



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

Councillors: P Youngblutt (Deputy Mayor)
D Holdom
B Longland
K Milne
K Skinner
J van Lieshout

Agenda

Planning Reports
Ordinary Council Meeting
Tuesday 19 January 2010

held at Murwillumbah Cultural & Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

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

Tweed Shire Council has the following charter:

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

Items for Consideration of Council:

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REPORTS FROM THE DIRECTOR PLANNING AND 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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4 [PR-CM] Development Application DA09/0747 for a Dwelling and Swimming Pool at Lot 13 DP 1043036, Terranora Road, Terranora

ORIGIN:

Building & Environmental Health

FILE NO: DA09/0747 Pt1

SUMMARY OF REPORT:

An application has been lodged to construct a new two storey dwelling with attached garage and in-ground swimming pool on the subject allotment.

The allotment fronts Terranora Road which is a designated road requiring a thirty metre building alignment under the provisions of part 5, clause 24 of the Tweed Local Environment Plan (LEP) 2000.

The Applicant has submitted an objection under the provisions of State Environmental Planning Policy (SEPP) 1 for the dwelling to observe a building alignment of 9.60m.

Given that the proposed SEPP1 variation is greater than 10%, this application has been referred to Council for determination in accordance with previous directions of the NSW Department of Planning.

The proposal also does not satisfy the mandatory controls of Tweed Development Control Plan (DCP) A1 in relation to the rear boundary setback, the depth of the rear deep soil zone and the location of the swimming pool between the dwelling and the front property boundary.

The Applicant has lodged a submission requesting that Council accept these areas of non compliance with the DCP due to the particular circumstances of the application.

The SEPP 1 objection and the variation to the DCP mandatory controls are considered to be worthy of support

RECOMMENDATION:

That: -

- 1. Council assumes the concurrence of the Director-General of the Department of Planning for the approval of the SEPP 1 objection to vary the thirty metre building setback requirement.**
- 2. Development Application DA09/0747 for a dwelling and swimming pool at Lot 13 DP 1043036, Terranora Road, Terranora 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 2/609 prepared by PFK Building Design and dated June 09, except where varied by the conditions of this consent.

[GEN0005]

2. 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]

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

[GEN0135]

4. The proposed fence between the front of the dwelling and the front property boundary shall be no higher than 1.50 m without separate Council approval.

[GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

5. 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]

PRIOR TO COMMENCEMENT OF WORK

6. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and the Principal Certifying Authority advised of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

7. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (c) the principal certifying authority has, no later than 2 days before the building work commences:

- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[PCW0215]

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

[PCW0225]

9. Residential building work:

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - * in the name and licence number of the principal contractor, and
 - * the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - * the name of the owner-builder, and
 - * if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.

- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

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

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

- 11. Where prescribed by the provisions of the Environmental Planning and Assessment Regulation 2000, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

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

[PCW0255]

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

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

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

[PCW0985]

- 13. All roof waters are to be disposed of through properly jointed pipes to the street gutter, to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2.

[PCW1005]

14. 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

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

[DUR0005]

16. Construction and/or demolition 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 6.00pm

No work to be carried out on Sundays or Public Holidays

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

[DUR0205]

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

[DUR0245]

18. 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]

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

[DUR0395]

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

[DUR0405]

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

[DUR0415]

22. All 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 A1 to the satisfaction of the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0835]

23. All retaining walls proposed are to be constructed in accordance with the construction Certificate approval issued by the Principal Certifying Authority.

Please note timber retaining walls are not permitted.

[DUR0845]

24. 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]

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

- Noise, water or air pollution
- dust during excavation operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

26. No portion of the structure may be erected over the existing stormwater drainage easement located inside the western property boundary.

[DUR1945]

27. **Swimming Pools (Building)**

(a) The swimming pool is to be installed and access thereto restricted in accordance with Australian Standard AS 1926.1 – 2007 & AS 1926.3 -2003. (Refer Council's web site www.tweed.nsw.gov.au)

(b) Swimming pools shall have suitable means for the drainage and disposal of overflow water.

(c) The pool pump and filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.

(d) Warning notices are to be provided in accordance with Part 3 of the Swimming Pool Regulations 2008.

[DUR2075]

28. **Backwash from the swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.**
[DUR2085]
29. **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/demolition.**
[DUR2185]
30. **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]
31. **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]
32. **Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.**
[DUR2515]
33. **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]
34. **All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-**
- * **43.5°C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and**
 - * **50°C in all other classes of buildings.**
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.**

[DUR2555]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

35. 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]

36. Prior to the issue of an occupation certificate,
- (a) Certification of termite protection methods performed by the person carrying out the works is to be submitted to the PCA; and
 - (b) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (i) the method of protection; and
 - (ii) the date of installation of the system; and
 - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (iv) the need to maintain and inspect the system on a regular basis.

[POC0235]

37. 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 professionally 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]

38. 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]

39. 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]

40. Prior to the issue of an occupation certificate the windows in the southern wall of the first floor storage loft shall be provided with permanent privacy screens which will restrict direct visual contact between this area and the adjoining allotment to the south.

[POCNS01]

USE

41. 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]

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

[USE1305]

REPORT:

Applicant: Mr DR Wearne and Mrs DA Wearne
Owner: Mr DR Wearne and Mrs DA Wearne
Location: Lot 13 DP 1043036 Terranora Road, Terranora
Zoning: 1(c) Rural Living
Cost: \$360,000

BACKGROUND:

A development Application has been received to construct a new two storey dwelling with attached garage and in - ground swimming pool on the subject allotment.

The land is zoned 1 (c) - *rural living*, is located on the southern side of Terranora Road, is cleared and has a moderate slope downhill towards Terranora Road.

Notwithstanding that the allotment will have vehicular access via a right of way from Dalton Street over lots 19 & 20 DP 1043036, it has frontage to Terranora Road which under the provisions of the Tweed Local Environmental Plan 2000 is a designated road.

The allotment has no physical connection to Dalton Street.

The allotment has a maximum depth of 40.235 metres and encompasses an area of 883.4m².

Under the provisions of part 5, clause 24 of the Tweed LEP 2000 the proposed dwelling is required to observe a minimum building alignment to Terranora Road of thirty (30) metres.

The dwelling is proposed to be set back 9.60 metres from Terranora Road.

It is not physically possible for a dwelling to observe a thirty metre set back on this allotment as the length of the allotment is only 40.235m and is subject to mandatory rear boundary setbacks under the provisions of DCP A1.

The allotment is also constrained by the presence of an easement to drain water, 3m wide, inside the western side property boundary which further restricts the available building area.

The Applicant has lodged an objection to this requirement under the provisions of State Environmental Planning Policy No. 1 (SEPP 1) to consider a reduced building alignment of 9.60 metres to the Terranora Road frontage of the allotment.

The SEPP 1 objection is considered below in this report.

Other allotments in this subdivision, which front Terranora Road, have been granted SEPP 1 objections for a building alignment of less than thirty metres as follows :-

- Lot 14- dwelling setback 15.755 m from front boundary,
- Lot 15 – dwelling setback 10.545 with pool between house & front boundary,

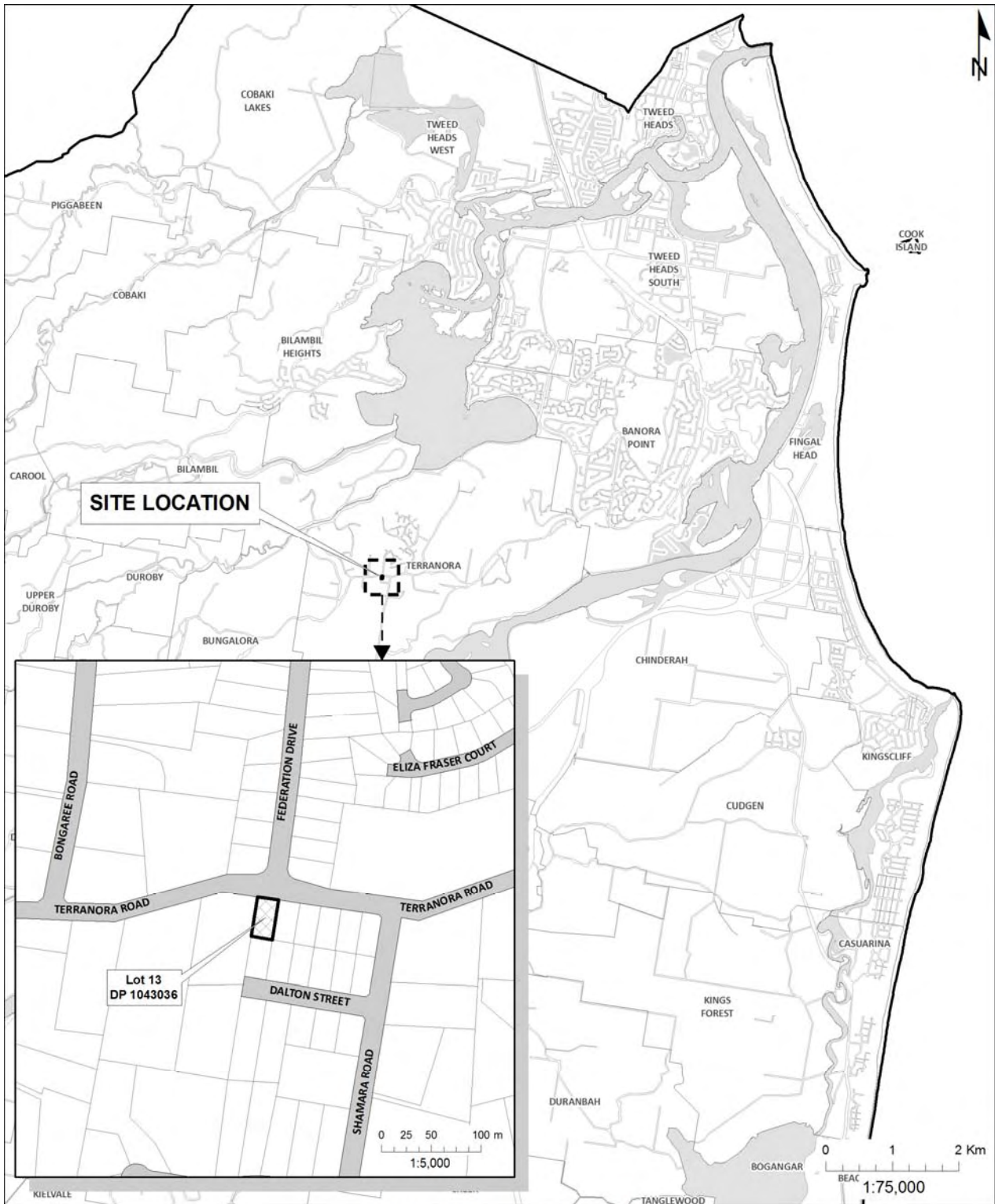
- Lot 16 - dwelling setback 8.55 m with pool between house and front boundary,
- Lot 17- dwelling setback 10m, bali hut setback 3.27m & pool between house & front boundary.

The proposal does not satisfy the mandatory controls of Development Control Plan A1 in relation to the rear boundary setback, the depth of the rear deep soil zone and the location of the swimming pool within the primary building alignment.

These matters are further considered below in this report.

The subject allotment has been granted dwelling entitlement by Council resolution dated 7 June 2000.

SITE DIAGRAM:



LOCALITY PLAN
 Lot 13 DP 1043036
 Terranora Road, Terranora

Filename: z:\esri\planning\mxd\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 4 January, 2010

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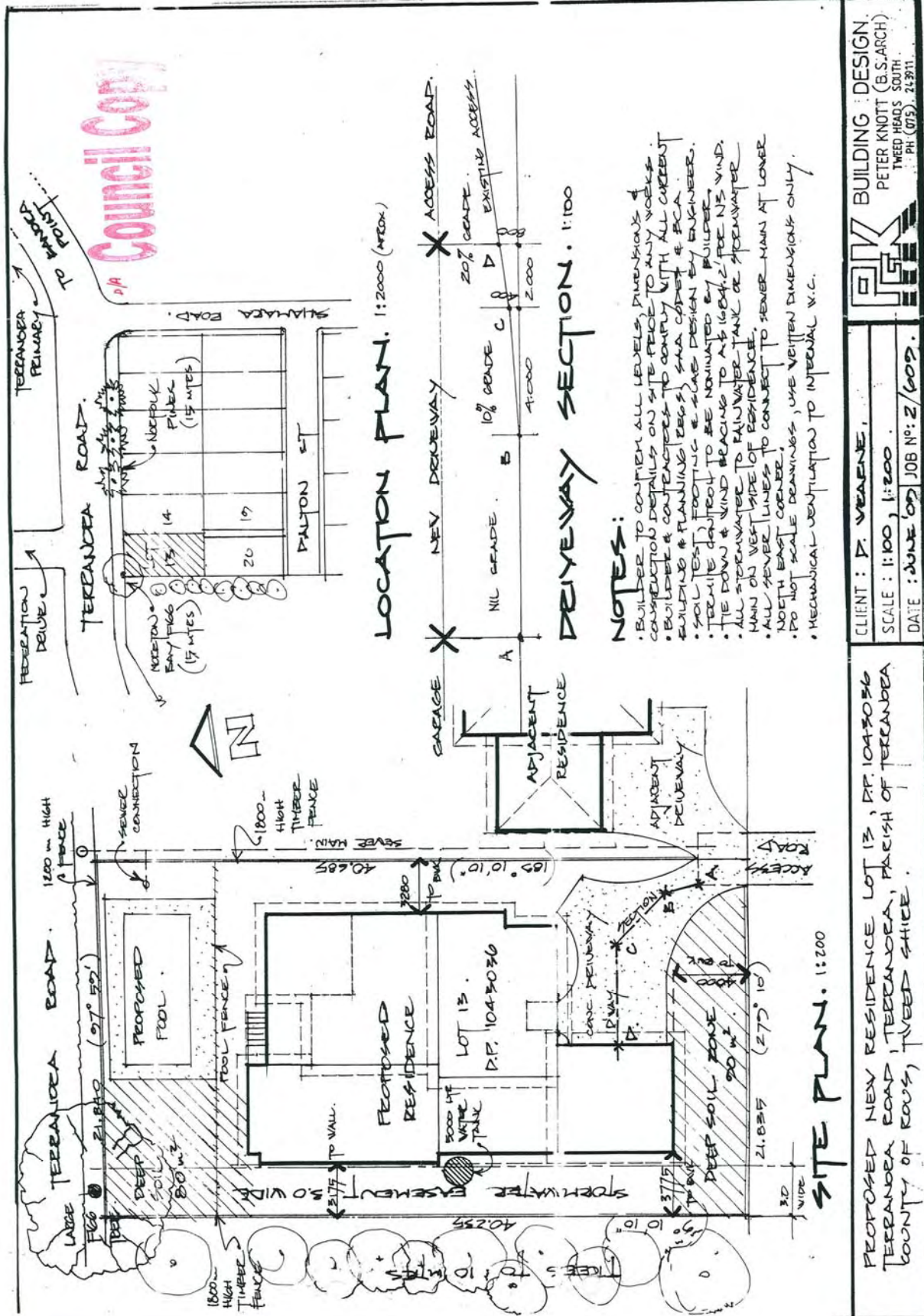
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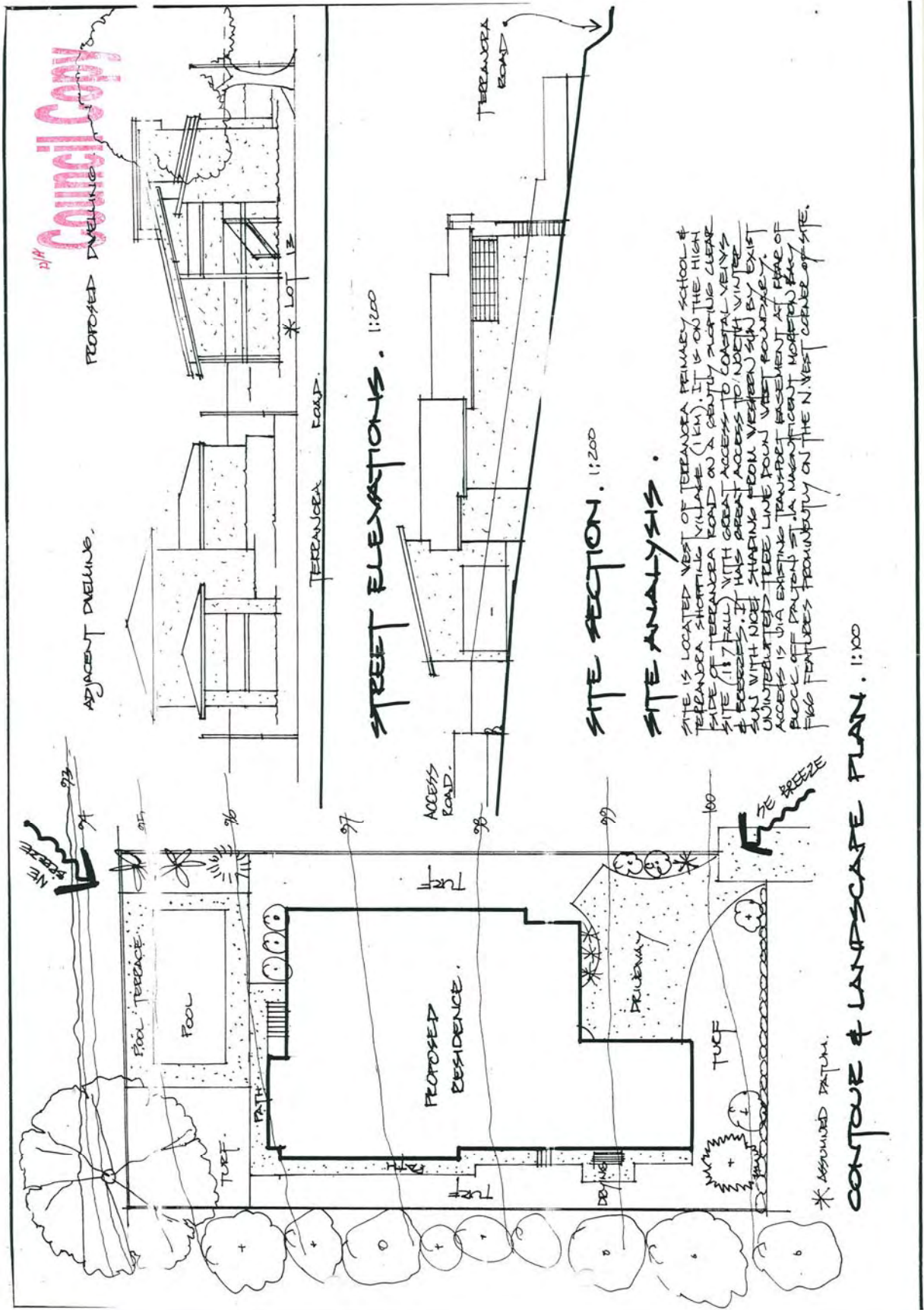
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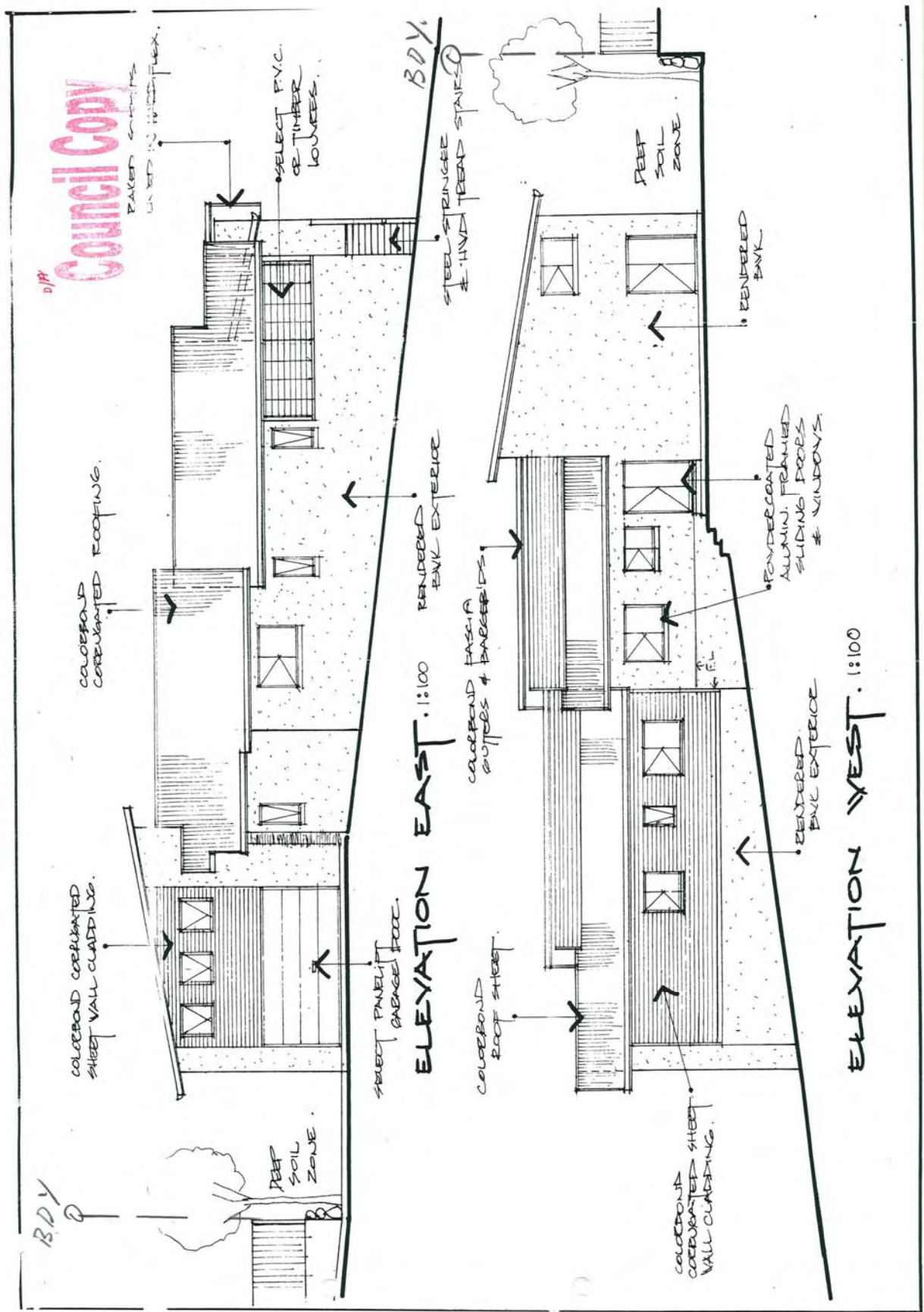
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Civic and Cultural Centre
 3 Tumbulgum Road
 Murwillumbah NSW 2484
 PO Box 816
 Murwillumbah NSW 2484
 T: (02) 6670 2400 / 1300 292 872
 F: (02) 6670 2483
 W: www.tweed.nsw.gov.au
 E: planningreforms@tweed.nsw.gov.au









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 plan

Clause 5 - Ecologically Sustainable Development

Proposal satisfies the objectives of this plan

Clause 8 - Zone objectives

The proposal is consistent with the primary objective of the zone

Clause 15 - Essential Services

All required essential services are available and adequate

Clause 16 - Height of Building

The dwelling will be two storeys which is permissible in this area. The height & scale of the proposal is consistent with surrounding development.

Clause 17 - Social Impact Assessment

Approval of the proposal is considered to be unlikely to result in any negative social impact issues.

Clause 24 – Designated Roads.

Terranora Road is a designated road which requires a thirty metre building alignment. The proposal does not satisfy this requirement and a SEPP 1 objection has been lodged in this regard.

The SEPP 1 objection is supported and is discussed below.

Clause 35 - Acid Sulfate Soils

Allotment is not affected by acid sulfate soils

Other Specific Clauses

N/A

State Environmental Planning Policies

SEPP No. 1 - Development Standards

A SEPP 1 objection has been lodged against the requirement under clause 24 of the Tweed LEP 2000 for the dwelling to observe a thirty (30) metre building alignment to Terranora Road, which is a designated road.

The Applicant has made the following submission in support of their request for a SEPP 1 variation:-

"The dwelling will be located a minimum of 9 m to the boundary to Terranora Road with the pool setback a minimum of 1.5m therefore the development does not comply with the 30m setback requirement.

It is submitted that the development standard requiring a 30m setback is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- There are other structures located adjacent to the property that are at a similar distance or encroach closer to the designated road than the proposed dwelling and pool. Other structures along Terranora Road have also been constructed within the 30m setback.*
- The subject site has vehicular access from Dalton Street with no access proposed from Terranora Road.*
- There are also further restraints imposed on the site that must be taken into consideration which require the dwelling to be constructed 9m from Terranora Road. The site has an area of only 883m² with a maximum depth of 40 m therefore compliance with the 30m setback cannot be achieved.*
- The pool is at ground level and will have a minimal impact on Terranora Road.*

For the above reasons Council is requested to uphold the objection and grant consent to the development application as approved."

Application of the 30m setback requirement to dwelling houses is an anomaly as it was not intended to apply to small lots fronting roads with low travel speeds.

The site has a maximum depth of 40.235 metres and therefore enforcing a thirty metre (30m) set back to Terranora Road would result in an unusable building envelope.

The allotment is also burdened by a 3.0m wide easement to drain water, which is located inside the western property boundary, and further reduces the available building area.

Other dwellings in this subdivision, which front Terranora Road, have previously been granted SEPP 1 objections for setbacks less than 30 metres.

The floor level of the dwelling will be substantially above Terranora Road and therefore it is considered that traffic using Terranora Road will not be impacted on by the proposed development in relation to sight lines or other distractions nor will traffic have an adverse impact on the dwelling.

The objectives of part 5 (Roads) clauses 22, 23 and 24 of the Tweed LEP and a response to each objective is as follows –

Clause 22 – Development near designated roads

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

Response - there will be no vehicular access to the subject site off Terranora Road and therefore the capacity, efficiency and safety of this road will not be compromised.

Vehicular access to the site is via a right of way over lots 19 & 20 which fronts Dalton Street which has access to Terranora Road via Shamara Road.

- **To prevent development on designated roads that would detract from the scenic attractiveness of the area of the Tweed.**

Response - the proposed development will comprise a residential dwelling which will be consistent with the rural residential character of the area.

This subdivision was approved to permit the construction of single dwellings and due to the physical limitations of the allotments it is impractical to enforce a thirty metre building alignment to Terranora Road.

The proposal will therefore not have an adverse impact on the scenic attractiveness of the area.

- **To prevent or reduce the potential impact of traffic noise on development adjacent to designated roads.**

Response - the dwelling will be set back 9.60 metres from Terranora Road with an open roofed verandah and bedroom being the closest part of the dwelling to the roadway.

Due to the slope of the allotment and the level of the allotment above Terranora Road the dwelling will be at a level considerably above Terranora Road which will lessen the impact of traffic noise on the proposed dwelling.

Clause 23 – Control of access

- **To control access to designated roads.**

Response – no vehicular access is proposed off Terranora Road.

Clause 24 – Set backs to designated roads

- **To control development along designated roads.**

Response - the allotment exists in an area which is zoned for rural residential use and in a subdivision which was specifically created for residential dwellings therefore the proposal is considered to be consistent with the objectives of the zoning of the area.

SEPP No 71 – Coastal Protection

The proposal is located outside the boundary of the SEPP and therefore this has not been assessed as part of this application.

SEPP (Building Sustainability Index: BASIX) 2004

A Basix certificate has been supplied in support of the application.

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

There is no draft planning instrument currently in force for this proposal.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The dwelling is proposed to observe a building alignment of 9.60m to Terranora Road which is a designated road under the provisions of the Tweed LEP 2000 (see SEPP 1 comment above in relation to the reduced building alignment).

The dwelling is proposed to stand 4.0 m from the southern boundary in lieu of the mandatory 5.0 m which is in Design Control 3 – Setbacks or 5.5m which is in design Control 2 – Site Configuration (Deep Soil Zones.)

The Applicant, in their statement of environmental effects, advises that “*front & rear deep soil zones have been have been demonstrated on the submitted plans and thus comply*”.

The deep soil zones have been identified on the site plan however do not satisfy the design control in relation to the geometry of these areas.

Justification of this area of non compliance, in relation to site constraints, is discussed later in this report.

A swimming pool is proposed in the front yard to benefit from the northern aspect and it is considered that this location is the preferred location for such a structure as there is no other more suitable location on the site.

If the dwelling was moved forward to comply with a 5.5 m rear alignment it may impact on the size and utilisation of the swimming pool and associated outdoor recreation area.

Other allotments in this subdivision which face Terranora Road have swimming pools located in the front yard. Notwithstanding that these were constructed prior to the implementation of DCP A1 it is considered that a precedent has been set in the immediate area and that the orientation of the allotments is conducive to swimming pools being located in front of the dwelling.

The variation to the design controls is supported due to the particular circumstances of the site.

DESIGN CONTROL 2

Deep Soil Zones – Objectives.

- To ensure that land retains its ability to permeate water.
- To ensure that each building lot has a deep soil zone of adequate area and dimension.
- To retain & enhance fauna and flora corridors throughout suburban areas.
- To provide space for mature tree growth and vegetation.
- To retain existing mature vegetation.

Controls

The controls which are applicable to this proposal are as follows :-

- a. Deep soil zones must be provided for all new developments and existing development, except on large lot rural or agriculturally zoned land.
- b. All sites are to provide two Deep Soil Zones, one to the rear and one to the front of the property.
- c. Rear Deep Soil Zones are to have minimum width of 8m or 30% of the average width of the site, whichever is the greater, and a minimum depth of 18% of the length of the site up to 8m but not less than 5.5m. Greater than 8m may be provided if desirable.
- d. Rear Deep Soil Zones are to have soft landscaping .

DESIGN CONTROL 3 - Setbacks

Rear Setbacks - Objectives

- To provide for an area for private outdoor recreation and relaxation.
- To allow space for vegetation and mature trees.
- To separate dwellings to achieve privacy.

Controls

The controls which are applicable to this proposal are as follow :-

- a. Garages, outbuildings and carports may be located a minimum of 450mm from the rear boundary.
- b. For Dwelling Houses the minimum rear boundary setback is to achieve the minimum Deep Soil Zone requirements or 5m whichever is the greater.
- c. Existing mature trees less than 5m from the rear boundary are to be retained.

DESIGN CONTROL 10 - Swimming Pools & Spas

Objectives

- To provide a place for recreation & enjoyment
- To provide a high level of child safety
- To minimise the impact of swimming pools & spas on neighbours
- To require swimming pools to comply with all relevant legislation and Australian Standards.

Controls

- a. The outer edge of the pool concourse or coping shall be setback a minimum 1 metre from the side or rear boundaries with the water line being a minimum 1.5 metre from these boundaries.
- b. Swimming pools must be surrounded with a child resistant barrier in accordance with the provisions of the Swimming Pools Act and the requirements of Australian Standard AS 1926.
- c. Spas must be surrounded by a child resistant barrier as for swimming pools or access to the water restricted at all times when the spa is not in use in accordance with the Swimming Pools Act.
- d. New swimming pools and spas shall comply with the current requirements of Basix.
- e. Swimming pools and spas are to have a suitable means for drainage and disposal of overflow water.
- f. Filters and pumps are to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- g. The wall of a residential building may form part of the child resistant barrier so long as the wall contains no openable door, window or other opening through which access may at any time be gained to the swimming pool.

- h. Pools are not to be located between the building and the street, except on sites where private open space can only be accommodated in this location.
- i. Pools and spas cannot be located in the Deep Soil Zones.

Justification

Tweed Development Control Plan section A1- Residential and Tourist Development Code allows for variations to the mandatory controls in the following circumstances :-

“Only in exceptional circumstances will Council consider a relaxation or variation to a mandatory control.

A variation or relaxation will only be considered where it has been demonstrated (through architectural and/or landscape drawings) how and why the mandatory controls cannot work on a particular site. This requires the Applicant to design a solution using the mandatory controls.

Generally Council will only consider a relaxation or variation to a mandatory control due to excessive constraints including;

- *the site being located as an infill (infill development is any allotment that is neighboured or adjoins a property that supports a building, including sites within new subdivisions, where that development has already occurred, and to the extent only that an existing building hinders the achievement of the mandatory control).*
- *established dwellings located in subdivisions created prior to the year 2000*
- *sites with highly irregular geometry,*
- *sites with major topographical or geotechnical constraints.*

Whilst the allotment does not strictly satisfy the definition of infill development due to the subdivision in which the allotment is located being registered after the year 2000 it is considered to satisfy the intent of infill development as all adjoining allotments have been developed.

The Applicant was not requested to submit additional plans demonstrating compliance with the controls of the DCP in this instance as it is considered that this would serve little purpose in the assessment of this application.

The rear of the dwelling will be set back 4.0 m from the southern property boundary in lieu of the mandatory 5.5 m however it is considered that this variation can be justified on the following grounds:-

- The proposal is affected by site constraints such as bounding a designated road and the presence of an easement which reduces the available building envelope and hinders the achievement of the mandatory control.

- The rear deep soil zone which will be available will comprise an area of 90m² which exceeds the minimum which would be achieved by strict compliance with the mandatory control.
- The front deep soil zone does not extend across the full width of the site, as required in the control, however adequate alternate infiltration area exists along the drainage easement inside the western property boundary.
- A front and rear deep soil zone will be provided.
- The site is burdened by a 3m wide easement to drain water inside the western property boundary which restricts the available building platform
- A garage with a storage area over will be located 4.0m from the common boundary with the allotment to the south.

A condition of consent will be imposed to provide screens to the windows to the storage area on the southern elevation to maintain privacy of the rear yard and deck of the dwelling to the south.

- The dwelling on the allotment to the south contains a garage about 7.50m from the common property boundary therefore there is adequate spatial separation between the two buildings and the use and enjoyment of the outdoor recreation area on the adjoining lot is unlikely to be compromised by the presence of a garage on the subject lot which is located 4.0 m from the boundary.
- Due to the slope of the land and existing site retaining there will be a difference in level between the two dwellings which will assist in maintaining visual separation between the allotments
- The allotment is restricted by being located adjacent to a designated road which requires a greater building alignment than a normal allotment.

This situation reduces the available building platform and therefore in order to fit the dwelling on the allotment and make provision for a swimming pool with the preferred northerly aspect the rear setback has been reduced.

- Notwithstanding that a SEPP1 report has been prepared to justify the dwelling and pool being located less than the mandatory 30m from Terranora Road it is preferable that the building setback be greater than 6m to provide spatial separation from the designated road.
- The dwelling has been designed to minimise any privacy issues to the adjoining allotment by locating non habitable utility rooms such as a garage and storage at the southern end.
- Adequate area exists on the western side of the site, which is burdened by a 3.0 m wide easement to drain water and therefore cannot be built on, to provide infiltration for rainwater.

- The allotment is elevated above Terranora Road and the presence of a swimming pool in front of the dwelling will have no adverse impact on the streetscape.

The location of the swimming pool is considered to acceptable for the following reasons:-

- The location of the swimming pool in the front yard, between the dwelling and the front property boundary is considered to be acceptable in the circumstances as it satisfies the controls apart from it's location.
- Pools are permitted in the front yard where open space can only be accommodated in this area.
- The design of the allotment, with driveway and pedestrian access provided via a right of way over properties to the south, will result in that area between the house and the rear boundary either being occupied by the driveway and manoeuvring area or being too small to accommodate a pool.
- This area is also unsuitable due to overshadowing, lack of northerly aspect and proximity to the property to the south.
- Other allotments in this subdivision which front Terranora Road have been granted consent to locate swimming pools between the dwelling and street boundary.
- The allotment is located substantially above Terranora Road therefore the location of the pool will have no adverse impact on the streetscape.
- The proposed pool fence will be 1.20 m high within the primary building alignment which satisfies the provisions of DCP A1 and will therefore not impact on the streetscape.
- Access to the pool from the dwelling is preferable via the front verandah/living area rather than through the garage or front door.

The proposal, whilst not fully consistent with the requirements of the Design Controls, is considered to be generally consistent with the objectives of the DCP.

The reduced rear building alignment is not considered likely to impact on the subject dwelling or adjoining dwellings and adequate area will be available on site to cater for rainwater infiltration.

The location of the swimming pool is considered to be the desired location with respect to solar access and connection to the dwelling.

The proposal is regarded as being worthy of approval.

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

Clause 92(a) Government Coastal Policy

The subject allotment is outside the boundaries of the policy and therefore the Coastal Policy has not been considered.

Clause 92(b) Applications for demolition

The allotment is vacant land and therefore no demolition is proposed.

Clause 93 Fire Safety Considerations

This clause is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

The proposal is a new dwelling & therefore no upgrading is 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 allotment is located in a residential subdivision and contains a variety of dwelling types.

The proposal is considered to be consistent with the existing and future character of the area.

Access, Transport and Traffic

Vehicular access to the allotment from Terranora Road is prohibited by covenant. The legal point of access to the lot is via a right of way over lots 19 & 20 which adjoin to the south.

This right of way contains an existing concrete driveway which was constructed at subdivision stage and complies with Council's Vehicular Access to Property specification document.

Flora and Fauna

The site does not contain any flora or fauna of any significance.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The allotment is surrounded by similar residential allotments to the east and south whilst a larger rural living allotment adjoins to the west.

Flora and Fauna

See above.

Topography

The allotment slopes moderately downhill from south to north. Fill on the allotment to the south is retained by a boulder retaining wall and fill on the subject allotment is retained by an existing boulder retaining wall along its northern boundary.

Site Orientation

The allotment has a northern orientation, living areas and the swimming pool have been located on the northern side of the allotment to take advantage of this solar access.

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

There have been no submissions made in relation to this application.

(e) Public interest

There are no adverse public interest issues anticipated should this application be approved.

OPTIONS:

1. Approve the application with conditions, or
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Refusal of the application may expose Council to a challenge in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application is considered to be unlikely to undermine the enforcement of Council's policies in this matter.

Each application is considered on its merits and the variations from Development Control Plan A1 and the Tweed LEP 2000 have been considered and are regarded as being worthy of approval due to the particular circumstances of the site.

CONCLUSION:

Under the circumstances it is considered that the proposal to construct the dwelling with a minimum building line of 9.60 metres to Terranora Road is reasonable for conditional approval.

The SEPP 1 objection to reduce the statutory building line has been considered and under the circumstances it is considered that the variation is justified and should be supported.

The variations from the statutory controls in Development Control Plan A1 are considered to be justifiable due to the circumstances of the site and acceptance of these variations is recommended.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

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

ORIGIN:

Director Planning & Regulation

SUMMARY OF REPORT:

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

RECOMMENDATION:

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

REPORT:

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

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

DA No.	Description of Development	Property Address	Date Granted	Development Standard to be Varied	Zoning	Justification	Extent	Authority
DA08/0113	nine (9) lot rural residential subdivision	Lot 2 DP 866690; Lot 1 DP864093; Lot 83 DP1015295; Lot 84 DP1015295 No. 161 Cobaki Road, Cobaki	17/12/2009	Clause 20(2)(b) - Minimum lot size 10ha	1(c) Rural Living, 7(d) Environmental Protection (Scenic/Escarpment)	The application seeks approval for a 9-lot residential subdivision which will result in the creation of a lot containing 7(d) zoned land that is less than 40ha in area. Clause 20 of the LEP requires lots created by the subdivision of land within the 7(d) zone to have a minimum area of 40ha.	All of the 7(d) zoned land (17.5ha) is to be contained within Lot 6 which has a total area of 20.22ha. This equates to a variation of 49.45%.	Tweed Shire Council
DA09/0460	boundary adjustment subdivision	Lot 7 DP 748802 & Lot 6 DP 748802 & Lot 3 DP 602563 No's 517, 519 and 525 Upper Burringbar Road Burringbar.	17/12/2009	Clause 20(2)(b) - Minimum lot size 10ha	1(b1) Agricultural Protection	The boundary adjustment is between three allotments and two of them do not comply with the minimum allotment size being 10ha in the 1(b1) zone.	proposed lot 11 = 95% and proposed lot 10 = 97%	Director-General of the Department of Planning

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

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Nil.