

**TITLE: [PR-PC] Development Application DA08/0929 for Construction of a Storage Depot Comprising the Erection of a New Shed and Associated Works at Lot 1 DP 1057594, Fernvale Road, Fernvale**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/0929 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of a Development Application to establish the subject site as a machinery storage depot in association with the applicant's current business activities as a demolition contractor. The proposal includes the construction of a storage shed and the establishment of hardstand areas with access off Fernvale Road.

The proposal is best defined as 'depot' in accordance with the Tweed Local Environmental Plan 2000 (LEP 2000). In order for a 'depot' to be permissible on unzoned land, it must be compatible with surrounding development and zones, which in this case is 1(a) Rural. It also must be compatible with development permissible in the adjoining zone.

A 'depot' is listed under Item 2 in the 1(a) Rural zone, which is a consent use, taking into consideration that it is a land use not included in Item 1, 3 or 4. The character and use of existing development in the vicinity is also taken into account in the assessment of the proposal.

The proposed development has issues regarding intensity of proposed land use, visual amenity, impact upon habitat for flora and fauna, proximity to existing development and suitability for the site given the rural character of the area.

The proposed development did not attract any objections.

Having regard to relevant statutory controls and an assessment against Clause 13 of the Tweed LEP 2000, the proposed storage depot is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**RECOMMENDATION:**

**That: -**

**A. Development Application DA08/0929 for the construction of a storage depot comprising the erection of a new shed and associated works at Lot 1 DP 1057594, Fernvale Road, Fernvale be refused for the following reasons: -**

**1. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can**

not be determined to satisfy sub section (a)(ii), the orderly and economic use and development of the land.

It is Council's view that the proposal has the ability to impact upon external properties; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

2. Pursuant to Section 5 Objects of the Environmental Planning & Assessment Act 1979 (as amended), the proposed development can not be determined to satisfy sub section (a)(vi), the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.

It is Council's view that the proposal has the ability to impact upon the protection and conservation of native animals and plants; accordingly the proposal is not identified as satisfying the Objects of the Environmental Planning & Assessment Act 1979.

3. In accordance with Section 79C(1)(a)(i) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be compliant with Environmental Planning Instruments.

It is Council's view that the proposed development does not satisfy the provisions contained within:

**The Tweed LEP 2000:**

Clause 4: Aims of this plan  
Clause 5: Ecologically sustainable development  
Clause 8(1): Consent Considerations  
Clause 11: Zoning  
Clause 13: Development of uncoloured land on the zone map  
Clause 16: Height of buildings

**Development Control Plan:**

**Section A2: Site Access and Parking Code**

4. Pursuant to Section 79C (1) (c) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed site is not considered suitable for the proposed development.

It is Council's view that use of unzoned land adjacent rural land for the purposes of a storage depot is considered unacceptable for the site due to its industrial scale and close proximity to conflicting land uses.

- 5. In accordance with Section 79C (1) (e) of the Environmental Planning & Assessment Act 1979 (as amended) the proposed development is not considered to be in the public interest.**

**It is Council's view that it is in the broader general public interest to enforce the standards contained within the Tweed LEP 2000 specifically as it relates to the objectives of unzoned land and the 1(a) Rural zone.**

- B. Engage solicitors to commence legal proceedings (for a breach of the Environmental Planning & Assessment Act 1979) in respect of the unauthorised works at Lot 1 DP 1057594, Fernvale Road, Fernvale, and seek site remediation as part of the legal proceedings.**

**REPORT:**

**Applicant:** Mr DW Long  
**Owner:** Mr WJ Dickinson, Ms D Dickinson, Mr LJ Dickinson and Mrs CS Dickinson  
**Location:** Lot 1 DP 1057594 Fernvale Road, Fernvale  
**Zoning:** Unzoned Land  
**Cost:** \$95,000

**BACKGROUND:**The Subject Site

The subject land is described as Lot 1 DP 1057594 Fernvale Road, Fernvale and has a total area of 2728m<sup>2</sup> (0.27 hectare).

The site is an irregular-shaped allotment with a frontage of 50m to Fernvale Road and a depth of approximately 70m. Development is proposed for approximately 90% of the site. Vehicular access to the site is from Fernvale Road only. Power is available to the site. Provision of an on-site water supply and waste management system is required.

The site is located in an area generally characterised as rural. Surrounding development is low-intensity rural residential and agricultural grazing. Four residential dwellings are located within a 300m radius of the subject site, one of which is within 2.5m of the site boundary.

The Proposed Development

Council is in receipt of a Development Application for utilisation of the subject site for the purposes of a storage depot. The applicant states that the shed will be used to store a truck, possibly a small excavator and hand tools used in association with an existing demolition business.

The development has two main components:

1. The erection of a new 48m x 15m shed (total floor area of 720m<sup>2</sup>) on a concrete slab foundation with steel portal frames and Colorbond cladding, and
2. Establishment of a hardstand car park/driveway and manoeuvring area on the western side of the shed with access off Fernvale Road.

Application details state that:

- The applicant will not reside on site
- Maintenance of equipment will be carried out (defined as “depot” and permissible in the adjacent rural zone)
- No actual business will be carried out from the shed
- No employees will be based there
- A domestic-scale compressor may be used
- No machinery or equipment will be installed – only hand tools will be used.

It is acknowledged that the proposed use may involve a compressor and/or electrical machinery such as power tools that can constitute a noise source for adjoining residences.

### Site History

The site is unzoned land located adjacent the 1(a) Rural zone and has a known history as follows:

Prior to 2001, the allotment was an unused road reserve in Council ownership. Originally, Fernvale Road was a narrow track that went around the north of this road reserve. However, in the 1970's, earthworks were undertaken by Council that levelled the site and the path of Fernvale Road was relocated to the south of the road reserve to its current location.

Of note is a two-storey dwelling on the adjacent site to the east (5.5m from the proposed development) which is currently a rental property. It was moved there in the 1980's with ownership transferring in 2007 to the current owner of the subject site and adjoining land to the north.

There have been no previous development applications lodged on the subject site. This application was lodged on 30 July 2008.

Extensive earthworks and clearing of vegetation took place on site sometime after July 2008 rendering the site significantly altered from that depicted on aerial photography and in supporting application documentation. The unauthorised works were not included in the proposal and are the subject of compliance action. As such, the applicant has been advised to cease work immediately.

Aerial photography taken in 2007 indicates an existing driveway servicing the site from Fernvale Road connecting with the adjoining allotment to the north by way of a narrow informal access track along the eastern boundary. A flat grassed area is located on the eastern portion of the allotment, on level with the adjacent allotment to the east.

The photography shows an abundance of vegetation defined as 'Grey Ironbark/White Mahogany/Grey Gum Open Forest Complex' and mapped as being of 'high ecological status' in the Tweed Shire Vegetation Management Plan on the south-western, western and northern boundaries in the Tweed Shire Vegetation Management Plan.

Site photos accompanying supporting documentation for the application (Annexure D, page 11 - attached) confirm the subject site as flat and on level with the eastern adjacent site where the dwelling is located. The photos also depict vegetation since removed.

As a result of unauthorised works, the site has been cut on the eastern boundary to a maximum depth of approximately 1.8m and lined with concrete retaining blocks. Fill has been spread out to the western and northern edges of the site and pushed over the northern boundary into the adjacent allotment creating a 10m high bank from top to toe. Fill has also been pushed up against and over trunks of surviving native trees along the western boundary.

Damage and potential for deterioration to remaining trees on the subject site has been identified, as well as loss of habitat for flora and fauna.

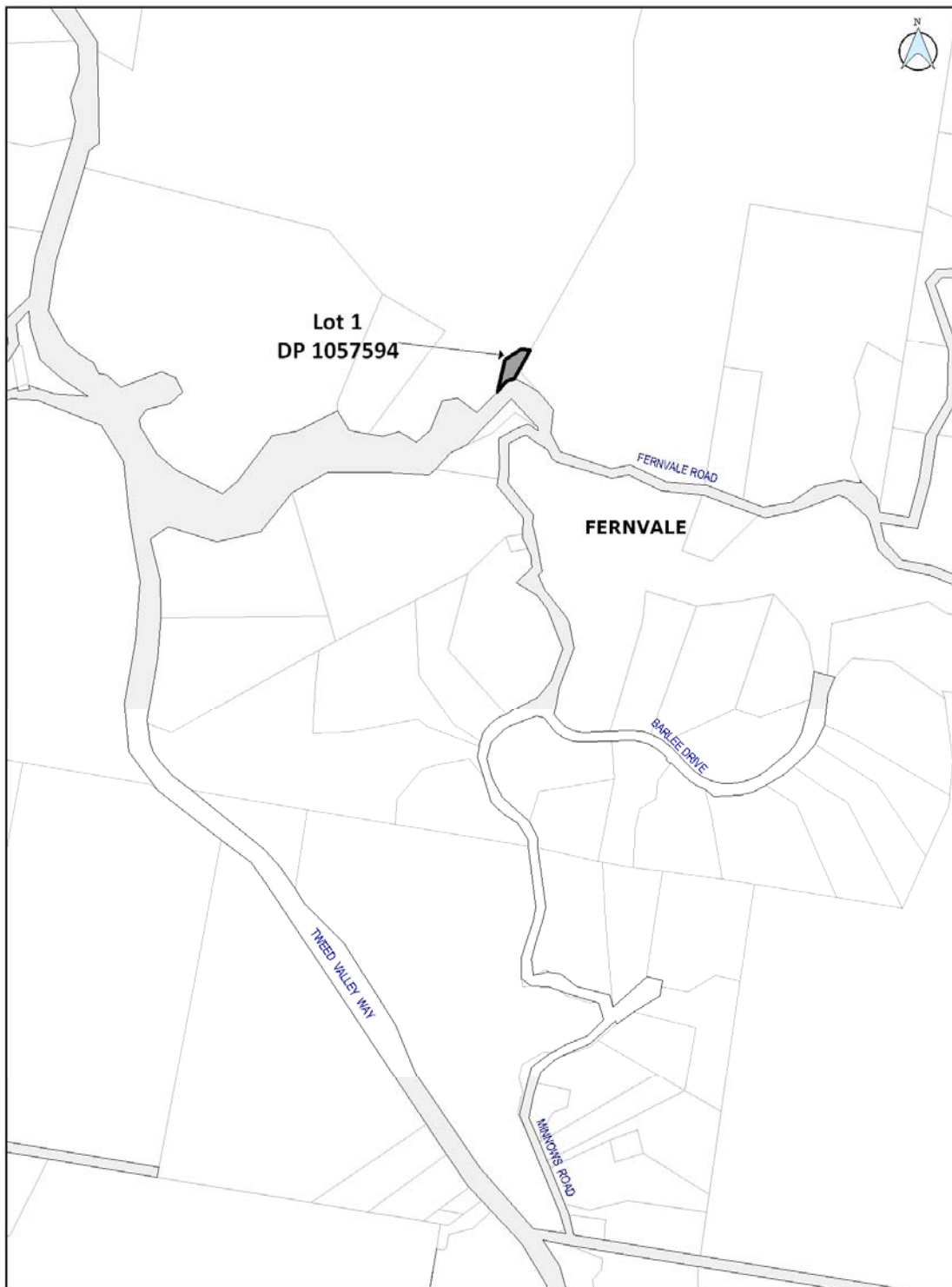
### Public Submissions

The proposed development attracted three individual letters of support following exhibition of the application. The letters of support were brief, stating there were no objections to the proposal. A letter of support was also included in the application details from the owners of 45 Fernvale Road, located 140m west of the subject site.

### Conclusion

Having regard to the site's characteristics, the site history, intended use, proximity of surrounding development and an assessment against Clause 13 of the Tweed LEP 2000 the proposed storage depot is not considered suitable for the location and therefore the proposed development is recommended for refusal.

**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2008                  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>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 816                  Murwillumbah, NSW, 2484                  Tel: (02) 6670 2403                  Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>DA08/0929 - Lot 1 DP 1057594</b>                  Fernvale Road, Fernvale</p>	<p><b>Site Plan</b>                    TWEED SHIRE COUNCIL</p>		
<p>File: Z:\GIS_Jobs\Site Plan.Wor</p>	<p>Author: J. Batchelor</p>	<p>Date: 21/Oct/08</p>	<p>Scale: 1:10,000</p>	<p>Sheet: 1 of 1</p>

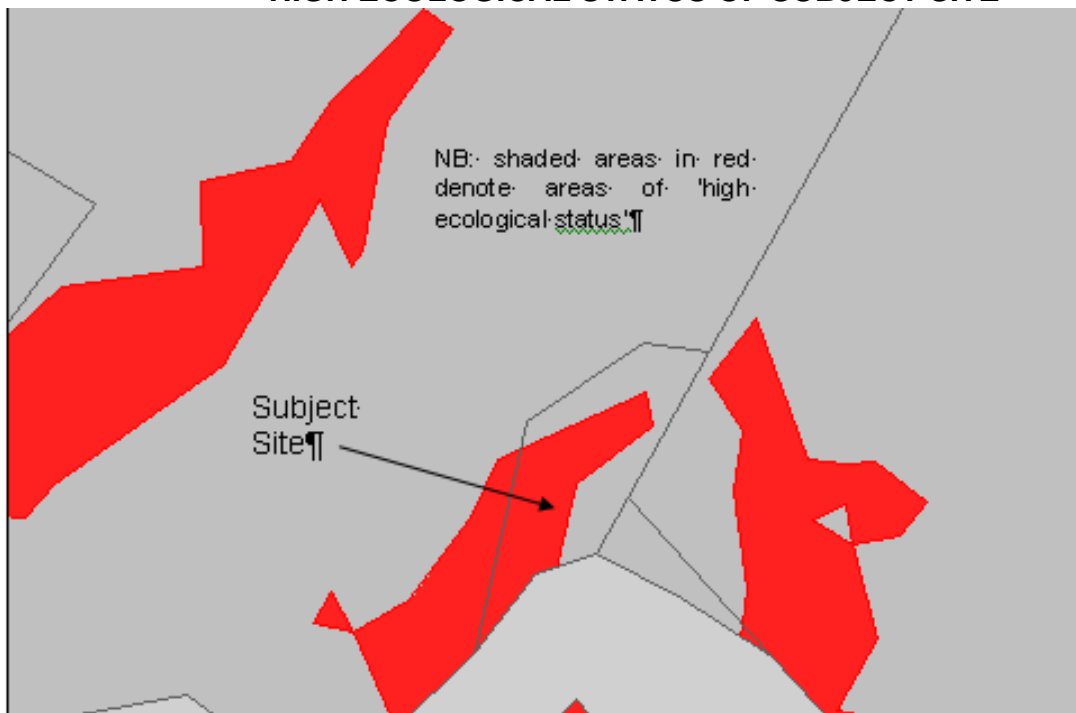
**AERIAL PHOTOGRAPHY:**

**JULY 2007 AERIAL PHOTOGRAPHY**



NB: inaccuracies exist in Council's cadastral boundaries as shown in grey on this map

**HIGH ECOLOGICAL STATUS OF SUBJECT SITE**



NB: shaded areas in red denote areas of 'high ecological status'

Subject Site



**PHOTOS:**

**The subject site before unauthorised works**

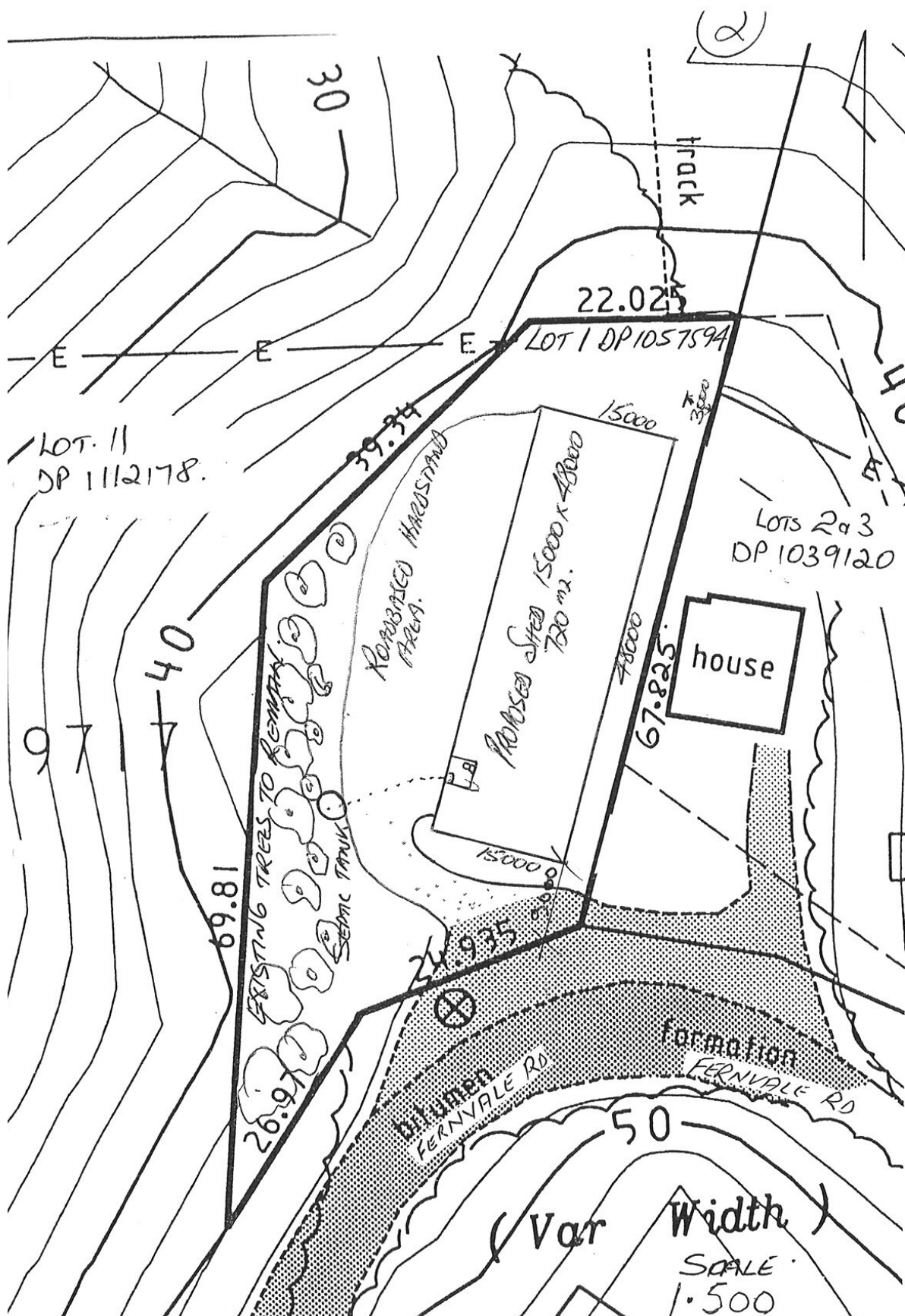


**Photo 1 Proposed shed site looking north**

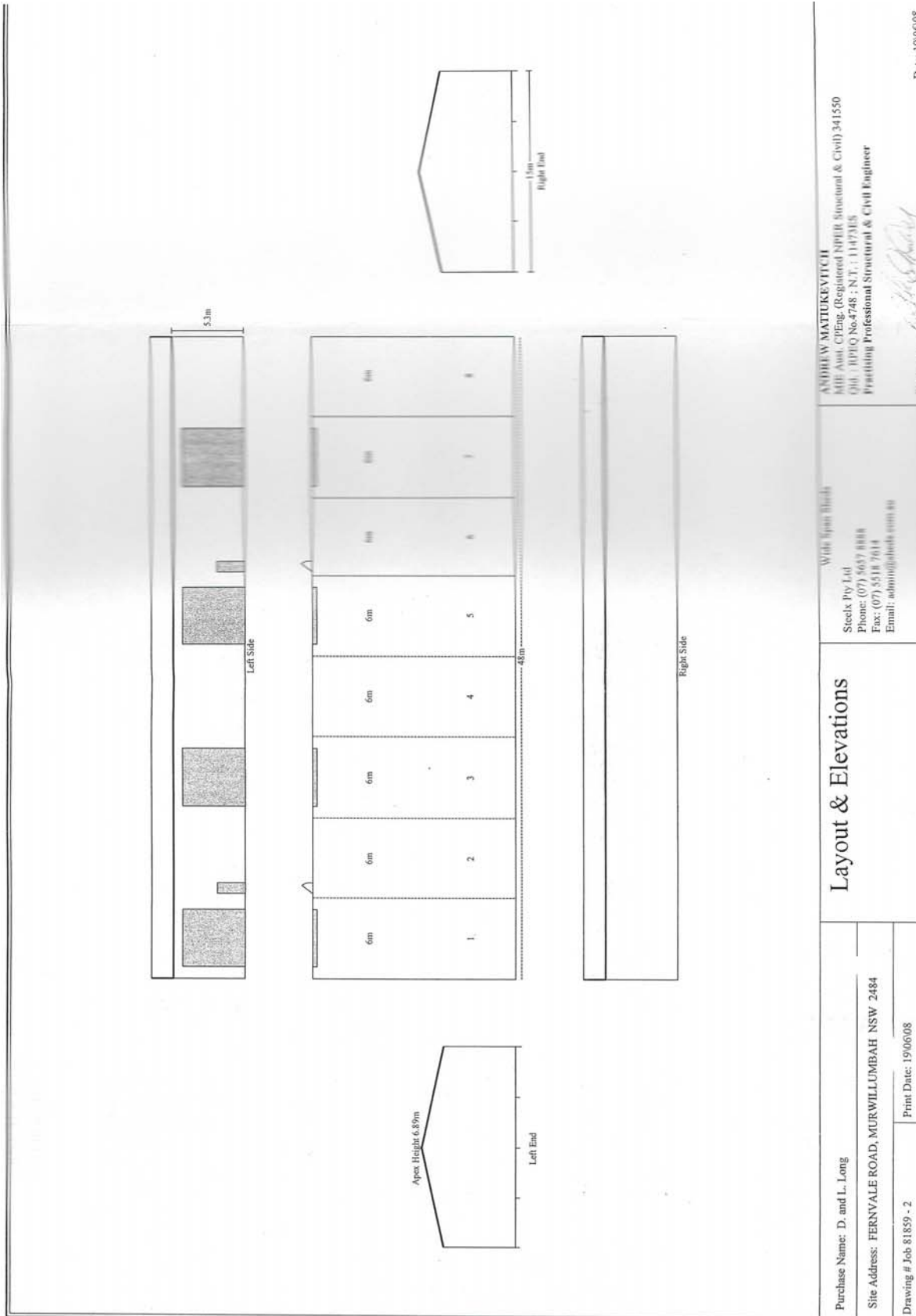
**The subject site after unauthorised works**



OVERALL SITE PLAN:



LAYOUT & ELEVATIONS PLAN:



**ANDREW MATIUKEVITCH**  
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 (Joh.) RPIC No.4748 ; N.T. ; 11473105  
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**Layout & Elevations**

Purchase Name: D. and L. Long  
 Site Address: FERNVALE ROAD, MURWILLUMBAH NSW 2484

Drawing # Job 81859 - 2      Print Date: 19/06/08

Date: 19/06/08

## 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 this plan**

One of the aims of the plan is:

(d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

#### Council Assessment

The proposed development is not considered to be compatible with the area's environmental and residential amenity qualities. It compromises habitat for flora and fauna. The unnecessary removal of native vegetation from the allotment in order to accommodate an industrial-sized shed with access and hard-stand areas results in these areas take up approximately 90% of the site.

The location of the shed in close proximity to an existing dwelling house on the eastern adjoining allotment results in a reduction of residential amenity quality for the present and future occupants of the dwelling and the locality in general.

#### **Clause 5: Ecologically sustainable development**

Development must be consistent with four principles of ecologically sustainable development. The first principle (a) applies in particular to the proposed development. It states that precautionary measures should be taken to prevent environmental degradation where there is a threat of irreversible damage to the environment.

#### Council Assessment

Removal of native vegetation that has been classed as being of 'high ecological status' (as outlined in the Tweed Shire Vegetation Management Plan) in order to progress the development poses the threat of irreversible damage to the environment by destroying habitat for flora and fauna. Therefore, the proposal is not consistent with this clause.

#### **Clause 8: Consent Considerations**

The proposed development is inconsistent with provisions contained within 1(a), (b) and (c) of this clause which states that the consent authority may grant consent to the development only if:

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

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

### Council Assessment

Assessment of the proposal as outlined below in relation to Clauses 11 and 13 results in the development being inconsistent with the primary objective of the 1(a) Rural zone which is adjacent to the uncoloured land against which the application has been lodged.

Consideration has been given to other aims and objectives of the plan that are relevant to the development.

The proposed development is of a light industrial nature best suited to a business zone. The size of the shed is not comparable to existing agricultural sheds in the area, being 141% larger than the largest shed (300m<sup>2</sup>) within a radius of 1.6km from the site.

The ratio of the floor area of the shed to the area of the land is also high at 26.4%, rendering the proposal as an overdevelopment of the site. Should the proposed development be approved, it would set an unacceptable precedent for future development in rural areas due to its bulk and scale and close proximity to residential land uses.

### **Clause 13: Development of uncoloured land on the zone map**

The subject land is zoned 'uncoloured' under the Tweed LEP 2000. Relevant objectives of Clause 13 are:

- to enable the control and development on unzoned land, and
- to ensure that development of unzoned land is compatible with surrounding development and zones.

For the purposes of the Tweed LEP 2000, the proposed storage and maintenance of machinery and equipment would be defined as a 'depot'.

In deciding whether to grant consent to development on unzoned land (above the mean high-water mark or waterways), the consent authority must consider:

- whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

### **Clause 11: Zoning**

The subject land adjoins the 1(a) Rural Zone to the east, north and west, and over a road reserve to the south.

A 'depot' is permissible with development consent on uncoloured land *providing it is compatible with surrounding development and zones*. A 'depot' is permissible with consent in the 1(a) Rural zone.

*Primary objectives for the 1(a) Rural zone include:*

- *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development, and*
- *to protect rural character and amenity.*

*Secondary objectives for the 1(a) Rural zone include:*

- *to enable other types of development that rely on the rural or natural values of the land such as agri- and eco-tourism*
- *to provide for development that is not suitable in or near urban areas*
- *to prevent the unnecessary fragmentation or development of land which may be needed for long-term urban expansion, and*
- *to provide non-urban breaks between settlements to give a physical and community identity to each settlement.*

### Council Assessment

Development surrounding the subject site is characterised by non-intensive residential and agricultural uses on large rural allotments:

- to the east, Lot 3 DP 1039120 has a total site area of 85.07 hectares. There is a two-storey dwelling house setback 2.5m from the adjoining boundary with the subject site
- to the west and north, Lot 34 DP 1128192 has a total site area of 184.5 hectares. There are two large sheds located at the northern end of this allotment at a distance of 1.6kms from the subject site. They are approximately (30m x 10m) 300m<sup>2</sup> each
- to the south, Council owns land opposite the proposed development (in two parcels) that has a total site area of 1.13 hectares upon which is located a public hall.

Other rural allotments within 1.6kms of the subject site range in size from 8108m<sup>2</sup> to 184.5 hectares. Aerial photography suggests that there are few agricultural sheds in the wider vicinity, none of which appear larger than 300m<sup>2</sup>.

The proposal does not satisfy the abovementioned primary objectives in that:

- it is development of a light industrial nature that is not associated with agricultural activities or natural resource utilisation, and
- the location of an industrial sized shed on a small rural allotment in close proximity to a dwelling house on an adjacent allotment threatens rural

character and reduces amenity both from the streetscape and from the adjoining allotment in particular.

The proposal does not satisfy the abovementioned secondary objectives for the 1(a) Rural zone in that:

- it is not a development such as agri- or eco-tourism that relies on the rural or natural values of the land
- it is development that would be most suited in a zone that promotes light industrial activity in closer proximity to urban areas
- it reduces the likelihood of a larger adjacent allotment realigning its boundary to incorporate the subject site in order to minimise fragmentation of rural lands, and
- it is a development that would be more suitably defined as 'urban industrial' and does not enhance the non-urban landscape between settlements.

### **Clause 15: Availability of essential services**

This clause of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent.

#### Council Assessment

The subject land is provided with single phase power. No town water or sewerage services are available.

The applicant has submitted an application to install an on-site Sewage Management System, which is pending approval. The site plan for the proposed system is included in the application documents on page 8 in Annexure D.

Conditions from the NSW Rural Fire Service received 30 September 2008 require a 10,000 litre water supply and tank to be installed on the site. A separate roof catchment water supply source is also required. The applicant would need to demonstrate suitable locations for rainwater tanks that do not conflict with the 42m<sup>2</sup> area required as an absorption bed for sewage management.

### **Clause 16: Height of buildings**

This clause of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to three storeys.

#### Council Assessment

The proposed shed at a height of 6.89m complies with this criterion. However, the proposed height of the shed does not satisfy the objective of the clause:

- to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

As outlined previously in this report, the bulk and scale of the proposed development is inappropriate for a small rural allotment of 2728m<sup>2</sup> that adjoins an existing rural residential land use. It also depletes the environmental characteristics of the land through unnecessary excavation and removal of native vegetation.

### **Clause 17: Social impact assessment**

The objective of Clause 17 is to ensure proper consideration of development that may have a significant social or economic impact and deems that where a proposal is likely to have a significant social or economic impact it must be accompanied by a socio-economic impact statement.

#### Council Assessment

The proposed storage depot will impact most significantly on the amenity of the locality and the natural environment. It is therefore unlikely to have a significant social or economic impact and is subsequently compliant with Clause 17 of the LEP.

### **Clause 35: Acid Sulfate Soils**

No acid sulphate soils are located on the subject site.

### **Clause 39A: Bushfire Protection**

The objective of Clause 39A is:

- to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The development application was forwarded to the Local Rural Fire Service on 1 September 2008 for consideration and comment, as the subject site is bushfire prone land. A response was received 30 September 2008. The Service recommended conditions to be attached to the development consent, should it be granted.

The conditions related to Asset Protection Zones, Water and Utilities, Access and Landscaping.

#### North Coast Regional Environmental Plan 1988

The following Clauses of the NCREP are relevant and are addressed below.

### **Clause 12 – Impact on Agricultural Activities**

This clause states that council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the



proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

#### Council Assessment

The site itself has been extensively modified through excavation and placement of concrete retaining blocks. The recent history of the use of the site is not for agricultural activities. In any event, the small parcel of land is of marginal agricultural value as an elevated, significantly vegetated site.

Adjoining and surrounding land is utilized for residential and grazing purposes.

The development would not lead to a loss of prime crop and pasture land, or adversely impact upon nearby agricultural activities.

#### **Clauses 46 & 47 – Principals for Commercial and Industrial Development**

The objective of this plan in this regard is to ‘encourage an adequate supply of zoned land located where there are planned growth areas foreshadowed and where essential services can be provided with minimal environmental damage’.

#### Council Assessment

This objective encourages the supply of land suitably zoned to accommodate commercial and industrial development in areas that do not come into conflict with the natural environment. Whilst this proposal does not affect the supply of suitably zoned land, environmental damage has occurred as a result of unauthorised excavation and clearance of native vegetation to make way for hard-stand areas and dispersal of septic waste.

Part 2 of clause 47 outlines that Council must take into consideration the principle that land used for industrial and/or commercial development should be located where it can be adequately serviced by the transport system and is accessible from urban areas.

The proposed development for a storage depot / light industrial use within a rural area remote from urban development is not easily accessible from urban areas and will access higher order roads by way of Fernvale Road.

Insufficient information was supplied in order to facilitate a final determination of the impact of the proposal on the transport system, or the efficacy of site access and site distances. However, Council’s Traffic Engineer stated that a 720m<sup>2</sup> shed, in normal circumstances, would generate approximately 30 trips per day (15 in and 15 out).

#### State Environmental Planning Policies

#### **SEPP (Rural Lands) 2008**

This SEPP introduces rural planning principles to facilitate the orderly and economic use and development of rural lands for rural and related purposes. It provides controls for rural subdivisions and identifies State significant agricultural land. It also implements measures designed to reduce land use conflicts.

None of the provisions contained within the SEPP relate specifically to this site. Measures designed to reduce land use conflicts are aimed at creation of residential land uses through subdivision on land that is adjacent existing farming activities.

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

Council has numerous shire-wide LEP amendments. However, none of which are specifically relevant to this application.

Furthermore, there are no other draft EPI's that require assessment.

**(a) (iii) Development Control Plans (DCP's)**

**Section A2: Site Access and Parking Code**

Access and parking generation for a 'depot' is included in the Industry Service Group within this Development Control Plan.

It states that 'site design must allocate adequate space for the loading, unloading, parking and manoeuvring of delivery and service vehicles within the subject property and that design of these areas shall comply with AS 2890.2.'

In summary, requirements include:

- 1 space per 200m<sup>2</sup> for 'heavy rigid vehicles' (HRV: min length = 8.8m; min height clearance = 4.1m)
- 10% of site for staff parking and access lanes (driveways are excluded from this calculation)
- No additional customer car parking (included in staff parking requirements), and
- No reductions are generated as this proposal does not generate employment.

The floor area of the proposed shed is 720m<sup>2</sup>. Site area is 2728m<sup>2</sup>. Parking requirements are as follows:

- 4 spaces for 'heavy rigid vehicles'
- 272.8m<sup>2</sup> for staff parking and access lanes

No information in relation to parking and access requirements has been supplied by the applicant. The site plan shows the proposed hardstand area extending towards the western, north western and northern boundaries, where native vegetation had recently been located.

Discussions with Council's Engineers indicate that a full engineering report with traffic study and design turning templates would be required in relation to the proposal in order to determine compliance with this DCP.

A large hardstand area of 272.8m<sup>2</sup> is likely to compound the impact of the proposed development on the amenity of the surrounding rural locality.

The DCP states that 'large vehicle manoeuvring areas, loading and unloading areas shall be located as far as possible from adjoining residential areas'. Also, 'where these activities are likely to result in loss of amenity in nearby residential areas, visual and acoustic screening approved by Council shall be required to minimise the loss of amenity'.

The size of the allotment, the bulk of the shed, the necessity to remove vegetation, reduced areas for landscaping and the proximity to adjoining residential uses and Fernvale Road combines to preclude this development from complying with these standards.

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

There are no additional matters that affect this application.

**(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**

Visual Impacts

Excavation of the site and removal of native vegetation to provide a lowered platform for the proposed storage depot has extensively modified the subject site. The bulk and scale of the shed and the area required for hard-stand areas and vehicle manoeuvring contribute to 90% of the site area being of 'industrial' appearance.

Adjacent to open rural land, in close proximity to residential uses and with little opportunity for landscaping, the visual impact of the development will be prominent from the streetscape and adjoining land.

Should Council determine to refuse the application, the applicant should be responsible for remediating the site to its state prior to the occurrence of unauthorised works.

Noise and Amenity

Council's Environmental Health Officer has reviewed the proposal and provided the following comments:

*The shed is proposed in a rural locality however, there is an existing dwelling immediately adjacent. A letter has been provided from the owner of that dwelling which indicates that they raise no objection.*

*The proponents own a demolition business and the shed is proposed for storage of machinery and 'limited maintenance' of trucks and machinery. Standard conditions to be applied regarding lighting, noise, waste materials etc.*

The EH Officer included concerns about amenity and potential conflict of land uses in the future should ownership of the adjoining dwelling transfer.

Application details do not include a Noise Level Impact Assessment indicating levels of noise that may emanate from the proposed development. Whilst the SEE states that no machinery or equipment will be installed in the shed, a compressor may be used along with hand tools. These hand tools may be electric power tools. It is possible that noise including vehicle noise may detract from the residential amenity of the adjacent allotment in particular, and the surrounding rural amenity in general.

Conditions in relation to hours of operation were not imposed by the EH Officer but it was suggested that imposition of restricted hours would be necessary to address potential of amenity conflict. Another issue was a requirement that vehicles that remain on site for periods in excess of two minutes switch off their engines.

#### Drainage

The preliminary erosion and sedimentation control plan and stormwater management plan provided in the application details at Annexure B are based on 'very minor site works for the preparation of the building pad'. They are not based on the actual site following unauthorised works.

The proposed drainage system is that 'roof water from the proposed building will be conveyed to rainwater tanks'.

Drainage of the extent of hardstand areas for access, parking and manoeuvring of vehicles was not addressed. A relevant engineering report would need to address these matters.

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

For the reasons detailed in the above report the proposed rural site is not considered suitable for a storage depot.

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

The Development Application was notified to surrounding properties for a period of two weeks, closing on Thursday 11 September 2008. During this period, three written submissions were received in support of the proposal.

No issues were raised in the submissions. They focused on their lack of objection. Two submissions stated that the proposed development 'would be an asset to the area'. One submission incorrectly identified the house they

were renting as 50m from the proposed shed. It is 5.5m from the proposed shed.

**(e) Public interest**

The issues considered in the assessment of the proposal are considered valid and contribute to the reasons for refusal. The proposed development could potentially set an unwarranted precedent for utilisation of rural land for the location of large industrial-style sheds in close proximity to existing residential development for purposes and unrelated to the land upon which they are situated. Therefore it is in the public interest for this application to be refused.

**OPTIONS:**

1. Refuse this application in accordance with the recommendation for refusal.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

Council will incur costs as a result of legal action however upon resolution of the matter the Land & Environment Court may award costs.

**POLICY IMPLICATIONS:**

The proposed development could potentially set an unwarranted precedent for overdevelopment of rural land and utilisation of rural land for semi-industrial purposes in close proximity to residential uses.

It is imperative that Council pursue unauthorised works to uphold the integrity of Council's policies and any lawfully issued development consents.

**CONCLUSION:**

The application submitted is deficient in detail. However, sufficient information has been submitted to determine that the nature and scale of the proposal is unsuitable for the site. This unsuitability is reflected in the proposal's non compliance with the statutory and strategic framework applicable to the application.

Having undertaken an assessment against Clause 13 of the Tweed LEP 2000 taking into account the rural character of the area and the proximity of the development to residential properties the proposed use is not considered suitable for the location and therefore the proposed development is recommended for refusal.

In addition, this is a clear case of extensive site works and removal of native vegetation outside the parameters of any existing development approval. Council has a responsibility to ensure that all developers undertake works as approved, in accordance with statutory controls.

**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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