



TWEED
SHIRE COUNCIL

Mayor: Cr Warren Polglase

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

Planning and Regulation Reports

Ordinary Council Meeting

Tuesday 17 August 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.

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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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9 [PR-CM] Planning Proposal PP10/0004 Enterprise Avenue/Greenway Drive, Tweed Heads South

ORIGIN:

Planning Reforms

FILE NO: PP10/0004

SUMMARY OF REPORT:

This report seeks Council's consideration of a planning proposal to amend the Tweed Local Environmental Plan as it relates to three properties, being Lots 2 and 3 of DP 1077990, Enterprise Avenue, Tweed Heads South and Lot 2145 DP 879149, Greenway Drive, Tweed Heads South.

The proposal seeks to enable Lots 2 and 3 to be developed for the purposes of a large format retail precinct (including the relocation and uses for Harvey Norman, Freedom Furniture, Toys r Us and the like) and a waste transfer station. Similarly, the proposal intends to enable the redevelopment of Lot 2145 for direct factory outlet retailing purposes.

Preliminary assessment of the planning proposal indicates that the proposal is generally consistent with the Far North Coast Regional Strategy, applicable State Environmental Planning Policies and Section 117 Ministerial Directions. However, there are two significant issues identified relating to roads and traffic and proximity to the Banora Point Waste Water Treatment Plant (WWTP) that could either warrant the deferral of any rezoning for the foreseeable future or ultimately prevent a rezoning and further development altogether.

Based on the current level of information and assessment of the planning proposal there is insufficient certainty about satisfactory outcomes being achieved, particularly in relation to securing necessary approvals, funding and timing for the construction of the Enterprise Avenue – Kirkwood Road extension and Kirkwood Road (western) extension and upgrade, as well as any potential financial impacts on the operation and possible need for upgrading of the Banora WWTP. As a result, it is the officers' view that it is not appropriate at this stage for Council to support a resolution to rezone the subject land and/or a referral to the Department of Planning for a "Gateway" determination.

It is therefore recommended that the Applicant be advised of the need for further investigation should they wish to proceed with a proposal and that Council's costs associated with any additional investigation be in accordance with the draft Fees and Charges adopted for exhibition at the Council meeting of 20 July 2010.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0004 for Lots 2 and 3 of DP 1077990, Enterprise Avenue, and Lot 2145 DP 879149, Greenway Drive, Tweed Heads South not be referred to the Department of Planning for a gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* based on the uncertainty of the adequate provision for roads and traffic and financial implications for ongoing operations of the Banora Point Waste Water Treatment Plant.**
- 2. The proponent be advised that additional investigation is required and will need to include pre application consultation with all relevant agencies and is to include additional information relating but not limited to:**
 - i. An assessment of potential impacts arising as between the Banora Point Waste Water Treatment Plant (WWTP) and the proposed future development, any mitigation measures as required, and cost estimates / allocation or apportionment of any cost arising on the WWTP as a result of the proposed development.**
 - ii. A roads and traffic needs assessment arising from the proposed development including estimates of the current future road funding under the Council's TRCP, identification of new roads or upgrading required to support the future development along with projected timeframes for construction and cost. The Applicant must clearly identify their contribution either by way of funding, contribution estimates, works in kind or any other means.**
 - iii. An assessment of the ecological constraints (including the traversing of SEPP14 Wetlands) of the footprint of the proposed extension of Enterprise Ave and how these constraints may be addressed to permit the road to proceed.**
- 3. The Applicant be advised that any costs to Council associated with any additional investigation or assessment of Stage 1 of Planning Proposal PP10/0004 be in accordance with the draft Fees and Charges adopted for exhibition at the Council meeting of 20 July 2010.**

REPORT:

BACKGROUND

On 1 July 2009 the Environmental Planning and Assessment Amendment Act 2008 and Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 implemented procedural changes to the way local environmental plans are prepared and processed.

SITE AND PLANNING HISTORY – “ENTERPRISE AVENUE”

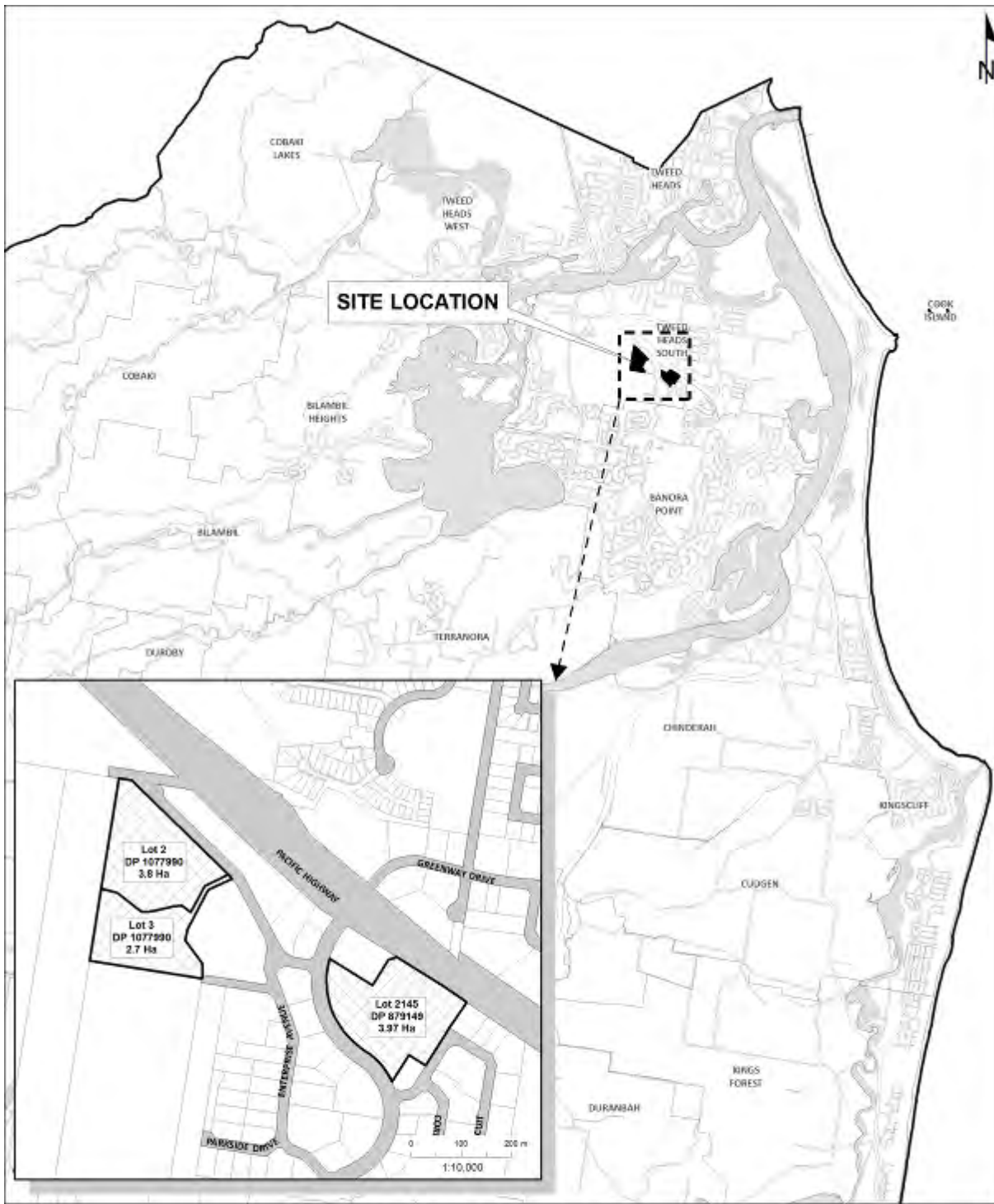
The study area includes Lots 2 and 3 of DP 1077990, Enterprise Avenue, Tweed Heads South and Lot 2145 DP 879149, Greenway Drive, Tweed Heads South. Figure 1 highlights the location and size of the study area.

Lots 2 and 3 DP 1077990 are currently vacant and are adjoined by the Banora Point Waste Water Treatment Plant (WWTP) to the west and south, Enterprise Avenue to the immediate north, followed by the Pacific Highway. To the east of the site is the established Expo Park trade precinct.

The final parcel that forms part of the study area, Lot 2145 DP 879149, contains the existing South Tweed Heads Harvey Norman complex and adjoins offices, a church, bulky goods retailing and light industry/service industry type uses.

Aside from the WWTP, it is not considered that the adjacent uses impose a significant constraint on the rezoning of the subject land as proposed. The potential impacts of the proposal on the WWTP are discussed later in this report.

FIGURE 1: SITE LOCALITY PLAN:



LOCALITY PLAN

Lots 2 and 3 of DP 1077990, Enterprise Avenue, Tweed Heads South & Lot 2145 DP 879149, Greenway Drive, Tweed Heads South

0 1 2 Km
1:75,000

Filename: z:\esr\planning\mxd\A4P_58\W SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 24 June, 2010

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TWEED
SHIRE COUNCIL

THE PLANNING PROPOSAL

Part 1 A Statement of the Objectives or Intended Outcomes of the Proposed Local Environmental Plan

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal describes its intended outcomes as follows:

'The objective of this Planning Proposal and any Draft Local Environmental Plan is to enable Lots 2 and 3 to be developed for the purposes of a Large Format Retail Precinct and a Waste Transfer Station. Similarly, the objective in respect of Lot 2145 is to enable that lot to be used as a Direct Factory Outlet.'

The NSW Department of Planning's 'A Guide To Preparing Planning Proposals' states that the objectives or intended outcomes constitute the actual 'proposal' and if at any stage they are varied during the course of the planning proposal, the entire amended planning proposal will need to be resubmitted to the Minister to enable a decision to be made as to whether to issue a revised gateway determination. In light of these provisions, whilst the submitted planning proposal contains draft proposed zonings (which are discussed within Part 2 of this report) the assessment of the proposal should have greater regard to the above intended outcomes statement as a variety of zones could be used to accommodate the desired outcome.

Under the provisions of Tweed LEP 2000, Lots 2 and 3 are zoned Part 4(a) General Industrial and Part 6(b) Recreation, development for the purpose of bulky goods retailing is permitted in the 4(a) zone providing the applicant can demonstrate that the provisions of Clause 8(2) are satisfied, however 'shops' (other than general stores, takeaway food shops serving the industrial area or shops ancillary or incidental to a lawful use of the land) are prohibited.

Accordingly, whilst a component of the proposal for Lots 2 and 3 is permissible with consent under the current LEP provisions, the majority of the planning proposal is not.

Lot 2145 is currently zoned 3(c) Commerce & Trade. Within the 3(c) zone, development for the purpose of 'shops' (other than general stores) is permitted with consent, provided the application can demonstrate that the provisions of Clause 8(2) are satisfied. Strictly speaking, a planning proposal is potentially not required to enable the desired development on Lot 2145, however, it is acknowledged that the provisions of Clause 8(2) within the Tweed LEP 2000 are not easily met and that the 3(c) Commerce and Trade zone has not traditionally been seen as an appropriate zone for the provision of retail premises (shops) development.

Part 2 Explanation of the Provisions

To enable the prescribed objective, the planning proposal seeks to amend the zoning map of the Tweed LEP as per Attachment 1. A basic summary of the changes sought is contained in Table 1 below:

Table 1 – Desired changes to the Tweed LEP 2000

Property (Lot/Sec/DP)	Tweed LEP 2000 Zoning	Draft Tweed LEP 2010 Zoning	Proposed Zoning
2//1077990	4(a) Industrial	IN1 – General Industrial	B5 Business Development
3//1077990	6(b) Recreation	RE2 – Private Recreation	IN1 General Industrial
2145//87914 9	3(c) Commerce & Trade	B5 – Business Development	B5 – Business Development

Note: Lots 2 and 3 both include portions of E2 – Environmental Conservation zoning under the proposal, to reflect site conditions.

With regard to Lot 2145, the applicant provides the following comment:

‘At the date of preparing this Planning Proposal, Draft Tweed Local Environmental Plan 2010 is on public exhibition. The Draft Plan implements the Standard Instrument and zones. As the Draft Plan is likely to be gazetted in 2010, the proposed zones are consistent with those zones used in the exhibited Draft Tweed Local Environmental Plan 2010.’

The abovementioned comments are noted. Whilst the planning proposal does not need to include Lot 2145 should the Draft Tweed LEP 2010 be adopted in its current form, given the number of unresolved issues within the Draft Tweed LEP 2010, the planning proposal should proceed with Lot 2145 included.

Part 3 Justification for the Proposal

Section A - Need for a Planning Proposal

Is the planning proposal a result of any strategic study or report?

The planning proposal is not a result of any specific or adopted strategic study or report prepared at either a local or regional level. The subject site however is within the existing urban footprint identified within the Far North Coast Regional Strategy and is considered to be consistent with its direction.

Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Council commenced a draft locality plan for Tweed Heads South as part of broader study and draft LEP which also included Tweed Heads in 2007. This was undertaken in partnership with the Department of Planning’s Cities Task Force.

Although elements of the locality plan process have informed the recently advertised amendments to Section B2 of the Tweed DCP, which forms part of and was publicly exhibited with the draft Tweed Heads “City Centres” LEP, the majority of the locality plan work has been deferred pending the completion of Council’s Tweed Floodplain Risk Management Strategy, which is expected to be publically exhibited during 2010.

Whilst the subject site falls outside the area of the locality plan, there is a strategic relationship and corresponding function between land-uses in Tweed Heads and those in Tweed Heads South. Ordinarily a wider review of the strategic relationship would be required and would occur through the locality plan process however, Council officers are confident that the strategic nexus and justification can be properly managed through the planning proposal by requiring the preparation of a more comprehensive strategic analysis for the Stage 2 assessment.

Based on the estimated value of the proposal it would be open to NSW Minister for Planning to accept a State Significant Site Application and an undertake the amendment through Schedule 3 of the SEPP (Major Development) 2005. The Applicant has however indicated a preference for a planning proposal and Council officers also consider it to be the best means of achieving the intended outcome.

Is there a net community benefit?

The planning proposal has stated the external benefits as comprising:

- *A reduction in escape expenditure:* At present, approximately \$165 million in large format retail expenditure and between \$34 and \$51 million in direct factory outlet expenditure has been identified by the proponent as being lost to areas outside of the Tweed district. The provision of these services in the Tweed is presented as an option for minimising the escape expenditure.
- *Creation of local employment opportunities:* The proposal states the creation of an additional estimate of 500–700 fulltime employment positions.
- *Funding of the Enterprise Avenue extension to the Kirkwood Road interchange:* The proposal states that the proponents are prepared to fund the construction of the Enterprise Avenue extension as part of any future development/project approval, facilitating wider public benefits by relieving existing traffic congestion in the South Tweed/Expo Park locality. The Works Program in Section 94 Plan No. 4 provides an estimated cost of \$4.86 million for the Enterprise Avenue extension.

Although the finer detail would need to be assessed on the last point in particular it appears that a net community benefit is likely.

Section B - Relationship to Strategic Planning Framework

Is the Proposal Consistent with the Objectives and Actions Contained Within the Applicable Regional or Subregional Strategy (including the Sydney Metropolitan Strategy and Exhibited Draft Strategies)?

Preliminary review indicates that the planning proposal is generally consistent with the Far North Coast Regional Strategy.

Is the Planning Proposal Consistent with Applicable State Environmental Planning Policies?

Preliminary review indicates that the planning proposal is generally consistent with applicable SEPPs.

Is the Planning Proposal Consistent With Applicable Ministerial Directions (Section 117 Directions)?

Preliminary review indicates that the planning proposal is generally consistent with applicable s117 Directions.

Section C - Environmental, Social and Economic Impacts

Is There any Likelihood That Critical Habitat, Threatened Species, Populations or Ecological Communities, or Their Habitats, Will be Adversely Affected As a Result of the Proposal?

The planning proposal identifies the potential presence of threatened species on the site and this is reflected in the proposed use of an environmental conservation zoning over a specific area of identified habitat. Further assessment of potential interface issues between the proposed business, industrial and environmental conservation zones will be required as part of Stage 2. The application was forwarded to Council's Natural Resource Management Unit for review under Stage 1, who are still considering the potential implications of this proposal.

Are There Any Other Likely Environmental Affects As a Result of the Planning Proposal and How Are They Proposed to be Managed?

Preliminary review indicates that the proposal would not likely result in any other significant environmental impacts. Ultimately the true extent will not be ascertainable until the more detailed assessment as part of Stage 2 is undertaken.

How Has the Planning Proposal Adequately Addressed Any Social and Economic Effects

Of those constraints identified from preliminary review and internal consultation within Council, the following issues have been identified as having potential significant impacts upon the site:

Traffic and Section 94 Planning

The planning proposal identifies that:

"... the existing road network does not have sufficient capacity to accommodate the additional traffic which would result from the proposed rezoning. However, current road network planning, particularly that involving the extension of Kirkwood Road to Fraser Drive and Enterprise Avenue, will alleviate current congestion problems associated with Leisure Drive and Machinery Drive and provide additional capacity for the development of the subject site."

Comments received from Council's Infrastructure and Planning Unit (IPU) are as follows:

"While these additions to Council's road network are included in forward planning and are included in the works program for the Tweed Road Contribution Plan (TRCP), it is considered premature to rezone land on the premise that these road projects will go ahead."

The Kirkwood Road extension is in its early planning stages, and will be subject to the outcome of ongoing negotiations with the NSW Roads and Traffic Authority (RTA) and obtaining necessary environmental planning approvals. It is expected that this road project will have a greater degree of certainty by the end of 2010, and at that time Council can secure its commitments regarding the Kirkwood Road project.

The extension of Enterprise Avenue to Kirkwood Road is not currently a priority project for Council, and is not in the current 5 year works plan for the TRCP. No planning or design for this project has been undertaken, although designs for Kirkwood Road have allowed for a future connection from Enterprise Avenue. If the proponents wish to bring forward this project in order for the rezoning to be considered in a shorter timeframe, the following obstacles need to be overcome:

- *Acquisition of approximately 2 hectares of road reserve through private land (Lot 33 DP 1073293);*
- *Environmental planning approvals, addressing significant site constraints including SEPP14 wetlands and extensive vegetation which is likely to contain endangered ecological communities and/or threatened species;*
- *Concept plans that overcome geotechnical constraints of the varying topography along the route (from low lying swampy land at the southern end, to steep land adjacent to Kirkwood Road at the northern end); and,*
- *Secure a funding source.”*

The provision of any extension to Enterprise Avenue and the ultimate success of the planning proposal may be a significant issue in light of the \$20,000 Section 94 Contributions cap and other methods, such as a planning agreement, may be required to ensure the provision of funding or construction of the road.

Clearly there are significant matters in relation to the Enterprise Avenue extension and the local road network that will require further detail and discussion and may ultimately result in the proposal being cost prohibitive. Further there is no certainty that planning approval can be obtained for the Enterprise Avenue road link, given that it will need to traverse sensitive vegetation and SEPP14 wetlands. Accordingly, it is considered appropriate that further detail be provided by the applicant and investigated at a desktop level to demonstrate that these very significant constraints can be overcome prior to referral to NSW Department of Planning for gateway determination.

Proximity to the Banora Point WWTP

As discussed earlier, Lots 2 and 3 DP 1077990 are adjoined by the Banora Point Waste Water Treatment Plant (WWTP) to the west and south. Section B3 of the Tweed DCP permits some development within the treatment plant buffer with strict conditions applied to reduce risks to the health of employees and to ensure the continued use of the essential community facility (WWTP) is not jeopardized.

Section B3 of the Tweed DCP works in conjunction with Section A5 – Subdivision Manual, which contains the recommended buffers to WWTPs. Section A5 prescribes that:

No development is permitted within 200 metres from any current or proposed primary and secondary process units of any sewerage treatment plant, except for uses of an open air nature (eg, car parking, storage) or those uses not requiring permanent or prolonged work station occupation.

The planning proposal has been referred to Council's Water and Waste Water Engineers who have provided the following comment:

"The proposal to zone lot 2 as B5 Business Development is contrary to the intent of the DCP in that the development of commercial/retail premises in such intensity in close proximity to the WWTP means that there will be a large number of people working, shopping and eating within the inner half of the buffer zone. This is an inappropriate development that could result in pressure from the community to relocate the WWTP facility at a very great cost to the community."

The location of the subject site combined with the desired land uses clearly presents a potential prohibition to the success of the planning proposal and will need further consideration by the proponent. Accordingly, it is considered appropriate that further detail be provided by the applicant and investigated at a desktop level prior to referral to NSW Department of Planning for gateway determination. Any further information provided by the proponent in regard to the Banora Point WWTP and the interface with the subject land will be considered by Council officers as well as discussions held with NSW Department of Planning, Department of Health and other agency deemed necessary.

Contamination

Council's Environment and Health Officers have requested additional information be provided in accordance with SEPP 55 and Section 3.4 of Council's Contaminated Land Policy as part of the Stage 2 process.

Section D – State and Commonwealth Interests

Is There Adequate Public Infrastructure for the Planning Proposal?

Preliminary review indicates that adequate water and waste water capacity is available to the subject site, as well as electricity and telecommunication. As discussed above, insufficient capacity is presently available within the local road network, however options may be available that would enable the proposal to proceed.

What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination

The application is yet to proceed through the gateway and has not yet been referred to any State or Commonwealth Authorities, this will occur as part of the Stage 2 process. As discussed earlier however, it is likely that the Planning Reforms Unit will consult with Department of Planning regarding current best practice provisions for development adjoining Waste Water Treatment Plants.

Part 4 – Community Consultation

The Department of Planning's guide to preparing planning proposals addresses the process requirements for determining the level of community consultation which should be specified when seeking a Gateway Determination. It can, in theory, be specifically tailored however the general guide is a 14 day exhibition for a low impact proposal and a 28 day exhibition for all other proposals.

Based on the scale of this planning proposal, Council officers are of the view that a minimum 28 day exhibition period should be sought.

CONCLUSION

On the basis of desktop review, the Planning Proposal is considered to contain insufficient strategic assessment and merit to warrant its referral to the NSW Department of Planning for a gateway determination. Whilst a high level merit assessment has been undertaken, the outstanding issues of the site's relationship with the Banora Point WWTP and its integration into the local and regional road network renders the proposal unacceptable at the present time.

Should the proponent wish to revisit these matters and provide additional information to Council, a supplementary assessment can be undertaken. However this should be facilitated in line with Council's amended fees and charged schedule. This ensures that the Planning Reforms Unit is able to manage the process of efficient assessment and turn around of planning proposals, as agreed to between Council and the wider development industry.

To ensure that the ongoing cost recovery for the assessment of private planning proposal's is maintained it is recommended that the any additional investigation or assessment be charged at the fees for service rates as adopted for exhibition at the Council Meeting of 20 July 2010, which is in the following terms:

Table 2 – Draft Fees & Charges 2010/2011 – Planning Proposal Assessment (in **BOLD**)

Rezoning Fees			
	Stage 1	Stage 2	Stage 3
Anomaly (no increase in the developable capacity of the land)	\$1,030	\$1,545	\$1,030
Minor rezoning (no significant increase in developable capacity of the land and s. 72J applications or schedule 3 amendments)	\$1,600	\$3,500	\$2,000
All others	\$3,500	\$7,000 + \$115 per hour beyond 60hrs	\$5,500 + \$115 per hour beyond 40hrs
Council appointed and managed consultancy	An Applicant may elect to have an application processes by an external consultancy. The cost is to be determined by a Council Tender invitation and submission process and agreed to by applicant + 20% administration fee.		
Preparation of Local Environmental Study (where required)	Cost in addition to rezoning application processing and is to be determined by a Council Tender invitation and submission process and agreed to by applicant + 30% administration fee.		

Reassessment of the same issue or a new issue not previously identified or sufficiently detailed in a planning proposal arising after the assessment of the proposal by the relevant Unit or Division of Council is subject to the prescribed assessment fee.	Assessment of additional supporting information is \$115 per hour, per staff member, plus an administrative fee of \$55.
Council reporting required in consequence of consideration of additional information is subject to the prescribed fee.	The fee for preparing a Council report arising from reassessment of a planning proposal is \$300.
Written correspondence associated with a planning proposal is subject to the prescribed administration fee.	The administration fee associated with written correspondence is \$25

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If adopted, the recommendation contained within this report would result in a resource implication for the Planning Reforms Unit, however Council has a fees and charges structure to enable the application to be managed internally or through external consultants and ensures cost recovery.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Proposed Zoning Map (ECM 18841788)
2. Architectural Plans Large Format Retail Concept (ECM 18841794)
3. Proposed Direct Factory Outlet Concept (ECM 18841795)
4. Architectural Plans Waste Transfer Station Concept (ECM 18841799)

10 [PR-CM] Pottsville Employment Lands - Rezoning Application

ORIGIN:

Planning Reforms

FILE NO: GT1/LEP/2000/85 Pt1 (related file: GT1/LEP/2006 Pt8)

SUMMARY OF REPORT:

This is a further report on the Pottsville Employment Lands Rezoning Submission as reported to Council on 15 June 2010, which sought a boundary redefinition for the rezoning of land from rural to employment, and at which Council resolved to defer consideration of the report pending a workshop.

Following an on-site workshop with Tweed Councillors, Council staff and the proponents, both the Applicant and Council staff have revised their boundary redefinition lines based on the assessment of issues raised on the site and on further analysis of the lands suitability. This report provides and discusses the advantages or otherwise of four potential options, with the preferred option comprising an increase in protected land consistent with the concerns raised by Councillors at the recent site workshop.

The report concludes that the preferred option (Option 1) best reflects the environmental attributes and constraints of the land as well as the State Government Policy direction through the Far North Coast Regional Strategy 2006.

Finalising the rezoning boundary, and pending satisfactory resolution of sewerage issues, this proposal will be in a position to be referred to the Department of Planning for issue of a section 65 certificate certifying that the draft plan may be publicly exhibited.

RECOMMENDATION:

That Council in respect of the rezoning application for the Pottsville Employment Lands site:

- 1. Endorses the boundary redefinition of the land subject to the rezoning as identified in Figure 1: Option 1 – Preferred option; to this report, being that land bordered with a blue dashed line;**
- 2. Defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 3 below;**
- 3. Endorses that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85);**

4. **Endorses that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land; and**
5. **Endorses that the Applicant be advised of Council's concern over the proposed method of waste water treatment proposed and the need for the Applicant to demonstrate certainty of all aspects of the scheme to Council's satisfaction.**

REPORT:

This is a further report on the Pottsville Employment Lands Rezoning Submission as reported to Council on 15 June 2010 which sought to revise the boundary of land to be considered for rezoning from rural to employment, and at which Council resolved to defer consideration of the report pending a workshop.

A report was submitted to the 15 June 2010 Council meeting seeking support for a resolution on vegetation matters, which was in the following terms:

“PROPOSED that:

1. *ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(e) and Section 10A(g) of the Local Government Act 1993, because it contains information that would, if disclosed:

(e) prejudice the maintenance of law
(g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege*
2. *Council endorses the boundary redefinition of the land subject to the rezoning as identified in Annexure 1 – Excluded Area, contained in this report, being that land bordered with a heavy red line.*
3. *Council defers proceeding with legal action in relation to vegetation clearing on the basis of the landowner agreeing to a revegetation management strategy in accordance with Resolution No. 4 below.*
4. *Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment No. 85).*
5. *Land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land.”*

An area of land proposed for exclusion from the rezoning proposal was identified, as stated in resolution 2 above, (refer Figure 4 below), which sought to exclude steep slopes on the southern boundary of the site and a small area along the western boundary with the Pacific Highway.

However, given the complexity of the issues affecting the site, and representations from the proponent, Council resolved “that this item be deferred for a workshop with staff including a presentation by the proponents to Councillors”.

Site Inspection

A site inspection was held on Tuesday 29 June 2010 for Councillors at which concerns about the extent of proposed earthworks throughout the site were raised, including a steep hill, part of which lies within the north-western corner of the site adjoining the Pacific Highway (hereafter referred to as “the hill”).

At the time of preparation of the excluded land map presented in the previous Council report, it was considered that while the land was steep, it had no tree cover, with the exception of a small clump on the crest of the hill in the far corner, and provided the proponent with the opportunity to salvage fill material for fill of land to the north of Kudgerie Avenue, currently outside the boundary of land identified in the Far North Coast Regional Strategy 2006 (FNCRS).

Following from the on-site assessment, the concerns raised about the extent of earthworks proposed and the potential adverse impact on visual amenity have been taken into further account and a revised map has been prepared. Alternative potential options have also been prepared to allow a balanced consideration of the issues and available options for proceeding with a rezoning for the much needed employment land in the Pottsville locality.

The proponent (Planit Consulting and Heritage Pacific) were invited and attended the on-site meeting and made a brief presentation to Councillors. They acknowledged the concerns and issues raised by Council and advised that although in closer agreement with the extent of land to be excluded they would nevertheless be submitting further justification and identification of their preferred boundary realignment for their proposal (refer Figure 5 below).

Point of difference

It is generally agreed by all parties that the steep slopes to the north (the hill upon which the site inspection was convened) which contains trees protected by Council's Tree Preservation Order 2004, is to be excluded from any development area. The point of difference being that the proponent is seeking to maintain a development footprint which encroaches into the steep slopes at the toe of this land, and had intended to fully utilise the hill in the north-western corner adjoining the Pacific Highway to maximise the proposed and potential future development opportunities.

The area of excluded land proposed by the proponent is more the result of consideration of potential lot configurations than it seems integration of any physical constraints affecting the site, and a preference to gain fill material from the hill for development purposes.

Rather than construction of long, tall flat batters, which are difficult to ‘hide’, this report presents an option to develop the site using contemporary design principles more sympathetic to the natural landscape, without the need for and the amenity impacts associated with excessive batter construction, which would otherwise be contrary to the topographic attributes of the area.

Land included in this rezoning proposal

While it is important to consider off-site and cumulative impacts, and the broader local and regional context of this proposal, only a small portion of the hill in the north-western corner falls within the boundary of land identified in the FNCRS as 'Employment Land' which can and will be subject to the determination of this rezoning application.

Given that the majority of the hill falls outside the boundary of this rezoning submission, potential future use of the majority of the hill cannot be determined under this rezoning; as such the report must focus on that small area of the hill which lies within the boundary of this proposal.

While the preferred option presented below excludes the majority of the hill, it does not necessarily follow that the hill or part thereof could not be available for development at a future time depending largely on whether the adjoining land identified in the Tweed Urban Land Release Strategy 2009 included in the revised Far North Coast Regional Strategy 2011, which the Department of Planning is preparing to review.

In any future event the amenity impact of the removal or disturbance to the hill on the surrounding areas will still need to be assessed and may ultimately act as a bar to its development.

Future opportunities to develop employment land adjoining this site

It is relevant and important to acknowledge the broader strategic intentions for the Pottsville locality so that the subject planning proposal and site is not considered in a vacuum or in isolation of the likely extent of urban development over the next 30 years and to ensure that any decisions on this proposal is not grounded or restricted to a perception of limited or finite opportunity or land supply.

The Tweed Urban and Employment Land Release Strategy 2009 (TUELRS), as discussed above, has identified a substantial area of additional land immediately to the north of this site which may be suitable for employment generating purposes in the future; however, for this land to be developed, it will need to be included in the FNCRS.

The Department of Planning has advised that they have commenced a revision of the Strategy, but at this stage there is no guarantee that this land will be included in the revised Strategy albeit that Council is optimistic that the effort expended in developing the TUELRS will be acknowledged by the Department in the revised Strategy.

Until such time as the Department of Planning finalises its revision of the FNCRS Council is not in a position to make a determination as to the potential future use of the majority of the hill which falls immediately to the north of the site in and beyond the north-western corner.

Should the Department concur with inclusion of land identified in the TUELRS in the revised FNCRS, then the site subject of this rezoning submission will form a very small part of a much larger area of employment land, which will provide further development opportunities to the proponent and other interested parties.

What land should be excluded?

Apart from the *regional and local strategies* listed in the previous report to Council, the following *additional considerations* have been included in developing the revised excluded land area presented in this report:

- Compensatory planting areas to offset vegetation lost in areas covered by the TPO;
- Visual amenity and impact on view fields from off-site, including nearby residential suburbs;
- Potential safety impacts for motorists travelling the Pacific Highway;
- Stability of batter and cuttings on the Pacific Highway;
- Ability to revegetate and conceal steep rock faces, and
- Concerns and comments expressed by Councillors at the recent site inspection.

The area of land on the southern boundary offered as a *compensatory offset* for loss of high value vegetation in the area protected by Council's TPO 2004 is considered to be appropriate in size and location, and once revegetated will support the consolidation of vegetation on both Council-owned land immediately to the east and land protected under Council's TPO 2004 on the site.

The visibility of cut batters from the north has the potential to be significant; with views into the site extending as far north as Seabreeze Estate, Koala Beach Estate and hills to the north on the opposite side of the flood plain.

The Roads and Traffic Authority has advised, in part, that due to the high visibility of the proposed development, an independent road safety audit will be required; they have also raised concerns about slope stability of embankments supporting the Pacific Highway were excavation as proposed be undertaken.

In addition to these considerations is the desire of the proponent to utilise the material won from excavation of the hill in the north-western corner for development of land to the north of Kudgerie Avenue in subsequent stages of the development, notwithstanding current limitations of the FNCRS as discussed above.

Finalising the area of excluded land

Since the site inspection, Council officers have considered the on-site assessment by Tweed Councillors and staff and again met with the proponents, who subsequently provided a response to Council's report comprising a revised development footprint as illustrated in Figure 5 below.

Although the proponents revised option provides an improved level of environmental protection the encroachment into the steep and vegetated land along the lower slopes of the vegetated land on the southern boundary remains. The proponent's revised plan continues with the proposition of removing the entire hill in the north-western corner.

This report proposes, with the intent to set a benchmark which demonstrates Council's desire to better manage and support development that is more sympathetic to the natural landscape, that Option 1 below is the better and preferred option for the development of the subject site..

As discussed above, alternative options have also been prepared to allow a balanced consideration of the issues and available options for proceeding with a rezoning of the site.

Option 1: Exclude land with slopes generally greater than 18 degrees (Figure 1)

The boundary as shown in Figure 1 below is to be recognised as the boundary of excluded land.

This alternative represents a revision of the area presented in Council report of 15 June 2010 to accommodate concerns about extent of proposed earthworks.

This boundary is generally represented by the 35 metre AHD contour, which closely reflects the change in slope of land generally in excess of 18 degrees. This line would also exclude all land above the designated contour on the hill in the north-western corner, and provide limited fill to be won from steep land below the contour.

Option 2: Exclude land with slopes generally greater than 18 degrees; reshape the hill (Figure 2)

The boundary as shown in Figure 2 below is to be recognised as the boundary of excluded land.

This is a hybrid proposal and represents a response developed following the site inspection with Councillors and discussions with the proponent, which excludes the majority of steep and vegetated land in the south, yet provides the proponent with surplus material for fill operations from the hill in the north-western corner (assuming permissibility under the revised FNCRS), yet at the same time generating a finished landscape typical of adjoining land.

As a compromise this option would ensure a finished landscape (resulting from development in future stages not related to this rezoning) to be typical of adjoining topography and thereby minimise any adverse visual impact, yet at the same time providing an opportunity for the proponent to take advantage of surplus material won in the reconstruction of this section of the site and adjoining land.

Option 3: Exclude all land with slopes greater than 18 degrees (Figure 3)

The boundary as shown in Figure 3 below is to be recognised as the boundary of excluded land.

This is a conservative boundary which would exclude all land in excess of 18 degrees and provide maximum protection of steep lands, minimise any immediate or long-term negative impact on the visual impact of the development, and would exclude any use of material from the hill.

Option 4: As presented in Council report of 15 June 2010 (Figure 4)

This option is as presented in the report to the 15 June 2010 Council meeting, and provides opportunity for winning of fill from the hill, but does not stipulate a finished landform as would be gained in Option 2 above.

Option 5: As proposed by the proponent (Figure 5)

This is the proposal as presented by the proponent, which considers the development envelop as the predominant parameter used to allocate excluded land once development has been accommodated.

Comparing each alternative

From the Council officers' perspective, there is little difference in benefit between Options 1 and 3 as both restrain development to the lower slopes, minimising batter heights and any potentially adverse visual impacts, and retain the majority of the hill in the north-western corner, with Alternative 3 providing the option for a small amount of cut material for fill on-site.

Option 2 provides the opportunity to gain fill material from a large part of the hill should development become permissible at some future date, but not to the extent requested in the proponent's proposal. This option would also allow for the finished landscape to be similar in shape and slope to the adjoining natural landscapes, thereby facilitating better revegetation and minimising any long-term negative visual impacts.

Need for security over the future of excluded land

As recommended in the resolution, it is imperative that Council secure a legally binding agreement with the landowner, the proponent and their heirs and successors to ensure that land excluded from the rezoning submission will be revegetated and managed to ensure long-term viability and sustainability of the flora and fauna occupying the site.

It is recommended that Council Officers negotiate with the landowner for the restoration, revegetation, contributory off-set planting, maintenance, and protection of vegetation, as necessary, through a legally binding agreement, and that a satisfactory resolution of these matters be concluded prior to the gazettal of any rezoning under GT1/LEP/2000/85 (Amendment no.85), and that land identified as unsuitable for rezoning for urban purposes be rezoned to reflect the environmental qualities and constraints of the land.

FIGURE 1: Option 1 – Preferred option.
 This option excludes land generally above 18 degrees

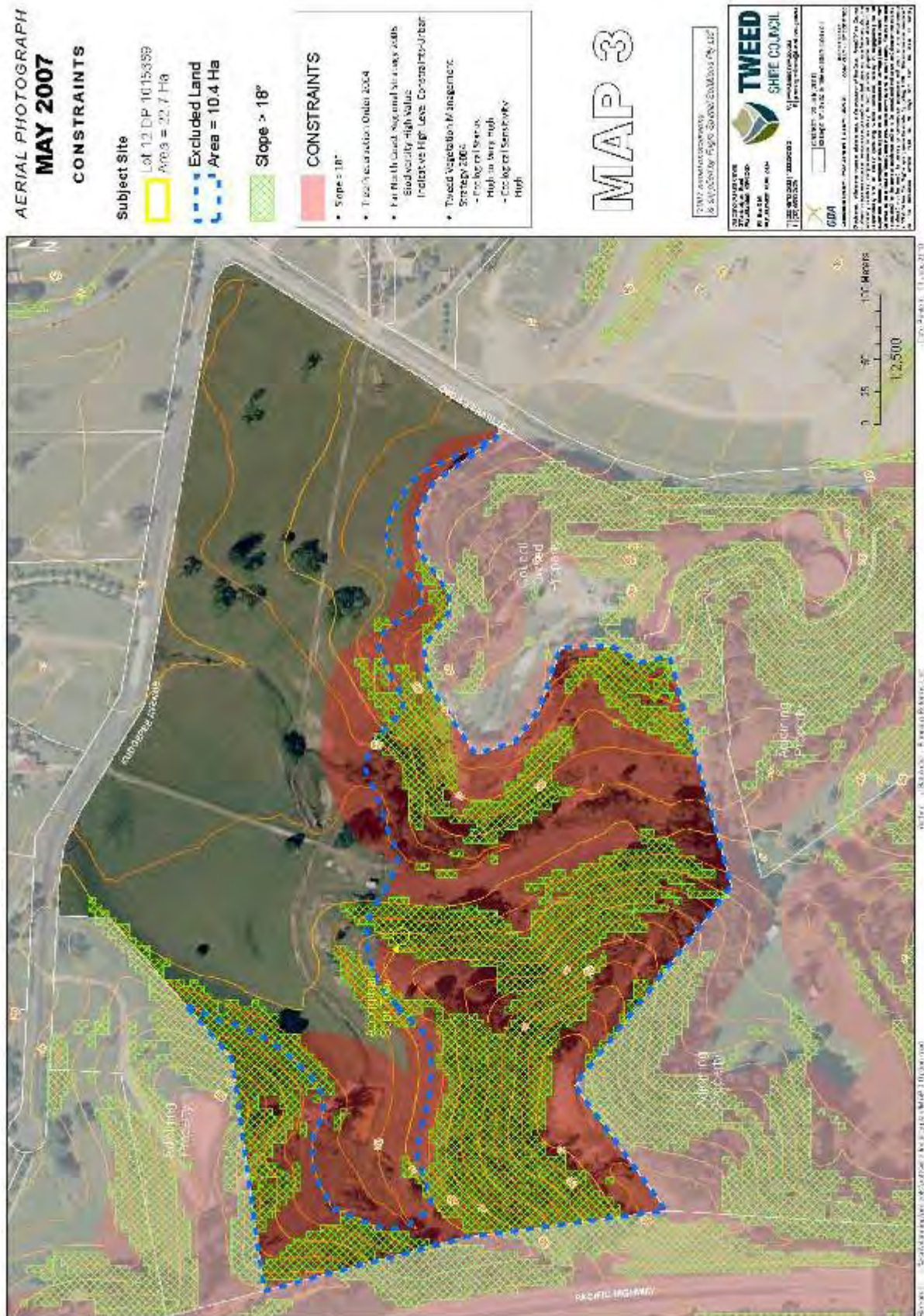


FIGURE 2: Option 2 – Exclusion of land to the south generally above 18 degrees, with removal of the hill in the north-western corner and remodelling of slope to produce slope angles typical of adjoining land as part of this and future development proposals.

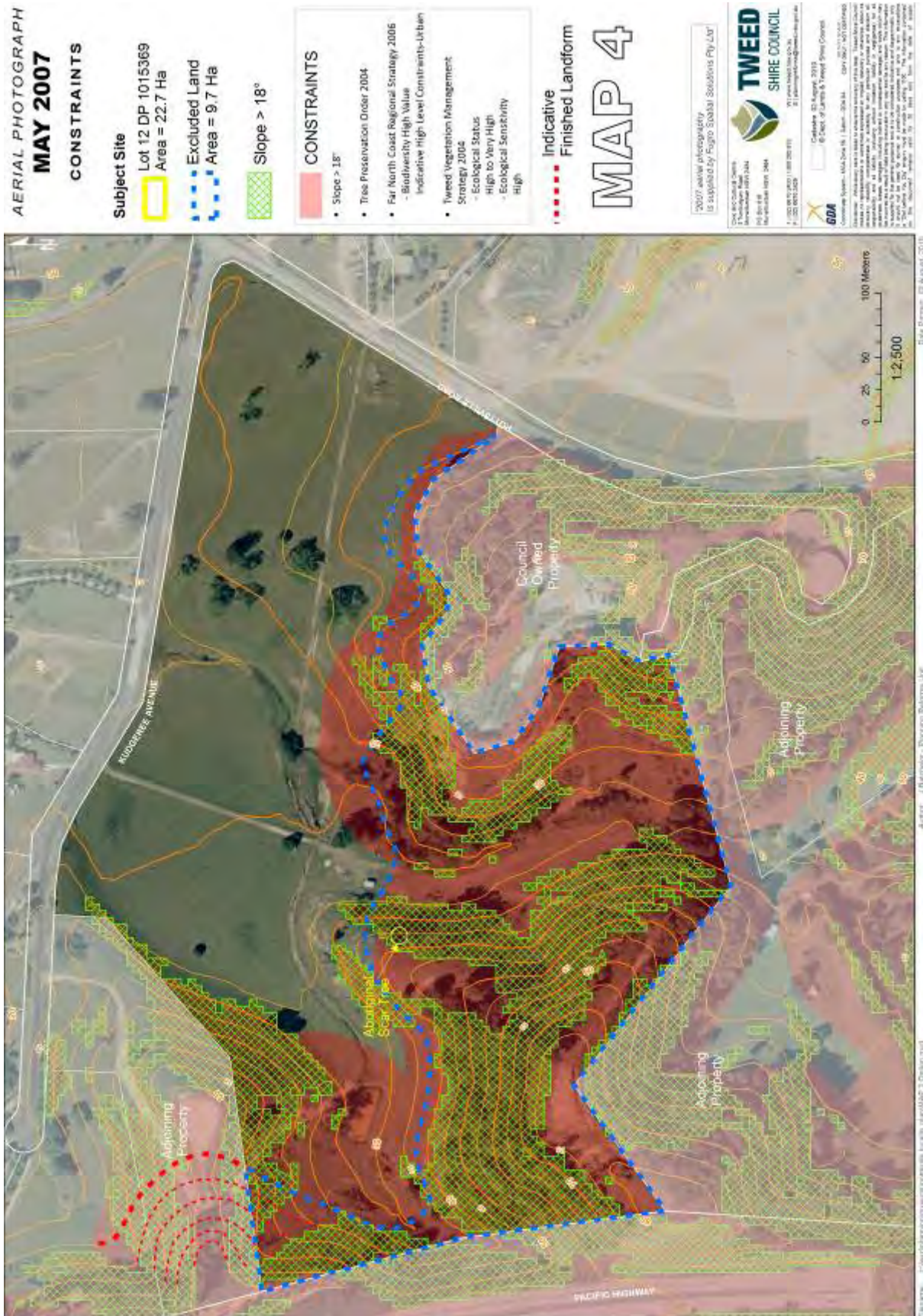


FIGURE 3: Option 3 – Exclusion of all land over 18 degrees
This is the most conservative option and excludes all land steeper than 18 degrees.

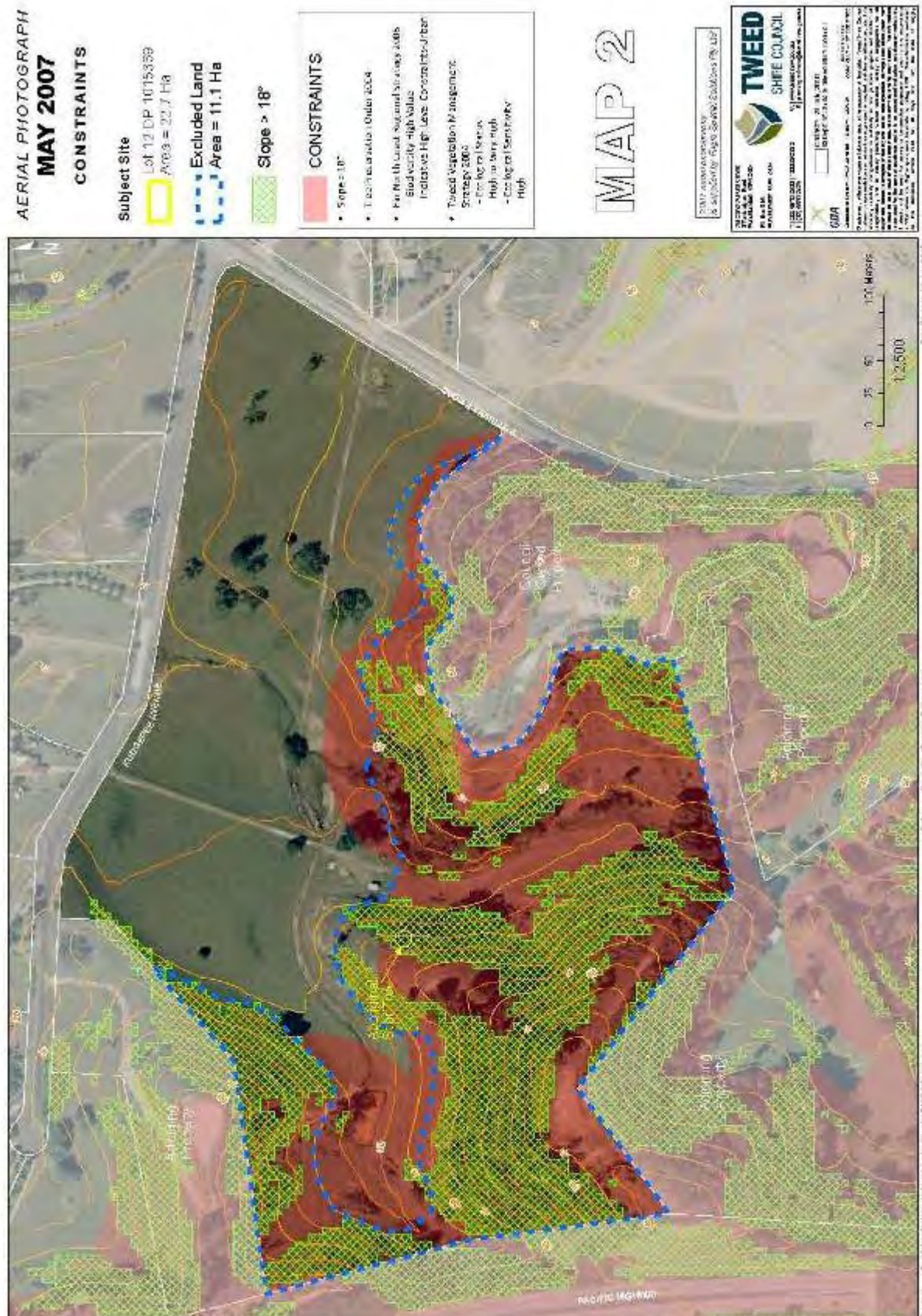


FIGURE 4: Option 4: - Area of excluded land as proposed in report to Council meeting of 15 June 2010 (prior to site inspection)

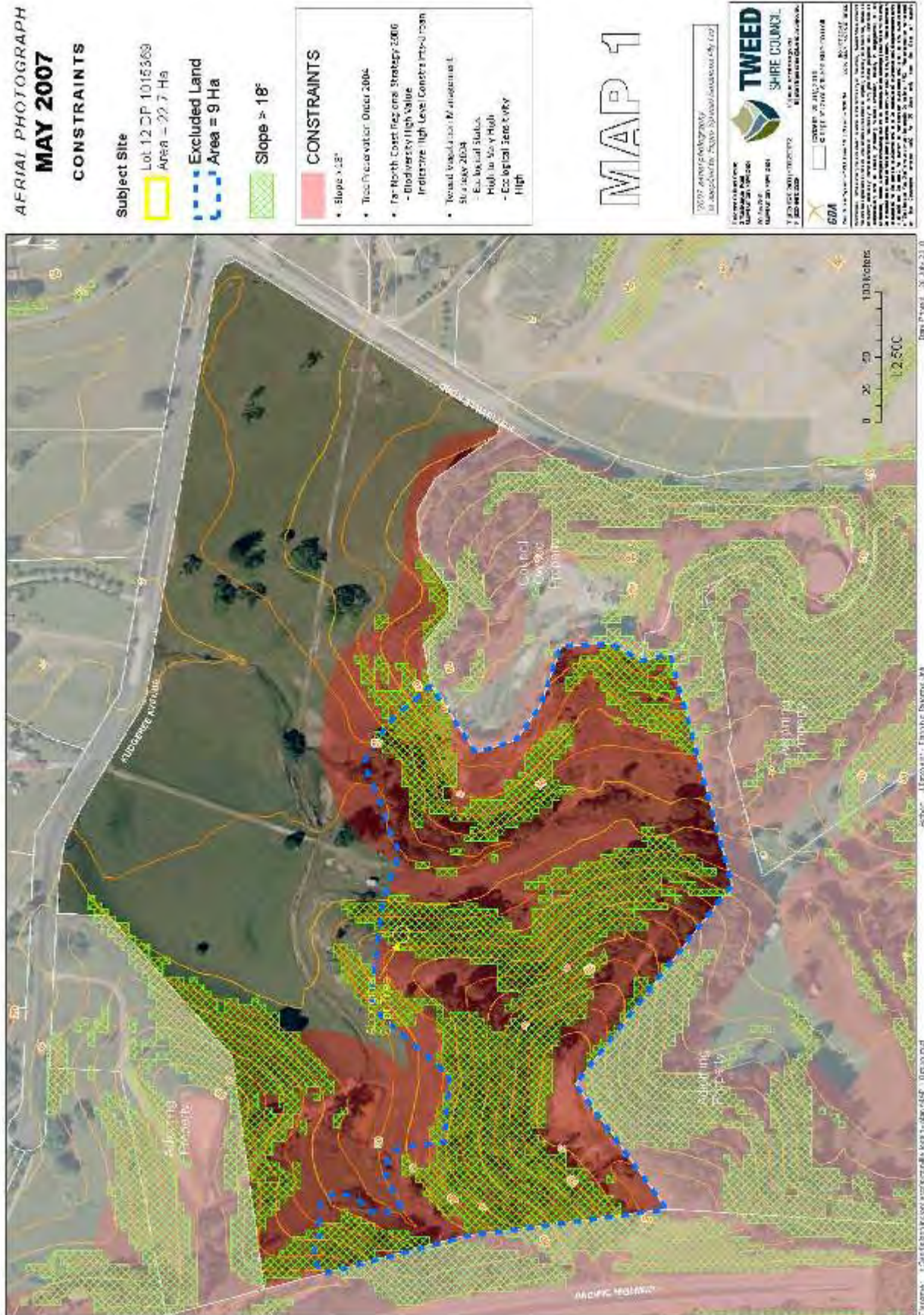
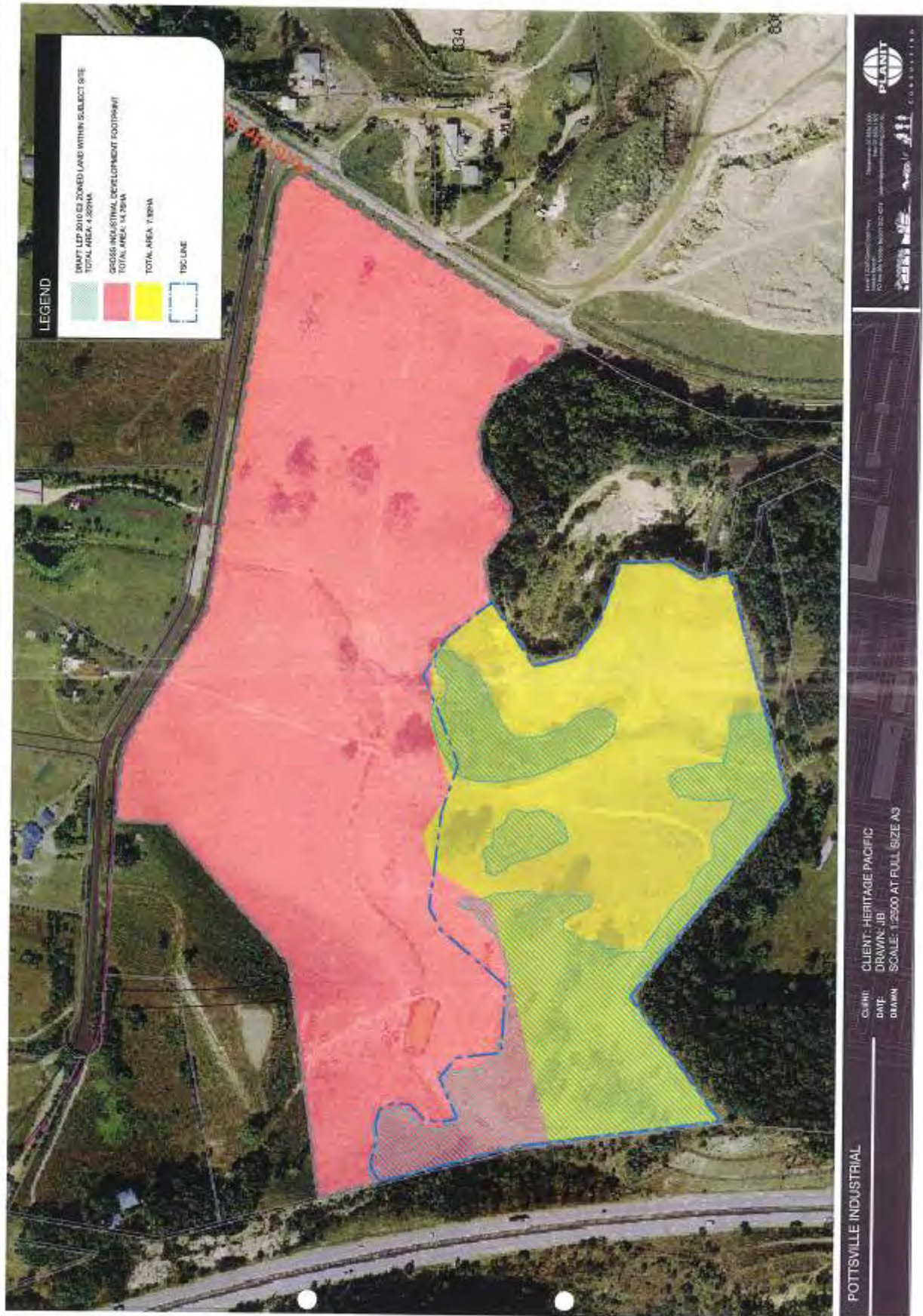


FIGURE 5: Option 5: - Revised development footprint (pink), and excluded land (yellow) as proposed by the Proponent



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to proceed with legal proceeding in respect of the breach of the Tree Preservation Order 2004 further legal costs will be incurred. The recommendations of this report which seek to avoid litigation of this matter will minimise further legal costs and would likely result in a better environmental outcome.

Further, should Council not proceed to excise off that part of the site identified as heavily constrained and unsuitable for rezoning for urban purposes additional resource costs are likely to arise through complications arising and associated with the rezoning of environmentally constrained land.

POLICY IMPLICATIONS:

The clearing of vegetation on land where the TPO applies is permissible only with consent. The policy impact arising from pursuing a negotiated outcome is seen to be positive as it reinforces the objectives of the TPO in respect of vegetation retention and maintenance. There is no guarantee that any successful legal proceeding will result in the revegetation of the site over a fine or the same extent that could be negotiated with the landowner on the basis of not proceeding with the rezoning application.

CONCLUSION

A number of significant issues have impacted the progress of this rezoning application, including: attempts to extend development into heavily constrained land, sewerage provision, geotechnical constraints, loss of vegetation protected by Council's TPO, and burning of the Aboriginal heritage scar tree.

This report seeks to finalise matters relating to the extent of land to be excluded for the rezoning proposal, and thereby remove the majority of vegetation related issues affecting this proposal.

After protracted negotiations with the proponent, the matter of land to be excluded from this rezoning is eminent, however, the proponent is keen to retain the opportunity to salvage fill material from the removal of the hill in the north-western corner as part of this and future rezoning and development proposals.

Following a site inspection with Councillors the following alternatives regarding the extent of land to be excluded are provided:

- **Option 1:** Exclude all land with slopes in excess of 18 degrees;
- **Option 2:** Exclude the majority of land in excess of 18 degrees to the south of the site, allow removal of the majority of the hill, but with reforming of the finished landscape typical of adjoining natural land slopes, as part of this and future development;
- **Option 3:** Exclude the majority of land in excess of 18 degrees, and
- **Option 4:** Exclude the majority of land in excess of 18 degrees, and

- **Option 5:** As proposed by the proponent.

Redefining the boundary of the area subject to rezoning is an essential and limiting component in the assessment and review of this proposal, which once resolved, and pending satisfactory resolution of sewerage issues will allow this proposal to be referred to the Department of Planning for issue of a section 65 certificate certifying that the draft plan may be publicly exhibited.

Council has committed substantial resources to the resolution of these matters and now proposes an opportunity to conclude the matter of land to be excluded from the rezoning, and seeks Council's resolution of the preferred option.

Council officers are still waiting on advice from the DECCW with respect to the scar tree, and will report back to Council on the advice once received.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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11 [PR-CM] Development Application DA07/0945 for Multi Dwelling Housing Consisting of 25 Residential Units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA07/0945 Pt5

SUMMARY OF REPORT:

The subject application was lodged in September 2007 for forty six (46) multi-dwelling housing units. On 14 October 2008 the applicant submitted a redesign to the development to provide clearance of the sewer main traversing the property.

The original plans submitted with the application were deficient of the elevation plans. The applicant was informed that there were numerous constraints and issues that required further information.

The subject site has a sensitive vegetation community, to the north, sewer mains traversing the property, stormwater issues, a steep site and is bushfire prone land.

Having regard to the extent of outstanding information, the sensitive nature of the site, the considerable physical constraints on the site and the bulk and scale of the design, the proposed development was originally recommended for refusal. The application was considered by Council on 18 November 2008 recommending refusal. Council resolved to defer the application to allow additional information to be submitted.

The amended information was received with a number of changes including reducing the units to a total of twenty five (25) units. The following report will go into these amendments in greater detail.

These matters have now been resolved except for additional information regarding the existing vegetation as such, deferred commencement consent is recommended.

RECOMMENDATION:

That Development Application DA07/0945 for multi dwelling housing consisting of 25 residential units at Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street Banora Point No. 7 Elsie Street Banora Point No. 7 Elsie Street Banora Point be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within twelve (12) months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. Demonstrate to the satisfaction of the General Manager or delegate in plan and report format that the proposed development and all associated infrastructure and buffer requirements will not cause an impact on the remnant Endangered Ecological Community (EEC) "Lowland Rainforest on Floodplain on the NSW North Coast bioregion" that reduce the long-term viability of that remnant or lead to deleterious impacts on other EEC's downslope on adjoining properties.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following Plans;
- Drawing No. SW001 Issue A; and
 - Drawing No. G001 Issue G
- prepared by Knobel Consulting Pty Ltd and dated 05-08-09 and 12-02-10 respectively, except where varied by the conditions of this consent; and
- Drawing No. 2881 DA 02K dated 11/02/10;
 - Drawing No. 2881 DA 06J dated 06/10/09;
 - Drawing No. 2881 DAA.01 J dated 17/02/10;
 - Drawing No. 2881 DAA.02 J dated 17/02/10;
 - Drawing No. 2881 DAA.03 J dated 17/02/10;
 - Drawing No. 2881 DAA.04 J dated 17/02/10;
 - Drawing No. 2881 DAA.05 J dated 17/02/10;
 - Drawing No. 2881 DAA.06 J dated 17/02/10;
 - Drawing No. 2881 DAA.07 J dated 17/02/10;
 - Drawing No. 2881 DAB.01 H dated 19/08/09;
 - Drawing No. 2881 DAB.02 H dated 19/08/09;
 - Drawing No. 2881 DAB.03 H dated 19/08/09;
 - Drawing No. 2881 DAB.04 H dated 19/08/09;
 - Drawing No. 2881 DAB.05 H dated 19/08/09;
 - Drawing No. 2881 DAB.06 H dated 19/08/09;
 - Drawing No. 2881 DAB.07 H dated 19/08/09;
 - Drawing No. 2881 DAB.08 H dated 19/08/09;
 - Drawing No. 2881 DAB.09 H dated 19/08/09;
 - Drawing No. 2881 DAB.10 H dated 19/08/09;
 - Drawing No. 2881 DAB.11 H dated 19/08/09;
 - Drawing No. 2881 DAB.12 H dated 19/08/09;
 - Drawing No. 2881 DAC.01 K dated 06/10/09;

- Drawing No. 2881 DAC.02 L dated 17/02/10;
 - Drawing No. 2881 DAC.03 K dated 06/10/09;
 - Drawing No. 2881 DAC.04 K dated 06/10/09;
 - Drawing No. 2881 DAC.05 K dated 06/10/09;
 - Drawing No. 2881 DAC.06 K dated 06/10/09;
 - Drawing No. 2881 DAC.07 K dated 06/10/09; and
 - Drawing No. 2881 DAC.08 K dated 06/10/09.
- prepared by Alex Enborisoff Architect, 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, approved modifications to any existing public utilities situated within or adjacent to the subject property.
- [GEN0135]
4. Sewer manholes are present on this site. These manholes are not to be covered with soil or other material.
Should adjustments be required to the sewer manholes, then application shall be made to Council's Community and Natural Resources Division for approval of such works.
- [GEN0155]
5. The development is to be carried out in accordance with Councils Development Design and Construction Specifications.
- [GEN0265]
6. Stormwater management shall be in general accordance with the Stormwater Report prepared by Knobel Consulting Pty Ltd, dated 14 October 2009, except where varied by the conditions of this consent.
The large stormwater inlet pit capturing runoff from Elsie Street (between Lot 576 DP755740 and Lot 577 DP755740) as shown on Drawing No. SW001 Issue A, dated 05-08-09, prepared by Knobel Consulting Pty Ltd shall be contained entirely within the subject site.
The Developer is responsible for all costs associated with this inlet and the associated drainage network, with the owner of the development inheriting all liability and maintenance responsibility for the structure.
- [GENNS02]
7. Management of the large stormwater inlet capturing runoff from Elsie Street (between Lot 576 DP755740 and Lot 577 DP755740) and associated drainage must be included within the Body Corporate Management Plan, advising owners of their maintenance responsibilities.
The plan must also clearly advise that Council hold no liability and maintenance responsibility for the inlet structure or the associated drainage infrastructure.
- [GENNS03]
8. Proposed Block C may be constructed over Council's existing sewer main, provided;
- An easement (clear of any structures except where the building proper straddles the sewer main) is provided centrally over the main. The easement width at any one point shall be at least twice the depth to the main to the finished surface level of the under-croft car park, plus the diameter of the main, with a minimum width of 3.5m.
-

- Any proposed piers or foundations are located clear of the easement and outside the zone of influence of the sewer main.
- A vertical clearance of no less than 3.5m is provided at any location.
- The under-croft car park is an open structure.
- Adequate access (providing a minimal height clearance of 2.4m) must be available to access the easement at all times.
- The finished surface of the under-croft car park shall be Asphaltic Concrete (AC), unless approved otherwise by Council.

[GENNS04]

9. Stormwater management through the development must incorporate the following;

- Any overtopping of the inlet chamber (as shown on Drawing No. SW001 Issue A, dated 05-08-09, prepared by Knobel Consulting Pty Ltd) must be managed such that stormwater does not bypass around the structure and cascade over the retaining wall in an uncontrolled manner.
- An overland flow path sized to convey 50% of the peak Q100 flow shall be provided to convey overtopping flows safely through the site. The profile of the overland flow path must provide a minimum freeboard of 300mm to the finished floor level of any building within the development.
- Suitable access for maintenance must be provided to the structure at all times
- Permanent level spreaders and energy dissipaters are required downstream of all discharge headwalls to ensure that stormwater discharging onto downstream property has no adverse impacts and is dispersed as sheet flow over the maximum possible width.
- All weather access for maintenance is to be provided to all of these structures.

[GENNS05]

10. The landscaped, and any compensatory habitat, areas are to be maintained in accordance with the *Planning for Bushfire Protection Guidelines* and the *Standards for Asset Protection Zones* and the *Vegetation and Fuel Management Guidelines* in the approved Environmental Restoration Plan (ERP).

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

11. The developer shall provide the following parking facilities including parking for the disabled (as required) in accordance with Tweed Shire Council Development Control Plan Part A2 - Site Access and Parking Code.
- A minimum of 8, 18 & 21 residence car parking spaces for Housing Block A, B and C respectively,
 - A minimum of 2, 3 & 4 designated visitor car spaces with unrestricted access for Housing Block A, B and C respectively,
 - A minimum of 3 designated, durable and pervious car wash bays
 - Parking for a minimum of 50 bicycles for the entire development.

Full design detail of the proposed parking and maneuvering areas 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 include indexation provided for in the S94 Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

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

- a. **Banora Point West/Tweed Heads South (DCP Section B3)**
 Open Space Passive (Casual):
 16.8746 ET @ \$2184 per ET \$36854.00
 (\$2184 base rate + \$0 indexation)
 S94 Plan No. 1
- b. **Banora Point West/Tweed Heads South (DCP Section B3)**
 Open Space Passive (Casual):
 16.8746 ET @ \$537 per ET \$9062.00
 (\$537 base rate + \$0 indexation)
 S94 Plan No. 1
- c. **Tweed Road Contribution Plan:**
 78 Trips @ \$936 per Trips \$73008.00
 (\$851 base rate + \$85 indexation)
 S94 Plan No. 4
 Sector2_4
- d. **Shirewide Library Facilities:**
 16.8746 ET @ \$792 per ET \$13365.00
 (\$792 base rate + \$0 indexation)
 S94 Plan No. 11

- e. **Bus Shelters:**
 - 16.8746 ET @ \$60 per ET \$1012.00
 - (\$60 base rate + \$0 indexation)
 - S94 Plan No. 12
- f. **Eviron Cemetery:**
 - 16.8746 ET @ \$120 per ET \$2025.00
 - (\$101 base rate + \$19 indexation)
 - S94 Plan No. 13
- g. **Extensions to Council Administration Offices
& Technical Support Facilities**
 - 16.8746 ET @ \$1759.9 per ET \$29697.61
 - (\$1759.9 base rate + \$0 indexation)
 - S94 Plan No. 18
- h. **Cycleways:**
 - 16.8746 ET @ \$447 per ET \$7543.00
 - (\$447 base rate + \$0 indexation)
 - S94 Plan No. 22
- i. **Regional Open Space (Casual)**
 - 16.8746 ET @ \$1031 per ET \$17398.00
 - (\$1031 base rate + \$0 indexation)
 - S94 Plan No. 26
- j. **Regional Open Space (Structured):**
 - 16.8746 ET @ \$3619 per ET \$61069.00
 - (\$3619 base rate + \$0 indexation)
 - S94 Plan No. 26

[PCC0215/PSC0175]

13. 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:	14.4 ET @ \$11020 per ET	\$158688
Sewer Banora:	19 ET @ \$5295 per ET	\$100605

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]
14. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works as set out in Council's fees and charges at the time of payment.

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

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

- [PCC0275]
15. 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 installments, the first installment 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]
16. 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 the approval of the General Manager or his delegate.

- [PCC0465]
17. The construction of any retaining wall or cut/fill batter must at no time result in additional runoff or ponding occurring within neighbouring properties.

Cut and fill controls shall be in accordance with Council's DCP Section A1 – Residential and Tourist Development Code - Part C - Residential Flat Buildings And Shop-Top Housing which limits;

- Cut areas to be set back from the boundaries at least 900mm;
- Fill areas are to be setback from the boundary a minimum of 1.5m.
- Excavations in excess of one metre within the confines of the building and on driveways may be permitted, to allow for basement garages providing the excavations are adequately retained and drained, in accordance with engineering details.

Catch drains shall be provided on the top side of all retaining walls in accordance with Council's Development Design Specification D6 – Site Regrading.

Safety fencing and guard rail shall be provided, where required.

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]

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

[PCC0865]

19. 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 undertaken in accordance with Councils Development Design and Construction Specifications for the following required works: -

- (a) Provision of a concrete vehicular access 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 June 2004.
- (b) Elsie Street shall be resealed for it's full width from the development access to the Laura Street intersection.
- (c) Drainage works within the unnamed road reserve between Lot 576 DP755740 and Lot 577 DP755740.

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]

20. Any sheet piling that utilises ground anchors that extend under public roads or land must not be used unless the applicant or owner enter into a contract regarding liability for the ground anchors and lodges an application under Section 138 of the Roads Act together with an application fee of \$10,000 and a bond of \$25,000 for each road frontage. This bond will be refunded upon the removal of the ground anchors. If the ground anchors are not removed prior to the occupation/use of the development, the bond shall be forfeited to Council.

[PCC0955]

21. Stormwater

- (a) Details of the proposed roof water disposal, including surcharge overland flow paths are to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. These details shall include likely landscaping within the overland flow paths.

- (b) All roof water shall be discharged to infiltration pits located wholly within the subject allotment.
 - (c) The infiltration rate for sizing infiltration devices shall be 3m per day:
 - * As a minimum requirement, infiltration devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) over a range of storm durations from 5 minutes to 24 hours and infiltrate this storm within a 24 hour period, before surcharging occurs.
 - (d) Surchage overflow from the infiltration area to the street gutter, inter-allotment or public drainage system must occur by visible surface flow, not piped.
 - (e) Runoff other than roof water must be treated to remove contaminants prior to entry into the infiltration areas (to maximise life of infiltration areas between major cleaning/maintenance overhauls).
 - (f) If the site is under strata or community title, the community title plan is to ensure that the infiltration areas are contained within common land that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
 - (g) All infiltration devices are to be designed to allow for cleaning and maintenance overhauls.
 - (h) All infiltration devices are to be designed by a suitably qualified Engineer taking into account the proximity of the footings for the proposed/or existing structures on the subject property, and existing or likely structures on adjoining properties.
 - (i) All infiltration devices are to be designed to allow for construction and operation vehicular loading.
 - (j) All infiltration devices are to be located clear of stormwater or sewer easements.
- [PCC1135]
22. 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]
23. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This can be achieved by On site stormwater detention (OSD) utilising above and or below ground storage. OSD devices including discharge control pits (DCP) are to comply with standards in the current version of The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire.
- All stormwater must initially be directed to the DCP. Details are to be submitted with the S68 stormwater application.

24. 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.

25. Prior to the issue of a Construction Certificate, applications shall be lodged together with any prescribed fees including inspection fees 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); [PCC1185]

a. water,

- Disconnection of any existing water meters and provision of a Bulk meter. The meter is to be installed by Council at the Developer's expense,

b. sewerage, including;

- any decommissioning or relocation of existing public sewer mains within the site.
- details of any proposed bridging over sewer mains, showing that proposed piers or foundations are located outside the zone of influence of the sewer main
- Note, the existing sewer network within the development site is to remain active at all times.

c. drainage works,

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

26. A Revised Traffic Noise Impact report is to be prepared for submission to council prior to the issue of the Construction Certificate. Such Report shall consider any proposed Pacific Highway upgrading information and shall make recommendations relating to the provision of noise barriers and the like and/or any necessary building shell acoustic treatments required to achieve internal noise criteria. [PCC1195]

The Report shall be prepared by an appropriately qualified and experienced acoustic consultant.

All recommendations as to barriers and building shell treatments as contained within the Report shall be implemented to the satisfaction of Council's General Manager or his Delegate.

Notwithstanding the above the following internal noise objectives for all habitable rooms under ventilated conditions shall as a minimum comply with the following:

All habitable rooms other than sleeping rooms: 45 dB(A) Leq(15hr) and 40 dB(A) Leq (9hr) and Sleeping rooms : 35 dB(A) Leq(9hr).

[PCCNS01]

27. An Acid Sulfate Soils Management Plan complying with the provisions of the NSW ASSMAC Guidelines shall be submitted to Council for consideration and approval by Council's Environmental Health Officer prior to the issue of the Construction Certificate. Such Report shall detail how Acid Sulfate Soils are to be managed during the construction works. All recommendations of the Acid Sulfate Soils Management Plan shall be implemented to the satisfaction of Council's General Manager or his Delegate.

[PCCNS02]

28. Runoff from all hardstand areas associated with the development, (including the driveway access, all car parking and hardstand landscaping areas and excluding roof areas and the drainage system capturing stormwater runoff from Elsie Street between Lot 576 DP755740 and Lot 577 DP755740) must be treated to remove oil and sediment contaminants prior to discharge. 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.

The Construction Certificate Application shall also 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*.

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*.

The stormwater and site works may incorporate water sensitive design principles and where practical, integrated water cycle management.

Specific Requirements to be detailed within the Construction certificate application include:

- (a) 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.
- (b) Roof water does not require treatment, and should be discharged downstream of treatment devices, or the treatment devices must be sized accordingly.

[PCCNS03]

29. Prior to the issue of a Construction Certificate, application for Road Closure (including payment of all associated fees) shall be made to Council covering all drainage infrastructure proposed within Council's public road (between Lot 576 DP755740 and Lot 577 DP755740) as per Drawing No. SW001 Issue A, prepared by Knobel Consulting Ptd Ltd, dated 05-08-09. Note , the actual inlet structure must be contained entirely within the subject site.

[PCCNS04]

30. Prior to the issue of the Construction Certificate, amended plans for Block C complying with Part D (Access and Egress) of the BCA are to be submitted to Council for approval.

[PCCNS05]

31. A detailed Landscaping Plan is to be submitted and approved by Council's General Manager or his delegate which includes:
- a. an assessment of the proportion of the site (%) intended to be landscaped;
 - b. a montage showing mature landscaping with selected native species in relation to building elevations;
 - c. a full revision of the plant species list is required to illustrate use of at least 80% of total plant numbers as local native species, no environmental weed species capable of spreading into surrounding down slope natural environments and restricted selected plant species suited to site conditions;
 - d. deletion of the following species currently included on submitted landscaping plans: *Acmena hemilampra* (Broad-leaved Lillypilly), *Araucaria cunninghamii* (Hoop Pine), *Acronychia imperforata* (Beach Acronychia), *Acronychia littoralis* (Scented Acronychia), *Allocasuarina torulosa* (Forest She-Oak), *Alpinia purpurata* (Purple Lady), *Banksia aemula* (Wallum Banksia), *Banksia integrifolia* (Coast Banksia), *Banksia robur* (Swamp Banksia), *Banksia serrata* (Old Man Banksia), *Callitris columellaris* (Coastal Cypress Pine), *Cassia marksiana* (Brush Cassia), *Eucalyptus microcorys* (Tallowwood), *Eucalyptus pilularis* (Blackbutt), *Eucalyptus robusta* (Swamp Mahogany), *Eucalyptus tereticornis* (Forest Red Gum), *Ficus macrophylla* (Moreton Bay Fig), *Gossia fragrantissima* (Fragrant Myrtle), *Grevillea Coastal Glow*, *Lomandra tanika* (Mat Rush), *Lophostemon confertus* (Brushbox), *Melaleuca quinquenervia* (Paperbark), *Melicope elleryana* (Pink Euodia), *Sophora tomentosa* (Silver Bush), *Syzygium jambos* (Rose Apple), and *Syzygium moorei* (Durobby).
 - e. Provision of replacement species selected in accordance with Appendix 5 of Planning for Bushfire Protection Guidelines (2006) and Section 6 of the Asset Protection Standards, as species that have low flammability (low ignitibility, low sustainability and combustibility, eg broad and fleshy leaves or very thin and difficult to ignite, smooth barked, low or lacking volatile oil glands or resin, compact dense foliage), that are suitable for planting near buildings, and do not have the potential to impact on the ecological integrity of the threatened species and ecological communities occurring in the locality (within 5 km surrounding site). Species that may be included are: *Blechnum cartilagineum* (Gristle Fern), *Cyathea cooperi* (Tree Fern), *Cordyline congesta* (Tooth-leaved Palm Lily), *Alocasia brisbanensis* (Cungevoi), *Glochidion sumatranum* (Cheesetree), *Syzygium australe* (Brush Cherry), *Syzygium smithii* (Lillypilly), *Syzygium oleosum* (Blue Lillypilly), *Microsorium scandens* (Fragrant Fern), *Aphananthe philippinensis* (Rough-leaved Elm), *Arthropteris tenella* (Fern), *Piper novae-hollandiae* (Giant Pepper Vine), *Polliia cripata* (Polliia), *Tristaniopsis laurina* (Water Gum), *Waterhousea floribunda* (Weeping Lillypilly), *Streblus brunonianus* (Whalebone Tree), *Eleaocarpus obovatus* (Hard Quandong), *Cryptocarya obovatus* (Pepperberry), and *Elatostemma reticulatum* (Rainforest Spinach).

- f. species proposed on the landscaping plans appropriate for inclusion on amended landscaping plans include: *Crinum pedunculatum* (Swamp Lily), *Baloskion tetraphyllum* (a sedge), *Hibbertia scandens* (Climbing Guinea Flower), *Lomandra longifolia* (Spiny-headed Mat Rush), and *Pandorea jasminoides* (Bower Vine).
32. An Environmental Restoration Plan (ERP) is required to be prepared by a person qualified in bushland regeneration or ecological restoration and with knowledge and experience in local vegetation community (eg. wetlands, floodplains, rainforest,) for areas of environmental repair works and for proposed planting areas. The ERP is for the protection and management of the Lowland Rainforest on Floodplain endangered ecological community that has been recorded as occurring on the subject site. The ERP shall be submitted and approved by the General Manager or his delegate and shall include:
 - a. an appraisal of the present condition of remnant vegetation;
 - b. consideration to mitigating direct and indirect impacts (resulting from proposed fill, acid sulphate soil management, bushfire risk mitigation, retaining walls, landscaping, erosion control measures, stormwater quality controls, habitat restoration-compensation) on and off site, and to the development of appropriate mitigation and compensatory measures;
 - c. a plan overlaying an aerial photograph of the site which divides the area into zones for regeneration and zones for planting, including connections between existing vegetation where appropriate;
 - d. a management strategy for each of the zones, including the approach, methods and techniques to be used for vegetation restoration, with a preference for natural regeneration;
 - e. a schedule of local native plant species to be used for planting (if appropriate), with consideration to the assessment of extent of species in the general locality and their continued viability, and details of any proposed propagation and replanting activities on the site;
 - f. a program of works to be undertaken to remove invasive weed species, including measures such as weed control and protection of the known local population are to be taken to assist the continued viability of the species.;
 - g. a schedule of timing of proposed works;
 - h. a maintenance, monitoring, evaluation and reporting schedule with developer commitment for a period not less than 5 years, including monitoring to ensure that the proposed development does not lead to a long-term decrease in the size of the population of species within the endangered ecological community;
 - i. an adaptive management and corrective action statement detailing how potential problems arising may be overcome and requiring approval of the General Manager or delegate for such changes; and
 - j. a Vegetation and Fuel Management Guidelines that provide for the establishment and on-going management of the APZ in accordance with the RFS Planning for Bushfire Protection Guidelines 2006 and Standards for Asset Protection Zones

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. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.
- [PCW0015]
35. 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]
36. 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]
37. 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]

38. 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.

39. Any imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of the fill, nature of material, proposed use of material and confirmation that 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.

[PCW0255]

[PCW0375]

40. Prior to start of works, the PCA is to be provided with a certificate of adequacy of design, signed by a practising Structural Engineer on all proposed retaining walls in excess of 1.2m in height, as well as on all endorsed retaining walls and structures designed over Council's sewer main. The certificate must address any loads or possible loads on the wall from structures adjacent to the wall, as well as confirm that any proposed piers or foundations are located outside the zone of influence of the sewer main.

The certificate must be supported by Geotechnical assessment of the founding material and be endorsed by Council's Community and Natural Resources Division.

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.

42. The applicant is to demonstrate that the trees being retained on the site and on adjacent land have been protected in accordance with AS 4970-2009 Protection of trees on development sites.

[PCW0985]

[PCWNS01]

43. Landscaping works are to be undertaken in accordance with the approved Landscaping Plan. [PCWNS02]
44. The applicant is to demonstrate that the landscaping works have been and will be undertaken in accordance with the approved Landscaping Plan. [PCWNS03]
45. All works are to be undertaken in accordance with the approved Environmental Restoration Plan (ERP). [PCWNS04]
46. The applicant is to demonstrate that the works have been and will be undertaken in accordance with the approved Environmental Restoration Plan (ERP). [PCWNS05]

DURING CONSTRUCTION

47. 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]
48. 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]
49. 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.
 $L_{Aeq, 15 \text{ min}}$ 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.
 $L_{Aeq, 15 \text{ min}}$ 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]
50. 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]

51. All waters pumped from the site in the dewatering process are to be treated with an effective deodoriser to the satisfaction of Councils General Manager or his delegate to neutralise any offensive odours. The point of discharge shall be approved by Councils General Manager or his delegate prior to installation and shall include a water sampling outlet.
[DUR0235]
52. 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]
53. 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]
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. Proposed earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments".
[DUR0795]
58. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.
[DUR0815]
59. 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]
60. Provision to be made for the designation of at least 3 durable and pervious car wash-down area/s. The area/s must be appropriately sized and identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.
[DUR0975]
61. 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]

62. 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]

63. 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 filling operations and also from construction vehicles
- material removed from the site by wind

[DUR1005]

64. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited. Such materials shall either be recycled or disposed of in a manner acceptable to Councils General Manager or his delegate.

[DUR1015]

65. 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]

66. 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]

67. 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]

68. A concrete footpath 1.2 metres wide is to be constructed on a compacted base from the north-eastern boundary of the development to Laura Street in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and subgrade to be inspected.

[DUR1735]

69. 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]
70. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.
[DUR1845]
71. 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 buildings.
[DUR1875]
72. The proponent shall comply with all requirements tabled within any approval issued under Section 138 of the Roads Act.
[DUR1885]
73. Where existing kerb or driveway laybacks are ~~is~~ to be removed for new driveway laybacks, stormwater connections or for any other reason, the kerb or driveway layback must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
[DUR1905]
74. 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]
75. All retaining walls in excess of 1.2 metres in height or retaining walls and structures that are approved to be constructed over Council's sewer main, must be certified by a Qualified Structural Engineer verifying the structural integrity of the structures 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 Certificate.
[DUR1955]
76. 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]
77. 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]
78. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
[DUR2245]

79. 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]

80. 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/l. 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]

81. 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]

82. 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]

83. **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]

84. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR2505]

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

[DUR2515]

86. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR2525]

87. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.

[DUR2535]

88. 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]

89. 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]

90. 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.

[DUR2615]

91. The proponent shall comply with all requirements tabled within any approval issued under Section 68 of the Local Government Act.

[DUR2625]

92. 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]

93. All works are to be undertaken in accordance with AS 4970-2009 Protection of trees on development sites.

[DURNS01]

94. Landscaping works are to be undertaken in accordance with the approved Landscaping Plan.

[DURNS02]

94. All works are to be undertaken in accordance with the approved Environmental Restoration Plan (ERP).

[DURNS03]

96. The applicant must demonstrate that the trees being retained on the site and on adjacent land to the north and the north-eastern corner can be protected in accordance with AS 4970-2009 Protection of trees on development sites.

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. Prior to the issue of an Occupation Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council. The bond shall be based on 5% of the value of the civil works approved under Section 138 of the Roads Act and Section 68 of the Local Government Act as set out in Councils Fees and Charges current at the time of payment which will be held by Council for a period of 6 months from the date on which the Occupation Certificate is issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

[POC0165]

99. 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]

100. 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]

101. 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.

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]

103. 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]

104. 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]

105. 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]
106. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of an occupation certificate. [POC0855]
107. 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]
108. 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]
109. 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]
110. Prior to the issue of a final occupation certificate, all conditions of consent are to be met. [POC1055]
111. Prior to the issue of an Occupation Certificate, a certificate of practical completion shall be obtained from Council's General Manager or his delegate for all works required under Section 68 of the Local Government Act. [POCNS01]
112. Prior to the issue of an Occupation Certificate, documentary evidence shall be provided to Council to confirm the registration of easements for drainage of sewer, located centrally over all reticulated public sewer within the subject property. The easement width at any one point shall be at least twice the depth to the main to the finished surface level, plus the diameter of the main, with a minimum width of 3.0m for all sewer mains except the mains approved under dwelling Block C which shall provide a minimum width of 3.5m, as specified under separate condition.
All easements shall be void of any structures, unless approved otherwise by this consent or Council's General Manager or his delegate.
All easement shall be created in favour of Council. [POCSN02]
113. An Occupation Certificate shall not be issued for any building associated with this consent until the Road Closure has been completed.
An easement to drain water shall be placed over the drainage infrastructure associated with the Road Closure, providing Council legal rights to discharge stormwater from Elsie Street into this drainage system. [POCNS03]
114. Prior to the issue of an Occupation Certificate, the Developer must have purchased the portion of road closed from Council, at a value as determined by a Registered Valuer. [POCNS04]

115. Prior to the issue of any Occupation Certificate, Works as Executed Plans of all public infrastructure within the subject allotment, shall be submitted in accordance with the provisions of Tweed Shire Council Development Control Plan A5 - Subdivisions Manual and Councils Development Design and Construction Specification, D13 - Engineering Plans.

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

- (a) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;**
- (b) the plans accurately reflect the Work as Executed.**

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

[POCNS05]

USE

116. 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]

117. 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]

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. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer

[USE0245]

120. All commercial / industrial / residential wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or his delegate.

[USE0875]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

120. All landscaping requirements shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

121. Environmental restoration works shall be completed to a level specified in the approved ERP prior to the release of the subdivision certificate and shall be maintained at all times to the satisfaction of the General Manager or his delegate. Trees identified for retention in the Environmental Restoration Plan shall not be removed without separate Council approval. [PSC0495]
122. The applicant is to demonstrate that the trees being retained on the site and on adjacent land have been protected in accordance with AS 4970-2009 Protection of trees on development sites. [PSCNS01]
123. All restoration works shall be completed to the satisfaction of the General Manager or his delegate PRIOR to the issue of a Subdivision Certificate. [PSCNS02]
124. The applicant is to demonstrate that the works have been undertaken in accordance with the approved Environmental Restoration Plan (ERP). [PSCNS03]

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

125. At the commencement of building works and in perpetuity the entire property shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' except for the patch of rainforest vegetation on the northern side of the property.
126. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.
127. Property access roads for the development shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006' except that a reversing bay 6 metres wide and 8 metres deep may be used instead of a turning circle.
128. Roller doors, tilt-a-doors and other such doors shall be sealed to prevent the entry of embers into the building
129. All new fencing shall be non-combustible.
130. A minimum 2 metre high radiant heat shield made of non-combustible materials shall be constructed along the full length of the northern, western and eastern boundaries adjacent to the hazard. All posts and rails shall be non combustible. The bottom of the fence is to be in direct contact with the finished ground level or plinth. The northern heat shields shall be inside the rainforest vegetation on the property.
131. New construction of "block A and B1" shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 29 except for the eastern facade which shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 19.
132. New construction of "block B2" shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 12.5 and undertake the following:
- A. The subfloor space shall be enclosed with either:
- a) a wall that complies with Clause 5.4 of AS39592009; or
 - b) a mesh or perforated sheet with a maximum aperture of 2 mm, made of corrosion resistant steel, bronze or aluminium; or

c) a combination of the items above.

NOTE: There are no construction requirements for subfloor supports where the subfloor space is enclosed

B. Where the subfloor space is unenclosed, the support posts, columns, stumps, piers and poles shall be:

a) of noncombustible material; or

b) of bushfire resisting timber (see AS39592009 Appendix F); or

c) a combination of the items above.

NOTE: This requirement applies to the principal building only and not to verandas, decks, steps, ramps and landings (see Clause 5.7 of AS39592009)

C. Where the subfloor space is unenclosed, flooring material, including bearers, joists and flooring less than 400 mm above finished ground level, shall be:

a) noncombustible (e.g., concrete, steel); or

b) of bushfireresisting timber (AS39592009 see Appendix F); or

c) particleboard or plywood flooring where the underside is lined with sarkingtype material or mineral wool insulation; or

d) a system complying with AS 1530.8.1; or

e) a combination of any of the items above.

NOTE: There are no construction requirements for elements of elevated floors, including bearers, joists and flooring, if the underside of the element is 400 mm or more above finished ground level.

D. In relation to unenclosed verandas, decks, steps, ramps and landings the support posts, columns, stumps, stringers, piers, poles and framing (i.e. bearers and joists) shall be:

a) of noncombustible material; or

b) of bushfire resisting timber (see AS39592009 Appendix F); or

c) a combination of the items above.

E. Parts of handrails and balustrades that are less than 125 mm from any glazing or any combustible wall shall be:

a) of noncombustible material; or

b) of bushfire resisting timber (see AS39592009 Appendix F); or

c) a combination of the items above.

NOTE: Those parts of the handrails and balustrades that are 125 mm or more from the building have no requirements.

F. External framed walls must incorporate either:

a) Breathertype sarking complying with AS/NZS 4200.1 and with a flammability index of not more than 5 (see AS1530.2) and sarked on the outside of the frame; or

b) An insulation material conforming to the appropriate Australian Standard for that material.

133. New construction of "Block B3" shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 19 and undertake the following:

A. The subfloor space shall be enclosed with either:

a) a wall that complies with Clause 6.4 of AS39592009; or

b) a mesh or perforated sheet with a maximum aperture of 2 mm, made of corrosionresistant steel, bronze or aluminium; or

c) a combination of the items above.

NOTE: There are no construction requirements for subfloor supports where the subfloor space is enclosed

- B. Where the subfloor space is unenclosed, the support posts, columns, stumps, piers and poles shall be:**
- a) of noncombustible material; or
 - b) of bushfireresisting timber (see AS39592009 Appendix F); or
 - c) a combination of the items above.
- NOTE: This requirement applies to the principal building only and not to verandas, decks, steps, ramps and landings (see Clause 6.7 of AS39592009)**
- C. Where the subfloor space is unenclosed, flooring material, including bearers, joists and flooring less than 400 mm above finished ground level, shall be:**
- a) noncombustible (e.g., concrete, steel); or
 - b) of bushfireresisting timber (AS39592009 see Appendix F); or
 - c) particleboard or plywood flooring where the underside is lined with sarkingtype material or mineral wool insulation; or
 - d) a system complying with AS 1530.8.1; or
 - e) a combination of any of the items above.
- NOTE: There are no construction requirements for elements of elevated floors, including bearers, joists and flooring, if the underside of the element is 400 mm or more above finished ground level.**
- D. In relation to unenclosed verandas, decks, steps, ramps and landings the support posts, columns, stumps, stringers, piers, poles and framing (i.e. bearers and joists) shall be:**
- a) of noncombustible material; or
 - b) of bushfireresisting timber (see AS39592009 Appendix F); or
 - c) a combination of the items above.
- E. Parts of handrails and balustrades that are less than 125 mm from any glazing or any combustible wall shall be:**
- a) of noncombustible material; or
 - b) of bushfireresisting timber (see AS39592009 Appendix F); or
 - c) a combination of the items above.
- NOTE: Those parts of the handrails and balustrades that are 125 mm or more from the building have no requirements.**
- F. External framed walls must incorporate either:**
- a) Breathertype sarking complying with AS/NZS 4200.1 and with a flammability index of not more than 5 (see AS1530.2) and sarked on the outside of the frame; or
 - b) An insulation material conforming to the appropriate Australian Standard for that material.

- 134. New construction of block C shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 40 except any building elements within 16 metres of the bushfire hazard to the north which are to be constructed to comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" Section 9. However, any material, element of construction or system when tested to the method described in Australian Standard AS1530.8.2 "Methods for fire tests on building materials, components and structures Part 8.2: Tests on elements of construction for buildings exposed to simulated bushfire attack—Large flaming sources" shall comply with Clause 13.8 of that Standard except that flaming of the specimen is not permitted. New construction of the southern elevation shall comply with Australian Standard AS3959-2009 "Construction of buildings in bush fire-prone areas" BAL 29.**
- 135. Roofing shall be gutterless or guttering and valleys are to be screened to prevent the build up of flammable material. Any materials used shall have a Flammability Index of no greater than 5 when tested in accordance with Australian Standard AS1530.2-1993 "Methods for Fire Tests on Building Materials, Components and Structures - Test for Flammability of Materials".**
- 136. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.**

REPORT:

Applicant: Zinkohl Pty Ltd
Owner: Rocksee Pty Ltd
Location: Lot 290, 630 DP 755740; Lot 1 DP 781512, No. 7 Elsie Street, Banora Point
Zoning: Part 2(a) Low Density Residential and Part 2(c) Urban Expansion
Cost: \$4,500,000

BACKGROUND:

The subject application was lodged in September 2007 for forty six (46) multi-dwelling housing units. On 14 October 2008 the applicant submitted a redesign to the development to provide clearance of the sewer main traversing the property.

An amended application was submitted to Council for the erection of a multi dwelling housing development comprising 34 units. The development consisted of three large buildings A, B and C, with Building B separated into B1, B2, and B3. The development consists of seventeen (17) three (3) bedroom units and seventeen (17) two (2) bedroom units:

- Block A consists of four (4) three (3) bedroom units over two residential levels with basement carparking, Block A is the only building with street frontage and pedestrian access and has northern elevation for the internal and external living areas.
- Block B consists of nine (9) three (3) bedroom units over three residential levels. Block B is divided into three modules, Block B2 and B3 are connected and B1 as a stand alone. It has adjacent carports for parking and each module has 1 unit per level.
- Block C consists of twenty two (22) units; four (4) units are three (3) bedroom units the other seventeen (17) units are two (2) bedroom. The building has two residential levels with an undercroft style parking and Block C has one lift in the middle of the building.

The configuration above went to Council on 18 November 2008 recommending refusal. Council resolved to allow 120 days to provide amended information.

The amended information was received with a number of changes including reducing the units to a total of twenty five (25) units. The development consists of three large buildings A, B and C, with Building B separated into B1, B2, and B3. The development consists of thirteen (13) three (3) bedroom units and twelve (12) two (2) bedroom units:

- Block A consists of four (4) three (3) bedroom units over two residential levels with basement carparking, Block A is the only building with street frontage and pedestrian access and has northern elevation for the internal and external living areas.
- Block B consists of nine (9) three (3) bedroom units over three residential levels. Block B is divided into three modules, Block B2 and B3 are connected and B1 as a stand alone. It has adjacent carports for parking and each module has 1 unit per level.

- Block C consists of twelve (12) units all of which are two (2) bedroom. The building has two residential levels with an undercroft style parking.

The subject site is located on the northern side of Elsie Street. The site is an irregular shape and consists of three allotments that has 42.670m frontage and the western boundary has a depth of 159.14m and the eastern boundary has a depth of 93.485m to create a total site area of 9215.59m². The site grades steeply from approximately RL 26m AHD at Elsie Street to RL 1.5m AHD at the northern boundary. The subject site is vacant and on the northern portion of the site is a significant vegetation community, Lowland Rainforest on Floodplain which is classed as an endangered ecological community under the Threatened Species Conservation Act 1995. There are stands of native vegetation across the site which is protected under a tree preservation order.

The surrounding development is characterised by mainly detached dwelling houses single and two storeys in height.

The residential flat development is proposed to be constructed from colourbond for the roof, rendered finishes and colourbond walls, timber privacy screens, timber awnings, feature glass balustrade. Windows are a mixture of fixed and openable windows for the units and Block B has skylights.

The siting of the buildings on the site result in Block A with street frontage, then downward of the site in an east to west direction are Blocks B1, B2 and B3, and at the bottom of the site is Block C. Communal facilities have been provided on the site in the form of a pool area and BBQ recreation area. The driveway is located on the western boundary of the site and access to Block C is provided to the rear of the building.

The application was lodged in September 2007 and has had a long history of event relating to the assessment of the proposal. The following is a summary of the chronological timeframe of processing the application.

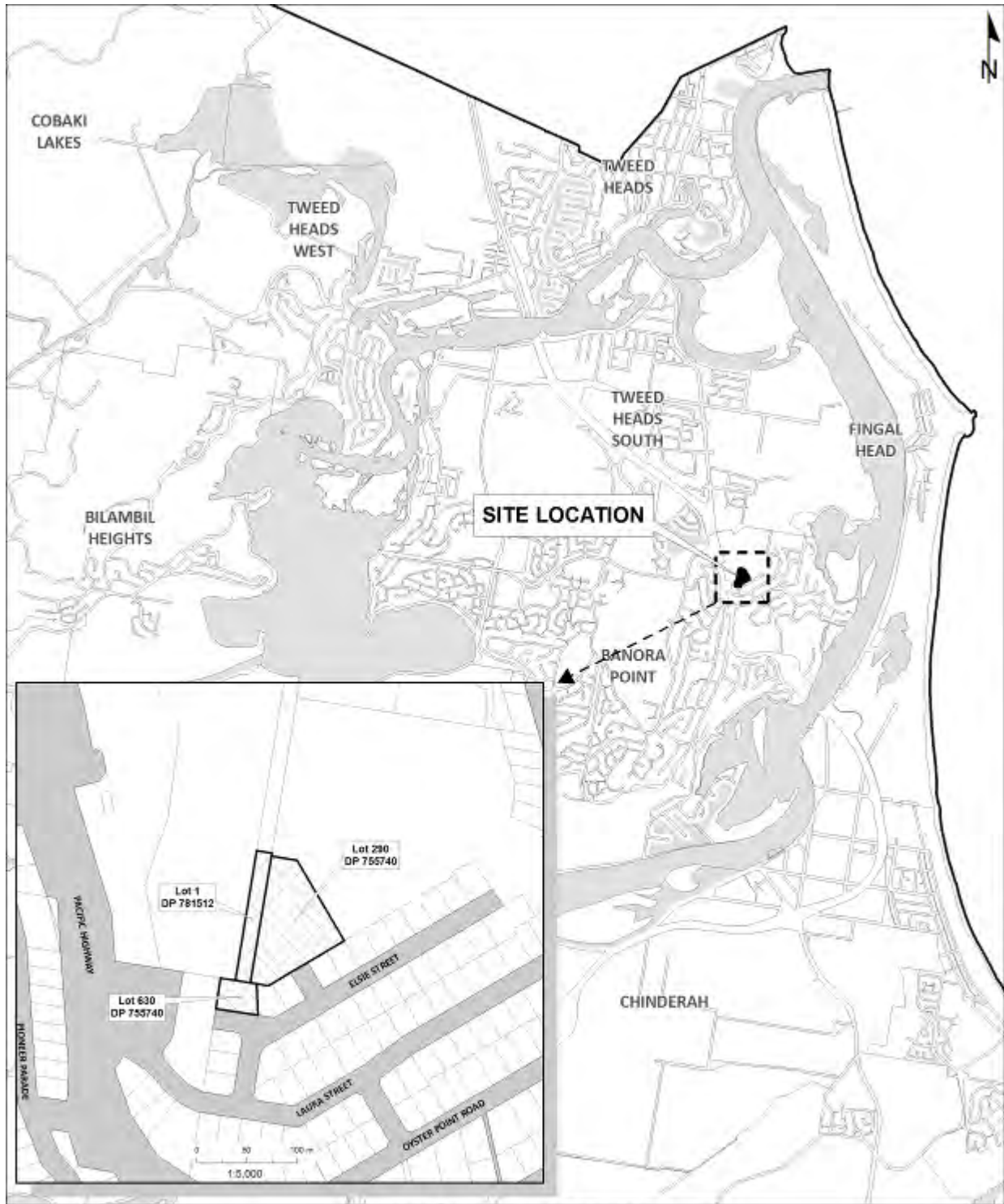
DATE	EVENT
14 September 2007	The application was lodged for forty six (46) multi dwelling housing units without elevation plans.
19 October 2007	<p>Further information request was sent to the applicant in regards to Environmental Health Officer request to carry out an assessment in regards to:</p> <ul style="list-style-type: none"> • Detailed site contamination report as required by SEPP 55; • Details of methods to collect, store and dispose of waste; • Advice on the extent and likely duration of any dewatering operations;
2 November 2007	<p>Further information request was sent to the applicant in regards to the Building surveyor to carryout an assessment in regards to:</p> <ul style="list-style-type: none"> • Levels reduced to AHD are to be provided for each floor, the top of all roofs, carparking/basement areas and finished site levels. A detailed plan of the driveway location in relation to the road reserve, existing pavement and adjoining dwelling is required. • Site plan showing the buildings clear of sewer lines. • Egress and exits from the basement carpark of Block A do not comply with Part D BCA. • Block B1, B2, B3 and Block C has non-compliance with Part C of BCA Protection of Openings • Basement exit stair widths of Block A appear less than 1m wide clear of handrails as required by Part D of the BCA <p>Further information request was sent to the applicant in regards to the Flooding Engineer's request to carryout an assessment in regards to:</p> <ol style="list-style-type: none"> a) <ol style="list-style-type: none"> (i) The applicant is requested to amend the development proposal, so as to provide an unobstructed overland flow path for external stormwater catchment flows along the existing gully line through the centre of the site. (ii) Should the applicant not wish to undertake this redesign, and continue to divert external flows via the internal access road, they shall bear all costs associated with providing this infrastructure, and shall inherit all future maintenance for this system. Details of fill depths and finished surface level contours must be provided, to demonstrate that filling of the existing gully complies with DCP Section A14 - Cut and Fill on Residential Land. b) Provide further measures, such as level spreaders and detention basins, downstream of the discharge headwall and the western overland flow path to ensure

	<p>that discharge to downstream land is dispersed as sheet flow and not concentrated onto adjoining properties.</p> <p>c) The proposed earth bund to protect the basement level carpark from flooding is not acceptable, and the proposal must be amended to provide permanent structural protection from inundation up to 3.1m AHD via driveway regrading, cut off walls and the like.</p>
14 January 2008	The application was referred to Rural Fire Service.
4 February 2008	The application was referred to Council specialist planner/ecologist for comment.
5 February 2008	A further information letter was sent to the applicant regarding flora and fauna issues.
25 March 2008	After six (6) months of no response from the applicant, a letter was sent to the applicant requesting the applicant respond to the outstanding information the letter attached all previous correspondence sent by Council.
30 April 2008	The applicant first contacted Council, seven months after submitted application in regards to the numerous outstanding information requests.
8 May 2008	The applicant submitted Stormwater Quality Assessment Report
26 May 2008	Council's ecologist met the applicant out on site to discuss flora and fauna issues.
29 May 2008	An amended flora and fauna request was sent to the applicant.
12 June 2008	Nine months later elevation plans were submitted to Council.
16 June 2008	Council's Flooding Engineer requested further information in regards to the stormwater report.
25 June 2008	The applicant was sent a request to withdraw the application due the bulk and scale of the development, numerous issues of noncompliance and the outstanding information or to provide a significant redesign of the proposal.
1 July 2008	Meeting with owner, architect, planner and Council staff to discuss the application in regards to areas of non-compliance and outstanding information.
4 August 2008	The applicant submitted amended plans. The application was reviewed by Council staff and found the amended plans still to be significantly non-compliant and still numerous information requests outstanding.
3 September 2008	The applicant was contacted and informed that the application in its current form cannot be supported.
11 September 2008	Meeting with applicant, architect, planner and Council staff, Development Assessment Manager, Director of Planning to discuss issues of non-compliance and outstanding issues. The following issues were raised: <ul style="list-style-type: none"> • The site had considerable constraints that have not been addressed in the application; • The applicant was advised that the sewer main issue had not been addressed and was a significant constraint to the site; and • Council and applicant decide resolve the sewer issue first then address all other issues in the application.

23 September 2008	Council's engineer staff accepted the design of Block C in principle in regards to the sewer access only and advised further detail would be required.
18 September 2008	The applicant was advised by Council town planner that any design to provide clearance over the sewer main could result in the development which would not comply with the height limit under the LEP and this would need to be addressed.
14 October 2008	<p>The applicant submitted amended plans, preliminary contamination report and a Statement of Landscape intent. The plans made the following changes:</p> <ul style="list-style-type: none"> • Reduced the development from 46 units to 34; • Removed the communal swimming pool and BBQ area; • Removed level from Block C and removed the basement carparking and provided undercroft parking that is up to 5 metres in height; and • Amended the façade of the buildings. <p>The amended plans that were submitted were scaled at 1:100 at A1, however, only A3 plans were submitted, no section plan was provided for Block B1 and Block B2 & B3 did not have all the elevation plans provided.</p> <p>To date the following still remains outstanding:</p> <ul style="list-style-type: none"> • Amended stormwater report; • Amended bushfire report; • Requested overlay plan of the development over an aerial photograph to show the proximity of the development to the EEC and the existing vegetation on the site; • Further engineering detail; • SEPP 1 objection for a departure from development standards; • Details of waste management on the site. <p>The plans Council received on the 14 October 2008 did amend some issues of non-compliances but it has resulted in other subsequent areas of non-compliance. Further, over year after the application was lodged there are still numerous issues of outstanding information. In addition to the areas of non-compliances.</p>
18 November 2008	The application went to Council on 18 November 2008 recommending refusal. Council resolved that the item be deferred to allow for further negotiations with applicant.
9 December 2008	It was agreed to allow 120 days to provide amended information. The information was to be submitted to Council on 1 March 2009.
20 January 2009	The applicant was advised that a further extension of time was granted until 28 April 2009.
8 April 2009	Plans were reviewed by a Council officer on the 8 April 2009 and various issues were raised in a meeting with the applicant.
12 May 2009	The applicant was advised that the plans and outstanding information is to be submitted by the 28 June 2009.

19 June 2009	The applicant and engineers were advised that the engineering plans were not consistent with the latest plans on file and therefore reminded needed a coordinated approach, where all information and plans should be submitted together to the assessing officer.
19 October 2009	Additional information was submitted to Council which was forwarded onto relevant sections for assessment.
14 January 2010	Additional information was requested as the plans Council received on the 19 October 2009 did amend some issues of non-compliances but it was determined that a number of issues of non-compliance were not addressed.
22 February 2010	Additional information was received which was sent back to relevant sections within Council. The information provided was not considered to be adequate however conditions of consent were able to be placed in the recommendations for the outstanding information.
12 May 2010	It was determined that the information requested by the Rural Fire Service had not been amended. It was requested that this information be provided.
28 June 2010	The applicant provided the additional information to the Rural Fire Service.
2 August 2010	The Rural Fire service supplied conditions of consent to be included in the recommendations.

SITE DIAGRAM:



LOCALITY PLAN

Lot 290 & 630 DP 755740; Lot 1 DP 781512
No.7 Elsie Street, Banora Point

0 0.5 1.0km
1:50,000

Filename: z:\asn\planning\msd\A4P_B&W_SitePlan.mxd

Author: J Batchelor - Planning Reforms Unit

Date Printed: 05 August, 2010

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Cadastre: 05 August, 2010
© Dept. of Lands & Tweed Shire Council

Coordinate System - MGA Zone 56
Datum - GDA 94

3D PDF FORM
COPY ONLY - NOT CROSSLINK

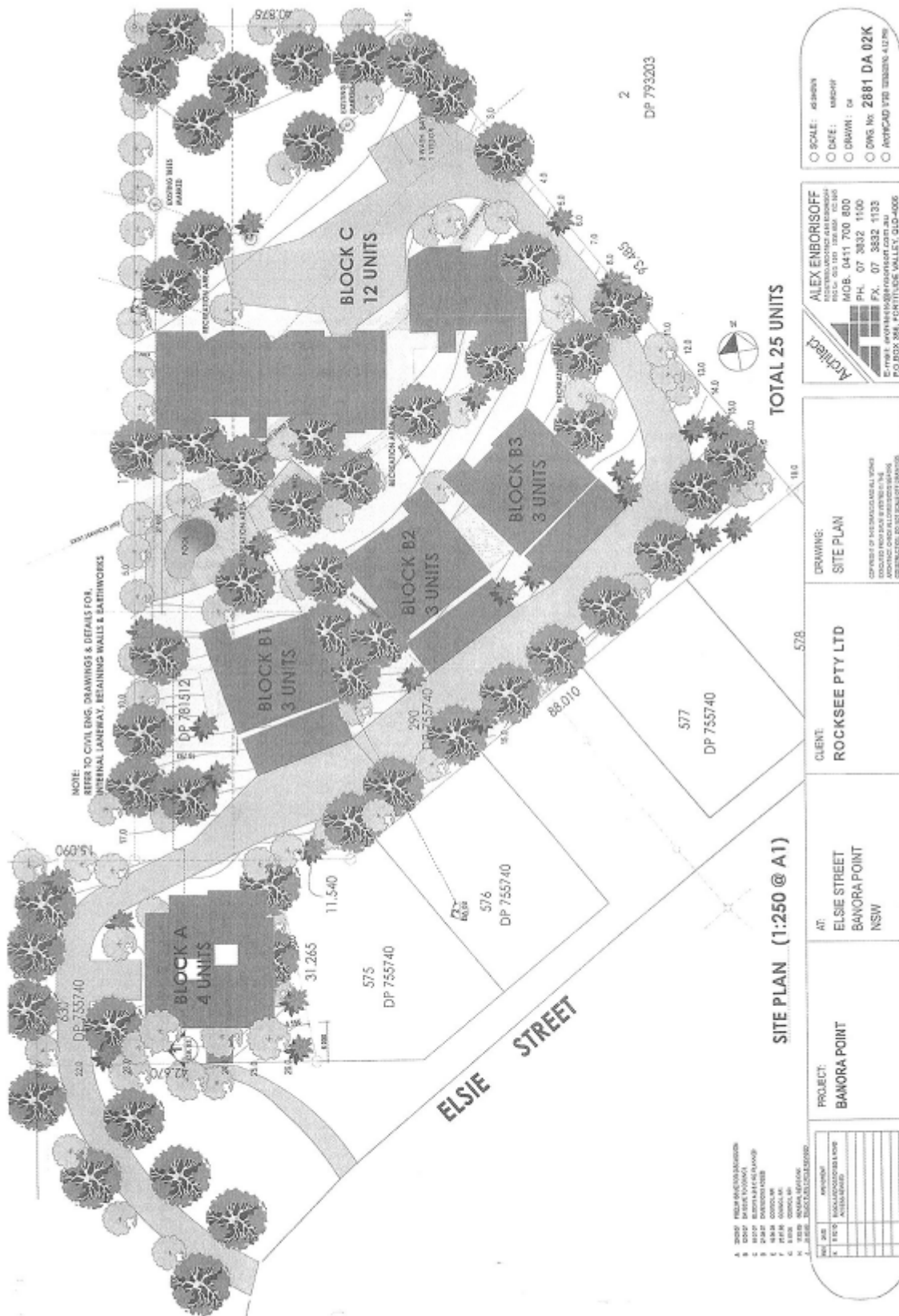
Civic and Cultural Centre
3 Tunbridge Road
Murrumbidgee NSW 2484
PO Box 616
Murrumbidgee NSW 2484

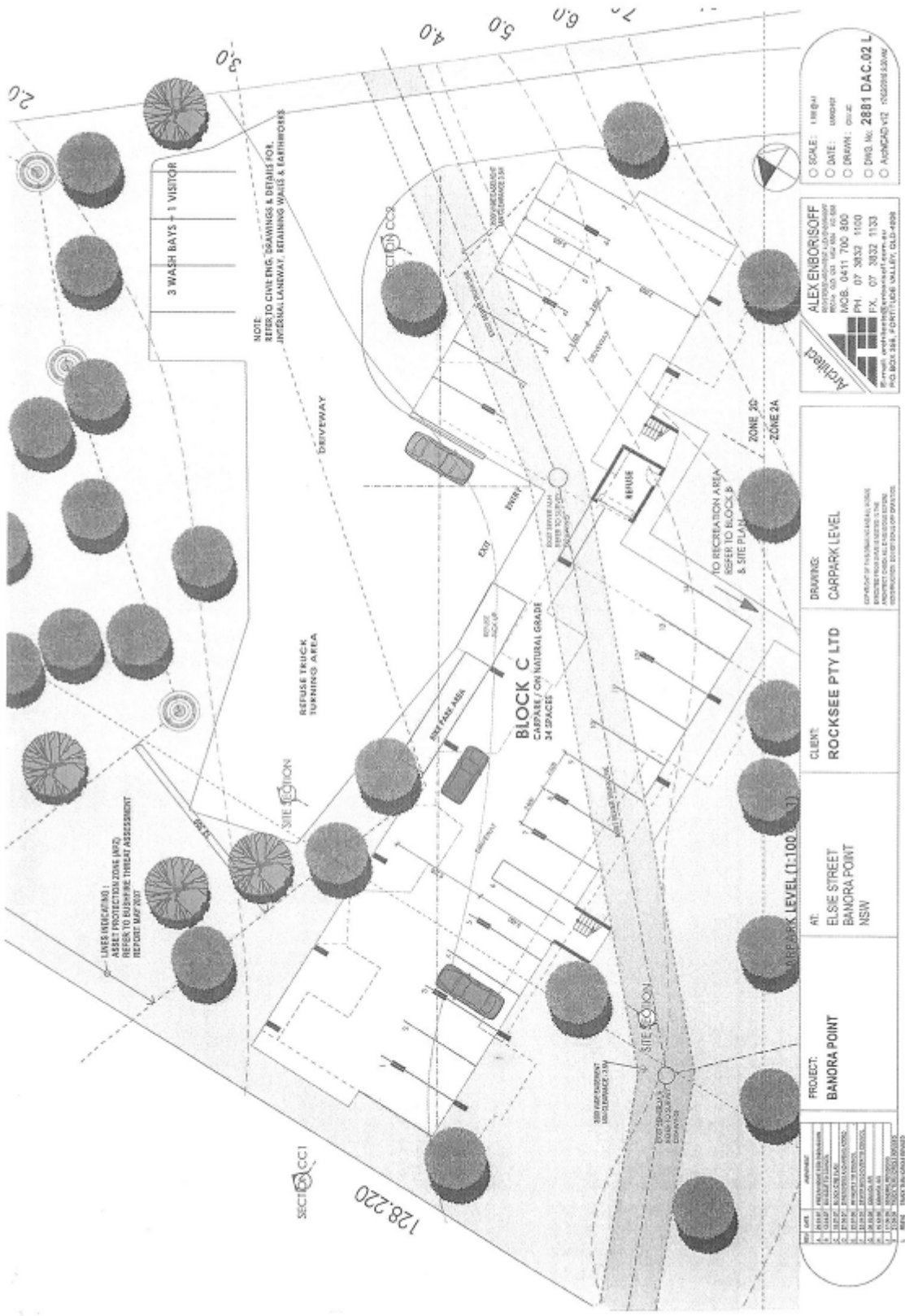
T: (02) 9670 2400 | 1500 292 672
F: (02) 9670 2483
W: www.tweed.nsw.gov.au
E: planning@tweed.nsw.gov.au



TWEED
SHIRE COUNCIL

DEVELOPMENT PLANS:





C SCALE: 1:100
 O DATE: 08/08/10
 O DRAWN: [unintelligible]
 O DWS No: 2881 DAC.02 L
 O APPROVED: [unintelligible]

ALEX ENBORISOFF
 ARCHITECT
 MCB: 0411 700 800
 PH: 07 3833 1100
 FX: 07 3833 1133
 10/100, WEST STREET, BUNBURY, SA 5157
 P.O. BOX 558, FORTITUDE VALLEY, QLD 4008

Rocksee Pty Ltd
 DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

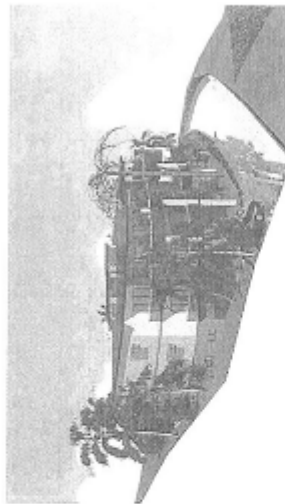
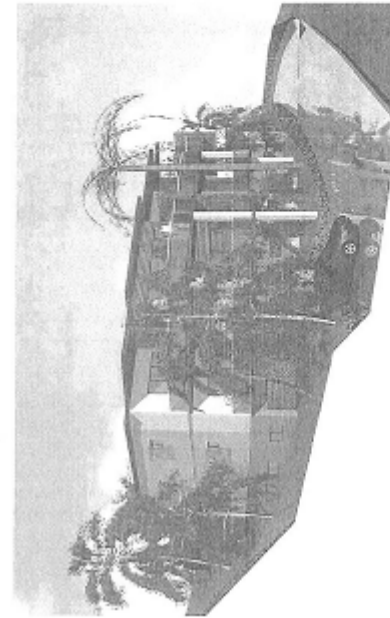
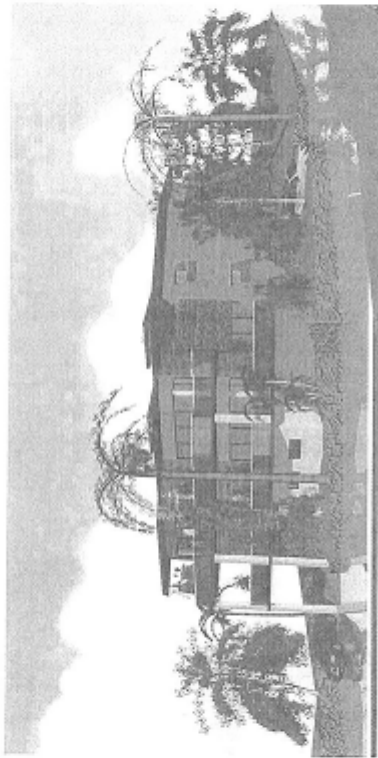
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 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

DRAWING: CARPARK LEVEL
 CLIENT: ROCKSEE PTY LTD
 AT: ELSE STREET, BANORA POINT, NSW
 PROJECT: BANORA POINT
 PROJECT NO: 128/220

BLOCK C CARPARK: DAC/02 CARPARK LEVEL: 10% - 08/08/10 128/220



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2	15/08/10	REVISED FOR TENDER
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9	15/08/10	REVISED FOR TENDER
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PROJECT:
BANDORA POINT

AT:
**ELSE STREET
BANDORA POINT
NSW**

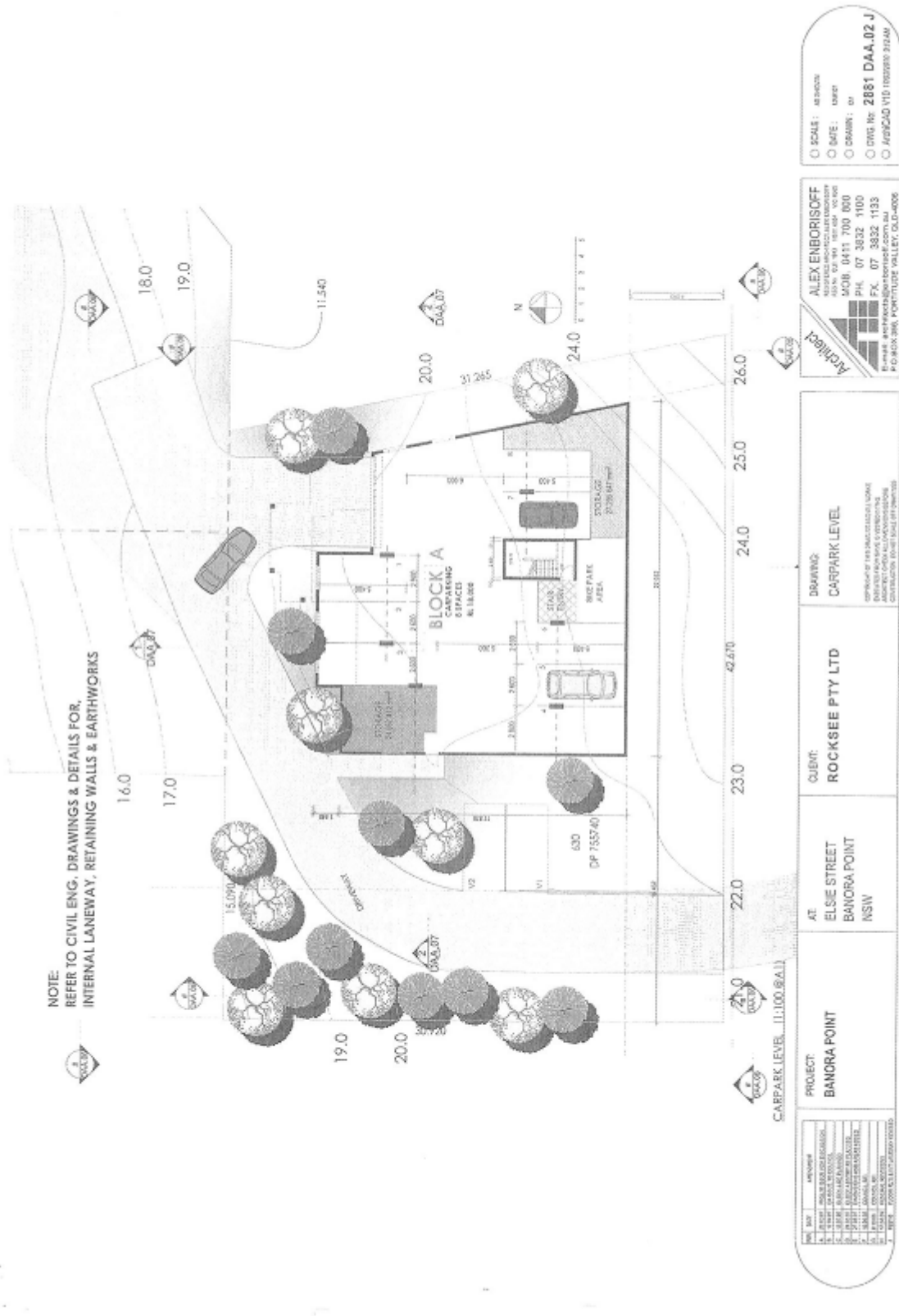
CLIENT:
ROCKSEE PTY LTD

DRAWING:
MASS MODELS - BLOCK A
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Alex Enborisoff
REGISTERED ARCHITECT (NSW)
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PH: 07 3832 1100
FX: 07 3832 1133
WWW.AENBORISOFF.COM.AU
P.O. BOX 3980, FORTITUDE VALLEY, QLD 4008

C SCALE: as shown
C DATE: issue
C DRAWN: ca
C DESG No: **2881 DAA.01 J**
C PROJECT NO: 1005888 F10JW

800-A-14401010-01-0408 14401010-01-0408 14401010-01-0408



NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR,
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

PROJECT:
BANORA POINT
SCALE: 1:100 (S.A.I.)

CLIENT:
ROCKSEE PTY LTD
DEVELOPER:
BANORA POINT
NSW

PROJECT:
BANORA POINT
SCALE: 1:100 (S.A.I.)

CLIENT:
ROCKSEE PTY LTD
DEVELOPER:
BANORA POINT
NSW

PROJECT:
BANORA POINT
SCALE: 1:100 (S.A.I.)

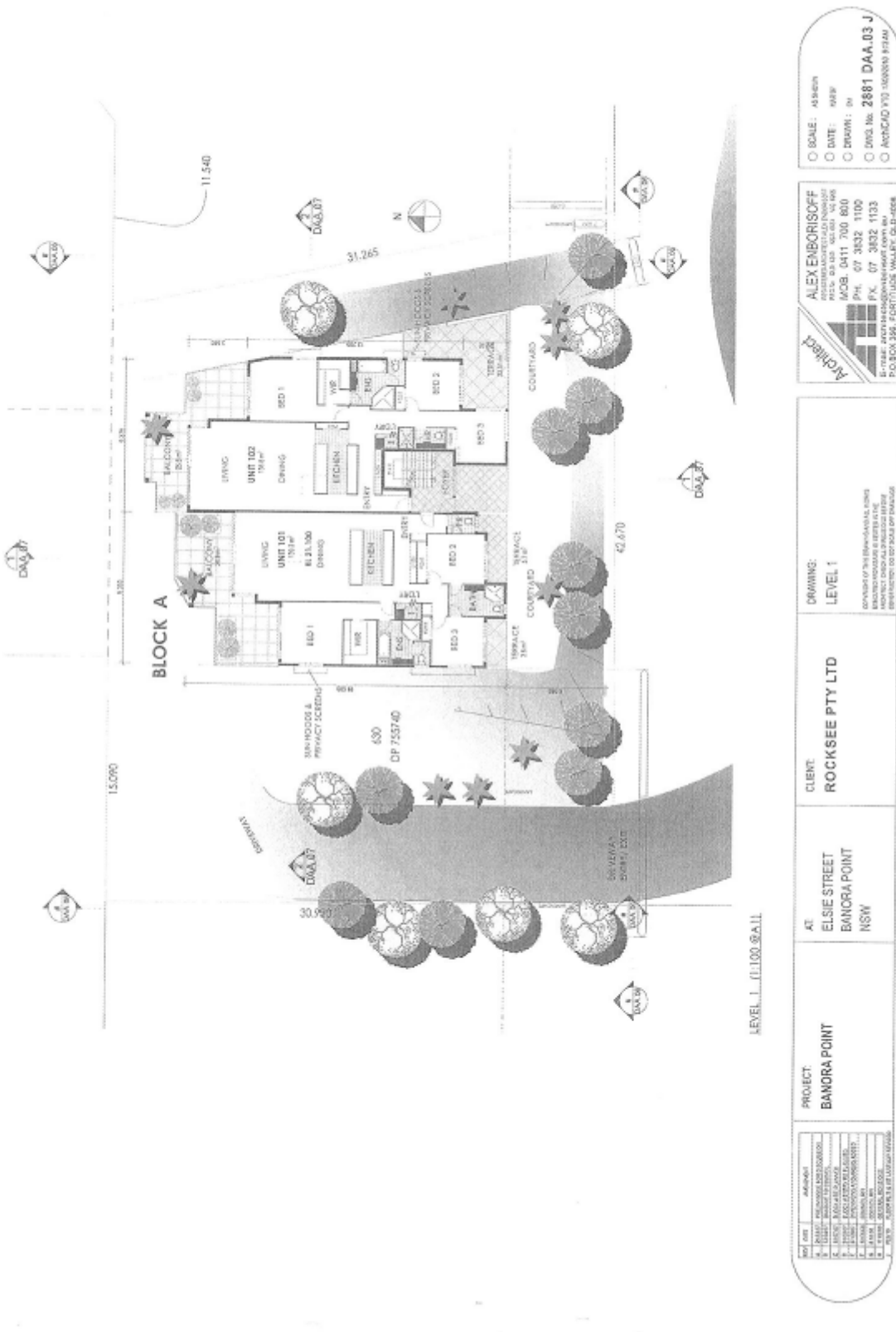
CLIENT:
ROCKSEE PTY LTD
DEVELOPER:
BANORA POINT
NSW

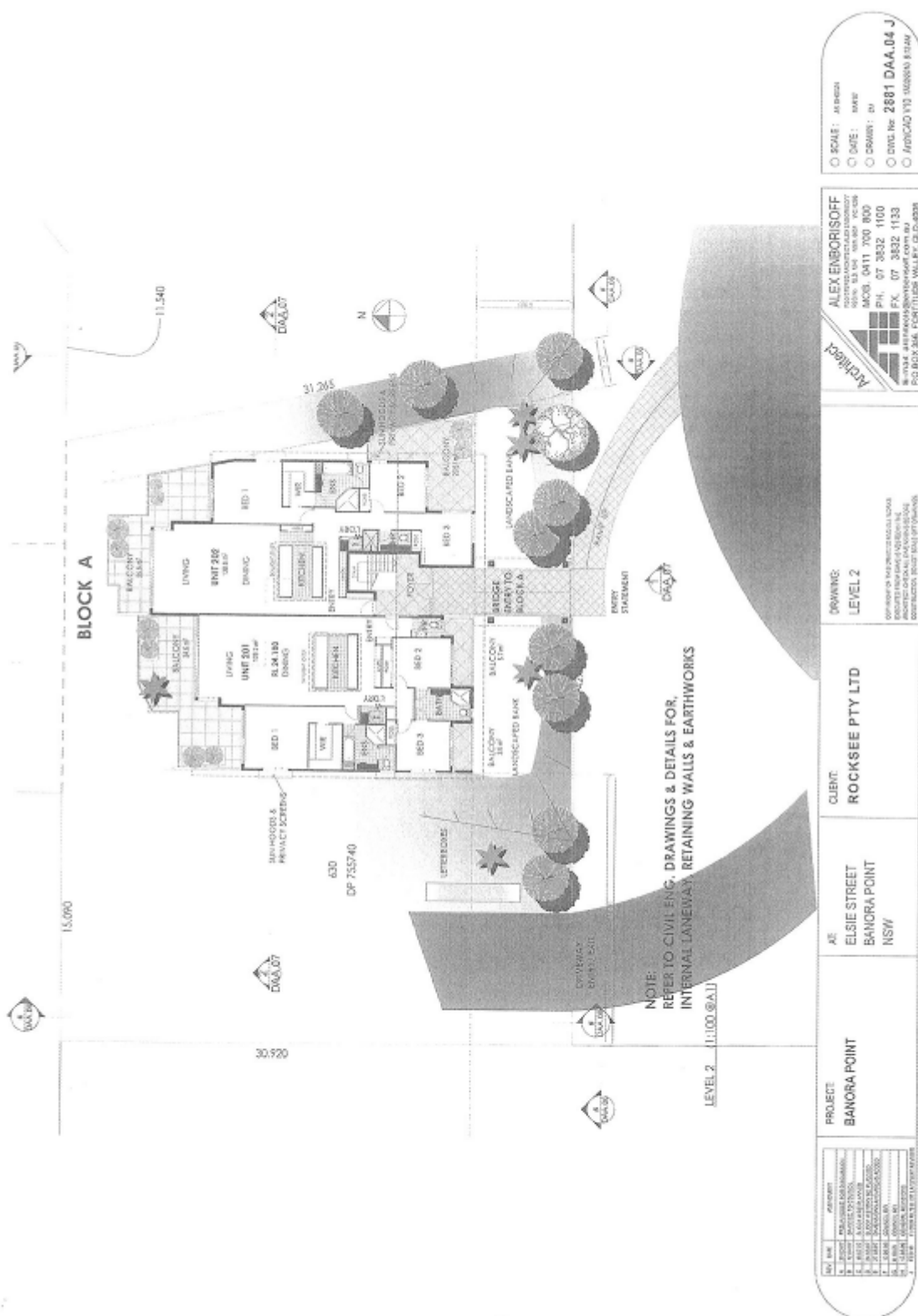
PROJECT:
BANORA POINT
SCALE: 1:100 (S.A.I.)

CLIENT:
ROCKSEE PTY LTD
DEVELOPER:
BANORA POINT
NSW

PROJECT:
BANORA POINT
SCALE: 1:100 (S.A.I.)

8000 BANORA POINT VALLEY CARPARK LEVEL 0101 1/200 (S.A.I.)



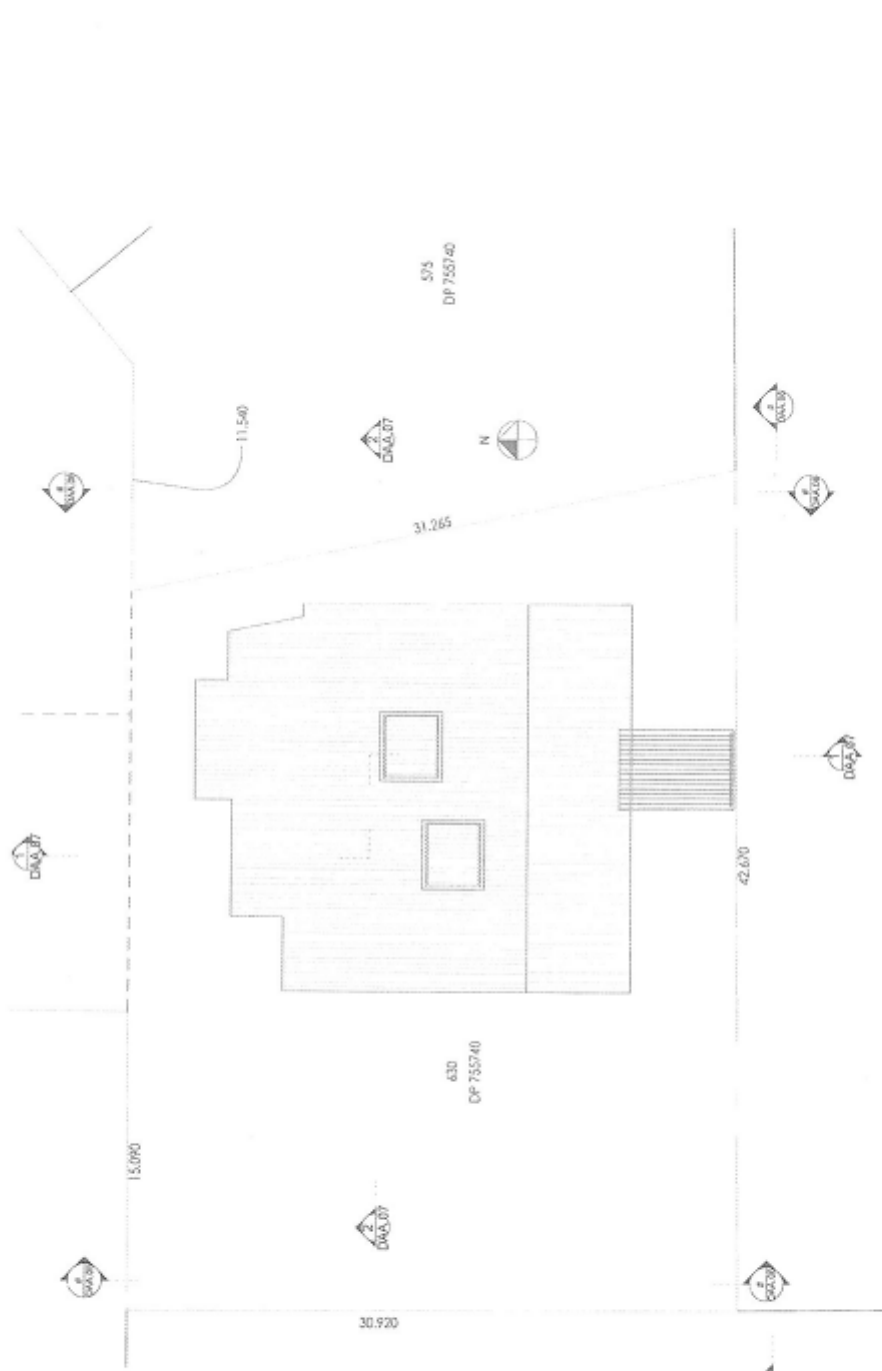


NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR,
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

LEVEL 2 (1:100 @ A1)

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REV	DATE	DESCRIPTION																																					
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END A ARCHITECTURAL DRAFT (LEVEL 2, 100% OVERSIGHT) 15/08/10



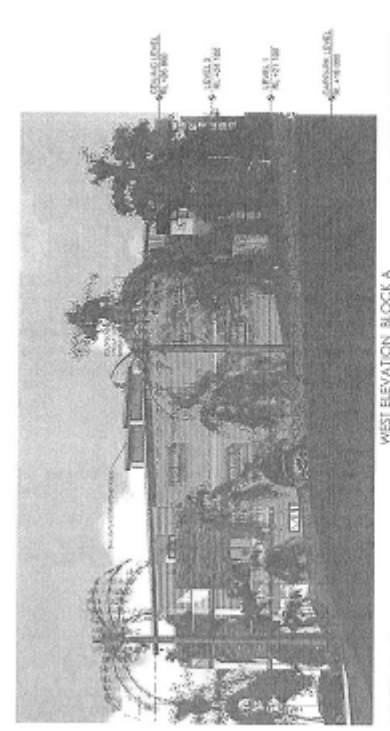
ROOF PLAN (1:100 @A.1)

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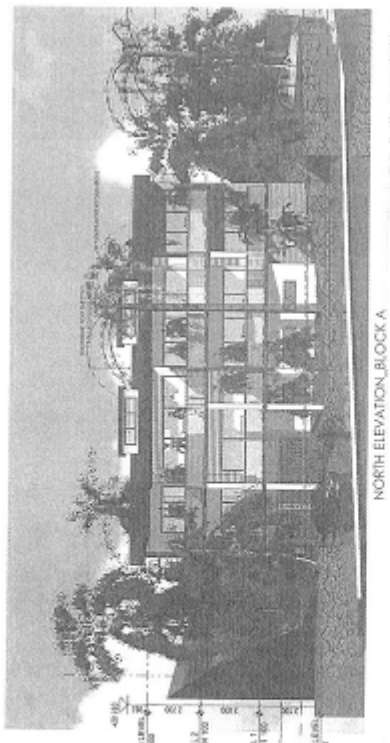
ALEX ENBORISOFF
REGISTERED ARCHITECT
 NO. 0411 700 820
 PH. 07 3832 1100
 FX. 07 3832 1133
18 WEDGE STREET, PORTLAND VILLAGE, QLD 4006

SCALE: AS SHOWN
 DATE: 15/08/10
 DRAWN: DA
 DRG NO: 2881 DAA.05 J
 APPROVED: 15/08/2010

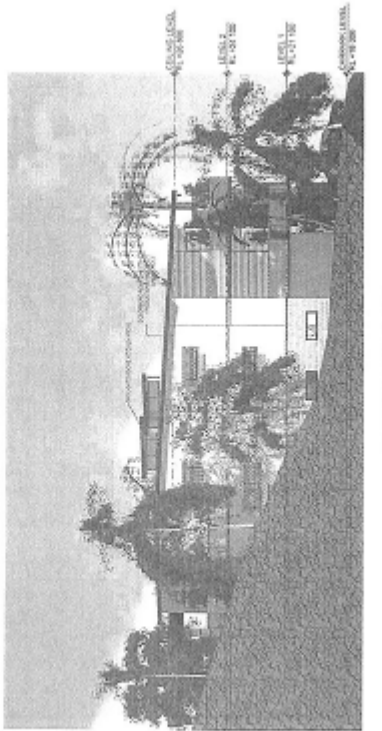
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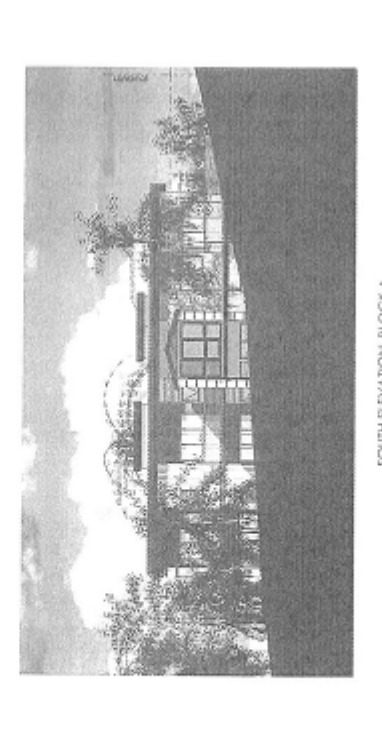
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WEST ELEVATION_BLOCK A



EAST ELEVATION_BLOCK A

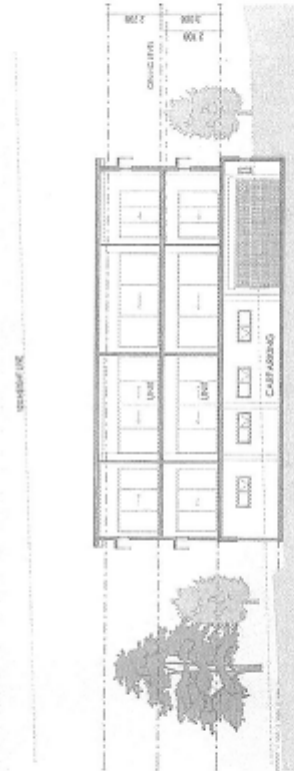
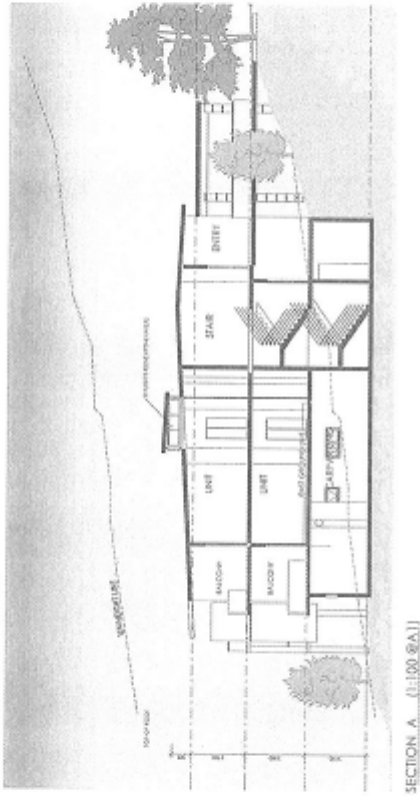


SOUTH ELEVATION_BLOCK A

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LAINEWAY, RETAINING WALLS & EARTHWORKS

PROJECT: BANGORA POINT	AT: ELSIE STREET BANGORA POINT NSW	CLIENT: ROCKSEE PTY LTD	DRAWING: ELEVATIONS_BLOCK A
SHEET NO: 1 SCALE: AS SHOWN DATE: 08/08/10 DRAWN: [initials] CHECKED: [initials] PROJECT NO: 2881 DAA.06 J CLIENT: ROCKSEE PTY LTD 11/11/10	ALEX ENBRISOFF ARCHITECTURE 1/11/10 MOB: 0411 700 800 PH: 07 3852 1100 FX: 07 3852 1153 11/11/10 PO BOX 255, FORTITUDE VALLEY, QLD 4088		

8004-A BANGORA POINT ELEVATIONS_BLOCK A_REV_1 20100808 10:11 AM



NOTE: REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR, INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

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PROJECT:
BANDORA POINT

AT:
**ELSIE STREET
BANDORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

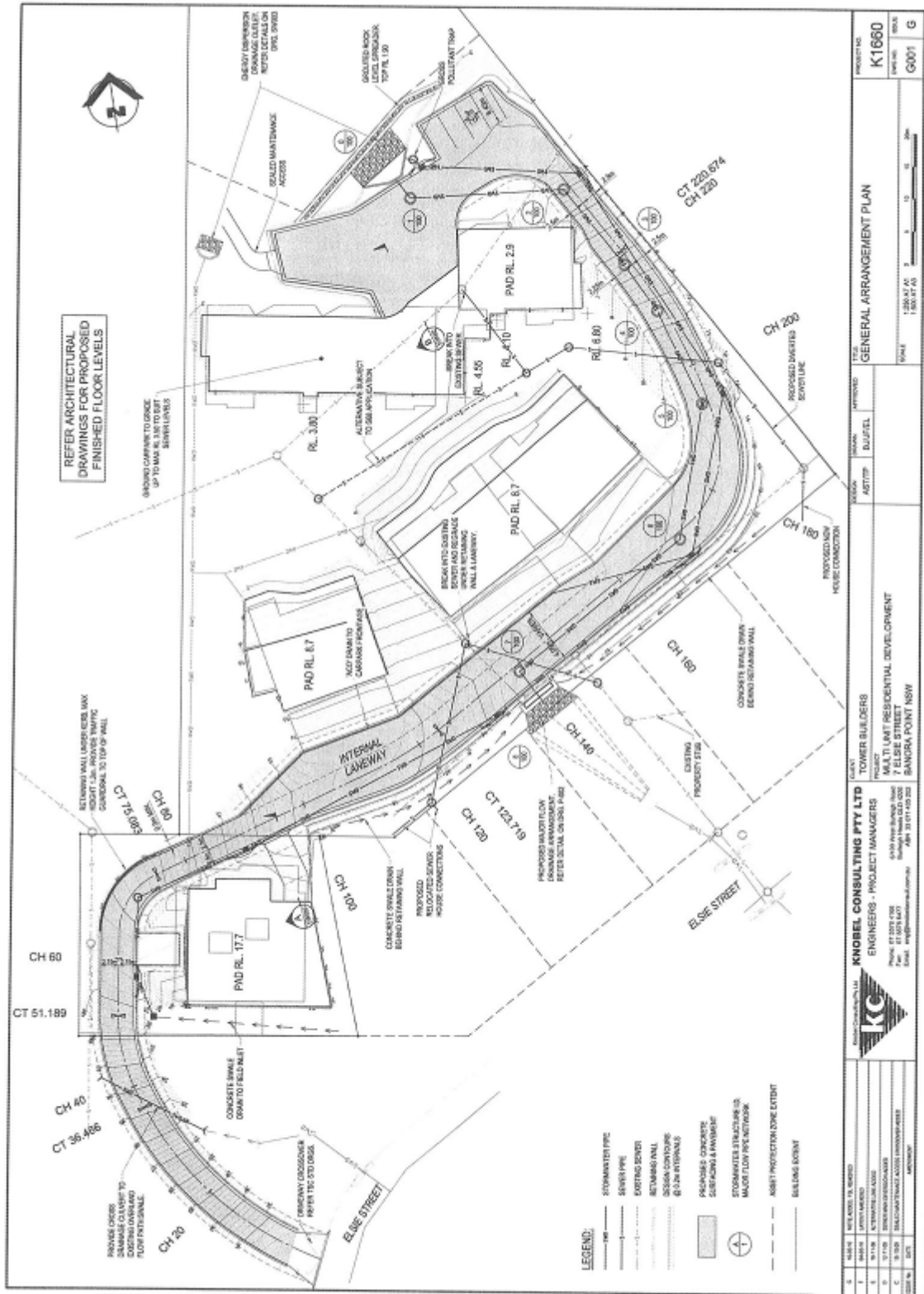
DRAWING:
SECTION A & A1

CONTRACTOR:
ROCKSEE PTY LTD

ARCHITECT:
ALEX ENBORISOFF
MOB: 0411 700 800
PH: 07 3632 1100
FX: 07 3632 1133
B-VALE INDUSTRIAL PARK, B-VALE, QLD 4084
P.O. BOX 264, FORTITUDE VALLEY, QLD 4008

SCALE: AS SHOWN
DATE: 10/08/10
DRAWN: DJ
DWG No: 2881 DAA.07 J
APP'CAD Y10 1020208 813M

ISSUED FOR TENDERS ONLY SECTION A & A1 (SCALE: 1:100 @A1)



REFER ARCHITECTURAL DRAWINGS FOR PROPOSED FINISHED FLOOR LEVELS

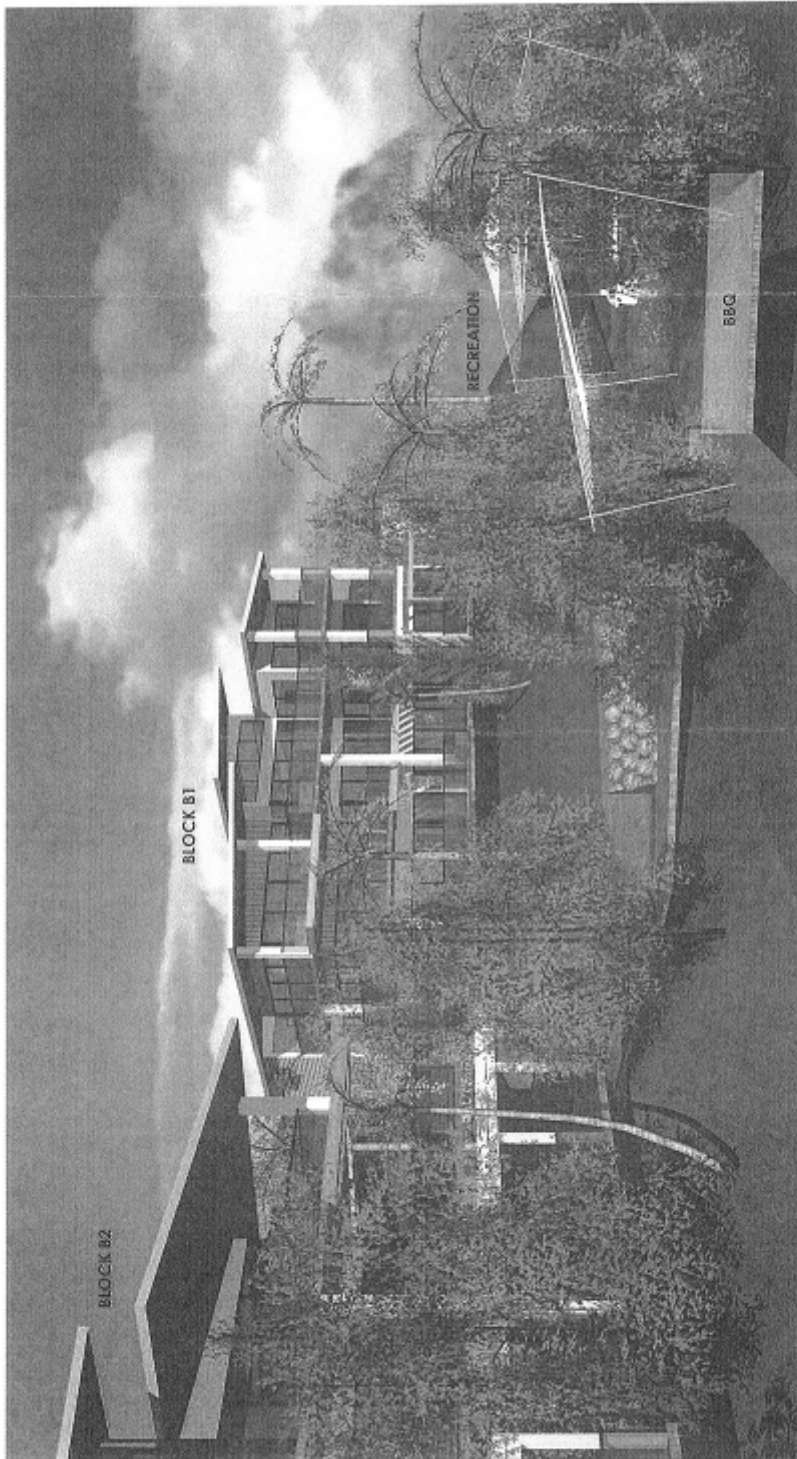
LEGEND:

- SP - STORMWATER PIPE
- SM - SEWER PIPE
- - - - - EXISTING SEWER
- - - - - EXISTING MAIN
- - - - - DESIGN CONTIGUOUS @ 0.2m INTERVALS
- ◻ - PROPOSED CONCRETE SURFING & HWYSIDE
- ⊕ - STORMWATER STRAIGHT-ON MAJOR FLOW PIPE NETWORK
- - - - - ASBEST PROTECTION ZONE EXTENT
- - BUILDING FOOTPRINT

PROJECT NO.	K1660
DRAWING NO.	G001
DATE	G

CLIENT	TOWER BUILDERS
PROJECT	MULTI UNIT RESIDENTIAL DEVELOPMENT
ADDRESS	7 ELISE STREET
CITY	BANDORA POINT NSW
SCALE	AS SHOWN
DATE	17 AUG 2010

KHOBEL CONSULTING PTY LTD
 ENGINEERS - PROJECT MANAGERS
 6/240 Brook Road
 Brookvale NSW 1570
 Phone: 67 507 4161
 Fax: 67 507 8470
 Email: info@kobel.com.au
 Web: www.kobel.com.au



SCALE: 1:100 @ A1
 DATE: 18/08/10
 DRAWN: CA
 DWG. NO: 2881 DAB.01 H
 ARCH/CA/VT 18/08/2010 11:24 AM

Architect
ALEX ENBORISOFF
 ARCHITECTURE AND INTERIORS
 SUITE 101, 101/110 ROSS
 ST, SYDNEY, NSW 1585
 PH: 02 9332 1100
 FX: 02 9332 1133
 WWW.ALEXENBORISOFF.COM
 P O BOX 364, FORTITUDE VALLEY QLD 4005

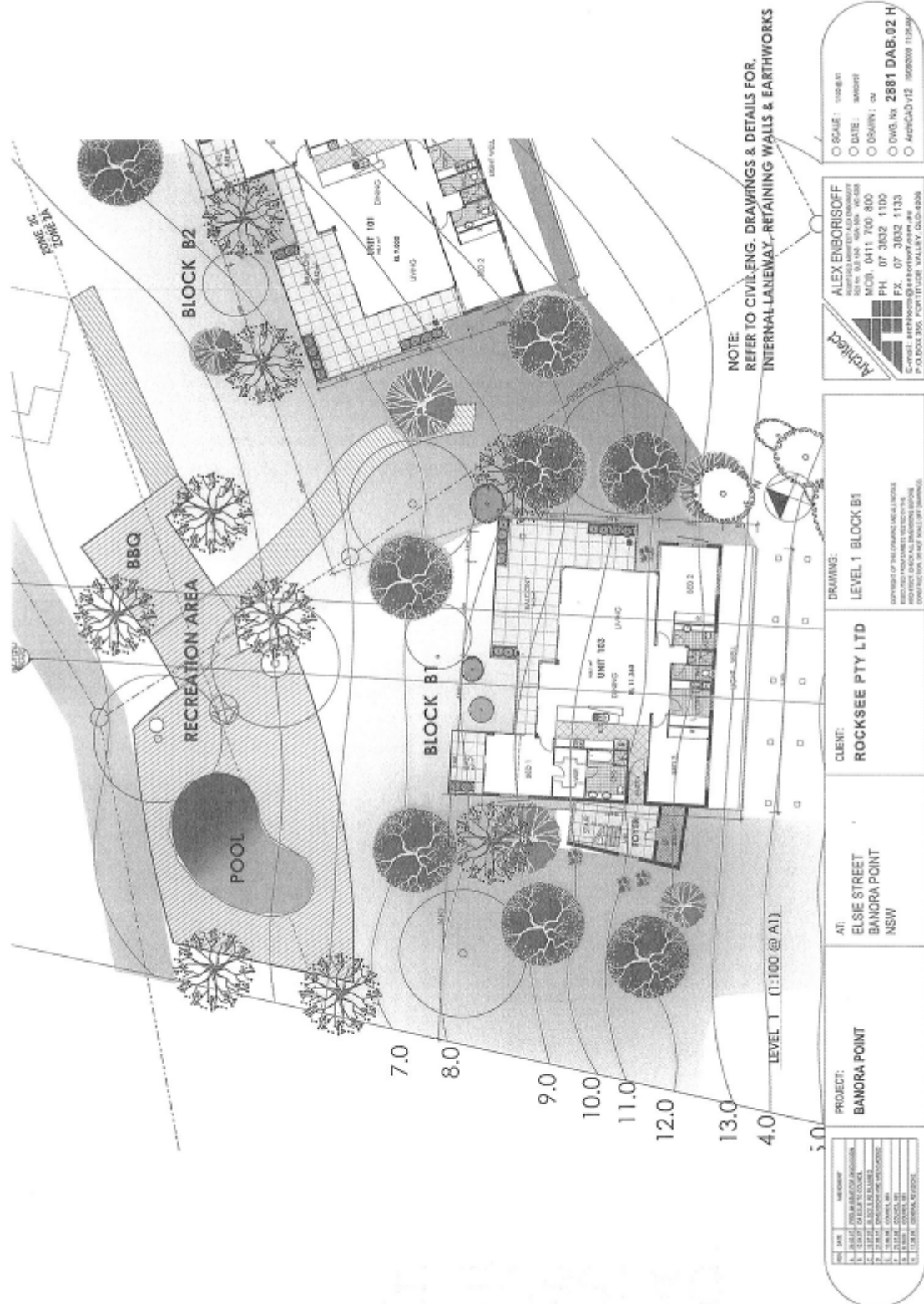
DRAWING:
MASS MODELS - BLOCK B1-3
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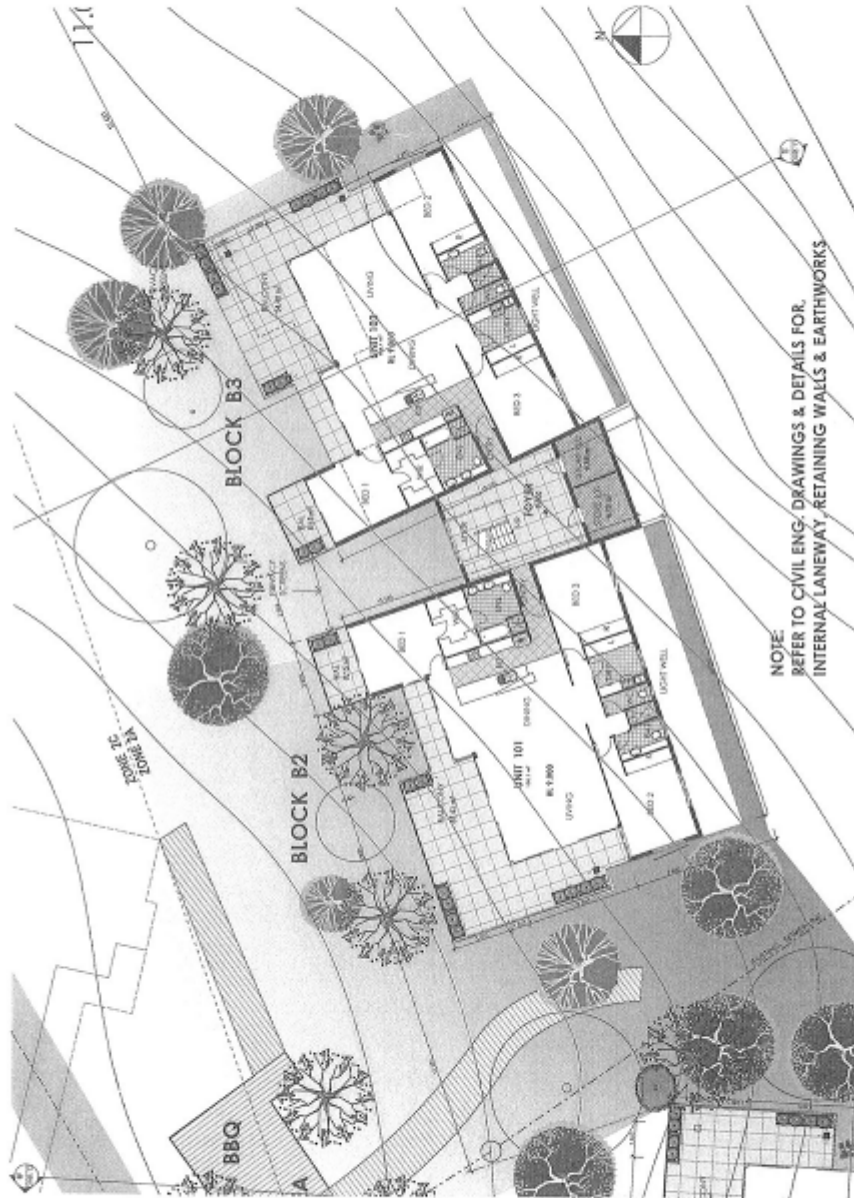
CLIENT:
ROCKSEE PTY LTD

AT:
**ELSIE STREET
 BANORA POINT
 NSW**

PROJECT:
BANORA POINT

NO.	DATE	DESCRIPTION
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6	18/08/10	ISSUED FOR APPROVAL
7	18/08/10	ISSUED FOR APPROVAL
8	18/08/10	ISSUED FOR APPROVAL
9	18/08/10	ISSUED FOR APPROVAL
10	18/08/10	ISSUED FOR APPROVAL





LEVEL 1 (1:100 @ A1)

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PROJECT:
BANORA POINT

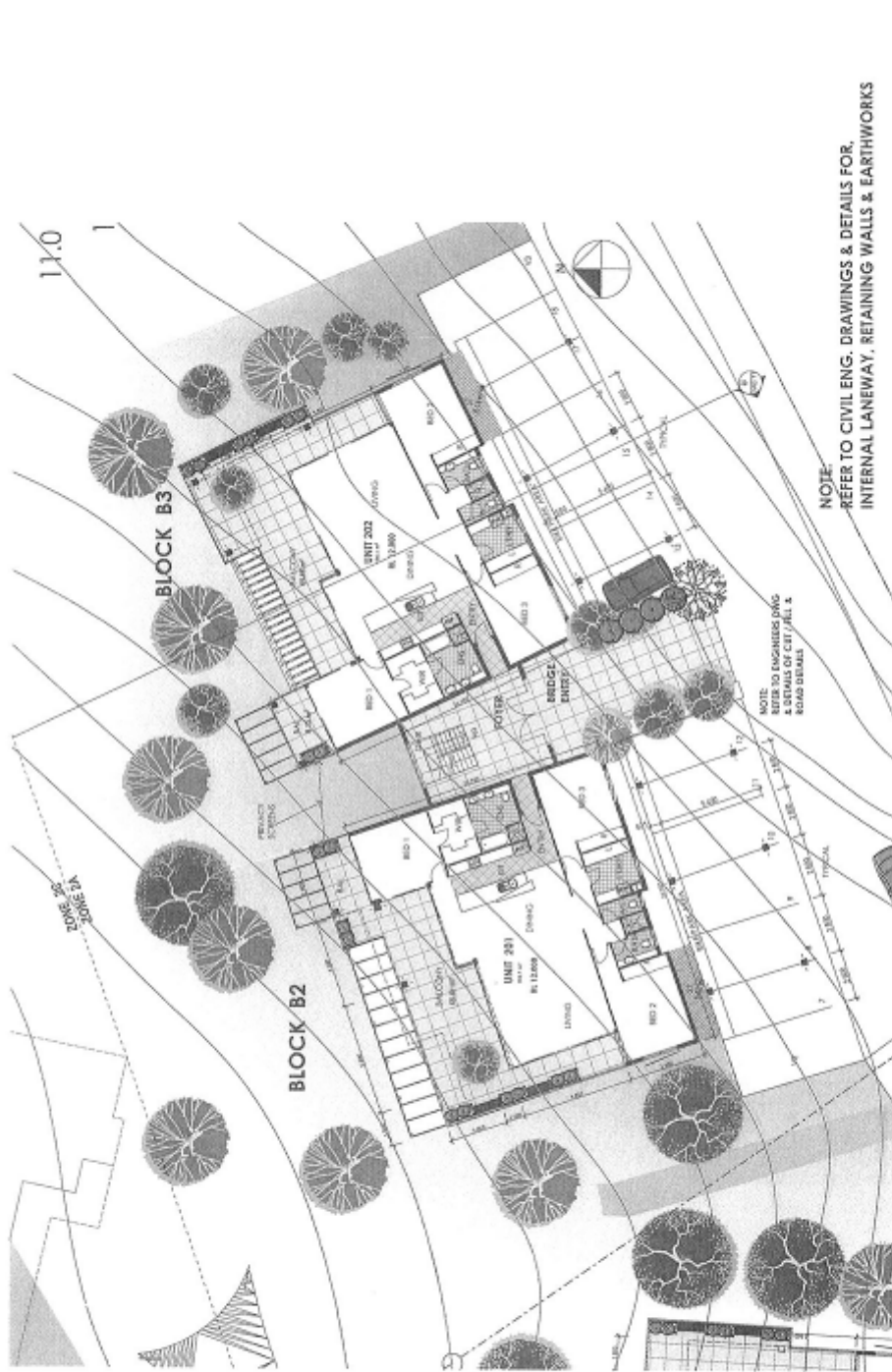
AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
LEVEL 1 BLOCK B2 & 3

Alex Enborisoff
ARCHITECT
REGISTERED ARCHITECT
NO. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

SCALE: 1:100 @ A1
DATE: MARCH
DRAWN: CK
DWS. NO: 2881 DAB.04 H
PROJECT NO: 1998008 (1/28/09)



LEVEL 2 (1:100 @ A1)

REV	DATE	DESCRIPTION
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2	17/08/2010	ISSUED FOR TENDER
3	17/08/2010	ISSUED FOR TENDER
4	17/08/2010	ISSUED FOR TENDER
5	17/08/2010	ISSUED FOR TENDER
6	17/08/2010	ISSUED FOR TENDER
7	17/08/2010	ISSUED FOR TENDER

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
LEVEL 2 BLOCK B2 & 3

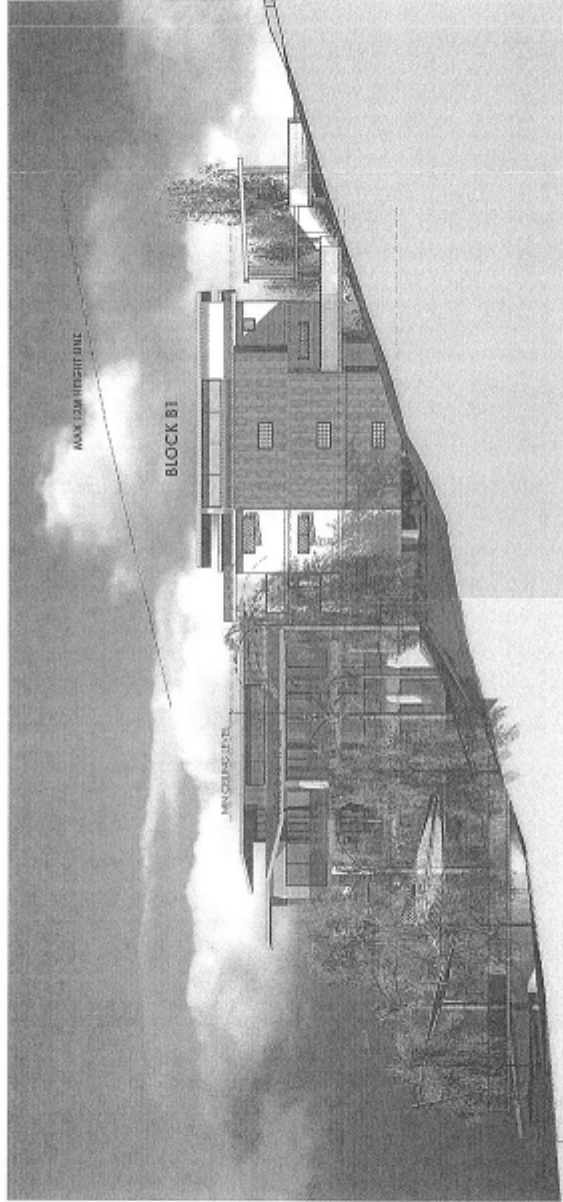
Alexander
ALEX ENBORISOFF
REGISTERED ARCHITECT (NSW)
10/100 WILSON ROAD, WILSON
VIC 3207
MOB: 0411 700 800
PH: 07 3832 1100
FX: 07 3832 1133
www.aenborisoff.com.au
P.O. BOX 385, PORTFOLIO VALLEY QLD 4088

SCALE: 1:100 @ A1
DATE: 17/08/2010
DRAWN: [initials]
CHECKED: [initials]
DESIGNED: [initials]
DRAWING NO: 2881 DAB.05 H
REVISED: 17/08/2010



LEVEL 3 (1:100 @ A1)

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NO.	DATE	DESCRIPTION																																					
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2	15/08/10	ISSUED FOR TENDERS																																					
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8	15/08/10	ISSUED FOR TENDERS																																					
9	15/08/10	ISSUED FOR TENDERS																																					
10	15/08/10	ISSUED FOR TENDERS																																					



BLOCK B1 SOUTH WEST ELEVATION

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

NO	DATE	REVISION
1	18/08/10	PRELIMINARY DRAWING
2	18/08/10	ISSUE FOR PERMITS
3	18/08/10	ISSUE FOR CONSTRUCTION
4	18/08/10	ISSUE FOR CONSTRUCTION
5	18/08/10	ISSUE FOR CONSTRUCTION
6	18/08/10	ISSUE FOR CONSTRUCTION
7	18/08/10	ISSUE FOR CONSTRUCTION
8	18/08/10	ISSUE FOR CONSTRUCTION

PROJECT:
BANORA POINT

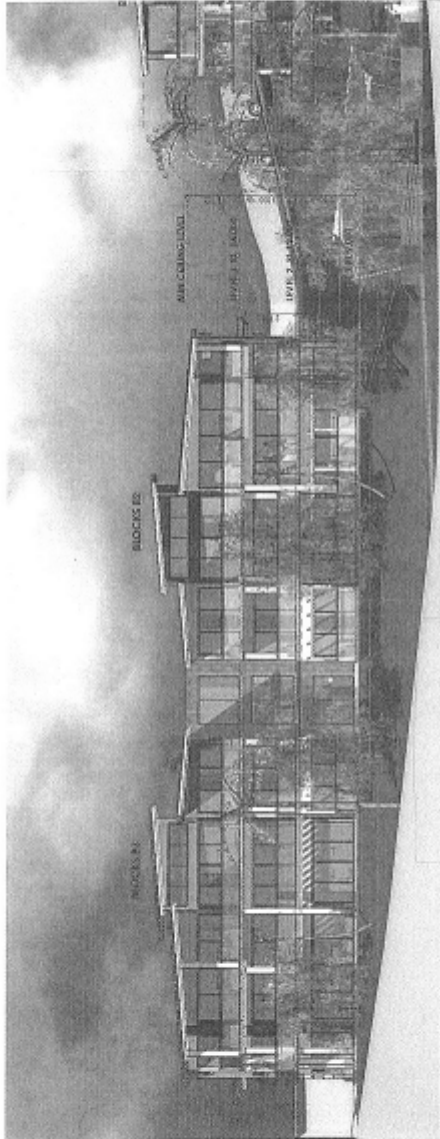
AT:
ELSIE STREET
BANORA POINT
NSW

CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS BLOCK B1

ARCHITECT:
ALEX ENBORISOFF
ARCHITECTS
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FX: 07 3832 1133
E-MAIL: alex@enborisoff.com.au
P O BOX 385, FORTITUDE VALLEY, QLD 4088

SCALE: 1:100 @ A1
DATE: 18/08/10
DRAWN: SA
CHKD: SA
NO: 2881 DAB.08 H
REV: 18/08/10



BLOCK B1 & 2 NORTH WEST ELEVATION



BLOCK B1 & 2 SOUTH EAST ELEVATION

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

REV	DATE	DESCRIPTION
1	17/08/10	ISSUED FOR TENDERS
2	17/08/10	ISSUED FOR TENDERS
3	17/08/10	ISSUED FOR TENDERS
4	17/08/10	ISSUED FOR TENDERS
5	17/08/10	ISSUED FOR TENDERS
6	17/08/10	ISSUED FOR TENDERS

PROJECT:
BANDORA POINT

AT:
**ELSE STREET
BANDORA POINT
NSW**

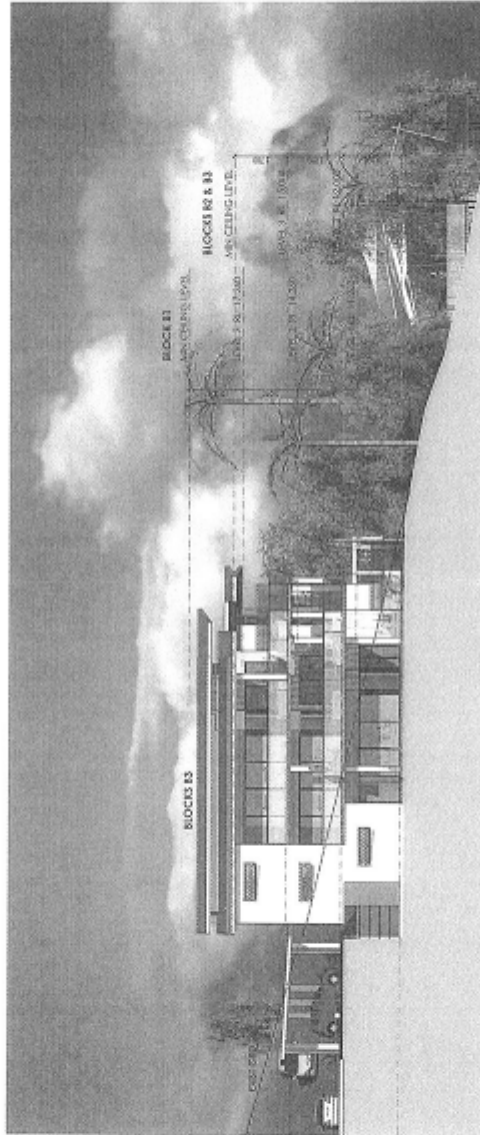
CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS BLOCK B2 & B3

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WWW.ALEXENBORISOFF.COM.AU
P. 0202 5561 FORTITUDE VALLEY QLD 4008

SCALE: 1:100 (PLAN)
DATE: 17/08/10
DRAWN: CA
DWG NO: 2881 DAB.09 H
APP'D: JZ 16/08/10



BLOCK B3 NORTH EAST ELEVATION

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

REV	DATE	DESCRIPTION
A	15/08/10	ISSUED FOR PERMIT
B	15/08/10	ISSUED FOR PERMIT
C	15/08/10	ISSUED FOR PERMIT
D	15/08/10	ISSUED FOR PERMIT
E	15/08/10	ISSUED FOR PERMIT
F	15/08/10	ISSUED FOR PERMIT
G	15/08/10	ISSUED FOR PERMIT
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L	15/08/10	ISSUED FOR PERMIT
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X	15/08/10	ISSUED FOR PERMIT
Y	15/08/10	ISSUED FOR PERMIT
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PROJECT:
BANORA POINT

AT:
ELSIE STREET
BANORA POINT
NSW

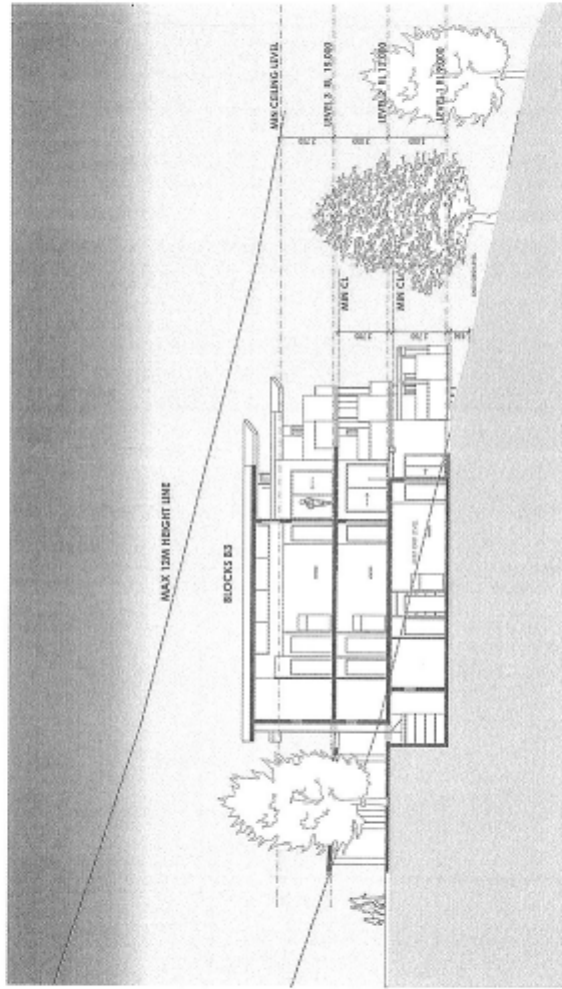
CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATIONS BLOCK B3

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Alex Enborisoff Architects
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P: 07 3832 1100 WINDYBUSH VALLEY QLD 4086

SCALE: 1:100 (A1)
DATE: 15/08/10
DRAWN: [Signature]
DWG. NO: 2881 DAB.10 H
ARCH. NO: 1988/2009 (10/10)



SECTION B3

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

REV	DATE	REVISION
1	18/08/10	ISSUED FOR ASSESSMENT
2	18/08/10	FOR LOCAL COUNCIL CONSIDERATION
3	18/08/10	FOR LOCAL COUNCIL CONSIDERATION
4	18/08/10	FOR LOCAL COUNCIL CONSIDERATION
5	18/08/10	FOR LOCAL COUNCIL CONSIDERATION
6	18/08/10	FOR LOCAL COUNCIL CONSIDERATION

PROJECT:
BANDORA POINT

AT:
ELSE STREET
BANDORA POINT
NSW

CLIENT:
ROCKSEE PTY LTD

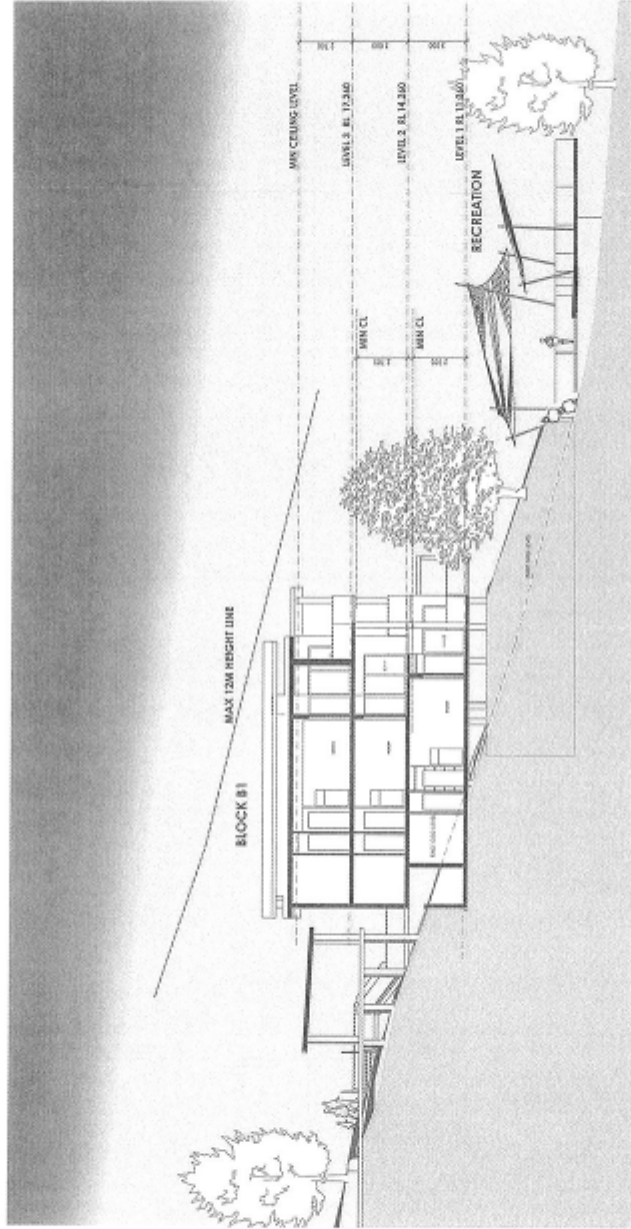
DRAWING:
SECTION B

COMPANY OF FIDELITY FINANCIAL SERVICES
LIMITED (INCORPORATED IN AUSTRALIA)
MEMBERSHIP NO: 254000018
SHELVING: 10/03/2008

Architect

ALEX ENBORISOFF
REGISTERED ARCHITECT
12/1100 SOUTH COAST HWY
MIDVALE VIC 3045
MOB. 0411 700 600
PH. 07 3832 1100
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E: alex@architectenborisoff.com.au
P: 25/55/02/05/01 FORTITUDE VALLEY VIC 3143

SCALE:	1:50 @ A1
DATE:	18/08/10
DRAWN:	ca
DWG. NO.:	2881 DAB.11 H
APPROVED BY:	18/08/2010 11:30 AM



SECTION B1

NOTE:
REFER TO CIVIL ENG. DRAWINGS & DETAILS FOR
INTERNAL LANEWAY, RETAINING WALLS & EARTHWORKS

NO.	DATE	DESCRIPTION
1	12/12/09	PRELIMINARY DRAWING
2	12/12/09	REVISED TO INCLUDE
3	12/12/09	REVISED TO INCLUDE
4	12/12/09	REVISED TO INCLUDE
5	12/12/09	REVISED TO INCLUDE
6	12/12/09	REVISED TO INCLUDE
7	12/12/09	REVISED TO INCLUDE
8	12/12/09	REVISED TO INCLUDE
9	12/12/09	REVISED TO INCLUDE
10	12/12/09	REVISED TO INCLUDE

PROJECT:
BANORA POINT

AT:
**ELSIE STREET
BANORA POINT
NSW**

CLIENT:
ROCKSEE PTY LTD

DRAWING:
SECTION B1

APPROVED BY THE ARCHITECT AND ENGINEER
FOR THE PURPOSES OF THE BUILDING
REGULATIONS AND NOT FOR THE
PURPOSES OF ANY OTHER LEGISLATION
ENGINEER'S SEAL NOT VALID OUT OF DISTRICT

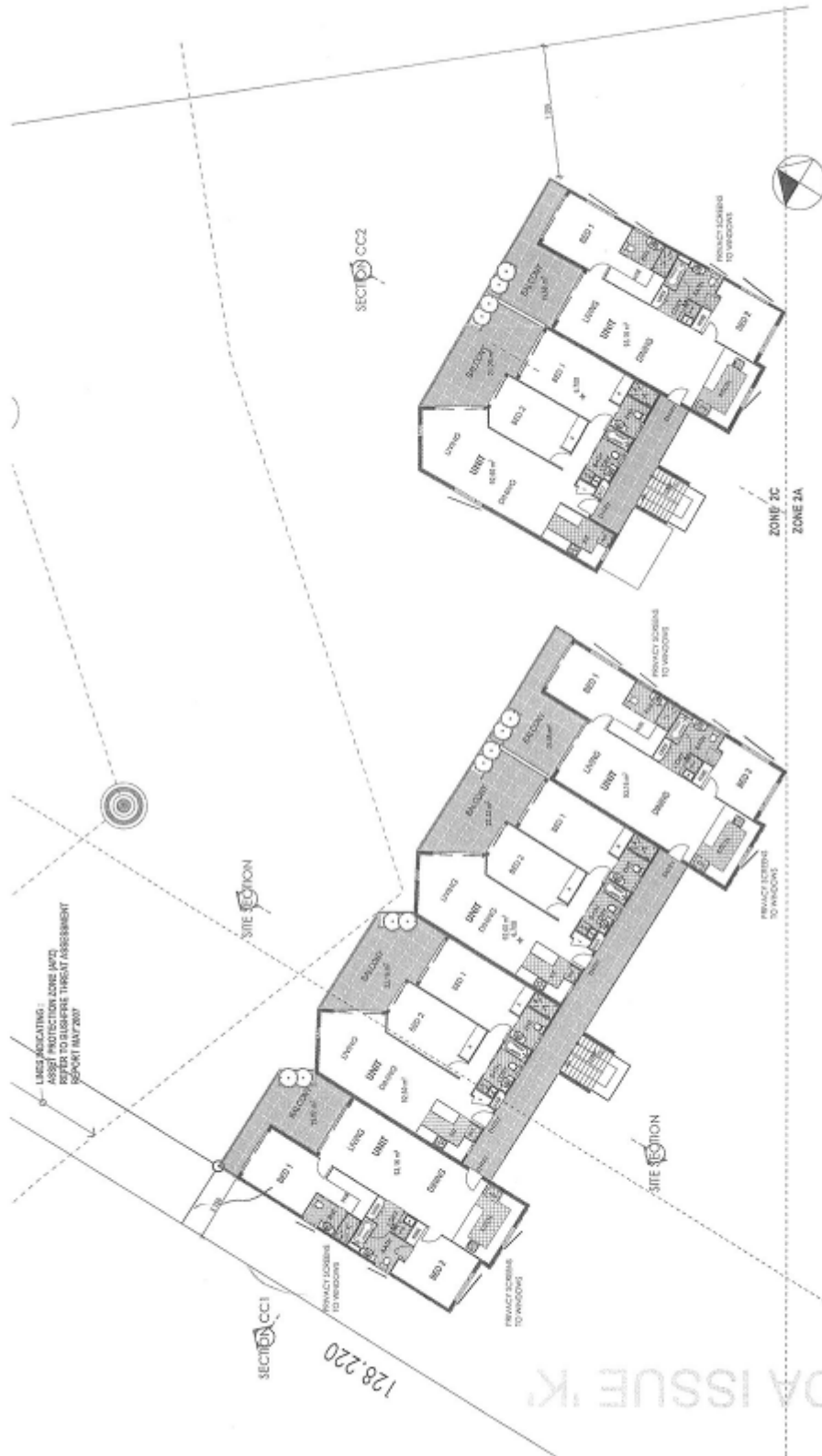
Alex Emborsicoff
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E-MAIL: alexemborsicoff@alexemborsicoff.com.au
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SCALE: 1:100 @ A1
DATE: MARCH
DRAWN: M
DWS No: 2881 DAB.12 H
PROJECT: BANORA POINT



DA ISSUE (K)

<p>Architect ALEX ENBORISOFF ARCHITECTURAL PRACTISE 103/10-23/27 NEWSEA VIC 3084 MCB: 0411 700 800 PH: 07 3832 1100 FX: 07 3832 1130 E-mail: alex@architect.com.au P.O. BOX 395, PORTITTOE VALLEY, Q.D. 4066</p>		<p>SCALE: 1/80th DATE: MARCH DRAWN: CAJZ DWG. No: 2881 DAC.01 K ARCHICAD V12 012009 8/14/10</p>	
<p>PROJECT: BANDORA POINT</p>		<p>CLIENT: ROCKSEE PTY LTD</p>	
<p>AT: ELSIE STREET BANDORA POINT NSW</p>		<p>DRAWING: MASS MODELS - BLOCK C</p>	
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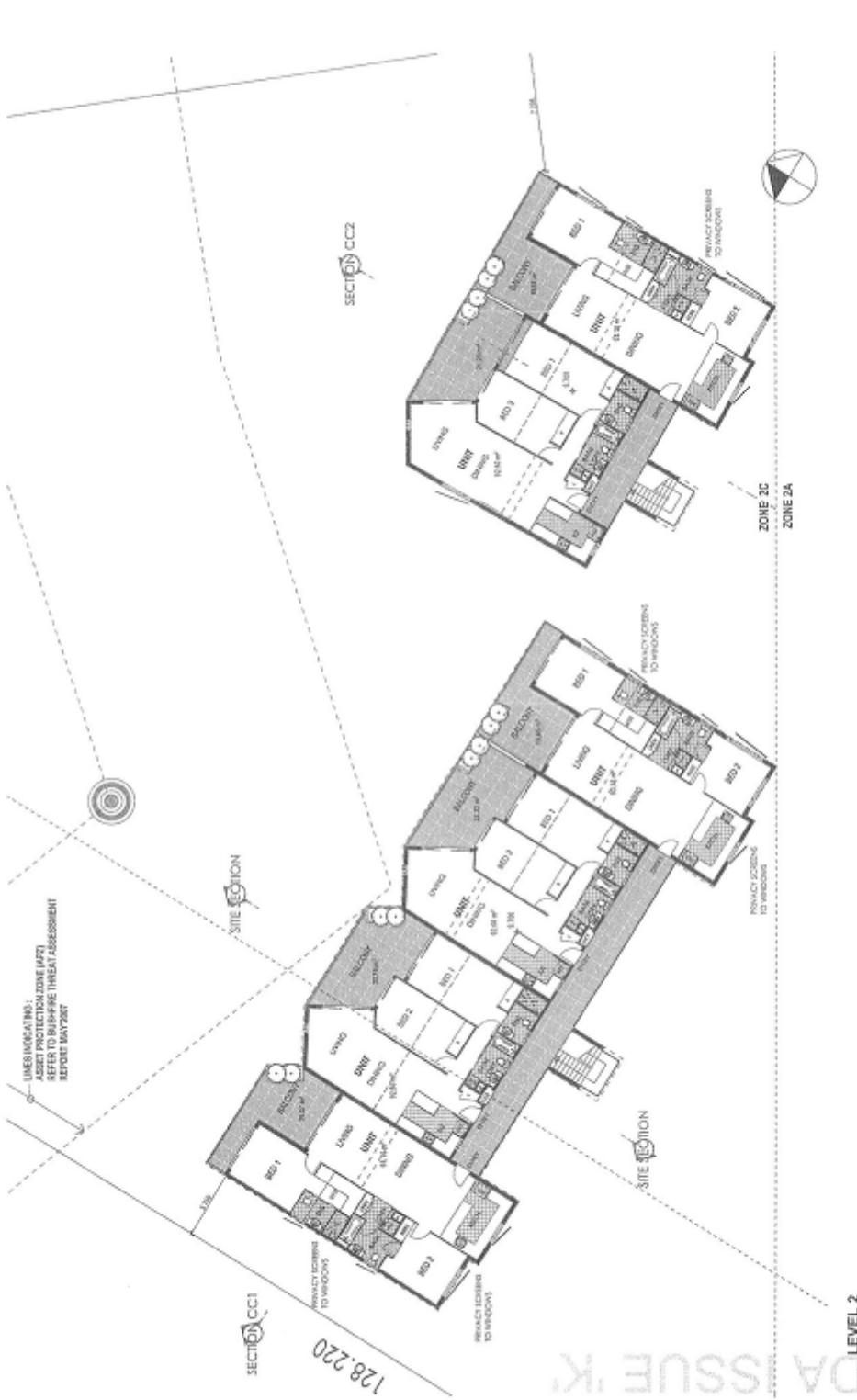
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 DATE: 18/07/10
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CLIENT:
 ROCKSEE PTY LTD
PROJECT:
 BANORA POINT
AT:
 ELSIE STREET
 BANORA POINT
 NSW

DRAWING:
 2, LEVEL 1
CONTAINS OR INCLUDES INFORMATION
 WHICH IS UNLAWFUL TO DISCLOSE
 OR WHICH IS UNLAWFUL TO OBTAIN

NO.	REV.	DESCRIPTION
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O SCALE: 1:800
 O DATE: 08/07/10
 O DRAWN: CALJ
 O DWS. No: 2881 DAC.04 K
 O APPROV: V12 8/2008 (S&M)

Achieved

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CLIENT: ROCKSEE PTY LTD

PROJECT: BANORA POINT

AT: ELSIE STREET BANORA POINT NSW

DRAWING: LEVEL 2

CONSENT OF THIS DRAWING IS SUBJECT TO THE PROVISIONS OF THE BUILDING ACT 1993 AND THE BUILDING REGULATIONS 2006.

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PROJECT: BANORA POINT

AT: ELSIE STREET BANORA POINT NSW

CLIENT: ROCKSEE PTY LTD

DRAWING: LEVEL 2

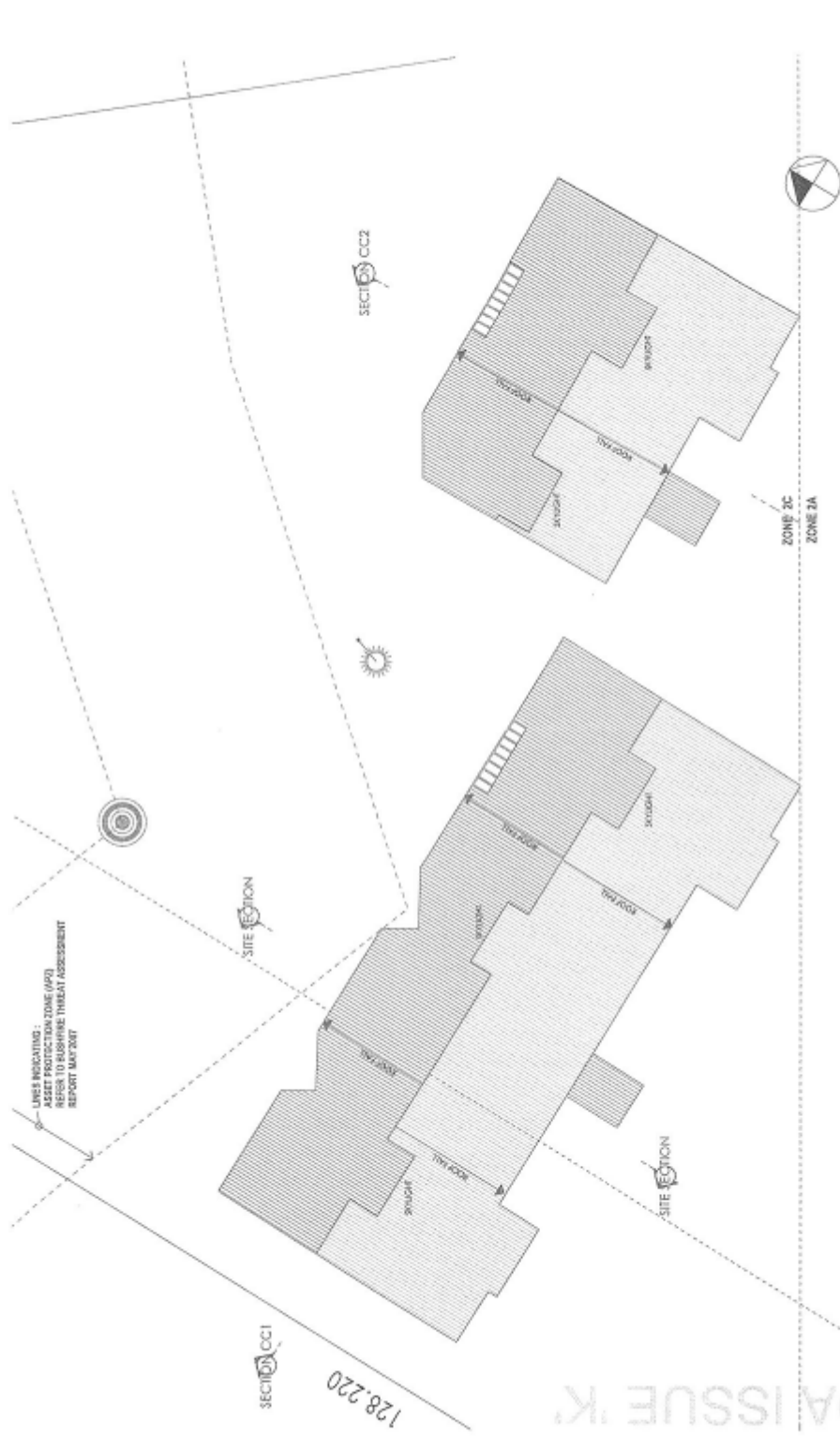
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AT: ELSIE STREET BANORA POINT NSW

CLIENT: ROCKSEE PTY LTD

DRAWING: LEVEL 2

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SCALE: 1:100
 DATE: 10/08/10
 DRAWN: DJL
 DMS: 2881 DAC.05 K
 ARCH/CAD: 1/2 10/08/10

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CLIENT:
ROCKSEE PTY LTD
 DRAWING:
ROOF LEVEL
 COPYRIGHT OF THE DIMENSIONAL ZONES
 ARCHITECTURAL WORKS
 DIMENSIONAL ZONES OF BRANSON

PROJECT:
BANORA POINT

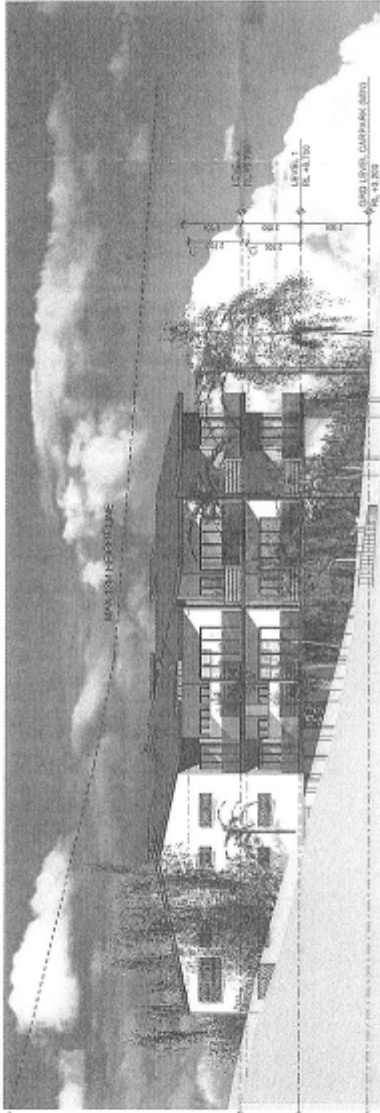
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 BANORA POINT
 NSW**

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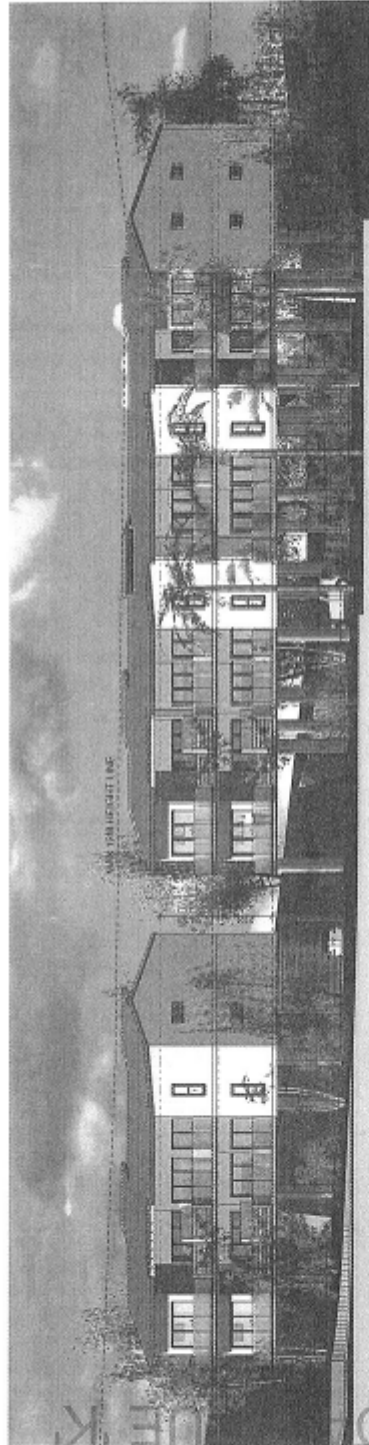
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DAISSUE K



NORTH EAST ELEVATION



NORTH WEST ELEVATION

NO.	DATE	REVISION
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PROJECT:
BANORA POINT

AT:
**ELSIE STREET
 BANORA POINT
 NSW**

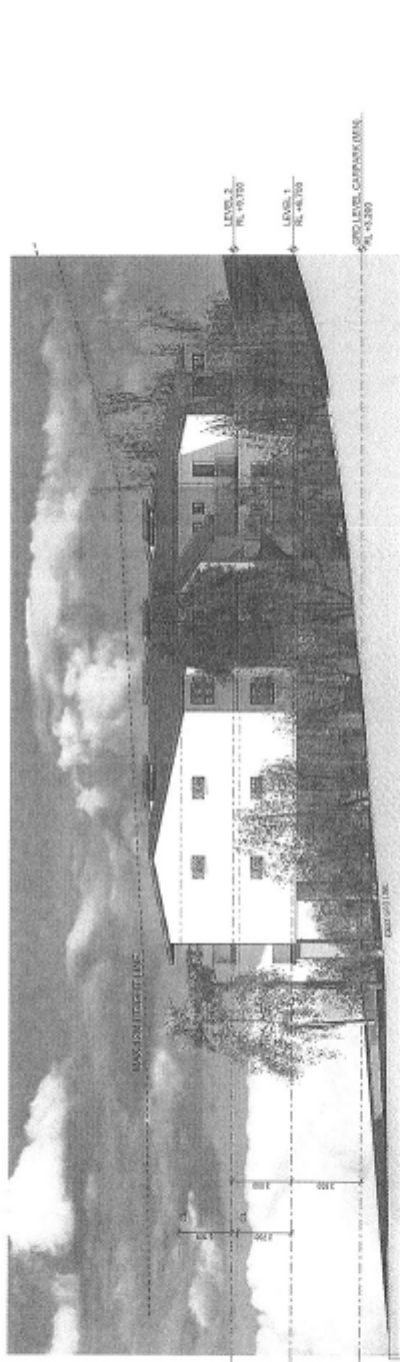
CLIENT:
ROCKSEE PTY LTD

DRAWING:
ELEVATION BLOCK C SHEET 1

Axiom

ALEX ENBORISOFF
 REGISTERED ARCHITECT (NSW) 102180
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 FAX: 07 3832 1133
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 P.O. BOX 754, QUENTON DRIVE, WALLBY QLD 4468

SCALE: 1/80 (1/1)
 DATE: 10/08/10
 DRAWN: CHL/AC
 DWG No: **2881 DAC.06 K**
 PROJECT: BANORA POINT

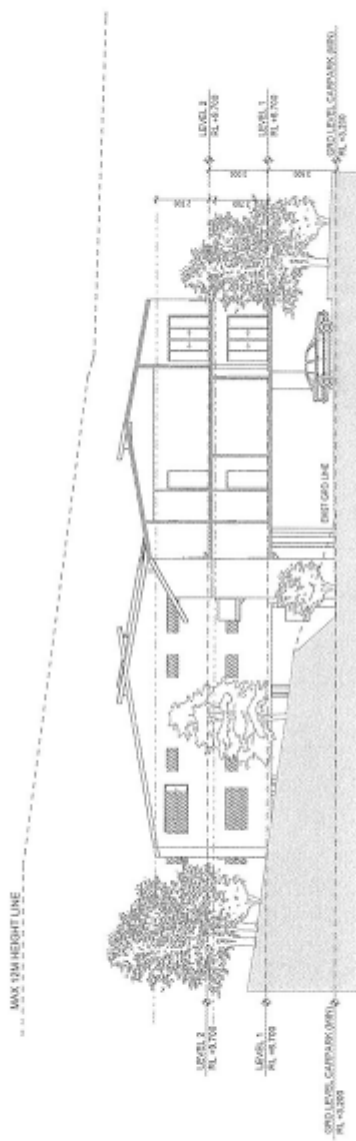


SOUTH WEST ELEVATION

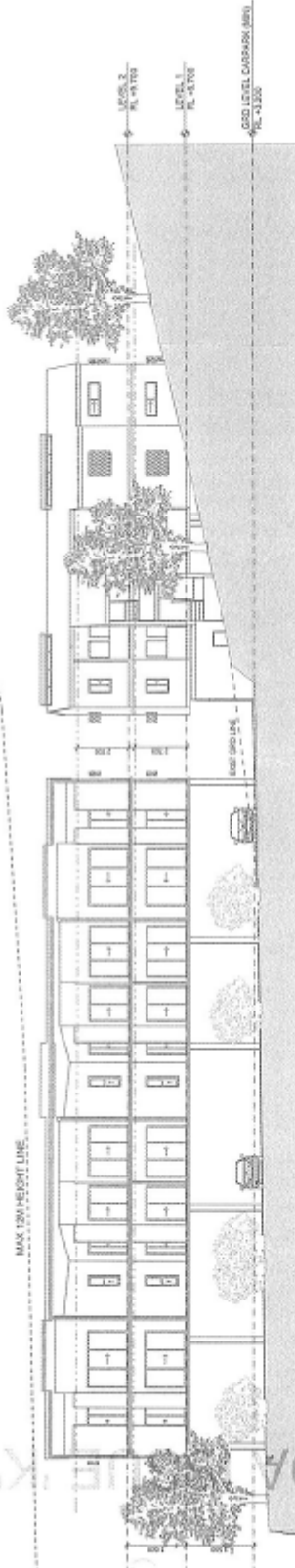


SOUTH EAST ELEVATION

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<p>Rocksee Pty Ltd</p>																								

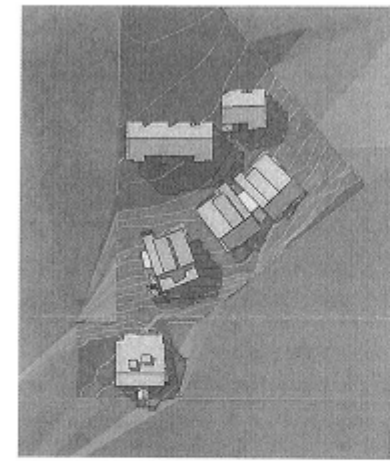


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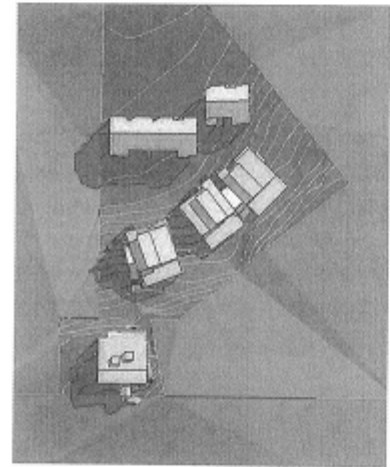


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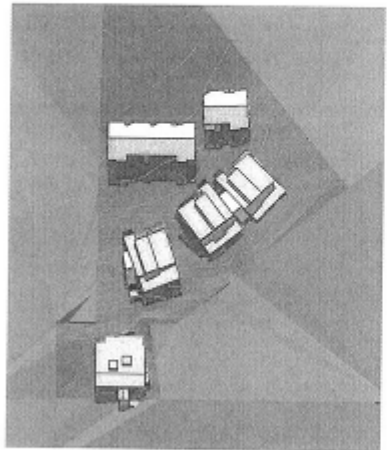
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<p>ALEX ENBORISOFF REGISTERED ARCHITECT AND INTERIOR DESIGNER NSW: 02 9341 7000 06 9341 7000 NSW: 0411 700 800 PH: 07 3832 1100 FX: 07 3832 1133 E-MAIL: alexenborisoff@alexenborisoff.com.au 110 DON 256, NORTHGATE VALLEY, 1525-1606</p>				<p>Rocksee Pty Ltd</p>
<p>DESIGNED BY THE ARCHITECTURAL WORKS ARCHITECTURAL WORKS PTY LTD CORPORATE OFFICE 87 ZADOK STREET DUNEDIN 9016 NEW ZEALAND</p>				



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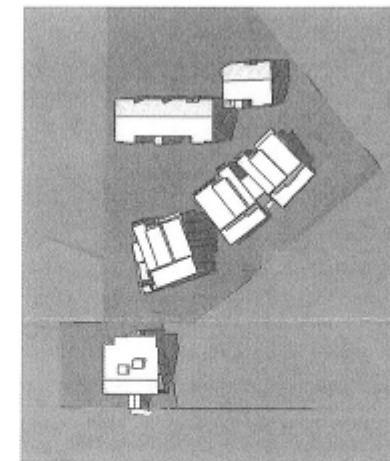


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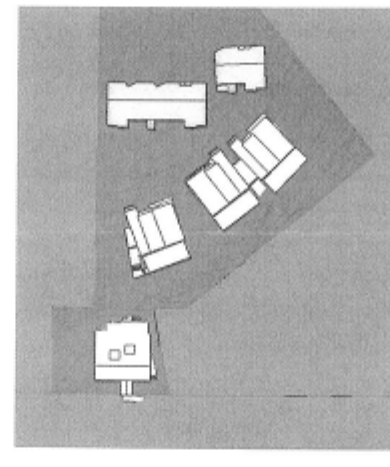


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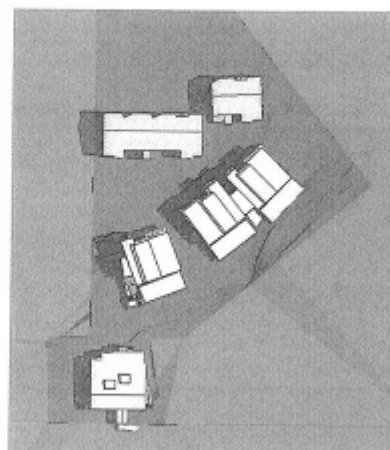
SHADOW DIAG'S. INDICATE NO MAJOR INTRUSION ONTO ADJ. SITES



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Alex Enbrisoff
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ALEX ENBRISOFF
 REGISTERED ARCHITECT
 MCB: 0411 700 800
 PM: 07 3832 1100
 PK: 07 3832 1133
 APPROVAL NO: 2881 DA 06J
 APPROVAL DATE: 07/02/09 15:24

SCALE: AS SHOWN
 DATE: 08/08/09
 DRAWN: OK

PROJECT:
 BANORA POINT

CLIENT:
 ROCKSEE PTY LTD

DATE:
 21 DEC 12 NOON

DRAWING:
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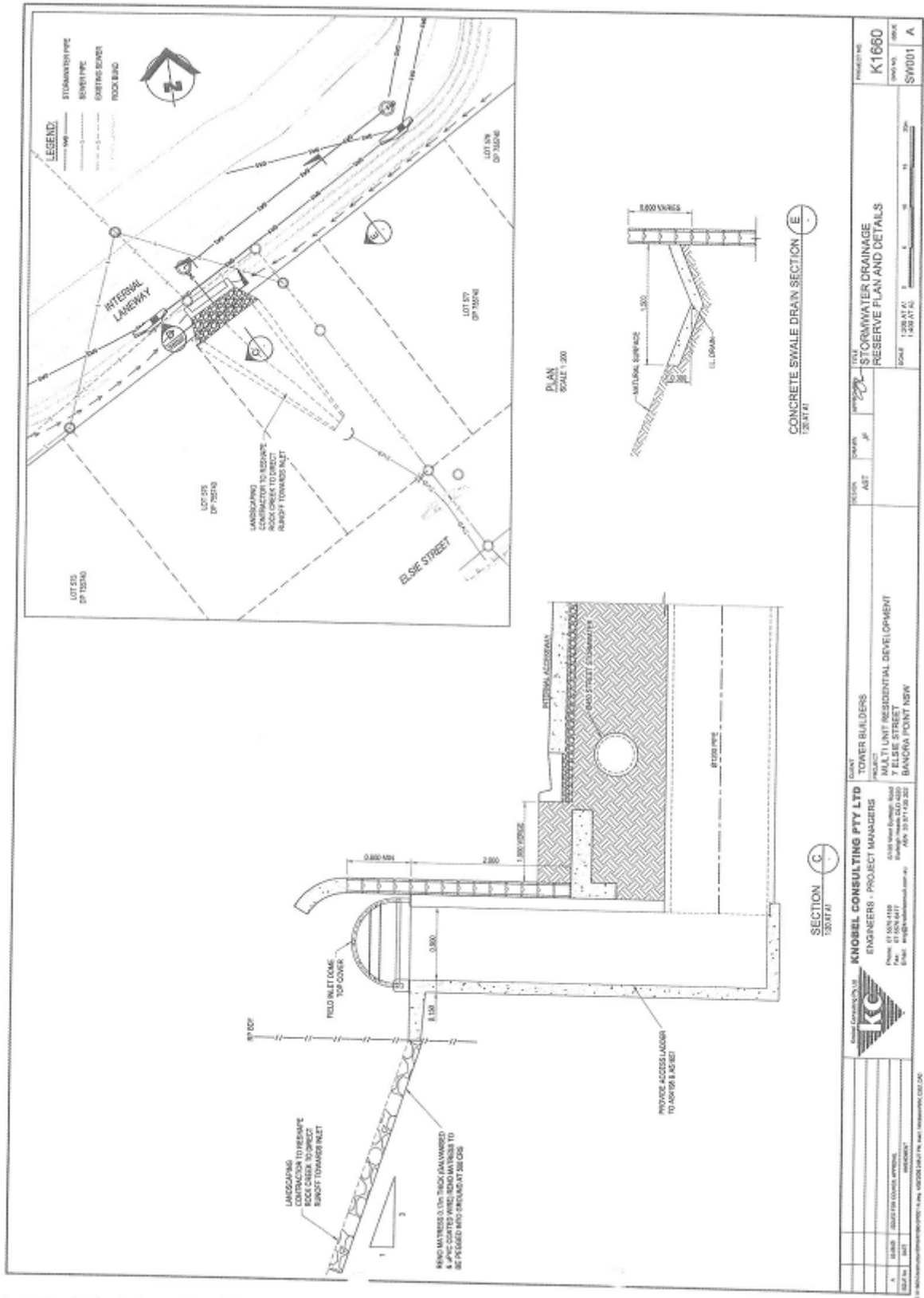
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 BANORA POINT
 NSW

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DRAWING:
 SHADOW DIAGRAMS

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		CLIENT TOWER BUILDERS PROJECT MULTI UNIT RESIDENTIAL DEVELOPMENT 7 ELSE STREET BANGORA POINT NSW	PROJECT NO K1660 SHEET NO SW001
ENGINEERS - PROJECT MANAGERS Project: 01 555 4119 Fax: 01 555 6417 Email: info@knobel.com.au Web: www.knobel.com.au	DESIGNER DRAWN BY CHECKED BY APPROVED BY	DATE SCALE 1:200 AT A1 1:500 AT A2 1:1000 AT A3	SHEET NO SW001

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

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is *“the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced”*.

Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire’s environmental and residential amenity qualities.

Council’s Strategic Plan 2004 – 2024 references effective control of new development and redevelopment as a key element of the Plan, with development controls being implemented ‘fairly and rigorously’ in order to minimise adverse impacts of development. The Plan notes that developers will be...‘*expected to adhere to planning controls as part of their contribution towards achieving more sustainable development*’.

The subject proposal results in a multi-dwelling residential development to form part of Banora Point. The original application has been amended which has resulted in an improved design and density which aims to provide a residential development that is in keeping with the character of the Tweed Shire. It is considered that the proposed development will have a positive effect upon the community and the Tweed Shire as a whole.

Clause 5 - Ecologically Sustainable Development

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

The proposal was forwarded on to Council’s ecologist/specialist planner for comment who has provided a number of Deferred Commencement conditions relating to the ecological integrity of the site. It is considered that these conditions will be consistent with the aims and the ecological sustainable development principles outlined within the plan

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.*

The subject proposal is unlikely to result in an unacceptable cumulative impact on the community, locality, catchment or Tweed Shire as a whole.

Clause 11 - Zone objectives

The subject land is zoned part 2(a) Low Density Residential and part 2(c) Urban Expansion under the Tweed LEP 2000. The 2(a) zone provides the following primary and secondary objectives:

Primary objectives

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

Secondary objectives

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

The proposed development complies with the primary objective for low density residential development being that the area in the 2(a) zone maintains a residential density of 1 dwelling per 450m². Although the proposed development does not appear as detached styled housing it is considered that it complies with the secondary objective being that it provides for a range of housing types.

The secondary objective allows for a variety of housing types, provided that the development achieves “good urban design outcomes”. The proposed development has been amended to reduce the density and provides for improved communal open space for residents and as such achieves a good urban design.

It is considered that the proposal complies with the 2(a) zone provisions. The 2(c) Urban Expansion zone provides the following primary and secondary objectives:

Primary objectives

- *to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.*

Secondary objectives

- *to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.*

Block C is contained within the 2(c) zone, the development originally provided for thirty three (33) units and the latest amended plans provided twelve (12) units. Therefore the proposed design has sought to ensure optimum utilisation of the site.

The applicant's response in relation to the objectives of the zone is supported in this instance. The site has been maximised and developed efficiently given the constraints affecting the site. This is demonstrated further throughout this report.

Clause 14 - Development near zone boundaries

Clause 14 relates to development near the boundaries of the 2(a) and 2(c) zone. The objective of the zone is:-

- *to provide flexibility where detailed investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site.*

It is considered that the proposal is consistent with the objectives of each of the zones. The design of the development shows compliance within each of the zones and is therefore recommended for approval.

Clause 15 - Essential Services

The subject site is within an existing residential area and there are existing services available to the site. Therefore the proposed development complies with this clause. Existing services may require relocation to accommodate the development. Accordingly, the proposal complies with the provisions of this clause.

Clause 16 - Height of Building

The clause states that the height and scale of the development is appropriate to its location, surrounding development and environmental characteristics of the land. The subject site has a three storey height limit.

A storey is defined under the Tweed Local Environmental Plan 2000 as:

- (a) the space between two floors, or
- (b) the space between a floor and any ceiling or roof immediately above it, or
- (c) foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between the finished ground level and the top of the floor immediately above them exceeds 1.5 metres in height. A storey which exceeds 4.5 metres for residential buildings is counted as two storeys. 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.

The amended plans submitted to Council on the 14 October 2008 were scaled at 1:100 at A1, however, only A3 plans were provided. Therefore the plans were not accurately provided to scale. Further the RL for the finished ground level do not provide the minimum finished ground level. However, based on the available information it would appear that building Block B and C did not comply with the three (3) storey limit.

As such it was requested that amended plans be provided to an appropriate scale which is to show compliance with the maximum height. Amended plans were received on 19 October 2009 showing compliance with the three storey height limit. All blocks now comply with the three storey limit and therefore complies with this clause.

Clause 17 - Social Impact Assessment

The subject proposal does not require a social impact assessment.

Clause 34 - Flooding

The objective of the clause is to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.

The proposed development was assessed by Council's flooding engineer who provided the following comments:

"The application generally complies with the flooding requirements."

The amended plans of Block C have resulted in the carpark being an open structure which is required to be above 2.6m AHD. The proposed development complies with this requirement. Therefore the proposed development satisfies this clause.

Clause 35 - Acid Sulfate Soils

A small portion of the site on the north western corner has been identified on Council's GIS mapping system as possessing Class 2 acid sulphate soils. No development or disturbance of soils will be carried out in that location of the site. Therefore this clause is not relevant to the proposed development.

Clause 39A - Bushfire protection

The objective is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets. The northern portion of the site is identified as bushfire prone land.

A bushfire report was sent to the local Rural Fire Service, in correspondence from the local Rural Fire Service it was advised that an adequate assessment of the proposed development could not be carried out as there was still outstanding information in regards to access and asset protection zones.

The applicant submitted the additional information to the Rural Fire Service on 28 June 2010. The Rural Fire Service responded in the form of a Letter dated 2 August 2010 with a number of conditions to be included in the recommendations. It is therefore considered that the proposal complies with the clause.

Clause 51A - Multi-dwelling housing densities in 2(a) zone

The objective of the clause is to control the density of multi-dwelling housing in Zone 2(a) Low Density zone. Multi-dwelling housing in the 2(a) zone is not to exceed one dwelling per 450 square metres of site area.

Amended plans reducing the density to one dwelling per 450m² for the land zoned 2(a) have been provided and therefore complies with this clause.

Clause 54 - Tree Preservation Order

The objectives of this clause are to enable the protection of vegetation for reasons of amenity or ecology. The northern portion of the site is covered by a Tree Preservation Order. The Statement of Environmental Effects did not fully address this clause. However, Council's ecologist/specialist planner has included a number of Deferred Commencement conditions relating to the ecological integrity of the site.

Therefore this clause has been satisfied and it is considered that appropriate measures can be taken to ensure compliance with this clause.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 43: Residential development

1. *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The North Coast Regional Environmental Plan states that Council shall not grant consent for residential purposes unless it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land.

As a multi-unit development which complies with the one dwelling per 450m² of 2(a) zoned land, the proposed density is considered to be a reasonable response to the land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, a sedimentation and erosion control plan will be enforced in relation to the construction.

The proposal is considered to be consistent with the relevant provision of Clause 43 of NCREP 1988.

SEPP No. 55 - Remediation of Land

State Environmental Planning Policy 55 provides a statewide planning approach to the remediation of contaminated land and promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 of the SEPP refers to the consideration of contamination in the determination of a development application, stating that:

1. *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated.*

A preliminary site contamination report was assessed by Council's Environmental Health Officer who provided the following comments:

"this report concludes that on the basis of site history information and soil testing for contaminants associated with banana cropping that the site is suitable for the proposed use".

Therefore the proposed development is considered to be compliant with SEPP 55.

SEPP No. 65 - Design Quality of Residential Flat Development

This Policy applies to a new residential flat building which is defined as:

- "(a) 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) 4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops)."*

The proposal is consistent with the definition of a residential flat building as it is three to four storeys in height.

The 10 design quality principles of the SEPP provides a guide to achieving good design and the means of evaluating the merit of a proposal. The application has provided a section 65 architect statement.

Context

The site is on the perimeter of existing residential locality which predominantly consists of single dwellings that are single or double storey dwellings. The dwellings are of a design from the 60 - 70's that are predominantly brick and tile construction. Recently houses in the locality have been renovated with rendering brick and provision of front balconies.

Block A is the only building visible from Elsie Street. The amended plan submitted provides a more domestic scale that is in keeping with the North Coast Design Guidelines. The built form has provided a good articulation and break up of materials to the building and is considered to be in keeping with the context of the surrounding locality.

Block B and C are not visible from the surrounding streetscape and therefore are not considered in regards to the context of the surrounding area. The proposed development therefore complies with this design requirement.

Scale

The scale of the surrounding locality is two storeys in height. Block A streetscape elevation appears two storeys in height and is in keeping with the scale of the surrounding locality. Upon entering the site, Block B1 and Block C appear as 3 storey development although it is considered that the slope of the land and the reduction in the density has reduced the scale of the original proposal and therefore complies with this design requirement.

Built Form

The amended design is an improvement on the built form from the original design, as Block A, B and Block C have been provided with articulation and variation of building materials and variation to the roof form. It is considered that the built form will be in keeping with the surrounding locality and therefore complies with this design requirement.

Density

The subject site is a large site of over 9000m² and therefore is capable of supporting a number of dwellings on the site. The applicant has reduced the density so the area of the proposal on 2(a) zoned land now complies with the provision of 1 dwelling per 450m². It is therefore considered that the proposal complies with the density requirement.

Landscaping

The submitted application has provided a plan of Landscape Intent. The plan was assessed by Council ecologist/specialist planner, who identified numerous weed species not to be included on the plan. Conditions have been included to remove these weed species and provide a Statement of Landscaping Intent to be submitted prior to the issue of construction certificate.

Amenity

The site has provided communal open space areas which have been improved with a pool and BBQ area. Footpaths are provided from every block to these communal areas.

It is considered that the separation of the blocks and the orientation towards the north where possible will increase the amenity for residents of the proposal. Therefore the proposal complies with the amenity requirement.

Safety and Security

The design criteria states that the visibility, functionality and safety of building entrances can be achieved by orientating the entrances to the public street.

The site slopes down from Elsie Street and therefore street frontage for the whole development is not achievable. However, the site layout promotes entryways visible from access road.

The amended plans have provided doors on the corridor and created a lobby walkway and windows on the corridor which is considered to improve safety and security on the site.

Therefore the proposed development complies with this design principle.

Aesthetics

The amended plans have significantly improved the external appearance of the building through the articulation of the built form and the variation in materials.

It is considered that with the improvements to the building design, the improved communal open space areas and landscaping have considerably increased the aesthetics and therefore complies with this provision.

SEPP No 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to satisfy the matters for consideration. Specifically it is considered that the type, bulk, scale and size of the proposed development is appropriate for the location. Further detail is provided later in this report which supports the argument that the proposed development is suitable for the subject site.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) aims to facilitate the effective delivery of infrastructure across the State. Clause 13 of the SEPP states that the consultation is required when the development is likely to generate traffic to an extent that will strain the capacity of the road system in a local government area.

The application was referred to Development Traffic Advisory Group (DTAG) who advised that the application should be referred to the RTA. The RTA responded that they had no concerns with the application provided a condition was included that noise attenuation measures are implemented into the design of the buildings.

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

The Tweed Local Environmental Plan 2010 is on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the R1 – General Residential Zone and R2 - Low Density Residential. Within the R1 and R2 zone a Multi-Dwelling unit is permitted with consent. It is therefore considered that the proposal complies with the intent of the Draft Tweed LEP 2010.

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

Tweed Development Control Plan

A1-Residential and Tourist Development Code

The subject application was submitted prior to the adoption of the current Tweed Development Control Plan which was adopted on 22 April 2008. Council resolved in the Planning Committee meeting of Tuesday 22 April that for applications that have been lodged prior to that date that have not yet been determined will be saved from strict compliance with the plan.

The subject application has been amended substantially to show compliance with the majority of the A1. The minor non-compliance areas are shown below. A full assessment against the A1 provisions is available on the file.

CHAPTER 2 - SITE AND BUILDING CONTROLS

DESIGN CONTROL 2 - Site Configuration

Landscaping

The applicant has not provided deep soil zone plans, however, this was not required as a part of the original application as it was submitted prior to DCP section A1 coming into force. However, it is considered that the condition requiring a Landscape Intent Plan being submitted with the removal of weed species is adequate for the development.

Impermeable Site Area

No information has been provided that there will be rainwater tanks on the site, however, a BASIX assessment has been complete and indicates that the proposal complies with water saving provisions.

A2-Site Access and Parking Code

The carparking requirements for multi-dwelling housing is 1.5 carparking spaces per 2 bedroom unit and 2 carparking spaces for 3 bedroom units, one space per four units for visitor parking.

The proposed development has twenty five (25) units of which thirteen (13) are three (3) bedroom units and twelve (12) are two (2) bedroom units

Block A has four (4) units that are three (3) bedroom and therefore requires eight (8) carparking spaces and one (1) visitor space. Block A has provided eight (8) carparking spaces and two (2) visitor spaces and therefore complies with this requirement.

Block B has nine (8) three (3) bedroom units and therefore requires sixteen (16) car parking spaces and therefore requires four (4) visitor spaces. Block B has provided eighteen (18) carparking spaces and three (3) visitor parking spaces and therefore satisfies the parking for Block B.

Block C has four thirteen (13) two (2) bedroom units, therefore requires twenty (20) spaces and four (4) visitor spaces. The proposed development provides twenty one (21) residential spaces and four (4) visitor parking spaces and therefore complies with this requirement.

The DCP requires the storage for two (2) bicycles spaces per unit and therefore needs to provide storage for 50 bicycles. The proposed development has provided adequate space at each building for the storage of bicycles.

Therefore the proposed development complies with the DCP.

A3-Development of Flood Liable Land

Section A3.3.3 Residential Development on Flood Liable Land in regards to development at Banora Point. The control states that all habitable areas of the residential buildings are to be at a level of not less than Council's adopted minimum floor level for development.

As mentioned above the application was assessed by Council's Flooding Engineer who found that the proposed development was generally compliant with the flooding controls. Therefore the proposed development complies with this development control plan.

Section A9 – Energy Smart Homes Policy

The proposal is consistent with Section A9 and the requirements of SEPP Building Sustainability Index: BASIX 2004.

A11 – Public Notification of Development Proposals

The development application was notified to surrounding properties for a period of two weeks closing on 31 October 2007. During this period there were eight (8) written submissions received. The issues raised by the submissions have been addressed later in this report.

B3-Banora Point West- Tweed Heads South

The site is partly located within the Banora Point West - Tweed Heads South DCP. The design philosophy for the DCP has five broad considerations as follows:

- (i) *The need to retain the current identities of both Banora Point West (living area) and Tweed Heads South (township/holiday area);*
- (ii) *The need to integrate the development whilst providing neighbourhoods of residential development and buffering possible incompatible land uses;*
- (iii) *The need to ensure that development is in harmony with the natural environment;*
- (iv) *The need to take into account constraints inhibiting development; and*
- (v) *To ensure that urban subdivision design has regard to slope, drainage patterns, geological hazards, landscape features; road hierarchy; open space networks and the provision of public facilities and services.*

The subject site is nominated as a Residential 'B' Area. In this area, multi-dwelling housing is expected to reach a density of 24 dwellings per hectare (the equivalent for townhouses). The proposed development reaches a density of 25 dwellings per 0.9215 hectares, which is a density slightly above that outlined in the DCP for the site. This is considered to be acceptable as it is only slightly above the density.

The current multi-dwelling housing proposal has a density that is similar to or greater than any of the previous integrated housing developments in the locality which are predominantly single storey detached dwellings. The developer has responded to a demand for secure independent housing from retirees and has incorporated two-storey housing where possible along the Elsie Street frontage.

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

Clause 92(a) Government Coastal Policy

Clause 92 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) prescribes additional matters that a consent authority must take into consideration in determining a development application and relates primarily to demolition and the NSW Coastal Policy 1997. No demolition is proposed, however, the subject application is located in the coastal zone and therefore the proposed development is required to be assessed in regards to the NSW Coastal Policy.

The NSW Coastal Policy 1997

The 1997 Coastal Policy is based on the four principles of ESD. These principles are the Conservation of biological diversity and ecological integrity, inter-generational equity, improved valuation, pricing and incentive mechanisms and the precautionary principle. These principles are included in the Tweed Local Environmental Plan clause 5 ecological sustainable development and therefore have been addressed above.

(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

Compatibility with Adjoining Land Uses

The surrounding development is predominantly single and double storey dwellings. The proposed development is for 25 units in three residential flat block buildings. It is considered that the subject site is large and capable of supporting medium density housing with the majority of the bulk of the buildings is located down slope and will not be visible from Elsie Street. It is therefore considered that the proposal is in keeping with the surrounding residential character, and compliant with the applicable DCP.

Privacy

Block A has balconies adjoining living areas that are overlooking the neighbouring property to the east. Privacy screens have been provided for that elevation of the building. As the subject site is a large site and slopes away from Elsie Street, it has provided a configuration that does not result in privacy impacts on the neighbouring property.

Bulk Scale & Design

The original application was for 46 residential units within three buildings in particular, Block C is over 60 metres long and three storeys in height and was not considered in keeping with the bulk and scale of good design principles of a residential flat building.

The amended plans improved the façade treatment of Block A & C, reduced the density on the site from 46 units to 34 units which included removed of level 3 of Block C.

The application was further amended and reduced the density from 34 units to 25 units. It is therefore considered that the bulk and scale of the development has been significantly improved and is a suitable development for the size of the site.

Stormwater

Council's Flooding Engineer has provided the following:

"The applicant has elected to provide a piped system to convey the Q100 external flows through the site, in accordance with (ii), rather than redesign the proposed buildings as per option (i). The stormwater consultant has calculated that a 1200mm pipe can accommodate these flows. In order to provide adequate inlet capacity, the internal road that separates the inlet from the adjacent habitable dwelling would need to be built 1.72m above invert level of the inlet structure. One way cross fall on the internal driveway away from the buildings will provide additional protection from stormwater flooding. No arrangement for this inlet system has been provided. It is considered that further design is required so that the adequacy of this inlet can be properly assessed, and the consequences of failure examined.

For the area between the proposed buildings, an overland flow path is to be constructed, to drain the gully area along the western boundary. Design of this drain has been provided, but no details of other cut and fill / regrading works in this area have been provided to demonstrate compliance with the DCP, as was requested."

An amended stormwater report was requested on numerous occasions which was submitted on 14 January 2010 and Council's Flooding Engineer provided Conditions of consent on 29 March 2010. It is therefore considered that the Stormwater issues have been rectified and are no longer an issue.

Noise

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

"A Revised Traffic Noise Impact report is to be prepared for submission to council prior to the issue of the Construction Certificate. Such Report shall consider any proposed Pacific Highway upgrading information and shall make recommendations relating to the provision of noise barriers and the like and/or any necessary building shell acoustic treatments required to achieve internal noise criteria.

The Report shall be prepared by an appropriately qualified and experienced acoustic consultant.

All recommendations as to barriers and building shell treatments as contained within the Report shall be implemented to the satisfaction of Council's General Manager or his Delegate.

Notwithstanding the above the following internal noise objectives for all habitable rooms under ventilated conditions shall as a minimum comply with the following:

*All habitable rooms other than sleeping rooms: 45 dB(A) Leq(15hr);
and
40 dB(A) Leq (9hr) and Sleeping rooms : 35 dB(A) Leq(9hr)."*

It is considered that an appropriate condition can be implemented to mitigate any noise issues.

Site Design and Internal Design

Originally, the proposed development was not considered to provide good urban design for the site layout and the internal design of the units. However, as a result of amended designs and a reduction in the density it was considered that the site and internal design improved significantly. Through the use of landscaping, providing usable communal open spaces and providing each unit with private open space, it is considered that the design of the proposal is suitable in the locality.

Cumulative Impacts

The subject application, in its current form will not result in a negative cumulative impact on the environment. The application has satisfactorily demonstrated how the stormwater will be managed, and deferred conditions have been included to protect the endangered ecological community. It is therefore considered that the proposal is suitable in the location.

(c) Suitability of the site for the development

Natural Hazards

The application as submitted has demonstrated that suitable mitigation measures for risks to the development from natural hazards. The site is bushfire prone land and as such was submitted to the Rural Fire. The RFS responded on 2 August 2010 with conditions. The site has significant stormwater issues, however, an amended stormwater report has been received by Council and as such was assessed by the Engineering section. Conditions have been included for the stormwater issues.

Therefore, it is considered that the application satisfies the risks of the natural hazards.

Flora and Fauna

Council's specialist planner/ecologist has reviewed the proposal and provided the following comments:

"The area contains significant vegetation of high conservation value that is classed as an Endangered Ecological Community (EEC) under the Threatened Species Conservation Act 1995.

The vegetation community is Lowland Rainforest on Floodplain which intergrades with Swamp Sclerophyll Forest. Both of these communities exist where the groundwater and surface water regime is suitable, and rely upon the current regime continuing unchanged.

The applicant has failed to demonstrate that the development will not impact directly or indirectly on the significant vegetation and habitat. A request (see below) for an aerial photograph with the development footprint (which includes any required asset protection zones, recreational areas and stormwater treatment devices) overlain has never been provided.

A site plan at a scale of 1:1000 or greater for the whole site clearly indicating:

- i. mapped extent of existing vegetation communities;*
- ii. final building design and locations;*
- iii. extent of asset protection zones;*
- iv. location of any stormwater treatment devices*
- v. the location of any trees identified for retention in the development application plans;*
- vi. location of grassed areas, boardwalk (if any), paved areas (if any) and stormwater infrastructure including swales and infiltration basins.*

The applicant has failed to demonstrate that the quantity, quality and velocity of surface water runoff can be maintained at or near current levels, a factor necessary for the long-term survival of the EEC."

Therefore given the lack of information in regards to the flora and fauna on the site, a deferred commencement condition has been included so it can be concluded with certainty that the proposed development will not impact on the EEC directly or indirectly.

The deferred commencement condition is based on the following understanding of the possible-likely and actual impacts of the proposed development on the local biodiversity and ecological values:

- *The proposed development will result in the ground surface across the site increasing in imperviousness, with stormwater moving faster toward the remnant of Lowland Rainforest on Floodplain at the bottom of the site. Council's flood engineer has advised that the measures are appropriate to allow for the natural flow to the area identified as an endangered ecological community.*

- *The Asset Protection Zones identified by the bushfire consultant in the latest amended report are 13.3 m to the north, 8 m to the east, 3 m to the west and 0 m to the south.*
- *There were Section 5A assessment of significance's undertaken for species and ecological communities considered relevant to the proposal.*
- *There was no tree survey provided that demonstrated exactly which trees or species would be removed.*
- *There were no specific details provided of the measures to be implemented to address impacts to trees and native vegetation being retained as a result of the proposal, particularly in relation to earthworks and retaining walls.*
- *The proposed landscaping plan remains inappropriate in species selection for biodiversity conservation, reducing bushfire risk and suitability to development sites. It also appears (from photos in the landscaping plan) that some of the landscaping will be in pots and it is not clear if these are part of the proposed plant densities in the landscaping plan.*
- *There was no Restoration Plan for the Lowland Rainforest on Floodplain provided with the application or additional information, despite this being a requirement of Council.*

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

Roads and Traffic Authority

The application was referred to Development Traffic Advisory Group (DTAG) as required under the provisions of SEPP (Infrastructure) 2007. DTAG stated that the application should be referred to the Roads and Traffic Authority of NSW.

The RTA provided the following comments:

“The Roads and Traffic Authority (RTA) has no objection to the proposed Multi Dwelling housing providing the noise requirements stated below are incorporated into the approval. The proposed development is located in the vicinity of and could be affected by traffic noise from the existing Pacific Highway”.

The comments were reviewed by Council Environmental Health Officer, who has provided an appropriate condition of consent will be added.

Local Rural Fire Service

The application required referral to the RFS under section 100B of Rural Fires Act 1997. The RFS requested further information from the applicant which was received on 28 June 2010. The Rural Fire Service responded in the form of a Letter dated 2 August 2010 with a number of conditions to be included in the recommendations. It is therefore considered that the proposal complies with the clause.

(e) Public interest

The proposed development was advertised for fourteen (14) days from Wednesday 17 October to Wednesday 31 October 2007. Eight submissions were received. The issues raised in the submissions are addressed in the following table.

ISSUE	COMMENT
Concern with the current street layout ability to handle an increase in traffic during construction and on completion of the development	The application was referred to Development Traffic Advisory Group (DTAG) on 15 November 2007. The committee had no concerns with the subject application in regards to traffic numbers of the area. DTAG had advised a condition regarding the resealing of Elsie Street if the application be approved.
The proposed development will result in increase in younger people who will increase the noise in the locality.	The proposed development is considered to result in general residential noise and therefore is not considered to be an excessive noise generation. The demographic that the proposed development will attract, is not an issue for consideration. Council is only concerned that diversity in housing is created to provide for the variety of the community's needs.
Increase in offstreet parking being generated from the development.	The proposed development complies with the parking requirement for residents and visitors under the Tweed Development Control Plan Section A2 and therefore this is not considered to result in an increase in off street parking in the area.
Increase in noise generated from increased use of the garbage service	The increase in noise from the servicing for garbage disposal is not considered an excessive noise incompatible with residential locality. Therefore, this is not considered an issue for refusal for the proposed development.
Concern for tree clearing and impact on wildlife	A number of deferred commencement conditions have been included to ensure the Endangered Ecological Community will be protected and therefore this is not considered an issue for refusal of the development.

<p>Concern the proposed development will block views</p>	<p>The proposed development slopes down significantly from Elsie Street, only Block A is visible from the street and this building appears as two storeys from the street. The views from the dwelling across the street therefore will not be affected by the proposed development.</p>
<p>Concerned the reflection of the roofs if zincalume, or a tiled roof would be an eyesore.</p>	<p>The original and amended plans have predominantly been for flat roof design that would not impact on neighbouring properties views, the amended design has dark roof and therefore would not result in a reflection to surrounding properties.</p>
<p>The proposed development will devalue property prices and make the property unliveable.</p>	<p>The impact of the development on property prices is not a matter for consideration under section 79C of the Environmental Planning and Assessment Act 1979.</p>
<p>Large stormwater flow over the site</p>	<p>Council's Engineers have assessed the stormwater issues and have indicated that the stormwater flow will be adequately dispersed over the low lying area to the north of the subject site.</p>
<p>Out of character with the area</p>	<p>The locality of Elsie Street is predominantly low density residential housing, consisting of single dwelling houses.</p> <p>Block A is the only building visible from Elsie Street, this building is only two storeys in height from the street elevation and therefore this building alone is considered in keeping with the scale and built form of the dwellings in the locality.</p> <p>The density for the development has been reduced to comply with the one dwelling per 450m² density as set out in Tweed Local Environmental Plan 2000. As such it is considered that this submission does not warrant refusal of the proposal.</p>
<p>Concerned with the line of sight in both directions when accessing the site.</p>	<p>The application was referred to Development Traffic Advisory Group (DTAG) on 15 November 2007. The committee had no concerns with the subject application in regards to line of sight into and out of the development site.</p>

The proposed development raised a significant number of objections. While a number of the issues are not issues that Council can consider under s79C matters for consideration. Whilst the issues that can be addressed have been conditioned so that the proposed development does not significantly affect the public interest. As such it is considered that the proposed development be approved with conditions.

OPTIONS:

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application, with reasoning

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

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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12 [PR-CM] Development Application DA09/0594 for a Change of Use from Dwellings to a Group Home and Internal Alterations at Lot 5 DP 621935, No. 91 Burringbar Road, Burringbar

ORIGIN:

Development Assessment

FILE NO: DA09/0594 Pt1

SUMMARY OF REPORT:

An application was originally lodged for minor additions and alterations (bathroom and laundry) to an existing dual occupancy dwelling. However, after an investigation into the proposed development it was apparent that the proposal included a change of use to a group home and a number of buildings that do not have Development Consent outlined below. The applicant provided correspondence confirming the change of use on 13 October 2009 and 20 October 2009.

The development site contains: a main residence; a dual occupancy dwelling approved under Development Consent D88/0802; a garage approved under Development Consent D82/0497, that appears to have been converted to a self-contained unit of accommodation without a Development Consent; a storage shed that was originally dairy bales and renovated to a self contained unit of accommodation without Development Consent; a shed and a laundry building that also do not have Development Consent.

The applicants have established a group home permanent residence for 4 residents with physical or intellectual disabilities that provides 24 hour staff supervision to the occupants. The group home was established in February 2009. This application seeks the regularisation of the existing structures and the use of the buildings as a group home. The report suggests a number of options for regularising the unlawful works as well as managing the issues raised by submitters via appropriate conditions. This report highlights the issues raised by the proposed development and provides reasons for the recommendation of approval for the proposed change of use.

RECOMMENDATION:

That Development Application DA09/0594 for a change of use from dwellings to a group home and internal alterations at Lot 5 DP 621935 No. 91 Burringbar Road, Burringbar be approved subject to the following conditions:

GENERAL

- 1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan No 683 Sheet 1 of 3 (Site Plan) prepared by Outpost Design and Drafting Service and dated July 2009, 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. **A maximum of 4 residents shall occupy the group home on the site known as 91 Burringbar Road, unless otherwise approved by the General Manager or his delegate.**
4. **The building known as the 'Dairy Bales' as labelled on Plan No 683 Sheet 1 (Site Plan) shall be decommissioned in accordance with details to be approved by the General Manager or his delegate. The details shall incorporate the removal of the kitchen sink and associated plumbing, the removal of the internal laundry and associated plumbing and shall provide an amended plan of the building illustrating a revised floor plan. The building known as the 'Dairy Bales' shall thereafter not be used for permanent residential purposes.**
5. **If the use of the site as a group home facility ceases to continue, the building known as the 'Studio/Garage' on Plan No 683 Sheet 1 (Site Plan) shall be decommissioned in accordance with details to be approved by the General Manager or his delegate. The details shall incorporate the removal of the kitchen sink and associated plumbing, and shall provide an amended plan of the building illustrating revised floor plans. .**
6. **The residents of the approved group home are to permanently reside in the main dwelling house and the dual occupancy dwelling/granny flat only. No other buildings within the site are to be used for permanent residential habitation.**
7. **One member of staff is to be present on the site at all times.**
8. **There shall be no clearance of vegetation on the site, unless otherwise permitted by the General Manager or his delegate.**
9. **The building known as the 'Storage Shed' on Plan No 683 Sheet 1 (Site Plan) shall be used for storage purposes only.**
10. **A Building Certificate application shall be submitted for all of the unauthorised building works on the site within 30 days of the date of this consent.**
11. **A Plan is to be submitted to the General Manager or his delegate officer for approval indicating the vegetation to be removed and retained in accordance with the General Terms of Approval from the Rural Fire Service. The plan is to be submitted within 30 days of the date of this consent.**
12. **The applicant is requested to provide a statutory declaration from a person with suitable detailed personal historical knowledge of uses and activities conducted on the land within six months of the date of this decision. The statement should confirm the occurrence or otherwise of potentially contaminating activities and storage, decanting and mixing of chemicals. In the absence of such a statement a preliminary contaminated lands assessment should be completed in accordance with relevant NSW EPA Guidelines.**

13. A detailed Flood Response Assessment Plan is to be submitted to and approved by the General Manager or his delegate officer within six months of the date of this decision. The plan submitted shall have prior approval of the State Emergency Service.
14. A detailed Management Plan including methods of managing operations and safety measures is to be submitted to and approved by the General Manager or his delegate within six months of the date of this decision. The Management Plan shall address complaint handling procedure, incident reporting, daily management of safety risk, monitoring and emergency support for staff.

[GENNS03]

PRIOR TO COMMENCEMENT OF WORK

15. The erection of a building works relating to the bathroom refit and removal of existing laundry 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]

16. 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]

17. 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]

DURING CONSTRUCTION

18. 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]

19. 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]

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. 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]

22. 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]

23. 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]

24. House drainage lines affected by the proposal are to be relocated to Council's satisfaction. Prior to the relocation of any plumbing and drainage lines, a plumbing permit and the relevant plumbing permit fee is to be submitted to Council. Inspection of drainage works prior to covering is required

[DUR2565]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

25. 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]

26. 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

27. 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]

28. 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]

29. 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]

30. Any premises used for the storage, preparation or sale of food are to comply with the *Food Act 2003*, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises and other requirements of Councils Environmental health Officer included in this approval.

[USE0835]

31. Adequate natural or mechanical ventilation must be provided to the satisfaction of the General Manager or his delegate.

[USE0865]

32. The premises shall be maintained in a clean and tidy manner.

[USE0965]

33. The premises must be provided with facilities that are adequate for the purpose of keeping towels, appliances, utensils and the like clean.

[USE1005]

34. Suitable receptacles with close fitting lids must be provided and maintained in a clean and serviceable condition for soiled towels and trade wastes.

[USE1015]

35. Bedding and flooring is to be provided to each guest room, which are regularly cleaned and maintained so as not to provide harbourage for vermin of any description.

[USENS01]

36. Each guest room shall be provided with flyscreening to at least one openable window.

[USENS02]

37. Any refrigerator utilised for the storage of food for guests shall maintain food at below 5 degree Celsius.

[USENS03]

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

- 1. At the commencement of the change of use and in perpetuity the property around all existing dwellings to a distance of 30 metres or to the property boundary, 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'.**
- 2. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'planning for bush fire protection 2006.'**
- 3. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'planning for bush fire protection 2006'.**
- 4. The existing dwellings are required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes any sub floor areas, openable windows, doors, vents, weepholes and eaves.**

REPORT:

Applicant: Accommodation Network Pty Ltd
Owner: Accommodation Network Pty Ltd
Location: Lot 5 DP 621935 No. 91 Burringbar Road, Burringbar
Zoning: 1(a) Rural
Cost: \$40,000

BACKGROUND:

The subject site

The subject site is legally known as Lot 5 DP 621935 and is more commonly known as 91 Burringbar Road. The site has an area of 0.7 hectares and contains an existing residential building, a dual-occupancy dwelling and a number of out buildings and car parking area. To the north of the site is the Burringbar Road and rail line; to the east is an adjacent block of land with a number of buildings and livestock; to the west is a rural block located across a small creek tributary of Burringbar Creek; and to the south Burringbar Creek and rural pastureland.

The site is located on designated flood land within 40 metres of Burringbar Creek. Vehicular access to the site is provided by way of an existing bitumen driveway from Burringbar Road. Aerial imagery indicates that the site is heavily vegetated to the southern section adjacent to Burringbar Creek although it is evident that part of the site has been cleared of vegetation.

The proposed development

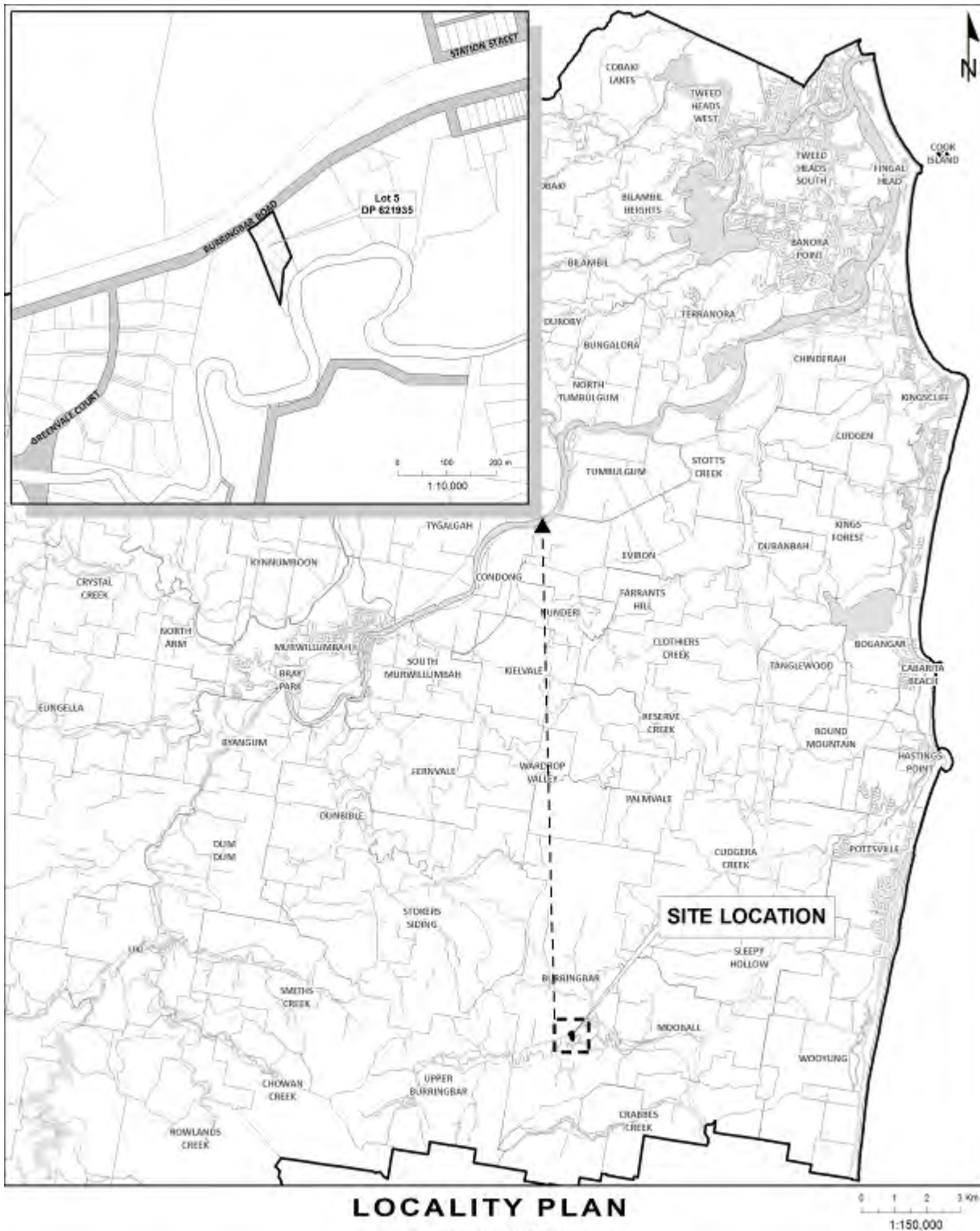
The applicant has advised that the property was purchased to provide an appropriate environment for people with Intellectual Disability living in a group model. The site has been used as a group home since February 2009. The residents have time together or time apart. Most meals are prepared at the main house with staff supervision. Staff are on-site 24 hours on a rotation basis, with one staff supporting residents during the night and one staff member available during the day.

The applicant clarified that the use is not a respite care but is a permanent home for four people who require supported assistance with daily living. The use includes use of a shed at the rear of the property which is used for craft or a BBQ area. The studio/garage has been renovated as a place for residents to meet and for staff toilets. There is a small kitchen area with sink and refrigerator and a bench and chairs. Connected to the studio/garage is a laundry building that has been constructed over the septic tank servicing the main dwelling. The site also includes old dairy bales including a full kitchen, bathroom, laundry and one bedroom. The applicant advises that this shed is not used as a permanent living accommodation however site assessment indicated that the unit may be presently utilised as living quarters. The applicant advises that the additional shed is used for storage purposes only with a roof area to the side to accommodate a vehicle utilised by staff.

A second dwelling was approved on the site and is built in accordance with the approved plans with the following exceptions: the approved plan illustrates the dual occupancy is attached to the main residence by a covered walkway however the building is separated from the main residence by approximately 10 metres; there is a carport to the western side of the building not indicated on the approved plans. The applicant advises that building is used by one resident to increase his independent living skills and meal preparation. The kitchen is not used in the second dwelling. All washing is undertaken in the common laundry at the rear of the garage.

Limited floor plans and elevations were provided and there is no information relating to boundary treatment of the site. Furthermore, limited information was provided relating to the suitability of the buildings for their proposed uses or details relating to incident reporting and safety following reported incidents involving residents of the group home in the local community. The applicant has clarified that the reported disturbances occurred when the group home was first established and there have been no reports of recent disturbances. Furthermore, the applicants have advised that the residents are now integrating with the local community. A detailed Management Plan relating to a suitable complaints strategy, incident reporting, police and emergency services liaison, safety risk and monitoring will be requested in order to alleviate concerns in the surrounding community relating to safety.

SITE DIAGRAM:



LOCALITY PLAN

Lot 5 DP 621935
No.91 Burringbar Road, Burringbar

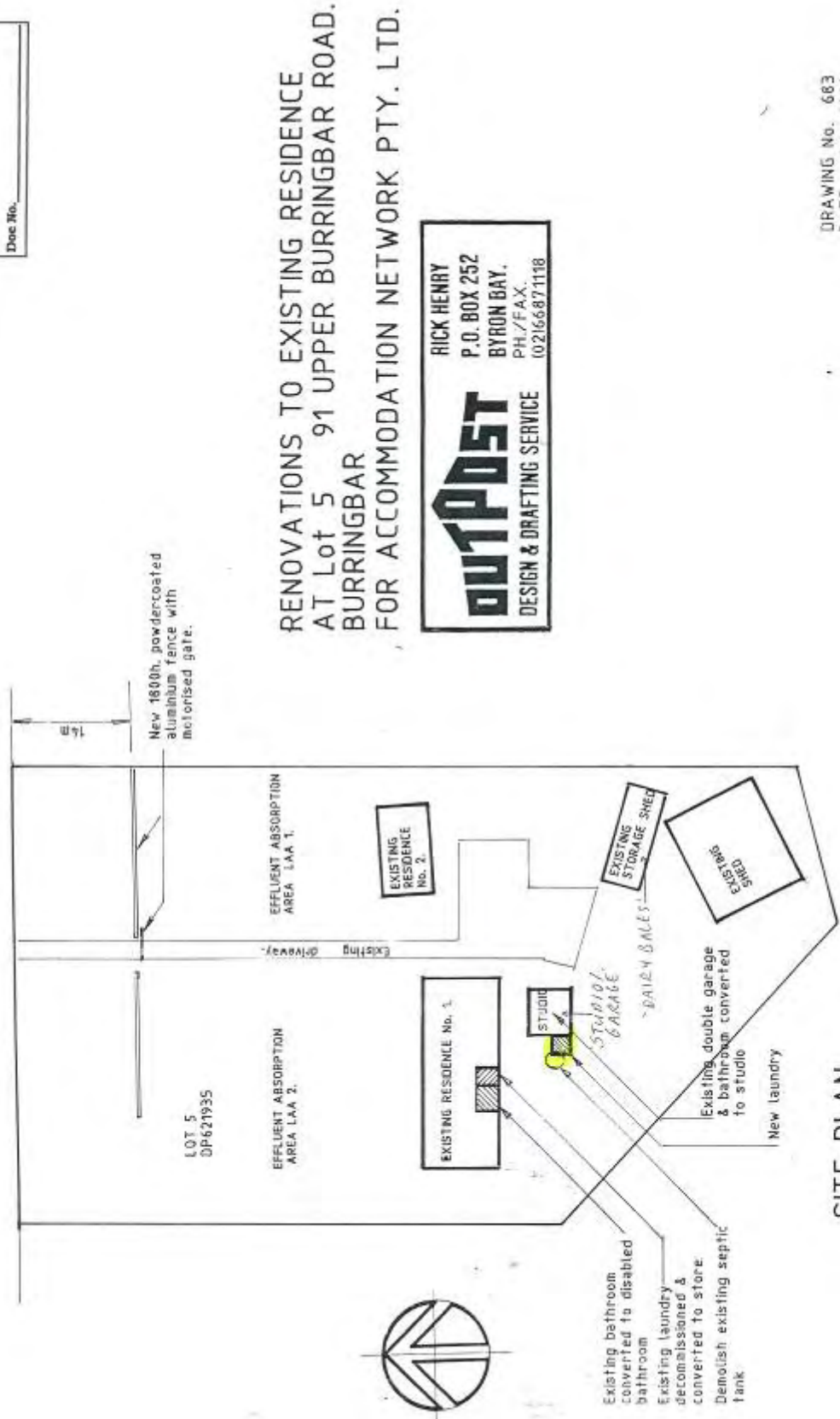
<p>Filename: z:\asr\planning\mxd\A4P_B&W_SitePlan.mxd</p> <p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and declares all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way, oral or in writing. This information is supplied for the general guidance and to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavation a "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Author: J.Batchelor - Planning Reform Unit</p> <p>Cadastre: 05 August, 2010 © Dept. of Lands & Tweed Shire Council</p> <p>Coastal rate System - IGA Zone 54 Datum - GDA 94</p> <p>DO NOT SCALE COPY ONLY - NOT CERTIFIED</p>	<p>Date Printed: 05 August, 2010</p> <p>Civic and Cultural Centre 3 Tambourine Road Murrumbidgee NSW 2484</p> <p>PO Box 816 Murrumbidgee NSW 2484</p> <p>T: (02) 8670 2400 / 1300 202 872 F: (02) 8670 2403 W: www.tweed.nsw.gov.au E: planningreform@tweed.nsw.gov.au</p>
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DEVELOPMENT PLAN:

TWEED SHIRE COUNCIL	
File No.	
Doc No.	

UPPER BURRINGBAR ROAD.



**RENOVATIONS TO EXISTING RESIDENCE
AT Lot 5 91 UPPER BURRINGBAR ROAD,
BURRINGBAR
FOR ACCOMMODATION NETWORK PTY. LTD.**

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DRAWING No. 663
DATE, July 2009
SHEET 1 of 3.

SITE PLAN

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

Unauthorised building works and activity

This application seeks the regularisation of the existing buildings that do not have Development Consent or a Construction Certificate. The applicants have advised that the use of the main residence is for the four individuals who permanently reside there. The second dual occupancy dwelling is used by one resident. The applicant advises that the former dairy bales are not used for permanent residential habitation but the internal renovation to form a fully independent self contained unit suggests otherwise. This is reinforced by the level of separation from the main residence. The applicant advises that the studio/garage is not used as a self-contained unit but for recreational use; given that the building does not have a fully functioning kitchen and is relatively small scale this is considered feasible.

The options for the regularisation of the unauthorised building works are as follows:

1. To require the decommissioning of the former dairy bales via the removal of the kitchen sink, laundry and plumbing and to ensure an appropriate condition to ensure the building is not used as a dwelling and/or to ensure an appropriate condition to ensure that the studio/garage is not used as a dwelling.
2. To allow the existing use to remain despite the lack of approval.
3. To issue a planning infringement notice (PIN) or to pursue legal action for unauthorised development.

It is arguable that the applicants bought the site in good faith and are operating a charitable community service that is needed. On this basis it is considered reasonable not to pursue a compliance notice for unauthorised building works. The storage shed is set back in the lot and relatively obscured from public vantage points. It is considered that the storage shed is acceptable in planning terms provided a suitable condition to ensure it remains only for storage purposes.

However, there is a concern that the buildings known as the dairy bales and studio/garage structures will be used for permanent residential occupancy which would be unlawful given the site already has approval for a main residence and a dual occupancy dwelling. It is therefore recommended that option 1, as detailed above, for the decommissioning of the former dairy bales building and to ensure both the dairy bale shed and the studio/garage are not used for permanent residential occupancy is enforced. Detailed amended floor plans will be requested via condition and shall indicate alternative internal layout of the dairy bales.

Furthermore, it appears that vegetation clearing has taken place within the site, particularly adjacent the creek. A penalty for the clearance of the vegetation is not recommended given the difficulties in establishing the extent of the unlawful works and the charitable nature of the development proposal. Council's Ecologist has suggested a number of conditions to ensure the Asset Protection Zone for bushfire is not compromised and to prevent erosion of the creek banks and sedimentation of the waterway. Providing a condition to ensure no further clearance of vegetation on the site without the appropriate consent, it is considered such measures are adequate.

The unlawful structures will require a Building Certificate to ensure their structural integrity.

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

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

The site is located in a 1(a) Rural Zone. The primary objective of this zone is:

“To protect identified prime agricultural land from fragmentation and the economic pressure of competing land use.”

The secondary objective:

“To allow other development that is compatible with agricultural activities.”

The development does not propose a loss of agricultural land or a subdivision of the allotment. Whilst there is no specific category for group homes the development may be considered as ‘housing for people with disabilities’. With regard to Item 3 of the LEP such development is allowed only with consent in the 1(a) zone providing it satisfies clause 8(2) of the LEP. Whilst the proposal meets an ‘identified urgent community need’, as detailed in clause 8(2) (a), the development fails to satisfy Items (b), (c) and (d) of the LEP. On this basis Council Officers are not satisfied that the development is consistent with the primary objective of the 1(a) zone.

The proposed change of use is not categorised as a rural land use however the SEPP (Affordable Rental Housing) 2009 takes precedence over the LEP in its encouragement of group homes on low density, rural land.

Clause 15 - Essential Services

The primary objective is to ensure that development does not occur without adequate measures to protect the environment and the community’s health.

The property is serviced by reticulated water. The application has been supported by an On-site Sewage Management Design Report (HMC Environmental Consulting Pty Ltd; May 2009). This report details the decommissioning of the existing wastewater primary treatment system and provides a recommended effluent application area and design for on-site sewer. Council's Environmental Health Officer (EHO) has assessed the proposed system and considers it to be sufficient. On this basis the development accords with Clause 15.

Clause 16 - Height of Building

No additional buildings are proposed – this Clause is not applicable.

Clause 17 - Social Impact Assessment

The objective is to ensure proper consideration of development that may have a significant social or economic impact.

A social impact assessment is not required for the proposed use given its relatively small scale in nature. Notwithstanding, it is recognised that the proposed group home provides a community service and meets a social need and therefore meets the objective of Clause 17.

Clause 35 - Acid Sulfate Soils

The site is not subject to Acid Sulfate Soils – this Clause is not applicable.

Other Specific Clauses

Clause 34 – Flooding

The objectives are to minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land; and to minimise the adverse effect of flooding on the community.

The LEP continues to state that: *in the consent authority's opinion, land is likely to be subject to flooding, then it must not grant consent to development on that land unless it has considered:*

(a) the extent and nature of the flooding hazard affecting the land,

The site is designated as being affected by the probable maximum flood (PMF) level with a small area of the southern section site adjacent to the creek affected by the 1 in 100 year flood level of 21.7 metres. There is suitable access from PMF affected areas to land above the PMF level to the north of the site.

(b) whether or not the development would increase the risk or severity of flooding of other land in the vicinity

A relatively small proportion of the site is covered in impermeable surfaces, such as buildings or hardstanding. Provided a condition to ensure no further vegetation clearance, that may otherwise reduce the ability of the site to absorb and store water, it is considered that the proposal will not result in risk or severity of increased flooding to surrounding land.

(c) *whether the risk or severity of flooding affecting the development could be reasonably mitigated,*

The principle of residential occupation on the site has already been accepted under the previous Development Consents. Provided that the additional buildings on the site are not used for residential use on a permanent basis it is considered that the proposal will not cause any further unacceptable risk. As the buildings have already been constructed it is not considered necessary to condition flood proofing materials. Once again, provided a condition to ensure no further vegetation clearance it is considered that the development reasonably mitigates the risk and severity of flooding.

(d) *the impact of the development on emergency services,*

The site is located in close proximity to the Old Pacific Highway that is located above the PMF level and therefore provides an adequate means of escape from the site and refuge. It is considered that with a condition to ensure that there are no more than 5 permanent residents of the group home, the proposal will not result in any impact to emergency services than would otherwise occur given the residential use of the site.

(e) *the provisions of Section A3 – Development of Flood Liable Land of Tweed DCP*

Under the provisos of Section A3 of the DCP the development is considered sensitive 'new development' that requires permanent high level road evacuation route to land above PMF level/and or adequate PMF refuge, subject to recommendations of an acceptable Flood Response Assessment Plan. The Old Pacific Highway to the north of the site is outside of the designated PMF area and provided a FRAP is conditioned the proposal accords with Clause 34.

Clause 39 – Remediation of Contaminated Land

The objective is to ensure that contaminated land is adequately remediated prior to development occurring.

Limited information was provided in relation to contaminated land and further information was requested in this regard. No indication of contaminating activities was evident from historical aerial photos, which show a residential structure on the property since 1962. A 'Stage 1 Preliminary Environmental Site Assessment' was prepared by EBG Environmental Geoscience (April 2010) and submitted in response to the Council information request. The report concludes that the site is suitable for the proposed use and Council's Environmental Health Officer is satisfied that no further information is required.

Clause 39A – Bushfire

The objective is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological assets and environmental assets.

The subject site is bushfire prone and required referral to the Rural Fire Service (RFS). RFS reviewed the proposal and provided conditions for inclusion in the consent. Conditions require that an inner asset protection zone is provided around all existing dwellings to a distance of 30 metres or to the property boundary. Clearing works would be required in this regard. (Refer discussion below on Flora and Fauna). On this basis and provided suitable conditions the development complies with Clause 39A.

State Environmental Planning Policies

SEPP (Affordable Rental Housing) 2009

The proposed development is defined as a permanent group home with regard to Clause 42 of the SEPP. Under Clause 42 such development is allowed in either a prescribed zone, or in

any other zone in which development for the purpose of dwellings, dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.

On this basis the development is considered to accord with Clause 42 of the SEPP as the site has an existing residential use with an approved main residence and dual occupancy.

Clause 43 relates to development in prescribed zones and states:

- 1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:
 - a) without consent if the development does not result in 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or
 - (b) with consent in any other case..

On this basis as the development is not being carried out by a public authority it requires development consent.

Clause 46 of the SEPP states that in the determination of development applications:

- (1) *A consent authority must not:*
 - a) *refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or*
 - b) *impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.*
- (2) *This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.*

It is acknowledged that there is an established requirement for a group home within the locality of Tweed Shire. On this basis the proposal for a group home cannot be refused.

The aims of the policy are as follows:

- (a) *to provide a consistent planning regime for the provision of affordable rental housing,*

SEPP (ARH) 2009 encourages approval for proposals for group homes to which planning bodies should pay due attention to in the consideration of development applications.

- (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*

The site is located in a rural 1(a) zone and on this basis such development would not normally be permissible. SEPP (ARH) 2009 encourages group homes in zones that would not otherwise have been permissible.

- (c) *to facilitate the retention and mitigate the loss of existing affordable rental housing,*

Should the group home use of the site be abandoned and its use ceases, an appropriate condition ensuring the decommissioning and removal of the buildings will be enforced to ensure that the buildings do not become market value dwelling houses in a location that would otherwise not be permitted.

- (d) *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*

The proposal seeks the regularisation of a current use of the site as a group home. The proposal is considered to accord with the policies set out in SEPP (ARH) 2009 and provided conditions to ensure that should the use of the site as a group home cease the buildings (other than the dual-occupancy and main residence) will no longer be used for habitable purposes.

- (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*

The development proposes a community facility that is lacking in the local area and recognised by State Government as in strong demand.

- (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*

Not applicable as the residents of the group home are not in full time employment.

- (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

The proposal facilitates the development of housing for disadvantaged people who require support services and 24 hour care.

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12 – Impact of development on agricultural activities

Clause 12 states:

‘The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land’.

The application site is not used for agricultural purposes and will not result in the subdivision of rural land. There are existing structures on the site to which this development proposal relates. On this basis the development is not considered to contravene the intentions of Clause 12 of the NCEP 1988.

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

The Draft LEP proposes alterations to land use and permissibility of development in rural zones. The objectives of the zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate to the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The proposal does not result in the loss or fragmentation of agricultural land or industry. The proposal does not seek the construction of additional buildings and proposes permanent residential accommodation solely within those dwellings that have been granted Development Consent for such a purpose. The Draft LEP does not make reference to group homes as being permitted with consent however the policies and principles contained within SEPP (Affordable Rental Housing) 2009 override the objectives of the Draft LEP.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

No alterations are proposed to existing access of parking arrangements. The site adequately provides parking facilities for staff and the applicants have advised that the residents of the site do not require parking facilities.

A3-Development of Flood Liable Land

As previously detailed within Clause 34 of the LEP, the site is designated as being affected by the probable maximum flood (PMF) level, with a small area to the southern section of the site being affected by the 1 in 100 year flood inundation level of 21.7 metres. Under the provisos of Section A3 of the DCP the development is considered sensitive 'new development' that requires permanent high level road evacuation route to land above PMF level/and or adequate PMF refuge, subject to recommendations of an acceptable Flood Response Assessment Plan. The Old Pacific Highway to the north of the site is outside of the designated PMF area and provided a FRAP is conditioned the proposal accords with Section A3 of the DCP.

A11-Public Notification of Development Proposals

A number of neighbouring residential dwellings were notified of the Development Application via letter dated 8 December 2009. Two submissions were received as a result of the notification process, the contents of which shall be considered later in this report.

A13-Socio-Economic Impact Assessment

The development proposes a community facility that is in vital need in this locality and in the State of NSW as a whole, as stipulated in SEPP (Affordable Rental Housing) 2009. The proposal will not result in a significant number of permanent employment positions and is not considered to impact significantly on the economy of Tweed Shire.

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

There are no other matters relevant to the application as 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

Context and Setting

The proposal relates to existing buildings that have been converted to form residential purposes within the site. The out buildings are single storey and relatively in keeping with the existing main residence and dual occupancy dwelling on the site. The buildings are set back from the main road and relatively well screened by mature trees and vegetation. The site is surrounded by high wire fencing with an electronic security gate adjacent to the Old Pacific Highway. Whilst the site is a secure compound, it does not have the appearance of a high-security development due to the level of vegetation that screens the site and remains residential in character. A condition to ensure that should the use of the site as a group home cease, the buildings are to be removed and the land returned to its former condition, will prohibit any long term impact to the context or setting of the surrounding rural area in terms of unnecessary proliferation of buildings in the open countryside.

Access, Transport and Traffic

As detailed within this report, the site does not propose any alterations to the existing access arrangement and has adequate parking space for the proposed use. The proposal is not anticipated to generate large volumes of traffic given the limited number of staff and residents do not themselves drive.

Flora and Fauna

According to Council details there are no recorded threatened or protected flora or fauna on the site. The Council's Ecologist has proposed a number of conditions to ensure the retention of the Asset Protection Zone (APZ) through a Vegetation and Fuel Management Plan, retention and protection of existing trees, ensuring the stability of the creek and measures to prohibit sedimentation of the waterway and details of monitoring existing plantings health and vigour. Clearing of vegetation has already been undertaken however provided conditions to ensure the longevity of the APZ, stability of the creek and no further clearance of vegetation, it is considered that the proposal will not have a significant impact to flora or fauna.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The site is located in a low-density rural area characterised by single or dual occupancy dwellings located in considerable lot sizes with agricultural buildings immediately to the west and agricultural pasture land to the north and south. Given the distance between the proposed buildings and neighbouring residential dwellings it is considered that the physical aspect of the buildings will not have an unacceptable impact to nearby residential amenity in terms of loss of amenity or privacy.

In terms of the use of the site as a group home, submissions have been received from local residents relating to behavioural issues and concerns about community safety in the area. In response to this the applicants have provided details pertaining to a Management Plan to ensure that future issues concerning residents in the local community are mitigated and responded to. Provided a condition to ensure that the measures within the Management Plan are adhered to, it is considered that the development will not pose an unacceptable impact to surrounding landuses or development.

Whilst the rural location of the proposed development may not be generally supported under the LEP and is better suited to towns or villages with improved access to other community facilities, amenities and emergency services, the SEPP (Affordable Rental Housing) encourages such development in this location. As detailed earlier, provided a condition to ensure that should the use of the site as a group home ceases, the buildings are decommissioned, it is considered that the site is suitable for the development.

Flora and Fauna

As outlined above there are no recorded protected or threatened species on the site. Provided adequate conditions to ensure no further vegetation clearance and protection of the APZ and creek, it is considered that the proposed development will not impact on flora and fauna.

Topography

The site is generally flat at 20 metres AHD with areas of sloping land toward the creek to the southern aspect of the site. The topography of the site and the surrounding area is considered acceptable for the proposed development.

Site Orientation

The use of the site for residential purposes has already been established under the previous development consents for the main residence and dual occupancy dwelling. The orientations of the buildings, subject to this development application, are considered adequate for their purposes.

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

Two submissions have been received. The main issues relate to:

- Site already been used as a group home prior to application;
- Not all residents in locality notified.
- Inappropriate location (close proximity to elderly persons and school);
- Residents displaying violent behaviour;
- A resident gaining entry to a neighbouring home;
- Indecent exposure
- Reported reluctance of police enforcement as this may only worsen situation;
- Issues relating to security (locked gate broken for more than 3 months);
- Excessive noise;
- Offensive language;

It is acknowledged that the group home has been operating without development consent for a number of months. This application seeks to regularise the existing unlawful use, taking into consideration local community concerns.

The Council has notified sixteen adjoining occupiers of the proposed development in accordance with Section A11.2.1 of the DCP.

The location of the development is supported under the relevant SEPP (Affordable Rental Housing) 2009 and cannot be refused on the grounds of proximity to a local school or elderly members of the community. Provided adequate measures of ensuring future disturbances to the surrounding community are put in place and retained as such, it is considered that the proposal is acceptable.

In response to the community's concerns a suitable Management Plan is to be conditioned relating to complaint handling, incident reporting, daily management of safety risk and monitoring of incidents, liaison with the emergency services and emergency support for staff. It has been advised by the applicant that incidents within the local community have ceased over the last 12 months and that the residents of the site are integrating with residents of the surrounding area. However, a detailed Management Plan of how any potential occurrences are to be mitigated is considered to be an appropriate method of ensuring that the use of the site as a group home will not pose a risk to neighbouring residents in the future.

(e) Public interest

There is a shortage of group homes within NSW and on this basis the proposal, albeit on a small scale with only 4 residents, is providing a public services that is in strong demand. On this basis it is considered that the proposal is accords with the public interest.

OPTIONS:

1. Approve the proposed development subject to conditions for the decommissioning of the former dairy bales and that the buildings on the site, other than the main residence and dual occupancy dwelling, are not used for permanent residential use;
2. Refusal of the proposed development;
3. Options for the unauthorised building works:
 - a) take no action;
 - b) issue a planning infringement notice (PIN) and/or take legal action for unauthorised building works.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

As the existing use of the site is residential it is therefore difficult to justify financial contributions for water, sewerage and other contributions; and in any case if the applicant were a public authority provider this type of proposal for a group home would not require a Development Application.

CONCLUSION:

The development application seeks to regularise an existing use of the site as a group home, a use that is encouraged via SEPP (Affordable Rental Housing) 2009. The proposal is considered to accord with the relevant policies and is recommended approval provided conditions to ensure the decommissioning of the former dairy bales; ensuring that only the main residence and the dual occupancy dwelling are used for residential purposes; to ensure that a suitable Management Plan is put into place to overcome community concerns relating to behaviour and safety; the restriction of further clearance of vegetation; and the removal of the buildings should the use of the site as a group home cease.

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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13 [PR-CM] Development Application DA10/0120 for a Three (3) Lot Boundary Alteration at Lot 26 DP 615931 Bartletts Road, Eviron; Lot 1 DP 248515 No. 138 Hawkens Lane, Eviron; Lot 1 DP 774820 Bartletts Road, Tumbulgum

ORIGIN:

Development Assessment

FILE NO: DA10/0120 Pt1

SUMMARY OF REPORT:

The proposed development involves three (3) parcels of land with various zones as follows:

- Lot 1 DP248515 - 1(a) Rural;
- Lot 1 DP774820 - part zoned 1(a) Rural and part 1(b2) Agricultural Protection; and
- Lot 26 DP615931 - part zoned 5(a) Special Uses Garbage Depot and part 1(b2) Agricultural Protection.

The applicant (Tweed Shire Council) is seeking approval for a boundary alteration between the (3) parcels of land which will create no additional lots. The boundary adjustment is to secure land for long term quarry and land fill operations.

The proposal incorporates a SEPP 1 Objection in relation to the 1(a) and 1(b2) portion of the site being less than the minimum lot size (40ha). The proposal is being reported to Council for determination as a result of the variation being greater than 10% of the development standard in accordance with the Department of Planning requirements.

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

RECOMMENDATION:

That Development Application DA10/0120 for a three (3) lot boundary alteration at Lot 26 DP 615931 Bartletts Road, Eviron; Lot 1 DP 248515 No. 138 Hawkens Lane, Eviron; Lot 1 DP 774820 Bartletts Road, Tumbulgum 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 MS09013 Issue 4 prepared by Tweed Shire Council and dated July 2009, except where varied by the conditions of this consent.**
2. **The subdivision is to be carried out in accordance with Tweed Shire Council Development Control Plan Part A5 - Subdivision Manual and Councils Development Design and Construction Specifications.**

[GEN0005]

[GEN0125]

3. A safe and acceptable access for the movement of machinery and livestock between existing Lots 18 and 19 DP 12676, proposed Lot 3 and proposed Lot 2 shall be maintained at all times across proposed Lot 1.

[GENNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

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

[PSC0825]

5. 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) A Restriction As To User, restricting residential development over proposed Lot 2. Council shall have the authority to revoke, release or modify this restriction.
- (b) Right Of Access shall be created over the portion of proposed Lot 1 being excised from existing Lot 1 DP 774820 and Lot 1 DP 248515. This Right Of Access shall benefit existing Lots 18 and 19 DP 12676 and proposed Lots 2 and 3.

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.

[PSC0835]

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

The following information must accompany an application:

- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 5.7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

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

- 1. At the issue of subdivision certificate and in perpetuity, the land surrounding the existing dwelling(s) on Proposed Lot 1, to a distance of 45 metres to the property boundary, shall be maintained as an asset protection zone (APZ) 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'.**
- 2. Water, electricity and gas for the existing dwelling on proposed Lot 1 shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'**
- 3. Property access roads for the existing dwelling on proposed Lot 1 shall comply with section 4.1.3(2) of 'Planning for Bush Fire Protection 2006'**
- 4. The existing dwelling on proposed Lot 1 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. Where applicable, this includes sub floor areas, openable windows, doors, vents, weepholes and eaves.**

REPORT:

Applicant: Tweed Shire Council

Owner: Mrs CE Hawken, Tweed Shire Council, Mrs CE Hawken and Mr RH Hawken

Location: Lot 26 DP 615931 Bartletts Road, Eviron; Lot 1 DP 248515 No. 138 Hawkens Road, Eviron; Lot 1 DP 774820 Bartletts Road, Tumbulgum

Zoning: 1(a) Rural; 5(a) Garbage Depot; 1(b2) Agricultural Protection

Cost: Nil

BACKGROUND:

Council is in receipt of a development application for a boundary alteration.

The subject site is legally described as Lot 26 DP 615931, Lot 1 DP 248515 and Lot 1 DP 774820 and is located at Bartletts Road, Eviron. The allotments are irregular in shape and Lot 1 DP 248515 has an overall area of 1.1 ha, Lot 1 DP 774820 has an overall area of 51.83 ha and Lot 26 has an overall area of 46.81 ha. The sites are been being used as follows:

- Lot 1 DP 248515 - Road Parcel;
- Lot 1 DP 774820 - Agricultural purposes (Sugar cane farming); and
- Lot 26 DP 615931 - Garbage Depot.

The proposal is over privately owned land and Tweed Shire Council owned land. The Council owned land zoned 5(a) Garbage Depot is currently the subject of a major project application for Quarry and Landfill. The Hawkens' owned land, being a closed road parcel (Lot 1//248515) zoned 1(a) Rural and a larger parcel (1//774820) zoned 1(a) Rural and 1(b2) Agricultural Protection, is primarily used for farming (sugar cane production).

Existing Parcel	Existing Area (ha)	Proposed Lot	Proposed Area (ha)	Owner
26//615931	46.81	1	53.28	Tweed Shire Council
1//774820	51.83	2	45.68	Mrs Coral Essie Hawken Mr Robert Harry Hawken
1//248515	1.1	3	0.7775	Mrs Coral Essie Hawken

The land required by Council to provide the corridor between Stott's Creek Landfill and the proposed Eviron Road Quarry and Landfill site is 1(a) Rural land. Consequently, the proposal would not affect land zoned 1(b2). The area which is the subject of the subdivision is characterised by erosional landscapes of the Burringbar Landscape consisting of rolling hills, long slopes to moderately broad crests (Morand 1996). The existing vegetation within the proposed subdivision area is a mixture of cleared land and remnant vegetation. Remnant sclerophyll open forest vegetation occurring along the western boundary is impacted by Camphor laurel regeneration, an introduced woody weed, suggesting past land disturbance at the site. The vegetation type is not a threatened ecological community in NSW.

One of the proposed new allotments does not meet the minimum lot size requirements for the zone although it is unlikely to have any impact upon the potential for agricultural use of the remainder of the site.

A SEPP 1 Objection has been lodged in relation to the 1(a) portion of the site being less than the minimum lot size (40ha). As the proposal incorporates a variation greater than 10% of the development standard, the application is being reported to Council for determination. The Director-General's concurrence has been granted for the proposed development.

Improvements on the site include:

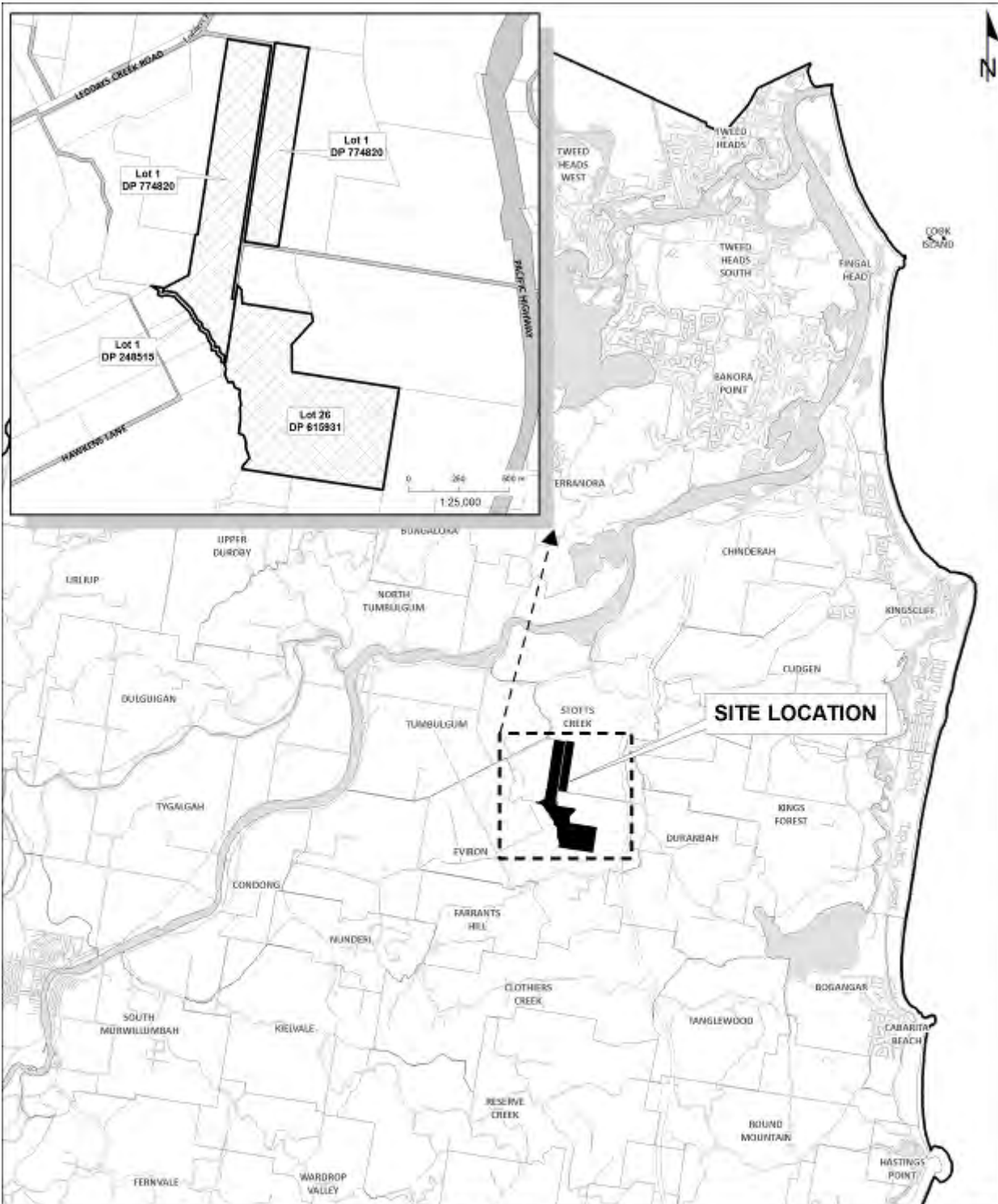
Lot 1 DP 774820

- a single storey dwelling approved under Building Application 1565/96B on 11 December 1996

Lot 26 DP615931

- a single storey dwelling approved under Building Application 0829/85B on 22 October 1985;
- continuing and expansion of existing quarry (Quirk's) under Development Application D95/0148 on 16 December 1999; and
- amendment to Development Consent D95/0148 for continuing and expansion of existing quarry (Quirk's) under Development Application D95/0148.01 on 14 February 2006.

SITE DIAGRAM:



LOCALITY PLAN

Lot 26 DP 615931 - Bartletts Road, Eviron;
 Lot 1 DP 248515 - No.138 Hawkens Lane, Eviron;
 Lot 1 DP 774820 - Bartletts Road, Tumbulgum

0 0.5 1 1.5 2 2.5 Km
 1:100,000

Filename: z:\ystr\planning\mxd\A4P_B&W_SitePlan.mxd

Author: J.Batchelor Planning Reforms Unit

Date Printed: 05 August, 2010

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



Cadastre: 05 August, 2010
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Coordinate System - MGA Zone 56
 Datum - GDA 94

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 E: planningreforms@tweed.nsw.gov.au



DEVELOPMENT PLAN:

NOTE:-
 1) AREAS ARE APPROXIMATE
 2) ALL DIMENSIONS SUBJECT TO SURVEY & COUNCIL APPROVAL

Tweed Shire Council
 DESIGN UNIT
 LOCAL OFFICE
 TWEED HEADQUARTERS
 115 BAYVIEW DRIVE
 TWEED HEAD, N.S.W. 2486
 PHONE (07) 6662 0000
 FAX (07) 6662 0001
 WWW.TWEEDSHIRENSW.GOV.AU

PROJECT: PROPOSED HAUL ROAD		DATE: MS09013	
YEAR: PROPOSED SUBDIVISION OF 1/774828, 26/615931, & 1/248515		SHEET 1 OF 1 SHEETS	
SCALE: 1:4000		ISSUE: 1/1/10	
PROJECT: PROPOSED HAUL ROAD		DRAWN BY: PSE/ELI_HAWREN_Stuvia_Draft	
DATE: 1/10/09		CHECKED BY:	
DRAWN:		APPROVED BY:	
SCALE:		DATE:	
PROJECT:		DATE:	
SCALE:		DATE:	
PROJECT:		DATE:	
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SCALE:		DATE:	

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

(a) (i) The provisions of any environmental planning instrument

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The proposed development is considered to meet the provisions of Clause 4. Appropriate conditions of consent have been applied in order to maintain an acceptable level of amenity for the area.

Clause 5 - Ecologically Sustainable Development

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

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding residences or locality. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

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 below, the proposed development is considered to meet the primary objective of the zones by way of taking into account agricultural matters and environmental constraints (i.e. no fragmentation of the agricultural land from its current form). The proposal generally complies with Clause 8(a).

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposal generally complies with the aims and objectives of each.

Given that the subject allotments will only have a minor change in configuration and the size of the allotments do not change significantly, the proposed development is not considered to have an unacceptable cumulative impact on the locality or the community as a whole.

Clause 11 - Zone objectives

Clause 11 of the LEP relates to zone objectives. The subject site consists of 1(a) Rural Zoned land, 1(b2) Agricultural Protection Zoned land and 5(a) Special Uses (Garbage Depot) Zoned under the provisions of the LEP.

The objectives of the 1(a) zone are:

Primary objective

- *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.*

Secondary objective

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

The proposed boundary alteration does not incorporate any significant change to the size of the allotments just a reconfiguration which is to increase the size of the Garbage Depot. The agricultural use of the land is protected and the proposal is considered to meet the objectives of the zone. The Department of Planning have also noted that the proposal is consistent with the objectives of the zone.

The objectives of the 1(b2) 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 proposed boundary alteration does not affect the 1(b2) zoned land. The agricultural use (sugar cane production) of the land is protected and the proposal is considered to meet the objectives of the zone. The Department of Planning have also noted that the proposal is consistent with the objectives of the zone.

The objectives of the 5(a) zone are:

Primary objective

- *to identify land which is developed or is 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 the land, particularly if it is not yet or is no longer required for the relevant special use.*

The proposed boundary alteration is to increase the size of the garbage depot for a more efficient use of the land. The land will be used for a public body to provide community services, therefore the proposal is considered to meet the objectives of the zone. The Department of Planning have also noted that the proposal is consistent with the objectives of the zone.

Clause 14 - Development near zoning boundaries

The proposal is permissible in this zone therefore Clause 14 is not applicable.

Clause 15 - Essential Services

Clause 15 of the TLEP requires the provision of essential services to be available to the site. There are no new dwellings or allotments being created so it is considered that this clause is complied with.

Clause 16 - Height of Building

Not applicable as there are no new dwellings being created.

Clause 17 - Social Impact Assessment

It is not considered that the proposed development will result in an adverse social impact.

Clause 20 - Subdivision in Zones 1(a), 1(b), 7(a), 7(d) and 7(l)

Clause 20 of the TLEP relates to minimum lot size requirements in order to prevent the potential for fragmentation of rural land. Clause 20(2) requires the following minimum lot sizes:

(2) *Consent may only be granted to the subdivision of land:*

- (a) *within Zone 1 (a), 1 (b2), 7 (a), 7 (d) or 7 (l) if the area of each allotment created is at least 40 hectares, or*
- (b) *within Zone 1 (b1) if the area of each allotment created is at least 10 hectares.*

As noted above, the subject site incorporates 1(a) and 1(b2) zoned land which relates to Clause 20. The existing Lot 1 DP 248515 is currently below the 40 hectare minimum.

A SEPP 1 Objection has been submitted and the application was referred to the Department of Planning for the Director-General's concurrence. The Department's comments and the SEPP 1 Objection are detailed later in this report.

Clause 34 - Flooding

The proposal involves a boundary adjustment with no new buildings proposed. It is therefore considered that the proposal will not increase the severity of flooding.

Clause 35 - Acid Sulfate Soils

The subject site contains Class 2 Acid Sulfate Soils and Class 5 Acid Sulfate Soils. The proposal relates to the section of land which is affected by Class 5 A.S.S. Considering the proposal would not impact on groundwater or A.S.S, no further consideration has been given to A.S.S.

Clause 39B - Bushfire Protection

The proposed development was identified as being Integrated Development as the site is located within a Bushfire Prone area. As such the application was sent to the Rural Fire Service (RFS) for comment. RFS replied on 27 July 2010 with a number of conditions relating to Asset Protection Zones and Design and Construction to be included in the consent. As such it is considered that the proposal complies with this clause of the TLEP.

Clause 42 - Heritage

The site has a section which is located within the Aboriginal Cultural Heritage Landscape and as such Clause 42 relates to the proposal. Clause 42 requires consideration of the extent to which a development may affect the heritage significance of heritage items or heritage conservation areas. An Aboriginal Cultural Heritage assessment and European Heritage study was commissioned over Lot 26//615931 and includes the proposed 6.47 to be acquired from the Hawkins lots. The assessment did not identify areas or objects of Indigenous Cultural heritage significance within the project area.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

Clause 12: Impact on agricultural activities

This clause requires Council to consider the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land. The proposed subdivision is unlikely to have any impact upon the surrounding agricultural land, given that the proposed allotments will remain the same size as currently existing. The proposal will only reconfigure the boundary.

It is also noted that in granting concurrence for the proposed boundary adjustment, the Department of Planning were satisfied that the proposal is consistent with the objectives of the zone. As such, the application is considered to meet the provisions of Clause 12.

Clause 36: Heritage items, generally

The site has a section which is located within the Aboriginal Cultural Heritage Landscape and as such Clause 36 relates to the proposal. Clause 36 requires consideration of the extent to which a development may affect the heritage significance of heritage items or heritage conservation areas. An Aboriginal Cultural Heritage assessment and European Heritage study was commissioned over Lot 26//615931 and includes the proposed 6.47 to be acquired from the Hawkins lots. The assessment did not identify areas or objects of Indigenous Cultural heritage significance within the project area.

SEPP No. 1 - Development Standards

The proposed development incorporates a SEPP 1 Objection which relates to the proposal not meeting the minimum 40 hectare allotment size requirement, pursuant to Clause 20(2) of the Tweed Local Environmental Plan 2000.

The parcel of land involved with the proposed boundary alteration is located within the 1(a) Rural and 1(b2) Agricultural Protection zone.

The applicant has submitted the following in support of the SEPP 1 objection:

“The objection to the development standard follows the principles established by the Land and Environment Court in relation to a SEPP 1 Objection. The established principles are based on the judgement of Lloyd J, in Winten Property Group Ltd v North Sydney Council (2001) 130LGERA 79 at 89. In this case, it was established that there are five questions to be addressed in SEPP 1 Objections. These are as follows:

1. *Is the planning control in question a development standard?*
2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended)?*
4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
5. *Is the objection well founded?*

These five principles are addressed as follows:

1. *Is the planning control in question a development standard?*

The nature of the development proposed is for a rural three lot subdivision. The TLEP 2000 does not prohibit such subdivision, but provides for a development standard under Clause 20(2) of the TLEP 2000 in relation to the sizes of lots in the 1(a) zone (minimum 40ha).

As such, the planning control in question is considered to be a development standard.

2. What is the underlying object or purpose of the standard?

Clause 20 (1) Objectives for subdivision in Zones 1 (a), 1 (b), 7 (a), 7 (d) and 7 (l) are as follows:

- *to prevent the potential for fragmentation of ownership of rural land that would:*
 - (i) *adversely affect the continuance or aggregation of sustainable agricultural units, or*
 - (ii) *generate pressure to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*
- *to protect the ecological or scenic values of the land.*
- *to protect the area of Tweed's water supply quality.*

Although the proposal will create a corridor of Council owned land that bisects rural properties, mutual beneficial rights of carriageway would be negotiated with the landowner as part of the sale to ensure the adjacent land owner has continued use of the residual land. This use primarily relates to maintaining machinery access between cane lands owned by the same landowner either side of the proposed corridor.

In regards to generating pressure to allow isolated residential development (and subsequent public amenities and service to support this), no new dwelling entitlements would be created as part of the subdivision and a restriction on user is proposed to remove the potential for a future dwelling entitlement on the residual land on Lot 1//774820.

This would remove any potential conflict between residential and adjacent land uses such as quarry and landfill operations. The residual land area for Lot 1//248515 being a closed road parcel does not have a dwelling entitlement and no new dwelling entitlement is sought as part of this application.

In addition, no earthworks are required as the proposal is for securing of land for future infrastructure purposes only. Future works to create a connecting road between the existing Stott's creek Landfill site and the proposed Eviron Road Quarry and Landfill site is the subject of an environmental assessment under Part 3a of the EP&A Act 1979 currently with the Department of Planning.

The proposal for a rural subdivision of three lots is not considered to impact on the Tweed's water supply quality.

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment (EP&A) Act 1979 (as amended)?

The aims and objectives of the SEPP 1 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.

The objects of the EP&A Act 1979 are reproduced as follows:

(a) to encourage:

- (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,*

The acquisition of land is to create a corridor of Council owned land for infrastructure purposes only. The proposal for subdivision will ultimately achieve a number of economic savings as well as significantly reducing impacts on amenity through reducing heavy vehicle traffic on adjacent road networks, reducing infrastructure costs by utilising existing landfill infrastructure at Stott's Creek Landfill, and reducing number of adjoining landowners potentially impacted by the proposed Eviron Road quarry/landfill proposal thus reducing landuse conflicts in the area. The change of use of the land to facilitate these economic, amenity and environmental benefits is currently the subject of a Part 3a Major Project application to the NSW Department of Planning (Application Number: 08_0067).

4. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

Compliance with the development standard would seem unreasonable or unnecessary in this instance as the proposal is for proposed future Council infrastructure and would not result in the creation of dwelling entitlements on land under the 40ha threshold.

To ensure that there will be no residential uses adjacent to the proposed quarrying and landfill operations, Council has negotiated a Restriction as to User to be registered over the residue land (Lot 1 DP 7748202). The Restriction as to User will read as follows "No residential development may occur within the land burdened" and further, Council is to have the right to vary, release or modify the Restriction. The background information described above was included in a Council report dated 21st April 2009. The residual Lot 1//248515 does not currently have a dwelling or dwelling entitlement and no dwelling entitlement is being sought as part of this application.

5. Is the objection well founded?

In summary, the area of land to be purchased would significantly improve the operational efficiencies for Council's long term quarry and landfill requirements through a significant reduction in infrastructure costs and reduction in amenity issues should the Eviron Road quarry and landfill proposal be approved. The acquisition of land is to create a corridor of Council owned land for infrastructure purposes only.

Consequently, this SEPP 1 Objection is not expected to create a precedent for similar developments in the Shire."

Conclusion

Given that five principles set by the judgement of Lloyd J, in Winten Property Group Ltd v North Sydney Council (2001) 130LGERA 79 at 89 have been met, strict compliance with the development standard under clause 20(2) is considered unreasonable and unnecessary in this instance. Given that the two allotments will remain above and one will be below the 40ha minimum which is currently the case, it is considered that there will be no issues with the proposal. The proposal was also sent to the Department of Planning who have no issues with the proposed SEPP No. 1 Objection. As such, the SEPP1 Objection warrants support.

SEPP No. 44 - Koala Habitat Protection

The Koala (*Phascolarctos cinereus*) is a threatened fauna species listed under Schedule 2 (vulnerable) of the Threatened Species Conservation Act 1995.

SEPP No. 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala Population decline by:

- (a) requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat and
- (b) encouraging the identification of areas of core koala habitat and
- (c) encouraging the inclusion of areas of core koala habitat in environmental protection zones.

SEPP No. 44 outlines a number of steps or considerations to be assessed to determine whether or not the Policy applies.

In general, only scattered polygons of Secondary Habitat Class A and Class B habitats occur in the area.

The proposal for subdivision does not involve vegetation clearing. The proposed linking road, the basis for the subdivision and the future land use over the site, will be located within a corridor of cleared land. The impact of the haul route is currently the subject of an Environmental Assessment under Part 3a of the EP&A Act with impacts on koalas considered as part of this proposal.

SEPP (Rural Lands) 2008

The proposal triggers the SEPP Rural Lands policy as Lot 1//248515 is zoned 1(a) Rural and Lot 1//774820 is zoned 1(a) Rural and 1(b2) Agricultural Protection. It is proposed that a portion of Lot 1//248515 and Lot 1//774820 of which is zoned 1(a) Rural form part of Lot 26//615931 to facilitate a corridor of Council Owned Land between Stott's Creek Landfill and the proposed Eviron Road Quarry and Landfill site.

The applicant has provided the following information:

"The principles and considerations within the SEPP are addressed as follows:

Clause 7 - Rural Planning Principles

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*

The proposal would maintain two existing land parcels above the 40ha area whilst Lot 1//248515 (a closed road parcel) will be reduced by 0.3ha only. No additional dwelling entitlements are proposed. Most of the land to be purchased is to be excised from Lot 1//774820. The primary landuse over Lot 1//774820 is sugar cane production.

The land to be amalgamated into Lot 26 would not include land zoned 1(b2) and subsequently, there would be no impacts over productive land in the area. Similarly, a mutual beneficial rights of carriageway would be created to allow the adjacent landowners continued use over the residual land (relating primarily to maintaining access between two cane farms either side of the corridor).

- (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,*

As noted, no land zoned 1(b2) Agricultural Protection would be included in the subdivision proposal. Ongoing access between residual lands would be created as part of the acquisition of the corridor of land to be amalgamated into Lot 26.

- (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,*

The proposal would not significantly impact on the rural land uses at the site as cane farming is the primary rural land use on Lot 1//774820 of which would not be impacted by the proposal.

- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*

Conflict between competing landuses such as rural residential and quarry and landfill activities would be limited by the proposal. For example, the proposal attempts to limit any future landuse conflicts through including the existing dwelling within the land acquisition, and also through the negotiation of a restriction on user for the residual land within Lot 1//774820.

Proposed use for the corridor would primarily involve a linking road between the existing and proposed land operations. This would result in significant economic savings and environmental benefits through utilising existing infrastructure at Stott's Creek Landfill and the use of more appropriate road networks to access the proposed landfill site. The environmental aspects of the road corridor are however being assessed as part of an Environmental Assessment under the Part 3a of the EP&A Act.

- (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,*

The proposal at this stage is for subdivision only to secure a corridor of Council owned land for future quarry and landfill operations. Environmental impacts associated with a proposed haul road to connect Council existing and proposed landfill sites is currently being assessed as part of a Part 3a application to the NSW Department of Planning.

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*

The existing dwelling would remain and become part of Lot 26//615931 although the dwelling would not be used for residential purposes. No other dwelling entitlements are proposed. A restriction on user is proposed over the residual land (Lot 1//774820).

- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*

As noted, the proposal would not provide 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.*

The proposal by its nature is small in scale and is not considered to fragment rural lands or result in interface issues between rural and residential land.

Clause 8 - The Rural Subdivision Principles

- (a) *the minimisation of rural land fragmentation,*

The proposal would not subdivide any farming land zoned as 1(b2). Mutual beneficial rights of carriageway have been negotiated with adjacent land owners of Lot's (1//772048 and Lot 1//248515) to allow the landowner continued use over residual land (primarily in the form of maintaining access between cane land either side of the proposed corridor.

- (b) *the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,*

The proposal would maintain the existing dwelling although it would not be used for residential purposes to avoid conflicts with any future proposed landuse relating to quarry and landfill. Similarly, a draft section 88B instrument has been prepared over the residual Lot 1//774820 to also avoid any conflict with future quarry and landfill proposals.

- (c) *the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,*

The proposal would limit any future potential for rural residential among the affected lots. This is considered appropriate in this instance due to reducing adjacent land use conflicts between rural residential and quarry and landfill operations.

- (d) *the consideration of the natural and physical constraints and opportunities of land,*

The proposal would not affect the existing 1(b2) Agricultural Protection land. There are no earthworks associated with the proposal for subdivision.

- (e) *ensuring that planning for dwelling opportunities takes account of those constraints.*

The proposed development will not create any additional dwellings or dwelling entitlements.

Clause 9 – Rural Subdivision for Agricultural Purposes

The proposal would not be subdividing land for the purposes of primary production to create a lot of a size that is less than the minimum size otherwise permitted for that land.

Clause 10 – Matters to be considered in determining development applications for rural subdivisions or rural dwellings

The matters for consideration outlined below are addressed as follows:

- (1) *This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*

The subject land is within a rural zone.

- (2) *A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*

(a) *subdivision of land proposed to be used for the purposes of a dwelling,*

(b) *erection of a dwelling.*

The subdivision of land is not for the purpose of a dwelling.

- (3) *The following matters are to be taken into account:*

(a) *the existing uses and approved uses of land in the vicinity of the development,*

Existing and approved land uses in and adjacent the subject lots are a mixture of low density grazing, cane farming, and quarry and landfill activities.

- (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,*

The subdivision is not considered to have a significant impact on adjacent land uses. A mutual rights of carriageway would be established with adjacent landowners to ensure continued use of residual lands.

The subdivision is for a corridor to connect the shire's existing and future proposed landfill operation. A road is consistent with existing uses in the area. The construction of this road is subject to an Environmental Assessment as part of a Part 3a application to the NSW Department of Planning.

- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

As noted, the rural subdivision is ultimately for a road proposal which is consistent with existing uses in the area.

- (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,*

There is no rural residential zoned land adjacent to the proposal.

- (e) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

The proposal also includes a draft S88B instrument over Lot 1//774820 to avoid any future conflict associated with a residential development in close proximity to a proposed quarry and landfill."

As seen above, it is considered that the proposal meets the objectives for the SEPP. There will be no reduction in Prime Agricultural land as the boundary adjustment happens between land zoned 1(a) and 5(a). The proposal was forwarded onto the Department of Planning for assessment. They had no issues with the proposed boundary adjustment.

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

Draft Tweed Local Environmental Plan 2010

Under the Draft LEP 2010, the subject site has a similar zoning to the current LEP 2000 in that the 1(a) land is zoned RU2 – Rural Landscape, the 1(b2) land is zoned RU1 - Primary Production and the 5(a) land is zoned SP1 - Special Activities (Waste Management Facilities). The proposed development is considered to be consistent with the objectives of the zone.

Clause 4.1 of the Draft LEP 2010 relates to minimum subdivision lot sizes and refers to the Lot Size Map. This map identifies the same minimum lot sizes as the current LEP. That is, the RU2 land currently zoned 1(a) is identified as Lot Size code AB2, which requires 40ha.

The applicant has lodged a written request that seeks to justify the contravention of the development standard (SEPP1 Objection).

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

Tweed Development Control Plan

A3-Development of Flood Liable Land

Sections of the site are identified as land that could be affected by flooding. The proposal is for a boundary adjustment with no new dwellings or buildings proposed. It is considered that the proposed will not increase the severity of flooding in the locality and as such DCP A3 is considered to not be applicable.

A5-Subdivision Manual

This DCP contains Council's guidelines for the preparation of applications for subdivision and aims to facilitate Council's assessment and consideration of such applications. A number of factors are required to be assessed including environmental constraints, land forming, design specifications, storm water runoff, drainage, waterways and flooding, setbacks and buffers (where appropriate). Where applicable, these matters have been discussed below.

Physical Constraints – The proposal is constrained by the shape of the subject site, the location of the existing roadways, bushfire prone land, the topography of the site and the location of the existing garbage depot. It is considered that the boundary adjustment will create a more economical use of the site as the area of land to be purchased will complete the creation of a corridor of Council-owned land at Eviron, and ownership of the land will significantly improve the operational efficiencies for Council's long term quarry and landfill requirements

Environmental Constraints – this section of the DCP relates to issues such as contamination etc, which are discussed in detail later in this report.

Landforming – The land is partially low lying adjacent to river flats of the Tweed River. The rest of the land can be described as undulating. There are no earthworks proposed as a result of this application and therefore no geotechnical issues have been raised.

Stormwater Runoff, Drainage, Waterways & Flooding – The site generally falls to the north, east and west towards the cane field plans which forms part of Lot 1 DP 774820 and adjoining properties to the east and west. Being a rural environment, the existing drainage arrangement will be maintained.

Lot Layout – As the proposed allotments are both below the minimum lot size for rural land it is considered that there will be no fragmentation of prime agricultural land. The section of land which is currently used for agricultural purposes will not be affected as a result of this application. The lot layout will improve the operational efficiencies of for Council's long term quarry and landfill requirements by:

- Allowing the construction of a haul road between the existing Stott's Creek landfill site and the new Eviron Road quarry/landfill site
- Reducing heavy vehicle traffic on Eviron Road and surrounding road networks by directing all quarry/waste traffic along the haul road constructed through the purchased land
- Reducing infrastructure costs by allowing the use of the weighbridge, transfer station and recycling plant at Stott's Creek Landfill for the Eviron Road quarry/landfill site
- Potentially increasing the resource and footprint area available for quarry activities, and
- Reducing the number of adjoining landowners potentially impacted by the proposed Eviron Road quarry/landfill proposal.

Infrastructure – Council's Development Engineer has assessed the proposed development against the relevant standards pertaining to road ways, reticulated water, reticulated sewer, electricity and telecommunications. Appropriate conditions of consent have been applied with regard to infrastructure requirements.

In light of the above assessment, the proposed boundary alteration to create proposed Lot 1 (53.28ha) Proposed Lot 2 (45.68ha) and Proposed Lot 3 (0.7775ha) is considered to meet the provisions of Section A5 of Council's Consolidated DCP.

A11-Public Notification of Development Proposals

The proposed development did not require public notification.

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

There are no matters prescribed by the Regulations applicable to the proposed subdivision.

(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

Farmland Protection

Council's mapping system indicates that the subject site has several classifications. A section of the 1(a) zoned land at the rear of the site is classified as Regionally Significantly Farmland. As the proposed boundary adjustment will make no change to this area, it is unlikely that there will be any impact to this type of farmland. The proposal was forwarded on to the Department of Industry and Investment for comment. On 25 March 2010 Rik Whitehead provided comments as follows:

"Given:

1. *the amended proposal is pretty much a replication of the lot arrangement that currently exists; and*

2. *the beef cattle producer will acquire the majority of the productive land excepting land surrounding the other house; and*
3. *given this is a local development matter and there is an intent to streamline the DA process particularly. boundary adjustments I&I has no further interests from an agricultural perspective.”*

In light of the above, the proposed development is not considered likely to have any impact upon the existing farmland on and around the subject site.

(c) Suitability of the site for the development

The proposed development is considered to be suitable for the site, subject to appropriate conditions of consent.

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

Notification

As the application is for a minor boundary adjustment it was considered that the application was not required to be notified.

Department of Planning

After reviewing the SEPP1 Objection to Clause 20(2) of the LEP, the Department provided the following comments:

“Following consideration of the application, concurrence has been granted to vary the 40ha minimum lot size development standard contained in clause 20(2) of the Council’s planning instrument to permit the creation of proposed Lot 1 having an area of 53.28ha, the part of the land zoned 1(a) with an area of 6.47ha, proposed Lot 2 having an area of 45.68 with approximately 9.6ha of the land zoned 1(a) and 36.08ha zoned 1(b2), and proposed Lot 3 having an area of 0.775ha.

Concurrence was granted in this instance for the following reasons:

- a) *That no net increase in the number of lots or dwelling entitlements;*
- b) *The subdivision design will not set up a situation that is likely to result in conflict between the new lots; and*
- c) *There is no public benefit in maintaining the standard.”*

The Department of Planning had no conditions to be included. It is therefore considered that the proposal has satisfied the requirements.

Rural Fire Service

The proposed development was identified as being Integrated Development as the site is located within a Bushfire Prone area. As such the application was sent to the Rural Fire Service (RFS) for comment. RFS replied on 27 July 2010 with a number of conditions relating to Asset Protection Zones and Design and Construction to be included in the consent. As such it is considered that the proposal complies with this clause of the TLEP.

(e) Public interest

The proposed development is generally considered to reflect the provisions of all applicable development control plans. Appropriate conditions of consent have been applied in an effort to limit any impact upon the surrounding residences and agricultural landowners.

OPTIONS:

1. Approve the application subject to the recommended conditions of consent.
2. Refuse the application, with reasoning.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be unsatisfied with Council's determination an appeal may be lodged with the NSW Land & Environment Court.

POLICY IMPLICATIONS:

The proposed development has been assessed on its merits and having regard to the applicable legislation and for that reason the development does not generate a policy implication for Council.

CONCLUSION:

The proposed development is consistent with the applicable environmental planning instruments with an acceptable variation to Clause 20 of the Tweed LEP 2000. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

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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- 14 [PR-CM] Development Application DA09/0777.01 for an Amendment to Development Consent DA09/0777 for Outdoor Seating in Association with IGA Supermarket at Lot 5 DP 1121923, No. 11-13 Coronation Avenue, Pottsville

ORIGIN:

Development Assessment

FILE NO: DA09/0777 Pt1

SUMMARY OF REPORT:

Development Application DA09/0777 was approved for the provision of four tables and eight chairs adjacent to the IGA supermarket at Pottsville to be utilised as an outdoor eating area. Relocatable barriers were to be positioned around the seating area to separate pedestrians from the seating area. The barriers measure 1.2m in length and are approved to be 900mm high.

The tables, chairs and barriers were to be removed from the footpath at times when the IGA Supermarket is closed. The tables and chairs were to occupy an area of 9.2m², being 9.2m in length and 1.0m in width. The tables and chairs are located immediately adjacent to the frontage of the supermarket.

The proposed amendment seeks to increase the width of the dining area from 1.0m to 1.8m for a length of 8 metres. The applicant has also applied to increase the length of the frontage from 9.2 metres to 13.715m.

It is considered that the proposed outdoor seating arrangement will unreasonably impact upon the accessibility of the adjoining footpath, and it is therefore recommended that the application be refused.

RECOMMENDATION:

That:-

A. Development Application DA09/0777.01 for an amendment to Development Consent DA09/0777 for outdoor seating in association with IGA supermarket at Lot 5 DP 1121923, No. 11-13 Coronation Avenue, Pottsville be refused for the following reasons: -

- 1. Pursuant to Section 79C(1)(a)(i) the development proposal has not demonstrated due consideration or compliance with the 3(b) - General Business zone objectives within Clause 11 of the Tweed Local Environmental Plan 2000, as the proposed development does not provide for the welfare and social needs of the community.**

2. Pursuant to Section 79C(1)(a)(i) the development proposal is not consistent with Clause 8 of the Tweed Local Environmental Plan 2000, as the proposed development results in undue cumulative impacts for the Pottsville community.
 3. Pursuant to Section 79C(1)(c) the development site is not considered suitable for the development as proposed for the following reasons:
 - (a) The proposal reduces the pedestrian access width and thereby reduces the level of service; and
 - (b) The proposal further constricts pedestrian space adjacent to the existing pedestrian crossing which requires a high level of pedestrian and disabled access service.
 4. Pursuant to Section 79C(1)(e) the proposed development, is not within the public interest.
- B. Appropriate regulatory action is to be undertaken when required to ensure compliance with relevant legislation for the use of the road reserve associated with the IGA Supermarket to preserve public health and safety.**

REPORT:

Applicant: Mr J Wightman
Owner: Mr J Wightman, Mrs G Wightman, Mr IW Wightman and Tweed Shire Council
Location: Lot 5 DP 1121923 No. 11-13 Coronation Avenue, Pottsville
Zoning: 3(b) General Business
Cost: Nil

BACKGROUND:

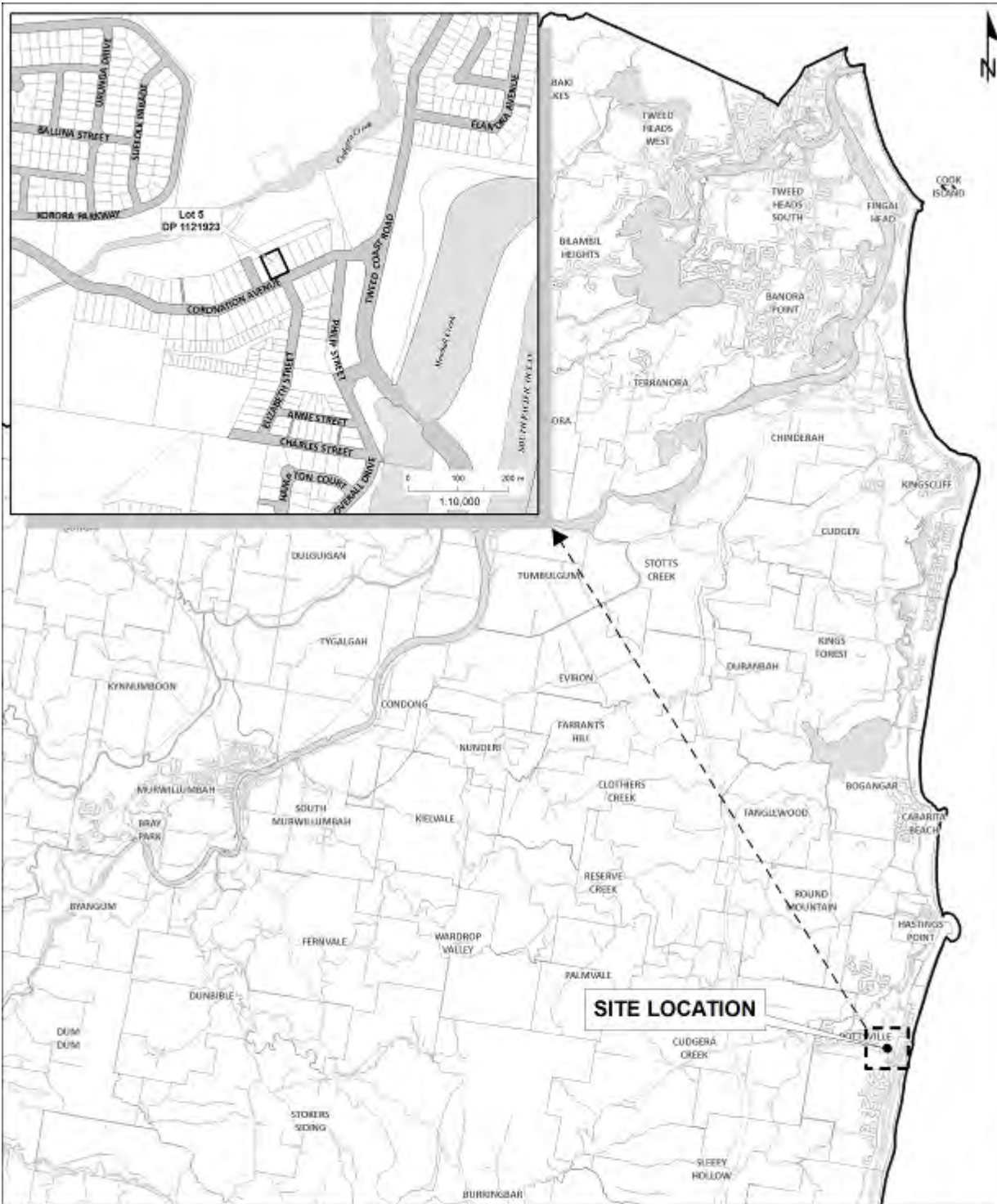
The IGA was approved via DA06/0706 which was for the Demolition of Existing Structures & the Erection of a Shop Building Comprising a Mini Supermarket (IGA) & Three (3) Other Tenancies (Real Estate, Solicitor and Butcher).

The outdoor seating area associated with the IGA was approved via DA09/0777 on 25 January 2010. A letter was sent to the owner on 13 May 2010 to indicating that the condition 10 of the original approval was not being complied with. Condition 10 is as follows:

“footpath dining activities shall be restricted to the approved footpath dining area and carried out in accordance with Council’s adopted Footpath Dining Policy.”

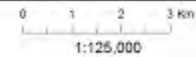
As such the owner had a meeting with the Mayor and other relevant Council staff regarding possible options. This section 96 application was submitted as a result of that meeting.

SITE DIAGRAM:



LOCALITY PLAN

Lot 5 DP 1121923
No.11-13 Coronation Avenue, Pottsville



Filename: z:\esr\planning\med\A4P_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 05 August, 2010

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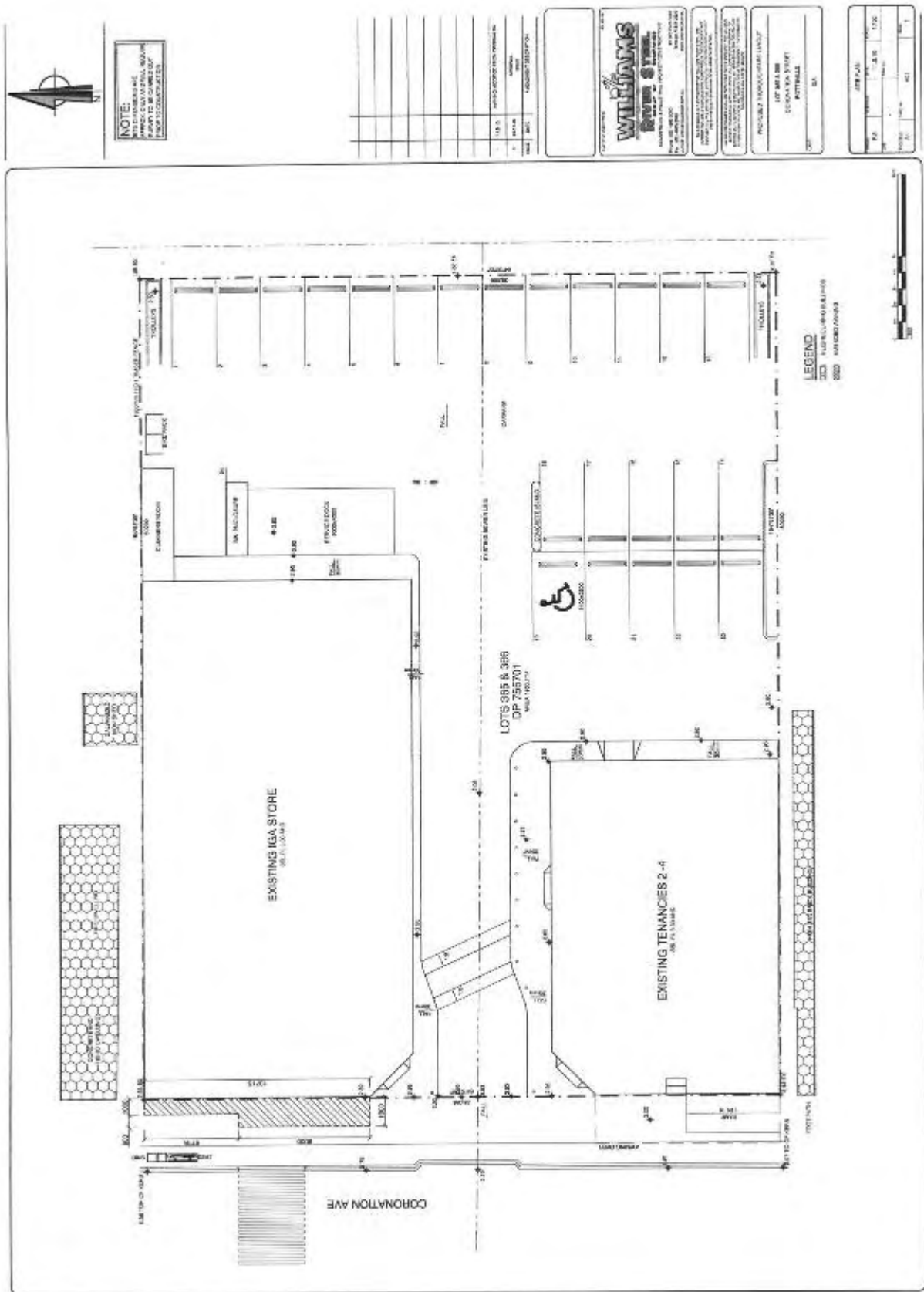


Coordinate System - MGA Zone 56
Datum - GDA 94
Cadastral: 05 August, 2010
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DEVELOPMENT PLAN:



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 vision of the Tweed Shire 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 subject proposal is non-compliant with the objectives of the zone therefore the proposed development is not compliant with the aims of the Tweed LEP. It is considered that the approved configuration should not be changed as a result of the information provided.

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 considered to have minimal impact on the environment and is in keeping with the precautionary principle inter generational equity and the conservation of biological diversity and ecological integrity.

Clause 8 (1) (c)- Cumulative Impact

The proposed development if approved would be considered to create an adverse cumulative impact for residents within Pottsville. There would be no benefit for the pedestrians utilising the footpath along Coronation Avenue as a result of this application. It is considered that the proposed development should be refused as a result of the cumulative impacts.

Clause 11 - Zone Objectives

The subject site is located within the 3(b) - General Business Zone of the Tweed LEP. The primary objectives of the Plan are as follows:

- *to provide business centres in which the community’s shopping, business, welfare and social needs can be met.*
- *to provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*

The Secondary objectives of the Plan are as follows:

- *to provide for tourist orientated development.*
- *to encourage upper floor residential or tourist accommodation.*

The proposed development will result in a business centre where the level of access reduces as a result of a reduction of the pedestrian access. It is considered that this reduction leads to a reduction of the welfare and social needs of the community by limiting pedestrian access.

Clause 15 - Essential Services

Existing infrastructure including water, sewer and stormwater services are available to the subject site.

Clause 16 - Height of Building

The proposed addition is single storey and therefore complies with the height limits adopted for Pottsville.

Clause 17 - Social Impact Assessment

This clause is not directly applicable to the proposed development.

Clause 22, 23 and 24 - Development near Designated Roads

Coronation Avenue is a Council Designated Road. The proposal is only for removable tables, chairs and barriers, and there will be no new access arrangements from the Designated Road. As such, the proposal is considered to comply with these clauses relating to development near designated roads.

Clause 34 - Flooding

The proposal involves minor removable structure which will not increase the severity of flooding.

Clause 35 - Acid Sulfate Soils

The proposed placement of the building will be on Class 3 ASS land. The proposal involves only minor building works with no cut or fill proposed. It is considered that the proposal complies with Clause 35.

Clause 38 - Future Road Corridor

Tweed LEP 2000 shows that land to the north of the site is nominated as a potential future road corridor. Such a road could service new developments along Coronation Avenue. However, as this road corridor is not currently on Council's works program, the proposed is only for a minor removable structure and the site already has access from Coronation Avenue it is considered that the future road corridor will not be affected by this.

Clause 39A - Bushfire Protection

The subject site is mapped as bushfire prone land although the proposal will not create any additional fuel source. It is considered that the proposal will not be affected by bushfire.

State Environmental Planning Policies

SEPP (North Coast Regional Environmental Plan) 1988

There are no clauses of the North Coast Regional Environmental Plan which are applicable to the site.

SEPP No 71 – Coastal Protection

The development proposal is located within the area defined as the coastal zone and SEPP 71 applies however referral to the Department of Planning was not required. Nevertheless an assessment of the proposal against the provisions of the policy was performed with the development deemed consistent with the Clause 2 'Aims' and satisfactory with regard to the Clause 8 'Matters for Consideration'. The proposal complies.

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

The Tweed Local Environmental Plan 2010 was on public exhibition from 27th January 2010 until 30 April 2010. In this Draft LEP the site is within the B2 – Local Centre Zone. Within the B2 zone an Outdoor Eating Area is permitted with consent. It is therefore considered that the proposal complies with the intent of the Draft Tweed LEP 2010.

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

Tweed Development Control Plan

A2-Site Access and Parking Code

The car parking rates specified within Tweed DCP A2 indicate that 4.4 car parking space is to be provided for every 100m² of GFA for a shop. There is no new permanent building work and as such there will be no increase in GFA. The tables and chairs will be removable and as such ancillary to the use on the site. As such complies with Council's numerical requirements for car parking.

A3-Development of Flood Liable Land

The proposal involves minor removable tables and chairs which will not increase the severity of flooding.

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

Clause 92(a) Government Coastal Policy

The subject site is located within the Coastal Zone and as such the provisions of the Coastal Policy apply to the site. The proposed development is consistent with the objectives of the Coastal Policy.

Clause 92(b) Applications for demolition

Not applicable.

Clause 93 Fire Safety Considerations

Not applicable.

Clause 94 Buildings to be upgraded

Not applicable.

(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 subject site is surrounded by development of a business nature. The proposal is to amend the area of an outdoor dining area which currently consists of four (4) tables and eight (8) chairs to be ancillary to the existing approved IGA shop. The approved outdoor eating area is currently 1.0m wide by 9.2m long and is located along the Coronation side of the IGA. The proposed amendments incorporate a change to the width of the outdoor dining area to be 1.8m wide for a distance of 8m and 1.0m wide for a distance of 5.715m. The chairs, tables and a barrier will not be permanent structures and will be removed each time the IGA is closed. The area will be used for the purpose of eating food or drinking beverages which were bought in the IGA.

The applicant has not provided any information on the number of tables and chairs to be included in the increased area although this was not requested as it is considered that the increase in size is not an appropriate amendment for the locality. There is a pedestrian crossing, an existing Council seat and Council bins which take up part of the footpath. Additionally, the operators of the IGA place unapproved items such as removable signs, planter boxes and 'specials' bins out in front of the store which also significantly reduce pedestrian access along the footpath. It is therefore considered that the proposed development is not in keeping with the context and setting of the Pottsville locality and should therefore be refused.

Access, Transport and Traffic

The proposed amendment to DA09/0777 was forwarded onto Council's Traffic Engineer who supplied the following assessment:

The proposal is very undesirable for the following reasons:

- *Reduction of pedestrian access width reducing pedestrian level of service. This is a medium to high pedestrian traffic area;*
- *Further constriction to the pedestrian space adjacent to the existing pedestrian crossing which requires a high level of pedestrian and disabled access service; and*

- *Close proximity to an existing pedestrian obstruction being a seat located at the kerb.*

The request to extend the dining area is therefore not supported.

It is considered that the abovementioned reasons provide sufficient grounds for refusal. As such the recommendation is for refusal of the application.

Cumulative Impacts

A resident raised concerns regarding the congestion on the path for bicycles and pedestrians. The application was referred to Council's Traffic Engineers who responded that they have objections to the proposal amendment as the service for pedestrians will be reduced considerably. There are a number of additional items which have been placed on the footpath by the operator which do not have approval. Items such as planter boxes, removable advertising signs and "specials bins" are located on the footpath which creates a situation where there is a significantly reduced pedestrian corridor which adds to the negative cumulative impacts.

For the original application (DA09/0777), the traffic engineers had concerns that, if approved, the operators will add an additional seat to the tables which will encroach within the nominated 2 metre pedestrian corridor. This was conditioned so that no extra tables and chairs are added and that the barriers put around the area will not encroach into the pedestrian corridor. The operators have encroached on the pedestrian corridor without approval and as such have submitted this application to legalise this encroachment.

Natural Hazards – Flooding

As identified above, the site and surrounds is constrained by flooding. Notwithstanding, the application is for an outdoor eating area which is ancillary to the shop use and will not increase the flood hazard on site.

(c) Suitability of the site for the development

Surrounding Landuses/Development

The subject site is within the Pottsville Village area which consists of numerous business and commercial activities. Land to the north, south and east of the site is predominately characterised by business uses. Coronation Avenue is located directly to the south. The proposed development is an ancillary to the IGA shop on site and as such is considered to be consistent with the business nature of the locality. However, the proposed amendments to the consent are undesirable for the access reasons shown above.

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

In accordance with Council's Development Control Plan Section A11 – Public Notification of Development Proposals, the proposal was not required to be notified. However, as a result of the assessment process there was a submission received in regards to the proposal. The submission received raised concerns about the outdoor seating area protruding past the approved area and creating obstructions. It is considered that this submission be taken into account and as a result of it and the recommendations outlined above, the proposed amendments should be refused.

(e) Public interest

In assessing public interest, consideration should be given to any government interests and community interests having regard to any policy statements, planning studies, guidelines, management plans, advisory documents, public meetings and enquiries held, public submissions, public health and safety etc.

The proposed amendments to the outdoor eating area are to be ancillary to the shop use which does not demonstrate consistency with the relevant planning instruments and Council requirements. It is considered that the interests of the community are reduced as a result of the proposed amendments to the outdoor eating area.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

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

CONCLUSION:

As detailed in the body of the report, the proposed development warrants refusal as Council Officers consider the applicants justification to increase the area of the outdoor eating area is not well founded in proving that there will be no unreasonable or unnecessary impacts as a result of the proposal.

In addition, the Council's Traffic Engineers have indicated that the proposal would reduce the pedestrian level of service along Coronation Avenue. It is therefore considered that the proposal be refused for the abovementioned reasons.

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.

15 [PR-CM] Visitor Carparking Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: PF4980/130

SUMMARY OF REPORT:

Council has received a complaint from residents within a residential strata titled complex (Lot 1 DP 525502, 4 Second Avenue Tweed Heads, SP 35133) regarding alterations to visitor parking arrangements without Council approval. The complainants are seeking to have the parking restored to its approved location.

Council Officers have inspected the site and spoken to both the owners and complainants in this matter. It is the Officers view that a Section 96 application is required to rectify the non compliance of the current parking arrangements with the development and building approvals. It is therefore recommended that Council endorse that an application be submitted or legal action will be initiated.

RECOMMENDATION:

That Council endorses the following actions in respect of Strata Plan 35133, Lot 1 DP 525502, No. 4 Second Avenue, Tweed Heads:

- 1. The owners of strata plan 35133 be advised that a Section 96 amended application is required to be submitted to Council for consideration of an alternate visitor parking arrangement or the visitor space is to be returned to the approved location parallel to unit 2A; and**
- 2. The owners of strata plan 35133 be advised if neither of the above options is undertaken within sixty days of notification Council will consider legal action against the body corporate for non compliance with Development Consent 88/212 and Building Permit 1024/88.**

REPORT:

Council has received submissions from unit owners/residents (units 3A and 2B) within the SP 35133 at No. 4 Second Avenue, Tweed Heads advising that another unit owner/resident (unit 2A) has altered the visitor parking location for one of the units and is now contrary to the approved plan. The complaint also relates to the impact of the relocation on the enjoyment and useability of the site by the residents affected by the relocation.

Background

Development consent (88/212) issued on 3 June 1988 for the erection of five cluster houses. Condition 2 of the consent states-

2. The provision of ten (10) off street car parking spaces in accordance with the submitted plans and Council's code for Off Street Car Parking.

The approved plan includes an attached garage and adjacent open carparking space for visitors for each of the five units.

Building Permit 1024/88 was issued on 23 September 1988 for the units. The approved site plan (dated 30.9.88) adjusted the visitor spaces for four of the units. On 11 April 1989 the visitor parking was further adjusted as follows-

- Unit 1A visitor parking on the south side of the driveway opposite unit 1A.
- Unit 2A visitor parking on the eastern side of unit 2A
- Unit 3A and 2B visitor parking centrally located on the eastern side of the site between units 3A and 2B.
- Unit 1B visitor parking on the eastern side of unit 1B.

Strata plan registered on 21 July 1989.

The strata plan indicates the private courtyard of unit 2A moved forward to align with the front wall of unit 2A. The significance of this is that the majority of the visitor car space is no longer located on common property with no alternate location designated on the strata plan. It is considered that with the layout of the units on the site it does not matter if the car spaces are located within common property or on private areas. The consent requires ten spaces on the site.

ISSUE

The owners of unit 2A have fenced, gated and landscaped the area of the visitor car space so a vehicle can no longer park parallel to the unit. The owner of unit 2A parks their vehicle in the common property across part of the frontage of unit 2A and part of the frontage of unit 3A. The garage for unit 2A does not appear to be used for a vehicle.

This partly blocks access to and from unit 3A and adversely affects vehicle manoeuvring for other unit owners and their visitors.

The body corporate (ie. unit owners) has not been able to resolve their differences regarding this issue.

It would appear that when the strata was signed off by Council the visitor space for unit 2A would have been physically located in the correct location however the strata plan removed the space from the common property and increased the size of the private courtyard.

This has led to a conflict between the approved plan and the registered strata plan.

The solicitor for Unit 2A has contended in a letter dated 24 May 2010 that the strata plan supersedes the approved plan. If this were to be correct relocation of the parking space still needs approval from Council. This approval has not been sought or gained.

The solicitor's letter also states the following-

Accordingly in our view as long as a vehicle parked in your courtyard is wholly within the courtyard area, then it is not a matter under the control of the Owners Corporation.

It is considered that to comply with the consent ten carparking spaces are required on the site. In this instance it does not matter if they are on private land or common property given the configuration of the development. Clearly alterations have occurred to the physical layout of the parking without approval from Council.

On 11 June 2010 a letter received from the strata manager representing the Owners states the following-

The Owners Corporation have recently held their Annual General Meeting and the letter sent by Council with the above reference was discussed.

By majority it was agreed to submit the following response:

The Strata Plan dated 10/05/1989, bearing the certification of the Tweed Shire Council supersedes Council's 1988 plan, and does not include visitor parks. It would therefore be necessary by Special Resolution of the Owners Corporation, to submit a visitor car park plan, showing present parking layouts, wholly within the common area as acknowledged by the Tribunal Adjudicator.

Options for Council

1. Commence legal proceedings to require compliance with the approved plan.
2. Seek legal advice regarding the conflict between the strata plan and the approved plan and the likelihood of success if regarding restoration of the visitor parking space.
3. Advise the owners that a S.96 amended application for 88/212 is required to be submitted to Council for consideration of an alternate visitor parking arrangement or the visitor space is to be returned to the approved location parallel to unit 2A. Given the owners corporation need to consider this issue a timeframe of sixty days to carry out the above actions is considered appropriate.

Comment

It is unlikely that the owners will agree to lodge a S.96 application given owners consent is required for Council to legally consider the application. The issue remains for Council whether or not to pursue legal action to enforce compliance should the matter not be resolved as per option three above. Council should reserve its right to pursue legal action on the basis that the body corporate resolves the issue and that they explore all avenues including independent mediation.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If Council resolved to take legal action costs would be incurred.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Strata plan, photographs in relation to the car parking issues and approved building plan (ECM 19884409)
-

16 [PR-CM] Cobaki Lakes Project Application - Update of Projects

ORIGIN:

Development Assessment

FILE NO: GT1/51

SUMMARY OF REPORT:

Council is in receipt of an Addendum to the Concept Plan Preferred Project Report (PPR) and the PPR for the Project Application for the central lakes and open space area.

The Addendum to the Concept Plan PPR includes major modifications to the Concept Plan design.

The PPR for the Project Application includes detailed information relating to infrastructure and open space which will be dedicated and maintained by Council. The Project Application includes earthworks, structured open space and parklands, revegetation and rehabilitation of environmental protection areas, establishment of freshwater wetland and fauna corridors, revegetation and rehabilitation of salt marsh areas, roads and culverts crossing the central open space, a road and culverts including trunk sewer and water services across the saltmarsh and subdivision.

The Department of Planning has provided Council approximately three weeks to undertake a review and assessment of both reports concurrently. Council officers are concerned that the timeframes are insufficient to review these documents properly, particularly given their long term maintenance and cost implications on Council.

This report seeks Council support to provide comments to the Department of Planning within a more achievable timeframe, which allows officers to undertake meaningful assessment as well as report the issues to Council.

At this stage, these reports are likely to be submitted to either the September or October Council Meetings.

RECOMMENDATION:

That Council endorses that the General Manager writes to the Department of Planning indicating that responses to both the Addendum to the Concept Plan PPR and Project Application PPR relating to the Cobaki Lakes development will be provided after proper assessment has been undertaken and after each matter has been reported to Council.

REPORT:

Applicant: Leda Manorstead Pty Ltd
Owner: Leda Manorstead Pty Ltd
Location: Lot 1 DP570076, Lot 2 DP566529, Lot 1 DP562222, Lot 1 DP570077, Lot 1 DP823679, Lot 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 & 305 DP755740 at Cobaki lakes Estate, Tweed Heads
Zoning: 2(c) Urban Expansion, 2(e) Residential Tourist, 6(b) Recreation, 7(d) Environmental Protection (Scenic Escarpments) and 7(l) Environmental Protection (Habitat).
Cost: N/A

BACKGROUND:

Concept Plan

In February 2009, Council reviewed the Cobaki Lakes Concept Plan and supporting Environmental Assessment and provided detailed submissions to the Department of Planning.

In January 2010, Council reviewed the Preferred Project Report (PPR) for Cobaki Lakes and provided a submission to the Department of Planning.

The Cobaki Lakes Development Code was on exhibition from 13 January 2010 to 26 February 2010.

Council officers reviewed the Cobaki Lakes Development Code and prepared a summary of issues and a Draft submission on the Code. This was presented to the Council at its meeting 16 February 2010 and a submission on the Code was subsequently provided to the Department of Planning.

Council received an addendum to the PPR for the Concept Plan on 23 July 2010 and required Council comment by 13 August 2010 (this timeframe includes an extension from the 6 August 2010).

Project Application

Council received a copy of the Project Application (PA) for Cobaki Lakes on 12 January 2010. The application is lodged pursuant to Part 3A of the *Environmental Planning and Assessment Act 1979* and the Minister of the Planning is the approval authority.

The PA includes an Environmental Assessment (EA) and the EA was been on public exhibition from 13 January 2010 to 26 February 2010. Council provided comments on the EA.

Council received a copy of the PPR for the Project Application on 29 July 2010 and required Council comment by 20 August 2010 (this includes an extension from 11 August 2010).

OPTIONS:

1. That Council supports the recommendation and allows officers additional time to provide meaningful comments on the Cobaki Lakes Addendum to the PPR Concept Plan and the PPR for the Project Application.
2. That Council does not support the recommendation and requires submission of comments to the Department of Planning within an alternative timeframe.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The Department of Planning has provided Council with a copy of an Addendum to the PPR for the Concept Plan for Cobaki Lakes and a copy of the PPR for the Project Application for the central open space system at Cobaki Lakes. The Department has requested Council assessment and comment within short timeframes.

Council officers are unable to undertake a proper assessment of the documents within the timeframe provided. This is of major concern because of the implications the Project Application and Concept Plan will have on Council resources over a long period of time.

The purpose of this report is to seek Council support to provide comments outside the timeframe set by the Department to allow for meaningful assessment and comment as well allow for reporting of each matter to Council.

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

Nil.

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17 [PR-CM] Tweed Shire Local Disaster Plan 2010

ORIGIN:

Building and Environmental Health

SUMMARY OF REPORT:

The Tweed Shire DISPLAN has undergone an extensive review since approval in 1998. This report introduces the Tweed Shire DISPLAN 2010 and outlines Council's requirements as defined within the Plan.

Further, following a successful funding application through the Natural Disaster Mitigation Program Council, in partnership with Gold Coast City Council, has developed a Cross Border Sub Plan, a supporting plan to the DISPLAN.

RECOMMENDATION:

That Council:

- 1. Acknowledges the Tweed Shire DISPLAN 2010 and supports the use of Council resources to fulfil its requirements as identified within the Plan.**
- 2. Receives and notes Attachment 2 "Cross Border Sub Plan 2010", a supporting plan to the Tweed Shire DISPLAN 2010.**

REPORT:

Local Emergency Management Committees (LEMCs) are established under the provisions of the NSW State Emergency and Rescue Management Act 1989 and are required to prepare local disaster plans, known as Local DISPLANS. Local councils are responsible for the establishment of and executive support facilities for these committees with the executive officer known as the Local Emergency Management Officer (LEMO). The committees are chaired by a senior representative of council and members are representatives of all local emergency service agencies and participating / supporting government and non-government organisations.

The Tweed Shire DISPLAN 2010 (**Attachment 1**) was approved by the Tweed Shire LEMC on 3 August 2010 following an extensive review of the existing plan and is to be forwarded to the Northern Rivers District Emergency Management Committee in September for endorsement.

The document details the emergency management arrangements for the area designated as the local government area of Tweed Shire to ensure the effective and efficient co-ordinated response to and recovery from an emergency event. It aims to detail arrangements that prevent or mitigate, prepare for, respond to and recover from emergencies within Tweed Shire.

Within the Plan Council has a number of roles and responsibilities as outlined below:

1. Establish and maintain the Local Emergency Operations Centre (LEOC) for the Local Emergency Operations CONTroller (LEOCON).
2. Provide support staff for the LEOC.
3. Provide human resources, plant, equipment, materials and services, as required in dealing with an incident or emergency.
4. Provide facilities for reception and registration of evacuees at the request of the Police and/or Community Services.
5. Provide support to combat agencies and functional area agencies as required including:
 - a. Reconnaissance of the area affected by the emergency,
 - b. Post disaster damage assessment.
6. Provide expertise and support as requested to the emergency services, combat agencies and functional areas identified in this plan.
7. Provide engineering resources required for response and recovery operations including:
 - a. Damage assessment
 - b. Clear and re-establish roads and bridges
 - c. Demolish and shore-up buildings
 - d. Remove debris
 - e. Construct and maintain temporary levees and evacuation routes, when appropriate
 - f. Erection of barricades and fences for public protection.

8. Provide a liaison officer and executive support to the LEOC and LEOCON or Combat Agency Controller.
9. Provide an officer to represent the Northern Coast Area Health Service Public Health unit in relation to Public Health emergency matters.
10. Provide an officer to represent the District Engineering Functional Area Coordinator in relation to engineering emergency matters.
11. Provide Road Condition advisory service/information for dissemination to other Emergency Agencies, Functional Areas, Media and Members of the Public during an incident/emergency.
12. Assist in any other emergency management prevention, preparedness, or recovery operations, including emergency management training, for which the Council's training and equipment is suitable.

These arrangements are co-ordinated through the LEMO with its responsibilities listed below.

1. Ensures executive support facilities are available to the LEMC and LEOCON
2. Acts as Executive Officer to the LEMC and LEOCON
3. Acts as liaison officer of Tweed Shire Council
4. Assists the LEOCON to establish and maintain the LEOC
5. Maintains a directory of contacts within the Tweed Shire Council
6. Maintains a registry of evacuation centres
7. Co-ordinates emergency management public education programs, which are not the responsibility of a combat agency
8. Ensures a comprehensive resource register and media directory is maintained by agencies within the LEMC (Councils, Emergency Service and Functional Areas)
9. Provides executive support at the LEOC when activated
10. Co-ordinates arrangements for a central debrief following operations and prepares a consolidated report on that operation in consultation with the LEOCON
11. Ensures that adequate "back up" arrangements are made to cover any period of absence and that the LEOCON is advised of the absence or intended absence of the LEMO

It is recommended that Council acknowledges the Tweed Shire DISPLAN 2010 and supports the use of Council resources to fulfil its requirements as identified within the Plan.

Further to the review of the DISPLAN Council, in partnership with the Gold Coast City Council, successfully applied for funding under the Natural Disaster Mitigation Program to develop effective cross border disaster management arrangements. One of the outcomes of the funding was to develop an agreed Cross Border Sub Plan. (**Attachment 2**)

Emergency management arrangements exist in both the local government areas of Gold Coast City and Tweed Shire. These arrangements reflect the local level requirements of our respective States however each demonstrate differences in command and control structures, is confounded by differences in language and do not acknowledge the formal and informal cross border arrangements and communication channels between various emergency service agencies and support organisations.

To improve the collective resilience of the two closely joined communities the sub plan was compiled to enhance joint mitigation, preparedness, response and recovery actions by developing effective cross border arrangements.

The sub plan was also approved at the Tweed Shire LEMC on 3 August 2010.

It is recommended that Council receives and notes the plan.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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1. Tweed Shire DISPLAN 2010 (ECM 20228050)
 2. Cross Border Sub Plan 2010 (ECM 20080688)
-

18 [PR-CM] On-Site Sewage Management

ORIGIN:

Building & Environmental Health

SUMMARY OF REPORT:

Council has numerous roles and responsibilities one of which includes the issuing of approvals for the installation of on-site sewage management systems, the issuing of licenses to operate on-site sewage management systems and the monitoring of such systems to ensure they operate and are adequately maintained to meet relevant standards to protect public health, the environment and community living.

This report has been prepared to inform Council on the work undertaken by officers within Councils Building and Environmental Health Unit to comply with the requirements in relation to the management of on-site sewage management systems.

RECOMMENDATION:

That the report on On-Site Sewage Management be received and noted.

REPORT:

On-site sewage management systems (OSSMS) are intended to process and dispose of human waste where reticulated sewer systems are not available. On-site sewage management involves the treatment of wastewater followed by the release of this treated material (effluent) into or onto a disposal area, otherwise referred to as a land application area, which could be by way of surface or subsurface absorption or irrigation or in some cases a system whereby a holding well is utilised and later collected by tanker.

OSSMS's include but are not limited to septic tanks, aerated wastewater treatment systems, biological wastewater treatment systems, composting systems, greywater treatment systems and any effluent disposal area associated with these systems. The purpose of these systems is to process and dispose of waste so that it is safe for health and the environment. The inappropriate treatment, use or disposal of this waste can have serious impacts including:

- The spread of disease by bacteria, viruses, parasites and other organisms in the wastewater
- The contamination of groundwater and surface water
- Degradation of soil and vegetation
- Decreased community amenity, caused by odours, noise and insects.

In New South Wales there is legislation and guidelines that stipulate that an on-site sewage management system must be designed, operated and maintained in a manner that will:

- Prevent public health risk;
- Prevent environmental damage (particularly to land, soil, groundwater and surface waters);
- Protects community amenity (e.g. nuisances such as bad odours); and
- work well into the future.

Also contained in the legislation is a requirement for Councils to manage the cumulative impact of sewage pollution in their local government area, which includes approving the installation and operation of on-site systems and the auditing of existing systems.

In 1998 the New South Wales Government made some amendments to the Local Government Act making it an obligation for Councils to better supervise the operation and installation of OSSMS's and ensure that property owners take greater responsibility for maintaining their system. These changes require that once a system has been installed on a property the owner of that property must apply to Council for an approval to operate the system. This requirement for an approval to operate also applies for existing systems where a property with an existing on-site sewage management system is sold to new owner/s or the approval to operate has expired. In these cases the owner must apply to Council for an approval to operate. This approval allows Council to maintain a register of systems throughout the shire together with details of the owners of those systems and the approval ensures that property owners are aware of their responsibility to efficiently operate and maintain their system in accordance with the conditions of approval.

To assist Councils in sufficiently resourcing and complying with these new requirements, recommendations were made by the Department of Local Government that Councils consider the adoption of certain fees and charges and that a strategy be implemented to regulate and manage on-site sewage management systems. As a result of these recommendations a program was commenced in Tweed Shire that included a requirement for the registering of all systems, undertaking an inspection of each system to verify correct operation, requiring the correction of defective systems, and a risk assessment to determine the risk factor for each installation. This program is now guided by Councils On-site Sewage Management Strategy which was adopted by Council On 16 October 2002. The Strategy, which is now currently being reviewed, details Council's approach to the supervision of OSSM's within the Tweed Shire and describes:

- How an approval to operate is made to Council;
- How Council assigns a risk to each system based on their location, type and operation;
- How inspections will be conducted for all systems and the frequency of inspections, varying from once every two years to once every six years depending on the risk assigned; and
- How fees will be charged on a user pays basis and will be required for approval of applications, approval renewals and inspections.

Since the adoption of the Strategy, fees have been introduced for an approval to operate, the transfer of an approval to operate; an annual charge for the management and auditing of OSSMS's has also been levied against all rated properties which have an on-site sewage management system. These fees are reviewed annually and together with other income which is derived in relation to the management of OSSM's, which includes pre-purchase reports and the approval of new systems and installations, currently returns Council approximately \$150,000.00 annually.

Council's records identify that the Tweed Shire has approximately 4900 OSSMS registered, however, many more systems exist which have not been registered and are gradually being picked up during the auditing process. Currently Council employs two full time OSSMS officers; one officer is dedicated full time to the auditing process and the other to as well as auditing, assesses applications for approval, undertakes inspections and issues reports for pre-purchase requests and other processes involved with on-site sewage management.

In relation to the auditing process, information in relation to the number of systems inspected and the percentage of system failures found are included in Councils quarterly reports. Inspections in relation to auditing are done by the use of mapping on a street by street basis and owners are usually notified in writing prior to the start of inspections in their area. In situations where property owners who have not previously applied for approval to operate, or where Council has no such record of an existing approval, they are requested to make application for an approval to operate and pay the appropriate application fee.

Owners of properties have the ability to arrange an inspection time if the owner wishes to be present during the inspection. If a specific time and date is not required the officer will undertake the inspection as soon after notification during the nominated period. Following the inspection an approval to operate is normally issued to the applicant. The approval may require the owner/applicant to undertake repairs or other works to improve the operation of the system within a set timeframe. The approval however only relates to the operation of a system of sewage management on land and the granting of such approval in no way authorises any ancillary activity on the land that may require approval under the Local Government Act 1993 and /or other legislation, and this is specified on the approval. Inspections are also undertaken when Council becomes aware that a system may be malfunctioning or possibly causing public health or environmental problems. Following these inspections improvement notices or other orders may be issued for immediate rectification works or other action to be undertaken in relation to the problem.

Council also offers a pre-purchase inspection service at the request of home purchasers or Solicitor/Conveyancer prior to the sale and settlement or transfer of ownership of a property. To obtain an inspection the relevant application form is completed and applicable fee paid. An inspection of the system is then undertaken and Council provides to the applicant a written report about the state of the system and any other matters relating to the system that may have been identified.

Council has numerous roles and responsibilities and this report has been prepared to inform Council on the work undertaken by officers within Councils Building and Environmental Health Unit to comply with the requirements in relation to the management of on-site sewage management systems.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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

Nil.

19 [PR-CM] Demolition of Fire Damaged Dwelling at Lot 1 DP 123061, No 8 Prince Street Murwillumbah

ORIGIN:

Building and Environmental Health

FILE NO: PF4440/310

SUMMARY OF REPORT:

Earlier this year a dwelling situated at 8 Prince Street Murwillumbah was extensively damaged by fire. An inspection of the site identified that due to the dangerous state of the building and the fact that the building contained asbestos the building required demolition. After a title search of the property an Emergency Order was issued to the owner of the property for the demolition of the dwelling to the prescribed standards. Further correspondence was also issued together with the order to install temporary fencing around the property to secure the site. The site has been fenced and an extension of time was given to the owner of the property to engage a suitable contractor to undertake the demolition. The owner has now been contacted on several occasions and at this point in time the demolition work has not been undertaken. As sufficient time has been given to the owner of the property and due to the fact the site and building present a risk to the adjoining land holders and public Council officers have arranged for the demolition works to be commenced 10 August 2010 and will pursue the costs for such work with the owner of the property.

RECOMMENDATION:

That Council recover the costs of \$27,357.00 GST inclusive from the owner for demolition of fire damaged dwelling of the property, Lot 1 DP 123061, No 8 Prince Street, Murwillumbah.

REPORT:

On 9 April 2010 an inspection was carried out by Council's Building Compliance Officer with reference to a fire damaged dwelling at No.8 Prince Street Murwillumbah. The inspection identified that the dwelling had almost been completely destroyed by fire and that the dwelling contained asbestos and therefore required immediate attention due to the hazardous nature of the site. After carrying out a Title Search an Emergency Order was issued to the known property owner with a direction to engage the services of Asbestos Licensed Contractors to carry out demolition of the said dwelling in accordance with the provisions of the Australian Standards AS2601 and to the relevant requirements of Work Cover NSW, Occupational Health and Safety Regulation 2001. A direction was also issued to install temporary fencing around the property to secure the site and restrict entry to the public. The property owner immediately arranged a licensed contractor to install the requested fencing.

On 10 May 2010 correspondence was received from the property owner requesting an extension of time in order to engage the services of a contractor to carry out the works as he claimed that he had only received the Emergency Order two weeks prior. After Consultation with Council's Manager of Building and Environmental Health the property owner was advised that a four week extension would be granted until 10 June 2010 to carry out the necessary work. Council was unable to contact the property owner until 1 July 2010 where he advised that he was interstate. He also advised that he was having difficulty arranging someone to carry out the required work but he had now found a contractor and he would advise the contractor to contact Council regarding a schedule of works. Council confirmed the advice given in writing on 1 July 2010 and requested a copy of the schedule of works and the name of the contractor carrying out the prescribed work.

On 7 July 2010 the property owner was contacted as no response had been received in relation to the correspondence issued 1 July 2010. He advised that he had contracted Hardie Excavations to carry out the required work and he advised Council to contact the principal of the company directly. A phone call to the contractor on 8 July 2010 revealed that the property owner had contracted the contractor to carry out the work to demolish the dwelling to the ground level. The contractor however had not been made aware that the dwelling contained asbestos and advised that he would need to review his quote.

On 12 July 2010 a further phone call was made to the contractor which revealed that he had been in contact with the property owner to review the original quote as a result of the asbestos. The contractor advised that the property owner had abruptly ended the phone call when advised of the increased cost in the quotation. Council's Compliance officer attempted to contact the property owner on a number of occasions to determine his intentions however calls were not answered. In an effort to determine the owners intentions a letter was then forwarded to the owner advising that as Council had been unable to make further contact that Council would now obtain quotations for the demolition of the said property and was intending to proceed with the demolition and pursue costs against him.

As a consequence and due to the urgency of the matter Council's Building Compliance Officer arranged for quotations to carry out the necessary demolition work. It should also be noted that several Demolition Companies had also contacted Council's Compliance Officer and advised that the property owner has been phoning to arrange for quotations but had not been advised that the building contained asbestos materials.

In regard to the demolition Council has a responsibility to ensure that the neighbouring properties and general public are safe from asbestos related issues. Therefore due to the reluctance of the property owner to comply with Council's direction Council is in a position where it has no option but to engage the services of a Licensed Asbestos Contractor to carry out the necessary work on behalf of the owner to ensure a safe environment and also comply with the Emergency Order. A quote has been accepted and work is due to commence on 10 August 2010.

SITE DIAGRAM:



LOCALITY PLAN

Lot 1 DP 123061
No. 8 Prince Street, Murwillumbah

0 1 2 Km
1:125,000

Filename: z:\as\planning\msd\AAP_B&W SitePlan.mxd

Author: J.Batchelor - Planning Reforms Unit

Date Printed: 10 August, 2010

Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and approximate only. It should not be used for survey or construction purposes and prior to any excavation a 'Dig before you Dig' enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of issue.



Coordinate System - MGA Zone 55
Datum - GDA 84

Cadastral: 10 August, 2010
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WE: www.tweed.nsw.gov.au
E: planningreforms@tweed.nsw.gov.au



PHOTOS:



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The Emergency Order for the demolition of the fire damaged dwelling at the above described property has been issued under Section 121 D of the Environmental Planning and Assessment Act 1979, as amended. This order has been signed by Council's Manager of Building and Environmental Health, who has the delegated authority. Quotations were sought and the lower of the quotes is \$27,357.00 GST inclusive.

Council will be required to reimburse the contractors for the work carried out subject to the contractors providing to Council a visual clearance certificate on completion of the works for the site. Service disconnections will be required to be provided by Council. The property owner is to be invoiced by Council for the work carried out. Clause 121ZJ of the Environmental Planning and Assessment Act 1979 relates to a person failing to comply with an order and the carrying out of the said work by the Consent Authority. Part (4) (b) states inter-alia: *that the person who gave the Order may recover the costs from the owner of a property as a debt.*

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

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Nil.

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

ORIGIN:

Director Planning and 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 July 2010 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.	DA09/0106
Description of Development:	Roadside stall
Property Address:	Lot 10 DP 252918 No. 852 Tyalgum Road EUNGELLA
Date Granted:	23/7/2010
Development Standard to be Varied:	Clause 24 – setbacks to designated roads
Zoning:	1(a) Rural
Justification:	A SEPP 1 Objection has been submitted to vary Clause 24 of the TLEP 2000 to enable a roadside stall to be constructed within the 30m setback to Tyalgum Rd, a Council designated road. The extent of the variation is 56% - i.e.: the stall is proposed to be located 17m from Tyalgum Road instead of 30m. The applicant has submitted that compliance of the standard is unreasonable and unnecessary because of physical characteristics of the site (the location of a dam) between the proposed site and the remainder of the farm, which precludes the stall being located 30m back from the road. Location of the stall on the other side of the dam would result in a 70m setback which would compromise the concept of a 'roadside stall'.
Extent:	56%
Authority:	Tweed Shire Council

DA No.	DA09/0685
Description of Development:	Two (2) lot subdivision
Property Address:	Lot 2 DP 772129 Hogans Road, BILAMBIL
Date Granted:	23/7/2010
Development Standard to be Varied:	Clause 20(2)(a) - Minimum lot size 40ha
Zoning:	1(a) Rural
Justification:	Two lot subdivision of a 95ha parcel of land to create a 76.17ha lot and a 19.06ha lot. Council Officers recommended refusal however Councillors approved the application.
Extent:	52%
Authority:	Director General of the Department of Planning

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 (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).*

Nil.

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