



# **AGENDA**

## **PLANNING COMMITTEE MEETING**

**Thursday 28 May 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] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards**

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

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

**RECOMMENDATION:**

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



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

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

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0879	multi dwelling housing comprising 5 dwellings	Lots 3 & 5 DP 247808 Nos. 58 & 62 Tweed Coast Road, Cabarita Beach	24/4/2009	Clause 32B (4)(b) of the NCREP – Overshadowing	2(a) Low Density Residential	The locational characteristics and the highly urbanised village make the standard difficult to apply. The proposed development will only overshadow vegetated escarpment and carparking. The shadowing will not at any time reach the beach.	The expectant shadow (at 6.30pm and 7.00 (EDST)) will have a length of 67m from the eastern boundary and an approximate total area of 990sqm. The shadowing will not reach the beach	Tweed Shire Council

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.



**P2 [PR-PC] Development Application DA08/1265 for a Two Storey Dwelling at Lot 9 DP 627840, Clothiers Creek Road, Nunderi**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA08/1265 Pt1**

**SUMMARY OF REPORT:**

The proposal is to construct a two storey brick veneer colour bond roof dwelling on the subject property. The subject property fronts Clothiers Creek Road which is a designated road and requires a 30 metre set back as identified under part 5 section 22 of Council's Tweed Local Environmental Plan 2000.

The applicant has lodged a SEPP No. 1 variation as the development proposes a dwelling up to 7.6 metres from the front property boundary well within Council's required 30 metre set back. This is an 84% variation to this standard.

The property has dwelling entitlement and is part of a subdivision approved by Council on 4 February 1982 for rural residential purposes.

The property is an unusual crescent shape, with an area of 4043 metres square and an average depth of 35 metres and length of 110 metres. Due to the shape and width of the property, a dwelling house could not be constructed behind the required 30 metre setback. The site has a slope of approximately 15% from the rear northern boundary to the southern front Clothiers creek property boundary. The proposed dwelling appears to be located on the nominated house site proposed at subdivision stage.

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.

The application was not notified to adjoining properties and subsequently 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. Council assumes the concurrence of the Director-General of the Department of Planning for the approval of the State Environmental**

Planning Policy No. 1 objection to vary the 30 metre setback requirement.

2. Development Application DA08/1265 for a two storey dwelling at Lot 9 DP 627840, Clothiers Creek Road, Nunderi 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 is to comply with Appendix 3 – Site Bush Fire Attack Assessment of *Planning for Bush Fire Protection 2006*. In this regard the following design standards for construction are to be incorporated into the development:

New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas' Level 2

4. Roofing shall be gutterless or have leafless guttering and valleys to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.
5. Screen-less door systems, including glazing and supporting framework shall be designed and constructed to withstand 19kW/m<sup>2</sup> 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. At the commencement of building works the property around the building to a distance of 31 metres or the boundary if less, shall be maintained 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. Where the rear or most distant part of the building is greater than 70 metres from the nearest hydrant, a new hydrant is required to be installed as per Australian Standard AS 2419.1– 2005 '*Fire Hydrant*

**Installations'**. Locations of fire hydrants are to be delineated by blue pavement markers offset 150mm from the centre of the road. The direction of offset shall indicate on which side of the road the hydrant is located. Alternatively an onsite supply of 10,000 litres of water shall be provided with a minimum 3kW (5hp) petrol or diesel powered pump. If a tank is provided a 65mm storz fitting and ball or gate valve shall be installed in the tank. If the tank is in ground, it shall be fitted with a 200mm x 200mm child proof access hole. Fire fighting appliance must be able to gain access to within 5 metres of the water supply may be provided.

10. Property access roads shall comply with section 4.1.3 (2) of Planning for Bush Fire Protection 2006.

[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. 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**

13. 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]

14. 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]

15. 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]

16. 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]

17. 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]

18. 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]

19. 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**

20. 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]

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

A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

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. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. All such materials should be chipped on site and used in landscaping unless it is not possible due to size, non suitability of the material or some other limitation, in which case the material will be disposed of at Council's Stotts Creek depot.

[DUR1015]

32. 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]

33. 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]

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

[DUR1945]

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. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

37. 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]

**38. 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]

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

[DUR2515]

**40. 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]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>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]

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

[DUR2705]

**43. The On-site Sewage Management System shall be installed in accordance with an Approval to Install an On-site Sewage Management System under Section 68 of the Local Government Act 1993.**

[DUR2775]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE****44. 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]

45. 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]

46. 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]

47. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

## USE

48. 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]

49. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

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

[USE0505]

**51. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system is to be fitted with a first flush device. Minimum storage tank capacity shall reflect the dry seasonal periods experienced with the locality and shall be separate to any fire fighting requirements stipulated by the NSW Rural Fire Services.**

[USENS01]

**REPORT:**

**Applicant:** Perry Homes Pty Ltd  
**Owner:** Mr KT Brinckman, Ms S Snewin and Mr RWR Brinkman  
**Location:** Lot 9 DP 627840 Clothiers Creek Road, Nunderi  
**Zoning:** 1(c) Rural Living  
**Cost:** \$352,000

**BACKGROUND:**

The proposal is to construct a two storey brick veneer colour bond roof dwelling on the subject property. The subject property fronts Clothiers Creek Road which is a designated road and requires a 30 metre set back as identified under part 5 section 22 of Council's Tweed Local Environmental Plan 2000.

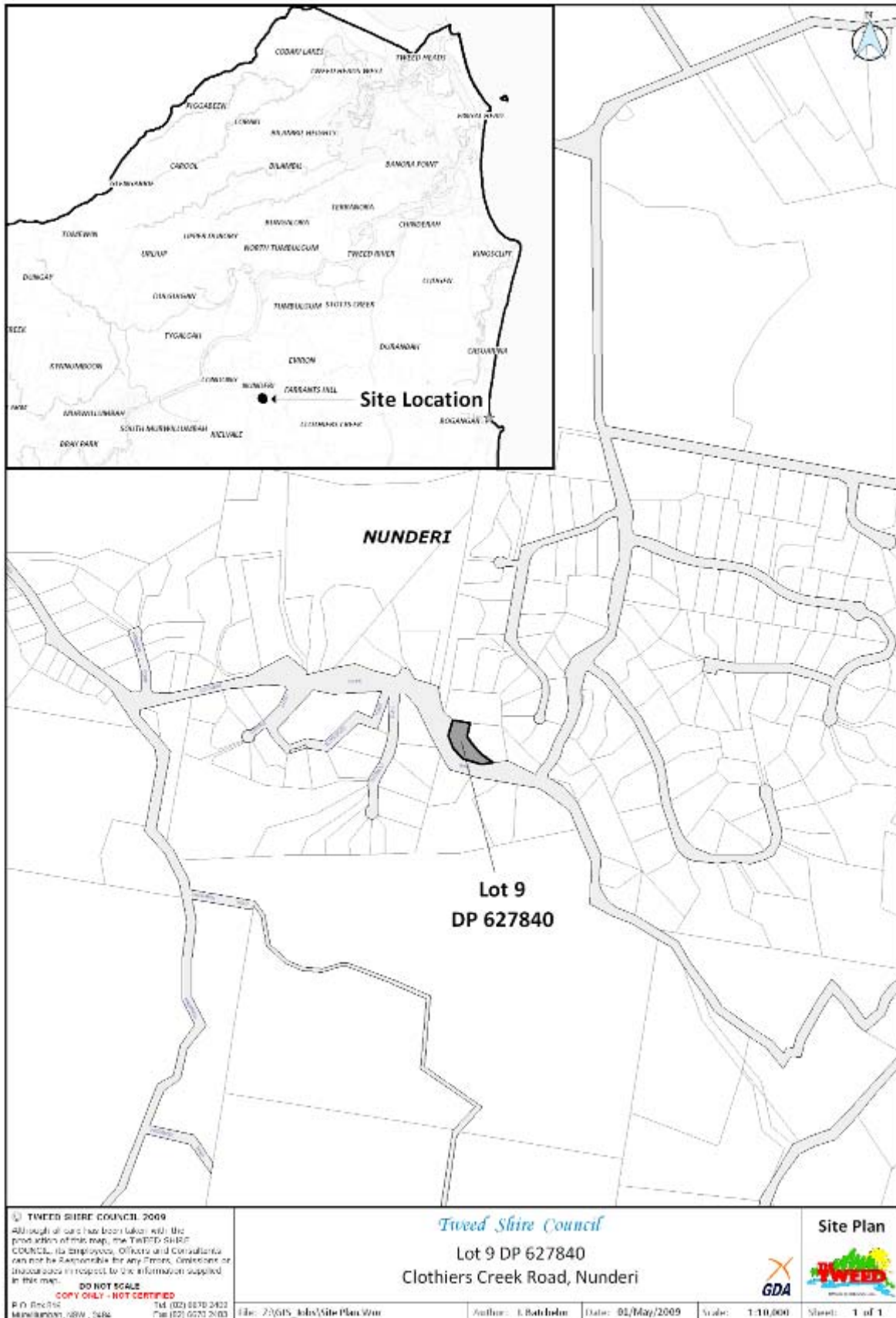
The applicant has lodged a SEPP No. 1 variation as the development proposes a dwelling up to 7.6 metres from the front property boundary which is well within Council's required 30 metre set back. This is an 84% variation to this standard.

The property is part of a council approved rural residential subdivision and has a dwelling entitlement. The property has an unusual crescent shape, with an area of 4043 metres square and an approximate average depth of 35 metres and length of 110 metres. Due to the shape and width of the property, a dwelling house could not be constructed behind the required 30 metre setback. The site has a slope of approximately 15% from the rear northern boundary to the southern front Clothiers creek property boundary. The proposed dwelling appears to be located on the nominated house site proposed at subdivision stage.

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.

The application was not notified to adjoining properties and subsequently 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.

**SITE DIAGRAM:**



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 P.O. Box 154  
 Murwillumbah NSW 2484  
 Tel: (02) 6670 2422  
 Fax: (02) 6670 2103

*Tweed Shire Council*  
 Lot 9 DP 627840  
 Clothiers Creek Road, Nunderi



Site Plan


Sheet: 1 of 1

**DEVELOPMENT PLANS:**

- GENERAL NOTES**
- CONCRETE CONSTRUCTION TO COMPLY WITH AS2870.1
  - ALL ASBESTOS REMOVED TO COMPLY WITH THE PROVISIONS OF PART 3.1 OF THE BCA AND WITH AS3600.1
  - CONCRETE ROOFING TO COMPLY WITH AS1684 - 1999
  - CONCRETE ROOFING TO COMPLY WITH AS1751 / AS2050
  - WET AREAS TO COMPLY WITH CLAUSE F1.7 OF THE BCA
  - WEEP HOLES IN MASONRY WALLS AT 900 CTRS.
  - GLASS INSTALLATION TO COMPLY WITH AS3286 AND AS204.7
  - CONCRETE ROOF FIXED IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS FOR ROOF CONDITIONS
  - PROVIDE ALCOHOL BARRIER BETWEEN LEAD FLASHING AND ZINCALUME VALLEY GUTTER AS REQUIRED
  - VERTICAL ARTICULATION JOINTS TO COMPLY WITH THE PROVISIONS OF PART 3.3.1.8 OF THE BCA

**NOTES:**

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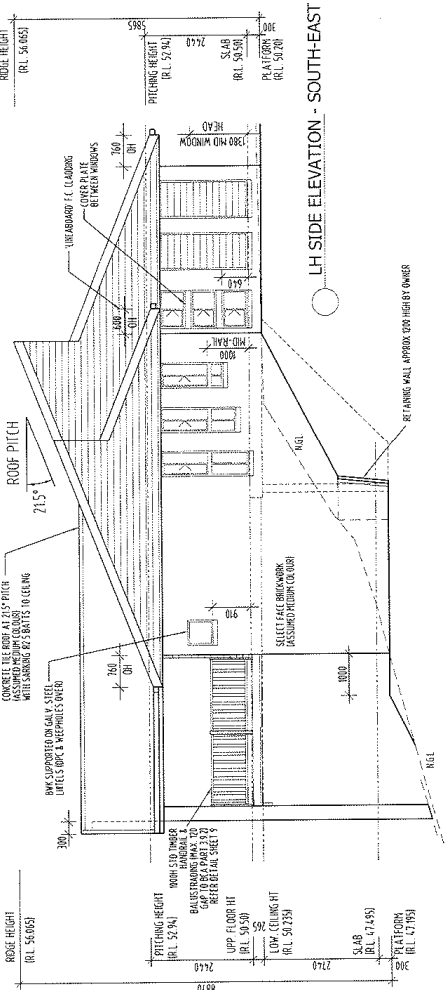
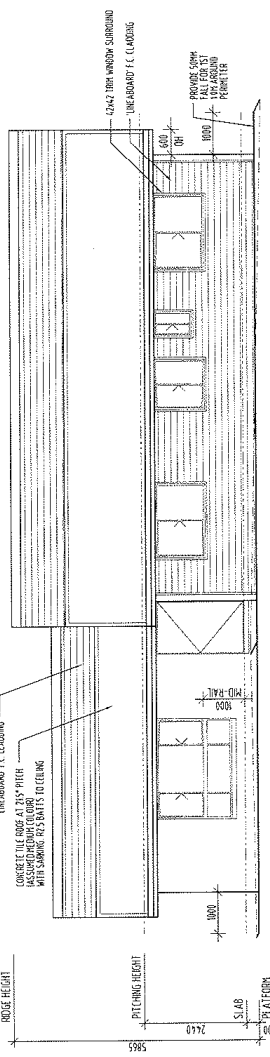


**PERRY HOMES**  
QUALITY HOMES  
 BUILT TO LAST

PO BOX 524  
 4790 WINDYBUSH RD  
 WINDYBUSH NSW 2444  
 P. 06 4987 7878 F. 06 4987 7877  
 E. SALES@PERRYHOMES.COM.AU  
 WWW.PERRYHOMES.COM.AU

**CLIENT:** R. & S. SNEWIN & K. BRINCKMAN  
**SITE ADDRESS:** LOT 9 CLOTHIERS CREEK ROAD  
 NUNDERI

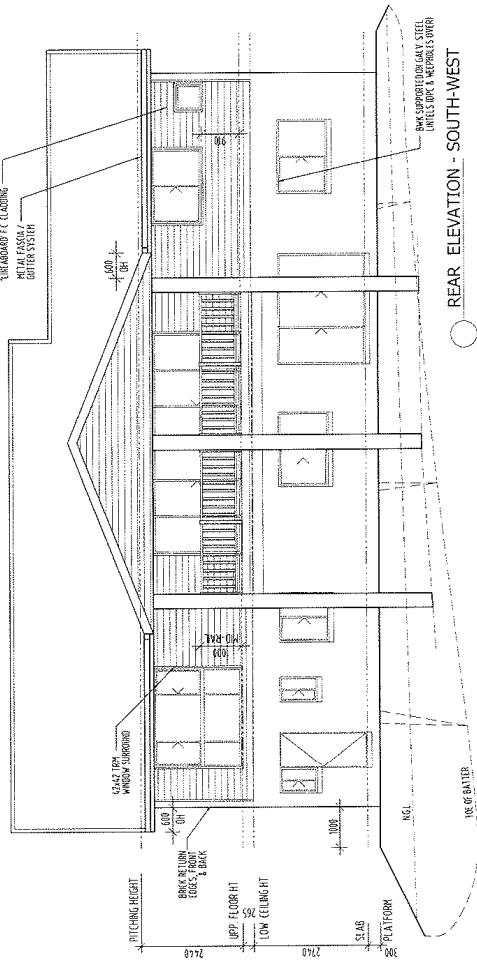
**AMENDED:**  
 DATE: 4/11/08 REV: -/- WINDYBUSH NSW, N3  
 DATE: -/- DATE: -/- CITY:  
 DESIGN: SKETCH DOWN: DMC SCALE: 1:100  
 THIS SHEET: ELEVATION SHEET 6 OF 10 JOB NO: 5860A



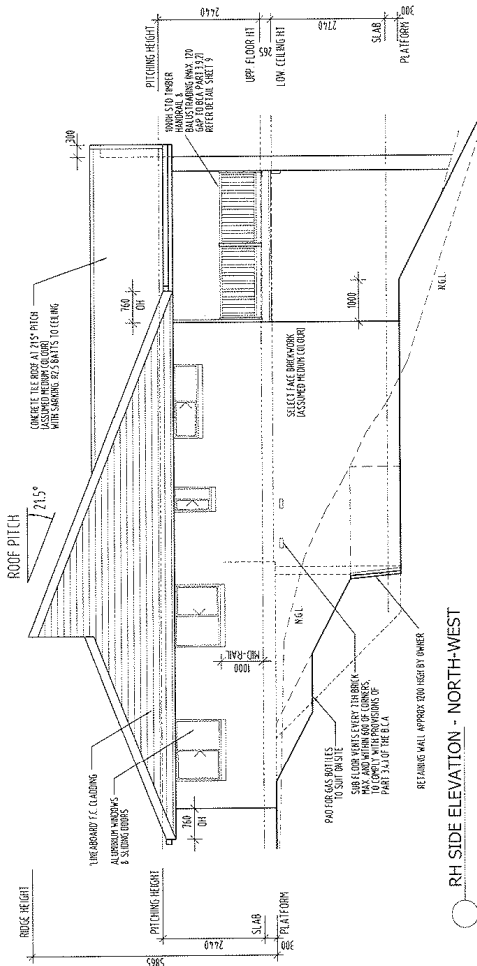
CONTRACT COPY



- GENERAL NOTES
- CONCRETE CONSTRUCTION TO COMPLY WITH AS2870.1
  - TERRACE TREATMENT TO COMPLY WITH THE PROVISIONS OF PART 3.1.3 OF THE BCA AND WITH AS3660, AS3664, 1999
  - ROOFING TO COMPLY WITH AS/NZS4561.1, AS/NZS4561.2, AS/NZS4561.3, AS/NZS4561.4, AS/NZS4561.5, AS/NZS4561.6, AS/NZS4561.7, AS/NZS4561.8, AS/NZS4561.9, AS/NZS4561.10, AS/NZS4561.11, AS/NZS4561.12, AS/NZS4561.13, AS/NZS4561.14, AS/NZS4561.15, AS/NZS4561.16, AS/NZS4561.17, AS/NZS4561.18, AS/NZS4561.19, AS/NZS4561.20, AS/NZS4561.21, AS/NZS4561.22, AS/NZS4561.23, AS/NZS4561.24, AS/NZS4561.25, AS/NZS4561.26, AS/NZS4561.27, AS/NZS4561.28, AS/NZS4561.29, AS/NZS4561.30, AS/NZS4561.31, AS/NZS4561.32, AS/NZS4561.33, AS/NZS4561.34, AS/NZS4561.35, AS/NZS4561.36, AS/NZS4561.37, AS/NZS4561.38, AS/NZS4561.39, AS/NZS4561.40, AS/NZS4561.41, AS/NZS4561.42, AS/NZS4561.43, AS/NZS4561.44, AS/NZS4561.45, AS/NZS4561.46, AS/NZS4561.47, AS/NZS4561.48, AS/NZS4561.49, AS/NZS4561.50, AS/NZS4561.51, AS/NZS4561.52, AS/NZS4561.53, AS/NZS4561.54, AS/NZS4561.55, AS/NZS4561.56, AS/NZS4561.57, AS/NZS4561.58, AS/NZS4561.59, AS/NZS4561.60, AS/NZS4561.61, AS/NZS4561.62, AS/NZS4561.63, AS/NZS4561.64, AS/NZS4561.65, AS/NZS4561.66, AS/NZS4561.67, AS/NZS4561.68, AS/NZS4561.69, AS/NZS4561.70, AS/NZS4561.71, AS/NZS4561.72, AS/NZS4561.73, AS/NZS4561.74, AS/NZS4561.75, AS/NZS4561.76, AS/NZS4561.77, AS/NZS4561.78, AS/NZS4561.79, AS/NZS4561.80, AS/NZS4561.81, AS/NZS4561.82, AS/NZS4561.83, AS/NZS4561.84, AS/NZS4561.85, AS/NZS4561.86, AS/NZS4561.87, AS/NZS4561.88, AS/NZS4561.89, AS/NZS4561.90, AS/NZS4561.91, AS/NZS4561.92, AS/NZS4561.93, AS/NZS4561.94, AS/NZS4561.95, AS/NZS4561.96, AS/NZS4561.97, AS/NZS4561.98, AS/NZS4561.99, AS/NZS4561.100



REAR ELEVATION - SOUTH-WEST



RH SIDE ELEVATION - NORTH-WEST

NOTES:

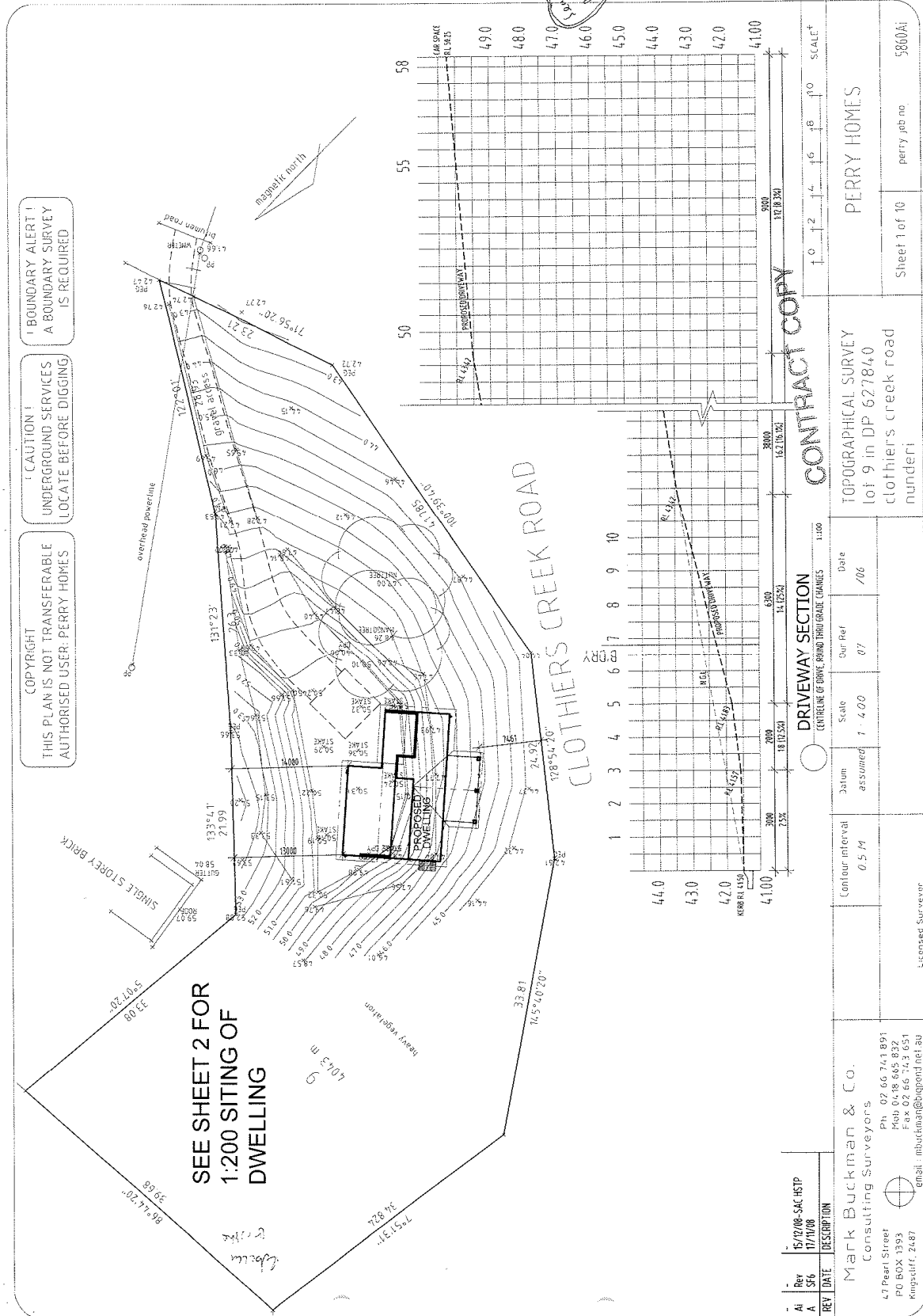
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**PERRY HOMES**  
RESIDENTIAL DEVELOPERS  
 150 COLLEGE STREET, SUITE 101, MELBOURNE VIC 3000  
 PH: 03 9593 4444  
 FAX: 03 9593 4444  
 WWW.PERRYHOMES.COM.AU

CLIENT: **R. & S. SNEWIN & K. BRINCKMAN**  
 SITE ADDRESS: **LOT 9 CLOTHIERS CREEK ROAD NUNDERI**

AMENDED: -  
 DATE: 4/11/08 REV: 1  
 DESIGN: SKETCH  
 THIS SHEET: ELEVATION SHEET 7 OF 10 JOB NO.: 5660A

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BOUNDARY ALERT!  
A BOUNDARY SURVEY  
IS REQUIRED

CAUTION!  
UNDERGROUND SERVICES  
LOCATE BEFORE DIGGING

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AUTHORISED USER: PERRY HOMES

REV	DATE	DESCRIPTION
A	15/12/08-SAM:HSBP	
A	17/11/08	

Mark Buckman & Co.  
Consulting Surveyors  
47 Pearl Street  
PO BOX 1353  
Kingsthorpe, 2487  
Ph: 02 66 74 1 891  
Mob: 04 18 645 832  
Fax: 02 66 74 3 651  
email: mbuckman@bigpond.net.au

DRIVEWAY SECTION  
(CENTRELINE OF DRIVE, BOUND THROUGH CHANGES)

Contour interval	Datum	Scale	Sur. Ref.	Date
0.5 M	assumed	1:400	07	/06

CONTRACT COPY  
PERRY HOMES  
TOPOGRAPHICAL SURVEY  
lot 9 in DP 627840  
clothers creek road  
number 1  
Sheet 1 of 10  
perry job no. 5960VAI



**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 1(c) rural living. The primary objectives are to enable residential development in selected areas possessing particular environmental and servicing attributes which do not compromise the viability of rural activities on land in the vicinity, do not detract from the quality of the rural and natural environment and do not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.
- To provide rural residential development of a design integration, quality and scale compatible with, and making a positive contribution to, the character of the rural area in the vicinity.

The proposed development is consistent with the primary objective of the zone.

**Clause 15 - Essential Services**

Mains power and town water are available to the site and appear adequate

**Clause 16 - Height of Building**

The proposed height of the development (8.8m) complies with the 2 storeys 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

**Other Specific Clauses****Clause 22- Development near designated roads**

The proposal incorporates the construction of a two storey dwelling with a building line of 7.461 metres to Clothiers Creek Road. The TLEP 2000 requires a building line of 30 metres to the designated road being Clothiers Creek Road.

The objectives of Clause 22 of TLEP 2000 are:

- To protect and improve the capacity, efficiency and safety of designated roads,
- To prevent development on designated roads that would detract from the scenic attractiveness of the Tweed Area.
- To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.

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

*"Council's present transport planning does not require road widening or road relocation at this location. As such a 7.461m front setback is acceptable from the designated road frontage (Clothiers Creek Road.)"*

In regards to the impact of traffic noise on the development the application was referred to Council's Environmental Health officer who raised no objection to the design or location of the proposed dwelling.

#### 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 several conditions of consent

#### North Coast Regional Environmental Plan 1988

The development is consistent with the objectives of the North Coast Regional Plan.

#### State Environmental Planning Policies

##### SEPP No. 1 - Development Standards

A SEPP 1 objection has been received from the applicant in relation to the 30 metre setback required to Clothiers Creek Road, which is a Designated Road. This setback is required by Clause 22 of the TLEP 2000.

The applicant in their objection has provided the following reasons as to why this standard is unreasonable or unnecessary;

- *The irregular shaped allotment is some 4043m<sup>2</sup> and Clothiers Creek Road is adjacent to the entire south western boundary of the property. Due to the shape of the allotment a 30m setback is impossible to achieve from the entire road frontage anywhere upon the allotment.*
- *An existing house pad is situated upon the property and the dwelling has been architecturally designed specifically to fit upon*

*the existing pad thereby reducing the impact of earthworks required for the construction of the dwelling.*

- *Access and egress to the site from Clothiers Creek Road will not be compromised or impeded due to the reduced setback. The siting of the dwelling will not constitute a traffic hazard or materially reduced the capacity or efficiency of Clothiers Creek Road.*
- *The proposed siting of the dwelling will not prejudice any future improvements or realignment of the road.*
- *To reduce any possible impact of traffic noise an intensive landscaping regime is proposed by the owners. In addition to reducing the impact of traffic noise, the proposed landscaping will enhance the scenic quality of the property.*

After consideration of the applicant's submission and the advice from Council's Planning and Infrastructure Engineer and Environmental Health Officer it is considered that in this instance the standard is unreasonable and should be varied for the following reasons.

- The property is within an approved rural residential subdivision and has a dwelling entitlement.
- The property is only 35 metres in depth and a dwelling would not be able to be constructed behind the 30 metre set back required for Clothiers Creek Road.

The site is quite steep and limited locations are available to construct a dwelling. The most suitable location appears to be on the existing level building platform, which is located within the required 30 metre setback. From the subdivision plan it appears that this existing building platform is the original house site nominated at subdivision stage.

- No road widening is proposed for the portion Clothier's Creek road which adjoins the subject property.

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

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

#### SEPP (Rural Lands) 2008

The proposal is consistent with the objectives as detailed in this SEPP and the proposed construction of a dwelling will be consistent with adjacent rural land uses. The proposal will not have a significant impact on the rural land uses in the vicinity.

**(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

The proposal is consistent with the objectives of this section of Council's development control plan.

A2-Site Access and Parking Code

Ample car parking is available on this rural property

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

None apparent

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

Access, Transport and Traffic

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

Flora and Fauna

Minimal impact is envisaged, the existing large trees on the property are to remain however the site has been generally cleared of undergrowth.

**(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 rural residential area and the utilities of reticulated water and power are provided to the site.

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

#### Topography

The site is quite steep with an approximate 15% - 20% slope from the rear northern side boundary to the southern front boundary. A flat building platform has been constructed on the site for the proposed dwelling.

A stand of tall trees exist on the edge of the property and in the road reserve, which will help screen the dwelling and reduce its impact on the streetscape.

#### Site Orientation

The dwelling has been oriented to the south to optimise rural and bush views. No significant views or vistas exist to the north from the property. The view to the north is towards an existing earth embankment.

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

No submissions have been made.

#### **(e) Public interest**

The development 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 have the right to appeal the decision in the Land and Environment Court.

#### **POLICY IMPLICATIONS:**

Due to the nature and position of the site it is not considered that the proposal will set an unreasonable precedent in the area if it is approved subject to conditions of consent.

#### **CONCLUSION:**

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation of Part 5 clause 22 of the TLEP 2000, and is generally consistent with the applicable Council policies. The proposal represents quality rural residential 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**P3 [PR-PC] Development Application DA09/0187 to Replace Existing Old Structure with General Workshed/Garage- Boat Storage Structure & SEPP 1 Objection to Building Setback at Lot 14 DP 729137, No. 797 Clothiers Creek Road, Clothiers Creek**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0187 Pt1**

**SUMMARY OF REPORT:**

The proposal includes the demolition of the existing shed and the construction of a new single storey workshed/garage. The subject property fronts Clothiers Creek Road which is a designated road and requires a 30 metre setback as identified under part 5 section 22 of Council's Tweed Local Environment Plan 2000.

The applicant has lodged a SEPP 1 variation as the development proposes a workshed/garage 8m from the front property boundary well within Council's required 30 metre setback.

The property has an area of 8967 metres square with an existing dwelling, swimming pool and two sheds located on the property. One of the existing sheds is to be demolished to make way for the proposed shed. The existing shed has been erected over 50 years ago and is located approximately 1-2 metres from the front boundary. The proposed shed will be located in a similar position but will be setback 8 metres from the front boundary.

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 Environment Planning Policy No. 1 variations greater than 10% to be determined by full Council.

The application was not notified to adjoining properties and subsequently 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: -**

- A. State Environmental Planning Policy No. 1 objection to Clause 22 of Tweed Local Environmental Plan 2000 regarding the building setback from a designated road be supported and the concurrence of the Director-General of the Department of Planning be assumed.**

- B. Development Application DA09/0187 to replace an existing old structure with general workshed/garage – boat storage structure and SEPP1 objection to building setback at Lot 14 DP 729137 No. 797 Clothiers Creek Road, Clothiers Creek 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 COMMENCEMENT OF WORK**

- 3. 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]

4. **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]

5. **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]

#### **DURING CONSTRUCTION**

6. **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]

7. **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]

8. **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]

9. 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]

10. 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]

11. 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]

12. 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]

13. 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]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

14. 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]

#### **USE**

15. The building is not to be used for any habitable commercial or industrial purpose.

[USE0455]

**REPORT:**

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

**BACKGROUND:**

The proposal includes the demolition of the existing shed and the construction of a new single storey workshed/garage. The subject property fronts Clothiers Creek Road which is a designated road and requires a 30 metre setback as identified under part 5 section 22 of Council's Tweed Local Environment Plan 2000.

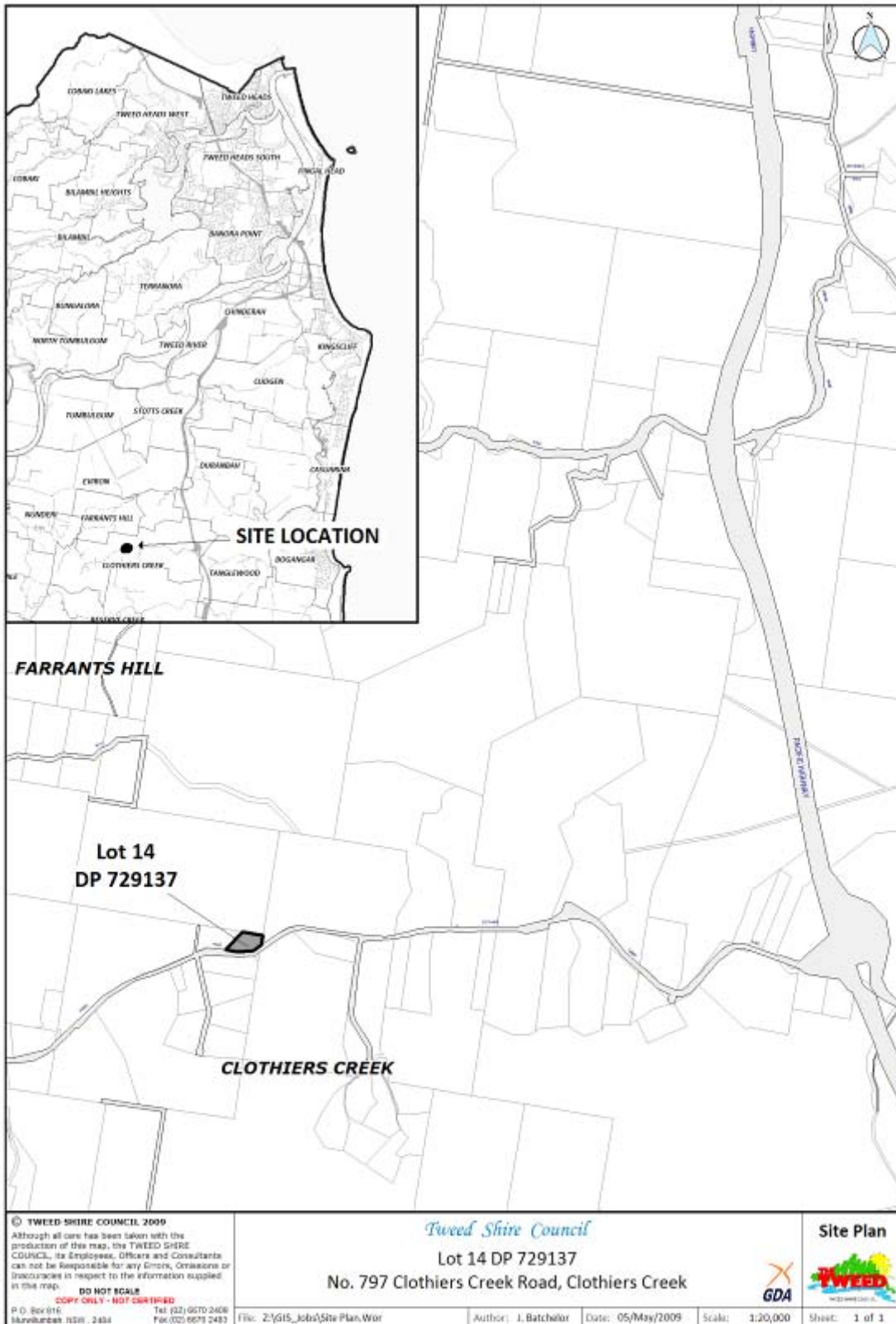
The applicant has lodged a SEPP 1 variation as the development proposes a workshed/garage 8m from the front property boundary well within Council's required 30 metre setback.

The property has an area of 8967 metres square with an existing dwelling, swimming pool and two sheds located on the property. One of the existing sheds is to be demolished to make way for the proposed shed. The existing shed has been erected over 50 years ago and is located approximately 1-2 metres from the front boundary. The proposed shed will be located in a similar position but will be setback 8 metres from the front boundary.

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 Environment Planning Policy No. 1 variations greater than 10% to be determined by full Council.

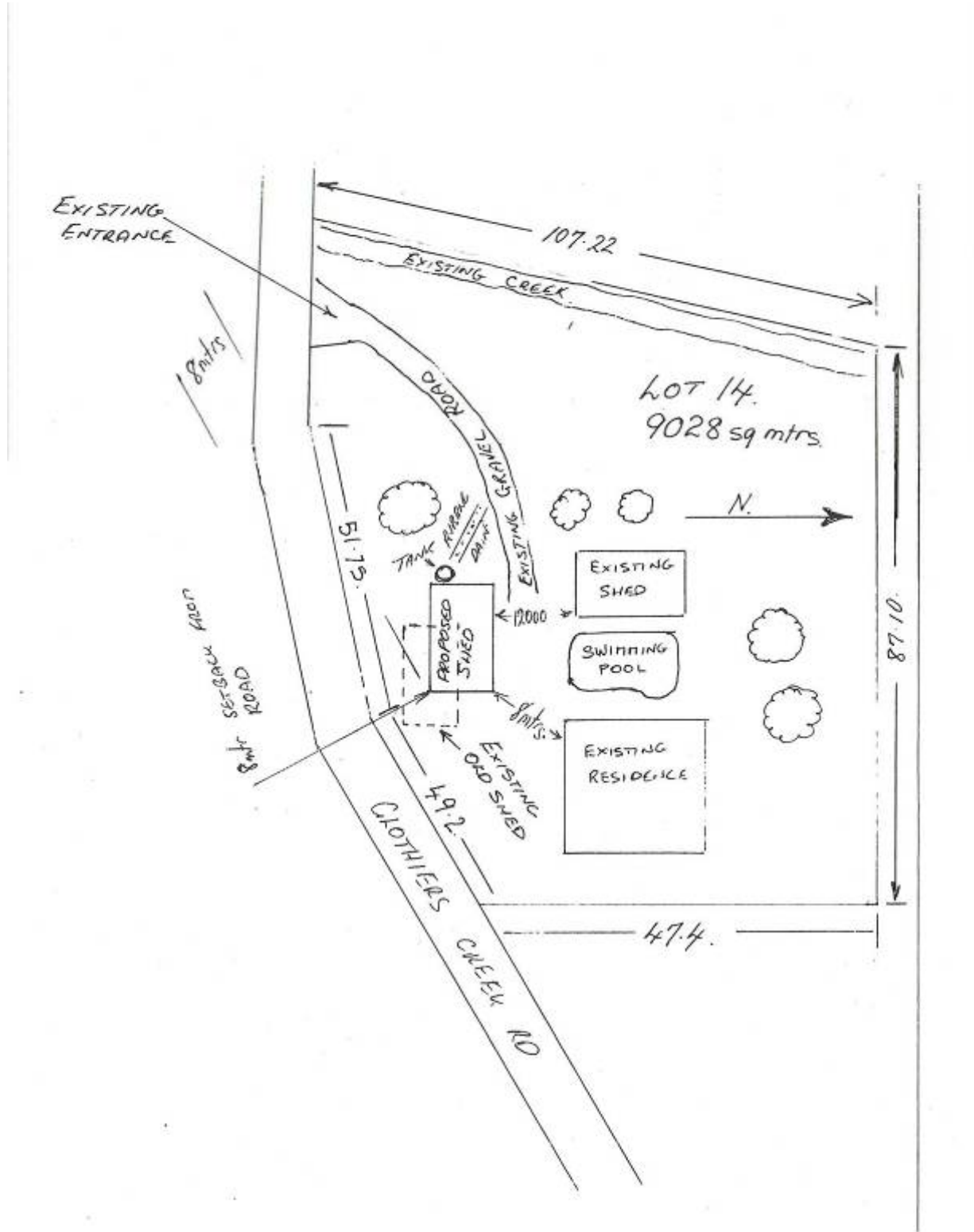
The application was not notified to adjoining properties and subsequently no submissions have been received in relation to the proposal. It is considered that the subject application is suitable for approval, subject to conditions of consent.

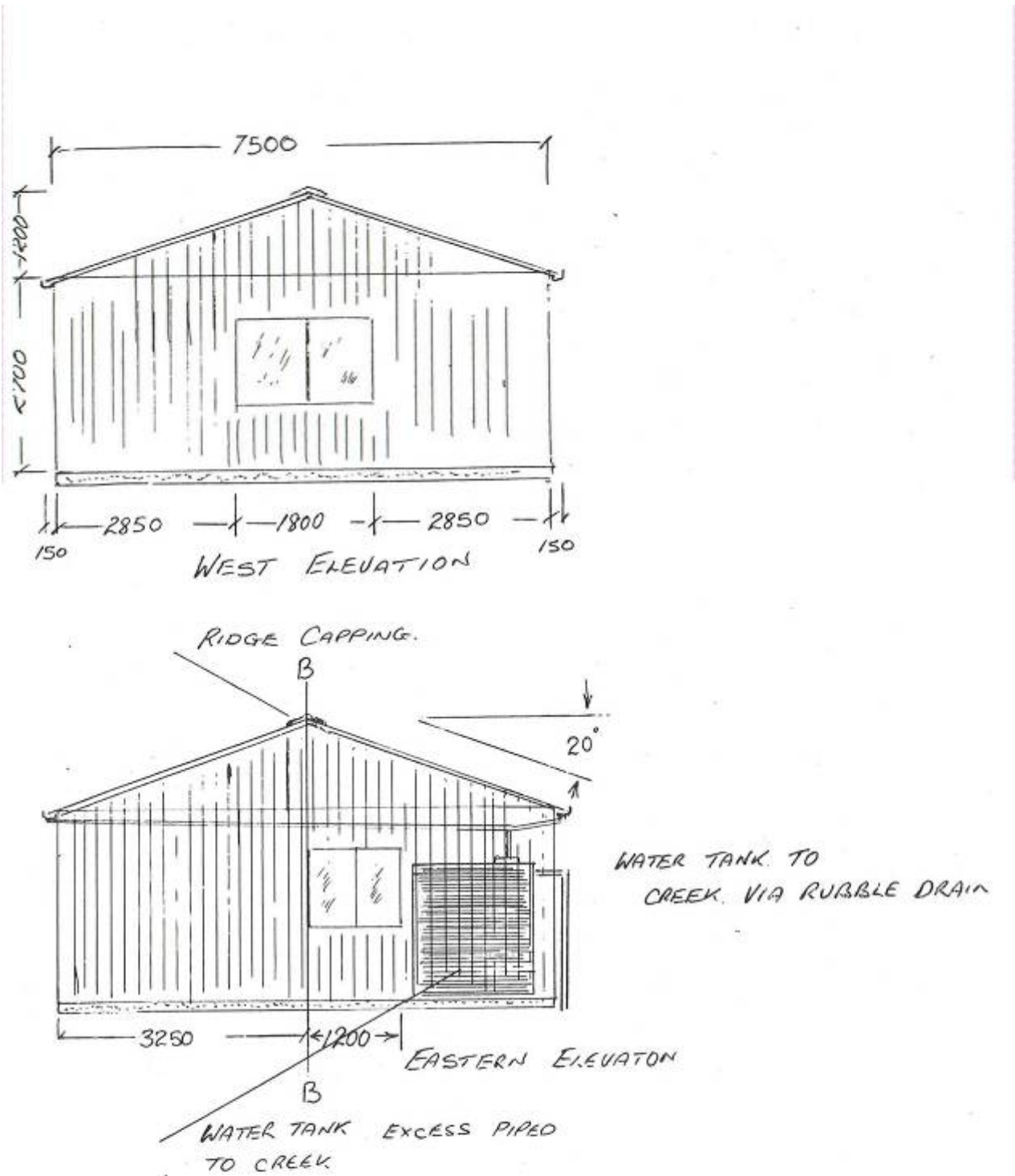
**SITE DIAGRAM:**

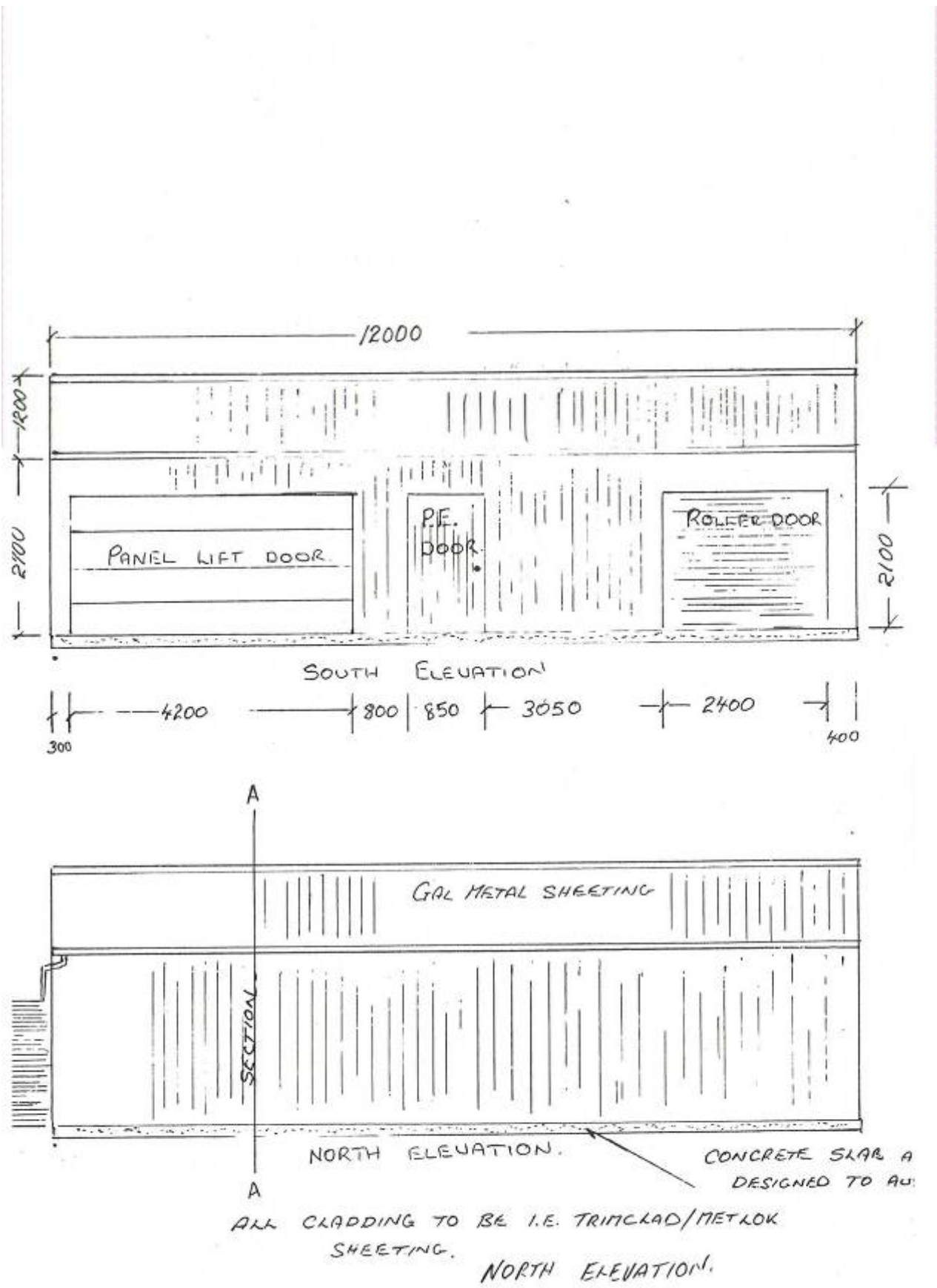


<p>© TWEED SHIRE COUNCIL 2009          Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be Responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>          COPY ONLY - NOT CERTIFIED          P.O. Box 616 Murumbidgee NSW 2434 Tel: (02) 6670 2400 Fax: (02) 6670 2483</p>	<p><i>Tweed Shire Council</i>  <b>Lot 14 DP 729137</b>          No. 797 Clothiers Creek Road, Clothiers Creek</p>	<p><b>Site Plan</b>   </p>
<p>File: Z:\GIS_Jobs\Site Plan.Wor Author: J. Batchelor Date: 05/May/2009 Scale: 1:20,000 Sheet: 1 of 1</p>		

DEVELOPMENT PLANS:







**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 1(a) rural. The primary objectives are:

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

The proposed development is consistent with the primary objectives of the zone.

Clause 15 - Essential Services

Mains power available to the site and appears adequate.

Clause 16 - Height of Building

The proposed height of the single storey development is 3.9 metres which complies with the height limitations affecting the subject site.

Clause 17 - Social Impact Assessment

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

Other Specific Clauses

Clause 22 – Development near designated roads

The proposal incorporates the construction of a workshed/garage with a building line of 8 metres to Clothiers Creek Road. The TLEP 2000 requires a building line of 30 metres to the designated road being Clothiers Creek Road.

The objectives of Clause 22 of TLEP 2000 are:

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



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

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

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

*As the proposal is an improvement over the existing situation and is consistent with the criteria set out in TLEP 2000 Part 5 Clause 22, no objection is raised to the proposed structure, or the request to vary the designated road setback."*

The development will not detract from the scenic attractiveness of the Tweed Area. Existing trees are located along the road boundary providing adequate screening from Clothiers Creek road to the proposed development (see photos below).





In regards to the impact of traffic noise on the development the application is for a non-habitable structure and therefore no concerns are raised. Also the proposed development will be located between Clothiers Creek road and the existing dwelling helping to reduce traffic noise.

### **North Coast Regional Environmental Plan 1988**

The development is consistent with the objectives of the North Coast Regional Plan.

### **State Environmental Planning Policies**

#### **SEPP No. 1 - Development Standards**

A SEPP 1 objection has been received from the applicant in relation to the 30 metre setback required to Clothiers Creek Road, which is a Designated Road. This setback is required by Clause 22 of the TLEP 2000.

The applicant in their objection has provided the following reasons as to why this standard is unreasonable or unnecessary;

- The existing shed to be demolished is located between 1-2 metres from the front boundary to Clothiers Creek Road and has been situated there for approximately 50 years.
- There is a chance that the lower half of the property could be prone to flooding from the existing creek.

- The proposed location for the development is able to use the existing driveway access whereas there would be a need for extensive driveway upgrades to any other part of the property.
- The proposed location for the shed will help to reduce traffic noise from Clothiers Creek Road to the existing dwelling.
- The proposed development will not prejudice any future development to the area.

After consideration of the applicant's submission and the advice from Council's Planning and Infrastructure Engineer it is considered that in this instance the standard is unreasonable and should be varied for the following reasons;

- The proposed development will be located 8 metres away from the front boundary to Clothiers Creek Road which is a further 6 metres away than the existing shed to be demolished on site.
- The area behind the 30 metre setback is considered unacceptable and unreasonable as the land is nominated as could be affected by flood as per Council flood maps.
- Any area behind the 30 metre setback would require extensive development of the existing driveway to provide access to the workshed/garage.
- No Road widening is proposed for the portion of Clothiers Creek Road which adjoins the subject property.

SEPP (Rural Lands) 2008

The proposal is consistent with the objectives as detailed in this SEPP and the proposed construction of a shed will be consistent with adjacent rural land uses. The proposal will not have a significant impact on the rural land uses in the vicinity.

**(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

The proposal is consistent with the objectives of this section of Councils development control plan.

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

None apparent

**(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 proposed development is located on a rural site and considered to be of a reasonable design and will be keeping with the style and rural character of the area.

Access, Transport and Traffic

Minimal impact is envisaged, the proposal will not change the existing driveway access to the site or increase traffic to the site.

Flora and Fauna

Minimal impact is envisaged, the proposal will be located on clear area with no clearing of significant vegetation required.

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

Surrounding Landuses/Development

It is considered that the site is suitable for the proposed development. The land was specifically created for rural purposes and its use is consistent with the locality. The design of the shed is in keeping with the rural character of the area.

Topography

The site is reasonably flat with the proposed location of the development a clear flat area (photo attached).



A stand of tall trees exist on the edge of the property and in the Road reserve, which will help screen the shed and reduce its impact on the streetscape.

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

No submissions have been made.

**(e) Public interest**

The development 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 have the right to appeal the decision in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Due to the nature and position of the site it is not considered that the proposal will set an unreasonable precedent in the area if it is approved subject to condition of consent.



**CONCLUSION:**

The proposed development is consistent with the applicable environment planning instruments with an acceptable variation of Part 5 clause 22 of the TLEP 2000, and is generally consistent with the applicable Council policies. The proposal represents quality rural 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](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

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**P4 [PR-PC] Development Application DA09/0037 for a Two Storey, and Part Three Storey Addition and Deck with Building Line Variation to Existing Dwelling at Lot 3 DP 211861, No. 53 Adelaide Street, Tweed Heads**

**ORIGIN:**

**Building & Environmental Health**

**FILE NO: DA09/0037 Pt1**

**SUMMARY OF REPORT:**

The subject allotment is located on the western side of Adelaide Street and this side of Adelaide Street is subject to a two storey height limit under Tweed LEP 2000.

The allotment contains an existing two storey timber framed dwelling comprising a garage partly excavated into the allotment with living areas above.

An application has been received to carry out alterations and additions to the dwelling which will result in part of the dwelling being classified as three storey.

The proposal also includes a variation to the six metre building alignment to permit a covered deck to stand 4.30 metre from the front property boundary.

The Applicant has lodged a SEPP 1 objection to the two storey height limit due to the small floor area of the addition which be classed as three storey.

The SEPP 1 objection is considered to be worthy of support due to the small floor area of the part of the dwelling which will be considered as three storey, the location of the addition in the centre of the site, the narrow design of the additions to minimise impact on views and the overall contemporary improvement in appearance of the dwelling due to the additions.

The Applicant's request to vary the six metre building line does not comply with design control 3 of DCP A1 and is not supported. The recommended Condition No. 6 addresses this non-compliance.

The allotment is already substantially elevated from road level and it is considered that approval of the proposed deck extension to 4.3 metres from the front property boundary would dominate the street and be inconsistent with the current streetscape.

There are no other building line variation approvals of this magnitude in the area.

Two written objections to the proposal were received and these objections were taken into consideration in the assessment of this application.

After a comprehensive assessment of the application it is considered that notwithstanding the objections and the areas of non compliance with DCP A1 and LEP 2000 it is considered that some of the areas of non compliance with the DCP are minor and justifiable as infill development and that the non compliance with the DCP can be argued as acceptable due to the circumstances of the application.

A response to the objections is included later in this report.

It is considered that the application to vary the two storey height limit is worthy of approval.

## **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 DA09/0037 for a two storey and part three storey addition existing dwelling at Lot 3 DP 211861, No. 53 Adelaide Street, Tweed Heads be approved subject to the following conditions: -**

### **GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos Dem 01(B), Site (B), CC-01-01(B), CC-01-02(B), CC-02-01(B), CC-02-02(B), CC-02-03(B), prepared for D & M Collins and dated 21/08/08, and Plan Nos. SUN-01(4 sheets) prepared for D & M Collins and dated 21/12/08 except where varied by the conditions of this consent.**

[GEN0005]

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

[GEN0115]

- 3. 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. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.**

[PCC0945]

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



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

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

Where Council is requested to issue a construction certificate for civil works associated with this consent, the abovementioned works can be incorporated as part of the cc application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1145]

6. Prior to the issue of a Construction Certificate the Principal Certifying Authority shall be provided with amended plans which identify the deck at the front of the dwelling observing a 6 metre building alignment.
7. Prior to the issue of a Construction Certificate a landscaping plan is to be submitted to and approved by Council. Such plan is to demonstrate a suitable vegetative screening of that section of the northern boundary adjacent to the proposed two storey addition.

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

8. 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]

9. 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]

10. 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]

11. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational,
-

where required, to the satisfaction of the Principal Certifying Authority.

[PCW0985]

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

[PCW1065]

#### **DURING CONSTRUCTION**

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

[DUR0005]

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

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

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

[DUR0205]

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

[DUR0245]

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

[DUR0375]

17. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0395]

18. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0405]

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

[DUR0445]

20. 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]

21. 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]

22. 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]

23. The additional rainwater drains must be connected to the existing rainwater disposal system; to provide satisfactory stormwater disposal in accordance with Australian Standard AS/NZS3500.3.2.

[DUR2255]

24. 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]

25. 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]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and

- \* **50°C in all other classes of buildings.**

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

[DUR2555]

- 27. **The Principal Certifying Authority shall be provided with a certificate from a Registered Surveyor which states that the highest point of the roof of the additions is no higher than RL 110.5 m relative to the assumed bench mark drill hole of RL 98.19 m at the south eastern corner of the allotment at frame stage prior to any lining being provided.**

[POCNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

- 28. **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]

- 29. **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]

- 30. **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]

- 31. **All landscaping adjacent to the northern boundary is to be completed in accordance with the landscaping plan approved by Council.**

**REPORT:**

**Applicant:** Mr DG Collins and Mrs MA Collins  
**Owner:** Mr DG Collins and Mrs MA Collins  
**Location:** Lot 3 DP 211861, No. 53 Adelaide Street, Tweed Heads  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$151,000

**BACKGROUND:**

The subject site encompasses an area of 467.8m<sup>2</sup> and is located on the western side of Adelaide Street and slopes moderately up from the street.

The site contains an existing two storey timber framed dwelling with garage at the lower level and living areas on the upper level. A covered deck is located at the front of the dwelling on the upper level.

The rear of the site has previously been excavated to form a level yard area and the western property boundary is supported by a boulder retaining wall approximately 2 metres high.

The northern property boundary is also supported by a boulder retaining wall.

Two storey dwellings exist on allotments adjoining each side boundary.

The site is rectangular in shape, has a frontage of 17.1 metres to Adelaide Street and a length of 27.505 metres. An easement for drainage 900 mm wide exists inside part of the rear property boundary and inside and parallel to the northern property boundary.

The purpose of this easement appears to be to drain 50 & 52 Charles Street via a private inter-allotment drain.

There are no Council services on the allotment which will be affected by the proposed development.

The site slopes down to the street and has a change of level of about 7.5m from western boundary to eastern boundary.

The subject site is zoned 2 (b) Medium Density Residential and is located within a designated 2 storey area as per clause 16 of the Tweed Local Environmental Plan (LEP) 2000.

The primary objective of this zoning is:-

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

The Applicant seeks consent to carry out building alterations and additions comprising extension of sitting room into existing deck and extension of covered deck by a similar distance, erection of two storey addition at the rear of the dwelling comprising Family Room & Study on ground floor and bedroom, en-suite & sun room on upper level.

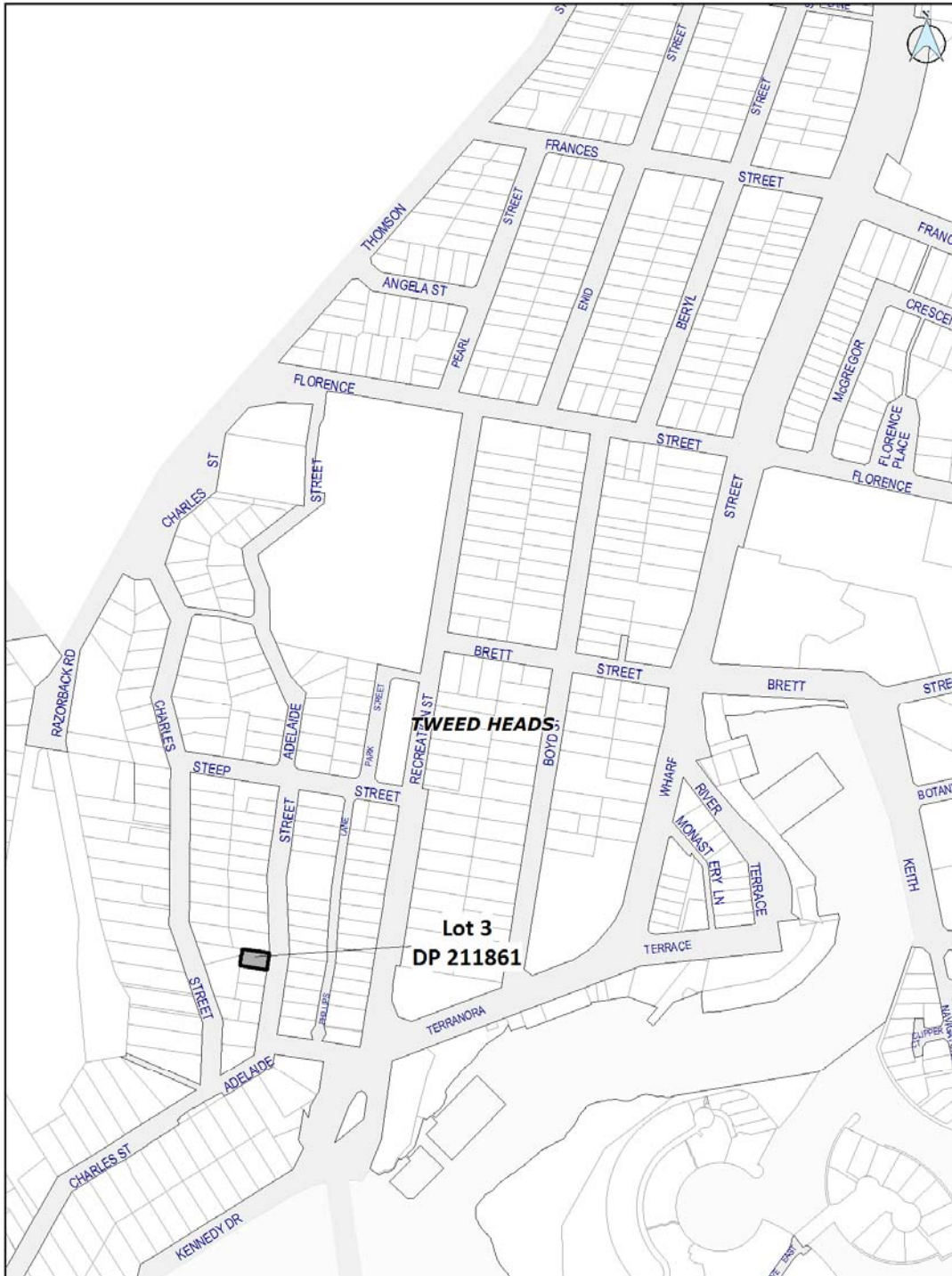
The existing deck at the front of the building is currently set back a distance of approximately 7 metre from the front boundary line. It is proposed to enlarge and extend this deck a further 2.7 metres closer to the front boundary line, thereby creating a revised front setback of 4.3 metres.

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, as the building will contain a small section which will be three storeys in height.

Notification was required in accordance with the provisions of DCP Section A11 (Public Notification of Development Proposals) and in response two written objections to the proposal have been received.

The zoning which is applicable to this allotment permits development of higher density than currently exists which would have a greater impact on adjoining properties than the proposed development.

**SITE DIAGRAM:**



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<p><i>Tweed Shire Council</i></p> <p><b>Lot 3 DP 211861</b></p> <p><b>No. 53 Adelaide Street, Tweed Heads</b></p>		<p><b>Site Plan</b></p>  		
File: Z:\GIS_Jobs\Site Plan.Wor	Author: J. Batchelor	Date: 05/May/2009	Scale: 1:5,000	Sheet: 1 of 1



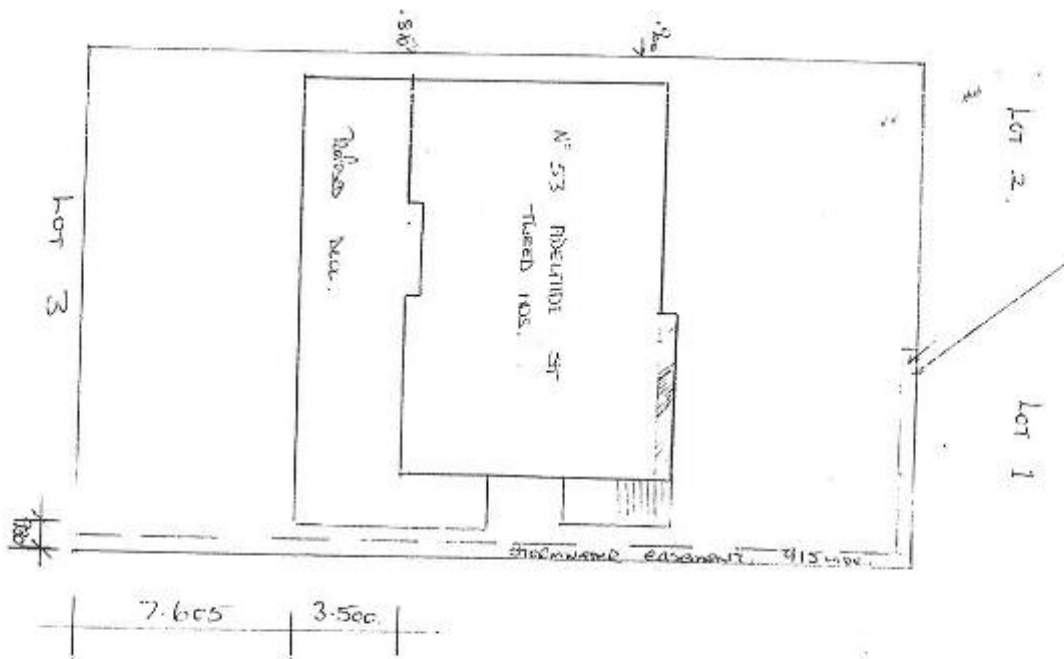
**DEVELOPMENT PLANS:**

**EXISTING SITE PLAN**

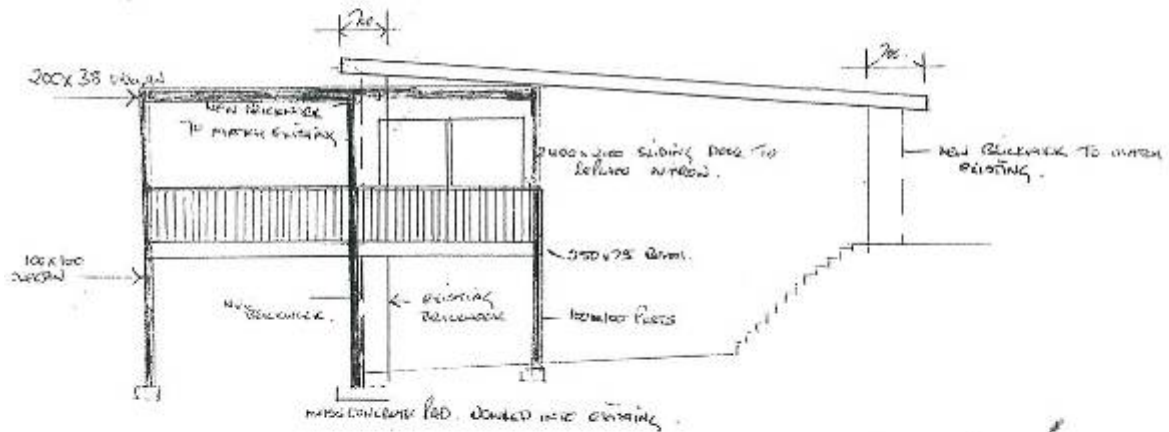
- COUNCIL SHALL BE GIVEN 48 HOURS NOTICE PRIOR TO:
1. FOUNDATIONS BEING READY FOR INSPECTION.
  2. FRAMEWORK INCLUDING ROOF FRAMING BEING COMPLETED.
  3. FIXING OF INTERNAL WALL SHEETING
  4. COMPLETION OF BUILDING.

SITE PLAN

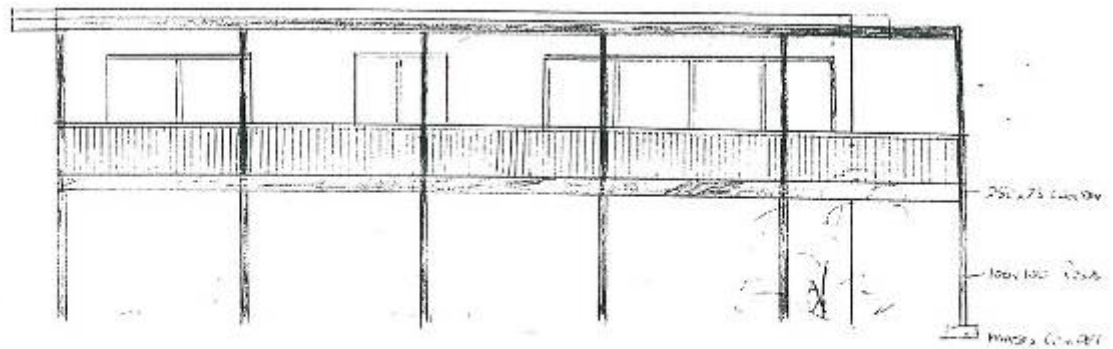
BOUNDARY DISTANCE OF 6.75 TO CUTTER EDGE TO BE OBSERVED. WALL MUST NOT ENDOURGE CLOSER THAN 900 TO BOUNDARY.

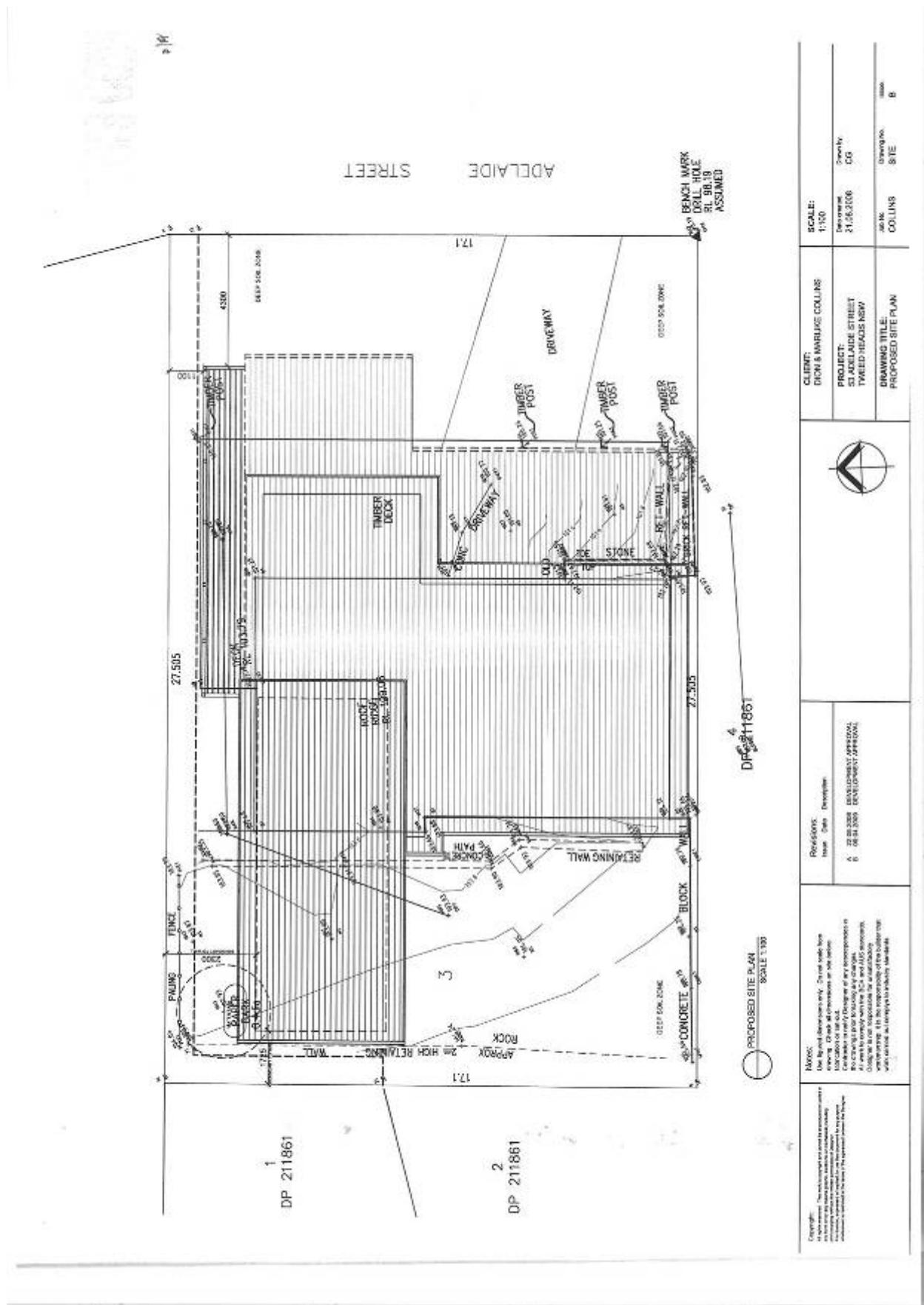


## EXISTING ELEVATION

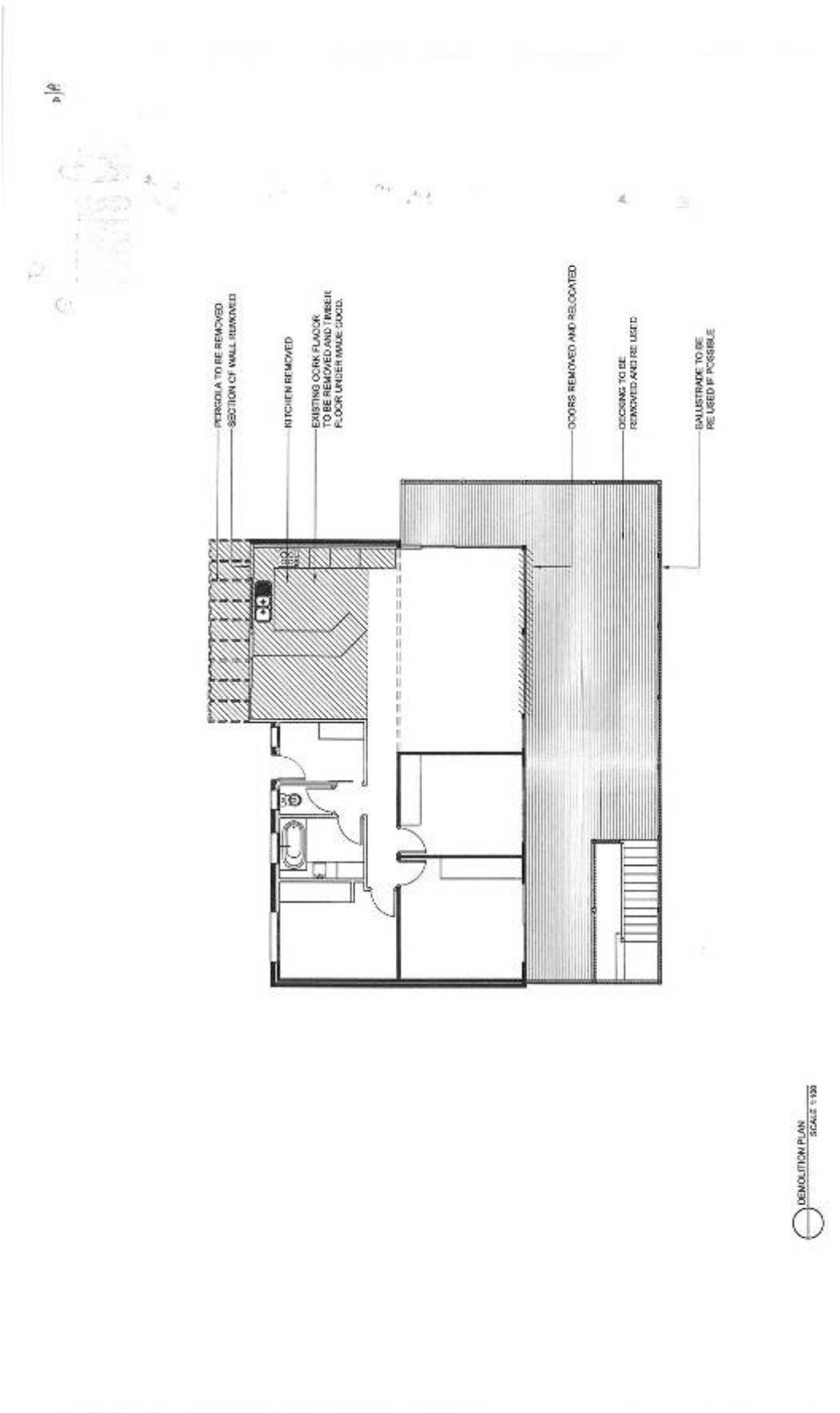


**ROOF WATERS**  
 \*ALL ROOF WATERS TO BE DISPOSED OF  
 THROUGH PROPERLY JOINTED PIPES TO  
 STREET GUTTER OR TO COUNCIL APPROVAL  
 ALL P.V.C. DRAINAGE LINES TO HAVE  
 ADEQUATE COVER.



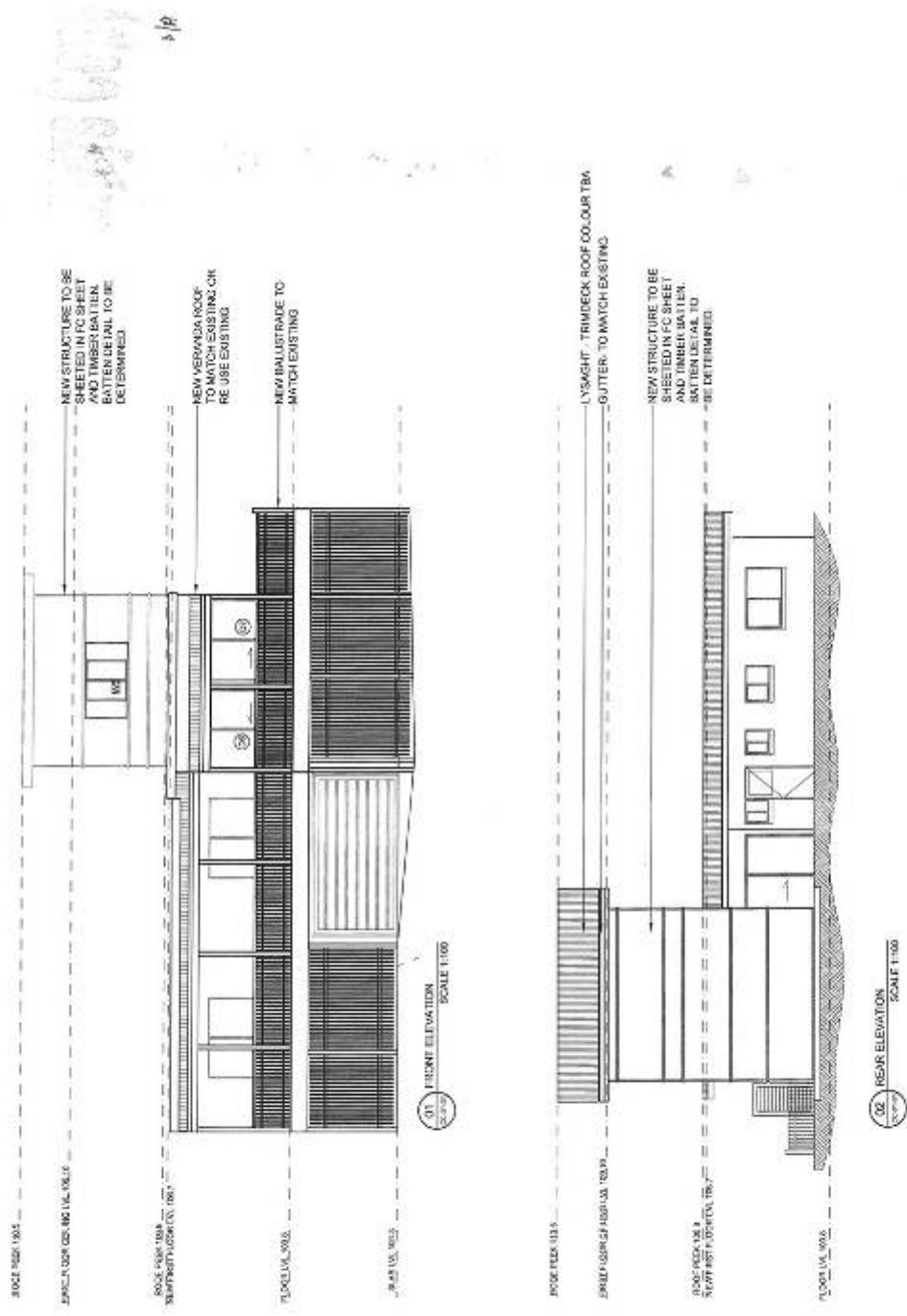


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Issue	Date	Description										
A	22.08.2008	REVISED FOR APPROVAL										
B	08.11.2009	REVISED FOR APPROVAL										
<p>Notes:</p> <ul style="list-style-type: none"> <li>1. The information contained herein is the property of the author and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the author.</li> <li>2. The information contained herein is the property of the author and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the author.</li> <li>3. The information contained herein is the property of the author and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the author.</li> <li>4. The information contained herein is the property of the author and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of the author.</li> </ul>		<p>Scale: 1:150</p> <p>Project: 51 ADELAIDE STREET TWEED HEADS NSW</p> <p>Drawing No: SITE B</p>	<p>Client: DICK &amp; MARILYN COLLINS</p> <p>Project: 51 ADELAIDE STREET TWEED HEADS NSW</p> <p>Drawing No: SITE B</p>									



DEMOLITION PLAN SCALE: 1:100

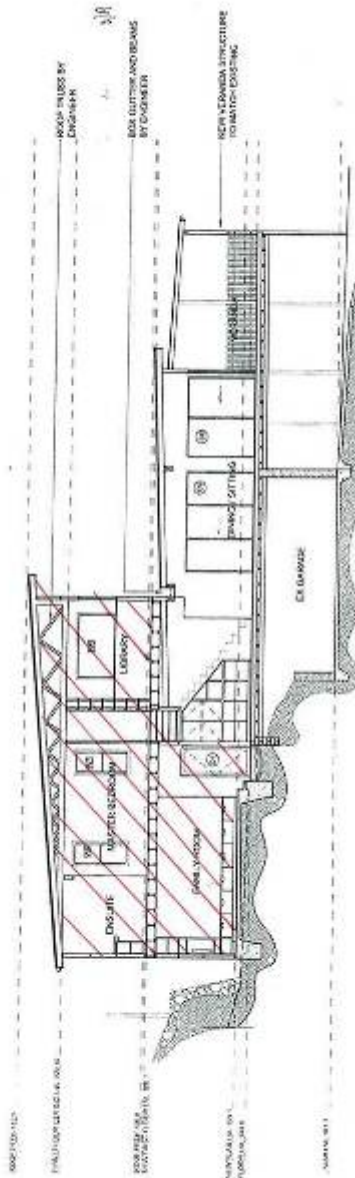
<p><b>NOTES:</b></p> <p>1. This work is subject to approval by the relevant authority and is subject to the relevant legislation and regulations.</p> <p>2. The contractor is responsible for the removal of all hazardous materials and for the safe disposal of the same.</p> <p>3. The contractor is responsible for the removal of all asbestos and for the safe disposal of the same.</p> <p>4. The contractor is responsible for the removal of all lead and for the safe disposal of the same.</p> <p>5. The contractor is responsible for the removal of all other hazardous materials and for the safe disposal of the same.</p>	<p><b>PROVISIONS:</b></p> <p>Item Code Description</p> <p>A 22.08.2008 DEVELOPMENT APPROVAL</p> <p>B 08.04.2009 DEVELOPMENT APPROVAL</p>	<p><b>CLIENT:</b></p> <p>DIXON &amp; MARQUE COLLINS</p>	<p><b>SCALE:</b></p> <p>1:100</p>	<p>DATE DRAWN:</p> <p>21.08.2008</p>	<p>DATE BY:</p> <p>CG</p>
				<p><b>PROJECT:</b></p> <p>58 ADELAIDE STREET</p> <p>TWEEDE HEADS NSW</p>	<p><b>DRAWING TITLE:</b></p> <p>DEMOLITION PLAN</p>



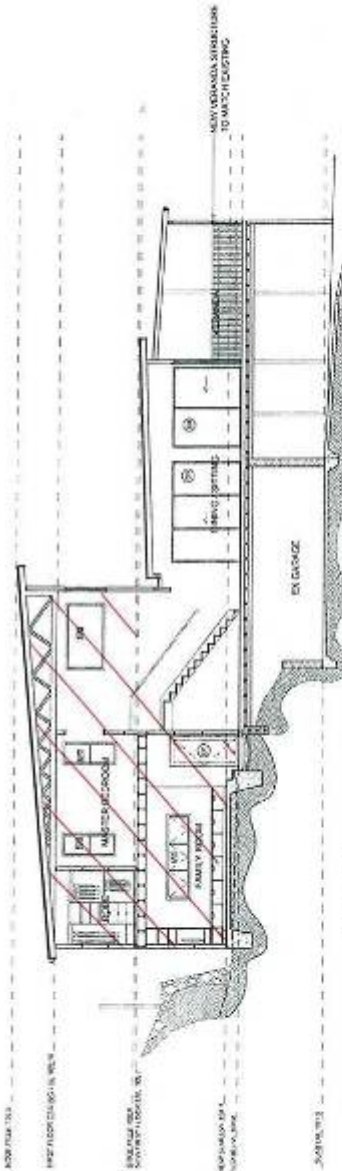
<p><b>NOTES:</b></p> <p>1. All drawings are for information only. Do not build from drawings. Check all dimensions on site before construction or use. All dimensions are to face unless otherwise stated. All work to comply with the DDC and ALP requirements. The design is not to be used for any other purpose without the written consent of the architect.</p>	<p><b>REVISIONS:</b></p> <table border="1"> <tr> <th>Issue</th> <th>Date</th> <th>Description</th> </tr> <tr> <td>A</td> <td>20.05.2009</td> <td>ISSUED FOR PERMIT APPLICATION</td> </tr> <tr> <td>B</td> <td>20.05.2009</td> <td>ISSUED FOR PERMIT APPLICATION</td> </tr> </table>	Issue	Date	Description	A	20.05.2009	ISSUED FOR PERMIT APPLICATION	B	20.05.2009	ISSUED FOR PERMIT APPLICATION	<p><b>CLIENT:</b> DUN &amp; MARLIN COLLINS</p> <p><b>PROJECT:</b> 53 ADELAIDE STREET TWEED HEADS NSW</p> <p><b>DRAWING TITLE:</b> PROPOSED ELEVATIONS</p>	<p><b>SCALE:</b> 1:100</p> <p><b>DATE DRAWN:</b> 21.06.2008</p> <p><b>DRAWN BY:</b> DG</p> <p><b>CHECKED BY:</b> CC-05-01</p> <p><b>ISSUED BY:</b> B</p>
	Issue	Date	Description									
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B	20.05.2009	ISSUED FOR PERMIT APPLICATION										
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### REAR ADDITIONS



SECTION A SCALE 1:100



SECTION B SCALE 1:100

<p>Notes:</p> <p>1. All work to be done in accordance with the Building Code of Australia (BCA) 2006.</p> <p>2. All work to be done in accordance with the Australian Standard AS/NZS 1170:2002.</p> <p>3. All work to be done in accordance with the Australian Standard AS/NZS 1170:2002.</p> <p>4. All work to be done in accordance with the Australian Standard AS/NZS 1170:2002.</p>	<p>CLIENT:</p> <p>TONY &amp; MARCOE COLLINS</p>	<p>SCALE:</p> <p>1:100</p>
	<p>PROJECT:</p> <p>51 ASHLADE STREET TWEED HEADS NSW</p>	<p>DATE:</p> <p>21/05/2009</p>
<p>DRAWING TITLE:</p> <p>PROPOSED REAR ADDITION</p>	<p>DATE:</p> <p>22/05/2009</p>	<p>SCALE:</p> <p>1:100</p>

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000****Clause 4 - Aims of the Plan**

The proposal satisfies the aims of the Tweed LEP in relation to the desired outcomes of the plan namely the management of growth in a responsible manner.

**Clause 5 - Ecologically Sustainable Development**

The proposal satisfies the principles of this clause as there will be no anticipated serious or irreversible environmental damage likely as a result of the proposed development.

**Clause 8 - Zone objectives**

The subject site is zoned 2 (b) Medium Density Residential and notwithstanding that the existing building on site is a single dwelling the proposed alterations and additions will be consistent with the current approved use of the site.

The proposal represents a contemporary and streamlined addition to an existing residential area currently in a state of transition.

The locality contains a mixture of single dwellings, dual occupancies and multi residential public housing of varying scale, height and density however most of the free standing residences in this street are single dwellings.

**Clause 15 - Essential Services**

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

**Clause 16 - Height of Building**

The existing development consists of a two storey dwelling with living areas at the upper level and garage under. As previously identified the subject site has a maximum two storey height limitation under clause 16.

The proposed additions will result in a small portion of the dwelling being regarded as three storeys which is not consistent with the provisions of this clause.

The Applicant has lodged an objection under SEPP No. 1 to the development control.



### Clause 17 - Social Impact Assessment

Normal domestic impacts can be anticipated from the proposed development. These impacts are not anticipated to have any significant impact on the existing amenity of the area or the existing streetscape other than what could be reasonably expected.

Sloping sites always present challenges to privacy and overlooking of adjoining lots due to the slope of the allotments and the common use of outside decks.

### Clause 35 - Acid Sulfate Soils

The allotment is not located in an area which is affected by acid sulphate soils.

### Other Specific Clauses

There are no other relevant clauses which are applicable to this proposal.

## **State Environmental Planning Policies**

### SEPP No. 1 - Development Standards

As stated previously the Applicant has lodged an objection under SEPP No.1 to the design control for building heights identified in clause 16 of the Tweed LEP 2000.

Clause 16 states as follows:-

**“(1) Objective**

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

- (2) *Consent must not be granted to the erection of a building which exceeds the maximum height or number of storeys indicated on the Height of Buildings map in respect of the land to which the application relates.”*

The subject site is nominated as having a two storey height limit. The development proposes an upper floor addition to the existing two storey dwelling. The proposed upper floor will contain a master bedroom, en-suite, robe and sun room.

The two storey addition will be located mainly at the rear of the existing dwelling with the sun room being located over the existing dwelling. Part of the sun room, approximately 2.2m wide, will be located over the garage thereby forming a third storey.

That part of the sun room which will form the third storey will encompass a floor area of 9.26 m<sup>2</sup>.

In their submission, prepared by Apex Building & Development Consultants, the Applicant considers that the development standard in clause 16 is unreasonable and unnecessary and therefore the third storey should be permitted for the following reasons:

- *The third storey has an area of only 9.26m<sup>2</sup>, being 2.2m long and 4.21m wide.*
- *That part of the addition which is three storeys is located in a position where it will have no impact on views or vistas from adjacent properties. The rear section of the extension is fully compliant with Council's two storey height limit and this rear extension would fully screen the 'three storey' part of the addition when viewed from properties at the rear of the site. The extension has been designed to be narrow, which would minimise any loss of view to adjacent residents.*
- *The original ground level is unknown, however it is likely that the upper floor addition is only two storeys above the natural ground level, as the garage has been excavated into the site. The 'finished ground level' (as referred to in the definition of storey) is far lower than the estimated natural ground level. The finished ground level gives the appearance that the building will be three storeys whereas it is likely that it is only two storeys above the natural ground level.*
- *Land on the opposite side of Adelaide Street is within a three storey height limit area and hence a small third storey is not out of character with development that could be anticipated within the street.*
- *The 'third storey' is located towards the centre of the footprint of the dwelling and hence is screened from view from most angles.*
- *The site is highly constrained by its size and topography. Opportunities for expansion of the dwelling are highly limited. Further extension at ground level is not an option as it would occupy the entire yard/deep soil zone. The development, as proposed, will meet the owners needs for additional space, with minimal impact on the surrounding properties.*
- *Alternative two storey designs were considered, with the planned upper floor being rotated so that it ran north/south along the existing dwelling. This option was rejected as it was considered that it had greater potential for impacting on the views of adjacent residents.*

- *Having regard to the above matters it is considered that the development standard is unnecessary and unreasonable in this instance. The 'third storey' will have minimal impact as it is located relatively central to the site and as the extension has been designed to be narrow to avoid obstructing views. Given that the third storey has an area of less than 10m<sup>2</sup>, and is technically only a third storey as it is located above a garage that has been excavated into the natural ground level, it is considered that the objection under State Environmental Planning Policy No.1 is deserving of Council's support."*

### **Assessment of the SEPP 1 Objection.**

The Applicant's submission indicates that the three storey component of the additions will be located in the centre of the site, has been designed to minimise any impact on adjoining properties, comprises only a minor floor area and is only considered to be a third storey due to its location above a garage which has been located partly below existing ground level.

Council's attention is drawn to the definition of a storey under Tweed LEP 2000 which defines a storey as being:

- (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 1.50m in height.*

*For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.*

It should be noted that less than 10m<sup>2</sup> of the sun room will be classed as three storey due to its location over the existing garage and if this part of the dwelling was deleted the remainder of the proposal would be fully compliant with the provisions of clause 16 of Tweed LEP 2000.

The rear part of the garage, over which the additions are proposed, is mostly below finished ground level and, in isolation, would not be classed as a storey.

This would tend to suggest that the subject three storey part of the addition has no significant impact on the external appearance of the dwelling.

If the offending part of the proposal was removed it would have negligible positive impact on the overall appearance of the building.

The Applicant has attempted to design the upper level addition to minimise any impact on the properties to the rear, which would be the most affected by impact on views, by orienting the proposal on an east / west axis which would present the narrowest façade of the building to these properties.

Due to this design aspect and the slope of the land it is considered that, notwithstanding that the addition is classed as three storey, it effectively is a two storey addition and would not have a significant adverse impact on views or the amenity of the area.

The proposed dwelling additions are generally compliant with Council's design requirements is considered to satisfy the objective of clause 16 in that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

The proposal is anticipated to be a positive contribution to the streetscape and contains design elements which are expected of a residential development.

The contemporary appearance of the additions would improve an otherwise dated looking dwelling.

The proposed additions are considered to be a suitable development and warrants favourable consideration.

It is recommended that Council assume concurrence of the Director-General of the Department of Planning in relation to the State Environmental Planning Policy No. 1 objection to clause 16 of the Tweed Local Environmental Plan 2000 regarding the height of part of the building.

#### 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.

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

The proposed development comprises additions to a residential dwelling and under the requirements of the SEPP and the Environmental Planning & Assessment Regulation 2000.

The Applicant has provided a valid BASIX certificate for the proposed additions in accordance with the legislation.

It is considered that the requirements if this 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

**Design Control 1 – Public Domain Amenity**

The proposed additions to the dwelling include an elevated roofed timber deck which is proposed to extend 1.70m into the 6 metre building line.

The existing deck is elevated substantially above road level and it is considered that extending the deck closer to the street will result in a structure which would dominate the streetscape and not respond in a positive manner to other developments in the street.

**Design Control 2 – Site Configuration**

**Deep Soil Zones**

The subject site has an area of 467.8 m<sup>2</sup> and the proposed impermeable area of the site will be approximately 57 % which satisfies the provisions of the DCP.

This will result in 43% of the site being permeable and available for rainwater infiltration. Adequate area will be available for deep soil zones at the front and rear of the site.

The rear deep soil zone which will be available after construction of the additions will comprise an area of about 9m x 8m which exceeds the minimum requirements of this section.

Existing soft landscaping in the front deep soil zone will be maintained and apart from the extension of the deck into this area adequate area exists in both the front and rear yards to ensure that the site has an adequate ability to permeate rainwater and provision for landscaping.

**External Living Areas**

The existing dwelling contains a first floor deck which stands 1.1m from the northern property boundary.

The proposal before Council includes extending living areas into part of this deck and extending the deck eastward towards the front boundary.

The proposed deck extension into the 6m building alignment is not supported as identified later in this report however extending the deck to observe the 6m building alignment would provide an acceptable north facing outdoor recreation area.

The existing deck is currently located well forward of the dwelling on the adjoining property due to the configuration of the allotments and has been in existence since its approval in 1990 without any apparent issues in relation to privacy.

The proposal is to extend the deck 3.0m in an easterly direction will result in some risk of privacy intrusion and therefore a reduction of the extension so as not to encroach into the building line is recommended.

It is also considered that provision of privacy screens to the northern side of the deck is not necessary and would detract from the open nature of the deck thereby having a greater impact on the streetscape that would otherwise occur.

The northern boundary of the site has established landscaping which will assist in providing visual separation.

The existing deck into which the living areas will be extended will have glazing along the side facing the adjoining property which can be fitted with window treatments to minimise privacy intrusion if required.

This external living area is therefore considered to satisfy the design controls apart from the distance of the deck from the boundary.

The deck extension is also proposed to stand 1.10m from the side property boundary which contravenes design control 3 of DCP A1 which states that a two storey dwelling shall stand 1.50m from a side boundary.

The setback is consistent with the current setback of the existing deck and dwelling and the extension forward would only project a further 1.3m from the existing line of the deck if it were to observe a 6m setback from the front boundary.

For the above reasons and the streetscape issues identified earlier in this report the variation to DCP A1 in relation to the variation to the building line is not supported. However in regard to the side setback, as the existing deck is setback 1.1 metres from the northern side boundary it is considered that maintaining this setback for approximately an additional 1 metre is not considered unreasonable.

### **Design Control 3 - Setbacks**

The DCP contains the following requirements relating to building setback:

- a. Dwelling Houses are to be setback 6 metres from the street boundary.

- b. On corner allotments the setback along the secondary street (the street to dwelling has its secondary frontage) is 3m.
- c. In older established areas and on infill sites Dwelling Houses are to be consistent with the setback distance of neighbouring buildings and are to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m.
- d. Garages and carports, including semi-basement garages and attached garages, are to be set back a minimum of 1 metre from the dwelling's front facade.
- e. Council may approve the erection of a dwelling or garage, which does not comply with the required building line setback in circumstances, outlined elsewhere within this document, or where –
  1. The levels, depth and shape of the allotment, or
  2. The exceptional conditions of the site such as excessive grades or slope, make it necessary or expedient to do so, and:
    - the proposal will not affect the amenity of adjoining properties,
    - no valid objections are received from adjoining property owners,
    - the proposal will not create an unwanted precedent to the vicinity,
    - the structure is located a minimum of 900mm from the side boundary of the property,
    - the proposal will not impede on the required pedestrian and traffic sight lines.

The subject development proposes a timber deck at the front of the site which will observe setback of 4.30m from the front boundary and a side setback of 1.1m. The intent of the verandah extension is to provide sufficient space to house outdoor furniture and to achieve the requirements of an External Living Area as referred to in the DCP. In support of the proposed setbacks the Applicant has offered the following comments:-

- The site is highly constrained by its size and topography and hence the extension into the 6.0m set back is necessary to achieve a veranda that is of sufficient size to act as an outdoor living area.
- The adjacent development to the south has a verandah that protrudes into the six metre setback and hence precedent exists in the immediate vicinity of the site.  
(Note – the deck on No. 55 Adelaide was approved in 2008 with a building alignment of 4.59m).
- The verandah is an open structure which will not be a dominant feature in the streetscape.
- The verandah is elevated well above street level and hence will not be highly visible to passing traffic. The visible streetscape, viewed from street level, will not be affected.

- The verandah is located higher than the verandah of the adjacent dwelling to the north. Accordingly direct line of site between the verandahs would not occur.

Additionally, the verandah is narrow along the northern boundary, which would prevent this area from being used as a sitting area. This would assist in maintaining privacy to the adjoining dwelling.

- Views of the adjacent properties would not be significantly affected. Primary views from the property and the adjacent properties are in an easterly direction. Hence, the adjacent properties would maintain significant unobstructed short and long distance views.
- The proposal also requires a minor variation to the side boundary set back of the deck (from 1.5 to 1.1m). At present, the existing deck has a setback of 1.1m from the side boundary and it is proposed to carry out a 3.0m extension to the deck at the same alignment as the current decking. Given that the deck is adjacent to the northern boundary, and is an open structure, it will not cause overshadowing or loss of amenity to adjacent properties.

The extension of the deck into the 6m building alignment as indicated previously is not supported due to the anticipated adverse impact on the streetscape and the envisaged impact on privacy to the property to the north of the site.

The existing deck is also significantly higher than the street due to previous filling of the front of the site and the proposed extension of the deck into the 6m building alignment would present an elevation to the street which is not consistent with the height and scale of the surrounding area.

### **Design Control 5 – Height**

The DCP contains the following requirements relating to building height:

- 9m is the maximum overall building height for dwelling houses.*
- 8.5 m is the maximum wall plate height for dwelling houses.*
- Carports maximum height 3.5m for a flat roof and 4.5m for a pitched roof.*
- Detached garages are to have an eave height of no more than 2.7m and a maximum overall building height of 3.5m for a flat roof and 4.5m for a pitched roof.*

The proposed building will have an overall maximum height of 9.2m which marginally exceeds the specified maximum height. The minor

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encroachment occurs in the central part of the building only for a distance of 1.0m of the length of the addition.

Additionally the height is being measured from the *finished* ground level, whereas if it were measured from *natural* ground level the height would be less than 8m.

The Applicant could have designed a two storey addition at the rear of the existing dwelling with a maximum height of 9.0m which would be substantially higher than the proposal and would have complied with the provisions of DCP A1.

The minor encroachment of the maximum building height is therefore considered to be acceptable as it is unlikely to cause any adverse impact on adjoining properties.

To safeguard the view of the property to the west it is proposed to impose a condition of consent that the height of the roof not exceed RL 110.5m relative to the assumed bench mark as identified in the submitted plans and that this be confirmed by a registered surveyor at frame stage, prior to any lining of the building being approved.

## **Design Control 6 – Building Amenity**

### Sunlight Access

Shadow diagrams which were submitted in support of the proposal indicate that the rear yard open space will be partly overshadowed by the additions during the day on June 21 however as mentioned previously in this report the elevated deck at the front of the dwelling is proposed to be the primary private open space for the household.

This deck faces north east and will receive sunlight for most of the day.

The additions will not result in any significant overshadowing of adjoining properties.

### Visual Privacy

As stated previously in this report overlooking of adjoining properties is unlikely to occur to any significant degree.

Windows to the ground floor family room have a higher than usual sill height and windows to the bedroom will be relatively small.

### View Sharing

Views from the allotments in this location are primarily to the east.

The upper level addition has been designed to present a narrow elevation to the allotment to the rear and a low pitched roof thereby minimising any adverse impact on the view which is currently available.

Perusal of the available view from the property to the west of the subject allotment revealed that existing vegetation on the subject lot obscures part of the view however a 180 degree panoramic view is still available.

The proposed additions will not protrude above the horizon and therefore distant coastal views will not be affected.

The additions will be in a location which is currently occupied by a large tree and therefore the net impact of the development on the current view will be neutral.

The additions are not considered to be likely to have any significant adverse impact on available views and the principles of view sharing have been adhered to.

#### Natural Ventilation

The design of the additions provides for adequate natural ventilation.

#### Building Orientation

The building additions have been designed to optimise solar access by the provision of the north facing deck and the provision of windows to the northern faces of the sitting room, sun room and bedroom.

### **Design Control 7 – External Building Elements**

#### **Roof**

The roof satisfies the objectives of this section in that it contributes to the contemporary upgrading of the appearance of the dwelling and will provide insulation to the internal spaces.

The slope of the roof has been minimised in order to maintain the view of the allotment to the west and a condition of consent will be imposed in relation to the reflectivity of the roof surface.

### **Design Control 8 – Building Performance**

#### **Energy Efficiency**

The proposal is consistent with this design control. The proposal is consistent with the SEPP Basix 2004.

**(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 proposed development will have any detrimental effects in this location

Clause 92(b) Applications for demolition

Only minor demolition is proposed as part of the development. The extent of the demolition will be restricted to removal of internal walls and part of the kitchen wall to allow for the extension of the ground floor.

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 additions are considered to be reasonable and generally consistent with the gradual upgrading of the housing stock in this area.

The additions will render the dwelling a more contemporary building which will promote a positive contribution to the streetscape.

Access, Transport and Traffic

No change is proposed to the existing access arrangements.

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 which is emerging in this locality.

### Flora and Fauna

No impacts on fauna or flora anticipated as a result of the development.

### Topography

The site is suitable for the proposed development. The rear portion of the site has been previously levelled which will assist in the construction process.

### Site Orientation

Additions generally oriented to the north to take advantage of solar access.

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

In accordance with Council's notification policy adjoining property owners were notified of the proposal and in response two written objections were received.

Each objection and a response are listed as follows:-

- ***Loss of views from existing dwelling, principles of view sharing not adhered to.***

### **Response**

The property to the west will be the most likely to suffer some loss of views however the elevation of the additions at the rear will be in the same location as a mature tree which currently exists and is proposed to be removed therefore the increased loss of views from this property would be considered negligible.

The additions will not extend above the horizon and distant coastal views will not be affected.

A 180 degree panoramic view will still be available to the owners of this allotment and therefore the principles of view are considered to have been adhered to.

- ***Building height exceeds maximum permitted.***

### **Response**

The allotment is subject to a two storey height limit in accordance with Clause 16 of the Tweed LEP 2000.

Part of the proposal will be classified as three storey due to its location above a garage which has been partly excavated below natural ground level.

The three storey part of the dwelling will occupy a floor area of less than 10m<sup>2</sup> and the Applicant has lodged a SEPP 1 objection to the two storey height limit which has been dealt with previously in this report.

A two storey addition could be approved with a height of 9.0m at the rear of the dwelling in compliance with height restrictions of the DCP A1 which would have a much greater impact than the current proposal.

- ***Two storey dwelling height exceeded, building should step down slope of land so it is not more than two storeys at any point.***

### **Response**

Stepping the building down the slope is not an option as the additions are to an existing two storey dwelling with an established footprint.

The main component of the addition will be at the rear of the existing dwelling.

The two storey portion of the additions that will exceed the two storey height limit will occupy an area of less than 10m<sup>2</sup> which is of little impact on the overall appearance of the dwelling or the amenity of adjoining premises.

Due to the slope of the land the building will have an overall appearance of a two storey dwelling. It is also noted that the rear addition will be stepped back from the northern side boundary providing a setback of 2.3 metres giving some articulation to the elevation. This setback will also provide an ability to allow some landscaping adjacent to the section of the boundary and it is proposed that a condition be imposed to provide such landscaping.

- ***An unattractive design that will look inappropriate in relation to the scale of the existing dwelling and will not be consistent with the existing dwellings in Adelaide Street.***

### **Response**

Adelaide Street is an older area where the original housing stock is gradually being modernised.

The proposed additions will give the dwelling a more contemporary appearance which will be consistent with the changing architectural identity of the locality.

- ***A significant reduction in the deep soil zone for the whole allotment particularly at the rear of the allotment.***

### Response

The non permeable area of the site which will be available after construction of the additions will be approximately 57% which will leave a permeable area of approximately 43%.

The dimensions of the front and rear deep soil zones and permeable area will satisfy Design Control 2 of DCP A1.

- ***Does not comply with the required rear boundary setback of 5m.***

### Response

The 5m rear setback which is identified in Design Control 3 of DCP A1 is required to provide a deep soil zone of a minimum 5m in depth.

Due to the relatively narrow width of the addition at the rear (4.21m) there will still be an ability to provide a rear deep soil zone which is proposed to be 8m deep x 9m wide which exceeds the minimum deep soil zone requirements in Design Control 2 of DCP A1.

- ***Yard area at south western corner of the allotment will be subject to almost permanent shade and therefore would be effectively unusable for the purpose of outdoor recreation and relaxation.***

### Response

The submitted shadow diagrams indicate that this part of the allotment will be in some shadow for a considerable part of the day in the winter months however the Applicant has advised that the reason for increasing the size of the front deck is to utilise this area as the main outdoor recreation area due to its northerly aspect.

- ***No justification for extension of deck into six metre building alignment, no other dwelling in the street is anywhere this close to the front boundary.***

### Response

As advised above the applicant wishes to extend the deck to provide additional outdoor recreation space due to the limited outdoor recreation space available on the site. The proposal is that approximately 40% of the decks will stand 4.3m from the front boundary.

A check of other developments that exist in the street identified that Council has approved a front balcony extension at 55 Adelaide Street in 2003 whereby a section of the deck observes a setback from the front boundary of 4.59m.

This approval however was for a small unroofed deck with a small triangular encroachment into the building alignment and does not have an adverse impact on the streetscape and as indicated previously the encroachment into the building line is not supported.

- ***Privacy compromised by proposed deck extension.***

### **Response**

The proposed addition at the front of the dwelling includes the enclosure of part of the existing deck to form additional internal living space and the construction of a covered deck, 3m wide, in front of the original alignment of the existing deck.

The deck will overlook the front yard area of the adjoining allotment to the north however the section of deck along the side will be the same width as the deck that currently exists only that the deck extension proposed will project further forward towards the front boundary than the existing. As indicated it is recommended that the proposed front extension be reduced by 1.7 metres which will reduce the privacy impact.

It is also considered that the dominant coastal views from this deck are to the east it is unlikely that a significant impact on the privacy of the neighbours will occur.

- ***Deck extension proposed to observe a 1.1m side building setback in lieu of 1.5m as required in DCP A1.***

### **Response**

The existing deck was approved by Council in 1990 with a side boundary set back of 980mm.

The submitted site plan identifies that the existing deck has been located 1.1m from the side boundary and the deck extension is proposed to observe the same setback.

Design Control 3 of DCP A1 prescribes a 1.50m side set back to the wall of two storey dwellings however forcing the deck extension to be set back further 400mm that the existing deck would achieve no benefit apart from arbitrary compliance with the DCP.

It is considered that the proposal satisfies the objective of the DCP in that due to the frontage of the adjoining dwelling being behind the proposed deck it will still facilitate visual & acoustic privacy between neighbouring lots.

- ***Existing large tree in north western corner of allotment will have to be removed to accommodate additions.***

## Response

The allotment is not subject to any prohibition on the removal of trees however design control 3 of Part A of DCP A1 recommends that existing mature trees within 5 metres of a rear boundary should be retained. As the tree is not within the nominated deep soil zone and as the position of the tree may impact on the structural integrity of the footing supporting the proposed addition, it is considered that the trees removal is warranted.

### (e) Public interest

The development will not prejudice the public interest.

### 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 to the Land & 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 two storey addition to the dwelling, internal alterations and increase in size of the deck up to the 6m building alignment.

The proposed extension of the deck into the 6m building alignment is not supported.

The proposed development is considered to be either generally consistent with the applicable planning instruments and the Development Control Plans or that the identified variations to such plans can be supported.

### UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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**P5 [PR-PC] Development Application DA05/0223.05 for an Amendment to Development Consent DA05/0223 for a Restaurant at Lot 1 DP 553728, No. 4 Wharf Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA05/0223 Pt2**

**SUMMARY OF REPORT:**

In late 2008, Council was made aware of unauthorised building works at the existing approved restaurant adjacent to the Jack Evans Boatharbour. An investigation into the works was undertaken, with the proprietor of the premises being advised that an application to modify Development Consent DA05/0223 was required. This was to be accompanied with a Building Certificate application for the unauthorised works, as well as a Construction Certificate for any further building works. In addition, all outstanding contribution fees relating to DA05/0223 were to be paid immediately. It has also since come to Council's attention that there are lap dancing activities being conducted within the premises, which requires development consent for the purposes of entertainment.

An application to modify the original approval by way of internal and external building modifications and use of the premises was subsequently lodged by the applicant. An assessment of the S96 application has determined that the proposed modifications are not substantially the same as the original approval. Council has also received several letters of complaint about the use of the existing building, being unauthorised and inappropriate in this locality, adjacent to the family oriented Chris Cunningham Park and Jack Evans Boatharbour.

In addition, the applicant has declined to make any further payment of contribution fees or submit the appropriate development application relating to Place of Public Entertainment (POPE) requirements. The following report addresses the issues and reasons for recommending refusal of the proposed amendments.

**RECOMMENDATION:**

**That: -**

**A. Development Application DA05/0223.05 for an amendment to Development Consent DA05/0223 for a restaurant at Lot 1 DP 553728, No. 4 Wharf Street Tweed Heads be refused for the following reasons: -**

- 1. The proposed modification is not considered to be in accordance with the provisions of Clause 8 and 11 of the Tweed Local Environmental Plan 2000, relating to consent considerations and zone objectives.**

2. The proposed modification is not considered to be in accordance with the provisions of Section 96(1)(a) of the Environmental Planning & Assessment Act 1979, in that it is not substantially the same development as that originally approved under DA05/0223.
  3. The proposed modification is not considered to be in the public interest.
- B. Council initiates legal action through Council's Solicitors in relation to:**
1. Unauthorised building works;
  2. The premises being used in a different manner from the original consent; and
  3. Outstanding contribution fees.

**REPORT:**

**Applicant:** Mr A Wright  
**Owner:** Mr AB Warner and Mrs AM Warner  
**Location:** Lot 1 DP 553728 No. 4 Wharf Street, Tweed Heads  
**Zoning:** 3(e) Special Tourist (Jack Evans Boat Harbour)  
**Cost:** Nil

**BACKGROUND:**

The subject site is located adjacent to the Chris Cunningham Park and Jack Evans Boat Harbour, opposite Centro Tweed (Tweed Mall) on Wharf Street, Tweed Heads. The existing single storey building was previously a Tourist Information Centre, as well as the sales office for the Latitude 28 proposal, which is now the Ultima site.

On 8 June 2005, Council's Development Assessment Panel issued development consent DA05/0223 for a restaurant known as "*Wright on the Water*" at 4 Wharf Street, Tweed Heads. The original approval was for the installation of a commercial kitchen to run a Steakhouse Restaurant from the existing building. The approval was for two stages of development. Stage 1 involved: the installation of a kitchen and bar within the existing building; the replacement of part of the northern and eastern external walls with retractable doors; and the installation of the services and refuse enclosure on the southern side of the building. Stage 2 incorporated: the construction of a 4.5m wide roofed terrace along the northern and eastern elevations for alfresco dining; and an additional unisex disabled toilet.

At the request of the applicant (and due to parking limitations on the subject site), the proposed use of the restaurant was limited to 40 diners as a condition of consent. The applicant had requested such a limit as it would allow them to '*provide a comfortable dining experience rather than catering for volume*'. The approval included 24 hour trading to allow the restaurant to cater for: late shift workers in the hospitality trade and late night eaters; and to offer early morning breakfast to shift workers and early morning risers. A condition of consent was applied limiting the 24 hour trading to a period of twelve months.

The approval also incorporated development contribution fees, to be paid prior to the release of Construction Certificates for both stages. It should be noted that a substantial amount (\$31, 249.20) of contribution fees remain outstanding to date.

Council's Compliance Officer investigated a complaint regarding unauthorised construction activities in December 2008. The Lessee of the premises (Mr Adrian Wright) and Lessor (Mr Warren Armstrong) were advised that Council records indicated that a Construction Certificate had not been issued for Stage 2 of the development, contribution fees were to be paid (after being recalculated) and the external colour scheme and signage details had to be approved prior to the release of the Construction Certificate for Stage 2.

Further investigation in January 2009 revealed that unauthorised works (beyond that approved under DA05/0223) had been undertaken, involving the following:

- An increase in deck area (and construction of timber deck rather than masonry deck).

- The disabled toilet as constructed does not comply with Australian standards.
- The approved internal configuration of the restaurant has been altered. The changes relate to: a new office (constructed without approval & is not in accordance with BCA requirements); the deletion of kitchen & cool room; and new bar location.
- The external plant area has not been constructed in accordance with approved plans. It is now much larger and incorporates a cool room (which does not comply with the BCA) and unauthorised plumbing works involving a hot water service and basin.
- No roof water drainage provided over the external plant area, which is now partially located over the trade waste treatment device.

A site meeting was held on 17 February 2009 between the Lessor (Warren Armstrong) and several Council officers. Mr Armstrong stated at the meeting that the Lessee (Adrian Wright) was no longer involved with the running of the restaurant (now known as the "iBar"). Mr Armstrong was advised of the abovementioned outstanding issues relating to unauthorised works and payment of contributions. It was agreed at that site meeting that an application to modify Development Consent DA05/0223 and Building Certificate application were required for the unauthorised works immediately (based on the use of the premises as a 'restaurant'). It was also verbally agreed that the restaurant could continue to operate while the S96 application was being processed, noting that the outstanding contribution fees were also to be immediately paid.

At the abovementioned site meeting, Mr Armstrong briefly discussed whether 'lap dancing' would be permissible within the restaurant. Council's Development Assessment Unit advised that all uses of the site should be incorporated within the S96 application, to be assessed on merit. Mr Armstrong was also advised that a Place of Public Entertainment (POPE) licence would be required and that the use of a building as a place of public entertainment could be carried out only with development consent (separate to the S96 application).

Further written confirmation of the requirements (S96 application, outstanding contribution fees etc) were issued to Mr Armstrong in March 2009, noting that legal action may be instigated if urgent action was not undertaken to resolve the matters.

#### **PROPOSED DEVELOPMENT:**

An application to modify Development Consent DA05/0223 was submitted to Council on 19 March 2009. It should be noted that the applicant has been identified as the Lessee rather than the Lessor of the premises.

The modifications sought are as follows:

- Replace the approved external masonry deck with a timber deck, by way of constructing the timber deck above and over the existing masonry deck. In addition, it is proposed to increase the size of the timber deck by an additional 18m<sup>2</sup>;
- Extend the roof area over the deck area to cover the entire deck. The roof is proposed to be pitched;

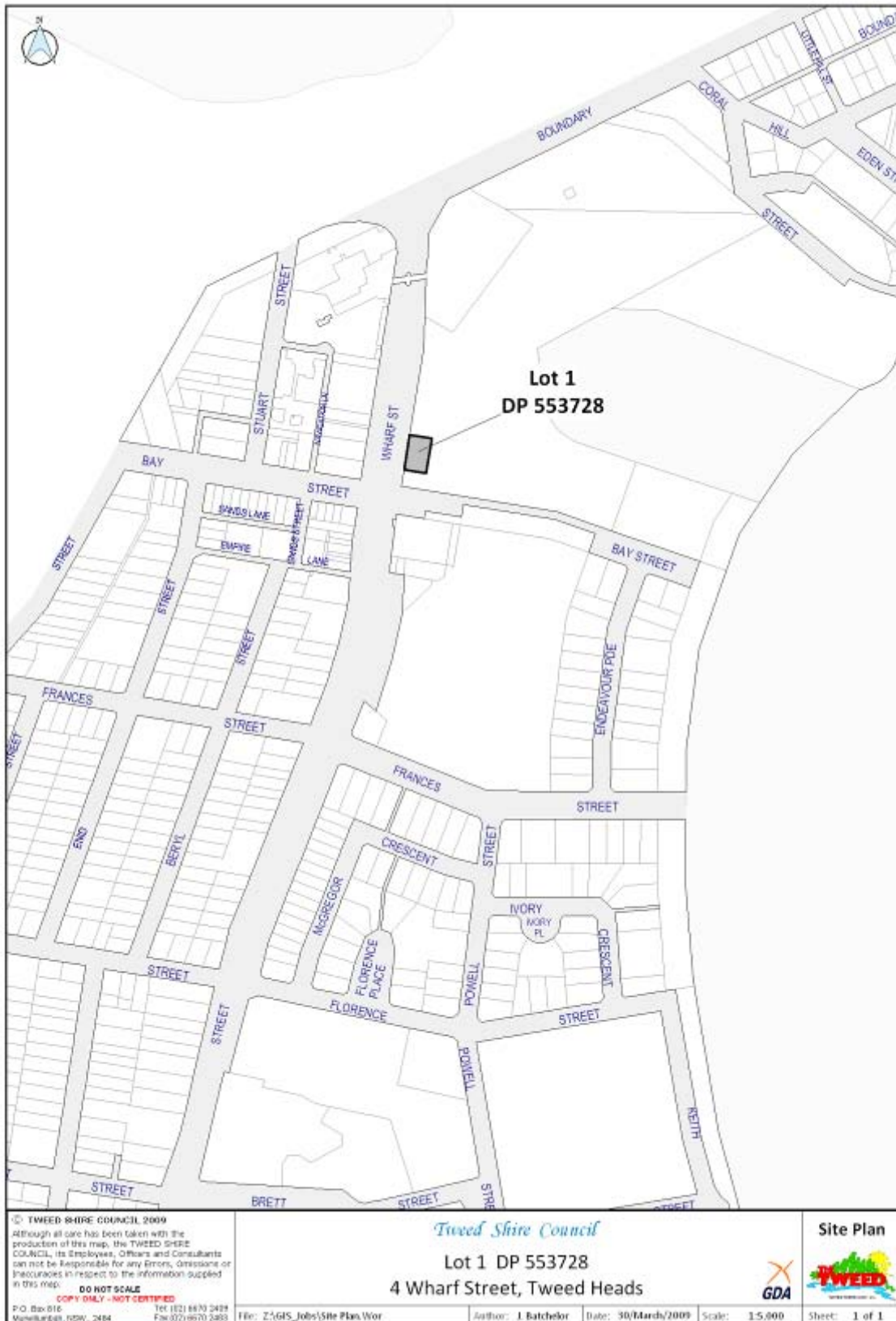
- The internal dining area is to be removed and all dining now on the external deck, with casual dining inside. The stacking doors removed and replaced with walls. Other internal dining walls to lounge area also proposed;
- Bar area moved and increased in size, and kitchen moved;
- Waiting area deleted;
- Office added near entry, adjacent to toilet facilities. An external fan proposed to meet BCA requirements;
- Additional unisex toilet added;
- Increase area of the approved service and refuse area on southern side of the building from 6m<sup>2</sup> to 43m<sup>2</sup>, to be used for storage, refuse, cool room and cleaners amenities;
- Relocate the cool room from within the main building to the service and refuse area noted above;
- Continue 24 hour trading, requiring the removal of Conditions 6 and 7 from the consent.

Rather than submitting documentation for approval regarding external colours and proposed signage, the applicant submitted photos of the external appearance of building with regard colours and signage already undertaken.

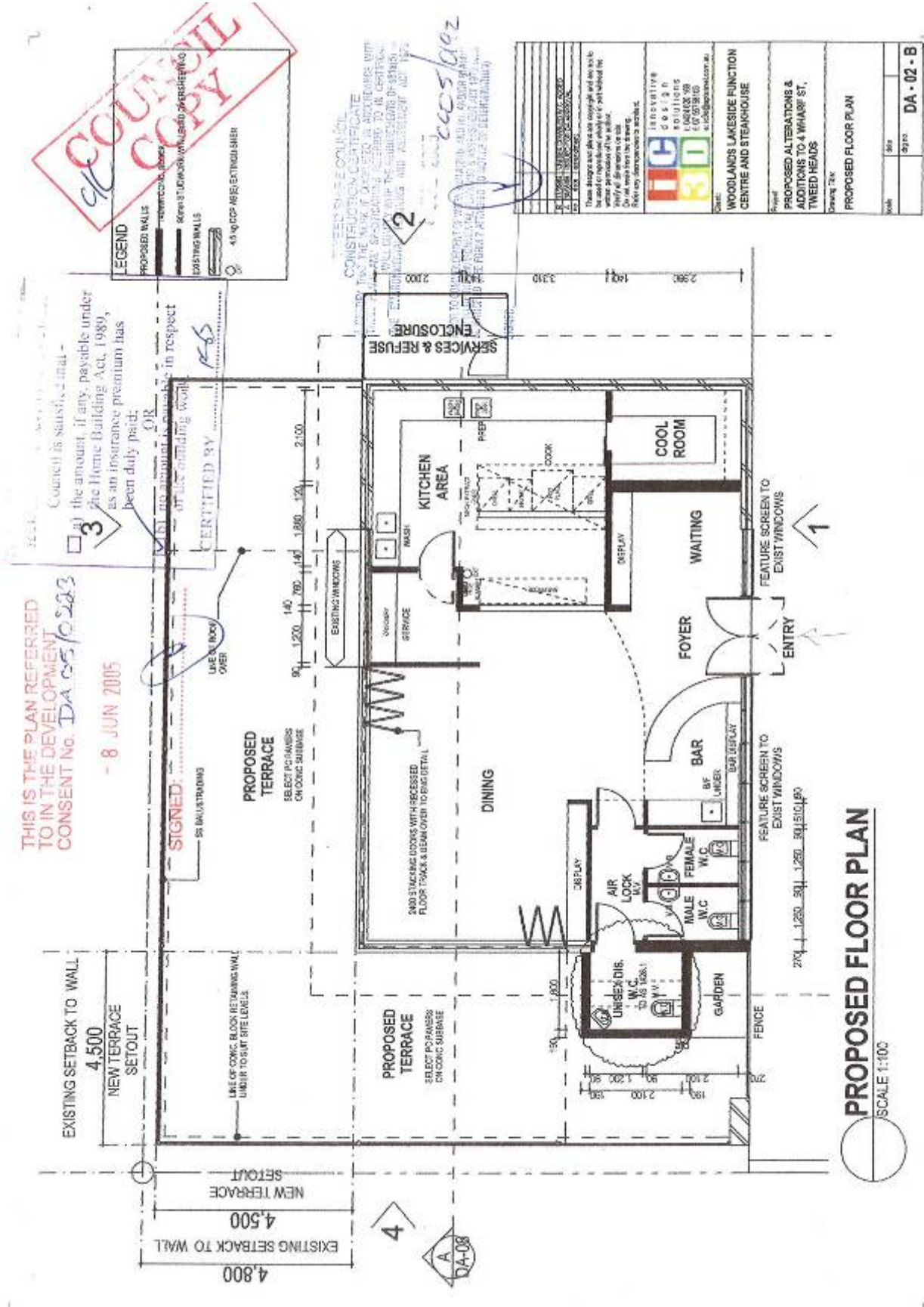
A Building Certificate (for the unauthorised building works already undertaken), an amended Construction Certificate (for any additional building works yet to be constructed), a Sewer application and POPE application (lodged under the Local Government Act 1993) were also submitted to Council for consideration.

Payment of outstanding contribution fees did not accompany the lodgement of the S96 application, despite repeated requests from Council.

**SITE DIAGRAM:**

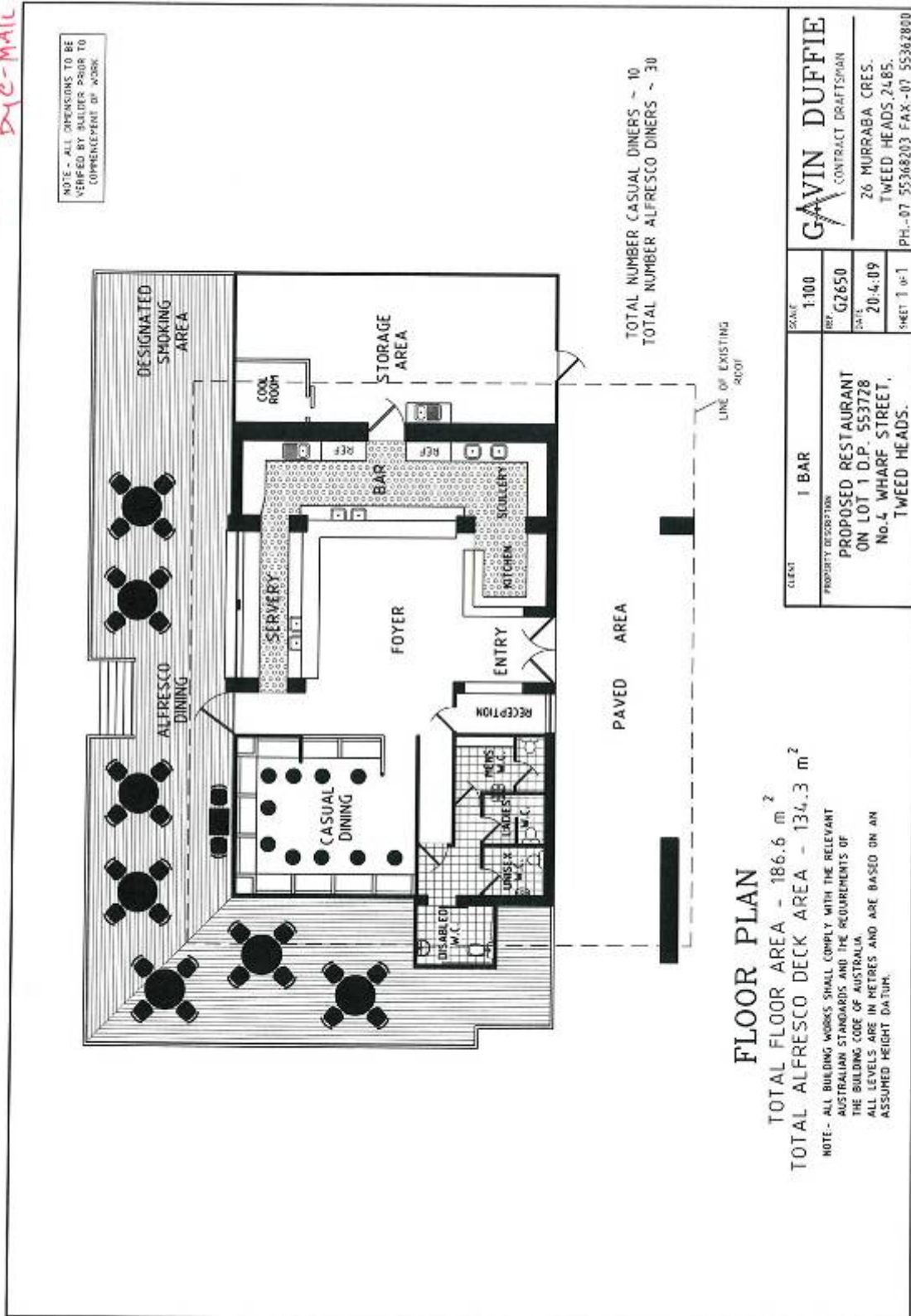


APPROVED LAYOUT PLAN OF RESTAURANT:



PROPOSED INTERNAL LAYOUT:

Received 15.5.09  
by e-mail.





**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****Tweed Local Environmental Plan 2000****Clause 11 – Zone Objectives**

Clause 11 of the LEP relates to zone objectives. The subject land is zoned 3(e) Special Tourist (Jack Evans Boatharbour) under the provisions of the LEP. The primary objective of the zone is to:

*‘Provide for tourist orientated commercial, retail, service, residential and waterfront facilities and activities and public buildings which support and are an integral part of the renewal of certain areas in the vicinity of the Jack Evans Boatharbour, but only at a scale which enhances the character of the locality’.*

A restaurant is defined as a Refreshment Room, which is permissible with consent under the provisions of the Tweed LEP 2000. The applicant has proposed modifications the original approval for a restaurant on the subject site. However, the proposed use of the existing building is not considered to be consistent with the zone objectives. Although the proposed modifications state that the use of the site is that of a restaurant, the nature of the ‘explicit restaurant’ is not considered to enhance the character of the locality.

The original approval related to a ‘Steakhouse Restaurant’ was based on a maximum of 40 diners at any one time. The main intent of the restaurant was to provide diners with a meal in a unique position within Tweed Heads CBD. The proposed modifications result in the premises no longer being a dining experience. Rather, the internal configurations result in the premises largely being a bar, with minimal kitchen facilities proposed.

The additional use of the premises as a Place of Public Entertainment (incorporating lap dancing) is not considered to meet the provisions of the zone objectives. The number of complaints and submissions received against the development support this view.

The proposed Jack Evans Boatharbour Revitalisation Project is currently on public exhibition. The Boatharbour project will create a diverse, vibrant, culturally rich, recreational and tourism centrepiece for the Tweed Heads Town Centre. It is unlikely that the proposed ‘explicit restaurant’ would enhance the character of the ‘centrepiece’ of Tweed Heads or entice tourists to visit the recently approved Tweed Heads Tourist Information Centre (located directly adjacent to the subject site), which is soon to be constructed. As such, the proposed development is not considered to meet the objectives of Clause 11 and the S96 application is not supported.

**Clause 8 – Consent Considerations**

This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:

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

As noted above, Council's Development Assessment Unit is not satisfied that the development is consistent with the primary objective of the 3(e) zone, thereby the proposal is not considered to be consistent with Clause 8(a) of the LEP and the application is recommended for refusal.

Other relevant clauses of the TLEP have been considered elsewhere in this report.

In addition to the above, Council's Development Assessment Unit is not satisfied that the proposed development would not have an unacceptable cumulative impact on the locality or the community as a whole. As such, the proposal is not considered to meet the provisions of Clause 8(c) of the LEP.

#### Clause 17 - Social Impact Assessment

The objective of Clause 17 is to ensure proper consideration of development that may have a significant social or economic impact. The clause notes that when a proposed development is considered likely to have a significant social impact in the locality, a socio-economic impact statement in respect of the proposed development is required. The applicant has not provided a socio-impact statement for Council's consideration. In light of the likely impacts (noted below) and submissions received against the proposed use of the premises, the proposal is not considered to have met the provisions of Clause 17 of the LEP, and as such is not supported.

#### Likely Impacts

##### Car Parking

The subject site has provision for only five (5) off-street car spaces. The original application identified a maximum of 40 diners only, which generated a need for 16 car spaces. However, significant deductions (70%) were applicable at the time, reducing the requirement to five spaces. Those reductions are no longer applicable under the current Car Parking Code (DCP A2). If the same application for 40 diners (based on 166m<sup>2</sup> in floor area + 3 staff) was lodged today, the minimum car parking requirement would be nineteen (19) spaces. Given the subject site only has provision for five spaces, it would be unlikely to be supported.

Although the proposed amendments identify the modified 'dining' area to now be 106m<sup>2</sup>, no detail has been provided regarding staff numbers. As such, a final carparking analysis cannot be undertaken. However, based on the customer provisions alone, 106m<sup>2</sup> of dining area generates a minimum of sixteen (16) car spaces on site. Even if the Tweed Heads Local Area Concession (30% reduction) was applied to this figure, eleven (11) spaces are required for customers, in addition to staff parking. As such, the proposed modifications are not considered to meet the provisions of DCP A2.

Further to the above, the proprietor of the building has identified the premises as having 200 customers on site. This is collaborated by a recent POPE application lodged by Mr Armstrong (which has since been rejected), which notes internal seating and standing as 20 persons and 50 persons respectively, and external seating and standing as 50 persons and 80 standing respectively. In addition, recent inspections carried out by Tweed Police have identified at least on one occasion, approximately 200 patrons at the premises.

In light of the above, the proposed modifications and use of the subject site are not considered to meet the provisions of DCP A2, and are not supported.

### Noise Impact

The original approval was conditioned such that no live or amplified music was permitted without the prior approval of Council. This condition was applied to ensure the amenity of existing and future residents within nearby residential development on the western side of Wharf Street (Ultima) and to the east (Seascope). Council officers have been made aware of live music being played at the premises on occasions, and an A-frame notice board identifying live music seen outside the premises when the unauthorised works were taking place. The proposed modifications make no reference to noise impact at all, therefore no further assessment can be undertaken in this regard. As such, the proposal is not supported.

### Hours of Operation

As a result of the original applicant requesting 24 hour trading to allow the restaurant to cater for: late shift workers in the hospitality trade and late night eaters; and to offer early morning breakfast to shift workers and early morning risers, Council's Environment & Health Unit applied a condition a condition of consent limiting the 24 hour trading to a period of twelve months. This would allow Council to assess the impact of the trading hours and modify the hours of operation accordingly. An additional condition was applied, requiring the applicant to lodge a S96 application 90 days prior to the 12 month period lapsing. No application was received within the 12 month time frame.

The proposed modifications have requested a continuation of the 24 hour trading provision. However, as the application is not considered to be substantially the same (as discussed in detail later in this report) this issue has not been forwarded to Council's Environment & Health Unit for further consideration. In any event, recent advertisements within local newspapers have identified the premises as operating from 5pm til late.

### Number of Patrons

As noted above in the carparking assessment, the original approval was limited to 40 diners. Although no provision was made within the S96 application with regard to patron numbers, Council records indicate that the proprietor has every intention of providing for up to 200 patrons. This leads to potential impacts from lack of off-street parking; noise; and potential security issues arising when customers leave the premises. In the absence of confirmed patron numbers and proposed management plan in place, the proposed development is not supported.

### Place of Public Entertainment

The proposed use of the premises for the purposes of lap dancing results in the need for a Place of Public Entertainment (POPE) licence. The proposed internal reconfiguration identifies a 'casual dining area' inside the building, where lap dancing takes place. In accordance with the provisions of the Department of Planning's Planning Circular PS08-012, an area for entertainment purposes which has '*a character of its own*' or is a '*distinctly separate room*', that part of the premises may be properly described as being used '*for the purpose of entertainment*' and would need to be approved for that use under the Environmental Planning & Assessment Act 1979.

As such, the use of the casual dining area for lap dancing purposes is considered to be defined as a place of public entertainment. The subject site does not have a POPE licence that was granted before 26 October 2007. Therefore, development consent is required for a POPE, as noted above. Further to the applicant being made aware of this requirement, Council has been advised that the internal walls of the lounge area have

been removed, seemingly in an effort to bypass POPE requirements. However, lap dancing continues within the premises, with Tweed Police advising that the...*'lap dance area is clearly visible from the front door now'*. When asked about the removal of the internal walls, the applicant acknowledged that they had been taken down and that an amended floor plan will be submitted. The amended floor plan was received on 15 May 2009.

Despite the removal of the internal walls, development consent is still required for the premises as it is being used for the purpose of entertainment, as noted above. Council's Building Unit has also notified the applicant that his POPE application (lodged under the Local Government Act) is rejected and a development application must be lodged with Council for the proposed use and assessed against the provisions of State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007.

### **Site Suitability**

As noted above under zone objectives, the proposed use of the subject site is not considered appropriate for the surrounding area. The use is not considered to meet the objectives of the zone in that it does not enhance the character of the adjacent Jack Evans Boatharbour.

### **Contribution Fees**

Appropriate contribution fees were applied to the original restaurant, based on the approved layout. Only S94 (TRCP) contributions were paid for Stage 1, with S64 (Water and Sewer) contributions remaining as unpaid contributions. Out of date Stage 2 contributions were paid prior to them being recalculated. As such, a substantial amount (\$31,249.20) of recalculated fees is yet to be paid, despite continual requests from Council. The figure of \$31,249.20 is based on the original layout approved under DA05/0223.

The proposed modifications result in additional floor area to that originally calculated. Based on the applicant's reconfigured layout, an assessment has been undertaken with regard the modified contributions (taking into account fees already paid), resulting in a combined contribution fee of \$38,864.20 being applicable if the proposed development was supported.

**CONSIDERATIONS UNDER SECTION 96(1)(a) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

Section 96 (1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

**Likely Environmental Impact**

As noted above under S79c considerations, Council's Development Assessment Unit is not satisfied that the proposed modifications are of minimal environmental impact, such that refusal of this application is recommended along with legal action regarding unauthorised works and unpaid contributions.

**Substantially the Same Development**

The applicant has noted the following:

*'It is considered that the proposed modifications are substantially the same development to that approved by DA05/0223 and do not raise any significant planning implications. As such it is considered that the modifications can be determined under Section 96 of the Environmental Planning and Assessment Act, 1979'.*

The above statement provided by the applicant is not supported. The changes to the internal layout and additional building works undertaken to date, along with the use of the premises are not considered to be substantially the same as that approved under DA05/0223.

The original restaurant included: a 30m<sup>2</sup> commercial kitchen and internal coolroom; a 6.6m<sup>2</sup> bar area; internal dining area; 125m<sup>2</sup> external terrace; and a 6m<sup>2</sup> external services & refuse enclosure. The proposed development incorporates: a 12m<sup>2</sup> preparation area identified as a 'kitchen'; a 30m<sup>2</sup> bar area; an internal casual dining area (lap dancing); an external timber deck (18m<sup>2</sup> larger than originally approved); and a 43m<sup>2</sup> external services / refuse area (including cool room). In addition to the physical changes to the building not being substantially the same, the use of the premises is questionable in terms of not having the same 'essence or character' as the originally approved development.

The applicant was notified in writing on 8 April 2009 that the proposed S96 application was not acceptable in terms of the proposed development not being 'substantially the same' development and should be withdrawn. In addition, the applicant was advised that a new development application should be lodged, clearly identifying the proposed new layout of the premises and the use of each part of the building. The new application

would have to address issues such as zone objectives, parking, noise, trading hours, patron numbers, POPE requirements and payment of contributions.

Despite Council's advice, the applicant has disregarded the issues raised by Council in terms of a new development application and have requested that the S96 application proceed as lodged.

### **Notification/Submissions**

As a result of the proposed modifications not being considered as 'substantially the same' as the original approval, the application to modify DA05/0223 has not been placed on public exhibition. Despite this, Council records indicate that MP Justine Elliot's office has received several complaints about the proposed use of the premises, in addition to several written submissions lodged directly to Council. The following is a summary of the issues raised by the submissions:

- Complaints from customers (locals & tourists) of nearby retail premises that this type of establishment is allowed to operate;
- Noise impact during the unauthorised construction;
- Noise impact from live & amplified music on Friday and Saturday nights, often until after midnight;
- No security / management in place when customers leave the premises;
- The premises is a pub, not a restaurant;
- Often have large crowds – fire hazard;
- Scantily clad women soliciting out the front of the premises; and
- Lap dancing premises in full view of the adjoining family park.

### **PUBLIC INTEREST:**

As noted above, the proposed modifications are not supported in terms of non compliance with regard to: zone objectives; potential impacts upon the surrounding environment; site suitability; and satisfying S96 provisions. The applicant has been repeatedly requested to withdraw this application and lodge a new development application. The applicant's disregard of these requests, the continual unauthorised use of the premises and non payment of outstanding contribution fees is not considered to be in the public interest.

### **OPTIONS:**

1. Refuse the proposed modifications to Development Consent DA05/0223; and
2. Initiate legal action through Council's Solicitor's in relation to: unauthorised building works; unauthorised use of the building; and outstanding contributions fees; or
3. Approve the S96 application.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has a right of appeal in the NSW Land and Environment Court if dissatisfied with the determination.

### **POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed modifications to amend Development Consent DA06/1442 are not considered to meet the provisions of S79C or S96 (1A) of the Environmental Planning and Assessment Act 1979. As such, the proposed modifications are not supported and are subsequently recommended for refusal. Legal action is recommended with regard to unauthorised building works; unauthorised use of the building; and outstanding contributions fees.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P6 [PR-PC] Development Application DA08/1254 for Relocation of Existing Rural Workers Dwelling to a New Location on the Same Site at Lot 1 DP 1110417, No. 489 Duranbah Road, Duranbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1254 Pt1**

**SUMMARY OF REPORT:**

Council has received a development application seeking approval to relocate an existing rural workers dwelling to a new location on the same property. The dwelling will be relocated from its current location in the north western corner of the property adjoining Duranbah Road and will be located closer to the owners' residence.

The rural workers dwelling is proposed to be relocated centrally on the property and will utilise the existing driveway that leads to the main dwelling house. The single storey dwelling has a proposed gross floor area of 133m<sup>2</sup>, comprising two bedrooms, one bathroom, a combined living and dining area, kitchen, deck area and a detached carport and laundry.

Because the allotment has a total area of 7.125 hectares and is zoned 1(b1) Agricultural Protection under the Tweed LEP 2000, Clause 18(3) of the LEP states that rural workers dwellings require a minimum area of 10 hectares to be erected on land within the 1(b1) zone. As a result, a SEPP 1 Objection was required to be lodged to vary the development standard. Therefore, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to approve a development application with a SEPP 1 objection greater than 10%.

Following the assessment of the application, the proposal is generally compliant with all the applicable planning controls, and is recommended for approval subject to conditions. The applicants have satisfactorily demonstrated that the development standard is unreasonable and unnecessary as the dwelling is an already approved dwelling for the purpose of housing a rural worker. The applicants have also justified reasonably that the dwelling has been continually used as a rural workers dwelling and with the increase in farming practices on the property, the need for a rural worker living on site continues to be necessary.

**RECOMMENDATION:**

That: -

- A. State Environmental Planning Policy No. 1 objection to Clause 18(3) of Tweed Local Environmental Plan 2000 regarding the erection of a rural workers dwelling on an allotment of land having less than 10 hectares in Zone 1(b1) be supported and the concurrence of the Director-General of the Department of Planning be assumed.
- B. Development Application DA08/1254 for a relocation of existing rural workers dwelling to a new location on the same site at Lot 1 DP 1110417, No. 489 Duranbah Road Duranbah be approved subject to the following conditions: -

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos DA00-DA11 prepared by Barefoot Sustainable Design and dated 12/12/2008, except where varied by the conditions of this consent.

[GEN0005]

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

[GEN0115]

**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. Prior to the issue of a construction certificate the applicant is required to lodge an application to install/operate an onsite sewerage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval.

[PCC1285]

**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
  - (i) 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]

6. 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]

7. 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]

8. 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]

9. 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]

## **DURING CONSTRUCTION**

10. 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]

11. 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]

12. 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]

13. 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]

14. 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]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>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]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

16. 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]

17. 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]

18. 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]

19. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

## USE

20. 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]

21. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

22. The dwelling is to be occupied only by a person engaged in agricultural pursuits on the property.

[USE0425]

23. In the event that untreated or untested water is supplied a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.

[USENS01]

- 24. The water supplied for human consumption must comply with the NSW HEALTH *Private Water Supply Guidelines* and the *Australian Drinking Water Guidelines* published in 2004 by the National Health and Medical Research Council.**

[USENS02]

- 25. A Drinking Water Management Plan shall be compiled & implemented and made available on-site as a reference document.**

[USENS03]

- 26. Prior to the commencement of operations the operator of the rural workers dwelling shall be registered with Tweed Shire Council's Public Health Register for Private Water Supplies and pay the associated fee.**

[USENS04]

**REPORT:**

**Applicant:** Mr JA Cutts  
**Owner:** Mr RD Churchill and Mrs S Cutts  
**Location:** Lot 1 DP 1110417 No. 489 Duranbah Road, Duranbah  
**Zoning:** 1(b1) Agricultural Protection  
**Cost:** \$180,000

**BACKGROUND:**

Council has received a development application seeking approval to relocate an existing rural workers dwelling to a new location on the same property. The dwelling will be relocated approximately 200m from its current location in the north western corner of the property adjoining Duranbah Road and will be located closer to the owners' residence.

The subject property is legally described as Lot 1 DP 1110417, No. 489 Duranbah Road, Duranbah. The property is approximately 7.125 hectares and has two boundaries fronting Duranbah Road.

The property has been utilised in the past for growing banana crops, however the farm is undergoing a period of change with new owners and has substantially increased its agricultural operations to become a certified organic farm growing legumes, potato, pumpkin, artichoke, zucchini, chard, broad beans, fennel beetroot, herbs, cabbage, cavolo nero and lettuce for Brisbane and local restaurants. The applicants have also indicated that they have planted a number of stands of citrus trees to further generate income for the property.

The property is generally cleared of any vegetation and has numerous buildings scattered over the site and include the existing rural workers dwelling, the owner's residence, and various machinery and storage sheds.

The rural workers dwelling is proposed to be relocated centrally on the property and will utilise the existing driveway that leads to the main dwelling house. The single storey dwelling has a proposed gross floor area of 133m<sup>2</sup>, comprising two bedrooms, one bathroom, a combined living and dining area, kitchen, deck area and a detached carport and laundry.

It is understood that the existing rural workers dwelling is over 40 years old and subsequently no Council records exist for its original approval.

However, on 20 September 1978 an application was submitted to Council for permission to carry out development under Interim Development Order No. 2 for a new three bedroom brick veneer dwelling on the land. As the property already contained an existing cottage on the property (subject rural workers dwelling) the application was referred to the then NSW Planning Commission for its concurrence. In the Shire Engineers Town Planning Report, it states that the commission advised that concurrence may be assumed if the application met certain requirements, for example that there was a bona fide rural operation being carried out on the land and that prima facie the proposed

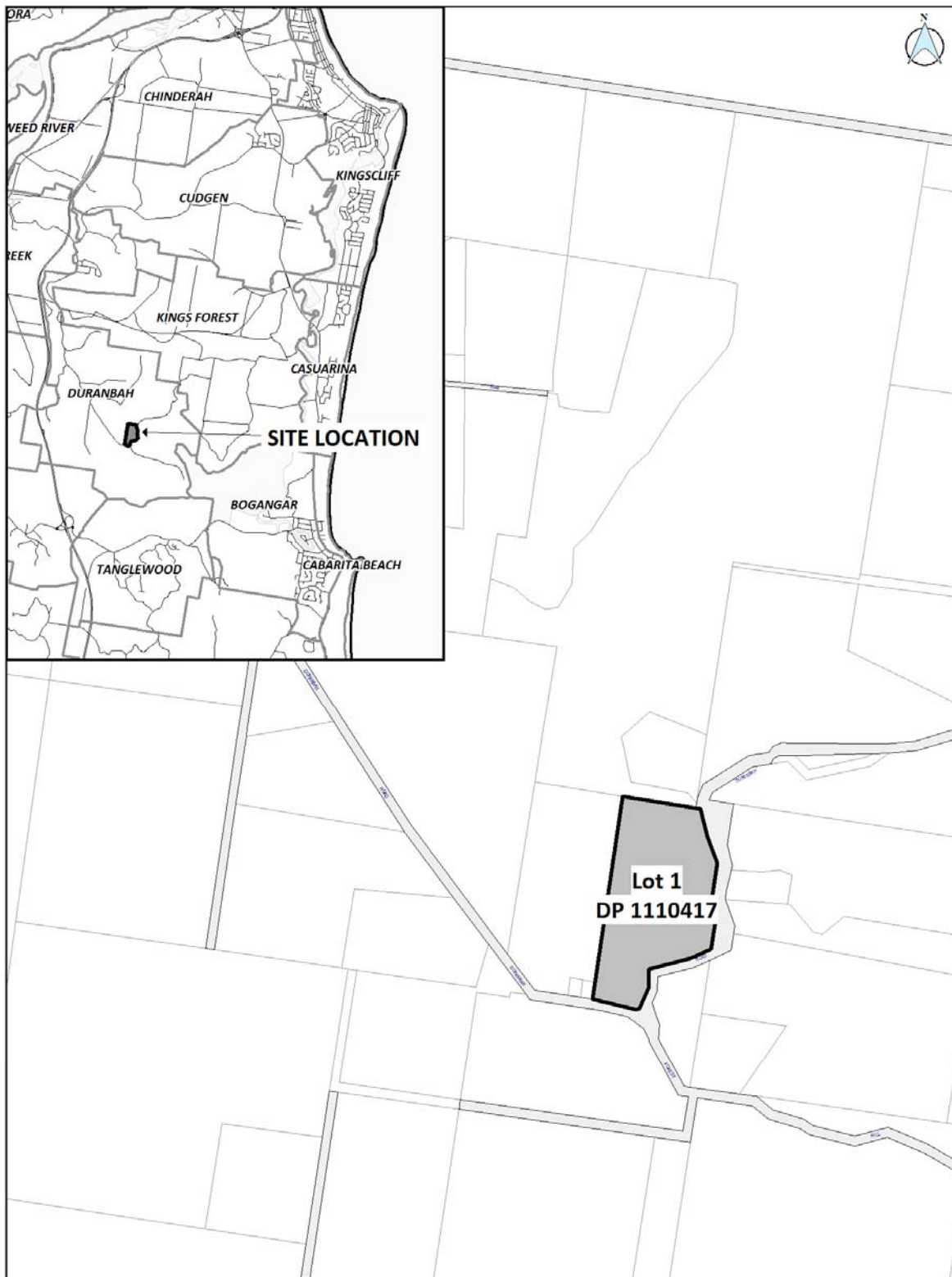


dwelling was to be used for a worker to be engaged on the property and not a subterfuge for residential development by another means. The recommendation in that report was relevantly that the existing cottage on the site was to be occupied by a person working on the farm.

Permit Number (PN 7169) was issued on 5 October 1978 for the erection of the new owner's residence and a condition of consent was imposed stating that the existing cottage on site is to be occupied by a person working on the farm. This permit therefore legally approved the cottage as a rural workers dwelling.

Because the allotment has a total area of 7.125 hectares and is zoned 1(b1) Agricultural Protection under the Tweed LEP 2000, Clause 18(3) of the LEP states that rural workers dwellings require a minimum area of 10 hectares to be erected on land within the 1(b1) zone. As a result, a SEPP 1 Objection was required to be lodged to vary the development standard. Therefore, the purpose of this report is to have the application determined by a full Council as Council Officers do not have the delegation to approve a development application with a SEPP 1 objection greater than 10% in accordance with the Department of Planning's circular.

**SITE DIAGRAM:**



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*Tweed Shire Council*

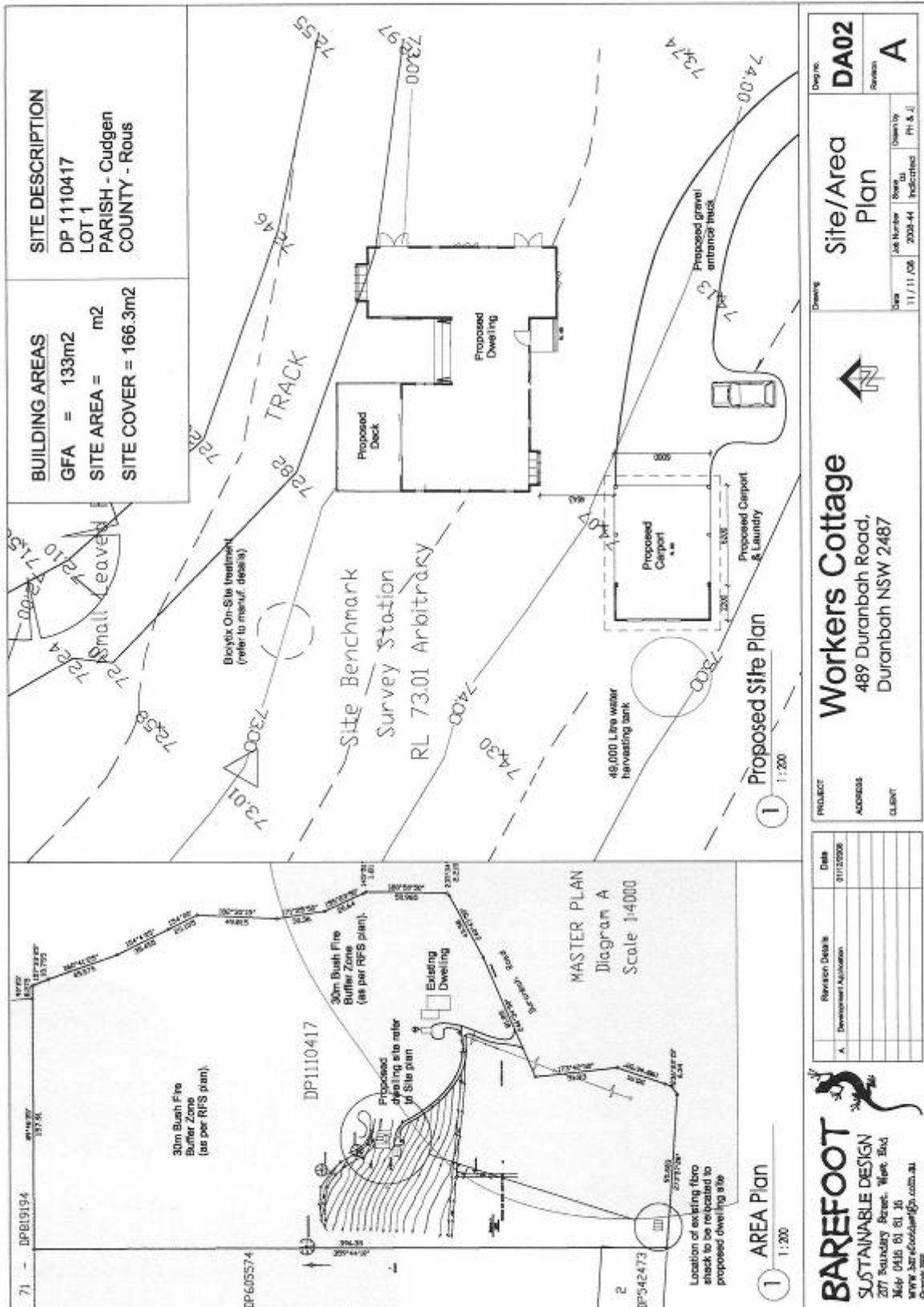
Lot 1 DP 1110417  
 No. 489 Duranbah Road, Duranbah

Site Plan



File: Z:\GIS\_Jobs\Site Plan.Wor Author: J. Batchelor Date: 14/May/2009 Scale: 1:10,000 Sheet: 1 of 1

DEVELOPMENT PLANS:



**BUILDING AREAS**  
 GFA = 133m<sup>2</sup>  
 SITE AREA = m<sup>2</sup>  
 SITE COVER = 166.3m<sup>2</sup>

**SITE DESCRIPTION**  
 DP 1110417  
 LOT 1  
 PARISH - Cudgen  
 COUNTY - Rous

**Workers Cottage**  
 489 Durambah Road,  
 Durambah NSW 2487

PROJECT ADDRESS CLIENT

Drawing: **Site/Area Plan**

Diagram: <b>DA02</b>	Revision: <b>A</b>
Date: 11/11/08	Job Number: 2008-44
Drawn by: PH & J	Checked by:

Revision Details	Date
A. Developer Application	01/12/08

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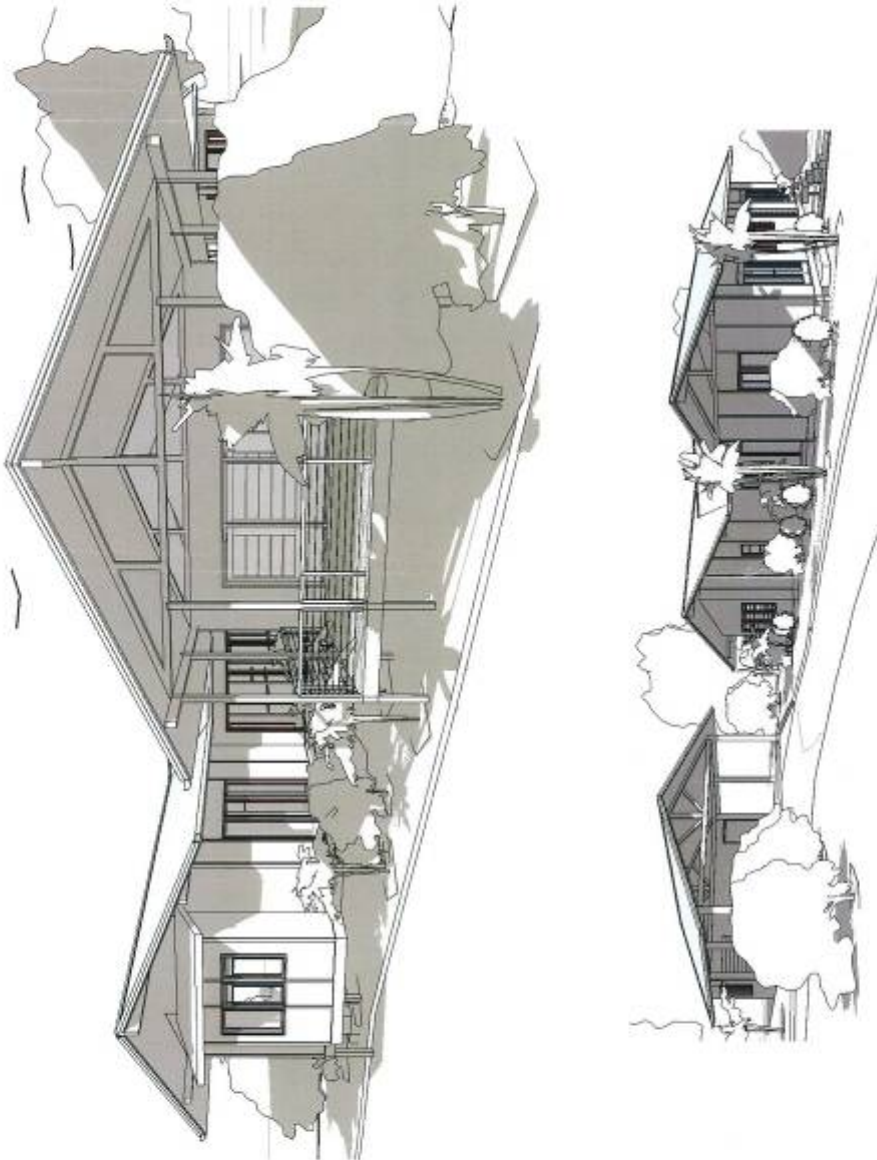
Description	Date
A - DA Application	12.12.2008

PROJECT  
40761883  
CLIENT

**Workers Residence :**  
489 Durambah Road - Durambah - 2487  
John and Susan Cutts

Drawing  
**Artist Impression**  
Date: 08.12.2008  
Job Number: 2008144  
Scale: 1:100  
Drawn by: PH/JJ

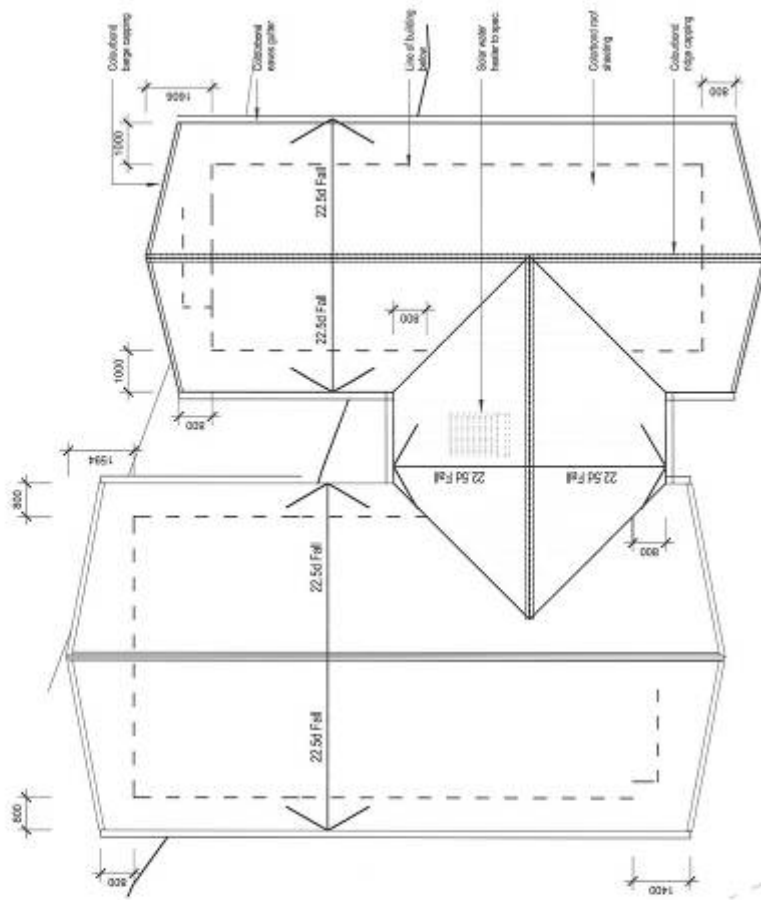
Drawn by: **DA11**  
Revision: **A**



<b>BAREFOOT</b> SUSTAINABLE DESIGN 207 Boundary Brook, West End May 04/6 of 16 www.barefootdesign.com.au		Description A DA Application	Date 12.12.2008	PROJECT Workers Residence	Drawing Perspectives	Date 05.12.2008	Scale 200mm:1	Drawn by Author	Design No. DA00	Revision A
		ADDRESS 489 Duranbah Road - Duranbah - 2487	CLIENT John and Susan Cutts							

### Rainwater Harvesting

Average Annual Rainfall = 1208mm  
 Roof collection area = 2650m<sup>2</sup>  
 Annual Rainfall Excess = 238,200 litres  
 Annual Rainfall Excess available for collection = 198,566 litres  
 Annual Rainfall Excess available for collection (after 20% loss) = 158,853 litres  
 Recommended tank size (at 2,000 litres) = 79 tanks



1 Roof Plan  
 1 : 100

**NOTES:**  
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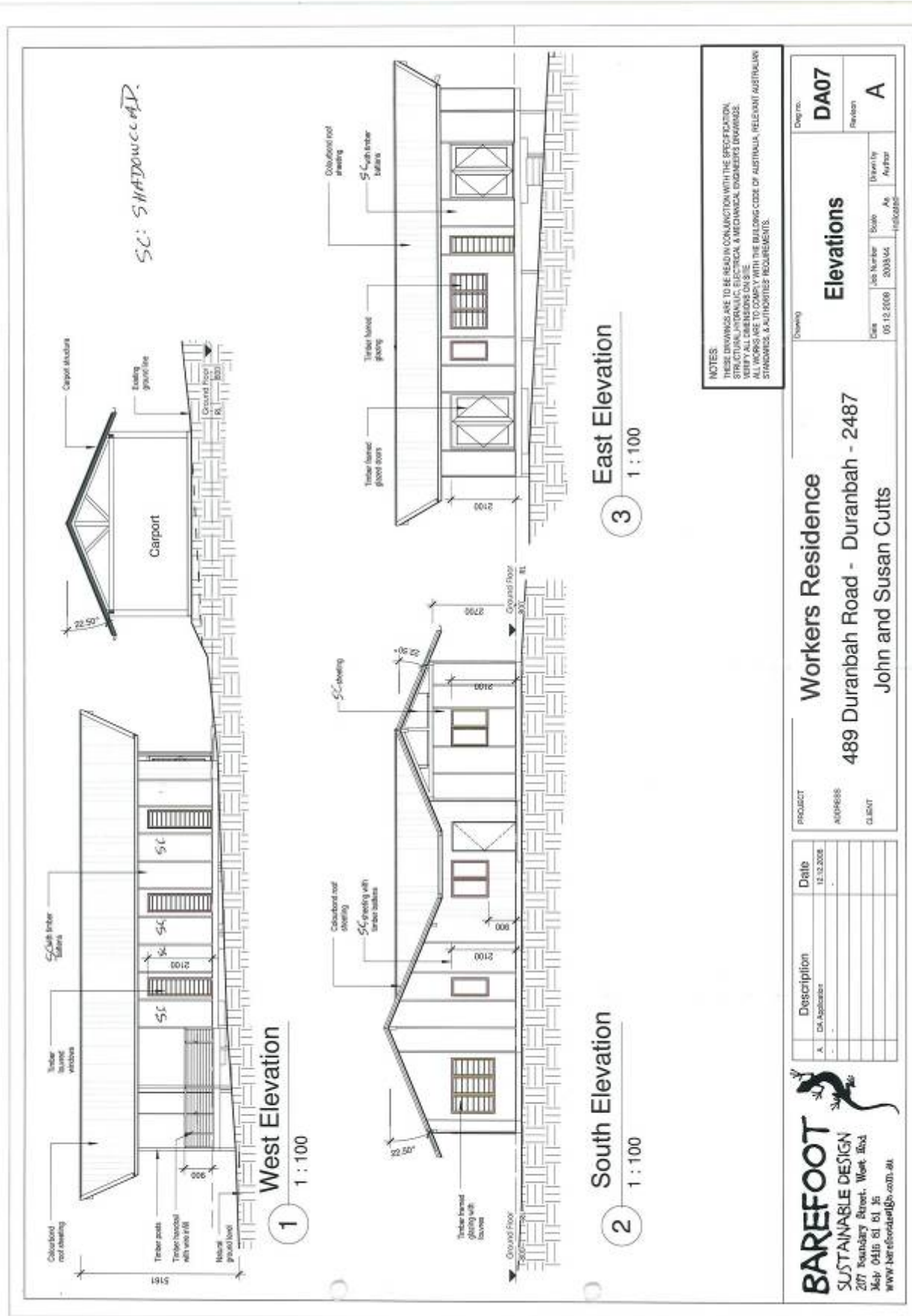
Drawing			Day no.		
DA06			Revision		
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Date	Job Number	Scale	Drawn by	As	Author
05.12.2008	2008104				

**Workers Residence**  
 489 Duranbah Road - Duranbah - 2487  
 John and Susan Cutts

PROJECT  
 ADDRESS  
 CLIENT

Description	Date
A DA Approval	12.12.2008

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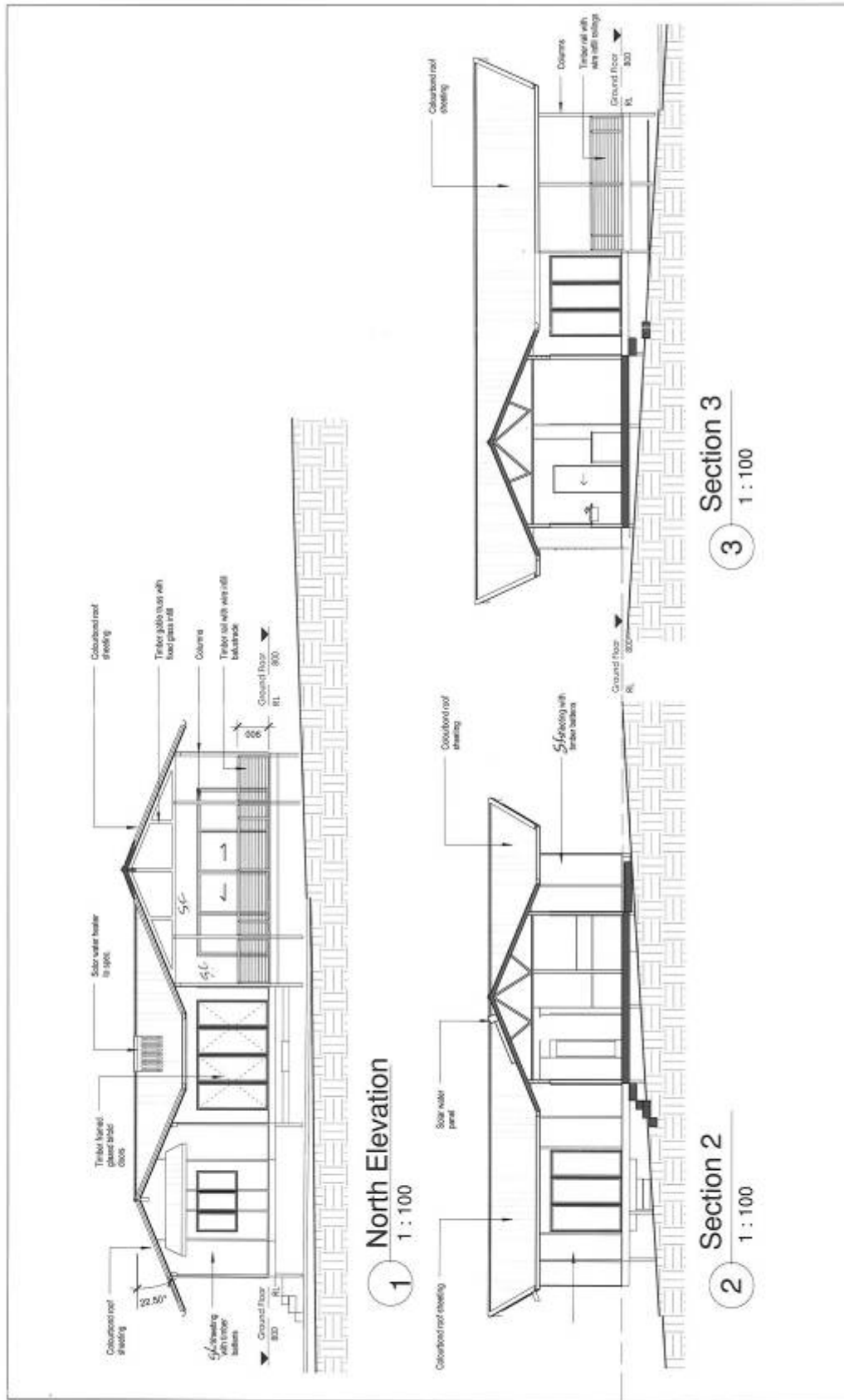
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Drawing		Elevations		Proj. No.	
Description		DA07		Revision	
Date		05.12.2008		Author	
Scale		As Shown		Checked	
Job Number		300804		Project	
Client		John and Susan Cutts		Drawing	

**Workers Residence**  
 489 Duranbah Road - Duranbah - 2487  
 John and Susan Cutts

Description	Date
A. DA Approval	12.12.2008

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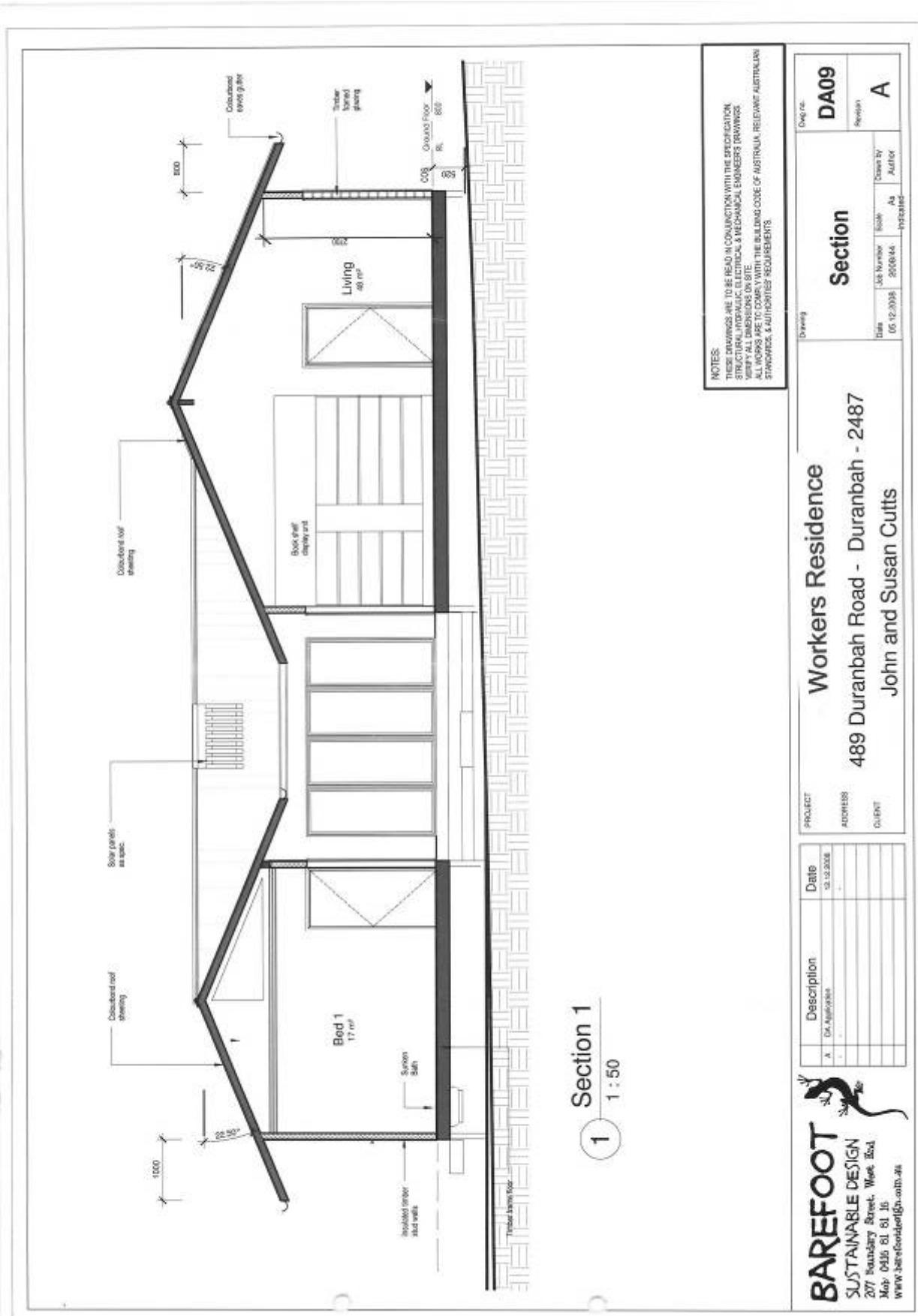
Drawing No. <b>DA08</b>		Revision <b>A</b>	
<b>Elevations</b>			
Date	Job Number	Scale	Drawn by
05.12.2009	309504	1:100	Author

**Workers Residence**  
**489 Duranbah Road - Duranbah - 2487**  
**John and Susan Cutts**

Description	Date
A. DA Application	05.12.2009

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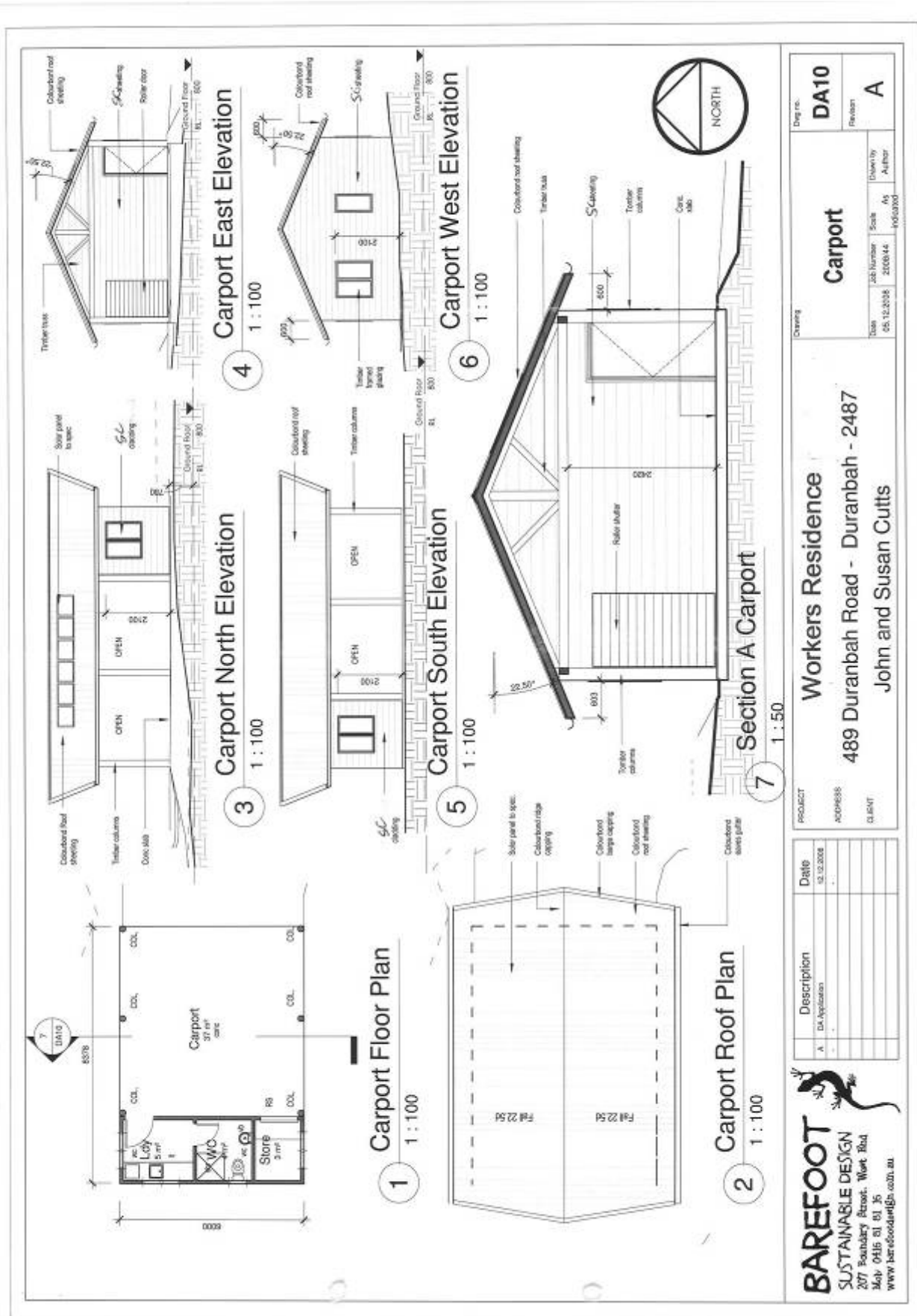




Section 1  
1 : 50

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<p><b>Date</b>          12.12.2008</p>	<p><b>Description</b>          A DA Approval</p>	<p><b>DATE</b>          06.12.2008</p>	<p><b>SCALE</b>          As Presented</p>	<p><b>Drawn by</b>          AJC</p>	<p><b>Checked by</b>          AJC</p>



<b>BAREFOOT</b> SUSTAINABLE DESIGN 207 Boundary Road, West Hill, Mt. Orléans NSW 1515 www.barefootdesign.com.au	Description DA Application	Date 12.12.2008	PROJECT 4049888 CLIENT JOHN AND SUSAN CUTTS	Drawing <b>Carport</b>	Title 489 Duranbah Road - Duranbah - 2487 John and Susan Cutts	Drawing no. <b>DA10</b>
						Revision <b>A</b>
Scale As Author		Date 05.12.2008		Job Number 2008044		Author JOSH WOOD

**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000****Clause 4 - Aims of the Plan**

The proposed development is considered to be consistent with the aims of the Tweed Local Environmental Plan. The proposed development is considered to be consistent with the vision of the shire “to manage growth so that the unique natural and developed character of the Tweed Shire is retained.”

The proposed development is consistent with the objectives of the Tweed LEP, therefore it is considered to be in keeping with the aim of the plan in particular to the aim that all development should be restricted to certain land within a zone and that specific development requirements should apply to certain land in a zone or to a certain type of development.

**Clause 5 - Ecologically Sustainable Development**

The proposed development is considered to be generally compliant with the principles of ecological sustainable development. The proposed development is on cleared land with two dwelling houses improved on the site. Therefore the proposed development is considered to have minimal impact on the environment and in keeping with the precautionary principle, inter generational equity and the conservation of biological diversity and ecological integrity.

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

The proposed development if approved would be not create an adverse cumulative impact in the Shire. The Tweed Shire has many properties which have old approved rural workers dwellings erected on the allotment, however this proposal is for the relocation only and the applicants have given documentary evidence demonstrating that the rural workers dwelling is still required for the effective operation of the property. Therefore, the proposed development if approved would not establish a cumulative impact in the Shire.

**Clause 8 - Zone objectives**

The objectives of the 1(b1) Agricultural Protection Zone are:

**Primary objective**

- to protect identified prime agricultural land from fragmentation and the economic pressure of competing land uses.

## **Secondary objective**

- to allow other development that is compatible with agricultural activities.

The subject land is zoned 1(b1) Agricultural Protection under the provisions of the Tweed LEP. The proposed rural workers dwelling is permissible with development consent in this zone.

It is considered that the proposed new location of the existing rural workers dwelling will allow for increased agricultural production on site through placement on a less productive location on site.

### Clause 15 - Essential Services

In accordance with Clause 15, the proposed rural workers dwelling must have adequate provision for essential services. Council is satisfied that the dwelling can be appropriately serviced by an approved onsite effluent treatment. The dwelling would gain its water supply from tank water on the property. These services are considered satisfactory.

### Clause 16 - Height of Building

The proposed building adequately satisfies the nominated height requirements contained within Clause 16.

### Clause 17 - Social Impact Assessment

Not applicable to this application.

### Clause 35 - Acid Sulfate Soils

The subject site is nominated as Class 5 as indicated on the Acid Sulfate Soils Maps. The proposed new location of the rural workers dwelling will be located wholly within the Class 5 component of the land and does not involve excavation extending beyond standard footings. Therefore neither the water table nor acid sulphate soils will be affected by the development.

### Other Specific Clauses

Clause 18 – Rural Workers Dwelling enables the provision of on farm accommodation for rural workers where there is a genuine need for them and it has been demonstrated that the farm can support their employment. This clause specifies that consent may be granted for a rural workers' dwelling only if Council is satisfied that:

- a. Its erection will not impair the use of the land for agriculture, and

- b. The existing agricultural operation genuinely necessitates that rural workers reside on the farm and the operation has the economic capacity to support them, and
- c. The resident of the rural workers dwelling is to be employed on that farm, and
- d. The erection of a rural workers dwelling would not result in there being any more than one rural workers dwelling on the farm, and
- e. The dwelling will not be built on land classified as Class 1 or 2 agricultural land by the Department of Agriculture.

Since the subject dwelling was approved as a rural workers dwelling in 1978, the dwelling has been used continuously for the purpose of housing a rural worker. The applicants have stated that because the farm has been certified organic, the need for a full time worker living onsite has become more essential than in the past for the effective cultivation and protection of the income producing crops of the farm. The following is a list of the current roles the rural worker performs:

- Maintenance of farm plant and machinery;
- Crop cultivation and harvest;
- Planting of citrus trees;
- Clearing the existing banana crop by organic means which requires the physical removal of the trees as chemical eradication is not permitted with organic certification;
- Repair and replacement of fencing to protect crops from neighbouring livestock that stray inadvertently;
- Establish free-range chickens houses in accordance with sustainable farming practices;
- Repair, replacement and expansion of irrigation systems pre-existent on the land;
- Renovation of the existing machinery and storage sheds;
- Landscape design work to create a barrier between other properties to reduce any potential overspray problems and to create windbreaks where required;
- Stock feeding and protection.

The owners whilst assist with the day to day natured jobs on the property, also have external employment ventures and are prone to absences of several days at a time. Therefore, because of the nature and sensitivity of the crops grown onsite (certified organic), the activities associated with cropping the land warrants the need for a rural worker to be in attendance at all times. The property also employs 4 casual employees in addition to the full time rural worker, of who perform seasonal duties.

It must be noted that this is not a new rural workers dwelling, but rather the relocation of an existing rural workers dwelling to a more suitable position on

the property. The applicants state the following reasons for relocating the rural workers dwelling:

- The current position would be more suitable to be used for prime agricultural purposes;
- The soil character of the existing location is better quality for growing crops;
- The existing rural workers dwelling is approximately only 10m apart from the dwelling house of the adjoining concessional allotment;
- The dwelling house is positioned adjoining partly on the road reserve.

The new location was chosen as it is positioned away from the adjoining lands property boundary and from the road reserve being Durambah Road where it currently sits. The new site location was chosen as it is closer to the owners dwelling and it will utilise the existing driveway in terms of access.

### **North Coast Regional Environmental Plan 1988**

#### **Clause 12: Impact on agricultural activities**

Clause 12 provides that consideration must be given to the likely impact of the proposed development on the use of the adjoining or adjacent agricultural land and whether the development will cause loss of prime agricultural land and whether the development will cause a loss of prime crop or pasture land.

The relocation of the existing rural workers dwelling to a new location on the property would not result in a loss of prime agricultural land.

The surrounding land is used for cattle grazing and associated agricultural purposes, the relocation of the house would not result in any land use conflict given the dwelling would be occupied by a farm worker, who would be aware of adjacent farming activities, therefore, the potential for conflict would be further diminished.

### **State Environmental Planning Policies**

#### **SEPP No. 1 – Development Standards**

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

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

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standard is unreasonable or unnecessary in the circumstances of the case, and specifying the grounds of that objection.

As established, the proposed subdivision requires a variation to the 10 hectare minimum allotment size stipulated under Clause 18(3) of the LEP.

Clause 18(3) states:-

*“Consent must not be granted to the erection of a rural workers dwelling on an allotment of land having an area of less than 40 hectares in Zone 1(a), 1(b2) or 7(d) or an allotment of less than 10 hectares in zone 1(b1).”*

The variation is required in relation the allotment being under the 10 hectare development standard. As discussed, the purpose of proposal is to relocate an existing approved rural workers dwelling to an alternative location on the property.

The underlying objective of the development standard is to enable the provision of on-farm accommodation for rural workers only where there is a genuine need for them to live on-site and there is a demonstrated capacity of the existing farm to support their employment.

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

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

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

- *“The property is 7.125 hectares and as such is in conflict with Clause 18(3). Despite this, the property has been, and continues to be, consistent with the objectives of Clause 18 of the Tweed LEP since the approval of the original workers dwelling in 1978.*
- *The dwelling has been used continuously for the purposes of a rural workers dwelling since 1978. There has been a genuine need for a rural worker to be living on site as they play the central role in the maintenance of farm plant and machinery, and the cultivation and protection of the income-producing crops of the farm. All day to day issues of irrigation, stock feeding and protection, crop cultivation and harvest, plant maintenance and repair, and most other odd jobs are his responsibility.*
- *The owners of the property, while resident, are prone to long absences of several days at a time due to the nature of their jobs.*

- *The successful cropping of the land relies upon the rural worker for constant tending of it especially during periods of extreme weather when immediate action is required. Onsite accommodation is an essential part of this vigilance.*
- *Relocating the current rural workers dwelling in no way impairs the use of the land for agriculture and would not result in there being any more than one rural workers dwelling on the farm.*
- *The dwelling will be relocated from a position known as prime agricultural land within the property to a position of lesser agricultural merit. The current workers dwelling has served the farm well for many years but we feel it will strengthen the long term prospects of the farm if the workers dwelling was relocated to a more suitable position on the property. It currently sits astride the western road easement boundary and is noise-effected by the new Pacific Highway which lays below to the west. Providing a safe, comfortable and suitably sited home for the rural worker serves to stabilise the workforce and relieve economic pressure on the business.*
- *The relocation of the dwelling away from the close proximity of the neighbouring residence minimises the conflict with adjoining land uses and allows more room near the existing packing and machinery shed to expand and the seed raising area thus satisfying the secondary objective of the zone.*

*It is for these reasons that I feel that the standard is both unreasonable and unnecessary in our circumstances as our application remains consistent with the objectives of the standard in that we require a full time onsite rural worker and that the existing farm has a demonstrated capacity to support their employment despite being less than 10 hectares. It is not thought that approval of this application would cause a precedent for future applications as it relies on the previous approval of a rural workers dwelling on the property, continuing use of the rural workers dwelling, correcting existing non-compliance issues and merely seeks to improve the property and its ability to comply with the objectives of the Tweed LEP.”*

Comment:

It is considered that the reasons outlined above, attest that the development standard is unreasonable and unnecessary as the rural workers dwelling is an already approved dwelling for the purpose of housing a rural worker. The applicants have justified reasonably that the dwelling has been continually used as a rural workers dwelling and with the increase in farming practices on the property, the need for a rural worker living on site is imperative.



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

The aims of the policy are as follows:-

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

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

Comment:

The proposed development will not affect the proper management, conservation of natural resources and the promotion and co-ordination of the orderly and economic use of the land as the application is for the relocation of an existing rural workers dwelling. The proposed departure is not significant and granting consent to such would not be inconsistent with the aims of the Policy.

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

Comment:

The proposed developments non-compliance with Clause 18(3) will not raise any matters for state and regional environmental planning. On a state level the DoP have gazetted SEPP (Rural Lands) 2008, which gives directions for Councils when considering an application to which the SEPP applies the Council must consider the inappropriate siting of dwellings in rural areas, which often results in land use conflict between rural and non rural uses which can potentially impact on farm activities. The SEPP requires that before granting consent Council must consider any impacts the development will have on other uses in the locality. The proposed new location of the dwelling achieves these directions as they are not creating a new rural workers dwelling but rather relocating the dwelling to a more suitable location.

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

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

Comment:

Despite noncompliance with the standard, the applicants have adequately demonstrated through documentary facts and figures that there is still a genuine need for a rural worker to live on site and there is a capacity of the existing farm to support their employment. Therefore, the proposed development satisfies the objective of the standard.

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

Comment:

The underlying objective and purpose of the standard is not directly relevant in this case as the rural workers dwelling is already approved and this application is for the relocation of the dwelling and not the establishment of a new dwelling. The applicants have also justified reasonably the need for the retention of such dwelling.

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

Comment:

A rural workers dwelling would not be possible if compliance was required and therefore would impact on the success of the agricultural activity.

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

Comment:

The development standard for minimum lot sizes for rural workers dwellings has been upheld consistently by Council. However, as this application is for the relocation of an already approved rural workers dwelling, the approval will not abandon or destroy the development standard.

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

Comment:

The zoning of the area is appropriate and the surrounding locality has rural character and agricultural uses have been established.

SEPP No. 55 - Remediation of Land

In accordance with the requirements of this Policy, the applicant submitted a Contamination Report. Council's Environmental Health Officer after an investigation confirmed that the site was not considered to be contaminated land.

SEPP (Rural Lands) 2008

The land is within the 1(b1) Agricultural Protection Zone and the provisions of this SEPP apply to the proposed development.

The principles are stated and addressed as follows:

*The Rural Planning Principles are as follows:*

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

It is considered that the proposed development satisfies the rural planning principles by the rural worker having the opportunity to promote and protect of current and potential productive and sustainable economic activities that the property achieves. Also, the applicants have adequately addressed the issue of the continued need and requirement for a rural workers dwelling despite the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region and State.

The following matters are to be considered in determining development applications for rural dwellings:

- (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*
- (d) *if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*
- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The SEPP requires that before granting consent Council must consider any impacts the development will have on other uses in the locality. The proposed new location of the dwelling achieves these directions as they are not creating a new rural workers dwelling but rather relocating the dwelling to a more suitable location.

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

There are no Draft Environmental Planning Instruments that affect this development proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The proposed additions of the relocated rural workers dwelling has been assessed against the provisions within DCP A1. The proposed additions are considered to generally comply with the provisions within DCP A1 namely, impermeability, deep soil zones, setbacks, dwelling orientation etc.

A2-Site Access and Parking Code

The applicant has provided that two off street parking spaces will be available off the existing driveway from Duranbah Road in accordance with the requirements of the DCP. The application has been conditioned accordingly.

A9-Energy Smart Homes Policy

The proposed dwelling has demonstrated compliance with this policy as would be capable of compliance with this control by installing an energy efficient hot water system. Appropriate conditions of consent have been imposed.

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

The application has been reviewed by Council's Building Surveyor, however, there are no other matters prescribed by the Regulations that are considered to apply.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Access

The proposed rural workers dwelling would utilise the same driveway as the owner's residence off Duranbah Road to that of the main dwelling house. This arrangement ensures compliance with the Essential Requirements detailed in the Department of Agriculture brochure "Can I Build a Rural Workers Dwelling?" which specifies that: *"the dwelling must have the same road access as the principal farm dwelling"*.

Flora & Fauna

The conversion of the building for a house in the proposed location would not disturb any existing flora or fauna.

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

Bushfire Hazard Assessment

The subject site falls outside a marked bushfire hazard area, and therefore the application does not require referral to the local NSW Rural Fire Service for comment.

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

NSW Department of Primary Industries

The application was referred to NSW Department of Primary Industries (DPI) for comment. The DPI advised that they no longer provide advice on Rural Workers Dwellings with regard to agricultural issues, as this is a planning issue for Council to consider.

Internal Comments

Council's Environment & Health Unit undertook a thorough investigation regarding the proposal, specifically, in relation to land contamination. Following this investigation no objections were raised subject to standard conditions of consent.

Council's Building Services Unit reviewed the application and raised no objection to the proposal subject to standard conditions of consent.

**(e) Public interest**

The application is not considered contrary to the public interest as the application satisfies the objectives of Tweed Local Environmental Plan 2000.

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of this application they may seek an appeal with the Land & Environment Court.

**POLICY IMPLICATIONS:**

Approval of the application is considered not to cause any policy implications.

**CONCLUSION:**

The applicants have satisfactorily demonstrated that the development standard is unreasonable and unnecessary as the dwelling is an already approved dwelling for the purpose of housing a rural worker. The applicants have also justified reasonably that the dwelling has been continually used as a rural workers dwelling and with the increase in farming practices on the property, the need for a rural worker living on site continues to be required.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P7 [PR-PC] Development Application DA08/1202 for a Saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street, South Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1202 Pt1**

**SUMMARY OF REPORT:**

At its meeting Tuesday 21 April 2009, Council proposed to approve in principle, an application for a saddlery at Lot 2 SP79933, 2/11 Buchanan Street, South Murwillumbah.

The report recommended refusal of the saddlery. The Council resolved as follows:

*“Recommended that this item be approved in principle with the Director Planning and Regulation to bring back conditions of approval to the next Planning Committee meeting for the consideration of Councillors.”*

This report is in response to Council's recommendation and includes conditions of approval for the saddlery.

**RECOMMENDATION:**

**That Development Application DA08/1202 for a saddlery at Lot 2 SP 79933, No. 2/11 Buchanan Street, South Murwillumbah be approved subject to the following conditions: -**

**GENERAL**

1. **The development shall be completed in accordance with the Statement of Environmental Effects and Plan 1 unauthored and dated 6/3/09, except where varied by the conditions of this consent.**  
[GEN0005]
2. **Advertising structures/signs to be the subject of a separate development application (where statutorily required).**  
[GEN0065]
3. **To enable the loading of bulky goods the roller door at the front of the premises shall not be blocked.**  
[GENNS02]
4. **Hours of operation of the business are restricted to the following hours:-**
  - \* **8am to 5pm - Mondays to Fridays**
  - \* **8am to 5pm - Saturdays**



- \* **8 am to 12pm Sundays and Public Holidays**
- \* **All deliveries and pickups relating to the business are to occur within the approved hours**

[USE0185]

**REPORT:**

**Applicant:** Ms K Sullivan  
**Owner:** Ms HV Goodall  
**Location:** Lot 2 SP 79933 No. 2/11 Buchanan Street, South Murwillumbah  
**Zoning:** 4(a) Industrial  
**Cost:** \$19,000

**BACKGROUND:**

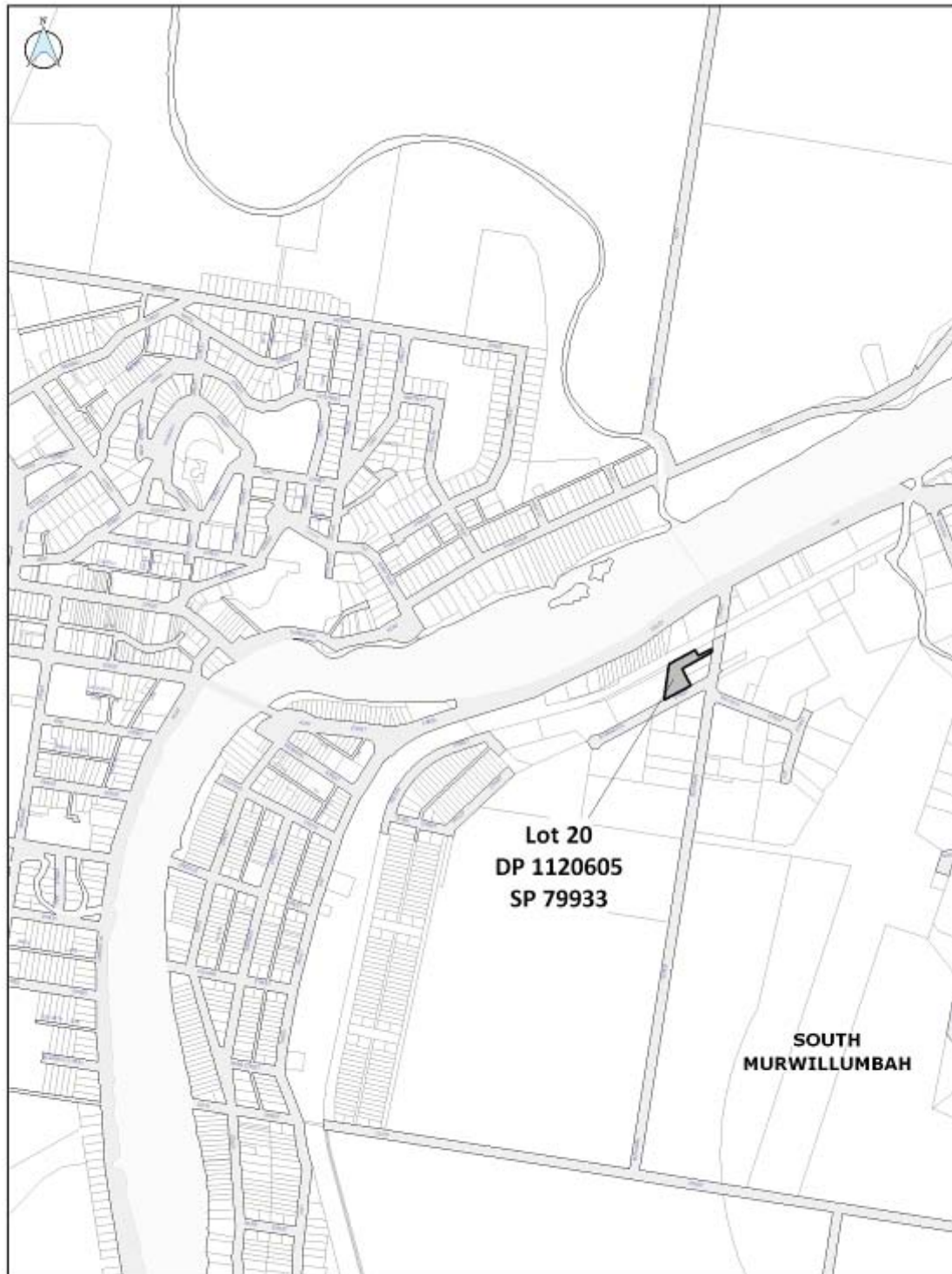
On 8 December 2009, Council received a development application for a saddlery at the abovementioned address.

The saddlery was defined as bulky goods and proposed in the 4(a) Industrial zone. Bulky goods are an 'item 3' matter under the Tweed Local Environmental Plan 2000 and are permissible with consent, subject to consideration of clause 8(2) matters.

A report addressing the application for the saddlery was put to the Planning Committee on 21 April 2009. The report recommended refusal, based on non-compliance with clause 8(2) matters.

A copy of the report and Council resolution from the Planning Committee meeting of 21 April 2009 is attached.

**SITE DIAGRAM:**



**Lot 20  
DP 1120605  
SP 79933**

**SOUTH  
MURWILLUMBAH**

© TWEED SHIRE COUNCIL 2009  
Although of care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its Employees, Officers and Consultants can not be responsible for any Errors, Omissions or Inaccuracies in respect to the information supplied in this map.  
**DO NOT SCALE**  
P.O. Box 916  
Murwillumbah, NSW 2484  
Tel: (02) 6678 2488  
Fax: (02) 6670 2482

*Tweed Shire Council*  
**Lot 20 DP 1120605 - Lot 2 SP 79933**  
**No. 2/11 Buchanan Street, South Murwillumbah**  
GDA

**Site Plan**  
  
Scale: 1:5,000  
Sheet: 1 of 1

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

Relevant statutory considerations were considered in the original report attached.

**OPTIONS:**

1. Council approves the application subject to conditions herein.
2. Council refuses the application in accordance with the original recommendation.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Approval of the development despite non-compliance with clause 8(2) matters may have ramifications on precedent and interpretation of this clause.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

In accordance with the Council resolution, this report outlines conditions of consent for a proposed saddlery, approved in principle at Council meeting 21 April 2009.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Report on DA08/1202 from the Planning Committee meeting held 21 April 2009 (ECM 2051960)
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**P8 [PR-PC] Development Application DA08/1171 for an Addition of a Deck to Existing Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 1083851 Pandanus Parade, Cabarita Beach**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1171 Pt1**

**SUMMARY OF REPORT:**

The subject application seeks consent for the construction of a deck extension to the existing Cabarita Surf Life Saving Club (SLSC). The subject application is generally compliant with the outlined requirements with the exception of onsite car parking. This report outlines the assessment of the proposed development in regards to relevant planning controls. The proposed deck is considered acceptable in this regard. The area of the deck is 141m<sup>2</sup>.

The applicant has requested that Council waive the requirement to pay section 94 and section 64 contributions as well as monetary fees required in lieu of on-site car parking. It is considered that the waiver of these contributions and fees is not justified.

A SEPP 1 objection has been submitted to accompany the application as the proposed deck will cast shadow over the foreshore reserve area. The North Coast Regional Environmental Plan limits shadowing of beaches and waterfront open space to after 3pm mid-winter (standard time) and after 7pm (mid-summer) (day-light saving time).

The Department of Planning require all development applications accompanied by a SEPP 1 objection that propose a variation greater than 10% of the standard to be determined by full Council. As it is not possible to apply a percentage to time all applications that overshadow the foreshore outside the designated times are reported to Council for determination.

Taking into account the balance of planning matters affecting this development proposal, it is recommended that Council approve the application, subject to conditions.

**RECOMMENDATION:**

**That: -**

- A. Council assumes the concurrence of the Director-General of the Department of Planning for the variation of the development standard for shadow contained in Clause 32(B) of the North Coast Regional Environmental Plan.**

- B. Development Application DA08/1171 for an addition of a deck to the existing Surf Life Saving Club at Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade, Cabarita Beach be approved subject to the following conditions: -

#### GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans-

- Site Plan. Job No. CABA0001. ML Design dated 19/06/2008.
- Ground Floor Plan Deck Addition. Job NO. CABA0001. ML Design dated 12/06/2008.
- Elevations. Job No. CABA0001. ML Design dated 12/06/2008.

Except where varied by the conditions of this consent.

[GEN0005]

2. Adequate privacy screening shall be provided to the south and western facade of the building and deck to protect privacy of adjacent units.

[GENNS01]

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

3. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

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

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

- (a) Tweed Road Contribution Plan:

4.935 Trips @ \$930	\$4,590
S94 Plan No. 4	
Sector7_4	



### Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$  heavy haulage contribution

and:

**Prod.** Projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist.** Average haulage distance of product on Shire roads (trip one way)

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.5

**(b) Shirewide Car Parking**

10 space/s @ \$13619 \$136,190

S94 Plan No. 23

[PCC0215/PSC0175]

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

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

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

Water DSP6: 0.564 ET @ \$10346.9 \$5,835.70

Sewer Hastings Point: 0.846 ET @ \$4972.1 \$4,206.40

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the

rates applicable in Council's adopted Fees and Charges current at the time of payment.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

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

[PCC0265/PSC0165]

5. 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]

6. Prior to the issue of a construction certificate the applicant is to provide structural engineering details of the proposed footing design for the deck. Footings must be of a sacrificial nature and incorporate engineering designs to accompany the load. The proposed footings must be approved by the General Manager or his delegate.
7. Prior to the issue of a construction certificate an operational strategy for the deck must be submitted and approved by Council's General Manager or his delegate. The Operational Strategy must outline the stage at which the deck will finish being utilised and measures to be undertaken for removal of the deck.
8. Applicant to apply for license from the Crown to authorise construction of the proposal on Crown Lands.

[PCCNS01]

9. The applicant shall pay contributions for 10 car parking spaces in accordance with section 94 plan number 23 - Off-Site Parking.

[PCCNS02]

10. Prior to commencement of construction the applicant shall provide evidence to the Director of Planning and Regulation that the lease agreements for the use of the air space over the road reserve and Crown Reserve 1001008 have been finalised.

[PCCNS03]

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

11. 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]

12. 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]

13. 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]

#### **DURING CONSTRUCTION**

14. 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]

15. 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]

16. 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]

17. 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]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

18. 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]

19. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]

C. Refuses the application to waive section 94 and section 64 contributions as well as any cash in lieu requirements for on-site car parking.

**REPORT:**

**Applicant:** Cabarita Beach Surf Life Saving Club Inc  
**Owner:** Tweed Shire Council  
**Location:** Lot 7010 DP 1055324; Lot 2 DP 1083851, Pandanus Parade Cabarita Beach  
**Zoning:** 6(a) Open Space & 5(a) Surf Life Saving  
**Cost:** \$80,000

**BACKGROUND:**

DA02/1646- Boundary adjustment, road widening and the erection of a surf life saving facility was approved on the 19/3/2003. During the assessment of the application, the surf club sought and was granted a reprieve from the requirement of section 94 contributions and relaxation to car parking requirements (see attached documentation).

DA02/1646.01- An amendment to the consent was granted which comprised a change to the proposed design of the SLSC.

DA07/0530 – Viewing deck and foreshore improvements were approved 13/11/2007, for the foreshore reserve area adjacent to the surf club. Proposed works approved within this application include landscaping and surface improvements that adjoin the hardstand area proposed to be covered as part of subject application.

**THE PROPOSAL:**

The subject application seeks consent for the erection of an above ground area decking area to the existing SLSC. The proposed works involve the construction of the deck with a roof above an existing concreted area. The concrete area is currently utilised as an outdoor eating area. The area of the proposed deck on the eastern elevation is 110.64m<sup>2</sup>, 97.72m<sup>2</sup> of which is erected within the foreshore reserve. The additions on the southern elevation have an area of 31.16m<sup>2</sup>, 23.45m<sup>2</sup> of which is located over the footpath on the Pandanus Parade road reserve.

The Statement of Environmental Effects (SEE) states that the proposal will achieve: -

- An area above ground for casual surveillance of the beach.
- All weather areas for use by patrons.
- Weather protection to the eastern facade.
- Solar shading for patrons utilising the outdoor eating area.

The deck is located adjacent to the internal kiosk. The Cabarita SLSC has indicated that the deck will provide additional floor area to the club's activities. The Cabarita SLSC has a restricted Liquor Licence and caters for approximately 2 functions per month.

The subject application was referred to Council's Recreation Services Unit, particularly in terms of potential impact with approved foreshore landscaping and surface improvements.

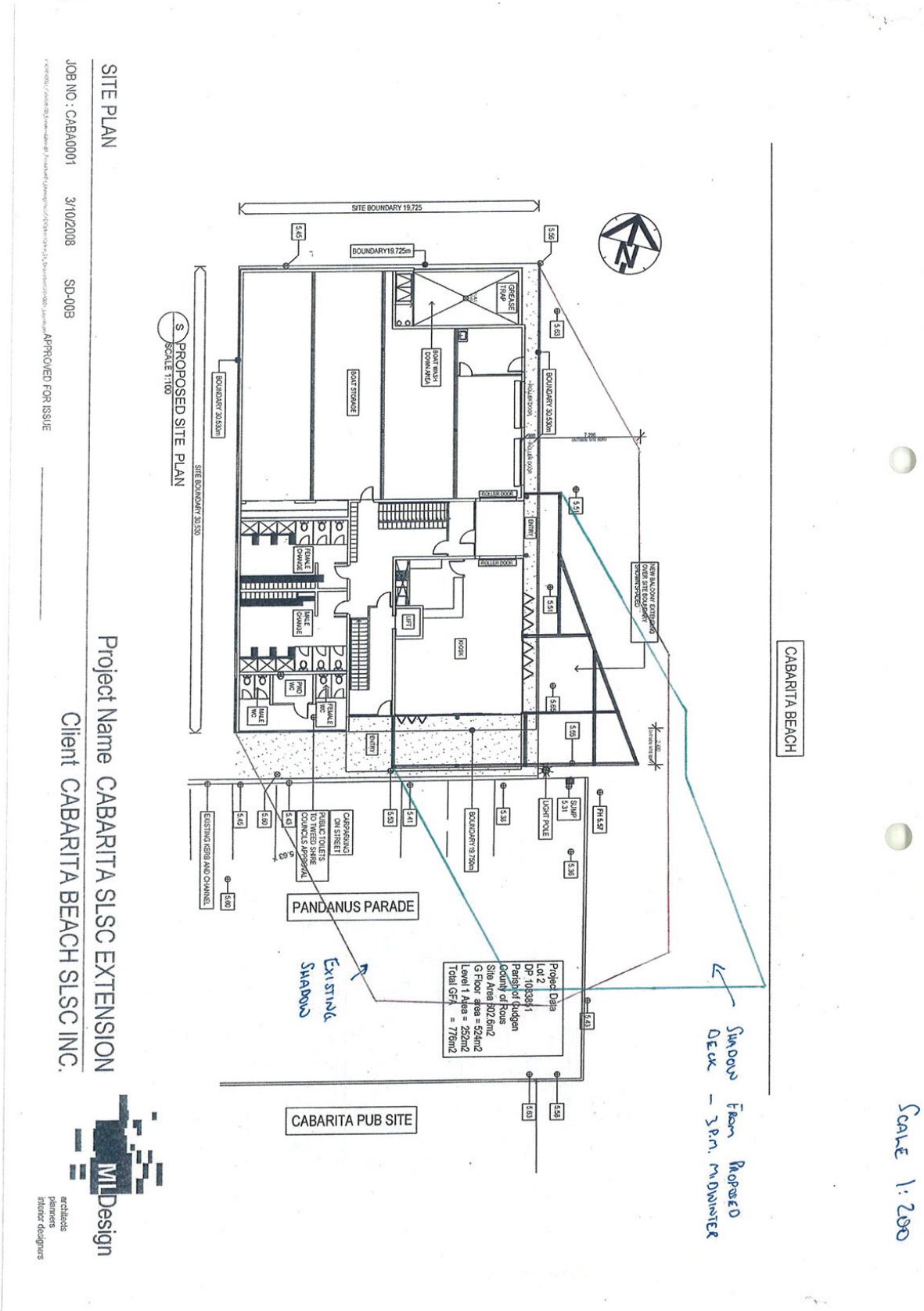


Council's Recreation Services Unit have advised no conflict will occur with the foreshore improvements, provided the deck covers only the existing hardstand area.

**SITE DIAGRAM:**



DEVELOPMENT PLANS:



SITE PLAN

JOB NO : CABAA001

3/10/2008

SD-008

APPROVED FOR ISSUE

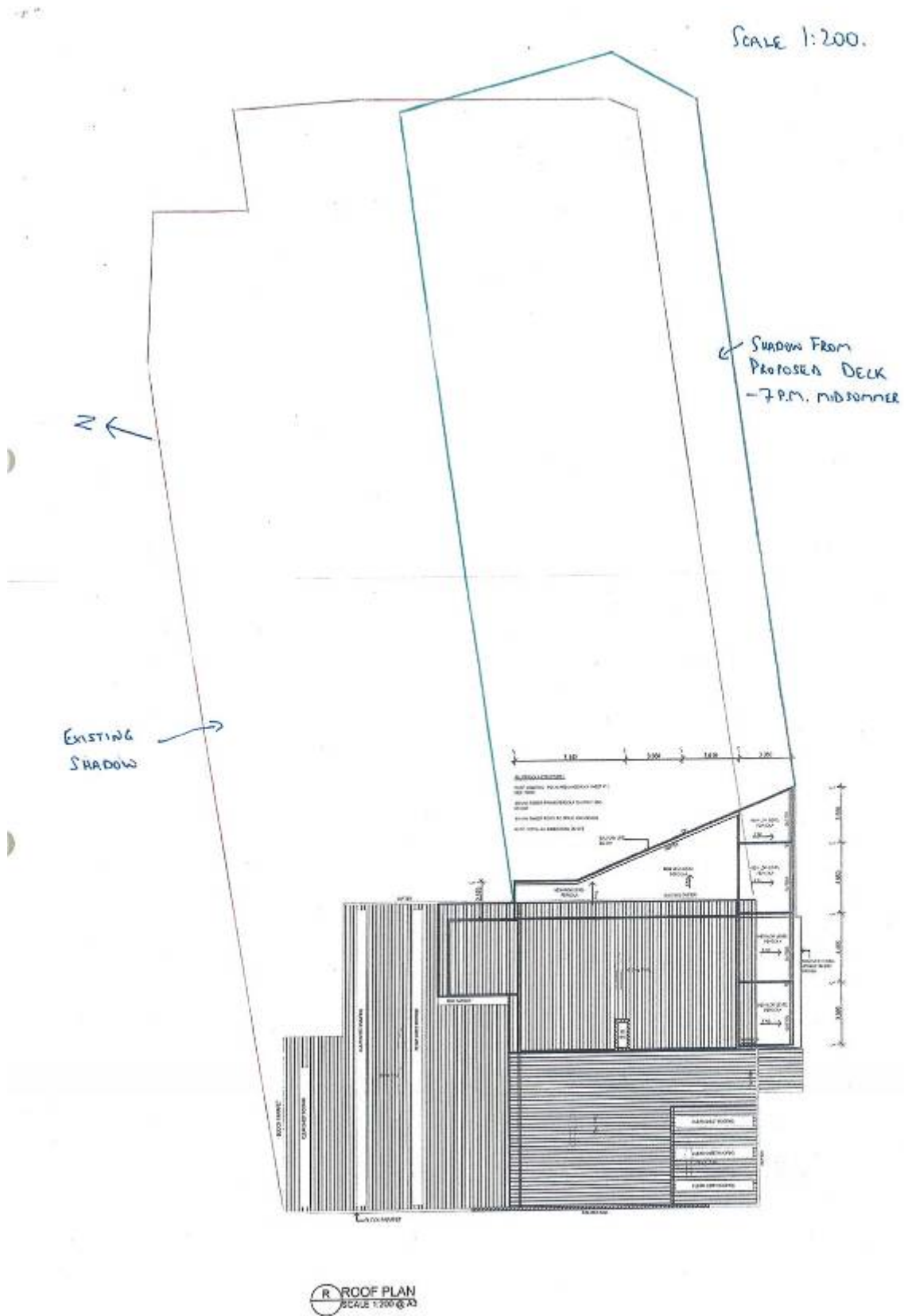
Project Name CABARITA SLSC EXTENSION

Client CABARITA BEACH SLSC INC.



architects  
planners  
interior designers





## REQUEST FOR WAIVER OF SECTION 94 AND 64 CONTRIBUTIONS

The subject application for deck extensions to the SLSC requires payment of section 94 and section 64 contributions. The deck extension comprises an area of 141m<sup>2</sup>.

The required section 94 contributions are calculated as follows:

TRCP Sector 7 - \$868 / trip

Hospitality function centre rate – category 30 = 50 trips / 100m<sup>2</sup>, based on 26 events per year

= 50 x 1.41 x 868 x 0.07

= 4.935 trips

= \$4,283.58 at today's date.

The DCP outlines that the car parking requirement for a club is divided into bar area, lounge dining area and auditorium. The auditorium was decided as the best fit in this instance, the rate for auditorium is defined as 1 space /15m<sup>2</sup>, therefore the proposed 141m<sup>2</sup> extension will require 9.4 car parking spaces (10). The section 94 plan number 23 (Off Street Parking) requires \$13,619 for each car space not provided, totalling a contribution of \$136,190 for the proposal.

The required section 64 contributions are calculated as follows:

Note: the rate for a commercial premises has been used as there is no specific rate for a SLSC. This rate was considered to be reasonable. It is noted that a proportion of funding for SLSC is generated from section 94 charges.

Water - 0.004 ET / m<sup>2</sup>

= 141x 0.004

= 0.564 ET

= \$5835.70 as of today's date.

Sewer – 0.006 ET/m<sup>2</sup>

= 141x 0.006

= 0.846 ET

= \$4206.40 as of today's date.

The applicant has requested Council waiver the required contributions for the following reason:

*"The Club has expressed that they are financially unable to pay the contributions due to being a not for profit organization."*

**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 desired outcome is outlined as"

*"The management of growth so that the unique natural and developed character of the Tweed Shire is retained and its economic vitality, ecological integrity and cultural fabric is enhanced."*

The existing SLSC provides valuable community service and facility. The proposed extension will enable the club to achieve greater economic sustainability and remain viable. The SLSC and service it provides contributes positively to the cultural fabric of the Tweed Shire and in this respect the proposal is consistent with the Aims of the Plan.

Clause 5 - Ecologically Sustainable Development

The subject proposal is consistent with the four principles of ESD.

Clause 8 - Zone objectives

*5 (a) Special Uses*

*Primary Objective*

- *To identify land which is developed or proposed to be developed, generally by public bodies, for community facilities and services , roads, railways, utilities and similar things.*

*Secondary Objective*

- *To provide flexibility in the development of land, particularly if it is not yet or is no longer required for the relevant special use.*

The subject application seeks consent for an extension to the existing SLSC. The existing club is a community facility and as such the proposed extension is consistent with the primary objective of the zone.

The proposed extension will not restrict any further proposed development as the deck area is to be constructed over an existing hardstand area.

#### *6(a) Open Space*

##### *Primary Objective*

- *To identify existing public land, and land that is proposed to be acquired for public ownership, to satisfy the open space and recreational needs of local residents and visitors to the area of Tweed and enable its development to encourage or assist their recreational use and enjoyment of land.*

##### *Secondary Objective*

- *To allow other development that is compatible with the recreational use of land.*

The proposed deck extension will not sterilise any available recreational areas as the deck will cover existing hardstand areas which are currently utilised for outdoor dining and as a pathway. The proposed deck extension will enable weather covering of these areas but still enable their utilisation.

#### Clause 15 - Essential Services

The proposed deck extension will not restrict service provision to any existing or future development. The subject site is serviced by all necessary service infrastructures.

#### Clause 16 - Height of Building

The proposed development is double storey in character which is a permissible height in the area

#### Clause 17 - Social Impact Assessment

The subject proposal is of a relatively minor nature and does not require a social impact assessment.

The SLSC provides an essential service to the community. The proposed deck extension to the existing Club will assist with its economic sustainability.

#### Clause 35 - Acid Sulfate Soils

The subject site is mapped as containing Class 4 Acid Sulfate Soils.

Class 4 requires that consideration be given to works conducted 2 metres below the natural ground surface and works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface.

If deep pile footings are required in constructing the deck (exceeding 2 metres below the natural ground level), a plan of management will be required. This should be imposed by conditions.

#### Other Specific Clauses

##### Clause 36 Coastal Erosion Outside Zone 7 (f)

The Objective of the Clause is -

*“To protect land that may be subject to coastal erosion (but not within Zone 7 (f)) from inappropriate development.”*

The Clause requires any proposals within the Coastal Erosion Hazard Line, be referred to the Department of Land and Water Conservation (now the Department of Energy and Climate Change (DECC)).

The subject proposal was referred to DECC for comment and the following recommendations were made by DECC -

*“It is recommended that prior to determining the application, that Council be satisfied that:*

- *The proposal is consistent with the provisions of the Protection of the Environment Operations Act, 1997;*
- *The proposal is not likely to cause impacts on areas of native vegetation, with special reference to threatened regionally significant flora and fauna species, populations and ecological communities;*
- *The proposed development is consistent with the threatened species provisions of the Environment Planning and Assessment Act, 1979, State Environmental Planning Policy (SEPP) 44- Koala Habitat, SEPP 71-Coastal Protection and the Native Vegetation Act, 2003;*
- *An appropriate level of Aboriginal cultural heritage assessment has been undertaken, and that the proposal is not likely to impact on areas of cultural significance to the Aboriginal community. Also, it is important that the views of Aboriginal community groups be sought in regard to the proposed development; and*
- *Potential, direct and indirect impacts on DECC estate, wilderness areas, wild rivers and recognized areas of high conservation value have been adequately considered.*
- *Additionally DECC advised the development should be conducted in accordance with the Tweed Shire Coastline Management Plan (Umwelt 2005) which outlines the following-*
- *For beachfront properties that are within the maximum 50 year hazard line; initiate a combination of:*
  - *Detailed review of hazard lines in 10 and 20 years;*

- *Investigate long-term planned retreat with either purchase or leaseback system to ensure retention of beach amenity and public foreshore access;*
- *Foundation requirements in accordance with Action WC5 (deep pile foundations);*
- *Redevelopment to be setback behind the maximum 50 year hazard line; and*
- *All lands within maximum 100 year hazard line be maintained in the existing 2 (2) zone.”*

It is considered that the proposal is consistent with the requirements of DECC.

It is considered that the requirement for deep pile footings is excessive in this instance. If approved, the proposed deck will be required to be sacrificial in nature to enable the process of coastal erosion to occur undisturbed. If approved the Club will be required to prepare an operation strategy which details the stage at which the deck stops being utilised as well as step to undertake potential removal due to the proximity of coastal erosion. These requirements are imposed through recommended conditions.

### **North Coast Regional Environmental Plan 1988**

The proposal will result in overshadowing of the foreshore before the times specified in this clause and a SEPP 1 objection is proposed in this regard (refer below).

The subject application does not impede any current or future access provisions to the coastal foreshore area.

The design of the deck is consistent with the existing SLSC design. The scale of the proposed deck will not impact upon view corridors due to the size and open sided nature of the structure. The orientation of the deck allows visual surveillance to occur unimpeded.

### **Clause 33: Coastal hazard areas**

The subject proposal if approved will be required to have footings of a sacrificial nature which are better suited to withstand coastal hazard events.

The proposal does not conflict with Coastline Management or foreshore rehabilitation or foredune access areas.

### **Clause 81: Development adjacent to the ocean or a waterway**

The proposal does not conflict with existing foreshore open space as the proposed deck is to cover an existing hardstand area. The proposal does not detract from the existing amenity of the beach adjacent to the Surf Club.

## **State Environmental Planning Policies**

### **SEPP No. 1 - Development Standards**

The applicant has submitted a SEPP 1 objection which relates to Clause 32B(4)(b) of the North Coast Regional Environmental Plan in relation to overshadowing beaches or waterfront open space before 7pm midsummer (daylight savings time).

A shadow plan has been prepared for the clubhouse building and the proposed deck additions. The proposed deck on 21 June at 3pm will cast an additional shadow with an area of approximately 55m<sup>2</sup> onto the coastal reserve with an area. The proposed deck will cast a further 165m<sup>2</sup> shadow on 21 December at 7pm.

Clause 32B of the NCREP 1988 states:

1. This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.
2. In determining an application for consent to carry out development on such land, the council must take into account:
  - (a) the NSW Coastal Policy 1997,
  - (b) the Coastline Management Manual, and
  - (c) the North Coast: Design Guidelines.
3. The council must not consent to the carrying out of development which would impede public access to the foreshore.
4. The council must not consent to the carrying out of development:
  - (a) on urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or
  - (b) elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).

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

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

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

- The existing clubhouse already casts a shadow onto the coastal reserve at the designated time and the height of the deck is lower than the pitch of the roof of the existing club house building. Thus, additional shadow is relatively minor and generally falls within the existing shadow.
- The proposed deck does not cast a shadow on the beach but on the turfed area adjacent to the club and vegetated foreshore areas. It will not impact upon the enjoyment of beach areas by the public.
- It is not unusual for SLSC to overshadow the foreshore given their location.
- The adjoining Cabarita Beach Hotel casts a far greater shadow onto the foreshore given it is up to 2 storeys greater in height than the SLSC.
- Existing dunal vegetation on the foreshore shadows the foreshore and the overshadowing caused by the deck will merge with the natural shadow.
- The SLSC is a community, non-profit organisation.

Comment:

It is considered that the non compliance with the development standard is well accepted and overshadowing will not have any adverse impacts, therefore the SEPP 1 objection is supported. It should be noted that the last dot point above is not a relevant SEPP 1 consideration.

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

The aims of the policy are as follows:-

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

Comment:

The aims of the policy state that flexibility can be granted in circumstances where strict compliance with standards is unnecessary or unreasonable. In this circumstance, it is considered that the non compliance with the development standard is acceptable and the



overshadowing will not have any adverse impacts, therefore the SEPP 1 objection is supported.

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

Comment:

The proposed non-compliance is not considered to raise matters for state and regional planning. The proposed variance relates to overshadowing open space or beach areas. As demonstrated the proposed application does result in overshadowing, however this overshadowing is related predominately to vegetated areas and not the beach proper. Therefore it is not considered that the application raises any matters of significance for State or Regional environmental planning.

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

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

Comment:

The objective of the standard contained within Clause 32B(4)(b) is related to the protection of the recreational integrity of foreshore open space areas and the need to restrict adverse impacts upon same by the erection of buildings in close proximity. As the proposed development does not impact upon foreshore and has only a minimal impact on open space (being the turf area adjacent to the SLSC and the vegetated foreshore area which has limited public access), it is considered that the objectives of Clause 32(B) are achieved.

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

Comment:

The objective of the standard is relevant to the development but the non compliance is considered acceptable as outlined above.

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

Comment:

It is concluded that compliance with the development standard is both unreasonable and unnecessary in this instance. Furthermore, as the proposed development demonstrates consistency with the intent and objective of the development standard, the granting of a variance in this instance would not prejudice the future integrity of that standard nor impact upon the amenity of the locality.

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

Comment:

The development standards determined under The North Coast Regional and Environmental Plan have not been abandoned or destroyed by Council actions. Notwithstanding, given zoning and height provisions in coastal villages such as Cabarita and Kingscliff, it is sometimes necessary to allow for a relaxation to this clause for development to occur. The overshadowing of open space areas in relation to the subject development application is considered minor, therefore compliance with the standard as under the NCREP is considered unnecessary and unreasonable and the SEPP 1 objection should be supported for this application.

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

Comment:

This consideration is not relevant because the standard is not dependent on the zone. Notwithstanding, the zoning of the area is appropriate for the proposed development and the surrounding locality has an urban character and residential land uses are well established.

As such it is considered that the non compliance with the development standard is well founded and the overshadowing will not have any adverse impacts, therefore the SEPP 1 objection is supported.

SEPP No 71 – Coastal Protection

Clause 8 of SEPP 71 requires an assessment of the proposal in relation to a number of matters for consideration. The following matters for consideration are relevant to the proposed development.

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- Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and where possible public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.
- The suitability of development given its type, location and design and its relationship with the surrounding area.
- Any detrimental impact that the development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.
- The likely impacts of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.

The proposed deck extension does not conflict with any existing or proposed access to the coastal foreshore. The deck is to extend over an existing hardstand area; people will still be able to access the beach and coastal foreshore area. The subject site is deemed to be suitable for the proposed extension to the existing SLSC.

As discussed above the structure will be required to be constructed in a manner that makes the deck sacrificial and an operational strategy will be required for the structure. This will ensure the proposed structure does not conflict with coastal processes.

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

There is no Draft EPI which is applicable to this site or application.

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

Section A2-Site Access and Parking Code

The car parking requirements for a club have been utilised to calculate the car parking.

The DCP outlines that the car parking requirement for a club is divided into bar area, lounge dining area and auditorium. The auditorium was decided as the best fit in this instance, the rate for auditorium is defined as 1 space /15m<sup>2</sup>, therefore the proposed 141m<sup>2</sup> extension will require 9.4 car parking spaces (10).

The applicant has requested a waiver of the car parking requirements. The SEE provides the following statement -

*“Council has resolved not to require the (original) club to provide any parking on its site with the construction of the surf club. It is requested that Council also extend this exemption to the proposed deck additions. Any requirement for the payment of a car parking contribution would be unaffordable for the club and result in a drain on its limited finances, which are primarily sourced from donations, government grants, Council Section 94 funds and membership fees. A variation is respectfully requested in this instance.”*

In regard to car parking provision under the original consent for the development, Council resolved on the 19 December 2001 that it would provide the car parking demand generated by the club redevelopment on adjacent land, the monetary value of which would be negotiated after submission of a Business Plan. An additional recommendation was made and upheld (on the 3 July 2002), that Council intends to waive charges for car parking in lieu of provision of on-site car parking when dealing with the development application for the new surf club building.

Under section 2.2.4 of the DCP, Council may accept contributions in lieu of physical car parking provision. In this instance the club has no land available to provide car parking spaces on-site and requires payment instead.

#### Section A11-Public Notification of Development Proposals

The subject application was notified from Wednesday 3 December 2008 to Wednesday 17 December 2008 in accordance with Council Public Notification DCP.

Twelve submissions were received and the matters raised in those objections are discussed in detail below.

#### Section B19-Bogangar/Cabarita Beach Locality Plan

The subject allotment is located within the Pandanus Parade precinct identified within the Bogangar Cabarita Beach Locality.

The DCP outlines that the intent of dividing the areas into precincts is so each precinct will develop into its own distinct character whilst maintaining and ensuring development is coordinated, sympathetic, and integrated with adjoining precincts.

The objectives of the Pandanus Parade Precinct are addressed below.

- *“Provide for a vibrant cultural and open space precinct that allows for a variety of commercial and community-based uses that satisfy economic demand and community needs.”*

Comment: the proposal will contribute to the functionality of the SLSC. The provision of all-weather areas for patrons to utilise will contribute to the vibrancy and energy of the area.

- *“Ensure that the physical and visual connections between the precinct and the beach and foreshore area is retained, protected and enhanced.”*

Comment: the proposed deck does not conflict with the physical and visual connection between the beach and the foreshore area. The structure is proposed over an existing hardstand area. The view corridors are not impacted upon and connectivity between the Pandanus Parade to the coastal foreshore will not be impacted.

- *“Provide for a high standard integrated mixed-use development enabling commercial and community-based activities on the ground floor and tourist or residential accommodation above.”*

Comment: This objective is not applicable to the proposed extension to the existing SLSC.

- *“Strengthen the village centre through high quality urban design and streetscape improvements.”*

Comment: the proposed deck extension is compatible with the design of the existing SLSC.

- *“Encourage a local building aesthetic that responds to the subtropical climate of the area, preserves important view corridors, and is representative of the local village character.”*

Comment: the proposed deck extension responds to the subtropical climate of the area by providing an all weather outdoor area and maximising access to views.

- *“Cater for retail, business, social and recreational needs of the community.”*

Comment: the proposal will enable the SLSC to remain economically viable and provides for recreational needs to contribute to the community.

- *“Cater for parking demands generated by the variety of uses within and adjacent to the precinct.”*

Comment: the SLSC is unable to physically provide car parking spaces and is therefore required to make a monetary contribution in lieu of the lack of physical car parking provision.

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

No matters for consideration are relevant to this proposal.

**(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

The proposal is considered unlikely to result in any significant adverse impacts on the existing natural or built environment. In this regard, the proposed deck is located on cleared land, will not require the removal of vegetation. It has a height consistent with the height requirements for the locality and it will not result in the creation of any impacts upon adjoining properties or the natural environment.

Standard conditions of consent are considered adequate to address potential impacts of the proposal and to control hours of construction work, builders noise and the installation of sedimentation and erosion control measures.

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

Given the proposal constitutes an extension of the approved building, the subject site is considered suitable for the proposal.

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

During the submission timeframe, twelve (12) submissions were received, an additional two (2) submissions were received after the close of submissions.

The issues raised are discussed below.

<b>Objection</b>	<b>Discussion</b>
This is not simply an 'observation' deck, but is clearly a 2+ storey extension to the existing building and therefore apart from anything else, the application is incorrect and misleading. The SLC has already recently been completely rebuilt, enlarged and heightened.	The description of the proposed development read as 'Addition of deck to existing SLSC'. This is considered an accurate description of the proposal.
When the 'Beach' resort was constructed, there was no indication to any purchaser from the developers or the SLSC that there may be alterations to the building which may impact on their beach/sea view and thus their investment	The original consent for the SLSC featured a deck extension in the original design (DA02/1646). This was removed due to financial reasons and the current design was approved under DA02/1646.01 The proposed deck extension is unlikely to have a major impact upon sea/beach views as the proposed structure is open

<b>Objection</b>	<b>Discussion</b>
	sided with a maximum proposed height of 7.25m.
The deck will affect the property values of the 'Beach' in general and the significant investment, made in good faith, by unit purchasers.	The property values adjacent to the SLSC are not a relevant planning consideration.
There is concern that privacy of adjacent beach facing units will be impacted and overlooking will occur.	<p>The deck is orientated to the ocean, not to adjoining residential properties. The level of the deck is lower than the level of Units at the 'Beach'.</p> <p>There is the potential to include a condition of consent requiring screening on the southern elevation of the deck.</p>
There is concern with noise impacts.	<p>The SLSC have provided that the club can be leased for up to two (2) functions a month and the bar is open on Sundays from 2pm-6pm.</p> <p>The proposal does not include any changes to the existing liquor license arrangement.</p>
Approving the application can only lead to increased 'Alcoholism', which is contrary to the health of the Nation and a current target of both State and Health Departments.	The proposal does not include any changes to the existing liquor licensing arrangement currently enjoyed by the SLSC.
There is also a significant security risk to surrounding residents, as the deck may attract 'undesirables' and promote 'aggressive behaviour'.	As discussed above there is no proposed change to the licensing agreement of the SLSC. The deck will encourage casual surveillance.
<p>There are concerns about the aesthetic impact of the deck</p> <p>The residents of Cabarita Beach and all visitors to the area need to have an 'easy on the eye view' of the entry to the beach and it is considered that the deck will take away the natural beauty of the front areas on either side of the entrance to the beach.</p>	<p>It is considered that the deck will have minimal impact upon view corridors along Pandanus Parade. The structure additionally is open sided.</p> <p>The deck is compatible with the associated building.</p>
This proposal will use public land, currently used as a walkway and general grassed area away.	The subject proposal will not be positioned over any grassed areas. The deck extends over the existing

Objection	Discussion
	hardstand area currently utilized for a outdoor dining. Therefore there will be no conflict with public open space areas.
The proposal is not in the spirit of SLSC movement which should be promoting a healthy and positive lifestyle to our youth and the public at large.	The proposal is for the construction of a deck on the existing SLSC. There is no proposal to change current licensing agreements.
Visitor carparking is at a premium on the street in front of the SLSC, this large extension will contribute greatly to parking problems in the area.	The proposal requires 10 car parking spaces. Council's DCP allows for cash in-lieu contributions where on-site spaces can not be provided.  This report requires Council decision on this matter.
There is concern that adjoining units have limited privacy from the upper level of the SLSC.	If approved a condition of consent should be included to incorporate a screening mechanism on the southern side of the building.
The deck extends too close to the beach front and beach vegetation. Further, it is inconsistent with the building line forming the eastern perimeter of all other buildings in the immediate vicinity of the development.	The deck does not result in any removal of vegetation.

It is considered that the objections can be adequately addressed through appropriate conditions.

**(e) Public interest**

The subject proposal is considered to not be detrimental to the public interest.

**OPTIONS:**

1. Resolve to:
  - a) adopt the recommendation made and approve the development application.
  - b) Adopt to waive section 94 and section 64 contributions as well as any cash in lieu requirements for on-site car parking and modify conditions accordingly.



2. Resolve to:
  - a) adopt the recommendation made and approve the development application.
  - b) Refuse the application to waive section 94 and section 64 contributions as well as any cash in lieu requirements for on-site car parking.
3. Resolve to refuse the development application and any requests for waiver of section 94, section 64 and any cash in lieu requirements for on-site car parking requirements.

Option two (2) is recommended.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil

**POLICY IMPLICATIONS:**

If section 94 and 64 contributions are waived, a new precedent will be set for non-profit organisations.

**CONCLUSION:**

The subject application seeks consent for the construction of a deck extension to the existing SLSC. The proposal is generally consistent with relevant planning controls, with the exception of car parking provision. The report outlines the assessment of the proposal.

The applicant has also requested Council waiver of section 64 and section 94 contributions, as well as monetary requirement for cash in lieu of on-site car parking.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Minutes of Council Meeting held 3 July 2002 (Item 5a) (ECM 2051442)
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**P9 [PR-PC] Development Application DA08/1080 for an Attached Dual Occupancy at Lot 17 Section 16 DP 758571, No. 9 Yao Street, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA08/1080 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 (SEPP No. 1) variations greater than 10% to be determined by full Council. In accordance with the advice by the Department of Planning the proposed 15.7% variation to the minimum site area necessitates reporting of this application to Council.

The SEPP No. 1 variation relates to Clause 51A of the Tweed Local Environmental Plan 2000 (LEP 2000) which does not permit multi-dwelling housing to be erected on land zoned 2(a) at a density greater than one dwelling per 450 square metres of site area. The subject site is not located within 300m of a Business Centre.

The existing dual occupancy was approved by Council on 12 July 1972 via Permit Number 2803. An existing use is a use that is lawfully commenced but subsequently becomes a prohibited use under a new local environmental plan or other environmental planning instrument. In this case, the variation to Clause 51A cannot be supported by way of existing use provisions as the use is still permissible within the 2(a) Zone.

The applicant seeks consent to construct an attached dual occupancy. The development contains 2 x 3 bedroom dwellings plus activity rooms within a two storey configuration. Each dwelling contains a double garage and external living areas on ground level. The front deep soil zone is associated with Unit 1 and the rear deep soil zone is associated with Unit 2. The upper levels contain bedrooms, living areas and balconies.

No submissions have been received in relation to this proposal.

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

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**RECOMMENDATION:**

That: -

- A. State Environmental Planning Policy No. 1 objection to Clause 51A of the Tweed Local Environmental Plan 2000 regarding dwelling densities in the 2(a) zone be supported and the concurrence of the Director-General of the Department of Planning be assumed, and
- B. Development Application DA08/1080 for an attached dual occupancy at Lot 17 Section 16 DP 758571, No. 9 Yao Street Kingscliff be approved subject to the following conditions: -

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos 833-S02 and 833-P01 prepared by Storm Consulting and dated October 2008, except where varied by the conditions of this consent.

This plan is relevant for the driveway and associated downstream stormwater works. Upstream internal stormwater works have been superseded by Parameter Designs Plan No. 1062K dated 18 March 2009.

[GEN0005]

- 2. 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]

- 3. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on the road reserve or footpath for the "dining blister" for dining purposes. Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[GEN0245]

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

[GEN0115]

- 5. All water sensitive design facilities designated in the approved Water Management Plan (WMP) shall be installed in accordance with relevant standards and specifications. The landholder shall operate and maintain in perpetuity all water sensitive design facilities designated in the WMP. This includes retaining in perpetuity the minimum permeable site area and deep planting areas for natural infiltration of stormwater, as specified by Clause 2.2.1(ii) of Tweed Shire Council Development Control Part A14 - Cut and Fill on Residential Land.

[GEN0175]

6. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. 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]

8. 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]

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

Receipt of approval is to be obtained prior to the issue of a construction certificate for works within the development site.

[PCC0075]

10. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in

accordance with Section D7.07 of Councils *Development Design Specification D7 – Stormwater Quality*.

- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils Development Design Specification D7 – Stormwater Quality.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
- (d) Specific Requirements to be detailed within the Construction certificate application include:
  - (i) Shake down area along the haul route immediately before the intersection with the road reserve.

[PCC1105]

11. Prior to the issue of a Construction Certificate, the applicant shall prepare a front return fence design which is consistent with the Tweed Development Control Plan.

[PCCNS01]

12. A detailed landscape plan shall be prepared by a landscape architect or landscape consultant to a standard acceptable to the General Manager or delegate. The plan shall include the following documentation -.
- (a) A site plan (at 1:100 to 1:1000 scale) showing the existing features, including north point, access road and an outline of buildings indicating doors and windows and extent of carparking. Any trees to remain in the vicinity are to be located to scale and identified by botanical and common names.
  - (b) Proposed and existing site services with potential to impact on landscape space, including water, gas, electricity, sewer, stormwater, etc.
  - (c) Easements on or adjacent to the site.
  - (d) View lines to and from the development and details of pedestrian access and circulation areas within and around the development, including retaining walls, seating, fences, gates, decorative features etc.
  - (e) Additional survey plan showing the location, canopy spread, trunk diameter, height and names of those existing tree/s and significant tree/s adjacent to the site likely to be affected by the development. The plan shall also include the existing ground levels at the base of the trunk of the tree/s as well as at the drip lines of the tree/s.

- (f) Existing and proposed ground levels (shown as spot heights and/or contours over the site and direction and degree of slope) indicating the site boundaries, and the base of the trees proposed to be planted or that are to be retained (if applicable).
- (g) Sectional elevations through the site showing the existing and proposed ground lines, building elevations and proposed plantings.
- (h) Construction details of planter boxes (including width and depth), paving, edging, fencing, screening, panels and other hard landscape components. As far as possible deep root zones must be provided for large trees and paving is to be porous. Paving works within 2m of the trunk of the large trees shall be constructed in such a way as to ensure the existing moisture infiltration and gaseous exchange to the tree root system is maintained.
- (i) Planting details for the preparation and planting of tube and potted plants, super-advanced plants, bare-rooted stock and any other planting.
- (j) A detailed plant schedule and plan at a scale of 1:100 to 1:1000 indicating the location of all proposed planting and any existing vegetation to be retained on and adjacent to the site. The plan is to include a detailed plant schedule which shall include;
  - species listed by botanical and common names, with the majority of plants constituting local native species;
  - expected mature size of the species at the site, taking in to consideration site specific parameters;
  - specific location, planting densities and quantities of each species; pot sizes; the estimated sizes of the plants at maturity, and proposed staking methods, if applicable.
  - maintenance methods including the use of drip irrigation and mulching or groundcovers to reduce bare soils areas and including a maintenance schedule for a minimum period of one year after completion of landscaping on site.

[PCCNS02]

13. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage

shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

14. Design detail shall be provided to address the flood compatibility of the proposed structure including the following specific matters:
- (a) Design flood level of RL 3.3m AHD.
  - (b) The minimum habitable floor level for the building is RL 3.8m AHD.
  - (c) All building materials used below Council's design flood level must not be susceptible to water damage.
  - (d) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water.
  - (e) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.
15. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -
- (a) Driveway Access

[PCC0895]

16. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 – Stormwater Quality*.
  - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

17. Medium density/integrated developments will be required to provide a single bulk water service at the road frontage. Individual metering beyond this point shall be managed by occupants. Application for the bulk metre shall be made to the supply authority detailing the size in accordance with NSW Code of Practice - Plumbing and Drainage and BCA requirements.



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

[PCC1185]

18. An application shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works prior to the issue of a construction certificate.

[PCC1195]

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

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

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

[PCW1065]

27. Prior to the commencement of works sedimentation and erosion control measures shall be placed and maintained to the satisfaction of the General Manager or his delegate.

[PCWNS01]

28. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill nature of material, proposed use of material and confirmation further blending, crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

29. Prior to start of building works provide a certificate of adequacy of design, signed by a practising Structural Engineer on the proposed retaining wall. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

#### **DURING CONSTRUCTION**

30. 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]

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

[DUR0815]

**32. 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]

**33. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.**

[DUR2505]

**34. 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]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>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]

**36. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).**

[DUR2615]

**37. The structure is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.**

[DUR2645]

**38. 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]

39. 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]

40. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above RL 3.8m AHD, and certifying the actual finished level of the total site. Certification of those levels by a registered surveyor must be submitted to the Principal Certifying Authority prior to proceedings past floor level to ensure that the floor is above flood level.

[DUR1365]

41. The habitable floor area of the building is to be at a level not less than RL 3.8m AHD.

[DUR1435]

42. 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]

43. 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]

44. 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]

45. 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]

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

[DUR0445]

47. 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]

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

A. Short Term Period - 4 weeks.

LAeq noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

LAeq noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

49. 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]

50. 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]

51. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste".

[DUR2195]

52. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

53. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto

the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

54. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

55. 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]

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

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

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

[DUR2375]

57. Should any items of cultural significance be discovered all site works shall cease immediately and the item/s be reported to the Department of Environment and Climate Change and Tweed Shire Council. Site works shall not recommence without prior written authorisation from Tweed Shire Council.

[DURNS01]

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

[DUR0005]

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

[DUR0985]

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

[DUR0995]

61. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

62. During construction, a "satisfactory inspection report" is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

63. 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]

64. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.

Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.

[DUR2655]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

65. 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]

66. 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]



67. 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]

68. 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]

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

[POC1055]

70. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:

(a) Easements for sewer, water supply and drainage over ALL public services/infrastructure on private property.

(b) An Easement to Drain Sewerage 3m wide, over the existing 150 mm diameter sewerage main within Lot 17, benefiting Council.

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

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

Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in

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accordance with the Community Land Development Act, Strata Titles Act, Conveyancing Act, or other applicable legislation.

[POCNS01]

71. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[POC0475]

72. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

73. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

74. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils adopted Development Design and Construction Specifications.

[POC0755]

75. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council. Written approval from Councils General Manager or his delegate must be issued prior to the issue of an Occupation Certificate.

[POC0865]

## USE

76. 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]

77. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

78. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.

[USE0235]



**79. The premises shall be maintained in a clean and tidy manner.**

[USE0965]

**80. General plant, air conditioning units, heat pump water systems and the like shall be located and installed so as not to be heard in a habitable room of another residence during restricted hours nor where it would create offensive noise as defined within the *NSW Protection of the Environment Operations (Noise Control) Regulation 2008*.**

[USENS01]

**81. Water stored within the underground water storage tanks shall not be utilised as potable water.**

[USENS02]

**REPORT:**

**Applicant:** Mr G Delanty  
**Owner:** Mr GL Stevens  
**Location:** Lot 17 Section 16 DP 758571 No. 9 Yao Street, Kingscliff  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$600,000

**BACKGROUND:**

The subject site is 758.8m<sup>2</sup> and is regular and rectangular in shape with a 16.7m frontage to Yao Street, a 43.15m northern boundary, 46.29m southern boundary and 17.51m rear boundary. The site falls approximately 0.5m from the rear north-east corner to the front south-west corner with no other significant topographical features. There is a mature avocado tree located to the rear of the site.

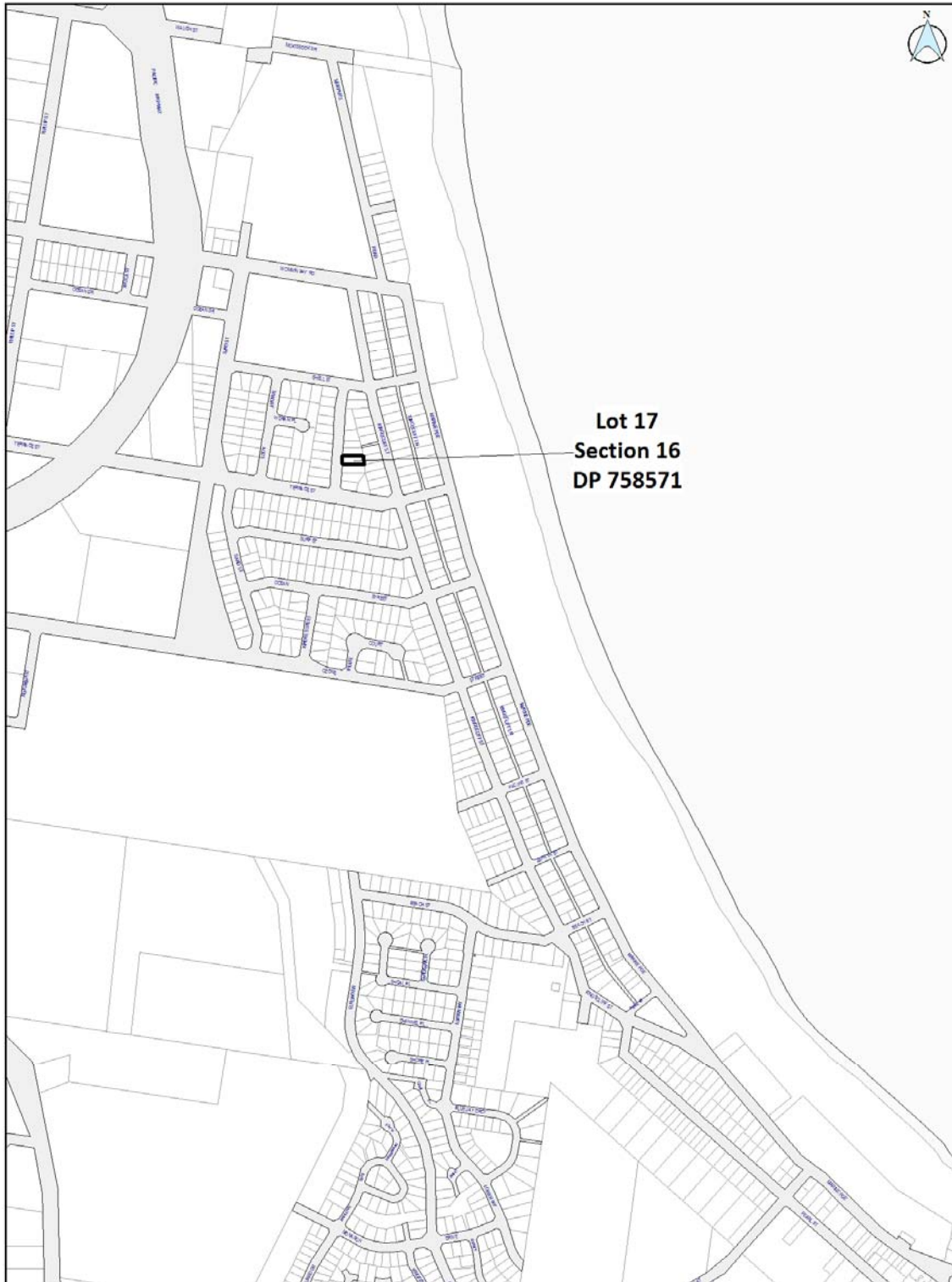
Vehicular access to the site is obtained via Yao Street. Council's records do not indicate the site is affected by any title restrictions.

The site is situated within an established residential area characterised by dwelling houses and multi dwelling housing. Two two-storey dwellings adjoin the site at 7 and 11 Yao Street. A reserve (zoned 6a) adjoins the northern boundary of 7 Yao Street and provides pedestrian access eastwards through to Kingscliff Street.

The applicant seeks consent to construct an attached dual occupancy. The development contains 2 x 3 bedroom dwellings plus activity rooms within a two storey configuration. Each dwelling contains a double garage and external living areas on ground level. The front deep soil zone is associated with Unit 1 and the rear deep soil zone is associated with Unit 2. The upper levels contain bedrooms, living areas and balconies.

The existing single-storey dual occupancy and any other ancillary structures on-site are proposed to be demolished by way of a separate application.

**SITE DIAGRAM:**



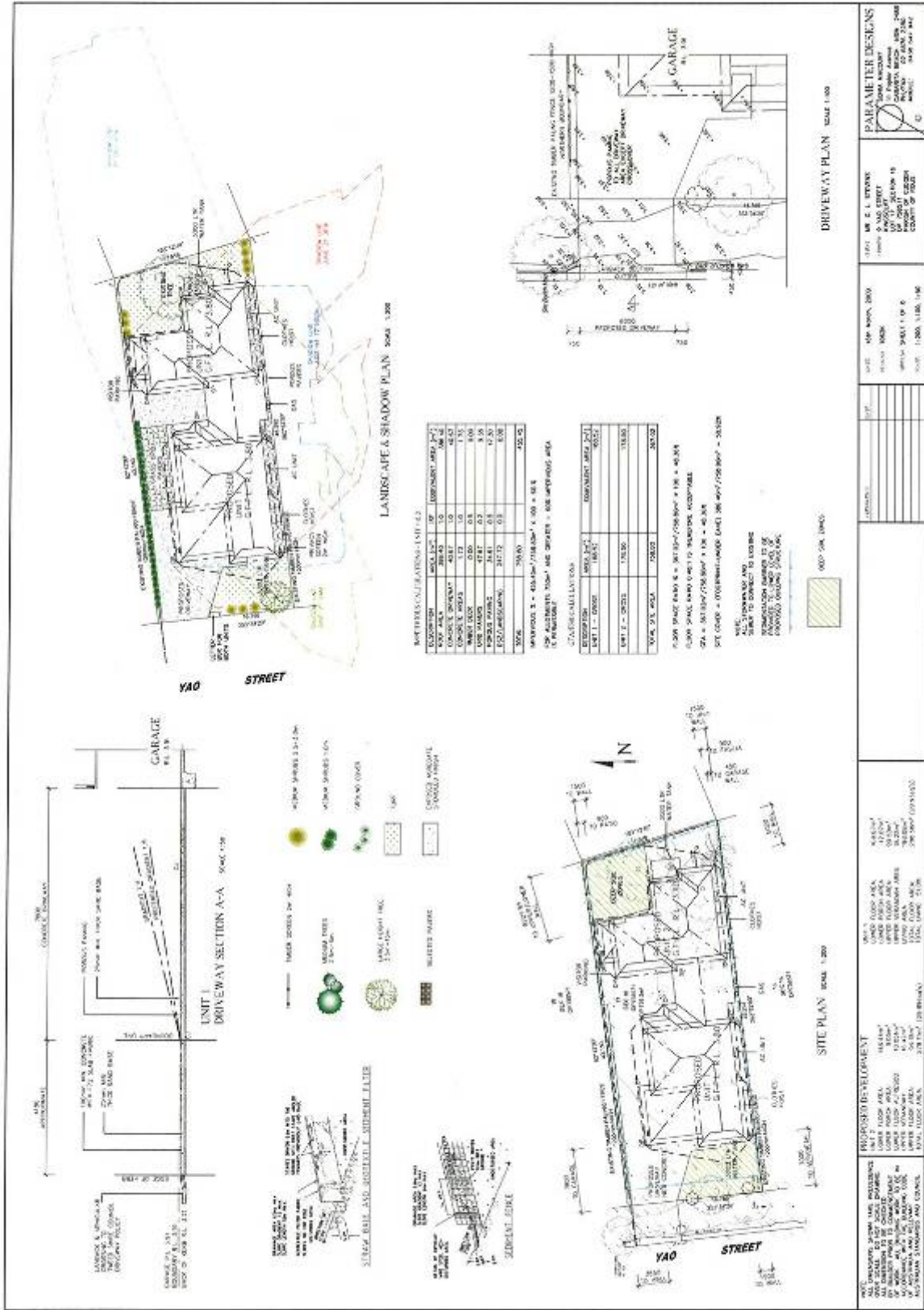
**Lot 17  
Section 16  
DP 758571**

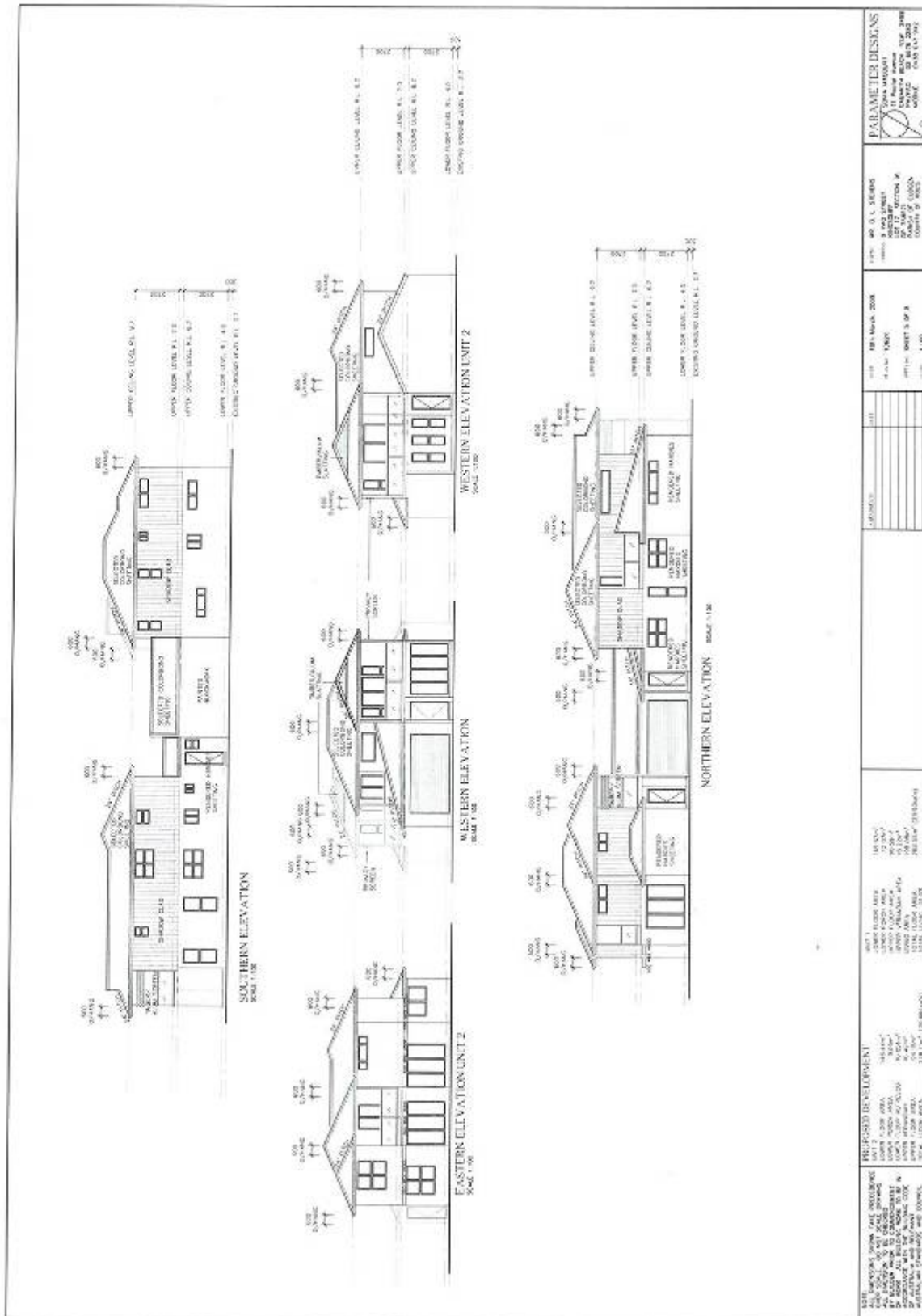
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*Tweed Shire Council*  
**Lot 17 Section 16 DP 758571**  
**No. 9 Yao Street, Kingscliff**  
File: Z:\GIS\_Jobs\Site Plan.Wor  
Author: J. Batchelor  
Date: 18/May/2009  
Scale: 1:10,000

**Site Plan**  
  
  
Sheet: 1 of 1

**DEVELOPMENT PLANS:**





**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 proposal is consistent with the aims of the Tweed Local Environmental Plan 2000 (TLEP). The proposal represents sustainable economic development which is consistent with the area's environmental and residential amenity qualities.

**Clause 5 - Ecologically Sustainable Development**

The proposal is consistent with the principles of ecologically sustainable development. The carrying out of the development will not result in unacceptable cumulative impacts.

**Clause 8 - Zone objectives**

The subject site is zoned 2(a) Low Density Residential. Multi dwelling housing is permissible within the zone with consent. 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 objectives of the zone in that the proposal represents attached residential dwellings, providing a variety in housing choice.

**Clause 15 - Essential Services**

The site is situated within an established residential area. All essential services are available to the site.

**Clause 16 - Height of Building**

The proposed two-storey development is consistent with the three-storey limit for the site.

**Clause 17 - Social Impact Assessment**

Given the minor nature of the proposal a Social Impact Assessment is not considered necessary.



### Clause 35 - Acid Sulfate Soils

The site contains Class 3 Acid Sulfate Soils. As no basement parking is proposed, it is not anticipated that Acid Sulfate Soils will be disturbed.

### Other Specific Clauses

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

The clause aims to control the density of multi dwelling housing within the 2(a) zone. The clause requires that multi dwelling housing developments be permitted at a density of one dwelling per 450m<sup>2</sup>. As discussed previously the site is 758.8m<sup>2</sup>, which is inconsistent with this clause and is the basis for a SEPP 1 Objection by the applicant to vary this standard.

The applicant's submission and plans demonstrate that the carrying out of the development will result in Unit 1 being located on a site with an area of 396.81m<sup>2</sup> and Unit 2 being located on a site with an area of 361.99m<sup>2</sup>.

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 section within this report.

### **North Coast Regional Environmental Plan 1988**

#### Clause 32B: Coastal Lands

This clause applies to the subject site as the NSW Coastal Policy applies.

The proposal is consistent with the NSW Coastal Policy, Coastline Management Manual and North Coast Design Guidelines. The development will not result in overshadowing of the beach or waterfront open space.

#### Clause 43: Residential development

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, site erosion and environmental constraints on the land.

Site erosion will be minimised throughout the construction phase and enforced via conditions of consent. The density of the proposed development has been maximised without adversely affecting the environmental features of the land.

### **State Environmental Planning Policies**

#### SEPP No. 1 - Development Standards

As discussed, the applicant seeks to vary the residential density development standard as contained within the Tweed LEP 2000 Clause 51A.

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The applicant states that the proposal essentially seeks to construct a new dual occupancy to replace the outdated existing dual occupancy structure.

A SEPP No. 1 submission may be supported where the applicant demonstrates that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and specifies the grounds of that objection. The applicant must also demonstrate the consistency with the aims of the SEPP.

**In support of the proposed variation, the applicant has provided the following:**

*The proposed development will result in the creation of site areas for each proposed dwelling that are less than the required minimum area of 450m<sup>2</sup> as contained within this clause (Clause 51A of the Tweed LEP 2000).*

*It is submitted that the development standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:*

- *The proposal is merely replacing an existing approved use for dual occupancy with a higher standard of development*
- *The proposed variation will not cause any detriment to the amenity of the site or the locality*
- *The proposal does not increase the existing density of the site and locality*
- *The proposal maintains the present density of the site and locality.*

*It is therefore considered unnecessary to strictly apply the development standard in this instance.*

*It is respectfully requested that Council deem the SEPP 1 Objection to the development standard within Clause 51A of the Tweed LEP appropriate in the context of the submitted development application and that Council approves the proposed development.*

The applicant's entire submission is reproduced below: -

*"Following our recent conversations this correspondence contains a SEPP1 Objection to the development standard contained within Clause 51A of the LP. This is submitted in support of the application so that the proposal may be presented at the next Council meeting as referred to in our most recent conversation.*

**SEPP1 Objection**

*A variation to the development standard relating to density presented within Clause 51A of the Tweed LEP is proposed.*

*The development standard in question and the objective to which the development standard seeks to achieve, is that presented in Clause 51A which states the following:*

**(1) Objective**

*To control the density of multi-dwelling housing in Zone 2(a) (the Low Density Residential zone) by the use of a development standard.*

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

*(a) one dwelling per 450 square metres of site area, or*

*The variation proposed is in relation to the density of the proposed dual occupancy development. The site (Lot 17 Section 16 DP 758571) has an area of 758.8m<sup>2</sup>. The site presently contains an approved attached dual occupancy development. The existing use of the dual occupancy has been maintained over time and is continuing. The proposal essentially seeks to construct a new dual occupancy development on the site and replace the existing out dated dual occupancy structure.*

*Two dwellings (detached dual occupancy) are proposed on a lot area of 758.8m<sup>2</sup> and the development standard requires that multi-dwelling (dual occupancy) housing is to be at a density not greater than 450m<sup>2</sup> per dwelling. The area of the site falls short of the development standard by 141.2m<sup>2</sup>, which is a variation of 15.7% in regard to site density.*

*A SEPP1 submission may be supported by the Council where it is demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case and where the SEPP1 Objection specifies the grounds of that objection. Consistency with the aims of the SEPP must also be demonstrated.*

*It is submitted the development standard in this instance is unreasonable and unnecessary in the circumstances of this case for the following reasons:*

*It is considered that as the proposal is merely replacing, with a higher standard of development, an existing approved use, the proposed variation to the development standard is appropriate in this instance and that the strict application of the standard in this instance is unreasonable and unnecessary.*

*It is respectfully requested that Council grant consent to this SEPP 1 Objection and the development application DA08/1080.*

*The following assessment of the SEPP1 is based on the principles set by Chief Justice Preston (Wehbe v Pittwater Council (2007) NSW LEC 827).*

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

*Chief Justice Preston noted in the case of Wehbe v Pittwater Council, that there may be five ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. Here it shall be established that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The objective of Clause 51A of the Tweed LEP is achieved despite the variation to the development standard pertaining to density. The objective of Clause 51A, simply provides for the control of density in the 2(a) zone through the use of the development standard. The site already contains a density of two approved dwellings and the proposal simply replaces these with two detached dwellings. Therefore the density for the site will not change and the objective for Clause 51A is not compromised as the density, as approved, has not been altered on the site or within the locality. Therefore, it is considered that the strict adherence to the development standard would be unreasonable as the density of the site has not been increased and remains as per the existing density as found on the ground and as previously approved.*

*The lot presently contains an existing approved attached dual occupancy development and this proposal simply replaces these approved but dated dwellings with another dual occupancy development that largely meets Council’s controls for residential development and is energy efficient as highlighted by the BASIX Certification submitted with the development application.*

*The existing approved dual occupancy still maintains use rights as the two dwellings have been continually occupied and are still occupied as two dwellings. Although the application cannot be submitted under existing use rights because the submitted proposal is not replacing a prohibited development within the 2(a) Low Density zoning, the proposal is essentially greatly improving the site by replacing the existing use with the same use on-site but to a higher quality and better overall design, improving the streetscape and amenity of both the site and the locality without increasing the existing approved density of the site.*

*Secondly, the consent authority must be of the opinion that granting consent to the development application would be consistent with the*

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*policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, the unreasonable or unnecessary or tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979.*

*The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land and the protection, provision and co-ordination of communication and utility services.*

*It is considered that the proposed variation and development in general will provide for orderly and economic use and development of the land by replacing an outdated, attached, dual occupancy that is not constructed to today's energy efficiency standards with a modern energy efficient detached dual occupancy development. This proposal will not hinder the attainment of the objectives of Section 5(a)(i) and (ii) of the Act.*

*Thirdly, it is also important to consider the following:*

- (a) whether non-compliance with the development standard raises any matter of significance for State or Regional planning; and*
- (b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

*It is considered there would be little public benefit in maintaining the development standard as strictly speaking this would allow only one dwelling on the lot when the lot presently contains two approved dwellings which do not cause any detriment to the public. By replacing two older dwellings with two newly constructed dwellings the streetscape is considered to benefit and the residents of the two dwellings would benefit from energy efficient modern housing.*

*The decision to approve the proposed development would not raise any matter of significance for state or Regional planning.*

*It is considered that the proposed variation to Clause 51A will not cause any detriment to the amenity of the site or the locality. The site contains an existing approved use for dual occupancy and the proposal will not increase this density thereby meeting the objective of the clause by controlling the density of multi-dwelling housing by maintaining the present density of the site and locality. It is therefore considered unnecessary to strictly apply the development standard in this instance.*

*It is respectfully requested that Council deem the SEPP1 Objection to the development standard within Clause 51A of the Tweed LEP appropriate in the context of the submitted development application and that Council approves the proposed development.*

*Should you have any questions concerning the above matters please contact our office on (02) 6674 5001."*

**Assessment of the applicant's submission:**

The following assessment of the SEPP No. 1 is based on the principles set by Chief Justice Preston (*Wehbe v Pittwater Council [2007] NSW LEC 827*).

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

Chief Justice Preston has noted 5 ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. In this instance, the first option, being the objectives of the standard are achieved notwithstanding non-compliance with the standard has been adopted.

The objective of Clause 51 of the Tweed LEP is achieved despite the variation to the development standard pertaining to density. The objectives of Clause 51A provide for the control of density in the 2(a) zone through the use of the development standard.

The proposal replaces an existing single-storey attached dual occupancy with a two-storey dual occupancy attached by the double garage for Unit 2. The site is already occupied as a medium density development. The proposal maintains the use of the site as medium density.

The replacement dual occupancy has greater compliance with energy efficient controls as highlighted by BASIX certification submitted. Mature vegetation is retained and additional landscaping is proposed beyond what is already evident on site.

The proposal is of a high quality with better overall design which improves the streetscape and amenity of both the site and locality without compromising density controls within Clause 51A.

The applicant's submission in relation to being well founded is supported.

**2. The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and**

The objects specified within Section 5(a)(i) and (ii) relate to the promotion and co-ordination of the orderly and economic use and development of land, and

the protection, provision and co-ordination of communication and utility services.

The proposal provides for replacement of a dual occupancy that is not constructed to current energy efficient standards to be replaced by a modern, energy efficient development of the same type.

It is not considered that the granting of this application would hinder the attainment of such objectives.

**3. It is also important to consider:**

- a. whether non-compliance with the development standard raises any matter of significance for State or regional planning; and**
- b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument.**

The proposed non-compliance with Clause 51A of the Tweed LEP 2000 is not considered to raise any matter of significance for State or regional planning.

There would be little public benefit in maintaining the development standard in this case as it would allow only one dwelling to be developed on the subject site to replace the existing two, resulting in the displacement of one household. The streetscape and amenity of the locality will be enhanced by the modern, energy efficient design which in turn may lead to a resource-related wider public benefit.

Chief Justice Preston notes that there is a public benefit in maintaining planning controls. However, the proposed non-compliance with the Tweed LEP 2000 is considered to be justified in this instance and is not likely to result in an adverse planning precedent. As such, the granting of this application is unlikely to impact upon public benefit.

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

**SEPP No 71 – Coastal Protection**

Clause 8 of the SEPP identifies matters for consideration. The proposal is consistent with the aims of the SEPP. Public access to the coastal foreshore will not be affected as a result of the proposal.

The protection of cultural heritage has been addressed via a condition of consent, in the event items of cultural significance are discovered all site works shall cease immediately.

The development is suitable for the location in regards to bulk, scale and size. This matter is discussed in further detail later within this report.

The proposed development is not considered to result in adverse cumulative impacts, which is evident throughout this assessment. The proposal is regarded as being energy efficient.

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SEPP (Building Sustainability Index: BASIX) 2004

The applicant has submitted a BASIX certificate demonstrating the proposal meets the energy target score. The energy saving measures such as water tanks are evident on the plans. The proposal is therefore consistent with the SEPP.

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

A number of shire wide draft LEPs apply however these have no specific relevance to the proposal or subject site.

There are no draft SEPPs or REPPs which apply to the subject site or development proposal.

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

Tweed Development Control Plan  
*(Adopted 22 April 2008)*

A1-Residential and Tourist Development Code

Part B - Dual Occupancy Housing, Granny Flats, Town Houses and Row Houses

The applicable design controls are addressed as follows:

**Building Types**

Suitable Locations for Dual Occupancy Housing

The site is 758.8m<sup>2</sup> and is regular and rectangular in shape. The area of the subject site is less than the minimum of 900m<sup>2</sup> required to suitably locate dual occupancy housing. Given that the land is not zoned 2(b), a minimum allotment size of 450m<sup>2</sup> does not apply. As such, the proposal varies this standard in the same way that it does Clause 51A of the LEP 2000. However, as the allotment is regular in shape, it has been possible for the balance of controls in this DCP to be met through careful design.

Access to dwellings is clearly identifiable from Yao Street. The applicant has incorporated access to both dwellings from driveway areas and covered entries with porches to achieve this. The careful location of living room areas on the front elevation of Unit 2 allows passive surveillance to the street.

Ground levels of both units contain living areas, studies and double garages. Each dwelling contains an activity room at the upper level. That associated with Unit 1 opens onto an external living area. Unit 2's upper level balconies are associated with bedrooms.



The surrounding area is predominantly characterised by one to two storey dwelling house developments. The proposed development will complement the existing streetscape.

## **Public Domain Amenity**

### Streetscape

Site design and a generous 7m building setback is appropriate as an infill development in an established residential area. Adjoining dwellings are setback at 7.7m and 7.8m. The allotment is virtually flat, presenting no topographic constraints.

Provision has been made for extensive landscaping to the front Deep Soil Zone to positively interface with the public domain and enhance streetscape character. A mature tree is to be retained in the rear Deep Soil Zone.

The line of the deck on the upper floor of the front elevation of Unit 1 is 1m forward of the double garage, thus shifting the focus from the garage doors to the balconies. Driveway areas have been minimised as much as practically possible with the use of grid pavers and porous paving. Porticos associated with both dwellings are of a relative scale and integrated design.

No fencing is proposed for the front boundary. Existing fencing remains for side and rear boundaries. Existing front return fencing is not consistent with DCP A2 as the design control requires a maximum solid fence height of 600mm and an openness ratio of 60% for the first 2m along a boundary adjacent to a driveway with a maximum height of 1.5m. Should the application be approved, a condition has been recommended that requires an amended front return fence which is consistent with DCP A2.

### Public Views and Vistas

The development will not result in a reduction of public views to dominant landmarks as the subject site is located west of Kingscliff Street amongst other one and two storey dwellings. Developments surrounding the subject site are unlikely to have any views impacted to land designated as open space. This is largely due to the relatively flat topography of sites within Yao Street.

The development will not unreasonably obscure public view corridors along Yao Street.

## **Site Configuration**

### Deep Soil Zones

A front Deep Soil Zone is provided within the front setback in association with Unit 1 and a rear Deep Soil Zone is located behind Unit 2 extending to the rear boundary and incorporating an existing mature fruit tree.

The front Deep Soil Zone incorporates all areas that are not hard-stand and has an approximate area of 65m<sup>2</sup>. The rear Deep Soil Zone has dimensions of 8m x 8m which is the minimum required (18% of the average length of the site). A comprehensive landscaping plan has been provided for the whole site that utilises turf, native shrubs and native screening trees.

It is noted Council has resolved to not require the mature tree within the front/rear setbacks, however the applicant has proposed a mature tree within the front setback.

#### Impermeable Site Area

The maximum area for impervious surfaces for the site is 60% or 455m<sup>2</sup>. The calculations for the proposal show the site has an impermeable area of 455m<sup>2</sup> which is consistent with the design control. The applicant has used a range of treatments to reduce the site's impermeability including porous paving, grid paving and landscaped areas.

#### External Living Areas

The external living areas proposed on the ground floor are located adjacent to living areas to extend the development's useable living area.

That associated with Unit 1 is forward of the dwelling within the front setback and will be screened from the street by extensive landscaping. It is setback 1.5m from the side boundary and is suitably screened to achieve visual privacy from the adjoining southern allotment.

The external paved living area associated with Unit 2 is oriented to the north, is not covered and is located appropriately within the rear setback.

#### Above Ground External Living Spaces, Balconies and Terraces

All primary balconies are located adjacent to the main living areas on the ground floor.

The secondary balconies on level 2 are situated within the 4m setback on the northern and southern boundaries. The balconies are not closer than 900mm from the boundaries. The northern and southern sections of the balconies are obscured with 1.8m high metal / timber privacy screening.

#### Landscaping

The detailed landscaping plan provides for functional and aesthetic external spaces. The ground level patio areas are integrated with the deep soil zones and landscaped areas.

As previously discussed the rear Deep Soil Zone contains a mature fruit tree that is to be retained. The landscape elements are anticipated to be a range of heights.

Concrete pavers are proposed along the southern side setbacks of the dwellings to provide pedestrian access to clothes line areas.

#### Topography, Cut and Fill

The site is flat with no topographic restrictions as such. Minor cut and/or fill is anticipated.

The applicant advises the allotment's runoff can be dispersed onto grassed and landscaped areas of the allotment. Two 3000 litre rainwater tanks are proposed to collect this water and reuse it.

#### **Setbacks**

##### Front Setbacks (Building lines)

In established areas and on infill sites Dual Occupancy Housing is to be consistent with the setback distance of neighbouring buildings and is to be the average of the setbacks of neighbouring dwellings on either side. This setback can be varied up to plus or minus 1m. The proposed setback is consistent with the adjoining dwellings setbacks, House Number 7 Yao St and 11 Yao Street which are setback 7.8m and 7.7m respectively.

The proposal is setback 7m from the front wall of the development to Yao Street. It is noted that the setback is measured from the wall as per the DCP.

From the balcony situated on the same elevation the setback is 7m and the garage is suitably setback behind the front elevation. The location of the balcony reduces the impact of the garage doors.

##### Side Setbacks

Single storey component setbacks of a minimum of 900mm and two storey component setbacks of a minimum of 1.5m are adhered to.

Primary windows of living rooms do not face the side boundaries and present no privacy issues.

The driveway for both units is located adjacent to the northern side boundary and as such, the existing 1200mm timber paling front return fencing must be modified to conform with DCP A2 as discussed earlier.

### Rear Setbacks

The building is setback a minimum of 5.02m from the rear boundary on the southern side and a minimum of 8m from the rear boundary on the northern side, which includes the 64m<sup>2</sup> rear Deep Soil Zone.

### **Car Parking and Access**

#### Carparking Generally

Tweed Shire Development Control Plan A2 requires 4 on-site car spaces plus the provision for driveway parking of another vehicle. Two double garages are proposed plus the provision of a visitors car space adjacent Unit 2. There is ample space in the driveway for additional stacked car parking.

The driveway width from Yao Street to the property boundary has been widened 1.5m to incorporate access to the front dwelling. Porous paving has been proposed for the internal driveway areas, maximising stormwater retention.

The garage doors represent 40% of the building's frontage to Yao Street (the garage doors being 4.7m and the maximum dwelling elevation is 11.5m).

The design and materials used for garages are in keeping with the main dwellings.

### **Building Footprint and Attics, Orientation and Separation**

#### Building Footprint and Attics

The proposal has been designed to ensure adequate sunlight will infiltrate through the dwellings due to the placement of windows and balconies.

#### Building Orientation

The proposed development primarily addresses the street by way of Unit 1, as the proposal extends the length of the site. Pedestrian entry is clearly visible to Unit 1 directly and Unit 2 is accessed by the common driveway.

Bathrooms and other wet areas have been oriented to the side boundaries and living areas take advantage of passive solar access. The primary windows of living rooms and open space areas are orientated to the east and west of the site.

#### Building Separation

The separation between the proposal and adjacent buildings provides for a minimum of 8m between living room windows due to the placement of primary windows/doors of the proposal being on the eastern (rear) and western (front) elevations. There is an 8.5m setback between the southern elevation of 7 Yao

Street and the northern elevation of proposed Unit 1 on the subject site. In addition, a 15.8m long carport is located along the boundary between the two dwellings on land associated with 7 Yao Street.

The primary living areas for 11 Yao Street are situated on the eastern (rear) elevation of the site therefore there are no separation issues between the dwellings. A driveway is located between the subject site and the dwelling at 11 Yao Street.

The proposal is consistent with the Sections' requirements for separation between walls with primary windows/doors of living rooms (on any level of the building) on the side boundaries and the separation between the primary windows of living rooms (on any level of the building) and walls containing no windows.

The separation proposed between walls containing primary windows/doors of living rooms to shared driveways is consistent with the Sections' requirements.

The proposal is consistent with the required 2m separation distance between the windows/doors of non-habitable rooms (on any level of the building).

## **Height**

### Building Height

The maximum overall building height permitted is 9m. The applicant proposes a maximum height of 7.9m.

The maximum wall plate height permitted is 8.5m. The applicant proposes a height of 5.8m.

### Ceiling Height

It is encouraged to provide minimum ceiling heights of 2.7m (minimum) from the finished floor level to finished ceiling level for habitable rooms. The proposal is consistent with the control at 2.7m for both ground and upper levels.

## **Building Amenity**

### Sunlight Access

Upstairs living spaces of both units are oriented to the north and other living areas are oriented east and west to the rear and front boundaries.

There is no issue with the subject site receiving at least two hours sunlight between 9am and 3pm on June 21 and for windows of habitable rooms, at least 3 hours.

The northern elevation of the dwelling at 11 Yao St does not contain any living areas and is not compromised by overshadowing. Private open space to the rear of 11 Yao Street receives shade after 12 noon and is capable of receiving at least 3 hours of sunlight between 9am and 3pm on June 21. The owner of this property has expressed no concern in relation to the proposed development.

#### Visual Privacy

The balcony facing west located off the Master Bedroom on the upper floor of Unit 2 has an 1800mm privacy screen at the northern end to minimise any impact on the adjoining property at 7 Yao Street.

The balcony on the upper floor of Unit 1 which is accessed off both the activity room (minor living area) and Bedroom 3 has no impact upon the front portion of the northern elevation of the adjoining residence of 7 Yao St.

As discussed previously in this assessment, side setbacks to living areas are adequate to retain visual privacy between dwellings.

#### Acoustic Privacy

The noise of an air conditioner, pump, or other mechanical equipment must not exceed the background noise level by more than 5dB(A) when measured in or on any premises in the vicinity of the item. This may require the item to have a sound proofed enclosure. This matter will be enforced via a condition of consent.

#### View Sharing

The footprint of the proposed development will not result in an unreasonable reduction in any views enjoyed by nearby residents. Properties situated on the eastern side of Yao Street do not have access to views of any particular significance.

#### Natural Ventilation

All rooms have windows/openings to the development's external walls.

The proposal incorporates windows, balconies and openings on all elevations which will enable cross-ventilation of breezes.

### **External Building Elements**

#### Side and rear fences

The existing side and rear 2m timber fencing is proposed to be retained.

### Front fences

There is no existing or proposed front fencing. Front return fencing will need to comply with DCP A2 as mentioned previously in this report.

### Roofs, Dormers and Skylights

The roof of both units is well articulated and relates well to the proportion and form of the buildings. There are no skylights. The roof is not trafficable.

### Elevations Visible from the Public Domain

As discussed previously the entries to the development are clearly identifiable from Yao Street, this has been achieved via pathways and covered entry areas.

The proportions, materials and windows proposed are residential in type and scale. The proposed screening and covered entries into the building have been integrated into the developments' design.

### Minor Elements

The proposed clothes lines are proposed in the southern side setback of both dwellings. It is unlikely the clothes lines will be visible from the street.

A letterbox that services both dwellings will be placed along the front boundary line to the south of the proposed driveway.

Outdoor security lighting is to be located and designed so as to avoid light spill into the living and sleeping areas of the subject development and to confine light spill to the source property. This matter will be enforced via a condition of consent.

## **Building Performance**

### Energy Efficiency

The applicant has submitted a BASIX certificate which meets the minimum energy targets. Two rainwater tanks are shown on the site plan.

### Floor Space Ratio

The maximum FSR is 0.55:1 for attached dwellings. The proposal is consistent with this control, the GFA of 367.02m<sup>2</sup> and a site area of 758.8m<sup>2</sup> results in a FSR of 0.48:1.

### A2-Site Access and Parking Code

As discussed previously the proposal is consistent with the parking requirements of this section.

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### A3-Development of Flood Liable Land

The subject site has a design flood level of RL 3.3m AHD, with a required minimum floor level of RL 3.8m AHD. The proposed ground floor level of both units complies at RL 3.8m AHD.

The proposed development does not impact upon measures already in place for the site in relation to a flood event. It improves upon the existing single-storey scenario by providing a flood refuge on the upper level which is essential for new residential development located within a Probable Maximum Flood (PMF) area.

### A11-Public Notification of Development Proposals

Notification of the development was provided to adjoining land owners/properties in accordance with this section. The proposal was placed on exhibition for 14 days from 5 November to 19 November 2008. No submissions were received as a result of this process.

### B9-Tweed Coast Strategy

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan.

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

### Clause 92(a) Government Coastal Policy

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies and strategies of the policy.

### Clause 92(b) Applications for demolition

A separate application will be required for the demolition of the existing dwelling and any other ancillary structures on-site.

## **(b) The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

There are no further likely impacts in addition to those previously discussed.

The proposal is consistent with surrounding residential character. The site's suitability has been demonstrated throughout the assessment of the proposal including the assessment of the minimal environmental impacts and consistency with environmental planning instruments and the DCP.



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

The suitability of the site for the development has been demonstrated by way of general consistency with the applicable environmental planning instruments and the Tweed Development Control Plan and minimal environmental impacts. The proposal is consistent with the residential character of the locality.

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

The development application was exhibited for a period of 14 days from 5 November to 19 November 2008. No submissions were received regarding the application.

**(e) Public interest**

The proposed development is generally consistent with the applicable environmental planning instruments and the Tweed Development Control Plan. The development is considered to be in the interest of the general public.

**OPTIONS:**

1. Resolve to assume the Director-General's concurrence and support the SEPP submission and resolve to approve the development application with conditions; or
2. Resolve to refuse the development application with reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the option to appeal the matter in the Land and Environment Court should they be dissatisfied with Council's resolution.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed attached dual occupancy development is consistent with the applicable environmental planning instruments, the Tweed Development Control Plan and policies. The proposal will not result in adverse cumulative impacts. It is considered the site is suitable for the development.



**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P10 [PR-PC] Development Application DA09/0123 for the Use of Pool for Swimming Lessons at Lot 44 DP 24583, No. 26 Tweed Street, Murwillumbah**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA09/0123 Pt1**

**SUMMARY OF REPORT:**

The subject application seeks consent for the use of an existing domestic swimming pool to conduct private swimming lessons. The applicant has requested a two year currency if the development is approved.

Swimming lessons will be conducted in the morning and afternoons on weekdays. No lessons are proposed on weekends or public holidays.

The maximum number of students at anyone time is two and parents of the children remain in attendance.

The proposed development is considered to demonstrate general compliance with the Tweed Local Environmental Plan, the North Coast Regional Environmental Plan and the other relevant State Environmental Planning Policies and associated regulations and is considered to be compliant with the Environmental Planning and Assessment Act 1979.

The application is recommended for conditional approval.

**RECOMMENDATION:**

**That Development Application DA09/0123 for the use of pool for swimming lessons at Lot 44 DP 24583, No. 26 Tweed Street Murwillumbah be approved subject to the following conditions: -**

**GENERAL**

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan-**
  - Site Plan for N & D O'Connor of Lot 44 in DP 24583. Dated 10/3/2009. Unauthored.**

**Except where varied by the conditions of this consent.**

[GEN0005]

- 2. (a) All openings to the pool area from the house and adjacent rumpus room must be adjusted to be 'child safe', meaning the installation of**

non-climbable doors latched at 1500mm above floor level and secured windows opening to the pool area to prevent access.

- b) All side fencing adjacent to the pool filter shall be adjusted to be non-climbable in accordance with Australian Standard 1926 (AS1926).
  - c) The lattice gate from the garage is to be adjusted to be self-closing and self latching at 1500mm above floor level.
  - d) As an alternative to point a) above, the pool must be isolated from the dwelling and rumpus building by installation of a separate pool fence complying with AS1926.
- [GENNS01]
3. This consent lapses two years after the date on this consent and all operations must cease prior to the consent lapsing.
- [GENNS02]
4. 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.

[DUR1005]

## USE

5. 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]
6. Hours of operation of the business are restricted to the following hours:
- - \* 8.00am to 11.30am and 2.30pm to 5pm Mondays to Fridays only
  - \* No operations are to be carried out on Saturdays, Sundays or Public Holidays
- [USE0185]
7. All externally mounted air conditioning units, swimming pool pumps, water tank pumps and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.
- [USE0235]
8. The premises shall be maintained in a clean and tidy manner.
- [USE0965]
9. The premises shall be operated in accordance with the *Public Health (Swimming Pools and Spa Pools) Regulation 2000*.
- [USE0985]
10. 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]

- 11. All activities shall be managed and controlled so as to prevent the emission of intrusive or 'offensive' noise. Noise shall not be audible within any residential building.

[USENS01]

- 12. The swimming lessons shall not be conducted by any person other than a resident of 26 Tweed Street, Murwillumbah. Children shall be under direct supervision of the swimming instructor at all times.

[USENS02]

- 13. There are to be a maximum of two children taught at any one time and the parents of those children are to be present at all times. A toilet and hand basin shall be made available to students and parents at all times.

[USENS03]

- 14. Should the General Manager or his delegate deem noise levels to be 'offensive' or intrusive, swimming lessons shall cease until such time as management measures have been adequately implemented to prevent the emission of 'offensive' noise to the satisfaction of the General Manager or his delegate.

[USENS04]

- 15. Activities shall generally comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines, June 1996 to the satisfaction of the General Manager or his delegate, particularly in relation to bacteriological and chemical water quality standards, water treatment, water quality testing, general hygiene and record keeping.

[USENS05]

**REPORT:**

**Applicant:** Mr NF O'Connor  
**Owner:** Mrs DJ O'Connor  
**Location:** Lot 44 DP 24583 No. 26 Tweed Street, Murwillumbah  
**Zoning:** 2(a) Low Density Residential  
**Cost:** N/A

**BACKGROUND:**

Council is in receipt of a development application for the use of an existing swimming pool for swimming lessons.

The subject use of the swimming pool for private swimming lessons has been conducted from the premises for the past 34 years. A statement received from the applicant outlined that at the time of construction of the pool, Council advised that a planning consent was not required to conduct swimming lessons from the pool.

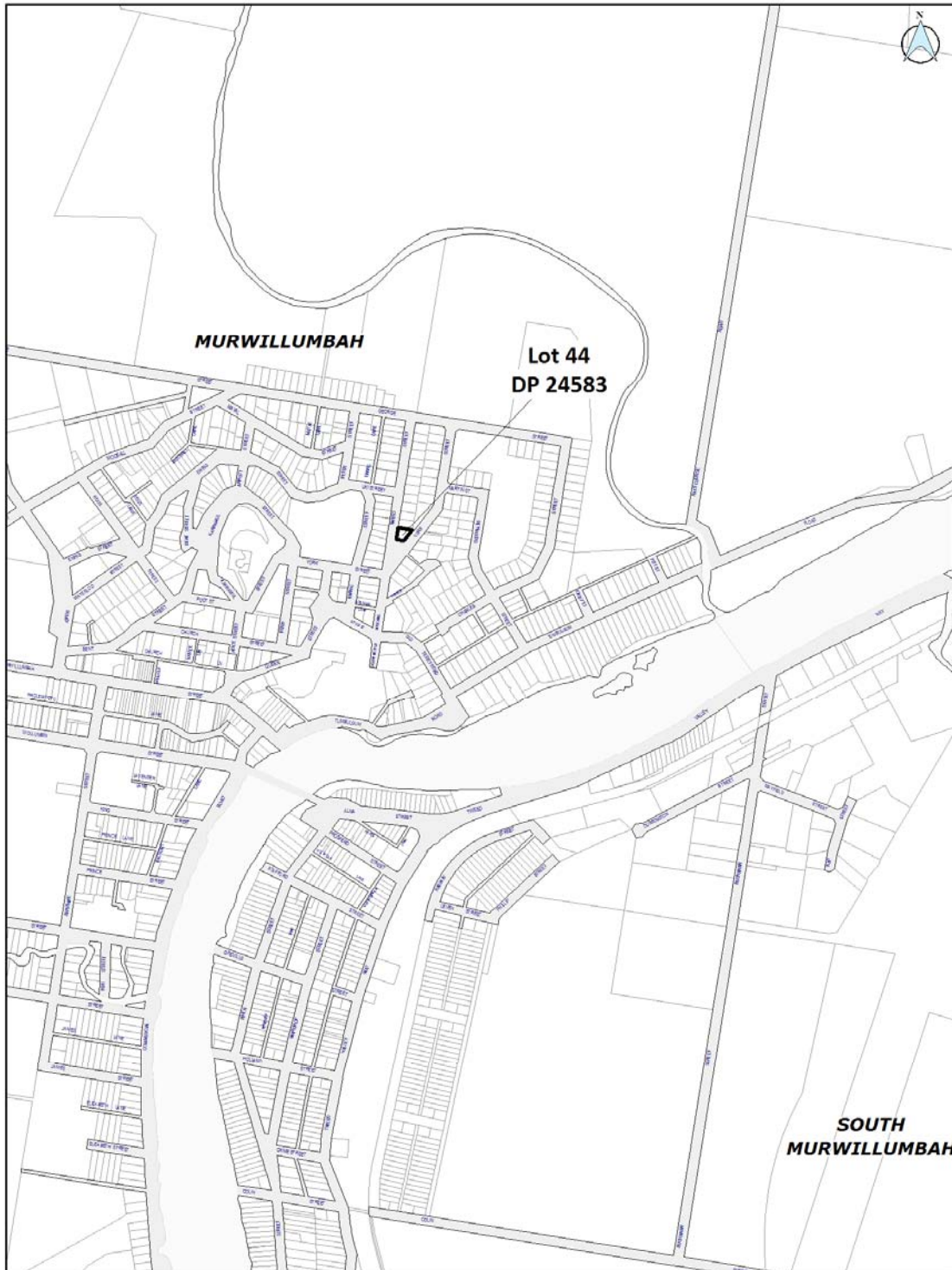
Council have been in receipt of a multiple noise complaints dating from 2007.

A recent complaint prompted additional investigation into the lawfulness of the existing swim school. It has been determined that at the time of establishment, the swim school a consent would be required under Interim Development Order 2 1966. The use would be defined as recreation facility. The land was zoned village and would have fallen in column 3, for development which may be carried out only with consent. As such, the applicant was requested to lodge a development application.

The applicant has lodge a development application (subject of this report) and requests to continue the use for two years.

Seven objections were received during the notification timeframe. Council also received twenty three submissions of support.

**SITE DIAGRAM:**



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**DO NOT SCALE**  
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 Murwillumbah NSW, 2484 Fax: (02) 6670 2483

*Tweed Shire Council*  
 Lot 44 DP 24583  
 No. 26 Tweed Street, Murwillumbah

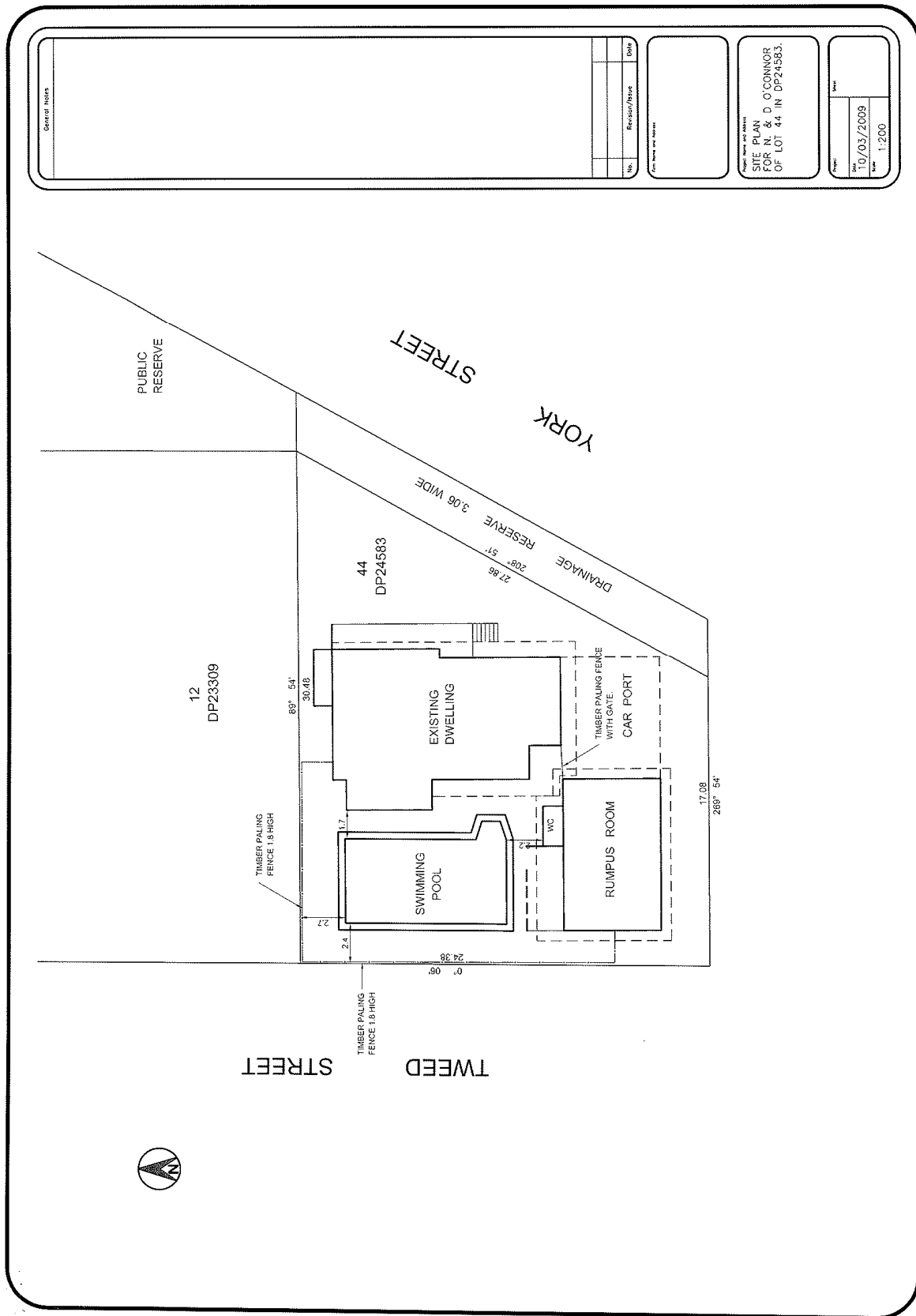
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Site Plan



Sheet: 1 of 1

DEVELOPMENT PLAN:





**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 main objective of Clause 4 is:

*“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced.”*

The subject proposed continuation of private swimming lessons is unlikely to result in a detrimental impact upon the natural and developed character of the Tweed Shire. The proposal is relatively minor. The use does not require any works or clearing of vegetation. The economic vitality, ecological integrity and cultural fabric of the Tweed Shire will be maintained.

**Clause 5 - Ecologically Sustainable Development**

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

**Clause 8 - Zone objectives**

The consent authority may grant consent to development only if:

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

The proposed swimming lessons are defined as recreation area in the current LEP. The subject proposal is consistent with the primary objectives of the zone and due to its nature and scale, will not result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole.

### Clause 11- Zone 2 (a) Low Density Residential

The land is located in the Low Density Residential zone.

The primary objective seeks:

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

The secondary Objective seeks:

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

The proposed use is defined as a 'Recreation Area' which is an Item 2 matter and permissible with consent. The proposed use of the domestic pool for swimming lessons does not alter the existing low density residential nature of the area and therefore the proposal is consistent with the primary objective of the zone.

In terms of the secondary objectives of the zone the proposal is consistent with allowing non- residential development that is domestically based and services the local needs of the community. Letters of support from surrounding residents were received, arguing that the applicant provides a valuable service by teaching children to swim.

If the proposed use is approved, conditions of consent will be included to ensure noise levels do not cause amenity impacts in the 2(a) Low Density area.

### Clause 15 - Essential Services

The subject proposal does not conflict with any service provision on site or in the locality. All services are already provided.

### Clause 16 - Height of Building

The subject proposal is not for construction and therefore Clause 16 is not applicable in this instance.

### Clause 17 - Social Impact Assessment

The proposal is of a minor nature and does not require a social impact assessment.

### Clause 35 - Acid Sulfate Soils

No excavation is proposed, therefore there is no likelihood of conflict with any level of ASS.

#### Other Specific Clauses

There are no other specific clauses relevant to this proposal.

#### **North Coast Regional Environmental Plan 1988**

There are no NCREP 1988 clauses relevant to the site or proposal.

#### **State Environmental Planning Policies**

There are no SEPP's relevant to the site or proposal.

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

There is no Draft EPI that is relevant to the site or proposal.

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

##### Tweed Development Control Plan

##### A2-Site Access and Parking Code

Under the requirements of the DCP a dwelling house requires one car parking space for the dwelling. The requirements for swimming pools are one space per fifty square metres of water surface. The swimming pool has a water surface area of approximately 45m<sup>2</sup>. Therefore, one car parking space is required for the proposed swimming school and one car parking space for the dwelling house.

The applicant has outlined that a double carport and driveway space are available for carparking. The outlined parking meets the required car parking requirement of A2. The applicant has further stated that a majority of his current clients walk to the swimming facility which further balances the car parking demand.

Furthermore, the applicant has indicated that a maximum of two children are given a lesson together at anyone time. If could be assumed that each child arrived in a separate vehicle so at least three spaces would be required for the site (including the site required for the dwelling). Given that there is a double carport on site, and a driveway space, it is considered that sufficient car parking is available.

##### A11-Public Notification of Development Proposals

The subject application was notified from 8 April 2009 to 24 April 2009.

During this timeframe a total of thirty submissions were received. Out of the thirty, seven signatures objected to the proposal and the remaining twenty three were submissions in support of the proposal.

The issues raised within the submissions are discussed in a later section of this report.

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

There are no relevant matters that have been prescribed by the Regulations.

**(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**

Amenity/Noise

A site observation was conducted by Council's Environmental Health Officer to determine the existing noise levels. The premise was monitored whilst lessons were being conducted on three separate occasions (1 May, 6 May and 7 May 2009).

It was observed that the sound levels from the pool area were almost inaudible on the footpath directly opposite in Tweed Street. Whilst this observation could be considered a 'snap shot' in time rather than an extended monitoring, importantly it demonstrates that the activity can be conducted with acceptable or minimal noise impact on other residential properties.

The occupants of a property (nearby that from which an objection was received) were interviewed on 1 May 2009 whilst lessons were underway. These residents stated that historically noise was audible from both the instructor and the children. However, since just prior to Christmas 2008, there had been a distinct improvement. In the six weeks prior to 1 May 2009, noise had been almost inaudible. The residents of Tweed Street state that if noise levels were maintained at current levels they would have no objection to the activities as they acknowledged the important skills being taught.

In light of these observations it was not considered necessary to request a noise impact assessment. Additionally given the proposal is limited to a two year timeframe, it is considered that observation of noise levels will be manageable.

Public Health

The following comments were provided by Council' Environmental Health Officer on public health issues:

*"It is noted that the pool is primarily designed and constructed as a domestic pool. Inspection of the premises (by Council's Environmental Health Officer) revealed that whilst the pool is relatively old, it is in*

*reasonable condition and no hazards with excessive potential to cause harm were identified (i.e whilst there are various stairs, level changes etc immediately adjacent to the pool, given the minimal number of users, level of intense supervision and likely familiarity of the users the risk of injury to users is considered not to be excessive).*

*Reference is made to the Public Health Act 1991, Public Health (Swimming Pools and Spa Pools) Regulations 2000 and the NSW Health Public Swimming Pool and Spa Pool Guidelines 1996. Having reviewed these documents, it is the Environmental Health Unit's opinion that the Guidelines are intended for 'public swimming pools' of a much more substantial nature and with much higher user numbers. Therefore if approval were granted it is not proposed to require compliance with the Guidelines in full, however conditions would be applied requiring practical compliance with requirements for disinfection, hygiene, water quality testing and record keeping."*

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

Surrounding Land Uses/Development

Surrounding development consists of low density residential dwellings. The proposal will be conducted during business hours Monday to Friday with a maximum of two pupils at one time. If approved the development will be conditioned to ensure the ambient noise levels remain acceptable to maintain acceptable residential amenity.

Access, Transport and Traffic

As outlined above the applicant has provided adequate onsite car parking for the development.

Pool Fencing

Council's Building Surveyor inspected the property and identified that adjustments are required to the existing fencing to facilitate compliance with the *Swimming Pools Act 1992*. Relevant conditions are imposed in this regard.

The following requirements are applicable to the existing swimming pool regardless of whether the application gains approval or not.

1. Adjust all openings to the pool area from the house and adjacent rumpus room building to 'child safe' which means generally non climbable doors latched at 1500mm above floor level and all window opening to the pool area secured to prevent access.
2. Adjust the side fencing adjacent to the pool filter so as to be non climbable in accordance with Australian Standard 1926 (AS1926).

3. Adjust the lattice gate from the garage to be self closing and self latching at 1500mm above floor level.
4. As an alternative to point 1. above, the pool could be isolated from the dwelling and rumpus building by installing a separate pool fence complying with AS 1926. This would be a preferred option.

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

During the notification timeframe thirty submissions were received, seven submissions of objection and twenty three signatures of support.

The outlined reasons for objection were identified as:

Issue	Comment
Lack of car parking	As discussed above, the subject proposal is compliant with the requirements for car parking.
Noise	Council's Environmental Health Department have conducted a noise audit of the premises and deemed the noise levels to be acceptable subject to conditions.
Commercial activity being conducted in a residential area.	The proposed use is a permissible form of development in the 2(a) Low Density Residential zone.
Operational Health and Safety Issues	As discussed above, if approved the subject development will be required to comply with relevant requirements in relation to fencing.

Reasons for support are summarised below:

- The provision of swimming lessons provides an essential community service by providing a safe and welcoming environment for parents to bring their children to swim.
- The lessons are small, well run and do not create any excessive noise or traffic problems in the neighbourhood.
- Long standing neighbours have had no reason to complain about noise or parking and never felt the need to question the use of the pool for swimming lessons.
- No noise issues are considered to arise from the existing activities conducted at the premises.

The number of submissions received in support of the proposal are significantly greater than the number of submissions received opposing to the proposal.

**(e) Public interest**

Submissions received have been noted above and it not considered that the proposal will have an adverse impact on public interest.

**OPTIONS:**

1. Resolve to adopt the recommendations made and approve the development application.
2. Resolve to refuse the development application for specified reasons.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Council is in receipt of a development application for the continued use of a swimming pool for swimming lessons. The proposed development is considered to demonstrate compliance with the Tweed Local Environmental Plan, the North Coast Regional Environmental Plan and the other relevant State Environmental Planning Policies and associated regulations and is considered to be compliant with the Environmental Planning and Assessment Act 1979.

Therefore the application is recommended for conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

Nil.

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**P11 [PR-PC] Major Project Application for Casuarina Town Centre Concept Plan and Project Application - Council's Final Comments, Land Ownership and Easement Issues**

**ORIGIN:**

**Development Assessment**

**FILE NO: GS4/96/135 Pt30**

**SUMMARY OF REPORT:**

The Department of Planning (DOP) has received a major project application for a town centre, mixed use development and subdivision at Casuarina. The major project application includes two parts, a concept plan for the whole site and a project application for stage one works. The project application, if approved, would allow for development of a supermarket, adjoining specialist retail, essential infrastructure, earthworks, provision of roads, car parking and subdivision of the land into 56 lots. The concept plan, if approved, allows for further project applications to be made over the site for mixed use development, medium density residential development and commercial development including a hotel.

The purpose of this report is to:

1. Provide Council with a summary of the key issues associated with the major project concept plan, and
2. Seek Council's support of the recommended option to withhold required owners consent.

The proposal requires removal of a significant easement (approximately 36 metres wide) which benefits Council. The easement runs through the site providing a drainage swale and cycleway from the north-east foreshore to the sports fields to the south-west. Council needs to consider owners consent to allow the removal of the existing easement and to also allow for the application to be made over Council land (Lot 10 and 13 DP1014470).

The concept plan also proposes to close Dianella Drive.

It is considered that there are three options for Council consideration as follows:-

**Option 1**

- (a) Subject to (b), (c) and (d) below, Council grant owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive for the purpose only of permitting the application to proceed to determination by the Department.
- (b) Consent does not include owner's consent to enter upon Council's land to carry out works.

- (c) Consent does not include Council's consent to relinquish its benefits relating to easements and right of way on lot 223 DP104849.
- (d) The matters referred to in (b) and (c) above would be the subject of further negotiations with the proponent, in the event that the Pt 3A application is successful. Negotiations would include monetary compensation to Council relating to these transactions.
- (e) The Director of Planning and Regulations forward appropriate conditions to the DOP for consideration in the Part 3A determination.

### **Option 2**

- (a) Subject to (b), (c) and (d) below and the proponent agreeing to change the concept plan to:
  - i. Widening the east/west open space reserve on the northeast of the Town Centre site from 15 to 20m and lengthen it to reach Casuarina Way
  - ii. provide a 15m wide easement, optimise the alignment, optimise separation of vehicular traffic and provide landscaping satisfactory to Council for the balance of the walkway/cycleway commencing in the reserve referred to in (i) above and extending to lot 10 DP1014470D and
  - iii. extend the beach esplanade road in accordance with the *Kings Beach Development Plan*.

Council grant owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive for the purpose only of permitting the application to proceed to determination by the Department.

- (a) Consent does not include owner's consent to enter upon Council's land to carry out works
- (b) Consent does not include Council's consent to relinquish its benefits relating to easements and right of way on lot 223 DP104849.
- (c) The matters referred to in (b) and (c) above would be the subject of further negotiations with the proponent, in the event that the Pt 3A application is successful. Negotiations would include monetary compensation to Council relating to these transactions.
- (d) The Director of Planning and Regulations forward appropriate conditions to the Department of Planning for consideration in the Part 3A determination.

### **Option 3**

- (a) Council withhold owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive.
- (b) Council advise the proponents and the Department that it supports the concept of the Town Centre proposal and would more favourably consider a request for owners consent if a revised concept plan was submitted that conformed with the intent of the *Kings Beach Development Plan* contained in the Land & Environment Court consent of 16 December 1998 for DA s96/135.

This report recommends option 3.

Primary reasons for this recommendation is that the proposed layout:

- Results in the loss of level of service and amenity to residents provided by the easement / right of way and assets contained therein. This issue has been carefully considered in the attached addendum.
- Results in visual impacts on Tweed Coast Road and the coastal character of the streetscape, primarily due to the location of the supermarket (the location of which is inconsistent with the Court approved *Kings Beach Development Plan*).
- Does not extend the foreshore esplanade or promote urban design principles contrary to the Court approved *Kings Beach Development Plan*.

#### **RECOMMENDATION:**

**That Council endorses Option 3 as follows: -**

- 1. Withholds owners consent relating to Lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over Lot 223 DP104849 and Dianella Drive.**
- 2. Advises the proponents and the Department of Planning that it supports the concept of the Town Centre proposal and would more favourably consider a request for owners consent if a revised concept plan was submitted that conformed with the intent of the *Kings Beach Development Plan* contained in the Land & Environment Court consent S96/135 of 16 December 1998.**

**REPORT:**

**Applicant:** Kings Beach No. 2 Pty Ltd  
**Owner:** Kings Beach No. 2 Pty Ltd and Tweed Shire Council  
**Location:** Tweed Coast Road, Casuarina  
**Zoning:** 2(e) Residential Tourist and 7(f) Environmental Protection (Coastal Lands)  
**Cost:** N/A

**BACKGROUND:****Land and Environment Court Appeal**

A master plan was approved for development of Casuarina by the Land and Environment Court in December 1998. The master plan is referred to as the *Kings Beach Development Plan* and includes allocation of:

- Development lots for future subdivision
- Resort accommodation
- Private and public open space areas
- Seaside and beachside villages
- Walkways and cycleways
- Possible road linkages.

The subsequent subdivision and development of Casuarina has occurred generally in accordance with the *Kings Beach Development Plan*.

The *Kings Beach Development Plan* is shown below under the heading “Kings Beach Development Plan” and referenced in Council’s Development Control Plan (DCP), section B5 – Casuarina Beach.

**Major Project Process and Terminology**

Development applications made under part 3A of the *Environment Planning and Assessment Act 1979* (The Act) are subject to a process different to that of standard applications assessed under part 4 of the Act. To assist with terminology used in this report, these stages and elements are summarised below.

1. The Minister declares if a project should be assessed under part 3A and requires a project to be lodged as a concept plan.
2. Initial application: The proponent submits application for a **project approval (PA)** and may also provide a preliminary **environmental assessment (EA)**. A PA applies to application for approval of all or part of an area that will not require further planning approvals because of it is planned in detail. This is different to a **concept plan**, which is more conceptual and requires additional applications. A PA may be assessed at the same time as a concept plan. The EA is the submitted report and plans which addresses the relevant requirements.

3. The Director General of the DOP establishes key issues and relevant requirements (DGRs) which should be addressed in the EA. Relevant public authorities are consulted in developing the DGRs.
4. The proponent submits its draft EA and statement of commitments (which are similar to conditions). The DOP determines if the draft EA adequately addresses the DGR's (test of adequacy).
5. The DOP exhibits the EA for a minimum of 30 days.
6. The DOP provides a copy of the submissions to the applicant and the applicant prepares a response to the issues raised in their project. Where changes are proposed, the proponent is required to prepare a preferred project report (PPR) outlining the changes.
7. The DOP prepares an assessment report to the Minister.
8. The Minister makes a determination.

### Chronology of Consultation with Council

Council officers have engaged in many meetings and discussions with the developer in relation to this proposal since before it was lodged. The concerns raised in this report have been consistently highlighted to the proponent and the DOP since as early as 2006, as outlined in the chronology below.

Date	Comment
6 November 2006	The DOP requested Council's preliminary advice on the proposal for a concept plan at Casuarina Beach including subdivision and supermarket (etc.). The DOP requested that Council advise if the proposed town centre would be consistent with the original Development Plan approved by the Land and Environment Court decision in 1998.
5 December 2006	<p>Council provided written comments to the DOP advising that the proposed plans did not meet officer's expectations, nor were they consistent with the court approved plan. In particular, there was concern with the location of the supermarket fronting Tweed Coast Road and deletion of the esplanade road adjacent to the beach. The Council correspondence advised that whilst the development plan allowed for a small commercial centre and shops (the "Seaside Village"), the intent was for the centre to be of a small scale, including a small supermarket and associated retail operated on local demand from within the Casuarina population (estimated at 4000 by 2014). This centre was intended to be adjacent to the beach and was not intended to trade as a district supermarket. On this basis, the DOP was advised that the supermarket and associated retail should be located away from Tweed Coast Road and located in the village area consistent with the original development plan. More beach side parking was also considered necessary.</p> <p>The draft concept plans were not considered acceptable by officers at this point.</p>

Date	Comment
17 January 2007	The DOP issued the DGRs for assessment of the proposed Casuarina Town Centre.
26 November 2007	Council received a Draft EA from the applicant to review. The Draft EA was for the proposed Casuarina town centre concept plan.
12 December 2007	Council officers met with the applicant and identified that Council officers had concerns with the location of the supermarket adjacent to Tweed Coast Road. The applicant was advised that consultation with Council's engineers was required in relation to the on-site drainage easement and the proposed closing of Diannella Drive.
17 December 2007	Council officers advised the applicant (email) that comments provided in December 2006 still stood. The email advice also highlighted the need for retention of the existing easement traversing the site which was significant for access and services and that no agreement had been made with Council regarding the relocation of services or roads.
14 March 2008	Council was advised that the DOP had received a Draft Environmental Assessment (EA) for the Casuarina Town Centre. The DOP invited Council to consider the Draft EA against the DGRs and provide an opinion of whether the proposal adequately addressed the issues raised in the DGRs.
1 April 2008	A meeting was held with Council officers and the applicant who again indicated they would not support the location of the supermarket on Tweed Coast Road and were not supportive of relinquishing the on-site drainage swale and cycleway.
8 April 2008	<p>Council officers provided written comments on the test of adequacy and advised it was not considered that the EA was adequate for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ the location of the supermarket on Tweed Coast Road was not supported</li> <li>▪ the esplanade road should not be reduced in length, compared with the court approved plan.</li> <li>▪ Council consent had not been granted for works within Council land or relinquishment of the on-site swale and right of carriageway.</li> <li>▪ the proposed alignment of Casuarina Way is not compatible with the existing easement and cycleway.</li> <li>▪ the plan includes cul-de-sacs which minimise the movement network through the site.</li> </ul>

Date	Comment
7 August 2008	<p>Correspondence was received from Cardno Eppell Olsen requesting owners consent for an application to be lodged for road works including the following:</p> <ul style="list-style-type: none"> <li>• Close Dianella Drive at the intersection of Tweed Coast Road,</li> <li>• Construct a new access and a signalised intersection 80 metres south of the existing Tweed Coast Road / Dianella Drive intersection.</li> <li>• Construct the Casuarina Way link between Dianella Drive (north and Steelwood lane (south).</li> <li>• Construct a new access road from the intersection on Tweed Coast Road to the new link on Casuarina Way.</li> </ul> <p>Cardno Eppell Olsen were advised that this application should not be lodged until determination of the concept plan.</p>
11 August 2008	<p>Correspondence was received from the applicant formally requesting owners consent for works (including landscaping, drainage, pedestrian and cycleways) proposed in Lot 13 DP101447 (adjacent to the foreshore) as part of the concept plan and project application.</p>
26 August 2008	<p>The public exhibition of the proposal commenced for a period of 30 days, ceasing on 30 September 2008.</p>
3 October 2008	<p>Council provided a submission to the DOP on the advertised proposal. The submission is attached to this report.</p>
6 April 2009	<p>Council received the PPR prepared by the applicant. The DOP requested Council's comments and or conditions on the PPR.</p>

**SITE DESCRIPTION:**

The Casuarina town centre is proposed on a site located east of Tweed Coast Road and south of Dianella Drive in Casuarina. It is currently vacant and is not improved with any buildings or structures, apart from a cycleway and drainage swale which runs through the site.

The subject site has a frontage to Tweed Coast Road. It is surrounded by sports fields to the south west, low density residential development to the north and south and ocean beaches and foreshore to the east.

The site includes the following lots owned by Kings Beach No. 2 Pty Ltd:

Lot 223 DP1048494

Lot 3 DP1042119

Lot 144 DP1030322

These lots have an area of approximately 208,746.29m<sup>2</sup> and are currently burdened with a variety of easements and restrictions as summarised below.

Development is also proposed over the following lots, owned by Tweed Shire Council

Lot 13 DP1014470 (land along the foreshore)

Lot 10 DP1014470 (northern edge of the sports fields)

The proposal also requires the closure of Dianella Drive.

It is noted that owners consent to lodge the application has only been formally requested for Lot 13.

Vegetation on the site is comprised of regenerating shrub land on coastal sand dunes, which were mined in the 1960's and 1970's. The ecologist report submitted with the EA has advised that none of the vegetation on-site is endangered ecological communities listed by the *Threatened Species Conservation Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*.

The site has varying topography, ranging between approximately RL 4 metres AHD and RL 10 metres AHD. It is characterised by a large, vegetated drainage channel and cycleway / pedestrian path which provides a link between the foreshore cycleway from the northeast of the site, through the site to the sports fields to the south west.

Burdens on the subject allotments are summarised below.

**Lot 223 DP1048494**

- Restriction to user at the eastern portion of the site (from dashed line to eastern boundary) so no buildings, structures or other improvements can occur, except for fencing or landscaping.
- Restriction on use of land so no direct access to the site is provided from Coast Road, accept as otherwise approved.
- Restriction on land so no change to the ground level and acoustic bund occurs adjacent to Tweed Coast Road.
- Easements for drainage of sewer, right of carriageway and water (centrally through the site)
- Easement for drainage of sewer adjacent to the boundary adjoining Tweed Coast Road.
- Easement for right of carriageway for extension of Casuarina Way into the site.

**Lot 144 DP1030322**

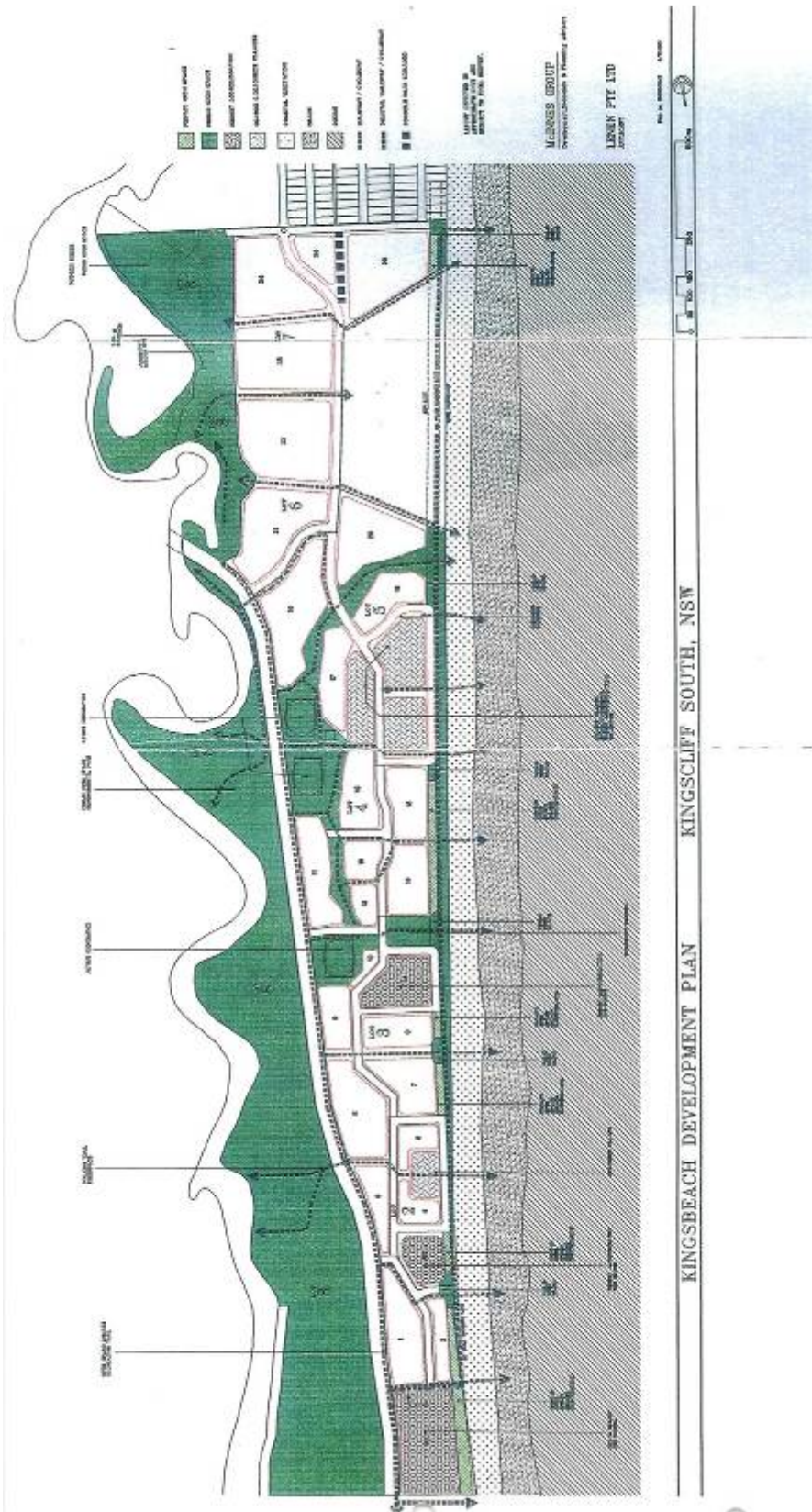
- Right of carriageway 16 metres wide variable width
- Easement for electricity supply
- Easement for drainage of sewerage
- Restrictions on use of the land (roof water from drainage and infiltration pits)

**Lot 13 DP1014470 and Lot 10 DP1014470**

- Public Reserve



**KINGS BEACH DEVELOPMENT PLAN:**



## PROPOSAL DESCRIPTION:

The proposed development consists of a concept plan and project application for stage 1, comprising retail development, infrastructure works and subdivision into a total of 56 lots.

The table below summarises the intended land use for each proposed lot.

Proposed Lot	Proposed land uses
1	supermarket and adjoining retail, car parking and access
2	offices, medical centre, child care centre and community facilities
17	restaurants, entertainment and beach retailing
5, 6, 13 and 17	Mixed use including retailing, commercial, restaurant and other uses. First floor occupancies may include mix of commercial, personal services and other associated uses together with residential use. Upper level floors are anticipated to be wholly residential.
3-4, 7-11, 14-16, 18	Medium density residential
19 – 56	Low density residential development

Proposed lot sizes range from 450m<sup>2</sup> to 21,134m<sup>2</sup>.

The applicant identifies that an “iconic building” is proposed in lot 17 and this will contain an adjunct facility to the existing surf life saving club facility at Salt. This may include limited office space, first aid room and storage facilities for the Salt surf club.

Details on the proportion of tourist accommodation and permanent accommodation were not provided, nor were the specific location of different uses identified.

### Concept Plan

The concept plan includes the conceptual land uses proposed in lots 2 -18 above, that is commercial development, mixed use and medium residential development. Subsequent approvals will be required for the construction of these uses.

The EA includes a proposed Built Form Compliance Table for future development applications as follows. This is proposed to be read in conjunction with any approved concept plan.

Land Use Type	Height <sup>(1)</sup>		Density <sup>(1)</sup>		Retail Floor Space	Min Landscape Area of Site
	Ridge Ceiling	& No. of Storeys	Plot Ratio	Min No. Units per m <sup>2</sup> of site area		
<b>Retailing (Lot 1)</b>	13m-10m	3	0.5	N/A	3,660m <sup>2(2)</sup>	30%
<b>Commercial (Lot 2)</b>	13m-10m	3	0.5	N/A	N/A	30%
<b>Commercial (Lot 17)</b>	10m-8m	2	1.0	N/A		10%

2000m<sup>2</sup>

<b>Mixed Use (Lots 5, 6, 12, 13)</b>	12.2m-9.6m	3	2.0	1 per 130m <sup>2</sup>		20%
<b>Medium Density Residential (Lots 3-4, 7-11, 14-16, 18)</b>	12.2m-9.6m	3	1.2	1 per 130m <sup>2</sup>	N/A	20%
<b>Low Density Residential (Lots 19-56)</b>	9m-7m	2	0.6	N/A	N/A	25%

- (1) The listed height and density criteria comply with those contained in the ratified Tweed Shire Council's Tweed Development Control Plan Section A1-Residential and Tourist Development Code.
- (2) Project Application (for (1) Stage 1 Works) is limited to ground floor retailing comprising a 2,500m<sup>2</sup> supermarket, 850m<sup>2</sup> speciality shops and 310m<sup>2</sup> restaurants, totalling 3,660m<sup>2</sup> floor space. Amenities (75m<sup>2</sup>) at ground floor are also proposed, with a first floor level to accommodate 400m<sup>2</sup> office space, additionally. Total proposed floor area (Stage 1) amounts to 4,135m<sup>2</sup>.

Any expanded retailing and related floor space beyond the amount specified above, is to be the subject of any, if any, further application(s), consistent with population growth in the short-to-medium term future.

The following **Table** is to be read in conjunction with the above-described **Concept Plan** proposed for Casuarina Beach Town Centre, and provides Drawing Number and other Report references for ease of convenience.

(Source: Extract from EA).

### Project Application

The project application incorporates the first stage of the town centre development. It seeks approval for development proposed in lot 1 (including the shopping centre and associated retail services) as well as essential service and infrastructure for the for the concept plan. Stage one includes the following:

- Shopping centre (2500m<sup>2</sup> supermarket, 850m<sup>2</sup> specialty shops, 310m<sup>2</sup> restaurants, 75m<sup>2</sup> amenities, 400m<sup>2</sup> office space)
- Bulk earthworks including vegetation clearing
- Construction of the north – south road link (extension of Casuarina Way)
- Construction of all roads including kerbside public parking
- Realignment of the foreshore cycleway / walk way
- Minor road construction
- Drainage swale works
- Provision of reticulated services (including water, sewerage, stormwater drainage)
- Reconstruction of Dianella Drive near the intersection of Tweed Coast Road which includes formation of a cul-de-sac
- Construction of a new intersection at Tweed Coast Road in place of the existing Dianella Drive

- Provision of public open space
- Landscaping
- Provision of electricity and telecommunication services.

The EA identified the following details in relation to the shopping centre component of stage one.

- **Stage 1 construction of the proposed shopping centre comprising:**  
**Ground Level**

- Supermarket 2,500m<sup>2</sup>
- Speciality shops 850m<sup>2</sup>
- Restaurants 310m<sup>2</sup>
- Amenities 75m<sup>2</sup>

**First Floor Level**

- Office 400m<sup>2</sup>
- Total Floor Space**
- 4,135m
- <sup>2</sup>

**Car Parking Provision**

- “At grade” 76 spaces
  - Basement 150 spaces
  - “Indented” on-street 16 spaces
- Total Car Parking Provision**
- 242 spaces

- **Signage** for the proposed shopping centre

Vehicle ingress and egress to the supermarket is proposed via Casuarina Way. A second vehicle egress is also proposed from the supermarket site onto the main street.

The proposal is proposed to be developed over an 8 – 10 year time period in a sequenced form reliant upon four stages.

The EA includes a statement of commitments, which were modified in the PPR as identified below.

It is intended that the operating hours of the shopping centre will be 8.00am to 9.00pm Monday – Friday and 8.00am to 6.00pm Saturday and Sunday. Servicing of the centre is intended to be limited to the period 6.00am – 10.00pm.

The applicant proposes to dedicate the following areas of open space:

- 7 (f) zoned land along the foreshore (4,164m<sup>2</sup>)
- 2 (e) zoned land over part of the existing cycleway and swale (3,180m<sup>2</sup>) on the northern side of the property
- 2 (e) zoned land adjacent to the foreshore area for a civic park (3,717m<sup>2</sup>)
- 2 (e) zoned land adjacent to the foreshore area on the south eastern portion of the site (454m<sup>2</sup>)

- 2 (e) zoned land adjacent to the sports field and on the northern boundary for infiltration basins (2,209m<sup>2</sup>).

Works proposed in Lot 10 DP1014470 (sports field) include trimming earthworks, construction of a concrete headwall and apron to fix the section of swale with the headwall and construction of cycleway to connect to that existing in the playing field.

#### *Proposed Earthworks*

The applicant proposes a bulk earthworks program of approximately 180,000m<sup>3</sup> to achieve the desired surface levels for the development. The EA advises that approximately 40,000m<sup>3</sup> of fill will be sourced locally. The most likely source of this fill will be from the Northwest Precinct of Casuarina situated north of Dianella Drive.

The PPR subsequently identifies that the fill will no longer be required.

The applicants have prepared an earthworks management plan including clearing and grubbing, bulk earthworks and topsoil and seeding. All vegetation will be cleared, mulched and spread on site to prevent erosion. The site will then be seeded to further reduce wind and soil erosion.

#### *Proposed Roads*

It is proposed to construct Casuarina Way from Steelwood Lane through to the existing roundabout at Dianella Drive. The construction of this section of Casuarina Way will complete the link between the Central Precinct and Northern Precinct and assist to reduce traffic volumes on the Coast Road. Traffic lights have been proposed at the intersections of Casuarina Way and the main street and at Tweed Coast Road and the main street. A warrant from the RTA will be necessary prior to final approval.

The applicant proposes to close Dianella Drive by forming a cul-de-sac at its western end. A new intersection with Tweed Coast Road will be constructed approximately 95m south of Dianella Drive which will provide direct access to Casuarina Way, the commercial precinct and the Esplanade Road.

The proposal also includes several new residential streets to service the medium density and residential subdivision areas.

#### Preferred Project Report

The PPR addresses submissions made on the proposal during the notification and advertising period, including submissions made by government agencies.

Modifications were made to the concept plan and project application in response to concerns raised in the submissions. The following modifications are noted:

- Additional north south pedestrian linkages were provided through the site
- The existing drainage swale is proposed to be replaced with three underground 900mm diameter concrete pipes and a new alignment. This also includes new alignment of the cycleway partly over the pipe drain and crossing perpendicular to the main street. The cycleway extends north / south between mixed use lots 6 – 13, 5 – 12 and medium density lots 4 – 11 and 4 – 10. It crosses Casuarina Way and extends west to the sports field. The applicant proposes to dedicate to Council the land within the swale (which has a width of 15 metres) and grant an easement of 10 metres over the balance length of the pipe system and cycleway.

- A hotel is indicated in Lot 18
- Perpendicular parking proposed along the northern side of the main street has been modified to 45 degree angle car parking. Parallel parking remains on the southern side.
- Chicane and narrow street design of esplanade is modified.
- Additional public car parking along the eastern alignment of the esplanade road is proposed.
- Indicative building setbacks are modified.
- Revised traffic and circulation around the proposed shopping centre is proposed.
- Clarification is provided that no additional fill is to be imported.
- Clarification that excavation during construction of the basement car park will be limited to 12,000m<sup>3</sup>.
- Amendments to the car parking as follows: 176 at grade car parking (increase of 100 spaces), 72 spaces in the basement (decrease of 78) and 16 indented on-street spaces.

### **CONSTRAINTS AND RELEVANT PLANNING INSTRUMENTS**

The site is located in the coastal zone and is partly identified as a sensitive coastal location. It is also bushfire prone. The land has potential acid sulphate soil and is flood affected, however previous filling has been undertaken on site.

Planning instruments particularly relevant to the site are outlined below.

North Coast Regional Environmental Plan

SEPP 55 – Remediation of Land

SEPP 65 – Design Quality of Residential Flat Buildings

SEPP 71 – Coastal Protection (The site is located in a sensitive coastal location)

SEPP (Major Projects)

SEPP (Infrastructure)

The following clauses in the LEP are particularly relevant to the proposal:

15 – Availability of Essential Services

16 – Height of Buildings (3 storeys)

17 – Social Impact Assessment (more than 50 lots and retail greater than 1500m<sup>2</sup>)

21A – Subdivision of 7(f) Zone – (minimum lot size must be 40 hectares)

22 – Development Near Designated Road (Casuarina Way)

23 – Control of Access

27 – Development in Zone 7 (f) Environmental Protection (Coastal Lands)

35 – Acid Sulfate soils (Class 4 – applicable to works 2 metres below ground)

36 – Coastal Zone

### 39A – Bushfire Prone Land

The following sections of Council's Development Control Plan are relevant to the proposal:

- A1 – Residential Development and Tourist Code
- A2 – Site Access and Parking Code
- A3 – Development of Flood Liable Land
- A5 – Subdivision Manual
- A7 – Child Care Centre
- A13 – Socio-Economic Assessment
- B5 – Casuarina

A detailed assessment of the proposal against the above documents has not been undertaken as Council is not the consent authority.

### **COUNCIL OFFICER COMMENTS**

Council's officers have reviewed that the proposal and comments are provide below.

#### **Planning**

Council officers are generally supportive of the proposed land uses, however due to a number of key concerns the proposed layout is not supported in its current form.

Concerns with the layout have been raised with the applicant on numerous occasions in the past and these concerns are summarised below.

#### **Inconsistency with *Kings Beach Development Control Plan***

The proposed activated main street concept is supported and consistent with the intent of the Court approved plan. However, there is concern that the proposal does not reflect other key features of the Court approved plan, which resulted in better urban design outcomes. These variations are discussed below.

#### ***Location of the Seaside Village***

The location of the retail and commercial uses are depicted in the *Kings Beach Development Plan* as a consolidated node ('seaside village') surrounding the esplanade road and Casuarina Way, some distance from Tweed Coast Road.

The original intent for the seaside village is summarised in the Statement of Environmental Effects (SEE) associated with development applications for management lots of the estate lodged subsequent to the approval of the Court approval (SEE for Stage 6 of the Development Application of Part of Management Lots 5, 6, 7 and Lot 1 DP811425, prepared by McInnes Group and McKerrell Lynch for Consolidated Properties, dated 20 May 2000). The SEE's identify that the seaside village would be located along the public esplanade running parallel to the beach and a broad main street.

It was also identified that the main anchor in the village would be located on the eastern side of the estate.

The proposal conflicts with this intent as it provides for the supermarket (the key anchor) in a prominent location on Tweed Coast Road, to the west. This location is considered inappropriate as it will:

- Attract passing traffic to the supermarket, providing for more than the needs of the surrounding locality but providing retail services to a wider catchment (refer discussion below on economic / retail implications).
- Modify the intention for provision of a village node with strong connections to the foreshore.
- Result in visual impact on the existing coastal landscaped character of Tweed Coast Road (as discussed in greater detail below).
- Encourage access by vehicles rather than promote a walkable village giving design priority to pedestrian and cycle access over cars.

There is concern that the mixed uses proposed along the new main street will not eventuate and the node will be concentrated around the supermarket on the western side adjacent to Tweed Coast Road, isolated from the iconic building and mixed uses proposed to the east.

#### *Community Facilities*

The SEE for Stage 6 of the Development Application of Part of Management Lots 5, 6, 7 and Lot 1 DP811425 (prepared by McInnes Group and McKerrell Lynch for Consolidated Properties, dated 20 May 2000) identifies that the seaside village precinct will accommodate two major community facilities, including a surf lifesaving club located in the north east corner of the village and a community sports and recreation centre in the southwest corner, overlooking the two community playing fields. These two community facilities were intended to be connected by a strong diagonal pedestrian connection through the village (discussed below).

The EA and PPR identify that the 'iconic building' proposed adjacent to the foreshore will include limited storage and office area for use by the SALT Surf Lifesaving Club. However the area available within the proposed building, as well as additional detail on extent of uses has not been provided.

The EA mentions the possibility of a community facility in proposed lot 2, however there is no detail on what this may entail and no certainty about the size, nature or extent of such facilities. The sports and recreation centre has been removed completely from the design.

#### *Diagonal Public Open Space and Walkway / Cycleway Connection through the Site*

The Court approved Kings Beach Development Plan clearly indicates the existing drainage swale as public open space incorporating a cycleway / walkway link diagonally through the site. This connection has been established through the site and reflected in the deposited plan by way of easement.

The applicant is proposing to amend the location this cycleway / walkway connection by diverting it from the open space area through the proposed main street as described above. This is the primary point of contention in relation to the proposal.

Council officers consider that the removal of the existing swale and cycleway will result in a loss of public benefit currently available. From a drainage point of view, the proposed pipe system is inferior to a swale.

As the asset manager, the Director of Engineering Services has provided a detailed discussion and analysis on this topic and made recommendations on this matter in the attached addendum. These recommendations are reflected in the options herein.



### *Esplanade Road*

The applicant removes part of the road intended to extend parallel to the beach. This is not supported and is considered a poor urban design outcome. Limited length of the esplanade road reduces opportunities of public access to the foreshore (both visual and actual). The foreshore represents a significant characteristic of the site and opportunity for public enjoyment and appreciation should be maximised. Furthermore, good urban design practice requires that subdivision street layout is permeable and inter-connected to maximise access for vehicles and pedestrians.

### Visual Impacts – Supermarket Location

Casuarina and the Tweed Coast generally have a unique coastal character which is different to that of the Gold Coast and other highly urbanised areas.

The Tweed Coast is characterised by a number of coastal villages, each with a different identity and character. The villages extending from Kingscliff to Pottsville are linked by Tweed Coast Road which displays a largely undeveloped character dominated by vegetated dunes and coastal heathland.

In Council's *Strategic Plan Tweed 4/24*, the community has identified key principles to guide land development in the Tweed. One of the key principles is the:

*Maintenance of the integrity and character of existing towns and villages, which are to be separated by open space buffers or green belts.*

Many NSW strategic planning instruments recognise the value of the north coast character and the threat that large development can have if it is not sensitive to its surroundings or if located in prominent positions (North Coast Design Guidelines).

Strategic planning objectives of the NSW Coastal Policy 1997 include the protection of aesthetic quality and the need to design and locate development to complement the surrounding environment. SEPP 71 – Coastal Protection also requires the consideration of scenic qualities of coastal areas and protection of these qualities.

The North Coast Design Guidelines require that vegetation be used to maintain coastal character, as well as use of natural materials and colours sympathetic to the surrounds. For industrial and commercial buildings, the Design Guidelines state that "heavy screening planting with large trees and thick understorey, together with the use of recessive colours, is essential".

The existing streetscape character of Tweed Coast Road will be severely impacted upon by the proposal. The supermarket will be visually prominent from the road. The design itself includes a significant a-frame element designed to create a landmark and maximise visual prominence. The new location of the intersection, together with earthworks adjacent to the Tweed Coast Road frontage will maximise view corridors from the road to the supermarket.

Given the surrounding context and existing character of Tweed Coast Road, the location and design of the supermarket is not considered to be appropriate.

### Economic Impacts

The Council's Tweed Retail Strategy (adopted by Council resolution 16 November 2005) seeks to ensure:

1. *The character of existing towns and villages and the retail facilities they already have be protected.*

2. *Where appropriate, Council will support the incremental expansion of existing retail centres in such a way as not to threaten or fracture those existing centres, rather than building new ones.*
3. *Reinforce Tweed Heads south as the major district retail centre by encouraging the expansion and when Tweed's population demands that increased range and level of shopping.*
4. *Maintain and wherever possible enhance the special appeal of the retail centre of Murwillumbah and those village centres of similar style.*
5. *Limit the scale of new large scale retail centres in the coastal region to a level which caters for the majority of chore type shopping needs. This concept to reflect the need to reduce fuel consumption and to support sustainability within each centre through discouraging vehicle use and encouraging walking and cycling.*
6. *Council does not support the establishment of another district retail shopping centre.*
7. *The retail concepts in these recommendations form the basis of locality plans in the Shire and any retail development applications which are submitted in the interim of these locality plans being prepared and approved by Council be assessed so that the above retail strategies are supported and not compromised.*

Core Economics (September 2005) prepared a report for Council to inform the above strategy and identified that a supermarket anchored site may be located at Casuarina / Salt at a scale to suite the needs of the local community.

The applicant submitted an economic impact report with the EA (also prepared by Conics, dated 15 February 2009). The economic report identified the primary trade catchment of the proposed supermarket would include communities at Kings Forest, Seaside City, Casuarina Beach, Salt, Cabarita / Bogangar, Hastings Point and Pottsville. This report identified that the proposed supermarket would “borrow” trade from catchments in and around Pottsville until such time as similar facilities are locally developed.

Concern was raised in the Council submission (refer attachment) with this approach and assumption that the future Kings Forest development would not include its own supermarket. There is concern the “borrow” approach does not cater only to the needs of the surrounding community and may hinder the outcomes intended by the Council’s Retail Strategy: to promote walkability and protect vibrant coastal villages.

In response to these concerns, the applicant submitted an additional economic impact assessment (prepared by MacroPlan dated December 2008). This report included a similar trade area and borrowing concept, but identified that smaller supermarkets at Kings Forest are likely. The MacroPlan report identified that the trade area included the needs of semi-permanent residents and visitors / tourists from beyond the main trade area.

This MacroPlan report argues that between 2011 – 2016 Casuarina could support the proposed supermarket and specialty retail, satisfying the short term need of local residents and non-permanent visitors. There would be temporary borrowing from the Pottsville catchments. By 2017 and beyond, the Casuarina catchment would become

self sustaining and support its own retailing facilities, even with a full-line supermarket to be delivered in Pottsville and longer term delivery of small convenience centres in Kings Forest.

The report identified the most impact of the proposal would be on Kingscliff Woolworths, which would result in impacts of approximately -15% of annual turnover. However MacroPlan consider that impacts on Kingscliff would dissipate within the short term period (2011-2016) as the Casuarina catchment becomes self sustaining over this period given population growth in Kingscliff.

The MacroPlan report states (page 10) that the site location is appropriate for the early delivery of a full-line supermarket in the Tweed Coast as it will be co-located to a significant tourist and visitor catchment. It goes on to say that the supermarket will serve the weekly and fortnightly needs of local residents along the coastal area stretching from Salt to Hastings Point and surrounding areas. It will provide an alternative for residents in Pottsville until such time as a full line supermarket is supportable there.

Council Officers have not engaged the services of an economic expert to review the findings of the MacroPlan or Conics reports, however it is noted that neither reports specifically deal with the economic implications of the location of the supermarket on Tweed Coast Road and the increased access opportunities this location provides for the wider trade catchment. It is considered that if the supermarket will be self-sustaining in the short to medium term (as the economist purport), the supermarket should not depend on its prominent location on Tweed Coast Road to attract visitors from the wider catchment.

It is considered that the location of the supermarket away from Tweed Coast Road, on the eastern side of Casuarina Way (within close proximity to the main street) would allow for more certainty that the outcomes of the retail strategy will be properly realised, including the intention to create walkable, self-sustaining, coastal villages.

It should also be noted that the Department of Planning is currently considering a major project application for a development that includes a 2000m<sup>2</sup> supermarket at Cabarita.

#### Esplanade Road

The North Coast Regional Environmental Plan identifies that development on land within 100 metres of the ocean should ensure sufficient foreshore open space is accessible and available to the public within the vicinity of the proposed development.

SEPP 71 – Coastal Protection requires improvement of pedestrian and public access to the foreshore, including identifying opportunities for increased access.

As identified above, extension of the beach esplanade road is considered necessary to provide greater public access to the foreshore and access points through the dunes.

Council's Traffic Engineer does not support the partial removal of the esplanade road and consider that it should be constructed in accordance with the Court approved *Kings Beach Development Plan*. Suitable traffic control devices can be designed to control speed.

#### **Public interest**

The DOP received 397 submissions during the public notification of the application. The applicant has identified that several people made more than one submission, calculating that a total of 250 people made one or more submission.

Additional Submissions have been received in relation to the PPR, outside the nominated notification period.

The majority of the submissions express concerns with the removal of the swale and cycleway through the site for the following reasons:

- The swale is the main route for runoff and acts as a refuse trap, it's removal will result in runoff impacts.
- The swale provides a wildlife corridor.
- The cycleway provides safe access for people to move from the beach to existing sports field. The removal of the current cycleway forces people onto the roads.
- Adjoining landowners have designed properties with the view the swale would be permanent.
- The proposal results in loss of public amenity and greenspace.
- The proposal is not compliant with the masterplans and Court approved plan.
- The swale provides a buffer between the adjoining residential / tourist resort and the proposed town centre and removal will result in loss of privacy.

Other issues raised in the submissions as follows.

- A town centre is needed and overdue.
- Lack of car parking is proposed within close proximity to the beach.
- Lack of aged care facilities proposed.
- Limited information is provided on any proposed beachfront amenities, park embellishments, bus stops, icon building and bicycle racks.
- Car parking is proposed in residential streets.
- Footpaths are too narrow.
- Insufficient information has been provided on the nature of land uses proposed within the 'iconic building'.

New issues raised by submitters in response to the PPR are also summarised below:

- Objection to the removal of the existing boardwalk / cycleway located in the foreshore area.
- No provision is made for a community meeting hall.
- Limited detail is provided on proposed surf life saving club facilities.
- Visual impacts of the supermarket from Tweed Coast Road.
- Safety concerns with the loading doc area at the rear of the supermarket.
- No details are provided on pedestrian crossings.
- No provision is made for bus stops or shelters.
- Concerns are raised with road and footpath design.
- Security issues are raised associated with buildings adjoining easements.

- Climate change issues arise from the removal of the open stormwater swale.

**OPTIONS:****Option 1**

- (a) Subject to (b), (c) and (d) below, Council grant owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive for the purpose only of permitting the application to proceed to determination by the Department.
- (b) Consent does not include owner's consent to enter upon Council's land to carry out works.
- (c) Consent does not include Council's consent to relinquish its benefits relating to easements and right of way on lot 223 DP104849.
- (d) The matters referred to in (b) and (c) above would be the subject of further negotiations with the proponent, in the event that the Pt 3A application is successful. Negotiations would include monetary compensation to Council relating to these transactions.
- (e) The Director of Planning and Regulations forward appropriate conditions to the DOP for consideration in the Part 3A determination.

**Option 2**

- (a) Subject to (b), (c) and (d) below and the proponent agreeing to change the concept plan to:
  - i. Widening the east/west open space reserve on the northeast of the Town Centre site from 15 to 20m and lengthen it to reach Casuarina Way
  - ii. provide a 15m wide easement, optimise the alignment, optimise separation of vehicular traffic and provide landscaping satisfactory to Council for the balance of the walkway/cycleway commencing in the reserve referred to in (i) above and extending to lot 10 DP1014470D and
  - iii. extend the beach esplanade road in accordance with the *Kings Beach Development Plan*.

Council grant owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive for the purpose only of permitting the application to proceed to determination by the Department.

- (a) Consent does not include owner's consent to enter upon Council's land to carry out works
  - (b) Consent does not include Council's consent to relinquish its benefits relating to easements and right of way on lot 223 DP104849.
  - (c) The matters referred to in (b) and (c) above would be the subject of further negotiations with the proponent, in the event that the Pt 3A application is successful. Negotiations would include monetary compensation to Council relating to these transactions.
  - (d) The Director of Planning and Regulations forward appropriate conditions to the Department of Planning for consideration in the Part 3A determination.
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### **Option 3**

- (a) Council withhold owners consent relating to lots 10 and 13 DP1014470, the easement/right of carriageway benefiting Council over lot 223 DP104849 and Dianella Drive.
- (b) Council advise the proponents and the Department that it supports the concept of the Town Centre proposal and would more favourably consider a request for owners consent if a revised concept plan was submitted that conformed with the intent of the *Kings Beach Development Plan* contained in the Land & Environment Court consent of 16 December 1998 for DA s96/135.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

#### Council's Owners Consent

As identified above, development is proposed within the following lots, owned by Tweed Shire Council

Lot 13 DP1014470 - landscaping, drainage works and a cycleway pedestrian link are proposed within the Council land along the foreshore.

Lot 10 DP1014470 – works associated with drainage are required in the northern edge of the site adjacent to the sports fields.

It is noted that owners consent has only been formally requested for Lot 13.

Council's owners consent has not been provided for lodgement of the application which includes works in the abovementioned lots.

Clause 8F of the *Environmental Planning and Assessment Regulation 2000* identify that consent of the owner for a project application is required and may be obtained at any time before the determination of the application.

#### Section 88B instruments

The proposal (if approved) will require modification and or extinguishment of items in the 88B instruments restrictions to user, easements for drainage and access, easements for services, rights of carriageways. Significantly, the easement located through the centre of the site providing for drainage, sewer and right of carriageway and will need to be modified and relocated to allow for the proposed layout (as discussed above in the addendum).

Pursuant to section 47 (6A) of the *Real Property Act 1990*, easements such as this may only be extinguished by the registered proprietor of the easement (ie. Tweed Shire Council) or extinguished by order of the Supreme Court.

### **POLICY IMPLICATIONS:**

Nil.

### **CONCLUSION:**

This report provides Council with details on the proposed Major Project concept plan for the Casuarina Town Centre.



Whilst there are no concerns with the land uses proposed in the concept plan, there are significant concerns with the proposed layout which requires removal of the existing easement providing drainage and cycleway access through the site. There is also concern with the location of the proposed supermarket on Tweed Coast Road.

It is recommended that Council withhold relevant owners consent and agreement to modify the relevant easements for the purpose of this application and advise the DOP that it would more favourably consider a request for owners consent if a revised concept plan was submitted that conformed with the intent of the *Kings Beach Development Plan*.

#### **UNDER SEPARATE COVER/FURTHER INFORMATION:**

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

1. Submission to Department of Planning dated 3/10/2008 (ECM 2052111)
  2. Addendum (memo from Patrick Knight to Rowena Michel dated 14/5/2009) (ECM 2052130)
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**P12 [PR-PC] Development Application DA07/0705 for the Demolition of the Existing Club and the Construction of a New Club to be used as a Place of Public Entertainment, Refreshment Rooms, Advertising Sign, Associated Car Park & Earthworks at Lot 1 DP 1088100,**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA07/0705 Pt2**

**SUMMARY OF REPORT:**

On the 12 July 2007, Council received an application for the demolition of the existing Clubhouse and the construction of a new Club to be used a place of public entertainment, refreshment rooms, advertising sign, associated car park and earthworks.

The existing Club has an approximate floor area of 1437m<sup>2</sup> consists of two storeys of Club in height with 80 car spaces on site at ground level.

The proposed Club contains an approximate floor area of 2708m<sup>2</sup> is two storeys in height consisting of one level of basement/ground level car parking and one level of Club.

The proposed Club is to consist of:

- Entertaining area = 430m<sup>2</sup>
- Dinning area = 240m<sup>2</sup>
- Gaming area = 200m<sup>2</sup>
- Kitchen = 100m<sup>2</sup>
- Function room = 410 m<sup>2</sup>
- Bar and TAB = 140 m<sup>2</sup>
- Refreshments rooms = 629 m<sup>2</sup>
- Beer garden = 385 m<sup>2</sup>
- Children's room = 49 m<sup>2</sup>
- Amenities and office = 125 m<sup>2</sup>
- 103 car spaces on-site plus 23 car spaces on Council's northern adjacent lot (lot 7 DP 1082139). Earth works of the subject Council lot is at Council's expense, with sealing and line marking at the developer's expense.

A report was submitted to Council on Tuesday, 18 November 2008. The report advised Council that the applicant had lodged a Class 1 Appeal through the Land and Environment Court, and that a Section 34 Conciliation Conference could be held prior to a full hearing. Council resolved to defend the appeal by way of an initial Section 34 Conciliation Conference and should the Section 34 Conciliation Conference be unsuccessful then proceed to a full hearing.

The Section 34 Conciliation Conference was held on site before Commissioner Hussey on 16 January 2009. The following contentions were highlighted:

- car parking shortfall
- Sewer
- Stormwater

These contentions were resolved through the traffic report by CRG Traffic & Acoustic Pty Ltd dated 6 March 2009 and appropriate conditions placed on the development consent. It is considered that the proposal is now suitable for approval. The applicant advised Council on the 29 April 2009, accepting the conditions proposed within the development consent.

#### **RECOMMENDATION:**

**That Development Application DA07/0705 for the demolition of the existing club and construction of a new club to be used as a place of public entertainment and refreshment rooms, advertising sign, associated car park and earthworks at Lot 1 DP 1088100, No. 260 Fraser Drive Banora Point be approved subject to the following conditions: -**

#### **GENERAL**

1. **The development shall be completed in accordance with the Statement of Environmental Effects and**

<b>Plan Number</b>	<b>Prepared by</b>	<b>Dated</b>
<b>SK-01 M</b>	<b>Bayden Goddard Design Architects</b>	<b>24.09.07</b>
<b>SK-06 D</b>	<b>Bayden Goddard Design Architects</b>	<b>14.12.06</b>
<b>SK-07 F</b>	<b>Bayden Goddard Design Architects</b>	<b>19.01.09</b>
<b>SK-08 B</b>	<b>Bayden Goddard Design Architects</b>	<b>15.01.07</b>
<b>SK-09 B</b>	<b>Bayden Goddard Design Architects</b>	<b>15.01.07</b>
<b>SK-10 A</b>	<b>Bayden Goddard Design Architects</b>	<b>26. 10.06</b>
<b>SK-11 A</b>	<b>Bayden Goddard Design Architects</b>	<b>26. 10.06</b>
<b>SK-12 A</b>	<b>Bayden Goddard Design Architects</b>	<b>27.06.07</b>

**except where varied by the conditions of this consent.**

[GEN0005]

2. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.

All signage lighting is to be turned on only during the approved operating hours and turned off after the approved operating hours.

The message contained within the electronic display board is to change instantaneously and remain static for at least 5 minutes (conveying products and pricing). Colour changes, flashing and movement of, or within the sign are otherwise not permitted.

The sign shall not illuminate the words 'stop', 'turn' or any other such words which could be perceived as directing motorists.

The glare and reflectiveness of the sign shall be limited to a reasonable level so as to not cause nuisance to adjoining residents or passing motorists.

[GEN0075]

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

[GEN0115]

4. 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]

5. Prior to commencement of work, a construction certificate shall be obtained for the works proposed by this consent.

[GEN0185]

6. Council advises that the land is subject to inundation in a 1 in 100 year event to the Design Flood Level of 2.6m AHD. Development of the site is subject to the provisions of Council's Consolidated DCP Section A3 *Development of Flood Liable Land*.

[GEN0195]

7. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.

[GEN0265]

8. Stormwater management shall be in general accordance with the Stormwater Management Plan prepared by Cozen Regan Williams Prove dated 30/01/09, except where varied by the conditions of this consent.

Surface levels for the proposed entrance off Fraser Drive and the proposed minor works within neighbouring Lot 7 DP 1082139 shall be in general accordance with Drawing Sk 6 Issue B prepared by Cozen Regan Williams Prove dated 02/09.

Final surface levels within neighbouring Lot 7 DP 1082139 shall be in general accordance drawing RC04006/01 Issue A prepared by Tweed Shire Council dated 03.2005

[GENNS02]

9. The existing concrete footpath along the frontage of the subject site to Fraser Drive and Leisure Drive is to remain.

[GENNS04]

10. The upgrade of the neighbouring car park within Lot 7 DP 1082139 shall be in general accordance with drawing RC04006/01 Issue A and RC04006/02 Issue A prepared by Tweed Shire Council dated 03.2005.

The earthworks associated with this upgrade shall be undertaken by either the Contractor or Tweed Shire Council at Tweed Shire Council's expense.

Re-sealing and re-linemarking of the upgraded neighbouring car park within Lot 7 DP 1082139 shall be at the Developer's expense.

[GENNS05]

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. The applicant shall provide 103 parking spaces on site, of which three shall be car parking spaces for the disabled in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code. The applicant shall also provide an additional 23 car spaces within Council's northern adjacent lot (Lot 7 on DP1082139).

Ten (10) bicycle spaces are to be provided on site.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

12. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

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

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

(a) Tweed Road Contribution Plan:

631.2 Trips @ \$912

\$575,654

**S94 Plan No. 4****Sector2\_4****Heavy Haulage Component**

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$  heavy haulage contribution

and:

**Prod.** projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist.** average haulage distance of product on Shire roads  
(trip one way)

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.5

[PCC0215/PSC0175]

**13. Section 94 Contributions**

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

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

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

**Heavy Haulage Component**

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 5 prior to the issue of a construction certificate. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$  heavy haulage contribution

and:

**Prod.** projected demand for extractive material to be hauled to the site over life of project in tonnes

**Dist.** average haulage distance of product on Shire roads  
(trip one way)

**\\$Unit** the unit cost attributed to maintaining a road as set out in Section 7.2 (currently 5.4c per tonne per kilometre)

**Admin.** Administration component - 5% - see Section 6.6

[PCC0225/PSC0185]

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

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

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

Water DSP4:	6.426 ET @ \$10346.9	\$66,489.20
Sewer Banora:	10.506 ET @ \$4972.1	\$52,236.90

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

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

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

[PCC0265/PSC0165]

15. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, description of material, proposed use of material, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval.

[PCC0465]

16. All earthworks shall be graded at a minimum of 1% so that the site drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties.

A plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate.

Any proposed fill and cut batters and retaining walls shall be contained wholly within the subject land, excluding the approved minor filling with neighbouring Lot 7 DP 1082139. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with a S68 stormwater application for Council approval.

[PCC0485]

17. A detailed plan of landscaping is to be submitted and approved by Council's General Manager or his delegate prior to the issue of a Construction Certificate.

[PCC0585]

18. Design detail shall be provided with the Construction Certificate application to address the flood compatibility of the proposed structure including the following specific matters:

- (a) All building materials used below Council's design flood level must not be susceptible to water damage.
- (b) Subject to the requirements of the local electricity supply authority, all electrical wiring, outlets, switches etc. should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should to suitably treated to withstand continuous submergence in water and provide appropriate earth leakage devices.
- (c) Define adequate provision for the flood free storage for goods and equipment susceptible to water damage.

[PCC0705]

19. Construction Certificate design detail shall confirm the area below Council's Design Flood Level is not totally enclosed. The enclosure of the basement car park shall be limited to the extent shown on "Basement Floor Plan SK-01 J prepared by Bayden Goddard Design Architects and dated 12.02.07.

[PCC0715]

20. Application shall be made to Tweed Shire Council under Section 138 of the Roads Act 1993 for works pursuant to this consent located within the road reserve. Application shall include engineering plans and specifications for the following required works: -

- (a) Provision of a complying access off Fraser Drive and Leisure Drive in accordance with Section A2 – "*Site Access and Parking Code*" of Council's consolidated Tweed Development Control Plan and

**Council's "Driveway Access to Property – Part 1 " Design Specification.**

The above mentioned engineering plan submission must include copies of compliance certificates relied upon and details relevant to but not limited to the following: -

- Road works/furnishings
- Stormwater drainage
- Water and sewerage works
- Sediment and erosion control plans
- Location of all services/conduits
- Traffic control plan

[PCC0895]

21. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls/footings/structures etc taking into consideration the zone of influence on the sewer main or other underground infrastructure and include a certificate of sufficiency of design prior to the determination of a construction certificate.

[PCC0935]

22. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0945]

23. Permanent stormwater quality treatment shall be provided in accordance with the following:

- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
- (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
- (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.



- (d) **Specific Requirements to be detailed within the Construction certificate application include:**
- (e) **Shake down area shall be installed within the property, immediately prior to any vehicle entering or exiting the site prior to any earthworks being undertaken.**
- (f) **Runoff from all hardstand areas, (including car parking and hardstand landscaping areas and excluding roof areas) must be treated to remove oil and sediment contaminants prior to discharge to the public realm. All permanent stormwater treatment devices must be sized according to Council's Development Design Specification D7 – *Stormwater Quality*, Section D7.12. Engineering details of the proposed devices, including maintenance schedules, shall be submitted with a s68 Stormwater Application for approval prior to issue of a Construction Certificate.**
- (g) **Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.**
- [PCC1105]
24. **All roof waters are to be disposed of through properly jointed pipes to the street gutter, inter-allotment drainage, or elsewhere if so directed in the conditions of consent. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZ3500.3.2. Note: A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.**
- [PCC1115]
25. **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]
26. **Erosion and Sediment Control shall be provided in accordance with the following:**
- (a) **The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with**
-

**Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.**

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - “Code of Practice for Soil and Water Management on Construction Works”.

[PCC1155]

27. Prior to the issue of a Construction Certificate, applications shall be lodged and approved by Tweed Shire Council under Section 68 of the Local Government Act for any of the following works including (but not limited to);
- (a) water,
- (b) sewerage, including;
- an application to operate an onsite sewerage management system.
- (c) drainage works, including;
- the connection of a private stormwater drain to a public stormwater drain,
  - the installation of stormwater quality control devices,
  - erosion and sediment control works.

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 Construction Certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1195]

28. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

29. Complete details of the fit out and construction of all food handling and preparation areas are to be submitted for consideration and approval by Council's Environmental Health Officer prior to the issue of the Construction Certificate. The fit out and construction of all food handling and preparation areas shall comply with the provisions of AS 4674 Design, Construction and fitout of Food Premises and Food Safety Standards

[PCCNS01]

30. Prior to the issue of a Construction Certificate, documentation shall be submitted to Council for approval, confirming that adequate fire pressure and flow are achieved.

[PCCNS02]

31. An amended plan demonstrating;
- a coach parking space can be provided at the entry of the building, and
  - that the ramp and drop off area (coach parking space) is wide enough for a vehicle to pass a parked coach;
  - and satisfactory coach access into and through the site;
- shall be submitted to and approved by Council prior to the issuing of a Construction Certificate.

[PCCNS04]

32. Submission of a Development Application(s) for the first use of each refreshment rooms to Council and is to be approved by Council prior to their use or occupation. Detailed floor and fit-out plans for the proposed refreshment room areas shall be submitted to Council to ensure that the front and back of house floor areas as nominated on plan no. SK-07 F by Bayden Goddard Design Architects is adhered to.

[PCCNS05]

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

33. 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]

34. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

35. 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]*
36. 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]*
37. 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]*
38. 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]*
39. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill nature of material, proposed use of material and confirmation further blending,
-



crushing or processing is not to be undertaken shall be submitted to the satisfaction of the General Manager or his delegate.

Once the approved haul route has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.

[PCW0375]

40. Prior to commencement of building works a stormwater drainage plan is to be submitted to and approved by the Principal Certifying Authority.

[PCW0955]

41. 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]

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

[PCW1065]

43. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by the General Manager or his delegate prior to any discharge to sewer being commenced. A trade waste application fee will be applicable in accordance with Councils adopted Fees and Charges.

[PCW1075]

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

[PCW1085]

45. Prior to the commencement of any works on the site all required plumbing and drainage inspection fees are to be submitted to Council.

[PCW1095]

#### **DURING CONSTRUCTION**

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

[DUR0005]

- 47. 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]

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

- A. Short Term Period - 4 weeks.**

**L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.**

- B. Long term period - the duration.**

**L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.**

[DUR0215]

- 49. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.**

[DUR0225]

- 50. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Council's General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Council's General Manager or his delegate prior to installation and shall include a water sampling outlet.**

[DUR0235]

- 51. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by the Tweed Shire Council General Manager or his delegate.**

[DUR0255]

- 52. 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]

53. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- (a) A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
  - (b) The chute shall be located in a position approved by the Principal Certifying Authority.
  - (c) A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0385]

54. 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]

55. 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]

56. 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]

57. Excavation

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

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

- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue

of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

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

[DUR0645]

60. Minimum notice of 48 hours shall be given to Tweed Shire Council for the capping of any disused sewer junctions. Tweed Shire Council staff in accordance with the application lodged and upon excavation of the service by the developer shall undertake Works.

[DUR0675]

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

[DUR0815]

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

[DUR0985]

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

[DUR0995]

64. 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]

65. All works shall be carried out in accordance with the Preliminary Acid Sulfate Soil Investigation and Management Plan Dewatering Management Plan prepared by HMC Environmental Consulting Pty Ltd dated December 2006 and numbered 2006.151A. A copy of this Plan shall be kept on site until all excavation and dewatering activity works have been completed.

[DUR1065]



66. All walls in the food preparation and storage areas shall be of solid construction. For this purpose walls in such areas may be of masonry or stud wall construction. If stud wall construction is used then the wall shall be lined as a minimum with 9mm thick high impact resistant material E.g. Villaboard or Versilux lining or other suitable material(s) approved by Council's Environmental Health Officer and tiled to a height of at least 2 metres above the floor. The floor/ wall junction shall be coved to the satisfaction of Council's Environmental Health Officer.

Masonry walls where not tiled may be cement rendered to provide a smooth faced impervious finish from the floor surface up to the underside of the ceiling or where permitted from the top of any bench or fitting permanently fixed to the wall.

Metal stud wall framing in lieu of timber framing shall be used in wet areas or where the walls and floor surfaces will be subjected to high levels of moisture or alternatively as directed by Council's Environmental Health Officer.

All penetrations of the wall surface in food preparation areas shall be effectively sealed to the satisfaction of Council's Environmental Health officer.

[DUR1495]

67. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.

[DUR1505]

68. Windows and doors opening into food handling, preparation and storage areas shall be pest proofed in accordance with the provisions of Food Safety Standard 3.2.3.

[DUR1515]

69. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate.

[DUR1545]

70. A floor waste connected to the drainage system shall be provided within 1.5 metres of the opening of the cool room.

[DUR1565]

71. All shelving, benches, fittings and furniture on which appliances and utensils are positioned within the premises must be of durable, smooth, impervious material capable of being easily cleaned.

[DUR1605]

72. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be installed in accordance with the

requirements of Part 2, Clauses 6, 7 and 8 of the Public Health (Microbial Control) Regulation 2000.

[DUR1645]

73. Access to the building for people with disabilities shall be provided and constructed in accordance with the requirements of Section D of the Building Code of Australia. Particular attention is to be given to the deemed-to-satisfy provisions of Part D-3 and their requirement to comply with AS1428.

[DUR1685]

74. Where a building or part of a building is required, under the provisions of Section D of the Building Code of Australia, to be accessible to permit use by people with disabilities, prominently displayed signs and symbols shall be provided to identify accessible routes, areas and facilities. The signage, including Braille or tactile signage, should be installed in accordance with the relevant provisions of the Building Code of Australia and achieve the minimum design requirements provided under AS1428.

[DUR1695]

75. Where access for people with disabilities is required to be provided to a building, sanitary facilities for the use of the disabled must also be provided in accordance with the provisions Part F-2 of the Building Code of Australia.

[DUR1705]

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

[DUR1715]

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

[DUR1795]

78. 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 Development Design and Construction Specifications prior to any use or occupation of the building.

[DUR1875]

79. Where the kerb or footpath is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb or
-



footpath must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR1905]

80. During construction, a “satisfactory inspection report” is required to be issued by Council for all works required under Section 138 of the Roads Act 1993. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR1925]

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

[DUR1945]

82. 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]

83. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

84. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR2245]

85. Appropriate measures are to be put in place during the construction and/or demolition period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

86. All waters that are to be discharged from the site shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]

87. During construction, a “satisfactory inspection report” is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection.

[DUR2445]

88. 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]
89. **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]
90. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR2515]
91. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.
- [DUR2525]
92. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>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]
93. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.
- [DUR2675]
94. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement
- [DUR2685]
95. The garbage location is to be acoustically treated to ensure adequate sound insulation in accordance with all requirements of the Acoustic Report Ref 32530 LO3 Twin Towns Juniors RFI Response.doc by TTM Acoustics and dated 4 March 2008.
- [DURNS01]
-



96. The doors to the garbage receptacle shall be closed at all times when glass is being deposited.

[DURNS02]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

97. Prior to issue of an occupation certificate, all works/actions/inspections etc required at that stage by other conditions or approved management plans or the like shall be completed in accordance with those conditions or plans.

[POC0005]

98. 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]

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

[POC0225]

100. Prior to commencement of operations and on completion of fit out an inspection is to be arranged with Council's Environmental Health Officer for final approval.

[POC0615]

101. The food premises shall provide appropriate notification to the NSW Food Authority prior to commencement of operations.

[POC0625]

102. The premise is to be treated on completion of fit-out and prior to commencement of trading and thereafter on a regular basis by a Licensed Pest Control Operator. A certificate of treatment is to be made available for Council inspection on request.

[POC0635]

103. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all works required under Section 138 of the Roads Act 1993.

[POC0745]

104. Redundant road pavement, kerb and gutter or foot paving including any existing disused vehicular laybacks/driveways or other special provisions shall be removed and the area reinstated to match adjoining works in accordance with Councils Development Design and Construction Specifications.

[POC0755]

105. On completion of work a certificate signed by a practising structural engineer is to be submitted to the Principal Certifying Authority to certify the structural adequacy of the structure.

[POC0805]



106. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the “satisfactory inspection report” issued by Council for all s68h2 permanent stormwater quality control devices.  
[POC0985]
107. 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]
108. Prior to the issue of a final occupation certificate, all conditions of consent are to be met.  
[POC1055]
109. Prior to the issue of the Occupation Certificate a Post Construction Noise Report prepared by a qualified acoustic consultant shall be submitted to Council for consideration and approval in particular, this report shall consider but not be limited to the noise emissions from all plant and equipment. The Post Construction Noise Report shall confirm that noise from all potential noise sources comply with the relevant noise acceptance criteria. The Post Construction Noise report shall be to the satisfaction of Council's General Manager or Delegate.  
[POCNS01]
110. Prior to the issue of the Occupation Certificate a Patron Noise Management Plan shall be prepared and submitted for approval by Council's General Manager or his Delegate which details arrangements that will be made for the management of noise from patrons while on the premises. The Plan shall specifically consider how patrons will be moved from congregating on the premises and causing any nuisance after closing time and shall list the responsible persons employed by the club for the implementation and enforcement of the Plan.  
[POCNS02]
111. A private sewerage pump station shall be provided to connect the development to Council’s sewerage system via the existing injection point on Council’s sewer rising main in Fraser Drive. The pump station shall be designed to operate satisfactorily when the Council sewerage pump station is pumping simultaneously.  
[POCNS04]
112. Prior to the issue of an occupation certificate or interim occupation certificate the applicant is required to lodge an application to operate an onsite sewerage management system (private sewage ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval to operate.  
[POCNS05]

113. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the creation of easements for services (including overhead electricity), rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act.

[POCSN06]

114. The existing reciprocal rights access/parking easement over Lot 1 on DP 1088100 and Lot 7 on DP 1082139 shall be extinguished.

A new Section 88B instrument (reciprocal rights for access and car parking) shall be prepared by the applicant in relation to Lot 1 on DP 1088100 and Lot 7 on DP 1082139. Both Council and the owner of Lot 1 on DP 1088100 shall sign and do all that is necessary to register the Section 88B instrument. The instrument shall apply to a minimum of fifty seven car spaces located within Lot 1 on DP 1088100, a minimum of fifty seven car spaces located within Lot 7 on DP 1082139 and the access aisles providing vehicular access to each of these areas from Fraser Drive. Registration costs shall be borne by the applicant. Registration of the instrument shall occur prior to the issue of an occupation certificate for the club.

[POCSN07]

115. 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]

116. 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]

117. Hours of operation are restricted to the following hours: -

- \* 9.00 am to 12.00 midnight - Sunday to Thursday
- \* 9.00 am to 1.30 am - Friday to Saturday

All deliveries are to occur within the hours of 7.00 am to 6.00 pm everyday.

[USE0185]

118. All externally mounted artificial lighting, including security lighting, is to be shielded to the satisfaction of the General Manager or his delegate where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.

[USE0225]

**119. All externally mounted air conditioning units and any other mechanical plant and equipment shall be acoustically treated so as to avoid the creation of offensive, or intrusive noise to any occupant of neighbouring or adjacent premises.**

[USE0235]

**120. The servicing of waste facilities shall be limited to between the hours of 7.00 am to 6.00 pm Monday to Saturday and 9.00 am to 6.00 pm Sunday and Public Holidays.**

[USE0285]

**121. The development shall comply with all recommendations as contained within the Acoustic Reports prepared by TTM Acoustics dated 8 October 2008 and 4 March 2008 ref: 32530 RO2 Twin Towns Juniors acoustic report. doc and ref:32530 LO3 Twin Towns Juniors RFI Response. doc respectively.**

[USE0305]

**122. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be operated in accordance with the requirements of Part 3, Clause 9 of the Public Health (Microbial Control) Regulation 2000.**

[USE0935]

**123. Any air-handling system, hot or warm water system or water-cooling system and any other regulated system as defined in Part 4, Section 43 of the Public Health Act shall be maintained in accordance with the requirements of Part 4, Clauses 11, 12 and 13 of the Public Health (Microbial Control) Regulation 2000, and a certificate to confirm that the regulated system is being maintained shall be submitted to Council on a 12 Monthly basis.**

[USE0945]

**124. All entertainment involving the use of amplified music in the beer garden area shall cease at 10.00 pm on every day.**

[USENS01]

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

**General Conditions (all approvals)**

The purposes of these conditions are to:

- Define certain terms used in other conditions
  - Specify the need to obtain a license, permit or authority before commencing any works
  - Specify that, in most cases an approval will only be issued to the occupier of the lands where the works are to be located (as required by the Water Act)
  - Require existing approvals to be cancelled or let lapse when a license is issued (if applicable)
-



- **Require the safe construction and operation of all works**
- **Require the use of appropriate soil conservation measures**
- **Limit vegetation destruction or removal to the minimum necessary**
- **Require the separate authorisation of clearing under the NVC Act**
- **Allow conditions to be imposed for management of fuel (petroleum)**

**In the following conditions relating to an approval under the Water Act 1912;**

**‘the department’ means the department administering the Water Act 1912;**

**‘approval’ means a license, permit, authority or approval under that Act;**

**‘river’ has the same meaning as in Section 5 of the Water Act 1912;**

**‘work’ means any structure, earthwork, plant or equipment authorised under the approval to be granted, as defined in Section 5 and 105 of the Water Act 1912;**

**‘controlled work’ means any earthwork, embankment or levee as defined in Section 165 of the Water Act 1912**

**Before commencing any works or using any existing works for the purpose of dewatering an approval under Part V of the Water Act 1912 must be obtained from the department. The application for the approval must contain sufficient information to show that the development is capable of meeting the objectives and outcomes specified in these conditions.**

**An approval will only be granted to the occupier of the lands where the works are located, unless otherwise allowed under the Water Act 1912.**

**When the department grants an approval, it may require any existing approvals held by the applicant relating to the land subject to this consent to be surrendered or let lapse.**

**All works subject to an approval shall be constructed, maintained and operated so as to ensure public safety and prevent possible damage to any public or private property.**

**All works involving soil or vegetation disturbance shall be undertaken with adequate measures to prevent soil erosion and the entry or sediments into any river, lake, waterbody, wetland or groundwater system.**

**The destruction of trees or native vegetation shall be restricted to the minimum necessary to complete the works.**

**All vegetation clearing must be authorised under the Native Vegetation Conservation Act 1997, if applicable.**

**The approval to be granted may specify any precautions considered necessary to prevent the pollution of surface water or groundwater by petroleum products or other hazardous materials used in the construction or operation of the works.**

**A license fee calculated in accordance with the Water Act 1912 must be paid before a license can be granted.**

**Conditions of water use (including irrigation)**

The purpose of these conditions are to:

- Allow the department to obtain an accurate measure of water use where necessary
- Specify the purpose(s) for which the water may be used
- Specify conditions to protect water quality and the environment
- Specify the maximum rate that water may be taken from the water source
- Specify the limitations of when water may be taken from the water source
- Ensure proper management of tailwater drainage
- Ensure accessions to groundwater systems are restricted

If and when required by the department, suitable devices must be installed to accurately measure the quality of water extraction or diverted by the works.

All water measuring equipment must be adequately maintained. It must be tested as and when required by the department to ensure its accuracy.

The water extracted under the approval to be granted shall be used for the purpose of dewatering and for no other purpose. A proposed change in purpose will require a replacement license to be issued.

**Conditions for bores and wells**

*See also 'general conditions' and 'conditions for water use'*

The purpose of these conditions are to:

- Set a limited period bore construction
- Require the bore to be properly completed and sealed
- Require certain information to be provided on completion of the work, including a location plan
- Allow DNR access for inspection and testing
- Specify procedures if saline or polluted water found
- Specify a volumetric allocation for the works purpose
- Allow DNR to alter the allocation at any time

Works for construction of bore must be completed with such period as specified by the department.

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

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

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Any water extracted by the works must not be discharged into any watercourse or groundwater if it would pollute that watercourse.

The department has the right to vary the volumetric allocation or the rate at which the allocation is taken in order to prevent the overuse of an aquifer.

- (1) THE LICENSEE MUST ALLOW AUTHORISED OFFICERS OF THE DEPARTMENT OF WATER AND ENERGY, AND ITS AUTHORISED AGENTS REASONABLE ACCESS TO THE LICENSED WORKS WITH VEHICLES AND EQUIPMENT AT ANY TIME FOR THE PURPOSES OF:
  - INSPECTING THE SAID WORK
  - TAKING SAMPLES OF ANY WATER OR MATERIAL IN THE WORK AND TESTING THE SAMPLES.
- (2) THE LICENSEE SHALL WITHIN 2 WEEKS OF BEING NOTIFIED INSTALL TO THE SATISFACTION OF THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES IN RESPECT OF LOCATION, TYPE AND CONSTRUCTION AN APPLIANCE(S) TO MEASURE THE QUANTITY OF WATER EXTRACTED FROM THE WORKS. THE APPLIANCE(S) TO CONSIST OF EITHER A MEASURING WEIR OR WEIRS WITH AUTOMATIC RECORDER, OR METER OR METER(S) OF MEASUREMENT AS MAY BE APPROVED BY THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES. THE APPLIANCE(S) SHALL BE MAINTAINED IN GOOD WORKING ORDER AND CONDITION. A RECORD OF ALL WATER EXTRACTED FROM THE WORKS SHALL BE KEPT AND SUPPLIED TO THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES UPON REQUEST. THE LICENSEE WHEN REQUESTED MUST SUPPLY A TEST CERTIFICATE AS TO THE ACCURACY OF THE APPLIANCE(S) FURNISHED EITHER BY THE MANUFACTURER OR BY SOME PERSON DULY QUALIFIED.
- (3) THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF POLLUTED WATER INTO A RIVER OR LAKE OTHERWISE THAN IN ACCORDANCE WITH THE CONDITIONS OF A LICENCE GRANTED UNDER THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997. A COPY OF THE LICENCE TO DISCHARGE IS TO BE PROVIDED TO THE DEPARTMENT OF INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES.
- (4) THE TERM OF THIS LICENCE SHALL BE SIX (6) MONTHS.
- (5) THE VOLUME OF GROUNDWATER EXTRACTED FROM THE WORK AUTHORISED BY THIS LICENCE SHALL NOT EXCEED 10 MEGALITRES FOR THE TERM OF THE LICENCE.
- (6) THE AUTHORISED WORK SHALL NOT BE USED FOR THE DISCHARGE OF WATER UNLESS THE PH OF THE WATER IS BETWEEN 6.5 AND 8.5, OR THE WATER HAS BEEN TREATED TO BRING THE PH TO A LEVEL BETWEEN 6.5 AND 8.5 PRIOR TO DISCHARGE, OR THE WATER IS DISCHARGED THROUGH THE COUNCIL'S SEWERAGE TREATMENT SYSTEM.

- (7) THE LICENSEE SHALL TEST THE PH OF ANY WATER EXTRACTED FROM THE WORK PRIOR TO THE COMMENCEMENT OF DISCHARGE AND AT LEAST TWICE DAILY THEREAFTER AND RECORD THE DATE, TIME AND RESULT OF EACH TEST IN THE SITE LOG. A COPY OF THE RECORDS OF THE PH TESTING IS TO BE RETURNED WITH THE FORM 'AG'.**

**THE WORK SHALL BE MANAGED IN ACCORDANCE WITH THE CONSTRAINTS SET OUT IN THE PRELIMINARY ACID SULFATE SOILS INVESTIGATION & DEWATERING MANAGEMENT PLAN PREPARED BY HMC ENVIRONMENTAL AND DATED DECEMBER 2006.**

**NSW RURAL FIRE SERVICE UNDER SECTION 79BA OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

- 1. Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.**
- 2. Property Access Roads shall comply with section 4.1.3 (2) of Planning for Bush Fire 2006.**

The applicant advised Council on 29 April 2009 that they will accept the conditions proposed within the development consent.

**REPORT:**

**Applicant:** Twin Towns Services Club Limited  
**Owner:** Twin Towns Services Club Limited  
**Location:** Lot 1 DP 1088100, No. 260 Fraser Drive, Banora Point  
**Zoning:** 6(b) Recreation  
**Cost:** \$7,000,000

**BACKGROUND:**

Council received the subject development application on the 16 July 2007. The applicant lodged a Class 1 appeal, through the Land and Environment Court of New South Wales on the 23 September 2008.

A report was submitted to Council on Tuesday 18 November 2008 advising that Council had been issued with a Class 1 Appeal. The report provided background of the application and proposed recommendations along with the following points;

- Marsdens Law Group appeared on behalf of Council for a telephone call-over before Assistant Register Hourigan of the Land and Environment Court on the 10 November 2008 along with the applicant's solicitor Mark Bolster.
- The parties advised the Register that the proceedings would be appropriate to be listed for a Section 34 conference. A Section 34 conference is a conciliation conference aimed at resolving or narrowing issues.
- The Register directed that the proceeding be listed for a Section 34 Conference for 22 January 2009, commencing 10.00am on site. The parties made a further request on 12 November 2008 to the Court that the date be brought forward to 16 January 2009, this was accepted.

The Council meeting of Tuesday 18 November 2008 resolved;

*“that Council endorses staff to continue to liaise with its Solicitors and defend the Appeal in the Land and Environment Court in respect of Development Application DA07/0705 for the demolition and redevelopment of existing club and advertising sign at Lot 1 DP 1088100, No. 260 Fraser Drive, Banora Point by way of an initial Section 34 conference and to proceed to a full hearing should the Section 34 conference be unsuccessful in mediating an outcome suitable to both parties.”*

Council engaged Marsdens Law Group to act on Council's behalf, to which it was considered appropriate for the proceedings to be listed for a Section 34 Conference.

The following contentions were highlighted throughout the assessment of the application and Section 34 Conference:

- Car parking shortfall
- Sewer

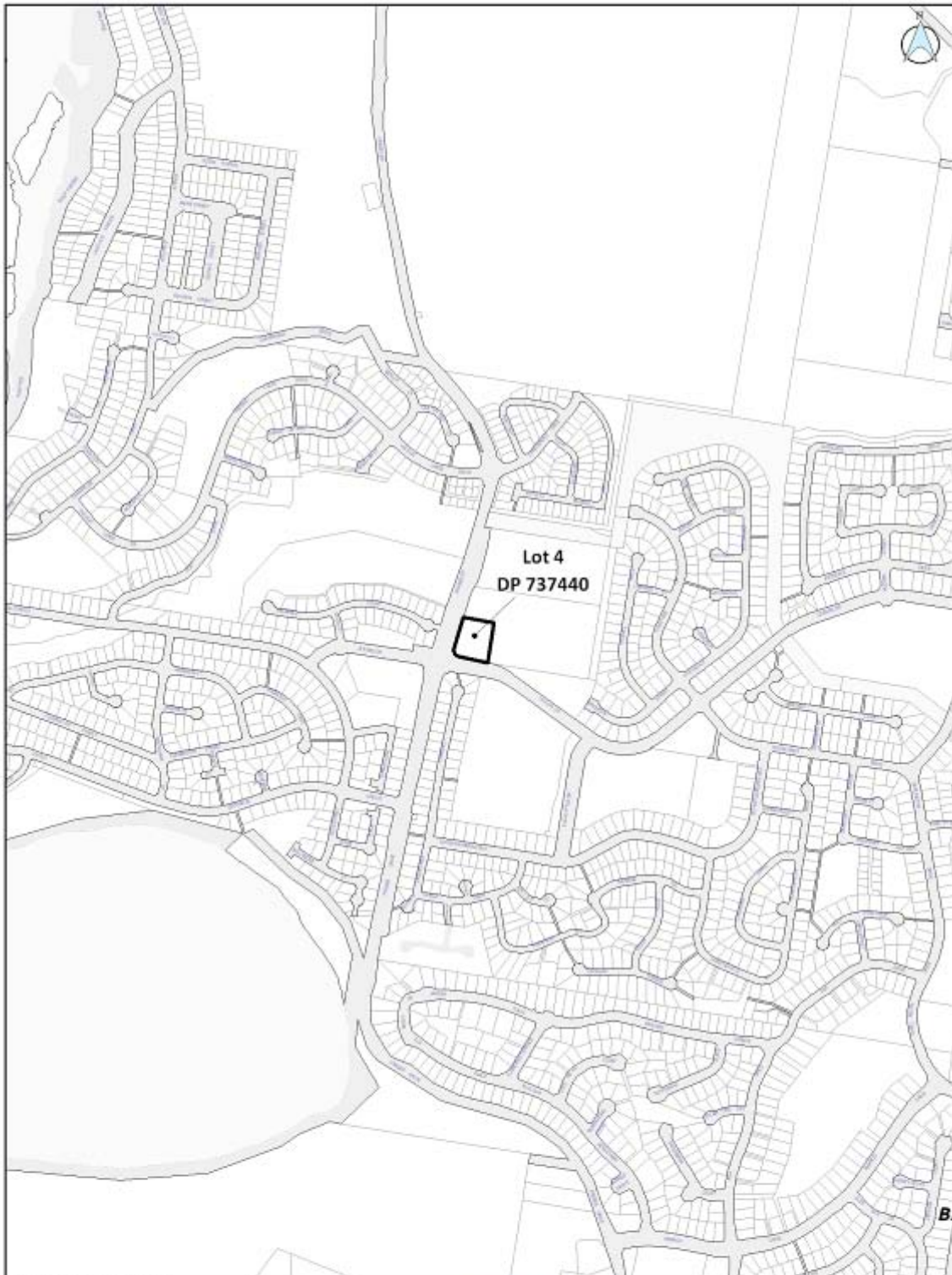
- Storm water



These issues have been resolved through traffic report by CRG Traffic and Acoustics Pty Ltd dated 6 March 2009 and appropriate conditions placed on the development consent.

The following agreement has been reached:

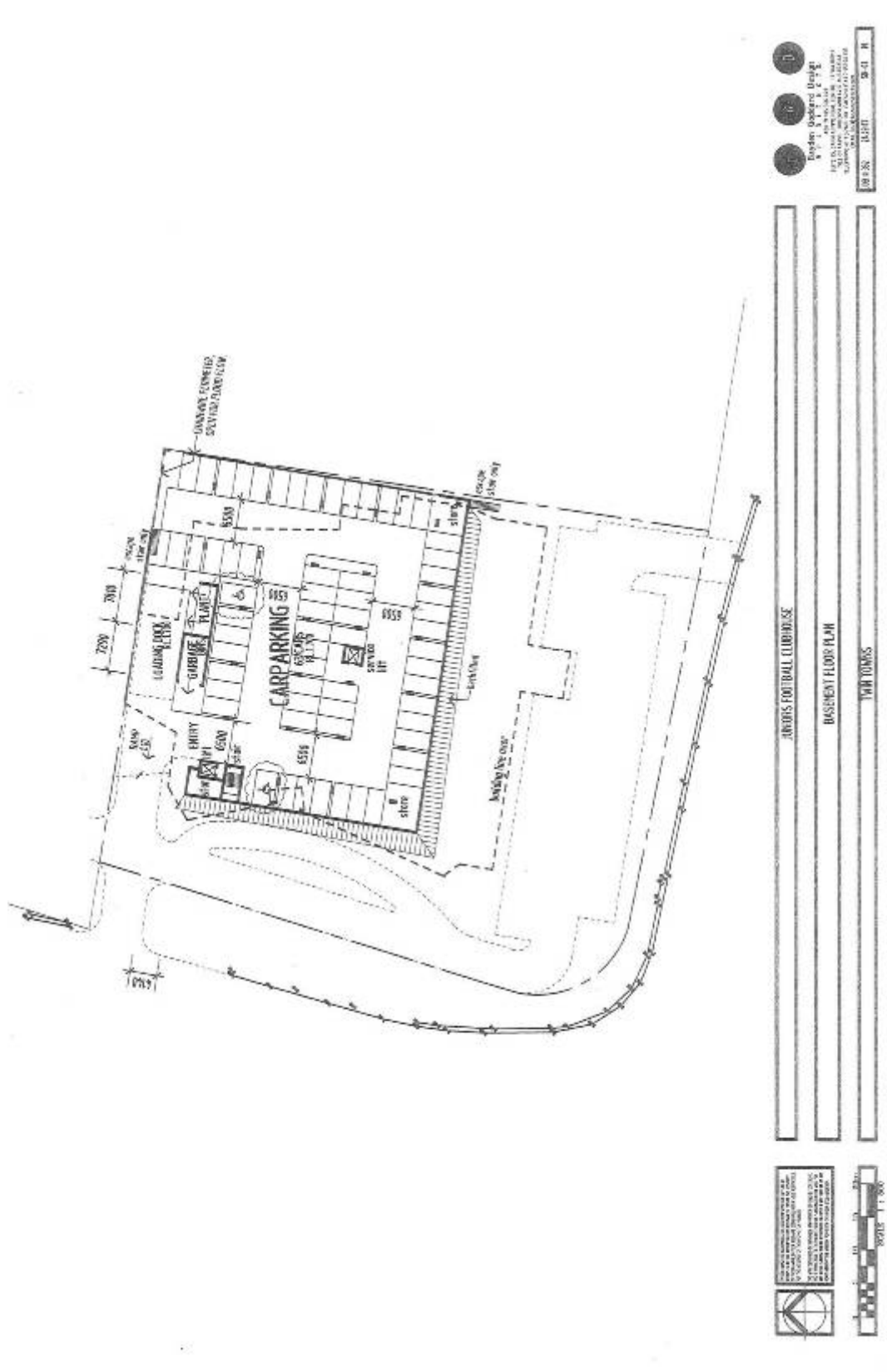
- Car parking
  - The development has a shortfall of 23 car spaces. These spaces are to be provided in Council's adjoining property (Lot 7 on DP 1082139) by resurfacing and re-linemarking the parking bays. A reciprocal rights easement is to be dedicated over these spaces.
- Sewer
  - A private sewerage pump station shall be provided to connect the development to Council's sewerage system via the existing injection point on Council's sewer rising main in Fraser Drive. The pump station shall be designed to operate satisfactorily when the Council sewerage pump station is pumping simultaneously.
  - Prior to the issue of an occupation certificate or interim occupation certificate the applicant is required to lodge an application to operate an onsite sewerage management system (private sewage ejection pump station) under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with an approval to operate.
- Stormwater
  - Stormwater management shall be in general accordance with the Stormwater Management Plan prepared by Cozen Regan Williams Prove dated 30/01/09, except where varied by the conditions of this consent.  
Surface levels for the proposed entrance off Fraser Drive and the proposed minor works within neighbouring Lot 7 DP 1082139 shall be in general accordance with Drawing Sk 6 Issue B prepared by Cozen Regan Williams Prove dated 02/09.

**SITE DIAGRAM:**

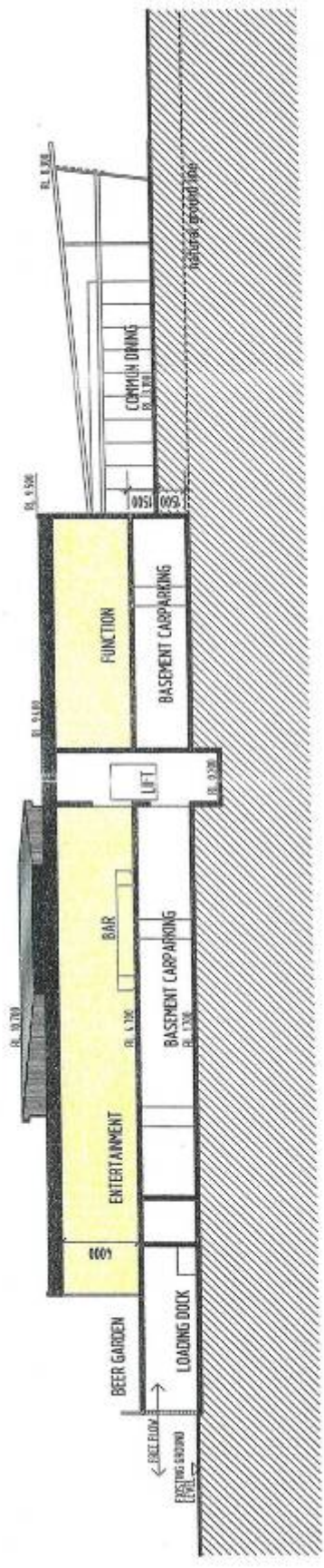


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<p>File: Z:\GIS_Jobs\Site Plan_Vor Author: J. Bachelor Date: 02/April/2009</p>		

DEVELOPMENT PLANS:



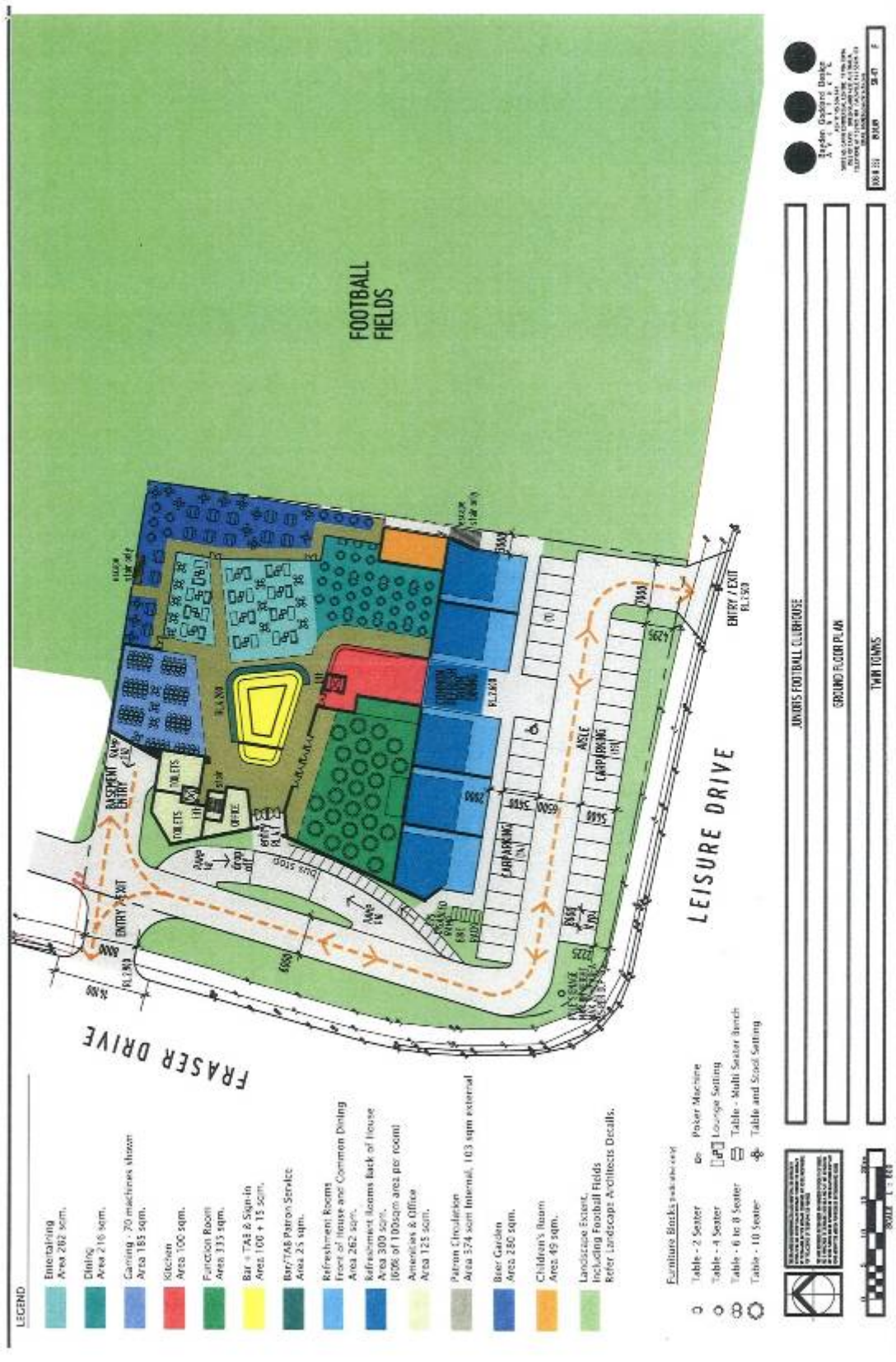


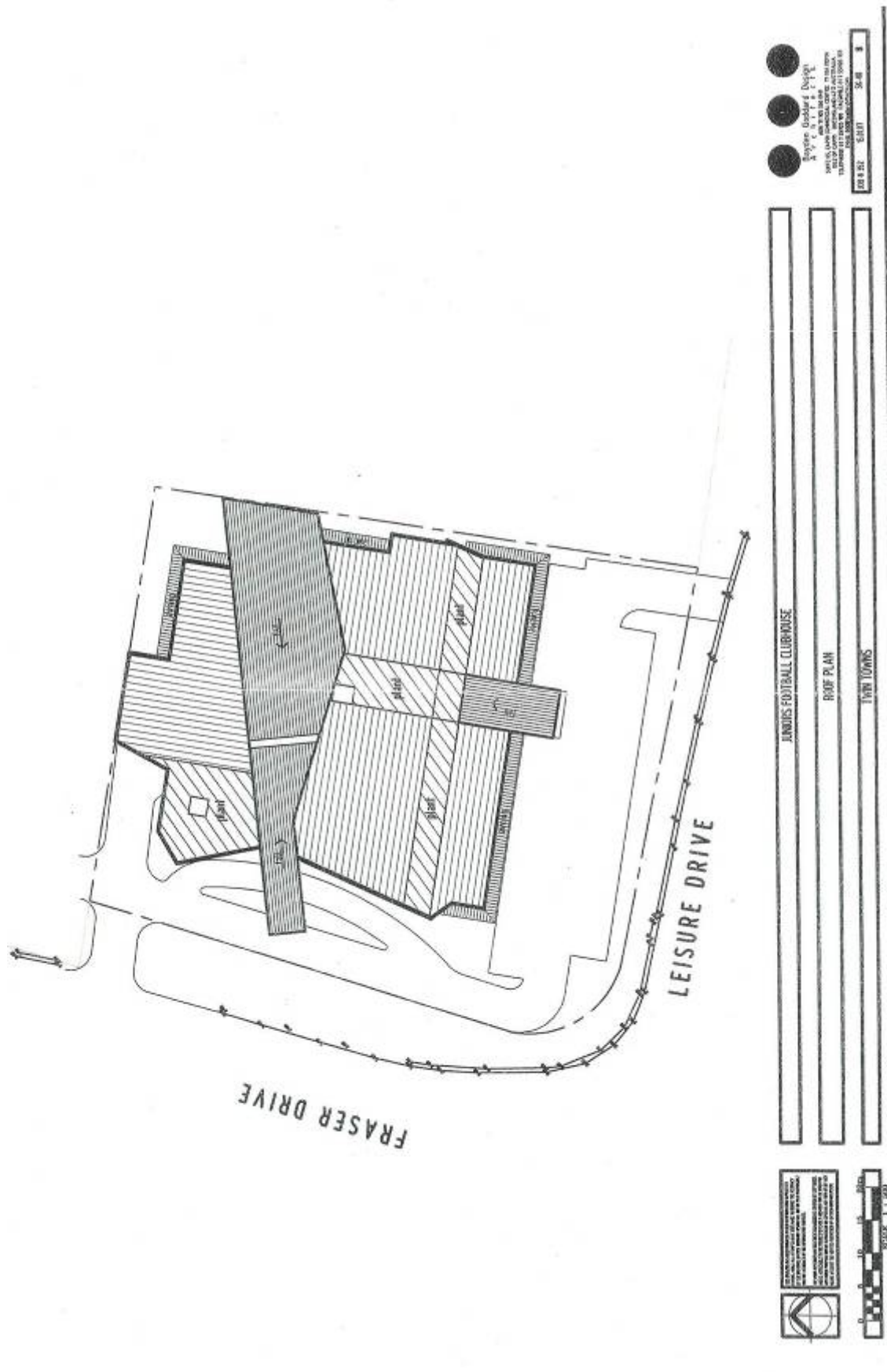


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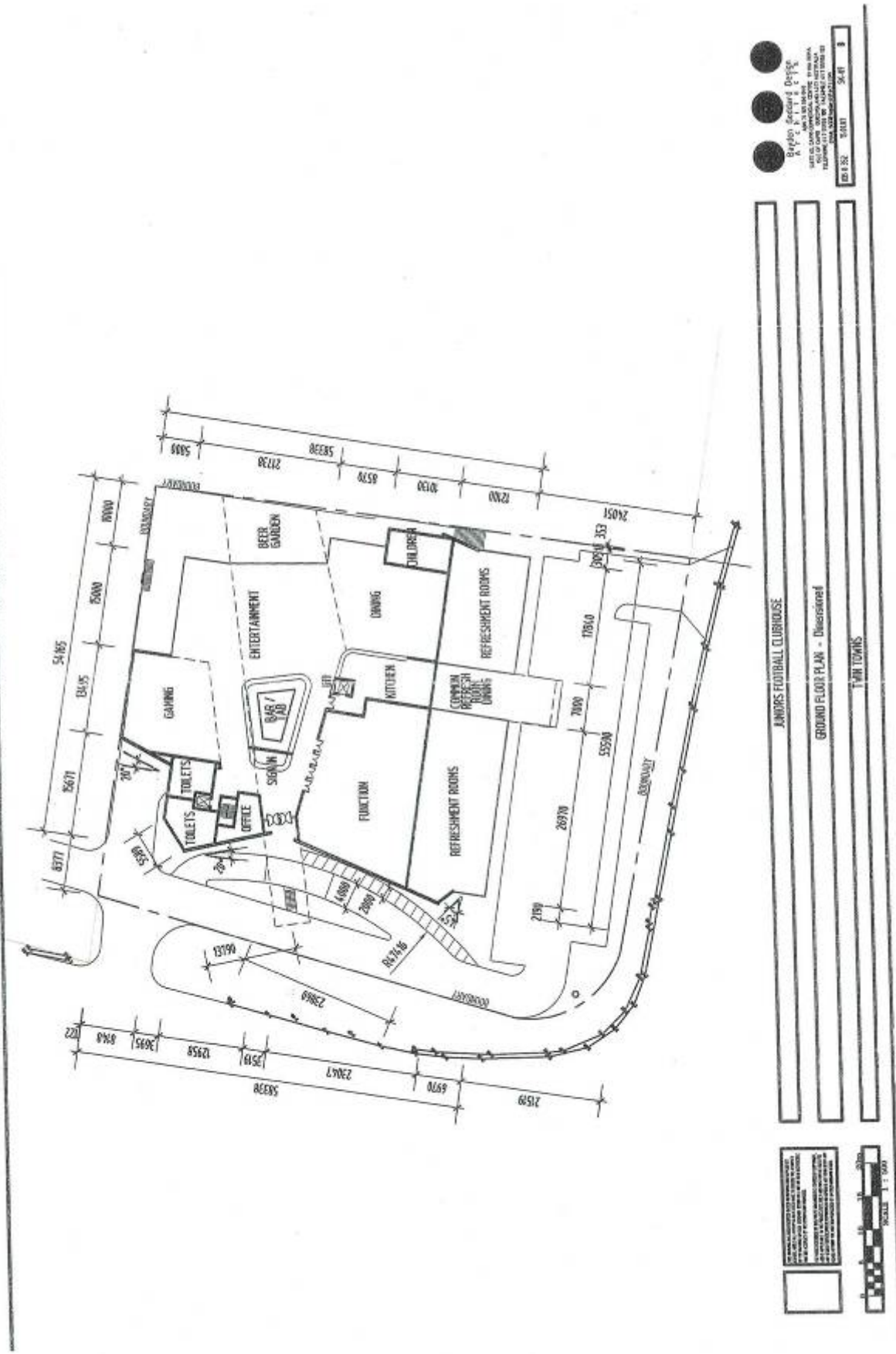


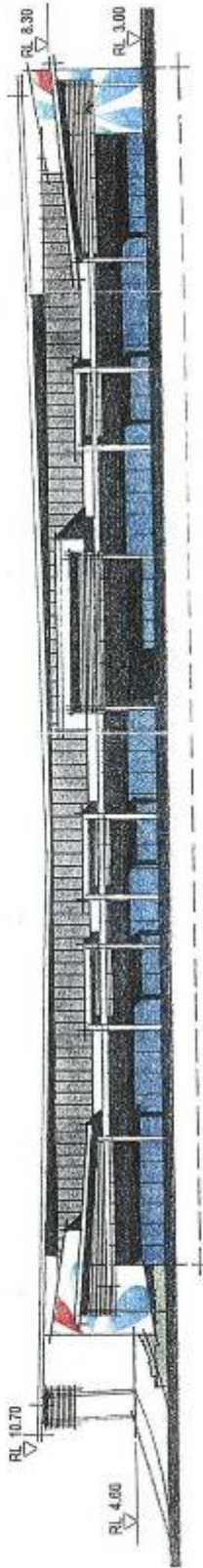

  
 Roof Types:
 

- Asph/Flt
- Asph/Flt
- Asph/Flt

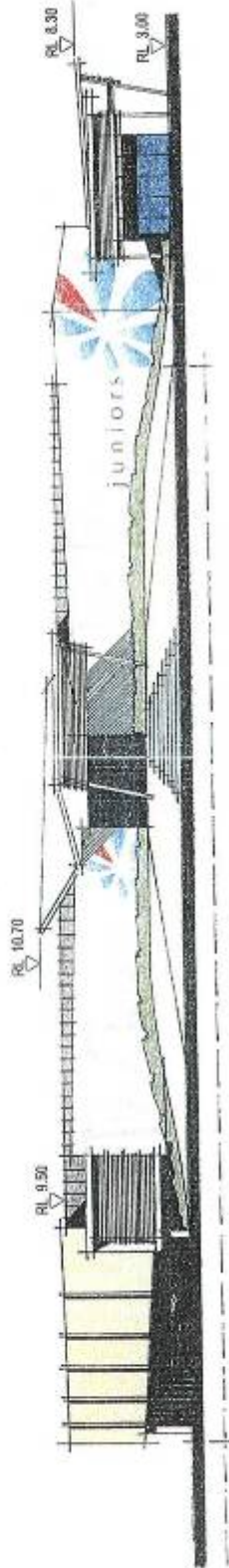
JUNIORS FOOTBALL CLUBHOUSE  
 ROOF PLAN  
 TWIN TOWNS


  

  
 SCALE 1:1000





LEISURE DRIVE ELEVATION - (SOUTH)



FRASER DRIVE ELEVATION - (WEST)

\*Planting not shown for clarity

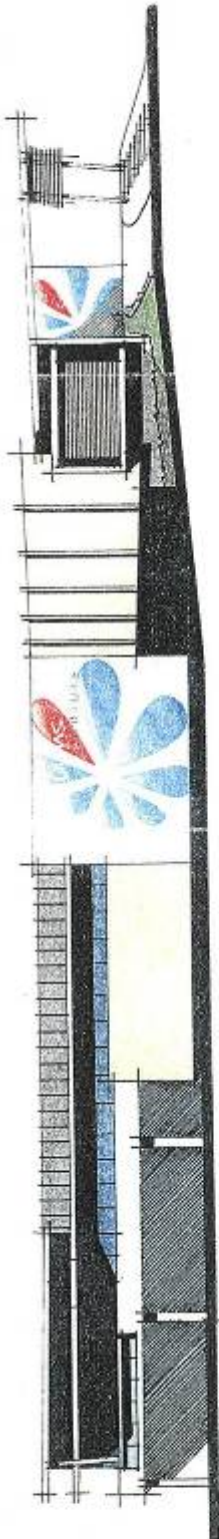


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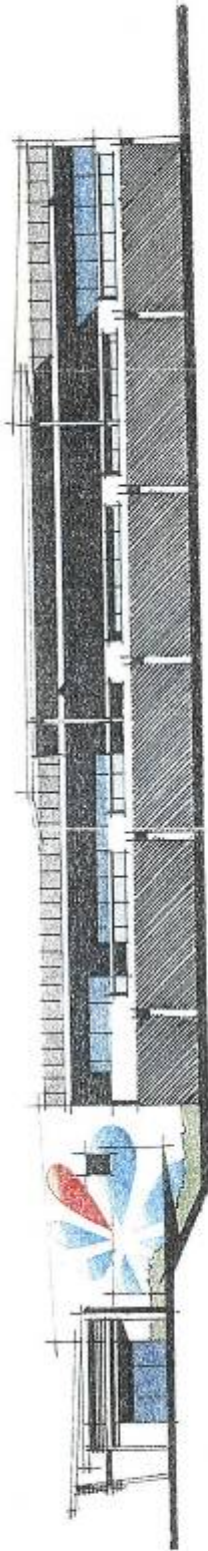
Stephen Goldberg Design  
 Architects & Planners  
 1/11-13 LINDSEY STREET, TOWN  
 TOWN TOWNS, NSW 2825  
 PHONE: 02 6322 2222  
 FAX: 02 6322 2223  
 WWW: STEPHENGD.COM

DATE: 28/05/2009 09:38

TOWN TOWNS JUNIORS FOOTBALL CLUBHOUSE
STREET ELEVATIONS
TOWN TOWNS



NORTH ELEVATION



EAST ELEVATION

\*Planting not shown for clarity



A  
 B  
 C  
 D

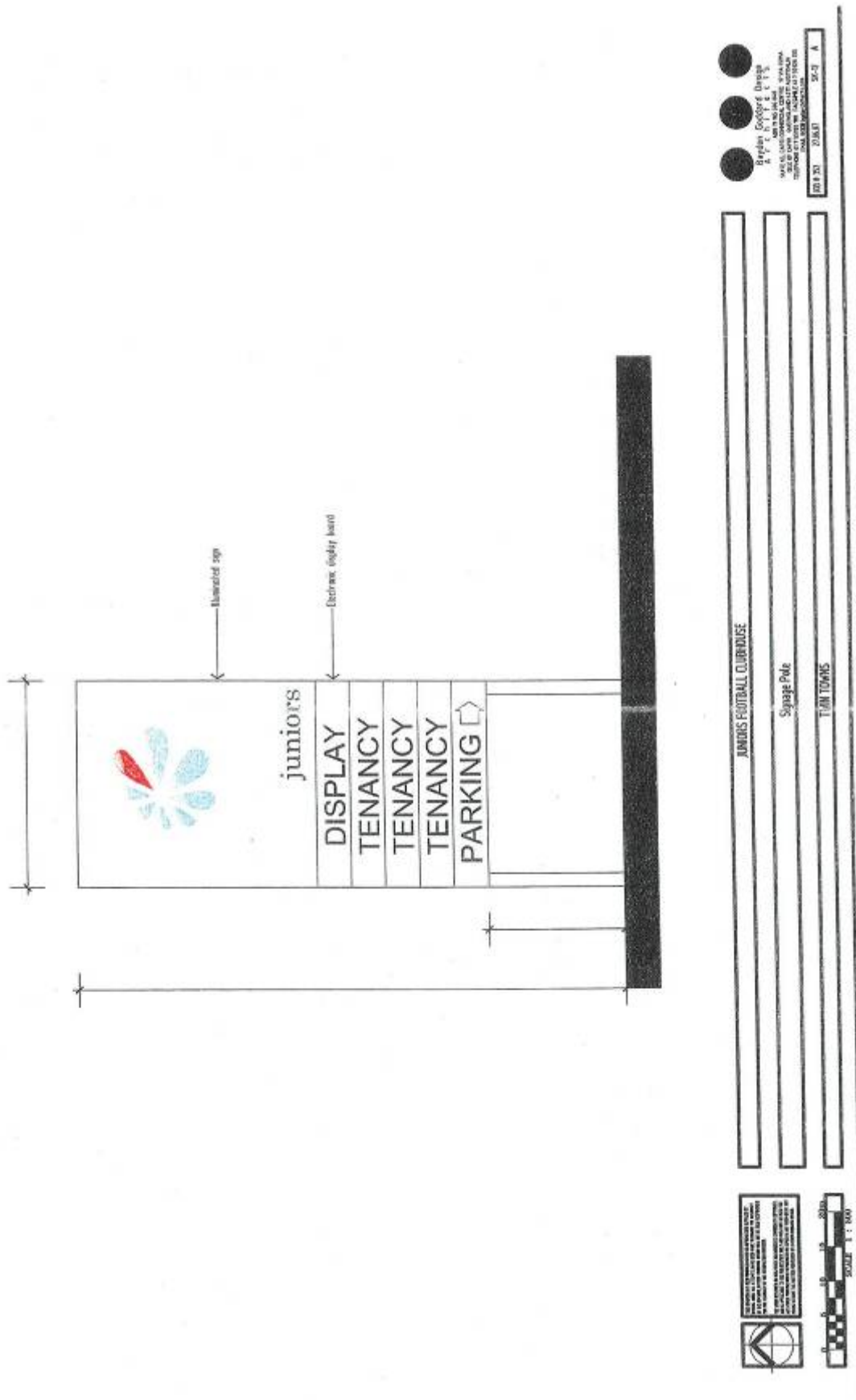
TWIN TOWNS JUNIOR FOOTBALL CLUBHOUSE

STREET ELEVATIONS

TWIN TOWNS

Sydney Outdoor Design  
 P O BOX 1000  
 111 CALVERTON ROAD, CALVERTON NSW 2323  
 TEL: 06 9520 1000 FAX: 06 9520 1001  
 WWW.SYDNEYOUTDOORDESIGN.COM.AU

ES1 302 BURTON 086 2621











**CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:****(a) (i) The provisions of any environmental planning instrument****Tweed Local Environmental Plan 2000****Clause 4 - Aims of the Plan**

The proposed development is consistent with the aims of this plan.

**Clause 5 - Ecologically Sustainable Development**

The proposed development is consistent with the four principles of ecological sustainable development by;

- a) not creating irreversible environmental damage.
- b) the environment is maintained for the benefit of future generations.
- c) the biological diversity and ecological integrity is retained and a fundamental consideration.
- d) the environmental qualities of the locality are retained.

**Clause 8 - Zone objectives**

The subject site is zoned 6(b) Recreation. The proposed club is consistent with the objectives of the zone by providing a building used for recreation purposes. The other aims and objectives of this plan (Tweed LEP 2000) relevant to the development have been considered and addressed within the body of this report. The development would not have an unacceptable cumulative impact on the community or locality.

**Clause 15 - Essential Services**

Water supply and facilities for the removal of sewerage are currently available to the site. Appropriate conditions have been imposed on the consent relating to the private sewerage pump station.

**Clause 16 - Height of Building**

The site is restricted with a three (3) storey height limit. The application proposes a two (2) storey development.

**Clause 17 - Social Impact Assessment**

The proposed re-development of the Club is considered to provide a positive social and economic outcome by providing employment opportunities and the social function the club provides for the general community and the adjacent recreational facilities.

### Clause 35 - Acid Sulfate Soils

The site is identified as being affected by class 2 ASS.

A Preliminary Acid Sulfate Soil Investigation, Management Plan and De-Watering Management Plan have been prepared by HMC Environmental Consulting Pty Ltd dated Dec.2006 has been submitted with the application (Report No. 2006.151A). Council's EHO have assessed these reports and considered them satisfactory. Appropriate conditions have been added to the development consent.

### Other Specific Clauses

#### **22 Development near designated roads**

##### **(1) Objectives**

- *to protect and improve the capacity, efficiency and safety of designated roads.*
- *to prevent development on designated roads that would detract from the scenic attractiveness of the area of Tweed.*
- *to prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.*

##### **Comment**

The development is considered not to negate the objectives of the clause due to:

- The development is considered not to reduce the capacity, efficiency or safety of Fraser Drive.
- The development would not detract from the scenic attractiveness of the Tweed area. The application proposes significant setback from Fraser Drive in addition to landscaping (a condition requiring approval of a landscape plan is to be imposed as a condition of consent).
- The proposed Club is not a type of development adversely affected by traffic noise.

##### **(2) *This clause applies to land that:***

- (a) *has frontage to a designated road, or*
- (b) *relies on a designated road for its sole means of vehicular access, or*
- (c) *is within Zone 1(a), 1(b), 1(c), 5(a), 7(a), 7(d), 7(f) or 7(l) and has direct access to another road at a point less than 90 metres from that road's intersection with a designated road.*

**Comment**

This clause applies to the proposal as the site has frontage and access to a designated road.

**(3) A person may, with the consent of the consent authority and the concurrence of the RTA, carry out development on land within Zone 5(a) shown by red lettering on the zone map as "Proposed Classified Road":**

- (a) *for a purpose for which development may be carried out on land in an adjoining zone, or*
- (b) *for any other purpose that is compatible with development that may be carried out on land in an adjoining zone.*

**Comment**

The development is not proposed on land zoned 5(a) "Proposed Classified Road".

**(4) The consent authority may grant consent to development on land to which this clause applies only if it is satisfied that:**

- (a) *the development (because of its nature, appearance, cumulative effect or illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and*
- (b) *the location, standard and design of access points, and on-site traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*
- (c) *the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*
- (d) *where the land is in Zone 1(a), 5(a), 7(a), 7(d), 7(f), or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and*
- (e) *the development is of a type that is not sensitive to traffic noise or, if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and*
- (f) *the development would not detract from the scenic values of the locality, particularly from the point of view of road users, and*
- (g) *where practicable, access to the land is provided by a road other than the designated road, and*
- (h) *in respect of any application for commercial or retail development near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l), the development:*
  - (i) *would not compromise the Highway's function as the North Coast's primary inter- and intra-regional road traffic route, and*

- (ii) *would not contribute to the need to expend public money on the Highway to overcome the effects of ribbon development, and*
- (iii) *would not compromise highway safety and efficiency, and*
- (iv) *would not cause or contribute to the shifting of the retail/commercial foci of any town from the town centre to a highway-orientated site.*

**Comment**

- a) The development was reviewed by Council's Traffic Engineer, no comments were received indicating that the development is likely to constitute a traffic hazard.
  - b) Access to comply with Australian standards (s138 required). The development will contain all related parking on-site and in the adjoining Council car park. All traffic can leave the site in a forward direction.
  - c) Future road widening is not identified of Council's mapping system.
  - d) The land is zoned 6(b) Recreation therefore not applicable
  - e) The development is of a type that is not sensitive to traffic noise.
  - f) The development would not detract from the scenic attractiveness of the Tweed area.
  - g) Access to the site is currently provided from the designated road in addition to Leisure Drive.
  - h) The proposed development is not near the Pacific Highway in Zone 1 (a), 7 (a), 7 (d), 7 (f) or 7 (l)
- (5) *The RTA must take the matters listed in subclause (4) into consideration before granting concurrence to development on land to which this clause applies.***

**Comment**

N/A

**Clause 34 – Flooding**

The site is subject to flooding with a Design Flood Level of RL 2.6m AHD. To address DCP Section A3 requirements for flood free storage for commercial buildings, the application proposes to have the restaurant at an FFL of 3.1m (AHD) and the Club at an FFL of 4.7m (AHD).

Being a commercial development, A3 does not specify minimum floor levels, however as the applicant proposes floor levels of 4.7m AHD and 3.1m AHD (providing a minimum +0.5m freeboard above the design flood level), there are no requirements for additional flood free storage areas as would otherwise be the case.

As the site is flood liable, the development proposes to keep the “basement” carpark open such that flood water will not be restricted, in accordance with Council policy.

### **Clause 37 Electricity transmission line corridor,**

The application was referred to Country Energy for comment. Country Energy provided the following comment;

*"In the Statement of Environmental Effects, page 11, the developer claims that the "overhead electricity corridor is no longer required" because of recent DA approvals on adjacent lots.*

*Please note that the electricity corridor is still required as shown in the Tweed LEP and remains centred on Fraser Drive past the proposed development. If a condition is required in the DA approval highlighting that the electricity corridor is to remain then Country Energy requests that it be added as an approval condition.*

*Also, Country Energy requests that the corridor remain shown in the Tweed LEP in its present location.*

*Generally, after consultation with all stakeholders, the most likely location to be chosen for a powerline within the corridor would be the road reserve rather than across private property. However, once it is determined by Country Energy that the proposed powerline is required, a full public consultation process involving all stakeholders will be followed to determine the optimum location and type of powerline to be installed."*

A condition requiring that the electricity corridor is to remain in its current location is considered not necessary and the development is considered not adversely impact on the electricity corridor as;

- the electricity corridor will remain in its current location.
- the most likely location to be chosen for a powerline within the corridor would be the road reserve rather than across private property
- Numerous residential dwellings have been built within the electricity corridor

### **Clause 39A – Bushfire Protection**

Part of the subject site is identified as bush fire prone. The development does not require a Bushfire Safety Authority pursuant to Section 100B of the Rural fires Act 1997.

The proposal is considered not to:

- Create a significant adverse effect on the implementation of any strategies for bushfire control;
- Create a significant threat to the lives of residents, visitors or emergency services personnel;

- Increased demand for emergency services during bushfire events;

The surrounding land for approximately 140m is level and clear of vegetation consisting of playing fields, car parking, roads and urban development, apart from the northwest which the distance is reduced to approximately 100m. Reticulated water supply is available to the site. The site has direct access to Fraser Drive and Leisure Drive.

The proposal is considered to be consistent with the objectives of the clause.

### **Clause 47 – Advertising Signs**

Clause 47 of the Tweed LEP contains the following objectives

- (a) conveys advertisers' messages and images while complementing and conforming to both the building on which it is displayed and the character of the locality, and*
- (b) does not adversely affect the locality in terms of appearance, size, illumination or overshadowing or in any other way, and*
- (c) does not lead to visual clutter through the proliferation of signs, and*
- (d) does not detract from the rural character or scenic qualities of the area of Tweed.*

The application proposes advertising integrated with the façade of the building in addition to one pole sign with dimensions 3m wide x 8m high located in the south western corner of the site.

The proposed façade advertising (Building advertising - Twin Towns Juniors) compliments the building and is in keeping with the contemporary style of the building. Subject to approved landscaping plan, the façade advertising will be mostly obscured from the street.

The proposed pole sign will provide advertising for the tenancies located on the site in the form of one pole sign, reducing potential visual clutter of signage. The pole sign does not adversely affect the scenic qualities of the locality by way of appearance, size or illumination. The development will be an improvement on the current appearance of the site, a condition relating to illumination will be imposed on the consent. A local shopping centre is located on the opposing corner of the intersection between Fraser Drive and Leisure Drive (The sign will not be out of character given the close proximity of shopping centre).

### **North Coast Regional Environmental Plan 1988**

#### **Clause 32B: Coastal Lands**

The proposal is considered not to negate the objectives of the following policies;

- (a) the NSW Coastal Policy 1997,
-



- (b) the Coastline Management Manual, and
- (c) the North Coast: Design Guidelines.

The proposed development is considered not to contravene the objectives of Clause 32B by creating any significant adverse effects to the public access to the foreshore, create overshadowing to beaches, waterfront open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

Clause 33: Coastal hazard areas

The site is not affected by coastal processes.

**State Environmental Planning Policies**

SEPP No. 64 – Advertising and Signage

The proposed signage is consistent with the aims of the policy by being compatible with the amenity and visual character of the area, is located in a suitable location, and is of a high quality design and finish.

The pole business identification sign has a display area of 18m<sup>2</sup> and a maximum height of 8m.

<b>Schedule 1 Assessment criteria</b>	
<b>Matters for consideration</b>	<b>Comment</b>
<p><b>1. Character of the area</b></p> <p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The proposal pole sign is compatible with the proposed development. The development is located opposite a local shopping centre.</p> <p>There is no particular outdoor theme for advertising in the area.</p>
<p><b>2. Special areas</b></p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The proposal does not detract from the visual amenity of the area.</p>

<b>Schedule 1 Assessment criteria</b>	
<b>Matters for consideration</b>	<b>Comment</b>
<p><b>3. Views and vistas</b></p> <p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>No</p> <p>No</p> <p>Yes</p>
<p><b>4. Streetscape, setting or landscape</b></p> <p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p>	<p>Yes, the height of the proposed sign is compatible to the proposed building (the building is approximately 9m in height).</p> <p>The sign would not dominate or negatively impact on the streetscape.</p> <p>Proliferation of signs will be avoided, with the club and future tenancies provided on the one sign.</p> <p>No</p> <p>The proposal will not dominate the streetscape.</p>
<p><b>5. Site and building</b></p> <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>Yes, the proposal does not dominate the development/site.</p> <p>As above.</p> <p>The proposed signage reduces the potential proliferation of signage.</p>

<b>Schedule 1 Assessment criteria</b>	
<b>Matters for consideration</b>	<b>Comment</b>
<p><b>6. Associated devices and logos with advertisements and advertising structures</b></p> <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	<p>The sign is proposed to be internally illuminated. A condition will be imposed that the intensity of the lighting/ illumination can be altered.</p>
<p><b>7. Illumination</b></p> <p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>See above.</p> <p>See above.</p> <p>See above.</p> <p>See above.</p> <p>Yes, a condition will be imposed restricting the illumination to reflect the hours of operation 7.00am to 10.00pm Sunday to Thursday 7.00am to 11.00pm Friday to Saturday.</p>

SEPP No 71 – Coastal Protection

The proposal is consistent with the aims of the Policy, due to the following:

- The site does not have frontage to coastal foreshores.
- No new opportunities for public access to and along coastal foreshores are available.
- The site is not identified as having Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge.
- Visual amenity of the coast is protected.
- The proposal does not adversely impact on beach environments and beach amenity.
- Native coastal vegetation is retained.
- The proposal does not adversely impact on marine environment of New South Wales, the site is greater than 100m from the closest MHWM.
- The proposal does not adversely impact on rock platforms.
- The type, bulk, scale and size of development is appropriate for the

location and protects and improves the natural scenic quality of the surrounding area. Adjoining properties consist of similar developments in terms of type, scale, bulk and scale, namely a school and local shopping centre opposing the site.

SEPP (Major Projects) 2005

This Policy identifies development to which the development assessment and approval process under Part 3A of the EP&A Act 1997 applies, for which the Minister is the consent authority.

The proposed development is below the capital investment value as specified in Schedule 1 (\$50 million), and is less than 13m in height as specified in Schedule 2.

Tweed Shire Council is the consent authority for the development application.

SEEP (Temporary Structures and Places of Public Entertainment) 2007

The applicant provided the following comments in regard to cl. 14 matters for consideration as the building is proposed to be used as a place of public entertainment.

The comments have been assessed and considered to satisfy the matters for consideration.

<b>STATE ENVIRONMENTAL PLANNING POLICY (TEMPORARY STRUCTURES AND PLACES OF PUBLIC ENTERTAINMENT) 2007</b>	
<b>14 Matters for consideration</b>	<b>Comments</b>
Before granting consent to development comprising the use of a building as a place of public entertainment, the consent authority must consider the following matters:	
(a) the maximum number of persons who should be permitted to be in the part of the building used as a place of public entertainment at any one time while entertainment is being provided and how that number should be monitored,	<p>Ground floor bar seated – 250</p> <p>Ground floor bistro seated – 100</p> <p>First floor function room seated – 100</p> <p>Practices for monitoring patron numbers by use are a combination of seating configuration and spatial capacities coupled with the staff controlling the spaces in accordance with the approvals. Staff are trained to assess occupancies and have the ability to close areas to all but members only and all patrons if overcrowding becomes evident. Being a registered club we have a control point in the form of a sign in register and member entry verification which restricts the overall number of people in the premises. Once capacity is reached this control point is used to deny entry unlike open access venues.</p>



<b>STATE ENVIRONMENTAL PLANNING POLICY (TEMPORARY STRUCTURES AND PLACES OF PUBLIC ENTERTAINMENT) 2007</b>	
<p>(b) the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines,</p>	<p>Twin Towns Juniors is widely respected with the local community as a meeting place and support mechanism for the general community and sporting users, especially junior sporting users. It is protected by the community as their asset and in general has been devoid of any malicious crime associated with the venues business.</p> <p>The newly elevated premises make unauthorised access difficult and control of patrons entry and attendance more regimented. In addition to all visitors attendances being recorded Twin Towns Juniors requires members to electronically record entrance to the facility. This is not a common practice outside the Registered Club sector but it reinforces and strongly supports the principles of Part B of the Guidelines.</p> <p>Twin Towns Juniors will be covered by extensive CCTV capabilities, the facility will be well lit and security patrols are engaged outside trading hours. During busy trading periods and every day of the week the facility is serviced by full time security guards who provide protection to persons and property in accordance with the best practice principles of the liquor industry.</p> <p>Twin Towns Juniors is currently viewed as a safe haven in the local area. It is nominated as a safe place for families to meet following events on the adjoining fields, provides secure access to toilet, recreation and cash facilities. It is well serviced by pedestrian links and a free bus transport system which operates throughout the Tweed Heads CBD minimising loitering and providing safe passage for users.</p>
<p>(c) any adverse impact on persons in the vicinity of any noise likely to be emitted as a result of the use of the building as a place of public entertainment and any proposed measures for limiting the impact,</p>	<p>The Development Application and Statement of Environmental Effects are accompanied by a Noise Report which addresses potential impacts and identifies appropriate mitigation measures including operating hours. These operating hours are confirmed by a Condition of the Consent.</p>
<p>(d) whether the hours during which the building is used as a place of public entertainment should be limited,</p>	<p>In accordance with the Noise Report accompanying the DA the premises will operate between 9.00am and Midnight Sunday to Thursday and 9.00am and 1.30am Friday and Saturday.</p>
<p>(e) any parking or traffic impacts likely to be caused as a result of the use of the building as a place of public entertainment,</p>	<p>The DA and SEE are accompanied by a Traffic Engineering Assessment and following lengthy negotiations with Council officers and the submission of a further report by CRG Environmental dated 6 March 2009 agreement has been reached with Council officers to the effect that a total of 103 car spaces will be required on site. Car parking and access arrangements are addressed in Conditions of the Consent.</p>

<b>STATE ENVIRONMENTAL PLANNING POLICY (TEMPORARY STRUCTURES AND PLACES OF PUBLIC ENTERTAINMENT) 2007</b>	
(f) whether the use is proposed to be carried out on land that comprises, or on which there is:	
(i) an item of environmental heritage that is listed on the State Heritage Register, or that is subject to an interim heritage order, under the <a href="#">Heritage Act 1977</a> , or	There are no items of Environmental Heritage on the subject land.
(ii) a place, building, work, tree, relic or Aboriginal object that is described as an item of environmental heritage or as a heritage item in another environmental planning instrument, or	There are no relics or Aboriginal objects described as an Aboriginal Heritage item under and other EPI.
(iii) land identified as a heritage conservation area, an archaeological site or a place of Aboriginal heritage significance in another environmental planning instrument.	The land is not identified as a Heritage Conservation area of Archaeological site etc under another EPI.

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

N/A

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The following issues were highlighted by Council's Traffic Engineer:

- (a) Amend design to provide the appropriate number of off-street car spaces.
- (b) A delivery / service vehicle parking space for one HRV, not MRV.
- (c) Provide  $238 / 5 = 48$  bicycle spaces. Note, a reduction to this number could be considered, if requested and justified.
- (d) Provide  $238/10 = 24$  Public Transport, Bus Stop Seats. Again, a reduction to this number could be considered if requested provided they will also be covered.
- (e) Disabled parking spaces also have not been shown on the proposal plans and need to be included, as required.

- (f) *Provide a minimum of one coach parking space on site.*
- (g) *CRG propose a reduction of the refreshment rooms area by 60% from 650m<sup>2</sup> to 260m<sup>2</sup> on the assumption that this represents the dining component and the remaining area will not be used by patrons. There is no detailed explanation of why this scenario is appropriate within the report and tables or chairs are not shown on the proposal plans. Based on the application provided, the total 650 m<sup>2</sup> should be used for the evaluation of off street parking spaces.*
- (h) *Table 6.2 (Queue Lengths) appeared inaccurate when considered by DTAG however the metres should be revised to car lengths thereby confirming that there will be no impacts of the queue of right turning vehicles from Fraser Drive (northbound) on the Fraser Drive / Leisure Drive traffic signals (Refer to DTAG resolution).*
- (i) *CRG have used a daily trip generation rate from the RTA guidelines for restaurants of 60 trips per 100m<sup>2</sup> GFA (which is the same as Council's). Council's generation rate for licensed clubs of 100 trips per 100m<sup>2</sup> GLA should have been applied with a peak hour factor of 8% or 8 trips per 100m<sup>2</sup> GLA.*
- (j) *CRG states there are 121 spaces available on Fraser Drive and in the adjacent car park associated with the playing fields. In this regard, the existing on street car parking spaces are not to be used for off street car parking calculation unless there is a demonstrated public benefit for such. Part of the existing on street parking areas could also be used for bus parking which is not unreasonable for such a development. Also there is no evidence within the application that an agreement has been reached with Council regarding shared used of the adjacent recreation parking area.*

*Note: CRG has shown a medium rigid vehicle loading bay for servicing the site with allowance for the movement of a heavy rigid vehicle through the site. This is considered acceptable in this case.*

Response to issues provided by Council's Traffic Engineer:

- (a) *CRG Traffic & Acoustics Pty Ltd's traffic report dated 6 March 2009 has adequately addressed traffic issues for the development. The development has a net shortfall of 23 car parking spaces which will be provided in Council's adjoining car park (Lot 7 on DP 1082139). It is proposed that Council's car park be re-surfaced and line marked so that the capacity is increased to 84 spaces. A condition to this effect should be conditioned in any approval. The existing reciprocal rights access easement will need to be extinguished and replaced with another which covers 57 car spaces within each allotment.*
- (b) *CRG has shown a medium rigid vehicle loading bay for servicing the site with allowance for the movement of a heavy rigid vehicle through the site. This is considered acceptable in this case.*
- (c) *Ten (10) bicycle spaces are to be provided on site.*
- (d) *Bus Stop Seating will not be required for this development.*
- (e) *Three Disabled parking spaces are required to be marked within the site.*

- (f) A coach parking space can be provided at the front door of the proposed complex. An amended plan is required, demonstrating satisfactory coach access and manoeuvring and the relocation of car spaces from the south-western corner of the site. Such plan is to be submitted to Council prior to the issuing of a Construction Certificate.
- (g) The refreshment rooms' areas issue has been resolved. A condition requiring more detailed floor and fit-out plans to be submitted to Council, to ensure that the areas nominated on the current plans are adhered to, prior to the issuing of a Construction Certificate.
- (h) Council's Traffic Engineer advised that CRG Traffic & Acoustics Pty Ltd's traffic report dated 6 March 2009 has adequately addressed traffic issues for the development.
- (i) Council's Traffic Engineer advised that CRG Traffic & Acoustics Pty Ltd's traffic report dated 6 March 2009 has adequately addressed traffic issues for the development.
- (j) Council's Traffic Engineer advised that CRG Traffic & Acoustics Pty Ltd's traffic report dated 6 March 2009 has adequately addressed traffic issues for the development.

#### A3-Development of Flood Liable Land

See previous comments above under section (a)(i) The provisions of any environmental planning instrument, clause 34 Flooding of this report

#### A4-Advertising Signs Code

The development application proposes a pole sign with a maximum height of 8m x 3m wide with a display area of 18m<sup>2</sup>.

The proposed pole sign is consistent with the aims of the Policy by:

- Being of a high standard and quality and prevent excessive advertising and visual clutter by encouraging the rationalisation of existing and proposed signs.
- The sign is compatible character of a building site or area.
- Provides legitimate, adequate and effective advertising for business identification.
- The sign does not reduce road safety or pedestrian path.

The proposed sign contains an electronic display board. This is defined within the policy as an "animated sign (flashing sign)". These types of signage are prohibited if they interfere with the amenity of people residing in the area or detract motorist's reducing road safety. A condition has been placed on the consent requiring the message contained electronic display board is to change instantaneously and remain static for at least 5 minutes.

#### A11-Public Notification of Development Proposals

The development application was advertised in the Tweed Link for a period of 30 days from Wednesday 29 August 2007 to Friday 28 September 2007.

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One (1) submission was received.

Issues raised by the objection are; Noise from club, noise from sports persons, lighting from sports fields.

These issues are addressed under section (d) later in this report.

#### A13-Socio-Economic Impact Assessment

The proposed re-development of the Club is considered to provide a positive social and economic outcome by providing employment opportunities and the social function the club provides for the general community and the adjacent recreational facilities.

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

##### Clause 92(a) Government Coastal Policy

The site is located within the area to which the Policy applies. The proposed development is considered not to negate the *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*.

##### Clause 92(b) Applications for demolition

The application proposes the demolition of the existing club. Council's Building Services Unit raised no objections and recommended relevant conditions relating to demolition which have been imposed on the development consent.

#### **(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 proposed re-development of the existing club is surrounded by the South Tweed football fields to the north and east of the site. Development to the south and west of the site consists of low and medium density residential housing. A shopping centre has recently been constructed on the opposing corner of the intersection. The Banora Point High School and the Centaur Primary School are located on the south and south east of the site.

##### Noise

Council's Environment Health Officers reviewed the submitted Acoustic Report and considered the report satisfactory subject to conditions.

### Access, Transport and Traffic

Access to the site is currently gained via a shared driveway from Fraser Drive which also provides access for the adjacent football fields. The existing access and parking arrangements are formalised in Section 88B Instruments which places restrictions on the titles of the 2 affected properties providing for shared access and reciprocal parking rights over parts of the properties.

Access to the site will be maintained in the current location off Fraser Drive. A second access point is proposed off Leisure Drive, adjacent to the eastern boundary of the site.

Council's Traffic Engineer has no objection to the proposal subject to conditions.

### Flora and Fauna

No significant vegetation exists on the site. A condition requiring a landscape plan has been imposed on the development consent.

The proposed development is considered an appropriate land use for the subject site. The development is considered not to create significant adverse impacts on the natural or built environments or on the social or economic environments of the locality.

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

### Surrounding Landuses/Development

The proposed re-development of the existing club is surrounded by the South Tweed football fields to the north and east of the site. Development to the south and west of the site consists of low and medium density residential housing. A shopping centre has recently been constructed on the opposing corner of the intersection. The Banora Point High School and the Centaur Primary School are located on the south and south east of the site.

The site is considered suitable for the proposed development.

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

### **Country Energy**

Country Energy raised no objection to the proposal in relation to the development and the Electricity transmission line corridor.

### **NSW Rural Fire Service**

Raised no objection to the proposed development subject to two (2) conditions.

## Department of Water and Energy

The Department determined that the proposal requires a license under Part 5 of the Water Act 1912. General terms and conditions relating to the license have been provided.

### (e) Public interest

The proposal is considered not to negate the public's interest.

### OPTIONS:

1. Approved the development subject to conditions.
2. Refuse the development and provide reasons for refusal.

### LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Class 1 Appeal is still active. It is likely the Appeal will be discontinued if the applicant is satisfied with the determination, however if the applicant is not satisfied with the determination the Appeal will continue.

### POLICY IMPLICATIONS:

Nil.

### CONCLUSION:

The proposed development is considered suitable for the subject site and considered not to create significant adverse impact on the natural or built environments or social or economic environments. Appropriate conditions of consent ensure potential impacts are mitigated.

### UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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