



AGENDA

PLANNING COMMITTEE MEETING

Tuesday 17 February 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**

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REPORTS THROUGH GENERAL MANAGER

REPORTS FROM 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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P1 [PR-PC] Development Application DA08/0841 for a Dwelling & Swimming Pool at Lot 3 DP 253861 No. 49 Elanora Avenue, Pottsville

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0841 Pt1

SUMMARY OF REPORT:

An application has been received to construct a two (2) storey dwelling with an in-ground swimming pool on the subject property. The property is situated on the eastern side of Elanora Avenue Pottsville and backs on to the coastal foreshore of Pottsville Beach.

An objection under SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space. This non-compliance has necessitated a report to Council.

The application was notified to adjoining property owners and one submission was received from the owner of No. 51 Elanora Avenue objecting to the proposal. The objectors' main concerns with the proposal were the bulk and scale of the dwelling, the impact on views, and its non compliance with the Requirements of Tweed DCP 2008 Section A1. The issues raised in the objection 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 taking into account that this DA was lodged prior to 30 June 2008, it is considered that the proposed development is suitable for approval, subject to conditions.

RECOMMENDATION:

That: -

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/0841 for a dwelling & swimming pool at Lot 3 DP 253861, No. 49 Elanora Avenue, Pottsville be approved subject to the following conditions:**

GENERAL

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

[GEN0015]

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

[GEN0115]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

3. 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]

4. 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]

PRIOR TO COMMENCEMENT OF WORK

5. 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-building, 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]

6. 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]

7. 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.

[PCW0255]

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. 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]

10. 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.

[PCW0985]

11. 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]

DURING CONSTRUCTION

12. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

13. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site www.tweed.nsw.gov.au)
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

14. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

15. 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, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

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. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

- 24. 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]

- 25. 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]

- 26. 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]

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

[DUR1945]

- 28. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.**

[DUR2515]

- 29. 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]

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

[DUR0445]

- 31. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-**

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**

- * 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]

- 32. 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]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

- 33. 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]

- 34. 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]

- 35. 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]

USE

- 36. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

37. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

- 38. The ground floor lounge and rumpus room is not to be used or adapted for separate residential habitation or occupation.**

[USE0465]

- 39. 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]

- 40. The building is to be used for single dwelling purposes only.**

[USE0505]

- 41. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.**

[USE1245]

REPORT:

Applicant: Mr I Callinan
Owner: Mr IDF Callinan
Location: Lot 3 DP 253861 No. 49 Elanora Avenue, Pottsville
Zoning: 2(a) Low Density Residential
Cost: \$450,000

BACKGROUND:

The property is zoned 2(a) low density residential under Tweed Local Environmental Plan 2000 and is located on the eastern side of Elanora Avenue, Pottsville. The property is currently vacant and is bounded by residential zoned land to the north (currently undeveloped) and south (a two storey dwelling house) and to the east a coastal reserve (waterfront open space).

An application has been received to construct a new two (2) storey dwelling with an in-ground swimming pool on the subject property. The property is situated on the eastern side of Elanora Avenue Pottsville and backs on to the coastal foreshore of Pottsville Beach.

An objection under SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space. This non-compliance has necessitated a report to Council.

Adjoining property owners were notified of the subject proposal and one submission was received from the owner of No. 51 Elanora Avenue objecting to the proposal. The issues raised in the objection have been addressed within the body of this report.

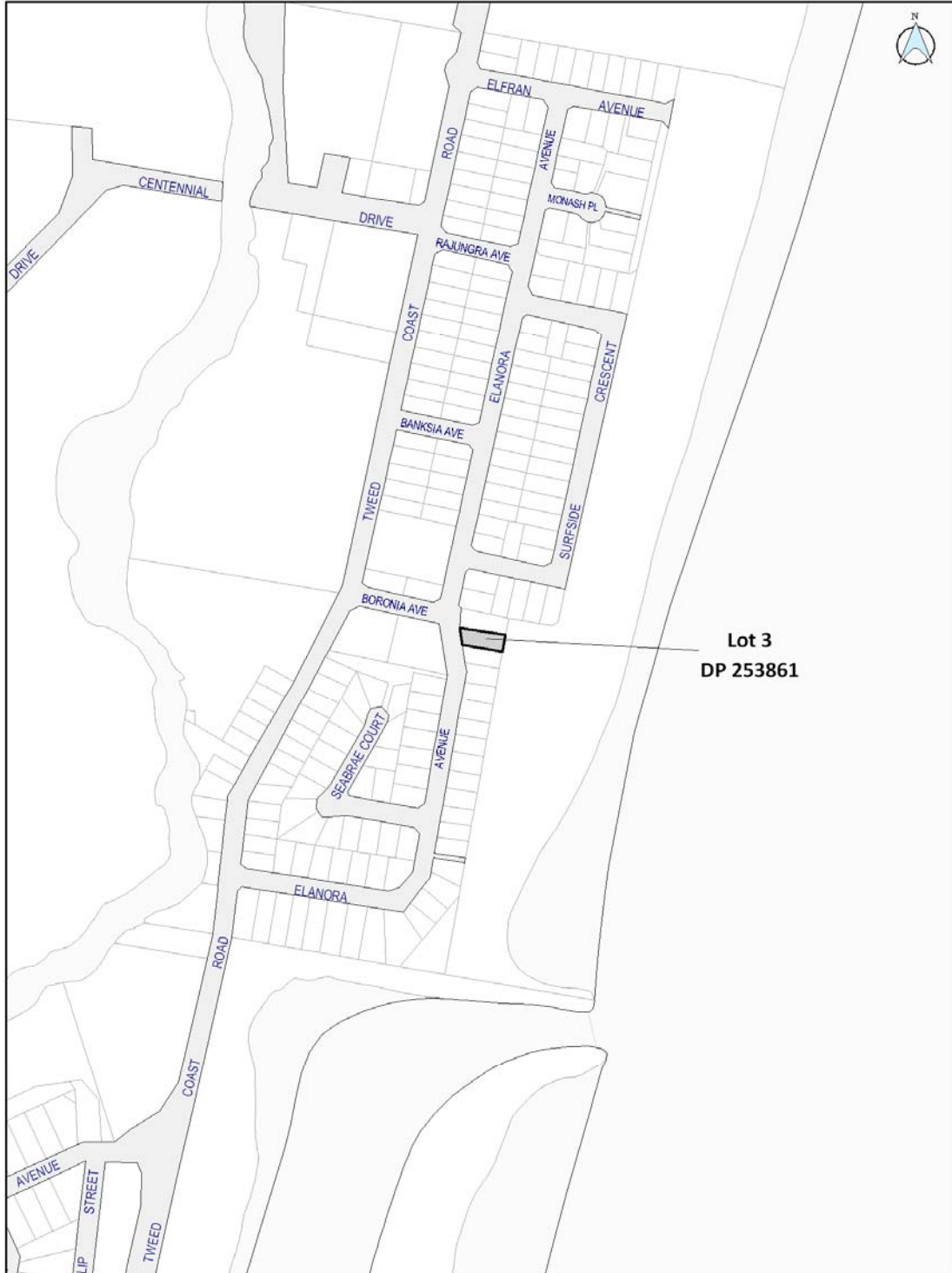
In terms of the assessment of this application it should be noted that Council has previously resolved the following in respect of the imposition of the controls of Tweed Development Control Plan Section A1:

"The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30th June 2008 and this decision be notified in the Tweed Link".

In this instance the proposed development application was lodged with Council on 26 June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

Notwithstanding the above resolution, Council officers have required amended plans to address where possible the main A1 controls. In response to this request the applicant submitted amended plans which provided a more articulated roof form, and a lowering of the overall building height by 300mm.

SITE DIAGRAM:



Lot 3
DP 253861

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P.O. Box 816 Tel (02) 6670 2409
Murwillumbah, NSW, 2484 Fax (02) 6670 2483

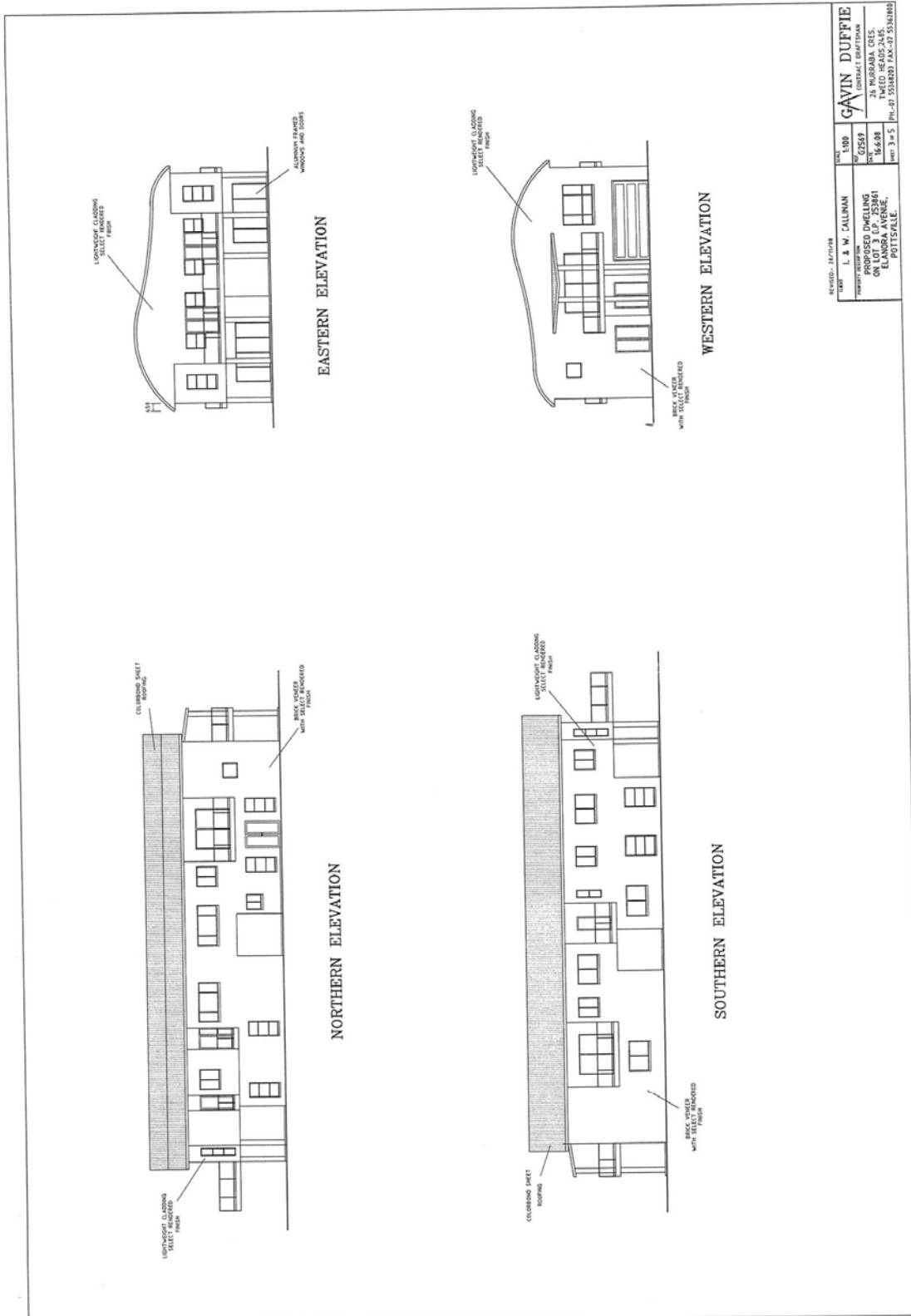
Tweed Shire Council
Lot 3 DP 253861
No. 49 Elanora Avenue, Pottsville

Site Plan



File: Z:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 09/Feb/2009 Scale: 1:5,000 Sheet: 1 of 1

DEVELOPMENT PLANS:



EASTERN ELEVATION

- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH
- ALUMINIUM FRAMED WINDOWS AND DOORS

WESTERN ELEVATION

- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

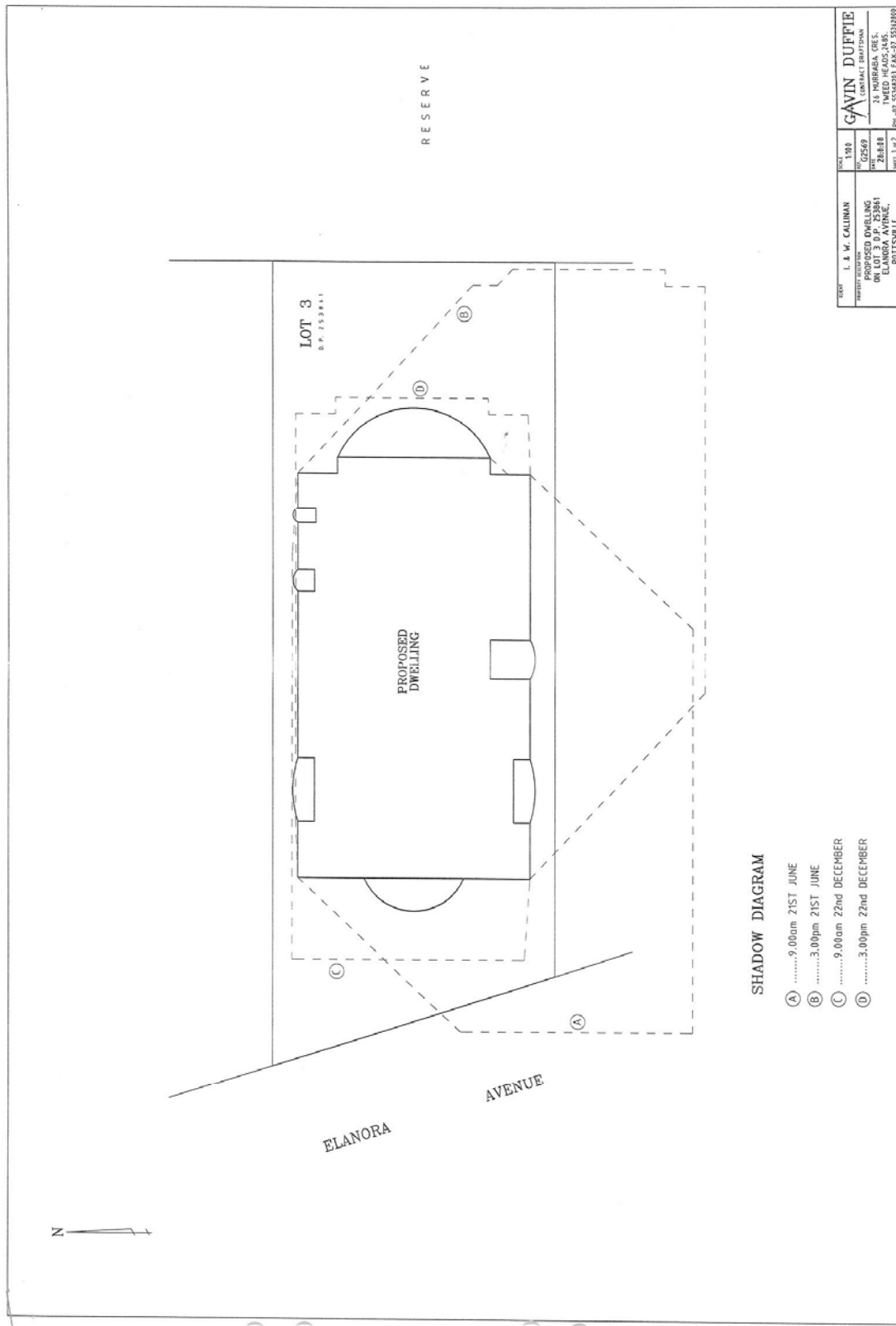
NORTHERN ELEVATION

- CONCRETE ROOFING
- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

SOUTHERN ELEVATION

- CONCRETE ROOFING
- BRICK VENEER WITH SELECT FINISHED FINISH
- LIGHTWEIGHT CLADDING SELECT FINISHED FINISH

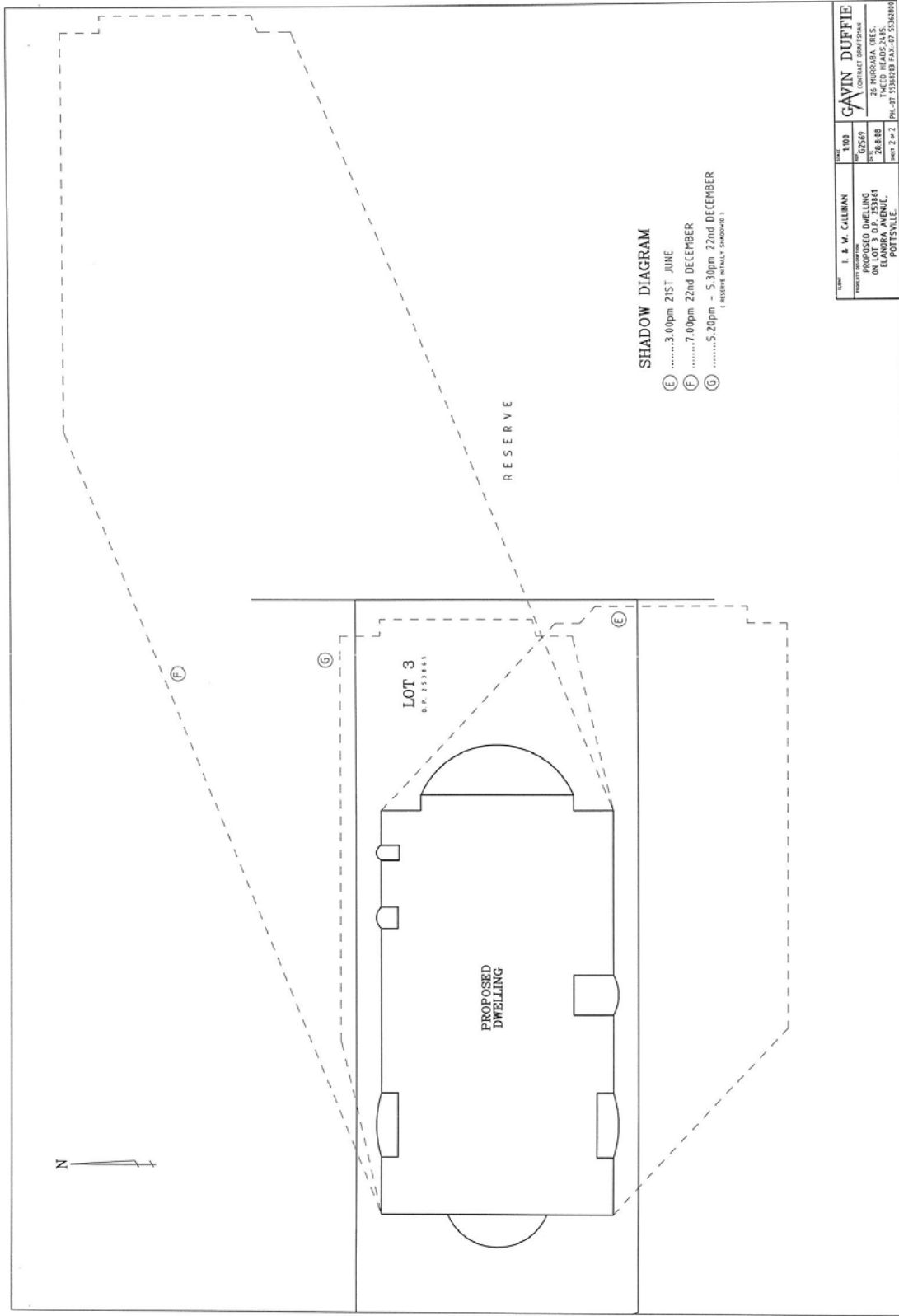
REVISION - 2/21/08	DATE	1/10	GAVIN DUFFIE CONTRACT DRAFTER 26 MURRAY CRENSHAW TWEED HEADS QLD 24688 PH: 07 5538877 FAX: 07 5538880
L & W LALLMAN ARCHITECTS 60 LOT 3 U.P. 125861 ELANDRA AVENUE, POTTSVILLE.	PROJECT NO 02559 DATE 1/10/08 SHEET 3 OF 5	SCALE 1:100	



SHADOW DIAGRAM

- (A)9:00am 21st JUNE
- (B)3:00pm 21st JUNE
- (C)9:00am 22nd DECEMBER
- (D)3:00pm 22nd DECEMBER

DATE	19th	19th
PREPARED BY	L. & W. CALLINAN	GAVIN DUFFIE
PROJECT NO.	00569	CONTRACT REFERENCE
DATE	28.8.08	26 MARRABA CRE.
PROJECT NAME	PROPOSED DWELLING ON LOT 3 D.P. 532864	TWEED HEADS A.B.S.
	ELANORA AVENUE, POTTSVILLE.	TWEED SHIRE COUNCIL
		Ph: 07 55382833 Fax: 07 55318848



DATE	11/02/09	BY	GAVIN DUFFIE
PROJECT	L. & W. GILLMAN	CONTRACT	DRAFTSMAN
DESCRIPTION	PROPOSED DWELLING ON LOT 3 D.P. 231841	DATE	28/08/08
CLIENT	ELANDRA AVENUE, POTTSVILLE	ADDRESS	28 MURRAY CRESC. TWEED HEADS QLD 2470
		PHONE	07 5525 1211

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 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 the option of housing diversity and for non-residential development. The proposed development is consistent with the primary objective of the zone.

Clause 15 - Essential Services

All essential services are available within the area.

Clause 16 - Height of Building

The proposed height of the development (8.3) complies with the 2 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 minor nature of the proposal

Clause 35 - Acid Sulfate Soils

The site is a mixture of acid soil classes, with class 3 soils located 1 metre below ground level and class 4 soils located 2 metres below ground level, the dwelling is proposed at the front of the site be over the class 3 soils and the pool over at the rear of the property over the class 4 soils. It is not anticipated that the construction of the dwelling and pool will impact on the acid sulfate soils in the area.

Other Specific Clauses

None apparent

North Coast Regional Environmental Plan 1988**Clause 32B: Coastal Lands**

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the 6(a) waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 6(a) public open space and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 objection and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *"Existing buildings in Elanora Avenue result in overshadowing of the foreshore area prior to the relevant times in both mid winter and mid summer.*
- *Existing trees on the foreshore dunal areas result in significant overshadowing of the foreshore reserve and beach prior to the relevant times.*
- *The immediate foreshore areas to be overshadowed are not useable passive open space area and do not contain any public amenities or facilitates at which members of the community would be expected to congregate. The overshadowing will therefore not alienate the physical use of the area.*
- *The shadows do not extend to the beach area during winter."*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 7.00 pm midsummer to be unreasonable.

The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The actual beach is over 150 metres from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast with similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

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) The Provisions of any Draft Environmental Planning Instruments

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

In regards to compliance with the design controls out lined in section A1, when DCP Section A1 was adopted Council resolved that:

"The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30th June 2008 and the this decision be notified in the tweed link."

In this instance the proposed development application was lodged with Council on the 26th June 2008 and therefore has been designed to comply with Council's development requirements that were applicable before the introduction of A1.

Notwithstanding the above the requirements of A1 have been considered in the assessment of the application.

It should be noted the most recent amended plans and supporting information were received by Council on the 18th December 2008 and these plans were the result of information requested during the assessment of the application.

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

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future residential character of the area whilst generally being sympathetic to the surrounding developments.

The dwelling is clearly visible from Elanora Avenue and the dwelling is setback 6m from the street which is consistent with surrounding developments.

The building is a large rectangular shaped dwelling centrally located within the property and complies with the setback and height requirements outlined in A1.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore vegetation given the 2 storey limitation as specified in the Tweed Local Environmental Plan 2000 and the 9 metres height in A1.

The proposed dwelling provides view corridors for dwellings located on the western side of Elanora Avenue, between dwellings and side boundary setbacks.

The one objection received was from the property on the northern side (No. 51 Elanora Avenue) in relation to the loss of a potential south eastern view to the coast and Byron Bay. This property is currently undeveloped, but the owners have indicated their intentions to develop in the future.

It is considered that this objection is unsubstantiated as the proposed dwelling is sited approximately 8 metres from the rear boundary of No. 51 Elanora Avenue which still allows for the owners substantial eastern coastal foreshore views should they wish to develop in the future.

Site Configuration

Deep soil zones (DSZs)

While deep soil zones were not required prior to the introduction of A1 the submitted plans show two suitable areas for deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the rear eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path. The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of approximately 5.5 metres which is consistent with the design control requirements.

Impermeable Site Area

The area of the site is 775.3m² 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 52% and will comply with the design control. This will enable ample water to infiltrate area on the site.

External Living Areas

The dwelling makes provision for external living areas in the form of balconies and a patio area adjacent to the pool providing adequate solar access to the dwelling and private open space.

Landscaping

A landscaping plan has not been submitted with the application. Prior to the introduction of A1 landscaping plans were not required unless significant cut and fill was proposed on a site.

Topography, Cut and Fill

The property is generally a flat site with an approximate 3% fall towards the front of the property

Setbacks

The proposal is consistent with the set back controls having 6 metres front boundary setback, 1.5 metres from northern side boundary, 1.5 metres from

the southern side boundary and approximately 8 metres from the rear property boundary.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Two off street car parking spaces are provided behind Council's building and vehicle access to these spaces is considered adequate.

Height

Building Height

The maximum height of the dwelling is 8.3 metres which is consistent the maximum design control of 9 metres. As previously pointed out, the overall height of the proposed building was reduced by 300mm following request for amended plans by Council officers.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 2.7m at ground floor level and 3 metres at the first floor level

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of small balconies orientated north and balconies at the eastern and westerns of the dwelling to access coastal and hinterland views.

The proposed dwelling being a large rectangular shape will overshadow the adjoining southern side of the property. The shadow diagrams submitted with the application show the extent of overshadowing. The shadow diagrams indicate that significant over shadowing will occur to different portions of Southern side property during the winter months as the sun moves through the sky.

The objection of A1 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 June.
- Windows to living areas must receive at least 3 hours of sunlight between 9am and 3pm on 21 June.

The height and boundary set backs for the proposed dwelling are consistent with the requirements of A1 so therefore the extent of overshadowing could be reasonably expected as the proposed development is generally in keeping with the height and scale of existing dwellings in the area.

The owner of property to the south (No. 47 Elanora Avenue) was notified of the subject proposal, and raised no objection.

Visual Privacy

The two storey dwelling has several windows, sliding doors and associated balconies on both sides which overlook the adjoining properties to the north and south. The windows and sliding doors provide ventilation and solar access to adjacent rooms and the balconies have been provided to provide architectural interest to the design of the dwelling.

The windows have a sill height of approximately 900mm and consistent with the requirements of A1.

The small first floor balconies on either side of the dwelling are adjacent to mainly bedroom areas, which presents less privacy concerns than balconies off main living areas, which are located at the front and rear of the dwelling.

While the location of the first floor balconies and sliding door are not compliant with the 4 metres set back required in A1 they are consistent with what was generally approved before the commencement of A1.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

View Sharing

This matter has been discussed previously in this report.

Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

Building Orientation

The dwelling has been sited on the property to optimize coastal views and solar access as well as providing an acceptable street presentation

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 recommended in the conditions. The applicant has advised that the roof was designed to echo the sweep of a wave, in keeping with the coastal locality.

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.

Swimming Pools

The proposed swimming pool is set back behind Council's Building line and greater than 1.5 from either side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

Under Tweed DCP A1 the maximum FSR applicable for this proposal is 0.55:1 for the dwelling. The proposed FSR for the dwelling is 74:1 which is above this requirement however this was acceptable before the introduction of A1.

A2-Site Access and Parking Code

Vehicle access and car parking on the site is in keeping with the requirements of A2.

(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 a vacant site in an established subdivision which has been specifically created for residential development. The proposed development is

of a design in keeping with the architectural style and residential character of the area.

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 only covered with grass.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is currently vacant. It is considered that 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 in keeping with the existing residential character of the area.

Site Orientation

The building has been centrally located on the property, with compliant minimum side and rear boundary setbacks. The dwelling is set back 6 metres from the front property boundary and therefore complies with the set back requirements of A1. The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and breezes and solar access to the north.

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

One submission was received from the owner of No. 51 Elanora Avenue, objecting to the proposed development.

The main concerns raised included:-

Non compliance with the requirements of Tweed DCP A1

- Council officers have attempted to encourage the applicant to confirm where possible to the requirements of A1, despite Council's previous resolution that they need not comply with A1. It is considered that the amendments made by the applicant in response to Council's request have achieved a final design more compliant with A1.

Loss of views to south and south-east

- The issue of view loss has been previously addressed in the report.

Design merit

- The objector was concerned about the design of the building, being *"extremely bulky with clumsy rooflines and non-articulated elevations."*

While the dwelling is a large home and appears to lack some articulation, the applicant has utilized the set back and height requirements, which were applicable prior to the adoption A1 design guidelines to their advantage in the dwellings design.

The proposed dwelling is not inconsistent with previously approved dwellings in the area, the applicant in their submission which is attached to this report, has provided photographs of existing dwellings in the area to support their proposal.

(e) Public interest

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

OPTIONS:

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve 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.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

On the balance of the assessment of the relevant planning matters, and taking into account that this DA was lodged prior to 30 June 2008, 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 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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P2 [PR-PC] Development Application DA08/0753 for a Dwelling, Swimming Pool & Front Fence at Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0753 Pt1

SUMMARY OF REPORT:

An application has been received to construct a two (2) storey dwelling with a basement car park and in-ground swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive, Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach.

The applicant has lodged a SEPP No. 1 variation as the proposed development will result in overshadowing of the foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties of calculating 10% of the shadow development standard (as it is time based), it has been decided to report this application to Council.

No submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval.

RECOMMENDATION:

That:

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. That Development Application DA08/0753 for a dwelling, swimming pool & front fence at Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff be approved subject to the following conditions: -**

GENERAL

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

[GEN0015]

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

[GEN0115]

3. A Construction Certificate approval is to be obtained for all proposed pre-cast concrete panel fencing of any height and masonry fencing in excess of 1.2 metres in height, prior to any construction of the fence being commenced.

Site specific design details or approved generic details prepared by a practicing structural engineer are required to be submitted and approved as part of the Construction Certificate application.

Such structural engineers design details are to confirm that the fence proposal has been designed to take account of all site issues including the site's soil and load bearing characteristics, wind and other applied loadings, long term durability of all components particularly in relation to corrosion and compliance with Tweed Shire Council's policies for "Sewers - Building in Proximity" and provision of appropriate pedestrian sight clearances to footpaths in accordance with Australian Standard AS2890 "Parking Facilities".

[GEN0145]

4. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the western façade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
5. Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m² of radiant heat flux to prevent the entry of embers into the building. Draught excluders, seals and door furniture shall be manufactured from materials having a flammability index no greater than 5 (with the exception of intumescent seals which are permissible) and ensure that there are no gaps >2.0mm in diameter when the door is closed.
6. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
7. No brushwood (or the like) or treated pine timber fencing shall be used.
8. At the commencement of building works the entire property 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*'.

9. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
10. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. 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]

12. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.
- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
- (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
- (d) Surcharge overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
- (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximize life of infiltration areas between major cleaning/maintenance overhauls).
- (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body

corporate (to ensure continued collective responsibility for site drainage).

- (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
- (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
- (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
- (j) All infiltration devices are to be located clear of stormwater or sewer easements.

[PCC1135]

13. 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]

PRIOR TO COMMENCEMENT OF WORK

14. 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]

15. 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]

16. 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]

17. 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]

18. 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.

[PCW0255]

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

- (a) The person must, at the person's own expense:
 - (i) preserve and protect the building from damage; and
 - (ii) if necessary, underpin and support the building in an approved manner.

- (b) The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0765]

20. 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.

[PCW0985]

DURING CONSTRUCTION

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

26. 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]

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

[DUR0445]

28. 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, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

29. 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]

30. 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]

31. 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]

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

[DUR1945]

33. **Swimming Pools (Building)**

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site www.tweed.nsw.gov.au)
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

34. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

35. 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]

36. 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]

37. **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]

38. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

39. **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]

40. **All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-**

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- * 50⁰C in all other classes of buildings.**

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

41. **No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**

[DUR2705]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

42. **Prior to issue of any occupation certificate, all work associated with the section 138 driveway approval for vehicle access to the property is to be completed to the satisfaction of Council's Director of Engineering Services.**

[POC0005]

43. **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]

44. **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]

45. 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]

USE

46. 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]

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

[USE0505]

48. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

49. Swimming Pools (Building)

- (a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- (b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
- (c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

50. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

REPORT:

Applicant: Curry Kenny Developments Pty Ltd
Owner: South Kingscliff Developments Pty Ltd
Location: Lot 351 DP 1087716, No. 19 Cylinders Drive, Kingscliff
Zoning: 2(f) Tourism
Cost: \$2,000,000

BACKGROUND:

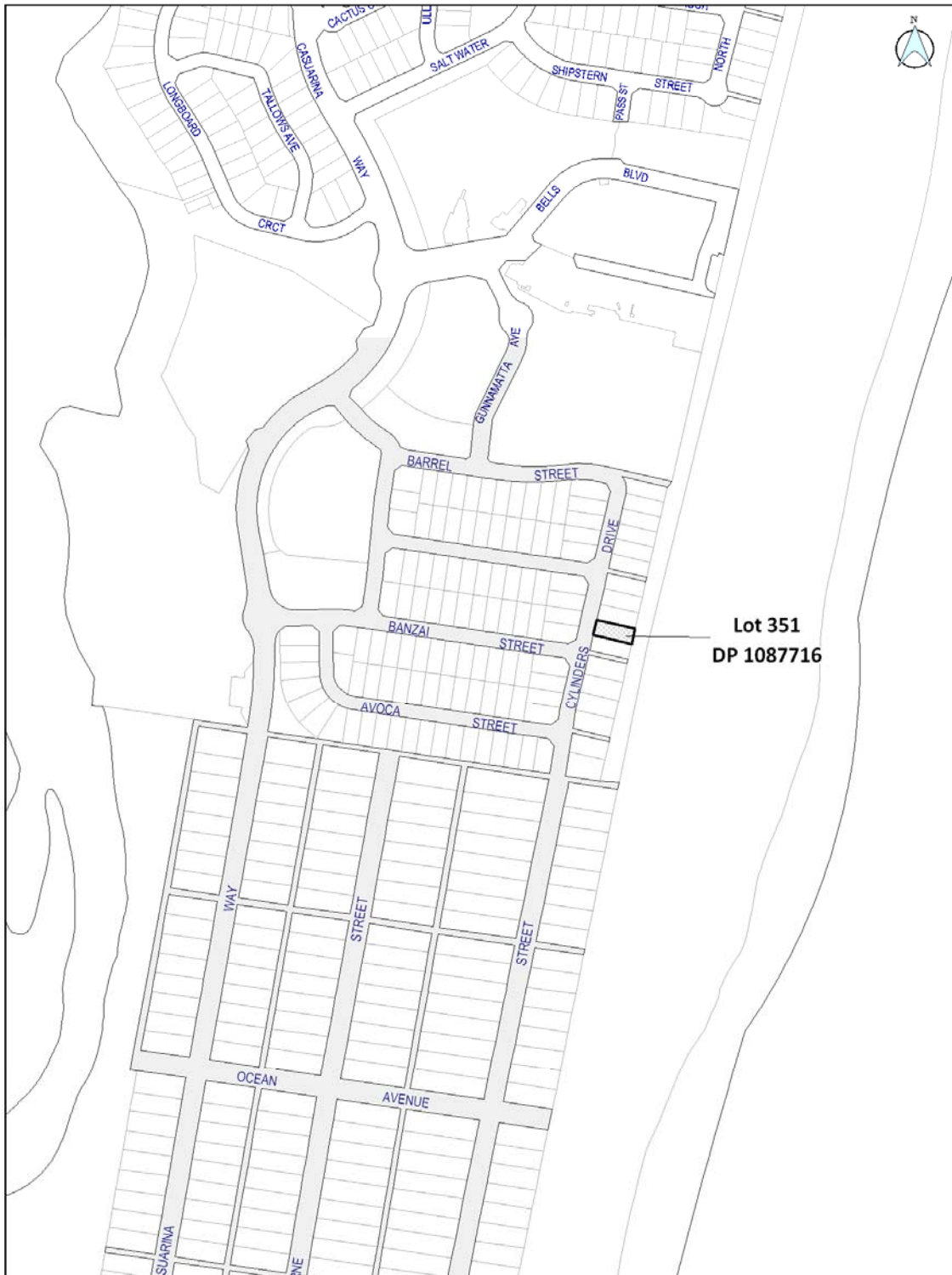
The property is zoned 2(f) tourism under Tweed Local Environmental Plan 2000 and is located on the eastern side of Cylinders Drive, Kingscliff. The property is bounded by residential land to the north and south and to the east a coastal reserve (waterfront open space).

An application has been received to construct a two (2) storey dwelling with a basement car park and in ground swimming pool on the subject property. The property is situated on the eastern side of Cylinders Drive Kingscliff and backs on to the coastal foreshore of South Kingscliff Beach

A SEPP No. 1 is sought for a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

The application was notified to adjoining property owners and no submissions have been received to date.

SITE DIAGRAM:



Lot 351
DP 1087716

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P.O. Box 816
Murwillumbah, NSW, 2484
Tel: (02) 6670 2409
Fax: (02) 6670 2483

Tweed Shire Council
Lot 351 DP 1087716
No. 19 Cylinders Drive, Kingscliff

Site Plan



File: Z:\GIS_Jobs\Site Plan.Wor

Author: J. Batchelor

Date: 05/Feb/2009

Scale: 1:5,000

Sheet: 1 of 1

EXTERNAL WORKS + LANDSCAPE PLAN

PROJECT / No | 1000000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT | LISA AND GARY MANNING

DRAWING / No | 02.110

SCALE | 1:200 / @ A3

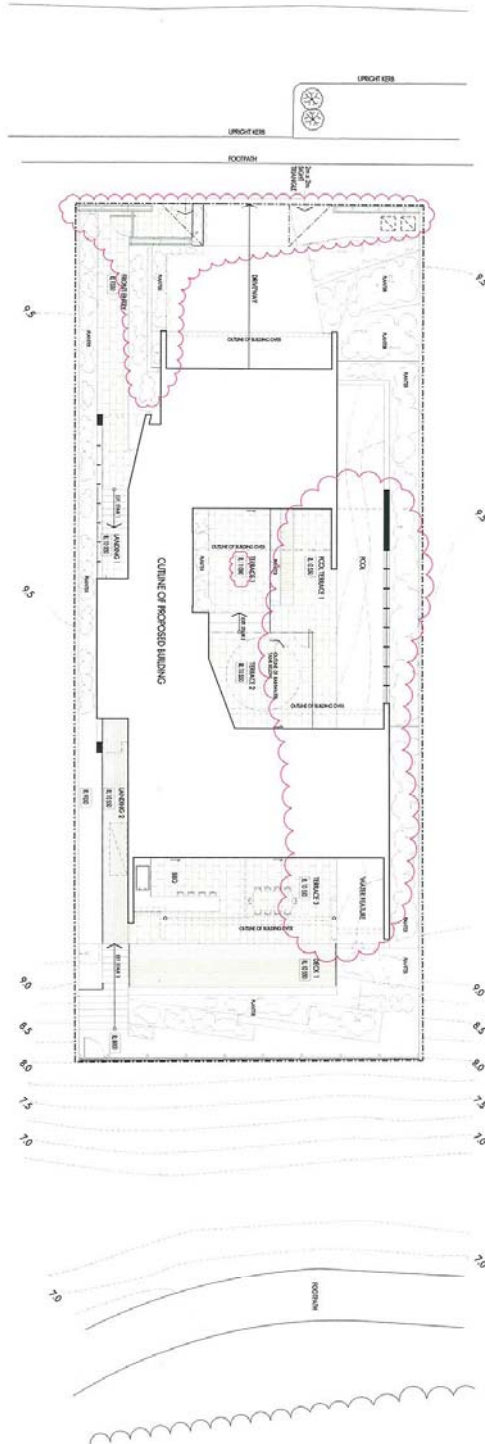
DATE | 09.12.08

DSF No | P10

DRAWN BY | JC

BUILDING STATISTICS	
SITE AREA	647m ²
BUILDING SITE COVER	44.5% (288m ²)
LEVEL 1 INT. AREA	92m ²
LEVEL 2 INT. AREA	159m ²
LEVEL 3 INT. AREA	141m ²

0 0.5 1 2 SHEET SCALE: 5m



BEACH HOUSE SALT VILLAGE - LOT 351

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 13 Manning Street South Brisbane Q.4101 Australia
 T 07 3255 2526 F 07 3255 2327
 email@richardkirkarchitect.com www.richardkirkarchitect.com
 Richard Kirk Architect Pty Ltd ABN 60006078010

WEST ELEVATIONS

PROJECT / No: 10000000 / BEACH HOUSE SALT VILLAGE - LOT 351

CITY/COUNCIL: LGA AND QUANT RENNIV

DRAWING / No: 200300

SCALE: 1/100 @ A3

DATE: 09/12/08

SHEET No: 010

DRAWN BY: PC

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 m@richardkirkarchitect.com www.richardkirkarchitect.com
 Richard Kirk Architects Pty Ltd ABN 60906078919

BEACH HOUSE SALT VILLAGE - LOT 351



EAST ELEVATIONS

PROJECT / No: 10000003 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT: USA AND GRANT KERRY

DRAWING / No: 100_002

SCALE: 1:100 @ A3

DATE: 09/12/08

SHEET No: 010

DRAWN BY: PC

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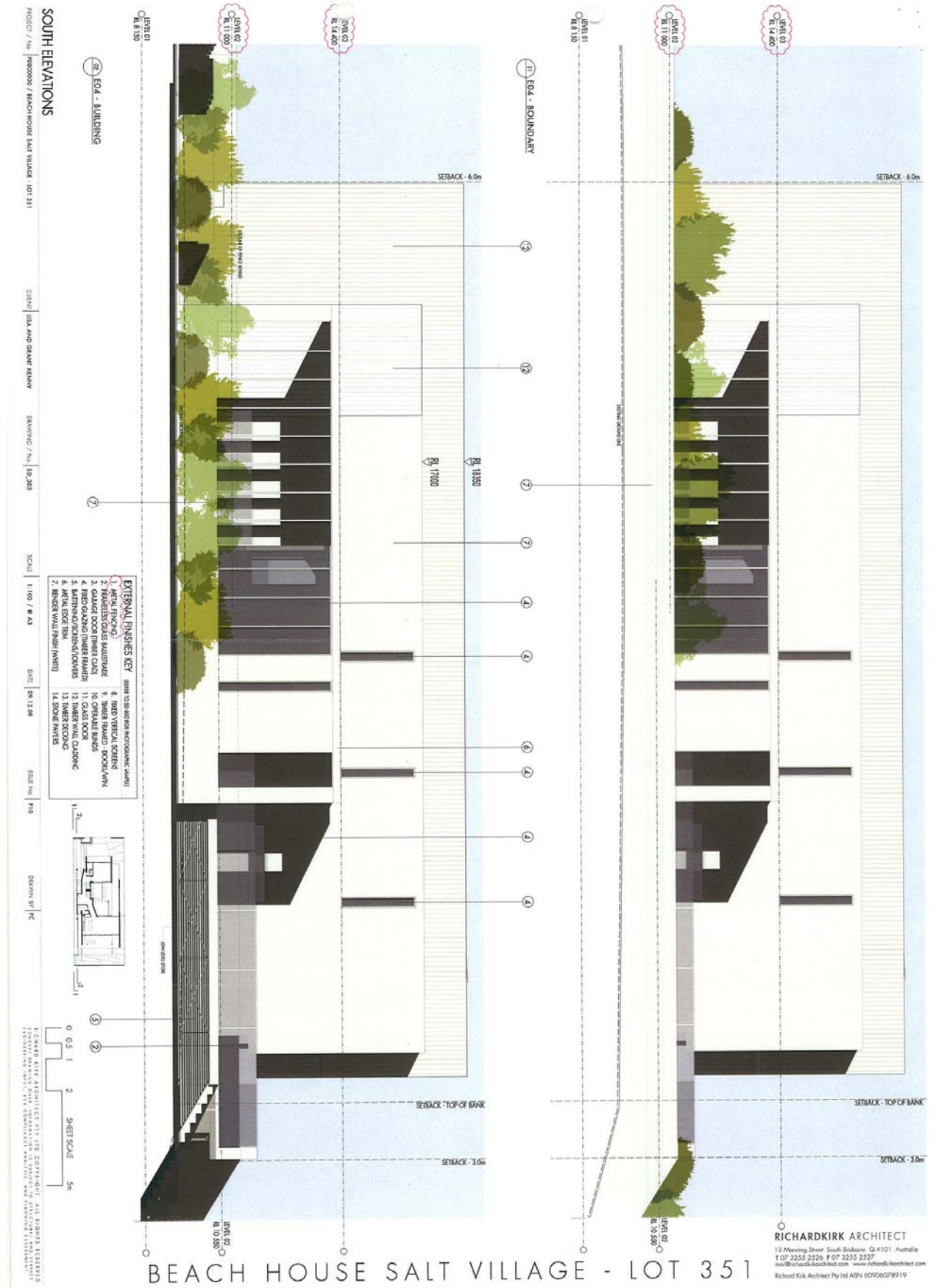
EXTERNAL FINISHES KEY REFER TO SPECIFIC ARCHITECTURAL DRAWING

1. METAL FINISHING	8. FIBRE OPTICAL SCREENS
2. POLYESTER GLASS BALUSTRADE	9. TUBULAR FRAMED DOOR/Window
3. GALVANIZED IRON/STEEL CLAD	10. OPERABLE BLINDS
4. FIBRE GLAZING FINISHES/FRAMES	11. GLASS DOOR
5. MATTERING SCREENS/COVERS	12. TIMBER WALL CLADDING
6. METAL FINISHING	13. TIMBER SCREENS
7. FIBRE GLAZING FINISHES/FRAMES	14. STONE FINISHES

0 0.5 1 2 SHEET SCALE 5m

BEACH HOUSE SALT VILLAGE - LOT 351

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 Richard Kirk Architect Pty Ltd ABN 60906078919



SECTIONS - SHEET 01

PROJECT / No: PO00000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT: LBA AND GRANT KIRBY

DRAWING / No: 100-200

SCALE: 1:100 / A3

DATE: 09/12/08

SHEET No: P10

DRAWN BY: PC

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0 0.5 1 2 5m SHEET SCALE

BEACH HOUSE SALT VILLAGE - LOT 351

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 mail@richardkirkarchitect.com www.richardkirkarchitect.com
 Richard Kirk Architect Pty Ltd ABN 60996078919

PROJECT / No. 19880008 / BEACH HOUSE SALT VILLAGE - LOT 351
 CLIENT IDA AND GRANT KEENE
 DRAWING / No. PD_200

SCALE 1:400 / A4
 DATE 09/12/08
 SHEET No. 110

DRAWN BY JC

PROJECT TITLE
 SHADOW DIAGRAMS: NORTH COAST REGIONAL ENVIRONMENTAL PLAN

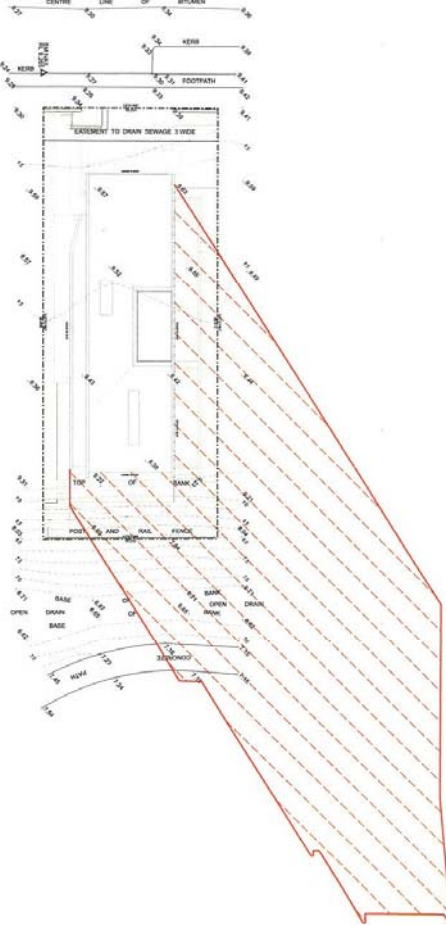
DATE 09/12/08

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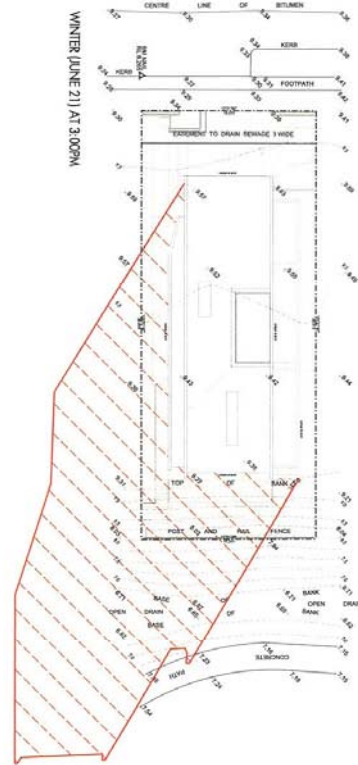


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 www.richardkirkarchitect.com
 Richard Kirk Architect Pty Ltd ABN 6090607891/9

SUMMER (DEC 21) AT 6:30PM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 3:00PM



BEACH HOUSE SALT VILLAGE - LOT 351

SHADOW DIAGRAMS - BUILDING IMPACT

PROJECT / No: 188000 / BEACH HOUSE SALT VILLAGE - LOT 351

CLIENT: USA AND GRANT TRUSTY

DRAWING / No: 501_201

SCALE: 1:400 / A3

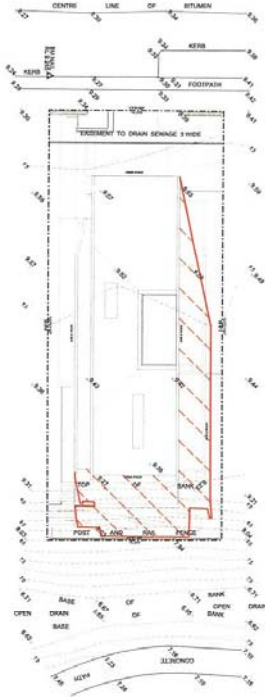
DATE: 09/12/08

ISSUE No: 010

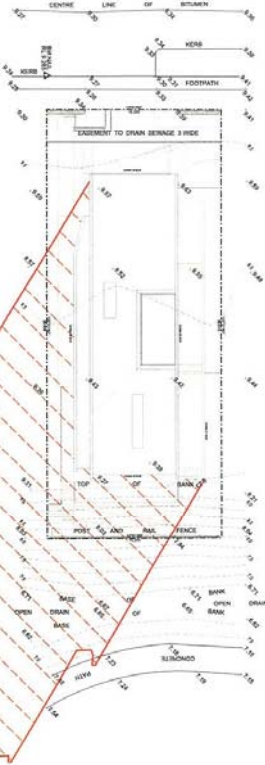
DRAWN BY: JC

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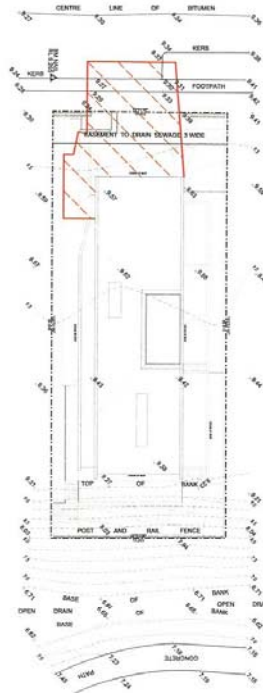
SUMMER (JANUARY 21) AT 3:00PM (DAYLIGHT SAVING)



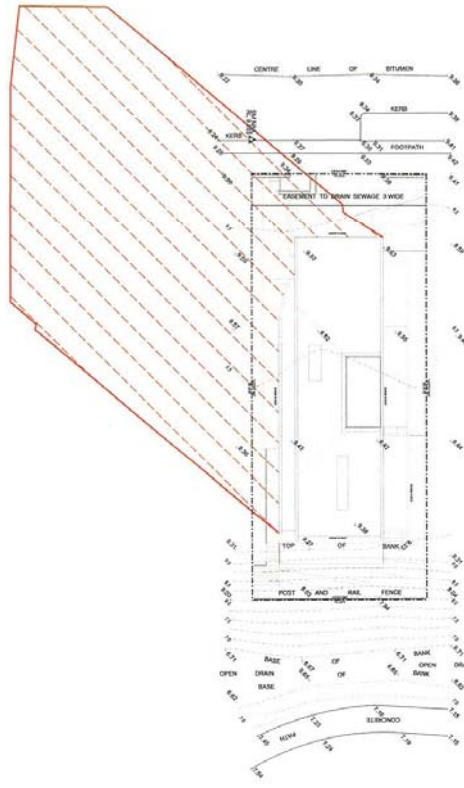
WINTER (JUNE 21) AT 3:00PM



SUMMER (JANUARY 21) AT 9:00AM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 9:00AM



BEACH HOUSE SALT VILLAGE - LOT 351

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 Richard Kirk Architect Pty Ltd ABN 60906078019

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 subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone. The proposed development is consistent with the secondary objective of the zone,

Clause 15 - Essential Services

All essential services are available within the area

Clause 16 - Height of Building

The proposed height of the development (9m) complies with the 2 storey and 9m maximum height limitation affecting the subject site.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. As approximately 2 metres of fill was placed on the site at subdivision stage, the depth of Acid soils would be approximately 4 metres below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

Other Specific Clauses**Clause 36 - Coastal Erosion Hazard Outside Zone 7(f)**

The proposal is consistent with the considerations of this clause. The proposed development will not affect the beach or dune system and landscape or scenic quality of the locality, other than in relation to shadowing which is discussed in detail later in this report.

Council's mapping records indicate the subject site is clear of the 100 year hazard line.

Clause 39A – Bushfire Protection

Council's records indicate the site is bushfire prone. The proposal is consistent with the considerations of this clause. The NSW Rural Fire Service reviewed the proposal and raised no concern with regards to Planning for Bush Fire Protection 2006 subject to conditions of consent

North Coast Regional Environmental Plan 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is not inconsistent with the Coastline Management Manual.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *At 6.30pm mid-summer, shadows cast by the proposed building, which encroaches onto the foreshore reserve(cycle way), are*

relatively narrow and therefore affects only a small portion of the reserve.(see shadow diagram attached).

- *At 3.00pm midwinter shadows cast by the proposed building generally do not extend beyond the cycle way/walkway.*
- *At the stated times, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*
- *The building design effectively minimises as much as possible the extent of shadow on the foreshore reserve.*
- *The area shaded at the statutory times comprises a storm water swale, a bicycle path and managed lawns that would be in full sun until late afternoon.*
- *The shadow does not impact on any areas used by the public for formal recreational activities.*
- *The shadow does not impact on the more intensely used foreshore area adjacent to “Central Park”*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is over 100 metres from the rear of the property

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt subdivision that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

SEPP No 71 – Coastal Protection

The development is generally consistent with the objectives of SEPP 71 and will not impact on the public’s enjoyment and access to the foreshore.

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) The Provisions of any Draft Environmental Planning Instruments

None apparent

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

In regards to compliance with the design controls out lined in section A1, when DCP Section A1 was adopted Council resolved that:

- The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30th June 2008 and the this decision be notified in the tweed link.

In this instance the proposed development was lodged with Council on the 26th June 2008 and in line with the above resolution need not comply with the design requirements of A1. Notwithstanding the above the applicant has attempted to comply with the requirements of A1 to utilise the increased height limit of 9 metres permitted in A1. It should also be noted the most recent amended plans were received by Council on 10 December 2008 and these plans were the result of information requested during the assessment of the application.

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

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming Pools

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments. The dwelling is clearly visible from Cylinders Drive and the dwelling is setback 6m from the street which is consistent with the surrounding developments.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given the 3 storey limitation as specified in the Tweed Local Environmental Plan 2000 and the 9 metres height in A1. The proposed dwelling provides view corridors for dwellings located on the western side of Cylinders Drive, between dwellings and side boundary set backs.

Site Configuration

Deep soil zones (DSZs)

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling adjacent to the eastern property boundary.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of 3 metres while this is less than the required 5.5 metres it is consistent with the 3 metres setback requirement outlined in the 88b instrument for the subdivision and is therefore considered acceptable.

Impermeable Site Area

The area of the site is 647m² subsequently the maximum impermeable site area permitted at the completion of the development will be 65%. From the landscaping plans submitted the development will create an impermeable area of approximately 64% and will comply with the design control.

External Living Areas

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

Topography, Cut and Fill

The site is basically flat with minimal cut of fill proposed other than the excavation for the basement car park.

Setbacks

The proposal is consistent with the set back controls, 6 metres front boundary setback, 1.5 metres northern side boundary, 0.9 metres from the southern side boundary.

The set back from the rear boundary is 2 metres which is consistent the prescribed set back requirement in the 88b instrument for the subdivision.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Three off street car parking spaces are provided behind Council's building line beneath the dwelling and vehicle access to these spaces is considered adequate.

Height

Building Height

The maximum height of the dwelling is 9 metres which is consistent the maximum design control of 9 metres.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show a minimum floor to ceiling height of 3.3m which satisfies the requirements of the DCP.

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

The proposed dwelling will overshadow the adjoining southern side of the property however the extent of overshadowing could be reasonably expected for the area, as the proposed development is in keeping with the bulk and scale of existing dwellings in the area.

Visual Privacy

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

View Sharing

This matter has been discussed previously in this report.

Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

Building Orientation

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

Fences and Walls; Front, Side and Rear

The proposal incorporates a 1.8m high slatted front fence. The design and use of materials is consistent with the design of the dwellings.

The side fences as evident on the architectural plans detail comprises a 1.8m high concrete panelled fence which is consistent with the design control. While the front fence is higher than the 1.5 metres nominated in A1, the height and style is consistent with front fences previously approved in the area prior to the requirements of A1.

Landscaping is proposed behind the slatted front fence to assist in reducing the impact of the fence on the streetscape.

Roof

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

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.

Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5 from the eastern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.55:1 for the dwelling. The proposed dwelling is consistent with this design control having an FSR of approximately 0.55:1.

A2-Site Access and Parking Code

The development will comply with the requirements of section A2 in relation to vehicle access and parking.

(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 in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged, the site has been cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Land uses/Development

It is considered that 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.

The design of the dwelling is in keeping with the residential character of the area

Topography

The property is generally a flat site with an approximate 1% fall towards the front of the property

Site Orientation

The building has been centrally located on the property, with compliant minimum side and rear boundary setbacks. The dwelling is set back 6 metres from the front property boundary and therefore complies with the requirements of A1. The living areas of the dwelling have been mainly orientated to the east and north to optimize ocean views and solar access to the north.

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

The proposal was notified to the adjoining property owners for 14 days from the 10 July to 24 July 2008. To date no submissions have been received.

(e) Public interest

The proposed development is considered to be in the public's interest.

OPTIONS:

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve 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.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to 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 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.

P3 [PR-PC] Development Application DA08/1007 for a Dwelling & Swimming Pool at Lot 282 DP 1120559, No. 13 Woodfull Crescent, Pottsville

ORIGIN:

Building & Environmental Health

FILE NO: DA08/1007 Pt1

SUMMARY OF REPORT:

This Development Application is being reported to Council due to the Department of Planning's circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council.

As the Department of Planning have advised Council Officers to be conservative in their application of the 10% rule and the fact it is extremely difficult to calculate 10% of a building storey limitation, it has been resolved to report this application to full Council.

The applicant seeks development consent for a dwelling with an attached garage and a swimming pool as well as earthworks and landscaping involved in the construction of the dwelling.

The applicant has lodged an objection under SEPP 1 to a development control contained within Council's Local Environmental Plan 2000.

The objection is in regard to the proposed dwelling component having a three storey portion which is not consistent with the provisions of Clause 16 of the Tweed LEP 2000.

In accordance with Development Control Plan A11 – Public Notification of Development Proposals – the Development Application was notified for a period of 14 (fourteen) days from 19 January 2009 to 03 February 2009. No submissions were received by Council within this timeframe.

RECOMMENDATION:

That: -

- A. State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- B. Development Application DA08/1007 for a dwelling and swimming pool at Lot 282 DP 1120559 No. 13 Woodfull Crescent, Pottsville be approved subject to the following conditions:**

GENERAL

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

[GEN0015]

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

[GEN0115]

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]

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]

PRIOR TO COMMENCEMENT OF WORK

6. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and
-

ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

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.

[PCW0255]

12. 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.

[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. All proposed works are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

15. 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]

16. 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]

17. 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]

18. 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]

19. 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]

20. 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]

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

[DUR0445]

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, Development Control Plan, Part A5 - Subdivision Manual and Development Control Plan, Part A14 - Cut and Fill on Residential Land to the satisfaction of the Principal Certifying Authority.

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. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

26. The habitable floor area of the building is to be at a level not less than RL 3.3 m AHD.

[DUR1435]

27. 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]

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

[DUR1945]

29. All retaining walls in excess of 1metre in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction. Certification from a suitably qualified engineer experienced in structures is to be provided to the PCA prior to the issue of an Occupation/Subdivision Certificate.

[DUR1955]

30. Swimming Pools (Building)

- (a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site www.tweed.nsw.gov.au)
- (b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- (c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- (d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

31. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

32. 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]
33. 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]
34. 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]
35. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
- [DUR2535]
36. 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]
37. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.
- [DUR2555]
38. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.
- [DUR2705]
-

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]

43. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.

[POC1055]

USE

44. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

45. 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]

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

[USE0505]

47. The keeping of dogs, cats or other animals on the property is to be in accordance with any relevant 88B Instrument requirements.

[USE1245]

48. Swimming Pools (Building)

(a) It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

(b) The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

(c) Warning notices required under Part 3 of the Swimming Pool Regulations 2008 shall be maintained at all times.

[USE1295]

49. The swimming pool is not to be used for commercial purposes without prior Development Consent.

[USE1305]

REPORT:

Applicant: Anstey Designer Homes
Owner: Mr DM Anderson and Mrs KE Anderson
Location: Lot 282 DP 1120559 No. 13 Woodfull Crescent, Pottsville
Zoning: 2(a) Low Density Residential
Cost: \$500,000

BACKGROUND:

The subject site is 1349m² and is elevated above surrounding blocks. The subject site has been cleared of significant vegetation apart from several established native trees (Iron Bark Eucalypts) located on the site.

Council's records indicate the site was created on 23 November 2007 as part of the "Black Rock" Estate at Pottsville.

The site has a street frontage of four (4) metres to Woodfull Crescent as it is a battleaxe block. The site widens to 27.845m in width and 50.345m in depth for the main body of the site. A sewer main enters the northern corner of the rear section of the site and would be clear of the proposed development.

The subject site is zoned 2(a) Low Density Residential and is located within a designated 2 storey area as per Clause 16 of the Tweed LEP 2000. The properties immediately adjoining to the north, east and west are not currently developed, however the greater surrounding area contains a mixture of single dwelling houses and duplexes.

The site also adjoins 7(d) Environmental Protection (Habitat) zone under the Tweed LEP 2000.

The applicant seeks consent for a dwelling with an attached garage and swimming pool which is located at the rear of the site, as well as related earthworks and landscaping.

An objection under SEPP No. 1 to a Development Control in Tweed LEP 2000 has been received by Council in regard to Clause 16 of the Tweed LEP 2000, as the proposed building contains a small section which is three stories in height.

The site is a battleaxe block which backs on to a nature reserve and koala habitat at the rear of the property.

Notification was required as per the provisions of DCP Section A11 (Public Notification of Development Proposals) and no submissions have been received to date.

SITE DIAGRAM:



**Lot 282
DP 1120559**

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P.O. Box 816
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Tel: (02) 6670 2409
Fax: (02) 6670 2483

Tweed Shire Council
Lot 282 DP 1120559
No. 13 Woodfull Crescent, Pottsville

Site Plan



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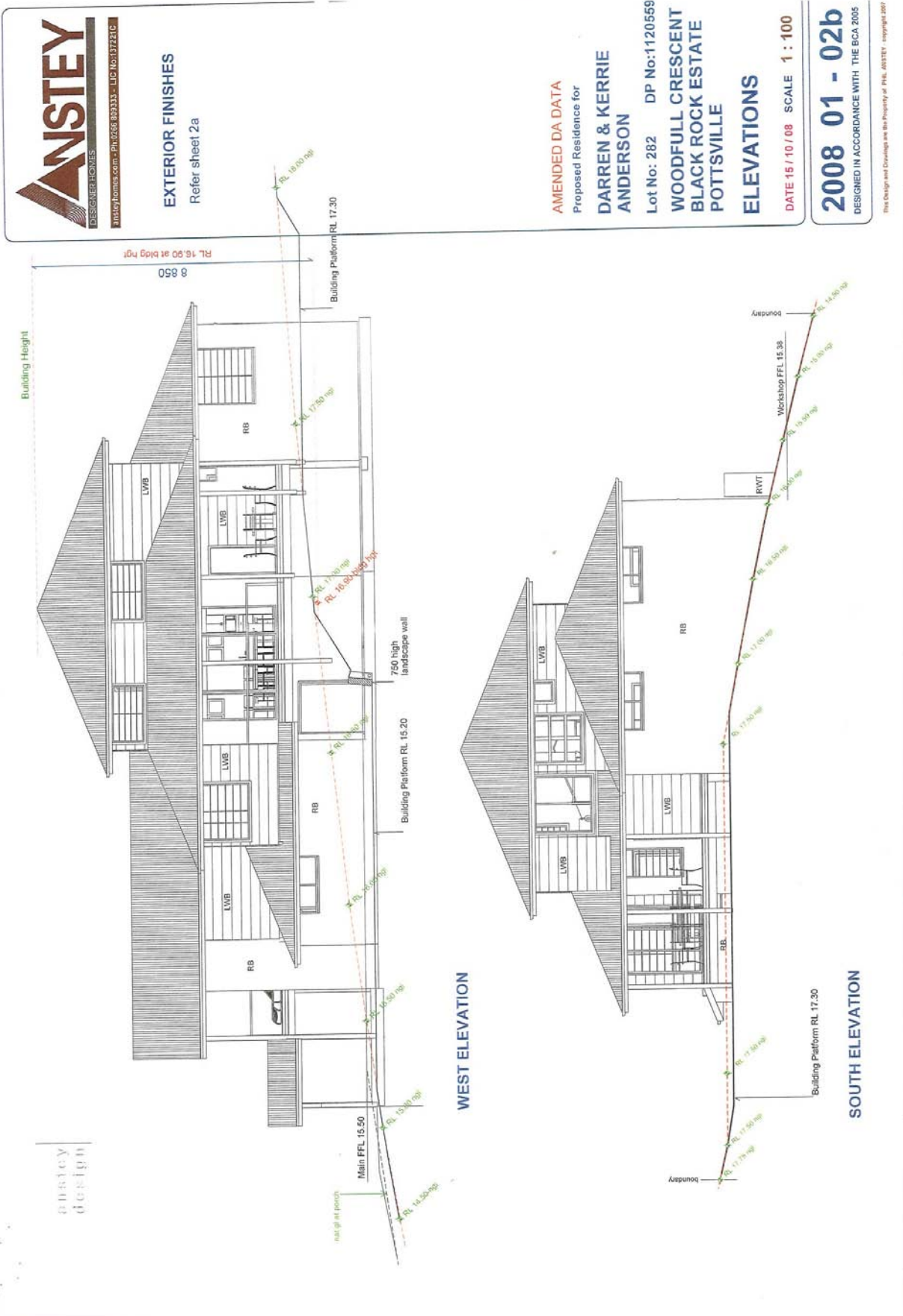
Author: J. Batchelor

Date: 19/Jan/2009

Scale: 1:5,000

Sheet: 1 of 1

ELEVATION PLANS:





ansteyhomes.com.au - Ph: 0256 609333 - LIC No: 35721C

EXTERIOR FINISHES

- Roof Sheets COLORBOND
- Colorbond Quad
- Guttering PVC 90mm, paint
- Downpipes Almn powder coat
- Windows Almn powder coat
- Patio Doors Almn powder coat
- Bi Fold Doors Almn powder coat
- reveals 100mm
- Ext Doors Select (see schedules)
- Garage Door Panel Lift
- V/Dah Posts 112 x 112 lam H2, painted finish
- Handrails lam, painted finish @ 1000mm min ht

LEGEND

- FC Fibrous sheet timber cover strap.
- BV Brick veneer
- RB bagged painted finish.
- RB Brick Veneer
- WB Render finish
- LWB Primeline Weatherboard painted finish
- LWB Linea Weatherboard painted finish
- RWT Rainwater Tank
- SL Sky Light

AMENDED DA DATA

Proposed Residence for

DARREN & KERRIE ANDERSON

Lot No: 282 DP No: 1120559

**WOODFULL CRESCENT
BLACK ROCK ESTATE
POTTSVILLE**

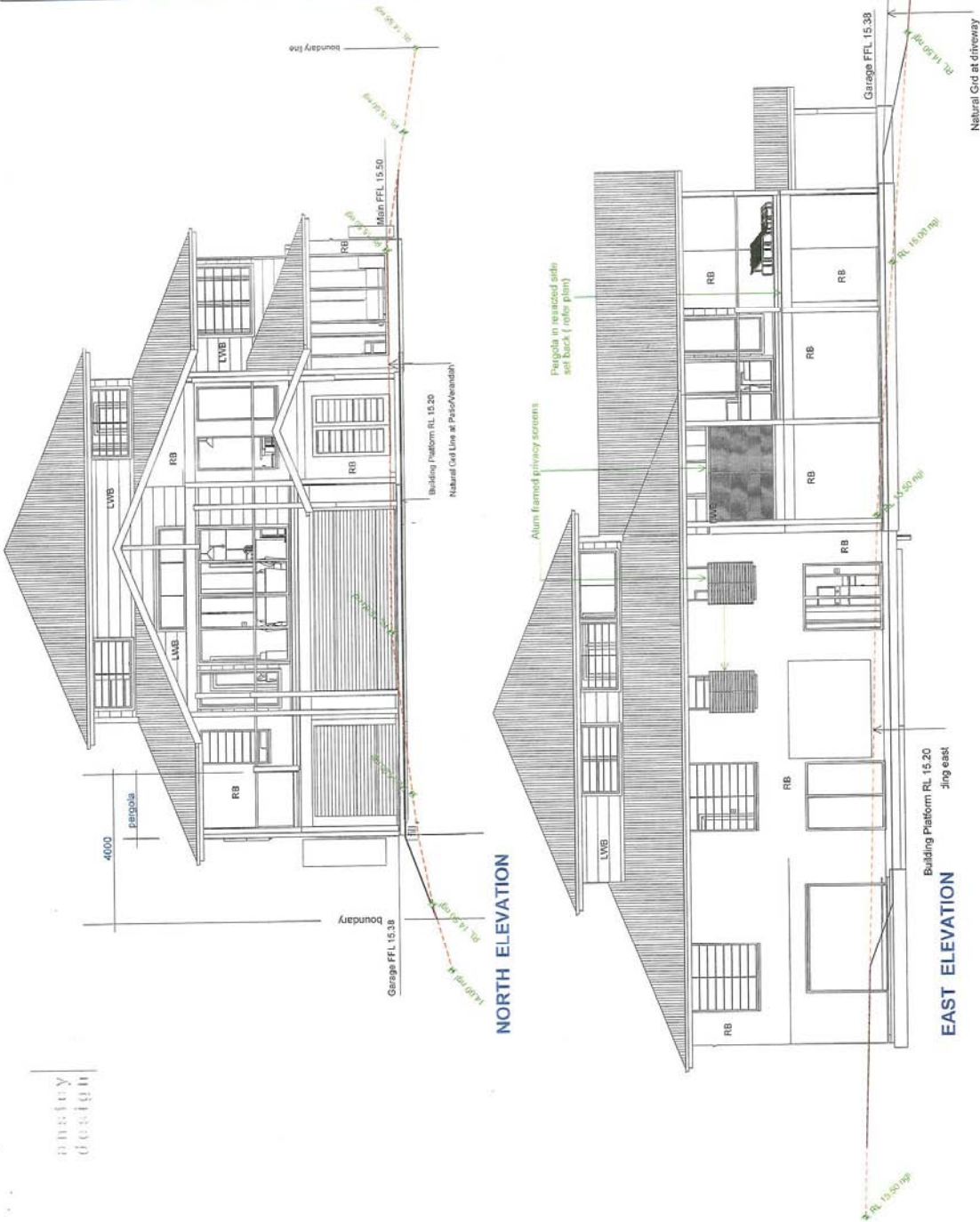
ELEVATIONS

DATE 15 / 10 / 08 SCALE 1 : 100

2008 01 - 02a

DESIGNED IN ACCORDANCE WITH THE BCA 2005

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ansteyhomes.com • Ph: 0256 603335 • ED No: 19221C

BASIX REQUIREMENTS

- PLANTS** Indigenous Plants
see Landscape plan
- FIXTURES** AAA rated throughout
- WTR TANK** 3000 litre rainbank min
..... m2 roof connected
connect to water tank
- TOILETS** Well Ventilated space
- TAP Ext x1** Outdoor Clothesline
- FRIDGE** Comfort Tone
- WASHING**
- GLAZING**
- INSULATION**
Wall: RhinoWrap LBD
R1.1
Roof: Perma-stop 55mm sisal
faced thermal blanket
with plasterboard ceilings
R2.94
- AIRCON** Single Phase Split
System EER 3.5
- location:**
where indicated
- FANS** Gas cooktop,
Electric Oven + MW.
- COOKING** see Electrical Plan
- LIGHTING**

AMENDED DA DATA

Proposed Residence for

**DARREN & KERRIE
ANDERSON**

Lot No: 282 DP No: 1120559

**WOODFULL CRESCENT
BLACK ROCK ESTATE
POTTSVILLE**

PERSPECTIVES

DATE 15 / 10 / 08 SCALE

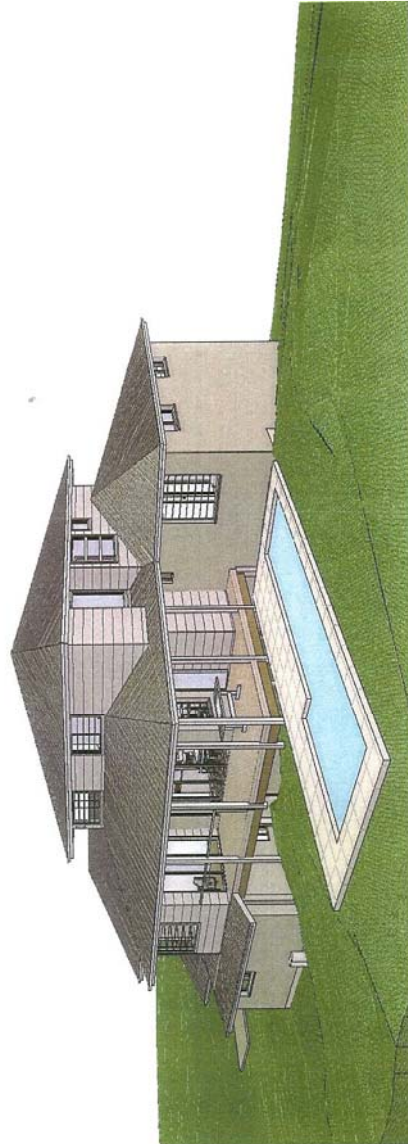
2008 01 - 01P

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NORTH EAST VIEW



NORTH WEST VIEW



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 5 - Ecologically Sustainable Development and Clause 8 - Zone 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 the option of housing diversity and for non-residential development.

The proposed development is consistent with the primary and secondary objectives of the zone as it represents a residential dwelling.

Clause 15 - Essential Services

The site has access to all necessary essential services including water, sewer, electricity and telecommunications.

Clause 16 - Height of Building

The proposed development consists of a dwelling with an attached garage and swimming pool. As identified previously the subject site has a maximum two storey height limitation under Clause 16.

The dwelling house contains a section which is three storeys in height and therefore not consistent with the provisions of clause 16. In response to this the applicant has lodged an objection under SEPP No. 1 to the development control.

Clause 17 - Social Impact Assessment

Normal domestic impacts anticipated from the proposed development. These impacts are not anticipated to have any significant impact to the existing amenity of the area or the existing streetscape.

Clause 35 - Acid Sulphate Soils (ASS)

The site is in a class 5 ASS area. As the proposed development will not extend below 1m AHD, acid sulphate material will not be an issue in relation to this development.

Other Specific Clauses

Clause 34 – Flooding

The site is identified as being in a flood prone area. The proposal will not increase the effect of flooding on the community and is considered to be consistent with the aims of the policy.

Clause 39A – Bushfire Protection

The site is identified as being in a bushfire prone area. After an assessment of the site and surrounding area whilst accompanied by NSW Rural fire service officer it has been established that the site can be identified as having a high potential risk of bushfire as per the provisions of Planning for Bushfires 2006. Therefore any consent will be conditioned to require the building achieve 'Level 2 Construction' as per Australian Standard 3959-1999 'Construction in bushfire prone areas'.

It was also noted at the time of inspection that the property to the rear of the subject site has a fire track which is maintained by Council which assist in the reduction of any potential bushfire risk.

North Coast Regional Environmental Plan 1988

Clause 29A: Natural areas and water catchment

No significant impact anticipated

Clause 32B: Coastal Lands

Clause 32B applies to this proposed development. The proposal is generally consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore.

Clause 43: Residential development

Generally consistent with the objectives of the Clause.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

As stated previously, the applicant objects under SEPP No. 1 to the Design Control for building height identified in Clause 16 of the Tweed LEP 2000.

The proposed dwelling is, technically, considered to be three storey as the internal layout of the dwelling creates a small section of the dwelling which by definition is deemed to be three storey.

In their submission the applicant states that:

“With respect to the 3 storey component, the site topography presents difficulties in the design response to the site in regards to the irregular cross fall.

A portion of the building exceeds the three storey height limit. The variation is restricted to the laundry and storage areas within the 3rd storey zone as illustrated within Plan 2008 01-01s. In support of the proposed variation, we highlight the following point for Council's consideration.

- *The design is site specific, and meets the objectives for, and relationship to, its surrounds. With the building centred on the block, the built form is located within the overall height limit at all points. The building sits comfortably within the proposed cut, which is also compliant with Council's DCP Section A1.*
- *Floor access to the front [lower] and rear [higher] is balanced and well positioned, for ease of access through the building and to lessen the site coverage.*
- *The ground floor perimeter is mostly at natural levels or cut in, with an gentle driveway at natural levels*
- *The building is stepped with the site and is pyramidal in form, ensuring that the form does not dominate either the site or its neighbours. To this end, the development is compliant with respect to solar access to adjoining properties and does not present an adverse overshadowing impact.*
- *At any point on the buildings perimeter the building is two storeys (the uppermost level is a smaller 'Hat', softening the buildings form, and offset toward the rear). This proposed design response preserves the reduced bulk of the dwelling when compared to a design which proposes a 2.7m high ceiling height above the first floor roofline.*
- *For the most part the sub floor areas comply as 'non storey' (<1500mm) but due to the irregularities of the contours of the site (the natural shape is not uniform) an area which would otherwise comply with the definition for exclusion 'as access path to basement areas' has been partly taken up by the location of the laundry and to increase storage space in the workshop.*

Reference to the above has been demonstrated on Plan 2008 01-01s [plans] and sections 2008 01 3a, & 3b

- *Both of the above referenced areas are not visible from the public domain or neighbouring properties given they are located totally within the body of the dwelling and as such do not adversely impact the streetscape that would otherwise occur from a typical three storey structure*
- *The building has a height of 8.85m at roof apex at a point on ground directly below, (RL 16.9 shown on drawing 01s) and thereby complies with the height limit. This height is demonstrated on elevation 2b and section 3b with reference to RL 16.9”*

Assessment of the SEPP No. 1 Objection

The applicants submission indicates that the three storey component of the dwelling will be located internally and at no point does the building perimeter exceed two storeys.

Council’s attention is drawn to the definition of a storey under Tweed LEP 2000 which defines that a storey means:

- (a) the space between two floors, or*
- (b) the space between a floor and any ceiling or roof immediately above it, or*
- (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height.*

Accordingly it should be noted that there is only an area of approximately 11m² in the downstairs area would constitute a third storey by that definition. Additionally this area is just an expansion of storage area and a laundry, which have been located so as to efficiently use the space present under the upper storeys created by the unique topography of the land.

Were the identified third storey area to be deleted the proposed building would be fully compliant with the requirements of Clause 16 of the Tweed LEP with no change to any of the outside facades of the dwelling. This would tend to suggest that the additional downstairs area, which creates the three storey section, has no significant impact on the external impact of the dwelling.

The adjoining nature reserve to the rear of the property, as well as the large open vegetated space in front of the dwelling will act to reduce any visual impact from the dwelling.

It should also be noted that the applicant has sought to best use the natural contours of the land in the design of the dwelling. The proposed location of

the dwelling is to be on top of a small hill on the site which has lead to a difficult topography for building design.

The proposed dwelling is generally compliant with Council's design requirements and is anticipated to be a positive addition to the streetscape. The proposed dwelling is considered to be a suitable development and warrants favourable consideration.

It is recommended that Council assume the Director's concurrence in this instance.

SEPP No 71 – Coastal Protection

The subject site falls within the coastal zone as identified under SEPP 71, however referral to the Department of Natural Resources is not necessary given the relatively minor nature of the proposal and its distance from any sensitive coastal locations.

Despite this, the items contained in Clause 8 of the policy remain a relevant matter for consideration. These items relate to the potential impacts of the development on public access to the foreshore, views, overshadowing of the foreshore, existing wildlife corridors, the suitability of the site for the development and measures to reduce other adverse environmental impacts.

Having regard to the nature of the proposal; its distance from any waterway or foreshore; and the existence of developments similar in intensity and scale on nearby and adjoining parcels, The proposed development is consistent with the matters for consideration under Clause 8 and is a suitable development for the site.

SEPP (Building Sustainability Index: BASIX) 2004

The proposed development is a residential dwelling with an attached garage and swimming pool. Under the requirements of the SEPP and the Environmental Planning and Assessment Regulation 2000 a BASIX certificate is required for this development.

The Applicant has provided a valid BASIX certificate for this proposed development in accordance with the legislation. Additionally the submitted plans have been notated to include a BASIX schedule of commitments and the require features have been included in the plans. It is considered that the requirements of the SEPP have been satisfied

(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)**

Tweed Development Control Plan

A1-Residential and Tourist Development Code

Public Domain Amenity

Streetscape

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

Being an axe-handle block the requirements for being visible from the street are obviously moot.

Public Views and Vistas

The proposal will not result in an unreasonable view loss for the surrounding sites as the predominant views from the surrounding area are in a north-easterly direction away from the proposed dwelling.

Site Configuration

Deep soil zones (DSZs)

The property contains two areas of deep soil zones, one at the front of the dwelling and the other at the rear of the dwelling.

The deep soil zone in the front yard of the property extends across the entire length of the site, and excludes the concrete driveway and entrance path, which is consistent with the design control requirements. Given the proposed dwelling's large setback from the front boundary of the property the front DSZ is extremely large with a setback of approximately 15m.

The second deep soil zone extends across the entire width of the property adjacent to rear eastern boundary and has a width of 5.6m, which is less than the distance required in the design controls which specifies 8m.

This is due to the location of the proposed dwelling on the site affecting the space available for a rear deep soil zone. In accordance with the provisions for varying a mandatory control, as outlined in section A1, the applicant has submitted an application to vary the control.

The applicant puts forward that the relaxation should be allowed due to the following reasons:

- The property backs on to a nature reserve, so the vegetation corridor sought after in the objectives for the control is already present and therefore some flexibility may be warranted;

- That the rear DSZ has been “reconfigured to a longer width rather than depth to achieve adequate area, an incorporate existing iron bark eucalypts, as indicated on revised landscape plan [2008 01 01 e]”;
- In addition to the rear DSZ the applicant has provided a front DSZ which has been enlarged to incorporate a much greater area than required, which will be vegetated substantially.

The current design of the proposed dwelling still allows for an area at the rear of the building which will create a flora and fauna corridor whilst maintaining and promoting existing mature tree growth and newly established vegetation.

Also the proposed design will allow significant area for stormwater and surface water to be retained and permeate on site. These are both consistent with the objectives of Design Control 2 of Section A1 of the DCP.

It is considered that due to the site conditions the topography of the land and the general design of the dwelling that the variation to the rear deep soil zone requirement is a satisfactory outcome which satisfies the objectives of the controls and is anticipated that it will not create a negative impact on the streetscape.

Impermeable Site Area

The area of the site is 1348.90m² subsequently the maximum impermeable site area permitted at the completion of the development will be 60%. From the landscaping plans submitted the development will create an impermeable area of 545.3m², which is approximately 40% of the total site area and will therefore comply with the design control.

External Living Areas

The dwelling makes provision for external living areas in the form of verandahs and decks to the front and rear of the building. The rear verandah and landscaped area adjacent to the pool provides adequate solar access to the dwelling and private open space.

The verandah and deck to the front of the house have been screened for privacy where required by the Design Controls relevant to section A1 of the DCP.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is generally consistent with this design control.

Topography, Cut and Fill

The site is sloped up away from the front boundary of the property and basic cut for the building platform has been proposed. This is generally in keeping with the natural landform and the design achieves the objectives of the Design Control.

Setbacks

The proposal is consistent with the set back controls have a 15m front boundary setback, 5m setback from the north-western side boundary, 3.4m setback from the north-eastern side boundary, a 5.6m setback from the rear boundary. These are consistent the prescribed set back requirements.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. At least four off street car parking spaces are provided behind Council's building line. These have been located beneath the front deck and within the garage attached to the dwelling. Vehicle access to these spaces is considered adequate and satisfy Council's access requirements.

Height

Building Height

The maximum height of the dwelling is 8.8m which is consistent the maximum design control of 9m.

Ceiling Height

The control encourages a minimum ceiling height of 2.7m for habitable rooms. The architectural plans show the ceiling height of the dwelling as being consistent with this provision and the deemed to satisfy provisions of the Building Code of Australia.

Building Amenity

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of landscaped areas adjacent to the pool area and western rear boundary.

The proposed dwelling will overshadow the adjoining southern side of the property at 3.00pm on the winter solstice however the extent of overshadowing could be reasonably expected for the area, as the proposed

development is in keeping with the bulk and scale of anticipated dwellings in the area.

Visual Privacy

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating that any noise emitted from an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

View Sharing

This matter has been discussed previously in this report.

Natural Ventilation

The design of the dwelling provides for adequate natural ventilation.

Building Orientation

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

Fences and Walls: Front, Side and Rear

The proposal incorporates a 1.6m high colourbond fence at either side of the rear of the property. The design and use of materials is consistent with the design of the dwellings.

It is assumed that future fencing will be proposed when adjoining properties are developed.

Roof

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

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.

Swimming Pools

A swimming pool has been proposed and will be set back behind Council's Building line and 1.5 from the eastern side property boundary. This is consistent with the design control objectives for swimming pools in the DCP.

Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1 for the dwelling. The proposed dwelling is consistent with this design control having an FSR of approximately 0.30:1.

A2-Site Access and Parking Code

The subject land allows for vehicular parking for 2 cars in the attached garage, as well as additional spaces within the existing driveway in a stacked arrangement for visitor use. Given the nature of the development and the size of the subject parcel, the proposal is considered to satisfy the provisions of DCP section A2.

A3-Development of Flood Liable Land

The site is nominated as being flood prone. The proposed dwelling is to be constructed at a height above the 1 in 100 year flood level and above the required minimum floor level for development in this area. Therefore the proposal is consistent with the requirements of section A3 of the DCP.

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

Clause 92(a) Government Coastal Policy

The site is in a coastal zone and it is considered unlikely that the nature and scale of the development will have any detrimental effects in this location.

Clause 92(b) Applications for demolition

No demolition is proposed as part of the development.

Clause 93 Fire Safety Considerations

None required.

Clause 94 Buildings to be upgraded

None required.

(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 design, scale and appearance of the building is reasonable and generally consistent with the establishing and desired built form and character of the estate and also promotes a positive contribution to the streetscape.

Access, Transport and Traffic

Proposed vehicular access arrangements satisfactory and would be separately approved. Pedestrian sight lines each side of the driveway at the front boundary are satisfactory.

Flora and Fauna

No significant impacts anticipated as a result of the development.

(c) Suitability of the site for the development

Surrounding Land uses/Development

The site is located in a residential area and is considered to be suitable for the proposed development. Furthermore the proposal is considered to be consistent with the type of development intended for the site.

Topography and Site Orientation

It is considered that the site is suitable for the proposed development. The land was specifically created for residential purposes and its use is consistent with the locality.

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

As the site is located in a bushfire prone area, the development was notified to the RFS for comments. The RFS recommended that certain measures be taken to protect the dwelling in the event of bushfire attack.

(e) Public interest

The proposed development is considered to be consistent with the surrounding uses and has been designed to be compatible with the existing development, hence the proposal is considered not to be contrary to the wider public's interests.

Subject to the proposed conditions of consent, the proposal generally complies with all applicable provisions and is considered to be in accordance with the public interest, with no significant impacts anticipated for the future of adjoining landowners.

OPTIONS:

1. Approve the development application with conditions
2. Refuse the development application stating reasons

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal in the Land and Environment Court should he/she be dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject land is generally considered to be suitable for the proposed development. The proposed development is considered to be generally consistent with the applicable planning instruments and Development Control Plans

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 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 - Plans (ECM 1966560)**
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P4 [PR-PC] Development Application DA08/0857 for a Dwelling, Swimming Pool & Front Fence with Fence Height Variation at Lot 356 DP 1087716, No. 29 Cylinders Drive, Kingscliff

ORIGIN:

Building & Environmental Health

FILE NO: DA08/0857 Pt1

SUMMARY OF REPORT:

An application has been received to construct a two (2) storey dwelling with a basement car park, an in-ground swimming pool and fencing at the subject property. The property is situated on the eastern side of Cylinders Drive Kingscliff and backs onto the coastal foreshore of South Kingscliff Beach. The property has approximately 1 metre fall towards the rear of the property.

The applicant has lodged an objection under SEPP No. 1 as the proposed development will result in overshadowing of the foreshore.

This development application is being reported to Council due to the Department of Planning's Circular PS08-014 issued on 14 November 2008 requiring all State Environmental Planning Policy No. 1 variations greater than 10% to be determined by full Council. Given that the Department of Planning has advised Council Officers to be conservative with the application of the 10% rule, the difficulties in calculating 10% of the shadow development standard (as it is time based), it is considered prudent to report this application to Council.

No submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval, subject to conditions of consent.

RECOMMENDATION:

That: -

- 1. State Environmental Planning Policy No. 1 objection to Clause 32B of the North Coast Regional Environmental Plan regarding overshadowing be supported and the concurrence of the Director-General of the Department of Planning be assumed.**
- 2. Development Application DA08/0857 for a dwelling, swimming pool & fencing at Lot 356 DP 1087716, No. 29 Cylinders Drive, Kingscliff be approved subject to the following conditions: -**

GENERAL

1. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.
[GEN0015]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0115]
3. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2. New construction of the western façade shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 1.
4. Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m² of radiant heat flux to prevent the entry of embers into the building. Draught excluders, seals and door furniture shall be manufactured from materials having a flammability index no greater than 5 (with the exception of intumescent seals which are permissible) and ensure that there are no gaps >2.0mm in diameter when the door is closed.
5. Roller doors, tilt-a-doors and the like shall be sealed to prevent the entry of embers into the building.
6. No brushwood (or the like) or treated pine timber fencing shall be used.
7. At the commencement of building works the entire property 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*'.
8. Water, electricity and gas are to comply with section 4.1.3 of *Planning for Bush Fire Protection 2006*.
9. To aid in fire fighting activities, unobstructed pedestrian access to the rear of the property shall be provided and maintained at all times.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. 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]

11. 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]

PRIOR TO COMMENCEMENT OF WORK

12. 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]

13. 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]

14. 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]

15. 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]

16. 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.

[PCW0255]

17. 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.

[PCW0985]

18. All roof waters are to be disposed of through properly jointed pipes 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.

[PCW1005]

DURING CONSTRUCTION

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

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

[DUR0445]

26. 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]

27. 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]

28. 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]

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

[DUR1945]

30. Swimming Pools (Building)

- (a) **The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 - 2007. (Refer Council's web site www.tweed.nsw.gov.au)**
- (b) **Swimming pools shall have suitable means for the drainage and disposal of overflow water.**
- (c) **The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.**
- (d) **Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.**

[DUR2075]

31. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR2085]

32. 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]

33. 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]

34. 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]

35. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR2515]

36. 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]

37. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
- * 50⁰C in all other classes of buildings.**

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR2555]

38. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.

[DUR2705]

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. Complete all road works associated with the Sect 138 application to the satisfaction of the Director of Councils Engineering and Operations Division.

[POCNS01]

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: Curry Kenny Developments Pty Ltd
Owner: South Kingscliff Developments Pty Ltd
Location: Lot 356 DP 1087716, No. 29 Cylinders Drive Kingscliff
Zoning: 2(f) Tourism
Cost: \$2,000,000

BACKGROUND:

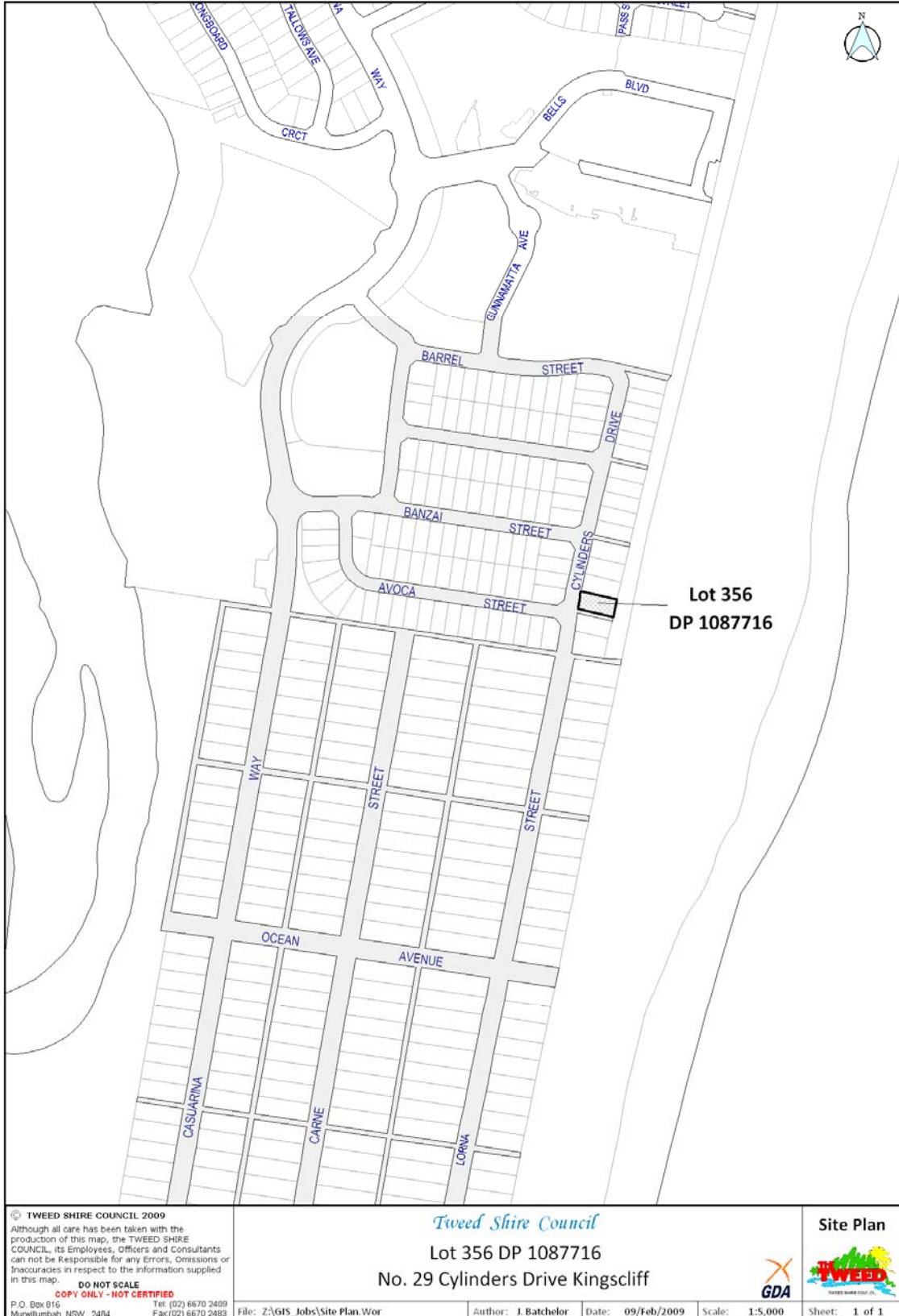
The property is zoned 2(f) Tourism under Tweed Local Environmental Plan 2000 and is located on the eastern side of Cylinders Drive, Kingscliff. The property is bounded by residential land to the north and a concrete pathway to the south. The property is bounded by a coastal reserve (waterfront open space) to the east.

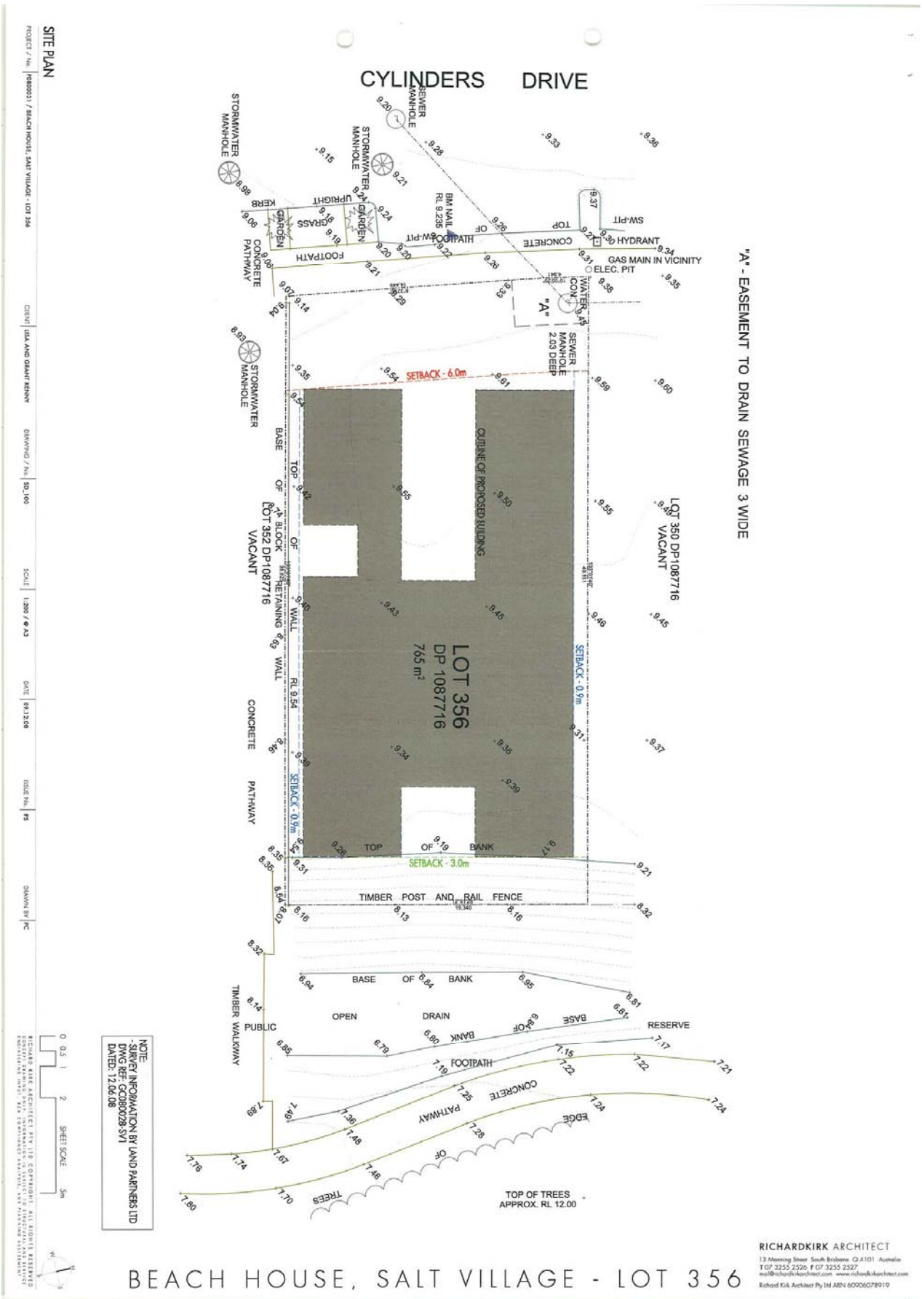
An application has been received to construct a two (2) storey dwelling with a basement car park, an inground swimming pool and fencing at the subject property.

An objection under SEPP No. 1 has been submitted to seek a variation to the North Coast Regional Environmental Plan 1988 relating to overshadowing of waterfront open space, as the proposed two storey dwelling will cast a shadow on the adjacent waterfront open space.

The application was notified to adjoining property owners and this did not result in the receipt of any submission.

SITE DIAGRAM:





"A" - EASEMENT TO DRAIN SEWAGE 3 WIDE

NOTE - SURVEY INFORMATION BY LAND PARTNERS LTD
 DWG REF: CG080208-SV1
 DATED: 12.06.08

SITE PLAN
 PROJECT / No: [P00003] / BEACH HOUSE, SALT VILLAGE - LOT 356
 CLIENT: [L&A AND GRANT SINER]
 DRAWING / No: [20] / 00
 SCALE: [1:200] / @ A3
 DATE: [09/12/08]
 ISSUE No: [15]
 DRAWN BY: [PC]

0 0.5 1 2 SHEET SCALE: 5m
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 CONSULTING ENGINEER, PLANNING ARCHITECT, LANDSCAPE ARCHITECT, PLANNING ARCHITECT

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 Richard Kirk, Architect Pty Ltd ABN 60706078919

BEACH HOUSE, SALT VILLAGE - LOT 356

LEVEL 02
RL 11.250

LEVEL 02
RL 11.250

WEST ELEVATIONS

PROJECT / No | 14800031 / BEACH HOUSE, SALT VILLAGE - LOT 356

CLIENT | 184 A&G QUANT DESIGN

DRAWING / No | 50_300

SCALE | 1:100 / A3

DATE | 19/12/08

ISSUE No | 15

DRAWN BY | JC

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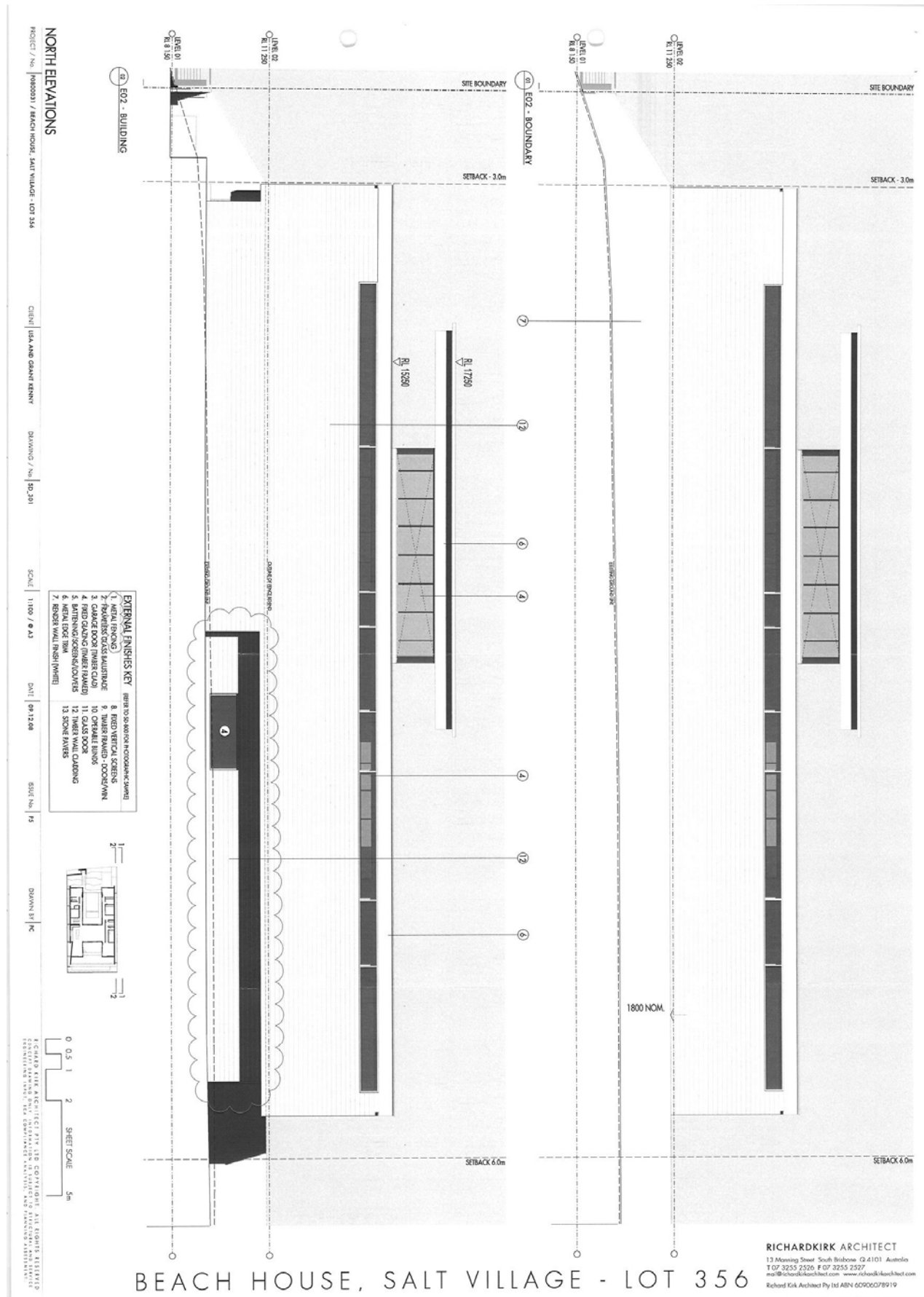
EXTERNAL FINISHES KEY (Refer to 50-300 for photographic boards)

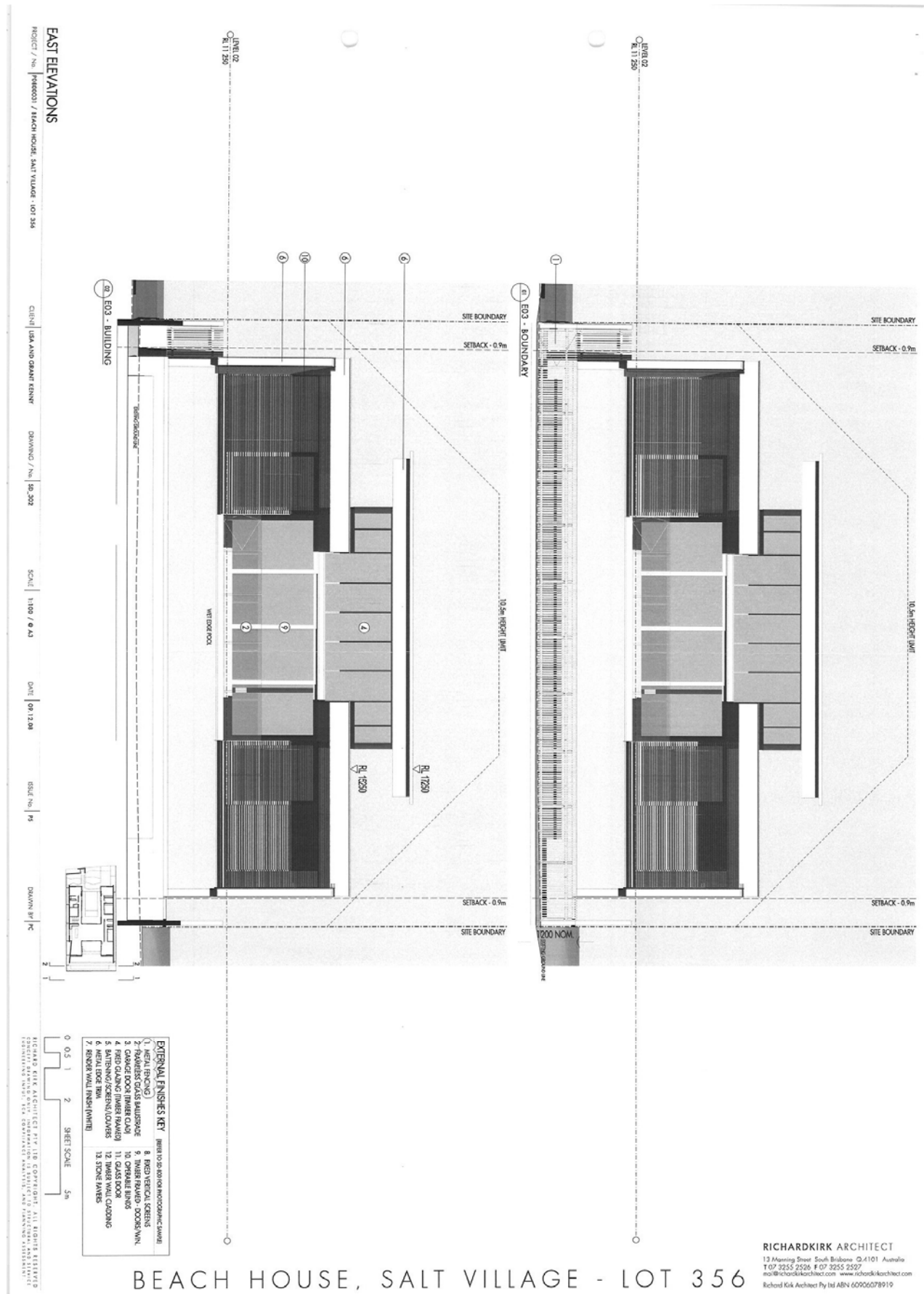
1. METAL FINISH	8. FRIED VERTICAL SCENES
2. THINSLIP GLASS BALUSTRADE	9. TIMBER FRAMED - DOOR/SWIV
3. GARAGE DOOR (TIMBER CLAD)	10. CHEVRE FINISH
4. RIBBED GALVANISED (TIMBER FRAMED)	11. GLASS BOOK
5. BATTERING/ROOFING/TIMBER	12. TIMBER WALL CLADDING
6. BATTERING/ROOFING/TIMBER	13. STONE FINISH
7. BATTERING/ROOFING/TIMBER	

DETAIL A - FENCE DETAIL

BEACH HOUSE, SALT VILLAGE - LOT 356

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EAST ELEVATIONS

PROJECT / No | P000001 / BEACH HOUSE, SALT VILLAGE - LOT 356
 CLIENT | USA AND GRANT KERRY
 DRAWING / No | 20_202
 SCALE | 1:100 / A3
 DATE | 09/12/08
 SHEET No | P3
 DRAWN BY | PC

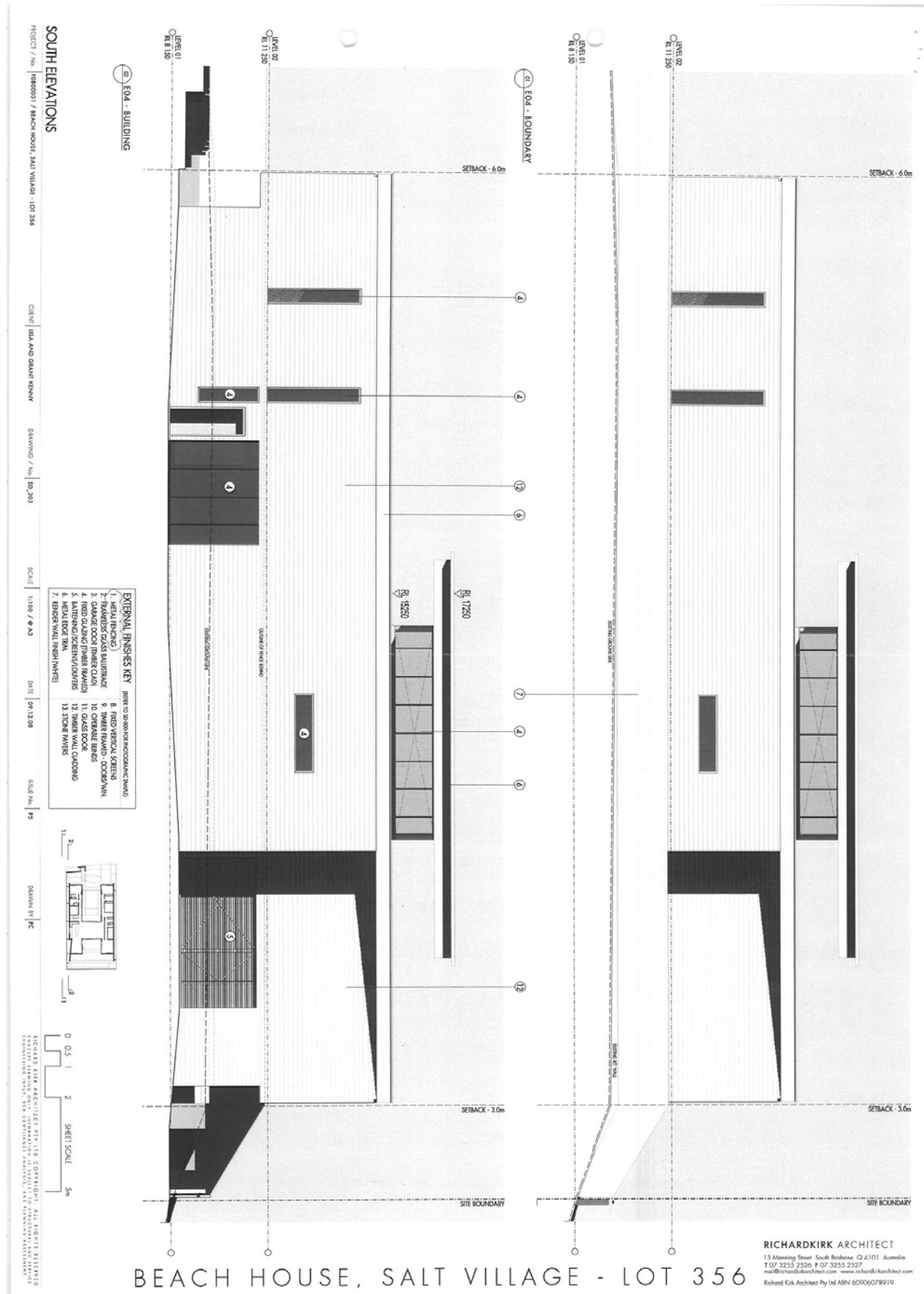
EXTERNAL FINISHES KEY (refer to site plan for approximate walls)

1. VERTICAL FINISH	8. BRICK VERTICAL SCREENS
2. FAUCIEST GULLS RAUSTRACE	9. TIMBER RAUAND - OCCURVANK
3. GARAGE DOOR FINISH (GAIN)	10. OPERABLE SHIMS
4. FIBRO GULLING FINISH (RAUAND)	11. GULLS DOOR
5. BATHING/SCREENS/COVERS	12. TIMBER WALL CLADDING
6. METAL DOOR FINISH	13. STONE FINISH
7. ROOF WALL FINISH (FINISH)	

0 0.5 1 2 SHEET SCALE 5m

BEACH HOUSE, SALT VILLAGE - LOT 356

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 Richard Kirk Architect Pty Ltd ABN 60906078919



SOUTH ELEVATIONS

PROJECT / No. | (H80003) / BEACH HOUSE, SALT VILLAGE - LOT 356

CLIENT | LISA AND GARY RYAN

DRAWING / No. | S03.030

SCALE | 1:100 @ A3

DATE | 09/12/08

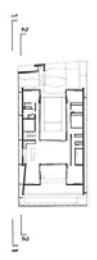
SHEET No. | 15

DRAWN BY | KC

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 RICHARD KIRK ARCHITECT PTY LTD ABN 60906078919

EXTERNAL FINISHES KEY (refer to S0300 for photographic details)

1. METAL FENCING	8. FIBRO CERAMIC TILING
2. FRAMED GLASS BALUSTRADE	9. TIMBER FRAME - DOOR/WIN
3. GALVANNEE IRON (TIMBER CLAD)	10. CERAMIC FINISH
4. FIBRO GALVANNEE IRON (FRAMED)	11. GLASS BLOCK
5. BATTENING/SKIRTING/COVERS	12. TIMBER WALL CLADDING
6. BRICKWORK FINISH	13. STONE FINISH
7. FIBRO WALL FINISH (SMITH)	



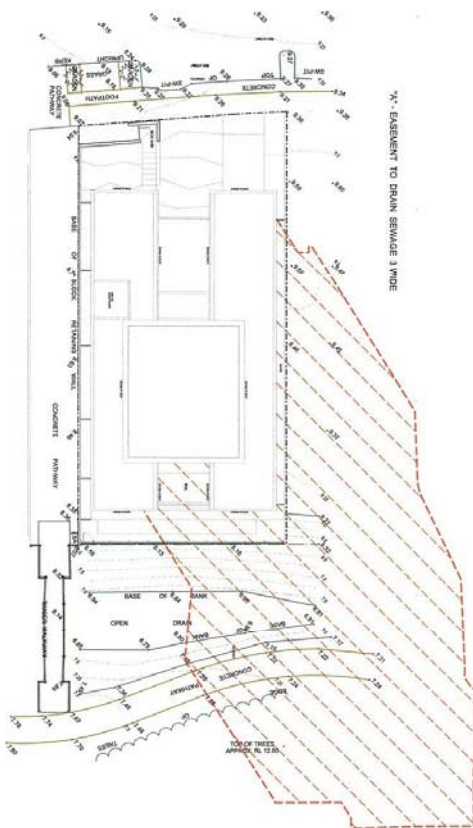
BEACH HOUSE, SALT VILLAGE - LOT 356

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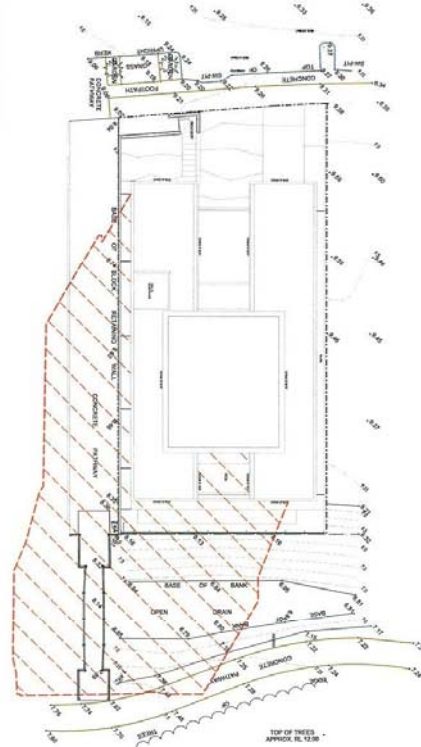
PROJECT / No: 1000003 / BEACH HOUSE, SALT VILLAGE - LOT 356
 CLIENT: USA AND GRANT TRUST
 DRAWING / No: 100/200

SHADOW DIAGRAMS: NORTH COAST REGIONAL ENVIRONMENTAL PLAN
 SCALE: 1:400 @ A3
 DATE: 09/12/08
 ISSUE No: 15
 DRAWN BY: PC

SUMMER (DEC 21) AT 6:30PM (DAYLIGHT SAVING)



WINTER (JUNE 21) AT 3:00PM



POINT OF SHADOW OUTLINE (APPROXIMATE ONLY)

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 SPECIAL THANKS TO THE LOCAL GOVERNMENT AND PLANNING DEPARTMENT.
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BEACH HOUSE, SALT VILLAGE - LOT 356

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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 subject site is zoned 2(f) Tourism. The primary objective of the zone relates to the provision of integrated tourist development and uses associated with, ancillary to or supportive of the tourist development.

The secondary objectives relate to the provision of high quality residential development being integral and supportive of the primary intent of this zone. The proposed development is consistent with the secondary objective of the zone.

Clause 5 - Ecologically Sustainable Development

The proposal is consistent with the objectives of this clause.

Clause 15 - Essential Services

All the necessary essential services have been provided to the site as part of the original sub-division.

Clause 16 - Height of Building

The proposed overall height of the 7.94 metres is less than the 9 metres permissible under Section A1 of the Tweed DCP and complies with the two storey requirement as detailed in Clause 53B of the Tweed LEP 2000.

Clause 17 - Social Impact Assessment

A social impact assessment is not required given the minor nature of the proposal

Clause 35 - Acid Sulfate Soils

The area contains class 4 acid sulfate soils, which exist at a depth of greater than 2 metres below surface level. As approximately 2 metres of fill was placed on the site at subdivision stage, the depth of Acid soils would be approximately 4 metres below current surface level. It is not anticipated that the development will impact on the acid soils in the area.

North Coast Regional Environmental Plan 1988

Clause 32B: Coastal Lands

Clause 32B – Development Control applies as the NSW Coastal Policy 1997 applies to the subject site.

The proposal is consistent with the NSW Coastal Policy 1997, Coastline Management Manual and North Coast: Design Guidelines.

The proposal will not impede public access to the foreshore and a concrete public access pathway is positioned on the southern side of the site.

The applicant's submission and shadow plans demonstrate that the carrying out the development will result in the waterfront open space to the east of the site being overshadowed before 3pm midwinter (standard time) and 7pm midsummer (daylight saving time).

The applicant is seeking Council's support to assume the Director-General's concurrence in this instance. This matter is discussed in further detail in the SEPP No. 1 variation section within this report.

Clause 33: Coastal hazard areas

The development will have minimal impact on coastal processes. The proposal is consistent with the Coastline Management Manual.

State Environmental Planning Policies

SEPP No. 1 - Development Standards

The proposal seeks a variation to the extent of shadow impacts to the adjacent foreshore reserve to the east. The property adjoining the site is zoned 7(f) environmental protection and is considered to be waterfront open space pursuant to this clause. The application was accompanied with a SEPP 1 variation and the applicant has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *At 6.30pm mid-summer, shadows cast by the proposed building, which encroaches onto the foreshore reserve(cycle way), are relatively narrow and therefore affects only a small portion of the reserve.(see shadow diagram attached).*
- *At 3.00pm midwinter shadows cast by the proposed building generally do not extend beyond the cycle way/walkway.*
- *At the stated times, the shadows cast by the proposed building would not extend to any beach areas and therefore will not impact on sunbathers and surfers.*

- *The building design effectively minimises as much as possible the extent of shadow on the foreshore reserve.*
- *The area shaded at the statutory times comprises a storm water swale, a bicycle path and managed lawns that would be in full sun until late afternoon.*
- *The shadow does not impact on any areas used by the public for formal recreational activities.*
- *The shadow does not impact on the more intensely used foreshore area adjacent to "Central Park"*

An objection has been lodged under SEPP 1 to vary the development standard provided by clause 32B (4) of the North Coast Environmental Plan 1988(NCREP 1988), which prohibits overshadowing of the coastal reserve at the times of 3pm mid winter and 6.30 pm midsummer to be unreasonable. The shadow diagrams submitted show that the building will overshadow the coastal reserve to the east at both of these times.

It is considered in this instance that the standard is unreasonable for the following reasons.

Whilst the dwelling will overshadow the coastal reserve, the area of the coastal reserve that will be affected comprises a grassed area and coastal dune vegetation. The shadow will not impact on any areas used by the public for formal recreational activities.

It should be noted that the shadows cast by the trees in the reserve located immediately behind the subject property will have a greater impact on the beach than the dwelling under consideration. The beach is over 100 metres from the rear of the property.

Council has granted many other approvals for dwellings along the Tweed Coast, particularly in the Salt sub-division that have similar minor overshadowing encroachments into the coastal foreshore and it is considered that in this instance Council should also support this request.

SEPP No 71 – Coastal Protection

The development is consistent with the objectives of SEPP 71 and will not impact on the public's enjoyment and access to the foreshore.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate for the proposal and this certificate is consistent with the energy efficiency target.

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

There are not any Draft Environmental Planning Instruments applicable to the site.

(a) (iii) Development Control Plan (DCP)Tweed Development Control PlanA1-Residential and Tourist Development Code

In regards to compliance with the design controls out lined in section A1, when DCP Section A1 was adopted Council resolved that:

- *The provisions of Tweed Development Control Plan Section A1 in relation to single dwelling houses not be applied to applications received prior to close of business on Monday 30th June 2008 and the this decision be notified in the Tweed link.*

In this instance the proposed development was lodged with Council on the 30th June 2008 and in recognition of the above resolution need not comply with the design requirements of A1. Notwithstanding the above the applicant has attempted to comply with the requirements of Section A1 of the Tweed Development Control Plan. It should also be noted that the most recently amended plans were received by Council on 15 December 2008 and these plans are the result of Councils' information requests.

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

External Building Elements Part A – Dwelling Houses, Alterations and Additions to Dwelling Houses, Garages, Outbuildings, Swimming PoolsPublic Domain Amenity**Streetscape**

The proposed development is consistent with the desired future character of the area whilst being sympathetic to the surrounding developments.

The dwelling will be clearly visible from Cylinders Drive and the dwelling will be setback 6m from the street. This is consistent with other dwellings within the area.

Public Views and Vistas

The proposal will not result in an unreasonable view loss of the beach and foreshore given the sympathetic overall height of the proposal. The proposed

dwelling provides for view corridors for dwellings located on the western side of Cylinders Drive between the dwelling and the side boundary set backs. It should also be noted that a 4.5 metres wide pathway is positioned directly adjacent to the southern side of the site.

Impermeable Site Area

The area of the site is 765m², subsequently the maximum impermeable site area permitted at the completion of the development must be not greater than be 60%. The development will create an impermeable area of approximately 54% of the site and will comply with the design control.

External Living Areas

The dwelling makes provision for external living areas in the form of a patio and terrace areas adjacent to the pool providing adequate solar access to the dwelling and private open space.

Landscaping

The applicant has provided a landscape plan in conjunction with the proposal, providing screening plants along the side boundaries and shrubs within the front and rear setbacks.

The proposal is consistent with this design control.

Topography, Cut and Fill

The site falls approximately 1 metre towards the rear of the site. The proposal involves the excavation of a basement carpark. This 1.35 metre excavation will not adversely impact on the amenity of the area due to its location.

Setbacks

The proposal will have a front setback of 6 metres and will have 1.5 and .9m setback to the northern side boundary and .9m from the southern side boundary.

The set back from the rear boundary is 3 metres which is consistent the prescribed set back requirement in the 88b instrument for the subdivision.

Car Parking and Access

The design control requires the proposed vehicle access and parking to be consistent with Section A2 of the DCP. Four off street car parking spaces are proposed behind Council's building line beneath the dwelling and vehicle access to these spaces is considered adequate.

Sunlight Access

Private open space for the dwelling will receive sufficient access to sunlight. The dwelling includes the provision of terraced areas orientated north adjacent to the pool area and eastern rear boundary.

Visual Privacy

Overlooking into adjoining properties has been minimized with the provision of suitable screening and strategic window positioning along both sides of the dwelling.

Acoustic Privacy

The applicable control relates to air conditioning and other mechanical equipment. A condition of consent has been recommended stating the noise of an air conditioner, pump or other mechanical equipment shall not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item.

Natural Ventilation

The design of the dwelling provides for adequate natural cross flow ventilation by the use of a large breeze path that is orientated in an east – west direction.

Building Orientation

The dwelling has been sited on the property to optimize solar access and coastal views as well as providing an acceptable street presentation

Fences and Walls; Front, Side and Rear

The proposal incorporates a 1.8 m high metal slatted front fence. The design and materials proposed to be used is consistent with the design theme of the dwelling. The majority of the front fence will be setback 1.5 metres from the front boundary.

The side fences as evident on the architectural plans detail a 1.8m high concrete panelled fence which is consistent with the design control.

While the front fence is higher than the 1.5 metres nominated in A1, the height and style is consistent with front fences previously approved in the area.

Feature landscaping is proposed within the centre of the front yard.

Roof

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

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.

Swimming Pools

The proposed swimming pool is set back behind Council's Building line and 1.5 from the eastern side property boundary and is consistent with the design control objectives for swimming pools in Section A1.

Floor Space Ratio (FSR)

The maximum FSR applicable for this proposal is 0.65:1. The proposed dwelling is consistent with this design control having an FSR of approximately 0.54:1.

A11-Public Notification of Development Proposals

The proposal was notified to the adjacent property owners and this notification process did not result in the receipt of any submission.

(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 in a residential subdivision which has been specifically created for residential development. The proposed development is an architect designed building of high quality and will be in keeping with the architectural style and residential character of the area.

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 been cleared during the creation of the subdivision.

(c) Suitability of the site for the development

Surrounding Landuses/Development

It is considered that 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.

The design of the dwelling is in keeping with the residential character of the area

Site Orientation

The building has been centrally located on the property and has been orientated to take advantage of the ocean views to the east. The living areas of the dwelling have been centrally positioned within the dwelling to minimize potential overlooking onto adjacent properties.

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

The notification process did not result in the receipt of any submission.

(e) Public interest

The proposal will not prejudice the public interest.

OPTIONS:

1. Council resolve to assume the Director-General's concurrence and resolve to approve the development application.
2. Council not resolve to assume the Director General's concurrence and resolve to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination they will have the right to appeal the decision to the Land and environment Court.

POLICY IMPLICATIONS:

The proposal will not set a precedent in relation to Council policy.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Clause 32B of the NCREP, and is generally consistent with the applicable Council policies. The proposal represents quality urban development which will make a positive contribution to 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 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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P5 [PR-PC] 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 that there have been no Variations to Development Standards under State Environmental Planning Policy No 1 - Development Standards approved under Delegated Authority during the period since 20 January 2009.

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, no Development Applications have been determined.

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 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.
