



# **AGENDA**

## **ORDINARY COUNCIL MEETING**

**Tuesday 15 September 2009**

**Mayor: Cr J van Lieshout**

**Councillors: Cr B Longland, Deputy Mayor  
Cr D Holdom  
Cr K Milne  
Cr W Polglase  
Cr K Skinner  
Cr P Youngblutt**

### **COUNCIL'S CHARTER**

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

Tweed Shire Council has the following charter:

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

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## CONFIRMATION OF MINUTES

- 1 **Minutes of the Ordinary and Confidential Meeting of Council held Tuesday 18 August 2009**

### UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Minutes of the Ordinary Council Meeting held Tuesday 18 August 2009 (ECM 4170958).
  2. **Confidential Attachment** - Minutes of the Confidential Council Meeting held Tuesday 18 August 2009 (ECM 4169952).
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## SCHEDULE OF OUTSTANDING RESOLUTIONS

### 2 Schedule of Outstanding Resolutions as at 15 September 2009

#### FOR COUNCILLOR'S INFORMATION:

18 November 2008

#### PLANNING COMMITTEE

P4 [PR-PC] Development Application DA07/0945 for Multi Dwelling Housing Consisting 34 Residential Units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point

#### P 13 COMMITTEE DECISION:

Cr W Polglase  
Cr K Skinner

**RECOMMENDED** that this item be deferred to allow for further negotiations with the applicant.

**Current Status:** To be reported to a future Council Meeting.

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28 May 2009

#### COUNCIL MEETING ORDERS OF THE DAY

### 17 [NOM] National Landscapes Viewing Locations

116

Cr K Milne  
Cr D Holdom

**RESOLVED** that Council brings forward a report on the feasibility of establishing a series of dedicated scenic viewing locations with associated BBQ, picnic, toilet and lighting facilities, in strategic locations around the Tweed Shire to tie in with the National Landscapes program involving:-

- a) Various funding options be investigated
  - b) Various methods of ascertaining prime viewing locations be outlined including community nominations.
-

**Current Status:** Report to be presented to a future Council Meeting.

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**18 AUGUST 2009**

**MAYORAL MINUTE**

**a3 [MM] Tweed Food Bowls Vision**

**170**

**Cr J van Lieshout**

**RESOLVED** that:-

1. Council Officers investigate and prepare a feasibility report on the potential for Northern Rivers region to increase its food growing capacity together with studies on food related industry initiative and more sustainable "Paddock to Plate" and "co-operative marketing" opportunities.
2. Council takes an active involvement in the \$1.9 million Northern Rivers Food Links Project and that a suitable workshop presentation on the "Draft Food Link Project Business Plan" be arranged.

**Current Status:** Workshop scheduled for 22 September 2009.

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**REPORTS FROM THE DIRECTOR PLANNING & REGULATION**

**11 [PR-CM] Development Application DA09/0139 for Construction of a Carport for Four (4) Cars at Existing Retirement Village at Lot 214, 215, 216 DP 251004, No. 1-5 Tupia Avenue, Tweed Heads**

**179**

**Cr W Polglase**

**Cr D Holdom**

**RESOLVED** that with regard to Development Application DA09/0139 for construction of a carport for four (4) cars at an existing retirement village at Lot 214, 215, 216 DP 251004, Nos. 1-5 Tupia Avenue, Tweed Heads Council requests amended plans demonstrating compliance with all matters raised within this report.

**Current Status:** Awaiting response from the applicant.

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## REPORTS FROM THE DIRECTOR TECHNOLOGY & CORPORATE SERVICES

### 33 [TCS-CM] Conduct Review Committee

211

Cr W Polglase

Cr K Skinner

**RESOLVED** that Council:-

1. Receives and notes the Interim Report of the Conduct Review Committee.
2. Council officers organises extensive workshops to further Councillors understanding of the Code of Conduct, the Media Policy, the Conduct Review Committee/Sole Reviewer Policy and the Code of Meeting Practice, as soon as possible.

**Current Status:** Workshop scheduled for 29 September 2009.

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## MAYORAL MINUTE

### 3 [MM] Mayoral Minute for the period 11 August 2009 to 7 September 2009

Councillors,

## COMMITTEE MEETINGS

### Attended by the Mayor

- 11 Aug 2009 - Repco Rally All Agencies Meeting, Peppers at Salt, Kingscliff
- 27 Aug 2009 - Richmond Tweed Regional Library Business Model Presentation, Tweed Shire Council Offices, Murwillumbah Civic Centre (also attended by Cr Dot Holdom)
- 28 Aug 2009 - NOROC Strategic Planning Meeting  
Clarence Valley Council Offices, Maclean
- 04 Sep 2009 - Aboriginal Advisory Committee Meeting, South Sea Island Room, Tweed Heads Civic Centre, Brett St, Tweed Heads

## INVITATIONS:

### Attended by the Mayor

- 13 Aug 2009 - Southern Cross University (SCU), Farewell Dinner for Professor Paul Clark and Dr Jean Clark – Outrigger Twin Towns, Tweed Heads
- 14 Aug 2009 - Supporting Hands Workshop for Child Protection - Nullum St, Murwillumbah
- 14 Aug 2009 - Tweed Valley Banana Festival Opening and Fashion Parade - Civic Centre Auditorium, Murwillumbah
- 19 Aug 2009 - Ocean View Assisted Living – Tour and meet residents – Ocean View, 2 Terranora Rd, Banora Point,
- 20 Aug 2009 - Museums and Galleries NSW Visit – Gallery Tour, afternoon tea – Tweed River Art Gallery - (also attended by Cr Longland)
- 30 Aug 2009 - Repco Rally, Sydney Cocktail Reception by Events NSW – 88 George Street, The Rocks
- 02 Sep 2009 - Deadly Days, North Coast Aboriginal Learning Partnerships – Kingscliff Tafe Campus, Cudgen Road, Kingscliff

- 02 Sep 2009 - Rally Australia Welcome Dinner – Fins, 5/6 Bells Boulevard, Salt Village, Kingscliff
- 03 Sep 2009 - Welcome Media for Rally by TEDC, TSC and Tweed Tourism – Salt Function Room, Salt Village, Kingscliff (also attended by Crs Longland, Skinner, Holdom, Polglase, Youngblutt)
- 03 Sep 2009 - Rally Opening Ceremony – Welcome to Drivers – Wharf Street, Murwillumbah (also attended by Crs Holdom & Longland)
- 03 Sep 2009 - Rally Australia Super Special Stage – Ewing St, Murwillumbah
- 04 Sep 2009 - Rally Australia Lunch at Castrol Edge East Special Stage
- 04 Sep 2009 - Rally Australia Super Special Stage – Ewing Street, Murwillumbah
- 06 Sep 2009 - Speed on Tweed Race & Lunch
- 06 Sep 2009 - Rally Celebration at Ceremonial finish – Service Park Finish Podium, Wommin Bay Road, Kingscliff

**Attended by other Councillor(s) on behalf of the Mayor**

- 13 Aug 2009 - Connecting Southern Gold Coast – Launch of website and brand Currumbin Wildlife Sanctuary Cafe, 28 Tomewin Street, Currumbin (attended by Cr Barry Longland)
- 14 Aug 2009 - Australian Red Cross AGM – Club Banora, Leisure Drive, Banora Point - (attended by DCNR David Oxenham)
- 14 Aug 2009 - Launch of Transport Information Pages – Sunnyside Shopping Centre, Murwillumbah - (attended by Cr Barry Longland)
- 17 Aug 2009 - Cudgen Progress Association Meeting re:- Traffic Concerns Cudgen Public School - (attended by Cr Longland)
- 21 Aug 2009 - Cheque Presentation, Festival & Donations Policies Council Chambers, Murwillumbah Civic Centre
- 31 Aug 2009 - Murwillumbah Legacy 61<sup>st</sup> Anniversary & National Legacy Week – Murwillumbah Services Memorial Club, Wollumbin Street, (attended by Cr Barry Longland)

**Inability to Attend by or on behalf of the Mayor**

- 03 Sep 2009 - Rally Australia Brunch at Shakedown, Wooyung
- 

**CONFERENCES:**

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**Conferences attended by the Mayor and/or Councillors**

*None attended.*

**Information on Conferences to be held**

*Councillors, please refer to the Councillor portal for complete Conference information.*

- 21-23 Sep 09 - River Symposium, Brisbane Convention & Exhibition Centre, (Cr Katie Milne attending)
  - 07-09 Oct 09 - Local Government Aboriginal Network (LGAN) – Mantra Ettalong Beach, Gosford, NSW – (Cr Dot Holdom attending)
  - 19-20 Oct 09 - 2009 Tourism Symposium – Byron at Byron Resort, Byron Bay
  - 03-06 Nov 09 - 18<sup>th</sup> NSW Coastal Conference – “Staying Afloat, Rising to the Challenges” – Ballina RSL Club, Ballina
- 

**SIGNING OF DOCUMENTS BY THE MAYOR:**

- 11 Aug 2009 - Assignment of Licence Agreement – Footpath Dining, Shells on Broadway
- 13 Aug 2009 - Signing of the Memorandum of Understanding between Council and Southern Cross University at Tweed Heads Campus, Brett Street.
- 25 Aug 2009 - Licence Agreement – Access and car parking – 21 and 23 Beryl Street, Tweed Heads
- 27 Aug 2009 - Release on restriction of use – DP1087716 and DP1092331 –Tweed Coast Road, Casuarina

**RECOMMENDATION:**

**That:-**

- 1. The Mayoral Minute for the period 14 August 2009 to 7 September 2009 be received and noted.**
  - 2. The attendance of Councillors at nominated Conferences be authorised.**
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**ORDINARY ITEMS FOR CONSIDERATION**

**REPORTS THROUGH THE GENERAL MANAGER**

**REPORTS FROM THE GENERAL MANAGER**

**4 [GM-CM] Code of Conduct Review**

**ORIGIN:**

**General Manager**

**FILE NO: Code of Conduct; Complaint; Conduct Review Committee; Media - Other; Newspaper Articles**

**SUMMARY OF REPORT:**

A Code of Conduct review was conducted in relation to Councillor Milne's release of information to The Tweed Shire Echo, published on 26 June 2009. This report contains the findings, reasons for those findings and recommendations made by the Reviewer in accordance with clauses 12.22 and 12.23 of the Code of Conduct.

**RECOMMENDATION:**

**That Council receives and notes the report on the Code of Conduct Review.**

**REPORT:**

On 29 June 2009 I appointed a Sole Reviewer to investigate a complaint received by me pursuant to clause 11.1 of Council's Code of Conduct.

The complaint was in relation to Councillor Milne's conduct in providing The Tweed Shire Echo information that was published in an article titled 'Council puts gag on itself' on 26 June 2009.

The Sole Reviewer found that no breach of the Code of Conduct occurred because clause 10.10 of the Code:

*... considers obligations relating to the use of Council information and is specific to the information being 'confidential'. It is my belief that the information that the information released was not classified or identified as 'confidential'. The subjective view that the information was 'confidential', in my view, falls short by definition and intention of the Code.*

...

*Further consideration for training in the area of the Media Policy and the Code of Conduct may well be appropriate considerations.*

On 2 July 2009 I sent each Councillor a memo that advised them of the Reviewer's findings and reasons for those findings.

In accordance with clauses 12.22 and 12.23 of the Code of Conduct the Reviewer's findings and reasons for those findings are now provided in writing to the whole Council for its consideration.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

A review of the Media Policy, occurred on 21 July 2009.

**UNDER SEPARATE COVER:**

Nil.

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**5 [GM-CM] Memorandum of Understanding with Industry & Investment NSW**

**ORIGIN:**

**General Manager**

**FILE NO: Agreements; Economic Development Strategy; Invitations - General; Letter of Introduction**

**SUMMARY OF REPORT:**

The NSW Government through Industry & Investment NSW (I&I NSW) is piloting a new initiative to enable closer engagement with local government on business development and provide improved delivery of regional economic development services for the NSW Government.

I&I NSW has invited Tweed Shire Council to participate in the pilot through a Memorandum of Understanding (MoU).

**RECOMMENDATION:**

**That Council enters into a Memorandum of Understanding with Industry & Investment NSW.**

**REPORT:**

The NSW Government through Industry & Investment NSW (I&I NSW) is piloting a new initiative to enable closer engagement with local government on business development and provide improved delivery of regional economic development services for the NSW Government.

I&I NSW have invited Tweed Shire Council to participate in the pilot through a Memorandum of Understanding. They see local government as a key partner in regional business development and investment attraction.

The aims of the pilot are to deepen the engagement between local and state governments, increase the number of business leads referred to I&I NSW and enhance I&I NSW's level of service delivery to the business sector. A Memorandum of Understanding will formalise the arrangements.

I&I NSW have forwarded the following Memorandum of Understanding (MoU) for Council's consideration.

**Memorandum of Understanding  
on Delivery of Services**  
  
**between**  
**Industry & Investment NSW and**  
**the Local Government Area of Tweed Shire**

This agreement provides for a Memorandum of Understanding between Industry & Investment NSW (I&I NSW) and the Tweed Shire Council, with the aim of ensuring mutual support in the delivery of the NSW Government's business and regional development services and programs, within the geographical area administered by the Tweed Shire Council.

Under the agreement, Tweed Shire Council undertakes to:

- Provide timely advice to I&I NSW of new economic activity in the Council area;
- Provide access to temporary office services when I&I NSW staff visit the region, including access to a desk, phone line and meeting room facilities;
- Work co-operatively with I&I NSW in providing assistance to businesses expanding in or relocating to the Council area;
- Conduct and promote business workshops in conjunction with I&I NSW;
- Provide the public with copies of program brochures/information as produced by I&I NSW;
- Leverage I&I NSW's Community Economic Development program for appropriate planning and project activities; and
- Submit a quarterly activity report (template attached).

Under the agreement, I&I NSW undertakes to:

- Ensure an officer of I&I NSW is present in the council area for at least one day in every six weeks and more frequently when major investment opportunities arise;
- Provide advice to the Council on programs and assistance available to the Council, its communities and businesses;
- Pay Tweed Shire Council a fee of \$8,000 per annum towards the cost of meeting its responsibilities under the terms of this agreement.

Signed: Louise McMeeking  
A/Regional Manager, Northern  
Industry and Investment NSW

Michael Rayner  
General Manager,  
Tweed Shire Council

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Quarterly report template****Activity under the MoU between Industry & Investment NSW and the LGA of Tweed Shire****Reporting period:** first quarter 2009/2010

Activity	Number	Details/status
New business leads referred to I&I NSW		
Joint provision of assistance to businesses relocating/expanding		
Business workshops		
Community economic development plan/projects		
Visits by I&I NSW staff		

Signed:

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General Manager, Tweed Shire Council

Date:

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As part of the pilot MoU arrangement Council will receive a fee of \$8,000 towards the cost of meeting its responsibilities under the terms of the agreement.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council receives a financial incentive of \$8,000.

**POLICY IMPLICATIONS:**

Nil

**UNDER SEPARATE COVER:**

Nil.

## REPORTS FROM THE DIRECTOR PLANNING & REGULATION

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

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

#### MATTERS FOR CONSIDERATION

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



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**6 [PR-CM] Construction Site Operating Hours**

**ORIGIN:**

**Building & Environmental Health**

**SUMMARY OF REPORT:**

Council at its meeting of 28 May 2009 asked “would the General Manager investigate and report back on construction site work days and times of operation, giving regard to how Council could re-define the practice to take into account reviewing of the early start and late finishing times in exclusively residential areas and commercial/retail/mixed use development within residential areas”. This report sets out a brief history of permitted construction times, the relevant legislation and other matters for consideration.

**RECOMMENDATION:**

**That Council adopts the following as a practice with respect to construction times for construction or demolition works so that unless prior approval has been obtained from Council, construction and or demolition work may only be carried out between the hours of 7.00am and 6.00pm Monday to Saturdays and no construction or demolition work may be carried out on Sundays or public holidays.**

**REPORT:**

Council at its meeting of 28 May 2009 asked “would the General Manager investigate and report back on construction site work days and times of operation, giving regard to how Council could re-define the practice to take into account reviewing of the early start and late finishing times in exclusively residential areas and commercial/retail/mixed use development within residential areas”.

Councils current requirements, which are imposed on the majority of development approvals as a standard condition, is that construction site work including the entering and leaving of vehicles is limited to between the hours of, unless otherwise permitted by Council, 7.00am and 7.00pm Monday to Saturday with no work permitted on Sundays or Public Holidays. The reason that the condition included the clause *unless otherwise permitted by Council* was to allow officers the discretion to allow work, upon written application and approval, outside of those hours in certain circumstances for reasons of safety or where major works are to be undertaken.

A review of Council records identify that construction times were not formally adopted as a policy by Council, but simply appear to be a condition that was imposed on building approvals to regulate construction work times from the mid 1980's as a result of guidelines that were published in 1985 by the State Pollution Control Commission (SPCC), which was the states pollution control authority at that time. Shortly after the guidelines were published Council imposed a condition on all building approvals to restrict construction times to between 7.00am to 7.00pm Mondays to Saturdays with no work permitted on Sundays. Several years later the condition was modified to also prohibit work on public holidays. These provisions have continued to be imposed on building approvals and development consents to this current day as a standard condition of approval.

A recent review of current legislation identifies that the Protection of the Environment Operations Act and the Protection of the Environment Operations (Noise Control) Regulation do not actually prescribe or limit construction hours however the Department of Environment, Climate Change and Water (DECCW), previously known as the (SPCC), has prepared guidelines to assist in the minimisation of noise impacts from construction noise. While these guidelines are not mandatory they have been developed to provide a clearer and more consistent approach on how to assess noise from construction sites, particularly those that are regulated by DECCW. The guidelines define construction as “the erection, installation, alteration, repair, maintenance, cleaning, painting, renewal, removal, excavation, dismantling or demolition of, or addition to, any building or structure, or any work in connection with any of these activities, that is done at or adjacent to the place where the building or structure is located”. The recommended standard hours for construction sites under these guidelines are Monday to Friday 7am to 6pm, Saturdays 8am to 1pm if audible on residential premises, otherwise 7am to 1pm with no construction work to take place on Sundays or Public Holidays.

A review of several other northern NSW Councils, which included Ballina, Byron, Lismore and Coffs Harbour, identified that each have adopted the abovementioned guidelines set down by the DECCW. An enquiry was also made in relation to construction site operating hours permitted by Gold Coast City Council and advice was given that there is a State

wide requirement which permits construction work between the hours of 6.30am to 6.30pm Monday to Saturday with no work permitted Sundays or public holidays.

If Council is to consider any change to the hours currently permitted Council should also note that the State Environmental Planning Policy (SEPP) (Exempt and Complying Development) adopted by the Department of Planning in November last year permits construction work to be carried out between the hours of 7.00am to 5.00pm Monday to Saturday with no work permitted to be carried at any time on a Sunday or Public Holiday which is slightly more restrictive than the DECCW guideline for Monday to Friday but less restrictive on Saturdays permitting works to extend until 5.00pm. However it should also be noted that the SEPP for exempt and complying development was developed to cover simpler and more basic type developments such as dwellings and associated structures but this will soon be expanded to include minor works on commercial and industrial buildings and the conditions relating to operating hours are prescribed under the SEPP.

With regard to the review of currently permitted starting times it is generally accepted that the construction industry in NSW commences at 7.00am and this is reflected by the recommendations set down by the DECCW in the construction noise guidelines and those set down under the SEPP. With regard to the DECCW guidelines it is felt that if Tweed Council were to adopt them, the fact that the construction hours are recommended by a State Government body would hold more weight from a regulatory prospective and in the event that Council were placed in a position where it was legally challenged. Furthermore their adoption would be consistent with times adopted by other Councils within the Northern Rivers area.

In considering any change Council will also need to be mindful that the construction industry within the Tweed area has operated under the current hours (7.00am to 7.00pm Monday to Saturday) for many years and the effect of any change needs to be closely considered. If Council were to restrict work finish times to 6.00pm Mondays to Fridays, in accordance with the DECCW guidelines, it is considered that such a change would have little if any impact on the local industry however restricting the finishing time on a Saturday in accordance with these guidelines may have an impact on the overall length of construction commencement to completion timeframes for development and have a direct impact on home owners and owner builders who may in some instances only have the ability to undertake work on Saturdays. With these implications in mind it is suggested that only limited restrictions be considered which include Saturdays that reduce work hours by not more than one hour in the afternoon from the current allowable hours of operation. This will ensure that both tradespersons and owner builders will have the ability to undertake work a full day on Saturdays.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil - however it is recommended that Council adopt the above recommendation as a practice for construction times.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

**That Council notes the August 2009 Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards.**

**REPORT:**

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

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

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0933	seven (7) lot subdivision	Lot 14 DP 635734 Larnock Place, Chillingham	24/7/2009	Clause 20(2)(b)	1(a) Rural 7(l) Environmental Protection (Habitat)	That the existing allotment was undersized and the proposed subdivision would facilitate better residential usage of the subject sites.	Variation sought to the minimum land size required for allotments zoned 1(a) and 7(l). Justification for the proposal was that the existing parcel of land containing the portions of land zoned 1(a) and 7(l) were under the required land size currently and that the proposal would facilitate or more effective utilisation of the land.	Director-General of the Department of Planning
DA08/0975	two storey dwelling & swimming pool with 1.5m high front fence	Lot 8 Sec 1 DP 31209 No. 2 Cypress Crescent, Cabarita Beach	28/7/2009	Clause 32B(4)(b)	2(a) Low Density Residential	The property is beach front land in an approved residential subdivision. the development is a single residence and the shadow cast by the development will only affect the vegetation on the coastal dune and not the beach	Minor Shadow encroachment cast by the development into the foreshore during the nominated times in the development standard. The shadows cast impact on the coastal dune vegetation and do not reach the beach	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**8 [PR-CM] Local Government & Shires Association Request for Funds for Berrigan Shire Legal Costs for a Rural Subdivision Appeal**

**ORIGIN:**

**Development Assessment**

**SUMMARY OF REPORT:**

Council recently received correspondence from the Local Government and Shires Association NSW seeking monetary assistance with Berrigan Shire Council's legal costs in an appeal.

The appeal was lodged against Berrigan Shire Council's refusal of an application for subdivision of two rural lots. The subdivision included a proposal for one of the lots to have portions separated by approximately 8.5km. If approved, the subdivision would have provided dwelling entitlement for the non-contiguous lot. The appeal was dismissed and the application refused.

The Joint Committee of the Associations and Berrigan Shire Council consider the significance of the decision relevant to all councils and important enough to warrant council's monetary support.

The matter was considered at the Council's Executive Management Team (EMT) Meeting on 29 August 2009 and 5 August 2009. EMT determined that it was appropriate to submit the request for monetary assistance to Council for a decision.

**RECOMMENDATION:**

**That:**

- 1. The General Manager writes to the Local Government Association of NSW in respect of the request seeking monetary assistance with Berrigan Shire Council's legal costs for a Land and Environment Court appeal regarding a rural subdivision advising that in this instance it is not considered that monetary support is warranted.**
- 2. The Director of Planning and Regulation reviews Section A5 (Subdivision Manual) of Council's Development Control Plan to ensure that the creation of lots with portions separated by significant distances (or in different Shires) for creation of dwelling entitlements, is prevented.**

**REPORT:**Appeal – Iramoo Flyer Pty Ltd v Berrigan Shire Council

On 21 May 2008, the Land and Environment Court of NSW considered a matter between Iramoo Flyer Pty Ltd and Berrigan Shire Council. The applicant (Iramoo Flyer Pty Ltd) was appealing a decision by the respondent (Berrigan Shire Council) to refuse a rural subdivision application for a 2 lot, rural subdivision at Tocumwal.

The Berrigan Shire Council had concerns with the subdivision as it did not protect, enhance or conserve the agricultural land and created unacceptable environmental impacts.

The proposed subdivision included Lot 150 DP1074674 and Lot 21 in DP1109568. Lot 150 is located approximately 8.5km by trafficable road, or 4km by unmade road from Lot 21. Lot 21 was a residue lot and has an area of 17.75 ha and frontage to the Murray River. Lot 150 has an area of 289.3 ha.

The minimum rural lot size specified in the 'Berrigan Local Environmental Plan 1992' is 120 ha.

The proposed subdivision will create:

- Lot 151 with non-contiguous portions (17.75 ha + 102.25 ha from lot 150) and
- Lot 152, residue of Lot 150 with a remaining area of 187.1ha.

The subdivision if approved, would have allowed for a dwelling entitlement on Lot 151.

In determining the appeal, the Commissioner considered the dwelling entitlement that would be created, as it related to economic and orderly development of the land. The appeal was dismissed and the subdivision refused because:

- The subdivision would result in fragmentation of rural and
- Substantial separation between parts of a lot is not considered economic or orderly development.

The judgement is an attachment to this report.

As detailed below, Council has received a request for assistance with legal costs from the Local Government Association of NSW. The matter was previously considered at EMT and has been forwarded to Council for decision.

**REQUEST FOR ASSISTANCE WITH LEGAL COSTS**

Council has received correspondence from the Local Government Association of NSW (LGA) dated 23 July 2009, requesting \$758.69 to assist Berrigan Shire Council with legal costs (see attachment).

In their correspondence, the LGA identifies that Berrigan Shire Council maintained that defending this application was important to ensure the avoidance of the land owners

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along the Murray River seeking to consolidate smaller parcels of land adjacent to the river with non contiguous parcels for the purpose of creating dwelling entitlements. It was considered that if this application was approved, it would allow a precedent that would impact on the riverine environment.

Berrigan Shire Council considers the matter to be significant for all councils because if the appeal were to be successful, it would create uncertainty for councils as follows:

- Limitations on non-contiguous lots
- Processing of applications involving non-contiguous lots which cross shire boundaries
- Management of performance based standards (relating to minimum area requirements)

The Joint Committee of the Associations agree with Berrigan Shire Council and consider the significance important enough to warrant council's monetary support.

### **COUNCIL OFFICER COMMENTS**

Whilst fragmentation of rural lots is a common matter arising in assessment of subdivisions by Tweed Shire Council planners, it is considered that support for this cause is not warranted given the following:

- The subdivision was not approved, but refused, based on sound and logical planning arguments.
- The SEPP (Rural Lands) is designed to protect rural land from fragmentation and carries significant statutory weight in assessment of rural subdivision.
- Berrigan Shire Council includes rural land of more intensive and large scale nature than Tweed Shire Council.

Furthermore, whilst rural subdivision is an important planning matter for Tweed Shire Council, the decision in this appeal strengthens and supports the arguments for orderly planning and protection of rural land, rather than creating uncertainty.

However, what this case does highlight is that whilst it may not be economic or orderly planning, it is apparently not unlawful to separate portions of a lot by large distances (subject to consent).

To provide greater certainty in terms of subdivision design, this issue could be addressed through an amendment to Section A5 (Subdivision Manual) of Council's DCP.

### **CONCLUSION:**

Council has received a request from the Local Government Association of NSW for monetary support for Berrigan Shire Council legal fees.

This request is made as it is considered that rural subdivision and non-contiguous lots is an important issue for all councils.

### **OPTIONS:**

1. (a) That the General Manager writes to the Local Government Association of NSW and indicates that in this instance it is not considered that monetary support is warranted.
- (b) That the Director of Planning and Regulation reviews Section A5 (Subdivision Manual) of the Council's Development Control Plan to ensure that the creation of lots with portions separated by significant distances (or in different Shires) for creation of dwelling entitlements, is prevented.
2. That Council supports the request for funds and pays the invoice for \$758.69 attached to the Local Government Association of NSW and Shires Association of NSW correspondence dated 21 July 2009.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the request is approved by Council, the payment of \$758.69 will be required, unless Council considers another amount to be more reasonable.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

1. Land and Environment Court Judgement (ECM 4708611)
  2. Correspondence from the Local Government Association of NSW (LGA) dated 23 July 2009, requesting \$758.69 to assist Berrigan Shire Council with legal costs (ECM 4708626)
-

**9 [PR-CM] Planning Reform Unit - Draft Pottsville Locality Plan and Development Control Plan**

**ORIGIN:**

**Planning Reforms**

**FILE NO: GT1/LEP/2006 Pt10**

**SUMMARY OF REPORT:**

This report provides an update on the progress of the Draft Pottsville Locality Plan and Development Control Plan, which has been further investigated and amended following a resolution of the Council, and responds to feedback received from the on-site Councillors workshop of 25 August 2009 with Council's Planning Reform Staff and Executive Management Team.

Council's Planning Reform Unit (PRU) along with their consultant, Architectus, originally undertook the preparation of the draft Pottsville Locality Plan and Development Control Plan (DCP), in 2007. The plans were finalised in early 2008 for public exhibition, which occurred from 7 May 2008 to 6 June 2008.

At its meeting of 12 August 2008, Council resolved to further investigate site suitability options for the containment of the village's retail growth by way of supermarket provision within the Pottsville village centre. These investigations were influenced by the NSW Land and Environment Court appeal process for the Seabreeze Estate Shopping Centre proposal as well as consultation with NSW Department of Lands on their draft planning proposals for their land within the Pottsville village.

This report identifies the extensive site investigation and urban design modelling that has been undertaken in response to that resolution, including the preliminary analysis of several key potential supermarket sites as part of a draft locality plan and DCP process. These sites were identified to the Councillors at their on-site Pottsville village workshop, which included a walk-around the village and discussion of key sites and development options.

In addition, the report identifies other amendments to the draft plans, including the location and rationale for identifying three out-of-centre potential supermarket sites. The amendments proposed within this report represent the substantive changes to the draft Plans, whereas there are other changes principally to the document format and wording that have no effect on the substance of the Plans' other than causing the documents to be more legible and easy to use.

The draft Plans' are in their final stage of drafting, after which they will be prepared for public exhibition, commencing 30 September 2009 for a period of 30 days, during which a community workshop will be held.

This report seeks Council's endorsement for the re-exhibition of the draft Locality DCP for a period of 30 days.

**RECOMMENDATION:**

**That:**

- 1. The report on Planning Reform Unit - Draft Pottsville Locality Plan and Development Control Plan be received and noted.**
- 2. The amended draft Pottsville Locality Plan and Development Control Plan, incorporating the amendments raised in this report, be publicly exhibited for a minimum period of 30 days, during which a community workshop is to be locally held, in accordance with section 74E of the *Environmental Planning Assessment Act 1979*.**
- 3. Following public exhibition a further report addressing all public submissions is to be submitted to Council.**

**REPORT:**

For ease of reference within this report the draft Pottsville Locality Plan (LP) and Development Control Plan (DCP) are collectively referred to as the LPDCP.

**Background**

Council's Planning Reform Unit (PRU) along with their consultant, Architectus, undertook the preparation of the LPDCP in 2007, which was in accordance with the 4 year priority actions of the *Tweed 4/24 Strategic Plan*, also referred too as "Tweed Futures."

Drafting of the LPDCP was completed in 2008 and public exhibition, following Council's earlier resolution of 29 May 2007, occurred between 7 May and 6 June 2008. During this period 21 submissions were received and the issues raised have been taken into consideration and where warranting amendments have been made. General observation of the communities' interest and views on the LPDCP was seen to be very positive.

**Seabreeze Court Appeal**

Council received notice on 6 March 2008 of a deemed refusal appeal to the NSW, in relation to a development application for a proposed 'Woolworths' supermarket at Seabreeze Estate, which also included a fuel station and associated retail shop, childcare centre, several speciality shops and a kiosk.

At its meeting of 22 April 2008 Council resolved to defend the appeal, and to assist with strengthening Council's defence, MacroPlan Pty Ltd were engaged to undertake a Retail Sustainability Assessment (RSA) to assess the potential or likely impact on the Pottsville village centre arising from an out-of-centre supermarket and to determine the existing and future demand for new retail floor space.

Following completion of the RSA Council resolved at it's meeting of 12 August 2008 to adopt the MacroPlan Report, in particular the resolution states:

1. *Council adopts the findings and conclusions of the Draft MacroPlan Pottsville Retail Sustainability Assessment as identified in this report, and notes its support and reinforcement of Council's adopted Retail Strategy.*
2. *That the investigation of suitable sites for the retail and commercial expansion of the village centre to support the projected population needs of the Pottsville community be reviewed and where appropriate incorporated into the draft Locality Plan and Development Control Plan (DCP).*
3. *That Council acknowledges that there are opportunities and constraints associated with the public and private land within the village centre and that environmental and physical constraints need to be taken into account during any site suitability investigation.*
4. *That the public exhibition of the draft Pottsville Locality Plan and DCP be deferred until the village centre retail site suitability investigation has been completed and appropriate amendments to the draft Plan have been made.*

Item 4 of the August resolution above is the more relevant one for the purposes of this report, as it provided the basis from which the further site investigations have been undertaken and proposed amendments drafted.

It is worth noting however that the NSW Land and Environment Court dismissed the shopping centre appeal on 11 November 2008, on the basis that *building a full line supermarket with associated commercial activities within the Seabreeze Estate is inconsistent with the council's planning controls and retail strategy and that such a development would severely impact on the existing Pottsville Centre.*

### **Post Exhibition and Council Resolution for Site Suitability Investigations**

In order to properly consider and respond to the Council's August resolution it was necessary to take several steps backward in the LPDCP process that had occurred up to and including the time of the resolution. This included a reassessment of urban design principles and concepts relating to the functioning of the existing village based on its current land-use zoning, subdivision pattern, land tenure and public infrastructure provision and servicing.

The process above provided an opportunity not only to explore the site suitability options for an in-centre supermarket but to also look at other aspects of the local areas design and functioning, as well as, the opportunity to improve the delivery of the information in a more legible and informative document format.

### ***Supermarket site investigation***

In order to determine the site suitability for a retail supermarket it was first necessary to identify the criterion by which each site was to be evaluated. This required a review of the needs of major retail supermarket providers, particularly in relation to the gross floor area required for the supermarket, the total site area required to accommodate both the supermarket and associated car parking, as well as, vehicular and pedestrian accessibility, delivery servicing, and commercial realities such as visibility (product placement).

Table 1 below identifies the site suitability key criteria for the investigation of potential 'full-line' supermarket sites within the Pottsville village centre.

**Table 1 – Key Criteria for Evaluating Supermarket Site Suitability**

Criterion	Comment
A minimum floor plate of 2,000 – 2,500m <sup>2</sup>	The MacroPlan Retail Sustainability Assessment identified that in the context of regional and/or coastal locations, full-line supermarkets are likely to deliver floor areas around 2,000 – 2,500m <sup>2</sup> .
Ensuring efficient delivery access and servicing	Council's Traffic and Transport staff indicated that public concern was held throughout the Shire regarding delivery trucks and access to supermarket sites.
Integration into the urban fabric	The Pottsville village centre possesses several key urban design characteristics, particularly it's fine grain retail frontage and active edge along the frontage of Coronation Avenue. The location of a full-line

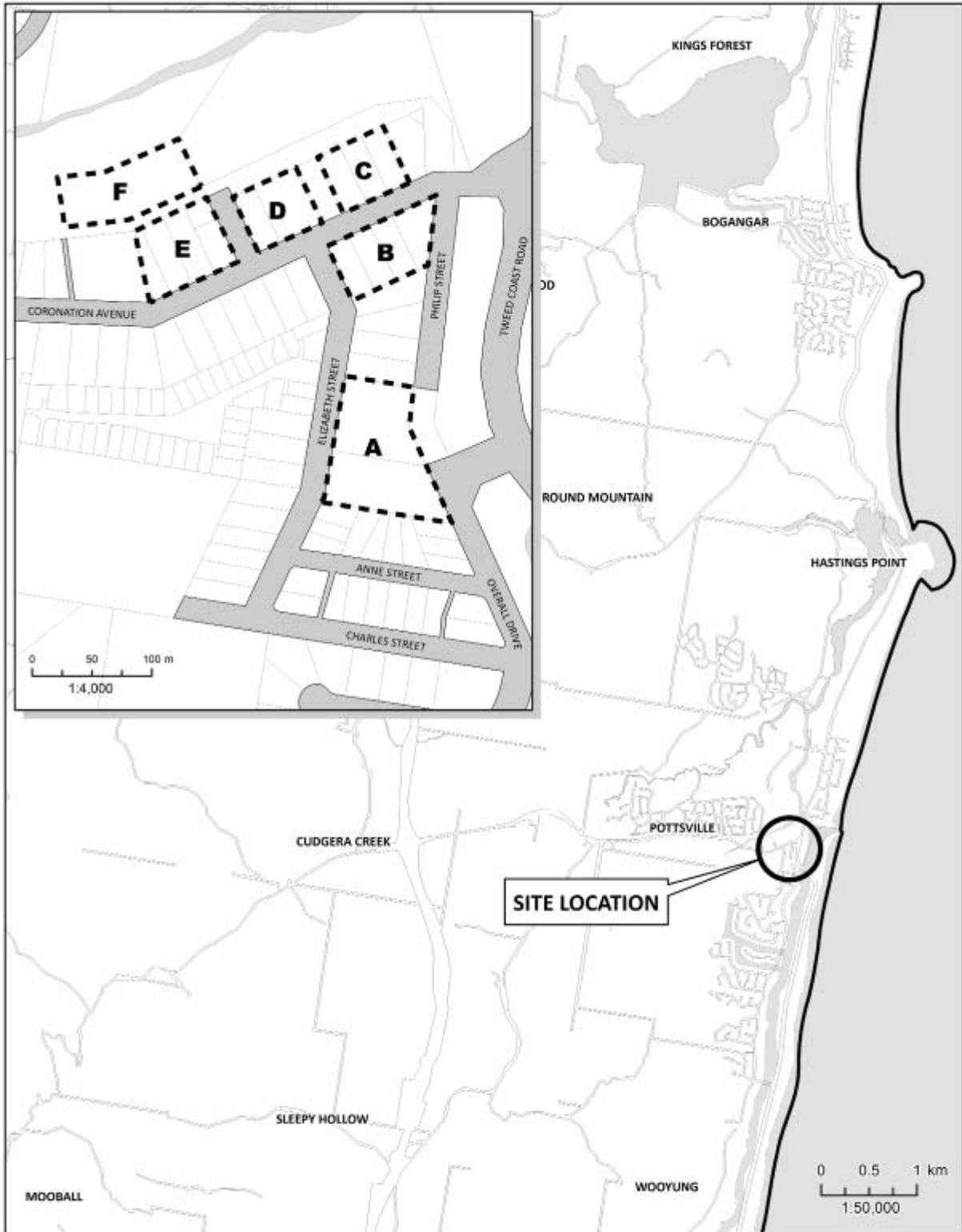


Criterion	Comment
	supermarket needs to respect these character attributes.
Provision of 100 – 135 car spaces	Referencing the desired floor space against both Council and NSW RTA car parking guides, between 100 – 135 vehicular spaces will be required.
Total site area of 4500 – 5000m <sup>2</sup>	Combining the required floor space, service areas and car parking requirements, a total site area requirement of 4500 – 5000m <sup>2</sup> was established.
A maximum 200m radius between Coronation Avenue and the supermarket car parking area	In order to further foster walkability within the town centre, and give rise to a greater percentage of multi-purpose trips and cross-utilisation of car spaces provided within the town centre

A desktop analysis of the village centre applying the key site suitability criteria identified several sites that have potential to support a full-line retail supermarket and that would be warranting of inclusion in the LPDCP for further future detailed investigation.

The sites and their location within the village are identified in the following “Potential Supermarket Site” map below.

Figure 1 - Potential Village Centre Supermarket Sites



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Author: J.Batchelor - Planning Reforms Unit

Date Printed: 3 September, 2009

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Several of the identified sites comprising sites; A, B, and C, are currently identified in the *Pottsville Village Strategy* 1998, and in addition sites; E and F, were referred to in the original exhibited copy of the LPDCP, as prepared by Council's previous project consultant, Architectus Ltd. It should be noted that contractual relations with Architectus have since concluded and all additional work on the LPDCP is being prepared in-house by the Planning Reforms Unit.

### ***The impact upon the road network***

As identified within the base criteria established to ascertain potential supermarket sites within the village centre, maneuvering of delivery trucks and car parking are critical to the appropriate function of the supermarket and the amenity of the village centre. Accordingly, following the preliminary identification of sites maneuverability and turning template models were run for each option. An image showing the vehicle traces is contained below in Figure 2.

In addition, a desktop analysis was undertaken by Council's Traffic and Transport engineers to appreciate the impact of the location of a full-line supermarket on the existing road network. Findings of this analysis concluded that the existing road network is currently operating well under its capacity and can sustain the additional traffic a full-line supermarket would generate.

Whilst the existing road network can support the proposals being pursued, the plan will contain opportunities and the framework to improve the existing road network through a variety of options, including extensions of existing roads, new laneways and traffic management methods, such as road alignment and pedestrian crossings. A predominate piece of road infrastructure facilitated within the LPDCP is the long mooted 'North, or rear laneway', which bypasses a section of Coronation Avenue. It is considered that the construction of this loop road is preferential and would positively contribute to the function of the village centre. The draft LPDCP provides options for the loop road in 2 configurations dependant upon the final built form of the village.

The ultimate improvements to be pursued will largely depend on the final location of the supermarket. These matters are to be further assessed as part of any Development Application lodged with Council via a Traffic Impact Assessment, which will need to be prepared by the proponent.

Figure 2 – Delivery Truck Modelling



## Proposed Village Centre Retail Supermarket Site Options

The six sites identified within the village centre as potential supermarket sites are identified individually below, this is presented by way of a locality map and a table that identifies the key opportunities and constraints for that site.

Figure 3 – Locality Map for Site ‘A’ - Elizabeth Street



Table 2 – Site ‘A’ Opportunities and Constraints

Site A	
Opportunities	Key Constraints
Centrally located	Requires new intersection and completion of Phillip St
Car parking immediately adjoining	Currently community land, perception that it would result in a loss of community asset (however presents opportunities to integrate new community and social infrastructure the development, or elsewhere within the Town Centre)
Serves as a Town Centre anchor drawing retail uses and walk-ability along Philip Street from the corner of Coronation Avenue	

Figure 3 – Locality Map for Site 'B' - 2 – 8 Coronation Avenue



Table 4 – Site 'B' Opportunities and Constraints

Site B	
Opportunities	Key Constraints
Centrally located	Requires the formation of north loop road with centralised car parking and a pedestrian prioritized route
Strong anchor site	Requires lot consolidation
Encourages multi-purpose village centre visits	

Figure 5 – Locality Map for Site ‘C’ - 3 – 7 Coronation Avenue



Table 4 – Site ‘C’ Opportunities and Constraints

Site C	
Opportunities	Key Constraints
Centrally located	Requires the formation of north loop road to function appropriately
Strong anchor site	Requires lot consolidation
Encourages multi-purpose village centre visits	
Adjoins car parking should the North Loop Road be constructed	

Figure 6 – Locality Map for Site ‘D’ - 11 – 15 Coronation Avenue



Table 5 – Site ‘D’ Opportunities and Constraints

Site D	
Opportunities	Key Constraints
Centrally located	Recent development approval for alternate uses
Strong anchor site	Requires the formation of north loop road to function appropriately
Encourages multi-purpose village centre visits	Requires lot consolidation
Adjoins car parking should the North Loop Road be constructed	
Clear delivery, private vehicle and pedestrian circulation	
Maintain some finer grain retail frontage to Coronation Avenue	



Figure 7 – Locality Map for Site ‘E’ -15A – 21 Coronation Avenue



Table 6 – Site ‘E’ Opportunities and Constraints

Site E	
Opportunities	Key Constraints
Centrally located	Requires the formation of north loop road to function appropriately
Strong anchor site	Requires lot consolidation
Encourages multi-purpose village centre visits	
Adjoins car parking should the North Loop Road be constructed	
Clear delivery, private vehicle and pedestrian circulation	
Maintain some finer grain retail frontage to Coronation Avenue	

Figure 8 – Locality Map for Site ‘F’ - Department of Lands, Coronation Avenue



Table 7 – Site ‘F’ Opportunities and Constraints

Site F	
Opportunities	Key Constraints
Single Ownership	Requires the formation of north loop road to function appropriately
Strong anchor site	May require vegetation removal to facilitate.
Encourages multi-purpose village centre visits	Dependant upon design, may intrude the established 40m buffer to Cudgera Creek
Immediately adjoining car parking	
Clear delivery, private vehicle and pedestrian circulation	
Maintain finer grain retail frontage to Coronation Avenue	

## Summary – Village Centre Sites

The further analysis of the village centre's capacity to accommodate a supermarket has identified six potentially suitable sites, each having its own unique characteristics, opportunities (including benefits) and constraints (including impacts).

Each of the sites will require detailed design investigation to thoroughly determine their true capacity to provide for a supermarket and this type of iterative evaluation process is used commonly in land-use planning, most notably in rezoning and Greenfield urban release processes.

Based on the level of current investigations each of the six identified sites is suitable for inclusion in the LPDCP. Whether any of these sites will ultimately be taken up for use as a supermarket site is non determinative at this level of assessment, and will only truly be known once the LPDCP is adopted and the commercial/private market has had adequate opportunity test each of the sites relative to their needs and the demand for their services.

This is important to note because any inactivity within 5 years of the LPDCP being adopted may indicate one of two things. Firstly, that the demand for a shopping centre does not exist, or secondly, that the sites are in some way not suitable. Taking the latter point in to consideration, and assuming that demand will arise, it was necessary to explore an alternative for the provision of a supermarket. The following section of this report discusses the options for an out-of-centre supermarket site and provides three potentially suitable sites.

## The Need to Identify Out-of-Centre Retail Sites

Further to reviewing the capabilities of the village centre, it was considered appropriate to undertake a secondary analysis of additional opportunities within the Pottsville locality. This analysis focuses on current out-of-centre opportunities.

As discussed above, it is possible that a full-line supermarket may not be provided in the village centre, but, could be located in any number of alternative locations including Dunloe Park or the Pottsville Employment Land, which is identified under the *Tweed Urban Employment Land Release Strategy* (2009). However, as the development of these release areas is uncertain, noting that any development or necessary rezoning may be eight or more years away, the out-of-centre analysis provided in this report does not include those lands, as they are not a viable or realistic option in the short-term. Any future review of the LPDCP, which is scheduled for every five years, would take into account any progress with those areas.

Three out-of-centre sites have been identified and include; Site (G) which is an existing commercially zoned land located in Pottsville Waters Estate and is used for a tavern and commercial tenancies; Site (H) located in Seabreeze Estate near an area identified in the Masterplan for a neighbouring centre; and, Site (I), also located within the Seabreeze Estate and currently the subject of a rezoning application for urban purposes and that is identified in the NSW Far North Coast Regional Strategy as a Future Urban Release Area.

The criteria identified in Table 1 to this report, which was used to assess supermarket site suitability within the village, was also used to evaluate potential out-of-centre site options. The additional serviceability criterion of access to the village and from the village centre, as well as, the number of dwellings directly accessible to each site, including a consideration of a range of transport options (walking, bus, car) were also assessed.

### **Proposed Out-of-Centre Retail Supermarket Site Options**

The three out-of centre sites identified as potential supermarket sites are identified individually below, this is presented by way of a locality map and a table that identifies the key opportunities and constraints for that site.

Figure 8 – Locality Map for Site ‘G’ - 5 Mountbatten Court & 28-40 Overall Drive



Site (G) is located to the south of the village centre, on Overall Drive. The site currently contains a mixture of commercial tenancies including a convenience store, specialty stores and a tavern. It is worth noting that the local retail shop closed approximately three months ago.

The development of this site for a full-line supermarket would likely require demolition of the existing building and may require the amalgamation of this site and commercial zoned land immediately adjoining this site to the north.

Table 8 – Site ‘G’ Opportunities and Constraints

Site G	
Opportunities	Key Constraints
Presently zoned for commercial development	Located out of centre
Adjoins a number of medium density developments	Isolated to terms of ancillary retail and commercial activity
Located along a public transport corridor	

Figure 9 – Locality Map for Site ‘H’ - Seabreeze Boulevard



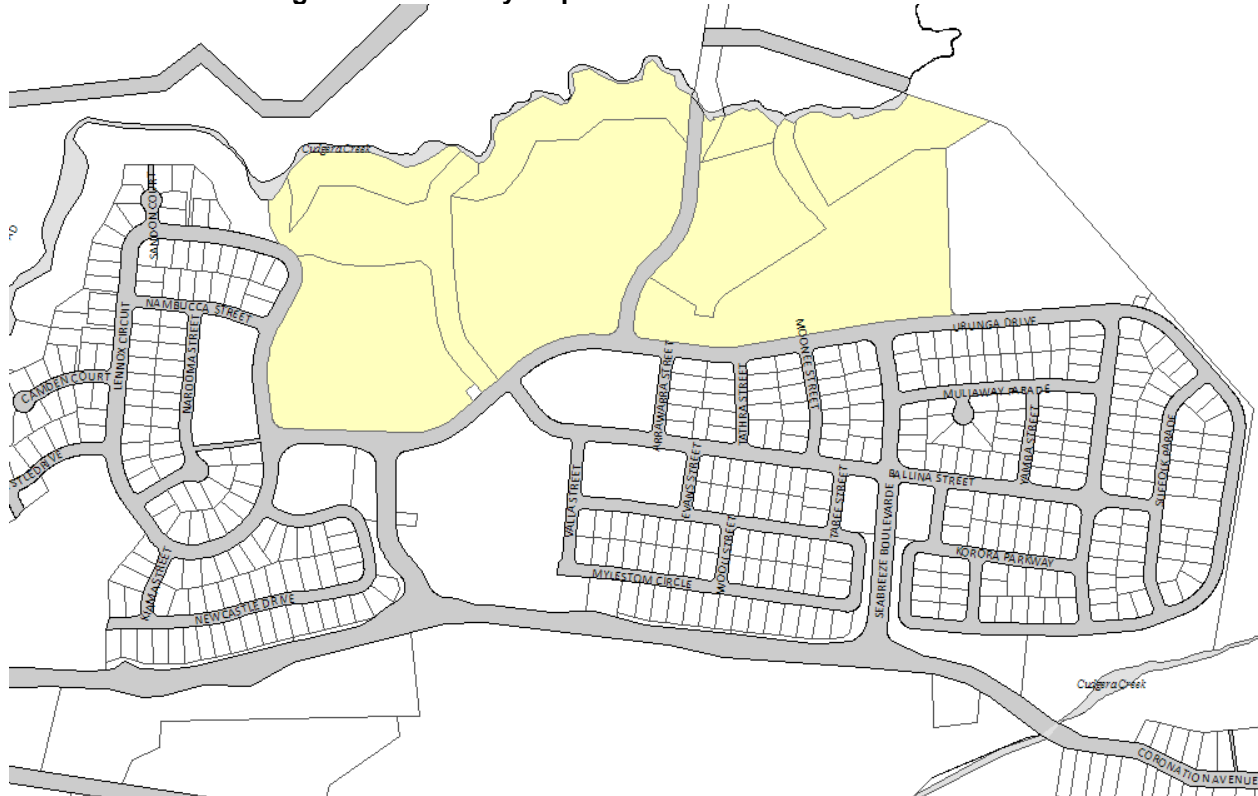
Site (H) is located within the Seabreeze Estate, to the west of the village centre. The site is presently undeveloped and has long been identified for retail uses, albeit to a much lesser scale than that of a full-line supermarket.

Table 9 – Site ‘H’ Opportunities and Constraints

Site H	
Opportunities	Key Constraints
Minimal limitations on loading and servicing	Located out of centre
Large greenfield site	Isolated to terms of ancillary retail and commercial activity
Ability to integrate medium density development	Minimal travel methods other than by private vehicle

Site I – Seabreeze Estate Stage 2

Figure 10 – Locality Map for Site ‘I’ - Seabreeze Boulevard



Site (I) is also located within the Seabreeze Estate and comprises land this presently vacant. This component of the Seabreeze development is the last stage and is still zoned rural, however, a rezoning application is being processed and in accordance with the Far North Coast Regionally Strategy (2006) the land is being investigated for urban purposes. The land was filled in about 2006 to Council’s flood design level, with the relevant Council approval, which further signalled an intended change in the zoning and use of the land. This site would be generally unencumbered.

Table 10 – Site ‘I’ Opportunities and Constraints

Site I	
Opportunities	Key Constraints
Minimal limitations on loading and servicing	Located out of centre
Large greenfield site	Isolated to terms of ancillary retail and commercial activity
Ability to integrate medium density development	Minimal travel methods other than by private vehicle

**Summary – Out-of-Centre Sites**

The purpose and focus of the LPDCP is to reinforce Council’s adopted retail strategy, which is based on the sound principles of sustainable and environmentally responsive multi-functional neighbourhoods. While these principles are being vigorously pursued there is a reasonably foreseeable probability that the village centre site options, despite the enormous potential benefits to the village, may not be taken up for a supermarket

development. It is also reasonably foreseeable that the demand for a full-line supermarket will arise, if not already present. Consequently, it is necessary to ensure that the strategic planning for Pottsville takes these factors in to account and adequately provides for them by way of a contingency plan.

The LPDCP does not seek to identify a preferred site but rather, provide a comparison and assessment of all identified sites in a matrix format displaying those with the greatest merit against the selected criteria. The matrix approach allows an applicant to design and rebut the constraints or shortfalls for the site identified within the matrix as part of the application process and provides for a transparent assessment of each sites' suitability.

In the event that the in-centre sites are not taken up or if they are shown to be unsuitable a proposed 'sunset clause' in the LPDCP will ensure that out-of-centre options will not be forgone in perpetuity, but, will be considered for inclusion as viable site options on the five year review of the LPDCP.

The proposed amendments reaffirm Council's adopted retail strategy by locating a full-line supermarket in the village centre for a period of 5 years, after which the Council may elect to include the out-of-centre sites or continue solely with the village centre site options, subject to the prevailing economic, social and political environment at that future time.

This is seen as a dynamic approach to managing the growth of the village centre and ensures that the village centre is given a 'fair go' at providing a supermarket.

### **'Other' Substantive Amendments to the LPDCP**

Several areas of the current LPDCP where improvements could be made were identified as a result of the further review. The proposed additional amendments are each addressed below.

#### ***Combining the LPDCP into a single document***

Locality plans provide a high level strategic policy framework setting out the visions and expectations of local communities for the future growth and development of their local area, they sometimes contain key actions relating or deferring to other strategic policies and plans. Area specific development control plans are one kind of strategic plan that would typically flow from a locality plan.

The issue with this process is that the overarching, and arguably most important element, strategic component (LP) is isolated from the regulatory (DCP) component. Further compounding the rift between these two elements is that DCPs are a prescribed head of consideration under the *Environmental Planning and Assessment Act 1979*, whereas the LP is not. This often leads to a situation where the DCP is given more weight than the LP, particularly during the assessment of the development applications.

It is essential to maintain continuity between the strategic and regulative components of the strategic planning and to do so requires that the two components be kept together. To achieve this, and has been the case with other recent plans, the LP and the DCP are being merged, this will give rise to a locality specific DCP (LPDCP), which will have the full force and effect of an ordinary DCP with the added benefit of having the strategic



background, context and vision bound to it, and as mentioned above, which will become a prescribed head of consideration.

### ***The need to address community and education facilities***

The Pottsville community through the earlier public consultation process raised issues with and placed significant emphasis on improving and expanding community and educational facilities in Pottsville. The need to address community and education infrastructure is compounded by the adoption of the *Tweed Urban Employment Land Release Strategy 2009* (UELRS), which makes provision for a significant future growth increase in the Pottsville locality.

There is an opportunity for the LPDCP to provide a more active strategic role in providing greater detail and reinforcing the mechanisms in the Council's adopted whole of Shire cultural and Community Facilities Plan.

The benchmarks in Table 11 below, have been extracted from Council's Whole of Shire Cultural and Community Facilities Plan (CCFP) 2008, and are utilised for guiding the planning of social infrastructure.

**Table 11 - Benchmarks for community infrastructure**

Type of Facility	Benchmark for Provision
Primary Schools	1 per 4,500 – 5,000 people
High Schools	1 per 14,000 – 18,000 people
Youth Centres	1 per 20,000 people

The CCFP also makes the following recommendations:

- (a) The use of a 40% threshold in the provision of community facilities in the Tweed LGA in order to ensure that the highest level of social cohesion and development of social capital are achieved in all localities across the region, i.e. Whilst youth centres should be provided at a rate of 1 per 20,000 people, once a population of 8,000 is achieved, a youth facility should be provided.
- (b) An estimated 3 year lead time for the development of primary schools and 5 years for high school provision.
- (c) Multi Purpose Community/Civic Centre incorporating a library and a co-located/integrated youth facility is required to support the current population of the Coastal Catchment.
- (d) An additional high school is required within the Coastal Catchment
- (e) 2 additional preschools are required within the Coastal Catchment

The CCFP nominates Kings Forest as a desired location for the Multi Purpose Community/Civic Centre incorporating a library and a co-locating/integrated youth facility, however, it is silent on a preferred location for a high school or preschool.

When considering the recommendations of the CCFP, together with the UELRS, spatial distribution of existing community facilities along the coast and the level of constraint to growth within the coastal catchment, it is considered appropriate that the LPDCP provides a greater strategic role in the forward planning of these services and that it provide provisions for the opportunity for these facilities to occur.

The LPDCP presents several site options with the potential to provide a high school, preschool, and community facilities. In addition, consideration has been given to the provisions of an additional primary school, which may also be required as a result of the projected population growth foreshadowed in Far North Coast Regional Strategy and Council's own strategic planning policies.

***Improving legibility of LPDCP by bringing together all relevant provisions***

The review of public submissions and increased level of information gathered for the locality has allowed the PRU to refine a number of the existing controls within the LPDCP. In addition, further guidance has been provided throughout the Plan, by way of design solutions and greater use of graphical representation, which is predominately targets the residential sector – it being the most frequently used section of any locality plan and DCP.

The LPDCP has been revised so that it delineates each of the residential precincts, providing a snapshot of the unique characteristics and enabling the drafting of objectives and controls specific to each precinct. Although Council's adopted Residential and Tourist Development Code (DCP A1) is considered the appropriate document to provide many of the prescriptive controls, the LPDCP provides the additional benefit of looking at areas in far greater detail and providing targeted and locally specific objectives. This is distinct from the DCP A1 as it targets the Tweed region as a whole and is not capable of differentiating between localised issues and characteristics.

These redrafting amendments are currently being finalised so that the final draft can be prepared for a public exhibition commencing 30 September.

**CONCLUSION:**

The Pottsville locality has had the benefit of a robust and highly relevant strategic plan, *Pottsville Village Strategy 1998*, which has played a significant role in managing the growth of the village during times of increasing redevelopment pressure. However, that Plan has reached the term of its expectancy and although of some relevance it needs to be updated.

The LPDCP has been drafted taking account of the many valuable and relevant elements of the earlier Strategy, as well as seeking to take the best of current best practice urban planning, community input and Land and Environment Court experiences.

Pottsville is a unique and diverse place and has many challenges to face as new development occurs and as the population increases. Among those challenges is maintaining the sense of place that Pottsville residents and visitors have about the village. This requires careful planning about what uses should and should not be permitted to occur in and around the village, whilst at the same time respecting that the area is in a state of continual transition and evolution. The LPDCP has taken all of these

factors in to account and has been designed to foster Pottsville village as meeting place for business, residents and visitors, whilst at the same time allowing the village to grow and expand to meet the needs of the community as it grows and diversities.

Principally, the LPDCP is about ensuring that the growth of the village and its surrounding areas is managed in a coordinated way, that the communities' right to contributed to local planning is preserved and made easier by way of clear intentions and legible provisions, and to ensure that new developments are not ahead of their time, and the future generations ability to have their say about those developments.

The LPDCP has been amended to take in to account the matters raised in this report relating to the identification of a suitable retail supermarket site and to ensure that any failure to provide a supermarket site in the village within a reasonable timeframe will not prevent local residents form having access to a supermarket at some other suitable location in the Pottsville area.

The LPDCP is considered to be more robust, concise and useable document than the earlier exhibited Plan, and has reached a point in its drafting whereby it requires the community to make comment and representation on it.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

The recommendations of this report will result in the re-exhibition of the LPDCP which has policy implications principally relating to the provision of a supermarket in Pottsville.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**10 [PR-CM] Development Application DA08/1161 for a Town House Development Comprising Eight (8) Attached Dwellings at Lot 1 and 2 DP 568733; Lot 9 DP 33501, Pacific Highway, Banora Point**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1161 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a development application for the erection of a multi dwelling (town House) development on the subject site. As part of the application a total of eight (8) dwellings are proposed to be constructed, all of which will be in an attached format.

A SEPP 1 objection also accompanies the application. The objection is in respect of the planning standard identified within Clause 51A of the Tweed LEP, specifically seeking variance to the site density development standard of 450m<sup>2</sup> of site area per dwelling in the 2(a) zone for multi dwelling development.

Clause 51A requires that any multi dwelling development in the 2(a) zone to have a minimum site area of 450m<sup>2</sup> per dwelling. The proposed eight dwelling multi dwelling (Town House) Development would, following the development standard require a minimum site area of 3600m<sup>2</sup>. The site area is 2218m<sup>2</sup> which is a shortfall of 1382m<sup>2</sup> of site area in this instance this equates to a variation of 38 per cent.

Therefore, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent.

It is recommended that the application be refused for the reasons outlined in this report.

**RECOMMENDATION:**

**That Development Application DA08/1161 for a town house development comprising eight (8) attached dwellings at Lots 1 and 2 DP 568733, Lot 9 DP 33501 Pacific Highway, Banora Point be refused for the following reasons: -**

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards.**

2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 2(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.
3. Pursuant to Section 79C(1)(a)(i) the development proposal is not consistent with Clause 51A of the Tweed Local Environmental Plan 2000, as the proposed density of the development is greater than one dwelling per 450m<sup>2</sup> of site area.
- 4 Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.
5. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest.
6. Specialist reporting has not been satisfactorily undertaken to determine the nature and extent of the contamination of the land because of the existing underground petroleum tanks. This information is required to enable Council to determine whether the land is suitable for the proposed use.

**REPORT:**

**Applicant:** Lifestyle Resorts Australia  
**Owner:** Lifestyle Resorts Australia Pty Ltd  
**Location:** Lots 1 and 2 DP 568733, Lot 9 DP 33501 Pacific Highway, Banora Point  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$1,600,000

**BACKGROUND:**

Council is in receipt of a development application for the erection of a multi dwelling (town House) development on the subject site. As part of the application a total of eight (8) dwellings are proposed to be constructed, all of which will be in an attached format. Each dwelling consists of living and dining quarters, and three bedrooms. Ground level terraces are provided along with upstairs decked areas to all units.

Private courtyards are provided to each dwelling with each dwelling also containing a private yard/garden area located between the property boundary and the building itself.

The design of the dwellings incorporates lightweight building materials, colours and textures. The proposed town house development is also heavily articulated through roof form, when observed from all elevations.

Access to the site will be provided via a combination of both shared driveways from Bimbadeen Avenue and the old Pacific Highway and individual access to dwellings seven (7) and eight (8) from Noarlunga Street.

Each unit incorporates two parking bays. Dwellings one (1) and two (two) contain double garaged accessed from the old Pacific Highway. Dwellings three (3) to six (6) each incorporate single garage and a single carport accessed from Bimbadeen Avenue and dwellings seven (7) and eight (8) each have a single garage and a single car port which is accessed via Noarlunga Street.

An objection under State Environmental Planning Policy No. 1 (SEPP 1) also accompanies the application. The objection is in respect of the planning standard identified within Clause 51A of the Tweed LEP, specifically seeking variance to the site density development standard of 450m<sup>2</sup> of site area per dwelling in the 2(a) zone for multi dwelling development.

Clause 51A requires that any multi dwelling development in the 2(a) zone to have a minimum site area of 450m<sup>2</sup> per dwelling. The proposed eight dwelling multi dwelling (Town House) Development would, following the development standard require a minimum site area of 3600m<sup>2</sup>. The site area is 2218m<sup>2</sup> which is a shortfall of 1382m<sup>2</sup> of site area in this instance this equates to a variation of 38 per cent.

Therefore, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to determine a development application with a SEPP 1 objection greater than 10 per cent.

The applicants have justified the SEPP 1 variation by stating that a development standard (control) detailed in Development Control Plan Section A1 – Residential and Tourist Code (DCP A1) regarding development lot sizes is a density control and provides a greater density control than the development standard of Clause 51A in the Tweed LEP.

This particular control presented in DCP A1 states:

- (a) *Town housing is permissible in 2(a),(b), (c), (d), (e) and (f) zones.*
- (b) *In 2(a) zone lot size min. 1350m<sup>2</sup>, development lot area of 220m<sup>2</sup> each.*

The applicants have justified the variation by stating the following:

*“It is clear when observing the development standards presented in both the LEP and the DCP that the standard for any site over 1350m<sup>2</sup> for multi-dwelling (town house) development in the 2(a) zone is conflicting with the DCP standard of a minimum site area per dwelling of 220m<sup>2</sup>. The DCP standard (control) cannot be achieved if the overarching development standard of the LEP is enforced.*

*The Tweed Shire Council is in the process of introducing a new LEP in accordance with introduced standards for LEP preparation. As section A1 of the DCP has been recently reviewed, researched, advertised and adopted, it is considered that the objectives and controls for multi-dwelling housing in the 2(a)zone (as found in the DCP), are those that the shire wish to implement to achieve the objectives of the 2(a) zone as outlined in the present LEP. The assumption could be made that the new LEP will present objectives and development standards (if applied) that correlate with the newly adopted DCP in regard to density controls for multi-dwelling town houses development in the 2(a) zone.”*

Because of this argument, the application was referred to Council’s Planning Reform Unit to seek clarification on the interpretation of DCP A1. The following response was received:

*“When considering the subject application a number of key points need to be considered, these are addressed below:*

- o *The Environmental Planning & Assessment Act – Clause 74C states:*
  - (5) *A provision of a development control plan (whenever made) has no effect to the extent that:*
    - (a) *it is the **same or substantially the same** as the provision of an environmental planning instrument applying to the **same land**,*
    - or*
    - (b) *it is **inconsistent** with a provision of any such instrument or its application prevents compliance with a provision of any such instrument.*



- *The subject application is defined under the Tweed LEP 2000 as Multi-Dwelling Housing*
- *Page 10 of Part B, Section A1 states:*
  - b. In 2(a) zone lot size min. 1350m<sup>2</sup>, development lot area of 220m<sup>2</sup> each.*
- *Page 19 of Part B, Section A1 states:*

**Development Lots**

*Development lots are created by the subdivision of the original lot.*

**Objectives**

- *To enable the concurrent application of building and subdivision development.*
- *To promote appropriate subdivision design for medium density developments.*

**Controls**

- a. *If subdivision other than Strata subdivision is proposed, the application must include:*
  - *Have a subdivision layout plan with the site and building layout overlaid,*
  - *Torrens Title subdivision designed in accordance with Tweed DCP S.A5 – Subdivision Manual,*
  - *Prescribe each lot size per dwelling.*
  - *Refer to each building type for the minimum lot sizes.*
- *The subject application does not detail subdivision that might otherwise be something other than Strata Subdivision.*

*The description of development lots on page 19 provides a dual purpose.*

*Firstly, being an allotment subdivided from a parent parcel to be developed independently from adjoining land and secondly, a lot subdivided within a wider development, where by the development lot integrates into the overall function of the development as a whole.*

*The intent of the drafter of the DCP in this regard was to permit, for example, the development of an integrated or multi-dwelling housing development whereby vacant 'development lots' within the overall development are made available for later sale/development, but, where communal infrastructure such as access roads/driveways, sewer, water and open space areas are constructed in advance. In this context, the 'development lot' comprises the area of exclusive use in the strata/community plan where a private dwelling and its curtilage for private recreation space and access can be erected. This area, comprising the 'development lot' is to be no less than 220m<sup>2</sup>. Overall, any such development site would consist of the sum of all 'development lot' areas plus the balance area required to meet the density provisions otherwise*

*prescribed by the LEP, e.g.  $220m^2 + 230m^2 = 450m^2$  multiplied by the number of dwelling units.*

*With this in mind, the minimum lot size specified in both the LEP and DCP A1 and the minimum development lot size must be read in conjunction and not independently.*

*Clause 51A of the LEP requires a density of not more than 1 dwelling per  $450m^2$  of site area. This methodology is followed in Section A1, where it requires a minimum lot size of  $1350m^2$  for town house developments (being  $3 \times 450m^2$ ). The provision for a 'development lot' to be created at a minimum size of  $220m^2$  enables the concurrent application of building and subdivision development with the ability to co-locate and provide communal private infrastructure, but, it is not a density guide beyond the  $1350m^2$  minimum lot size, or minimum  $450m^2$  site area per dwelling.*

*The Applicant's legal advice provides that 'development lot' area as referred to in the controls above can only mean the total area where a town house is to be constructed including its curtilage and open spaces associated with the town house.' As discussed above this part of the interpretation is agreed with; the  $220m^2$  minimum size for development lots provides an area for the town house and its associated private open space. The remaining  $230m^2$  is anticipated to comprise shared driveways, communal areas for open space and other common infrastructure associated with the overall development.*

*Accordingly, when reviewing the controls as detailed above, the LEP and DCP controls correspond with each other and in our respectful opinion do not provide a basis for inconsistency.*

*The applicant's interpretation of the DCP is not concurred with in so far as there is no intention by Council to alter density, that is, the DCP does not seek nor intend on altering the density ratio in the 2(a) zone."*

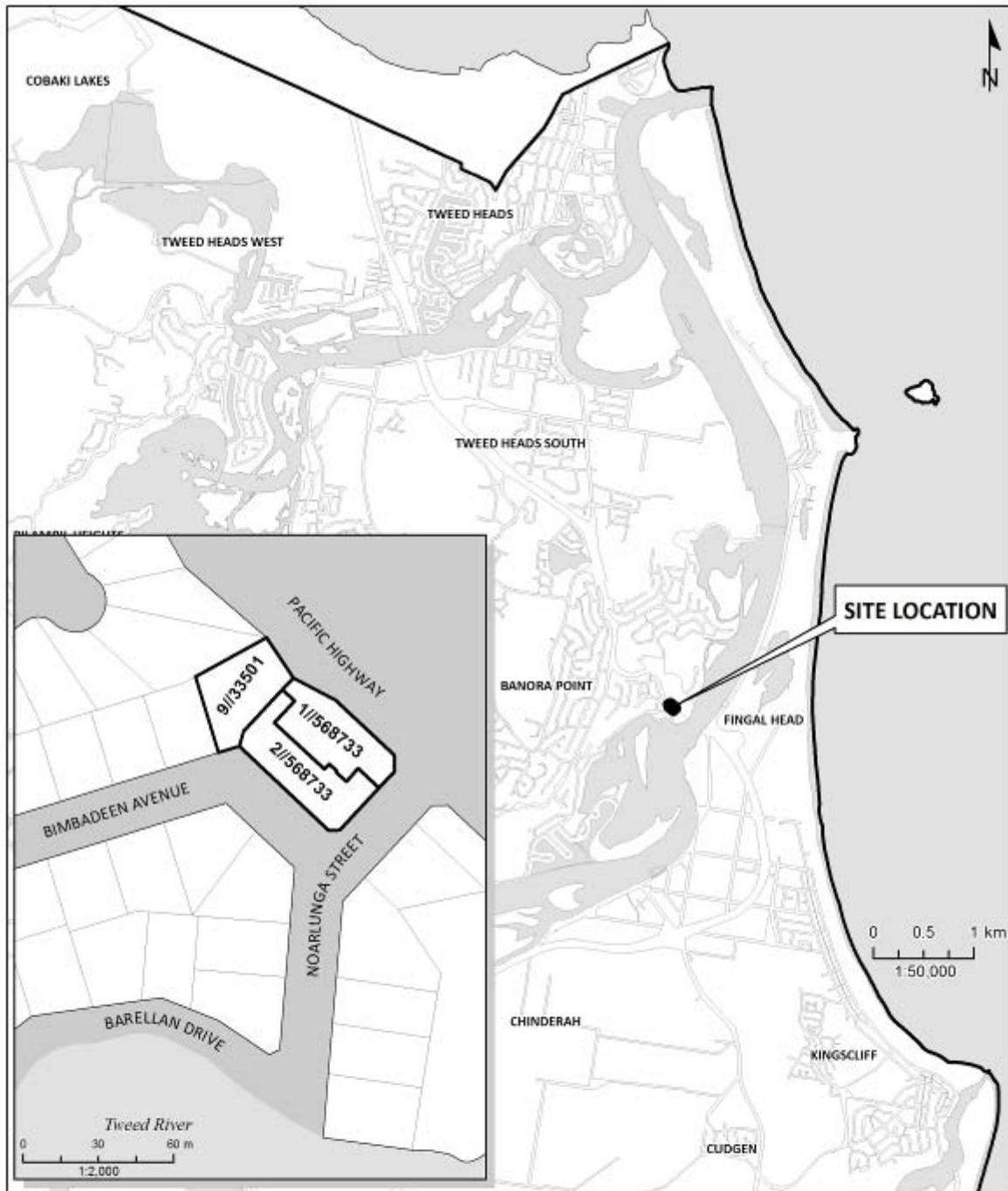
Based on this advice, the applicants argument that the development standards presented in both the Tweed LEP and DCP A1 that the standard for any site over  $1350m^2$  for multi-dwelling (town house) development in the 2(a) zone is conflicting with DCP A1 standard of a minimum site area per dwelling of  $220m^2$  is considered not to be well founded to prove that the standard is unreasonable or unnecessary in this case.

This matter is the focus of this report in addition to the specialist reporting that has not been satisfactorily undertaken to determine the nature and extent of the contamination of the land because of the existing underground petroleum tanks. This information is required to enable Council to determine whether the land is suitable for the proposed use.

The subject site is legally described as Lots 1 and 2 DP 568733 and a small portion of Lot 9 DP 33501, all commonly referred to as No. 111 Bimbadeen Avenue, Banora Point. The lands collectively have a site area of 2218m<sup>2</sup> and currently contain a decommissioned service station with attached medium density single storey units. The service station component is no longer operational, however residents still presently occupy the units.

The property has a road frontage to three sides, these being Bimbadeen Avenue to the south west, Noarlunga Street to the south east and the old Pacific Highway to the north. The locality is a long established urban residential area. The property is located within a low density residential area. The housing in the area is generally characterised by one and two storey detached residential dwellings.

**SITE DIAGRAM:**



**LOCALITY PLAN**

**Lots 1 & 2 DP 568733 and Lot 9 DP 33501  
Pacific Highway, Banora Point**

Filename: z:\esri\planning\mad\MAP\_B&W\_SitePlan.mxd

Author: J. Batchelor - Planning Reforms Unit

Date Printed: 3 September, 2009

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Coordinate System - MGA Zone 56  
Datum - GDA 94

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**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****Clause 4 - Aims of the Plan**

The proposed development is considered not to be consistent with the aims of the Tweed Local Environmental Plan (Tweed LEP). The proposed development is not considered to be consistent with the vision of the shire "to manage growth so that the unique natural and developed character of the Tweed Shire is retained." The proposed development is for a medium density development in a low density zone which does not comply with the development standards contained within the Tweed LEP.

The proposed development is significantly not complying with Clause 51A of the Tweed LEP, therefore it is considered not to be in keeping with the aim of the plan in particular to the aim that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

**Clause 5 - Ecologically Sustainable Development**

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

The proposed development is not considered to meet the provisions of Clause 51A of the Tweed LEP, and as it is a significant variation, it is considered that the proposed development is an overdevelopment of the subject site.

**Clause 8(c) - Cumulative Impact**

Clause 8(1)(c) Cumulative Impact: The proposed development if approved would be considered to create an adverse cumulative impact in the Shire. The Tweed Shire currently has a sufficient number of properties that are zoned medium density residential zoning that would accommodate this type of development. By approving this application would encourage other non conforming applications to be lodged. Therefore, the proposed development if approved would establish an adverse cumulative impact in the Shire.

**Clause 11 - Zone objectives**

The subject land is zoned 2(a) Low Density Residential pursuant to the provisions of Tweed LEP 2000.

The objectives of the 2(a) zone state:

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In the case of land within Zone 2 (a) between the Tweed Heads Bypass and Cobaki Bridge:

- *To minimise the number of dwellings subject to unacceptable aircraft noise and to limit development within the Kennedy Drive traffic catchment so that development is compatible with Kennedy Drive traffic capacity.*

In the case of all other land within Zone 2 (a):

- *To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*

Secondary objectives

- *To allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objective.*
- *To allow for non-residential development that is domestically based, or services the local needs of the community, and does not detract from the primary objective of the zone.*

The proposed development is defined as Multi Dwelling Housing and is permissible with consent in the zone.

The proposed development does not meet the primary objectives of the zone as the proposed development is for a medium density development in a low density zone. Town House developments in the 2(a) zone should be designed to be predominantly detached as to be compatible with the existing and desired future streetscape character. As the streetscape is predominantly low density single dwelling houses which reflect the zone being low density. Therefore, an 8 unit town house development in a low density area does not achieve the objectives of the zone.

#### Clause 15 - Essential Services

The subject site is currently serviced by way of existing stormwater management, electricity, sewer and water connections.

#### Clause 16 - Height of Building

The subject site possesses a statutory height limit of three (3) storeys. The proposal incorporates eight dwellings of two (2) storeys. Therefore the proposed height is in accordance with the provisions of Clause 16 of the Tweed LEP.

#### Clause 34 - Flooding

The design flood level of the site is 3m AHD. The adopted minimum floor level of this site is 3.5m AHD. The proposed finished floor level of all the dwellings in 3.5m AHD which is compliant with the provisions. As the site is located within the mapped Probable Maximum Flood Area (PMF) the applicant submitted a flood response assessment plan.

#### Clause 35 - Acid Sulfate Soils

The subject site is not identified as being subject to Acid Sulfate Soils (ASS). However, ASS may still be an issue in respect to the future excavations for the removal of any underground petroleum storage tanks on the site. Because of this, the applicant undertook an ASS investigation report.

Council's Environmental Health Unit assessed the ASS investigation report submitted and considered it to be inadequate, although for a total site area of approx. 0.3 Ha, one borehole could be considered the absolute minimum, it is considered that the depth of sampling was not adequate to reflect the probable excavation depth that will be involved with the removal of the Underground Storage Tanks. ASSMAC Guidelines state that the sampling depth should be at least One (1) metre beyond the depth of the proposed excavation or the estimated drop in watertable height.

Given that the depth of the Underground Storage Tanks has not been verified by the investigation that was carried out, and that groundwater was encountered at a depth of 1.2m below NSL, it is considered that a further ASS investigation should include an assessment of either the maximum excavation depth plus 1.0m or the estimated drop in watertable associated with the removal of the Underground Storage Tanks and analysis of the soil accordingly for ASS and results submitted to Council, samples should be collected for analysis at every soil layer or every 0.5m interval.

This additional testing was requested to be undertaken by the applicant, however no such evidence of additional testing has been submitted to Council to date.

#### Clause 39 – Remediation of Contaminated Land

As the site contains an existing service station, the site represents a primary contamination source and is listed as contaminating activity with potential contaminates of Aliphatic hydrocarbons, BTEX, PAHs, Phenols and lead, under Appendix A of the Managing Land Contamination Planning Guidelines (NSW).

Because of this, a Remedial Action Plan was submitted and assessed by Council's Environmental Health Unit. The report was considered to be inadequate based upon the following:

- No information has been supplied in respect to Test Pit locations; minimum soil and groundwater sampling protocols as contained in Table 1 of the NSW EPA Guidelines for Assessing Service Station Sites 1994 have not been observed, no laboratory analyses reports or details have been provided, no chain of custody details have been provided in respect to sampling carried out, soil sample depths appear not to have extended to the estimated depth of any of the identified UST's based upon

information provided in Section 5.3 of the Remedial Action Plan (RAP), no offsite groundwater migration boreholes appear to have been constructed therefore potential offsite contamination of groundwater has not been investigated and the qualifications of the Consultant preparing the RAP have not been provided.

- It is considered that insufficient investigation has been carried out in respect to the investigation of possible onsite contamination resulting from the past onsite activities to establish the lateral and vertical extent of any soil and groundwater contamination and therefore to enable a RAP to be prepared.
- It is apparent however from the investigation that there is a likelihood of both soil and groundwater contamination on the site and potentially off-site arising from the previous operations of the Service Station.
- It is also considered that the site of the car sales yard needs to be investigated for possible contamination. Council has responded previously to complaints concerning wrecked cars on the site, these cars were not in good condition contrary to the information contained in Section 3.1 of the RAP and it is considered that oils and other possible contaminants may have leaked from these cars over the years.

Because of the issues above, Council Officers have requested the applicant undertake further testing by an EPA Accredited Contaminated Sites Auditor under the provisions of the NSW Contaminated Land Management Act to be engaged for the purpose of providing a Site Audit Statement in respect to the issue of contamination from the previous uses of the site. The Site Audit is to be conducted to determine the nature and extent of any contamination of the land, the nature and extent of any remediation works, whether any further investigation or remediation remains necessary and whether the land is suitable for the proposed use. This is also to include if necessary investigation into the use of lead based paints and any provisions in respect to the handling of asbestos materials.

To date, this requested information has not been received from the applicant.

#### Clause 51A – Multi Dwelling Housing Densities in Zone 2(a)

Clause 51A requires that any multi dwelling development in the 2(a) zone to have a minimum site area of 450m<sup>2</sup> per dwelling. The proposed eight dwelling multi dwelling (Town House) Development would, following the development standard require a minimum site area of 3600m<sup>2</sup>. The site area is 2218m<sup>2</sup> which is a shortfall of 1382m<sup>2</sup> of site area in this instance this equates to a variation of 38per cent. This matter is discussed in depth later in this report.

### **State Environmental Planning Policies**

#### **SEPP (North Coast Regional Environmental Plan) 1988**

##### Clause 32B: Coastal Lands



In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy and the Coastline Management Manual. The development will not impede public access to the foreshore or cause any overshadowing of beaches or adjacent open space. Accordingly, the proposal complies with this clause of the REP.

#### SEPP No. 1 - Development Standards

This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

Where development could, but for any development standard, be carried out under the Act (either with or without the necessity for consent under the Act being obtained therefore) the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

As established, the proposed development for eight townhouses requires a variation to the Multi dwelling housing density development standard in the 2(a) zone as stipulated under Clause 51A of the Tweed LEP.

Clause 51A states:-

*Multi-dwelling housing proposed to be erected on land within Zone 2(a) is to be at a density not greater than:*

- (a) one dwelling per 450 square metres of site area, or*
- (b) if the site is within 300 metres of a business centre as indicated on the Business Centres Map – one dwelling per 250 square metres of site area.*

The variation is required as the proposed eight dwelling multi dwelling (Town House) Development would, following the development standard require a minimum site area of 3600m<sup>2</sup>. The site area is 2218m<sup>2</sup> which is a shortfall of 1382m<sup>2</sup> of site area in this instance this equates to a variation of 38per cent..

The underlying objective of the development standard is to control the density of multi-dwelling housing in the 2(a) low density residential zone by the use of a development standard.

In accordance with the 5 part test outlined by Chief Justice Preston in the decision *Wehbe v Pittwater Council* (2007) NSW LEC 827. Preston rephrased the assessment process as follows:

1. *The applicant must satisfy the consent authority that “the objection is well founded” and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The applicant provided the following reasons as to why the standard was considered to be unreasonable and unnecessary in their particular case –

*The objective states that its intent is to control the density of multi-dwelling housing in the 2(a) zone. It is noted that the development standard applied to achieve the objective prescribes a measured minimum density of 450m<sup>2</sup> of site area per dwelling. It is also noted that the recently adopted Section A1 – Tourist and Residential Code of the Tweed DCP, for the type of multi-dwelling development proposed (Town Houses as defined under this section of the DCP) contains both objectives and controls (development standards) for town housing in the 2(a) zone.*

*It is clear when observing the development standards presented in both the LEP and the DCP that the standard for any site over 1350m<sup>2</sup> for multi-dwelling (town house) development in the 2(a) zone is conflicting with the DCP standard of a minimum site area per dwelling of 220m<sup>2</sup>. The DCP standard (control) cannot be achieved if the overarching development standard of the LEP is enforced.*

*The Tweed Shire Council is in the process of introducing a new LEP in accordance with introduced standards for LEP preparation. As section A1 of the DCP has been recently reviewed, researched, advertised and adopted, it is considered that the objectives and controls for multi-dwelling housing in the 2(a) zone (as found in the DCP), are those that the shire wish to implement to achieve the objectives of the 2(a) zone as outlined in the present LEP. The assumption could be made that the new LEP will present objectives and development standards (if applied) that correlate with the newly adopted DCP in regard to density controls for multi-dwelling town houses development in the 2(a) zone.*

*The proposal is considered to provide a diversity of housing types on the fringe of a predominantly single dwelling residential locality. It is also noted that the site is separated from existing low density development by the somewhat unusual road configurations in the immediate area and therefore presents as a stand alone parcel in the sense of physical urban character. The site does not currently present as a low density form but rather a mixed use development with motel units now being used as single dwellings. Whilst the proposal will provide housing diversity, the proposal is also considered to present a design that is sympathetic to the low density character of the locality through provision of ample open space areas, an openness created through the use of light coastal materials and a scale and bulk that is minimised by the maximum two storeys proposed and the articulation of the building created through use of varying heights, wall setbacks and appropriate materials. Further to this, the proposed design strongly addresses all road frontages in recognition of the sites relationship with the local road network, which in*

*the immediate area serves an important ingress and egress function in Banora Point. The design of the proposed dwelling is considered to produce a high quality urban design outcome in line with the objectives and controls of the DCP.*

*It is considered that the development standard of Clause 51A of the LEP is unreasonable in this instance when considering the incompatibility with the development standards presented within the newly adopted Section A1 of the DCP and that the proposal meets both the objectives of the DCP for multi-dwelling (town houses) development and the objectives of the LEP for development in the 2(a) zone. Therefore, in this instance, the development standard of Clause 51A is unreasonable and unnecessary in that it prevents the proposal from meeting the objectives of the 2(a) zone of the LEP.*

Comment:

It is considered that the reasons outlined above, do not attest that the development standard as being unreasonable or unnecessary as the proposed development is simply a medium density development that is proposed to be built on low density residential zoned land.

2. *The consent authority must be of the opinion that “granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3”.*

The aims of the policy are as follows:-

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act”.*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

Comment:

The proposed development will affect the proper management, conservation of natural resources and the promotion and co-ordination of the orderly and economic use of the land as development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development. In this case granting

consent to a medium density development in a low density zone would be inconsistent with the aims of the Policy.

- 3. The consent authority must be satisfied that a consideration of the matters in clause 8(a) “whether non-compliance with the development standard raises any matters of significance for State or regional environmental planning; and (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

Comment:

The proposed non-compliance raises matters for state and regional planning. The objective of the development standard specifically states that its intent is to control the density of multi-dwelling housing within the 2(a) zone therefore it would be unnecessary or unreasonable for Council to allow such a large variation i.e. 38 per cent. to the development standard and also considering the development is within an established low density single dwelling area and is 1.4kms away from the nearest business area. This goes against all state and regional planning practices of consolidating medium density development around business areas where all relevant services are provided.

Preston also expressed the view that there are five different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment:

Whilst the comments are noted from the applicant, accordingly, when reviewing the controls, the LEP and DCP controls correspond with each other and do not provide a basis for inconsistency, therefore the objectives of the standard are not achieved.

- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment:

As advised by Council’s Planning Reforms Unit, the intent of the DCP was to permit, for example, the development of an integrated or multi-dwelling housing development whereby vacant ‘development lots’ within the overall development are made available for later sale/development, but, where communal infrastructure such as access roads/driveways, sewer, water and open space areas are constructed in advance. In this context, the ‘development lot’ comprises the area of exclusive use in the strata/community plan where a private dwelling and its curtilage for private recreation space and access can be erected. This area, comprising the ‘development lot’ is to be no less than 220m<sup>2</sup>. Overall, any such development site would consist of the sum of all ‘development lot’ areas plus the balance area required to meet the

density provisions otherwise prescribed by the LEP, e.g.  $220\text{m}^2 + 230\text{m}^2 = 450\text{m}^2$  multiplied by the number of dwelling units. Therefore, the underlying objective of Clause 51A to limit the density of multi dwelling housing in the 2(a) zone is directly relevant.

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment:

If compliance was required, the underlying purpose would be achieved.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment:

Council has maintained the one dwelling per  $450\text{m}^2$  of site area in the 2(a) zone for all medium density development. Council has strategically zoned areas particularly around business areas where services are readily available for higher density development like the one proposed. Approval of this development would potentially set an undesirable precedent for similar higher density developments being approved within the 2(a) low density residential zone.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment:

The zoning of the area is appropriate as the surrounding locality is predominantly made up of low density detached single dwelling residences.

#### SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is not considered to adequately satisfy the matters for consideration. Specifically it is not considered that the type, bulk, scale and size of the proposed development is appropriate for the location. Further detail is provided later in this report which supports the argument that the proposed development is not suitable for the subject site.

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

There are no draft Environmental Planning Instruments directly applicable to the proposed development.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

A full assessment of Section A1 has been undertaken and the proposed design of the development is considered to generally comply with Section A1 Part B in relation to town house developments. A copy of this assessment is **attached** to this report.

A2-Site Access and Parking Code

Section A2 of the DCP requires that two (2) parking bays be provided for each three bedroom dwelling of a multi-dwelling development and that one (1) visitor parking bays be supplied for every four (4) dwellings. The proposed parking provides for two parking bays for each dwelling. Two additional car spaces have also been provided to accommodate visitor spaces. This is considered satisfactory.

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

Clause 92(b) Applications for demolition

The proposed development application does not incorporate the demolition of the existing service station, underground petroleum storage tanks and the existing residential units. Council Officers have requested that such works be included as part of this application because of the potential contamination of the site.

**(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**

Investigation of the likely impacts of the proposal upon the built or natural environment is not considered to be required in light of the concerns detailed earlier in this report.

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

Given the earlier comments detailed within this report, the subject land is not suitable for the development as proposed.

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

The application was placed on public exhibition for a period of fourteen (14) days from Wednesday 25 February 2009 to Wednesday 11 March 2009. One submission was received. The submission raised concern with the amount of cut that was to occur on the northern boundary of the property.

The proposed cut is considered to be only minor and therefore is not pertinent to the issues raised above.

**(e) Public interest**

The proposed development is considered to compromise the public interest as it is not in accordance with local planning policies and the proposed development will not be the appropriate type of development for the subdivision will create two undersized allotments.

**OPTIONS:**

1. Council resolves to refuse the application in accordance with the officer's recommendation.
2. Council provides in-principle support for the proposal and requests appropriate conditions for approval be submitted to the next Council Meeting.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land & Environment Court.

**POLICY IMPLICATIONS:**

Should the recommendation of this report be upheld, no direct policy implications will occur, however a precedent will be set for similar applications to be approved.

**CONCLUSION:**

As detailed in the body of the report, the proposed development warrants refusal as Council Officers consider the applicants SEPP 1 justification not to be well founded in proving that development standard Clause 51A of the Tweed LEP is unreasonable or unnecessary in this case.

In addition, specialist reporting has not been satisfactorily undertaken to determine the nature and extent of the contamination of the land because of the existing underground petroleum tanks. This information is required to enable Council to determine whether the land is suitable for the proposed use.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Full assessment of Section A1 of Council's Development Control Plan (ECM 4965369)
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**11 [PR-CM] Development Application DA08/1170 for a Two (2) Lot Subdivision at Lot 1 DP 1073137, No. 19 and 43 Turners Road, Wardrop Valley**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1170 Pt1**

**SUMMARY OF REPORT:**

At its meetings on 21 April 2009 and 21 July 2009, Council considered an application to undertake a two (2) lot rural subdivision of a 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley. At its meeting on 21 July 2009, Council resolved to refuse the application as per Council Officer's recommendation.

A notice of motion was then endorsed at the Council meeting on 18 August 2009 to rescind the refusal resolution. The Council resolved:

*"That Council officers bring forward conditions for approval for consideration by Council."*

This report is in response to the latest Council's resolution. The report provides Council with two (2) main options:

- (i) to resolve to refuse the application in accordance with the officer's previous recommendations; and
- (ii) to resolve to approve this application subject to the conditions provided in this report.

**RECOMMENDATION:**

**That Development Application DA08/1170 for a two (2) lot subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley be refused for the following reasons:-**

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated compliance with the development standard as being unreasonable or unnecessary in accordance with State Environmental Planning Policy No. 1 – Development Standards**
- 2. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with State Environmental Planning Policy (Rural Lands) 2008 as the proposal will result in:**
  - development being incompatible with surrounding agricultural uses,**

- potential to create land use conflicts
  - the proposed subdivision not supporting or enhancing the agricultural production of the site
3. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 1(a) zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not:
    - protect the rural character and amenity;
    - prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion.
  4. Pursuant to Section 79C(1)(a)(i) the development proposal in seeking a subdivision for a residential purpose is not consistent with Clause 20(2)(a) of the Tweed Local Environmental Plan 2000, as the proposed Lots are below the minimum requirement of 40 hectares.
  5. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed.
  6. Pursuant to Section 79C(1)(e) the proposed development will result in prohibited development with dwelling houses located on undersized allotments that do not enjoy dwelling entitlements.
  7. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest as the development would create two undersized lots in the 1(a) Rural zone.

**REPORT:**

**Applicant:** Mr I Chambers  
**Owner:** Mr IM Chambers and Mrs R Wolf  
**Location:** Lot 1 DP 1073137, No. 19 and 43 Turners Road, Wardrop Valley  
**Zoning:** 1(a) Rural  
**Cost:** Nil

At its meetings on 21 April 2009 and 21 July 2009, Council considered an application to undertake a two (2) lot rural subdivision of a 41.7 hectare parcel of land zoned 1(a) Rural in Wardrop Valley. At its meeting on 21 July 2009, Council resolved to refuse the application as per Council Officer's recommendation.

A notice of motion was then endorsed at the Council meeting on 18 August 2009 to rescind the refusal resolution. The Council resolved:

*"That Council officers bring forward conditions for approval for consideration by Council."*

This report is in response to the latest Council's resolution (to consider conditions) and includes conditions of approval for the two lot subdivision.

This application was originally submitted in the form of proposed Lot 1 being 1.2 hectares and proposed Lot 2 being 40.5 hectares. As Lot 2 was not complying with Tweed Local Environmental Plan 2000's Clause 20 (minimum lot size requirements) an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) and the concurrence of the Department of Planning (DoP) was required.

Concurrence was granted by the DoP on the condition that Council requires that the proposed Lot 1 be enlarged to include all land south of the currently proposed northern boundary. The DoP believe that the enlargement of this proposed lot will lessen the potential for land use conflict to occur between the larger agricultural holding (proposed Lot 2 – approx 39.2 ha) and the smaller rural residential holding (proposed Lot 1 – approx 2.5ha).

At its meeting on 21 April 2009, Council resolved the following:

*"Recommended that the application be deferred until Council had a full and extensive workshop on farming with regard to the requirement of the 40 hectare allotment and request the director Planning and Regulation to sit with the applicant in further negotiations prior to bringing this matter back to Council"*

Following the April meeting, a workshop for the Councillors was held on 19 May 2009 regarding the application. At this workshop, the Councillors requested that the application be referred back to the Department of Planning (DoP) for reconsideration of the original proposal submitted by the applicants i.e. proposed Lot 1 being 1.2ha and proposed Lot 2 being 40.5ha.

The application was again referred to the DoP on 20 May 2009. The DoP advised that their position on the matter has not changed from the previous letter dated 9 January 2009.

At its meeting on 21 July 2009 the Council resolved that the application be refused. A rescission motion was received in respect of this decision, and the matter was to be reconsidered at the Council meeting of 18 August 2009.

A meeting was arranged by the Mayor on Thursday 30 July 2009 between the owners and their consultant planner, the Acting Manager Development Assessment and the Director Planning and Regulation. At this meeting the rescission motion was discussed and the applicant again put forward their case. The Mayor suggested the proponent may wish to address the Councillors at the next Community Access meeting to be held on 11 August 2009. The Director of Planning and Regulation also asked the owner to confirm which lot configuration they would prefer should Council be of the mind to support approval of this application.

At this meeting, the question was also raised whether the Department of Planning (DoP) have granted concurrence to either the original proposed layout comprising of lot configurations being 1.2ha and 40.5ha or the amended layout comprising of lot configurations of 2.7ha and 38.9 ha.

Council Officers contacted the DoP, of who advised the following:

*“The original letter granted concurrence to an amended proposal; the second letter granted concurrence to the original application without alteration of boundaries. So the Department would be content for either configuration to occur.*

*If another (third) option is derived in the development consideration process with Council (e.g. an option somewhere between the two listed above) then the Department would need to issue another letter, presumably to concur in that configuration. If an amended DA needs to be submitted to achieve this, the Department would be prepared to waive the concurrence fee.”*

This advice was forwarded to the owners and their consultant planner, who have since made a further submission confirming that they would prefer the layout comprising of lot configurations of 2.7ha and 38.9 ha. Please note that the correspondence states 2.5ha however, the applicants are in fact referring to the 2.7ha and 38.9 ha lot configurations.

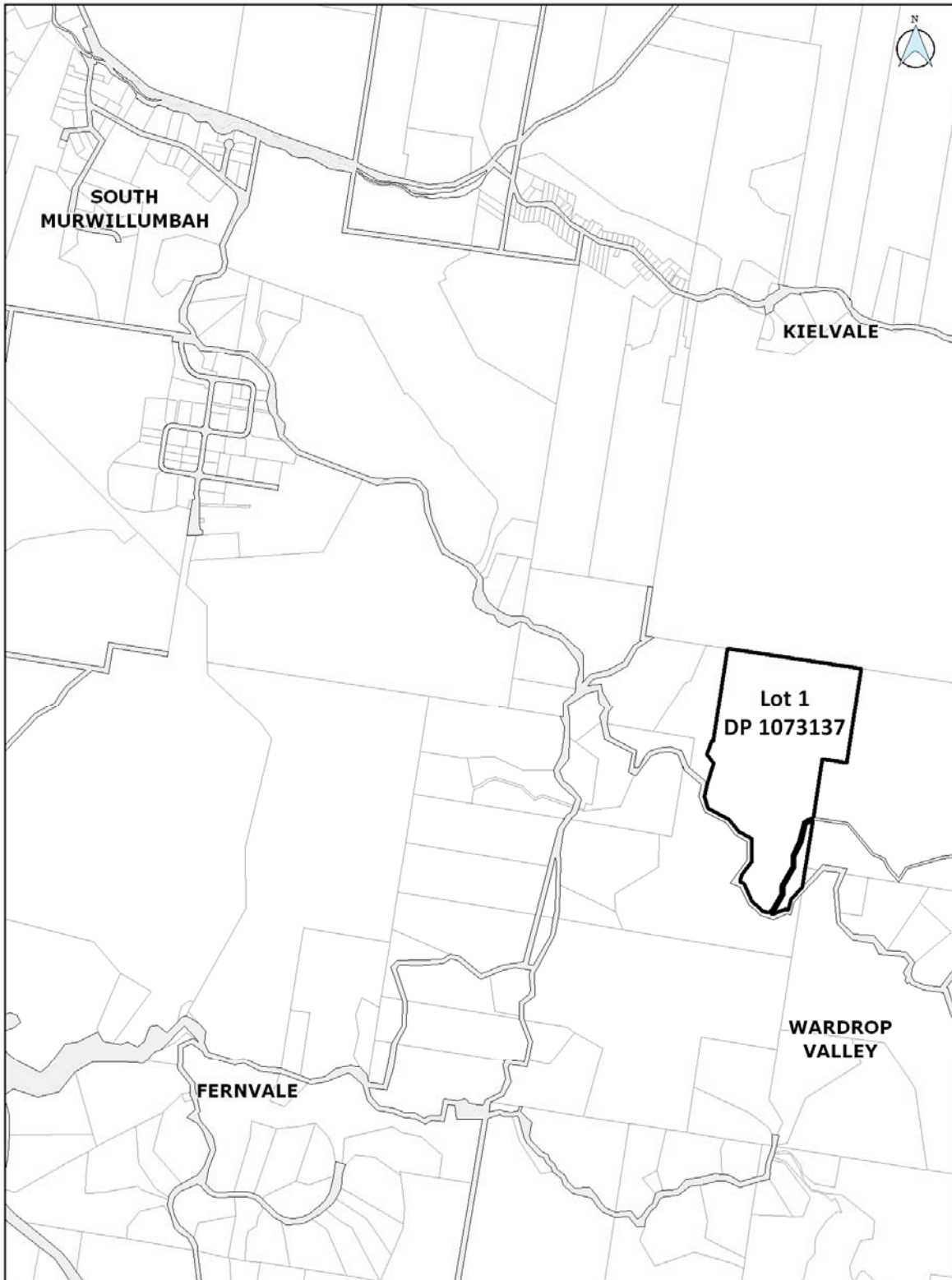
The subject application represents a significant variation of the planning controls and would be contrary to Council's strategic aims. Accordingly the subject application is recommended for refusal. The applicant has not demonstrated that the 40ha development standard is unnecessary or unreasonable.


The proposal is contrary to the objectives of the State Environmental Planning Policy Framework and the Local Environmental Planning Policy Framework. The proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size. Also, approval of this application could create a precedent for similar developments in the Shire.

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In accordance with the resolution of Council from 18 August 2009 please find draft conditions of consent (within the options section of this report) should Council decide to approve this application.

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2009          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 816          Murwillumbah, NSW, 2484          Tel: (02) 6670 2409          Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i></p> <p><b>DA08/1170 - Lot 1 DP 1073137</b>  <b>No. 19 &amp; 43 Turners Road, Wardrop Valley</b></p>	<p>Site Plan</p>  <p>Sheet: 1 of 1</p>	
<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 04/March/2009</p>	<p>Scale: 1:20,000</p>

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

Relevant statutory considerations were considered in the original report attached.

**OPTIONS:**

1. Determine the application as per the recommendation and having regard to the previous Council Officers reports, which was to refuse the application.
2. Council resolves to recommend that Development Application DA08/1170 for a two (2) lot subdivision at Lot 1 DP 1073137, No. 19 & 43 Turners Road, Wardrop Valley be approved, the following conditions should be imposed:-

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 2537-2 Revision A prepared by Chapman Surveys Pty Ltd and dated 7/8/08, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0125]

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

[GEN0135]

4. The development shall not result in damage to or loss of any threatened or endangered flora.

[GENNS01]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

5. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,552).

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

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

[PCC0275]

6. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by

instalments, the first instalment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

7. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person and shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

8. Prior to the issue of a Construction Certificate the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

(a) copies of compliance certificates relied upon

(b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:

- earthworks
- roadworks, including
  - (a) The upgrade of Turners Road from its intersection with Smarts Road, to the existing driveway access servicing proposed Lot 2, to provide a 6m formation with full width gravel pavement, minimum 150mm roadbase depth in accordance with Council's DCP – Section A5 – Subdivision Manual.
  - (b) Required road drainage and batters.
- access, including
  - (c) Provision of a vehicular access providing a minimum 150mm depth roadbase from Turners Road to the property boundary of both proposed Lot 1 & 2.
- stormwater drainage
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

9. Erosion and Sediment Control shall be provided in accordance with the following:

(a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.



- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
- [PCC1155]
10. The Construction Certificate Application shall include a detailed Stormwater Management Plan (SWMP) prepared in accordance with Councils *Development Design Specification D7 - Stormwater Quality*.

[PCCNS01]

### **PRIOR TO COMMENCEMENT OF WORK**

11. 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.

[PCW0225]

12. Civil work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the civil work has been issued in accordance with Councils Development Design and Construction Specification C101 by:
- (i) the consent authority, or
  - (ii) an accredited certifier, and
- (b) the person having the benefit of the development consent:
- (i) has appointed a principal certifying authority,
  - (ii) has appointed a Subdivision Works Accredited Certifier (SWAC) in accordance with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, Appendix C, with accreditation in accordance with the Building Professionals Board Accreditation Scheme. As a minimum the SWAC shall possess accreditation in the following categories:
    - C4: Accredited Certifier – Stormwater management facilities construction compliance
    - C6: Accredited Certifier – Subdivision road and drainage construction compliance
  - (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment,
  - (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Subdivision Works Accredited Certifier is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the civil work.

[PCW0815]

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

[PCW0835]

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

[PCW0985]

### **DURING CONSTRUCTION**

15. All proposed works are to be carried out in accordance with the conditions of development consent, approved management plans, approved Construction Certificate, drawings and specifications.

[DUR0005]

16. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

17. 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.

[DUR0215]

18. Access to the property is to be provided in accordance with Chapter 4.1.3 (2) of Planning for Bushfire Protection 2006, except where varied by these conditions.

[DUR0585]

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

[DUR0815]

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

[DUR0985]

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

[DUR0995]

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

[DUR1795]

23. The proponent 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.

[DUR1845]

24. Any damage caused to public infrastructure during construction of the development shall be repaired in accordance with Councils Development Design and Construction Specifications prior to the issue of a Subdivision Certificate.

[DUR1875]

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

[DUR2015]

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

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

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

[DUR2375]

## **USE**

27. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system is to be fitted with a first flush device. Minimum storage tank capacity shall reflect the dry seasonal periods experienced with the

locality and shall be separate to any fire fighting requirements stipulated by the NSW Rural Fire Services. Installation, water collection, and maintenance of rainwater tanks used for drinking purposes must comply with NSW Health requirements.

[USENS01]

### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

28. Prior to issue of a subdivision certificate, all works/actions/inspections etc required by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[PSC0005]

29. Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[PSC0215]

30. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate prior to the issue of a Subdivision Certificate. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

[PSC0725]

31. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor Certifying that:

- (a) the constructed Turners Road pavement and associated drainage and batters are contained within the nominated road reserve.

(b) the plans accurately reflect the Work as Executed.

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

[PSC0735]

32. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with.

[PSC0825]

33. 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 must include the following:

- Future property owners shall be advised that proposed Lots 1 and 2 do not have a dwelling entitlement and rely on existing use rights in accordance with the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

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.

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[PSC0835]

34. Submit to Council's property officer an appropriate plan indicating the rural address number to both new and existing lots for approval. Prior to the issue of a Subdivision Certificate, each lot shall have its' rural address number displayed in accordance with Council's "Rural Addressing Policy".

[PSC0845]

35. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

[PSC0855]

36. 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 Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

[PSC0865]

37. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

**Note:** The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0885]

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38. Prior to the application for a **Subdivision Certificate**, Council will undertake an inspection of the completed roadworks and once satisfied that all conditions of consent have been complied with, will issue a Compliance Certificate or the following:-

(a) Compliance Certificate - Roads

(b) Compliance Certificate – Drainage

**Note:**

1. All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 – Subdivisions Manual and Councils Development Design and Construction Specifications.
2. The fee associated with Council's inspections is subject to Council's Fees and Charges, current at the time of payment.

[PSC0915]

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

[PSC0925]

40. Prior to the issue of a Subdivision Certificate a properly dimensioned plan shall be submitted to Council for approval, showing the position of fences, structures (including the existing dwelling on proposed Lot 1) and the road formation, in relation to the proposed boundaries along Turners Road.

1. Any encroaching boundary fence is to be removed/relocated to the correct alignment.
2. Any encroaching part of the existing dwelling on proposed Lot 1 encroaching into the Turners Road road reserve shall be removed.

[PSC0945]

41. Prior to the issue of a subdivision certificate the applicant is required to lodge an application to operate an onsite sewerage management system for each individual dwelling under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issues with an approval.

[PSCNS01]

42. Where the road formation of Turners Road encroaches into private property, the submitted Subdivision Certificate must incorporate appropriate road widening within the subject allotment (generally taken to the existing fence line) to encompass such encroachments.

Any such road widening shall be dedicated to Council, at no cost to Council.

[PSCNS02]

**GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997**

1. At the commencement of subdivision the property around the existing dwellings to a distance of 20 metres shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of *Planning for*

*Bush Fire Protection 2006* and the NSW Rural Fire Service's document 'Standards for asset protection zones.'

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the decision of the determination the applicant may determine to lodge an appeal with the Land and Environment Court.

**POLICY IMPLICATIONS:**

Should the recommendation of this report be upheld, no direct policy implications will occur.

**CONCLUSION:**

As stated in previous Council reports, the proposal is contrary to the objectives of the State Environmental Planning Policy Framework and the Local Environmental Planning Policy Framework. The proposed subdivision will potentially alter the agricultural potential of the site and surrounding land through the creation of a rural residential block which is likely to lead to future land use conflict and reduce the potential of the existing allotment that currently exceeds the minimum allotment size. However, if Council resolves to approve the application, appropriate conditions of consent have been provided.

**UNDER SEPARATE COVER:**

1. Council reports - 21 April 2009, 21 July 2009 and the Notices of Motion 18 August 2009 (ECM 4703244)
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**12 [PR-CM] Development Application DA08/0708 for a Disability Ramp and Stairs to the Murwillumbah Historical Museum at Lot 1 Section 30 DP 758739, No. 2 Queensland Road, Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0708 Pt1**

**SUMMARY OF REPORT:**

Council's Community and Natural Resources Unit have submitted a development application seeking consent for the addition of a disabled access ramp and replacement of the existing stairs along the frontage of the Murwillumbah Museum, located at 2 Queensland Road, Murwillumbah.

The Murwillumbah Museum is listed as a Regional Heritage Item under both Schedule 2 of the Tweed Local Environmental Plan 2000 (TLEP 2000) and Schedule 3 of the North Coast Regional Environmental Plan 1988 (NCREP 1988). The building is heritage listed because of the architectural quality of its facade as an example of the Federation-Free Style c.1890-1915, and because it makes an important contribution to the streetscape. The listing of the building in Schedule 3 of the NCREP required referral of the proposal to the Director, Department of Planning at the time the application was submitted.

The building is also listed on the respective heritage registers of the State Heritage Office, the National Trust, the Royal Australian Institute of Architects (RAIA) and the Australian Heritage Commission (AHC).

The proposal comprises the demolition of the existing steps (these are structurally unsound), construction of a new set of stairs (from Queensland Rd consisting of 3 risers to a landing, then a left turn to a central landing then a right turn to the entry landing) and the construction of a disabled ramp from the central landing, spanning the right hand side of the building when viewed from the street.

Council planning officers do not support the current application for reasons outlined in this report, particularly concerning statutory compliance of the proposal with relevant heritage provisions of the Tweed Local Environmental Plan 2000 (TLEP 2000) and the North Coast Regional Environmental Plan 1988 (NCREP 1988), but acknowledge that the existing set of stairs is structurally unsound and improving access to the building is of critical importance.

Planning officers have a preferred position for refusal of the current development application with respect to the disabled access ramp and new set of stairs, but would be willing to consider the submission of a new development application with amended plans showing the deletion of the disabled access ramp and the upgrade of the front steps to current Building Code of Australia (BCA) requirements.

In response to the planners' position on this development application, there have been extensive discussions held with officers of Council's Community and Natural Resources Unit, and with Councillors at a workshop held on 11 August 2009. In this workshop, the

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requirements of the Federal Government's Disability Discrimination Act were put forward for further consideration. A number of design alternatives were considered which are expanded upon within the body of this report.

Given the varying views among Council's staff and Councillors and strong community interest with respect to this development application, it was considered appropriate that a report be submitted to Council for their determination with two (2) options; refusal or approval with conditions of consent. Should Council resolve to approve the development application, an attachment to this report provides recommended conditions of consent and the relevant development plans.

This proposal has posed some significant challenges for Council staff in attempting to address the highly important issues of accessibility and heritage. On the balance of consideration of the various plans, issues and legislation, Council's Development Assessment Unit has recommended the refusal of the development application.

#### **RECOMMENDATION:**

**That Development Application DA08/0708 for a disability ramp and stairs to the Murwillumbah Historical Museum at Lot 1 Section 30 DP 758739, No. 2 Queensland Road, Murwillumbah be refused for the following reasons: -**

- 1. The development application is contrary to Part 8 – Heritage Provisions of the Tweed Local Environmental Plan 2000 in that the proposed development does not meet the objectives of the part, particularly Clause 40.**
- 2. The development application is contrary to Division 3 – Heritage of the North Coast Regional Environmental Plan 1988 in that the proposed development does not meet the objectives of the Division, in particular Clause 36.**
- 3. The development application is not considered to be in the public interest.**

**REPORT:**

**Applicant:** Tweed Shire Council  
**Owner:** Tweed Shire Council  
**Location:** Lot 1 Section 30 DP 758739 No. 2 Queensland Road, Murwillumbah  
**Zoning:** 5(a) Museum  
**Cost:** \$150,000

**BACKGROUND:**

Council's Community and Natural Resources Unit has sought development consent for the construction of a disabled ramp and replacement set of stairs at the entry to Murwillumbah Historical Museum, on Queensland Road, Murwillumbah. It is noted that the existing stairs are structurally unsound.

The Murwillumbah Museum is listed as a Regional Heritage Item under both Schedule 2 of the Tweed Local Environmental Plan 2000 (TLEP 2000) and Schedule 3 of the North Coast Regional Environmental Plan 1988 (NCREP 1988).

These listings required the preparation of a Heritage Impact Assessment (HIA) for the proposal which was submitted on 2 October 2008 at the request of Council Planning officers. The HIA (prepared by David Scobie) identified that the property has a high level of significance due to the architectural quality of its façade as an example of the Federation-Free Style c.1890-1915 – characterised by the multi-colour brickwork and prominent window arches. The HIA also specifies that the building makes an important contribution to the streetscape.

The museum building is also listed on the following heritage databases:

- The State Heritage Office
- The National Trust (first listed the building in 1974)
- The Royal Australian Institute of Architects
- The Australian Heritage Commission

The Disability Discrimination Act 1992 specifies that access to *assembly buildings* should be through the main pedestrian entrance (off Queensland Road). However, the Act also states that it is not unlawful to discriminate against a person on the grounds of the person's disability in relation to the provision of access to premises if the premises are so designed or constructed as to be inaccessible to a person with a disability, or any alteration to the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.

**PROPOSED DEVELOPMENT:**

There have been numerous reviews to the design of the ramp and stair structure as outlined below. The basic method of providing access has not changed, and proposes the demolition of the existing steps, construction of a new set of stairs (from Queensland Rd consisting of 3 risers to a landing, then a left turn to a central landing then a right turn to the entry landing) and the construction of a disabled ramp from the central landing, spanning the right hand side of the building when viewed from the street.

Relevant events in assessment of the application are summarised below:

**ASSESSMENT HISTORY:**

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**24 June 2008** – DA submitted, proposing a system of tubular steel balusters with glass infill panels. No Heritage Impact Assessment was submitted with the original application.

**17 September 2008** – Heritage Impact Assessment submitted at request of Development Assessment Unit. The HIA makes the following comments pertaining to the proposed design:

- *The loss of the existing flight of steps will be acceptable subject to a suitable archival photographic record.*
- *The retention of a small set of steps in a central location off Queensland Road retains the symmetrical layout of the original design.*
- *Suitably enhanced locally appropriate planting is recommended.*
- *The plan layout of the ramp and stairs is appropriate for the levels on the site and has the least impact upon the garden setting.*
- *The ramp balustrading at the south elevation will be visually prominent.*
- *Drainage grilles or slots should be incorporated within the ramp structure.*
- *The use of steel balustrading is appropriate.*
- *The use of glass infill panels requires further consideration as the glass will appear dark and reflective at various times and may not weather well in collecting grime. A less visually striking material would be appropriate.*
- *The colour of the steelwork requires further consideration, a black or charcoal colour is recommended.*
- *Alternative designs could be explored to reinforce the prominence of the front of the building and the street corner.*
- *In reference to the Tweed as a timber producer and a reference to the institutional significance of the building, a high quality timber hardwood handrail could be provided in appropriate areas such as the symmetrical 2600mm run on the top landing and the 3600 run on the south western corner. While the timber would require some regular maintenance, this would be more than offset by the visual and heritage benefits.*
- *The existing front verandah is a damaged concrete slab which may be allowing dampness into the building structure, it is recommended that the existing slab is replaced and the walls inspected for damp. A suitable verandah would be hardwood in keeping with the origins of the building.*
- *Cement render should have integral colour rather than be painted.*
- *Tactile indicators such as Latham T1 spiral top studs should be utilised for the landing areas.*
- *Lighting should be incorporated into the design.*

**20 October 2008** – Amended plans submitted in response to the recommendations of the HIA.

The recommendations for photographic archiving and the inclusion of drainage grilles, lighting and tactile indicators have been incorporated into the design. The ramp balustrading system was also revised from stainless steel and glass to 16mm painted steel balustrading with a tubular painted steel handrail.

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The recommendations for integral colouring, a timber handrail system and investigations/possible replacement of the existing front slab with a timber deck were not adopted.

**5 November 2008** – Application, HIA and revised plans referred to the Department of Planning (as required at the time under the provisions of Clause 32B of the NCREP 1988).

**15 December 2008** – response received from the Department of Planning indicating the proposal was not supported. The Department stated they had concerns regarding the scale and impact of the proposed disabled ramp and stairs to the heritage building. A summary of their concerns is as follows:

- *The site drawings for the proposal show a massive structural change to the front of the building which appears to have little sympathy to the heritage significance of the site. There appears to have been no rationale given as to why this was the option taken.*
- *Other alternatives to that currently proposed are needed to demonstrate that the current proposal is the best solution to minimise impact on the heritage item. This could include entry through the side door.*
- *It is understood that there is a proposal to extend the Museum at the rear including a new main entrance, which would therefore appear to negate the need for expensive remedial works to the current entranceway.*

**18 December 2008** – Community and Natural Resources Unit advised of the above.

**10 February 2009** – Correspondence received from Director Community and Natural Resources. This was accompanied by justification for the proposal by the project architect Paul Berkemeier.

Council's Director Community and Natural Resources provided the following comment:

*"The current ramp proposal has been designed by the project architect, Paul Berkemeier, who was the successful winner of a public competition to secure the services of an architect suitably qualified and experienced in adaptive reuse of heritage buildings. Paul Berkemeier himself has been a Trustee of the Historic Houses Trust of NSW (a statutory authority of NSW State Government that manages a large portfolio of the State's most significant buildings, all of which have been adapted for public access), and project architect on such projects as Maitland Regional Art Gallery (including adaptive reuse of a heritage building). His credentials to appraise the architectural issues against heritage and compliance concerns are excellent and thus his recommendations sound. The proposed ramp designs have been formulated as one step in a holistic approach to the planned future extensions.*

*As advised, the current application will not be withdrawn. I believe the concerns that have been raised were not articulated in the original proposal, yet have been thoroughly addressed in preparation of the proposal. As such, I have instructed Paul Berkemeier to outline the heritage and design logic taken into consideration in reaching the final submitted design. The proposal has been in design since 2008, and a range of considerations have been taken into account including the complexity of the site, heritage values and the future proposed uses of the building. I am satisfied that the design meets relevant guidelines, is aesthetically appropriate in this circumstance, and once constructed, will be an exemplar project demonstrating Tweed Shire Council's ability to care for one of the Shire's most handsome and socially significant heritage assets".*

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The accompanying justification centred around the HIA recommendations that were not adopted and the concerns raised by the Department of Planning. The justification notes that the original proposal (prior to the application being submitted to Council planning officers) proposed replacement of the stairs only and provided disabled access through a side door. The documentation notes this option was discounted and the ramp scenario proposed because *“the significant heritage experience of entering the building would be lost if any visitor were directed to enter through the ‘back door’”*. Further, the ramp proposal would meet the requirements of the Disability Discrimination Act 1992.

The following additional following excerpts from the applicant’s justification are supplied:

*“The site is difficult due to compactness and contours. Council considered a range of solutions in the design process and presented the solution that best balanced heritage requirements, safety requirements, BCA guidelines and access requirements, in particular disability access. The scale of the presented construction and its design are as ‘light’ and low impact as the needs would permit. Council, in discussions with us during site visits required a structure that was as simple as possible, that was sympathetic yet contemporary and that maintained the significant entry experience of scaling steps to enter the civic building through its front door, as has been the case since the building was built. It should be noted that the extant steps and front garden terraces are not original and documented as such in photographic evidence. Queensland Road has been lowered in the past and further steps and garden terraces added.*

*A further benefit of the ramp for the community, and one that Council sees as invaluable, is that providing access for all to heritage buildings has broader equity issues including improved access that benefits a range of users including parents with children in strollers, couriers and furniture movers as well as people with disabilities. Universal design, or access for all, is an overriding objective that should always be aimed for when upgrading a heritage place”.*

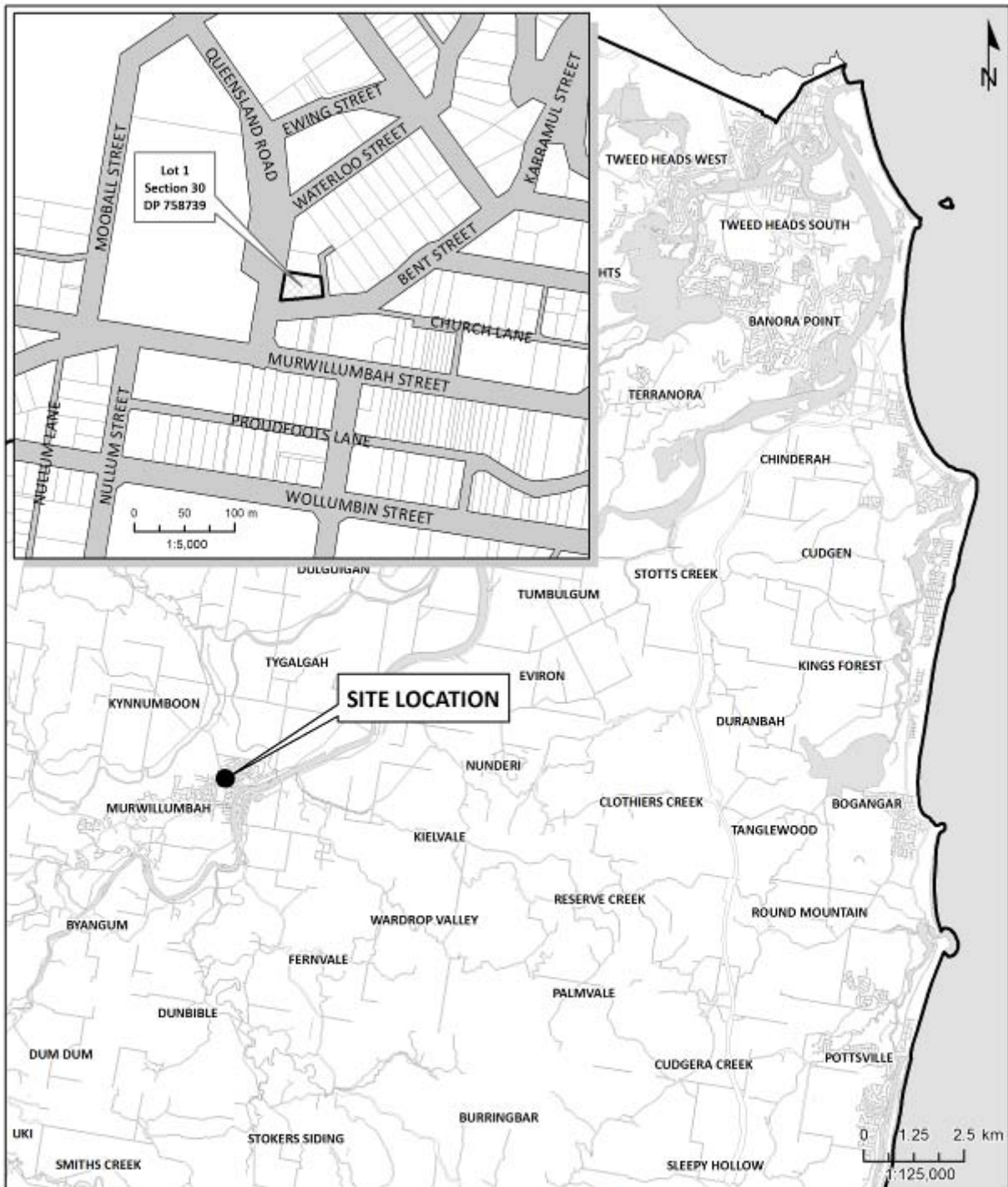
It is acknowledged that ‘access for all’ to the building is a priority.

**17 February 2009** – The above project rationale was referred back to the Department of Planning. Please note that SEPP (Repeal of Concurrence and Referral Provisions) gazetted on 12 December 2008 no longer triggers referral to the Department in relation to Clause 32B of the NCREP.

**13 March 2009** – response received from the Department of Planning indicating they remain unsupportive of the proposal and the information submitted did not allay their concerns that the proposed ramp will have a detrimental impact on the heritage value of the building in terms of scale and will reduce the heritage experience that is gained from the aesthetics of the façade.

At this point the proposal remains the same overall design as that originally proposed, and utilises a balustrading system of tubular steel handrail with 12mm steel cord along both the ramp and stair sections. There are proposed to be 3 strands of steel cord along the ramp and stair sections, set at 125mm apart as per the Building Code of Australia.

## **SITE DIAGRAM:**



**LOCALITY PLAN**  
**Lot 1 Section 30 DP 758739**  
**No.2 Queensland Road, Murwillumbah**

Filename: z:\year\planning\mxd\AAP\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 7 September, 2009

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Coordinate System - MGA Zone 56  
 Datum - GDA 94

Cadastre 7 September, 2009  
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**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****Clause 4 - Aims of the Plan**

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

The proposed development is considered to remain consistent with the above.

**Clause 5 - Ecologically Sustainable Development**

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

Broadly, the subject proposal is considered consistent with the above criteria.

**Clause 8 – Zone Objectives**

The subject site is zoned 5(a) Special uses (Museum). The proposed alterations and additions do not contravene the zone objectives which relate to the use of land for public purposes as well as allowing for flexibility in the use of land if and when the special use is no longer required.

The subject proposal is considered in keeping with the objectives of the Special Uses zone, as it attempts to improve access to an existing community resource.

**Clause 11 – Zone objectives**

The land to which this application relates is zoned 5(a) Special Uses, the objectives of which have been discussed above. The proposal is considered to be consistent with the relevant objectives and Clause 11.

**Clause 17 – Social Impact Assessment**

It is considered that by providing an improved means of access to the museum building, the proposal will have a positive social impact.

**Part 8 – Heritage Provisions****Clause 40 – Heritage Provisions Objectives**

The objectives of the Heritage Provisions are to:

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- To conserve the environmental heritage of the area of Tweed;
- To ensure that any development does not adversely affect the heritage significance of heritage items and heritage conservation areas and their settings;
- To provide for public involvement in the conservation of environmental heritage and;
- To integrate heritage conservation into the planning and development control process.

Clause 41 specifies that Part 8 – Heritage Provisions applies to all heritage items listed in schedule 2 of the TLEP 2000. The Murwillumbah Historical Museum is listed in schedule 2 as a heritage item of Regional Significance.

Clause 42 outlines that altering a heritage item or building by making structural or non structural changes to the buildings exterior may be carried out only with development consent. Clause 42(2) states that development consent is not required if the consent authority is of the opinion that the proposed development would not affect the heritage significance of the heritage item. In this instance, Council officers are not of the opinion that the proposed works will have no impact on the heritage significance of the museum building and as such must consider the extent to which the significance will be altered as prescribed by Clause 42 (3).

#### Assessment under Part 8 – Heritage Provisions

##### Proposed stairs

The existing access is not safe and has to be addressed in terms of safety. The limited area to provide stair access (between the edge of the building and the front boundary) limits the proposal in terms replacing the front steps with a new set which comply with BCA requirements, without touching the existing building or encroaching into the road reserve.

##### Proposed access ramp

The proposed access ramp is located at the building's most visually prominent point. The applicant's HIA indicates that the property has a level of aesthetic significance for its contribution to the streetscape – and has not been identified as an item of significance other than in relation to the streetscape. It is considered that the current proposal will dramatically alter the existing streetscape and detract from the significant aesthetics of the building.

In addition, Council's Strategic Planning Unit has raised concerns with the potential of the modifications to obscure the building at its most prominent façade and public vantage point and disrupt the building's symmetry.

It is considered that the proposed disability ramp is inconsistent with the objectives of Part 8 of the TLEP as it will adversely affect the heritage significance of the building by obstructing it at its most visually prominent point.

There remain opportunities for the current design to be improved in order to minimise impacts on the significant front building façade. As such, approval of the proposal 'as is' is not recommended.

#### **North Coast Regional Environmental Plan 1988 (NCREP)**

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The Murwillumbah Museum is listed in Schedule 3 of the policy as an item of regional heritage significance.

### Division 3 – Heritage

#### Clause 34 – Objectives

The objectives of this division include the conservation of environmental heritage and the promotion of appreciation and understanding of the North Coast region's distinct variety of cultural heritage items.

#### Clause 36 – Development Control: Heritage Items Generally

Clause 36 specifies that a person shall not demolish, damage or alter a heritage item except with consent of the relevant Council. Clause 36(2) specifies that Council shall not grant consent to such a proposal unless it has made an assessment of:

- The heritage significance of the item;
- The extent to which the carrying out of the development in accordance with the consent would affect the heritage significance of the item and its site;
- Whether the setting of the item and in particular whether any stylistic horticultural or archaeological features of the setting should be retained;
- Whether the item constitutes a danger to the users or occupiers of that item or to the public, and
- Measures to be taken to conserve heritage items, including any conservation plans prepared by the applicant.

Clause 36B required referral of the application to the Director, Department of Planning at the time the application was submitted (please see Department of Planning comment later in this report). This referral requirement has since been repealed.

#### Assessment under Division 3 - Heritage

The Murwillumbah Museum is significant in terms of the architectural qualities of its façade. The proposed works are considered to obscure the building at its most prominent point. The Conservation Management Strategy (CMS) provides the following Statement of Significance:

*“The museum building marks the original commissioned accommodation constructed for the Tweed Shire Council and opened in 1915 and occupied by Council until 1948. The building is constructed in a late federation style with distinctive elements including a hipped iron roof, large arched windows and a symmetrical front elevation with re-entrant verandah. The building marks the social importance of Shire government as the base for an elected Council responsible for levying rates for the expenditure on the provision of local services to the Tweed Shire”.*

The CMS identifies that the external elevations of the building including their materials and finishes are to be conserved with minimal alteration and change and states that the building should retain the key characteristics of layout, form, materials and finishes.

The heritage significance of the item is considered to be undermined by the current proposal. Although no construction works are proposed to the building itself, the proposed access is considered to impact on the significance of the heritage item.

However, it is acknowledged that the state of the current front steps does pose a danger to the users of the museum building. Rectification of this issue is of paramount importance.

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

There are no draft Environmental Planning Instruments on exhibition that are a relevant matter for consideration in the assessment of this application.

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

Murwillumbah Town Centre DCP

The subject site adjoins the area covered by the Murwillumbah Town Centre DCP, but does not actually fall within its borders. The DCP “supports the conservation of the rich mix of significant buildings within Murwillumbah generally”. The objectives of the DCP are to protect and enhance items of environmental heritage listed in the TLEP 2000 and contributory items and ensure that developments are designed to be compatible with the heritage significance of listed items.

The guidelines for assessment require that proposals involving heritage items must comply with the heritage provisions of the TLEP 2000 and specify that the onus is on the proponent to demonstrate that the heritage significance of the item would not be compromised by the proposal. Further, onus is on the applicant to demonstrate that the architectural and streetscape value of the building would be retained or enhanced by the proposal. As above, the current proposal is not considered to retain or enhance the heritage qualities of the building, nor show consistency with the heritage provisions contained in Part 8 of the TLEP. Based on this, it is evident that the proposal is not consistent with the Murwillumbah Town Centre DCP.

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

Clause 92(b) Demolition

The proposal will require the demolition of the existing front stairs. Council’s Building Surveyor has reviewed the application and provided standard conditions of consent.

Clause 94 Buildings to be upgraded

The proposal involves alterations to the building. Council’s Building Surveyor has reviewed the application in this regard and indicated that Clause 94 is not relevant as no internal works are proposed.

**(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**

Access

Refusal of the current application will not immediately improve the existing access situation (i.e.: structurally unsound stairs would remain). However, a new application to replace these stairs in their current location could be

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submitted, with a merit assessment undertaken by Council's planning officers. Calculations (provided later in this report with respect to riser/tread grade) indicate that BCA compliance is achievable in this regard.

This solution is considered to meet the dual goal of improving access to the building whilst preserving its heritage qualities.

### Heritage

This issue has been raised throughout the body of this report. It is considered that refusal of the application will result in the least amount of impact to the building façade.

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

Constraints of the site make it difficult to improve access to the building. These constraints suggest that disabled access to the building is better addressed holistically with the planned extensions to the building, rather than as proposed in the subject application.

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

The Department of Planning have twice commented on the application, excerpts of which are provided below. No other submissions were received as the application was not advertised or notified development.

#### **Extract from Department of Planning – first response dated 15/12/2008**

*"I refer to your letter dated 5 November 2008 concerning the above proposal to a heritage listed building. The Department notes that this is a regionally listed heritage building in the North Coast Regional Environmental Plan. The role of the Department's Director General (under Section 36B of the REP) is to provide advice on the application.*

*The Department does not support this proposal. It has concerns regards the scale and impact of the proposed disabled ramp and stairs to this heritage building. The site drawings for the proposal (labelled DA 1B – DA 8B) show a massive structural change to the front of the building which appears to have little sympathy to the heritage significance of the site. There appears to have been no rationale given as to why this was the option taken.*

*Other alternatives to that currently proposed are needed to demonstrate how this is the best solution to minimise the impact on this heritage item. For instance, the use of the existing side entrance, on the southern side of the building, for disabled access would appear to be a better, less obtrusive and more economical option (the use of an external buzzer connected to the front desk could be used by disabled persons to alert Museum staff). An inspection of the site noted that the front stairs are unusually steep and long. The pitch of the stairs might be better addressed by rebuilding them at a better slope in the current location (and in keeping with the older design) and length broken up with a midway landing.*

*It is understood that there is a proposal to extend the Museum at the rear including a new main entrance (presumably off Bent Street). This would therefore appear to negate the need for expensive remedial works to the current entranceway."*

#### **Extract from Department of Planning – response to amended plans dated 13/03/2009**

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*"I refer to your letter dated 17 February 2009 concerning the above proposal and the submission of additional information in relation to the heritage listed building. I also refer you to Craig Bellamy's letter dated 15 December 2008 in which the Department expressed concerns with the proposal namely relating to scale and impact. As a result of these concerns, the support of the Department was not given in this instance.*

*The additional information recently submitted to the Department (17 February 2009) whilst appearing to adequately address the issues raised, does not allay the Department's concerns that the proposed disability ramp will have a detrimental impact on the heritage value of the building in terms of scale and will reduce the heritage experience that is gained from the aesthetics of the façade.*

*Whilst the Department is not supportive of the proposal, it is important to note that the Director of Planning no longer has a specific consultation role for items of Regional Significant as detailed in Schedule 3 of the North Coast Regional Environmental Plan as clause 36B of the Plan has been repealed."*

**(e) Public interest**

The current proposal is not in the public interest as the ramp structure is considered to detract from the aesthetic experience of the building façade. Refusal of the current application and the potential submission of a new development application for replacement of the stairs only (disabled access addressed with the planned museum upgrade) is considered to be a reasonable compromise between preserving the building façade and its associated heritage experience and improving access to the building.

**CONSIDERATIONS UNDER SECTION 79C - ASSESSMENT SUMMARY:**

The proposal is not consistent with Part 8 – Heritage Provisions of the TLEP 2000, nor Division 3 – Heritage of the NCREP 1988. The proposal is not consistent with the heritage provisions of the Murwillumbah Town Centre DCP and the Department of Planning have commented that the proposal is not supported.

During the assessment process, a number of alternative solutions were considered, as set out below. After a thorough assessment of all options and their associated opportunities and constraints, planning officers recommend refusal of the application.

The following alternative access solutions were taken into consideration during the assessment process:

- 1. Refusal.** Heritage significance of façade remains intact, existing stairs still pose a safety risk.
- 2. Approval of entire proposal with conditions** (relating to landscaping, timber deck and handrail and BCA compliance)
- 3. Temporary approval of ramp and approval of proposed stairs**, with disabled access addressed during the proposed future museum extension. Council's Building Surveyor has reviewed this option and indicated that removal of the ramp is possible, but the cost of the structure could render construction and subsequent removal unviable and the applicant may not proceed with this option. Further, should the

proposed extension not go ahead, the ramp will remain a substantial structure across the building's façade.

- 4. Approval of stairs only with amendment to design** – replication of existing stairs to BCA requirements in the same location, as per the following calculations (i.e.: stairs in the same location but at a compliant grade). Disabled access is to be provided through side door.

Stair grade calculations:

*RL @ Qld Road = 8.2m*

*RL @ Museum floor = 11.05m*

*Difference is 2.85m.*

*BCA specifies maximum stair riser height on 190mm.  $2.85/0.19 = 15$  stairs*

*BCA specifies minimum tread 250mm. 15 stairs x 250mm (tread) = 3.75m required between property boundary and outermost edge of central entry landing. The submitted plans indicate this will require approximately 10cm of cut into the central landing, or a 10cm encroachment into Council's road reserve. It is noted that current proposal indicates works (tactile indicators and 3 steps) occurring on the road reserve. It is therefore considered that a compliant set of stairs in the existing location is achievable.*

- 5. Approval of proposed stairs only with conditions** (relating to landscaping, timber deck and handrail and BCA compliance). Disabled access is to be provided through side door.

To assist in determining an appropriate solution, the following matrix of all of the above mentioned alternative solutions (including their BCA compliance and success in terms of improving access/heritage) was developed:

**Table 1: Assessment matrix of possible stair/ramp solutions**

Access Solution	BCA	Access	Heritage	Conclusion
1	Compliance not achieved	Existing access arrangement is not improved	Heritage significance of building remains intact	Not preferred due to necessity of improving current access
2	Compliance achieved	Access improved	Heritage significance of building façade compromised	Not preferred due to impacts on heritage significance of building
3	Compliance achieved	Access improved	Heritage significance of building façade compromised, even if temporarily. Should planned extensions not go ahead, ramp may need to remain. Cost of ramp may render removal of it unviable and applicant may not	Not preferred as still compromises heritage significance of the building, even if temporarily

			go ahead with proposal	
4	Compliance achieved	Access improved but constraints of site result in another steep staircase. Disabled access to be provided through side door.	Heritage significance and central stair experience maintained	<b>Preferred option</b> ensuring compliance with BCA requirements, improves current access arrangement and maintains heritage experience of building entry
5	Compliance achieved	Access improved, stairs at better grade than option 4. Disabled access provided through side door	Heritage significance partially compromised, though a better outcome than the combined ramp and stair proposal. Most prominent vantage point of the building is not obscured.	Not preferred, ensures compliance with BCA, but still makes change to front of building (providing easier stair access through lesser incline)

Access solution 4 (replacement of the existing steps with a new set in the same location) was on balance considered the best and most immediate way to improve access to the building whilst conserving its heritage significance.

However, the Environmental Planning and Assessment Act 1979 (Sec 80) specifies that consent can only be issued in the following circumstances:

- (a) for the development for which the consent is sought, or
- (b) for that development, except for a specified part or aspect of that development, or
- (c) for a specified part or aspect of that development.

As such, the alternative access solutions have been used for assessment purposes only and Council's Development Assessment Unit recommends refusal of the proposed disability ramp and stairs.

#### OPTIONS:

1. Refuse the application, for the reasons specified under 'Recommendation' below; or
2. Approve the application, subject to conditions of consent (please refer to the attached recommended conditions and development plans, should Council resolve to approve the application).

#### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision they have the right to appeal the decision in the NSW Land and Environment Court.

#### POLICY IMPLICATIONS:

Nil.

## CONCLUSION:

Improved public access to the Murwillumbah Museum is a necessity. The current proposal provides this in a manner that is considered to detract from the heritage significance of the building and is not consistent with the heritage objectives of the TLEP 2000, NCREP 1988 and the Murwillumbah Town Centre DCP.

Council's Development Assessment Unit recommends refusal of the proposed disability ramp and stairs.

**\*Advisory Note:** A future application can be submitted with modified plans indicating removal of the disabled access ramp and the replication (to current BCA standards) of the existing set of stairs in their current location. These plans shall also indicate the provision of adequate disabled access to the building's Bent Street elevation.

## UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Option 2 - Recommended conditions and development plans (ECM 4801564)
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**13 [PR-CM] Development Application DA08/1216 for a Dwelling & Demolition of Existing Dwelling at Lot 2 DP 501165 No. 10a Boomerang Street, Kingscliff**

**ORIGIN:**

**Building and Environmental Health**

**FILE NO: DA08/1216 Pt1**

**SUMMARY OF REPORT:**

**ITEM DEFERRED FROM MEETING HELD:**

**18 August 2009**

***“RESOLVED that***

- 1. Development Application DA08/1216 for a dwelling and demolition of existing dwelling at Lot 2 DP 501165, No 10a Boomerang Street, Kingscliff be deferred to allow for further consultation with the applicants and Council Officers including the Director of Planning, on the bulk and scale of the proposed new building.*
- 2. A further report be presented to the next Council meeting as a result of this consultation.”*

In response to the resolution at the August meeting, the Director of Planning and Regulation and another Council officer met with the applicants and owners of this application. The owners and applicants advised that they did not consider any further amended plans were warranted for this application, and that they would present their views in more detail at the Community Access Meeting on 8 September.

An application has been received to demolish an existing three storey dwelling and construct a new larger three (3) storey dwelling on the subject property. The property is a battleaxe block situated on the southern side of Boomerang Street Kingscliff.

The application was notified to adjoining property owners and eight (8) submissions were received from eight (8) surrounding properties objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and impact on privacy. After extensive consultation with all parties the proposal has been modified twice from the original submission, with the final design being generally compliant with the mandatory controls of Council's DCP A1 and providing reasonable regard to the concerns of the objectors. There are still some objections from neighbouring residents in respect of the amended design.

The issues raised in the objections have been addressed within the body of this report.

On the balance of the assessment of the relevant planning matters, the context of other developments in the surrounding locality and the nature of the battleaxe block, it is considered that the proposed development is suitable for approval, subject to conditions.

## RECOMMENDATION:

**That Development Application DA08/1216 for a dwelling & demolition of existing dwelling at Lot 2 DP 501165, No. 10a Boomerang Street Kingscliff be approved subject to the following conditions: -**

### GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects as amended and Plan Nos 037-01 issue H, 037-02 issue K, 037-03 issue H, 037-04 issue K, 037-06 issue M, 037-12 issue G, 037-30 issue J, 037-20 issue L, 037-21 issue L, prepared by Gary Grieve Design and dated July 08, except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. Landscaping is to be provided and maintained in accordance with the approved plans and any additional landscaping on the site is to be limited to a maximum growth height of 24.65m AHD so as facilitate the view sharing considerations accommodated by the development.

[GENNS01]

### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

[PCC0285]

5. 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

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.

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be

incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

6. 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.

[PCW1065]

#### **PRIOR TO COMMENCEMENT OF WORK**

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
  - (c) 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
  - (d) 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.

[PCW0215]

8. 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.

[PCW0225]

**9. Residential building work:**

- (a) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- \* in the name and licence number of the principal contractor, and
  - \* the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- \* the name of the owner-builder, and
  - \* if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

10. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every fifteen (15) persons or part of fifteen (15) 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

[PCW0245]

11. 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.

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[PCW0255]

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

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

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

[PCW0985]

13. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

#### DURING CONSTRUCTION

14. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

15. The roof cladding is to have low reflectivity where it would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0245]

16. 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 was made).

[DUR0375]

17. 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.

[DUR0395]

18. 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.

[DUR0405]

19. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Occupational Health and Safety Regulation 2001.

[DUR0415]

20. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR0445]

21. All demolition work is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures", to the relevant requirements of the WorkCover NSW, Occupational Health and Safety Regulation 2001 and the approved demolition work plan.

[DUR0645]

22. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Tweed Shire Councils Design and Construction Specifications, and Development Control Plan.

Please note timber retaining walls are not permitted.

[DUR0835]

23. The development is to be carried out in accordance with the current BASIX certificate and schedule of commitments approved in relation to this development consent.

[DUR0905]

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

- Noise, water or air pollution
- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

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

[DUR1875]

26. No portion of the structure may be erected over any existing sullage or stormwater disposal drains, easements, sewer mains, or proposed sewer mains.

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- [DUR1945]
27. 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.
- [DUR2185]
28. 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.
- [DUR2485]
29. Plumbing
- (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.
- [DUR2495]
30. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
31. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR2545]
32. 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:-
- \* 43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50°C 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.
- [DUR2555]
33. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.
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34. A Sewer manhole is present on this site. This manhole is to be uncovered and if necessary, application shall be made to Council's Engineering & Operations Division for the raising of the manhole.
- [DUR2655]
35. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.
- [DUR2705]
36. During construction the Principal Certifying Authority is to be provided with a Registered Surveyors' floor level certificate at each floor platform stage and when the roof framework is in place, to confirm that the height of the building is proceeding in accordance with the approved plans.
37. All externally mounted equipment such solar panels, other than antennas are not to exceed the maximum allowed construction height of 24.555m AHD.
- [DURNS02]
38. A new water meter service is to be provided to the property at the Boomerang Street frontage and arrangement made with Council's Water Unit for the removal of the existing service located on Rob Roy Crescent.

[DURNS03]

#### PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

39. A person must not commence occupation or use of the whole or any part of a new building or structure (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).
- [POC0205]
40. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property.
- The street number is to be on a white reflective background professional painted in black numbers 100mm high.
- On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.
- For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.
- The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

41. Prior to the issue of a final occupation certificate adequate proof and/or documentation is to be submitted to the Principal Certifying Authority to identify that all commitment on the BASIX "Schedule of Commitments" have been complied with.



[POC0435]

42. 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.

[POC1045]

## USE

43. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive noise.

[USE0175]

44. The building is to be used for single dwelling purposes only.

[USE0505]

**REPORT:**

**Applicant:** Mr RJ Bailey  
**Owner:** Mr RJ Bailey and Mrs FA Bailey  
**Location:** Lot 2 DP 501165, No. 10a Boomerang Street Kingscliff  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$400,000

**BACKGROUND:**

The property is zoned 2(a) Low Density Residential under Tweed Local Environmental Plan 2000 and is located on the southern side of Boomerang Street Kingscliff. The property is a battleaxe block containing an existing small three storey dwelling and a detached two storey shed and rumpus area. The property is situated on the side of Kingscliff hill with a northerly aspect and as a battleaxe block is situated in the middle of the surrounding properties.

An application has been received to demolish the existing structures and to construct a new three (3) storey dwelling on the subject property.

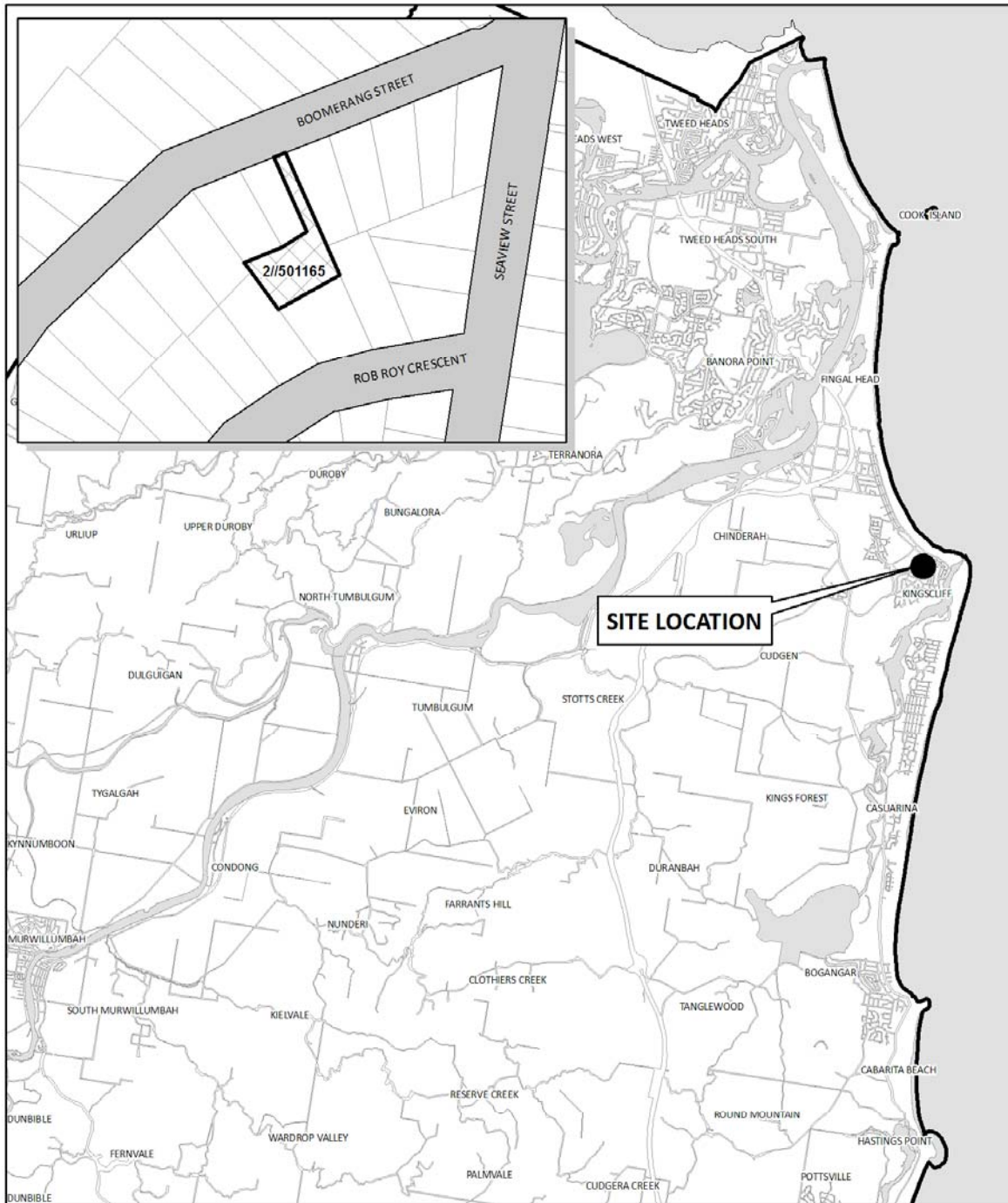
The application was notified to adjoining property owners and eight (8) submissions were received from eight (8) surrounding properties objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and impact on privacy. After extensive consultation and additional notification with all parties the proposal has been modified twice from the original submission, with the final design being generally compliant with the mandatory controls of Council's DCP A1 and providing reasonable regard to the concerns of the objectors.

The original design has been modified to address the objectors concerns by:

- reducing the length of the building by 1.7m
- reducing the top storey verandah overhang
- reducing the overall height of the building to be just below the existing roof at 24.555m AHD.
- providing privacy screening on the eastern end of the building.
- providing movable screens to northern edge of the upper verandah
- providing extensive privacy landscaping to the northern and eastern boundary
- changing the roof design

These modified plans are now the plans considered in this report and some neighbour's still maintain their objection to the development in its modified form.

**SITE DIAGRAM:**



**LOCALITY PLAN**

Lot 2 DP 501165  
No.10a Boomerang Street, Kingscliff

Filename: z:\esr\planning\mxd\A4P\_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: July 10, 2009

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and liability (including, without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Call before you Dig" enquiry must be made by calling 1100. The information contained on this document remains valid for 30 days only from the date of supply.



Cadastre July 10, 2009  
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Coordinate System - MGA Zone 56  
Datum - GDA 94  
DO NOT SCALE  
COPY ONLY - NOT CERTIFIED



**Tweed Shire Council**  
PO Box 816,  
Murwillumbah  
NSW 2484  
Tel: (02) 6670 2409  
Fax: (02) 6670 2483

**DEVELOPMENT PLANS:**

**09:00 (AEST) Summer**

**12:00 (AEST) Summer**

**15:00 (AEST) Summer**

**18:00 (AEST) Summer**

**CERTIFIED SHADOW DIAGRAM**  
No. 1: BELLARABO

108

**LEGEND**

- SHADOW AREA
- REDUCED SHADOW AREA
- EXCESS SHADOW AREA
- NEED BUILDING OVERLAP

**NOTES:**

1. THIS PLAN SHOWS SHADOWS CAST BY ALL BUILDINGS ON LOT 2.
2. SHADOWS CAST BY TREES AND BUSHES ON LOT 2 ARE NOT SHOWN.
3. SHADOWS CAST BY TREES AND BUSHES ON LOT 1 ARE NOT SHOWN.
4. SHADOWS CAST BY TREES AND BUSHES ON LOT 3 ARE NOT SHOWN.
5. SHADOWS CAST BY TREES AND BUSHES ON LOT 4 ARE NOT SHOWN.
6. SHADOWS CAST BY TREES AND BUSHES ON LOT 5 ARE NOT SHOWN.
7. SHADOWS CAST BY TREES AND BUSHES ON LOT 6 ARE NOT SHOWN.
8. SHADOWS CAST BY TREES AND BUSHES ON LOT 7 ARE NOT SHOWN.
9. SHADOWS CAST BY TREES AND BUSHES ON LOT 8 ARE NOT SHOWN.
10. SHADOWS CAST BY TREES AND BUSHES ON LOT 9 ARE NOT SHOWN.
11. SHADOWS CAST BY TREES AND BUSHES ON LOT 10 ARE NOT SHOWN.
12. SHADOWS CAST BY TREES AND BUSHES ON LOT 11 ARE NOT SHOWN.
13. SHADOWS CAST BY TREES AND BUSHES ON LOT 12 ARE NOT SHOWN.
14. SHADOWS CAST BY TREES AND BUSHES ON LOT 13 ARE NOT SHOWN.
15. SHADOWS CAST BY TREES AND BUSHES ON LOT 14 ARE NOT SHOWN.
16. SHADOWS CAST BY TREES AND BUSHES ON LOT 15 ARE NOT SHOWN.

**Legend - AEST (Summer)**

- 1. SHADOWS CAST BY BUILDINGS ON LOT 2
- 2. SHADOWS CAST BY TREES AND BUSHES ON LOT 2
- 3. SHADOWS CAST BY TREES AND BUSHES ON LOT 1
- 4. SHADOWS CAST BY TREES AND BUSHES ON LOT 3
- 5. SHADOWS CAST BY TREES AND BUSHES ON LOT 4
- 6. SHADOWS CAST BY TREES AND BUSHES ON LOT 5
- 7. SHADOWS CAST BY TREES AND BUSHES ON LOT 6
- 8. SHADOWS CAST BY TREES AND BUSHES ON LOT 7
- 9. SHADOWS CAST BY TREES AND BUSHES ON LOT 8
- 10. SHADOWS CAST BY TREES AND BUSHES ON LOT 9
- 11. SHADOWS CAST BY TREES AND BUSHES ON LOT 10
- 12. SHADOWS CAST BY TREES AND BUSHES ON LOT 11
- 13. SHADOWS CAST BY TREES AND BUSHES ON LOT 12
- 14. SHADOWS CAST BY TREES AND BUSHES ON LOT 13
- 15. SHADOWS CAST BY TREES AND BUSHES ON LOT 14
- 16. SHADOWS CAST BY TREES AND BUSHES ON LOT 15

**DATE:** 15/09/09  
**PROJECT:** Lot 2 Barringong St, BARRABO, NSW 2383  
**CLIENT:** MRS HAWK  
**ARCHITECT DESIGNER:** GARY GREENWOOD  
**DATE OF DESIGN:** 15/09/09  
**DATE OF SHADOW DIAGRAM:** 15/09/09

**Scale:** 1:200  
**Scale:** 1:4000  
**DATE:** 15/09/09  
**DESIGNER:** GARY GREENWOOD  
**DATE OF DESIGN:** 15/09/09

**Scale:** 1:200  
**Scale:** 1:4000  
**DATE:** 15/09/09  
**DESIGNER:** GARY GREENWOOD  
**DATE OF DESIGN:** 15/09/09





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R.P.D.  
 LOT : 2  
 DP : 501165  
 PARISH : Cudgen  
 COUNTY : Rivers  
 SHIRE : Tweed Shire  
 LOCALITY : Kingscliff  
 AREA : 789m<sup>2</sup>

PROJECT  
 ARCHITECT  
 DRAWN  
 SCALE  
 DATE  
 TITLE

**GARY GRIEVE  
 DESIGN**

... architectural design & drafting ...  
 Tel: 7535 8585  
 mobile 0410 614 094  
 email - gogrieve@eept.net.au

DATE  
 R & F Bailey

PROJECT  
 Proposed residence

LOCATION  
 Lot 2, Boomerang Street,  
 Kingscliff,  
 NSW

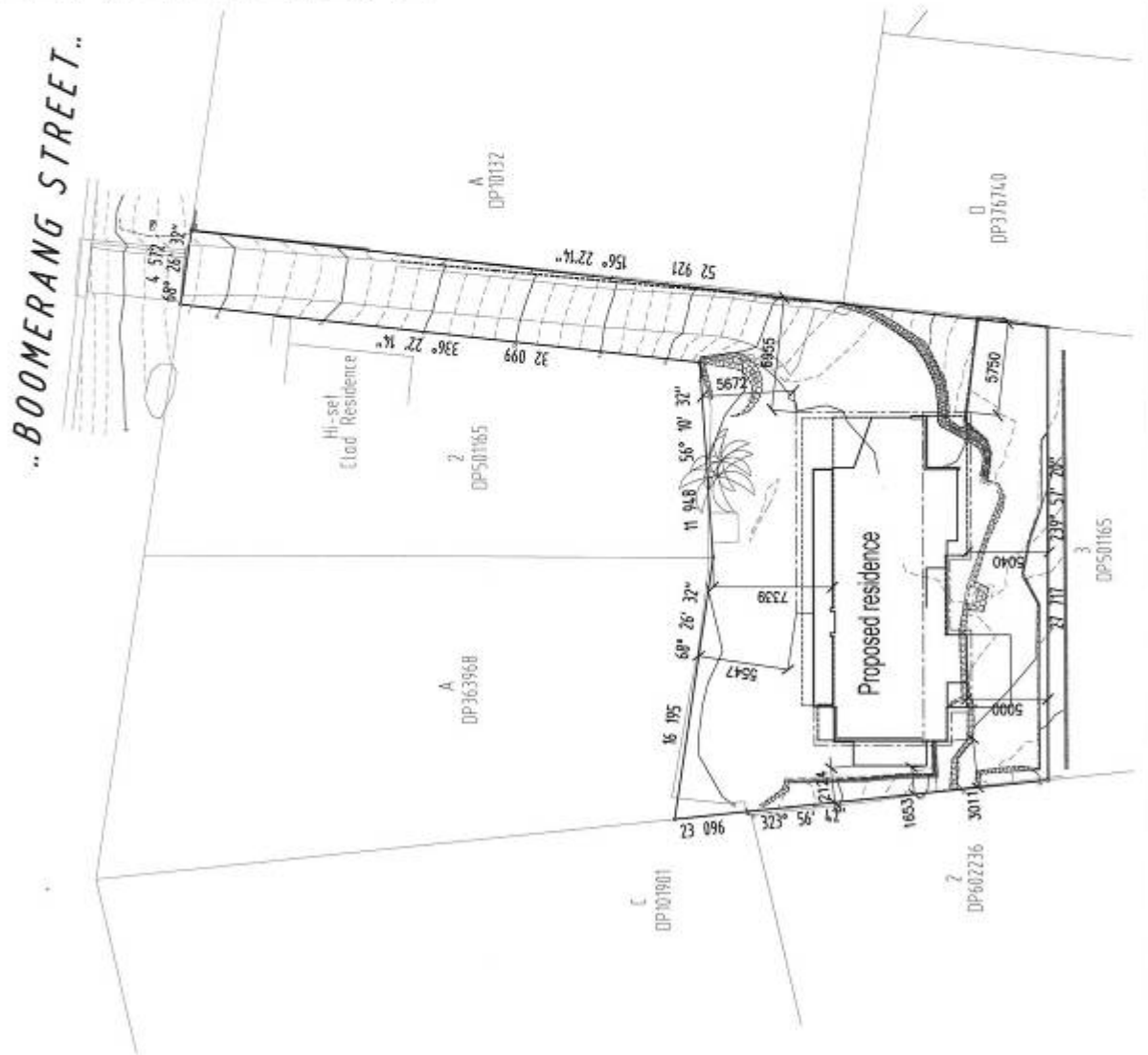
DRAWN  
 Site plan

SCALE : 1:200  
 DRAWN : G. Bailey  
 DATE : July-08  
 SHEET : 037-01  
 ATTACHED SHEETS : 037-surveys-A, 037-ground, 037-landscape,  
 037-02  
 DRAWING NO  
 TITLE

**037-01** **H**

FLOOR AREAS		area
location		
ground	Total	130.6
first	living	135.8
	balcony	16.6
	drying deck	13.6
second	living	165.4
	balcony	35.3

total floor area	487.3
------------------	-------





1:1 scale of site plan  
Application will need to be provided.

- Generally:
- 1 plant / sq.m.
  - 200mm pot size min recommended.
  - Taller accents proposed for entry & corner of site.

1	Site location	15/09/09
2	Site plan	15/09/09
3	Site plan	15/09/09
4	Site plan	15/09/09
5	Site plan	15/09/09
6	Site plan	15/09/09
7	Site plan	15/09/09
8	Site plan	15/09/09
9	Site plan	15/09/09
10	Site plan	15/09/09
11	Site plan	15/09/09
12	Site plan	15/09/09
13	Site plan	15/09/09
14	Site plan	15/09/09
15	Site plan	15/09/09
16	Site plan	15/09/09
17	Site plan	15/09/09
18	Site plan	15/09/09
19	Site plan	15/09/09
20	Site plan	15/09/09

## GARY GRIEVE DESIGN

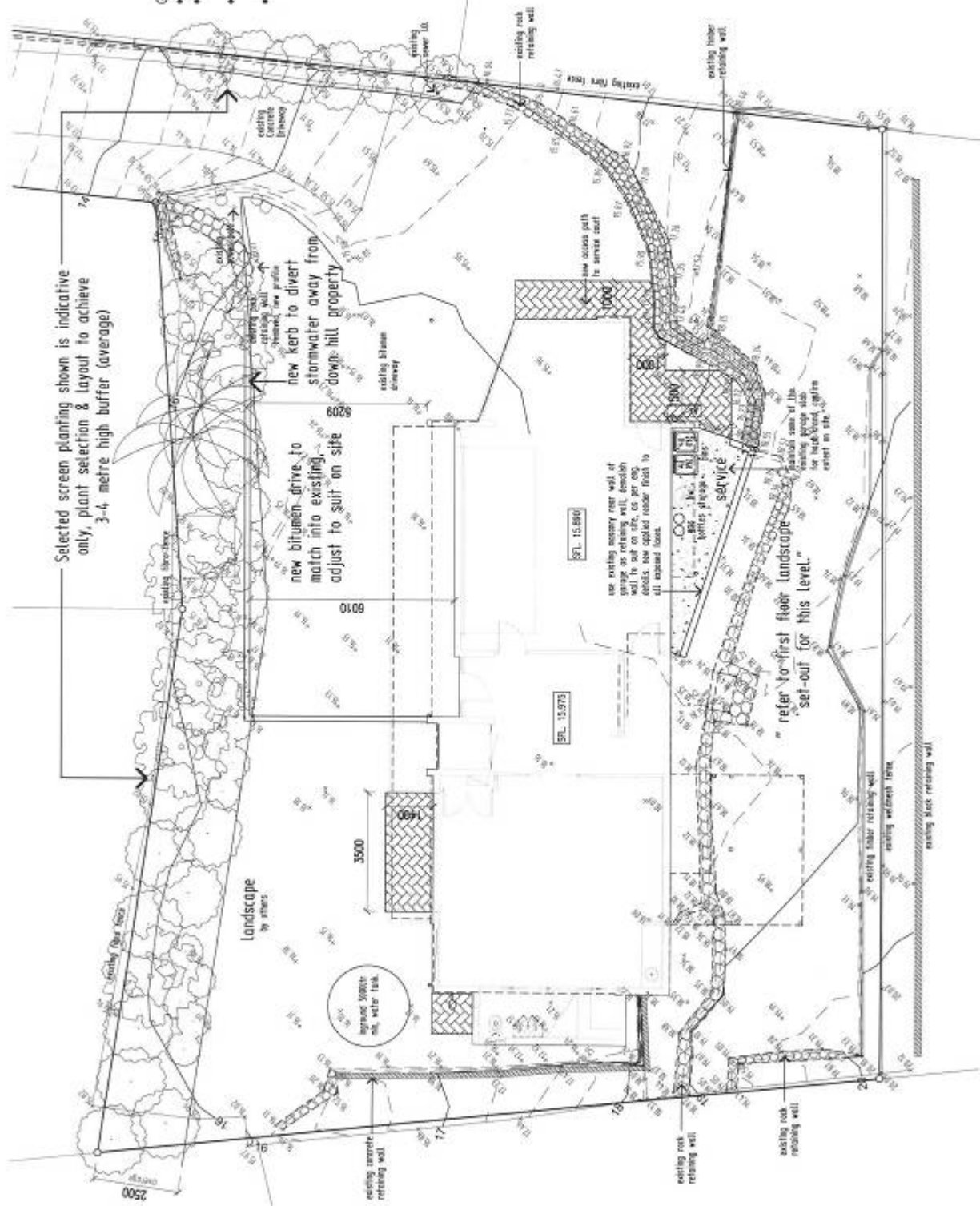
architectural design & pricing  
 bas 089988  
 mobile 0410 414 094  
 email - ggdesign@optinet.au

**CLIENT:**  
R & F Bailey  
**PROJECT:**  
Proposed residence

**ADDRESS:**  
Lot 2, Boomerang Street,  
Kingscliff  
NSW

DATE	DESCRIPTION
15/09/09	GROUND FLOOR LANDSCAPE SETOUT
15/09/09	SITE
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN
15/09/09	PLAN

**037-03 H**



Selected screen planting shown is indicative only, plant selection & layout to achieve 3-4 metre high buffer (average)

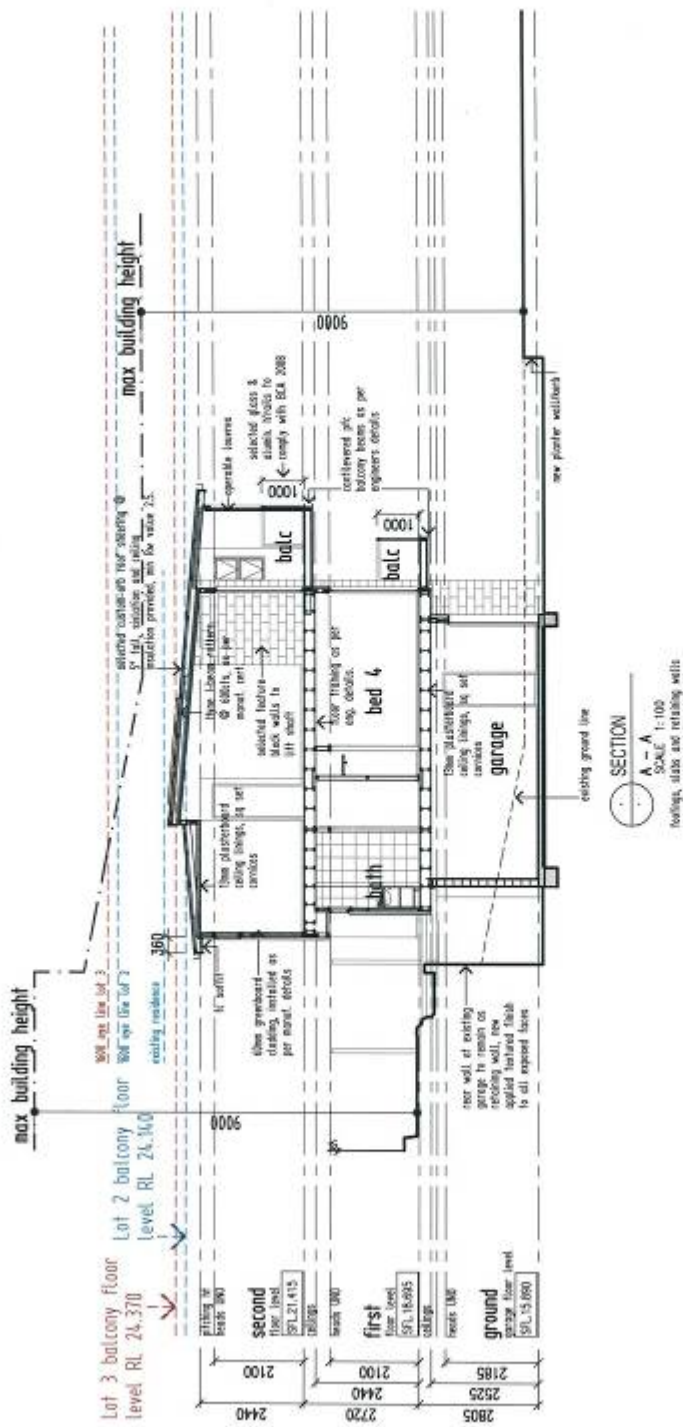
new kerb to divert stormwater away from down-hill property

new bitumen drive to match into existing, adjust to suit on site

use existing masonry rear wall of garage as retaining wall, removal wall to suit on site, on per esp. access, new applied roader finish to all exposed faces

refer to first floor landscape set-out for this level.





SCALE	DATE	BY
1:100	28/08/09	JH
DATE	BY	
27/08/2009	JH	
DATE	BY	
27/08/2009	JH	
DATE	BY	
27/08/2009	JH	
DATE	BY	
27/08/2009	JH	

Section A-A

LOCATION  
Lot 2, Boomerang Street,  
Kingscote,  
NSW

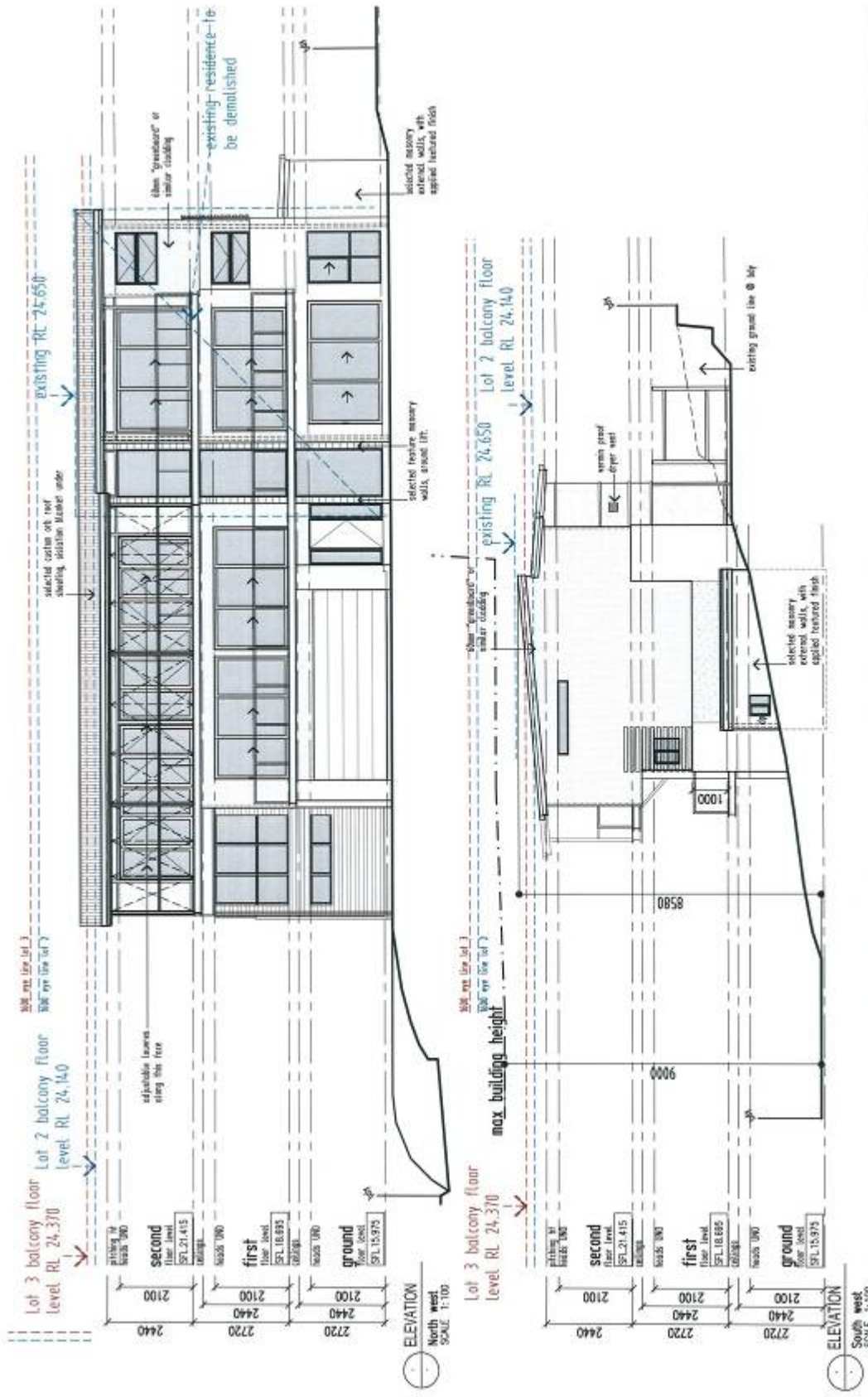
CLIENT  
R & F Bailey

PROJECT  
Proposed residence



**GARY GRIEVE DESIGN**  
 architectural design & drafting  
 1/85 108/2385  
 mobile 04 10 14 14 084  
 email - ggdesign@gmp.net.au

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DATE	DESCRIPTION	BY
1.12.08		JH/SL
20.08.08		DL/SL
28.08.08		DL/SL
22.10.08		DL/SL
27.09.08		DL/SL
27.09.08		DL/SL
27.09.08		DL/SL

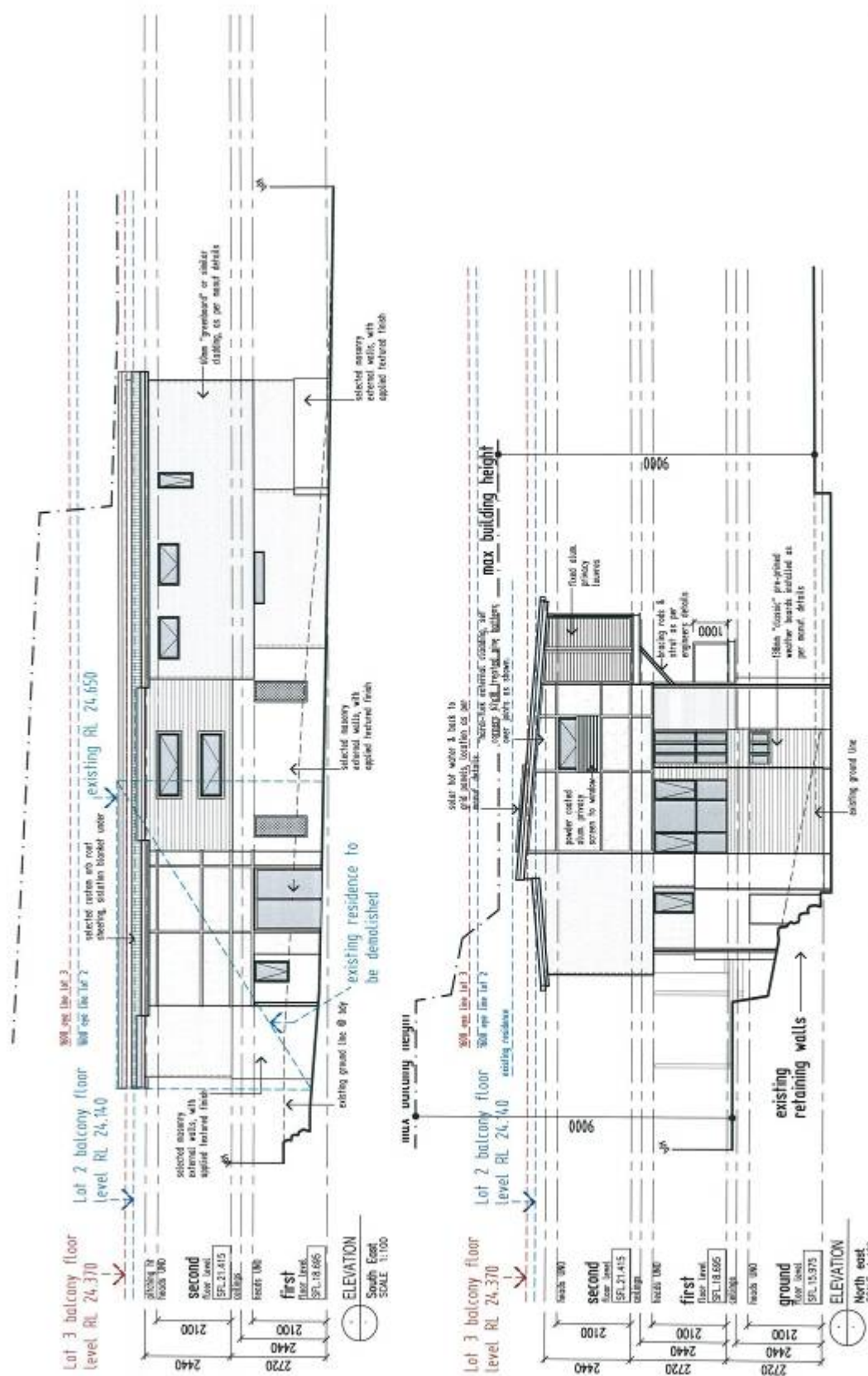
NO. 037-20 L

PROJECT: Proposed residence  
 CLIENT: R & F Bailey  
 LOCATION: Lot 2, Boomerang Street, Kingscliff, NSW

NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08
NO. 037-20 L	DATE: 27.09.08

**GARY GRIEVE DESIGN**  
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SCALE	DRAWN	CHECKED	DATE
1:100	MD	MD	20/08
DATE	PROJECT	LOCATION	CLIENT
20/08	037-21	Lot 2, Boomerang Street, Kingscote, NSW	R & F Bailey
01/09/2009	037-21		Proposed residence
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		
07/09/2009	037-21		

PROJECT  
Proposed residence

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

DATE  
20/08

SCALE  
1:100

PROJECT  
037-21

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

DATE  
20/08

SCALE  
1:100

PROJECT  
037-21

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

DATE  
20/08

SCALE  
1:100

PROJECT  
037-21

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

DATE  
20/08

SCALE  
1:100

PROJECT  
037-21

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

DATE  
20/08

SCALE  
1:100

PROJECT  
037-21

CLIENT  
R & F Bailey

LOCATION  
Lot 2, Boomerang Street, Kingscote, NSW

ELEVATIONS  
Sheet 2

The following photo montages have been provided to assist in evaluating the impact of the proposal noting that they have been provided as an approximate view only. The montages have been provided by the applicant on photos taken by Council's assessing officer.



**Figure 1- Existing view from 10 Boomerang street rear yard**



**Figure 2- OVERLAY view from 10 Boomerang street rear yard.**



**Figure 3 –Solid Overlay view from 10 Boomerang street rear yard.**



**Figure 4-Existing view from 3 Rob Roy Crescent rear balcony**



**Figure 5- Overlay view from 3 Rob Roy Crescent rear balcony**



**Figure 6 - Solid overlay view from 3 Rob Roy Crescent rear balcony**



**Figure 7-View north from 5 Rob Roy Crescent main outdoor balcony**



**Figure 8 Overlay view north from 5 Rob Roy Crescent main outdoor balcony**



**Figure 9- Solid overlay view north from 5 Rob Roy Crescent main outdoor balcony**



**Figure 10- Existing view south from 14 Boomerang street rear patio**



**Figure 11- Existing view south from 12 Boomerang street rear yard****ASSESSMENT:**

The application was lodged as a requirement of the Environmental Planning and Assessment Act 1979 and is required to be evaluated using the relevant terms of clause 79C of the Act.

As a part of the assessment process numerous site visits by Council's assessing officer have been undertaken to all of the surrounding properties involving many hours. Impacts have been discussed in person on site with those most affected and different vantage points were included. The applicant was advised early of Council's concerns and the likely modifications that would be necessary to allow reasonable compromise.

The assessment also utilised the expertise of Council Senior Urban Design Planner who produced 3D imagery of the proposal in context to the surrounding built form and gave assistance in gauging impact and direction for the applicants design changes reflected in the final plans now the subject of this report.

**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 2000Part 1 Clause 4 - Aims of the Plan

The aims or objectives of the plan are not compromised by the proposed development

Clause 8 Consent considerationsZone Objectives

The subject site is zoned 2(a) Low Density Residential. The primary objective of the zone relates to the provision for and maintenance of low density residential development with a predominantly detached housing character and amenity. The secondary objectives relate to allow some diversity of housing types provided it achieves good urban design outcomes and the density, scale and height is compatible with the primary objectives. The proposed development is consistent with the primary objective of the zone.

Cumulative Impacts

The proposed building at three storeys is consistent with other dwellings in the area and the pattern emerging of reconstruction of the older homes to larger more modern homes of two and three storeys. The proposed dwelling is unlikely to be dominant amongst the Kingscliff hill when viewed from a distance. The proposal is unlikely to have an unacceptable cumulative impact

---



on the community, locality or area of the Tweed as a whole. The battleaxe block is somewhat unique for the hillside and requires noting in regard to cumulative impact.

The cumulative weight of objections of several surrounding properties is considered to be relevant and it is considered that the final design has addressed reasonably the main collective concerns of bulk and scale and privacy by reducing the height and length and providing privacy screening of various kinds.

#### Part 3 Clause 15 - Essential Services

All essential services are available within the area.

#### Clause 16 - Height of Building

The proposed height of the development (8.65m) complies with the three (3) storey control under the TLEP 2000 and 9m maximum height limitation affecting the subject site under Section A1 of Tweed DCP.

#### Clause 17 - Social Impact Assessment

A social impact assessment is not required given the relatively minor nature of the proposal being satisfied that it is unlikely to have a significant social or economic impact in the locality.

#### Part 7 Clause 35 - Acid Sulfate Soils

The site is not affected by acid sulfate soils

#### Other Specific Clauses

None apparent

#### SEPP (North Coast Regional Environmental Plan) 1988

#### Clause 43 - Development Control- residential development

The proposed development is consistent with the objectives of the North Coast Regional Environmental Plan 1988 Division 2 for Urban Housing requiring broader consideration of roads, access to services, transport, site erosion and of maximising density.

#### SEPP No 71 – Coastal Protection

The development is generally consistent with the specific provisions and intent of Clause 8 of SEPP 71.

#### SEPP (Building Sustainability Index: BASIX) 2004

The applicant has provided a BASIX certificate for the proposal which is consistent with the required energy target.

**(a) (ii) Any Draft Environmental Planning Instruments**

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Section A1 of Tweed DCP applies and includes detailed parameters for improved site outcomes including the provision of height controls, deep soil zones, impermeable site area, private open space, landscaping, car parking, setbacks and general street presence.

Section A1 of the DCP is divided into two chapters.

Chapter 1 Building Types

The Building Type proposed is 'Housing'.

The DCP describes that housing developments generally contain up to two storeys and goes on to set the minimum and maximum standards required for this Building Type.

The DCP envisages primarily up to two storeys but does not prohibit three storeys, although it follows, that they demonstrate compliance with the mandatory controls of the DCP and ofcourse must be permissible by the number of storeys permitted by the Local Environment Plan 2000 for the locality.

The proposal meets generally the mandatory controls of the DCP and specifically for chapter 1 as outlined below.

Objectives

- To be well designed and attractive.
  - To be of an appropriate scale relative to the existing or desired future pattern of development.
  - To provide landscaped and deep soil areas on the lot.
  - To provide amenity for residents without compromising the amenity of neighbouring properties.
  - To address the street and to make a positive contribution to its established or envisaged streetscape character.
  - To maximise the sustainability of the building during its lifecycle.
  - To minimise the impact on the natural environment.
  - To minimise the impact on the natural landscape through inappropriate or unnecessary cut and fill.
-

## Controls

- a. Dwelling houses in existing urban areas must be consistent with the scale and character of surrounding dwelling houses or as envisaged through an adopted concept plan, locality plan, design statement or the like.
- b. In new subdivision areas dwelling houses are to be designed to conserve any natural landscape features of the site and surrounding area.
- c. In new subdivision areas dwellings must be consistent with any design scheme adopted for that subdivision.
- d. Deep soil areas are to be provided to the front and rear of sites in accordance with this Part.
- e. Entrances are to be clearly visible from the street, where the allotment has a street frontage, and there is to be a clear line of access to the building from the street.
- f. Dwelling houses are to meet the controls as set out in this Part A: Site and Building Design Controls.
- g. Dwelling houses on non urban zoned land shall not, for the purpose of this Plan, be restricted to the deep soil zone, setback and carport, garages and outbuildings controls where it is demonstrated that compliance with a particular control would be unreasonable in the circumstances.

The proposed building in its original form attracted many submissions objecting to the proposal particularly relating to the bulk and scale of the proposed dwelling, loss of views and loss of privacy. The final plans the subject of this report have addressed reasonably the concerns and are now considered to satisfy the objectives and controls of chapter 1 above.

More detail is provided in the latter sections of this report.

## Chapter 2- Site and Building Design Controls

### Design Control 1-Public Domain Amenity

#### Streetscape and Public Views and Vistas

The proposed development is to be constructed on a battleaxe block and will not be readily visible from the street or other public domain. Because of its location the proposed dwelling will not compromise the objectives of this control.

### Design Control 2 -Site Configuration

### Deep soil zones (DSZs)

A large area of deep soil zone is available at the rear and is considered consistent with the objectives of this design control. The depth in metres of the deep soil zone falls short of the prescribed minimum depth of 5.5 metres due to the constraints of an existing retaining wall for an area of some 4 square metres. This is considered minor and is offset by the fact that most of the rear width of the property is available as deep soil zone. Variation to this control is also permitted within the DCP by way of the development being constrained by the existing site conditions of an existing dwelling located on a subdivision created prior to the year 2000.

The front deep soil zone is compliant as applied to a battleaxe block.

### Impermeable Site Area

The area of the site is 789m<sup>2</sup> subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the plans submitted the development will create an impermeable area of approximately 50.36% and will comply with the design control. This will enable water to infiltrate on the site.

### External Living Areas

The dwelling makes provision for compliant external living areas in the form of balconies on the second and third level. The balcony on level 2 services primarily the bedrooms of the dwelling and the balcony of the third level will service the main living area of the dwelling. There is large boundary setback to the northern boundaries in excess of 5.5m and privacy to the lower properties will be enhanced by extensive landscaping on the north boundary and full height adjustable privacy screens on the upper balcony.

### Landscaping

A landscaping plan is compliant with the DCP has been submitted with the application and has been designed specifically to soften the building into its surrounds and strategically to provide privacy to the neighbours.

### Topography, Cut and Fill

The property is a sloping site with existing cut areas and existing retaining walls that generally comply with the prescribed maximum cut of 1.0m. The proposed dwelling incorporates a further cut of 300mm as a means of lessening the impacts of the development on adjoining properties in regard to views and bulk and scale. The variation is considered minor and reasonable considered the constraints of the site in context to the neighbouring properties.

### Design Control 3 -Setbacks

The proposal is consistent with or in excess of the set back controls; having a 5.5-7.3 metres northern boundary setback, 1.6-3.0 metres western boundary

---

setback, 5.7-6.9 metres eastern boundary setback and 5 metres from the southern boundary.

#### Design Control 4 -Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP.

The proposed dwelling house complies having two off street car parking spaces provided behind Council's building line and vehicle access to these spaces is considered adequate.

#### Design Control 5 -Height

##### Building Height

The proposed height of the dwelling house is 8.65 metres which is consistent the maximum design control height of 9 metres. The wall plate height is 8.20m which is consistent with the maximum design control height of 8.50 metres.

##### Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a ceiling height of 2.4m which was reduced from 2.7m in the original plans so as to reduce the overall building height. The proposal complies with the DCP.

#### Design Control 6- Building Amenity

##### Sunlight Access

The dwelling includes private open space by the provision of balconies orientated north and of the dwelling to access coastal and hinterland views and therefore will receive sufficient access to sunlight.

The proposed dwelling being a large rectangular shape will overshadow the adjoining southern side properties. The shadow diagrams submitted with the application show the extent of overshadowing of the original design which has not been required to be redrafted on the basis that the reduced building size will lessen the extent of shadow at the 9am and 3:00pm winter by approximately 2.5metres. The shadow diagrams indicate that some over shadowing will occur to different portions of southern properties during in the winter months as the sun moves through the sky. Shadowing is more extensive in the late afternoon as is to be expected from most developments.

The prescriptive requirement of this control is to ensure for neighbouring properties,

- Sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9 am and 3pm on June 21.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The proposed dwelling complies and exceeds the sunlight requirements above.

#### Visual Privacy

The proposed building generally complies with the objectives of this control.

The building has limited windows on the east, south and west elevations and those that are provided are designed with privacy screens or high level sills to minimise overlooking of adjoining properties.

With regard to the north elevation, the building orientates to the ocean view and privacy is a concern to the lower properties. In this regard the design incorporates a fixed privacy screen to the east end of the upper level balcony, full height movable privacy screens to the northern edge of the balcony and extensive landscaping screens.

These design features will provide for reasonable protection of visual privacy to the lower properties while at the same time allowing the building owner to take full advantage of the primary ocean views.

#### Acoustic Privacy

The sound insulation of this design complies with the objectives of this control and a suitable condition on the consent will be imposed to control air conditioning and other mechanical equipment.

#### View Sharing

The proposal satisfies this control as can be seen from the photo montages above. The building will not exceed the overall height of the existing building of 24.65m AHD and was reduced in overall length by 1700mm. This provides reasonable protection of important primary and iconic whole views of the properties above.

#### Natural Ventilation

The design complies with this control. The dwelling provides for adequate natural ventilation of the dwelling with openable windows and ample breeze paths.

#### Building Orientation

The dwelling has been sited on the property to optimize coastal views and solar access and complies with the objectives of this control.

---

### Building separation

The proposed building has been sited with large boundary setbacks and therefore achieves separation with other buildings on adjoining properties well in excess of the minimum 8m required.

### Design Control 7 – External Building Elements

#### Fences and Walls; Front, Side and Rear

The submitted architectural plans indicate that no fences are proposed with this application.

#### Roof

The design of the roof is consistent with the design requirements. A condition regarding the implementation of non-reflective roof materials has been included in the conditions.

### Design Control 8 -Building Performance

The proposal is consistent with this design control. As discussed previously the proposal is consistent with the SEPP (Building Sustainability Index: BASIX) 2004.

### Design Control 9- Outbuildings

There are no outbuildings proposed as part of this application.

### Design Control 10- Swimming pools and spas

There is no pool proposed as a part of this application

### Design Control 11- Tennis Courts

There is no tennis court proposed as part of this application

### Design Control 12 - Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.65:1 for the dwelling as the site has an area of 789m<sup>2</sup> and the site coverage is less than 50%. The proposed FSR for the dwelling is 0.52:1.

Even when the area of the battleaxe handle is disregarded from the site area the proposed building still complies with the required FSR (Site area would be 642m<sup>2</sup>, site coverage still less than 50% and FSR would be 0.61:1).

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

### Clause 92(a) Government Coastal Policy

---

The proposal is consistent with the goals and objectives outlined within the 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**

Context and Setting

The property is redevelopment within an established residential subdivision which has been specifically created for residential development. The proposed development is of a design generally in keeping with the architectural style and residential character of the area taking into account the redevelopment occurring overall on the Kingscliff hill and the nature of this particular battleaxe block. On a hillside such as this it must be reasonable expected and is usually the case that the higher properties will overlook lower properties. In this proposal the applicant has address these specific concerns as previously noted.

Access, Transport and Traffic

Minimal impact is envisaged, the proposed is a single residence within an approved residential subdivision.

Flora and Fauna

Minimal impact is envisaged; the site has no significant plantings and is part of an existing urban environment.

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

Surrounding Land uses/Development

The proposal is not inconsistent with the surrounding land use and the site is suitable for the proposed development. The property is located within an existing residential area and utilities of reticulated water, public sewer and power are provided to the site. A mixture of old and new dwellings with varying architectural styles exist within the area, the design of the dwelling is considered to be in keeping with the existing residential character of the area.

Site Orientation

The building has been centrally located on the property, with compliant boundary setbacks an orientation consistent with the design controls of DCP A1. The dwelling is set back 6 metres from the front property boundary and therefore complies with the set back requirements of DCP A1. The living areas of the dwelling have been mainly orientated to the north to optimise ocean views and breezes and solar access to the north.

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

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The application was notified to surrounding properties when first received and again after the first amendment as the application did not address the initial concerns of Council's assessing officer or those of the objectors. A second amendment was then received which made numerous changes to address the concerns and these final plans were viewed by and discussed with those objectors most affected. During the initial notification, eight (8) written submissions were received. The issues raised have been summarised below:

Issue	Objection Comment	Assessment
Bulk and scale is excessive	The building is too large for the site and will impact adversely on amenity of surrounding building occupants and create a "hemmed in feeling"	The building was reduced in height and length, a balcony extension protruding to the north was removed and buffering landscaping is to be provided. Site coverage, boundary setbacks, building height and floor space ratios all comply with or are better than Council's adopted DCP. The building when viewed from the lower properties will extend across the skyline much further to the east than the existing building but will be much further away (towards the south) by approximately an additional 5m and will be buffered by landscaping. The battleaxe block was created in 1954 with no restrictions to foresee today's concerns. It is considered that the applicant has made reasonable amendments to respond to concerns given his right to develop the valuable site which exists essentially in the middle surrounding properties. Redevelopment was to be reasonably expected of the subject site and while the proposed building will be more imposing on surrounding property occupants than the existing buildings, the change can be compared to when a long term vacant site in an established residential area is finally built upon.
Loss of views	The proposal will have an extremely severe adverse impact on existing views for higher properties	The building has been reduced in height to 24.555m AHD to be no higher than the existing roof being at 24.65m AHD and has been reduced in length towards the east by 1.7m. This has significantly improved the views to be maintained by the properties above as can be seen in the photo montages. The proposal is now considered to comply with principles of view sharing referenced in the Tweed DCP A1. A condition of consent has been included to ensure construction adheres to the total height constraints nominated in the plans.
Loss of natural ventilation	Cool breezes may not be as prevalent on the higher properties	While some reduction in northern breezes may be experienced the building is considered to have sufficient separation from surrounding building to allow natural ventilation.
Loss of privacy	The height above lower properties and extensive balcony and windows on the north elevation will impact on	This has been addressed in the amended plans by the inclusion of fixed and movable privacy screens as well as strategic landscaping. The building also has good boundary setbacks achieving reasonable separation. It must also be reasonably expected that dwellings on the lower part of a hillside will have reduced privacy as a consequence of higher dwellings.

Issue	Objection Comment	Assessment
	privacy	
Future trees may obscure views	Future tree planting may obscure views	While this is typically a civil matter between property owners a consent condition has been included to control mature landscaping height.
Safety of excavation	The earthworks may reduce the stability of the hillside	There are minimal earthworks and retaining work proposed beyond what exists and all works will be protected by the requirement to provide soil report and engineers design for the building. There is also no prior evidence of slip concerns in the area.
Landscaping effectiveness	Landscaping may not provide privacy in the long term	A condition relating to landscaping is included which requires the landscaping to be "...provided and maintained...". As with all conditions they are enforceable over the life of the development.
Items on roof	Will items such as solar panel exceed roof height and obstruct views	A condition has been included to prohibit all auxiliary installations other than antennas from exceeding the 24.555m AHD maximum height.

**(e) Public interest**

The proposed development raised no major implications in terms of the public's interest.

**OPTIONS:**

1. Council resolves to approve the development application subject to conditions
2. Council resolves to refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court which would incur financial costs to Council in defence.

Should the applications be approved there is potential for one or more of the objectors to lodge an appeal against the adequacy of the processing of the application which would incur financial costs to Council in defence.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

On the balance of the assessment of the relevant planning matters, it is considered that the proposed development is suitable for approval, subject to conditions.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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- 14 [PR-CM] Development Application DA09/0187.02 for an Amendment to Development Consent DA09/0187 for Replacing an Existing Old Structure with General Work Shed/Garage- Boat Storage Structure & SEPP 1 Objection to Building Setback - Correction of Setback Dimensions at Lot 14 DP 729137 No. 797 Clothiers Creek Road, Clothiers Creek

**ORIGIN:****Building & Environmental Health****FILE NO: DA09/0187 Pt1****SUMMARY OF REPORT:**

The approved plan identified the location of the work shed/garage with dimensions indicating 8 metres from the front boundary adjacent to Clothiers Creek Road. Due to the owners' misinterpretation, the setback was measured from the sealed Road surface, rather than the boundary line. The subject Section 96 application now seeks approval for the location of the work shed/garage in the same location but with plan dimensions of a 4.5 metre setback from the front boundary adjacent to Clothiers Creek Road.

As identified in the report on the original approved development application, the location of the proposed shed is actually an improvement to the current shed which is closer to Clothiers Creek Road. The proposed structure is therefore considered to raise no concerns in terms of the visual amenity of this locality.

**RECOMMENDATION:**

**That Development Application DA09/0187.02 for an amendment to development consent DA09/0187 for replacing an existing old structure with general work shed/garage- boat storage structure & SEPP 1 objection to building setback – correction of setback dimensions at Lot 14 DP 729137, No. 797 Clothiers Creek Road Clothiers Creek be approved and the consent be amended as follows:**

1. **Condition No. 1 is to be deleted and replace with Condition No. 1A which reads as follows:**

***1A. The development shall be completed in accordance with the plans approved by Council, amended plans and the Statement of Environmental Effects, except where varied by conditions of this consent.***

[GEN0015]

2. **The following new Condition No. 2.1 is to be added under the GENERAL heading:**

- 2.1 *Landscape screening along the roadside frontage of the proposed work shed/garage is required to the satisfaction of the General Manager or his delegate.***

[GENS01]

**REPORT:**

**Applicant:** Mr BR Neale  
**Owner:** Mr BR Neale and Mrs KH Neale  
**Location:** Lot 14 DP 729137 No. 797 Clothiers Creek Road, Clothiers Creek  
**Zoning:** 1(a) Rural  
**Cost:** \$11,000

**BACKGROUND:**

On the 14 April 2009, Council received a development application for a work shed/garage to be located at Lot 14 DP 729137 No. 797 Clothiers Creek Road.

The work shed/garage was proposed within the stipulated 30m setback (the plans indicated setback dimensions of 8m from the frontage of the property) requirement from a designated road, (Clothiers Creek Road) in regards to Clause 24 of the Tweed Local Environmental Plan 2000. The application contained a SEPP 1 objection that had a greater than 10% variation and therefore was referred to Council for determination as per Department of Planning issued circular dated 14 November 2008.

The application was reported to, and determined by Council on the 28 May 2009 with the nominated setback of 8 metres to Clothiers Creek Road.

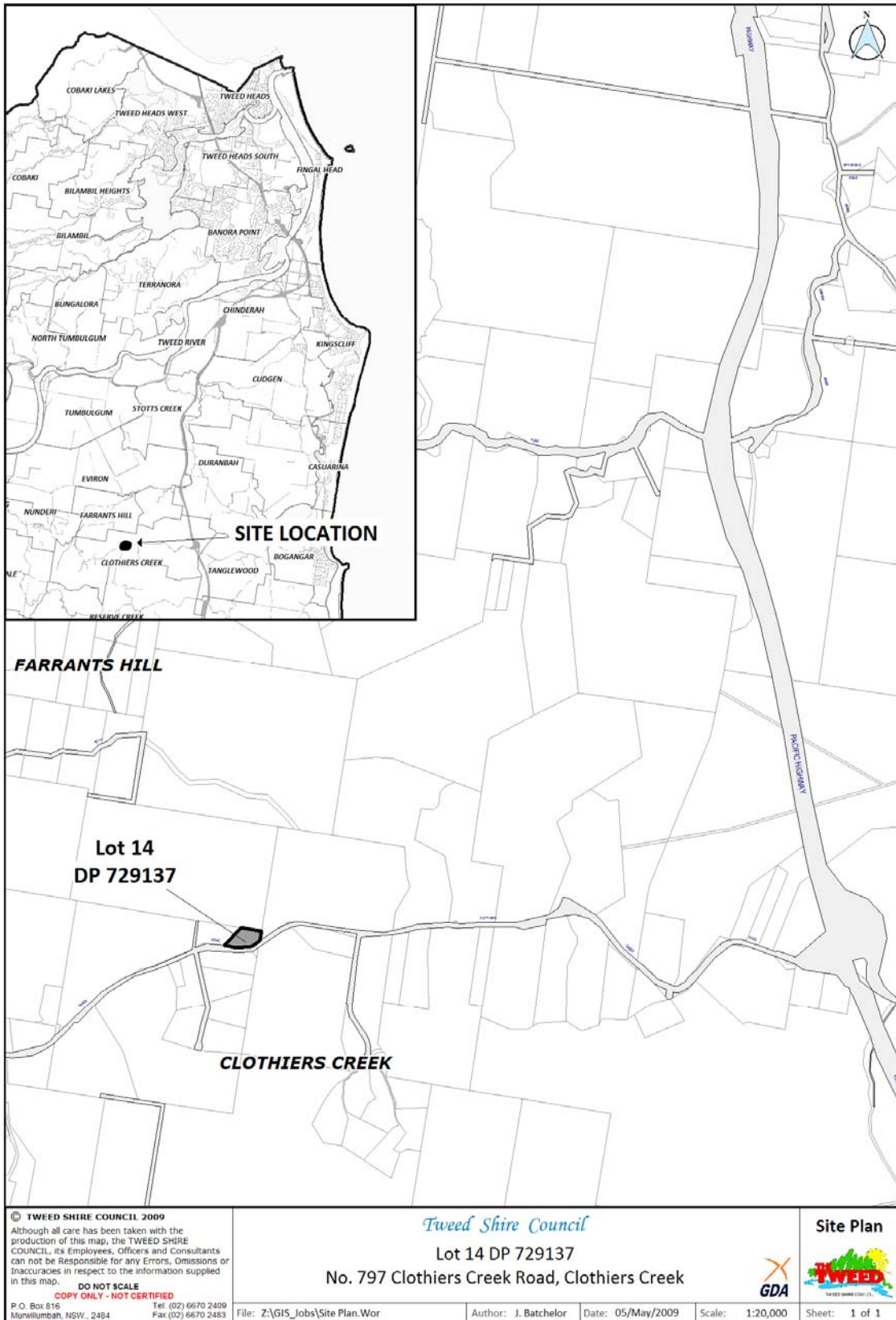
On the 30 July 2009 a slab inspection was carried out by a Council Building Surveyor who identified that the shed was not setback the nominated 8m from the site's Clothiers Creek Road boundary. It was evident that the owner had misinterpreted Council's setback requirements which had been measured from the sealed Road surface, rather than the sites front boundary line.

On the 6 August 2009, Council received an application pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979*, to modify development consent DA09/0187.

The subject Section 96 application seeks approval for the location of the work shed/garage with revised plan dimensions of 4.5 metres from the front boundary adjacent to Clothiers Creek Road. The applicants intended position of the shed is unchanged and at the time of the original site assessment thereby raising no further environmental or visual impact concerns. The owner is therefore proposing the shed in the same position on the site but correcting the nominated setback to 4.5 metres rather than the original 8 metres.

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

**SITE DIAGRAM:**



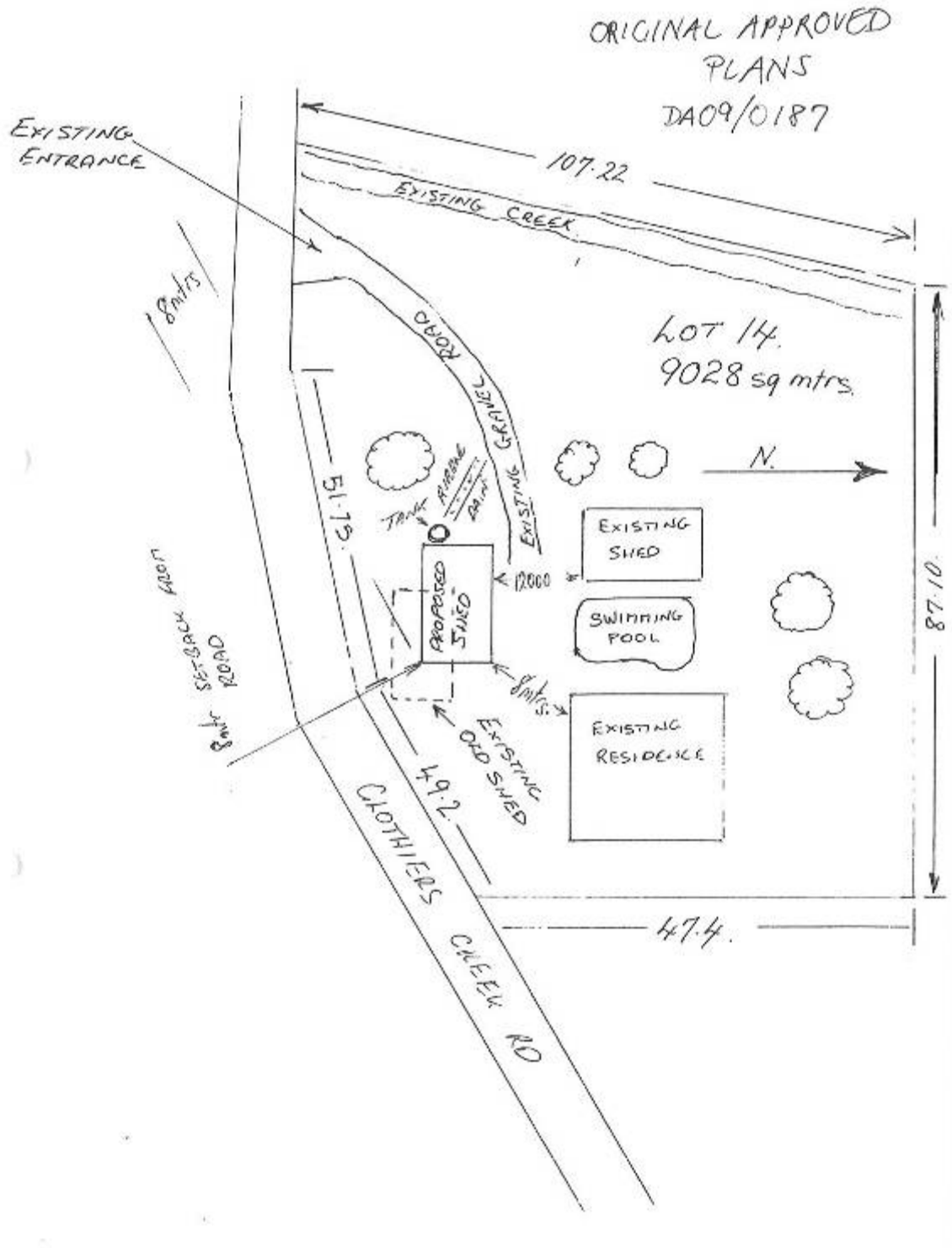
© TWEED SHIRE COUNCIL 2009  
 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  
**DO NOT SCALE**  
**COPY ONLY - NOT CERTIFIED**  
 P.O. Box 816 Tel: (02) 6670 2409  
 Murwillumbah, NSW, 2484 Fax: (02) 6670 2483

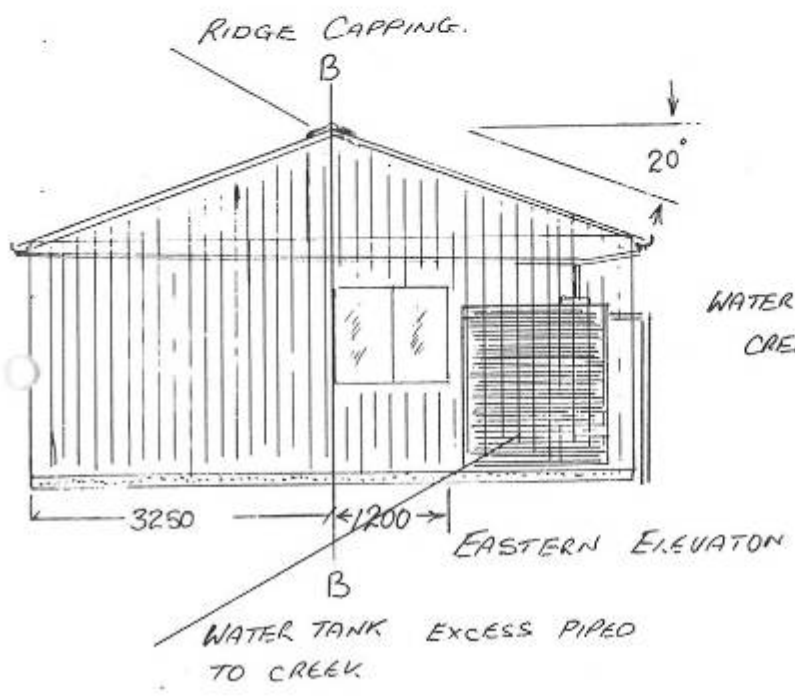
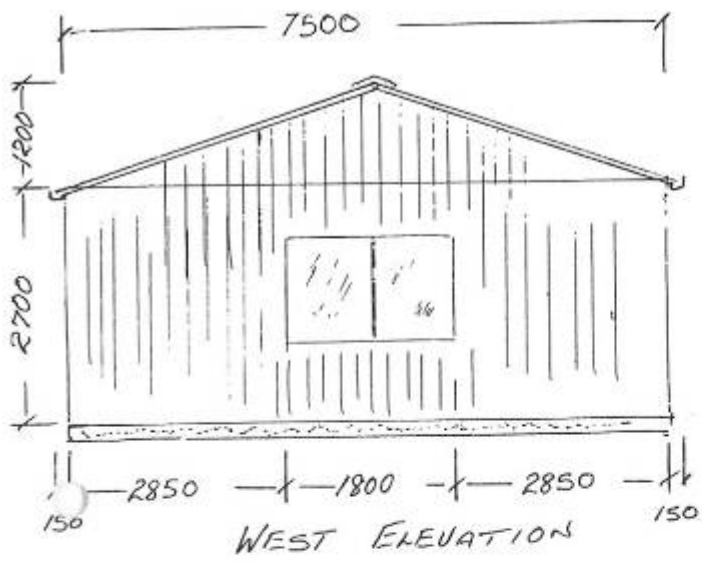
*Tweed Shire Council*  
**Lot 14 DP 729137**  
**No. 797 Clothiers Creek Road, Clothiers Creek**  
 File: Z:\GIS\_Jobs\Site Plan.Wor Author: J. Batchelor Date: 05/May/2009 Scale: 1:20,000

**Site Plan**  
   
 Sheet: 1 of 1

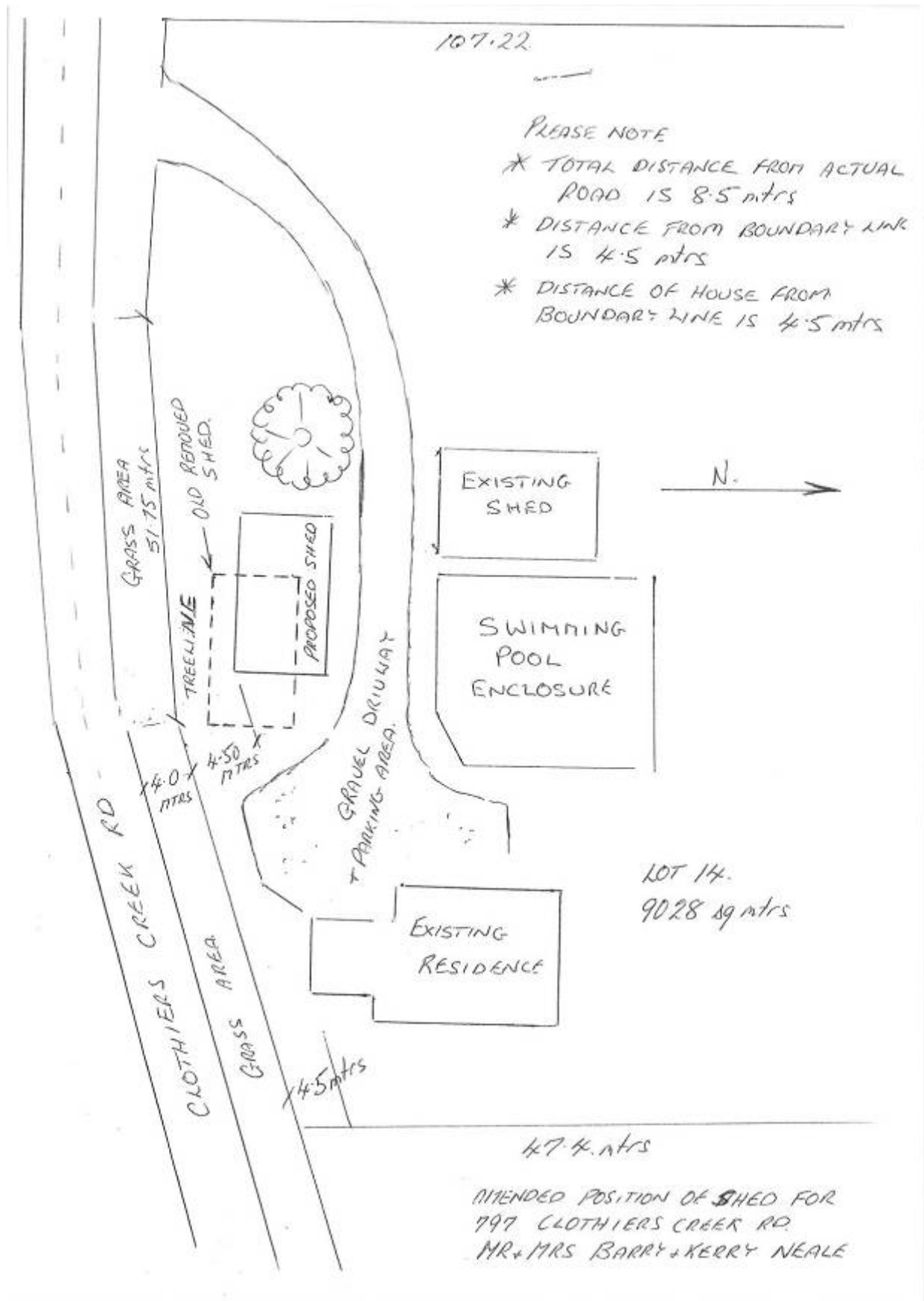


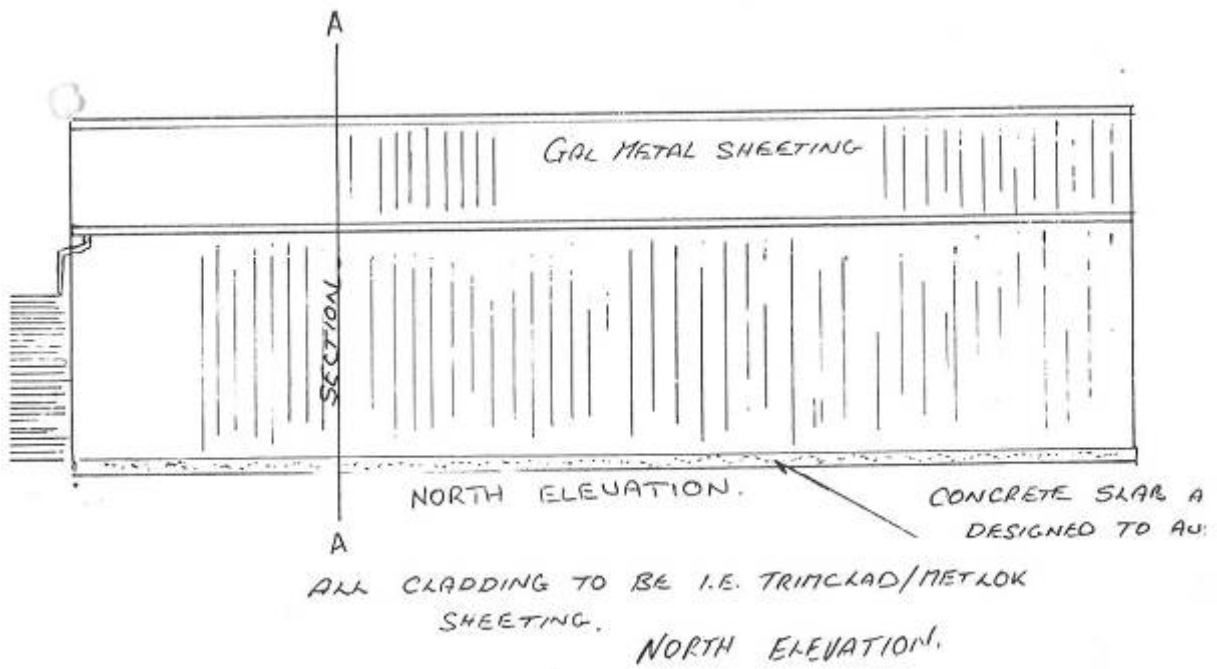
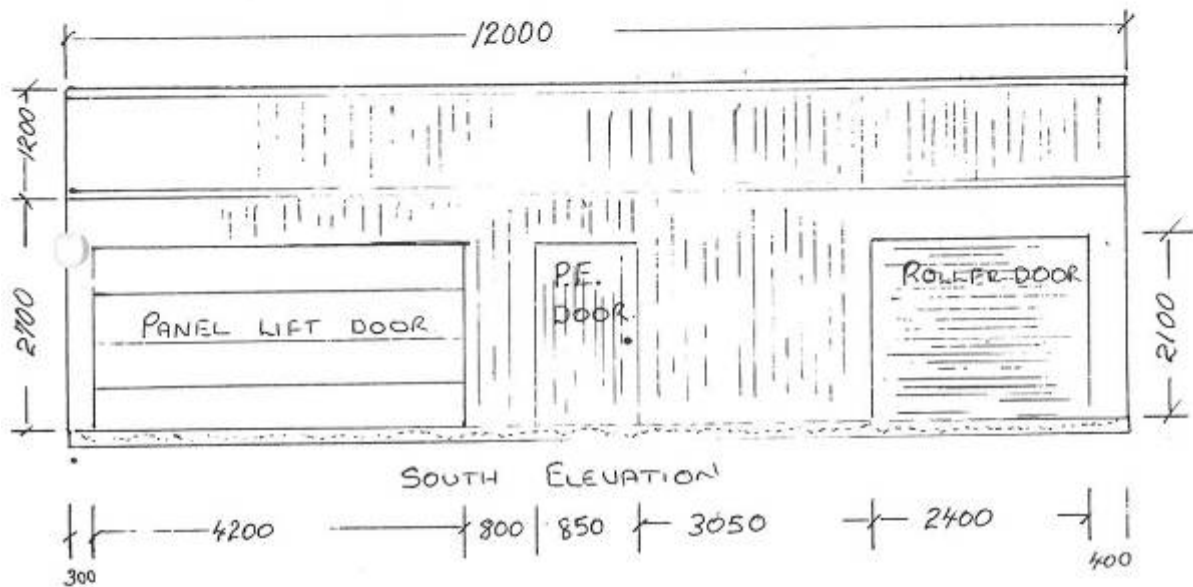
DEVELOPMENT PLANS:





WATER TANK TO CREEK VIA RUBBLE DRAIN





**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****Section 96 (Modification of consents-generally)**

- 1A (a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

The proposed modifications are considered to be of minimal environmental impact. The correction of the plan setback dimensions of the shed to within 4.5m metres of the front boundary adjacent to Clothiers Creek Road does not adversely impact on the capacity, efficiency or safety of Clothiers Creek Road and is not a development sensitive to traffic noise.

The original shed that has been situated on the property for approximately 50 years was located between 1-2 metres from the front boundary to Clothiers Creek Road. Therefore the 4.5 metre setback is an improvement and consistent with the existing dwelling located on the property which is setback 4.5 metres from the front boundary to Clothiers Creek Road.

There are also a number of difficulties with relocating the shed elsewhere on the property as the lower half of the property could be flood prone from the existing creek and any other location on the property would require extensive driveway upgrades.

The development does not detract from scenic quality of the locality. The shed is consistent with the existing built form and character of the rural area. The shed is surrounded by existing landscaping with additional landscaping proposed, which provides adequate screening of the shed.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The development as modified is substantially the same development for which the consent was originally granted. The development remains as a work shed/garage with the same dimensions, materials and vehicular access to the site.

- (c) *it has notified the application in accordance with:*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Development application was not notified.

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- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Development application was not notified.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

### **Section 79C (1) (Evaluation)**

- (1) *Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the 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 public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*
- (iiia) *any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

The following analysis is provided subject to the proposed changes pursuant to the relevant sections of the LEP and DCP.

### **Clause 22 – Development near designated roads**

The proposal incorporates the construction of a work shed/garage setback 4.5 from the front boundary adjacent to Clothiers Creek Road. The TLEP 2000 requires a building line of 30 metres to the designated road being Clothiers Creek Road.

The objectives of Clause 22 of TLEP 2000 are:

- To protect and improve the capacity, efficiency and safety of designated roads.

- To prevent development on designated roads that would detract from the scenic attractiveness of the Tweed Area.
- To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

In regards to road widening the application was referred to Council's Planning and Infrastructure Engineer who has advised that;

*"The proposed garage/work shed structure is a replacement for an existing old structure. The new structure will be constructed a few metres further away from the road reserve, but still within the 30m designated road setback. The works will not reduce road amenity, or require changes to the existing property access to Clothiers Creek road. There are no proposals to upgrade the public road that could affect the proposed structure.*

*As the proposal is an improvement over the existing situation and is consistent with the criteria set out in TLEP 2000 Part 5 Clause 22, no objection is raised to the proposed structure, or the request to vary the designated road setback."*

The development will not detract from the scenic attractiveness of the Tweed Area. Existing trees are located along the road boundary and further shrubs are proposed providing adequate screening from Clothiers Creek road to the proposed development.

The proposed 4.5 metre setback from a designated road in this instance is considered acceptable.

In regards to the impact of traffic noise on the development the application is for a non-habitable structure and therefore no concerns are raised. Also the proposed development will be located between Clothiers Creek road and the existing dwelling helping to reduce traffic noise.

### **A1-Residential and Tourist Development Code**

The proposed shed is located on non urban zoned land and is not restricted to the setback controls when demonstrated that compliance would be unreasonable. In this instance the 4.5 metres setback from the front boundary adjacent to Clothiers Creek Road is considered acceptable with the existing dwelling on the property setback 4.5 metres from the front boundary adjacent to Clothiers Creek Road.

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

The proposed changes are considered not to create an adverse impact on the natural or built environments or an impact on the social or economic environments of the locality.

- (c) *The suitability of the site for the development,*

The proposed changes are minor in nature, the site is considered suitable for the proposed changes.

(d) *Any submissions made in accordance with this Act or the regulations,*

No submissions

(e) *The public interest.*

The proposed modifications are considered not to negate the public's interest.

**OPTIONS:**

1. Council resolves to approve the Section 96 modification application.
2. Council resolves to refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination they have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Due to the nature and position of the site it is not considered that the proposal will set an unreasonable precedent in the area if it is approved subject to condition of consent.

**CONCLUSION:**

The proposed application is considered not to negate the public's interest. The correction of the plan setback dimensions to the designated road in this instance does not undermine the development standard contained within clause 22 of the Tweed LEP 2000. The proposed development is considered not to create a significant adverse impact on the natural or built environments or impact on the social or economical environments of the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**15 [PR-CM] Development Application DA05/0824.07 for a Section 96 Amendment to DA05/0824 for Multi Dwelling Housing Comprising Four (4) Units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0824 Pt3**

**SUMMARY OF REPORT:**

The resolution adopted by Council in respect of this Section 96 application at its meeting held on Tuesday, 21 April 2009, was *“that this item is to be deferred pending further advice and a report from the Director Planning & Regulation”*. The main purpose behind Council’s deferral was to verify that there was accurate plan information to base a determination on.

In response to this resolution Council officers have since held further meetings with the applicant prompting the receipt of further amended plans on 3 August 2009, relating to the subject Section 96 application. The changes primarily relate to the applicant’s attempt to readdress the constructed buildings non-compliance with the original, approved development application plans. This report seeks to assess the proposed changes and provide a recommendation for Council to determine.

The latest Section 96 plans and documentation outline the applicant’s intent to achieve compliance with the approved development application plans. From the officers’ assessment, the applicant has produced a height profile for the majority of the East-West length of the proposed building which is actually lower than the approved development application plans. Only the two sections of proposed roof at the rear (eastern) part of the building will now exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The main form of design amendments include:

1. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.
2. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
3. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.

The proponent claims:

*“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”*

It is pertinent to note that the amended plans show the addition of an eave on the roof section adjacent to Seaview Street (marked in Red on the northern and southern elevations and ‘roof plan and roof sections’). This eave is not supported with plans amended in Red deleting reference to the subject eave. The ‘roof plan and roof sections’ also incorrectly identifies the finished floor levels, 0.09m lower than proposed (and built). This error has been amended in Red on the subject plans.

Adjoining owners were notified of the latest amended plans relating to the subject Section 96 application. One submission was received from the owner of No. 28 Seaview Street, who reiterates previous concerns about inaccuracies in the information presented by the applicants, the inconsistencies and non-compliance with approved plans, and the view loss impacts of the proposed retention of two large Norfolk Pines trees in the front section of the site.

Given the applicant's agreement to alter the current unauthorised building works to generally conform to the height levels of the approved original development application, it is considered that the current Section 96 modification is suitable for approval. In this regard, the only exceedence of the approved roof height profile at the rear part of the proposed building (a variation of 5-6cm) will still allow for a reasonable degree of view sharing to adjoining properties, particularly for the owners of No. 28 Seaview Street.

On the basis of this proposed rectification works, as well as other advice reported to Council, the officers have also recommended that Penalty Infringement Notice (PIN) for the sum of \$1500 be issued in respect of the unauthorised works. The officers have also provided information on further criminal proceedings that can be pursued should Council consider it to be appropriate.

It is pertinent for Council to also take account of the attached Council report dated Tuesday 21 April 2009 in their assessment prior to determining this matter, particularly in respect of the other designated plan amendments of this Section 96 application, including the proposed retention of 2 Norfolk Pine trees in the front section of the subject site.

## **RECOMMENDATION:**

**That:**

**A. Development Application DA05/0824.07 for a Section 96 amendment to DA05/0824 for multi dwelling housing comprising four (4) units at Lot 4 Section 2 DP 7309, No. 26 Seaview Street, Kingscliff be approved and the consent be amended as follows:**

- 1. Condition No. 1 be deleted and replaced with Condition No. 1A which reads as follows:**

**1A The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos LP01 prepared by Boyds Bay Landscape & Environmental and dated 11.03.09, (as amended in Red on the approved plans) except where varied by the conditions of this consent.**

[GEN0005]

**2. The addition of Condition Nos 6.1 and 76.1:**

**6.1 The two Norfolk Pines (within the front setback adjacent to Seaview Street) are permitted to remain whilst it can be demonstrated the potential risk of harm to public safety is appropriately assessed. This shall be determined through the landowner(s) submitting to Council 6 monthly assessments by a suitably qualified Arborist (minimum Australian Qualification Framework Level 5) for a period of 2 years. The first report is to be submitted within 6 months of the date of this amended consent. A section 88B restriction is to be placed on the title of Lot 4 Section 2 DP 7309 giving effect to the terms of this condition.**

[GENNS03]

**76.1 Prior to the issue of an occupation certificate a surveyor's report prepared by a registered surveyor is to be submitted to Council detailing the height of the building at all relevant points as detailed on the approved plans Plan Nos 62531 sheet 1-4 of 7 inclusive prepared by Gordon Bismire and dated 09/02/07 (revised 24/02/09), Plan Nos 62531 sheet 5 of 7 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), Plan Nos 62531 sheet 1 of 1 prepared by Gordon Bismire and dated 09/03/09 (revised 07/07/09), (as amended in Red on the approved plans) to the satisfaction of Council or delegate. All levels are to be provided in Australian Height Datum.**

[POCNS03]

- B. A Penalty Infringement Notice for the sum of \$1500 be issued to Gordon Bismire Builder for the non-compliance with Development Consent DA05/0824 be issued.**
- C. The applicant be advised that if the rectification works have not commenced within 30 days from the date of this amended consent Council will commence Class 5 Criminal proceedings in the Land and Environment Court. Any additional breaches of the development consent as amended will result in Council commencing Class 5 Criminal proceedings in the Land and Environment Court.**



- D. Attachment 1 is CONFIDENTIAL in accordance with Section 10A(2)(g) of the Local Government Act 1993, because it contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

**REPORT:**

**Applicant:** Jeanleighmac Developments Pty Ltd, Mr GF Bismire and Mr WC Engwirda  
**Owner:** Mr GF Bismire, DM Househam, WC Engwirda and Jeanleighmac Pty Ltd  
**Location:** Lot 4 Section 2 DP 7309, No. 26 Seaview Street Kingscliff  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$1,100,000

**BACKGROUND:**

Development application DA05/0824 was approved on the 15 August 2006 for the construction of a two storey multi-dwelling housing development containing four units. The main issues of contention in this original application related to the proposed building height and view loss for adjoining and surrounding properties particularly for the adjoining southern property to the south, No. 28 Seaview Street.

Council received a Section 96 application (DA05/0824.01) on the 27 March 2008 following complaints that the building under construction had exceeded the previous approved maximum height levels. This application was refused by Council at its meeting held 16 December 2008 for the following reason:

1. *The unauthorised increase in building height will create an unacceptable visual impact/view loss on the neighbouring property No. 28 Seaview Street Kingscliff.*

Council also resolved as follows: -

- "B. Council's solicitors be engaged as soon as possible to commence appropriate action for unauthorised building works.*
- C. Council will not issue an Occupation Certificate until such breaches are rectified."*

Council's solicitors advised the applicant via letter dated 12 January 2009 to immediately cease construction and to rectify the unauthorised building works within 28 days of the date of the letter, or otherwise Council would commence proceedings in Class 4 of the Land and Environment Court.

The applicant lodged a second Section 96 application (DA05/0824.07) on the 8 January 2009, to rectify the breach in building height, amend the landscaping plan and amend the front fence and other building elements. In accordance with advice from Council's Solicitors, legal proceedings were deferred until the determination of the section 96 is finalised.

The section 96 application (DA05/0824.07) was reported to the Council meeting held Tuesday, 21 April 2009. Following concerns raised regarding the accuracy of the latest plans, Council deferred the determination to seek further clarification. The resolution adopted by Council was *'that this item is to be deferred pending further advice and a report from the Director Planning & Regulation'*.

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For a more detailed chronology of events refer to the attached previous Council report dated Tuesday, 21 April 2009.

Since the 21 April Council meeting, further meetings were held between the applicant and Council officers. As a result of those meetings, Council has received further amended plans on the 3 August 2009 (referenced revised 07/07/09), relating to the subject Section 96 application. This report seeks to assess the proposed changes and provide a recommendation for Council recommendation.

The amended plans propose:

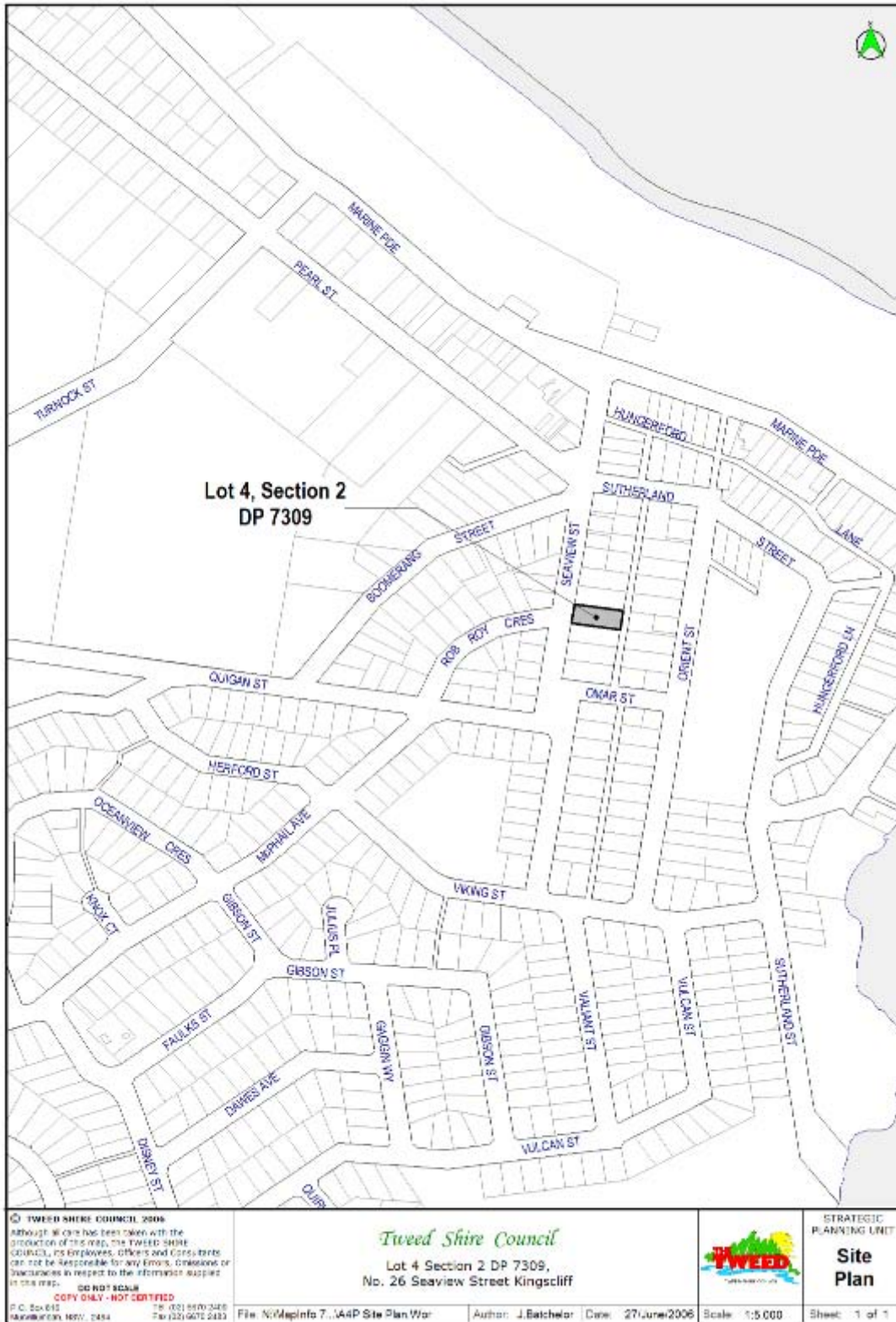
- “1. *Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.*
2. *Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.*
3. *Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”*

The proponent claims:

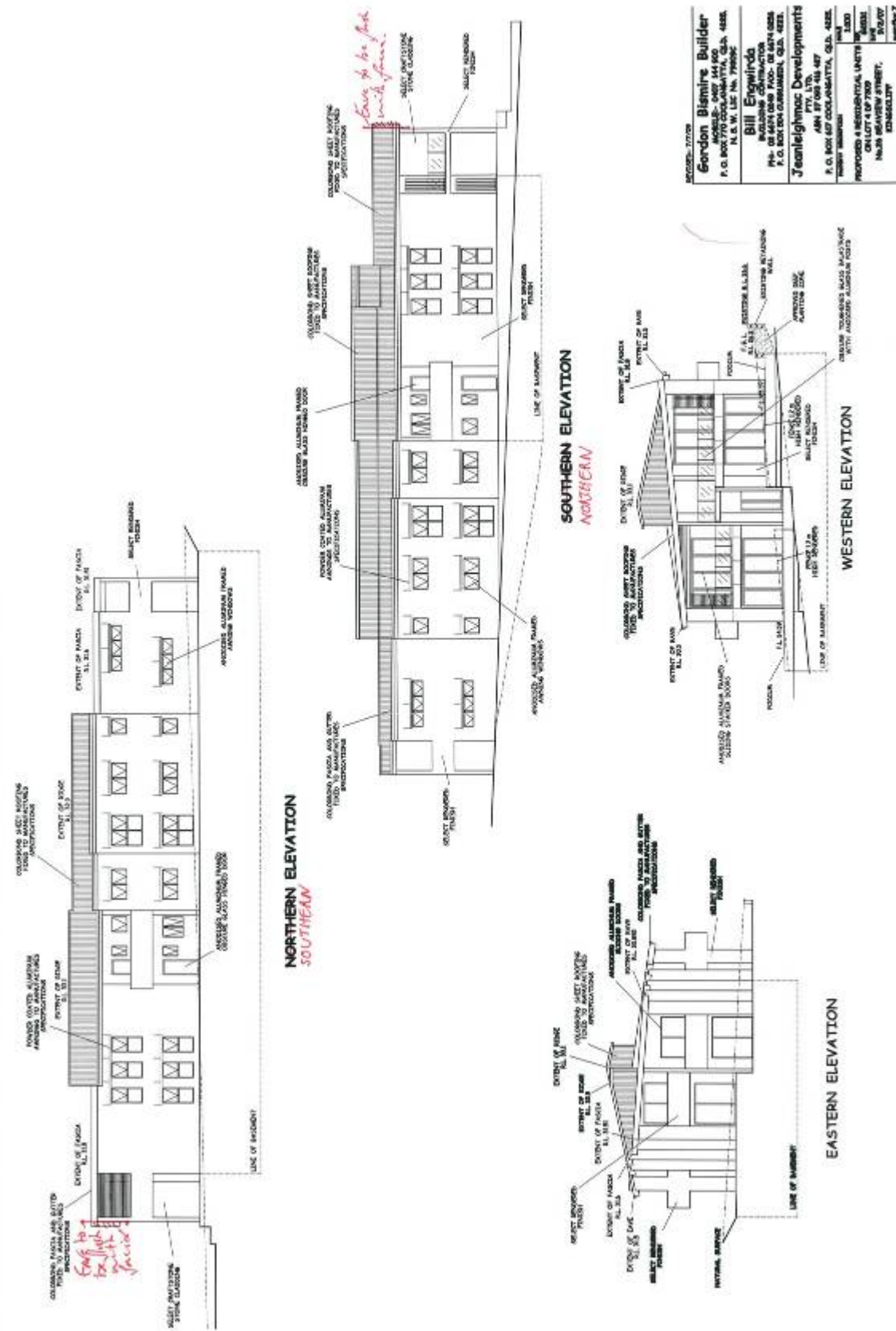
*“the plans have been amended so as to achieve greater compliance with the approved plans where the opportunity exists and where possible, in a manner consistent with the interpretation of the plans by the neighbouring residents.”*

The elevation plans still incorrectly reference the Northern and Southern elevations. The proposed floor levels on the roof sections relating to the ‘Roof plan and roof section plan’ are incorrect. These have been amended in Red on the proposed plans.

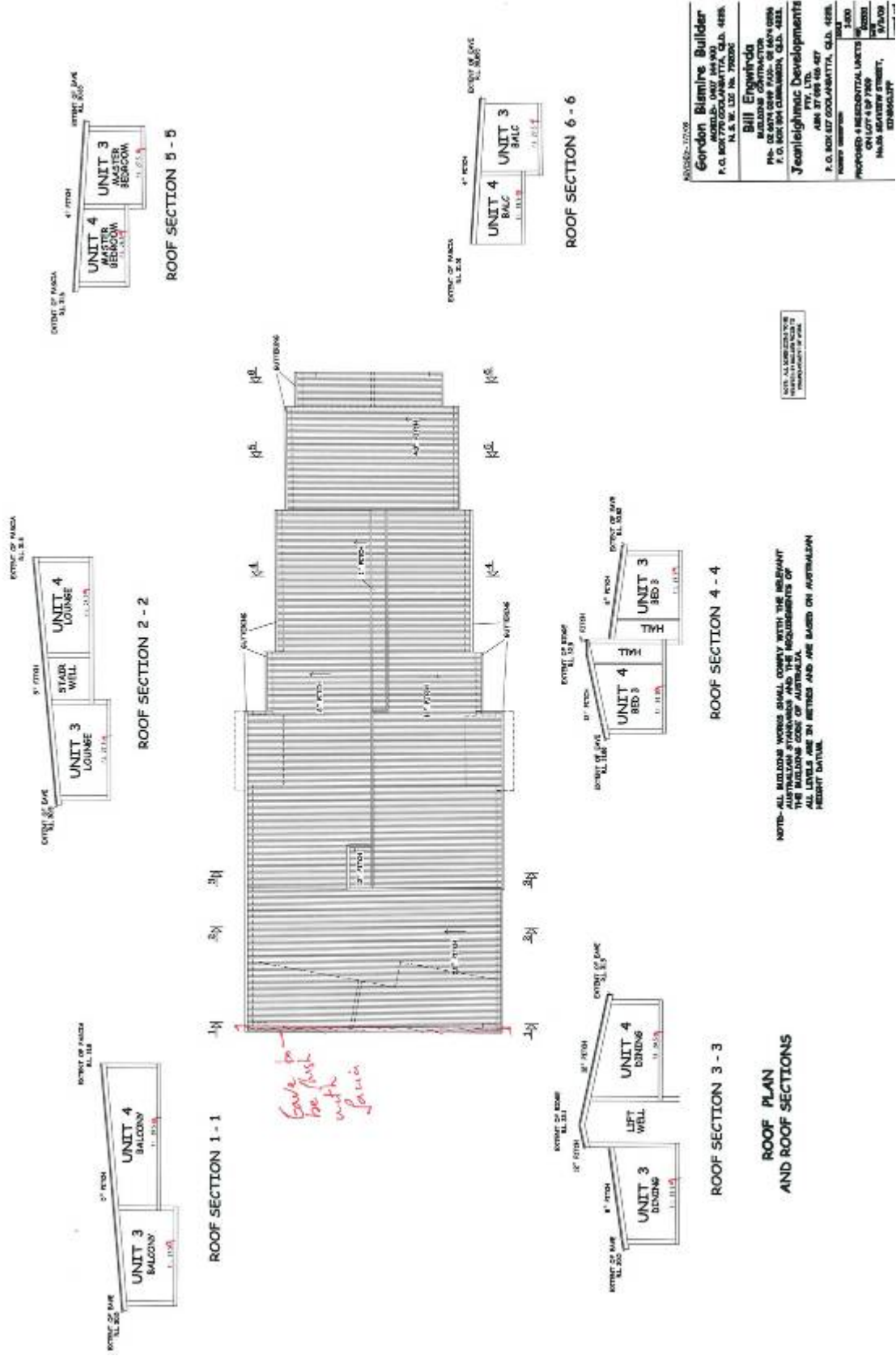
**SITE DIAGRAM:**

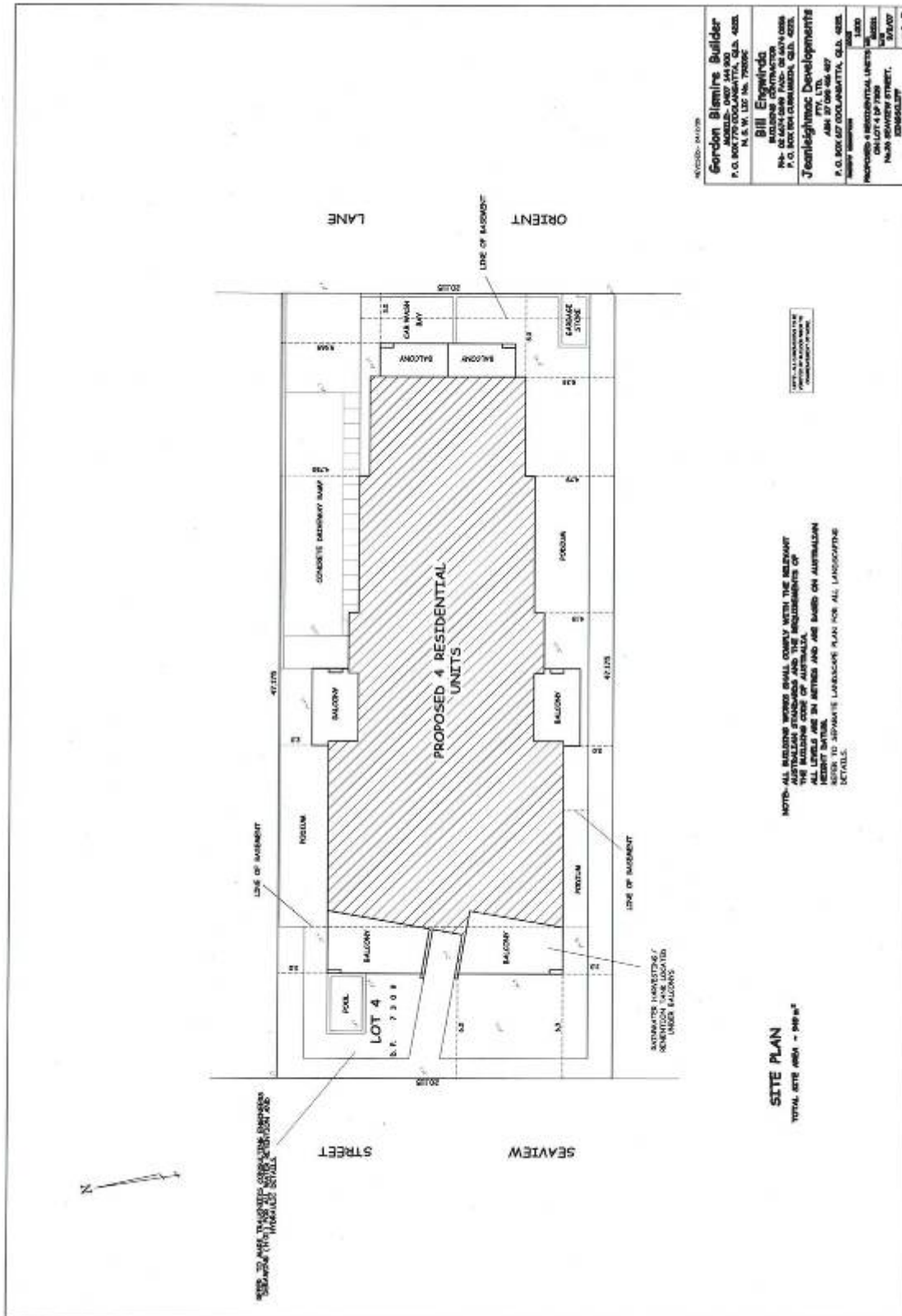


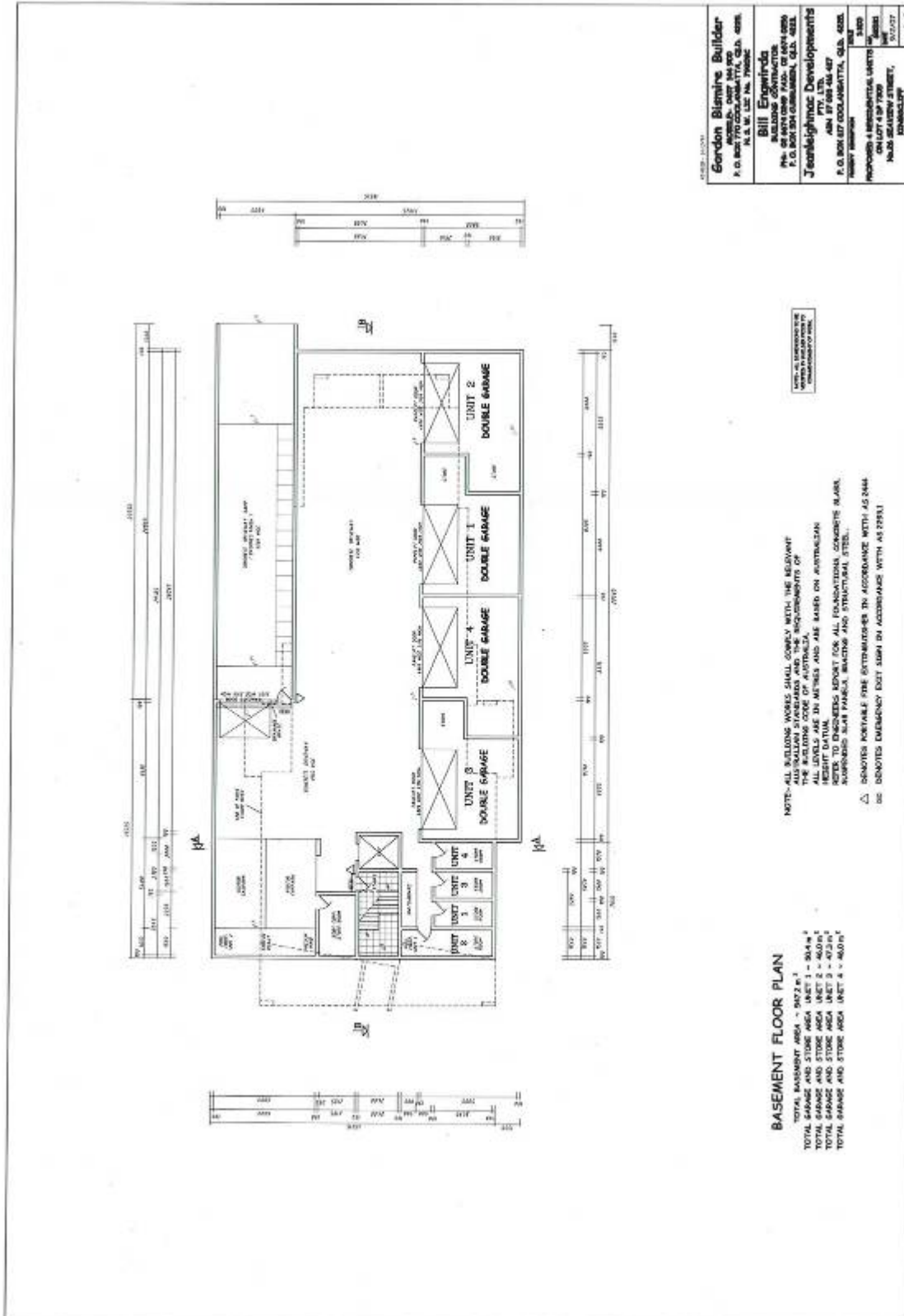
DEVELOPMENT PLANS:











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

**PROPOSAL**

The latest revised Section 96 application now proposes the following composite of modifications including the latest proposed reconstruction of the roof profile to achieve lower building heights:

1. The swimming pool located on the southern side of the property has been deleted.
2. The skylights on the upper level northern elevation have been deleted.
3. Minor changes to the entry door in the ground floor foyer.
4. The front balcony to Unit 4 (previously known as unit 3) now protrudes across the front elevation, where previously there was a three metre void. This element has been brought about by way of rationalizing the current design and to increase the area of private open space available to the upper level apartment.
5. The glass balustrade to the balcony facing the laneway (east elevation) is to be changed from glass balustrade to a rendered concrete block balustrade. This element has been brought about by way of rationalizing the design, increasing privacy and reducing costs to what is a secondary frontage.
6. Minor change to the bathroom layout on the top floor (bath deleted and shower repositioned).
7. Louver windows to the bathroom and laundry in the northern and southern elevations changed to awning windows.
8. Laundry window to the northern and southern elevations deleted.
9. The eave overhang adjacent to the lift has been reduced. This element has been brought about by way of design rationalization and a response to the need to maintain building heights around the lift overrun.
10. Pine trees to the front of the property to be retained.
11. The front fence height is to be reduced and constructed of rendered brick with a continuous height of 1200mm. The fence is proposed to run parallel to the finished ground level on the property boundary. The original consent was for a rendered brick fence with varying heights up to 1600mm high.
12. Revised landscaping plan.
13. Splitting of the front and rear roof sections (over the lounge and balcony areas fronting Seaview Street and the rear bedroom and balcony fronting the rear lane) from the main central roof section so as to reduce the height of these components

to reflect the approved plans. Actual proposed roof heights are shown within the submitted plans.

14. Adoption of a revised roof form to the front and rear, being a single pitch skillion so as to avoid splitting of the roof lines, thus preserving views further for the adjoining resident.
15. Adjustment to capping treatment on the central roof section at 32.9m AHD so as to generate compliance with the approved plans.”
16. Approve the following proposed floor levels:
  - o Unit 1 – 24.59
  - o Unit 2 – 25.59
  - o Unit 3 – 27.59
  - o Unit 4 – 28.59

Note these floor levels are all 0.09m (9cm) higher than the approved floor levels.

### **Assessment under Section 79(c)(1) of the EP&A Act, 1979**

The proposed modification is considered to be in accordance with Section 79(c)(1) Matters for consideration, as the modification is consistent with the planning rationale used to support the original approved DA05/0824 in respect of all relevant Council environmental planning instruments and development control plans. It is considered that the proposed modifications will not create any significant adverse impact on the natural or built environments or create social or economic impacts on the locality.

Further details of the assessment of these planning issues relating to of the Section 96 application are provided in the next section of this report.

### **ASSESSMENT UNDER SECTION 96 (1A) OF THE EP&A ACT, 1979**

#### **(a) Minimal Environmental Impacts**

The proposed modifications (as outlined in the previous section) numbered 1 to 9 are mainly modifications that are considered not to create an adverse impact on the natural or built environment.

The proposed modifications numbered 10 to 12 are modifications that have been considered in the Council report dated Tuesday 21 August 2009.

The proposed modifications numbered 13 to 16 are the latest modifications relating to building height, and are assessed below:

#### **1. Roof and Building Height**

The applicant has sought to remove the entire existing roof (as built) and proposes to rebuild the roof so the height of the building is lower than as measured on the approved plans for roof areas for the majority of the length of the building exceed the approved roof heights by a maximum of 5-6cm and the impacts of this non-

compliance are discussed below. An appropriate condition is recommended requiring a surveyor's report detailing height of the building at all relevant points prior to issue of an occupation certificate.

In assessing the proposed modifications, Council officers relied on the applicant's submission of a qualified surveyor's report on the building constructed to date. This information was further qualified through comparison with an additional surveyor's report provided by one of the objectors to the subject proposal, the owners of No. 28 Seaview Street.

The proposed roof contains five (5) main areas with different maximum height levels. These locations have been used as a reference point for the following scenarios:

1. The first level is located adjacent to Seaview Street,
2. The second level is the lift over run,
3. The third level is located within the centre of the building east of the lift over run,
4. The fourth level is located to the east or to the rear of the site,
5. The fifth level is located adjacent to Orient Lane

The roof levels as currently built are;

(measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 32.70m AHD
2. The second level = 33.42m AHD
3. The third level = 33.13m AHD
4. The fourth level = 32.32m AHD
5. The fifth level = 32.25m AHD

As measured on the Council approved plans by Council officers (DA05/0824) the following roof heights were calculated (measurements begin from Seaview Street and end at Orient Lane):

1. The first level = 31.85m AHD
2. The second level = 33.15m AHD
3. The third level = 32.95m AHD
4. The fourth level = 31.55m AHD
5. The fifth level = 31.45m AHD

The s96 application proposes to physically remove the existing roof structure and reform the pitch and roof height to the following levels:

1. The first level = 31.8m AHD
2. The second level = 33.1m AHD
3. The third level = 32.9m AHD
4. The fourth level = 31.6m AHD
5. The fifth level = 31.51m AHD

Difference between approved plans and proposed reformed roof heights are:

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1. The first level = 0.05m lower
2. The second level = 0.05m lower
3. The third level = 0.05m lower
4. The fourth level = 0.05m/5cm higher
5. The fifth level = 0.06m/6cm higher

As identified above the latest s96 plans propose a lower building height than previously approved for the main reference points 1, 2 and 3 being a combined length of 29.9m out of a total of 37.87m or 78.95% of the length of the building. Areas 4 and 5 exceed the approved roof heights by 5cm and 6cm respectively for a combined length of 7.97m or 21.04% of the length of the building.

The southern elevation is directly facing the neighbouring property and that which has the most impact upon their view opportunities.

The proponent provides the following points in regards to roof areas 4 and 5 exceeding the approved roof heights, which are supported;

1. In this regard, the proponent will be seeking a performance based solution as 1/3 ceiling space will be less than 2.4m high;
2. A roof pitch of only 4 degrees has been adopted in this area so as to lower the roof height at the upper pitch as much as possible, thus preserving the view lines for the neighbouring residents as much as is physically possible;
3. If the approved plans had of been pursued strictly in accordance with the approved plan, then well over half of the rear master bedroom on the upper level would have been inconsistent with the ceiling height provisions of the Building Code of Australia, where a height of only 2.1m was proposed between the finished floor level and the underside of the ceiling;
4. The proponent is also splitting the roof from the main roof section so as to lower both the pitch and height further where there is a view impact for the neighbouring property;
5. Given the limitations on floor to ceiling heights with respect to the rear bedroom, there is no ability to flatten the roof, with this action also resulting in an increase in the eave height on the down side of the current roof line. As such, it can only be concluded that the rear roof section has been lowered as much as possible without contravening the provisions of the BCA and indeed the development consent issued (with reference to Condition No. 3); and
6. With respect to the impacts upon the adjoining property that the heights now proposed still afford a reasonable level of view line access over the rear section of the property it is pertinent to note that the adjoining property provides for an approximate level of 26.5m AHD central to the rear portion of their land (where it adjoins the rear section of our clients building). Given a two (2) storey height limit and a physical restriction of 9m overall (giving a potential overall building height of 35.5m it is reasonable to assume that views over the proposed rear ridge of 31.6m AHD can readily be achieved.

In regards to the increase in eave heights on the northern elevations, the plans as proposed incorporate reduced eave widths to the original approved plans and therefore the eave heights will be higher than that approved. This is an important element as it explains why on assessment particularly of the northern elevation, the eave heights appear to be higher than that consented to. The higher eave heights are considered not to adversely impact on neighbouring properties particularly in respect to view lines.

On the basis of the above actions it is considered that the building and roof heights proposed in the revised plans will not create a significant reduction of the views of the adjoining property owners, No. 28 Seaview Street.

**(b) Substantially the same Development**

The development to which the modification relates is considered to be substantially the same development as the development for which the consent was originally granted.

**(c) Notification**

Due to applicant amending plans (revised 07/07/09) the application was re-notified. The documentation was on public display at Council's Murwillumbah and Tweed Heads Civic Centres during ordinary office hours and the Kingscliff library during library hours for a period of fourteen (14) days from Monday 17 August 2009 to Monday 31 August 2009 (public holidays excepted).

**(d) Consideration of Submissions**

One submission was received in relation to the modified plans. The issues raised in the submissions are summarised below;

- Unauthorised building works
- Building Height
- View loss
- Landscape
- Retention of existing "Norfolk Pine" trees, view loss & safety

Please refer to the previous section and Council report dated Tuesday 21 April 2009, for a detailed review and comment on these issues of objection.

**(e) Public interest**

The proposed development is considered not to negate the public's interest.

**OPTIONS:**

1. Approve the application subject to the recommended conditions.
2. Refuse the application and provide reasons.



3. Take action in respect of the unauthorised building works.
4. Take no punitive action against the applicant, owners or builders, in respect of the unauthorised building works through Class V of the Land and Environment Court.

Option 1 is recommend by the officers together with a PIN under Option 3. A PIN is recommended as opposed to prosecution in the Land and Environment Court or the Local Court, as approval of this application will result in the developer removing the roof structure and re-constructing the roof with a revised roof height profile generally in accordance with the original consent, which is considered sufficient penalty together with a PIN.

In terms of other variations for criminal proceedings under Option 3, the officers have previously sought legal advice from its' solicitors in respect of possible criminal proceedings under Class 5 of the Land and Environment Court, and also the Local Government Act. A copy of the advice was provided in a confidential attachment to the report for this matter to Council's meeting of 21 April 2009. Council may wish to proceed with the alternative criminal proceedings, should they deem it to be appropriate.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

As stated above, Council officers have recommended the issue of a PIN for the unauthorised building works. Council may wish to consider further prosecution action stated above, taking account of the costs that may be incurred by Council in carrying out such actions.

It is also considered that Council not proceed with its earlier decision to commence investigation for Class 4 proceedings under the Land and Environment Court in respect of the unauthorised works given that the applicant has sought to rectify this non-compliance through the latest amended Section 96 plans.

#### **POLICY IMPLICATIONS:**

Nil.

#### **CONCLUSION:**

The proposal is considered not to adversely affect the natural or built environments or negate the public's interest.

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. **Confidential Attachment** - Legal Advice from Marsdens Law Group (ECM 4983925)
-



2. Council of report to Council meeting 21 April 2009 in respect of DA05/0824.07 (ECM 4983926)
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**16 [PR-CM] Development Application DA08/1118.02 for an Amendment to Development Consent DA08/1118 for a Fruit and Vegetable Roadside Stall and Signage at Lot 11 DP 835413, No. 2 Boulder Close, Byangum**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1118 Pt1**

**SUMMARY OF REPORT:**

The subject application seeks approval for the location of the road side stall, approximately 5 metres from the property boundary adjacent to Kyogle Road. The approved plan identified the location of the stall approximately 7 metres from the property boundary adjacent to Kyogle Road. The applicant previously lodged an objection under State Environmental Planning Policy No. 1 to vary the 30 metre setback requirement from Kyogle Road, pursuant to Clause 24 of Tweed Local Environmental Plan 2000. Advice from Council's Solicitors has confirmed that a further SEPP1 objection is not required for the current Section 96 modification of the approved setback.

The variation to the approved plans is considered to have minimal environmental, traffic management and planning implications for this site and its road frontage, and it is therefore recommended that Council approve this application.

**RECOMMENDATION:**

**That Development Application DA08/1118.02 for an amendment to Development Consent DA08/1118 for a fruit and vegetable roadside stall and signage at Lot 11 DP 835413, No. 2 Boulder Close, Byangum, be approved and the consent be amended as follows:-**

- 1. Condition No. 1 is to be deleted and replaced with Condition No. 1A which reads as follows:**
  - 1A. The development shall be completed in accordance with the Statement of Environmental Effects and following plans:**
    - **Plan Nos 2209D prepared by P Hurcombe and dated 06/08/09,**
    - **Plan Nos 1 prepared by Avraham Mishtler and dated 11 August 2009,**
    - ***Stall plan. Unauthored and dated 3/3/09 and***
    - ***Site plan and signage plan. Unauthored and dated 3/3/09,*****(as amended in Red), except where varied by the conditions of this consent.**

[GEN0005]

- 2. The insertion of the USE heading after Condition No. 29**
-

**USE**

**3. Insert Condition No. 27.1 which reads as follows:**

**27.1 A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of an Occupation Certificate.**

[POCNS01]

**REPORT:**

**Applicant:** Mr A Mishtler  
**Owner:** Mr A Mishtler  
**Location:** Lot 11 DP 835413, No. 2 Boulder Close, Byangum  
**Zoning:** 1(a) Rural  
**Cost:** Nil

**BACKGROUND:**

On the 28 October 2008, Council received a development application for a road side fruit and vegetable to be located at Lot 11 DP 835413 No. 2 Boulder Close.

The application proposed a food stall twenty (20) square metres in area, associated signage and on site car parking spaces. The proposed stall will sell certified organic produce grown on-site via the approved green houses, (the green houses were approved under DA02/0988).

The proposed stall and signage were located within the stipulated 30m setback (approximately 7m from the frontage of the property) requirement from a designated road, (Kyogle Road) in regards to Clause 24 of the Tweed Local Environmental Plan 2000. The application contained a SEPP 1 objection that had a greater than 10% variation and was therefore referred to Council for determination as per Department of Planning issued circular dated 14 November 2008.

Three submissions of objection were received in regards to the proposal and twenty submissions of support inclusive of two petitions.

The application was considered and approved by Council at its meeting on 17 March 2009.

On 17 August 2009, Council received an application pursuant to Section 96 of the *Environmental Planning and Assessment Act, 1979*, to modify development consent DA08/118.

The applicant states that the stall was built two metres closer to the Kyogle Road boundary as a result of a two metre wide landscaping strip provided to satisfy the owners of Lot 10 of DP 835413 on the eastern boundary adjacent to the drive way and turn around bay. The two metre wide landscaping (unknowingly to the applicant) forced the access and turn around bay and road side stall two metres towards Kyogle Road.

The subject application seeks approval for the location of the road side stall five metres from the western boundary adjacent to Kyogle Road. The application also seeks to modify the approved signage from two (2) metres x one (1) metre to one point eight (1.8) metres x one (1) metre with a picture of a fruit or vegetable (e.g. A strawberry) with a dimension of 500mm extending from the top left hand corner of the sign.

The application requires an amendment to Condition No. 1 which relates to the approved plans and is provided below:



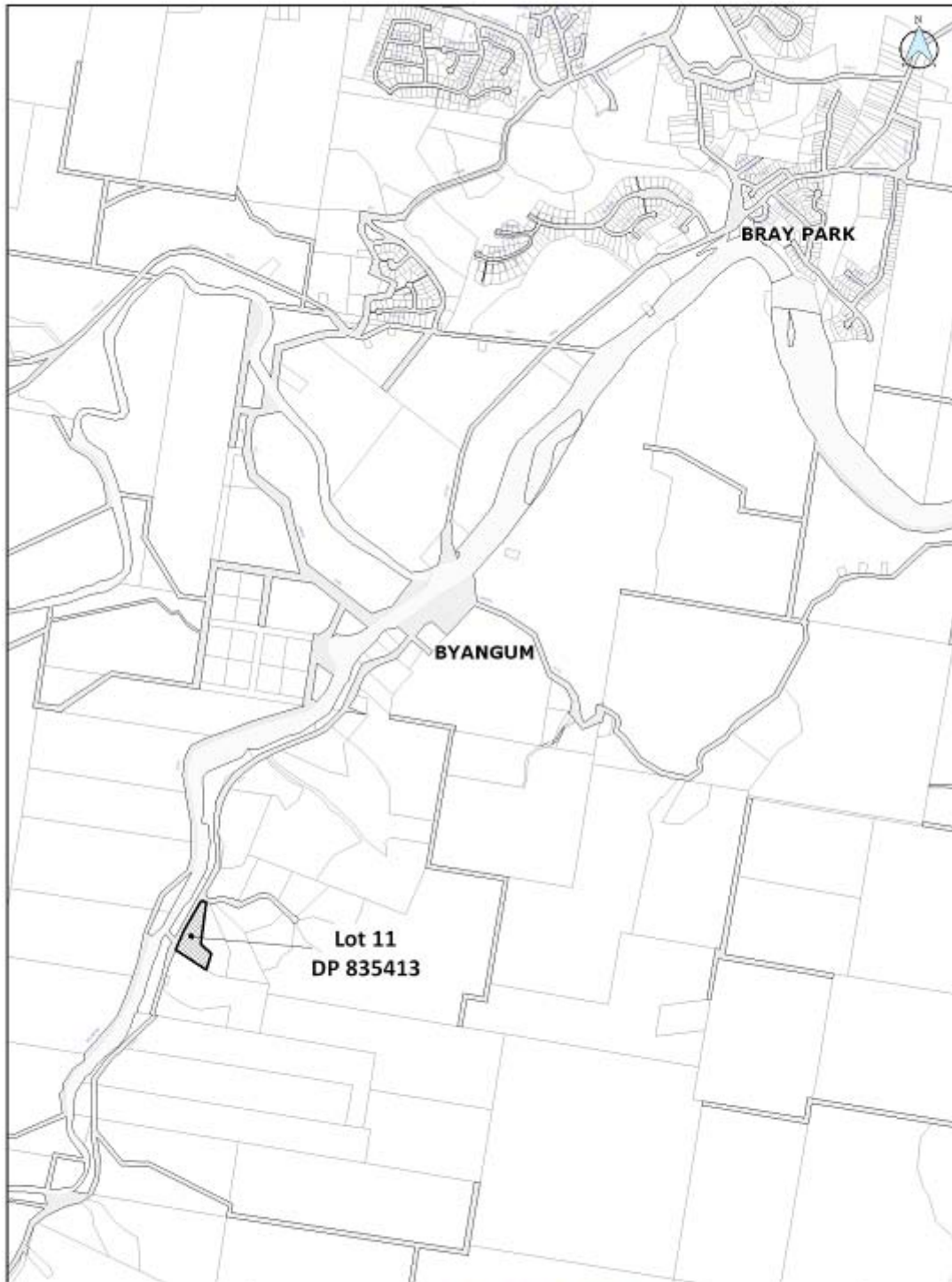
1. *The development shall be completed in accordance with the Statement of Environmental Effects and the following plans-*


- *Site plan and signage plan. Unauthored and dated 3/3/09.*
- *Stall plan. Unauthored and dated 3/3/09,*

*except where varied by the conditions of this consent.*

[GEN0005]

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2009          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 810      TEL 072 6618 2489          Mullumbidgee, NSW 2484      Fax: 072 6670 2482</p>	<p><i>Tweed Shire Council</i></p> <p><b>Lot 11 DP 835413</b>  <b>No. 2 Boulder Close, Byangum</b></p>	<p><b>Site Plan</b></p> 		
<p>File: Z:\695_John\Site Plan.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 09/March/2009</p>	<p>Scale: 1:20,000</p>	<p>Sheet: 1 of 1</p>

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**Environmental Planning and Assessment Act 1979****Section 96 (Modification of consents-generally)**

- 1A (a) *It is satisfied that the proposed modification is of minimal environmental impact, and*

The proposed modifications are considered to be of minimal environmental impact. The changes in location of the road side stall to within five metres of the eastern boundary adjacent to Kyogle Road does not adversely impact on the capacity, efficiency or safety of Kyogle Road and is not a development sensitive to traffic noise. Vehicles are able to enter and exit the site in a forward direction from Boulder Close with adequate car parking available on site.

The development does not detract from scenic quality of the locality. The stall is consistent with the existing built form and character of the rural area. The stall is made of timber and corrugated roof with earthy tones and is surrounded by existing landscaping, which provides adequate screening of the stall.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

The development as modified is substantially the same development for which the consent was originally granted. The development remains as one road side stall with the same dimensions, materials and vehicular access to the site and car parking.

- (c) *it has notified the application in accordance with:*

- (i) *the regulations, if the regulations so require, or*  
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The application was notified for a period of fourteen (14) days from Monday 24 August 2009 to Monday 7 September 2009.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Four (4) submissions of support and one submission of objection was received in relation to this application. The issues raised in the objection are provided in the table 1.1 below:

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ISSUE/COMMENT	ASSESSMENT
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ISSUE/COMMENT	ASSESSMENT
<p>1. In 2008 the owners of Lot 11 submitted the subject Development Application seeking approval to build a roadside stall. This was a development supported by the Mayor and some very vocal supporters from the outset and recommended for approval by planning staff despite a range of constraints applying to the property, including a 30m setback requirement from Kyogle Rd.</p>	<p>The application was assessed on its merits and approved by Council.</p>
<p>2. The proponents lodged a SEPP 1 objection to overcome the 30m setback constraint and lodged plans clearly showing a 7m setback of the wall of the fruit stall from the property boundary. The council approved and assumed the Ministers Concurrence for a 7 m setback. <b>Not 20 metres not 1 metre not 5.8 metres but 7 metres.</b> The submitted plan was drawn also showing the position of the proposed signage just inside the boundary.</p>	<p>This section 96 application (to which this report relates to) has been lodged with Council to amend the approved plans. The 5 metre setback has been assessed on its merits, with the proposal considered to satisfy the objectives of the LEP.</p> <p>This section 96 application (to which this report relates to) has been lodged with Council to amend the approved plans. The location of the proposed signage has been assessed on its merits, with the proposal considered to satisfy the objectives of the LEP and DCP.</p>
<p>3. A roadside stall is a building or place not exceeding 20 sq m in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail. (Tweed LEP definition verbatim)</p>	<p>Condition four and five of the consent reinforces the requirement of the definition.</p>
<p>4. The development envelope therefore must be contained in a 20 sq metre area by definition, the concrete surrounds and roof included. The development is not a roadside stall if it exceeds the area and is non-conforming by definition. The as built building is not a roadside stall as it does not fit in a 20 square metre area and you have reported otherwise to</p>	<p>An appropriate condition has been imposed on the development consent, restricting the size of the development to 20m<sup>2</sup>. It is pertinent to note that the gross floor area is measured from the outer face of the external enclosing walls. The concrete surrounds and roof area as stated within the objection are not included in measuring gross floor area (as per the Tweed LEP 2000).</p>

ISSUE/COMMENT	ASSESSMENT
<p>the council in the business papers. Why did you do this? These principles are well established – see <b>Agostino &amp; Anor v Penrith City Council [2002] NSWLEC 222</b></p>	
<p>5. The property owners, have previous experience with these concepts and have previously lodged material dealing with the required setback from Kyogle Rd (DA 02/0988) and indeed have breached these setback requirements before. This was reported by council and is on the public record. They were granted a previous section 96 variation to regularise the breaches to the detriment of their neighbours.</p>	<p>Public record will show that previous applications were assessed on there merits and determined appropriately.</p>
<p>6. We construed this as favouritism and a reward to the applicant given the contempt shown for council imposed conditions and the fact they ignored the requirement to adhere to lodged plans and construction requirements. We were denied protection of our amenity over the last five years or more and view this as punishment meted out to us by council for no other reason than we have been outspoken. We consider the council in the past has shown culpable bias against us and now, surprisingly, continue to favour the applicant by again accepting their application to vary council's approval to regularise their deliberate breach of conditions.</p>	<p>The applicant has a lawful right to lodge a s96 application. No further comment required.</p>
<p>7. Why should the applicant or anyone else bother to conform to the planning law when it is quite clear council and the PCA have no will to enforce lawful requirements? It is our view that this failure to enforce is a poor exercise of discretion when applied to repeat offenses and is</p>	<p>Council advised the applicant of the breach of consent. This s96 application has been lodged with Council in order to assess the breach and Council's options.</p>

ISSUE/COMMENT	ASSESSMENT
not characteristic of orderly planning and regulation.	
<p>8. There can be no misconstruction of the setback shown on the plan, and any suggestion that the setback pertains to the bitumen edge of the road is a pure fabrication to avoid the truth that the owners sought to maximise exposure of the stall to the road for purely commercial reasons. In addition they wilfully removed mature trees from the roadside boundary that would otherwise have screened the stall to achieve the position. (We have video of the contractor doing this under the applicants' instruction and before and after stills.)</p>	<p>A condition requiring the approval of a landscape plan prior to Occupation Certificate is to be placed on the development consent, to ensure adequate screening of the stall is achieved.</p>
<p>9. It is pertinent that the applicant say 3 inspections have occurred. The PCA obviously did not have a tape measure.</p>	<p>Not a planning issue.</p>
<p>10. Please advise the name of the PCA as this is perceived as a breach of duty and we intend to lodge a complaint to the certifier's disciplinary body. Actually council should do this but we suspect you will do nothing about it as in the past.</p>	<p>Not a planning issue. The objector can apply for the information through appropriate channels.</p>
<p>11. This is a formal request for you to not regularise the construction. We believe you should issue orders for deconstruction and reconstruction in accordance with the plans and conditions which were the subject of the Minister's concurrence. The applicant can sue the builder and or the PCA for the costs.</p>	<p>The s96 application is recommended for approval. The demolition and reconstruction of the proposal is considered not warranted.</p>
<p>12. In any event we do not believe a section 96 variation is an open option legally.</p> <p>This is a formal request for you to review section 96 (2), in that this application seeks to vary an</p>	<p>Council has authority to assume concurrence. The lodgement of a s961(a) application is correct.</p>

ISSUE/COMMENT	ASSESSMENT
<p>approval granted with the concurrence of the minister and that an application under section 96 (1) or 96 (1a ) is not available and section 96 (2) applies. In addition since the building has already been constructed you will note that the following statements within section 96 (2) stops consideration under section 96 entirely “...and before that consent as originally granted was modified (if at all), and...”</p> <p>“Subsections (1) and (1A) do not apply to such a modification”.</p>	
<p>13. We understand that a SEPP 1 objection can only be lodged with a development application. Council cannot consider a revised SEPP 1 objection with a section 96 Application.</p> <p>The General Manager and The Director Planning and Regulation should note that had the applicant stuck to the script there would have been no grounds for complaint. If council had considered a sensible fully compliant location for the roadside stall all of this could have been avoided.</p>	<p>The applicant previously lodged an objection under SEPP No. 1 to vary the 30 metre setback to Kyogle Road, pursuant to Clause 24 of Tweed LEP 2000. Advice from Council’s Solicitors has confirmed that a further SEPP1 objection is not required for the current Section 96 modification to modify the approved setback.</p> <p>The proposal has been considered on its merits with the amendment considered suitable for the subject site.</p>

Following assessment of all issues, it is concluded that the reasons for objection do not warrant refusal of the application in this instance. Consequently it is considered that the proposal is suitable for conditional approval.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

Section 79C(1) (Evaluation)

- (1) *Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the 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 public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*

The following analysis is provided subject to the proposed changes pursuant to the relevant sections of the LEP and DCP.

#### ***Clause 24 - Set backs to designated roads***

Clause 24 applies as the site is zoned 1(a), with the objectives of the clause to control development along designated roads. The required setback for a road side stall is 30m, with the proposed distance being five metres.

The proposed location of the road side stall five metres from the designated road is considered not to adversely impact on the capacity, efficiency or safety of Kyogle Road and is not a development sensitive to traffic noise. Vehicles are able to enter and exit the site in a forward direction from Boulder Close with adequate car parking available on site.

The development does not detract from scenic quality of the locality. The stall is consistent with the existing built form and character of the rural area. The stall is made of timber and corrugated roof with earthy tones and is surrounded by existing landscaping, which provides adequate screening of the stall.

The proposed five metre setback from a designated road in this instance is considered acceptable.

#### ***A4 - ADVERTISING SIGNS CODE***

The application proposes a reduction in the size of the approved signage from 2 metres x 1 metre to 1.8 metres x 1 metre with a 500mm diameter section protruding on the top left hand corner (for an image of a fruit or vegetable). The sign is proposed to be made of timber consistent with the road side stall.

The proposed signage is consistent with policy as the sign does not lead to visual clutter by being collocated on an existing street sign within the subject property and is consistent with the rural character of the locality.

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

The proposed changes are considered not to create an adverse impact on the natural or built environments or an impact on the social or economic environments of the locality.

- (c) *The suitability of the site for the development,*

The proposed changes are minor in nature, the site is considered suitable for the proposed changes.

- (d) *Any submissions made in accordance with this Act or the regulations,*

An assessment of the submission received is provided previously in this report (under s96 1(a) (d)).

- (e) *The public interest.*

The proposed modifications are considered not to negate the public's interest.

**OPTIONS:**

1. Approve the application subject to conditions.
2. Refuse the application and provide reasons and advise if Council's solicitors are to be engage to rectify the non-compliance.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil

**POLICY IMPLICATIONS:**

Nil

**CONCLUSION:**

The proposed application is considered not to negate the public's interest. The proposed development is considered not to adversely affect the capacity, efficiency and safety or detract for the scenic qualities of Kyogle Road as: the development is considered not to increase traffic on Kyogle road, (conditions advised by Council's Development, Traffic Advisory Group have been placed on the development consent), the design of the stall is in keeping with the existing rural character of the locality, vegetation exists between the stall and the road with a condition requiring approval of a landscape plan to assist in screening the stall from the road users perspective. The reduced setback to the designated road in this instance does not negate the development standard contained

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within clause 24 of the Tweed LEP 2000. The proposed development is considered not to create a significant adverse impact on the natural or built environments or impact on the social or economical environments of the locality.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**17 [PR-CM] MP08\_0034 - Submission to the Department of Planning regarding Environmental Assessment (EA) for a Residential Subdivision at Lots 2 and 3 DP 244652 Urliup, Bilambil and Hogans Road, Bilambil Village**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF0960/5 Pt5**

**SUMMARY OF REPORT:**

The Department of Planning (DoP) has received a major project application for a residential subdivision at Bilambil. The application is proposed to be carried in two stages, with stage one proposing the creation of 52 residential lots and one commercial lot, dedication and embellishment of the public reserve, all new roads and infrastructure together with completion of bulk earthworks. Stage 2 will involve the construction of the general store.

In terms of the officers overall assessment of the proposal, it is acknowledged that the mixed residential/commercial development is consistent with the Residential 2(d) Village zoning applying to the site, and with Council's broader strategic plans. However, the officers have identified a number of significant issues with the layout and the siting of the proposed open space and riparian zone, which should be addressed by the proponent.

Following an earlier request for Council's professional services, Council's Development Engineering Unit (DEU) (within the Planning and Regulation Division) entered into a consultancy agreement with the Department of Planning on 24 July 2009. The consultancy agreement requires the DEU to provide a draft assessment/report of the Environmental Assessment (EA), and final assessment/report and conditions on the Preferred Project Report (PPR) in regard to stormwater, subdivision design (including open space), wastewater, transport impacts (including roads), and earthworks and geotechnical. Although the DEU is providing detailed reports on the assessment of the more technical engineering issues to the DoP, Council officers have conducted a broader assessment of the full range of planning and environment issues relating to the proposal, and have drawn from the assessment by the Development Engineering Unit to inform a recommended submission to the Department of Planning. This report also contains a detailed summary of the submission made by the Bilambil Progress Association in respect of the proposal.

The main issues recommended for further investigation by the proponent include: the proposed park is not considered appropriate due to size, location, slope, and the inability to contain a central activity area or play equipment. A park in this location is likely to encourage tramping through the riparian area proposed for restoration, raising safety and vegetation damage issues. The preferred site for a small park is around the location of the rainforest remnant containing the Macadamia being proposed lots 22, 23, 24, and 25. Also proposed lot 55 is not considered appropriate as public open space as the site area

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is small, narrow with no recreation value. A second option for the location of public open space is lots 9, 10 and 11, which adjoin the Bilambil Hall. This would increase opportunities for use in connection with the hall, increase separation between dwelling and the hall, reducing the potential for noise impact on dwellings from the use of the hall.

There are a number of other issues that the officers have recommended that the proponent address in the preferred project plan.

**RECOMMENDATION:**

**That Council endorses the preparation of a submission to the Department of Planning regarding MP08\_0034 Environmental Assessment (EA) for a residential subdivision at Lots 2 and 3 DP 244652 Urliup, Bilambil and Hogans Road, Bilambil Village based on the matters identified in this report.**

**REPORT:**

**Applicant:** Jackson International Pty Ltd  
**Owner:** Jackson International Pty Ltd  
**Location:** Lots 2 and 3 DP 244652 Urliup, Bilambil and Hogans Road, Bilambil Village  
**Zoning:** 2(d) Village

**BACKGROUND:**

Following an earlier request for Council's professional services, Council's Development Engineering Unit (DEU) (within the Planning and Regulation Division) entered into a consultancy agreement with the Department of Planning on 24 July 2009. The consultancy agreement requires the DEU to provide a draft assessment/report of the Environmental Assessment (EA), and final assessment/report and conditions on the Preferred Project Report (PPR) in regard to stormwater, subdivision design (including open space), wastewater, transport impacts (including roads), and earthworks and geotechnical. Although the DEU is providing detailed reports on the assessment of the more technical engineering issues to the DoP, Council officers have conducted a broader assessment of the full range of planning and environment issues relating to the proposal, and have drawn from the assessment by the Development Engineering Unit to inform a recommended submission to the Department of Planning.

**THE PROPOSAL**

Council received the Environmental Assessment (EA) a residential subdivision at Lots 2 and 3 in DP 244652 Urliup, Bilambil and Hogans Road, Bilambil Village on 22 July 2009.

The project involves the following key elements:

- The creation of 52 residential allotments with areas ranging from 450m<sup>2</sup> to 691m<sup>2</sup>.
- The creation of one commercial allotment (Lot 53).
- The creation of a public reserve (Bilambil Creek Foreshore, Lot 54).
- Creation of a Sewer Pump Station site (Lot 56).
- The erection of a general store (250m<sup>2</sup>) and ancillary Manager's residence on the commercial allotment (Lot 53).
- Dedication of foreshore open space and revegetation of the area adjacent to Bilambil Creek.
- Creation of an easement for transmission lines 40m wide over the existing overhead transmission lines through the site adjacent to Hogans Road.
- Construction of the proposed roads within the subdivision to a sealed standard with layback kerb and gutter and street lighting.
- Provision of reticulated public water supply.
- Provision of reticulated public sewer.
- Construction of a sewer pumping station on the site and a sewer rising main from the site to Tweed Shire Council Sewer Pump Station No. 2018 located in Gollan Drive, Tweed Heads West.
- Re-landforming the site to achieve compliant road and allotment gradients.

The application is proposed to be carried in two stages as follows:

- Stage 1 creation of the 52 residential lots, dedication and embellishment of the public reserve, all new roads and infrastructure together with completion of bulk earthworks on the site to establish the final landform.
- Stage 2 will involve the construction of the general store.

## **THE SITE**

Land to which the application relates to is described as Lots 2 and 3 in DP 244652 Uriup, Bilambil and Hogans Road, Bilambil Village. The site has a total area of approximately 4.66 hectares and is bound by Hogans Road to the south, Bilambil Creek to the west, Uriup Road to the north and Bilambil Road to the east.

The previous use of the subject site, as a quarry, has removed the majority of the native vegetation. The site is highly disturbed and infested with exotic weeds, many of which are listed as noxious. Some patches of forested (rainforest) vegetation occur along the property boundaries and the within the Riparian Zone. Camphor Laurel dominates in these areas but there are remaining elements of riparian rainforest.

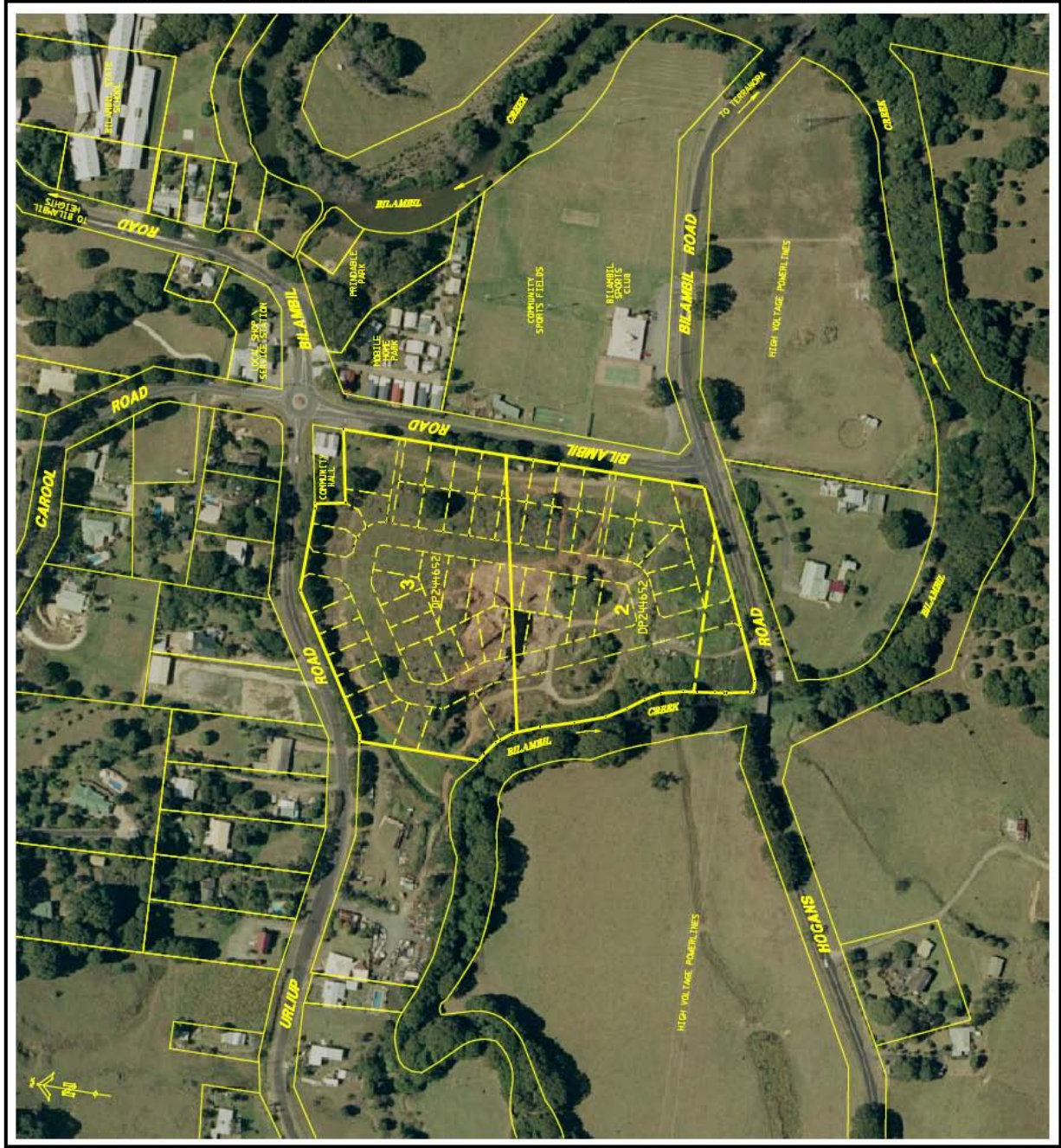
The key land uses within the existing village of Bilambil include:

- Approximately fifteen dwelling houses.
- Bilambil Creek Retirement Village (caravan park containing approximately 25 sites).
- A public primary school.
- A public hall (located on the north eastern corner of the site).
- A service station, post office and convenience store.
- A public park (Prindable Park) adjacent to Bilambil Creek containing picnic shelters, playground equipment and landscaping.
- Bilambil sports fields comprising a turf cricket wicket, football fields (some floodlit), tennis courts, cricket practice nets, a licensed clubhouse and amenities building.

Land surrounding the Village is mainly used for grazing purposes.

**DEVELOPMENT PLANS:**

Rev B - 04/03/09 - Amend layout Rev A - 04/08/08 - Add info Revision Client <b>JACKSON INTERNATIONAL PTY LTD</b>	DATE OF PHOTOGRAPHY: APPROX. MARCH 2007 THE TITLE BOUNDARIES AS SHOWN HEREON WERE NOT MARKED AT THE TIME OF SURVEY AND HAVE BEEN DETERMINED BY PLAN DIMENSIONS ONLY & NOT BY FIELD SURVEY. THE PROPOSED BOUNDARIES AS SHOWN HEREON (DASHED) ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN, LOCAL AUTHORITY APPROVAL AND REGISTRATION IN THE DEPARTMENT OF LANDS NSW.
THIS NOTE IS AN INTEGRAL PART OF THIS PLAN. <b>LOCALITY / CONTEXT PLAN</b> Of Lots 2 and 3 in DP2444652 Bilambil Road, Bilambil Village Parish of TERRANDRA County of ROUS	<b>B &amp; P SURVEYS</b> CONSULTING SURVEYORS 30 Bay Street Tweed Heads NSW 2485 Australia Telephone: (07) 5536 3611 Fax: (07) 5536 3701 Email: <a href="mailto:tweed@bpsurveys.com.au">tweed@bpsurveys.com.au</a> Webpage: <a href="http://www.bpsurveys.com.au">www.bpsurveys.com.au</a> Offices Also At: Surfport Paradise Murwillumbah Ph: (07) 55590499 Ph: (02) 766721924
Scale 1: 2500 REF. No. T15337	Level Datum Date 31/07/08 Drawing No./Size 17151 D Rev. B



Rev D - 20/05/09 - Amend layout  
 Rev C - 16/03/09 - Amendments  
 Rev B - 12/03/09 - New Layout  
 Rev A - 04/08/08 - addition info

Revision  
 Registered Proprietors

Chk'd

**JACKSON INTERNATIONAL PTY LTD**

**Important Notes:**  
 THE PROPOSED LOT BOUNDARIES, NUMBERS, AREA'S AND DIMENSIONS AS SHOWN HEREON ARE PRELIMINARY ONLY AND SHOULD BE USED FOR INFORMATION PURPOSES ONLY. APPROVAL AND REGISTRATION IN THE DEPARTMENT OF LANDS NSW.

**Sheet Layout**

SHEET 1

SHEET 2

SHEET 3

**IMPORTANT NOTE:**  
  
 ALL UNDERGROUND SERVICES SHOULD BE LOCATED AND DEPTH MARKED BEFORE ANY WORK IS COMMENCED.

THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

**PROPOSED SUBDIVISION PLAN**

Of Lots 2 and 3 in DP244652  
 Bilambil Road, Bilambil Village

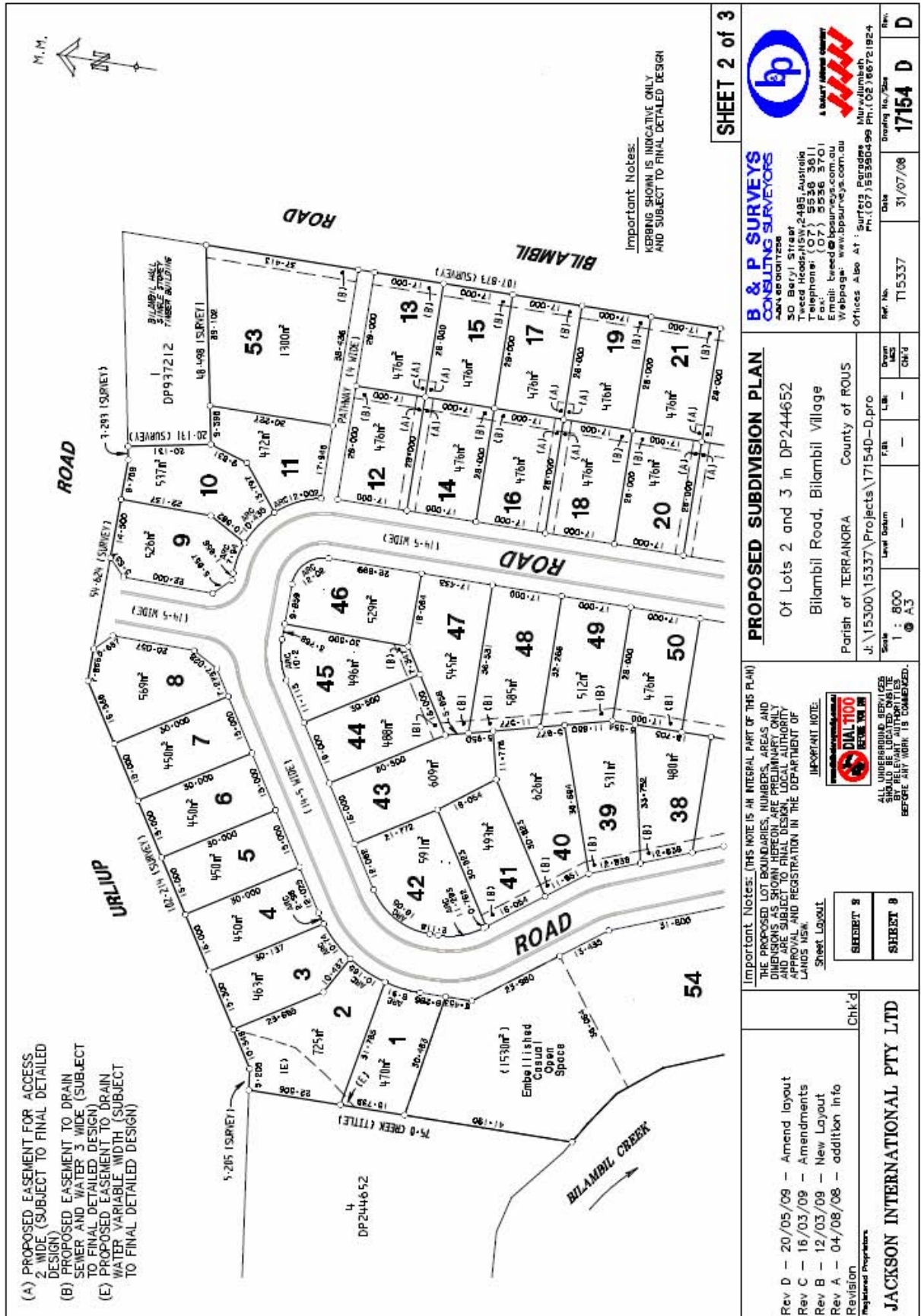
Parish of TERRANORA County of ROUS

**B & P SURVEYS CONSULTING SURVEYORS**  
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Onceas Also at:  
 Surfers Paradise Murwillumbah  
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- (A) PROPOSED EASEMENT FOR ACCESS 2 WIDE (SUBJECT TO FINAL DETAILED DESIGN)
- (B) PROPOSED EASEMENT TO DRAIN SEWER AND WATER 3 WIDE (SUBJECT TO FINAL DETAILED DESIGN)
- (C) PROPOSED EASEMENT TO DRAIN WATER VARIABLE WIDTH (SUBJECT TO FINAL DETAILED DESIGN)

Important Notes:  
 KERBING SHOWN IS INDICATIVE ONLY  
 AND SUBJECT TO FINAL DETAILED DESIGN

SHEET 2 of 3

**B & P SURVEYS**  
 CONSULTING SURVEYORS

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 Murwillumbah  
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**PROPOSED SUBDIVISION PLAN**

Of Lots 2 and 3 in DP244652

Bilambil Road, Bilambil Village

Parish of TERRANORA County of ROUS

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Important Notes: (THIS NOTE IS AN INTEGRAL PART OF THIS PLAN)

THE PROPOSED LOT BOUNDARIES, NUMBERS, AREAS AND DIMENSIONS AS SHOWN HEREON ARE PRELIMINARY ONLY AND ARE SUBJECT TO FINAL DESIGN LOCAL AUTHORITY LANDS USE.

Sheet Layout:

SHEET 3	SHEET 8
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**DIAL TIDY**  
 REUSE THE PLAN

ALL SUBDIVISIONS MUST BE REGISTERED WITH RELEVANT AUTHORITIES BEFORE ANY WORK IS COMMENCED.

Registered Proprietors:

Rev D - 20/05/09 - Amend layout  
 Rev C - 16/03/09 - Amendments  
 Rev B - 12/03/09 - New Layout  
 Rev A - 04/08/08 - addition info

Revision:

Chk'd

**JACKSON INTERNATIONAL PTY LTD**





## ZONING/STRATEGIC CONTEXT

The subject site is zoned 2(d) village with the primary objectives of the zone to provide residential development, services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.

The development provides for the minimum residential statutory lot size for a dwelling house of 450m<sup>2</sup> with services and facilities such as a general store, sewer, water, power, stormwater and telecommunications. The development optimises the site density making efficient use of existing urban zoned land, minimising urban sprawl and achieve sustainability principles.

The development is considered not in character with the existing area, however, this is largely due to Bilambil not being connected to reticulated sewerage. It is likely that when reticulated sewerage is provided to the whole of the Village, the character of the Village will change as other existing allotments will also be subdivided such that lot yields are optimised based on the minimum lot size of 450m<sup>2</sup>.

The development has the potential to make a positive contribution to the village character if future building types are sympathetically designed.

## SUBMISSION

The Environmental Assessment was referred to relevant Council officers within the following fields:

- Ecology
- Open Space
- Engineering
  - Flooding
  - Subdivision
  - Sewer
  - water
  - Roads/Traffic
- Building
- Environment Health
- Social Planning
- Entomology

The relevant Council officers have assessed the Environmental Assessment and provided comment. These comments have been assembled into the following table, a submission provided by the Bilambil Progress Association has also been added to the table.

ISSUE	COMMENT
<b>SITE CONTAMINATION</b>	<p>Levels of Heavy Metals and Asbestos were detected. The Detailed Site Investigation Report dated August 2008 prepared by Precise Environmental concludes that the site is suitable for residential use subject to a general site clean up being carried out to remove general waste and rubbish and additional test pits being excavated in the Southern filled area of the site to investigate the presence of asbestos.</p> <p>(Appropriate conditions can be provided).</p>
<b>ZONING/STRATEGIC CONTEXT</b>	<p>The subject site is zoned 2(d) village with the primary objectives of the zone to provide residential development, services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.</p> <p>The development provides for the minimum residential statutory lot size for a dwelling house of 450m<sup>2</sup> with services and facilities such as a general store, sewer, water, power, stormwater and telecommunications. The development optimises the site density making efficient use of existing urban zoned land, minimising urban sprawl and achieve sustainability principles.</p> <p>The development is considered not in character with the existing area, however, this is largely due to Bilambil not being connected to reticulated sewerage. It is likely that when reticulated sewerage is provided to the whole of the Village, the character of the Village will change as other existing allotments will also be subdivided such that lot yields are optimised based on the minimum lot size of 450m<sup>2</sup>.</p> <p>The development has the potential to make a positive contribution to the village character if future building types are sympathetically designed.</p>
<b>NOISE</b>	<p>Noise impacts associated with the proposed general store which will be constructed as part of Stage 2 works can be appropriately dealt with by relevant conditions.</p> <p>A post construction noise report following the completion of installation of the recommended noise barriers and sound shell insulation to mitigate offsite noise impacts should be a condition of any approval.</p> <p>The sound shell insulation relates to the first floor areas of any future dwellings. It is considered that an 88B Restriction as to User under the provisions of the Conveyance Act may be an appropriate mechanism in respect to the sound shell insulation of the future dwellings if they are to be erected under separate Development application. If this is the situation then in respect to the sound shell insulation compliance with the recommendations of the Environmental Noise Impact Report may suffice, otherwise</p>

ISSUE	COMMENT
	<p>each separate dwelling owner would need to provide a post construction noise report which would be an onerous provision. Therefore if an 88B Restriction is provided in respect to future sound shell insulation the post construction noise report would only be for the noise barrier.</p> <p>(Appropriate conditions can be provided).</p>
<p><b>POWERLINES AND ELECTROMAGNETIC RADIATION IMPACTS</b></p>	<p>A Preliminary Assessment of the Potential Impact of Electric and Magnetic Fields from Overhead Powerlines has been submitted with the EA.</p> <p>This report recommends that the concept of prudent avoidance apply to the effects of the power lines and that a 20 meter wide buffer from the power line axis to the nearest residential lot boundary apply. This would in effect result in a total easement width of 40 meters over the power line corridor.</p> <p>Overhead power is available to the site and Country Energy has advised that sufficient capacity exists. The reticulation within the new estate will be underground.</p> <p>HMC Environmental Consulting Pty Ltd has prepared a Preliminary Assessment of Potential Impact of Electric and Magnetic Fields from Overhead Powerlines. In summary, that Assessment concludes that based on the literature research presented in this report, it is concluded that the expected exposure of the future occupants of the site to power frequency EMF is well below the permissible limit for occupational and general public exposure as set out in the International Commission on Non-Ionizing Radiation Protection (ICNIRP) and ARPANSA draft Standard aimed at protection against established adverse health effects.</p> <p>In line with the approach of “prudent avoidance”, adopted by the Electrical Supply Association of Australia and its member supply authorities, it is recommended that:</p> <ul style="list-style-type: none"> <li>• The proposed dwellings be located outside a minimum 40m wide transmission line easement over the subject property, and as far as possible from the overhead power line; and</li> <li>• The electricity power supply and reticulation system for the proposed dwelling should be designed and installed to minimise human exposure to the power frequency electric and magnetic fields, as far as is practical and cost effective.</li> </ul> <p>(Appropriate conditions can be provided).</p>

ISSUE	COMMENT
<b>ACID SULFATE SOILS</b>	<p>A Preliminary Acid Sulfate Soils Assessment has been submitted with the EA. This Assessment has concluded that there is significant existing acidity and potential Acid Sulfate Soils at the site and that additional testing and treatment procedures will be required for all disturbances below the existing surface levels on the site.</p> <p>(Appropriate conditions can be provided)</p>
<b>FOOD</b>	<p>A general store is proposed within the subdivision, it is likely that this will have some type of food handling area. Appropriate conditions in relation any food handling carried out in the proposed store can be provided at the time of consideration of the Development Application for the use of the store.</p> <p>(Appropriate conditions can be provided)</p>
<b>FILL MATERIAL</b>	(Appropriate conditions can be provided)
<b>GROUNDWATER</b>	(Appropriate conditions can be provided)
<b>FLORA AND FAUNA ASSESSMENT</b>	<ol style="list-style-type: none"> <li data-bbox="544 873 1522 1272">1. The assessment of Community 4 (Mid-high Open Forest (<i>Jagera pseudorhus</i>) states a low to moderate conservation value, however, this area contains a large “old growth” Foambark tree and several rainforest species, including a threatened species. Threatened species legislation refers to in-situ conservation as the appropriate response for management of threatened species, and translocation is only a last-ditch salvage effort. This area is suitable for retention and is best retained and restored unless cut and fill totally prevents this. <b>This area is preferred as a park.</b></li> <li data-bbox="544 1276 1522 1720">2. Assessment of threatened fish (aquatic) species in Section 5.4 on page 42 (as modified since previous comments) now relates to relevant threatened fish species; however, the 7-part test has been answered with reference to the Schedules of the Threatened Species Conservation Act (e.g. Key Threatening Processes for terrestrial species), rather than the Fisheries Management Act (specifically relating to aquatic species). As it is accepted that erosion and sedimentation or waterway pollution are the only real threats to this aquatic system and measures are contained within other sections to control these impacts, this error is not of real concern but should be noted for future assessments.</li> <li data-bbox="544 1724 1522 1888">3. The flora and fauna assessment still shows a footpath through the riparian zone when this has been negotiated to be outside this zone on the edge of the road. <b>This should be amended as per other reports.</b></li> </ol>

ISSUE	COMMENT
<p><b>VEGETATION REHABILITATION PLAN</b></p>	<ol style="list-style-type: none"> <li>1. The plan indicates a small playground within the riparian buffer zone. This is not supported as the riparian buffer zone has already been reduced in width from 50m to 35m, thus its primary responsibility is protection of creek stability, water quality and fauna habitat corridor. A park in this location is likely to encourage tramping through the area proposed for restoration, raising safety and vegetation damage issues. <b>A preferred site for a small park is around the location of the rainforest remnant containing the Macadamia.</b></li> <li>2. The plan proposes retention of native species present within the riparian zone, yet the engineering plans appear to show fill within a good portion of the proposed reserve. Rectifying these two apparently conflicting scenarios is required in order that sufficient plant stock is reserved or provided to achieve canopy cover within the designated time frame. <b>No fill should be placed within 5m of the high bank of the creek in order to reduce sedimentation risk and appropriate sediment control must be in place.</b></li> <li>3. The planting density should be amended to 1m to 1.5m apart for all life-forms as this is the spacing that has shown best success in achieving a canopy quickly, thus reducing weed invasion and maintenance. This needs to be clearly stated within the plan and there should be no requirement for three different management units as indicated on Figure 6A. Requiring different spacing for shrubs, groundcovers and trees is not necessary and will only serve to confuse issues when monitoring is being undertaken.</li> <li>4. The plan requires specific Performance Criteria in order that the success or failure of the proposal may be objectively assessed. Examples are given below: <ul style="list-style-type: none"> <li><u>Example Performance Indicators for a Riparian Habitat</u></li> <li>• Primary treatment of all weeds in the riparian zone by the end of year three.</li> <li>• Nil fruiting of weed species after primary treatment.</li> <li>• Increased number and abundance of native species.</li> <li>• Increased recruitment of native species.</li> <li>• Increased percentage canopy of native species.</li> <li>• inappropriate genetic material used in plantings.</li> <li>• &gt;70% survival rate of planted stock and naturally recruited native species.</li> <li>• Growth of &gt;1 metre by year three and 1.5 metres by year five for rainforest plantings and cover (cumulative cover from ground level to canopy) of 60% after 3 years and 80% after five years.</li> <li>• Increased colonisation and use of the site by native</li> </ul> </li> </ol>

ISSUE	COMMENT
	<p>fauna.</p> <ul style="list-style-type: none"> <li>• Effective restriction of access by pedestrians, vehicles and domestic and feral animals to the re-vegetation sites.</li> <li>• No net increase in streambank erosion.</li> </ul> <p>5. The plan requires quantitative monitoring, thus permanent plots (suggested at 5m x 5m) should be specified. The plan proposes measuring canopy height and percentage cover, presumably over the entire site in the absence of specified quadrats, likely to be an onerous and unnecessary task.</p> <p>6. The entire public reserve should be treated as a restoration area which includes trees, rather than a 5m zone adjacent to the road proposed for only low-growing species. This 5m zone effectively reduces the riparian rehabilitation zone to 30m when the negotiated outcome was for 35m, already a reduction from the usually accepted 50m buffer and only allowed due to the perimeter road.</p> <p>7. It is presumed this low-growing plant area is to provide for an asset protection zone, yet the APZ for rainforest vegetation is accepted in other parts of the reports as 10m. No APZ in the riparian buffer is supported by Council, nor can Council commit funds or time sufficient to maintain an APZ to the required degree once the land is handed to Council. If any APZ is specifically required to be greater than 15m (road width) by the NSW Rural Fire Service, it should first burden private lots. The proposal to plant primarily low-growing and densely planted species within the roadside batter for bushfire protection is not agreed with. The use of such species such as <i>Lomandra longifolia</i> and <i>Gahnia aspera</i> retain dead material for long periods, provide high ground fuel risk and grow to a height that facilitates transfer of fire into adjacent tree canopies. As previously stated, the area should be regenerated or re-vegetated as rainforest with a dense tree canopy. A 1 in 4 batter does not preclude tree planting.</p> <p>8. Years 2 and 3 will still likely involve Primary weed treatment for Camphor Laurel species as they should be progressively removed to avoid high light/replacement weed situations. This should be reflected in the Implementation Strategy.</p> <p>9. Page 78 of the EA states that the creek foreshore is proposed to be dedicated after a six month maintenance period. This is not acceptable to Council and the Vegetation Restoration Plan correctly states the period as 5 years minimum which should be reflected in the Statement of Commitments. The land should not be dedicated to Council</p>

ISSUE	COMMENT
	<p>until at the required standard at the end of the maintenance period.</p>
<p><b>TRANSLOCATION PLAN</b></p>	<ol style="list-style-type: none"> <li data-bbox="555 320 1519 728">1. The Translocation Plan for <i>Macadmia tetraphylla</i> proposes collection of genetic material from nearby populations in order to increase the site population in the longer term. This raises question such as: where are these populations and will material be collected under licence without damage to off-site populations? Due to inadequate detail provided within the document these questions and potential for further population damage, can not be adequately assessed. It is recommended to propagate from the <i>Macadmia tetraphylla</i> on-site only, unless sufficient information can be provided answering such questions.</li> <li data-bbox="555 763 1519 1422">2. The current location of the <i>Macadmia tetraphylla</i> is considered an ideal location for the open space lot, not only due to the <i>Macadmia tetraphylla</i> but the surrounding mature vegetation and that the proposed location of the open space within the riparian zone is not supported. If the retention of the <i>Macadmia tetraphylla</i>, surrounding mature vegetation and the creation of open space surrounding this plant is not an option due to the level earthworks, translocation is supported.  The document states that the hole dug to receive the transplanted Macadamia will be ready prior to moving the plant. The extent of cut and fill on the site appears to indicate that the receiving site within the riparian zone is unlikely to be ready (because fill is proposed there) before the Macadamia will require removal due to site the re-grading progresses. If this situation occurs then a “holding” plan for the plant is required.</li> <li data-bbox="555 1458 1519 1641">3. The plan appears to follow the Australian Network for Plant Conservation <i>Guidelines for the translocation of threatened species</i> and is thus satisfactory if translocation is accepted as an outcome for the site. This species has a high translocation success rate.</li> </ol>
<p><b>TREATMENT OF POWERLINE EASEMENT AND ONGONING MANAGEMENT</b></p>	<ol style="list-style-type: none"> <li data-bbox="555 1641 1519 1821">1. The treatment of the power line easement has not been adequately addressed in the document. Further details on the treatment and ongoing management of this area should be provided.</li> </ol>

ISSUE	COMMENT				
<p><b>WATER SUPPLY</b></p>	<p>There would appear to be no particular impediments to this project subject to detailed design and analysis from the perspective of water supply.</p> <p>Water is supplied to Bilambil Village from Council's trunk water main in Bilambil Road via a pressure reducing valve (PRV). This PRV currently is a 100mm valve. The additional demand subject to detailed analysis may require upgrading to a larger size. This should be addressed at detail design stage.</p> <p>The normal water supply conditions including headworks should apply.</p> <p>In addition, Water Unit seeks the same sort of commitment that has been asked of Cobaki Lakes and Kings Forest for the statement of commitments to include the provision of 5000 litre rain water tanks on each lot.</p> <p>Council has done a review of IWCM options for Greenfield sites in its Demand Management Strategy which was adopted by Council in February 2009.</p> <p>The mandated strategy for Greenfield sites within Tweed Shire as a minimum is for:</p> <table data-bbox="622 1153 1503 1456"> <tr> <td data-bbox="622 1153 1101 1310">Single Dwellings</td> <td data-bbox="1101 1153 1503 1310">Minimum 5000L rainwater tank with a minimum 160 m<sup>2</sup> roof area connected to it.</td> </tr> <tr> <td data-bbox="622 1310 1101 1456">Multi Dwellings &amp; other buildings</td> <td data-bbox="1101 1310 1503 1456">Rainwater tanks to be provided on a similar basis connecting 80% – 90% of the roof area</td> </tr> </table> <p>These tanks shall be plumbed to provide water for external uses, toilet flushing and laundry cold water for washing machines. This is expected to produce a water saving of approximately 36%.</p> <p>It is required that this mandated strategy be included in the statement of commitments for this development.</p> <p>(Appropriate conditions can be provided)</p>	Single Dwellings	Minimum 5000L rainwater tank with a minimum 160 m <sup>2</sup> roof area connected to it.	Multi Dwellings & other buildings	Rainwater tanks to be provided on a similar basis connecting 80% – 90% of the roof area
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<p><b>SEWERAGE</b></p>	<p>As noted in the Environmental Assessment (EA) Bilambil Village is not connected to Council's reticulated sewerage system, nor does Council have any current plans to connect Bilambil Village to sewerage.</p> <p>The nearest sewerage system to Bilambil is at Bilambil Heights, however, the sub-regional pump station for Bilambil Heights, SPS2038 Peninsula Drive, was indentified in Council's Sewerage</p>				



ISSUE	COMMENT
	<p>Overflow Abatement Strategy as the highest risk pump station having very little storage in the event of a pump station failure, leading to overflows to Terranora Broadwater with oyster leases nearby. Council is in the process of procuring a generator for this site but non-power supply related failures still leave this station as a major risk. Accordingly, Council has begun a sewer flow gauging study of this catchment and hopes to be able to quantify works needed to reduce the risk of overflow and any upgrading works that may be required to enable this development and other potential connections in the area to proceed without increased risk.</p> <p>Alternatively, the development will need to provide a connection to SPS2018 Gollan Drive Regional Pump Station.</p> <p>The statement of commitments provided gives comfort that the developer will do all works necessary to connect to SPS2018 if that is the required outcome. The wording of the statement of commitments is as agreed between the Manager Water, Director of Engineering and Operations and the developer's consultants.</p> <p>There is however some confusion in various documents supplied with the EA as to the route of the proposed sewer rising main if it is required to be constructed to SPS2018. The drawing attached to Annexure 19, "Civil Engineering Matters" shows the route from Bilambil Village to SPS2018 as being along Scenic Drive when this route has been specifically excluded by the Director of Engineering and Operations, the statement of commitments and the wording of the EA itself. (Appropriate conditions can be provided)</p> <p>Another issue is the servicing of eleven lots by a pressure sewer system. Such a system should be used only as a last resort to service otherwise unserviceable land. Because it has a higher ongoing maintenance cost associated with the maintenance and replacement of the pumps, it is Council's preference that developments be serviced by gravity to a central pump station as far as possible. In this case, the terrain may exclude this option. It may also be that the most effective way to provide a sewerage system to the whole village may be an extension of this system using a pressure sewer system. Accordingly, Water Unit is prepared to consider a limited number of pressure sewer system units in this development provided the proponent demonstrates to the satisfaction of the Director Community and Natural Resources that the lots cannot be serviced by conventional gravity sewers.</p> <p>One of the pump station types proposed, Mono Pumps PSS Eco 1-60 has not been approved for use in Tweed Shire Council reticulation systems.</p>

ISSUE	COMMENT																														
	<p>Council's position where a pressure sewer system is proposed for a subdivision is:</p> <p><i>Where a subdivision is to be sewerred by a pressure sewer system, Council will take a capital contribution at subdivision stage for the installation of pressure sewer pumps on each property when the house is being constructed. The subdivider will provide the rising main and connection points as part of the subdivision works. These units will be Council's property and hence responsibility to maintain.</i></p> <p>Council requires a positive covenant to be placed on the affected lots that will permit Council access for the installation, maintenance and replacement of the pump station equipment, the provision of electricity by the householder, the placement of the control box and alarm system on an exterior wall of the dwelling. The accompanying document contains the wording required for the terms of the positive covenant.</p> <p>Capital Contribution per lot for PSS Pump Station Units</p> <table border="0"> <tr> <td>Cost of Pump Station Unit</td> <td></td> <td>\$5985</td> </tr> <tr> <td>    Allowance for Price Fluctuations (AUD, Inflation)</td> <td></td> <td>\$1047</td> </tr> <tr> <td>    Cost of MDPE Class 12.5 32mm diameter pipe</td> <td></td> <td>\$200</td> </tr> <tr> <td>    Cost of installation – Plumbing</td> <td></td> <td>\$2200</td> </tr> <tr> <td>    Cost of installation – Electrical</td> <td></td> <td><u>\$1700</u></td> </tr> <tr> <td>Sub Total</td> <td></td> <td>\$11132</td> </tr> <tr> <td>Engineering Supervision and Coordination</td> <td>20%</td> <td>\$2226</td> </tr> <tr> <td>Administration</td> <td>13%</td> <td>\$1447</td> </tr> <tr> <td>Contribution Required per Lot</td> <td></td> <td><u>\$14805</u></td> </tr> <tr> <td></td> <td>Say</td> <td>\$14800 per Lot.</td> </tr> </table> <p>Assuming eleven lots, Total Capital Contribution \$162,800.00</p> <p>This capital contribution is separate to the Section 64 Developer charges that apply for the provision of head works and requires a separate specific condition including the positive covenant requirement.</p> <p>The existing Bilambil Hall (Lot 1 DP 937212) is currently serviced by an on-site sewerage treatment system. As part of the works associated with this development, sewer reticulation is required to be extended to service the hall.</p> <p>There is a need to provide reticulated sewer to the Bilambil Village area in general. For this purpose consideration should be given to providing extra capacity in the proposed reticulated sewer for the subdivision to enable existing and future premises in the Bilambil Village to connect to the sewer.</p>	Cost of Pump Station Unit		\$5985	Allowance for Price Fluctuations (AUD, Inflation)		\$1047	Cost of MDPE Class 12.5 32mm diameter pipe		\$200	Cost of installation – Plumbing		\$2200	Cost of installation – Electrical		<u>\$1700</u>	Sub Total		\$11132	Engineering Supervision and Coordination	20%	\$2226	Administration	13%	\$1447	Contribution Required per Lot		<u>\$14805</u>		Say	\$14800 per Lot.
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ISSUE	COMMENT
	<p>There may be a requirement for a Section 68 approval in respect to the installation of any sewer pump station.</p> <p>(Appropriate conditions can be provided)</p>
<p><b>MOSQUITO/MIDGE</b></p>	<p>No further comment is required on mosquito/biting midge risk issues, as the site is reasonably buffered by distance from mosquito/midge breeding areas.</p>
<p><b>WASTE MANAGEMENT</b></p>	<p>The applicant is to provide a statement of commitment to prepare a Waste Management Plan (WMP). The WMP is designed to control the volume of waste generated at the development, and the proposed waste management practices for a development.</p> <p>The WMP should include the following information to address the Director Generals Requirement 4.1 relating to waste disposal:</p> <p>Construction and site cleanup phase;</p> <ul style="list-style-type: none"> <li>• The type of waste generated during construction</li> <li>• The method and location of waste storage on site</li> <li>• How any recyclable materials will be managed</li> <li>• The location of the disposal facility for residual waste. A Remediation Action Plan may be required if the applicant wishes to dispose of contaminated materials at Councils licence waste facility (e.g. soil containing asbestos or other contaminants)</li> <li>• Ongoing waste management strategies</li> </ul> <p>It is noted in the Statement of Commitments that the applicant is to prepare a Construction Management Plan.</p> <p>Site Occupation:</p> <ul style="list-style-type: none"> <li>• For the commercial premise, details of waste storage containers to be used by the development (ie mobile garbage bins or bulk bins, how many, frequency of collection etc.)</li> <li>• For the commercial premises, location, size, and design of waste storage areas, reference to Councils Code for Storage and Disposal of Garbage and Other Solid Wastes. <b>The architectural drawing contained in Annexure 9 is noted, however is not deemed adequate.</b></li> <li>• For the commercial premises, nominate collection point for servicing</li> <li>• For the residential premises it is noted that in 8.3.4 of the Environmental Assessment the applicant has stated that servicing will be aligned with Council's standard</li> </ul>

ISSUE	COMMENT
	<p>arrangements with Solo Resource Recovery. Further information is required to provide details and commentary that the internal road network is adequate to allow for the garbage and recycling collection vehicles to access the proposed allotments, and service the properties and turnaround in a forward drive direction only (i.e. no reversing of vehicle).</p> <ul style="list-style-type: none"> <li>• Ongoing waste management strategies</li> </ul>
<p><b>LANDFORMING</b></p>	<p>The subject site has been significantly disturbed by previous quarry activities. Site levels range from approximately RL 25m AHD at the top of an existing hill in the centre of the site, down to approximately RL 3-4m AHD along the Bilambil Road and Hogans Road frontages. The frontage to Urliup Rd ranges from approximately RL 5-12m AHD. The site fronts Bilambil Creek to the west, with a steep bank.</p> <p>Significant earthworks are proposed as part of the development, to reduce road and allotment grades. Maximum site level will be reduced to approximately RL 15m AHD, grading fairly uniformly to existing frontages.</p> <p>Council's DCP-A5 and D6 specification limit bulk earthworks that exceed 5m in cut or fill depth to 10% of the site (to a maximum 15% if variation can be justified on environmental grounds). According to the applicant's engineering report, this requirement will be met, although calculations verifying compliance have not been provided. Given the site's highly disturbed and irregular nature the bulk earthworks are considered to generally satisfy Council requirements.</p> <p>Retaining walls up to 1m high are proposed along the road frontages of lots 35-52 in the centre of the site, where Roads #1 and #2 cut into the slope. Walls of this height are permissible under D6, however these interfaces may cause difficulties in achieving compliant driveway accesses. This is discussed in greater detail under the Traffic and Access issue.</p> <p>The proposed levelling of Lot 53 for a future commercial (small retail) development would result in a high batter (approximately 4-5m high) along the rear and side boundaries. This far exceeds usual subdivision practice. It is noted that the engineering report recommends deferring these earthworks for the future DA for the retail development, however this issue will have a bearing on the suitability of the site for this purpose, and should be addressed by the applicant now.</p> <p>It is assumed that no earthworks will be undertaken on the Bilambil Creek bank, however re-grading works are proposed within the nominated riparian buffer area. Council's ecologist/open</p>

ISSUE	COMMENT
	<p>space officer will comment on these proposed works in more detail (see Vegetation Rehabilitation Plan issue). Erosion and sediment controls will need to be tightly controlled for the entire site, to protect the creek environment.</p>
<p><b>FLOODING</b></p>	<p>According to DCP-A3, Design Flood Level (100 year ARI flood) for the site is RL 3.5m AHD, which is based on historical flood levels in the area. Council's Tweed Valley Flood Study (2005) models a 36 hour duration flood in the Tweed Valley, which results in a peak 100 year ARI regional flood level of RL 2.5m AHD. Based on this information, a local flood in Bilambil Creek of shorter duration will provide the maximum flood level, however this has not been modelled by Council or the applicant to date.</p> <p>Only a small part of the subject site adjacent to Hogans Road is flood liable, with the majority of the site being above RL 4m AHD. The small portion of the site below RL 3.5m AHD is intended to be filled, with no significant impact on flood storage anticipated.</p> <p>The proposed residential lots will be constructed with a minimum allotment level of RL 4.4m AHD, to provide freeboard above the design flood level, and to balance cut and fill earthworks for the development.</p> <p>The Tweed Valley Flood Study (2005) also predicts a Probable Maximum Flood (PMF) level for the subject site of RL 5.0m AHD downstream of the site. The applicant has worked on an assumed PMF level of RL 5.5m AHD to account for some additional flood gradient to the site. DCP-A5 and Council's Flood Risk Management Policy require that all residential allotments in new subdivisions have adequate high level road and/or pedestrian access (evacuation route) to land above the PMF level. The proposed development easily complies with this requirement.</p> <p>The DGRs provided to the applicant by DoP require consideration of climate change on the development. Council is currently in the process of investigating the impacts of climate change in terms of potential flood impacts as part of an update to the Tweed Valley Flood Study. In accordance with DECC Guidelines, a "high" impact climate change scenario with 0.91m sea level rise and 30% increase in rainfall intensity has been modelled. Draft results of that study indicate an impact of the order of 1.5m increase in the peak flood level for the 100 year ARI event, when considering the 36 hour duration regional Tweed Valley event.</p> <p>The applicant's engineering report proposes that it is not considered appropriate to apply this impact to the historical flood level (i.e. RL 3.5m AHD), but rather this impact should be superimposed on the modelled regional flood level (i.e RL 2.5m AHD). Thus in considering the impact of climate change, the anticipated flood level would increase from RL 2.5m AHD</p>

ISSUE	COMMENT
	<p>(modelled) to RL 4.0m AHD. This would provide a minimum freeboard of 0.4m to the lowest lots, with an additional 0.5m freeboard requirement to habitable floor levels for future residential development. In lieu of a flood model for the shorter duration Bilambil Creek flood event, this approach is considered satisfactory, and the minimum fill level of RL 4.4m AHD provides a conservative design approach to account for potential increases in flood levels due to climate change.</p>
<p><b>STORMWATER MANAGEMENT</b></p>	<p>The applicant's engineering report considers stormwater quality and quantity for the site, however the recommendations of the report are unclear, particularly in terms of quantity management.</p> <p>With regards to stormwater quality, Council usually requires a constructed wetland for treatment of stormwater for subdivisions of 50 lots or more. Given the pre and post development landform, it is not feasible to direct all stormwater from the site to a single treatment point. Rather, two separate piped collection systems are proposed, one per internal catchment, which discharge to the creek at the north and at the south of the site. This is an acceptable variation to the wetland requirements. Each piped system would pass through a proprietary treatment device prior to discharge to the creek. This is generally acceptable provided these devices are sized to treat the 3 month ARI flow from these catchments, and meet the storage requirements set out in D7. As two separate devices are required to treat the relatively small number of contributing allotments, alternative measures that meet Council's water quality objectives and D7 design requirements (filter areas, bio-filtration etc) will be considered, to reduce the overall maintenance burden inherited by Council.</p> <p>Although not specified, it is assumed that the piped road drainage systems would be sized for the Q5 storm event. D5 also requires consideration of the major storm event, and the provision of adequate Q100 flow paths to a lawful discharge point, including interallotment systems. Due to the sloping nature of the lots, these interallotment systems in particular need significant detailed design to work properly, and protect future residential development.</p> <p>With regard to stormwater quantity, the applicant cites previous conversations with Council officers and states that mitigation of flows is not necessary due to the available capacity in the creek. However, the engineering report also has the objective of limiting post development flow rates to pre development levels. Due to the steep nature of the site and assumed low permeability (resulting in high pre-development runoff coefficients), the main difference in the stormwater regime for the proposed urbanisation of the site is the concentration of post-development runoff at the proposed discharge points, and the potential impacts this may have on creek erosion, bank stability and related ecosystems.</p>

ISSUE	COMMENT
	<p>The engineering report does not provide on site stormwater detention, but appears to recommend lot level OSD for future development. It is not clear whether the calculated flow rates for the trunk drainage systems on Drawing 08418-002 E allow for this future mitigation or not.</p> <p><b>Regardless, the applicant will need to provide facilities to disperse flows from the site and dissipate energy to prevent scour and erosion of the creek, such as detention basins or specially designed stormwater outlets. Council's ecologists/open space officers may have some concerns about the placement of such structures within the riparian buffer area. DPI / Fisheries may also have specific requirements regarding discharge arrangements.</b></p>
<p><b>TRAFFIC AND ACCESS</b></p>	<p>As discussed under 'Landforming', Lots 35-52 have a 1m high retaining wall along the road frontages. This may present difficulties in providing compliant driveway accesses to future dwellings on these sites, particularly on the smaller sized lots. Council allows a maximum 2.5% grade across the road verge, to a maximum 25% within the property. However transitional grades are necessary to prevent vehicles scraping, and this increases the driveway footprint. The applicant is requested to demonstrate that practical vehicle accesses are achievable on the lots in question, otherwise the landforming will need to be revised.</p> <p>The proposal also includes works on Uriup Road in order to achieve compliant site distances at the intersection of Road #1. According to the engineering report, up to 800mm needs to be taken off the road crest. On discussion with Council's Development Engineer, these works should have minimal impact on the public road, adjoining accesses, and any services in the area. Conditions of consent requiring a s138 application for these works, to be accompanied by detailed engineering plans, should be applied.</p> <p>(Appropriate conditions can be provided).</p>

<b>ISSUE</b>	<b>COMMENT</b>
<b>EMBELLISHED CASUAL OPEN SPACE</b>	<p>The embellished casual open space indicated as part of the riparian buffer requires negotiation regarding its acceptability. As the applicant was previously advised (memo of 15 April 2009) this area does not meet the development standards specified in Councils Subdivision Manual (table A5-8.2.1) in terms of size, slope, ability to contain a central activity area or play equipment and a number of other matters. For example, the park's location, small size and the adjacent creek means play equipment cannot be considered.</p> <p>While the size criteria may be influenced by the contiguous riparian buffer, there is also potential for negative impacts during the regeneration period from people accessing the area. Council will require detailed advice as to how these problems can be addressed, and options available. For example, locating play equipment at the sports field was raised as a possible option, but will there are concerns regarding available space at the fields and the need for children from the subdivision to cross Bilambil Road to access the equipment.</p>
<b>OPEN SPACE</b>	<p>The proposed park is not considered appropriate due to size, location, slope, and the inability to contain a central activity area or play equipment. A park in this location is likely to encourage tramping through the riparian area proposed for restoration, raising safety and vegetation damage issues. The preferred site for a small park is around the location of the rainforest remnant containing the Macadamia being proposed lots 22, 23, 24, and 25. Also proposed lot 55 is not considered appropriate as public open space as the site area is small, narrow with no recreation value. A second option for the location of public open space is lots 9, 10 and 11, which adjoin the Bilambil Hall. This would increase opportunities for use in connection with the hall, increase separation between dwelling and the hall, reducing the potential for noise impact on dwellings from the use of the hall.</p>
<b>LOT 55 - GRASSED PUBLIC OPEN SPACE – ADJACENT TO HOGANS ROAD</b>	<p>This is not acceptable as public open space. The applicant has previously been advised of this however continues to propose it. The area is small, narrow, and useless as a park and is nothing more than a widened roadside verge. There is no recreation value in it and is simply a maintenance burden to Council.</p>
<b>DETAILED LANDSCAPE PLANS</b>	<p>A condition of any approval for this development must be that a detailed landscape plans be submitted and approved. The Landscape Concept Plan is a simple generalised drawing with some unacceptable proposals – for example trees on public land that overhang private property. Any such landscaping designs would be rejected</p> <p>(Appropriate conditions can be provided)</p>



ISSUE	COMMENT
<p><b>SUBDIVISION DESIGN &amp; LAYOUT</b></p>	<p>The land is subject to relative constraints imposed by the overhead transmission line, flood prone land in the southern part of the site and the need to protect water quality in Bilambil Creek.</p> <p>Each proposed allotment will have a minimum 9m kerb frontage (in accordance with Council requirements) to provide one on street car parking space for each allotment, with the exception of Lots 30 and 32. A Restriction As To Use will be created on these allotments requiring a visitor space to be provided on site. <b>Note the EA has incorrectly referenced Lots 32 and 33 instead of Lots 30 and 32.</b></p> <p>Easements for water supply, sewer and drainage will be created where necessary benefiting Tweed Shire Council.</p> <p>An easement 40m wide will also be created over the existing overhead transmission line. All easements and accompanying Section 88B Conveyancing Act Instruments will be submitted and approved with the Subdivision Certificate Application.</p> <p>The proposed Lot layout providing Right Of Carriageways (ROC) to service the allotments backing onto Bilambil Road is not ideal although in its current formation, it does comply with Council's DCP Section A5 – Subdivision Manual. If the ROC area was deleted from the lot area, the lots fronting Road #2 would be under Council's minimum lot size of 450m<sup>2</sup>. This, situation is worsened by the fact that the front lots are also burdened by a 3.0m wide easement for sewer along their rear boundary, making their usable footprint very small indeed. The proposed lot layout for those lots serviced by a ROC along Bilambil Road should be converted to a traditional battleaxe arrangement or the front allotments should gain the benefit of the ROC. i.e. Lot 14 has the benefit of the ROC over Lot 12 and visa versa.</p> <p>Buffers</p> <p>The DECC originally recommend a 50m vegetated buffer to Bilambil Creek, excluding the 15m wide perimeter road. The Applicant has based the latest design around a 50m buffer, including the perimeter road, arguing that such a buffer will achieve satisfactorily objectives in regards to protecting riparian vegetation, bank stability and water quality within Bilambil Creek. Recent correspondence from DECC (refer email dated 30 January 2009) advised that although DECC would prefer to see a 50m buffer excluding the perimeter road, DECC acknowledge that the proposed buffer will achieve improved outcomes for fish and fish habitat and hence raise no objection to the latest proposal.</p> <p>Open Space</p>

ISSUE	COMMENT
	<p>The Application proposes to dedicate the Bilambil Creek foreshore area (Lot 54 – totalling 8224m<sup>2</sup>) to Council as a Public Reserve, including an embellished Open Space Area of 1530m<sup>2</sup> (based on 11.3m<sup>2</sup>/person) as per Council’s DCP Section A5 - Subdivision Manual requirements. However Council advised (via email dated 17 February 2009) that <b>the proposed embellished Open Space area is not sufficient, as Council’s Subdivision Manual specifies a minimum open space park of 2500m<sup>2</sup>.</b></p> <p><b>The Department of Lands have also stipulated that there is to be no footpaths or engineering structures within 20m of Bilambil Creek.</b></p> <p>The latest submission also still proposes to dedicate proposed Lot 55 as Open Space to Council. This allotment originally located the proposed Detention Pond. When <b>Council advised the Applicant that the pond was no longer required, Council also advised that Council would not accept ownership of this land.</b> The Applicant has failed to incorporate this advice within their latest layout.</p> <p><b>The submitted Civil Engineering Report (Appendix 19) has several inconsistencies.</b></p> <ul style="list-style-type: none"> <li>○ Page 2 - The report references that “The site is to be developed as a residential subdivision comprising 57 allotments.” The development is creates 56 allotments.</li> <li>○ The report continues to reference the inclusion of a Detention Pond, however the inclusion of a Detention Pond has been removed from the requirement for the development.</li> <li>○ The electronic copy of the CLA Consultants plans (i.e. Drawings 001 – 009) submitted with the AE is not consistent with the hard copy plans submitted with the AE and is not the latest set of plans. The Applicant should confirm what is the latest set of plans and ensure that Council are provided with the appropriate number of electronic and hard copies.</li> </ul>
<p><b>EARTHWORKS AND FILLING</b></p>	<p>The proposed earthworks have been assessed against Council’s DCP Section A5 – <i>Subdivision Manual</i>, and associated Development Design Specification D6 – <i>Site Regrading</i>.</p> <p>Section D6.05.3.1 - <i>Mass Landform Change Criteria</i> of Council’s Design Specification D6 states that for residential subdivisions the “proportion of a subdivision 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%. Variations up to 15% of site area may be considered if such variations have a demonstrated environmental benefit (e.g. avoidance of importing borrowed fill off site)”.</p>

ISSUE	COMMENT
	<p>The Civil Engineering Report (Appendix 19) advises that, in one particular area of the development, the depth of required excavation exceeds 5m in order to achieve an acceptable grading of the site. As this area of excavation representing approximately 10% of the site as a whole, this complies with the requirements of D6.05.3.1.</p> <p>The proposed earthworks result in a maximum grade of the finished allotments of approximately 20%, with no access grades to any allotment exceeding 25%. This complies with Council specifications.</p> <p>The submission also reports that retaining walls are proposed to be utilised in 3 locations throughout the development. Council's Design Specification D6 limits retaining walls to 1.2m along residential property boundaries, to 1.8m along the road frontage where the allotment is above the road and 2.4m along the road frontage where the allotment is below the road.</p> <ul style="list-style-type: none"> <li>○ Location 1, being the area bounded by the proposed new internal roads (refer submitted Drawings 002 F and 003 E). These walls will be limited to a maximum height of 1m which complies with D6 requirements.</li> <li>○ Location 2, being at the rear of the proposed commercial site (Lot 53). The application makes note that a large retaining wall is proposed, but provides no details on this wall. The report states that this wall is not a pre requisite to the development proposal and requests that the earthworks in this area are not finalised until the building approval of the commercial premises is finalised.</li> </ul> <p><b>As the construction of the Commercial allotment is proposed as Stage 2 of this development, details of the extent of earthworks and treatment proposed in this area are required to be provided for assessment now.</b></p> <ul style="list-style-type: none"> <li>○ Location 3, being adjacent to the existing flow path in proposed lot 2. As the wall is proposed to be less than 1m in height, again this complies with D6 requirements.</li> </ul> <p><b>The Civil Engineering Report also makes the statement that, with the exception of the boundary between the development site and the existing hall (Lot 1 DP 937212), the finished surface levels at the boundary of the development will match existing surface levels. This does not appear to be consistent with the submitted documentation, especially along Urliup Road, as depicted by Section #5 on Drawing 005 Rev E.</b></p> <p>There is no need to amend the Report for such a minor discrepancy. The proposed cut along this boundary will result in</p>

ISSUE	COMMENT
	<p>achieving the required Line of Sight for the proposed intersection at Urliup Road, as well as producing a standard road verge cross fall along this section of road.</p> <p><b>The Report also advises that earthworks at the boundary with the existing Hall (Lot 1 DP 937212) will not exceed 900mm in height, however sufficient information has not been provided to confirm the extent of these earthworks. As this area has not been listed as one of the 3 locations where retaining walls are proposed, it can only be assumed that batters are proposed in this area. Supporting documentation is required to confirm this.</b></p> <p>The preliminary earthworks plans indicate a potential 19,060m<sup>3</sup> of spoil will be required to be removed from the site. This will generate payment of a Heavy Haulage Contribution.</p> <p><b>The application has not provided sufficient detail to assess the extent of earthworks proposed. Additional information is required on the extent and treatment proposed of the proposed earthworks along the rear of the proposed commercial site (Lot 53) and between the development site and the existing hall (Lot 1 DP 937212).</b></p> <p><b>Additional information is required to detail the extent of earthworks proposed at the boundary with the existing Hall (Lot 1 DP 937212) and the development, in accordance with Council's Design Specification D6.</b></p>
<p><b>GEOTECHNICAL ASSESSMENT</b></p>	<p>A Geotechnical Engineering Assessment report for the proposed development was undertaken by Border Tech for the purposes of determining the suitability of the site for the proposed development. Excess fill material of approximately 19,060m<sup>2</sup> is anticipated to be disposed of off site.</p> <p>Council will enforce that earthwork procedures are performed under Level 1 inspections. This was also a recommendation of the Border Tech report.</p> <p>The report notes that the south-western portion of the site contains existing uncontrolled fill material, in accordance with AS 2870 – 1996 'Residential Slabs and Footing – Construction'. The report advises that boreholes undertaken indicate that this fill material appears to be well compacted and may not be require removal and replacement, however it is recommended that the material in question is inspected during the stripping stage of the development for ultimate determination or alternatively a detailed investigation carried out on all fill areas prior to earthworks commencing or cost estimations finalised. Council accept that a final inspection of the fill areas be undertaken after the site has been stripped.</p>

ISSUE	COMMENT
	<p>The Border Tech report concludes that the proposed subdivision is a suitable and feasible land use for the subject site in terms of geotechnical conditions. Council agree with the findings of the report.</p> <p>(Appropriate conditions can be provided)</p>
<b>GROUNDWATER</b>	<p>The Border Tech submission advises that no subsurface seepage was noted during on site investigations, however the groundwater table was intercepted in Boreholes (BH) 7 (at 2.8m below surface level) and BH 9 (at 3.0m below surface level). This correlates to approximately RL 1.0m.</p> <p>It is anticipated that the development will not disturb the Groundwater Table as excavations are not intended below 1.0m in depth.</p>
<b>TRAFFIC AND ACCESS</b>	<p>The site has three road frontages. Council will enforce (via an appropriately worded condition) that direct vehicular access shall be prevented off / onto Urliup Road, Bilambil Road and Hogans Road to all residential allotments fronting such roads.</p> <p>Access to the development is proposed to occur via a new intersection off Urliup Road and another off Hogans Road. Direct access to the retail facility (Lot 53) is proposed off Bilambil Road. The submitted Traffic Impact Assessment Report (prepared by CRG Consultants) proposes Type BA right turning treatment be provided at each of these access locations in accordance with Austroads design standards. <b>Past correspondence between Council and the Applicant has confirmed that a Type BA right turning treatment will be sufficient for the intersection off Hogans Road, but the intersection off Urliup Road needs to be of an urban standard. This has correctly been incorporated within the latest design Plans, submitted by CLA Consultants.</b></p> <p>Hogans Road. Minor vegetation clearing will be required in order to achieve a satisfactory level of sight distance for the proposed intersection off Hogans Road.</p> <p>Council previously advised the Applicant that Hogans Road would need to be upgraded to provide:</p> <ul style="list-style-type: none"> <li>○ A half road profile along the frontage of the development on Hogans Road, from the “to be constructed” upgrade of Bilambil Road (refer requirements above) to the proposed entrance of the development (Road #1), equivalent to Tweed Shire Council’s standard road profile for an Access Street, providing a minimum 3.1m wide pavement from the centreline, with kerb and gutter.</li> </ul>

ISSUE	COMMENT
	<p>Note: a pavement width of 3.1m has been nominated as the existing pavement width of Hogans Road (edge of bitumen to edge of bitumen is 6.2m)</p> <ul style="list-style-type: none"> <li>○ A 1.2m wide concrete footpath is required along Hogans Road from the entrance to the development (Road #1) to the “to be constructed” footpath associated with the Bilambil Road upgrade (refer above).</li> <li>○ A half road profile along the frontage of the development on Hogans Road, west of the proposed entrance of the development (Road #1), equivalent to Tweed Shire Council’s standard road profile for an Access Street (Water Sensitive Urban Design), providing a minimum 3.1m wide pavement from the centreline, with a grass swale for stormwater management.</li> <li>○ The upgrade of Hogans Road shall also provide appropriate line marking and kerbside drainage to a legal point of discharge.</li> </ul> <p>The Applicant incorporated Council’s requested amendments apart from the proposed Water Sensitive Urban Design profile for the half road profile upgrade, west of the proposed intersection. Instead a standard half road profile upgrade with barrier kerb and gutter has been proposed in the latest submission.</p> <p>Council have accepted the latest set of plans prepared by CLA Consulting (especially refer Drawing 001 E and 002 F) in regards to the proposed upgrade of Hogans Road.</p> <p>Urliup Road.</p> <p>More significant clearing, including the lowering of the existing road crest in Urliup Road in the order of 800mm will be required to achieve a satisfactory level of sight distance for the proposed intersection off Urliup Road.</p> <p>Council previously advised the Applicant that Urliup Road would need to be upgraded to provide:</p> <ul style="list-style-type: none"> <li>○ A half road profile along the frontage of the development on Urliup Road, from the existing roundabout (at the intersection of Urliup Road and Bilambil Road) to the proposed entrance of the development (Road #1), equivalent to Tweed Shire Council’s standard road profile for an Access Street, providing a minimum 3.5m wide pavement from the centreline, with kerb and gutter.</li> <li>○ A 1.2m wide concrete footpath is required along Urliup Road from the entrance to the development (Road #1) to the “to be constructed” footpath associated with the Bilambil Road upgrade.</li> <li>○ A half road profile along the frontage of the development on</li> </ul>

ISSUE	COMMENT
	<p>Urliup Road, west of the proposed entrance of the development (Road #1), equivalent to Tweed Shire Council's standard road profile for an Access Street (Water Sensitive Urban Design), providing a minimum 3.5m wide pavement from the centreline, with a grass swale for stormwater management.</p> <ul style="list-style-type: none"> <li>○ The upgrade of Urliup Road shall also provide appropriate line marking and kerbside drainage to a legal point of discharge.</li> </ul> <p>The Applicant incorporated portions of the amendments proposed by Council.</p> <ul style="list-style-type: none"> <li>○ The Applicant successfully argued that it was unreasonable to require the Developer to upgrade Urliup Road, beyond its frontage. As such the Applicant has not proposed to undertake a half road profile from the existing roundabout (at the intersection of Urliup Road and Bilambil Road) to the proposed entrance of the development (Road #1). The Applicant has proposed upgrade works commencing from the developments frontage, but incorporating a full road profile upgrade, providing a 7.0m pavement with barrier kerb and gutter and drainage from this point. This has been accepted by Council.</li> <li>○ On a similar argument, the Applicant has proposed to construct a 1.2m wide concrete footpath only along its frontage, east of the proposed new intersection. Again, this has been accepted by Council.</li> <li>○ The proposed BA type intersection at Urliup Road has been replaced by a urbanised intersection, providing a 7.0m wide pavement with barrier kerb and gutter both sides, over an appropriate length. Again, this has been accepted by Council.</li> <li>○ The Applicant has not opted to incorporate a Water Sensitive Urban Design profile for the half road profile upgrade of Urliup Road, west of the proposed intersection. Instead a standard half road profile upgrade with barrier kerb and gutter and piped drainage has been proposed in the latest submission. Again, this has been accepted by Council.</li> </ul> <p>Council have accepted the above referenced amendments that have been incorporated into the latest set of plans prepared by CLA Consulting (especially refer Drawing 001 E and 002 F) in regards to the proposed upgrade of Urliup Road.</p> <p>Bilambil Road.</p> <p>Council previously advised the Applicant that Bilambil Road would need to be upgraded to provide:</p>

ISSUE	COMMENT
	<ul style="list-style-type: none"> <li>○ A road profile from the roundabout, for the full frontage of the commercial allotment along Bilambil Road, equivalent to Tweed Shire Council's standard road profile for a Low Volume Neighbourhood Connector (for up to 300vpd), providing a minimum 11.0m wide pavement (excluding the width of the median associated with the existing roundabout at the intersection of Uriup Road and Bilambil Road), with kerb and gutter both sides.</li> <li>○ There shall be a 30m transition from the "to be constructed" kerb and gutter to the existing edge of bitumen along the eastern side of Bilambil Road.</li> <li>○ No stopping signs shall be provided on both sides of Bilambil Road for the extent of the above works.</li> <li>○ A 1.2m wide footpath will be required on the developments side of the road only.</li> <li>○ A half road profile for the remaining frontage of the development along Bilambil Road, equivalent to Tweed Shire Council's standard road profile for a Low Volume Neighbourhood Connector (for up to 300vpd), providing a minimum 5.5m wide pavement from the centreline, with kerb and gutter and a 1.2m wide concrete footpath.</li> <li>○ The road shall be appropriate line marked, including channelised right turning lanes and edge lines.</li> <li>○ The upgrade of Bilambil Road shall provide appropriate kerbside inlet and piped drainage, to a legal point of discharge.</li> </ul> <p>The above amendments have been included in the latest set of plans prepared by CLA Consulting (especially refer Drawing 001 E and 002 F) in regards to the proposed upgrade of Bilambil Road.</p> <p>On 1 June 2009 Tweed Shire Council advised that the subject site is not located within the identified Kennedy Drive Catchment Area (refer Annexure 30 of the EA). Therefore Council's Resolution is not relevant to the project.</p> <p>Parking</p> <p>The EA has adopted a classification of Dwelling House and Shop to determine what car parking loading is required for the proposed commercial area.</p> <p>The submitted Traffic Impact Assessment Report (prepared by CRG Consultants) incorrectly references that Type BA right turning treatments be provided at each of the proposed intersections servicing the residential component of the development. Council have liaised with the Applicant, confirming that a Type BA right turning treatment will suffice for the intersection off Hogans Road (subject to a half road profile upgrade), but the intersection off Uriup Road will need to be of an</p>



ISSUE	COMMENT
	<p>urban standard. This has correctly been incorporated within the latest design plans, submitted by CLA Consultants.</p>
<p><b>BUSHFIRE</b></p>	<p>The subject site is mapped as bushfire prone land with riparian vegetation communities adjacent to Bilambil Creek constituting the key bushfire hazard. Other surrounding land is either grasslands or managed lands (i.e. urban roads and lawns).</p> <p>The applicant has determined that, in accordance with the provisions of Planning for Bushfire Protection 2006, the narrow riparian vegetation can be treated as a rainforest thus requiring a 10m asset protection zone. This does not impose a significant constraint on the development potential of the land as the asset protection zone has been accommodated in the proposed road which separates the residential lots from the proposed re-vegetated foreshore reserve.</p> <p>The Department of Planning should refer the proposal to the NSW Rural Fire Service for comment.</p>
<p><b>Issues raised by the Bilambil Progress Association</b></p>	
<p><b>Lot 53 - Retail Site</b></p>	<p>It is considered that the inclusion of a retail block is unnecessary considering the size of the village and as there is a general store/post office operating and meeting the needs of the community.</p> <p>Currently we have a new development in Terranora that is approximately five kilometres from the site and this is an economic disaster as the developer of this complex has been unable to lease the shops and those that were operating have closed and the remaining retailers are in the process of closing.</p> <p>Also at Bilambil Heights which is approximately 2kms away we have another general store a liquor store, hairdresser and 3 vacant shops.</p> <p>Another retail outlet in this development would not be sustainable and add no value to the village.</p>

ISSUE	COMMENT
<p><b>Lots 1 – 52 - Residential lots</b></p>	<p>The average size of lots is 512sqm.</p> <p>The lots facing Bilambil Road average 476sqm in size with an easement access from the internal road. The inclusion of an easement reduces the size of the blocks fronting the internal road and leaves a limited amount of space for the siting of residences. It is our understanding that easements can create disharmony and social problems. Due to the size of the blocks and the lack of parking the easements could be misused for additional parking. This could create conflict between neighbours. Maintenance and use of easements will always be an issue!</p> <p>There is also a privacy problem as the houses in this section of the estate would need to be two storey due to the size of the land. This close proximity to the adjoining homes will undoubtedly have an impact with noise from air conditioners on the first floor (as required for noise pollution from the sports field) together with privacy issues.</p> <p>It is recommended that Lots 31 to 13 should be removed to eliminate the requirement of easements and reduce social issues. However, even with the removal of these suggested lots it is considered that the density is still too great.</p>
<p><b>Lot 56 – Sewer Pump Site</b></p>	<p>Presently Tweed Shire Council is undertaking a study and modelling to see if the capacity of the sewer pump station at Bilambil Heights, which is at maximum capacity, can be upgraded to accept the extra volume from the proposed development.</p> <p>The developer and the council have agreed to a Draft Statement of Commitment pending the results of the above study.</p> <p>If the sewer pump well was located at current levels of the area then when the area goes under flood (which occurs every 2/3 years) the sewer well would overflow and have to discharge directly into Bilambil Creek and ultimately to the broadwater. (see attached report on estuary waters)</p> <p>In addition, one possible alignment for the sewer would require the resumption of a portion of community member's land. This information should be available to the community and be specified at the time of the proposal thus enabling the community to assess its impact. Further, one alignment may require removing extensive vegetation currently under government protection (i.e. the riparian zone around the Broadwater). This also may be of an unacceptable nature both environmentally and socially for the community.</p> <p>When discussing the issue of sewer with the developer we asked if the intending sewer line would be suitable for the Bilambil Village to connect to. He advised that they were only required to provide</p>

ISSUE	COMMENT
	<p>a sewer pipe sufficient to cater for their proposed subdivision. Other options may need to be considered like bio cycle.</p> <p>It is strongly recommended that no decision should be made on the development application until such time as Council have agreed to a suitable route. Also Council need to undertake some commitment to negotiating with the developer to supply adequate pipes to allow for the entire Bilambil Village to be sewerred.</p>
<b>Lot 55 – Public Open Space</b>	<p>This lot is located at the lowest point of the proposed development and is flood prone. Portion of the lot has an easement which is required for overhead power lines. Children should not be encouraged to play in this area due to electro magnetic fields.</p>
<b>Lot 54 – Public Reserve</b>	<p>This area is part riparian and a small embellished open space. The plan indicates a 50m buffer zone which includes the road.</p> <p>It is considered that this area is insufficient. Bilambil Creek has recently had a ‘C’ rating in a study commissioned by the Tweed Shire Council and conducted by International Water Centre to determine the quality of estuary waters.</p> <p>From our investigations with Council the generally accepted buffer zone is 50m. The Bilambil community expects no less and this development should have the full buffer excluding the road.</p> <p>This recommendation is based on the fact that Bilambil Creek has a ‘C’ rating in the recent study conducted. Also there are several colonies of platypus located in the upper reaches of the creek and also in the proximity of the proposed development. These colonies have been mapped with the Department of Wildlife at Murwillumbah and also Tweed Shire Council.</p> <p>We also recommend that Bilambil Creek be protected with suitable fencing to prevent accidents and to ensure that there is no contamination by residents e.g. rubbish, plastic bags, bottles etc.</p>
<b>Subdivision Entry Roads</b>	<p><b>Urliup Road</b> - the Urliup Road intersection is situated on a crest and the engineering plan indicates an 800mm reduction. Locals who use this road believe that this is inadequate and that a further reduction should be made to give clear vision from both easterly and westerly aspects.</p> <p>We recommend that a 1.5m reduction should be made to the crest.</p> <p><b>Hogans Road</b> - although the proposal has an entry via Hogans Road this area is highly susceptible to flooding. When approaching from the western side the entry is close to the causeway. Drivers may concentrate on crossing the causeway and may not necessarily be aware of the entry road in front. The intersection of Bilambil Road and Hogans Road is only a short distance to the proposed entry. There have been many traffic</p>

ISSUE	COMMENT
	<p>incidents at this junction particularly when the sporting fields are in full use.</p> <p>We recommend that this entry receive special consideration in regard to clear viewing of the proposed entry.</p>
<p><b>ENVIRONMENTAL ISSUES</b></p> <p><b>Stormwater</b></p>	<p>After consultation with Campbell Leonard, Engineering Consultant for Jackson International Ltd. He advised that he considered that the stormwater dispersal as indicated in their submission was not an ideal outcome. He had originally included a settling pond system and this was rejected by Tweed Shire Council.</p> <p>We have not determined why Council made this decision even though correspondence indicates that it was because the subdivision only included 50 blocks when, in fact, there is currently 53 lots.</p> <p>When discussing this matter with Campbell Leonard Engineer for the developer he advised that the system nominated in the development does have a tendency to have a septic smell if insufficient water flows.</p> <p>Our concern is that if a rapid release system is used it will not remove nutrients thus polluting Bilambil Creek which flows into the broadwater.</p> <p>It is recommended that the matter of stormwater be revisited to achieve the best outcome. This recommendation is based on our concern that stormwater will disperse at a faster rate as there will be increased run off due to most surfaces being sealed.</p>
<p><b>Flooding</b></p>	<p>Bilambil Valley has an enormous catchment area and encompasses run off from, Tomewin, Dulguigan, Glengarrie and Mt. Carool. This catchment area has an excessively high rainfall. All of these tributaries go in the Bilambil Creek moving east through the valley to the broadwater.</p> <p>The residents who live on the western side of Hogans Road causeway may be significantly affected by a rapid release system when the creek is flooding as the stormwater outlet is at the southern end of the development near the causeway.</p> <p>This could make the causeway impassable and dangerous particularly to people who are not aware of the rapid flow.</p> <p>The property and home adjoining the southern side of the causeway could be inundated with additional stormwater discharge. Currently the water flows down Hogans Road behind the house on the southern end of the development across the adjoining paddock and then moves on through the sporting club and field adjacent to the over 55 village. Residents are forced to move vehicles to higher ground as water is knee high and then</p>

ISSUE	COMMENT
	<p>they wait for the tide to go down and the water recede.</p> <p>Bilambil Creek then proceeds to flood the remaining sporting fields and valley before reaching the broadwater. The proposed 52 lot subdivision will then become an island cut off from the arterial roads.</p> <p>People unaware of the dangers of flood waters leave themselves at risk.</p> <p>We must make you aware that as the creek is tidal, when flooding occurs the waters are held back by up to 4 – 5 hours until the changing tide allows them to escape.</p> <p>We recommend that all intending purchasers be suitably advised in a Contract of Sale.</p>
<p><b>SOCIAL ISSUES</b></p> <p><b>Parking facilities</b></p>	<p>Due to the density of the development there is inadequate parking for visitors or additional vehicles and as the roads are 15m wide and parallel parking on the internal road will cause congestion. The majority of families operate 2 to 3 vehicles and these will most certainly be necessity to access employment etc. due to the location of Bilambil Village.</p> <p>We have been advised that this width road is causing problems within the Tweed Shire as if cars are parked on opposite kerbs they invariably block the road. Therefore, it is recommended that a more appropriate width be included.</p>
<p><b>Noise &amp; Lights</b></p>	<p>The proposed subdivision is in conflict with the sporting fields opposite.</p> <p>The fields are used for tennis, cricket, football, soccer, school activities and games and coaching for these sports together with after game activities in the club houses which can continue until late into the night with a curfew of 1.00 am. All fields are flood lit at night for these activities and light the whole of the village.</p> <p>The sporting club opposite the proposed development have entertainment in the form of live music and performers. This could be in direct conflict with the development.</p> <p>At our meeting on August 13 a representative from the over 55 village complained about noise and flood lights impacting on their lifestyle.</p> <p>The developer has incorporated a 1.8m acoustic barrier fronting Bilambil Road to reduce noise from the sporting complex and indicated that any 2 storey home (probably the majority) will have to have an air conditioning unit and double glazed windows to reduce the noise on the first floor.</p> <p>We are concerned about the maintenance of this acoustic fence.</p>

ISSUE	COMMENT
	<p>Who is responsible for the upkeep eg removing graffiti or damaged panels? Council were unable to advise us and are looking into the matter.</p> <p>We consider that this is not a very environmentally sound policy as one would think that we would be trying to reduce the amount of power used in accordance with government greenhouse policy.</p> <p>We have a rural based economy in the valley with cattle properties adjoining the proposed development. These enterprises generate noise from tractors and livestock which newcomers could find offensive particularly at calving time and separation of livestock.</p> <p>Over the years the traffic flow on Bilambil, Hogans and Urliup Roads has increased dramatically. Bilambil Road is a recognised tourist drive encompassing Hogan's Rainforest Park and it is also used as a secondary road to Murwillumbah as is Urliup Road. The increased noise from the flow of the traffic will impact on the residents of the proposed development.</p> <p>We recommend that intending buyers be made fully aware of noise levels particularly if the subdivision is advertised as a "quiet rural estate".</p>
<b>Community Hall</b>	<p>The Bilambil Hall was built by John Suter and is 100 years old. The hall plays an integral part in the community. Old time dances, band practice, and other functions are conducted here on a regular basis. It is situated on the north eastern corner of Bilambil and Urliup Road at the roundabout.</p> <p>With the intended site works and the retaining walls which are to be built on the boundary between the development and the hall we have grave fears that water run off will be increased on to this site causing undermining of the stumps.</p> <p>It is considered that Lots 9 10 and 11 are in conflict with the hall due to the fact that there will be an element of noise generated from the above events. The proposed retail block will have a retaining wall 4/5 m high and this being so close to the hall could be a safety issue.</p> <p>We recommend that Lots 9 10 11 and 53 (retail lot) be left as open space/ playground so that the possibility of conflict is eliminated. We also consider that the developer should provide a sewer connection and other benefits for the Community Hall as it will in all probability be used by intending residents.</p>
<b>TRANSPORT</b> <b>Public Services</b>	<p>Presently there is no public bus service to residents of Bilambil Valley in order that they are able to commute to work or to access doctors etc. They are totally reliant on private vehicles. A bus service is available for school children only.</p>
<b>Roads</b>	<p>We must point out that Bilambil Road as it descends into the</p>

ISSUE	COMMENT
	<p>valley from Bilambil Heights and Terranora is a degraded narrow winding road with no safety rails and with limited lane marking. These roads are also affected by slippage particularly in wet weather. Tweed Shire Council has been requested to carry out work on these roads to ensure the safety of the residents of Bilambil valley but as yet we have had no satisfaction.</p> <p>There are no footpaths available for pedestrians on any arterial road or village roads. Pedestrians have to use grass verges or the road.</p>
<p><b>Traffic</b></p>	<p>With the increased amount of home units and estates over the past few years, Tweed Heads is experiencing severe traffic issues particularly in the West Tweed area.</p> <p>To access the freeway, shopping centres and all other amenities leading north vehicles must go through the Kennedy Drive catchment. This arterial road is currently operating at maximum capacity.</p> <p>If you wish to travel south via the highway you have to use Terranora Road which once again has issues in that it is a winding narrow road servicing new estates in that area and close to maximum capacity.</p> <p>Bilambil Valley has become the hub of the Tweed Shire as the Council acquired some years ago two club houses and adjoining sporting fields. When sporting functions are on there is limited parking and the roads surrounding the area become a safety issue. Once again Council have been approached and we have been advised that Council are unable to provide additional parking.</p> <p>It is recommended that the proposed development have sufficient parking incorporated in the design (as do other estates) to accommodate the residents.</p>

ISSUE	COMMENT
<p><b>SAFETY ISSUES</b></p> <p><b>Children's Playground</b></p>	<p>The developer has not allowed for appropriate playground or open space in this proposed development. They have allocated a very small area north of the riparian area. This is not adequate and it would appear that they have approached Council to use a portion of the playing fields for a children's playground.</p> <p>This is not acceptable as Bilambil Road carries a large volume of through traffic as well as those attending sporting functions.</p> <p>As a suggestion the retail complex should be removed as we already have a general store and place the children's playground next to the community hall.</p> <p>This will allow the integration of the two separate areas creating a more attractive element to the proposed development. This area could be appropriately fenced with gates to improve safety for the children.</p>
<p><b>SOCIAL ISSUES</b></p>	<p>Bilambil Village is basically a rural area and although there are sporting fields for them to use other social and educational activities such as universities, movies, shopping centres, beaches etc. will require a 24 hours public transport service.</p> <p>Research has proved that growing children require stimulation in all aspects of their lives.</p>

**OPTIONS:**

1. That Council endorses the submission to the Department of Planning for the subdivision at Bilambil, based on the officer's assessment provided in this report.
2. Council resolves to add further issues to the submission, prior to submission being sent to the Department of Planning.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council has an opportunity to make a submission to the Department of Planning on the proposed Major Project for a subdivision at Bilambil.

Relevant Council officers have assessed the Environmental Assessment on public exhibition. These comments have been assembled into the report and submission.

The purpose of this report is to seek Council endorsement of the issues raised in the submission.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

Nil.

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**18 [PR-CM] Environmental Assessment Major Project 07\_0179, Mixed Use Development - Lots 184-187 and 191-194 DP 259164 and Lots 20-23 DP 31208, Tweed Coast Road and Hastings Road, Cabarita**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA2380/690 Pt5**

**SUMMARY OF REPORT:**

The purpose of this report is to gain endorsement from Council to forward a submission to the Department of Planning in respect of this preferred project plan.

An earlier officer's report on the exhibited project application was submitted to Council's meeting of 16 June 2009, which formed the basis for a Council endorsed submission to the Department of Planning. A copy of this report has been provided as an attachment.

The Department of Planning have since invited Council to provide a submission on the preferred project plan for a mixed use development at Tweed Coast Road and Hastings Road.

The Department of Planning requested that the applicant prepare a preferred project if changes were proposed to the project to minimise the development's environmental impact and as a result of matters raised by both the public and relevant authorities during the exhibition period.

The applicant's preferred project responds to the submissions received including those made by the community and to the key issues raised by Council and other government authorities.

The officer's assessment of the preferred project plan indicates there are a number of unresolved issues regarding the proposed sewer relocation, the part removal of the right of carriageway through the middle of the site, and an on site parking shortfall. In this regard the officers have recommended a number of issues for the Department to act upon and resolve.

It is recommended that a submission detailing the considerations within this report should be forwarded to the Department of Planning prior to any determination being made.

**RECOMMENDATION:**

**That the matters discussed in this report, in respect of the preferred project plan for Major Project 07\_0179, be endorsed by Council and forwarded to the Department of Planning as a submission.**

**REPORT:**

At its meeting on 16 June 2009 Council considered a report on the Environmental Assessment for a mixed use development at Tweed Coast Road and Hastings Road, Cabarita. Council resolved to forward a submission detailing these issues to the Department of Planning.

The Department of Planning have invited Council to provide comments on the current preferred project which address issues raised by the community, Tweed Council and other government authorities.

The Department of Planning have invited Council to provide comments regarding the preferred project. The following matters have been identified as being of importance to include in any submission to the Department.

DEVELOPMENT PLANS:



WILDSCAPE PHOTOMONTAGE

CADARITA DEVELOPMENT | Tweedscap Photomontage

27.07.09 | Rev Application | 04.09 | 6

**STOCKWELL**  
DESIGN AND ARCHITECTURAL  
147 BRIDGE ST, SUITE 100, MELBOURNE VIC 3000  
TEL: 03 9412 3333

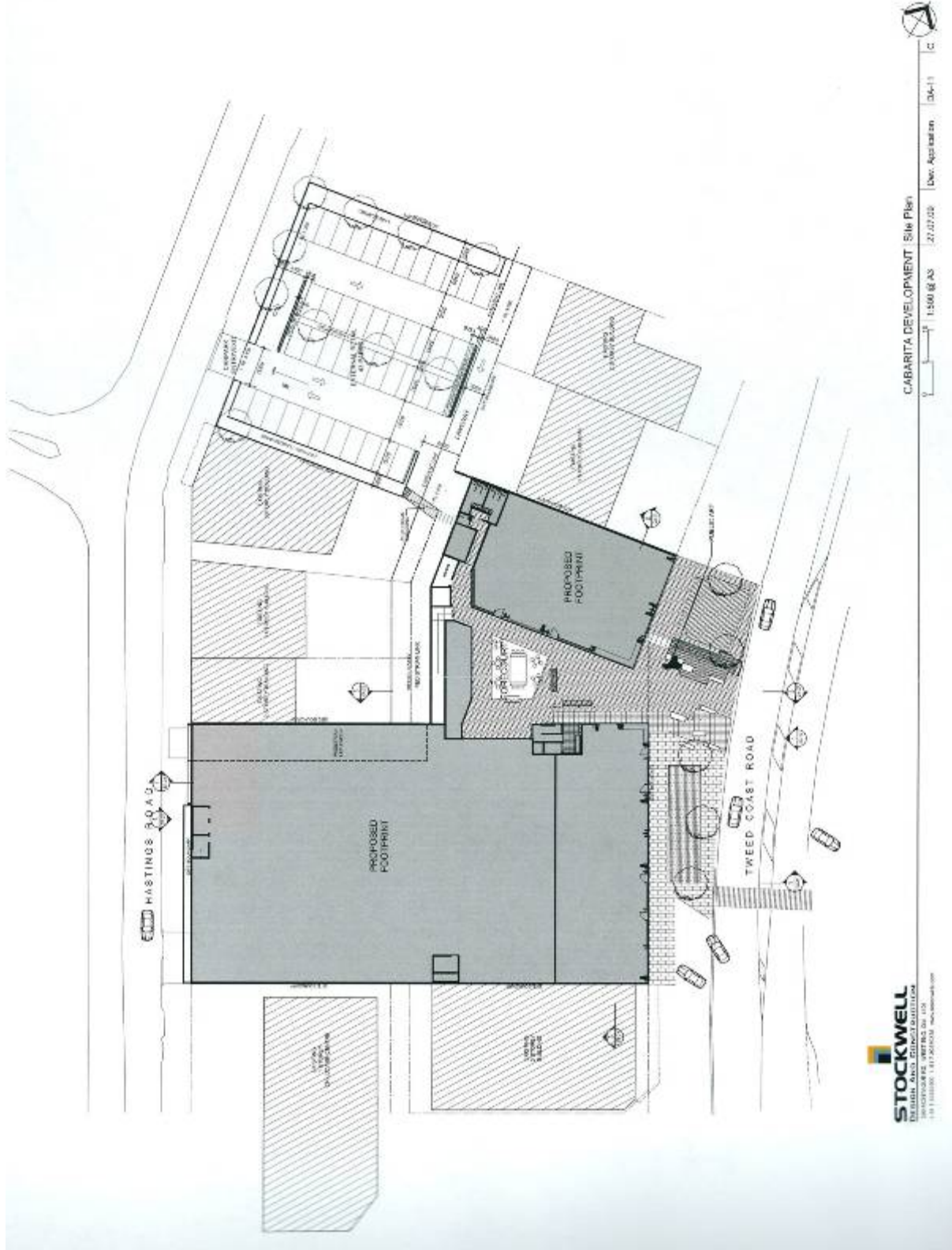


HASTING RD PHOTOMONTAGE



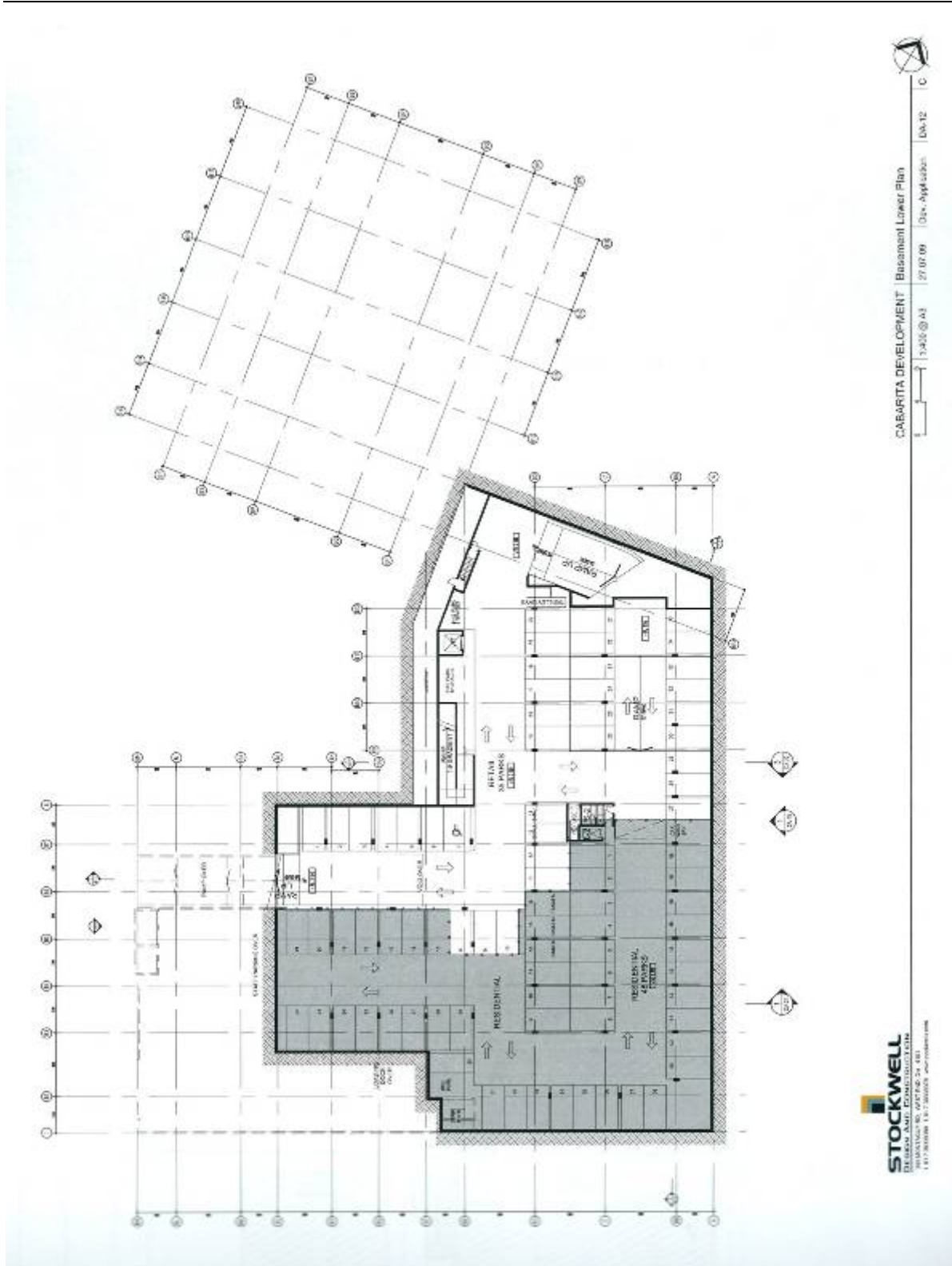
CABARITA DEVELOPMENT Hasting Road Photomontage  
27.07.08 Dev. Application DA-10 H

**STOCKWELL**  
 ELECTRONIC AND DIGITAL SOLUTIONS  
 1/11 BROADWAY, SUITE 101, MELBOURNE VIC 3000  
 TEL: (03) 9412 1000 FAX: (03) 9412 1001  
 WWW.STOCKWELL.COM.AU



CABARITA DEVELOPMENT Site Plan  
 1:500 @ A3 27.07.08  
 Date: Application 304-13

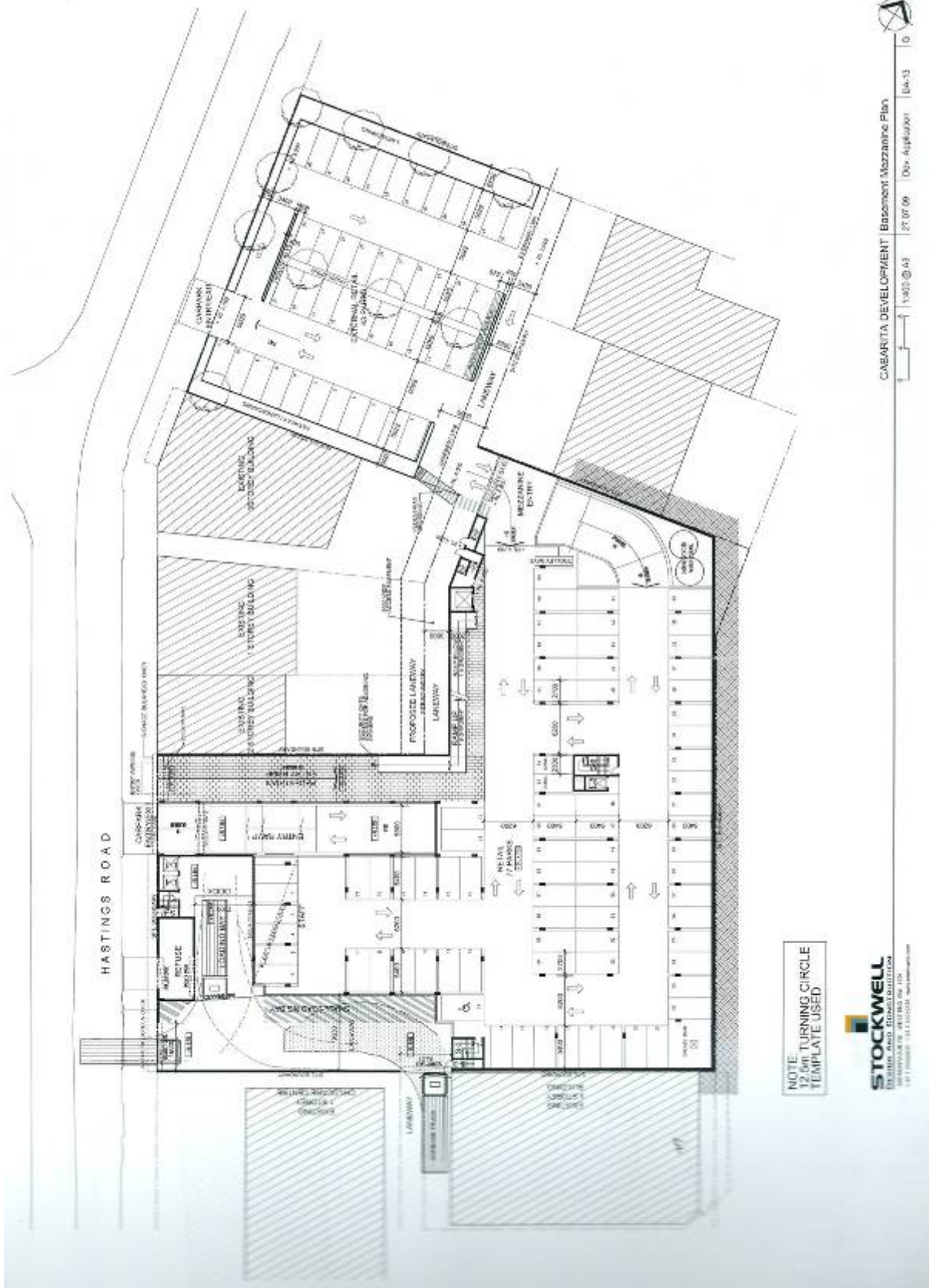
**STOCKWELL**  
 DESIGN AND CONSULTANTS  
 10/11 HASTINGS ROAD, TWEED HEADS  
 PH: (07) 5532 1111 FAX: (07) 5532 1112



**STOCKWELL**  
 ARCHITECTS  
 1 ST. MARKS PLACE, SUITE 204, ARLINGTON, VA 22201  
 TEL: 703.261.1100 FAX: 703.261.1101

CABARITA DEVELOPMENT Basement Lower Plan  
 1:3.05 @ A3 27.07.09 Des. Application DA-12 C

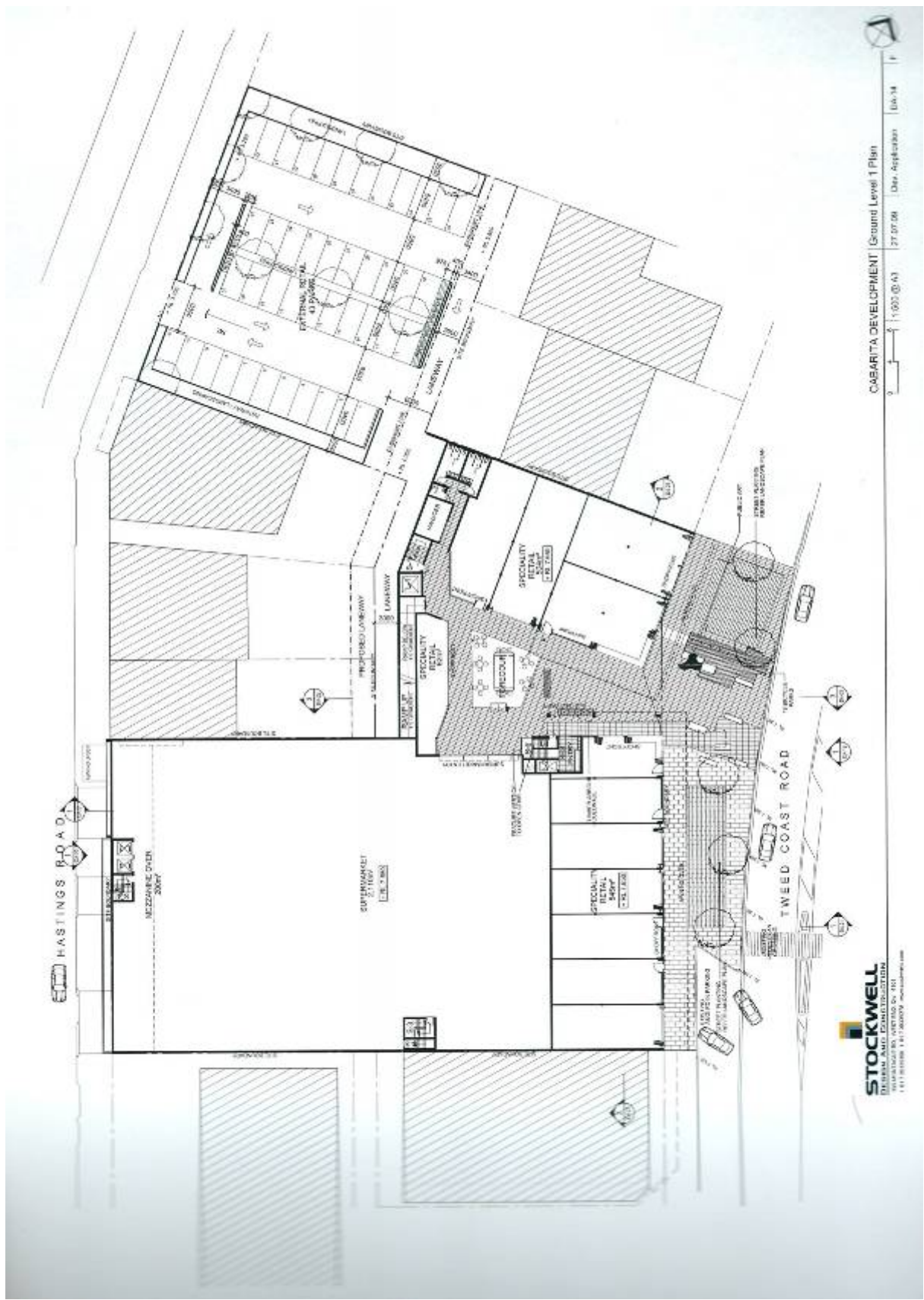




NOTE  
12.5m TURNING CIRCLE  
TEMPLATE USED

**STOCKWELL**  
DESIGN AND CONSTRUCTION  
107 PARRAMATTA STREET SUITE 105  
PARRAMATTA NSW 2150  
PH: (02) 9639 1111 FAX: (02) 9639 1112

CABARITA DEVELOPMENT Basement Mazeplan  
27.07.09  
1:500 @ A3  
BA-13





**STOCKWELL**  
 ARCHITECTS  
 111 KINGSWAY, SYDNEY NSW 1585  
 TEL: (02) 9550 1111 FAX: (02) 9550 1112 WWW.STOCKWELL.COM.AU

CABARITA DEVELOPMENT | LEVEL 2 PLAN  
 1:402 @ A3 | 27.07.09 | Day Application | Dec-19 | E



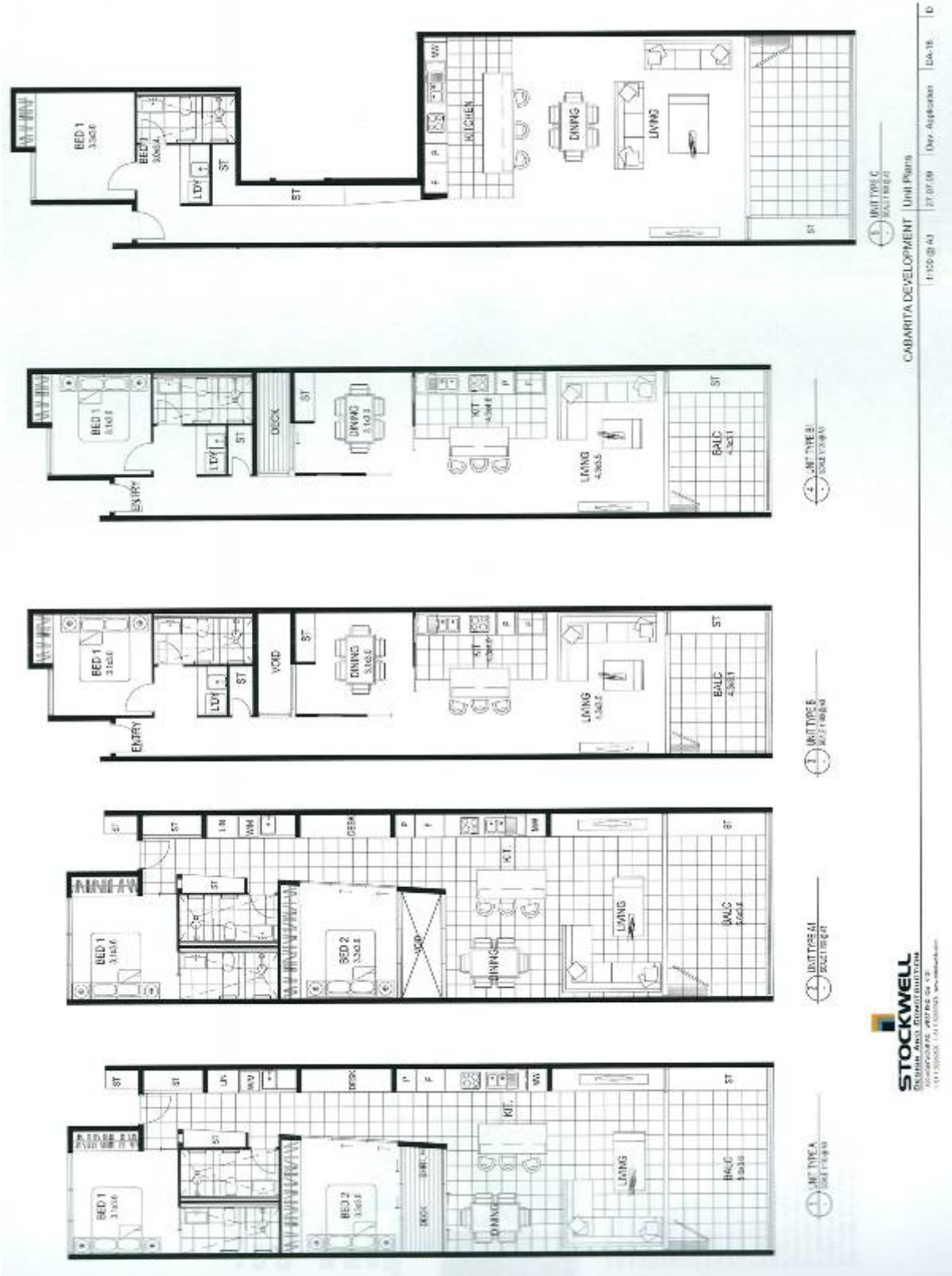
**STOCKWELL**  
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 1/17/2008 1/17/2009 [www.stockwell.com](http://www.stockwell.com)

CABARITA DEVELOPMENT LEVEL 3 PLAN  
 1:500 (A3) 17/07/09 (Rev. Approval) CA-16 D



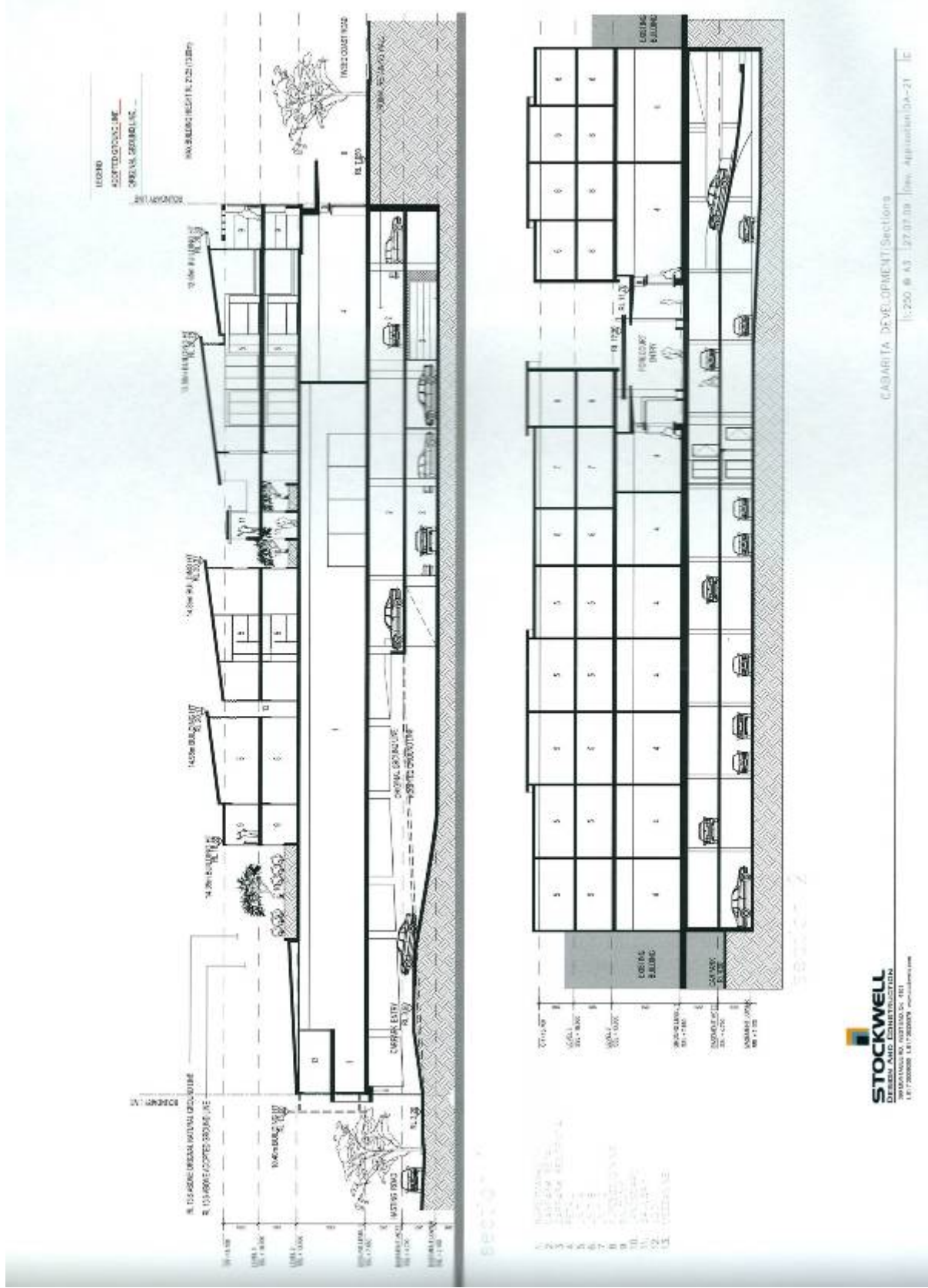
CABARITA DEVELOPMENT Floor Plan  
 1:450 @ A3  
 27.07.09  
 Date: 27.07.09  
 DA-17

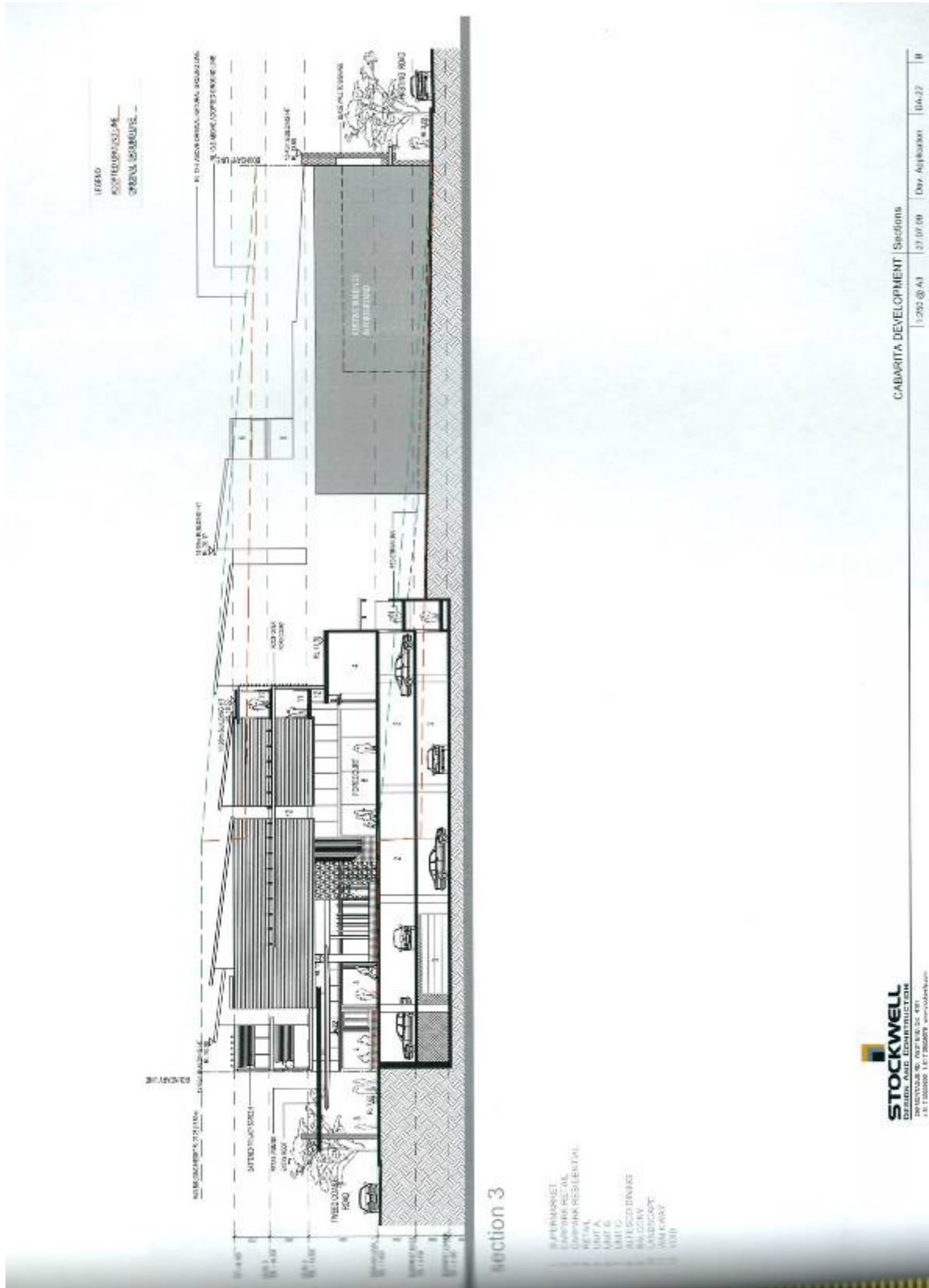
**STOCKWELL**  
 DESIGN AND CONSTRUCTION  
 1/11/2008 11:17:00 AM



CABARITA DEVELOPMENT Unit Plans  
 1:100 @ A3 27.07.09 Day Application DA-18 D

**STOCKWELL**  
 CONSULTING ARCHITECTS  
 111-120/121-122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000





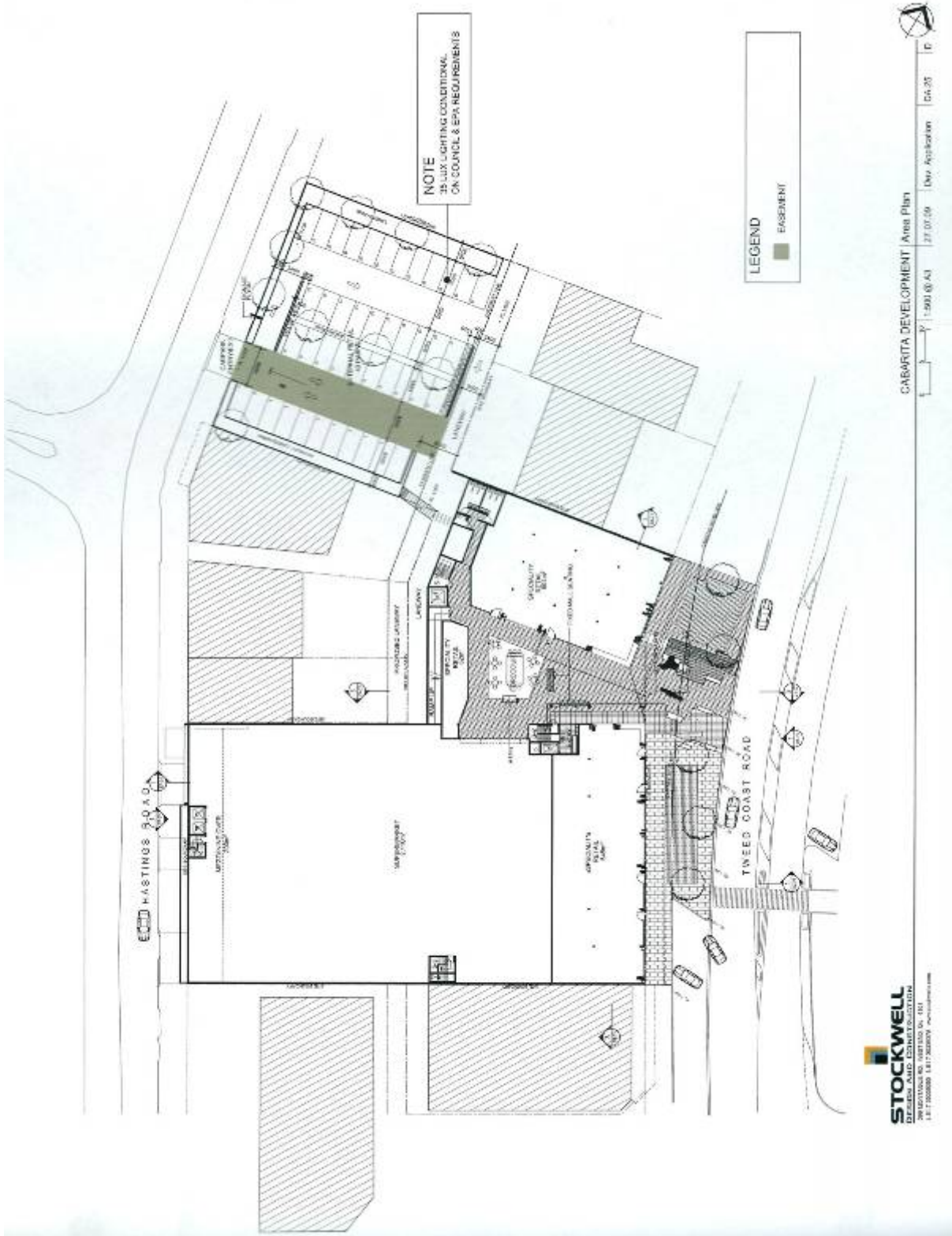




CABARITA DEVELOPMENT | Perspectives

27.07.09 | Dev. Application | 06-04 | 11

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 DESIGN AND CONSULTANTS  
 141 QUEENSLAND STREET, SUITE 101  
 SYDNEY NSW 2000 | PH: (02) 9231 1111 | WWW.STOCKWELL.COM



Planning Comment:

**Overall Number of Storeys**

The proposal is regarded as a three and four storey development. The fourth storey is a result of the basement carpark and the slope of the site. The preferred project report states the fourth storey component is not visible from the Tweed Coast Road or Hastings Road frontages as it is confined to the central section of the site. The proposal is viewed as a three storey development from Tweed Coast Road and a two storey development from Hastings Road. The building height issue was addressed in more detail in the earlier report to Council's meeting of 16 June 2009.

**Developer Contributions**

If supported the Department of Planning may include the following condition with regards to developer contributions within the development consent:

**Recommended Condition:**

- # 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 DSP6:	7.8502 ET @ \$10709 per ET	\$84067.80
Sewer Hastings Point:	16.859 ET @ \$5146 per ET	\$86756.40

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

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

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

[PCC0265/PSC0165]

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# **Section 94 Contributions**

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.

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

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

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

(a) Tweed Road Contribution Plan:

1298.984 Trips @ \$955 per Trips \$1,240,530

(\$868 base rate + \$87 indexation)

S94 Plan No. 4

Sector7\_4

**Heavy Haulage Component**

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5.1.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

$\$Con_{TRCP - Heavy} = Prod. \times Dist \times \$Unit \times (1+Admin.)$

where:

$\$Con_{TRCP - Heavy}$  heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads  
(trip one way)

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\$Unit	the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)	
Admin.	Administration component - 5% - see Section 6.5	
(b) Open Space (Casual):		
17.196 ET @ \$597 per ET		\$10,266
(\$570 base rate + \$27 indexation)		
S94 Plan No. 5		
(c) Open Space (Structured):		
17.184 ET @ \$684 per ET		\$11,754
(\$653 base rate + \$31 indexation)		
S94 Plan No. 5		
(d) Shirewide Library Facilities:		
17.184 ET @ \$374 per ET		\$6,427
(\$374 base rate + \$0 indexation)		
S94 Plan No. 11		
(e) Bus Shelters:		
15.616 ET @ \$26 per ET		\$406
(\$26 base rate + \$0 indexation)		
S94 Plan No. 12		
(f) Eviron Cemetery:		
18.48 ET @ \$131 per ET		\$2,421
(\$131 base rate + \$0 indexation)		
S94 Plan No. 13		
(g) Community Facilities (Tweed Coast - South)		
31 ET @ \$584 per ET		\$18,104
(\$584 base rate + \$0 indexation)		
S94 Plan No. 15		
(h) Emergency Facilities (Surf Lifesaving):		
17.2 ET @ \$200 per ET		\$3,440
(\$200 base rate + \$0 indexation)		
S94 Plan No. 16		
(i) Extensions to Council Administration Offices & Technical Support Facilities		
18.7464 ET @ \$1996.8 per ET		\$37,432.81
(\$1996.8 base rate + \$0 indexation)		
S94 Plan No. 18		
(j) Cycleways:		
17.136 ET @ \$352 per ET		\$6,032

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	(\$352 base rate + \$0 indexation)	
	S94 Plan No. 22	
(k)	Regional Open Space (Casual)	
	17.152 ET @ \$855 per ET	\$14,665
	(\$855 base rate + \$0 indexation)	
	S94 Plan No. 26	
(l)	Regional Open Space (Structured):	
	17.144 ET @ \$2327 per ET	\$39,894
	(\$2327 base rate + \$0 indexation)	
	S94 Plan No. 26	

Engineering Comment:

**Rear Service Vehicle Access**

As shown in amended plan DA-13G, the proposed development severs the rear access lane corridor identified in Tweed Local Environmental Plan 2000.

The southern portion of the lane, at the rear of No.47 Tweed Coast Road, will be continued through the development's loading bay area and onto Hastings Road. This is generally satisfactory, subject to detailed design to achieve adequate turning paths and the like. The proposal would close off the portion of the laneway through the delivery area outside of operating hours, for security reasons. Though this restricts public access, it is considered a reasonable approach, subject to the developer obtaining Council agreement for the hours of closure, any future changes to these hours, and satisfactory arrangements for after hour's emergency access.

The revised loading bay arrangement required to accommodate the laneway extension through the development will limit deliveries to small rigid trucks, and will hopefully eliminate unauthorised reversing by semi trailers to service the development. Previously it was recommended that physical barriers be incorporated into a median on Hastings Road to prevent these semi trailer movements however this could be difficult to implement at this time without impacting other road users. The preferred option is for the developer to pay a cash bond (\$20 000) to Council for additional median works if after 12 months delivery movements are demonstrated to be unacceptable to Council.

The northern leg has been improved by the dedication of 3m of the development site as public road, to achieve the final 6m wide laneway at the rear of Lots 188-190. The lane dead ends without provision of turn around areas, these will have to be accommodated by future development of the adjoining lots. This arrangement is generally satisfactory, subject to the developer constructing the 3m wide portion to be dedicated. For future continuity of the rear vehicle access lane, the developer also needs to dedicate as public road the 3m wide carparking aisle along the eastern site boundary. The easement through the carpark connecting this portion of the laneway to Hastings Road is acceptable, and provides a degree of flexibility should this connecting leg be relocated (with Council authorisation) in the future.

As part of the assessment of the laneway issues, it has come to light that lots 181 to 194 (inclusive) of DP 259164 are burdened by a 3m wide right of carriageway over the

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laneway alignment (Appendix G of the preferred project). These easements benefit each lot from Lot 180-195 (inclusive, noting Lot 195 has since been subdivided). As such, variations to the right of carriageway need to be endorsed by all benefitting landholders. This may have a significant bearing on the legality of the subject development's proposal to construct over the right of carriageway easements on Lots 191-194, as the developer must obtain the agreement of all benefitting landholders to relinquish the easements. Council is one of the beneficiaries, and its officers do not object to removal of the easement, subject to a Council resolution to that effect. The Department of Planning is urged to resolve this easement issue prior to determination of the application.

### **Stormwater Management**

A number of issues have been raised regarding the applicant's stormwater management plan. Rather than try and address these problems, the applicant will accept conditions of consent requiring an on site detention system for stormwater runoff, to limit peak discharge from the site to 200 L/s/ha, in accordance with Development Design Specification D5. This shall limit adverse drainage impacts on Hastings Road.

### **Recommendation and Conditions**

Subject to satisfactory resolution of the right of carriageway easement issue discussed above, previous engineering objections to the development are withdrawn subject to the following conditions:

#### Access Laneway

1. Rear service vehicle access shall be provided in general accordance with Drawing DA-13 G. Detailed design shall ensure adequate turn paths are provided in laneway and carparking areas.
2. The section of laneway through the loading dock area shall be contained within a 6m wide easement benefitting Council.
3. A 6m wide easement benefitting Council shall be created over the nominated vehicle aisle in the northern car park area in general accordance with Drawing DA-25 D.
4. The 3m wide section of laneway adjacent to Lots 188, 189 and 190 on DP 259164 shall be constructed to Council specifications and dedicated to Council as public road.
5. The 3 metre portion of the car park access aisle running along the eastern boundary of lots 184,185,186 and 187 DP 259164 is to be dedicated to Council as public road.
6. Land dedication and registration of easements shall be completed prior to occupation of the development.
7. Closure of the laneway area through the loading dock area is conditional on the agreement of Council for the terms and the hours of closure. Future variation to those terms and/or hours shall also be subject to Council agreement. Arrangements for the provision of after hour's emergency access to this section of the laneway must be made to the satisfaction of Council.
8. Deliveries to the loading dock shall be restricted to small rigid vehicles (maximum 12.5m), and deliveries by semi trailer are not permitted. The developer shall pay a cash bond of \$20,000 to Council for the purpose of future traffic control devices in Hastings Road, should delivery arrangements be deemed by Council to be

unsatisfactory. The bond shall be paid prior to occupation, and the balance of this bond shall be refunded 12 months after the date of occupation.

Stormwater Management

9. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of *The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook"* except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.

All stormwater must initially be directed to the DCP. Details are to be submitted with the construction certificate application.

10. 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 S68 of the Local Government Act.

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.

Where Council is requested to issue a construction certificate for civil works associated with a subdivision consent, the abovementioned works can be incorporated as part of the construction certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

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



- i. The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - ii. Permanent stormwater quality treatment shall comply with section 5.5.3 of the *Tweed Urban Stormwater Quality Management Plan* and Councils *Development Design Specification D7 - Stormwater Quality*.
  - iii. The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management.
  - iv. Specific Requirements to be detailed within the Construction certificate application include:
    - \* Shake down area along the haul route immediately before the intersection with the road reserve.
13. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.
- In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.
- This sign is to remain in position for the duration of the project.
14. During construction, a satisfactory inspection report is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.
15. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the satisfactory inspection report issued by Council for all s68h2 permanent stormwater quality control devices.

### Flooding

16. Basement car parking shall be protected against the ingress of flood water in accordance with DCP-Section A3 being:

The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 3.4m AHD in accordance with Tweed Shire Council Development Control Plan Part A3 - Development of Flood Liable Land. This immunity shall be provided at all accesses including external stairs to the basement car park. The pump system shall be designed for a storm event with a 10 year average return interval (ARI 10) and shall have failsafe measures in place such that property (onsite and adjacent) is protected against pump failure.

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Consequences of the 100 year ARI storm event must also be addressed. Details of the basement stormwater pump-out system shall be submitted to and approved by the Principle Certifying Authority prior to the issue of a Construction Certificate.

Installed pumps must be designed and installed in accordance with Section 9 of AS/NZS3500.3.2 1998 *National Plumbing and Drainage Part 3.2: Stormwater Drainage Acceptable Solutions*

### Car Parking

The following table presents the shortages in car parking requirements for the 'preferred project report' including loading bays for a Heavy Rigid Vehicle (HRV).

The applicant is currently short 10 car parking spaces, 3 staff spaces and 2 HRV spaces (including the 20% reduction for the commercial component as specified in section 2.4.1 of the DCP Section A2).

No visitor parking has been provided in the residential component, it is recommended the applicant provide the required car parking numbers to Council's standards as previously requested. The applicant provides no justification for the shortfall in car parking numbers. An assessment is provided below:

Mixed Use Development	DCP – Section A2 – site access & car parking requirements (Includes 20% ESD for customer and staff parking only)	Car parking provided in development
Supermarket – floor area of 2310m <sup>2</sup> (includes 200m <sup>2</sup> mezzanine)	Delivery vehicle = min 2 HRV	2 HRV = 12.5m length & smaller space
	Staff 1/100 m <sup>2</sup> x 2310 m <sup>2</sup> x 0.8 = 18.48 spaces	6 staff spaces
	Customer 4.4/100 m <sup>2</sup> x 2310 x 0.8 = 81.312 spaces	154 retail spaces
	Bicycles = 1/200 x 2310 m <sup>2</sup> = 12 spaces	40 spaces
Retail – 1111m <sup>2</sup>	Delivery Vehicle = 1/500 x 1111m <sup>2</sup> = 2.2 HRV spaces	Nil
	Staff 1/100m <sup>2</sup> x 1111 x 0.8 = 8.88 spaces	Only 6 spaces are nominated as staff car spaces Short 2.88 spaces
	Customer 4.4/100 m <sup>2</sup> x 1111 x 0.8 = 39.12 spaces	154 retail spaces (as above)
<b>TOTAL</b>	Delivery vehicles = 4.2 spaces Staff and customer = 147.8 spaces	Delivery vehicles = 2 spaces Staff and customer = 154 retail spaces (only 6 spaces are nominated for staff, 2.88 spaces short)
40 residential units	1 per 1 bedroom unit and 1.5	

Mixed Use Development	DCP – Section A2 – site access & car parking requirements (Includes 20% ESD for customer and staff parking only)	Car parking provided in development
16 x 2 bedroom units 24 x 1 bedroom units	per 2 bedroom unit Plus 1 space per 4 units for visitor parking  = 48 residential spaces and 10 visitor spaces	48 residential spaces (which includes 6 tandem spaces)
<b>TOTAL</b>	48 residential spaces and 10 visitor spaces	48 residential car spaces, no visitor car spaces. Short 10 visitor spaces
<b>TOTAL for mixed use development</b>	Delivery vehicles = 4.2 spaces Staff and customers = 147.79 spaces Residential units = 48 spaces Visitor Spaces = 10 spaces	Delivery vehicles = 2 spaces Staff and Customers = 154 retail spaces Residential units = 48 spaces Nil visitor spaces 2.88 spaces short for staff spaces
	<b>Delivery vehicles = 4.2 spaces</b>  <b>All other uses = 205.79 spaces = 206 spaces</b>	<b>Delivery vehicles = 2.2 spaces</b>  <b>All other uses = 202 spaces</b>
<b>Shortfall</b>		<b>The development is short 2 HRV spaces, 10 visitor spaces and 3 staff spaces</b>

The Preferred Project Report states “Concern has been raised with respect to the provision of car parking. In this regard, the proposal now meets Tweed Shire Council’s car parking code.” This statement is incorrect as the car parking is short by 10 vehicles and 2 HRV spaces as specified in Council’s DCP.

Section A2.2.4 of the DCP relates to Cash Contributions. This section requires that bicycle parking; delivery and service vehicle parking and loading/unloading facilities; resident parking; and staff parking be provided on site. Council will not give consideration to accepting a cash contribution for these components of any proposed development.

The 10 visitor car spaces, 3 staff spaces and 2 HRV spaces are required to be provided on-site.

**Recommended Condition:**

17. The proposal shall comply with the Tweed Development Control Plan Section A2. The applicant shall provide 10 visitor car spaces, 3 staff spaces and 2 HRV spaces on-site.
18. The pedestrian link and northern car park shall be accessible 24 hours a day.

## **Heavy Vehicles**

The amended layout provides the following;

- Loading space for a 12.5m vehicle is provided on site.
- An area has been nominated in the same vicinity as the 12.5m loading bay, labelled 'small loading bay'. It is assumed this space is for vehicles smaller than a 12.5m vehicle.

Council's DCP requires that all parking for heavy rigid vehicles is to be provided on site.

The 'Preferred Project Report' states "*In addition two (2) x Heavy Rigid Vehicle and 1 x Small Rigid Vehicle spaces. These will be provided in the available laneway.*" The laneway will be a public roadway and is to be available for access and through traffic. The laneway is not a parking area for heavy vehicles.

## **Manoeuvring Issues**

Turning templates show vehicles turning left from the ground level car park to the upper level basement car park are turning into on coming traffic from the access ramp upper car park. This issue was raised previously and has not been addressed.

## **Advisory notes:**

### **Intersection Distance**

The intersection distance between Reef Water Circuit / Hastings Road and the proposed access into the ground level car park on Hastings Road has been increased to a distance of 20m measured from the road centreline of each access point. This is considered to be acceptable and detail of any proposed traffic management due to the additional traffic and access points on Hastings Road should be provided prior to the issue of the construction certificate. These details can be conditioned.

### **Standard size delivery truck**

It is noted that a smaller size delivery truck of 12.5m in length is to service the proposed development. As previously advised to ensure access is made inaccessible to semi trailers, it is recommended that 'physical barriers' such as balustrades and mature landscaping are constructed along the frontage.

### **Sewer Relocation**

The following advice was provided to the Department of Planning in response to the Environmental Assessment (EA):

The proposed sewer relocation is problematic as the report makes the assertion that the sewer can be diverted along the wall of the basement to another sewer in Hastings Road. Sketch plans showing pipe grades or the route were not included in the EA. The EA warns that there may be a clash with existing services. Within Hastings Road, there is a 450 mm diameter trunk water main, a 250 mm diameter distribution main and a 100mm reticulation main, as well as a 375mm diameter stormwater main. The matter of

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temporary servicing of the upstream properties during construction has not been addressed either.

The applicant will be required to submit an application under Section 68 for sewerage works for the relocation of the sewer main and provide an appropriate easement to drain sewage within the building. A condition to this effect can be made available upon request from the Department of Planning.

Approval of the development should be dependent upon the applicant demonstrating in detail that the sewer can be satisfactorily relocated.

The applicant's Statement of Commitments Item 13 undertakes to "Obtain approval Section 68 works and submit detailed sewer relocation details to meet Tweed Shire Councils satisfaction" prior to the issue of the Construction Certificate.

It is reiterated that the ability of the project to proceed is dependent upon the satisfactory relocation of the sewerage that services a number of properties to the south of the proposed development.

Council has been contacted by the engineering consultant advising that the relocation can take place using the laneway access to the loading dock area and will not have to be located within the building. This location will still be within the footprint of the building but it is anticipated that there will be about 3.5m minimum clearance above the sewer line. The pavement for heavy vehicles in the lane should be a type that can be economically removed and reinstated in the event of a pipe failure requiring excavation to repair. A suitable easement guaranteeing access to the sewer will be required. Access to this sewer will be required twenty-four hours per day as sewer blockages requiring attention may occur at any time, however, it is noted that this area is behind security gates.

There is still a question as to the level of various services within Hastings Road and whether the proposed sewer relocation will work.

The preferred project plan gives a commitment to the sewer relocation but has not demonstrated a practical solution. Hence, if approval is given to this project, it may only proceed if a practical solution in keeping with Council's standard for sewer construction is demonstrated and the appropriate approval of Council under Section 68 of the Local Government Act is obtained.

Recreation Services and Community and Cultural Services Comment:

Streetscape issues previously raised with the Department and the applicant appear to be covered within the preferred project. The applicant advises they will work closely with council officers to be consistent with the streetscape masterplan Council staff are preparing for Cabarita. As such the improvements and public art within Council's land adjacent to Tweed Coast Road should not form part of this development consent.

**Recommended Condition:**

19. The improvements and public art within Council's land adjacent to Tweed Coast Road should not form part of this development consent.

Waste Management Comment:

The waste management collection identified in plan DA-13G of the report is satisfactory.

**Recommended Condition:**

20. A Waste Management Plan prepared to the satisfaction of the General Manager of Tweed Shire Council shall be prepared and lodged with Council prior to the commencement of works.

**RECOMMENDATION**

That the Department of Planning:

1. Notes all issues raised within this report; and
2. Resolves to forward a submission to the Department of Planning raising the issues contained within this report.

**OPTIONS:**

1. Council resolves to adopt the matters raised within this report and forward to the Department of Planning as a submission with recommended conditions of consent; or
2. Council resolves to provide an alternate submission to the Department; or
3. Council resolves not to provide a submission to the Department.

**CONCLUSION:**

It is recommended the issues identified within this report be forwarded to the Department of Planning for its consideration.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*To view any "non confidential" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

1. Council report from the meeting held 16 June 2009 (ECM 4985931)
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