate, Council will carry out the following inspections as deemed necessary by Council based on the rates contained in Council's current Fees and Charges:-
Water Reticulation, Sewer Reticulation, Drainage
 - a. Excavation
 - b. Bedding
 - c. Laying/jointing
 - d. Manholes/pits
 - e. Backfilling
 - f. Permanent erosion and sedimentation control measures
 - g. Drainage channels
 - h. Final inspection - on maintenance
 - i. Off maintenanceCouncil's role is limited to the above mandatory inspections and does NOT include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

3. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR0360]

59. The owner or contractor must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR0430]

60. Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet. Such to specifically include the following:

[DUR0460]

61. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering Services. Twenty four (24) hours notice is to be given to Council's Engineering Services Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

Such to specifically include the following:

- The driveway is to be constructed 6 metres wide at the property boundary and 9 metres wide at the kerb line with a uniform taper if a splay is specified.
- The proposed waste storage area shall be located so as not to restrict the minimum sight lines for pedestrian safety as detailed in as2890.1 - Off Street Carparking figure 3.3.
- Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR0470]

62. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Enid Street. The compacted base is to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres, the balance area to be graded to the kerb and turfed. The footpath is to have a 2.5% crossfall which must be attained at each side boundary. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. The footpaving is to be located 800 millimetres from the property boundary. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and maintained unvaried across the (any) driveway cross-section. An inspection of the formwork is to be arranged with Council's Engineering & Operations Division prior to concrete being placed.

[DUR0520]

63. The concrete footpath is to be saw cut and removed to facilitate the construction of the concrete driveway access.

[DUR0530]

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

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

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

[DUR0730]

65. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material or concealed below ground level.

Should additional fill be proposed in the area of the sewer manhole Council's Engineering & Operations Division must be consulted and suitable arrangements made for the raising of the manhole to the satisfaction of Council's Manager Water.

[DUR0840]

66. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.

[DUR0850]

67. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.

[DUR0870]

68. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

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

- A. **Short Term Period - 4 weeks.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
- B. **Long term period - the duration.**
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0910]

70. **The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.**
71. **Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director, Engineering & Operations.**
72. **The burning of builders waste on site by open fire is prohibited.**
73. **Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.**
74. **Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:**
- a. **internal drainage, prior to slab preparation;**
 - b. **water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;**
 - c. **external drainage prior to backfilling.**
 - d. **completion of work and prior to occupation of the building.**
75. A. **A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.**
- B. **The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.**

[DUR0920]

[DUR0930]

[DUR0940]

[DUR0970]

[DUR1020]

[DUR1030]

76. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR1040]
77. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises. [DUR1070]
78. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]
79. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard. [DUR1110]
80. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR1160]
81. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water. [DUR1170]
82. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement [DUR1190]

83. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:
- i. All required erosion and sedimentation control devices have been installed and are operational.
 - ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder
 - Phone number of builder or person responsible for site.
 - iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
 - v. That the licensee has complied with the provisions of Section 98(1)(b) of the Environmental Planning and Assessment Amendment Regulations 2000.
- [DUR1200]
84. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director, Engineering & Operations prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
- [DUR1210]
85. Landscaping of the site shall be carried out in accordance with the submitted landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Development Services.
- [DUR1230]
86. No ground anchors supporting shoring are to be installed under Councils road reserve in Enid Street and Francis Street unless approval is issued by Tweed Shire Council under Section 138 of the Roads Act and appropriate fees paid
- [DURNS01]
87. Any pumps used for the purpose of dewatering operations are to be electrically operated only.
- [DURNS02]
88. All pumps used for dewatering operations are to be installed on the site in a location that will minimize any noise disturbance to neighbouring residential premises. Such location shall be to the satisfaction of Council's Director Environment & Community Services.
- [DURNS02]

89. Practical measures to the satisfaction of Council's Director Environment & Community Services are to be taken to acoustically shield all pumps used for dewatering operations.

[DURNS02]

90. Where any pumps used for dewatering operations are proposed to operate on a 24 hour basis then the owners of adjoining residential premises shall be notified accordingly.

[DURNS02]

91. Dust control measures and water quality monitoring shall be carried out in accordance with the Soil & Water Management Plan prepared by Blueland Engineers and dated 20 January 2004.

[DURNS03]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

92. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent.

[POC0020]

93. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0030]

94. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0050]

95. Prior to occupation of the building or the issue of a Subdivision Certificate, all disused invert crossings are to be removed and replaced with kerb and gutter and all disused driveway across the footpath are to be removed and replaced with topsoil and turf to the satisfaction of the Director, Engineering & Operations.

[POC0080]

96. Work as executed plans are to be provided to Council detailing:-

- (i) all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision;

- (ii) the plans accurately reflect the Work as Executed;
- (iii) plans are to show the two inspection points perpendicular to two side boundaries and a depth below natural surface to pipe culvert for each inspection shaft.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

[POC0120]

97. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC0170]

98. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:

- i. Easements for sewer, water supply and drainage over ALL PUBLIC services on private property.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

[POCNS01]

99. Prior to the issue of a Occupation Certificate, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.

[POCNS01]

100. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of the occupation certificate.

[POCNS01]

101. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Occupation Certificate.

[POCNS01]

102. Prior to the issue of an Occupation Certificate, a "satisfactory inspection report" issued by Council must be produced for s68h2 permanent stormwater quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.

[POCNS01]

USE

103. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street.

[USE0040]

104. All loading/unloading to take place within the boundary of the subject property.

[USE0130]

105. Owners of buildings served by plant involving the operation of "cooling towers", "evaporative condensers" or "tepid water systems" must submit to Council, half yearly, a report detailing the maintenance, cleansing and chemical treatment of such plant every three (3) months in accordance with Part 6 of the NSW Public Health Act.

[USE0180]

106. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.

[USE0220]

107. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.

[USE0240]

108. All mechanical plant and machinery including any air handling equipment shall be acoustically shielded or otherwise treated to prevent the emission of loud and/or offensive noise caused by the operation of such plant or equipment causing a nuisance to the occupants of any neighbouring or adjacent residential premises. Any such required acoustic shielding or treatment shall be to the satisfaction of Council's Director Environment & Community Services.

[USENS01]

109. All artificial lighting including security lighting shall be shielded where necessary to prevent the spill of light causing a nuisance to any neighbouring residential premises. Any such shielding so provided shall be to the satisfaction of Council's Director Environment & Community Services.

[USENS01]

110. Any premise used for storage, preparation or sale of food are to comply with the relevant provisions of the Food Act 2003 Food safety Standards and AS 4674 - 2004.

[USENS01]

GENERAL TERMS OF APPROVAL UNDER SECTION 116 OF THE WATER ACT 1912 (Licence to commence sinking a bore to enlarge, deepen or alter a bore)

General Conditions

The purposes of these conditions are to -

- define certain terms used in other conditions
- specify the need to obtain a license, permit or authority before commencing any works
- specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
- require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
- require the safe construction and operation of all works
- require the use of appropriate soil conservation measures
- limit vegetation destruction or removal to the minimum necessary
- require the separate authorisation of clearing under the NVC Act
- allow conditions to be imposed for management of fuel (petroleum)
- require the payment of fees on the issuing of an approval

In the following conditions relating to an approval under the Water Act 1912:
“the Department” means the Department administering the Water Act 1912;
“approval” means a license, permit, authority or approval under that Act;
“river” has the same meaning as in Section 5 of the Water Act 1912;
“work” means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;
“controlled work” means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912.

- Before commencing any works or using any existing works for the purpose of Temporary Dewatering for Construction Purposes, an approval under **Part 5** of the Water Act 1912 must be obtained from the Department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.
- An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.
- When the Department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or to let lapse.
- All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.
- All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry of sediments into any river, lake, waterbody, wetland or groundwater system.
- The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.
- All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.
- The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.
- A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.

- Any license so issued, from the date of issue, will be subject to Annual Cost Recovery Water Management Charges as set by the Independent Pricing and Regulatory Tribunal.

Conditions relating to water entitlements

The purposes of these conditions are to -

- allow rules for water transfers to be applied
 - specify an annual entitlement (regulated and unregulated streams)
 - allow the placement of limitations as to when water may be taken to ensure a flow remains for other users and the environment (unregulated streams)
- A transfer of an entitlement shall be subject to the provisions of the Water Act 1912 the regulations made thereunder and the transfer rules applying at the time of application as determined by the Department
 - The authorised annual entitlement will not exceed 10 mega litres.
 - Extraction of water under the approval to be issued shall be subject to conditions with regard to availability of supply and such restrictions as are deemed necessary by the Department from time to time to ensure an adequate flow remains for other water users and the environment.

Conditions for water use

The purposes of these conditions are to -

- allow the department obtain an accurate measure of water use where necessary
 - specify the purpose(s) for which the water may be used
 - specify conditions to protect water quality and the environment
 - ensure proper management of tailwater drainage
 - ensure accessions to groundwater systems are restricted.
- If and when required by the Department, suitable devices must be installed to accurately measure the quantity of water extracted or diverted by the works.
 - All water measuring equipment must be adequately maintained. It must be tested as and when required by the Department to ensure its accuracy.
 - The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

Conditions for Bores and Wells

See also “general conditions” and “conditions for water use”

The purpose of these conditions are to -

- set a limited time for bore construction
 - allow DIPNR access for inspection and testing
 - specify procedures if saline or polluted water found
 - specify procedures if the bore is abandoned
 - require advice if water found
 - specify the volumetric allocation for each purpose of the entitlement
 - identify lands that may be irrigated
 - specify the volumetric allocation for the works purpose
 - allow DIPNR to alter the volumetric allocation at any time
-
- Works for construction of bores must be completed within such period as specified by the Department.

 - Within 2 months after the works are completed the Department must be provided with an accurate plan of the location of the works and notified of the results of any pumping tests, water analysis and other details as are notified in the approval.

 - Officers of the Department or other authorised persons must be allowed full and free access to the works for the purpose of inspection and testing.

 - Water shall not be pumped from the works for any purpose other than dewatering for construction purposes.

 - The use of water shall be conditional on no tailwater drainage being discharged into or onto -
 - any adjoining public or crown road
 - any crown land
 - any river, creek or watercourse
 - any groundwater aquifer
 - any area of native vegetation
 - any wetlands

 - The work shall be managed in accordance with the constraints set out in the “Soil and Water Management Plan” and “Acid Sulfate Soil Management Plan” produced by blueLAND engineers dated March 2005.

- The volume of groundwater extracted as authorised must not exceed 10 mega litres.
- The Department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.
- The licence shall lapse within six (6) months of the date of issue of the licence.

REPORT:

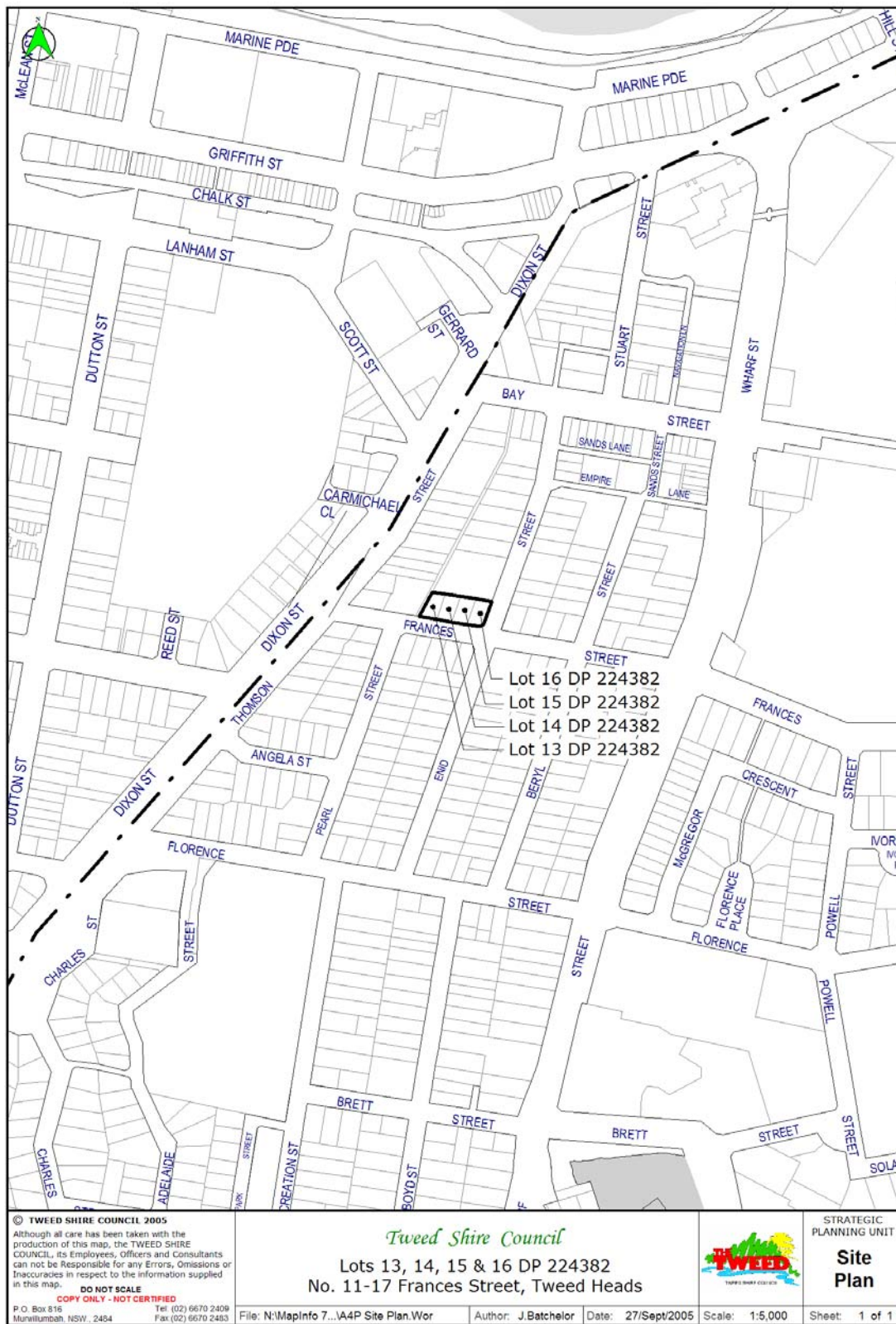
Applicant: Trustees of the Roman Catholic Church for the Diocese of Lismore
Tweed Heads Parish
Owner: Trustees of the Roman Catholic Church
Location: Lots 13, 14, 15 & 16 DP 224382 No. 11-17 Frances Street, Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$10,000,000

BACKGROUND:

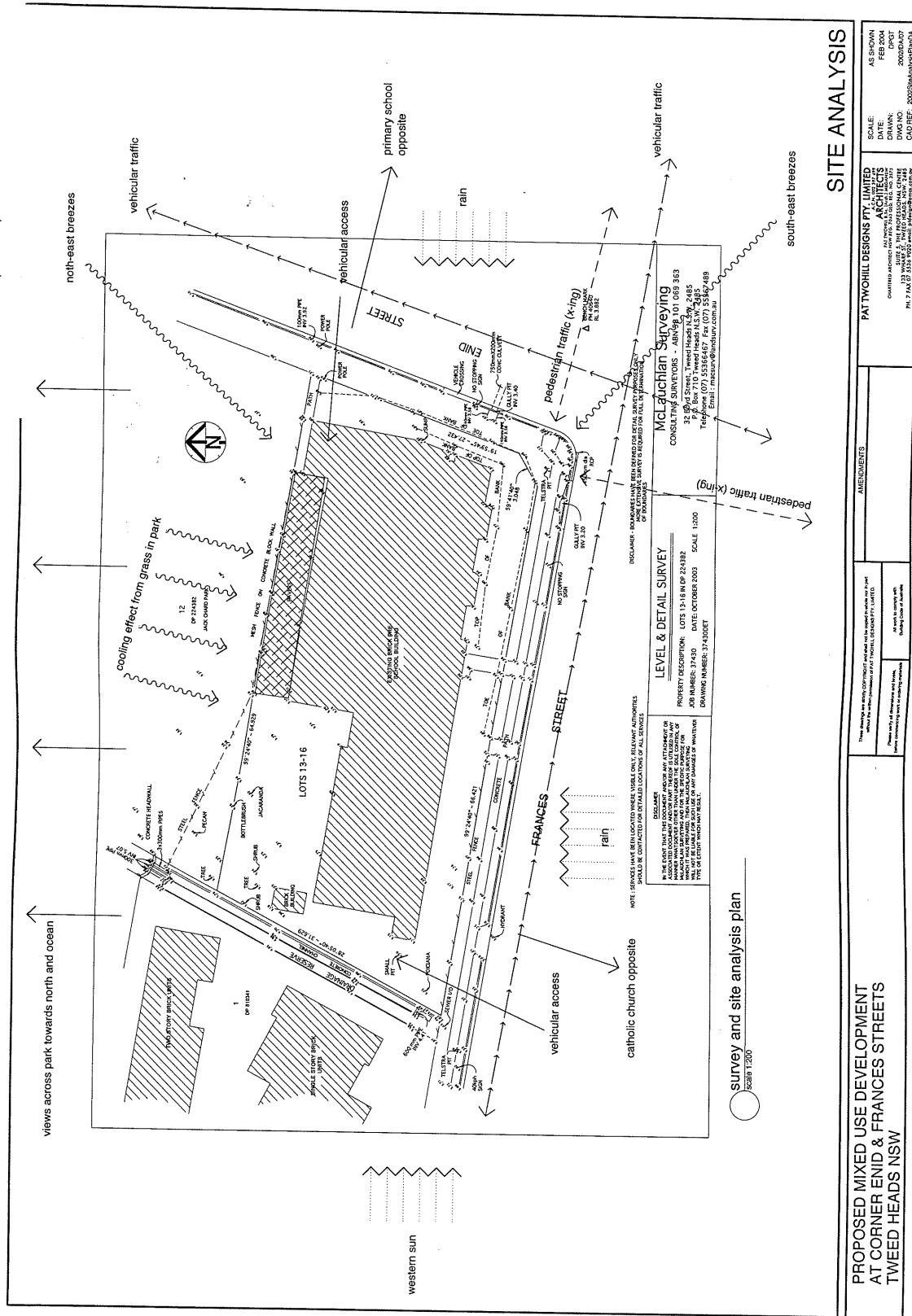
Council is in receipt of a Development Application for a proposed multi-dwelling housing development containing 30 residential units as well as administration, meeting and function rooms for the Catholic parish. The proposed development involves the erection of a 12-storey building comprising 11 levels of residential units and the ground floor being the commercial floor space. The development is provided with a basement carparking area with 45 carparking spaces, storage areas, garage, garbage storage, irrigation tanks and lift and stairwells to the building. The basement is accessed by a ramp off Frances Street. From Enid Street, the proposed development at ground floor has a driveway entry which provides 15 vehicle carparking spaces and a car wash bay. The Enid Street entry is adjacent to Jack Chard Park, which is on the northern side of the subject land.

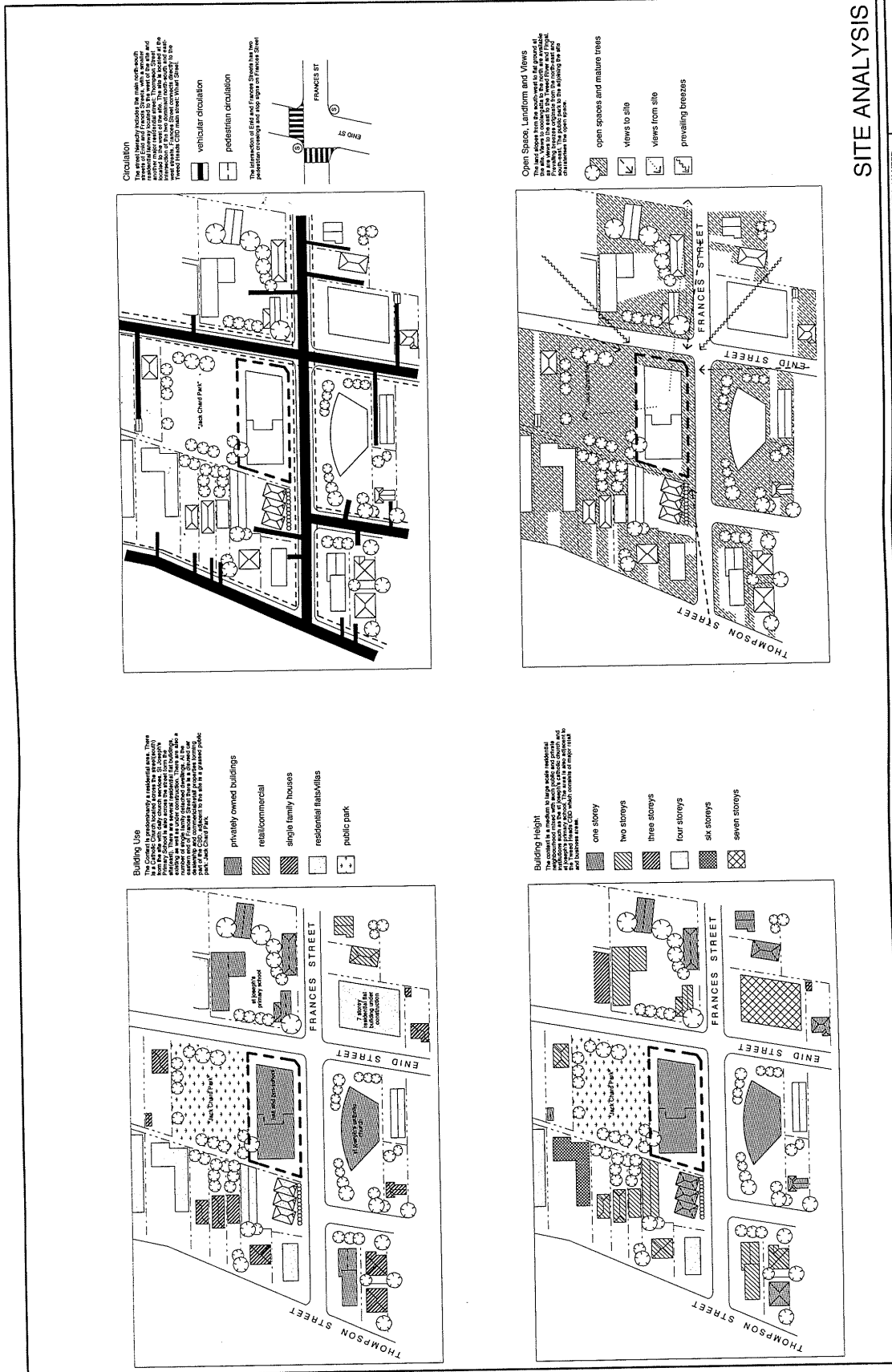
The proposed development will result in the removal of a pre-school and church hall building, on the site. The pre-school has been relocated to Council owned community land in Banora Point and the proposed re-development includes commercial floor space for the Catholic Church to undertake its' other administrative functions. The proposed development includes a pedestrian access way connecting Frances Street with Jack Chard park to the north of the site. The site is opposite the St Josephs Primary School and the St Josephs Catholic Church is located to the south of the site on Frances Street. Directly opposite the proposed development is a new Department of Housing complex. During the exhibition of the proposed development Council received 10 written submissions by way of objection and petitions with multiple signatures. Others issues raised with the proposed development are consistency with the Tweed Heads Master Plan as well as traffic impacts given the location of the development at the intersection of Frances and Enid Streets.

SITE DIAGRAM:



Development Plans





SITE ANALYSIS

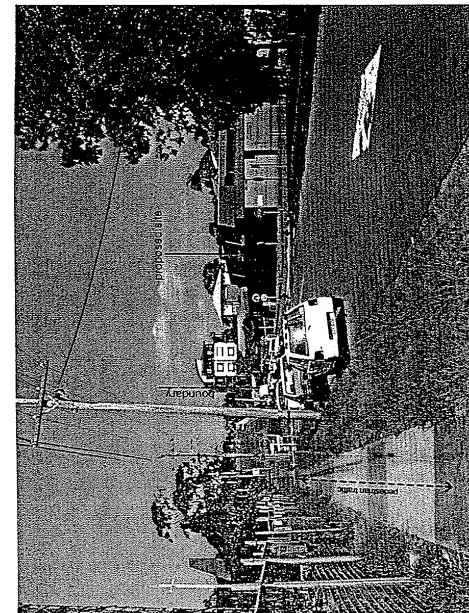
AMENDMENTS

**PROPOSED MIXED USE DEVELOPMENT
 AT CORNER END & FRANCES STREETS
 TWEED HEADS NSW**

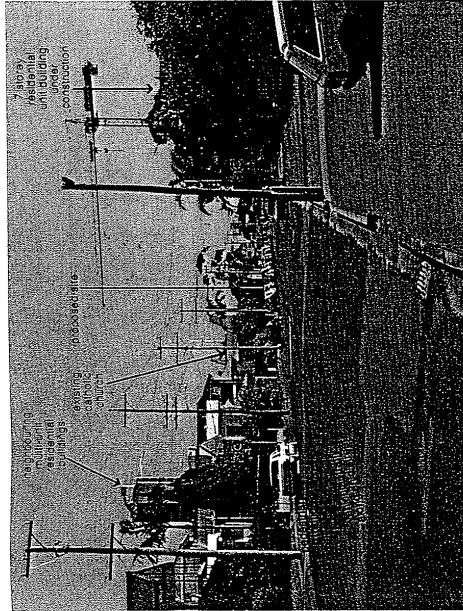
SCALE: AS SHOWN
 DATE: FEB 2004
 DRAWN: DPPT
 DWTG NO: 20020408
 CAD REF: 20020408

PAT TWOHILL DESIGNS PTY. LIMITED ARCHITECTS
 CONSULTING ARCHITECTS
 133 WOODVILLE ROAD, WOODVILLE, NSW 2325
 PHONE: (067) 425 5555
 FAX: (067) 425 5555
 EMAIL: pat@twohill.com.au
 WWW: www.twohill.com.au

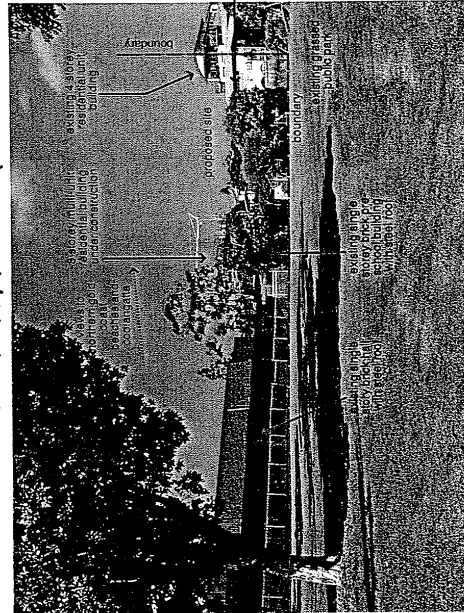
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 Drawing Code: 2004/001



VIEW WEST
ALONG FRANCES ST.
FROM OPPOSITE
ST. JOSEPH'S SCHOOL



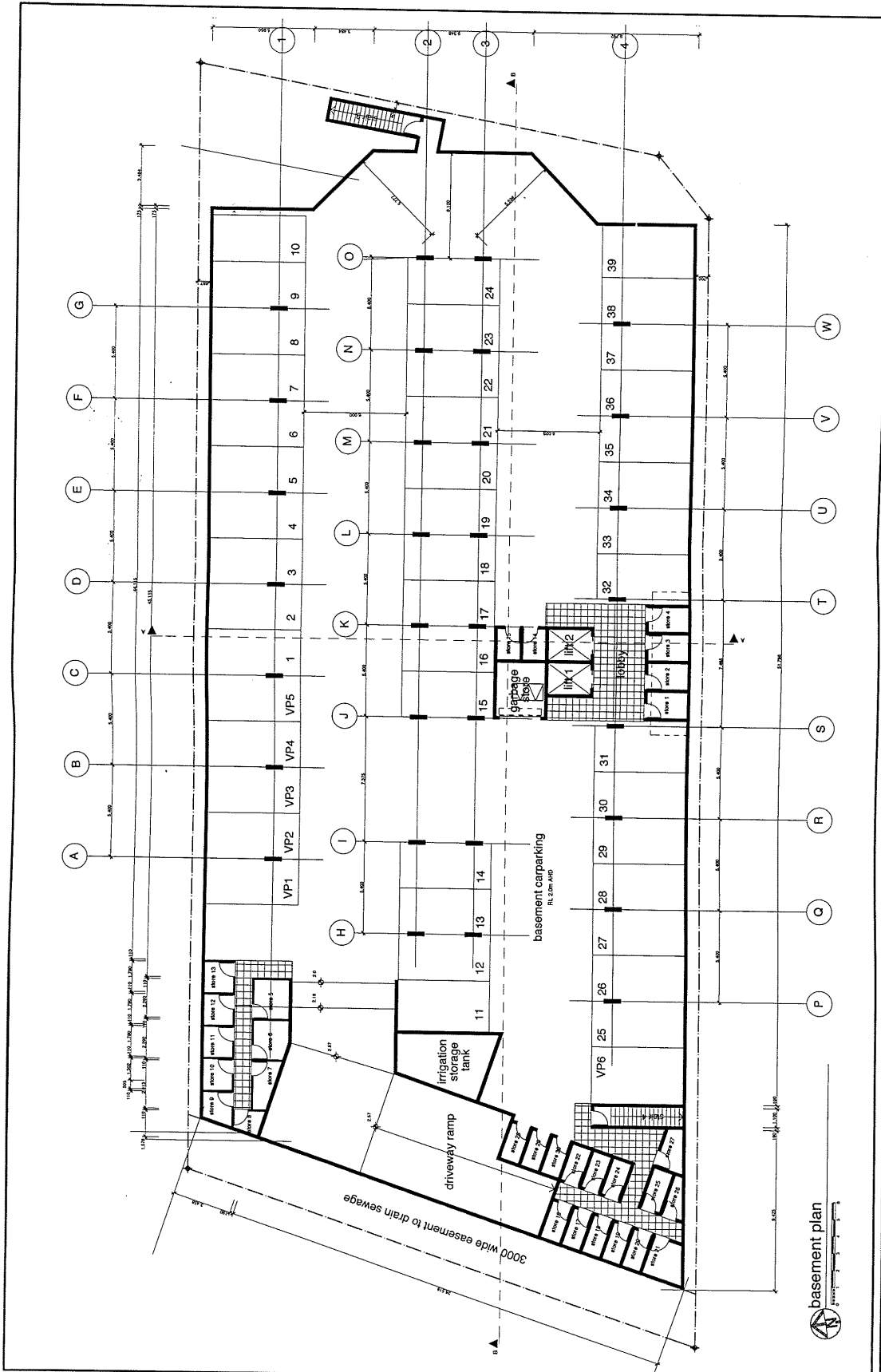
VIEW NORTH ALONG ENID ST.
TOWARDS INTERSECTION
WITH FRANCES ST.



VIEW SW ACROSS
PARK TO SITE
FROM ENID ST.

SITE ANALYSIS

PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW		AMENDMENTS	PAT TWOHILL DESIGNS PTY. LIMITED ARCHITECTS ARCHITECTS 133 WYALAY ST. TWEED HEADS NSW 2486 PH: 7543 2313 FAX: 7543 2311	SCALE AS SHOWN DATE FEB 2004 DRAWN 20020410 CAD REF
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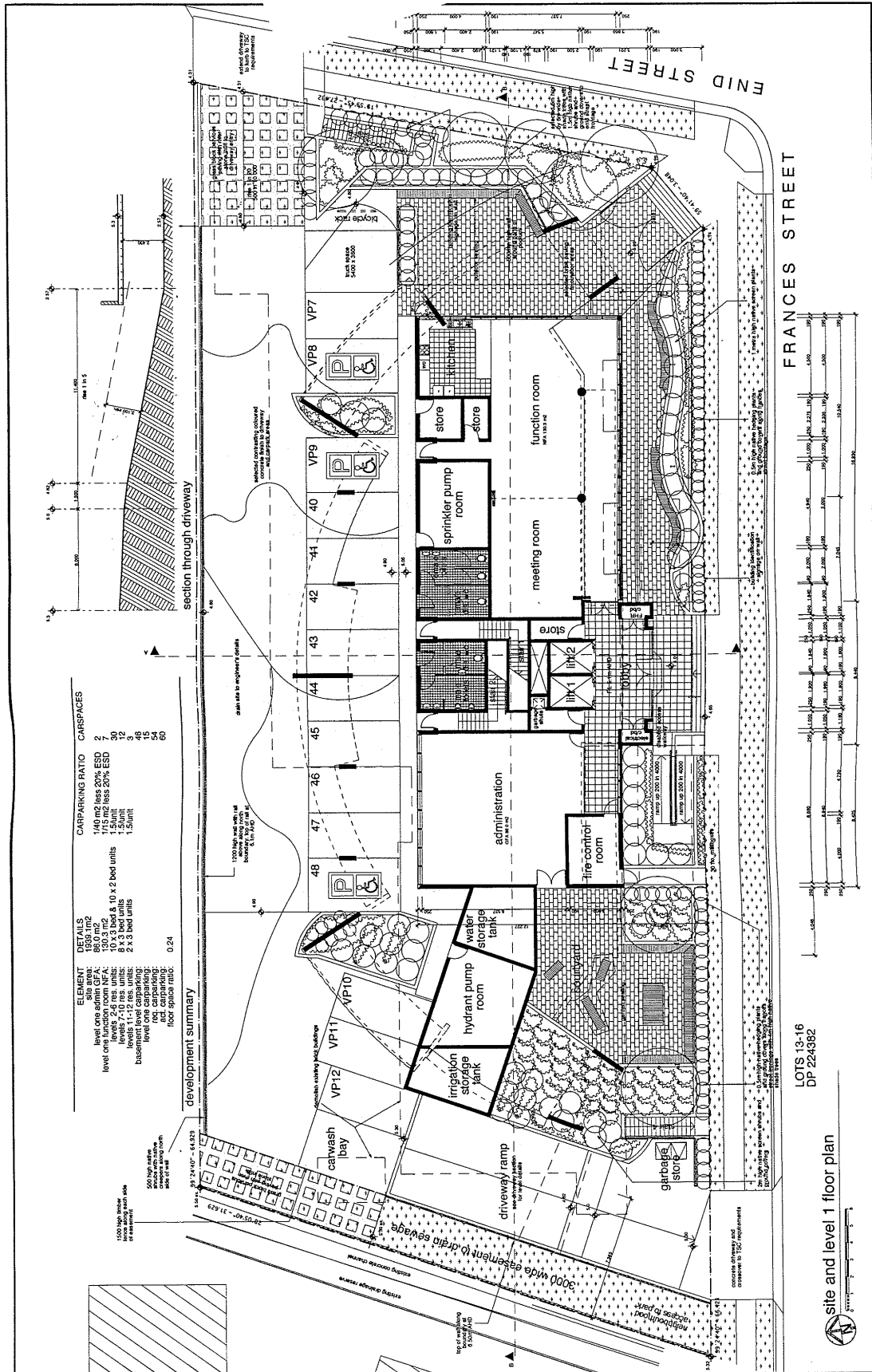


basement plan

PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW

AMENDMENTS

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ELEMENT	DETAILS	CARPARKING RATIO	CARS/SPACES
level one admin	130.3 m ²	1/40 m ² less 20% ESD	2
level one function room	88.0 m ²	1/15 m ² less 20% ESD	7
level one store	10.0 m ²	1/15 m ² less 20% ESD	1
levels 7-10 res. units	8 x 3 bed units	1.5 unit	12
levels 11-12 res. units	2 x 3 bed units	1.5 unit	3
basement	1.5 unit		15
level one carparking			64
total			104
floor space ratio:	0.24		

development summary

LOTS 13-16
DP 224362

site and level 1 floor plan

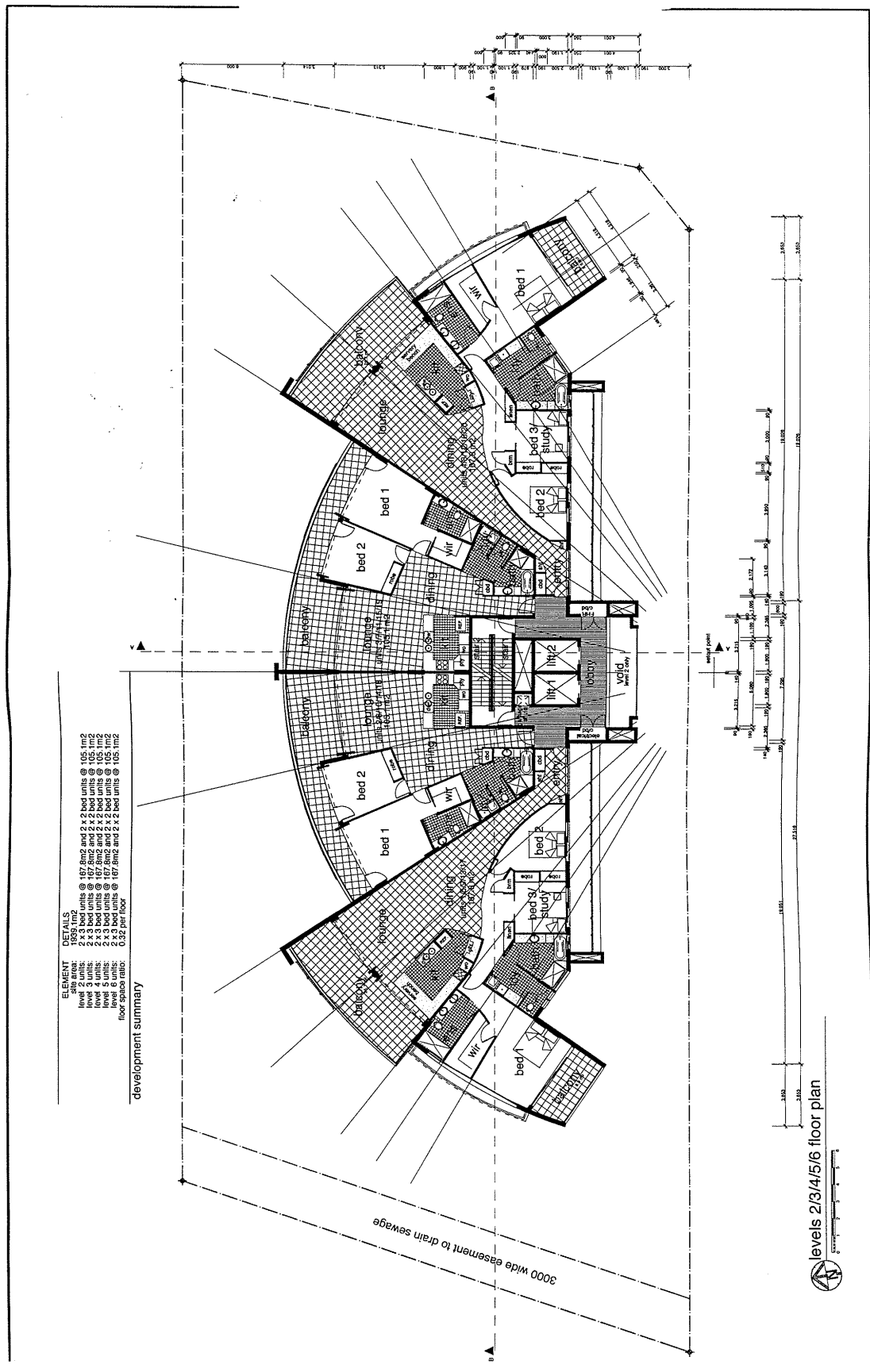
AS SHOWN
FEB 2004
DATE:
PAT TWOHILL
DRAWN BY:
DMS/BC
CAD REF:
2002P/001/P/004

SCALE:
DATE:
PAT TWOHILL DESIGNS PTY. LIMITED
ARCHITECTS
141 TROTTON STREET, TWEED HEADS NSW 2486
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PH: 7 146 5233 (08 2333 0000) (toll free) (9am-5pm)
PH: 7 146 5233 (08 2333 0000) (toll free) (9am-5pm)

AMENDMENTS

These drawings are made, prepared and used in accordance with the conditions of the contract for the services of PAT TWOHILL DESIGNS PTY. LIMITED.
Pat Twohill
Architect
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Tweed Heads NSW 2486
Phone: 08 2342 0000
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Email: pat@twohill.com.au

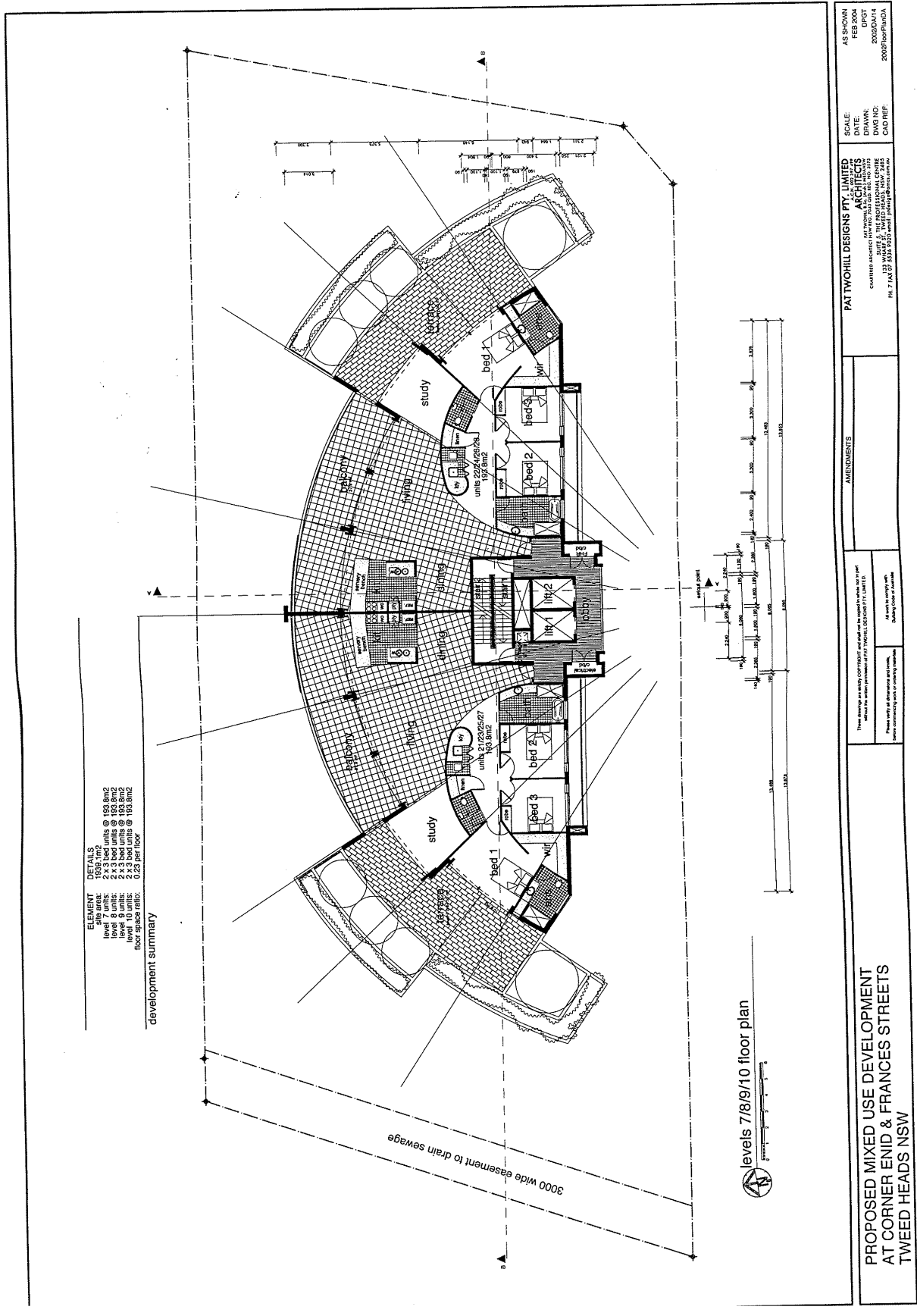
PROPOSED MIXED USE DEVELOPMENT
AT CORNER END & FRANCES STREETS
TWEED HEADS NSW



ELEMENT DETAILS
 1500 t/m²
 level 3 units @ 187.8m² and 2 x 2 bed units @ 105.1m²
 level 4 units @ 187.8m² and 2 x 2 bed units @ 105.1m²
 level 5 units @ 187.8m² and 2 x 2 bed units @ 105.1m²
 level 6 units @ 187.8m² and 2 x 2 bed units @ 105.1m²
 floor space ratio: 0.32 per floor

development summary

<p>AS SHOWN DATE: FEB 2004 DRAWN: DP/ST DWG NO: 2002/D/13 CAD REF: 2002/00/P/04</p>	
<p>SCALE DATE DRAWN DWG NO CAD REF</p>	
<p>PATWOHILL DESIGNS PTY. LIMITED ARCHITECTS CHARTERED ARCHITECTS (NSW) REG. NO. 133 133 FAYERS ST. SYDNEY NSW 2009 PH: 7 549 8338 FAX: 7 549 8339</p>	
<p>AMENDMENTS</p>	
<p>These drawings are to be read in conjunction with the following documents: - The site plan prepared by P. T. Woehll, P. T. Woehll Pty. Limited. - All work is carried out in accordance with the Building Code of Australia.</p>	
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>	



ELEMENT DETAILS
 site area: 1639 m²
 level 7 units @ 153.8 m²
 level 8 units: 2 x 3 bed units @ 153.8 m²
 level 9 units: 2 x 3 bed units @ 153.8 m²
 level 10 units @ 153.8 m²
 floor space ratio: 0.23 per floor

development summary

levels 7/8/9/10 floor plan

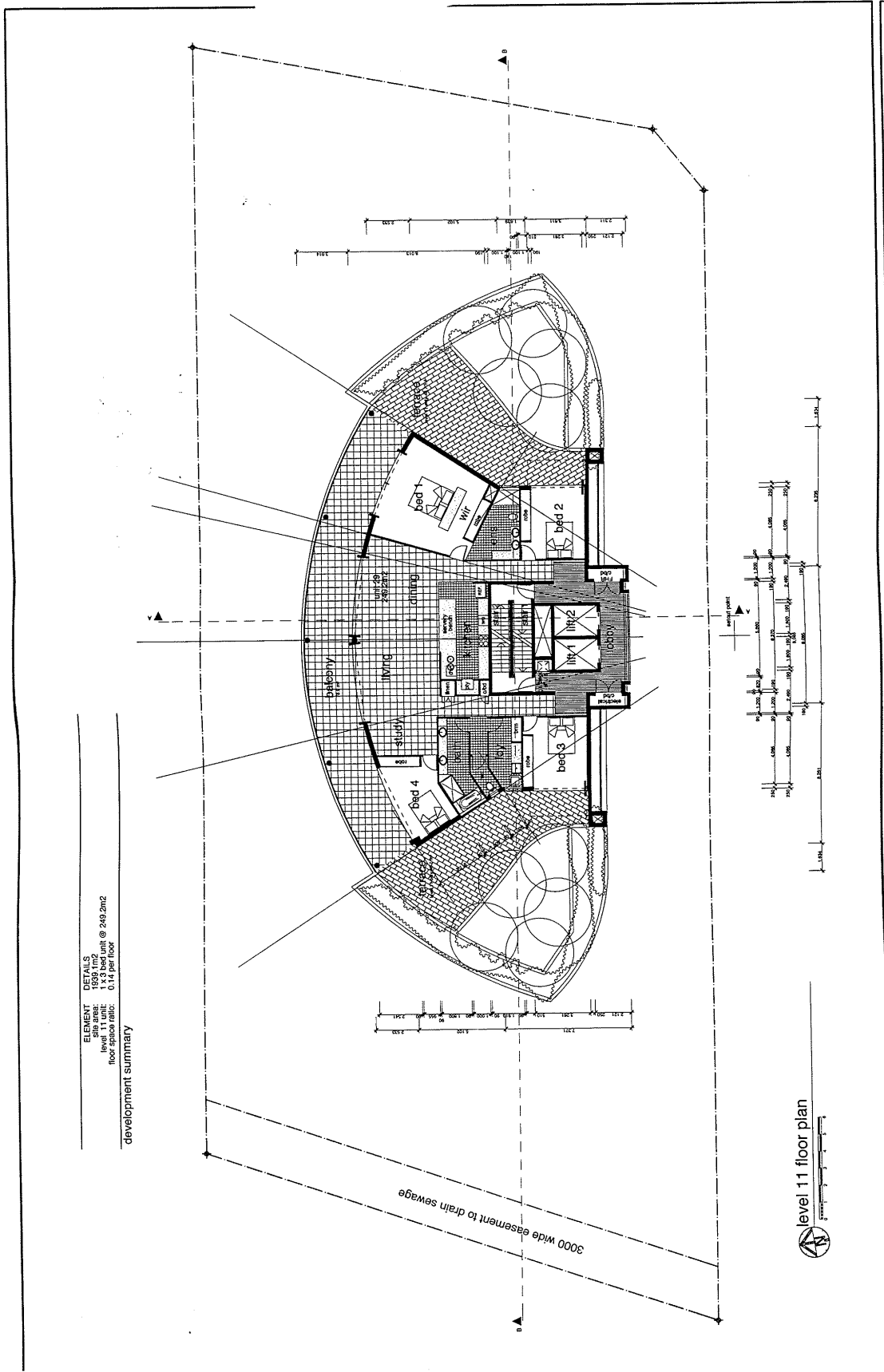
AS SHOWN
 FEB 2004
 2005/01/4
 2005/01/4
 2005/01/4
 2005/01/4

SCALE:
 DATE:
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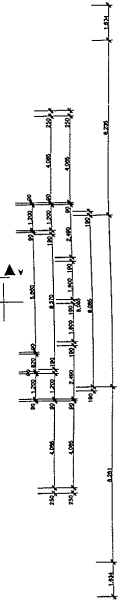
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 123 WILSON STREET, TWEED HEADS NSW 2486
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 www.pattwohill.com.au

AMENDMENTS

PROPOSED MIXED USE DEVELOPMENT
 AT CORNER ENID & FRANCES STREETS
 TWEED HEADS NSW

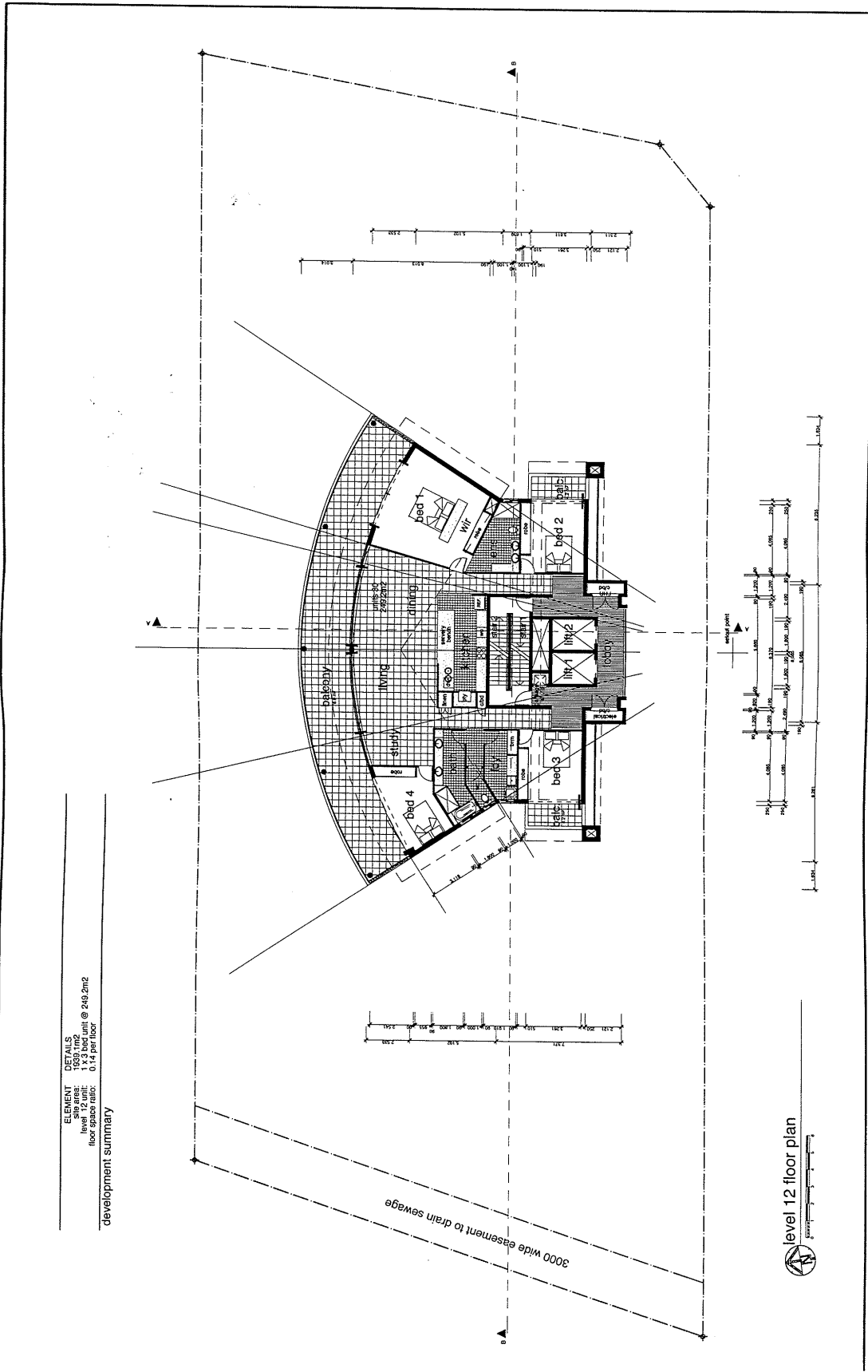


ELEMENT DETAILS
 site area: 1959 sqm
 level 11 units @ 249.2m²
 floor space ratio: 0.14 per floor
development summary



level 11 floor plan

<p>AMENDMENTS</p>	
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<p>As shown FEB 2004 DPST 2002DA15 2002PH01A 2002PH01A</p>	
<p>SCALE: DRAWN: DWG NO: CAD REF:</p>	
<p>PAT TWOHILL DESIGN PTY LIMITED 1/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000</p>	
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>	



ELEMENT DETAILS
 1997.1102
 floor area: 1.14 per floor
 floor space ratio: 0.14 per floor
 development summary

level 12 floor plan

<p>These drawings are solely for the purpose of the development and are not to be used for any other purpose without the written permission of Pat Twohill Designs Pty. Limited.</p> <p>Please note all dimensions are in metres.</p> <p>Drawn in accordance with the Australian Standards for Architectural Drawings.</p>		<p>SCALE: AS SHOWN DATE: FEB 2004 DRAWN: DRGT CHECKED: DRGT CAD FILE: 20050204.dwg</p>
<p>AMENDMENTS</p>		<p>PAT TWOHILL DESIGNS PTY. LIMITED ARCHITECTS 1111 FARM ROAD CHARTERED ACCOUNTANT 1111 FARM ROAD, TWEED HEADS, NSW 2486 PHONE: 07 5533 7373 FAX: 07 5533 7373 EMAIL: pat@twohill.com.au</p>
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>		

THE SITE

WEST SIDE OF ENID ST.

JACK CHARD PARK

WEST SIDE OF ENID ST.

WEST SIDE OF JACK CHARD PARK

SOUTH SIDE OF FRANCES ST.

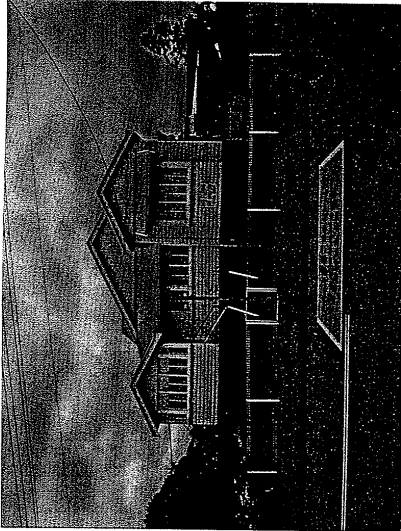
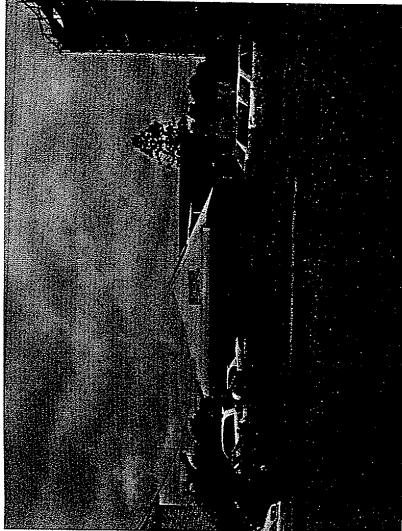
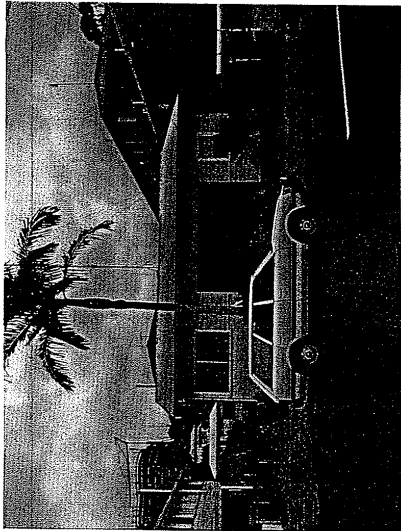
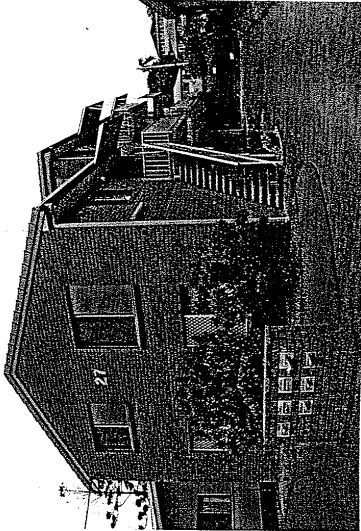
ST. JOSEPH'S CATHOLIC CHURCH

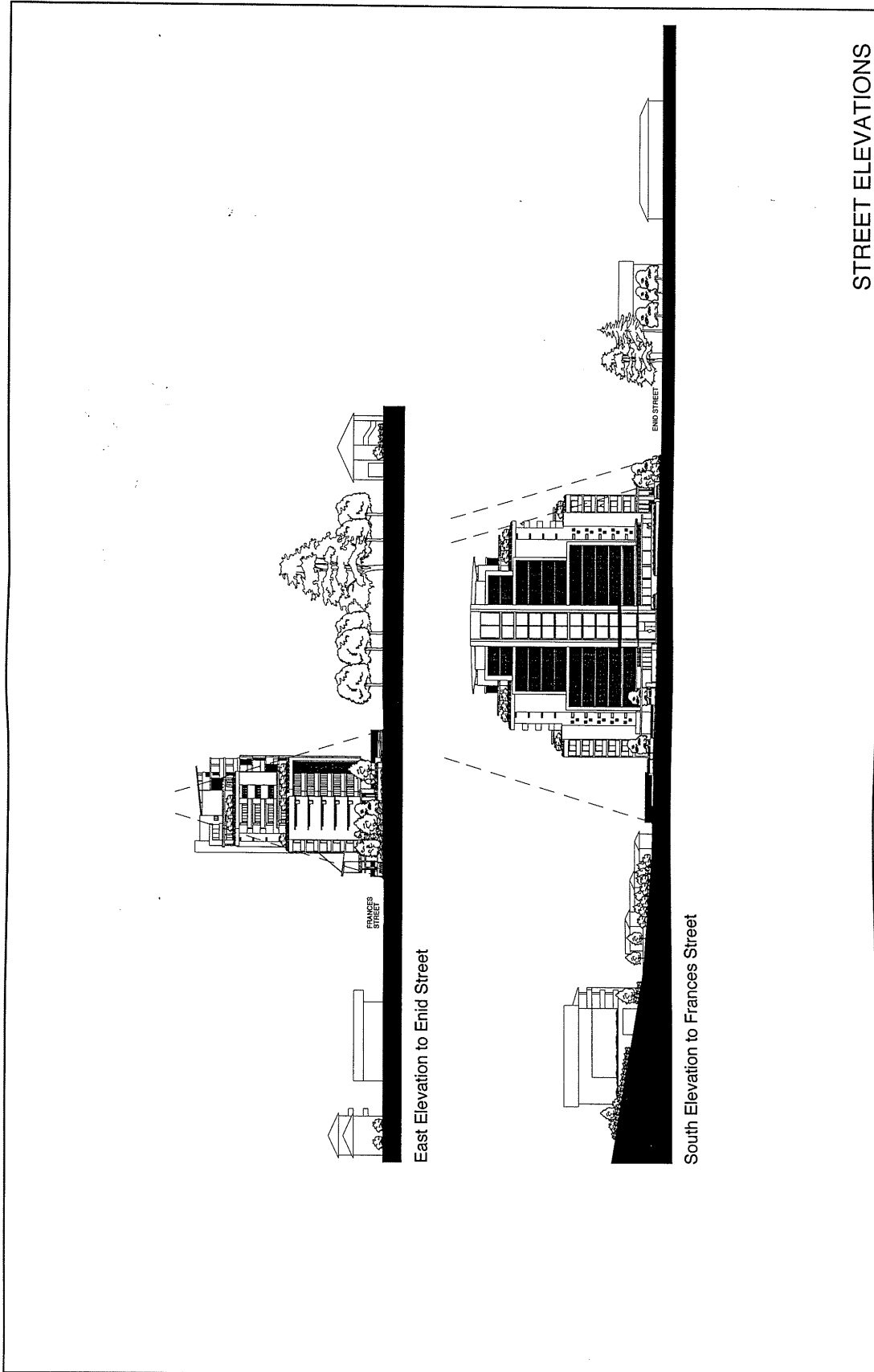
STREET SCAPE

PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW

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<p>PAT TWOHILL DESIGNS PTY LIMITED ARCHITECTS 2/115 RIVER STREET TWEED HEADS NSW 2486 PH: 7542 8282 FAX: 7542 8281</p>			

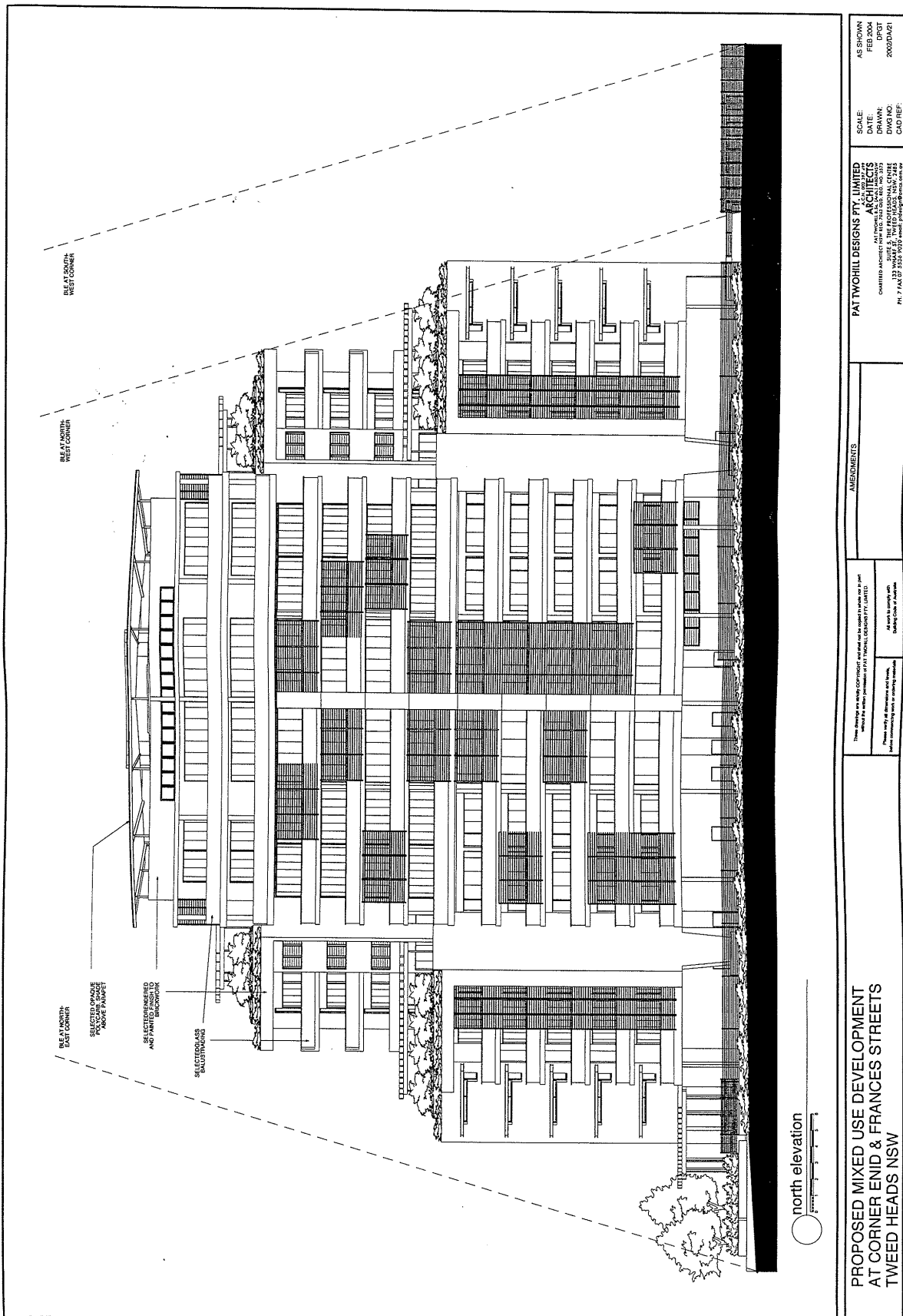
			<p>28 ENID ST.</p>	<p>EAST SIDE OF ENID ST. 20 ENID ST.</p>	<p>18-20 ENID ST.</p>	<p>STREET SCAPE</p>	<p>AMENDMENTS</p>	<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>	<p>AS SHOWN FEB 2004 DATE DRAWN DATE DRAWN DATE DRAWN DATE DRAWN</p> <p>SCALE</p> <p>PAT TWOHILL DESIGNS PTY. LIMITED ARCHITECTS 44/1000 COMMERCIAL ROAD - TWEED HEADS NSW 2486 322 MARKET ST. TWEED HEADS NSW 2486 PH. 7 5527 2222 FAX 7552 2222 Email: pat@twohill.com.au</p>
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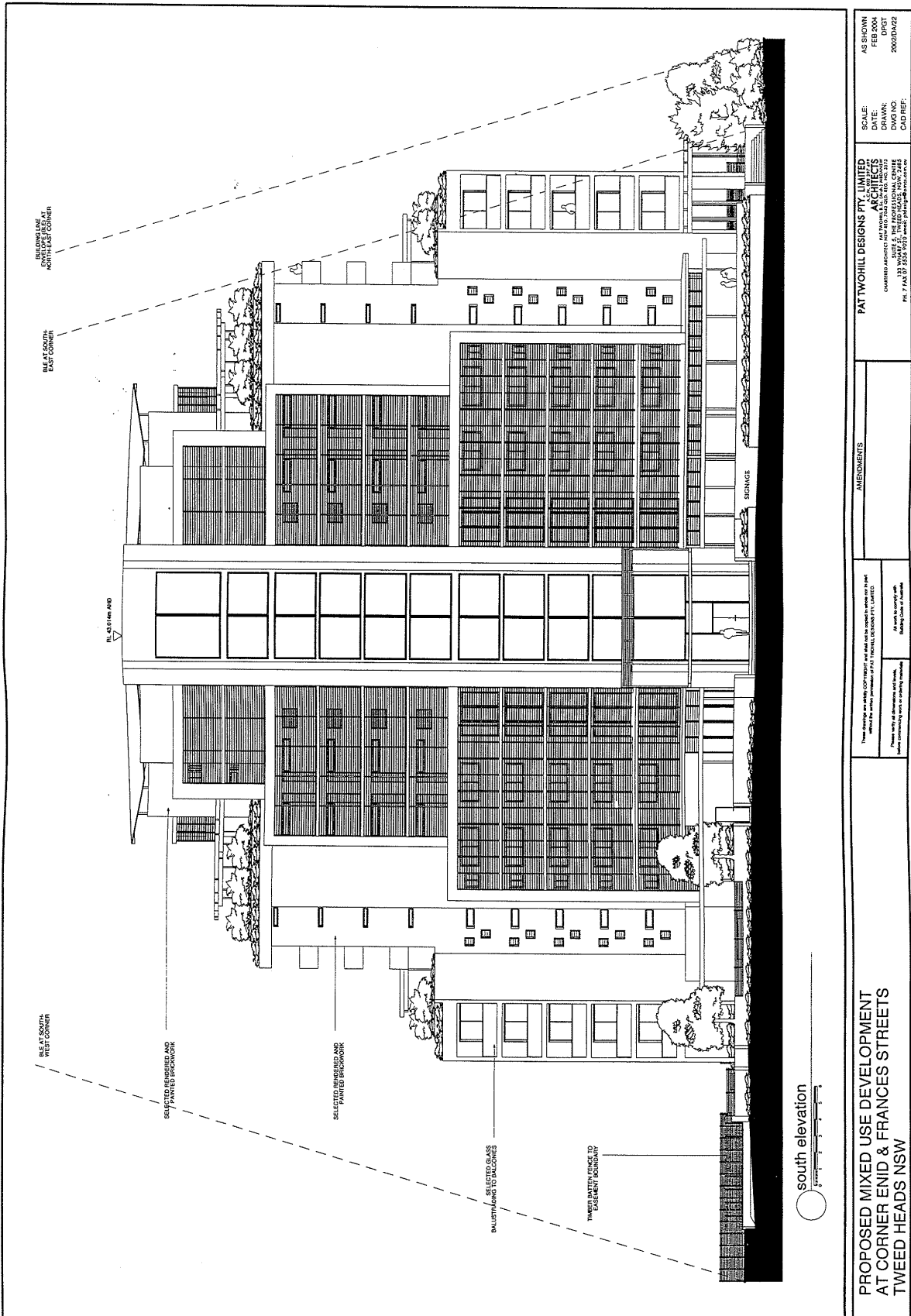
 <p>42 FRANCES ST.</p>	 <p>SOUTH SIDE OF FRANCES ST. 44 FRANCES ST.</p>	 <p>WEST SIDE OF ENID ST. 29 ENID ST.</p>	 <p>27 ENID ST.</p> <p style="text-align: right; font-weight: bold;">STREET SCAPE</p>
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>			
<p>AMENDMENTS</p>		<p>PATTWOCHILL DESIGNS PTY. LIMITED ARCHITECTS 133 FARMERS ROAD, TWEED HEADS NSW 2486 CONTACT: ANDREW PATTON 08 1300 7222 WWW.PATTWOCHILLDESIGNS.COM.AU</p>	
<p>These drawings are submitted for approval under the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000. It is the responsibility of the applicant to ensure that the drawings comply with the relevant provisions of the Act and the Regulation.</p> <p>Professional seal of the architect: [Signature]</p>		<p>SCALE DATE DRAWN DWG NO CAD REF:</p> <p>AS SHOWN FRANCIS ENID 2005/DA19</p>	



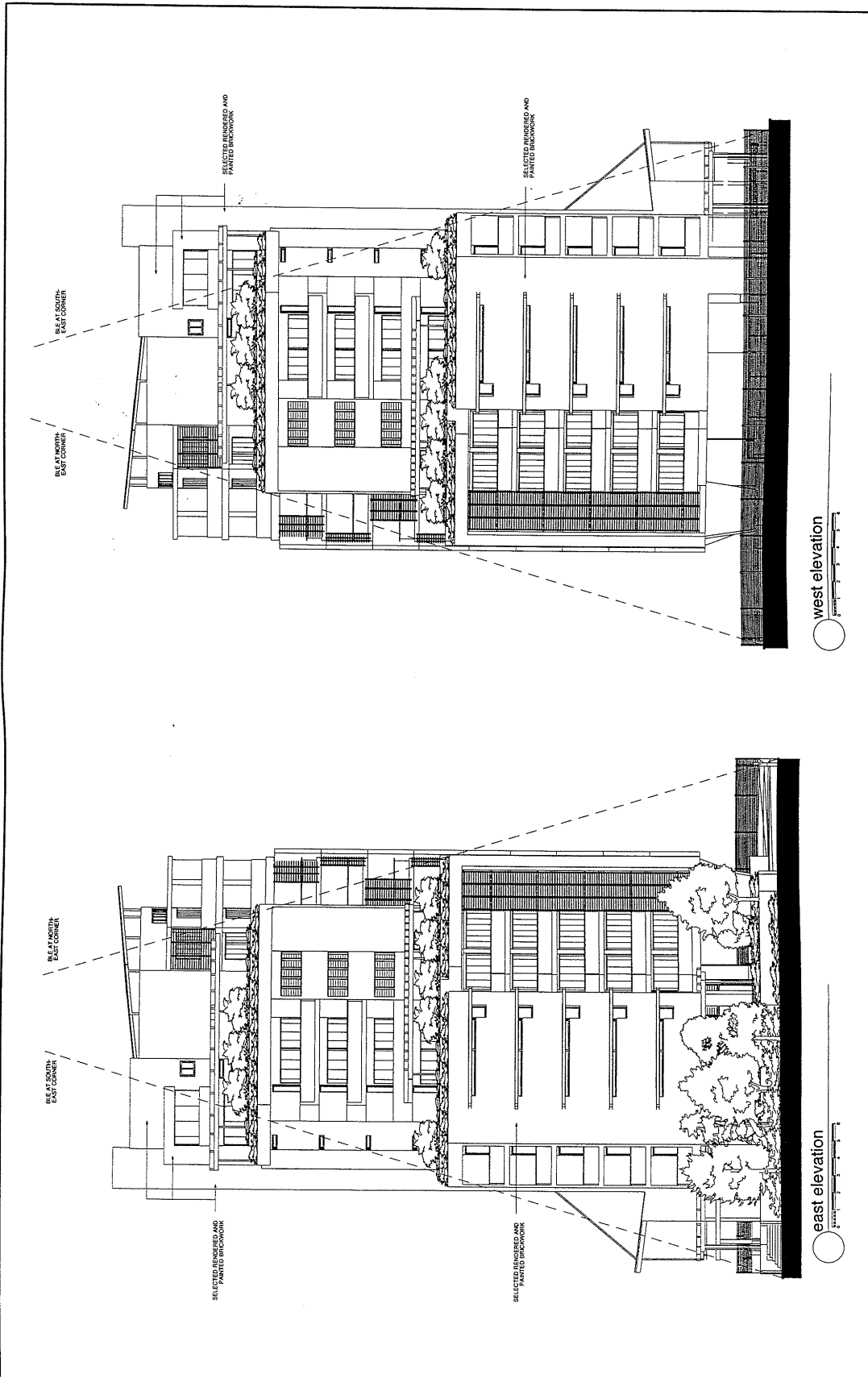
STREET ELEVATIONS

<p>AS SHOWN FEB 2004 DATE DWG NO. CAD REF.</p>	<p>PAT TWOHILL DESIGNS PTY LIMITED ARCHITECTS COUNTY OF TWEED, THE PROFESSIONAL CENTRE PH: 7141 27 7333 FAX: 7141 27 7333</p>	<p>AMENDMENTS</p>	<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>
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<p>AS SUSAN FEB 2004 DATE: DRAWN: DWG NO: CAD REF:</p>	<p>SCALE: DATE: DRAWN: DWG NO: CAD REF:</p>	<p>PAT TWOHILL DESIGNS PTY LIMITED ARCHITECTS 11/11/05 11/11/05 STATE OF THE PROFESSIONAL CENTRE 333 333 333 333 333 333 333 333 PH: 7144 0122 333 333 333 333 333 333</p>
<p>AMENDMENTS</p>		
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<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>		



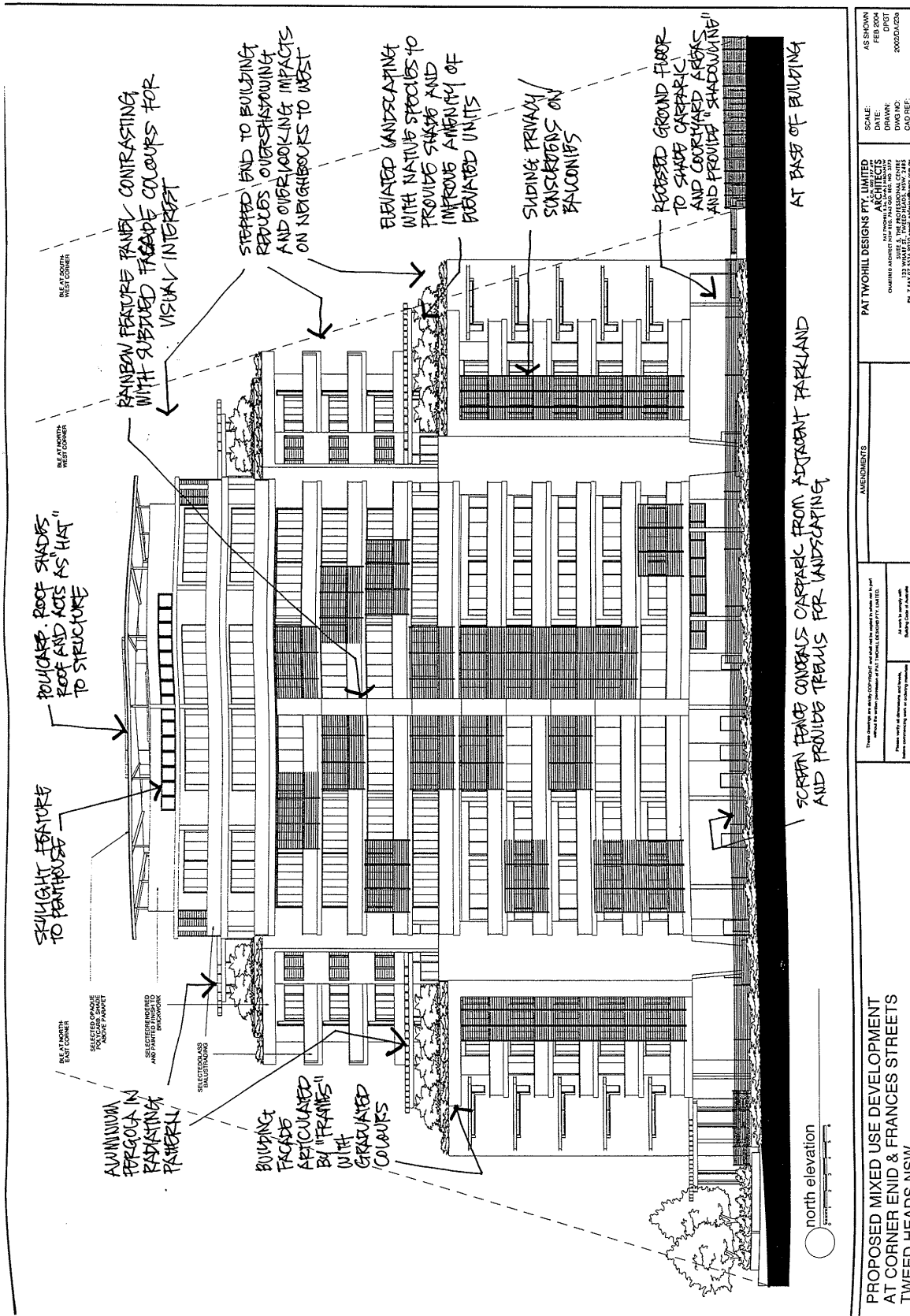
**PROPOSED MIXED USE DEVELOPMENT
AT CORNER END & FRANCES STREETS
TWEED HEADS NSW**

AMENDMENTS

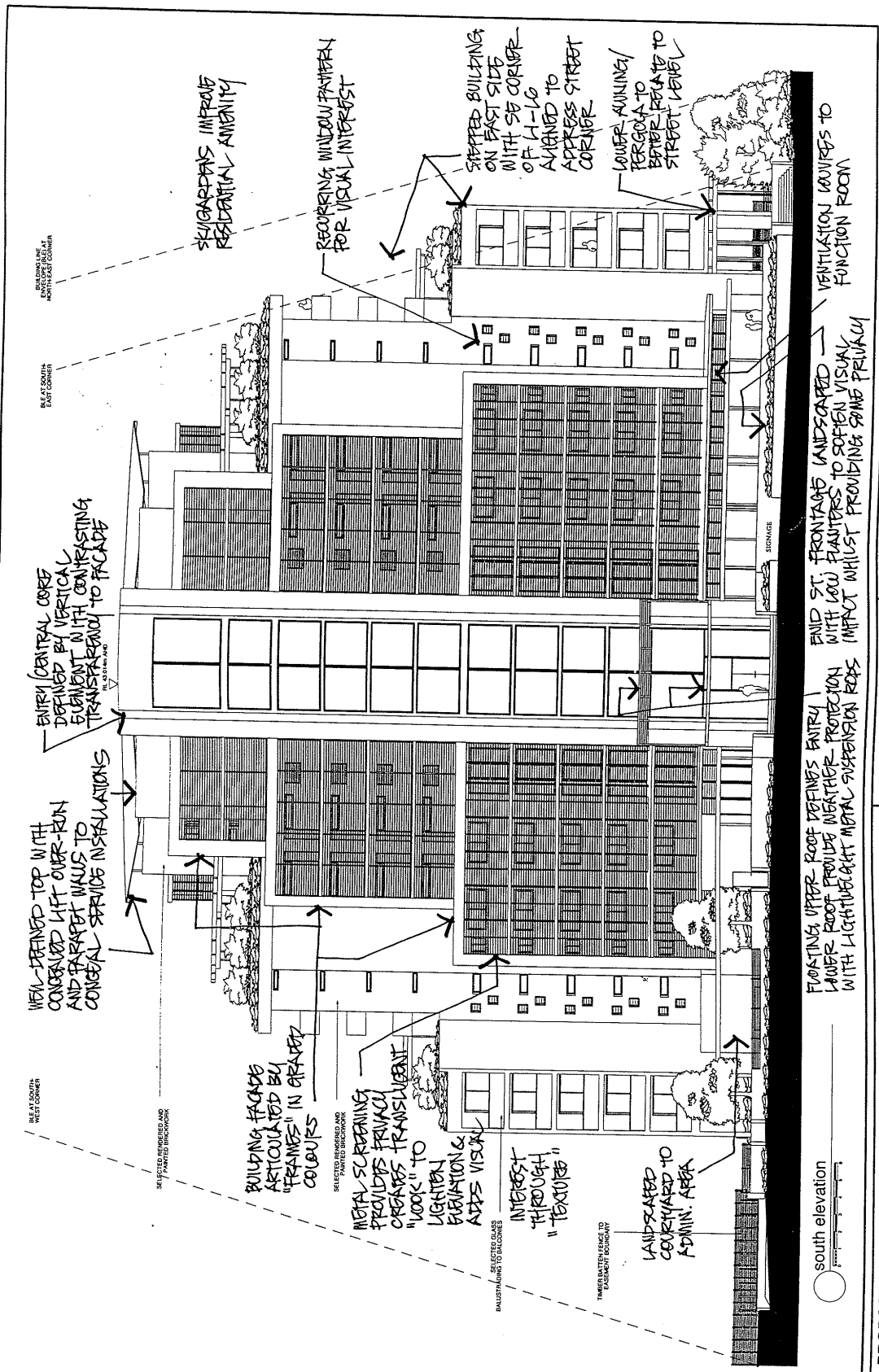
PAI TWOHILL DESIGNS PTY. LIMITED
ARCHITECTS
1/11 TROCKENBURY STREET
TWEED HEADS NSW 2486
PH: 7542 2222 FAX: 7542 2223
WWW.PAIARCHITECTS.COM.AU

SCALE: 1:100
DATE: 10/08/05
DRAWN BY: D.M.K.M.O.
CHECKED BY: D.M.K.M.O.
C.I.O. REF:

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PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW		



AS SHOWN
FEB 2004
DATE: FEB 2004
DRAWN: DPCT
2000/04/25
CAD FILE:

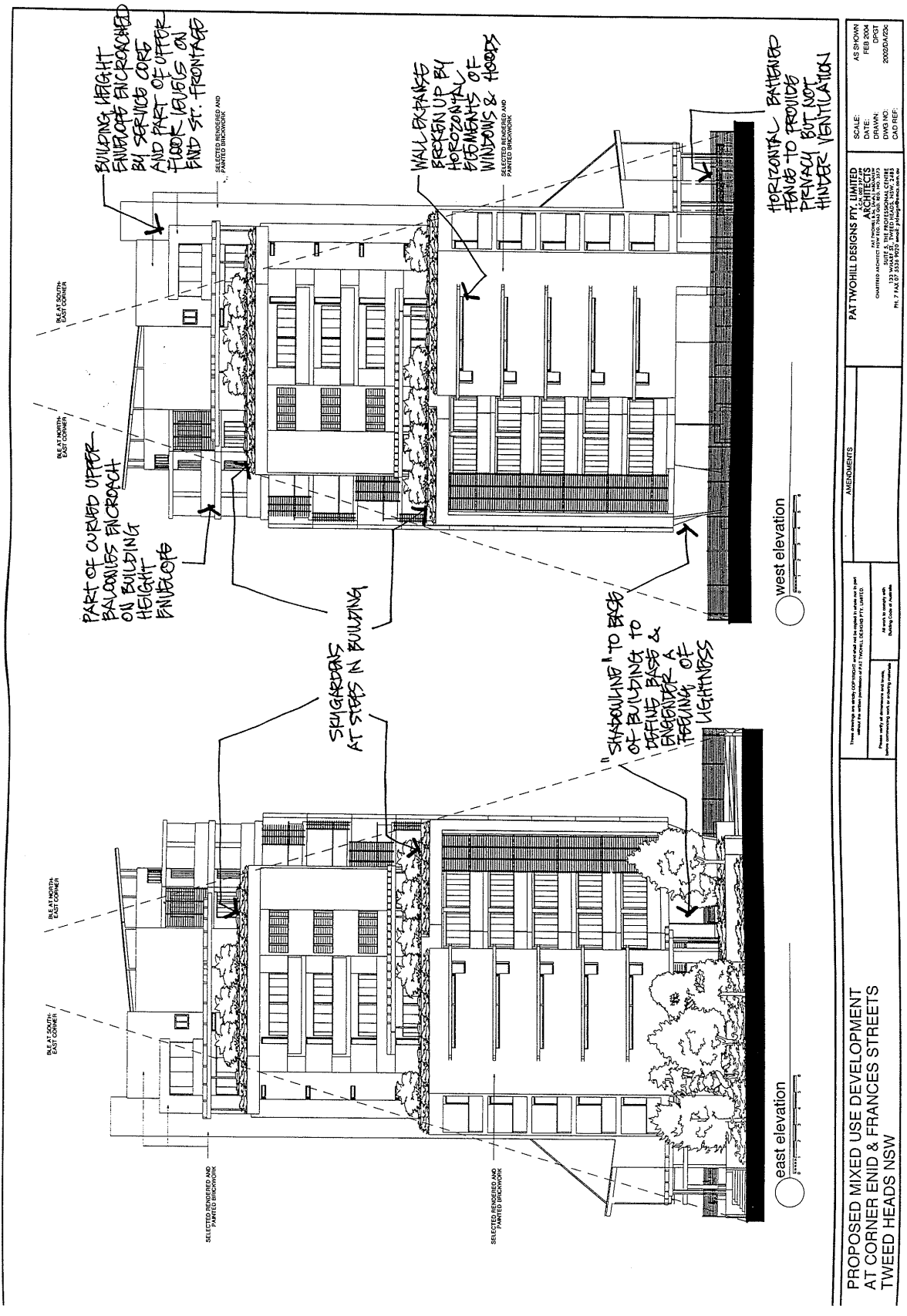
SCALE: ARCHITECTS
PATWORTH DESIGNS PTY. LIMITED
ARCHITECTS
141 NEWCASTLE STREET, NEWCASTLE NSW 1590
CHARTERED ARCHITECTS (NSW) INC. NO. 10718
133 WARD ST., THE BUSH, NSW 1588
PH: 7 438 07 2333 FAX: 7 438 07 2334
WWW.PATWORTHDESIGNS.COM.AU

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PROPOSED MIXED USE DEVELOPMENT
AT CORNER END & FRANCES STREETS
TWEED HEADS NSW

south elevation



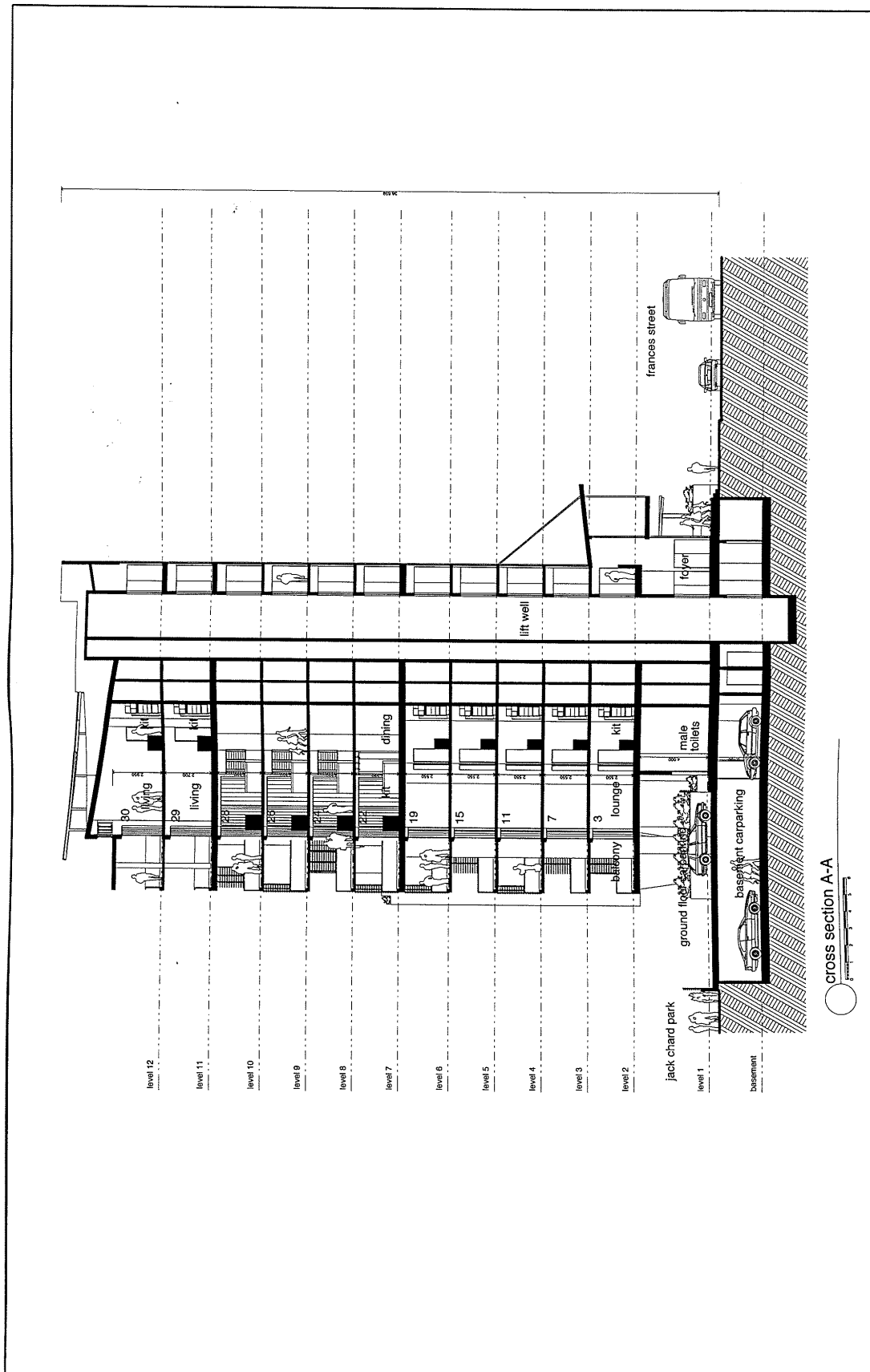
PROPOSED MIXED USE DEVELOPMENT
AT CORNER END & FRANCES STREETS
TWEED HEADS NSW

AMENDMENTS

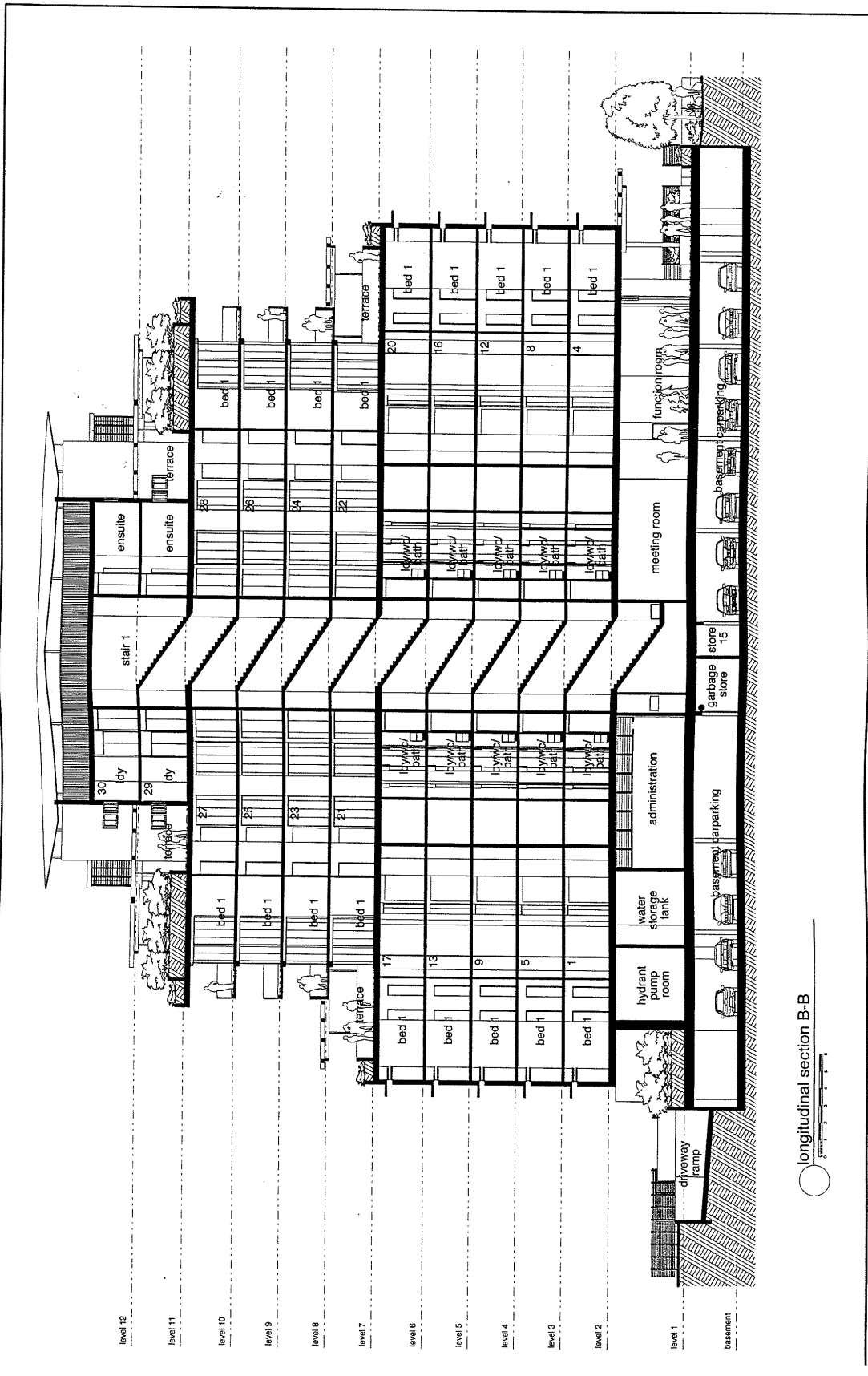
PAT TWOHILL DESIGNS PTY LIMITED
ARCHITECTS
1/110 WILSON STREET
TWEED HEADS NSW 2486
PH: 7 552 2333 FAX: 7 552 2333
WWW.PATDESIGN.COM

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DWG NO: 200204/02
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<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>		



longitudinal section B-B

**PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW**

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DATE: FEB 2004
DRAWN: DPBT
DWG NO: 20020405
CAD REF: 200204

PAT TWOHILL DESIGNS PTY. LIMITED
ARCHITECTS
CHARITABLE SOCIETY FOR THE TWEED HEADS DISTRICT
133 WALKER ST. TWEED HEADS NSW 2486
Ph: 7442 3333 2005 email: pat@twohill.com.au



December 21 - 9am

December 21 - 12 noon

December 21 - 3pm



December 21 - 6pm

December 21 - 7pm

SHADOW PROJECTION PLANS

**PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW**

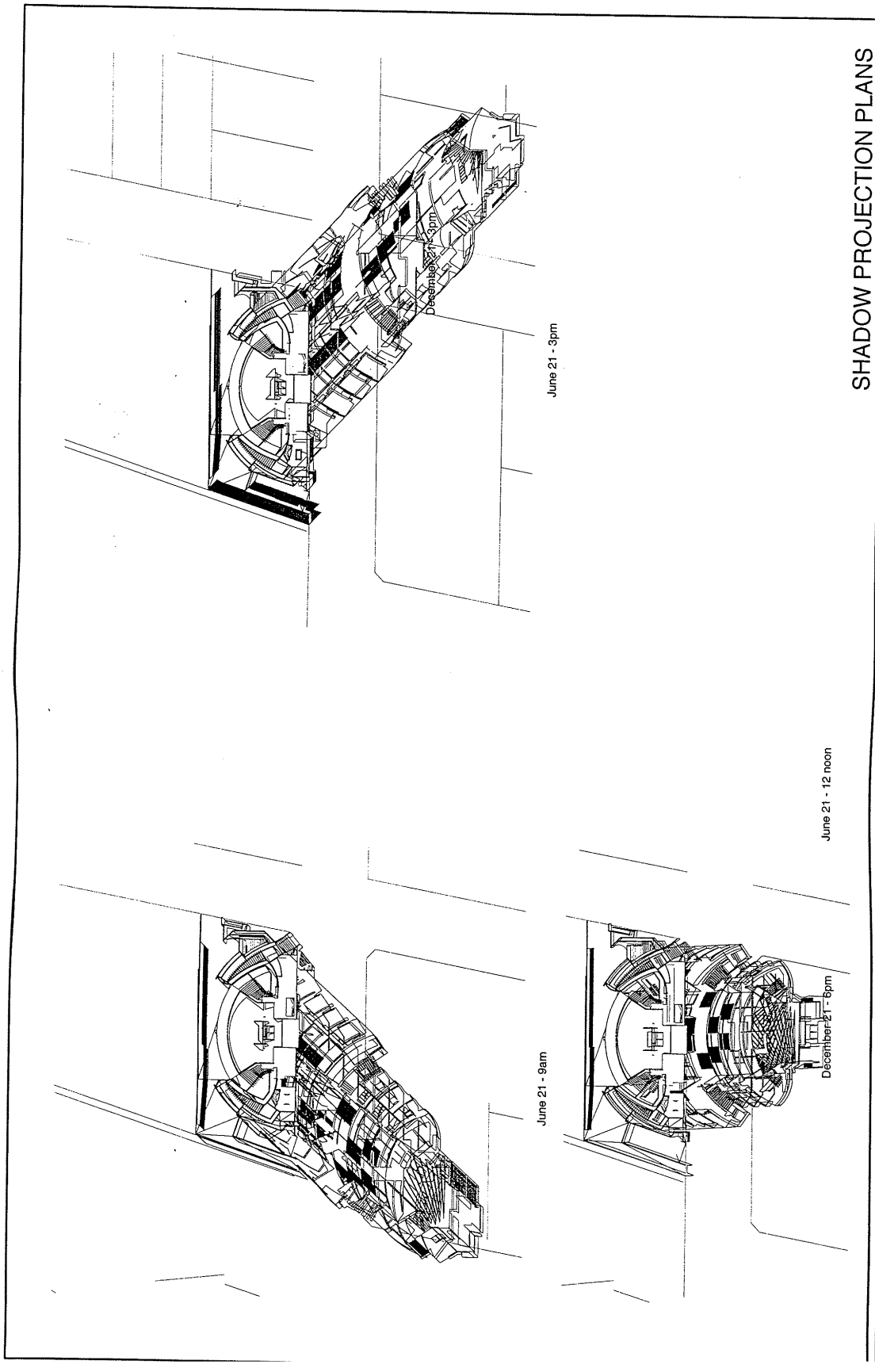
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1/110 RIVERVIEW DRIVE
TWEED HEADS NSW 2486
PH: 7 439 3233 FAX: 7 439 3234
WWW.PATTYNHILLDESIGN.COM.AU

SCALE: AS SHOWN
DATE: FEB 2004
DRAWN BY: [blank]
DWG NO: 200502028
CAD REF: [blank]



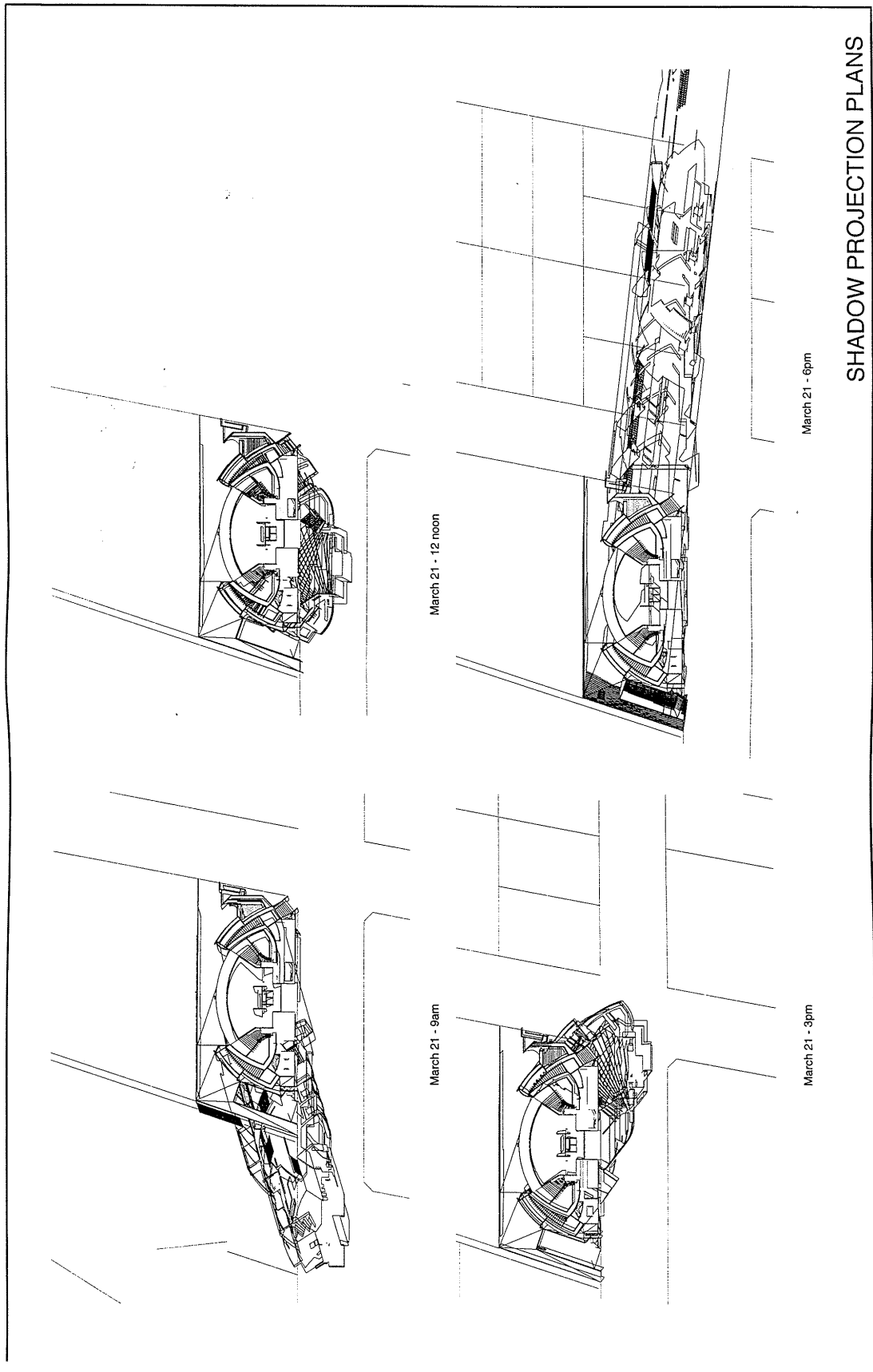
SHADOW PROJECTION PLANS

**PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW**

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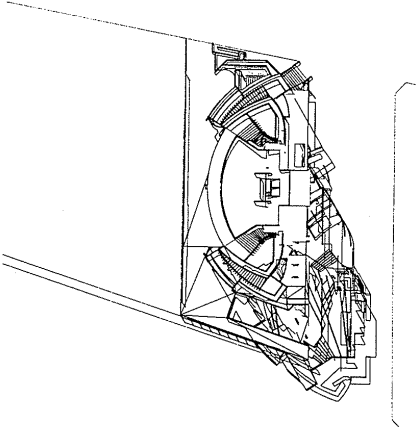
AMENDMENTS

AS SHOWN	PAT TWOHILL DESIGNS PTY. LIMITED
FEB 2004	ARCHITECTS
DATE:	CONSULTANTS
DWG NO:	PROJECT NO:
CAD REF:	PI. 7.1A.03.001A.001

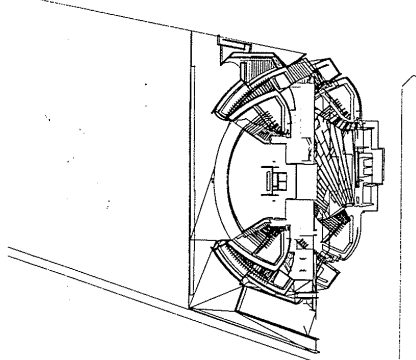


SHADOW PROJECTION PLANS

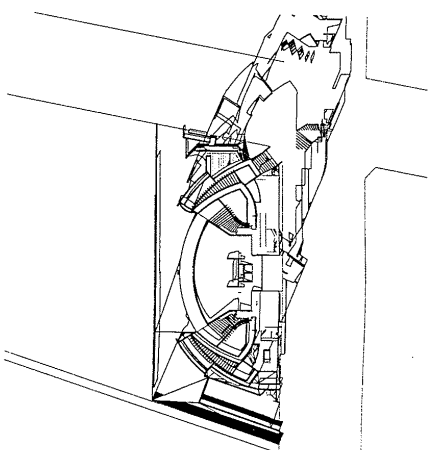
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>		<p>AMENDMENTS</p>	<p>PAT TWOHILL DESIGNS PTY LIMITED ARCHITECTS 11/111 ENID STREET TWEED HEADS NSW 2406 CONTACT: ANDREW WILSON PH: 7 (42) 323 3333 AND 08 223 3333 WWW.PATWOHILLDESIGNS.COM.AU</p>	<p>SCALE: AS SHOWN DATE: FEB 2004 DRAWN BY: J. WILSON DWG NO: 20020420B CAD REF:</p>
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September 21 - 9am



September 21 - 12 noon



September 21 - 3pm

SHADOW PROJECTION PLANS

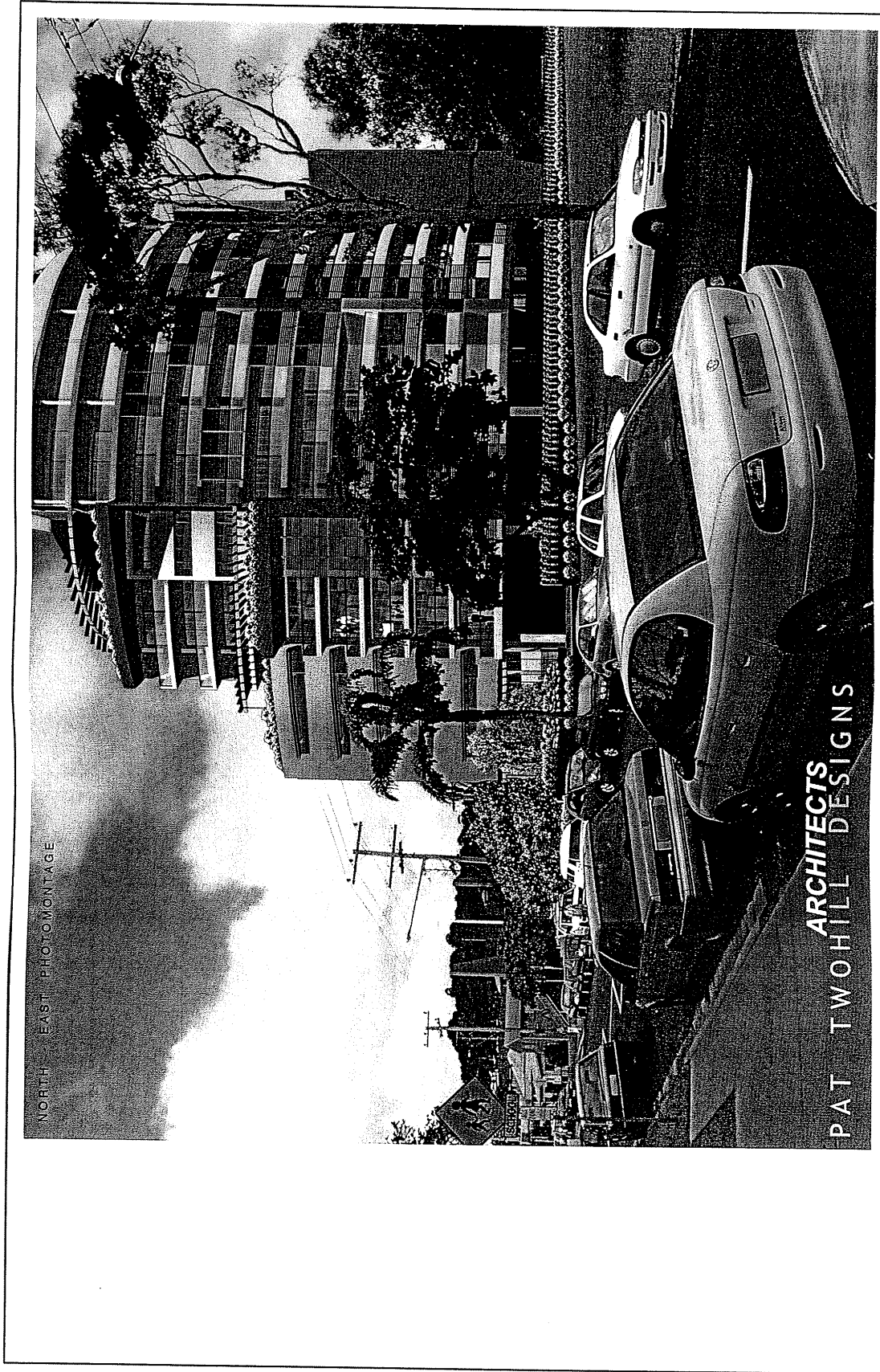
**PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW**

AMENDMENTS

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 111/105 ENID STREET, TWEED HEADS NSW 2486
 PHONE: 07 5533 1233 FAX: 07 5533 1234
 EMAIL: info@pattwohill.com.au

SCALE: AS SHOWN
 DATE: FEB 2004
 DRAWN: PAT
 CHECKED: 2005/04/29
 CAD REF:



PROPOSED MIXED USE DEVELOPMENT
 AT CORNER ENID & FRANCES STREETS
 TWEED HEADS NSW

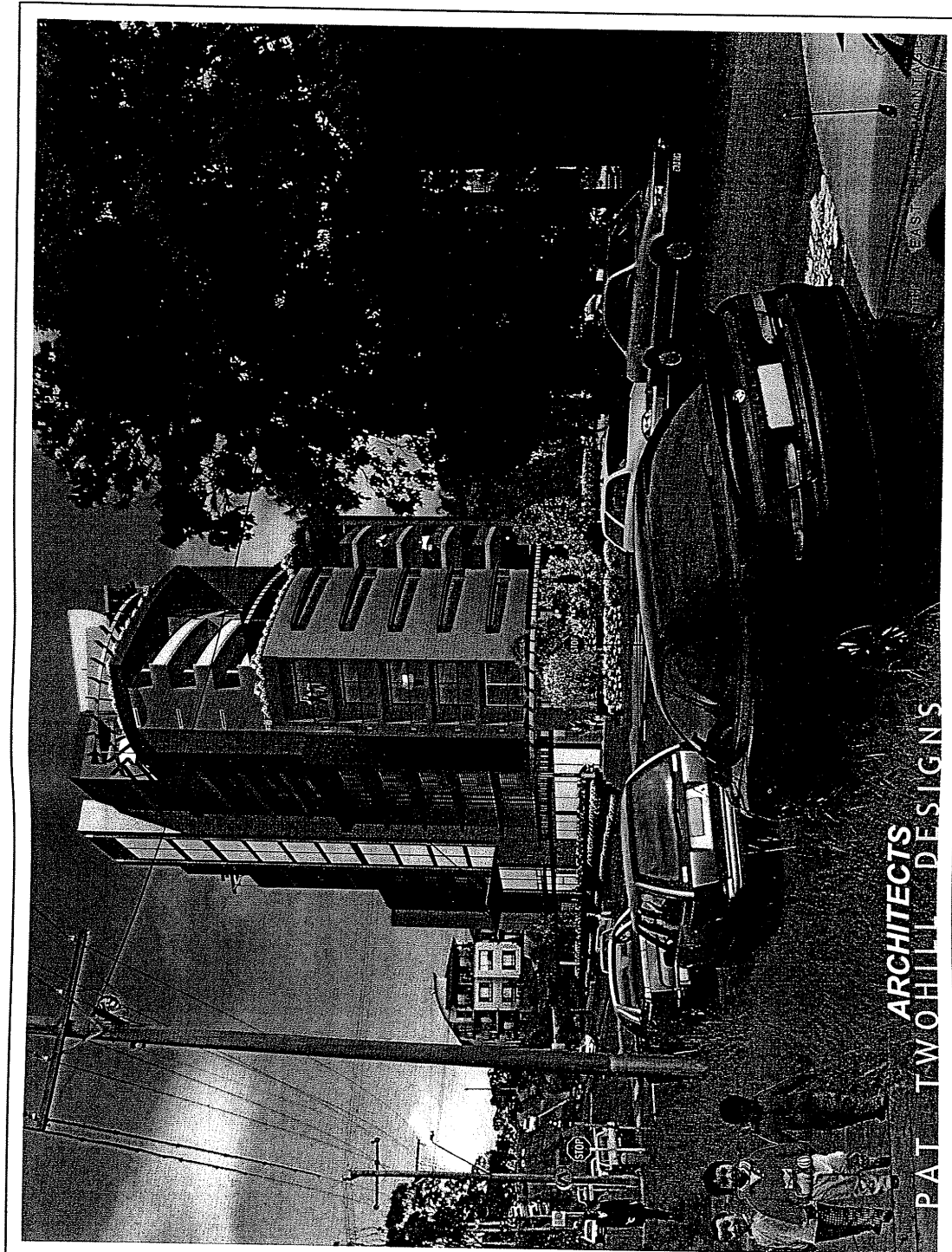
AMENDMENTS

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 Date: FEB 2004
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 Dwg No: 2002DA/00

Scale: AS SHOWN
 Date: FEB 2004
 Drawn: DPCT
 Dwg No: 2002DA/00

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 133 WALKER ST. TWEED HEADS NSW 2486
 Ph: 7 43 538 5055 Email: pat@pattdesigns.com.au

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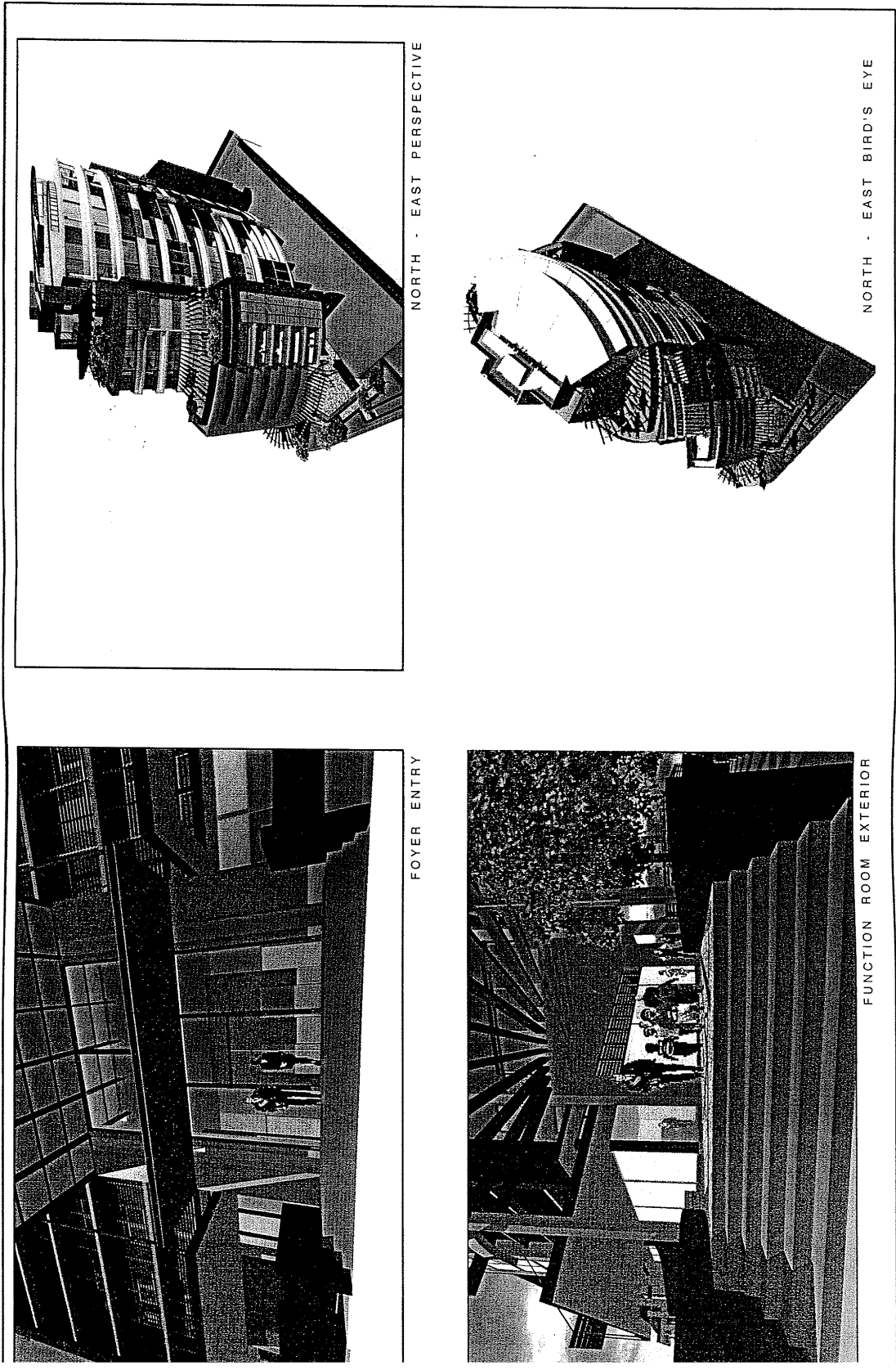
**PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW**

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Please note all dimensions are in meters.
Unless otherwise stated, all dimensions are in meters.

AMENDMENTS

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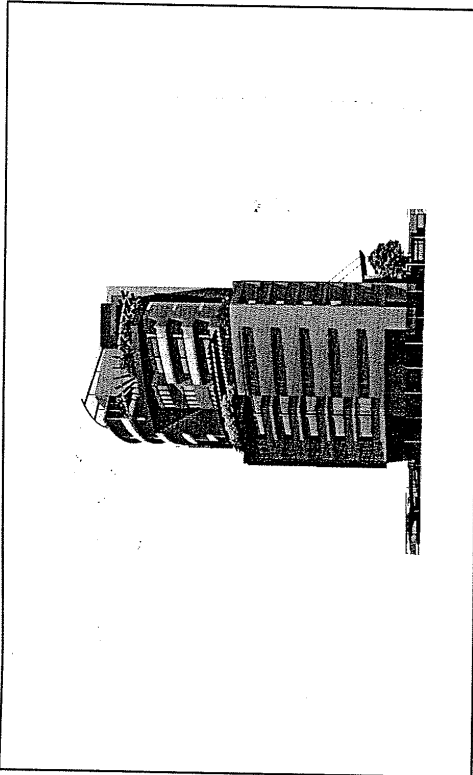
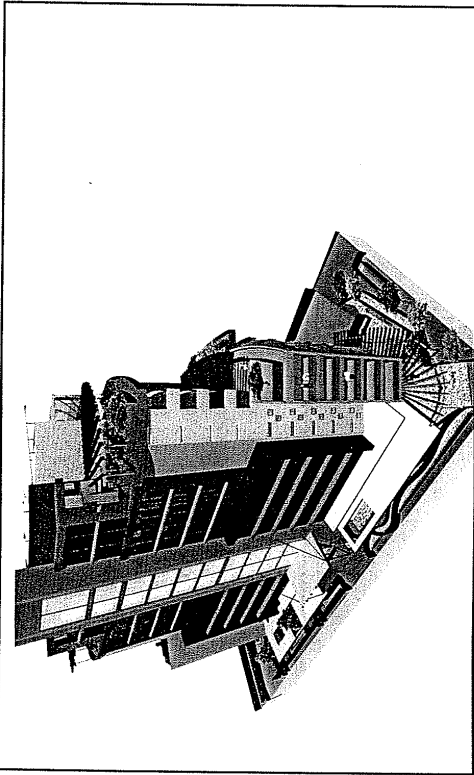
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PROPOSED MIXED USE DEVELOPMENT
AT CORNER ENID & FRANCES STREETS
TWEED HEADS NSW

 <p style="text-align: center;">WEST PERSPECTIVE</p>	 <p style="text-align: center;">SOUTH - EAST PERSPECTIVE</p>
<p>PROPOSED MIXED USE DEVELOPMENT AT CORNER ENID & FRANCES STREETS TWEED HEADS NSW</p>	
<p>AMENDMENTS</p>	
<p>Patwihill Designs Pty. Limited Architects All work to comply with Planning Code of Australia</p>	
<p>Scale: AS SHOWN Date: FEB 2004 Drawn: DPOT Checked: 2005/04/03 CAD REF:</p>	

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000. The objectives of the 2(b) zone are:

Primary Objective:

- To provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary Objectives:

- To allow for non-residential development which supports the residential use of the locality;
- To allow for tourist accommodation that is compatible with the character of the surrounding locality;
- To discourage the under-utilisation of land for residential purposes particularly close to the Tweed Heads sub-regional centre.

The proposed development is partly defined as multi-dwelling housing under the Tweed Local Environmental Plan and is permissible with consent in the subject zone.

The proposed development includes an administration and function meeting room facility at ground level which is associated with the St Josephs Catholic Church. The subject land has contained the commercial premises for the Catholic Church since the mid-1970's. Commercial premises are prohibited within the 2(b) Residential zone however the subject land has an existing use right due to the continued use of the land for church administration duties. The proposed development intends to continue the commercial component and utilises the existing use right provisions of the Environmental Planning and Assessment Act. The commercial component of the development is able to be considered by Council.

The applicant has demonstrated that the proposed development achieves a good urban design outcome for the site and has submitted substantial design documentation under State Environmental Planning Policy No. 65 as well as under the planning controls provided in Council's Development Control Plan No. 18 for Tweed Heads. The considerations contained within Tweed Local Environmental Plan 2000 have been satisfied and as such Council is able to favourably consider the proposal.

Clause 15 of the Tweed Local Environmental Plan relates to the provision of essential services to the site. The subject land has access to water, sewer, electricity and telephone services. The proposed development is able to be serviced by the existing connections to the subject land. Council's engineers have assessed the proposal and confirmed that adequate services are available for the proposed development.

Clause 16 of the Tweed Local Environmental Plan provides controls in relation to building heights. The subject land is identified as having a maximum height of 50m AHD. The proposed development reaches an RL of 43.014m AHD. Therefore the proposal is 7m below the existing height limitation under the Tweed Local Environmental Plan 2000.

It is however noted that the Tweed Heads Master Plan has identified the subject site to have a building height limitation of 10 storeys. While the proposal complies with the existing statutory height limits, it exceeds the height limits contained in the Tweed Heads Master Plan by two (2) storeys. Issues in relation to height and the impact of this in the general locality are further addressed in the following report.

Clause 17 of the Tweed Local Environmental Plan requires a social impact assessment to be prepared where Council is of the view that significant social or economic impact may be generated. The applicant has submitted a social economic impact report that has reviewed.

The relocation of the pre-school to Banora Point raises a question as to whether there will be equivalent pre-school places and whether the loss of the community facility in central Tweed Heads to Banora Point is satisfactory. The local area may suffer a local shortage of pre-school placements. However, the pre-school has since been relocated and is fully operational at Banora Point. The short distance between the two localities will reduce any negative impact in terms of the services available to the community.

Another issue raised is the issue of affordable housing and whether the proposed development will increase the average rental costs in that local area therefore reducing the proportion of affordable housing. It is however noted that the subject land doesn't contain any existing housing and therefore any additional housing in the central business district is beneficial.

Council's Social Planner raised some access issues including wheelchair access and slopes and the question of whether they are designed in accordance with the disabled access requirements. Council's Building Surveyors have reviewed this application and determined that the application is capable of achieving compliance with the Building Code of Australia, and subsequently appropriate conditions of consent have been applied to this development.

Clause 33 of the TLEP requires Council to consider any current obstacle limitation surface plan or procedures for aircraft navigation services. Council has received advice on the application from Ian Rigby Consulting who acts for the Gold Coast Airport Limited (GCAL) for the purposes of assessing matters of relevance under the legislative requirements administered by the Department of Transport and Regional Services. The advice includes a condition of any approval, as stated below:

"Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (ie Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity."

The recommended condition has been incorporated into the conditions of consent.

Clause 35 of the Tweed Local Environmental Plan is applicable, as it requires the management of acid sulphate soils. The subject development will include a dewatering requirement during the construction of the basement. The proposed development has been lodged as integrated development and referred to the Department of Infrastructure, Planning and Natural Resources for the necessary permits. Part of that requirement included the provision of a dewatering and acid sulphate soil management plan. These aspects of the development have been assessed the proposal is considered to meet Council's requirements.

There are no further clauses applicable under the Tweed Local Environmental Plan.

North Coast Regional Environmental Plan 1988

Clause 32(b) addresses the need for Council to assess developments in relation to the NSW Coastal Policy and the North Coast Design Guidelines. The proposed development isn't considered to be in conflict with the NSW Coastal Policy. The North Coast Design Guidelines include general statements applicable to tall buildings. These general requirements are further elaborated with requirements in Council's Development Control Plan No. 18 - Tweed Heads. It is considered that in satisfying the requirements of DCP 18 the proposed development exceeds the requirements of the North Coast Design Guidelines. The proposed development is not adjacent to any coastal reserves or foreshore reserves and is not considered to require further assessment in relation to the shadow impacts onto the coastal reserve system.

Clause 43 of the Regional Environmental Plan relates to urban density and the number of residential units being achieved in the re-development of land. The applicant has submitted that the proposed development achieves approximately 1 unit per 66.4m² of the site. The applicant has submitted that this density has been maximised without adversely affecting the environmental features of the site or surrounding land. The application is submitted with erosion and sedimentation control plans and soil and water management plans to ensure environmental impacts are not generated by maximising the residential densities.

Clause 51 of the North Coast Regional Environmental Plan relates to heights of buildings. It requires the concurrence of the Director General of Department Infrastructure, Planning and Natural Resources for the erection of a building over 14m in height. Council has the assumed concurrence from the Director General by way of the Gazettal of Tweed Local Environmental Plan 2000, which contains a building height limitation on the site up to 50m AHD.

Clause 51 states that in deciding whether to grant concurrence to an application the Director (or Council due to our assumed concurrence) shall take into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect, which it will or is likely to have on the amenity of the area.

It is considered the proposal will not have an adverse social, economic or visual impact regionally, and in local terms, the proposal will not have an unreasonable adverse impact upon the amenity of the neighbourhood. The issues considered to conclude this involve overshadowing, privacy, loss of view, traffic impacts, bulk and scale and the objectives for the area. Each of these issues are assessed in detail in this report.

The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policies

State Environmental Planning Policy No. 55 - Remediation of Land

Investigation into the historic uses of the site identified that the land was once part of the rail yard associated with the former Tweed Heads to Brisbane rail line. The subject land has been redeveloped and used for Church purposes such as the hall and pre-school for over 30 years. The applicant submitted a soil contamination investigation including pre-demolition testing for residue organ-chloride pesticides below the existing structures. Council's Environmental Health Officer has assessed these reports and concludes that subject to the recommended conditions of consent specifically requiring compliance with the submitted Acid Sulphate Soils Management Plan no objection is raised regarding site contamination.

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development

The proposed development falls into a category which has required the design to be undertaken having regard to the design quality principles for residential flat development. The applicant has submitted a complete site analysis which details the design response as part of the Development Application. A verification statement has also been provided and the application has addressed all of the design quality principles as detailed below:

Context

"Good design responds and contributes to its' context. Context can be defined as the key natural and built form in the area."

The proposed development has been designed with regard to the geographical context in which it is located. The design has been justified with review of the features in the area both natural and built. The context for the development is based on its' location in relation to the Tweed Heads CBD and its presence in the St Josephs Catholic Church as well as school precinct. The site is located adjacent to the Enid and Frances Street intersection and this intersection also features Department of Housing units as well as the other Catholic developments. The proposed building has been designed to address the actual street corner, manipulating the different floor plan levels, providing balconies and overlooking opportunities to activate that street corner.

Scale

"Good design provides an appropriate scale in terms of the building bulk and height that suits the scale of the street and surrounding buildings".

The site analysis has identified that the subject land is close to a transition point under the Building Heights plan from the 15m AHD limit to the 12 storey limit. The building therefore has a significant potential space impact in relation to the character of Frances Street. Due to this the proposed design has incorporated a lot of façade treatment to articulate and enhance the visual impact, reduce large expanses of walls and ensure some mutual privacy between adjoining developments. The ground floor of the development incorporates pedestrian access into the commercial uses on the ground floor level bringing it to a human scale.

Built Form

"Good design achieves an appropriate built form for the site and buildings purpose in terms of building alignments, proportions, building type and the manipulation of building elements."

The applicant has submitted that the building design achieves a built form that is consistent with the desired future character of the area as set out in DCP 18. The building alignments at ground level are consistent with neighbouring developments and conform with major building plane envelopes on the eastern and western sides. The building envelopes encroached into on the northern and southern sides at the upper levels above 6 storeys. The building envelope encroachments are further addressed in this report.

Density

"Good design has a density appropriate for the site and its' context in terms of floor space yields". The subject site is located in a high density residential precinct under DCP 18 and the proposed development maximises the residential density in the area by providing apartments.

Resource, Energy and Water

"Good design makes efficient use of natural resources, energy and water throughout its' full lifecycle including construction".

The proposed building has been designed to achieve solar access into the living areas. The residential units have been orientated to capture natural light. The construction method will ensure thermal mass and insulation to achieve the required energy ratings and the development application is accompanied by NatHERS certificates confirming the energy efficiency of the development.

Landscape

"Good design recognises that together landscape and buildings operate in an integrated and sustainable system resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain."

Landscaping occurs at the ground level, in conjunction with the commercial nature of the development, and includes landscape planters at the 7th and 11th levels which soften the visual impact of the proposed development.

Submitted landscaping plans indicate that the development will be suitably landscaped at ground level and on the podium with native trees and shrubs, to satisfy the provisions of DCP 18 and SEPP 65. Appropriate conditions of consent have been imposed to ensure that landscaping will be completed prior to occupation of the development.

Amenity

"Good design provides amenity through the physical spatial and environmental quality of the development".

The applicant has submitted that the proposed building contains appropriate room sizes and shapes, solar access, natural ventilation, visual and acoustic privacy, indoor and outdoor space and efficient layouts. These features that are carried through the design have been promoted as providing good amenity.

Safety and Security

"Good design optimises safety and security both internal to the development and for the public domain."

The applicant has submitted that the proposed development achieves safety and security for the public domain with windows and balconies providing natural surveillance. This is to both the streetscape as well as to Jack Chard park in the north. The proposed development is also provided with a security intercom system to the basement carparking area.

Social Dimensions

"Good design responds to the social contexts and needs of the local community in terms of lifestyles, affordability and access to social facilities."

The applicant has submitted that the proposed building is located very close to the town centre and associated facilities, that the accommodation will provide an opportunity of housing closer to the central business district. There is also the opportunity in this precinct to be involved in Parish activities.

Aesthetics

"Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context particularly to desired elements of the existing streetscape or in precincts undergoing transition contribute to the desired future character of the area."

The applicant has submitted that many of the design features of the proposed development increase the aesthetic quality of that particular corner. The intersection of Enid and Frances Streets will be anchored by the proposed development which addresses both the streetscape and the park at the higher levels. Various materials and textures on the facades break up the appearance of the building and it maintains a slender visual appearance to the street. A range of colours has been adopted in the design to minimise the bulk of appearance of the building.

State Environmental Planning Policy No. 71 - Coastal Protection

The subject land is within the coastal zone and therefore SEPP 71 applies. The proposed development is not a state significant development type and is not located on environmentally sensitive coastal land. Council is the consent authority for the proposed development. The applicant has submitted an assessment of the proposal in relation to Clause 8 of SEPP 71 addressing conflicts that the proposal may have in relation to the coastal protection. As the subject land is not adjacent to any coastal foreshores the development will not impact on public access. The proposed development does not overshadow any coastal reserves and is not located in any area where coastal processes such as erosion are occurring. The subject land does not contain any native habitat areas and is not habitat for any protected flora or fauna. It is considered that the proposed development is not in conflict with the provisions of SEPP 71.

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

The proposed development is not inconsistent with any draft EPI.

(a) (iii) Development Control Plans (DCPs)

Development Control Plan No. 2 - Site Access and Parking

The proposed development is for multi-dwelling housing which is to be provided at 1.5 spaces per unit. With the proposal being for 30 residential units a total of 45 carparking spaces are required for the residential component of the development of which 12 are to be provided as visitor spaces. The non-residential component of the development being the administration offices and meeting and function rooms for the Catholic parish also generate on-site carparking. The administration offices are calculated at 1 space per 40m² therefore requiring a total of 3 spaces and the function meeting rooms are calculated at 1 space per 15m² generating a total requirement of 9 spaces. The commercial component of the development is entitled to the 80% reduction due to ESD principles, therefore the total development generates a need for 54 carparking spaces. The applicant has proposed 45 spaces within the basement car park including 6 visitor spaces. An additional 15 spaces at ground level with six of these marked for visitors. The proposed development complies with the requirements of DCP 2. At ground level bicycle carparking has been provided as well as a car wash bay. The proposed development is accessed from Frances Street by way of a ramp into the basement and Enid Street by way of a driveway into the at-grade carparking area. Council's engineers have assessed the access to the development and have advised that each driveway shall be required to be splayed to 9m at the kerb line and ensure that no obstructions are located within the sight lines as defined in Council's adopted standard.

Development Control Plan No. 5 - Development of Flood Liable Land

The Tweed Heads Locality has an adopted design flood level of 2.65m AHD. The adopted minimum floor level for residential development is 2.95m AHD. The proposed development will result in a finished level over the site of 5.0m AHD and the ground floor units would be at an RL 5.1m AHD. The proposed development is considered to comply with Council's requirements in relation to development of flood liable land.

Development Control Plan No. 18 - Tweed Heads

The subject land is located in a high density residential precinct being the western precinct within DCP 18. The objectives of the high density precinct are:

- Develop the Precincts primarily as high density residential areas which respect existing residential amenity;
- Provide additional choice in housing accommodation to cater for an increase in variety of household types;
- Facilitate an increased residential population in proximity of the sub-regional centre of Tweed Heads to maximise economic and social benefits;
- Promote the efficient use of residential land; and
- Develop a streetscape that reflects the climate, topography and lifestyle of the locality.

The applicant has submitted that the proposed development in its design is consistent with the objective for the high density precinct. The Development Control Plan also includes a strategic requirement for high density residential precincts to be characterised by attractive landscaped streets and for applications to be submitted with a comprehensive landscape plan. To achieve this strategic objective, the applicant has included in the design the following features:

- The use of the entry ramp and stairs from Frances Street to direct visitors to the building entry;
- Landscaping treatment of the podium to integrate the administration and meeting function room areas with the outside;
- Planting and paving to provide appeal from the street;
- Provision of terraces and sky gardens on levels 7 and 11 to create shade and improve amenity of the units on these levels as well as providing a greenscape element to the façade of the building.

Building Envelopes

Development Control Plan No. 18 provides a building envelope of 72° from the property boundary. The proposed development has been designed with regard to a site analysis and in undertaking the site analysis certain areas were specifically designed with greater setbacks to reduce identified impacts. The proposed development includes encroachments into the building envelope and these appear in the following two areas in the design.

- Encroachment at levels 5 and 6 at the south-eastern corner of the building;
- Encroachment from levels 7 to 12 on eastern and western elevations of the building;

The building envelope provisions of DCP 18 are accompanied with the following objectives:

- Ensure that building setbacks to property boundaries increase relative to any increase in building height;
- Minimise the visual and physical impact and apparent bulk of tall buildings on adjoining developments and public streets and spaces;
- Facilitate adequate sunlight access to and minimise shadow impact on adjoining properties and public streets and spaces;
- Reduce ground level wind effects caused by tall buildings;
- Facilitate the development of taller, narrow buildings which produce visual diversity and can preserve important view corridors.

The applicant has provided a justification as to why the proposed development and its' building envelopes can be supported. The following points have been submitted as part of their application:

- The proposed setbacks increase on levels 7 and 11 so that the building becomes more slender at the high levels. Encroachments primarily occur on the east/west elevations as a consequence of the narrow width of the site. From this elevation the building height is greater than its' width which ensures a slender appearance.
- The building has been designed to minimise the visual and physical impacts. The 12 storey building is well proportioned and avoids bulk by being more articulated with increased setbacks at high levels. Features such as generous balconies and landscaped sky terraces further enhance the visual appearance of the building.

The applicant has submitted that the encroachment into the building envelope is primarily located on the eastern and western elevations of the building which do not contribute to unreasonable overshadowing of the surrounding properties. By limiting the building height to 12 storeys the shadow impact on adjoining properties and public streets and spaces has been minimised by maximising the development opportunities of the site. The applicant has provided justification because the development has a substantial podium level which reduces the wind tunnelling effect of a tall building and has submitted that the building does not fall within a view corridor identified in DCP 18. The above justification submitted by the applicant to support the building envelope encroachment is considered to have some merit given the lot shape with a narrow frontage and a deep lot depth. The proposed development has achieved a slender appearance however the narrow width has made it difficult to achieve a design maximising the density without having some encroachments into the building envelope.

Building Mass

The applicant has submitted that the design has achieved the requirements of building mass under DCP 18, has no walls continuous or unbroken in length of more than 15 metres. The articulation in the façade is particularly important in relation to the building and its impact on the public realm, there are variations within the building setback. The design includes the use of metal screens and louvres and alternate textures to provide interest to the building. It is contended that the proposed design achieves the building mass requirements.

Energy Efficiency

The proposed units have been designed with large openings to the north to capture north-easterly breezes as well as sunlight. Units generally have a south facing window and this achieves cross ventilation. The Development Application has been accompanied by a NatHERS Energy Rating Certificate which achieves the Council's requirements in terms of energy efficiency.

Daylight Access

The proposed design incorporates substantial glazed areas into each of the units thereby achieving access to natural light.

Wind Mitigation and Overshadowing

DCP 18 requires that down draft be avoided in tall buildings and for this to be achieved that podiums be provided. The proposal includes a podium at street level. The proposal also includes deep balconies, privacy louvres and landscaped podiums to reduce down draft. The effects of overshadowing have been assessed with a number of shadow diagrams submitted for the application. The proposed development doesn't result in any unreasonable overshadowing of Jack Chard park which is on the northern side of the property. The only period of time of shadowing of public space occurs between 6pm and 7pm in mid-summer and that is to Jack Chard park. The application and its shadow diagrams demonstrate that most of the overshadowing impacts the public road and the Catholic church located opposite the site. The Catholic church is not considered to be adversely impacted by the building shadow.

Roof Lines

The proposed design has achieved various roof lines. There is a northern roof and a lower pitched roof over decks. The use of parapets and various roof lines provides a visual crown to the building and is a design feature.

Privacy

The proposed development is afforded balconies which prevent overlooking between the units as they are offset. Privacy within the actual development will be achieved by the methods of construction with concrete block walls dividing units as well as the floors preventing sound transmission. The issue of loss of privacy between various tall buildings within this locality has been raised by submissions. It is evident that from site inspections in the area that the various tall buildings in the locality that are afforded balconies and large glazed areas provide opportunity for overlooking and potentially loss of privacy. This aspect of the development is further examined in this report.

Security and Surveillance

The proposed development has been designed with an orientation to the Church facilities which are on Frances and Enid Streets. Pedestrian access to the site is pre-defined with an entry lobby. Internal pathways and outdoor terrace area would be well lit. The proposed development is to be fitted with an intercom system to enable communication between residents and visitors to the site. The upper floor areas and their balconies provide opportunity for surveillance of Jack Chard park to the north. It is considered that security and surveillance has been adopted in the proposed design.

Materials and Colours

The applicant has submitted a colour schedule with the proposed development. The building will essentially be constructed of concrete with a range of external finishes including:

- Rendered masonry finishes to varying colours;
- Glass;
- Aluminium louvres; and
- Elevated landscaping.

The applicant has submitted that the building colours on the northern side are predominantly light tones to harmonise with the colours of the coastal environment. The predominance of glazed balustrades will on this side will engender a feeling of lightness and transparency within the building façade. Graded tan colours are used on the east and western wings to reflect surrounding building colours and articulate the structure framing elements in darker greys to enhance definition. It is considered that this will work in well with the existing newly completed re-development being the Department of Housing units at the corner of Frances and Enid Streets. The southern façade is a combination of graded greys to reflect the sombre tone and nature of the street precinct adjacent to the church. Lighter walls rise vertically on each end towards the east and west wrapping around to the northern elevation. The south side is predominantly screened to provide privacy between the church and the proposed building thus engendering a translucent appearance to the southern façade. The proposed development also includes a colourful decorative treatment which may provide some vibrancy to the façade of the development. The proposed materials and colours are considered to be well considered and have been clearly selected given the neighbouring uses in the locality.

Access and Parking

The proposed development will be accessed from Frances Street to the basement car park and that crossover is located at the western end of the site at Frances Street and the second crossover is located at the northern end of the site on Enid Street and that provides access to ground level carparking. The off-street carparking provided complies with the requirements of Development Control Plan No. 2.

Open Space and Balconies

Development Control Plan No. 18 requires landscaped open space at a rate of 25m² per dwelling and in this case that would equate to 750m². The landscaped ground level open space that has been submitted is 635m² with planting, paved areas and passive recreation areas. The minor shortfall is a result of the ground floor continuing to utilise existing use rights for commercial development, therefore to maintain the commercial feel of the site a reasonable footprint has been maintained. The minor reduction to ground level landscaping has been replaced by additional private open space in the form of landscaped terraces at level 7 and level 11 providing sky gardens to the development. Additionally the balconies within all of the units exceed the minimum of 8m² required by DCP 18. The balconies have been located directly adjacent to internal living areas thereby providing increased residential amenity for the future residents of the development.

Development Control Plan No. 39 - Energy Smart Homes Policy

The applicant has submitted NatHERS accreditation certificates for the proposed units. The certificates indicate that the proposed units will achieve a rating of 3.5 to 5 stars. The proposed development complies with Council's requirements.

Development Control Plan No. 45 - Socio-Economic Impact Assessment

The development application has been accompanied by a socio-economic impact assessment. As the proposed development will actually result in the loss of a childcare facility on the site the issue of a reduction in supply of child care spaces has arisen as part of the development. The applicant has submitted that childcare spaces are not being lost to the area but has been relocated to the community land at Leisure Drive, Banora Point where Council recently approved a child care facility. Council's Social Planner has assessed the proposed development and raised some general socio-economic impact issues that the proposal raises however it is not considered that any further detailed assessment is required in relation to this issue.

Development Control Plan No. 47 – Cut & Fill

The plan limits the depth of cut and fill to 1m unless it can be demonstrated that the earthworks are compatible with the natural landform and will not adversely affect adjoining properties while achieving the objectives of the plan.

The proposed development involves excavation for the basement and will clearly extend beyond 1 metre, however this is considered consistent with recently approved developments. The applicant has substantiated the request with an erosion and sediment control plan, and a stormwater management plan that have been assessed and considered appropriate. Council's Environmental Health Officer, Council's Infrastructure Engineers and Council's Building Surveyor have all reviewed these plans, with no objections raised subject to the recommended conditions of consent.

In all other regards the applicant provides that appropriate measures will be in place to ensure that the proposal is consistent with the objectives of the plan. However, appropriate conditions of consent have been imposed to ensure safe construction.

Tweed Heads Town Centre Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads which describes the desired future character for Tweed Heads and provides urban guidelines for each precinct together with indicative plans and sections to illustrate the principal planning objectives and design intent. Public exhibition of the Draft commenced on 11 May 2004 and continued for a month before refinement and referral of the document to the Minister of The Department of Infrastructure Planning and Natural Resources who has endorsed the Plan.

The subject site is located in the Ridgeline High Density Residential precinct and is restricted to a 10-storey height limit in accordance with the Plan. However, the subject application was prepared prior to the Draft being exhibited and therefore incorporates 12 storeys in accordance with the current LEP Height control of 50m AHD. Subsequently, the current application does not comply with the numerical height provisions of the master plan. To assist in the assessment of this non-compliance the application was referred to the Tweed Heads Master Plan Project Facilitation Team who made the following comments:

- *The team supports the new height limits in the Masterplan in order to provide a finer grain to the overall structure of the tweed Heads CBD urban character.*
- *The integrity of the Masterplan building height strategy needs to be maintained in order to ensure that the new built form responds to the topography.*
- *New applications should be assessed in relation to all strategies and provisions of the Masterplan, including height controls. Applications seeking to vary provisions of the Masterplan should demonstrate the variation will not set a precedent that would undermine the urban design principles of the Masterplan and all applications should demonstrate a positive contribution to the overall Masterplan strategy for Tweed Heads to create a place where people live, work and play in a vibrant, diverse and sustainable town centre.*

In regards to the above guidelines the following comments are provided:

The subject application has been thoroughly assessed against the urban design principles detailed in the master plan. The land is identified as a high-density residential precinct and is within walking distance to the Tweed Heads/ Coolangatta CBD, clubs, sporting facilities and other recreational opportunities. The proposal is consistent with the precinct objectives and the vision for Tweed Heads.

Development is encouraged to accentuate and respond to the topography of the land. The architecture is encouraged to be distinctive contemporary forms reflective of the sub tropical environment and coastal location. The building has a distinctive base, middle and top with all elevations having strong vertical and horizontal articulation. The roof design is considered a feature of the building that adds to the overall aesthetics of the design.

The additional two stories and roof of the development occur between RL 34m and RL 43m. These two additional stories will obviously increase the length of shadow cast by the building and will add to the overall appearance of the building, however, these two stories themselves will not cause any significant view loss. Existing properties affected by view loss as a result of this development (specifically 30 Thomson Street) would suffer view loss from a complying 10 storey building as the balcony level of the upper most level of No. 30 Thomson Street is only RL 18.9m, which is some 15m lower than the proposed level 11. Therefore the additional two stories in this instance should be assessed in terms of the overall appearance and bulk and not against any view loss implications.

The upper two stories form the peak of the building and have been tapered in to create a narrower footprint. This sets the development and gives it form from base, middle and through to the top. These aspects of the development add to the architectural merits rather than detract from it and therefore, the two storey variation to the master plan in this instance warranted for the following reasons:

- The subject development application was lodged prior to the adoption of the Tweed Heads Master Plan;
- The development is proposed at RL 43m which is 7m less than the statutory maximum;
- The development satisfies the objectives of the Tweed Heads Master Plan in all other regards;
- The additional two stories will have limited view loss for existing development in the immediate vicinity and is not within a recognised view corridor;
- The development represents good urban design and will assist in the changing character of the area.

The proposed design of the subject development complies with the urban design principles of the Master Plan and is therefore recommended for conditional consent.

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

Coastal Policy

The land is identified under the Coastal Policy. However, the site is significantly landward from the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes, overshadowing of the foreshore reserves or restricting public access to the coast. Therefore, the proposed development is not considered to be in conflict with the policies and strategies contained in the coastal policy.

Demolition

The proposal requires the demolition of the existing structures on the site. The applicant has submitted a demolition plan, which has been assessed as adequate, and appropriate conditions of consent have been recommended to control demolition activities.

(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

It is considered the proposed development will not have an adverse impact upon the natural environment as the site is currently utilised for commercial purposes. In terms of the built environment the proposed residential flat building will replace a church and child care facility, and as such the development will have an impact upon the built environment. The following issues are raised.

Character of the area

The area is made up of a mix of medium density development comprising mainly residential flat buildings some that have only recently been constructed, older dwelling houses, and commercial premises. The area is currently undergoing a transition phase as the older dwellings come under market pressures to be demolished and the land redeveloped for higher density mixed and residential development as encouraged under the applicable planning controls. The proposal is considered not to be out of character with the area and is consistent with the future built form as per Tweed LEP 2000, DCP No. 18 – Tweed Heads, and the Draft Tweed Heads Town Centre Master Plan.

Views

DCP 18 acknowledges that views provide a sense of place and identity, and that key view corridors should be retained. The Senior Commissioner in the Land & Environment Court in Tenacity Consulting Pty Ltd v Warringah Council adopted the following four-stage test to assess the reasonableness of view sharing:

1. The first step is the assessment of views to be affected;
2. The second step is to consider from what part of the of the property are the views obtained (an expectation to retain side views and sitting views would be unreasonable);
3. The third step is to assess the extent of the impact (the extent of the impact should be assessed for the whole of the property not just for the view that is affected. This could be done by ranking the affect from negligible to devastating); and
4. The fourth step is to assess the reasonableness of the proposal that is causing the impact (it may be unreasonable if it comes about as a result of non compliance with planning standards).

The proposed development will affect the views from near by developments in Thomson Street where views are enjoyed to the southeast and specifically from 30 Thomson Street where views are enjoyed to the east.

The views would be obtained from the upper floors of buildings (maximum fifth storey). The views from 16-18 Thomson Street would be obtained from side facing windows from bathrooms, bedrooms and living areas, while the development at 30 Thomson Street would obtain this view from external balconies, bedrooms, living and dining areas.

The impact on 16-18 Thomson Street would be a loss of distant views, which provide a higher level of amenity, however this impact would be considered acceptable given the sideways views. The impact on 30 Thomson Street would be loss of view, and a sense of enclosure. This loss has also been considered in light of other recent approvals, which have further reduced the available views. However, this view loss is also acceptable given the panoramic views that this property experiences. The view to the east is only one aspect of their view and could therefore allow for a reasonable sharing of views through view corridors.

In assessing the reasonableness of the proposed application it has been determined that the building satisfies the intent for the character of the area, while complying with the height and satisfying Council that the application has had adequate regard for the amenity of adjoining property in terms of shadow, privacy and general amenity.

Therefore, it is concluded that the loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on adjoining properties.

Amenity & Shadow Impacts

Neighbouring residences have raised concern that the proposal will adversely overshadow adjoining properties. However, given the orientation of the site and its location with Francis Street to the south the majority of the shadow will fall on the road or is evenly shared between adjoining properties throughout the day as the shadow moves.

The applicant supplied shadow diagrams depicting the extent of the shadow. Adjoining land parcels receive adequate solar access as the day progresses,

Having regard to the applicable planning controls and the desired future urban form of the area it is considered the proposal does not unreasonably detract from the amenity of the area, nor restrict the ability of adjoining parcels to be developed for similar purposes.

In terms of privacy the architect has provided that the proposed building offers a number of design elements to ensure appropriate amenity for residents visitors and neighbours.

The key elements comprise the focus of the main living areas and private open space areas to the street and park frontages with generous door and window openings to provide adequate ventilation and natural sunlight.

The amenity of privacy sensitive rooms has been addressed by the provision of appropriate sized window openings away from active frontages and the inclusion of narrow balconies to some bedrooms break sightlines from levels below and provide physical separations from adjacent properties.

Traffic Impact and Local Road Network

The immediate surrounding road network consists of local streets. The local road network is capable of absorbing the additional traffic generated by the proposed development however Councils traffic engineer has raised concern for the intersection of Enid and Francis Street. It has been tabled that upgrading works estimated at approximately \$50,000 are required.

The works associated with this development include the realignment of the kerb return, pavement construction, relocation of the pedestrian crossing and splinter island, signage, relocation of utilities/drainage and footpath construction. The estimated cost of works relative to this development have been estimated at \$18,345.00. Engineering services have requested that this be provided as a contribution allowing Council to undertake all works within the intersection at one time. A condition has been imposed accordingly.

Access to the site shall be provided from both Francis Street and Enid Street. Each access requires modification to that identified within the application to comply with Councils adopted standards. Each driveway shall be required to be splayed to 9m at the kerb line and ensure that no obstruction are located within the sight lines as defined in Councils standards and AS2890.

Any disused access shall be required to be reinstated in accordance with Councils adopted Development Design and Construction Specifications.

An exiting footpath in reasonable repair is located along the full frontage of Francis Street however this has a width of 1.0m, current standards require the path to be a minimum of 1.2m. Enid Street has no formed pedestrian pavement constructed. Recommended conditions of consent shall required the applicant to provide a minimum 1.2m wide path along the full frontage of both Francis and Enid Streets.

Design

The proposed development has been reviewed by Council's Strategic Planning Unit who have raised a number of design issues that are relevant to the proposal. The proposed building is orientated more towards the actual street frontage of Frances Street and that is generating a connectivity to the Church and Frances Street and the school precinct in Frances Street. However, the subject land is adjacent to the Jack Chard Park, being a large opening on the northern boundary of the subject site. The proposed development does not open onto the parkland and essentially is turning away from that space. A design opportunity is being lost by not activating the park frontage of the development. One of the potential problems with this aspect of the design is that the at-grade carparking that is adjacent to the park area may become a security issue in that location. The actual visual connectivity with the park isn't achieved at the ground levels, rather it is achieved at the higher residential levels which are capturing the northern aspect in their design. The proposed development has been designed as part of a Catholic building precinct and as it's intended to maintain those connections with the Parish administration occurring at ground level the design has maintained that orientation. The loss in the development not activating the park at ground level is considered to be reduced by the other embellishments which are to occur in and around the park as part of the development on the northern side of Jack Chard park in Enid Street.

Waste Management

The applicant has demonstrated that there will be a garbage storage area in the basement and at grade near the basement driveway which will enable Solo Resource Recovery to collect garbage directly form the storage area at grade. Council's Waste Management Officer has applied appropriate conditions of consent.

(c) Suitability of the site for the development

The subject site is within close proximity to the commercial business districts of Tweed Heads and Coolangatta, which provide for a variety of shopping, dining, and recreational opportunities. The area is also serviced by medical facilities including the Tweed Heads Hospital and various professional consulting rooms in Boyd Street.

The subject site has been nominated as a designated high-density residential area to utilise the areas facilities as detailed above. Additionally the site has the benefit of a 50m AHD height limitation, which further encourages high-density development for the area. The existing public infrastructure is adequate to service the proposed residential flat building, as the area is not subject to any known hazard such as slip, flood or bushfire. The site of the proposed development is considered suitable for this type of development and encouraged through our strategic plan for the area.

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

The proposed development was publicly exhibited for 30 days being the requirement for integrated development needing a water permit for the dewatering of the site. The submission period closed on 16 July 2004. During the exhibition period 10 written objections were received, some of these had multiple signatures. The following table examines the issues raised in the submissions.

Issue	Concern Raised	Assessment
Traffic and Pedestrian conflicts	<p>The school buses and speeding through traffic will create safety issues for pedestrians and other motorists.</p> <p>The drastically increased traffic volumes will create an even more dangerous intersection.</p>	<p>Council's Traffic & Transport Engineer has provided that the local road network can cater for the proposed development however, the developers have been asked to contribute to the construction of a new round about.</p> <p>Additional pedestrian paths are required to a minimum width of 1.5m.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
Amenity	There will be impacts during construction	<p>During construction there will be a disturbance to residential amenity. This is unavoidable however, there are recommended conditions of consent to minimise impact and ensure compliance with the Australian Standards.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>

Over Development	Small site therefore over development	<p>The application generally complies with the requirements for high density residential development. There is sufficient on site parking and a high level of private open space for potential residents.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
Loss of residential amenity	Closing-down a convenient community service (kindergarten) in an ever increasing built-up area.	<p>The childcare centre has already closed and is now operational at Banora Point.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
Loss of privacy	<p>Impact on quality of life in terms of lack of privacy, deteriorating environment (increases traffic, overshadowing etc)</p> <p>The block of five units on the corner of Thompson and Frances streets look directly at the proposal. Our ground floor unit currently receives 3-4hr of sunshine in summer and 1-2hr during winter will be lost with the erection of this tower.</p> <p>Our main living and dinning areas, our kitchen and one balcony all face east directly into this building.</p>	<p>The objectives of the precinct are focussed on increasing the density within this area, as a result of this privacy and amenity can be reduced, however, the design of the building has focussed on orientation to ensure privacy implications have been minimised.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
Loss of views	Looking into a massive 12 storey building adjacent to my two storey home, combined with the loss of sunlight due to the height of this building.	<p>View loss will be experienced, however, as detailed in the above report this application still affords some view sharing opportunities for the adjoining developments.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>

<p>Height is excessive</p>	<p>Will bring too great an impact on the residents living nearby.</p>	<p>The proposed building complies with the statutory 50m AHD height limit.</p> <p>The impact of the two additional stories to that permitted under The Tweed Heads Master Plan is considered on merit to be acceptable.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
<p>Visitor car parking</p>	<p>Street parking in the area is virtually impossible especially at school drop off and pick up times.</p> <p>The additional parking demand created by the visitors to the new units will be increased. The intersections are becoming exceedingly dangerous because of parked cars, the additional traffic and associated increase in on street parking generated by this building will make these intersections more dangerous.</p>	<p>The application complies with the requirements for onsite parking.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
<p>Balconies overlooking each other</p>	<p>Balconies directly overlooking my property reducing my quality of life.</p>	<p>The objectives of the precinct are focussed on increasing the density within this area, as a result of this privacy and amenity can be reduced, however, the design of the building has focussed on orientation to ensure privacy implications have been minimised.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
<p>Property devaluation</p>	<p>The two issue of overshadowing and loss of privacy would all most certainly devalue our property.</p>	<p>This is not matter of consideration under the Environmental Planning & Assessment Act 1979.</p>

Aesthetic of design	Aesthetically it is totally out of keeping with the current tone of the area.	<p>The objectives of the precinct are focussed on increasing the density within this area and this will result in a change to the existing tone of the area.</p> <p>This objection is not considered to warrant amendment or refusal of the application.</p>
Departures	There are departures from DCP 18 requirements.	The application has been assessed against the objectives for the area as detailed in DCP 18, SEPP 65 and The Tweed Heads Master Plan. Based on these provisions the application is recommended for conditional approval.
Sustainability	We need to look long-term not short term. Less emphasis on urban expansion and avoidance of over development.	<p>As discussed in the above report this application is not considered to be an over development of the site. The four sites combined have a site area of 1939.1m² which results in a density of one dwelling for every 65m². This is considered to be consistent with the high density intent for the area. Additionally the application satisfies the on site parking requirements and has acceptable private open space and landscaping.</p> <p>Therefore, this objection does not warrant amendment or refusal of this application.</p>

(e) Public interest

Despite the objections received to this application the proposal is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the controls and the intended development for the locality.

OPTIONS:

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal to the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development has provided high density residential and commercial development in an area suitable for such a use given its close proximity to the commercial business districts of Tweed Heads and Coolangatta, which provide for a variety of shopping, dining, and recreational opportunities.

The existing public infrastructure is adequate to service the proposed residential flat building, as the area is not subject to any known hazard such as slip, flood or bushfire. Furthermore, the local road network surrounding the site is suitable for such a development especially when basement car parking is provided.

The merit assessment of the applicable issues relating specifically to the building envelope, landscaping, privacy and loss of views are not considered to be unsustainable or result in an over development of the site.

The site of the proposed development is considered suitable for this type of development and encouraged through Council's strategic planning documents for the area. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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3 [PD] Tweed Heads Master Plan - Funding Through Section 94

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/26; GT1/S94/27

SUMMARY OF REPORT:

This report discusses funding part of the proposed Tweed Heads Master Plan through Section 94 contributions.

Council adopted the Masterplan conditional upon capital and recurrent costs being suitably linked to funding sources.

In summary the proposed funding split is as follows:

- **Regional Open space**
 - 1/3 from section 94;
 - 1/3 from Council (through rates etc);
 - 1/3 from State government grants, sale of land, etc

- **Local Open Space**
 - 2/3 from Section 94
 - 1/3 from Council (through rates etc)

Funding for the Master Plan from Council, grants and other means will be the subject of further Council reports.

RECOMMENDATION:

That Council:

- 1. Approves the exhibition of amendment to Section 94 Contribution Plan No 26 – Shire Wide/Regional Open Space and its placement on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations;**

- 2. Approves the exhibition of Section 94 Contribution Plan No 27 Tweed Heads Master Plan - Streetscaping and Local Open Space and its placement on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations;**

3. **Endorses the continuation of negotiated contributions for development in the Tweed Heads Master Plan area based on the new S94 rates proposed in this report, pending finalisation of these S94 Plans;**
4. **Endorses the adjustment to any contributions that have be made to date for the Masterplan based on the new contributions, following finalisation of the S94 Plans; and**
5. **Includes the implementation of the landscape component of the Master Plan for consideration in the 7 year Long Term Financial Plan.**

REPORT:

Background

As a result of increasing social, economic and environmental pressures in the Tweed Heads Town Centre, the NSW Government resolved to undertake a series of strategic actions to regenerate the area resulting in the Tweed Heads Master Plan. The Master Plan is a physical framework that will guide the future development of the town centre precinct. The Master Plan's objectives include:

- Develop an urban design and planning framework to guide the revitalisation of the Tweed Heads Town Centre;
- Establish the location, distribution and mix of land uses, open space network and public domain;
- Develop a Master Plan for Jack Evans Boat Harbour;

Council adopted the Masterplan conditional upon capital and recurrent costs being suitably linked to funding sources. Council also gave a low priority to the proposed lagoon concept, stormwater and drainage plan and Tweed Heads centre bypass due to resource requirements

The Masterplan has been used as a basis for estimating the costs for the landscape elements of the Plan. In this respect Belleng Pty Ltd was commissioned by Council recently to provide an estimated cost of the landscaping elements of the Master Plan. Belling has estimated the total precinct costs at \$11,007,368, however has also included a higher estimate (TOP) based on an additional 30% cost on standard recommended cost items. This accounts for material and labor cost increases over time. The above costs have been reviewed and recommendations determined in terms of:

- Suitability of each of the landscape items contained in the Plan;
- Approximate costs of those items;
- Identification of local and regional projects;
- Preferred program for their implementation.

Council's landscape architect recommends that the TOP estimate be used which is \$14,574,069. This TOP estimate does not include such facilities as the lagoon, marina, cultural centre, and various design fees. Council's landscape architect has also divided the total capital works into a regional (\$13,251,925) and local component (\$2,003,460), which will be used as a basis for the Section 94 funding, as discussed later in this report. In addition to the TOP estimate of \$14,574,069 an additional \$596,024 has been included to cover the costs for the detailed design and costing of the landscape component of the Masterplan for a total of \$15,255,385.

This order of costs will require significant decisions by Council in terms of a financial strategy for the implementation of the Plan. Potential sources of funding are as follows:

Funding sources	Comment
S94 contributions	No plan at present, although negotiated developer contributions through developer agreements are being levied in the Masterplan area
Government funding, grants	Nothing in place. Detailed plans will be required to negotiate these
Council funding	\$1.5m included in 2005/2006 draft budget, but excluded in final budget
Developer's in-kind	Limited application. Detailed plans required to allow for any negotiation
Land development of Council and Crown property	Funds from the sale of Crown land should be allocated towards the Master Plan. Other funding sources are unclear at this stage

The implementation of the Masterplan will be long term, estimated at least over a 20 year period. Therefore there requires some flexibility to allow for funding opportunities as they may arise during this period.

In summary the proposed funding split is as follows:

- Regional Open space
 - 1/3 from Section 94;
 - 1/3 from Council (through rates etc);
 - 1/3 from State government grants, sale of land etc
- Local Open Space/Streetscaping
 - 2/3 from Section 94
 - 1/3 from Council (through rates etc)

Funding for the Master Plan from Council, grants and other means will be the subject of further Council reports. The draft work program for the implementation of the Master Plan (Attachment A) indicates that a major part of the expenditure will take place in the first few years of the Master Plan. There is therefore a requirement to borrow some of the funds as the contributions under the contribution plans will be not be sufficient to cover these costs. The interest costs are included in the calculation of the levy rates at the end of this report.

Use of S94

Section 94 development contributions could be considered as a means for providing some of the funding for capital works associated with the Tweed Heads Master Plan. However there needs to be a clear nexus between the proposed development and the need for the increased/improved amenities that are proposed under the Master Plan.

In summary S94 is relevant where:

- There is expected growth which creates a quantifiable increase in demand for public facilities;
- Existing public facilities can be shown to be inadequate to cater for this increase in demand;
- Council has a strategy for further growth and development;
- There are no alternative funding sources; and
- Council can commit the resources necessary to administer and maintain the facilities.

A contribution plan is based on projections of the type of development, anticipated population trends and estimates of costs and timing for the provisions of the facilities.

In a certain light the Master Plan could be seen as a means of rejuvenating an existing area or providing for a backlog of works that has no links to future development – a shopping list of desirable items. In this case S94 cannot be used as a means for funding the proposed works unless it can be shown that existing facilities are being altered to supplement existing functions which cater for increased demand and to reduce operational expenses (by managing existing facilities in a more efficient manner in order to satisfy existing and future demand).

The Master Plan could also be seen as a response to the growing maturity of the Tweed Shire as its population grows past 80,000 people, with the need to provide more regional type facilities to cater for both the current and future population, and the increased number of tourists visiting the Shire. The central Tweed Heads precinct has seen a significant increase in the numbers of high-rise units being constructed, catering for both the residential and tourist population. This coupled with its proximity to the Queensland border (and competition for the tourist dollar) and its economic importance means that the current standard of provision and scope of facility requires improvement.

Council currently has a number of Section 94 Plans that are either Shire wide Plans (eg, libraries) or relate to particular release areas. In addition Contribution Plan No 26 – Shire Wide/Regional Open Space involves the provision of higher level regional type facilities and areas for a larger Shire population.

In deciding whether works or proposed facilities are of a regional or local importance and who pays, a general principle is if the proposed works satisfies not only the demand of new development, but also some regional demand, or makes up for some deficiency, then only the portion created by development can be charged.

On balance it is concluded that the proposed works should be apportioned between the existing and future population, and this apportionment should be applied on a Shire-wide and local basis, for the following reasons:

- The provision of the works will satisfy the demands beyond those in the immediate area and those of the future development;
- The works will satisfy some pre-existing shortfall in facility provision;

- It would appear to be reasonable and equitable to levy development beyond the immediate area;
- It is impractical to isolate the new population as the exclusive user of the proposed facilities and therefore it is more equitable to share the cost between the existing and new population;
- There is some exclusive Tweed Heads local benefit in the proposed Masterplan as it relates to the streetscaping and therefore the proposed residents in this area should contribute to this in a separate S94 Plan.

On balance then the funding split would appear to be reasonable as it involves funding from the existing and future population as well as other sources such as grants. Both Council's Executive Management Team and Infrastructure Coordination Committee have considered and endorsed the proposed funding approach for the Master Plan

Funding under S94

In terms of Section 94 funding, it is proposed that funding be applied on a shire-wide basis for the regional facilities and be funded under the existing Contribution Plan No 26 – Shire Wide/Regional Open Space (CP 26), while funding for the local streetscaping facility be managed under a new local S94 plan for the Tweed Heads area. CP 26 proposes more intensively used and higher cost outdoor sporting facilities and major regional passive recreation facilities including foreshore parklands and botanic gardens. Most of the works around the boat harbour will satisfy the demands of both the local and shire wide residents and is seen as a shire wide resource, while acknowledging that some of the works, particularly the streetscaping, will benefit the local Tweed Heads population almost exclusively.

The following is the proposed split between the regional and local open space to be funded under S94:

Total Cost for the Tweed Heads Master Plan: \$15,255,385

- Regional open space: \$13,251,925) based upon estimate provided by Council's
- Local open space: \$2,003,460) landscape architect and includes \$596,204, for the detailed design

Regional open space: $\frac{\$13,251,925}{3}$

= \$4,417,308

Local open space: \$2,003,460: 1/3 funded through Council - **\$667,820**
2/3 funded through S94 - **\$1,335,640**

The following are the proposed costs attributable to the S94 funding component of the Tweed Heads Master Plan.

Assessment of Contributions

- **Regional Facilities: Section 94 Plan No 26 – Shire Wide/Regional Facilities**

The current work program under the Casual Open Space component of the plan is \$4,110,000 and the estimated cost for the S94 component of Jack Evans Boat Harbour is \$4,417,308 capital cost and \$3,442,166 interest. Interest has been included as there will not be sufficient funds in the plan to allow early commencement of the work as per the draft work program. The interest has been calculated on the cost of the work program up until 2008/09 with a pay back period of 20 years.

$\$4,100,000 + \$4,417,308 + \$3,442,166 = \$11,959,474 + 10\% \text{ admin. levy}$

$\frac{\$11,959,474}{40,000} + 10\% \text{ admin. levy}$

= \$298.98 + 10% admin levy per person
= \$329 per person

New Levy rate:

\$329 X 2.6 people per single residential lot = **\$855 (currently \$221)**
\$329 x 1.7 people per medium density unit = **\$559 (\$144)**

- **Local Open Space: Proposed new Section 94 Contribution Plan No 27 – Tweed Heads Master Plan; Local Open Space and Streetscaping**

The total estimated cost for streetscaping/local open space is \$2,003,460. It is proposed that Section 94 will be funding two thirds of the total cost which is \$1,335,460. Added to this amount is an interest component as funds will be required to be borrowed to allow work to commence. This interest is only calculated on work required up to year 2009/2010 and the interest is calculated over a twenty year period. The estimated cost for the s94 component of the streetscaping/local open space is \$1,335,460 (capital works) and interest of \$903,745.

It is proposed that a new local casual open space plan be drafted for Tweed Heads to accommodate the streetscaping under the Tweed Heads Master Plan. Based on an estimated population growth rate of 4,000 people in the Tweed Heads Master Plan area over the next 20 years the levy rate for this new plan is as follows (assuming that the majority of the new development will be medium/high density dwellings):

$\frac{\$1,335,460 + \$903,745 + 10\% \text{ admin. Levy}}{4,000}$

= $\frac{\$2,239,205}{4,000}$

= \$559.80 + + 10% admin. levy per person

= \$616

= \$616 x 1.7 persons per unit

= **\$1,047 per medium density unit**

Developer Agreements

Council has negotiated developer agreements in respect of recent development applications (a total of 103 units) in the Tweed Heads Master Plan area. These agreements, negotiated in the absence of a section 94 plan for the Master plan, provide for the contributions to be spent on public infrastructure proposed in the Master Plan. In most cases the contribution rate negotiated was \$2,000 per unit, although a lesser amount was negotiated for one development application. No contributions from these agreements have been received by Council at the time of this report. The \$2,000 per unit was based on estimates provided on various scenarios for funding the Tweed Heads Master Plan entirely through S94.

In view of the above proposed S94 contributions which are well below those of the negotiated agreements, there may be representations from developers who signed the agreements. In addition there are current development applications in the Masterplan area that will require contribution assessment. It is recommended that:

1. Following finalisation of the S94 plans Council adjusts any contributions that have be made to date for the Masterplan, based on the new contributions;
2. Pending finalisation of these S94 Plans Council continues to negotiate contributions for development in the Tweed Heads Master Plan area based on the new s94 rates proposed in this report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Section 94 Plan No 26 - Shire Wide/Regional Open Space \(DW 1273416\)](#)
 - [2. Section 94 Plan No 27 - Tweed Heads Master Plan - Local Open Space and Streetscaping \(DW 1273417\)](#)
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4 [PD] Section 430 Investigation

ORIGIN:

Director

SUMMARY OF REPORT:

The Section 430 investigation into Tweed's planning procedures including the processing, assessment and determination of development applications was carried out over a two month period between March and May 2005. The investigation found that Council had not made any inappropriate planning decisions and there were no grounds to appoint a planning administrator for the Tweed. The investigation also found that the Council's planning staff operate at an appropriate level of competence and professionalism.

There were concerns raised about the areas which have been zoned urban expansion in the 1980's and that some of this land needed to be zoned for environmental protection. The report did not appear to address the fact that these areas were assessed and reiterated in the Tweed LEP 2000. Council's practice in relation to these urban expansion zones is to carry out independent extensive environmental studies over all of the land zoned for urban expansion and to rezone the areas for environmental protection where urban development is inappropriate. Whilst this process is a source of conflict it does not have a major impact on the development assessment process currently being undertaken in the Shire.

The report also raised concerns about the working relationship with DIPNR and while it is accepted that working closely with DIPNR is necessary, it is not accepted that there were problems in the working relationship with DIPNR. The only issue was the amount of development assessment Council was carrying out for DIPNR without any payment for the cost of this work. Council has sought to continue and increase the amount of development assessment work for DIPNR (now Department of Planning) on a fee for service basis.

The report addresses these concerns in the comments on the Section 430 recommendations.

RECOMMENDATION:

That : -

1. Council seeks an arrangement with the Department of Planning where meetings are held quarterly alternatively at Tweed and Grafton with relevant Council staff and the Administrators as appropriate.
2. Council advises Department of Planning that Council's strategic planning framework will be amended to accord with the Far North Coast Strategy as soon as it is adopted by the State Government.
3. Council only undertakes those spot rezonings where the rezonings would not thwart any of the State Government objectives and priorities as outlined in the concept planning for the Far North Coast Strategy.
4. Council seeks Department of Planning's agreement to review the administration of SEPP71 to progressively increase Council's delegations for some of these applications.
5. Council prepares locality plans with appropriate development standards for the Tweed's coastal villages as soon as practicable.
6. Council notes and endorses the proposed actions by the Department of Local Government and Department of Planning to review the reporting requirements of Councils when developments are approved contrary to staff recommendations.
7. Council notes and endorses the proposed actions of the Department of Local Government and the Department of Planning to have a joint approach to planning components of Promoting Better Practice Reviews for Councils where there is evidence of significant planning issues.
8. Council notes the proposal by the Department of Local Government to schedule a Promoting Better Practice Review of the Tweed Shire Council within the next twelve months.
9. The General Manager conveys Council's resolution in regard of the Section 430 report to the Minister for Local Government the Honourable Kerry Hickey, MP.

REPORT:

The report on Tweeds planning processes prepared by Mr Ross Woodward following an investigation under Section 430 of the Local Government Act 1993 was tabled at the Council meeting of 7 September 2005. The recommendations of the Section 430 report have been assessed and the following actions are proposed in relation to them.

- 1. The Council and DIPNR establish a framework for improving their working relationship. The Department of Local Government may have an assisting role to play.**

Comment

The need to work closely with DIPNR (now restructured into Department of Planning - DoP) is acknowledged. There have been some difficulties due to the demand on Council's planning resources to assess and provide conditions of approval for development applications lodged with the State Government. The fees for these applications are paid to the State Government and there was a large cost to the Tweed ratepayers for providing this service. Council resolved to seek some payment on a 'fee for service' basis from DIPNR. There wasn't any breakdown in the working relationship from this decision. It is recommended that Council resolve to seek an arrangement with DoP where meetings are held quarterly alternatively at Tweed and Grafton with relevant Council staff and the Administrators as appropriate.

- 2. The Council review its strategic planning documents in the light of the draft Far North Coast Strategy and work with DIPNR to ensure maximum and urgent participation in the Strategy.**

Comment

The requirement to review Council's strategic planning framework to reflect the State Government priorities in the Far North Coast Strategy being prepared by DIPNR (now DoP) is accepted. It should be noted however that the Far North Coast Strategy is now available in draft or final format at the time of writing this report. Consequently, it is unreasonable to expect Council to have reviewed or changed its strategic planning framework to incorporate the Far North Coast Strategy before it was available. Council staff have attended all of the meetings arranged by DIPNR and provided all of the base information required by DIPNR in relation to this strategy. There has been Council input provided to DIPNR whenever it was needed and Council has endeavoured to participate and work with DIPNR. The inferred criticism in this regard is unwarranted and misplaced. It is recommended Council advise DoP that Council's strategic planning framework will be amended to accord with the Far North Coast Strategy as soon as it is adopted by the State Government.

- 3. The Council place a moratorium on spot rezonings, until recommendation 2 above is completed.**

Comment

The requirement to place a moratorium on spot rezonings until the Council's strategic planning documents are reviewed to accord with the Far North Coast Strategy may be overly onerous. The Tweed has large parcels of land already zoned for urban development. There are a small number of spot rezonings which are needed to overcome anomalies in zone boundaries and where there is a significant benefit to Council in, for example, obtaining land for environmental purposes. The intent of the recommendation is accepted as logical and desirable however there may be some instances where the moratorium on a spot rezoning would be illogical and unnecessary. It is recommended Council resolve to only undertake those spot rezonings where the rezonings would not thwart any of the State Government objectives and priorities as outlined in the concept planning for the Far North Coast Strategy.

- 4. The Council review the Residential 2(c) Urban Expansion zones in Tweed LEP 2000, with a view to back zoning environmentally sensitive land where urban development is inappropriate.**

Comment

Since the Woodward report was tabled there has been a template prepared for LEP's in NSW. This template has been advertised for comment however the draft does not have an urban expansion zone. There is a requirement for the Tweed Shire Council to prepare a new LEP within 3 years. If Council provides sufficient resources the preparation of a new LEP can be expedited. It will be necessary to assess all the land currently zoned 2(c) as part of this process. It should be noted that Tweed's current practice is to obtain independent environmental reports in relation to land zoned 2(c) and wherever urban development is inappropriate then this part of the land is zoned to an appropriate environmental protection zone. The recommendation about land zoned 2(c) is already part of Council's normal practice and has been in the past. There are many examples where Council has negotiated large areas of land to be set aside for environmental purposes, eg. Black Rocks, SALT, Koala Beach etc.

- 5. The Council and DIPNR review the administration of SEPP71 and consider progressively increasing the Council's delegations.**

Comment

This recommendation has been overtaken by the planning reforms to some extent. Some of the provisions which relate to development applications under the SEPP71 legislation have been clarified and new provisions for State significant development specified. There are clearly resource constraints in DIPNR to deal with all the development applications under the current SEPP71 legislation.

The concept of Council assisting DIPNR (now DoP) to assess these applications on a 'fee for service' basis has a lot of merit. The objective should always be the best planning outcome for coastal communities and this can only be achieved with local planning assessment and input. It is recommended Council resolve to seek DoP's agreement to review the administration of SEPP71 to progressively increase Council's delegations for some of these applications.

- 6. The Council review LEP 2000 to provide clarity with regard to development standards as they apply to the coastal zone and work with local communities to establish an acceptable framework for future development.**

Comment

There has been a lot of community concern about the development standards for development applications in the coastal areas. The Tweed's development standards are mainly contained in DCP6 rather than the LEP. The need to prepare locality plans for the coastal villages is already a priority for the Tweed Shire Council. In addition there is an urgent need to educate and inform these communities about the performance based provisions of the Tweed's current development standards. There appears to be a distrust of performance based decisions even when such decisions are soundly based. The application of a two storey height limit on medium density zoned land which has a steep slope creates complex planning assessments and conflict in communities particularly where surrounding property owners are seeking to preserve views. The need to provide more clarity in regard to development standards as they apply to the coastal zone is acknowledged and accepted. It is recommended Council resolve to prepare locality plans with appropriate development standards for the Tweed's coastal villages as soon as practicable.

- 7. The Department of Local Government and DIPNR review the reporting requirements of councils when approving developments contrary to the recommendations of council staff.**

Comment

It is recommended that Council note and endorse the proposed actions by the Department of Local Government and Department of Planning to review the reporting requirements of Councils when developments are approved contrary to staff recommendations.

- 8. The Department of Local Government and DIPNR consider a joint approach to planning components of the Promoting Better Practice Reviews for councils where there is evidence of significant planning issues.**

Comment

It is recommended that Council note and endorse the proposed actions of the Department of Local Government and the Department of Planning to have a joint approach to planning components of Promoting Better Practice Reviews for Councils where there is evidence of significant planning issues.

9. The Department of Local Government schedule a Promoting Better Practice Review of the Council within the next twelve months.

Comment

It is recommended Council note the proposal by the Department of Local Government to schedule a Promoting Better Practice Review of the Tweed Shire Council within the next twelve months.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Section 430 Report by Ross Woodward \(DW 1251382\)](#)
-

5 [PD] Request for Support for Development Concept to be Dealt with by the State Government Under Section 3(A) of the Planning and Environment Act - Lot 529 DP 1003396 Clothiers Creek Road, Clothiers Creek

ORIGIN:

Director

FILE NO: DA1160/975 Pt2

SUMMARY OF REPORT:

A large integrated development is proposed for the Tanglewood locality. Preliminary discussions have been held with Council's planning staff. The concept plans include significant employment generation for the Tweed through the relocation of a natural pharmaceutical industry.

There are a number of State Government agencies which will need to be co-ordinated and the scale of the project is one which meets the new guidelines for State significant development. Under this legislation one of the first steps is to obtain the local government approval for the development to be dealt with by the State Government under Part 3(A) of the Planning and Environment Act. This approval is not one which fetters Council position to raise objections to the development nor does it prevent Council input into the urban design and infrastructure requirements of the development proposal. Indeed Council can signify agreement to the development being dealt with under Part 3(A) of the Planning and Environment Act only on the basis Council input is obtained in all of the aspects of the development proposal which are normally carried out in the development assessment process.

There is considerable pressure on Council's planning resources to cope with the planning reforms and the other changes to the statutory planning framework which Council has foreshadowed.

In addition there are major infrastructure and environmental constraints within the Tanglewood estate which are likely to require State Government intervention to provide an integrated State Government approach to the development proposals.

RECOMMENDATION:

That Delfin Lend Lease be advised Council is supportive of the development concept being dealt with by the State Government under Part 3(A) of the Planning and Environment Act provided Council input is obtained for all aspects of the development assessment process.

REPORT:

As per Summary.

Correspondence from Delfin Lend Lease is reproduced as follows:

Dear Sir,

*CLOTHIERS CREEK IN
CLOTHIERS CK.*

RE: TANGLEWOOD – STATE SIGNIFICANT DEVELOPMENT PROCESSES

I refer to your recent discussions with Mr Darren Gibson of Jim Glazebrook & Associates Pty Ltd regarding the above matter

As you are aware Delfin Lend Lease (DLL) has developed a concept plan for the establishment of a new village at Tanglewood.

The concept involves the creation of an 'employment led' sustainable community, comprising the following specific elements.

- A health cluster producing 150 – 200 jobs and more than \$100 million investment which includes a (possible) private hospital, a 100 - 150 bed residential aged care facility, a 200 bed retirement village, a network of health professionals, a nutraceutical manufacturing facility and a health education facility.
- A regionally relevant residential community of between 1000 and 1500 dwellings that provide a quality approach integrated into the local area and the region. The residential project value will be greater than \$100 million.
- Protection of significant environmental features adjacent to the existing nature reserve.

A more detailed overview of the preliminary concept is outlined in the attached proposal document prepared for the Department of Planning

Following earlier discussions with Council and in accordance with your advice, DLL has consulted with the NSW Department of Planning regarding whether or not the development proposals constitute "State Significant Development" The Department's initial advice is that a number of elements of the proposal do fall within the ambit of the new State Environmental Planning Policy (Major Projects) 2005. Furthermore, the project is of a nature and scale that would satisfy the criteria for assessment under the new Part 3A provisions of the Environmental Planning & Assessment Act, 1979.

Sydney
Melbourne
Brisbane
.....

DLL is currently preparing a submission to the Department of Planning in accordance with its requirements, seeking confirmation that the project will be assessed by the Minister under Part 3A of the Act.

Draft guidelines produced by the Department of Planning require that DLL consult with Council to confirm that it raises no objection to the Part 3A approval process being implemented in relation to this project. In particular, the Department wishes to gauge whether the conventional local planning processes would be able to deliver outcomes as efficiently as the Part 3A process

We recall your previous advice to us regarding the local planning processes, particularly in relation to certainty of process and timing, as well as your view that issues raised by the project might best be co-ordinated at a State Government level

The critical issues from DLL's viewpoint, as we understand them, are as follows:

- 1 The development concept is prohibited by the disposition of current zonings on the site and therefore would necessitate an 'incremental steps' planning process involving:
 - a. Rezoning (including EIS)
 - b. DCP preparation, and
 - c. Subsequent development approvals.
2. The Council's current strategic work program is such, that no commitment could be given to dealing with the proposal with priority over other projects
3. To deliver the project on the site via conventional local planning processes could realistically take four (4) – five (5) years.
4. There are time imperatives in terms of the delivery of key elements of the DLL scheme for the site, in particular some of the key employment generating elements (aged care facilities, nutraceuticals manufacturing). An approval timeframe in the order of 18 months – 2 years is required
5. The proposal is on the face of it, State Significant development and raises myriad inter-agency policy issues at the State level, which could be better co-ordinated at a State Government level.

Timeframes in the order of those noted above would result in DLL's withdrawal from the project. DLL could simply not commit itself to the inevitable uncertainties arising from the conventional local processes over such an extended period

DLL therefore requests Council's confirmation that it raises no objection to DLL's Tanglewood proposal being dealt with under the new Part 3A provisions.

We note that Council would not and cannot indicate any view in relation to the concept at this stage. Furthermore, we expect that Council would want to be consulted closely throughout the Part 3A process. DLL fully supports Council's involvement in the process.

I understand that you are aware of DLL's time imperatives with respect to submitting its proposal to the Department and we therefore seek Council's earliest confirmation.

Please contact me if you wish to discuss this matter further. I look forward to working with you on this project.

Yours sincerely
DELFIN LEND LEASE

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS FROM DIRECTOR ENGINEERING & OPERATIONS

6 [EO] Subdivision Landforming Policy

ORIGIN:

Planning & Infrastructure

SUMMARY OF REPORT:

This report considers the NSW Government Architect's review of Council's subdivision policies and his recommended policy changes for cut and fill landforming earthworks in subdivisions.

A Council workshop and further report by the Director of Planning and Development will consider the Strategic Plan and LEP issues raised in the Government Architect's Review.

The review has highlighted a number of areas where current policy could be improved.

The recommendations of the review are not supported as they are inappropriate for the Tweed Shire topography, do not significantly improve environmental outcomes or the visual character of the area, would significantly curtail the population growth projections in Council's recently adopted Strategic Plan and lead to unacceptable decline in the local economy and resulting unemployment.

Council currently has a comprehensive policy structure platform to control landforming at the subdivision and later house construction phase of development. The urban zoned areas of land in Tweed Shire are a small portion of the total land area of the Shire and sensitive, suitably controlled landforming of subdivisions within these areas will not have a significant adverse impact on the overall character and landscape/visual quality of the shire.

There are a number of areas where Council's current policies can be improved and appropriate amendments are recommended.

RECOMMENDATION:

That having regard to the NSW Government Architect's "Preliminary Review of Planning Instruments for Residential Subdivision in Hill Zones":

- (a) Apart from minor amendments *Development Control Plan No.16 – Subdivision Manual*, should be generally unchanged in regard to regulation of subdivisions in steep areas**
 - (b) *Development Design Specification D6 – Site Regrading*, be amended as follows:**
-

- Change allowable retaining wall height table to discourage the use of retaining walls for production of flat “terraced” landforms on land that would otherwise be unsuitable for slab on ground dwelling construction.
 - Include diagrams to clarify above issue
 - Restrict retaining wall heights beyond the current 3m from boundary regulated area
- (c) Development Control Plan No.47 – Cut and Fill on Residential Land be amended to include:
- Development for future residential dwellings is to adopt sound urban design principles that are sympathetic to the topographical features of the site.
 - Future dwellings are not to be a contiguous slab on ground level if the building site area has a slope of greater than 10%.
 - Development on such land is to be of pole or pier construction or multiple slabs or the like that minimise the extent of cut and fill.
 - For residential dwellings the depth of excavation shall not exceed one metre and the depth of fill shall not exceed one metre so that the degree of both cutting and filling is minimised.
 - Excavations in excess of one metre within the confines of the building may be permitted to allow for basements, garages, etc providing the excavations are adequately retained and drained in accordance with engineering details.
 - Current “Section 2.2 - Variations to Cut and Fill Design” should be amended to prohibit variations to the one metre cut/fill limit
 - Provisions for other non residential uses (industrial, business etc)
- (d) Amended drafts of "Development Design Specification D6 - Land Regrading" and "Development Control Plan No. 47 - Cut and Fill on Residential Land" be presented to Council in December for exhibition and public consultation in January/February 2006.

REPORT:

Preamble

At the Council Committee meeting held 21 September 2005 regarding Tweed Shire Planning Instruments Applying to Residential Subdivisions in Hill Zones and the Government Architect's Preliminary Review it was resolved as follows: -

"that this report be received and noted and the Director Planning and Development provides a report and advice on the recommendations contained within the Government Architect's Preliminary Review of Tweed Shire Planning Instruments Applying to Residential Subdivisions in Hill Zones".

1. Scope

This is a response to those parts of the Government Architect's Review relating to Council's subdivision policy and in particular to subdivision landform change.

2. Issues Raised in the Review

The principal issues raised in the review can be summarised as:

- DCP16 gives inadequate direction about desirable subdivision layouts based on thorough understanding of the natural attributes of specific areas, natural and built heritage values, topography and hydrology, landscape character, climatic conditions etc.
- DCP16 is limited in its urban design, landscape and strategic content
- DCP16 is very much driven by heavy engineering to create flat building blocks, retaining walls and drainage systems.
- Recommendations including:
 - amend DCP16 to identify desired future character of new subdivision areas based on sound environmental planning & urban design principles, supported by clear diagrams of the local context
 - no residential subdivisions should be developed on sites with natural slope greater than 20%
 - no cut or fill greater than 1m should be permitted on any part of the site
 - new roads should follow contours
 - maximise permeable landscape area of each lot
 - contain subdivision stormwater runoff within subdivision area
 - residential buildings on steep sites should have small footprints and site specific design to minimise cut and fill
 - 3m side setbacks should be considered for a generous landscape setting
 - larger blocks of 1,200m² are more suitable for hill zones to provide greater landscape area opportunities
 - Development on sites with slopes greater than 1 in 20 (5%) should have specific controls for roads and building type to minimise ground disturbance, earthworks and impact on character of the area

- landscape strategy for hill sites should have detailed recommendations for street design and revegetating hills with native trees for green canopy and summer cooling
- masterplans for sites greater than 5,000m² (currently 25 lots)
- investigate availability and capacity of developable land with slopes less than 1 in 20 (5%) suitable for future growth

3. Subdivision Landform Regulation in Tweed Shire

3.1 The Demand for Flatter Building Blocks in Tweed Shire

In the past the concrete slab on the ground technique was mostly used for dwelling construction on relatively flat sites with conventional pier/beam and timber floor techniques used for sloping sites.

During the 1990s the concrete slab technique became more dominant and favoured by project builders because of its economical cost in a very competitive market environment.

Slab floors need a flat earth building platform and unless the home site is already flat, cut and fill earthworks are required to achieve the required shape. On gently sloping sites this can be achieved without substantial earthworks, however on steeper sites it calls for extensive cuttings, earth batters and/or retaining walls.

In hilly areas, in response to market demand for flat building platforms, the subdivision industry began constructing stepped terrace type landforms which use large scale earthworks and high retaining walls and/or cuttings to produce flat building platforms.

Slab on ground construction is of particular benefit to the project home industry supplying houses for lower income customers. Savings of \$30,000 - \$45,000 are estimated for slab on ground houses on flat allotments compared to the same house with pier and beam timber floor construction on sloping sites.



Fig 1. Retaining Wall Failure Bulwarra Place, Bilambil Heights

Whilst the trend to produce terraced subdivision landforms responded to the economies of the building industry, by 2002 there were a number of issues causing concern:-

- Invasive earthworks with high cut and fill increases the risk of geotechnical (landslip) failure. Whilst the probability of failure may be low when appropriate geotechnical investigation and engineering design are carried out, failures nevertheless can still occur and the consequences may be serious. Landslip in occupied areas could result in damage to property, structures, injury and loss of life.
- There was a significant retaining wall failure in a recent subdivision (Bulwarra Place).
- Long term stability of high retaining walls and cuttings is often dependent on effective drainage systems. Drain maintenance and repair are difficult to guarantee in subdivisions, particularly where multiple ownership interallotment drainage systems are used.
- High cuts and fills and retaining walls can be visually unsightly
- Urban design principles suggest that building form should preferably adapt to the environment rather than changing the environment (ie the landform) to suit a preferred building technique. In sites with significant gradients, it seems preferable to restrict the permissible amount of cut and fill earthworks, thus requiring builders to use alternate flooring systems to slab on ground.

In response to these concerns, in June 2002 Council adopted Development Design Specification D6 – Site Regrading as an interim policy for subdivision site earthworks, retaining walls and geotechnical risk assessment.

In 2003 the new version of DCP16 – Subdivision Manual and associated Specifications (including an updated version of D6 – Site Regrading) were publicly exhibited. Of all the issues raised through the exhibition of DCP16, written submissions, subsequent workshops and industry meetings, the most contentious was the landforming criteria in specification D6. The new version of D6 was unanimously adopted by Council in June 2003 along with DCP16 itself and the other associated specifications.

Whilst DCP16 and D6 regulated landforming/earthworks/retaining walls in subdivisions, controls were also needed for the post subdivision, building phase. Accordingly DCP 47 was drafted (based on a similar DCP at Gosford), exhibited and adopted by Council In January 2003 to control cut and fill earthworks on residential building sites.

3.2 Current Tweed Shire Council Policy for Subdivision on Steep Land

Key requirements for subdivision of steep land are contained in DCP16 and Specification D6 and are summarised in Table 1.

Table 1

Development Control Plan No. 16 Subdivision Manual	
Section	Effect
4.2.1, p 17 Significant Vegetation	Significant vegetation must be identified and preserved
4.2.1, p18 Landscape Visual Character	Subdivision design should protect landscape, visual character and scenic amenity of area. Need for "Scenic Impact Assessment". Must address Brouwer report.
4.2.2 p18, Landforming	<ul style="list-style-type: none"> • Proposals to alter natural landform must: <ul style="list-style-type: none"> ◦ not adversely impact other land, persons or public infrastructure. ◦ preserve levels at site boundaries ◦ preserve significant natural watercourses, riparian vegetation, environmental and topographical features ◦ preserve the visual character of the landform as viewed from within and outside the land site ◦ preserve cross boundary drainage conditions ◦ ensure runoff from upstream or upslope land is not adversely impeded ◦ ensure there are no adverse geotechnical consequences to the site or to other land ◦ ensure there are no adverse consequences to public infrastructure ◦ minimise earthworks • Significant landforming proposals must be justified <p>The use of high earthworks batters and retaining walls to achieve flat building platforms should be avoided.</p>
4.2.3, p19, Water sensitive urban design	Subdivision drainage systems should mimic natural (pre-development) flows by utilising such techniques as reuse, detention, retention and infiltration.

Development Design Specification D6 – Site Regrading	
Section	Effect
D6.02 Principles for Site Regrading Proposals	<ul style="list-style-type: none"> • Site regrading must not adversely impact other land, persons or public infrastructure. • Natural watercourses, riparian vegetation and significant environmental features should be preserved. • The visual character of the landform as viewed from both within and outside the land should be preserved. • Earthworks are to be minimised
D6.04 Site regrading concept	<ul style="list-style-type: none"> • Water sensitive design principles shall be adopted (see D7). Where practical, areas should be regraded to minimise the necessity for underground drainage systems. • Site regrading proposals shall preserve significant features of the environment.
D6.05 Landforming Geometric Criteria	<ul style="list-style-type: none"> • Creation, on residential subdivision allotments, of flat earth platforms that are suitable for construction of concrete slab-on-ground dwellings is allowable subject to compliance with the design criteria in this specification. Where such compliance is not possible, flat earth platforms should not be created and future dwellings should to use building techniques suitable to sloping sites. • The proportion of a subdivision or development site (plan area) that contains cut or fill areas with finished surface levels that depart from natural surface levels by more than 5m shall not exceed 10%. • Maximum height of retaining walls or batters <ul style="list-style-type: none"> ◦ 2.5m side and rear boundaries * ◦ 1.8m above street boundary ◦ 3.6m below street boundary <p>* or within 3m of boundary</p>

Key requirements for earthworks at the dwelling construction phase are contained in DCP 47 - Cut and Fill on Residential Land and are summarised in Table 2.

Table 2

Development Control Plan No.47 Cut and Fill on Residential Land	
Section	Effect
1.7 Objectives	<ul style="list-style-type: none"> • control excessive earthworks to preserve existing topography • preserve amenity of neighbours
2.1 Cut and fill design	neither cut or fill shall exceed 1m except under buildings in basements, garages etc
2.2 Variations	variations allowed to 2.1 above if it can be shown the objectives of this DCP are fulfilled
2.3 Geotechnical requirements	approved geotechnical & structural engineers report necessary for cut/fill/retaining walls above 1m height or risk of landslip
2.4 Alternative construction	alternatives to slab on ground construction encouraged

While these policies have arrested the trend for more invasive subdivision earthworks and more control of cut/fill associated with dwelling construction, there remain a number of unresolved issues which include:

- Whilst there are well developed state/federal policies for protection of endangered flora and fauna, the protection of natural landform is an area that is devoid of policies or practical guidelines.
- The retaining wall height limits in subdivisions are sometimes avoided by having additional walls beyond the 3m “boundary” definition.
- The allowable retaining wall heights in subdivisions have curtailed the construction of excessively high walls heights, but, are still enabling some “terraced” subdivisions to be approved
- The no more than 5m cut or fill over no more than 10% of the site rule is considered to be too restrictive by some and not restrictive enough by others
- Developers consider the rules too restrictive for economic subdivision of existing 2c zoned land in Tweed Shire and unfairly target the project home industry
- The nominal 1m cut and fill limit of DCP47 is easily exceeded by variations in section 2.2
- Landforming controls are mainly targeted at residential land. Appropriate controls are also desirable for industrial and business zoned land

There is a need to review existing Council policies to address these issues and other issues raised by the Government Architect.

4. Is There a Need For Landforming Control?

4.1 Reasons for Landform Control

A number of reasons are given for promoting regulation/control of landforming activities which include:-

(a) Geoconservation

Geoconservation aims to preserve the natural diversity - or 'geodiversity' - of significant geological (bedrock), geomorphological (landform) and soil features and processes, and to maintain natural rates and magnitudes of change in those features and processes.

Geoconservation recognises that the non-living components of the natural environment are just as important, for nature conservation, as the living components, and just as much in need of proper management.

(b) Vegetation, Habitat Loss

This is an inescapable loss of vegetation within the cut and fill footprint. However there are well established policies to deal with threatened species issues. Natural vegetation and habitat loss also have their own suite of policies and development regulation.

(c) Landscape, Visual and Character

The Tweed Shire area has attractive and unique landscape and visual character attributes. Excessive changes to the underlying landform may adversely impact on these attributes.

- the landform level change may have a significant impact (hills lowered and low land raised),
- the artificially created landform may have different shape characteristics to the natural landform eg straight instead of curved land surfaces, sharp rather than rounded changes of slope, discontinuous levels at walls and batters
- cut and fill earthworks result in the removal of all existing vegetation from the affected surfaces.

(d) Geotechnical, Land Stability

Steep land is often unstable and subject to landslip. Subdivision of steep land may require high cut and fill batters or retaining walls. Invasive engineering and expert geotechnical and structural design is required to ensure land stability. Such high risk areas may be better avoided in subdivision development.

(e) Erosion and sediment control

Large areas of cut and fill earthworks mean large areas of exposed land subject to erosion forces. Such works on steep land are at particular risk to erosion.

(f) Watercourses, Drainage, Riparian Vegetation

Artificial landforming may adversely impact/change existing natural watercourses, drainage patterns and riparian vegetation. Altered drainage patterns may adversely impact on neighbouring land.

(g) Impacts on Immediate Neighbours

Immediate neighbours may be affected by any of (a) to (g) above. Additionally, high and long walls or embankments on or near land boundaries can adversely impact on the amenity of neighbouring land in terms of bulk, scale and visual amenity.

Undercut walls or cut batters on or near land boundaries can undermine stability of adjoining land, cause maintenance of boundary fences and the like difficult and present a safety (risk of falling) hazard.

Given these issues there is an obvious need for landforming controls on both subdivisions and later lot level building works.

4.2 What Landforming Controls are Available?

Landforming controls take many forms. The following is a sample:

Type of Control	How Applied	Examples
Advisory	Advice to <ul style="list-style-type: none"> • preserve natural landform • minimise cut/fill • maintain natural drainage patterns • protect strategic ridgelines and scenic features 	Tweed, Maroochy, Blue Mts, Lk Macquarie, Ten Towns NJ, Nanaimo BC, Santa Rosa CA, Archuleta CO, Hunterdon NJ, Wyong, Truckee CA, Malvern PA,
Slope constraint limit	<ul style="list-style-type: none"> • No development (including landform modification) on land with slope greater than nominated slope (examples range from 15 to 35%) • Restrict % of developable area on lots with slope exceeding nominated thresholds. Often graduated, the steeper the land the smaller the portion of the lot can be used 	Blue Mts, Lk Macquarie, Ten Towns NJ, Nanaimo BC, S Monmouth Cty NJ, Santa Rosa CA, Archuleta CO, Hunterdon NJ, Wyong, Truckee CA, Malvern PA,
Avoid changes to natural watercourse and riparian areas	<ul style="list-style-type: none"> • No landform modification of natural watercourses or riparian zone of nominated width • Transverse crossings usually permitted (bridges, approaches etc) 	Tweed, Santa Rosa CA
Cut and fill depth limit	Numerical limit on permissible depth of cut and/or fill above or below natural surface	Blue Mts, Truckee CA,

Type of Control	How Applied	Examples
Limit on site percentage with cut/fill above nominated height	Cut/fill of more than nominated height restricted to nominated % of site	Tweed
Avoid artificial terraced landform		Tweed, Nanaimo
Shape characteristics	<ul style="list-style-type: none"> Finished shape must mimic shape characteristics of natural/adjacent landforms having regard to slope curvature (concave, convex, straight, curved), changes of slope (sharp, gradual, rounded) So called "Landform grading" Shore & Gray Journal of Technical Engineering, October 1995 	Nanaimo BC, Lakewood CO, San Diego CA, Santa Rosa CA,
Retaining wall and batter height constraint	Numerical limits placed on height of retaining walls and cut/fill batter slopes	Tweed, Nanaimo BC, Truckee CA, Lakewood CO
Preserve boundary conditions	<ul style="list-style-type: none"> Existing/natural levels at external boundaries (on the subdivision perimeter) to be preserved Cross boundary drainage configurations to be preserved 	Tweed
Non numerical	Statements that: - <ul style="list-style-type: none"> Cut/fill should be minimised Natural landform should be preserved as much as possible 	Widespread
Road alignment	Align roads to natural topography reduce road widths parking on site not roads	Nanaimo BC, Santa Rosa CA, Truckee CA, Hunterdon NJ,

Type of Control	How Applied	Examples
Preserve significant landforms, views		Tweed, Lakewood CO, San Diego CA, Santa Rosa CA, Archuleta CO, Hunterdon NJ, Truckee CA,
Amend allotment standards	<ul style="list-style-type: none"> • Reduce requirements for level areas, • Use narrower streets, • Smaller yards on allotments • Increase building setbacks on adjacent lots with significant level difference 	San Diego CA, Santa Rosa CA, Truckee CA

There are many forms of landform control. Some are very restrictive and others control very little.

A number seek to exclude development from steep areas, whilst others permit it provided certain criteria are met – stability, shape, drainage, visual character etc.

Most controls have probably evolved to meet local concerns and also to respond to local political/development issues.

The approach of Tweed Shire's policies on subdivision landforming issues is as comprehensive and environmentally sensitively as that of any other authority researched for this report. Its structure also has the flexibility to fine tune numerical standards, height limits and the like.

5. Comments on Government Architects Review

5.1 Landforming Recommendations

The principle landforming controls recommended by the Government architect are:-

- *no residential subdivisions should be developed on sites with natural slope greater than 20%*
- *no cut or fill greater than 1m should be permitted on any part of the site*

Comments

The natural landforms of the Tweed are such that most areas need substantial landforming to render them suitable for residential subdivision.

The Government Architect's recommendation for an exclusion of land with slope above 20% is a form of control that is widespread in many areas around the world. It is particularly suited to landforms that consist of flat/moderately undulating areas with escarpment edges, such as occurs in some areas of the Sydney Basin and the Blue Mountains. The topography of much urban zoned land in Tweed Shire is rolling in nature and quite steep especially in the mid section between the lower gully and upper ridge areas. The application of a slope constraint control in this landform type can lead to available land being cut into small unusable fragments.

The review's recommendations would virtually stop approval of new greenfield subdivision in Tweed Shire.

Significant areas of Tweed Shire developed in the past including, Casuarina, SALT, Seabreeze and West Banora Point would fail the Government Architect's proposed controls.

The Tweed Shire Strategic Plan and associated infrastructure plans (water supply, Sewerage, arterial roads, open space etc) have been based on a population growth of around 40,000 from a present 80,000 to 120,000 over the next 20 years.

This population is to be largely accommodated in growth areas that include Cobaki Lakes, Bilambil Heights, Kings Forrest, Area E and West Murwillumbah.

Apart from parts of Cobaki Lakes that are already approved, the Government Architects proposals would stop most subdivision of the remaining areas.

As an example a slope analysis has been conducted in the undeveloped part of the West Murwillumbah urban release area. About 60% of this area has more than 20% slope. The remaining less steep land is broken into small unconnected fragments that are mostly impossible to access or service under the Government Architects proposals.

A 20% slope constraint on this land would reduce its potential yield of currently 330 lots to around 30 lots.

The Government Architect's additional recommendation of restricting cut and fill to not more than one metre would further reduce the potential yield. Whilst a cut/fill restriction of one metre at the lot/dwelling phase may have some merit, at the subdivision stage this is an extremely restrictive and impractical recommendation.

Instead of a slope constraint control and absolute cut/fill height control, Council's current policies include a control based on a limit on the site percentage of cut/fill above a nominated height. This type of control is considered more suitable for the local topography as it can preserve the natural landform character/shape and still enable subdivision to proceed. It can also be fine tuned by altering the cut/fill height limit and the percentage of site that is allowed to be exceeded.

Other landform/drainage controls proposed by the Government Architect include:

- *new roads should follow contours*
- *maximise permeable landscape area of each lot*
- *contain subdivision stormwater runoff within subdivision area*

Comments

A simplistic requirement for new roads to follow contours is inappropriate. In many areas this is desirable, however for connectivity, drainage and other urban design purposes some roads are required that do not follow contours.

The principle to maximise permeable areas of lots is already contained in Council and NSW planning controls.

The requirement to contain subdivision stormwater within the subdivision area is not possible. In the Casuarina and SALT subdivisions Council, in partnership with the developers, have instituted state of the art water sensitive urban design systems . These subdivisions are located on sand dunes and private and public land stormwater runoff is directed through infiltration systems to reduce external runoff. However even in these areas, located on raw sand, only stormwater up to $Q_{3\text{months}}$ is retained. Stormwater from larger storms is still discharged externally. In less permeable areas far more runoff is unavoidable. Council existing controls already require post subdivision runoff to mimic pre subdivision runoff and there are a suite of water sensitive design options to achieve this outcome. However to go the step further as suggested by the Government Architect is not only unjustifiable, it is not possible.

5.2 Urban Design Recommendations

The review criticizes DCP 16 on a number of urban design grounds including on page 3:

Quotation 1.

“..there is no direction given by Council’s DCP about desirable subdivision layouts based on thorough understanding of the natural attributes of specific areas, natural and built heritage values, topography and hydrology, landscape character, climatic conditions etc. Although the DCP requires masterplans to be completed for large subdivisions, there is no strategic direction from Council as to how the various residential areas should function as sustainable communities”

Quotation 2.

“The fundamental problem with Council’s Subdivision DCP 16 is the limited urban design, landscape and strategic planning content. The document is very much driven by the heavy engineering required to create flat building blocks, retaining walls and drainage systems. It does not promote sustainable design outcomes.”

Comments on Quotation 1

DCP16 was adopted in June 2003 after a 6 month community and industry exhibition and consultation process. The urban design sections in Chapter 4 (pages 12 to 25) address all the issues referred to as “*given no direction by the DCP*” in the Government Architect’s review.

The urban design section of DCP16 was principally based on the West Australian “Livable Neighbourhoods” publication, widely acknowledged then as representing “best practice” in urban design. DCP16 not only incorporates the relevant urban design sections of “Livable Neighbourhoods”, it is enhanced by also incorporating relevant environmental, constraint and statutory issues in a NSW context eg. NSW Coastal Policy, Threatened Species legislation etc.

Comments on Quotation 2

The suggestion that “*The fundamental problem with Council’s Subdivision DCP 16 is the limited urban design, landscape and strategic planning content*” is demonstrably incorrect. Its urban design content in Chapter 4 is amongst the best of any comparable subdivision DCP in NSW and its associated specification “D14 – Landscaping Public Space” has a wealth of landscaping guidelines and development standards.

The DCP and associated *Development Design Specification D6 – Site Regrading* were introduced in a climate where applications for ever larger cut and fill earthworks in subdivisions (and associated retaining walls) were increasing at a rapid rate and there was lack of practical guidance on how to deal with the issue from the NSW Government or elsewhere. Section “4.2.2 Landforming” of DCP 16 and “Development Design Specification D6 – Site Regrading” were a Council response to control this issue. It was not as asserted by the review a “.. *very much driven by the heavy engineering required to create flat building blocks, retaining walls and drainage systems.*”, it was quite the contrary.

The review misunderstands the “strategic” context of DCP16. DCP16 is a generic subdivision manual, and whilst it has best practice urban design guidelines, it is not site specific and does not provide “*local context and the desired future character of the new subdivision areas*”.

These issues must be addressed at a locality level and desirably in a site specific DCP, incorporating the urban design principles of DCP16.

Where there is no site specific DCP, DCP16 acts as a safety net to guide subdivision development applications in the absence of specific local controls.

5.3 Assessment

The Government Architect’s comments that “*It would require more detailed analysis and understanding of local site conditions to develop comprehensive and firm recommendations for development in the hill zones*” are acknowledged. However the review is disappointing as it contains a number of errors of fact, reveals an ignorance of the detail of Council’s existing policies, a lack of understanding of natural landforms/drainage systems in Tweed Shire, and an absence of practical understanding of the scope and consequences of subdivision landforming controls.

The consequences of adopting the Government Architect’s review and recommendations could include:-

- Reduction of Tweed Shire population growth from a predicted 40,000 to possibly less than 15,000 over the next 20 years
- Significant loss of employment in the development industry including works contractors, suppliers, consulting planners/engineers/surveyors
- Flow on negative economic multiplier effects to a substantial part of the local economy
- Loss of new housing land supply for local families and new settlers to the Tweed
- Reassessment and downsizing of Council's strategic landuse and infrastructure planning
- A severe economic loss for persons who purchased zoned urban land in good faith with the expectation of being able to develop this land in accordance with Council's current policies
- Reassessment and downsizing of contributions plans for water supply, sewerage, open space, sports facilities and arterial roads including
 - network configuration and size
 - contribution rates
 - works programs
- Reassessment of Councils corporate structure and growth assumptions
 - downsizing works program for council buildings and depots
 - restructure and/or redundancy of Council staff involved in provision and planning of future infrastructure

For the above reasons, the recommendations of the Government Architect's review are not supported. Further it would not be equitable to adopt such a dramatic change to Council's strategic direction without:

- A complete and rigorous review of Council's Strategic Plan, LEP and development control policies
- Full and extensive consultation with the local community and industry
- General concurrence of the local community to proposed changes

It is acknowledged however that there are changes that could improve Council's subdivision policies and the Government Architect's review has highlighted some significant issues.

Comments by the Director Planning and Development

*"The report prepared by Council's Planning and Infrastructure Engineer provides a detailed account of the problems which have occurred in past subdivisions in relation to the amount of cut and fill and the height of retaining walls in some of Tweed's subdivisions. The report outlines the provisions which have been formulated in DCP16, Specification D6 and DCP47 to overcome these problems and show that Tweed's controls are at the forefront of best practice. DCP16, Specification D6 and DCP47 were subject to extensive public consultation with workshops consisting of residents, elected members and industry representatives. **These new controls for landforming at the subdivision stage and at the residential building stage were only approved by Council in 2003. There have not been any major subdivisions approved and constructed under these new landforming controls.***

One of the first to comply with these guidelines was the subdivision application at McAllisters Road, Bilambil Heights. There were many development options assessed in relation to this subdivision to reduce landforming and conform with water sensitive design principles. The finished residential lots follow the general topography of the original land slopes and the lots will not be suitable for slab on ground construction. The amount of landforming proposed averages no more than one metre of cut and fill over the site. Some large allotments are proposed to enable the drainage paths to follow the existing natural waterways. It is acknowledged that there are sections of high retaining walls in this subdivision. This is an unavoidable necessity to accommodate widening of McAllisters Road which is needed to access the future Bilambil Heights urban release area. Overall the development has been designed to comply with the principles and objectives of the new DCP16.

There are some areas where previous Council decisions have proposed development on land with significant undulations such as West Murwillumbah. It is likely the amount of landforming needed to achieve practical outcomes for these areas may exceed the amount permitted in DCP16. The site constraints and the legal framework for development makes it necessary to negotiate the best planning outcome for these areas rather than to try to overturn past decisions retrospectively. There are a number of factors in the Tweed which make the landforming of undulating land more acceptable than many other areas.

- The areas of undeveloped land which are proposed for urban development in the Tweed comprise less than 1% of the Shire area.*
- The location of these areas is generally such that the landforming will not have a significant adverse impact on the visual quality of the Shire. The soil and rainfall in the Tweed is conducive to the rapid restoration of the landformed areas particularly if native landscaping is required as part of the development approval.*
- The demographics of the Tweed show that there is a very high proportion of aged persons in the Shire. There is a community need to create houses on flat sites for this proportion of the population. Similarly disabled people need flat sites to maintain some mobility with wheelchairs etc.*

- *There are significant environmental constraints for any new urban release areas in the Shire. If the anticipated population growth is to be housed in the Shire then areas which are already approved for urban development need to be maximised providing the development is not being proposed on environmentally sensitive land.*

Landforming of undulating land which is not environmentally sensitive to maximise the number of serviced lots for the planned population growth may be a better environmental outcome than reducing the amount of development through restrictions on landforming. If new release areas are required because the existing release areas are restricted there may be a greater overall impact on the environment.

The recommended approach to this issue is to concentrate on the landscaping rather than have a more prescriptive approach to landforming. Landscaping can be provided on the public land and road reserves through conditions of approval. Landscaping and the future visual quality of subdivisions can also be significantly enhanced by providing native plants to the residents on these residential allotments. Councils current landscaping policies are being reviewed with input from Councils landscape architect. The new conditions proposed in DCP16, Specification D6 and DCP47 as detailed in the report by the Infrastructure Engineer will significantly improve the urban design of future development in the Tweed and are fully concurred with.

The Government Architect has recommended other changes in the statutory planning and strategic frameworks for the Tweed. A separate report has been prepared for a workshop with the Administrators prior to putting the report to Council's Planning Committee on these other matters."

6. Conclusion

The current policies in DCP16, DCP 47 and Development Design Specification D6 – Site Regrading, form a comprehensive policy structure platform to control landforming at the subdivision and later house construction phases.

The urban zoned areas of land in Tweed Shire are a small portion of the land area of the Shire and sensitive, suitably controlled landforming of subdivisions within these areas will not have a significant adverse impact on the overall character and landscape/visual quality of the shire.

Areas of subdivision landforming control that need further adjustment include:-

- The retaining wall height limits in subdivisions are sometimes avoided by having additional walls beyond the 3m wide "boundary" regulated area.
- Whilst the D6 allowable retaining wall height table for subdivisions has curtailed the construction of excessively high walls, some further adjustment is needed to discourage "terraced" subdivisions on steeper areas. Inclusion of diagrams such as Figure 1. will give clearer guidance on this issue.

- More attention to the subdivision landform shape criteria to ensure final shape blends in visually with surrounding natural landforms
- DCP47 needs adjustment to prevent variation of the nominal 1m cut and fill limit in its section 2.2.

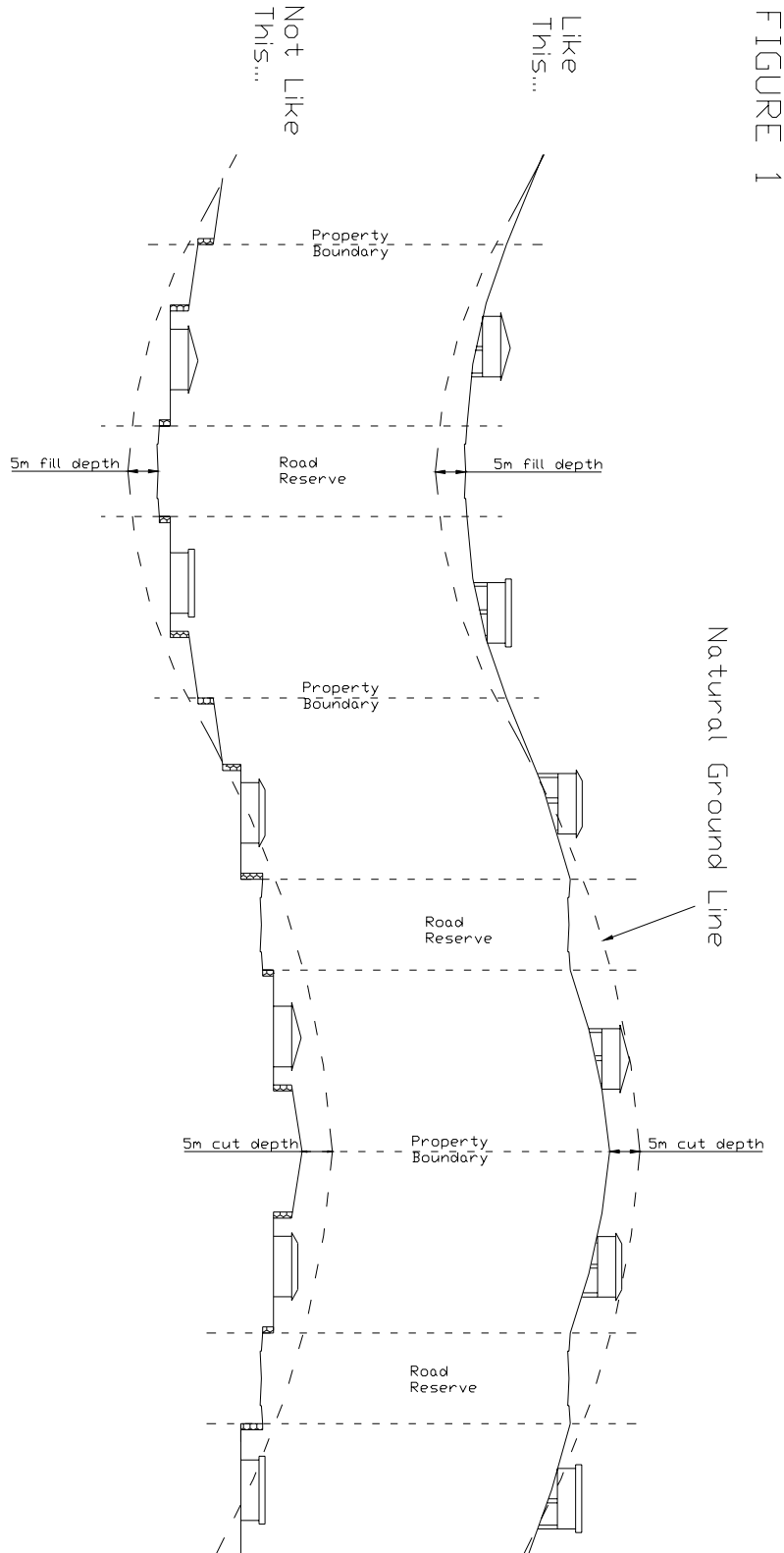


FIGURE 1

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Significant financial impact on future planning of Council's infrastructure and organisation. Significant impacts on economy of Tweed Shire area.

POLICY IMPLICATIONS:

Substantial impact on strategic land use, economic and population policy

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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